

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

3 STATE OF WISCONSIN,

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

9  
10 DATE: NOVEMBER 15, 2005

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

13 APPEARANCES:

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

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

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

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

26 \* \* \* \* \*

27 TRANSCRIPT OF PROCEEDINGS

28 Reported by Diane Tesheneck, RPR  
29 Official Court Reporter

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

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

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

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

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

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

3                   ATTORNEY LOY: That's correct.

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

5                   ATTORNEY LOY: There's an asset.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 THE COURT: Mr. Loy.

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

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

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

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

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

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

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

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

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

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

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

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

19                  THE COURT: Correct.

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

23                  THE COURT: That will be fine.

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

1                   THE COURT: Anything else this afternoon?

2                   ATTORNEY KRATZ: That's all for today.

3                   Thank you, Judge.

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

9                   (Proceedings concluded.)

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

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      day of                       , 2006.

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19                       \_\_\_\_\_  
20                       Diane Tesheneck, RPR  
21                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF,

PRELIMINARY EXAMINATION

5 vs.

Case No. 05 CF 375 & 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

10 DATE: DECEMBER 6, 2005

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

12 APPEARANCES:

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

15 ERIK R. LOY  
16 Attorney at Law  
On behalf of the Defendant.

17 CRAIG JOHNSON  
18 Attorney at Law  
On behalf of the Defendant.

19 STEVEN A. AVERY  
20 Defendant  
Appeared in person.

22 \* \* \* \* \*

23 TRANSCRIPT OF PROCEEDINGS

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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

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

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

14                  THE COURT: Mr. Kratz.

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

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

21                  ATTORNEY KRATZ: Until they are what?

22                  THE COURT: Any witness who --

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

1                   THE COURT: Correct.

2                   ATTORNEY KRATZ: Yes.

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

10                  ATTORNEY KRATZ: That's my understanding,

11                  your Honor.

12                  THE COURT: Mr. Loy.

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

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

17                  ATTORNEY KRATZ: Yes.

18                  ATTORNEY LOY: Yes.

19                  THE COURT: The Court has also received a  
20                  motion for bail reduction and I will take that up at  
21                  the conclusion of the preliminary examination.

22                  Anything else before we proceed, Counsel?

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

25                  ATTORNEY LOY: Not from us, your Honor.

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

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

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

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

10                  THE WITNESS: I do.

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

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

15                  DIRECT EXAMINATION

16                  BY ATTORNEY KRATZ:

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

22                  A. Yes, I was.

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

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

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

4 A. Tom Halbach is Teresa's father.

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

9 A. Yes, I did.

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

13 A. Yes, I did.

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

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

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

1           with?

2 A.    My daughter was with me.

3 Q.    And your daughter's name?

4 A.    Nicole Sturm.

5 Q.    About how old is Nicole?

6 A.    25.

7 Q.    And did you and Nicole then proceed to a piece of

8           property west of Mishicot, Wisconsin, property is

9           known as Avery Auto Salvage?

10 A.    Yes, we did.

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

12          remember?

13 A.    Approximately 10 to 10 a.m.

14 Q.    And at about 10 to 10 did you make contact with

15          anybody on that property?

16 A.    Yes, I did.

17 Q.    Who was that?

18 A.    I talked to Earl Avery.

19 Q.    And did Earl Avery identify himself or tell you

20          how he might be associated with that property?

21 A.    I asked him if he was an Avery and he said, yes,

22          Earl. And on the side of the building, it says

23          that Earl is one of the co-owners. And he did

24          indicate that he is one of the owners of the

25          property.

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

3 A. Yes, I did.

4 Q. What did you ask him?

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

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

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

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

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

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

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

3       A. Yes, he did.

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

6       A. Yes, we did.

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

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

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

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

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

25      A. Yes.

1 Q. What was your intent?

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

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

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

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

14 A. It was a Rav 4 Toyota.

15 Q. Small SUV; is that right?

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

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

22 A. Yes, I did.

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

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

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

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

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

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

15      A.   Yes, that's correct.

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

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

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

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

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

9 A. About 10:20 a.m.

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

12 A. Yes.

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

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

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

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

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

A. Yes.

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

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

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

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

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

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

So she gave me Mr. Pagel immediately.

24 And I told Mr. Pagel, I believe we found the  
25 vehicle in the Avery Salvage Yard. And he said,

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

4           So, my daughter read the four last  
5           numbers, she could see those. And then he said,  
6           well, could you read the rest of the numbers.

7           And she read those off to me, so I told Mr. Pagel  
8           the VIN number.

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

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

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

17      A.    No, he would not tell me.

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

19      A.    That's right.

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

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

1                   the yard.

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

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

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

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

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

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

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

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

4       A. Yes, it is.

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

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

10      Q. How did she try the doors?

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

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

15      A. Yes, that's correct.

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

19      A. Yes, we did.

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

22      A. Approximately 20 minutes.

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

1           Thank you.

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

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

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

9           ATTORNEY LOY: Yes, your Honor.

10          THE COURT: You may proceed.

11          ATTORNEY LOY: Thank you, Judge.

12          CROSS-EXAMINATION

13          BY ATTORNEY LOY:

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

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

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

19          A. Yes, that's correct.

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

22          A. Four or five photos of the car.

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

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

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

7       Q. One of the two individuals?

8       A. Yes.

9       Q. Did the other person identify himself?

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

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

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

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

20      A. No, sir.

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

22      A. Yes.

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

25      A. That's correct.

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

4 A. Yes.

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

6 A. We walked down there.

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

10 A. No.

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

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

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

15 A. No, sir.

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

18 A. I don't believe so.

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

21 A. That's correct.

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

24 A. No, we didn't.

25 Q. Did you touch anything in that office?

1 A. No, sir.

2 Q. How long did you stay in there?

3 A. Maybe about two seconds.

4 Q. Okay. All right. What did the person who was

5 talking with Earl Avery look like? Can you give

6 me a description of him?

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

8 brown hair.

9 Q. Where were these people standing?

10 A. I'm sorry?

11 Q. Where were the two of them standing, Earl and

12 this person he was talking to?

13 A. They were out in the parking lot.

14 Q. In --

15 A. Right in front of the building.

16 Q. In front of the main office area?

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

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

19 A. Yes.

20 Q. When you saw this Rav 4 vehicle, did you -- did

21 you move any of the items that were -- that were

22 covering it or on top of it?

23 A. The only thing that we moved was the hood. And

24 if you can picture, the hood has got a real thin

25 part where you can just move it a little bit away

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

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

5 A.       Correct.

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

7 A.       No.

8 Q.       It was some other hood, right?

9 A.       Yes.

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

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

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

16 A.       That's correct.

17 Q.       And she used her sleeve?

18 A.       Yes.

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

21 A.       No.

22 Q.       The vehicle was locked?

23 A.       That's correct.

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

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

1           door, were tried.

2 Q.     For the front seat?

3 A.     Pardon me?

4 Q.     For the front seat?

5 A.     There are only two doors.

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

7 A.     I believe so.

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

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

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

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

18                   THE COURT: Mr. Loy.

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

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

23                   ATTORNEY KRATZ: Thank you.

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

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

2 A. I believe the door goes in.

3 Q. So, you pushed the door in?

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

5 Q. Grabbed the doorknob and turned it and pushed the

6 door in; is that how it went?

7 A. Right.

8 Q. Okay. When you first got there, you didn't see

9 anyone outside, right?

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

11 Q. Okay. So you saw these two guys conversing by a

12 car, but you went in the main office door to find

13 someone, and then -- is that right?

14 A. That's correct.

15 Q. And then, when you didn't find anyone in the

16 office, you went outside and talked to the two

17 guys?

18 A. That's correct.

19 Q. And where were they standing?

20 A. They were standing to the right of my vehicle, in

21 between two other vehicles.

22 Q. And did you park your vehicle sort of in a

23 courtyard area near the door to the main office?

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

25 the office.

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

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

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

7 A. That's correct.

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

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

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

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

16 Q. Okay. Did he say anything else?

17 A. No.

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

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

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

- 1 A. That's correct.
- 2 Q. Did Earl Avery have any response when you said it  
3 would relieve the parent's minds if you could  
4 look for the car? Did he have any response to  
5 that?
- 6 A. He just said, I know how it feels, because we  
7 lost a nephew a year ago and I know how they  
8 feel.
- 9 Q. Earl Avery was very cooperative with you?
- 10 A. Yes.
- 11 Q. He didn't give you any problems with searching  
12 the property?
- 13 A. Well, at first he said he thought somebody else  
14 was there already to search, but they took a  
15 vehicle through the yard. And he kind of said,  
16 well, you know, they searched already.
- 17 Q. Did he say anything about what these other  
18 searchers did or found?
- 19 A. No, he didn't.
- 20 Q. Did he say it was okay, then, for you to do the  
21 search?
- 22 A. Yes, he did.
- 23 Q. Did Earl Avery say anything about where to start  
24 the search, or anything along those lines, give  
25 you any direction?

1 A. No, sir.

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

3 A. Yes, he did.

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

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

8 ATTORNEY LOY: Nothing further, your Honor.

9 THE COURT: Any redirect?

10 ATTORNEY KRATZ: No, Judge.

11 THE COURT: The witness is excused.

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

14 THE CLERK: Please raise your right hand.

15 **THOMAS FASSBENDER**, called as a witness

16 herein, having been first duly sworn, was  
17 examined and testified as follows:

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

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

22 **DIRECT EXAMINATION**

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

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

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

5 A. Yes.

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

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

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

13 A. Yes.

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

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

22 Q. How is it that you recognize that?

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

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

25 A. Probably averaged about 16.

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

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

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

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

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

1           take this road --

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

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

6   Q.   Go ahead. Who else lived there?

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

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

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

1 A. That's correct.

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

9 A. Yes.

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

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

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

19 A. Yes.

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

1 A. Yes, most of the time.

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

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

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

9 A. Yes.

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

12 A. Yes.

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

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

16 ATTORNEY KRATZ: Your Honor, I would ask

17 that the record reflect the defendant's  
18 identification.

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

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

1                   investigation?

2     A. Yes.

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

8     A. Yes.

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

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

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

23    A. Yes.

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

1 fact?

2 A. Yes.

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

5 THE COURT: Any objection?

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

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

11 (Side bar taken.)

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

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

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

1                   microphone so that won't happen.

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

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

8                   A. Yes.

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

11                  A. Yes.

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

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

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

6 A. Yes, to a certain degree.

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

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

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

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

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

1 to Madison?

2 A. Yes.

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

5 THE COURT: Any objection?

6 ATTORNEY LOY: None for this hearing.

7 THE COURT: Exhibit 5 is admitted.

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

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

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

22 A. Certainly that played into that decision.

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

1 A. That's correct.

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

8 A. Yes.

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

14 A. Yes.

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

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

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

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

8                  A. Yes.

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

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

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

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

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

11 A. Took a picture of it, yes.

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

16 THE COURT: Sustained.

ATTORNEY LOY: And move to strike.

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

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

22 A. Yes.

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

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

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

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

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

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

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

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

1 interview with Mr. Avery?

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

4 Q. Is that form signed?

5 A. Yes.

6 Q. Who is it signed by?

7 A. Steven Avery.

8 Q. Is it witnessed by anybody?

9 A. Myself and Investigator Wiegert.

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

12 A. Yes.

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

15 THE COURT: Any objection to Exhibit 6?

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

18 THE COURT: Exhibit 6 is admitted.

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

25 A. Yes.

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

3 A. Yes.

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

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

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

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

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

17 A. No.

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

22 A. Yes.

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

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

3 A. Yes.

4 Q. What did Mr. Avery tell you?

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

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

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

1                   returned to his house.

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

7   A.   No.

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

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

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

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

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

23   A.   Yes, he was asked.

24   Q.   What did he tell you?

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

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

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

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

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

1           that diagram?

2   A. Yes.

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

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

8   Q. Scale?

9   A. Scale. Done to scale.

10   Q. Okay.

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

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

21   A. Yes.

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

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

3       A. Definitely.

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

9       A. Yes.

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

14      A. Yes.

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

19           THE COURT: Sustained.

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

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

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

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

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

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

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

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

2   A. Yes.

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

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

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

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

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

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

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

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

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

16                  THE COURT: All right.

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

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

25       Q. Did you understand that those remains were

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

4         A. Yes.

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

10       A. Yes.

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

13       A. Yes.

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

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

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

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

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

17 A. Yes.

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

21 THE COURT: Mr. Loy.

22 ATTORNEY LOY: Thank you, your Honor.

23 **CROSS-EXAMINATION**

24 BY ATTORNEY LOY:

25 Q. Officer Fassbender, were you the officer in

1 charge of this investigation?

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

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

5 A. Yes.

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

8 A. Yes.

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

11 A. Yes.

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

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

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

21 A. Yes.

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

24 A. Yes.

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

1 A. No.

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

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

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

8 A. That's correct.

9 Q. And there were hundreds of these people?

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

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

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

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

17 A. Yes.

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

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

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

1           searched?

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

5       Q. Searched pretty thoroughly?

6       A. I believe so.

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

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

15      Q. Fire departments from where?

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

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

21      A. Yes.

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

24      A. Watching every searcher?

25      Q. Yes.

- 1       A. I would have to say no to that. When you have  
2           got 60 troopers in the back searching cars, there  
3           wasn't someone from Calumet or DCI with each of  
4           those troopers, no.
- 5       Q. What about the searchers who were looking in  
6           areas other than the cars, the residences, the  
7           business areas, up, basically, where we have the  
8           scaled diagram? How many people were searching  
9           that area and how were they monitored?
- 10      A. I can't say for sure how many people were  
11           searching that area, but when it came to  
12           searching the residences and the buildings, there  
13           was a DCI agent or a Calumet County personnel  
14           with them.
- 15      Q. You testified that her license plates were found  
16           in a vehicle, and I think there is an arrow  
17           pointing to it on a diagram; is that correct?
- 18      A. Yes.
- 19      Q. Did you find those or did someone else?
- 20      A. Someone else.
- 21      Q. Okay. Do you know who found those plates?
- 22      A. By name, no, but I believe it was a trooper.
- 23      Q. Who -- It looks like you gave Mr. Avery his  
24           **Miranda** warning; is that correct?
- 25      A. No, Investigator Wiegert read his **Miranda**

1           warnings to him.

2 Q.       And you signed as a witness?

3 A.       Yes.

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

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

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

12 A.       No.

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

14 A.       Yes.

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

16 A.       Yes.

17 Q.       And was he in handcuffs?

18 A.       No.

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

21 A.       No.

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

24 A.       No, not at that time.

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

1                   attorneys?

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

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

7       A. No.

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

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

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

16      A. Yes.

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

20      A. Correct.

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

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

1 Q. And Officer Wiegert was in the back seat with  
2 Mr. Avery?

3 A. Yes.

4 Q. And you were driving?

5 A. Yes.

6 Q. You observed a scabbed over cut on the middle  
7 finger of Mr. Avery's right hand; is that right?

8 A. Yes.

9 Q. And Mr. Avery told you how he got that cut,  
10 didn't he?

11 A. If he said it, when he said it, I wasn't present,  
12 no. He didn't tell me.

13 Q. Nothing that you heard?

14 A. No.

15 Q. Was Mr. Avery cooperative with you and Officer  
16 Wiegert?

17 A. Yes.

18 Q. He answered your questions?

19 A. Yes.

20 Q. And he told you that Ms Halbach had been there  
21 and had taken a picture?

22 A. Yes.

23 Q. And then she had driven away?

24 A. Yes, he said about less than five minutes she was  
25 there.

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

2 A. Saturday, November 5, mid-afternoon. I'm

3 thinking it was around 3, 2:30, 3 p.m.

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

5 A. Met with the investigators, the sheriff of

6 Calumet County, in a command post at the Avery

7 property and became -- got briefed on what was

8 happening up to that point.

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

10 A. Yes.

11 Q. Okay. At that point, there hadn't been any other

12 evidence found, other than the Rav 4?

13 A. I believe that's correct.

14 Q. Okay. And this command post, was it inside one

15 of the Avery buildings?

16 A. No.

17 Q. Where was it?

18 A. They had a trailer out there, command post

19 trailer from the Sheriff's Department.

20 Q. From the Calumet Sheriff's Department?

21 A. They had one from each. I don't know if

22 Calumet's was there yet. But they had one from

23 Manitowoc County and Calumet County brought one

24 also.

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

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

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

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

16       A. Yes.

17       Q. Who was there?

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

21       Q. About how many?

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

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

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

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

1                   the deputies who were securing the vehicle?

2       A. When I went down there?

3       Q. Yes.

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

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

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

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

15      A. That's correct.

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

19      A. Correct.

20      Q. Did you supervise that processing?

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

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

Q. Where was the tow truck from?

A. I do not know.

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

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

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

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

1 just can't remember it right now.

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

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

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

8 A. When I first saw it?

9 Q. Yes.

10 A. Yes.

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

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

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

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

22 Q. And how was that done?

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

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

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

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

7                     THE COURT: Any redirect?

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

14                     THE CLERK: Yes.

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

16                     THE CLERK: Four you did and six.

17                     ATTORNEY KRATZ: I have with 6 as well?

18                     THE CLERK: Yes.

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

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

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

25                     THE COURT: Exhibits 2 and 3 are admitted.

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

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

5           THE CLERK: Raise your right hand.

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

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

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

13                            DIRECT EXAMINATION

14          BY ATTORNEY KRATZ:

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

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

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

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

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

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

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

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

6         A. Yes, I did.

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

12        A. Yes, I do.

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

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

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

1           like, were searched on more than one occasion?

2       A. Yes.

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

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

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

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

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

19       A. Yes, it did.

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

22       A. Yes.

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

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

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

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

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

8       Q. Describe those rifles for me, please.

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

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

15      A. Yes.

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

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

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

1 A. Yes, it is.

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

3 THE COURT: Just a second.

4 ATTORNEY KRATZ: I'm sorry, Judge.

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

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

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

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

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

19 ATTORNEY LOY: No objection, your Honor.

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

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

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

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

7       Q. And did you do that?

8       A. Yes, I did.

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

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

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

14      A. That's correct.

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

16      A. Ten of them.

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

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

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

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

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

15 A. That's correct.

16 Q. What day did you do that?

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

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

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

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

1                   the bedroom, where that Toyota key was found?

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

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

8       A.   Yes, I did.

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

13      A.   Not while it was in my possession.

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

18      A.   Yes, I did.

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

21                   THE COURT: Mr. Loy.

22                   **CROSS-EXAMINATION**

23                   BY ATTORNEY LOY:

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

1           the 8th?

2   A. No, I did not.

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

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

6   Q. Who else was searching with you?

7   A. At which time?

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

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

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

13   A. Yes, we were.

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

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

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

22   A. Yes.

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

1 A. To a certain point.

2 Q. Okay. During this search, were you and the other

3 officers wearing gloves?

4 A. Yes, we were.

5 Q. And did you wear the same gloves throughout the

6 search?

7 A. No.

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

9 A. I can only testify as to what I did there. As I

10 would be writing or photographing, it was tough

11 to do with the gloves on so I would take them off

12 periodically and take fresh gloves then.

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

14 think?

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

16 Q. Well, I'm talking, specifically, about the search

17 on November 8th?

18 A. Okay. I did several searches on that day. The

19 search of the Avery residence, Steven Avery's

20 residence, I probably changed my gloves

21 approximately two or three times.

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

23 A. Like I said, usually it was to -- if I had to

24 write something, or if I was photographing.

25 Q. Do you remember the specific times when you

1           changed the gloves?

2 A. No.

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

5 A. Yes, I did.

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

8 A. We were finishing up the search in the room. I  
9       had finished up the section that I was searching,  
10      the night stand. I took off my gloves.

11 Lieutenant Lenk was making a phone call. That  
12      was why I took off my gloves. We had finished up  
13      the search of that room, were finishing up the  
14      search of that room.

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

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

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

23 A. We were searching, correct.

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

1 A. Yes.

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

4 A. Yes.

5 Q. Was it underneath anything?

6 A. Not when we saw it, no.

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

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

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

13 A. Yes.

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

16 A. Correct.

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

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

22 Q. No one mentioned seeing it?

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

1 testimony.

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

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

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

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

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

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

17 A. No, Manitowoc County.

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

20 A. Also, yes.

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

23 A. Not that I know of.

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

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

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

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

4 on November 5th; is that right?

5 A. Search of?

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

7 residence?

8 A. I don't know for sure.

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

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

11 A. No.

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

13 searched pursuant to a warrant; is that right?

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

15 junk yard with cadaver dogs.

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

17 5th?

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

19 Steven Avery residence on the 5th.

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

21 was done on that day or not?

22 A. Correct.

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

24 that.

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

1           look under everything.

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

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

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

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

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

11 A.     No.

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

14 A.     Correct.

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

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

18 Q.     Okay.

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

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

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

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

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

#### A. Evidence collection materials.

Q. What kinds of things?

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

Q. Was there any other evidence in this kit?

A. No.

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

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

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

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

Q. Okay.

### A. Brown paper.

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

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

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

3           THE COURT: Mr. Loy.

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

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

18          ATTORNEY LOY: Okay.

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

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

23          Q. At least a couple hours?

24          A. Yes.

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

1           same time --

2   A.   Yes.

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

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

7   Q.   That was Officer Colburn and Officer Lenk?

8   A.   Sergeant Colburn, Lieutenant Lenk, yes.

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

11           ATTORNEY KRATZ: Judge, same objection.

12          This is just what the Court, I think, had hoped  
13      wouldn't happen, goes well beyond the preliminary  
14      hearing scope.

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

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

1 ATTORNEY LOY: Thank you, your Honor.

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

4 A. Yes.

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

6 A. A couple inches away.

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

9 A. Yes.

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

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

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

16 A. Yes.

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

19 A. Yes.

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

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

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

1 A. Yes.

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

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

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

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

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

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

20 A. No.

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

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

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

1 A. No.

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

6 A. Yes.

7 ATTORNEY LOY: Nothing further.

8 THE COURT: Any redirect?

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

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

14 ATTORNEY KRATZ: How long, Judge?

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

17 (Recess taken.)

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

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

22 THE CLERK: Please stand.

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

1 follows:

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

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

6 **DIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

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

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

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

16 A. I did.

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

20 A. I did.

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

25 A. I do.

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

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

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

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

18 A. That was on November 8th.

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

23 A. I did.

24 Q. And tell us what happened, please.

25 A. Myself and three members of the Wisconsin State

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

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

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

17       A. Yes.

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

24       A. Yes, we did.

25       Q. Agent Sturdivant, I understand that the recovery

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

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

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

15       A. That's correct.

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

18                   THE COURT: All right. Mr. Loy.

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

21                   THE COURT: Excuse me. Mr. Johnson.

22                   ATTORNEY JOHNSON: Thank you.

23                   **CROSS-EXAMINATION**

24       BY ATTORNEY JOHNSON:

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

1 DCI; is that right?

2 A. That is correct.

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

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

7 Q. What time of day?

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

10 Q. You work out of Madison?

11 A. No, I work out of Wausau.

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

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

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

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

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

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

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

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

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

4       Q. Okay. Where was that?

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

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

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

12      Q. Thank you.

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

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

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

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

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

1 command post vehicle.

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

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

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

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

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

19 A. Yes.

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

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

23 Q. And you did that?

24 A. I did that, yes.

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

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

4 Q. How long did that take?

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

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

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

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

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

15 Q. Okay. Anybody else?

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

20 Q. Okay.

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

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

23 ATTORNEY KRATZ: Objection, discovery.

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

25 ATTORNEY KRATZ: I interposed an objection.

1           This is discovery.

2           THE COURT: Sustained.

3           ATTORNEY KRATZ: Thank you.

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

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

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

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

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

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

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

7 A. I believe so.

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

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

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

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

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

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

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

1           pit?

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

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

6       A. Yes.

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

9       A. Okay.

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

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

14      Q. Okay.

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

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

18      A. I am not.

19      Q. Okay. How was this deputy dressed?

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

21      Q. Okay. What else?

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

24                   THE COURT: Sustained.

25                   ATTORNEY KRATZ: Thank you.

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

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

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

8 A. That's correct.

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

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

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

- 1           what did you do?
- 2       A. From the 8 feet south of that burn pit, I could
- 3           clearly see that there was some bone matter
- 4           located around the debris pile. Then I walked
- 5           over and took a closer look at the charred debris
- 6           and realized that there was quite a bit of bone
- 7           matter within the debris, as well as intertwined
- 8           within the steel belts of burned tires, and so
- 9           forth.
- 10      Q. Okay. Can you describe more specifically what
- 11           you saw when you say bone matter. What exactly
- 12           does it look like?
- 13      A. Well, in this case, it just looked like different
- 14           lengths and different sizes of bone fragments.
- 15           Could I determine at that point what they were,
- 16           what type of bone? I could not. But I could
- 17           determine that it was bone matter.
- 18      Q. And you say you have sifted through this kind of
- 19           thing before; is that right?
- 20      A. That's correct.
- 21      Q. And approximately how many times?
- 22      A. Twice.
- 23      Q. Two times?
- 24      A. Yes.
- 25      Q. Okay. And when were those two times?

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

3 Q. When was that?

4 ATTORNEY KRATZ: Objection, discovery,  
5 Judge.

6 THE COURT: The objection is sustained.

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

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

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

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

19 Q. How were you dressed?

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

22 Q. Does that cover your feet?

23 A. I'm sorry?

24 Q. Does that cover your feet?

25 A. No.

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

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

7 Q. What was the weather like that day?

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

11 Q. Any idea of the temperature?

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

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

18 A. That's correct.

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

21 A. I couldn't tell you.

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

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

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

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

10      A. Throughout the mound of dirt?

11      Q. Right.

12      A. No.

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

15      A. May I point to it.

16      Q. Sure.

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

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

1           pile was located.

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

5 A. Yes.

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

9 A. That's correct, yes.

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

12 A. Yes.

13 Q. What exactly did you see?

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

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

1 Q. You say a car seat, like a seat from a car?  
2 You're not talking about a baby car seat, you're  
3 talking about an actual seat from a car?  
4 A. Would be a bench seat.  
5 Q. Bench seat. Okay. And there were other pieces  
6 of material. Could you tell -- I mean, was there  
7 a way for you to tell if all that stuff had been  
8 recently burned, or if some of it was older; for  
9 instance, did the car seat have any rust on it,  
10 or anything like that?  
11 A. The car seat, it did have some rust on it, but it  
12 probably oxidized due to the weather. But my  
13 opinion is that the burn site, and it looked  
14 fairly -- that site didn't look like it was used  
15 that often, looked like it was fairly new.  
16 Q. Okay. Were you there when the crime scene people  
17 came to process that scene, I mean the Crime Lab  
18 people?  
19 A. At what point? I was there when they initially  
20 sifted the material.  
21 Q. Okay. Did they dig down?  
22 A. We did not.  
23 Q. So, you didn't -- you couldn't tell how deep,  
24 like the charred dirt, or charred materials,  
25 would go down into the ground?

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

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

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

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

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

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

20 A. The tarp came from the Crime Lab.

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

23 A. They did, yes.

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

- 1 A. That's correct.
- 2 Q. Okay. And so, I assume for a couple hours, until
- 3 it got dark, from 3 to 5, 5:30 type of thing?
- 4 A. Yes.
- 5 Q. And what happened to the stuff that was on the
- 6 tarp?
- 7 A. The stuff on the tarp was collected, double
- 8 bagged in a black bag and then placed into a
- 9 secure trailer that was in control of the Calumet
- 10 County Sheriff's Department.
- 11 Q. Okay. What kind of bags were used?
- 12 A. Large, black, plastic garbage bags.
- 13 Q. So you put it in large, plastic garbage bags?
- 14 A. It all fit in one bag. We just double bagged it.
- 15 Q. Okay. And you say you used like three -- three
- 16 different strainers; is that right?
- 17 A. Yes.
- 18 Q. Sort of sift through the dirt, get all the dirt
- 19 out?
- 20 A. What you do is, there are different sifters. You
- 21 want some of the material to fall through and you
- 22 want to capture other material.
- 23 Q. So, how wide are we talking about?
- 24 ATTORNEY KRATZ: Objection, discovery.
- 25 THE COURT: The objection is sustained.

1 Q. (By Attorney Johnson) Were you there when the  
2 stuff was taken off the tarp and bagged up?

3 A. Yes.

4 Q. Okay. Were you there that whole time, throughout  
5 the afternoon?

6 A. Yes.

7 Q. Okay. So then, that stuff is taken off the tarp,  
8 it is put in these plastic -- this one plastic  
9 bag, double bagged, sealed; is that right?

10 A. It's not sealed, per se. It's tied and then it's  
11 placed in the Calumet County van that was in  
12 control of the Calumet County Sheriff's  
13 Department. And Rick Reimer was the person that  
14 secured it.

15 Q. Okay. And then did it, that particular burn area  
16 scene, did that continue to get processed the  
17 next day?

18 A. I don't believe it was actually processed until  
19 Thursday.

20 Q. Okay. So, what about Wednesday, what happened  
21 there?

22 A. Wednesday, I had to appear in court in Monroe  
23 County, so, I wasn't available. And then I came  
24 back on Thursday and assisted Special Agent  
25 Rodney Pevytoe with sifting debris.

1 Q. To your knowledge, nobody did anything with that  
2 particular part of this site on Wednesday?

3 A. Not to the best of my knowledge.

4 Q. Okay. Then you came back on Thursday. Did you  
5 spend the whole day doing the sifting on that  
6 date?

7 A. The first thing we did was, Thursday morning we  
8 set up at the Calumet County Sheriff's Department  
9 and sifted, again, through the debris that we had  
10 collected on the tarp on Tuesday. And after  
11 completing that, we then went back to the crime  
12 scene and began to process that thoroughly.

13 Q. You say you went back, you mean back to that burn  
14 area; is that what you are talking about?

15 A. Yes.

16 Q. Okay. And, basically, same process as on Tuesday  
17 or?

18 A. Well, I was -- I wasn't intimately involved with  
19 any of the processing of the scene. We had a  
20 number of other agents that arrived from the  
21 Arson Bureau that then processed the scene.

22 Q. Okay. Are you an arson investigator?

23 A. I was at once upon a time.

24 Q. And when was that?

25 A. That was approximately two years ago.

1 Q. For how long?

2 THE COURT: I'm going to interpose my own  
3 objection.

4 ATTORNEY KRATZ: Thank you, Judge.

5 Q. (By Attorney Johnson) How long have you been with  
6 DCI?

7 A. Since 1998.

8 Q. And before that?

9 ATTORNEY KRATZ: Objection, discovery, your  
10 Honor.

11 THE COURT: Sustained.

12 ATTORNEY JOHNSON: That's all the questions  
13 I have. Thank you.

14 THE COURT: Any redirect?

15 ATTORNEY KRATZ: Absolutely not. Thank  
16 you, Judge.

17 THE COURT: Witness is excused.

18 THE WITNESS: Thank you.

19 ATTORNEY KRATZ: State will call Leslie  
20 Eisenberg to the stand.

21 THE CLERK: Please raise your right hand.

22 **LESLIE EISENBERG**, called as a witness  
23 herein, having been first duly sworn, was  
24 examined and testified as follows:

25 THE CLERK: Please be seated. Please state

1                   your name, spell your last name for the record.

2                   THE WITNESS: My name is Leslie Eisenberg,  
3                   E-i-s-e-n-b-e-r-g.

4                   **DIRECT EXAMINATION**

5                   BY ATTORNEY KRATZ:

6                   Q.     How are you employed, ma'am?

7                   A.     I'm sorry?

8                   Q.     How are you employed?

9                   A.     I am currently employed by the Wisconsin  
10                   Historical Society in Madison and as program  
11                   coordinator for the State's Burial Site  
12                   Preservation Program.

13                  Q.     Do you enjoy any titles at this time?

14                  A.     Yes, I have a doctorate in anthropology and am  
15                   also board certified in forensic anthropology.

16                  Q.     In front of you, Dr. Eisenberg, is an exhibit.  
17                   It's actually a 16 page exhibit, which is  
18                   referred to as a curriculum vitae, or what most  
19                   people would call a resume, a 16 page resume. Do  
20                   you see that?

21                  A.     Yes, I do.

22                  Q.     Does that resume include your educational  
23                   background, your training and your experience,  
24                   including writings that you have personally and  
25                   collaboratively been involved in that allow you

1           to speak as an expert witness in matters of  
2           anthropology?

3       A. It does, sir.

4                   ATTORNEY KRATZ: Ask for a stipulation as  
5           to her qualifications. Move the admission of  
6           Exhibit 10, Judge.

7                   THE COURT: Any objection?

8                   ATTORNEY LOY: No objection.

9                   THE COURT: Court will accept her as an  
10          expert and admit Exhibit 10.

11       Q. (By Attorney Kratz) Dr. Eisenberg, were you asked  
12          to review some material that was found at what's  
13          now been referred to as the Avery Salvage Yard  
14          and did you, in fact, agree to review that  
15          material?

16       A. Yes, I did.

17       Q. Could you answer, please, how it was that you  
18          were asked and, specifically, what it was that  
19          you did with that material?

20       A. I was initially contacted on Wednesday,  
21          November 9th, through a telephone message by a  
22          Special Agent from the Division of Criminal  
23          Investigation, State of Wisconsin, Department of  
24          Justice, who indicated that she would be bringing  
25          to me a box of items that were recovered from the

1 Avery property, for my examination.

2 I took possession of those remains on  
3 November 10th and transferred them to the Dane  
4 County Coroner's Office in Madison, the Morgue  
5 Facility, where I examined those remains and  
6 sorted them into and identified them as human  
7 remains, and other items, which were bagged  
8 separately.

9 Q. All right. Did you then separate the human  
10 remains from what you believed to be non-human  
11 remains?

12 A. I did.

13 Q. And regarding the human remains, could you  
14 describe in a little more detail what it was that  
15 you observed?

16 A. Yes. When I opened the box containing all the  
17 material I first examined on November 10th, there  
18 were many fragments of human bones, some as small  
19 or smaller than the size of a nickel, other  
20 fragments perhaps as long as 4 or 5 inches.  
21 None -- None of those fragments represented an  
22 entire bone, but they did represent almost every  
23 segment of the human skeleton, at least in part.

24 Q. Do you know how many bone fragments, just  
25 roughly, it is that you have examined?

1 A. I have not made a count at this time. And the  
2 reason I have not done that is because I am in  
3 the process of trying to refit those fragments  
4 together, to look for any other evidence, other  
5 than the burning, on the fragments that I have  
6 observed.

7 Q. You indicated that there were fragments, both  
8 small and larger, but none, at least to your  
9 independent recollection, longer than 4 or 5  
10 inches; is that right?

11 A. That's correct.

12 Q. Did it appear to you that these fragments, either  
13 intentionally or otherwise, had somehow degraded  
14 or been changed from their original skeletal  
15 state?

16 A. Yes, sir, they have. Because of the breakage and  
17 the coloration, it was obvious to me when I  
18 opened the box that the human remains, the bone  
19 fragments, had undergone considerable heat and  
20 burning.

21 Q. And so we're clear, from what is commonly  
22 referred to as mutilation, the question that I  
23 have of you is, did these bones appear to have  
24 been altered in some way, again, rather -- either  
25 by human or other forces, so that they took a

1 shape other than what a corpse may look like that  
2 was not altered? Do you understand the question?

3 A. I do. And in response, I would say that the  
4 normal skeleton that I would expect to find was  
5 so altered by a burning episode as to render that  
6 skeleton into fragments.

7 Q. All right. Dr. Eisenberg, were you able and are  
8 you able, based upon your training, experience,  
9 education, and to a reasonable degree of  
10 scientific certainty, identify those remains as  
11 being either male or female?

12 A. Yes, I have been able to make a determination of  
13 sex.

14 Q. And what, first of all, is that determination?

15 A. That determination is that the fragmentary human  
16 remains presented to me for examination are those  
17 of an adult female.

18 Q. And by an adult female, are you able to  
19 approximate the age of those remains; in other  
20 words, the age of the individual from which those  
21 remains come?

22 A. At this juncture, I would like to reserve comment  
23 on that until I have completed my examination.

24 Q. All right. So the Court is clear, that  
25 examination, um, continues your analysis, not

1           only for the -- for this particular case but for  
2           the Division of Criminal Investigation, you have  
3           asked to remain involved; is that right?

4       A. That is correct.

5           ATTORNEY KRATZ: For this hearing, Judge,  
6           that's all the questions I have of Dr. Eisenberg.  
7           Thank you.

8           THE COURT: All right. Mr. Johnson.

9           ATTORNEY JOHNSON: Thank you.

10            CROSS-EXAMINATION

11       BY ATTORNEY JOHNSON:

12       Q. Dr. Eisenberg, are there -- is there scientific  
13           literature that you reviewed in conjunction with  
14           the examination that you made in this case?

15       A. Well, as I mentioned, I have not completed my  
16           examination, but, yes, there is research that I  
17           have referred to and research that I already know  
18           of, based on my years in the field.

19       Q. And in conjunction with this examination, what  
20           literature did you refer to, what scientific  
21           literature?

22       A. Literature involving signatures of possible  
23           antemortem bone trauma in burned remains.

24       Q. Do you have the name of those articles or those  
25           treatises?

1                   ATTORNEY KRATZ: Objection, discovery,  
2                   Judge.

3                   THE COURT: Sustained.

4   Q. (By Attorney Johnson) Um, the examination that  
5       you did -- First of all, you received these items  
6       from a DCI agent; is that right?

7   A. That is correct.

8   Q. And who was that?

9   A. The name of the Special Agent was Duranda  
10      Freymiller, F-r-e-y-m-i-l-l-e-r.

11   Q. And you had received a phone call prior to  
12      receiving these, I take it?

13   A. That is correct.

14   Q. And who was the phone call from?

15   A. It was a voice mail message left for me on my  
16      work answering machine, from Special Agent  
17      Freymiller.

18   Q. And you returned that call?

19   A. I did not return that call because when -- I was  
20      out of town when the call came in. And I picked  
21      up that message in transit back to Madison.

22   Q. Okay.

23   A. After hours.

24   Q. Okay. And then, when did you actually receive  
25      the items?

- 1 A. On Thursday morning, November 10th.
- 2 Q. Okay. And this agent came to your workplace?
- 3 A. The remains were left for me at my workplace,
- 4 signed for by a coworker, and left in my locked
- 5 office, awaiting my arrival.
- 6 Q. Okay. And they were in a box; is that what you
- 7 said?
- 8 A. At the time, I did not know it was in a box, but,
- 9 yes, I did receive a white flat rectangular box
- 10 identified with labels and other information on
- 11 that box. And the box was in a brown grocery
- 12 type bag, presumably to transmit the box.
- 13 Q. Okay. And then you take that box, then, to the
- 14 morgue, the Dane County Morgue; is that right?
- 15 A. That is correct.
- 16 Q. And that's where you opened it?
- 17 A. That is correct.
- 18 Q. And, um, inside that box, are the items packaged
- 19 inside that box, separately?
- 20 A. Within the box there was one plastic bag into
- 21 which several bone fragments had been placed by
- 22 another forensic anthropologist, Dr. Kenneth
- 23 Bennett, to whom the box was initially brought,
- 24 for a brief examination, to determine whether the
- 25 fragments in the box were of human origin.

1 Q. Okay. And the color of that plastic bag was?

2 A. Was clear.

3 Q. Okay. Was that plastic bag sealed?

4 A. In what way?

5 Q. Sealed, I mean taped shut, there was some sort of

6 a seal on it, anything like that?

7 A. There was not a seal on that bag, but the bag was

8 within the sealed box that was brought to me.

9 And the box was sealed with evidence tape and

10 had -- was intact upon my receipt of the box.

11 Q. Okay. And how many items were there in the

12 plastic bag?

13 A. I did not count them. I simply laid them out

14 during the sorting procedure I followed.

15 Q. Okay. But 10, more than 10, more than 20? Do

16 you have an estimate?

17 A. I don't recall. I'm sorry.

18 Q. Okay. How do you do an examination like this?

19 Can you just sort of take me through the steps.

20 A. The first thing that I do is, wearing appropriate

21 gloves and mask and gown and so on, remove piece

22 by piece from the box and sort them into piles

23 representing human bone fragments and items of

24 non-biological origin, like metal, plant material

25 and so on.

1 Q. And how many items of non-biological origin were  
2 there here?

3 A. I did not count them. I simply, with the initial  
4 sorting, segregated them into separate piles that  
5 then were put into separate bags that were  
6 labeled.

7 Q. Okay. And then what do you do next?

8 A. Well, this is -- it's a fairly slow process.

9           There were many fragments in the box. And what I  
10 did was, at the end of the evening, grouped all  
11 of the human bone fragments together, was able to  
12 sort out dental structures, which may have  
13 represented fragments of jawbone and/or tooth  
14 structures, and bagged those separately.

15           At the end of the evening I had several  
16 bags, one representing human bone and bone from  
17 different areas of the body, in addition to other  
18 non-biological types of items.

19 Q. Okay. And you put each group of items in a  
20 separate bag?

21 A. A separate labeled bag, that's correct.

22 Q. And then, did you continue this examination the  
23 next day, I assume?

24 A. I did.

25 Q. Okay. And what's the next stage in it?

1 A. If I may, Judge, may I refer to my timeline?

2 Q. Is there something that would refresh your  
3 recollection?

4 ATTORNEY KRATZ: Judge, perhaps I'll just  
5 interpose the objection that this goes well beyond  
6 the direct examination and the purpose for which  
7 it's being offered at the preliminary hearing.

8 ATTORNEY JOHNSON: Judge, if there's expert  
9 testimony that's been offered, I think on  
10 cross-examination I'm entitled to go into the data  
11 on which that expert testimony is being offered,  
12 under 907.05.

13 THE COURT: If there's a document that  
14 she's used to refresh her memory to testify today, I  
15 believe the defense is entitled to see that. Is it  
16 here?

17 ATTORNEY KRATZ: Has he asked that  
18 question?

19 ATTORNEY JOHNSON: Well, I guess, let me --

20 ATTORNEY KRATZ: She asked if she could  
21 look at it.

22 ATTORNEY JOHNSON: Let me see if I can  
23 clarify this.

24 Q. (By Attorney Johnson) Would it refresh your  
25 recollection to refer to the timeline that you

1           prepared in conjunction with this examination?

2       A. It would, but certainly I can speak through the  
3           timeline. From the initial receipt of the  
4           remains on November 10th, the remains actually  
5           coming into my possession, on successive days,  
6           after the 10th, I spent several to many hours  
7           continuing with my examination, not only of the  
8           remains that were initially brought to me on  
9           November 9th, but additional remains that had  
10          been collected by the Division of Criminal  
11          Investigation on the same property, from which  
12          the original box of fragments came.

13       Q. Okay.

14       A. So, the examination continued using the same  
15          basic sorting procedure.

16       Q. Okay. The question that I had asked was: The  
17          next day, what did you do? And I guess that's --  
18          that's my question at this point. The next day,  
19          how did you continue that process?

20       A. The next day I continued to sort. This is a very  
21          slow process. It's a very detailed and  
22          meticulous process and not something that's  
23          easily completed in just several hours.

24       Q. Okay. And are you consulting anything as you are  
25          doing this sorting, or any treatises, any

1 material, any reference material?

2 A. No, sir.

3 Q. Okay. How long would you say this process of  
4 sorting took you? Do you have an estimate at  
5 all?

6 A. Well, I am still in the process of sorting.

7 Q. Okay. Is this a situation where you, basically,  
8 are sorting these fragments and you can offer an  
9 opinion as to their origin purely by a -- a  
10 visual examination?

11 A. That is correct.

12 Q. Okay. There's no -- Is there any other type of  
13 testing that you would do to confirm that visual  
14 examination?

15 A. None that I believe is necessary, given my  
16 experience in analyzing human remains not only  
17 from a forensic context but from some of the  
18 disaster context with which I have been involved  
19 in this country.

20 Q. Okay. And I'm sorry if I have -- this has been  
21 answered before, how long have you been doing  
22 this? How many years?

23 A. I began consulting in forensic anthropology in  
24 1986 for the office of Chief Medical Examiner in  
25 New York.

1 Q. Okay. Now, you are able to offer an opinion that  
2 these remains, you believe, come from an adult  
3 female; is that right?

4 A. That is correct, sir.

5 Q. And how do you come to that conclusion? What is  
6 it about them?

7 ATTORNEY KRATZ: Judge, I'm going to --  
8 well --

9 THE COURT: I'm going to allow this  
10 question. She can explain how she came to her  
11 conclusion.

12 ATTORNEY KRATZ: That's fine.

13 A. There are, as forensic anthropologists, certain  
14 landmarks and certain shapes, what we call  
15 morphology, that differ between male and female  
16 skeletons. And there are certain landmarks that  
17 I find -- even though they are fragmentary -- in  
18 the human remains, that I have been able to  
19 identify as being of the shape and form and size  
20 that I believe to come from a female.

21 Q. And what landmarks, specifically, are you  
22 referring to?

23 A. Two in particular, although, because my analysis  
24 is not completed, there may yet be others. But  
25 there are fragments from what we call the brow

1 ridge, above the eye socket, on both sides of the  
2 skull, above both orbits, as well as an elbow  
3 joint at the top end of one of the lower arm  
4 bones, the radius.

5 Q. And what would be -- what would be the  
6 difference? I mean, how would that lead you to  
7 the conclusion it was a female?

8 A. In female skulls, the shape of the upper rim of  
9 the eye socket is not very robust, or very heavy  
10 looking. It's actually fairly gracile, very  
11 small and has a sharp margin. And I see that  
12 sharp margin on both fragments of the skull, of  
13 the upper eye area.

14 And the head of the radius, or the part  
15 of the lower -- one of the lower arm bones that  
16 forms part of the elbow joint, is also of a very  
17 small size.

18 Q. Now, is there a particular standard by which you  
19 would judge this to be a female? I mean, a  
20 certain -- below a certain size it has got to be  
21 a female, above a certain size you would offer  
22 the opinion it's a male? I'm talking about the  
23 radius.

24 A. That's correct, that would apply to the radial  
25 head, the radius head. And there has -- there

1           has been a study done that addresses just that  
2           issue.

3   Q.   And what is that size?

4   A.   At the present time, I don't have that number in  
5           my head to report to you.

6   Q.   Okay. And would that -- That study you referred  
7           to, do you know the name of that study?

8   A.   I don't know the name of the article. I do know  
9           the name of the author. I'm not quite sure if I  
10          know how to pronounce the last name. First name  
11          is Emily. The last name is something like  
12          Barasbieta (phonetic). It's an article that was  
13          published, I believe, in the *Journal of Forensic*  
14          *Science*.

15   Q.   And is that dealing with averages or -- I mean,  
16          is there sort of like a cut off? Do you  
17          understand my question?

18   A.   Yes, I do.

19                   ATTORNEY KRATZ: Judge, excuse me. My  
20          objection is, this goes more to weight than to  
21          admissibility.

22                   THE COURT: At this point, the Court will  
23          sustain the objection.

24                   ATTORNEY KRATZ: Thank you, Judge.

25   Q.   (By Attorney Johnson) What about with regard to

1           the orbital bone, is there a similar type of  
2           standard there, as to what you described, that  
3           would lead you to believe it's a female?

4       A. It's not a metric or measurable kind of standard.  
5           It's an observational kind of standard that we  
6           all base our work on.

7       Q. So, it's a subjective call on your part?

8       A. I do not believe it's a subjective call simply  
9           because it cannot be measured.

10      Q. Okay. What are you looking for in that  
11           particular bone, the thickness, the length from  
12           side to side?

13      A. To which bone are you referring, sir?

14      Q. The orbital, I'm sorry.

15      A. It's -- It's the sharp edge, the fact that  
16           there's not a heavy and protruding brow ridge on  
17           top of it.

18      Q. Okay. And so that would be true, generally, of  
19           females?

20      A. That is correct.

21      Q. Okay. And is that same article that you referred  
22           to before the basis for -- for your opinion on  
23           that bone as well, or is --

24      A. The article previously mentioned about the radius  
25           head does not at all address using the orbital

1           bone to determine sex.

2   Q.    Okay.  Is there another learned treatise or piece  
3       of scientific literature that you would have  
4       reviewed relative to the orbital bone?

5           ATTORNEY KRATZ:  Objection, discovery.

6           THE COURT:  The objection is sustained.

7           ATTORNEY KRATZ:  Thank you.

8   Q.    (By Attorney Johnson) Now, are there other tests  
9       that you have performed on these -- these items,  
10      other like chemical tests, or anything like --

11   A.   No, sir.

12   Q.   All just been a visual examination?

13   A.   That's correct.

14   Q.   Okay.

15   A.   May I qualify that?  I have also had an  
16      opportunity to have the fragments of the skull  
17      that were presented for analysis, x-rayed.

18   Q.   Okay.  And where did that take place?

19   A.   That took place on November 17th, at the  
20      Middleton Memorial Veteran's Hospital in Madison.

21   Q.   Okay.  And what did you find out as a result of  
22      those x-rays?

23   A.   As a result of those x-rays, several of the  
24      cranial fragments, at least seven of them, showed  
25      evidence for areas with a greater density than

the bone itself. In other words, they were small tiny areas, almost flecks, that appeared whiter in the x-ray than the surrounding bone.

(Court reporter asked for clarification.)

A. Whiter.

Q. You examined these x-rays yourself; is that right?

A. That's correct, but I was not the only one in the room at the time.

Q. Okay. Was there a radiologist or someone who was helping you interpret those?

A. There was a radiology technician. There was also a forensic pathologist in the room at the same time.

Q. Okay. Who was that?

A. His name is Dr. Michael Stier, S-t-i-e-r.

Q. Is he -- He is with Dane county?

A. He is with --

THE COURT: The Court is going to impose  
it's own objection.

ATTORNEY JOHNSON: Okay.

THE COURT: It's discovery.

Q. (By Attorney Johnson) And what do those findings tell you, if anything?

A. At the moment, I have -- I am not at a point

1           where I can comment on what those mean. At this  
2           point, there are -- there are areas in those  
3           bones that are more dense than the bone itself.  
4           It's unknown at this time what those densities  
5           represent.

6       Q.    Okay. And do you know what part of the skull  
7           those came from?

8                   THE COURT: Again, just a minute, the Court  
9           is going to interpose its own objection. The  
10           witness has testified that, at least at this point,  
11           the significance of it is unknown, so it adds  
12           nothing to this hearing.

13                   ATTORNEY JOHNSON: Okay.

14       Q.    (By Attorney Johnson) Do you recall what the  
15           substance of the voice mail message was that was  
16           left for you by the Special Agent?

17                   ATTORNEY KRATZ: Objection, discovery, your  
18           Honor.

19                   THE COURT: What's the purpose of the  
20           question?

21                   ATTORNEY JOHNSON: Well, I'm trying to  
22           figure out if there was something that was told to  
23           her about the items that she was going to be asked  
24           to look at. Was it told to her that these were  
25           human remains? Remains of unknown origin? What

1 exactly was told to her.

2 ATTORNEY KRATZ: If I may, Judge, and if  
3 they were, that would go to weight, not  
4 admissibility.

5 THE COURT: The Court agrees, the objection  
6 is sustained.

7 Q. (By Attorney Johnson) Were these items that you  
8 examined, were they -- you indicate that they  
9 were all badly burned; is that right?

10 A. That is correct.

11 Q. And that's -- you can see that through a visual  
12 examination?

13 A. That is correct. Most all of the bone was  
14 blackened from burning.

15 Q. Okay. Is there any kind of chemical analysis you  
16 did to confirm that?

17 A. No, and that is really outside of the range of my  
18 expertise.

19 Q. Okay. So, this is, again, just -- it's a visual  
20 examination that tells you, through your training  
21 and experience, that this is from burns?

22 A. That is correct.

23 Q. And you have had experience in examining human  
24 remains before, from burn victims?

25 A. Yes, I have had a number of forensic cases as

well as some of the federal disaster work I have done involving a train crash in Illinois, the aftermath of the World Trade Center disaster.

And so I have had occasion to look at many types of burned and fragmentary human remains.

Q. Would you have an estimate as to how many times?

A. I do not have an exact number for you.

ATTORNEY JOHNSON: Thank you. That's all

the questions I have. Thank you.

THE COURT: Any redirect?

ATTORNEY KRATZ: No, Judge, thank you.

THE COURT: The witness is excused.

THE WITNESS: Thank you.

ATTORNEY KRATZ: State will call Sherry Culhane to the stand. May we approach, Judge, just briefly.

THE COURT: Yes.

THE CLERK: If you would raise your right hand.

**SHERRY CULHANE**, called as a witness  
herein, having been first duly sworn, was  
examined and testified as follows:

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

THE WITNESS: Sherry Culhane,

1 C-u-l-h-a-n-e.

2 **DIRECT EXAMINATION**

3 BY ATTORNEY KRATZ:

4 Q. Ms Culhane, how are you employed?

5 A. I work for the Wisconsin State Crime Laboratory  
6 as a DNA analyst in the DNA Section.

7 Q. In front of you is a document which is marked as  
8 Plaintiff's Exhibit No. 11, would you tell us  
9 what that is.

10 A. Yes, it is a copy of my curriculum vitae.

11 Q. Does that curriculum vitae include your current  
12 position, the duties with the Crime Lab, your  
13 prior education, training, experience, that  
14 entitles you to hold the position of DNA analyst?

15 A. Yes.

16 ATTORNEY KRATZ: Move admission of Exhibit  
17 11 and ask she be considered an expert, at least in  
18 that particular field.

19 THE COURT: Any objection from the defense?

20 ATTORNEY JOHNSON: No.

21 THE COURT: The exhibit is admitted. The  
22 Court will accept the witness as an expert.

23 Q. (By Attorney Kratz) Ms Culhane, you have been  
24 asked to participate in the investigation  
25 regarding DNA analysis of samples regarding the

1 case involving Mr. Avery and Ms Halbach; is that  
2 correct?

3 A. Yes, it is.

4 Q. As part of that investigative process, did you  
5 have occasion to individually search and recover  
6 items from a 1999 Rav 4 SUV, in Madison?

7 A. Yes, I did.

8 Q. In searching the back of that vehicle, were you  
9 able to observe and did you collect various  
10 material, various stains, that you believed  
11 included human blood?

12 A. Yes, I did.

13 Q. I'm going to show you what's been marked for  
14 identification as Plaintiff's Exhibit No. 12.  
15 Excuse me. Could you tell us what that is,  
16 please.

17 A. This is the back cargo area of that vehicle. And  
18 I recovered a portion of a large reddish brown  
19 stain that was where that yellow area is.

20 Q. All right. That stain recovery, is that  
21 something that you do as a member of the Crime  
22 Lab, as a DNA analyst?

23 A. Yes, it is.

24 Q. Were you also asked to examine, and did you  
25 recover, a reddish stain that was located near

1           the ignition portion of the front of that same  
2           SUV?

3       A. Yes, I did.

4       Q. And could you look at what's been marked as  
5           Exhibit No. 13 and tell us what, if anything,  
6           that depicts?

7       A. This is a photograph of the inside of the Rav 4.  
8           And that squiggly --

9                           THE COURT: Excuse me, there's a laser  
10                          pointer floating around.

11                        ATTORNEY KRATZ: I have got it. The yellow  
12                       button.

13       A. Thank you. This area right here is where I  
14           recovered a portion of this reddish brown stain.

15       Q. Ms Culhane, did you also receive in evidence and  
16           were you asked to process and identify whether  
17           any DNA material was located on a vehicle key,  
18           which has been referred to as a Toyota key?

19       A. Yes, I was.

20       Q. By the way, once receiving that key at the Crime  
21           Lab, did you do anything with the key and test it  
22           as it might relate to this particular '99 Rav 4?

23       A. Yes, I did.

24       Q. What did you do?

25       A. I placed it in the ignition and turned it. The

1           key turned the ignition and I also tested it on  
2           the locked front driver's side door, and it did  
3           open the door.

4       Q. And so the Court is aware what key we are talking  
5           about, is this the same key at least identified,  
6           and identified in the evidence package, as having  
7           been collected from the bedroom of Steven Avery?

8       A. Correct.

9       Q. Ms Culhane, the key itself, did you process that  
10           for the recovery of possible DNA material?

11      A. Yes, I did.

12      Q. Can you tell us what that entails, please.

13      A. I, basically, took a sterile cotton swab and  
14           swabbed the black rubberized portion of the key  
15           that you would use to crank the key. I swabbed  
16           all the surfaces and I did my analysis from that  
17           cotton swab.

18      Q. Ms Culhane, the analysis of this vehicle, where  
19           did that take place at?

20      A. At the Wisconsin State Crime Lab in Madison.

21      Q. All right. We're going to be showing you what's  
22           been marked for identification as Exhibits No. 14  
23           and 15. And as you testify about your analysis,  
24           I would invite you to refer to those exhibits and  
25           tell us if -- if you need to read from them.

1                   But let me ask you if you were able to  
2                   develop what's commonly referred to as a DNA  
3                   profile from the bloodstain that was obtained  
4                   from the back of the Rav 4 SUV?

5 A. Yes, I was.

6 Q. Were you able to identify and develop a profile  
7                   of any DNA material that was found on the Toyota  
8                   key that we have heard about?

9 A. Yes, I did.

10 Q. Ms Culhane, have you received from law  
11                   enforcement officials what are commonly referred  
12                   to as exemplars, or sometimes intimate samples  
13                   that are referred to, from both Mr. Avery and  
14                   that of Teresa Halbach?

15 A. Yes, I have.

16 Q. And were you able, specifically, from a buccal  
17                   swab saliva sample of Mr. Avery, to develop a DNA  
18                   profile?

19 A. Yes, I was.

20 Q. And, specifically, from a slide, a pap smear of  
21                   the victim in this case, Teresa Halbach, were you  
22                   able to develop a DNA profile?

23 A. Yes, I was.

24 Q. Did you also, Ms Culhane, receive from the Crime  
25                   Lab various bone and tissue material which was

1                   represented to you as having been collected from  
2                   a burn area on the Avery property?

3         A. Yes, I was.

4         Q. Did you attempt to develop a DNA profile from  
5                   those charred remains of bone and tissue?

6         A. Yes.

7         Q. Referring then, first, to Exhibit No. 14 --

8                   THE COURT: Just a minute, did she say she  
9                   tried? What was the --

10                  ATTORNEY KRATZ: She said she did, Judge,  
11                  I'm sorry.

12                  THE COURT: You were able to read the DNA  
13                  from the charred remains; is that what you said?

14                  THE WITNESS: Yes.

15         Q. (By Attorney Kratz) Ms Culhane, then, regarding  
16                  the profiling, or regarding the analysis that you  
17                  performed, were you able to compare the DNA  
18                  profile from the key found in Mr. Avery's  
19                  bedroom, from the blood found near the ignition  
20                  inside of Ms Halbach's vehicle, and compare that  
21                  with Mr. Avery's DNA exemplar?

22         A. Yes, I was.

23         Q. What were the results of that analysis?

24         A. The profile developed from the buccal swabs that  
25                  were taken from Steven Avery was consistent with

1           the DNA profile that I developed from both the  
2           Toyota key and the apparent blood stains that  
3           were taken from the ignition.

4       Q.   Were you able to develop and compare the DNA  
5           profiles from the blood found in the back of the  
6           Rav 4 and compare that with the DNA profile, the  
7           pap smear from Teresa Halbach?

8       A.   Yes, I was.

9       Q.   What were those results?

10      A.   The profile from the pap smear was also  
11           consistent with the stain from the back cargo  
12           area of the Rav 4.

13      Q.   And so the Court is clear, there was also a soda  
14           can that was found in the front of Teresa's  
15           vehicle, that you developed a DNA profile from;  
16           is that right?

17      A.   Yes.

18      Q.   And what, if anything, did that match, or what  
19           was that consistent with?

20      A.   That was also consistent with the profile  
21           developed from the pap smear of Teresa Halbach.

22      Q.   And, finally, Ms Culhane, were you able to  
23           compare the DNA profile from the pap smear of  
24           Teresa Halbach and compare those to the charred  
25           tissue and charred remains found on the Avery

1           property?

2   A. Yes, I was.

3   Q. Could you describe the results for us, please.

4   A. The profile -- The DNA profile from the charred  
5       remains was a partial profile and, mainly,  
6       because that was a very degraded sample of DNA.  
7       That partial profile was consistent with the  
8       profile developed from the pap smear of Teresa  
9       Halbach.

10   Q. Were you able, Ms Culhane, to speak as to  
11       statistics, or a frequency of occurrence, that  
12       is, between the partial profile and the known or  
13       exemplar sample of Ms Halbach?

14   A. Yes, I am.

15   Q. Could you describe how that analysis occurs and  
16       what, if any, statistical data you can provide in  
17       that regard?

18   A. When we do this type of DNA analysis, we're  
19       looking at several different locations on the DNA  
20       molecule. The more locations, the more areas of  
21       the DNA we test, the more discriminating and the  
22       more specific that profile becomes.

23           Because the profile from the charred  
24       remains was a partial profile, it was only -- it  
25       matched the pap smear sample at seven different

1           locations. Statistically, if we look at how rare  
2           this profile occurs in the population, we can  
3           statistically look at all those different areas,  
4           and combining those, we come up with a composite  
5           statistic that characterizes this sample and how  
6           rare it is in the population.

7           In the case of the partial profile from  
8           the charred remains, it occurs one person in one  
9           billion in the Caucasian population -- I have to  
10          refer to the exact numbers -- one person in two  
11          billion in the African/American and southeastern  
12          Hispanic populations and one person in three  
13          billion in the southwestern Hispanic population.

14         Q. And at least for our purposes, regarding whether  
15          or not those charred remains are in fact those of  
16          Teresa Halbach, is it a fair statement, then,  
17          with the analysis that you have provided, to  
18          indicate that the chances, if you will, that it  
19          is not Teresa Halbach would be one in one  
20          billion? Is that roughly a restatement of what  
21          you are telling us?

22         A. Basically, it just means that this profile occurs  
23          in the general Caucasian population one person  
24          out of a billion and it is consistent with  
25          Teresa.

1 Q. So, the seven out of seven loci, in other words,  
2 the DNA analysis, at least to the frequency of  
3 one in one billion, matched between that of  
4 Teresa Halbach and that of the charred remains;  
5 is that correct?

6 A. That's correct.

7 ATTORNEY KRATZ: That's all I have of this  
8 witness, Judge. Thank you.

9 THE COURT: Mr. Johnson.

10 ATTORNEY JOHNSON: Thank you.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY JOHNSON:

13 Q. When did this car arrive at the Crime Lab?

14 A. I got involved in it on November 7th --

15 Q. Do you know --

16 A. -- 2005.

17 Q. I'm sorry, 2005, is that what you said?

18 A. Yup.

19 Q. Okay. When did it arrive, to your knowledge?

20 A. I believe it arrived the day before, on a Sunday.

21 Q. Okay. And then you didn't have anything to do  
22 with it until that day?

23 A. Correct.

24 Q. And where was it when you first saw it?

25 A. It was in the garage of our laboratory.

1 Q. Okay. And it was parked there? Was it in a van?  
2 How was it?  
3 A. No, it was parked in the garage and it was being  
4 photographed by the photographer in the  
5 laboratory.  
6 Q. Okay. Who else was there?  
7 A. Myself, Mike Riddle, who is another analyst in  
8 the lab, Nick Stahlke and Ron Groffy.  
9 Q. And those are other Crime Lab personnel?  
10 A. Yes.  
11 Q. Okay. Were any of those people people who had  
12 been on the scene when the car was recovered?  
13 A. I don't recall if they were there or not.  
14 Q. Okay. And was the car -- were the doors open and  
15 the hatch open?  
16 A. Yes, I believe so.  
17 Q. Okay. And they were taking photographs; is that  
18 right?  
19 A. Yes.  
20 Q. And were they processing the vehicle otherwise?  
21 Were they looking like for fingerprints, doing  
22 things like that?  
23 A. Usually when we process a vehicle like this, as a  
24 DNA analyst, I look at it first for any  
25 biological material. In this case, I was

1                   interested in any blood stains, apparent blood  
2                   stains, that I might find. So, I was involved in  
3                   the beginning.

4                   The car is photographed, first. Then I  
5                   was involved in looking for blood stains,  
6                   apparent blood stains. And after I was completed  
7                   with my portion of it, then it would have been  
8                   processed for fingerprints.

9       Q.    Okay. So the car is there, there are a number of  
10           people around it. Are the doors open and things  
11           like that?

12      A.    Yes.

13      Q.    Okay. And so someone had done that prior to your  
14           arrival?

15      A.    As far as I recall, yes.

16      Q.    Okay. And so you get there. And what do you  
17           have with you?

18      A.    Pardon me?

19      Q.    What do you have with you? I mean, what  
20           materials do you have?

21      A.    I have the supplies that I use to process the  
22           car: Cotton swabs, chemicals that I use to look  
23           for presumptive test for blood, my notes, that  
24           sort of thing. And I begin -- flashlight -- by  
25           actually visually looking at the car to see if

1           there is any blood stains.

2 Q.       Okay. And how are you dressed?

3 A.       I have a lab coat on.

4 Q.       Okay.

5 A.       I don't remember what else.

6 Q.       Okay. And you have --

7 A.       Gloves, lab coat, gloves, yup.

8 Q.       Okay. Anything covering your mouth, or anything  
9           like that?

10 A.       Not my mouth, but I had safety goggles, glasses.

11 Q.       Okay. And so what's the first thing you do --

12 (Court reporter asked to have the question repeated)

13 Q.       I'm sorry. What's the first thing you do in  
14           relation to this car?

15           THE COURT: Just a second. Mr. Kratz, can  
16           you turn off the photo machine, it will make life  
17           easier for the reporter.

18 A.       The first thing I do is begin to take notes. I  
19           verify that the car that's in the garage is the  
20           car that I'm actually supposed to be looking at.  
21           I write down the VIN number, what type of car it  
22           is, and then I begin, basically, by -- with a  
23           flashlight, looking on the inside of the car.

24           As I come across stains that appear to  
25           be consistent with blood stains, I diagram and

1 note where those stains are. I collect those  
2 stains by using a sterile cotton swab that's  
3 in -- dipped in sterile water and I swab the  
4 area. In some cases those are photographed. Not  
5 all stains from every car is photographed. And  
6 I, basically, write my notes as I go along.

7 Q. Okay. Now, do you speak to anybody before you  
8 start this process?

9 A. I'm usually -- I have usually been told what case  
10 it is, some of the background on the case. In  
11 this particular case, I was told by one of the  
12 supervisors what kind of case this was, where  
13 this car was found, and what we were interested  
14 in looking at.

15 Q. Okay. So you knew -- you knew some background  
16 about the case, where the car was found, you knew  
17 it was the victim's car?

18 A. Correct.

19 Q. And you knew that -- that -- that it was,  
20 potentially, you would expect to find blood  
21 stains there?

22 A. Correct.

23 Q. And other potential DNA material?

24 A. Correct.

25 Q. And that's all before you go out and start

1 processing the car?

2 A. Yes.

3 Q. Okay. So, then, does anybody point out, like  
4 different possibilities about what stains you  
5 might want to look at, or do you just do that  
6 yourself?

7 A. Actually, in this case, Nick Stahlke, who is  
8 another analyst, he is a blood spatter analyst as  
9 well as a document analyst, we were sort of doing  
10 it in conjunction, and we were kind of looking at  
11 the stains together.

12 Q. Okay. And so you -- you -- do you recall which  
13 stain you looked at first?

14 A. Yes, the first one was the one in the back cargo  
15 area, because it was the largest and the most  
16 obvious.

17 Q. How big an area was that stain?

18 A. I didn't measure it exactly. That was the  
19 photograph you were shown earlier. I would guess  
20 about that big.

21 Q. And you are holding your hands --

22 A. -- about six inches across.

23 Q. About six inches. Would you say --

24 A. Approximately.

25 Q. Would you say six inches around, I mean, like

1 sort of a circular type of stain?

2 A. Yes.

3 Q. And what do you do to process that stain?

4 A. We do a test that is a presumptive test for

5 blood. It is not specific for human blood, but

6 we use it as a screening tool. It's a --

7 Q. What test is that?

8 A. It's phenolphthalein.

9 Q. Okay.

10 A. It is a color test. If you -- If it's probably

11 blood, you get a bright pink color.

12 Q. Okay.

13 A. So, I did that on the stain. It appeared to be

14 that it was consistent with a possible

15 bloodstain, so I collected that one.

16 Q. Okay. And, then, to collect it, what do you do?

17 A. I took a sterile cotton swab, wet it with sterile

18 water and just, basically, wiped it over the

19 surface until I had enough on the cotton swab

20 that I felt I could get a DNA profile from.

21 Q. Okay. And is that cotton swab, the tip of it,

22 like saturated then, or just a small amount of

23 the bright pink on it, or?

24 A. I use a different swab. I use the swab -- a swab

25 for the phenolphthalein to test that. Then I

1           throw that away. Then I take another swab to  
2           actually take my sample for DNA extraction.

3 Q.        Okay. You throw that away, where do you throw  
4           that away?

5 A.        Into a biohazard box.

6 Q.        And then what do you do? Then you take a  
7           different cotton swab and you swab the stain?

8 A.        Correct.

9 Q.        Then what do you do with that swab?

10 A.       I allow it to air dry and then I put it into a  
11          paper coin envelope and I mark on the outside the  
12          item designation, the laboratory number. Any  
13          evidence or any case that's opened into the  
14          laboratory has a unique number and we use that  
15          number to identify everything associated with  
16          that case.

17           So I put the lab number on it. It was  
18          Item A, and it was the first stain that I  
19          collected so it was A1.

20 Q.        Okay. And you allow it to air dry; how long does  
21          that take?

22 A.       It wasn't very wet. I probably -- What I have is  
23          a rack and this -- the cotton swabs, as I collect  
24          the stains, are put into this rack and they are  
25          left there until I'm completed. Then I put them

1           all into a envelope.

2 Q.       And how big is this rack, a foot long?

3 A.       No, not that long.

4 Q.       Six inches?

5 A.       Yeah.

6 Q.       Okay. So, like square, six by six?

7 A.       Yeah.

8 Q.       How many different cotton swabs can fit in there?

9 A.       I usually put about three, then I use another

10           one.

11 Q.       And then you put those, where? Is there like a

12           table or something there you put them on?

13 A.       Yes, it's an area that I designated as my work

14           surface. It has paper down and it has all the

15           tools, the forceps and everything that I use for

16           examination.

17 Q.       Okay. And that little holder stand sits on that

18           table?

19 A.       Correct.

20 Q.       And, um -- So you take the cotton swab, put it in

21           the stand, you go on to the next stain, then, at

22           that point?

23 A.       Correct.

24 Q.       What do you do with that stain, the next stain,

25           same process?

1 A. Same process, correct.

2 Q. Okay.

3 A. Yes.

4 Q. Okay. Is it the same thing with the blood test

5 first, the presumptive blood test first?

6 A. Yes. And then that's discarded into a biohazard

7 box and then I take my actual sample.

8 Q. Where is that biohazard box; is that also on that

9 little table, the work table?

10 A. It's in a -- It's a box on the floor, it's a big

11 biohazard box right by where I am.

12 Q. Is it like covered, or?

13 A. What do you mean by cov -- No, it's open.

14 Q. It's just an open box?

15 A. An open box, yeah.

16 Q. Okay. You're sort of pitching stuff into?

17 A. Correct.

18 Q. Okay. Do you remember which stain you went to

19 next?

20 A. Yes, I do. I did not -- I believe there were a

21 total of 10 stains that were -- I actually

22 swabbed and collected. I only did DNA on four of

23 them. The next stain was on the cargo area, the

24 back cargo area of the car. There's a little

25 plastic strip that you get into the car. I don't

1 know exactly what it's called, but that was the  
2 second stain that I took.

3 Q. That's sort of like the -- the rear of the car,  
4 where the sort of carpeting ends and there's sort  
5 of a little plastic area there?

6 A. That's correct.

7 Q. Right where the hatch back opens?

8 A. Correct.

9 Q. Okay. And that's -- that's the stain you did  
10 next?

11 A. Yes.

12 Q. Okay. How do you get access to the stain in the  
13 interior of the cargo portion? Did you go  
14 through the door, or how did you get to that?

15 A. No, I just leaned over.

16 Q. You leaned over. Okay. How big of a lean is  
17 that?

18 A. I don't recall, maybe a few feet.

19 Q. Okay.

20 A. Just a reach. I could comfortably reach it.

21 Q. Are you touching anything else when you are doing  
22 that?

23 A. No.

24 Q. Okay. So, then this strip, you do that one next.  
25 How big is that stain?

1 A. I don't recall. I would have to look at my notes  
2 to see exactly.

3 Q. Okay. You would refresh your recollection by  
4 looking at your notes?

5 A. Yes.

6 Q. Okay.

7 THE COURT: I'm going to interpose my own  
8 objection here. Is this one of the ones you  
9 analyzed?

10 THE WITNESS: No.

11 THE COURT: For purposes of this hearing, I  
12 don't believe it's relevant.

13 Q. (By Attorney Johnson) Okay. So, this is not one  
14 of the stains you analyzed for DNA?

15 A. That is correct.

16 Q. Okay. Why don't we go to the next stain you  
17 analyzed for DNA?

18 A. Okay.

19 Q. Where was that?

20 A. There was a stain on the driver's seat. It was  
21 actually in the fabric of the seat. I cut that  
22 out.

23 Q. Okay. Using what?

24 A. A pair of scissors.

25 Q. Okay. Where did the scissors come from?

1 A. In the laboratory, my work scissors.

2 Q. Are they from that same work area?

3 A. Yes. Yes, all the tools that I use for my

4 processing and examination are all in the same

5 area.

6 Q. Okay. That's that little table where the little

7 stand for the swabs is sitting?

8 A. Correct.

9 Q. And how big is that table, again?

10 A. I don't recall exactly, probably maybe 3 feet by

11 2 feet.

12 Q. Okay.

13 A. It's a laboratory counter.

14 Q. Okay. All right. So -- So you get the pair of

15 scissors and your, um, and, um, you cut out

16 that -- that stain out of that driver's, uh,

17 seat; is that right?

18 A. Yes.

19 Q. Okay. And how big is that stain?

20 A. It's probably the size of my thumbnail.

21 Q. Okay. Which is half an inch? I mean, an inch?

22 A. Quarter of an inch.

23 Q. Quarter of an inch. Okay. You cut that out;

24 what do you do with it?

25 A. I put that in a coin envelope and also label it

1           with a case number, the date, and my initials,  
2           and the item designation that I give it, which in  
3           this case I believe it was a six.

4       Q.    Okay.

5       A.    It was the sixth thing I took.

6       Q.    So that -- now would that stain -- You don't take  
7           a swab of that stain right there?

8       A.    No.

9       Q.    When do you -- So what do you do with that  
10           envelope?

11      A.    That's put on my work surface.

12      Q.    Okay.

13      A.    It's folded over and sealed and put on my work  
14           surface.

15      Q.    Okay. In the meantime, you collected, I assume,  
16           four other stains?

17      A.    Correct.

18      Q.    And those are all with Q-tips?

19      A.    Yes, they are.

20      Q.    Okay. And those Q-tips are stored in that same  
21           little --

22      A.    Yes.

23      Q.    Okay. That's the same little stand, Q-tip drying  
24           stand or something?

25      A.    Yes.

1 Q. Okay. Um, and, um, and then what's the next --  
2 next thing you do?

3 A. The next stain that I process?

4 Q. Yes.

5 A. The next stain that I collected, that I actually  
6 did DNA on, was the stain that was right to the  
7 right of the ignition.

8 Q. Okay. And how do you get that stain?

9 A. Again, I collected that on a cotton swab.

10 Q. Okay. Is that after you have done the  
11 presumptive test?

12 A. Yes, same process with each one of these. Each  
13 one of these stains I do a presumptive test first  
14 and then I do the actual collection of the  
15 sample.

16 Q. Okay. And how do you decide which ones you  
17 are -- I mean are you taking swabs that you  
18 intend to do DNA analysis --

19 A. Yes.

20 Q. -- on from each one of these stains?

21 A. All of the stains that are on a hard surface,  
22 like the dashboard or a metal part of a car, we  
23 can't actually cut that metal out, so the way to  
24 remove those stains is to use a cotton swab and  
25 actually take the stain off.

1                   If it's a stain on a piece of fabric --  
2                   We don't -- it's much more efficient and we get  
3                   more sample out of it when we cut the stain. So  
4                   all the stains that were collected from like  
5                   cloth seats, the stain was actually cut. If it  
6                   was a stain that was on a hard surface, it was  
7                   collected with a cotton swab.

8 Q. Okay. And -- But did you not analyze some of  
9                   these stains later, for DNA, or did you analyze  
10                  all of them?

11 A. No, I didn't. I only chose four to analyze.

12 Q. Okay. And how did you decide which four?

13 A. Um, it was -- I basically just took a random  
14                  sampling of some of the stains -- as I said, Nick  
15                  Stahlke, one of the other analysts in the  
16                  laboratory, is proficient in blood spatter --  
17                  under his direction. He said that some of the  
18                  stains appeared to be possible drips. Those  
19                  stains I collected for sure. And that's how I  
20                  decided which ones to actually look at.

21 Q. Okay. So, he -- he basically told you which ones  
22                  he thought looked like blood?

23 A. Right.

24 Q. Okay.

25 A. Not looked like blood, but looked like they were

1           drips of blood. The stain -- I collected -- All  
2           the stains I collected gave me a positive  
3           phenolphthalein for blood and were consistent  
4           with the appearance of blood.

5 Q. Okay.

6 A. I chose to do DNA on certain stains, the ones  
7           that appeared to be drip marks or that appeared  
8           to be isolated stains, not with the larger  
9           bloodstain. I only did one of those.

10 Q. Okay. And the reason for that was because they  
11           appeared to have dripped from the other stains?  
12           I guess I'm --

13 A. Well, I mean they could have appeared to have  
14           dripped from anything, from someone that was  
15           injured, from an object, from a weapon, from  
16           anything. They just appeared to be different.

17           A lot of times when we process cars, or  
18           any kind of evidence, that's part of the process,  
19           is to decide which stains maybe look different,  
20           which stains are separated from other stains,  
21           which stains might be -- give a little more  
22           probative evidence than the --

23           For instance, in this case, the large  
24           stain in the back, I took that stain, but there  
25           were other smaller stains associated with that.

1           I took that stain, but I didn't take, you know,  
2           four or five samples from that stain, I just took  
3           one sample from that stain.

4                 The other samples, perhaps they were  
5           from another source of the blood. So that's why  
6           we choose certain samples to take and certain  
7           ones not to examine.

8   Q. Okay. So the -- And how long does this process  
9           take?

10   A. To process a car?

11   Q. Right.

12   A. My portion of it, it took me most of the day.

13   Q. Okay.

14   A. And then someone else had to process it for  
15         fingerprints. You know, it depends on the  
16         vehicle. Sometimes they take a day, sometimes it  
17         may be two or three days. It just depends.

18   Q. And so there is a total of 10 stains that you get  
19         presumptive positive blood tests from?

20   A. Correct.

21   Q. And I think you said four of those you also  
22         swabbed for -- with a swab, a cotton like, for  
23         DNA?

24   A. All of them -- All of those 10 I collected.

25   Q. For DNA?

1 A. Right --

2 Q. Okay.

3 A. -- with a swab --

4 Q. Okay.

5 A. -- but I only chose to examine four of them --

6 Q. Four. Okay.

7 A. -- for DNA.

8 Q. All right. And you go through the same process

9 in each one?

10 A. Yes.

11 Q. And how many of them are drying -- drying at the

12 same time?

13 A. Well, I don't recall exactly, but as they are

14 dry, I take them out and put them into the

15 envelope as I, you know, as I go along.

16 Q. Okay. And how can you tell if they are dry; do

17 you like feel them?

18 A. Actually, I put them in the envelope and then I

19 reopen them. I reopened them at my desk and let

20 them air dry.

21 Q. Okay. So they are not quite dry, you put them in

22 the envelope --

23 A. They weren't -- I mean, they were put in the

24 envelope, then I took them up to my desk and I

25 opened -- the end of them was opened so the air

1           could circulate. But they were never taken out  
2           of the envelope again.

3   Q.    Okay. When you do that, how are you carrying  
4       them up to your office?

5                   ATTORNEY KRATZ: Objection, discovery,  
6                   Judge. This is well beyond the preliminary hearing.

7                   THE COURT: Sustained.

8   Q.    (By Attorney Johnson) Um, okay. So then, um, you  
9       are finished processing the car and, um, you are  
10      going to do the, uh, the analysis of these  
11      stains; is that right?

12   A.   Yes.

13   Q.   Um, and how do you do that?

14   A.   Um, these stains that I recovered?

15   Q.   Right.

16   A.   I take each of the stains. I cut a small portion  
17      of the stain. I put it in a tube and I do a  
18      procedure that basically extracts the DNA from  
19      the cells. Um, I go through a process where I  
20      clean it up. And in the end, I end up with a  
21      vial with about 45, 50 microliters of liquid that  
22      has nothing but DNA in it.

23   Q.   Okay.

24   A.   I take that DNA. I quantitate it, which means I  
25      try and find out how much DNA, what the

1           concentration is of the DNA. Some samples have a  
2           lot of DNA. Some samples don't have very much.  
3           So I have to quantitate it to find out how much  
4           is in there. I then set up these samples to be  
5           amplified for DNA.

6           In this type of DNA analysis, we're  
7           looking for specific fragments of DNA. These  
8           fragments have to be amplified, which I set them  
9           up for that process in the laboratory. Then I  
10          run them on an instrument that detects those  
11          fragments of DNA that we're looking for. When  
12          the data comes off of the instrument, what I get  
13          is a composite profile of DNA fragments that  
14          characterizes that particular stain.

15          Q. Okay. So with the amplification, that's the PCR;  
16          is that right?

17          A. Yes.

18          Q. Okay. And then you do, um, the -- the process by  
19           which you look for the -- the -- the repeats, is  
20           that right, the short tandem repeats?

21          A. Yes. It's a PCR based system. And STRs are the  
22           fragments we're looking for. We use a  
23           commercially prepared kit that tags those  
24           fragments with a fluorescent dye and then our  
25           instrumentation detects that dye and that's how

1           we get the actual size that comes out of the  
2           fragments.

3       Q.    Okay. And then, um, that ultimately ends up,  
4           you -- you look for, is it 13 different  
5           locations?

6       A.    There are 13 core loci. In our laboratory we use  
7           a kit that is produced by Promega, which has,  
8           actually, two extra ones. There are no  
9           statistics associated with those extra ones, but  
10          we do the 13 core loci that the FBI requires, in  
11          addition to two extra ones.

12      Q.    Okay. So, basically, when you talk about core  
13          loci, what you are talking about is 15 different  
14          points, 15 different locations, right?

15      A.    Yes.

16      Q.    Okay. And then you are looking for what's at  
17          those particular locations?

18      A.    You are looking at fragments of different sizes.  
19          For instance, at a particular locus, say D5, I  
20          might be a 14/15, someone else is a 15/16. So  
21          they have one fragment that's a little bit  
22          bigger. Those fragments are determined -- The  
23          difference in those fragments is determined by  
24          the size of them.

25      Q.    And this is all done by a computer, right, a

1 machine?

2 A. It's done by a 310 capillary electrophoresis  
3 instrument?

4 (Court reporter asks her to repeat her answer.)

5 A. 310 capillary electrophoresis instrument. And  
6 that detects the fragments as it goes through the  
7 instrument with the dyes attached to it and that  
8 tells us what the size of those fragments are.

9 Q. Do you get like a printout then --

10 A. Yes.

11 Q. -- with some peaks on it?

12 A. With peaks on it, yes.

13 Q. Okay.

14 A. And those peaks represent the fragments.

15 Q. Right. So, like if you -- you get sort of a  
16 chart and one particular area there's -- which  
17 represents a particular location on the DNA loci,  
18 or locus, basically, I guess, if you are talking  
19 about one, then you look for two peaks, if there  
20 is two, or one if there's one and you -- and  
21 that's the 14, or the 15, or the 16, or whatever?

22 A. Correct.

23 Q. Okay. And for each of these 13 loci, you will  
24 get a reading of however many peaks there are in  
25 that particular DNA sample?

1 A. Correct.

2 Q. At that -- at that locus?

3 A. Correct.

4 Q. And do you do the -- the reading of that graph,

5 that -- that chart with the peaks?

6 A. Yes, I do.

7 Q. Okay. So -- So, you are the one who -- who looks

8 and says that -- the computer tells you --

9 A. Well, we actually have a computer program, but I

10 actually analyze -- I mean, each analyst is

11 responsible for looking at their own data and

12 making those interpretations.

13 Q. Okay. So, that's your call as to whether a

14 particular peak actually represents the presence

15 of an allele there versus some background noise

16 and things like that that sometimes gets printed

17 out as well?

18 A. Correct.

19 Q. Okay. Um, and you go through this process for

20 each of these 13 core loci that the FBI tells you

21 to look at, right?

22 A. Correct.

23 Q. And plus, this particular commercially

24 manufactured thing, this is the PowerPlex 16; is

25 that right?

1 A. Yes.

2 Q. It gives you two more, that's like penta E and  
3 penta D, or something like that; is that right?

4 A. Correct.

5 Q. Okay. And then -- So you look for those  
6 additional loci as well?

7 A. Correct.

8 Q. Okay. And then, um, and then do you also look to  
9 see if there's a, um, a genetic marker for sex?

10 A. Yes.

11 Q. Okay. And you did that with the samples that you  
12 got, four of them; is that right?

13 A. Yes, from that item of evidence.

14 Q. Okay. And do you remember which four?

15 A. I believe it was A6, A8, A9 and A12. Um, A6 was  
16 a stain from the driver's side front seat. A8  
17 was a stain near the ignition. A9 was on the  
18 front seat in the passenger side. And A12 was a  
19 stain that was, um, it was between -- it was on  
20 the passenger side, between the front and back  
21 door, that metal panel. Um, I don't know what  
22 you call it. It was on the passenger side, the  
23 metal piece that -- that -- where the door  
24 closes.

25 Q. Okay. Like the frame?

1 A. Yeah.

2 Q. Okay.

3 A. On the side of the frame.

4 Q. Okay. And that was on the side of the frame on

5 the passenger --

6 A. Yes.

7 Q. -- side in the rear?

8 A. Right.

9 Q. Is this a four-door or two-door?

10 A. Four-door.

11 Q. Four-door. Do you ever do any other test with

12 regard to whether or not it is blood?

13 A. No, we do not.

14 Q. Now, you generate a DNA profile based on the --

15 the presence of different alleles at these

16 different loci, correct?

17 A. Yes.

18 Q. Okay. And, then, did you compare that to, um,

19 the DNA Data Bank, Wisconsin DNA Data Bank?

20 A. Originally, yes.

21 Q. So that was the first thing you did?

22 A. Um, after I generated the profile, I requested a

23 keyboard search, um, through the Milwaukee Data

24 Bank.

25 Q. Okay. Why did you do that?

1 A. Because I was asked to do that.

2 Q. By who?

3 A. The police department. Um, there was -- My  
4 initial testing indicated that it was a male  
5 individual. Um, I did not have any samples from  
6 anyone, um, so we thought someone may be in there  
7 that matched, so we did a keyboard search. Um, I  
8 think between myself and the DCI agents -- and I  
9 don't remember who -- we had a discussion and it  
10 was decided that we would do it.

11 Q. Okay. How -- How broad a keyboard search did you  
12 do?

13 A. I did not actually do it. Dan Haase did it, who  
14 is the -- in charge of the data bank over in  
15 Milwaukee. I sent him the profile that I  
16 developed from these stains. Um, and he searched  
17 all the state -- the convicted offender -- State  
18 Convicted Offender Data Base.

19 Q. Okay. But did you do, um, a search -- I mean, do  
20 you know if he did a keyboard search just based  
21 on those specific alleles at each one of those  
22 different loci, or did he do a broader search  
23 whereby he would put in more than those two  
24 alleles for each loci? Do you know what I'm  
25 asking you?

1 A. No, you would just --

2 ATTORNEY KRATZ: Judge, I'm going to  
3 object. Whatever he's asking is well beyond a  
4 preliminary hearing.

5 THE COURT: The objection is sustained;  
6 it's discovery.

7 Q. (By Attorney Johnson) Now, with regard to the  
8 key, when did you get the key?

9 A. I believe it was the 8th. Let me check my notes  
10 to make sure.

11 Q. You are using your notes there to refresh your  
12 recollection; is that correct?

13 A. Yes, I am.

14 Q. Can I just -- Can we approach?

15 THE COURT: Yes.

16 (Side bar taken.)

17 Q. (By Attorney Johnson) Does that refresh your  
18 recollection as to when you got the key?

19 A. Yes.

20 Q. Okay. When did you get it?

21 A. November 8th.

22 Q. Okay. And how did it come to you?

23 A. It came into the laboratory from a DCI agent,  
24 Matthew Joy.

25 Q. How was it packaged?

1 A. In a brown paper bag.

2 Q. Okay.

3 A. With evidence tape. I opened it up and then --

4 Q. I'm sorry, where was this taking place, in your

5 office?

6 A. No, in the garage.

7 Q. In the garage?

8 A. Yes.

9 Q. Same garage?

10 A. Yes.

11 Q. Okay. And is there like a table or something

12 that's set up to do this kind of thing?

13 A. No, I believe it was taken in by an evidence

14 specialist and then it was brought down to me,

15 because they wanted it swabbed before it could be

16 tested on the car to see if it -- it would turn

17 the ignition.

18 Q. Okay.

19 A. So they gave it to me. I had gloves on. I

20 opened the package. I swabbed the area, the

21 black part of the key that does the crank, with a

22 cotton swab. There was no visible staining on

23 it. That's when I took the key and put it in the

24 ignition and tested the lock on the door.

25 Q. Okay. So you, um, you swabbed the black part; is

1           that the only part you swabbed?

2   A. Yes.

3   Q. Okay. And then what do you do with that swab?

4   A. That was also laid out in my work space to air  
5       dry.

6   Q. Okay. I assume there's -- that's the one swab  
7       there at this time?

8   A. Yes, this was the next day.

9   Q. Okay. Um, what is the procedure? Is this the  
10      same work space that you used down in this garage  
11      all the time or was this sort of a temporary set  
12      up?

13   A. It was a temporary set up. It's not my work  
14      space that I use all the time. It's just set up,  
15      an area set up for processing cars.

16   Q. Okay. And -- And it was brought to you there  
17      because the car was still there and you expected  
18      to -- to eventually try the key on the car; is  
19      that the idea?

20   A. Yes.

21   Q. Okay. And this was -- Um, what's the procedure  
22      for dealing with that work space in between the  
23      time you examined the car and the time you  
24      examined this key?

25   A. Well, it's used by multiple people, I mean,

1           whoever needs the space to work on the car.

2           Before I start working on it, I clean it down  
3           with bleach and put down white paper.

4       Q.    Okay. And what about the little Q-tip holder?

5       A.    That's also cleaned down with bleach, at my desk.

6       Q.    You do that personally?

7       A.    Yes.

8       Q.    Okay. And so you -- you -- you do that everyday  
9           at the end of the day, or how do you do that?

10      A.    We do it several times a day, depending on what  
11           kind of evidence we have out, what we're working  
12           on. We clean our pipettes. We clean our work  
13           bench. We clean our forceps, our -- everything,  
14           numerous times.

15      Q.    Okay. Do you know how many times this was  
16           cleaned?

17      A.    No, I don't.

18      Q.    In between the car and the key, you don't know?

19      A.    No, I don't know how many times. It was cleaned,  
20           because I always clean it every time I use it.

21      Q.    Okay. You clean it right at the beginning of  
22           processing any piece of evidence?

23      A.    Yes, I do.

24      Q.    Okay. And so then you swab this, this air dries,  
25           and then what do you do with the key?

1 A. Then I put it back into the paper container and I  
2 believe I retained custody of it.

3 Q. Were you the person that tried it in the ignition  
4 then, too?

5 A. Yes.

6 Q. Okay. And you did that right after you swabbed  
7 it?

8 A. Yes.

9 Q. Right. Immediately --

10 A. I -- As soon as I was done swabbing it, I tried  
11 it in the car.

12 Q. Okay. And you tried it in the ignition and you  
13 said, also, in the door; is that right?

14 A. Yes. I locked the door and it opened the lock.

15 Q. Okay. And then you turned the ignition and it  
16 turned over?

17 A. Actually, it didn't turn over because, I  
18 believe -- It didn't crank. I believe the  
19 battery was disconnected?

20 Q. Oh.

21 A. But it -- I mean it turned completely over. It  
22 just didn't crank the engine.

23 Q. Okay. Um, and then, um, when do you get the, um,  
24 the samples from -- Mr. Kratz referred to them as  
25 the intimate samples -- when do you get those

1           things?

2 A.   Um, the buccal swabs?

3 Q.   Right.

4 A.   The standard samples?

5 Q.   Right.

6 A.   I will have to check my notes and evidence.

7 Q.   Go ahead.

8 A.   There were three buccal swabs that were  
9       submitted, and they were all three submitted on  
10      the 11th of November.

11 Q.   Okay. And who were those from?

12 A.   Allan Avery, Bryan Dassey, and Steven Avery.

13 Q.   Okay. Those are the three that you got?

14 A.   Buccal swabs, yes.

15 Q.   Okay. And those -- And you generated profiles  
16      off of those three?

17 A.   Yes, I did.

18 Q.   Okay. And that's the same process that you did  
19      with generating the profile from the -- from the  
20      stains in the car?

21 A.   Yes.

22 Q.   And how did those -- those swabs come to you?

23 A.   How are they packaged?

24 Q.   Right. How did you get them?

25 A.   They came into the laboratory --

1                   THE COURT: I'm going to impose my own  
2                   objection here, again. This goes to discovery.

3                   ATTORNEY JOHNSON: Okay.

4       Q. (By Attorney Johnson) Now, the partial profile  
5                   that you received from the, um, the charred  
6                   materials, when did you receive those?

7       A. The 11th as well.

8       Q. Okay. And, um, you generated a partial profile,  
9                   that's because you could only -- there was only  
10                  enough DNA material to -- to find seven out of  
11                  the 13 loci; is that the idea there?

12      A. No, I suspect in this case it was because the DNA  
13                  was degraded.

14      Q. Okay.

15      A. It was not a very, um, good sample for DNA.

16      Q. Okay. And so what does that do to it?

17      A. Um, when you look at a DNA profile, as you are,  
18                  um, the larger -- when a DNA sample -- when DNA  
19                  begins to degrade, the larger fragments will  
20                  begin to break up and we don't detect them.

21                   So, when you look at a sample where the  
22                  smaller fragments are detected, which was the  
23                  case in this particular instance, if it's a  
24                  degraded sample, you usually see the larger  
25                  fragments drop out. So, I only got fragments at

1           seven loci instead of 13.

2 Q.    Okay. And -- and, um, so those -- those --  
3           those, um, fragments that you got on the seven  
4           loci would have been larger fragments?

5 A.    Smaller fragments.

6 Q.    Smaller fragments. The larger ones would drop  
7           out?

8 A.    Yes.

9 Q.    Okay. The loci would be present, you just  
10          wouldn't see any peaks in those particular  
11          places; do I have that right?

12 A.    Well, the loci basically just refers to a  
13          location.

14 Q.    Right.

15 A.    The peaks are the actual fragments that are  
16          there, but any time a biological sample starts  
17          to -- such as DNA -- starts to degrade and break  
18          up, it basically just breaks apart. And so the  
19          DNA at those places are beginning to break apart.

20 Q.    So you don't -- So what, are there no peaks at --

21 A.    Nothing.

22 Q.    -- those loci?

23 A.    Right. There's nothing.

24 Q.    Nothing --

25 A.    Nothing.

1 Q. -- on the printout, there's just nothing there?

2 A. Correct.

3 Q. Okay. Using those -- At those seven different  
4 loci, did you get two alleles at each one; do you  
5 know?

6 ATTORNEY KRATZ: Objection, discovery,  
7 Judge.

8 THE COURT: Sustained.

9 Q. (By Attorney Johnson) How do you come up with the  
10 calculation of one in a billion in the Caucasian  
11 population?

12 A. We use the FBI's Data Bank and, basically, each  
13 one of these fragments are inherited  
14 independently of each other. So, we can multiple  
15 the frequencies of each one of these fragments,  
16 how frequent -- how common or how rare that  
17 particular fragment is in the population.

18 So, by combining those numbers, by  
19 multiplying the frequencies of the fragments of  
20 the alleles that I did get, and comparing that to  
21 the FBI's data base, the frequency is one in a  
22 billion in the Caucasian and the other numbers  
23 that I stated.

24 Q. At any particular loci, you will get two alleles,  
25 correct?

- 1 A. If that person is a heterozygote, yes.
- 2 Q. Okay. What does that mean?
- 3 A. It means they inherit -- You always inherit half
- 4 of your DNA from your mother and half from your
- 5 father. If you are heterozygote, you inherit a
- 6 different fragment of DNA from your mother and a
- 7 different from your mother -- from your father.
- 8                 If you are homozygote, then you inherit
- 9 the same one from each parent.
- 10 Q. So, then you would have two 14's at the same
- 11 locus?
- 12 A. You would only have one peak.
- 13 Q. Okay.
- 14 A. And it would be 14.
- 15 Q. Okay.
- 16 A. So that person is homozygote.
- 17 Q. Okay. Um, if the DNA is not degraded, it doesn't
- 18 take much to get a profile; is that right?
- 19 A. Correct.
- 20 Q. How much?
- 21 A. When we amplify the DNA, we usually shoot for
- 22 around one nanogram.
- 23 Q. And how much is that?
- 24 A. I don't recall exactly.
- 25 Q. Okay. I'm sorry, I think I may have asked this,

1           I'm not sure. When you process the vehicle, you  
2           wear a lab coat; is that right?

3       A. Yes.

4       Q. Gloves?

5       A. Yes.

6       Q. And safety glasses?

7       A. Yes.

8       Q. And -- And do you wear a face mask?

9       A. No, I didn't.

10      Q. Other people there wearing face masks?

11      A. No.

12      Q. Okay. Other people there wearing gloves?

13      A. Yes, everybody wears gloves.

14      Q. Okay. And -- And any other protective clothing?

15      A. I don't recall what the other people were  
16           wearing.

17      Q. Okay. But you, yourself, no other protective  
18           clothing, nothing like on your feet, anything  
19           like that?

20      A. No, I didn't have anything like that on.

21      Q. Okay. And you wear gloves throughout the entire  
22           process?

23      A. Yes.

24                           ATTORNEY JOHNSON: That's all the questions  
25                           I have. Thank you.

1                   THE COURT: Any redirect?

2                   ATTORNEY KRATZ: No, Judge.

3                   THE COURT: All right. The witness is  
4 excused.

5                   ATTORNEY KRATZ: We will move the admission  
6 of Exhibits 12, 13, 14, and 15 at this time.

7                   THE COURT: Are there -- Is there any  
8 objection to 12, 13, 14 and 15? I believe 12 and 13  
9 are photos and 14 and 15 are lab results.

10                  ATTORNEY LOY: No objection for purposes of  
11 this hearing.

12                  THE COURT: All right. Those exhibits are  
13 admitted.

14                  ATTORNEY KRATZ: Your Honor, the last piece  
15 of evidence that's being offered, and is by  
16 stipulation, is Exhibit No. 16, which is a certified  
17 copy of a death certificate -- death certificate for  
18 that of Teresa M. Halbach, having date of birth,  
19 March 22nd, 1980.

20                  That death certificate was filed by  
21 Michael Klaeser, Calumet County Medical Examiner.

22                  It was filed in the Manitowoc County Register of  
23 Deeds Office today. And the designation of cause  
24 of death is that of a homicide. I will provide  
25 the Court with Plaintiff's Exhibit 16 at this

1 time.

2 THE COURT: Any objection to Exhibit 16?

3 ATTORNEY LOY: Not for purposes of this  
4 hearing.

5 THE COURT: All right. Exhibit 16 is  
6 received. Is there anything further from the State?

7 ATTORNEY KRATZ: State rests, your Honor.

8 THE COURT: Is there any evidence to be  
9 offered from the defense?

10 ATTORNEY LOY: No, your Honor.

11 THE COURT: Do the parties -- either party  
12 wish to make argument with respect to either of  
13 these cases?

14 ATTORNEY KRATZ: I do not, Judge. I'm  
15 going to move the Court for bindover, asking the  
16 Court, with the evidence and the reasonable  
17 inferences, to find probable cause that a felony has  
18 been committed, that the defendant probably  
19 committed that felony, and bind him over for trial.

20 THE COURT: Mr. Loy, or Mr. Johnson?

21 ATTORNEY LOY: Your Honor, we'll simply  
22 move to dismiss, for the record.

23 THE COURT: All right. Based on the  
24 evidence presented, the Court is going to determine  
25 that there's probable cause to believe that a felony

1 has been committed in each of these cases, that is,  
2 05 CF 375 and 05 CF 381. The Court will schedule  
3 these matters for an arraignment. I will ask the  
4 clerk to get me my calendar.

5 Counsel, I know there is a bail  
6 reduction motion as well. We have run out of  
7 time to hear it today. I can hear it at the same  
8 time as the arraignment, if the parties wish.

9 ATTORNEY KRATZ: That's fine, Judge.

10 THE COURT: Mr. Loy.

11 ATTORNEY LOY: Your Honor, I could try to  
12 be very brief with my bail motion.

13 THE COURT: I'm not -- I said 5:00 was the  
14 deadline today. We stretched that a bit already.

15 ATTORNEY LOY: I appreciate that, your  
16 Honor. That's fine.

17 ATTORNEY KRATZ: If I may, Judge, and I  
18 understand that the Court had anticipated this, the  
19 State is going to file with the Court at this time a  
20 three count Criminal Information in case No. 05 CF  
21 381. We are merging the three counts from the two  
22 different Complaints into one Information. It was  
23 contemplated that Mr. Loy would ask for a separate  
24 arraignment date and we obviously have no objection  
25 to that.

1                   ATTORNEY LOY: We have been served with a  
2 copy of the Information, your Honor. We would ask  
3 for an arraignment at a later date.

4                   THE COURT: All right. Well, the choices  
5 are as follows: Next week I have some civil trials  
6 scheduled. I do not know the status. There's also  
7 some criminal trials, actually. The calendar is  
8 thinning out a bit, but I have no days that are open  
9 at this time. So, if you want to take a contingent  
10 date next week, I can look at that, otherwise we're  
11 looking into January. I can give you -- How about  
12 3:00 on Monday, January 9th.

13                  ATTORNEY KRATZ: I'm actually in a jury  
14 trial that afternoon. Did the Court have  
15 something -- did you say next week Tuesday or  
16 Wednesday?

17                  THE COURT: Well, what I said is, at this  
18 time I have got trials scheduled next week. I have  
19 got two trials scheduled for Tuesday and one for  
20 Wednesday.

21                  ATTORNEY LOY: Your Honor, actually, we  
22 would prefer a January date because there are some  
23 things we need to do.

24                  THE COURT: All right. How about 3:00 on  
25 Thursday, the 12th.

1                   ATTORNEY KRATZ: I'm sorry, Judge, I'm  
2 unavailable then, as well. The entire next week I  
3 am available, as well as the week of the 23rd.

4                   THE COURT: All right. How about 9:00 on  
5 the 17th?

6                   ATTORNEY KRATZ: That would be fine.

7                   ATTORNEY LOY: That's fine with us.

8                   THE COURT: Works fine with both parties,  
9 very well, that would be for the arraignment and  
10 bail reduction hearing.

11                  ATTORNEY KRATZ: Just so the parties --  
12 should we anticipate bringing our calendars to  
13 schedule future matters at that time as well, your  
14 Honor?

15                  THE COURT: That would probably be  
16 advisable.

17                  ATTORNEY KRATZ: Thank you, Judge.

18                  ATTORNEY LOY: Thank you, your Honor.

19                  THE COURT: January 17th. We are adjourned  
20 for today.

21                  (Proceedings concluded.)

22

23

24

25

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

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 20th day of January, 2006.  
16  
17  
18

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, ARRAIGNMENT & BAIL MODIFICATION  
5 vs. Case No. 05 CF 375 & 05 CF 381  
6 STEVEN A. AVERY,  
7 DEFENDANT.

9  
10 DATE: JANUARY 17, 2006

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

13 APPEARANCES:

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

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

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

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

26 \* \* \* \* \*

27 TRANSCRIPT OF PROCEEDINGS

28 Reported by Diane Tesheneck, RPR

29 Official Court Reporter

1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery, Case No.'s 05  
3                   CF 375 and 05 CF 381. These matters are scheduled  
4                   for an arraignment and a bail modification motion  
5                   hearing today. Will the parties state their  
6                   appearances for the record, please.

7                   ATTORNEY KRATZ: State of Wisconsin appears  
8                   by Calumet County District Attorney Ken Kratz  
9                   appearing as Special Prosecutor.

10                  ATTORNEY LOY: Steven Avery appears  
11                  personally and by his Attorneys Erik Loy and Craig  
12                  Johnson, your Honor.

13                  THE COURT: Very well. It's my  
14                  understanding that the State has filed an  
15                  Information in Case 05 CF 381, but has not filed an  
16                  Information in 05 CF 375; is that correct, Mr.  
17                  Kratz?

18                  ATTORNEY KRATZ: That is correct, Judge.  
19                  We have joined the three counts, the two counts from  
20                  381, and the single count in 375, in a single  
21                  Information in 05 CF 381.

22                  THE COURT: All right. The law is, then,  
23                  in the case of 05 CF 375, that if the Information is  
24                  not filed within 30 days of the bindover, the matter  
25                  is dismissed without prejudice. Does either party

1 have any objection to the Court dismissing that  
2 matter?

3 ATTORNEY KRATZ: No, Judge, that should  
4 occur.

5 ATTORNEY LOY: No objection, your Honor.

6 THE COURT: All right. Then the Court will  
7 dismiss Case 05 CF 375. Mr. Loy, has your client  
8 received the Information in Case 05 CF 381?

9 ATTORNEY LOY: We have the Information,  
10 your Honor, we'll waive its reading and enter pleas  
11 of not guilty to all charges, reserving our right to  
12 object to the jurisdiction of the court and,  
13 particularly, to object to adding the felon with a  
14 gun charge to the Information in 381.

15 THE COURT: Very well. And before I accept  
16 your plea, it's my understanding that the defendant  
17 also wishes to file a motion to change of venue; is  
18 that correct?

19 ATTORNEY LOY: We do, your Honor. We are  
20 filing that today, pursuant to the statute; however,  
21 we are also reserving our right to withdraw that  
22 motion and to -- for Mr. Avery to insist on his  
23 constitutional right to be tried by a jury from this  
24 county.

25 THE COURT: Very well, the Court will note

1           that the motion has been timely filed. I will  
2           receive it at this time. I will accept the  
3           defendant's not guilty plea to the three charges in  
4           the Information.

5           And at this time, before proceeding to  
6           the bail modification motion, for purposes of  
7           scheduling, I would like to set a deadline by  
8           which pretrial motions, if any, if there be any  
9           others, should be filed. I will hear the parties  
10          with respect to that issue at this time.

11          Mr. Loy, how much time do you anticipate the  
12          defense would need for such filing?

13          ATTORNEY LOY: Your Honor, there are a  
14          number of potential motions in this case. I believe  
15          there were 15 or 20 search warrants; we have to look  
16          at those. Mr. Kratz has been very good about  
17          providing us with discovery and we -- I think we  
18          have the majority of those materials. I believe  
19          there's still some more to come, though, and it's a  
20          rather high stack of paper work.

21          What we would ask the Court to do is to  
22          give us approximately two months to file motions  
23          and perhaps set a status date near the end of  
24          that time period. At that time, then, the Court  
25          will know what we filed and scheduling could be

1 done.

2 THE COURT: All right. I started out  
3 earlier with my calendar, but my judicial assistant  
4 got it before I came out. So I will get my calendar  
5 at this time.

6 I'm looking at Friday, March 17th, then,  
7 as a date for filing of motions. And I could set  
8 a status conference -- let's see -- how about  
9 10:00 on Friday, March 10th; will that work for  
10 the parties?

11 ATTORNEY LOY: I was wondering if you would  
12 want to set the status conference for after the  
13 deadline, that's the question I have.

14 THE COURT: All right. I misunderstood, I  
15 thought you were leaving open the possibility you  
16 might ask for a longer period. All right. Let's  
17 set a status conference then for -- how about March  
18 23rd, at 10:00?

19 ATTORNEY LOY: Your Honor, I'm scheduled to  
20 be gone that day. Most of the rest of that week I'm  
21 free, if the Court has any other time.

22 THE COURT: All right. Friday, the 24th,  
23 at 10:00?

24 ATTORNEY JOHNSON: That's fine, unless we  
25 could do it a little bit earlier.

1                   THE COURT: Earlier in the morning?

2                   ATTORNEY JOHNSON: By like 9:00.

3                   THE COURT: I have got a sentencing set for  
4                   9 and a plea date for 9:30.

5                   ATTORNEY JOHNSON: That's fine, then, 10  
6                   will work.

7                   THE COURT: Okay. Otherwise, I could do it  
8                   at 8:30, but I know some folks are traveling to get  
9                   here. I would be happy to do it at 8:30, if it  
10                  works with the parties.

11                  ATTORNEY JOHNSON: 8:30 is fine with me.

12                  THE COURT: Mr. Kratz?

13                  ATTORNEY KRATZ: It doesn't matter to me,  
14                  Judge.

15                  THE COURT: All right. 8:30 it is, on  
16                  Friday, the 24th.

17                  ATTORNEY KRATZ: So I understand, Judge, we  
18                  will be scheduling the motion hearings at that time  
19                  and will we at least begin to discuss potential  
20                  trial dates?

21                  THE COURT: Yes. And I will ask the  
22                  parties at this time to -- after you have had a  
23                  chance to review the discovery, have some idea of  
24                  how long each of you believe the trial will take, to  
25                  have that information ready for the Court at the

1 time of the status conference so we can look at  
2 scheduling this matter for trial at that time, along  
3 with setting a motion date for any motions that are  
4 filed.

5 (Partial Transcript begins here.)

6 At this time, then, the Court will move  
7 on to the defendant's motion for modification of  
8 bail. Mr. Loy, or Mr. Johnson, which one of you  
9 will be heard on that motion?

10 ATTORNEY LOY: Your Honor, we filed --  
11 actually, we recently filed an amended motion for  
12 bail reduction. And the amendment, we're asking the  
13 Court to consider allowing sureties. And the  
14 sureties would be Mr. Avery's family.

15 They are here in the courtroom today. I  
16 have talked with them. They are willing to  
17 guarantee a recognizance bond. They have  
18 property in the county. They own Avery Salvage  
19 Yard, business and the land. And I believe that  
20 that's worth somewhere in the neighborhood of 200  
21 to \$250,000, if not more.

22 Mr. Avery is a lifetime resident of  
23 Manitowoc County, accept during a period of time  
24 when he was incarcerated. He has very  
25 substantial ties to this community. His parents,

1           his siblings, his children, all reside in this  
2           county. And most tellingly, your Honor, early on  
3           in this investigation, when evidence was found at  
4           the Avery Salvage Yard, and Mr. Avery was  
5           questioned, he was cooperative with law  
6           enforcement.

7           He, despite knowing that he was at least  
8           a person of interest, he didn't go anywhere. He  
9           was up, I believe, in Crivitz at a family cabin  
10          and he came back. There's no reason to believe  
11          that -- that Mr. Avery would flee, um, given his  
12          behavior before he was incarcerated.

13          Um, he talked with law enforcement  
14          officers. He allowed law enforcement officers  
15          access to his residence. I don't see, um, any  
16          reason to think that Mr. Avery is likely to flee.

17          He has not been able to post the bail  
18          that's currently set. I believe the bail right  
19          at this time is \$500,000. Your Honor, we would  
20          ask the Court to reduce the bail to a smaller  
21          amount, perhaps a hundred thousand dollars, or we  
22          would ask the Court -- and this, actually, would  
23          be our preference -- to set the bail as a  
24          recognizance bail, but a recognizance bail that  
25          has to be guaranteed by, I think the wording of

1                   the statute is solvent sureties. And the solvent  
2                   sureties would be his parents and other family  
3                   members.

4                   I don't think that Mr. Avery would be  
5                   likely to violate his bail if he knew that, you  
6                   know, his family's livelihood was on the line if  
7                   he did so. So, your Honor, that would be our  
8                   request.

9                   THE COURT: All right. Mr. Kratz.

10                  ATTORNEY KRATZ: Thank you, Judge. When  
11                  the original bond issue was brought up, the State  
12                  cited Section 969.01 (4), the factors that this  
13                  Court should consider when determining bond. The  
14                  State had argued at that time for a \$1 million cash  
15                  bond. The Court did set \$500,000 noting the gravity  
16                  of the offense, the penalties involved, the degree  
17                  of violence that was used in this case, the degree  
18                  of violence he used in evidence hiding and  
19                  destruction, defendant's prior felony criminal  
20                  record, the character and strength of the evidence,  
21                  his history on release, and his ties to the  
22                  community.

23                  Of those, the defendant only has a  
24                  positive consideration in ties to the community.  
25                  The rest of those factors weigh heavily in favor

1           of the Court not modifying the \$500,000 cash  
2           bond. The only change since the last time the  
3           Court visited the issue of bond is the Court has  
4           now found probable cause that the defendant has  
5           committed a felony offenses.

6           Defendant's attempts to raise bond money  
7           have been well publicized. He's attempting to  
8           raise bond money from sources unrelated to him.  
9           And if raised -- if successful in raising money  
10          from strangers or other sources that's, of  
11          course, a factor for this Court to consider.  
12          There's no incentive at all to comply with bond,  
13          no financial incentive or other risk to violate  
14          that particular kind of bond.

15          The suggestion, also, that a salvage  
16          yard could be put up as a surety, does not  
17          provide the incentive for Mr. Avery to not flee,  
18          to be made available for future court  
19          appearances. This Court also must consider  
20          community safety; the degree of violence, again,  
21          involved; the fact that this was a stranger, or  
22          at the very best, casual acquaintance homicide  
23          allegation. Risk of future violence to  
24          additional victims or other members of the  
25          community is substantial. For all of those

1 factors, I'm asking the Court to deny the defense  
2 motion at this time. Thank you.

3 ATTORNEY LOY: Just a brief response, your  
4 Honor.

5 THE COURT: Yes, Mr. Roy.

6 ATTORNEY LOY: I think it's worth noting  
7 that Mr. Avery is, at this point, presumed innocent.  
8 The State hasn't proved his guilt to a jury. So I  
9 think it may be premature to assume any guilt on his  
10 part of the allegations against him.

11 Regarding the efforts to raise bail  
12 money, I think I can tell the Court that those  
13 efforts have not met with a great deal of  
14 success. I don't think that there's much chance  
15 that -- that strangers are going to be donating  
16 anything even remotely close to the amount of  
17 money needed for bail here.

18 What we're really asking the Court to do  
19 is to allow Mr. Avery's family to be sureties.  
20 And Mr. Avery, I'm sure, would not want to  
21 imperil his family's business by violating his  
22 bail. And, um, that's -- that's all I have to  
23 say at this point, your Honor.

24 THE COURT: All right. The factors that  
25 the Court is to consider in setting bail are set

1 forth in Section 969.01 (4). Each of the parties  
2 have touched on those factors in their arguments.

3 And there are a number of the factors  
4 that warrant consideration of Mr. Avery's  
5 request; specifically, his inability to make bail  
6 as it is set now, and his lifelong residence in  
7 Manitowoc County, and the fact that there's no  
8 record that he's ever tried to flee before, and  
9 was apparently cooperative with officers earlier  
10 in the investigation of this matter.

11 There are also factors that support the  
12 State's argument; specifically, the Court is to  
13 consider the number and gravity of the offenses.  
14 In this case, the defendant is charged with three  
15 felonies including, most significantly, first  
16 degree intentional homicide, which carries with  
17 it a penalty of life in prison if convicted.

18 The Court also considers the -- whether  
19 the alleged acts were violent in nature. And the  
20 Court certainly, at this time, is making no  
21 determination or venturing no opinion as to the  
22 guilt or innocence of the defendant, but the  
23 allegations are of a crime which is certainly  
24 violent in nature.

25 And with respect to the strength of the

1                   evidence, the Court has already found probable  
2                   cause to believe that the defendant committed a  
3                   felony and bound the defendant over for trial.

4                   Based primarily on those considerations,  
5                   the Court feels that its initial determination as  
6                   to the appropriate bail amounts, or amount, is  
7                   still appropriate. So I'm not going to modify  
8                   bail; I'm going to leave it at \$500,000.

9                   I will, however, indicate that in lieu  
10                  of cash, the Court would consider a mortgage of  
11                  property of the defendant's family, if that's  
12                  what's offered, providing there was a sufficient  
13                  showing of the equity in the property and its  
14                  fair market value to meet a part or all of the  
15                  \$500,000.

16                  Mr. Kratz, I will direct you to prepare  
17                  the order with respect to the Court's decision in  
18                  this case. Is there anything further today  
19                  before we adjourn? Mr. Kratz?

20                  ATTORNEY KRATZ: I don't believe so, Judge.  
21                  Thank you.

22                  THE COURT: Mr. Loy.

23                  ATTORNEY LOY: No, your Honor.

24                  THE COURT: All right. If not, we're  
25                  adjourned for today.

1 ATTORNEY JOHNSON: Thank you.

2 ATTORNEY LOY: Thank you, your Honor.

3 (Proceedings concluded.)

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

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      day of                   , 2006.

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17  
18  
19                       \_\_\_\_\_  
20                       Diane Tesheneck, RPR  
21                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING

5 VS. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

9  
10 DATE: MARCH 17, 2006

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

13 APPEARANCES:

14 KENNETH R. KRATZ & NORMAN GAHN  
15 Special Prosecutors  
16 On behalf of the State of Wisconsin.

17 DEAN ARTHUR STRANG & JEROME F. BUTING  
18 Attorneys at Law  
19 On behalf of the Defendant.

STEVEN A. AVERY  
Defendant  
Appeared in person.

20 \* \* \* \* \*

21 TRANSCRIPT OF PROCEEDINGS

22 Reported by Diane Tesheneck, RPR

23 Official Court Reporter

1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery. It's Case No.  
3                   05 CF 381. We're in court this morning to deal with  
4                   a number of motions that have been filed -- or this  
5                   afternoon. Will the parties state their appearances  
6                   for the record, please.

7                   ATTORNEY KRATZ: State of Wisconsin appears  
8                   by Calumet County District Attorney Ken Kratz. I  
9                   appear as Special Prosecutor and lead counsel on the  
10                  case.

11                  Seated with me is Norm Gahn, G-a-h-n,  
12                  Assistant District Attorney from Milwaukee  
13                  County. Mr. Gahn has been appointed by this  
14                  Court, also, as Special Prosecutor. The record  
15                  should further reflect that Jeff Froehlich,  
16                  Assistant District Attorney from Calumet County,  
17                  also is present in the courtroom.

18                  ATTORNEY BUTING: Good afternoon, your  
19                  Honor, this is Attorney Jerome Buting of Buting  
20                  and Williams appearing with Mr. Avery. I'm  
21                  co-counsel.

22                  ATTORNEY STRANG: And good afternoon, as  
23                  well. Steve Avery is here to the far right at  
24                  the table, Dean Strang of Hurley, Burish, Stanton  
25                  on his behalf as well.

THE COURT: Very well. I will indicate for the record that I met with counsel briefly in chambers before beginning today. The first order of business that we are going to take up is the defendant's motion for an order limiting public disclosure. And I will also indicate for the record that I had a brief telephone conference with counsel about this motion a week or so ago.

I indicated at that time that I believed, that under Supreme Court Rule 20:3.6, that it's the Court's understanding that further trial publicity, in the form of press releases or other conversations with the press by counsel, would be extremely limited by that rule. And I encouraged the attorneys to meet with each other and try and work out an agreement for any press contacts that they felt were necessary before the Court would take up the issue as a contested matter.

But I can indicate for the benefit of everyone, that under that rule, the circumstances in which counsel for either party are permitted to communicate with the press during the course of legal proceedings are quite limited. And the Court expects, and I have received assurances

1                   from attorneys from both sides, that they are  
2                   fully aware of the rule and intend to comply with  
3                   it.

4                   There are some exceptions in the rule  
5                   that apply, including discussion regarding  
6                   information contained in public records. And  
7                   it's my understanding, from speaking with the  
8                   attorneys, that that's the matter they are  
9                   intending to meet with each other about to reach  
10                  an agreement. Counsel, I will give each of you a  
11                  chance to comment on the record to confirm that  
12                  fact.

13                  ATTORNEY KRATZ: Judge, I do confirm that  
14                  we have discussed this matter. Mr. Strang and I  
15                  are, I think, very close in our positions regarding  
16                  Rule 3.6 and public dissemination of information.  
17                  I'm quite confident that should there be any need  
18                  for any additional information, or should there need  
19                  to be an agreement reached on filing of public  
20                  information, that that can be accomplished between  
21                  Mr. Strang and myself.

22                  THE COURT: Mr. Strang.

23                  ATTORNEY STRANG: I think now that the  
24                  Court has reiterated the requirements of Supreme  
25                  Court Rule 20:3.6 and both counsel have acknowledged

1           those, that the Court, at the moment, need take no  
2           further action on that motion. I would add that,  
3           it's my recollection and understanding, in the  
4           course of an off the record conversation, that the  
5           State agreed, that for purposes of this motion and  
6           the agreement such as it is that we have reached,  
7           that the Calumet County Sheriff, other agents of the  
8           state or of the Sheriff's Department, would be  
9           embraced within the scope of our agreement.

10           Like Mr. Kratz, I also think that, with  
11           a little bit of further talking, we ought not  
12           have difficulty reaching some understanding on  
13           future filings, or invited response for that  
14           matter, which is something that I understand  
15           Mr. Kratz also thinks worthy of discussion, and  
16           I'm happy to do that.

17           THE COURT: Mr. Kratz, is that correct?

18           ATTORNEY KRATZ: That is, Judge.

19           THE COURT: All right. The Court, for the  
20           time being at least, will hold that motion in  
21           abeyance, with the consent of the parties and,  
22           hopefully, you will be able to come to an agreement  
23           that will resolve that matter.

24           The next motion has to do with the  
25           State's motion to amend the Complaint and the

1           Information in this case and the filing in  
2           opposition of that motion from the defense. I  
3           have received both the State's request to amend  
4           and a memorandum in opposition from the defense.  
5           Before I get to you, Mr. Strang, I guess  
6           technically it's Mr. Kratz's motion to amend.

7           ATTORNEY STRANG: And I wondered if I might  
8           have a moment's indulgence, since we're being  
9           broadcast as I understand and may be streamed, or  
10          whatever the word is, on the web. I wonder if the  
11          Court, perhaps, ought not address media rules here,  
12          particularly intrusion into counsel table on either  
13          side, filming during recesses, that sort of thing,  
14          before we move forward.

15          THE COURT: Right. It was brought to my  
16          attention, and normally we have been dealing with  
17          the media matters through the media coordinator and  
18          representatives of the television broadcast  
19          stations, and there are a few things that counsel  
20          asked me to bring up, which I will later.

21          The one that should be brought up  
22          immediately is that the papers that are on the  
23          desk of either counsel often contain privileged  
24          information. So I'm going to ask the cameras who  
25          are present in the courtroom, or the --

1                   specifically, the video camera, not to zoom in on  
2                   papers on table which may be confidential. Is  
3                   that what you are looking for today, Mr. Strang?

4                   ATTORNEY STRANG: That and the recess  
5                   issue, but the Court can deal with that at a time of  
6                   its choice.

7                   THE COURT: Mr. Kratz, I will hear from you  
8                   then, first, on your request to amend the Complaint.

9                   ATTORNEY KRATZ: Thank you, Judge. As the  
10                  Court knows, the State has filed a motion to both  
11                  amend the Criminal Complaint and the Criminal  
12                  Information, which is the formal charging document  
13                  in felony prosecutions. The State has cited two  
14                  separate cases authorizing, alternatively, the  
15                  filing of the Amended Complaint, and also the  
16                  requirement, or lack of requirement, for an  
17                  additional preliminary hearing upon the filing of  
18                  new charges.

19                  The State reiterates that these new  
20                  offenses charging Mr. Avery with three separate  
21                  counts -- including first-degree sexual assault,  
22                  false imprisonment, and kidnapping -- are not  
23                  wholly unrelated to the original series of  
24                  charges.

25                  I understand Mr. Strang has filed with

1                   the Court a motion challenging, not the timing of  
2                   the filings, but the sufficiency of the  
3                   information contained in the Complaint. And with  
4                   approval of the Court, I will address those  
5                   issues at this time, unless the Court wants me to  
6                   wait until Mr. Strang makes his argument. I have  
7                   received his written argument and I'm prepared to  
8                   address the sufficiency of the Complaint argument  
9                   at this time, if the court would prefer I do  
10                  that.

11                  THE COURT: All right. Mr. Strang, as we  
12                  discussed in chambers, it's my understanding the  
13                  defense is not challenging the State's right to  
14                  file, at this time, an Amended Complaint and  
15                  Information, but rather the sufficiency of the  
16                  Amended Complaint and Information that's been  
17                  proposed; is that correct?

18                  ATTORNEY STRANG: That's the bottom line on  
19                  that point. The State, of course, needs leave of  
20                  the Court to file an Amended Complaint, or for that  
21                  matter, an Amended Information. Leave would be  
22                  withheld if the timing, or some other aspect of the  
23                  filing, were prejudicial to the defense, in and of  
24                  itself, and it's not. That's not my concern. It's  
25                  really the reliability, or the sufficiency of the

1                   Complaint, with which I am concerned.

2                   THE COURT: All right. I'm not sure which  
3                   one of you wishes to be heard first. Mr. Kratz is  
4                   proposing the amendment, and I'm sure he feels that  
5                   the Amended Complaint with the language included is  
6                   sufficient, but, Mr. Kratz, I will -- since it's  
7                   your motion, I'm going to let you start and briefly  
8                   summarize for the Court why you feel it is, and then  
9                   I will hear from Mr. Strang.

10                  ATTORNEY KRATZ: Thank you, Judge. Your  
11                  Honor, as this Court knows, any Complaint needs to  
12                  present probable cause, or proof to the level of  
13                  probable cause which requires a Court to look at the  
14                  facts contained within the four corners of the  
15                  Complaint, together with any reasonable inferences  
16                  that may be drawn therefrom.

17                  Mr. Strang has complained about the  
18                  sufficiency of the information in the Complaint.  
19                  I might -- I might add that Mr. Strang, in his  
20                  written motion and -- excuse me -- in his written  
21                  pleadings, as well as other information, contains  
22                  a great deal of criticism of the State for  
23                  providing too much information within the four  
24                  corners of this Amended Complaint.

25                  But this Court understands that

1                   reliability of information within the four  
2                   corners of the Complaint is something that the  
3                   Court must find. And so the State, in providing  
4                   the detail that it did, argues that that was  
5                   necessary, absolutely required, for this Court to  
6                   make that finding of reliability.

7                   Mr. Strang also argues that there are no  
8                   claims of physical evidence or other  
9                   corroboration in the Amended Complaint. The  
10                  State obviously disagrees. There is a lengthy  
11                  list of physical evidence that has been  
12                  recovered, that was seized, and in fact analyzed  
13                  in this case, which is all recited in the Amended  
14                  Complaint.

15                  I'm not going to go item by item, but  
16                  the statements of now co-actor, Brendan Dassey,  
17                  in his recounting the behavior of himself and of  
18                  Mr. Avery that ultimately led to the death of  
19                  Teresa Halbach, as well as the other criminal  
20                  behavior, is quite detailed indeed. The State  
21                  does argue, Judge, that within those details, and  
22                  as I have mentioned, those details are  
23                  corroborated by physical evidence which is  
24                  recited for the Court within the four corners of  
25                  the Complaint.

1                         Finally, Mr. Strang argues that if  
2 Dassey's statement alone was the basis for this  
3 particular prosecution, that at trial, it could  
4 not stand besides the **Lilly** as well as the  
5 **Crawford** case. And the State concedes that, at  
6 trial, if the State intended to convict Mr. Avery  
7 on Mr. Dassey's statements alone, without any  
8 physical evidence, that they may be unable to do  
9 so. Or if we attempted to introduce a co-actor's  
10 statement, without an opportunity to  
11 cross-examine, that would also be problematical,  
12 require an advanced ruling.

13                         But those are trial issues, Judge.  
14 Those are issues that apply to Sixth Amendment  
15 Confrontation and are unique to trial. I think  
16 Mr. Strang, at page 9 of his brief, concedes  
17 that, that although those rules appear to the  
18 trial and not to an analysis under the Criminal  
19 Complaint, Mr. Strang invites this Court to,  
20 nonetheless, throw out the Complaint, just in  
21 case, I guess, just in case the State intended to  
22 only provide that statement. Well, the State  
23 does not intend to provide only that evidence at  
24 trial. But, again, these are trial arguments, it  
25 has nothing to do with the Criminal Complaint.

1                   When this Court reviews the four corners  
2                   of the Criminal Complaint, it will find probable  
3                   cause that the defendant committed each of the  
4                   violations as set forth. And as I have cited in  
5                   the **Burke** case, B-u-r-k-e, an additional  
6                   preliminary hearing is not required, based upon  
7                   the connection, or nexus, of the six criminal  
8                   behaviors that our alleged, that is, that they  
9                   are not wholly unrelated. We will ask the Court  
10                  grant leave to file the Amended Complaint and  
11                  Information. Thank you, Judge.

12                  THE COURT: All right. Mr. Strang.

13                  ATTORNEY STRANG: The proposed Amended  
14                  Complaint founder is not, of course, on a posit of  
15                  detail here but rather on the unreliability of the  
16                  detail that is included. Let me -- let me walk  
17                  sequentially here through the problem that confronts  
18                  the Court.

19                  There was an original Complaint, of  
20                  course, that started this criminal case back in  
21                  November. It charged three crimes: First-degree  
22                  intentional homicide, mutilation of a corpse,  
23                  felon in possession of a firearm. The time to  
24                  challenge that Complaint, or probable cause  
25                  showing, is gone.

1                   We don't -- It's established for  
2 purposes of this motion and today's proceedings.  
3 I raise it because, now, in it's proposed Amended  
4 Complaint, that the State has incorporated by  
5 reference -- as lawyers are fond of saying -- the  
6 factual allegations in the original Complaint.  
7 So, let's start there.

8                   No one, no one presumably at the table  
9 to my left, would contend that the original  
10 Complaint, without the March 2 or whenever it was  
11 additions, made out probable cause to believe  
12 that Steve Avery committed first-degree sexual  
13 assault.

14                  No one, I assume, in the courtroom,  
15 would contend that the original Complaint's  
16 factual basis made out probable cause, or  
17 anything close to it, on kidnapping or false  
18 imprisonment, which are the other two new counts  
19 in the proposed Amended Complaint.

20                  So the incorporation of the factual  
21 basis in the first Complaint, while I acknowledge  
22 it, really adds nothing at all to our problem  
23 here today, focusing maybe most usefully on the  
24 first-degree sexual assault allegation that the  
25 State wishes to toss into the mix of this case

1 now.

2                   What is new in the proposed Amended  
3 Complaint, as counsel acknowledges, is a  
4 statement that Brendan Dassey gave, evidently, to  
5 law enforcement officers in response to law  
6 enforcement questioning, out of Steve Avery's  
7 presence, and that now the State would -- would  
8 like to use as a reliable basis for a finding  
9 that he probably committed first-degree sexual  
10 assault, and kidnapping, false imprisonment.

11                  Again, it's not -- it's not a lack of  
12 detail, there's a great deal of ugly detail that  
13 the police say Mr. Dassey provided here. It's  
14 the reliability as to Steve Avery that's the  
15 problem. I'm delighted to hear counsel  
16 acknowledge, in a fashion here today, that the  
17 Dassey statement would be inadmissible, not  
18 allowed, at trial, against Mr. Avery, absent a  
19 chance to cross-examine Mr. Dassey in that  
20 witness chair, or some similar chair. Not  
21 admissible evidence against him.

22                  I also acknowledge that a Complaint can  
23 include the inadmissible. The Court can look at  
24 that within the four corners of the Complaint.  
25 But as **Knudson** and a variety of other Wisconsin

1 decisions, at least back to 1968 with **State ex**  
2 **rel. Evanow against Seraphim**, and I'm sure  
3 decisions before that, before I was born, as the  
4 Court knows, hearsay or not, the factual  
5 assertions in a Complaint have to be reliable.

6 The State here, in the Complaint,  
7 alleges that these are presumptively reliable,  
8 presumed truthful and reliable, I think is the  
9 exact wording of the Complaint. In fact, of  
10 course, the presumption is just the opposite.  
11 It's just the opposite as a matter of law. The  
12 U.S. Supreme Court has made that clear at least  
13 by **Bruton** back in 1968, while we're on 1968  
14 cases, **Lee, Williamson, Lilly**.

15 This is sort of beyond repetition at  
16 this point. This is really very clearly  
17 established, that when an accomplice or someone  
18 claims he is an accomplice, is questioned by the  
19 police and says, yeah, I was involved, you know,  
20 but he was -- he was involved too, he did this  
21 and that, and points to someone else, that's  
22 unreliable stuff.

23 It's blame shifting. It's literally  
24 finger pointing. And it's a very effective way  
25 for an accomplice, caught cold or not, to sound

1                   credible by acknowledging some involvement, but  
2                   to lay off blame, in part, or in large part, on  
3                   another person. Are the risks of that  
4                   particularly high when we're talking about a 16  
5                   year old boy who may be slow and being questioned  
6                   by two police officers, presumably without a  
7                   parent or a lawyer around? Yes, the risks of  
8                   that are particularly high, if we get into  
9                   specifics on reliability.

10                  But the Court's, including the Wisconsin  
11                  Court of Appeals in *Myren*, which Mr. Buting and I  
12                  have cited, has been very clear that this stuff  
13                  is inherently suspect, inherently unreliable,  
14                  presumptively unreliable, just to quote bits and  
15                  pieces. So the State really can't claim the  
16                  presumption that the amendment tenders.

17                  Neither does the Complaint offer  
18                  anything more than a presumption that Brendan  
19                  Dassey's statements are truthful and reliable,  
20                  not as to Brendan Dassey, but as to Steve Avery.  
21                  And that's where the problem is. They simply are  
22                  not, as a matter of law, reliable as to Steven  
23                  Avery; hence, the motion asking the Court, not to  
24                  strike the original three charges, of course, but  
25                  to deny the State leave here to file the three

1 new charges.

2                   Timing is not prejudicial, that's not  
3 the issue, as we have agreed. The reliability,  
4 or rather the unreliability of the entire factual  
5 basis here, there being as to first-degree sexual  
6 assault, kidnapping, and false imprisonment,  
7 nothing but an inadmissible, unreliable statement  
8 by Brendan Dassey to support this Complaint.

9                   Allowing it to be filed would require  
10 the Court only later, when I filed a motion  
11 challenging probable cause, to dismiss those  
12 three counts. Again, there's no reason to do  
13 that. The Court, on the grounds we have  
14 articulated, ought deny leave to file this  
15 proposed Amended Complaint, at least as to the  
16 three new charges. That ruling would necessarily  
17 moot inquiry into what is procedurally a  
18 subsequent document in Wisconsin criminal courts,  
19 which is an Amended Information.

20                  We also don't have to get to the  
21 question of a preliminary examination, if the  
22 Court denies leave to file the Amended Complaint,  
23 because there's nothing on which to have a  
24 preliminary examination at that point.

25                  I could pause and let the Court say

1                   something, but I will note that I very much  
2                   disagree were this Amended Complaint to be filed  
3                   with leave of the Court and then to withstand a  
4                   motion to dismiss on probable cause grounds; I  
5                   very much disagree that a preliminary examination  
6                   would be unnecessary, legally, as to those three  
7                   counts.

8                   And I can get into **Burke**, and more  
9                   illuminating, **Bailey**, a decision that **Burke**  
10                  extends, or at least endorses. It's the facts of  
11                  both of those cases, suggest why, although their  
12                  new counts were not wholly unrelated to the  
13                  evidence adduced at the preliminary examination  
14                  here, these new counts would be wholly unrelated,  
15                  at least the first-degree sexual assault, and the  
16                  kidnapping. May not need to get there, so I will  
17                  yield the microphone.

18                  THE COURT: Mr. Kratz, anything in  
19                  rebuttal?

20                  ATTORNEY KRATZ: Just a couple of things,  
21                  briefly, Judge. Once again, if Mr. Strang and the  
22                  defense is allowed to extend these trial  
23                  confrontation principles to the Criminal Complaint  
24                  analysis, State argues that you would never, or at  
25                  least would be very difficult to ever charge

1 co-defendants, at least when one of the defendants  
2 makes a statement and the other does not.

3 Again, they simply are not Complaint  
4 principles, these are trial confrontation  
5 principles. Let me also talk, then, to the  
6 reliability question that Mr. Strang raises.  
7 Reliability of statements of a co-declarant in  
8 **Lilly** and in other cases cited by Mr. Strang,  
9 don't just inculpate the co-defendant, don't just  
10 point the finger at somebody else, but they are  
11 also meant to exonerate the declarant.

12 That's not what we have here.

13 Mr. Dassey's statement in no respect, at least as  
14 cited in the Amended Complaint, intended to  
15 exonerate Mr. Dassey at all. Mr. Dassey  
16 inculpates himself. He says I acted together  
17 with my uncle, Steven, without threat, without  
18 reprisal, knowingly and voluntarily engaging in  
19 the same kinds of behaviors.

20 So when a defendant -- when a suspect  
21 makes a statement, that against their own penal  
22 interests, they deserve reliability. And that is  
23 much distinguished from the kinds of statements,  
24 again, that were offered in **Lilly** and others.

25 That's all I have got, Judge. Thank you.

THE COURT: All right. First of all, there have been a number of reported decisions, especially United States Supreme Court decisions, in recent years involving the admissibility of the statements of co-defendants at trial where the State seeks to introduce the statement, not through the actual person of the co-defendant, but as hearsay testimony.

And the law in that regard has changed a good deal in recent years against the State and in favor of the defense, culminating with the **Crawford** case, which held, as close as you can, as a black letter rule, that if a co-defendant's testimony is going to be used against the defendant, the co-defendant in virtually all cases has to testify.

But I think it's dangerous to simply equate those cases to the situation where you are dealing with a Complaint and whether or not the statements of a co-defendant can be used as a basis for a Complaint. The closest case from Wisconsin on the facts, that I could find, is a 1974 case called ***Ruff versus State***, which dealt precisely with this issue, that is, whether or not a Complaint could be based on the statement

1 of a co-defendant that implicated the defendant.

2 I will read a little bit from that  
3 decision. The Court asked: Was the Complaint  
4 legally sufficient to establish probable cause?  
5 The defendant admits the sufficiency of the  
6 Complaint to establish probable cause that the  
7 alleged crimes had been committed, but challenges  
8 the sufficiency to establish probable cause that  
9 the defendant committed the crimes.

10 The part of the Complaint which names  
11 the defendant is based upon statements made to  
12 police officers by the defendant's accomplices,  
13 Charles Flowers and Willy Payne. Such statements  
14 were hearsay, but a Criminal Complaint may be  
15 based on hearsay.

16 The Court goes on in that case to hold  
17 that, the statements against penal interest made  
18 by a co-defendant can be used as a basis for  
19 probable cause in a Complaint where the statement  
20 is not the statement of the co-defendant  
21 essentially attempting to exculpate himself, that  
22 is, there can be cases where a co-defendant is  
23 simply trying to blame someone else.

24 But where the statements are  
25 interrelated, such that the co-defendant is

1 implicating himself at the same time he's  
2 implicating someone else, I believe the law in  
3 Wisconsin, as it applies to Criminal Complaints,  
4 remains, that such statements can be used where,  
5 when considered in context, they have sufficient  
6 indicia of reliability. And based on my review  
7 of the Complaint, I do believe that that's the  
8 case here.

9 I recognize that some of that rationale  
10 has been criticized in the cases that have led to  
11 testimony in those cases not being admitted where  
12 it doesn't come from the co-defendant himself at  
13 trial. But that's based primarily on  
14 confrontation clause issues under the United  
15 States Constitution. And I'm not aware of any  
16 decision that has used the same rationale to say  
17 that the statements of a co-defendant cannot be  
18 used to supply a probable cause in a Complaint.

19 So, for that reason, I believe that the  
20 statements of Mr. Dassey contained in the  
21 proposed Amended Complaint can be used as a basis  
22 for the Complaint. And I believe that with those  
23 statements, the Complaints are sufficient as they  
24 have been filed. I believe that's the only basis  
25 on which the Amended Complaint is really being

1                         challenged. So, the Court is going to grant the  
2 State's motion to file the Amended Complaint.

3                         I think implicit in Mr. Strang's  
4 argument is that he may have other issues related  
5 to that matter that he wishes to argue. So,  
6 Mr. Kratz, I will direct you to prepare the order  
7 allowing you to file your Amended Complaint.  
8 And, Mr. Strang, I will give you the opportunity  
9 to file additional pleadings, if you wish,  
10 regarding whether your client is entitled to a  
11 preliminary examination, based on the Amended  
12 Complaint.

13                         ATTORNEY STRANG: I can do that within 10  
14 days after the order is signed, if that's sufficient  
15 for the Court.

16                         THE COURT: All right. I will allow you to  
17 do that. At the end of today's proceedings, I can  
18 see we may have to do some scheduling. But for now,  
19 I will give you 10 days to file your motion in that  
20 respect. Let me ask this, do the parties anticipate  
21 any additional issues other than the defendant's  
22 right to a preliminary examination on the Amended  
23 Complaint, relating strictly to the Complaint and  
24 the proposed Amended Information?

25                         ATTORNEY STRANG: We can short circuit the

1           one I would see which is, I will move now to dismiss  
2           the three new counts for want of probable cause,  
3           relying on the arguments I have already made. And  
4           if I heard correctly, the Court ruled that, with the  
5           Dassey statements in, as a factual basis, there is  
6           probable cause. I disagree and I will make the  
7           motion, for the purpose of making it clear, that I  
8           do want those three counts dismissed once the  
9           Amended Complaint is filed.

10           THE COURT: All right.

11           ATTORNEY STRANG: But don't need to brief  
12           it separately.

13           THE COURT: Okay. Anything further on the  
14           Complaint issue before we move on?

15           ATTORNEY KRATZ: No.

16           THE COURT: All right. The next issue that  
17           the Court will take up is the defendant's motion to  
18           assure fair forensic testing, which involves a  
19           request by the defense to either be present when the  
20           State Crime Lab performs analysis on items that have  
21           been seized in the course of the investigation in  
22           this case, or in the alternative, to have the  
23           testing procedures videotaped. And if I understand  
24           correctly, Mr. Buting, you will be making the  
25           defense argument on this issue?

1 ATTORNEY BUTING: Yes, your Honor.

2 THE COURT: I will hear from you at this  
3 time.

4 ATTORNEY BUTING: The defense motion is  
5 somewhat unusual, but I think given the nature of  
6 this case and it's unique history, I think it's  
7 appropriate, especially in light of concerns that  
8 were raised earlier, before either Mr. Strang or  
9 myself became involved in the case, about possible  
10 bias from law enforcement, that I would think the  
11 State would actually welcome efforts to make the  
12 testing process more transparent.

13 And that would be by allowing a defense  
14 representative to be present during any portions  
15 of the testing where they are handled -- where  
16 the evidence gets handled by the analyst or  
17 technicians and/or to videotape those portions of  
18 the testing process to ensure, or at least to  
19 limit the possibility of there being any  
20 contamination that may occur of the evidence in  
21 the lab once it gets there, either accidental or  
22 otherwise.

23 I believe that, although there are no  
24 cases that have specifically addressed this  
25 issue, I think the Court does have authority to

1 do so by considering Statutes 165.79 and 971.23  
2 together. The first allows the Court to order  
3 the Crime Lab to perform tests on the defense  
4 behalf under certain circumstances.

5 And if the Court has the authority to do  
6 that, then this is a lesser remedy, or request,  
7 which is simply to allow the defense to  
8 participate in observing, not to interfere with  
9 the process itself, and to necessarily then be  
10 present during the generation of the results of  
11 the tests, which are disclosable anyway under  
12 971.23. And all this would do is move up the  
13 time when those rules get disclosed, that is, at  
14 the time that the State learns them, the defense  
15 representative would also be there and also learn  
16 them.

17 There are, I think, very unusual  
18 circumstances in this case that warrant that.  
19 The remedy that the State suggests in their  
20 response objecting to our motion, is independent  
21 testing. Independent testing can work in some  
22 instances and to some degree, but not if material  
23 is already contaminated.

24 A repeated independent test of  
25 contaminated evidence does nothing towards

1           getting at the truth, it simply repeats or  
2        confirms the original erroneous results. The  
3        State also suggests that, in addition to that, by  
4        the way, having independent tests done subsequent  
5        to the State's test, can also build an additional  
6        delay.

7           I don't know how long it's going to take  
8        for the State to complete the tests that they  
9        have not yet done. That would be, presumably, on  
10       items that were seized in the March 2nd, I think  
11       it was, search warrant. But an independent test  
12       would necessarily have to take place after that.  
13       And that could be while Mr. Avery is at least  
14       presently incarcerated.

15           The bail issue, we'll be dealing with  
16        later, but if he remains incarcerated then that  
17        works to his disadvantage by requiring him to sit  
18        in jail longer, just because the State resists  
19        transparency in the process, at this point,  
20        allowing a defense view of what goes on in the  
21        Crime Lab. So independent testing is not a  
22        adequate remedy to the concerns that the defense  
23        has in this particular case.

24           The State also, in it's written  
25        objection, complained that somehow this would

1           jeopardize the accreditation of the State Crime  
2           Lab if an outside observer were allowed in. And  
3           I don't see that at all. Nothing that they cite  
4           in their written brief indicates that.

5           Accreditation requires that a lab comply  
6           with security and control and methods, which are  
7           not always done, by the way, despite the fact  
8           that they are supposed to be accredited. But  
9           those could also be complied with very easily  
10          with the defense expert who might be present.

11          I have spoken with a defense expert who  
12          has done this in other labs, in various states,  
13          including recently Illinois, I believe also  
14          Maine. It's done very easily. He is clothed in  
15          surgical type scrubs, mask, same way that the  
16          State analyst should or would be.

17          He is also -- has no objection to the  
18          State's concern that -- that the Crime Lab has a  
19          process whereby their staff provides their own  
20          DNA genotype, so that in the event results should  
21          come up, or would come up, that would show that  
22          there's some other DNA in it, if it turns out to  
23          be the analyst's, then it could be discarded as  
24          evidence -- as indication of contamination. The  
25          defense expert would also be willing to do that.

1                   So, I don't see anything about the way  
2                   that the Crime Lab is set up in it's testing that  
3                   would prohibit, or make it somehow a threat or  
4                   jeopardy to their accreditation to allow a  
5                   defense representative to be present simply  
6                   observing what's going on. The State also cites  
7                   in their written opposition a number of older  
8                   cases where the Courts did rule that it was  
9                   not -- or they denied defense motions to do  
10                  similar types of observations.

11                  But one reason that this motion is  
12                  brought in this case is because of what we have  
13                  learned, what the public has learned, about Crime  
14                  Labs all over the nation in the last five, six  
15                  years. I cite to some law review articles that  
16                  talk about the studies that have been done.

17                  Now 17 states, Crime Labs in 17  
18                  different states, have been found to have either  
19                  had fraudulent behavior by some of the analysts,  
20                  or erroneous test results, incompetence,  
21                  everything, the entire spectrum of problems that  
22                  result in false tests, that, in some instances in  
23                  Kansas, resulted in the correct suspect being  
24                  released, going out and committing another  
25                  offense. And in other instances, innocent people

1                   being wrongly identified through DNA testing and  
2                   only later, fortuitously, was it determined that  
3                   the mistake was made.

4                   The FBI lab, once considered the most  
5                   prestigious, elite lab in the world, went through  
6                   a horrible scandal of disclosure of, not just  
7                   mistakes -- and there were many, many instances  
8                   of that -- but also deliberate, fraudulent  
9                   conduct resulting in one of their analysts being  
10                  convicted of a misdemeanor for fraudulent  
11                  reporting on DNA reports. That went on for two  
12                  years before the lab discovered it.

13                  Now, I'm sure the State will say more  
14                  different, this is Wisconsin, we have a very fine  
15                  lab here, it's never been proven to have  
16                  fraudulently or erroneously come up with test  
17                  results that have affected a case. But I am also  
18                  quite sure that the prosecutors in courts and  
19                  public believe that in all of those other states,  
20                  in each of those cases.

21                  And yet we now know otherwise. We now  
22                  know that these kinds of mistakes do take place  
23                  and there is worldwide discussion on what to do  
24                  about the problems with Crime Labs. DNA evidence  
25                  has considered this with programs like CSI on TV

1 and other things like that, considered this the  
2 ultimate proof, the pristine evidence one way or  
3 the other. But that's only true so much as the  
4 Crime Labs in this country and in this state are  
5 competent, fair, and able to produce correct  
6 results.

7 Therefore, what we're suggesting is,  
8 given the implications of what has gone on in  
9 this case, or what was implied anyway, earlier,  
10 before we became involved, we think that the best  
11 way to resolve, to assure that that doesn't  
12 extend further into the testing process, is to  
13 simply allow transparency.

14 That's all we're asking, no  
15 interference, just transparency to allow a  
16 defense representative to be present during the  
17 handling of the evidence, or in the alternative,  
18 a less favored alternative. But at a minimum,  
19 something that certainly wouldn't cause any  
20 contamination, would be to videotape at any time  
21 when the analysts are handling the evidence  
22 itself.

23 There's periods of time when it's sort  
24 of cooking in the incubator, and it wouldn't need  
25 to be filming that portion, but when it's taken

1 out, when it's moved from one step in the process  
2 to the next, that could certainly be recorded and  
3 preserved and that would, I think, lessen the  
4 likelihood of there being any implications of  
5 wrong doing or mistakes down the road. I think  
6 there is authority for it. It's in the Court's  
7 discretion to grant it and that's what we ask.  
8 Thank you.

9 THE COURT: All right. Mr. Strang, do I  
10 understand that Mr. Gahn is going to be addressing  
11 this issue? Mr. Kratz, I'm sorry.

12 ATTORNEY KRATZ: Yes, Mr. Gahn.

13 THE COURT: Mr. Gahn.

14 ATTORNEY GAHN: Thank you, your Honor. I'm  
15 going to rely upon the brief that I filed in  
16 response to their request to be present for the  
17 testing or, in the alternative, to have it  
18 videotaped and just amplify a few portions of that  
19 brief.

20 Again, the defense has cited no  
21 authority, or any statutory authority, or case  
22 precedent, to authorize them into the Crime  
23 Laboratory, or for videotaping of the procedures  
24 that go on in the Crime Laboratory. I must  
25 emphasize to the Court that in a Crime

1                   Laboratory, especially with DNA testing, the  
2                   issues of security and contamination are just of  
3                   the utmost importance.

4                   And they are so very important in the  
5                   accreditation process of a Crime Laboratory. And  
6                   any time that you lessen that security, or allow  
7                   the potential to introduce other contaminants  
8                   into the Crime Laboratory, that's going to place  
9                   that accreditation into some jeopardy.

10                  The State has cited three cases where  
11                  that issue has come before appellate courts and  
12                  they have ruled against the defense. I guess,  
13                  your Honor, you have to understand what happens  
14                  at the Crime Laboratory. We're talking about a  
15                  huge number of items here of evidence. This is  
16                  not just one item that is coming into the Crime  
17                  Lab. It's just a huge number of items.

18                  And when the Crime Lab gets these items  
19                  of evidence, they are going to be screened, first  
20                  of all, and that can take a couple of days. And  
21                  once it's been screened, and they believe there  
22                  may be something of potential value to submit to  
23                  some type of DNA testing, then that's when the  
24                  extraction process takes place. And that can  
25                  take, also, a couple of days.

1                   The problem is, once the extraction  
2                   process is finished, the items are batched. And  
3                   what happens is, other analysts may batch, with  
4                   this case, items that they are testing for their  
5                   cases. And then there's what's called the  
6                   quantitation. And this is a very important  
7                   process, which is, again, days and days later.

8                   And once they realize how much DNA is  
9                   present, whether there is a certain quantity,  
10                  then the analysts, again, determine which are  
11                  going to be set up for the amplification process.  
12                  And then you still have a number of other  
13                  processes that can take two to three weeks to  
14                  complete.

15                  The intrusiveness, the burdensome nature  
16                  of their request, would make it almost impossible  
17                  for a Crime Lab to operate when you are looking  
18                  at so many items of evidence, and the process,  
19                  and how the process -- how the analysis process  
20                  takes place.

21                  The Crime Lab is accredited. They  
22                  follow very strict, stringent, national  
23                  standards. And one of the reasons for writing  
24                  such strict national standards is that the  
25                  defense is given, in their discovery process, and

1           it's routinely done in Wisconsin, they are given  
2           the bench notes. They are given the protocol.  
3           They are allowed to see the quality assurance  
4           guidelines as followed, the gene scan data, the  
5           genotype RE-data.

6           It's all designed so that an outside  
7           expert can look at the protocol, can look at the  
8           process, the analysis that was done, and  
9           determine whether it was followed, so that  
10          defense is not left without anything in this  
11          case. They are open to all the paperwork and the  
12          analytic process through the DNA typing.

13          Having someone in and trying to video  
14          tape it, again, would be so burdensome and such  
15          an order were granted, I think the Court can  
16          appreciate, if every defendant were allowed to  
17          have an expert go in to look, or a videotaping  
18          done, you could almost shut down the Crime  
19          Laboratory.

20          There are so many sensitive items that  
21          are out at the Crime Lab. It's evidence from  
22          cases all over the State of Wisconsin. It's a  
23          very, very, sensitive issue and security is  
24          paramount. So I would ask the Court --

25          One other issue I would like to address

1           is the unnamed independent expert. I don't know  
2           what were the circumstances of this independent  
3           expert, or what the circumstances were to go into  
4           an Illinois Crime Lab and observe. In all  
5           candor, I will admit to the Court, I have heard  
6           of cases where that is done, or there's an  
7           agreement between the defense and the prosecution  
8           to send the item for independent testing. But  
9           those generally are cases where there is one  
10          critical piece of evidence and there will be a  
11          total consumption of that evidence.

12           Then you get into issues of what is  
13          materially relevant, what is potentially  
14          exculpatory evidence, and you get into an **Arizona**  
15          **vs. Youngblood** analysis. That's generally where  
16          those cases come about, where it is just one  
17          piece of evidence that could be inculpatory, or  
18          it could be exculpatory. And the defendant has  
19          no other comparable means of getting that  
20          evidence analyzed.

21           Under those circumstances, I have heard  
22          of where the defense and the State would get  
23          together and maybe agree on an independent lab to  
24          do it, or perhaps agree upon the -- a defense  
25          expert viewing that process. But that is the

1                   rare case. And -- From my understanding and from  
2                   the knowledge that I have.

3                   So I would ask the Court to grant our  
4                   position and that the defense not be allowed in  
5                   to observe the testing, or to videotape it,  
6                   mostly because of just the burdensome nature it  
7                   would have upon the Crime Lab and the security  
8                   issues and just the integrity of the whole Crime  
9                   Lab set up. Thank you, Judge.

10                  THE COURT: Mr. Buting, anything else?

11                  ATTORNEY BUTING: Just briefly, your Honor.  
12                  As to the question of burdensome, there being so  
13                  many items, I seriously doubt that in this case,  
14                  because from what I understand from prosecution,  
15                  that most, if not all, of the items originally  
16                  seized back in November in this case have been  
17                  tested. So, we're really only talking about items  
18                  that are seized as a result of the most recent  
19                  search warrant.

20                  And I don't think there are that many of  
21                  them that were seized, and probably a very small  
22                  percentage of them that, that when looked at,  
23                  will have any area that would be worthwhile to  
24                  test. So there may only be a handful, five, six  
25                  items perhaps, that in this case will still be

1 tested.

2 So I don't understand the argument that  
3 it's so burdensome, because there are so many  
4 items. There's no reason those can't all be run  
5 at the same time. That would not -- In fact, it  
6 would probably be the normal course, if there's  
7 one analyst working on this case, which I  
8 understand there would be.

9 Yes, through discovery, the State does  
10 provide bench notes and raw data and that sort of  
11 thing, which can be helpful to an expert, but it  
12 says nothing about the potential of  
13 contamination, cross-contamination between items  
14 of evidence. None of that can be found after the  
15 fact. That's the problem.

16 That's why, it's that very reason that  
17 the State, in order to become accredited, has to  
18 take all kinds of precautions to try and prevent  
19 that. But accreditation, some of these other  
20 labs, where these problems have been developed,  
21 have been accredited, and have thought that they  
22 had very good, sound protocols that were being  
23 followed and, low and behold, they discover  
24 that's not the case.

25 Finally, as to the question of whether

1           there is -- It's true that perhaps these motions  
2           are more likely granted or agreements made when  
3           there is one item of evidence that will be all  
4           used up in the course of the testing, but at this  
5           point I don't know whether that's going to be the  
6           case here or not. I don't know yet.

7           I don't think the State knows that, that  
8           there is sufficient, or that there would be, if  
9           they find an area that would be worthy of  
10          searching for DNA, that it would be sufficient to  
11          guarantee a separate half of it, or whatever  
12          sample, for a subsequent, independent test. And  
13          I don't think they are going to know that until a  
14          number of things happen --

15          One, they eyeball it and look at it,  
16          whether it's cloth, or concrete, or whatever it  
17          may be. And, secondly, only after they have run  
18          it through a process to determine whether there  
19          is an amount that's quantifiable, that's enough,  
20          enough DNA present to try and test it further.  
21          So we may find ourselves in that situation where  
22          there is nothing left for the defense to test,  
23          once the State completes its.

24          The last point is that I would ask, or I  
25          guess maybe to make clear as a matter of a Brady

1           Demand, orally, I can follow up with something in  
2           writing. In the event the Court does not grant  
3           this motion, I do want to make it clear that we  
4           do consider raw data, notes, charts, things of  
5           that matter, and preservation of sufficient  
6           quantities of future testing to be considered  
7           Brady material that could be exculpatory, that  
8           could point to other individuals.

9                 And that would include DNA fingerprints,  
10           all types of forensic evidence. That would also  
11           include, particularly in this case, any test  
12           results that prove positive for law enforcement  
13           DNA, which in most cases are simply discarded as  
14           erroneous mistakes, but in this case, given the  
15           history, we view as Brady material that should be  
16           preserved for subsequent review by the defense.  
17           So with that I would ask the Court to grant the  
18           motion.

19                 THE COURT: All right. For purposes of  
20           today's hearing, I'm taking up the motion as it's  
21           been filed. I'm not going to comment on the last  
22           items that you mentioned. I'm specifically dealing  
23           with the defense request to either observe testing  
24           by the State Crime Lab or to have that testing  
25           videotaped.

1                   The first issue I looked at was whether  
2                   or not there was a due process right on the part  
3                   of the defendant to observe such testing. I,  
4                   actually, before I got the State's response,  
5                   looked at the New York case that's cited, that is  
6                   **New York vs. Monigas**, which is a case that  
7                   involved a request, I believe, precisely  
8                   identical to that that was made here. And the  
9                   Court in that case ruled that there was not such  
10                  a due process right. I have not been able to  
11                  find any case that creates a constitutional right  
12                  to observe testing in cases like this. And I  
13                  don't understand the defense to be arguing that  
14                  there is any such authority.

15                  I next look at the Wisconsin Statutes.  
16                  We do have a statute that has been mentioned, I  
17                  think by both parties, that deals with this  
18                  issue; specifically, Section 165.79 (1). That  
19                  reads in relevant part as follows:

20                  Evidence, information and analyses of  
21                  evidence obtained from law enforcement officers  
22                  by the laboratories -- and I understand it to  
23                  mean the State Crime Lab there -- is privileged  
24                  and not available to persons other than law  
25                  enforcement officers. Nor is the defendant

1           entitled to an inspection of information and  
2           evidence submitted to the laboratories by the  
3           State, or of the laboratory's findings, or to  
4           examine laboratory personnel as witnesses  
5           concerning the same, prior to trial, except to  
6           the extent that the same is used by the State at  
7           a preliminary hearing and except as provided in  
8           Section 971.23.

9                 Upon request of a defendant in a felony  
10          action, approved by the presiding judge, the  
11          laboratories shall conduct analyses of evidence  
12          on behalf of a defendant. No prosecuting officer  
13          is entitled to an inspection of the information  
14          or evidence submitted to the laboratories by the  
15          defendant, or of the laboratory's finding, or to  
16          examine laboratory personnel as witnesses  
17          concerning the same, prior to trial, except to  
18          the extent that the same is used by the accused  
19          at a preliminary hearing and except as provided  
20          in Section 971.23.

21                 The statute was discussed in the case of  
22                 *State of Wisconsin vs. Franszczak*,  
23                 F-r-a-n-s-z-c-z-a-k, a 2002 Wisconsin Court of  
24                 Appeals case. And in that case, the Court  
25                 essentially says that the statute means what it

1       says and that is, that the State Crime Lab  
2       performs testing on behalf of the State. It's  
3       not subject to disclosure or discovery, except as  
4       provided by the statute. And, likewise, if it  
5       provides discovery on behalf of the defendant,  
6       that the State can't get at the information,  
7       except in the circumstances provided for in the  
8       statute.

9                  I'm not going to decide today whether or  
10       not there might be some special circumstances  
11       under which the Court could grant the request  
12       made by the defense in this case. I don't see  
13       anything in the statute that expressly prohibits  
14       it, but at least the statute seems to suggest  
15       that, in the ordinary course of things, absent  
16       some extenuating circumstances at a minimum, the  
17       legislature doesn't contemplate the statute  
18       granting a request like this.

19                  I will also note that, although there  
20       have been incidents of mistakes in other Crime  
21       Labs, and I think any time you are dealing with  
22       human beings that's always a possibility, I'm not  
23       aware that our State Crime Lab has ever been  
24       involved in this type of a thing. And as the  
25       State noted in the brief, it was actually the

1 State Crime Lab's tests in the defendant's prior  
2 case that resulted in him being released from  
3 prison after being wrongfully convicted. And the  
4 State fully acknowledges that fact.

5 So based -- For those reasons, I don't  
6 believe there's a basis here for granting the  
7 defendant's request and I'm going to deny the  
8 State's motion regarding forensic testing.

9 ATTORNEY GAHN: The defense motion, your  
10 Honor.

11 THE COURT: The defense motion for forensic  
12 testing. I'm certainly not foreclosing the parties  
13 from coming to an agreement, if they do. Anything  
14 that expedites the process and makes both parties  
15 feel assured the testing is being done properly is a  
16 benefit to all. But in the absence of that, the  
17 statute seems to contemplate, as a general rule, a  
18 different approach and, therefore, the Court is  
19 denying the defendant's motion.

20 The last item to deal with today is the  
21 motions that have been made by each of the  
22 parties for modification of bail in this case.  
23 The defense made its motion first, so I will hear  
24 from the defense first. Will that be Mr. Strang  
25 or Mr. Buting?

1 ATTORNEY STRANG: Mr. Strang.

2 THE COURT: Mr. Strang.

3 ATTORNEY STRANG: We have no quarrel  
4 with -- today with the reasonableness of the amount  
5 of bail set by the Court here, working off of the  
6 half million dollar number. Our motion goes to the  
7 surety or the security that the Court would accept,  
8 as a financial condition, to reasonably assure  
9 Mr. Avery's appearance in court, as he is required,  
10 and the safety of the community.

11 And what we're asking here is for the  
12 Court to allow the posting of property, the  
13 tendering of a mortgage, or can be done with a  
14 Quitclaim Deed that then is not filed by the  
15 County Clerk unless bond conditions are violated.  
16 But there are different ways to accomplish using  
17 real property as security to meet the financial  
18 aspect of the bail condition.

19 Mr. and Mrs. Avery, who are behind me,  
20 are willing to post all of the property they own  
21 in the world, the Manitowoc County property, the  
22 Marinette County property. We have had that  
23 appraised for fair market value. The combined,  
24 unincumbered value of those properties well  
25 exceeds the half million dollars in bail that the

1 Court has set.

2 These are solvent sureties, in other  
3 words, and the Wisconsin Statutes have absolutely  
4 no presumption against, or bias against, the use  
5 of property to secure appearance and compliance  
6 with bail conditions, as opposed to cash. Real  
7 property as opposed to cash or other personality.

8 The Corporation Counsel for the County  
9 of Manitowoc filed a letter of his own raising  
10 concerns. And I think that Corporation Counsel  
11 misapprehends the very purpose of posting  
12 property. The issue here is not what value the  
13 Avery Salvage Yard or a property near Crivitz  
14 might have to Manitowoc County. The issue is its  
15 fair market value and, more importantly, it's  
16 value to Steve Avery or the people he loves and  
17 care about him.

18 The point, of course, is not for the  
19 property to come into legal ownership of  
20 Manitowoc County. The point is that if he didn't  
21 follow conditions of bond, his parents would  
22 lose, literally, the farm. That's the level that  
23 we have to assure a defendant's compliance with  
24 conditions of release, that the Court sets.

25 So, without wading into DNR issues or

1 other issues really, fundamentally, the  
2 Corporation Counsel's concerns miss the point of  
3 Chapter 969. There's no real question here that  
4 the fair market value, regardless of what  
5 Manitowoc County might pay for the property, the  
6 fair market value of the property well exceeds  
7 the half million dollars in cash.

8 As a practical matter, unless the Court  
9 modifies bail, he is not getting out. As a  
10 practical matter. Now, the Court knows, I know,  
11 perhaps some in the public or some in the media  
12 even have forgotten, that he's innocent. As he  
13 sits here today, he is legally presumed innocent.

14 I mean, we can dress him up in something  
15 that makes him look like he, you know, jumped off  
16 a Monopoly game board or something. He's a  
17 get-out-of-jail-free card come to life. But he  
18 is innocent as he sits here today.

19 And, you know, he had his Thanksgiving  
20 meal, as a presumptively innocent man, in the  
21 jail. He had his Christmas meal, as a  
22 presumptively innocent man, in the County Jail.  
23 He is heading toward his Easter meal, as a  
24 presumptively innocent man.

25 And all of this delay is necessary,

1                   nobody is quarreling with the delay. But the  
2                   earliest, as I understand it, that he's going to  
3                   have a full chance to be heard, and to put the  
4                   State to its burden of proof here to prove what  
5                   it alleges, will be after his Labor Day meal, as  
6                   things stand, if he is not out.

7                   Ten months is a long time to sit, if you  
8                   are presumptively innocent. And this is someone  
9                   who is sort of sensitive about sitting in custody  
10                  when he's innocent, and I understand that. He's  
11                  got no history of trying to evade justice,  
12                  skipping court. If anything, it's justice that  
13                  once evaded him.

14                  He's lived right here in Manitowoc  
15                  County all his life. Lives on the parent's  
16                  property. This is -- This is not just a  
17                  homestead, but it's a place on which the family's  
18                  business, you know, from which it derives its  
19                  entire livelihood. He is not going to put that  
20                  at risk.

21                  The reasonable perception here is he is  
22                  not going to put that at risk by failing to abide  
23                  conditions of release. His parents would stand  
24                  to lose everything, if he did, as would he. I  
25                  mean, it's his livelihood that is made on this

1 property as well.

2                   The State here has relied on angry  
3 letters that he wrote to his ex-wife, who  
4 divorced him while he was in prison for a crime  
5 he didn't commit. Those were written, the most  
6 recent of them, according to Judge Hazlewood in  
7 his transcript, was 15 years ago now, in 1991.  
8 They were angry, they were aggressive.

9                   His wife was trying to deprive him of  
10 any further contact with his young children. I  
11 guess I would be angry too, in his circumstance,  
12 particularly where I'm sitting in prison on  
13 something I didn't do, which is exactly the  
14 situation he was in at the moment.

15                  So it's not to excuse angry, aggressive,  
16 ugly letters that he wrote 15 years, 17 years, 19  
17 years ago. It is to put them into a context that  
18 suggests they say very, very, little today about  
19 whether he will come back to court when he's  
20 supposed to and whether he will stay in his  
21 house, as he's supposed to, other than when  
22 conditionally allowed to leave by this Court.

23                  Once we get past letters to his ex-wife,  
24 now we're into the State offering past criminal  
25 acts that are getting near a quarter century old.

1           We're getting into the State offering convicts  
2           who only now are coming forward and saying,  
3           presumably, or at least tacitly suggesting, get  
4           me out of jail and I will testify that this guy,  
5           you know, talked about building torture chambers,  
6           and all kinds of other stuff, that inmates didn't  
7           bother to report for the 15, or 18 years, or  
8           whatever it's been since they say they heard it  
9           from Avery.

10           This is all so much nonsense, honestly.  
11           Really, so much nonsense. The State has been out  
12           and searched the Avery property, with consent,  
13           probably five times or more. With search  
14           warrants, at least a couple times, maybe three,  
15           something like that. Nobody had a torture  
16           chamber. No torture chamber on the Avery  
17           property, in the trailer he lived in, or anywhere  
18           else.

19           So it's really, some of that is beneath  
20           further comment. But what's not is the Court's  
21           ability to fashion non-monetary, non-financial  
22           conditions as well. And Steve Avery wanted me to  
23           tell the Court, and invite the Court, to impose  
24           any other non-monetary conditions it sees as  
25           appropriate here, including increasing the

1 restrictiveness of the conditions of release  
2 already set, since we have moved to modify.

3 Something your Honor might reasonably be  
4 concerned about is, if he's out of jail, are we  
5 going to be asking that he be allowed to go down  
6 to Madison to see me, or down to Brookfield to  
7 see Mr. Buting. And the answer is, no, we will  
8 come to him. He can be restricted to Manitowoc  
9 County. Electronic monitoring wouldn't be a bad  
10 idea and is fully acceptable to Steve Avery.  
11 Very controlled time out of the house or away  
12 from the property, fully acceptable to Mr. Avery.

13 If the Court wants him to report in  
14 person to the Two Rivers' Police Department, or  
15 some other law enforcement agency, on a regular  
16 cycle, fully acceptable to Mr. Avery. And, of  
17 course, I would expect, that in the process of  
18 posting real property to secure the bail that the  
19 Court has set, that the State would want to look  
20 at the appraisals, want to look at title and any  
21 encumbrance to it. And I'm wholly prepared to  
22 share all of that information with the State.

23 Indeed, the Avery's, the senior Avery's,  
24 have gone to the trouble of retaining  
25 Mr. Krajnek, a local lawyer here who does real

1                   estate work, to assist in assembling the  
2                   information that would be necessary to secure  
3                   bail with real estate, rather than cash. So,  
4                   that is -- that's our request here today. I know  
5                   the State has a competing motion, but perhaps  
6                   it's better in my place to respond to the State's  
7                   argument in that respect.

8                   THE COURT: All right. Mr. Kratz.

9                   ATTORNEY KRATZ: Thank you, Judge.

10                  Mr. Strang is correct, the State does have a  
11                  competing motion that we filed. Actually, the other  
12                  side of Mr. Strang's motion, the other side of the  
13                  coin, if you will, is our second motion, that is,  
14                  our motion to increase cash bail. And I'm going to  
15                  take this opportunity then to first argue that,  
16                  since it addresses those same factors that  
17                  Mr. Strang has argued.

18                  The State no longer believes that a  
19                  \$500,000 cash bond is appropriate. The Court may  
20                  recall that this State originally requested a  
21                  \$1,000,000 cash bond to secure Mr. Avery's future  
22                  court appearances. But this Court can, and I  
23                  believe should, take into consideration new  
24                  factors, that is, what we have learned since the  
25                  last time we addressed bond.

1                   Since the last time I was before this  
2                   Court and addressed bond, substantial changes  
3                   have occurred in this case. Now, Mr. Strang can  
4                   sit here and presume Mr. Avery to be innocent; I  
5                   don't have to do that. And when I make these  
6                   arguments to the Court, the statute, 969.01 (4),  
7                   is on the State's side in that regard when it  
8                   invites, in fact, requires the Court consider the  
9                   character and strength of the State's case.

10                  Now, the character and strength of the  
11                  case against Steven Avery, I will argue, has  
12                  changed dramatically since we last visited this  
13                  issue. The detailed statements given by what I'm  
14                  calling the co-actor, the co-perpetrator in this  
15                  case, speak directly to the nature, number, and  
16                  gravity of offenses. And to leave bond at the  
17                  previously issued, I believe does a disservice  
18                  not only to this particular case, but does not  
19                  reflect Mr. Avery's likelihood of appearing at  
20                  future court appearances.

21                  Those other factors that I previously  
22                  argued, including the degree of violence used,  
23                  there's new information as to those. I had  
24                  already argued the prior criminal record, the  
25                  fact that other crimes have been committed while

1                   Mr. Avery was out on legal status, that he's now  
2                   been bound over for trial.

3                   New information, though, on our request  
4                   to increase cash bail to \$2 million, includes the  
5                   allegations of his plans to flee the  
6                   jurisdiction. The alternatives to cash bail not  
7                   being warranted, as cited by Manitowoc County  
8                   Corp Counsel, and what I'm arguing is one of the  
9                   most important factors, that is, Mr. Avery's  
10                  character.

11                  Those items contained in the  
12                  affidavit -- again, an affidavit, something more  
13                  than mere allegations, but something contemplated  
14                  by the motion practice in the State of  
15                  Wisconsin -- sets forth some specific acts of  
16                  violence, some specific plans of Mr. Avery that I  
17                  think are very important as to the State's  
18                  request for the increase in cash bail. And,  
19                  therefore, I make that request, your Honor, to  
20                  raise cash bail, to deny any kind of surety or  
21                  property bond and to increase the cash bail  
22                  previously authorized, to \$2 million.

23                  I am prepared, Judge, although as I  
24                  mentioned, included in a formal detailed motion  
25                  and affidavit, to argue the denial of bail. But

1 I didn't know if the Court wanted to address the  
2 first motion, or what I have characterized as the  
3 other side of Mr. Strang's motion, first. But I  
4 am prepared to proceed, your Honor.

5 THE COURT: With respect to the motion to  
6 deny bail, that's a request that has not been made  
7 to me before in another case. But as I read the  
8 statute, and I reread it this morning, I believe it  
9 involves a testimonial hearing, an evidentiary  
10 hearing, with fairly extensive description. It  
11 involves, essentially, a mini trial.

12 ATTORNEY KRATZ: It does, Judge, and that's  
13 why I have stopped. I have the witnesses. I have  
14 officers prepared for that. I don't know how much  
15 time the Court has set aside for that. Let me also  
16 indicate that, depending on how the Court and  
17 Mr. Strang wants to proceed, it may even contemplate  
18 calling other witnesses, or providing writs, or the  
19 like, for what the Court calls a mini trial.

20 I don't disagree with that procedure as  
21 contemplated in the statute, that's why I'm  
22 stopping at this point and, I think, asking the  
23 Court to rule on Mr. Strang and my motion.  
24 Frankly, Judge, depending on that motion, the  
25 State may ask in another manner to be heard on

1 the denial motion.

2 THE COURT: Mr. Strang, I'm looking now for  
3 your response to the motion to increase cash bail.

4 I'm not seeking comment on the motion to deny bail.

5 ATTORNEY STRANG: Okay. It's -- A lot of  
6 this is so academic that one wonders why the State  
7 wants to talk about it. The original charges, the  
8 first one, carries a mandatory life sentence. And  
9 then we have got 12 and a half years of possible  
10 confinement on one charge, beyond that. And I  
11 haven't even looked recently, seven years, or five  
12 years, or something on the other one. But once you  
13 are at mandatory life, you know, adding on more  
14 exposure, really doesn't alter the calculus much for  
15 a defendant in deciding whether he's going to stick  
16 around or try to make a run for it.

17 In terms of his proclivities, boy, I  
18 mean, I didn't notice much in my television back  
19 in early November, any inclination of him to  
20 avoid anybody, a camera, a police officer. He's  
21 consenting to searches. He's talking to anybody  
22 who wants to search him. He's going up to the  
23 family's cottage, to be sure, a cottage they have  
24 had for decades up in Crivitz. Everybody knows  
25 where he is.

1                   There's nothing here, not only in the  
2 lead up to this arrest, but in his earlier cases,  
3 to suggest that he tries to runaway or avoid  
4 obligations to come to court. There's just  
5 nothing. Not a bench warrant, as far as I know,  
6 at least nothing the State has tendered to the  
7 Court. So, you know, and adding -- we could add  
8 a hundred more charges here, if creative counsel  
9 wanted to do that, and it wouldn't really change  
10 the functional incentives that have been in place  
11 since this case was charged with a first-degree  
12 intentional homicide count.

13                  Beyond that, you know, I note under our  
14 statutes, and specifically 969.08 (5), it is a  
15 little bit ambiguous here. If he were out on  
16 release and the State alleged that he violated  
17 conditions of release and wanted to tighten up or  
18 add conditions to address a violation of  
19 conditions of release once he's out, if that were  
20 the State's request, we would be entitled to a  
21 hearing. And the State would bear the burden of  
22 proof by clear and convincing evidence, in  
23 establishing both the violation and the need for  
24 some tighter conditions.

25                  Now, it is ambiguous because one also

1 can read the same statute, 969.08 (1) or (5) as  
2 allowing the Court, on the State's motion, to  
3 increase conditions of bail. So, I'm not hanging  
4 my hat, so to speak, on this entirely. But it's  
5 passing strange to say that if you were out, you  
6 know, increasing cash from half a million dollars  
7 to \$2 million as a response to some violation of  
8 conditional release would entitle me to a hearing  
9 at which there is an intermediate standard of  
10 proof.

11                 But when he is not out and has no  
12 realistic prospect of posting half a million  
13 dollars in cash, that's not happened, would have  
14 happened by now if that was anywhere within the  
15 realm of possibility, that the State, with no  
16 showing other than statements of inmates or 20  
17 year old allegations being filtered through a law  
18 enforcement officer's affidavit now can quadruple  
19 the amount of bail that the Court is being asked  
20 to set.

21                 THE COURT: Anything else, Mr. Kratz?

22                 ATTORNEY KRATZ: No, not on this issue,  
23 Judge. Thank you.

24                 THE COURT: I'm going to take a brief  
25 recess. I have my notes from the prior bail hearing

1                   in chambers. I'm going to look at them and then  
2                   I'll come back.

3                   ATTORNEY BUTING: Your Honor, could we deal  
4                   with that issue of recess with regard to cameras and  
5                   filming at this time, if we're going to break the  
6                   proceedings?

7                   THE COURT: Yes, for purposes of today's  
8                   hearing, I'm going to ask the camera folks to  
9                   shutdown during the recess. The court proceedings  
10                  aren't going on during that time and the parties are  
11                  entitled to speak with each other privately during  
12                  that time.

13                  ATTORNEY BUTING: Thank you.

14                  (Recess taken.)

15                  THE COURT: I did take the opportunity to  
16                  go back and review my notes from the last bail  
17                  modification motion hearing. I'm not going to  
18                  repeat all of the findings and matters I relied on  
19                  at that time because of the fact that the defense in  
20                  this case is not disputing the current level of bail  
21                  at \$500,000.

22                  But I think it is worthwhile to review  
23                  the things that have changed since the last bail  
24                  modification hearing, as I view them. I will  
25                  note that, based on the Court's decision today,

1           the Court has allowed the filing of additional  
2           charges against the defendant. The number and  
3           gravity of the offenses are greater, as are the  
4           penalties that the defendant faces. Though, as  
5           noted by defense counsel, the penalties under the  
6           existing charges are already significant.

7           The Court further notes that the level  
8           of violence alleged in the Complaint is greater  
9           than it was before, based on the new allegations.  
10          And the Court, while keeping in mind that the  
11          defendant is innocent until proven guilty -- and  
12          the Court makes no comment on what the final  
13          disposition in this case might be, a jury will  
14          obviously make that determination -- but the  
15          statutes do direct the Court to take into  
16          consideration, in setting bail, the strength of  
17          the evidence that has been presented.

18          And this is no longer purely a  
19          circumstantial evidence case, based on the new  
20          allegations made by the State. And the Court  
21          would have to characterize the strength of the  
22          evidence at this point as greater than it had  
23          been in the past.

24          The State has also alleged that a  
25          statement on behalf of the defendant that at one

1 point in the proceedings, before his initial  
2 arrest, he considered flight. I think that  
3 that's not -- as it's stated, it's not an  
4 unequivocal statement.

5 It may reflect just the defendant's  
6 thought at the time. There is no evidence he has  
7 actually tried to flee the jurisdiction or  
8 anything like that, but it was made at a time  
9 before the charges were actually filed. And to  
10 the extent the defendant ever would have  
11 considered flight, the reasons would be greater  
12 at this stage than in the past.

13 Finally, although it may not be the most  
14 significant consideration, based on the fact that  
15 the defendant has now retained private counsel,  
16 is not represented by the Public Defender's  
17 Office -- and the Court has been informed that  
18 was as a result of a settlement of a lawsuit --  
19 the defendant's ability to give bail is somewhat  
20 greater than it has been in the past.

21 Taking those factors into account, the  
22 Court believes that the bail in this case should  
23 be increased from \$500,000 to \$750,000 and I'm  
24 going to order that bail be increased in that  
25 amount. Because of the severity of the offenses

1                   involved and the possible penalties that the  
2                   defendant faces, the Court concludes in this case  
3                   that cash bail is necessary.

4                   I'm not going to allow a bond to be used  
5                   in lieu of cash. I will note to the extent that  
6                   the defendant's family has assets, they could, of  
7                   course, borrow against those assets and obtain  
8                   cash. I'm aware of that. But both because of  
9                   the severity of the offenses and the possible  
10                  penalties, primarily for that reason, the Court  
11                  is going to have bail remain at a cash figure and  
12                  the amount will be \$750,000.

13                  Now, before we conclude today, Counsel,  
14                  I believe going back to one of the earlier  
15                  motions, it appears we're going to need another  
16                  motion date. I hope you brought your calendars  
17                  with you. And, Mr. Kratz, I didn't say it, but  
18                  if you still intend to pursue your motion to deny  
19                  bail, I'm not going to start that at 10 minutes  
20                  to 4 today.

21                  I think, even though you may have  
22                  witnesses here, I believe that the defense should  
23                  have an opportunity to produce evidence of their  
24                  own, if they wish. I believe they have that  
25                  under the statute and I think they would be

1                   entitled to specific notice that we're going to  
2                   have such a hearing before we proceed. So I  
3                   won't require you to make that decision today.

4                   ATTORNEY KRATZ: If I may suggest, Judge,  
5                   if the Court is going to be setting another motion,  
6                   if the Court would give me leave to provide the  
7                   Court with sufficient notice before that time to be  
8                   heard at that new time, or to withdraw my motion one  
9                   way or another, I can alert the Court what I intend  
10                  to do.

11                  THE COURT: All right. Counsel, you may be  
12                  contemplating the filing of other motions that I  
13                  haven't heard about today, so rather than me  
14                  suggesting a date to you, I will let the attorneys  
15                  tell me when you would like to meet next. I know  
16                  there was going to be a defense motion relating to  
17                  the Complaint.

18                  ATTORNEY STRANG: Yes.

19                  THE COURT: And it sounded to me like  
20                  perhaps sometime less than a month from now.

21                  ATTORNEY STRANG: I'm going to bring a  
22                  motion relating to the right to a preliminary  
23                  hearing on the three new charges, which the Court  
24                  has now ruled, in denying bail or property bond, are  
25                  significant and add something. And I guess for

1                   purpose of a preliminary hearing, I share that to a  
2 degree. And I had suggested that within 10 days --  
3 what I said earlier was from the Court signing  
4 Mr. Kratz's proposed order I can file a motion, but  
5 the fact is I can do it 10 days from today. I don't  
6 need to wait for a written order since I understood  
7 the Court's ruling.

8                   THE COURT: All right. So you are going to  
9 file a motion within 10 days relating to any  
10 challenges you have to the Amended complaint, which  
11 the Court today allowed to be filed.

12                  ATTORNEY STRANG: Right. Say by the 27th,  
13 which would be 10 days, if that's acceptable.

14                  THE COURT: Mr. Kratz, any objection?

15                  ATTORNEY KRATZ: No. At the same time, I  
16 didn't know if Mr. Strang intended to include the  
17 issue of the preliminary hearing.

18                  ATTORNEY STRANG: That is the issue.

19                  THE COURT: Yes, that's my understanding.

20                  ATTORNEY KRATZ: If I may also ask, Judge,  
21 I don't know if Mr. Strang believes that oral  
22 argument is required or if the Court would be  
23 satisfied with just written argument, my ability to  
24 respond and then just your ruling.

25                  THE COURT: Are the parties willing to have

1                   that matter decided on written briefs?

2                   ATTORNEY KRATZ: That's fine, Judge.

3                   ATTORNEY STRANG: Sure. And if the ruling  
4                   goes our way, then we would have to have a telephone  
5                   conference for purposes of scheduling a preliminary,  
6                   I suppose.

7                   ATTORNEY KRATZ: That's right.

8                   THE COURT: I'm worried about things  
9                   getting backed up. I would like to set contingent  
10                  dates that you reserve on your calendar, so that if  
11                  something has to be done it can be done. I don't  
12                  want the calendar to get out of hand here. I do  
13                  have the entire morning of April 13th available. I  
14                  would ask the parties how they feel about that.

15                  ATTORNEY STRANG: It's not an issue here,  
16                  but for what it's worth, I know Passover begins that  
17                  day. I'm clear that day. Mr. Buting has to be in  
18                  another circuit court in the state.

19                  ATTORNEY BUTING: Judge, at 1:30 I have to  
20                  be in Waukesha on an oral argument.

21                  THE COURT: All right.

22                  ATTORNEY BUTING: I suppose if it takes  
23                  about -- if we broke by 11:30.

24                  THE COURT: I think that would work. We  
25                  could start at nine. Let me do this. I'm just

1                   going to hold that date for now. And depending on  
2                   the motions that the parties file, if a hearing has  
3                   to be held, I would like to hold it on that date.

4                   And I would also like to be kept  
5                   informed by the parties of progress being made  
6                   with respect to discovery and testing, so that if  
7                   there are any motions that have to be filed, they  
8                   can be filed in a timely manner and I can hear  
9                   them, so they don't jeopardize a September trial  
10                  date.

11                  ATTORNEY STRANG: I don't want to sit on my  
12                  hands here and not give the Court fair warning, but  
13                  I think it's at least possible with the March 1,  
14                  March 2 developments, and now presumably further  
15                  testing and much material and discovery that the  
16                  State can't disclose to us because it doesn't have  
17                  it yet, I think the September 5 trial date is very  
18                  questionable.

19                  It's not a calendar problem for me, I  
20                  just think it's very questionable. And I can  
21                  understand why the Court would not want to move a  
22                  date once one is set, so I don't want to sit here  
23                  and sound like I'm acquiescing or not raising at  
24                  least the concern that, for all the reasons we  
25                  have discussed today, just scheduling like bail

1 consideration and, you know, what charges Mr.  
2 Avery is facing, all of these things may also  
3 have an affect on trial scheduling.

4 THE COURT: Mr. Kratz, I don't know if you  
5 have any information yet about the timing of the  
6 testing that's going to be done.

7 ATTORNEY KRATZ: On Monday, Judge, we -- we  
8 meaning myself and the investigator involved in the  
9 case -- intend to meet directly with the Crime Lab  
10 to get those answers. And so once we have a  
11 timetable, I would be happy to provide that to  
12 Mr. Strang and Court.

13 THE COURT: All right.

14 ATTORNEY STRANG: The Court's ruling on the  
15 motion concerning fair forensic testing means that  
16 now, necessarily, the only avenue open to the  
17 defense would be sequential testing once the State's  
18 private testing is done, so that -- I don't know  
19 that we'll do that, but we may. That's what's left  
20 to us.

21 ATTORNEY KRATZ: If I can be heard. We  
22 have offered what's already been tested already for  
23 retesting. Defense hasn't taken us up on that yet,  
24 we'll see if they do. That is already available for  
25 retesting. That decision should be able to be made

1 before this new testing is done, Judge.

2 ATTORNEY STRANG: That's absolutely true,  
3 as to stuff seized in November, absolutely so,  
4 agreed.

5 THE COURT: All right. Is there anything  
6 else either party wishes to take up this afternoon?

7 ATTORNEY BUTING: Judge, one other matter.  
8 When you mentioned other motions that we might need,  
9 we may be able to just short circuit that. If  
10 Mr. Kratz is willing to today, I could file a motion  
11 for return of property -- I'm informed that  
12 co-counsel has already spoken to the State and  
13 reached some agreement on that, so that's fine.

14 THE COURT: All right. Anything else this  
15 afternoon?

16 ATTORNEY KRATZ: No, Judge.

17 THE COURT: If not, we're adjourned for  
18 today.

19 ATTORNEY KRATZ: Thank you.

20 ATTORNEY STRANG: Thank you.

21 (Proceedings concluded.)

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

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 25th day of April, 2006.

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING

5 VS. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

9  
10 DATE: APRIL 13, 2006

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

13 APPEARANCES:

14 KENNETH R. KRATZ & THOMAS J. FALLON  
15 Special Prosecutors  
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG & JEROME F. BUTING  
18 ATTORNEYS AT LAW  
19 On behalf of the Defendant.

STEVEN A. AVERY  
Defendant  
Appeared in person.

20 \* \* \* \* \*

21 TRANSCRIPT OF PROCEEDINGS

22 Reported by Diane Tesheneck, RPR

23 Official Court Reporter

THE COURT: At this time the Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. This matter is scheduled this morning for a Court decision on a motion that's been filed by the defense. Will the parties state their appearances for the record, please.

ATTORNEY KRATZ: Your Honor, the State of Wisconsin appears by Calumet County District Attorney Ken Kratz, having been appointed as special prosecutor in this case. The State also appears this morning by Tom Fallon. Tom is with the Department of Justice, also having been assigned special prosecutor in this matter.

ATTORNEY STRANG: Good morning. Steven Avery, second to my right, he's in custody. Dean Strang appearing on his behalf and Jerome Buting, also as counsel for Mr. Avery.

THE COURT: All right. I will indicate for the record that the motion that's the subject of the hearing today is a motion that was filed by the defense, renewing a previous motion that the new charges in the Amended Complaint should be dismissed, or in the alternative, if the Court permits the filing of the charges, that the defendant be entitled to a preliminary examination

1 on the new charges.

2 I will also indicate for the record that  
3 I met with counsel in chambers, briefly, before  
4 we began this morning. And as I understand it,  
5 the defense would like the opportunity to  
6 supplement it's written argument, which the Court  
7 has already received and reviewed, and the  
8 prosecution would like a chance to respond. Is  
9 that correct, Mr. Strang?

10 ATTORNEY STRANG: It is.

11 THE COURT: All right. I will hear you at  
12 this time.

13 ATTORNEY STRANG: I will not belabor the  
14 written arguments nor repeat arguments made at the  
15 initial oral motion to dismiss the Complaint.  
16 Leaving, in summary, my argument on the motion to  
17 dismiss the Complaint, that when the United States  
18 Supreme Court, probably close to half a dozen times  
19 since 1968, has explained that statements against a  
20 declarant's interest, that then go on to inculpate  
21 another person, are unreliable, that those sorts of  
22 unreliable statements fail Wisconsin's reliability  
23 requirement for the factual assertions in a Criminal  
24 Complaint. The Court already has ruled adversely to  
25 me on that. I have renewed the motion in writing

1 and I will leave argument there on that point.

2 As to the question of a preliminary  
3 hearing, if the Amended Complaint is allowed to  
4 stand, I confess that I had been -- become  
5 occupied, if not preoccupied, with **Burke** and  
6 **Bailey** and the profusion of case law, criminally,  
7 from the Wisconsin Supreme Court that make very  
8 thick, I think, intellectually interesting, very  
9 complicated, the law in an area in which the  
10 underlying statutes, at least to my eye, look  
11 fairly straight forward, but now have been  
12 construed, or rather with such gloss that there's  
13 nothing at all straight forward about the area of  
14 the law. And I became very interested in that,  
15 and that case law, and what it all means, where  
16 it sorts out and applies here, as the focus of my  
17 briefs, I think also the focus of the State's  
18 written submissions.

19 And so I have written arguments that  
20 suggest to the Court why it should grant a  
21 preliminary hearing here and I think over looked  
22 a statutory command that the Court shall order a  
23 preliminary hearing in the unusual procedural  
24 posture in which we find ourselves here today.

25 We step back to early in mid-March. The

1 State's request was for leave to file an Amended  
2 Complaint and leave to file an Amended  
3 Information. We took issue with the first of  
4 those requests, to file an Amended Complaint.  
5 That was the briefing, our opposition to an  
6 Amended Complaint, or to the request that he be  
7 granted to file an Amended Complaint, was the  
8 thrust of the briefing that brought us here the  
9 last time before your Honor.

10                 The Court overruled my position and did  
11 grant the State's request to leave to file an  
12 Amended Complaint, that occasioned by oral motion  
13 to dismiss the Complaint for want of probable  
14 cause. And we covered that ground already.

15                 But we are not here today on a request  
16 for leave to file an Amended Information only.  
17 We're here with an Amended Complaint now having  
18 been filed on leave of the Court, no initial  
19 appearance having been made on that Amended  
20 Criminal Complaint. And I think, therefore,  
21 we're within the field covered by Wisconsin  
22 Statute Section 970.02, and for our purposes  
23 here, narrowly 970.02 (5), which governs the  
24 initial appearance and what's to happen and -- at  
25 and after the initial appearance.

1                   And the question is, or the statutory  
2 command is, that if the defendant does not waive  
3 the preliminary examination, the Judge shall,  
4 forthwith, set the action for a preliminary  
5 examination under Section 970.03. That's the  
6 preliminary examination we seek. We're certainly  
7 not waiving it.

8                   The question becomes somewhat circular  
9 because, if we don't have a right to preliminary  
10 examination for some reason in the first place,  
11 then there's nothing that we would be asked to  
12 waive or, properly, could resist waiving. I  
13 don't have any case law construing 970.02 (5) in  
14 this setting, or anything that I can offer today  
15 from which the Court might draw guidance, other  
16 than statutory language.

17                  But the procedural posture, I think, is  
18 indisputable. We are here with the Court having  
19 granted leave to file an Amended Complaint, which  
20 is what the State had requested. We are here on  
21 an Amended Complaint. There has not been an  
22 initial appearance on that Amended Complaint.  
23 The Amended Complaint adds three new charges, not  
24 before seen in the course of this case to date.

25                  We, of course, have disputed whether

1           those are transactionally related to and derived  
2           from the evidence at the earlier preliminary  
3           hearing. We think they aren't, the State thinks  
4           they are. But the fact is, this is a new  
5           Complaint and it is a Complaint on which the  
6           case, as to the three new charges, presently is  
7           founded.

8                         We don't waive the preliminary hearing.  
9                         We think we have a right to it. And we think the  
10                        statutory command is clear, that the Court shall  
11                        schedule a preliminary hearing forthwith on the  
12                        three new counts.

13                       THE COURT: All right. Mr. Kratz, or Mr.  
14                        Fallon?

15                       ATTORNEY KRATZ: Judge, Mr. Fallon wrote  
16                        the brief on this issue. And with leave of the  
17                        Court, I would like him to argue this today.

18                       THE COURT: Very well. Mr. Fallon.

19                       ATTORNEY FALLON: Yes. Thank you, Judge.  
20                       Good morning. I think I feel compelled to address  
21                       counsel's concern regarding the posture of the case  
22                       and whether or not an additional preliminary  
23                       examination is needed at this time.

24                       We're firmly convinced that no such  
25                       examination is needed for both a practical reason

1 and a legal reason. The legal reason being,  
2 quite frankly, is he's not entitled to one. And  
3 I say that because, interestingly enough, the  
4 defendant has received a benefit to the fact that  
5 the State sought and did, in fact, file an  
6 Amended Complaint, which was jurisdictionally  
7 unnecessary.

8 The defendant has been provided far more  
9 information relative to the additional charges  
10 than the law in Wisconsin normally permits. So  
11 he has received a benefit already, one to which  
12 he was not entitled, one in which, as a result of  
13 which, no preliminary examination is required  
14 under the law.

15 Once the original charges are filed,  
16 once a Court finds probable cause at a  
17 preliminary examination and binds the matter over  
18 for trial, the Information becomes the governing  
19 procedural document. The document upon which  
20 this Court may exercise its authority and power  
21 to determine the course of action for the  
22 parties.

23 In this particular case, additional  
24 information came to pass, which ethically permits  
25 the prosecutor, and also based on the transaction

1 related law that each side has briefed rather  
2 thoroughly, to add additional charges. Assume,  
3 for the sake of argument, this Court had granted  
4 the defense motion to dismiss the Complaint.  
5 Would the state be precluded from being in the  
6 exact posture we're in right now? Absolutely  
7 not.

8 As the Court is aware, and the parties  
9 are aware, the cases of **State vs. Bailey**, **State**  
10 **vs. Burke**, **State vs. Richer**, **State vs. Williams**,  
11 State vs. Akers (sic) **State vs. Bury**, all  
12 occurred and were litigated in the context of  
13 post-probable cause, based upon the original  
14 Complaint and a subsequent preliminary  
15 examination and no additional or Amended  
16 Complaints after bindover.

17 So, in effect, the defendant has  
18 received a benefit, based on a local custom and  
19 practice, to provide additional information  
20 should, in the average felony case, the result, a  
21 change of plea. The parties would have a factual  
22 basis upon which to make a determination to  
23 accept a plea, to refer the matter for further  
24 presentence investigations, what have you. A  
25 current local custom and practice, but one which

1           is not jurisdictionally required and nor should  
2           it be.

3                   So, even if the Court had granted the  
4           motion to say, no, I'm not going to let the State  
5           file an Amended Complaint with these additional  
6           counts, the State would not be precluded from  
7           seeking leave to amend the Information for the  
8           reasons stated in the State's brief, that the  
9           additional charges are transactionally related,  
10           or to borrow the phrase, not wholly unrelated to  
11           the transaction which was the subject of the  
12           preliminary examination, that is, the murder and  
13           mutilation of Teresa Halbach.

14                   I would also note, parenthetically, that  
15           even if we were to get it wrong, so to speak, any  
16           error relative to preliminary examination is  
17           cured by a fair, impartial jury trial. And  
18           that's **State vs. Webb**. And I see that  
19           possibility of no error because he is not  
20           entitled to a preliminary examination and, thus,  
21           looking at the law as just cited in **Bailey**,  
22           **Burke, Richer, Williams, Akins, Bury**, the case  
23           that followed **Bailey**, I'm not going to reiterate  
24           the points of my brief, I think they are very  
25           clear.

1                   The State is entitled to add the  
2 additional charges because they are  
3 transactionally related and whether we have --  
4 there's no legal requirement, there's no  
5 jurisdictional imperative to have a preliminary  
6 examination ordered on those Complaints because  
7 those Complaints were not required by law. They  
8 were not jurisdictionally mandated. They were  
9 not necessary. They were provided as a courtesy.

10                  And I would note that 99 percent of the  
11 defendants in Wisconsin law find themselves  
12 wondering, well, jeez, how did that prosecutor  
13 add these additional counts. None of them had  
14 the benefit of the additional information being  
15 provided in the Complaints, because they are not  
16 necessary. They are not required. They do not  
17 provide the jurisdictional predicate that the  
18 defense seems to suggest that they do.

19                  So, he has received the benefit. He has  
20 received notice. He has received the  
21 information. He is, in effect, better off at  
22 this early stage in the proceedings than all the  
23 other defendants who may find themselves in this  
24 posture. So, that's the equitable argument. The  
25 legal argument is there's no jurisdictional

1 basis. They are not required and they are  
2 unnecessary.

3 So, we ask the Court to decide this  
4 strictly in the context of whether or not a  
5 prosecutor may seek leave and amend the  
6 Information, based on the theory that the  
7 additional counts are either: One, directly flow  
8 from evidence adduced at preliminary examination  
9 or, as we theoretically and actually posit in our  
10 brief, the additional charges are transactionally  
11 related to the information, to the subject matter  
12 which was testified to at preliminary  
13 examination. We thank the Court.

14 THE COURT: Thank you. Mr. Strang.

15 ATTORNEY STRANG: I'm very pleased to hear  
16 my colleague, a very skilled lawyer, concede here  
17 that the Complaint was unnecessary, the Amended  
18 Complaint was unnecessary. I don't know that I  
19 fully can accept his gracious concession to the  
20 extent that he qualifies it by saying  
21 jurisdictionally unnecessary, but it is gratifying  
22 to hear the concession that this Amended Complaint  
23 was unnecessary.

24 Only lawyers, though -- I think only  
25 lawyers could imagine that that unnecessary

1                   Complaint conferred a benefit on Steve Avery.  
2                   The benefit is then that he has been pilloried in  
3                   the press on the basis of unreliable,  
4                   inadmissible, hearsay accusations in the  
5                   Complaint. Repeatedly pilloried in the press.

6                   The benefit has been that this Court  
7                   explicitly cited that information in the  
8                   Complaint as part of the reason for raising his  
9                   bail from a half million dollars to three quarter  
10                  of a million dollars cash. The benefit is that  
11                  we are here today fighting simply to have the  
12                  State stand beside and submit to the minimal  
13                  testing of a preliminary hearing, the information  
14                  that it has spread before the public in this  
15                  Amended Complaint and by comments to the news  
16                  media that tracked some of the allegations of the  
17                  Criminal Complaint. And the State resists the  
18                  minimal testing that occurs at a preliminary  
19                  hearing in this State where it is required only  
20                  to establish probable cause.

21                  So, I don't share the sense that any  
22                  benefit has been conferred on Mr. Avery by this  
23                  Amended Complaint. I do have the sense that it  
24                  introduces altogether something new in this case.  
25                  And I think everybody watching, or listening, or

1 sitting behind me today, understands that there  
2 are altogether new things that the State has been  
3 alleging since early March, against Mr. Avery.  
4 And those ought to be tested by preliminary  
5 hearing.

6 THE COURT: All right. By way of  
7 background, the Court notes first that the initial  
8 charges in the initial Complaint in this case  
9 charged the defendant with first-degree intentional  
10 homicide, mutilation of a corpse, and a felon in  
11 possession of a firearm. The State sought  
12 permission, and the Court granted permission, for  
13 the State to file an Amended Complaint adding the  
14 charges of first-degree sexual assault, kidnapping,  
15 and false imprisonment.

16 The defendant's motion before the Court  
17 today raises two separate issues. First, the  
18 defense renews its argument that the Amended  
19 Complaint should be dismissed on its face, or in  
20 the alternative, the defense also argues that if  
21 the Court permits the filing of an Amended  
22 Complaint, the defendant is entitled to a  
23 preliminary examination on the new charges.

24 The Court will first, briefly, readdress  
25 the argument regarding the sufficiency of the

1                   Complaint. The Court has already ruled that the  
2                   State is permitted to add the new charges in the  
3                   Amended Complaint, and I don't believe there's a  
4                   reason for the Court to reconsider that ruling at  
5                   this time.

6                   There is no claim of prejudice on the  
7                   part of the defense, based on the lack of time to  
8                   answer the new charges. The defense alleges that  
9                   there is no reliable information in the Amended  
10                  Complaint to support the new charges. However,  
11                  the statements of the alleged co-defendant can,  
12                  in this Court's opinion, be used to support the  
13                  charges in the Amended Complaint under the law in  
14                  the case of **Ruff vs. State**, which I cited at the  
15                  last hearing. And the Court still believes that  
16                  case to be the law in the State.

17                  With respect to the reliability of  
18                  statements of the alleged co-defendant that form  
19                  the basis of the new allegations, the Court  
20                  cannot presume that that witness won't be  
21                  available to testify. The development of the law  
22                  in the area of confrontation certainly suggests  
23                  that if he doesn't testify, the State will have a  
24                  difficult time supporting the allegations, based  
25                  on the statements attributable to the

1 co-defendant.

2                   But the Court is not aware of any law  
3 that wouldn't find that the co-defendant's  
4 statements would not be relevant if he did  
5 testify. And I believe they still can form the  
6 basis of the charges in the Amended Complaint.  
7 Therefore, the Court does not find a basis for  
8 denying the State's request to file an Amended  
9 Complaint.

10                  The next logical issue to take up here  
11 is the new argument raised by the defense today.  
12 And that is, whether or not the defense is  
13 entitled to a preliminary examination upon the  
14 filing of new charges in the anticipated new  
15 Information, is the defendant entitled to a  
16 preliminary examination under Section 970.02  
17 based on the filing of an Amended Complaint.

18                  The parties did not brief that issue in  
19 written form, but both parties have informed the  
20 Court today that they are not aware of any  
21 relevant case law. So we're left with the  
22 language of Section 970.02 itself.

23                  Significant in the Court's mind is the  
24 title of that statute. It is the duty of the  
25 judge at the initial appearance. I don't believe

1           that the filing of an Amended Complaint triggers  
2           a new initial appearance in this case. It can  
3           result in the defendant responding to the  
4           charges, but I don't believe that a second  
5           initial appearance is contemplated within the  
6           meaning of the statute; 970.02 (5) says, if the  
7           defendant does not waive preliminary examination  
8           the judge shall forthwith set the action for a  
9           preliminary examination understand 970.03.

10           Implicit in the statute is that there's  
11           a right of a preliminary examination to waive.  
12           And I think that merely postpones the question to  
13           the one that the parties have addressed in -- at  
14           length in their written briefs, and that is, is  
15           the defendant entitled to a preliminary  
16           examination upon the filing of additional  
17           charges, after the bindover.

18           I agree with the -- I believe both  
19           parties today, that the case law as it is  
20           developed does not appear to require, nor does  
21           the statutes require, the State to file an  
22           Amended Complaint as a condition precedent to  
23           adding charges in the Information. The fact that  
24           the State has elected to do so and provide the --  
25           everyone with the alleged factual basis for the

1 additional charges, I'm not sure how, absent some  
2 specific wording in the statutes requiring it,  
3 that that fact alone would add anything to the  
4 argument that the defendant should be entitled to  
5 a preliminary examination.

6 It does provide the defendant with  
7 notice of the factual basis for the State's  
8 charges. And I think that that's a benefit to  
9 the defense in the sense that it alerts the  
10 defense as to what the basis for the new charges  
11 are going to be. So, I don't find anything in  
12 Section 970.02 that would independently trigger a  
13 right to an additional preliminary examination in  
14 this case.

15 The Court will move on then to what both  
16 of the parties have focused on in the written  
17 briefs as the primary argument, and that is, when  
18 the State seeks to add charges in an Information,  
19 that were not the subject of the Complaint at the  
20 time of the original preliminary examination, is  
21 the defendant entitled to a second preliminary  
22 examination on the new charges.

23 I will first note that the factual basis  
24 for the defendant's claim of entitlement to an  
25 additional preliminary examination is largely

1 undisputed. The State did not produce any  
2 evidence to support the charges it seeks to add,  
3 at the time of the original preliminary  
4 examination. In fact, the State does not claim  
5 it was in possession of any such evidence to  
6 support those charges at the time of the original  
7 prelim. There is no specific evidence in the  
8 record from the original preliminary examination  
9 that would support the additional charges.

10 As noted by the parties in their briefs,  
11 the question of whether the State can add charges  
12 not included in the original Complaint, after a  
13 defendant has been bound over for trial following  
14 a preliminary examination, has been the subject  
15 of extensive litigation over the years.

16 The governing statutes themselves are  
17 not particularly clear on their face as far as  
18 providing an answer to this question. And the  
19 Supreme Court decisions dealing with the issue  
20 have not always been unanimously decided.

21 The starting point is Section 971.01  
22 (1), which provides that the district attorney  
23 shall exam all the facts and circumstances  
24 connected with any preliminary examination  
25 touching the commission of any crime. If the

1 defendant has been bound over for trial and  
2 subject to Section 970.03 (10), shall file an  
3 Information according to the evidence on such  
4 examination, subscribing his or her name thereto.

5 The statute is somewhat ambiguous on its  
6 face and susceptible to different interpretation.  
7 One interpretation certainly might be that the  
8 district attorney is limited to pursuing only  
9 those charges supported by evidence produced at  
10 the preliminary examination. However, the  
11 Supreme Court has held many times that that is  
12 not the law in this state and the defense in this  
13 case does not argue otherwise.

14 The question then becomes, what is the  
15 test for determining whether the State can add  
16 additional charges. The test was stated in the  
17 case of **State vs. Richer** reported at 174 Wis. 2d,  
18 231, by the Supreme Court as follows:

19 From our discussion in **Leicham** to our  
20 recent decision in **Burke**, we have seen a  
21 broadening of prosecutorial discretion from a  
22 rule limiting charges to those supported strictly  
23 within the confines of the evidence adduced at  
24 the preliminary, to a rule granting prosecutors  
25 the discretion to charge, in the Information, any

1                   felony that is, quote, "not wholly unrelated",  
2                   end quote, to the initially charged crime.

3                   The common denominator in all these  
4                   decisions was that the charges must be related to  
5                   one another, either from an evidentiary viewpoint  
6                   or a transactional one. We conclude that a  
7                   felony not charged in the preliminary examination  
8                   can be made a count in a subsequently filed  
9                   Information if there is evidence, direct or  
10                  inferential, in respect to that felony, adduced  
11                  at the preliminary, or if a subsequently charged  
12                  felony is demonstrated by the State to be  
13                  transactionally related, that is, not wholly  
14                  unrelated, to one or more of the felonies for  
15                  which the defendant has been bound over for  
16                  trial.

17                  This test has been adhered to in all the  
18                  cases cited by each of the parties in their  
19                  briefs. The parties differ concerning how they  
20                  believe the standards to be applied to this case.  
21                  The defense argues that the not wholly unrelated  
22                  test applies to evidence introduced at the  
23                  preliminary hearing itself, as opposed to the  
24                  transaction, which was the subject matter of the  
25                  preliminary examination.

1                   The Court concludes that while there is  
2                   such a distinction, the law is that charges can  
3                   be added which do not have to be specifically  
4                   related to the evidence introduced at the  
5                   preliminary examination. Perhaps the closest  
6                   case on the facts, to those in this case, is that  
7                   of the **State vs. Bailey** reported at 65 Wis. 2d,  
8                   331. It's a 1974 Wisconsin Supreme Court  
9                   decision.

10                  The Complaint in that case charged  
11                  Bailey with one crime, first-degree murder. The  
12                  Information filed after the preliminary  
13                  examination added counts of indecent behavior  
14                  with a child, child enticement, and attempted  
15                  child enticement. The additional charges related  
16                  to the abduction of the child, who was  
17                  subsequently murdered by the defendant. In  
18                  upholding the prosecutor's authority to add these  
19                  charges, the Court ruled as follows:

20                  In our view of Section 970.03 (10) does  
21                  not prohibit the prosecutor from including in the  
22                  Information, once a defendant has been bound  
23                  over, charges in addition to those advanced at  
24                  the preliminary hearing, so long as they are not  
25                  wholly unrelated to the transactions or facts

1                   considered or testified to at the preliminary.

2                   This view is consistent with the  
3 legislative statement in Section 970.03 (1), that  
4 a preliminary hearing is held, quote, "for the  
5 purpose of determining if there is probable cause  
6 to believe a felony has been committed by the  
7 defendant", end quote. Once it is determined  
8 that the defendant should be bound over for trial  
9 on at least one count, the purpose of the  
10 preliminary has been satisfied and the prosecutor  
11 may, in his discretion, allege such other  
12 offenses as permitted by the limitations stated  
13 above.

14                  In this case, assuming there is no  
15 evidence presented as to them at the preliminary,  
16 it is clear that the sex related offenses, Counts  
17 2, 3, and 4, were not wholly unrelated to the  
18 murder count. They are related in terms of  
19 parties involved, witnesses involved, geographic  
20 proximity, time, physical evidence, motive, and  
21 intent.

22                  There's a strong parallel between the  
23 facts recited in **Bailey** and those here. The  
24 child enticement counts were related to crimes  
25 that immediately preceded the murder and were

1 part of the motive for the murder.

2 Now, as the defense points out in its  
3 brief, the Court in **Bailey** went on to find that  
4 the facts introduced at the preliminary  
5 examination in that case would have been  
6 sufficient to bind over on the enticement counts  
7 anyway. So the language quoted could be  
8 considered dicta not necessary to the Court's  
9 decision.

10 And I believe that's an entirely valid  
11 distinction on the defense's part. I think the  
12 language could easily have been characterized as  
13 dicta. And, in fact, it was. It wasn't really  
14 necessary to the Court's decision because the  
15 Court found the facts introduced at the prelim by  
16 themselves would have been sufficient to support  
17 the additional counts.

18 However, **Bailey** has been cited in a  
19 number of subsequent Supreme Court decisions and  
20 the Court has never backed away from its  
21 rationale, whether or not that rationale is  
22 characterized as dicta. In fact, the Supreme  
23 Court has accepted the dicta from **Bailey** as the  
24 law.

25 For example, in the case of **State vs.**

1                   **Burke**, the Court held as follows: **Fish** and  
2                   **Bailey** hold that, in a multiple offense  
3                   transaction case, once the defendant has been  
4                   bound over for trial on at least one count  
5                   related to the transaction, the prosecutor may,  
6                   in the Information, charge additional counts not  
7                   wholly unrelated. **Bailey** further establishes  
8                   that the direct evidence related to the  
9                   additional counts may not have been presented at  
10                  the preliminary examination.

11                  In the Court's opinion, we are not left  
12                  to wonder how additional charges must relate to  
13                  the evidence introduced at a preliminary  
14                  examination in order to be includable in an  
15                  Information. The test has been repeated often.  
16                  To meet the test of transactionally related or  
17                  not wholly unrelated, the charges must be related  
18                  in terms of parties involved, witnesses involved,  
19                  geographic proximity, time, physical evidence,  
20                  motive and intent. That's the test that the  
21                  Court is required to apply and that test can be  
22                  applied in this case.

23                  Referring specifically to the facts in  
24                  this case, the Court concludes that the new  
25                  charges clearly meet the test which the Supreme

1 Court has established:

2                 The parties involved in the alleged  
3 crime are the same, that is, it's the same  
4 defendant and the same victim.

5                 The witnesses, who would be the persons  
6 alleged to be present at the time of the crime,  
7 are the same in each case.

8                 With respect to geographic proximity,  
9 everything is alleged to have happened at the  
10 same location.

11                 With respect to time, the new charges  
12 are alleged to have immediately preceded the  
13 homicide and mutilation of a corpse charge from  
14 the original Complaint.

15                 In addition, the physical evidence  
16 involved is likely to significantly overlap the  
17 charges in the original Complaint and the Amended  
18 Complaint.

19                 With respect to motive and intent, the  
20 kidnapping, false imprisonment, and sexual  
21 assault charges will form an important basis on  
22 the alleged motive for the homicide and  
23 mutilation charges.

24                 The Court concludes that it's difficult  
25 to imagine how the additional charges could be

1 more closely related to the original charges in  
2 this case, than they are. Thus, the Court  
3 concludes that the State is permitted to add the  
4 new charges and the defendant is not entitled to  
5 a preliminary examination on the other charges.

6 For those reasons, the Court is denying  
7 the motion of the defense to dismiss the -- I  
8 will reiterate the Court's denial of the motion  
9 to dismiss the Amended Complaint. And the Court  
10 also denies the motion requesting an additional  
11 preliminary examination on the additional  
12 charges.

13 Mr. Kratz, I will direct you to prepare  
14 the order in this case. Procedurally, at this  
15 point, I don't know if the State is prepared to  
16 proceed with an Information at this time or not.  
17 Mr. Kratz.

18 ATTORNEY KRATZ: I think probably, Judge,  
19 the Court should schedule an arraignment at which  
20 time the Amended Information can be filed.

21 THE COURT: I know, Mr. Strang, you  
22 indicated previously, in the correspondence, that  
23 the defense may seek a permissive appeal from the  
24 Court's ruling if the Court ruled as it did. I  
25 don't know if the -- if the defense is going to seek

1 to delay with respect to arraignment or not.

2 ATTORNEY STRANG: Well, that's a question,  
3 the Court is right. And I agree with Mr. Fallon's  
4 assessment of **Webb**. I read that case the same way,  
5 in the sense that, if we think the Court erred on  
6 the sufficiency of the Complaint, or on our  
7 entitlement to a preliminary hearing, the only time  
8 we can raise that is now. Because the trial will  
9 certainly cleanse the error, or render it harmless,  
10 if in fact there was error.

11 So, this is not a usual case, the stakes  
12 are very high. Obviously, we understand what  
13 they are for Mr. Avery, for the Halbach family,  
14 for the State, people of the State. I think it  
15 prudent for us to ask the Wisconsin Court of  
16 Appeals for leave to file an appeal here,  
17 permissively, that the Court doesn't have to --  
18 that is, the Court of Appeals doesn't have to  
19 grant leave. But if I don't ask, I'm giving up  
20 my only opportunity to be heard on the  
21 correctness of the Court's ruling and to have  
22 those rulings reviewed. So, I do and will do  
23 that.

24 I have 10 days from the entry of the  
25 written order, I think -- 14 days, I'm sorry,

1                   from the entry of the written order memorializing  
2                   the Court's rulings. It seemed, although I don't  
3                   have an answer on whether an intervening  
4                   arraignment would affect the posture of a request  
5                   for permissive appeal, I can tell the Court this,  
6                   if we're put to an arraignment before we seek  
7                   leave to file from this appeal, we will stand  
8                   mute and not participate in that, not wanting to  
9                   waive or imperil our position on the request for  
10                  this interlocutory appeal.

11                  So, the better practice may be to  
12                  schedule the arraignment after the deadline, at  
13                  least, for filing a petition for leave to take  
14                  permissive appeal. I think that's probably the  
15                  wiser procedural course for the Court to follow.  
16                  Although counsel may well view it differently,  
17                  that's the view at this table.

18                  THE COURT: I did read the **Webb** case and I  
19                  understand that, as a result of that case, if you  
20                  want to challenge the Court's ruling you -- the  
21                  lesson is pretty clear, you have to do it before the  
22                  trial. I didn't see anything in there to suggest  
23                  that holding an arraignment would prejudice the  
24                  defendant in anyway. But on the other hand, the  
25                  Court didn't really address the issue in this case.

1                   Mr. Kratz.

2                   ATTORNEY KRATZ: On the 9th of March I did  
3                   file the Amended Information already. That's why,  
4                   when I was searching, I couldn't find it, it's  
5                   already been filed. If the Court can just recognize  
6                   today that it's been filed, however the Court wishes  
7                   to address the responsive pleading, you can do that.

8                   ATTORNEY STRANG: I did not remember the  
9                   date, but I do remember seeing the proposed, at that  
10                  point, Amended Information. It was, I suppose,  
11                  filed conditionally on the granted leave to file,  
12                  which the Court now has granted. And I certainly  
13                  have a copy of the proposed Amended Information.

14                  THE COURT: All right. Does the State have  
15                  any objection to scheduling the arraignment shortly  
16                  after the appeal deadline for the defense?

17                  ATTORNEY KRATZ: No, Judge, once the Court  
18                  accepts, or recognizes the filing of the  
19                  Information, an arraignment can be held any time.

20                  THE COURT: Well, let's see. All right.  
21                  How about 9:00 on -- or Mr. Strang, is life easier  
22                  for you -- or, actually, we have Mr. Fallon  
23                  traveling as well. Does 9:30 work out better for  
24                  you?

25                  ATTORNEY STRANG: Well, I assume Mr. Fallon

1           is in the same position. I have to be seated in my  
2           car three hours before the Court starts. So I  
3           wouldn't be seated in my bed at 6:00 a.m., but I  
4           also wouldn't be in my car.

5           THE COURT: What if we do it this way, how  
6           about 10:00 on May 30th. I will tell you, here, for  
7           security purposes, the Sheriff's Department likes to  
8           have your hearing be the first thing done in the  
9           courtroom that day. So, I have pressure on both  
10          sides here.

11          ATTORNEY FALLON: I don't know about Dean,  
12          but it doesn't matter to me, whatever is convenient  
13          for the Court and security purposes. If you want to  
14          hold this at 7:00 a.m., I will be here.

15          ATTORNEY STRANG: Right.

16          ATTORNEY KRATZ: If all we're doing is the  
17          arraignment, I suspect Mr. Fallon is not going to be  
18          here. It should be a 30 second hearing.

19          ATTORNEY STRANG: I will be here any time  
20          the Court sets it. I was being a little bit  
21          flippant. Yes, it's a three hour drive, but I will  
22          be here whenever the Court sets it.

23          ATTORNEY KRATZ: Is there any chance of  
24          doing it just before noon on the 4th of May? The  
25          reason I say that, co-defendant, Mr. Dassey's

1 motions before Judge Fox are scheduled, I have to be  
2 here that morning anyway. And if we could -- if  
3 this is such a short hearing, if we could do it  
4 sometime later that morning on the 4th, that would  
5 sure help my schedule.

6 ATTORNEY STRANG: Both Mr. Buting and I  
7 have a Criminal Law Section Board meeting for the  
8 State Bar at 11:00 on the morning of May 4th.

9 THE COURT: Where is that held?

10 ATTORNEY STRANG: That one is in Madison.

11 ATTORNEY KRATZ: The 3rd is fine, Judge.  
12 That's fine.

13 THE COURT: All right. Let's say 10:00 on  
14 the 3rd then. All right. Is there anything else  
15 that either party wants to bring up on the record  
16 this morning?

17 ATTORNEY KRATZ: Not the State, your Honor.

18 THE COURT: Mr. Strang.

19 ATTORNEY STRANG: No.

20 THE COURT: All right. If not, we're  
21 adjourned for this morning.

22 (Proceedings concluded.)

23  
24  
25

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

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 25th day of April, 2006.

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16  
17  
18  
19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
21  
22  
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<b>0</b>	24/17 25/6 25/9 25/12 26/25 27/10 27/11 <b>address</b> [3] 7/20 29/25 30/7 <b>addressed</b> [1] 17/13 <b>adds</b> [1] 6/23 <b>adduced</b> [3] 12/8 20/23 21/10 <b>adhered</b> [1] 21/17 <b>adjourned</b> [1] 32/21 <b>advanced</b> [1] 22/23 <b>adversely</b> [1] 3/24 <b>affect</b> [1] 29/4 <b>after</b> [7] 5/25 9/16 17/17 19/12 22/12 29/12 30/16 <b>against</b> [2] 3/19 14/3 <b>agree</b> [2] 17/18 28/3 <b>Akers</b> [1] 9/11 <b>Akins</b> [1] 10/22 <b>alerts</b> [1] 18/9 <b>all</b> [17] 2/18 3/11 4/13 4/15 7/13 9/11 11/22 14/6 19/23 21/3 21/17 30/14 30/20 31/16 32/13 32/14 32/20 <b>allegations</b> [3] 13/16 15/19 15/24 <b>allege</b> [1] 23/11 <b>alleged</b> [8] 15/11 15/18 17/25 26/2 26/6 26/9 26/12 26/22 <b>alleges</b> [1] 15/8 <b>alleging</b> [1] 14/3 <b>allowed</b> [1] 4/3 <b>alone</b> [1] 18/3 <b>already</b> [7] 3/7 3/24 5/14 8/11 15/1 30/3 30/5 <b>also</b> [10] 2/10 2/12 2/17 3/2 4/17 8/25 10/14 14/20 27/10 31/4 <b>alternative</b> [2] 2/23 14/20 <b>although</b> [2] 29/2 29/16 <b>altogether</b> [2] 13/24 14/2 <b>always</b> [1] 19/20 <b>ambiguous</b> [1] 20/5 <b>amend</b> [2] 10/7 12/5 <b>Amended</b> [39] <b>another</b> [2] 3/21 21/5 <b>answer</b> [3] 15/8 19/18 29/3 <b>anticipated</b> [1] 16/14 <b>any</b> [14] 6/13 10/15 13/21 16/2 16/20 19/1 19/5 19/24 19/25 20/25 30/15 30/19 31/19 31/23 <b>anything</b> [5] 6/14 18/3 18/11 29/22 32/14 <b>anyway</b> [3] 24/7 29/24 32/2 <b>appeal</b> [7] 27/23 28/16 29/5 29/7 29/10 29/14 30/16 <b>Appeals</b> [2] 28/16 28/18 <b>appear</b> [1] 17/20 <b>appearance</b> [7] 5/19 5/24 5/25 6/22 16/25 17/2 17/5 <b>appearances</b> [2] 1/12 2/5 <b>Appeared</b> [1] 1/18 <b>appearing</b> [1] 2/16 <b>appears</b> [2] 2/8 2/10 <b>applied</b> [2] 21/20 25/22 <b>applies</b> [2] 4/16 21/22 <b>apply</b> [1] 25/21 <b>appointed</b> [1] 2/9 <b>APRIL</b> [2] 1/10 33/15 <b>are</b> [32] 3/21 5/15 6/18 6/20 7/1 7/4 8/15 9/9 10/9 10/24 11/2 11/15 11/16 12/1 12/1 12/7 12/10 13/11 14/2 16/20 18/11 19/16 22/24 23/18 25/11 26/3 26/7 26/12 27/2 28/12 28/13 32/1 <b>area</b> [3] 4/9 4/13 15/22 <b>aren't</b> [1] 7/3
<b>1</b>	<b>argue</b> [2] 7/17 20/13 <b>argues</b> [2] 14/20 21/21 <b>argument</b> [11] 3/6 3/16 4/1 9/3 11/24 11/25 14/18 14/25 16/11 18/4 18/17 <b>arguments</b> [3] 3/14 3/14 4/19 <b>arraignment</b> [9] 27/19 28/1 29/4 29/6 29/12 29/23 30/15 30/19 31/17 <b>as</b> [34] <b>ask</b> [3] 12/3 28/15 28/19 <b>asked</b> [1] 6/11 <b>assault</b> [2] 14/14 26/21 <b>assertions</b> [1] 3/23 <b>assessment</b> [1] 28/4 <b>assigned</b> [1] 2/12 <b>assisted</b> [1] 33/10 <b>assume</b> [2] 9/2 30/25 <b>assuming</b> [1] 23/14 <b>at</b> [49] <b>attempted</b> [1] 22/14 <b>attorney</b> [3] 2/9 19/22 20/8 <b>ATTORNEYS</b> [1] 1/16 <b>attributable</b> [1] 15/25 <b>authority</b> [2] 8/20 22/18 <b>available</b> [1] 15/21 <b>average</b> [1] 9/20 <b>AVERY</b> [9] 1/6 1/17 2/2 2/15 2/17 13/1 13/22 14/3 28/13 <b>aware</b> [4] 9/8 9/9 16/2 16/20 <b>away</b> [1] 24/20
<b>2</b>	<b>B</b>
<b>3</b>	<b>back</b> [1] 4/25 <b>backed</b> [1] 24/20 <b>background</b> [1] 14/7 <b>bail</b> [1] 13/9 <b>Bailey</b> [12] 4/6 9/9 10/21 10/23 22/7 22/11 23/23 24/3 24/18 24/23 25/2 25/7 <b>Bar</b> [1] 32/8 <b>based</b> [7] 8/25 9/13 9/18 12/6 15/7 15/24 16/17 <b>basis</b> [11] 9/22 12/1 13/3 15/19 16/6 16/7 17/25 18/7 18/10 18/23 26/21 <b>be</b> [44] <b>became</b> [1] 4/14 <b>because</b> [8] 6/9 8/3 10/19 11/2 11/6 11/15 24/14 28/8 <b>become</b> [1] 4/4 <b>becomes</b> [3] 6/8 8/18 20/14 <b>bed</b> [1] 31/3 <b>been</b> [32] 2/4 2/9 2/12 4/4 4/11 5/18 5/19 6/21 8/8 13/2 13/6 13/22 14/2 19/13 19/14 19/20 20/1 21/15 21/17 22/22 23/6 23/10 24/5 24/12 24/16 24/18 25/3 25/9 25/15 30/5 30/6 33/8 <b>before</b> [11] 1/11 3/3 5/9 6/24 13/14 14/16 29/6 29/21 31/2 31/24 32/1 <b>began</b> [1] 3/4 <b>behalf</b> [3] 1/14 1/16 2/16 <b>behavior</b> [1] 22/13 <b>behind</b> [1] 14/1 <b>being</b> [4] 8/1 9/5 11/14 31/20 <b>belabor</b> [1] 3/13 <b>believe</b> [8] 15/3 16/5 16/25 17/4 17/18 21/20 23/6 24/10 <b>believes</b> [1] 15/15 <b>benefit</b> [11] 8/4 8/11 9/18 11/14 11/19 13/1 13/2 13/6 13/10 13/22
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<b>a.m</b> [2] 31/3 31/14 <b>abduction</b> [1] 22/16 <b>ability</b> [1] 33/14 <b>about</b> [4] 4/13 30/21 31/6 31/11 <b>above</b> [1] 23/13 <b>absent</b> [1] 18/1 <b>Absolutely</b> [1] 9/6 <b>accept</b> [2] 9/23 12/19 <b>accepted</b> [1] 24/23 <b>accepts</b> [1] 30/18 <b>according</b> [1] 20/3 <b>accusations</b> [1] 13/4 <b>action</b> [3] 6/4 8/21 17/8 <b>actually</b> [2] 12/9 30/22 <b>add</b> [11] 9/2 11/1 11/13 15/2 18/3 18/18 19/2 19/11 20/15 22/18 27/3 <b>added</b> [2] 22/3 22/13 <b>adding</b> [2] 14/13 17/23 <b>addition</b> [2] 22/23 26/15 <b>additional</b> [27] 7/22 8/9 8/23 9/2 9/15 9/19 10/5 10/9 11/2 11/13 11/14 12/7 12/10 17/16 18/1 18/13 18/25 19/9 20/16 22/15	

<b>B</b>	<p>benefit... [1] 18/8 beside [1] 13/12 best [1] 33/13 better [3] 11/21 29/11 30/23 between [1] 23/22 bind [1] 24/6 bindover [2] 9/16 17/17 binds [1] 8/17 bit [1] 31/20 Board [1] 32/7 borrow [1] 10/10 both [6] 7/25 16/19 17/18 18/15 31/9 32/6 bound [6] 19/13 20/1 21/15 22/22 23/8 25/4 BRANCH [2] 1/1 33/5 brief [6] 7/16 10/8 10/24 12/10 16/18 24/3 briefed [1] 9/1 briefing [2] 5/5 5/8 briefly [2] 3/3 14/24 briefs [5] 4/17 17/14 18/17 19/10 21/19 bring [1] 32/15 broadening [1] 20/21 brought [1] 5/8 Burke [5] 4/5 9/10 10/22 20/20 25/1 Bury [2] 9/11 10/22 but [15] 4/11 5/15 6/17 7/4 9/25 12/21 16/2 16/19 17/4 28/19 29/24 30/9 31/3 31/12 31/21 BUTING [3] 1/15 2/16 32/6</p>	<p>clear [5] 7/10 10/25 19/17 23/16 29/21 clearly [1] 25/25 close [1] 3/18 closely [1] 27/1 closest [1] 22/5 co [5] 15/11 15/18 16/1 16/3 31/25 co-defendant [4] 15/11 15/18 16/1 31/25 co-defendant's [1] 16/3 colleague [1] 12/16 command [3] 4/22 6/2 7/10 comments [1] 13/15 commission [1] 19/25 committed [1] 23/6 common [1] 21/3 compelled [1] 7/20 Complaint [53] Complaints [4] 9/16 11/6 11/7 11/15 complicated [1] 4/9 computer [1] 33/10 computer-assisted [1] 33/10 computerized [1] 33/9 concede [1] 12/16 concern [1] 7/21 concerning [1] 21/19 concession [2] 12/19 12/22 conclude [1] 21/6 concluded [1] 32/22 concludes [4] 22/1 25/24 26/24 27/3 condition [1] 17/22 conditionally [1] 30/11 conferred [2] 13/1 13/22 confess [1] 4/4 confines [1] 20/23 confrontation [1] 15/22 connected [1] 19/24 considered [2] 23/1 24/8 consistent [1] 23/2 construed [1] 4/12 construing [1] 6/13 contemplated [1] 17/5 context [2] 9/12 12/4 convenient [1] 31/12 convinced [1] 7/24 copy [1] 30/13 corpse [2] 14/10 26/13 correct [2] 3/9 33/12 correctness [1] 28/21 correspondence [1] 27/22 could [7] 6/12 12/25 24/7 24/12 26/25 32/2 32/3 couldn't [1] 30/4 counsel [3] 2/17 3/3 29/16 counsel's [1] 7/21 count [4] 21/8 23/9 23/18 25/4 counts [11] 7/12 10/6 11/13 12/7 22/13 23/16 23/24 24/6 24/17 25/6 25/9 COUNTY [3] 1/1 2/8 33/2 course [4] 6/24 6/25 8/21 29/15 COURT [79] Court's [10] 15/12 16/23 24/8 24/14 25/11 27/8 27/24 28/21 29/2 29/20 courtesy [1] 11/9 courtroom [1] 31/9 covered [2] 5/14 5/21 crime [5] 19/25 21/2 22/11 26/3 26/6 crimes [1] 23/24</p>	<p>Criminal [4] 3/23 5/20 13/17 32/7 criminally [1] 4/6 cured [1] 10/17 current [1] 9/25 custody [1] 2/15 custom [2] 9/18 9/25</p>
<b>D</b>	<p>Dassey's [1] 31/25 date [3] 1/10 6/24 30/9 Dated [1] 33/15 day [2] 31/9 33/15 days [2] 28/24 28/25 deadline [2] 29/12 30/16 dealing [1] 19/19 DEAN [3] 1/15 2/15 31/11 decide [1] 12/3 decided [1] 19/20 decision [5] 2/4 20/20 22/9 24/9 24/14 decisions [3] 19/19 21/4 24/19 declarant's [1] 3/20 defendant [32] 1/7 1/16 1/18 2/25 6/2 8/4 8/9 17/14 9/14/22 15/11 15/18 16/1 16/15 17/3 17/7 17/15 18/4 18/6 18/21 19/13 20/1 21/15 22/17 22/22 23/7 23/8 25/3 26/4 27/4 29/24 31/25 defendant's [3] 14/16 16/3 18/24 defendants [2] 11/11 11/23 defense [20] 2/5 2/21 3/5 9/4 11/18 14/18 14/20 15/7 15/8 16/11 16/12 18/9 18/10 20/12 21/21 24/2 27/7 27/23 27/25 30/16 defense's [1] 24/11 degree [3] 14/9 14/14 22/11 delay [1] 28/1 demonstrated [1] 21/12 denial [1] 27/8 denies [1] 27/10 denominator [1] 21/3 denying [2] 16/8 27/6 Department [2] 2/12 31/7 derived [1] 7/1 determination [1] 9/22 determine [1] 8/21 determined [1] 23/7 determining [2] 20/15 23/5 developed [1] 17/20 development [1] 15/21 Diane [3] 1/22 33/4 33/19 dicta [4] 24/8 24/13 24/22 24/23 did [10] 5/10 8/5 11/12 16/4 16/18 19/1 27/24 29/18 30/2 30/8 didn't [2] 29/22 29/25 differ [1] 21/19 different [1] 20/6 differently [1] 29/16 difficult [2] 15/24 26/24 direct [3] 21/9 25/8 27/13 directly [1] 12/7 discretion [3] 20/21 20/25 23/11 discussion [1] 20/19 dismiss [6] 3/15 3/17 5/13 9/4 27/7 27/9 dismissed [2] 2/23 14/19 disputed [1] 6/25 distinction [2] 22/2 24/11 district [3] 2/8 19/22 20/8 do [13] 11/16 11/18 13/23 17/24 22/3 28/22 28/22 29/21 30/7 30/9 31/5 32/3 33/6</p>		

<p><b>D</b></p> <p>document [2] 8/19 8/19 does [11] 6/2 16/7 17/7 17/20 17/20 18/6 19/4 20/13 22/20 30/14 30/23 doesn't [4] 15/23 28/17 28/18 31/12 doing [2] 31/16 31/24 dollars [2] 13/9 13/10 don't [14] 6/9 6/13 7/8 12/18 13/21 15/3 16/25 17/4 18/11 27/15 27/25 28/19 29/2 31/11 done [1] 31/8 dozen [1] 3/18 draw [1] 6/15 drive [1] 31/21 duty [1] 16/24</p> <p><b>E</b></p> <p>each [3] 9/1 21/18 26/7 earlier [1] 7/2 early [3] 4/25 11/22 14/3 easier [1] 30/21 easily [1] 24/12 effect [2] 9/17 11/21 either [3] 12/7 21/5 32/15 elected [1] 17/24 else [1] 32/14 end [2] 21/2 23/7 enough [1] 8/3 enticement [4] 22/14 22/15 23/24 24/6 entirely [1] 24/10 entitled [12] 2/25 8/2 8/12 10/20 11/1 14/22 16/13 16/15 17/15 18/4 18/21 27/4 entitlement [2] 18/24 28/7 entry [2] 28/24 29/1 equitable [1] 11/24 erred [1] 28/5 error [4] 10/16 10/19 28/9 28/10 establish [1] 13/20 established [1] 26/1 establishes [1] 25/7 ethically [1] 8/24 even [2] 10/3 10/15 everybody [1] 13/25 everyone [1] 17/25 everything [1] 26/9 evidence [17] 7/2 12/8 19/2 19/5 19/7 20/3 20/9 20/23 21/9 21/22 22/4 23/15 23/20 25/8 25/13 25/19 26/15 evidentiary [1] 21/5 exact [1] 9/6 exam [1] 19/23 examination [43] example [1] 24/25 exercise [1] 8/20 explained [1] 3/19 explicitly [1] 13/7 extensive [1] 19/15 extent [1] 12/20 eye [1] 4/10</p> <p><b>F</b></p> <p>face [3] 14/19 19/17 20/6 fact [9] 7/4 8/4 8/5 17/23 18/3 19/4 24/13 24/22 28/10 facts [7] 19/23 22/6 22/25 23/23 24/4 24/15 25/23 factual [5] 3/23 9/21 17/25 18/7</p> <p>18/23 fail [1] 3/22 fair [1] 10/17 fairly [1] 4/11 FALLON [8] 1/13 2/11 7/14 7/15 7/18 30/22 30/25 31/17 Fallon's [1] 28/3 false [2] 14/15 26/20 family [1] 28/13 far [2] 8/8 19/17 feel [1] 7/20 felon [1] 14/10 felonies [1] 21/14 felony [6] 9/20 21/1 21/7 21/10 21/12 23/6 field [1] 5/21 fighting [1] 13/11 file [17] 5/1 5/2 5/4 5/7 5/11 5/16 6/19 8/5 10/5 14/13 16/8 17/21 20/2 28/16 29/7 30/3 30/11 filed [10] 2/4 2/20 5/18 8/15 21/8 22/12 27/20 30/5 30/6 30/11 filing [8] 2/24 14/21 16/14 16/17 17/1 17/16 29/13 30/18 find [8] 4/24 11/11 11/23 16/3 16/7 18/11 24/3 30/4 finds [1] 8/16 fine [2] 32/11 32/12 firearm [1] 14/11 firmly [1] 7/24 first [10] 5/3 6/10 14/7 14/9 14/14 14/17 14/24 18/23 22/11 31/8 first-degree [3] 14/9 14/14 22/11 Fish [1] 25/1 flippant [1] 31/21 flow [1] 12/7 focus [2] 4/16 4/17 focused [1] 18/16 follow [1] 29/15 followed [1] 10/23 following [1] 19/13 follows [3] 20/18 22/19 25/1 foregoing [2] 33/7 33/7 form [4] 15/18 16/5 16/19 26/21 forthwith [3] 6/4 7/11 17/8 forward [2] 4/11 4/13 found [1] 24/15 founded [1] 7/7 Fox [1] 32/1 frankly [1] 8/2 fully [1] 12/19 further [2] 9/23 25/7</p> <p><b>G</b></p> <p>geographic [3] 23/19 25/19 26/8 get [1] 10/15 giving [1] 28/19 gloss [1] 4/12 go [1] 3/20 going [5] 10/4 10/23 18/11 27/25 31/17 Good [2] 2/14 7/20 governing [2] 8/18 19/16 governs [1] 5/23 gracious [1] 12/19 grant [3] 4/20 5/11 28/19 granted [7] 5/7 6/19 9/3 10/3 14/12 30/11 30/12 granting [1] 20/24 gratifying [1] 12/21 ground [1] 5/14 guidance [1] 6/15</p>	<p><b>H</b></p> <p>had [6] 4/4 6/20 9/3 10/3 11/13 33/13 Halbach [2] 10/13 28/13 half [2] 3/18 13/9 hand [1] 29/24 happen [1] 5/24 happened [1] 26/9 harmless [1] 28/9 has [36] have [40] having [5] 2/9 2/12 5/17 5/19 6/18 he [12] 5/6 8/11 8/12 10/19 11/19 11/19 11/20 11/21 12/20 13/2 15/23 16/4 he's [2] 2/15 8/2 hear [3] 3/11 12/15 12/22 heard [1] 28/20 hearing [19] 1/4 2/20 4/3 4/21 4/23 7/3 7/8 7/11 13/13 13/19 14/5 15/15 21/23 22/24 23/4 28/7 31/8 31/18 32/3 hearsay [1] 13/4 held [5] 20/11 23/4 25/1 30/19 32/9 help [1] 32/5 her [1] 20/4 here [21] 4/16 4/21 4/24 5/8 5/15 5/17 5/23 6/18 6/20 12/16 13/11 16/10 23/23 28/16 31/6 31/10 31/14 31/18 31/19 31/22 32/2 hereby [1] 33/6 high [1] 28/12 him [1] 7/17 his [5] 2/16 12/19 13/8 20/4 23/11 hold [2] 25/2 31/14 holding [1] 29/23 homicide [3] 14/10 26/13 26/22 Hon [1] 1/11 Honor [3] 2/7 5/9 32/17 hour [1] 31/21 hours [1] 31/2 how [7] 11/12 18/1 21/19 25/12 26/25 30/21 31/5 however [4] 15/10 20/10 24/18 30/6</p> <p><b>I</b></p> <p>I'm [6] 10/4 10/23 12/15 18/1 28/19 28/25 if [32] 2/23 4/3 4/5 6/2 6/9 10/3 10/15 14/20 15/23 16/4 17/6 19/25 21/9 21/11 23/5 27/15 27/24 27/25 27/25 28/5 28/10 28/19 29/6 29/19 30/5 31/5 31/13 31/16 32/2 32/2 32/3 32/20 imagine [2] 12/25 26/25 immediately [2] 23/25 26/12 impartial [1] 10/17 imperative [1] 11/5 imperil [1] 29/9 Implicit [1] 17/10 important [1] 26/21 imprisonment [2] 14/15 26/20 in [135] inadmissible [1] 13/4 includable [1] 25/14 included [1] 19/12 including [1] 22/21 inculpate [1] 3/20 indecent [1] 22/13 independently [1] 18/12</p>
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, ARRAIGNMENT & MOTIONS

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** MAY 3, 2006

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

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

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

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

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

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

21 STEVEN A. AVERY  
Defendant  
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1                   **I N D E X**

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5                   Cross-Examination by **ATTORNEY**

6                   Redirect Examination by **ATTORNEY**

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9                   **WIT NAME**

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20                  **WIT NAME**

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22                  Cross-Examination by **ATTORNEY**

23                  Redirect Examination by **ATTORNEY**

24                  Recross-Examination by **ATTORNEY**

1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery. This is Case  
3                   No. 05 CF 381. We're here this morning for an  
4                   arraignment on the Amended Information in this case  
5                   and also to hear a couple motions that have been  
6                   filed by the defense. Will the parties state their  
7                   appearances for the record, please.

8                   ATTORNEY KRATZ: State of Wisconsin appears  
9                   by Calumet County District Attorney Ken Kratz  
10                  appearing as Special Prosecutor. Also appearing is  
11                  Tom Fallon from the Department of Justice.

12                  ATTORNEY STRANG: Good morning. Steve  
13                  Avery is here and in custody, your Honor. Dean  
14                  Strang and Jerome Buting appearing on his behalf.

15                  THE COURT: All right. The Court will  
16                  first take up the arraignment on the Amended  
17                  Information. Has the defense -- I believe the  
18                  defense has previously received a copy of the  
19                  Amended Information, but I would like to confirm  
20                  that at this time.

21                  ATTORNEY STRANG: That is confirmed.

22                  THE COURT: And, Mr. Strang, do I  
23                  understand that, before proceeding to take a plea,  
24                  the defense had a motion regarding the Information?

25                  ATTORNEY STRANG: Your Honor, the defense

1           does. I confine my remarks to the three new counts  
2           in the Amended Complaint and then reiterated or  
3           replied in the Amended Information; that is, first  
4           degree sexual assault, the kidnapping and false  
5           imprisonment. As to those three counts, the Amended  
6           Complaint demonstrated no probable cause and  
7           therefore that Amended Complaint established no  
8           personal jurisdiction. I moved to dismiss it, the  
9           Court denied the motion. I renew the motion here  
10          now, understanding that the Court has ruled.

11           We then requested a preliminary  
12          examination on the three new counts, all three of  
13          them felonies. We were not afforded the  
14          preliminary examination. I object to that.  
15           Further, I move to dismiss the Amended  
16          Information because there is no personal  
17          jurisdiction over Mr. Avery as to the three new  
18          counts. So the three new counts in the Amended  
19          Information I move to dismiss on personal  
20          jurisdiction grounds.

21           THE COURT: All right. Mr. Kratz, is there  
22          anything further from the State with respect to that  
23          motion?

24           ATTORNEY KRATZ: No, Judge, the Court has  
25          already ruled, as Mr. Strang has indicated, and

1           we'll rely upon our argument on the previous  
2           findings of the Court.

3           THE COURT: All right. For reasons  
4           previously stated by the Court, the Court will deny  
5           the defense motion. The Clerk's Office informed me  
6           that there had been an interlocutory appeal filed on  
7           behalf of the defense today. I have not seen it,  
8           but I assume that the rationale for the defense  
9           motion is the subject of that appeal. But for  
10          purposes of the hearing today, the Court will deny  
11          the defense's motion to dismiss.

12          I should also note, with respect to the  
13          Amended Information, while it adds three new  
14          counts as Counts 4, 5, and 6, I believe it also  
15          amends Counts 1 and 2 to allege party to the  
16          crime, rather than the simple offense in the  
17          original Complaint.

18          Mr. Strang, to those new charges, is the  
19          defendant prepared to enter a plea this morning?

20          ATTORNEY STRANG: The defendant stands  
21          silent.

22          THE COURT: Okay. Very well. Based on the  
23          defendant standing mute, the Court will infer a  
24          plea, on the defendant's behalf, of not guilty to  
25          each of the six charges in the Amended Information.

1                         Now, the Court has also received, and  
2                         agreed to hear today, a motion on behalf of the  
3                         defendant to extend the deadline for filing  
4                         motions in this case and also a motion to adjourn  
5                         the trial. The motion itself contains some  
6                         argument in support of those requests.

7                         Mr. Strang, does the defense have anything in  
8                         addition to add at this time?

9                         ATTORNEY STRANG: Your Honor, the time  
10                         that's intervened since I have filed this motion to  
11                         extend, not quite two weeks ago I guess, hasn't  
12                         diminished in any way the basis for the motion. I  
13                         still seek the relief that I have requested, namely  
14                         a motion filing deadline applicable to both parties,  
15                         on or before June 16; scheduling of a motion hearing  
16                         at the convenience of the State, and the Halbach  
17                         family, and the Court, and defense counsel; and a  
18                         trial in 2007, some time after the holidays and  
19                         accommodating holiday obligations of the Court, and  
20                         families, and counsel.

21                         We're now at about 5400 pages of  
22                         discovery, give or take. The most recent search  
23                         warrant executed by the State I think came the  
24                         day I filed this. I think it was April 21,  
25                         thereabouts. I have received a copy of at least

1                   the hard drive of the principle evidence seized  
2                   in that search warrant.

3                   I'm informed by counsel this morning, as  
4                   well, that within about 10 days, give or take,  
5                   the State will be in a position to provide Crime  
6                   Lab reports, relating to March 1 seizures, to the  
7                   defense. So I note that if counsel's estimate is  
8                   good, as I expect it is, that we would be getting  
9                   the Crime Lab -- a large number of Crime Lab  
10                  reports at about the time the provisional  
11                  deadline for motions arrives, which is May 12, at  
12                  the moment.

13                  I think as a matter of efficiency, it  
14                  makes sense here not -- or to try to avoid the  
15                  piecemeal filing of motions. I realize others --  
16                  that motions in limine will come much closer to a  
17                  trial date. I realize as well that the State's  
18                  investigation may be ongoing in this case, just  
19                  as it is in almost any case. The State can't  
20                  predict the course of future events any better  
21                  than I can.

22                  That said, I think it makes sense to  
23                  acquire what we have, that is, what the State  
24                  has, look at it and file some, as far as  
25                  possible, one round of motions. June 16 ought

enable the defense to do that. It is a tight timeline. This is not an issue on which I have asked for a mile hoping to get a half mile, that is not my style, or my practice, in any event.

I think June 16 is the minimum amount of time I reasonably need, with Mr. Buting, to meet my obligations to Mr. Avery under the 6th Amendment. I ask the Court to do that, as well.

I think the September 5 trial date will not work, will not afford justice to the people of Wisconsin, or to the man whose liberty here is at stake for the rest of his life and will not assure that this Court sees counsel perform as the 6th Amendment and this Court demand. So I stand on the earlier requests, I don't need to reiterate what I provided in writing. But that's what I can add.

THE COURT: And I understand, along with the requesting that the motion filing deadline be extended to that point, that the defendant is asking to have June 16 as a deadline to notify the Court whether or not the defendant wishes to pursue a change of venue motion as well.

ATTORNEY STRANG: Yes. And I would propose to be bound by that. You know, at this point I have

1 straddled, in a sense. I have said, and because  
2 it's true, that the defense continues to prefer a  
3 Manitowoc County jury, if we can get an impartial  
4 jury from this county. I recognize the practical  
5 obstacles to that.

6 I also appreciate that the Court and  
7 the Clerk of Court have a good deal of  
8 administrative work to do if venue is to be  
9 changed. In balancing all that, it strikes me as  
10 fair that the defense take a final position on  
11 that issue. And I see no reason not to couple  
12 that with the motion deadline, if the Court will  
13 indulge our scheduling needs in that respect.

14 THE COURT: All right. Mr. Kratz.

15 ATTORNEY KRATZ: Thank you, Judge. I have  
16 several points. First, this Court, on the issue of  
17 motion extension, I believe necessarily needs to  
18 address the trial date issue first. In granting  
19 relief to the defense for moving the trial date past  
20 the current September 5th date, the Court very well  
21 may then wish to similarly extend the motion date.

22 And let me just tell the Court that,  
23 should the Court be moving the trial date, I  
24 don't have any objection to Mr. Strang's request  
25 that the motions themselves be put off for an

1           additional five weeks or so. As to the trial  
2           date, the State does not necessarily object to  
3           the September 5th date being moved, at least in  
4           some some respect, given the Crime Lab analysis  
5           that has now been completed, at least now that --  
6           or what we have already submitted we believe is  
7           completed.

8                   Mr. Strang is correct that we can't  
9           predict if there is going to be additional work  
10           in the future, but at least that what has been  
11           submitted has been completed. The reports are to  
12           be forwarded do Mr. Strang in the near future.

13                   In considering a motion for adjournment  
14           of the trial date, this Court is required to  
15           consider the position not only of the parties,  
16           but also of the victim. Victim Rights, Section  
17           950.04 (1v)(a)requires this Court consider the  
18           victim's position. Victim in a homicide case  
19           extends to the surviving family members.

20                   I can tell the Court that after  
21           explaining the realities of discovery, the  
22           realities of the effective assistance of counsel,  
23           that Mr. Avery is entitled, by Mr. Strang and  
24           Mr. Buting, that the family would not object to a  
25           continuance of the trial date past September 5th.

1 I'm also authorized by the family to extend their  
2 request that the trial date be finished as soon  
3 as this Court is able to realistically schedule  
4 that.

5 The State has suggested to this Court an  
6 October 16 start date, that is, jury selection to  
7 begin on the 16th. That would, with at least the  
8 timeline we have provided the Court, have us  
9 completed by, hopefully, the 17th of November,  
10 and certainly no later than the 22nd of Noember,  
11 which is before the Thanksgiving holiday.

12 That would be an extension of time, I  
13 believe sufficient, for those reasons set forth  
14 in Mr. Strang's arguments to the Court, as  
15 something certainly the State could be prepared  
16 for and could live with. And that is, in fact,  
17 my affirmative recommendation to the Court, that  
18 the trial date be then set as a firm date  
19 beginning October 16th, with motions then to be  
20 filed, both by Mr. Strang and myself, no later  
21 than the 16th of June.

22 THE COURT: Mr. Strang, anything with  
23 respect to the date of trial, should the Court grant  
24 your request to extend the trial date from the  
25 current September date?

1                   ATTORNEY STRANG: October 16 surely would  
2                   be better than September 5, but I don't think it's  
3                   adequate. It's better, but I think not sufficient.  
4                   Again, the defense proposed 2007 because that's what  
5                   we think is necessary to accommodate, for example,  
6                   defense testing, if we need to, once we have got the  
7                   Crime Lab results; to accommodate the exchange of  
8                   expert witnesses; and just to get through the mass  
9                   of discovery here and do the necessary defense  
10                  investigation.

11                  So, I don't want to sound inflexible.  
12                  Again, October 16 is better. It's an improvement  
13                  on September 5. It's not what I would prefer or  
14                  I think we need.

15                  THE COURT: All right. First of all, with  
16                  respect to the request to extend the motions  
17                  deadline, I think the information provided by the  
18                  defense in the motion gives a number of reasons why  
19                  an extension of the deadline for filing pretrial  
20                  motions is appropriate.

21                  The volume of discovery in this case is  
22                  significant. And as I understand it, the  
23                  information that will be provided by the State to  
24                  the defense has not yet to be completed, although  
25                  it's expected to be completed in the near future.

1                   The Court also recognizes that the case  
2                   took somewhat of a different turn, if you will,  
3                   by the filing of a Complaint against an alleged  
4                   co-defendant. And the defense legitimately  
5                   wishes to monitor media reports to assess its  
6                   request for a chain of venue.

7                   For all of those reasons, the Court  
8                   believes that the request to extend the deadline  
9                   for filing pretrial motions in this case is  
10                   appropriate. I'm going to grant the defense  
11                   motion to extend the deadline for filing pretrial  
12                   motions in this case to June 16th of this year.

13                  I will ask the parties to include  
14                  written argument in support of any motion they  
15                  file, with the filing of the motion. I will give  
16                  the other party until June 26th to file any  
17                  written response which they wish to file. And I  
18                  would propose hearing the motions on Thursday,  
19                  July 6th. Hopefully you have got your calendars  
20                  with you.

21                  ATTORNEY KRATZ: I am not available on the  
22                  6th, Judge, in fact.

23                  THE COURT: What about the following week.

24                  ATTORNEY KRATZ: That is, I'm leaving on  
25                  the 6th, actually, to be out of the state until the

1           14th. I would be available on the fifth.

2           Certainly, the week before would work as well.

3           THE COURT: What about the defense?

4           ATTORNEY STRANG: The 5th is fine, the 6th  
5           is fine, the 10th is fine. The Court should  
6           accommodate Mr. Kratz's schedule here, so far as  
7           possible, in that we're the ones moving the motion  
8           deadline.

9           THE COURT: Mr. Kratz.

10          ATTORNEY KRATZ: The 5th should be fine.

11          THE COURT: All right. Let's set it for --  
12          What time on the 5th?

13          ATTORNEY STRANG: The sooner we can, it  
14          appears we would only have one day for that.

15          THE COURT: 9:30, 9:00?

16          ATTORNEY STRANG: I think 9:00 would be  
17          most prudent.

18          THE COURT: All right. Nine o'clock on  
19          July 5th. And I will hold the day for motions on  
20          that day.

21          ATTORNEY KRATZ: Judge, as we have informed  
22          the Court before, Mr. Strang and I will make every  
23          effort, before the 5th, to discuss motions to be  
24          filed. And if we can reach some stipulations, we'll  
25          certainly alert the Court of that on the 5th, or

1 even before.

2 THE COURT: All right. Thank you.

3 Next, the Court will take up the  
4 defendant's motion to adjourn the trial date in  
5 this case. That request is based on a number of  
6 considerations that are set forth in the motion.  
7 One of them is -- relates to the effect of  
8 pretrial publicity. Needless to say, there has  
9 been a significant amount of pretrial publicity  
10 in this case. Though, I will note that the pace  
11 of media reports, at least, has slowed somewhat.

12 There have been no press conferences or  
13 direct communication from the defense attorney's  
14 to the media, recently. And the statements from  
15 both the victim's family and the defendant's  
16 family, to the press also, fortunately, have  
17 settled down somewhat.

18 In considering the request to adjourn  
19 the September trial date, I did take into  
20 consideration, and I am taking into  
21 consideration, all of the reasons offered by the  
22 defense for an adjournment. In that regard, the  
23 defense makes a number of supplemental requests:  
24 First that the Court rule on the defendant's  
25 motion of March 8 for an order limiting public

1 disclosure in this case.

2 In evaluating this request, I cannot  
3 help but note a reference in the defendant's  
4 motion to what purports to be exculpatory DNA  
5 evidence regarding one of the items that was  
6 seized in this case. I think the example of the  
7 reference in this to the pleadings demonstrates  
8 the difficulty of effectively keeping either side  
9 from conveying evidentiary information to the  
10 media even without direct communication.

11 The applicable rule that governs the  
12 attorneys in this case is SCR20 3.6. That rule  
13 provides in relevant part as follows: A lawyer  
14 shall not make an extra judicial statement that a  
15 reasonable person would expect to be disseminated  
16 by means of public communication. If the lawyer  
17 knows, or reasonably should know that it will  
18 have a substantial likelihood of materially  
19 prejudicing an adjudicative proceeding in the  
20 matter.

21 The rule goes on to provide that a  
22 statement referred to in Paragraph A ordinarily  
23 is likely to have such an effect when it refers  
24 to a criminal matter and the statement relates  
25 to, among other things, the results of any

1 examination or test, or the identity or nature of  
2 physical evidence expected to be presented.

3 So the reference in the pleading in this  
4 case, had it been directly communicated to the  
5 media, would have been within the prohibition of  
6 the rule. For that reason the reference in the  
7 motion was, at least technically, not in  
8 violation of the rule. However, in the Court's  
9 opinion, the reference was not really necessary  
10 to support the motion in this case. And it was  
11 placed in a pleading, which by now both parties  
12 are well aware the media regularly reviews in  
13 this case.

14 Therefore, the Court concludes it's  
15 somewhat disingenuous for the defense to ask this  
16 Court to impose a gag order on the attorneys, but  
17 disseminate information to the press indirectly  
18 through a pleading where it's inclusion, for  
19 argumentative purposes the Court believes is  
20 somewhat marginal.

21 My criticism in this regard is not  
22 limited to the most recent example in this  
23 pleading. I'm not at all sure that the press  
24 conference, that was held when the charges were  
25 filed against Mr. Dassey, was limited and

1           certainly could have an adverse affect on  
2           selecting a jury in this case.

3           And I will note that when I listened to  
4           one of the press reports referring to the  
5           information contained in the defendant's motion,  
6           the news reporter reported that the State had no  
7           response at this time but would reserve the right  
8           to respond to the press at a later date.

9           Mr. Kratz, I have no direct information  
10          of anything you told the media, but I will note  
11          that I don't believe within the context of rule  
12          that if that report was accurate that there could  
13          be a direct response to the press for something  
14          that was contained in a pleading.

15          I'm not attempting here today really to  
16          jump down on either of you because I think each  
17          of you are trying to comply with the rules and  
18          allow an impartial jury to be selected. However,  
19          I think that the -- what's taken place here  
20          serves as an example that, even if the Court did  
21          issue a gag order in this case on the attorneys,  
22          it would not prove especially effective.

23          So, since the Court has been requested  
24          to rule on the motion for an order limiting  
25          public disclosure I'm going to rule on that

1 motion at this time. And I'm going to deny the  
2 motion for a number of reasons. First, the  
3 granting of such a motion is highly unusual and  
4 difficult to police. The Court has not, in this  
5 case, seen behavior on either side so egregious  
6 that in the Court's opinion it warranted a gag  
7 order.

8                 Secondly, the Court is satisfied, if the  
9 parties religiously adhere to please with SCR 20  
10 3.6 that rule will provide adequate safeguards in  
11 this case.

12                 And third, as the reference in the  
13 defendant's pleading demonstrates, the Court is  
14 not really satisfied that issuing a gag order  
15 would provide the complete protection that the  
16 Court might hope to gain by issuing such an  
17 order. So I'm going to deny the defense motion  
18 for an order limiting public disclosure.

19                 The defense also asked the Court  
20 strictly enforce SCR Chapter 61, as to the media.  
21 Actually, Mr. Strang, I wasn't exactly sure what  
22 you were driving at there. I haven't -- I  
23 reviewed SCR 61 again. I have not really noted  
24 in this case any violations by the media. I have  
25 been communicating with the media through the

1 media coordinator, and to the best of my  
2 knowledge they have complied with all my KR-SZ  
3 and I think were operating under SCR 61. Is  
4 there anything specific you had in mind?

5 ATTORNEY STRANG: The only ongoing problem  
6 of which I'm aware, it arises with streaming video  
7 on some of the -- at least one of the television  
8 websites -- and probably more than one, although I  
9 don't know that -- and that's -- that's with the  
10 camera running when your Honor is not on the bench.  
11 And that -- As I read Chapter 61, that is not  
12 allowed. I think that after the Court raised this,  
13 at the joint request of the parties, in March, I  
14 think that zooming in on either counsel table has  
15 stopped, at least I haven't noticed anything more  
16 like -- like that.

17 THE COURT: All right. I did, following  
18 our discussion, convey a written instruction to the  
19 media, through the media coordinator. I believe, to  
20 the best of my knowledge at this point, unless I  
21 receive a report otherwise that those instructions  
22 are being complied with.

23 The Court has also been requested to  
24 keep motions in limine, seeking admission or  
25 inclusion of sensitive evidence, filed under

1 seal. The motions in limine themselves, as noted  
2 by the parties, will be filed at a later date,  
3 closer to the trial.

4 But I do agree that motions by the  
5 parties that are due now by June 16th, which  
6 could include a motion from either party to admit  
7 other acts evidence, could prove prejudicial and  
8 make it more difficult to select a fair and  
9 impartial jury. So, I am going to order that any  
10 motions seeking other acts evidence, that are  
11 filed by June 16th, be filed under seal.

12 I ask the parties to differentiate those  
13 motions, put them in a separate document than  
14 your other motions. Include any written argument  
15 in favor of your request with the motion. And  
16 whether or not the Court releases them from being  
17 kept under seal, I will make that determination  
18 after I review them.

19 Mr. Kratz, is there anything you wish to  
20 raise regarding that?

21 ATTORNEY KRATZ: No, Judge, the other acts  
22 motion, we were just going to point out as  
23 Mr. Strang and I had discussed, and I believe it was  
24 outside of the Court's presence, that the concern is  
25 any motions that may require the Court to balance a

1 prejudicial effect versus probative value. Those  
2 wouldn't be limited to the character type evidence,  
3 or other acts evidence, but could include other  
4 kinds of motions in limine where we seek advance  
5 rulings of the Court where that analysis that is to  
6 be made. Those are the kinds of sensitive material  
7 and motions that perhaps the Court is already  
8 envisioning be filed outside of the public domain.  
9 And then the Court can rule on dissemination  
10 thereafter.

11 THE COURT: I know the parties have  
12 previously agreed to, informally at least, exchange  
13 motions with each other before they are filed and,  
14 certainly, I ask that do you that. If either of you  
15 have any motions you see are going to be filed by  
16 the other side that you file should also fall within  
17 the Court's order, we can conduct a telephone  
18 conference ahead of time. You can notify me of  
19 those ahead of time and I would make a  
20 determination.

21 The Court is also -- or the defense also  
22 asks the Court to reconsider the Court's motion  
23 denying modification of bail. I wouldn't take  
24 such action unless a formal motion was made to  
25 that effect. But I will simply state at this

1 time, I think I have addressed that issue  
2 previously on the record and I'm not aware of any  
3 information that would cause the Court to  
4 reconsider the decision that's already been made.

5 With those considerations in mind, the  
6 Court has been asked to adjourn the trial date.  
7 And with respect to the trial date, first of all,  
8 I agree and I don't really hear the State to be  
9 seriously disputing it, that an adjournment trial  
10 date from the early September date is called for  
11 in this case.

12 The case not only involves voluminous  
13 discovery, but there's been a second round of it  
14 related to a subsequent investigation by the  
15 State. I think the defense, which to this point  
16 hasn't received all of the lab results from the  
17 State, is entitled to adequate time in order to  
18 assess the results of the State's investigation,  
19 to evaluate those results, and to determine  
20 whether or not the defense wishes to conduct  
21 additional testing on its own.

22 That takes time and that -- I believe  
23 the time that's required would be pushing it, at  
24 least if we stuck with the September trial date.  
25 I do feel that there are countervailing reasons

1           for holding the trial promptly. People's  
2       memories tend to fade, both parties are entitled  
3       to a trial that is held as soon as it can  
4       reasonably be held, giving the parties an  
5       opportunity to prepare.

6           I believe, in this case, it's most  
7       appropriate to adjourn the trial date in this  
8       case to Monday, October 16th. I believe that has  
9       a number of advantages. First of all, it -- that  
10      means it would take place more than five months  
11      from today. I think that would allow dissipation  
12      of any adverse publicity there might have taken  
13      place already.

14           It gives the party an adequate chance to  
15      prepare and yet it does not unduly delay the  
16      trial in this case. By starting it on  
17      October 16, I think it can be completed before  
18      the Thanksgiving holiday. And for those reasons  
19      I think that's an appropriate delay.

20           I haven't heard anything specific that  
21      would call on the Court to consider a delay  
22      longer than that. So I'm going to delay the  
23      start of trial until Monday, October 16th. Is  
24      there anything else that either party wishes the  
25      Court to take up this morning?

1                   ATTORNEY KRATZ: Mr. Strang, with that new  
2 trial date, had previously discussed with me an  
3 exchange of experts and a more detailed scheduling  
4 order regarding some more detailed discovery  
5 matters. May I suggest, Judge, that the Court allow  
6 Mr. Strang and I to try to resolve those matters and  
7 report to the Court, within our correspondence, by  
8 June 16th, as to our discussion as to exchange of  
9 experts, and the like, and other kinds of scheduling  
10 matters, and then should we need acquiescence or  
11 approval of the Court, that we can seek that  
12 sometime after the 16th.

13                   THE COURT: All right. Mr. Strang.

14                   ATTORNEY STRANG: That makes sense. And I,  
15 further, will take as implicit and consider myself  
16 bound by a June 16 deadline for making a final  
17 decision on change of venue.

18                   THE COURT: Yes.

19                   ATTORNEY STRANG: Barring something really  
20 unforeseen happening.

21                   THE COURT: I meant to include that in your  
22 order; yes, you can consider that included. And at  
23 this point, I haven't specifically addressed an  
24 additional scheduling order to deal with matters  
25 before the trial. I certainly anticipate that there

1 will be one.

2 I appreciate the fact that the attorneys  
3 will be talking with each other and attempt to  
4 present the Court with joint recommendations on  
5 dates, but there will be a date, for example, for  
6 filing motions in limine and that type of thing  
7 before the trial. Anything else this morning?

8 ATTORNEY KRATZ: Not by the State, Judge.

9 ATTORNEY STRANG: Nothing here either.

10 THE COURT: All right. If not, the Court  
11 will prepare an order reflecting the Court's  
12 decision this morning on the motions. And with  
13 that, we're adjourned for today.

14 ATTORNEY KRATZ: Thank you, Judge.

15 THE COURT: The Clerk just reminded me of  
16 something, the May 18 and 19 dates that had been  
17 held for hearing, the motions which were due on May  
18 1st, the hearing on those dates are cancelled.

19 ATTORNEY KRATZ: Thank you, Judge.

20 ATTORNEY FALLON: Thank you.

21 (Proceedings concluded.)

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

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 [redacted] day of [redacted], 2006.  
16  
17  
18

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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22  
23  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARINGS

5 VS. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

9  
10 DATE: JULY 5, 2006

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

13 APPEARANCES:

14 KENNETH R. KRATZ & THOMAS J. FALLON  
15 Special Prosecutors  
16 On behalf of the State of Wisconsin.

17 DEAN ARTHUR STRANG & JEROME F. BUTING  
18 Attorneys at Law  
19 On behalf of the Defendant.

STEVEN A. AVERY  
Defendant  
Appeared in person.

20 \* \* \* \* \*

21 TRANSCRIPT OF PROCEEDINGS

22 Reported by Diane Tesheneck, RPR

23 Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery. It's Case No.  
3                   05 CF 381. This case is scheduled for a hearing on  
4                   a number of pretrial motions this morning. Will the  
5                   parties state their appearances for the record,  
6                   please.

7                   ATTORNEY KRATZ: The State of Wisconsin  
8                   appears by Calumet County District Attorney Ken  
9                   Kratz appearing as Special Prosecutor. Also  
10                  appearing this morning is Tom Fallon from the  
11                  Department of Justice, also appointed by this Court  
12                  as Special Prosecutor.

13                  ATTORNEY STRANG: Good morning, Steven  
14                  Avery appears in person, he's second to my right.  
15                  Jerome Buting of Buting and Williams is immediately  
16                  next to me, representing Mr. Avery. And I'm Dean  
17                  Strang, I also represent Mr. Avery.

18                  THE COURT: All right. I will indicate for  
19                  the record that before we began today, I met with  
20                  counsel to discuss the logistics of the hearing  
21                  today. I believe both parties agree that there is  
22                  some overlap with some of the motions today and some  
23                  of those will be heard together. With respect to  
24                  the order of the motions, the parties have  
25                  requested, and the Court agrees, that we'll proceed

1 first on the Defendant's Motion to Dismiss.

2 And I understand, Mr. Strang, that the  
3 defense has some evidence to offer in relation to  
4 that motion, as well as the Motion For Change of  
5 Venue and Motion to Exclude the Sheriff's  
6 Department and It's Employees From Testifying and  
7 Overseeing Jurors; is that correct?

8 ATTORNEY STRANG: That is, your Honor.

9 THE COURT: All right. You may call your  
10 witness at this time.

11 ATTORNEY STRANG: Defense calls Sheriff  
12 Kenneth Petersen.

13 ATTORNEY KRATZ: I should note, Judge, that  
14 the examination of Sheriff Petersen and the argument  
15 on this particular motion will be done by  
16 Mr. Fallon.

17 THE COURT: Very well.

18 **SHERIFF KENNETH J. PETERSEN**, called as a  
19 witness herein, having been first duly sworn, was  
20 examined and testified as follows:

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

23 THE WITNESS: Kenneth J. Petersen,  
24 P-e-t-e-r-s-e-n.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY STRANG:

2 Q. Good morning. Let's start with a little bit of  
3 background if we may, Sheriff Petersen. You have  
4 been with the Manitowoc County Sheriff's  
5 Department for about 31 years at this point?

6 A. Correct.

7 Q. Started as a patrol deputy?

8 A. That's correct.

9 Q. You have served as sheriff for the last six  
10 years, roughly?

11 A. Correct.

12 Q. Six and a half years, pretty close to that right  
13 about now?

14 A. It will be six years in January.

15 Q. January, that's right, you were sworn in in  
16 January, 2001, as the sheriff?

17 A. Correct.

18 Q. As the Manitowoc County Sheriff, it would be fair  
19 to describe you as the chief county law  
20 enforcement officer for the County of Manitowoc?

21 A. Yes.

22 Q. During your experience with the Manitowoc County  
23 Sheriff's Department, sir, when was the first  
24 time in which you participated, personally, in a  
25 prosecution of Steven Avery on a charge related

1 to murder?

2 A. You mean murder of a person?

3 Q. Or attempted murder, yes, of a human being?

4 A. I think 1984.

5 Q. And that involved an event that since has become  
6 widely-known, involved a violent assault on a  
7 beach here in Manitowoc County?

8 A. Correct.

9 Q. You, personally -- I'm going to at least suggest  
10 to you that I think it was 1985; does that  
11 sound--

12 A. Somewhere in the mid '80's, yes.

13 Q. We're talking about a violent assault on a beach?

14 A. Yes.

15 Q. You, personally, were requested by the, then,  
16 sheriff in Manitowoc County, Tom Kocourek, to  
17 arrest Mr. Avery on a charge of attempted murder?

18 A. Yes.

19 Q. You did that?

20 A. Yes.

21 Q. Prior to that arrest, you already new where  
22 Steven Avery lived in 1985?

23 A. Yes.

24 Q. And that prosecution went forward following  
25 Mr. Avery's arrest?

1 A. Yes, it did.

2 Q. On a charge of attempted first-degree intentional  
3 homicide?

4 A. I'm not sure what the actual charge was at the  
5 time of trial.

6 Q. But attempted murder charge and a sexual assault  
7 charge of some kind, perhaps others, correct?

8 A. Yes.

9 Q. That resulted in a conviction?

10 A. Yes, it did.

11 Q. Resulted in a 32 year sentence being imposed?

12 A. Yes.

13 Q. You participated after the arrest of Mr. Avery,  
14 personally, in that prosecution, as a witness in  
15 that trial?

16 A. Yes.

17 Q. Later, in 2003 to be specific, the claim that  
18 Mr. Avery had made in 1985, that he was innocent  
19 of those crimes, proved to be true?

20 A. Possibly.

21 Q. That is, the State made a motion to release him  
22 from prison?

23 A. Yes.

24 Q. After some DNA testing was done?

25 A. Yes.

1 Q. That motion was made by the State, by the  
2 District Attorney of Manitowoc County, after  
3 consulting with you?

4 A. Yes.

5 Q. And Mr. Avery was released the day, or the day  
6 following the State's motion to release him?

7 A. Yes.

8 Q. Now, when you say possibly, is there any question  
9 in your mind that Gregory Allen was identified by  
10 DNA evidence as the sole attacker of the woman at  
11 issue on the beach in 1985?

12 A. Yes, I would have doubts.

13 Q. I'm sorry?

14 A. I would have doubt.

15 Q. You have doubts about that?

16 A. Yes, I believe the DNA created reasonable doubt  
17 and enough to release Steve, but I don't think  
18 that single hair was enough to convict Gregory  
19 Allen.

20 Q. Okay. Do you have doubts whether, in fact,  
21 Gregory Allen was the person who's hair was  
22 tested?

23 A. No, I believe it was.

24 Q. You base your doubts on the reliability of DNA  
25 evidence?

1 A. No.

2 Q. That is, you accept the DNA evidence and that the  
3 pubic hair at issue, in fact, was Gregory  
4 Allen's?

5 A. Yes.

6 Q. You have no reason to question or doubt the  
7 claims of the victim, the testimony of the victim  
8 in that case that one man, and one man only,  
9 attacked her in 1985 on the beach?

10 A. Yes.

11 Q. You do doubt that?

12 A. Oh, no. No.

13 Q. Okay. Mr. Avery, in any event, spent, give or  
14 take, 18 years in prison following his conviction  
15 for that crime?

16 A. I believe he had six years, also, on another  
17 charge.

18 Q. Running concurrently?

19 A. Right.

20 Q. Okay. So the total time in prison was about 18  
21 years?

22 A. Yes.

23 Q. Or in custody, I should say more accurately. You  
24 arrested him in July of 1985?

25 A. Yes.

1 Q. He was released on September 11, 2003?

2 A. Yes.

3 Q. 18 years and two months, give or take, in  
4 custody?

5 A. Yes.

6 Q. As you point out, six years of that also being on  
7 a separate and unrelated conviction?

8 A. Correct.

9 Q. But running at the same time, or concurrently?

10 A. Yes.

11 Q. You know, in your life, have you -- have you ever  
12 spent a day, or a night, in jail, for a crime you  
13 didn't commit?

14 A. No.

15 Q. Certainly not 18 years?

16 A. No.

17 Q. Or 12 years, or anything close to that?

18 A. No.

19 Q. If you were sitting here, if you were in Steven  
20 Avery's chair and you were in his shoes, so to  
21 speak, would you trust the Manitowoc County  
22 Sheriff's Department in the investigation and  
23 prosecution of yourself, a second time?

24 MR. FALLON: Objection, speculation.

25 Q. (By Attorney Strang)~ I'm not asking you to

1 speculate at all. I'm saying, if you were Steven  
2 Avery, with your present sense, on whether you  
3 would trust your department?

4 MR. FALLON: Relevance, then.

5 THE COURT: I'm going to sustain the  
6 objection.

7 Q. (By Attorney Strang)~ You have told us that you  
8 are the chief county law enforcement officer?

9 A. Yes.

10 Q. Meaning, you run the Manitowoc County Sheriff's  
11 Department?

12 A. Correct.

13 Q. The Sheriff's Department here in Manitowoc  
14 County, as in most counties, is organized with  
15 people in rank, correct?

16 A. Yes.

17 Q. That's a clumsy way to put it, but you hold the  
18 rank of sheriff?

19 A. Yes.

20 Q. Obviously. The Wisconsin Statutes require you to  
21 have something called and under sheriff?

22 A. No.

23 Q. You do have an under sheriff?

24 A. I do.

25 Q. Okay. And the under sheriff is the number two

1           person in the department?

2   A.   Yes.

3   Q.   Is that person, whose name I think is

4           Mr. Hermann, if I have it right?

5   A.   That's correct.

6   Q.   Does he have another rank or title in addition to

7           under sheriff?

8   A.   Inspector.

9   Q.   All right. And he's the one inspector for the

10           Manitowoc County Sheriff's Department?

11   A.   Yes.

12   Q.   Now, he reports directly to you?

13   A.   Yes.

14   Q.   Others in the department then report up through

15           him?

16   A.   That's correct.

17   Q.   Below him, who's the next ranking officer?

18   A.   Deputy Inspector of Operations.

19   Q.   And that's who?

20   A.   Greg Schetter.

21   Q.   I'm sorry, maybe you could spell that for the --

22   A.   S-c-h-e-t-t-e-r.

23   Q.   Thank you. He's the deputy inspector?

24   A.   Yes.

25   Q.   Below that who do we have?

1 A. Deputy Inspector of Support, that's Larry  
2 Ledvina, L-e-d-v-i-n-a.

3 Q. That's not a parallel position; the one deputy  
4 inspector is below the other?

5 A. Yes.

6 Q. All right. How far down -- I'm not going to go  
7 through everybody at the department, but how far  
8 down do we get before we get to the chief  
9 investigator, or the lieutenant in charge of the  
10 Detective's Bureau?

11 A. He would be under the Deputy Inspector of  
12 Operation.

13 Q. As well as Mr. Ledvina?

14 A. No, it's two separate divisions.

15 Q. I understand that but, in other words, under  
16 Mr. Schetter, you said --

17 A. Yes.

18 Q. -- would be the lieutenant in charge of the  
19 Detective's Bureau?

20 A. Yes.

21 Q. And the other deputy inspector?

22 A. No, the Deputy Inspector of Support would take  
23 care of the court services, secretarial  
24 functions, records releases, that type of thing.

25 Q. It's my clumsiness. I understand they have

1           separate areas, but the person who's the  
2           lieutenant in charge of the Detective's Bureau is  
3           James Lenk?

4       A. Yes.

5       Q. L-e-n-k?

6       A. Yes.

7       Q. All right. Mr. Lenk and Mr. Vetter (sic) both  
8           report to Mr. Schetter; is that right -- or  
9           Mr. Ledvina?

10      A. Ledvina.

11      Q. Both report to Mr. Schetter?

12      A. Ledvina wouldn't directly report to him, but Lenk  
13           would.

14      Q. All right. And then below Lenk, there are  
15           investigators or detectives, whichever you call  
16           them, and -- correct?

17      A. Correct.

18      Q. I'm sorry, I should have paused there. Where do  
19           sergeants fall in the hierarchy?

20      A. Sergeants are in patrol, normally. I have  
21           sergeants in the jail and on the road.

22      Q. They are in charge of deputies?

23      A. Correct. But there's lieutenants in patrol also,  
24           which would supervise the sergeants in the  
25           patrol.

1 Q. Got it. So if we work our way up, we have got  
2 deputies in the various divisions of the  
3 department?

4 A. Yes.

5 Q. They report directly to sergeants?

6 A. Yes.

7 Q. Sergeant's report directly to lieutenants?

8 A. Yes.

9 Q. You haven't described any captain's, is that --

10 A. Deputy inspector would be equivalent to a  
11 captain.

12 Q. All right. And you have told us about them. So  
13 the lieutenants report to deputy inspectors?

14 A. Correct.

15 Q. Who deputy inspectors report to the inspector and  
16 under sheriff?

17 A. Yes.

18 Q. And then, ultimately, the top of the chart, or  
19 the pyramid, is you?

20 A. Correct.

21 Q. Now, you are familiar with a man named Andrew  
22 Colborn?

23 A. Yes.

24 Q. All right. He's a sergeant in your department?

25 A. Yes.

1 Q. What -- Just to identify him, what's his area of  
2 responsibility?

3 A. He's a patrol sergeant.

4 Q. Patrol meaning, covering the county's roads?

5 A. Right. He would be referred to as a shift  
6 commander, so he would assign the beats, the  
7 vehicles, and brief the patrolmen before they go  
8 out into the road.

9 Q. In the patrol division?

10 A. Yes.

11 Q. Another person who will come up is, I believe, a  
12 Lieutenant named Remiker. I could be wrong. He  
13 may be a detective.

14 A. Remiker is a detective.

15 Q. All right. So he's in the Detective Bureau,  
16 obviously?

17 A. Correct.

18 Q. He would report directly to Mr. Lenk?

19 A. Yes.

20 Q. And, in a sense -- I don't mean this to sound  
21 like a loaded question, if it does, but in a  
22 sense, the Manitowoc County Sheriff's Department  
23 has a paramilitary structure in that we have  
24 these ranks that we have now established, and the  
25 chain of command is clear and well established?

1 A. Yes.

2 Q. You, as the sheriff, set the overall tone for the  
3 department?

4 A. I believe so.

5 Q. You try to express your values?

6 A. Yes.

7 Q. Your policy directives?

8 A. Yes.

9 Q. And, ordinarily, you would do that -- or I  
10 shouldn't even say ordinarily -- but you may do  
11 that by written directive?

12 A. Yes.

13 Q. That written directive may go directly to one of  
14 your subordinates?

15 A. It could.

16 Q. Or it could go to a number of people, including  
17 those several steps down the ladder, correct?

18 A. Correct.

19 Q. You may send a written directive to all staff,  
20 for example?

21 A. Correct.

22 Q. But in any event, you are the person who sets the  
23 tone and the policies of your department?

24 A. Yes.

25 Q. You have the power to hire?

1 A. Yes.

2 Q. You have the power to fire, probably with some  
3 oversight from the County Board or some committee  
4 of the County Board?

5 A. Generally, we have to inform personnel and, of  
6 course, we have to follow the State Statutes.

7 Q. Yes, of course. But in -- It would be fair to  
8 say that, in a rough sense, the buck stops on  
9 your desk?

10 A. Yes.

11 Q. Do you find, in general, that the Manitowoc  
12 County Sheriff's Department operates as a well  
13 disciplined organization?

14 A. I believe so.

15 Q. That is, your directives are communicated,  
16 faithfully, to those below you?

17 A. Yes.

18 Q. And they are followed?

19 A. Yes.

20 Q. On Saturday, November 5, 2005, and just to orient  
21 you, that Teresa Halbach, we now know, was last  
22 seen on October 31, 2005. I don't expect that  
23 you necessarily know this, but I'm led to believe  
24 that she was reported missing on Thursday,  
25 November 3. All right.

1                   So I'm talking about two days later, on  
2 Saturday, November 5, 2005, at about 11:30 or  
3 11:45 in the morning, a decision was made to  
4 transfer control of the investigation into her  
5 disappearance, and circumstances surrounding it,  
6 to the Calumet County Sheriff's Department and to  
7 DCI, or the Division of Criminal Investigation;  
8 is that true?

9 A. Yes.

10 Q. That decision to transfer control was made by  
11 you?

12 A. Indirectly, yes.

13 Q. You say indirectly, the primary focus of the  
14 investigation was in Manitowoc County, within the  
15 metes and bounds of Manitowoc County, correct?

16 A. Correct.

17 Q. To fall within your jurisdiction?

18 A. Correct.

19 Q. Your department had been involved in early steps  
20 in the investigation of Ms Hallbach's  
21 disappearance?

22 A. Correct.

23 Q. Maybe you would explain, then, for me, what you  
24 mean when you say, indirectly, the decision that  
25 Saturday morning was made by you?

1 A. I had been out of town the previous week. I was  
2 out in Seattle, Washington. And I arrived home  
3 probably 10:30, quarter to 11, Saturday morning.  
4 And that decision to transfer had already been  
5 made, I assume, by the inspector. I never  
6 inquired. I agreed with the way it was going, so  
7 I didn't interfere.

8 Q. Okay. I need to explore that just a little bit  
9 further to nail down timing. When you say you  
10 arrived home, do you mean physically at your  
11 home?

12 A. Yes.

13 Q. All right. You didn't go in to work immediately  
14 that Saturday morning?

15 A. No.

16 Q. Had you been in contact with the office during  
17 the course of that week in Seattle?

18 A. No.

19 Q. So you really were --

20 A. The first I heard --

21 Q. -- out of loop so to speak?

22 A. Yeah. The first I heard about the Halbach case  
23 was when a reporter called me Saturday after 11.

24 Q. Do you recall about when, after 11?

25 A. About 11:15, somewhere in that general area.

1 Q. Okay. And this was entirely news to you at that  
2 point?

3 A. Yes.

4 Q. You got in contact with Mr. Hermann?

5 A. Yes.

6 Q. Inspector Hermann?

7 A. Right.

8 Q. Do you remember about when you did that?

9 A. It had been shortly after the reporter called.

10 Q. I will bet. By telephone?

11 A. Yes.

12 Q. All right. And at that point, he told you that  
13 he had already decided to shift the primary  
14 responsibility for the investigation to the two  
15 other law enforcement agencies I described?

16 A. Yes.

17 Q. Did he tell you when he had made that decision?

18 A. No. He had talked about conferring with Corp  
19 Counsel and that was what he advised. Normally  
20 we follow his advice.

21 Q. You agreed with that advice?

22 A. Yes.

23 Q. You had a discussion with him on his reasoning?

24 A. Yes.

25 Q. And in a nutshell -- and you are free to disagree

1           or explain this -- but in a nutshell, the reason  
2           he described to you, after consulting with  
3           Corporation Counsel, was to avoid the appearance  
4           or the reality of a conflict of interest?

5       A.    Correct.

6       Q.    Because at least a person of interest at that  
7           point was Steven Avery?

8       A.    Yes.

9       Q.    You were told that?

10      A.    No, they didn't give me any specific suspects or  
11           people of interest. They merely stated that the  
12           vehicle had been found on the Avery Salvage Yard  
13           property.

14      Q.    Correct. And what further information did you  
15           need, or ask for, or inquire about, to decide  
16           whether, in fact, there was a conflict of  
17           interest or the appearance of one?

18      A.    I didn't need anything more than that at that  
19           point.

20      Q.    Avery Auto Salvage Yard, car found, that was  
21           enough?

22      A.    Sure.

23      Q.    The reason you perceived, or you agreed with  
24           Inspector Hermann's assessment, that there was a  
25           potential conflict of interest, is that at that

1 time a civil lawsuit by Steven Avery was pending  
2 against Manitowoc County and some former  
3 officials?

4 A. Correct.

5 Q. That was a civil lawsuit for 36 million dollars  
6 in damages?

7 A. Correct.

8 Q. It related to the 1985 conviction that you and I  
9 have discussed this morning?

10 A. Correct.

11 Q. Did you see that as a real and present conflict  
12 of interest on November 5?

13 A. I don't see it so much as a conflict of interest,  
14 I would say a prudent decision just to keep  
15 accusation free.

16 Q. All right. And what did you -- what did you  
17 understand the decision to be, in terms of the  
18 shifting of responsibility?

19 A. That the Calumet County Sheriff would run the  
20 investigation and I would pay for it.

21 Q. Okay. In addition to paying for the  
22 investigation, what role was the Manitowoc County  
23 Sheriff's Department to play, if any?

24 A. Support.

25 Q. What does support mean?

1 A. Logistics, equipment, whatever they needed,  
2 manpower.

3 Q. So the Calumet County Sheriff, Mr. Pagel, was to  
4 communicate with you, or your department?

5 A. As far as?

6 Q. Logistics, support, manpower, whatever he needed?

7 A. Yes.

8 Q. All right. So he would request it of you, or  
9 someone in your department?

10 A. Yes.

11 Q. And then you would provide it?

12 A. Yes.

13 Q. The Manitowoc County Sheriff's Department, in  
14 that way, continued to play an active role in the  
15 investigation into Ms Halbach's disappearance?

16 A. Yes, I believe so.

17 Q. You monitored the progress of that investigation?

18 A. No, I have never seen a report on the actual  
19 investigation.

20 Q. All right.

21 A. I have gotten copies of bills, we have had  
22 conferences on security, that type of thing.

23 Q. The guy in charge usually gets the bills.

24 A. Yeah.

25 Q. But in your department, reports generated by

1           deputies, or detectives, or sergeants, or  
2           lieutenants, don't necessarily all come up to  
3           your desk?

4       A. Most of them do.

5       Q. And this one may have or haven't?

6       A. Have not.

7       Q. Why?

8       A. I divorced myself from the early investigation.

9       Q. You personally?

10      A. Correct.

11      Q. All right. When did that happen, Sheriff  
12           Petersen?

13      A. On that Saturday.

14      Q. Immediately?

15      A. Right.

16      Q. Okay. Who did you leave as the liaison, or the  
17           contact person, or the reviewing person within  
18           your department, for your department's role in  
19           the investigation?

20      A. Deputy Inspector Schetter.

21      Q. With a formal directive to him of some kind?

22      A. No.

23      Q. With a conversation?

24      A. No, I didn't talk to him. He may have talked to  
25           the inspector, he didn't talk to me.

1 Q. Oh. Okay. Do you know whether someone directed  
2 Deputy Inspector Schetter to play a reviewing  
3 role?

4 A. No.

5 Q. How do you know he is?

6 A. Because he was out at the scene with the sheriff  
7 and his people.

8 Q. All right. And who is getting the reports  
9 generated by the Manitowoc County Sheriff's  
10 Department on the Halbach investigation and,  
11 ultimately, the arrest and prosecution of  
12 Mr. Avery?

13 A. I would believe Calumet County Sheriff's  
14 Department would.

15 Q. Not Deputy Inspector Schetter?

16 A. Well, they would still be in our files, there  
17 would be copies there -- or originals there. The  
18 copies would be -- would be shipped.

19 Q. All right. I will see if I can do this  
20 efficiently, and the problem is, you may not know  
21 some of the facts I'm going to suggest to you.

22 A. Okay.

23 Q. Because it sounds like I have seen Manitowoc  
24 Sheriff's Department reports that you probably  
25 have not. All right?

1 A. Sure.

2 Q. But let me suggest these things and we'll see  
3 what you know and what you don't know, or what  
4 you dispute. All right. The first law  
5 enforcement officer to speak with -- speak  
6 personally with Steven Avery about Teresa  
7 Halbach, which was on November 3, was Sergeant  
8 Andrew Colborn of your department; is that right?

9 A. Don't know.

10 Q. One way or the other?

11 A. Yeah, don't know.

12 Q. You don't dispute that?

13 A. Yeah, I don't know.

14 Q. All right. The first law enforcement officers to  
15 search Mr. Avery's trailer, this time with  
16 consent, on Friday, November 4, were two members  
17 of the Manitowoc County Sheriff's Department,  
18 Lieutenant Lenk and Detective Remiker?

19 A. I believe they were with a Calumet County  
20 officer.

21 Q. You think they may have been with a Calumet  
22 County officer?

23 A. I believe so.

24 Q. But you know that Lenk and Remiker --

25 A. Had been at the trailer.

1 Q. -- did a consent search of the trailer on Friday,  
2 November 4th?

3 A. Yes, I believe so.

4 Q. On Saturday, November 5, the first law  
5 enforcement officer, as opposed to citizen,  
6 unsworn citizen, to see Teresa Halbach's Toyota  
7 Rav 4, was a member of your department, Detective  
8 Remiker?

9 A. I don't know that.

10 Q. You don't dispute it, you just don't know one way  
11 or the other?

12 A. I don't know.

13 Q. All right. The first search of Mr. Avery's  
14 trailer, with a search warrant, occurred later on  
15 Saturday, November 5. And that involved, again,  
16 Detective Remiker of your department and Calumet  
17 County Investigator Gary Steier, or is that  
18 something you know?

19 A. That, I believe, is what I was referring to.

20 Q. All right. The first law enforcement officers  
21 that day to collect any suspected blood in  
22 Mr. Avery's trailer, or on it, was, again,  
23 Detective Remiker of your department, correct?

24 A. It's possible, yes.

25 Q. He gave that to Sergeant Colborn of your

1                   department?

2       A.   That I don't know.

3       Q.   Don't dispute, but just don't know?

4       A.   Yeah.

5       Q.   The detached garage between Mr. Avery's trailer  
6                   and Barb Yanda's trailer, I believe first was  
7                   searched pursuant to warrant on Sunday, November

8                   6.   Were you aware that Detective Remiker and  
9                   Lieutenant Lenk and Sergeant Colborn, along with  
10                  a Calumet County deputy, were the first law  
11                  enforcement officers to search the detached  
12                  garage?

13                   MR. FALLON:   Excuse me, your Honor, I'm  
14                  going to impose an objection on this particular line  
15                  of questioning as -- and the reason is, the previous  
16                  testimony of Sheriff Petersen indicating that as of  
17                  earlier that day, 11:30, 11:45, control of the  
18                  investigation was passed.   And given that fact, the  
19                  fact that there may have been some logistical or  
20                  support personnel provided by the Manitowoc County  
21                  Sheriff's Department to assist in these searches or  
22                  contacts, was all under the control and direction of  
23                  Sheriff Pagel at Calumet County.   Thus, this  
24                  particular line of questioning, I would suggest to  
25                  the Court, is irrelevant.

1                   THE COURT: Mr. Strang.

2                   ATTORNEY STRANG: Let me ask some  
3                   clarifying questions, because I'm not necessarily in  
4                   disagreement with the factual portion of  
5                   Mr. Fallon's statement, and I will clarify that.

6       Q. (By Attorney Strang)~ Any actions that members of  
7                   your department took after, let's say 11:30, on  
8                   Saturday, November 5, you believe would have been  
9                   taken with the knowledge, or under the direction,  
10                  at the request, however you want to put it, of  
11                  either the Calumet County Sheriff's Department or  
12                  the DCI?

13      A. Correct.

14      Q. That is, neither you, nor Inspector Hermann, nor  
15                  anybody above the level of the people in your  
16                  department involved, were directing, or  
17                  controlling, or supervising the steps of those  
18                  people?

19      A. Correct.

20      Q. My -- And I think you and I are in agreement, I'm  
21                  not trying to suggest otherwise, my questions  
22                  really are just inquiring into who the boots on  
23                  the ground were, who the people were, not who's  
24                  directing them, or telling them what to do and  
25                  not to do; do you understand me that way?

1 A. Correct.

2 Q. Okay. So with that limitation, Lenk, Remiker and  
3 Colborn, along with a Calumet deputy -- Calumet  
4 County deputy, were the first to search the  
5 detached garage on Sunday, November 6th?

6 MR. FALLON: I'm going to renew the  
7 objection. I understand counsel's point, but I  
8 still fail to see the relevance as it pertains to  
9 the motion to dismiss and/or the motion to  
10 exclude.

11 ATTORNEY STRANG: It bears more on the  
12 motion to exclude. I have moved to exclude not just  
13 Sheriff Petersen from further involvement in this  
14 case, supervising the jury, or in a logistical or  
15 support role to the Court, but have moved to exclude  
16 the entire department from providing that logistical  
17 or support role. So, I think this has a bearing,  
18 the involvement of others in the department clearly  
19 has a bearing on that motion, your Honor.

20 THE COURT: I believe it relates to the  
21 motion to exclude, so I'm going to allow it.

22 ATTORNEY STRANG: Do you recall my last  
23 question?

24 THE WITNESS: No.

25 Q. (By Attorney Strang)~ Sunday, November 6,

1           detached garage, first law enforcement officers  
2           to search, Lenk, Remiker, Colborn, and a deputy  
3           from Calumet whose has a name, and that's Dan  
4           Kucharski?

5       A. I wouldn't know who searched it.

6       Q. Don't know one way or the other?

7       A. No, I don't know who was in the garage.

8       Q. Don't dispute that the three Manitowoc people  
9           were among the first law enforcement people to  
10          enter the garage?

11      A. It's possible.

12     Q. All right. This one you may know. On November  
13       8, which is Tuesday, it was widely reported that  
14       a law enforcement officer found a Toyota key that  
15       fit the Toyota Rav 4, in the bedroom of Steven  
16       Avery, in the trailer; do you recall that?

17     A. That would be Detective Lenk.

18     Q. That was Detective Lenk -- or Lieutenant Lenk of  
19       your department?

20     A. Yes.

21     Q. Law enforcement officers first came across bone  
22       fragments in a burn pit out -- south, south and  
23       east of the Avery -- the Steven Avery trailer on  
24       November 8 as well. Do you recall Deputy Jost,  
25       or Sergeant Jost, of your department, as being

1           the first officer who claimed to see a bone  
2           fragment?

3       A. I don't know who saw the bone fragments.

4       Q. One way or the other?

5       A. Correct.

6       Q. Am I pronouncing Jost's name right? J-o-s-t?

7       A. Yes.

8       Q. Now, of the names that have come up here we  
9           have -- I have mentioned Lieutenant Lenk and  
10          Detective Remiker and Sergeant Colborn, more than  
11          once each, this morning. I want to be clear, one  
12          of the reasons you disengaged personally,  
13          completely, from this investigation, on November  
14          5, is that you, personally, had sat for a  
15          deposition in Steven Avery's civil claim against  
16          Manitowoc County?

17      A. No, I don't think I had anything to do with that  
18          decision, no.

19      Q. Let's break this down. First of all, you did  
20          have your deposition taken in that lawsuit?

21      A. Yes.

22      Q. You had your deposition taken on October 13,  
23          2005; does that sound right?

24      A. It's possible.

25      Q. About two and a half, three weeks, before Ms

- 1                   Halbach disappeared?
- 2     A.   Somewhere in that time period.
- 3     Q.   And the other two members of your department who
- 4                   had their depositions taken about the same time
- 5                   were Lieutenant Lenk and Sergeant Andrew Colborn,
- 6                   correct?
- 7     A.   I don't know. I don't know who gave depositions.
- 8     Q.   You don't one way or the other?
- 9     A.   I saw one person, actually, two people, but I
- 10                  don't know who they all deposed now.
- 11    Q.   I think one of them had his deposition taken the
- 12                  same day you did. Did you ever talk to
- 13                  Lieutenant Lenk about having his deposition taken
- 14                  in that lawsuit?
- 15    A.   No.
- 16    Q.   Or Sergeant Colborn?
- 17    A.   No.
- 18    Q.   You don't disagree that they both sat for
- 19                  depositions in that lawsuit in mid-October, 2005,
- 20                  you just don't know?
- 21    A.   As I recall, that had something to do with some
- 22                  information that came somewhere in the late 90's.
- 23    Q.   Mid 1990's, that's right.
- 24    A.   Yeah, but I don't know when they were deposed. I
- 25                  wouldn't have a clue.

1 Q. You understand they were, you just don't know  
2 when?

3 A. Correct.

4 Q. And one of the things, that initially, I think,  
5 probably brought you here, was an interview, or a  
6 special two part series that FOX 11 TV in Green  
7 Bay did in May; do you remember that?

8 A. Yes.

9 Q. I'm not going to go into the substance of that.  
10 I just want to nail down a couple of questions.  
11 First of all, that was you who appeared as  
12 Sheriff Petersen in that two part segment?

13 A. Yes.

14 Q. All right. Do you remember now about when you  
15 actually sat for the interview, or interviews,  
16 that were aired on May 10 and 11?

17 A. I believe it was somewhere in the second half of  
18 April.

19 Q. Okay. So two weeks or more before this segment  
20 aired?

21 A. At least two weeks before.

22 Q. Sometime after April 15, roughly?

23 A. Roughly.

24 Q. I mean that's your best recollection as you sit  
25 here?

1 A. Yes.

2 Q. Do you remember whether there was one interview  
3 or more than one interview?

4 A. One interview, lasted about a half hour.

5 ATTORNEY STRANG: And that's all I have.

6 Thank you.

7 THE COURT: Mr. Fallon, any questions?

8 MR. FALLON: One moment, Judge. I just  
9 have probably two or three questions, Sheriff.

10 CROSS-EXAMINATION

11 BY ATTORNEY FALLON:

12 Q. As far as you know, all decisions, instructions,  
13 and supervision of the Manitowoc County Sheriff's  
14 personnel participating in the investigation of  
15 this case came at either the direction or request  
16 of Sheriff Pagel from Calumet County, or members  
17 of the Department of Justice's Division of  
18 Criminal Investigation; is that true?

19 A. That's correct.

20 Q. In your capacity as sheriff, of the county in  
21 which these proceedings are being held, have you  
22 instructed anyone, or told anyone, what to do or  
23 what to say relative to any of the court support  
24 personnel that are present here today?

25 A. No, I have not.

1 Q. Have you directed them to engage in any comments  
2 with the media or anyone connected with this  
3 case?

4 A. No.

5 Q. As far as you know, have you issued any orders or  
6 directives at all relative to the handling of  
7 these court proceedings, to your personnel, or  
8 has that been left to others, or is it simply  
9 something that they routinely do what they do?

10 A. You mean like court security?

11 Q. Right.

12 A. That would be what they normally do.

13 Q. All right. And you have given no other  
14 instructions or directions?

15 A. No.

16 ATTORNEY FALLON: That's all I have.

17 THE COURT: Any redirect?

18 ATTORNEY STRANG: I do.

19 **REDIRECT EXAMINATION**

20 BY ATTORNEY STRANG:

21 Q. Just so I'm clear, I mean, do you have a division  
22 that provides court support? Is that a separate  
23 division within the Manitowoc County Sheriff's  
24 Department?

25 A. That comes under the Support Division, Deputy

1 Inspector Ledvina.

2 Q. So everybody in this courtroom who is wearing a  
3 Manitowoc County Sheriff's deputy uniform,  
4 ultimately, calls you boss?

5 A. Yes.

6 Q. All right. On the scene of the investigation, I  
7 think you testified, in response to Mr. Fallon's  
8 question, that Manitowoc County Sheriff's  
9 Department personnel would have been following  
10 the directions of either the Calumet County  
11 Sheriff's Department or DCI; did I understand you  
12 correctly?

13 A. Correct.

14 Q. And within the ranks of those there in the  
15 Manitowoc County Sheriff's Department, you would  
16 expect the ordinary hierarchies continue to  
17 apply, correct?

18 A. Yes.

19 Q. When -- You testified as well that you haven't  
20 directed anyone in your department to speak to  
21 the media about this investigation or  
22 prosecution?

23 A. Correct.

24 Q. All right. And, in fact, I'm going to take that  
25 a little bit further. On or about September 12,

1           2003, if we go back not quite three years now,  
2           you had a conversation with Manitowoc County  
3           Corporation Counsel in which he suggested that  
4           you and members of your department make no public  
5           statements at all about Steven Avery?

6       A. I don't recall.

7       Q. Do you recall issuing a directive, a written,  
8           very short directive, to your department, that  
9           people were to make no public statements about  
10          Steven Avery?

11      A. It's possible.

12      Q. Back in December, 2003?

13      A. It's possible.

14      Q. Do you recall that?

15      A. No.

16      Q. That was, I think, marked as Exhibit 140 of your  
17          deposition; would it help to look at the  
18          deposition?

19      A. Could be, yeah.

20      Q. Okay. I am approaching you with a transcript of  
21          your deposition. You are welcome to look at all  
22          of it, but I would invite your attention  
23          particularly to page 45, right after Exhibit 140  
24          is identified. You can look at that yourself and  
25          see if that helps restore your recollection.

1 A. I don't see what you want me to see here.

2 Q. I'm sorry, do you see where it refers to Exhibit  
3 140?

4 A. Yes.

5 Q. Okay. Here we go, the lawyer who is asking you  
6 questions is asking you about the circumstances  
7 of making that two sentence memo that he's marked  
8 as Exhibit No. 140?

9 A. Okay.

10 Q. All right. What it was, I mean, if you now  
11 recall, you had done a very short memo, about two  
12 sentences, telling your entire department, don't  
13 talk about Steven Avery?

14 A. Okay.

15 Q. On the advice of the Corporation Counsel.

16 A. Correct.

17 Q. Do you remember doing that?

18 A. I believe so.

19 Q. Okay. When did you -- When, if ever, did you  
20 lift that order?

21 A. Didn't.

22 Q. Did it apply to you in mid-April, 2006, when you  
23 sat down with FOX 11?

24 A. No, I don't believe so. I believe if anyone  
25 would have talked, would have been able to come

1                   from myself or the inspector.

2   Q.    Okay.  So the two of you, the lead inspector  
3                   being Mr. Hermann?

4   A.    Correct.

5   Q.    The two of you were excepted -- outside the scope  
6                   of that and could make public comments about  
7                   Steven Avery?

8   A.    I believe.

9   Q.    You believe?

10   A.    Yeah, I believe we could.

11   Q.    You are the guy who wrote the memo, I mean, is it  
12               yes or no?

13   A.    Yes.

14   Q.    Thank you.  That's it.  Oh, another question, you  
15               won't need the deposition, but give me -- I don't  
16               know if you have an exact number, but about how  
17               many detectives do you have in the detective  
18               bureau of the Manitowoc County Sheriff's  
19               Department?

20   A.    I believe five, including the lieutenant.

21   Q.    Including Lieutenant Lenk?

22   A.    Yes.

23   Q.    All right.  And do they cover all three shifts or  
24               is that primarily a day shift bureau?

25   A.    Primarily a day shift, with an on call basis.

1 Q. And then are there acting detectives as well, or  
2 people who perform investigative duties outside  
3 the Detective Bureau?

4 A. We have evidence techs and things like that, yes.  
5 People that know how to take pictures, people  
6 that know how to lift fingerprints, that type of  
7 thing.

8 Q. To what division are they assigned?

9 A. Operations.

10 Q. To operations?

11 A. Yes.

12 Q. They are not assigned to the patrol division?

13 A. They come out of the patrol division, yes.

14 Patrol operations are synonomous.

15 Q. I see. All right.

16 ATTORNEY STRANG: Thank you. I will just  
17 take that back. And that's all I have, your Honor.

18 ATTORNEY FALLON: Nothing further.

19 THE COURT: Any further questions?

20 ATTORNEY FALLON: No.

21 THE COURT: All right. The witness is  
22 excused. Mr. Strang, any other evidence relating to  
23 these motions?

24 ATTORNEY STRANG: Yes. No other testimony.

25 If, and when, we get to talking directly about a

1 change of venue, I'm -- and this was at the Court's  
2 urging -- I'm going to offer two full boxes of  
3 material. I have provided the same to the State,  
4 identical sets.

5 And these boxes include 24 DVD's and  
6 then thousands of 8 1/2 by 11 pages of paper,  
7 which consist of transcripts of television and a  
8 few radio broadcasts, newspaper articles that we  
9 copied to reduce the bulk. I had four boxes and  
10 I reduced this to 2 by photocopying, judiciously.  
11 Photo copies from websites, some of newspapers,  
12 some other than newspapers, for example,  
13 television stations.

14 And then there are lists provided to me  
15 by something called Wisconsin Media Services that  
16 provides a few lines of text from television  
17 broadcasts relating to Ms Halbach or Mr. Avery.  
18 I used those lists to select which TV reports I  
19 wanted copied to DVD.

20 And I'm going to guess that of all the  
21 stories that Wisconsin Media Services covered for  
22 me, I don't know, it took a quarter to a half,  
23 somewhere in there, maybe more than half of some  
24 of them. And I -- The DVD's all come from either  
25 the Milwaukee media market or the Green Bay Media

1 Market.

2 So, in other words, the Milwaukee and  
3 the Green Bay television stations, but not  
4 Wausau, not Madison. I did not make any effort  
5 to capture publicity in those media markets. So  
6 that's what's in the two boxes behind me. That  
7 may be something that's bulky enough that I  
8 should discuss with the Deputy Clerk during a  
9 break here this morning.

10 But if we get to the change of venue  
11 after we have argued dismissal and an  
12 adjournment, I'm prepared to offer that. Beyond  
13 that, I have got no other evidence to tender on  
14 the three motions that we're undertaking  
15 initially.

16 THE COURT: Does the State have any  
17 evidence to offer with respect to those three  
18 motions of the defense?

19 ATTORNEY KRATZ: As to the Motion to  
20 Dismiss, Judge, we did intend to call Sheriff Pagel  
21 to testify.

22 THE COURT: All right. You may call him at  
23 this time.

24 **SHERIFF GERALD A.PAGEL**, called as a  
25 witness herein, having been first duly sworn, was

1                   examined and testified as follows:

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

4                   THE WITNESS: Gerald A. Pagel, P-a-g-e-l.

5                   DIRECT EXAMINATION

6                   BY ATTORNEY KRATZ:

7                   Q. Mr. Pagel, how are you employed?

8                   A. I am the Sheriff for Calumet County.

9                   Q. And as we have heard in this last series of  
10                  examinations, your department, and you  
11                  personally, were requested to assume  
12                  investigative responsibility in the disappearance  
13                  of Teresa Halbach and the subsequent  
14                  investigation into how that occurred; is that  
15                  correct?

16                  A. That is correct.

17                  Q. Sheriff Pagel, do you recall on Saturday,  
18                  November 5, 2005, being at the Avery Salvage Yard  
19                  and accepting responsibility for this  
20                  investigation?

21                  A. Yes, I do.

22                  Q. After that period of time, is it a correct  
23                  statement, as we have heard from Sheriff  
24                  Petersen, that your department, in concert with  
25                  the Division of Criminal Investigation, made all

1           investigative decisions, that is, you directed  
2           the investigation; is that correct?

3           ATTORNEY STRANG: Now that we're beyond  
4           preliminary questions, I'm going to object to  
5           leading, at least I assume Sheriff Pagel is not  
6           hostile to Mr. Kratz.

7           THE COURT: The objection is sustained.

8       Q. (By Attorney Strang)~ Who then, Sheriff Pagel,  
9           was involved in directing this investigation?

10      A. It was members of the Calumet County Sheriff's  
11           Department, in conjunction with the Department of  
12           Criminal Investigation, as far as a joint  
13           investigation, team work.

14      Q. Mr. Strang's motions as to pretrial publicity and  
15           related motions deal with pretrial publicity.  
16           Let me first ask you whether you have any  
17           experience or training in media relations,  
18           specifically, as it relates to high profile  
19           cases?

20      A. Yes, I do. I have gone to two separate training  
21           sessions in media relations with law enforcement.

22      Q. Are you an elected official?

23      A. Yes, I am.

24      Q. And similar to Sheriff Petersen, do you consider  
25           yourself the head of your law enforcement agency?

1 A. Yes, I do.

2 Q. Sheriff Pagel, prior to the discovery of Teresa  
3 Halbach's vehicle on November 5th, was your  
4 agency involved in what's been referred to as a  
5 missing persons investigation?

6 A. Yes, we were.

7 Q. Could you describe, just briefly, the scope of  
8 that investigation for us?

9 A. On, I believe it was November 3rd, our department  
10 received a call of a missing person, that being  
11 Teresa Halbach. Our agency became immediately  
12 involved in speaking with the relatives and  
13 friends of Teresa. And, ultimately, that  
14 Thursday evening, I received a call at home from  
15 Investigator Mark Wiegert, informing me of the  
16 fact that Teresa Halbach was missing and that  
17 last contact with her had been on October 31st.

18 Q. Have you been engaged in missing person  
19 investigations before?

20 A. Yes, I have.

21 Q. As part of those investigations, Sheriff, and I  
22 will just ask you directly, as part of this  
23 investigation as well, did you invite  
24 participation of the media or the general public  
25 in assisting in locating Ms Halbach?

1 A. Yes, I did.

2 Q. How was that done?

3 A. That was done Thursday evening, shortly after I  
4 received the call from Investigator Wiegert. I  
5 responded to the Sheriff's Department. And it's  
6 been my theory, and also information that has  
7 been provided to me through investigative  
8 matters, that the quicker you get information to  
9 the media the better.

10 We need public's assistance in trying to  
11 locate missing individuals, and this was my  
12 thought that evening, was to get the information  
13 about Teresa, about her disappearance, to the  
14 media, so that we could have the public's  
15 assistance in attempting to locate her.

16 Q. After Ms Halbach's vehicle was found on the 5th  
17 of November, were there discussions as to what,  
18 if anything, would be disseminated, or told, to  
19 the general public?

20 A. Yes, it was felt that we needed to control the  
21 information that was disseminated to the general  
22 public. It was done for investigative purposes  
23 and also to control the information that the  
24 media received, that we needed to have  
25 disseminated to them. We still had a missing

1           person and we needed, again, the public's  
2           assistance in trying to locate Teresa.

3           We found her vehicle, that was true, but  
4           we still had not found Teresa. So we still felt  
5           that we needed the public's assistance in  
6           locating her.

7       Q.   Was it decided, Sheriff Pagel, who would be  
8           involved in disseminating information about --  
9           both about the investigation and the request for  
10          assistance from the public?

11      A.   Yes, a decision was made that we were going to,  
12          again, control who the media went to as far as  
13          gathering or obtaining information. And it was  
14          felt that myself and yourself would be the  
15          individuals who would disseminate the  
16          information.

17           Again, we could control the information  
18          that the media would obtain and, also, that it  
19          would not impair the investigation. Often in  
20          these type of cases, the media wishes to contact  
21          investigators, contact individuals who are  
22          involved in the investigation. And we felt it  
23          would be better if we just had two individuals  
24          who they could contact and who would be the  
25          individuals that they would go to in attempting

1 to obtain information.

2 Q. While this case remained a missing persons  
3 investigation, was it decided how many times per  
4 day the media would receive information?

5 A. Yes, we felt that we would provide information  
6 daily to the media to keep them informed, and  
7 also to, again, provide information to the  
8 general public as to the outcome, the scope,  
9 where the investigation was going.

10 Q. Sheriff Pagel, on those early occasions, that is  
11 the press conference on the 5th and perhaps the  
12 6th of November, could you characterize the  
13 interest from the public, that is, from both the  
14 media and general public, be able to gauge how  
15 interested they were in this investigation?

16 A. We were able to determine that there was a huge  
17 interest in this investigation. And we knew  
18 then, and we knew beginning, going into this  
19 investigation, that there would be a huge, or a  
20 large interest in the media for this  
21 investigation, and by the public as to this  
22 investigation.

23 Q. Were there any discussions held as to limiting  
24 what was said and the reasons to not provide  
25 information of a specific nature?

1       A. Yes, we had daily meetings to discuss what  
2              information was going to be provided to the  
3              media. Again, this was done for several reasons.  
4              One was to -- for investigative purposes, to  
5              ensure that information was not disseminated that  
6              we did not wish to have disseminated.

7                      We also wanted to do what is being  
8              alleged here, in that not having prejudicial  
9              information, inflammatory information, provided  
10             to the public. And we also had a sensitivity  
11             issue. We felt that we had -- we owed it to the  
12             Halbach family, to the relatives, that  
13             information provided to the media, to the public,  
14             would be sensitive in nature and that we kept  
15             them informed. They were involved in the loop.

16                      In fact, before any information was  
17              provided to the media, the Halbach's were  
18              contacted and they were informed of what  
19              information was going to be provided that evening  
20              or that day.

21       Q. Was there more information that the Sheriff's  
22              Department had in it's possession that was held  
23              back, or not provided, to the media during this  
24              investigation?

25       A. Most definitely.

1 Q. Sheriff Pagel, at any point, at least prior to  
2 the 9th of November, was a specific suspect  
3 identified?

4 A. No, there was not. In fact, we -- it was a wide  
5 open investigation.

6 Q. On the 9th of November, Steven Avery was arrested  
7 on a charge of felon in possession of a firearm;  
8 do you remember holding a press conference  
9 announcing that fact on the 9th?

10 A. Yes, I do.

11 Q. Do you recall any discussions on the 9th  
12 regarding limiting your comments to the facts  
13 that were contained within that public document,  
14 that is the Criminal Complaint?

15 A. Yes, that information was going to be public  
16 knowledge in the Criminal Complaint and it  
17 pertained to the felon in possession. We still  
18 had a missing person investigation.

19 Q. Sheriff Pagel, later in that week, between the  
20 9th and the 11th of November, do you recall  
21 receiving specific questions, and even at the  
22 press conferences, obtaining inquiries, regarding  
23 allegations made by Mr. Avery and his family,  
24 regarding being set up or framed?

25 A. Yes, I do. In fact, I would be receiving phone

1           calls from the media, who indicated that they had  
2           received information from either Mr. Avery or  
3           members of his family. And they were making  
4           inquiries about these -- this information that  
5           they were receiving. And, again, I would not  
6           elaborate on those type of things at that  
7           particular time, via phone contacts.

8                 Any members of the media would be  
9           informed that any information that was going to  
10          be released would be released at a news  
11          conference to be determined or announced later.

12       Q.   All right. That brings me, then, to questions  
13          regarding a press conference held on the 11th of  
14          November, Friday, the 11th; do you recall that  
15          press conference?

16       A.   Yes, I do.

17       Q.   Do you recall specific information being  
18          released, as it related to public questions, or  
19          direct questions, from the Avery's, as to being  
20          set up or framed?

21       A.   Yes. Again, we felt that we owed it to the  
22          public, to insure them that there was no  
23          information, no evidence gathered through the  
24          investigation, tending to indicate that there was  
25          any type of conspiracy theory in effect here.

1 Q. Now, this may be a little awkward since I'm not a  
2 witness in this case, but I'm going to ask you  
3 about conversations that you and I had. Do you  
4 recall specific conversations with me regarding  
5 limiting, or being very careful about what was  
6 disseminated, to insure a fair trial for  
7 Mr. Avery?

8 A. Yes, I do. Again, we would have conferences  
9 daily to discuss what was going to be  
10 disseminated. You also indicated that it's your  
11 policy, once charges are filed, that the  
12 information disseminated to the media would  
13 cease, and that it would be the joint thought  
14 here that anything after that point would not be  
15 disseminated, there would be no more conferences.

16 Q. You are aware that at some point, in fact, on the  
17 5th of November, Judge Fox, from Manitowoc  
18 County, appointed me as Special Prosecutor in  
19 this case; is that correct?

20 A. That is correct.

21 Q. Have you worked on other criminal cases with me  
22 as the Calumet County Sheriff?

23 A. Yes, I have.

24 Q. Are you familiar with my general policy of not  
25 commenting on pending criminal matters, other

1 than in the courtroom?

2 A. Yes, that is your policy.

3 Q. Sheriff Pagel, while present with me at not only  
4 press conferences, but other times that we may  
5 have been approached, do you recall me, and other  
6 members of my office, reiterating, or explaining  
7 that policy, that no comment policy, if you will,  
8 to members of the media?

9 A. Yes, you did.

10 Q. Have you, individually, Sheriff Pagel, received  
11 offers from local, or regional, or even national  
12 news sources to comment on this case?

13 A. Yes, I have received numerous requests from the  
14 news media, not only in Green Bay, but in  
15 Milwaukee. And I have also received numerous  
16 calls from national news outlets requesting  
17 interviews, requesting comments.

18 And everything nationally has been  
19 refused. I indicated in the beginning that I  
20 would not go on any national news show to discuss  
21 this matter.

22 Q. Several months after Mr. Avery's Criminal  
23 Complaint was filed, I think it was the 14th of  
24 November when it was filed, but in early March,  
25 March 1st and 2nd, did you become aware of a

1           second suspect having been arrested regarding the  
2           homicide and related charges with Ms Halbach?

3       A. Yes, I did.

4       Q. And who was that person?

5       A. Brendan Dassey.

6       Q. On March 1st, do you recall holding a joint news  
7           conference informing the public?

8                   ATTORNEY STRANG: Leading?

9                   ATTORNEY KRATZ: I'm sorry, what was that?

10                  ATTORNEY STRANG: Leading.

11                  ATTORNEY KRATZ: Oh.

12       Q. (By Attorney Kratz)~ I could ask, what day did  
13           you hold the news conference that you informed  
14           the public of Mr. Dassey's involvement?

15       A. I believe it was March 1st.

16       Q. All right. Then, do you recall a Criminal  
17           Complaint being drafted and filed against  
18           Mr. Dassey?

19       A. Yes, I do.

20       Q. Then on -- Do you recall another, in fact, the  
21           last press conference jointly held in this case?

22       A. Yes, I do.

23       Q. Do you remember when that was?

24       A. That would have been the following day. I  
25           believe it was March 2nd.

1 Q. Sheriff Pagel, prior to that news conference,  
2 were you aware of the details; that is, were you  
3 aware of the information that would be included  
4 in that public document, in that Criminal  
5 Complaint, against Mr. Dassey?

6 A. Yes, I was.

7 Q. Do you recall having conversations with me about  
8 what information should be released and how to  
9 release that information?

10 A. Yes, you had indicated that the information that  
11 was going to be released was information that was  
12 in the document. And we had -- a decision had to  
13 be made how it was going to be released, or what  
14 was going to be released. And it was felt that  
15 we would, again, try to control the information  
16 that was going to be released, rather than having  
17 the news media take the report and then go  
18 wherever they were going to go with it.

19 It was a decision that was difficult to  
20 do, but was ultimately decided that we needed to  
21 provide the information to the public and, again,  
22 control what information was disseminated.

23 Q. Without limiting the information in that news  
24 conference, what did you believe would happen if  
25 that document was simply released to the public?

1       A. Personally, I felt it was going to be helter  
2           skelter. That the news media was going to take  
3           it and go in all directions with it. And, again,  
4           we would probably lose control over what was --  
5           what was gathered by the news media if we just  
6           gave them the article and gave them the Criminal  
7           Complaint, I mean, and let them go from there.  
8           And, again, we felt that we needed to control the  
9           information.

10      Q. You had mentioned sensitivity to the Halbach  
11           family, to the victims, especially regarding that  
12           disturbing information. Were meetings held,  
13           before the 2nd of March, to disclose to the  
14           family what would be included in that document?

15      A. Yes. We had met the night before, with them, and  
16           provided them with the information that the  
17           investigators had gathered. And that provided  
18           them with the information that was going to be in  
19           the Criminal Complaint.

20      Q. At any time, Sheriff Pagel, were there  
21           attempts -- and I can only ask you  
22           individually -- but were there attempts by you to  
23           influence any potential jurors, or to in any way  
24           prejudice Mr. Avery through this criminal  
25           process?

1 A. None. In fact, this is, again, why we tried to  
2 control the information that was released, so  
3 that we could control any prejudicial  
4 information, any inflammatory information, so as  
5 to prevent, as much as possible, any pretrial  
6 prejudicial publicity.

7 Q. And, again, that's consistent with other cases  
8 that you and I have worked on; is that correct?

9 A. That is correct.

10 ATTORNEY KRATZ: That's all the questions I  
11 have of Sheriff Pagel. Thank you, Judge.

12 THE COURT: Mr. Strang.

13 **CROSS-EXAMINATION**

14 BY ATTORNEY STRANG:

15 Q. Is it typical, in a missing person Complaint,  
16 that you, as the sheriff, would be notified at  
17 home, after hours, on the day that someone is  
18 reported missing?

19 A. It's not typical, nor is it non-typical. The  
20 investigators, the staff, do keep me informed of  
21 their investigations and do keep me informed if  
22 they want something done. And in this particular  
23 case, they wanted the information disseminated to  
24 the media and they felt it would be best if I  
25 came in and did that for them.

1 Q. All right. You say the investigators, how many  
2 investigators, or detectives, are employed in the  
3 Calumet County Sheriff's Department?

4 A. We have four investigators.

5 Q. Does that include the lead investigator or chief  
6 investigator?

7 A. They are all investigators. There's no lead  
8 investigator. Whoever gets the case, initially,  
9 is the -- basically, the lead investigator,  
10 pertaining to that particular investigation.

11 Q. And to whom do the four investigators report  
12 directly?

13 A. They report to either the lieutenant or to  
14 myself.

15 Q. And I will keep this short, and I hope simple for  
16 you, but to the extent that you know, does the  
17 Calumet County Sheriff's Department have fewer  
18 sworn personnel than the Manitowoc County  
19 Sheriff's Department?

20 A. Yes.

21 Q. Do you know, roughly, the numbers --

22 A. No, I don't.

23 Q. -- at least to your own department?

24 A. I don't know what the difference would be.

25 Q. How about your department; how many sworn

1           officers of any rank?

2       A. Okay. We have 24 sworn officers and, I believe,  
3           27 non-sworn.

4       Q. Non-sworn being support people, secretarial,  
5           clerical, bookkeeping, business management?

6       A. Dispatch and correctional officers.

7       Q. Very good. Were you acquainted with the Halbach  
8           family personally, before November 3, 2005?

9       A. I know members of the Halbach family, yes, I do.

10      Q. Personally?

11      A. Yes.

12      Q. Had you known Teresa Halbach personally?

13      A. No, I did not.

14      Q. But you knew some members of her family?

15      A. Yes.

16      Q. Was that in part why Detective Wiegert said he  
17           was calling you that evening?

18      A. No, it was not. He had no knowledge that I would  
19           have known the Halbachs.

20      Q. But what he did say was, hey, we need to get the  
21           public's help, or words to that effect?

22      A. Yes, he felt that it was important that the  
23           information be disseminated to the media so that  
24           they could disseminate it to the public for their  
25           assistance.

1 Q. The media being a tool to reach the public?

2 A. That is correct.

3 Q. All right. You agreed?

4 A. Yes. Yes, I did.

5 Q. As early as the evening of November 3?

6 A. Yes.

7 Q. That evening is the point at which -- and I think  
8 your words were -- you knew going into the  
9 investigation that there would be a huge amount,  
10 or huge interest on the part of the public and  
11 the media?

12 A. Yes. Well, I guess, not that particular evening,  
13 we didn't know the enormity. November 5th is  
14 when we realized that we were probably going to  
15 have a large media interest.

16 Q. You testified on direct, in response to  
17 Mr. Kratz's question, you knew going into the  
18 investigation. And so my question is, you know,  
19 is it November 5, or some time prior to or after  
20 that, that you knew going into the investigation  
21 it would be huge media and public interest?

22 A. What I was referring to was November 5th, the day  
23 that her vehicle was found on the Avery property.

24 Q. What was it that was so hugely interesting about  
25 her car being found?

1       A. The fact that Steven Avery had garnered a large  
2                  amount of media interest concerning his release  
3                  from prison, for charges that he had been alleged  
4                  to have committed, and the vehicle being found on  
5                  Avery property. You didn't have to be a rocket  
6                  scientist to know that the media was, again,  
7                  going to be interested in this.

8       Q. Steven Avery was a man you knew from the media  
9                  before November 5?

10      A. That is correct.

11      Q. You were familiar, at least with the general  
12                  outlines of his wrongful conviction and eventual  
13                  exoneration?

14      A. Yes.

15      Q. Release from prison?

16      A. Yes.

17      Q. Were you aware that he had filed a big lawsuit  
18                  against Manitowoc County over that series of  
19                  events?

20      A. Prior to what?

21      Q. November 5.

22      A. No, I was not aware of any lawsuit prior to that.

23      Q. But you were aware of Avery and you thought, gee,  
24                  this will attract the media?

25      A. Yes.

1 Q. All right. Now, that's two days after Ms Halbach  
2 is reported missing. And I guess it's as early  
3 as that evening, November 3, in which you  
4 realized, look, we need some public assistance  
5 here, and the way to accomplish that is by using  
6 the media?

7 A. Yes, we felt that the information should be  
8 disseminated concerning Teresa Halbach, and her  
9 disappearance, and the fact that we were looking  
10 for her and the vehicle.

11 Q. Giving information directly to the media was not  
12 the only strategy you employed to get the word  
13 out to the public?

14 A. I guess I don't know.

15 Q. For example, you had a telephone number, that you  
16 encouraged members of the public to call and  
17 encouraged investigators to share with the  
18 public?

19 A. Our local Sheriff's Department number, yes, or  
20 tip number.

21 Q. Right, sort of a dedicated line, not for this  
22 case, but for tips, or for information from the  
23 public?

24 A. That is correct.

25 Q. You got that out to the public?

1 A. Yes.

2 Q. You had members of your department going to  
3 friends and family members of Teresa Halbach's in  
4 the early days of this search?

5 A. Yes, most definitely.

6 Q. In part, to ask them when they had last seen her,  
7 and what information they might have, but also,  
8 in part, to encourage them to talk to others?

9 A. Yes, to try to garner any information we could  
10 from them, again, when was the last time you had  
11 seen her, and garner any information we could  
12 about Teresa.

13 Q. Sure. And to get the network going so to speak,  
14 might ask a friend who else do you know she may  
15 have talked to, or called, or been e-mailing, or  
16 appointments she may have had, things like that.

17 A. Yeah, would be a typical missing person  
18 investigation.

19 Q. You also took some other steps that would be  
20 publicly visible but controlled. I mean, for  
21 example, did you -- did you rent an airplane or  
22 make arrangements for an airplane at some point?

23 A. Yes, that was done on November 4th.

24 Q. Went to an aviation service and took a plane up  
25 in the air?

1 A. Yes.

2 Q. And that involved circling a good deal, I assume,  
3 over parts of Manitowoc County?

4 A. Manitowoc, Brown, Calumet. I don't think we got  
5 down into Sheboygan, but basically a three county  
6 area.

7 Q. Sure. And at fairly low altitude?

8 A. Yes.

9 Q. That, you knew, at least would attract some  
10 public attention and raise the profile that  
11 people should be on the lookout for a missing and  
12 possibly endangered person?

13 A. The fact that we used the airplane?

14 Q. Yeah.

15 A. No. That was basically a search to try and to  
16 locate her vehicle. We knew that her vehicle was  
17 missing. And we were trying to locate her  
18 vehicle, or anything which could be of assistance  
19 in the missing person investigation.

20 Q. Okay. So, is that why you only used the plane on  
21 Friday, November 4?

22 A. Yes.

23 Q. There was -- Once you found the car, the Toyota,  
24 there was no need for further flyovers or that  
25 kind of visible activity?

1 A. There were other flyovers done after, yes. There  
2 were the use of other planes and helicopters  
3 throughout the search for Teresa.

4 Q. The search continued until -- well, I mean it  
5 continued beyond this, but on November 8, some  
6 bone fragments were found; does that sound right?

7 A. That could be the date, yes.

8 Q. All right. Which would have been a Tuesday?

9 A. That would be about right, yes.

10 Q. Were you, personally, out at the Avery Auto  
11 Salvage property on the days following this phone  
12 call, at home, on November 3?

13 A. Yes, I was.

14 Q. Each day?

15 A. Yes, I was there every day.

16 Q. Starting Friday, November 4.

17 A. No, the 5th.

18 Q. So, November 5th?

19 A. Yes.

20 Q. Saturday, November 5. And then how many days in  
21 a row did you remain, personally, out at the  
22 Avery Auto Salvage property?

23 A. I would go out their during the daylight hours  
24 and generally would leave anywhere between 7, 8,  
25 9 at night.

1 Q. How long did that continue, Sheriff Pagel?

2 A. I was there the entire week that we were out  
3 there.

4 Q. And until the road was reopened and the searching  
5 was done?

6 A. That's correct.

7 Q. All right. Now, during that time that you were  
8 out there, during these long daylight hours,  
9 essentially, did you, personally, direct the  
10 activities of Lieutenant Lenk?

11 A. Did I, personally? How did you phrase it?

12 Q. Direct the activities of Lieutenant Lenk of the  
13 Manitowoc County Sheriff's Department?

14 A. Not personally, no. It was -- Could have been  
15 done either through the command post. Again,  
16 they were there as a support group. So we would  
17 utilize our investigators, our officers, our  
18 personnel, along with agents from the Department  
19 of Criminal Investigation and individuals would  
20 then be assigned to those particular individuals  
21 who would be the lead people doing particular --  
22 particular programs or parts of the investigation  
23 out there.

24 Q. Activities. All right. So you set up a command  
25 post?

1 A. Yes.

2 Q. You set that up in conjunction with the DCI?

3 A. Yes.

4 Q. There were other law enforcement agencies, also,

5 at the command post?

6 A. Yes, there were other agencies involved in the

7 investigation who were there for support and

8 assistance.

9 Q. In the command post?

10 A. Not necessarily inside the command post. We

11 tried to limit individuals who would be in the

12 command post. We had a number of individuals who

13 were out there on any particular day and we

14 couldn't have all those individuals in the

15 command post, but we would have the individuals

16 who were going to be responsible for doing a

17 particular activity, given their assignments.

18 Q. Okay. Physically, what was the command post?

19 A. Physically, what was it?

20 Q. Yeah.

21 A. It's our command trailer that we have at the

22 Sheriff's Department?

23 Q. Like a Winnebago type?

24 A. It's a good size.

25 Q. Okay. But not everybody can crowd into those

1           things?

2   A.   Right.

3   Q.   Okay. So people, law enforcement officers, would  
4        come in as necessary to participate in  
5        discussions?

6   A.   Yes. Whoever we needed to discuss matters with  
7        would be invited into the command post and we  
8        would then discuss our information with them.

9   Q.   The -- You ran this investigation in conjunction  
10      with DCI, you said?

11   A.   Yes.

12   Q.   And then, jointly, with a number of other  
13      agencies?

14   A.   Yes.

15   Q.   The FBI was involved?

16   A.   Yes, the FBI.

17   Q.   They were in the command post from time to time?

18   A.   They were -- They were only out there for a short  
19        period of time. They arrived and indicated that  
20        if we needed their assistance for anything we  
21        should feel free to contact them. I think they  
22        might have been there personally, only a couple  
23        of hours.

24   Q.   Okay. But they said, call if you need help?

25   A.   Yes.

1 Q. The Wisconsin State Patrol was out there for a  
2 longer period of time?

3 A. They were there several days, yes.

4 Q. They had command officers in and out of the  
5 command post?

6 A. Yes, they would have had individuals in and out.

7 Q. The Two Rivers Police Department?

8 A. Yes.

9 Q. They had senior staff in and out of the command  
10 post?

11 A. I don't know if they would have had individuals  
12 in or out, specifically, or if they were just  
13 part of the support group.

14 Q. All right. But what you tried to do was run this  
15 as a collaborative, or a joint effort?

16 A. Yes.

17 Q. You consulted with Manitowoc County Sheriff's  
18 personnel?

19 A. Yes.

20 Q. They were in and out of the command post?

21 A. Yes.

22 Q. At least the ranking members were?

23 A. Yes.

24 Q. So you weren't necessarily, personally, directing  
25 things, but you were part of a group that was

1                   making conjunctive, or joint, or collaborative,  
2                   investigative decisions, so that all the tasks  
3                   got done?

4         A.   Attempting to, yes.

5         Q.   Right. Were you aware, on November 5, let's say,  
6                   that Lieutenant Lenk and Sergeant Colborn of the  
7                   Manitowoc County Sheriff's Department recently  
8                   had given depositions in Steven Avery's civil  
9                   lawsuit?

10        A.   No, I was not aware of that.

11        Q.   When did you first learn that?

12        A.   Today, in court.

13        Q.   Mr. Avery, then, was arrested on November 9, if I  
14                  understood your testimony correctly?

15        A.   I believe that would be correct, yes.

16        Q.   Charged, initially, with being a felon in  
17                  possession of a firearm?

18        A.   That's correct.

19        Q.   Now, you have had enough time in the criminal  
20                  justice system to know that, typically, at least  
21                  when somebody is charged in a Circuit Court of  
22                  the State of Wisconsin, there's a Criminal  
23                  Complaint filed?

24        A.   Yes.

25        Q.   With the court?

1 A. Yes, will eventually be filed.

2 Q. With the court, correct?

3 A. Yes.

4 Q. And, typically, as far as I know, always, that's  
5 a publicly available document?

6 A. Yes.

7 Q. That is, anyone from the public, including a  
8 reporter, could go to the Clerk of Court's Office  
9 and say, May I see the Criminal Complaint against  
10 Joe Blow, or Steven Avery, or anyone else?

11 A. That is correct.

12 Q. Make a copy of it?

13 A. Yes.

14 Q. And leave with it?

15 A. Yes.

16 Q. All right. So in terms of making something --  
17 making information available to the public, one  
18 way to do that is to file, at least, an unsealed  
19 public document in court?

20 A. It would be a public document, yes.

21 Q. That was done here with the felon in possession  
22 of a firearm Complaint, as to Mr. Avery, correct?

23 A. I believe so, yes.

24 Q. It was done with the criminal charge against  
25 Brendan Dassey on or about March 2, 2006?

1 A. That's correct.

2 Q. You know, of your personal knowledge, that

3 Mr. Dassey, although 16 years old, was charged as

4 an adult from the outset?

5 A. Yes.

6 Q. So you knew that that was a public proceeding

7 from the outset, not a juvenile and closed

8 proceeding?

9 A. Yes.

10 Q. You knew that the Criminal Complaint against

11 Brendan Dassey, therefore, was a public document?

12 A. That is correct.

13 Q. You and Mr. Kratz began to talk about public

14 dissemination of information in this

15 investigation, when?

16 A. The dissemination of information to the media and

17 to the public?

18 Q. Yeah.

19 A. That was done on the first day, that Saturday

20 that we were at the Avery property.

21 Q. Mr. Kratz was out there as well?

22 A. Yes.

23 Q. You learned on November 5, or shortly after, that

24 a number of people lived on what we are calling

25 the Avery property, correct?

1 A. That is correct.

2 Q. Family members, including extended family  
3 members, correct?

4 A. Yes.

5 Q. Husbands, wives, boyfriends, girlfriends, a whole  
6 collection of people?

7 A. That is correct.

8 Q. This is a large -- relatively large parcel of 40  
9 acres, plus?

10 A. Yes.

11 Q. Steven Avery being one of the people who lived  
12 somewhere on what you are calling the Avery  
13 property?

14 A. That is correct.

15 Q. On November 5, when you and Mr. Kratz were on the  
16 Avery property, you began to discuss, I guess,  
17 gee, how are we going to disseminate information  
18 to the media?

19 A. And what information was going to be  
20 disseminated.

21 Q. And what. Were you and Mr. Kratz the only two  
22 decision makers on those discussions?

23 A. No. The investigative staff, agents from DCI,  
24 investigators from my office, would meet, and  
25 discuss, and come up with what investigative

1 material. What information was going to be, and  
2 should be, and needed to be, released to the  
3 media and to the public.

4 Q. So, again, I guess, a little bit, as you were  
5 describing the investigation itself, your  
6 personal style, or your approach to dissemination  
7 of information to the media, was more collegial  
8 or collaborative and inclusive?

9 A. That would be correct.

10 Q. And that's just a matter of personal style for  
11 you?

12 A. No, it's done for a number of reasons: One, to  
13 ensure that information that investigators have,  
14 information that they do not wish to be divulged,  
15 is not divulged. And, again, it's better to do  
16 it jointly, together, so that you don't say or  
17 disseminate information that should not be, and  
18 disseminate information that should be.

19 Again, we had a missing person. We were  
20 still looking for Teresa Halbach. And throughout  
21 this case we were looking for Teresa Halbach.  
22 And we felt that it was important that the media,  
23 the public, be provided with this information.

24 Q. In a criminal investigation -- Well, first of  
25 all, a criminal investigation would be different

1           in your world, in the jargon of law enforcement,  
2           than a missing persons investigation, correct?

3       A. Yes, there would be different aspects.

4       Q. You separate those two things, or distinguish  
5           between them?

6       A. You can, occasionally, but sometimes they run  
7           hand in hand. If you still do not have a  
8           missing-- if you still have not located the  
9           missing person, you still have an individual you  
10          are trying to locate, so they can run jointly.

11      Q. Of course, but at the outset, in law enforcement,  
12          at least in Calumet County, you distinguish  
13          between those two, a missing person investigation  
14          and the criminal investigation?

15      A. Yes.

16      Q. Many missing person investigations turn out to be  
17          a teenager who was upset with mom and ran away  
18          for a few hours?

19      A. That can be true, yes.

20      Q. And I think even here, I don't remember which  
21          news conference, but I think at some point you or  
22          Mr. Kratz made a comment that, we now have a  
23          criminal investigation, not just a missing  
24          persons investigation. This isn't verbatim, I  
25          don't remember the exact words.

1 A. Yeah, but words to the effect that the  
2 investigation was tending to lead towards a  
3 criminal investigative nature.

4 Q. Right. And that would have been -- Regardless of  
5 when and who said it, you began to think of this  
6 as a criminal investigation, or at least leading  
7 that way, when?

8 A. Probably after information was obtained from the  
9 Crime Lab, which was providing us with details as  
10 to information being found in Teresa's vehicle.

11 Q. So the vehicle was found November 5?

12 A. Yes.

13 Q. What looks like blood is found that same day,  
14 November 5?

15 A. Yes, I believe so.

16 Q. Some swabs for collection of the blood is  
17 undertaken?

18 A. Yes. The entire vehicle is removed from the  
19 Avery property and taken to Madison, to the Crime  
20 Lab.

21 Q. What day was it removed?

22 A. It was removed Saturday evening, late Saturday  
23 evening.

24 Q. Taken directly to the Crime Lab?

25 A. Yes.

1 Q. And further collection of evidence is done, then,  
2 from the vehicle?

3 A. Yeah, the evidence -- the vehicle is then  
4 analyzed for evidence.

5 Q. When -- When, then, did you get your first  
6 information back from the Crime Lab that caused  
7 you to think of this as looking like a criminal  
8 investigation?

9 A. Again, it was probably Monday or Tuesday. I  
10 can't recall, specifically, what day it was.

11 Q. Okay. Maybe this will help, you remember  
12 somebody first saying, gee, I think we have got  
13 bone fragments?

14 A. That would have probably been on Tuesday, I think  
15 you said, was the 8th.

16 Q. Right.

17 A. Then, yeah, we discovered some bone fragments on  
18 the property. And, again, they had to be  
19 analyzed to determine whether they were human in  
20 nature.

21 Q. But had you heard back from the Crime Lab before  
22 somebody said we have got bone fragments, or  
23 after?

24 A. I believe it was before, that we had some  
25 information back, some preliminary information

1 back from the Crime Lab.

2 Q. So probably Monday, November 7th?

3 A. Could be, correct.

4 Q. Okay. Now, in a criminal investigation, one of  
5 the things that law enforcement people do in  
6 disseminating information publicly is attempt not  
7 to disclose information that should be known only  
8 to the culprit, or the perpetrator, correct?

9 A. We try to do that, yes.

10 Q. So that if you find someone, and in talking with  
11 that person they have that information, you know  
12 that they haven't gotten it by watching  
13 television?

14 A. That would be correct.

15 Q. Or reading the newspaper or something. What sort  
16 of information, prior to a criminal  
17 investigation, do you not want disclosed in a  
18 missing persons investigation?

19 A. Well, in a missing persons investigation, you  
20 want to get information out to the public as to  
21 the person who was missing, what the person might  
22 have been wearing, a general description of the  
23 person, and in this particular case, her vehicle.

24 Q. Okay. And by elimination, then, certain personal  
25 information you would not want disclosed, I

1 assume?

2 A. Personal information?

3 Q. About the missing person, private information?

4 A. You possibly could want to withhold that, yes.

5 And it's a -- a decision is made, is it

6 pertinent --

7 Q. Right.

8 A. -- to this particular missing person.

9 Q. If it's not particularly pertinent, then privacy  
10 concerns would prevail?

11 A. Sure.

12 Q. All right. Now, the purpose, then, of these  
13 collaborative or collegial meetings, was to find  
14 out, gee, guys, what information do you think we  
15 should and should not disclose?

16 A. Yes.

17 Q. Reach some agreement on that, as a group?

18 A. Yes.

19 Q. And then, you know, as people say, make sure  
20 we're all on the same page?

21 A. Correct.

22 Q. Then, you and Mr. Kratz would be the public  
23 spokespeople?

24 A. That was a decision that was made, yes.

25 Q. Who were the decision makers on that, in the end?

1 A. As far as what information is released?

2 Q. Right. And by whom?

3 A. Again, it is a collaborative effort among  
4 everybody who's involved in the investigation.

5 There were several incidences where the  
6 investigators said, no, we can't release this, or  
7 maybe we should release this, and a discussion  
8 was held.

9 Q. And maybe an agreement was reached each of those  
10 occasions, but to the extent that there was no  
11 agreement, or somebody had to make the call, make  
12 the decision, so to speak, who was doing that?

13 A. Well, I guess that information, the ultimate  
14 information that was released, would have been  
15 Mr. Kratz and myself, because we were the  
16 individuals who released the information.

17 Q. Jointly, not one over the other?

18 A. Yeah, I would believe probably, right, he would  
19 release information, I would release information,  
20 but we knew what information was going to be  
21 released.

22 Q. And you decided that jointly?

23 A. Yes.

24 Q. The press conferences on March 1 and March 2, of  
25 course, were well after Mr. Avery had been

1 charged with murder?

2 A. Yes.

3 Q. The March 1 press conference was before Brendan  
4 Dassey had been charged with murder and other  
5 crimes?

6 A. He was in custody.

7 Q. Right.

8 A. But he had not --

9 Q. Before a Criminal --

10 A. Yes.

11 Q. -- Complaint had been filed?

12 A. Yes, before he had been taken to court.

13 Q. The March 2 press conference was after he had  
14 been charged formally, a Criminal Complaint had  
15 been filed against Mr. Dassey?

16 A. Yes.

17 Q. The Criminal Complaint was distributed to  
18 interested members of the media at the March 2  
19 press conference, or after?

20 A. I can't recall if it was before or after.

21 Q. But one or the other?

22 A. Yes.

23 Q. You made copies available?

24 A. Yes. Yes.

25 Q. To save them the trouble of going to the Clerk of

1                   Court?

2       A.   Right.

3       Q.   So the press conference wasn't going to replace  
4                   disclosure of the Criminal Complaint?

5       A.   Again, it was felt, a decision was made, that  
6                   maybe we needed a press conference so that we  
7                   could discuss this information with the news  
8                   media and kind of inform them of what they were  
9                   going to be reading and seeing in the Criminal  
10                  Complaint.

11                  It was felt that it was important. And  
12                  it was a tough decision to make, should we just  
13                  give it to them, or not. We felt that it was  
14                  better to be able to control and to answer  
15                  questions, I guess, that the media might have.

16       Q.   Well, what control did you have after you handed  
17                  them a copy of the Complaint?

18       A.   Well, you still are able to answer questions and  
19                  you are still able to provide them with some  
20                  information that is of help, I guess,  
21                  sensitivity, again, to the family in this matter.

22       Q.   Okay. You had no -- you had no serious question  
23                  about the ability of the assembled reporters to  
24                  read English?

25       A.   No, we knew that they were going to be doing

1           that, yes.

2   Q.   They would read the Complaint for themselves?

3   A.   Yes.

4   Q.   All right. So I guess, necessarily, the purpose  
5       of answering questions, or providing further  
6       information, was to tell them details, or  
7       explanations, beyond those contained in the words  
8       of the Criminal Complaint?

9   A.   Yes. And, again, the concern was that they were  
10      going to take this and go in all directions. And  
11      we wanted to be able to control, again, the  
12      information. You have to look at it as a whole  
13      picture here, not just -- excuse me -- not just  
14      little pieces, but a whole picture.

15   Q.   And I guess my question was, how in the world  
16      were you going to control the media after they  
17      left that room? And we have something called the  
18      First Amendment in this country, right?

19   A.   Mm-hmm.

20   Q.   Did you ask them not to print certain things, not  
21      to broadcast certain things?

22   A.   No, but I think by being able to answer questions  
23      and providing them with information, it's going  
24      to enhance our ability to be able to provide them  
25      and not let them run in all directions with this

1           Complaint, talking to individuals, trying to  
2           gather more information than what was in the  
3           Criminal Complaint.

4                 And that's always a concern that  
5                 everybody has in major investigations, is that  
6                 the media, or anybody else, is going to take  
7                 information that they have obtained and go  
8                 further and try to enhance what they are reading,  
9                 and what they are seeing, or what's in the  
10                Criminal Complaint.

11          Q.    Okay. Now, you have used the word control here  
12               at least -- at least a half dozen times or  
13               something, I haven't counted, but. By control,  
14               you certainly could control what you and  
15               Mr. Kratz were saying, correct?

16          A.    Yes.

17          Q.    You could put out the information under your  
18               control, that you chose to disseminate. You had  
19               control in that sense, correct?

20          A.    Yes.

21          Q.    You could decline to put out information, that  
22               was a way to exercise control?

23          A.    Yes, that's true.

24          Q.    You could phrase information in a certain way,  
25               that was another form of control you had?

1 A. Yes.

2 Q. You -- These news conferences didn't just happen,  
3 invitations were sent, or notices were sent to  
4 media outlets?

5 A. They were provided with a date and time so that  
6 we could have everybody together at one time,  
7 rather than having individuals from the media  
8 calling and getting information at this time, and  
9 this time, and that time.

10 Q. Sure. Sure. So either your office or  
11 Mr. Kratz's office, somebody was either mailing  
12 or faxing, you know, here's the date, here's the  
13 time, here's the place, kind of information to  
14 media outlets?

15 A. Yes. And, again, this goes back to some training  
16 that I have received as to providing one news  
17 conference where everybody gets the same  
18 information.

19 Q. Fair enough. And you made a facility available  
20 at which cameras could be set up?

21 A. Yes.

22 Q. Microphones could be set up?

23 A. Yes.

24 Q. And that was another form of control, in the  
25 sense that, if your words are recorded on tape

1           or, you know, orally, as opposed to visually.

2           Now, you know, somebody plays the tape, you know  
3           exactly what the viewer will see and hear?

4       A. Yes.

5       Q. But what the media did after they left your news  
6           conference, after they shut off the lights, and  
7           turned off the cameras, and took the microphones,  
8           that you couldn't control?

9       A. That is correct.

10      Q. What Steven Avery might choose to say, you could  
11           not control?

12      A. That is correct.

13      Q. What his family members might say, you could not  
14           control?

15      A. That is correct.

16      Q. Other than the week or thereabouts that you had  
17           control of the Avery property, you couldn't  
18           prevent the media from going and talking to the  
19           Avery family members?

20      A. Yes, and that happened.

21      Q. How many times in your -- Well, how long have you  
22           been a law enforcement officer?

23      A. 33 years.

24      Q. Part of a long line of Pagels, I think, with the  
25           Sheriff's Department in Calumet County, right?

1 A. Yes.

2 Q. And during your 33 years in law enforcement, on  
3 how many occasions have you held a televised news  
4 conference, as you did on November 11, to respond  
5 to something that somebody, charged with being a  
6 felon in possession of a firearm, may have said  
7 publicly?

8 A. How many times have we had similar type --

9 Q. Yes.

10 A. -- news conferences? I would have to go back and  
11 check through my notes and records but --

12 Q. I bet you remember.

13 A. There have been a couple.

14 Q. There have been a couple?

15 A. Yes, we have had a number of major investigations  
16 that we have conducted, that we have had these  
17 type of news conferences.

18 Q. But my question was really more narrow. I mean,  
19 how often have you had a news conference to  
20 respond to something that an arrested defendant  
21 has said publicly?

22 A. Myself, probably none.

23 Q. This was the only time?

24 A. Yes, I believe so.

25 Q. This case?

1 A. Myself, as sheriff, investigating or being  
2 involved?

3 Q. Yes.

4 A. Yes. I know there's been other cases, but not  
5 myself, no.

6 Q. Ever -- Ever in your experience with him, ever  
7 hear Mr. Kratz give a news conference to respond  
8 to some claim that a defendant has made publicly?

9 A. I don't know. I guess that would be something  
10 you would have to ask Mr. Kratz if he can --

11 Q. But you don't remember seeing --

12 A. I don't know.

13 Q. -- or hearing such a thing?

14 A. I would have to look back. I don't know. I  
15 can't answer that.

16 Q. As you sit here today, you don't recall?

17 A. I don't recall, sitting here today.

18 Q. Okay. If I understood your testimony on direct,  
19 you were getting phone calls from Avery family  
20 members, or members of the general public, saying  
21 something like, are you framing Steven Avery?

22 A. No, the news media was calling my cellphone and  
23 indicating that they were getting calls from Mr.  
24 Avery, or from family members, and that certain  
25 information was being released to the news media

1 via them.

2 And they were trying to confirm whether  
3 this was factual or not. And they would be  
4 informed that any information that was going to  
5 be divulged would be divulged at the news  
6 conference, or at the press conference.

7 Q. Referring to the November 11 news conference?

8 A. This was numerous times throughout this. And, in  
9 fact, even the day of March 1st, I was receiving  
10 phone calls from the news media inquiring about  
11 the fact that, we understand that Brendan Dassey  
12 has been interviewed, the Avery's have called us  
13 and told us this.

14 And, again, they were disseminating the  
15 information themselves. And we had -- we felt we  
16 had an opportunity, or we should be dispelling  
17 some of the information that the Avery's were  
18 providing.

19 Q. Well, let me be clear. I mean, it was members of  
20 the news media who were telling you that the  
21 Avery's had called them?

22 A. Yes.

23 Q. You probably saw some Avery family members back  
24 before Steven was in custody so, that is, before  
25 November 9, probably saw some film footage, if

1           you watched the TV's at all, of him and other  
2           family members?

3       A. That is correct.

4       Q. But you also know that you were getting calls  
5           from media people in which they claim that they  
6           had gotten information from the Avery's that had  
7           not been made public by those media sources?

8       A. Yes.

9       Q. And so you and Mr. Kratz made a decision to  
10          respond publicly to these phone calls on your  
11          cellphone, that you were getting from the media  
12          people, saying the Averys are calling us and  
13          telling us X, Y, or Z?

14      A. The news media was told that any information that  
15          was going to be released would be done at the  
16          press conference and that we weren't going to be  
17          speaking to them, or giving them information  
18          without having a joint conference.

19      Q. Okay. Although, you did do that, you sat down  
20          for an interview on air, in your office, at one  
21          point, didn't you?

22      A. Yes, I have had interviews in my office.

23      Q. About this case?

24      A. Yes.

25      Q. Including about claims that evidence was not

1                   handled appropriately?

2       A. Yes, there was one, yes.

3       Q. Prior to November 11, which I think was the news  
4                   conference that responded to suggestions of  
5                   mishandling of evidence, or improper motives,  
6                   prior to that date, what investigation had you,  
7                   or those under your direction, done to assure  
8                   yourself that there had not been mishandling of  
9                   evidence?

10      A. Interviews were done, and the information that we  
11                  were obtaining from the State Crime Lab was  
12                  tending to indicate, or inform us, that this was  
13                  impossible.

14      Q. When you say interviews were done, who did you  
15                  interview about the possible mishandling of  
16                  evidence?

17      A. We would be conversing with individuals out at  
18                  the scene. And we knew that there was no  
19                  possibility, because there was always an  
20                  investigator, either from the Sheriff's  
21                  Department of Calumet County, or from DCI, with  
22                  these individuals. So we knew that wasn't a  
23                  possibility.

24      Q. So when you say these individuals, you were  
25                  referring to Manitowoc County Sheriff's

1                   Department personnel?

2       A.   That's who I thought you were referring to.

3       Q.   I'm just asking who you were referring to?

4       A.   Yes.

5       Q.   Okay. So the safeguard, so to speak, was, well,

6                   we will make sure we always have a Calumet County

7                   person with the Manitowoc people?

8       A.   Calumet, DCI, yes.

9       Q.   Somebody from outside the Manitowoc County

10                  Sheriff's Department?

11      A.   That was -- That was done, yes.

12      Q.   Was that actually a policy that was put in place

13                  for this investigation?

14      A.   Yes.

15      Q.   When was that policy put in place?

16      A.   Shortly after the investigation was turned over

17                  to Calumet County and DCI.

18      Q.   And who put that policy in place?

19      A.   It was a joint decision made through our agency,

20                  the Calumet County District Attorney's Office,

21                  and the Manitowoc County D.A.'s Office, and Corp

22                  Counsel, and Sheriff's Department.

23      Q.   Okay. So, the three Manitowoc County agencies,

24                  D.A., Sheriff's Department, and Corp Counsel,

25                  correct?

1 A. Yes.

2 Q. Two Calumet County agencies, Sheriff's Department  
3 and District Attorney's Office?

4 A. Yes.

5 Q. And I think I missed someone. DCI?

6 A. DCI.

7 Q. DCI. So among these six groups, this decision  
8 was made, we will always have somebody from  
9 another department there with any Manitowoc  
10 County Sheriff's Department person involved in  
11 this investigation?

12 A. Yes, because of the fact that we were the lead  
13 agency and we found out about the pending  
14 litigation against Manitowoc County by Mr. Avery.

15 Q. That's done on November 5, right?

16 A. Yes.

17 Q. Why would that be done on November 5, if Steven  
18 Avery was not a suspect, or a person of interest,  
19 until November 9?

20 A. Again, the evidence -- the vehicle was found on  
21 the Avery property. There's a lawsuit filed by  
22 Steven. So -- So, as to not look like there was  
23 any type of tampering, we felt it was important  
24 that we do the investigation properly from the  
25 beginning. And this is the reason it was done.

1 Q. Again, I don't think that that addresses my  
2 question. Why, if Steven Avery was not a  
3 specific person of interest, or a suspect, until  
4 November 9, why the great concern to be  
5 shadowing, or accompanying, and watching over the  
6 shoulder of the Manitowoc County Sheriff's  
7 Department?

8 A. Because --

9 ATTORNEY KRATZ: Judge, I'm sorry. Judge,  
10 I'm going to interpose an objection if Mr. Strang is  
11 meaning to quote a previous answer or question. The  
12 question was why was he not identified as a suspect.  
13 Mr. Strang has now said, if he was not a suspect.  
14 It is a mischaracterization of the previous question  
15 that was placed.

16 ATTORNEY STRANG: I will have the court  
17 reporter read back my original question.

18 (Question read back.)

19 Q. (By Attorney Strang)~ Maybe you could answer that  
20 question?

21 A. Okay. We have a vehicle that's found on the  
22 property. We have a missing person  
23 investigation. We have Steven Avery being one of  
24 the individuals who is living on this property as  
25 were other members of his family.

1                   Because of the litigation, it was felt  
2                   that, let's insure that there's no thing in the  
3                   future that's going to be construed as being a  
4                   cover up, or anything like that. Let's ensure  
5                   that if we are going to do this investigation, we  
6                   are going to do it properly, and let's do it from  
7                   the beginning. And that's why it was done that  
8                   way.

9       Q.   All right. Now, do I understand, then, that as  
10                   to what investigation you had done into the  
11                   possible mishandling of evidence as of the  
12                   November 11 news conference, the answer is none,  
13                   but that you had put this policy in place on  
14                   November 5?

15      A.   The policy, meaning the policy as far as?

16      Q.   If someone from another law enforcement agency is  
17                   looking over the shoulder of any Manitowoc County  
18                   Sheriff's Department person involved in this  
19                   investigation.

20      A.   Again, that's the reason that Manitowoc asked us  
21                   to do the investigation in the first place --

22      Q.   I understand.

23      A.   -- because of this litigation. And so, because  
24                   of that litigation, we felt it was very  
25                   important, that if you wanted us to be the lead

1 agency, that we do it properly from the beginning  
2 and start, and so that there can't be any  
3 inference in the future that it wasn't done  
4 properly.

5 Q. Understood. And the question was, as of November  
6 11, then, putting this policy in place was the  
7 only step you had taken to assure yourself that  
8 there was not mishandling of evidence, or other  
9 misconduct by law enforcement officers?

10 ATTORNEY KRATZ: Judge, I am also going to  
11 interpose an objection. I think we're well beyond  
12 the change of venue or pretrial publicity portion of  
13 these motions. These might be relevant to other  
14 motions, but I don't know as to pretrial publicity,  
15 the motion to dismiss, or the change of venue that's  
16 before the Court.

17 ATTORNEY STRANG: I will leave it with his  
18 answer, if he's permitted to ask that question --  
19 answer that question, I should say.

20 THE COURT: All right. Are you withdrawing  
21 your objection if this is the last question?

22 ATTORNEY KRATZ: Yeah, if we can move on.

23 THE WITNESS: I guess I'm still confused as  
24 to what you are asking.

25 ATTORNEY STRANG: Do you want to read it

1 back.

2 (Last question read back.)

3 ATTORNEY STRANG: Judge, I don't think we  
4 have got that exactly right.

5 Q. (By Attorney Strang)~ What I meant to ask was, as  
6 of November 11, other than putting in place the  
7 policy that you have described, of watching over  
8 Manitowoc County people --

9 A. Okay.

10 Q. -- you had taken no step to assure yourself that  
11 there had not been mishandling of evidence or law  
12 enforcement misconduct?

13 A. I guess that was the reason.

14 Q. That was the step.

15 A. The step we took that day to ensure --

16 Q. Right. And the question is --

17 A. -- that could not be a question in the future,  
18 yes.

19 Q. Is that the only step, as of November 11?

20 A. I believe so, yes.

21 Q. Last area I have -- and I'm shifting gears off  
22 that, or shifting off that. You told Mr. Kratz  
23 that you had --

24 THE COURT: Mr. Strang before you start,  
25 about how long do you think you have got to go yet?

1 ATTORNEY STRANG: Three minutes.

2 THE COURT: Three minutes, go ahead.

3 Q. (By Attorney Strang)~ You told Mr. Kratz, on  
4 direct examination, that you have gotten many  
5 phone calls, or approaches from national media,  
6 as well as local and regional media?

7 A. Yes.

8 Q. You have turned down all the national media  
9 requests for comment?

10 A. Yes.

11 Q. Have you, personally, been approached by anyone  
12 for a book deal, or a movie deal, or something of  
13 that kind?

14 A. Approached, no. I don't know what you mean. No.

15 Q. Well, now, I don't know what you mean. I mean,  
16 by approached, I mean a letter written, a call  
17 made, an e-mail received, has anybody suggested  
18 to you that you ought to become involved in a  
19 book, or a television movie, or a commercial  
20 movie, or something like that, about the Avery or  
21 the Halbach case?

22 A. No.

23 ATTORNEY KRATZ: Thank you. That's all I  
24 have then.

25 THE COURT: Counsel, if you have got some

1 redirect, I'm going to have you do it after lunch.

2 ATTORNEY KRATZ: I think I only have two  
3 questions, Judge. I promise it will be very brief.

4 THE COURT: All right. Go ahead.

5 ATTORNEY KRATZ: If I may.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY KRATZ:

8 Q. Sheriff Pagel, just a couple of questions. The  
9 press conference on the 2nd of March, do you  
10 recall, before that press conference, or before I  
11 made any comments, an admonition, or a reminder  
12 to the public that all accused individuals are  
13 presumed innocent until proven guilty?

14 A. Yes, you did.

15 Q. And that wouldn't be something, if the Complaint  
16 was just released, that would be included,  
17 typically, in the Complaint; is that correct?

18 A. That is correct, yes.

19 Q. Finally, the sensitivity to the Halbach family  
20 and to crime victims, was that discussed in how  
21 details would be released? I'm specifically  
22 talking about the March 2nd Complaint and the  
23 details within there, how things would be  
24 phrased, what should be left out regarding a  
25 sensitivity to the Halbach's.

1       A. Oh, yes, most definitely. That was done on  
2                   March 2nd, and it was done throughout the  
3                   investigation.

4                   ATTORNEY KRATZ: That's all the questions  
5                   as to the venue and the publicity issue, Judge.

6                   THE COURT: All right. You are excused.  
7                   Counsel, then as I understand it, we're going to  
8                   have one more evidentiary witness after lunch and  
9                   then I will hear argument on the motions; is that  
10                  both parties understanding?

11                  ATTORNEY STRANG: Not necessarily  
12                  immediately after lunch -- I shouldn't speak for  
13                  Mr. Fallon.

14                  ATTORNEY FALLON: The remaining testimony  
15                  anticipated for today has nothing to do with any  
16                  motion that will be decided today, that's relative  
17                  to a motion set for the 19th. So I think it would  
18                  be better to hear the arguments, or get through as  
19                  many of the arguments as we can before we take the  
20                  testimony of that other witness.

21                  THE COURT: Very well. I think in most  
22                  cases, these motions, each of the parties have  
23                  submitted written arguments already, so they will be  
24                  somewhat supplemental. I assume they won't be too  
25                  lengthy.

1 ATTORNEY FALLON: Correct.

2 THE COURT: All right. We'll see you at  
3 1:00.

4 (Noon recess taken.)

5 THE COURT: At this time we're back on the  
6 record, all counsel are present. And I believe  
7 that, with the exception of some testimony we're  
8 going to hear on one of the July 19 motions later  
9 this afternoon, we have completed the evidence  
10 portion of the hearing today; is that correct,  
11 Counsel?

12 ATTORNEY KRATZ: Judge, there may be some  
13 brief testimony as to the bond modification motion  
14 of Mr. Strang that we intend to come much later this  
15 afternoon, once that motion is addressed.

16 THE COURT: All right. Moving on to the  
17 motions themselves, and before dealing with a  
18 particular motion, I know there were a number of  
19 motions and supporting documents filed under seal.  
20 And it's my understanding from our status conference  
21 leading up to today's hearing, that the parties were  
22 going to request that a number of the documents that  
23 had been filed be unsealed. Is that correct,  
24 counsel?

25 ATTORNEY STRANG: I don't know that it's a

1           great number. The principal issue, at least as I  
2           recall it, your Honor, was the -- the defense motion  
3           to exclude the Manitowoc County Sheriff's  
4           Department, which I filed under seal in deference to  
5           Mr. Kratz's expressed view that it ought to be. So  
6           I thought it only fair to honor that, in the first  
7           instance, and then to let the Court decide rather  
8           than, in effect, deciding it myself by filing it  
9           other than under seal.

10           I don't think it's properly sealed.  
11           That is, I couldn't defend a media request to  
12           unseal it. It concerns information that already  
13           has been broadcast publicly. And in general  
14           here, Steve Avery is aware that the public nature  
15           of trials in this country has been an aid to the  
16           defense. It's been a protection for the citizen  
17           accused. And I would err here on the side of  
18           making court documents publicly available where  
19           they possibly can be, and certainly there still  
20           will be some that cannot, consistent with a fair  
21           trial and the Court's obligation.

22           But I think this one reveals nothing  
23           that hasn't already been broadcast publicly by  
24           FOX 11 TV. So I suggest to the Court that the  
25           Motion to Exclude the Manitowoc County Sheriff's

1                   Department, and any response from the State,  
2                   rightly ought to be unsealed.

3                   THE COURT: All right. Mr. Kratz and  
4                   Mr. Fallon.

5                   ATTORNEY KRATZ: Judge, I do agree with  
6                   Mr. Strang's position on that particular motion.  
7                   Our concern was providing an additional forum for  
8                   additional pretrial publicity on such a volatile  
9                   issue, or at least as framed by Mr. Strang. But at  
10                  this time, as the matter has been brought before the  
11                  Court, and as the Court is about to receive at least  
12                  brief oral argument on it, I have no objection to  
13                  that course.

14                  THE COURT: All right. The Court will  
15                  order then that that motion, and any papers filed in  
16                  support of or in opposition to it, can be unsealed.

17                  The next item I have got is the State's  
18                  motion concerning third party liability evidence,  
19                  or a **Denny** motion. Is there any reason that that  
20                  pleading, and the briefs submitted in support and  
21                  opposition to it, cannot be unsealed?

22                  ATTORNEY KRATZ: It's fine from the State's  
23                  perspective, Judge.

24                  THE COURT: Mr. Strang?

25                  ATTORNEY BUTING: Judge, I'm handling that

1 motion. I don't know that it was, actually,  
2 originally sealed, but I don't see there is any need  
3 to have it sealed, or any of the responses.

4 THE COURT: Okay. Court will order that  
5 motion, and the briefs relating to it, unsealed.

6 The next item is -- well, actually, the  
7 State I think groups together a number of  
8 preliminary motions in limine. The one that I'm  
9 looking at to be dealt with next is the motion  
10 concerning the admissibility of evidence  
11 regarding the defendant's wrongful conviction.  
12 This would be designated as item one in the  
13 pleading entitled Motion in Limine Series One  
14 from the State.

15 Now, there's other related motions made  
16 in the same document. I will start out I guess,  
17 Mr. Kratz, with you, since you filed it. Is  
18 there anything in there that the State feels  
19 requires sealing at this point?

20 ATTORNEY KRATZ: Not in paragraph -- I'm  
21 sorry, Judge, not in Paragraph 1, no.

22 THE COURT: Well, let's take the entire  
23 document. I don't think I can unseal a paragraph.  
24 I think there is, later in the document, some  
25 evidentiary matters that are set forth in some

1 detail, the admissibility of which is yet to be  
2 determined.

3 ATTORNEY KRATZ: Paragraph 5 and 6, Judge,  
4 may still be appropriate to be sealed as it  
5 requires, at least in part, a balancing test of the  
6 Court and seeks a pretrial ruling of the Court. As  
7 I told the Court, in chambers, and Mr. Strang,  
8 Paragraph No. 7, dealing with out of the court  
9 statements of Teresa Halbach, this Court understands  
10 the recently decided case of **Davis vs. Washington**  
11 decided by the US Supreme Court, June 19th, was very  
12 relevant to the analysis the Court must undertake in  
13 this regard.

14 The Court had asked for a supplementary  
15 memorandum of law to be prepared. I have done  
16 that. I have provided that to defense counsel.  
17 I at least want to provide the Court the original  
18 of that; although, it's not going to be argued  
19 until the 19th, that's been completed, Judge.

20 THE COURT: All right. What's the State's  
21 position on the sealing or unsealing of the State's  
22 Series One Motions in Limine.

23 ATTORNEY STRANG: Defense's position?

24 THE COURT: Defense's position, I'm sorry.

25 ATTORNEY STRANG: This is an appropriate

1 case to use redacting of a public copy rather than  
2 sealing. And I think that Paragraph 1 may be made  
3 available publicly, that is, not redacted.

4 Paragraph 2 may be made available  
5 publicly, not redacted.

6 Paragraph 3, I think is appropriate for  
7 public disclosure, not redacted.

8 Paragraph 4, need not be redacted.

9 Paragraph 5, in my view, need not be  
10 redacted.

11 All of Paragraph 6 should be redacted at  
12 this point.

13 Paragraph 7, need not be redacted. The  
14 argument that follows need not be.

15 And, then, Paragraph 8 need not be  
16 redacted.

17 THE COURT: So the defense is asking for  
18 the document to be unsealed with the exception of  
19 Paragraph 6 being redacted, correct?

20 ATTORNEY STRANG: I'm sorry?

21 THE COURT: Paragraph 6 is the only one  
22 that you are asking to be redacted.

23 ATTORNEY STRANG: Yes, your Honor.

24 THE COURT: Any objection from the State?

25 ATTORNEY KRATZ: No, Judge, other than

1           there was discussion previously about Paragraph 5,  
2           and this Court asking for additional argument as to  
3           that may or may not include information that will be  
4           made public. Actually, the suggestion, or offer, in  
5           Paragraph 5, is probably not something that is all  
6           that noteworthy and so I would have no objection to  
7           the Court, other than Paragraph 6, allowing this  
8           document to be made public.

9                         THE COURT: All right. Let's move on then  
10                        to --

11                       ATTORNEY STRANG: May I make a suggestion--  
12                        THE COURT: Yes.

13                       ATTORNEY STRANG: -- about the mechanics of  
14                        this, which then could apply to any future issue  
15                        where the document itself would be public, but parts  
16                        of it may be redacted. My suggestion would be that  
17                        the author of the document, in this case the State,  
18                        go back to the word processing system, create a  
19                        copied over document of this and then just remove  
20                        Paragraph 6 and put Paragraph 6 redacted, rather  
21                        than black ink and that kind of thing, which people,  
22                        then, invariably are holding up to the light and  
23                        trying to guess about.

24                       I think it's just a more effective way  
25                        to redact. And then the document, as refiled,

1           would clearly say redacted at the appropriate  
2           paragraph. And I, of course, would have no --  
3           there's every reason why a redacted copy should  
4           be treated as filed on the original date of  
5           filing, nunc pro tunc.

6                         THE COURT: Any objection Mr. Kratz?

7                         ATTORNEY KRATZ: My secretary might, Judge,  
8                         but I don't. We'll try to accomplish that.

9                         THE COURT: All right. Let's move on then  
10                        to the next item to be addressed today. That was  
11                        actually, let's see, I think an additional part of  
12                        the same document, which would be Paragraph 3. So  
13                        that's dealt with there.

14                         ATTORNEY BUTING: Judge, the only filings  
15                        on that motion so far is the State's Motion in  
16                        Limine Series One that we just discussed, Paragraph  
17                        3, and then my letter response. I don't think that  
18                        needs to be sealed.

19                         THE COURT: Okay. All right. So -- Well,  
20                        that's a good point. The written arguments, in  
21                        support of or in opposition to the request for each  
22                        of these items, with the exception of Paragraph 6 at  
23                        this time, I would think could be unsealed or  
24                        submitted open, if you will, without prior request  
25                        to and permission of the Court. Fair enough?

1                   ATTORNEY STRANG: Right. And in that vein,  
2 I filed a memorandum that relates only to  
3 Paragraph 6 and the State's argument there. So my  
4 memorandum probably just could be sealed.

5                   THE COURT: That would remain sealed. Very  
6 well. The Court was also going to take up  
7 Paragraph 2 of the State's motions in limine today  
8 and that's covered by the part that has already been  
9 decided to be unsealed.

10                  ATTORNEY STRANG: And that's a matter on  
11 which I have no doubt we'll reach a substantive  
12 stipulation at some point.

13                  THE COURT: The State's Motion to Dismiss,  
14 I believe is already open. I don't think there's  
15 anything left to unseal there; is that correct,  
16 Counsel?

17                  ATTORNEY KRATZ: The defense motion, I  
18 don't think I filed one, Judge.

19                  THE COURT: Right.

20                  ATTORNEY STRANG: Right, I think that's  
21 unsealed.

22                  THE COURT: And then there was also a  
23 defense motion concerning interference with right to  
24 counsel that I was led to believe might be resolved  
25 by today, relating to the other person.

1 ATTORNEY STRANG: The cell mate?

2 THE COURT: Yes.

3 ATTORNEY STRANG: It's not even a motion,  
4 it's a notice.

5 THE COURT: True.

6 ATTORNEY STRANG: What I'm awaiting from  
7 the State, and I'm sure I will get when Mr. Kratz  
8 has five minutes, is an explanation of why this  
9 gentleman was in the jail at all. CCAP doesn't  
10 disclose a reason. I know that Mr. Kratz knows and  
11 he's commented about where the gentleman is now. So  
12 he has that information.

13 At this point I wanted the State and the  
14 Court to be on notice that we have a concern  
15 about cell mates and inquiry that may be made of  
16 Mr. Avery by cell mates. But as the notice  
17 itself says, I think at this point there hasn't  
18 been a "messiah problem" that arose as to that  
19 gentleman.

20 THE COURT: Mr. Kratz, do you have  
21 materials with you today that are hopefully going to  
22 resolve that?

23 ATTORNEY KRATZ: I have information.  
24 Actually, if the Court anticipates a mid-afternoon  
25 break, Mr. Wiegert from the Sheriff's Department can

1 provide that relevant information and I'm sure it  
2 will be to Mr. Strang's -- or that it will conclude  
3 the matter without further discussion with the  
4 Court.

5 THE COURT: All right. The last item up  
6 for consideration today is the defendant's motion to  
7 reduce bail which was also, I believe, submitted  
8 under seal. What's the position of the parties on  
9 that particular motion? Mr. Strang?

10 ATTORNEY STRANG: This is Mr. Buting's  
11 department.

12 THE COURT: Okay. Sorry, Mr. Buting.

13 ATTORNEY KRATZ: We're just talking on the  
14 sealing issue?

15 THE COURT: The sealing issue of the bail  
16 motion, correct.

17 ATTORNEY BUTING: Judge, I have no reason  
18 that this could not be unsealed.

19 THE COURT: What is the State's position?

20 ATTORNEY KRATZ: Well, Judge, this was what  
21 we had alerted the Court that would require some  
22 brief testimony. It deals with statements made by a  
23 co-defendant, which may or may not be admissible at  
24 trial. Quite frankly, Judge, the State doesn't --  
25 doesn't mind if it is unsealed and discussed. We

1 can certainly do that in open court.

2 As an officer of the court, however, I  
3 need to alert the Court, and I'm sure defense  
4 counsel understands, that portions of those  
5 statements may or may not be admissible. So I  
6 want to at least tell the Court that.

7 If we are getting into those statements,  
8 we can certainly do that in open court. That  
9 seemed an area, however, that was a little less  
10 clear about whether the Court wanted to air that  
11 in open court. But we are prepared to do so  
12 today, if the Court wishes.

13 THE COURT: Mr. Buting.

14 ATTORNEY BUTING: Again, I'm fine with  
15 unsealing it. I don't think there is any reason  
16 that it can't be.

17 THE COURT: Very well. The Court will  
18 allow that motion to be unsealed. And I will  
19 prepare an order regarding the documents to be  
20 unsealed, which I will submit for -- to the parties  
21 before I sign it, just so everyone is in agreement.

22 ATTORNEY STRANG: There's one more document  
23 that's under seal, your Honor.

24 THE COURT: Okay.

25 ATTORNEY STRANG: The -- I filed a motion

1 to suppress Mr. Avery's November 5 statement to a  
2 Marinette County detective and any products or  
3 fruits of that statement. The motion itself was not  
4 under seal, but I filed a supporting affidavit from  
5 Steve Glynn that has some pages from the discovery  
6 attached to it and, therefore, I sealed -- I filed  
7 under seal Mr. Glynn's affidavit, because it was my  
8 understanding if we were attaching discovery  
9 documents, it should be filed under seal.

10 All that said, I don't think there's --  
11 you know, there's nothing all that terribly  
12 prejudicial in the document -- in the discovery  
13 documents that were attached to Mr. Glynn's  
14 affidavit. So I -- I don't feel strongly about  
15 keeping it sealed.

16 THE COURT: Mr. Strang -- Mr. Kratz, I'm  
17 sorry.

18 ATTORNEY KRATZ: I have no objection to  
19 that as well, Judge. There was -- and I didn't know  
20 if the Court wanted to deal with the July 19th  
21 motions as well. This Marinette issue is to be  
22 dealt with, at least contemplated, partly today and  
23 partly on the 19th. And I noted the Court did not  
24 address other motions, including the other acts  
25 motions, which I'm sure should remain under seal.

1           But that having been said, I don't have any  
2           objection to the Marinette detective's reports, or  
3           at least portions of them included in Mr. Glynn's  
4           affidavit, to be made public.

5           THE COURT: Very well. I will include that  
6           as part of the order then.

7           ATTORNEY STRANG: Mr. Buting points out  
8           that there is one more document that remains under  
9           seal, which is the Defendant's Memorandum on  
10          Evidence of Wrongful Conviction and Accusations of  
11          Prisoners.

12          THE COURT: That sounds like it would fall  
13          under Paragraph 6 of the --

14          ATTORNEY STRANG: Some of it does and some  
15          of it concerns Paragraph 1. You know, we could -- I  
16          don't have a -- I was pretty circumspect in what I  
17          have said about the Paragraph 6 material in this  
18          memorandum; although, I did file this under seal. I  
19          don't have an objection to unsealing it.

20          And, indeed, maybe a good balance to  
21          strike here is there's probably about four lines  
22          of it that could be redacted with the rest of the  
23          document being unsealed. And obviously I, as the  
24          author, would handle the word processing task  
25          that I described earlier.

1           If the State would prefer that it not be  
2 redacted, then I don't have an objection to  
3 unsealing it in the entirety.

4           THE COURT: Mr. Kratz.

5           ATTORNEY KRATZ: I don't have a position,  
6 Judge. I think Mr. Strang is correct, there isn't  
7 anything in there that is so prejudicial that it  
8 needs to remain sealed.

9           THE COURT: All right. I will include that  
10 as part of the Court's proposed order. Do the  
11 parties have a preference as to which motion they  
12 wish to present argument on first?

13           ATTORNEY KRATZ: Is the Court contemplating  
14 receiving argument on the Change of Venue, Exclusion  
15 of the Sheriff's Department and Motion to Dismiss --

16           THE COURT: Yes.

17           ATTORNEY KRATZ: -- altogether, or did the  
18 Court want to receive separate argument on those?  
19 We certainly can since we -- we meaning defense  
20 counsel and the State -- have in one form or another  
21 presented the lion's share of the argument to the  
22 Court. I expect this Court wishes a very brief  
23 summary of the arguments as to those. I have no  
24 objection, Judge, to providing them en masse, that  
25 is, all three together, since they are interrelated.

1                   THE COURT: Mr. Strang, are you going to be  
2                   arguing these for the defense?

3                   ATTORNEY STRANG: I am.

4                   THE COURT: Any objection to combining your  
5                   argument?

6                   ATTORNEY STRANG: I don't.

7                   THE COURT: All right. You may proceed.

8                   ATTORNEY STRANG: I will start with  
9                   Mr. Avery's Motion to Dismiss the five counts  
10                  relating to Teresa Halbach. I was clear on the  
11                  motion, but I will reiterate here that we have not  
12                  moved to dismiss the felon in possession count,  
13                  because I don't think the problems of which we  
14                  complain relate anywhere near as strongly to that  
15                  Count of the Amended Information.

16                  The facts here, largely, are undisputed,  
17                  your Honor. In terms of what -- what has  
18                  happened. But I will simply review them as I  
19                  understand them.

20                  There have been eight news conferences  
21                  of which I'm aware in this case. All eight of  
22                  them have been set up by the State, presented by  
23                  the State, as part of a decision, as Sheriff  
24                  Pagel testified this morning, to disseminate  
25                  information to the media and, thereby, to the

1                   public, and to do so with control of the Calumet  
2                   County Sheriff and the Calumet County District  
3                   Attorney who serves here as Special Prosecutor,  
4                   of course.

5                   Each of those eight news conferences was  
6                   broadcast, in full, by one or more, I think  
7                   probably all, of the Green Bay television  
8                   stations. Some of them were covered in full, or  
9                   in large excerpt, by Milwaukee stations.

10                  The defense appeared at none of those  
11                  and there have been no news conferences called by  
12                  counsel for the defense at any juncture, either  
13                  current counsel or, to my knowledge, predecessor  
14                  counsel, for Mr. Avery.

15                  Of the State's eight televised news  
16                  conferences, four of those came after formal  
17                  charges, or a formal charge, was filed against  
18                  Mr. Avery. The Court will have available to it,  
19                  DVD's of all eight in full, but I will represent  
20                  to the Court, as an officer, that Steven Avery,  
21                  by name, and then the Avery family more  
22                  generally, are discussed in all eight of the news  
23                  conferences, some of that incidentally, some of  
24                  it in response to questions from media people,  
25                  some of it just in the statements of Mr. Kratz or

1 Sheriff Pagel.

2 And, you know, to be clear, obviously,  
3 it's conceded by the defense that the locus of  
4 much of the investigated activity here was the  
5 Avery Auto Salvage property. So I don't cast  
6 dispersions or lay motives, in and of itself, to  
7 talking about the Averys, or the Avery family, or  
8 the Avery property that was the locus of many of  
9 the investigative steps here.

10 But it is clear that the Avery name, and  
11 Steven Avery's name in particular, was attached  
12 immediately in the news conferences, and then  
13 consistently in the news conferences, to the  
14 information that the State was making public.

15 That included, at the March 1 and March 2 news  
16 conferences, the impetus of which we are told was  
17 the arrest, and then the plans to charge, and  
18 eventually the charging of Brendan Dassey.

19 Impetus that may have been for the March 1 and  
20 March 2 press conference but, again, much of the  
21 content of both of those concerned Steven Avery.

22 There have been claims of superior  
23 knowledge made -- salted throughout these various  
24 news conferences by either Mr. Kratz or  
25 Mr. Pagel. And I don't remember right now anyone

1           else speaking at them, although, I can't be  
2           certain.

3           Well, I take that back, I think  
4           Manitowoc County District Attorney Mark Rohrer  
5           spoke very briefly at one of them. And I know  
6           that others appeared on camera, but I don't  
7           recall them speaking, all of them law enforcement  
8           officers or representatives of the State. So not  
9           at every one of these conferences, but salted  
10          throughout, there are references to what the  
11          State now knows, or what is now clear.

12          And assurances to the public that law  
13          enforcement and the prosecuting authorities were  
14          in possession of information beyond that  
15          disclosed to the public and that they found, or  
16          viewed, the information known only to them as  
17          reliable and as informing their conduct and their  
18          decisions in the case.

19          One of the press conferences, March 2,  
20          2006, was sufficiently graphic, or lurid, or  
21          colorful in its details, that Mr. Kratz did  
22          something I had not ever seen before, which is at  
23          the beginning, urge children under age 15, and  
24          friends or family members of Ms Halbach, not to  
25          watch. Essentially the State made an effort to

1 impose and R rating on its final televised news  
2 conference here on something that it knew was to  
3 be broadcast in the media market covering this  
4 county and, therefore, the jury pool, during  
5 daytime hours.

6 There have been at least two other  
7 appearances by law enforcement figures on TV:  
8 One, a televised interview of Sheriff Pagel, as I  
9 recall. And that was a topic of some brief  
10 testimony by him earlier this morning.

11 And then, probably something that's  
12 drawn much more focus, a two part series run by  
13 WLUK TV, which is FOX 11 out of Green Bay, that  
14 featured prominently, although not exclusively by  
15 any means, Sheriff Kenneth Petersen from  
16 Manitowoc County who, it is undisputed,  
17 personally has next to no role in the actual  
18 investigation of this case, but who spoke as the  
19 chief law enforcement officer at the county level  
20 for Manitowoc County. That was aired two nights  
21 in a row, May 10 and 11. And I think the Court  
22 has already a DVD carrying the 17 plus minutes of  
23 those two segments.

24 I note, as well, that one of the early  
25 steps that I took, after undertaking

1 representation of Steve Avery, was to move for a,  
2 what we call locally, a gag order. The motion  
3 had a little bit more elegant title than gag  
4 order motion. But the gist of it was, that I was  
5 moving to limit public comment.

6 From my recollection, and I'm sure the  
7 Court's notes or recollection are to be relied  
8 on, at least as much, if not more than mine, and  
9 the public record here. But my recollection is  
10 that the State did not join in that motion. And  
11 the Court, after some prompting to the parties to  
12 try to work things out in a reasonable way,  
13 eventually denied the motion.

14 The defense also, here, has sought an  
15 adjournment of the trial date, initially set for  
16 September 5; an October 16 date was proposed.  
17 The defense position, in a nutshell, was  
18 October 16 was better than September 5, but not  
19 sufficient. And that we thought an adjournment  
20 date into 2007 was necessary for adequate defense  
21 preparation and to permit a diminution in the  
22 publicity, and particularly the more inflammatory  
23 publicity that has attended this case from the  
24 outset, as Sheriff Pagel correctly anticipated  
25 back on November 5.

1                   The State, as I recall it, agreed that  
2                   on balance it was appropriate for the Court to  
3                   adjourn the September 5 trial date, but the State  
4                   preferred an October 16 trial date. And as we  
5                   stand here today, it's the October 16 date that  
6                   the Court has scheduled for trial on this.

7                   So, I don't think there is any question  
8                   that the publicity has been intense here, that at  
9                   least to the extent of the eight news conferences  
10                  and a couple of other televised appearances that  
11                  I have described, that the State has participated  
12                  actively in that; indeed, made a conscious choice  
13                  to engage in the dissemination of information  
14                  that way, publicly, as Sheriff Pagel testified  
15                  this morning.

16                  And that a foreseeable result of that  
17                  would be to impair or threaten, put at serious  
18                  risk, Mr. Avery's right to a fair trial at all,  
19                  because some of this publicity has been statewide  
20                  or even national, as the testimony acknowledged  
21                  this morning. More specifically, has imperiled,  
22                  put at risk, Mr. Avery's right to a trial at  
23                  which citizens of Manitowoc County would serve as  
24                  jurors.

25                  Both of these are constitutional rights

1           that he has, the fair trial in general being both  
2           federal and state constitutions as providing the  
3           basis for those constitutional claims. And as to  
4           a trial in this vicinage, or a trial venued in  
5           Manitowoc County, the Wisconsin Constitution  
6           guarantees Mr. Avery that right.

7           Now, I don't disagree with the State's  
8           observation in the abstract, that sometimes  
9           constitutional rights come into tension with one  
10          another. Sometimes, one, a defendant, an  
11          accused, is put to a choice in, do I, for  
12          example, exercise my constitutional right to be  
13          heard at trial, as a matter of due process, by  
14          trying -- by testifying at trial, or do I  
15          exercise my 5th and 14th amendment and, for that  
16          matter, state constitutional privilege against  
17          self-incrimination by declining to testify,  
18          knowing that the State, then, can't comment on my  
19          decision not to testify and meet the charges.

20          That would be the classic dilemma or  
21          potential conflict of constitutional rights. The  
22          defendant who chooses to testify necessarily  
23          gives up the privilege in self-incrimination.  
24          The defendant who stands on that privilege,  
25          necessarily, then, can't testify in his defense

1 at trial and exercise that aspect of his due  
2 process right to be heard.

3 But that's not the kind of conflict of  
4 constitutional rights that the Court confronts  
5 this afternoon; that is, the constitutional  
6 rights we raise here. The right to a fair trial,  
7 the right to a trial in the venue in which the  
8 crime is alleged to have occurred, are not  
9 unavoidably in conflict as are self-incrimination  
10 and the right to be heard. And this isn't a  
11 situation where mere fate has caused these two  
12 constitutional rights to collide, where forces  
13 outside anyone's control, or as I say, fate, for  
14 shorthand, have put Steven Avery to an unhappy  
15 choice.

16 This is not fate, this is the State that  
17 has done this. The State has fostered the  
18 publicity. The State has contributed to the  
19 publicity. The State is not to blame for all the  
20 publicity, and I don't suggest for a moment that  
21 the State is.

22 Today we're being televised, I assume,  
23 or there will be newspaper reports about the  
24 proceedings today, and that's not attributable to  
25 the State. It doesn't lay at their feet. I

1 haven't attributed any fault, any wrong doing, to  
2 the Halbach family. They have entirely separate  
3 interests. Those interests are important, they  
4 are legitimate. They are not under the State's  
5 control.

6 And nobody is complaining here about  
7 statements that the Halbach family have made, or  
8 when they have been intruded upon by cameras, the  
9 way they have handled that. Although, there have  
10 been -- there has been other publicity.

11 So the State, you know, the State is  
12 responsible only for some of the publicity in  
13 this case. But that responsibility is  
14 significant.

15 When I looked around at cases, primarily  
16 on change of venue, I find references to, you  
17 know, one short informational news conference,  
18 for example, Briggs (phonetic), the defendant not  
19 mentioned by name, purely an informational short  
20 news conference. Now, I can't say that there's  
21 no reported case in which there's been more than  
22 one news conference. I haven't seen one, but  
23 there may well be one.

24 Even in the State Courts of Wisconsin,  
25 I'm sure if I cast a wider net, nationally or in

1           the federal decisions, I'm sure I would find  
2           situations where there have been more than one  
3           news conference held by the prosecution, the  
4           State, the government, but eight is a great  
5           number. They were televised and these were not  
6           purely informational.

7                 These included a great amount of detail,  
8                 a fair amount of opinion, assertions of  
9                 knowledge, as if that epistemologically were  
10                absolute, and based on information not to be  
11                disclosed to the public. In the case of March 2,  
12                the presentation was so graphic and I think  
13                effective, to give Mr. Kratz his due, that he  
14                himself warned some viewers not to watch.

15               And gave what I thought was a pretty  
16               effective opening statement or closing argument,  
17               running through a Criminal Complaint that was  
18               graphic and highly detailed; a Criminal Complaint  
19               that went well beyond what was necessary to  
20               establish fair probable cause against Mr. Dassey,  
21               in the information that it detailed, and then  
22               that Mr. Kratz repeated on television.

23               The participation of Sheriff Petersen  
24               hardly needs much further comment. I will go out  
25               on a limb and say that we will not find, in

1           reported decisions, another case in which the  
2           sheriff of the county in which the alleged crimes  
3           occurred opines not just that the defendant is  
4           guilty of the charged offense, but opines that if  
5           he's acquitted, somehow he will murder someone  
6           else in the future, on what possible basis, I  
7           have no idea, that assertion would be made.

8                 I will venture further that the Court  
9                 will not find a close analog to the chief county  
10                law enforcement officer in the affected county,  
11                describing with, or agreeing with a description  
12                of an accused person as a psychopath. And then  
13                suggesting further, in his own words, in a case  
14                having nothing to do with fraud, deception, that  
15                sort of wrong doing, that the defendant may be a  
16                con man.

17                This was really remarkable. Before we  
18                even get to the bizarre discussion of how it  
19                might have been easier to kill Steven Avery than  
20                to frame him. Off the charts.

21                And the direct participation of the  
22                sheriff of this county, his words, his image on  
23                TV, two nights in a row, in an interview that he  
24                said took about half an hour, that occurred in  
25                the second half of April, about five months into

1           the prosecution of this case and at that point  
2           almost four full months before the September 5  
3           trial date that this Court anticipated. I will  
4           add also, the interview being given at a time  
5           when the defense already had made clear that we  
6           prefer, we want, a jury from Manitowoc County to  
7           hear this case.

8                         So the conflict here in constitutional  
9           rights, the fair trial right, bumping up against  
10           the right to a trial in the proper venue, isn't  
11           one of fate entirely. There has been significant  
12           State action in creating that conflict. It's a  
13           choice to which the defendant ought not be put.

14                         Because when the State takes action to  
15           interfere with any constitutional right, yet  
16           alone to bring two constitutional rights into  
17           direct contact so one cannot enjoy the one if he  
18           claims the other, the State is interfering with  
19           the defendant's constitutional rights, his bundle  
20           of trial rights assured by a Federal, in part,  
21           and the State, in full, Constitution.

22                         And that's a denial of due process, it  
23           seems to me. I don't know what could be more  
24           fundamental to due process and to fair play than  
25           the State not interfering with, or impeding, or

1 imperiling the defendant's constitutional rights,  
2 particularly when they go directly to where the  
3 trial will be held and how fair that trial will  
4 be.

5 It is a fundamental denial of due  
6 process, in addition to an interference with the  
7 specific constitutional right at issue. That's,  
8 I think, what we have here. Dismissal is an  
9 extreme remedy. Dismissal is an extreme remedy.  
10 But we have also seen extreme conduct.

11 And if I thought there was some remedy  
12 short of dismissal, I understand -- I understand  
13 just how unpalatable that is to the public, how  
14 horribly unpalatable that is to the Halbach  
15 family, if they believe Mr. Avery guilty.

16 I understand how unpalatable that is to  
17 the Court, which sits as a neutral in this, but  
18 in all events sits to see that justice is done,  
19 which ordinarily means that causes are tried.  
20 Allegations are presented to a fact finder and  
21 they stand proven or unproven, but they are  
22 tried. So I understand this is unpalatable  
23 stuff.

24 Maybe I'm not smart enough to think of  
25 the lesser remedy that would remove the conflict

1           between the right to a fair trial and the right  
2           to a trial in this venue. The only alternative I  
3           have come up with, and I stand on, is to adjourn  
4           this trial for a number of months, into February,  
5           2007, and to couple that adjournment with an  
6           order limiting the public disclosure by lawyers  
7           in this case and by law enforcement agencies  
8           involved in the prosecution of this case.

9                 I think the Court has the power to do  
10           that. It's unusual to ask for an order limiting  
11           disclosure by law enforcement officers, but the  
12           Court in general has the right to control what  
13           witnesses say. And the Court has the right to  
14           preserve the integrity of the proceedings before  
15           it and to assure the rights to a fair trial that  
16           he enjoys as a matter of the constitution and  
17           that the public enjoys as a matter of common  
18           sense, as a matter of tradition in this country.

19                 And although it's not a constitutional  
20           right for the public or the State, it's certainly  
21           a tradition, and a hope, and aspiration in this  
22           country, that the public too would have a fair  
23           trial. So maybe -- maybe an adjournment coupled  
24           with an order limiting disclosure, but I don't  
25           have more to offer, short of dismissal of the

1           affected charges. And, again, I tried to tailor  
2           that as best as I can to the problem.

3           So the first course, the one I prefer,  
4           is that the five counts relating to Ms Halbach be  
5           dismissed, without prejudice; without prejudice  
6           on the hope that at some point, if the State  
7           wishes to proceed, again, that that could be done  
8           without irreparable harm to the constitutional  
9           rights of the accused.

10          As a matter of second preference to  
11          adjournment, coupled with a pretty strong order  
12          eliminating public disclosure, that order would  
13          exclude the Halbach family, they would not be  
14          covered by it. And that order would exclude the  
15          defendant himself, because I don't think a Court  
16          can, or should, mute the accused himself, who has  
17          everything at stake in terms of his liberty,  
18          anything more than I think the Court should mute  
19          or gag the family of someone who's been killed,  
20          who's been lost. Because that family has a great  
21          deal at stake emotionally and in seeking justice.

22          But I will say this, that I think  
23          Mr. Avery has been less voluble since Mr. Buting  
24          and I have arrived on the scene. Specifically,  
25          none of the Avery family members agreed to

1 comment for the FOX 11 report, for example, as  
2 the reporter, Lauren Cook notes at the end of  
3 both of those segments. I know that I have tried  
4 to keep my tongue in check with the media, not  
5 with 100 percent success, but I haven't had any  
6 news conferences.

7 And while it wouldn't be proper for the  
8 Court to order Mr. Avery to say nothing in  
9 asserting his innocence, I will say, if he says  
10 anything, he's got his lawyers to explain that  
11 to. And he understands we won't be very happy.  
12 So those are the alternatives.

13 The third, and to us, least palatable  
14 alternative, is to change venue entirely in this  
15 case. Our motion is for relief under Section  
16 971.22 of the Wisconsin Statutes. It is not an  
17 invitation to, or an invocation of, the use of  
18 Section 971.225.

19 We think that if venue has to be  
20 changed, as a least palatable alternative here,  
21 that the entire trial ought be moved to a less  
22 tainted county, in the hope that the jury there  
23 would not have to be sequestered and that we  
24 wouldn't visit that sort of imposition on 12, or  
25 14, or 15, or 16, citizens, depending on the

1                   number of alternates the Court might pick for a  
2                   trial that well could go five weeks or  
3                   conceivably longer.

4                   So, I prefer the dismissal. Failing  
5                   that, an adjournment coupled with the restriction  
6                   of public comment by law enforcement officers, as  
7                   well as lawyers. And only last would I address  
8                   change of venue.

9                   Now, I have more to say about the change  
10                  of venue, but I want to end in -- for the moment,  
11                  in talking about an adjournment. And this is  
12                  new, I have something new to say on that. I have  
13                  not put this in writing and I have struggled with  
14                  how to say it, when to say it, and whether to say  
15                  it, but I'm going to say it.

16                  The Wisconsin legislature, acting rather  
17                  rapidly on the last day of a special session, saw  
18                  fit to decree that on this November's ballot for  
19                  statewide and federal offices, the citizens of  
20                  Wisconsin will be asked to give their advice, if  
21                  you will, to vote, that is, on an advisory  
22                  referendum on the death penalty.

23                  Wisconsin has gone 153 years now without  
24                  the death penalty. No state in the nation has an  
25                  unbroken period of that length in administering

1 justice without killing people. That referendum  
2 will happen just about the time the State is  
3 resting its case, give or take a few days, or a  
4 week, in this trial, if this trial remains set  
5 for October 16th.

6 And in a state where, for example, in  
7 1917 a bomb blew up and killed nine members of  
8 the Milwaukee Police Department; in a state that  
9 produced Ed Gein in the 1950's; in a State that  
10 produced David Spanbauer, in this neck of the  
11 woods, in the 1980's; in a state that produced  
12 Jesse Anderson, who was cynical enough to blame  
13 his own murder of his wife on a young black man  
14 figuring that would be the easiest guy to frame;  
15 in the state that in the 1990's featured Jeffrey  
16 Dahmer; in a state in which this horrible,  
17 alleged crime probably isn't even the worst  
18 Halloween crime in this part of the state, I  
19 guess that honor probably would go, dubious  
20 though it is, to Gerald Turner, in the late  
21 1970's.

22 In a state with this history, Steven  
23 Avery now has become the poster child, the poster  
24 boy, for some politicians in pushing the death  
25 penalty referendum. Whether they like it or not,

1 to some degree, Teresa Halbach's life and death  
2 have been politicized with the death penalty.

3 And I tell you, I don't like it that  
4 Steven Avery, for whom I feel responsible for  
5 here, has become politicized with the death  
6 penalty. But that's how it's playing out.  
7 That's what's happening in our state capitol, and  
8 that's the reality in terms of the referendum the  
9 citizens face this November. And they ought not  
10 be going to the polls in the super heated  
11 atmosphere that this trial will produce, at least  
12 in the Manitowoc County and northeastern  
13 Wisconsin area.

14 His own jurors shouldn't be taking a day  
15 off to go vote on the death penalty referendum at  
16 about the time they have heard the best the State  
17 has to offer in this case and probably before the  
18 defense has been heard, or heard in full.

19 It's an unfortunate confluence. No one  
20 in this room is to blame for any of it. But --  
21 And, you know, I hesitated to address it.

22 The one, I feel very strongly about the  
23 death penalty in general. And, two, it's just  
24 one of these events out there in Wisconsin. But  
25 the fact is, and you see this if you go through

the media reports that I have assembled for the change of venue motion, the fact is, that politicians, and the media themselves, have linked the death penalty referendum to the prosecution of Steven Avery.

Senator Lasse from Depere, the principal sponsor of the death penalty referendum, said in televised interviews that he revised the wording that he had intended. He adjusted course on his referendum proposal because of the Steven Avery case, or the Teresa Halbach case. I don't remember whether he used her name or his, and they are, unfortunately, linked by this case.

But it was this set of events, that brings to the courtroom, that caused the principal author, he said on television, to revise his proposal. And this case simply is a link to it. It is not good democracy, in terms of this referendum, and it's certainly not good justice, in this particular case, to have these two things going on at the same time. So, in speaking on behalf of an adjournment, as the second of the three possible alternatives I have proposed here, I will close with that.

If we get to the change of venue issue,

1           the Court wanted me to be more specific about  
2           what was prejudicial about the publicity, and  
3           also to make a full record by submitting what I  
4           have gathered on the publicity, and I will do  
5           that. But I'm going to yield the floor to  
6           counsel for the State on the initial matters I  
7           have addressed.

8                         THE COURT: All right. Mr. Kratz, will you  
9                         or Mr. Fallon be addressing?

10                  ATTORNEY KRATZ: I will, Judge. Your  
11                 Honor, I have filed with the Court written argument  
12                 as to the request by Mr. Strang to dismiss these  
13                 charges as the appropriate remedy for what he  
14                 describes as improper pretrial publicity. What  
15                 Mr. Strang also identifies as the only logical  
16                 remedy, I'm using his words, Mr. Strang recognizes  
17                 in citing the 1968 case, the **Schulter** case, that  
18                 dismissal due to pretrial publicity is not deemed an  
19                 acceptable remedy, at least in this state, and has  
20                 not been deemed an acceptable remedy when others are  
21                 available.

22                  The defense has available to it, not  
23                 only increased care in the voir dire and jury  
24                 selection process, but also that of change of  
25                 venue. Both **Schulter** and **Mendoza**, certainly,

1           when read together, suggest just what Mr. Strang,  
2           I believe, already knows; that is, when change of  
3           venue is, and would be, an appropriate remedy.  
4           Even should this Court find the pretrial  
5           publicity to be improper, dismissal just is not  
6           an appropriate remedy.

7           I do not, Judge, intend to go through  
8           the purposes of the press conferences. I think  
9           Sheriff Pagel did a good job in doing that. This  
10          Court, however, needs to understand that the  
11          first half of those press conferences related to  
12          a missing persons investigation. Great care was  
13          taken never to identify Steven Avery as a  
14          suspect.

15          And, in fact, the purpose of those  
16          disclosures were to limit information. That  
17          sounds a little bit unusual that you would hold a  
18          press conference to limit release of information.  
19          But that's exactly what was done, was exactly the  
20          plan by the State, to disseminate very little  
21          information, only that necessary to request  
22          assistance of the public and to release  
23          information already made public, both which are  
24          allowed and prescribed under Rule 3.6 that I  
25          cited in my brief as well.

1                   Let me also mention that -- things that  
2                   Mr. Strang did not concede; that is, the  
3                   admonition by the State when reporting the filing  
4                   of the Complaints, that accused persons are  
5                   presumed innocent. Not noting that, I believe,  
6                   fails to recognize the very serious nature of  
7                   these press conferences and the serious manner in  
8                   which the State, particularly in which I, took  
9                   them.

10                  Care was taken not to prejudice  
11                  Mr. Avery, not to unnecessarily identify him, and  
12                  to move forward in the criminal prosecution of  
13                  Mr. Avery with all deference and with all  
14                  recognition of his constitutional protections.  
15                  Objective, factual, non-editorial reporting is  
16                  not prejudicial. That is something I will,  
17                  however, also save for the change of venue  
18                  discussion.

19                  This Court can't, however, forget the  
20                  facts of this case. This Court cannot forget the  
21                  allegations of what happened to Teresa Halbach.  
22                  And it is those facts, it is the way in which Ms  
23                  Halbach was abducted, and killed, and mutilated,  
24                  that has raised the intense media attention.

25                  Mr. Strang may blame the State for that,

1 may say it was the State who was bringing the  
2 attention upon Mr. Avery, but this gentleman  
3 seated furthest to my right, who enjoyed a degree  
4 of celebrity, when you talk about a poster child,  
5 he enjoyed being the Innocence Project poster  
6 child, didn't shy away from media attention.

7                 In fact he, together with his supporters  
8 and family members, continued to make allegations  
9 of being framed, of being set up. And their  
10 responsibility exists for members of law  
11 enforcement, including prosecutors, under  
12 Rule 3.6, to address just such comments made on  
13 the other side, to avoid improper publicity and  
14 improper inferences being raised.

15                 So, Judge, not reiterating, but asking  
16 this Court to accept those arguments set forth in  
17 our motion, recognizing that the current state of  
18 Wisconsin law is to discount the possibility, or  
19 remedy, of dismissal of the charges, I'm asking  
20 the Court to reject that motion by the defense.

21                 Secondly, the continuance of the trial  
22 is not an appropriate remedy. Mr. Strang's tying  
23 this case to the death penalty referendum is  
24 something that is improper. I can see why he was  
25 reluctant to mention it, because it has no place

1           in this courtroom. It has no place in this  
2           Judge's decision, whether or not to grant a  
3           continuance.

4                 The final remedy, the change of venue,  
5           again, is something that the State is prepared to  
6           argue, is something that **Schulter** and **Mendoza**  
7           both provide for a Court, as a logical remedy,  
8           should the Court find that the publicity prevents  
9           a trial within this county for at least from  
10          jurors from within this county, and would ask the  
11          Court to deny this motion and move on, then, to  
12          the change of venue motion. Thank you, Judge.

13                 THE COURT: All right. I'm not going to  
14          issue a decision from the bench today on the motion  
15          to dismiss.

16                 With respect to the venue motion I do  
17          have a couple of questions. First of all, I know  
18          in the original motion, Mr. Strang indicated that  
19          if the State opposed the motion, he requested an  
20          evidentiary hearing. I'm not sure that we have  
21          heard, on the record, yet, the position of the  
22          State on the motion, on the defense's motion to  
23          change venue, if it came to that. What is the  
24          State's position on the defense motion to change  
25          venue?

1                   ATTORNEY KRATZ: Judge, first, Mr. Strang  
2         framed this issue as not inviting the Court to  
3         accomplish a change of venue in one manner or the  
4         other. That concerned me in addressing my position.

5                   In other words, as I read **Fonte**, and the  
6         other change of venue cases, if this Court  
7         believes that pretrial publicity endangers the  
8         defendant's right to a fair trial, and this Court  
9         decides that a change of venue is appropriate,  
10        it's the Court's decision to decide how to  
11        accomplish that, whether to bring a jury from  
12        another county, or whether the entire trial  
13        moves.

14                  By Mr. Strang imposing upon the Court  
15         what appears almost to be an ultimatum, that this  
16         Court is not invited to use one method or the  
17         other, again, is of concern. That's the  
18         preference, Judge -- or preface, excuse me, to my  
19         position. Should this Court agree with the  
20         State, that if pretrial publicity is believed to  
21         endanger the defendant's right to a fair trial,  
22         and if this Court believes it is the Court's  
23         responsibility on how best to accomplish that,  
24         the State does not intend to argue or to  
25         challenge the motion.

1                   If this Court agrees, however, with  
2                   Mr. Strang, that it is the defense's prerogative  
3                   to preclude the Court from accomplishing change  
4                   of venue, in one manner or another, the State  
5                   very well may put the defense to its burden  
6                   regarding the publicity and whether or not the  
7                   change of venue is appropriate.

8                   THE COURT: I'm not sure I understand what  
9                   the State's position is yet. To be sure, it's the  
10                  Court's decision to determine whether or not there  
11                  is going to be a change of venue. I'm not sure that  
12                  prevents the State from taking a position, either in  
13                  support of or in opposition to the defense's  
14                  request.

15                  The defense is making a conditional  
16                  request, as I understand it, for change of venue.  
17                  Its hope is, number one, that the Court will  
18                  grant the defense's motion to dismiss, or in the  
19                  alternative, number two, the Court will grant the  
20                  defense's motion for a continuance of a trial  
21                  date. But if the Court denies those two motions,  
22                  I understand the defense to be asking for a  
23                  change of venue. Is that a correct  
24                  interpretation, Mr. Strang?

25                  ATTORNEY STRANG: That's right.

1                   THE COURT: What I'm asking you, Mr. Kratz,  
2 if it came to that, and because I'm taking these  
3 motions globally and together, today, if it comes to  
4 that, what is the State's position on the defense  
5 motion?

6                   ATTORNEY KRATZ: But Mr. Strang also said,  
7 we're only asking for a change of venue if you move  
8 the whole trial to a different county. I don't  
9 think the defense can do that. And I read the  
10 statute as, they either ask for a change of venue or  
11 they don't. And it's the judge, then, who decides  
12 how best to accomplish that. If that's a correct  
13 reading of the law, I have no objection to the  
14 change of venue motion.

15                  ATTORNEY STRANG: That's fair. I mean  
16 there is a legal issue lurking here. I am  
17 suggesting that 971.22 does not automatically give  
18 the Court the power, over defense objection, to  
19 proceed under 971.225. Now, I'm not aware of any  
20 case law on the question on -- one way or the other.

21                  But Mr. Kratz is right, to this limited  
22 extent, we are specifically making a motion, in  
23 the alternative, as the Court correctly  
24 described, to move the entire trial; that is, to  
25 pick a jury from another county, and in that

1 county to conduct the trial.

2 I'm not trying to impose anything on the  
3 Court. But I am arguing to the Court, or  
4 submitting to the Court, that here, where we have  
5 questions about the involvement of the Manitowoc  
6 County Sheriff's Department and, indeed, the  
7 Sheriff's Department of this county electively,  
8 on November 5, recusing itself from lead  
9 responsibility in this investigation, I'm asking,  
10 in effect, for the Court to hold the department  
11 to that, or to continue and keep in place that  
12 recusal, that stepping back, by not having the  
13 Sheriff's Department participate in contact with  
14 jurors here, unsupervised, any more than it  
15 participate in the collection of evidence,  
16 unsupervised, by other law enforcement agencies.

17 So, if we moved the trial to another  
18 county altogether, we would solve that problem.  
19 We would be using another county's sheriff's  
20 department to provide support to the Court in  
21 terms of witnesses, and courtroom security, and  
22 superintending the jury, and all the things that  
23 the sheriff's department, in the capacity as  
24 bailiffs, do.

25 So, yeah, I mean Mr. Kratz is right, I'm

1           not trying to impose anything on the Court. But  
2           he views -- he reads the statutes as leaving,  
3           entirely to the Court, the decision whether to  
4           proceed under 971.22 or 971.225 once the defense  
5           has asked, generally, for change of venue.

6           And I'm saying that on these facts here,  
7           the willingness of the defense to relinquish its  
8           constitutional right to a trial in this venue,  
9           hinges on the denial of the first two remedies we  
10          seek; and, finally, then, hinges on moving the  
11          trial altogether, if in fact we have to use  
12          jurors from a county other than Manitowoc. I  
13          don't know if that helps clarify or not.

14           THE COURT: So, setting aside for the  
15          moment the question of whether the Court alone has  
16          the power to utilize 971.225 as an alternative, you  
17          are saying, if the defense -- the defense position  
18          is, that if the Court does not dismiss the case and  
19          does not adjourn the trial, the defendant is  
20          requesting a change of venue, but only if the Court  
21          actually moves the trial to another county. And  
22          that if the Court -- if the Court's position was  
23          that it would consider a change of venue, if it only  
24          meant bringing jurors from another county here, then  
25          the defense would withdraw it's request for a change

1 of venue?

2 ATTORNEY STRANG: Right.

3 THE COURT: Assuming you have the power to  
4 do that?

5 ATTORNEY STRANG: Right. That's right.

6 Mr. Avery would not relinquish his right to a trial  
7 in this venue under the circumstances the Court just  
8 outlined. I mean the Court has described our  
9 position exactly correctly.

10 THE COURT: All right. And Mr. Kratz, it  
11 appears I unfairly jumped on you. I didn't perceive  
12 what the issue was deciding the parties -- or  
13 dividing the parties. So the State's position,  
14 then, is what?

15 ATTORNEY KRATZ: The State's position is,  
16 should the defense request this Court for a change  
17 of venue, I have no objection to that change of  
18 venue. I'm confident in reading 971.225 that it  
19 then becomes the Court's obligation how best to  
20 accomplish that. Now that I have 971.225 in front  
21 of me, I don't believe -- I'm quite confident the  
22 defense doesn't get to place that condition upon its  
23 request. They either ask for it, or they don't.

24 THE COURT: All right. Because of the  
25 criteria that apply, to evaluate a request for

1 change of venue, I'm not going to hear additional  
2 oral argument on that today. I think it depends,  
3 not exclusively, but in significant part, on not  
4 only the publicity the case has received but the  
5 nature of that publicity.

6 And I think the most effective way for  
7 me to evaluate your arguments on that issue is to  
8 get citations perhaps to specific news media  
9 accounts that relate most closely to your  
10 arguments and then have a DVD that I can look at  
11 to evaluate those arguments.

12 So I'm going to ask, I know the defense  
13 does, I'm not sure what the State's position is  
14 going to be but, Mr. Strang, to supplement your  
15 argument on the venue motion, which I understand  
16 to be a contingent or conditional argument,  
17 please address it in writing and direct me to  
18 those news media accounts which you wish to cite  
19 either as examples of a general theme or specific  
20 accounts. I don't think I'm going to look at  
21 every DVD that's in the box.

22 ATTORNEY STRANG: Right.

23 THE COURT: I think I have a general idea  
24 what the publicity has been.

25 ATTORNEY STRANG: Right. And I very easily

1 can do that, your Honor, in fact, since I pulled out  
2 several pages of examples and put them down in  
3 writing already, I can just change that to a format  
4 appropriate for the Court.

5 And the Court is right, the way I  
6 approached this was to -- I will give the Court  
7 everything I have, and then in writing I can  
8 provide examples, some with specific dates, some  
9 just more general things to look for, and maybe  
10 with exemplars of the general problem. And in  
11 writing is just fine. That's no problem at all.  
12 Now, I have the boxes of the raw material, which  
13 if we have to have a fight over change of venue,  
14 I will want, as a matter of making a record.

15 THE COURT: All right.

16 ATTORNEY STRANG: But rather than making  
17 the Court search for needles in a haystack, I can  
18 give some examples.

19 THE COURT: And with respect to the prior  
20 argument on the Motion to Dismiss, I know that the  
21 news conferences play a more significant role in  
22 that motion, they may also relate to the venue  
23 motion as well. As I understand it, at this point  
24 there isn't a DVD that has those on, but the parties  
25 think they can get one.

1                   ATTORNEY STRANG: That's right. And I  
2                   should take, obviously should take responsibility  
3                   for that. They used to be online on wfrv.com and  
4                   between the time I looked at them and watched them,  
5                   and when Mr. Buting tried to do the same thing, they  
6                   got taken down. I assume to save band width or  
7                   something so what I'm going to do is, by subpoena or  
8                   request to WFRV, or to one of the channels, try to  
9                   get one or more, probably more than one DVD that has  
10                  all of that footage, to the Court.

11                  THE COURT: All right. Anything further on  
12                  those three motions?

13                  ATTORNEY KRATZ: So I'm clear, and I don't  
14                  mean to belabor this issue, Judge, is the Court then  
15                  unwilling to rule on whether or not the defense is  
16                  legally able to make a conditional change of venue  
17                  request? And here is why, I don't know how to  
18                  respond.

19                  There are 30 family members sitting  
20                  behind me, there are 75 cops that are going to  
21                  testify. I have a room full of evidence that I  
22                  prefer not to trek over to La Crosse. And that  
23                  is a very, very candid and very practical  
24                  approach to how I mean to respond.

25                  If the Court believes that the defense

1 has that ability, the Court believes that the  
2 defense can say, Judge, you are precluded under  
3 971.225, despite saying the Court shall, you are  
4 precluded from making that decision. Then the  
5 State very well may put the defense to it's  
6 burden. Very well may argue that it was not  
7 inflammatory.

8                   THE COURT: All right. Since the Court  
9 hasn't been focused on this particular issue until a  
10 few minutes ago, I can tell you for sure, I'm not  
11 prepared to rule on it today. I welcome you to  
12 submit written argument if you wish. And maybe the  
13 question is easy to address and maybe it isn't. I  
14 don't know, since I haven't looked at it until now.  
15 But you should submit your argument in writing.

16                   ATTORNEY KRATZ: Would the Court permit,  
17 and Mr. Strang permit, me to argue in the  
18 alternative; would that be acceptable?

19                   THE COURT: Yes.

20                   ATTORNEY KRATZ: All right. Thank you.

21                   ATTORNEY STRANG: In terms of getting the  
22 written highlights or examples for change of venue  
23 purposes, does the Court have a date that I should  
24 meet?

25                   THE COURT: How long do the parties believe

1 it will take them to submit their arguments to me?

2 ATTORNEY KRATZ: I will need to see the  
3 DVD's from Mr. Strang and then we're able to  
4 respond. I doubt we can have this ready for  
5 decision by the 19th.

6 ATTORNEY STRANG: Okay. Now, what DVD's?  
7 I'm sorry, the news conferences or the 24 DVD's  
8 about pretrial publicity?

9 ATTORNEY KRATZ: I understood that we were  
10 waiting for something from Mr. Strang by way of the  
11 news conferences but, also, there was going to be  
12 some opportunity that the Court provided the defense  
13 to supplement its argument as to change of venue.  
14 After I receive that, Judge, I can respond.

15 THE COURT: I think it's fair that the --  
16 since the State is at least reserving the right to  
17 oppose the change of venue request, that they have a  
18 right to see what the basis is for the change. So I  
19 think the defense is going to have to go first and  
20 the State is going to have to get a chance to reply.

21 ATTORNEY STRANG: I agree.

22 THE COURT: So with that in mind,  
23 Mr. Strang, I guess I ask you first, how long do you  
24 think it will take?

25 ATTORNEY STRANG: I really think that if I

1           had to, by the end of the week I could submit the  
2           written highlights of the publicity. I don't know  
3           how long it will take me to get the eight news  
4           conferences on to DVD, but I would think, certainly,  
5           by the 14th that could be done. That's a reasonable  
6           target.

7                 THE COURT: All right. So the defense by  
8                 July 14th, and then, Mr. Kratz, what do you need for  
9                 response time?

10                ATTORNEY KRATZ: A week is fine, Judge. I  
11                can have it by the 21st.

12                THE COURT: State by the 21st. Fair  
13                enough. Anything else on those three motions?

14                ATTORNEY KRATZ: No, Judge.

15                THE COURT: If not, we're going to take our  
16                afternoon break now and then resume. I think some  
17                of the other motions are a bit less time consuming  
18                than these were.

19                ATTORNEY KRATZ: I'm sure they are, Judge.  
20                Thank you.

21                (Afternoon recess taken.)

22                THE COURT: At this time we'll go back on  
23                the record and move on to the next motion, which is  
24                the State's motion concerning Third Party Liability,  
25                or a **Denny** motion. And it's really in two parts.

1           The first is requesting that if the defense is going  
2           to -- or intends to introduce any evidence  
3           suggesting that someone else is guilty of the crime,  
4           other than Brendan Dassey, that they comply with the  
5           requirements of **Denny**, before the Court allows such  
6           evidence.

7           And, secondly, that the same standard be  
8           applied to any allegedly planted evidence;  
9           though, I'm not sure if -- in light of  
10          Mr. Fallon's response, if the State is still  
11          making that argument or not, that is, that the  
12          **Denny** standards be applied to any allegedly  
13          planted evidence.

14           First of all, with respect to the motion  
15          as it relates to **Denny** type evidence itself, I'm  
16          not sure that there's a disagreement between the  
17          parties. Counsel?

18           ATTORNEY STRANG: I don't think there is,  
19           although, that's Mr. Buting's motion to respond to.  
20           But I just want to make sure I have got the batting  
21          order, are we skipping over excluding the Manitowoc  
22          County Sheriff's Department, for now?

23           THE COURT: Well, let's see. Actually, I  
24          thought that the other arguments were including that  
25          one. I thought we were dealing with items 1, 2, and

1           7.

2           ATTORNEY STRANG: No.

3           THE COURT: Well, let's do **Denny** and then  
4           we'll go back, as long as we're here.

5           ATTORNEY BUTING: Judge, as to the first  
6           question you had, we recognize that **Denny** is the  
7           binding authority on third party evidence and that  
8           we would be required to comply with that as to any  
9           identified third parties, other than the  
10          co-defendant, obviously, Mr. Dassey. So I don't  
11          think there's any dispute on that particular point.

12          The dispute between the parties came on  
13          whether **Denny** should apply to any so-called  
14          frame-up or planting kind of argument. And I  
15          think Mr. Fallon conceded that **Richardson, State**  
16          **vs. Richardson**, now makes it clear that **Denny**  
17          does not apply under those circumstances. And  
18          then the question becomes: What, if any, rules  
19          do apply to that, and whether there needs to be a  
20          pretrial motion and any sort of foundation laid.  
21          So that would be the area that would still be in  
22          dispute.

23          THE COURT: All right. In reading the  
24          arguments of both of the parties and looking at the  
25          issue, it struck me that even the planted evidence

1 matter could actually have two sub-issues. I could  
2 see how the defense could make such an argument,  
3 just as an inference from the evidence as it came  
4 in, without any independent evidence, or as in some  
5 of the cases -- and I forget which case it was --  
6 where they wanted to show evidence that the officer  
7 had committed similar offenses, if you will, against  
8 other arrested defendants, that there actually would  
9 be other independent evidence of planted evidence.

10 Let me deal with the first issue first.

11 If the -- Does the State feel that the defense  
12 has to do anything special to argue from  
13 evidence, as it comes in from the State, that  
14 evidence may have been planted, just as a logical  
15 inference from the evidence that the State  
16 introduces?

17 ATTORNEY FALLON: Thank you, your Honor.  
18 Yes, we do. I think the best way to characterize  
19 this issue is in this light. I would submit to  
20 Court, and Counsel, that it is an entirely different  
21 argument, a far different argument, to say that the  
22 constable has blundered and negligently collected  
23 the evidence, negligently transported the evidence,  
24 negligently cared for the evidence.

25 That's one argument. And I would

1 suggest they are free to make that argument and  
2 ask the jury to draw whatever reasoned inference,  
3 from that, they choose to draw, during the course  
4 of the deliberations.

5 However, the argument that the constable  
6 is crooked, is an entirely different argument to  
7 be offered, with respect to the presentation of  
8 evidence, the collection of evidence, the storage  
9 of evidence, the transportation of the evidence  
10 and, hence, the actual -- the integrity of the  
11 evidence itself.

12 The point of the State's argument is  
13 simply this, if that is the argument, if that is  
14 the inference the defense chooses to have the  
15 jury draw from the presentation of evidence, then  
16 we ought to know what that evidence is.

17 It is clearly -- As I argue in the  
18 brief, it clearly contemplates consideration of a  
19 variety of potential issues: The integrity of  
20 the officers, or the citizens, or whomever may be  
21 involved in the evidence which is at issue. The  
22 Court cannot make a determination of relevance  
23 and, hence, balance the competing interest to  
24 determine the admissibility of evidence, if we  
25 don't know what the evidence is, if we don't know

1 what the issue is.

2 As I suggest in my -- in the written  
3 argument, waiting until the trial to deal with  
4 objections as to the admissibility of evidence,  
5 or the appropriateness of certain arguments  
6 relative to inferences drawn from the evidence,  
7 waiting to the point of trial is not practical,  
8 nor logical. By analogy, any other trial in  
9 which evidence of this type, or similar type, is  
10 always handled pretrial, there's always a  
11 question as to its admissibility.

12 And while, for instance, the State may  
13 very well be prepared to concede relevance,  
14 depending on what the evidence is and what the  
15 argument is and what the theory is, conceding  
16 relevance does not in any way mean that the  
17 evidence would be admissible. And we're simply  
18 asking for the notice, and the opportunity to be  
19 heard, relative to that particular type of  
20 evidence.

21 So, again, it comes down to, there's a  
22 big difference regarding negligent handling of  
23 evidence and deliberately contaminating or  
24 tampering with the evidence, which goes to the  
25 very essence of the trial's goal, which is to

1 search for the truth. So anything that in that  
2 way suggests impropriety, challenges the fairness  
3 of the trial itself, ought to be handled  
4 pretrial.

5 We normally do that in a whole host of  
6 whether it's other acts motions, which we will be  
7 doing in a couple weeks, whether it's a rape  
8 shield issue. There are certain types of  
9 evidentiary issues which must be handled  
10 pretrial. And the obvious -- or the policy  
11 reason is that we have more time to think about  
12 the impact of that evidence and those arguments,  
13 and weigh the competing inferences and do the  
14 balancing test that Section 904.03 suggests.

15 And that's the point of our motion. If  
16 you look at **Richardson** and you don't look at the  
17 Supreme Court case, **Holmes vs. South Carolina**,  
18 even in that case, they dealt with the issue  
19 pretrial. And in **Denny** it's a pretrial issue,  
20 and in **Scheidell**, which dealt with unknown third  
21 party evidence, it's handled pretrial.

22 And when you look at that interplay  
23 between the statutes at issue, 901.04, 904.02,  
24 904.03, the Court talked at length as to the  
25 interplay of that. And the whole idea is to

1            avoid surprise, waste of time, confusion. And I  
2            think there's a very distinct possibility of a  
3            possible mistrial, if we don't handle that  
4            evidence correctly.

5            And it just seems to me that we should  
6            deal with that upfront and not in the middle of  
7            the trial, and not have an argument and have to  
8            delay the trial for a day or two, which is often  
9            the remedy, if there's a problem in that regard.

10           So that's the point of our motion, we  
11           would just like a little notice. We may very  
12           well concede the relevance, and it's possible, we  
13           might even concede the admissibility. Possible,  
14           but not likely, but that's a possibility.

15           So the question then becomes, what is  
16           the evidence, how can we -- how can the Court  
17           fulfill its function of applying the rules of  
18           evidence to engage in the balancing test, and to  
19           provide the parties sufficient notice to prepare  
20           the case and present it as smoothly as possible.  
21           That's what the whole point of the pretrial  
22           motion practice is.

23           THE COURT: All right. Mr. Buting, are you  
24           going to handle this?

25           ATTORNEY BUTING: Yes, I am, Judge.

1                   THE COURT: Fine.

2                   ATTORNEY BUTING: I think the Court,  
3                   really, in its introductory remarks, distinguishes  
4                   what is going on here; and that is, that I think the  
5                   State has sort of muddied the issues together, the  
6                   question of whether or not the defense can argue  
7                   reasonable inferences from the evidence that they  
8                   present, or that the defense themselves presents,  
9                   versus whether the defense can introduce extrinsic  
10                  evidence of other -- perhaps other cases where  
11                  officers committed misconduct.

12                  That was the case, I believe Missouri --

13                  *State vs. Missouri*, a recent Court of Appeals  
14                  case, where the defense was that the officer was  
15                  biased against Missouri, the defendant, as  
16                  evidenced by his bias and racial bias in numerous  
17                  other cases. And the Court of Appeals said, that  
18                  comes in.

19                  Not only can they challenge his bias  
20                  towards this individual defendant, but that they  
21                  could use extrinsic evidence from his past cases  
22                  to support the bias on this case. That's very  
23                  different than what the State seems to be arguing  
24                  though.

25                  What they seem to ask for is something

1           much more radical than **Richardson**. **Richardson**  
2           dealt with extrinsic evidence. First of all, the  
3           State filed a motion in limine, as I understood  
4           the procedural history, to exclude two collateral  
5           pieces of extrinsic evidence. Not to prevent any  
6           argument that the defendant may make that he was  
7           being framed by his ex-wife, but to prevent  
8           testimony from the ex-wife, or the divorce  
9           attorney that she had called and made some kind  
10           of accusation. And the other item was that the  
11           defendant had successfully obtained a child abuse  
12           injunction against the ex-wife.

13           Well, the Court said that **Denny**, first  
14           of all, did not apply to those kinds of requests  
15           for evidence, and then the Court went through  
16           this 901.04 or .03, I think, type of analysis  
17           and -- because it was extrinsic evidence. And in  
18           that case, they said it was very much collateral  
19           because there was -- And, actually, there's one  
20           paragraph in that decision that troubles me that  
21           may, frankly, be overruled by **Holmes vs. South**  
22           **Carolina**. And that's Paragraph 27 of **Richardson**,  
23           where they sort of do a weighing of the State's  
24           evidence when they are trying to determine what  
25           is the probative value of the defense proffered

1 evidence.

2 They go through the whole State's case,  
3 including the fact that this young girl had  
4 physical evidence of a sexual assault, that there  
5 was semen, that there was three or four other  
6 things that certainly made it look like his claim  
7 was -- was of little probative value, his claim  
8 that the ex-wife was framing him who, by the way,  
9 was not even the mother of the child who was  
10 accusing him. So he had a rather tenuous  
11 argument there.

12 I think under **Holmes vs. South Carolina**,  
13 that whole analysis is, frankly, very  
14 questionable. Because they say you can't do  
15 that, you can't analyze, just look at the one  
16 side to determine if there is strong forensic  
17 evidence, or if there's strong whatever kind of  
18 evidence, that somehow that affects the  
19 admissibility of the defense.

20 But, again, **Richardson** was very, very  
21 different, because it really was not talking  
22 about whether or not the defense needs to provide  
23 notice to the State if they are going to  
24 challenge the State's evidence. I have said it  
25 as clearly as I can say it in our response and

1           we're giving them notice now. Mr. Avery is  
2           challenging the State's evidence, including the  
3           forensic evidence. And we're going to put them  
4           to their proof.

5           And as a party to a litigation, we have  
6           a right to challenge the authenticity of  
7           evidence, first, to see if it could even come in;  
8           chain of custody, whether its been properly  
9           maintained; and then even if it does come in and  
10          is relevant, we have a right to challenge its  
11          reliability, its integrity, the credibility of  
12          the officers who seized it.

13          All of that is fair game. That is  
14          direct physical evidence in this case. It's not  
15          extrinsic. It's not some other case, or some  
16          tangential argument. So, what they are asking  
17          is -- is an absurdly high burden.

18          They want us, the defendant, in his own  
19          case, to be able to apparently show who -- if  
20          there is any evidence of a frame-up, or any  
21          argument, or innuendo, or inference to be made,  
22          that first the defense has to be able to show who  
23          did it, how they did it, how many people are  
24          involved, who else knows about it.

25          Now, how could a defendant possibly do

1           that, in any case, if the allegation is that the  
2           misconduct is on the part of the police. That  
3           may or may not be the allegation that's raised  
4           here.

5           The integrity of the evidence that  
6           appears to indicate Mr. Avery's involvement is  
7           very much going to be in play, whether it's  
8           something the police did or something someone  
9           else did. But we are free to argue any  
10          reasonable inference that comes from the evidence  
11          presented, as to how that evidence was found,  
12          seized, and secured, from that point forward, and  
13          tested, if it's forensic evidence.

14          Indeed, nowhere, I was able to find no  
15          case anywhere in this country that has ever --  
16          and the State has certainly cited none -- that  
17          has ever held what they are asking, to somehow  
18          prevent an entire defense argument, from  
19          reasonable inferences of physical evidence in the  
20          defendant's own case, to somehow go through this  
21          whole relevance and balancing test.

22          The Court doesn't have to go through  
23          that whole balancing test if we're talking about  
24          arguments from the evidence or inferences from  
25          the evidence. There are no cases that talk about

1           that, because that's not required.

2           That would be required if we were  
3           seeking to introduce extrinsic evidence, such as,  
4           for instance, that one of the officers in this  
5           case had committed some misconduct in the past  
6           that was related to this. Then we would be  
7           filing a motion, and we would go through that  
8           sort of analysis, and the Court would have to  
9           weigh and go through the balancing test.

10          But they are, as I understand the  
11         State's motion, at least it's written motion,  
12         going way, way, way beyond that. And I think the  
13         Court accurately distinguished those two issues  
14         in its initial comment. So if we intend to  
15         introduce extrinsic evidence of some misconduct  
16         in other cases, then I anticipate we would be  
17         filing a motion.

18          But we do not need to file any motion,  
19         or give any further notice than we have today, to  
20         the State, that we intend to challenge all of  
21         their evidence they marshal against Mr. Avery.

22          THE COURT: All right. Mr. Fallon, let me  
23         ask you a question. Because I -- There might be one  
24         argument being made one way, or a different answer  
25         being given the other way. To go back to the prelim

1           in this case, I just recall it vaguely, but the car  
2       key was found on the carpet, and I think the  
3       testimony was that there had been a couple police  
4       run-throughs through the room where the key was  
5       found. And on the third time they found it.

6           And I think -- Let's say the defense  
7       wants to argue that, well, since the key wasn't  
8       found the first couple times, that one logical  
9       reading is that somebody from the police  
10      department planted the key and that's how they  
11      found it the third time.

12       If that's what happened, if the State's  
13      evidence would come in as it did at the prelim,  
14      and the defense didn't introduce any other  
15      evidence on the issue, but simply made that  
16      argument, are you saying that they have to meet  
17      some burden, or produce something, or notify the  
18      parties and the Court ahead of time, that they  
19      are going to make that argument? Or is it just  
20      if they -- if they want to argue, as Mr. Buting  
21      said, that they had some evidence that some  
22      member of the police department had been guilty  
23      of planting evidence in the past, say, and put  
24      that in?

25           I think they are admitting that if they

1           want to introduce any extrinsic evidence they  
2           would have to provide advance notice, but I think  
3           the question comes down to, aren't there times  
4           when they just want to argue, based on the  
5           evidence as it's come in, that some evidence was  
6           planted. What do they have to give a notice of?

7           ATTORNEY FALLON: If you are going to make  
8           the argument -- If you are going to make the  
9           argument that somebody put that key there, then it  
10          seems to me the State should have the opportunity to  
11          examine and question. It's a lot easier to make an  
12          allegation of police misconduct than there is to  
13          prove it.

14          And what we're trying to avoid, is this  
15          trial becoming a whole series of allegations of  
16          police misconduct which are not supported by  
17          fact. I suppose you could make the argument that  
18          that's a "reasoned" inference; although --  
19          reasoned is in quotes -- from those particular  
20          facts. But I have already obtained -- We have  
21          already obtained one concession right now,  
22          because the defense is clearly saying that any  
23          extrinsic evidence that would require a motion.  
24          That's fine, then we're half way home. That's  
25          exactly what we're looking for. If they are

1 acknowledging the fact that they are going to  
2 bring in any type of extrinsic evidence, that's  
3 fine.

4                   But, okay, the key is planted there.

5                   Well, who was there? Well, we know the officers  
6                   who were involved in the search and we know the  
7                   officer who uncovered the key. So, is there then  
8                   -- Are we led to believe there's a conspiracy?  
9                   Seems to me the conspiracy, for instance, is a  
10                  reasonable inference. And if we're going to have  
11                  inferences alleging conspiracy, conspiracy is one  
12                  of those things that always requires a pretrial  
13                  motion. Obviously, it's usually the State which  
14                  is seeking to introduce evidence of conspiracy,  
15                  but not always. It's sometimes offered by the  
16                  defense as a theory.

17                  And in **Richardson**, that involved  
18                  somewhat of an extrinsic evidence, but it clearly  
19                  set forth the analysis, that if you're going to  
20                  reach to make an argument, or an inference, then  
21                  you have to have a reason to make that reach,  
22                  that argument, that inference. And, again, I  
23                  come down to, it's a far different argument that  
24                  the constable is crooked than the constable  
25                  blundered.

1                   They can make whatever argument. I  
2                   don't challenge their ability to question every  
3                   bit of evidence we produce, the manner in which  
4                   it was collected, preserved, maintained,  
5                   transported. They are free to do that.

6                   But I take issue with the fact that we  
7                   can willy nilly walk in and accuse police officers  
8                   of misconduct. To me, before that evidence is  
9                   submitted to the jury and argued to the jury,  
10                  there ought to be a reason for that, for not  
11                  every argument and not every inference, although  
12                  relevant, should be heard.

13                  THE COURT: All right. Well, in the  
14                  example I gave, I mean, are you arguing that they --  
15                  What you are really arguing, I think, and I don't  
16                  want to put words in your mouth, so I will give you  
17                  a chance to respond. But are you really arguing  
18                  that the defense should have to provide notice of  
19                  the argument it is going to make -- or that the  
20                  defense is going to make, from the facts as they  
21                  come in? Because there could easily be a scenario  
22                  where the defense has no more facts than the State  
23                  introduces, they just argue that there's a different  
24                  inference from those facts.

25                  In the example I gave, I think as I

1 recall the testimony, was that the key fell out  
2 or something. I don't want to get into the facts  
3 because, number one, my memory isn't that good.  
4 But if the defense wishes to make an argument of  
5 evidence being planted, simply based on the way  
6 the evidence is introduced on examination and  
7 cross-examination of the State's witnesses, what  
8 do they have to provide notice of?

9 ATTORNEY FALLON: I guess I'm envisioning  
10 you are taking one bit of evidence and looking at it  
11 in isolation, to draw an argument or an inference,  
12 and is that appropriate. And it seems to me that  
13 whether you are defending or prosecuting a case,  
14 that there are lines of evidence, there are theories  
15 of evidence, there are themes, there are  
16 admissibility strains, as it were.

17 And it's hard to analyze and accept the  
18 Court's proposition of looking at, for instance,  
19 the key, in isolation. I mean, there's a lot of  
20 other physical evidence that is subject to  
21 dispute. And just as an example, there is a fair  
22 amount of blood evidence obtained from the  
23 vehicle of the victim here. Well, how did that  
24 blood evidence get there?

25 And there's a fair amount of other

1 physical evidence collected elsewhere, from the  
2 garage of Mr. Avery, for instance, so how does  
3 that get there? So, are we just saying that, and  
4 can the defense just, willy nilly, say, well, we  
5 think that piece was planted and this is not.

6 How do you make the argument? That's my  
7 concern. How do you make that argument in  
8 isolation? How do you tie it all together? Or  
9 is it just, rudimentally, they can make the  
10 argument because it is the defense and,  
11 therefore, it's admissible? That's a reasoned  
12 inference?

13 Because you have to -- I guess the point  
14 I'm trying to make, and I'm not being very  
15 artful, is that you have to look at the evidence  
16 as a total, as it is anticipated to come in.  
17 Admittedly, that's difficult. But generally we  
18 have a pretty good idea of what the evidence will  
19 be in this particular case; although, some of it  
20 is still the subject of motion and debate.

21 But I don't think you can make a  
22 determination as to whether or not a particular  
23 inference is reasoned, under the circumstances,  
24 until you consider everything. And if somebody  
25 wants to make the argument that there's a

1           planting of evidence, or that Mr. Avery is being  
2           framed, it seems to me that there ought to be  
3           proof of that.

4                 It may be in extrinsic form or, to  
5           borrow a phrase, it may be intrinsic. It may be  
6           directly related to the case. But if you are  
7           going to make that argument, or you are going to  
8           introduce evidence of that, then we ought to know  
9           what it is. I'm more concerned about the  
10           evidence than the argument.

11                 THE COURT: But that's a big "or" there,  
12           because I think as I hear the defense, they are  
13           saying, if they do intend to introduce evidence,  
14           that they will provide notice. I don't know,  
15           Mr. Buting, maybe now is the time to ask whether I'm  
16           reading too much into what you are saying.

17                 But that's the way I understood you to  
18           say, that if the defense was going to offer any  
19           extrinsic evidence relating to the issue of  
20           planted evidence, that the defense would provide  
21           notice, but that you didn't feel that you had to  
22           make any pretrial offer if you were simply going  
23           to argue, from the evidence as it came in, that  
24           some evidence could have been planted.

25                 ATTORNEY BUTING: Yes. Well, if we sought

1           any extrinsic evidence that's not related to the  
2           evidence directly in this case, then, yes, we would  
3           have to go through that, file a motion, I think --  
4           or we would. And then the Court could go through  
5           that balancing test. If it relates to the evidence  
6           in this case, it's fair game for us to challenge it  
7           in any way we can, whether it's by calling our own  
8           witness or cross-examining their witnesses.

9                 This whole notion, that somehow the  
10          Court decides ahead of time what's a reasonable  
11          inference that we can argue, is absurd. That's  
12          for the fact finder. A party can argue any  
13          reasonable inference from the evidence.

14                 Now, if our inferences are just totally  
15          absurd, then the State will get up there on its  
16          rebuttable argument and make that very argument  
17          to the jury. And the jury, collectively, will  
18          decide whether or not the inferences that the  
19          defense is advancing are reasonable or not.

20                 And that's -- As I understand it, he  
21          seems to be trying to take that away from the  
22          defense and put -- making the Court rule in  
23          advance what -- whether or not any reasonable --  
24          or whether or not any inferences we want to argue  
25          from their evidence should even go to the jury.

1           And that's a complete denial of the defense's  
2           right to present a defense, a constitutional  
3           right to present a defense. And, again, there's  
4           no case law anywhere that says that. Because  
5           it's clear that the jury is the one that decides  
6           whether or not something is reasonable.

7           You know, I don't see anything that  
8           unusual about a defendant getting up and  
9           challenging the police for misconduct or  
10          otherwise. Think about -- Think about drug  
11          cases, hand-to-hand deliveries, dropsy type  
12          cases. Defendants do that all the time, where  
13          the defendant testifies one way, the police  
14          officer testifies another.

15          You know, that's not negligence that's  
16          being alleged by the defendant in those cases.  
17          The defendant is saying, I'm telling the truth  
18          and the officer is not. You don't have to file a  
19          motion ahead of time to do that, that's  
20          fundamental.

21          And so, if somehow the notion that in  
22          this case it's different, and that we cannot go  
23          off willy nilly accusing the police of something,  
24          you know, if the State or its witnesses put  
25          themselves in the position in this case where

1           they are subject to that kind of attack, and the  
2           jury finds that it's a reasonable inference to be  
3           drawn, then we can do that, plain and simple.

4           THE COURT: Mr. Fallon.

5           ATTORNEY FALLON: Again, I'm less worried  
6           about whatever argument they choose to make. I'm  
7           more concerned about what evidence they choose to  
8           introduce in support of that argument, or that  
9           inference.

10          The key is one thing, but when you  
11          consider the amount of physical evidence, for  
12          instance, taken from the vehicle, the vehicle  
13          wasn't processed by anyone from Manitowoc County.  
14          It wasn't processed even at the scene. It was  
15          processed at the Crime Lab in Madison. So if  
16          you're going to challenge the evidence, it  
17          necessarily involves introduction of extrinsic  
18          evidence, almost.

19          What about the other physical evidence  
20          that was obtained, in this particular case.  
21          Counsel is correct to a degree, he can make  
22          whatever argument he wishes to make. And if the  
23          jury rejects it out of hand, then they are stuck  
24          with that.

25          Again, our concern is, and the motion

1           is, frame-up evidence, not frame-up argument.

2           So, just to be clear on that, and perhaps we got  
3           sidetracked on inference and argument as opposed  
4           to evidence, the motion is focussed on what  
5           evidence is there of a frame-up that's going to  
6           be introduced.

7           And that's the question, admittedly.

8           And they have conceded, if they are going to  
9           introduce extrinsic evidence, then it would  
10          require a motion. That's fine. We're  
11          comfortable with that. But it just seems to me,  
12          that if that's going to be the tact, we ought to  
13          be able to talk about that and determine how that  
14          evidence is going to be used. That's the point  
15          of the motion, not so much the argument or the  
16          inference. So I should be clearer.

17           THE COURT: On the issues that relate to  
18          this motion, there was one other one. I think in  
19          Mr. Kratz's original argument, he indicated that he  
20          felt the **Holmes** case modified **Denny**, but it seems to  
21          me that if the result had been different, it might  
22          have modified **Denny**, but that the **Holmes** -- that the  
23          South Carolina Supreme Court result was reversed.

24           ATTORNEY FALLON: Right.

25           THE COURT: Was it not?

1                   ATTORNEY BUTING: But I'm not so sure that  
2                   **Holmes** does anything for us, other than suggest that  
3                   this should be discussed pretrial. Because **Holmes**  
4                   did deal with third party liability. It did deal  
5                   with an identified, informed third party that was  
6                   suspected of committing the crime.

7                   And the actual focus is whether or not  
8                   the South Carolina rule of evidence went above  
9                   and beyond what other courts have held; in other  
10                  words, above and beyond, say, our **Denny** rule.  
11                  And I think it clearly did in that case and  
12                  that's why the United States Supreme Court  
13                  reversed that conviction and sent it back.

14                  So, it didn't deal with frame-up  
15                  evidence per se, but it is instructive for the  
16                  proposition, I think, that it's the type of issue  
17                  that's appropriately discussed pretrial. But I  
18                  think **Richardson** is the closest we have.

19                  THE COURT: All right. I will allow either  
20                  side to correct me, but I don't really detect that  
21                  there's a big disagreement between the parties here.  
22                  I think, number one, both parties agree that **Denny**  
23                  is still good law, **Denny** applies, and that if the  
24                  defense wishes to suggest that some third party,  
25                  other than Mr. Dassey, is involved in the crime, the

1           defense will have to comply with the requirements of  
2           **Denny**.

3           Number two, that if the defense wishes  
4           to introduce any extrinsic evidence to suggest  
5           that evidence was planted, or the defendant was  
6           framed, the defense will have to seek the  
7           admissibility of that -- of such evidence before  
8           the trial and have the matter addressed at that  
9           time.

10          But, third, if the defense wishes to  
11          argue, that the evidence as it comes in and is  
12          offered by the State, subject to  
13          cross-examination by the defense, without any  
14          extrinsic evidence being offered, that the  
15          defense is not prohibited from making such an  
16          argument, and the defense can argue that  
17          different inferences than those suggested by the  
18          State can be accepted by the jury.

19          That's what I'm hearing here. And I'm  
20          not -- I'm not detecting that the parties differ  
21          on this motion.

22          ATTORNEY FALLON: I accept your explanation  
23          and summary of those arguments.

24          THE COURT: Mr. Buting?

25          ATTORNEY BUTING: I think we're clear, if

1           we have the same understanding of extrinsic  
2           evidence, I guess. That would be evidence that's  
3           not related to this case. If there's evidence that  
4           we could present, I can't really think of any  
5           analogy right now, but -- so it's probably foolish  
6           to speculate at this point.

7           But I -- Again, if it relates to the  
8           actual physical evidence in this case, and it  
9           somehow relates to authenticity, or chain of  
10          custody, I do not accept, by the way, the State's  
11          claim that somehow there was no opportunity for  
12          this to have been tainted by anyone, that the  
13          vehicle could not have been tainted. I don't  
14          accept that. And I don't think the evidence will  
15          show that.

16          But, certainly, anything that would go  
17          to chain of custody, or authenticity, or  
18          credibility, or reliability of the State's -- or  
19          bias -- of any of the State's evidence, or  
20          witnesses presenting the evidence, is fair game,  
21          and is not extrinsic. In fact, it is very clear,  
22          bias is not extrinsic to a case, authenticity is  
23          not. All of those fundamental building blocks is  
24          what I'm talking about.

25           THE COURT: Mr. Fallon.

1                   ATTORNEY FALLON: To the extent of the  
2 comments on bias, and those other things, that's  
3 fair game. But I do foresee a possible argument on  
4 the scope of extrinsic. But as counsel has stated,  
5 those comments there, we can live with that.

6                   THE COURT: All right. The Court will  
7 prepare its own ruling, written decision, on this  
8 motion.

9                   All right. Then moving back to the  
10 defense motion to exclude members of the  
11 sheriff's department from testifying and  
12 overseeing jurors. Mr. Strang, are you handling  
13 this one?

14                  ATTORNEY STRANG: I am. Or trying to.  
15 There's conceptually two parts to this motion: One,  
16 supervision of jurors, or contact with jurors. And,  
17 two, exclusion as a witness from the State's  
18 case-in-chief. Let me address supervision of jurors  
19 first.

20                  We learned today, that on November 5,  
21 the Manitowoc County Sheriff's Department decided  
22 to turn over responsibility for the investigation  
23 to other departments and to play a background  
24 role. And then we learned that the Calumet  
25 County Sheriff, according to the policy of having

1               someone from another department look over the  
2               shoulder, so to speak, of any Manitowoc County  
3               Sheriff's Department employee who's involved in  
4               the investigation.

5               Really, what we're asking for here is a  
6               continuation of that decision by the Manitowoc  
7               County Sheriff's Department and, in a sense, that  
8               policy that the Calumet County Sheriff  
9               implemented. There is, you know, a department  
10               that was concerned enough about a conflict of  
11               interest, or the appearance of a conflict, to  
12               take itself out of investigative responsibility  
13               and turn it over to two other departments that  
14               then were concerned enough about potential  
15               conflict of interest, or the appearance of a  
16               conflict, that, you know, they provided a  
17               chaperone, or an accompanying officer, from  
18               another department, any time a Manitowoc County  
19               Sheriff's Department employee was involved at the  
20               scene.

21               Certainly, I think ought to be -- I'm  
22               not sure why you would oppose, then, implementing  
23               that same thinking when you are not talking about  
24               an investigation, and a scene, and collection of  
25               evidence, but rather talking directly about

1 contact with the fact finders in the case.

2 And if -- if we simply extend this  
3 recusal, or sort of turning over of  
4 responsibility from the scene, to the jury, and  
5 the fact finding process in this case, we would  
6 have law enforcement officers, other than the  
7 Manitowoc County Sheriff's Department, serve as  
8 bailiffs, move the jury to and fro, move the  
9 defendant to and fro, if he were to remain in  
10 custody.

11 It's -- I think it's really not much  
12 different. Indeed, the argument for it is more  
13 compelling when you are talking about dealing  
14 directly with jurors, because they are the fact  
15 finders rather than just talking about the  
16 assembly of evidence, or the processing of  
17 potential evidence at a scene.

18 The fact is, that in any trial, the  
19 Court is left to rely on court officers,  
20 bailiffs, you know, usually Sheriff's Department  
21 personnel in this State, but I will call them  
22 court officers here. You have to rely on them  
23 heavily. They are the point of contact with the  
24 jury, at the beginning of the day, at the end of  
25 the day, lunch, if a jury is sequestered.

1                   These people are housed in the hotel  
2                   with the jurors. They are transporting the  
3                   jurors. They are supervising what jurors can see  
4                   and who they can talk to. And there isn't  
5                   anybody looking over their shoulder. There is no  
6                   one from an independent law enforcement agency to  
7                   look over their shoulder.

8                   Now, I don't have any question about the  
9                   ability of the Manitowoc County Sheriff's  
10                  Department to do that, in the ordinary case, just  
11                  as they would investigate the ordinary crime in  
12                  Manitowoc County, rather than recusing themselves  
13                  because of concerns about a conflict, or the  
14                  appearance of one.

15                  But in that sense, this case was tabbed  
16                  on November 5, by the Manitowoc County Sheriff,  
17                  well, or more accurately, by his under sheriff,  
18                  as not the ordinary case, as requiring a  
19                  different response. And that -- that really  
20                  ought to extend to contact here with the jury,  
21                  particularly if we -- if we have got a  
22                  sequestered jury.

23                  The trial, obviously, should be fair and  
24                  it also should appear to be fair to the public,  
25                  and to the defendant, and everybody else who is

1                   interested in it. I think it's an unusual case.  
2                   It's an unusual request. But it's pretty well  
3                   matched to the situation which we find ourselves,  
4                   where the department itself decided that it ought  
5                   not be the front line in the investigation and  
6                   the collection of evidence.

7                   So, as to that first part, I guess to  
8                   some degree I'm adopting the reasoning that we  
9                   have already seen Sheriff Petersen describe to  
10                  his under sheriff, and seen Sheriff Pagel  
11                  implement at the scene.

12                  As to the second part, excluding  
13                  Manitowoc County Sheriff's Department witnesses  
14                  from the case-in-chief, Mr. Fallon, who is a very  
15                  good lawyer, and a neat colleague and, you know,  
16                  I enjoy his company and his work, but he's very  
17                  deftly turned this and redefined this as a  
18                  defense request for suppression.

19                  It's not. Not looking to suppress any  
20                  physical evidence. Not looking to suppress any  
21                  testimony, actually. What I'm looking for, what  
22                  I'm asking the Court to do, is to exclude  
23                  particular witnesses as a limited sanction, only  
24                  from the State's case-in-chief, so the defense  
25                  could call them, or the defense could open doors

1           on cross-examination during the State's  
2           case-in-chief.

3                 It would permit, then, the State to call  
4                 in members of the Manitowoc County Sheriff's  
5                 Department in rebuttal. And if, indeed -- if,  
6                 indeed, Sheriff Pagel is right, and at least as  
7                 of November 5 this policy of always having an  
8                 independent law enforcement agency person  
9                 accompanying any Manitowoc County law enforcement  
10               officer, if that indeed was complied with, was  
11               made practice, not just policy, then I don't know  
12               how the State even would be impeded in presenting  
13               it's case-in-chief, by the relief that I'm  
14               requesting.

15                 Because there always would be somebody  
16                 from DCI, or somebody from the Calumet County  
17                 Sheriff's Department, or someone from the State  
18                 Patrol, or some other agency, to testify to what  
19                 was happening when a Manitowoc County Sheriff's  
20                 Department employee was present. It's a little  
21                 hard to know why -- why the State even would  
22                 object to the exclusion, but they are, the State  
23                 is.

24                 And this is really, I think, not akin to  
25                 suppression, but something much closer to the

1 kind of sanction a Court might impose on a party  
2 in a civil case, when that party fails timely to  
3 disclose witnesses, fails timely to respond to  
4 interrogatories, or requests for production of  
5 documents.

6 It's the sort of sanction that is used  
7 for a failure of timely disclosure, or timely  
8 action in civil cases, regularly. Used  
9 occasionally, at least, in criminal cases for the  
10 same sort of disciplinary reason on lawyers who  
11 may be dilatory, or not following the rules.

12 And here the -- you know, the remedy is  
13 even more closely matched to the problem, in the  
14 sense that the Manitowoc County Sheriff, I think,  
15 conducted himself very poorly, to put it mildly,  
16 on FOX 11. Made highly inappropriate and  
17 inflammatory comments directed, by name, at  
18 Steven Avery. I went through some of them  
19 before.

20 I didn't touch on, you know, the sheriff  
21 dredging up and discussing on television, prior  
22 criminal acts and convictions dating back more  
23 than 20 years. It's the kind of stuff, he's been  
24 around long enough to know, juries aren't suppose  
25 to hear and, ordinarily, don't hear. It's at

1           least potentially inadmissible and highly  
2           prejudicial information.

3           So, you know, there -- this wasn't one  
4           stray comment at issue here. And he is the man  
5           who leads the department. He is the man who sets  
6           the tone. He is the man who makes the  
7           directions. He's the principal, if you will, and  
8           the others under him in that department are  
9           agents. And so this, I think, is a remedy that's  
10          pretty well tailored to the problem, as to  
11          exclusion of witnesses, on the basis that I have  
12          sought.

13           THE COURT: Mr. Fallon. By the way, I have  
14          read your written arguments and I will read them  
15          again. So you don't have to be repetitive.

16           ATTORNEY STRANG: That's a very kind way of  
17          saying that I'm long winded.

18           ATTORNEY FALLON: Thank you, Judge. I just  
19          want to make a couple of points. First and  
20          foremost, remedies should be connected to the wrong.  
21          And in this particular case, the defense seeks to  
22          exclude from participation in the administration of  
23          the jury selection process, and court security, the  
24          Manitowoc County Sheriff's Department without, in  
25          any way, shape, or form, connecting the comments of

1 Sheriff Petersen to concerns that somehow members of  
2 his staff can't follow your instructions, can't  
3 follow the common sense, and what is, in effect, a  
4 policy that, from even Sheriff Petersen's comments  
5 this morning, run itself.

6 He's given no orders, no instructions,  
7 no information to his staff, per him, other than  
8 do what you guys usually do, make it safe,  
9 etcetera; in other words, follow the policies  
10 that we have. There is no connection between the  
11 comments and a concern that somehow members of  
12 his staff are going to contaminate the jury pool.

13 That's outrageous. There is not a single shred  
14 of information that connects those two.

15 If the defendant has concerns about  
16 security for himself, or courtroom security, and  
17 wants the Calumet County Sheriff's Department to  
18 continue, as it were, and take over all facets of  
19 this particular case, then we might as well have  
20 the trial in Calumet County.

21 Are we going to bring the entire Calumet  
22 County Sheriff's Department here and let them set  
23 up camp across the courtyard here, and tell the  
24 Manitowoc folks how to run the jail, how to walk  
25 the prisoner over, and don't talk to the jurors,

1           don't say anything about the case, don't even  
2           talk about the weather. Do we need Sheriff Pagel  
3           to do that?

4           Again, let's have the trial in Calumet  
5           County, if we're going to rely on everything else  
6           Calumet County has to resolve. And in that  
7           regard, depending on what this Court chooses to  
8           do relative to the motion to admiss  
9           (sic)/adjourn/change of venue, depending on how  
10          you resolve that issue, the change of venue may  
11          very well moot this issue out.

12          With respect to exclusion and  
13          suppression, rather than trade compliments with  
14          counsel on deftness to craft an argument, I  
15          will simply make this observation. If you say  
16          that a witness can't testify, then it may very  
17          well make it difficult for information collected  
18          by that witness, to present it in court. So if  
19          the witness can't testify, then perhaps some  
20          further pretrial motion practice and perhaps some  
21          testimony, not perhaps, definitely, some  
22          testimony at the trial will be affected.

23          Perfectly example, Detective Remiker was  
24          the one -- was the first law enforcement officer,  
25          I believe, on the scene, to verify the location

1           of Teresa Halbach's car, on Mr. Avery's property.

2       Now, that's obvious, because he's here in  
3       Manitowoc County, where as the folks in Calumet  
4       County have to get in their car and drive here.

5       So, it only stands to reason that the first  
6       person here is going to be someone from Manitowoc  
7       County.

8           So, if we're saying, for instance -- and  
9       this is a for instance -- Detective Remiker can't  
10      testify, then that certainly creates some issues  
11      regarding the circumstances, regarding the  
12      preservation of the evidence and the scene, until  
13      the official takeover takes place. So, in terms  
14      of deftness or clever, you can certainly make the  
15      argument that, well, we're not asking for the  
16      suppression of evidence, we're just asking for an  
17      exclusion of a witness. Well, that may very well  
18      impact the nature and the presentation of the  
19      evidence.

20           And, finally, to say that it's not  
21      suppression is a rather interesting issue. For  
22      instance, if the statement of an accused in a  
23      case is suppressed, for reasons of a Miranda  
24      violation, that testimony may still be heard,  
25      perhaps in rebuttal, or in an impeachment form,

1 should that given witness take the stand.

2           But it's still referred to as  
3 suppression. It's not necessarily referred to as  
4 exclusion. So whether or not you characterize it  
5 as exclusion or suppression, I think it doesn't  
6 matter. The real connection is, is that the  
7 appropriate remedy.

8           In ***Hudson vs. Michigan*** and ***State vs.***

9 ***Ward***, clearly tell us it's not. And the reason  
10 it's not is because the harm, i.e., the comments  
11 of Sheriff Petersen are entirely unrelated to,  
12 not connected to, the evidence which is sought to  
13 be excluded.

14           And if, for instance, we are not to be  
15 impeded, and this is not that big a deal, I can't  
16 imagine why the State is troubled, your Honor,  
17 then my question is, if it's not meant to impede  
18 us, then why bring it. It makes no sense. The  
19 remedy must be connected to the wrong. And in  
20 this case, it's not.

21           THE COURT: Mr, Strang, anything else?

22           ATTORNEY STRANG: Yeah. As he did on  
23 brief, Mr. Fallon expresses a good deal of concern  
24 and distress with me that I have not connected  
25 Sheriff Petersen to the people under him in the

1                   department. And, indeed, I'm not trying to impugn  
2                   the gentleman sitting here, or anybody else in the  
3                   department. I'm simply following Petersen's lead,  
4                   and Pagel's.

5                   I mean, the Court wouldn't know this,  
6                   but in his deposition, Sheriff Petersen testified  
7                   that he's the last remaining member of the  
8                   Manitowoc County Sheriff's Department who was  
9                   involved in the 1985 case against Steven Avery.  
10                  Last one, who was around in 1985. Most of the  
11                  deputies, I imagine, in this department, were in  
12                  Junior High School in 1985.

13                  None of the current Manitowoc County  
14                  Sheriff's Department personnel were named as  
15                  parties in the civil lawsuit that occasioned this  
16                  concern about a conflict of interest. As far as  
17                  I know, nobody had any specific concerns about,  
18                  you know, Detective Remiker, or Sergeant Jost or  
19                  anybody else on the Sheriff's Department, and yet  
20                  all of them, by the department, were taken out of  
21                  lead responsibility, for an investigation of  
22                  crimes that occurred in Manitowoc County and  
23                  ordinarily would be within their jurisdiction.

24                  So, I'm just simply picking up on the  
25                  same connection, as a matter of agency law, that

1           the under sheriff and Sheriff Pagel themselves  
2        drew here. As I say, I don't know if there was  
3        any specific concern on their part about the  
4        reliability of, or integrity of, this or that  
5        specific deputy, or sergeant, or detective.

6           But the concern about a conflict of  
7        interest, by its nature, pervades the  
8        organization. And that concern is at least as  
9        great when we're talking about direct contact  
10      with the people who will decide the facts, as  
11      opposed to simply direct contact with the items  
12      of evidence that ultimately may be introduced to  
13      assist a jury in finding the facts.

14           So that's -- I can be flayed for the  
15      want of a connection, but Sheriff Petersen and  
16      Sheriff Pagel would fall under the same switch.

17           THE COURT: All right. Also on the agenda  
18      today is the State's preliminary motion in limine  
19      regarding the jury hearing evidence concerning the  
20      defendant's 1985 wrongful conviction. I will hear  
21      argument on that motion at this time. It's the  
22      State's motion, who's going to argue that?

23           ATTORNEY KRATZ: Thank you, Judge. Judge,  
24      this is a straight relevance argument. Both 904.01,  
25      .02, and .03 if a balancing test is to be performed,

1 relevancy, of course, being defined as having any  
2 tendency to make the existence of a fact of  
3 consequence more or less probable. The State argues  
4 that the defendant's wrongful conviction, or the  
5 fact that the defendant was convicted and spent some  
6 time in prison, has absolutely no relevance in this  
7 case, does not implicate any fact at consequence.

8 In other words, it would not be offered  
9 to prove, or disprove, or assist the jury on any  
10 element of the offense or other matter of  
11 consequence, but simply would be, in the State's  
12 opinion, offered for an impermissible purpose.  
13 Sympathy is not something for a jury to consider.  
14 Feeling sorry for Mr. Avery that he spent time,  
15 for a crime that he was later exonerated for, is  
16 the exact kind of evidence that should not be  
17 allowed.

18 I appreciate the response by the defense  
19 suggesting bias on the part of investigating  
20 officers, but the State argues, still, that when  
21 compared with, or when balanced against, the risk  
22 of impermissible reasons, the whole discussion of  
23 the defendant being previously wrongfully  
24 convicted, has no place in this trial.

25 Importantly, Judge, I believe it's

1           instructive to consider the other side of the  
2           coin, to consider why evidence of prior  
3           convictions are precluded. It's impermissible  
4           for the State to inflame a jury, to indicate that  
5           a defendant has previously been convicted of a  
6           crime, again, absent some permitted purpose under  
7           904.04.

8                 But the fact that the defendant was  
9           previously convicted of a felony, we know is  
10           inadmissible. It conjures bias and it conjures  
11           president -- prejudice, excuse me, and the State,  
12           therefore, argues that a prior exoneration would  
13           equally be impermissible.

14                 Lastly, Judge, when we talk about  
15           904.04, we talk about other acts. We're talking  
16           about behaviors. We're not talking about prior  
17           convictions, or prior exonerations, or prior not  
18           guilty findings. We're talking about behaviors.  
19           And when relevant for intent, or identification,  
20           motive, or those other permissible reasons, we  
21           are talking about behaviors.

22                 Prior exoneration does not mean that the  
23           defendant is more likely to be exonerated in this  
24           case, or more likely to be not guilty of this  
25           particular offense, which is exactly what the

1           defense would be offering this kind of evidence  
2           for. So the risk -- the very high risk of unfair  
3           prejudice to one of the parties, which is the  
4           State, which this equally applies to, that is,  
5           the relevance standard equally applies to  
6           evidence offered on behalf of the State as well  
7           as the defense and should be applied in this  
8           case. We're asking that the Court exclude that  
9           evidence. Thank you, Judge.

10           THE COURT: All right. Mr. Strang.

11           ATTORNEY STRANG: Evidence of Mr. Avery's  
12           prior wrongful conviction, and the ensuing lawsuit  
13           against Manitowoc County, is what the State seeks to  
14           exclude, absolutely, as I understand the motion.  
15           Now, like any other evidence, if this is proper at  
16           all, as I have argued on brief that it is, there is,  
17           concededly, a role for the Court under Section  
18           904.03.

19           How much do we get into the 1985  
20           conviction? How much do you get into the 1983  
21           lawsuit -- Section 1983 lawsuit, from whom, what  
22           kind of details. All of this raises 904.03  
23           questions. And the Court had a good idea in  
24           chambers, that I will act on, which is to file a  
25           motion in limine here, ourselves, as to what

1 specific evidence do we wish to offer of the  
2 wrongful conviction and the prior lawsuit.

3                 But the absolute position just can't  
4 prevail here, in the end. I have argued on  
5 brief, and I won't repeat here, the bias and the  
6 credibility value of this evidence, explaining  
7 why the Manitowoc County Sheriff's Department,  
8 and other officers, may have acted as they did;  
9 explaining, if he becomes a witness, why  
10 Mr. Avery may have acted as he did, or helping  
11 the jury to understand and evaluate his  
12 credibility if he testifies at trial. I will  
13 stand on my brief on all of that.

14                 I do want to add here, briefly, without  
15 repeating the arguments in the brief, that it's  
16 awfully hard for the State, fairly, to say we  
17 need to introduce evidence of what Mr. Avery said  
18 to three men in prison, and the pictures he drew  
19 for them in prison; and we want to introduce  
20 evidence, if we have Mr. Dassey testify, that,  
21 gee, Steve Avery wanted to go back to prison  
22 because life on the outside was tough; and then  
23 not allow the defense at least some room to  
24 explain that he shouldn't have been in prison in  
25 the first place, and spent 18 years trying to get

1 himself out, saying he was innocent. At a bare  
2 minimum, that kind of context is necessary, if  
3 the State is to offer the evidence that it has  
4 sought to offer, and pursues.

5 I agree with Mr. Kratz wholly, that if  
6 the issue were sympathy for Mr. Avery, that's not  
7 a proper purpose for this. It happens to be not  
8 why we're offering it, but it's not a proper  
9 purpose, simply to make a pitch for sympathy.  
10 The same, of course, would be true for Teresa  
11 Halbach's life history, which the State proposes  
12 to offer.

13 Had that no purpose other than  
14 generating sympathy for her, or her family, it  
15 would be improper and, indeed, that's why there's  
16 a pattern jury instruction in this state, in  
17 which this Court, I'm confident, will instruct  
18 the jury that it is not to decide this case on  
19 the basis of bias, or prejudice, or sympathy, for  
20 one party, or for anyone, for that matter.

21 So that can be handled very well with a  
22 jury instruction. And just as Ms Halbach's life  
23 history evidence invariably will present a 904.03  
24 question for this Court, how much is right, how  
25 much is too much, how much distracts, or

1           confuses, or misleads, or wastes its time; I  
2           think the same is true of the wrongful conviction  
3           and the lawsuit.

4                 It's clearly a Section 904.03 issue. It  
5           should be addressed before trial, an absolute  
6           position by the State on this, particularly if  
7           it's offering other evidence informing the jury  
8           that Mr. Avery was in prison. It just goes too  
9           far. Just as I think an absolute position by the  
10          defense, that nothing about the life or history  
11          of Teresa Halbach can come in, also would be  
12          mistaken and would go too far.

13                 So we're going to be into, it seems to  
14          me, a balancing area. And I will try to assist  
15          the Court by filing a motion in limine here by  
16          July 14, talking about just exactly what we hope  
17          to get into, with whom, and how.

18                 THE COURT: Question for Mr. Strang, with  
19          respect to the bias basis for getting the evidence  
20          in, what -- what witness, or witnesses, of the  
21          State, is the defense seeking to argue that the  
22          wrongful conviction and the attendant lawsuit would  
23          show bias on the witness's part?

24                 ATTORNEY STRANG: Anyone from the Manitowoc  
25          County Sheriff's Department. Now, in practice in

1           this trial, that's likely to turn out to be, I can't  
2           rank order these, but it's likely to turn out to be  
3           Detective Remiker, it's likely to be Lieutenant  
4           Lenk, Sergeant Colborn, you know, anybody. Those  
5           are likely to be the main players.

6           But, you know, when you work for a  
7           department, or a firm, or a company, and you are  
8           getting sued for \$36 million, your department  
9           is -- and it's been an embarrassment, it's been  
10          public, you know, somebody who shouldn't have  
11          been in prison was -- I think that's likely to  
12          effect the morale, the bias. May be  
13          sub-conscious, but it really is likely to have a  
14          human effect on the people in the department.  
15          There can't have been warm feelings about Steven  
16          Avery, or even neutral feelings, about Steven  
17          Avery, at the time this was going on.

18           THE COURT: Mr. Kratz, if the State  
19          allowed -- or if the Court allowed into evidence,  
20          any of the statements that would, by their nature,  
21          suggest that Mr. Avery was in prison at the time,  
22          wouldn't it be fair to let the jury know that he was  
23          not there serving a sentence for a crime that he is  
24          still convicted of?

25           ATTORNEY KRATZ: I'm not sure that we

1           would -- excuse me -- I'm not sure that we would  
2           have to include where the statements were made or  
3           under what context. And I appreciate Mr. Strang's  
4           concern in that regard, and I may need to fashion a  
5           explanation as to how, or in what context those  
6           statements may have been made, but I'm sure it could  
7           be done. I don't think that we have to include that  
8           these were statements that were made by Mr. Avery in  
9           prison. Let's not forget, that the first six years,  
10          Mr. Avery was not there for some un -- or  
11          impermissible reason.

12           THE COURT: I understand that, but I think  
13          it is significant that, at the time the statements  
14          were made, he wasn't supposed to be there.

15           What about the -- What's the State's  
16          response to the bias argument? As I understand,  
17          and I don't have, obviously, first hand  
18          familiarity with the lawsuit, but the argument is  
19          that the -- not only was the defendant cleared of  
20          the crime, but that the -- another police agency  
21          had provided the Sheriff's Department with  
22          information about the person who was really  
23          responsible.

24           And the sheriff, on the stand here  
25          today, indicates he still doesn't really accept

1           the fact that the defendant wasn't guilty of that  
2           offense, does not show bias on the part of at  
3           least the sheriff himself, if not other members  
4           of the department?

5           ATTORNEY KRATZ: Here's where I agree with  
6           the defense, that the balancing test under 904.03  
7           has to come into play, but then this Court has to  
8           decide whether or not it's relevant. This Court has  
9           to decide whether it's reasonable that police  
10          officers would try to set up Mr. Avery, because of a  
11          civil lawsuit, whether they would pick some  
12          unsuspecting woman and kill her, if in fact that's  
13          going to be the argument, that bias went to that  
14          extent, and dispose of her body, because of this  
15          lawsuit.

16           So, it's in those kinds of suggestions  
17          of bias, and how far they extended, whether or  
18          not this is for a permissible bias reason, or  
19          whether or not it goes beyond that into something  
20          that we're talking more about sympathy, or an  
21          impermissible reason, rather than appropriate  
22          bias.

23           ATTORNEY STRANG: I can -- I can say a  
24          couple things. First of all, the Court -- and the  
25          Court doesn't sit to decide the reasonableness of

1           the inference of bias, the jury does. That said, I  
2           can't imagine that anybody at this table is going to  
3           argue that someone in law enforcement murdered  
4           Teresa Halbach. I just don't expect that to be an  
5           argument.

6                         Will there be questions about the  
7           fairness and integrity of the investigation, and  
8           how they came to focus on Steven Avery? You bet.  
9                         Will there be questions about the reliability of  
10           physical evidence? Yes. Will there be questions  
11           about the reliability of testimony? Yes.

12                  THE COURT: All right. The next motion I  
13           have was the motion relating to the State's motion  
14           to offer -- let's see -- evidence concerning the  
15           victim's life history. I know I got a letter from  
16           Mr. Buting, I think yesterday or the day -- I guess  
17           it was, technically, the 3rd, indicating that it was  
18           premature to address this motion until the  
19           information proposed was offered with a little more  
20           specificity. And I got as far as getting your  
21           pleading on my bench here, Mr. Kratz. I'm not sure  
22           what --

23                  ATTORNEY KRATZ: Judge, that pleading has  
24           to do with statements of Ms Halbach.

25                  THE COURT: Oh.

1 ATTORNEY KRATZ: That's number seven.

2 THE COURT: All right.

3 ATTORNEY KRATZ: That's to be addressed on  
4 the 19th.

5 THE COURT: I'm not sure that I can address  
6 your request in the abstract without knowing exactly  
7 what it is. I mean, I'm certain that, to put  
8 anything into context, some background information  
9 is always appropriate. But I think, as Mr. Buting  
10 points out, there could be a lot more evidence that  
11 would be appropriate at the time of sentencing, that  
12 wouldn't necessarily get in at the trial. So, I'm  
13 not sure that the Court can issue any meaningful  
14 decision on the request, as it's currently framed.

15 ATTORNEY KRATZ: If I may, Judge, I don't  
16 know that Mr. Buting and I are very far apart. We  
17 understand that, in a homicide case, when taking of  
18 a human life is at issue, some aspects of the  
19 victim's life becomes relevant, her contacts with  
20 Avery, her employment, her family relationships,  
21 those things that intersect, if you will, her life  
22 with that of Mr. Avery.

23 That being done through at least some  
24 photographs of the victims, or some evidence of  
25 those characteristics, or part of Teresa's life

1           that, again, puts her in contact with Mr. Avery,  
2           will be relevant. State has no intent to  
3           overstep its authority or to offer any of this  
4           evidence for sympathy or other reasons, just  
5           those that are relevant.

6           It's my, perhaps, clumsy attempt to  
7           obtain pretrial rulings when I can so that we  
8           don't have to stop the trial, or have those  
9           discussions in the middle. I intend, Judge, and  
10          I think perhaps this is best addressed by sharing  
11          it with the defense, if there are going to be  
12          photographs, if there are going to be kinds of  
13          evidence that, again, are relevant as to Ms  
14          Halbach, and especially as they intersect with  
15          Mr. Avery, and as I previously mentioned, I don't  
16          think that Mr. Buting and I, when I read his  
17          response, are very far apart at all.

18           THE COURT: All right, Mr. Buting.

19           ATTORNEY BUTING: I guess I would just  
20          suggest that perhaps they do the same thing that  
21          we're doing on -- or that the Court's asked us to  
22          do, which is to file a motion in limine on how we  
23          would use the wrongful conviction. If the State  
24          wants to identify, certainly, any way that Teresa's  
25          life intersected with Mr. Avery, I think is going to

1           be fair game, just to set the context.

2           I'm not sure about relationships with  
3           her family and all those kinds of things. But I  
4           think if the State wants to do that, they can  
5           file a motion and, then, before trial, share his  
6           concern about all these things coming up in the  
7           middle of the trial. But I think a motion in  
8           limine before trial, where he can lay out the  
9           limits and the parameters of this kind of  
10          evidence, is the way to go.

11           THE COURT: All right. I'm going to trust  
12          Mr. Kratz to do that. I don't know that it's  
13          necessary, in every case, that the State provide the  
14          defense with a summary of background victim  
15          information, but given the length that the parties  
16          are anticipating for this trial, and the fact that  
17          wherever we have a jury, they are going to be  
18          around, take a sizeable chunk of time out of their  
19          lives, I think to the extent that we can resolve  
20          matters ahead of time we should do so.

21           There's another motion filed by the  
22          State regarding prior criminal convictions of the  
23          defendant. And it's my understanding the parties  
24          were going to work together to resolve that.

25           ATTORNEY KRATZ: We will, Judge. We will

1           reach a stipulation on that, and we'll attempt to  
2           reach stipulations on any witness, whether called by  
3           the State or the defense, prior to trial.

4                 If we have issues that the Court needs  
5           to resolve, whether it's issues of remoteness or  
6           relevance, we will bring those to the Court. But  
7           I'm quite confident, with the number of years of  
8           experience between all of us, we should come  
9           pretty close to coming up with correct numbers.

10               ATTORNEY STRANG: Right. This will  
11           probably get worked out. We can raise our hands if  
12           it doesn't.

13               THE COURT: Okay. I think that takes us to  
14           the motion for bail reduction. I believe everything  
15           else has been addressed, unless I have missed  
16           something.

17               ATTORNEY KRATZ: There was the issue of the  
18           Marinette detective, and we do recognize, Judge,  
19           with the Court's previous ruling on the change of  
20           venue, that it's quite clear that a third hearing is  
21           to be set in this case. There was, as the Court  
22           knows, an audiotape recording of Mr. Avery's  
23           interviews with the Marinette detective.

24               We felt it fair to at least suggest to  
25           the Court that that be provided before they have

1                   an opportunity to cross-examine the detective.

2                   And so we plan to do that. And anticipating, we  
3                   will set a date before we leave here today. We  
4                   suggest, at least the State suggests, that that  
5                   entire motion, then, be dealt with on that third  
6                   motion date that we are contemplating.

7                   THE COURT: Any objection?

8                   ATTORNEY BUTING: No, Judge.

9                   THE COURT: So I will hear the bail motion  
10                  today and we'll set another hearing date then for  
11                  the other motion.

12                  ATTORNEY STRANG: I'm sorry, do we have his  
13                  schedule?

14                  ATTORNEY FALLON: He's still here. Would  
15                  it be possible?

16                  THE COURT: We can set the date now. How  
17                  about Thursday, August 3rd; what does that look like  
18                  for the parties.

19                  ATTORNEY BUTING: Judge, that's the week  
20                  I'm going to be out of town and out of state.  
21                  Mr. Strang, I think, is gone the week before, but  
22                  the week after that perhaps.

23                  THE COURT: Wednesday, August 9th.

24                  ATTORNEY FALLON: That's fine with us.

25                  ATTORNEY BUTING: That's good.

1 ATTORNEY STRANG: That's good.

2 THE COURT: All right. 9:00 on the 9th.

3 ATTORNEY KRATZ: And so that we're clear,  
4 Judge, that is, at least, the change of venue  
5 motion, and the statement of the Marinette detective  
6 and, perhaps, whatever we don't accomplish on the  
7 19th; does that sound fair?

8 THE COURT: Everybody agree with that?

9 ATTORNEY BUTING: Change of venue in the  
10 sense of argument and decision or?

11 THE COURT: Well, let's see, I'm going to  
12 have -- I'm anticipating it would be a decision at  
13 that time because I'm going to get some written  
14 submissions from the parties, correct?

15 ATTORNEY KRATZ: That's fine.

16 THE COURT: Between the written submissions  
17 and the media reports I'm going to have to review, I  
18 think that's fair. I don't believe any further  
19 argument or evidence is necessary, is it?

20 ATTORNEY BUTING: Right.

21 THE COURT: Very well.

22 ATTORNEY STRANG: On the change of venue,  
23 here's the -- here are the two boxes.

24 THE COURT: Okay.

25 ATTORNEY BUTING: Should we mark them?

1                   THE COURT: The Clerk will happily take  
2                   them to the Clerk's Office when we're done today,  
3                   I'm sure.

4                   ATTORNEY STRANG: I'll be happy to help.

5                   THE COURT: Maybe you can help her out.

6                   ATTORNEY STRANG: I can carry them,  
7                   physically. What I'm -- For the record, what I'm  
8                   tendering her, two bank boxes, to include thousands  
9                   of pages of the copies -- photo copies I described  
10                  earlier, and 24 DVD's of television clips concerning  
11                  this investigation and the prosecution.

12                  THE COURT: Very well. All right. At this  
13                  time, then, I will hear argument on the bail motion.  
14                  Mr. Strang, will that be you or Mr. Buting?

15                  ATTORNEY BUTING: It's going to be me,  
16                  Judge. Judge, we filed a motion for reconsideration  
17                  of the bail -- our motion to reduce bail, I believe  
18                  on June 2nd. June 1st is the date here that we  
19                  signed it. I think it was filed in this court on  
20                  June 2nd. This is our first chance to argue it.

21                  There have been some changes since that  
22                  date, in what we would have put in the motion, or  
23                  presented to the Court. But when we last  
24                  discussed bail it was on March 17th, and it was  
25                  in conjunction with the State's motion to amend

1                   the Criminal Complaint, adding additional counts  
2                   against Mr. Avery, based upon the statements,  
3                   alleged reliable, credible statements of  
4                   Mr. Dassey, the 16 year old nephew.

5                   And we argued at that time, and provided  
6                   whatever case law we could, that Mr. Dassey's  
7                   statements were simply not reliable and shouldn't  
8                   be admissible, or considered, to establish  
9                   probable cause in the Criminal Complaint. And  
10                  the Court disagreed and found that they were  
11                  reliable for that purpose.

12                  The State then objected to our motion to  
13                  reduce bail. And, in fact, filed their own  
14                  motion to increase the bail, based, again, upon,  
15                  solely, the statements of 16 year old Brendan  
16                  Dassey, which were set forth in lurid detail in  
17                  the Criminal Complaint. And on that basis, the  
18                  Court found that, because of those statements,  
19                  and only those statements, Mr. Avery's bail  
20                  should be increased from 500,000 to 750,000.

21                  Now, since that time, substantial  
22                  evidence has disproved -- certainly called into  
23                  question -- the reliability of that young man's  
24                  statements that are in this Complaint. As a  
25                  matter of fact, the majority of the story, of how

1           Teresa Halbach supposedly lost her life at the  
2           hands of these two individuals, has been proven  
3           to be incorrect, either lies or guesswork made up  
4           by Mr. Dassey at the urging, coaching, of his  
5           interrogators, some of which we placed in our  
6           written motion.

7                 He claimed, for instance, that she was  
8           handcuffed to the bed when he saw her for the  
9           first occasion. The Crime Lab tested those  
10          handcuffs. Her DNA was not found on the  
11          handcuffs. But, suggesting that they were not  
12          wiped off or wiped clean, Mr. Avery's was found  
13          on the handcuffs, as well as another individual,  
14          not Mr. Dassey, again, suggesting that these  
15          handcuffs were not used, that she was not  
16          restrained by handcuffs as Dassey claimed.  
17          Because if she was, one would certainly expect  
18          the poor woman, struggling, would have left at  
19          least as much DNA as somebody else, like  
20          Mr. Avery or the other unknown individual would  
21          have, just handling them.

22                 So, that immediately called into  
23          question the credibility and reliability of  
24          Brendan Dassey's version of what happened. But  
25          then there were some other things that developed.

1           His statement also claimed that they cut off  
2           3-inches of her hair, I believe it was. And the  
3           Crime Lab ripped up all of the carpet from  
4           Mr. Dassey's -- I'm sorry, Mr. Avery's trailer.  
5           And they took all of the wood paneling off of the  
6           walls as well. They found no hair.

7           He also claimed that she was brutally  
8           stabbed, her throat cut in a horrific  
9           description, pure fantasy, of how that woman  
10          supposedly died at Mr. Avery's hands, in a manner  
11          that would have obviously left blood on the  
12          mattress, soaked through the bedding. Even if  
13          the bedding had been disposed of, the mattress  
14          would have had evidence.

15          Everybody was talking about it, even on  
16          the street, well, where's the evidence of this,  
17          wouldn't there be blood on the mattress. Well,  
18          sure enough, they took the mattress, and it's the  
19          same mattress, and there was not a speck of blood  
20          on it.

21          And he also claimed that Mr. Avery,  
22          then, after she had been brutally stabbed and  
23          bleeding all over the mattress, then carries her  
24          over his shoulder, out into the garage, obviously  
25          would have been dripping blood all the way,

1 again, not a speck of blood anywhere on the  
2 carpet, or on the steps, or anywhere leading out.

3 And as a matter of fact, with all the  
4 tests that they have done, of all the stuff in  
5 his trailer, not one speck of Teresa Halbach's  
6 blood or DNA has been found in Mr. Avery's  
7 trailer, directly contrary to what they claim in  
8 this Complaint to be reliable, credible evidence,  
9 sufficient to have this Court increase his bail.

10 Now, recognizing that, the interrogators  
11 went back to Mr. Dassey, on May 13th, I believe,  
12 and did another interview of him, once again,  
13 coaching, leading, trying to change his story to  
14 fit their theory of what happened in this case.  
15 And thank God for **State vs. Jerrell**, because it's  
16 recorded, for you to see, or anyone else to see,  
17 eventually, in this case, or in his case.

18 And the manner that they questioned him  
19 is -- it would be laughable, if it wasn't a real  
20 case with real people's lives at stake. He is  
21 fed information to change his story. Now, it  
22 turns out, according to this young man, that the  
23 whole story about him getting off the bus,  
24 finding a letter of Mr. Avery's, and going down  
25 and hearing this poor woman screaming, was

1           totally made up.

2           He hears no screaming outside the  
3           trailer. He claims that he goes in the trailer  
4           and, yes, she's there. But, again, the entire  
5           time he's there she's never screaming, which is,  
6           frankly, rather preposterous. He now, because he  
7           knows, with his lawyer, and what's been made  
8           public, that there's no DNA on the handcuffs.

9           It's like, oh, I was wrong about that.  
10          It was rope, her arms were bound by rope, to the  
11          headboard. So they test the headboard and  
12          there's no rope fibers on it. They swab it  
13          specifically for that purpose. No evidence, once  
14          again.

15          And his interrogators press him about  
16          that and they say, well, was that a lie? And he  
17          says, yes. Did you cut off her hair? No, that  
18          was a lie. Why did you tell us these things?  
19          Where did you come up with these things? Just  
20          guessing, is his response.

21          Recognizing that there's no blood or DNA  
22          in his trailer, it is now obvious this young  
23          woman was not killed in his trailer. So the  
24          interrogators get him to try and move the  
25          location. Again, not accepting the possibility

1                   that Brendan Dassey's entire story is wrong.

2                   They just want to change it and somehow make it  
3                   fit the physical evidence.

4                   And so, now, she is supposedly killed in  
5                   the garage. And there's one piece of evidence  
6                   that they have found, that in some way might  
7                   support part of his story. Allegedly, there is a  
8                   very small amount of her DNA that was found on a  
9                   bullet somewhere in the garage; although, it  
10                  wasn't found until after March some time, when  
11                  they re-searched the garage.

12                  But, as we put in our written motion,  
13                  it's a garage that is fairly accessible to many  
14                  people, not just Mr. Avery. And, of course, it  
15                  wasn't found until five months after Mr. Avery  
16                  has been in custody. So, many people had access  
17                  to it during that period of time.

18                  But other than that, again, and -- and  
19                  they -- and they challenge him, frankly, it's  
20                  pretty obvious. And, frankly, I have a copy of  
21                  it. I can offer it to the Court, introduce it if  
22                  you would like to look at -- listen to this. But  
23                  you can tell that the interrogators don't even  
24                  believe most of what he's saying, until they get  
25                  him to say what it was -- what they want to hear,

1           that they think might somehow fit the evidence.  
2           But they say, well, where's the blood? Where's  
3           the knife? They never found any knife. There  
4           was no evidence that there was ever any stabbing  
5           of this woman. He's got no explanation for it.

6           And they say, well, one would think that  
7           there would be blood because, again, now the  
8           killing is supposedly in the garage. And it's  
9           not just a gunshot. In fact, originally it was  
10          10 times that he shot her, now he's changed it to  
11          five. But there's still the stabbing that's  
12          going on, with her now in the garage. There's no  
13          blood to support it.

14          And they are relying, now, on, oh, well,  
15          they cleaned it up with bleach and gasoline, and  
16          all that stuff. Well, in truth, there was blood  
17          stains found -- or there were blood stains found  
18          on the floor of the garage, Mr. Avery's. The man  
19          works on cars in there for -- every day. He cuts  
20          himself repeatedly. His blood is found in  
21          numerous places, but not hers. If it's all  
22          cleaned up with bleach, why is his blood found  
23          anywhere. Again, it doesn't fit.

24          In essence, he has now retracted almost  
25          everything. This dramatic press conference

1 statement that people -- the children should not  
2 listen to this, it's so terrible to hear, was  
3 pure fantasy, unsupported by any other physical  
4 evidence, and now retracted by the guy who  
5 supposedly told it.

6 I feel sorry for the Halbachs, that they  
7 think all these horrible things happened to their  
8 daughter and sibling. Now, we know that's not  
9 even true, but that's, unfortunately, the  
10 reality. I can go on and on. Did he punch her,  
11 or did she -- did Avery punch her in the mouth?  
12 Now, he's like, no, he never hit her at all.

13 Not only that, he now retracts any --  
14 any knowledge that he has that Mr. Avery ever had  
15 any sexual assault. He's still on his newest  
16 statement, newest I'm aware of, admits that he  
17 had sex with her; although, the way he admits it  
18 is certainly suspect. But he says, no, I didn't  
19 see Avery have sex with her. No, he didn't tell  
20 me he had sex with her.

21 So the whole sexual assault charge  
22 against Mr. Avery that's in this Criminal  
23 Complaint, and for which his bail went up, is now  
24 going to be out the window.

25 In Mr. Dassey's own bond hearing, the

1 prosecution revealed -- and by the way, I think  
2 the description of Sheriff Pagel's, the purpose  
3 of these press conferences was to control the  
4 information that went out, is a very good  
5 description of what's been going on in this case,  
6 in the public's eye all along; which is, the  
7 prosecution has controlled the evidence that the  
8 public hears, and construed it in a way that  
9 makes it look like this guy should be the poster  
10 boy for the death penalty, when, in fact,  
11 everything that they construed is one sided. It  
12 leaves out all kinds of other things.

13 Looking at that press conference, you  
14 would have expected that that young boy, who was  
15 holding this in for months and just had to  
16 unburden himself with this terrible story that he  
17 had -- experience that he had, was emotionally  
18 upset and came out with this whole, long story  
19 when, in fact, there is not an iota of emotion  
20 expressed by the guy.

21 He never cries, he's not upset at all,  
22 he's not coming out with any narrative. It's one  
23 sentence or one word responses to their  
24 questions, the entire way, all the way through  
25 that first statement. And the second statement

1           is more of the same. There is no emotion. If  
2           this kid had any involvement with it, he  
3           certainly hasn't described what happened, or what  
4           his involvement really was, because there's no  
5           emotional connection or affect there.

6           But back to the bond hearing, the  
7           prosecutor announced, oh, well, now we have new  
8           information that this was a planned murder and  
9           that they selected Teresa Halbach several days  
10          earlier. And, again, I suggest to the Court,  
11          look at that statement. Brendan Dassey says  
12          nothing about any planning until they suggest it,  
13          as the only explanation they can come up with for  
14          why there isn't more evidence.

15          And after he's -- he's badgered with  
16          this, he finally starts, well, yeah, I suppose;  
17          again, guessing, answering their questions. But  
18          when they press him about, okay, what was the  
19          plan; there is no plan. There's no discussion  
20          about who is going to do what, how it's going to  
21          be carried out. No plan to have sex. No plan on  
22          why Teresa Halbach.

23          When they start pressing him on -- on  
24          the obvious questions, he can't answer any of  
25          them, because it's, again, it's just fantasy.

1           It's not the truth. And, then, when they ask  
2           him, well, why -- why would Steven Avery have  
3           planned this, why would he have done this, again,  
4           there's long pauses in all these answers. And he  
5           comes up with, well, he wanted to go back to  
6           prison, because he missed it.

7           And even their own interrogator throws  
8           up his hands and says, He didn't say that, did  
9           he? Come on, start telling us the truth. And  
10          then there's a long sequence where they start  
11          badgering him about how he has got to help  
12          himself, and he is not being honest with them.  
13          On and on and on. So they don't even buy that  
14          story, yet they offer it, in Mr. Dassey's own  
15          bond hearing, and probably would do so here too.

16          So, in short, the Criminal Complaint is  
17          no longer credible and that all of the evidence  
18          that they have done, all the testing that they  
19          have done so far, has disproved Mr. Dassey's  
20          credibility, and his involvement, and, therefore,  
21          the involvement of Steven Avery in the murder,  
22          and any other offenses that go along with that,  
23          of Teresa Halbach.

24           What we're asking is the Court to,  
25           therefore, reconsider the bond, to once again

1 consider, first, reducing the bond back down to  
2 the 500,000 that was originally set, before this  
3 Brendan Dassey fantasy was filed. And, then, to  
4 once again, consider a property bond posted by  
5 Mr. Avery's family.

6 He's shown no evidence of a risk of  
7 flight. He's fought for 18 years to get himself  
8 out of prison. He intends to -- He's conducted  
9 himself in jail, and in this courtroom, with  
10 perfect decorum, and showing no evidence of being  
11 a disruptive individual who's a risk of flight.

12 Yes, he's facing serious charges, with a  
13 great deal of prison time, but that's the purpose  
14 of monetary bail, or property bond bail, to  
15 ensure that he will return. Five hundred  
16 thousand dollars is a lot. It's his parent's  
17 entire property, his brother's and sister's  
18 entire property. He's not going to risk  
19 forfeiture of that by failing to reappear in  
20 court.

21 So for those reasons I would ask the  
22 Court to reconsider and reduce the bail to what  
23 was originally asked on March 17th. Thank you.

24 THE COURT: All right. Mr. Kratz, or  
25 Mr. Fallon, which one will be addressing?

1                   ATTORNEY KRATZ: I will, Judge. And I'm --  
2                   I must say, I'm surprised that somebody, you know,  
3                   we have given a lot of compliments around here,  
4                   somebody with Mr. Buting's reputation, would come  
5                   into this court, and express to this Court that he  
6                   knows for certain, or that he has some personal  
7                   opinion that this statement by Brendan Dassey is  
8                   fantasy, or that it's made up, or that there are  
9                   such inconsistencies in this statement that it  
10                  should be disregarded.

11                  Mr. Buting doesn't know that.

12                  Mr. Buting can discuss inconsistencies of  
13                  Brendan's statements, but what Mr. Buting hasn't  
14                  expressed to the Court, at least what the State  
15                  would argue, in a factual or proper manner, are  
16                  the consistencies that Brendan did provide in his  
17                  second statement.

18                  Brendan Dassey, in his second statement,  
19                  which, by the way, was at the invitation of a  
20                  defense attorney, after his statement was not  
21                  rejected by Judge Fox, does include  
22                  consistencies. The consistencies that it was he  
23                  and Steven Avery who killed Teresa Halbach. That  
24                  it was Steven Avery who stabbed Teresa Halbach.  
25                  That it was Steven Avery that shot Teresa

1                   Halbach. That it was the shooting that occurred  
2                   in the garage. That it was he and Steven Avery  
3                   who mutilated the body of Teresa Halbach, hid her  
4                   car and, thereafter, tried to clean up or destroy  
5                   evidence. All of that information was included  
6                   in Brendan's second statement.

7                   What Mr. Buting did indicate in kind of  
8                   an, oh, by the way, manner, was that there was a  
9                   bullet now found in that man, Steven Avery's,  
10                  garage, that had the victim, Teresa Halbach's,  
11                  DNA on it. That is not insignificant, Judge.  
12                  That is additional evidence that this Court did  
13                  not have, since the March 1st statement that was  
14                  given, and should not be given such a short  
15                  shrift.

16                  What Mr. Buting, perhaps, forgot to tell  
17                  the Court was that Mr. Avery's DNA was also found  
18                  on the hood latch of the SUV of the victim, since  
19                  the first statement by Brendan Dassey. And  
20                  because of Brendan Dassey's first statement, that  
21                  Steven was fooling around with and opened up the  
22                  hood of the victim's vehicle, the hood latch was  
23                  swabbed and a full DNA profile match of Mr. Avery  
24                  was, in fact, developed. That's been provided to  
25                  the defense and, again, maybe Mr. Buting forgot

1 to tell the Court that.

2 Mr. Buting and Mr. Strang also know that  
3 additional admissions have been made by this  
4 young man, admissions to family members, that not  
5 only was he involved in the murder of Teresa  
6 Halbach, but very clearly that Steven Avery was  
7 responsible for her death. The defense, now,  
8 also knows that the victim's PDA Palm Pilot was  
9 found with the cell phone and camera, on the  
10 Avery property.

11 So, together with the inconsistencies,  
12 there have been additional, not only consistent  
13 statements made, but additional physical  
14 evidence, which has been developed. I also wish  
15 to alert the Court, or direct the Court, to my  
16 previous bond arguments. All of the previous  
17 evidence about the degree of violence; the prior  
18 record of this man; the ties, or lack of ties, to  
19 the community; flight risk; the penalties that he  
20 faces; and the gravity of the offense, apply  
21 today, equally, as they did previously. I'm  
22 asking this Court deny the motion for the  
23 reduction of bond. That's all I have, Judge.  
24 Thank you.

25 THE COURT: Mr. Buting, anything in

1                   rebuttal?

2                   ATTORNEY BUTING: No, your Honor.

3                   THE COURT: All right. The Court, in  
4                   addition to the oral argument today, I, before  
5                   today, read the written argument in support of the  
6                   motion. And I gather that, from what I know, there  
7                   appear to be at least some inconsistencies in  
8                   Mr. Dassey's version of events that was originally  
9                   given to the police, versus what he said recently.

10                  The significance of those  
11                  inconsistencies is in dispute here today. We're  
12                  only at the bail stage. The Court is not in a  
13                  position to weigh credibility of the parties, or  
14                  make determinations as to who's telling the truth  
15                  and who isn't. That's the province of the jury.

16                  When the Court last reviewed bail on  
17                  March 17, I did consider the fact, at that time,  
18                  that the State's case appeared to have been  
19                  strengthened from what it had been earlier, to  
20                  the extent that it was no longer based on purely  
21                  circumstantial evidence, but that another person  
22                  claiming to be an eye witness and, in fact, a  
23                  co-defendant, had been identified, and made  
24                  statements incriminating himself, along with  
25                  Mr. Avery.

1                   While different statements that he's  
2                   given since then may have some affect on the  
3                   credibility of the version of events he gave,  
4                   that's still the case; that is, there's still  
5                   another person who's made incriminating  
6                   statements identifying himself and Mr. Avery.  
7                   The nature of those statements seems to be such  
8                   that -- they are at least not obviously, on their  
9                   facts, or on their face, designed to shift blame  
10                  to someone else, because they are heavily  
11                  incriminatory of himself, namely Mr. Dassey.

12                  I would also point out that it's not  
13                  true that the Court, at the last hearing, only  
14                  based its decision on the statements of  
15                  Mr. Dassey. Of at least equal significance was  
16                  the fact that the defendant's financial situation  
17                  had changed considerably; specifically, it  
18                  settled a lawsuit for \$400,000.

19                  The facts, as they existed back on March  
20                  17, are largely still present today, even if the  
21                  defense may have some additional argument to  
22                  discredit Mr. Dassey's version of the events.

23                  For purposes of this bail hearing, I do  
24                  not find that there's been any measurable change  
25                  in circumstances. And so for the reasons that I

gave on March 17, and as I have reiterated them today, the Court is not going to modify bail. I will leave it at \$750,000 cash. The motion to modify bail is denied.

Counsel, is there anything further to address before our next hearing on the 19th?

ATTORNEY BUTING: Not from our standpoint,  
Judge.

ATTORNEY KRATZ: I don't think so, Judge.  
We'll see you on the 19th. Thank you.

THE COURT: Very well. We'll see you on the 19th. We're adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN    )  
2                         )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 18th day of July, 2006.

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Diane Tesheneck, RPR  
Official Court Reporter

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARINGS

5 VS. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

9 **DATE:** JULY 19, 2006

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

12 **APPEARANCES:**

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

15 THOMAS J. FALLON  
16 Special Prosecutor  
On behalf of the State of Wisconsin.

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

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

21 STEVEN A. AVERY  
22 Defendant  
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Stephen Avery. It's Case No.  
3                   05 CF 381. We are here this morning to take  
4                   evidence on some of the pretrial motions that have  
5                   been filed. Will the parties state their  
6                   appearances for the record, please.

7                   ATTORNEY KRATZ: State appears by Calumet  
8                   County District Attorney Ken Kratz appearing as  
9                   Special Prosecutor. Also appearing for the State is  
10                  Tom Fallon from the Department of Justice.

11                  ATTORNEY BUTING: Buting and Williams by  
12                  Attorney Jerome Buting, appearing on behalf of  
13                  Mr. Avery. Also present, Attorney Dean Strang.

14                  THE COURT: All right. We did meet in  
15                  chambers, briefly, before beginning today. I  
16                  believe the parties agreed that the first evidence  
17                  to be presented would be on the defense motion to  
18                  suppress statements made to media, and the State was  
19                  going to begin. Mr. Fallon, are you going to be  
20                  handling this portion?

21                  ATTORNEY FALLON: Yes. Yes, your Honor, I  
22                  will be conducting the evidentiary portion and  
23                  argument, if any, relative to this issue.

24                  THE COURT: All right. You may call your  
25                  first witness.

1                   ATTORNEY FALLON: The State would call  
2                   Emily Matesic.

3                   ATTORNEY BUTING: Judge, could we just ask  
4                   for a sequestration order of any other witnesses  
5                   that are anticipated?

6                   THE COURT: Are there any?

7                   ATTORNEY FALLON: There is one other media  
8                   person, who I have not had an opportunity to talk  
9                   to, who interviewed the defendant on two entirely  
10                  different occasions.

11                  ATTORNEY STRANG: And there's the Jail  
12                  Administrator --

13                  ATTORNEY FALLON: And there's the Jail  
14                  Administrator.

15                  ATTORNEY STRANG: -- to Calumet County who  
16                  should be sequestered.

17                  THE COURT: All right. Any objection to  
18                  having those folks excluded from the courtroom?

19                  ATTORNEY FALLON: No, I have no objection.  
20                  Ms Kolbusz, I guess you will have to step out, and  
21                  Mr. Byrnes. Very good.

22                  ATTORNEY STRANG: Before we begin with Ms  
23                  Matesic, I'm informed by counsel that she provided  
24                  some documents today, two of which I think we should  
25                  get copied before.

1                   ATTORNEY FALLON: That's correct. The  
2 witness did provide some additional information, and  
3 I have asked one of our assistants to make a couple  
4 of copies. So it will just be another moment or two  
5 before those copies appear. They are very short,  
6 two or three pages apiece. So, it will be just  
7 another minute or two and counsel will have those.

8                   THE COURT: Okay. The clerk can swear the  
9 witness at this time.

10                  **EMILY MATESIC**, called as a witness  
11 herein, having been first duly sworn, was  
12 examined and testified as follows:

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

15                  THE WITNESS: Emily Matesic M-a-t-e-s-i-c.

16                  THE COURT: Mr. Strang, do you object to  
17 questioning beginning?

18                  ATTORNEY STRANG: No, on the understanding  
19 I will have these in a couple minutes, we can go  
20 ahead.

21                  ATTORNEY FALLON: All right. Very well.

22                  DIRECT EXAMINATION

23 BY ATTORNEY FALLON:

24 Q. What do you do for a living?

25 A. I'm a television news reporter.

1 Q. And for whom are you a reporter?

2 A. WBAY-TV.

3 Q. How long have you been a reporter for that  
4 entity?

5 A. Almost 11 months.

6 Q. All right. And are you currently assigned to any  
7 particular duties as a reporter with that news  
8 outlet?

9 A. Just a general assignment reporter.

10 Q. All right. And specifically, then, directing  
11 your attention to November, 2005, did you have an  
12 opportunity to interview the defendant in this  
13 case, Steven Avery?

14 A. Yes.

15 Q. And first of all, would you describe for us how  
16 it came to be that you interviewed Mr. Avery; in  
17 other words, how did it start?

18 A. Which interview?

19 Q. I'm talking about the first interview, on  
20 November 12th, in fact, that's a good question.  
21 So let me ask you this, how many times did you  
22 interview Mr. Avery?

23 A. A couple, twice.

24 Q. All right. And in what format was he  
25 interviewed?

1 A. The first one was in person, on camera, and the  
2 second one was over the phone.

3 Q. All right. And so the focus of our hearing  
4 today, so it's clear in your mind, would be for  
5 the first interview, which was on camera.

6 A. All right.

7 Q. With respect to that particular interview, do you  
8 recall when that occurred?

9 A. I believe it was November 12th.

10 Q. Tell us how it happened.

11 A. The case had been going on for a couple of weeks.  
12 And I was with some co-workers on the night of  
13 the 11th and we were just kind of talking about  
14 everything that day. There had been a news  
15 conference that Steven Avery would be charged  
16 with Teresa Halbach's murder the following week.

17 And we were just sitting around talking  
18 about it. And he had been talking to the media  
19 throughout this whole investigation and we -- and  
20 so I -- I got into work on Saturday morning and  
21 called the Calumet County Jail to see if he would  
22 be willing to do an interview with us.

23 Q. Tell us about the call.

24 A. I called the jail and told whoever answered the  
25 phone who I was and what I was interested in, and

1           asked if Steven Avery would be interested in  
2           doing another -- doing an interview with us. And  
3           they said, hold on, we'll go ask him. Put me on  
4           hold. A couple minutes later, came back and  
5           said, yes, he will talk to you.

6       Q. And was there any other instructions, or any  
7           other feedback, or comments from the  
8           administrator at the jail, or whomever it was  
9           that you spoke to, any other instructions or  
10          comments, requests?

11      A. No.

12      Q. All right.

13                   ATTORNEY STRANG: I'm going to object.  
14                   Move to strike the prior question, or at least the  
15                  answer, as inadmissible hearsay, as to the person on  
16                  the phone.

17                   ATTORNEY FALLON: I would object for two  
18                  reasons: One, I don't believe the evidentiary rules  
19                  are applicable, in terms of a motion in limine like  
20                  this, to determine the admissibility of evidence.  
21                  And number two, it does have a substantial, quote,  
22                  "effect on the listener", closed quote, as to the  
23                  course of conduct to be embarked upon. So under  
24                  either theory, this statement would be admissible.

25                   ATTORNEY STRANG: Well, I think under

1           911.01 the rules of evidence do govern this  
2 proceeding, one. And, two, clearly the  
3 representation of what Mr. Avery said is offered for  
4 the truth here, not just for the state of mind of Ms  
5 Matesic, which wouldn't be relevant anyway.

6           THE COURT: Okay. Your objection is going,  
7 now, to which question and answer?

8           ATTORNEY STRANG: What happens when she's  
9 talking to the administrator, and leaving the phone,  
10 and coming back, and purportedly relaying Mr.  
11 Avery's statement. So we have two levels of hearsay  
12 there. His would be admissible under 908.01, but  
13 the person on the phone is an inadmissible level of  
14 hearsay and it's offered for its truth.

15           THE COURT: I think it's acceptable to at  
16 least explain why she came to the interview, so I'm  
17 going to allow it.

18           ATTORNEY FALLON: Thank you.

19 Q. (By Attorney Fallon)~ After this conversation,  
20 what did you do?

21 A. My photographer and I got in the car and drove to  
22 the Calumet County Jail.

23 Q. All right. What occurred when you arrived at the  
24 jail?

25 A. We signed in at the front desk and they said

1           we'll take you into the room, we'll let you get  
2           set up, and then we'll bring Mr. Avery in.

3 Q. All right. And describe the room for us.

4 A. Very small room, there's just a small table and  
5       either two or three chairs.

6 Q. All right. Was there any -- How many doors to  
7       the room?

8 A. There were two doors.

9 Q. Any windows to the room?

10 A. Both doors had windows.

11 Q. All right. And in terms of the walls, any  
12       windows there?

13 A. No.

14 Q. All right. Who arrived in the room first, you  
15       and your cameraman, or Mr. Avery?

16 A. Mr. Avery was sitting in there when we walked in.

17 Q. All right. When he was sitting there, was there  
18       any conversation, that you recall, between  
19       yourself and Mr. Avery, prior to going on camera?

20 A. I think just small talk, hello, that sort of  
21       thing.

22 Q. All right. In your meeting with Mr. Avery at  
23       that time, did he give you any indication,  
24       whatsoever, that he did not want to participate  
25       in such an interview?

1 A. No.

2 Q. As you recall now, thinking back on that moment,  
3 can you describe his demeanor for us?

4 A. Just -- He was just relaxed, just kind of sitting  
5 there.

6 Q. All right. Once the -- Who else was in the room?

7 A. My photographer.

8 Q. Was there any member of the Calumet County  
9 Sheriff's Department in the room with you, as you  
10 were setting up to conduct this interview?

11 A. I believe they were in there when they walked us  
12 in. I don't remember how long they were in there  
13 while we were setting up.

14 Q. All right. During the course of the interview  
15 itself, was there any member of the Calumet  
16 County Sheriff's Department present?

17 A. No.

18 Q. All right. In terms of the windows you have  
19 previously described in the door, were there any  
20 members of the Sheriff's Department posted  
21 outside the doors?

22 A. Yes.

23 Q. All right. Which door, or both doors?

24 A. I believe there were both doors, one was behind  
25 me, so I couldn't see that one.

1 Q. Right. All right. Prior to engaging in a  
2 discussion with Mr. Avery, did you or your  
3 cameraman, and that being him in your presence,  
4 have any discussions with any member of the  
5 Calumet County Sheriff's Department regarding the  
6 nature of your interview?

7 A. No.

8 Q. Did you have any discussions with them with  
9 respect to what topics would be covered in the  
10 interview?

11 A. No.

12 Q. Did they suggest any questions to ask of  
13 Mr. Avery during the course of the interview?

14 A. No.

15 Q. Your best estimate, approximately how long did  
16 the interview of the defendant take?

17 A. We were probably there between 20 and 30 minutes.

18 Q. All right. Were you given any instructions as to  
19 how to conduct the interview, or for the length  
20 of the interview, by members of the Sheriff's  
21 Department? In terms of -- when I say conduct, I  
22 mean, for instance, turning the camera on,  
23 turning the camera off, positioning of the  
24 person, or anything like that.

25 A. No.

1 Q. All right. And in terms of the length, was that  
2 regulated at all by the members of the Sheriff's  
3 Department?

4 A. No.

5 Q. All right. Now, Ms Matesic, this morning,  
6 immediately prior to going on the record, my  
7 assistant provided us some documents that you  
8 brought along, and I would like to have you just  
9 identify them for purposes of the record.

10 ATTORNEY FALLON: And if I may approach the  
11 witness and have an exhibit marked?

12 THE COURT: Yes. The clerk can mark the  
13 exhibit.

14 ATTORNEY FALLON: Thank you.

15 (Exhibit 1, 2, and 3 marked for identification.)

16 Q. (By Attorney Fallon)~ Ms Matesic, I'm showing you  
17 what has been marked for identification purposes,  
18 for this hearing, as Exhibit No. 1. First of  
19 all, we'll start with that, what is Exhibit  
20 No. 1?

21 A. It's a VHS copy of five stories, I think. Yeah,  
22 five stories involving interviews that I did with  
23 Mr. Avery.

24 Q. All right. And with respect to the interview  
25 which is at issue today, the November 12th

1                   interview, is there a videotape of that  
2                   particular interview?

3       A. Yes -- Not of the interview, of the stories that  
4                   aired on our station.

5       Q. Just of the stories that aired?

6       A. Correct.

7       Q. Very well. All right. And as far as you know,  
8                   as the stories aired, is this a true and accurate  
9                   video recording of those stories that were aired,  
10                  relative to your interviews with Mr. Avery?

11      A. Yes.

12      Q. Very good. With respect to Exhibits 2 and 3,  
13                  could you identify these documents for us,  
14                  please.

15      A. Those are the scripts from the two interviews --  
16                  or the two stories I did on the 12th.

17      Q. Okay. And scripts, would it be fair to say that  
18                  scripts are what you use for purposes of  
19                  broadcasting a story?

20      A. Yes.

21      Q. And likewise, these do not contain the full  
22                  content of the interview with Mr. Avery, relative  
23                  to November 12?

24      A. No.

25      Q. Okay. So they are the media broadcast accounts?

1 A. Correct.

2 Q. Very good. Thank you. As far as Exhibits 2 and  
3, are they true and accurate scripts, relative  
4 to the broadcasts of the story, relative to the  
5 interview on November 12th?

6 A. Yes.

7 Q. Very well. Thank you.

8 ATTORNEY FALLON: Subject to Counsel's  
9 cross, would move to the introduction of those  
10 exhibits.

11 ATTORNEY STRANG: I have no objection to 1,  
12 2, or 3.

13 THE COURT: All right. Exhibits 1, 2, and  
14 3 are admitted.

15 Q. (By Attorney Fallon)~ What occurred upon your  
16 conclusion of the interview?

17 A. We finished up the interview. I thanked  
18 Mr. Avery for talking to us. And at that point a  
19 deputy from the jail had come back into the room,  
20 because we were finished. And I said, can I  
21 leave him my card, and he said -- the deputy  
22 said, I can take it. I couldn't actually give it  
23 to Mr. Avery.

24 Q. All right. And at any point during the -- I  
25 think you said 20 to perhaps 30 minutes that you

1           spent with him -- at any time during that  
2           particular interview, did Mr. Avery express to  
3           you that he did not wish to participate in the  
4           interview?

5       A. No.

6       Q. How would you characterize his willingness to  
7           participate in an interview, which was on camera?

8       A. He continued to ask my questions.

9       Q. I'm sorry?

10      A. He continued to ask -- answer my questions.

11      Q. All right. Prior to beginning the interview, did  
12           you explain to Mr. Avery what the nature or  
13           purpose of your coming to interview him was?

14      A. I don't really recall.

15      Q. All right. How did the interview begin, what did  
16           you tell him, in terms of why you were there,  
17           perhaps?

18      A. I think I -- if my memory serves me correctly --  
19           just said, you know, don't know if you're aware,  
20           but they announced you are going to be charged  
21           with Teresa Halbach's murder, and we just sort of  
22           started the interview.

23      Q. All right. Do you recall, at this particular  
24           time, the general framework of any of the  
25           questions that you asked him, in terms of leading

1           into the interview; do you remember how it  
2           started?

3       A. I don't.

4       Q. Do you have any specific recollection as to  
5           whether -- Well, let me rephrase that question.  
6           Was it made clear to Mr. Avery that the interview  
7           was likely to be broadcast, or parts of the  
8           interview would be broadcast on television?

9       A. I don't think I ever said anything like that, but  
10          I guess you assume, when you go in with a camera  
11          and a microphone, that you are eventually going  
12          to use the interview for a story.

13      Q. Did you identify yourself to him?

14      A. Yes.

15      Q. And how did you identify yourself to him; do you  
16          recall?

17      A. I said, I'm Emily Matesic from Channel 2.

18      Q. And did he seem to recognize either who you were  
19          or perhaps your news station?

20      A. That I don't recall.

21      Q. Okay. At any point during the interview, did he  
22          ask that the camera be turned off?

23      A. No.

24      Q. At any point in the interview, did he refuse to  
25          answer any of your questions?

1 A. No.

2 ATTORNEY FALLON: I will pass the witness.

3 THE COURT: Mr. Strang.

4 **CROSS-EXAMINATION**

5 BY ATTORNEY STRANG:

6 Q. Ms Matesic, if I understood you correctly, you  
7 began working at WBAY in August, 2005?

8 A. Correct.

9 Q. You previously had not worked in Wisconsin?

10 A. No.

11 Q. The first time you heard the name Steven Avery  
12 would have been shortly after November 3, 2005?

13 A. That I don't recall.

14 Q. First time you heard the name Steven Avery was in  
15 connection with Teresa Halbach's disappearance?

16 A. I believe so.

17 Q. You were assigned to that story as a general  
18 assignment reporter?

19 A. Yes.

20 Q. You explained to Mr. Fallon, on direct  
21 examination, your belief that on November 11,  
22 when you were chatting with one or more  
23 co-workers, whatever it was, that the case had  
24 been going on for a couple of weeks at that  
25 point; do you recall that?

1 A. Yes.

2 Q. By that, you mean the public awareness of the  
3 disappearance of Teresa Halbach?

4 A. Yes.

5 Q. Mr. Avery, himself, was under arrest, you knew,  
6 by November 11?

7 A. Correct.

8 Q. You had been following the news conferences that  
9 Mr. Kratz and Sheriff Pagel, principally, had  
10 been holding?

11 A. Yes.

12 Q. Had you attended those?

13 A. A few of them.

14 Q. Not all of them, but some of them you had  
15 attended, personally?

16 A. Yes.

17 Q. You had introduced yourself to Sheriff Pagel at  
18 some point?

19 A. I believe -- Yes.

20 Q. Sure. Introduced yourself to Mr. Kratz at some  
21 point before November 11?

22 A. Probably.

23 Q. Had you met other members of the Calumet County  
24 Sheriff's Department, let's say during or at  
25 about the time of those news conferences?

1 A. You would see them and just say hello. I don't  
2 know if I was on a first name basis with any of  
3 them, or given my name.

4 Q. That included Detective Mark Wiegert?

5 A. Possibly.

6 Q. Okay. When did you become on a first name basis  
7 with any of the members of the Calumet County  
8 Sheriff's Department?

9 A. I don't think I was ever on a first name basis  
10 with any of them. Sheriff Pagel was the one that  
11 I had any sort of conversation with.

12 Q. All right. And November 11, you're having this  
13 discussion. I missed it, I don't know how many  
14 co-workers it was, or if that matters, but you  
15 are talking with them about Avery?

16 A. Yes.

17 Q. Or the case. Tell me a little bit more about  
18 that conversation, who says what.

19 ATTORNEY FALLON: I'm going to ask for a  
20 little foundation as to when and where this  
21 foundation -- or this conversation took place.

22 Q. (By Attorney Strang)~ I think you described only  
23 one, it was on November 11, and you were at work;  
24 am I correct?

25 A. We weren't at work.

1 Q. You weren't at work. All right. Would it be  
2 polite to tell me where you were, even if it's  
3 not polite to ask?

4 A. We were having a couple of cocktails in a bar.

5 Q. All right. Reporters will do that. So you are  
6 having a couple of cocktails at the bar; how many  
7 co-workers?

8 A. I think there were three of us that worked at the  
9 station together, but I don't remember, there  
10 might have been a couple other people there. We  
11 don't all just hang out together, we have other  
12 friends.

13 Q. You have friends. Okay. All right. That's  
14 good.

15 ATTORNEY STRANG: You don't need the name  
16 of the bar for foundation; do you, Mr. Fallon?

17 ATTORNEY FALLON: Nope.

18 ATTORNEY STRANG: Thank you.

19 Q. (By Attorney Strang)~ This was only one  
20 conversation, on November 11, if I understood you  
21 correctly?

22 A. Yes.

23 Q. All right. So, you know, I wasn't there. I  
24 don't drink cocktails. And it was -- I would  
25 have no way of knowing who said what. But how

1 did the subject of Steven Avery come up?

2 A. I think it had been a story that we had been  
3 covering for a couple weeks, and the news  
4 conference from that day kind of sparked our  
5 conversation. I think we were -- it was the  
6 first time we were all together and just kind of  
7 rehashing the day.

8 Q. And who had the idea that, hey, let's go try to  
9 talk to Mr. Avery?

10 A. That I don't remember.

11 Q. Had -- Was there any discussion about, you know,  
12 whether the Calumet County Sheriff's Department  
13 would, or would not, allow that to occur in the  
14 jail?

15 A. I think someone did mention, or I mentioned, and  
16 I said, I wonder if we would be allowed in to  
17 talk to him.

18 Q. Okay. And what was the response to that?

19 A. I don't know, we'll make a phone call in the  
20 morning.

21 Q. All right. And that's exactly what you did?

22 A. Yes.

23 Q. About when in the morning?

24 A. I'm scheduled to be into work at 9:30, so  
25 sometime around there.

1 Q. All right. And you called, what, the general  
2 number for the Calumet County Jail, or what --

3 A. Yes.

4 Q. -- or what did you do? And was it the person who  
5 answered the phone to whom you addressed the  
6 inquiry, hey, can we come down and interview  
7 Mr. Avery?

8 A. Yes.

9 Q. All right. Do you know who that person was?

10 A. I don't.

11 Q. Do you remember if it was male or female?

12 A. That I don't even remember.

13 Q. And if I understood you, you said, on direct  
14 examination, that the person said something like,  
15 I don't know, we'll ask?

16 A. Yes.

17 Q. You were put on hold, or the phone was put down  
18 in any event?

19 A. Yes.

20 Q. All right. And how much time passed before a  
21 voice came back on the jail end of the telephone?

22 A. A minute or two, not very long.

23 Q. At most, two minutes?

24 A. Probably, I really am not 100 percent sure.

25 Q. Okay. But a short time?

- 1 A. Yes, I wasn't on hold for a half hour or anything  
2 like that.
- 3 Q. All right. And was it the same person, if you  
4 recognized the voice, who came back?
- 5 A. That I don't remember. I'm assuming it was the  
6 same person, or at the time I assumed. I don't  
7 know for sure.
- 8 Q. Okay. Whether it was someone new, or the same  
9 person?
- 10 A. Right.
- 11 Q. And that person said, as best as you recall,  
12 what?
- 13 A. He agreed to do the interview.
- 14 Q. And what was left for you, then, to discuss with  
15 the person on the phone from the jail?
- 16 A. I said, what do I need to do. And they said,  
17 just come down here and we'll take you into a  
18 room for the interview.
- 19 Q. Did they ask when you were coming?
- 20 A. I think I asked what time, and they said  
21 whenever. I said, okay, we'll leave in a few  
22 minutes.
- 23 Q. All right. So the response from them was, you  
24 can come whenever you like?
- 25 A. Yes.

1 Q. Did you ask, would there be a time limit on how  
2 long we could see Mr. Avery?

3 A. No.

4 Q. And they didn't volunteer that there would be a  
5 time limit?

6 A. No.

7 Q. In fact, there turned out not to be anyone  
8 knocking on the door, saying times up, or trying  
9 to regulate the amount of time you spent?

10 A. No.

11 Q. So, you said, we'll hop in the car, we'll come  
12 down. I can show you the sign-in registry if you  
13 want, but if I suggest to you, that at least what  
14 you wrote signing in was 11:15 in the morning, on  
15 Saturday, November 12, does that sound about  
16 right?

17 A. I guess, yeah, it was in the morning. It was in  
18 the morning. I believe you, on the sign in  
19 sheet.

20 Q. Okay. You are welcome to see it if you want.

21 A. That's probably about right.

22 Q. About 11:15 in the morning. All right. And did  
23 you have any conversations with anyone from law  
24 enforcement? You know, by that, I would include  
25 the District Attorney's Office, the Calumet

1           County Sheriff's Department, certainly the  
2           Calumet County Jail, or any other law enforcement  
3           agency, before you arrived at the jail, just  
4           before 11:15?

5       A. Nothing, other than the phone call to the jail.

6       Q. All right. You came down with one cameraman?

7       A. Yes.

8       Q. Now, your purpose in interviewing Steven Avery,  
9           was to ask him about the events that you had seen  
10          discussed on the news conferences?

11      A. Yes.

12      Q. Ask him, in general, about the Halbach  
13          disappearance and the charges arising from her  
14          disappearance?

15      A. Yes.

16      Q. You had no other reason to want to interview  
17          Steven Avery?

18      A. No.

19      Q. You weren't interested in his opinions on other  
20          topics?

21      A. No.

22      Q. Didn't regard him as newsworthy, on November 12,  
23          2005, other than for his connection to the  
24          charges that, then, had been filed against him,  
25          and the events surrounding Teresa Halbach's

1 disappearance?

2 A. Correct.

3 Q. Did you explain to the person who answered the  
4 phone, in the jail, when you called shortly after  
5 9:30, that you wanted to talk to Mr. Avery about  
6 the Halbach case, or about the charges against  
7 him?

8 A. Yes.

9 Q. How many times have you been in the Calumet  
10 County Jail, total?

11 A. Once, in the jail.

12 Q. All right. And how many times in the Calumet  
13 County Sheriff's Department, total?

14 A. Once in the Sheriff's Department.

15 Q. Are we talking about the same time, November 12?

16 A. No.

17 Q. No. Separate times?

18 A. Yes.

19 Q. All right. And the Sheriff's Department was  
20 when?

21 A. That I don't recall.

22 Q. Before or after the November 12 televised  
23 interview of Mr. Avery?

24 A. It was before.

25 Q. And that was to see whom?

1 A. Sheriff Pagel.

2 Q. To interview him, or for some other purpose?

3 A. For a different -- To interview him for a  
4 different story in the county.

5 Q. Unrelated to --

6 A. Unrelated to the Avery --

7 Q. -- to Teresa Halbach?

8 A. Yes. Unrelated to that, completely unrelated.

9 Q. Okay. And in fact, do you recall, was that  
10 interview with Sheriff Pagel before you were  
11 aware that Ms Halbach had been reported missing?

12 A. Well before, I believe, yes.

13 Q. Okay. So -- I mean, it couldn't have been before  
14 August 2005?

15 A. Correct.

16 Q. But late summer, fall, before Ms Halbach  
17 disappears?

18 A. Yes.

19 Q. All right. I'm actually going there because I'm  
20 going to try to ask you about the jail layout,  
21 and if you have only been there once, it would be  
22 fair if you don't recall. But let me ask, okay.  
23 There's a heavy metal security door to the left  
24 of the bullet proof window where you first see a  
25 jail receptionist; do you recall that?

1 A. I don't remember the door to the left. I believe  
2 we went in a door to the right.

3 Q. To the right. Okay. Did you have to be buzzed  
4 in?

5 A. Yes.

6 Q. Security door. All right. And then do you  
7 remember where you signed the book, where you  
8 wrote your name, and the time in, and the date?

9 A. Outside of that window, before we were escorted  
10 into the jail area.

11 Q. Before you're within the secure area?

12 A. We walked in the door and that window is right  
13 there, that's where we signed in.

14 Q. Oh, okay. And then you think you went into a  
15 door to the right and now you are in the secure  
16 area of the jail.

17 A. I believe so, yes.

18 Q. All right. The small room that you described  
19 doing -- you know, in which you did the  
20 interview, is that the -- sort of the first room,  
21 on the left, in the hallway?

22 A. Yes. I don't know if it's the first room, but it  
23 was at the beginning of that hallway.

24 Q. When you went in to get to the interview room and  
25 went through that first secure door, did you go

1           through an area that had some desks, people  
2           sitting out and some offices against the back?

3       A. No, I don't remember that at all.

4       Q. You just went straight into a hallway?

5       A. Into a hallway.

6       Q. All right. And the room, you think, was the  
7           first one on the left?

8       A. It was on the left. I don't know if it was the  
9           first room.

10      Q. Okay. Fair enough. You were aware of a deputy  
11           posted outside each door, while you were in the  
12           room?

13      A. Yes.

14      Q. You could see them through the windows on the  
15           door?

16      A. I could see the one, because the one door was  
17           behind me. So, I don't have eyes in the back of  
18           my head, but I could see the one, you know.

19      Q. How did you know there was somebody standing  
20           behind you, behind that door?

21      A. The deputy that walked us in said that there  
22           would be a deputy at each door.

23      Q. All right. And the deputies were uniformed?

24      A. Yes.

25      Q. They were standing immediately at the door?

1 A. The one that I could see wasn't right at the  
2 door, a little bit away from the door.

3 Q. Looking in, or watching?

4 A. That I don't know. My eyes weren't focused on  
5 the deputy while I was in there.

6 Q. Right. But you were able to see him yourself?

7 A. Yes.

8 Q. So it follows that he could see you?

9 A. Yes.

10 Q. All right. You conducted the interview --

11 A. Yes.

12 Q. -- with Mr. Avery, 20 or 30 minutes, correct?

13 A. Yes.

14 Q. Setting aside small talk, and I'm Emily Matesic,  
15 nice to meet you, that kind of stuff, the  
16 entirety of the interview was committed to Teresa  
17 Halbach, and the charges against Mr. Avery?

18 A. Yes.

19 Q. You did not go into other topic areas with  
20 Mr. Avery?

21 A. No.

22 Q. Did you -- Did you buzz to let -- to ask that the  
23 deputy then come in at the end of interview, or  
24 did the deputy simply let himself, or herself, in  
25 as the interview appeared to be wrapping up?

1 A. Before the interview started, the deputy said  
2 when you are done, or you need us at any time,  
3 just raise your hand. And when we were done, I  
4 raised my hand.

5 Q. Okay. And, obviously, again, then one of them  
6 was -- at least one was positioned such where he  
7 could see you raise your hand?

8 A. Yes.

9 Q. And they came, correct?

10 A. Yes.

11 Q. They took Mr. Avery?

12 A. Yes.

13 Q. And then you and the cameraman were escorted out?

14 A. Yes.

15 Q. Did you talk to anyone from the Calumet County  
16 Sheriff's Department before leaving that property  
17 to return to Green Bay?

18 A. Nothing, other than thank you and goodbye.

19 Q. Did you make arrangements at any point, at any  
20 time, to provide a videotape, or a DVD, or  
21 anything of the interview, to anyone from law  
22 enforcement?

23 A. No.

24 Q. Were you asked to bring the videotape today?

25 A. Yes.

1 Q. By whom?

2 A. By Mr. Fallon.

3 Q. Okay. And you were able to accommodate  
4 Mr. Fallon's request?

5 A. I referred him to my news director. I referred  
6 him to my news director. I'm not the one that  
7 makes those decisions.

8 Q. Sure. But in any event, you were given the tape  
9 to bring today, by someone at WBAY?

10 A. A tape only of the stories that aired from my  
11 interview, not the complete interview itself.

12 Q. So you're aware of that little dispute that's  
13 ongoing about the raw footage versus the aired  
14 footage?

15 A. Yes.

16 Q. Okay. What's on the raw footage that is not on  
17 the aired footage?

18 A. The entire interview is on the raw footage, and  
19 the tape I brought today has the stories that I  
20 did, containing little bits of the interview.

21 Q. But, again, just to be very clear about this, if  
22 we had -- if we could see the raw footage, all  
23 the film that your cameraman shot in that room,  
24 other than true small talk, the entire discussion  
25 would have been about Teresa Halbach, or the

1                   allegations in the original Criminal Complaint,  
2                   against Mr. Avery?

3         A. Yes.

4         Q. You referred, as well, to a second interview with  
5                   Mr. Avery, that occurred over the telephone?

6         A. Yes.

7         Q. Do you remember about when that was?

8         A. I believe it was in December.

9         Q. How did that come to be?

10        A. The interview, I sent a fax to the Calumet County  
11           Jail requesting an interview.

12        Q. To whom did you address the fax?

13        A. To Steven Avery.

14                   ATTORNEY FALLON: Object to this line of  
15                   inquiry as being irrelevant, based on the pleadings  
16                   and focus. If we're concerned solely with the on  
17                   camera interview, as opposed to initiated telephone  
18                   conversations, that was my understanding as to our  
19                   limited focus today, so it seems to me that this  
20                   would be irrelevant.

21                   ATTORNEY STRANG: Well, it's a fair point,  
22                   but as I understand the scope of our motion and  
23                   intend the scope of the motion, your Honor, I am not  
24                   seeking to suppress, or exclude, any statement to  
25                   media representatives that Mr. Avery initiated.

1                   Now, I was not aware of this telephonic  
2 interview with Ms Matesic, and to the extent that  
3 she initiated it, it is within the intended scope  
4 of this motion. I certainly could re-plead the  
5 motion, but the division line here is if he  
6 initiated it, I don't see it as being subject to  
7 the Sixth Amendment claim. If someone else  
8 did--

9                   THE COURT: I'm not sure I have got a copy  
10 of the motion handy. It was filed on June 16th.  
11 It's a motion -- Do one of you have a copy of the  
12 motion handy?

13                  ATTORNEY STRANG: I do. I don't want to  
14 suggest that I addressed this, because I didn't. I  
15 didn't no about this particular one.

16                  ATTORNEY KRATZ: Here you go.

17                  THE COURT: So, Mr. Fallon, your objection  
18 relates to the description of in person interviews?

19                  ATTORNEY FALLON: It is my understanding  
20 that that was the focus, otherwise I would have gone  
21 into more questioning on my direct examination of  
22 the witness relative to the telephone interviews  
23 occurring a couple of weeks after the interview at  
24 issue here.

25                  As I understand it from the pleading, it

1           says on page two, Mr. Avery does not seek  
2           suppression of statements he made in telephone  
3           calls that he placed from the jail to members of  
4           the news media. So this motion addresses only in  
5           person interviews with the media, in the jail.  
6           So that's why, that's the basis for my objection.

7           THE COURT: You seem to be talking about a  
8           third category here, that's not an in person  
9           interview at the jail, but also not a telephone call  
10          that was originated by the defendant.

11          ATTORNEY STRANG: Right. And I have no  
12          objection to breaking my cross and allowing a  
13          resumption of direct. I mean, that's a fair point.  
14          I'm learning here for the first time that she  
15          initiated it.

16          THE COURT: You can have this back. Why  
17          don't you finish your cross and I'll let Mr. Fallon,  
18          on redirect, start from scratch, if he wishes here.

19          ATTORNEY FALLON: That's fine. I suspect,  
20          on further cross-examination by counsel, the issue  
21          may disappear, or become far more ripe for argument.  
22          Go ahead.

23          THE COURT: You may proceed, Mr. Strang.  
24          Q. (By Attorney Strang)~ You faxed a letter, or  
25          something, to the jail, addressed to Steven

1           Avery?

2       A. Yes.

3       Q. Did you follow that with a phone call to the  
4           jail?

5       A. I believe I placed a phone call first, and then  
6           was told I couldn't make my request over the  
7           phone, so I sent the fax.

8       Q. You had made the request over the phone on  
9           November 12?

10      A. Yes.

11      Q. The answer, though, was different this time?

12      A. Yes.

13      Q. Were you given an explanation for why the answer  
14           had changed?

15      A. No.

16      Q. Were you ever told that Mr. Avery had written out  
17           a statement saying that he did not want to be  
18           interviewed, in jail, by members of the media,  
19           including TV reporters?

20      A. No.

21      Q. Nobody at the jail ever told you that?

22      A. No.

23      Q. What did they tell you after saying, no, you  
24           can't make this request over the phone?

25      A. That it needed to be in writing.

1 Q. All right. And did they tell you to whom to  
2 address the writing?

3 A. To him, I believe. I'm not sure.

4 Q. Okay. That's fine, if you don't remember. Do  
5 you have that letter or fax?

6 A. I don't, no.

7 Q. What happened to it?

8 A. I threw it out.

9 Q. Did anybody, you know, explain to you how a fax  
10 would get to Mr. Avery, in the jail?

11 A. No.

12 Q. But they gave you a fax number?

13 A. I believe I asked for the fax number.

14 Q. And you were given the fax number?

15 A. Yes.

16 Q. All right. And off you sent this fax?

17 A. Yes.

18 Q. Was it a letter to Mr. Avery, is that your best  
19 recollection?

20 A. Yes, just a short letter.

21 Q. What did you next hear from either Mr. Avery or  
22 someone in the Calumet County Jail?

23 A. Mr. Avery called me.

24 Q. When did he call you?

25 A. Shortly after the fax was sent.

1 Q. All right. And was that a collect call?

2 A. Yes.

3 Q. You had provided your telephone number in the

4 fax?

5 A. Yes.

6 Q. It had invited him to call collect?

7 A. Yes.

8 Q. Did you tell him, in the letter, what it was you

9 wanted to talk about?

10 A. I don't recall.

11 Q. Okay. That's fine. You do recall, that in your

12 mind, again, the topic of interest as to

13 Mr. Avery was the charges against him, relating

14 to the disappearance and death of Teresa Halbach?

15 A. Yes.

16 Q. You weren't interested in his opinion of what was

17 going to happen to the Nasdaq in 2006, or

18 anything like that?

19 A. No.

20 Q. All right. That interview lasted about how long?

21 A. Probably about 20 minutes.

22 Q. Did you tape it?

23 A. Yes.

24 Q. Did you know, at that time, that the jail would

25 be taping you as receiving an outgoing call from

1           the jail?

2       A. No.

3       Q. When did you first learn that you were on tape,  
4           on the jail end, when you were talking to an  
5           inmate of the jail?

6       A. I think during the course of the interview, there  
7           was a recording, or something, that comes up on  
8           the phone, that -- I think it says -- it says  
9           something, I'm -- I don't remember what, but at  
10          that point, I guess, is when I kind of realized  
11          that we were probably being taped.

12      Q. Right. It's a tape that says something like this  
13          call was placed by an inmate from the Calumet  
14          County Jail, something to that effect?

15      A. I will have to take your word for it, I don't  
16          really remember.

17      Q. But some voice --

18      A. Yes.

19      Q. -- on what you took to be a taped message?

20      A. Yes.

21      Q. Did you hear it more than once?

22      A. Yes.

23      Q. So on some cycle, this voice comes on the line?

24      A. Yes.

25      Q. All right. And you assumed at that point, that

1                   you were being taped?

2 A. Yes.

3 Q. You had no objection to that?

4 A. No.

5 Q. Because you were also taping on your end?

6 A. Correct.

7 Q. And the point was to get all of this on tape?

8 A. Right.

9 Q. Was that interview then broadcast, or aired?

10 A. Parts of the interview and stories that I had  
11                  written.

12 Q. So that one, again, you sort of chopped, or  
13                  edited, and assembled into a story, rather than  
14                  running the raw interview tape?

15 A. Yes.

16 Q. Look, I don't want to get off track here, but I'm  
17                  curious, because I just don't know. Does any of  
18                  the two interviews that we're talking about,  
19                  would segments of those have run on the WBAY  
20                  website, if you know?

21 A. No.

22                   ATTORNEY FALLON: Objection, relevance.  
23                   And I will renew my previous objection. It's clear  
24                  that Mr. Avery initiated the phone contact, so this  
25                  matter is not the subject of the motion, unless

1                   counsel is amending his motion.

2                   THE COURT: Well, in a sense he initiated  
3                   it, in that he made the call, but it also was in  
4                   response to a fax that was sent by the witness. So  
5                   I'm going to give the defense some latitude here. I  
6                   will overrule that part of the objection.

7                   ATTORNEY FALLON: Just for the record, the  
8                   basis of my motion on that is a case called **State**  
9                   **vs. Pischke**, P-i-s-c-h-k-e, regarding initiation.  
10                  And I think the argument can be made, although the  
11                  case is not directly on point, that Mr. Avery was  
12                  the one who initiated the contact here. So, just  
13                  for the record.

14                  THE COURT: All right. I'm not -- Let me  
15                  make sure if my ruling is understood here. I'm not  
16                  saying that the manner in which the defendant  
17                  returned the call doesn't have some legal  
18                  significance as to the substantive portion of the  
19                  motion. I'm just saying, for evidentiary purposes,  
20                  I'm going to allow the questioning.

21                  ATTORNEY FALLON: Very well. Thank you.

22                  Q. (By Attorney Strang)~ But there was another  
23                  objection to that and that was to what the  
24                  website runs. And I don't even know if you know  
25                  the answer to my question.

1 A. I believe the only thing that would have run on  
2 the website was my story that aired on our  
3 station.

4 Q. But that may have been on the website both times?

5 A. The entire interviews?

6 Q. No, the stories.

7 A. The stories, yes.

8 Q. Okay. Were there any other attempts, by you, to  
9 interview Mr. Avery since he's been in custody?

10 A. One other time, I believe, yes.

11 Q. When was that?

12 A. I think it was in March.

13 Q. You initiated that with a fax?

14 A. With a phone call to the jail, at first. I was  
15 told it needed to be in writing, and asked if I  
16 could send a fax, and it was, no, it had to come  
17 through the mail.

18 Q. Oh.

19 A. The request had to be --

20 Q. So it changed again?

21 A. Yes.

22 Q. So this time you couldn't fax it. Did you mail a  
23 request?

24 A. No.

25 Q. Why?

1 A. It would take a day or so for the letter to get  
2 there, and by that time it wouldn't be very  
3 timely.

4 Q. I see. And you didn't hear, then, from  
5 Mr. Avery, at any time after this December  
6 telephonic interview that you described?

7 A. No.

8 Q. You are aware of no other attempt by him to call  
9 you collect?

10 A. No.

11 Q. Aware of no other attempt by him to call anyone  
12 at WBAY-TV, collect?

13 A. No.

14 ATTORNEY STRANG: That's all I have. Thank  
15 you.

16 THE COURT: Mr. Fallon.

17 ATTORNEY FALLON: Yes, just to complete the  
18 record.

19 (Exhibits 4, 5, and 6 marked for identification.)

20 ATTORNEY FALLON: May I approach?

21 THE COURT: Yes.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY FALLON:

24 Q. Ms Matesic, I show you what's been marked for  
25 identification purposes as Exhibits 4, 5, and 6,

1 can you take a moment to look at those and tell  
2 us what they are.

3 A. These are the scripts from the stories I did with  
4 the telephone interview of Mr. Avery.

5 Q. All right. And these are the scripts relative to  
6 the telephone interviews that were the subject of  
7 Counsel's cross-examination a few moments ago?

8 A. Yes.

9 Q. And these are the outtakes, or broadcasts,  
10 comments, and not the entire substance of the  
11 interview; is that correct?

12 A. Correct.

13 ATTORNEY STRANG: I'm sorry, I'm not sure I  
14 understand the question. You said these are the  
15 outtakes, not the substance of the --

16 ATTORNEY FALLON: Not the entire interview.  
17 These are what was broadcast.

18 ATTORNEY STRANG: So they are not outtakes?

19 THE WITNESS: They were taken out of the  
20 interview, bites that were taken out of the  
21 interview.

22 ATTORNEY FALLON: Okay. Choice of words.

23 Q. (By Attorney Fallon)~ And as far as you know,  
24 these are true and accurate reflections of what  
25 was actually broadcast, relative to these

1                   telephone interviews.

2       A.   Yes.

3       Q.   Okay.   Thank you.

4                   ATTORNEY FALLON:   We would move for  
5                   introduction of Exhibits 4, 5, and 6.   For the  
6                   record, it's marked by the duration, apparently; 133  
7                   is Exhibit No. 4, duration 137 is Exhibit 5; and  
8                   duration 157 is Exhibit 6.   And I don't believe  
9                   there will be an objection from counsel.

10                  ATTORNEY STRANG:   No.   No, these can be  
11                  admitted, your Honor.

12                  THE COURT:   All right.   Those exhibits are  
13                  admitted.

14                  ATTORNEY FALLON:   That's all I have for  
15                  this witness, I'm not going to do any redirect.

16                  THE COURT:   All right.   The witness is  
17                  excused.

18                  ATTORNEY FALLON:   State would call it's  
19                  next witness, Jennifer Kolbusz.

20                  THE COURT:   Is somebody bringing the next  
21                  witness in?

22                  ATTORNEY FALLON:   I believe so.

23                  THE COURT:   Okay.

24                  THE CLERK:   Please raise your right hand.

25                  **JENNIFER KOLBUSZ**, called as a witness

1           herein, having been first duly sworn, was  
2           examined and testified as follows:

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

5           THE WITNESS: Jennifer Kolbusz,  
6           K-o-l-b-u-s-z.

7           DIRECT EXAMINATION

8 BY ATTORNEY FALLON:

9 Q. What do you do for a living?

10 A. I'm a reporter at Channel 5.

11 Q. And where is Channel 5 located?

12 A. In Green Bay.

13 Q. How long have you been employed with Channel 5?

14 A. It will be two years in September.

15 Q. Do you have a current assignment, or detail, for  
16       the type of reporting you do at this time?

17 A. I'm a general assignment reporter.

18 Q. And have you been a general assignment reporter  
19       for the entire two years at Channel 5?

20 A. Yes, I have.

21 Q. Directing your attention to November and December  
22       of the year 2005, starting first with November;  
23       did you have an opportunity to interview an  
24       individual by the name of Steven Avery?

25 A. Yes.

1 Q. And with respect to Mr. Avery, tell us where that  
2 interview took place?

3 A. In the Calumet County Jail.

4 Q. Do you recall the date of your first interview  
5 with Mr. Avery?

6 A. Yes, it was November 18th.

7 Q. Describe for us, if you will, how that interview  
8 came to be?

9 A. On the morning of November 18th, I called the  
10 Calumet County Jail from my apartment, and I  
11 asked what the visiting hours were at the jail.

12 Q. And what information did you receive in response  
13 to that request?

14 A. The woman who answered the phone told me there  
15 were specific days and times. I don't recall  
16 what she said; however, it differed from what I  
17 had heard from other reporters who I work with.  
18 So, at that point, I questioned her further and  
19 she asked if I would like to speak to a  
20 supervisor.

21 Q. All right. And did you in fact speak to a  
22 supervisor?

23 A. Yes, I did. She transferred me to John Byrnes.

24 Q. And before we get into that, my question would  
25 be, did you identify yourself as a news reporter

1                   during this first conversation with the woman?

2 A. Yes, I did.

3 Q. All right. And did you indicate the reason for

4                   your inquiry?

5 A. Yes.

6 Q. All right. And the best you can recall, what did

7                   you tell the person who answered the phone, in

8                   terms of the reason for your inquiring as to the

9                   visiting hours?

10 A. I said that I would like to interview Steven

11                   Avery in the jail.

12 Q. All right. Subsequent to this woman answering

13                   the phone, you indicated you spoke with one of

14                   the supervisors?

15 A. I'm sorry?

16 Q. I'm sorry. You did speak to a supervisor?

17 A. After, right. After I talked to that woman.

18 Q. All right. And to whom did you speak?

19 A. John Byrnes.

20 Q. And what did you ask of Mr. Byrnes?

21 A. Well, again, I told him, I'm a reporter and that

22                   I wanted to see if I could do an interview with

23                   Steven Avery. And I asked him how I could go

24                   about doing that.

25 Q. All right. And what instructions were you given?

1 A. He said I could mail a letter to Steven Avery,  
2 that was one option.

3 Q. All right. Any other options?

4 A. Yes, I in fact said, well, I was trying to see if  
5 I could interview him that day. And he said I  
6 could write a letter and then hand deliver it to  
7 the jail, just ask for John Byrnes, when I got  
8 there, and he would hand deliver the letter to  
9 Steven Avery.

10 Q. All right. And did you in fact hand deliver such  
11 a letter?

12 A. Yes, I did.

13 Q. At this particular point, do you know if that  
14 letter still exists?

15 A. I don't.

16 Q. Do you -- Did that letter that you wrote ever  
17 come back to you?

18 A. No.

19 Q. All right. Tell us what happened, specifically,  
20 when you arrived at the Sheriff's Department that  
21 day?

22 A. We went to the jail, the photographer I was  
23 working with, and I asked to speak to John  
24 Byrnes. John Byrnes, then, came out to the area  
25 where we were, and I introduced myself, and I

1           gave him the letter that I had handwritten in the  
2           car ride over to the jail.

3       Q.   All right. And as best you can recall now, can  
4           you tell us the contents of that letter?

5       A.   Yes, I identified myself as Jennifer Kolbusz, who  
6           works for Channel 5, and said that I would like  
7           to do an interview with him. And I said that I  
8           had no intention of convicting him on television,  
9           or had no agenda, but rather just wanted to hear  
10          his side of the story.

11      Q.   All right. And when you came to the Sheriff's  
12       Department, to whom did you give that letter?

13      A.   John Byrnes.

14      Q.   And when you handed him that letter, what  
15       occurred?

16      A.   He looked it over, but at the same time, had also  
17       turned his back and started walking back into the  
18       jail. And my understanding is that he delivered  
19       it to Steven Avery.

20      Q.   All right. And what led you to believe that it  
21       was actually delivered to Mr. Avery?

22      A.   He said he was going to deliver it to him, and  
23       then, also, a few minutes later, another member  
24       of the jail staff opened the door and said that  
25       Steven Avery had agreed to let us in.

1 Q. All right. And what occurred then?

2 A. That jail staff member took our identification,  
3 had us sign in, and then we were led into a room,  
4 and then Steven Avery was led in a few minutes  
5 later.

6 Q. All right. Could you describe, first and  
7 foremost, the room in which you were sent to?

8 A. It was located just right there from the door  
9 that I initially entered. It wasn't far into the  
10 jail at all.

11                   And it was just a plain room with a  
12 small table. A small plain room. And there were  
13 some windows on the doors, so I could see the  
14 guards through both sides, I believe, as we were  
15 talking to Steven.

16 Q. All right. And how many doors were in the room?

17 A. Two.

18 Q. And these windows, were they the only windows in  
19 the room?

20 A. I believe there were other windows, I'm not  
21 positive.

22 Q. All right. Who accompanied you into the room?

23 A. The photographer I work with.

24 Q. Did any member of the Sheriff's Department  
25 actually walk into the room with you?

1 A. I don't remember.

2 Q. Was there any conversation with either

3 Mr. Byrnes, or the person who opened the security

4 door for you, regarding Mr. Avery?

5 A. They said he would be in shackles, and that was

6 it.

7 Q. All right. Prior to commencing the interview

8 with Mr. Avery, did you have any discussions,

9 whatsoever, with Mr. Byrnes, as to the nature and

10 content of your interview with Mr. Avery?

11 A. No.

12 Q. Did Mr. Byrnes, or any other member of the

13 Sheriff's Department, put any restrictions on the

14 topics that were to be covered in the interview?

15 A. No.

16 Q. Were you suggested -- excuse me -- let's rephrase

17 that. Were any questions suggested to you that

18 should be asked of Mr. Avery?

19 A. No.

20 Q. In terms of the interview, during -- describe for

21 us, if you will, Mr. Avery's appearance when he

22 came into the room?

23 A. When he came into the room, he had shackles

24 around his ankles and he was handcuffed.

25 Q. All right.

1 A. And he had, I believe, recently had a haircut.  
2 And he just simply came in and sat down.  
3 Q. All right. Describe his demeanor for us, if you  
4 will.  
5 A. I would say casual. He was pleasant. I would  
6 just say, fairly neutral.  
7 Q. All right. Well, would you say he was excited,  
8 relaxed, cordial, angry; how would you describe  
9 him?  
10 A. I would describe him as relaxed.  
11 Q. All right. When he came into the room, did any  
12 of the Sheriff's Department personnel remain in  
13 the room with you, and your cameraman, and  
14 Mr. Avery?  
15 A. No.  
16 Q. All right. As best you can recall, how did --  
17 what were the first words spoken upon his arrival  
18 in the room, by you?  
19 A. What did I say first?  
20 Q. What did you say first?  
21 A. I said thank you for speaking with us.  
22 Q. And what response, if any, did you receive from  
23 him?  
24 A. You're welcome.  
25 Q. All right. At any point at the beginning here,

1 did he suggest to you that he did not wish to be  
2 interviewed?

3 A. No.

4 Q. At any point, did he tell you, that he had told  
5 members of the Sheriff's Department, that he did  
6 not want to have any media interviews?

7 A. No.

8 Q. At this particular point, did you then tell him  
9 what you wanted to do, in terms of the interview?

10 A. Yes.

11 Q. All right. And as best you can recall, tell us  
12 what you told him, as to what your plan was for  
13 the interview?

14 A. I said I just wanted to hear his side of the  
15 story.

16 Q. All right. And how did he respond to that  
17 comment?

18 A. He just said, okay. And then, as I proceeded to  
19 ask questions, he answered them.

20 Q. All right. At what point, if you recall, was the  
21 camera turned on, as it were, for purposes of  
22 recording this interview?

23 A. Probably within a minute of Steven Avery taking a  
24 seat.

25 Q. All right. Is the camera which was utilized by

1           your cameraman -- is there a light on that camera  
2           that would suggest to someone observing that the  
3           camera was on, and/or recording?

4       A. Yes.

5       Q. All right. During the course of the interview,  
6           did you indicate to Mr. Avery, if you can recall,  
7           whether the content of the interview might  
8           actually be broadcast to the public at large?

9       A. I never said that specifically, but my  
10          understanding was that it was implied.

11      Q. All right. And just so that we're clear, what  
12          was it about the circumstances that led you to  
13          conclude that he was aware that it could very  
14          well be broadcast?

15      A. Well, I identified myself as a reporter for  
16          Channel 5, and I entered the room with a  
17          photographer.

18      Q. All right. During the entire interview with  
19          Mr. Avery, at any point, did any member of the  
20          Calumet County Sheriff's Department come into the  
21          room?

22      A. No.

23      Q. At any point during the course of the interview,  
24          did Mr. Avery indicate to you that he did not  
25          wish to be interviewed any longer, in other

1           words, he didn't want to answer any more  
2           questions?

3       A. No.

4       Q. At any point during the course of the interview,  
5           did he indicate to you that he didn't want the  
6           interview publicly aired or broadcast, during the  
7           course of the interview?

8       A. No.

9       Q. Tell us how -- your best estimate of how long  
10           this interview lasted?

11      A. I would say probably about a half hour.

12      Q. How did the interview terminate?

13      A. I would say that it ended on cordial terms.

14      Q. All right. Did you make any requests of  
15           Mr. Avery, at the conclusion of the interview,  
16           that you recall at this time?

17      A. I said that chances are I would try to contact  
18           him again and do another interview.

19      Q. Okay. How did he respond to that?

20      A. He said, okay.

21      Q. All right. Did he make any requests of you, or  
22           your cameraman, relative to the interview  
23           process, at the conclusion of the interview?

24      A. No.

25      Q. How did you let members of the Sheriff's

1                   Department know that the interview was concluded?

2       A.   We stood up, and I'm assuming that they just  
3                   knew, at that point, we were done, because we  
4                   were collecting our equipment.

5       Q.   All right. And as you were doing that, did the  
6                   deputies enter the room, or did you open the door  
7                   and ask them to come in?

8       A.   They opened the door, and then escorted Steven  
9                   Avery out one door, and then we were led out of  
10                  the other door.

11      Q.   Who left the room first, Mr. Avery, or you and  
12                  your cameraman?

13      A.   I believe Steven Avery did, but I'm not sure.

14      Q.   All right. Did you have any additional  
15                  discussion, that you recall at this time, with  
16                  the deputy sheriff who escorted you from the  
17                  room, back to the general public waiting area?

18      A.   No.

19      Q.   When you -- During the course of that, I think  
20                  you said it was a brief walk, did you have any  
21                  encounters with Mr. Byrnes?

22      A.   No.

23      Q.   Upon your leaving the secure area of the jail and  
24                  going into the general reception area, did you  
25                  have any additional discussion with Mr. Byrnes at

1           that time?

2   A. No.

3   Q. Did you have any discussion with any member of  
4       the Calumet County Sheriff's Department regarding  
5       the nature and content of the interview you had  
6       just conducted with Mr. Avery?

7   A. No.

8   Q. Were there any requests made for copies of the  
9       video or audio parts of that interview?

10   A. No.

11   Q. All right. I believe you indicated there was a  
12       second interview that occurred with Mr. Avery.

13   A. Yes.

14   Q. Your best recollection, approximately when did  
15       that second interview take place?

16   A. On December 14th.

17   Q. Tell us how that interview came to pass?

18   A. That interview, I had not contacted the jail that  
19       morning. I had said in our afternoon news  
20       meeting that I would like to try talking to  
21       Steven Avery again. And our staff agreed that I  
22       should try. And we just -- my photographer and  
23       I -- again, the same photographer -- just drove  
24       to the Calumet County Jail.

25                   And, once again, I hand wrote a letter.

1           And when I got into the jail, I asked for John  
2           Byrnes, and he came out. And, once again, took  
3           that letter back to Steven Avery.

4       Q.    Okay. And, again, your best recollection --  
5           Well, first of all, let me ask, did you ever see  
6           that letter again?

7       A.    No.

8       Q.    All right. Your best recollection, could you  
9           tell us what you put in the letter this time, for  
10           the December 14th interview?

11      A.    Yes. I said, my name is Jennifer Kolbusz. We  
12           talked about a month ago. And there have been  
13           some recent developments in the case and I would  
14           just like an opportunity to talk to you again,  
15           about those developments and, once again, give  
16           you an opportunity to share your side of the  
17           story.

18      Q.    All right. When you encountered Mr. Byrnes this  
19           time, was there any additional discussion between  
20           you and him, or did you simply just present the  
21           letter to him?

22      A.    I just gave him the letter.

23      Q.    All right. And what response, if any, did you  
24           receive from him?

25      A.    None. He just looked it over, once again, and

1 turned and walked into the jail.

2 Q. Approximately how long, or how much time passed,  
3 before you saw him again, Mr. Byrnes?

4 A. I don't believe I did see him again. The next  
5 person I saw was a different member of the staff.

6 Q. All right. And do you recall who that may have  
7 been?

8 A. No.

9 Q. All right. Male or female?

10 A. Male.

11 Q. All right. And what did this person -- Well,  
12 what happened when they appeared?

13 A. They opened the door and said that Steven Avery  
14 agreed to let us in.

15 Q. All right. And is this the same door that you  
16 entered on November 18th?

17 A. Yes.

18 Q. When the door opened, and the person escorted you  
19 through the door, where did you go?

20 A. Once again, we were asked to give our ID's, and  
21 we signed in, and then we were led into the same  
22 room we were in a month before.

23 Q. All right. And when you arrived in that  
24 particular room, was Mr. Avery already there, or  
25 did he come in later?

1 A. He came in later.

2 Q. When Mr. Avery came in, how did he appear on this

3 particular date, December 14th?

4 A. I know this time his hands were not in cuffs.

5 And he seemed, actually, to be in quite a good

6 mood. He was smiling, and he extended his hand,

7 and said, good to see you, and we shook hands.

8 Q. Did he greet the photographer as well, or just

9 you?

10 A. I don't remember.

11 Q. All right. After the greeting or -- excuse

12 that -- While the greeting was occurring, were

13 members of the Sheriff's Department present, or

14 had they left the room?

15 A. They had left the room.

16 Q. So, at this particular time, there were only

17 three of you in the room?

18 A. Yes.

19 Q. All right. After the greetings were exchanged,

20 tell us what occurred next, or how you began?

21 A. I don't remember the exact content of the

22 conversation, but I know I started with, more or

23 less, small talk. And I asked him if he had been

24 following the news, reading the newspapers, and

25 he said, somewhat. I did say to him, you seem

1           like you are in a good mood, because he was  
2           smiling.

3       Q.    All right. And how did he respond to your  
4           comment?

5       A.    He just kind of shook his smile off. And I would  
6           say he got fairly serious at that point.

7       Q.    All right. And at this particular point, did he  
8           express to you any unwillingness to participate  
9           in another on camera interview?

10      A.    No.

11      Q.    At any point, did he alert you to the fact, or  
12           tell you that he had declined other news media  
13           interview requests?

14      A.    No.

15      Q.    As you proceeded during the course of this  
16           interview, at any time, was there any indication  
17           from Mr. Avery that he just did not want to  
18           participate in the interview with you?

19      A.    No.

20      Q.    At any point during the course of the interview,  
21           did he refuse to answer any of your questions?

22      A.    No.

23      Q.    At any point in the interview, did he appear  
24           confused as to the nature or purpose of the  
25           interview?

1 A. No.

2 Q. Were his responses to the questions posed by you  
3 coherent?

4 A. Yes.

5 Q. Were they actually in response or -- to the  
6 particular question that had been asked?

7 A. Yes.

8 Q. All right. During the course of the interview,  
9 did any member of the Calumet County Sheriff's  
10 Department enter the room?

11 A. No.

12 Q. Prior to the interview taking place, did any  
13 member of the Calumet County Sheriff's Department  
14 discuss with you the nature or content of the  
15 interview?

16 A. No.

17 Q. Did anyone suggest to you certain questions that  
18 could, or should, be asked?

19 A. No.

20 Q. Did anyone suggest to you certain areas which  
21 should not be discussed during the course of the  
22 interview?

23 A. No.

24 Q. Would it be fair to say that you had complete  
25 license, as it were, to conduct the interview as

1           you saw fit, as a reporter?

2   A. Yes.

3   Q. In any way, did you feel constrained, or  
4       restricted, by any member of law enforcement, for  
5       purposes of conducting the interview?

6   A. No.

7   Q. Your best estimate, approximately how long did  
8       this second interview, on December 14th, last?

9   A. About a half hour.

10   Q. How would you characterize Mr. Avery's demeanor  
11       during that half an hour?

12   A. Relaxed.

13   Q. How did the interview end?

14   A. I wrapped it up, once again, with lighter  
15       conversation. We were approaching Christmas and  
16       I asked him if his family planned on visiting him  
17       for Christmas.

18   Q. All right.

19   A. He also mentioned that it was almost time for  
20       them to eat dinner, at the jail. And I asked him  
21       what kind of food they served.

22   Q. All right. So would it be fair to say that this  
23       interview occurred late afternoon?

24   A. Yes.

25   Q. All right. How did the deputy -- Strike that.

1           Let me ask you this, during the course of the  
2           interview, were there members of the Sheriff's  
3           Department standing outside of each of the doors?

4       A. Yes.

5       Q. All right. And how did you let them know that  
6           the interview was concluded?

7       A. Once again, I stood up, and Steven did shake my  
8           hand again, and I just assumed, that they  
9           assumed, we were finished.

10      Q. All right. And when you stood up, he stood up,  
11           you shook hands; did anyone from the Sheriff's  
12           Department enter the room at that point?

13      A. I believe that at that point they opened the  
14           door.

15      Q. All right. All right. And what occurred then?

16      A. They escorted Steven Avery out of the room.

17      Q. And then what occurred?

18      A. And then my photographer and I left, the other  
19           door.

20      Q. All right. As you proceeded out the other door,  
21           were you escorted by any member of the Calumet  
22           County Sheriff's Department?

23      A. Escorted, in the sense that there was somebody  
24           who opened the door for us.

25      Q. All right. And did they at least direct, or

1           point you to the way out, or did you already know  
2           that from past experience?

3       A. We already knew where we were going. It was such  
4           a short distance, we just showed ourselves out.

5       Q. All right. During that short distance, were you  
6           approached by any member of the Sheriff's  
7           Department regarding the nature or content of  
8           your interview?

9       A. No.

10      Q. After the interview was completed and after you  
11           left the secure area, did you have any additional  
12           conversations with John Byrnes, for instance?

13      A. No.

14      Q. Before leaving the Calumet County Sheriff's  
15           Department and Jail that day, did anyone from the  
16           Sheriff's Department make any requests of you  
17           with respect to obtaining copies, for instance,  
18           of the interview that you had just conducted?

19      A. No.

20      Q. Did anyone approach you at all, for that matter,  
21           after completion of the interview, before you  
22           left?

23      A. No.

24      Q. Were you required to sign out, or did you just  
25           walk out the door and keep going?

1 A. I believe we just walked out the door.

2 Q. All right.

3 A. I don't recall, though.

4 Q. Just a concluding question, what motivation, if

5 any, did you have to approach Mr. Avery on both

6 November 18th and December 14th? I mean, what

7 was your thinking?

8 A. It's my job as a reporter.

9 Q. All right. Were you aware of the fact of any

10 other media interviews which may have occurred,

11 since the time of his arrest until the time that

12 you interviewed him on November 18th, for

13 instance? Were you aware of other media

14 interviews?

15 A. Yes.

16 Q. All right. And with respect to the time frame

17 from November 18th to December 14th, were you

18 aware of other media attempts to interview

19 Mr. Avery?

20 A. Attempts, yes.

21 Q. All right. And being a news reporter, is there a

22 certain amount of competition out there, amongst

23 reporters, to get a story?

24 A. Yes.

25 Q. All right. So that also played a factor in your

1           attempt to obtain an interview of Mr. Avery,  
2           because you would like to have gotten the story,  
3           correct?

4       A.    Correct.

5       Q.    Okay.

6           ATTORNEY FALLON:   That's all I have for the  
7           witness.   I will pass the witness for  
8           cross-examination.

9           ATTORNEY STRANG:   Were you --

10          THE COURT:   Mr. Strang.

11          ATTORNEY STRANG:   I'm sorry.   Thank you.   I  
12          apologize.

13          THE COURT:   Go ahead.

14                            CROSS-EXAMINATION

15          BY ATTORNEY STRANG:

16       Q.    Were you new to Wisconsin, in September, 2006,  
17          when you joined WFRV?

18       A.    I'm sorry, can you repeat that?

19       Q.    In September, 2004, when you joined WFRV, if I  
20          understood you right, were you new to Wisconsin?

21       A.    Yes.

22       Q.    Steven Avery was a new name to you in the fall of  
23          2005, when you first began working on this story?

24       A.    I had heard of who Steven Avery was, before this  
25          case ever started.

1 Q. What had you heard?

2 A. I had heard that he was wrongfully convicted of a  
3 rape and was released from prison a couple of  
4 years ago.

5 Q. Okay. And so when this story started, you are  
6 referring to the disappearance of Teresa Halbach?

7 A. Yes.

8 Q. The name Steven Avery, at that point, rang a bell  
9 with you?

10 A. Yes.

11 Q. His release from prison in 2003 was not, at that  
12 point, fresh news?

13 A. No.

14 Q. But the disappearance of Ms Halbach was?

15 A. Yes.

16 Q. So was Mr. Avery's possible connection to that?

17 A. Yes.

18 Q. You were assigned to this story when, the general  
19 story, I mean, the Halbach/Avery story?

20 A. The first time I covered this story was a  
21 Saturday, the Saturday that investigators had set  
22 up a perimeter on the Avery property.

23 Q. Okay. That is, that's when you were first  
24 assigned?

25 A. Yes.

1 Q. You went to the Avery property, or to the  
2 perimeter?

3 A. Correct.

4 Q. Were met there by law enforcement officers?

5 A. There weren't any law enforcement officers right  
6 there by the media, at the time, but eventually  
7 someone did come out to the media to release a  
8 statement.

9 Q. Okay. Who was that?

10 A. I don't know.

11 Q. Okay. What I'm interested in, that's Saturday  
12 November 5?

13 A. Mm-hmm.

14 Q. At least, I will suggest that to you and I think  
15 I'm right. Did you meet any members of the  
16 Calumet County Sheriff's Department that day?

17 A. I don't -- I don't even know if the person that  
18 we talked to was with the Calumet County  
19 Sheriff's Department.

20 Q. Fair enough. And that was the only law  
21 enforcement person with whom you had contact?

22 A. Yes.

23 Q. You then followed the news conferences?

24 A. Yes.

25 Q. Did you attend some of news conferences?

1 A. Yes.

2 Q. And do you remember how many, or just that you  
3 attended some of them?

4 A. Throughout the whole course of this case, I have  
5 attended two of those news conferences, that one  
6 on Saturday, and then one, I don't recall the  
7 date.

8 Q. But in an inside room?

9 A. Yes.

10 Q. The Saturday one was outdoors?

11 A. There was one that was held -- There was one that  
12 was held in the fire department, indoors.

13 Q. That you attended?

14 A. Yes.

15 Q. That Saturday?

16 A. Yes.

17 Q. And then a second?

18 A. Yes.

19 Q. All right. During those two interviews, have you  
20 made the acquaintance of Sheriff Pagel?

21 A. Not directly.

22 Q. Have you made the acquaintance of anyone else  
23 from the Calumet County Sheriff's Department?

24 A. No.

25 Q. When you called on November 18, 2005, to the

1           jail, you identified yourself as a reporter, to  
2           the woman who answered the phone?

3       A. Yes.

4       Q. Said that you wanted to interview Steven Avery?

5       A. Correct.

6       Q. Asked about the visiting hours, and the  
7           opportunity to do that?

8       A. Yes.

9       Q. If I understood you correctly, she then gave you  
10           information that was at odds with, or varied,  
11           from the information you had gotten from other  
12           reporters?

13      A. Yes.

14      Q. That is, she said you could not come to interview  
15           Mr. Avery?

16      A. She said that the visiting hours were, as she had  
17           stated.

18      Q. Certain days for certain last names?

19      A. Something like that.

20      Q. Mm-hmm. And certain hours?

21      A. Right.

22      Q. And you understood, that that day was not a  
23           permissible visiting day under the set of rules  
24           that she was describing to you?

25      A. Correct.

1 Q. Because of the news, the time cycle on news, you  
2 wanted to accomplish the interview that day?

3 A. Yes.

4 Q. Had, at any point, you met the Calumet County  
5 District Attorney, Ken Kratz, by that time?

6 A. No.

7 Q. Had seen him at news conferences, but not been  
8 introduced to him?

9 A. Correct.

10 Q. All right. Did you ask for someone in specific,  
11 at the jail, when the woman with whom you were  
12 speaking proposed that you talk with the  
13 supervisor?

14 A. No.

15 Q. Did you ask for, by description, I want to talk  
16 to the top person, or the captain, or, you know,  
17 what did you say?

18 A. Well, I never asked to speak to anyone, she said  
19 would you like to speak to my supervisor, and I  
20 said yes.

21 Q. Why was it -- Well, you couldn't know that. What  
22 had you said immediately before her proposing  
23 that you speak to a supervisor?

24 A. I said that I had heard differently, what the  
25 hours were for visitation, and we were just

1           discussing that. And I think that in a situation  
2           of being sort of flustered, she just asked if I  
3           would like to speak to the supervisor.

4   Q.   All right. So while you were polite to her?

5   A.   Yes.

6   Q.   Correct. You expressed some irritation, or  
7           disappointment that you were getting the answer  
8           that you were?

9   A.   Yes.

10   Q.   Who told you what to expect, in terms of visiting  
11           hours?

12   A.   A reporter at my station.

13   Q.   Who?

14   A.   Olga Halaburda.

15   Q.   All right. Had she been in to interview Mr. Avery  
16           in the jail herself?

17   A.   No.

18   Q.   How -- Did you ask her, how do you know the jail  
19           visiting hours down in Chilton?

20   A.   She said that she had called.

21   Q.   Okay. And gave you the information, and now this  
22           woman's information didn't square with that?

23   A.   I'm sorry, can you repeat that.

24   Q.   The woman's information didn't square with what  
25           Olga Halaburda had given you?

1 A. Correct.

2 Q. How long before Mr. Byrnes got on the phone,  
3 roughly?

4 A. A matter of seconds.

5 Q. As if he was somewhere standing nearby?

6 A. My understanding is that it was a phone that was  
7 transferred.

8 Q. Okay. So, but it was just a matter of  
9 transferring a phone call, just a few seconds.

10 A. Yes.

11 Q. Did he identify himself to you?

12 A. Yes.

13 Q. How?

14 A. He said that his name is John Byrnes, and that  
15 he's the jail supervisor.

16 Q. You understood him to be in charge of the jail?

17 A. Correct.

18 Q. You then repeated your request?

19 A. Yes.

20 Q. For an interview?

21 A. Yes.

22 Q. With Mr. Avery?

23 A. Yes.

24 Q. You told him that you wanted to talk with  
25 Mr. Avery about the pending Criminal Complaint,

1                   the charges against him?

2 A. Yes.

3 Q. You said that you wanted to do it that day?

4 A. Yes.

5 Q. He initially told you that you would have to  
6                   write a letter?

7 A. Yes.

8 Q. But it was he, then, after hearing you wanted to  
9                   accomplish the interview that very day, it was he  
10                  who suggested that you could hand deliver a  
11                  letter to the jail?

12 A. I asked if I could hand deliver it.

13 Q. All right. And he agreed?

14 A. Yes.

15 Q. Did he tell you to ask for him?

16 A. Yes.

17 Q. That he would meet you?

18 A. Correct.

19 Q. Did he tell you that he would personally take the  
20                  letter to Mr. Avery?

21 A. Yes.

22 Q. Do you remember about what time of day you are  
23                  having this conversation on November 18, with  
24                  Mr. Byrnes?

25 A. It was in the morning, my guess is that it was

1           around 10 o'clock in the morning.

2 Q.     All right. Now, I have the sign in sheet, and  
3           I'm happy to show it to you if you would like to  
4           see it. At least it looks like a fellow named  
5           Dave Duchan --

6 A.     Duchan.

7 Q.     -- and Jennifer Kolbusz, signing into the jail at  
8           2:05 p.m.?

9 A.     Mm-hmm.

10 Q.    Does that sound about right?

11 A.    Yes.

12 Q.    Okay. So some time passed between this  
13          conversation with Mr. Byrnes and your arrival,  
14          obviously?

15 A.    Yes.

16 Q.    More time than necessary to drive down from the  
17          Green Bay area, from where you were coming?

18 A.    Yes, I wasn't at work yet. I was calling on my  
19          own time, from my apartment.

20 Q.    All right. So did you talk to anyone at all at  
21          the jail, or in law enforcement, between your  
22          conversation with Mr. Byrnes and arriving at the  
23          jail around 2:00 that day?

24 A.    No.

25 Q.    Hand wrote a letter to Mr. Avery in the car?

1 A. Yes.

2 Q. Asked for Mr. Byrnes at the receptionist window,  
3 outside the jail?

4 A. Yes.

5 Q. How long did it take him to come?

6 A. About a minute.

7 Q. Again, as if he was nearby?

8 A. I guess.

9 Q. Had you told him what time to expect you?

10 A. No.

11 Q. Had he said anything to you about, you know, gee,  
12 you have to avoid this mealtime, or that shift  
13 change, or any sort of restrictions like that?

14 A. No.

15 Q. Did he tell you you could come any time at all?

16 A. No.

17 Q. Was there any discussion at all about when you  
18 were coming that day?

19 A. I said that, I think I'm going to come today, but  
20 I would have to go in to work and discuss it with  
21 other members of our news staff.

22 Q. That's where you left it with Mr. Byrnes?

23 A. Yes.

24 Q. So, your understanding, at least of his  
25 conversation with you, was the only he had, is

1           that about 10 in the morning, he's told by a  
2           reporter on the telephone, she thinks she's  
3           coming today, but there's a contingency to that?

4       A.    Correct.

5       Q.    He then disappears into the jail, or somewhere,  
6           with the letter you handed him?

7       A.    Yes.

8       Q.    And Mr. Avery appears, then, in the company of  
9           some other uniformed member of the Calumet County  
10          Sheriff's Department?

11       A.    Right, after we were led into that other room.

12       Q.    Roughly how much time passes between when Byrnes  
13          leaves with your letter and Avery and the other  
14          deputy show up?

15       A.    Five minutes.

16       Q.    I understand that the letter was handwritten, you  
17          prepared it in the car. You didn't make a copy  
18          of the letter, obviously?

19       A.    No.

20       Q.    It was on WFRV letterhead?

21       A.    No, it was just on a legal pad.

22       Q.    Okay. But you explained that you were from  
23          WFRV, --

24       A.    Yes.

25       Q.    -- to Mr. Avery. And if I understood you on

1           direct examination, you think that you said, in  
2           the letter, something like, I have no intention  
3           of convicting you?

4     A.    Correct.

5     Q.    I just want to hear your side of the story?

6     A.    Yes.

7     Q.    So, this was, you were intending to be welcoming,  
8           correct?

9     A.    Yes.

10    Q.    Intending to encourage Mr. Avery to speak freely?

11    A.    Yes.

12    Q.    Presenting yourself as a neutral?

13    A.    I presented myself as a reporter --

14    Q.    Right.

15    A.    -- without a bias.

16    Q.    That is, you know, suggesting, whether in words  
17       or effect, that every story has two sides and you  
18       know, I would like to hear your side of it?

19    A.    Yes.

20    Q.    The small talk in the interview room started with  
21       that kind of pattern as well, correct?

22    A.    Yes.

23    Q.    Thank you for talking with us, we want to hear  
24       your side of the story, that sort of thing?

25    A.    Yes, there was some other small talk.

1 Q. That was intended, by you, to try to put  
2 Mr. Avery at ease?

3 A. Both of us at ease.

4 Q. Sure. He seemed to be at ease when he sat down  
5 for the interview?

6 A. Yes.

7 Q. Now, I want to -- I think I understood you, but  
8 you described two uniformed members of the  
9 Sheriff's Department, they were immediately  
10 outside the doors to this interview room?

11 A. I believe so.

12 Q. They are not in the room during the interview?

13 A. No.

14 Q. Okay. But you could see them through the glass  
15 in the doors?

16 A. Yes.

17 Q. Within a couple of feet of the doors?

18 A. Yes.

19 Q. Now, the interview itself, you estimated at about  
20 30 minutes?

21 A. Correct.

22 Q. Setting aside small talk, okay, introductions,  
23 and how are you doing today, that kind of thing,  
24 the substance of the interview concerned the  
25 charges against Mr. Avery?

1 A. Correct.

2 Q. Concerned Ms Halbach and the allegations related  
3 to her?

4 A. Yes.

5 Q. The camera was running during the entire  
6 substantive portion of the interview?

7 A. Yes.

8 Q. So, when you say the interview lasted for about  
9 30 minutes, you would expect that there would be,  
10 again, about 30 minutes of tape of that  
11 interview?

12 A. There might have been a few more minutes than  
13 that, because after we're done doing the  
14 interview, the photographer tries to get what we  
15 call cut-away shots, just wider shots of us  
16 talking.

17 Q. I see, to sort of fill in for visual --

18 A. Correct.

19 Q. -- presentation on the story?

20 A. Yes.

21 Q. All right. Would the small talk have been  
22 filmed, or taped, whatever it is -- it's probably  
23 digital image these days -- but the camera had  
24 been on for the small talk portion of this?

25 A. Some of it.

- 1 Q. This story itself, then, ran that evening?
- 2 A. Correct.
- 3 Q. It was shorter than 30 minutes?
- 4 A. Correct.
- 5 Q. Do you know how long that story was, as run on
- 6 air?
- 7 A. I believe it was slightly over two minutes.
- 8 Q. Probably ran at 5, and 6, and 10, or that kind of
- 9 thing, on the broadcast?
- 10 A. Parts of it ran at 5, and 6. And then the longer
- 11 version, which was more than two minutes, ran at
- 12 10 o'clock.
- 13 Q. How long was the longer version?
- 14 A. At 10 o'clock it was about two -- a little over
- 15 two minutes.
- 16 Q. And 5, and 6, a little bit under two minutes?
- 17 A. Correct.
- 18 Q. You edited the 30 minutes, roughly, of film that
- 19 you had?
- 20 A. I didn't personally edit it, but I logged it and
- 21 selected what pieces of it would be used.
- 22 Q. And my clumsiness, that's really what I meant.
- 23 You made the selection --
- 24 A. Correct.
- 25 Q. -- of what snippets, or segments of that

1 interview to use in your story?

2 A. Correct.

3 Q. And then you wrote some text to fill in and make

4 it flow into a story?

5 A. Yes.

6 Q. Somebody else actually did the clipping, or the

7 editing?

8 A. Correct.

9 Q. All right. But the design, then, was to make --

10 to render about 30 minutes down into about two

11 minutes of good news cast material?

12 A. Well, just to tell what happened during the

13 interview.

14 Q. Right. And something that would be interesting

15 to the viewers, right?

16 A. Provided that it was an accurate representation

17 of what happened.

18 Q. Well, sure. I mean, I assume the camera takes

19 down accurately what's being said and done,

20 correct?

21 A. Correct.

22 Q. And you want to present a balanced story, true?

23 A. Yes.

24 Q. And unbiassed story?

25 A. Correct.

1 Q. But the accuracy of the actual film is not in  
2 issue, correct?

3 A. I'm sorry?

4 Q. The accuracy of the actual film isn't an issue,  
5 correct?

6 A. No.

7 Q. There's selection decisions on how to present it,  
8 true?

9 A. Yes.

10 Q. And you want it to be interesting?

11 A. Yes.

12 Q. You want it to attract viewers, rather than cause  
13 them to switch over to FOX 11, right?

14 A. Well, it depends on what you mean by good, and  
15 interesting. But the idea, yes, is to do a story  
16 that's fair and accurate, but at the same time,  
17 not boring.

18 Q. Sure. And that's what I mean, will help to cause  
19 someone to decide to watch Channel 5, rather than  
20 Channel 2, or Channel 26, or Channel 11, correct?

21 A. That's not my primary motivation when I do a  
22 story, but I guess you could say that.

23 Q. Sure. I'm not suggesting that it's your primary  
24 motivation, but it's a consideration.

25 A. Sure.

1 Q. Have you been asked to produce the balance of the  
2 roughly 30 minutes of film from November 18?

3 A. No.

4 Q. Are you willing to do that?

5 A. I don't know whether or not I would have to. I  
6 would just wait for direction from my supervisor.

7 Q. That is, in the scheme of things, you don't get  
8 to make that decision?

9 A. I don't know.

10 Q. You don't know if you get to make the decision?

11 A. About whether or not the tape is released?

12 Q. I'm asking for all 30 minutes, what's your  
13 answer?

14 A. Oh, I know it's not my decision.

15 Q. Okay. After the November 18 interview ended, did  
16 you -- did you have any further communication, of  
17 any kind, with Mr. Byrnes, before December 14th?

18 A. No.

19 Q. What caused you simply to hop in the car on  
20 December 14 and drive down to Chilton with a  
21 cameraman?

22 A. There had been more developments in the case, as  
23 there were weekly. And we just decided that a  
24 month had passed and it seemed like it was time  
25 to attempt to talk to Steven Avery again.

1 Q. What -- What recent developments caused this?

2 A. I don't recall, specifically, what they were. I  
3 believe it was that -- something to do with a  
4 small cabinet being found, in his trailer.

5 Q. Okay.

6 A. I can't recall, specifically, what --

7 Q. But something excited you, or drew your attention  
8 at the time, and you said, let's go back and try  
9 to talk to him again?

10 A. Right.

11 Q. All right. The offices in which you work are,  
12 physically, in the City of Green Bay?

13 A. Actually, I work out of the Fox Cities Bureau,  
14 which is in Little Chute.

15 Q. All right. And as does your cameraman?

16 A. Yes.

17 Q. How long did it take the two of you to drive from  
18 the office in Little Chute to the Calumet County  
19 Jail in Chilton?

20 A. Probably about an hour.

21 Q. In each direction, obviously?

22 A. Yes.

23 Q. All right. So -- And you work roughly an eight  
24 hour shift?

25 A. Correct.

1 Q. You -- Obviously, you have deadlines you have to  
2 hit, because at 5 o'clock the newscast will be on  
3 air?

4 A. Yes.

5 Q. If I understand you correctly, you had spoken to  
6 no one before grabbing a cameraman, or asking the  
7 cameraman to accompany you, and taking a one hour  
8 car trip to Chilton, spoken to nobody at the  
9 Calumet County Jail?

10 A. Correct.

11 Q. Hadn't spoken to Mr. Avery?

12 A. No.

13 Q. As far as you know, Mr. Avery hadn't tried to  
14 contact you after November 18, 2005?

15 A. Correct.

16 Q. If you got to this jail and they said, sorry,  
17 we're not letting you in, you have now -- you're  
18 facing the risk of having wasted two hours of  
19 your time and two hours of the cameraman's time,  
20 correct?

21 A. Yes.

22 Q. You arrived at the jail that day at 3:40ish,  
23 something like that, in the afternoon?

24 A. That's likely.

25 Q. So, if you got turned around right away, you

1           would be back at 4:40, or something like that,  
2           true?

3       A. Yes.

4       Q. Twenty minutes before the 5 o'clock newscast?

5       A. Yes.

6       Q. Empty handed?

7       A. Yes.

8       Q. We took a drive to Chilton today, wouldn't make  
9           much of a story?

10      A. It happens more than you think.

11      Q. Okay. So you arrived, and did you ask to see  
12           Mr. Byrnes immediately?

13      A. Yes, I did.

14      Q. He appeared quickly?

15      A. Yes.

16      Q. Did he ask why you were there?

17      A. Well, I spoke first and said that I would like  
18           him to deliver this letter to Steven Avery.

19      Q. And then we have been through what happened,  
20           correct?

21      A. Yes.

22      Q. Here, again, about a 30 minute interview?

23      A. Yes.

24      Q. About two minutes, give or take, that gets aired  
25           in the story later that evening?

- 1 A. Correct. The story only aired at 10 o'clock,  
2 though. We did not do anything at 5 or 6.
- 3 Q. All right. Did the raw footage, you know, the 30  
4 minutes, approximately, of either November 18 or  
5 December 14, ever get posted on, or made  
6 available to the public on wfrv.com?
- 7 A. No.
- 8 Q. When you -- When you came into the jail on  
9 December 14, did any of the jail staff, anybody  
10 in a uniform, you know, working there, whether it  
11 was Mr. Byrnes or anyone else, say anything at  
12 all to you about their schedule, for instance,  
13 for meals?
- 14 A. No.
- 15 Q. Say anything at all to you about shift change  
16 schedules?
- 17 A. No.
- 18 Q. Put any time limit on how long you could be with  
19 Mr. Avery?
- 20 A. No.
- 21 Q. Put any other limitations on what sort of  
22 resources you'd be drawing from the jail?
- 23 A. No.
- 24 Q. Were there, again, two uniformed deputies posted  
25 outside the two doors to this interview room?

1 A. I believe so.

2 Q. As far as you know, did they remain there for the

3 entire course of the roughly 30 minute interview?

4 A. As far as I know.

5 Q. Again, as on November 18, setting aside small

6 talk about Christmas, or food, or family, the

7 substance of this interview was about the

8 criminal allegations against Mr. Avery, pending

9 in Manitowoc County?

10 A. Yes.

11 Q. It was about nothing else?

12 A. Correct.

13 Q. You explained to Mr. Fallon that, well, for

14 starters, that you never actually said to

15 Mr. Avery, we're going to broadcast this

16 interview?

17 A. Correct.

18 Q. But you did come in carrying a microphone, and

19 identifying yourself as a reporter, and with a

20 cameraman, and all this sort of equipment, right?

21 A. Yes.

22 Q. Saying you were from WFRV-TV?

23 A. Correct.

24 Q. And you took it as implied that -- and obviously

25 implied -- that some portion of the interview, at

1           least, would be broadcast?

2       A. Yes.

3       Q. Was it also implied to Mr. Byrnes, in the same  
4           way, that you would be interviewing Mr. Avery  
5           about the pending criminal allegations?

6       A. Yes.

7       Q. Were you asked, or to your knowledge was anyone  
8           else at WFRV asked, to provide either a CD or a  
9           DVD, of your November 18, 2005 interview of  
10           Mr. Avery, to law enforcement, or to the Calumet  
11           County District Attorney's Office?

12      A. I was never asked, and I don't know of anyone  
13           else who was.

14      Q. All right. Do you have any idea how the Calumet  
15           County District Attorney's Office would have  
16           obtained what's described as a CD of that Avery  
17           jail interview on November 18, 2005, to then  
18           produce to the defense?

19      A. No.

20                   ATTORNEY STRANG: I think that's all I  
21                   have. Thank you.

22                   THE COURT: Any redirect?

23                   ATTORNEY FALLON: I have no redirect for  
24                   the witness. She may be excused.

25                   THE COURT: All right. You are excused.

ATTORNEY FALLON: I do have two requests of the Court. I would ask the Court to take judicial notice of the fact that the Criminal Complaint in this case, charging Mr. Avery with first-degree intentional homicide, was filed, I believe, on November 15th, 2005. And I would further ask the Court to take judicial notice of the fact that the preliminary examination in this case occurred on or about December 6th, 2005.

ATTORNEY STRANG: I think it's appropriate for the Court to take judicial notice of anything on the docket, or in the court files, on this case. And, indeed, as we proceed to further briefing, or argument on this, I also may ask the Court to take notice of, you know, certain dates, for example, when the Original Criminal Complaint was filed.

THE COURT: All right. The Court will do so. We have got one more witness on this issue?

ATTORNEY FALLON: That's correct. We're going to defer to the defense to call that witness. We're going to rest our presentation of evidence.

THE COURT: All right. I'm going to take a 10 minute break at this time and then we'll come back at that time and hear that witness.

(Recess taken.)

1                   THE COURT: Mr. Fallon, do I understand the  
2                   State has no further witnesses on this issue.

3                   ATTORNEY FALLON: No, we'll pass the  
4                   presentation of evidence to the defense.

5                   THE COURT: Mr. Strang.

6                   ATTORNEY STRANG: We'll call Lieutenant and  
7                   Jail Administrator, John Brynes.

8                   THE CLERK: Please raise your right hand.

9                   **LIEUTENANT JOHN BYRNES**, called as a  
10                  witness herein, having been first duly sworn, was  
11                  examined and testified as follows:

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

14                  THE WITNESS: John Byrnes B-y-r-n-e-s.

15                  DIRECT EXAMINATION

16                  BY ATTORNEY STRANG:

17                  Q. Mr. Byrnes, tell us just a little bit about how  
18                  you are presently employed?

19                  A. I'm a Jail Administrator for the Calumet County  
20                  Jail, that's my present position.

21                  Q. All right. Jail Administrator, meaning you have  
22                  general responsibility for all facets of the  
23                  operation of the Calumet County Jail?

24                  A. That's correct.

25                  Q. You report directly to Sheriff Pagel?

- 1 A. Yes.
- 2 Q. But anyone who actually works in the jail reports
- 3 to you?
- 4 A. Correct.
- 5 Q. In addition to being Jail Administrator, you
- 6 remain a sworn officer of the Calumet County
- 7 Sheriff's Department?
- 8 A. Yes.
- 9 Q. In that department, you presently hold the rank
- 10 of Lieutenant?
- 11 A. Correct, yes.
- 12 Q. How long have you been in the position of Jail
- 13 Administrator at Calumet County?
- 14 A. It's been four years.
- 15 Q. Continuously?
- 16 A. Yes.
- 17 Q. So, for the period, let's say November 9, 2005,
- 18 through the end of December, 2005, you're the
- 19 Jail Administrator?
- 20 A. Correct.
- 21 Q. Did you bring with you today, any documents?
- 22 A. Yes. From reading the subpoena, I brought a copy
- 23 of the visitation policy that's used by the jail.
- 24 Q. Thank you. May I have that?
- 25 A. Sure.

1 Q. Thank you, very much. I have got several  
2 questions about this. You have given me three  
3 pages stapled together, but the first two are two  
4 sided, that is, there's typing on both sides?

5 A. Yes.

6 Q. All right. This is an excerpt out of a larger  
7 book of jail rules and regulations?

8 A. Yes.

9 Q. But these are all the rules relating to  
10 visitation?

11 A. Yes.

12 Q. These rules were in effect, in this form, during  
13 the period November and December of 2005?

14 A. Yes.

15 Q. For ease of reference, that's the time frame I'm  
16 going to use here, that 60, 61 days here, unless  
17 I tell you otherwise, all right?

18 A. Okay.

19 Q. Did you bring more than one copy today?

20 A. No, that's the only copy I have.

21 Q. All right. I'm going to give this back to you --  
22 I think what I will do is mark it as an exhibit.  
23 Is your Honor's preference that we just mark  
24 exhibits sequentially or separate?

25 THE COURT: Yes.

(Exhibit 7 marked for identification.)

2 Q. I want to be careful about this Mr. Byrnes,  
3 because although I except what you said, that  
4 these rules are unchanged and they were in effect  
5 as you have been given them to me in Exhibit 7,  
6 in November and December of 2005, the last page  
7 looks to me like it says they were approved on  
8 March 24, 2006?

9 A. That's correct. Many of the policies that I  
10 personally worked on, I set them for an annual  
11 review, and I take a look at the policy,  
12 determine if there needs to be any changes. When  
13 I checked my history document, the previous  
14 change to the visitation policy was made in 2003.  
15 So this policy, although it was examined and  
16 reviewed within the past year, it was unchanged.

17 Q. Great. Thank you.

18 A. Sure.

19 ATTORNEY STRANG: Now, I will offer Exhibit  
20 7 with that explanation.

THE COURT: Any objection?

22 ATTORNEY KRATZ: None.

23 THE COURT: Exhibit 7 is received.

24 ATTORNEY FALLON: No objection.

25 Q. (By Attorney Strang)~ Very quickly introduce the

1                   Court, if you would, to the command structure  
2                   within the Calumet County Jail during the time  
3                   frame we're interested in.

4       A.   The head of the department, of course, is the  
5                   sheriff. I report to a captain, Captain Paul  
6                   Rusch. And underneath me would be one sergeant,  
7                   and then our corrections officers.

8                   ATTORNEY STRANG: Should we push the mike  
9                   just a little bit closer to the Lieutenant?

10      Q.    (By Attorney Strang)~ So when you say one  
11                   sergeant, there's not one per shift, there is  
12                   only one sergeant of the jail?

13      A.   One position, yes.

14      Q.   Okay. And that's a daytime position?

15      A.   Yes, daytime, evening, generally works 9:30 a.m.  
16                   until 5:00 p.m.

17      Q.   And your general hours are what?

18      A.   6:00 a.m. to 2:00 p.m.

19      Q.   Okay. So he is then in charge of the jail from 2  
20                   to 5:30, roughly?

21      A.   Correct.

22      Q.   Overnight, what's the authority structure from,  
23                   you know, 5:30 p.m. to 6 a.m., when you come  
24                   back?

25      A.   There's just corrections officers on duty. And

1           if there would be an issue, they would report to  
2           the patrol supervisor.

3       Q.    During the -- Between the hours of 9:30 in the  
4           morning and 5:30 in the afternoon, again, during  
5           the time period of interest, what's the total  
6           staff complement in the Calumet County Jail?

7       A.    It can vary. Generally, on a weekday, myself,  
8           the sergeant, at least two jailers, corrections  
9           officers, would be on duty, and perhaps a third.  
10          We also may have transport officers. They  
11          generally work under the sergeant and I. So we  
12          may have transport officers working.

13      Q.    Transport officers in Calumet County are  
14          temporary duty employees?

15      A.    Correct.

16      Q.    They don't report to work unless requested, on a  
17          particular day at a particular time?

18      A.    Correct.

19      Q.    So the -- the actual staff of the jail would be  
20          either 4 or 5, from 9:30 in the morning until  
21          5:30 in the afternoon?

22      A.    Yes.

23      Q.    When one comes to, what I think of as the  
24          reception window near that little historical  
25          display in the lobby --

1 A. Yes.

2 Q. -- those people, although they wear uniforms,  
3 they are not jail staff?

4 A. Yeah, the window on the right is clerical staff.

5 Q. For the Sheriff's Department?

6 A. For the Sheriff's Department, yes.

7 Q. Not attached to the jail, per se?

8 A. One of the clerical staff is attached half-time  
9 to the jail.

10 Q. Fair enough. The 9:30 a.m. to 5:30 p.m. staffing  
11 complement that you have described is the same,  
12 or different, on the weekends, during this time  
13 period?

14 A. On the weekends, it would just be corrections  
15 officers.

16 Q. Two or three people on duty?

17 A. Correct.

18 Q. And no transport officers on the weekend?

19 A. Generally not, unless they are called in.

20 Q. You have the original of Exhibit 7 in front of  
21 you?

22 A. Yes, I do.

23 Q. Okay. The Calumet County Jail -- Again, all my  
24 questions are going to be during the time frame I  
25 have described. Calumet County Jail controls

1           access to inmates, true?

2 A.   True.

3 Q.   Almost self-obviously, members of the public do

4       not have access to the inmates, other than on

5       terms under the control of yourself and the

6       people working for you in the jail?

7 A.   Correct.

8 Q.   When I say members of the public, that would

9       include lawyers for inmates?

10 A.   Yes.

11 Q.   Religious advisors, or chaplains, that type of

12      thing, who may wish to see inmates?

13 A.   Yes.

14 Q.   Alcoholics Anonymous counselors, those kinds of

15      people?

16 A.   Yes.

17 Q.   Family members?

18 A.   Yes.

19 Q.   Friends of the inmate?

20 A.   Yes.

21 Q.   And even law enforcement officers?

22 A.   Yes.

23 Q.   They would gain access to an inmate in the jail,

24      that is, law enforcement officers would, through

25      you or your corrections staff?

1 A. Correct.

2 Q. That said, there are different rules that apply  
3 to some of these different groups I have  
4 described, correct?

5 A. Yes.

6 Q. Let's start with lawyers and clergy members. And  
7 I think we can group in probation and parole  
8 agents there as well, correct?

9 A. Yes.

10 Q. There's a specific rule that applies to the three  
11 groups I have just described?

12 A. Yes.

13 Q. Their access will be permitted to the inmate for  
14 lawyers, clergy members, probation and parole  
15 agents, during reasonable hours?

16 A. Yes.

17 Q. You ultimately decide what those reasonable hours  
18 are?

19 A. Yes.

20 Q. Reasonable hours would not include during shift  
21 changes?

22 A. Correct.

23 Q. It would not include when you are trying to serve  
24 meals?

25 A. Correct.

1 Q. That is, you, as the Jail Administrator, are  
2 responsible for the care, feeding, and safe  
3 keeping of inmates in your custody?

4 A. Yes.

5 Q. Moving visitors, or dealing with visitors,  
6 distracts from -- or requires manpower, I guess I  
7 would put it that way, right?

8 A. Yes.

9 Q. So at critical times like a shift change, when  
10 one would be leaving and another would be coming,  
11 it's not reasonable to expect changing shifts  
12 also to juggle professional visitors?

13 A. Generally not. If a visit was started prior to a  
14 shift change, they may allow it to continue.

15 Q. But probably not to terminate, requiring movement  
16 of the visitor out, and the inmate back to the  
17 cell, during the shift change?

18 A. Correct.

19 Q. Same with the mealtime?

20 A. Yes.

21 Q. Might allow the inmate to continue a visit  
22 through the meal and maybe you would hold the  
23 meal for him, correct?

24 A. Yes.

25 Q. But you aren't going to be doing inmate movement

1           or visitor movement during the actual process of  
2           feeding?

3       A. Generally not. Again, if it's important to move  
4           an inmate, they will hold a meal. It really  
5           depends on the situation.

6       Q. And the guide is reasonableness, as I understand  
7           the rule?

8       A. Yes.

9       Q. So we're talking of, generally, the visitors,  
10           even the professional visitors we have described,  
11           would avoid mealtimes and shift changes?

12      A. If we can, yes.

13      Q. Other than that, do you expect advance notice  
14           from, let's say, an inmate's lawyer?

15      A. We prefer it but, again, we understand schedules  
16           and, yeah, sometimes they drop in and we do our  
17           best.

18      Q. You try to accommodate?

19      A. Yes.

20      Q. But, again, it's a rule of reason?

21      A. Yes.

22      Q. All right. Law enforcement officers are not  
23           covered, specifically, in terms of their visits  
24           with inmates, in these rules, Exhibit 7, correct?

25      A. I don't believe so.

1 Q. There again, though, the law enforcement officer  
2 would have to contact you, or someone working for  
3 you, to arrange a visit?

4 A. Yes.

5 Q. Lawyers, probation agents, clergy members, are  
6 allowed what's called a contact visit?

7 A. In most cases, yes.

8 Q. And Exhibit 7 refers to that a little bit  
9 obliquely in paragraph -- what is it, I'm  
10 sorry -- 29.00.30 (g), as in golf, right?

11 A. Yes.

12 Q. By identifying the two visiting rooms that may be  
13 used by clergy, lawyers, and probation agents?

14 A. Yes.

15 Q. Those are what's called contact visit rooms?

16 A. Correct.

17 Q. By contact visit, there is no barrier separating  
18 the inmate from the visitor?

19 A. Correct.

20 Q. No need to use a telephone to speak through the  
21 barrier?

22 A. Correct.

23 Q. Law enforcement officers also are permitted  
24 contact visits?

25 A. Yes.

1 Q. Law enforcement officers also can visit at any  
2 reasonable hour?

3 A. Yes.

4 Q. Their visits can last for a reasonable duration?

5 A. Correct.

6 Q. So, in many ways, they are treated much like the  
7 lawyer, the clergy member, or the probation  
8 agent?

9 A. Yes.

10 Q. When we step away from law enforcement officers,  
11 the inmate's lawyer, clergy members, and  
12 probation agents supervising the inmate, and we  
13 get into family members, friends of the inmate,  
14 the rules are different?

15 A. Yes.

16 Q. There are more rules?

17 A. There are structured hours that they can visit,  
18 yes, and rules limiting the amount of friends  
19 that can visit.

20 Q. Rules limiting the length of a visit?

21 A. Yes.

22 Q. In the case of your jail, to 20 minutes?

23 A. Yes.

24 Q. There's no limit on time length of a lawyer's  
25 visit, or a clergy member's visit, other than

1            reasonableness, again?

2 A.        Correct.

3 Q.        So you have got this, you have got the visiting

4            schedule for friends and family members set up

5            Thursday and Sunday evenings?

6 A.        Yes.

7 Q.        Females from a certain time, male inmates to

8            another time?

9 A.        Yes.

10 Q.       These are not contact visits?

11 A.       No.

12 Q.       At least ordinarily?

13 A.       Yes. Ordinarily it's a non-contact visit through

14            the phone.

15 Q.       And a --

16 A.       Glass barrier.

17 Q.       -- reinforced glass barrier?

18 A.       Yes.

19 Q.       Okay. Those visits routinely are tape recorded

20            by the jail?

21 A.       Yes.

22 Q.       Contact visits are, or are not, tape recorded by

23            the jail?

24 A.       Not.

25 Q.       Just not at all?

- 1 A. No, there is no recording device, I'm aware of,  
2 in there.
- 3 Q. Okay. And you would know?
- 4 A. I would hope so.
- 5 Q. Okay. Further, the inmate who wishes to have  
6 family or friends visit must compile a visitor  
7 list?
- 8 A. Yes.
- 9 Q. Within the jail?
- 10 A. Yes.
- 11 Q. There is a limit on how many names can be on that  
12 visitor list?
- 13 A. Three.
- 14 Q. And those can be changed, one name can be  
15 substituted for another?
- 16 A. Yes, we allow that on occasion.
- 17 Q. Right. There again, not willy nilly, whatever  
18 the inmate wants?
- 19 A. Yes.
- 20 Q. I'm seeing these for the first time, but I also  
21 take it that visits by people other than lawyers,  
22 clergy members, law enforcement officers, or  
23 probation agents, require an identification  
24 procedure for the visitor?
- 25 A. Yes. Family, or friends, or most anybody, we

1           prefer to see an identification. Especially if  
2           we don't know the person.

3       Q.    Sure. Okay. Now -- And, again, setting aside  
4           the four groups, the professionals, so to speak,  
5           that I have been talking about, with the family  
6           and friend visitors, what is the identification  
7           procedure?

8       A.    We request a picture ID, if we don't know the  
9           person. The information is recorded, and if the  
10          visit is allowed, generally there's a check done  
11          to make sure there's no wants or warrants for the  
12          person.

13      Q.    Right. Is a criminal record check done as well,  
14          or just to see if there are open wants or  
15          commitment wants?

16      A.    Generally just a basic wants check.

17      Q.    All right. So, that when the person, the  
18          visitor, is in a law enforcement environment, and  
19          if somebody is wanted by a law enforcement  
20          agency, you wouldn't want them to walk in and out  
21          unmolested and be out there with an open warrant?

22      A.    Correct.

23      Q.    The general visitor may not bring recording  
24          equipment into the jail for the visit?

25      A.    No.

1 Q. The general visitor, the father, the mother, the  
2 wife, whomever, can't bring a camera in for the  
3 visit?

4 A. We try to limit personal property to a purse.

5 But I don't know that we specify cameras. I  
6 would request that they don't. I would request  
7 that they don't bring a camera.

8 Q. Sure. And you would have the ability, then, to  
9 prevent that person from entering with a camera.

10 A. Yes.

11 Q. You have to leave it out here, or that kind of  
12 thing, or leave it in your car?

13 A. Correct.

14 Q. So there's some screening of the visitor in terms  
15 of what he or she is carrying with him?

16 A. Correct. Primarily because the room is small and  
17 there's -- there can be up to eight people, you  
18 know, in the room, or more, so.

19 Q. Right.

20 A. Primarily just for that reason.

21 Q. Fair enough. Are there any rules in Exhibit 7  
22 that address members of the media in specific?

23 A. No.

24 Q. Do you have any other rules, written or  
25 unwritten, that you apply generally, with respect

1 to visits by reporters, members of the media?

2 A. No.

3 Q. You are familiar with Mr. Avery, two chairs to my  
4 right?

5 A. Yes.

6 Q. He is a current inmate of your jail?

7 A. Correct.

8 Q. Has been since November 9, 2005.

9 A. Yes.

10 Q. Other than for a brief time with a  
11 hospitalization and a transfer to the Brown  
12 County jail, he's been continuously in your  
13 custody since that time?

14 A. Yes.

15 (Exhibits 8 & 9 marked for  
16 identification.)

17 Q. You can just drop 7 there, and I will give you  
18 Exhibit 8 and 9; do you recognize those?

19 A. Yes.

20 Q. What's number 8?

21 A. Number 8 is a -- it's a copy of two separate  
22 forms. The first one is the Fifth Amendment  
23 Rights Invoked, indicating that Steven Avery has  
24 invoked his Fifth Amendment rights and that he's  
25 requesting that an attorney be present during

1 questioning. And that was signed by Correction  
2 Officer Hansel on 11/9/2005.

3 Q. Hansel is H-a-n-s-e-l?

4 A. Correct.

5 Q. First name is Noel?

6 A. Noel, yes.

7 Q. And the bottom, I'm sorry?

8 A. The bottom is a Notification of Victim Form. If  
9 a person is released from the jail and there's a  
10 victim, or somebody involved in the case that  
11 needs to be notified, this form is to alert the  
12 corrections officer to do that.

13 Q. Both of these forms, then, that are copied  
14 together on Exhibit 8 are Calumet County Jail  
15 forms?

16 A. Correct.

17 Q. They normally would be found in an inmates file?

18 A. These were stapled to the front of the file.

19 Q. Routinely?

20 A. Yes. These two forms are on the front of the  
21 file so they are very prominent.

22 Q. In Mr. Avery's case, as in the case of every  
23 other inmate?

24 A. Correct.

25 Q. There is a unique file created, or a single file

1           created, for every inmate, for any duration in  
2           the jail?

3       A. There is a paper file created, yes.

4       Q. All right. So Exhibit 8 goes on the front, and  
5           both of them do, stapled on the front, to be  
6           prominent?

7       A. Yes.

8       Q. And Exhibit 9 is what?

9       A. It's a note written by Steve Avery. It indicates  
10          that he does not want to talk with any reporters,  
11          from any news media. This includes TV,  
12          newspaper, radio, internet, magazines, or any  
13          other media.

14      Q. Is that dated, Mr. Byrnes?

15      A. It's dated November 12, 2005.

16      Q. When did you first see it?

17      A. I believe I first saw it when I copied the  
18          contents of his folder for you, a couple weeks  
19          ago.

20      Q. Okay. You found it in the inmate file for  
21          Mr. Avery?

22      A. Yes.

23      Q. That file is available to all of the corrections  
24          officers staff, you have described for us?

25      A. Yes.

1 Q. Do you not routinely look at an inmates file, as  
2 the Jail Administrator?

3 A. On occasion, yes, I will.

4 Q. Maybe we have gone past each other. I asked you,  
5 do you not routinely do that?

6 A. I don't make it a habit, but I generally handle  
7 most of the files.

8 Q. Okay. So how is it that you first saw Exhibit 9  
9 when you set out to copy the Avery file for me?

10 A. I guess -- I guess what confuses me with this  
11 exhibit, if I would have seen it, or I believe if  
12 my sergeant would have seen it, it would have  
13 been date stamped, and it's not date stamped. So  
14 I'm not sure when I saw it. I may have seen it  
15 before, but I didn't recall reading it.

16 Q. And the question is why, why would you have not  
17 seen that until I asked you to copy Mr. Avery's  
18 file for this hearing?

19 A. It was probably given to a corrections officer,  
20 the corrections officer may have noted it in the  
21 jail log and then placed it in the file.

22 Q. You found it in the place it should be, correct?

23 A. Yes.

24 Q. I mean the correct place for this Exhibit 9 to  
25 have been filed, is in the inmate's file?

1 A. Yes.

2 Q. Where you found it?

3 A. Yes.

4 Q. You have no reason to think that one of the

5 corrections officers hid it, or misfiled it, or

6 did anything mistaken or improper with it?

7 A. No.

8 Q. You just had not looked for it?

9 A. I didn't recall reading it until I viewed it and

10 made you a copy.

11 Q. Fair enough. And I guess, if I'm hearing you,

12 you may have read it earlier, you just don't

13 recall?

14 A. Yes.

15 Q. Have you talked to your jail sergeant about

16 whether he or she was familiar with it?

17 A. No, I did not.

18 Q. Have you had conversations with anyone at all

19 about Exhibit 9 before today?

20 A. No.

21 ATTORNEY STRANG: I will offer Exhibit 8

22 and 9, your Honor.

23 THE COURT: Any objection?

24 ATTORNEY FALLON: No objection.

25 THE COURT: Exhibits 8 and 9 are admitted.

1 Q. (By Attorney Strang)~ Mr. Byrnes, you are aware  
2 of three televised interviews that occurred in  
3 the Calumet County Jail, involving Mr. Avery,  
4 during November and December of 2005?

5 A. Yes.

6 Q. Are you aware of any more than that, televised  
7 interviews now, I'm speaking of?

8 A. No.

9 Q. The first of these would have been November 12  
10 with Emily Matesic, of Channel 2, out of Green  
11 Bay?

12 A. Yes, I believe so.

13 Q. Was the second, November 18, Jennifer Kolbusz,  
14 Channel 5, out of Green Bay?

15 A. Yes.

16 Q. And the third was Ms Kolbusz again, December 14;  
17 does that sound right?

18 A. I would agree, that sounds right.

19 Q. Okay. When did you first have any contact, of  
20 any kind, with Emily Matesic?

21 A. I'm not sure if I did.

22 Q. Ever?

23 A. No, I'm not sure that I did.

24 Q. Wouldn't know if she walked in the room?

25 A. Well, I believe I saw her when she testified, and

1 did not look familiar.

2 Q. Okay. When did you first have any contact at all  
3 with Jennifer Kolbusz?

4 A. I'm not sure if I spoke with her on the phone, or  
5 if she came to our lobby, but I was present when  
6 she did an interview with Mr. Avery.

7 Q. Do you know whether that was the first or second  
8 interview that she did?

9 A. I believe it was the first.

10 Q. What caused you to be present, in the lobby, for  
11 that interview?

12 A. I think she asked to speak with somebody in  
13 charge, or she explained what she wanted and she  
14 was referred to me, and I went out and spoke with  
15 her.

16 Q. What did she tell you?

17 A. She indicated that she wanted to conduct an  
18 interview with Mr. Avery and requested to see  
19 him.

20 Q. Your response?

21 A. At that time, I requested that she write a note  
22 to Mr. Avery, and I indicated to her I would show  
23 that to Mr. Avery and he could make that  
24 decision.

25 Q. Was Jennifer Kolbusz on Mr. Avery's visitor list

on November 18, 2005?

2 A. No.

3 Q. Was she his lawyer?

4 A. No.

5 Q. Was she a member of the clergy?

6 A. No.

7 Q. She wasn't his probation agent?

8 A. No.

9 | Q. How about law enforcement?

10 | A. No.

11 Q. What provision of the jail rules or regulations  
12 might we look to for a suggestion that somebody  
13 could appear in the lobby, write a letter to an  
14 inmate, and the Jail Administrator would take the  
15 letter to the inmate?

16 A. There's nothing in policy.

17 Q. You took a letter to Mr. Avery, personally?

18 A. I believe I did, yes.

19 Q. All right. And what -- what was your  
20 conversation with him?

21 A. I just explained the situation, that there was a  
22 person from the media in the lobby requesting to  
23 see him. I handed him the note and waited for  
24 his reply.

25 | (Exhibit 10 marked for identification.)

1 Q. (By Attorney Strang)~ I show you Exhibit 10.

2 Now, that's just one page out of what I'm sure is  
3 a longer document, but maybe you recognize it?

4 A. Yes. It's copies of our jail log entries. The  
5 date would be November 12th, 2005. The first  
6 entry on this page was made at 9:17 and the last  
7 entry at 1933 hours.

8 Q. Thank you. Is Exhibit 10 something that is  
9 prepared by Calumet County Jail staff, in the  
10 ordinary course of their business duties?

11 A. Yes.

12 Q. Is it prepared at, or about, the time of the  
13 events it reflects?

14 A. As close as possible?

15 Q. Prepared by someone with knowledge of the facts  
16 or the events that they are entering in the  
17 comments line?

18 A. Correct.

19 Q. And is it then maintained and kept, in the  
20 ordinary course of business, at the Calumet  
21 County Jail?

22 A. Yes.

23 ATTORNEY STRANG: I offer Exhibit 10.

24 THE COURT: Any objection?

25 ATTORNEY FALLON: And Exhibit 10, which is

1 just one page or page two.

2 ATTORNEY STRANG: I just marked the one  
3 page as Exhibit 10.

4 ATTORNEY FALLON: I have no objection.

5 THE COURT: Exhibit 10 is admitted.

6 Q. (By Attorney Strang)~ Now, I want to go back to  
7 this first entry that you started describing to  
8 us in identifying Exhibit 10. There's a code  
9 number there, I see No. 801 and, then, for  
10 instance, in the next entry, I see a number 700,  
11 those numbers refer to people; correct?

12 A. That's correct.

13 Q. Who's Number 801?

14 A. 801 would be Sheriff Pagel.

15 Q. He's got ultimate responsibility for the Calumet  
16 County Jail?

17 A. Correct.

18 Q. As well as for the Calumet County Sheriff's  
19 Department?

20 A. Yes.

21 Q. And Number 700, is that you, the Jail  
22 Administrator.

23 A. Yes.

24 Q. All right. So on November 12, 2005, at 9:17,  
25 going on 9:18 in the morning, somebody named

1           Juckem, I guess, receives a call from Sheriff  
2           Pagel, correct?

3       A. Yes, that's Corrections Officer Denise Juckem.

4       Q. She's somebody who works for you as a corrections  
5           officer?

6       A. Yes.

7       Q. So, what she's telling us, is that Sheriff Pagel  
8           called and he states, if the media want to  
9           interview Avery, we can allow them to do so,  
10           right?

11      A. Yes.

12      Q. Avery refers to Steven Avery?

13      A. Yes.

14      Q. If Avery wants to talk to them, right?

15      A. Correct.

16      Q. This can occur in the conference room, in the  
17           jail, right?

18      A. Yes.

19      Q. We are to make sure all the media logs in?

20      A. Yes.

21      Q. Make sure we get the TV station, reporter, and  
22           camera person's name?

23      A. Yes.

24      Q. Also, make a copy of their ID?

25      A. Correct.

1 Q. All right. Were you aware of that direction from  
2 Sheriff Pagel the morning of November 12th?

3 A. I believe so. I believe we had discussed that  
4 within the first couple days that Steven was in  
5 the jail.

6 We were getting a lot of requests from  
7 media for information, and also to see him. And  
8 I did, at one point, approach the sheriff and  
9 asked him how he wanted to handle that. And what  
10 is written down here was pretty much what we had  
11 discussed.

12 Q. Okay. Do you remember if it was November 12 that  
13 you approached the sheriff about that?

14 A. I believe it would have been before that,  
15 probably the 10th or 11th. It was within the  
16 first couple of days that Steven Avery was in the  
17 jail.

18 Q. Okay. And the next thing that Denise Juckem  
19 does, according to the log, Exhibit 10, is  
20 roughly 27 minutes after the phone call from  
21 Sheriff Pagel, she makes a 1021, which is just a  
22 call, right?

23 A. Yes, a phone call.

24 Q. To you?

25 A. Yes.

1 Q. And tells you what Sheriff Pagel advised, right?

2 A. Correct.

3 Q. And then she asks you questions about,  
4 essentially, how -- how you want them to move  
5 Mr. Avery back and forth for such a visit?

6 A. Yes.

7 Q. And you then tell her if we need extra help while  
8 the media is here, we can call someone in to  
9 assist with jail duties; is that what you told  
10 her?

11 A. Yes, generally we do have five part-time people.  
12 And if they felt they needed help, I had told  
13 them they were free to call in some help.

14 Q. Now, November 12, we have had testimony here, I  
15 think it was a Saturday morning. I don't expect  
16 you to remember that, but I think the calendar  
17 will bear me out. So, if you are going to have  
18 to call in help on short notice, on any day of  
19 the week, you are going to incur some extra costs  
20 at the jail, correct?

21 A. Yes.

22 Q. Labor costs, right?

23 A. Pardon me?

24 Q. Labor costs.

25 A. Labor costs, yes.

1 Q. And if it's going to be a Saturday or Sunday,  
2 those costs may be higher still?

3 A. No, the hourly rate is the hourly rate.

4 Q. They need a union. But, essentially, if I  
5 understand you here, what you -- what you are  
6 telling the corrections officer, is the checkbook  
7 is open. We'll pay extra labor costs, if we need  
8 to, in accommodating the media, if they want to  
9 see Mr. Avery?

10 ATTORNEY FALLON: Objection, speculation as  
11 to the intent.

12 THE COURT: I will sustain the objection.

13 Q. (By Attorney Strang)~ Did you put in any limits  
14 on how much extra help, how often, for how long,  
15 on who's say so?

16 A. Not necessarily, but it's always been our policy  
17 in the jail, that they are free to call in a  
18 part-time staff person for any visiting night,  
19 any visiting time. So, it's not unusual to allow  
20 them to do that.

21 Q. Well, let's talk about what's unusual. Prior to  
22 November 12, 2005, during your entire tenure as  
23 Jail Administrator at the Calumet County Jail,  
24 can you recall one occasion on which a TV camera  
25 crew interviewed an inmate of the jail -- in the

1                   jail?

2       A. I couldn't give a specific.

3       Q. No one comes to mind?

4       A. Not off hand.

5       Q. How long have you been with the Calumet County  
6                   Sheriff's Department?

7       A. Twenty-seven years.

8       Q. In your 27 years with the Calumet County  
9                   Sheriff's Department, do you remember any other  
10                  inmate -- I don't need the name -- but do you  
11                  remember any other inmate who has attracted as  
12                  much media attention as Steven Avery?

13      A. No.

14      Q. The next entry, and now we have got a corrections  
15                  officer named Konen?

16      A. Yes.

17      Q. The next entry is at 10:16, roughly, that same  
18                  morning, November 12. And we have got Channel 2  
19                  calling, right?

20      A. Yes.

21      Q. And who's -- who's number 714?

22      A. That would be Denise Juckem.

23                   ATTORNEY STRANG: Where's my second copy?  
24                   Your Honor, I realize I'm leaving you in the dark.

25                   ATTORNEY FALLON: Never a good thing to do

1 to a Judge.

2 THE COURT: Thank you.

3 ATTORNEY STRANG: Sure. May I share with  
4 you? May I share with you?

5 THE WITNESS: Sure.

6 ATTORNEY STRANG: I gave away my last copy  
7 to the Judge.

8 Q. (By Attorney Strang)~ So, you know, some 30  
9 minutes, not even, or I guess 32 minutes after  
10 this discussion that you have about how we're  
11 going to move Avery if the media wants to see  
12 him, low and behold we get a call from the media,  
13 at least according to Exhibit 10?

14 A. We were getting a lot of calls.

15 Q. Okay. And Ms Juckem, or Officer Juckem and  
16 Officer Konen go back and, at least according to  
17 this, they talk to Avery, ask him if he would  
18 speak to the media?

19 A. Correct.

20 Q. And Avery stated -- and here they quote -- "Yeah,  
21 for a second."

22 A. Yes.

23 Q. Have you given instructions to corrections  
24 officers on when to use quotations in the jail  
25 log, quotation marks?

1 A. No.

2 Q. And your understanding, though, would be that the  
3 use of quotation marks connotes a verbatim  
4 statement from the person being quoted?

5 A. Yes.

6 Q. That's certainly how you would rely on this  
7 document, in reading it?

8 A. Yes.

9 Q. And then it looks like, within 30 minutes,  
10 there's some further discussion between Officer  
11 Konen now and, again, Sheriff Pagel? I'm sorry,  
12 go ahead, you take it. 10:46 a.m.?

13 A. Yes.

14 Q. And at least what -- is it Mr. Konen?

15 A. Yes.

16 Q. Officer Konen?

17 A. Yes, Todd.

18 Q. Says is, that Sheriff Pagel advises, corrections  
19 officers are to stand outside the conference  
20 room, not inside, when above is being interviewed  
21 by the media?

22 A. Yes.

23 Q. Did Sheriff Pagel explain to you, at any time,  
24 why he wanted the officer standing outside the  
25 room?

1       A. At that time, it was the first few days that he  
2                  was in our jail, and due to what he had been  
3                  accused of, we wanted to be close, for security  
4                  reasons, yes.

5       Q. Okay. Why have them outside the room, not inside  
6                  the room, according to Sheriff Pagel; what did he  
7                  tell you about that?

8       A. I'm not sure he explained it. But generally,  
9                  with all professional visits, we don't stay in  
10                 the room, unless there is an immediate security  
11                 concern.

12      Q. Sure.

13      A. We allow the conversation in private.

14      Q. When -- When a lawyer visits, for professional  
15                 visit, contact visit, it would not be the  
16                 practice to have even one correction officer  
17                 standing outside the door, would it?

18      A. No.

19      Q. Let alone two.

20      A. No.

21      Q. So this, having two corrections officers outside  
22                 the door, was an improvised procedure here, to be  
23                 used with media -- media interviews of Mr. Avery?

24      A. It was a decision based on everyone's safety.

25      Q. And that decision was Sheriff Pagel's?

- 1 A. Yes.
- 2 Q. The interview room itself, that was used here,  
3 you are familiar with?
- 4 A. Yes.
- 5 Q. It has what I would call linoleum floor, or tile  
6 floor?
- 7 A. Correct.
- 8 Q. The hallway through which the visitor comes and  
9 goes, is the same linoleum tile?
- 10 A. Correct.
- 11 Q. The hallway through which the inmate passes into  
12 the other door, the second door, is a poured  
13 concrete floor?
- 14 A. There's some sort of covering on it but, yeah, it  
15 is a hard surface.
- 16 Q. It's a hard surface. The two doors into this  
17 visiting room are heavy metal security doors?
- 18 A. Yes.
- 19 Q. With security glass?
- 20 A. Yes.
- 21 Q. They are not flush with the floor?
- 22 A. No.
- 23 Q. That is, there's a gap of an inch or something  
24 under each of those doors?
- 25 A. Probably, yes.

1 Q. One standing within a couple feet of those doors  
2 can hear, with relative ease, what people are  
3 saying in a normal conversational tone inside the  
4 visiting room?

5 A. It's not been my experience. I disagree, no.

6 Q. You could not hear, if you're standing at the  
7 door, what people are saying in a normal  
8 conversational tone, in the interview room?

9 A. I don't believe so. As I said, I did stand  
10 outside the door during one of the media  
11 interviews, and I couldn't hear the conversation.

12 Q. At all?

13 A. No, I may have heard some of the noise, but it  
14 wasn't to the point where I could understand the  
15 words.

16 Q. Could make out the words, okay.

17 A. Correct.

18 Q. Fair enough. And, yet, the privacy concern, the  
19 not being overheard, with lawyers or clergy  
20 visiting an inmate, causes you not to station  
21 someone near the door?

22 A. Not so much a privacy concern with an attorney  
23 visit. It's primarily a security concern with  
24 the media, why we wanted someone close. With an  
25 attorney, there's generally not that concern

1           about the attorney's safety. It's somebody that  
2           -- In most cases. It's someone that the inmate  
3           is looking forward to, to help them, so they are  
4           usually glad to see them.

5       Q. Okay. You know, I don't disagree with that. Any  
6           reason to think that -- here, that Mr. Avery was  
7           not glad to see the media?

8       A. No. But I have seen media at times, it depends  
9           on their approach. And not knowing Mr. Avery at  
10          that time, we didn't want to take a chance.

11      Q. You had a concern, potentially, or at least  
12          didn't want to take a chance, on the safety of  
13          the two people from the media?

14      A. Correct.

15      Q. That is, he may not have been happy to see them,  
16          was your concern?

17      A. He may not have been happy, or they may have done  
18          something to provoke him during the interview.

19      Q. You know, I have done lots of things to provoke  
20          clients during interviews in a jail, but I have  
21          never had a sheriff's deputy standing there for  
22          my safety. So what was the concern about the  
23          media provoking Mr. Avery?

24      A. I guess, as I said, we weren't sure. Unfamiliar  
25          with Steven Avery, we weren't sure what types of

1           questions they would ask, or what they would  
2           imply and what his reaction might be.

3       Q. Okay.

4       A. Because they are his professionals, in a way,  
5           that I felt there was a duty to protect them.

6       Q. Okay. Giving you back Exhibit 10, it was a busy  
7           day for Mr. Avery, because a couple hours,  
8           roughly, after Emily Matesic and her cameraman  
9           leave, in comes Mr. Avery's lawyer, right?

10      A. Correct, at 1:24 p.m.

11      Q. He meets with Mr. Avery?

12      A. Correct.

13      Q. No corrections officers are stationed outside the  
14           doors for that meeting?

15      A. I don't believe so.

16      Q. That would reflect it if there were?

17      A. It probably would.

18      Q. And what's the entry there concerning the note  
19           that Mr. Avery writes?

20      A. It indicates the entry was made at 4:04 p.m. It  
21           should be noted, that the above subject,  
22           Mr. Avery, they are referring to, wrote a note to  
23           the jail staff, that he wishes not to speak with  
24           any media, newspapers, internet, etcetera. All  
25           calls inquiring about subject should be directed

1 to his attorney, Erik Loy, per his note.

2 Q. Erik Loy is an Assistant State Public Defender  
3 who's responsible for Manitowoc and Calumet  
4 Counties?

5 A. Yes, he was his attorney at that time.

6 Q. That's something you knew at the time?

7 A. Yes.

8 Q. That's something your staff knew at the time?

9 A. Yes.

10 Q. The jail log is maintained for access to you, or  
11 access by you?

12 A. Yes, I review it daily.

13 Q. Your jail sergeant reviews it daily?

14 A. Yes.

15 Q. The corrections officers are expected to review  
16 it daily?

17 A. Yes.

18 Q. That's an entry, then, you would have seen on  
19 Monday, November 14th.

20 A. Correct.

21 Q. You did see that entry on Monday, November 14?

22 A. I believe so, yes.

23 Q. You reviewed the jail log first thing in the  
24 morning, essentially?

25 A. Yes.

1 Q. At any time after November 14, 2005, are you  
2 aware of Mr. Avery submitting a contrary, or  
3 overriding written instruction, to the jail,  
4 about his preferences with respect to contact  
5 with the media?

6 A. Not that I'm aware of.

7 Q. You searched his file carefully?

8 A. Yes.

9 Q. You personally copied the contents of the entire  
10 Avery inmate file?

11 A. Most of it, there were some private letters that  
12 I didn't forward to you.

13 Q. Private letters?

14 A. I believe there were letters that were written to  
15 Mr. Avery, that for some reason probably weren't  
16 delivered. They were denied for some reason and  
17 kept in the file.

18 Q. Kept in the file?

19 A. Yeah.

20 Q. Okay. But you saw no document superseding or  
21 modifying Exhibit 9, which is in front of you?

22 A. No.

23 (Exhibit 11 marked for identification.)

24 Q. I show you Exhibit 11, which I believe to be the  
25 very next page of the jail log that you have

1 described, and that we marked as Exhibit 10?

2 A. Correct.

3 ATTORNEY STRANG: This is Exhibit 11, your  
4 Honor.

5 Q. (By Attorney Strang)~ Now we're back to Noel  
6 Hansel, who you told us about with respect to the  
7 Invocation of Fifth Amendment Rights. He makes  
8 an entry at, I think, just about 5 p.m., does he  
9 not?

10 A. 1715.

11 Q. Okay. 5:15 p.m.?

12 A. 5:15.

13 Q. Right?

14 A. Yes.

15 Q. What's the -- Why don't you --

16 ATTORNEY STRANG: Well, I will offer  
17 Exhibit 11 as well.

18 ATTORNEY FALLON: I have no objection. I'm  
19 confident -- I have no objection. I'm confident  
20 this is accurate documents provided by the business  
21 records from the jail, so that's fine.

22 THE COURT: All right. Exhibit 11 is  
23 admitted.

24 Q. (By Attorney Strang)~ What's the entry from  
25 Mr. Hansel, at 5:15 in the afternoon?

1 A. Noel would be a female.

2 Q. I'm sorry. I apologize.

3 A. That's all right. I will read the entry. At  
4 approximately 1700 hours, Owen Jensen, a reporter  
5 for NBC 26, was in the Sheriff's Department  
6 lobby. I talked with Jensen. Jensen requested  
7 an interview this evening with Inmate Avery.

8 I told Jensen that Inmate Avery has  
9 refused, in writing, to speak with the media. I  
10 referred Jensen to Inmate Avery's attorney, Erik  
11 Loy, per Inmate Avery's written request.

12 Q. Following the directions, or at least consistent  
13 with the directions set forth in Exhibit 9 by  
14 Mr. Avery, correct?

15 A. Correct.

16 (Exhibit 12 marked for identification.)

17 Q. Showing you Exhibit 12, yet another page from the  
18 same jail log?

19 A. Correct.

20 Q. Prepared and maintained under the same  
21 circumstances?

22 A. Yes.

23 ATTORNEY STRANG: Offer Exhibit 12.

24 ATTORNEY FALLON: I have no objection.

25 THE COURT: Exhibit 12 is admitted.

1 Q. (By Attorney Strang)~ Let's look at the  
2 November 18, 2005, entries. You will recall that  
3 as the day we agreed that Jennifer Kolbusz did  
4 her first televised interview from the jail,  
5 right?

6 A. Correct.

7 Q. Okay. And is there an entry there concerning FOX  
8 11?

9 A. Yes, at 9:50 a.m. The entry was made by  
10 Corrections Officer Cheryl Mason. I will read  
11 it. Mark Leland from FOX 11 called and wanted to  
12 give a message to above subject, to call to  
13 arrange for an interview. I gave subject the  
14 message and he refused to take it, and did not  
15 want to call. And stated that all inquiries to  
16 be forwarded to his attorney. I called Mark  
17 Leland back and advised him what Avery stated and  
18 gave him Erik Loy's number.

19 Q. Now, the subject, or the above subject referred  
20 to there, is Steven Avery?

21 A. Correct.

22 Q. So this time it appears that a corrections  
23 officer, rather than just turning away the  
24 inquiry, goes and asks Mr. Avery, correct?

25 A. Yes. And that had been the procedure we had set

1 up.

2 Q. But Avery's letter, Exhibit 9, clearly said, I  
3 just don't want to talk to these people, correct?

4 A. Yes, but I guess as a corrections officer, if the  
5 sheriff tells me I deliver the message, I would  
6 deliver the message.

7 Q. Was Sheriff Pagel involved?

8 A. Well, he had -- the previous orders were to, if  
9 there was a message, give it to Mr. Avery.

10 Q. Okay. Do you know whether Sheriff Pagel reviews  
11 inmate files at the jail?

12 A. On occasion I have seen him in the jail office.

13 Q. Reviewing an inmate file?

14 A. Possibly, I'm not sure.

15 Q. Does he review the jail log, Exhibits 10, 11, and  
16 12, that document, regularly?

17 A. That I couldn't answer.

18 Q. One way or the other?

19 A. I couldn't answer.

20 Q. Is it available to him?

21 A. It's -- This is available on computer terminal.  
22 It should be available to him.

23 Q. But in any event, Avery refuses FOX 11 and says,  
24 tell them to call my lawyer, or words to that  
25 effect?

1 A. Correct.

2 Q. What's the next entry relating to Mr. Avery,  
3 after that? And that's at, I don't know, 9  
4 something in the morning? Yeah, 9:51,  
5 essentially, November 18, we have that entry,  
6 right?

7 A. Yes.

8 Q. And then the next entry related to Mr. Avery is  
9 when?

10 A. At 2:44 p.m.

11 Q. Same day?

12 A. Correct, made by Corrections Officer Cheryl  
13 Mason.

14 Q. Same officer?

15 A. Correct.

16 Q. And what's that?

17 A. Says, interview with news media done. Started  
18 approximately 1400.

19 Q. No reference to asking Mr. Avery about that one?

20 A. There is no reference, no reference to which  
21 media it was.

22 Q. No reference to anyone walking a letter back to  
23 him?

24 A. No.

25 Q. No reference to any action at all by you?

1 A. No.

2 Q. Had you engaged in any action at all on  
3 November 18, with respect to admission of  
4 Jennifer Kolbusz to the jail, would you expect  
5 your actions to be reflected on Exhibit 12?

6 A. Yes.

7 Q. If we assume, for a moment, that a reporter shows  
8 up at the jail, unannounced, asks to see you, and  
9 hands you a letter, to Mr. Avery -- and maybe we  
10 don't need to assume this -- did that happen, on  
11 at least one occasion?

12 A. Yes.

13 Q. With whom?

14 A. I believe it was the interview we talked about  
15 before, with Channel 5.

16 Q. The last interview, the December 14 interview, or  
17 the --

18 A. Yes.

19 Q. Or did it happen twice with Channel 5?

20 A. Could have happened twice.

21 Q. Okay. And I'm not trying to trap you on this,  
22 once, twice, it happened?

23 A. I recall -- I mean, I recall talking to the media  
24 quite a bit in our lobby, during this time  
25 period, and just, specifically, to name a date

1 and time, would be difficult.

2 Q. I agree. And I'm not -- Again, I'm not trying to  
3 go there, okay. But you at least -- You remember  
4 at least one occasion, and maybe there was more  
5 than one, when Jennifer Kolbusz, in specific,  
6 gave you a letter -- and showed up unannounced,  
7 and gave you a letter, and asked you to give it  
8 to Mr. Avery?

9 A. Yes.

10 Q. You did that?

11 A. Yes.

12 Q. And came back, told Ms Kolbusz, essentially, he  
13 will see you?

14 A. If he agreed to, yes.

15 Q. You recall, at least, her conducting these two  
16 interviews with Mr. Avery?

17 A. I recall the one interview, as I said, where I  
18 stood outside the door.

19 Q. All right. And that interview started within  
20 minutes after you handed Mr. Avery the letter  
21 from Ms Kolbusz?

22 A. Yes.

23 Q. Not time for Erik Loy to drive from Sheboygan, or  
24 Manitowoc, wherever his office is?

25 A. No.

1 Q. You have -- After reviewing the entire inmate  
2 file for Steven Avery, you have no document  
3 suggesting that Mr. Avery requested, or  
4 initiated, the November 12, 2005 interview with  
5 Emily Matesic, true?

6 A. True, the notes were given to Steven. And I'm  
7 not sure what he did with them.

8 Q. Same as to the November 18, 2005 interview with  
9 Jennifer Kolbusz?

10 A. Correct.

11 Q. Same with the December 14, 2005 interview with  
12 Jennifer Kolbusz?

13 A. Yes.

14 ATTORNEY STRANG: Your Honor, I'm missing a  
15 page of a jail log that I had. I wonder whether  
16 this would be a good time for a break, and I will  
17 get a copy of that page, or I can just take a couple  
18 moments now.

19 THE COURT: No, it's 1:00, let's take our  
20 lunch break at this time. Given the fact that the  
21 pace isn't going as quickly as we thought, let's  
22 resume at quarter to two.

23 (Noon recess taken.)

24 ATTORNEY STRANG: Two quick things before  
25 we resume with him, your Honor, if I may.

1                   THE COURT: All right.

2                   ATTORNEY STRANG: One, Mr. Kratz and  
3                   Mr. Fallon were kind enough to tell me that, at  
4                   least to them, I left an impression that the Calumet  
5                   County District Attorney's Office had the entire  
6                   November 18, 2005 interview, including raw footage.  
7                   That wasn't my intended implication at all.

8                   The DVD or the CD that was produced is  
9                   what was aired on TV, and nothing more. I  
10                  intended no -- if the Court took it that way, I  
11                  certainly intended no such implication.

12                  THE COURT: The only impression I got was  
13                  that they would have had the telephone interview, by  
14                  virtue of the fact that it was conducted over the  
15                  telephone, not --

16                  ATTORNEY STRANG: Right.

17                  THE COURT: -- for any other reason. But I  
18                  did not get the impression that they had any of the  
19                  full length TV interviews.

20                  ATTORNEY STRANG: Right. I just wanted to  
21                  make that very clear, if it wasn't already. Second,  
22                  I think Mr. Fallon and I agreed here that it would  
23                  make sense, and be appropriate for the Court, to be  
24                  permitted to take judicial notice of the calendars  
25                  for 2005 and 2006, so that we don't have to worry

1                   about what's a Saturday and what's a Wednesday and  
2                   that kind of -- the days of the week, as we're going  
3                   through things with witnesses, including on the next  
4                   motion, I assume.

5                   ATTORNEY FALLON: Yeah. I think that's  
6                   true. I think we can agree, for instance, that the  
7                   5th, the 12th, the 19th, and 26th of November were  
8                   Saturdays.

9                   THE COURT: Very well.

10                  ATTORNEY FALLON: And we would also just  
11                  note for the record, that a request has been made to  
12                  Corporate Counsel in New York for the substance of  
13                  the entire interview. The initial request was not  
14                  granted, and we'll see where that takes us, whether  
15                  or not that results in further hearings elsewhere or  
16                  not, but at least so the record is clear, that a  
17                  request was made for the entire interview. It has  
18                  not been adhered to at the moment.

19                  ATTORNEY STRANG: That's -- Not only is  
20                  that not in dispute, but I have heard that before  
21                  from Mr. Fallon.

22                  THE COURT: Answer me something here, the  
23                  motion in this case is a motion to suppress  
24                  statements made to the media. If the State doesn't  
25                  have the statements, what's the relevance of the

1 other content.

2 ATTORNEY STRANG: If the motion is denied  
3 for any reason, then we have a doctrine of  
4 completeness problem. I'm sure that's what counsel  
5 has in mind.

6 ATTORNEY FALLON: That's correct, yes,  
7 because some of those comments and statements were  
8 actually aired, parts of the interview were aired  
9 publicly.

10 THE COURT: Okay. And I understand --

11 ATTORNEY FALLON: So either party may  
12 choose to use some of the on air snippets from the  
13 interview. At this particular point, the defense is  
14 challenging the three in issue, as not wanting that  
15 to occur. But that's a separate issue on the rule  
16 of completeness. And in the interest of accuracy,  
17 which was, I think, something that Ms Kolbusz was  
18 attempting to provide in her testimony. But that's  
19 a separate issue over and above the admissibility  
20 per se of the statements which were aired publicly.

21 THE COURT: All right. Mr. Strang, you may  
22 proceed with your examination of the witness. And,  
23 Mr. Byrnes, you are still under oath.

24 MR. BYRNES: Yes.

25 (Exhibit 15 marked for identification.)

1                   DIRECT EXAMINATION, CONT.

2 BY ATTORNEY STRANG:

3 Q. Mr. Byrnes, this is Exhibit 15, do you recognize  
4 at least the type of form?

5 A. Yes, the form is an Inmate Communication Form  
6 that we use.

7 Q. Part of the business of the Calumet County Jail  
8 is to make regular, the communication of inmates  
9 to jail staff and jail staff back to inmates, by  
10 the use of this form?

11 A. Correct.

12 Q. It's a standard form that your jail, at some  
13 time, created?

14 A. Correct.

15 Q. You maintain these in the ordinary course of the  
16 business of the Calumet County Jail?

17 A. Yes.

18                   ATTORNEY STRANG: Move Exhibit 15.

19                   ATTORNEY FALLON: No objection.

20                   THE COURT: This exhibit is what number?

21                   ATTORNEY STRANG: Fifteen.

22                   ATTORNEY FALLON: We have no objection to  
23 the introduction of Exhibit 15.

24                   THE CLERK: I put the wrong number on, do  
25 you want me to change it to 13.

1                   THE COURT: I thought it was 13.

2                   THE CLERK: It should be, I just put the  
3 wrong sticker on it.

4                   THE COURT: Yes, let's make it 13.

5                   ATTORNEY STRANG: All right. Thirteen it  
6 is. All right. Exhibit 13, so I that's the one I  
7 move.

8                   THE COURT: There's no objection, as I  
9 understand it, from the State?

10                  ATTORNEY FALLON: No. It's been  
11 re-numbered to 13 now?

12                  THE COURT: Correct. Exhibit 13 is  
13 admitted.

14 Q. (By Attorney Strang)~ The top half of Exhibit 13  
15 is the part on which the inmate writes?

16 A. Correct.

17 Q. And then the bottom half is for a response by  
18 jail staff?

19 A. Correct.

20 Q. The top half here is written by Steven Avery?

21 A. Yes.

22 Q. The bottom half is written by you?

23 A. Yes.

24 Q. What's the date of Steven Avery's request, or his  
25 communication?

1 A. This is January 9, 2006.

2 Q. And you write back to him on what date?

3 A. Would have been January 9th, 2006.

4 Q. Same day?

5 A. Yes.

6 Q. What's Mr. Avery asking?

7 A. It's addressed to Jail Administrator, John  
8 Byrnes. It says, I have got TV 26 NBC for a  
9 interview on 1/11/06. Aaron Keller, he is going  
10 to come to see me. Thank you.

11 Q. And then what's your reaction, or your response  
12 to Mr. Avery?

13 A. My response was, I cannot approve a special visit  
14 for this, you will have to do this interview by  
15 phone.

16 Q. Okay. Thank you. In fact, we'll just leave that  
17 there. Now, I think we agreed, before lunch,  
18 that Mr. Avery had not made any request for the  
19 three televised interviews that we have already  
20 discussed, but we now have him making a written  
21 request for a 4th televised interview?

22 A. Correct.

23 Q. And although he had not requested the first  
24 three, you arranged those, and we have gone  
25 through the sequence of your involvement, and

1 Sheriff Pagel's involvement, and that of  
2 corrections officers. This one you are turning  
3 down, when he finally does request one, and my  
4 question for you is, why?

5 A. At some time, I believe it was later in November  
6 or December, the sheriff redirected us, I think  
7 after speaking with Mr. Avery's counsel, not to  
8 grant interviews. It was an agreement that we  
9 would abide by the counsel's wish, the attorney's  
10 wish, that we stop that process.

11 Q. Erik Loy at that time?

12 A. I believe so.

13 Q. Are you aware of any document reflecting that  
14 agreement?

15 A. I'm sure that Sheriff Pagel issued a memo; I  
16 don't have a copy of it.

17 Q. Okay. So that would have -- You would have  
18 received such a memo, or some kind of directive  
19 from Sheriff Pagel, after the third interview we  
20 discussed before the lunch break, but before this  
21 request. So the answer simply is, no, even  
22 though Mr. Avery is initiating the request.

23 A. Correct.

24 Q. Sheriff Pagel had not directed you to prevent  
25 telephone interviews with Mr. Avery, correct?

1 A. There's really no way to prevent it.

2 Q. If the inmate places the call?

3 A. Correct.

4 Q. Right?

5 A. Yes.

6 Q. Okay. Was there any direction about request for  
7 a telephone interview initiated by a member of  
8 the media?

9 A. I believe that any request, whether it was for a  
10 telephone interview or anything, since that  
11 change in direction, it has to be addressed to  
12 Mr. Avery at the Calumet County Jail. They have  
13 to send a letter, or -- we're not even providing  
14 notes to Steven any more.

15 Q. Since this December directive from Sheriff Pagel?

16 A. Correct.

17 Q. As to the three interviews that did happen on  
18 camera, you had an understanding of the topics on  
19 which the reporters wished to interview  
20 Mr. Avery, true?

21 A. Not specifically. It was related to the case.

22 Q. Right. Generally, you understood them to be  
23 wanting to interview him relating to the case?

24 A. Correct.

25 Q. By the case, you mean the pending charges against

1           Mr. Avery, concerning the disappearance and death  
2           of Teresa Halbach?

3       A. Correct.

4           ATTORNEY STRANG: That's all I have. Thank  
5           you.

6           THE COURT: All right. Mr. Fallon.

7           ATTORNEY FALLON: Yes, thank you.

8           CROSS-EXAMINATION

9       BY ATTORNEY FALLON:

10      Q. Do you have the exhibits in front of you?

11      A. Just 13.

12      Q. All right.

13           THE COURT: Counsel, your microphone is  
14           still on there.

15           ATTORNEY FALLON: May I approach the  
16           witness?

17           THE COURT: Yes.

18      Q. (By Attorney Fallon)~ Lieutenant, I'm showing you  
19           what has been received into evidence as Exhibit  
20           No. 8, are you familiar with that form?

21      A. Yes.

22      Q. And do you know its purpose?

23      A. There's two forms here. The Fifth Amendment, or  
24           the notification?

25      Q. And my attention is directed -- I'm directing

1                   your attention to the top part of the Fifth  
2                   Amendment Form?

3       A. Yes, the purpose is to ensure that the jail staff  
4                   understands and makes any law enforcement officer  
5                   that may come in to question an inmate,  
6                   understand that that inmate has invoked his Fifth  
7                   Amendment rights, does not wish to give a  
8                   statement without an attorney present.

9       Q. So, that's to alert any other law enforcement  
10                  officer who may wish to interview a defendant or  
11                  suspect, on any other crime, on any other matter,  
12                  that they would be prohibited from doing so,  
13                  because the individual has invoked his right to  
14                  counsel on all unrelated and related matters,  
15                  correct?

16      A. Correct.

17      Q. All right. And that's for law enforcement  
18                  personnel seeking to come and interview a given  
19                  inmate who is detained at the jail?

20      A. Correct.

21      Q. Okay. Now, you indicated in your direct  
22                  examination that there were at least two distinct  
23                  classes, or groups of individuals, and that the  
24                  rules were different for purposes of facilitating  
25                  visitation; is that correct?

- 1 A. Yes.
- 2 Q. And one group, or one class of individuals, you
- 3 have lawyers, clergy, probation and parole, and
- 4 medical personnel?
- 5 A. Yes.
- 6 Q. And on the other side of the ledger, the other
- 7 group, we have family members, friends,
- 8 relatives, and perhaps other members of the
- 9 general public?
- 10 A. Correct.
- 11 Q. All right. Now, I believe, also, you said in
- 12 your examination that there wasn't anything
- 13 specific in the visitation rules governing
- 14 contacts with the media; is that correct?
- 15 A. That's correct.
- 16 Q. All right. So, for purposes of assessing the
- 17 media, in your opinion, which category does the
- 18 media fall into? Do they fall into the lawyers,
- 19 clergy, professional, law enforcement,
- 20 doctor group; or would they fall into the family,
- 21 friends, relatives, and others group?
- 22 A. We consider them professional visitors, as a
- 23 doctor or an attorney.
- 24 Q. All right. And why were they afforded this
- 25 professional status?

1 A. Well, because we -- Obviously, generally, they  
2 are not family, and the inmates are limited to a  
3 specific number of friends that can visit. I  
4 guess, to allow the visitation, which the inmate  
5 does have a right to access the media, we just  
6 consider them a professional visit.

7 Q. Well, let's talk about that right of access to  
8 the media. Where does that come from?

9 A. The courts uphold that inmates have certain  
10 rights in jail, such as access to the courts,  
11 access to their attorneys, access to their legal  
12 materials, and access to the media, or other  
13 organizations that do help them.

14 Q. Now, is that something that you learned in  
15 training?

16 A. Yes.

17 Q. Could you tell us about that, please.

18 A. I believe, specifically, I learned -- I attended  
19 a Department of Corrections Seminar on writing  
20 policies and procedures. And part of the  
21 materials that we were provided talked about  
22 specific inmate rights that should be protected.

23 Q. All right. So would it be fair to say that you  
24 were sensitive to any given inmate's right to  
25 have access to the media?

1 A. Correct.

2 Q. So, sensitive to their First Amendment right to  
3 free speech?

4 A. Correct.

5 Q. All right. And does that sensitivity somewhat  
6 inform you in exercising your policy of  
7 reasonableness?

8 A. Yes.

9 Q. All right. There was a fair amount of discussion  
10 relative to -- to flexibility that needed to be  
11 afforded to permit professional visits; is that  
12 correct?

13 A. Yes.

14 Q. All right. As a matter of fact, Monday, in  
15 Calumet County, is criminal court intake day; is  
16 it not?

17 A. Yes.

18 Q. And things get rather hectic on that particular  
19 day, correct?

20 A. Yes.

21 Q. There's a lot of court appearances to be held?

22 A. Yes.

23 Q. And as a result, there's a lot of visits by  
24 retained counsel for inmates?

25 A. Yes.

1 Q. As a matter of fact, there may very well be  
2 visits by the State Public Defender's Office  
3 doing indigency evaluations and things of the  
4 sort to see if some in custody person is entitled  
5 to a right of counsel, correct?

6 A. Correct.

7 Q. Now, on a given day like that, do you sometimes  
8 have to call in extra personnel to make these  
9 visits happen?

10 A. Yeah, we generally like to, if we can, staff  
11 heavier on busier court dates.

12 Q. I believe you said the staffing is somewhat more  
13 limited on weekends; is that correct?

14 A. It's limited in the way that there's not always a  
15 supervisor working. The corrections officers  
16 depend more on the patrol supervisors to assist  
17 them.

18 Q. All right. And in terms of the correctional  
19 individuals, or sometimes referred to as jailers,  
20 the staffing, does that depend on the number of  
21 inmates that may be housed at any given time at  
22 the jail? Do you have to put on extra staffing,  
23 in other words, if you're full versus half full,  
24 for instance?

25 A. We prefer, but there's so many factors that

1 influence it, that it's really hard. We like to  
2 have as many working as we can, but as I said  
3 there's a lot of factors that limit it.

4 Q. And those factors, then, necessitate an exercise  
5 of reasonableness in attempting to facilitate  
6 visits that someone -- that any given inmate may  
7 wish to have?

8 A. Yes.

9 Q. All right. Let's talk about the situation with  
10 Jennifer Kolbusz. As I understand your  
11 testimony, she provided you with a letter briefly  
12 explaining her purpose for visiting Mr. Avery; is  
13 that correct?

14 A. Correct.

15 Q. And you examined the letter?

16 A. Yes, I reviewed it.

17 Q. All right. And you found it to be appropriate,  
18 under the circumstances?

19 A. Yes.

20 Q. And you took that letter and you went down to  
21 Mr. Avery's cell, correct?

22 A. Yes.

23 Q. You handed him the letter, correct?

24 A. Yes.

25 Q. You waited for a reply?

1 A. Yes.

2 Q. And what we didn't hear is, what was his reply?

3 A. Said he would talk to them.

4 Q. All right. At that particular point, was he at

5 all hesitant to grant the interview?

6 A. Didn't appear to be. He studied the letter, and

7 thought about it, and agreed to it.

8 Q. All right. At any time during your contact with

9 him, did he express an unwillingness to meet with

10 them?

11 A. No.

12 Q. As a matter of fact, you gave him the letter,

13 correct?

14 A. Yes.

15 Q. You never took that letter back, correct?

16 A. No, I did not.

17 Q. For all you know, that letter is in his

18 possession to this day?

19 A. Probably, unless he disposed of it.

20 Q. All right. And there was a -- I will withdraw

21 that. When you were discussing with him the fact

22 that Ms Kolbusz, from Channel 5, was wanting to

23 interview him, he never once mentioned Attorney

24 Erik Loy to you, did he?

25 A. No.

1 Q. As a matter of fact, he never mentioned once to  
2 you, Exhibit No. 9, which was the handwritten  
3 letter that he wrote out and was found in your  
4 files, correct?

5 A. No.

6 Q. As a matter of fact, there was no real hesitation  
7 whatsoever in terms of his willingness to meet  
8 with the reporter, correct?

9 A. Correct.

10 Q. And that held true, as far as you know, for both  
11 interviews conducted by Ms Kolbusz, the  
12 November 18th letter circumstance we were just  
13 talking about, and the December 14th?

14 A. Correct.

15 Q. Now, with respect to this media access issue and  
16 Mr. Avery, it's true, is it not, that initial  
17 counsel in this case, Erik Loy, and his  
18 associate, were concerned about the interviews  
19 given to the media by their client, Mr. Avery,  
20 correct?

21 A. Yes.

22 Q. As a matter of fact, he was not heeding their  
23 advice not to give those interviews was he?

24 A. No.

25 Q. And as a matter of fact, the change in the policy

1           that you alluded to by Sheriff Pagel, came at the  
2           request of the attorneys that -- basically, in  
3           effect, asking for a favor that they not -- that  
4           he not grant access or pass on information to  
5           their client, correct?

6         A.    Correct.

7                   ATTORNEY STRANG: Personal knowledge here,  
8                   but I think we need some foundation.

9                   THE COURT: I will sustain the objection on  
10                  foundational grounds, at this point.

11         Q.    (By Attorney Fallon)~ What's your understanding  
12                  as too why there was a change of policy in  
13                  January of '06?

14         A.    As I explained earlier, my understanding from  
15                  conversations with the sheriff was that  
16                  Mr. Avery's counsel at that time had requested  
17                  that we no longer grant access, by the media, to  
18                  Mr. Avery. And the sheriff at that time changed  
19                  his policy of passing notes and asking if  
20                  Mr. Avery wanted to do an interview and, in  
21                  effect, stopped it.

22         Q.    All right. And that, specifically, was at the  
23                  request of his attorneys of record at that time?

24         A.    That was my understanding.

25         Q.    All right. Now, in terms of the interviews, who

1                   were granted interviews -- Well, let's rephrase  
2                   that. In terms of the individuals for whom Mr.  
3                   Avery agreed to be interviewed, those interviews  
4                   were conducted by Emily Matesic, correct?

5     A. Yes.

6     Q. All right. And they were also interviews  
7                   conducted by Jennifer Kolbusz, correct?

8     A. Yes.

9     Q. And it's true, is it not, that Mr. Avery declined  
10                  to be interviewed by Mark Leland, from FOX 11  
11                  news, correct?

12    A. Yes, it's in the jail log.

13    Q. As a matter of fact, in the jail logs, the  
14                  individuals to whom Mr. Avery granted interviews  
15                  are all women, correct?

16    A. Correct.

17    Q. As a matter of fact, for instance, Ms Matesic and  
18                  Ms Kolbusz are young, attractive, dark-haired  
19                  professional women, correct?

20                   ATTORNEY STRANG: Stipulated.

21    A. Correct.

22    Q. (By Attorney Fallon)~ One other matter, in  
23                  November and December, which is the time frame in  
24                  question, it was customary for you and/or other  
25                  jail staff to sit down and have discussion with

Mr. Avery as to how he was doing, how he was adjusting in the jail, correct?

A. Yes.

Q. As a matter of fact, you would review everything from his visitation list, to his medication needs, to his entertainment needs, whatever the case may be; you wanted to see if he was adjusting correctly?

A. Yes.

Q. And comfortably?

A. Yes.

Q. All right. How often would these meetings take place with Mr. Avery?

A. I couldn't say specifically, I know I tried to speak with him weekly, it's probably not that frequent any more.

Q. And as a matter of fact, you did have a meeting with him on November 30th; would that be correct?

A. I guess.

Q. Well, perhaps I can show you a page from the report.

(Exhibit 14 marked for identification.)

ATTORNEY FALLON: May I approach?

THE COURT: Yes.

Q. (By Attorney Fallon) ~Lieutenant, I show you

1           what's been marked for identification purposes as  
2           Exhibit 14; is that correct?

3       A. Yes.

4       Q. Directing your attention to the last entry on  
5           Exhibit 14.

6       A. That's a narrative that Sergeant Hemauer wrote  
7           about a meeting that we had with Mr. Avery.

8       Q. Tell us about that meeting. What does the entry  
9           say?

10      A. I will read it. Earlier this afternoon JA Byrnes  
11           and I invited Inmate Avery into the office to  
12           discuss any concerns, requests, or complaints, he  
13           may have. Inmate Avery stated he is doing as  
14           good as can be.

15           I asked Inmate Avery if everything was  
16           working properly in his housing unit. The only  
17           complaint Inmate Avery indicated, were that  
18           sometimes the water in the shower is too hot and  
19           the reception on the television is poor.

20           Inmate Avery stated he has no problems  
21           with the correctional staff and is -- that's all.

22           ATTORNEY FALLON: I believe the next page  
23           is already an exhibit -- No, it's not. All right.

24           THE COURT: If you are going to add a page,  
25           can the parties agree just to make it part of --

1 ATTORNEY FALLON: Yeah, I'm going to add  
2 Page 6, in the interest of completeness.

3 THE COURT: All right.

4 ATTORNEY STRANG: Sure.

5 Q. (By Attorney Fallon)~ All right. There's the  
6 rest of the that note, would you continue,  
7 please.

8 A. It's, again, on the first page, Inmate Avery  
9 stated he has no problems with the correctional  
10 staff and is being treated okay.

11 I asked Inmate Avery about a report by a  
12 television station, that his mother made the  
13 comment he is depressed. Inmate Avery stated he  
14 was doing okay.

15 Inmate Avery was advised that should he  
16 ever need services from the Calumet County  
17 Department of Human Services, the jail will  
18 assist him in arranging to have someone speak  
19 with him. Inmate Avery again stated he was doing  
20 okay and would let correctional staff know if he  
21 needs assistance from CCDHS.

22 Lastly, we talked about being housed  
23 alone. Inmate Avery stated he is okay with it,  
24 but sometimes he wishes he had someone to talk  
25 to. Inmate Avery made the comment he's facing

1 more time this time than the last. It was  
2 decided that Inmate Avery will continue to be  
3 housed alone, but will be revisited at Inmate  
4 Avery's request, in the future.

5 Inmate Avery thanked JA Byrnes and  
6 myself for our time and was turned over to  
7 correctional staff.

8 Q. Thank you. So it would be fair to say -- or  
9 would it be fair to say that those types of  
10 meetings or debriefings would occur periodically  
11 during his detention?

12 A. Yes.

13 Q. And at that particular meeting, it's obvious he  
14 didn't have any concerns or express any problems  
15 with having media interviews, correct?

16 A. Correct.

17 Q. So, during the course of these periodic reviews,  
18 to your recollection did he ever -- and I'm now  
19 talking specifically from the time frame of  
20 November. Well, that note was November 30th,  
21 through December 15th, were there ever any  
22 concerns expressed by Mr. Avery regarding, geez,  
23 I just don't want any more media contact?

24 A. No.

25 ATTORNEY FALLON: I move into evidence

1                   Exhibit 14 and tender the witness for redirect.

2                   THE COURT: Any objections?

3                   ATTORNEY STRANG: No objection.

4                   THE COURT: All right. The exhibit is  
5 admitted. Mr. Strang.

6                   **REDIRECT EXAMINATION**

7 BY ATTORNEY STRANG:

8 Q. With respect to an inmate's access to the media,  
9        okay, discussed on cross-examination, one of the  
10      things an inmate ordinarily has available to him  
11      in the jail is a telephone?

12 A. Correct.

13 Q. Each block, or pod, however the jail is  
14      organized, has such a phone?

15 A. Yes.

16 Q. That phone can be turned off by jail staff?

17 A. Yes.

18                   ATTORNEY FALLON: Objection, beyond the  
19      scope of cross.

20                   ATTORNEY STRANG: It's clearly within.

21                   THE COURT: I'm trying to remember.

22                   Mr. Strang.

23                   ATTORNEY STRANG: All I'm going is, Avery  
24      was able to initiate calls to the media, by  
25      telephone.

1                   ATTORNEY FALLON: I don't recall bringing  
2                   that up on cross-examination.

3                   ATTORNEY STRANG: Yes, the right of access  
4                   to the media and his training on right of access to  
5                   the media.

6                   THE COURT: Yeah. I will allow the  
7                   question.

8 Q. (By Attorney Strang)~ This is a phone that can be  
9                   turned off by jail staff.

10 A. Correct.

11 Q. But unless it's abused, ordinarily it's on?

12 A. Correct.

13 Q. Doesn't receive incoming calls?

14 A. No.

15 Q. But the inmate can place outgoing calls, collect?

16 A. Yes.

17 Q. There was a short time in March of 2006 where you  
18                   turned off Mr. Avery's phone, or at least moved  
19                   him to a cell that had no phone, correct?

20                   ATTORNEY FALLON: Objection, relevance as  
21                   to what went on in March, we're talking November and  
22                   December.

23                   THE COURT: Mr. Strang, what's the --

24                   ATTORNEY STRANG: It's just a counter  
25                   point. What I'm going to is, he, other than for a

1                   very brief period of time in March, has had access  
2                   to a telephone and could make collect calls.

3                   THE COURT: I don't know that that's  
4                   contested. I'm going to sustain the objection.

5 Q. (By Attorney Strang)~ Mr. Avery, to your  
6                   knowledge, was able to place collect calls to any  
7                   media outlet he wished, who would accept his  
8                   collect call?

9 A. Correct.

10 Q. We discussed the three interviews, television  
11                   interviews, Mr. Avery did not request, and the  
12                   one television interview he did request and was  
13                   turned down. And Mr. Fallon explored the sex and  
14                   the physical characteristics of the reporters.  
15                   The one reporter Mr. Avery ever asked to speak to  
16                   was a gentleman named Aaron Keller, wasn't it?

17 A. I'm not familiar with Aaron Keller -- pardon  
18                   me -- but the note indicates "he".

19 Q. Finally, the November 30 meeting, which I  
20                   understand was one of several similar meetings  
21                   that you have had with Mr. Avery, --

22 A. Yes.

23 Q. -- correct? And so you are the Jail  
24                   Administrator, and with you for that meeting was  
25                   your Jail Sergeant, Sergeant Hemauer?

1 A. Correct.

2 Q. During the period of November and December, 2005,  
3 were you and Sergeant Hemauer in the habit of  
4 regularly visiting every inmate of the Calumet  
5 County Jail, to inquire how things were going,  
6 whether he was depressed, whether the water in  
7 the shower was too hot, how the TV reception was  
8 doing; were the two of you running around and  
9 talking to every inmate, during that time period,  
10 about these solicitous matters?

11 A. I would say we didn't have formal meetings with  
12 them. I'm not sure how formal this was but,  
13 yeah, we keep in touch with the inmates and, I  
14 mean, I want to know what's going on and how they  
15 are doing. And he is not the only inmate in  
16 there, and not the only one I'm concerned about.

17 Q. Sure, but I have had a chance to look at the jail  
18 log, and we have only marked a few pages of it,  
19 but I don't see that -- that sort of attention to  
20 the other inmates. Am I missing something, or  
21 was Mr. Avery a little bit different?

22 A. The jail log that you were provided are entries  
23 that deal solely with Mr. Avery, nothing with the  
24 other 40, 50 inmates that we house. That log was  
25 provided by querying his booking number. And

1                   from that I obtained all the log entries specific  
2                   to him only.

3       Q.   Very well. So the question, really, the final  
4                   question is, was Mr. Avery treated differently in  
5                   terms of your solicitude, the Jail Sergeant and  
6                   the Administrator, visiting him and making these  
7                   sort of inquiries; was he treated differently, in  
8                   the last two months in 2005, than the other 40 or  
9                   50 inmates?

10      A.   No.

11                   ATTORNEY STRANG: That's all I have.

12                   THE COURT: Any other questions?

13                   ATTORNEY FALLON: Nothing further for the  
14                   witness.

15                   THE COURT: You may be seated.

16                   THE WITNESS: Thank you.

17                   THE COURT: Does the defense have any  
18                   further witnesses on this motion?

19                   ATTORNEY STRANG: We do not.

20                   THE COURT: Any other witnesses for the  
21                   State?

22                   ATTORNEY FALLON: One moment. We have  
23                   nothing further.

24                   THE COURT: All right. I know each party  
25                   has submitted a written argument in support of their

1 position on their motion, does either party wish to  
2 be heard orally, after today's evidence on the  
3 motion?

4 ATTORNEY STRANG: I would like an  
5 opportunity to get a transcript, which I'm willing  
6 to pay for on an expedited basis, and submit a  
7 written argument. Because I think we will find no  
8 case that directly controls this on the question of  
9 where the line falls on a citizen becoming, de  
10 facto, an agent of the police. I think it's an  
11 interesting issue. And I would like a chance to  
12 look at the testimony and argue it in writing.

13 ATTORNEY FALLON: Your Honor, I guess I  
14 would disagree. I think there is case law both in  
15 Wisconsin and elsewhere. I cited some of it in my  
16 brief. We have argued it. We have done our  
17 preliminary research. We have taken the testimony.  
18 And I would be prepared to orally argue further  
19 comments, based on the testimony, while it's fresh  
20 in our minds.

21 THE COURT: I think on the general  
22 question, the memoranda submitted by both parties  
23 adequately addressed the point. There was a -- I  
24 don't know that the written memoranda addressed the  
25 significance, if any, of the written request that

1                   was made by the defendant, not to have access to any  
2                   media people.

3                   ATTORNEY STRANG: No, we had none of that  
4                   at the time of the memoranda.

5                   THE COURT: All right. In light of that  
6                   fact, I will grant the request to allow the parties  
7                   to submit written argument, a supplemental memoranda  
8                   on this issue. I will just make it due by  
9                   August 9th.

10                  (Discussion about expedited transcript.)

11                  THE COURT: I also think that the parties  
12                  can probably start researching their memoranda  
13                  before they get a copy of the transcript. I don't  
14                  think the evidence is that complicated here.

15                  ATTORNEY FALLON: Let me ask, Judge, are  
16                  you contemplating, then, a simultaneous filing,  
17                  since we each have already filed our initial replies  
18                  or responses, so that each party will file our final  
19                  position by the 9th; is that the contemplation?

20                  THE COURT: Yes, that is exactly what I  
21                  contemplate.

22                  ATTORNEY FALLON: That's fine.

23                  THE COURT: All right. Then we move on to  
24                  the **Franks** motion regarding the basis for the search  
25                  warrant. I believe the defense is going to begin

1 here. Mr. Buting, you are handling this one?

2 ATTORNEY FALLON: Excuse me, your Honor,  
3 before we begin, if I could have a moment, since I'm  
4 doing this one as well, to reorganize my paperwork.  
5 But I would like the right to be heard on whether or  
6 not the pleading is sufficient to justify an  
7 evidentiary hearing on part of the defense motion  
8 dealing with the **Franks** issue.

9 THE COURT: All right.

10 ATTORNEY BUTING: Judge, I think the State  
11 has had an opportunity to respond to this motion,  
12 several weeks, if they were going to reply and  
13 object to this motion being heard, having a hearing  
14 on that part of it, they could have filed it in  
15 writing. I can't say that I have all the case law  
16 at my fingertips right now, on these issues, because  
17 it wasn't raised as a concern until right now.

18 THE COURT: Mr. Fallon.

19 ATTORNEY FALLON: Yes, Judge. Well, I  
20 would have liked to have had the time to file a more  
21 written rendition of the argument I'm about to make,  
22 but like other counsel, I have been away from the  
23 office quite a bit in the last few weeks.

24 And I did write a brief for the November  
25 5th proceeding, and I wrote a brief with respect

1 to the issue we just had. I did not have time to  
2 write the third brief. That's all I can say.

3 I would note for the record that, in  
4 reading the case law, the courts have often times  
5 footnoted comments regarding the fact that the  
6 issue was not raised at the trial court, and  
7 probably should have been raised, so I did not  
8 want to be put in a situation, should there be an  
9 appellate review, of not having argued the point.

10 THE COURT: All right. I will acknowledge  
11 that you have raised the issue at this time, and I  
12 will take it under advisement, but I think, given  
13 the fact I haven't had a chance to review any  
14 arguments that might have been made either, I would  
15 have difficulty ruling on it at this time. So we  
16 will proceed with the evidentiary hearing.

17 ATTORNEY FALLON: At some point, may I  
18 submit at least a brief offer of what my argument  
19 would have been had the Court entertained it, just  
20 to preserve the record.

21 THE COURT: Yes. And if it turns out that  
22 the Court can still grant your motion --

23 ATTORNEY FALLON: All right.

24 THE COURT: -- even if I take evidence  
25 today, if the Court is satisfied that the defense

1           wasn't entitled to an evidentiary hearing, based on  
2           the material provided. Likewise, Mr. Buting gets an  
3           opportunity to make the counter-argument.

4           ATTORNEY BUTING: All right. Thank you.

5           THE COURT: And I suppose we should have  
6           that due by August 9th as well.

7           ATTORNEY BUTING: My witness is probably in  
8           the hall. Let me check.

9           ATTORNEY FALLON: Your Honor, I will let  
10          you swear the witness, but there's one other  
11          housekeeping matter I thought we might want to take  
12          up regarding the scope of the claim, so that I'm  
13          certain I know exactly what the defense is wishing  
14          to accomplish in terms of what is to be suppressed  
15          and what is not.

16          THE COURT: Okay.

17          **INVESTIGATOR MARK WIEGERT**, called as a  
18          witness herein, having been first duly sworn, was  
19          examined and testified as follows:

20          THE CLERK: Please be seated. Please state  
21          your name --

22          THE COURT: All right. Mr. Fallon.

23          ATTORNEY FALLON: Just so that we're clear,  
24          as I understand the suppression motion, Counsel, you  
25          are challenging the -- primarily and exclusively,

1                   the searches of your client's trailer and garage,  
2                   based on the initial averments in the affidavit  
3                   prepared by this witness; is that correct?

4                   ATTORNEY BUTING: On the **Franks** motion, no,  
5                   it would be the question of whether any part of this  
6                   warrant is sufficient for probable cause, to  
7                   anything that they search, including the property of  
8                   the whole salvage yard.

9                   ATTORNEY FALLON: If you are asserting  
10                  that, then, my point at this time is, I would like a  
11                  demonstration of standing by the defendant, if he  
12                  would prove that he has standing to object to  
13                  searches of locations on the salvage yard, above and  
14                  beyond his private trailer and his garage. If he's,  
15                  then, challenging the entire fruits of everything,  
16                  then he ought to show standing that he's entitled to  
17                  challenge.

18                  ATTORNEY BUTING: Again, Judge, this is --  
19                  I would have thought that if the State was going to  
20                  object to standing, they would have replied. I  
21                  filed this June 15, I think it was, approximately a  
22                  month ago. They haven't raised an issue on the  
23                  **Franks**, whether there is a right to a hearing. They  
24                  haven't raised an issue on standing. Mr. Avery  
25                  lived and worked on the property, just like any of

1                   the others. I think, beyond that, I don't have  
2                   witnesses to establish that today.

3                   ATTORNEY FALLON: I would note for the  
4                   record, that standing is the first issue that needs  
5                   to be dealt with when you are dealing with a  
6                   comprehensive search warrant such as this. And if  
7                   the defense is challenging everything, if everything  
8                   is in play, then it seems to me, the fact that the  
9                   defendant worked there, it doesn't cut the mustard  
10                  in terms of establishing that he has standing, for  
11                  instance, to challenge the searches of burn barrels,  
12                  of fire pits, of the residences of Delores, and  
13                  Steven Avery, the residence of Barb Janda, the  
14                  business office.

15                  He's an employee, as I understand it,  
16                  he's not an owner. So my question is -- That's  
17                  why I asked the question, what is really being  
18                  suppressed and where is the standing? I mean,  
19                  that's hornbook law.

20                  ATTORNEY BUTING: Counsel is correct, he  
21                  would not have standing to object to searches of  
22                  other private residences encompassed in this  
23                  warrant. And maybe I should have been more clear on  
24                  that, but the motion does go to the search of the  
25                  properties, which would include the Rav 4 vehicle

1                   that was found, as well as his personal residence,  
2                   garage, and areas within the general purview of  
3                   those particular buildings.

4                   ATTORNEY FALLON: Again, my question then  
5                   is, well, what is the defendant's reasonable  
6                   expectation of privacy in a vehicle owned by Teresa  
7                   Halbach? Just because it's found in the salvage  
8                   yard, that makes it a reasonable expectation of  
9                   privacy? I think not.

10                  ATTORNEY BUTING: The issue is not what  
11                  privacy he has in the vehicle. The issue is what  
12                  privacy interest he has on the property. And if the  
13                  State wishes to challenge that, we can take  
14                  testimony today on these issues and I can try and  
15                  supplement the record later to establish the  
16                  standing questions.

17                  But they have not raised that until  
18                  today, as a concern. And I think my motion was  
19                  pretty clear as to what is involved here. I  
20                  mean, obviously, issues related to the business  
21                  office, business records, are not in play. There  
22                  is nothing there anyway. I think counsel knows  
23                  that.

24                  As to other private residences on the  
25                  property, again, there is no issue there either,

1                   as counsel is aware of. So there's really only a  
2                   few areas of this 40 acre property that are at  
3                   issue here.

4                   ATTORNEY FALLON: And that's the point of  
5                   the pleading. The pleading does suggest suppression  
6                   of derivative fruits, etcetera. But when you read  
7                   the argument, the entire argument is obsessed with  
8                   the numerous entries to both his trailer and the  
9                   garage, and not much else.

10                  So there's -- that's the reason for my  
11                  question, what is at issue. And if it's the  
12                  trailer and the garage, and those entries, then,  
13                  I will concede standing. I don't have a problem  
14                  with that. But if everything else is in play,  
15                  then Mr. Avery should take the stand and  
16                  demonstrate he has a reasonable expectation of  
17                  privacy, sufficient to be acknowledged by a court  
18                  of law, in the remaining 39 and a half acres.

19                  ATTORNEY BUTING: Perhaps there's confusion  
20                  here. What we -- I anticipate we're going to take  
21                  testimony from the witnesses this afternoon on is  
22                  the **Franks** portion of the motion. That's separate  
23                  from the separate violation alleged, which is the  
24                  exceeding the scope of the warrant.

25                  Before you can even get to that

1 question, we have to determine if the warrant  
2 itself was valid under **Franks**. We have to look  
3 at the alleged untruthful -- or statements made  
4 with reckless disregard for the truth, see if we  
5 can meet our burden to establish the **Franks**  
6 standard. And then, if so, those paragraphs are  
7 stricken from the warrant.

8 Then we look at the warrant to see if  
9 there's probable cause to support it at all. If  
10 there is no probable cause left, then the whole  
11 second part of the motion, which is the exceeding  
12 the scope because they entered over, and over,  
13 and over, and over, after -- all on one warrant,  
14 then that becomes moot.

15 If the warrant is found to be invalid,  
16 lacking probable cause, after we strike and  
17 redact those portions for which the **Franks**  
18 standard has been met, then the rest of it is  
19 mooted. The rest of all of those entries would  
20 be illegal, I think. I think counsel would agree  
21 with that.

22 ATTORNEY FALLON: That assumes he has  
23 standing to challenge the warrant. He has standing  
24 to challenge the warrant as it may pertain to his  
25 residence, and his garage, and probably his yard

1                   area. But the -- For instance, the Toyota Rav 4,  
2                   which the evidence will show, is about as far away  
3                   from Mr. Avery's particular curtilage as you could  
4                   possibly be on that property.

5                   So while I would concede that he has  
6                   standing and, thus, the ability to challenge the  
7                   warrant on our **Franks** theory, for purposes of  
8                   the -- his trailer and his garage, I would  
9                   concede that, and we're ready to go. But that's  
10                  why I asked the question, what is in play. If  
11                  it's all in play, then there should be a  
12                  standing.

13                  ATTORNEY BUTING: Judge, if you think about  
14                  it, it really doesn't matter at this point. We can  
15                  establish the standing question later, if we need  
16                  to. But if the warrant is invalid as to the -- as  
17                  to Mr. Avery's residence, and his garage, then, I  
18                  mean, that's obviously an important legal  
19                  determination that's going to have to be made.

20                  It's a separate question whether, then,  
21                  that means he also has standing, or that somehow  
22                  the rest of the property also would be --  
23                  evidence would be suppressed from other parts of  
24                  the property as well. But either way, if there's  
25                  a **Franks** motion -- if there's a valid **Franks**

1 motion as to his residence, then we should  
2 proceed today.

3 THE COURT: All right. Well, I have  
4 already indicated that the Court is going to take  
5 under advisement the State's motion that the defense  
6 is not entitled to a hearing on a **Franks** challenge  
7 to the search warrant, based on the allegations in  
8 the pleading.

9 We'll hear evidence at this time, on the  
10 **Franks** motion portion of the motion. I'm not  
11 sure, actually, how far we're going to get to the  
12 other challenge to the search warrant today. So  
13 Mr. Buting.

14 ATTORNEY FALLON: That's fine.

15 THE COURT: You may proceed, Mr. Buting.

16 ATTORNEY BUTING: I talked with counsel  
17 about this, I will limit my questioning of -- this  
18 witness actually would have some relevance to the  
19 other part of the motion on the multiple entries,  
20 but for today's purposes, I'm going to limit it to  
21 the parts that deal with the **Franks** motion, and the  
22 issuance of the warrant in the first instance. I  
23 would move to sequester any other witnesses that the  
24 State intends to call.

25 ATTORNEY FALLON: I don't believe any of

1           them are here, but if I can have a moment --

2           THE COURT: Go ahead.

3           ATTORNEY FALLON: -- to canvass.

4           ATTORNEY KRATZ: I will take care of it,  
5           Judge.

6           ATTORNEY FALLON: Okay. Good.

7           THE COURT: Detective, would you spell your  
8           name and state it for the record, please.

9           THE WITNESS: Sure. Mark Wiegert,  
10           W-i-e-g-e-r-t.

11                            DIRECT EXAMINATION

12          BY ATTORNEY BUTING:

13          Q. And how are you employed?

14          A. I'm an Investigator with the Calumet County  
15           Sheriff's Department.

16          Q. And how long have you been there?

17          A. About 14 years.

18          Q. And as part of your responsibilities, did you go  
19           through some training, in law enforcement, before  
20           you arrived?

21          A. Yes.

22          Q. On the job?

23          A. Yes.

24          Q. And what did that involve?

25          A. I have a associate's degree in police science. I

1 have a lot of specialized classes as far as  
2 investigations, interviews, and things like that.

3 Q. Okay. And I assume, then, that part of your  
4 training involved the Fourth Amendment and how it  
5 applies to law enforcement?

6 A. Yes.

7 Q. That would be the rights with regard to searches  
8 and seizures, right?

9 A. Yes.

10 Q. Okay. And did you -- I assume you learned about  
11 the standard that is to be applied under the  
12 Fourth Amendment, that is, probable cause?

13 A. Yes.

14 Q. And you have learned about searches with warrants  
15 and searches without warrants?

16 A. Yes.

17 Q. And you were also taught how to apply for a  
18 search warrant?

19 A. Yes.

20 Q. And that you do so -- And how do you go about  
21 applying for a search warrant?

22 A. Basically, getting your information together,  
23 putting together an affidavit for the search  
24 warrant, and putting the search warrant together,  
25 and presenting it to a judge.

1 Q. And the affidavit that you put together is -- is  
2 that something that you type up yourself?

3 A. No.

4 Q. Is it something that you dictate to someone else,  
5 or what?

6 A. Depends on the situation. Sometimes it's  
7 dictated. Sometimes it may be called in over the  
8 phone. Sometimes we may get it off a report,  
9 depends on the situation.

10 Q. Are they fill in the blank kind of things?

11 A. The affidavit, generally not.

12 Q. Okay. So, it's usually, the words in it, though,  
13 come from you, prepared by some typist somewhere?

14 A. Generally, yes.

15 Q. Not like -- You don't have the District Attorney  
16 prepare your warrants?

17 A. It's usually a member of the District Attorney's  
18 Office that would prepare that for us.

19 Q. Okay. Some clerical staff, is that what you are  
20 saying?

21 A. Yes.

22 Q. And then you are aware that these affidavits have  
23 to be sworn -- that you have to be sworn before  
24 you sign the affidavits, right?

25 A. Yes.

1 Q. And you swear that everything in them is the  
2 truth, right, as you know it?

3 A. The truth, yes.

4 Q. Now, in this particular case, you were working on  
5 an investigation of a complaint, or concern about  
6 a missing person, initially, correct?

7 A. Yes.

8 Q. Teresa Halbach, right?

9 A. Yes.

10 Q. And that complaint, or call, came in to you on  
11 November 3rd, or into your department on November  
12 3rd; is that right?

13 A. That's correct.

14 Q. About 5:30 p.m., something like that?

15 A. Yeah, I think, roughly.

16 Q. Okay. And were you then assigned? How did you  
17 manage to get involved in the case?

18 A. Initially, no. Initially it went to a road  
19 officer, who eventually contacted me for  
20 assistance in the case.

21 Q. Okay. And did you know the Halbach family, or  
22 Teresa?

23 A. No, I did not.

24 Q. And one of your first duties, or one of the first  
25 things you did, anyway, was to go to Teresa's

1                   residence, right?

2 A. Yes.

3 Q. And you spoke to some of her friends and  
4                   roommates who were there, right?

5 A. Friends, roommates, family.

6 Q. Okay. And did you have an opportunity to look at  
7                   a list of phone calls that she had made?

8 A. Yes.

9 Q. How did that come about?

10 A. I believe her -- one of her best friends and her  
11                   roommate had located her phone records on her  
12                   computer.

13 Q. So somebody had a password, they were able to get  
14                   into her online records?

15 A. I assume so, yes.

16 Q. And so you looked at a list of phone calls that  
17                   she had made on her cell phone on -- in  
18                   particular, on October 31st, right?

19 A. Correct.

20 Q. And there were no other outgoing phone calls from  
21                   her cell phone after that date, right?

22 A. Yes.

23                   ATTORNEY FALLON: Your Honor, I'm going to  
24                   interpose an objection as to the relevance of this  
25                   particular line of inquiry, as it may pertain to

1           whether or not there was a lie or a reckless  
2           disregard for the truth in a November 5th affidavit.  
3           It seems to be a bit tenuous in terms of its  
4           connection. It seems to be more exploratory, or  
5           discovery in nature.

6                         THE COURT: Mr. Buting.

7                         ATTORNEY BUTING: It's foundational, Judge.  
8           I'm leading up to what -- how he developed his  
9           investigation, and in particular, with volunteers?

10                  THE COURT: Well, some background might be  
11           appropriate, but I think it's getting a little more  
12           detailed than it needs to be, so I will ask you to  
13           move it along.

14                  Q. (By Attorney Buting)~ At some point, after going  
15           through this list of phone numbers, you noticed  
16           that one of them was a phone call to a Barb  
17           Janda's house, right?

18                  A. Yes.

19                  Q. And somehow you determined that that was  
20           Mr. Avery -- could have been to Mr. Avery, to  
21           Steven Avery; is that right?

22                  A. We had learned that it was a relative of Steve  
23           Avery, specifically his sister.

24                  Q. Okay. So you contacted -- He lived in Manitowoc  
25           County, you are in Calumet; right?

1 A. That's correct.

2 Q. So you contacted the Manitowoc County Sheriff's  
3 Department and requested their assistance?

4 A. Yes.

5 Q. And when you called, you spoke to Sergeant  
6 Colborn?

7 A. Yes.

8 Q. And did he just answer the phone, or did he  
9 somehow get assigned to you?

10 A. I called their department directly and requested  
11 to speak with a shift commander, or supervisor.  
12 And I believe Sergeant Colborn called me back.

13 Q. Okay. And so you spoke to him about some  
14 investigation you wanted to do. And then shortly  
15 after that, you got a call from Lieutenant Lenk;  
16 is that right?

17 A. I spoke with Sergeant Colborn first, and then,  
18 yeah, some time after that, I believe -- I  
19 believe Lieutenant Lenk had called me.

20 Q. So, he called you, you didn't call him?

21 A. No, I didn't call him.

22 Q. Okay. And you learned later, sort of passing  
23 over some things here, but you learned later that  
24 Sergeant Colborn had gone out and talked to  
25 Mr. Avery, Steven Avery, correct?

1 A. Yes.

2 Q. And, in fact, had actually gone into his  
3 residence, looked around, saw that no evidence of  
4 Teresa Halbach or anything amiss, correct?

5 A. I don't know if, initially, Sergeant Colborn went  
6 into the residence. Without reviewing my report,  
7 I don't know that. I know he spoke with Steven  
8 Avery.

9 Q. Okay. Next day is when Detective Remiker, or  
10 somebody, actually went over and went to his  
11 house?

12 A. Yes, eventually somebody did.

13 Q. Okay. Now, at some point, then, on -- was it on  
14 the first night, November 3rd, did you learn that  
15 there was some family or friends who were  
16 interested in assisting the investigation in some  
17 way?

18 A. No.

19 Q. No?

20 A. Not on November 3rd.

21 Q. Okay. Did you learn that on November 4th?

22 A. On November 4th, I spoke with one of Teresa's  
23 friends who was at her residence, and they  
24 indicated they were going to hang some posters.

25 Q. Okay. Let me just go back for a second, just to

1           clarify the record. Actually, on November 3rd,  
2           that same evening, you contacted Sheriff Pagel,  
3           correct?

4       A. That's correct.

5       Q. And he took steps to see that the missing person  
6           complaint was distributed to the media, right?

7       A. Yes.

8       Q. With the hope that that would generate some  
9           public assistance in locating Teresa or her  
10          vehicle, right?

11      A. Yes.

12      Q. And did that include -- Did the request that went  
13          out to the public include a description of  
14          Teresa's vehicle?

15      A. Yes, it did.

16      Q. Do you recall what it was?

17      A. It was -- I believe it was a 1999 Rav 4, greenish  
18          in color. And we had the license plate put out  
19          there as well.

20      Q. Okay. And so, did you get calls from people,  
21          then, interested in providing assistance?

22      A. Yes, we got several calls from the public.

23      Q. Okay. And did some of those actually include  
24          people who were interested in going out, boots on  
25          the ground, doing a search?

1 A. We had gotten inquiries, I believe, the following  
2 day, that people were wondering if there was a  
3 search organized or not.

4 Q. Okay. And that would be November 4th, correct?

5 A. Yes.

6 Q. And that's also the day that you did a flyover of  
7 the Manitowoc County area; is that right?

8 A. I did not, personally, but our department did.

9 Q. Sheriff Pagel, I think, was involved?

10 A. Yes.

11 Q. And that included a flyover of the Avery  
12 property, correct?

13 A. Yes.

14 Q. Were there any other flyovers done of the Avery  
15 property, by the way, on other dates, that you  
16 are aware of?

17 A. I believe after her vehicle was found, I think  
18 there was a flyover done then.

19 Q. Okay. So, after you learned that there were  
20 people interested in helping search and wondering  
21 if anybody was organizing a search, is the word  
22 you said, right?

23 A. Correct.

24 Q. What did you do, or what did you suggest, with  
25 regard to the request for citizens who were

1                   interested in doing that kind of a search?

2       A. Well, basically, when they would call me, I told  
3                   them that at this point we would take their  
4                   names, and if our department was going organize  
5                   anything, and if we were intending on using  
6                   anybody, that we would call them. But at that  
7                   point, we had no intention of forming any kind of  
8                   search.

9       Q. Now, were you concerned, have you ever done any  
10                  -- Let me go back for a second. Had you ever  
11                  done any other missing person cases?

12      A. Yes.

13      Q. Had you ever done any large scale searches for  
14                  missing persons?

15      A. Yes.

16      Q. Where citizens get involved and actually start  
17                  doing searches themselves?

18      A. The other large one that I can remember doing, we  
19                  used firefighters for, and not just citizens. I  
20                  should say, not citizens at all, we used  
21                  firefighters, for the other one that I was  
22                  involved in.

23      Q. Okay. And as an investigator, if there was  
24                  concern about there being a possible crime and  
25                  possible evidence, you might have some concern

1           about citizens just running amok, so to speak,  
2           doing their own searches, freelance, correct?

3       A. If I had a specific area where I thought the  
4           crime was committed, yes, I would have that  
5           concern.

6       Q. Okay. And even without that, I assume if there's  
7           a large scale search, it would be best that it be  
8           organized in some way, so that people are not  
9           re-searching the same areas and, you know,  
10           searching over the same areas; is that right?

11      A. Yeah. Yes.

12      Q. Okay. So, for instance, in the fire, the one  
13           where you used the firemen, you often do  
14           something called a grid search?

15      A. Yes.

16      Q. And that's where people are kind of running, or  
17           walking along in parallel, covering ground, the  
18           same ground, in almost a grid shaped pattern,  
19           right?

20      A. That's correct.

21      Q. So at what point, then, did you learn that some  
22           of these citizens were actually going to do  
23           searches themselves, they actually wanted to get  
24           out into the field and start walking and  
25           searching?

1       A. I had received a phone call late Friday  
2                   afternoon, evening area, by somebody, and I don't  
3                   even recall who it was, that they had intended on  
4                   getting a search party together to go to the  
5                   Manitowoc or Mishicot area to look for her  
6                   vehicle in ditches and things. They were  
7                   concerned that she had an accident.

8       Q. Okay. And did you -- Why did they call you?

9       A. I can't answer why they called me, I don't know  
10                  that.

11      Q. Did you give them any advice, or suggestions?

12      A. No, I did not. They had just advised me that  
13                  they were planning on doing that. And what I  
14                  told them is, that I would notify Manitowoc  
15                  County, if they were intending on searching road  
16                  areas and ditches, that the searchers would be in  
17                  that area, that they may want to have somebody  
18                  out there for traffic control.

19                          And after hanging up with that person, I  
20                  did contact the shift commander in Manitowoc  
21                  County, again, late Friday evening, and told them  
22                  that there were going to be volunteer searchers  
23                  in the area, looking through ditches, things like  
24                  that, that they may want to have an officer in  
25                  the area for traffic control, because I did not

1 know how big it was going to be, or how small it  
2 was going to be.

3 Q. And this was late on, you said Friday afternoon,  
4 that's November 4th, right?

5 A. Yes.

6 Q. And the shift commander that you spoke to was  
7 who?

8 A. I don't know who was working that afternoon.

9 Q. Late afternoon, but before 5?

10 A. I want to say it was after 5, before 8, I  
11 believe. I worked quite late that night, on the  
12 case, so I'm really not sure. I believe between  
13 5 and 8 some time.

14 Q. Would it have been Sergeant Colborn who you spoke  
15 to earlier?

16 A. I don't believe it was Sergeant Colborn. It was  
17 somebody who I had not spoke to at all on this  
18 case, at that point.

19 Q. So it wasn't -- You had spoken to Sergeant  
20 Colborn and Lieutenant Lenk, it was neither of  
21 those?

22 A. No, it was neither of those.

23 Q. Detective Remiker you also spoke with?

24 A. No, it was not him either. It was one of their  
25 road shift commanders.

1 Q. Okay. Okay. And your understanding was that  
2 this search party was going to do this on  
3 Saturday, the 5th?

4 A. That's correct.

5 Q. Okay. And so on Saturday, did you also get some  
6 calls from any of these citizen searchers,  
7 telling you any further plans that they had?

8 A. No, I did not.

9 Q. Did you talk with any of the searchers about  
10 trying to get together with a meeting somewhere,  
11 where they could sort of coordinate their  
12 efforts?

13 A. No.

14 Q. Did you ever suggest that perhaps the searchers  
15 could meet at the Manitowoc Sheriff's Department,  
16 or somewhere nearby there, to try and coordinate  
17 their efforts?

18 A. No. What I did have, was a discussion with  
19 Sheriff Pagel and Investigator Dederling on  
20 Saturday morning. And we had come up with a --  
21 basically a plan that we were going to go to the  
22 Sheriff's Department in Manitowoc and meet with  
23 one of the detectives there.

24 And we thought as long as there were  
25 volunteers in the area, that we would see if the

1           Avery's would give us permission to go on their  
2           property. And if there were volunteers willing  
3           to assist us, that we would go out there and see  
4           if we could get permission, and permission to use  
5           those volunteers, for that purpose.

6       Q. So you had this meeting with Sheriff Pagel and  
7           Dedering, you said?

8       A. That's correct.

9       Q. And your specific interest, or area of interest  
10           at that point, though, was the Avery property?

11      A. During our discussion, that's what we thought we  
12           would do, yes.

13      Q. And prior to that time, had you ever asked any of  
14           the Averys for permission to go into their  
15           salvage area and search?

16      A. I, personally, did not, no.

17      Q. Are you aware of anybody in your department, or  
18           in Manitowoc, whoever asked them, personally?

19      A. Outside of what you asked me earlier, I know  
20           there were some officers who had, days earlier  
21           had talked to some of the Averys, but I don't  
22           know what they asked them.

23      Q. Well, you are aware that they -- they went to  
24           Mr. Steven Avery's residence?

25      A. Yes, I'm aware of that.

1 Q. This is the Manitowoc Sheriff's people?

2 A. Correct, yes.

3 Q. And that he allowed them to come into his  
4 residence and look around?

5 A. Yes.

6 Q. My question then is, do you know whether -- did  
7 either you, or to your knowledge, the Manitowoc  
8 Sheriff's Department, ask any of the Avery's,  
9 Steven or otherwise, if they could go through the  
10 rest of the property, all of the salvage vehicles  
11 and all of that, to search?

12 A. I never did, personally, no. And I don't know if  
13 anybody from Manitowoc did. I'm not aware if  
14 they did.

15 Q. Okay. So -- But Saturday morning you stated that  
16 you were interested, then, in searching that  
17 salvage yard?

18 A. Yes.

19 Q. And why?

20 A. Well, after doing interviews both Thursday night,  
21 Friday, researching Teresa's financial records,  
22 researching Teresa's phone records, knowing that  
23 one of the last places we believe that she was  
24 was on the Avery property, or at least one of the  
25 last places that we think she was, and one of

last people she had contact with, on the phone, we thought that would be a good place for us to start.

Q. And, indeed, Sheriff Pagel had done a flyover of the property just the day before, correct?

A. That's correct.

Q. And did he see anything of suspicion?

A. Not that I am aware of.

Q. Not that you are aware of?

A. Not that I'm aware of.

Q. But at least you had s

Q. But at least you had some idea of how massive the undertaking would be. How many -- Approximately how many vehicles do you think there were there in the salvage yard?

A. At that time, I didn't know. As a result of consequence, or the other search warrants that we did, you know, I have a good idea now how many vehicles there were out there.

Q. Which is?

A. I believe there was roughly 3,800 vehicles.

Q. Okay. So, approaching 4,000 vehicles. And Sheriff Pagel saw that in it's totality, from the air, on November 4th, right?

A. I would assume so, yes.

25 ATTORNEY FALLON: Your Honor, I'm going to

1                   interpose an objection on two grounds. Still, I'm  
2                   not entirely sure that I see the relevance of all  
3                   this, vis-a-vis, the challenge to the averments and  
4                   the warrant. And number two, even if the Court does  
5                   find its relevance, I think we're at the point where  
6                   counsel is leading the witness and should be doing a  
7                   direct, and not a cross.

8                   THE COURT: Mr. Buting.

9                   ATTORNEY BUTING: Well, I can rephrase it  
10                  so it's not leading.

11                  THE COURT: I'm going to sustain the  
12                  objection on relevance. This is not a trial, it's a  
13                  motion hearing. I read your documents. I think  
14                  it's time to get to the meat of your motion.

15       Q. (By Attorney Buting)~ Okay. So going back to  
16                  Saturday morning, November 5th, then, you talked  
17                  about -- your plan was that you would go to the  
18                  Manitowoc Sheriff's Department, that is, you and  
19                  who?

20       A. Myself, Sheriff Pagel, and Investigator Dederling.

21       Q. And that you would try and meet with some of the  
22                  citizens who were interested in searching?

23       A. No, our intention was to meet with Detective  
24                  Remiker, who was working that morning for the  
25                  Manitowoc Sheriff's Department.

1 Q. And did you tell Detective Remiker that you were  
2 interested in getting some space where the  
3 citizens could meet and organize their searches?

4 A. No, my phone conversation with Detective Remiker  
5 consisted of basically telling him that we would  
6 like to come down and meet with him. I did  
7 inform him, over the phone, that there were  
8 volunteer searchers in the area of the Avery  
9 property, and that we would like to get  
10 permission from the Avery family. And if we  
11 gained that permission, that we would like to use  
12 those volunteer searchers to go and search the  
13 Avery property.

14 Q. Well, did you tell Detective Remiker that you  
15 were aware that several of the searchers were  
16 willing to go to the Avery property and search  
17 the junkyard salvage area?

18 A. No, I couldn't have, because I had no knowledge  
19 of that at all. I hadn't talked to any of the  
20 volunteer searchers up to that point, except for  
21 the one phone call that I received the night  
22 before, basically, indicating they were going to  
23 do that. So, no, I did not tell him that. I  
24 told him we would like to meet with him and use  
25 those volunteer searchers, if we had permission

1                   from the Averys to do so.

2   Q. So, your phone call the night before, did it --  
3         did the individuals you spoke with, the citizens  
4         you spoke with, express any interest in searching  
5         the Avery's property?

6   A. No, again, their primary focus when they spoke  
7         with me, is they were concerned, as I think you  
8         get a lot of times, initially, in a missing  
9         persons complaint, that maybe she ran off the  
10        road somewhere, maybe she's laying in a ditch.  
11        There's a lot of deep ditches in that area, if  
12        you're familiar with the area, where that 147,  
13        for example, there's a lot of deep ditches,  
14        there's ponds, there's things like that.

15                  So, in my conversations with the  
16         searchers at that time, they were more concerned  
17         about that than anything else.

18   Q. Well, had you had any phone conversations with  
19         any of the volunteer searchers on Saturday  
20         morning?

21   A. Again, I don't believe I did.

22   Q. Did you tell Detective Remiker that you wanted to  
23         come meet at the Manitowoc Sheriff's Department,  
24         with volunteers, and coordinate your efforts with  
25         theirs?

1       A. No, what I told Detective Remiker, was that I  
2           would like to meet with him, and that there were  
3           volunteer searchers in that area, and if we got  
4           permission from the Avery's, that we would like  
5           to use those volunteer searchers. I believe -- I  
6           believe I know what you are referring to, and I  
7           believe that Detective Remiker may have  
8           misunderstood me on the phone.

9       Q. Well, how were you going to get any of the  
10          searchers to Manitowoc Sheriff's Department where  
11          you would meet and use any of their services?

12      A. Wasn't our intention to bring them to the  
13          Manitowoc Sheriff's Department. It was our  
14          intention to go out to the Averys first and get  
15          permission. We knew from the conversation on  
16          Friday that they were going to be in that area  
17          looking through the ditches. So we knew there  
18          would be searchers in that area. We could meet  
19          with them there. That's how we were going to do  
20          that.

21      Q. So, your plan was you were just going to go, so  
22          then why go to the Manitowoc Sheriff's Department  
23          at all?

24      A. Because we wanted to meet with Detective Remiker  
25          and see what his thoughts were on it. It was his

1 jurisdiction at that point. We didn't have  
2 jurisdiction over anything at that point. So we  
3 wanted to go down and meet with him and see what  
4 his thoughts on it were.

5 Q. Why didn't you just pick up the phone -- or --  
6 and call one of Averys, or go over there yourself  
7 and ask the first question, which is, is it okay  
8 if we and perhaps some other volunteers come and  
9 search this salvage yard?

10 A. Again, we were out of our jurisdiction at that  
11 point. We had not been named the lead  
12 investigative agency at that point, number one.  
13 Number two, the media had contacted us on  
14 Saturday and requested if we had any new  
15 information.

16 And we also instructed the media to meet  
17 us at Manitowoc Sheriff's Department. At that  
18 point, we were trying to get it out to the media  
19 as much as we could because we had a missing  
20 persons complaint. We were concerned about her.  
21 That was the other reason that we went to the  
22 Manitowoc Sheriff's Department, because the media  
23 was going to meet us there.

24 Q. Oh, so you had actually arranged to have the  
25 media meet you at the Manitowoc --

1 A. They were calling us constantly, obviously. And  
2 Saturday morning they were, again, on the phone  
3 with us. And we thought we would meet with them  
4 in Manitowoc at that point.

5 Q. And, again, the idea was you were going to do all  
6 that before you contacted the Averys and got --  
7 and even asked if they would give you permission?

8 A. We were going to do what, I'm not sure?

9 Q. Meet at Manitowoc Sheriff's Department with  
10 Manitowoc people and media?

11 A. We were going to meet with detectives and the  
12 media, yes.

13 Q. Before going -- before contacting the Averys?

14 A. Yes.

15 Q. Okay. Did you have any reason to believe, or any  
16 concerns that the Averys would not have given  
17 permission?

18 A. Not at that point, no.

19 Q. And I assume, at that point, you didn't believe  
20 you had probable cause to get a search warrant  
21 for the Avery property?

22 A. No, I did not have any probable cause at that  
23 time.

24 Q. So, did you ever meet with any of the -- any of  
25 the volunteers on Saturday morning?

1       A. No -- Well, let me go back from there. After we  
2           got the call from Pam Sturm, who was a volunteer  
3           searcher, obviously we talked with her. But  
4           prior to that, no, I did not meet with any  
5           volunteer searchers.

6       Q. Did you -- Do you know whether the volunteer  
7           searchers had any kind of maps that they were  
8           working with?

9       A. I found that out later in talking to  
10           Mr. Hillegas. He instructed me, or told me  
11           later, basically, that he had gotten some maps  
12           and things together. At the time, I did not know  
13           that.

14      Q. Did the maps come from you?

15      A. No.

16      Q. Do you know if they came from the Manitowoc  
17           Sheriff's Department?

18      A. In speaking with Mr. Hillegas, at a later date,  
19           he had told me that he had taken them off the  
20           internet.

21      Q. All right. So, is it your testimony, that until  
22           you got a phone call from a woman by the name of  
23           Pamela Sturm, while you are at the Sheriff's  
24           Department in Calumet, that you had no idea  
25           whatsoever that any of the volunteers were going

1           to be searching the Avery property?

2   A.   That is correct.

3   Q.   But you don't know what Manitowoc may have known  
4       as to that?

5   A.   No, I don't know.

6   Q.   Was there some effort to -- in the public, in the  
7       media, information that was distributed, or was  
8       there some effort to centralize a phone number  
9       where people could call if they had found  
10      something?

11   A.   During our initial press conference, or news  
12       release, on the night, actually, that she was  
13       reported missing, on the third, we had given out  
14       our Sheriff's Department and our Crime Stopper's  
15       number. If anybody had any information about  
16       Teresa, we instructed them to call those numbers.

17   Q.   And when you got a call, you got a call at some  
18       point on Saturday morning, from Pamela Sturm,  
19       right?

20   A.   Yes.

21   Q.   And do you know what number it came in on?

22   A.   I believe it was our regular line. From what I  
23       understand, she had called from her cell phone.  
24       Then she called the Sheriff's Department phone  
25       number, the regular line, is my understanding.

1 Q. All right. Now, that phone call, actually, part  
2 of it took place before you got on the phone, I  
3 understand; is that right?

4 A. Yes.

5 Q. And that was because it was -- originally, the  
6 call was given to Sheriff Pagel?

7 A. Yes.

8 Q. Okay. And so, then, how did you become involved  
9 in it?

10 A. Actually, Sheriff Pagel, myself, and Investigator  
11 Dederling were physically walking out the back  
12 door of the Sheriff's Department to go to  
13 Manitowoc when Sheriff Pagel got called back into  
14 the Dispatch Center, so we all went back in the  
15 Dispatch Center.

16 At that time, the dispatcher informed  
17 Sheriff Pagel that there was a phone call from a  
18 lady named Pam, I believe. I think that's what  
19 she had said, something about a Rav 4 which she  
20 believed she had found. Sheriff Pagel initially  
21 took the phone, and eventually handed the phone  
22 over to me, because he did not have his glasses  
23 and could not read a VIN number which he was  
24 trying to compare.

25 Q. So, then you got on the phone and spoke to this

1                   woman; is that correct?

2       A. Yes.

3       Q. Now, did you know who this Pamela Sturm woman  
4                   was?

5       A. No.

6       Q. Never met her before?

7       A. No.

8       Q. Never talked to her before?

9       A. No.

10      Q. Okay. And Sheriff Pagel passed it to you because  
11                  you had the full VIN number somewhere?

12      A. No, the dispatcher had the full VIN number.

13                  Sheriff Pagel had the VIN number in his hand,  
14                  which was given to him by the dispatcher, but  
15                  didn't have his glasses with him so he couldn't  
16                  read it, so he handed the phone to me and the VIN  
17                  number to me.

18      Q. Okay. Now, when you talked with her, did she  
19                  give you a description of the vehicle that you --  
20                  that she saw?

21      A. Yes.

22      Q. And did she tell you that it was green?

23      A. I believe she said it was greenish blue.

24      Q. Did she tell you that it matched the description  
25                  of the vehicle that had been passed out on any of

1                   the fliers or anything?

2       A. I don't know her exact words, but she said  
3                   something to the effect, I think she thought it  
4                   was similar to it.

5       Q. Okay. But she did not use the word that it  
6                   matched the description, correct?

7       A. I don't know the exact words she used. Without  
8                   looking at the transcript, I couldn't say the  
9                   exact words she used.

10      Q. Well, did she, in fact, express some concern  
11                  about whether it was -- about a difference in the  
12                  color?

13      A. Yes.

14      Q. She said it was more blue, than green, correct?

15                   ATTORNEY FALLON: Excuse me, your Honor.  
16                  In an effort to expedite the proceedings, we did  
17                  bring an audiotape of that phone conversation, if  
18                  counsel would like to play it. It's four minutes in  
19                  length, thereabouts, and that might speed things  
20                  along. I will offer.

21                   THE COURT: Mr. Buting.

22                   ATTORNEY BUTING: I don't know, at some  
23                  point we may introduce that into evidence, but what  
24                  I'm getting at right now is what his knowledge and  
25                  what his information was at the time that he

1           prepared the affidavit. So I don't know that it's  
2           directly --

3           ATTORNEY FALLON: It's his call. It's his  
4           presentation of evidence. I just thought I would  
5           offer.

6           THE COURT: All right. You may continue.

7           ATTORNEY BUTING: Okay.

8       Q. (By Attorney Buting)~ So, she told you that she  
9           had found this vehicle, that was a Rav 4, but she  
10          didn't tell you that it matched the description  
11          of what she was looking for, right?

12      A. I believe -- And again, without seeing the  
13          transcript I don't know her exact words, but it  
14          was similar. I believe she said it was similar.  
15          She just didn't know exactly.

16      Q. And in fact, she asked what the VIN number was of  
17          Teresa's vehicle so that she could try and  
18          compare it to the one that she had found; is that  
19          right.

20      A. Yes.

21      Q. And did you give it to her?

22      A. No, actually, I requested that she give me the  
23          VIN number so I could compare it to what I had.

24      Q. Is there some reason for doing it that way?

25      A. I just thought it would probably be the easier

1           way for her. No other reason at that point, no.

2 Q.       Okay. So -- So, did she actually find the VIN  
3           number? Did you help assist her in locating  
4           where -- telling her where she could locate that  
5           on the car?

6 A.       Yes.

7 Q.       And did she read the numbers to you?

8 A.       She did.

9 Q.       Or, actually, she had a similar problem with no  
10          glasses, did she not?

11 A.       Yes, she did.

12 Q.       And she had her daughter try and read some of it?

13 A.       Correct.

14 Q.       Now, in fact, she was not able to, neither she  
15          nor her daughter, were able to actually relay to  
16          you all of the VIN numbers that were on this  
17          unknown Rav 4 that they had located; isn't that  
18          right?

19 A.       I believe that she provided me with 10 of the  
20          characters of the 17 that are in the VIN number.

21 Q.       Okay. So she had not -- She was unable to do all  
22          17 characters of the VIN number?

23 A.       Correct.

24 Q.       VIN numbers have a full 17 numbers, correct?

25 A.       Correct.

1 Q. All right. Now, at that point, did you -- did  
2 you -- what did you tell her to do, after she had  
3 given you those 10 numbers?

4 A. Actually, I asked her if she had permission to be  
5 there, first.

6 Q. And why did you ask that?

7 A. Because that was important, to establish that,  
8 whether she had permission to be on that  
9 property, from the Avery family.

10 Q. And what difference would it make if she had not?

11 A. I didn't want her -- First of all, for her  
12 safety, I didn't want her in a place where she  
13 shouldn't be, obviously. I thought if she was  
14 there with permission, it would probably be a  
15 little safer for her. Because, if you listen to  
16 the phone call, by the tone of her voice, she  
17 seemed somewhat concerned. She even mentioned  
18 that there were other people walking around.

19 Q. Were you concerned about whether, legally, the  
20 search -- any search that might result, might  
21 have some problems, if she was there without  
22 permission?

23 A. Well, certainly, that would be a concern as well.  
24 But at the point, again, in the phone  
25 conversation, it appeared that she was concerned

1           about her safety as well.

2   Q.   So did you tell her she could leave, then, and  
3           retreat to some place of safety?

4   A.   What I told her to do is just stay where she was,  
5           that I would be contacting someone from  
6           Manitowoc, basically, get somebody over there as  
7           soon as possible, and if she had any problems,  
8           that she should dial 911.

9   Q.   Okay. So then you called Detective Remiker?

10   A.   Yes.

11   Q.   And you also set off from the Calumet Sheriff's  
12           Department to the Avery property?

13   A.   Yes.

14   Q.   And you went with someone else?

15   A.   I rode over with Investigator Dedering and  
16           Sheriff Pagel had followed us there.

17   Q.   So two vehicles, right?

18   A.   Yes.

19   Q.   And when you talked with sheriff -- I'm sorry,  
20           with Detective Remiker, did you talk with him  
21           after he had gotten to the property, but before  
22           you did?

23   A.   I don't think so, because we arrived not long  
24           after he did. I talked to him on our way there.  
25           I called him with some more information that I

1 had.

2 Q. Was this -- This communication, was this over the  
3 dispatches, or over the radio, or over some  
4 personal cell phones, or what?

5 A. It was on work cell phones.

6 Q. And when you say you called him to tell him that  
7 you had some additional information, what was  
8 that?

9 A. Pam Sturm had informed me that there was a  
10 Lemieux Toyota sticker on the vehicle, and I had  
11 contacted Karen Halbach to inquire if she knew if  
12 there was one. At which time she said she didn't  
13 know, but she would find out for me. And then  
14 Karen, in fact, had called me back and told me  
15 she believed there was one on there. And I  
16 relayed that to Investigator Remiker.

17 Q. All right. So, then, when you arrived at the  
18 property, the Avery compound, had you ever been  
19 there before?

20 A. No.

21 Q. How did you know where to go?

22 A. Investigator -- Detective Remiker gave me  
23 directions.

24 Q. Before he arrived, or after he had gotten there?

25 A. Before he arrived.

1 Q. And how did he know where to go, on the property,  
2 I mean?

3 A. On the property?

4 Q. Yes.

5 A. If I recall Pam telling me, saying that she was  
6 down at the end of the property, or something to  
7 that effect. She kind of explained where she  
8 was. I don't know exactly how Detective Remiker  
9 found her, that I can't answer. But she kind of  
10 described a little bit where she was on the  
11 property.

12 Q. Do you know whether Detective Remiker spoke with  
13 her while he was on his way?

14 A. Not to my knowledge.

15 Q. Did you give Detective Remiker her cell phone, or  
16 anything like that?

17 A. I don't recall doing that, no. I don't think so.

18 Q. Okay. So, okay, you arrived at the Avery  
19 property and you drove down to where?

20 A. Well, when I arrived at the property, there was  
21 an officer at the end of Avery road, which is a  
22 town road. And he said he believed that they  
23 were down towards the end of the property. He  
24 said, kind of go straight, just follow the gravel  
25 road down.

1 Q. And this was some Manitowoc officer you were  
2 talking about?

3 A. I believe it was a Manitowoc road officer at the  
4 end of the road, yes.

5 Q. All right. So, when you drove on to the  
6 property, then, there is a sort of a cluster of  
7 buildings, business kind of buildings, that you  
8 first come into, on your left there; is that  
9 right?

10 A. Mm-hmm, yes.

11 Q. And then, beyond that, is this large sort of  
12 sunken area where all the salvage cars are,  
13 correct?

14 A. Yes.

15 Q. And did you drive your vehicle down into that  
16 depressed area?

17 A. We drove down into the salvage yard area, yes.

18 Q. And drove all the way towards the back, southeast  
19 corner of it?

20 A. Not all the way to the back, no. We drove down  
21 past, if you will, past the salvage yard shop and  
22 then down a small embankment to a clearing area  
23 where there was a car crusher.

24 Q. And you saw Detective Remiker's vehicle there?

25 A. Yes.

1 Q. And you parked next to it?

2 A. Yes.

3 Q. All right. Now, did you, personally, get out and

4 go over and look at the -- this unknown Rav 4?

5 A. I did not.

6 Q. You spoke with Detective Remiker?

7 A. Yes.

8 Q. And did he tell you that he had gone and looked

9 at it?

10 A. Yes.

11 Q. And did he tell you that he had been able to see,

12 himself, that he had been able to read all 17

13 characters of the VIN number?

14 A. Yes, he did.

15 Q. He didn't tell you that he had -- he was unable

16 to read the first two or three numbers?

17 A. Eventually, and I don't know when I learned this,

18 but I know eventually he indicated that he had

19 difficulty seeing the first several digits of the

20 VIN number. However, he used a small flashlight,

21 I believe he said he had gotten from another

22 officer, and he was able to read the entire VIN

23 number at that time.

24 Q. Now, did you know -- or let me ask you this. You

25 didn't stop at the -- other than with the officer

1           out on Avery Road and the highway, did you stop  
2           and talk with any of the Averys, or anybody that  
3           looked like they would -- they were in charge  
4           there, before you drove down into the pit?

5       A. Not prior to going in the pit, no.

6       Q. And did you have any knowledge whether Detective  
7           Remiker had received consent to be where he was  
8           at, at that point?

9       A. I can't answer that. I don't know.

10      Q. Okay. Now, at some point, you were -- other  
11           personnel from Manitowoc and your department  
12           arrived, I take it.

13      A. Yes.

14      Q. And some agreement was made, because of some  
15           concern, that your department would take over the  
16           lead investigation?

17      A. Yes, there was a representative of the Manitowoc  
18           Sheriff's Department, as well as my sheriff, and  
19           eventually the Manitowoc County District  
20           Attorney, as well as the Calumet County District  
21           Attorney, and then that decision was made at some  
22           time during that.

23      Q. And the concern was, that because Steven Avery  
24           had a pending lawsuit, \$36 million dollar civil  
25           lawsuit against Manitowoc County, that there

1           might be some impropriety, or appearance of it,  
2           with having that county and that department now  
3           investigating this case; was that it?

4       A. There was no concern on my part, but obviously  
5           there must have been some concern, somewhere,  
6           that there would be the appearance of  
7           impropriety. But I didn't have any concern at  
8           all.

9       Q. Did you see, while you were at the property --  
10           I'm sorry. Let's get the time down here, so that  
11           we're clear for the record. What time did you  
12           arrive at the property, Avery property?

13      A. I believe it was around 10 after 11 in the  
14           morning, give or take.

15      Q. Okay. And this is November 5th, right?

16      A. Yes.

17      Q. Did -- And you were in charge of this  
18           investigation up to that point, correct?

19      A. Yes.

20      Q. Did you direct that members of your department  
21           should take over custody of the vehicle, or  
22           anything of that sort?

23      A. At that point it was not my call, it was still  
24           Manitowoc County's call at that point, until the  
25           people that are obviously higher up than me made

1                   the decision that we were taking it over.

2   Q.   And what -- How much longer was that, couple  
3                   hours, or what?

4   A.   I would say, yeah, a couple hours. I don't have  
5                   a time on it, but would be a couple of hours  
6                   before it was determined and, actually, that's  
7                   the way it went.

8   Q.   Actually, could it have been as soon as 11:45?

9   A.   Again, I don't know. It was some time after.  
10                  There was some discussions, obviously, that took  
11                  place prior to that happening. It could have  
12                  been. I really don't know.

13   Q.   All right. But is it your testimony, that even  
14                  after that, you didn't have any involvement in  
15                  the directing who would take custody, or maintain  
16                  the custody, of the Rav 4?

17   A.   Well, at that point, there was an officer from  
18                  Manitowoc that was with the Rav 4. I know,  
19                  eventually, one of our officers -- and I don't  
20                  know the time frame on it -- but one of our  
21                  officers eventually had taken over staying with  
22                  the Rav 4 until the Crime Lab would arrive on  
23                  scene.

24   Q.   And you were parked about how far away from where  
25                  the Rav 4 was located?

1 A. I would guess about 100 yards.

2 Q. And there's a little strip of trees kind of along

3 that pond area where you --

4 A. There's a brushy area.

5 Q. Okay. And this was -- The Rav 4 was actually

6 behind the brushy area?

7 A. Yes.

8 Q. Between the brushy area and the berm, right?

9 A. Yes.

10 Q. And so that brushy area was obscuring some of

11 what you could see from your location?

12 A. Some, yes. I mean, you could see the vehicle

13 there. Did you have a plain sight at it, no.

14 Q. At some point, was a decision made to try and get

15 a search warrant for the property?

16 A. Yes.

17 Q. Do you know when that was?

18 A. Timewise, no. Again, the two District Attorney's

19 had arrived on scene. And after conferring with

20 them, we decided that that was the route we would

21 take.

22 Q. Okay. And did you then participate in getting a

23 warrant?

24 A. I did.

25 Q. And did you actually draft the affidavit for that

1 warrant yourself?

2 A. No, it was drafted by a representative from the  
3 Calumet County D.A.'s Office.

4 Q. Did you call it in?

5 A. I did speak with them, yes, and gave them the  
6 information.

7 Q. Okay. So, you provided the information that was  
8 supposed to be put in the affidavit; is that  
9 right?

10 A. Myself, and with the assistance of Detective  
11 Remiker.

12 Q. Well, whose affidavit was it supposed to be,  
13 yours or --

14 A. It's mine. It's mine.

15 Q. Okay. So, you were responsible for insuring that  
16 the information in the affidavit was truthful,  
17 right?

18 A. Yes.

19 Q. And when -- I know the search warrant -- Let me  
20 ask you this. Let's mark this.

21 (Exhibit 15 marked for identification.)

22 Q. Okay. We're up to 15. I'm showing you Exhibit  
23 15, can you identify that?

24 A. Yes, it's a search warrant.

25 Q. And just for the record, could you just indicate

1                   how many pages it is?

2 A.       With the affidavit, or without?

3 Q.       With the affidavit, the whole exhibit.

4 A.       Be 10 pages.

5 Q.       Let me just show it to counsel. Okay. Maybe,

6                   just so we're clear then, can you tell us how

7                   many pages of that are the affidavit?

8 A.       There's two pages that are search warrant, three

9                   pages of affidavit, including the signature page,

10                  obviously.

11 Q.       Okay. And -- I'm sorry, what's the remainder?

12 A.       The remainder, there's two, that's three, that's

13                  five, there would be five other pages, I guess.

14 Q.       And those are the return; is that right?

15 A.       The return, and then there's a, yeah, a face page

16                  from a fax, for the return, yes.

17 Q.       For an amended return, actually?

18 A.       Yeah, right.

19 Q.       And you obtained this at what time; do you

20                  recall?

21 A.       Not off hand, I don't recall what time we

22                  obtained it. It's endorsed by me at 3:10 p.m.

23 Q.       Okay. So around -- At about 3:00 you signed it

24                  and then obtained a signature from Judge Fox, was

25                  it?

1       A. Yes.

2                     THE COURT: All right, Counsel, I think  
3                     since we're going to take a break sometime this  
4                     afternoon, I don't think you are going to get  
5                     through with him in the next few minutes, we'll take  
6                     an afternoon break at this time, resume in 10  
7                     minutes.

8                     ATTORNEY BUTING: Thank you.

9                     (Recess taken.)

10                  THE COURT: At this time we're back on the  
11                  record. I will indicate that I spoke with Counsel  
12                  during the break. And it's obvious we're not going  
13                  to be able to complete the hearing today, on the  
14                  **Franks** motion. It's my understanding that the  
15                  attorneys for both sides have gathered in the  
16                  courtroom. The witnesses that have been sequestered  
17                  earlier, who will be testifying regarding this  
18                  motion; is that correct, Counsel?

19                  ATTORNEY FALLON: We have made an effort to  
20                  do that, I believe there might have been one or --  
21                  one civilian witness excused already?

22                  ATTORNEY BUTING: Is Detective Remiker  
23                  here?

24                  OFFICER: He is on the way.

25                  ATTORNEY FALLON: So we have one witness

1           that was --

2           ATTORNEY BUTING: Three, actually, he is  
3         with Lenk and Colborn.

4           ATTORNEY FALLON: We're waiting for three  
5         Manitowoc.

6           THE COURT: All right. And for the rest of  
7         today's proceedings, I believe, Mr. Buting, you  
8         believe you can finish your direct examination of  
9         Mr. Wiegert and then you are going to take a couple  
10        civilian witnesses?

11          ATTORNEY BUTING: Yes, Patricia (sic) and  
12         Nikole Sturm. And the other witnesses we could  
13         release, if the Court can give some sequestration  
14         instructions. But since some of them aren't here, I  
15         don't know if you want to do it twice, or wait a few  
16         minutes until we're concluded with him, and hope  
17         that the others arrive? Did somebody call for them?  
18         They did.

19          THE COURT: All right. And Mr. Fallon you  
20         are going to --

21          ATTORNEY FALLON: Yes.

22          THE COURT: -- postpone your  
23         cross-examination of this witness?

24          ATTORNEY FALLON: Yes, in an effort to  
25         accommodate Pamela Sturm and her daughter, Nikole,

1           that I would defer cross of this witness until the  
2           9th. In an effort, since they both took the entire  
3           day off, they have been patiently waiting, we will  
4           make an effort to get them in by the close of  
5           business today, so that they could be excused.

6           THE COURT: All right. We still don't have  
7           some witnesses here, correct?

8           OFFICER: They are on their way.

9           THE COURT: From where?

10          OFFICER: Sorry, the District Attorney's  
11           Office.

12          THE COURT: That's not that far away. I  
13           hope they get down here quicker than we get D.A.'s  
14           when we need them. Call up and make sure they are  
15           on their way.

16          THE CLERK: Who am I calling?

17          THE COURT: The D.A.'s Office. Oh, here we  
18           go. All right. Do we have all of the -- We don't.  
19           Who are we missing?

20          OFFICER: Colborn and Lenk.

21          THE COURT: Do we know where they are?

22          OFFICER: Here they are. They are both  
23           here.

24          THE COURT: Okay. It's my understanding  
25           that we now have, in the courtroom, all of the

1                   witnesses who were subpoenaed to appear at the  
2                   hearing today on the defendant's motions regarding  
3                   the search warrants in this case. Because we're not  
4                   going to complete taking testimony today, we're  
5                   going to excuse a number of you. And I believe that  
6                   is everyone, Counsel, except for who?

7                   ATTORNEY FALLON: I believe Earl Avery was  
8                   subpoenaed and he was released earlier in the day.

9                   THE COURT: Okay.

10                  ATTORNEY BUTING: Who was that?

11                  ATTORNEY FALLON: Earl Avery.

12                  ATTORNEY BUTING: Okay.

13                  THE COURT: The two Sturm witnesses.

14                  ATTORNEY BUTING: Sturm, yes.

15                  THE COURT: We're going to take their  
16                  testimony?

17                  ATTORNEY BUTING: Correct.

18                  THE COURT: They will be asked to leave the  
19                  courtroom in a few minutes. But we'll get their  
20                  testimony in. The rest of you will not have to come  
21                  back until August 9. But I want to, because the  
22                  hearing has started, I want to make sure you  
23                  understand that the exclusion order continues to  
24                  apply to you.

25                  That means, you should not talk to any

1                   of the other witnesses in this case who have been  
2                   called, or will be called. You are permitted to  
3                   talk to Counsel between now and the next hearing.

4                   However, in order to make sure that the  
5                   exclusion order has effect, you are not to watch  
6                   any news casts concerning these proceedings, this  
7                   evening, nor to look at any webcast of today's  
8                   proceedings, between now and the next scheduled  
9                   hearing, on August 9. And you should not discuss  
10                  this case either with any of the other witnesses  
11                  who have been subpoenaed, or with anyone else,  
12                  except for Counsel in this case.

13                  Counsel, are there any other admonitions  
14                  either of you wishes the Court to give at this  
15                  time?

16                  ATTORNEY FALLON: I guess I would add the  
17                  written print accounts of the testimony of this  
18                  witness, and the two civilians yet to come.

19                  THE COURT: That's correct, no news  
20                  accounts of any kind. Make sure that you don't read  
21                  any account of today's proceedings until after you  
22                  testify at the conclusion of this hearing. Anything  
23                  else?

24                  ATTORNEY BUTING: Judge, just that the  
25                  witnesses should be instructed that they should

1           return on the 9th, so that we don't have to  
2           re-subpoena them. And maybe warn some of them that  
3           it may possibly extend into August 10th as well.

4           THE COURT: I hope it won't extend into  
5           August 10th, at least on this particular motion  
6           hearing, because we will start at 9:00. But that's  
7           correct, for those of you who are here under  
8           subpoena, you should report back at 9:00 on  
9           August 9th, for the continuation of today's hearing.

10          Mr. Fallon.

11          ATTORNEY FALLON: Yes, I just ask if any of  
12           the witnesses are going to have a problem with  
13           appearing on the 9th if they would immediately let  
14           Counsel, or Counsel's staff, know that there is a  
15           conflict and we'll see if we can work around that.

16          THE COURT: All right. Very well, then the  
17           witnesses who were subpoenaed today can step out in  
18           the hall. Except for the Sturm's, the rest of you  
19           are free to leave today. And after we complete the  
20           examination of this witness, we'll -- I assume  
21           defense counsel will be calling the Sturms.

22          All right. Mr. Wiegert is still on the  
23           stand. Mr. Buting, you may resume your direct  
24           examination.

25          ATTORNEY BUTING: Thank you, Judge.

1 Q. (By Attorney Buting)~ We were talking about the  
2 search warrant affidavit that you filed on  
3 November 5th at around 3:10 p.m., I think it was.

4 And you indicated that you didn't type it  
5 yourself, but you did receive a typed copy at  
6 some point, correct?

7 A. Yes.

8 Q. And you reviewed it?

9 A. Yes.

10 Q. And you -- did you read it carefully?

11 A. I believe so, at the time, yes.

12 Q. And you swore an oath that what was in that  
13 affidavit was the truth, as you knew it?

14 A. Yes.

15 Q. In fact, though, there are a few items that are  
16 not entirely accurate in it, are there not?

17 A. There is one item that I can see, from reviewing  
18 it now, that it's not 100 percent accurate, yes.

19 Q. And which item is that?

20 A. If you look at the affidavit -- I have to find it  
21 here -- Paragraph 5 of the affidavit.

22 Q. All right. And what specific item are you  
23 referring to within Paragraph 5, that's not  
24 correct?

25 A. It indicates that the search provided the VIN

1                   number and lists the VIN number taken from the  
2                   vehicle, which they located. In the affidavit,  
3                   it has got the full VIN number, and I did not  
4                   receive the full VIN number from the volunteer  
5                   searchers.

6       Q.   And you also indicated, on the second line, that  
7                   the volunteer searchers said they had located a  
8                   vehicle that matched the description of Teresa  
9                   Halbach's?

10      A.   Yes.

11      Q.   Did they tell you that it matched -- I think we  
12                  have been through this, but just so it's clear --  
13                  they did not, in fact, tell you that it matched  
14                  the description, they told you it was similar to,  
15                  right?

16                   ATTORNEY FALLON: Objection, argumentative,  
17                  as to context.

18                   THE COURT: Mr. Fallon, can you explain  
19                  your objection a little more.

20                   ATTORNEY FALLON: It seems to me that --  
21                  maybe it's premature, depending on what the next  
22                  question is -- but in terms of a question of  
23                  semantics, or matched, or matching, or similar to,  
24                  whatever the case may be, it seems, given the tone  
25                  of voice and the manner in which the question was

1               asked, it seemed argumentative. But it's been a  
2               long day.

3               THE COURT: Well, just a second, let me  
4               look at the -- Mr. Buting, what is your question?

5               ATTORNEY BUTING: I don't know if it is  
6               possible to read it back, Madam Reporter.

7               (Last question read back.)

8               THE COURT: I think the objection goes more  
9               to the weight of evidence or the inferences to be  
10               drawn from it. I will allow the question.

11 Q. (By Attorney Buting)~ Could you answer it?

12 A. Again, I believe they had told me that it was  
13               similar.

14 Q. All right. And you also said that Investigator  
15               Remiker was able to confirm the VIN number. And  
16               then you list all 17 characters, again, of the  
17               VIN number, and that's not accurate; isn't that  
18               right?

19 A. No, that's accurate.

20 Q. By the time of this preparation of the warrant,  
21               you are saying that Detective Remiker had been  
22               able to do that?

23 A. Yes, he did.

24 Q. Okay. And Detective -- or Investigator Remiker  
25               actually assisted in the preparation of this

1 warrant?

2 A. Yes.

3 Q. This affidavit?

4 A. Yes.

5 ATTORNEY BUTING: I will pass.

6 THE COURT: That's the end of your  
7 questions?

8 ATTORNEY BUTING: That's the end of my  
9 questions, your Honor.

10 THE COURT: Mr. Fallon, I understand you  
11 are going to postpone your cross until the 9th.

12 ATTORNEY FALLON: Yes, I will defer cross  
13 until the 9th in an effort to get the Sturms done.

14 THE COURT: Very well. This witness is  
15 excused.

16 THE WITNESS: Thank you, your Honor.

17 THE CLERK: Please raise your right hand.

18 **PAMELA STURM**, called as a witness  
19 herein, having been first duly sworn, was  
20 examined and testified as follows:

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

23 THE WITNESS: My name is Pamela Sturm,  
24 S-t-u-r-m, P-a-m-e-l-a.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY BUTING:

2 Q. Now, ma'am, did you review anything prior to your  
3 testimony today, to refresh your recollection?

4 A. I read my statement.

5 Q. And that would be the statement that was taken by  
6 the Calumet County Sheriff's Department; is that  
7 right?

8 A. Deputy Dederling.

9 Q. Okay. You didn't review your prior testimony you  
10 have given?

11 A. No.

12 Q. No?

13 A. No.

14 Q. Okay. Didn't see any maps, or diagrams, or  
15 photos, or anything of that nature?

16 A. I saw a photo in the break room.

17 Q. And what was that photo of?

18 A. It was an aerial view of the salvage yard.

19 Q. Okay.

20 A. Yeah.

21 Q. Do you have any familial relationships -- or  
22 relationship with the Halbach family?

23 A. They are my relatives, yes.

24 Q. In what degree?

25 A. Tom Halbach is my first cousin, so Teresa would

1           be my second cousin.

2   Q.    Okay. And I understand that you became involved  
3           as a volunteer -- volunteered your services, I  
4           should say, to help search, once Teresa turned up  
5           missing; is that right?

6   A.    That's correct.

7   Q.    Can you tell me why you felt it necessary for you  
8           to provide some services like that?

9   A.    Well, I guess our motto is family helps family.

10           And Betty had called me on Friday night, which  
11           would be the 4th of November, and told me that,  
12           you know, Teresa was missing.

13                 And I sure wanted to do my part, so I  
14           said, is there a search going to be conducted  
15           tomorrow, which would have been the 5th, and she  
16           said yes.

17   Q.    I'm sorry who was this conversation going on  
18           with?

19   A.    Betty Halbach, who is Tom's sister.

20   Q.    Okay. And did you -- Did you have in mind any  
21           particular place that you were going to search,  
22           or area you were going to search, when you were  
23           having this phone conversation on Friday, the  
24           4th?

25   A.    No, I had no idea where the search party was

1           going to go the next day.

2   Q.   Did you -- Let me ask you this first, before I  
3       get to the next stage.  Did you have any prior  
4       experience doing any kind of searches of this  
5       nature?

6   A.   Not exactly this nature, no.

7   Q.   Like for missing persons, or large areas of  
8       geography, land?

9   A.   Never for a missing person, and never for a large  
10      geographical area.

11   Q.   You have some experience as a private  
12      investigator; is that right?

13   A.   That's correct.

14   Q.   And what -- Are you presently licensed?

15   A.   No, I'm not.

16   Q.   Were you licensed on November 5th?

17   A.   No, I wasn't.

18   Q.   Is there some reason for that?  Were you ever  
19      suspended, or revoked?

20   A.   No, I wasn't suspended or revoked.  It was my  
21      choice.

22   Q.   Okay.  So you just let it lapse?

23   A.   Correct.

24   Q.   And how long ago was it that you had that  
25      license?

1 ATTORNEY FALLON: Objection, relevance.

2 THE COURT: Mr. Buting.

3 ATTORNEY BUTING: I can go on. I think it  
4 goes to her question of whether -- One of the issues  
5 we're dealing with here is whether she's a volunteer  
6 or not, so.

7 THE COURT: I'm going to sustain the  
8 objection. I haven't heard anything to tie it in.

9 Q. (By Attorney Buting)~ Let me ask you it this way,  
10 then, as part of your training to be -- did you  
11 have training to be a private investigator?

12 A. Yes.

13 Q. And did part of that training involve learning  
14 some of the law about Fourth Amendment searches?

15 A. Yes.

16 Q. But, in other words, you learned what the  
17 standard of probable cause is, correct?

18 A. That's correct.

19 Q. And did you learn about the need for search  
20 warrants?

21 A. That's correct.

22 Q. Did you also learn about warrantless searches?

23 A. Yes.

24 Q. Consent searches?

25 A. Yes, I believe so.

1 Q. Okay. Now, up to that point of that Friday  
2 after -- or Friday evening phone call, had you  
3 any contact with any members from the Calumet  
4 County Sheriff's Department?

5 A. No.

6 Q. Had you ever worked with them on any of your  
7 other cases before?

8 A. No.

9 Q. Besides your private investigator experience,  
10 have you had any law enforcement experience?

11 A. No.

12 Q. So you have never been a sworn officer anywhere?

13 A. No.

14 Q. Had you had any contact with Manitowoc County  
15 Sheriff's Department, up to the point of Friday  
16 evening, November 4th?

17 A. No.

18 Q. Now, on Saturday morning, then, did you make  
19 plans? Were you going to meet somewhere, after  
20 this discussion you had with Betty?

21 A. Betty said that the search party was going to  
22 meet at Teresa's house at approximately eight  
23 a.m. on Saturday. So my daughter and I decided  
24 that we were going to go and help with that  
25 search.

1 Q. Okay. And any particular reason why your  
2 daughter was involved too?

3 A. She was just eager to assist the family.

4 Q. Okay. And this daughter you are referring to is  
5 Nikole?

6 A. That's correct.

7 Q. And how old is she?

8 A. 29.

9 Q. Okay. So you went -- Did you go, in fact, to  
10 Teresa's residence, on Saturday morning?

11 A. Yes, we did.

12 Q. And that was based on information you had  
13 received from Betty?

14 A. That's correct.

15 Q. Did you talk to anybody else, between that time,  
16 about what was going on?

17 A. I talked to my sisters and my mom.

18 Q. And were they also going to this meeting or  
19 this --?

20 A. No, they weren't going to.

21 Q. They weren't part of the search?

22 A. No.

23 Q. Did you know any of the people who were going to  
24 be part of this search party?

25 A. I assumed my first cousins would be there?

1 Q. Okay. And so, you did arrive on Saturday morning  
2 at Teresa's residence?

3 A. Yes, that's correct.

4 Q. And who was there?

5 A. Scott and Ryan were both there.

6 Q. Is that Scott Bloedorn (phonetic)? Is that how  
7 you say his name?

8 A. That sounds right.

9 Q. And the Ryan you are referring to is Ryan  
10 Hillegas?

11 A. Yes.

12 Q. And Ryan is -- was a former boyfriend of  
13 Teresa's, is that --

14 A. I heard that.

15 Q. -- right?

16 A. I'm not sure.

17 Q. And Scott was her roommate at the time, when she  
18 disappeared; is that right?

19 A. Yes.

20 Q. Okay. Were there any other people there when you  
21 arrived?

22 A. No.

23 Q. So, did you ever attend any meeting with other  
24 searchers, to coordinate who would do what?

25 A. No.

1 Q. Just when you got to Ryan -- or to Teresa's  
2 house, and those two people were there, is your  
3 only meeting; is that what you're saying?

4 A. That's correct.

5 Q. Did you -- Were you given reason to think that  
6 others had been there earlier and had gone, or  
7 were they still coming, or what?

8 A. I just thought it was peculiar that there were  
9 only a couple cars in the parking lot. But we  
10 got there at 9:00, so we thought we must have  
11 missed the main group.

12 Q. And when you went into the residence, was that  
13 confirmed?

14 A. Yes --

15 Q. That others had been --

16 A. -- they already had left.

17 Q. And were there some sort of maps that you were --  
18 that they were looking at when you came in?

19 A. Yes, they had several maps.

20 Q. And how was it determined what you would search?

21 A. There was already a group dispensed to a certain  
22 area, and he gave us a map of that area.

23 Q. And what area was that?

24 A. I'm not sure.

25 Q. So, did you go to that area then?

1 A. No. I said something to Ryan, that I would like  
2 to actually go to the Avery Salvage Yard and  
3 search there.

4 Q. Was that on any of the maps that he had?

5 A. It just showed the Avery road. It really wasn't  
6 part of the search.

7 Q. So were these maps that you were looking at, did  
8 they have -- were they divided up into quadrants,  
9 or sections, or anything like that?

10 A. It was like a map quest, and it had several roads  
11 on it. I'm not sure if it's a specific property  
12 they were looking at, or boundaries.

13 Q. Okay. But you are saying that the map he had  
14 didn't actually have the Avery Salvage yard on  
15 it?

16 A. It just had Avery Road on it.

17 Q. And was it your understanding that none of the  
18 other searchers who had left earlier were going  
19 to go to the Avery yard?

20 A. He said there was no one else that had gone  
21 there.

22 Q. Did you have any information whether the police  
23 or law enforcement had already done a search of  
24 that area, that is, the Avery Salvage Yard?

25 A. I don't believe so. I didn't have any knowledge

1           of that.

2   Q.   So, it was your understanding that it had not  
3        been searched; is that -- would that be correct?

4   A.   It had not been searched by any of the search  
5        party people, that wasn't part of the search.

6   Q.   Okay. So it was your suggestion that you felt  
7        like going there; is that what you are saying?

8   A.   It was my suggestion.

9   Q.   And why did you have that interest in going to  
10      that particular area?

11   A.   Because Teresa was last seen on the Avery Salvage  
12      Yard. And I thought that's the point where I  
13      should start, search that area first.

14   Q.   And who told you that she was last seen there?

15   A.   It was on a press release on Friday morning, I  
16      believe it was.

17   Q.   So, that was a press release from Sheriff Pagel?

18   A.   One of the news stations maybe it was, I'm not  
19      sure.

20   Q.   Okay. So your understanding, though, is that you  
21      learned that from some specific media information  
22      that was provided?

23   A.   Right.

24   Q.   On Friday morning?

25   A.   Mm-hmm.

1 Q. By the way, do you know Sheriff Pagel,  
2 personally?

3 A. No, I don't.

4 Q. Before this case, had you ever met him?

5 A. No, sir.

6 Q. Or talked with him at all?

7 A. No, sir.

8 Q. Okay. So you decided you wanted to go to the  
9 Avery Salvage, because that was the last place  
10 that you knew that she was seen?

11 A. That's correct.

12 Q. And did you have any fears, or concerns, about  
13 your safety in going to that location?

14 A. Yes.

15 Q. What were those?

16 ATTORNEY FALLON: Objection, relevance.

17 THE COURT: Mr. Buting.

18 ATTORNEY BUTING: I will move on. I will  
19 go to something else, actually.

20 Q. (By Attorney Buting)~ You decided, though, to go  
21 with just yourself and your daughter?

22 A. That's correct.

23 Q. And neither one of you were armed, or anything  
24 like that, right?

25 A. No.

1 Q. And did you make any kind of arrangements to have  
2 any -- Two women alone, going to this strange  
3 place, did you make any kind of arrangements to  
4 have any kind of back up security, or anything  
5 like that?

6 A. No.

7 Q. Did you tell anybody that you were going there?

8 A. I told Ryan.

9 Q. Do you know whether Ryan told -- called the  
10 police, or let anybody know that you were going  
11 to that location?

12 A. I don't know if he did or not.

13 Q. Did you ask Ryan to come along with you?

14 A. No.

15 Q. Is there any particular reason?

16 A. He was the coordinator for the search party.

17 Q. Okay. And by coordinator, what does -- what did  
18 you mean?

19 A. Well, if anybody called in, they would know -- he  
20 would know where to send them, for that search,  
21 for that day.

22 Q. Okay. So the plan was that if people were to  
23 call him and he would coordinate it from there?

24 A. I believe so.

25 Q. So, if anybody found anything suspicious, or

1           untoward, they would call him and report in; is  
2           that right?

3       A. I received Sheriff Pagel's personal telephone  
4           number to contact him, in case I found any kind  
5           of evidence.

6       Q. Okay. And how did you get that?

7       A. I got that from Ryan.

8       Q. Okay. So Ryan -- Did Ryan tell you that he had  
9           spoken with Sheriff Pagel, then, and gotten this  
10          personal phone number?

11      A. No, he didn't tell me that.

12      Q. You just assumed it, since he gave it to you; is  
13          that right?

14      A. I wasn't sure --

15                   ATTORNEY FALLON: Objection, relevance as  
16          to what she assumed. It also calls for speculation.

17                   THE COURT: Sustained.

18      Q. (By Attorney Buting)~ All right. So when you say  
19          you had Sheriff Pagel's personal phone number,  
20          did you understand that to be his cell phone, or  
21          something like that, or what?

22      A. All I understood, it was his direct line to him.

23      Q. Okay. So when you arrived at the Avery property,  
24          had you ever been there before?

25      A. No.

1 Q. Did you know, have any idea how many cars there  
2 were in that?

3 A. I had no idea how many cars were in that area.  
4 All I heard, it was a 40 acre plot.

5 Q. So, would it be fair to say you knew there could  
6 have been thousands of cars?

7 A. Yes.

8 Q. And what was your intent in going to that  
9 property?

10 A. I was going to look in each and every car to try  
11 to find a trace of Teresa.

12 Q. Okay. You were going to look inside of each  
13 vehicle?

14 A. We looked inside the vehicle. We didn't actually  
15 go inside a vehicle, but we looked in the  
16 windows.

17 Q. So it was your intent to not only look for her  
18 vehicle, but also to look for her, perhaps in  
19 some other vehicle, right?

20 A. Correct.

21 Q. And did you think that, with just the two of you,  
22 that you would be able to cover the whole yard?

23 A. We hoped we could get it done that day.

24 Q. Okay. And were you -- Besides looking for her,  
25 were you also looking for her vehicle?

1 A. Yes.

2 Q. And did you have some description of the vehicle?

3 A. Yes, we had the sheet on the vehicle, and what it

4 looked like.

5 Q. And the sheet --

6 A. The plate number.

7 Q. -- what kind of sheet are you referring to?

8 A. It was, I believe, a picture of the car.

9 Q. Okay. And did the car -- What kind of

10 information was on the sheet?

11 A. It was a Toyota Rav 4, and there was a license

12 plate number, the color.

13 Q. The what?

14 A. The color.

15 Q. And what was the color?

16 A. Green.

17 Q. Okay. And was there a year, also, on there,

18 model year?

19 A. I think so, but I can't remember.

20 Q. All right. So when you arrived at the Avery

21 Salvage Yard, and you drive in, there's a number

22 of sort of business type buildings; is that

23 right?

24 A. Yes.

25 Q. One of which has a sign that says Avery Salvage

1           Yard, correct?

2   A.   Yes.

3   Q.   You stopped there, rather than driving into the

4       rest of the yard, right?

5   A.   I stopped there? Where is there?

6   Q.   Well, I'm sorry, you stopped at that building

7       that said Avery Salvage Yard on it?

8   A.   Yes.

9   Q.   From there, you could see that there was a sort

10      of a pit, depressed area with many, many, many

11      cars, off in the distance?

12   A.   Yes.

13   Q.   But you didn't drive on into, past these

14      buildings, and go down into that pit, initially,

15      did you?

16   A.   No.

17   Q.   And why was that?

18   A.   Because I wanted to ask permission first, before

19      we went.

20   Q.   Okay. And did it appear obvious to you that --

21      that before you would go into that back area

22      where all these cars were, that you should get

23      permission?

24   A.   Yes.

25   Q.   Didn't appear to be an area where it was just

1 open to the public, without any permission at  
2 all?

3 A. I didn't think so.

4 Q. Okay. And then, did you speak with anyone there?

5 A. Yes.

6 Q. And who was that?

7 A. Earl Avery.

8 Q. And what did you tell him?

9 A. I asked him if we could search the salvage yard  
10 for Teresa, or Teresa's car, or any evidence of  
11 Teresa?

12 Q. And by Teresa, did he seem to know who you were  
13 talking about?

14 A. Absolutely.

15 Q. Did he have any hesitation at all?

16 A. He hesitated a little bit, yes.

17 Q. And when you say hesitated a little bit, what did  
18 he do, or what did he say?

19 A. He said that someone else tried to search the  
20 area, and they used their car, and they almost  
21 got stuck, and came right back out.

22 Q. Okay. So did you have to use your powers of  
23 persuasion, then, to allow him to search, or  
24 what?

25 A. Well, I just told him that we would search on

1 foot, that we wouldn't take our car.

2 Q. And did he have any -- seem to have any problem  
3 with that?

4 A. No, he recommended walking.

5 Q. And did you tell him anything that you were in  
6 anyway there on behalf of the police, to give you  
7 any kind of authority, or anything of --

8 A. No.

9 Q. -- that nature?

10 A. No.

11 Q. Did you tell him that you were part of some sort  
12 of official search party that had been organized  
13 by the police?

14 A. No.

15 Q. So you didn't mention that you had any connection  
16 in any way to the police?

17 A. No.

18 Q. I mean, is that yes?

19 A. I told him that I didn't have. No. He never  
20 even asked if I had any, you know, contact with  
21 the police, or was with the police. And I never  
22 said I was with the police.

23 Q. All right. Thank you. Did you have a discussion  
24 with Earl Avery about hunting season coming up?

25 A. Yes.

1 Q. And talking about hunters, perhaps, finding  
2 something; do you recall that?

3 A. Yes.

4 Q. Did you say that -- that you were hoping that,  
5 perhaps, hunters could find some evidence of  
6 Teresa out in the woods or something?

7 A. Yes.

8 Q. Was it your assumption that she was already dead?

9 A. No.

10 Q. Then why would you be expecting hunters to find  
11 something?

12 A. I said some type of evidence.

13 Q. What sort of evidence were you expecting that  
14 hunters would find?

15 ATTORNEY FALLON: Objection, speculation,  
16 relevance, to the narrow issue for what we're here  
17 for.

18 THE COURT: Sustained.

19 Q. (By Attorney Buting)~ All right. So you are  
20 saying it was your assumption that she was still  
21 alive?

22 A. Well, I surely hoped so, yes.

23 Q. Okay. And so, then, you did proceed to walk into  
24 the pit, you and your daughter?

25 A. That's correct.

1 Q. Now, it was your intention, you said, to look  
2 inside each vehicle, as well as look for Teresa's  
3 vehicle?

4 A. Yes.

5 Q. Why did you pick the part of the yard that you  
6 went to, to start searching?

7 A. I believed that God led us that way, through  
8 prayer.

9 Q. Okay. Did you say a prayer before you went in?

10 A. Sure, I did.

11 Q. And, I mean, were you asking for some guidance on  
12 which place to start searching or?

13 A. Yes. And I think all my cousins were praying  
14 too, so it really worked.

15 Q. Okay. I believe in that power as well, but I  
16 guess my question would be, as far as the area  
17 that you chose to search, in the salvage yard, of  
18 those thousands of cars, were you asking for that  
19 kind of guidance?

20 A. I sure was.

21 Q. Dear God, tell me which way to go?

22 A. Sure, I was.

23 Q. Okay. And so that's how you decided?

24 A. Yes.

25 Q. There was nothing about any aspect of the

1           property you were searching, that gave you any  
2           reason to go one place versus the other?

3       A. No.

4       Q. Were there other people in the salvage yard as  
5           well?

6       A. Yes.

7       Q. Did you speak with any of them?

8       A. No.

9       Q. Did you -- You didn't ask them to see if they  
10          could help you search as well?

11      A. No.

12      Q. Did you ask them whether they had seen a car like  
13          hers, a Rav 4, anywhere in there?

14      A. No, the people I came upon were speaking Spanish.

15      Q. Okay. So, is that why you didn't go up to them,  
16          because you thought you wouldn't be able to  
17          communicate?

18      A. No.

19      Q. Well, why did you not?

20      A. Because I did not want to get them involved?

21      Q. Was there some reason?

22      A. I didn't know these people, and I'm on Avery's  
23          Salvage Yard.

24      Q. Well, did you have some reason to feel guilty  
25          about being there on the --

1 A. No, I just thought perhaps they may be dangerous,  
2 so I would not approach them.

3 Q. Okay. So you were concerned, already, that there  
4 was something, some foul -- something --  
5 something amiss in the whole Avery Salvage Yard;  
6 is that what you are saying?

7 ATTORNEY FALLON: Objection, he's leading  
8 the witness. And she just said she just perceived  
9 danger. So I would object to the use of the term  
10 foul, or something amiss. I think her testimony is  
11 clear, she felt there was some danger, and that's  
12 why she didn't approach.

13 THE COURT: The objection is sustained. In  
14 addition, I guess I'm not following how some of this  
15 line of questioning is relevant to the motion here.

16 ATTORNEY BUTING: All right. I will move  
17 on, Judge.

18 Q. (By Attorney Buting)~ Can you tell me, was there  
19 anything that drew your attention to that  
20 particular area where you found it?

21 A. No, sir.

22 Q. And you had looked through how many vehicles  
23 before you came upon this Rav 4?

24 A. Approximately 50.

25 Q. And that was looking inside, as well as looking

1 at the vehicle?

2 A. Yes.

3 Q. Opening trunks and all that, or no?

4 A. No.

5 Q. Just inside?

6 A. Right.

7 Q. Okay. And when you came upon this particular  
8 vehicle, this Rav 4, was it -- about how long do  
9 you think you had been searching?

10 A. Approximately 20, 25 minutes.

11 Q. Okay. Just a short while. And did the -- If I  
12 understand the area where you found it, it was in  
13 a single row of cars, it was kind of double  
14 parked?

15 A. It was up on a ledge. The quarry is shaped like  
16 a bowl. And up on the ledge were about seven or  
17 eight cars.

18 Q. Okay. And they were all in a single file, except  
19 for this one?

20 A. I think they were zigzagged a little bit, not  
21 exactly bumper to bumper.

22 Q. Okay. And the Rav 4, though, was it sticking out  
23 to some degree?

24 A. No, I don't believe so.

25 Q. Okay. Now, when you walked up to it, did you --

1 did you look inside?

2 A. Yes.

3 Q. Did you see any blood?

4 A. No.

5 Q. You didn't see Teresa?

6 A. No.

7 Q. Did you see anything with her name on it? I'm

8 sorry. Do you need some tissues?

9 A. What was the last question?

10 Q. Did you see anything with Teresa's name on it,

11 inside the vehicle?

12 A. No.

13 Q. Did you try the doors?

14 A. No, I didn't.

15 Q. Did you see your daughter try the doors?

16 A. I was actually on the -- looking at the VIN

17 number when she was trying to open the doors.

18 Q. And was that just the front passenger and front

19 driver's side door, to your knowledge?

20 A. I'm not sure.

21 Q. Okay. Did you see -- notice -- take note of

22 anything else inside the vehicle?

23 A. There was a pop can on the floor, on the

24 passenger side, in the front.

25 Q. Did you look under the vehicle?

1 A. I don't recall.

2 Q. Okay. Now, was it at that time -- I skipped over

3 some stuff. Your daughter was separated from you

4 for a short period of time, right?

5 A. Yes.

6 Q. But you called her over to come look at the

7 vehicle as well?

8 A. Yes.

9 Q. And you thought that there was -- that this was

10 similar to what the description was?

11 A. Yes.

12 Q. Would you say that it matched the description

13 exactly or?

14 A. It was real close to the description.

15 Q. You had some concern about the color?

16 A. Yes.

17 Q. Looked more -- Did it look more blue than green,

18 I think?

19 A. Right.

20 Q. And then you called this special number that you

21 had; is that right?

22 A. Um --

23 Q. Or did your daughter?

24 A. You will have to ask my daughter.

25 Q. Okay. So you didn't dial it?

1 A. No.

2 Q. Did your daughter speak to anybody, or did she  
3 hand it right to you?

4 A. She handed it to me.

5 Q. And did you speak with Sheriff Pagel, then,  
6 immediately or --

7 A. It went to his voice mail first. And then I  
8 dialed zero again and the operator answered.

9 Q. So, it gave you -- From the voice mail, it gave  
10 you an option to dial zero and go to an operator,  
11 on the voice mail, rather than leaving a message?

12 A. Yes.

13 Q. Okay. I didn't understand at first, but. And  
14 then when you spoke to the operator, or the  
15 dispatcher, she put you in touch with Sheriff  
16 Pagel?

17 A. Yes, she did.

18 Q. And did you tell him that you had -- or you  
19 explained to him that you had found the vehicle,  
20 or a vehicle that was similar to it, right?

21 A. I believe it was her vehicle, yes.

22 Q. You told -- You asked for the VIN number, though,  
23 right? You didn't have the VIN number?

24 A. No, we didn't have the VIN number.

25 Q. And there were no license plates on it, right?

- 1 A. No plates on it.
- 2 Q. And it was more blue than green, like you were
- 3 expecting, right?
- 4 A. It was bluish green.
- 5 Q. So you had some doubt, enough doubt that you
- 6 wanted to see if you could compare the VIN
- 7 number?
- 8 A. Right. But it was camouflaged, so, yeah, we
- 9 probably suspected it was her car.
- 10 Q. Okay. And then he wasn't able to give you the
- 11 VIN number, so he passed you off to someone else?
- 12 A. I don't recall that.
- 13 Q. Do you recall speaking to Investigator Wiegert?
- 14 A. I don't recall that.
- 15 Q. Okay. So, at any rate, then, you weren't -- I
- 16 don't want to lead, but I'm trying to move things
- 17 along. You weren't provided with the actual VIN
- 18 number, though, correct?
- 19 A. It was on some sheet, but we didn't have that
- 20 specific sheet with us.
- 21 Q. I see. So instead, they asked you to look and
- 22 see if you could find the VIN number on that
- 23 vehicle, though?
- 24 A. Yes.
- 25 Q. And were you able to provide all of the numbers

1           in that VIN number to the officer you spoke with?

2   A. I didn't have my glasses on, so my daughter read

3       the numbers to me, while I read it to the officer

4       on the phone.

5   Q. Okay. And do you know, was she able to see all

6       of them, or only a partial?

7   A. You will have to ask her.

8   Q. Okay. She didn't tell you? I mean you heard

9       her, she was passing the numbers to you?

10   A. Right.

11   Q. And she didn't say whether some of it was

12       obscured or not?

13   A. I think she did say that, yes.

14   Q. That she could not see all of them?

15   A. That she couldn't see all of them.

16   Q. All right. You -- I have the advantage of having

17       seen the transcript of your call, but you

18       indicated you thought it was a particular model

19       year, a 1999, or year 2000; do you recall that?

20   A. No, I can't recall that.

21   Q. Okay. Did you have any sort of knowledge, or

22       information, that would enable you to tell the

23       year of a vehicle like that?

24   A. No, I have no knowledge of that.

25   Q. And then the officer that you spoke with told you

1 | to standby?

2 A. He told us not to touch anything and to move away  
3 from the car.

4 Q. And how long was it before the officers arrived,  
5 first officer?

6 A. I would say approximately 20 minutes.

7 | Q. Do you know who that officer was?

8 A. It was Officer Remerick, Remerak (phonetic).

9 Q. Remiker?

10 A. Remiker. I'm sorry, yes.

11 Q. While you were waiting, did you speak with that  
12 Officer Remiker?

13 A. My daughter did.

14 Q. Your daughter spoke with him by cell phone?

15 A. I believe so.

16 Q. And then, how long were you at the scene after  
17 that, before you were allowed to leave?

18 A. I don't believe we left until about 12:30.

19 Q. So -- And -- I'm sorry. Do you know what time it  
20 was when you discovered the car, the Rav 4?

21 A. Approximately 10:20 to 10:25.

22 Q. All right.

ATTORNEY BUTING: I have nothing further.

24 | Thank you.

25 THE WITNESS: Thank you.

1 THE COURT: Mr. Fallon.

2 ATTORNEY FALLON: Yes, just one moment.

3 Yes, your Honor, a moment or two, we're going to ask  
4 the witness to identify an audio recording.

5 THE COURT: Is there any chance of the  
6 parties stipulating that the recording is the  
7 correct one?

8 ATTORNEY BUTING: Sure.

9 THE COURT: I assume this is something  
10 that's been exchanged?

11 ATTORNEY FALLON: It has been exchanged and  
12 there is a transcript that I'm able to provide the  
13 Court and Counsel. We would like to mark that and  
14 hand it to the witness. We can do that.

15 THE COURT: All right. Defense has a copy,  
16 I take it?

17 ATTORNEY STRANG: I do.

18 ATTORNEY BUTING: I do.

19 THE COURT: All right. We'll have one  
20 marked. And then, do you wish to introduce the CD  
21 of the actual conversation into evidence?

22 ATTORNEY FALLON: I would.

23 THE COURT: We'll have that marked.

24 ATTORNEY FALLON: Is the stipulation, then,  
25 Counsel, that the voices which appear on the tape

1                   are the voices of this witness, Pamela Sturm,  
2                   Sheriff Pagel, and Investigator Wiegert?

3                   ATTORNEY BUTING: And the dispatcher.

4                   ATTORNEY FALLON: And the dispatcher.

5                   ATTORNEY BUTING: Whose name I don't know  
6                   that I have. Do you?

7                   ATTORNEY FALLON: I don't have the  
8                   dispatchers name. We could certainly supplement the  
9                   record with that.

10                  ATTORNEY BUTING: Yes, we would stipulate  
11                  that those are the voices.

12                  THE COURT: Very well.

13                  ATTORNEY FALLON: All right. Very well.

14                  (Exhibit 16 & 17 marked for identification.)

15                  ATTORNEY FALLON: May I approach the  
16                  witness?

17                  THE COURT: Yes.

18                  CROSS-EXAMINATION

19                  BY ATTORNEY FALLON:

20                  Q. Ms Sturm, have you ever had an opportunity to  
21                  review a transcript of that audio recording?

22                  A. No, I haven't.

23                  Q. All right. Very good. I will take that. Thank  
24                  you.

25                  ATTORNEY FALLON: Pursuant to the

1           stipulation, I would offer Exhibit 17. The Court  
2       may examine it at its leisure.

3           THE COURT: Any objection to Exhibit 17,  
4       Mr. Buting?

5           ATTORNEY BUTING: No objection.

6           THE COURT: All right. Exhibit 17 is  
7       admitted.

8       Q. (By Attorney Fallon)~ Just so I'm clear, I just  
9       have a few questions, Ms Sturm. You became aware  
10      of Teresa's disappearance, when?

11      A. Approximately November 4th at like 10 a.m, over  
12      the TV.

13      Q. So that would have been Friday morning, about 10  
14      o'clock?

15      A. Correct.

16      Q. And you hadn't caught any of the newscast, or any  
17      of the information from the previous day?

18      A. No.

19      Q. And your first contact with anyone regarding her  
20      disappearance would have been your cousin, Tom  
21      Halbach's sister, Betty, called you?

22      A. Yes.

23      Q. And that occurred on Friday evening, that same  
24      day?

25      A. Yes.

1 Q. About how late in the day would that call have  
2 occurred, your best recollection? Before dinner,  
3 after dinner?

4 A. I think after dinner.

5 Q. All right. On that day, Friday, did you have any  
6 discussions with any member of law enforcement,  
7 regarding Teresa's disappearance?

8 A. No, sir.

9 Q. Directing your attention, then, to Saturday  
10 morning, on Saturday morning, prior to your  
11 calling Sheriff Pagel, did you have discussion  
12 with any law enforcement officer, whether it be  
13 Manitowoc County, Calumet County, any police  
14 officer whatsoever, regarding Teresa's  
15 disappearance?

16 A. No, sir.

17 Q. Did you have any discussion, whatsoever, with any  
18 law enforcement officer, regarding the volunteer  
19 search efforts; in other words, letting them know  
20 that you were ready to join the search?

21 A. No, sir.

22 Q. When you arrived at the residence where Ryan  
23 Hillegas and Scott Bloedorn were coordinating, as  
24 it were, these efforts, there was no law  
25 enforcement officer present, correct?

1 A. No, sir.

2 Q. Just so that we're absolutely clear, your  
3 decision -- or excuse me -- the idea to go to the  
4 Avery Salvage Yard was entirely your idea?

5 A. That's correct.

6 Q. And as far as you knew, from your discussions  
7 with Mr. Hillegas and Mr. Bloedorn, no one else  
8 had offered to go to that particular local?

9 A. Yes.

10 Q. And your reason for choosing it was because it  
11 seemed to you, logical, that that would be a  
12 place to look, because according to the  
13 information you had become aware of, that was the  
14 last place that she was located?

15 A. That is correct.

16 Q. Now, did that information, in terms of the last  
17 place seen by her, did that come in in that 10  
18 o'clock news information; or did that come later  
19 in the day, from Betty Halbach; or perhaps did it  
20 come on Saturday morning; when in the sequence  
21 did you become aware of that?

22 A. It was Friday morning on the TV.

23 Q. All right.

24 A. The news release.

25 Q. And you had no discussions with any law

1 enforcement officer about that particular aspect  
2 of the missing person case, that she was last  
3 seen, or last believed to be seen, at that  
4 property, for a business appointment?

5 A. No.

6 Q. When you arrived at this salvage yard, you spoke,  
7 I believe you said, with Mr. Earl Avery; is that  
8 correct?

9 A. That's correct.

10 Q. Did you speak with him inside a building, or was  
11 it out on the grounds?

12 A. It was out on the grounds.

13 Q. And do you recall which building it was in front  
14 of, or near, that you had your conversation with  
15 him? In other words, did it appear to be a  
16 business office, a residence, a shed, anything  
17 stick in your mind?

18 A. It appeared to be a building with an office  
19 inside.

20 Q. Did you, at all, go into the office?

21 A. Yes, I did.

22 Q. All right. And in the office, did you observe,  
23 for instance, any missing poster -- missing  
24 person poster of Teresa Halbach in that office?

25 A. No.

1 Q. All right. You indicated that Mr. Avery had --  
2 your belief was that Earl Avery had no -- he knew  
3 exactly what you were there for and who you were  
4 looking for?

5 A. Yes, he did.

6 Q. All right. And how was it that you reached the  
7 conclusion that he was quite sure what you were  
8 wanting to do?

9 A. He agreed to the search. And I told him that we  
10 were searching for Teresa, or her vehicle, or any  
11 trace of Teresa.

12 Q. Or any trace of her?

13 A. Yes.

14 Q. Okay. All right. You go down to the -- You  
15 start in one area, you search for 20, 25 minutes,  
16 and you come upon her vehicle; is that correct?

17 A. Yes.

18 Q. All right. Now, there was some questions from  
19 counsel regarding your attempt to -- or you or  
20 your daughter's attempt to get into the vehicle.  
21 So I want to talk a little bit about that. Just  
22 so I'm clear, you, yourself, did not attempt to  
23 get into the vehicle?

24 A. No.

25 Q. All right. Your daughter, you think attempted to

1           get into the vehicle, at least perhaps tried one  
2           or more of the doors?

3       A. Yes.

4       Q. All right. And the doors were locked, correct?

5       A. Correct.

6       Q. And you could not get into the vehicle, correct?

7       A. Correct.

8       Q. Now, describe for us, was the vehicle -- When you  
9           came upon it, describe the condition of the  
10          vehicle. How was it -- You said, you used the  
11          word camouflaged. Tell us about that.

12      A. There were branches leaning up against it. Also  
13          a hood from another car leaned up against it.  
14          Plywood. And on the roof there were branches, so  
15          it was covered.

16      Q. Be fair to say it was difficult to look inside  
17          the vehicle, because of this stuff?

18      A. No, it wasn't really difficult to look inside. I  
19          could see, you know, through the branches.

20      Q. All right.

21      A. There was a viewing area.

22      Q. In your initial efforts to read the VIN number,  
23          did you have to move anything?

24      A. No.

25      Q. Did your daughter have to move anything?

1 A. No.

2 Q. When she attempted?

3 A. No.

4 ATTORNEY FALLON: Okay. That's all.

5 THE COURT: Any redirect?

6 ATTORNEY BUTING: No.

7 THE COURT: All right. The witness is  
8 excused.

9 ATTORNEY BUTING: Can we have just a  
10 minute, your Honor?

11 THE COURT: Sure. We'll take a two minute  
12 break and then come back.

13 (Brief recess taken.)

14 THE COURT: All right. Counsel, you may  
15 call your next witness.

16 ATTORNEY BUTING: The other witness I was  
17 going to call today would have been the daughter,  
18 Nikole; however, I think, given the testimony of her  
19 mother, it's probably not necessary. So I would --  
20 I will not do that.

21 THE COURT: All right. So does that -- Now  
22 wait a minute, that doesn't conclude the evidence.

23 ATTORNEY FALLON: I think that just gives  
24 us, we adjourn for today, I think is what it means.

25 THE COURT: And, Mr. Buting, you will have

1 more witnesses to call on the **Franks** motion, on the  
2 9th.

3 ATTORNEY BUTING: Correct.

4 THE COURT: All right. Is there anything  
5 else to address today before we adjourn?

6 ATTORNEY BUTING: One last -- Just one last  
7 thing. The State subpoenaed Mr. Hillegas. And he  
8 was here and was told to come back. But because the  
9 State subpoenaed him and I did not, I would just  
10 ask, if you intend to withdraw your subpoena at any  
11 point, let me know. Otherwise, I will assume, by  
12 the Court's comments, that he will be here next  
13 time.

14 ATTORNEY FALLON: I will make sure that we  
15 contact him. I believe we told him to come back on  
16 the 9th.

17 ATTORNEY BUTING: Oh, was he not one of the  
18 ones who was here?

19 ATTORNEY FALLON: He was here.

20 ATTORNEY BUTING: He was. That's fine,  
21 then, Judge.

22 THE COURT: All right. Anything further?  
23 If not, we're adjourned for today.

24 ATTORNEY STRANG: Thank you.

25 (Proceedings concluded.)

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

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 27th day of July, 2006.

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18  
19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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<b>Z</b>	<b>yours</b> [1] 226/13 <b>yourself</b> [17] 11/19 18/13 18/15 20/17 20/20 32/6 49/25 74/1 82/12 93/19 103/5 187/2 207/6 226/1 234/5 248/21 273/22

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

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3 STATE OF WISCONSIN,

4 PLAINTIFF, PARTIAL MOTION HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8

9 **DATE:** AUGUST 9, 2006

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

11 **APPEARANCES:**

12 KENNETH R. KRATZ  
13 Special Prosecutor  
On behalf of the State of Wisconsin.

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

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

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

20 STEVEN A. AVERY  
21 Defendant  
Appeared in person.

23 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls  
2 State of Wisconsin vs. Steven Avery. It's Case No.  
3 05 CF 381. We are here this morning on a  
4 continuation of a hearing regarding some pretrial  
5 motions filed by the defense; specifically, the  
6 remaining testimony on the **Franks** motion that's been  
7 filed by the defense, and also to your testimony on  
8 defense motions regarding the execution of the  
9 search warrant that was issued. And a motion to  
10 suppress statements made by the defendant to the  
11 Marinette County Sheriff's Department.

12                            Will the parties state their appearances  
13                            for the record, please.

14 ATTORNEY KRATZ: The State appears by  
15 Calumet County District Attorney Ken Kratz,  
16 appearing as Special Prosecutor in this matter. Tom  
17 Fallon, from the Department of Justice, also appears  
18 having been appointed Special Prosecutor.

19 ATTORNEY BUTING: Good morning, your Honor.  
20 Buting and Williams by Attorney Jerome Buting,  
21 appearing on behalf of Mr. Avery, who is present.  
22 Also, Attorney Dean Strang, appearing on behalf of  
23 Mr. Avery.

24 THE COURT: All right. As I recall, when  
25 we left off, Mark Wiegert was testifying. The

1           defense had completed its direct exam, and the State  
2           is going to cross-examine the witness today; is that  
3           correct?

4           ATTORNEY FALLON: That's correct, Judge.

5           THE COURT: All right. Is Mr. Wiegert  
6           here?

7           ATTORNEY FALLON: Yes, he is.

8           THE COURT: The Court will have the clerk  
9           re-swear the witness.

10           **DETECTIVE MARK WIEGERT**, called as a  
11           witness herein, having been first duly sworn, was  
12           examined and testified as follows:

13           THE CLERK: Please be seated.

14           ATTORNEY BUTING: Judge, I assume the  
15           sequestration order remains, as to any other  
16           witness?

17           THE COURT: Yes, it does.

18           ATTORNEY FALLON: Yes, it does. I don't  
19           believe any other witnesses, relative to the **Franks**  
20           matter, is present. Our Victim/Witness person  
21           advises me that is the case. Officer Fassbender is  
22           here for the next motion, unless there is any  
23           objection, by counsel, on him sitting in on this  
24           part.

25           ATTORNEY BUTING: No.

1 ATTORNEY FALLON: Very well.

2 THE COURT: All right. Mr. Fallon, you may  
3 proceed.

4 ATTORNEY FALLON: All right. Thank you.

5 CROSS-EXAMINATION

6 BY ATTORNEY FALLON:

7 Q. Detective Wiegert, before you spoke to Pam Sturm  
8 on that Saturday morning, November 5th, you had  
9 spoken only to one other volunteer searcher in  
10 this particular matter; is that correct?

11 A. That is correct.

12 Q. As a matter of fact, you received only one call  
13 from that person?

14 A. Yes.

15 Q. And to this day, you don't really recall the name  
16 of the person who called you?

17 A. No, I do not.

18 Q. All right. You were informed by that person that  
19 the searchers would be searching county roads,  
20 and ditches, etcetera, for evidence of Teresa  
21 Halbach, their thinking perhaps that she had some  
22 type of motor vehicle accident?

23 A. That's correct.

24 Q. All right. The volunteers indicated they would  
25 be searching from Manitowoc to Mishicot to the

1           area where she lived, that general stretch of  
2           road?

3       A. Right, the Mishicot area over towards the Hilbert  
4           area.

5       Q. All right. And you spoke to no other volunteers  
6           on that particular day, November 4th, that's a  
7           Friday; is that right?

8       A. That's correct.

9       Q. All right. So, with respect to the events of  
10           November 4th, you did not organize any volunteer  
11           search group?

12      A. No, not at all.

13      Q. You did not coordinate anything with that  
14           particular group?

15      A. No.

16      Q. You did not direct them in any way?

17      A. No.

18      Q. You did not instruct them in any way?

19      A. Did not.

20      Q. You did not suggest any locales where they should  
21           commence their search?

22      A. No.

23      Q. And you certainly didn't give them any details of  
24           any other places, or buildings, or things to  
25           search?

1 A. No.

2 Q. And it's fair to say you gave them no  
3 instructions, whatsoever; you basically were a  
4 conduit of information received from them?

5 A. That's correct.

6 Q. All right. As a result of receiving that  
7 information, you then called the Manitowoc  
8 Sheriff's Office?

9 A. Yes, I contacted the shift commander at the  
10 Manitowoc County Sheriff's Department.

11 Q. And you advised the shift commander of the  
12 information you received from this volunteer  
13 searcher; is that correct?

14 A. That's correct, yes.

15 Q. All right. And because -- You did this because  
16 there were some safety issues or concerns, with  
17 respect to people being out on the roads, either  
18 late at night or early in the morning, looking  
19 for Teresa Halbach?

20 A. Yeah. My concern was that they would be parked  
21 on the side of the road and there would be a lot  
22 of people, obviously, in the area, for their  
23 safety.

24 Q. All right. Now, on Saturday, November 5th, that  
25 particular morning, you contacted Detective

1                   Remiker; is that correct?

2       A. Yes.

3       Q. And you wanted to meet with him at the Manitowoc  
4                   Sheriff's Office?

5       A. Yes.

6       Q. In thinking you were wanting to come up with some  
7                   type of game plan, or organization as to how you  
8                   were going about this, finding the missing person  
9                   of Theresa Halbach?

10      A. That's correct.

11      Q. You wanted to -- And one of the things, I believe  
12                  you indicated you wanted to ask consent  
13                  because -- of the Avery family -- because one of  
14                  the places you wanted to search, or look for her,  
15                  was their property; is that correct?

16      A. Yes.

17      Q. And that's because, as far as anyone knew at that  
18                  point, that was the last place she had been seen  
19                  alive?

20      A. Correct.

21      Q. All right. And it was at that point, with  
22                  respect to your discussions with Detective  
23                  Remiker, that it was your thinking, at least in  
24                  your mind, that if consent were granted to look  
25                  at the Avery property and the surrounding area,

1           you might, at that point, call upon the  
2           volunteers to assist in a search of that area?

3       A. Yes. We had an idea of how big the salvage yard  
4           was, and we thought if they would grant us  
5           permission, since we were there with people in  
6           the area, we would ask them for their help.

7       Q. All right. Now, up to this particular point, you  
8           had not asked for any volunteers help, correct?

9       A. No, did not.

10      Q. Were you actually planning on meeting with  
11           volunteers at the Sheriff's Department, or just,  
12           at some point later on, asking for their help in  
13           search of various locales?

14      A. No, our purpose was to meet with Detective  
15           Remiker, to discuss with him our ideas and see  
16           what kind of ideas he might have. But no, we had  
17           no intentions of meeting with any volunteer  
18           searchers at that time.

19      Q. As a matter of fact, no such meeting with  
20           Detective Remiker, regarding your thoughts, ever  
21           occurred that morning, did it?

22      A. That's correct.

23      Q. You never asked for any volunteers for assistance  
24           on November 5th, correct?

25      A. Correct.

1 Q. You did not organize them on that day?

2 A. No.

3 Q. You did not direct them on that day?

4 A. No.

5 Q. You did not coordinate any of their efforts?

6 A. Did not.

7 Q. You did not suggest a place to search?

8 A. No.

9 Q. And prior to that day, you had never had any  
10 telephone or contact with Pamela Sturm regarding  
11 her intentions?

12 A. That's correct.

13 Q. All right. After your discussion with Detective  
14 Remiker, it was at that point where your  
15 department received a phone call from Pamela  
16 Sturm; is that correct?

17 A. Yes.

18 Q. All right. And it was pursuant to that phone  
19 call, that you then responded to the scene, to  
20 the Avery property?

21 A. Yes.

22 Q. All right. And, again, prior to that phone  
23 conversation from her, you had no idea that  
24 anyone was actually going to that property that  
25 morning did you?

1 A. No idea.

2 Q. All right.

3 ATTORNEY FALLON: Your Honor, does the  
4 Court have Exhibit 15 available for our perusal, for  
5 the witnesses perusal?

6 THE COURT: We will in a minute.

7 ATTORNEY FALLON: Very well.

8 Q. (By Attorney Fallon)~ Detective, you were the  
9 affiant in the search warrant, issued on November  
10 5th, 2005?

11 A. Yes, I was.

12 Q. All right. And that means you set forth specific  
13 facts which you believed established probable  
14 cause to justify a search warrant of the Avery  
15 property, correct?

16 A. Correct.

17 Q. All right. Now, in that particular affidavit,  
18 and until we get the official one, I will let you  
19 examine my copy of Exhibit 15. I would like to  
20 direct your attention to Paragraph 5.

21 ATTORNEY FALLON: May I approach the  
22 witness?

23 THE COURT: Yes.

24 ATTORNEY FALLON: Thank you.

25 Q. (By Attorney Fallon)~ For the record, Detective,

1           you have a copy of Exhibit 15?

2   A. I do, yes.

3   Q. Now, that copy of the Exhibit 15, however, does  
4       not have the return of the officers on it,  
5       correct?

6   A. It does not, you are correct.

7   Q. All right.

8           THE COURT: Just for my benefit, is this --  
9       This affidavit is attached to the defense motion,  
10      correct?

11           ATTORNEY FALLON: Yes, the warrant and  
12       affidavit are attached to the defense motion.

13           THE COURT: Because I have got a copy of  
14       the motion here, so at least I have something to  
15       follow along with.

16           ATTORNEY FALLON: All right. Very well.

17   Q. (By Attorney Fallon)~ Now, in Paragraph 5, you  
18       use a phrase, a vehicle matching the description  
19       of the vehicle owned by Teresa Halbach was found  
20       on the Avery property; is that correct?

21   A. Yes.

22   Q. All right. Now, there was much questioning  
23       regarding the discussion of matching. And, first  
24       of all, let me begin by asking you this question,  
25       Detective Wiegert. What were the sources of

1           information that you used to prepare that  
2           warrant?

3       A. Actually had three different sources: One was  
4           Pam Sturm, and the information she called in,  
5           such as the color of the vehicle, the sticker on  
6           the back of the vehicle, the Le Mieux Toyota  
7           sticker; the vehicle that was covered up by --  
8           was covered up by branches, for example; and the  
9           partial VIN number that she provided me. Also,  
10          information I received from Karen Halbach,  
11          Teresa's mother, that the Le Mieux Toyota sticker  
12          should be on the back of her truck, which matched  
13          the one that was out at the scene.

14                   Also, information that I had gotten from  
15          Detective Remiker. He had went to the scene and  
16          verified the complete and entire VIN number,  
17          which matched Teresa Halbach's vehicle.

18       Q. All right. Now, Detective Remiker arrived at  
19          that scene, before you and other members of the  
20          Calumet County Sheriff's Department arrived  
21          there, correct?

22       A. Yes, he did.

23       Q. All right. Were you in communication with  
24          Detective Remiker, by telephone, prior to your  
25          arrival at the salvage yard?

1 A. By telephone, and I believe, also, on the radio,  
2 one or two times, yes.

3 Q. All right. Now, you also, did you not, have  
4 information from the Wisconsin Department of  
5 Transportation, some teletype communication, with  
6 a more detailed description of the vehicle  
7 registered to Teresa Halbach?

8 A. Yes, we did.

9 Q. All right. So you knew, then, that it was a  
10 1999, or 2000, Toyota RAV 4?

11 A. Yeah. And as a matter of fact, when Pam Sturm  
12 had called, she had told me that she believed it  
13 was a '99 or 2000 RAV 4, so that also matched.

14 Q. All right. And with respect to -- For purposes  
15 of our discussion now, would you describe for  
16 us -- Well, first of all, let me ask this: When  
17 you arrived at the scene, did you have an  
18 opportunity to examine the vehicle yourself?

19 A. I stayed at least 100 yards from the vehicle.

20 Q. All right.

21 A. I did not get close to the vehicle.

22 Q. All right. Since that time, have you had an  
23 opportunity to get a close look at the vehicle?

24 A. Absolutely, yes.

25 Q. All right. Now, for purposes of our discussion,

1                   describe the color of that vehicle for us?

2     A. I would say it's a greenish, bluish color. It

3                   depends on when the light hits it, you know, what

4                   color it is. It kind of differs with the

5                   different type of light you have. But it's a

6                   greenish blue.

7     Q. All right. And in your particular affidavit

8                   there, you use the phrase dark blue; is that

9                   correct?

10    A. Yes.

11    Q. All right. Now, with respect to the information

12                  provided by Ms Sturm, you indicated that she --

13                  you received a partial VIN number. First of all,

14                  with respect to VIN's, to be more grammatically

15                  correct, how many characters are commonly

16                  associated with a VIN.

17    A. Seventeen characters in a VIN number.

18    Q. And with respect to the information provided by

19                  Ms Sturm, how many characters did she provide of

20                  that number?

21    A. She provided 10 of the 17 numbers, off the VIN.

22                  And those matched, obviously, Teresa's vehicle.

23    Q. All right. And with respect to Detective

24                  Remiker's involvement here, did Detective Remiker

25                  advise you that he had confirmed the remaining

1           numbers?

2       A. Yes, he did. As a matter of fact, he indicated  
3           that he had a match, and that all the numbers  
4           were verified.

5       Q. All right. Now, so -- And that all occurred  
6           before you applied for the search warrant, which  
7           is reflected in Exhibit 15?

8       A. That's correct, yes.

9       Q. All right. So, at the time you prepared that  
10           warrant, you knew that you were -- a vehicle that  
11           was dark blue, or greenish blue, had been located  
12           at the Avery property?

13      A. Yes.

14      Q. You knew the vehicle was secreted in some way, in  
15           so far as it was covered by brush and other  
16           automobile parts?

17      A. Yes.

18      Q. You knew that the -- that you had 10 of 17 VIN  
19           characters from Ms Sturm, and the remaining seven  
20           provided by Detective Remiker?

21      A. Yes.

22      Q. You had a teletype from the Department of  
23           Transportation regarding the registration and  
24           description of the vehicle?

25      A. Yes.

1 Q. And you also confirmed, with Karen Halbach, that  
2 there was a Le Mieux Toyota sticker available --  
3 or located on that vehicle?

4 A. Yes.

5 Q. All right. And at the time of -- As a matter of  
6 fact, you knew before you even got there, from  
7 your discussion with Ms Sturm, that such a  
8 sticker -- dealer sticker, was on that vehicle?

9 A. Yes, I did.

10 Q. All right. Now, Detective, did you deliberately  
11 misstate any facts in that affidavit?

12 A. Absolutely not.

13 Q. And in your mind, did you omit any significant  
14 facts which would affect the determination of  
15 probable cause by this Court?

16 A. No.

17 ATTORNEY FALLON: No other questions.

18 THE COURT: Mr. Buting.

19 **REDIRECT EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Now, Detective, so it's your testimony that you  
22 did not tell Detective Remiker, from the  
23 Manitowoc Sheriff's Department, that you had --  
24 I'm referring now to Saturday morning, the  
25 November 5th before the vehicle was discovered.

1 A. Mm-hmm.

2 Q. Is it your testimony that you did not tell him  
3 that you had volunteers that were willing and  
4 interested in going to the Avery property?

5 A. I did not tell him that there were volunteers  
6 willing to go to the Avery property, that's  
7 correct.

8 Q. Okay. And you did not tell him that several of  
9 the volunteer search parties would be coming to  
10 the Manitowoc Sheriff's Department to meet and  
11 coordinate efforts; is that your testimony?

12 A. That's correct.

13 Q. Okay. And you are familiar -- We have discussed  
14 it briefly, but just to refresh your  
15 recollection, we talked about it earlier, you  
16 have had training in how to apply for search  
17 warrants, right?

18 A. Yes.

19 Q. And you know that it's very important that you be  
20 completely truthful and honest when you prepare  
21 an affidavit for a search warrant, right?

22 A. That's correct, yes.

23 Q. And that that's so that the judge, or the  
24 magistrate, can form his or her own opinion, as  
25 to whether or not there's probable cause to

1           justify the warrant, right?

2 A. Yes.

3 Q. In other words, the judge is not supposed to  
4       simply rely on your belief that probable cause  
5       exists, correct?

6 A. Yes.

7 Q. That you have to provide the facts to him or her  
8       so that an independent decision can be made,  
9       correct?

10 A. That's correct.

11 Q. And in your affidavit, Exhibit 15 --

12                   THE COURT: The record should reflect that  
13       he's holding the actual Exhibit 15 at this point.  
14       It was handed to him during his testimony on  
15       cross-examination.

16                   ATTORNEY BUTING: Thank you, your Honor.

17 Q. (By Attorney Buting)~ In Exhibit 15, directing  
18       your attention to Paragraph 5, you prepared the  
19       words -- the wording in this paragraph are your  
20       words, are they not?

21 A. Yes.

22 Q. Anybody else help you formulate this?

23 A. Detective Remiker was there when we put it  
24       together.

25 Q. Okay. So it was -- was it a mutual effort

1                   between you and Detective Remiker?

2       A. Yes.

3       Q. Both of you read it over?

4       A. I can't say if he read it over. I know I did. I  
5                   can't testify to what he did, for sure.

6       Q. All right. And you read it over and you swore to  
7                   it?

8       A. I did.

9       Q. And in that, you specifically said that the  
10                  volunteer searchers had located -- I'm sorry, I  
11                  will use the exact phraseology here -- that  
12                  officers had received information, quote, from  
13                  volunteer searchers, that they had located a  
14                  vehicle matching the description of the vehicle  
15                  owned by Teresa Halbach, closed quote, right?

16      A. Yes.

17      Q. But, in point of fact, you had no information  
18                  that the volunteers told you the vehicle matched  
19                  the description?

20      A. No, she told me what type of vehicle it was. She  
21                  told me that there was a sticker on the back.  
22                  She told me the color of the vehicle. She told  
23                  me the year of the vehicle. To me, that's  
24                  matched.

25      Q. So, the volunteers did not tell you that it

- 1                   matched, you concluded that it matched?
- 2       A. I concluded, from the information that the
- 3                   searcher gave me, that there was a match.
- 4       Q. And you did not, however, put in your affidavit,
- 5                   for the judge to make his or her own
- 6                   determination on whether or not the vehicle
- 7                   matched, the following facts: You did not
- 8                   mention anything about a Le Mieux sticker; isn't
- 9                   that correct?
- 10      A. It is not in the affidavit, that's correct.
- 11      Q. You did not mention anything about the model
- 12                  year; is that correct?
- 13      A. I would have to review the affidavit to be sure.
- 14      Q. Take your time.
- 15      A. That's correct.
- 16      Q. And you did not put anything in your affidavit to
- 17                  tell the judge that the volunteer you personally
- 18                  spoke with, that is, Pamela Sturm, told you that
- 19                  she was concerned that the color did not appear
- 20                  to match the description of the vehicle as she
- 21                  understood it?
- 22      A. She indicated that it was a bluish green color.
- 23                  And I don't know exactly what's in the affidavit,
- 24                  again, without looking at it, but that's what she
- 25                  told me.

1 Q. And she told you, though, also, that she was --  
2 as a result of the fact that the information had  
3 gone out that the vehicle was green, that's  
4 correct, is it not?

5 A. Yes, that's correct.

6 Q. She told you, therefore, that she was not certain  
7 that this was really the same vehicle, right?

8 A. She initially was concerned about the color,  
9 because she said it was bluish green. However,  
10 after discussing other facets of the vehicle:  
11 The sticker, what she said was the year of the  
12 vehicle, and the VIN number, I took it that she  
13 believed that it was the vehicle.

14 Q. But she never told you that, you just took it at  
15 that?

16 A. She asked me several times, is this the vehicle,  
17 and I said I can't tell you that at this time.

18 Q. Okay. And that uncertainty, about the difference  
19 in the color, that she expressed to you, was not  
20 something that you included in your affidavit;  
21 isn't that right?

22 A. No, because I believed --

23 Q. That's fine. Answer the question. The answer is  
24 no; is that right?

25 A. That's correct.

1 Q. The sources of the information that you said went  
2 into this Paragraph 5, you included information  
3 from Detective Remiker, who had actually arrived  
4 at the scene, correct?

5 A. Yes.

6 Q. Now, are you aware that Detective Remiker did not  
7 have any consent from the property owners, to be  
8 in the location he was at, when he made his  
9 observations?

10 A. No.

11 ATTORNEY FALLON: Objection.

12 THE COURT: What is the objection?

13 ATTORNEY FALLON: Speculation, it's  
14 irrelevant at this point.

15 THE COURT: Mr. Buting?

16 MR. BUTING: Well, it is relevant. It goes  
17 directly to the issue of what can be relied upon in  
18 a search warrant.

19 ATTORNEY FALLON: I don't see how that is  
20 relevant to the averments in the affidavit, under  
21 the circumstances in which the affidavit was  
22 presented.

23 THE COURT: All right. I'm not going to  
24 say that it's not relevant for purposes of the  
25 defense motion, but I think for purposes of this

witness's testimony, I agree with Mr. Fallon. The Court will sustain the objection.

Q. (By Attorney Buting)~ All right. As part of your experience and training with regard to search warrant applications, you know that you cannot put information into a warrant, for a judge to rely on, that was obtained unlawfully by the police; is that right?

A. Yes.

Q. And that you are also aware that observations that an officer may make on private property, the lawfulness of those observations would depend on whether that officer had a lawful purpose in being there at the time he made such observations, right?

A. Yes.

Q. And that if Detective Remiker, in this instance, did not have a lawful reason to be in the place where he made the observations you relied upon, you would not have included those in this affidavit, right?

A. If I knew he wasn't there lawfully, are you asking --

Q. Yes.

A. -- would I have included that? If I knew he was

1           there illegally, I would not include that, no.

2 Q.       Okay. And he was with you when you prepared this  
3           affidavit?

4 A.       That's correct.

5 Q.       Did you ask him whether he had consent to be in  
6           the -- that portion of the Avery property where  
7           he was making his observations of the RAV 4  
8           vehicle?

9 A.       I did not ask him if he had permission to be  
10          there; I assumed he did.

11 Q.       And he never told you that he had permission to  
12          be there?

13 A.       I never asked him.

14 Q.       That's not my question. Did he ever tell you?

15 A.       No, not specifically.

16 Q.       Okay. And you actually arrived at the scene  
17          later, yourself, correct?

18 A.       Later than?

19 Q.       Than Detective Remiker?

20 A.       Yes.

21 Q.       A matter of a few minutes, I believe, correct?

22 A.       Correct.

23 Q.       And you had an opportunity to speak with one of  
24          the property owners or managers, correct?

25 A.       I did speak with Earl Avery, that's correct.

1 Q. And you did so when you -- after you had been  
2 there for a period of time, right?

3 A. Yes.

4 ATTORNEY FALLON: Objection, on two  
5 grounds. Irrelevant and, two, beyond the scope of  
6 cross-examination.

7 THE COURT: Sustained, as beyond the scope.

8 Q. (By Attorney Buting)~ Did you -- Did you know --  
9 Well, first of all, when you first arrived, did  
10 you see Mr. Earl Avery, or any other property  
11 owner, speaking or standing next to Detective  
12 Remiker?

13 A. Earl Avery was in the area. I don't know if he  
14 was speaking to anybody or not. I don't recall  
15 that.

16 Q. In fact, it wasn't until five or so minutes later  
17 that Mr. Avery, Earl Avery, came up to where you  
18 were located and asked what was going on; isn't  
19 that right?

20 A. I believe Earl Avery was already in that area, on  
21 a four-wheeler, when we arrived.

22 Q. Was he over by the vehicle?

23 A. He was probably within feet of one of the squad  
24 cars. I don't know that.

25 Q. Did you have personal knowledge about whether he

1                   had consented to Detective Remiker being in the  
2                   location he was when he made his observations of  
3                   the vehicle?

4                   ATTORNEY FALLON: Again, objection, beyond  
5                   the scope. It's irrelevant.

6                   THE COURT: The Court will sustain the  
7                   objection. It is beyond the scope of redirect.

8 Q. (By Attorney Buting)~ So, just so we're clear,  
9                   then, the information you relied upon in terms of  
10                  the description of the vehicle, and whether or  
11                  not it was similar to, or matched, the Teresa  
12                  Halbach vehicle, did not come from your own  
13                  personal observations?

14 A. No, it came from other people, that's correct.

15 Q. Because even when you arrived at the scene, you  
16                  did not physically walk up to the vehicle to  
17                  check out any of the information you had received  
18                  about it, right?

19 A. I could see the vehicle. I did not walk up to  
20                  the vehicle.

21 Q. So you couldn't see its VIN number, for instance?

22 A. That's correct.

23 Q. And it's your testimony that Detective Remiker  
24                  told you that he had walked up to the vehicle?

25 A. Yes.

1 Q. And that he had actually obtained the entire VIN  
2 number, all 17 numbers?

3 A. Yes.

4 Q. When you say that, in Paragraph 5, that  
5 Investigator Remiker -- this is half way down --  
6 your affiant is informed that Investigator  
7 Remiker was provided with the VIN number of the  
8 RAV 4, located at the Avery Auto Salvage, you are  
9 saying that it was provided by somebody else to  
10 him or?

11 A. I'm not understanding your question. He was  
12 provided with the VIN to match up to the one that  
13 was on the truck at the salvage yard.

14 Q. But you say that he was provided with the VIN  
15 number of the RAV 4, that was located at the  
16 Avery property, right? And then the rest of your  
17 sentence after the semicolon, goes on, the  
18 searchers provided the VIN number, and you list  
19 all 17 numbers, right?

20 A. Yes. Well, I believe what happened is, the  
21 number that Pam Sturm called in, I discussed that  
22 with Detective Remiker, I believe that's what  
23 that's referring to.

24 Q. So, when you say, in this affidavit, that the  
25 searchers provided the VIN number, and you list

1           all 17 characters, that, in fact, is not true;  
2           isn't that right?

3       A. No, they provided 10 of the 17 numbers.

4           ATTORNEY BUTING: All right. I have no  
5           other questions.

6           THE COURT: Any recross?

7           ATTORNEY FALLON: A couple questions.

8           RECROSS-EXAMINATION

9       BY ATTORNEY FALLON:

10      Q. Counsel asked you about your experience in  
11           applying for search warrants and the need for  
12           accurate, reliable, truthful information, so I  
13           have a few questions regarding that. With  
14           respect to your experience in applying for search  
15           warrants, you are aware that the legal standard  
16           is probable cause?

17      A. That's correct.

18      Q. All right. And that is a standard of proof  
19           that's somewhat, or significantly, less than  
20           beyond a reasonable doubt?

21      A. Yes.

22      Q. It's a standard of proof which is less than --  
23           more likely than not, by less than 50 percent?

24      A. Yes.

25      Q. Probability?

1 A. Yes.

2 Q. All right. And based on the information that you  
3 had at the time, from Ms Sturm, that you had a  
4 dark blue or bluish green, late model, 1999-2000  
5 Toyota RAV 4; that it had a Le Mieux sticker on  
6 it; that it was secreted in brush and other  
7 automobile parts; that you had, at minimum,  
8 before you even arrived, 10 of the VIN  
9 characters; in your mind, did you believe that  
10 was probable cause right there?

11 A. Absolutely. I think that would have been enough  
12 to get a search warrant, right there, in my  
13 opinion.

14 Q. As a matter of fact, setting aside for the VIN  
15 number, the fact that Teresa Halbach was last  
16 seen on the Avery property on October 31st; the  
17 fact that the defendant, Steven Avery,  
18 acknowledged her being there as recently as  
19 November 4th, that she was there to take pictures  
20 of a vehicle he was selling; the fact that he was  
21 the last person known to have seen her alive; the  
22 fact that a late model, dark blue, greenish RAV 4  
23 was located on that property; setting aside the  
24 VIN number, setting aside all that; in your mind  
25 is that probable cause?

1 A. Absolutely, yes.

2 ATTORNEY FALLON: That's all I have.

3 ATTORNEY BUTING: Just one quick follow up.

4 **RE-REDIRECT EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q. Until the vehicle was located by Ms Sturm on the  
7 5th, you did not believe there was probable cause  
8 to get a warrant; isn't that right?

9 A. Maybe not at that point, but looking at it now,  
10 yeah, I believe it would have.

11 Q. You didn't -- In other words, the mere fact that  
12 Mr. Avery -- that Teresa Halbach had been at the  
13 Avery property four or five days earlier, and  
14 that Mr. Avery had acknowledged that, was not  
15 enough for you to get probable cause for a search  
16 warrant?

17 A. I think the fact that she was missing for that  
18 many days, coupled with the fact it was the last  
19 place she was seen, I think looking back on it  
20 now, we may have been able to use that for enough  
21 probable cause.

22 Q. But you did not seek a warrant at that time?

23 A. At that point, we did not, no.

24 Q. And during that period of time, you were  
25 obviously concerned about doing whatever you

1           could to locate Teresa Halbach?

2   A.   That's correct.

3   Q.   And, nevertheless, you did not seek a warrant  
4       until after Ms Sturm located the vehicle on the  
5       property?

6   A.   That is true, yes.

7           ATTORNEY BUTING: Thank you. No further  
8       questions.

9           ATTORNEY FALLON: Nothing else.

10          THE COURT: Witness is excused.

11          THE WITNESS: Thank you.

12          THE COURT: Mr. Buting, you may call your  
13       next witness.

14          MR. BUTING: I call Detective Remiker.

15          THE CLERK: Raise your right hand.

16          **DETECTIVE DAVID REMIKER**, called as a  
17       witness herein, having been first duly sworn, was  
18       examined and testified as follows:

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

21          THE WITNESS: Dave Remiker, R-e-m-i-k-e-r.

22                    DIRECT EXAMINATION

23   BY ATTORNEY BUTING:

24   Q.   And you are a detective; is that correct?

25   A.   Yes.

1 Q. How long have you been a police officer, or in  
2 law enforcement?

3 A. About 13 years.

4 Q. And how long have you been a detective?

5 A. I have been an investigator since January of '99.  
6 Part of that included narcotics.

7 Q. And you are employed by whom?

8 A. Manitowoc County Sheriff's Department.

9 Q. And on November 4th, 5th, in that time period of  
10 last year, were you also so employed?

11 A. Yes.

12 Q. And in your experience as a officer or detective,  
13 with the Manitowoc County Sheriff's Department,  
14 have you had experience in applying for search  
15 warrants?

16 A. Yes.

17 Q. Have you had training to do so as well?

18 A. Depends on what part of the search warrant you  
19 are talking about. I don't recall any specific  
20 training in reference to applying for search  
21 warrants.

22 Q. Never had any training on how to prepare an  
23 affidavit in order to get a search warrant, on  
24 the job, or otherwise?

25 A. On the job experience, that type of training.

1 Q. Okay. You do know, though, that when you prepare  
2 an application for a search warrant and, in fact,  
3 when you prepare an affidavit in support of that,  
4 that you must be truthful in the information  
5 that's provided?

6 A. Definitely.

7 Q. Could you tell me when you first became involved  
8 in the Teresa Halbach matter?

9 A. I believe it was on a Thursday, that would have  
10 been November 3rd, I believe.

11 Q. And how did that come about?

12 A. I was paged. I was requested to come into the  
13 Sheriff's Department. I arrived there and I met  
14 with some of the detectives from our department  
15 and Calumet County.

16 Q. And you were asked to come in by who; was that  
17 Lieutenant Lenk?

18 A. Probably.

19 Q. When you came in, did you meet with Lieutenant  
20 Lenk?

21 A. He was there, yes.

22 Q. As well as an investigator from the Calumet  
23 County Sheriff's Department?

24 A. Investigator Dederling, correct.

25 Q. And at that time, was it your understanding that

1           you were being called in to assist with a Calumet  
2           County matter, or a Manitowoc County matter, or  
3           which?

4       A. Missing person.

5       Q. But an investigation involving which department?

6       A. Well, the female that was missing was from  
7           Calumet County. They had received some  
8           information that some of her last contacts  
9           included an address in Manitowoc County.

10      Q. Okay. And did that address, in fact, turn out to  
11           be the Avery property in Manitowoc, Town of  
12           Gibson?

13      A. That was one of the locations, yes.

14      Q. Okay. And did you have occasion to check with  
15           Steven Avery on Thursday night, November 3rd, as  
16           to whether he had any information about the  
17           missing woman?

18      A. I did not.

19      Q. Someone from your department did?

20      A. Correct.

21      Q. And that would have been?

22      A. Sergeant Colborn.

23      Q. You know, did he go out to the property, or was  
24           it by phone?

25      A. I believe he went out to the property and spoke

1           with Steven, and maybe some additional people.

2 Q.       Okay. And the following day, did you, in fact,  
3           have an opportunity to go out to the Avery  
4           property as well?

5 A.       Yes.

6 Q.       Were you asked to do that, or did you do that on  
7           your own?

8 A.       I was asked.

9 Q.       By?

10 A.       It was Calumet County. I believe one of the main  
11          contacts we had was with Investigator Wiegert.

12 Q.       Okay. And do you know what time it was you went  
13          to the Avery property on the 4th?

14 A.       10:30.

15 Q.       10:30 in the morning?

16 A.       Correct.

17 Q.       Did you have a warrant at that time?

18 A.       No.

19 Q.       And did you approach the trailer in which Steven  
20          Avery resided in?

21 A.       At one point, yes.

22 Q.       Do you know the address, actual address of that?

23 A.       12932.

24 Q.       Avery Road?

25 A.       Correct.

1 Q. Okay. Did you speak with other -- You are aware,  
2 from your investigation, that there are other  
3 people that live at that same general area or  
4 compound, correct?

5 A. That was the first time I have ever been on the  
6 Avery property.

7 Q. Okay.

8 A. I had no idea who lived out there.

9 Q. So at that time, you didn't know -- you were  
10 directed to go to that specific address?

11 A. Correct.

12 Q. And that specific address related to the trailer  
13 resided in by Mr. Steven Avery?

14 A. I believe that's the information I received, yes.

15 Q. And when you drove on to the property, you had to  
16 turn right and go down sort of a dirt road to get  
17 to the end of the road before you reached that  
18 particular trailer; isn't that right?

19 A. I recall, when we first got out there, I had no  
20 idea where to go. I wasn't sure where his  
21 trailer was. At one point, we went down that  
22 road that leads to Steve's trailer, yes.

23 Q. And when you knocked on the door, was he there?

24 A. No.

25 Q. Did you enter without him being there?

1 A. No.

2 Q. After a period of time, did he arrive, or did he  
3 come up to you?

4 A. We attempted to make contact at that trailer,  
5 then we went to another trailer. That was the  
6 trailer that was resided by Barb Janda. And  
7 then, when there was no contact there, we started  
8 leaving. And as we were driving down the road,  
9 Steven, and I believe Delores, arrived, made  
10 contact with us. They were in a golf court.

11 Q. When you say us and we, who are you referring to?

12 A. Myself and Lieutenant Lenk.

13 Q. Lieutenant Lenk was actually out there with you?

14 A. Yes.

15 Q. Okay. And, so, did you talk with Mr. Steven  
16 Avery at that point?

17 A. Yes.

18 Q. Do you explain what your purpose was in being  
19 there?

20 A. Yes.

21 Q. And what was that? What did you tell him?

22 A. I told him that we were investigating a missing  
23 female. He seemed a little surprised. I told --  
24 I explained to him that he had contact with  
25 Sergeant Colburn the night before, and then I

1           asked if I could search his trailer.

2 Q.    Okay. And did he agree to do that?

3 A.    Yes.

4 Q.    Gave his consent freely?

5 A.    Freely.

6 Q.    Appeared to cooperate fully?

7 A.    Yes.

8 Q.    And, so, then did you walk back, or drive back,  
9           to the end of the road where his trailer was  
10          located?

11 A.    Yeah, he told me to go ahead and search. I told  
12          him I wanted him to come with me, and then we  
13          drove over to his trailer, and then he followed  
14          in the golf cart.

15 Q.    So he was willing to let you just go into his  
16          trailer and let you search without him even being  
17          there?

18 A.    I believe so, yes.

19 Q.    But you wanted him to be there?

20 A.    Correct.

21 Q.    And when you walked into the trailer, did you  
22          look around, through the complete trailer?

23 A.    Yes.

24 Q.    And can you just briefly describe what the  
25          layout -- or what the layout of the trailer is

1                   inside?

2                   ATTORNEY FALLON: Objection, relevant.

3                   THE COURT: Mr. Buting?

4                   ATTORNEY BUTING: Well, we're going to get  
5                   to it eventually, so to make the record clear, I  
6                   think it's helpful.

7                   THE COURT: We may get to it eventually, as  
8                   part of the case, but I'm hoping that the testimony  
9                   here will focus on your motion. And I am having  
10                  trouble understanding the relevance of what he found  
11                  in the trailer, or what he observed in the trailer,  
12                  to the motion.

13                  ATTORNEY BUTING: Well, we do have a burden  
14                  to establish some standing, and so some of these  
15                  questions need to go towards that so. I can --

16                  THE COURT: I'm not sure I follow that.

17                  ATTORNEY BUTING: I can rephrase it.

18                  Q. (By Attorney Buting)~ When you went in the  
19                  trailer, did it become clear to you that  
20                  Mr. Steven Avery did in fact reside in that  
21                  trailer?

22                  A. Yes.

23                  Q. Okay. You had no reason to doubt that?

24                  A. No, he let us in.

25                  Q. Okay. And you went and searched all of the rooms

1           and opened up all the doors and closets at that  
2           time, right?

3       A.   Yes.

4           ATTORNEY FALLON: Your Honor, I'm going to  
5           renew my objection as to the relevance of this. If  
6           Counsel is trying to lay foundational evidence for a  
7           standing argument, as I already argued last week,  
8           and in written pleadings, we do not challenge the  
9           fact that Mr. Avery has standing to challenge a  
10          search of his residence or his garage. Our argument  
11          goes to everywhere else. I'm not sure how this  
12          questioning, on November 4th, is relevant to the  
13          events on November 5th.

14          MR. BUTING: Nevertheless, Judge, we do  
15          have to make a record to establish standing, as  
16          Mr. Fallon has pointed out. And this is -- This  
17          detective was there and can testify about  
18          Mr. Avery's standing to object to this warrant,  
19          which included this particular trailer. That's what  
20          I'm trying to establish.

21          THE COURT: I don't know that that's  
22          disputed. I think that that's established already.  
23          I don't know how, what he found in the various  
24          rooms, relates to that, so I'm going to sustain the  
25          objection.

1 ATTORNEY BUTING: All right.

2 Q. (By Attorney Buting)~ In any event, you walked  
3 through the trailer and then came out, right?

4 A. Correct.

5 Q. Didn't find anything inside that gave you any  
6 reason to think that Teresa was there, or had  
7 been there?

8 A. I had no reason to believe that Teresa was there.

9 Q. Okay. And then, did Steve allow you to -- Well,  
10 let me go back for a second. There's also a  
11 detached garage that's near that particular  
12 trailer; isn't that right?

13 A. Yes.

14 Q. And it has a door on it?

15 A. Correct.

16 Q. Actually, two doors, a service door and an  
17 overhead door?

18 A. Correct.

19 Q. And were those doors opened?

20 A. I don't recall.

21 Q. Did Steve allow you to go in and look into the  
22 garage as well?

23 A. I didn't ask to go in the garage.

24 Q. I'm sorry?

25 A. I didn't ask to go in the garage.

1 Q. Okay. And he didn't do anything to prevent you  
2 from going in the garage, though?

3 A. There wasn't any discussion about the garage.

4 Q. Did you look around to see if there was any  
5 evidence that her vehicle was on the property  
6 somewhere, in that area?

7 A. We may have looked as we were driving in and out,  
8 that's about it.

9 Q. Did you walk around any of the property to the  
10 side or back of the trailer?

11 A. No.

12 Q. Did you see any burn barrels located nearby the  
13 Steven Avery trailer?

14 A. On the day of the consent search?

15 Q. Or before you actually filed the warrant?

16 A. I know there's burn barrels out there, from my  
17 contact out there. When I exactly seen them, I  
18 don't know.

19 Q. Did it appear to you that the burn barrels you  
20 saw were in some way connected to the Steven  
21 Avery trailer, that somehow there was some  
22 connection between them, as opposed to anywhere  
23 else?

24 A. Well, when I was out there on Saturday and  
25 Sunday, and I seen the burn barrels, at that

1           point, obviously, I sensed that there was some  
2           connection between Steven's house and the burn  
3           barrels, yes.

4       Q.   And that's because of the proximity to the house,  
5           or what?

6       A.   Yes.

7       Q.   The barrels you are referring to were in the --  
8           Are we talking about one or more barrels?

9       A.   I believe there's one, just prior to you arriving  
10          at Steven's trailer, and on the right hand side  
11          of the driveway.

12      Q.   Sort of in the front, still, of the trailer?

13      A.   Correct.

14      Q.   And did you -- Did you at any point see a  
15          burning -- a burn pit to the rear of the detached  
16          garage, next to Mr. Avery's trailer?

17      A.   Are you still talking about that Friday, or into  
18          Saturday/Sunday; what date are we talking about?  
19          They are quite different.

20      Q.   For purposes of clarifying the record, on this  
21          question, we can include your subsequent.

22      A.   Saturday and Sunday?

23      Q.   Yes.

24      A.   Yes, I seen a burn pit back there.

25      Q.   And did that burn pit appear to be connected in

1           any way to the Steven Avery residence, as opposed  
2           to any of the neighboring ones?

3   A. It's right behind his garage.

4   Q. So your answer would be?

5   A. Yes, it is.

6   Q. Did you do anything else before you left the  
7       Avery property on November 4th?

8   A. No.

9   Q. So you and Detective Lenk came together in the  
10      same vehicle?

11   A. Correct.

12   Q. Now, the following day, Saturday, November 5th,  
13      were you working?

14   A. Yes.

15   Q. Do you know what time you started?

16   A. 8:00 a.m.

17   Q. Did you receive a call from Investigator Wiegert  
18      that morning?

19   A. Yes.

20   Q. Do you know what time?

21   A. I would say between 8:00 a.m. and 10:00 a.m.

22   Q. And did, in that -- I'm talking about the first  
23      conversation that you had with Investigator  
24      Wiegert, did you have a discussion about  
25      volunteer searchers?

1 A. Yeah, he gave me some information about some  
2 volunteer searchers.

3 Q. And did Investigator Wiegert tell you that there  
4 were numerous volunteer searchers who were  
5 coordinating their efforts to do some searches of  
6 properties within Manitowoc county?

7 A. Not those exact words, no.

8 Q. Have you reviewed anything prior to your  
9 testimony today?

10 A. Yes.

11 Q. What was that?

12 A. My report, um, recorded phone calls, um, recorded  
13 radio transmissions.

14 Q. And are those transcribed, those radio  
15 transmissions you are talking about?

16 A. No.

17 Q. Did you bring those with you today?

18 A. I did not.

19 Q. Where are they located?

20 A. At the Sheriff's Department.

21 Q. What radio transmissions are you referring to?

22 A. There's recorded conversations, phone  
23 conversations between myself and Investigator  
24 Wiegert. And I also reviewed the radio traffic  
25 that I participated in.

1 Q. And those recordings, are they -- what day are  
2 they referring to?

3 A. Saturday, the 5th.

4 Q. So this is around the time of this phone call  
5 that we were talking about?

6 A. Correct.

7 Q. And, thereafter, as you are approaching the Avery  
8 property, later?

9 A. Yes.

10 Q. How many different recordings did you listen to?

11 A. Phone calls or radio conversations?

12 Q. Do you have tape recordings of the phone calls  
13 too?

14 A. Yes.

15 Q. Which ones?

16 A. There were a couple conversations between myself  
17 and Investigator Wiegert, prior to me arriving at  
18 the Avery property.

19 Q. Were those while you were located, still, at the  
20 Sheriff's Department, or while you were on the  
21 road?

22 A. At the Sheriff's Department.

23 Q. And would that include your first conversation  
24 with Investigator Wiegert that morning?

25 A. I believe so.

1 Q. And, so, approximately how many phone  
2 conversations did you have, or did you review,  
3 before your testimony today, that concerned your  
4 conversations with Investigator Wiegert?

5 A. I believe there's two phone calls between myself  
6 and Investigator Wiegert.

7 Q. And did both of those take place while you were  
8 still located at the station?

9 A. Correct.

10 Q. And the radio transmissions that you are  
11 referring to that you reviewed, were those ones  
12 that took place after you had left the station?

13 A. Correct.

14 Q. And included what period of time?

15 A. From the time I left the south parking lot of the  
16 Sheriff's Department until the time that --  
17 shortly after I confirmed the VIN number on the  
18 vehicle.

19 Q. And did those radio transmissions also include  
20 your conversation, in other words, statements you  
21 were making on the radio?

22 A. Yes.

23 Q. I will get back to the recordings in a minute.  
24 But you also indicated that you reviewed your  
25 report?

1 A. Yes.

2 Q. As part of your testimony today?

3 A. Correct.

4 Q. And by your report, are we talking about a -- a

5 portion of a 22 page report prepared by the

6 Manitowoc County Sheriff's Department?

7 A. Yes.

8 Q. And that goes in a sort of sequential,

9 chronological time, the way it's organized?

10 A. For the most part, yes.

11 Q. And is that something you dictate, your part of

12 it?

13 A. Yes.

14 Q. And then it gets transcribed by somebody?

15 A. Correct.

16 Q. And then you review it?

17 A. Yes.

18 Q. To make sure that it's accurate?

19 A. Yes.

20 Q. And that's done shortly after the events that you

21 are investigating, right?

22 A. I can tell you, that report was probably dictated

23 about a week after the last day I was out there.

24 Q. Okay. Now, would you agree with me, since you

25 reviewed your report, that in your report, you

1 state, quote, I, Detective Remiker, was working  
2 at the MTSO -- is that an abbreviation for  
3 Manitowoc County Sheriff's Department?

4 A. Yes.

5 Q. -- at which time I received a phone call from  
6 CASO -- Calumet Sheriff's Department, right?

7 A. Correct.

8 Q. -- Investigator Mark Wiegert. Investigator  
9 Wiegert indicated there were numerous volunteer  
10 searchers who were coordinating their efforts to  
11 do some searches of properties within Manitowoc  
12 County. Does this all sound familiar with what  
13 you reviewed?

14 A. That's what my report says.

15 Q. Did you bring it with you today?

16 A. Yes.

17 Q. Do you want to retrieve it quickly?

18 A. Sure.

19 Q. I believe we're on Page 4 of 22?

20 A. Got it.

21 Q. Okay. And do you also go on to say in your  
22 report, quote, Wiegert indicated that several  
23 searchers were willing to go to the Avery  
24 property, on Avery road, to search the  
25 junkyards/salvage area.

1 A. That's what it says.

2 Q. And does it also say, quote, Investigator Wiegert  
3 stated he and several of the volunteer search  
4 parties would be coming to the MTSO within the  
5 next hour, to meet and coordinate efforts.

6 Right?

7 A. Correct.

8 Q. That's what your report says?

9 A. Correct.

10 Q. And, finally, Investigator Wiegert requested my  
11 assistance for this follow up. Closed quote.

12 A. Yes.

13 Q. That's what your report says, right?

14 A. Yes.

15 Q. And is your report true and accurate?

16 A. It's close.

17 Q. You try to make a complete and true report, I  
18 assume, right?

19 A. Absolutely.

20 Q. And when you say it's close, what -- that's based  
21 upon what?

22 A. Well, during my conversations with Investigator  
23 Wiegert, um, in the first conversation I had with  
24 him, he indicates that, he says to me, just so  
25 you know, the family is doing their own thing out

1           there with searches. In case you get calls of  
2           trespassers, in case you get calls that there's  
3           people walking the ditches, the family is out  
4           there doing their own thing. That was my first  
5           conversation with him.

6       Q. And this -- this conversation that you are  
7           relating right now, is that based on some  
8           independent recollection you have now, of an  
9           event?

10      A. That's based on my review of the phone calls.

11      Q. That's based on your review of the phone calls  
12           that you did to prepare for today's testimony?

13      A. Yeah, I mean, some of the conversation I can  
14           recall, but I was able to, I guess, verify a  
15           little bit more once I reviewed that.

16      Q. Anything else about your report, or is there  
17           anything about your report that's not true?

18      A. Well, I guess I misunderstood Investigator  
19           Wiegert in which -- at some point I had thought  
20           that he was bringing some people to our  
21           department, some volunteer searchers to  
22           coordinate our efforts, that wasn't the case.

23      Q. Well, that is what you put in your report,  
24           though?

25      A. Correct.

1 Q. So, is your report not true on that?

2 A. I would say that part is a little, yeah, a  
3 little -- it's not quite accurate.

4 Q. Not quite accurate, doesn't really cut it. My  
5 question is, did Wiegert say that several  
6 searchers were willing to go to the Avery  
7 property to search the junkyard/salvage yard  
8 area.

9 A. The part that there were volunteer searchers out  
10 there, that's accurate. Another conversation  
11 that I had with Wiegert after that was, he calls  
12 me, he says, Hey, we have a change of plans. I  
13 think we should reinterview Steven and another  
14 individual. And he also indicated that there  
15 were some volunteer searchers who were willing to  
16 go out and do some searches in different  
17 locations. And he had thought that we should  
18 meet up and talk about that and it was possible  
19 that we would go and try to get consent from the  
20 Avery's to search the salvage yard. That was the  
21 second conversation I had with him.

22 Q. And all of this recollection that you are  
23 relating to us now comes from your review of the  
24 phone calls?

25 A. It's a little bit of both. As I reviewed the

1 phone calls, I remembered a couple more things,  
2 an independent recollection of that exact date.

3 ATTORNEY BUTING: Judge, at this time, I  
4 request we take a break. We have not had an  
5 opportunity, did not even know of such recordings,  
6 even though we have requested them. And I think at  
7 this point we have got to take a break so that we  
8 have an opportunity to review those before I can  
9 complete my cross-examination of Detective Remiker.

10 THE COURT: Mr. Fallon.

11 ATTORNEY FALLON: We don't have any  
12 objection to that. Counsel and I were unaware that  
13 Manitowoc actually had recordings of those, I  
14 believe. We had some information from Calumet  
15 County, or things that they had recorded. And,  
16 quite frankly, never dawned on us that they would  
17 have recordings of something 10 months old, so.

18 THE COURT: All right. Does anyone have  
19 any idea how long it's going to take to get these  
20 together?

21 THE WITNESS: I know they are in the  
22 process of getting it all together. There's a lot  
23 of information, a lot of recordings. I don't know  
24 where they are at. I believe they are -- they are  
25 finishing up.

1                   ATTORNEY FALLON: Let me ask, this, If I  
2 may, Judge?

3                   THE COURT: Go ahead.

4                   ATTORNEY FALLON: Detective, is it  
5 possible -- Apparently there's a lot of radio  
6 traffic relative to that day, so let me ask this  
7 question. Is it possible to obtain, for instance, a  
8 recording of the telephone conversations you had  
9 with Investigator Wiegert and, perhaps, what would  
10 you say, gentlemen, the first hour of radio traffic,  
11 and then we can wait, for the rest of it may not  
12 have any pertinence at all to the balance of the  
13 motion? What do you think, if we just -- Is there  
14 any way we can get like --

15                  THE WITNESS: Probably have it to you  
16 within the hour.

17                  ATTORNEY FALLON: Within the hour.

18 Q. (By Attorney Buting)~ Can I ask you this, when  
19 you reviewed them, were they on -- did you just  
20 review them through some central system, or were  
21 they on cassettes already, or what?

22 A. The individual that was collecting the  
23 information, doing the recordings, he had -- I  
24 had requested that I be able to listen to a few  
25 things. And he had centralized, or itemized

1                   those specific ones. And I think they are all on  
2                   some hard drive, some main data base within the  
3                   Department.

4       Q.   When you listened to them, you had some  
5                   headphones plugged into something, or what?

6       A.   No, they were just right on the computer.

7       Q.   Okay. Is that right next door?

8       A.   Correct.

9                   THE COURT: Well, let me ask this, what are  
10                  the other witnesses that the parties anticipate  
11                  calling, with respect to this motion? Does the  
12                  defense have any further witnesses?

13                  ATTORNEY BUTING: We do, your Honor, but I  
14                  view this new information as extremely important to  
15                  all of the witnesses. If we're talking about actual  
16                  recordings of communications that are directly at  
17                  issue here, that is, Detective Wiegert's testimony  
18                  and Detective Remiker's testimony, about their  
19                  contacts with the volunteers and all of that, if  
20                  that's recorded somewhere, then that's obviously  
21                  very important. And it would really, potentially,  
22                  impact how I would question other witnesses, if I  
23                  had that information, which I had requested but --  
24                  and apparently it was in the process of being  
25                  prepared, but had not yet been prepared to us.

THE COURT: What I'm wondering is, if we can't continue taking testimony either on this motion, or one of the other motions, while people at the Sheriff's Department are getting the recordings together, so perhaps over an hour and a half break for lunch, the parties could listen to the recordings, but not put us too far behind schedule here today.

I understand perfectly, before you complete your examination of Detective Remiker, you are going to want to listen to those recordings. I also acknowledge that it may well play a role in your examination of other witnesses on this particular motion. But I would prefer that we not be wasting time, with everybody here, while somebody at the Sheriff's Department is compiling the information.

I would hope that someone over at the Sheriff's Department could be instructed to get that together so that it's ready over the noon hour. And we can take testimony, either additional testimony on this motion, or move on to one of the other motions before the lunch break.

ATTORNEY BUTTING: Let me ask one other

1 question, first, of Detective Remiker.

2 Q. (By Attorney Buting)~ These phone calls that are  
3 recorded that you reviewed, do any of them  
4 involve discussions with an individual by the  
5 name of Ryan Hillegas?

6 A. That name is never mentioned.

7 Q. I'm sorry?

8 A. That name is never mentioned.

9 Q. Or any phone conversations with the Halbach  
10 family?

11 A. No.

12 Q. Or Patricia (sic) Sturm?

13 A. That's all it is, is I think two phone calls  
14 between myself and Investigator Wiegert, and then  
15 some radio traffic from myself going out to the  
16 Avery property. I have it kind of written down,  
17 word for word --

18 (Court reporter couldn't hear.)

19 A. I have it written down almost word for word what  
20 the conversation is.

21 ATTORNEY BUTING: All right. We could call  
22 one other witness, then, if we would take a break,  
23 and Detective Remiker be instructed to contact the  
24 Sheriff's Department and expedite making copies of  
25 those.

1                   THE COURT: All right. Is that  
2 satisfactory to everyone?

3                   ATTORNEY FALLON: That's fine.

4                   DETECTIVE REMIKER: Clarify exactly what  
5 you want.

6                   ATTORNEY BUTING: I'm talking about the  
7 phone conversations, as well as the radio traffic,  
8 right up to the point where you say you stopped  
9 reviewing it, that is, I think you were looking at  
10 the VIN number or something.

11                  THE WITNESS: There's myself talking about  
12 the VIN number quickly, and then dispatch contacts  
13 me and tells me that there's somebody waiting at the  
14 Sheriff's Department, the media shows up at the  
15 Sheriff's Department. And that's about where it  
16 ended.

17                  ATTORNEY BUTING: Okay. So all of that, up  
18 to that point. After that, if you haven't reviewed  
19 that for today, then we'll deal with it later.

20                  DETECTIVE REMIKER: Correct.

21                  THE COURT: Is the -- Is someone at the  
22 Sheriff's Department in the process of transcribing  
23 these conversations?

24                  DETECTIVE REMIKER: We're in the process of  
25 providing radio, telephone, various types of

1 communication that's recorded, to the defense, in  
2 it's original form.

3 THE COURT: All right. Why don't I excuse  
4 you at this time. You can contact the Sheriff's  
5 Department and ask them to get that together. We'll  
6 move on to the next witness. Okay. And, hopefully,  
7 it will be ready to be reviewed over the noon hour.

8 (Witness excused.)

9 ATTORNEY BUTING: We are waiting for Ryan  
10 Hillegas. That's H-i-l-l-e-g-a-s, Ryan with a y.

11 THE CLERK: Please remain standing. Please  
12 raise your right hand.

13 **RYAN HILLEGAS**, called as a witness  
14 herein, having been first duly sworn, was  
15 examined and testified as follows:

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

18 THE WITNESS: Ryan Hillegas,  
19 H-i-l-l-e-g-a-s.

20 **DIRECT EXAMINATION**

21 BY ATTORNEY BUTING:

22 Q. And, Mr. Hillegas, do you reside in Calumet or  
23 Manitowoc County?

24 A. I don't anymore.

25 Q. Where do you reside?

1 A. I'm in Waukesha County now. I moved in February.

2 Q. Okay. In November of 2005, did you reside in

3 this area?

4 A. I did.

5 Q. In which county?

6 A. Calumet.

7 Q. And what is your occupation?

8 A. I'm a registered nurse.

9 Q. Do you know, or did you know Teresa Halbach?

10 A. I did.

11 Q. And what was the nature of your relationship with

12 her?

13 A. Um, we were close friends. We dated for a while

14 in high school; basically, just remained friends.

15 Q. So for a period of time you were

16 boyfriend/girlfriend?

17 A. Mm-hmm.

18 Q. You have to say yes or no for the court reporter?

19 A. Yes.

20 Q. And when did you discover that she was missing?

21 A. That Thursday right after Halloween.

22 Q. Thursday, November 3rd, would that?

23 A. That's correct.

24 Q. Okay. And how did you learn this?

25 A. Her roommate called me and, basically, asked me

1           if I had talked to her, or heard anything about  
2           her?

3 Q.       Her roommate being who?

4 A.       Scott Bloedorn.

5 Q.       B-l-o-e --

6 A.       -d-o-r-n.

7 Q.       -d-o-r-n. Okay. And had you seen her recently,  
8           before that?

9 A.       I saw her -- let's see, I believe it was --  
10          Halloween was a Monday, I saw her on Sunday.

11 Q.       So the very day before?

12 A.       I believe so, yes.

13 Q.       And were you familiar with her vehicle?

14 A.       Yup. Yes.

15 Q.       Did you ever personally see it, in other words?

16 A.       Yes.

17 Q.       Did you ever drive it?

18 A.       No.

19 Q.       Ever ride in it?

20 A.       Yes.

21 Q.       And did you, at some point, become involved in  
22          some searches of the area?

23 A.       Yes.

24 Q.       And how did you become involved in that?

25 A.       Um, once we -- I heard she was missing, I believe

1           it was Friday morning, it would have been the  
2           4th. I talked to the family that morning, and we  
3           had arranged to pick up posters and -- pick up  
4           posters in Appleton, at a missing person  
5           organization and, basically, it kind of started  
6           there.

7 Q.       Did you help put together the posters or  
8           suggest--

9 A.       Um, the posters were already put together. I'm  
10          not sure if the family collaborated. I'm pretty  
11          sure it was the family that got together with the  
12          missing person organization. They put the  
13          posters together and printed them up for us.

14 Q.       Did you use those posters yourself and later  
15          distribute them to others?

16 A.       Yes.

17 Q.       What sort of information was contained on them?

18 A.       Um, there was a picture of Teresa, some of the  
19          posters had a picture of Teresa as well as the  
20          vehicle. There was information about her,  
21          describing her, her height, weight, what she was  
22          possibly wearing, and then, I believe, just a  
23          little information that if anybody seen her that  
24          they should call the number and there was the  
25          number for the Sheriff's Department there, for

1                   them to call.

2   Q.  And so after you -- you picked up some of these  
3       posters -- and this was Friday morning you said,  
4       right?

5   A.  Yes.

6   Q.  How did you then go from there to becoming  
7       involved in some kind of search?

8   A.  I agreed to go pick the posters up, and I guess I  
9       kind of had the most access to, like, phone  
10      numbers of her friends, stuff like that.  And we  
11      just started calling, basically, anybody we knew,  
12      to come help.  And by the time I returned with  
13      the posters that afternoon there was, I don't  
14      know, 50, 60 people waiting in the driveway to go  
15      out and hang the fliers.

16   Q.  So, the idea, then, was to have these people go  
17      out and post the fliers, not actually search?

18   A.  On Friday, we put up the posters, correct.  So it  
19      wasn't so much a search.  It was more or less  
20      getting the information out, and getting people  
21      in the local areas to realize what was going on.

22   Q.  So, did you sort of become the coordinator of all  
23      of this, the volunteers?

24   A.  Basically, yes.

25   Q.  And, then, at some point did your -- did your

1 thinking go from just a matter of putting up  
2 posters to actually using these people to do some  
3 searches?

4 A. Yes. Basically, how I was advised, through the  
5 missing person agency, was they kind of go in  
6 steps. First, you get posters out, make people  
7 aware. And you kind of move, you get a little  
8 more invasive from there, I guess.

9 Q. Do you know the name of this agency?

10 A. It is the -- I believe it's the YES Foundation,  
11 in Appleton.

12 Q. Is it connected with the police department there?

13 A. I have no idea.

14 Q. Okay. But you knew the police were already  
15 involved in their own investigation at that time,  
16 right?

17 A. Yup.

18 Q. So, why did you feel it necessary to do any other  
19 searches with these volunteers, if the police  
20 were already involved?

21 A. Well, the more help you could get, the better  
22 odds we would have of finding her quick, I guess.

23 Q. Did you have any experience in --

24 A. No.

25 Q. -- searches of this sort?

1 A. No.

2 Q. And did you talk to anybody, any police officers,  
3 or anybody, to help explain to you how you could  
4 go about doing these searches?

5 A. No, I talked to the police, but none of it was --  
6 none of it really regarded how to search, or I  
7 guess I didn't get any pointers from the cops on  
8 that.

9 Q. When you say you talked to the police, who did  
10 you speak with?

11 A. Let's see, I know Thursday night, when we were at  
12 the house, I went over -- after Scott called me,  
13 I went to the house and we kind of started  
14 calling around and started calling friends then.

15                   But I believe it was Jerry Pagel and  
16 Detective Wiegert, who were at the house Thursday  
17 night, collecting belongings and asking  
18 questions. The family was there also.

19 Q. Did you know either of those individuals before  
20 that night?

21 A. No, I had heard of Jerry Pagel before, only  
22 because he was the County Sheriff, but I don't  
23 think I had ever met him before.

24 Q. Didn't have any other dealings with him on  
25 anything?

1 A. No.

2 Q. And, then, after Thursday night, did you also  
3 have some contact with police, or law  
4 enforcement, on Friday?

5 A. I believe on Friday -- I believe on Friday I  
6 talked to Jerry Pagel. And I'm pretty sure it  
7 was regarding, you know, more -- they had -- I  
8 spoke to the police every day regarding questions  
9 about Teresa, personal items, and friends of  
10 hers, people who may know information about her.

11 I did talk to -- I talked to Jerry on  
12 Friday, just shortly, and just mentioned what we  
13 were doing. I said we had put up posters and  
14 just kind of told him the game plan for things.

15 Q. And did you tell him that -- When you say him,  
16 you are referring to?

17 A. Jerry Pagel.

18 Q. Jerry Pagel, Sheriff Pagel. Did you tell him  
19 that you were intending to use these volunteers  
20 and go out and do searches?

21 A. I believe so. And I believe what we had -- what  
22 we had told them was -- or what I had told them,  
23 sorry, was that we were just going out on  
24 Saturday to do car searches. I told him we were  
25 putting up flyers on Friday. And our plan was to

1           go out on Saturday and drive around the  
2           countryside and look for anything that was  
3           interesting, or worth taking a second look at.

4   Q.   So, did you tell Sheriff Pagel that you had sort  
5       of become the coordinator of all of this?

6   A.   I don't believe so. I think it was just kind of  
7       assumed, I was kind of the contact for the whole  
8       search. If anybody wanted to help, they were  
9       instructed to call me. Basically, I guess it  
10      started with me.

11   Q.   Did you also speak with Investigator Wiegert on  
12      Friday?

13   A.   I don't know that for sure.

14   Q.   What about Saturday morning, did you speak with  
15      him?

16   A.   I don't know that for sure either.

17   Q.   Is it possible that you did?

18   A.   I don't know.

19   Q.   Well, did you -- Let me ask it this way. Did you  
20      speak to any law enforcement people on Saturday  
21      morning, November 5th?

22   A.   I don't know.

23   Q.   And why is it that you don't know?

24   A.   Well, I guess a lot was going on. We had been up  
25      for, you know, most of Thursday night, planning

1           all day Friday, all day Friday night, making maps  
2           and posters, and sizing them and scaling them, to  
3           hand out to everybody to their assigned driving  
4           areas. Yeah, I guess, you know, three days  
5           without sleep will -- I don't know what else to  
6           tell you.

7       Q. Did Sheriff Pagel or any other law enforcement  
8           individual tell you that they did not want you to  
9           do any of these searches?

10      A. No.

11      Q. They didn't say, like, butt out, this is our  
12           investigation, anything of that sort?

13      A. No.

14      Q. Did they -- any of them tell you that they had  
15           some concerns about whether your searches might  
16           compromise their own investigation?

17      A. No.

18      Q. Did you have any concerns of your own about  
19           whether searchers, or all these volunteers going  
20           out over the countryside, might somehow  
21           compromise the police investigation?

22      A. No, not really. I guess our main concern was to  
23           find Teresa, and find her quick, if she was still  
24           alive, or still somewhere.

25      Q. But had you considered the possibility that she

1           was not alive at that point?

2 A.       It was always a possibility, I guess.

3 Q.       And were your searchers instructed to search, not

4           just for her, but anything, any evidence of her,

5           or anything that might point to her?

6 A.       Sure, yes.

7 Q.       And did you tell that to Sheriff Pagel, that that

8           was your purpose?

9 A.       Maybe not specifically like that but, you know, I

10          think the intent was just to go out there and

11          search for anything that would lead to her, yeah.

12 Q.       And so to that effect you conveyed that

13          information to Sheriff Pagel?

14 A.       Yeah.

15 Q.       Other than the Thursday, November 3rd, which is

16          the day I think you said you actually met with

17          Investigator Wiegert, right?

18 A.       Yes.

19 Q.       Did you have any phone conversations with him

20          after that, between that time and when the

21          vehicle was located?

22 A.       Detective Wiegert, I don't know.

23 Q.       Is it possible, or are you sure either way?

24 A.       I don't know, like I said. I talked to so many

25          of the detectives and police throughout the whole

1           search, not just those first two days, you know,  
2           regarding personal items, numbers of contact for  
3           Teresa, people who knew her. I can't say for  
4           sure.

5       Q. All right. So I take it then that you put the  
6           word out to these volunteers to get together  
7           somewhere, you talked about working on maps and  
8           all of that?

9       A. Mm-hmm, yes.

10      Q. And was there some group meeting of these  
11           volunteers?

12      A. Yeah, I guess Friday, when I got back with the  
13           posters, most of the calls were put out, you  
14           know, family and friends. I know the family had  
15           contacted a lot of people. A lot of people were  
16           just calling to see what they could do.

17           Basically, we were just telling them to  
18           meet at the house. So, Friday, everybody met me  
19           there, when I came back with the posters. And  
20           Saturday morning -- Friday night we planned that  
21           Saturday morning everybody would meet at the  
22           house. I'm not sure what time it was, 6, 7.

23      Q. So, you had a big meeting on Friday night of  
24           everybody, as well as Saturday?

25      A. Not -- Not so much a meeting as it was everybody

1 just met and then we kind of divvied up, I guess,  
2 driving assignments and where everybody should  
3 go.

4 ATTORNEY FALLON: Excuse me, just for  
5 purposes of clarification, we're losing the  
6 sequence. Is this Friday night, or is this  
7 Saturday, that we're talking about right now?

8 ATTORNEY BUTING: We'll talk about Friday  
9 and then we'll move immediately to Saturday.

10 THE WITNESS: Right now, I think we're  
11 talking about both days, yeah.

12 Q. (By Attorney Buting)~ So, Friday evening there  
13 was a gathering of 50 some people, something like  
14 that?

15 A. Yes.

16 Q. When you say at the house, which house are you  
17 referring to?

18 A. At Teresa's house, where Teresa lived.

19 Q. Okay. And were there assignments made on Friday  
20 night as to who would do what or was that --

21 A. Friday wasn't as organized as Saturday was. It  
22 was, you know, rather fly by the moment. I  
23 picked the posters up and everybody met. And  
24 when we got back, just had a big circle around  
25 me, I guess, and started telling people what

1           cities we needed posters put up in. And  
2           people -- people volunteered for mostly the areas  
3           they knew, but people just kind of picked areas,  
4           we wrote them down for what cities, and made sure  
5           that all the surrounding.

6       Q.    Is this still Friday night we're talking about?

7       A.    This is Friday afternoon, Friday night, yeah.

8       Q.    And then, so what was the purpose of meeting  
9           again then on Saturday?

10      A.    To get a group of people together to do a road  
11           search, a car search.

12      Q.    So, were there other assignments handed out on  
13           Friday evening, that were different than that?

14      A.    Friday was just putting up posters. Friday  
15           wasn't driving around the countryside looking for  
16           a vehicle or anything like that. It was  
17           basically --

18      Q.    I'm talking about Friday evening, when you had  
19           this gathering?

20      A.    Friday was all posters. We had one gathering.  
21           Everybody met. I handed out posters to  
22           everybody, gave them city assignments. They went  
23           and handed their posters out and that was it for  
24           that day.

25      Q.    Okay. So the Friday meeting didn't have any

1 discussion with actual doing any searches, it was  
2 just where are we going to put the posters?

3 A. Getting the information out, correct.

4 Q. I gotcha. Okay. So, then, on Saturday morning,  
5 did it change to, let's now use them for  
6 searches?

7 A. Saturday morning, right, it changed. Everybody  
8 met and we decided to do a car search, basically.

9 Q. Was that your decision?

10 A. Basically, yeah. We were up all night Friday  
11 night, making maps. Basically, just took  
12 satellite images off the internet, blew them up  
13 to scale, gave everybody a blown up version of  
14 their roads that we wanted them to search.

15 Q. And did the areas you selected -- How did you  
16 select what areas to search?

17 A. Um, well, we -- we searched pretty much every  
18 town and every road from just about the St. John,  
19 Sherwood area, to all the way to Lake Michigan,  
20 off to Green Bay.

21 Q. Let me ask you this way. Did you have any  
22 information from the police, or otherwise, as to  
23 where Teresa was last seen or where she was going  
24 on the day she was last seen.

25 A. I'm not sure. I don't believe that -- that we

1           knew where she was last seen then. I'm not real  
2           clear about that, like I say.

3 Q.       Did you know anything about her travels, her  
4           activities on the 31st?

5 A.       I knew that she had been taking pictures out in  
6           the Manitowoc County area.

7 Q.       Okay. And did you know that one of the locations  
8           was the Avery Salvage property?

9 A.       I believe I did, yes.

10 Q.       Okay. You are saying you just don't know if you  
11           knew it was the last place that she was seen, but  
12           you --

13 A.       Right. I don't know when that information was  
14           specifically figured out.

15 Q.       Okay. But you did know when you were gathering  
16           these searchers together, that the Avery property  
17           was one place she had been?

18 A.       Yes.

19 Q.       And so as you are dividing up the property, or  
20           the areas to search, did you give that particular  
21           area to any individual?

22 A.       I didn't, per se, give it to anybody, somebody  
23           volunteered -- Well, we had -- we had that whole  
24           area covered anyways, all the roads, all the back  
25           country roads. But the property itself was --

1           was went through, I guess.

2 Q.     Was what?

3 A.     I guess you could say went through. Pam -- Pam  
4           Sturm had went there, found the vehicle, yes.

5 Q.     I'm talking, now, about the meeting on Saturday  
6           morning?

7 A.     Sure.

8 Q.     Did one of the -- one of the sectors -- or you  
9           said you had maps, right?

10 A.    Mm-hmm, yes.

11 Q.    Okay. And you divided them up in certain  
12          sectors, would we say, or sections?

13 A.    Yeah.

14 Q.    And then people were assigned, or volunteered, to  
15          take certain sections?

16 A.    Yes.

17 Q.    And one of those sections included the Avery  
18          property?

19 A.    No, that's not correct.

20 Q.    So, you did not -- That was not something that  
21          was considered, by you, to be an area that should  
22          be searched?

23 A.    By me, I considered it an area that, you know, we  
24          definitely should look at. That morning, as you  
25          were talking, we did not specifically tell

1           anybody to go there. It was more or less the  
2           surrounding areas and the counties around there.

3 Q.        Okay. And there's like gravel pits, and  
4           quarries, and things like that in that area, too?

5 A.        Right.

6 Q.        And were people actually going to be walking over  
7           land, or just driving on the roads?

8 A.        No. That morning, the plan was for everybody to  
9           go out in their cars and look for anything  
10          conspicuous, tracks going into the ditch, her  
11          vehicle, anything, basically, that would lead to  
12          where she was.

13 Q.        But my question is, were they restricted to just  
14          the roads, or was it anticipated that people  
15          would then get out and walk?

16 A.        I did not restrict anybody. If they wanted to  
17          get out of their vehicles and walk spots, that  
18          was kind of up to them. My plan was just to get  
19          the people out there and have them looking.

20 Q.        All right. Now, Pamela Sturm, did you know her  
21          before that day?

22 A.        No.

23 Q.        Never met her?

24 A.        No.

25 Q.        Did she -- So you had never talked with her at

1           all before Saturday morning?

2       A. Um, she may have been there on Friday, when we  
3           handed out the posters. I took names down, I  
4           don't remember who I talked to. Basically, we  
5           were in such a hurry by the time I got back, that  
6           I didn't have time to meet and greet with  
7           anybody.

8       Q. Okay. By the way, did you review anything before  
9           your testimony today, to help you refresh your  
10          recollection about your testimony?

11      A. No.

12      Q. No reports or notes of your own?

13      A. No.

14      Q. Okay. So, did Pamela Sturm arrive with all the  
15          other groups?

16      A. No.

17      Q. When did she arrive?

18      A. I don't remember the time. The large group that  
19          met that morning left the house at approximately  
20          between 7 and 8, I'm going to guess. Pam showed  
21          up maybe an hour or two after everybody else had  
22          left.

23      Q. And what was discussed at that point?

24      A. Pam came to the house and, basically, introduced  
25          herself and asked what she could do. I explained

1 to her what we were doing for the day, what our  
2 plan was, showed her the maps.

3 By that time, most of the areas were  
4 already covered. And she, basically, mentioned  
5 to me, you know, has anybody gone to the Avery  
6 car lot, or Avery's Salvage Yard. I don't  
7 remember the correct terms for it that she used  
8 but.

9 Q. And did you know that she was a former private  
10 investigator?

11 A. At that time, I don't know if I did.

12 Q. Did she -- Do you recall her telling you anything  
13 about any experience she might have had, with  
14 searches?

15 A. I don't remember that. I don't know.

16 Q. Okay. When she mentioned that she might want to  
17 take that section and search the Avery Salvage  
18 lot, did you understand she meant actually going  
19 onto the property?

20 A. Yes.

21 Q. Not just the roads nearby?

22 A. Yes.

23 Q. And did you discuss with her at all, you know,  
24 whether she should get permission, or what her  
25 procedure should be, or anything of that sort?

1 A. I don't remember that. I really don't remember  
2 what was discussed. Basically, that she wanted  
3 to go in there and just said, well, if that's  
4 what you want to do. I wasn't going to tell her  
5 no, but I, specifically, didn't want to tell  
6 anybody that they should either, but.

7 Q. But you were coordinating all this, right?

8 A. Yes.

9 Q. So there wouldn't be overlap?

10 A. Yes.

11 Q. And did you talk to her at all about, well, you  
12 know, the police might also be searching that  
13 area and you should check with them, or did you  
14 have any discussion like that?

15 A. I do not think so. I guess I'm not real sure,  
16 though. I don't believe so.

17 Q. Okay. Did she tell you that she had spoken to  
18 any police officers about it?

19 A. No.

20 Q. No, she didn't or --

21 A. No, she did not.

22 Q. She did not tell you that?

23 A. She didn't tell me that.

24 Q. Okay. Now, you mentioned that these fliers had  
25 phone numbers on them, like a hot line number or

1                   something?

2 A.    Some type of number, yes.

3 Q.    Not a number that you got yourself?

4 A.    Excuse me?

5 Q.    I mean, not a number -- You didn't have anything

6                   to do with putting that number on the flier?

7 A.    No.

8 Q.    You got some other numbers that you could also

9                   use to contact the law enforcement, right?

10 A.   Yes.

11 Q.   And what were those?

12 A.   Most of the investigators that I had been

13                   speaking to.

14 Q.   Okay. They all gave you their phone numbers?

15 A.   Pretty much, yes, and cards.

16 Q.   So that would be their direct lines?

17 A.   Yes.

18 Q.   So Sheriff Pagel gave you his card, with his

19                   phone number?

20 A.   Yes.

21 Q.   Investigator Wiegert gave you his card, with his

22                   phone number?

23 A.   Yes.

24                   ATTORNEY FALLON: Objection, leading.

25                   ATTORNEY BUTING: I'm asking, did he. I

1           will rephrase it.

2 Q.       (By Attorney Buting)~ Did Investigator Wiegert?

3           THE COURT: You may answer.

4 A.       Ask me that again, please.

5 Q.       Did Investigator Wiegert give you his business  
6           card with his phone number?

7 A.       Yes.

8 Q.       And did you provide those phone numbers to the  
9           volunteer searchers?

10 A.       I don't -- not that morning, I did not, but I had  
11           also -- I had tried to call that number for  
12           information and it was -- the number on the  
13           flier, I believe, was the number for the general  
14           dispatch in Calumet County, which it is not a  
15           fast way to get a hold of anybody you need to, if  
16           you have direct numbers.

17 Q.       So, the faster way was to call which number,  
18           then?

19 A.       Well, for me, I had direct access to all the  
20           investigators, so I could just call their  
21           numbers.

22 Q.       So, what was the plan, were the volunteers, if  
23           they found anything, were they supposed to call  
24           you? Were they supposed to call the sheriff?  
25           How did you organize that?

1 A. The plan was to call the sheriff, or to call 911,  
2 or whatever number they had available to them, to  
3 get a hold of somebody.

4 Q. So, did you give them any of those direct phone  
5 numbers?

6 A. I gave Pam -- Pam Sturm, I gave her Jerry Pagel's  
7 number that morning. The cell phone coverage out  
8 in that area is absolutely horrid. And to get a  
9 call out to -- most of the time when I used my  
10 phone out there, I only had 30 seconds or a  
11 minute to talk before your phone cut off on you.  
12 But I gave Pam that number, Jerry Pagel's number,  
13 that morning, with the intent that if she was  
14 going into the car lot and needed to call  
15 somebody quick, and get somebody out there, that  
16 would be the best way for her to.

17 Q. Is she the only one you gave that personal number  
18 to?

19 A. I believe so.

20 Q. Who else was -- Who else had already been on that  
21 Avery property, to your knowledge?

22 A. To my knowledge, I don't know if anybody had. I  
23 knew that there were cars that were in that area,  
24 whether any of them got out and got into the  
25 property, I do not know.

1 Q. When you say cars in that area, you mean other  
2 volunteers?

3 A. Yeah, searchers from that morning.

4 Q. What about the prior day, were there any  
5 searchers in that area, volunteer searchers in  
6 that area?

7 A. Not searchers, per se, more or less handing out  
8 fliers at, you know, bars, restaurants, grocery  
9 stores, post offices.

10 Q. So a volunteer may, in fact, have actually gone  
11 to the Avery property and left a flier?

12 A. There is a possibility, if that was their choice  
13 to go there and put a flier up, maybe they did.  
14 I never instructed anybody or heard that it  
15 happened.

16 Q. Okay. Before the morning of November 5th, had  
17 you ever been out to the Avery property?

18 A. The 5th, no.

19 Q. That Saturday morning?

20 A. No.

21 Q. So, before the vehicle was located, you had never  
22 been -- in your whole life, you had never been to  
23 that Avery property?

24 A. No.

25 Q. I mean, that's correct?

- 1 A. That is correct.
- 2 Q. Okay. Did you have any idea, though, how many
- 3 vehicles might have been on that property, that
- 4 Pam Sturm was going to have to --
- 5 A. I didn't know how many vehicles were there, no.
- 6 Q. You hadn't seen any aerial photographs that would
- 7 give you a clue, or anything of that sort?
- 8 A. I don't know if I had seen the aerial photographs
- 9 by then, when the news was covering it.
- 10 Obviously, there was coverage from above,
- 11 helicopter shots of the property. I don't recall
- 12 when I saw those and realized the scale of it,
- 13 though.
- 14 Q. So, you don't know whether that was before the
- 15 vehicle was found, or not?
- 16 A. No, I don't.
- 17 Q. Did you -- Did you at some point ever go to the
- 18 property, the Avery property?
- 19 A. Yes.
- 20 Q. When was that?
- 21 A. Geez, when did we go there? I'm not real sure on
- 22 the dates. It was possibly that Monday or
- 23 Tuesday, which would have been, let's see, was
- 24 that the 6th or 7th, that Monday?
- 25 Q. Let me ask you this. When you went to the

1           property, was it still, to your knowledge, in the  
2           custody of the law enforcement?

3       A. Yes.

4       Q. Did you pass through any checkpoints?

5       A. Yes.

6       Q. And what were you doing there? What were you  
7           supposed to be?

8       A. We had met, let's see -- we went and we talked  
9           to, I believe it was Jerry Pagel, and just showed  
10          him our maps, showed him the lands that we had  
11          searched. We had been walking fields and  
12          outlying areas of the sectored off areas of the  
13          Avery property. We had went through county parks  
14          around there, river bottoms, fields, forest,  
15          basically, to show on the maps and show them the  
16          lands we have covered.

17      Q. So, did you actually go into the salvage lot  
18          area, though, and start searching on that day?

19      A. No.

20      Q. I don't understand.

21      A. Well, I will correct myself. We had went there  
22          and showed them the maps, yes, that morning. And  
23          I believe it was that -- like I say I'm not clear  
24          on the days that we were out there. But we did  
25          go into -- I don't know if it was the sectored

1 off areas, but the very outskirt areas of the  
2 enclosed areas, I guess.

3 We walked just a flat winter green field  
4 with nothing in it. Walked across the road  
5 on some -- I believe it was public land, just  
6 forested, and fields by some houses.

7 Q. But were you walking around in the Avery property  
8 area, or its immediate outskirts?

9 A. Not in the salvage yard. And I don't know who  
10 owned the land, if it was the Averys or not, it  
11 was farm field.

12 Q. But it was past the police checkpoint?

13 A. On the road, yes. Police checkpoint was a mile  
14 out on each side.

15 ATTORNEY FALLON: I'm going to object to  
16 the relevance of this. We don't even know what day  
17 it is. We don't know if it was Monday. We don't  
18 know if it was Tuesday. We don't know if it's  
19 inside, outside the property, and whether it is or  
20 isn't is irrelevant.

21 THE COURT: Mr. Buting?

22 ATTORNEY BUTING: I'm just trying to  
23 clarify whether it is or isn't.

24 THE COURT: I'm going to give Mr. Buting a  
25 little latitude here to answer some of the questions

1 raised by Mr. Fallon.

2 ATTORNEY FALLON: Just so the record is  
3 complete, I just would note that whatever is  
4 occurring here is well after the warrant was applied  
5 for.

6 ATTORNEY BUTING: We may have to recall the  
7 witness, potentially. But I'm almost done with my  
8 questions of him anyway, so.

9 THE COURT: All right. Go ahead.

10 Q. (By Attorney Buting)~ Just so we're clear, at  
11 some point, you were allowed in past some police  
12 checkpoint, to do some searches?

13 A. Correct.

14 Q. You are just alone or with other volunteers?

15 A. Myself at first, and then other volunteers to  
16 follow after we kind of got a land assignment.

17 Q. And did the officers who let you in know that you  
18 had a relationship as a former boyfriend with the  
19 missing woman, at that point?

20 A. I don't know if anybody knew I was an  
21 ex-boyfriend of hers. I guess I never saw the  
22 relevance in it.

23 Q. Did Sheriff Pagel know that?

24 A. What's that?

25 Q. Did Sheriff Pagel know of your relationship with

1                   her?

2       A. I don't believe so. I think everybody just  
3                   assumed I was a good friend.

4       Q. Did Sheriff Pagel know that you had seen Teresa,  
5                   yourself, just the day before she disappeared?

6       A. I believe so.

7                   MR. BUTING: That's all the questions I  
8                   have, Judge?

9                   THE COURT: All right. We'll take our  
10                  morning break at this time and come back in 15  
11                  minutes.

12                  (Recess taken.)

13                  THE COURT: Mr. Buting, it's my  
14                  understanding that you have finished your direct  
15                  examination of Mr. Hillegas?

16                  ATTORNEY BUTING: Yes, your Honor.

17                  THE COURT: Mr. Fallon, or Mr. Kratz?  
18                  Mr. Fallon.

19                  ATTORNEY FALLON: Thank you, Judge.

20                  CROSS-EXAMINATION

21       BY ATTORNEY FALLON:

22       Q. Mr. Hillegas, the YES Organization which you  
23                  mentioned, that is an acronym for the Youth  
24                  Education and Safety Organization.

25       A. I believe so, yeah.

1 Q. And that's an organization that was founded by  
2 Mr. Breyer?

3 A. Yes.

4 Q. And as far as you know, he has no association  
5 with any law enforcement entity whatsoever?

6 A. I don't believe so, no.

7 Q. All right. Okay. So we're clear, you became  
8 involved in the efforts to find Teresa Halbach on  
9 Thursday, November 3rd?

10 A. Yes.

11 Q. And that's when you became aware of the fact that  
12 she was actually missing?

13 A. Yes.

14 Q. And you were aware of the fact that a missing  
15 persons report was filed by the Halbach family,  
16 regarding Teresa?

17 A. Yes.

18 Q. All right. And at some point, there was a  
19 gathering of people on Thursday evening?

20 A. Friday, it was Friday afternoon.

21 Q. Friday afternoon. Okay. I'm not clear from your  
22 testimony on direct examination, did you  
23 participate at all in any meeting with any  
24 volunteers, any family members, anyone, on  
25 Thursday night, November 3rd?

1 A. Yes.

2 Q. Okay. Where did that take place?

3 A. That was at Teresa's house.

4 Q. Teresa's house. And where she lived with her  
5 roommate, Mr. Bloedorn?

6 A. Yes.

7 Q. And there were other family members there?

8 A. Karen and Tom came over to the house that  
9 evening.

10 Q. All right. Now, as you sit and think now, as to  
11 that particular day, do you recall whether  
12 Sheriff Pagel was even present on Thursday  
13 evening, November 3rd? Do you have an  
14 independent recollection of that?

15 A. I believe that it was Pagel and Wiegert that were  
16 over Thursday night, with the family, looking for  
17 belongings.

18 Q. Looking for belongings. As opposed to Friday, as  
19 opposed to any other day?

20 A. I believe it was Thursday but, honestly, I  
21 believe there was somebody at the house for about  
22 the first four or five days, once she was filed  
23 missing, to pick up items and belongings.

24 Q. Now, would it be fair to say that, as a matter of  
25 fact, you became involved on Thursday, November

1           3rd, and your involvement didn't really end until  
2           the following Wednesday?

3       A. Yes.

4       Q. All right. Which would be about the 9th, I  
5           believe?

6       A. Yeah.

7       Q. All right. Now, during that particular time, you  
8           did have numerous contacts with law enforcement,  
9           throughout the days?

10      A. Yes.

11      Q. All right. Specifically, my questions are going  
12           to be focussed on Thursday, Friday, and Saturday  
13           morning. Think about those particular times, all  
14           right. Now, first and foremost, you indicated  
15           that posters were obtained on Thursday,  
16           November 3rd?

17      A. Actually, the posters were obtained Friday, on  
18           the 4th.

19      Q. All right. When did you become aware that  
20           posters were on order, as it were?

21      A. I believe it was Friday morning. I had spoken  
22           with the family and they had mentioned to me that  
23           this foundation in Appleton was printing up the  
24           posters. And they asked me if I could pick them  
25           up.

1 Q. When did it become apparent, either directly or  
2 implicitly, that you were going to coordinate the  
3 volunteer effort?

4 A. Um, I guess it kind of just happened Friday, when  
5 I got back with the posters. Basically, had a  
6 whole group of people, I guess, wanting to know  
7 what they could do, and somebody had to get them  
8 on the way.

9 Q. All right. So would it be fair to say that, on  
10 Thursday evening, you volunteered to go get the  
11 posters?

12 A. Friday morning I volunteered to go pick them up.

13 Q. So, in terms of Thursday evening, there was no  
14 discussion really, no formal discussion,  
15 regarding the organization or coordination of a  
16 poster effort, or a volunteer effort, at that  
17 particular point?

18 A. No.

19 Q. And there was no -- no instruction, or guidance,  
20 or direction, provided by anyone from law  
21 enforcement, to you, relative to the creation of  
22 a volunteer effort on Thursday evening?

23 A. No.

24 Q. That's a correct statement?

25 A. That is a correct statement.

1 Q. All right. Now, let's -- let's go to Friday  
2 morning. Friday morning you volunteered to go  
3 pick up the posters?

4 A. Yes.

5 Q. And the posters were provided by this YES  
6 Organization?

7 A. Yes.

8 Q. They were not provided by law enforcement?

9 A. No.

10 Q. All right. You returned back with the posters,  
11 there's a group of individuals gathered at Teresa  
12 Halbach's residence?

13 A. Yes.

14 Q. All right. And at that particular point, you and  
15 Mr. Bloedorn discuss things and, apparently, or  
16 implicitly, you become the director, as it were,  
17 or the coordinator of this volunteer effort to  
18 find Teresa Halbach?

19 A. Yes.

20 Q. All right. Now, at that Friday morning meeting,  
21 regarding the placing of the posters, it was your  
22 decision to focus efforts, on that day, of  
23 getting the word out to the community?

24 A. That's correct.

25 Q. And it was your idea to organize people in such a

1           way as there would be specific areas targeted for  
2           the publication, as it were, of the information  
3           regarding Teresa's disappearance?

4       A. Yes.

5       Q. All right. And that information was going to be  
6           disbursed to the public by means of these  
7           posters?

8       A. Yes.

9       Q. And they were going to be tacked up in public  
10           places throughout Manitowoc and Calumet County?

11      A. Yes.

12      Q. All right. And in terms of taking that approach,  
13           that was your idea, correct?

14      A. Um, I guess it wasn't so much my idea to do it  
15           that way, it was the YES Foundation that had  
16           mentioned that, you know, first thing is get the  
17           information out. So I guess that's how I kind of  
18           pictured that we needed to do it.

19      Q. All right. So you got advice from them?

20      A. Yes.

21      Q. All right. Who were you in contact with, from  
22           the YES Organization, that provided that advice;  
23           do you recall?

24      A. Yup, Jay Breyer.

25      Q. All right. And you had a number of conversations

1           with him?

2   A. Yes.

3   Q. He had some experience, as it were, in trying to  
4       find missing persons, or engaging in this type of  
5       work?

6   A. Yeah, some type of experience. I know he had a  
7       daughter or a niece that was abducted or missing,  
8       and that's how he began. But he had helped out a  
9       lot of searches across the state.

10   Q. So you conferred with him regarding a relative  
11       game plan, as it were, to get the word out?

12   A. Yes.

13   Q. All right. So you were following his advice?

14   A. Yes.

15   Q. So with respect to the placing of the posters,  
16       and dividing people up and sending them to  
17       various locales in the two-county or tri-county  
18       area, there was no one from law enforcement  
19       telling you to do that?

20   A. No.

21   Q. There was no one coordinating you, or directing  
22       you, in that regard?

23   A. No, that is correct.

24   Q. All right. So you come back, you disburse the  
25       people to cover their respective areas for these

1 poster placements; did anything else occur on  
2 that particular day, other than disbursing the  
3 posters?

4 A. No.

5 Q. All right. Now, the phone number, which was on  
6 the poster, was the general dispatch number for  
7 the Calumet County Sheriff's Department, correct?

8 A. I believe so, yes.

9 Q. All right. Now, at some point during that day,  
10 you did have some contact with Sheriff Pagel,  
11 correct?

12 A. Yes.

13 Q. And you were -- The point of that conversation or  
14 contact was to advise him of what you were doing,  
15 correct?

16 A. Yes.

17 Q. All right. At no point during your conversation  
18 was Sheriff Pagel, that day --

19 ATTORNEY BUTING: I'm sorry, what day are  
20 we talking about?

21 ATTORNEY FALLON: Friday.

22 Q. (By Attorney Fallon)~ At no point during your  
23 conversation -- Well, first of all, before I even  
24 ask that question, how many times, your best  
25 recollection -- if you are not sure, tell us you

1           are not sure -- how many times you spoke with  
2           Sheriff Pagel on Friday, November 4th?

3       A. I guess, how many times, I am not exactly clear  
4           or sure.

5       Q. Could it have been once, could have been twice?

6       A. It was at least once. I don't know if it was any  
7           more than that.

8       Q. At some point during the course of your  
9           discussion, to advise him what you were doing,  
10           you obtained a more direct phone number for --  
11           from him, should somebody find something?

12      A. Well, I had received his card the night before,  
13           when he was at the house.

14      Q. All right.

15      A. So, I guess that's when I obtained the number.

16      Q. All right. But the night before, you didn't have  
17           any discussions with him regarding what you were  
18           doing, or how you were going to go about it, or  
19           anything like that?

20      A. No, we didn't have a plan, basically, until  
21           Friday morning.

22      Q. In fact, you don't even know if you talked to him  
23           that night, other than to receive his card and  
24           exchange pleasantries?

25      A. Basically, yes.

1 Q. Okay. So, on Friday, when you did talk to him,  
2 at some point, either one or possibly two  
3 occasions, you did obtain a more direct phone  
4 number, or was that already on the card?

5 A. I had that on the card.

6 Q. All right. Now, on these conversations with  
7 Sheriff Pagel that day, in no way did he direct  
8 you to -- where to place these posters, correct?

9 A. That's correct.

10 Q. And there was no discussion with him, whatsoever,  
11 regarding any perceived or intended plan to  
12 actually conduct searches with the volunteers who  
13 were placing the information in the general  
14 public?

15 A. Yes.

16 Q. That's correct?

17 A. Yes.

18 Q. All right. And, similarly, you think that you  
19 may have had contact with Detective Wiegert on  
20 Friday, November 4th, or are you not sure about  
21 that?

22 A. I'm not sure if I had any contact with Wiegert on  
23 Friday.

24 Q. All right. And it's difficult for you to recall  
25 when you had contact, because at some point

1                   during the seven days or so that you were  
2                   involved in looking for Teresa, you did have  
3                   contact with law enforcement from time to time?

4     A.   Yes.

5     Q.   Okay. Now, with respect to later that Friday,  
6                   were there -- on Friday was there -- when did it  
7                   become apparent, or when did the idea come to you  
8                   that maybe we should do more than put posters  
9                   out, maybe we should actually use some of these  
10                  folks to actually look for Teresa; when did that  
11                  come about?

12    A.   I believe it was late Friday night. I don't  
13                  exactly recall how we got started on that idea.  
14                  I did know that I had a whole lot of -- well, a  
15                  whole lot of volunteers that wanted to do  
16                  something. Everybody was willing to help. So I  
17                  guess we just figured we would put them to use.

18    Q.   When you say, we figured we would put them to  
19                  use, are you referring to yourself and  
20                  Mr. Bloedorn?

21    A.   We means, me and Scott, yes.

22    Q.   Now, the decision that maybe we can take  
23                  advantage of these folks in that regard, was  
24                  entirely your decision?

25    A.   Um, I don't know if it was entirely my decision.

1           And I guess, like I said, I'm not clear how  
2           that -- how that started, or how we came upon the  
3           idea of it.

4       Q.   When I say your, I mean yours, meaning you and  
5           Mr. Bloedorn's.

6       A.   Right, yes.

7       Q.   No one from law enforcement told you that, hey,  
8           this would be a great idea if you collected some  
9           people and went out and helped to look, right?

10      A.   No, nobody from law enforcement told us that.

11      Q.   All right. Now, Saturday morning, you indicated  
12           that, at some point then, on Friday evening, you  
13           must have gotten word out to get everybody to  
14           come to the house on Saturday morning?

15      A.   Yup. Friday -- Friday evening, late evening, we  
16           had started telling people to just meet at the  
17           house the following morning and we would have a  
18           plan.

19      Q.   And you were drawing from the pool of 50 to 60  
20           people who assisted in putting posters up that  
21           day?

22      A.   That, and there were probably 20 to 40 more  
23           people that were there the following day, on  
24           Saturday morning.

25      Q.   All right. So on Saturday morning, you had

1           perhaps as few as 70 and maybe almost 80, 90  
2           people?

3       A. I would say that's probably accurate.

4       Q. All right. Now, of that 80 to 90 people, it's  
5           true, is it not, that there was not one single  
6           solitary law enforcement officer present; is that  
7           true?

8       A. That is true. That's correct.

9       Q. And the meeting, you said, was scheduled for  
10           somewhere between 6, maybe 7 o'clock in the  
11           morning, your best recollection?

12      A. I believe, yeah.

13      Q. All right. Now, during the course of the  
14           meeting, you had a large gathering of individuals  
15           there and the decision was -- tell us how the  
16           meeting went.

17      A. Well, by the time people had started showing up  
18           in the driveway on Saturday, to go out and do the  
19           search, me and Scott had already, basically, had  
20           maps of sectioned out areas that we were ready to  
21           hand out to people and, basically, when they got  
22           there, we had them line up and come through the  
23           house. When they got in the kitchen, we made  
24           them take a look at the map, gave them a larger  
25           version of the map, and then we gave them a

1           smaller version, also, that we wanted them to  
2           cover, that's where they went from there.

3       Q. Where did the maps come from?

4       A. Me and Scott made them that night.

5       Q. And where did you make them? How did you make  
6           them? Where did you get the information to  
7           create the maps?

8       A. Satellite imaging off the internet.

9       Q. Your best estimate, how long did the meeting  
10          last, for you to process all the helpers, as it  
11          were?

12      A. To go through everybody, it was pretty quick,  
13          once they started filing through the house and  
14          taking assignments. From start, to the end of  
15          the large group that was there in the morning,  
16          probably maybe took an hour, hour and a half, to  
17          get everybody out of the house.

18      Q. So, after an individual group or person received  
19          their assignment, were they then released to go  
20          search that area, or did they stick around for  
21          any further instructions?

22      A. No, they left right away.

23      Q. They left right away. So it was basically in,  
24          get your assignment, and they were out the door?

25      A. As soon as they talked to me and got their

1           assignment, they were, basically, out on their  
2           own and ready to leave.

3       Q. All right. And you pretty much left it in each  
4           individual searchers discretion as to how they  
5           would go about conducting the search?

6       A. Yes.

7       Q. Similar to, I think you said, whether people  
8           wanted to get out of their vehicles and walk the  
9           area, that was up to them. You certainly didn't  
10          put any restrictions, or even give advice, as to  
11          how they should go about doing it?

12      A. No, I basically told them to look for anything  
13          suspicious, her vehicle, tracks, anybody who had  
14          seen her.

15      Q. As a matter of fact, the focus still, at that  
16          time, was under the impression or hope that there  
17          might have been just some automobile mishap and  
18          that perhaps her car was stuffed some side of the  
19          road somewhere and no one had discovered it?

20      A. I guess, yes.

21      Q. All right. Now, during the course of handing out  
22          these assignments, you didn't hand out any  
23          assignments to go search any personal property?  
24          By that, I mean any particular residence or  
25          buildings?

1 A. No.

2 Q. And the assignments to search areas were more or  
3 less public roads and lands which were readily  
4 accessible from public roads?

5 A. Yes.

6 Q. They included county parks, gravel pits, for  
7 instance, and fields, farms, etcetera?

8 A. Yes.

9 Q. All right. Now, after the initial group of  
10 people were processed and given their assignment  
11 and sent on their way, later that morning, Ms Pam  
12 Sturm and her daughter, Nikole, showed up?

13 A. Yes.

14 Q. Your best estimate, that was maybe as much as an  
15 hour, could be even more, after the general group  
16 had passed through?

17 A. Yes.

18 Q. Now, Ms Sturm comes to your particular meeting  
19 here, and by and large was she the only one left,  
20 had everyone else pretty much passed through?

21 A. The large group of people that left that morning,  
22 everybody was gone from that group. Throughout  
23 the entire day, people were stopping in, people  
24 who just got off work, or people who just found  
25 somebody to watch their kids. So all throughout

1           the day there were stragglers coming in.

2   Q.   Stragglers coming in. Now, when Ms Sturm came  
3       in, as I understand it, just so that we're clear,  
4       it was she who asked, without any prompting from  
5       you, or anyone else, whether anyone had been  
6       given the assignment of going to the Avery  
7       property?

8   A.   Yes.

9   Q.   All right. And she said, well, then I'll take  
10      that; is that correct?

11   A.   Yeah.

12   Q.   It was her idea?

13   A.   Basically, yes.

14   Q.   All right. Well, when you say basically?

15   A.   Yeah, it was entirely her idea. She was the one  
16      that mentioned it to me.

17   Q.   And that's because she told you, well, isn't that  
18      the last place where Teresa was seen?

19   A.   It was.

20   Q.   That was her thinking, I might as well go there?

21   A.   Yes.

22   Q.   All right. So she and her daughter, then, took  
23      that assignment, and they left to go there,  
24      correct?

25   A.   Yes.

1 Q. Now, before they left, did you give them a phone  
2 number, just in case they had problems, or they  
3 found anything?

4 A. I did.

5 Q. All right. And what number did you give them?

6 A. I gave them Jerry Pagel's, his cell number.

7 Q. His cell number. From the card that he gave you?

8 A. Yes.

9 Q. All right. And other than that, you had no other  
10 discussion with her regarding law enforcement's  
11 potential involvement in her effort to search the  
12 Avery property?

13 A. Right, that's correct.

14 Q. Okay. Her time at your -- at the meeting place  
15 was just, literally, a matter of minutes, maybe  
16 10 minutes?

17 A. I would say between 5 and 10 minutes.

18 Q. Did she take any maps or did she just kind of go  
19 on her own?

20 A. We gave her maps, I believe, of the area.

21 Q. The general area?

22 A. Right. The same map that we had handed to  
23 everybody else.

24 Q. Okay. Similarly, I know I asked you about  
25 Saturday, let me back up to the Friday meeting,

1           about divvying up the posters and deciding who  
2           was going to put the information and the posters  
3           in what particular area. There was no one from  
4           law enforcement involved in that meeting either?

5         A.     No.

6         Q.     All right. Let's talk about the Sunday, Monday,  
7           Tuesday.

8                           ATTORNEY FALLON: If I may, and if the  
9                           Court wants to put another exhibit on there, I would  
10                          like to direct the witness's attention to Exhibit  
11                          No. 2, from the preliminary examination, dated 12/6  
12                          of 05. If the clerk would prepare another  
13                          exhibit -- sticker, I would be happy to put it on  
14                          here, whatever the next number in order is.

15                           THE CLERK: 18.

16                           (Exhibit 18 marked for identification.)

17         Q.     (By Attorney Fallon)~ All right. Mr. Hillegas, I  
18                          would like to direct your attention to  
19                          Exhibit 18, which is an aerial photograph; do you  
20                          recognize this particular property?

21         A.     Yes.

22         Q.     And what is that property?

23         A.     That's the Avery Salvage Yard.

24         Q.     All right.

25                           ATTORNEY FALLON: And if the clerk would

1           prepare one more exhibit, 19, please.

2   Q.   And I would also like to direct your attention to  
3       the aerial photograph which is behind you on the  
4       chalkboard, which will be marked Exhibit No. 19.

5           (Exhibit 19 marked for identification.)

6           All right. I just want to clear up some  
7       perceived misconception from your examination.

8           First of all, let's look at 18. Now, you  
9       indicated at some point on Monday or Tuesday, you  
10      passed a checkpoint and were permitted -- you and  
11      a few of your volunteers were permitted to do  
12      some searching past a checkpoint; is that  
13      correct?

14     A.   Yes.

15     Q.   Now, with respect, first of all, to Exhibit 18,  
16      did any of the searching that you and your  
17      volunteers did, on either that Monday or Tuesday,  
18      occur within the parameters of Exhibit 18?

19     A.   No.

20     Q.   All right. As a matter of fact, the closest you  
21      got to Exhibit 18 is the far corner, upper right  
22      hand corner; is that correct?

23     A.   Yes.

24     Q.   You never passed in through this area, where  
25      we're -- into the main business area, correct?

1 A. That's correct.

2 Q. All right. And you had never been on  
3 this property before, in your life, correct?

4 ATTORNEY BUTING: Could the record just  
5 reflect where you are pointing?

6 ATTORNEY FALLON: Let the record reflect  
7 that I'm pointing a laser pointer, in the upper  
8 right hand corner, about 4 or 5 inches in from the  
9 right side and about 6 inches down from the top,  
10 between an area, wide spot in the road with four  
11 buildings.

12 ATTORNEY BUTING: That's fine.

13 ATTORNEY FALLON: Good enough?

14 Q. (By Attorney Fallon)~ And, now, you have never  
15 been in that particular area before that,  
16 correct?

17 A. Correct.

18 Q. All right. Now, directing your attention, again,  
19 to Exhibit 19, which is behind you, and if you  
20 would be so kind as to get up and use the  
21 pointer, the laser pointer, and tell us if you --  
22 First of all, can you identify Exhibit 19? You  
23 are familiar with what's depicted?

24 A. Right. It's an aerial -- it's like an aerial or  
25 a satellite image of, this would be the Avery

1           property, pretty much dead center of the map.

2 Q. All right. Would you point the laser pen,  
3           there's a button on there.

4 A. Sure. Right there is the salvage area.

5 Q. And what is depicted there is, in fact, a smaller  
6           version of Exhibit 18?

7 A. Yes.

8 Q. All right. Now, you indicated at some point  
9           during questioning by Counsel, that you passed a  
10           particular checkpoint, to assist law enforcement  
11           in doing a search. In looking at Exhibit 19, do  
12           you have an idea where that checkpoint would have  
13           been?

14 A. Yeah. Am I allowed to get up and look closer?

15 Q. Yes, please do.

16 A. The checkpoint I'm speaking of, I believe that  
17           the roads were blocked off here and here, and  
18           this is the checkpoint that I'm talking about.

19 Q. All right. I'm going to let you put your  
20           initials in red on the spot where that was, your  
21           best recollection. Okay. Now, as you are  
22           standing there --

23                   ATTORNEY BUTING: If you could put a  
24                   circle, it would make it a little bit more obvious.

25                   ATTORNEY FALLON: Sure.

1 Q. (By Attorney Fallon)~ All right. Now, you have  
2 marked there, that's the checkpoint, you believe,  
3 that you were allowed to pass through with your  
4 volunteers?

5 A. Yes, the road block, one of the roads were  
6 blocked.

7 Q. Okay. You indicated on direct examination that  
8 on either this Monday or Tuesday, and you are not  
9 sure when that was, that you were allowed to  
10 assist in a search of a couple of areas. Can you  
11 draw a line, or put a series of X's to the  
12 property which you believe you and your group  
13 searched?

14 A. Sure.

15 Q. Just so we're clear.

16 A. Yes. To the edge of this, it's just a plain  
17 winter wheat field.

18 Q. All right. And you are making a series of X's?

19 A. I'm making a series of X's.

20 Q. Go ahead. Continue.

21 A. Just, you know, a strip like right here. And  
22 then we did some searches of here as well.

23 Q. Perhaps this red might be a little deeper. You  
24 could improve upon that. All right. So for  
25 purposes of our discussion here -- thank you --

1           you have marked an area, a rectangle as it were,  
2           with a series of X's, and that is below -- what  
3           is this road right here?

4       A. That's a highway.

5       Q. Do you recall what the name of that highway was?

6       A. I don't recall what it is right now.

7       Q. Okay. Fair enough. Below that highway, you have  
8           a rectangled box containing X's?

9       A. Yes.

10      Q. And above the highway you have a four-sided --  
11           the geographical -- the box here that --  
12           containing X's as well, reflecting an area that  
13           you searched?

14      A. Yes.

15      Q. Now, is the area above the road, which passed  
16           through, was that past the checkpoint, or was  
17           that --

18      A. It was past where the roads were blocked.

19      Q. Where the roads were blocked.

20           ATTORNEY BUTING: Do you want to just  
21           stipulate, for the record, what the name of that  
22           road is, so it's clear?

23           ATTORNEY FALLON: 147.

24           ATTORNEY BUTING: Is that Highway 147?

25           ATTORNEY KRATZ: Yes, I believe so.

1                           ATTORNEY FALLON: Highway 147. All right  
2                           Very good, have a seat.

3   Q. (By Attorney Fallon)~ And just so that we're  
4       clear, there was one other point during your  
5       testimony, when you and/or Mr. Bloedorn were  
6       collecting this information and coordinating  
7       these searches, you would, from time to time,  
8       check in with Sheriff Pagel and tell him what you  
9       were doing?

10   A. Yes.

11   Q. And you would tell him the areas that you were  
12      searching?

13   A. Yes.

14   Q. At no time, however, did he ask you to search any  
15      particular place, did he?

16   A. No.

17   Q. He never directed any particular area to be  
18      searched, correct?

19   A. That's correct.

20   Q. And, basically, all he did was, well, if you find  
21      something, or anything interesting, call us?

22   A. Yes.

23   Q. That was the extent of the direction that you  
24      received from Sheriff Pagel.

25   A. Yes.

1 Q. And that was the extent of the direction you  
2 received from any law enforcement officer,  
3 relative to the search efforts for Teresa  
4 Halbach.

5 A. Yes.

6 ATTORNEY FALLON: That's all. Would move  
7 into evidence Exhibits 18 and 19.

8 ATTORNEY BUTING: No objection.

9 THE COURT: Those exhibits are admitted.

10 Mr. Buting.

11 ATTORNEY BUTING: Thank you, Judge.

12 **REDIRECT EXAMINATION**

13 BY ATTORNEY BUTING:

14 Q. You mentioned that you had these satellite maps  
15 that you had generated off the internet; is that  
16 right.

17 A. Yes?

18 Q. Were they similar to Exhibit 19 that you were  
19 marking on?

20 A. Yes.

21 Q. Or were they more in, close up, that's a pretty  
22 high aerial shot?

23 A. No, our maps were probably like that, or actually  
24 farther out. We had no reason to go real close  
25 with them, we just wanted to see the roads.

1 Q. Okay. And you mentioned that there was a general  
2 map, a big one, and then like a smaller one of  
3 certain areas?

4 A. Mm-hmm. Yes.

5 Q. When you say smaller, in what way, were they  
6 closer up?

7 A. We handed out a general map to everybody, which  
8 covered, basically, the whole -- everything from  
9 Lake Winnebago to Lake Michigan, that whole strip  
10 of land in there, Manitowoc, Calumet Counties.

11 Q. Like a satellite deal?

12 A. No, that was just a far away -- just a road view.

13 Q. Okay.

14 A. Just a normal map, I guess you could say. And  
15 then we made closer versions also, on Friday, to  
16 give the people a closer look at the roads we  
17 wanted them to travel on. Because the larger  
18 maps didn't show all the small country roads and  
19 such.

20 Q. So, the smaller ones, were they -- did they cover  
21 smaller areas than is depicted in Exhibit 19?

22 A. No, no smaller.

23 Q. So they were about like that?

24 A. Some of them were like that. Some of them were  
25 just normal maps that we blew up. It just

1           depended if we could see the roads or not.

2   Q.    By normal maps, are you referring to like a Map  
3           Quest map, or are you talking about satellite  
4           maps?

5   A.    A Map Quest map, or just a plain piece of paper  
6           with lines on it that had boundaries and roads.

7   Q.    Okay. In any event, one of them contained the  
8           Avery property as well, right?

9   A.    Yup.

10   Q.    And the map that you then gave to Pamela Sturm,  
11           was it similar to Exhibit 19, then?

12   A.    No.

13   Q.    What was it like?

14   A.    I just gave her the general map that I gave  
15           everybody, the large view of all the highways and  
16           the roads, nothing close up.

17   Q.    Okay. And she said that one of the reasons she  
18           wanted to go search that property was because she  
19           knew that Teresa had been there the day that she  
20           was last seen?

21   A.    I believe so, yes.

22   Q.    And you were aware of that as well, right?

23   A.    Yes.

24   Q.    And did you know what her purpose was in going  
25           there?

1 A. I knew that she was taking pictures for Auto  
2 Trader that day.

3 Q. Did she have any other purpose that you were  
4 aware of?

5 A. No.

6 Q. No other reason for being there?

7 A. Not that I'm aware of.

8 Q. Okay. Your discussions with Sheriff Pagel, you  
9 said you kept him informed about where people  
10 were going to search?

11 A. Just basically let him know what we were doing.

12 Q. And did he ever say, don't go to the Avery  
13 property?

14 A. No.

15 Q. Did he ever tell you not to actually go onto  
16 private property, without permission?

17 A. I don't know.

18 Q. Did he ever talk to you at all about making sure  
19 that the volunteers would get permission if they  
20 were on private property?

21 A. I don't recall. I don't know. Like I say, I  
22 never really received instruction from him, as to  
23 what to do. I basically just told him that we  
24 were going out to search.

25 Q. I understand, but what I'm getting at is maybe

1           any advice or instruction he gave you of what not  
2           to do. Did he warn you about not to do certain  
3           things?

4       A. No.

5       Q. There was no instruction or warning not to pick  
6           up evidence, if you found it, or anything like  
7           that?

8       A. We -- I guess I pretty much knew that from common  
9           knowledge. I didn't need anybody to tell me that  
10          I shouldn't tamper with evidence. I, basically,  
11          just instructed people from my point of view and  
12          from the YES Foundation's, you know, that if  
13          anybody did find anything, the first thing you do  
14          is get a hold of somebody and leave it alone.

15      Q. It wasn't clear to me from the way you were just  
16          testifying in the chronological sequence; did you  
17          have any phone conversation with Detective  
18          Wiegert, or Investigator Wiegert, on Saturday  
19          morning?

20      A. I don't know.

21      Q. Do you remember talking to him about how you were  
22          going to have this -- how this meeting was going  
23          to take place on Saturday morning to organize all  
24          these people?

25      A. I don't know if I told that to Detective Wiegert.

1 I guess I'm not sure.

2 Q. Okay. But you told it to somebody at the  
3 Sheriff's Department?

4 A. That I had told Jerry Pagel that we were just  
5 going to go out and do a car search.

6 Q. Okay. By car search, you mean --

7 A. Driving the roads and looking for anything  
8 conspicuous.

9 Q. And you told him that you were going to do that  
10 Saturday morning?

11 A. Yeah.

12 Q. And when you searched the areas that you marked  
13 on Exhibit 19, was that just you alone, or was  
14 that other volunteers as well?

15 A. Me, as well as other volunteers.

16 Q. How many would you say?

17 A. Between 30 to 50 people came and went, some had  
18 prior obligations or couldn't get there until  
19 later, so.

20 Q. So, in terms of that little parcel that you first  
21 marked, that you searched, south of Highway  
22 150 -- 147, how many people were walking through  
23 that field with you?

24 A. Between 30 to 50.

25 Q. Okay.

1 A. Like I said, people came and went as they needed.

2 Q. And were there any police officers with you when

3 you were doing that part?

4 A. Yes.

5 Q. Walking with you?

6 A. Yes.

7 Q. How many?

8 A. I believe two.

9 Q. Manitowoc or Calumet?

10 A. I do not know.

11 Q. Don't know their names?

12 A. No.

13 Q. And that first area that you marked is a field

14 that is directly adjacent to the north -- on the

15 north, to the Avery salvage property, right?

16 A. Yes.

17 Q. And did you get Sheriff Pagel's permission to do

18 that?

19 A. Yes.

20 Q. And I'm sorry, I don't remember, but by that

21 point had you told Sheriff Pagel that you were

22 her -- Teresa's former boyfriend?

23 A. I don't know. Like I said earlier, I really

24 wasn't, you know; I guess I didn't tell too many

25 people about it. It never really occurred to me

that it was an issue. And it was quite a while ago, that we dated.

Q. But you were still seeing her as recently as the day before, that she disappeared, right?

A. Yes.

Q. And Sheriff Pagel knew that?

A. Yes, I believe so.

ATTORNEY BUTING: All right. Thank you.

No further questions.

THE COURT: Anything else?

ATTORNEY FALLON: Nothing for this witness.

THE COURT: All right. You are excused.

With the understanding, Mr. Buting, that you still have the right to recall Detective Remiker, are there any other witnesses for the defense on this motion?

ATTORNEY BUTING: Well, Judge, I do know --  
I understand that the CD's are prepared now, of the  
information that we talked. I don't know whether  
you would like to take maybe an early break at this  
point and we could then proceed.

THE COURT: All right. We'll take a lunch break now and resume at 1 o'clock; will that work for the parties?

ATTORNEY KRATZ: Sure.

1 ATTORNEY BUTING: Okay.

2 THE COURT: Very well. We'll take our  
3 lunch break at this time and then resume at 1  
4 o'clock.

5 (Lunch break taken.)

6 THE COURT: At this time, we'll go back on  
7 the record. Do I understand, Mr. Buting, you are  
8 going to be recalling Detective Remiker?

9 ATTORNEY BUTING: Yes, if we could do that,  
10 Judge. And Detective Remiker is involved in both  
11 motions, but we thought maybe we would finish his  
12 testimony related to the **Franks** part of the motion,  
13 including the State's cross-examination. And then  
14 we can recall him when we're ready to switch gears  
15 into the next motion.

16 THE COURT: Is that acceptable to the  
17 State?

18 ATTORNEY FALLON: I think that is  
19 acceptable, as far as I know. I told Lieutenant  
20 Lenk to be available. We thought it would be in the  
21 morning; but I told him, don't plan anything for the  
22 day depending on -- so we would have maximum  
23 flexibility, so that should work.

24 THE COURT: All right. Is Mr. Remiker  
25 here?

1 ATTORNEY BUTING: Yes.

2 THE COURT: Mr. Remiker, you are still  
3 under oath. Mr. Buting, you may continue.

4 ATTORNEY BUTING: Thank you, Judge.

5 **CONTINUED DIRECT EXAMINATION**

6 BY ATTORNEY BUTING:

7 Q. All right. Detective, we had an opportunity over  
8 the noon hour to listen to the recordings that  
9 you used to refresh your recollection. And I  
10 guess, so we put on the record, that included,  
11 you had 2 CD's, one of which was phone  
12 conversations that you had that morning of  
13 November 5th; is that right?

14 A. Yes, that's correct.

15 Q. And the other one, the other CD contained radio  
16 dispatch information?

17 A. Correct.

18 Q. Okay. Now, the first call that you had on  
19 Saturday morning -- I'm sorry, what time did you  
20 say you got to work?

21 A. 8:00 a.m.

22 Q. Okay. If I understood from the records, at 9:03  
23 a.m., you made a phone call to Investigator  
24 Wiegert; is that right?

25 A. Yes.

1 Q. And during that time, you were asking him if they  
2 had a timeline or anything for the missing  
3 person?

4 A. Correct.

5 Q. And at that time, Investigator Wiegert had some  
6 phone records that he had relied on, evidently,  
7 and was telling you certain times the phone calls  
8 were made?

9 A. Yes.

10 Q. And at that time, the belief was that Teresa  
11 Halbach made an appointment -- or made it to her  
12 appointment in New Holstein, sometime around  
13 1:30 p.m. on October 31st?

14 A. I believe that was part of the conversation, yes.

15 Q. And that the understanding or belief, at that  
16 time, was that after that she went to the Avery  
17 property?

18 A. Yes.

19 Q. And then after that, she went to her appointment  
20 at the Zipperer, Z-i-p-p-e-r-e-r --

21 A. There were discussions about those appointments,  
22 whether you are in the correct order or how  
23 exactly that discussion took place, I'm not sure,  
24 but.

25 Q. But do you recall at that time, there was a

1           belief or understanding that she had made a  
2           subsequent -- an appointment subsequent to  
3           meeting with Mr. Avery?

4       A.    Correct.

5       Q.    Okay. You also talked about some tips that  
6           various people had called in; is that right?

7       A.    Yes.

8       Q.    But in that conversation, there was no discussion  
9           about volunteer searchers -- Well, I take that  
10          back, there was a reference that Wiegert advised  
11          you that the family was doing their own search?

12      A.    Yes. Investigator Wiegert tells me, he says,  
13          Just so you know, in case you get any calls, the  
14          family is doing their own thing. They are out  
15          there doing some searches, in case you see them  
16          or get some calls of somebody out in some yards  
17          or doing some stuff. Just so you know, they are  
18          doing their own thing.

19      Q.    When he told you that, you said, Yes, I got that,  
20          or I read that note?

21      A.    Yes, I say that on the phone call.

22      Q.    Did you actually get some sort of written  
23          instruction about that?

24      A.    I don't recall.

25      Q.    You haven't seen any kind of written note or

1 instruction about that since?

2 A. No, based on the phone call, I'm assuming it was

3 something in reference to maybe a note in the

4 Shift Commander's Office, or somebody had called

5 the shift commander and just let him know that

6 there's people out there doing some searches --

7 Q. Okay.

8 A. -- in case you get any reports.

9 Q. Okay. And then you also got a second call

10 from -- incoming, from Investigator Wiegert, at

11 about 10:07 a.m., correct?

12 A. Yes.

13 Q. And in that call, did he tell you that there was

14 a change of plans?

15 A. Yes.

16 Q. And did he tell you that his boss wanted them --

17 I don't know if I have the exact words but,

18 wanted to see about using the search -- the

19 volunteer search party, to see if they would go

20 to the Avery junkyard and search that property?

21 A. What he says to me is that, he identifies him as

22 his boss, wants him to reinterview Steven Avery,

23 and another individual, and that there also are

24 some volunteer searchers out there who would be

25 willing to do some searching and that he was

1                   going to come and talk to me, and there was a  
2                   chance maybe we could see if those searchers  
3                   could get consent to go out on the Avery property  
4                   and search. I think he called it the junkyard.

5 Q. Maybe we should -- Could we mark your copy? And  
6                   then could you get another one, if we marked  
7                   yours as an exhibit?

8 A. No problem.

9 Q. Do you have just the CD of the phone calls with  
10                  you?

11 A. I had two copies, I gave one to you --

12 Q. Okay.

13 A. -- and one to the State.

14                   ATTORNEY FALLON: Are you going to play it,  
15                  Counsel?

16                   ATTORNEY BUTING: No, I just want it  
17                  marked.

18                   ATTORNEY FALLON: Marked?

19                   ATTORNEY BUTING: Yeah.

20                   ATTORNEY FALLON: Is this the phone or --

21                   ATTORNEY BUTING: It says phone call. This  
22                  is the one, right?

23                   THE WITNESS: Correct.

24                   ATTORNEY BUTING: Could you mark this?

25                   (Exhibit 20 marked for identification.)

1 Q. (By Attorney Buting)~ I'm showing you Exhibit 20,  
2 can you identify that for the record?

3 A. That is a CD recordable device that contains  
4 audio recordings of conversations on recorded  
5 phone lines at the Sheriff's Department.

6 Q. And that includes the phone conversation that we  
7 have been discussing this morning, or this  
8 afternoon now?

9 A. Should.

10 Q. And that would be the best evidence of what  
11 actually was said by Investigator Wiegert, to  
12 you, and vice versa?

13 A. That's exactly what he said.

14 Q. Okay. And then you also got another call from  
15 Investigator Wiegert; that was on your cell phone  
16 though, correct, later that morning?

17 A. The last recorded call that I have between myself  
18 and Investigator Wiegert, I give him my cell  
19 phone, that's the best way of getting a hold of  
20 me. And there were some additional calls that he  
21 made to me on my cell phone.

22 Q. And that was before you left the station, even,  
23 to go to the Avery property?

24 A. Yes.

25 Q. And we don't have a recording of those phone

1           calls, though?

2   A.  We do not.

3   Q.  Okay. And in those phone calls, did he talk with  
4       you any more about any searches of the Avery  
5       property?

6   A.  At one point he calls me and says, Hey, I just  
7       got a call from some lady, supposedly they are  
8       out at the Avery property, they said they got  
9       permission from Earl to be out there, and they  
10      observed a vehicle that might be Teresa's.

11   Q.  Okay. But before that call, were there any other  
12      discussions that he had about plans to search, or  
13      get consent of -- for a search of the Avery  
14      property?

15   A.  No, the last recorded call you have there, the  
16      second recorded call, he says, I will meet you at  
17      the department in about an hour. So then I was  
18      waiting for him and then I receive a phone call  
19      from him, on my cell phone, advising me that  
20      somebody is out there, they found a car.

21   Q.  So your understanding was then, the plan would be  
22      that he would come to your department and the two  
23      of you would go out to the Avery's, or would  
24      contact the volunteers, or what?

25   A.  He just said we were going to come to your

1           department, we'll discuss it, we'll go from  
2           there. We never got to that point.

3 Q.       But that his boss wanted to contact the volunteer  
4           searchers to see if they would be able to get  
5           permission to go onto the Avery property and look  
6           there?

7 A.       He does make a statement similar to that, yeah.

8 Q.       Okay. Now, after you got the call on your cell  
9           about -- from Wiegert -- about two women being at  
10          the Avery property, you got in your car and left  
11          the station, right?

12 A.       Yes.

13 Q.       And you also made a call to -- or had dispatch  
14          contact Lieutenant Lenk, sometime during that  
15          point?

16 A.       A ways after that.

17 Q.       And Lieutenant -- Was Lieutenant Lenk your  
18          supervisor at the time?

19 A.       Yes.

20 Q.       Was he -- He was directly involved with you on  
21          this particular Halbach missing person matter as  
22          well, wasn't he?

23 A.       Yes.

24 Q.       And he did also come to the Avery property then?

25 A.       Eventually, yes.

1 Q. Do you know what time?

2 A. No idea.

3 Q. Within an hour or so after you called?

4 A. He was out of town. I would say within three

5 hours of calling him, would be a fair guess.

6 Q. Do you know if he arrived before or after you

7 obtained -- you and Investigator Wiegert obtained

8 the actual search warrant?

9 A. Before.

10 Q. Before you did?

11 A. Yes.

12 Q. And then you left the property. You and

13 Investigator Wiegert left the Avery property, to

14 go get the warrant signed by Judge Fox, right?

15 A. Yes.

16 Q. So there's a period of time when you two are gone

17 from the Avery property and from the vehicle,

18 while you are getting that warrant, right?

19 A. Correct.

20 Q. About how long were you gone?

21 A. I'd have to look at my report, several hours.

22 Q. Okay. And then, during that time period, who was

23 the highest ranking officer who would be in

24 charge of your Department's involvement,

25 Lieutenant Lenk, or someone else?

1 A. Deputy Inspector Schetter.

2 Q. Okay. And he arrived about when?

3 A. I would say within two hours after we had  
4 verified that it was Teresa's car on the  
5 property.

6 Q. And just so we have a time of that, time of the  
7 reference, what -- you arrived at the property  
8 and about what time was it when you made that  
9 verification?

10 A. Approximately 11:00.

11 Q. Okay. Now, I'm sorry, did you actually -- did we  
12 talk about you going to the -- We already talked  
13 about you going to the Avery's property on the  
14 4th, didn't we?

15 A. We did talk about that, yes.

16 Q. Okay. Did you ever -- Before you arrived at the  
17 property on November 5th, and saw the vehicle,  
18 did you ever talk to any volunteer searchers  
19 yourself?

20 A. No.

21 Q. Any volunteers come to your department and say, I  
22 want to help, I'm going to be involved in some  
23 kind of a search, anything like that?

24 A. None.

25 Q. Any contact with the Halbach family that you had?

1 A. I have never met them.

2 Q. Okay. And when you arrived at the Halbach -- at  
3 the Avery property, if I could refer you to  
4 Exhibit 18. I'm going to hand you this pointer,  
5 maybe you could just show us where you went, how  
6 you arrived, with the pointer, and then we'll  
7 state it for the record as well?

8 A. I travelled from the Village of Mishicot onto  
9 147, which isn't pictured in this diagram. And I  
10 would have taken a left onto Avery Road, which is  
11 a town road. It actually extends above this a  
12 little bit.

13 Q. You are indicating the upper right hand corner of  
14 the exhibit?

15 A. Yeah. The picture doesn't actually show Avery  
16 Road real well. I would have travelled down this  
17 roadway. I wasn't sure where the searchers were.  
18 I continued -- this is just a main -- I think  
19 it's a gravel portion. There's shops, there's  
20 buildings, there's a residence right here. I  
21 just continued to go straight down. Continues a  
22 gravel portion, some sort of roadway. And then I  
23 just continued all the way down here. Right  
24 where this lighter area is, is about where I  
25 stopped, as it gets a little bit darker here.

1 Q. Let me just state, the record reflects then that  
2 your route of entry was a -- is a gravel dirt-  
3 type road on the far right of the exhibit, that  
4 runs sort of behind the cluster of buildings; is  
5 that right?

6 A. Correct.

7 Q. Did you stop at -- First of all, had you ever  
8 been to the Avery property? That's right, you  
9 were there the night before.

10 A. Friday was the first time I can ever recall ever  
11 being on Avery Road.

12 Q. Okay. And when you were there that night, were  
13 you aware that the main area where the public  
14 would go normally, would be branching on a fork  
15 to the right as you come in there, because there  
16 is an office building there; is that right?

17 A. Are you asking what my thoughts were when I first  
18 got there? I'm not sure what you are asking.

19 Q. Did you ever go to the office, the night before  
20 when you were there?

21 A. No.

22 Q. So you have never been there at all?

23 A. I have never been on that property, ever.

24 Q. Until --

25 A. With the exception of Friday, when I did the

1 consent search.

2 Q. I was going to say the morning before, it was  
3 Friday morning when you were there, right?

4 A. Correct, 10:30 a.m.

5 Q. Okay. And in any event, you didn't stop anywhere  
6 to talk with any of the owners or managers of the  
7 property, to see if you had permission to go all  
8 the way down to where you did; is that right?

9 A. Correct.

10 Q. And how far away from the Toyota RAV 4 were you,  
11 where you parked your vehicle?

12 A. My vehicle is parked right about where that dot  
13 is and, obviously, you see there is an indication  
14 of where the Toyota is.

15 Pam and Nikole Sturm are also standing  
16 right there. I remember them, they were pointing  
17 to me the direction as to where that vehicle was.  
18 I could see the vehicle from right here where I  
19 was standing.

20 ATTORNEY FALLON: All right. Let the  
21 record reflect the witness is using the laser  
22 pointer to indicate a spot on the exhibit, which is  
23 about five inches up from the bottom of the exhibit,  
24 on the right hand side, and slightly to the right of  
25 the area, or linear line where the RAV 4 was found.

1           In other words, about 4-inches from the far right  
2           side and about five inches up from the bottom, in  
3           the right hand corner.

4           THE COURT: Parties agree with that  
5           characterization?

6           ATTORNEY BUTING: That's fine.

7           THE COURT: All right. The record will so  
8           reflect.

9           ATTORNEY BUTING: I can clarify it a little  
10          bit more.

11          Q. (By Attorney Buting)~ Are you aware there's a  
12          little pond in that area, or a depression with  
13          some sort of water?

14          A. Yeah. There's a depression, I think eventually  
15          filled up one of those days because it was  
16          raining or snowing.

17          Q. You were -- Your car was parked to the north of  
18          that?

19          A. Yes.

20          Q. And you were looking across that depression or  
21          pond-type area, to the south, where the RAV 4 was  
22          found; is that fair?

23          A. That's pretty accurate.

24          Q. Okay. And about how many feet away from the  
25          vehicle would you say?

1 A. I'm going to guess at least 200 yards.

2 Q. Okay. Did you eventually go up to the RAV 4  
3 yourself?

4 A. Yes.

5 Q. And did you approach it yourself or with others?

6 A. I believe Sergeant Jason Orth was just ahead of  
7 me. He arrived just before me. Lieutenant Todd  
8 Hermann, we either walked together or we were  
9 very close together. I don't remember if we  
10 walked together or where he was.

11 Q. And when you did that, that was -- When you first  
12 approached the vehicle, that was before the  
13 Calumet people had arrived; that is, Investigator  
14 Wiegert, or Dedering, or Sheriff Pagel?

15 A. Yes.

16 Q. Okay. And what were you able to determine when  
17 you walked up to the vehicle?

18 A. Well, there was a Toyota RAV 4. I had in my hand  
19 a manila folder that had the, I call it a  
20 teletype or the registration of the vehicle, with  
21 me. It was the same make and model, didn't have  
22 license plates, it had a Le Mieux Toyota sticker  
23 on the back, I believe. There were tree branches  
24 covering it. There was a vehicle hood alongside  
25 the passenger side. I walked to the driver's

1           side and I just -- I just started looking at the  
2           VIN plate.

3       Q.    Were you able to look inside the vehicle?

4       A.    At one point I looked in the vehicle, yes.

5       Q.    And did you see any blood or anything?

6       A.    I did not observe any blood then, no.

7       Q.    Didn't see any person, obviously?

8       A.    Not that I could see.

9       Q.    Did you have to use a flashlight to do that or  
10           was the daylight bright enough?

11      A.    I had to use a flashlight to get the whole VIN  
12           number. I may have used -- I looked under the  
13           car, to see if Teresa was under there.

14      Q.    Did it appear that the drive train was disengaged  
15           at all or did it look --

16      A.    The grass was kind of high, just -- I made a  
17           quick determination that there was nobody under  
18           the vehicle, and from what I could see in the  
19           vehicle, and confirm the VIN number, and I walked  
20           out.

21      Q.    Okay. Now, you -- you weren't actually able to  
22           get all of the VIN numbers; isn't that right?

23      A.    No, that's not right.

24      Q.    Do you still have your report with you?

25      A.    Yes.

- 1 Q. If you could look at Page 5, please.
- 2 A. Okay.
- 3 Q. Right about in the middle, there was a reference
- 4 of 11/05/05, 1100 hours?
- 5 A. Mm-hmm.
- 6 Q. Third line from the bottom, don't you say in your
- 7 report, I was able to verify all but the first
- 8 two numbers on the VIN.
- 9 A. That's what it says.
- 10 Q. So would that be more accurate than your memory
- 11 today?
- 12 A. If you read the next paragraph, I think it
- 13 explains it. The VIN was confirmed as the VIN
- 14 number for missing Halbach vehicle.
- 15 Q. Confirmed how?
- 16 A. I read all 17 numbers.
- 17 Q. So four minutes later -- At first you couldn't
- 18 read it, and then you did read it later?
- 19 A. The VIN plate was moved. And with the sunlight
- 20 and the windshield, you couldn't see it real
- 21 well. I got a flashlight from -- it was either
- 22 Orth or Hermann -- and I used the flashlight to
- 23 illuminate the numbers. I could get all the VIN
- 24 numbers then.
- 25 Q. Is this the VIN number that's found up on the

1 dashboard, by the driver's side?

2 A. Correct.

3 Q. You say it was moved?

4 A. Well, it looked like somebody had tampered with

5 it. It was bent. And it wasn't in original

6 factory condition.

7 Q. Okay. And you weren't able to see it without the

8 use of a flashlight?

9 A. I believe it was the first two numbers I couldn't

10 get. Then when I got the flashlight, I shined it

11 in there and I was able to get all 17 numbers.

12 Q. Okay. Did you check any of the doors?

13 A. I didn't touch that vehicle.

14 Q. Okay. So, how long were you in that presence of

15 the vehicle?

16 A. Well, I -- I arrived at 1100 hours, 1106 I

17 walked away from the vehicle. Sergeant Orth

18 stayed by the vehicle as security.

19 Q. Okay. And then you went back to where your car

20 was, or someplace else?

21 A. I went and made contact with Nikole and Pam, told

22 them that it was the vehicle. They started

23 crying, comforted them for a little bit, and then

24 Calumet County showed up.

25 Q. Okay. And then how long was it after that that

1           Calumet County showed up?

2   A.  1110 hours.

3   Q.  When you say Calumet County, it's Sheriff Pagel,

4           Investigator Wiegert, and Investigator Dedering,

5           right?

6   A.  My report says Sheriff Pagel and Investigator

7           Wiegert. I know Investigator Dedering was there

8           also. When he arrived, I'm not sure.

9   Q.  Did you see how they entered the property?

10   A. They came down -- They came down the road that --

11           in the area where I was parked. So, that's all I

12           know.

13   Q.  And then also in that area then was, when they

14           arrived, was yourself, Sergeant Orth -- and was

15           Lieutenant Hermann down there near your car?

16   A. Sergeant Orth was standing by the vehicle.

17   Q.  Okay.

18   A. Lieutenant Hermann was by me somewhere, and then

19           Wiegert and Sheriff Pagel arrived.

20   Q.  And you were all clustered in that lower right

21           hand corner of Exhibit 18?

22   A. Yeah. I would say between where the road ends,

23           and there's a car crusher right along the side

24           here.

25   Q.  Okay. So that's about 11:10 a.m., and at that

1           time point there's six law enforcement officers  
2           clustered in that area, including Orth?

3       A. I would say at least five.

4       Q. And to your knowledge, none of them had actually  
5           obtained consent to come into the property and go  
6           to that location, yet, from the property owners?

7       A. They did not.

8       Q. Okay. Did you actually have contact with the --  
9           one of the owners or managers of the property?

10      A. Earl drove down there on his four-wheeler.

11      Q. At what point was that?

12      A. Well, I have Wiegert and Sheriff Pagel arriving  
13           at 1110 hours. In my report I indicate, a short  
14           time later a four-wheeler came to our location,  
15           so.

16      Q. Five minutes or so?

17      A. Yeah, I would say.

18      Q. So in terms of time then, from about 11:00 a.m  
19           when you first arrived -- Were you the first one  
20           to arrive or Sergeant Orth?

21      A. We were all within a minute or two.

22      Q. Okay. So, from about 11 a.m. to about 11:15, one  
23           or more law enforcement officers was down in the  
24           Avery property, without yet having had any  
25           contact, to gain consent from one of the owners?

1 A. At one point, Lieutenant Hermann made contact  
2 with Earl and got consent for us to be there and  
3 to start conducting an investigation.

4 Q. And that was at about 1117; is that right?

5 A. It's in the report here, somewhere. Yeah, 1117,  
6 Lieutenant Hermann spoke with Earl Avery. Earl  
7 gave verbal consent at this time for conducting  
8 an investigation in the salvage yard.

9 Q. All right. Now, at what time was it determined  
10 that there might be a change in the leadership of  
11 the investigation?

12 A. I documented a time of 1145 hours. There was a  
13 decision made to turn over the scene to Calumet  
14 County Sheriff's Department and DCI.

15 Q. And did you participate in that decision?

16 A. I was present during the discussions. I don't --

17 Q. Who actually made the decision?

18 A. I think that was collectively made between Deputy  
19 Inspector Schetter, Calumet County Investigator,  
20 Sheriff Pagel. They were all in on the  
21 discussions.

22 Q. Okay. Were there any -- any attorneys on the  
23 scene at that point?

24 A. Attorney Kratz showed up.

25 Q. District Attorney Rohrer?

1 A. Yes. And I believe -- I believe Assistant  
2 District Attorney Griesbach was out there also.

3 Q. And did any of the attorneys involved -- or did  
4 they -- Were they involved at all in the decision  
5 to transfer authority from Manitowoc Sheriff's to  
6 the Calumet, if you know?

7 A. I don't know.

8 Q. Okay. Were you then asked to get information  
9 together that could be placed in a warrant -- a  
10 search warrant application?

11 A. I was asked to drive down some of the driveways  
12 and get some physical legal descriptions of  
13 certain pieces of property.

14 Q. And that would include the residences that you  
15 were aware of, and the properties?

16 A. Yes.

17 Q. Including Steven Avery's trailer and garage?

18 A. Yes.

19 Q. And you got physical description of that, that  
20 you could then -- but you had to drive over there  
21 to get it; is that right?

22 A. Yes.

23 Q. Did you go inside any buildings during that  
24 period of time?

25 A. Never left my vehicle.

1 Q. Okay. And then, did you participate in the  
2 drafting of the warrant?

3 A. I'm sure I was asked some questions and gave  
4 verbal information to Investigator Wiegert. We  
5 were in phone contact with Calumet County's  
6 paralegal or secretary, District Attorney Kratz.

7 Q. But did you -- Did you read the warrant before it  
8 was presented to the Judge? I understand you  
9 didn't sign it.

10 A. I may have, I don't know.

11 Q. It wasn't -- Since you weren't the one that was  
12 signing it, it wasn't as important that you make  
13 sure that everything in it was accurate?

14 A. I know there were some changes made, certain  
15 people would review it, a phone call was made  
16 back to the paralegal to change this or change  
17 that. Eventually there was sufficient  
18 information that we felt comfortable. I don't  
19 remember if I specifically read it at the end.

20 Q. Okay. In any event you didn't, or did you, make  
21 any corrections to the information in the  
22 affidavit before it was presented to the Judge?

23 A. I know there were changes made periodically,  
24 whether it was in direct correlation to what I  
25 say, or based on myself reviewing it, I don't

1 know.

2 Q. Okay. But your position was that you weren't --  
3 It wasn't directly your application, it was  
4 Investigator Wiegert's; would that be fair?

5 A. He was the lead investigator, so, we were all  
6 working together on it.

7 ATTORNEY BUTING: All right. I have no  
8 other questions on this **Franks** part.

9 THE COURT: Very well. Mr. Fallon.

10 ATTORNEY FALLON: Thank you.

11 **CROSS-EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q. Is it detective or investigator; does it matter?

14 A. Either one is fine.

15 Q. Okay. Detective Remiker, on Friday,  
16 November 4th, you had no contact with any  
17 volunteer, or anyone associated with  
18 Mr. Hillegas' and Scott Bloedorn's volunteer  
19 search efforts; would that be correct, on Friday,  
20 November 4th?

21 A. No.

22 Q. All right. And on Saturday, November 5th, just  
23 so that we're clear, you did not have any  
24 conversations, on the phone or in person, with  
25 anyone representing themselves to be a member of

1                   Mr. Hillegas's search efforts?

2       A. No.

3       Q. Okay. So that's correct, you had no contact?

4       A. I'm not sure who Mr. Hillegas is.

5       Q. Okay. Fair enough. Did you have contact with  
6                   anyone representing themselves to be a searcher,  
7                   anyone that you believed was a volunteer  
8                   searcher, on Saturday?

9       A. The only contact I had was when I was attempting  
10                  to get more information from Investigator  
11                  Wiegert, about these two females down in the  
12                  gravel pit or salvage yard. He said, Here's  
13                  their number, call them.

14       Q. So --

15       A. And I called, I think I spoke to Nikole. And she  
16                  told me where she was and what was going on.  
17                  Other than that, I had no idea anybody was out  
18                  there.

19       Q. Other than that. Very well.

20       A. Other than that.

21       Q. Okay. Now, I would like to clarify something  
22                  regarding the phone conversations you had with  
23                  Investigator Wiegert on Saturday morning,  
24                  November 5th. On his second call with you,  
25                  that's to you, Investigator Wiegert said, there's

1           been a change of plans, correct?

2   A.   Yes.

3   Q.   And in that call, he indicated that his boss,  
4           which you took to mean Sheriff Pagel?

5   A.   I don't know who I took it as. He just said his  
6           boss, whoever that is.

7   Q.   Indicated that at that time that he wanted them,  
8           presumably himself and other people involved in  
9           the missing persons case, to reinterview Steven  
10          Avery and another individual, possibly  
11          Mr. Zipperer or someone?

12   A.   That's correct.

13   Q.   And as a matter of fact, the intention was that  
14          we should go talk to them and see if we can gain  
15          consent to look around the salvage yard, correct?

16                   ATTORNEY BUTING: Objection as to what --  
17                  what their intent would be, since he's speculating  
18                  as to that.

19                   ATTORNEY FALLON: I'm saying the stated  
20          intent.

21                   ATTORNEY BUTING: Okay.

22   Q.   (By Attorney Fallon)~ Is that correct?

23   A.   My understanding is that --

24                   THE COURT: Your objection is withdrawn?

25                   ATTORNEY BUTING: If it's focussed on what

1                   was stated, yes.

2                   THE COURT: Okay.

3                   A. Can I hear your question again, I'm sorry?

4                   Q. Sure. The reason for the reinterview was to --  
5                   one of the reasons -- was to see if they would  
6                   gain consent of Mr. Avery, or others at the  
7                   property, to look around the property, correct?

8                   A. My impression was, it's kind of separate, do  
9                   some -- reinterview Steven and Mr. Zipperer; and  
10                  there's some searchers that are out there, they  
11                  are willing to do some searches. Maybe at some  
12                  point we can contact the Averys and see if they  
13                  would allow these searchers to go out on the  
14                  property.

15                  Q. Maybe?

16                  A. Possibly.

17                  Q. That meeting never took place, correct?

18                  A. Correct.

19                  Q. And there was no other further discussions  
20                  regarding that idea, were there?

21                  A. No.

22                  Q. And the reason that occurred is because shortly  
23                  thereafter you got a call from Mr. Wiegert,  
24                  Investigator Wiegert, saying, Hey, we have one of  
25                  these people on the property, they think they

1           found the car?

2   A.    Correct.

3   Q.    And that's when things really changed?

4   A.    A lot.

5   Q.    All right. Now, when you went to the property  
6        that Saturday morning, there were no gates  
7        around, at that particular time, precluding entry  
8        to the property, right?

9   A.    No gates, no chains, nothing. I continued down a  
10      gravel portion, if you extend Avery Road, right  
11      down into the gravel pit. There was a road, went  
12      past a residence, went by shops.

13   Q.    Well, obviously, and it hasn't been made clear  
14      yet, but this is a commercial business, right,  
15      this is a salvage yard?

16   A.    Yes.

17   Q.    They were open for the public that day, right?

18   A.    I would assume so, yes.

19   Q.    In fact, there were other people milling around,  
20      upon your arrival, right?

21   A.    Yes.

22   Q.    As a matter of fact, one of the reasons that Ms  
23      Sturm called, she indicated, Well, there's some  
24      people walking around here, and she was a little  
25      uncomfortable, right?

1 A. Yes, there were people walking around the salvage  
2 yard, traffic in and out.

3 Q. Traffic in and out. So people were coming and  
4 going. In fact, since people were coming and  
5 going, you actually had some of the officers  
6 stopping or checking license plate numbers for  
7 vehicles that were coming and going from the  
8 property, as you members of law enforcement were  
9 first arriving?

10 A. Yes.

11 Q. And that's because there was traffic in and out  
12 of the Avery property. When I say the Avery  
13 property, I'm referring to the salvage yard,  
14 which is depicted on Exhibit 18?

15 A. There were people walking around, within these  
16 cars, as we were down there. There were people  
17 coming in off 147 and Avery Road, constantly.

18 Q. All right. As a matter of fact, one of the  
19 reasons why it took Mr. Avery -- Mr. Avery, I'm  
20 referring to Earl Avery -- a few minutes to get  
21 down there is because he was talking to some  
22 people; is that right?

23 A. That, I don't know.

24 Q. All right. Now, with respect to the location of  
25 the vehicle, you did, yourself, walk from where

1           you parked your squad, up to the vehicle,  
2           correct?

3       A. Yes.

4       Q. All right. Did Pamela Sturm and her daughter,  
5           Nikole, walk with you to the vehicle, or was it  
6           readily visible from where you stopped your car  
7           and parked?

8       A. They stood right by my vehicle. I did not allow  
9           them to go any further than that. I walked back  
10          from my vehicle, back to where the Toyota was,  
11          they stayed there. I returned, and they were in  
12          that same location.

13      Q. All right. So you walked to the vehicle alone?

14      A. Lieutenant Hermann and Sergeant Orth were  
15          either -- I think Sergeant Orth was just ahead of  
16          me and Lieutenant Hermann was by me, or somewhere  
17          in the vicinity.

18      Q. At the time you were investigating the VIN  
19          characters, were you alone or were the other two  
20          officers, with you?

21      A. The other two were with me.

22      Q. All right. And as a matter of fact, when you  
23          first examined it, you were able to get 15 out of  
24          the 17 characters?

25      A. First two, I couldn't see.

1 Q. Because of the light and position?

2 A. Yes.

3 Q. Now, a few minutes later you were able to borrow  
4 a flashlight?

5 A. Yes.

6 Q. And you were able to get the last two vehicle  
7 identification numbers?

8 A. I matched up all 17 from that -- that vehicle  
9 registration that I had in my hand, with the  
10 vehicle that was parked there.

11 Q. All right. And, now, describe for us, if you  
12 will, you indicated there was some trouble  
13 reading the VIN number, and why was that?

14 A. It was tampered with. It was moved. I guess my  
15 best recollection would be as if somebody maybe  
16 took a screwdriver or something and pushed it, or  
17 moved it, or bent it. It wasn't in its normal  
18 position. It wasn't flat.

19 Q. And did that contribute, along with the sunlight  
20 and difficulty in initially reading all of the  
21 numbers?

22 A. Yeah. Yeah, I'm sure it did.

23 Q. All right. If you would take the pointer and  
24 tell us, you said you never left your vehicle  
25 when you went out and looked for better -- or

1 physical descriptions of some of the buildings on  
2 the parcel of land here. Tell us how you went  
3 about that, if you would, with the pointer, show  
4 us what you did, where you drove?

5 A. I drove from this lower portion here, back up  
6 this road.

7 Q. So you are going south to north, back toward the  
8 entrance?

9 A. Yes. And then I know I travelled down this road,  
10 which actually leads to Steve's residence, Barb's  
11 residence. And I continued to drive down here.  
12 I parked at the end of this driveway.

13 Q. All right. Now, that's the driveway that runs  
14 across the top of the exhibit?

15 A. Correct.

16 Q. And you showed us a course of driving east to  
17 west; is that correct?

18 A. Yes.

19 Q. All right.

20 A. I either wrote down the legal descriptions, or I  
21 was on a phone with Calumet County and I was  
22 giving it to them. Then I drove back. I know I  
23 got a legal description of Barb's trailer, which  
24 is right there. And I don't know how many other  
25 buildings I got information from.

1                   And then I just drove back here and came  
2                   back down. In fact, my car battery went dead  
3                   here. I used somebody else's car. My car  
4                   actually stayed here. I used somebody else's car  
5                   and drove down here.

6 Q. For the initial foray, or did you have to go back  
7                   and redo it because -- or -- I'm not sure, when  
8                   did the car die on you?

9 A. When I went back -- When I was given instructions  
10                  to go get legal descriptions, I went back to my  
11                  car and then it was dead. And I went and grabbed  
12                  somebody else's car and I drove here and got  
13                  those descriptions and then I came right back.

14 Q. Now, how about the area where there's a cluster  
15                  of buildings in the northeast corner there,  
16                  toward the entrance way, there is one, two,  
17                  three, four, looks like five buildings; were  
18                  those included in the general description that  
19                  you were asked to get or did you somehow already  
20                  have that information?

21 A. I know I got Barb's and Steve's. I don't know --  
22                  I don't recall if I got descriptions of all these  
23                  other buildings. I don't know. I may have  
24                  gotten Chuck's trailer, which is right here. I  
25                  don't know about those other buildings. I don't

1 recall.

2 Q. All right. How that information was obtained?

3 A. I'm not sure.

4 Q. Okay. Now, when you first made contact with Earl  
5 Avery, shortly after 11:10 a.m., he indicated to  
6 you that most of the family, Charles, Allen,  
7 Delores, and Steven, were up at their family  
8 property in Marinette County, correct?

9 A. Yes.

10 Q. So he was the one that was more or less in charge  
11 of the property and the business area at that  
12 time, correct?

13 A. I think I asked him. I think he said he was part  
14 owner, or owner, of the property or the business.

15 Q. At any time during that particular meeting with  
16 him, the one shortly after 11:10 a.m., did he  
17 ever ask you to leave?

18 A. No.

19 Q. Did he ever indicate any displeasure or -- with  
20 your presence on the property?

21 A. Earl was very cooperative. He didn't know much  
22 about what was going on, but he was very  
23 cooperative.

24 Q. Right.

25 ATTORNEY FALLON: That's it.

1                   THE COURT: Mr. Buting, any redirect?

2                   ATTORNEY BUTING: Judge, I would move  
3                   Exhibit 20 into evidence. And I wonder, just so we  
4                   can clear the record, maybe the -- that second phone  
5                   call, we could just play it. It's only about a  
6                   minute or two and we would have the exact. There's  
7                   been some -- It's been described various ways as to  
8                   what Investigator Wiegert said about the use of  
9                   volunteers in searching the Avery property. I think  
10                  that would be the best evidence.

11                  ATTORNEY FALLON: We could do that, or the  
12                  Court could listen to it at your leisure as well.  
13                  It doesn't matter to me; whatever you think is  
14                  easiest.

15                  THE COURT: You don't object to it's  
16                  admission?

17                  ATTORNEY FALLON: Not at all.

18                  THE COURT: I will admit it into evidence.  
19                  I think it's just as easy for me to listen to it  
20                  later.

21                  ATTORNEY BUTING: Okay.

22                  THE COURT: It's in evidence.

23                  ATTORNEY BUTING: The one thing that we  
24                  should maybe clarify, though, or that he could  
25                  clarify for here is, who's speaking. They don't

1           identify themselves. And the second phone call, the  
2           first voice, I don't know if it's obvious to the  
3           Court which one is Wiegert.

4                         THE COURT: It's Detective Remiker calling  
5                         Mr. Wiegert?

6                         ATTORNEY BUTING: No, that's the first one,  
7                         that's a longer call, the second one is much  
8                         shorter.

9                         THE COURT: I'm sorry, the second one is  
10                         Wiegert calling Remiker.

11                         ATTORNEY BUTING: Right.

12                         THE COURT: Are they the only two  
13                         participants in the call?

14                         ATTORNEY BUTING: Yes.

15                         ATTORNEY FALLON: Yes.

16                         THE COURT: Okay. I think I can figure it  
17                         out.

18                         ATTORNEY FALLON: I have no objection to  
19                         the receipt of the exhibit, that's fine.

20                         THE COURT: Exhibit 20 then is received. I  
21                         will ask the Clerk, are there any exhibits that have  
22                         been marked today that haven't been received yet?

23                         THE CLERK: No.

24                         THE COURT: Okay.

25                         ATTORNEY BUTING: I do have just one last

1 question, now that I think about it.

2 **REDIRECT EXAMINATION**

3 BY ATTORNEY BUTING:

4 Q. You indicated there were other customers or  
5 people in the salvage yard, right, when you were  
6 there?

7 A. Yes.

8 Q. Nobody else's vehicles were parked down where you  
9 were, right, operating vehicles, in other words,  
10 not junk ones?

11 A. I don't believe so.

12 Q. So any customers that would be in that area,  
13 their cars would be parked up by those business  
14 buildings, or don't you know?

15 A. I have no idea where they are parked.

16 ATTORNEY BUTING: Okay. No further  
17 questions.

18 ATTORNEY FALLON: Nothing.

19 THE COURT: Anything else? All right. The  
20 witness is excused. Does the defense, then, have  
21 any further witnesses on the **Franks** motion.

22 ATTORNEY BUTING: No, your Honor.

23 THE COURT: Does the State have any  
24 witnesses to call on the **Franks** motion?

25 ATTORNEY FALLON: Just one.

1                   THE COURT: Very well.

2                   ATTORNEY FALLON: We have just one witness,  
3                   we call Earl Avery.

4                   THE COURT: Mr. Avery, you can just step up  
5                   to the witness stand, please. Remain standing and  
6                   the Clerk will swear you in.

7                   THE CLERK: Please raise your right hand.

8                   **EARL AVERY**, called as a witness herein,  
9                   having been first duly sworn, was examined and  
10                  testified as follows:

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

13                  THE WITNESS: Earl Avery A-v-e-r-y.

14                  ATTORNEY FALLON: Thank you.

15                  DIRECT EXAMINATION

16                  BY ATTORNEY FALLON:

17                  Q. Mr. Avery, you are the brother of Steven Avery?

18                  A. Yes.

19                  Q. All right. And what do you do for a living, sir?

20                  A. I run a salvage yard with my brother.

21                  Q. All right. And which brother do you run the  
22                  salvage yard with?

23                  A. Chuck.

24                  Q. Is that short for Charles?

25                  A. Yes.

1 Q. And you run the business which is depicted here  
2 on Exhibit 18; that's a picture of the property  
3 that you run?

4 A. Yes.

5 Q. All right. And just so I'm clear, who owns all  
6 that land or property?

7 A. My mom, my dad.

8 Q. All right. And their names are Delores and Allen  
9 Avery?

10 A. Yes.

11 Q. All right. And in terms of who keeps the books,  
12 and works on the purchasing orders, and sales,  
13 and things of that sort for the salvage yard  
14 business?

15 A. That would be my dad, Al.

16 Q. I'm sorry, I didn't hear your answer?

17 A. That would be my dad, Al.

18 Q. All right. And how long have you been running  
19 the business, as it were?

20 A. I couldn't tell you, last couple years.

21 Q. All right. And as of last November, that's how  
22 it was, you and your brother, Chuck, were running  
23 the business and your mom and dad were handling  
24 the books, as it were?

25 A. I guess, yes.

1 Q. All right. And what kind of decisions that you  
2 and your brother, Chuck, would make -- I mean  
3 what kind of business, what activities, did you  
4 do as in terms of running the business?

5 A. I mainly just disassembled cars, and picked up  
6 cars, picked up junk cars. I was mostly on the  
7 road.

8 Q. On the road. Who handled the customer traffic  
9 that would come in? Say, for instance, I wanted  
10 to come in and pick up an automobile part, or  
11 maybe I wanted to sell you some crushed cars, or  
12 I should say, not crushed, but crashed cars, or  
13 something like that?

14 A. Whoever was there.

15 Q. Whoever was there. So that would either be you  
16 or --

17 A. Me and Chuck.

18 Q. Chuck. Would your dad sometimes handle that  
19 work?

20 A. No.

21 Q. How about your mom?

22 A. No.

23 Q. All right. Now, did your brother, Steve, was he  
24 a co-owner of the business?

25 A. No.

1 Q. Was he an employee of the business?

2 A. No, he was just helping us out.

3 Q. He would help you out from time to time?

4 A. Yeah.

5 Q. What were some of the things that he would help

6 you out with?

7 A. The same thing, disassemble cars and get them

8 ready for to go down in the yard, and everything

9 else.

10 Q. All right.

11 A. Drain the fluids.

12 Q. And did your brother, Steve, have any say in how

13 the business was run, or pretty much you and

14 Chuck?

15 A. Mainly just me and Chuck.

16 Q. Any big decisions or final decisions, were those

17 made by you, or made by your dad?

18 A. Mostly my dad.

19 Q. All right. Now, in recent years, your dad was

20 gone quite a bit to your property up in Marinette

21 County; would that be fair?

22 A. Huh?

23 Q. Would that be fair, he would take a lot of time

24 off, you know, and go to the property in

25 Marinette County?

1 A. Yeah. Just Monday through Thursday, he was  
2 usually at the yard.

3 Q. Monday through Thursday. And he would take long  
4 weekends to go up north?

5 A. Yeah.

6 Q. All right. That had been going on for a couple  
7 years?

8 A. Yes.

9 Q. All right. So, for the day-to-day business, you  
10 and your brother, Chuck, would pretty much handle  
11 most things that came up?

12 A. Yes.

13 Q. All right. Now, what were the business hours for  
14 the salvage yard?

15 A. Eight to five, Monday through Friday.

16 Q. All right. How about Saturdays?

17 A. Eight till noon.

18 Q. Eight till noon. All right. If, for instance, I  
19 wanted to come in and see if you had any parts  
20 for a particular car that I needed to repair,  
21 would I come in and check in the office or could  
22 I, if I wanted to, just wander through the yard  
23 and see if I could find something that might fill  
24 my need?

25 A. No, you have to check in the office.

1 Q. Okay. And so then we probably would come in, say  
2 I'm looking for a part to a 1999 Chevrolet  
3 Impala, and you might say, well, try this part of  
4 the yard?

5 A. Yes.

6 Q. Okay. All right. Of your family, Mr. Avery, who  
7 actually lived in the parcel of land that's known  
8 as the Avery property, or the -- Who lived there,  
9 who had residences?

10 A. It was my brother, Chuck, and my ma and dad, and  
11 that was it.

12 Q. Your brother, Steve, had a residence, right?

13 A. Yeah, but that wasn't on Avery's Auto Salvages.

14 Q. I'm sorry?

15 A. That wasn't on Avery's Auto Salvages property.

16 Q. Of the 40 acres, 37 was actually salvage yard  
17 property; would that be about right?

18 A. I guess, yes.

19 Q. Something like that?

20 A. Yeah.

21 Q. All right. And your sister, Barb, was -- where  
22 was her property?

23 A. Hers was down on the end.

24 Q. All right.

25 A. Yeah.

1 Q. Now, I would like to direct your attention to  
2 Saturday morning, November 5th. Did their come a  
3 time where you had some people come to your  
4 property expressing an interest regarding the  
5 whereabouts of Teresa Halbach?

6 A. Yes.

7 Q. All right. Did you have more than one person  
8 come to the yard that morning?

9 A. Yes.

10 Q. Um, tell us about that, you had someone come?

11 A. Yeah, I had -- At first I had two -- two people  
12 come. I don't know what time it was, but there  
13 was a man and a lady there that asked if they  
14 could take a ride through the yard, just to take  
15 a look. And I told them, go ahead, I'm more than  
16 willing to help you guys out.

17 Q. Did they give you anything to hang up in the  
18 office?

19 A. Yeah, they gave me a poster or something to hang  
20 up in the office. Actually, they asked me if  
21 they could hang it up and I said, yes.

22 Q. Okay. So they did, and they kind of asked if  
23 they could take a ride around?

24 A. Yes.

25 Q. Do you know if they did?

1 A. As far as I know, they went down into the pit and  
2 they took a ride around, but I didn't see them  
3 leave after that.

4 Q. Okay. Now, did you have other visitors that had  
5 come that morning, expressing an interest in  
6 Teresa Halbach's whereabouts?

7 A. Yes.

8 Q. Tell us about that.

9 A. I was outside with a neighbor, talking to a  
10 neighbor outside. And they come up to me and  
11 they asked me -- there were two ladies, maybe it  
12 was about 45 minutes after.

13 Q. After the first group?

14 A. Yes.

15 Q. Okay.

16 A. And they asked me if they could take a walk. And  
17 I told them there was a man and a lady down there  
18 already, that they are more than welcome to go  
19 down and take a walk through the yard. And I  
20 kind of pointed to them, where they can start, or  
21 whatever.

22 Q. Mm-hmm. So these two women asked permission to  
23 look around?

24 A. Yes.

25 Q. All right. And you -- And they told you they

1           were looking for anything that would help them  
2           locate Teresa Halbach?

3       A. Yes.

4       Q. All right. And you had no problem with that?

5       A. I had no problem with it.

6       Q. All right. And what was your thinking there?

7       A. Huh?

8       Q. What was your thinking? Why did you have no  
9           problem with that?

10      A. I was just trying to help them out.

11      Q. As a matter of fact, you would want someone to  
12           help out if it was your sister who was missing,  
13           right?

14      A. Yes.

15      Q. So, they came in and they started looking around,  
16           and they decided what direction they were going  
17           to go, or did you make any suggestions?

18      A. Well, I told them, I kind of just pointed, you  
19           know, what was down in the -- how to get down  
20           into the pit and how to get on the top. That's  
21           about all I did.

22      Q. Did you give them any directions, or express  
23           anything about the roads, or the condition of the  
24           yard, or anything they should do to be careful,  
25           so they didn't get hurt?

1 A. No, I didn't. I don't think I did any way.

2 Q. Okay. After they came in and asked permission,  
3 you let them go and look around?

4 A. Mm-hmm, yes.

5 Q. All right. As being one of the owner's of the  
6 business, would it be a fair idea that you would  
7 have a pretty good idea of what kind of vehicles  
8 you have in the salvage yard?

9 A. Yes.

10 Q. All right. And you would need to know that for  
11 your own inventory purposes in case somebody came  
12 and asked questions about do you have a part for  
13 such and such and whether or not you have that  
14 vehicle on hand?

15 A. Yes. Like I said before, is a lot of times I was  
16 more on the road picking vehicles up. And I  
17 usually remember what kind of vehicles I pick up  
18 or what kind of vehicles I put down in the yard.

19 Q. All right.

20 A. With the loader and that.

21 Q. Okay. Did your brother, Chuck, do that kind of  
22 work or were you pretty much involved in securing  
23 the vehicles for use in the salvage yard?

24 A. No, he did it once in awhile to.

25 Q. Once in a while. Now, if a vehicle were brought

1           in by, say your brother, Chuck, or anyone else,  
2           at some point would you have knowledge that that  
3           was brought in just so that you would know what  
4           is on the property?

5       A. Yes.

6       Q. Okay. Now, were you surprised when they found  
7           this Toyota RAV 4 that appeared to be Teresa  
8           Halbach's vehicle?

9       A. Yes, I was.

10      Q. And did you even have any idea that that vehicle  
11           was there?

12      A. No. And I didn't, after I went down there to see  
13           what was going on, I still didn't know that it  
14           was down there. I still couldn't see it.

15      Q. All right.

16      A. I was down there for an hour, until they pointed  
17           it out to me. And then I finally seen it.

18      Q. All right. You had no idea that vehicle was  
19           there?

20      A. No. It was like two days -- two days or three  
21           days before that, we were just through there  
22           rabbit hunting with my brother-in-law and that  
23           vehicle wasn't there.

24      Q. All right. Well, tell me about that, that rabbit  
25           hunting; when did that happen, do you think?

1 A. It was during the week my brother-in-law come  
2 over. He wanted to hunt for some rabbits.

3 Q. Okay. And what's his name, by the way?

4 A. Robert Fabian.

5 Q. I'm sorry?

6 A. Robert Fabian.

7 Q. Fabian?

8 A. Yes.

9 Q. Okay. So, you were down in that portion of the  
10 yard where that vehicle was found?

11 A. Yes.

12 Q. All right. Now, is that something you guys did  
13 fairly regularly, you would hunt rabbit, or  
14 squirrel, or other small game, that --

15 A. That was --

16 Q. -- that might be on the property?

17 A. That was the first time we did it that year.

18 Q. That year?

19 A. Yeah. In the fall like that, yes.

20 Q. Yeah. So, two or three days earlier, as far as  
21 you know, that vehicle wasn't there?

22 A. No, it wasn't there. I'm not sure if it was  
23 Wednesday or Thursday.

24 Q. That you were rabbit hunting?

25 A. That we were right through that area. We were

1           through the whole yard and that vehicle wasn't  
2           there.

3       Q.    Okay. Now, Mr. Avery, a couple last questions,  
4           originally, on that Saturday afternoon, after the  
5           police officers started showing up, I think one  
6           of them indicated that you may have drove down on  
7           a four-wheel drive -- a four-wheeler vehicle, to  
8           find out what was going on; is that right?

9       A.    Yes.

10      Q.    And you talked to one of the officers there?

11      A.    Not at first. At first they just told me to sit  
12           there. For about 45 minutes I sat there. Then  
13           they came up to me and then they were telling me  
14           what was going on.

15      Q.    What was going on. So they gave you a full  
16           debriefing then?

17      A.    Somewhat, yes.

18      Q.    All right. Now, before that, however, or shortly  
19           after they arrived, one of the officers asked  
20           you, just to make sure, that you had no  
21           problem --

22                   ATTORNEY BUTING: Objection leading.

23                   THE COURT: Sustained.

24                   ATTORNEY FALLON: All right.

25      Q.    (By Attorney Fallon)~ Somewhere between 11 and

1           11:30, were you approached by an officer, to your  
2           recollection?

3       A. I don't remember.

4       Q. You don't remember. All right.

5       A. All I know, I sat down there for about 3, 3 1/2  
6           hours.

7       Q. At some point -- Let me ask you this. At some  
8           point during your conversation with law  
9           enforcement, did they ask you if they had your  
10           continued permission to be there?

11      A. No, they didn't.

12      Q. You don't recall?

13      A. No, they didn't.

14                   ATTORNEY FALLON: Nothing else.

15                   ATTORNEY BUTING: I'm sorry?

16                   ATTORNEY FALLON: That's it, your witness.

17                   THE COURT: Mr. Buting.

18                   ATTORNEY BUTING: Thank you.

19                   **CROSS-EXAMINATION**

20      BY ATTORNEY BUTING:

21      Q. Now, you mentioned that this Avery Auto Salvage  
22           business was -- the day-to-day stuff was run  
23           primarily by you and your brother, Chuck, right?

24      A. Yes.

25      Q. Now, once Steven Avery was released from prison,

1                   after his wrongful conviction, he came to live on  
2                   the Avery area compound as well, did he not?

3     A. Yes.

4     Q. And that was about two years before this incident  
5                   that we're here today about?

6     A. Yes.

7     Q. So, the fall of 2003 is when he came to live  
8                   there?

9     A. Yes.

10    Q. And during that two years, you said he wasn't an  
11                   employee, but he did do work at the yard,  
12                   correct?

13    A. Yes, he helped us out.

14    Q. In fact, he did a lot of the same things that you  
15                   and Chuck did, when it came to the cars?

16    A. Yes.

17    Q. He would disassemble them, prepare them for  
18                   either crushing or storage, as a salvage vehicle?

19    A. Yes.

20    Q. He would go with you out on the road to go pick  
21                   up vehicles on your tow truck or flat bed to  
22                   bring to the yard?

23    A. Yes.

24    Q. And he was paid cash for his work as well, was he  
25                   not?

1 A. That I don't know nothing about.

2 Q. Okay. Because you didn't have anything to do  
3 with that part of it?

4 A. No.

5 Q. And directing your attention to Saturday,  
6 November 5th, you are saying that it was only  
7 about 45 minutes before the two women came, that  
8 a different two -- a different couple arrived?

9 A. Yes, there was a man and a woman. I think they  
10 were more younger, and they took a ride through  
11 the yard, yes.

12 Q. When you say took a ride through the yard, on  
13 what kind of a vehicle?

14 A. I don't remember that.

15 Q. They would drive their own car, not a  
16 four-wheeler?

17 A. No, they drove their own vehicle. They asked me  
18 if it was all right. And I told them, yes, it  
19 was.

20 Q. So, the general custom, in fact, is -- maybe you  
21 could use your pointer and point to Exhibit 18  
22 and show me where your office is?

23 A. I have got to find the office. The new office is  
24 right in here.

25 Q. And the record should reflect he's pointing on

1                   Exhibit 18 to the upper right hand corner, the  
2                   building farthest to the right edge, actually  
3                   appears to be about the largest building in the  
4                   photograph.

5                   ATTORNEY FALLON: That's fair -- That's  
6                   fair, Judge.

7                   THE COURT: The record will so reflect.

8 Q. (By Attorney Buting)~ And when you are open for  
9                   normal business, 8 to 5 on weekdays and 8 to noon  
10                  on Saturday, people come up to that office first,  
11                  before they start roaming around in the yard?

12 A. Yes, they do.

13 Q. And that's part of your policy and custom?

14 A. Yes.

15 Q. You don't allow members of the public to just  
16                  come at off hours and start roaming through the  
17                  yard, without your permission?

18 A. Not unless they want to get chased down with a  
19                  four-wheeler.

20 Q. Would it be fair to say that the area on Exhibit  
21                  5, that shows really most of that area that is  
22                  filled with cars; is that sort of like your  
23                  stockroom of your business?

24 A. Yeah, you could say that, yes.

25 Q. So people first come to you to ask whether or not

1           you have a particular part for a particular  
2           vehicle, like a 1995 Chevy, something or other?

3       A. Yes.

4       Q. You have got these cars arranged in various  
5           groups?

6       A. Somewhat, yes.

7       Q. And you can tell them, from your inventory, yes,  
8           we have a '95 Chevy, whatever, and direct them,  
9           generally, where to go?

10      A. Sometimes, yes.

11      Q. Do they take the parts off themselves, or do you  
12           take the parts off for them?

13      A. Sometimes they take a part off, sometimes we take  
14           the part off.

15      Q. And you have regular customers, I assume, right,  
16           that you recognize?

17      A. Yes.

18      Q. Now, when the man and the woman arrived, they  
19           came up to the office that you mentioned there?

20      A. Yes.

21      Q. And you were the only one of the Avery's still  
22           left on the property, so were you up by the  
23           office, or in it?

24      A. I don't recall, but I think I was in the office,  
25           yes, when the first two came.

1 Q. And they gave you the poster, or they hung the  
2 poster of Teresa?

3 A. Yes.

4 Q. And then they themselves started driving down  
5 looking through the junkyard, right?

6 A. I think so, yes.

7 Q. Did you see which way they went?

8 A. No, I didn't.

9 Q. But you never saw them leave.

10 A. No, I didn't see them leave.

11 Q. And you think, then, it was about 45 minutes or  
12 an hour later, when the two women came?

13 A. Yes. Roughly, yes.

14 Q. And were you inside the office at that time or  
15 were you out?

16 A. I was outside.

17 Q. You were outside when they drove up?

18 A. Yes.

19 Q. Can you show us on the pointer where they drove  
20 up?

21 A. I'm not sure where they drove up, but where this  
22 vehicle is right here is where I was standing, by  
23 a pickup truck. And they come from -- they --  
24 actually they must have been parked over here.

25 Q. Record should reflect you are pointing to sort of

1           an open, dirt parking kind of area in the front  
2           of the office, that you previously described. Is  
3           that area generally like a parking area, where  
4           people come up --

5 A. Yes, it is.

6 Q. -- customers?

7 A. Yes.

8 Q. So customers park in at that little area there?

9 A. Yes.

10 Q. In front of the office building? Yes?

11 A. Yes.

12 Q. Okay. And these two women did the same thing,  
13 basically?

14 A. Yes.

15 Q. And did you -- You said you pointed how to get  
16 down into the pit. Can you show me what you did  
17 and where you were when you were doing that?

18 A. We were standing right in here and I just -- I  
19 just verbally told them that this road here goes  
20 up on the top here and behind the blue building  
21 here.

22 Q. The record should reflect you're pointing to the  
23 upper six inches or so of the diagram where  
24 there's some vehicles.

25 A. And then I pointed down here. I told them to

1           take the main road down the pit hill and that  
2           goes down into the pit.

3   Q.   So, did you walk out to the edge of where that  
4       dirt parking lot ends and kind of --

5   A.   No.

6   Q.   -- suggest anything?

7   A.   No, I didn't.

8   Q.   You didn't give them any direction as to which  
9       area to start.

10   A.   No, I'm pretty sure they said that they would  
11       just walk around and look. I'm not sure.

12   Q.   The road that runs along the sort of a dirt  
13       driveway, that runs along the right side of that  
14       exhibit, do you see that? It runs the full  
15       length, from the top down towards the bottom?

16   A.   Yes.

17   Q.   And that's behind the office?

18   A.   Yes, it is.

19   Q.   That's not a public road that's open for  
20       customers, right?

21   A.   No, it isn't.

22   Q.   So --

23   A.   The public road ends up here.

24   Q.   Public road ends up at the top right corner?

25   A.   Yes.

1 Q. Customers are allowed to come onto the property  
2 into the parking area in front of the office,  
3 right?

4 A. Yes.

5 Q. But the road that goes behind it, all the way  
6 down to the lower left -- lower right corner of  
7 the property, is not an area that is open to the  
8 public; is that right?

9 A. Yes, that's correct. That's Chuck's driveway.

10 Q. Okay. Yes, because Chuck's -- Could you  
11 indicate -- maybe we should, just for the  
12 record--

13 A. Chuck's house is right here, and this is his  
14 driveway here.

15 Q. I'm going to have you, if you wouldn't mind, use  
16 this red marking pen and just put some numbers on  
17 some of these buildings?

18 A. What do you mean?

19 Q. If you could just put a number one on the top --  
20 on the roof area of the new office building, as  
21 you call it.

22 A. This is number one.

23 Q. Make a bigger number right in the middle, with a  
24 circle. Okay. And Chuck's residence is where,  
25 if you could put a number two. And the area that

1           would be the stopping point, beyond which the  
2           public is not generally invited, without  
3           permission, would be where, number 3? Well, they  
4           are allowed to come down into the parking lot  
5           area?

6       A. Yes, they are, but this is kind of like a private  
7           road here. Yeah, I would say like right from --  
8           well, even with the buildings, but we still.

9       Q. What about in this area?

10      A. No. No, that there is -- I would say mostly like  
11           right into here.

12      Q. All right. Why don't you put a number four where  
13           people are -- the public is not generally allowed  
14           to go beyond, without permission. Okay. And you  
15           have marked that with number four?

16      A. Yeah, number 4.

17      Q. And the private road that goes behind, that goes  
18           to Chuck's residence, could you put a number -- I  
19           see you put a four up there too.

20      A. Yes.

21      Q. At the top of that where, beyond which it is  
22           considered private. All right. You can sit  
23           down.

24                           ATTORNEY BUTING: I have nothing further at  
25                           this time.

1                   THE COURT: Mr. Fallon, any further  
2                   questions for this witness?

3                   ATTORNEY FALLON: Pass.

4                   THE COURT: All right. Mr. Avery, you are  
5                   excused.

6                   ATTORNEY FALLON: We have no other  
7                   additional witnesses per this particular motion.

8                   THE COURT: All right. Given the number of  
9                   witnesses we have got on the other motions, I don't  
10                  think I'm going to hear oral argument at this time.  
11                  Hopefully, there will be time for that tomorrow.

12                  Which motion are the parties proposing  
13                  to move on to next?

14                  ATTORNEY BUTING: Judge, I think Lieutenant  
15                  Lenk is standing by. Could I have just one moment  
16                  to see whether there is one officer that we may not  
17                  need to use and he's on vacation here today, with  
18                  his family waiting. If I could just take a moment  
19                  to look over my notes.

20                  THE COURT: Go ahead.

21                  ATTORNEY BUTING: All right. Judge, we're  
22                  releasing one of the officers that was subpoenaed,  
23                  who was on vacation today, and we do have Lieutenant  
24                  Lenk that we wanted to take telephone testimony  
25                  from. I think he's available. I'm not sure exactly

1 how we connect him.

2 THE COURT: All right. We'll take just a  
3 quick couple minute break. You can come back with  
4 me. If you have got his number, I will have my  
5 Judicial Assistant get him on the line and we will  
6 be set to go.

7 ATTORNEY BUTING: Okay. Thank you.

8 (Brief recess taken.)

9 THE COURT: Lieutenant Lenk, you are now on  
10 the public address system in the courtroom. You are  
11 being called as a witness by Attorney Buting, on  
12 behalf of the defendant. Is that correct,  
13 Mr. Buting?

14 ATTORNEY BUTING: Yes, it is, your Honor.

15 THE COURT: Before we begin, Mr. Lenk, I'm  
16 going to ask you to raise your right hand. Do you  
17 have it raised?

18 THE WITNESS: Yes.

19 **LIEUTENANT JAMES M. LENK**, called as a  
20 witness herein, having been first duly sworn, was  
21 examined and testified as follows:

22 THE COURT: Please state your name and  
23 spell your last name for the record, please.

24 THE WITNESS: James M. Lenk, L-e-n-k.

25 THE COURT: All right. Mr. Buting, you may

1 proceed. You may have to sit to make sure you are  
2 close enough to the microphone so he can hear you.

3 ATTORNEY BUTING: All right. Can you hear  
4 me, Lieutenant?

5 THE WITNESS: Yes, I can.

6 **DIRECT EXAMINATION**

7 BY ATTORNEY BUTING:

8 Q. All right. How long have you been a police  
9 officer?

10 A. Total?

11 Q. Yes.

12 A. Approximately 24 years.

13 Q. And have you been, or are you, a detective rank?

14 A. Yes, I am.

15 Q. And how long has that been?

16 A. Approximately five years.

17 Q. And your present rank is what?

18 A. Lieutenant.

19 Q. And in the hierarchy of the Manitowoc Sheriff's  
20 Department, how many officers are above you in  
21 rank?

22 A. There would be four.

23 Q. That would be the sheriff himself?

24 A. Yes.

25 Q. And what, three other -- I'm sorry. And the

1 Inspector Hermann?

2 A. Yes.

3 Q. And then two deputy inspectors?

4 A. That's correct.

5 Q. So you are the 4th highest ranking officer at the

6 department?

7 A. Yes.

8 Q. And was that also true on November 5th, 2005?

9 A. Yes.

10 Q. Now, I assume as part of your training and

11 experience you have learned how to go about

12 executing search warrants, right?

13 A. Yes.

14 Q. And can you tell me approximately how many search

15 warrants you have executed, or participated in

16 the execution of?

17 A. That would be hard to say, probably a couple

18 dozen. It would be hard to say.

19 Q. Only a couple of dozen search warrants in your

20 whole career?

21 A. In the whole career? Oh, probably, I don't know,

22 30 or 40.

23 Q. Okay.

24 A. It's hard to tell.

25 Q. And have you had any training, or on the job type

1           training, that tells you how you are supposed to  
2           go about legally executing a warrant?

3       A. Just the training through the academy and while  
4           on the job.

5       Q. So you learned about no knocks, and whether you  
6           can just break in, or whether you have to knock  
7           first and all of that?

8       A. Correct.

9       Q. Now, how did you first become involved in the  
10           Teresa Halbach matter?

11      A. I first became involved on November 4th, when we  
12           received a call to assist on doing an interview  
13           on the Avery location by the Calumet County  
14           Sheriff's Department?

15                   THE COURT: Excuse me, Mr.Lenk, I'm going  
16           to interrupt you a second here because I intended,  
17           before you began your testimony, to have a personal  
18           discussion with the defendant. And I believe,  
19           Counsel, you discussed this matter with your client?

20                   ATTORNEY BUTING: That's correct, Judge.

21                   THE COURT: Mr. Avery, your attorney's  
22           discussed this with me yesterday, and informed me  
23           that they talked to you about this, but do you  
24           understand, that if you wished, you may well have  
25           the right to have Mr. Lenk testify at this hearing,

1           in person, instead of by telephone? Do you  
2           understand that?

3           THE DEFENDANT: Yes, I do.

4           THE COURT: If that happened, you would not  
5           only be able to hear what he had to say, but you  
6           would also be able to observe his demeanor on the  
7           witness stand; do you understand that?

8           THE DEFENDANT: Yes, I do.

9           THE COURT: Have you had adequate  
10          opportunity to discuss, with your attorneys, your  
11          right to require Mr.Lenk to appear here in person  
12          today, as opposed to by telephone?

13          THE DEFENDANT: Yes, I did.

14          THE COURT: Do you wish any more time to  
15          discuss this matter with your attorneys?

16          THE DEFENDANT: No, this is good.

17          THE COURT: Okay. And for the purposes of  
18          this hearing only, that is, not any future  
19          proceedings or certainly a trial, do you have any  
20          objection to the Court allowing Mr. Lenk to testify  
21          and be cross-examined by telephone, rather than  
22          appearing in person?

23          THE DEFENDANT: No, I don't.

24          THE COURT: Very well. That applies to the  
25          testimony he's given thus far?

1                   THE DEFENDANT: Yes, it does.

2                   THE COURT: The Court is satisfied that  
3                   Mr. Avery is willing to cooperate with this  
4                   procedure and I have already been informed by  
5                   counsel that neither counsel objects; is that  
6                   correct, Counsel?

7                   ATTORNEY FALLON: That is correct.

8                   THE COURT: It's probably been implicit in  
9                   the fact that we made arrangements for this  
10                  telephone conversation, but it should be placed on  
11                  the record as well. And, Mr. Buting, since he's  
12                  your witness, you have no objection to the witness  
13                  appearing by phone?

14                  ATTORNEY BUTING: That's correct, Judge.  
15                  We preferred his personal appearance, but he had  
16                  plans that were important enough, out of state, that  
17                  we agreed to arrange this by phone.

18                  THE COURT: Very well. All right. You may  
19                  proceed with your examination.

20 BY ATTORNEY BUTING:

21 Q. Lieutenant, you mentioned November 4th, but I  
22                  want to direct your attention to November 3rd,  
23                  which is actually Thursday night; do you recall  
24                  being advised at that time about the Teresa  
25                  Halbach missing person Complaint?

1 A. Yes, I believed our detective unit was called and  
2 advised that there was a missing -- that they  
3 needed assistance.

4 Q. And was it Sergeant Colborn who contacted you  
5 about this, or who did you speak with first?

6 A. I don't recall who I spoke with first.

7 Q. But at some point did you place a call to Calumet  
8 yourself and speak to Investigator Wiegert?

9 A. I'm not -- I don't believe I did. I believe it  
10 may have been Detective Remiker that did that.

11 Q. And at what point did you learn that Steven  
12 Avery's name had come up in this matter?

13 A. I'm not sure if it was the 3rd or the 4th, that  
14 he had been interviewed regarding this matter.

15 Q. And you learned that -- or did you learn that  
16 Sergeant Colborn had actually gone out to his  
17 residence and spoken with him about any knowledge  
18 he had regarding Teresa Halbach?

19 A. Yes, I learned later, I think it was possibly the  
20 4th, that he had already interviewed Mr. Avery.

21 Q. And, actually, you had a meeting on November 3rd  
22 with Detective Remiker and Investigator Dederling  
23 from Calumet County, did you not?

24 A. Yes, I believe it was up in our detective unit.

25 Q. Now, from that point forward, were you the lead

1                         supervising officer with regard to Manitowoc  
2                         County's involvement in the request for  
3                         assistance from Calumet on this missing person  
4                         Complaint?

5     A.   At that time I would have been the lead officer,  
6                         yeah.

7     Q.   Okay. And so you would be kept informed by  
8                         Detective Remiker, or others, Sergeant Colborn,  
9                         as to what was going on?

10    A.   Yes.

11    Q.   And you would assign officers to work on the  
12                         matter?

13    A.   Yes, I would have assigned officers to assist  
14                         Calumet County.

15    Q.   Now, on the following day, November 4th, were you  
16                         asked to go to Steven Avery's house or trailer?

17    A.   I believe I received a call from Calumet County  
18                         asking if we would go out and reinterview  
19                         Mr. Avery.

20    Q.   And this would have been the second interview,  
21                         because Sergeant Colborn had spoken to him the  
22                         prior night?

23    A.   Correct.

24    Q.   And at whose request was that made, somebody from  
25                         Calumet County, you said, right?

1 A. Yes, sir.

2 Q. Do you know who that was?

3 A. I don't recall. It may have been Detective  
4 Wiegert, but I'm not totally positive.

5 Q. And did you go to Steven Avery's property?

6 A. Yes, I went along with Detective Remiker, to his  
7 property.

8 Q. Do you remember what time?

9 A. I don't recall offhand, I believe it was in the  
10 afternoon, but I don't recall.

11 Q. Could it have been 10:30 in the morning?

12 A. Like I said, I'm not sure what time it was.

13 Q. Okay. But there was only one time on that day,  
14 November 4th, when you went over to Steven  
15 Avery's residence; is that right?

16 A. That's correct.

17 Q. And did you -- you didn't have a warrant at that  
18 point, I assume?

19 A. No, sir.

20 Q. Did you speak with Mr. Avery?

21 A. Yes, we did.

22 Q. Did you ask permission to look through his  
23 trailer?

24 A. Yes, I believe Detective Remiker asked him,  
25 towards the end of the interview, if he would let

1           us look through his trailer.

2 Q. And did he agree with that?

3 A. Yes, he did.

4 Q. Was he cooperative?

5 A. Yes, he was.

6 Q. And did you actually enter the trailer?

7 A. Yes, we did.

8 Q. So both you and Detective Remiker?

9 A. That's correct.

10 Q. And did you walk through the whole trailer?

11 A. Detective Remiker walked through the trailer; I  
12         stood in the living room, with Mr. Avery.

13 Q. Did you walk back to the bedroom at all?

14 A. No, sir.

15 Q. Did Mr. Avery try to prevent yourself, or  
16         Detective Remiker, from going in any particular  
17         area of the trailer?

18 A. No, sir.

19 Q. And did you find anything that would indicate  
20         that Teresa had ever been in the trailer?

21 A. Not at that time, no, sir.

22 Q. And then you left the residence; did you go into  
23         any other buildings at that time?

24 A. No, sir, we left and thanked him for his  
25         cooperation.

1 Q. Didn't go to -- into the garage?

2 A. I don't believe so. I think we just went into  
3 the trailer.

4 Q. And did you have any other investigation, or  
5 involvement with the investigation, on that  
6 Friday?

7 A. No, sir.

8 Q. Did you ever have any phone conversations with  
9 any volunteer citizens who wanted to help search  
10 for Teresa or her vehicle?

11 A. No, sir.

12 Q. On any day?

13 A. No, sir.

14 Q. Are you aware whether or not anyone in your  
15 department had conversations with any volunteer  
16 citizens who wished to help search for Teresa, or  
17 her vehicle?

18 A. I'm not aware of any, no.

19 Q. Now, turning your attention to November 5th,  
20 Saturday, were you on duty on that day?

21 A. No, sir.

22 Q. Did you receive a call from somebody that told  
23 you that they believed that Teresa's vehicle had  
24 been located on the Avery property somewhere?

25 A. Yeah, I received a call from Detective Remiker,

1                   who was on duty, and he gave me that information.

2 Q.       And where were you at the time of the call?

3 A.       I was actually looking at an RV in Menasha.

4 Q.       Okay. And did you then place yourself on duty

5                   and come in?

6 A.       I informed him that I would be coming back and

7                   that I would be coming out to that location.

8 Q.       And did you, in fact, arrive at the Avery

9                   property?

10 A.       Yes.

11 Q.       Do you know what time?

12 A.       I'm not sure of the exact time, somewhere 6:30 or

13                   7 that evening. I'm not positive.

14 Q.       Do you know whether a search warrant had been

15                   issued already?

16 A.       I don't know. I don't think so, at that time,

17                   but I'm not positive.

18 Q.       Did you see the RAV 4 Toyota vehicle on the

19                   property?

20 A.       No, I didn't.

21 Q.       Did you go down to the area where it had been

22                   located?

23 A.       I went down there with another officer. He

24                   showed me the location where it was, but I didn't

25                   get -- I didn't really see it. I mean, from what

1           I seen, it was getting dark and it was hidden,  
2           but I didn't get a good look at it.

3       Q.     Did it look like there was a tarp on it, at that  
4           time, or not?

5       A.     I don't recall. I don't believe so, but I don't  
6           really recall.

7       Q.     In any event, you didn't walk up to it?

8       A.     No, sir.

9       Q.     At what time were you advised that your  
10           department had turned over the investigative  
11           authority to Calumet County?

12      A.     Shortly after I arrived, I received that  
13           information.

14      Q.     You never got a call about that earlier?

15      A.     No.

16      Q.     And you didn't have any role in the search  
17           warrant that was obtained?

18      A.     No, sir.

19      Q.     All right. Now, on the evening of November 5th,  
20           did you participate in a search of Steven Avery's  
21           trailer?

22      A.     Yes, I did.

23      Q.     And this was about 7:30, I believe.

24      A.     Approximately, yes.

25      Q.     Were you also with Sergeant Colborn?

1 A. Yes, I was.

2 Q. And was there anyone else with you when you  
3 entered the trailer?

4 A. Detective Remiker and Sergeant Tyson from Calumet  
5 County.

6 Q. So four officers went into his residence to  
7 execute the search warrant?

8 A. Yes.

9 Q. And three of whom were from Manitowoc Sheriff's  
10 Department; is that right?

11 A. Correct.

12 Q. And do you know how long you were searching his  
13 trailer?

14 A. I think it was approximately 2 hours or so, 2 1/2  
15 hours.

16 Q. All right. Now, can you describe for me how many  
17 rooms there are in the trailer?

18 A. As you walk in, there's a living room area. If  
19 you turn to your left and go down the hall, there  
20 is a bedroom on the right. If you go down a  
21 little farther, it is the bathroom area. After  
22 the bathroom area, is the final bedroom,  
23 Mr. Avery's bedroom. If you come in the front  
24 door and go to the right, there is a small like  
25 kitchenette and the kitchen area.

1 Q. So, it's a relatively small residence; would that  
2 be fair to say?

3 A. Yes.

4 Q. And the four of you were in there for about 2 1/2  
5 hours, right?

6 A. Approximately, yes.

7 Q. And you seized a number of items during that  
8 search?

9 A. Yes.

10 Q. Including bedding, and photographs, and  
11 handcuffs; do you recall that?

12 A. I believe so, yes, sir.

13 Q. Okay. And then all four of you left the trailer  
14 at, what would it have been, about 10 o'clock?

15 A. I would -- Yeah, around at 10 o'clock I think it  
16 was.

17 Q. And then what area of the trailer were you  
18 searching in, personally?

19 A. I searched the part of the master bedroom which  
20 would have been Mr. Avery's bedroom, consisting  
21 of a dresser and a walk in closet. I believe I  
22 even looked under the bed, and things like that.  
23 That was the extent of my searching that room.

24 Q. Did -- Did all four officers go together in a  
25 room and search all together, or were you spread

1           out, some in one area, some in the other?

2       A. It's my recollection that we tried to stay at  
3           least two people in a location. There may have  
4           been a time when an officer may have split off  
5           from another officer for a few minutes. But  
6           generally speaking, we pretty much stayed  
7           together.

8       Q. And so was it you and Sergeant Colborn that were  
9           generally together during the search?

10           ATTORNEY FALLON: Objection, relevance to  
11           this particular point.

12           THE COURT: Mr. Buting.

13           ATTORNEY BUTING: It's really just  
14           foundational, the subsequent witnesses will testify.

15           THE COURT: The issue here is just the  
16           multiple execution of the search warrant, right?

17           ATTORNEY BUTING: Right.

18           THE COURT: How is what the -- was found at  
19           any particular time going to be relevant or  
20           significant for this motion?

21           ATTORNEY BUTING: It goes to when the  
22           search was executed, when the warrant was completed,  
23           or the search was completed. And I think that's  
24           going to be, ultimately, a legal question. But we  
25           need to lay a little bit of a factual foundation.

THE COURT: All right. I'll allow it.

Q. (By Attorney Buting)~ So, when you were --

Lieutenant Lenk, when you were searching and paired off into two, were you generally with Sergeant Colborn, or with somebody else?

A. We were with different people, at different times. In Mr. Avery's bedroom, I was primarily with Detective Remiker, and searching with him, because of the volume of stuff that we were looking at. Other times, in other rooms, it all depended on who was available to assist.

Q. All right. But, in general, you searched -- during that 2 1/2 hours you were able to search, the four of you, Mr. Avery's bedroom, the other bedroom, the living room, bathroom, and kitchen area; is that right?

A. Correct.

Q. And so when you left that evening, you had seized everything you could find that was of any evidentiary value, right?

A. Yes, at that time.

ATTORNEY FALLON: Objection, leading the  
also conclusory.

Q. (By Attorney Buting)~ Well, had you -- did you in fact --

THE COURT: Just a minute. On the form of the question, I will sustain the objection.

Q. (By Attorney Buting)~ When you left that evening, did you believe you had seized everything of evidentiary value?

A. At that time, yes.

Q. Okay. Now, the next morning you returned to the Avery salvage property, did you not?

A. Yes.

Q. Do you recall about what time?

A. I think it was around 8 o'clock in the morning.

Q. And let me ask you, how were you assigned -- I'm going to go back a minute to the November 5th evening search. How was it that you were assigned to participate in that search, or did you just -- or were you doing the assigning?

A. I was not assigning, at any time. I was -- We were asked by Calumet County, after they decided to take the case, if we would assist them, because they had very short manpower, and we volunteered to assist them.

Q. So you volunteered to be one of the officers who searched Steven Avery's residence?

A Yes sir

0 And as far as you know was that also true of

1                   Sergeant Colborn?

2       A. Yes, and Detective Remiker.

3       Q. Okay. And so when you returned on the 6th --

4                   Going back to the 5th for a second, you had not  
5                   yet had time, by 10 o'clock at night, to do a  
6                   thorough search of the garage, the detached  
7                   garage that was next to Mr. Avery's trailer; is  
8                   that right?

9       A. Correct.

10      Q. So, did you do that the next morning when you  
11           arrived?

12      A. I believe we searched the garage.

13      Q. And were you --

14      A. I don't know if it was. I believe it was the  
15           next morning, yes.

16      Q. And were you also paired with Sergeant Colborn,  
17           Detective Remiker, again?

18      A. Yes, and Deputy Kucharski from Calumet County.

19      Q. Okay. And can you give me an estimate of the  
20           size of that garage, how many, you know, like  
21           20 feet by 15 or something, or what?

22      A. Boy, it was a two car garage, whatever a standard  
23           two car garage would be, about that size.

24      Q. And do you know about how long you were searching  
25           the garage that morning?

1 A. I don't recall how long it was, hour, two. I'm  
2 not sure.

3 Q. If I told you that you entered at 8:00 a.m. and  
4 left at 9:47 a.m. would that fit with your  
5 recollection?

6 A. That would be about right.

7 Q. So were all four officers in the garage during  
8 that entire time?

9 A. Yes.

10 Q. And you searched very thoroughly?

11 A. Yes, we tried to.

12 Q. And you seized anything that you thought was of  
13 evidentiary value in that garage?

14 A. At that time, yes.

15 Q. And when you all left, at 9:47 a.m., it was your  
16 understanding or belief, that you had seized  
17 anything that had evidentiary value, from that  
18 garage; is that correct? Or is that correct?

19 A. That's correct.

20 Q. Now, after you finished the search of the garage,  
21 you didn't go back into Mr. Avery's residence  
22 immediately, did you? The trailer?

23 A. No, I don't believe so, that was awhile after  
24 that.

25 Q. Okay. A couple hours later, were you asked to go

1           back into Mr. Avery's trailer?

2   A. Yeah, our team leader at the time, Deputy

3           Kucharski, received information that we should go

4           back into the trailer of the unit.

5   Q. And was it for a specific purpose?

6   A. We were told to go back and collect weapons, a

7           vacuum cleaner, and bedding from the spare

8           bedroom, in the trailer.

9   Q. So, three specific types of items you were asked

10          to go back and retrieve, right?

11   A. Yes.

12   Q. Do you know who gave that order?

13   A. I don't know.

14   Q. So, once again you entered Mr. Avery's trailer,

15          along with Sergeant Colborn?

16   A. Yes. Deputy Remiker, I believe, was there also,

17          and Deputy Kucharski.

18   Q. And if I said that you entered at 12:25 p.m. and

19          left at 12:48 p.m.; would that fit with your

20          recollection?

21   A. Yes, that would be about right.

22   Q. And you did, in fact, seize a number of firearms

23          or rifles, I believe, from the residence?

24   A. Yes.

25   Q. In fact, from Mr. Avery's bedroom, correct?

1 A. Correct.

2 Q. And did you actually go into the bedroom  
3 yourself?

4 A. I don't know who was -- actually took the  
5 firearms. I believe it was Deputy Kucharski who  
6 actually took the firearms. It wouldn't surprise  
7 me if I was actually back in the bedroom with  
8 him.

9 Q. So that was at least the second time when you had  
10 been in his bedroom?

11 A. Right.

12 Q. And did you do any more searches of Mr. Steven  
13 Avery's trailer or garage, on that day,  
14 November 6th?

15 A. Not that I recall, no.

16 Q. The next day, November 7th, which would be a  
17 Monday, did you again have an opportunity to go  
18 into Mr. Steven Avery's trailer?

19 A. Yes, we did.

20 Q. Was that, once again, with Sergeant Colborn?

21 A. Yes, this time we were also with Sergeant Tyson,  
22 from Calumet County.

23 Q. And did you go in there because you were  
24 instructed to do something in particular?

25 A. Sergeant Tyson had received information, from his

1           superiors, to go in there and get the serial  
2           numbers and things off the computer.

3       Q. So there was, again, one specific reason to --  
4           that you were told to go back in, and that was to  
5           retrieve the actual serial number of the computer  
6           in the trailer; is that right?

7       A. Correct.

8       Q. And if I told you that you entered at 9:57 a.m.  
9           and exited at 10:04 a.m., would that fit with  
10          your recollection?

11      A. That would be right.

12      Q. Did you -- Do you have any recollection of going  
13          into Mr. Steven Avery's trailer or garage, again,  
14          later on that date?

15      A. No, sir, I don't recall that.

16      Q. The next day, November 8th, this would be a  
17          Tuesday, do you recall, again, going into Steven  
18          Avery's trailer with Sergeant Colborn?

19      A. Yes, we went in with Deputy Kucharski, who was in  
20          charge.

21      Q. And Sergeant Colborn and yourself?

22      A. Correct.

23      Q. And this was now the 5th time that you had been  
24          inside Mr. Avery's trailer, the 4th time since a  
25          search warrant was obtained; is that right?

1 A. Correct.

2 Q. And do you remember when you -- the time when you

3 entered and exited?

4 A. On the 8th?

5 Q. Correct.

6 A. I believe it was somewhere around 8:30 in the

7 morning. We left around 12:15.

8 Q. So, if I said 8:25 entered, and exited at 12:18,

9 would that fit?

10 A. That would be about right, yes.

11 Q. Okay. And it was actually -- And you were once

12 again searching in Mr. Avery's bedroom, on this

13 occasion?

14 A. Correct.

15 Q. So this was at least the third time that you had

16 been inside Mr. Avery's bedroom?

17 A. I believe so.

18 Q. And to your knowledge, the fourth time that

19 officers had been in his bedroom, including

20 Detective Remiker, on the November 4th consensual

21 search, right?

22 A. Correct.

23 Q. And it was only at the very end of this search

24 that you found something, in his bedroom, of

25 interest?

1 A. Actually, we were searching -- Primarily, we were  
2 sent there to pick up any pornography materials,  
3 to retrieve the computer and related items, and I  
4 believe there was some swabs that needed to be  
5 taken of some blood spots that were found in the  
6 bathroom, by the State Crime Lab.

7 Q. And did you also find a key?

8 A. Yes, I observed a key.

9 Q. And I'm not going to go into the details of that,  
10 you testified at the preliminary hearing -- or,  
11 no, actually you didn't, but is that the -- the  
12 key was found by you, initially, correct?

13 A. I saw the key first, yes.

14 Q. And it was sitting in plain view on the floor  
15 next to a cabinet; is that right?

16 A. Yes, next to the back corner of the cabinet.

17 Q. Now, also on that same day, after completing the  
18 search of the -- Steven Avery's trailer, did you  
19 also go back into his garage?

20 A. Yes, we did.

21 Q. And that was, once again, you and Sergeant  
22 Colborn, correct?

23 A. And Deputy Kucharski.

24 Q. Okay. And if I said that you entered at 12:19  
25 p.m. and exited at 12:45 p.m.; would that fit

with your recollection?

A. Yes, sir.

(Court reporter couldn't hear.)

Q. And your answer to that was?

A. Yes, we exited about 12:45.

Q. Okay. So, that was your second search of the garage, correct?

A. That is correct.

Q. Now, on the next day, November 9th, in the morning, which would now be Wednesday, did you once again go into Mr. Avery's residence, the trailer, with Sergeant Colborn?

A. I don't recall the 9th, no.

Q. Do you have the Manitowoc report with you?

A. Yes.

Q. Do you -- Do you recall going into the Steven Avery garage or trailer at all on November 9th?

A. Not that I recall.

Q. If there were Calumet County officer's reports that indicated that you, and Sergeant Colborn, and Calumet County Deputy Wendling went into the garage on November 9th, looking for a garage door opener and things; would that fit with your recollection?

A. Yes, if it's in their report, then it probably

1                   occurred.

2       Q.   And if I said that you entered at 10:39 a.m. on  
3                   November 9th, this is in the trailer we're  
4                   talking about, and left at 10:59 a.m., there for  
5                   about 20 minutes looking for a garage door  
6                   opener, and gloves, things like that; would that  
7                   fit with your recollection?

8       A.   Yes. If that's in the report, yes.

9                   ATTORNEY FALLON: If Counsel is willing to  
10                  stipulate, to facilitate that, my review of the  
11                  records likewise indicate an entry, 10:39 to 10:59,  
12                  which was interrupted by the arrival of a locksmith.  
13                  They left the residence to attend to the need of the  
14                  locksmith and then resumed between 11:40 and 11:50  
15                  to complete. I would be willing to stipulate to  
16                  those facts, to facilitate the continued  
17                  questioning.

18                   ATTORNEY BUTING: That's fine.

19                   THE COURT: All right. The Court will  
20                  accept that stipulation.

21       Q.   (By Attorney Buting)~ So then on November 9th,  
22                  then, that was your 5th and 6th entry of  
23                  Mr. Avery's trailer, after the warrant had been  
24                  obtained; is that correct?

25       A.   Yes, it would be.

1                   THE COURT: Was this the garage or the  
2                   trailer?

3                   ATTORNEY BUTING: This is the trailer.

4                   THE COURT: Okay.

5   Q. (By Attorney Buting)~ So a total of six different  
6                   times that you entered and left Mr. Avery's  
7                   trailer, on the authority of that first search  
8                   warrant, correct?

9   A. Yes. Assisting Calumet County, yes.

10   Q. Okay. And, finally, there was a third search of  
11                   the garage also on that day, in which you entered  
12                   with Sergeant Colborn at 11:51 a.m., left the  
13                   garage at 12:10 p.m.?

14   A. This is on the 9th?

15   Q. On the 9th, yes.

16   A. If that's in the report, yes, that's what  
17                   happened.

18                   ATTORNEY BUTING: Do you have that,  
19                   Counsel, can we stipulate to that?

20                   ATTORNEY FALLON: I have them in the  
21                   garage -- I have them in the garage 11:51 to 12:10,  
22                   so that's fine.

23                   ATTORNEY BUTING: Okay.

24   Q. (By Attorney Buting)~ So that would be your third  
25                   search of the garage, Mr. Avery's garage,

1                   correct?

2     A.    Correct.

3     Q.    Now, going back for just one minute, to  
4                   November 5th, at around 6:30 p.m., were you, in  
5                   fact, giving orders or directions, to officers,  
6                   as to which buildings to search?

7     A.    I don't know. I don't believe it was an order,  
8                   it was more of a suggestion. We were looking at  
9                   different buildings. I think it was a suggestion  
10                  to go to a building.

11    Q.    And so, do you recollect telling an investigator  
12                  named Gary Steier, and Sergeant Bill Tyson, from  
13                  the Calumet County Sheriff's Office, to check  
14                  specific trailers and out buildings in the Avery  
15                  Salvage Yard?

16    A.    As I said, it was more of a suggestion that they  
17                  check a couple buildings on that date.

18    Q.    And you were aware at that time that the  
19                  investigation had already been turned over to  
20                  Calumet county?

21    A.    Yes, sir.

22    Q.    All right. So just to summarize and make sure  
23                  the record is clear, then, between November 4th,  
24                  when you went in on the consent search, to  
25                  Mr. Avery's trailer, and about midday on November

1           9th, you were actually in Steven Avery's trailer  
2           seven different times?

3       A. That sounds about right.

4       Q. And six of those were on the execution of the one  
5           warrant?

6       A. I'm not sure of how many warrants. Like I said,  
7           I didn't get the warrants.

8       Q. Okay. And during that same time period, you were  
9           also in Mr. Avery's garage three times?

10      A. Yes.

11      Q. On the warrant?

12      A. On some warrant, yes.

13                   ATTORNEY BUTING: All right. I have no  
14                   further questions at this time.

15                   THE COURT: Very well. Mr. Fallon.

16                   THE DEFENDANT: Thank you, Judge.

17                   CROSS-EXAMINATION

18      BY THE DEFENDANT:

19      Q. Lieutenant Lenk, this is Mr. Fallon. As I  
20           understand it, there was a transfer of authority,  
21           to conduct this investigation, from the Manitowoc  
22           Sheriff's to the Calumet County Sheriff's  
23           Department, on the morning of November 5th,  
24           correct?

25      A. I'm not sure when it would have been. Yes, it

1           would have been on the 5th.

2   Q.   All right. And when did you arrive at the  
3        property, the morning or the afternoon?

4   A.   Late afternoon.

5   Q.   Late afternoon.

6   A.   Yes.

7   Q.   By the time you arrived in the late afternoon,  
8        you were made aware of the fact that the Calumet  
9        County Sheriff's Department was in charge of the  
10      investigation, correct?

11     A.   Correct.

12     Q.   But you were also aware of the fact that they  
13        were being assisted -- or by the Wisconsin  
14        Department of Justice, Division of Criminal  
15        Investigation?

16     A.   Correct.

17     Q.   And you were aware, as a matter of fact, that it  
18        was Special Agent Tom Fassbender and Investigator  
19        Mark Wiegert who were actually in charge, as it  
20        were, of the investigation, by the time you  
21        arrived late afternoon, November 5th?

22     A.   Yes, sir.

23     Q.   All right. So, in terms of conducting these  
24        searches, you were doing these searches under the  
25        direction and/or supervision of Investigator

1                   Wiegert and Special Agent Fassbender?

2       A.    Correct.

3       Q.    And in terms of authority, while you may be a  
4                   lieutenant with the Manitowoc Sheriff's  
5                   Department, you only had authority with respect  
6                   to members of your own staff, that is, the  
7                   Manitowoc Sheriff's officers, and did not have  
8                   any independent authority over the Calumet  
9                   deputies or sergeants, correct?

10      A.    Correct.

11      Q.    As a matter of fact, on each of the occasions you  
12                  entered the residence of Mr. Avery, or his  
13                  garage, you were accompanied by a member of the  
14                  Calumet County Sheriff's Office?

15      A.    That is correct.

16      Q.    All right. And in terms of, you used the phrase,  
17                  you volunteered to assist, just so that we're  
18                  clear on that, in terms of your willingness to  
19                  help out as a member of the Manitowoc Sheriff's  
20                  Department, in terms of what you were assigned,  
21                  and where you were to do it, and how you were to  
22                  go about it, was determined by either the  
23                  Department of Justice, or the Calumet County  
24                  Sheriff's Office?

25      A.    That's correct.

1 Q. As a matter of fact, there were a number of  
2 search teams that were put together, involved in  
3 searching various locations on the Avery  
4 property, correct?

5 A. That's correct.

6 Q. And the property itself, and the subject of the  
7 warrant, was about a 40 acre parcel of land?

8 A. I believe so, yes.

9 Q. Okay. Now, in response to a number of questions  
10 by counsel, regarding what your thought process  
11 was at the time you completed each of the  
12 searches of Mr. Avery's residence or garage, you  
13 indicated, Well, at that time, we thought we had  
14 gotten all of the information and evidence that  
15 we needed to get. What did you mean by that?

16 A. Well, what I meant was, at that particular time,  
17 with the information that we had about the case,  
18 we thought we had gotten what we needed to get.

19 Q. All right. And as a result of which, as far as  
20 you know, was there additional information coming  
21 in that then caused Wiegert and Fassbender to  
22 direct reentry, to continue searching these  
23 various locations?

24 A. Yes.

25 Q. Would it be fair to say, that when you and

1           members of Manitowoc Sheriff's Office were  
2           engaged in the searches of the residence and the  
3           garage of Mr. Avery, the person actually in  
4           charge of those searches was the Calumet County  
5           officer, whether it was a deputy, or sergeant, or  
6           lieutenant, or whatever?

7       A. That's correct.

8       Q. And they were the ones who actually collected the  
9           evidence, correct?

10      A. That's correct.

11      Q. Thank you.

12                   ATTORNEY FALLON: That's all. Thank you.

13                   THE COURT: Anything else, Mr Buting?

14                   ATTORNEY BUTING: Just a couple.

15                   REDIRECT EXAMINATION

16      BY ATTORNEY BUTING:

17      Q. You mentioned there were various search teams  
18           involved. How many officers do you think were  
19           involved in the search of the Avery compound, 40  
20           acre compound, on November 5th and 6th?

21      A. I would have no idea.

22      Q. Would you believe more than 50?

23      A. I wouldn't hazard a guess. I have no idea.

24      Q. Okay. But you do know that there were other  
25           search teams searching lots of other areas and

1           buildings on the property, right?

2   A.   Yes.

3   Q.   And that these search teams included  
4       non-Manitowoc people, correct?

5   A.   I believe so, I'm not sure.

6   Q.   All right. You knew there were state troopers  
7       out there?

8   A.   On that particular day, I'm not sure who was all  
9       there. We were pretty much focused on what we  
10      were doing.

11   Q.   All right. But during that time period when you  
12      entered Mr. Avery's house six times -- or trailer  
13      six times, there were DCI agents also on the  
14      property who could have done the search, correct?

15   A.   I believe so.

16   Q.   And there were many, many non-Manitowoc County  
17      officers who could have conducted the searches of  
18      Mr. Avery's trailer, correct?

19   A.   If they had been assigned that, yes.

20   Q.   And as a matter of fact, there was a later, a  
21      second warrant obtained, late on the day of  
22      November 9th, that included Mr. Avery's  
23      residence; isn't that right?

24   A.   I wouldn't know. Like I said, I had nothing to  
25      do with the warrants.

1 Q. In fact, though, after November 9th, you never  
2 entered Mr. Avery's trailer again, correct?

3 A. I don't believe so, no.

4 Q. Other officers were assigned to do that?

5 A. Yes.

6 Q. Officers from the DCI and Calumet County?

7 A. I'm not sure which officers and which  
8 departments, but there were other officers, yes.

9 Q. They were not Manitowoc County officers?

10 A. Not to my knowledge, no.

11 ATTORNEY BUTING: I have no further  
12 questions.

13 ATTORNEY FALLON: No redirect.

14 THE COURT: Very well. Mr. Lenk, you are  
15 excused.

16 THE WITNESS: Thank you.

17 ATTORNEY BUTING: Thank you, sir.

18 THE COURT: And we'll take our afternoon  
19 break at this time.

20 (Recess taken.)

21 (Partial transcript concluded.)

22

23

24

25

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

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 31st day of August, 2006.  
16  
17  
18

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
21  
22  
23  
24  
25

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, PARTIAL MOTION HEARING

5 VS. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

9 DATE: AUGUST 9, 2006

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

11 APPEARANCES:

12 KENNETH R. KRATZ  
Special Prosecutor  
On behalf of the State of Wisconsin.

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

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

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

16 STEVEN A. AVERY  
Defendant  
Appeared in person.

17 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

18 Reported by Diane Tesheneck, RPR

19 Official Court Reporter

1                   **I N D E X**

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1                           **EXHIBITS**

2                           Marked      Offered      Received

3   Exhibit 21               23           23           23

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1                   THE COURT: Counsel, were we going to be  
2                   taking some witnesses out of order, or on a  
3                   different motion?

4                   ATTORNEY FALLON: I believe that was our --  
5                   I believe that was our intention, to take a brief  
6                   hiatus from the multiple execution and do the two  
7                   witnesses on the Marinette County Sheriff's  
8                   statement. We have Detective O'Neill here and  
9                   Attorney Glynn is here.

10                  And as the Court observed the last time  
11                  we were together, you have already listened to  
12                  the recordings and, basically, the two witnesses  
13                  are here to fill in what's happened that's not on  
14                  the recording, so we're not anticipating lengthy  
15                  testimony.

16                  THE COURT: Very well. And the State is  
17                  going to be calling the witnesses here?

18                  ATTORNEY FALLON: Well, we're going to call  
19                  Detective O'Neill, and I believe the defense will be  
20                  calling Mr. Glynn.

21                  ATTORNEY STRANG: Yes.

22                  THE COURT: All right. Mr. Fallon, go  
23                  ahead.

24                  ATTORNEY FALLON: Very well. State, at  
25                  this time, would call to the stand Detective

1 O'Neill.

2                   **DETECTIVE ANTHONY O'NEILL**, called as a  
3 witness herein, having been first duly sworn, was  
4 examined and testified as follows:

5                   THE CLERK: Please state your name, spell  
6 your last name for the record.

7                   THE WITNESS: O'N-e-i-l-l.

8                   **DIRECT EXAMINATION**

9 BY ATTORNEY FALLON:

10 Q. First name?

11 A. Anthony.

12 Q. What do you do for a living?

13 A. Detective Marinette County Sheriff's Department.

14 Q. How long have you been a law enforcement officer  
15 with Marinette County?

16 A. Since 1989.

17 Q. How long have you been a detective?

18 A. Since 1998.

19 Q. To what duties are you normally assigned as a  
20 detective with the Sheriff's Department in  
21 Marinette?

22 A. General investigations.

23 Q. All right. And I would like to direct your  
24 attention to Saturday, November 5th, 2005, did  
25 you have an opportunity to meet with one Steven

1           Avery?

2       A. Yes, I did.

3       Q. Is Mr. Avery, the one you met with, is he present  
4           in the courtroom this afternoon?

5       A. Yes, he is.

6       Q. And would you point out where he is seated, for  
7           the benefit of the Court.

8       A. Seated to the right of his attorney, Mr. Strang,  
9           wearing a black, short-sleeve shirt, dark colored  
10          pants and dark colored shoes.

11                   THE COURT: All right. The record will  
12          reflect that the witness identified Mr. Avery.

13       Q. (By Attorney Fallon)~ How did it come to pass  
14          that you had contact with Mr. Avery on November  
15          5th, 2005?

16       A. My office informed me that it was requested by --  
17          excuse me -- Calumet County investigators, that  
18          we make contact with the Avery family, at their  
19          property located in Marinette County, Wisconsin.  
20          And to make contact with the Avery family and  
21          talk to them about the case that they were  
22          working on involving a missing person by the name  
23          of Teresa Halbach.

24       Q. All right. And approximately what time of day  
25          was that that you had contact with the defendant,

1           Steven Avery?

2       A. Actually arrived at the property proper at  
3           approximately 2 in the afternoon.

4       Q. When you arrived there, what was the first thing  
5           you did?

6       A. Went to a smaller type cabin, knocked on the  
7           door. I believe it was Charles Avery came to the  
8           door, came outside. I spoke to him for a few  
9           moments. Also spoke to Mr. Avery, Allen Avery,  
10           and then eventually, of course, Steven Avery.

11      Q. All right. And where did you first meet Steven  
12           Avery?

13      A. It would have been in the cabin that was occupied  
14           by Mr. Avery, Mrs. Avery, and some other Avery  
15           family members.

16      Q. What information did you provide, or what reason  
17           did you give Mr. Avery for your willing -- your  
18           wishing to speak with him?

19      A. Initially, I explained to Chuck Avery that our  
20           purpose was on behalf of Calumet County  
21           investigators, to speak to the Avery family,  
22           including Steven, excuse me, regarding any  
23           knowledge that they may have of the whereabouts  
24           of Teresa Halbach, and that there was no  
25           indications, or no purpose, by law enforcement,

1           to take anybody in custody, or arrest anybody,  
2           but merely to talk to them about anything they  
3           might know.

4   Q.   Was that information, you relayed that directly  
5           to the defendant, Steven Avery?

6   A.   Yes, while in the cabin, in the presence of his  
7           family.

8   Q.   Was he willing to speak with you?

9   A.   Yes, he was.

10   Q.   Did you, in fact, speak with him?

11   A.   Yes, I did.

12   Q.   Where did that conversation take place?

13   A.   It took place in my unmarked car, county squad  
14           car, on the Avery property, just outside of the  
15           cabin, in a driveway area of the Avery property.

16   Q.   Was there anyone else in the vehicle when you  
17           engaged in conversation with Steven Avery?

18   A.   On that Saturday, no, there was not.

19   Q.   All right. Now, on that particular day, was --  
20           or excuse me -- were any of your conversations  
21           with Mr. Avery recorded?

22   A.   Yes.

23   Q.   All right. Tell us generally, first and  
24           foremost, was there any department policy which  
25           facilitated, or suggested, or directed you to

1 record the conversation?

2 A. At that time, no.

3 Q. Are -- The last time you were here, July 19th, I  
4 believe it was, did you bring with us copies of  
5 those recordings?

6 A. Yes, I did.

7 Q. And you provided copies to myself, and to the  
8 defense counsel in this case, correct?

9 A. Correct.

10 Q. All right. Are the information which was  
11 provided to us, is that a complete copy of the  
12 recordings?

13 A. Yes, it is.

14 Q. All right. Now, are all of your conversations  
15 with Mr. Avery, all discussions, all words  
16 spoken, recorded on those recordings?

17 A. No, they are not.

18 ATTORNEY FALLON: All right. And just so  
19 the record is clear, I believe the Court has already  
20 received its copy and has listened to them?

21 THE COURT: I have. I'm wondering if --

22 ATTORNEY FALLON: I can't remember if it  
23 was marked as an exhibit or not, that's what I'm  
24 drawing a blank on.

25 THE COURT: I don't believe it was. Janet,

1 can you tell me if that's in the file somewhere?

2 THE CLERK: It is in the file.

3 ATTORNEY FALLON: While she's checking that  
4 let's continue, Officer.

5 Q. (By Attorney Fallon)~ Let's start with the big  
6 picture here. Approximately how much time did  
7 you spend with Mr. Avery, total, that day?

8 A. Approximately 2 hours, 45 minutes, to 3 hours.

9 Q. All right. Now, during that time frame, was it  
10 one continuous conversation, or were there a  
11 series of conversations?

12 A. It was continuous conversation, interrupted by  
13 other events.

14 Q. All right.

15 A. If that helps.

16 Q. Sure. Approximately how many interruptions  
17 occurred during the course of your contact with  
18 Mr. Avery?

19 A. Maybe three.

20 Q. All right. As you recall this day, do you know  
21 the reasons for those interruptions?

22 A. Yes.

23 Q. All right. Tell us, please, the first  
24 interruption.

25 A. I'm not sure where it fits in, in the

1           pre-interview, or during the interview, but there  
2           was a point where Mr. Avery gave consent, along  
3           with Steven, for the search of the property and  
4           the vehicles that were contained on the property.

5           And my attention was directed towards  
6           the Steven Avery vehicle for a moment, by an  
7           officer that was conducting the search. That may  
8           have been an interruption or may have been  
9           pre-interview. The other interruptions would  
10          have been numerous phone calls from the press to  
11          Mr. Avery, and phone calls from an attorney.

12          Q. All right. Let's start, first, with your first  
13          initial contact in the vehicle itself. When was  
14          the recorder turned on? Was there any discussion  
15          that occurred before the recording was engaged?

16          A. Yes, there was.

17          Q. All right. And tell us about that?

18          A. I obtained some biographical data from Steven  
19          regarding his name, his address, his date of  
20          birth, and specific information as to where he  
21          lived and so forth. And then, as he started  
22          telling me the story, at that point, I felt there  
23          was a need for me to make more of a record for  
24          myself, because it was becoming a story that was  
25          involving into a lot of details, a lot of things

1 I was not familiar with, and I needed to make  
2 sure that there was an accurate thing I could go  
3 back to later on and make sure my reports  
4 reflected what was said.

5 Q. All right. So, approximately, if we guessed -- I  
6 don't want you to guess -- If you were to  
7 estimate, approximately how many minutes went by  
8 before you thought to yourself, it's probably a  
9 good idea, I better start recording this; about  
10 how much time elapsed?

11 A. I would say between 8 to 10, or 10 to 12 minutes.

12 Q. All right. Now, during that particular time,  
13 other than biographical data, you know, the  
14 details of who he is, and how old he was, and  
15 where he lived and worked, etcetera; what else  
16 was discussed, that you recall?

17 A. Knowing what we discussed, that I know is not on  
18 the recording was, I just had a phone call, okay,  
19 and basically was not given any specific details  
20 as to what the investigation involved, so it was  
21 kind of like coming in blind.

22 And I remember talking to Steven, saying  
23 hears the situation as I know it, and I think you  
24 are going to be able to tell me much more than  
25 what I know, and I'm going to rely upon you to

1           help me through, try and understand what this  
2           investigation is, into the missing person, Teresa  
3           Halbach.

4       Q. All right.

5       A. And I think at that point, when he started to go  
6           into talking about it, I wrote down some notes,  
7           like it was Halloween, then it was like, okay,  
8           then I flip on the recorder. So it was only from  
9           the time I collected the biographical data, and  
10          that we had that conversation regarding what I  
11          was there for, and trying to understand the  
12          circumstances and going from there.

13      Q. Okay. Now, you mentioned some other  
14          interruption, or something concerning consent.  
15          What was that about?

16      A. I believe it may have been during the initial,  
17          and not during the interview, where we asked  
18          Mr. Avery if we could search the property. We  
19          had some other officers that were present and  
20          wanted to give them their tasks, with Mr. Avery's  
21          permission, to go and search the property, see if  
22          there was anything that may be pertinent, that  
23          wasn't normal.

24      Q. All right.

25      A. He gave -- Pardon?

1 Q. I just want to interrupt, which property are you  
2 referring to?

3 A. The Avery property, in the Town of Stephenson,  
4 Marinette County.

5 Q. Marinette County. All right. So after that  
6 occurred, then you had this general discussion of  
7 who you were, why you were there getting his  
8 biographical data. And then as the questioning  
9 begins, it's shortly thereafter, within a matter  
10 of what, a minute or two, that you decide, I  
11 better turn on the recorder?

12 A. Correct.

13 Q. Okay. All right. What was the next  
14 interruption -- Well, strike that. Until the  
15 point of the next interruption, should I say the  
16 first interruption, was everything recording from  
17 that moment on, after you turned on the recorder?

18 A. Yes.

19 Q. Okay. What was the first interruption then?

20 A. I believe it was a phone call that was made to a  
21 family member and then presented to Steven by  
22 someone who knocked on the door and said, hey,  
23 phone, and he says wait a moment, and the person,  
24 I believe, said something to the effect of, it's  
25 the attorney. And at that point Steven, I

1 believe, rolled down the window and took the  
2 phone.

3 Q. All right. And did he remain in the vehicle?

4 A. Yes, he did.

5 Q. Now, while he was on the phone, the recording is  
6 still running?

7 A. Yes, it is.

8 Q. All right. At some point during this  
9 interruption, was the recording turned off at  
10 all?

11 A. Not until after he left the vehicle.

12 Q. All right. After he left the vehicle, did you  
13 turn off the recorder immediately, or did you  
14 leave it on for a few moments?

15 A. I left it on for a few moments because I made a  
16 note, a verbal note, as to what was going on?

17 Q. All right. And at some point, you turned the  
18 recorder back on?

19 A. Yes, I did.

20 Q. With respect to that, prior to turning the  
21 recorder back on, did you have any conversation  
22 with Mr. Avery, before you turned the recording  
23 back on?

24 A. No, I stayed in the car.

25 Q. You stayed in the car?

1 A. Correct.

2 Q. All right. So, when you -- When did the  
3 recording get turned on?

4 A. When Mr. Avery came back into the car.

5 Q. As he opened the door?

6 A. I believe so. I believe I could even hear a  
7 chime from the door, in the recording.

8 Q. All right. And from that moment on, did the  
9 recording remain on?

10 A. For that session, yes.

11 Q. All right. And what was the next interruption  
12 that occurred?

13 A. When he came back into the car, he still had the  
14 phone. We continued on with the interview. I  
15 don't think there were any other interruptions.

16 Q. All right. Was there a second phone call from an  
17 attorney; do you recall?

18 A. Yes, there was.

19 Q. All right. Tell us about that.

20 A. I believe it was somewhere closer to 4 or  
21 5:00 p.m.

22 Q. All right.

23 A. And someone said, again, that it was his  
24 attorney. And he said something to the effect,  
25 tell him I will call him back in 15 minutes.

1 Q. And at that point, did you continue to converse  
2 with Mr. Avery?

3 A. For a short time, yes.

4 Q. And then what happened?

5 A. We concluded our interview.

6 Q. All right. Now, did he step out and take a call  
7 from an attorney.

8 A. During the first phone call interruption, yes.

9 Q. All right. Now, when was the last time that you  
10 listened to a recording of this -- of this  
11 afternoon's conversation with Mr. Avery?

12 A. Would have been, in totality, on the date I came  
13 here, which was July.

14 Q. 19th?

15 A. 19th.

16 Q. So, it's been since July 19th that you listened  
17 to the recording?

18 A. Actually, I think that was June 19th, wasn't it?

19 Q. Whenever you were here last. But you have not  
20 listened to the recording since?

21 A. No, I have not.

22 Q. All right. Now, at any time while the recorder  
23 was off, did you have any discussions with  
24 Mr. Avery regarding the events which were  
25 unfolding in Manitowoc County, about the location

1                   of Teresa Halbach's vehicle on his property, that  
2                   were not recorded?

3         A. No, I did not.

4         Q. All right. Now, any discussion with Mr. Avery,  
5                   whatsoever, that were not recorded, about whether  
6                   he should continue to talk with you, notwithstanding  
7                   the fact that he had just taken a  
8                   phone call from Attorney Glynn?

9         A. No.

10        Q. All right. So, everything relative to the events  
11                  which were unfolding here in Manitowoc County,  
12                  and the discussion regarding the fact that his  
13                  attorney is trying to get a hold of him, are on  
14                  the recordings?

15        A. To the best of my knowledge, yes.

16        Q. All right. During the course of the afternoon's  
17                  interview, was Mr. Avery -- in your mind, was he  
18                  ever in custody?

19        A. No.

20        Q. Did you tell him that he was free to leave during  
21                  the course of this conversation?

22        A. At least a couple times, and reaffirmed it, yes.

23        Q. Did you advise him, during the course of these  
24                  conversations, that he was, of course, free to  
25                  leave any time?

1 A. Yes, and he exercised those as well.

2 Q. As a matter of fact, he left your presence how  
3 many times?

4 A. If the interruption of going out and looking at  
5 his car occurred during the interview, that would  
6 have been one, to take that phone call from his  
7 attorney, would have been the second time. So,  
8 one for certain, two possibly.

9 Q. All right. And as a matter of fact, you actually  
10 talked to his attorney at one point during his  
11 receiving the call, correct?

12 A. A person identified himself as his attorney, yes.

13 Q. And the person identified himself as Attorney  
14 Stephen Glynn?

15 A. Correct.

16 Q. All right. When you completed your discussions  
17 with Mr. Avery, did you arrest, or otherwise take  
18 Mr. Avery into custody?

19 A. No.

20 Q. You wrote a report on this?

21 A. Yes, I did.

22 Q. I'm just curious, did you have the opportunity of  
23 listening to the recording before writing your  
24 report?

25 A. Yes.

1 Q. All right. At any point, while on the  
2 recording -- or excuse me -- the recording will  
3 speak for itself. At any point, which was not  
4 recorded, during your contact with Mr. Avery, did  
5 Mr. Avery tell you he just did not want to talk  
6 to you?

7 A. No.

8 Q. At any point, during your contact with Mr. Avery,  
9 and I'm focusing in on points which were not  
10 subject to recording, did he ever say he didn't  
11 want to talk to you without the assistance of  
12 counsel?

13 A. No.

14 Q. At any point, during your contact with Mr. Avery,  
15 that was not recorded, did he ever refuse to  
16 answer any particular question?

17 A. As related to Teresa Halbach case, no.

18 Q. Yes. All right. Now, during the course of this  
19 conversation, he sat in what part of your  
20 vehicle?

21 A. A passenger front.

22 Q. All right. And is that passenger vehicle, is one  
23 able to freely get in and out of that vehicle?  
24 It is not like the backseats, for instance, it's  
25 not locked?

1 A. Just as your typical civilian car, Ford Taurus,  
2 no cage, no locks, no special things to keep  
3 someone inside the car.

4 Q. All right. Your best recollection, is there any  
5 reason in your mind right now why it took 2 or 2  
6 1/2 hours to complete the job of interviewing  
7 Mr. Avery?

8 A. I believe the duration was in such to be sure as  
9 to what he was telling me, to expand upon what he  
10 was telling me, to grasp what he was telling me,  
11 and to be certain to myself and to him, that what  
12 he was telling me was, what he said, the truth.

13 Q. All right. Were any of the interruptions that  
14 you have just described lengthy; in other words,  
15 there was a lot of down time, where you actually  
16 turned off the tape for any extended period of  
17 time?

18 A. No.

19 Q. During the course of taking these statements from  
20 Mr. Avery, at any point, in an effort to get him  
21 to talk to you, did you promise him anything?

22 A. No.

23 Q. Did you at all threaten or otherwise coerce him?

24 A. No.

25 Q. Did you -- Did he make any requests of you that

1                   you denied?

2       A.   No.

3       Q.   And how would you characterize his demeanor when  
4                   he was speaking with you?

5       A.   Wanting to cooperate, wanting to talk. It was  
6                   almost as if it was a casual conversation, so to  
7                   speak, but yet with concern. And without any  
8                   type of need to go anywhere or do anything. It  
9                   was.

10      Q.   All right. And at any point, did he become angry  
11                  or frustrated with you, or your questioning?

12      A.   No.

13      Q.   Did he have any questions of you, that are not  
14                  reflected on the recording?

15      A.   I don't believe so, no.

16      Q.   All right.

17                   ATTORNEY FALLON: Ms Clerk, do we have an  
18                  exhibit number for that recording?

19                   THE CLERK: It wasn't marked as an exhibit,  
20                  but it was filed.

21                   ATTORNEY FALLON: Perhaps we should have it  
22                  marked.

23                   THE COURT: It should be marked, so can it  
24                  be 21?

25                   THE CLERK: Yes.

(Exhibit 21 marked for identification.)

2 Q. (By Attorney Fallon)~ Detective, I show you what  
3 has been marked for identification purposes as  
4 Exhibit 21. Does that look familiar to you?

5 A. This actual CD, no. This is not the CD that I  
6 would have produced.

7 Q. Okay. You reproduced an exhibit such as this;  
8 would that be yours?

9 A. I believe so, yes.

10 Q. All right. And as far as we know, this is -- As  
11 far as you know, this is a true and accurate copy  
12 of the original that you brought with you when  
13 you were here last?

14 A. Correct.

15 Q. Okay.

16 ATTORNEY FALLON: Is there a stipulation,  
17 Counsel, on that creation?

18 ATTORNEY STRANG: Yes. And Exhibit 21 is  
19 admissible, as far as I'm concerned.

20 ATTORNEY FALLON: Very well. We'll tender  
21 the witness for cross upon receipt of the exhibit

25 ATTORNEY STRANG: Yes.

## CROSS-EXAMINATION

2 BY ATTORNEY STRANG:

3 Q. Detective O'Neill, other than listening to the  
4 tape, or the recording that we have now marked as  
5 Exhibit 21, what did you review, at any time  
6 after November 5, 2005, to refresh your  
7 recollection to testify here today?

## 8 A. My reports.

9 Q. How many reports are those?

10 A. I believe I reviewed the report involving the  
11 interview of Steven Avery on November 5th. I  
12 believe it was maybe four pages.

13 THE COURT: Can you hand me the exhibit?

14 THE WITNESS: I'm sorry?

15 THE COURT: Can you hand me the exhibit,  
16 the CD?

17 Q. (By Attorney Strang)~ Did you review any other  
18 reports?

19 A. I believe I reviewed the actual motion that was  
20 presented.

21 Q. The defense motion?

22 A. Yes. I reviewed a handwritten note regarding  
23 some times --

## 24 Q. Your handwritten --

25 A. -- some biographical data.

1 Q. Your handwritten notes?

2 A. Yes.

3 Q. Prepared on November 5?

4 A. Yes.

5 Q. During the interview with Steven Avery?

6 A. Yes.

7 Q. Do you have those with you?

8 A. May I check?

9 Q. Yes.

10 A. No, I do not.

11 Q. Where are they?

12 A. Actually, I believe they may be in my car.

13 Q. Which is nearby, obviously?

14 A. Correct.

15 Q. All right. We'll find a convenient time to have

16 you get those.

17 ATTORNEY STRANG: Simply signal the Court

18 now, that I'm asking for them under 906.12.

19 Q. (By Attorney Strang)~ What else did you review?

20 We have gone through the tape, the motion that I

21 filed, one report, which you recall as being four

22 pages, and then your handwritten notes.

23 A. The audio recordings from my first appearance

24 here, I would have reviewed back then.

25 Q. Audio recordings from your first appearance here;

1           I'm not sure I understand?

2   A.   When I first came, I think it was on June 19th.

3           I believe that was the first date of motions.

4   Q.   July 5.

5   A.   I'm sorry. July 5th, the day I would have

6           appeared, but not presented for motion. I would

7           have reviewed, also, the audio recordings, and

8           the diagrams, and the statements that were taken.

9   Q.   Okay. So the same things you reviewed. When you

10          say audio recordings, you are talking about the

11          November 5 interview of Steven Avery?

12   A.   And 6th, yes.

13   Q.   And 6. Okay. Separate recording?

14   A.   Yes.

15   Q.   All right. Separate report for November 6th as

16          well?

17   A.   I believe so, yes.

18   Q.   Did you review that to refresh your recollection

19          to testify?

20   A.   I don't believe so.

21   Q.   I'm going to show you two reports. Before I mark

22          these, I'm going to show you two reports. Tell

23          me if both of those are reports that you

24          authored, which one did you review to refresh

25          your recollection, or do you now think you looked

at both of them, having seen them?

A. I would have reviewed the report dated 11/16 of '05.

Q. And not the report dated 11/17 of '05?

A. I don't believe so.

Q. Okay. Fair enough. I'm going to mark the one you identified as reviewing that, and ask the clerk to mark that as Exhibit 22. What I will do, I will leave this with you.

(Exhibit 22 marked for identification.)

ATTORNEY STRANG: I'm not moving it into evidence at this point, your Honor.

Q. (By Attorney Strang)~ That report, to my eye, is five pages, not four; is that right?

A. Correct.

Q. And then there's a 6th page which looks like, you know, somebody's hand drawn diagram?

#### A. Attachment of a diagram, yes.

Q. Right. On the fifth of the typed pages, we have got your signature near the bottom?

A. Yes, it is.

Q. I see four little computer symbols for a speaker; do you see those?

A. Yes, I do.

Q. Any significance to the symbol?

1 A. When I compiled these reports and presented them  
2 to the Calumet County officers, I did so not only  
3 in written format but also in a CD ROM format.

4 And that CD ROM would have allowed the user to  
5 click on the icons that are there, to access  
6 whatever audio recordings were pertinent to that  
7 specific report.

8 Q. Okay. And that goes to my next question. There  
9 are four of the icons, does that correspond to  
10 the four parts, or segments, on the CD, of the  
11 November 5 interview of Steven Avery?

12 A. Without actually seeing the CD ROM and looking at  
13 that property for the icons, I would say yes.

14 Q. And that would be your expectation --

15 A. Yes.

16 Q. -- in other words? All right. You did not tell  
17 Steven Avery, during the course of your  
18 November 5 interview, that you were recording it,  
19 true?

20 A. True.

21 Q. Where was the recorder, in the unmarked squad,  
22 you described?

23 A. Where I always keep it, on my visor, there's kind  
24 of like a visor caddy, in that location, right  
25 there.

1 Q. Sort of a small dictaphone, or digital handheld  
2 recorder?

3 A. Yes.

4 Q. Which you can simply turn on with your thumb by  
5 reaching up to the visor?

6 A. Yes.

7 Q. Do that unobtrusively?

8 A. To someone that may be in a vehicle, it may be  
9 unobtrusively, yes.

10 Q. Sure. And then turn it off with your thumb, as  
11 well, correct?

12 A. Correct.

13 Q. That is something you have grown accustomed to  
14 doing?

15 A. During my career, no. But more recently, yes.

16 Q. As of November 5, 2005, you were adept at turning  
17 this recorder on and off quickly, without  
18 looking?

19 A. I probably would have had to take it down to turn  
20 it on, because I'm not that adept. Okay.

21 Q. All right. In any event, you had no reason to  
22 believe that Mr. Avery knew that he was being  
23 recorded?

24 A. No.

25 Q. The initial phase, if you will, of this

1 interview, involved what I think you said was  
2 about 8 to 12 minutes, give or take, of getting  
3 some biographical information from Steven Avery,  
4 true?

5 A. Yes.

6 Q. What did he tell you about his level of formal  
7 education?

8 A. I believe that was part of our conversation. He  
9 talked about not having completed high school.

10 Q. And going no further?

11 A. I believe that to be correct, yes.

12 Q. Would your -- Would your notes out in your car  
13 reflect some of these biographical details?

14 A. That was just during conversation and -- I really  
15 don't know.

16 Q. Did you make most of the notes before you turned  
17 on the recorder for the first time?

18 A. I believe so.

19 Q. Which is also the period of time during which you  
20 covered the biographical information?

21 A. Correct.

22 Q. So, what you knew, in any event, was that you had  
23 a high school graduate, in the car with you?

24 A. I don't believe he graduated high school. I  
25 don't think he did.

- 1 Q. I'm sorry, I misunderstood you.
- 2 A. I don't believe he did graduate high school.
- 3 Q. What was your understanding of his educational
- 4 attainment?
- 5 A. I believe, just from our conversation, I don't
- 6 believe he graduated high school because I talked
- 7 about some familiar surroundings and things and
- 8 so forth.
- 9 Q. You didn't learn how far short of graduation he
- 10 left high school?
- 11 A. No, I didn't.
- 12 Q. But you knew you did not have a high school
- 13 graduate?
- 14 A. I believe that's correct.
- 15 Q. That was your understanding?
- 16 A. Yes.
- 17 Q. Okay. Did you inquire into the manner of his
- 18 employment? His trade, or his job?
- 19 A. I believe during conversation it became known,
- 20 that it was a family run business, the Avery
- 21 Salvage Yard.
- 22 Q. Worked in the salvage yard?
- 23 A. Correct.
- 24 Q. You would describe him, then, as a working man?
- 25 A. Correct, yes.

- 1 Q. Someone who did not have post-secondary  
2 education?
- 3 A. I believe so, correct.
- 4 Q. Someone you believed not to have a high school  
5 degree?
- 6 A. Correct.
- 7 Q. So, at least the man you believed you were  
8 speaking to, his highest diploma would have been  
9 from 8th grade, presumably, correct?
- 10 A. From what grade?
- 11 Q. Eighth.
- 12 A. I can't remember that. I don't remember that.
- 13 Q. Okay. But no reason to think he had graduated  
14 from 12th grade?
- 15 A. I was surprised that you said 8th grade, because  
16 I put him, in the idea of his cognitive abilities  
17 to understand me, as being a lot higher than an  
18 8th grade education.
- 19 Q. I understand. What I was asking about was the  
20 last diploma that you believed he had received,  
21 or the last stage of schooling he had completed,  
22 would have been junior high school.
- 23 A. I don't recall that being something that we  
24 talked about.
- 25 Q. All right. The interview was one of many

1           interviews that you have conducted with people  
2           during, at that point, roughly 16 years you have  
3           been in law enforcement?

4       A. Yes.

5       Q. Probably hundreds of interviews you have  
6           conducted with citizens during those 16 years,  
7           roughly?

8       A. Yes.

9       Q. I'm talking about 1989 to November of 2005?

10      A. In some sort and fashion, yes.

11      Q. Sure. And then in about 1999, you took on the  
12           duties of an investigator?

13      A. I believe it was '98.

14      Q. '98, I'm sorry. So, it had been about 7 years  
15           that you had been an investigator by the time you  
16           were conducting this interview?

17      A. Yes.

18      Q. The job of investigator regularly entails  
19           interviewing citizens?

20      A. Yes.

21      Q. Some of those citizens are witnesses to crimes,  
22           or potential crimes?

23      A. Yes.

24      Q. Some are victims of crimes?

25      A. Yes.

1 Q. Some are suspects in crimes?

2 A. Yes.

3 Q. Some are actually defendants charged with a

4 crime?

5 A. Usually, at that point, I'm not talking to them.

6 Q. But, occasionally, there have been occasions

7 where somebody has been charged with a crime,

8 later has talked to you about that charge, or

9 some other --

10 A. Yes.

11 Q. -- matter of interest, correct?

12 A. Correct.

13 Q. So you have acquired experience dealing with all

14 types of these categories of citizen interviews

15 that we have discussed?

16 A. Yes, sir.

17 Q. You have done that probably hundreds of times,

18 during your employment as a detective?

19 A. To some degree, yes.

20 Q. You have been trained, from the beginning of your

21 law enforcement career, that one, in this

22 country, always has a right to ask for a lawyer?

23 A. Yes.

24 Q. One doesn't need to be a suspect?

25 A. Correct.

- 1 Q. One doesn't need to be under arrest?
- 2 A. Correct.
- 3 Q. You are a scrupulous law enforcement officer?
- 4 A. Depends on how you define scrupulous.
- 5 Q. How do you define scrupulous?
- 6 A. One who takes his job serious and exemplifies
- 7 what you would expect in a law enforcement
- 8 officer.
- 9 Q. All right. Does that include honesty?
- 10 A. Yes.
- 11 Q. Does that include respect for constitutional
- 12 rights?
- 13 A. Yes.
- 14 Q. Does that include respect for the human beings
- 15 with whom you have contact, professionally?
- 16 A. Yes.
- 17 Q. That respect extends to respecting a request for
- 18 a lawyer?
- 19 A. Very much so.
- 20 Q. Doesn't matter to you whether the person is in
- 21 custody, or not?
- 22 A. Correct.
- 23 Q. If he asks for a lawyer, that's his wish?
- 24 A. That's his wish.
- 25 Q. That's something that you will respect?

- 1 A. Always have.
- 2 Q. As part of a serious and responsible law
- 3 enforcement officer?
- 4 A. Yes.
- 5 Q. You are familiar, as a matter of experience, with
- 6 the fact that people have all different states of
- 7 mind, when you come to interview them? By that,
- 8 I mean some are relaxed, correct?
- 9 A. Correct.
- 10 Q. Some are friendly?
- 11 A. Correct.
- 12 Q. Some are sober?
- 13 A. Correct.
- 14 Q. Some are not under the influence of drugs?
- 15 A. That's correct.
- 16 Q. And, then, some are hostile?
- 17 A. Correct.
- 18 Q. Some are drunk?
- 19 A. Correct.
- 20 Q. Some are under the influence of some sort of drug
- 21 or illegal substance?
- 22 A. Correct.
- 23 Q. Some are scared?
- 24 A. Correct.
- 25 Q. Some are highly formal?

- 1 A. Correct.
- 2 Q. Some want to be informal and jovial, or try to  
3 play the joker, if you will?
- 4 A. I imagine so, yes.
- 5 Q. You have seen the gamut, in other words, of human  
6 behavior, in the course of interviewing people?
- 7 A. Yes, I have.
- 8 Q. This one, Mr. Avery, was somebody who appeared to  
9 you to want to be cooperative?
- 10 A. Yes.
- 11 Q. Your experience, too, with the hundreds of people  
12 you have interviewed in various descriptions we  
13 have covered, you have seen a range of levels of  
14 facility with the English language, I guess we  
15 could put it that way, couldn't we?
- 16 A. Including my own, yes.
- 17 Q. Yes, sure. I mean, you are at one point on the  
18 scale of, you know, from inarticulate or  
19 illiterate, to highly articulate, correct?
- 20 A. I would hope so.
- 21 Q. Sure. You are at some point in there, and you  
22 have seen people who range pretty well across  
23 that spectrum?
- 24 A. Yes.
- 25 Q. You have had people, in fact, who are mute or,

1 because deaf, are not able to speak ordinarily at  
2 all?

3 A. I can't recall any, but I'm sure.

4 Q. Yeah. You have certainly interviewed people as  
5 to whom you understood that perhaps Spanish was  
6 their first language, and English only a second  
7 and fragmentary language?

8 A. Yes.

9 Q. You have had people who had college degrees, or  
10 maybe degrees beyond that, and had an excellent  
11 grasp of the English language; you have  
12 interviewed people like that?

13 A. Yes, I have.

14 Q. And you have interviewed simple, ordinary folks  
15 who have, maybe, less ability to articulate their  
16 thoughts than you do, for example?

17 A. Yes.

18 Q. Mr. Avery would fall into the group who would be,  
19 you know, less articulate than you, correct?

20 A. I don't believe so.

21 Q. Somewhere about you, in terms of his ability to  
22 articulate himself in English?

23 A. To a certain degree, yes.

24 Q. All right. But I guess the point is, you have  
25 learned to deal with a range of English language

- 1           skills in your work?
- 2 A. Yes.
- 3 Q. You, therefore, do not hold people to a
- 4        dictionary standard of use of the language?
- 5 A. No.
- 6 Q. You don't correct their grammar?
- 7 A. No.
- 8 Q. You don't correct their diction?
- 9 A. No.
- 10 Q. You don't ask them to speak with precise phrases,
- 11       or specific magic words?
- 12 A. Unless there is a problem in me understanding
- 13       what they are saying, no.
- 14 Q. In which case, you will try to clarify so that
- 15       you could understand?
- 16 A. Correct.
- 17 Q. But you allow some room for communicating with
- 18       the interviewee at the level that the interviewee
- 19       communicates?
- 20 A. As long as we are both understanding each other,
- 21       and we have the same presence of the language --
- 22 Q. Sure.
- 23 A. -- that we're speaking.
- 24 Q. And that is the key, you want to make sure you
- 25       understand?

- 1 A. Project and receive the same language.
- 2 Q. Right. And that -- So if someone was using a
- 3 very elevated vocabulary, words you didn't
- 4 understand, you might ask that person to explain
- 5 in simpler terms?
- 6 A. As we have done, yes.
- 7 Q. Sure. And likewise, if someone was using very
- 8 imprecise, or poorly chosen words, you might try
- 9 to clarify what they were trying to tell you as
- 10 well?
- 11 A. Correct.
- 12 Q. There are no magic words, in other words, in your
- 13 business here, the point is to communicate?
- 14 A. That's correct.
- 15 Q. And to be fair in taking down what you believe
- 16 the person to mean?
- 17 A. Taking down?
- 18 Q. Well, recording, writing, taking in, you know,
- 19 perceiving on your part, you want to understand
- 20 the person, in other words.
- 21 A. During conversation, yes, I do. Taking down what
- 22 I take down, if you are referring to notes, or
- 23 anything like that, would be points that I feel
- 24 important to capture the moment.
- 25 Q. Yeah, fair enough. And I -- I sort of sent you

1 off in that direction.

2 A. I was trying to make a transition of work.

3 Q. Sure. But, initially, in conversation, you want

4 to understand them?

5 A. Yes.

6 Q. You want to understand them accurately?

7 A. Yes.

8 Q. That's part of doing your job fairly?

9 A. Yes.

10 Q. And then, if you can write something down, then

11 you may hone in, to clarify, or just make quite

12 certain that you have got an accurate description

13 of what the person is saying?

14 A. Okay. I think you kind of lose me there. If I

15 had a problem with what you were trying to say to

16 me, I might not necessarily write it down. I

17 might ask you clarify, or ask you another

18 question that may clarify it anyhow.

19 Q. You understood me perfectly. That's fine. The

20 report that we have marked as Exhibit 22,

21 actually bears a date, as you noted, 11 days

22 after the interview of Mr. Avery.

23 A. It does bear that date, yes.

24 Q. Okay. And I'm not familiar with your department,

25 so my question is, when would you first have

1           prepared the report marked as Exhibit 22?

2       A. I really can't say, except it may have been a  
3           work in progress. And the date of 11/16/05 would  
4           have been the date that I printed this out, upon  
5           completing it, so sometime before -- on or before  
6           November 16th.

7       Q. Let's back into it that way, then, okay. We'll  
8           use your date, 11/16/05 would have been the date  
9           you actually printed the report?

10      A. Correct.

11      Q. You would have printed it after reviewing it?

12      A. Yes.

13      Q. I mean, is that true?

14      A. I would hope to believe so, yes.

15      Q. Okay. You don't remember, specifically, this  
16           report?

17      A. I reviewed it, but to review it upon being done  
18           with it and saying, okay, I need to review it,  
19           make sure it is correct. I'm sure it was done  
20           over a period of time, with reviews done  
21           intermittently, and in a final review.

22      Q. And that's what you recall doing as to  
23           Exhibit 22?

24      A. I believe so because I think I do with every  
25           report that I make.

1 Q. That's a habit of yours?

2 A. Yes.

3 Q. All right. I'm less worried now about the actual

4 date, but do you know how the report would have

5 come into being in the sense, would you have

6 typed it at a computer, would you have dictated

7 it, handwritten and had somebody type it; how

8 would it have come into being, initially?

9 A. I would have typed it.

10 Q. Yourself?

11 A. Yes.

12 Q. Okay. And then when you said, you told me it was

13 a work in progress, perhaps you may have revised

14 it over the course of 11 days?

15 A. Or stopped it, got back to it, stopped it, got

16 back to it. Usually revisions, I want to do

17 before I get done with my session.

18 Q. Using the tape that you made on November 5 to

19 help you in preparing the report and typing it?

20 A. Yes, to some extent.

21 Q. Were you satisfied when you printed the report on

22 November 16, 2005, that the report was complete?

23 A. I believe so, yes.

24 Q. Were you satisfied that it was accurate?

25 A. To the extent that a report can be, yes.

1 Q. Were you satisfied that it was fair?

2 A. Depending upon what fair is.

3 Q. Well, fair to you. I mean, were you satisfied  
4 that it was fair?

5 A. A fair summary of what occurred during the day  
6 that we have on report.

7 Q. All right. Now, Paragraph 4 --

8 ATTORNEY STRANG: And I think I'm getting  
9 into this, so I will offer Exhibit 22 at this point,  
10 your Honor.

11 ATTORNEY FALLON: No objection.

12 THE COURT: All right. Exhibit 22 is  
13 admitted. You don't have an extra copy of that?

14 ATTORNEY STRANG: I do. I do.

15 ATTORNEY FALLON: There should be one  
16 attached to the motion, Judge, if you have it.

17 ATTORNEY STRANG: I have an extra.

18 THE COURT: The motion is in the file, so I  
19 think I will just take this.

20 Q. (By Attorney Strang)~ Exhibit 22, I'm looking at  
21 page four, Mr, O'Neill; do you have that?

22 A. Yes, I do.

23 Q. Okay. And down at the bottom right, just a cross  
24 check here, it should say, State 0148?

25 A. Yes, it does.

1 Q. Okay. Thank you.

2 ATTORNEY FALLON: Counsel, you might want  
3 to clarify how that number got on the exhibit, 0148.

4 ATTORNEY STRANG: I would be testifying,  
5 but I would be happy to do it. It's a number that  
6 was added by the paralegal service that we're using  
7 to compile discovery and keep it organized.

8 ATTORNEY FALLON: So that wasn't part of --  
9 The point is, that wasn't part of the original  
10 report.

11 Q. (By Attorney Strang)~ It was not part of your  
12 original report, that number on the bottom right?

13 A. No, I have seen those numbers used before and  
14 it's usually at the level of the attorneys, that  
15 are discovery.

16 Q. Yeah.

17 ATTORNEY FALLON: Thank you.

18 Q. This otherwise looks like content that you put in  
19 the report, correct?

20 A. Yes, sir, it does.

21 Q. All right. Down at the -- On the last paragraph  
22 on Page four, you write, Steven returned to my  
23 car stating, and then you put in quotes, "I guess  
24 they don't want me to talk no more" closed quote,  
25 period; do you see that?

1 A. Yes, I do.

2 Q. And then you go on to say, I asked Steven if that  
3 was his wishes, that he didn't want to talk to me  
4 anymore. And he replied, then you have another  
5 quote from Mr. Avery?

6 A. Correct.

7 Q. The quotes were taken from the tape, or the  
8 recording, correct?

9 A. I believe so, yes.

10 Q. I'm not going to play the tape, because you have  
11 listened to it and the Court can listen to it.  
12 But if -- if you asked Mr. Avery, after he said,  
13 Well, I guess they don't want me to talk no more,  
14 and if you asked him, You don't, you didn't  
15 include that in the report, did you?

16 A. If it's on the audio and it's not in the report,  
17 that would be correct.

18 Q. That's right. And if the audio reflects that  
19 Mr. Avery then said, No, but here's his number,  
20 case when you want to talk to me, contact them  
21 and they -- they want to be there too; that's not  
22 something you included in the report either is  
23 it?

24 A. That they want to be there too, I don't recall  
25 that.

1 Q. You certainly didn't put it in your report?

2 A. Correct.

3 Q. And then you saying, Okay, that's not in your

4 report?

5 A. The report is reflective of that paragraph.

6 Q. And it doesn't have you saying, Okay?

7 A. That's correct.

8 Q. If the tape then records you, at that point,

9 saying, Let me ask you this, Steve, although they

10 are telling you that they don't want you to

11 talk -- and you go on from there, that's not

12 something you put in the report either?

13 A. That's correct.

14 Q. If Steven then responded to your question about

15 whether it was his wish to talk, or not talk, by

16 saying, Well, I got to listen to the lawyer,

17 that's not something you include in the report,

18 is it?

19 A. If that's what the tape reflects, my report does

20 not reflect that.

21 Q. And then, if you said, Well, and we're not

22 talking about you committing any crime, and you

23 go on to talk about this just being a missing

24 person, you didn't include that in the report,

25 did you?

1 A. No, I didn't.

2 Q. And then you, as I understood the report -- and  
3 you may remember this -- did you say, So, in the  
4 interest of a missing person, last being seen by  
5 you, that we're aware of, and trying to figure  
6 out where this person may be, am I understanding  
7 you correctly, in the idea that you could help in  
8 this investigation, to find this missing person,  
9 that you are refusing to cooperate, because your  
10 attorney is telling you not to talk to us? Do  
11 you recall making that statement, at this point  
12 in the conversation, with Steven Avery?

13 A. If your quote is from the recording, I would say  
14 yes.

15 Q. Okay. And Steven Avery says, Oh, no, no. Do you  
16 recall him responding that way?

17 A. Again, yes.

18 Q. And then -- And here I'm not quoting you, I'm not  
19 suggesting this is verbatim, but do you recall  
20 going on to tell Mr. Avery, Look, you are a 40  
21 plus year old man, you are an intelligent guy.  
22 If you have nothing to fear, do you want to  
23 finish this conversation? That's not verbatim,  
24 but words to that effect?

25 A. I believe it's a fair representation of what was

1           on the recording, yes.

2   Q.    Okay. And somewhere after that point, Mr. Avery  
3        says, and I quote, "We can talk a little longer",  
4        closed quote. And then he says, very shortly  
5        after that, I want to help. Do you recall that?

6   A.    With a little bit more detail to the quote, I  
7        believe it was, If it's easy, as well. As long  
8        as it's easy.

9   Q.    He goes on to, makes the comment about it being,  
10       as long as it's easy?

11   A.    Correct. That's right.

12   Q.    And that's where you pick up in the report, Well  
13       as long as it's easy and whatever I know ... we  
14       can.

15   A.    Correct.

16   Q.    Okay. Now, this may have gotten lost somewhere  
17       in the direct examination by Mr. Fallon, but I  
18       believe there was a time when you accepted the  
19       telephone from Mr. Avery, correct?

20   A.    Yes.

21   Q.    And Steve says something to you like, Hang on,  
22       and then just hands you the cell phone?

23   A.    When he returns back to the vehicle, yes.

24   Q.    This is shortly after he returns to the car on  
25       one of the occasions. And at that point you talk

1 to the voice on the other end of phone.

2 A. Correct.

3 Q. The person on the other end of the phone  
4 identified himself as a lawyer?

5 A. Yes, he did.

6 Q. Gave you his name?

7 A. Yes, he did.

8 Q. Gave the name, Steve Glynn?

9 A. Yes, he did.

10 Q. Was that a name you recognized as a criminal  
11 defense lawyer in the State of Wisconsin?

12 A. No.

13 Q. Okay. Didn't know the name at all?

14 A. Rang no bells.

15 Q. Okay. Fair enough. And you had no reason to  
16 doubt that the person was a lawyer?

17 A. No, I didn't.

18 Q. He identified himself, specifically, as  
19 representing Steven Avery?

20 A. In a civil matter, yes.

21 Q. In a presently pending civil matter?

22 A. Yes.

23 Q. What else did he tell you about his  
24 representation?

25 A. Besides being Madison, and what you just said,

1                   nothing more than -- as far as representation.

2 Q. I'm sorry. You made a reference to Madison?

3 A. Yeah, that he was from Madison.

4 Q. Milwaukee, perhaps?

5 A. I thought it was Madison.

6 Q. That was -- I mean, that's your recollection?

7 A. Yes.

8 Q. Okay. You did not, in the report marked as  
9                   Exhibit 22, write down the details of your  
10                  conversation with the lawyer, on the telephone?

11 A. No.

12 Q. Neither were you able to record the conversation  
13                  with the lawyer, because the lawyer was on  
14                  Mr. Avery's cell phone?

15 A. I believe the recording reflects some of the  
16                  conversation that you can hear.

17 Q. Your end of it?

18 A. You may even also catch a little bit what  
19                  Mr. Glynn was saying as well, because of the  
20                  proximity of the phone to the recorder, I think.

21 Q. Right. I thought I heard that too. And to me  
22                  it -- if you have ever watched those old Charlie  
23                  Brown cartoons when Lucy's mother, the school  
24                  teacher, is talking, kind of a wha, wha, wha,  
25                  wha, (attorney demonstrates) that sort of thing?

1 A. I'm sure Mr. Glynn would probably not agree.

2 Q. Mr. Glynn probably will not agree with that. In  
3 other words, I couldn't make out his words but,  
4 I, like you, heard something that sounded like  
5 your recorder was actually picking up a voice off  
6 the cell phone.

7 A. Yes, sir.

8 Q. Could you make out, on your tape, what Mr. Glynn  
9 was saying?

10 A. From my recollection, I think I might have made  
11 out his name, because I remember writing down his  
12 name on the note, as well as the phone  
13 number.

14 Q. Right. And if this will help refresh your  
15 recollection, you are audible on the tape asking  
16 him to spell his name and you are sort of, under  
17 your breath, saying, why, and that kind of thing.  
18 But in the meantime, we don't have Mr. Glynn's  
19 voice recorded on there.

20 A. No.

21 Q. And you -- You've had nothing available to you  
22 with which to refresh your recollection about  
23 your conversation with Mr. Glynn that day?

24 A. Besides writing down his name on my notes at the  
25 time, no.

1 Q. Okay. As far as you know, that's the only time  
2 in your life you have spoken to Steve Glynn?

3 A. Yes, as far as I know, from my recollection.

4 Q. Okay. What I would like to do -- Actually, I  
5 have one last sort of stray question, that was  
6 just a follow up to Mr. Fallon's inquiry.

7                   I don't have this verbatim in mind  
8 anymore, but he asked you a question, something  
9 like, was there any question that Steven Avery  
10 refused to answer. And you paused for a little  
11 bit, and then said something like, that Mr. Avery  
12 never refused to answer a question relating to  
13 Teresa Halbach.

14                   And that struck me as a qualification.  
15 Was there any other area, not relating to Teresa  
16 Halbach, that Mr. Avery had not wanted to discuss  
17 with you?

18 A. Yes.

19 Q. What was that?

20 A. I believe in our general conversation, when he  
21 was explaining to me his fiance, and that he had  
22 a problem, or issue, or what her issue was, that  
23 she was incarcerated. And something to the  
24 extent of, you know, she was curious of this, but  
25 then and it's like, well, he didn't want to get

1           into that. And I said, Very well.

2           So, in answer to his question, going  
3           back through that day, it gave me a little pause.

4           But, yet, I at least wanted to make it known that  
5           that was the only time that I could recall that  
6           he took us off the subject of that and moved on  
7           to whatever else.

8 Q.        Okay. And it's not that Mr. Avery, specifically,  
9           or expressly told you, I don't want to talk about  
10          my fiance, is it?

11 A.        No, not at all.

12 Q.        You just sensed he was uncomfortable?

13 A.        Correct.

14 Q.        You read him as being reluctant to talk about  
15          that?

16 A.        And he acknowledged that part.

17 Q.        So, you respected that wish, not to discuss his  
18          fiance?

19 A.        It wasn't the fiance part, it was a different  
20          part, relating to her being in custody, and what  
21          the situation was that brought her there?

22 Q.        Sure. But in any event, you respected that wish,  
23          not to talk about that?

24 A.        As part of our communication of understanding  
25          each other, yes.

1 Q. And you moved on --

2 A. Right.

3 Q. -- to another subject right away?

4 A. Yes.

5 ATTORNEY STRANG: Okay. What I would like  
6 to do, I'm done, I would like to pass the witness  
7 back, your Honor. But then, rather than releasing  
8 him, I would like to have him run out to his car,  
9 get his notes. Maybe somebody here can make some  
10 copies. And then I will take a look at those  
11 during, or after, we're done with Mr. Glynn. And if  
12 we need to recall Detective O'Neill, that would be  
13 my suggestion, for the most efficient way to go.

14 THE COURT: All right. Well, when this  
15 witness is done here, we'll let him get his notes  
16 while we get started with Mr. Glynn. Mr. Fallon,  
17 any redirect?

18 ATTORNEY FALLON: Just a couple questions,  
19 Judge. Thank you.

20 **REDIRECT EXAMINATION**

21 BY ATTORNEY FALLON:

22 Q. There was a line of questionings -- questioning  
23 by counsel, respecting the rights of other  
24 individuals, including the right to a lawyer; do  
25 you remember that line of questioning?

1 A. Yes.

2 Q. And you were asked the question, Well, it doesn't  
3 even matter if the person is in custody or not;  
4 do you recall that question?

5 A. Yes.

6 Q. All right. Now, in terms of one's Fifth  
7 Amendment right to counsel, does it matter if  
8 that right exists, if they were in custody or  
9 not?

10 A. If I may, with my understanding, if a person is  
11 not in custody, not under arrest, free to leave  
12 any time, don't have to answer any questions,  
13 didn't ask for an attorney, and if he did ask for  
14 an attorney, I would honor that, by any means  
15 possible.

16 Q. Well, maybe we'll ask the question this way. In  
17 your mind, does his comment, words to the effect,  
18 I guess they don't want me to talk no more, did  
19 you take that as a request for counsel?

20 A. Unequivocally, no.

21 Q. Doesn't even mention counsel in there, does it?

22 A. No.

23 Q. Doesn't mention the word attorney, does it?

24 A. No.

25 Q. And on the tape, it doesn't mention -- When he

1           comes back, he doesn't mention attorney, right?

2       A.    No.

3       Q.    All right.

4                   ATTORNEY FALLON: I'm not going to ask any  
5                   more questions. Let's move on.

6                   THE COURT: All right. Mr. O'Neill, you  
7                   are excused to go to your vehicle and bring your  
8                   report back, at this time.

9                   THE WITNESS: Thank you, your Honor.

10                  THE COURT: Mr. Fallon, does -- the State  
11                  has no further witnesses on this motion?

12                  ATTORNEY FALLON: No, your Honor, with the  
13                  receipt of the tape, which I think speaks for  
14                  itself, and the testimony, he was the only law  
15                  enforcement officer associated with that contact, on  
16                  that day, so I believe that is the basis.

17                  THE COURT: I don't mean to make you feel  
18                  bad. It doesn't bother me that you don't have any  
19                  other witnesses. I just want to make sure I  
20                  understand.

21                  ATTORNEY FALLON: That's the basis of their  
22                  motion, is that day of that interview.

23                  THE COURT: All right. Mr. Strang, I  
24                  understand the defense has a witness.

25                  ATTORNEY STRANG: I'm going to call Stephen

1                   Glynn.

2                   THE COURT: Very well.

3                   THE CLERK: Please raise your right hand.

4                   **ATTORNEY STEPHEN M. GLYNN**, called as a  
5                   witness herein, having been first duly sworn, was  
6                   examined and testified as follows:

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

9                   THE WITNESS: Stephen, with a p-h, M, as in  
10                  Michael, Glynn, G-l-y-n-n.

11                   **DIRECT EXAMINATION**

12                  BY ATTORNEY STRANG:

13                  Q. Mr. Glynn, what have you been doing with most of  
14                  your daytime hours, since 1971?

15                  A. Defending criminal cases in state and federal  
16                  court.

17                  Q. Do you recognize the gentleman immediately to my  
18                  right?

19                  A. Yes, I do.

20                  Q. Has he been a client of yours, at any point?

21                  A. On probably two and a half occasions.

22                  Q. Okay. Let's start with the whole occasions  
23                  first, earliest one.

24                  A. 1995, my firm, which was then Shallow, Shallow  
25                  and Glynn, was retained by the Avery family, and

1           friends of the Avery family, to determine whether  
2           there were post-conviction efforts that could be  
3           brought on Steven's behalf, arising from a 1985  
4           charge and, if I remember correctly, 1986  
5           sentencing.

6           We filed post-conviction motions on his  
7           behalf, relating to what we called newly  
8           discovered evidence, consisting of DNA analysis  
9           conducted on material found beneath the  
10          fingerprints of the victim of a sexual assault,  
11          for which Mr. Avery had been convicted.

12         Q. Fingernails not fingerprints?

13         A. What did I say, fingerprints? Yes, fingernails.

14         Q. Okay. This was about 1995?

15         A. Yes, I think the hearing on that would have been  
16          in 1996. It was across the hall in Judge  
17          Hazlewood's court.

18         Q. Okay. During that -- During the period of time  
19          of that representation, was your practice  
20          exclusively the defense of criminal cases?

21         A. Actually, from, gee, from 1972, roughly on, if I  
22          had had a total of three civil cases in my  
23          career, to today, that would a lot.

24         Q. Okay. All right.

25         A. The rest have all been the defense criminal

1 cases.

2 Q. And the firm, of which you were a partner at that  
3 time, was almost exclusively a criminal defense  
4 firm?

5 A. Yes, there was one partner who did family law.  
6 There may have been the odd -- excuse me -- civil  
7 rights action. I mean, I had handled civil  
8 rights actions, as well. But by far, the vast  
9 bulk of what we did was defense of criminal  
10 cases.

11 Q. What was your second representation of Steven  
12 Avery?

13 A. In a civil case, arising from the same conviction  
14 that was the subject of the earlier  
15 representation. And I was co-counsel on that  
16 case with Walt Kelly, who was handling the civil  
17 side of the case. I was involved to handle the  
18 criminal law related side of the case, and to be  
19 a trial lawyer on it.

20 Q. And what -- During what period of time, were you  
21 representing Mr. Avery on that civil action?

22 A. My recollection is that Mr. Avery was exonerated,  
23 and it was determined that Mr. Allen was the  
24 actual assailant, in 2003.

25 And my recollection, again, is that that

1                   was August or September and Walt and I were  
2                   involved in the case approximately 30 days later.  
3                   So, let's say, very early fall of 2003, up until  
4                   the settlement of that case, which was sometime  
5                   after Mr. Avery's charge in the present case.

6       Q.   Were you representing Mr. Avery on that civil  
7                   case as of November 5, 2005?

8       A.   I was. And if I may, that's the half that I made  
9                   reference to. I had had some conversations with  
10                  Mr. Kratz while I was, essentially, acting as  
11                  Mr. Avery's criminal defense lawyer, because he  
12                  didn't have another criminal defense lawyer at  
13                  that stage.

14                   And I was still trying to determine  
15                  whether or not there were sufficient ethical  
16                  conflicts between being involved, simultaneously,  
17                  in the representation of Mr. Avery in a civil  
18                  case and getting involved in the criminal case.  
19                  Ultimately, that was resolved in favor of saying  
20                  such a conflict existed.

21                   I talked to Mr. Kratz, by telephone,  
22                  told him I would not be involved, on behalf of  
23                  Mr. Avery, very much longer at all. My  
24                  recollection is that he and I then had a  
25                  telephone conference call with a Manitowoc County

1                   Circuit Court Judge. I'm sorry, I just don't  
2                   remember which judge it was, at that time,  
3                   because it was just a scheduling conference, it  
4                   may have been even a scheduling conference on a  
5                   initial appearance. I'm not sure. It was not a  
6                   substantive appearance however.

7                   And in that telephone conversation, I  
8                   informed the Court that I was prepared to act as  
9                   Mr. Avery's counsel, for purposes of the  
10                  scheduling, but would not be continuing to act as  
11                  his counsel in the criminal case.

12                 Q. Let me locate you in time a little bit. We have  
13                  established here, and we're all clear, that  
14                  November 5, 2005, was a Saturday. All right.

15                 Mr. Avery, at that point, was not under  
16                  arrest. I think the court records, and the  
17                  earlier evidence here, will show that he was  
18                  arrested on November 9, 2005, which would have  
19                  been the following Wednesday.

20                 And just to give us some time frame on  
21                  the conversation with Mr. Kratz, and with the  
22                  Judge, here in this county, that you have  
23                  described; do you know whether those  
24                  conversations were before or after Saturday,  
25                  November 5?

1 A. I know they were after.

2 Q. On Saturday, November 5, 2005, and I think the

3 period of time we're interested in is, certainly,

4 the afternoon, perhaps between about 2:00 p.m.

5 and 5; do you recall talking with Steven Avery?

6 A. Yes, I do.

7 Q. Do you recall where you were when you talked with

8 Steven Avery?

9 A. Yes, I was in my office.

10 Q. Do you recall how you talked to Steven Avery?

11 A. By telephone, that would have been a wired line,

12 as opposed to a cell line, in my office.

13 Q. That is a landline in your office?

14 A. Yes. And when I say, my office, I mean the law

15 firm called Glynn, Fitzgerald, and Albee, located

16 in Milwaukee.

17 Q. Is the main number for that office 414/221-9600?

18 A. Yes.

19 Q. And then you have a number of rollover telephone

20 lines?

21 A. I think at least four additional ones. There's

22 9600, 9604, 9649, and then a couple of numbers

23 that I brought with us from the Shellow, Shellow

24 and Glynn telephones to the Glynn, Fitzgerald,

25 and Albee telephones, which included 271-8536 and

1           271, I think, 9417. And then there's, you know,  
2           there's also a DSL line, and a fax line, and  
3           others. But those are the five telephone lines.

4 Q. The voice telephone lines --

5 A. Yes.

6 Q. -- at least as you would call them. Were those 5  
7           as of November 5?

8 A. Correct.

9 Q. Do you recall whether you were dialing a cell  
10          phone number, or a landline number, for  
11          Mr. Avery?

12 A. Can I expand on that a little bit?

13 Q. Sure.

14 A. My recollection is a cell phone. And I need to  
15          back up a little bit to sort of set the scene, if  
16          I can. I indicated that Walt Kelly and I were  
17          representing Mr. Avery in a civil rights action,  
18          based on his arrest and charging in connection  
19          with the basis for his exoneration. We were in  
20          the middle of depositions in that case and were  
21          moving from what we considered to be less  
22          important depositions to more important  
23          depositions.

24 Q. This is as of November 5?

25 A. Yes. And Mr. Kelly and I would frequently meet

1 at my office, on Saturday mornings, to decide  
2 what we were doing next in that case, and review  
3 where he had been, and talk about where we were  
4 going. And November 5th was such a meeting.

5 And we had decided to have that meeting,  
6 because I started another case in Door County,  
7 that was set for trial on restitution, complex,  
8 white-collar crime, you know, multi-hundred  
9 thousand dollar restitution issue and as well as  
10 some sentencing issues.

11 And in the course of this meeting, Walt  
12 Kelly asked me whether I had talked to a  
13 particular newspaper reporter from the Milwaukee  
14 Journal-Sentinel, and I said I had not. Walt  
15 said that he had, and the person wanted to know  
16 if either Walt or I had any comment on this  
17 strange congruence between the fact that Steve  
18 Avery is an exonerated guy who is in the middle  
19 of a civil rights action, and there is now a  
20 young woman who has disappeared, who has  
21 apparently had some factual intersection with  
22 him.

23 And I told Walt I didn't have the  
24 slightest idea what this reporter was talking  
25 about. Neither did Walt. We knew nothing of a

1 missing woman. And as a matter of fact, I think  
2 at that time we thought this was somebody from  
3 the Green Bay area.

4 So we talked to that reporter. He told  
5 us he was running a story in the next day's  
6 newspaper. And with respect to the presentation  
7 of the Avery side of this issue, he was going to  
8 be relying on some of the statements that  
9 Mr. Avery had made to various media outlets.

10 Q. What day did you talk to this reporter?

11 A. I'm thinking it was the same Saturday that we  
12 were in the office. And as a matter of fact, I'm  
13 sure that's when it was.

14 And, again, as a lawyer, I'm sure you  
15 can understand this, but for the record, I need  
16 to say that this was a shock, to put it lightly.  
17 Because the notion that a person who had been  
18 wrongfully convicted of a crime he didn't commit,  
19 is now sufficiently trusting of the media and law  
20 enforcement, that he's making statements to them,  
21 boggled my mind. I mean, I -- you know, it made  
22 no sense to me at all. And so I said, I need to  
23 try to get in touch with Steve. And here's where  
24 my confusion is --

25 ATTORNEY FALLON: I'm going to interpose an

1                   objection to the narrative at this time and ask that  
2                   we return to specific questions relative to the  
3                   issue at hand.

4                   THE COURT: The objection is sustained.

5       Q. (By Attorney Strang)~ You made the decision you  
6                   wanted to call Steve, meaning Steven Avery?

7       A. Yes, and that's where the confusion was as to  
8                   your question --

9       Q. A point of confusion --

10      A. -- was this a cell line or was this a hard line,  
11                   did I call him one way or the other? And the  
12                   answer is, I'm not real sure. I believe that I  
13                   called him on his cell phone, and was then  
14                   requested, by him, or someone else who answered  
15                   the phone, to call back on a different cell  
16                   phone, that belonged either to his brother or his  
17                   mother. I think I was given both numbers. So,  
18                   yes, I did call him back. It was on a cell  
19                   phone. And I did speak to Steven Avery.

20      Q. Do you recall whether there was more than one  
21                   conversation that afternoon, in which you  
22                   actually spoke with Steven Avery?

23      A. Yes. I mean, I talked to him, I think, three  
24                   times during the course of what, I think, were  
25                   two calls. That is, I think in one call I talked

1 to him. And then there was an interruption.

2 Then I talked to him again. And then the other  
3 call, I just talked to him the first time.

4 Q. Did you talk with a law enforcement officer that  
5 afternoon, too, during the course of one of the  
6 calls?

7 A. I did.

8 Q. Do you recall who that law enforcement officer  
9 was?

10 A. Only by a refreshed recollection from your  
11 showing me a report of his, whenever that was, a  
12 month or two ago. And, frankly, a detective  
13 outside introduced himself to me as Detective  
14 O'Neill. We chatted for a little bit, and so I  
15 understand his name to be O'Neill.

16 Q. So, if you talked to Steven Avery three times,  
17 during the course of two calls, can you place the  
18 conversation with Detective O'Neill in there  
19 somewhere for me?

20 A. In that group? Yeah, I believe that it was  
21 between the second and third, which I think were  
22 part of the same telephone call.

23 Q. All right. What -- What was the thrust of your  
24 conversation with Detective O'Neill, as you  
25 recall it?

1       A. What can you tell me about this matter? Is  
2           Mr. Avery under arrest? Is he a target of what  
3           you guys are doing? Do you have warrants for  
4           him? What can you tell me about this?

5           I mean, it was basically asking him  
6           questions at the beginning, it was later telling  
7           him, after we had gone through our question and  
8           answer discussion, which was much more in the  
9           nature of questions, and much less in the nature  
10          of answers, that --

11       Q. Questions by whom?

12       A. Questions by me to him, and not a lot of answers  
13          being received, or at least answers that weren't  
14          terribly meaningful, that I said, Well, look, I  
15          mean, I know I don't have the authority to make  
16          you stop questioning him, but I'm telling you  
17          that I don't want him questioned anymore, and I'm  
18          going to talk to him again and make sure that he  
19          tells you he doesn't want to be questioned  
20          anymore.

21       Q. Do you recall O'Neill saying something to you  
22          like, But Steven is well aware he is not under  
23          arrest, he's free to leave at any time, he  
24          doesn't have to talk with us, so that's not an  
25          issue with us?

1 A. Something like that, yes.

2 Q. What was your response to that, if you recall?

3 A. He could -- He could have his view about arrest.

4 I could have my view about arrest. The point

5 was, that I didn't want Steven talking to him,

6 and that Steven would follow my advice and not

7 talk to him.

8 Q. Did you, then, ask to speak to Steven again?

9 A. Yes.

10 Q. Okay.

11 A. And understand, I had spoken to Steven earlier on

12 this same subject, as well. That's -- I don't

13 want to be volunteering stuff.

14 Q. Okay. And I'll try to get to it.

15 A. Okay.

16 Q. When you took the phone -- When Avery got back on

17 the phone, after O'Neill, what did you tell

18 Mr. Avery?

19 A. Well, actually, I repeated something that I had

20 said earlier, which is that I did not want him

21 talking to the officer, that even though the

22 officer said that he was not under arrest and at

23 that point not a target, and that there weren't

24 any warrants for him, that it just simply wasn't

25 in his interest to be carrying on these

1           conversations without the presence of a criminal  
2           defense lawyer.

3           Not only did I want him to understand  
4           that that's what I was telling him, but I also  
5           wanted him to say that to the officer. So I  
6           asked him to take the cell phone that he was  
7           speaking on -- And I had the impression that he  
8           was in a house.

9           He may not have been, he may have been  
10          on a porch of a house. And when I say house, I  
11          mean, I include trailer. I don't even know what  
12          this place was, that he was visiting in Crivitz.  
13          But at any rate, I wanted him to take that cell  
14          phone with him, so that when he made the comments  
15          to the officer, I could hear it.

16         Q. Did you hear him saying anything to the officer?

17         A. I did. And my best recollection of what I heard  
18          him say is --

19           ATTORNEY FALLON: Objection --

20         A. -- I don't want to talk to you.

21           ATTORNEY FALLON: -- hearsay.

22           THE COURT: Just a sec -- Excuse me?

23           ATTORNEY FALLON: Hearsay, self-serving  
24          hearsay by the respondent, the defendant.

25           THE COURT: Mr. Strang.

1                   ATTORNEY STRANG: It's not an assertion  
2                   offered for it's truth. It's a verbal act, that was  
3                   audible to Mr. Glynn.

4                   ATTORNEY FALLON: If it's not offered for  
5                   the truth, it's not relevant.

6                   THE COURT: I'm going to sustain the  
7                   objection.

8 Q. (By Attorney Strang)~ Were you able to hear any  
9                   part of Mr. Avery's statements, or assertion,  
10                  comment of any kind, to somebody other than  
11                  yourself, on the phone?

12 A. Yes.

13 Q. What, in substance, did you hear?

14 A. What I heard --

15                   ATTORNEY FALLON: Objection.

16 A. -- was Mr. Avery --

17                   THE COURT: The objection is sustained.

18                   ATTORNEY FALLON: He can ask what counsel  
19                  said, that's fine.

20                   ATTORNEY STRANG: Again, your Honor, with  
21                  all due respect, I think the comment here is a  
22                  verbal act. Whether someone actually wants a lawyer  
23                  or not, only he can know, and that's really not --  
24                  the truth really isn't an issue here.

25                   What's at issue is whether an assertion

1           that, I don't want to talk to you, or I want a  
2           lawyer, or I'm going to stop this conversation,  
3           anything like that, was made in a way that was  
4           audible, both to the detective, we can infer from  
5           Mr. Glynn hearing it.

6                         THE COURT: I think it's a statement. I  
7                         think it's hearsay. I'm sustaining the objection.

8                         ATTORNEY FALLON: I would note, it is on  
9                         the recording. It's already there. It's already in  
10                       evidence.

11                  Q. (By Attorney Strang)~ What had been your earlier  
12                       advice in the first conversation with Mr. Avery?

13                  A. The very first conversation I had with him was  
14                       one in which I told him not to have any  
15                       conversations with the officers, period.

16                  Q. Did you ask, now, going back to the time when you  
17                       are on the phone with the officer, with O'Neill;  
18                       did you ask him, or was there a discussion  
19                       between the two of you, about whether Mr. Avery  
20                       was a suspect?

21                  A. Yes.

22                  Q. What do you recall yourself saying to  
23                       Mr. O'Neill, we have got his end of the  
24                       conversation but?

25                  A. My recollection is that I used the word target.

1           And that's a term that I use in conversations  
2           with prosecutors. It's a conversation that I use  
3           in the relatively rare circumstances when I'm  
4           talking to a state or city law enforcement  
5           officer. And I believe that's the term I used.

6       Q.   Would -- Would it help refresh your recollection,  
7           in terms of the actual conversation, or the  
8           further conversation with him, if I suggested to  
9           you that at some point, as I have the tape, or  
10          the recording, it reflects O'Neill saying to you,  
11          For me to say he's a suspect, I haven't  
12          determined that, no.

13      A.   I mean, that certainly is consistent with my  
14          recollection, but that doesn't -- I mean, I still  
15          may have said to him, is he a target, and he may  
16          have responded in terms of suspect. But,  
17          clearly, what he communicated to me, was that he  
18          was not prepared to say that Steve Avery was a  
19          suspect, which, you know, I construed as a  
20          outright lie.

21      Q.   What, if anything, did you tell Mr. O'Neill about  
22          your specific role representing Steven Avery that  
23          afternoon, at the moment that you were on the  
24          phone, alternately, with the two of them?

25      A.   I told them that I was counsel in a pending civil

1 case, and if this was a criminal investigation  
2 that Steve Avery was involved in, I was acting as  
3 his lawyer in that as well.

4 Q. Do you recall him challenging that assertion at  
5 any time?

6 A. You mean, telling me I couldn't be the lawyer, or  
7 I wasn't the lawyer, or something, no.

8 Q. Do you recall him leading you to believe that he  
9 would not respect your assertion that you wanted  
10 the conversation with Steven Avery to stop?

11 A. I think --

12 ATTORNEY FALLON: Objection, speculation.

13 Q. I'm asking if you recall that.

14 THE COURT: Just a second repeat the  
15 question please. Diane, can you read it back?

16 (Last question read back.)

17 THE COURT: I'm going to allow it.

18 A. I think that what he said was something to the  
19 effect that Steve is going to have to make up his  
20 own mind on that, or something to that effect,  
21 that caused me to say, Well, look, I'm telling  
22 you, I'm his lawyer, I don't want him questioned.  
23 He certainly wasn't saying that, I don't believe  
24 you are a lawyer, or I don't believe you are his  
25 lawyer, or I don't believe that he wants to

1           listen to you.

2 Q.    But as a practical matter, you had to leave it at  
3       that, being on the telephone?

4 A.    That's right.

5           ATTORNEY STRANG:   That's all I have.   Thank  
6       you.

7           THE COURT:   Mr. Fallon.

8           ATTORNEY FALLON:   Thank you.

9           CROSS-EXAMINATION

10 BY ATTORNEY FALLON:

11 Q.    Mr. Glynn, you have been actively engaged in the  
12       criminal defense, or the defense of individuals  
13       accused of crimes, since 1972, correct?

14 A.    Actually '71.

15 Q.    '71. And during that time you have had occasion  
16       to advise many individuals regarding their  
17       constitutional rights, correct?

18 A.    Yes.

19 Q.    You would consider yourself relatively proficient  
20       in the scope of one's Fifth Amendment right to  
21       counsel?

22 A.    And Sixth, I think, yes.

23 Q.    We'll take them one at time, Fifth Amendment  
24       right to counsel?

25 A.    Yes.

1 Q. Fifth Amendment right to remain silent?

2 A. Yes.

3 Q. And Sixth Amendment right to counsel --

4 A. Yes.

5 Q. -- correct? Okay. Now, with respect to the  
6 events on November 5th, you were told, by  
7 Detective O'Neill, that Mr. Avery was not under  
8 arrest, correct?

9 A. Yes.

10 Q. And that he was not in custody?

11 A. Yes.

12 Q. That there were no warrants for his arrest?

13 A. Yes.

14 Q. And then there was a question of whether we --

15 A. I don't -- I shouldn't -- I don't know about the  
16 for arrest business. I think I asked if there  
17 were any warrants, and he said, no. So, I don't  
18 know if -- I meant to encompass more than arrest.

19 Q. And there was a discussion regarding suspects  
20 versus targets, you think you used the word  
21 target, and he responded with the word suspect,  
22 correct?

23 A. Yes.

24 Q. All right. And he said he is certainly not in a  
25 position to say that he's a suspect, correct?

1 A. Yes, or words to that effect.

2 Q. Or words to that effect. All right. Now, you  
3 also indicated that you, at that time, were  
4 representing him primarily, first and foremost,  
5 on the civil rights action involving Manitowoc  
6 County, correct?

7 A. If, by first and foremost, you mean earlier, yes,  
8 I was representing him on the civil case before I  
9 was representing him on the criminal case.

10 Q. And as I understand it from your testimony, you  
11 just said that you told Detective O'Neill, If  
12 this is a criminal case, I'm representing him on  
13 that, too?

14 A. Correct.

15 Q. But you had no discussion with Mr. Avery whether  
16 or not you were going to represent him on any  
17 criminal investigation, had you?

18 A. No.

19 Q. As a matter of fact, you didn't even know if  
20 there was a criminal investigation, or a missing  
21 persons complaint, correct?

22 A. I believed it was a criminal investigation and  
23 the officer was telling me it was a missing  
24 persons investigation.

25 Q. All right. But he told you it was a missing

1           persons case?

2   A.   He did.

3   Q.   All right.  Nonetheless, without having any  
4       discussions with Mr. Avery, you were asserting  
5       that you were representing him on the criminal  
6       investigation?

7   A.   That's correct.

8   Q.   Okay.  Now, just so we're clear, one's Fifth  
9       Amendment right to counsel does not exist unless  
10      one is in custody and subject to police  
11      interrogation, correct?

12   A.   Correct.

13   Q.   One's Fifth Amendment right to counsel -- excuse  
14      me -- Fifth Amendment right to silence, likewise,  
15      does not exist until one is in custody and  
16      subject to interrogation?

17   A.   Correct.

18   Q.   And it's further -- With respect to one's Fifth  
19       Amendment right to counsel, those rights are  
20       personal to the person who is the subject of the  
21       interrogation?

22   A.   Correct.

23   Q.   They cannot be invoked by their lawyer?

24   A.   So it's been said.

25   Q.   And, similarly, with respect to one's Fifth

1           Amendment right to silence, that is a right which  
2           is personal to one who is accused?

3       A.    Absolutely.

4       Q.    That right cannot be invoked?

5       A.    Same as we were saying before.

6       Q.    All right. So it's incumbent upon the  
7           individual, in person, to assert their rights on  
8           their own behalf, correct?

9       A.    Yes.

10      Q.    And, again, those rights don't exist if one is  
11           not in custody, correct?

12      A.    Well, right, if at a later hearing one is  
13           determined not to have been in custody, then  
14           those rights, not being exercised, is  
15           meaningless.

16      Q.    Now, with respect to one's Sixth Amendment right  
17           to counsel, one's Sixth Amendment right to  
18           counsel does not exist until one is similarly  
19           charged with the offense for which the  
20           interrogation is to take place, correct?

21      A.    Today, yes.

22      Q.    Well, it was back then as well?

23      A.    By then, you mean the time of the interrogation?

24      Q.    Yes.

25      A.    Yes.

1 Q. All right. And as a matter of fact, with respect  
2 to the Sixth Amendment right to counsel, it is an  
3 offense specific right, correct?

4 A. Yes.

5 Q. It doesn't cover any and all cases, only the  
6 cases for which the person is charged?

7 A. There is some case law that disagrees with that,  
8 but the general thrust of case law is as you  
9 stated.

10 ATTORNEY STRANG: Your Honor, this is  
11 afield, in the sense that we have raised no Sixth  
12 Amendment claim, or correlative Wisconsin  
13 Constitutional claim here. It's agreed that  
14 Mr. Avery was not yet charged with a criminal  
15 offense, the formal accusatory process had not  
16 begun.

17 THE COURT: So it's a Fifth Amendment  
18 question, you are saying?

19 ATTORNEY STRANG: It's a Fifth Amendment  
20 question. And, again, the correlative provisions of  
21 the Wisconsin Constitution, that's right.

22 Q. (By Attorney Fallon)~ All right. As a matter of  
23 fact, in your discussions with Detective O'Neill,  
24 as I understood your examination from defense  
25 counsel, you said, quote, I don't have authority

1           to stop you from questioning him, you told  
2           Detective O'Neill that, correct?

3   A.   Right.

4           ATTORNEY FALLON:   That's all.

5           THE COURT:   Any redirect?

6           REDIRECT EXAMINATION

7   BY ATTORNEY STRANG:

8   Q.   Assuming that a person is not under arrest, and  
9        setting aside the very narrow circumstances of  
10      when it can be a crime to refuse to provide your  
11      name or your identity to a law enforcement  
12      officer, I'm talking about **Hiibel**, most recently.  
13      Setting aside that, if one is not in custody,  
14      does one in this country have a perfect right to  
15      assert a claim to silence, irrespective of  
16      custodial status, when approached by a law  
17      enforcement officer?

18   A.   Absolutely.

19           ATTORNEY STRANG:   That's all I have.

20           THE COURT:   All right.   The witness is  
21        excused.

22           ATTORNEY FALLON:   Pass.   Thank you.

23           THE COURT:   And, hopefully, Mr. O'Neill is  
24        still hovering in the hall.

25           Mr. Strang, from my own benefit, is the

1 motion -- I don't recall if this was specified in  
2 the motion, but is your motion triggered by the  
3 portion of the interview that you questioned  
4 Mr. O'Neill on earlier, that point forward? Is  
5 there any challenge to any statements made before  
6 that point? The language about, Well, I guess  
7 they don't want me to talk no more, and I got to  
8 listen to my lawyer; is that what the defense is  
9 arguing here, is the assertion of the right to  
10 remain silent?

11 ATTORNEY STRANG: Yes, and I don't want to  
12 be pinned down to specific words, but we're talking  
13 about the same point in time and it's -- it's in  
14 part two --

15 ATTORNEY FALLON: It's reflected on the  
16 bottom of page four and the remainder of page five  
17 from the report status.

18 ATTORNEY STRANG: And I guess, more  
19 importantly --

20 THE COURT: I think on the --

21 ATTORNEY STRANG: -- part three and into  
22 part four on the --

23 ATTORNEY FALLON: On the tape.

24 ATTORNEY STRANG: -- on the tape, on the  
25 recording.

1                   THE COURT: Right. My recollection is the  
2 part three ended with the officer waiting for  
3 Mr. Avery to come back, after he was on the  
4 telephone --

5                   ATTORNEY FALLON: That's correct.

6                   THE COURT: -- with his attorney, and then  
7 part four --

8                   ATTORNEY FALLON: Picks up --

9                   THE COURT: -- starts with the language  
10 that you questioned Mr. O'Neill about.

11                  ATTORNEY STRANG: Yes.

12                  ATTORNEY FALLON: Correct.

13                  ATTORNEY STRANG: Right. We're in the  
14 right location. That's right.

15                  THE COURT: Okay. Mr. O'Neill, you are  
16 still under oath. Mr. Strang, do you need a couple  
17 minutes to go over that.

18                  ATTORNEY STRANG: Yes.

19                  THE COURT: All right. Let's take a short  
20 break and then we will come back for some final  
21 questions for Mr. O'Neill.

22                  (Exhibit 23 marked for identification.)

23                  (Brief recess taken.)

24                  THE COURT: Mr. O'Neill, you are still  
25 under oath and, Mr. Strang, you may begin.

1                           RECROSS-EXAMINATION

2         BY ATTORNEY STRANG:

3         Q.     Is Exhibit 23 an accurate photo copy of the notes  
4                           retrieved from your car?

5         A.     Yes, it is.

6         Q.     If you go to the first page, the top page, the  
7                           entry at the top, 1415 is 2:15 p.m.?

8         A.     Yes.

9         Q.     That's roughly when you arrived to begin talking  
10                          to Steven Avery?

11        A.     Actually I'm leaving the car at the point and  
12                          talking to Steve Avery, yes.

13        Q.     I'm sorry?

14        A.     I think we arrived at 2:00 p.m. Actually sitting  
15                          down with Steven was at 2:15.

16        Q.     All right. And then down at the bottom, at  
17                          5:57 p.m., which you have written in Zulu time or  
18                          military time, 1757; do you see that?

19        A.     Yes, I do.

20        Q.     All right. And -- And what you are recording  
21                          there is that the property owner revoked his  
22                          consent for you to be on the property?

23        A.     Correct.

24        Q.     The property owner being Al, or Allen Avery?

25        A.     Correct.

1 Q. What's 1055 mean?

2 A. In my notations, 1055 would mean alcohol --  
3 alcohol was a factor in that notation.

4 Q. Okay. But you understood the property owner to  
5 be revoking consent for law enforcement to be  
6 present on the property?

7 A. Correct.

8 Q. If we go to Page three, you have got an entry of  
9 1538; is that right?

10 A. Yes.

11 Q. That's 3:38 in the afternoon?

12 A. Correct.

13 Q. And you write, Attorney phoned to me, right?

14 A. Yes.

15 Q. What do you mean there?

16 A. I believe that was a point where, two minutes  
17 before the connected phone call of Mr. Glynn, he  
18 received, again, a phone call. And it was his  
19 attorney. And they wanted to talk to me, but the  
20 area that we're in is really bad for cell phones  
21 and it disconnected. And he called back, as  
22 noted in the second entry.

23 Q. And what's the -- I can't read the time on that,  
24 can you?

25 A. 1540.

1 Q. So, two minutes later.

2 A. Correct.

3 Q. 3:40. The lawyer calls back, and the first line

4 I can't read, after 1540; what does that say?

5 A. Interview continue.

6 Q. Interview continued?

7 A. Yes.

8 Q. Okay. Meaning interview with Steven Avery

9 continued?

10 A. Correct.

11 Q. And then at that point, Avery actually offers you

12 the names and telephone numbers of the lawyer at

13 some point right in there, correct?

14 A. I don't believe Steven did. I don't know if this

15 is a notation I made when I was asking Attorney

16 Glynn to clarify the name, and I see that there's

17 another name as well in the log.

18 Q. Right. But as a matter of refreshing your

19 recollection, if the tape -- I think the

20 recording has Mr. Avery saying something to you,

21 very close to, if not verbatim, quote, "No, but

22 here's his number, case when you want to talk to

23 me, contact them and they -- they want to be

24 there too", closed quote. Do you remember

25 Mr. Avery saying--

1 A. I don't remember that, but if it's on the  
2 recording, I would have to refresh my memory with  
3 that.

4 Q. Okay. But do you recall Avery at least offering  
5 you a number for one or more of his lawyers?

6 A. I don't remember. I don't remember if I got it  
7 from Mr. Glynn, or if I got it from Mr. Avery, or  
8 if I got it from both, or if it was at the  
9 conclusion of our interview. I really don't know.

10 Q. Okay. But the comment here, interview continued,  
11 it's referring to the interview with Avery, not  
12 an interview with Glynn?

13 A. That's correct.

14 Q. Okay. And then below that you have written  
15 Stephen Glynn, right?

16 A. Yes.

17 Q. And below that, you have written the name Walt  
18 Kelly?

19 A. Yes.

20 Q. That's not a name that Mr. Glynn gave you?

21 A. It may have been, I'm not certain. In fact, I  
22 didn't realize it until now that the name Walt  
23 Kelly was below my note of Steve Glynn.

24 Q. Okay. So whether Glynn gave it to you, or Avery  
25 gave it to you, or both, you just don't remember?

1 A. I remember talking to Mr. Glynn. But noting,  
2 Mr. Kelly's.

3 Q. Okay. And you noted the attorneys, right?

4 A. I believe Mr. Kelly is an attorney, yes.

5 Q. Yeah. I mean, you have got a note to the right  
6 of that, attorneys?

7 A. Correct.

8 Q. And then a telephone number?

9 A. Correct.

10 Q. Which is 414/221-9600?

11 A. Yes.

12 Q. Do you remember now whether you got that from  
13 Glynn, Avery, or both of them, or do you just not  
14 remember?

15 A. I don't recall.

16 ATTORNEY STRANG: That's all I have.

17 Thanks. And I move Exhibit 23.

18 THE COURT: Any objection?

19 ATTORNEY FALLON: No objection to the  
20 exhibit. No questions.

21 THE COURT: Okay. Exhibit 23 is in and the  
22 witness is excused.

23 THE WITNESS: Thank you, your Honor.

24 THE COURT: You're welcome.

25 ATTORNEY FALLON: I think that completes

1 the evidence on this motion.

2 THE COURT: On that motion, I believe it  
3 does.

4 ATTORNEY STRANG: Yes, it does.

5 THE COURT: Counsel, what are the remaining  
6 witnesses that the parties will be calling on the  
7 multiple execution search warrant issue?

8 ATTORNEY FALLON: The burden is still on  
9 the defense to go forward, that we have taken  
10 testimony from one of their witnesses, Lieutenant  
11 Lenk. So I'm not certain how many more they have  
12 and how much more we're going to do this evening.

13 ATTORNEY BUTING: Judge, I have Detective  
14 Remiker, and Sergeant Colborn. Neither of which  
15 probably will be much longer than -- probably be  
16 about the same length as Lieutenant Lenk, which was  
17 what, about 45 minutes?

18 ATTORNEY FALLON: I think probably about an  
19 hour total.

20 ATTORNEY BUTING: About an hour each, for  
21 those. Sheriff Pagel, just briefly. And possibly  
22 Sergeant Tyson tomorrow, but I don't know that we're  
23 going to need that, and that would be it. Unless, I  
24 don't think -- possibly Investigator Wiegert, if he  
25 had some decision making or a signing type

1 authority, we could find that out later.

2 THE COURT: The -- And these witnesses are  
3 all going to have something to say that's not just  
4 cumulative to what the others have said?

5 ATTORNEY BUTING: They weren't all on the  
6 exact same searches, right. They were paired up at  
7 times, and other times they were separate, with  
8 other individuals.

9 THE COURT: How much time do you think is  
10 left to present the defense case, with those  
11 witnesses?

12 ATTORNEY BUTING: I would estimate about --  
13 Detective Remiker, perhaps a little bit longer,  
14 because he actually did more searches than anybody.  
15 Colborn maybe a half hour, Remiker maybe 45 minutes.

16 THE COURT: What about the others, or are  
17 they contingent witnesses?

18 ATTORNEY BUTING: Wiegert is contingent  
19 on -- I don't know, he didn't do any of the searches  
20 directly, so his testimony would be only in the  
21 event he is a -- was involved in the decision  
22 making. And similar with Pagel. And Tyson, I think  
23 there is really only a couple of searches that he  
24 was involved in. So neither one of those witnesses  
25 would be lengthy, on my motion.

1                   THE COURT: I'm just wondering, if I  
2 understand the nature of your motion, and the  
3 multiple -- I understand the legal argument, I'm  
4 just wondering if every officer who participated in  
5 a search, has to testify for you to make your point.

6                   ATTORNEY BUTING: The case law on these --  
7 on this issue, is not entirely clear. And in  
8 Wisconsin, there is none that has actually ruled on  
9 it. But the other case law, I think the one thing  
10 that is pretty clear and not surprisingly, because  
11 most Fourth Amendment law is like this, is very fact  
12 driven.

13                  And although there are some -- there's  
14 some sort of different approaches, although  
15 there's some common themes that the other courts  
16 in other state's have taken on this issue. But  
17 the facts, and I anticipate the State is going to  
18 be presenting some evidence as well --

19                  THE COURT: Well, I don't want to prevent  
20 you from fully presenting your case, I'm just  
21 questioning whether the level of detail for each  
22 witness will be necessary. What is the State  
23 looking at in terms of its witnesses?

24                  ATTORNEY FALLON: I can tell the Court  
25 that, I'm looking for my check list at the moment,

1           but off the top of my head, I know that there will  
2           be probably four witnesses, if they call all the  
3           witnesses they are calling.

4           I believe we have some brief testimony  
5           from Sergeant Tyson, some testimony from  
6           Lieutenant Bowe and Lieutenant Sippel. And there  
7           will be testimony from Special Agent Tom  
8           Fassbender.

9           I think that's it. Because I suspect  
10          that by the time defense is done presenting their  
11          case, and we'll be able to elicit testimony from  
12          some of the witnesses they are calling, that that  
13          will -- that will help, although most of my  
14          questioning for the other witnesses is unrelated  
15          to the key points that the defense is apparently  
16          trying to bring out.

17          THE COURT: All right. Well, it looks to  
18          me like the testimony we're looking at is going to  
19          take the better part of the day tomorrow. I don't  
20          know that it pays --

21          ATTORNEY FALLON: I would say that's  
22          probably true.

23          THE COURT: -- to do much more tonight. We  
24          are going to have to finish tomorrow --

25          ATTORNEY FALLON: That's fine.

THE COURT: -- regardless of how long it takes. I did have one matter I wanted to take up on the record before we leave. I think we have discussed it before. I know I have discussed it with counsel and in correspondence, and I don't believe there's been any objection to this.

But in order to address some of the concerns, primarily raised by the defense on the venue motion, and also under the Court's own authority, to keep prejudicial evidence from being made public, because of the level of publicity that's attended to this case, I have ordered a number of documents sealed. And I have actually given the parties some authority on their own to submit documents under seal.

A number of those documents have since been opened, but a number of them are also still sealed, and I would like to hear from the parties, on the record, whether they have any objection to the documents that are currently sealed, or the method that the Court has been using to this point. Mr. Fallon and Mr. Kratz.

ATTORNEY KRATZ: Yes, Judge, we do understand that the items that remain under seal include nine other acts motions, and one three-part

1           in limine motion by the State, that required a  
2           probative versus prejudice analysis by the Court for  
3           admissibility. We have no objection to those  
4           matters remaining under seal.

5           It's my recollection, Judge, perhaps I'm  
6           wrong on this, but it's my recollection that the  
7           balance of the items that originally were ordered  
8           sealed by the Court, have now been unsealed. And  
9           if that is, in fact, a correct recollection, we  
10          have no problem with that continuing.

11          We do anticipate a ruling, again, some  
12          time prior to trial, at least enough in advance  
13          of trial, as to the other acts and that one  
14          three-part in limine motion. And we understand,  
15          at least the Court's original indication, that  
16          the items that would be ruled admissible, the  
17          seal would be lifted; and those that the Court  
18          believed, if any, would be inadmissible, would  
19          remain sealed. The State has no objection to  
20          that procedure as well.

21           THE COURT: Mr. Strang.

22           ATTORNEY STRANG: First, most broadly, I  
23          have no objection to the procedure the Court is  
24          using on both sealing and unsealing to date.

25           Second, more specifically, as I

1 understand the division between which specific  
2 documents remain sealed and which do not, I have  
3 no objection there either.

4 The proviso I guess I would add, is that  
5 it probably would be a good time tomorrow, for me  
6 to pause and just look to make sure that my  
7 understanding of what is sealed and not sealed,  
8 accords with reality.

9 THE COURT: I have not -- I know at the  
10 last hearing, before a number of documents were  
11 unsealed, I did my own inventory and attempted to  
12 make sure that anything that could be unsealed was  
13 unsealed. I have not inventoried the sealed versus  
14 unsealed documents lately, so I'm not in a position  
15 to know -- say whether Mr. Kratz is correct as to  
16 the current state of affairs or not.

17 However, that -- if I didn't mention it,  
18 the understanding is correct, that once the Court  
19 rules that information will be admissible, it's  
20 the Court's intention, at that point, to unseal  
21 it. There's certainly a strong presumption in  
22 favor of openness in our court system, and it's  
23 only to maintain the integrity of the trial and  
24 protect the defendant's rights to a fair trial  
25 that some of the documents have been sealed.

1                   Counsel, let's do this, I'm going to  
2                   excuse you for today, but let's plan on starting  
3                   at 8:30 tomorrow, to make sure we don't run into  
4                   troubles as the day goes on. Anything else  
5                   today?

6                   ATTORNEY KRATZ: Not from the State, Judge.  
7                   Thank you.

8                   ATTORNEY STRANG: We had a stipulation  
9                   resolving one motion, should we make that of record  
10                  tomorrow, or do we fear that we'll forget it.

11                  THE COURT: Well, I think, actually, I have  
12                  a list of some other things to possibly address  
13                  after tomorrow's hearing, and that's one of them.  
14                  So, we'll do it that way, along with some of the  
15                  other matters to be addressed. All right. If  
16                  there's nothing further, we're adjourned for today.

17                  (Proceedings concluded.)

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

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 14th day of August, 2006.  
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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, PARTIAL MOTION HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** AUGUST 10, 2006

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

11 **APPEARANCES:**

12 KENNETH R. KRATZ  
13 Special Prosecutor  
On behalf of the State of Wisconsin.

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

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

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

20 STEVEN A. AVERY  
21 Defendant  
Appeared in person.

22 \* \* \* \* \*

23 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery. It's Case No.  
3                   05 CF 381. We're here this morning for a  
4                   continuation of a hearing on some pretrial motions  
5                   that started yesterday. Will the parties state  
6                   their appearances for the record, please.

7                   ATTORNEY KRATZ: State appears by Special  
8                   Prosecutors Kratz and Fallon.

9                   ATTORNEY BUTING: Attorney Jerome Buting  
10                  appears on behalf of Mr. Avery. Also present is  
11                  Attorney Dean Strang.

12                  THE COURT: All right. And I believe we're  
13                  taking testimony this morning on the defense motion  
14                  challenging the multiple execution of search  
15                  warrants. Mr. Buting, you may call your first  
16                  witness.

17                  ATTORNEY BUTING: Thank you.

18                  **DETECTIVE DAVID REMIKER**, called as a  
19                  witness herein, having been first duly sworn, was  
20                  examined and testified as follows:

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

23                  THE WITNESS: Dave Remiker, R-e-m-i-k-e-r.

24                  ATTORNEY BUTING: Good morning.

25                  THE WITNESS: Good morning.

1                           DIRECT EXAMINATION

2 BY ATTORNEY BUTING:

3 Q. We left off your last testimony with the efforts  
4         to obtain a warrant, search warrant, on  
5         November 5th, for the Avery property, correct?

6 A. I believe so.

7 Q. And I believe you said that you went with  
8         Investigator Wiegert, and one or more lawyers, to  
9         get the warrant itself, from Judge Fox?

10 A. Yes.

11 Q. And then you returned to the Avery property with  
12         the warrant at what time?

13 A. I believe it was about 3:30 in the afternoon.

14 Q. And then, what was your assignment after that?

15 A. Well, there were several discussions about how we  
16         were going to go about doing this. Obviously,  
17         the scope of our concern, in our search, was to  
18         locate Teresa. And eventually we put some teams  
19         together, some individuals.

20                           What we tried to do is coordinate our  
21         efforts so that there was a Calumet County  
22         officer and a Manitowoc County officer together.  
23         And we were assigned different locations to go in  
24         and find Teresa.

25 Q. And by that time, you were aware that, because of

1           the possible appearance of a conflict of  
2           interest, the Manitowoc Sheriff's Department had  
3           turned over lead authority for the investigation  
4           to Calumet, right?

5       A. Yes.

6       Q. And so, you first were paired with an  
7           Investigator Steier, I believe?

8       A. Gary Steier, correct.

9       Q. From Calumet?

10      A. Yes.

11      Q. And you made your first entry, on the warrant, to  
12           Mr. Avery's trailer?

13      A. Yes.

14      Q. And that would have been at 3:48 p.m., on  
15           November 5th?

16      A. Correct.

17      Q. And you did that by force, by kicking in the  
18           door, did you not?

19      A. Yes.

20      Q. And then, what did you do when you were inside?

21      A. We entered. There was two doors. The door to  
22           the right, we entered. We entered into a living  
23           room, the kitchen is to the right. There is a  
24           hallway to the left that leads to the bathroom,  
25           and then another bedroom way on the end.

1                   Just went through the residence checking  
2                   closets, looking for Teresa, or any evidence that  
3                   Teresa was there, any clothing, anything obvious  
4                   that would indicate Teresa would be in that  
5                   residence.

6   Q.  Now, so we're clear on the record, you testified  
7                   yesterday that you had actually -- the day  
8                   before, November 4th, you had been in the very  
9                   same trailer with consent?

10 A.  Yes.

11 Q.  So you had gone through and opened up doors and  
12                   closets, on that occasion as well?

13 A.  Correct.

14 Q.  And neither the 4th, nor the 5th, then, when you  
15                   made this first entry, did you see anything that  
16                   would indicate that Teresa had been there?

17 A.  I did not find Teresa in his trailer.

18 Q.  I'm sorry, the last part of that?

19 A.  I did not find Teresa in his trailer.

20 Q.  In the trailer?

21 A.  Correct.

22 Q.  So you were in it only about 10 minutes at that  
23                   time?

24 A.  Well, I believe we went to the garage.

25 Q.  Let's stick with the trailer, first?

1 A. I'm recalling the times, the garage was around a  
2 little after 4 o'clock.

3 Q. If I told you that you entered the trailer at  
4 3:48 on November 5th, and exited at 3:58 p.m.,  
5 would that be --

6 A. Correct, yes.

7 Q. Okay. And then, after leaving the trailer, you  
8 went immediately into the detached garage that  
9 was located next door?

10 A. Yes.

11 Q. And if I told you that you entered at 3:58 p.m.  
12 and left the garage at 4:06 p.m.; would that fit  
13 with your recollection?

14 A. If that's what my report says, that would be  
15 accurate.

16 Q. Okay. And, again, in the garage, you were  
17 looking for Teresa or any evidence that would  
18 indicate Teresa had been there?

19 A. I would say that's pretty accurate.

20 Q. And, again, you found neither?

21 A. Well, I didn't -- We didn't find her. There was  
22 some shell casings on the floor.

23 Q. Did you pick those up at that time?

24 A. No.

25 Q. Okay. So, nothing else?

1 A. I don't believe so.

2 Q. All right. Now you -- You went back, I assume,  
3 had some other duties elsewhere on the property  
4 after that, but then you returned to the trailer,  
5 that is, Steven Avery's trailer, at 5:35 p.m.,  
6 with the dog handler; do you recall that?

7 A. No.

8 Q. Do you ever remember going in the trailer, in  
9 Steven Avery's trailer, at any point, with the  
10 dog handler?

11 A. I did not.

12 Q. Let's see. I'm going to show you a excerpt from  
13 the Calumet County Sheriff's Department report,  
14 Page 89, at the top, ask you to review that last  
15 three paragraphs; are you familiar with that?

16 A. Yeah, I have had discussions about that entry.

17 Q. About that what?

18 A. About the entry on the report, that makes  
19 reference to myself going into the residence with  
20 a dog handler.

21 Q. Does that refresh your recollection on this?

22 A. No, that wasn't me.

23 Q. So you are saying that this report is in error?

24 A. It is not my report. My report indicates the  
25 times that I was in the residence. For some

1           reason, my name was listed as an individual going  
2           in on that occasion. That's not the case.

3 Q.        Okay. So you, at no point, entered with a  
4           cadaver dog, to look around the apartment?

5 A.        Must have been somebody else that he documented.  
6           That wasn't me.

7 Q.        Were you aware that that was done?

8 A.        I don't believe so.

9 Q.        Okay. All right. In any event, you did go back  
10          in the trailer, that is, Mr. Steven Avery's  
11          trailer, again, on November 5th, correct?

12 A.       Yes.

13 Q.       And I'm talking about after the search warrant  
14          was obtained?

15 A.       Correct.

16 Q.       And it was approximately 7:30, I believe?

17 A.       Correct, yes.

18 Q.       And so we have these times for the record, if I  
19          told you that you entered the Avery trailer,  
20          Steven Avery trailer, at 7:30 p.m. and exited and  
21          10:05 p.m.; would that fit with your  
22          recollection?

23 A.       That sounds right.

24 Q.       That's on Page 11 of 22?

25 A.       Yup.

1                   THE COURT: Was that 10:05, the time?

2                   ATTORNEY FALLON: Yes.

3                   ATTORNEY BUTING: Yes, 7:30 to 10:05 p.m.

4   Q. (By Attorney Buting)~ Now, on that occasion, you  
5       also entered with Sergeant Colborn, correct?

6   A. Yes.

7   Q. And Lieutenant Lenk?

8   A. Yes.

9   Q. And Calumet Sheriff's officer, Sergeant Tyson?

10   A. Correct.

11   Q. So there were four officers, three of which were  
12       Manitowoc Sheriff's Department officers, right?

13   A. Yes.

14   Q. And the 4 of you then spent 2 1/2 hours, 2 hours  
15       and 35 minutes, searching the entire trailer; is  
16       that right?

17   A. Yes.

18   Q. And you seized a number of items?

19   A. Yes.

20   Q. Including bedding, photographs, handcuffs; do you  
21       recall that?

22   A. I believe so, yes.

23   Q. And you, yourself, were also searching, looking  
24       at the walls, and the doorways, and areas like  
25       that, to see if there might be any evidence of

1           blood as well, correct?

2 A.    That's my job, yes.

3 Q.    Okay. And you did locate some items that, at the  
4       time, you believed might be bloodstains, later  
5       determined not to have any relationship to Teresa  
6       Halbach, but you did make note of those, right?

7 A.    There were several areas within the residence  
8       that contained a red dried substance.

9 Q.    Okay. And you had photographed them?

10 A.   I believe I took some digital photographs of  
11      those areas, yes.

12 Q.    Okay. And then you also took swabs of those  
13      areas?

14 A.   Yes.

15 Q.    And by that, I mean, you were taking a -- Well,  
16      you tell me, I don't want to lead you. Tell me  
17      what taking a swab means.

18 A.   Well, what you do is, you take a sealed, unused,  
19      sterile cotton-tipped applicator, you remove that  
20      from its packaging. Usually what you do is, you  
21      prepare another package for that applicator to go  
22      into.

23            You use a sealed, distilled water  
24      container, and you apply a few drops to the end  
25      of the sterile cotton-tipped applicator. You

1           then swab the dried, liquid substance with the  
2           applicator. You place it into your evidence  
3           packaging. You seal it. You label it. You  
4           secure it.

5           And then a lot of times, in many cases,  
6           you would also take a controlled swab, which is  
7           another swab. You use the same technique. You  
8           swab an area in close proximity to the area where  
9           you took the first swab from.

10          Q. All right. And you did that more than once while  
11           you were in the Steven Avery trailer, on November  
12           5th, that evening, correct?

13          A. Yes.

14          Q. And the point of that was, you were looking for  
15           trace evidence, right?

16          A. Yes.

17          Q. Specifically, to see whether or not there might  
18           be any DNA associated with Teresa Halbach?

19          A. Well, many -- Many of the areas I observed looked  
20           consistent with blood.

21          Q. Okay. And that's your job, was to do that and to  
22           look for that?

23          A. Absolutely.

24          Q. And you were commanded by the warrant to do that,  
25           right?

1 A. Yes.

2 Q. And so, you did do that, you took swabs? You can  
3 refer to your report if you need to. It's on  
4 Page 12, just to refresh your recollection. But  
5 you identified three different spots on the  
6 wooden frame area surrounding the doorway; is  
7 that right?

8 A. Yes. Right outside of Steven's bedroom, there  
9 was a wooden frame around the door. And along  
10 the wall there was some dried, red substances on  
11 the wall.

12 Q. Okay. And then you also found some -- a drop of  
13 similar dried, red substance on the floor of the  
14 bathroom, correct?

15 A. Yes.

16 Q. And you took a swab of that?

17 A. Yes.

18 Q. And you also found a similar type of a red  
19 marking on the wooden molding on the right side  
20 of the bedroom doorway? I'm sorry, right side of  
21 the doorway, facing the doorway, from the  
22 interior of the residence?

23 A. That's the first one I talked about, the molding  
24 around the doorway.

25 Q. Okay. But now you took another one, second to

1 last full paragraph.

2 ATTORNEY FALLON: Your Honor, I'm going to  
3 object, because it seems to me that, although they  
4 were in there doing their search and that it does  
5 take time, and we'll certainly concede that, I'm not  
6 sure that the painstaking detail of what was  
7 collected where, and how it was collected, other  
8 than the fact that collecting evidence takes time  
9 and is detailed work, beyond that, I'm not sure how  
10 this relates to the multiple execution argument.

11 THE COURT: Mr. Buting.

12 ATTORNEY BUTING: Well, I could tighten it  
13 up a little bit, but it is relevant in terms of, you  
14 know, their evidence, whether or not he was  
15 completing his search of the residence at that time.

16 THE COURT: Well, I agree that -- I can  
17 understand why you have to get it in, but I don't  
18 want to be here until midnight either. I think for  
19 purposes of this hearing, the level of detail that  
20 we're going into right now is probably unnecessary.

21 Q. (By Attorney Buting)~ All right. Let me ask you  
22 this way, if you recall. Do you know how many  
23 swabs, in total, you took of things that you  
24 thought might possibly be bloodstains? I  
25 understand later they have proven not to have any

1                  relevance, but you were doing your job at the  
2                  time. How many swabs did you take from the  
3                  residence on that evening?

4       A. The entire residence?

5       Q. Yes.

6       A. I can't give you an exact number. In my  
7                  estimation, I would say probably between 10 and  
8                  20.

9       Q. So you found a lot of possible areas to look,  
10                 throughout the trailer, right?

11      A. Yes.

12      Q. Not just by the doorway, but also in the living  
13                 room, front door, areas like that?

14      A. There were some areas on the front door, wasn't  
15                 sure if it was paint, blood, other substance. I  
16                 wasn't sure. I believe I took some swabs in that  
17                 area. I don't know if there was anything in the  
18                 living room. It was more in the bathroom and  
19                 Steven's bedroom.

20      Q. Now, was it primarily your responsibility? Of  
21                 the four officers in there, was it primarily your  
22                 responsibility to be doing the trace evidence  
23                 search, or what?

24      A. We all played a part. We all had a section of  
25                 the residence, or the bedroom. I have done

1 collection similar to this in the past, the use  
2 of those types of kits. I felt very confident in  
3 my abilities, and we worked together.

4 One individual may have taken the  
5 collection, the other individual may have  
6 prepared the packaging, to put the collection in.  
7 So, using my equipment --

8 Q. Sure.

9 A. -- it made the most sense.

10 Q. So, but do you know whether any of the other  
11 three remaining officers that were in there, also  
12 collected trace evidence, in the form of swabs?

13 A. In the form of swabs, I would say that it was  
14 either myself or Sergeant Colborn who would have  
15 done the swabs or participated in the collection  
16 of those.

17 Q. Okay. Now, you also seized -- In terms of trace  
18 evidence, you also found like a lint roller with  
19 some sort of adhesive material on it?

20 A. Yes.

21 Q. And you seized that?

22 A. I did not seize that, I used that.

23 Q. Oh, I'm sorry. You used that in order to take  
24 samples of fibers, hairs, things like that?

25 A. It's a technique you use. In this case, the

1 carpeting in Steven's bedroom, I used a lint  
2 roller to just roll over the carpeting to collect  
3 trace hair, trace items of evidence that may have  
4 been in the carpeting.

5 Q. Okay. And you went all around the bedroom, or  
6 all around the bed, anyway?

7 A. I think the main area that I -- that I used was  
8 when you first walk into the bedroom, between the  
9 doorway and the bed, near the night stand, that  
10 area.

11 Q. Okay. And then, also a number of items, many,  
12 many items, were seized. Do you know about how  
13 many items were actually taken on that search?

14 A. It's my job to collect it, search, and then  
15 everything was turned right over to Calumet  
16 County. They did the list. I have no idea.

17 Q. Could it be as many as 50 items; would that fit  
18 with your recollection?

19 A. It could have been.

20 Q. Okay. And I'm not going to go through all of  
21 those, I'm sure you're happy to hear.

22 A. Thank you.

23 Q. But it did include a vacuum cleaner bag and  
24 filter, correct?

25 A. I believe that was taken. Whether that was taken

1 Saturday or Sunday, I'm not sure.

2 Q. You could look at the bottom of Page 22 -- I'm

3 sorry, 12 --

4 A. 12.

5 Q. -- of your report, last full paragraph.

6 A. Yes.

7 Q. The vacuum bag and filter were removed from the

8 vacuum cleaner on that search, right?

9 A. Correct.

10 Q. And the four of you searched and continued as

11 long as necessary, that evening; isn't that

12 right?

13 A. Yes.

14 Q. No one kicked you out of the trailer and said

15 it's time to go?

16 A. No.

17 Q. No one put any kind of time limit on when you

18 should get out of that trailer that night; is

19 that right?

20 A. No. That's right, I'm sorry.

21 Q. Okay. And then, when you left at 10:05 p.m., you

22 had completed your search of the entire trailer,

23 Steven Avery trailer; is that right?

24 A. Well, that search, yes.

25 Q. As far as you knew, at that point, you had

1           searched -- or you had seized everything that had  
2           any apparent evidentiary value, from Steven  
3           Avery's trailer?

4       A. No. I know we had some questions about certain  
5           things. I mean, at that time, we didn't know a  
6           lot. And there were magazine, after pornographic  
7           magazine, in there. There was pictures. There  
8           was stuff, we weren't sure at that time whether  
9           it was relevant or whether we should take it, so.

10      Q. But anything that had obvious evidentiary value,  
11           that fit within your parameters of the search  
12           warrant, you took on that night?

13      A. No. We -- Obviously, we went back to get a  
14           number of other things. There was a shotgun, or  
15           a gun, in the bedroom.

16      Q. Answer my question though, is -- did you leave  
17           the -- is there some reason you didn't take the  
18           shotgun that night?

19      A. I don't recall. There may have been a question  
20           whether it was included in the search warrant.  
21           We had a lot of questions about what we should  
22           take, what we shouldn't take.

23      Q. Okay. But in your actual words of your report,  
24           at 2205, 10:05 p.m., the officers were completed  
25           with the processing of the residence and out

1           of -- went out of the residence; isn't that what  
2           it says?

3       A. That's what it says.

4       Q. While that was going on, by the way, Sergeant  
5           Tyson, the Calumet officer, was also doing sort  
6           of a written log of all of the items, and the  
7           times that they were seized, and where they were  
8           located, and all of that?

9       A. Right alongside of us.

10      Q. Okay. All right. Now, the next morning, this is  
11           November 6th, did you return to the Avery salvage  
12           property?

13      A. Yes.

14      Q. At about what time?

15      A. I believe I arrived at about, around 8 o'clock  
16           a.m.

17      Q. Okay. And were you assigned certain duties  
18           again?

19      A. Yes.

20      Q. And who gave you those assignments?

21      A. Well, again, we met Investigator Wiegert, Agent  
22           Fassbender, Lieutenant Lenk. We were all  
23           involved in discussions. And there was a  
24           decision made to go process the garage. And we  
25           made assignments, who would participate in that

1 search and went and did.

2 Q. My question is, who made those assignments, or  
3 did you just sort of volunteer for it?

4 A. We all did, depending on who was there, who the  
5 personnel was, who had the equipment, who worked  
6 well together. It was a cooperative effort  
7 amongst all of us making those decisions.

8 Q. All right. And on that occasion --

9 A. I had a say in that. Wiegert had a say in that.  
10 We all did.

11 Q. And on that occasion, the team, the same team was  
12 formed. I'm sorry, I take that back. It was the  
13 same team of Manitowoc officers?

14 A. Correct.

15 Q. Yourself?

16 A. Yes.

17 Q. Lieutenant Lenk and Sergeant Colburn?

18 A. Yes.

19 Q. But a different Calumet officer, this time a  
20 Deputy Kucharski was assigned to go along with  
21 you?

22 A. Yes.

23 Q. His responsibility was primarily, he was going to  
24 be taking custody, as well, of any of the items?

25 A. Correct.

1 Q. And when you went back to the Avery property, you  
2 did not go into Mr. Avery's trailer residence at  
3 that time, did you?

4 A. Not initially, no.

5 Q. Instead, you went into the garage, the detached  
6 garage next to it?

7 A. Yes.

8 Q. Which you had not -- you had entered only once  
9 before, for about seven minutes, on the day  
10 before?

11 A. Correct.

12 Q. And if I told you that you entered the detached  
13 garage next to Mr. Steven Avery's residence at 8  
14 a.m. and left at 9:47 a.m.; would that fit with  
15 your recollection?

16 A. That sounds accurate.

17 Q. So, the four of you, the four officers were  
18 inside the garage searching, for about 1 hour and  
19 47 minutes?

20 A. Correct.

21 Q. And can you tell me how big the garage is,  
22 approximate estimate?

23 A. About a standard two car garage size.

24 Q. Okay. And the four of you had went through the  
25 garage, thoroughly looking for, again, any

1           evidence of Teresa Halbach or evidence that would  
2           fit with what was sought in the warrant?

3       A.    Correct.

4       Q.    And no one kicked you out of the garage at any  
5           particular time?

6       A.    No.

7       Q.    You were able to stay as long as you wanted?

8       A.    Yes.

9       Q.    And you did seize some items, including some .22  
10          caliber shells, correct?

11      A.    Correct.

12      Q.    And also some, again, possible bloodstains that  
13          you noted on the floor in the various areas?

14      A.    Correct.

15      Q.    And, again, you did the same type of a process of  
16          collecting them with swabs, sealing them, for  
17          possible DNA tests, and that sort of thing?

18      A.    Correct.

19      Q.    And I recognize, again, that those didn't turn  
20          out like you thought they might but,  
21          nevertheless, you were doing your job and were  
22          looking for possible blood of Teresa Halbach; is  
23          that right?

24      A.    I guess I was -- If it was blood I was collecting  
25          and whose it was, I'm not able to determine that.

1 Q. Okay. Or whether it was even blood at all?

2 A. Correct.

3 Q. Okay. And now you finished searching the garage  
4 at 9:47 a.m., you were right next door to the  
5 Steven Avery trailer, just a few feet away,  
6 right?

7 A. Yes.

8 Q. Did you go back into the trailer at that time?

9 A. No.

10 Q. In fact, you didn't go back into the trailer  
11 until -- that is, Steven Avery's trailer, until  
12 about 12:25 p.m.?

13 A. Correct.

14 Q. That same day, November 6th?

15 A. Yes.

16 Q. And you went back, because you were asked to go;  
17 is that right?

18 A. I believe so.

19 Q. By who?

20 A. I'm guessing those conversations took place with  
21 Investigator Wiegert and/or Agent Fassbender.

22 Q. And if I told you that you entered at 12:25 p.m.  
23 and left at 12:48 p.m., this is Mr. Steven  
24 Avery's trailer, on November 6th; would that fit  
25 with your recollection?

1 A. Sounds about right.

2 Q. And on that occasion you seized -- you went back

3 to get the weapons you saw?

4 A. We -- Earlier I talked about some of the

5 questions we had. Obviously, this was in

6 reference to some other items that we had

7 observed on the first search. And we went back

8 and collected some additional things.

9 Q. Some magazines, I think you mentioned,

10 photographs?

11 A. Photographs, the weapon above the bed, I believe

12 there was some additional bedding in the other

13 bedroom, within the residence. There may have

14 been a carpet shampooer that was taken also.

15 Q. And, again, you had as much time as you wanted in

16 that trailer, on that occasion, no one kicked --

17 Is that right?

18 A. Yeah, I mean, we had a lot of searches to do that

19 day. We had our work cut out for ourselves. So

20 I wouldn't say we were rushing, but we knew there

21 were other places that needed to be processed,

22 so.

23 Q. And, again, the officers who entered Mr. Avery's

24 trailer at 12:25 p.m., November 6th, were the

25 same ones that had gone into the garage; that is,

1                   yourself, Detective Remiker, Lieutenant Lenk,  
2                   Sergeant Colborn, all from Manitowoc, as well as  
3                   Calumet's Deputy Kucharski; is that right?

4     A. I believe so, yes.

5     Q. So all four of you were back in there?

6     A. I believe so.

7     Q. And did you, at any time after that, go back into  
8                   Mr. Avery's -- or the detached garage next to  
9                   Mr. Avery's residence?

10                  ATTORNEY FALLON: Your Honor --

11     A. Second time?

12                  ATTORNEY FALLON: -- I'm going to oppose an  
13                  objection here. As I'm listening to the line of  
14                  questioning here, it seems remarkably similar, if  
15                  not identical, to the questions and information  
16                  obtained from Lieutenant Lenk in yesterday's call.  
17                  So this does seem to me, duplicitous.

18                  I'm not quite sure how this adds to the  
19                  equation. I mean, it's quite obvious that they  
20                  entered the residence on a number of occasions  
21                  while conducting this overall search. So, I'm  
22                  not quite sure what we are accomplishing with  
23                  Detective, or Investigator Remiker's echoing what  
24                  Lieutenant Lenk testified to.

25                  ATTORNEY BUTING: Actually, I think we are

1           done with his. That was going to be my final  
2           question.

3       Q. (By Attorney Buting)~ Did you go back in the  
4           garage, yourself?

5                           THE COURT: You may answer.

6       A. No.

7                           ATTORNEY BUTING: All right. Thank you.

8                           THE COURT: Mr. Fallon, are you going to be  
9                           conducting cross?

10                          ATTORNEY FALLON: I am. Thank you, Judge.

11                          THE COURT: Go ahead.

12                          CROSS-EXAMINATION

13                          BY ATTORNEY FALLON:

14       Q. How long have you been an evidence collector, or  
15                          evidence technician, as they are sometimes  
16                          referred to?

17       A. Well, I don't recall when I attended the State  
18                          Crime Lab Evidence Tech School. I would guess  
19                          that's at least six, seven years ago, would be a  
20                          guess.

21       Q. All right. Is evidence -- Is the search for  
22                          evidence, particularly trace evidence, time  
23                          consuming?

24       A. It's very detail oriented. You have to be very  
25                          careful; yes, definitely.

1 Q. Does it take time?  
2 A. Takes a lot of time.  
3 Q. All right. And why does it take time?  
4 A. Well, when you are looking for trace evidence, it  
5 doesn't stand out. You have got to look for it.  
6 You have got to find it. You have to be on your  
7 hands and knees. And then, when you are  
8 collecting those things, you are dealing with  
9 very small samples, you are using tweezers. You  
10 are using small patching material.

11                   You are using cotton-tipped applicators  
12 that you have to apply sterile water to. You are  
13 doing a collection. You are doing a controlled  
14 sample. You are packaging it. You are sealing  
15 it. You are labeling it. Each item, there's a  
16 process that you follow to make sure that that  
17 evidence is secure and is as pure as you can  
18 collect it.

19 Q. All right. So in effect, first of all, you have  
20 to spend time to find trace evidence, right?

21 A. Definitely.

22 Q. And then there's an entirely separate process of  
23 collecting the evidence, correct?

24 A. Yes.

25 Q. And that collection is sometimes painstakingly

- 1           slow?
- 2 A.   It can be.
- 3 Q.   Sometimes it's rather quick, for instance, if you  
4       are just securing a gun from the wall; that takes  
5       but a matter of a moment or two. Perhaps a  
6       minute or two to collect it, log it in, and  
7       secure it. But perhaps, as opposed to looking  
8       for fiber evidence, or possible blood splots --  
9       spots, that takes more time, doesn't it?
- 10 A.   Definitely.
- 11 Q.   And as I understand it, you are required to,  
12      basically, once you find an item, you deal with  
13      that item. You log it in; you picture it, if you  
14      do take a picture; you collect it; you secure it;  
15      you label it, before you go on to the next item.  
16      It's one item at a time.
- 17 A.   Correct.
- 18 Q.   And that's to ensure the integrity of the piece  
19      of evidence you are collecting?
- 20 A.   Without a doubt.
- 21 Q.   And as a matter of fact, especially when you are  
22      looking for trace evidence and things like that,  
23      there are environmental factors that affect the  
24      collection of trace evidence?
- 25 A.   Yes.

1 Q. For instance, would you say it's easier to find  
2 trace evidence with natural daylight, as opposed  
3 to artificial incandescent light?

4 A. Natural daylight is always advantageous.

5 Q. So -- So -- And your recollection was that you,  
6 yourself, took anywhere from 10 to 20 swabs, each  
7 one had to be individually processed?

8 A. Yes.

9 Q. All right. And as counsel suggested, there could  
10 have been perhaps 50 or more items secured that  
11 evening?

12 A. That's possible.

13 Q. All right. And each one had to be individually  
14 found, right?

15 A. Correct.

16 Q. They had to be pictured or preserved, and then  
17 they were collected, correct?

18 A. Correct. Packaged, labeled. Insert number,  
19 date, and time of collection, everything.

20 Q. Before the next item could be processed?

21 A. Definitely.

22 Q. All right. Now, with respect to the assignments,  
23 it's true, is it not, that although there was a  
24 great deal of give and take and discussion  
25 amongst the investigators, that notwithstanding

1                   that, Investigator Wiegert and Special Agent  
2                   Fassbender were in charge of the overall  
3                   investigation, correct?

4         A. Definitely.

5         Q. So, in terms of the cooperative effort, in other  
6                   words, they sought your ideas and your input,  
7                   correct?

8         A. Yes.

9         Q. But the decisions, in terms of what was to be  
10                  done and when and how and allocation of  
11                  resources, those were decisions made by Wiegert  
12                  and Fassbender?

13         A. Correct.

14         Q. Based on your input and available resources?

15         A. You are exactly right.

16                   ATTORNEY FALLON: That's all. Thank you.

17                   THE COURT: Anything else, Mr. Buting?

18                   ATTORNEY BUTING: Just one or two.

19                   **REDIRECT EXAMINATION**

20         BY ATTORNEY BUTING:

21         Q. Mr. Fallon asked you a number of questions about  
22                  what you were trained to do, or what you might do  
23                  in certain cases, how long it takes to collect  
24                  trace evidence in general, correct?

25         A. Yes.

1 Q. But in this case, on November 5th, in those 2 1/2  
2 hours, while you were in that trailer, you did,  
3 in fact, get down on your hands and knees, right,  
4 with a lint roller?

5 A. Yes.

6 Q. And to collect a swab off of the bathroom floor?

7 A. Correct.

8 Q. And you were doing all of those things that you  
9 would normally do, to find trace evidence,  
10 correct?

11 A. Yes.

12 Q. And you are a thorough officer, aren't you?

13 A. I believe so.

14 Q. And you did as thorough and complete a job as you  
15 could that night?

16 A. I believe so.

17 Q. And Mr. Fallon mentioned that Agents Fassbender  
18 and Investigator Wiegert were in charge?

19 A. Investigator Wiegert.

20 Q. Wiegert, I'm sorry, I say that half the time. Is  
21 that right?

22 A. Well, yeah, they were assigned as the lead  
23 investigators, correct.

24 Q. So they were the ones who -- Well, let me ask you  
25 this, then, Lieutenants -- Lieutenant Sippel, are

1           you familiar with him? Maybe I'm pronouncing his  
2           name wrong.

3       A. I've heard his name. If I would see him, I would  
4           probably recognize him. I don't --

5       Q. Lieutenant Bowe, I think it is; do you know him?  
6           Or Bowe?

7       A. I'm sure if I seen him, I would recognize him.

8       Q. So, neither of them were directing you or  
9           advising you what to do during the entire week or  
10           so that the Avery property was seized?

11      A. If I'm correct, I believe those individuals had a  
12           lot to do with the security, or the watching over  
13           the property, some of the layers of security that  
14           we had out there.

15      Q. Okay. They would have been in the command post  
16           area that was set up?

17      A. No, they would have been parked right next to  
18           Steve's trailer, in a squad car, or standing  
19           outside the trailer providing security, or  
20           watching over that residence. There were several  
21           layers of security out there.

22      Q. Are you talking about lieutenants?

23      A. Those Calumet County officers.

24      Q. Okay. But my question is, were they involved in  
25           the direction or decision making of the search,

1           in particular, the search of Mr. Avery, Steven  
2           Avery's residence?

3       A. I don't believe so, no.

4       Q. That was Wiegert and Fassbender, collectively,  
5           with your cooperative decisions?

6       A. Yes.

7                   ATTORNEY BUTING: Thank you.

8                   THE COURT: Anything else?

9                   ATTORNEY FALLON: I just have one question.

10                   RECROSS-EXAMINATION

11       BY ATTORNEY FALLON:

12       Q. What did you mean when you said, we had a lot of  
13           searches to do that day, in response to Counsel's  
14           question, on your Sunday's questioning?

15       A. Well, we had about 37 acres, thousands of cars,  
16           residences, shops, outbuildings. There was a lot  
17           to do.

18                   ATTORNEY FALLON: All right. Thank you.

19                   ATTORNEY BUTING: One last.

20                   FURTHER REDIRECT EXAMINATION

21       BY ATTORNEY BUTING:

22       Q. Do you know how many officers, law enforcement  
23           officers, were out there on that 40 acre parcel,  
24           besides yourself?

25       A. When?

1 Q. During the week.

2 A. No idea.

3 Q. As many as a hundred?

4 A. Could have been.

5 Q. So there were many others available to do  
6 searches, besides yourself and your foursome that  
7 was doing these searches, correct?

8 A. Based on our discussion, based on our confidence  
9 in our abilities, based on our experience working  
10 together, based on the access to equipment, and  
11 the being comfortable with that equipment, and  
12 being able to use that equipment properly --

13 ATTORNEY BUTING: Judge, he's not answering  
14 my question. Would you please answer the question I  
15 asked, which is --

16 THE WITNESS: I was getting to that.

17 Q. (By Attorney Buting)~ Were there other officers  
18 available, that were searching in other areas,  
19 besides just the four of you?

20 A. There may have been, but it didn't make sense for  
21 those individuals to do those searches.

22 Q. To do what searches?

23 A. Of the residences, the garage, the buildings.

24 Q. Didn't make sense for them, for anyone but you  
25 four, to search any of the buildings on that

1           property?

2       A. Well, you obviously want to use evidence techs,  
3           people who are trained to do those types of  
4           searches and collections of evidence.

5       Q. And you had --

6       A. It's limited.

7       Q. Well, you had plenty of evidence techs out there,  
8           during that week, did you not?

9       A. No.

10      Q. Well, you had the Crime Lab?

11      A. They showed up with two people on Saturday --

12      Q. Okay. You had --

13      A. -- which one was a photographer only.

14      Q. You had DCI?

15      A. Fassbender may have been the only one out there  
16           Saturday.

17      Q. But during the week, as we went on, up to  
18           November 9th?

19      A. I was only there until Sunday night.

20                   ATTORNEY BUTING: All right. Thank you.

21                   THE COURT: All right. You are excused.

22                   THE WITNESS: Thank you.

23                   THE COURT: Defense may call its next  
24                   witness.

25                   THE CLERK: Please raise your right hand.

**SERGEANT ANDREW L. COLBURN**, called as a witness herein, having been first duly sworn, was examined and testified as follows:

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

THE WITNESS: Andrew L. Colburn,  
C-o-l-b-o-r-n.

**DIRECT EXAMINATION**

BY ATTORNEY BUTING:

10 Q. Sergeant, how are you employed?

11 A. I'm a patrol supervisor with the Manitowoc  
12 Sheriff's Department.

13 Q. And how long have you been so employed?

14      A.      14 years.

15 Q. As a police officer, you say?

16 A. As a corrections officer until 1996. I have been  
17 a police officer since '96.

18 Q. Okay. And how long have you been a sergeant?

19 A. Since 2002.

20 Q. Okay. And on November 5th of 2005, were you so  
21 employed?

22      A      Yes    sir

23 Q. And did you become involved in a Teresa Halbach  
24 matter?

35 | A YOGA TUTORIAL

1 Q. And what date was that?

2 A. On Saturday, I believe it was the 3rd of

3 November.

4 Q. Could that have been Thursday, November 3rd?

5 A. Yes, sorry, Thursday, November 3rd.

6 Q. Okay.

7 A. That was my initial involvement.

8 Q. And you received a phone call from somebody at

9 Calumet?

10 A. Yes, sir.

11 Q. Advising you that there was a missing person

12 investigation?

13 A. Yes, sir.

14 Q. And were you asked to do something in your

15 jurisdiction, in Manitowoc?

16 A. Yes, the officer that called from Calumet asked

17 if we could send a deputy, or if I could go out

18 to the Avery Auto Salvage area and check to see

19 if that young lady was there.

20 Q. And that was that very same evening, November

21 3rd, is what they wanted you to do, right?

22 A. Yes, sir.

23 Q. And so did you do so?

24 A. Yes, I went out there personally.

25 Q. You did?

1 A. Yes.

2 Q. Okay. And the name, Steven Avery, was mentioned  
3 to you; is that right?

4 A. No. When I was contacted, I was just told that  
5 the last address that she had been at, they  
6 thought, was an address on Avery Road. I didn't  
7 know of any other residences on Avery Road, but  
8 the Avery Auto Salvage area.

9 Q. Okay. And so when you went out there, did you  
10 see Steven Avery?

11 A. Yes.

12 Q. And he was somebody that you were familiar with,  
13 right?

14 A. Not real familiar with, but I knew who Steve was,  
15 by sight.

16 Q. Well -- And you knew his involvement with your  
17 department as well, right?

18 A. Yes.

19 Q. In fact, you had been deposed in his civil case  
20 just three weeks earlier, right?

21 A. Yes.

22 ATTORNEY FALLON: Objection, relevance.

23 THE COURT: Mr. Buting.

24 ATTORNEY BUTING: I will move on.

25 Q. (By Attorney Buting)~ When -- Did you find

1                   Mr. Avery at home, or outside the trailer, or  
2                   tell me what happened?

3       A. Probably the two -- the two Avery's that I'm most  
4                   familiar with are Charles and Earl. I knew Earl  
5                   doesn't live out there, so my initial -- the idea  
6                   in my head was to make contact with Charles.

7                   And so I drove directly towards where I  
8                   knew Charles lived, which is in close proximity  
9                   to the shop building. Got out of my squad. And  
10                  before I could get to Charles' residence, Steve  
11                  came out of his parent's home and asked what I  
12                  was doing.

13       Q. Okay. And so what did you tell him?

14                  THE COURT: Excuse me, I have a question  
15                  here. I think this testimony is for the multiple  
16                  execution of the warrant section. Is this testimony  
17                  necessary for purposes of this motion?

18                  ATTORNEY BUTING: If it's whether it's an  
19                  entry or not, I don't know whether he went into the  
20                  residence at that time or not, it could be.

21                  ATTORNEY FALLON: But what relevance is  
22                  that, in terms of once a warrant is obtained,  
23                  whether it was properly executed.

24                  THE COURT: Right.

25                  ATTORNEY BUTING: Well, it relates to

1                   whether -- the necessity of how many times you need  
2                   to go back into someone's residence.

3                   ATTORNEY FALLON: Well, we're talking -- If  
4                   you want argument, I'm prepared to argue more.

5                   THE COURT: I think we have to get to the  
6                   point after the warrant was issued, to hear  
7                   testimony that's relevant to your motion. I mean,  
8                   I'm sure that the questions you are asking might  
9                   be -- may well be relevant at a different time,  
10                  during trial, for example, but I don't see how they  
11                  relate to the motion.

12                  ATTORNEY BUTING: Well, I guess it's not  
13                  clear to me whether he entered. That's really what  
14                  I'm getting at, but I'm trying not to lead him, so  
15                  it's going a little bit slower. My real question  
16                  is, did he go into the Avery trailer on that night  
17                  or not.

18                  THE COURT: How is that relevant to the  
19                  issue relating to multiple executions of the search  
20                  warrant, which wasn't issued until a couple days  
21                  later?

22                  ATTORNEY BUTING: Well, I think it relates  
23                  to it because every entry makes it less necessary to  
24                  go in again.

25                  ATTORNEY FALLON: We would disagree. We're

1 talking two conceptually different concepts, one a  
2 breeze through based on consent and --

3 ATTORNEY BUTING: I don't know if there is  
4 or not. I mean, I haven't asked the question yet  
5 and don't have an answer on that yet. He may have  
6 never gone in, I don't know.

7 THE COURT: I will let you ask a few brief  
8 background questions, but I think we should move on  
9 to the point fairly quickly once the point is  
10 issued.

11 ATTORNEY BUTING: Sure. Let me just get to  
12 the point.

13 Q. (By Attorney Buting)~ Did you, on that night,  
14 November 3rd, accompany or go into Mr. Avery's  
15 trailer?

16 A. No, I didn't.

17 Q. Okay. So you just talked with him outside?

18 A. That's correct.

19 Q. All right. Did you go in the next day, to his  
20 trailer?

21 A. No, I didn't.

22 Q. Okay. Now, moving onto Saturday, November 5th,  
23 did you -- can you tell me what time you arrived  
24 at the Avery property?

25 A. Sometime between 6 and 6:30 in the evening.

1 Q. Is that when you are on duty?

2 A. No, I was on my day off.

3 Q. Okay. So you were called in?

4 A. Yes.

5 Q. And you -- Did you meet with -- with somebody who

6 was assigning you tasks to do?

7 A. Yes.

8 Q. Who was that?

9 A. I believe it was Investigator Wiegert from the

10 Calumet Sheriff's Office.

11 Q. Were you aware, at that point, that the --

12 because of the appearance of a conflict of

13 interest, because of Mr. Avery's pending 36

14 million dollar lawsuit against your department,

15 that Calumet had taken over -- supposedly taken

16 over the lead investigation?

17 A. Yes, I was told that the Calumet Sheriff's Office

18 would be the lead investigative agency and we

19 were to assist them.

20 Q. And do you know how many officers were out on the

21 scene of the property, on that day, when you

22 arrived?

23 A. No, I do not.

24 Q. Do you have an estimate of whether it's more or

25 less than 50?

1 A. I would hazard a guess at less than 50, but I  
2 don't have an accurate head count of how many  
3 officers were out there, sir.

4 Q. All right. Or what about the following day, do  
5 you have any other -- the November 6, do you have  
6 any information or knowledge about how many  
7 officers were there then?

8 A. Again, approximately the same amount as on  
9 Saturday.

10 Q. All right. Now, on November 5th, after you  
11 arrived at the property, did there come a time  
12 when you entered Mr. Steven Avery's residence to  
13 conduct a search, based on a search warrant?

14 A. Yes.

15 Q. And who were you with?

16 A. A Sergeant Bill Tyson from the Calumet Sheriff's  
17 Department, Detective Remiker from our agency,  
18 Lieutenant Lenk from our agency, and myself.

19 Q. And how was it you were assigned to perform those  
20 duties?

21 A. One of my additional duties or specializations in  
22 the area of criminal investigation, is evidence  
23 tech. And I was acting in that capacity.

24 Q. Let me ask you, in your department, as patrol  
25 supervisor, are you among the top three

1           individuals qualified to search Mr. Avery's  
2           trailer?

3       A. I'm not sure I understand the question, sir. Are  
4           you asking for the rank structure of the Patrol  
5           Division?

6       Q. No. No. I'm asking for your qualifications as  
7           a --

8       A. I would probably be in the top three choices,  
9           yes.

10      Q. To search a residence?

11      A. Yes.

12      Q. Okay. And you have done that a number of times?

13      A. Yes.

14      Q. Do you know how many, approximately?

15      A. 25 or better.

16      Q. Okay. And you completed your search of the  
17           residence at some point around 10 o'clock that  
18           night; is that right?

19      A. Yes, sir, that sounds right.

20      Q. And did you come back the next day and do some  
21           more searches of the Avery property?

22      A. Yes, sir.

23      Q. Do you know what time you started?

24      A. Would have been around 8 o'clock in the morning.

25      Q. And did you go immediately into Mr. Avery's

1           trailer, again?

2       A. I don't believe we went immediately into his  
3           trailer. I believe that we went into his garage,  
4           though --

5       Q. Okay.

6       A. -- which is in close proximity to it.

7       Q. If I told you you were there in the garage from  
8           about 8:00 a.m. to 9:47 a.m.; would that fit with  
9           your recollection?

10      A. Yes, sir.

11      Q. And were you there with Detective Remiker,  
12           Lieutenant Lenk, again?

13      A. Yes.

14      Q. And Deputy Kucharski from Calumet?

15      A. Yes, sir.

16      Q. And then you completed the search of the garage;  
17           is that right?

18      A. Yes, sir.

19      Q. Were you asked to go back in Mr. Avery's trailer  
20           sometime during the noon hour, 12:30?

21      A. I'm not sure of the time, but I believe, yes, we  
22           were asked to go back into Mr. Avery's trailer.  
23           Steve Avery, I'm talking about.

24      Q. And was that with a specific -- Was that from  
25           Investigator Wiegert's direction?

1 A. I don't know who exactly gave the direction to go  
2 back in there. One of the Calumet County  
3 supervisors just said, the next thing we need you  
4 to do is go back in, you know. I didn't -- Every  
5 time I was directed to go into the trailer, it  
6 didn't come directly from Investigator Wiegert.  
7 Could have come from any number of supervisors  
8 that were out there.

9 Q. At any rate, you were directed to go back in,  
10 specifically, to seize some weapons --

11 A. Yes, sir.

12 Q. -- that were located in the bedroom of Mr. Steven  
13 Avery?

14 A. Yes, sir.

15 Q. And you did that?

16 A. Yes.

17 Q. And you went in, the same four officers went in  
18 on that occasion, right?

19 A. Yes, sir.

20 Q. And you completed your search on that occasion,  
21 right?

22 A. Yes, sir.

23 Q. Now, there's a similar request the following day,  
24 I believe, November 7th. Do you recall being  
25 asked to go into the Steven Avery trailer again,

1           to simply get a serial number of a computer?

2   A.   Are we talking Monday, now.  Is it Monday?

3   Q.   Yes, that would be Monday, November 7th.

4   A.   Yes, I do recall being asked to obtain a serial  
5       number for a computer.

6   Q.   And you went in with Lieutenant Lenk and Sergeant  
7       Tyson from Calumet?

8   A.   I believe so, yes.

9   Q.   And did you get the serial number?

10   A.   Yes, I did.

11   Q.   And then you left on that occasion, right?

12   A.   Yes, sir.

13   Q.   And then, on the following day, this would be  
14       Tuesday, November 8th, did you again go back into  
15       Mr. Steven Avery's residence?

16   A.   Yes, I did.

17   Q.   And if I told you 8:25 a.m. you entered and left  
18       at 12:08 p.m.; would that fit with your  
19       recollection?

20   A.   That sounds accurate, yes, sir.

21   Q.   And on that occasion, you went in with who?

22   A.   That occasion I believe it would have been  
23       myself, Lieutenant Lenk, and Deputy Dan  
24       Kucharski, from Calumet County Sheriff's Office.

25   Q.   So the three of you were inside the apartment for

1           almost four hours?

2   A. Yes, sir.

3   Q. On that same day -- I'm sorry -- Yes, on that  
4       same day, immediately after you completed the  
5       search of Mr. Avery's trailer, you went into the  
6       garage again; is that right, the same three of  
7       you?

8   A. On Tuesday are you talking about?

9   Q. Yes.

10   A. I don't recall if we went in the garage that day  
11      or not.

12   Q. If I told you you entered at 12:19 p.m. and left  
13      at 12:45 p.m. and you were looking for tools and  
14      things, specific tool to match up with something,  
15      did that -- would that -- that --

16   A. Yes, I do recall that.

17   Q. Okay.

18   A. I didn't know if that was on Tuesday but, yes, I  
19      do recall that.

20   Q. And then, the following day, November 9th, do you  
21      recall going back into Mr. Avery's trailer with a  
22      specific intent to look for a garage door opener,  
23      some gloves, and things of that nature?

24   A. It's possible; that, I don't recall.

25   Q. Do you recall going into his residence at all on

1           November 9th, that would be --

2       A.   Wednesday?

3       Q.   Wednesday.

4                           ATTORNEY FALLON: Your Honor, I think this  
5                           question is -- I know it hasn't been asked  
6                           specifically of Sergeant Colborn, but I believe  
7                           Lieutenant Lenk did indicate that he was in there  
8                           that day. And I think we stipulated, if I recall,  
9                           that the entry was 10:39 to 10:59, with an  
10                          interruption at 10:59, and then resumed at 11:40,  
11                          and ended at 11:50. I think we agreed to that  
12                          yesterday, so I'm not sure what this adds to the  
13                          equation.

14                           ATTORNEY BUTING: That's correct, your  
15                          Honor, I forgot that we had stipulated to that, so I  
16                          can move on.

17                           THE COURT: All right.

18       Q.   (By Attorney Buting)~ Did you have anything to do  
19                          with getting the search warrant?

20       A.   No, sir.

21       Q.   Did you have anything to do with the decisions of  
22                          when you went into his residence, or not?

23       A.   No, sir.

24       Q.   Lieutenant Lenk out ranks you; is that right?

25       A.   That's correct.

1 Q. And on -- Let me go back to this first search for  
2 a minute, the November 5th entry, in the evening,  
3 when you were there from, like 7:30 to  
4 10:05 p.m.; are you oriented for that?

5 A. Yes, sir.

6 Q. Okay. You said that you are an evidence tech;  
7 does that mean you collect evidence as well?

8 A. Collect evidence, photograph evidence, locate  
9 evidence, it's all, yes.

10 Q. Okay. I'm sorry. And did you do so on that  
11 occasion?

12 A. Yes, I did.

13 Q. Were you collecting swabs and things that could  
14 be trace evidence?

15 A. My -- excuse me -- My primary job, if you want to  
16 use that term, was probably photographing and  
17 assisting in collecting. I didn't do a lot of  
18 the swabbing on Saturday.

19 Q. Okay.

20 A. I did assist Detective Remiker with that task,  
21 though.

22 Q. Okay. And you did, I believe, find some fiber  
23 evidence, or something, on the living room floor;  
24 do you recall that?

25 A. It's entirely possible, yes.

1 Q. Okay. Do you know how many items you actually  
2 collected yourself, that night?

3 A. Myself, personally, if you are talking about just  
4 me, I didn't, like, collect any items myself, bag  
5 them up and say I have this. I would locate  
6 items that I thought were of evidentiary value  
7 and I pointed them out to Sergeant Tyson of the  
8 Calumet Sheriff's Office and, collectively, we  
9 would pick those items up.

10 Q. Okay. And by the way, did you review anything  
11 before your testimony today?

12 A. I did review these two reports that I have in my  
13 hand here. The one is the Calumet County  
14 Sheriff's Department report and the other one is  
15 our Manitowoc Sheriff's Department report that  
16 was compiled by Detective Remiker.

17 Q. That's the 22-page report?

18 A. My report indicates it's -- this is page one of  
19 24.

20 Q. Twenty-four. May I see the Calumet report for a  
21 minute, please? You have reviewed both of these  
22 items?

23 A. Yes, sir.

24 ATTORNEY BUTING: May I have just a moment,  
25 Judge, I think I have seen these, but there's a

1 couple pages that are different now.

2 THE COURT: Go ahead.

3 ATTORNEY FALLON: Your Honor, I would just  
4 observe that, given the sequencing of that report,  
5 those last pages, if that's what's in issue here, I  
6 would be surprised if they are relevant to this  
7 particular motion. I mean, they may be certainly  
8 entitled to that under discovery, but I'm not sure  
9 that it adds anything to Sergeant Colborn's  
10 testimony relative to the events of the week of  
11 November 5th.

12 Q. (By Attorney Buting)~ All right. Lieutenant, the  
13 Manitowoc official report of the investigation in  
14 this case is -- it's now 24 pages, right?

15 A. Are you asking me to count each page or?

16 Q. Well, I'm just asking you how many total pages it  
17 is?

18 A. It says this is Page 1 of 24. I didn't take any  
19 pages out, this is 24 of 24, so I'm assuming  
20 these to be --

21 Q. Okay.

22 A. -- 24 pages.

23 Q. All right. How much of that report consists of  
24 reports that you wrote or dictated into this  
25 sequential system?

1 A. Oh, there's only a very few entries that I  
2 personally have on here.

3 Q. In fact, the last couple of pages involve a  
4 report that you did very recently?

5 A. Yes, sir.

6 Q. And -- But it deals with an investigation that  
7 you did way back on November 3rd?

8 A. Yes, sir.

9 Q. Particularly, it's the encounter with Mr. Avery  
10 that night that we talked about briefly at the  
11 beginning of this testimony?

12 A. Yes, sir.

13 Q. But you only recently, within the last month or  
14 two, prepared a report of that?

15 A. Only within the past month or so made an addition  
16 on this report about that, yes.

17 Q. And until you did that report, you had almost no  
18 personal reports in that entire Manitowoc  
19 official report, right?

20 A. That is correct.

21 Q. And were you directed to add that report to it,  
22 this newer one?

23 A. Yes.

24 Q. By whom?

25 A. We had a pretrial conference -- and I'm just

1           using the term pretrial, generically --  
2           conference in Calumet County and all the officers  
3           were talking about what involvement they had in  
4           this case.

5           And when I mentioned that I had initial  
6           contact with Mr. Avery on 11/3/2006, it was  
7           suggested that I make an entry to this report,  
8           the Manitowoc County Sheriff's Department report,  
9           about the nature of that contact.

10          Q.    Okay. That was one of your supervisors directing  
11           you to do that?

12          A.    Yes.

13           ATTORNEY BUTING: Thank you. I have no  
14           further questions.

15           THE COURT: Mr. Fallon.

16           ATTORNEY FALLON: Pass. We have no  
17           questions for this witness.

18           THE COURT: All right. You are excused.  
19           You may call your next witness.

20           ATTORNEY BUTING: Your Honor, if you give  
21           me just a minute here, we may be able to shorten  
22           this.

23           THE COURT: All right. We'll take a 10  
24           minute break at this time and then resume.

25           ATTORNEY BUTING: Thank you.

(Recess taken.)

2 THE COURT: All right. Mr. Fallon, you  
3 may -- or -- Yes.

4 ATTORNEY BUTING: Judge, at this time we're  
5 not presenting any other evidence on the multiple  
6 entries motion.

9                   ATTORNEY FALLON: Yes, the State will be  
10                  presenting witnesses. State would call as it's  
11                  first witness, Tom Fassbender.

15 THE CLERK: Please be seated. Please state  
16 your name, and spell your last name for the record.  
17 Thomas Fassbender, F-a-s-s-b-e-n-d-e-r.

**DIRECT EXAMINATION**

19 BY ATTORNEY FALLON:

20 Q. What do you do for a living?

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

23 Q. How long have you been so employed?

24 A. With DCI, I have been employed 21 years.

25 Q. And prior to that, any law enforcement

1                   experience?

2       A. I had five years as a patrol officer on the State  
3                   Patrol.

4       Q. What is your current assignment as an agent with  
5                   the Department of Justice?

6       A. I currently work within our Special Assignments  
7                   Bureau, which is primarily responsible for  
8                   homicide investigations.

9       Q. All right. And how long have you held that  
10                  particular assignment?

11      A. About five years.

12      Q. Prior to that, what duties or assignments did you  
13                  hold?

14      A. When I came in with DCI, I was a narcotics agent  
15                  for five years. And then I went into white collar  
16                  and government corruption for about 11 years.  
17                  And during that period, I worked internet crimes  
18                  against children for about two years at the same  
19                  time.

20      Q. All right. With respect to your current  
21                  assignment, approximately how many homicide  
22                  investigations have you been involved in?

23      A. Well, if we're counting what we term "cold case"  
24                  homicide investigations, I have a file drawer  
25                  full of those, which would go anywhere from 8 to

1           15 cases there. Other homicide investigations,  
2           probably anywhere from 5 to 10.

3       Q. All right. Now, during those particular  
4           investigations, are they -- Where are those  
5           homicide investigations? Where did they take  
6           place? What is your jurisdiction or area of  
7           operation?

8       A. Jurisdictionwise would be State of Wisconsin.

9       Q. All right. With respect to this particular case,  
10           I would like to draw your attention to  
11           November 5th, 2005; how did you become involved  
12           in this case?

13      A. DCI was re -- Or the assistance of DCI was  
14           requested by the Calumet County Sheriff's  
15           Department and I was assigned by my supervisor.

16      Q. And did you arrive upon the scene of the Avery  
17           Auto Salvage Yard on November 5th?

18      A. Yes, somewhere around shortly after 2:00 p.m.  
19           that day.

20      Q. Had you had any association at all with the  
21           missing person case involving Teresa Halbach  
22           prior to that?

23      A. No.

24      Q. All right. When you arrived at 2:00 p.m., which  
25           law enforcement agency was in control and in

1 charge?

2 A. Calumet County Sheriff.

3 Q. All right. At some point during the  
4 investigation -- Well, let's ask the question  
5 this way. What was your role? As a member of  
6 the Division of Criminal Investigation, what was  
7 your role in this missing persons case on  
8 November 5th?

9 A. Initially, it was to come in and provide  
10 assistance to the Calumet County Sheriff's  
11 Department, investigating the scene. And shortly  
12 after arrival and having some briefing sessions,  
13 I took over role as a co-lead investigator.

14 Q. All right. Who was the other co-lead  
15 investigator in the case?

16 A. Investigator Mark Wiegert, with the Calumet  
17 Sheriff's Department.

18 Q. And approximately how long after your 2:00 p.m.  
19 arrival did that take place, roughly?

20 A. I'm not real sure, probably within an hour, hour  
21 and a half.

22 Q. All right. Were you on site when a search  
23 warrant was obtained?

24 A. Yes.

25 Q. All right. And are you familiar with the area

1                   which was the subject of the search?

2       A.   Yes.

3       Q.   All right. Specifically, I would like to first  
4                   of all draw your attention to, I believe it's  
5                   Exhibit 18, if I'm correct. Yes, Exhibit 18.  
6                   Are you familiar with what is depicted in  
7                   Exhibit 18?

8       A.   Yes, it is the Avery's Salvage Yard, with some  
9                   additional properties up in the northwest corner,  
10                  I believe that is, Steven Avery's residence.  
11                  Barb Yanda's residence up in that area would be  
12                  an additional several acres up there.

13      Q.   All right. And the overall area which was  
14                  subject to the search warrant that was obtained,  
15                  was how many acres?

16      A.   Approximately 40 acres.

17      Q.   All right. And what is depicted in Exhibit 18,  
18                  is that a fair and accurate depiction of the  
19                  Avery Auto Salvage Yard and the adjoining  
20                  properties?

21      A.   Yes, that would be that, and that would be the  
22                  scene, the initial scene, we were dealing with.

23      Q.   So what is depicted there is the 40 acres?

24      A.   Yes.

25      Q.   With respect to the 40 acres, are you aware of

1                   the breakdown as to how much of that general area  
2                   contained the auto salvage yard business and it's  
3                   inventory?

4       A. Yes, approximately 37 acres would have been  
5                   attributed to that.

6       Q. All right. And during the course of the  
7                   investigation, were you able to determine a  
8                   ballpark estimate as to approximately how many  
9                   junked cars, for lack of a better term, are  
10                  located on that 37 acre portion of the parcel?

11      A. Initially, when we got there, we believed it to  
12                  be well over 1,000 junked cars. And, ultimately,  
13                  a rough count was taken by searchers, that put it  
14                  more in the neighborhood of 36 to 3800 junk cars.

15      Q. All right. And in terms of including residences  
16                  and commercial buildings, approximately how many  
17                  buildings are located on that parcel?

18      A. About 15.

19      Q. All right. Out of the 15, how many of them were  
20                  residences which were subject to the execution of  
21                  the search warrant?

22      A. Four.

23      Q. And did the four also include immediate out  
24                  buildings, such as garages?

25      A. That is correct, yes.

1 Q. All right. And the remaining buildings there  
2 were commercial buildings, or support buildings,  
3 for the business of the salvage yard?

4 A. Yes, with the exception of one, I guess you would  
5 term it a house trailer, alongside the road going  
6 down to Barb Yanda and Steven Avery's residence.  
7 It was a large trailer alongside that road. I  
8 would count that as a building that was searched.

9 Q. All right. Now, when the warrant was obtained  
10 and about to be executed, were any precautions  
11 taken to secure the overall premises, again,  
12 directing your attention to Exhibit 18?

13 A. Yes.

14 Q. All right. And tell us about those.

15 A. Well, there were checkpoints established out on  
16 the primary, or the main highway, running  
17 parallel to the property, as well as a checkpoint  
18 coming into the property on Avery road. There  
19 was, as you got down to the end of Avery Road, or  
20 the south end of Avery Road, and getting onto the  
21 Avery property, business property, is where a  
22 command post had been set up.

23 Q. All right. If I were to -- I'm going to have  
24 you -- I'm going to give you a laser pointer. If  
25 you would just direct out where the command post

1 was located.

2 ATTORNEY BUTING: Could he mark it?

3 THE WITNESS: I don't think I will have to,  
4 it's real near No. 3, where 3 is marked, just maybe  
5 a little south of 3 there, you can see some vehicles  
6 and stuff. So it would have been right at that  
7 nexus, right around 3.

8 Q. (By Attorney Fallon)~ Now, I would also like to  
9 direct your attention to Exhibit, I believe it's  
10 19, which is behind you on the chalkboard.

11 A. Yes.

12 Q. Are you familiar with what is depicted there?

13 A. Yes.

14 Q. All right. And just so that we're clear, what is  
15 depicted in Exhibit 19?

16 A. That's an aerial view, a little broader version  
17 of an aerial view, that shows the Avery salvage  
18 yard and adjoining properties, about right in the  
19 center of that view, and then the surrounding  
20 parcels of land and property.

21 Q. All right. I believe we had a stipulation  
22 yesterday, but just to illustrate your testimony,  
23 can you refer to where this Highway 147 is  
24 located on Exhibit 19?

25 A. Certainly, with the pointer, it's running

1                   essentially east-west, east to southwest, right  
2                   there, which would be about one parcel of land or  
3                   field, north of the Avery property.

4   Q. All right. Now, you indicated there was a  
5                   checkpoint that was set up, can you describe the  
6                   locations on -- using Exhibit 19, to tell us  
7                   where the checkpoints were?

8   A. Okay. The day that I arrived, I can't remember  
9                   if the checkpoints out on the highway had been  
10                  set up yet; I'm not going to speak to that for  
11                  sure. But I know if they weren't, shortly  
12                  thereafter, the highway checkpoints would have  
13                  been set up.

14   Q. All right.

15   A. The highway checkpoints would have been out on  
16                  Highway 147, which would have been to the west of  
17                  the Avery property, somewhere toward the upper  
18                  left corner of this picture.

19   Q. All right. I'm going to give you a pen, if you  
20                  could just put a checkmark and the number 1, that  
21                  may illustrate that, please. Is the area where  
22                  the checkpoint located, is that on the map, or  
23                  could it be farther west or farther east of what  
24                  is depicted there; do you recall?

25   A. To my memory, the checkpoints may have moved

1                   during the course of the week. They may have  
2                   expanded. They may have started, you know,  
3                   closer to Avery Road and then eventually expanded  
4                   out a little further.

5 Q. All right.

6 A. So that's where I'm having problems definitely  
7                   putting the X --

8 Q. All right.

9 A. -- on where it was at any given point.

10 Q. Okay.

11 A. I know at some times it was as far west as here,  
12                   but it may have been as close as this, earlier in  
13                   the week.

14 Q. All right. We'll put a check on each of those  
15                   locations then. The one farthest to your left,  
16                   we'll make that No. 1, and then -- right.

17 A. And if that is the little city I'm thinking about  
18                   here, I know there was an intersection of a road.

19                   ATTORNEY BUTING: Could we identify what  
20                   road, the names of those roads are, if you know?

21                   THE WITNESS: I'm not going to be able to  
22                   do that. It's just that there was Highway 147.  
23                   There was an intersection, and I'm going to, again,  
24                   put and X there and a 1, by that one, and it may  
25                   have been as close as what I'm designating as X-2,

1 to the west of Avery Road.

2 Q. (By Attorney Fallon)~ Is it possible there could  
3 have been one even farther west, which is not  
4 depicted on the map?

5 A. It's possible. And I'm not going to say for sure  
6 at this point.

7 Q. Were there any checkpoints on Avery Road?

8 A. Yes.

9 Q. All right. And tell us about those.

10 A. The checkpoints on Avery Road, again, moved.  
11 Generally, during the day, when we were there  
12 working, the checkpoint was toward the north end  
13 of Avery Road, out near Highway 147.

14 Q. Pretty close to the intersection of Avery Road  
15 and 147?

16 A. That's correct.

17 Q. All right. So put a check there.

18 A. I will put an X there with a 3.

19 Q. All right. And you said it moved, tell us about  
20 that.

21 A. At night, when most of the personnel, the  
22 investigative personnel, left the scene, they  
23 would often times draw that back in toward the  
24 command post area.

25 Q. What was the thinking for that?

1       A. The thinking was to draw it back in, contain the  
2           scene a little better, and actually have that  
3           personnel right there at the corner of the scene,  
4           to provide security for the scene, and also for  
5           break purposes, because there were porta-potties  
6           and stuff that were there, and food and water,  
7           and shift changes, and stuff like that.

8       Q. All right. Now, were there any checkpoints east  
9           of Avery Road, on 147, anything that you can  
10          place on our map there, or were they farther east  
11          than what is depicted?

12      A. I don't believe so. I think they were around  
13          this intersection, in the vicinity of this  
14          intersection, on Highway 147.

15      Q. All right.

16      A. I will put an X-4 there.

17      Q. All right. You may resume your seat. Directing  
18          your attention, again, to Exhibit 18, the 40 acre  
19          plot of land depicted there, once the initial  
20          search warrant was obtained and you began the  
21          searches, was that area under your continuous  
22          control?

23      A. Yes.

24      Q. And when did you give up control of that 40 acre  
25          plot of land?

1 A. Saturday, November 12, at about 11:28 a.m.

2 Q. All right. Now, during the course of the week  
3 that you were there, was there plans made to  
4 secure the premises -- the perimeter of the 40  
5 acre plot on Exhibit 18?

6 A. Yes.

7 Q. All right. And what can you tell us about that?

8 A. The plans to secure the perimeter was to have law  
9 enforcement personnel, at minimum, on each corner  
10 of the property.

11 Q. All right. And was that around the clock  
12 securance?

13 A. Yes.

14 Q. All right. At any point during the seven days,  
15 did you ever leave -- were any of the guards  
16 removed or any of the postings from the corners  
17 of the property?

18 A. Other than changes, shift changes, to my  
19 knowledge, no.

20 Q. All right. Was it Lieutenant Sippel and  
21 Lieutenant Bowe, from the Calumet County  
22 Sheriff's Department, who were in charge of the  
23 overall perimeter security?

24 A. Yes.

25 Q. All right. Again, returning to the time on

1           November 5th when Detective Wiegert and Detective  
2           Remiker and others returned with the search  
3           warrant, what was the initial plan or focus of  
4           executing the search warrant?

5       A. That would have been to do a protective sweep of  
6           the buildings on that scene, and also to search  
7           for Teresa Halbach.

8       Q. All right. And what did you mean by protective  
9           sweep; what was the point or purpose of that?

10      A. When law enforcement executes a search warrant or  
11           a search, we generally do a protective sweep for  
12           our safety, or the safety of anyone on that  
13           scene, to look for anything that could endanger  
14           us people, people armed with weapons, whatever.

15      Q. All right. And that's so you could also see if  
16           there were any other individuals who were  
17           actually on the premises at the time the warrant  
18           was being executed?

19      A. Certainly.

20      Q. All right. You also said that the other point or  
21           purpose was to look for Teresa Halbach, tell us  
22           about that.

23      A. Well, essentially, this was a missing case -- or  
24           a missing person investigation at that point.  
25           And the search warrant was to look for -- one of

1           the things, the search warrant, was to look for  
2           the body or to look for Teresa Halbach, in the  
3           hopes of finding her alive.

4       Q. All right.

5       A. And that was the primary purpose at that time.

6       Q. And given that primary purpose, were there any --  
7           Well, given that as a purpose, how did you go  
8           about attempting to accomplish that particular  
9           aspect, what did you do?

10      A. Based on the personnel we had, teams were set up  
11           to disseminate throughout the property and do  
12           that sweep, through the buildings, looking for a  
13           protective sweep and looking for Teresa.

14      Q. All right. Now, in your capacity as an agent  
15           with the Department of Justice, have you been  
16           involved in the execution of search warrants?

17      A. Yes.

18      Q. Numerous times?

19      A. Yes.

20      Q. In terms of the focus, for instance, is there a  
21           difference in the way you approach things if the  
22           focus is looking for a particular person as  
23           opposed to looking for something like blood, or  
24           narcotics, or something of a smaller size?

25      A. Most certainly.

1 Q. All right. Tell us about that.

2 A. If I'm looking for something larger size,  
3 something obvious or evident, it's obvious that  
4 that search is going to be a little quicker and  
5 easier because it's much more visible and  
6 apparent.

7           If I'm looking for evidence that might  
8 constitute forensic evidence or trace evidence,  
9 so to speak, blood, or hair, or fibers, that's  
10 going to be a much more detailed search, which  
11 may involve artificial lighting, may involve  
12 getting down on hands and knees, using magnifying  
13 glasses, etcetera. So there's a big difference.

14           One could -- conceivably could call it a  
15 search, while the other one may be, you know,  
16 searching for evidence and then the processing  
17 and collection of evidence. So there's a  
18 difference.

19 Q. All right. Now, in terms of organizing the  
20 search teams, who organized the teams?

21 A. It would have been either myself, or Investigator  
22 Wiegert, or someone in our stead at times. And I  
23 believe that probably would have been, in this  
24 instance, Investigator Wiegert, because I would  
25 have been involved with a search of my own, or

1           with one of the dogs at that time.

2   Q. Now, on -- All right. How did you and  
3       Investigator Wiegert assign responsibilities or  
4       duties during the execution of this search  
5       warrant?

6   A. Again, based on the personnel present, a decision  
7       had been previously made that Calumet was going  
8       to take over the investigation, and that  
9       resources being as they were, we were going to  
10      use Manitowoc County personnel to assist in the  
11      investigation of this scene, and the search of  
12      this scene.

13           And, basically, what we decided to do,  
14       as the teams were set up, we would have either a  
15       person or an investigator, from Calumet County or  
16       DCI, accompany Manitowoc County personnel, if  
17       they were on a search team.

18   Q. All right. Now, what kind of teams were actually  
19       put together?

20   A. I'm not sure if I understand the question.

21   Q. Is there a difference, for instance, from a  
22       search team and/or an evidence collection team?

23   A. Well, certainly. Again, this initial search, we  
24       weren't concerned with having evidence collection  
25       technicians on those particular teams

1                   necessarily. It may have been deputies. It may  
2                   have been jail personnel. It may have been DCI  
3                   agents on the teams.

4                   Again, their primary purpose was the  
5                   protective sweep and the searching for Teresa,  
6                   and not necessarily a concern of finding and  
7                   locating trace evidence, so to speak.

8 Q. All right. And once -- Did there come a time  
9                   when the focus shifted from looking for Teresa to  
10                  one looking more detailed, looking for more trace  
11                  evidence, as it were, or other evidentiary items,  
12                  found or listed in the warrant?

13 A. Yes.

14 Q. All right. Tell us about that.

15 A. What happened was, they did the protective sweep  
16                  and the search for Teresa in the buildings area.  
17                  After that, we had some trained cadaver dogs come  
18                  in. And I initially accompanied one of those  
19                  trained cadaver dogs, with some other personnel.  
20                  And we did a search all along the south end of  
21                  the property, where the dog alerted on Teresa's  
22                  RAV 4 vehicle.

23                  We continued that search along that  
24                  south border of the property and actually into  
25                  the adjoining property owned by Radandt. During

1           that time, additional dogs arrived and additional  
2           searches were done, utilizing the dogs, of some  
3           of the buildings. Just a walk through, basic  
4           search, with the dogs, to see if the dogs alerted  
5           on anything.

6           Again, the thinking being, if the dog  
7           alerted on something, that might be a clue or an  
8           assist in helping locate Teresa or the body of  
9           Teresa Halbach. And again, that was a fairly  
10          quick search, walking the dogs through.

11          Q. When you say fairly quick search, are you  
12           referring to the buildings?

13          A. Yes.

14          Q. All right. Were the dogs used to search other  
15           areas on the property?

16          A. Yes.

17          Q. Tell us about that.

18          A. Again, Lieutenant Sippel and Bowe would probably  
19           be better to address that. But the dogs were  
20           used to take into the pit area, the salvage area,  
21           walking through and around cars and to see if  
22           they were alerting on anything there. So that's  
23           that 37 acre area that we were talking about.

24          Q. So would it be fair to say that when you were  
25           using the dogs, the primary focus was still

1                   looking for Teresa, or something, some part of  
2                   her remains, for instance?

3         A. Certainly.

4         Q. All right. Now, you indicated you were -- You  
5                   mentioned something about the Toyota RAV 4; did  
6                   you have any involvement in securing that item of  
7                   evidence?

8         A. To a degree. After I arrived, sometime after I  
9                   arrived, we had approached the RAV 4 and used a  
10                  flashlight to confirm that there was no body in  
11                  the RAV 4. While we were there, we were getting  
12                  reports and seeing obvious signs of inclement  
13                  weather approaching, getting reports of serious  
14                  inclement weather approaching.

15                   The Crime Lab, Wisconsin State Crime Lab  
16                  was involved and I was in contact with them. And  
17                  as such, we would be agreeing to attempt to put a  
18                  tarp over the RAF 4 vehicle, which we did.  
19                   Inclement weather arrived and there was some  
20                  rain, not the worst of it yet, but that was  
21                  accompanied by some high winds. And the winds  
22                  were blowing the tarp all over. So, ultimately,  
23                  we went back to that scene and we ended up  
24                  removing the tarp, because it was just flailing  
25                  around anyways.

1 Q. You couldn't keep the tarp on because of the  
2 weather?

3 A. No.

4 Q. At some point, was the vehicle removed?

5 A. Yes.

6 Q. Approximately when?

7 A. Approximately 8:45 p.m.

8 Q. All right. You mentioned something about serious  
9 inclement weather on the way; what concerns, if  
10 any, did that pose for you during the course of  
11 executing the search warrant?

12 A. Well, that, as well as other things. We were  
13 getting into dark now, losing daylight.  
14 Searching, anything, is much better and well done  
15 during daylight as opposed to artificial light or  
16 in the dark. Add to that the horrendous  
17 rainstorm that ultimately moved in that evening,  
18 very much limiting any of the outdoor search,  
19 except the removal of the RAV 4, which we  
20 accomplished in that storm.

21 Q. How bad was the weather?

22 A. It was raining extremely hard when the storm hit,  
23 as hard as I have experienced.

24 Q. And how long did that rain persist?

25 A. You know, I don't remember exactly, but most of

1                   the night that we worked there it was raining.

2 Q. All right. And did that create some concerns  
3                   with you, with respect to evidence detection and  
4                   collection?

5 A. Well, obviously, we had concerns with any  
6                   evidence collection and detection outside,  
7                   coupled with the dark. Lights were brought in to  
8                   illuminate the southeast corner where the RAV 4  
9                   was found, that area. But the rain affected that  
10                  quite heavily, also. So we were fairly or pretty  
11                  much limited to inside or in building searches at  
12                  this time.

13 Q. All right. I will come back to that in a minute.  
14                  I would like to direct your attention, again, to  
15                  Exhibit 19. And -- which is behind you -- and  
16                  ask, during the course of the week that you were  
17                  executing the search warrant on the premises  
18                  depicted in Exhibit 18, were you called upon to  
19                  investigate, or participate, or coordinate  
20                  searches of surrounding areas?

21 A. Yes.

22 Q. And tell us about that.

23 A. Ultimately, when we were done searching, it was  
24                  estimated that we had searched approximately six  
25                  to 800 acres of property.

1 Q. That's in addition to the 40 acres?

2 A. In addition to the 40 acres on the Avery  
3 properties. And that property included a lot of  
4 surrounding areas which were gravel pits, sand  
5 pits; I think most of them owned by Radandt.

6 And then many ponds and lakes. I'm not  
7 sure of the count, but numerous ponds and lakes  
8 that had to be searched, either with dive teams  
9 or walk-throughs of some sort. Again, all taxing  
10 the personnel and resources during the course of  
11 that week.

12 Q. With respect to your role and Investigator  
13 Wiegert's role, were the two of you responsible  
14 or more or less in charge of the perimeter  
15 searches; in other words, the 6 to 700 acres, was  
16 that your responsibility or someone else's?

17 A. That would have been more Lieutenant Bowe and  
18 Sippel coordinating that, managing that part.

19 Q. But who oversaw their work?

20 A. Investigator Wiegert, myself.

21 Q. All right. And returning then to the weather on  
22 Saturday night and limiting to building searches,  
23 did there come a time where you, and/or  
24 Investigator Wiegert, directed various search  
25 teams to enter the buildings?

1 A. Yes.

2 Q. All right. And tell us how that came to pass.

3 A. I keep returning to this, but again, pertaining  
4 to the personnel we had present and the resources  
5 yet available that evening, now we're organizing  
6 what we believe to be a search to look for  
7 evidence, potential processing and collection of  
8 evidence. And for such a search, we need  
9 evidence technicians or trained officers who were  
10 trained in the collection of evidence.

11 Q. All right. And on Saturday night, I would say  
12 approximately 7:30 or thereabouts, how many  
13 evidence technicians, or evidence collection  
14 teams, were available on Saturday?

15 A. I believe we put one evidence collection team  
16 together that night.

17 Q. All right. During the course of the week, were  
18 other evidence collection teams put together?

19 A. Yes. And I'm going to back up, Saturday night,  
20 if you count the Crime Lab, the two technicians  
21 that came from the Crime Lab, we would have had  
22 two.

23 Q. All right. What assignment did the Crime Lab  
24 people have on Saturday night?

25 A. To process and seize and transport the RAV 4,

1           Teresa's vehicle.

2       Q.     Did they actually do an examination or processing  
3           of the vehicle itself, on scene, or just the  
4           collection and removal?

5       A.     The only thing they processed or looked at, on  
6           scene, was the debris and the items that had been  
7           used to conceal the vehicle, but the vehicle  
8           itself, to my knowledge, no.

9       Q.     All right. And what happened to the Crime Lab  
10          after the vehicle was removed, the Crime Lab  
11          personnel, after the vehicle was removed?

12      A.     The Crime Lab personnel remained with the  
13          vehicle. I believe one of the technicians rode  
14          with the individual towing the vehicle, while the  
15          other one followed the vehicle, or led the way to  
16          Madison.

17      Q.     All right. So in terms of after they left the  
18          scene, you only had one evidence collection team  
19          on site that evening?

20      A.     Correct.

21      Q.     All right. So in terms of using their  
22          capabilities, what was the plan?

23      A.     The plan was to start searching buildings. And  
24          we started with Steven Avery's residence on the  
25          northwest corner of the property, at about 7:30,

1 if I remember right.

2 Q. All right. And did there come a time that you  
3 and/or Investigator Wiegert, directed additional  
4 entries into Mr. Avery's trailer?

5 A. Yes.

6 Q. All right. And did there come a time where you  
7 directed additional entries to other residences  
8 during the course of the week?

9 A. I believe so, yes.

10 Q. And the businesses, or buildings associated with  
11 the business?

12 A. Yes.

13 Q. All right. And there's been some testimony that  
14 through the course of the week, and in particular  
15 the first five days, there were as many as -- I  
16 think perhaps eight entries, thereabouts, to  
17 Mr. Avery, Steven Avery's trailer. And three or  
18 four entries to the garage.

19 So what was it about the circumstances,  
20 in your mind, that caused you to direct  
21 successive or additional entries, first of all,  
22 with respect to Mr. Avery's trailer?

23 A. I think that's a longer answer than you might  
24 anticipate. But additionally, we have the  
25 same -- you have got your protective sweep and

1                   looking for a body, and using the dogs. I would  
2                   categorize those into, basically, the same type  
3                   of search, a walk-through, a sweep. So you have  
4                   two entries there.

5                   I have got a search warrant for a scene  
6                   here, which is a 40 acre scene. I don't have a  
7                   search warrant specifically for any building or  
8                   Steven's house, or Barbara's house. I have got a  
9                   40 acre scene here. That's why I say I'm holding  
10                  that scene. Okay. Ultimately, that evening, we  
11                  get a team put together and we start the  
12                  buildings.

13                  We start with Steven's residence. When  
14                  the technicians go in there, they are looking for  
15                  evidence that's obvious. And they are also  
16                  looking for trace or forensic evidence, which is  
17                  a little more difficult, sometimes, to detect.

18                  At this point in time, you are talking  
19                  it's dark, it's night, you have got a horrendous  
20                  rain storm going on. We want to look, to the  
21                  best of our abilities, for that type of evidence.  
22                  Because of the rain, because of people maybe  
23                  going in and out of their house to get evidence  
24                  collection bags, gloves, whatever they need,  
25                  flashlights, you run the risk of evidence being,

1           in effect, destroyed or lost. So we look for  
2           that type of evidence as quickly as possible,  
3           because that is the most susceptible to that type  
4           of danger.

5           So, they go in there about 7:30.  
6           Keeping in mind also, at this point in time most  
7           of those investigators that went in that trailer  
8           are already going on 12 hours, or more, of work.  
9           So you are talking that they are getting tired,  
10          there could be safety issues, and exhaustion's  
11          becoming a factor. So they go in there --

12          Q. Does that affect the ability to locate and  
13          collect evidence --

14          A. I would think --

15          Q. -- based on your experience --

16          A. -- so, yes.

17          Q. Was that based --

18          A. I felt it, yes.

19          Q. All right.

20          A. So, they go in there until about 10:30 and they  
21          clear Steven's residence that evening. They come  
22          back and we have, Mark and I, as well as the  
23          sheriff and other people that are involved,  
24          Sippel, and Bowe, and whoever, are continually  
25          having debriefing sessions, and planning

1 sessions, and assessing what's going on.

2                   Taking in all the intelligence  
3 information that's happening. We debrief that  
4 team. And even as early as that night, in my  
5 mind, I'm telling people -- or my mind I'm  
6 thinking -- either that night or the next night,  
7 I'm telling people, we are not done in that  
8 house. We will be going back there, for several  
9 reasons: Number 1, they noted guns. They talked  
10 to us about a vacuum cleaner, and having taken, I  
11 believe, the bag out of the vacuum cleaner.

12                  But we talked about the roll -- about  
13 the brush that's in the vacuum cleaner, how that  
14 can collect -- possibly collect trace evidence.  
15 And we're going to want to take that. Bedding in  
16 a spare bedroom, yeah, we're going to want to  
17 take that.

18                  That's how these meetings occurred, you  
19 know. What did you find? What did you see in  
20 that residence? We're going to want that.

21 Q. All right.

22 A. That building is still part of my scene. This is  
23 an ongoing search. So as early as that, we're  
24 going to be returning there. That night, that  
25 completed that night. The following evening is

1           when we continued the search in process,  
2           involving going in the buildings, including  
3           Steven's garage.

4       Q.   Now, did the apparent evidentiary significance of  
5           items observed in the buildings, in particular,  
6           Mr. Avery's trailer; did that change during the  
7           course of the week?

8       A.   Certainly.

9       Q.   Tell us about that.

10      A.   Beginning just at that first night, I mean, we  
11           have -- we have investigative personnel. To  
12           start with, we have investigative personnel up in  
13           Marinette, at the Avery's other property up  
14           north, who are speaking with Avery members,  
15           gleaning intelligence and information, which is  
16           being reported back to us.

17           We have investigators at the scene that  
18           are going out and doing interviews either of  
19           relatives, family members, friends, or just  
20           people who may have been involved in this scene.

21           We have neighborhood canvasses that are  
22           started the following day. We're constantly  
23           bringing in intelligence and information,  
24           assessing that information and intelligence.

25           We have evidence teams that are finding

1           evidence and we're making determinations on:  
2           What's been found; what we need to look for; do  
3           we need to look somewhere else; are there things  
4           that we're missing.

5           That's all affecting what's going on in  
6           this ongoing process. This is not a static  
7           process, that's just standing still. We have a  
8           RAV 4 that went down to the Crime Laboratory,  
9           that's being analyzed. I think it's as early as  
10          Sunday that there is a presumptive positive test  
11          for human blood in that vehicle. That's  
12          affecting what we may be doing, or what we're  
13          looking for, obviously.

14       Q. All right. Now, at some point did the Crime Lab  
15          come down and assist further in the search of the  
16          scene, and/or the collection of evidence, or the  
17          identification of evidence?

18       A. Yes, they came back. The other team came back on  
19          Sunday I believe, afternoon, later afternoon,  
20          Sunday.

21       Q. And what did they do to assist in either the  
22          identification or collection of additional  
23          evidence?

24       A. They were being sent all over the place. Again,  
25          on Sunday, we have search teams that are going

1           out and searching. We're accounting for the  
2           vehicles, the trunks of the vehicles, underneath  
3           the vehicles, and the insides of the vehicles;  
4           the car crusher, the crushed vehicles, the  
5           crushed vehicle in the car crusher; the  
6           buildings, and even maybe starting some of the  
7           surrounding areas.

8                 As the search teams are going through,  
9                 again, they are not necessarily evidence  
10                technicians, but they are looking for potential  
11                evidence, or identifying potential evidence, and  
12                either marking or flagging the potential  
13                evidence. And that could include, and in many  
14                instances did include, potential blood in junked  
15                vehicles.

16               And the Crime Lab was being utilized to  
17               go check or analyze those areas of potential  
18               evidence, to see if it needed to be collected, if  
19               it was blood, if it wasn't blood. They went to  
20               vehicles. I think they went to a golf cart at  
21               one time, to check something that had been found  
22               in a golf cart.

23               Ultimately, they were directed to go  
24               back -- or asked to go back into Steven Avery's  
25               residence, to use alternate light sources to

1 check for the presence of blood.

2 Q. All right. And did they, in fact, go into  
3 Mr. Avery's residence at some time during the  
4 course of one of these searches, with alternate  
5 light sources, to look for blood?

6 A. Yes, I believe they did that Sunday evening.

7 Q. All right. And did they actually collect what  
8 they observed, or how did you work with them,  
9 best utilizing their abilities?

10 A. Yes. Generally, they would be able to identify  
11 and help process. And the collection of  
12 evidence, if they collected it, it was  
13 immediately turned over to Calumet County  
14 personnel.

15 ATTORNEY BUTING: I'm going to object to  
16 his testimony about what they did or didn't do, in  
17 Mr. Avery's residence, unless this witness was there  
18 and observed it.

19 ATTORNEY FALLON: I will clear up with a  
20 foundation question.

21 Q. (By Attorney Fallon)~ Were you responsible --  
22 Strike that. Let's try it this way. Once  
23 someone entered a residence and did something in  
24 the residence, was that information conveyed back  
25 to you in the command post or -- and/or Detective

1                   Wiegert?

2       A.   Yes.

3       Q.   All right. So in terms of your responsibility  
4                   and Investigator Wiegert's responsibility, you  
5                   were made aware of the results, or what the  
6                   observations were, during the course of entering  
7                   any of these residences?

8       A.   I would believe so, in most of the cases, yes.

9       Q.   Now, specifically, since the Crime Lab personnel  
10                  work also for the Department of Justice, did you  
11                  have constant contact with them regarding what  
12                  they were doing and how they were assisting?

13      A.   The majority of time, yes, I agree.

14      Q.   Now, with respect to their participation in one  
15                  of the searches of Mr. Avery's trailer, that  
16                  being Steven Avery's trailer, with respect to  
17                  using an alternate light source, were you made  
18                  aware of that?

19      A.   Yes.

20                   ATTORNEY BUTING: Objection, hearsay.

21                   THE COURT: For purposes of this hearing, I  
22                  think it's relevant to determine how this witness  
23                  acted and what he did, rather than for the truth of  
24                  the matter, so I'm going to accept it on that basis.

25                   ATTORNEY FALLON: Fine, thank you.

1 Q. (By Attorney Fallon)~ So, did the Crime Lab  
2 collect evidence after they went through --

3 ATTORNEY BUTING: Same objection. It's  
4 hearsay, as to what was done inside that house, if  
5 he wasn't there. He can talk about why he did or  
6 didn't do things afterwards, but he -- it is hearsay  
7 for him to relate what someone else did, outside of  
8 his presence, and came back and told him. What  
9 other purpose does the State have to offer that?

10 THE COURT: Mr. Fallon?

11 ATTORNEY FALLON: Certainly. First of all,  
12 it does go to the state of mind. After all, he is  
13 one of the two people responsible for the overall  
14 execution of this warrant. He's already established  
15 the fact that he and Investigator Wiegert were in  
16 charge of the investigation, so they were clearly  
17 made aware.

18 He's already testified that there were  
19 debriefings after each search. This is all  
20 information that factors into the decision making  
21 process as to how that warrant was executed.

22 Secondly, under 904.01, a certain amount  
23 of hearsay under these circumstances is  
24 permitted.

25 Third, taking the Court's previous

1 example, it does go relative to his state of  
2 mind.

3 THE COURT: For purposes of this hearing,  
4 what they found or what they didn't find isn't  
5 really that important. It's hearsay if it's  
6 introduced for the purpose of proving the truth of  
7 the matter asserted.

8 In this case, I take the information to  
9 be an explanation of why orders were given, why  
10 searches were ordered to be conducted, why they  
11 came back the next day. And I think so for that  
12 purpose, which is most relevant to the defense  
13 motion here, it is not hearsay because it's not  
14 offered to prove the truth of the matter  
15 asserted; therefore, I'm going to allow it.

16 ATTORNEY FALLON: Thank you.

17 Q. (By Attorney Fallon)~ What occurred with respect  
18 to the Crime Lab's participation and what affect  
19 did that have on you, in terms of what you were  
20 doing and organizing, with respect to  
21 continuation of the executing the search warrant?

22 A. They identified additional areas in Steven's  
23 trailer that show the presence of blood, or the  
24 potential presence of blood. They collected a  
25 few of the areas. They identified the other

1                   areas, as areas that were needed to go in and  
2                   collect yet.

3       Q.   And subsequent to that, did you direct additional  
4                   entries to collect the information requested by  
5                   the Crime Lab?

6       A.   Yes.

7       Q.   All right. Are you an evidence technician, by  
8                   the way?

9       A.   I have attended a week long evidence technician  
10                  course put on by the State Crime Laboratory.

11      Q.   All right. After you directed the subsequent  
12                  entry suggested by the Crime Lab, in other words,  
13                  the collection of these additional samples, in  
14                  your mind, were you -- was the execution of the  
15                  search warrant, as a whole, completed?

16      A.   Absolutely not.

17      Q.   With respect to the part of the warrant  
18                  permitting entrance, authorizing entrance to  
19                  Mr. Avery's trailer, and his garage, for that  
20                  matter, after Sunday evening, did you, in your  
21                  mind, think that you had completed or, quote,  
22                  gotten everything there was to get?

23                   ATTORNEY BUTING: I think what's in his  
24                  mind is really irrelevant. It's ultimately going to  
25                  be a legal question. It's more what he did and

1 didn't do. He's not --

2 ATTORNEY FALLON: It's a foundational  
3 question to explain subsequent conduct.

4 THE COURT: Well, in a sense, you are both  
5 right. Even what his thoughts were may not  
6 necessarily control the outcome of the decision on  
7 your motion, but as both parties have already  
8 informed the Court, there's not a lot of case law on  
9 this, and it may be that what was going through his  
10 mind is important. So, for that reason, I'm going  
11 to allow the question.

12 Q. (By Attorney Fallon)~ Did you feel you had  
13 completed that portion of the execution of the  
14 search warrant with respect to the defendant's  
15 residence and garage?

16 A. Based on -- a lot on the factors I already talked  
17 about, no.

18 Q. All right. And why not?

19 A. Reiterating a lot of those factors, and the  
20 purpose of a lot of the searches up to that  
21 point, we were not done with those areas. We  
22 had, like I said, after that first forensic  
23 search, based on the weather and lighting  
24 conditions, exhaustion of the searchers, I knew  
25 that building, even without Steven being the

1 primary suspect necessarily, was going to be  
2 searched again. It was too likely that things  
3 would have been missed, based on those factors.

4 They did see some things in there, guns  
5 and stuff, that we needed to go back in and get  
6 the following day, due to the lateness of hour,  
7 etcetera. And we did. We knew there was a  
8 computer in there that we had to obtain  
9 information off of, which we got a separate  
10 search warrant for.

11 And then the Crime Lab was asked to go  
12 in because that first search team found evidence  
13 of blood in there. So we asked them to use their  
14 technology to determine if there was any other  
15 blood in there. Again, as I said, this was  
16 ongoing.

17 After they identified other areas of  
18 blood, we knew we had to go back there and get --  
19 collect those items. During this whole course of  
20 things, through debriefings and interviews,  
21 interviews being conducted, we're obtaining more  
22 intelligence information that tends to indicate  
23 that Steven is definitely the suspect, or a  
24 suspect in this case, which makes it even more  
25 relevant that we make sure we do a complete and

1           thorough search of that area before we release  
2           the scene.

3       Q.    With respect to that, what additional information  
4           was uncovered on Tuesday, for instance, that led  
5           you to continue the belief that you needed to  
6           gain additional entry into the trailer and the  
7           garage; what was happening?

8       A.    Number one, Monday, we were -- we were busy in  
9           other areas, again, in the junkyard, other  
10          buildings, etcetera. So we did not get back to  
11          Steven's trailer on Monday like we had planned  
12          to, because of what the Crime Lab showed, and  
13          just my beliefs.

14                   So Tuesday, it was planned to go back in  
15          there. I believe Tuesday they went back in there  
16          and got the computer. And then Tuesday we were  
17          going back in, that that's where we put the team  
18          up to go back in there and hopefully do a final,  
19          thorough search of that trailer.

20                   Things that were coming in, I mean from  
21          interviews and intelligence, we're interviewing  
22          people and finding that Steven's initial story,  
23          it was inconsistent with later stories that he  
24          had given, whether to us or to the press.

25                   We have other interviews of other

1           individuals that are contradicting --  
2           contradicting his statements.

3           We have information coming in from the  
4           Crime Lab, the presence of blood. And I believe  
5           it was Tuesday, and I'm not sure, but I believe  
6           it was Tuesday I was advised by the Crime Lab  
7           that DNA analyzed from the RAV 4, matched up with  
8           Steven Avery's DNA from the Wisconsin data base,  
9           DNA data base. That may have been later on  
10          Tuesday, but these are the types of things that  
11          are coming in and we're analyzing and basing our  
12          decisions on.

13       Q. Did the fact that there were bone fragments  
14          uncovered from a burn pit on Tuesday factor into  
15          the equation?

16       A. I'm sure that factored into the equation, to make  
17          sure that the residence was searched properly and  
18          held. I believe -- I'm not sure what time of day  
19          the bone fragments were found, whether they were  
20          found a little later, or the search had conducted  
21          earlier, so I'm going to say I'm not sure.

22       Q. All right. During the course of overseeing the  
23          execution of this search warrant, were you,  
24          and/or Investigator Wiegert, more or less was  
25          your attention drawn away from the scene to other

1           locales outside of the perimeter here?

2       A. Oh, yes, a lot of times.

3       Q. Tell us about that and why you felt that you had  
4           to address those.

5       A. Again, you are getting information from many  
6           different sources, whether it's evidence  
7           technicians finding evidence, or agents or  
8           investigators doing interviews and obtaining  
9           information and intelligence. And you perform  
10          sort of a triage, I guess. Is this something  
11          that we need to address? Do we have the  
12          personnel and resources to address it now, or  
13          could it wait?

14                   And a good example, we had the Crime Lab  
15          personnel running around trying to address  
16          different areas. During Tuesday, I think it was  
17          Tuesday morning, license plates were found in a  
18          vehicle on the yard that were Teresa Halbach's  
19          license plates from her vehicle. At that point  
20          we made the decision to pull the Crime Lab off  
21          what they were doing to go address the seizure  
22          and the processing of the plates from that  
23          vehicle.

24                   Other areas where maybe blood was found,  
25          we were directing evidence technicians to go

1           there. We had search teams out that were  
2           identifying these various areas of evidence.  
3           They would report back to us and we would  
4           determine, do we need to send someone there now,  
5           or can we just hold that scene until we can get  
6           someone available to go process that.

7           We need people who have been trained in  
8           processing evidence to do that. And we only had  
9           so many people that were trained to do that. So  
10          we're constantly making those decisions. We had  
11          a site that, potentially, could have been a  
12          clandestine burial site, that we pretty much  
13          pulled everyone off of, for quite a period of  
14          time, until we determined that it wasn't.

15         Q. Where was that? Was that in the perimeter or  
16          somewhere else?

17         A. That was outside the perimeter, to the west.

18         Q. And were individuals dispatched to areas such as  
19          Maribel Caves Park?

20         A. We had intelligence coming in that some pants,  
21          and I think some lotion or something, had been  
22          found at this park. So, yes, we dispatched some  
23          evidence technicians over there.

24           We had a report of a cell phone being  
25          found in the ditch. We ultimately dispatched

1           people there. We had that clandestine site. We  
2           had reports of some bones found on some property  
3           west of this area, that Mark and I actually went  
4           out on because there was no one available,  
5           technicians available, that we checked that.

6       Q.   When you say Mark, you mean Mr. Wiegert?

7       A.   Our investigator, Wiegert. We had intelligence  
8           coming in from interviews that someone may have  
9           seen something; for example, a bus driver  
10          dropping someone off, that we had to send people  
11          out to interview and obtain information from that  
12          person.

13      Q.   All right. Now, during the course of this week  
14          long event, did you have assistance of other law  
15          enforcement agencies?

16      A.   Yes.

17      Q.   All right. What agencies assisted?

18      A.   Wow, I don't even know the whole list, but the  
19          State Patrol for sure. They were assisting in  
20          perimeter security, I think from day one or day  
21          two, and then en masse. I think on Tuesday was  
22          the first day they were there en masse, where  
23          upwards of 60 troopers arrived to help search  
24          that, go over that yard, again.

25      Q.   When you say the yard, you are talking about the

1           salvage yard?

2       A. The salvage yard, the vehicles. And they  
3           actually came and assisted in searching the  
4           properties adjacent to the Avery properties.

5       Q. All right. Other law enforcement entities  
6           assist?

7       A. Of course, Manitowoc County Sheriff, Manitowoc  
8           City, I think Two Rivers may have had some people  
9           there, and then Calumet County Sheriff's  
10           Department, obviously, and some various, I think,  
11           police departments in Calumet County also  
12           assisted in perimeter and scene protection, and  
13           security.

14      Q. And did -- At some point did you receive  
15           assistance from some local firemen?

16      A. Yes.

17      Q. All right. And how were they employed?

18      A. I believe the first day they were employed was on  
19           Sunday, and they were employed in searching the  
20           vehicles. And I believe they brought in their  
21           Jaws of Life to open trunks of vehicles, and car  
22           doors, and whatever needed to be opened. And  
23           they were broken up into teams.

24                           And I believe each of those teams had  
25                           one law enforcement -- at least one law

1 enforcement personnel with them. And they went  
2 through the yard and went through every vehicle  
3 to make sure that, again, Teresa, or evidence of  
4 Teresa, was not apparent in those vehicles. And  
5 that's in the vehicles, under the vehicles,  
6 evidence that the vehicle had been moved, or not  
7 moved. And if it was moved, we had to get  
8 personnel in there to lift that vehicle up, move  
9 it, check under it.

10 Q. All right. Now, with the -- in terms of having  
11 at least the benefit of these additional  
12 resources, did that ease the strain at all with  
13 respect to the actual evidence collection  
14 processing component associated with the  
15 execution of a warrant?

16 A. Not nearly as much, no, because these people  
17 weren't trained to process or collect evidence.

18 Q. Who was responsible for coordinating their  
19 efforts?

20 A. The efforts of whom?

21 Q. The State Patrol, the firemen, the Two Rivers  
22 officers; in other words, the supporting law  
23 enforcement cast, as it were?

24 A. The hands on portion was probably more Lieutenant  
25 Sippel and Bowe, but Investigator Wiegert and I

1                   were ultimately responsible for what we were  
2                   going to do.

3       Q.   All right. And you decided how they were going  
4                   to be employed, these law enforcement assists?

5       A.   Yes.

6       Q.   All right. During the course of the week, do you  
7                   recall, you mentioned two evidence collection  
8                   teams; were there other evidence collection teams  
9                   available at your disposal?

10      A.   Off the top of my head, Sunday we had two primary  
11                   evidence collection teams made up of Calumet  
12                   County Sheriff's evidence technicians, Manitowoc  
13                   County and Manitowoc City.

14                   And then we had the Crime Lab personnel,  
15                   who I would describe more as roving where needed.  
16                   And then later in the week, we actually brought  
17                   in an evidence technician from the Grand Chute  
18                   Police Department that assisted us.

19      Q.   All right. Now, all this is going on, did you  
20                   have law enforcement personnel in other parts of  
21                   the state who were collecting information and  
22                   providing it to you during the execution on the  
23                   search warrant?

24      A.   Yes.

25      Q.   And tell us about that.

1 ATTORNEY BUTING: Objection, it's  
2 irrelevant.

3 ATTORNEY FALLON: It goes to the resource  
4 allocation issue and how they went about their  
5 business. They keep questioning why it took eight  
6 searches, or four days, to complete processing of  
7 that. This is -- all goes to that explanation.  
8 Now, the hallmark of Fourth Amendment is  
9 reasonableness, under the circumstances.

10 THE COURT: I will let you ask a few  
11 questions about it.

12 ATTORNEY FALLON: Thank you.

13 A. The primary area in question would have been up  
14 in Marinette County where the Avery's have  
15 property up there. And many of the Avery's were  
16 there on that Saturday, November 5. So I had  
17 to -- or I did, allocate special agents to go up  
18 there. We had Marinette County personnel up  
19 there.

20 I had special agents running definitely  
21 throughout Manitowoc County as well as into other  
22 counties, following up leads, reports of this or  
23 that. I had many special agents transporting  
24 evidence from the Avery property, or Calumet  
25 Sheriff's Department, down to Madison Crime

1                   Laboratory, to forensic anthropologists down  
2                   there. So, yeah, a lot of special DCI personnel  
3                   was eaten up doing a lot of that too.

4       Q.   Were there other -- What I guess, for lack of a  
5                   better term, were there other volunteers which --  
6                   who assisted in the searches?

7       A.   Yes.

8       Q.   All right. And who is responsible -- When did  
9                   they come into the play?

10      A.   For my part, or our part, I'm going to guess  
11                   mid-week, talking about the week of November 7.  
12                   Mid to early week, we had -- we realized we had  
13                   acres and acres and acres of property outside the  
14                   40 acre Avery scene that still needed to be  
15                   walked through and searched.

16                   There was a point in time that we  
17                   weren't sure we had a body. And we decided to  
18                   utilize the searchers who were still standing by,  
19                   you know, hanging around; the civilian searchers  
20                   that Ryan Hillegas had kind of coordinated. And  
21                   so we decided to utilize them to walk through  
22                   some of those areas outside of that 40 acre area  
23                   accompanied by, again, a member of law  
24                   enforcement.

25      Q.   All right. Now, were there other neighborhood

1           canvasses or leads called in by just citizens,  
2           that impacted upon the allocation of resources?

3       A. Yes.

4       Q. Tell us about that.

5       A. We had leads coming in, like I said, I mentioned  
6           the cell phone, someone found a cell found.  
7           There were leads coming in that someone said --  
8           or people said they saw Teresa or saw Teresa's  
9           vehicle; we had to send investigators out to  
10           that.

11           We were finding evidence on the property  
12           that would lead investigators to go out; for  
13           example, handcuffs or leg irons, and receipts for  
14           the purchase of such things, and we sent people  
15           out on. We had -- Just lost my train of thought.

16       Q. Okay. So you had received information, or  
17           benefits from some community searchers?

18       A. Yes.

19       Q. All right. One second. During the course of  
20           executing the initial search warrant here, at  
21           some point did you become cognizant of the fact  
22           that this was taking several days?

23       A. Oh, absolutely.

24       Q. And what, if anything, did you do, or what did  
25           you do in recognition of that?

1 A. Well, if I understand your question correctly,  
2 number one, holding the scene.

3 Q. Right.

4 A. Number two, attempting to get additional  
5 resources and personnel in place.

6 Q. Right.

7 A. Number three, we did obtain additional search  
8 warrants for various things and, ultimately,  
9 mid-week, we obtained another search warrant for  
10 the whole scene.

11 Q. Right. Now, in terms of your experience, have  
12 you ever been involved in overseeing the  
13 execution of a search warrant this comprehensive?

14 A. No.

15 Q. In terms of your experience with the Department  
16 of Justice, have you ever been involved in the  
17 execution of a search warrant of this magnitude?

18 A. That I was personally involved with?

19 Q. Yes.

20 A. No.

21 Q. All right.

22 ATTORNEY FALLON: That's all.

23 THE COURT: Mr. Buting.

24 **CROSS-EXAMINATION**

25 BY ATTORNEY BUTING:

1 Q. Let me start right, for the moment, with where  
2 you ended. You said you got other search  
3 warrants during that week, right?

4 A. Yes.

5 Q. And this is during the period from November 5th  
6 to November 12th, when you had that property  
7 under your control, right?

8 A. Correct.

9 Q. How many other search warrants did you obtain  
10 during that week?

11 A. Related to the property.

12 Q. No, related to the case.

13 A. Related to the case.

14 Q. Investigation.

15 A. So you are talking about DNA --

16 Q. Everything.

17 A. -- search warrants. I can't give you a number.

18 Q. Dozens, would that be right?

19 A. It may be as many as dozens, yes.

20 Q. So you were going back and getting warrants  
21 throughout the week, applying for warrants  
22 related to this case, dozens of times?

23 A. I just -- I don't know about the dozens, but, yes  
24 numerous times.

25 Q. Say as many as 20?

1 A. That would probably be fair, yes.

2 Q. Okay. But it wasn't until late in the day on  
3 November 9th, that you went back and asked for an  
4 additional warrant to allow you to search  
5 Mr. Avery's residence and garage; isn't that  
6 right?

7 A. Now, the 9th being Wednesday, if I'm correct?

8 Q. Yes.

9 A. I believe it was Wednesday, yes.

10 Q. 4:40 in the afternoon, I believe, would you --

11 A. I didn't -- I don't believe I went back and got  
12 that search warrant. I think I served it, but I  
13 didn't go get it.

14 Q. All right. So, you served it at 4:40 p.m. on  
15 November 9th?

16 A. Without seeing that, I can't say.

17 Q. Well, let's see if I can find it for you. I'm  
18 showing you a copy of the warrant, just to  
19 refresh your recollection.

20 A. This warrant shows it was endorsed on November 9,  
21 at 4:40 p.m.

22 Q. All right. And that warrant was intended to  
23 allow you to continue searching Mr. Steven  
24 Avery's property, as well as the other areas in  
25 this 40 acre parcel, correct?

1 A. Yes.

2 Q. You were worried that the original warrant from  
3 November 5th was going to expire, as a matter of  
4 time, was going to expire with the five day  
5 statutory limit, correct?

6 A. I believe so, it wasn't my decision. My  
7 decision -- That wasn't my decision.

8 Q. And that warrant on November 9th -- I can show it  
9 to you again if you would need to, but that  
10 warrant contained more information, gathered  
11 through your intelligence and your investigation,  
12 to support a probable cause finding, than was in  
13 the original warrant from November 9th, correct?

14 A. Yes.

15 THE COURT: The original one from the 9th  
16 or the 5th?

17 Q. (By Attorney Buting)~ I'm sorry, from November  
18 5th, correct?

19 A. Yes.

20 Q. So as you -- Throughout the week, the week  
21 November 6th, November 7th, November 8th, you  
22 talked about how you kept gathering all this  
23 additional information, right?

24 A. Yes.

25 Q. There would have been nothing to prevent you from

1           going back to a judge, on Saturday, November 6th,  
2           with new information, saying I want another  
3           warrant to be able to go back into Mr. Avery's  
4           trailer or garage, correct?

5       A. The only constraints would have been time and  
6           personnel, but you're probably right, yes.

7       Q. Or November 7th?

8       A. Yes.

9       Q. Or November 8th?

10      A. The 8th, we served numerous other warrants and  
11           that would have been a tough day, probably.

12      Q. Well, you are serving numerous warrants. You are  
13           going to a judge. You are filling out  
14           applications for other warrants, throughout that  
15           time, up to 20 different warrants.

16           Nothing would have prevented you, on  
17           those occasions, from getting another warrant to  
18           allow you to go into Mr. Avery's house a second  
19           time, or a third time, or a fourth time, or a  
20           eighth time; isn't that right?

21      A. Except the fact that we had the scene.

22      Q. Except what?

23      A. The fact that we were still holding that scene.

24           In our estimation, this was ongoing.

25      Q. You had no lack of personnel, to go to a court

1           and get search warrants, from November 5th  
2           through the 9th; isn't that right?

3       A. Yes. And that strained our personnel, getting  
4           those search warrants, phone search warrants.

5       Q. But you did it, didn't you?

6       A. Yes.

7       Q. They were there, in front of a judge?

8       A. Yes.

9       Q. And all it would have taken was another affidavit  
10          to present to the judge, saying, we think that  
11          there's reason why we need to go back into  
12          Mr. Avery's residence. That's all you would have  
13          needed in order to get another warrant from a  
14          judge, right?

15      A. Yes.

16      Q. You could have done that, right?

17      A. Yes.

18      Q. You chose not to?

19      A. Yes.

20      Q. You believed that this warrant gave you carte  
21          blanche to go in and out of his residence and  
22          trailer as many times as you wanted, right?

23      A. Yes.

24      Q. Now, meanwhile, you had that property secured  
25          from the owner's and residents, the people who

1           lived and worked on that property, right?

2   A. Yes.

3   Q. For one solid week, the owners of the property  
4       and the people who lived on that property, were  
5       denied access to that property, right?

6   A. Yes.

7   Q. This was a business that was completely shut down  
8       while you had it secured, right?

9   A. Correct.

10   Q. There were people who had to feed -- who had dogs  
11       and pets on the property, who were unable to get  
12       to it, right?

13   A. Yes. That was another one of our concerns,  
14       taking care of them. And dealing with the  
15       property owners and trying to help them get  
16       things off their property. I dealt with the  
17       Averys numerous times on the phone, taking them  
18       into the property, helping them get things, yes.  
19       It wasn't my intent to deprive them of the  
20       property. We wanted to get that back to them as  
21       soon as we could.

22   Q. But you did, in fact, hold it for an entire week?

23   A. Yes.

24   Q. Now, let's talk about the personnel you had.

25       Give me a number, how many officers -- how many

1 law enforcement officers, during that week, did  
2 you have searching that property? Forget the  
3 firemen. Let's just talk law enforcement  
4 officers.

5 A. On any given day, or during the course of a week?

6 Q. During the course of a week, over 100?

7 A. I would say over 100.

8 Q. Easily over 100, right?

9 A. Yes.

10 Q. This was a high profile case, correct?

11 A. Yes.

12 Q. This was a case that was in the media everyday,  
13 if not throughout the day, correct?

14 A. Certainly.

15 Q. This Toyota RAV 4, when it was brought to the  
16 Crime Lab, they dropped everything and started  
17 working on it right away, didn't they?

18 A. Yes.

19 Q. And we know how backed up the Crime Lab is on  
20 other cases, right?

21 A. Yes.

22 Q. This case took priority for them?

23 A. Yes.

24 Q. Okay. And this case took priority for you?

25 A. Well, certainly. And one of the reasons was to

1 release that scene as soon as we could.

2 Q. How many DCI agents did you have working on this

3 case between November 5th and November 12th.

4 A. I can't answer that, but on and off, probably

5 upwards of 10.

6 Q. Okay. So you had at least 10 DCI agents

7 available to you during that week?

8 A. Yes.

9 Q. And are each of those agents -- did they have

10 evidence collection training?

11 A. No.

12 Q. Any of them have evidence collection training?

13 A. To my knowledge, no, but I'm not sure.

14 Q. Does DCI have anybody else in the state who

15 collects evidence?

16 A. I'm sure there are agents that collect evidence.

17 The arson agents would, obviously, collect

18 evidence. Have they been certified? Have they

19 gone to specific evidence training, or schools?

20 I don't know.

21 Q. This is the State Department of Justice we're

22 talking about, correct?

23 A. Yes.

24 Q. Criminal investigation?

25 A. Yes.

1 Q. How many agents work for that department, in the  
2 state?

3 A. Approximately 60, I'm not sure.

4 Q. And they go through a lot of training, don't  
5 they?

6 A. Yes.

7 Q. Probably more than your average police officer?

8 A. Yes.

9 Q. And you are telling me that those 10 agents, that  
10 you had at your disposal, were not capable of  
11 collecting evidence from a crime scene?

12 ATTORNEY FALLON: That's argumentative, the  
13 question, did he have trained agents at his  
14 available disposal? That's one question, but the  
15 way the question is asked --

16 THE COURT: Well, I will ask you to  
17 rephrase the question. I think what he's getting at  
18 is relevant, but.

19 Q. (By Attorney Buting)~ Did you have -- Is it your  
20 testimony that you had -- that those 10 agents  
21 that you actually used, forget about the other 50  
22 available somewhere in the state, but those 10  
23 agents, are you telling me that they were not  
24 capable, trained enough, to collect any evidence?

25 A. What I'm telling you is, a lot of the agents that

1 I had at my disposal were transferring evidence  
2 to and from Madison, around Madison. Many of the  
3 agents I utilized, I utilized for interview  
4 purposes. Because DCI agents, in my estimation  
5 at that time, would be better used to go out in  
6 the field and do interviews because they're --

7 Q. Answer my question.

8 ATTORNEY BUTING: Judge --

9 A. I'm getting to it.

10 ATTORNEY BUTING: -- I would ask you to  
11 direct the witness to answer my question.

12 ATTORNEY FALLON: If you would let the  
13 witness finish his statement, you might get his  
14 answer.

15 ATTORNEY BUTING: It's a simple question;  
16 he can answer it, or he can say no.

17 THE COURT: Well, there is some ambiguity,  
18 in trained to collect evidence. I have heard  
19 references to evidence technicians who are  
20 apparently trained in a special way to collect  
21 certain types of evidence; and then there's other  
22 officers who just collect evidence. So make your  
23 question a little more specific, and then he can  
24 answer it directly.

25 Q. (By Attorney Buting)~ As part of the training of

1           a police officer, you are trained to -- in crime  
2           scene evidence searches, right?

3       A. Yes.

4       Q. All police officers go through that, do they not?

5       A. Yes.

6       Q. Every single one?

7       A. Yes.

8       Q. And they are taught how to avoid contaminating  
9           evidence by touching it with their hands, or  
10          smearing fingerprints, all of that sort of thing,  
11          correct?

12      A. They are taught the basics.

13      Q. All right. And you had a hundred police officers  
14          at your disposal that week, who would have that  
15          training; isn't that right?

16      A. Yes.

17      Q. And then, some also have more specialized  
18          training. Did they get some sort of certificate  
19          that says they are an evidence collector, or  
20          what?

21      A. When I went to the training, you got a  
22          certificate that you attended and completed that  
23          week long training.

24      Q. And you are a qualified evidence technician, are  
25          you not?

- 1 A. I went to that training.
- 2 Q. Well, are you qualified to collect evidence, or  
3 not?
- 4 A. I believe I'm qualified to collect certain  
5 amounts of evidence, certainly.
- 6 Q. And during this week, isn't it true that you have  
7 spent a total of 55 minutes in Mr. Avery's  
8 trailer?
- 9 A. I don't know.
- 10 Q. Isn't it true that you never even entered his  
11 trailer until November 10th, at 5:05 p.m., when  
12 you did a brief walk through, looking for hacksaw  
13 blades?
- 14 A. No.
- 15 Q. I'm sorry, isn't it true that's when you entered  
16 the garage for the first time?
- 17 A. That may be true, yes.
- 18 Q. And isn't it true that the first time you entered  
19 the residence of Mr. Avery, you personally, was  
20 November 12th, at 8:20 a.m., and you left at  
21 8:45 a.m., and seized some direct TV documents?
- 22 A. No.
- 23 Q. That's not true?
- 24 A. No.
- 25 Q. Well, what is true? You weren't there that day?

1 A. I was there that day, but that's not the first  
2 day I was there.

3 Q. What's the first day you ever entered his  
4 residence?

5 A. I believe Tuesday, when a key was found. We went  
6 there and viewed that, entered the residence to  
7 view that.

8 Q. Okay. And you just looked at what they found,  
9 and left?

10 A. Essentially, yes.

11 Q. After that, the next time was this November 12th  
12 date?

13 A. To actually go in the trailer, probably. I may  
14 have been outside looking in. I know I was,  
15 standing on the porch, looking in the door, but I  
16 did not go in.

17 Q. And this November 12th, just so we're clear,  
18 that's the day you released the whole property,  
19 right?

20 A. Yes.

21 Q. That was a week later?

22 A. Yes.

23 Q. And did you ever collect any evidence from his  
24 trailer?

25 A. I assisted in the collection of a small tin of

1           ashes. I didn't take it, but I assisted in that.

2           That was on Saturday, the 12th.

3 Q.       So that was a week later?

4 A.       Yes.

5 Q.       Is Investigator Wiegert a trained evidence

6           collection, or at least as much as you are?

7 A.       I don't know.

8 Q.       Do you know how long or how many times

9           Investigator Wiegert went into Mr. Avery's

10          trailer?

11 A.       No.

12 Q.       So, out of that hundred police officers that you

13          had, that included the State Patrol, right?

14 A.       Yes.

15 Q.       State patrol has evidence collection teams, do

16          they not?

17 A.       I don't know.

18 Q.       Well, you utilized them in this case, right?

19 A.       Yes.

20 Q.       Did you ask whether they could provide any

21          assistance to you as evidence collection

22          technicians?

23 A.       We wanted them for searchers and to identify

24          potential evidence, after which we would send

25          collection teams to take the evidence.

1 Q. Well, you just told us that you were strained for  
2 resources, to collect evidence, isn't that what  
3 you testified about earlier?

4 A. I would say that we were.

5 Q. Let's go into that. Did you ask any of the State  
6 Patrol officers, that you were working with,  
7 whether they were trained and capable evidence  
8 technicians to collect evidence?

9 A. State patrol has no criminal authority and we  
10 weren't going to use them to collect evidence.

11 Q. Did you ask them whether they had any --

12 A. No.

13 Q. -- experience? Okay. How about Calumet County  
14 Sheriff's Department; how many officers did they  
15 have who could collect evidence?

16 A. That we wanted to collect evidence?

17 Q. How many officers did they have, on their  
18 department, who were capable of collecting  
19 evidence?

20 A. I don't know.

21 Q. So, when you say you're strained and you didn't  
22 have enough resources, it's because you didn't  
23 even know what your resources were capable of  
24 doing; is that it?

25 A. No, it's because we had a certain type of

1 individual that we wanted to collect the  
2 evidence, that was trained, that had experience.

3 Q. Oh, you mean evidence people from Manitowoc  
4 County Sheriff's Department?

5 A. Calumet, Manitowoc, Manitowoc City, Crime Lab.

6 Q. Well, in fact, you sent in Manitowoc County  
7 officers to search Mr. Avery's residence?

8 A. Yes.

9 Q. After you knew that Manitowoc County had recused  
10 themselves, or stepped down as the lead  
11 investigators of this case, because of their  
12 civil lawsuit that Mr. Avery had filed?

13 A. Absolutely.

14 Q. Did you decide to send Lieutenant Lenk into  
15 Mr. Avery's apartment -- or trailer?

16 A. Whether it was me personally, or a combined  
17 decision with Investigator Wiegert, I'm not sure.

18 Q. But between the two of you, you had made that  
19 decision to send Lieutenant Lenk in?

20 A. Yes.

21 Q. And to send Sergeant Colborn in?

22 A. Yes.

23 Q. Did you know, at that time, that Lieutenant Lenk  
24 had been deposed as a witness in the 36 million  
25 dollar lawsuit that Mr. Avery had filed just

1           three weeks earlier?

2       A.    No.

3           ATTORNEY FALLON: Objection, relevance.

4           This line is irrelevant.

5           ATTORNEY BUTING: He brought it up on  
6           direct examination. He asked about the decision  
7           making and who and why he decided to bring people  
8           in. I'm entitled to cross-examine him on that.

9           ATTORNEY FALLON: The question, there was a  
10          civil lawsuit pending, has little to do with the  
11          collection of the evidence.

12          THE COURT: I don't know that to this  
13          motion it has much probative value, but if -- there  
14          were a few questions on direct, so I will allow a  
15          few on cross.

16          ATTORNEY BUTING: Thank you, Judge.

17       Q.    (By Attorney Buting)~ So you did not know, at  
18          that time, that Lieutenant Lenk had been deposed  
19          as a witness in this lawsuit?

20       A.    No, I didn't.

21       Q.    He did not tell you?

22       A.    No.

23       Q.    And did you know that Sergeant Colborn had also  
24          been a witness, deposed in Mr. Avery's lawsuit,  
25          just three weeks before you sent him into his

1 house to search?

2 A. No.

3 Q. Sergeant Colburn didn't tell you that either, did  
4 he?

5 A. No.

6 Q. And if you had known that, would you have sent  
7 those two officers into his house to search?

8 ATTORNEY FALLON: Objection, speculation,  
9 relevance, argumentative.

10 THE COURT: For purposes of this hearing,  
11 on this motion, I will sustain the objection.

12 Q. (By Attorney Buting)~ Now, Sergeant Colburn is  
13 just a patrol supervisor, right?

14 A. To my knowledge.

15 Q. He is not a detective, right?

16 A. Correct.

17 Q. And yet you put him into a team to go search  
18 Mr. Avery's residence, right?

19 A. To my knowledge, he has had experience and  
20 training in evidence collection.

21 Q. Using this patrol supervisor as a benchmark, how  
22 many other officers were that qualified to also  
23 have gone in and searched for, or collect  
24 evidence? Strike that search for, let's just  
25 leave it with collect evidence.

1 A. How many other officers would have been qualified  
2 to search for evidence?

3 Q. No, to collect it.

4 A. To collect it. That determination was made on  
5 their experience and training, not whether they  
6 were a road sergeant, not whether they were a  
7 trooper, not whether they were a special agent.

8 Q. How many of these 100 officers had sufficient  
9 training to collect evidence at a crime scene?

10 A. I don't know.

11 Q. Why do you not know?

12 A. I wasn't directly involved in that decision, when  
13 they put the teams together, to determine who was  
14 going to be on those teams.

15 Q. You said you were a co-leader.

16 A. Yes.

17 Q. Of this entire investigation, right?

18 A. Yes.

19 Q. And you just told us -- or tried to explain why  
20 it took so long was because you didn't have  
21 enough resources, right?

22 A. At times, yes.

23 Q. Is it your testimony, then, that you did not even  
24 ask these 100 officers, what degree of training  
25 they had, to see whether -- how many of them

1           might have actually been able and capable of  
2           collecting evidence?

3       A. I don't know. For example, the first night, I  
4           was assigned with the Crime Lab and the wrecker  
5           operator, to go down and secure the RAV 4.  
6           During that period of time, Mark was up --  
7           Investigator Wiegert was up at the command post  
8           organizing the evidence collection team. So,  
9           him, along with Lieutenants Bowe and Sippel,  
10          would have been more involved in a specific  
11          detail of organizing and putting together those  
12          teams.

13      Q. All right. So you don't really know then, you  
14          would have to correct your testimony -- prior  
15          testimony -- about whether you had any personal  
16          knowledge of how much resources you did or didn't  
17          have, from law enforcement, who could have  
18          collected evidence?

19      A. I don't know if I have to correct my testimony.  
20          I'm looking at what happened when teams were put  
21          together. I mean, I'm in that command post, and  
22          if there's officers that had had training, I  
23          would anticipate that they would have come  
24          forward and told us that they had training. My  
25          assumption was that we had the people who had the

1           training experience, that we wanted to do that  
2           task.

3       Q.     How many teams did you have -- did you actually  
4           put together? How many different teams did you  
5           put together to search? Let's just talk about  
6           the buildings on that property.

7       A.     Again, if we're talking search teams, or teams  
8           that were going in to collect evidence, these are  
9           two different things, in my mind. My evidence  
10          collection teams, to my knowledge, there were two  
11          primary teams earlier in the week, a third team  
12          if you count the Crime Laboratory.

13                   And then, when we started processing the  
14          bones and the burn pit area, it would have been  
15          our arson guys, DCI arson guys, along with  
16          someone collecting it from Calumet County.

17       Q.     So how many of those -- You say your arson guys,  
18          those are DCI agents who are trained to collect  
19          evidence?

20       A.     They are arson investigators and they collect  
21          evidence related to arson, so I would imagine,  
22          yes, they are trained and experienced in that  
23          field.

24       Q.     And how many of them were on the scene?

25       A.     This would have been mid-weekish, probably, when

1           we had them come, had upwards of probably four or  
2           five, at any given moment, four maybe.

3   Q.   All right. You said you had the Manitowoc City  
4           Police out there at the scene as well, right?

5   A.   On Sunday, for sure.

6   Q.   All right. How many officers from that  
7           department did you use?

8   A.   For evidence collection, I think two.

9   Q.   So there were evidence collectors qualified, and  
10           employed, and working for the Manitowoc City  
11           Police?

12   A.   Yes.

13   Q.   And you had them out there on the scene?

14   A.   Yes.

15   Q.   What about Two Rivers Police Department, did they  
16           have any trained evidence collection people?

17   A.   I don't know.

18   Q.   Did you bring any of them out to the scene?

19   A.   I think they may have had some personnel out  
20           there; in what capacity they acted, I'm not sure.

21   Q.   Did you ever ask any of these law enforcement  
22           departments who had come to your aid and  
23           assistance, if they would have some evidence  
24           collection teams that they could assist you --  
25           that they could loan you and give you to work on

1           this case?

2   A. Yes, I went out and obtained the Grand Chute  
3       evidence technician to come over.

4   Q. But you didn't ask that of Two Rivers; is that  
5       what you're saying?

6   A. No, not me personally.

7   Q. And what about Mishicot Police, were also there?

8   A. I don't know.

9   Q. You mentioned some other police departments from  
10      Calumet County?

11   A. Some of the small police departments there  
12      allowed us to use personnel, I believe, but that  
13      was mainly for perimeter and scene security, and  
14      stuff like that.

15   Q. You said this was the most comprehensive, biggest  
16      search you had ever done, right?

17   A. Yes.

18   Q. Did you ever go to your supervisor, call your  
19      supervisor and say, hey, I need more evidence  
20      collectors out here, give me everybody you've  
21      got?

22   A. We talked about it.

23   Q. Did you ever ask for it?

24   A. She said I could have the personnel that I had  
25      needed, I mean within reason.

1 Q. All right. You basically had the whole  
2 department, within reason, at your disposal,  
3 right?

4 A. Right. And I took what I could get.

5 Q. So, in truth, you had plenty of officers capable?

6 A. If you want to take officers off of scenes, off  
7 of other searches, yeah. But those things had to  
8 be done too. Interviews had to be done. It's  
9 not that these officers were all sitting around  
10 in a carton of eggs, waiting to be used. They  
11 were being utilized in other areas.

12 Q. I understand that. And I'm not criticizing that.  
13 But what I'm questioning you about, though, is  
14 you have a search warrant that commands you to,  
15 forthwith, search these places. You don't have  
16 all day, or all week, or whatever. You don't  
17 have an unlimited time to execute that warrant;  
18 isn't that right?

19 A. Yes.

20 Q. You know that when the judge says you can go onto  
21 someone's property, and go into their house and  
22 search, you are to do that with all due dispatch,  
23 right?

24 A. Correct.

25 Q. That's a priority?

1 A. Yes.

2 Q. And that if you have officers available to assist

3 you and do that, you should do that, right?

4 A. I believe I did.

5 Q. Mr. Avery's trailer, Mr. Steven Avery's trailer,

6 can you tell me about how big that is?

7 A. Kitchen, living room, hallway, bedroom, bathroom,

8 another bedroom, all average size.

9 Q. It's a single width trailer, right?

10 A. Yes, I believe so.

11 Q. It's not a double-wide, right?

12 A. Probably 12 to 14 feet wide.

13 Q. Okay. And maybe, what, 30 feet long?

14 A. No, probably longer than that.

15 Q. Forty, maybe; does that sound fair?

16 A. Forty, fifty feet, I'm not sure.

17 Q. But it's a regular common size house trailer?

18 A. Yeah, what you would commonly associate with a

19 house trailer.

20 Q. On the evening of November 5th, you had 4 trained

21 police officers going through Mr. Avery's

22 trailer, for 2 1/2, 3 hours, right?

23 A. Yes.

24 Q. And you had no concern about the capabilities of

25 that team of officers, to collect and seize any

1           evidence, right?

2 A.    Other than what I mentioned on direct.

3 Q.    What?

4 A.    Other than what I mentioned on direct.

5 Q.    I'm sorry. I don't know what you are referring

6        to?

7 A.    Lighting conditions, weather conditions,

8        exhaustion.

9 Q.    Well, did any of them tell you they were

10      exhausted?

11 A.   Independent recollection, I don't remember.

12 Q.    Okay. But, so to your knowledge, none of those,

13      Lenk, Colburn, Remiker, or --

14 A.   Tyson.

15 Q.    -- or Tyson, came to you and said, Hey, boss, I'm

16      beat; I'm just exhausted; I have to quit for the

17      night?

18 A.   When they were done, yes. At 10, 10:30, whatever

19      time they cleared that.

20 Q.    Did anybody of them ever come up to you and say,

21      we just got to quit, we're just too tired?

22 A.   Did they ever say that, no.

23 Q.    All right. This Steven Avery trailer had no

24      attic, did it?

25 A.   No.

1 Q. Had no basement?

2 A. There may have been a crawl area, crawl space,  
3 but I'm not sure.

4 Q. Okay. So if we take the dimensions of about  
5 14 feet wide, by 50, that's maybe 700 square  
6 feet?

7 A. If you say so.

8 Q. That's a really small area for a search, isn't  
9 it?

10 A. Depends what you are looking for.

11 Q. Well, by Saturday, November 5th, you had cadaver  
12 dogs on that property, didn't you?

13 A. Yes.

14 Q. You were searching not only for Teresa alive, you  
15 also were contemplating the possibility she was  
16 not alive, right?

17 A. Correct.

18 Q. So your investigation, in part, was a potential  
19 homicide investigation, even then, was it not?

20 A. Yes.

21 Q. Did you ever take any of those cadaver dogs into  
22 Mr. Avery's trailer?

23 A. Yes.

24 Q. And did the dog alert on any part of his trailer?  
25 He did not, did he?

1 A. I don't believe so.

2 Q. And you said the dogs were kind of all over the

3 property, right?

4 A. Yes.

5 Q. This was Saturday, November 5th?

6 A. I was aware, because I was with one dog, where we

7 went, and I know that there were some other dogs

8 that swept through the buildings, and I believe

9 they were then utilized to sweep through the

10 salvage yard.

11 Q. Okay. And because you were a co-leader, you

12 would be told if there were any areas where these

13 dogs were alerted?

14 A. Myself or Investigator Wiegert.

15 Q. Okay. And the whole purpose of these dogs is

16 that they are trained to be able to -- I don't

17 know whether it's scent, or whatever training it

18 is, but they can assist in locating blood, as

19 well as deceased bodies?

20 A. The theory -- Yeah, the theory is, human blood or

21 cadavers.

22 Q. And I think you used the dogs only that one day,

23 Saturday?

24 A. No.

25 Q. You used them throughout the?

1 A. They were brought back on other occasions, along  
2 with bloodhound.

3 Q. And isn't it true, that none of those dogs ever  
4 alerted on a burn pit, behind Mr. Avery's  
5 detached garage?

6 ATTORNEY FALLON: Objection, relevance.

7 THE COURT: Mr. Buting.

8 ATTORNEY BUTING: He's talking about  
9 ability to search, and where to search, and what his  
10 resources are, and he brought up the dogs on direct.

11 THE COURT: Mr. Fallon?

12 ATTORNEY FALLON: Just because -- I don't  
13 see how that's relevant to the multiple execution  
14 theory or the resource issue. The fact that they  
15 used dogs, yes, that's admitted, they used dogs. So  
16 what. Whether the dog hit on the burn pit or not,  
17 how does that add to the -- why does that make  
18 something more probative, more relevant, more  
19 material?

20 ATTORNEY BUTING: Then why were we bringing  
21 it up in the first place. It's a resource issue  
22 that I can explore on cross-examination.

23 THE COURT: It's a resource that he used  
24 the dogs. And the questions about how often he used  
25 them and what they were used for, is fine. But

1           whether or not he hit on this particular case,  
2           again, that's an issue that may be highly relevant  
3           for the trial, but I don't think it's particularly  
4           probative on this motion. So, I'm sustaining the  
5           objection.

6       Q. (By Attorney Buting)~ Let me ask it this way.  
7           When the dogs would alert on something, that  
8           would cause you to devote some resources, you or  
9           Wiegert, to devote some police resources to then  
10          start searching, right?

11      A. Certainly.

12      Q. And that would, potentially, include evidence  
13           collection officers if, upon search, they found  
14           something that looked like it was of evidentiary  
15           value, right?

16      A. Yes.

17      Q. And you talked about, for instance, a suspected  
18           clandestine grave site, right?

19      A. Yes.

20      Q. The dogs alerted on that?

21      A. Yes.

22      Q. And you took a team over and you spent some time  
23           working on that?

24      A. Yes.

25      Q. And it ended up being -- In fact, you were very

1           seriously thinking that this was potentially a  
2           new grave site and that Teresa's body might even  
3           be in there, right?

4       A. Yes.

5       Q. So you pulled a bunch of people over there to go  
6           look at it?

7       A. To deal with it, yes.

8       Q. Okay. And then it ultimately determined -- was  
9           determined to be nothing of value, correct?

10      A. Correct.

11      Q. So tell me, during that week, did you have to  
12           take your resources, your evidence collection  
13           team, to the burn pit behind Mr. Avery's garage,  
14           before November 8th? On the 5th, 6th, or the  
15           7th, did you have to take an evidence collection  
16           team to the burn pit behind Mr. Avery's garage,  
17           because a dog had alerted?

18      A. No.

19      Q. Thank you. Let me go back for just a minute. We  
20           were talking about search warrants you could have  
21           gotten. One of the search warrants you did get  
22           was for Mr. Avery's computer, right?

23      A. Yes.

24      Q. You believed at that time that the original  
25           warrant was not sufficient to allow you to seize

1                   the computer; is that why you went back?

2                   ATTORNEY FALLON: Objection,

3                   mischaracterization. He's already testified it was  
4                   not his decision to seek a renewal of the warrant.

5                   ATTORNEY BUTING: This is not a renewal.

6                   This is a different warrant.

7                   ATTORNEY FALLON: I'm sorry, is this the  
8                   November 9th or --

9                   ATTORNEY BUTING: No, this is the computer.

10                  ATTORNEY FALLON: Oh, I'm sorry, then I  
11                  withdraw it.

12                  THE COURT: I will allow the question.

13                  ATTORNEY BUTING: Could you read it back,  
14                  please.

15                  (Last question read back.)

16                  A. I would have to speculate. I don't think I was  
17                  involved in that decision, as it related to the  
18                  computer.

19                  Q. Who was?

20                  A. I would believe Investigator Wiegert, as the  
21                  other co-lead investigator, probably dealt with  
22                  that.

23                  Q. Did you ever see the affidavit, the application  
24                  for that warrant?

25                  A. Yes.

1 Q. And that included -- I mean, that was a warrant  
2 to permit a specific search within Mr. Avery's  
3 residence, right? Specific item?

4 A. I have seen it, but I don't really remember.  
5 There's a warrant to seize the computer, I  
6 imagine, and to search said computer.

7 Q. And there would have been nothing to prevent you  
8 or Investigator Wiegert, to, at that same time,  
9 seek an additional warrant to allow you to search  
10 his trailer?

11 A. I imagine.

12 Q. And that was November 7th?

13 A. Seventh or eighth. Obtained on the seventh?

14 Q. I believe so.

15 A. Okay. And served on the 8th, I believe, yes.

16 Q. These checkpoints that were set up were  
17 maintained either in their original spot, or in  
18 some similar close area, for the entire week of  
19 November 5th to the 12th, right?

20 A. Yes.

21 Q. Around the clock, correct?

22 A. Yes.

23 Q. Did you have a guard stationed outside  
24 Mr. Avery's trailer, around the clock, for the  
25 entire week?

1 A. I believe there was. Again, that would be more a  
2 question to the Lieutenants, Sippel or Bowe.

3 Partly from the fact that that was one of the  
4 corners of the property so, ultimately, there was  
5 someone there from almost minute one, because  
6 they had someone on each corner of that scene.

7 Q. So you had no concern about the -- somebody -- or  
8 somehow the scene being compromised while you  
9 went off to go get an additional warrant; that  
10 wouldn't have been a concern, would it?

11 A. That's correct.

12 Q. When I say additional warrant, I mean an  
13 additional -- potential, additional warrant for  
14 Mr. Avery's residence or garage?

15 A. Correct.

16 Q. You also got telephone search warrants, telephone  
17 record search warrants?

18 A. Subpoenas and search warrants, yes.

19 Q. And DNA?

20 A. Telephone records.

21 Q. Right, telephone records. And DNA search  
22 warrants?

23 A. Yes.

24 Q. Seeking -- In other words, requiring individuals  
25 to submit to examinations for DNA samples and all

1           of that?

2   A. Yes.

3   Q. Now, on November 9th -- I'm sorry, November 5th,  
4       6th, 7th, 8th and 9th, you permitted or, indeed,  
5       instructed Manitowoc Sheriff Department officers  
6       to go in and out of Mr. Avery's residence, right?

7   A. Yes.

8   Q. But after that second warrant was obtained, at  
9       4:40 p.m., November 9th, suddenly for the  
10      remaining three days, no Manitowoc officers were  
11      allowed to go into Mr. Avery's residence, or  
12      directed to go into Mr. Avery's residence?

13   A. I don't know, if it wasn't.

14   Q. You wouldn't dispute that, that there was --  
15      that, in fact, after a second warrant was  
16      obtained, you no longer had any Manitowoc  
17      officers go into his residence?

18   A. Do I not -- No, I don't dispute that.

19   Q. Did something happen? Were you -- Somebody tell  
20      you, Hey, maybe we better stop using Manitowoc to  
21      go into his office -- or his residence?

22   A. Not that I recall.

23   Q. Did you and Investigator Wiegert ever talk about  
24      it and say, Hey, maybe we better stop using the  
25      Manitowoc Sheriff people to go into Mr. Avery's

1           residence?

2   A.   No.

3   Q.   This rain that occurred on November 5th, what  
4       time did that start?

5   A.   There was an initial lighter rain, which would  
6       have been in the afternoon, between 3 and 4, some  
7       time. Then it bypassed, or stopped for a while,  
8       and I can't tell you when exactly it started at  
9       this time. Probably toward dark, after dark,  
10      right in there.

11   Q.   Now, there was nothing to stop your searchers  
12      from searching the buildings while it's raining  
13      outside, correct?

14   A.   Correct.

15   Q.   And you know, Mr. Avery's residence and garage  
16      weren't leaking rain -- or leaking water during  
17      the rain or anything of that sort, right?

18   A.   Right.

19   Q.   So, you can't say that the rain somehow prevented  
20      your searchers from completing their search of  
21      Mr. Avery's residence that night, can you?

22   A.   I factored it as a condition, when I'm  
23      determining whether or not I felt that search was  
24      adequately done and complete.

25           Number one, it's darker when it's

1 overcast and raining.

2 Number two, it's affecting -- I mean,  
3 there's wet, people going in and out of the  
4 trailer are bringing in wetness and stuff. I  
5 factored it.

6 Q. Well, the officers that you sent in there, or you  
7 and Wiegert sent in there, the four officers,  
8 into this little 700 square foot trailer, stayed  
9 in that trailer for 2 1/2 hours; they didn't come  
10 in and out, did they?

11 A. I don't know. If they had to go out to their  
12 vehicle to get collection devices, or storage  
13 things, I don't know.

14 Q. Well, indeed, the fact that it was raining, would  
15 have been a benefit to you, to assist you to --  
16 or to allow you to more quickly complete the  
17 searches of the buildings, because you could use  
18 all of your officers in those buildings, instead  
19 of spread out over 40 acres; isn't that right?

20 A. That evening, that's correct. We didn't have a  
21 lot of officers that evening.

22 Q. Well, how many officers did you have that  
23 evening? This is the first day that this thing  
24 is discovered, right?

25 A. Yes.

1 Q. You had helicopters flying over, doing aerial  
2 flyovers, right?

3 A. I think so, I'm not sure.

4 Q. You had officers coming in on their days off,  
5 right?

6 A. Yes.

7 Q. This was big news. We got this vehicle here.  
8 We're going at it, right?

9 A. Whatever officers we could get in that amount of  
10 time, we got, yes. Some were sent up to  
11 Marinette, some were out doing interviews that  
12 were important to do, and some were there.

13 Q. And were some also assigned to search the shop?

14 A. At some time during this search, yes.

15 Q. Were there other teams, on that night of November  
16 5th, available to search Mr. Avery's residence,  
17 other than the three Manitowoc officers you chose  
18 to put in there?

19 A. My answer would be speculative, and it would be,  
20 no. I was busy down in the pit. The decision  
21 would have been made by Mark -- or Investigator  
22 Wiegert that night. I knew our resources, our  
23 personnel, were not that many, so my answer would  
24 be, yes, it's speculation.

25 Q. So then your focus at the beginning was on

1           Mr. Avery's residence, of all those buildings,  
2           that was your initial focus?

3       A. Yes.

4       Q. That's where you wanted to send the team in,  
5           right?

6       A. That's where we started.

7       Q. And it was important for to you find -- At that  
8           point, you were certainly considering this to be  
9           a homicide investigation, potentially?

10      A. We were thinking dirty.

11      Q. Okay. That's a yes, is it not?

12      A. Yes.

13      Q. Okay. And so those officers were sent in there  
14           to look for any possible evidence, including  
15           trace evidence, that might indicate that Teresa  
16           Halbach was killed in that trailer?

17      A. Certainly.

18      Q. And they did, in fact, seize trace evidence,  
19           didn't they?

20      A. Yes.

21      Q. And they did, in fact, get down on their hands  
22           and knees and use lint rollers, and swab stains  
23           off of the floor, and all of that, didn't they?

24      A. Whether they got down on hands and knees, I don't  
25           know, but I would assume, yes.

1 Q. And when the Crime Lab told you that they thought  
2 there was maybe some other trace evidence that  
3 might be worth searching, or seizing, you didn't  
4 go and get a warrant on that basis, did you?

5 A. No.

6 Q. Nothing would have prevented you from going to a  
7 judge and saying, Hey, now I have got some  
8 additional evidence I can present to you. Crime  
9 Lab has gone in with their expertise and they  
10 found this spot or that spot, that should be  
11 seized?

12 ATTORNEY FALLON: Objection, asked and  
13 answered.

14 THE COURT: I don't recall if that specific  
15 question has been asked and answered. I will allow  
16 it.

17 A. No, nothing would have prevented that, other than  
18 I was still holding that scene.

19 Q. Now, you mentioned that as part of this  
20 intelligence and information you were getting,  
21 you specifically mentioned that Mr. Avery's  
22 story, initial story, was somehow inconsistent?

23 A. Yes.

24 Q. Give me examples of that, at that point I'm  
25 talking about. Give me examples of what was

1 inconsistent about his story.

2 ATTORNEY FALLON: Objection, foundational,  
3 relevance.

4 ATTORNEY BUTING: He's saying as part of  
5 his decision making, it's taking --

6 THE COURT: The objection is overruled.

7 That was given as one explanation for the actions of  
8 the witness, so I will allow the question.

9 A. Steven Avery's initial statement to, I believe  
10 Investigator -- or Sergeant Colborn, was that he  
11 never left his trailer, and that Teresa Halbach  
12 never came up to the trailer, he never spoke with  
13 Teresa Halbach.

14 Ultimately, we received information that  
15 Teresa Halbach was seen walking up to his  
16 trailer. We received information later,  
17 obviously, that he did talk to her.

18 Q. So you are saying, in his initial story, he said  
19 he never talked to her?

20 A. His initial statement to Sergeant Colborn was  
21 that he never spoke with Teresa Halbach. He  
22 never left the trailer. He watched her out of  
23 the window, of the trailer.

24 Q. Okay. And some subsequent information was  
25 that -- I'm sorry, you said someone saw her

1 walking up --

2 A. Subsequent interviews indicated that she was seen  
3 walking from her vehicle up to the trailer, and  
4 then that individual lost sight of her, and then  
5 when he went outside, she was gone, and the  
6 vehicle was still there.

7 Q. Who was this?

8 A. Bobby Dassey.

9 Q. Okay. And Bobby Dassey at one point was a  
10 possible suspect too, wasn't he?

11 ATTORNEY FALLON: Objection, relevance.

12 THE COURT: Sustained.

13 Q. (By Attorney Buting)~ On November 5th, when you  
14 got there, you said it was around 2 o'clock?

15 A. Yes.

16 Q. And you directed -- You drove down to the  
17 southeast corner of the property where the RAV 4  
18 was located?

19 A. By the car crusher, yes.

20 Q. And did you walk over to the RAV 4?

21 A. No, I viewed it from that distance, at that time.

22 Q. At some point, did you walk over to the RAV 4?

23 A. Yes.

24 Q. I believe you said you looked inside with a  
25 flashlight.

1 A. Yes.

2 Q. You were looking for -- to see if anybody was in  
3 there?

4 A. Yes.

5 Q. Did you see any blood?

6 A. No.

7 Q. Did you check the doors?

8 A. No.

9 Q. Did you touch it at all?

10 A. No.

11 Q. You put a tarp over it?

12 A. Yes.

13 Q. How long was that tarp on there?

14 A. No more than a half hour, probably.

15 Q. Do you know whether the tarp was on there when  
16 there were flyovers?

17 A. I don't know.

18 ATTORNEY BUTING: I have no other  
19 questions at this time.

20 THE COURT: All right. We'll take our  
21 lunch break at this time, and resume at 1:15.

22 (Noon recess taken.)

23 THE COURT: At this time we'll go back on  
24 the record. Mr. Fassbender, you are still under  
25 oath, and I believe Mr. Fallon is up for his

1 redirect.

2 ATTORNEY FALLON: Right, just a couple  
3 questions.

4 **REDIRECT EXAMINATION**

5 BY ATTORNEY FALLON:

6 Q. Now, as far as you know, in terms of utilizing  
7 personnel from other jurisdictions, Kucharski,  
8 Tyson, and Riemer are from Calumet County  
9 Sheriffs Office?

10 A. Yes.

11 Q. And they were placed on the evidence collection  
12 teams because they are evidence technicians?

13 A. Yes.

14 Q. Now, in terms of the Division of Criminal  
15 Investigation and the Wisconsin Department of  
16 Justice, in cases of homicides or other major  
17 offenses, the Crime Lab is, in fact, the evidence  
18 technicians or evidence collectors in those types  
19 of cases?

20 A. Yes. If I go to a homicide, I get called to a  
21 homicide, our evidence techs are the Crime Lab,  
22 that's who we take.

23 ATTORNEY FALLON: That's all I have for  
24 this witness.

25 THE COURT: All right, anything else?

1 ATTORNEY BUTING: No questions.

2 THE COURT: Witness is excused.

3 ATTORNEY FALLON: State at this time would  
4 call Lieutenant Kelly Sippel.

5 THE COURT: Very well.

6 THE CLERK: Please raise your right hand.

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

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

12 THE WITNESS: Kelly Sippel, S-i-p-p-e-l.

13 THE COURT: Counsel, before we proceed, is  
14 everybody in compliance with the sequestration  
15 arrangement here? Are there any other --

16 ATTORNEY FALLON: Yes, I only have one  
17 other witness and I believe he is out in the hall.

18 THE COURT: Okay.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY FALLON:

21 Q. Where are you employed?

22 A. Calumet County Sheriff's Department.

23 Q. How long have you been employed?

24 A. Since October 21st, 1981.

25 Q. What rank do you currently hold?

1 A. Lieutenant.

2 Q. How long have you been a lieutenant?

3 A. Since '94.

4 Q. All right. Prior to that, what duties or rank  
5 had you held?

6 A. Patrol officer, patrol duties, related to street  
7 level activities.

8 ATTORNEY BUTING: Judge, can I interrupt  
9 for one second?

10 THE COURT: Yes.

11 ATTORNEY BUTING: With regard to  
12 sequestration, I see that Investigator Wiegert is in  
13 back. I understand the State is not intending to  
14 call him; however, there may still be a possibility  
15 I would -- It's unlikely, but it's still possible I  
16 might call him after this, and I would ask that he  
17 be sequestered.

18 ATTORNEY FALLON: I can ask him to leave.

19 He's right, I wasn't going to call him.

20 THE COURT: Mr. Wiegert, we'll ask you to  
21 leave the courtroom then.

22 Q. (By Attorney Fallon)~ Directing your attention to  
23 the events of November 5th, 2005, were you called  
24 upon to assist in the execution of a search  
25 warrant at the Avery property, located here in

1           Manitowoc County?

2       A. Yes, I was.

3       Q. All right. Approximately what time did you first  
4           arrive upon the scene?

5       A. About 3:20 p.m., on the 5th.

6       Q. What were your duties?

7       A. Upon arriving at the scene, I was initially put  
8           with two other Manitowoc County investigators to  
9           assist in doing a sweep of the buildings on the  
10          property, in an attempt to locate the potential  
11          victim and/or other civilians that still may be  
12          on the property, to secure them off the property.

13      Q. All right. And how long did that particular duty  
14          take you, estimated time?

15      A. That went until about 5:30, 5:40 in the evening,  
16          on the 5th.

17      Q. All right. And once those duties were completed,  
18          what was your next assignment relative to the  
19          execution of the warrant?

20      A. At that point in time, I began to contact  
21          additional officers and staff from our  
22          department, in an attempt to secure and lock down  
23          the property, and start initiating shifts for the  
24          upcoming hours.

25      Q. All right. And so would it be fair to say that

1           you were assigned, or in charge of perimeter  
2           security?

3       A. That would be correct, of the inner perimeter.

4       Q. All right. Just so that we're clear, what would  
5           be the inner perimeter; first directing your  
6           attention to Exhibit 18, which is on the easel  
7           resting on the jury box?

8       A. We took the inner perimeter utilizing the roadway  
9           at the top of the map. If you would like I can  
10           go over.

11      Q. You can have that, I think we have a laser  
12           pointer there for you.

13      A. Above this roadway, there is a fence line located  
14           here.

15      Q. And you're pointing to the roadway which goes  
16           east, west across --

17      A. Travels east and west, due north would be to the  
18           top of the photograph.

19      Q. All right.

20      A. We also had the roadway here, but we had another  
21           fence line or berm, a property divider,  
22           basically.

23      Q. Now, you are referring to the east?

24      A. East.

25      Q. East of the property.

1       A. And then the western half of the property, there  
2                  was another berm, and beyond that berm, it went  
3                  into some open gravel pit areas. And pretty much  
4                  the same across the bottom half of the property  
5                  here. And then we made a containment within this  
6                  general area.

7       Q. All right. Now, briefly, if I may direct your  
8                  attention to Exhibit 19, which is behind you.  
9                  And can you locate Exhibit 18, within the  
10                 confines of Exhibit 19?

11      A. This would be the property in question right  
12                 here.

13      Q. All right. Now, in terms of the perimeter  
14                 security here, starting Saturday night, what  
15                 efforts did you undertake?

16      A. Prior to my arrival on the 5th, the vehicle had  
17                 been located in this lower southeast quadrant of  
18                 the property. We had assigned a deputy to stay  
19                 at this location during the processing and the  
20                 removal of that vehicle.

21                  We also had about -- I believe it was  
22                 around 1:30 in the afternoon, they had assigned  
23                 an officer to stay in this quadrant of the  
24                 property, in regards to the buildings here. That  
25                 officer was relieved at about 1430 hours by

1 another officer. And then --

2 Q. I'm going to stop you right there. The last  
3 quadrant, that would be the northwest quadrant?

4 A. This would be the northwest corner of the  
5 property.

6 Q. All right. That's the area for which Mr. Avery's  
7 trailer, and garage, and his sister, Barbara's,  
8 residences are located?

9 A. That would be correct.

10 Q. All right. Please continue, you said after that  
11 area.

12 A. I had -- At this point, we had set up a command  
13 post at the intersection here, coming off of  
14 Avery Road and where these two roads come off of  
15 that, heading south. And at approximately 7 or 8  
16 o'clock in the evening, a sergeant from the  
17 Manitowoc County Sheriff's Department informed me  
18 of the area located in the southwest quadrant,  
19 that vehicular traffic may be able to get into  
20 the property.

21 Q. All right. Now, you just pointed to Exhibit 19,  
22 so you are referencing what would be the  
23 southwest corner of the property?

24 A. That's correct.

25 Q. All right. Once you learned that, what steps did

1           you take?

2       A. Both him and I, then, went around to that, to  
3           take a look at what kind of access or easement  
4           there would be into this particular area, and  
5           determined that the vehicular access would  
6           basically incur in this corner. At that point in  
7           time, we made arrangements to cover that corner,  
8           as well, with an officer.

9       Q. All right. And when you covered the area with an  
10          officer, can you tell us what you meant by that?

11      A. We placed -- We were able to place a patrol  
12          officer at that location for the remainder of the  
13          week, 24/7.

14      Q. All right. Now, if I may, for a moment,  
15          Exhibit 18 is a photograph with a flight date of  
16          November 11th. I draw your attention, first of  
17          all, to this corner, on the southwest side. Do  
18          you recognize what is depicted there?

19      A. Yeah, this would be one of the units or patrol  
20          vehicle that we used for staffing that corner.

21      Q. Now, is that -- would that be a typical location  
22          where a perimeter security was set up for that  
23          southwest corner?

24      A. That is correct. There was -- there is a -- this  
25          line that you see here is an old rail, overhead

1 rail.

2 Q. Yes.

3 A. The unit would either be on one side, or the  
4 other side, of that rail.

5 Q. Now, with respect to the upper quadrant, there is  
6 a vehicle, which is depicted right here,  
7 underneath the sign, Plymouth Voyager?

8 A. That's correct.

9 Q. Or the arrow points elsewhere, what is that  
10 vehicle?

11 A. That is also a patrol unit that was used. Those  
12 cars change periodically depending upon who was  
13 covering that corner. But during the day we  
14 would have the officer back up and allow the  
15 investigators to do their work throughout this  
16 area. Then at night we would move that patrol  
17 car closer into the buildings, in about this area  
18 here.

19 Q. All right. So, you are pointing to an area which  
20 is directly in front of the residence of Steven  
21 Avery, the garage; is that correct?

22 A. That's correct.

23 Q. All right. Now, how about in the southeast  
24 corner, were there evidence of -- on this  
25 photograph, for instance -- where it's

1 exemplifying perimeter security placement?

2 A. That's correct. We have a patrol car located  
3 right here. This car would utilize this corridor  
4 through here, through the day, and through the  
5 evening, to cover this berm area.

6 This is an area that goes up, be  
7 estimating 60 feet, an upward climb, basically,  
8 to a hay field. And there was a bit of berm back  
9 here. And he was -- he or she was able to cover  
10 this corner and watch those berms.

11 Q. All right.

12 A. At night, the first two days, we actually had  
13 that lit even.

14 ATTORNEY BUTING: Could we just let the  
15 record reflect that when he was pointing to the  
16 southeast corner, talking about a berm along the  
17 south edge of the property; where were you talking?

18 THE WITNESS: There's two berms. There's a  
19 higher berm of approximately 60 feet or better,  
20 located along this edge. And then there's a  
21 shallower --

22 ATTORNEY BUTING: This edge being the  
23 eastern edge?

24 THE WITNESS: That would be the eastern  
25 edge.

1 ATTORNEY BUTING: Okay.

2 THE WITNESS: And then along this southern  
3 edge here, there is another berm that goes up  
4 approximately anywhere from -- it varies, you know,  
5 10, 15, 20 feet and then drops down into another  
6 quarry, an actual old gravel or sand pit quarry.

7 ATTORNEY BUTING: That's fine.

8 ATTORNEY FALLON: Thank you.

9 Q. (By Attorney Fallon)~ All right. And in terms of  
10 the northeast corner, what was happening there?

11 A. The northeast corner, on Saturday, the 5th, right  
12 about in this area, we had a command post set up.

13 Q. Just for identification purposes, that's an area  
14 to the right of the exhibit sticker and slightly  
15 north --

16 A. Yeah.

17 Q. -- of the number three?

18 A. It would be just adjacent to the number three.

19 You can just kind of catch it on the photograph,  
20 where we had the command post.

21 Q. All right. And now, in terms of perimeter  
22 security, were there any other command post  
23 locations, or anything that were -- that you  
24 utilized?

25 A. Saturday we, and in through Saturday evening, we

1 utilized this command post. And Sunday morning  
2 the Calumet County Sheriff's Department brought  
3 in our own command post and we reorganized at  
4 this location here, utilizing this command post  
5 for the investigators, and this command post  
6 became command security, basically, for the  
7 property.

8 Q. All right. Would you put your initials on that  
9 particular -- All right. Thank you. And you put  
10 your initials -- For the record, what initials  
11 did you put on there?

12 A. K.S.

13 Q. K.S. Thank you. All right. Now, in terms of  
14 the perimeter security here, who else, if anyone,  
15 assisted you in performing those duties?

16 A. The interior perimeter was pretty much maintained  
17 by employees of the sheriff's department, with  
18 assistance from various other agencies when we  
19 couldn't fill staffing gaps. Basically, we had  
20 to rely on other municipal agencies to assist us  
21 on that, on the inner perimeter.

22 Referring to the map behind me, the  
23 exterior perimeter, being the highway and the  
24 roadways around the adjacent acreage, was  
25 maintained by the Wisconsin State Patrol and

1                   managed by the State Patrol. And they were also  
2                   assisted by various sheriff's departments and  
3                   municipal agencies.

4       Q. All right. Now, in terms of returning then,  
5                   again, to Exhibit 18, these postings on the four  
6                   corners of the property, was there always a car  
7                   there during the course of the week long  
8                   occupation of the property?

9       A. That is correct.

10      Q. All right. And during the course of the week,  
11                  were any artificial lights or anything used  
12                  during the evening hours to assist in keeping an  
13                  eye on things?

14      A. That is correct. In this lower quadrant here, in  
15                  the southeast quadrant, we did have lights set up  
16                  to cover these berms coming into the property,  
17                  where we could actually light up the physical  
18                  berm to see anybody breaching from the top.

19      Q. All right. At any point did those lights move,  
20                  or were they utilized for any other purpose?

21      A. As the week went on, through searching -- we  
22                  started searching properties adjacent to the 40  
23                  or so acres involving our inner perimeter. And  
24                  we started finding items what we felt that might  
25                  be evidentiary purpose -- or needed for

1           evidentiary purposes, and quarries to the  
2           southwest of the property.

3           At that point, mid-week, going into  
4           Thursday, we started putting officers, additional  
5           officers, on those evidence areas, until we could  
6           physically recover. Then we began to light these  
7           quarry areas as well, at that point.

8 Q.       And what was the purpose of that?

9 A.       To secure, basically, the evidence or what we  
10          felt was evidence, that we were finding in those  
11          quarries.

12 Q.       All right. Now, in terms of overall -- although  
13          not your primary function, were you aware of  
14          where certain checkpoints were located on the  
15          surrounding roads?

16 A.       Referring to the map behind me, primary  
17          checkpoints --

18 Q.       That's Exhibit 19 --

19 A.       Exhibit 19.

20 Q.       -- for the record.

21 A.       I'm not sure how to pronounce the community,  
22          Larrimore, I believe, or Laramore, I'm not quite  
23          sure. It's a small community just off this  
24          particular photo, where the highway meets here  
25          with another county trunk. And the primary

1           checkpoint for the exterior perimeter was located  
2           there.

3       Q.    And that's Highway 147. And is the road that it  
4           intersects with, is that -- any part of that road  
5           depicted on the exhibit?

6       A.    This part of the map here, or photograph, you can  
7           see a portion of that roadway.

8       Q.    All right. And you are referring to Exhibit 19,  
9           the road that runs diagonally across the south --

10      A.    Quadrant.

11      Q.    Southwest quarter.

12      A.    And then they had an officer located at this  
13           intersection here. And this intersection was  
14           also blocked at this location. And Manitowoc  
15           County Sheriff provided an officer at the north  
16           end of Avery Road, at 147, to manage individuals  
17           coming in and out of the crime scene.

18      Q.    All right. Now, in terms of access, was the  
19           inner perimeter, as you say that you were  
20           responsible for, was security maintained for the  
21           entire seven days?

22      A.    Correct.

23      Q.    All right. At any time -- Well, let's ask this  
24           question. You, yourself, in charge of perimeter  
25           security, were you at the property the entire

1           seven days?

2   A.   No.

3   Q.   All right. Who else filled in your duties when  
4        you were not there?

5   A.   I was relieved by Lieutenant Bowe of the Calumet  
6        County Sheriff's Department.

7   Q.   All right. And in terms of that, how did you and  
8        Lieutenant Bowe organize or supervise those  
9        responsible for perimeter security?

10   A.   We would supervise the security from the command  
11       post. We would work approximately 30 hour  
12       shifts. I would -- Lieutenant Bowe relieved me  
13       Sunday morning. I stayed on Sunday morning, the  
14       6th through the 7th, where we worked together in  
15       trying to organize staffing as we were going on.  
16       Approximately 6, 7 p.m., on Sunday evening, I  
17       left. And then I would return on Monday morning  
18       to relieve Lieutenant Bowe, who then would leave  
19       sometime late afternoon, on Monday, early  
20       evening.

21           So we always had a portion of at least 8  
22       hours, the two of us working together, trying to  
23       formulate and create and keep the security. And  
24       then we always would have one of us working the  
25       night shift.

1 Q. All right. And during the course of the week, to  
2 your knowledge, were there any attempts by other  
3 individuals, none law enforcement people, to come  
4 in and see what's going on?

5 A. If I could refer to Exhibit 19, behind me, we did  
6 have several attempts. First attempt would have  
7 occurred, an incursion by the press, from this  
8 farm located to the southeast of the property.

9                   The press did come in and park at this  
10 farm. And as the individual was walking across  
11 this field, and as he began to breach the berm,  
12 the officer at this location observed that  
13 breach, contacted the command post. I then left  
14 on an ATV, made contact with that press  
15 individual, on that berm, prior to him setting  
16 up. Removed him and walked him back to the farm,  
17 to his vehicle, identified him, and removed him  
18 from that area.

19 Q. As a result of that incident, were there any  
20 additional precautions taken, with respect to  
21 perimeter security?

22 A. At that point we then -- this town road, I  
23 believe, that travels north and south here, was  
24 then closed by the Manitowoc Sheriff's  
25 Department, to local travel only at that point.

1 Q. All right. Any other concerns, or possible  
2 interested bystanders who approached the area  
3 while it was under your control?

4 A. We had another attempt by two individuals, two  
5 local residents, curious residents, who as they  
6 were coming down this fence line, approaching  
7 from 147, from the north, heading south to the  
8 northwest corner of the property, they got to  
9 about halfway down this fence line when officers  
10 from the command post area, as well as officers  
11 that were working within the interior scene,  
12 started to move towards them.

13 They then retreated up the fence line,  
14 and were apprehended by Manitowoc Sheriff on a  
15 driveway just off of 147. They were placed in  
16 handcuffs, returned to my location at the command  
17 post. I identified them, warned both individuals  
18 that a return to the property would result in  
19 their arrest.

20 Q. All right. Were they then escorted back to  
21 beyond the checkpoint?

22 A. They were then escorted back out, up to the  
23 checkpoint, back out to 147.

24 Q. All right. Now, at night time, just so that  
25 we're fair here, is it conceivable or possible,

1           that there could have been a perimeter breach?

2           Could someone have hoofed it in, so to speak?

3       A. It's very possible that somebody coming in from  
4           anyone of the quarries or wooded areas, could  
5           have breached by foot.

6       Q. All right. Is that the reason why lights were  
7           then placed down in the quarry area, later on in  
8           the week?

9       A. Initially, those lights were placed at the  
10           vehicle location, for the vehicle. And then we  
11           began to use them when the vehicle was removed,  
12           for that purpose.

13       Q. All right.

14       A. And, secondarily, at the command post here, we  
15           had a state trooper sergeant at the command post.  
16           He would relieve his staff for breaks and  
17           bathroom breaks and meal breaks. And when he  
18           would return, I would travel, or Lieutenant Bowe  
19           would travel, through the property, periodically,  
20           at night, and relieve our staff on the corners  
21           for breaks and meals and so forth.

22       Q. During the course of the week, was it difficult  
23           to navigate through the property to get from one  
24           side to the other?

25       A. Unfortunately, on Saturday evening, we had a

1 heavy rainstorm and the roadways within this area  
2 here filled, at locations, with water. Most  
3 became fairly impassable -- you can see some of  
4 the water still in some of the locations on this  
5 photo -- with passenger vehicles.

6 We, as an agency, did have a four-wheel  
7 drive Explorer. And that first day or two, we  
8 did travel through, but because of how difficult  
9 it became at times, we then, when we had to move  
10 out to this location, we quite often went all the  
11 way around the perimeter and off of the county  
12 trunk here, through the quarries. But, yes, it  
13 was difficult at times.

14 Q. All right. And do you have any approximate  
15 estimate for us, approximately how many officers  
16 you utilized or were assisting you, in just the  
17 task of perimeter security?

18 A. Everyday, 24/7, we always had security here,  
19 officer in this corner, this corner, and the  
20 southeast corner. And then throughout the day,  
21 due do searching, evidentiary reasons, there were  
22 officers throughout the property as well.

23 And then we had the exterior covered,  
24 you know, by other agencies. I would have to  
25 resurrect logs to determine exactly how many

1                   officers was on the security.

2 Q. All right. Now, one moment.

3                   ATTORNEY FALLON: I have no other questions  
4                   for the witness.

5                   ATTORNEY BUTING: No cross, your Honor.

6                   THE COURT: Okay. The witness is excused.

7                   THE WITNESS: Thank you.

8                   THE COURT: The State may call it's next  
9                   witness.

10                  ATTORNEY FALLON: Yes, we're -- I'm going  
11                  to call Lieutenant Bowe.

12                  THE CLERK: Please raise your right hand.

13                  **LIEUTENANT BRETT BOWE**, called as a  
14                  witness herein, having been first duly sworn, was  
15                  examined and testified as follows:

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

18                  THE WITNESS: Brett Bowe, B-o-w-e.

19                  DIRECT EXAMINATION

20 BY ATTORNEY FALLON:

21 Q. What do you do for a living?

22 A. I work for the Calumet Sheriff's Department as a  
23 deputy.

24                  THE COURT: Mr. Bowe, can you move the  
25                  microphone over, please.

1 Q. (By Attorney Fallon)~ Say that answer again.

2 A. I work for the Calumet Sheriff's Department as a

3 deputy.

4 Q. All right. What rank do you currently hold?

5 A. Patrol lieutenant.

6 Q. All right. How long have you been so employed

7 with Calumet County?

8 A. Sixteen years I have been there.

9 Q. And how long have you held the rank of

10 lieutenant?

11 A. Almost two years.

12 Q. What were your previous duties?

13 A. Prior to that, I was a patrol sergeant. Before

14 that, I was a patrolman. And I was a jailer for

15 a year and a half.

16 Q. All right. Directing your attention now to the

17 week of from November 5th to November 12th, were

18 you involved at all in the execution of a search

19 warrant on the property of the Avery Auto Salvage

20 Yard and the residences located therein?

21 A. Yes, I was.

22 Q. And in what role or capacity did you have with

23 respect to that?

24 A. I was in charge of the command post.

25 Q. All right. And specifically, what duty were you

1 assigned?

2 A. My main duty was to guarantee security on the  
3 property, and also to coordinate the searches.

4 Q. All right. And in terms of the security, who  
5 else did you share those responsibilities with?

6 A. Lieutenant Sippel.

7 Q. All right. And in terms of yourself and  
8 Lieutenant Sippel, how did you work? In other  
9 words, were you both there at the same time,  
10 alternating shifts? What did you do?

11 A. During the day, we were there at the same time.  
12 He started on Saturday morning, I arrived Sunday  
13 morning. He left Sunday night, I would have  
14 stayed through the night. He would have come  
15 back Monday morning and then I would have left  
16 Monday night. And we kept alternating that way.

17 Q. All right.

18 A. So we were both there during the day.

19 Q. All right. We have heard some testimony already  
20 from Lieutenant Sippel, so I don't want to repeat  
21 that, but I have a question for you, are you  
22 familiar, yourself, with any attempted breaches  
23 of the security that you were involved in, in  
24 ferreting out?

25 A. Yes, I am.

1 Q. Tell us about that.

2 A. There were three that I was aware of. There was  
3 one that I was personally involved with.

4 Q. All right.

5 A. Is that the one you want?

6 Q. If need be, there should be a laser pointer in  
7 front of you and there's an exhibit to your  
8 immediate right and one behind you. In terms of  
9 the incident you were involved in, tell us about  
10 that.

11 A. The incident I was involved in, the officer that  
12 was stationed down in the southeast corner  
13 notified us that he had observed a person on the  
14 berm, to the south, which would have been located  
15 a little further south than what this map shows.

16 Q. All right. And you just briefly turned and  
17 pointed to Exhibit 19, the one on the chalkboard?

18 A. Yes.

19 Q. All right. And if that assists you better, tell  
20 us about what you -- what incurred -- occurred,  
21 excuse me.

22 A. The officer indicated that there was an  
23 individual just south, on top of the berm. I  
24 proceeded around to the quarry and got up on top  
25 of the berm. And I could see a set of footprints

1           that came along there.

2           They were approximately 20 yards south  
3           of the southeast corner of the property. And I  
4           saw that the footprints led to a residence that  
5           was just to the east of where the footprints  
6           were. So I followed them up to that residence.

7       Q. All right. And were you able to ascertain who  
8           was responsible for the footprints and/or the  
9           attempted entrance?

10      A. I spoke with a gentleman there who indicated that  
11           his wife had just left for work. He indicated  
12           that she had gone out and had fed their dog and  
13           was gone for approximately five minutes. And  
14           that he had heard her car leave at that time and  
15           that that was the only person on the property  
16           that could have been back where we were.

17      Q. All right. In terms of your particular time,  
18           while you were in charge, were there any other  
19           attempted entrances to the -- the inner  
20           perimeter, as it's been described?

21      A. Yes, there were. There was an individual that  
22           was also in the southeast corner, further north,  
23           so they would have been just east of the  
24           property. And Lieutenant Sippel addressed that.  
25           That was a member of the media.

1                   And then there were two gentleman that  
2                   came in from the north, on the west side of the  
3                   property, were walking a line fence down, and I  
4                   believe they made it about two-thirds of the way  
5                   down through the 40 acre field. And when they  
6                   saw numerous officers approaching them, they  
7                   turned and headed back toward the north. And  
8                   they were apprehended --

9                  Q. All right.

10                 A. -- north of that property.

11                 Q. All right. And during your time, when you were  
12                   solely in charge of the -- of the perimeter, were  
13                   there postings at each corner of the perimeter;  
14                   in other words, was there, the euphemism of  
15                   today, 24/7 security?

16                 A. Yes, there was.

17                 Q. All right.

18                   ATTORNEY FALLON: That's all.

19                   THE COURT: Mr. Buting, any questions?

20                   ATTORNEY BUTING: None.

21                   THE COURT: Witness is excused.

22                   ATTORNEY FALLON: I believe Exhibits 18 and  
23                   19 have already been received, so that being the  
24                   case, just in the odd chance they aren't, I would  
25                   move for their introduction. And secondly, we would

1 rest the presentation of our evidence on this issue.

2 THE COURT: All right. With respect to 18  
3 and 19, have they been admitted?

4 THE CLERK: Yes.

5 THE COURT: All right. They are already  
6 admitted. Any rebuttal witnesses from the defense?

7 ATTORNEY BUTING: None. Are there any  
8 exhibits that are not admitted? I should --

9 THE CLERK: Everything is received.

10 ATTORNEY BUTING: Everything is received.

11 Okay. Thank you.

12 THE COURT: All right. Does that conclude  
13 the witnesses then, for all the outstanding motions  
14 at this time.

15 ATTORNEY STRANG: The only thing I will add  
16 is, I should have thought to do this yesterday when  
17 I had Mr. Glynn on the stand, but I will make an  
18 offer of proof on what his answer would have been,  
19 had the hearsay objection not been sustained. I  
20 expect Mr. Glynn would have testified that, as he  
21 had said something to the effect that, he had told  
22 Mr. Avery that he wanted Mr. Avery to tell the  
23 officer that he didn't wish to speak to the officer  
24 without a lawyer.

25 And Mr. Avery agreed to say that, with

1                   the cellphone still -- the line still open, and  
2                   Mr. Glynn heard that. He thinks before Mr. Avery  
3                   got into the car, heard Mr. Avery saying to  
4                   somebody, you know, nearby, I don't want to talk  
5                   to you any more without my lawyer, or words to  
6                   that effect.

7                   THE COURT: All right. Is that --

8                   ATTORNEY FALLON: Obviously, we still hold  
9                   to our objection.

10                  THE COURT: Let me ask this, is that  
11                  something that was on the CD transcript?

12                  MR. STRANG: It's not on the transcript  
13                  but, you know, the tape goes off and then comes back  
14                  on as Avery, I think, is probably getting into the  
15                  car.

16                  THE COURT: Okay. So that's a statement,  
17                  had it been admitted, that the defense would have  
18                  contended came in between parts three and four of  
19                  the tape recorded --

20                  MR. STRANG: That's my best inference.  
21                  That's an inference only.

22                  ATTORNEY FALLON: Then I have a second  
23                  objection to that. And the second objection is,  
24                  that's speculation on the part of Mr. Glynn, as to  
25                  when that occurred relative to the getting into the

1                   vehicle or the turning on the tape, because he  
2                   wasn't there. So, now I have another grounds to  
3                   object.

4                   THE COURT: Okay. I didn't understand that  
5                   Mr. Glynn would have said that. I understood --

6                   MR. STRANG: Glynn thought it was before  
7                   Avery -- If you assume Avery was out of the car,  
8                   Avery says it right away, you know, before he would  
9                   have had a chance to go an open a car door. Glynn  
10                  doesn't hear car doors opening and there's no pause  
11                  in there.

12                  THE COURT: All right. I would like to  
13                  take a short break at this time, to meet with  
14                  counsel and determine what else we're going to do  
15                  today.

16                  ATTORNEY KRATZ: Judge, could we have just  
17                  one moment.

18                  THE COURT: Yes.

19                  ATTORNEY FALLON: Judge, before we do that,  
20                  I would like you to make a record on two points  
21                  since it appears that the testimonial part of this  
22                  motion has now ended. With respect to the Franks  
23                  motion and, more importantly, with respect to the  
24                  State's challenge to his standing to even raise a  
25                  challenge, that you engage in a colloquy with the

1 defendant, Mr. Avery, that he did, in fact, have a  
2 right to take the stand and assert his reasonable  
3 expectation of privacy in any of the locations  
4 subject to the search.

5 Secondly, we would ask the Court to  
6 engage in a second colloquy with the defendant,  
7 relative to the circumstances surrounding the  
8 taking of this statement by the Marinette  
9 detective, Anthony O'Neill. If he had the right  
10 to testify, he had the right to say, in his mind,  
11 what occurred and when things occurred,  
12 vis-a-vis, that statement. And he apparently has  
13 chosen not to. So I would ask that you engage in  
14 a colloquy with Mr. Avery, on both of those  
15 matters, before we close and move to argument.

16 THE COURT: Let me --

17 ATTORNEY STRANG: May I -- I'm sorry.

18 THE COURT: Just a second, before I give  
19 you a chance to speak, Mr. Strang. Your first  
20 request, Mr. Fallon, was to what, the right to  
21 privacy to?

22 ATTORNEY FALLON: His right to testify,  
23 relative to his right to challenge the search  
24 warrant. We had objected, demanded that he  
25 establish standing to challenge the warrant and,

1 thus, standing to bring the Franks motion. So,  
2 obviously, he has that right and he has chosen not  
3 to exercise it.

4 So that would be the first colloquy,  
5 that that was a decision that he made with,  
6 presumably, advice of counsel, that he's given up  
7 his right to testify and offer his point of view.  
8 That's the first one. And the second one is, his  
9 right to testify regarding the motion to suppress  
10 the statement to Detective O'Neill.

11 THE COURT: All right. Mr. Strang.

12 ATTORNEY STRANG: I understand and  
13 appreciate that the flow of Wisconsin law, in the  
14 last 15 or 20 years, has advanced steadily toward  
15 inserting the Court ever more frequently into  
16 strategic decisions and decisions on which witnesses  
17 to call, or whether to call the defendant in a  
18 pretrial matter, and so I understand full well why  
19 the State makes the request that it does.

20 I also acknowledge that I have invited  
21 the Court, on at least one or two occasions so  
22 far, to engage in a colloquy with Mr. Avery,  
23 where we were requesting some relief or some  
24 indulgence. And I thought that would be the  
25 better way to make a record, or to make clear

1           that this was done with the accused's personal  
2           consent.

3           That said, I'm not aware of any  
4           authority here that would invite the Court to  
5           insert itself, at this point, in the decision on  
6           what witnesses to call on pretrial matters, or on  
7           foundational matters in the case of the standing  
8           question, or personal interest in privacy on a  
9           pretrial motion.

10          And I think that, you know, obviously,  
11         Mr. Avery has been present here. The record has  
12         reflected that all along. He's been awake. He's  
13         been an active participant at the defense table.

14          But I don't think it's a wise move to --  
15         to have the Court, or then the adversarial party,  
16         involved in every decision in the defense camp  
17         about what witnesses to call or how,  
18         strategically, to handle the pretrial motion.  
19         So, you know, while the Court will do as it sees  
20         fit, I don't think a colloquy on either of these  
21         points is either required or appropriate under  
22         the circumstances.

23          THE COURT: Let me -- Mr. Fallon, I'm not  
24         sure -- I understand what you are saying about the  
25         motion to suppress the statement to Officer O'Neill;

1 I'm not sure with respect to the Franks motion.

2 ATTORNEY FALLON: The Franks motion is  
3 ancillary. The real issue is, does he have the  
4 right to even bring a Franks motion. Does he have  
5 standing to challenge the search? And he has to  
6 establish standing by a preponderance of the  
7 evidence. That's his burden.

8 And if it's the defense burden, then,  
9 one rightly ought to assume that he has the right  
10 to testify, to assert his constitutional  
11 interests. And if he's choosing not to, that's  
12 fine. I just want to make sure that it's his  
13 choice, presumably with the advice of counsel.

14 If not, we would be more than happy to  
15 accept a waiver of any subsequent claim in the  
16 future of ineffective assistance of counsel for  
17 not putting their client on the stand, for  
18 purposes of completing the record on these two  
19 motions.

20 THE COURT: All right. I want to make sure  
21 that I'm understanding your point on the Franks  
22 motion correctly. I understand, and I believe the  
23 State has already asserted that the motion that was  
24 filed by the defense did not constitute a  
25 substantial preliminary showing that a false

1 statement had knowingly and intentionally been made,  
2 or a statement with reckless disregard for the  
3 truth; you have made that motion, have you not?

4 ATTORNEY FALLON: Yes, relative to the  
5 Franks aspect of this.

6 THE COURT: Right. And argued that the  
7 Court should not have even conducted an evidentiary  
8 hearing because the defense motion does not meet  
9 that initial plateau to be entitled to a hearing.

10 ATTORNEY FALLON: That's the second  
11 argument. The first argument, they didn't have  
12 standing to bring a Franks motion, except as it  
13 pertains to the trailer and the garage. His  
14 residence, the trailer. And the garage.

15 THE COURT: Okay.

16 ATTORNEY BUTING: Judge, it's the same  
17 warrant. Mr. Fallon has been making this argument  
18 for two days now. And the warrant, it's the same  
19 warrant; it involves his trailer as well as all the  
20 property. So, how can he say he doesn't have  
21 standing to challenge a warrant that has his trailer  
22 residence on it.

23 THE COURT: Well, I suppose the State could  
24 argue that the Court should find in the State's  
25 favor, and in the alternative, if the Court doesn't

1           find in the State's favor, it should only sustain  
2           the argument made by the defense as it relates to  
3           the trailer and the garage. I mean, I don't know if  
4           that's where we're heading or not.

5           One of the things I was going to discuss  
6           with counsel in chambers was what we were going  
7           to do from here forward. And one of those was  
8           going to be, to hear your arguments, because I  
9           believe I told Mr. Fallon I would hear his  
10          argument, which I have not heard yet.

11          ATTORNEY FALLON: That's right. So our  
12          only question is, is it seems to me that wisdom  
13          would suggest that we take colloquy from the  
14          defendant so that we're sure that he had the right  
15          to testify on these matters, if he wanted to, and  
16          he's chosen not to.

17          THE COURT: Let me ask the defense, and I  
18          don't know that this is self-evident in the  
19          pleadings, is the defendant asserting that he has a  
20          right to privacy that extends beyond the trailer,  
21          the garage, and the immediate surrounding area, if  
22          you will, that is, to the rest of the 40 acre  
23          parcel? I don't know that I have -- that the  
24          defense has asserted, to this point, that the  
25          defendant has such an interest.

1                   ATTORNEY BUTING: Judge, I think -- I think  
2                   it's pretty clear from the testimony that what we  
3                   focused on, and from the motion, is the entries to  
4                   his residence and to his garage and, you know, the  
5                   reasonable curtilage, or whatever, in that area.

6                   The testimony regarding the other  
7                   aspects of the property is that he was basically  
8                   an employee or worked there, not an actual  
9                   ownership -- owner of it. But that testimony  
10                  went to the question of whether or not there was  
11                  probable cause for the officers to have been in  
12                  the location they were at, before consent was  
13                  given to the officers, such that the information  
14                  that Detective Remiker obtained, that is, the VIN  
15                  number, was improperly obtained and should not  
16                  have been considered in the warrant, as part of  
17                  the probable cause.

18                  In other words, if the Franks motion --  
19                  if the Franks motion is granted and the Court  
20                  strikes that portion of it that is considered  
21                  deliberately false or recklessly untruthful, and  
22                  then you look at the remainder of the warrant to  
23                  see if there's still probable cause, and that  
24                  consideration has to -- in my estimation we can  
25                  argue all this, but that's what the testimony

1                   went to, as to why that portion of the police  
2                   observations could also not be considered in  
3                   determining whether there was probable cause.

4                   THE COURT: All right. Maybe I missed it,  
5                   I know there was testimony that Detective Remiker  
6                   didn't ask consent -- I don't think he asserted that  
7                   he asked consent -- before responding to the scene  
8                   on Saturday, and responding to the location of the  
9                   RAV 4, and looking at the VIN number.

10                  But I guess to this point, I also didn't  
11                  understand that the defendant to be asserting  
12                  that he had a right to privacy with respect to  
13                  that portion of the property that required --  
14                  would have required Detective Remiker to ask for  
15                  the defendant's consent to visit it.

16                  I don't know, I mean, it's not -- it's  
17                  not clear to me, in the motion papers that were  
18                  filed, what the arguments were going to be.  
19                  That's why -- one of the reasons I'm going to  
20                  permit each side to make oral argument, perhaps  
21                  some of those points can be clarified.

22                  Is the defendant arguing that he had an  
23                  individual right to privacy that was violated,  
24                  that required Remiker to get consent or a warrant  
25                  before responding to the location of the RAV 4

1 and looking at the VIN number?

2 ATTORNEY FALLON: Excuse me, your Honor, I  
3 think we're getting a little off track. Because we  
4 are going to argue these points shortly, the only  
5 issue on the table right now, as I understand it, is  
6 whether or not we're going to take a colloquy from  
7 Mr. Avery, that he was mindful that he had the  
8 opportunity to testify and chose not to. And if  
9 we're not, then that's fine, and then we can proceed  
10 to argument. I mean that's the only -- I don't want  
11 to mix up the two concepts.

12 THE COURT: Well, this is a pretrial  
13 motion, let me ask you this, Mr. Strang or  
14 Mr. Buting, have the two of you discussed this with  
15 your client and made a decision, after your  
16 discussions with him, that you would not be calling  
17 him to testify?

18 ATTORNEY STRANG: We have not had extensive  
19 discussion about it. And I think, beyond that, it's  
20 privilege. And really this is the point. I mean,  
21 if we could do a colloquy with Mr. Avery and,  
22 essentially, what the State would be hoping to  
23 accomplish is, his ratification of decisions that  
24 haven't been his, strategic decisions about how to  
25 proceed on a pretrial motion and which witnesses to

1 call, and not to call, him included.

2 If -- if these calls are so far wrong  
3 that they fall below a reasonable level of  
4 defense counsel's performance, then that's the  
5 fact. And having him ratify them doesn't change  
6 that. The decisions on what witnesses to call  
7 here and which not to call, including Mr. Avery,  
8 have been mine and Mr. Buting's.

9 THE COURT: Well, I understand that. I  
10 guess my question is directed to something that's a  
11 little -- that falls a little short of actually  
12 conducting a personal colloquy with Mr. Avery, and  
13 that is, whether or not the two of you have  
14 discussed this with him. I'm not looking to get  
15 into any privilege.

16 ATTORNEY STRANG: No, and in a very general  
17 way, we have had very brief discussions about it, as  
18 to the -- as to these two motions.

19 THE COURT: All right.

20 ATTORNEY STRANG: And I will say,  
21 discussion to the extent that that implies a two-way  
22 discourse, may be gilding the lily to some extent.  
23 I know that, very briefly, I have expressed an  
24 opinion or made an assertion. I'm not sure that  
25 beyond that I should be implying a two-way

1 discourse.

2 THE COURT: All right. I'm going to take a  
3 short break at this time. Before I ask counsel to  
4 meet with me in chambers, I'm going to ask that  
5 defense counsel address this issue with Mr. Avery.  
6 And we'll discuss in chambers how to proceed further  
7 when we come back out on the record, after that's  
8 been completed.

9 ATTORNEY STRANG: Is there a place we can  
10 talk in private?

11 THE COURT: Yes, I believe the jury room  
12 would work for that purpose.

13 ATTORNEY KRATZ: Two-fifteenish?

14 THE COURT: Let's say 2:20, in my chambers.

15 ATTORNEY STRANG: We can use the jury room,  
16 but that will require one of two things: First,  
17 preferably all the law enforcement people or  
18 representatives of the State, being outside a closed  
19 door.

20 Or, second, much less preferably,  
21 anybody who's within the room being deputized as  
22 a defense investigator for purposes of that  
23 meeting, and being instructed that he or she is  
24 within the lawyer/client privilege, on the work  
25 product doctrine, forever more, for purposes of

1 what he or she would overhear.

2 THE COURT: Well, I will meet with who's  
3 ever in charge of security and then address that  
4 with you after I do that.

5 (Recess taken.)

6 (End of partial transcript.)

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

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 1st day of September, 2006.  
16  
17  
18

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
21  
22  
23  
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25

	20 feet [1] 160/5 20 yards [1] 174/2 2002 [1] 37/19 2005 [3] 37/20 58/11 152/23 2006 [3] 1/8 55/6 191/15 21 [1] 56/24 21st [1] 151/24 22 [2] 9/24 18/2 22-page [1] 52/17 2205 [1] 19/24 24 [6] 52/19 53/14 53/18 53/19 53/19 53/22 24/7 [3] 157/13 169/18 175/15 25 [1] 45/15 27 [1] 2/5 2:00 p.m [3] 58/18 58/24 59/18 2:20 [1] 189/14	109/21 110/1 137/14 141/4 165/14 <b>7</b> <b>700</b> [3] 78/15 133/5 143/8 <b>7:30</b> [7] 9/16 9/20 10/3 51/3 79/12 80/25 83/5 <b>7th</b> [8] 47/24 48/3 109/21 110/7 137/15 139/12 141/4 165/14
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING - ARGUMENTS

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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9 DATE: AUGUST 10, 2006

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

11 **APPEARANCES:**

12 KENNETH R. KRATZ  
Special Prosecutor  
On behalf of the State of Wisconsin.

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

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

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

16 STEVEN A. AVERY  
Defendant  
Appeared in person.

17 **TRANSCRIPT OF PROCEEDINGS**

18 Reported by Diane Tesheneck, RPR

19 Official Court Reporter

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THE COURT: At this time the Court will go back on the record. Before we hear oral argument from the parties on the **Franks** motion, there's a couple of other things to address. First of all, it's my understanding from discussions with counsel, that the parties have agreement on the media statements motion that was filed by the defense, and for which testimony has been taken; is that correct, counsel?

ATTORNEY FALLON: Yes, that is correct. It is my understanding, and I think Counsel would agree, that neither side is conceding the merits of the other side's argument, but in acknowledgment of the overall circumstances of this case and the number of statements at issue, we have reached this following resolution:

And that is, that the State would agree not to use any of the interview statements obtained by News Reporter Kolbusz, which I believe, if memory serves me, were November 18th and December 14th. And in exchange for which the defense is withdrawing their request to prohibit our use of any of the statements, either telephonically, or in person, obtained by Investigative Reporter Matesic.

1                   Again, neither side is conceding the  
2                   merits of the other side's argument; it's just a  
3                   concession due to the overall circumstances of  
4                   the case.

5                   THE COURT: Mr. Strang.

6                   ATTORNEY STRANG: There's nothing about  
7                   that with which I disagree. I will add a little bit  
8                   I think that matters and I believe we're also in  
9                   agreement on. The Emily Matesic interview was  
10                  November 12th, as I recall, the in jail televised  
11                  interview. And we are withdrawing our  
12                  constitutional objection to that, withdrawing the  
13                  motion in so far as that interview goes.

14                  And as to the one later, telephonic  
15                  interview with Ms Matesic, and I will say that it  
16                  was -- that was a straddler, that was sort of  
17                  midway in between. Because the motion never was  
18                  intended to cover interviews or statements of  
19                  Mr. Avery where he initiated the telephone call.

20                  And as I say, that one straddled a  
21                  little bit, because Ms Matesic initiated in one  
22                  sense by writing a letter asking Mr. Avery to  
23                  call, he initiated in another sense by making the  
24                  collect call. But in any event, no  
25                  constitutional objection and the motion is

1 withdrawn as to those two interviews.

2 At this time, I believe that the State  
3 has not obtained the raw footage of the  
4 November 12 interview, or any full tape, or raw  
5 tape, so to speak, of the later telephonic  
6 interview with Ms Matesic.

7 I know the defense doesn't have those  
8 materials. And I think what we have agreed to do  
9 at this point is just to table, until later,  
10 questions of completeness, if in fact the State  
11 is able to obtain raw footage, or the full  
12 interview, on either of those occasions.

13 Assuming the State is not, we will not  
14 object to introduction of the little two minute  
15 or two minute plus segments of those interviews  
16 that were actually aired in the Matesic  
17 interviews.

18 And then I also agree, it's simpler as  
19 to the Channel 5, or Jennifer Kolbusz interviews,  
20 both in the jail, both televised or filmed,  
21 November 18 and December 14, those the State will  
22 make no use of at all at trial. And, again,  
23 here, each of the two sides is utterly secure in  
24 its conviction that the other side is completely  
25 wrong on the legal merits, so.

1                   THE COURT: All right. In light of the  
2 detail involved in your agreement here, I'm going to  
3 ask you to provide that to the Court in the form of  
4 a written stipulation and then I will accept it.

5                   Mr. Strang, I will have you draft it. And --

6                   ATTORNEY STRANG: I would be happy to.

7                   THE COURT: -- when the Court receives it,  
8 then, I will deal with it.

9                   With respect to some of the other  
10 motions that are pending, because of the lateness  
11 of today, and I'm still going to be hearing oral  
12 arguments, what I am going to do is set a date  
13 for August 22nd, that is a Tuesday, at 9:00 in  
14 the morning.

15                  And on that date, the Court will issue a  
16 decision, or issue decisions, addressing the  
17 issues of venue and the trial date, among other  
18 things, but also, on most of the other motions  
19 that have been heard, and that is, either heard  
20 or for which briefs have been filed.

21                  I understand that some of the motions  
22 that were heard over the last couple days will be  
23 dependent on the filing of written briefs and the  
24 court reporter generating a transcript. So we  
25 may not be in a position to deal with everything

1                   on August 22, but certainly the venue and trial  
2                   date motions, and some of the other motions as  
3                   well.

4                   With respect to the concerns raised by  
5                   the State just before we entered into the break,  
6                   Counsel, it's my understanding that defense  
7                   counsel has discussed more fully than even  
8                   before, with the defendant, his right to have  
9                   provided testimony at these motion hearings over  
10                  the last couple days, and that it's still the  
11                  defendant's decision, in consultation with  
12                  counsel, to elect not to testify. Mr. Strang, is  
13                  that correct?

14                  ATTORNEY STRANG: We had -- Mr. Buting and  
15                  I had a meeting with Steven Avery in the Manitowoc  
16                  County Jail, during break. I'm going to guess, I  
17                  didn't time it, but I'm going to guess the meeting  
18                  was about 10 or 15 minutes long, something in that  
19                  neighborhood. It was a private meeting, law  
20                  enforcement was not in the room. We were within the  
21                  secure envelope in the jail.

22                  And we -- we had a two-way discussion  
23                  about Mr. Avery's opportunity, if he chose, to  
24                  testify at the motions hearings, and his right to  
25                  maintain his silence as well, and choose not to

1           testify. Explained -- Mr. Buting and I explained  
2           that these pretrial motions and their strategic  
3           questions are at least predominantly issues  
4           committed to a lawyer's judgment. And we  
5           explained to him what our judgment was, and is,  
6           on the presentation of evidence on those motions.

7           But this was a two-way discussion and  
8           Mr. Avery, as always, is really a very, very  
9           cooperative client, someone who's engaged in  
10          discussions and cares about his case. And I  
11          think he certainly treats us as if he respects us  
12          as the two lawyers he chose to defend him in this  
13          case.

14           THE COURT: Mr. Avery, do you concur with  
15          that summary of your discussion, just placed on the  
16          record, with Mr. Strang?

17           MR. AVERY: Yes.

18           THE COURT: You understand you have the  
19          right, if you wanted to, to testify at these  
20          hearings, but do I take it that you have made the  
21          decision, in consultation with your attorneys, that  
22          you elect not to testify at these hearings?

23           MR. AVERY: Yes.

24           THE COURT: Very well. The Court is  
25          satisfied that the defendant has been adequately

1                   informed by defense counsel of his right to testify  
2                   at these hearings and has made the decision, in  
3                   consultation with his attorney, not to testify.

4                   With respect to the motions that the  
5                   Court has heard the last few days, first of all,  
6                   on the issue of the admissibility of the  
7                   statements made to the Marinette County Sheriff's  
8                   Department, it's my understanding that the  
9                   testimony that we have heard was fairly limited  
10                  on those, and that the court reporter expects to  
11                  get it out in short order, and the parties could  
12                  submit simultaneous written briefs by a week from  
13                  tomorrow.

14                  ATTORNEY STRANG: Yes.

15                  THE COURT: Both parties in agreement?

16                  ATTORNEY FALLON: That's correct, Judge.  
17                  Although the record should reflect, that the  
18                  preference of the State was to argue it now. But  
19                  acknowledging the decision of the Court, we'll have  
20                  a brief for you the end of next week.

21                  THE COURT: All right. The testimony taken  
22                  on the issue of the effective multiple executions of  
23                  the search warrant and the motion related to that, I  
24                  understand there is a good deal more testimony there  
25                  and the parties would like additional time in which

1 to brief that issue.

2 I have spoken to the court reporter, she  
3 indicates she can have a transcript ready in  
4 about three weeks. So I'm asking the parties at  
5 this time, how much time would you like to submit  
6 simultaneous briefs on that issue? So,  
7 essentially, the transcript will be ready at  
8 about the end of the month.

9 ATTORNEY BUTING: I could probably do it in  
10 10 days after that.

11 THE COURT: Okay. How about  
12 September 13th, it's a Wednesday?

13 ATTORNEY BUTING: Sure.

14 ATTORNEY FALLON: September 13th, I will  
15 check my calendar, please. Right now, my written  
16 calendar shows that that would be doable. I haven't  
17 checked my computer calendar back at the office.  
18 So, assuming I don't have anything else going on, I  
19 think that's doable.

20 THE COURT: All right. We'll say briefs  
21 due 9/13 on the multiple executions issue.

22 And the last matter is the **Franks**  
23 motion. I will hear oral argument at this time  
24 on that issue. Since there is an initial burden  
25 there on the defense, I will hear from the

1 defense first.

2 ATTORNEY BUTING: Thank you, Judge.

3 Perhaps, before we -- before I argue that, though,  
4 we did have some discussion off the record with  
5 counsel for the State, that maybe crystallizes the  
6 issue on standing a little bit better. I don't know  
7 if you would like to state what your position is on  
8 where Mr. Avery does or does not have standing?

9 ATTORNEY FALLON: The only thing I would  
10 say is that the State hasn't challenged his  
11 standing, or haven't contested his standing to  
12 challenge a search of the house and the garage, and  
13 the rest we're prepared to argue.

14 THE COURT: Okay.

15 ATTORNEY BUTING: Including the -- the burn  
16 barrel and burn pit in the area of his house and  
17 garage? That was something that wasn't clear to me.

18 ATTORNEY FALLON: It was clear in our  
19 pleadings. And, again, the arguments and  
20 discussions are relative to this particular motion,  
21 exclusively.

22 ATTORNEY BUTING: All right. Judge, as we  
23 pointed out in the motion that we filed, the --  
24 although -- Let me talk about **Franks** first, and then  
25 I will talk a little bit about standing. And in

1                   order to complete my argument on **Franks**, I want to  
2                   play for the Court the second phone call that  
3                   Detective Remiker had with Investigator Wiegert on  
4                   the morning of November 5th, regarding the use of --  
5                   or the discussion about whether there was an intent  
6                   to use volunteers to search the Avery property or  
7                   not. And if I could play that, briefly, and then I  
8                   will argue from there. I have set up -- I have my  
9                   copy in there, I could put the original in if you  
10                  like.

11                  THE COURT: All right. And this was, if I  
12                  remember correctly, the part of Detective Remiker's  
13                  testimony where the jail had tapes, the attorneys  
14                  went over and listened to them, so there's no  
15                  question that this is the tape; both parties agree?

16                  ATTORNEY FALLON: I believe so. I believe  
17                  so, depending on what we hear, if it is as  
18                  represented by counsel, yes, it's a conversation  
19                  between Detective Remiker and Investigator Wiegert.

20                  THE COURT: All right. Mr. Buting.

21                  ATTORNEY BUTING: There were two phone  
22                  calls, the first one is more lengthy. It is the  
23                  second one that is very brief and is more of issue  
24                  in this.

25                  THE COURT: Is it set up for the second

1 one?

2 ATTORNEY BUTING: It is set up and ready  
3 for the second one.

4 THE COURT: Very well.

5 (CD played, Exhibit 20.)

6 DETECTIVE REMIKER: Remiker.

7 INVESTIGATOR WIEGERT: Yeah. Is it 323 or  
8 373?

9 DETECTIVE REMIKER: 323.

10 ATTORNEY STRANG: I can't remember fuckin'  
11 reading.

12 DETECTIVE REMIKER: 32319 -- the year you  
13 were born, 1929.

14 INVESTIGATOR WIEGERT: You got 'er. Hey, I  
15 have a change of plans here.

16 DETECTIVE REMIKER: Okay.

17 INVESTIGATOR WIEGERT: The boss has got  
18 something he wants us to do.

19 DETECTIVE REMIKER: Okay.

20 INVESTIGATOR WIEGERT: He wants us to go  
21 back over and reinterview Avery and Zipperer, again.  
22 And as long as the search party is out there, he  
23 wants us to ask them if they would allow us to have  
24 the search party come on their property and go  
25 through the junkyard. The search party.

1 DETECTIVE REMIKER: Okay.

2 INVESTIGATOR WIEGERT: So, if it's okay  
3 with you, we'll meet you over at your Sheriff's  
4 Department.

5 DETECTIVE REMIKER: Okay.

6 INVESTIGATOR WIEGERT: Talk about it a  
7 little bit, and if you're not too busy.

8 DETECTIVE REMIKER: Okay. Man, Zipperer is  
9 not going to be real happy.

10 INVESTIGATOR WIEGERT: I'm sure he is not.  
11 If he tells us no, he tells us no.

12 DETECTIVE REMIKER: All right.

13 INVESTIGATOR WIEGERT: Later.

14 DETECTIVE REMIKER: Okay.

15 INVESTIGATOR WIEGERT: If you don't mind.

16 DETECTIVE REMIKER: Yup, that's fine.

17 INVESTIGATOR WIEGERT: We'll stop over.

18 Okay. We'll probably be there, I would say, within  
19 the hour.

20 DETECTIVE REMIKER: Okay. Give me a call  
21 before you get here, I will meet you.

22 INVESTIGATOR WIEGERT: Will do.

23 DETECTIVE REMIKER: Okay.

24 INVESTIGATOR WIEGERT: Thanks.

25 DETECTIVE REMIKER: Bye.

1 (Transcribed to the best of my ability.)

2 ATTORNEY BUTING: That's it, Judge. And I  
3 told your court reporter beforehand, that it's a  
4 little hard sometimes for her to be able to take  
5 down what's being said in the CD like that, but I  
6 wouldn't have any objection to her listening to --  
7 if she prepares a transcript on it, have her  
8 listening to the Court's exhibit, which is Exhibit  
9 No. -- I'm sorry -- 20, for accuracy on the  
10 transcription.

11 THE COURT: Okay.

12 ATTORNEY BUTING: The case of **Franks vs.**  
13 **Delaware** says that if an individual who applies for  
14 a search warrant, that is, the affiant, in this  
15 case, Investigator Wiegert, provides false  
16 information intentionally or with reckless disregard  
17 for the truth, and that information was necessary to  
18 establish probable cause, then the Fourth Amendment  
19 requires that a hearing be conducted.

20 If, at the hearing, it's proved that the  
21 false information was presented intentionally, or  
22 with reckless disregard for the truth, then what  
23 the Court does is set aside that portion of the  
24 affidavit and looks to the remainder of the  
25 affidavit, to see whether probable cause exists.

1                   If, having struck that portion of the  
2 affidavit, probable cause does not anymore exist,  
3 then the warrant is -- the search must be voided,  
4 the warrant is improper. It's our contention, in  
5 the motion that we filed, that Investigator  
6 Wiegert, either deliberately, intentionally, or  
7 certainly with reckless disregard for the truth,  
8 did just that.

9                   In Paragraph 5 of the search warrant  
10 affidavit, that's dated November 5th, 2005 --  
11 it's been made part of the record -- in  
12 particular, Investigator Wiegert stated in that  
13 affidavit, that officers had received  
14 information, from volunteer searchers, that they  
15 had located a vehicle matching the description of  
16 the vehicle owned by Teresa Halbach.

17                  That is the first statement that is --  
18 is inaccurate, that is incorrect. As I believe  
19 also was made part of the record, the transcript  
20 of the call from Pamela Sturm makes clear that  
21 she did not say that the vehicle matched. In  
22 fact, that she indicated that the vehicle color  
23 did not appear to be correct, or did not appear  
24 to be with the same that she had seen described  
25 or had seen on the fliers that she was following.

1                   And that it was, in fact, because of  
2                   that, and she hesitated to say that she thought  
3                   it was the matching vehicle because she wanted to  
4                   see the VIN number. And she was calling and  
5                   asking, do you know the VIN number.

6                   Secondly, we also argued that the term  
7                   "volunteer searchers" was a bit of a stretch in  
8                   that we believe the officers used volunteers in  
9                   such a way, or citizens in such a way, as to  
10                  essentially make them part of a police search, by  
11                  trying to engage them in a Fourth Amendment  
12                  search.

13                  Now, in that regard, the motion was  
14                  based upon statements made in the official  
15                  Manitowoc County Police -- Sheriff's Department's  
16                  report of this investigation, which I went over  
17                  with both Detective Remiker and Investigator  
18                  Wiegert. Investigator Wiegert denied making the  
19                  statement that was in Detective Remiker's report,  
20                  that Detective Remiker attributed to him, in  
21                  which stated, Wiegert indicated that several  
22                  searchers were willing to go to the Avery  
23                  property, on Avery road, to search the junkyard  
24                  and salvage area.

25                  When I put the question to Investigator

1                   Wiegert, he said that Detective Remiker just got  
2                   it wrong, I didn't say anything about that. I  
3                   think he said he didn't say anything about  
4                   volunteers coming to search the junkyard at all.  
5                   And here's where his credibility, in this court,  
6                   at this hearing, it is at issue. Because he  
7                   didn't know at the time, as neither did we when  
8                   he testified, that Manitowoc County had actually  
9                   recorded that phone conversation.

10                  And I played that portion of it right  
11                  now, in which it's clear he did talk to Detective  
12                  Remiker about using these volunteer search party,  
13                  is what he calls it, to search the Avery  
14                  junkyard. And that if, in fact, he was using --  
15                  using volunteers to conduct a search, that  
16                  obviously by that time, Mr. Avery was also a  
17                  person of interest at a minimum.

18                  Using them to get consent to try and get  
19                  in and search, would be a way to get around  
20                  Mr. Avery's Fourth Amendment rights with regard  
21                  to privacy and expectations on the search of the  
22                  Avery family property, and that that was  
23                  recklessly, if not intentionally, misstated in  
24                  the affidavit, again, Paragraph 5 of the  
25                  affidavit.

1                   The other part of that paragraph that is  
2 completely wrong, or nearly completely wrong,  
3 Detective Remiker himself acknowledged, he puts  
4 in the affidavit that -- I mean Wiegert, that  
5 Wiegert acknowledged he, in fact, put false  
6 information, or incorrect information, in here,  
7 because he says in his affidavit, that the  
8 searchers provided the entire VIN number.

9                   And when pressed on that in court he had  
10 to admit that that's not true, in fact, only a  
11 part -- a portion of that VIN number, about half,  
12 10 of the 17 numbers, could be provided by the  
13 volunteers, that they evidently were unable to  
14 read the rest of it.

15                  Now, the State will probably argue, oh,  
16 that's just a semantics, that's just a mistake,  
17 negligence at most, it's not any kind of reckless  
18 disregard for the truth. But we have got to  
19 think about the timing of this as well. Wiegert  
20 talks to Pamela Sturm on the phone at about  
21 10:30, 11:00 in the morning.

22                  This is only a matter of a couple hours  
23 later he's -- at most, he's preparing this  
24 affidavit. It's facts are obviously fresh in his  
25 mind. It's clear from the transcript that there

1           was an extensive discussion -- extensive  
2           discussion with Pamela Sturm about how many  
3           numbers she could read in the -- on the VIN.

4           And it's very clear, as you look at the  
5           transcript of that 911 call, or whatever you want  
6           to call it, that there's back and forth, can you  
7           read this, well, I'm not sure about that number,  
8           might be a T, might be a 1. Very clear that she  
9           did not have the full VIN number.

10          And yet here, within a couple of hours  
11         or so, he's saying, in this affidavit to the  
12         Court, that the searchers not only found a  
13         vehicle that matched the description, but that  
14         had a VIN number, complete VIN number that  
15         matched. And that's a very big difference in my  
16         mind, and in the Court's mind, I'm sure it is.

17          Because if -- if you are trying to get  
18         probable cause for a warrant, it's much, much  
19         easier to do so if you mislead the Court and tell  
20         them, hey, there's a vehicle that these searchers  
21         found, and it matches the description that was  
22         given for Teresa Halbach's vehicle. And not only  
23         that, they checked the VIN number and it's  
24         completely a match, all 17 numbers.

25          Very easy to get probable cause with

1                   something like that. It's another matter if they  
2                   point out the truth, if Wiegert was to point out  
3                   the truth to the Court, which is that, well, we  
4                   only have a partial VIN number. And there is  
5                   some hesitation on the part of the caller, the  
6                   searcher, as to whether this really matches or  
7                   not.

8                   And in cross-examination, I believe it  
9                   was, Attorney Fallon was having Investigator  
10                  Wiegert point out all these other facts that he  
11                  knew, such as whether the model matched, whether  
12                  there was a sticker on it from Le Mieux Toyota,  
13                  all these other facts, but the point is not what  
14                  he knew in his mind, the point is what he  
15                  provided to the independent reviewer, the Court.

16                  And he does not say anything in this  
17                  affidavit about the model year, or any comments  
18                  that the -- Pamela Sturm said about that, or any  
19                  of his subsequent investigation about whether or  
20                  not there's -- there were other reasons to  
21                  believe that the vehicle might have matched.

22                  He skipped over all that. He just  
23                  assumed for himself that he could call it a  
24                  match, and that he could tell the Court that  
25                  these volunteer searchers believed it to be a

1                   match, rather than telling the full truth, which  
2                   was -- which is something very less than that.

3                   If in fact, the information that's left  
4                   out, or not -- or deliberately not included, was  
5                   reckless, or reckless disregard for the truth,  
6                   then the first couple of sentences in Paragraph 5  
7                   would be struck, or stricken. The only other --  
8                   Frankly, the only other part of that paragraph  
9                   that supplies probable cause is, Investigator  
10                  Remiker, once he got to the scene, it says  
11                  Investigator Remiker was able to confirm that the  
12                  VIN number, and then it lists all 17, is the  
13                  correct number for Teresa Halbach's Toyota RAV 4.

14                  And then he talks about Investigator  
15                  Remiker's visual observation. And then here we  
16                  get to the point of whether or not Detective  
17                  Remiker was in a place where he can make --  
18                  lawfully make those observations, such that they  
19                  could be considered by the Court, in the search  
20                  warrant. If not, then that has to be struck as  
21                  well, stricken from this affidavit.

22                  And without Paragraph 5, there is not  
23                  probable cause. I can spend some time on that  
24                  later if there's really a dispute about it. But  
25                  there's not probable cause in this affidavit, if

1 you take Paragraph 5 out, plain and simple.

2 So the question then is, at this point  
3 anyway, did Detective Remiker have a right to be  
4 in the position that he was, to go up to the  
5 vehicle and to read the VIN number on it? Was he  
6 lawfully there? Were his observations lawful?  
7 And that does involve questions of standing, as  
8 to whether Mr. Avery might have a reason to have  
9 an expectation of privacy, as well. So let me  
10 address those two points.

11 First of all, the testimony said, or  
12 established, that Detective Remiker did not have  
13 consent from anybody on that property, at the  
14 time that he came up to the RAV 4 and, I believe,  
15 shined his flashlight on it, or whatever, in  
16 order to try and read the VIN number.

17 And the testimony from Pamela Sturm was  
18 that she had gotten consent, holding herself out  
19 to be a volunteer, but not a police officer. And  
20 so that consent would clearly not carry over to  
21 the police as well.

22 There's also some testimony, that later,  
23 Earl Avery supposedly gave consent to the  
24 officers to be there, but that was, I think the  
25 record was at 11:17. That was a good 5 or 10

1           minutes, or 15 minutes, I think, after Detective  
2           Remiker arrived at the scene.

3           Earl Avery, when he testified, in fact,  
4           denied that he ever gave consent. He said the  
5           officers made him sit around for three hours,  
6           never talked to him until then, they just had  
7           their way with it.

8           I don't think that there can be any  
9           serious argument that -- that there was -- that  
10          that part of the property was simply open to  
11          public access and that -- that none of the  
12          Avery's would have any expectation of privacy in  
13          that area, the southeast quarter quadrant of  
14          their property.

15          Testimony was, from Earl Avery, he  
16          marked on Exhibit 18, where the public is  
17          generally allowed and not allowed, without  
18          permission. And the custom and practice is that  
19          they drive up to the front of the office, they  
20          come in, and they say, do you have a part for  
21          this or that year car, and then they are allowed  
22          to go in, sometimes with supervision, sometimes  
23          without, and go into the yard. But only with  
24          permission that they -- I think Earl's words  
25          were, absolutely not, is the public allowed to

1 just go in there without -- into the pit, or into  
2 the junkyard area, without permission.

3 Other facts which indicate a reasonable  
4 expectation of privacy were testified to today by  
5 Lieutenant Sippel. He talked about how there's  
6 fence lines around the property, on the north and  
7 east -- I'm sorry -- north and east edge, yes.  
8 And that there are berms, one of them very high,  
9 on the east edge, and 15 feet or so, 10 to  
10 15 feet on the south edge, which would clearly  
11 indicate that someone is trying to demark that  
12 property as separate and private from public  
13 access.

14 So the question that the State, then,  
15 has raised is whether or not, I assume this is  
16 the essential argument, is whether or not  
17 Mr. Avery himself had standing. It's conceded  
18 that he had standing in his house, or trailer,  
19 and that he had standing in his garage. But they  
20 contest that he had standing anywhere else. And  
21 presumably that includes the location where the  
22 RAV 4 was found, the so-called burn pit and burn  
23 barrel, located outside of his residence and  
24 garage.

25 The State has -- had filed a brief, or a

1 memo, to the Court, the day before this motion  
2 hearing started yesterday. And I did not have a  
3 chance to file a written response. I apologize  
4 for that, but it was not received until the very  
5 day before this. But I did have a chance to  
6 review some of their cases and some of my own.  
7 And I have some cites, and some references, and  
8 legal authority that I think run counter to their  
9 arguments.

10 First of all, the case of **Rakas vs.**  
11 **Illinois**, which is at 439 U.S., at page 139, I  
12 believe it is. Makes clear that the Fourth  
13 Amendment -- a claim -- a Fourth Amendment claim  
14 does not depend on a property right. It is a  
15 personal right. It's a right, an expectation of  
16 privacy in the invaded place. Fourth Amendment  
17 does not protect property. It protects people  
18 from unreasonable searches and seizures.

19 No single factor is determinative on the  
20 question of standing. That's also from **Rakas**, at  
21 152. And **State vs. Whitrock**, which I believe is  
22 also cited by the State, at 161 Wis. 2d, at page  
23 974, says that the Court must take a totality of  
24 the circumstance approach when determining the  
25 questions of standing.

1                   It is true, defendant does have the  
2 burden of establishing, however, just by -- just  
3 by a preponderance of the evidence, that he had a  
4 reasonable expectation of privacy in the -- the  
5 things searched. But **Whitrock** and **Arizona vs.**  
6 **Hicks**, which is the cite, 480 U.S. 321, 1987,  
7 make clear that a defendant does not need to show  
8 an ownership interest in the place or thing to be  
9 seized, and that the thing, in fact, seized need  
10 not even be his own property.

11                  In both **Whitrock** and **Hicks**, I believe  
12 stolen property was involved. And in **Hicks**, the  
13 Court found that there was a reasonable  
14 expectation of privacy, even in the stolen stereo  
15 equipment that was found inside of this  
16 individual's house.

17                  And in that case, the police, in order  
18 to determine whether or not the item was stolen,  
19 it was not obviously stolen when they went in  
20 there, but they moved pieces around, and they  
21 looked at serial numbers, and they recorded  
22 those. And they went back later and determined  
23 that the property appeared to have been stolen,  
24 or was reported stolen.

25                  And on that basis, they went back with a

1 warrant. And the Court stated, no, no, you can't  
2 do that, that was improper. And that's akin to  
3 Detective Remiker going onto this property, using  
4 a flashlight, in order to read the VIN number on  
5 this vehicle.

6 The case law also shows that people have  
7 a reasonable expectation of privacy in a variety  
8 of areas, a number of different settings. The  
9 **Trecroci** case, I think it's misspelled in the  
10 State's brief, but that's T-r-e-c-r-o-c-i. The  
11 cite for that is 246 Wis. 2d, 261. It's a Court  
12 of Appeals case from 19 -- I'm sorry -- from  
13 2001.

14 That case actually does a fairly good  
15 job of summarizing what some of the factors are  
16 and what some of the various areas where standing  
17 has been found, even when someone doesn't own the  
18 property. And I point out that the State used  
19 Mr. Earl Avery to try and establish that Steven  
20 Avery did not have an ownership interest, or  
21 portion of the property.

22 But that that really is irrelevant on  
23 the question of standing here. The numerous  
24 cases say you don't have to own the property to  
25 have a reasonable expectation of privacy in it.

1 I will get into a little bit more of that in a  
2 minute.

3 Even in a workplace, employees have a  
4 reasonable expectation of privacy, *O'Connor vs.*  
5 *Ortega*, 480 U.S. 709 at 717, 1981, I believe, or  
6 '87. Overnight guests in a house have an  
7 expectation of privacy, *State vs. Whitrock*,  
8 again. Even commercial areas, in garbage, if  
9 steps are taken to exclude the public, can't  
10 have -- are areas that one can have an  
11 expectation of -- reasonable expectation of  
12 privacy in.

13 The *Trecroci* case, at page 282, sort of  
14 lists, gives a helpful list of factors to  
15 consider in determining whether someone has  
16 standing in a particular place. And it's not  
17 necessary that all of them be met, but they are  
18 considered in part -- as part of the totality of  
19 the circumstances.

20 The first is whether the person had a  
21 proprietary interest in the premises. And here,  
22 clearly, he had a proprietary interest in the  
23 house and the garage. He did not have -- He was  
24 not an owner of the Avery Salvage business but,  
25 on the other hand, he worked there.

1                   It's a family business. He lived on the  
2 property. Earl talked about how he did -- Steven  
3 Avery did all the things that Earl did, including  
4 dismantling vehicles, driving out to pick up  
5 junks and bring them back and forth. And so the  
6 fact that it's a family business, I think, makes  
7 that factor somewhat less critical.

8                   Second factor is whether the person was  
9 legitimately on the premises that are searched.  
10 Clearly, Mr. Avery lived on the Avery compound so  
11 to speak, or right next to it, and he worked on  
12 the compound every day. So he clearly was  
13 legitimately there.

14                   Whether the person had complete dominion  
15 and control, and the right to exclude others,  
16 perhaps he didn't have as much of complete  
17 dominion as he would as an owner, but  
18 nevertheless, he worked there, he lived there, he  
19 worked the car crusher right near the area where  
20 this was found. He had full access to all of the  
21 property as a family member, and as a person who  
22 worked in the family business.

23                   The next factor is whether the person  
24 took precautions customarily taken by those  
25 seeking privacy. I have covered that already.

1           But I think the berms, the fences, it's clear  
2           that the property itself does have attributes to  
3           indicate that there is a reasonable expectation  
4           of privacy in that property.

5           Whether the person had put the property  
6           to some private use, clearly they did. There's a  
7           business in the front. There's a public office  
8           in the upper right, or northeast corner of the  
9           40-acre parcel, but the rest of it is private.  
10          There's private residences, both to the north  
11          edge and down the eastern edge, where Chuck Avery  
12          lives. All the land belonged to the family.

13          And, finally, whether the claim of  
14          privacy is consistent with historical notions of  
15          privacy. This is a fluid concept because --  
16          that's probably changed over time -- but here,  
17          people know, that if you enter someone's private  
18          property, you must receive permission to do so.

19          Even the volunteer who testified, Pamela  
20          Sturm, recognized that she had to get permission  
21          from Earl Avery before she could go into any area  
22          of the yard to do a search. So I think that  
23          that's a factor that clearly indicates that there  
24          is a historical and reasonable expectation of  
25          privacy in that area.

1                   Then, finally, there is the question of  
2                   the -- Well, let me just, before I turn to the  
3                   burn barrel and burn pit area.

4                   If I make the first hurdle, if we pass  
5                   the first hurdle, and the Court finds that there  
6                   is sufficiently reckless or intentional  
7                   misstatements, falsehoods, in the affidavit, and  
8                   that, therefore, they are stricken, then the  
9                   Court, I think, sequentially, next, has to look  
10                  at the question of whether or not Detective  
11                  Remiker, therefore, was in a position where he  
12                  was not lawfully permitted to make the  
13                  observations -- the rest of the observations that  
14                  are included in Paragraph 5.

15                  And if so, then there is no probable  
16                  cause for the warrant. The entire warrant is  
17                  void and the entire search is void, at least as  
18                  to that warrant. Later warrants were obtained  
19                  and we have to deal with those issues later, but  
20                  as to this warrant they would be void.

21                  And that would also answer the question  
22                  as to any evidence found outside of Mr. Avery's  
23                  residence, such as the burn pit, or the burn  
24                  barrel, or whatever. We wouldn't even have to  
25                  get to the question of standing, because if the

1 warrant is void, it's void.

2                 But as to the question of standing, it's  
3 not clear to me just what position the State is  
4 taking on this, but the testimony was, and the  
5 exhibits show, that the burn barrel was right  
6 outside the front residence, front area of the  
7 trailer, and that the burn pit was behind the  
8 detached garage.

9                 So I don't know how they are going to  
10 argue that he had a privacy interest in the house  
11 and the garage, but not in those areas that are  
12 close by. If that's their position, then they  
13 will have to make it, but I don't see it. It's a  
14 bit of a different argument, I think, when we get  
15 to the far corner of the property, where the  
16 vehicle is made. But as to those other areas, I  
17 don't see any legitimate argument.

18                 So, for those reasons, I think we have  
19 established a reasonable expectation of privacy,  
20 by a preponderance of the evidence. I think we  
21 have established that there were material,  
22 intentional or reckless disregard for the truth  
23 in the affidavit. And I think we have  
24 established, as well, that when those improper  
25 falsehoods, or illegally obtained portions are

1                   stricken from this warrant, there is no probable  
2                   cause left in the warrant. And so the search --  
3                   any searches based on this November 5th warrant,  
4                   would have to be voided and any evidence  
5                   suppressed. Thank you.

6                   THE COURT: Mr. Fallon.

7                   ATTORNEY FALLON: Thank you, Judge. Well,  
8                   the defense argument is stunning for the facts which  
9                   were omitted during the presentation of their  
10                  argument. So, in and effort, let's first all start  
11                  with a couple of general principles and then we'll  
12                  go through the evidence which I understand was  
13                  presented during the last day and a half.

14                  Counsel is correct, it is a totality of  
15                  the circumstances analysis, with respect to  
16                  determination of whether or not Mr. Avery has a  
17                  reasonable expectation of privacy, in the areas  
18                  searched, and in the items seized.

19                  If there is no reasonable expectation of  
20                  privacy, in the areas searched, and the items  
21                  seized, there is, as it pertains to Mr. Avery, no  
22                  Fourth Amendment event. There is no search.  
23                  There is no basis for a hearing. And there is no  
24                  basis to request suppression.

25                  Now, first and foremost, Counsel is

1           correct and does cite ***Rakas vs. Illinois***, which  
2           is a case that we clearly cite in our brief.  
3           It's a critical case. And counsel is right, in  
4           fact, it's one of the few things that I do agree  
5           with, and that is the Fourth Amendment reasonable  
6           expectation of privacy is not conditioned upon  
7           the existence of a property right. We agree.  
8           Quite frankly, that supports the State's argument  
9           that there is no standing, no reasonable  
10          expectation of privacy.

11           In determination of whether there is a  
12          reasonable expectation of privacy, the burden is  
13          on the defense, to establish by a preponderance  
14          of the evidence, whether it is more likely than  
15          not, whether it's somewhere over 50 percent. Is  
16          it likely that this person has two things,  
17          whether the individual has exhibited an actual,  
18          subjective expectation of privacy in the area  
19          inspected or searched, and in the items seized.

20           The second part of the question is, is  
21          the expectation, is it one that society is  
22          willing to recognize as reasonable, as a  
23          reasonable expectation of privacy, under the  
24          circumstances. There has been no evidence of an  
25          actual, subjective expectation of privacy

1 produced by Mr. Avery.

2 We have references to berms and we have  
3 references to fence lines. We have no reference  
4 to the fact that the berms were created with that  
5 intent, with that subjective expectation. We  
6 have no evidence that there's actually a fence  
7 that goes along the fence line.

8 We have no evidence that Mr. Avery took  
9 any -- any reasonable steps to secure the salvage  
10 yard, the location of where Teresa Halbach's  
11 vehicle was found, the vehicle in which her  
12 license plates were found. The burn barrel,  
13 which I might add and point out to the Court on  
14 Exhibit No. 18, is located up here, Mr. Avery's  
15 residence is here. We have a burn pit, which is  
16 behind a garage, and I will get to that in a  
17 minute.

18 There has been no demonstration of an  
19 actual, subjective expectation of privacy that  
20 has been provided to this court. All we have is  
21 a berm line, a fence line. We have a rather  
22 isolated geographical piece of property. That  
23 alone is insufficient to justify, or a  
24 conclusion, first of all, that there's an actual,  
25 subjective expectation of privacy.

1                   And more importantly, or equally  
2 important, I should say, there's been nothing  
3 here that demonstrates that society is prepared  
4 to accept that Steven Avery has a reasonable  
5 expectation of privacy in the location of the  
6 Toyota RAV 4 vehicle, found at the bottom of  
7 Exhibit No. 18.

8                   More importantly, there's been no  
9 evidence whatsoever that suggests he has a  
10 reasonable expectation of privacy about anything  
11 in that vehicle. And while he may not have a  
12 property right, we agree he has no property right  
13 with respect to her vehicle. He has no property  
14 right with respect to the blood found in the  
15 vehicle, unless of course it's his blood.

16                  But then, again, we don't have any  
17 testimony saying that. We don't have any  
18 evidence of the fact, introduced in this hearing,  
19 of those facts, justifying a reasonable  
20 expectation of privacy there.

21                  He did not drive that vehicle. He did  
22 not own that vehicle. As far as we know, the  
23 only time he touched that vehicle was sometime  
24 during the week of October 31st.

25                  With respect to the contents of the burn

1                   barrel, the location of the burn barrel, where's  
2                   the reasonable expectation of privacy? Anyone  
3                   would drive up and down that upper road there,  
4                   stop and look in that burn barrel. Burn barrel,  
5                   anything in the burn barrel is discarded  
6                   abandoned property. It's the quintessential act  
7                   of abandoned property. Burned stuff is in there.

8                   What reasonable expectation of privacy  
9                   actual -- First of all, what subjective, actual  
10                  expectation of privacy did that man have in the  
11                  contents of this burn barrel? What expectation  
12                  of privacy did he have in the remains of the  
13                  camera, in the remains of the cell phone, in the  
14                  remains of other items collected there? It's not  
15                  only an expectation of privacy in the place, but  
16                  also in the things. And there's been no  
17                  evidence, no argument, nothing whatsoever.

18                  The burn pit, located behind the garage,  
19                  what special -- what evidence do we have there  
20                  are any special expectation of privacy there?  
21                  Yes, okay, it's located behind the barn. Great,  
22                  do we have any demonstration? Do we have any  
23                  evidence that there was an actual, subjective  
24                  expectation of privacy created by Steven Avery in  
25                  the burn pit?

1                   There's no evidence in the record, not  
2                   one iota, that he did anything special to secret  
3                   that area, to shield it from anywhere else, other  
4                   than it's geographical location. And, quite  
5                   frankly, that's not enough.

6                   More to the point, what reasonable, or  
7                   what actual, subjective expectation of privacy  
8                   does he have in the contents of the pit. What  
9                   subjective, actual expectation of privacy does he  
10                  have in the remains of Teresa Halbach? I  
11                  certainly didn't hear any evidence suggesting  
12                  that he has such an expectation of privacy  
13                  relative to the contents of the burn pit either.

14                  Now, let's further address some of the  
15                  case law cited by the defense. It's been a while  
16                  since I read **Arizona** Hicks -- **vs. Hicks**, but it  
17                  seems to me the principle that Counsel cites in  
18                  that is that individuals can't have an  
19                  expectation of privacy in stolen items. That's  
20                  true.

21                  But the search in **Hicks** occurred in the  
22                  house of Mr. Hicks, if I remember, and it's been  
23                  some time, so there is an expectation in the  
24                  place, which then, of course, provided an  
25                  additional expectation of privacy in the items

1           within the place. Well, that's a far different  
2           set of facts than we have here.

3           Then they cite ***O'Connor vs. Ortega***.

4           Ownership is not -- Let's see, ***Ortega***, if memory  
5           serves me, that was a case involving a search of  
6           an individual at his place of employment. As a  
7           matter of fact, ***O'Connor vs. Ortega***, I believe,  
8           was an actual search of the person's private  
9           office. Again, that's an entirely different set  
10          of circumstances that we have in this particular  
11          case.

12          Again, they cite the ***Whitrock*** case,  
13          which I also cite for the principle, the general  
14          principle in my brief, for another point.

15          Certainly guests can have an expectation of  
16          privacy in someone else's home. We're certainly  
17          not contesting that but, then again, it's the  
18          place that's searched and how reasonable is their  
19          expectations.

20          And it's not a carte blanche, just  
21          because you have a guest, they always, forever,  
22          have a reasonable expectation of privacy in, for  
23          instance, your home. There are other factors  
24          that the Courts look at, but it's not uncommon.  
25          I don't see how that case has any particular

1                  relevance, or the principles therein, have  
2                  application to this case, because the facts are  
3                  so unique and so different.

4                  Next, it's pretty much conceded in their  
5                  argument, and in the testimony, that by and  
6                  large, the vast area contained in Exhibit No. 18,  
7                  here, is attributed to the auto salvage yard.  
8                  Well, the last time I looked, an auto salvage  
9                  yard was a commercial enterprise and business.

10                 And while one may have, and I use the  
11                 word one because I will come back to that, one  
12                 may have a reasonable expectation of privacy in  
13                 commercial property, but it is less than a  
14                 reasonable expectation of privacy one would have  
15                 in a private dwelling. The best case for that is  
16                 **New York vs. Burger**, B-u-r-g-e-r, 482 U.S. 691,  
17                 page 700, 1987. And if memory serves me, **Burger**,  
18                 I think, involved a search to a auto salvage  
19                 yard.

20                 Now, with respect to the challenge here,  
21                 we have no reasonable -- no actual, subjective  
22                 expectation of privacy, which has been  
23                 established in the defense presentation of  
24                 evidence, in this particular case. Not only is  
25                 there no actual, subjective expectation of

1           privacy in the areas that we have just talked  
2           about, there's no one that society is willing or  
3           prepared to accept as reasonable under the  
4           circumstances of this case. Again, this is a  
5           commercial piece of property, by and large. It  
6           is a property which is held open to the public.

7           It's the State's position that Mr. Avery  
8           doesn't have a basis to challenge the search  
9           warrant except, and only limited to, the search  
10          of his residence and the garage. Any property  
11          located elsewhere, he did not have a reasonable  
12          expectation of privacy in.

13          Particularly in addition, the argument  
14          is, with respect to the burn area and the burn  
15          pits, you have abandoned property, you have burn  
16          property. And more importantly, relative to the  
17          expectation of privacy, there is no evidence,  
18          there is no testimony, that there were any steps  
19          taken by Mr. Avery, evincing an actual,  
20          subjective expectation of privacy, other than  
21          their mere location. And, quite frankly, in or  
22          near the curtilage, to borrow the old common law  
23          term, is not enough.

24          All right. Moving on to the challenge  
25          to the **Franks** motion. The State's primary

1 argument, and I'm going to begin with the  
2 procedural argument, and then I will reach the  
3 merits. The procedural argument is, first and  
4 foremost, the defendant's pleading. Its motion,  
5 affidavit, supporting documentation, we believe,  
6 was insufficient to justify the Court's taking  
7 the evidentiary testimony in the first place.

8 First, there must be a substantial  
9 preliminary showing that there was a false  
10 statement, knowingly and intentionally, or with  
11 reckless disregard for the truth, was included in  
12 the warrant and affidavit, and that that  
13 statement is necessary to the finding of probable  
14 cause. We agree.

15 **Franks vs. Delaware** is the seminal case  
16 in this matter. It has been adopted and it's  
17 reasoning applied in a couple of Wisconsin cases,  
18 most notably **State vs. Anderson**. To make a  
19 substantial preliminary showing there must be  
20 allegations of deliberate falsehood or reckless  
21 disregard. And those allegations may be -- must  
22 be accompanied by an offer of proof.

23 When you look at the motion and  
24 supporting documentation of the defense, they  
25 raise conclusory allegations that there were

1           certain false statements made, but they don't  
2           really show or demonstrate that there was any in  
3           the pleadings, any intent on the part of the  
4           affiant, in this case Investigator Wiegert, to  
5           deliberately mislead and lie to the Court, in an  
6           effort to obtain the warrant.

7           Their pleading is totally and completely  
8           deficient. It is conclusory only. And I will  
9           rely on the argument raised in my written brief  
10          on that particular point. Again, a presumption  
11          of validity attends to the affidavit.

12          In this case, there pleading fails to  
13          establish that the key statement was false or  
14          made with reckless disregard for the truth.  
15          Defense hinges it's argument primarily on two  
16          concepts, whether or not there were really  
17          volunteers and this -- the manner in which the  
18          vehicle identification number, commonly referred  
19          to the VIN, was obtained. So let's take those  
20          one at a time.

21          In their pleadings, they allege that  
22          they weren't really volunteers. I believe I  
23          specifically point pages, I think, it's 7 or 8,  
24          or 8 and 9, where they raise the specter, that  
25          there was this grand scheme to employee

1           volunteers to secretly invade the Avery compound  
2           and conduct a search. At best, the pleadings  
3           suggest that they might do something like that,  
4           at best. In other words, might use the volunteer  
5           searchers to help assist in a search.

6           This discussion, while there was a  
7           meeting, that we were all going to meet at the  
8           Manitowoc Sheriff's Department, that all, at  
9           best, signifies an intent to have something  
10          happen in the future. It doesn't exist --  
11          doesn't establish the existence of any kind of  
12          working relationship, or to take the legal phrase  
13          now, an agency relationship, or a joint venture  
14          relationship, with law enforcement, at the time  
15          of Pamela Sturm's entry to that property.

16          At best, it's a -- suggests that maybe  
17          at some point we will utilize these searchers to  
18          assist us in the search. As it turned out, we  
19          know from Mr. Hillegas, that several days later  
20          he did assist in that capacity. But the  
21          pleadings don't tell us that such -- or suggest  
22          that such an agency existed at the time of entry.

23          There's no other evidence to suggest  
24          that Pamela Sturm, in the affidavit, was working  
25          at the behest, or for, law enforcement. There's

1                   no evidence anywhere in the affidavit that  
2                   suggests that such an agency relationship  
3                   existed, or was established, prior to gaining  
4                   entry on the morning of November 5th. So their  
5                   pleading is deficient.

6                   Secondly, with respect to the VIN  
7                   number, they say that there was a lie regarding  
8                   this whole concept of matching, primarily hinging  
9                   its argument on whether the -- Pamela Sturm found  
10                  all of the VIN characters upon her examination of  
11                  the vehicle. Well, regardless of whether she did  
12                  or she didn't, it is irrelevant.

13                  Detective Remiker did have the  
14                  opportunity to examine the vehicle, did have the  
15                  opportunity to find all 17 characters. And that  
16                  was hours before the warrant and affidavit were  
17                  prepared and submitted to a judicial officer for  
18                  review and signature.

19                  Again, with respect to the pleadings,  
20                  we'll come back on the technical argument and  
21                  make this point. I think if you were to remove  
22                  the discussion of the VIN number entirely from  
23                  Paragraph 5, the affidavit prepared by  
24                  Investigator Wiegert states probable cause,  
25                  easily.

1                   We know at the time of the affidavit,  
2                   and the Court has the affidavit, I believe it's  
3                   marked as Exhibit 15, if memory serves me. Yes,  
4                   Exhibit 15.

5                   We know that in Paragraph 2 of this  
6                   particular case, that a missing person Complaint  
7                   was filed with the Calumet County Sheriff's  
8                   Department, by Karen Halbach. We know that her  
9                   daughter had not been seen or heard from since  
10                  Monday, October 31st, 2005, and that it was  
11                  unusual for her not to have contact with family  
12                  friends or work people. We know further, from  
13                  that paragraph, that she was driving a 1999  
14                  Toyota RAV 4, dark blue in color.

15                  We also know that on November 4th, we  
16                  have Mr. Avery informing the investigators, I  
17                  believe Investigator Remiker, that Teresa Halbach  
18                  was in fact on his property. He did see her on  
19                  October 31st, 2005, that she was there to take  
20                  photographs of the vehicle he was selling.

21                  We also know, taking out the concern  
22                  regarding the obtaining of the VIN number, that  
23                  Pamela Sturm found a Toyota RAV 4, on the  
24                  property, on November 5th. That's less than five  
25                  days, a few hours less than five days after she

1                   was last seen on the property.

2                   The interesting thing about the Toyota  
3                   RAV 4, as she described it, the affidavit says it  
4                   was dark blue in color. She finds a RAV 4. The  
5                   RAV 4 that she finds, her attention is drawn to.  
6                   It is not an unfair inference to draw that it has  
7                   some similar appearance to the RAV 4 of Teresa  
8                   Halbach's.

9                   But what really makes this case rather  
10                  interesting is the fact that, of all the vehicles  
11                  there, we have a RAV 4 which is secreted by brush  
12                  and other automobile parts, less than -- again,  
13                  less than five days after she was last seen and  
14                  known to be driving that vehicle. That in and  
15                  off itself is probable cause to justify a search  
16                  warrant, the issuance of a search warrant in this  
17                  particular case.

18                  Now, additionally, let's assume for the  
19                  sake of argument that -- we don't have to assume,  
20                  but we will for purposes of the procedural  
21                  argument -- that Pamela Sturm was only able to  
22                  read four of the characters, not 10. But let's  
23                  say it was just four, let's just say it was the  
24                  last 4, 3044.

25                  What are the odds, what are the

1           probabilities, that it is, in fact, Teresa  
2           Halbach's vehicle, when you consider all those  
3           facts. Easily meets probable cause. At 10  
4           digits, does that make it closer? Ten digits,  
5           we're at -- we're preponderance of the evidence.

6           All right. Now, to the merits of the  
7           argument, and to the testimony that was  
8           delivered. The testimony establishes, I think  
9           critical testimony was provided by Pamela Sturm  
10          and Ryan Hillegas.

11          With respect to Pamela Sturm, she  
12          testified that she had no contact whatsoever with  
13          any member of law enforcement regarding the  
14          decision to participate in the volunteer search  
15          program and, more importantly, in the decision to  
16          go to the Avery property and look for Teresa  
17          Halbach's vehicle. As she indicated, and was  
18          confirmed by Ryan Hillegas, it was her idea.

19          No one told her anything. No one  
20          suggested anything. In fact, she hadn't even  
21          been given any instructions by Mr. Hillegas as to  
22          what to do and how to do it. He gave her a very  
23          generalized map of the area. And she and her  
24          daughter, Nikole, went on their way and took the  
25          initiative and decided they would go there.

1                   Because, at least she knew in her mind,  
2                   from the media newscast, the last place Teresa  
3                   Halbach was seen, that anyone knew at that time,  
4                   was the Avery property. It was her decision to  
5                   go there, without any association with law  
6                   enforcement whatsoever. That was confirmed by  
7                   Ryan Hillegas.

8                   The entire volunteer search effort,  
9                   especially in those early days, that being  
10                  Thursday night, Friday when the posters were  
11                  picked up, Friday afternoon when the posters and  
12                  information were distributed, was entirely his  
13                  workings, along with his friend, and Teresa  
14                  Halbach's roommate, Scott Bloedorn. They were in  
15                  charge of the volunteer efforts.

16                  There's no testimony they took any  
17                  organization, any direction, any control, any  
18                  supervision, or any advice, for that matter, from  
19                  law enforcement, other than, perhaps -- and the  
20                  record is thin on this -- if you find something,  
21                  call us, here are the phone numbers. Hardly  
22                  evidence indicating, or establishing, the  
23                  existence of an agency relationship, or a joint  
24                  venture relationship.

25                  In fact, as I recall the testimony of

1           Ryan Hillegas, it wasn't until later on Friday  
2           that they decided that he would have a meeting at  
3           the residence of Teresa Halbach and Scott  
4           Bloedorn's, the next morning, and perhaps do some  
5           searches.

6           And when questioned about the scope, or  
7           purpose, or focus of these searches, he indicated  
8           that they were searching the roads, the ditch  
9           lines, the general fields, in the area from  
10          Manitowoc to Mishicot, to the area where -- the  
11          apartment where Teresa Halbach lived.

12          Their assumption was the fact that she  
13          perhaps had some automobile accident. That was  
14          their focus. They weren't looking to search  
15          private premises or private property, per se,  
16          other than something that might be associated  
17          with an open field. That was the focus.

18          There was no law enforcement involvement  
19          in that. And as indicated, Pamela Sturm and her  
20          daughter, Nikole, show up a good hour after  
21          everyone else has been dispatched. Again, the  
22          decision to go there was entirely theirs.

23          The tape played by counsel is rather  
24          interesting, but there's a couple of ways to look  
25          at that. But more importantly, it supports the

1 argument made relative to the procedural point,  
2 and that is, at best, it signifies that, well,  
3 we're going to have the searchers, maybe we can  
4 use those searchers do something later.

5 We want to go back. We want to get a  
6 reinterview of Mr. Avery, want to get a  
7 reinterview of Mr. Zipperer, and we're going to  
8 ask for consent. We can get the searchers to  
9 help us with a search. Again, doesn't signify  
10 any agency existed, doesn't signify any joint  
11 venture existed at that time.

12 At best, it signals that perhaps one  
13 would occur in the future. It certainly doesn't  
14 suggest, and it doesn't even come close to  
15 suggesting, that there was an error, a lie, or an  
16 omission, relative to just who these searchers  
17 were and what they were up to.

18 Now, with respect to that, I would like  
19 to direct the Court to the case of **State vs.**  
20 **Anderson**, as an example of what would constitute  
21 an error, a lie, or omission. **Anderson** was a  
22 case that came out of Kenosha County regarding  
23 the execution of a search warrant for narcotics  
24 at a particular residence there.

25 In that case, the defense challenged the

1 search warrant on a **Franks** motion, alleging that  
2 there were two lies, or reckless disregards for  
3 the truth that occurred, in the presentation of  
4 the affidavit.

5 One was a statement by the undercover --  
6 or by the officer, the affiant, who said, Well, I  
7 have reason to believe that the informant we use  
8 here is reliable because we made two prior  
9 purchases with that individual and they  
10 demonstrated their reliability. Defense  
11 challenged that as a reckless statement,  
12 insufficient to justify credibility, reliance by  
13 the Court on that.

14 Secondly, they challenged the statements  
15 when the undercover officer said, Well, I saw the  
16 ve -- I saw the informant go to and from the  
17 residence of the defendant, return to and come  
18 from the residence of the defendant. It turns  
19 out that, actually, the investigator did lose  
20 sight of the informant for a moment or two, and  
21 never actually saw them enter the house and exit  
22 the house, but it was a matter of moments.

23 The Court likewise determined, under  
24 those type of facts, that those were not lies,  
25 they were not reckless disregards to the truth,

1           they were reasonable inferences drawn from the  
2           circumstances which were presented in the court.

3           And, again, under those circumstances,  
4           and taking by analogy what's occurred here, there  
5           is no unfair, unreasonable inference drawn from  
6           the contents of this affidavit. And if those  
7           statements, under those circumstances, were found  
8           to be supportive of the issuance of the warrant  
9           in that particular case, then certainly anything  
10          that occurred in the affidavit here, meet legal  
11          sufficiency.

12          The other thing which the **Anderson** case  
13          notes, and I would again point out, in footnote  
14          seven of **Anderson** --

15           THE COURT: What's the citation?

16           ATTORNEY FALLON: Yes, 138, Wis. 2d, page  
17          451, specifically, page 464. The **Anderson** cite is  
18          in my brief. Footnote seven, the Court noted that  
19          they were, quote, "We are unconvinced that a hearing  
20          was providently granted in that case."

21          The **Anderson** case is also significant  
22          for another reason, which was discounted by the  
23          defense, and so we take issue with that. And  
24          that is, the defense says that what information  
25          was contained in Investigator Wiegert's mind, in

1 other words, what information he had available to  
2 him at the time he applied for the warrant, which  
3 may or may not have found it's way into the  
4 affidavit, was irrelevant.

5 Well, quite frankly, nothing could be  
6 further from the truth. Because as **Rakas vs.**  
7 **Illinois**, as **Franks v. Delaware**, and as **State vs.**  
8 **Anderson** tell us -- specifically, I should say as  
9 **Franks v. Delaware**, not **Rakas** -- as **Franks v.**  
10 **Delaware**, and the **Anderson** case tell us, it says,  
11 Because the defendant must show either intent or  
12 reckless disregard, a **Franks** hearing, by  
13 necessity, focuses on the state of mind of the  
14 affiant.

15 So what Investigator Wiegert knew and  
16 when he knew it, was important. That was the  
17 basis for the testimony. He knew that they had  
18 found a Toyota RAV 4. He knew from the telephone  
19 conversations that it was a late model. In fact,  
20 the Court can consult Exhibit 16 regarding that.

21 As a matter of fact, Exhibit No. 6 --  
22 I'm sorry -- Exhibit 16 was the recording, so  
23 either one, Exhibit 16, but Exhibit 17 is the  
24 written transcription. Looking at page 62  
25 question by Detective Wiegert:

1                   Question: Does it look like a newer  
2                   one?

3                   Caller: Yeah, it's the '99 to 2000.

4                   Wiegert: Is there any --

5                   Caller: It's more of a bluish-green,  
6                   though, that's why we don't want to put, you  
7                   know --

8                   Question: Is there any license plates  
9                   on it?

10                  Caller: No plates on it, but it's a  
11                  little covered up. It's weird, it's covered up.

12                  There's also much discussion as to  
13                  whether it was dark blue, blue, bluish-green.

14                  And the Court can consult the transcript on the  
15                  tape, but she says it's more blue than green.

16                  During the course of that trip from  
17                  Calumet County, to Manitowoc County, to the  
18                  property itself, Investigator Wiegert knew that  
19                  there was a Le Mieux sticker, dealer sticker, on  
20                  Teresa's vehicle, and then confirmed with Ms  
21                  Sturm that the vehicle she found, likewise, had a  
22                  sticker. They knew some of the VIN numbers, upon  
23                  arrival they got the rest of the VIN numbers.

24                  All of that information goes to the  
25                  state of mind. So when the officer uses the word

1 matching, that's what's in his mind. And  
2 matching, by the way, doesn't have to be a hyper  
3 technical term, as counsel would like to suggest  
4 it is.

5 And perhaps in purposes of DNA analysis,  
6 matching means hyper technical, dot your eyes,  
7 cross your t's, perfect fit. But in every day  
8 parlance, matching means matching. It looks like  
9 it, it is, it's similar to, etcetera.

10 Again, and that becomes relevant,  
11 because the whole purpose of the Fourth Amendment  
12 search and seizure law, the whole determination  
13 of probable cause is that it -- it's not a hyper  
14 technical determination. It's based on reason.  
15 It's based on common sense. It's based on  
16 inferences. It's based on reasonable  
17 possibilities and probabilities that the item  
18 looked for will be found in the place searched.

19 Now, also did want to respond to some  
20 concerns, because yes, first and foremost, Pamela  
21 Sturm did have consent. I don't think that's  
22 questioned. She had consent to enter the  
23 property. She told us so. And Mr. Earl Avery,  
24 likewise, confirmed that he allowed her in.

25 As a matter of fact, his words when

1                   questioned about that, words to the effect:

2                   Well, he was concerned. He wanted to help out.

3                   He wanted to do what he could. And when I asked,

4                   Well, if it was your sister, you would want

5                   somebody to be willing to help out and let you

6                   take a look around, and I believe his answer was

7                   yes. So there's no question that Pamela Sturm

8                   rightfully had a way to get on there.

9                   Again, it is a commercial property.

10                  Again, this occurred in the morning, when the

11                  property, the salvage yard where the vehicle was

12                  located, was in business. It was during business

13                  hours, 8 to noon. They were there at 11.

14                  So it's a property held open to the

15                  public. There were other members of the public

16                  milling about, through that yard. In fact, the

17                  phone call, Exhibit 16 and 17, which the Court

18                  is, again, free to peruse, indicates there was

19                  observations of other individuals floating around

20                  at the time the vehicle was found.

21                  In fact, Ms Sturm was somewhat

22                  concerned, because she didn't know who they were,

23                  or what they were up to. And she had a pretty

24                  good feeling that she had found the vehicle.

25                  Otherwise, I don't think she would have been all

1                   that concerned.

2                   But not knowing who is there, what's  
3                   going on, I think the fact of her heightened  
4                   sensitivity, is further evidence. Also, a fact  
5                   in the mind of Investigator Wiegert and Sheriff  
6                   Pagel, that there was something to the finding of  
7                   that vehicle, that it was the vehicle everyone  
8                   was looking for.

9                   Next, the defense would have us to  
10                  believe that, there is no basis for law  
11                  enforcement to even come in there. Well, excuse  
12                  me, but you have a situation where you have the  
13                  vehicle of the missing person, found in the  
14                  corner of a business piece of property. Law  
15                  enforcement had every right to go in there and  
16                  assist in, one, securing the vehicle, you have  
17                  exigent circumstances here.

18                  It's interesting to note that, as was  
19                  pointed out in the testimony, the vehicle is  
20                  reasonably close to the car crusher. The vehicle  
21                  is also secreted from view. It is a vehicle, as  
22                  Mr. Avery told us, he didn't even know it was  
23                  there two or three days earlier.

24                  So all of these factors come into the  
25                  equation as to the reasonableness -- and that's

1           the linchpin of Fourth Amendment analysis, the  
2           reasonableness of law enforcement behavior upon  
3           arrival at the scene. They went there. They  
4           secured the vehicle. Took care of the safety of  
5           Pamela Sturm and her daughter, Nikole.

6           Now, even if the defense wanted to make  
7           the argument, I saw -- I heard inklings of it,  
8           that there were somehow some kind of trespass  
9           here, by law enforcement. Well, the reality is,  
10          that doesn't matter. We don't believe there was.

11          But even if the Court were somewhat  
12          concerned, I would ask the Court to direct, and  
13          perhaps consider, the case of **United States vs.**  
14          **Oliver**, Supreme Court case at 466 U.S. 170.  
15          **Oliver** is not particularly noteworthy for the  
16          Court's analysis, except with respect to one  
17          point. And -- And that deals with the law of  
18          trespass and it's possible application in Fourth  
19          Amendment determination.

20          The law of trespass, this is page 183.  
21          Law of trespass, however, forbids intrusions upon  
22          land that the Fourth Amendment would not  
23          prescribe. For trespass law extends to instances  
24          where the exercise of the right to exclude  
25          vindicates no legitimate privacy interest.

1                   And then they go on to say -- there is a  
2                   footnote, which I will get to in a minute -- they  
3                   go on to say, less in the case of open fields,  
4                   the general rights of property protected by  
5                   common law trespass, have little or no relevance  
6                   to the applicability of the Fourth Amendment.

7                   Well, by analogy, we're in a salvage yard here,  
8                   and whose expectation of privacy are we concerned  
9                   with, Earl and Charles Avery, or is it Steven  
10                  Avery.

11                  With respect to trespass, the Court went  
12                  on in the footnote, the law of trespass  
13                  recognizes the interest, and possession, and  
14                  control of one's property, and for that reason,  
15                  permits exclusion of unwanted intruders. But it  
16                  does not follow the right to exclude conferred by  
17                  trespass law, embodies a privacy interest also  
18                  protected by the Fourth Amendment.

19                  To the contrary, the common law of  
20                  trespass furthers a range of interest that have  
21                  nothing to do with privacy and that would not be  
22                  served by applying the strictures of trespass law  
23                  to public officers. And the footnote goes on.

24                  In examining the totality of the  
25                  circumstances here, taking all of the evidence

1           that the Court has taken in, over the course of  
2           the last day and a half, there is no basis,  
3           whatsoever, under the Fourth Amendment law, to  
4           suppress any of the evidence. One, there is no  
5           standing, by Mr. Avery, to challenge any of the  
6           searches, other than the search of his trailer  
7           and his residence, although he attempts to do so.  
8           And he attempts to do so on the basis of a **Franks**  
9           challenge.

10           Again, there was no basis to hold a  
11           hearing and, clearly, based on the testimony  
12           which was established by all of the witnesses  
13           here, there was certainly probable cause to  
14           justify the search warrant and conduct the search  
15           that law enforcement conducted. There is no  
16           material omission, or material lie, affecting the  
17           establishment of probable cause in this  
18           particular case. As a result, this Court is duty  
19           bound to deny the request and we ask the Court to  
20           do so. Thank you.

21           THE COURT: Mr. Buting, brief rebuttal?

22           ATTORNEY BUTING: Yes, Judge, I will try to  
23           be brief because I know it's getting late here.  
24           The -- A couple things are not -- a lot of things  
25           are not clear about what position the State is

1           really taking here. It seems to say that, because  
2           Mr. Avery has no personal privacy interest in, for  
3           instance, the remains of Teresa, he can't have any  
4           standing.

5           That's totally irrelevant. The Court's  
6           have made it clear that would also be true as to  
7           stolen property, as in **Hicks**. One has no  
8           expectation, or no personal interest in that  
9           stolen property, you shouldn't even have it in  
10          your house, but the Court said that's not the  
11          issue. Ownership is really irrelevant when it  
12          comes to standing.

13          So -- And that applies also to -- he  
14          said it a couple times, I think he also mentioned  
15          it when he was talking about the vehicle, he  
16          didn't drive it, he didn't own it, etcetera,  
17          etcetera. Again, that doesn't matter. The issue  
18          is, is there an expectation of privacy. And,  
19          frankly, if -- One factor that he ignored is, in  
20          determining whether someone has an expectation of  
21          privacy, if the State is going to argue that  
22          there was some effort to conceal it, that would  
23          seem to even more indicate that there was an  
24          expectation of privacy, if it was not out in the  
25          open.

1                   The reference to the burn barrel somehow  
2 being, and the burn pit somehow being, like  
3 abandoned, and somehow no expectation of privacy,  
4 absolutely, I totally disagree with. First of  
5 all, it's not like garbage, even garbage you have  
6 an expectation of privacy in until -- as long as  
7 it's by your curtilage, until it is picked up, as  
8 people often retrieve things from garbage.

9                   This is entirely different. When you  
10 burn, a burn barrel, expectation is it's not  
11 being picked up. It's not ever going to go to  
12 someone else. The contents of the burn  
13 barrel are, it's going to be entirely burned up.  
14 That's the point of it.

15                  Moreover, the location of it, as we have  
16 seen numerous times through these descriptions,  
17 is it's probably a good half a mile, you have to  
18 get off the highway and drive a half a mile down,  
19 to the driveway that goes over to Mr. Avery, and  
20 then back over to his property, going all the way  
21 around this big parcel of --

22                  ATTORNEY FALLON: I'm going to object. I  
23 don't believe there's any evidence that's a half  
24 mile ride from one point to the other. I don't  
25 recall any evidence of that being introduced.

1                   ATTORNEY BUTING: Well, whether it's  
2 exactly a half mile, it's clearly a long way off the  
3 highway. Would Mr. -- Suppose this analogy, would  
4 Mr. Fallon say, that if you have a clothes line  
5 hanging over the area where that burn pit is, with  
6 your clothes on it, that any individual from the  
7 public, or law enforcement, could drive down highway  
8 147, turn right on Avery Road, and then drive around  
9 the corner, take a left, go all the way over to the  
10 Steven Avery residence, park, get out, walk around  
11 to the back of it, and start going through your  
12 clothes? Of course not. The location of that is  
13 obviously not open to the public and there's clearly  
14 an expectation of privacy.

15                  By the same token, would he expect that  
16 somebody would be allowed to drive off of Highway  
17 147, down the road, turn left, go all the way  
18 down the driveway and start sticking their nose  
19 in the burn barrel? No, I don't think so. I  
20 think the location clearly indicates an  
21 expectation of privacy. And it's not like  
22 garbage, because there's no expectation it's  
23 going to be picked up by anybody.

24                  The reference to commercial business, as  
25 I want to mention for just one second, **O'Connor**

1           **vs. Ortega**, I think, did deal with a private  
2           office and it was in a hospital, I think. But  
3           the comparison of this, what I cited it for is to  
4           point out that even -- there's even an  
5           expectation of privacy in a commercial setting,  
6           not just a private setting.

7           But, this is not strictly what you would  
8           classify as an employment, or employee, employer  
9           type of case, because this is a family run  
10          business. It's not like Mr. Avery is just an  
11          employee of GE or something, who has his own  
12          private office and expectation in there, but  
13          everything else in the big plant is not. This is  
14          different. This is a small, family run business  
15          where he is not just an employee, he's a member  
16          of the family working there and living there.

17          And there is one other case that I would  
18          cite to the Court on that point, and that's **State**  
19          **vs. Schwegler**, S-c-h-w-e-g-l-e-r, 170 Wis. 2d,  
20          487, 1992 case, which was a horse barn, again, it  
21          was a commercial business. But where the horse  
22          barn, and there was an inspection done, that the  
23          Court ultimately found, the owner of that  
24          business, even though it was a commercial  
25          business, had an expectation of privacy in the

1 barn and the warrantless inspection was unlawful.

2 One last point on the question of  
3 proximity and, used to be called curtilage, and  
4 that sort of thing. Again, like in all Fourth  
5 Amendment law, it is very fact intensive, the  
6 Courts recognize the difference between a very  
7 large property and a small one.

8 In **State vs. Martwick**, M-a-r-t-w-i-c-k,  
9 that's 231, Wis. 2d, 801, I don't have the year,  
10 I don't think, but it's at page 819. The Court  
11 notes, On a smaller property, such as Martwick's  
12 property, the curtilage may very well extend for  
13 less distance than on a larger property, where  
14 the owner has more room to conduct his or her,  
15 quote, "intimate activities of life", citing a  
16 U.S. Supreme Court case.

17 And they also -- In this case, they  
18 found that it wasn't, but they also note in **State**  
19 **vs. O'Brien**, which is at 223 Wis. 2d, 303, at  
20 page 316, a 1999 Wisconsin Supreme Court case,  
21 the Supreme Court found that a truck parked  
22 approximately 200 feet from a farmhouse was  
23 nonetheless within the curtilage. So, when one  
24 is talking about a large, open, farm type, or  
25 parcel like we have here, the whole concept of

1                   curtilage is different than if you are talking  
2                   about a little city house.

3                   Now, as to the question of probable  
4                   cause, and whether the State argues that even if  
5                   you take -- you strike certain parts from the  
6                   Paragraph 5 of the affidavit, there's still  
7                   sufficient probable cause. And one of the points  
8                   that he made is, he argues, Well, the rest of the  
9                   affidavit says, she's been missing since October  
10                  31st; they spoke to Mr. Avery, he conceded that  
11                  he did see her on October 31st; and that, then,  
12                  Sturm, the volunteer searcher, citizen searcher,  
13                  found a Toyota RAV 4 on the property, and as if  
14                  that alone, I think he says, would be probable  
15                  cause.

16                  But -- And maybe in some settings it  
17                  would be, if this was a farm, with no other  
18                  vehicles, and you happen to have -- or maybe just  
19                  one or two vehicles, and you happen to find a  
20                  Toyota RAV 4. Well, perhaps that is probable  
21                  cause, probably would be.

22                  This is a auto junkyard. There's 4,000  
23                  cars on there. So the mere existence of a Toyota  
24                  RAV 4 would not be unusual, and would not be so  
25                  significant that, in and of itself, absent any

1           other descriptions that match, that there would  
2           be probable cause.

3           Now, I would concede, so there is no --  
4           we don't waste anymore time on this, that in our  
5           pleadings, we believe the evidence would indicate  
6           that there was an agency type relationship  
7           between these searchers, these citizens, and the  
8           police, and that they were conducting -- using  
9           them as an end around. And I will concede that  
10          the way the evidence came out on this record, we  
11          haven't established that.

12          Patricia (sic) Sturm and Ryan Hillegas,  
13          whether truthful or not, clearly the record from  
14          them is that they did not have any contact with  
15          law enforcement. They weren't organized,  
16          encouraged, or whatever.

17          My point in playing that segment of --  
18          or that brief phone conversation today, of  
19          Investigator Wiegert, was not to try and show  
20          that his reference to volunteers proves that he  
21          was using them for that, but it goes to his  
22          credibility on the other matters that he's  
23          testified to, because he swore under oath that he  
24          did not say anything to Remiker on the phone  
25          about using, or intending to use volunteers, to

1 search the Avery property.

2 ATTORNEY FALLON: I'm going to object,  
3 that's a mischaracterization of his testimony.

4 ATTORNEY BUTING: Obviously it's --

5 THE COURT: His testimony will speak for  
6 itself, I will take a look at the transcript.

7 ATTORNEY BUTING: Okay. So, yes, but  
8 conceding that that -- that one part of Paragraph 5  
9 we have not established our burden on, says nothing  
10 about the rest of it, though. Granted, okay, so  
11 they are volunteer searchers, according to this  
12 record. But, Wiegert also says that the volunteer  
13 searcher said they had a matching -- a vehicle  
14 matching the description, and we know that that's  
15 not true.

16 The reference in **Franks** and **Anderson**  
17 that the State makes, to the state of mind of the  
18 affiant being important, he totally  
19 misunderstands, or he's taking it out of context.  
20 What the Court is talking about is, sure, the  
21 state of mind of the affiant is important,  
22 because it's important as to the intent or  
23 recklessness element, of the test.

24 It's not relevant what the affiant has  
25 in his mind that he doesn't present to the Court.

1           Otherwise, why would we have search warrants in  
2           the first place, if all that it needed was that  
3           the officer, in his own mind, is convinced that  
4           he's got enough evidence, but he feels like he  
5           doesn't have to even tell the Court.

6           That's preposterous. That's turning on  
7           its end, the whole process of requiring an  
8           independent evaluation by a magistrate, not  
9           allowing officers themselves to accumulate facts  
10          or beliefs and come to some conclusion on their  
11          own. Those facts and beliefs need to be  
12          presented to the Court. It's not enough that he,  
13          in his own mind, thought, oh, well, this is  
14          enough for a match. He should tell the Court  
15          what it is that makes him think that. And he  
16          didn't do that.

17          Just two other quick points. One, yes,  
18          this is a property open for business, and yes,  
19          there are other people wandering around there at  
20          the time. But all of them had permission. It's  
21          clear, that the custom and practice was that  
22          people don't go into that salvage yard, into the  
23          pit, and start looking at cars, without -- that  
24          is customers -- without permission from the  
25          owners first. And that's what Patricia (sic)

1                   Sturm did, that's not what Detective Remiker did.

2                   It's not a question of trying to apply  
3                   trespass law, specifically, which is the **oliver**  
4                   case. It's a question of, under the Fourth  
5                   Amendment, whether Detective Remiker had a lawful  
6                   purpose in being where he was and observing what  
7                   he saw.

8                   Even if there is some exigent  
9                   circumstances to allow him to come down to the  
10                  property and to, quote, "secure the vehicle", he  
11                  did much more than that. And that's the point,  
12                  he didn't just come down here, secure the  
13                  vehicle, talk to the Sturms, then go get a  
14                  warrant, which is what he should have done.

15                  He did more. He searched the vehicle,  
16                  because he went up to it with a flashlight and he  
17                  looked in and he used illumination to allow him  
18                  to see other evidence related to the car,  
19                  particularly the VIN. That's what happened.

20                  It's analogous to what happened in  
21                  **Hicks**, where they recorded the serial numbers.  
22                  They moved them, the speakers or stereo  
23                  components, recorded the serial numbers. And  
24                  that was considered a search that was unlawful.

25                  So, for all those reasons, I think the

1                   Court should find that we have met our burden,  
2                   under **Franks**, and that the motion to suppress  
3                   should be granted. Thank you.

4                   THE COURT: All right. Given your  
5                   arguments, and my need to look at the transcript,  
6                   I'm not sure I will have a decision for you on this  
7                   issue on the 22nd, but we certainly will have some.  
8                   And I will see you then. Is there anything else  
9                   from either party?

10                  ATTORNEY KRATZ: No.

11                  ATTORNEY STRANG: No, your Honor. Thank  
12                  you.

13                  THE COURT: If not, we're adjourned for  
14                  today.

15                  (Proceedings concluded.)

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

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 15th day of August, 2006.  
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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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'	4	addressing [1] 6/16 adequately [1] 8/25 adjourned [1] 73/13 admissibility [1] 9/6 admit [1] 19/10 adopted [1] 43/16 advice [1] 50/18 affecting [1] 62/16 affiant [7] 15/14 44/4 53/6 55/14 70/18 70/21 70/24 affidavit [32] 15/24 15/25 16/2 16/10 16/13 18/24 18/25 19/4 19/7 19/24 20/11 21/17 22/21 22/25 32/7 33/23 43/5 43/12 44/11 45/24 46/1 46/16 46/23 47/1 47/2 48/3 53/4 54/6 54/10 55/4 68/6 68/9 after [5] 10/10 24/1 47/25 48/13 51/20 afternoon [1] 50/11 again [26] 4/1 5/22 11/19 13/21 18/24 29/8 37/16 40/9 40/12 40/17 42/4 44/10 46/19 48/12 51/21 52/9 54/3 54/13 57/10 58/9 58/10 58/18 62/10 63/17 66/20 67/4 agency [6] 45/13 45/22 46/2 50/23 52/10 69/6 agree [8] 3/12 3/17 5/18 12/15 35/4 35/7 37/12 43/14 agreed [1] 5/8 agreement [4] 3/6 4/9 6/2 9/15 aired [1] 5/16 akin [1] 28/2 all [48] 3/4 5/22 6/1 9/5 9/21 10/20 11/22 12/11 12/20 14/12 18/4 20/24 21/10 21/13 21/22 22/12 23/11 26/10 29/17 30/3 30/20 31/12 34/10 36/20 36/24 38/9 42/24 45/7 45/8 46/10 46/15 48/10 49/2 49/6 56/24 58/25 59/24 61/25 62/12 64/5 64/20 65/9 65/17 67/4 71/2 71/20 72/25 73/4 allegations [3] 43/20 43/21 43/25 allege [1] 44/21 alleging [1] 53/1 allow [3] 13/23 72/9 72/17 allowed [6] 24/17 24/17 24/21 24/25 57/24 65/16 allowing [1] 71/9 alone [2] 36/23 68/14 along [2] 36/7 50/13 already [1] 30/25 also [27] 4/8 5/18 6/18 16/19 17/6 18/16 23/22 26/20 26/22 28/6 32/21 38/16 40/13 47/15 47/21 54/21 56/12 57/19 59/4 59/21 61/17 63/6 63/13 63/14 67/17 67/18 70/12 although [3] 9/17 11/24 62/7 always [2] 8/8 40/21 am [1] 6/12 Amendment [17] 15/18 17/11 18/20 26/13 26/13 26/16 34/22 35/5 57/11 60/1 60/19 60/22 61/6 61/18 62/3 67/5 72/5 among [1] 6/17 analogous [1] 72/20 analogy [3] 54/4 61/7 65/3 analysis [4] 34/15 57/5 60/1 60/16 Anderson [10] 43/18 52/20 52/21 54/12 54/14 54/17 54/21 55/8
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, JUDGE'S DECISION

5 VS. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

9 DATE: AUGUST 22, 2006

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

11 APPEARANCES:

12 KENNETH R. KRATZ  
Special Prosecutor  
On behalf of the State of Wisconsin.

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

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

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

16 STEVEN A. AVERY  
Defendant  
Appeared in person.

22 \* \* \* \* \*

23 TRANSCRIPT OF PROCEEDINGS

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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

5                   ATTORNEY KRATZ: State of Wisconsin appears  
6                   by Calumet County District Attorney Ken Kratz,  
7                   appearing as Special Prosecutor. Also appearing as  
8                   Special Prosecutor is Tom Fallon, from the  
9                   Department of Justice.

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

14                  THE COURT: All right. We're here this  
15                  morning for the Court to issue its decision on a  
16                  number of motions that have been filed. Following  
17                  the decisions on those motions, the Court will take  
18                  a summary of the motions that are still outstanding,  
19                  just to make sure that they are all being dealt  
20                  with.

21                  Court will first issue its decision on  
22                  the defendant's motion to dismiss on the grounds  
23                  that the State has made a trial in Manitowoc  
24                  County impossible. The basis for this motion is  
25                  alleged that the State has taken actions to make

1           a fair trial in Manitowoc County impossible.

2           Specifically, the defendant refers to  
3           eight press conferences that were conducted  
4           primarily by the Calumet County District Attorney  
5           and Sheriff. Four of these press conferences  
6           occurred after the defendant's arrest in this  
7           case. The defendant also cites comments made in  
8           a two-part news story in May of this year by the  
9           Manitowoc County Sheriff.

10          The defendant asserts that his  
11         constitutional rights under Article 1, Section 7  
12         of the Wisconsin Constitution, as well as his due  
13         process rights under the 14th amendment to the  
14         United States Constitution, and Article 1,  
15         Section 8 of the Wisconsin Constitution were  
16         violated by the State's participation in pretrial  
17         publicity.

18          The defense brief concludes on Page 11,  
19         that, taken together, the State's actions  
20         effectively have destroyed Avery's opportunity to  
21         obtain an impartial jury in Manitowoc County.  
22         That is, the basis for requesting dismissal as a  
23         sanction is the claim that participation by  
24         agents of the State in pretrial publicity has  
25         precluded the defendant from receiving a fair

1 trial in front of Manitowoc County jurors. The  
2 Court has reviewed the media account -- accounts  
3 referenced by the motion.

4 The defendant cites no Wisconsin case  
5 which has ever granted the remedy he requests;  
6 that is, no Wisconsin case has ever found that a  
7 defendant is entitled to dismissal of a criminal  
8 charge because of the State's participation in  
9 pretrial publicity.

10 The defendant does cite two Wisconsin  
11 cases as being relevant: ***State ex rel. Schulter***  
12 ***v. Roraff***, a 1968 Wisconsin Supreme Court case,  
13 and ***Briggs vs. State***, a 1977 Wisconsin Supreme  
14 Court case.

15 In neither of these cases did the Court  
16 order that the criminal charges involved be  
17 dismissed. In fact, the Court specifically  
18 rejected the remedy in ***Schulter***, the one case in  
19 which the defendant actually requested dismissal.  
20 Continuance and change of venue have been the  
21 only remedies approved, to date, where  
22 prejudicial pretrial publicity threatens the  
23 defendant's right to a fair trial.

24 The Court is not prepared to say that  
25 the State's participation in pretrial publicity

1           could never justify dismissal of criminal  
2           charges; indeed, there's language from the  
3           **Schulter** decision which suggests that the Court  
4           did not rule out the possibility entirely.  
5           There's a sentence that reads as follows: In  
6           **State vs. Woodington**, we considered the problem  
7           of pretrial publicity and concluded that the  
8           remedy was not necessarily the dismissal of  
9           charges, but a change of venue, or continuance of  
10          the trial, and the careful selection of the jury  
11          on voir dire.

12           So it may be possible that, in an  
13          appropriate case, the Supreme Court could justify  
14          dismissal as a sanction. However, since no  
15          reported decision ever -- ever sanctioned the  
16          remedy of dismissal, this Court concludes that a  
17          remedy as drastic as dismissal could only be  
18          justified by very egregious behavior on the part  
19          of the State.

20           The Court concludes in this case that  
21          the State's role in pretrial publicity was not  
22          egregious, or designed to jeopardize the  
23          defendant's right to a fair trial. The Court has  
24          reviewed the participation of the State  
25          complained of by the defendant and makes the

1 following observations:

2                   The first four of the eight cited press  
3 conferences were more informational in nature and  
4 also related more to the missing person report,  
5 not to the involvement of the defendant in the  
6 crimes that have been alleged in this case. The  
7 last four press conferences did involve a  
8 detailing of the accusations made against the  
9 defendant, in some cases with more detail than  
10 the Court believes was necessary.

11                  But the content was largely confined to  
12 information contained in the Complaints against  
13 Mr. Avery, and the co-defendant in this case,  
14 Brendan Dassey. While the content was somewhat  
15 inflammatory in nature by virtue of the very  
16 allegations of fact, similar to the situation  
17 described in the **Briggs** decision, the information  
18 was largely available to the press and the public  
19 anyway, from the Complaints, which already were,  
20 or were soon to become, public information.

21                  The Court notes that the press in this  
22 case has given publicity to a number of pleadings  
23 and motions that have been filed, even before the  
24 court proceedings dealing with those pleadings.  
25 So, it is unlikely that the news conferences

1                   resulted in the disclosure of any meaningful  
2                   information that would not have been publicized  
3                   in any event.

4                   The Court also notes that, especially  
5                   early in these proceedings, there were media  
6                   reports that the defendant and members of the  
7                   defendant's family believed the police were  
8                   unfairly picking on him and suggested that the  
9                   defendant was being framed; indeed, the defense  
10                  in this case has filed motions indicating that  
11                  such a defense may be pursued at trial.

12                  Supreme Court Rule 20:3.6(d) permits a  
13                  district attorney to make a statement reasonably  
14                  required to protect the State from the adverse  
15                  effects of publicity not initiated by the State.  
16                  Early in these proceedings, such adverse  
17                  publicity existed. The State was reasonably  
18                  entitled to respond to public allegations that it  
19                  was basing its decisions on bias rather than the  
20                  evidence obtained.

21                  With respect to the two-part news story  
22                  involving the Manitowoc County Sheriff, the Court  
23                  notes that that took place in May, a number of  
24                  months before the scheduled trial date. At the  
25                  outset, the Court does conclude that a number of

1           the comments made by the Sheriff were ill-advised  
2           and the Sheriff should not have participated in  
3           the interview, even in the absence of a  
4           prohibition order issued by the Court. The Court  
5           does conclude, however, that his participation  
6           was not so egregious or prejudicial as to justify  
7           dismissal of the charges.

8                 First, it had been previously reported,  
9                 and the May reports reiterated, that the Sheriff  
10                was involved in the wrongful prosecution of  
11                Mr. Avery back in 1985. The Sheriff's testimony  
12                at the July 5 hearing in this case suggested he  
13                may still not be convinced that Gregory Allen is  
14                guilty and Steven Avery is innocent in the 1985  
15                sex assault. But the Sheriff appears to be  
16                largely alone in that belief.

17                 As has been widely reported for some  
18                 time, the State has not only conceded that  
19                 Mr. Avery did not commit the 1985 crime, but the  
20                 State has concluded that another man, Gregory  
21                 Allen, did. Thus, any viewer of this report  
22                 would have serious reason to question the  
23                 Sheriff's objectivity.

24                 To further balance the report, it  
25                 included prior statements from members of the

1 defendant's family that law enforcement  
2 representatives were unfairly picking on the  
3 defendant's family.

4 Sheriff's explanation as to why his  
5 department would have had no reason to frame the  
6 defendant may have been unfortunately worded, but  
7 the Court is satisfied that the Sheriff was  
8 trying to explain, in an admittedly awkward way,  
9 why the allegation that his department was trying  
10 to frame Steven Avery should not be believed. As  
11 the Court has already noted, while the Sheriff  
12 should not have granted the interview, his  
13 participation is somewhat mitigated by a  
14 perceived need to respond to publicized frame-up  
15 allegations on the part of the defendant and his  
16 family.

17 A person viewing the report may well  
18 have come away with the impression that the  
19 Sheriff believed the defendant is guilty of the  
20 crimes charged in this case. That should not be  
21 any more surprising than that the defendant's  
22 family, friends, and his attorney in a civil  
23 case, Stephen Glynn, publicly expressed their  
24 belief in his innocence in the same report.

25 If law enforcement officials did not

1 believe the defendant was guilty, this Court  
2 would certainly expect the State to move to  
3 dismiss the charges against the defendant. The  
4 Court gives the public more credit than to be too  
5 unduly influenced by comments from either side.  
6 The report was balanced and not so inflammatory  
7 that persons who viewed it months ago could still  
8 not provide the defendant a fair trial if  
9 selected as jurors.

10 Finally, the Court notes that while the  
11 defense is requesting dismissal because he  
12 asserts the State's participation in pretrial  
13 publicity has made a trial in Manitowoc County  
14 impossible, the defendant acknowledges in another  
15 motion that if the Court grants an adjournment of  
16 the trial date to early next year, a fair jury  
17 composed of Manitowoc County citizens could be  
18 selected. At least, the Court believes that's a  
19 fair inference for the Court to draw from the  
20 defendant's contingent change of venue request.

21 The bottom line is that while there may  
22 be a set of facts which would warrant the relief  
23 the defendant seeks, there are no such facts  
24 present here. The complained of publicity  
25 occurred many months before the scheduled trial.

1           Early news conferences focused on the search for  
2           Teresa Halbach, not the charges against the  
3           defendant.

4                 Later press conferences with the Calumet  
5           County District Attorney and Sheriff were mainly  
6           confined to information available in public  
7           records. The Manitowoc County Sheriff's  
8           participation in the May interview was  
9           ill-advised, but not so prejudicial as to justify  
10           the remedy the defendant seeks.

11               The defendant's own contingent change of  
12           venue request demonstrates his belief that, with  
13           adequate precautions, a fair jury can be selected  
14           in Manitowoc County. For all these reasons, the  
15           defendant's motion to dismiss is denied by the  
16           Court.

17               Before I proceed to other motions, I  
18           will note that there have been motions filed  
19           relating to change of venue and scheduling of the  
20           trial date. And it's my understanding that the  
21           parties have a stipulation on those issues to  
22           propose to the Court this morning; in fact, I  
23           have been handed a written stipulation. Counsel,  
24           does one of you care to put it on the record for  
25           the Court?

1                   ATTORNEY KRATZ: I certainly can, Judge. I  
2                   don't know how much in detail the Court wants me to  
3                   go. We have provided the Court a two-page  
4                   stipulation. That stipulation attempts to deal with  
5                   the issues of change of venue, as well as trial  
6                   schedule. The stipulation, and I will read at least  
7                   the part of the stipulation that is being proposed  
8                   towards the bottom of Page one.

9                   The parties, that is, the defense and  
10                  the State, have agreed to the following: Number  
11                  one, that the jury trial in this case will  
12                  commence on or about February 5, 2007. The  
13                  parties continue to believe that the trial itself  
14                  will last approximately six weeks. I note for  
15                  the record that I'm paraphrasing, when  
16                  appropriate, in parts of the stipulation.

17                  Number two, that the jury trial will  
18                  physically be held in the Calumet County  
19                  Courthouse.

20                  Number three, that the Court has agreed  
21                  upon the county in which the jury will be  
22                  selected. The parties have identified and have  
23                  agreed upon that jury pool, and the Court may  
24                  wish to comment on that thereafter.

25                  The stipulation is proposed by myself

1 and Mr. Strang, both as lead counsel for the  
2 relative parties. The stipulation includes  
3 acquiescence by Mr. Avery, and a statement as to  
4 waiver of right to be tried physically here in  
5 Calumet County. And also includes the agreement  
6 of the Halbach family, by Tim Halbach, a  
7 representative of the Halbach family.

8 I should note that the purpose of the  
9 stipulation, or at least in part, as well as the  
10 Halbach's acquiescence, is based upon the Halbach  
11 family's ability to now fully participate, if  
12 they choose, in all aspects of the jury trial, as  
13 the physical location would be within Calumet  
14 County.

15 Attached to the stipulation includes  
16 proposals from Sheriff Pagel, with the agreement  
17 of the Manitowoc County Sheriff's Department.  
18 This sets forth reasons why Calumet County is a  
19 preferred venue, or preferred place of trial in  
20 this case, as to issues of security, transport,  
21 and the physical evidence which is being held in  
22 the Calumet County Courthouse.

23 Lastly, there is correspondence from  
24 Mr. Rollins, who is Corporation Counsel, acting  
25 on behalf of Manitowoc County. This county, that

1           is, Manitowoc County, has requested this Court  
2           adopt the stipulation, based upon the physical  
3           amenities that the Calumet County Courthouse may  
4           have, Mr. Avery's location, the physical  
5           evidence, again, and the participation of the  
6           Halbach family.

7           For all of those reasons, and reasons  
8           previously provided in more detail to the Court,  
9           including this proposal having been made by me  
10          back in, I believe it was February of this year,  
11          the parties jointly, that is, Mr. Avery, his  
12          lawyers, and the State, is asking the Court adopt  
13          the stipulation.

14           THE COURT: Mr. Strang.

15           ATTORNEY BUTING: Counsel recited the  
16          stipulation's terms, in their essence. He did it  
17          fairly. He did it accurately, but for one small  
18          item on which he misspoke, innocently, and that is  
19          simply that Mr. Avery has agreed in writing here,  
20          not to be tried in Manitowoc County, physically.  
21          The trial will take place in Calumet County, but it  
22          would be Manitowoc County in which he had a right to  
23          insist upon the physical location of the trial. And  
24          he's agreed instead to try the case in the Calumet  
25          County Courthouse, just as counsel explained.

1                   THE COURT: All right. I will note there  
2                   were some written modifications to the third  
3                   paragraph in the stipulation, that after the parties  
4                   approached the Court, I indicated I had a concern  
5                   with. At one point, it was my understanding the  
6                   parties wished the county from which the jury would  
7                   be selected to not be disclosed at this time. But I  
8                   understand the parties do not have an objection to  
9                   disclosure as of today.

10                  ATTORNEY KRATZ: That's correct, Judge.

11                  THE COURT: Mr. Strang.

12                  ATTORNEY STRANG: That's true.

13                  THE COURT: And I think that is important,  
14                  for the Court to make sure that Mr. Avery -- and I'm  
15                  going to conduct a brief colloquy with him on the  
16                  record today -- that everybody understands and  
17                  agrees what is being proposed here and,  
18                  specifically, that the parties both agree that the  
19                  jurors are to be selected from Manitowoc County. Is  
20                  that correct?

21                  ATTORNEY STRANG: Yes.

22                  ATTORNEY KRATZ: Yes.

23                  THE COURT: Mr. Avery, is that your  
24                  understanding of the recommendation that the parties  
25                  are proposing to the Court today, and that you have

1 agreed to?

2 MR. AVERY: Yes.

3 THE COURT: Okay. I do have some questions  
4 to ask of you, to make sure that you understand it,  
5 and I want to make sure that you are knowingly  
6 agreeing to this proposal.

7 First of all, do you understand that you  
8 have a constitutional and statutory right to keep  
9 venue in Manitowoc County, if you wish; that is,  
10 a right to be tried not only by a jury of  
11 Manitowoc County residents, but also, at least  
12 arguably, to a trial physically held in Manitowoc  
13 County. Do you understand that?

14 MR. AVERY: Yes, I do.

15 THE COURT: Do you also understand that the  
16 venue statute, Section 971.225, only permits the  
17 Court to order the trial to be held in another  
18 county if I make a determination that an impartial  
19 trial could not be held in Manitowoc County? That  
20 is, if you were not requesting it, the Court would  
21 not be ordering that this trial be held in Calumet  
22 County; do you understand that?

23 MR. AVERY: Yes.

24 THE COURT: Is it your wish to be tried in  
25 Calumet County in this case, with a jury composed of

1 Manitowoc County residents?

2 MR. AVERY: Yes.

3 THE COURT: Has anyone made any promises or  
4 threats to you, to get you to request this  
5 provision?

6 MR. AVERY: No.

7 THE COURT: Have you had adequate time to  
8 discuss this decision with your attorneys?

9 MR. AVERY: Yes.

10 THE COURT: And do you have any questions  
11 at this time? If you do, I would go off the record  
12 and permit you to discuss the matter further with  
13 your attorneys. Do you have any such questions?

14 MR. AVERY: No, I don't.

15 THE COURT: Very well. The parties had  
16 alerted the Court a few days ago that this  
17 stipulation would be being presented today, so I  
18 have had some time to give it some thought. I also  
19 took the opportunity, a few days ago, to travel to  
20 Calumet County in order to tour the courthouse  
21 facilities.

22 I agree that there are some advantages  
23 to holding the trial in Calumet County, in terms  
24 of security relating to both the defendant and to  
25 the jurors. There also appears to be more space

1 at the courthouse for the media.

2 And the Court has been informed that  
3 Manitowoc County officials believe it would be  
4 more economical to hold the case in Calumet  
5 County. That is not a major request, obviously,  
6 in the Court's decision, but the Court is aware  
7 that Manitowoc County officials concur in the  
8 move. And I also understand that the victim's  
9 family has joined in this request; in fact,  
10 Calumet County, I believe, is closer to their  
11 home than Manitowoc.

12 Based on those considerations, the  
13 request that's been made by the parties, I'm  
14 going to grant the joint request that's been made  
15 here. I will also note the request calls for a  
16 delay in the trial date, that will further  
17 alleviate any prejudicial effects of any pretrial  
18 publicity, avoid any potential conflicts with the  
19 Thanksgiving holiday that might have occurred had  
20 the trial started in mid-October, and allow the  
21 defense more time to evaluate the evidence in  
22 this case, which is somewhat voluminous. The  
23 Court has been informed of such requests on the  
24 defense in the past. So I will grant the  
25 request.

1                   The trial date here will be scheduled  
2                   for February 5, of 2007. I cannot foresee  
3                   anything at this time that would result in a  
4                   further continuance of that trial date, and the  
5                   Court will agree to hold the trial in the Calumet  
6                   County Courthouse.

7                   The jury will be selected, composed of  
8                   Manitowoc's residents. Jury selection, I think,  
9                   will take place here. It will be more convenient  
10                  for everyone. But once the trial begins, it will  
11                  take place in Calumet County. Is there anything  
12                  further from either party on that matter?

13                  ATTORNEY KRATZ: No, Judge.

14                  THE COURT: If not, then the Court will  
15                  move on to the defense motion to exclude members of  
16                  the Manitowoc County Sheriff's Department from  
17                  testifying in this case. That motion initially  
18                  included a request, also, to prevent members of the  
19                  Sheriff's Department from overseeing the jury in  
20                  this case. But, Mr. Strang, it's my understanding  
21                  that with the move of the physical site of the trial  
22                  to Calumet County, that portion of the defense  
23                  motion is being withdrawn.

24                  ATTORNEY STRANG: It is in the sense that I  
25                  think it's mooted. There are a number of logistical

1           details attending the stipulation just presented to  
2           the Court, and adopted by the Court, that we have  
3           not laid out here today, but on which the parties  
4           are in accord. And one of those, in sum, is that  
5           with a trial conducted in the Calumet County  
6           Courthouse, the Calumet County Sheriff's Department,  
7           in the ordinary course, would take charge of jury  
8           assembly, jury management, the role of bailiff,  
9           custody of Mr. Avery, if in fact he's in custody at  
10           the time of trial.

11           And we see that as mooting the request  
12           for relief as to a role with the Manitowoc County  
13           Sheriff's Department, in prospective or actual  
14           jurors, because under this proposal the Manitowoc  
15           County Sheriff's Department will have no role  
16           with, or contact with, actual or prospective  
17           jurors.

18           THE COURT: Okay. All right. As the Court  
19           noted, the defense has filed a motion to exclude all  
20           members of the Manitowoc County Sheriff's Department  
21           from testifying on behalf of the State, as part of  
22           the State's case in chief.

23           The sole basis for the defense motion  
24           arises out of comments made in an interview  
25           Sheriff Kenneth Peterson provided to FOX 11 News

1           in Green Bay, portions of which were aired in a  
2           two-part report on May 11 and 12 of this year.  
3           The Court is not going to detail the Sheriff's  
4           comments further here, other than to note that  
5           they related to the Sheriff's involvement with  
6           Mr. Avery in the past, including the Sheriff's  
7           role in the prosecution of Mr. Avery back in  
8           1985, relating to a sex assault charge, for which  
9           he was subsequently exonerated. The Sheriff also  
10          relayed in the report some of his own opinions  
11          concerning the defendant's personality.

12           The defendant contends that he is  
13          entitled to the remedy he seeks because the  
14          Sheriff's comments were calculated to interfere  
15          with the defendant's right to a fair trial in  
16          Manitowoc County, before a Manitowoc County jury.

17           The Court has reviewed the two-part news  
18          report in its entirety and I have also read and  
19          heard the party's arguments; that is, the written  
20          argument submitted by Mr. Strang, with his  
21          motion; the written response submitted by  
22          Mr. Fallon; as well as the arguments made at the  
23          July 5, 2006 hearing. The Court makes the  
24          following observations:

25           The Court has accepted, today, the

1           stipulation of the parties that the trial will be  
2           held in Calumet County, with a Manitowoc County  
3           jury. So the defendant has not lost his  
4           constitutional right to a trial in the county  
5           where the crimes are alleged to have been  
6           committed. The place of the trial is being moved  
7           at the joint request of the defendant and the  
8           State.

9                 Earlier in these proceedings, the  
10          parties agreed, informally, to eliminate out of  
11          court comments to the press; the State, through  
12          the attorneys or representatives of the Calumet  
13          County Sheriff's Department, and the defense  
14          through defense counsel or the defendant himself.  
15          There was, and is, no order at this time to  
16          support this agreement. But it came about as a  
17          result of the Court's reluctance to issue a gag  
18          order, which the Court regarded as an extreme  
19          remedy. The Court felt that this agreement,  
20          along with the admonition to the parties to  
21          comply with Supreme Court Rule 20:3.6 would  
22          address the concerns initially raised by the  
23          defense.

24                 The informal agreement has proven  
25          largely effective with respect to the parties

1                   involved. No party mentioned any concern at the  
2                   time with comments originating from the Manitowoc  
3                   County Sheriff's Department. The Court did not  
4                   issue any type of gag order, and the Sheriff's  
5                   comments in this case did not violate any such  
6                   order.

7                   There is no evidence that the Sheriff  
8                   initiated contact with FOX 11 News.

9                   Representatives of that organization apparently  
10                  contacted him for the interview.

11                  Nevertheless, the Court does believe  
12                  that the comments were inappropriate coming in  
13                  the context of these court proceedings. And the  
14                  Sheriff should not have -- should have used his  
15                  own discretion to avoid such comments. Those  
16                  comments fell within the scope of the type of  
17                  publicity the parties had agreed to stop and had  
18                  the potential to jeopardize the defendant's right  
19                  to a jury of Manitowoc County jurors.

20                  Whatever the Court's decision is on the  
21                  defense motion, the Court believes that care  
22                  should be taken to make sure such comments do not  
23                  occur again before the trial in this case. The  
24                  Court notes that the comments involved were those  
25                  of the Sheriff alone.

1                   His department does not have control of  
2                   this investigation. And the Court has not been  
3                   presented with any evidence to suggest that any  
4                   other member of the Manitowoc County Sheriff's  
5                   Department who participated in the investigation  
6                   in this case has been directly, or indirectly,  
7                   influenced in any way by the Sheriff. The Court  
8                   notes that the Sheriff has announced his  
9                   intention to retire at the expiration of his term  
10                  in early January of next year.

11                  The Court makes the following  
12                  conclusions: The Court is unaware of any  
13                  precedent for granting the remedies the defendant  
14                  seeks where no court order was violated. The  
15                  cases cited by the defense, which sustain the  
16                  drastic remedy of exclusion of evidence, involve  
17                  violation of either a court order or a discovery  
18                  statute.

19                  Participation by representatives of the  
20                  State in pretrial publicity has only been used in  
21                  reported cases as a grounds for change of venue  
22                  or a continuance. There is even less reason in  
23                  this case to exclude evidence from members of the  
24                  Sheriff's Department who did not themselves  
25                  participate in any allegedly improper comments.

1                   The Court further notes that the report  
2                   was a one time, in two-part, news item on one  
3                   television station in May, approximately nine  
4                   months before what will now be the scheduled  
5                   start of the trial.

6                   The Court agrees that the comments made  
7                   were inappropriate in the context of these court  
8                   proceedings and did constitute a threat to the  
9                   defendant's right to fair trial before a  
10                  Manitowoc County jury; although, the Court has  
11                  earlier today accepted a stipulation of the  
12                  parties to have this case heard by a Manitowoc  
13                  County jury.

14                  While the attorney's did not cite  
15                  concern over comments from the County Sheriff's  
16                  Department, that is, the Manitowoc County  
17                  Sheriff's Department, at the time they reached  
18                  their informal agreement to refrain from public  
19                  comment in this case, the comments should not  
20                  have been made.

21                  To make sure there are no further  
22                  problems of this nature, the Court is going to  
23                  issue an order prohibiting members of either the  
24                  Manitowoc County Sheriff's Department, or the  
25                  Calumet County Sheriff's Department, from making

1           any further public comment concerning this case,  
2           or the defendant, Steven Avery, until the trial  
3           is concluded.

4                 The Court is satisfied that adherence to  
5           the attorneys to Supreme Court Rule 20:3.6  
6           precludes the need for any such order to apply to  
7           counsel. I'm directing the counsel for the  
8           defense to draft the order and submit it to  
9           counsel for the State before submitting it to the  
10          Court for signature.

11                 Because the Court concludes that the  
12          other remedy sought by the defense, that is, the  
13          exclusion of testimony by members of the  
14          Sheriff's Department of Manitowoc County is not  
15          warranted, that portion of the defense motion is  
16          denied.

17                 ATTORNEY STRANG: As a matter of  
18          clarification, your Honor -- and I'm happy to draft  
19          the proposed order -- I will intend to include  
20          proceedings related to Brendan Dassey within the  
21          Court's definition of this case, even though,  
22          technically, the Dassey proceedings are under a case  
23          number different than the Avery proceedings.

24                 THE COURT: Any objection from the State?

25                 ATTORNEY KRATZ: I'm not sure you have

1 authority over the Brendan Dassey case, Judge.

2 THE COURT: I don't have authority over the  
3 case, but -- and the Court's order would have no  
4 affect in his case -- but I think it could extend to  
5 comments relating to his role in this case. I  
6 will -- I will do this, I will let it up to the  
7 parties, in the form of your proposed order, to  
8 attempt to resolve that matter. If it still winds  
9 up being contested and the parties have alternative  
10 versions of the proposed order to submit, I will  
11 review them, give the parties a chance to be heard,  
12 before I issue the Court's order.

13 ATTORNEY KRATZ: That's fine. Thank you.

14 THE COURT: The Court will next move on to  
15 the State's motion in this case to admit statements  
16 of Teresa Halbach to co-workers. The State seeks to  
17 admit certain statements which Teresa Halbach  
18 allegedly made to co-workers in October of 2005,  
19 relating to her observations during an earlier visit  
20 to the defendant's property and her state of mind  
21 based on those observations.

22 The defense opposes the admission of  
23 these statements. The admissibility of evidence  
24 which the State seeks to introduce involves  
25 issues relating to hearsay, relevance, and the

1 defendant's right to confront his accusers. The  
2 Court will address each of these issues  
3 independently, as they relate to the statements  
4 which the State seeks to introduce.

5 First of all, with respect to hearsay,  
6 the State asserts that Teresa Halbach's  
7 statements relating to both her perceived  
8 observations and to her state of mind fall under  
9 the hearsay exception contained in Section  
10 908.045 (2). That statute provides in relevant  
11 part as follows:

12 The following are not excluded by the  
13 hearsay rule, if the declarant is unavailable as  
14 a witness. A statement which describes an event  
15 or condition recently perceived by the declarant,  
16 not in contemplation of pending or anticipated  
17 litigation and while the declarant's recollection  
18 was clear.

19 The statements which Teresa Halbach may  
20 have made to her co-workers describing  
21 observations from her earlier visit to the  
22 defendant's home could fit within this hearsay  
23 exception, subject to adequate foundation. At  
24 this point, the State has not provided the Court  
25 with a date the observations were allegedly made

1 by Ms Halbach, nor when the observations were  
2 relayed to her co-workers.

3                 However, it appears that any statement  
4 relating to her observations may well constitute  
5 a statement which describes an event she recently  
6 perceived. Indeed, the defense does not  
7 seriously dispute, that with proper foundation,  
8 the hearsay exception in Section 908.045 (2)  
9 could apply to statements relating to Ms  
10 Halbach's observations.

11                 The statements relating to her state of  
12 mind, as opposed to her observations, do not fall  
13 within the exception of Section 908.045 (2). A  
14 statement of recent perception is exactly that,  
15 it is a statement of something which the  
16 declarant has perceived. It does not include  
17 opinions of the declarant relating to her  
18 perceptions or her state of mind.

19                 Now, there is a hearsay exception not  
20 advanced by the State which could arguably apply  
21 to the defendant's state of mind; that is,  
22 Section 908.03 (1), which reads, in relevant  
23 part, as follows. The following are not excluded  
24 by the hearsay rule: A statement explaining an  
25 event or condition made while the declarant was

1           perceiving the event or condition, or immediately  
2           thereafter. While the statements made by Ms  
3           Halbach relating to her then existing state of  
4           mind could arguably fall within this exception,  
5           they would still have to be relevant before they  
6           could be admitted.

7                 In order for a statement of Teresa  
8                 Halbach relating to her state of mind to be  
9                 relevant, the statement would have to relate to  
10               an element of the crimes which the State seeks to  
11               prove. A similar issue was addressed by the  
12               Court of Appeals in the case of **State vs. Kutz**, a  
13               2003 Court of Appeals case.

14               The defendant in that case was charged  
15               with first-degree intentional homicide, hiding a  
16               corpse, and stalking, arising out of the  
17               disappearance of his wife. The State sought to  
18               introduce a number of statements attributed to  
19               the wife in the time leading up to her  
20               disappearance involving threats which the  
21               defendant made to her. The State sought  
22               introduction of the of statements as evidence of  
23               her fearful state of mind at the time she made  
24               the statements, shortly before her disappearance.

25               The Court of Appeals ruled that the

1 statements were not admissible, because while  
2 they were evidence of the declarant's state of  
3 mind, her state of mind was not relevant to the  
4 charges in that case. The Court recognized that  
5 the primary purpose of introducing the evidence  
6 was to demonstrate that the threats were actually  
7 made to the wife, not that she was in fear  
8 because of the statements.

9 That is similar to the situation here.  
10 While any statement of Teresa Halbach involving  
11 her state of mind made a few weeks before her  
12 disappearance would certainly be relevance as  
13 evidence of her state of mind, her state of mind  
14 is not really at issue in this case.

15 The State has suggested that her state  
16 of mind has a relationship to the elements which  
17 the State must prove on the kidnapping charge.  
18 However, the Court views the probative value of  
19 her state of mind weeks before the crime as very  
20 marginal. The Court does not believe that her  
21 state of mind has sufficient probative value or  
22 relevance to justify admission of the evidence.

23 The State asserts that the personal  
24 observations of Theresa Halbach, as opposed to  
25 her state of mind, have relevance as to the

1 defendant's intent and plan to sexually assault  
2 her in the future. The Court has heard  
3 references in prior arguments of the parties to  
4 allegations that Mr. Avery specifically requested  
5 Teresa Halbach to return to his residence.

6 Depending on what other facts are  
7 introduced her observations, which were relayed  
8 to her co-workers, may have probative value which  
9 could justify their admission. However, the  
10 Court is unable, based on the current state of  
11 the record, to resolve that issue at this time.

12 Should the observations of Teresa  
13 Halbach fall within the hearsay exception of  
14 Section 908.045 (2) and have sufficient probative  
15 value to justify their admission, the question  
16 remains as to whether the admission of such  
17 statements would violate the defendant's  
18 constitutional rights under the confrontation  
19 clause of the constitution.

20 The United States Supreme Court expanded  
21 the scope of the confrontation clause in **Crawford**  
22 **vs. Washington**, a 2004 case. The Court ruled in  
23 **Crawford** that where testimonial statements are  
24 involved, the defendant is entitled to confront  
25 his accusers, regardless of the reliability of

1           the statements or whether they fall in firmly  
2           rooted hearsay exceptions.

3           For purposes of the State's motion, the  
4           key question is whether the statements offered  
5           for admission are testimonial in nature. The  
6           issue of what is a testimonial statement was  
7           recently addressed by the United States Supreme  
8           Court in **Davis vs. Washington**, a case decided on  
9           June 19th of this year. The case involved the  
10          question of whether statements made by an  
11          emergency 911 caller were testimonial in nature.

12          The Court ruled that some of the  
13          statements made in the course of a 911 call were  
14          testimonial, while others were not.

15          Specifically, the Court ruled as follows:

16           Statements are non-testimonial when made  
17           in the course of police interrogation, under  
18           circumstances objectively indicating that the  
19           primary purpose of the interrogation is to enable  
20           police assistance to meet an ongoing emergency.

21          They are testimonial when the  
22          circumstances objectively indicate that there is  
23          no such ongoing emergency and that the primary  
24          purpose of the interrogation is to establish or  
25          prove past events potentially relevant to later

criminal prosecution.

Of particular significance to our case is the following language, which the **Davis** opinion quoted from the **Crawford** case: An accuser who makes a formal statement to government officers bears testimony, in a sense that a person who makes a casual remark to an acquaintance does not.

With this example the Supreme Court comes very close to describing the statements Teresa Halbach purportedly made to her co-workers as a textbook example of what is not testimonial. The observational statements which the State seeks to admit were not made to the police and were certainly not made in the context of any investigation by anyone. They are much more in the nature of a casual remark to an acquaintance, which is not testimonial.

The Court concludes that the statements by Teresa Halbach of her earlier observations of Mr. Avery are not testimonial in nature and their admission would not implicate confrontation clause concerns.

In conclusion, any statement made by  
Teresa Halbach to her co-workers concerning her

1 state of mind at an earlier point in time are not  
2 admissible. Subject to proper foundation  
3 establishing relevance and probative value,  
4 statements that she made involving prior  
5 observations may be admissible under the hearsay  
6 exception contained in Section 908.045 (2).

7 Finally, for today's hearing, the Court  
8 will address the defendant's motion challenging  
9 the search of November 5, on the basis that it  
10 violated the rule in **Franks vs. Delaware**. I'm  
11 not addressing, today, the additional challenge  
12 to the search based on alleged multiple  
13 executions of the search warrant, because the  
14 Court has not yet received from the briefs of the  
15 parties on that issue.

16 As part of his challenge to obtaining --  
17 to the obtaining and execution of the search  
18 warrants, the defendant challenges the  
19 November 5, 2005 search warrant on the basis that  
20 it was obtained as a result of false statements,  
21 knowingly and intentionally made, or with  
22 reckless disregard for the truth, that were  
23 included in the affidavit supporting the search  
24 warrant request.

25 Under the rule of **Franks vs. Delaware**, a

1           1978 United States Supreme Court decision, if the  
2           defendant makes a substantial preliminary  
3           showing, and proves that such false statements  
4           were made, and that they are necessary to the  
5           finding of probable cause, a search warrant can  
6           be voided and the fruits of the search  
7           suppressed.

8                 Initially, the defendant's motion  
9           alleged that three separate knowingly false  
10           statements were made in the affidavit of  
11           Detective Mark Wiegert supporting the request for  
12           the November 5, 2005 warrant. First, the  
13           defendant alleged that Pamela Sturm and her  
14           daughter, the two citizens who initially located  
15           Teresa Halbach's vehicle on the Avery property,  
16           were incorrectly characterized as volunteer  
17           searchers, when in fact they were acting on  
18           behalf of law enforcement.

19                 Following the evidentiary hearing,  
20           defense counsel acknowledged that the evidence  
21           did not demonstrate that Ms Sturm and her  
22           daughter were anything but volunteer searchers.  
23           The motion goes on to allege, however, that the  
24           affidavit falsely claimed that the volunteer  
25           searchers located a vehicle matching the

1 description of the vehicle owned by Teresa  
2 Halbach, at the Avery auto salvage.

3 Further the defendant alleges that the  
4 affidavit falsely represented that the searchers  
5 provided a complete VIN from the vehicle, when in  
6 fact the searchers were only able to identify 10  
7 of the 17 characters of the vehicle  
8 identification number.

9 While acknowledging that Detective  
10 Remiker was able to obtain the full VIN of the  
11 vehicle when he responded to the scene, the  
12 defendant's motion further alleges that Detective  
13 Remiker did not have a search warrant, or consent  
14 to be on the property, and his complete  
15 identification of the VIN can, therefore, not be  
16 considered because it was illegally obtained.  
17 The defendant concludes that if the false  
18 information and Detective Remiker's  
19 identification are excised from the affidavit, it  
20 lacks the required level of probable cause to  
21 justify the issuance of the November 5 warrant.

22 The State asks the Court to deny the  
23 motion for the following reasons: First, the  
24 allegations made in the defendant's motion do not  
25 constitute a substantial preliminary showing

1 justifying an evidentiary hearing under the  
2 holding of the **Franks** case.

3 Second, that Steven Avery lacks standing  
4 to challenge the searches of any portions of the  
5 Avery Auto Salvage Yard, other than his trailer  
6 residence and the detached garage, because he has  
7 not demonstrated a reasonable expectation of  
8 privacy in the other portions of the Avery  
9 Salvage property.

10 Third, that no intentional  
11 misrepresentations were made in the affidavit.

12 Fourth, even if the challenged  
13 information is excised from the affidavit, it  
14 still contains sufficient probable cause to  
15 justify the issuance of the November 5 warrant.

16 And, finally, that Steven Avery lacks  
17 standing to challenge the information gathered by  
18 Detective Remiker when the detective responded to  
19 the scene on November 5, because whether or not  
20 Detective Remiker was legally on the premises,  
21 Mr. Avery had no reasonable expectation of  
22 privacy, either in Teresa Halbach's vehicle, or  
23 the portion of the Avery Salvage property on  
24 which Detective Remiker was present.

25 The Court will first address the State's

1 claim that the defendant has not made a  
2 substantial preliminary showing entitling him to  
3 a hearing on the alleged **Franks** violations. When  
4 a defendant alleges that a search warrant is  
5 based on knowingly false information, the United  
6 States Supreme Court held in **Franks vs. Delaware**  
7 that the following procedure governs:

8 Where the defendant makes a substantial  
9 preliminary showing that a false statement  
10 knowingly and intentionally, or with reckless  
11 disregard for the truth, was included by the  
12 affiant in the warrant affidavit, and if the  
13 allegedly false statement is necessary to the  
14 finding of probable cause, the Fourth Amendment  
15 requires that a hearing be held at the  
16 defendant's request.

17 In the event that at the hearing the  
18 allegation of perjury, or reckless disregard, is  
19 established by the defendant, by a preponderance  
20 of the evidence, and with the evidence -- with  
21 the affidavits false material set to one side,  
22 the affidavit's remaining content is insufficient  
23 to establish probable cause, the search warrant  
24 must be voided and the fruits of the search  
25 excluded to the same extent as if probable cause

1 was lacking on the face of the affidavit.

2                 In this case the defendant's motion  
3 alleged, first, that the two citizens who found  
4 the RAV-4 were not truly volunteer searches, but  
5 persons who Detective Wiegert told Detective  
6 Remiker were willing to go to the Avery property  
7 on Avery road to search the junkyard salvage  
8 area.

9                 The quoted language presumably was  
10 obtained by the defendant as part of a discovery  
11 from a police report. One possible inference  
12 from the language could have been that the  
13 volunteer searchers had in fact met with  
14 Detective Wiegert and expressed their willingness  
15 to assist the police in searching the Avery  
16 property.

17                 While neither party has argued the point  
18 at any length, it is at least arguable that if  
19 they had been enlisted to assist law enforcement,  
20 the searchers may have had to disclose that fact  
21 to Earl Avery when they obtained his consent to  
22 enter the property, in order to conduct the  
23 search. The State has not argued otherwise as a  
24 reason for which the motion should be denied.

25                 The defense also characterizes as an

1           intentional false statement, or one made with  
2           reckless disregard for the truth, the assertion  
3           in the affidavit that the searchers claimed they  
4           had located a vehicle matching the description of  
5           the vehicle owned by Teresa Halbach. The basis  
6           for this assertion is that Pamela Sturm was told  
7           to be looking for a green vehicle, but she  
8           informed police that the vehicle was, quote,  
9           "bluish green, though it's more blue than green",  
10           end quote.

11           In addition, while the affidavit  
12           indicates that Sturm provided the entire 17  
13           character VIN, Sturm was actually able to report  
14           only 9 or 10 of the 17 VIN characters. She was  
15           not in a position to see the remaining  
16           characters.

17           Detective Wiegert acknowledged in his  
18           testimony that the portion of his affidavit  
19           indicating that Patricia Sturm provided the  
20           entire VIN was incorrect. He acknowledged that  
21           while he obtained the full VIN from Detective  
22           Remiker, Ms Sturm was only able to make out 10 of  
23           the 17 characters.

24           In addition to the inconsistencies  
25           listed in the defendant's motion, the defendant

1 also asserts that the State was not assisted by  
2 Detective Remiker's ability to read the full VIN  
3 because he did not have authorization or consent  
4 to be on the property.

5 The Court was initially inclined to  
6 conclude that the defendant's motion did  
7 constitute a substantial preliminary showing that  
8 false statements had been intentionally included  
9 in the search warrant which called into question  
10 the level of probable cause needed for the  
11 issuance of a warrant. Had Patricia Sturm -- or  
12 I believe it's Pamela Sturm -- and her daughter  
13 been acting as agents of the State, their  
14 discovery of the RAV-4 and it's identifying  
15 information, which formed an important basis for  
16 the issuance of the warrant, may have been  
17 subject to suppression.

18 As the State correctly points out,  
19 however, a close reading of the defendant's  
20 motion reveals no substantial preliminary showing  
21 that the Sturms were acting as agents of law  
22 enforcement. The motion does refer to a  
23 scheduled meeting of volunteers, which apparently  
24 never took place.

25 But there is no assertion that the

1                   Sturms had any specific relationship with any  
2 member of law enforcement. Indeed, the defense  
3 conceded at the conclusion of the hearing that no  
4 evidence introduced added anything to the  
5 allegations in the original motion.

6                   In addition, while the motion describes  
7 Detective Remiker's entry on the property as  
8 unauthorized and non-consensual, which apparently  
9 it was, there's no assertion in the motion that  
10 Steven Avery had any legitimate expectation of  
11 privacy over either Teresa Halbach's vehicle or  
12 the portion of the Avery salvage property on  
13 which the vehicle was located.

14                  If Detective Remiker's presence on the  
15 property had violated Steven Avery's reasonable  
16 expectation of privacy, it could perhaps be  
17 argued that the failure of the affidavit to  
18 disclose his unlawful presence was a material and  
19 intentional omission, which could support a  
20 **Franks** claim under the Wisconsin Supreme Court  
21 decision in **State vs. Mann**.

22                  However, since there was no assertion in  
23 the motion that the defendant had a legitimate  
24 expectation of privacy over the area in which the  
25 Halbach vehicle was located, Detective Remiker's

1           lack of permission to be on the property does not  
2           measurably contribute to the substantial  
3           preliminary showing required as a prerequisite  
4           for a hearing on the defendant's **Franks** motion.

5           The Court concludes that the State is  
6           correct, the motion does not make a substantial  
7           preliminary showing entitling the defendant to a  
8           hearing on the **Franks** claim. While the defendant  
9           may not have been entitled to a hearing on his  
10          **Franks** motion, the Court, nevertheless,  
11          conditionally granted one.

12          The evidence introduced at the hearing  
13          further supports the conclusion that there was no  
14          **Franks** violation in this case. The defense  
15          acknowledges that the volunteer searchers  
16          referred to in Detective Wiegert's affidavit  
17          truly were volunteer searchers; thus, there is no  
18          basis upon which to delete their discovery of  
19          Teresa Halbach's vehicle, from the Wiegert  
20          affidavit.

21          While one can argue whether or not  
22          Detective Wiegert was justified in using the term  
23          "matching" in the affidavit, the Sturm's clearly  
24          did discover a vehicle, which was very similar in  
25          appearance to Teresa Halbach's vehicle, and which

1 turned out to be an exact match.

2                   While Detective Remiker's entry on the  
3 property may not have been authorized by an owner  
4 or person in control of the property, there is no  
5 evidence to suggest that the defendant had any  
6 ownership interest or other expectation in the  
7 area upon which the vehicle was located, or the  
8 vehicle itself. Thus, the information provided  
9 by Detective Remiker is also appropriately  
10 included in the affidavit.

11                  With all of this information included,  
12 there is no question but that the affidavit was  
13 sufficient to justify the issuance of the  
14 November 5, 2005 search warrant.

15                  The State also asserts in it's written  
16 argument that Steven Avery has no standing to  
17 challenge any of the searches that were  
18 subsequently conducted at the Avery Auto Salvage  
19 Yard, including searches of the burn barrel, burn  
20 pit, the RAV-4, or any of the other buildings  
21 located on the property, with the exception of  
22 Mr. Avery's residence and detached garage.

23                  Resolution of this argument is not  
24 necessary to the Court's decision on the **Franks**  
25 issue. The Court concludes that this argument is

1 more appropriately addressed in the portion of  
2 the defense motion challenging the multiple  
3 executions of the original search warrant.

4 For the reasons stated, the defense  
5 motion to suppress the fruits of the November 5,  
6 2005 search warrant on the grounds that it was  
7 issued in violation of **Franks v. Delaware** is  
8 denied.

9 Those are all the decisions on motions  
10 the Court has today. I did want to take a brief  
11 inventory of what I understand to be the  
12 outstanding motions and confirm the status of  
13 those motions at this time.

14 The State has filed a motion concerning  
15 the admissibility of DNA evidence. And it's my  
16 understanding that at least at one point the  
17 parties were working on a stipulation to resolve  
18 that motion. Counsel, where are we on that  
19 motion?

20 ATTORNEY KRATZ: I understood, Judge, if  
21 there was going to be a challenge to whatever it was  
22 that Mr. Gahn had presented, that Mr. Buting was  
23 going to alert us to that.

24 ATTORNEY BUTING: That's correct, Judge,  
25 and Mr. Gahn has been trying to compile some

1 additional requests that I had made regarding those  
2 tests and has not yet complied with that. And once  
3 we receive that, I anticipate we'll either -- we'll  
4 be in a position to either agree or not agree.

5 THE COURT: All right. I would like to  
6 have a date by which the Court will be notified  
7 either that the motion is going to be contested, or  
8 that it's resolved.

9 ATTORNEY KRATZ: Judge, would the Court be  
10 willing to adopt a scheduling plan that Mr. Buting  
11 has 30 days after the receipt of our discovery?  
12 Mr. Gahn is meeting with Mr. Fallon and myself  
13 tomorrow. We should have an idea as to that date,  
14 certainly won't be any later than perhaps  
15 mid-September. Nonetheless, Judge, Mr. Buting  
16 believes that he can have that done within 30 days  
17 after receipt.

18 THE COURT: When you say receipt, is that  
19 what's going to happen in the next couple of days?

20 ATTORNEY KRATZ: No, Mr. Gahn will be  
21 meeting with us. And what I'm suggesting is that we  
22 can -- if you wanted to set a date certain for that,  
23 we can have that to him, let's say by the 15th of  
24 September; Mr. Buting alerting the Court as to any  
25 challenges by the 15th of October. That should give

1 us plenty of time.

2 THE COURT: All right. So, Mr. Buting,  
3 with the understanding that you are going to get the  
4 information by September 15th, the October 15th is  
5 acceptable to the defense?

6 ATTORNEY BUTING: Yes, that's fine.

7 THE COURT: Very well. The State has filed  
8 a number of other acts motions. The Court has  
9 received written arguments and I'm going to be  
10 issuing a written decision on those motions. Do I  
11 have all of the briefs that are going to be filed.

12 ATTORNEY KRATZ: Yes, you have three from  
13 the State, Judge.

14 THE COURT: Mr. Strang.

15 ATTORNEY STRANG: You have everything the  
16 defense anticipates submitting.

17 THE COURT: Okay.

18 ATTORNEY STRANG: I think the most recent  
19 was Friday, August 18. We submitted a brief on one  
20 aspect of Paragraph 6 of the State's motion.

21 THE COURT: All right. And I understand  
22 that each party has filed a motion. The defense has  
23 filed a motion to admit evidence regarding the  
24 defendant's prior wrongful conviction. The State  
25 has filed a motion to exclude it. Where are the

1 parties on those motions?

2 ATTORNEY KRATZ: I note that a stipulation  
3 was proposed, Judge. I think even Mr. Strang may  
4 have provided us with his first suggestion as to  
5 that stipulation. This kind of goes on the same  
6 track as the stipulation regarding evidence of  
7 victim history. That stipulation is to exchanged as  
8 well. Would the Court allow us to exchange and then  
9 perhaps alert the Court by, again, the 15th of  
10 October, if we have a resolution. If we don't, we  
11 can certainly tell the Court before that time.

12 THE COURT: Does that work for both  
13 parties?

14 ATTORNEY STRANG: Yes. I followed the  
15 Court's lead, I submitted a proposed stipulation on  
16 the wrongful conviction evidence that really also  
17 looks like an offer of proof. It's fairly detailed  
18 and I gave the State a written draft of that  
19 document either on August 9 or August 10, when we  
20 were last here in Court. I don't -- I don't see any  
21 difficulty in leaving that issue unresolved until  
22 October 15 on the present schedule.

23 THE COURT: All right. So with respect to  
24 that issue and the issue of the victim's history,  
25 the parties will notify the Court by October 15th

1           either that you have an agreement, or that you  
2           don't, and if it requires Court resolution --

3           ATTORNEY KRATZ: I'm sorry, we should  
4           probably be using the 16th, the 15th is a Sunday.

5           THE COURT: All right. The 16th.

6           ATTORNEY KRATZ: I don't if it makes that  
7           much difference. The 16th I think is --

8           THE COURT: I will use that for the DNA  
9           evidence issue as well.

10          ATTORNEY STRANG: Okay.

11          THE COURT: With respect to the suppression  
12         motion regarding Marinette County statements, I have  
13         received briefs from both parties, but it's my  
14         understanding that there may be a related issue the  
15         parties want to alert the Court to.

16          ATTORNEY FALLON: Yes, Judge. After  
17         reviewing counsel's brief on the matter, the thought  
18         occurred to me that I think each counsel would like  
19         to be heard. If the Court for one reason or another  
20         decides to suppress the statement obtained by the  
21         Marinette County Sheriff on Saturday, November 5th,  
22         from the point on -- from the point of contention,  
23         we would like to be heard as to whether the  
24         subsequent statements obtained on November 6th ought  
25         to be suppressed as well. And that's because

1                   there's a different set of arguments and issues  
2                   presented.

3                   Neither party really briefed those this  
4                   time around, waiting and preferring to see if  
5                   there was a need to. So we -- I think each  
6                   counsel would reserve our right, if we may, to  
7                   address further those issues if, and only if, the  
8                   Court finds anything suppressible on the  
9                   November 5th statement.

10                  THE COURT: Mr. Strang, is that a fair  
11                  statement?

12                  ATTORNEY STRANG: That's been the defense  
13                  intention from the start, both on the motion to  
14                  suppress statements after the point of contention,  
15                  as Mr. Fallon puts it, on November 5, 2005. And I  
16                  might add on the Fourth Amendment suppression  
17                  motions, as to which Mr. Buting took the lead role,  
18                  I think the Court properly ought to decide on, is  
19                  the exclusionary right -- exclusionary role rightly  
20                  invoked here? Does it have a role to play? If it  
21                  does, we can be heard later, both parties, on the  
22                  scope of exclusion, or what potential evidence would  
23                  derive from any unconstitutional conduct by law  
24                  enforcement.

25                  And I will add, it's not out of the

1           realm of possibility that the State or the  
2           defense might wish to offer some evidence on the  
3           scope of application in the exclusionary rule;  
4           although, it's also quite possible that just  
5           would be a matter of written or oral argument.

6           So not only am I in agreement with Mr. Fallon on  
7           this point, it's really been my intention from  
8           the start as I think a much more orderly and  
9           measured way to proceed on those issues.

10           THE COURT: All right. So the -- Whether  
11           or not the parties are going to be looking to make  
12           further argument, or possibly even introduce  
13           additional evidence, will depend on the Court's  
14           decision. And the parties are both asking the Court  
15           at this time to only make a decision with respect to  
16           the November 5 statements. Is that a fair summary?

17           ATTORNEY FALLON: Yes.

18           ATTORNEY STRANG: And there -- Yes, it is.  
19           And there, just to endorse the suggestion the Court  
20           made during the August 9 and August 10 evidentiary  
21           proceedings, there's no challenge to the  
22           admissibility of Mr. Avery's statements on  
23           November 5 prior to, again, as Mr. Fallon puts it  
24           elegantly, the point of contention, and we have both  
25           briefed where exactly that arises in the recorded

1 interview.

2 THE COURT: All right. There is a defense  
3 motion, filed some time ago, entitled -- it's  
4 actually not a motion, but a notice concerning  
5 interference with right to counsel. I have been led  
6 to believe a number of times that's been resolved,  
7 but it's still technically hanging out there.

8 ATTORNEY STRANG: Well, it is resolved. It  
9 was not a motion or a request for relief, it was a  
10 notice of a concern. Since I had it -- had the  
11 concern on June 16, I treated that deadline as one  
12 by which I ought to raise the concern in good faith.  
13 I did.

14 The State provided me the information it  
15 promised about the inmate at issue, his name is  
16 Orville Jacobs. I'm satisfied at this point with  
17 the information I have gotten from the State. I  
18 don't perceive a Sixth Amendment right to counsel  
19 concern arising with respect to Mr. Jacobs. Of  
20 course, if future information comes to light, or  
21 future events warrant it, I will raise the  
22 concern again, but I don't anticipate either of  
23 those events coming to pass.

24 THE COURT: All right. Since it was  
25 entitled a notice and not a motion, I don't believe

1                   there's any need for a formal withdrawal document or  
2                   anything like that.

3                   ATTORNEY STRANG: But neither is there any  
4                   need for a ruling.

5                   THE COURT: All right. Then with respect  
6                   to the defense motion to suppress the fruits of the  
7                   search, or searches, based on multiple executions of  
8                   the search warrants, those written briefs are due  
9                   September 13.

10                  ATTORNEY STRANG: Yes, it's a simultaneous  
11                  exchange, as I understand it, of one round.

12                  THE COURT: For my benefit, and I haven't  
13                  seen the written arguments yet, but it appeared to  
14                  me possible, based on the way the evidence came in,  
15                  that there could be different lines of arguments  
16                  relating to different individual searches. Are the  
17                  parties -- Are the briefs going to be structured  
18                  such that different searches are addressed  
19                  individually?

20                  ATTORNEY BUTING: I suppose we could do it  
21                  that way. I anticipate -- Really, if the Court can  
22                  recall from the testimony, I anticipate that the  
23                  major point of contention is going to be after that  
24                  first three hours or so search was made on the night  
25                  of the 5th, Saturday night. Thereafter, there was a

1                   number of entries and -- and I can address each one  
2                   of those separately, but I think the primary issue  
3                   is going to be on that.

4                   THE COURT: Let me just ask this, I don't  
5                   want to tell each party -- either party how to argue  
6                   their case, but if you have arguments that relate to  
7                   some searches and not others, please let those be  
8                   differentiated in your briefs so that I know what  
9                   you are trying to argue.

10                  ATTORNEY BUTING: Okay.

11                  THE COURT: And then there's also a State's  
12                  motion regarding statements to other inmates. I  
13                  believe I have recently received a written brief  
14                  from the defense on that. Is there anything more  
15                  coming from the State, or do I have everything I'm  
16                  going to have on that?

17                  ATTORNEY KRATZ: We just talked about that,  
18                  Judge. We will discuss that in detail tomorrow and  
19                  if the Court would allow us an opportunity, perhaps  
20                  to the 13th of September, we can get that to the  
21                  Court as well.

22                  THE COURT: All right. Any objection from  
23                  the defense?

24                  ATTORNEY STRANG: I don't. That's an issue  
25                  that's under seal, or we have treated it as sealed

1 to date.

2 THE COURT: Very well. I will give the  
3 State until September 13 then to respond.

4 ATTORNEY BUTING: Judge, could we return  
5 for just one moment to the multiple execution of the  
6 search warrant issue. As the Court framed it, I  
7 don't know whether that -- the way these -- the  
8 arguments may come out then might really be more  
9 amenable to a reply by either party as well.

10 In the event that there are -- that the  
11 State has certain arguments on certain searches  
12 and not others, or that I have likewise, it might  
13 be easier to just reply to them, rather than try  
14 and anticipate -- each of us anticipate what the  
15 arguments of the others would be. We have a  
16 little bit more time to do that now and I just  
17 raise that as one way of resolving that.

18 THE COURT: Mr. Fallon.

19 ATTORNEY FALLON: Yes. Thank you. It  
20 seems to me that the way -- excuse me -- the way the  
21 defense pled the issue and proceeded with its  
22 proofs, that the issue has been fairly well narrowed  
23 to complain of the searches occurring to Mr. Avery's  
24 trailer and garage, starting on Sunday, the 6th,  
25 until the second or subsequent warrant was obtained

1 late afternoon, I believe on the 9th.

2           Those were the issues which were the  
3           subject of the testimony and it seems to me that  
4           that's the context in which the case is going to  
5           be argued. So I'm not really sure that we need  
6           to separate out the searches per se other than,  
7           as the testimony reflected, there was, you know,  
8           an entry on Sunday, for instance, and one or two  
9           on Monday, and then one on Tuesday, that type of  
10          itemization or reflection.

11         I'm not sure it's to our benefit to  
12          separate them out any further, because as I  
13          reviewed the case law in preparation for writing  
14          this brief, it's not much -- it's not the issue,  
15          really. And I don't -- I don't know if we really  
16          need to reply, and counter-reply, or what have  
17          you. It seems to me it's been narrowly pled and  
18          the testimony was narrowly produced. So I'm not  
19          sure we have a whole lot of range of other  
20          searches at issue, so to speak.

21         THE COURT: Let's do this, after each party  
22          receives a copy of the other party's brief, if  
23          either party feels there's a need to reply, you can  
24          ask the Court for permission, in writing, just fax  
25          it to me, I will take it up at that time.

1 ATTORNEY STRANG: Thank you.

2 THE COURT: I would ask also on that issue,  
3 I think I mentioned it before, I did not have access  
4 in our law library, or my online law library, to all  
5 of the secondary sources that necessarily relate to  
6 that issue. So if you have -- if you're going to be  
7 citing any secondary sources, please give me copies.  
8 I have got ALR and Amger and those types of things,  
9 but I think it was --

10 ATTORNEY BUTING: La Fave.

11 THE COURT: -- La Fave I do not have.  
12 Right. I'm not looking to make the file any bigger  
13 than it is, but if you cite to La Fave, give me a  
14 copy. I think I have already gotten one from the  
15 State.

16 ATTORNEY FALLON: I think you got the copy.  
17 I think, unless counsel disagrees, I think we have  
18 got the relevant portions of La Fave for the Court.

19 ATTORNEY BUTING: I believe so. If there  
20 are any -- so the Court has access to case law.

21 THE COURT: Other jurisdiction case law is  
22 fine, I have got Lexus Nexus, but La Fave is not on  
23 there.

24 ATTORNEY BUTING: So anything like Law  
25 Journals, Law Reviews, things of those nature that

1                   might -- you do not have access to?

2                   THE COURT: If you have got access to Lexus  
3 and it's on Lexus, you don't have to send it to me.

4                   ATTORNEY BUTING: I use Lexus.

5                   THE COURT: Right. So, if it's not on  
6 Lexus, send it, otherwise you don't have to. I  
7 certainly have access to case law from all other  
8 jurisdictions and a number of secondary sources, but  
9 not La Fave.

10                  ATTORNEY FALLON: Your Honor, may I have  
11 just a moment to talk to Mr. Buting on this.

12                  THE COURT: Go ahead.

13                  ATTORNEY FALLON: I thought we might have  
14 one other point of interest for the Court, but I  
15 guess we'll have to defer comment until we consider  
16 it further.

17                  THE COURT: All right. Is there anything  
18 further from either party today?

19                  ATTORNEY STRANG: Yes. One, just a point  
20 of clarification. This may have been implicit in  
21 the Court's rulings both on the motion to dismiss  
22 and the motion for sanctions to exclude the  
23 Manitowoc County Sheriff's Department, since the  
24 Court referred to having reviewed the eight news  
25 conferences, but I just want to make sure that the

1 record is complete and that, in fact, a viewable,  
2 either VHS tape or DVD arrived from WFRV-TV to the  
3 Court as I had arranged to happen.

4 THE COURT: Yes, the VHS tape arrived and  
5 that's workable.

6 ATTORNEY STRANG: Terrific. Second, I  
7 anticipate some further motions, not just motions in  
8 limine. Conceivably, for example, some discovery  
9 that I received -- was received at my office, I have  
10 lost track of the dates now, but it's more than a  
11 week and less than two weeks ago. Some new  
12 discovery suggests a further non-evidentiary motion.

13 It's also entirely possible, as  
14 Mr. Dassey's case proceeds here, that an issue  
15 may arise under **Samuels** -- under **State vs.**  
16 **Samuels** in this case. We can't know that at this  
17 juncture of the proceedings in Mr. Dassey's  
18 separate case.

19 But what I would propose is that I treat  
20 the October 16 deadline as a good time to file  
21 any other motion, other than an in limine issue  
22 properly addressed much closer to trial, you  
23 know, that has arisen with new discovery, or new  
24 information, or new events since June 16.

25 For that matter, September 13, I also

1           could treat as a date for raising any new issues.

2           I know there's at least one that I intend to  
3           raise so, that's disclosure. And I guess also  
4           jointly request that the Court set a date, fix a  
5           date for me to do that, or accommodate new issues  
6           that have arisen.

7           THE COURT: Mr. Kratz.

8           ATTORNEY KRATZ: We are going to need a  
9           scheduling conference anyway, Judge. We talked  
10          about jury questionnaires. We talked about exchange  
11          of experts and some other more definite scheduling  
12          order from the Court. And whether the Court wants  
13          to do that by a phone conference, to at least  
14          schedule that meeting, or wants to set that meeting,  
15          we're certainly amenable to that.

16          THE COURT: All right. Because of the  
17          contemplated adjournment of the trial date, I didn't  
18          give that as much attention as I might have before  
19          today. I agree that we're going to need a  
20          scheduling conference at some point to establish  
21          timelines for filing motions in limine, jury  
22          questionnaires, those types of things. Do either of  
23          the parties have any suggestions about when that  
24          could be effectively accomplished?

25          ATTORNEY STRANG: Well, we'll know where we

1                   are on some things on October 16, particularly DNA,  
2                   and the wrongful conviction, and victim's history  
3                   information.

4                   ATTORNEY KRATZ: Perhaps later that week,  
5                   Judge, we know it's blocked off our calendar so.

6                   THE COURT: I know I have got time that  
7                   week. All right. I'm having the clerk get me my  
8                   calendar.

9                   ATTORNEY KRATZ: Could either be that  
10                  Thursday or Friday, those work best for us, Judge.

11                  THE COURT: Thursday the 19th, morning or  
12                  afternoon?

13                  ATTORNEY KRATZ: Morning would be just  
14                  fine.

15                  THE COURT: Should we say 10:00.

16                  ATTORNEY BUTING: That's fine.

17                  ATTORNEY KRATZ: That's good, Judge. Thank  
18                  you.

19                  THE CLERK: What date was that?

20                  THE COURT: October 19th.

21                  ATTORNEY KRATZ: Will that be on the record  
22                  or in chambers, your Honor?

23                  THE COURT: I will notify you about that a  
24                  little closer to the date, whether it will be on the  
25                  record, or simply a scheduling conference, or

1                   something that involves going on the record. For  
2                   now, it will be an off the record scheduling  
3                   conference, but I'm going to hold the time in the  
4                   event there is anything to deal with on the record.  
5                   Does either party have anything else that needs  
6                   addressing?

7                   ATTORNEY STRANG: So we'll address  
8                   deadlines for further motions and the whole sort of  
9                   schedule before trial at that point?

10                  THE COURT: Yes.

11                  ATTORNEY STRANG: Fine.

12                  THE COURT: Anything else today?

13                  ATTORNEY KRATZ: No, Judge. Thank you.

14                  THE COURT: If not, we're adjourned for  
15                  today.

16                  (Proceedings concluded.)

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

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 29th day of January, 2007.

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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<b>0</b>	accusers [2] 28/1 32/25 acknowledged [3] 36/20 41/17 41/20 <b>1</b> 10 [5] 37/6 41/14 41/22 49/19 52/20 10:00 [1] 62/15 11 [4] 3/18 20/25 21/2 23/8 12 [1] 21/2 13 [3] 54/9 56/3 60/25 13th [1] 55/20 14th [1] 3/13 15 [1] 49/22 15th [7] 47/23 47/25 48/4 48/4 49/9 49/25 50/4 16 [4] 53/11 60/20 60/24 62/1 16th [3] 50/4 50/5 50/7 17 [4] 37/7 41/12 41/14 41/23 18 [1] 48/19 1968 [1] 4/12 1977 [1] 4/13 1978 [1] 36/1 1985 [4] 8/11 8/14 8/19 21/8 19th [3] 33/9 62/11 62/20	50/5 52/10 53/2 53/24 54/5 55/22 58/4 59/7 59/17 61/16 62/7 <b>allegation</b> [2] 9/9 39/18 <b>allegations</b> [6] 6/16 7/18 9/15 32/4 37/24 43/5 <b>allege</b> [1] 36/23 <b>alleged</b> [8] 2/25 6/6 22/5 35/12 36/9 36/13 39/3 40/3 <b>allegedly</b> [4] 24/25 27/18 28/25 39/13 <b>alleges</b> [3] 37/3 37/12 39/4 <b>Allen</b> [2] 8/13 8/21 <b>alleviate</b> [1] 18/17 <b>allow</b> [3] 18/20 49/8 55/19 <b>alone</b> [2] 8/16 23/25 <b>along</b> [1] 22/20 <b>ALR</b> [1] 58/8 <b>already</b> [3] 6/19 9/11 58/14 <b>also</b> [25] 2/7 3/7 6/4 7/4 13/5 16/11 16/15 17/18 17/25 18/8 18/15 19/18 21/9 21/18 40/25 42/1 45/9 45/15 49/16 52/4 55/11 58/2 60/13 60/25 61/3 <b>alternative</b> [1] 27/9 <b>although</b> [2] 25/10 52/4 <b>am</b> [1] 52/6 <b>amenable</b> [2] 56/9 61/15 <b>amendment</b> [4] 3/13 39/14 51/16 53/18 <b>amenities</b> [1] 14/3 <b>Amger</b> [1] 58/8 <b>announced</b> [1] 24/8 <b>another</b> [4] 8/20 10/14 16/17 50/19 <b>anticipate</b> [7] 47/3 53/22 54/21 54/22 56/14 56/14 60/7 <b>anticipated</b> [1] 28/16 <b>anticipates</b> [1] 48/16 <b>any</b> [47] 7/1 7/3 8/21 9/21 17/3 17/10 17/13 18/17 18/17 18/18 23/1 23/4 23/5 24/3 24/3 24/7 24/12 24/25 26/1 26/6 26/24 29/3 31/10 34/15 34/24 38/4 40/18 43/1 43/1 43/10 45/5 45/17 45/20 47/14 47/24 49/20 51/23 54/1 54/3 55/22 57/12 58/7 58/12 58/20 60/21 61/1 61/23 <b>anyone</b> [2] 17/3 34/16 <b>anything</b> [12] 19/3 19/11 36/22 43/4 51/8 54/2 55/14 58/24 59/17 63/4 63/5 63/12 <b>anyway</b> [2] 6/19 61/9 <b>apparently</b> [3] 23/9 42/23 43/8 <b>Appeals</b> [3] 30/12 30/13 30/25 <b>appearance</b> [1] 44/25 <b>appearances</b> [2] 1/11 2/4 <b>appeared</b> [2] 1/21 54/13 <b>appearing</b> [2] 2/7 2/7 <b>appears</b> [4] 2/5 8/15 17/25 29/3 <b>application</b> [1] 52/3 <b>apply</b> [3] 26/6 29/9 29/20 <b>approached</b> [1] 15/4 <b>appropriate</b> [2] 5/13 12/16 <b>appropriately</b> [2] 45/9 46/1 <b>approved</b> [1] 4/21 <b>approximately</b> [2] 12/14 25/3 <b>are</b> [40] 2/18 2/19 10/23 15/19 15/25 16/5 17/22 19/25 20/4 22/5 25/21 26/22 28/12 29/23 32/6 32/23 33/5 33/16 33/21 34/16 34/21 35/1 36/4 37/19 46/9 46/18 48/3 48/11 48/25 52/11 52/14 54/8 54/16 54/17 54/18 55/9
<b>2</b>	2003 [1] 30/13 2004 [1] 32/22 2005 [6] 27/18 35/19 36/12 45/14 46/6 51/15 2006 [2] 1/9 21/23 2007 [3] 12/12 19/2 64/15 20:3.6 [3] 7/12 22/21 26/5 22 [1] 1/9 29th [1] 64/15	admissibility [3] 27/23 46/15 52/22 admissible [3] 31/1 35/2 35/5 admission [7] 27/22 31/22 32/9 32/15 32/16 33/5 34/22 admit [4] 27/15 27/17 34/14 48/23 admitted [1] 30/6 admittedly [1] 9/8 admonition [1] 22/20 adopt [3] 14/2 14/12 47/10 adopted [1] 20/2 advanced [1] 29/20 advantages [1] 17/22 adverse [2] 7/14 7/16 advised [2] 8/1 11/9 affect [1] 27/4 affiant [1] 39/12 affidavit [18] 35/23 36/10 36/24 37/4 37/19 38/11 38/13 39/12 40/1 41/3 41/11 41/18 43/17 44/16 44/20 44/23 45/10 45/12 affidavit's [1] 39/22 affidavits [1] 39/21 against [4] 6/8 6/12 10/3 11/2 agents [3] 3/24 42/13 42/21 ago [5] 10/7 17/16 17/19 53/3 60/11 agree [6] 15/18 17/22 19/5 47/4 47/4 61/19 agreed [8] 12/10 12/20 12/23 14/19 14/24 16/1 22/10 23/17 agreeing [1] 16/6 agreement [8] 13/5 13/16 22/16 22/19 22/24 25/18 50/1 52/6 agrees [2] 15/17 25/6 ahead [1] 59/12 aired [1] 21/1 alert [3] 46/23 49/9 50/15 alerted [1] 17/16 alerting [1] 47/24 all [28] 2/14 2/19 11/14 13/12 14/7 15/1 16/7 20/18 20/19 28/5 45/11 46/9 47/5 48/2 48/11 48/21 49/23
<b>3</b>	30 [2] 47/11 47/16 381 [2] 1/5 2/3	advanced [1] 29/20 advantages [1] 17/22 adverse [2] 7/14 7/16 advised [2] 8/1 11/9 affect [1] 27/4 affiant [1] 39/12 affidavit [18] 35/23 36/10 36/24 37/4 37/19 38/11 38/13 39/12 40/1 41/3 41/11 41/18 43/17 44/16 44/20 44/23 45/10 45/12 affidavit's [1] 39/22 affidavits [1] 39/21 against [4] 6/8 6/12 10/3 11/2 agents [3] 3/24 42/13 42/21 ago [5] 10/7 17/16 17/19 53/3 60/11 agree [6] 15/18 17/22 19/5 47/4 47/4 61/19 agreed [8] 12/10 12/20 12/23 14/19 14/24 16/1 22/10 23/17 agreeing [1] 16/6 agreement [8] 13/5 13/16 22/16 22/19 22/24 25/18 50/1 52/6 agrees [2] 15/17 25/6 ahead [1] 59/12 aired [1] 21/1 alert [3] 46/23 49/9 50/15 alerted [1] 17/16 alerting [1] 47/24 all [28] 2/14 2/19 11/14 13/12 14/7 15/1 16/7 20/18 20/19 28/5 45/11 46/9 47/5 48/2 48/11 48/21 49/23
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<b>whether</b> [11] 32/16 33/1 33/4	<b>Y</b>
33/10 38/19 44/21 50/23 52/10	<b>Yard</b> [2] 38/5 45/19
56/7 61/12 62/24	<b>year</b> [6] 3/8 10/16 14/10 21/2
<b>which</b> [51] 4/5 4/19 5/3 6/19 10/22	24/10 33/9
12/21 13/21 14/18 14/22 15/6	<b>Yes</b> [18] 15/21 15/22 16/2 16/14
18/22 20/3 21/1 21/8 22/18 24/15	16/23 17/2 17/9 48/6 48/12 49/14
27/17 27/24 28/4 28/14 28/19	50/16 52/17 52/18 54/10 56/19
29/5 29/15 29/20 29/22 30/10	59/19 60/4 63/10
30/20 31/16 32/7 32/8 34/3 34/13	<b>yet</b> [3] 35/14 47/2 54/13
34/18 38/24 40/24 42/9 42/15	<b>you</b> [46] 11/24 15/25 16/4 16/4
42/23 43/8 43/13 43/19 43/24	16/5 16/7 16/7 16/9 16/13 16/15
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<b>while</b> [19] 6/14 9/11 10/10 10/21	47/18 47/22 48/3 48/12 48/15
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41/21 43/6 44/8 44/21 45/2	58/16 59/1 59/2 59/3 59/6 60/22
<b>who</b> [9] 10/7 13/24 24/5 24/24	62/18 62/23 63/13
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<b>whole</b> [2] 57/19 63/8	<b>your</b> [9] 15/23 16/24 17/8 17/13
<b>why</b> [3] 9/4 9/9 13/18	26/18 27/7 55/8 59/10 62/22
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<b>Wiegert</b> [6] 36/11 40/5 40/14	
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47/5 47/9 49/8 50/18 50/23 51/6	
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** DECEMBER 20, 2006

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

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

13 THOMAS J. FALLON  
Special Prosecutor  
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN  
Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG  
Attorney at Law  
18 On behalf of the Defendant.

19 JEROME F. BUTING  
Attorney at Law  
20 On behalf of the Defendant.

21 STEVEN A. AVERY  
Defendant  
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

THE COURT: At this time the Court calls State of Wisconsin vs. Steven Avery Case No. 05 CF 381. This matter is scheduled for a status conference today. And I will indicate for the record that I met with counsel before we began today and they informed me of the status conference. There were a few matters to take up on the record. Will the parties state their appearances for the record, please.

ATTORNEY KRATZ: Your Honor, the state appears by Calumet County District Attorney Ken Kratz appearing as Special Prosecutor. Also special Prosecutors Norm Gahn and Tom Fallon.

ATTORNEY BUTING: Good morning, your Honor,  
Buting and Williams by Attorney Jerome Buting  
appearing on behalf of Mr. Avery. Also Dean Strang  
appearing on behalf of Mr. Avery. Mr. Avery is  
present in court.

THE COURT: Very well. Mr. Buting, I believe you indicated you wish to take up a matter concerning a motion recently filed by the defense.

ATTORNEY BUTING: Yes, Judge, we filed --  
the defense filed, on December 6, a motion to allow  
the Court to grant us access to a particular exhibit  
that we discovered has been sitting in the Clerk's

1                   Office in Manitowoc County, in Mr. Avery's 1985  
2                   wrongful conviction case. We discovered that a vial  
3                   of his blood, or what we believed was a vial of his  
4                   blood, was in a box in that file. And we filed a  
5                   motion.

6                   We could see that the box itself, the  
7                   seal, the evidence tape seal, had been broken and  
8                   that it had been resealed with a piece of scotch  
9                   tape. We did not want to open that to see if  
10                  there really was a vial of his blood in that box  
11                  until the Court allowed us. So we filed this  
12                  motion.

13                  The Court initially sealed it. I  
14                  understand the Court is unsealing it today. The  
15                  Court granted the defense request. The parties,  
16                  including the prosecution team, went to the  
17                  Clerk's Office last week. The box was opened and  
18                  there was, inside of it, a styrofoam box that had  
19                  also at one point been sealed with evidence tape.

20                  That evidence tape had been opened, cut  
21                  open, and inside the styrofoam package was a  
22                  liquid vial of Mr. Avery's blood, in a tube, that  
23                  also was unsealed, and therefore available to  
24                  anyone who would want to use it to plant evidence  
25                  against Mr. Avery in this case.

1                   We filed our motion and set forth some  
2                   of the links that we believe will establish at  
3                   trial. And the issues that remain now are  
4                   whether or not any sort of forensic tests can be  
5                   done on the blood that will shed any further  
6                   information for either party and that is  
7                   something that the State and I will be working on  
8                   in the next week.

9                   THE COURT: All right. Mr. Gahn, are you  
10                  handling this one for the State?

11                  ATTORNEY GAHN: Yes, I am, your Honor.

12                  THE COURT: With respect to the defendant's  
13                  motion, specifically, what's going to be done with  
14                  this blood, what's the State's position.

15                  ATTORNEY GAHN: Your Honor, the State's  
16                  position is that we would like to have access to  
17                  that vial of blood. Our initial investigation in  
18                  looking into this matter has revealed that although  
19                  we cannot determine who was the source of drawing of  
20                  this blood and that there may be some questions on  
21                  chain of custody. At this point we just haven't had  
22                  time to fully investigate this matter.

23                  In any event, we would like to have  
24                  access to the blood. There is some chemical  
25                  testing that we would like to do with this blood.

1           We're confident that the testing that we  
2           anticipate doing is going to show that this blood  
3           had absolutely nothing to do with the case that  
4           is in front of this Court.

5           And we also are in the process of  
6           interviewing individuals who did have contact  
7           with that blood and -- but that was under the  
8           Court's approval back in Manitowoc County and  
9           that the individuals who did unseal the blood, it  
10          was done under the auspices of a court, and there  
11          was nothing really surreptitious, or some type of  
12          lapse of security where this could be taken or  
13          planted. And we're confident we'll be able to  
14          show that.

15          But in order to do that, we would ask  
16          the Court to unseal that blood and give us access  
17          to it so that we can send this for testing.  
18          We're so confident in our position that we're  
19          more than willing to split that sample, if the  
20          Court wishes, with the defense. In any event, we  
21          certainly would like to get on with the testing  
22          that we believe will show that this vial of blood  
23          had absolutely nothing to do with the case before  
24          us.

25           THE COURT: All right. With respect to how

1           this matter is to be handled, Mr. Buting, has the  
2           defense determined yet whether or not it wishes to  
3           test the blood?

4                   ATTORNEY BUTING: Judge, it's my  
5           understanding, I don't believe there are any tests  
6           that can be done on this vial of blood that are  
7           really going to shed any more light to either side.  
8           I may be wrong, Mr. Gahn may find someone who thinks  
9           that something else can be done. But I very much  
10          object to unsealing the evidence and allowing the  
11          State to have free access to this blood at this  
12          time.

13               What we discussed in chambers I think is  
14          a fair way to deal with this, which is that  
15          Mr. Gahn and I will talk between now and the end  
16          of the year, December 31st, to see if there is a  
17          joint proposal we can present to the Court. But  
18          my feeling at this time is if there is any  
19          transfer of that evidence, I want notice to the  
20          defense, I want potentially a representative from  
21          the defense present during change of custody, if  
22          not even perhaps during the testing itself.

23               But I think we can work that out between  
24          the two of us. And if we can't, then we can  
25          bring it back to the Court for a decision on how

1           it should be handled. At this time, though, I do  
2           strongly urge the Court to keep this evidence  
3           locked in the safe at the Clerk's Office in  
4           Manitowoc County.

5           THE COURT: All right. Mr. Gahn.

6           ATTORNEY GAHN: May I address that, your  
7           Honor?

8           THE COURT: Go ahead.

9           ATTORNEY GAHN: What I would ask the Court  
10          to do is this. Again, as we're confident in our  
11          position with this vial of blood, I would ask the  
12          Court to -- what would be the mechanism. Assume  
13          that firstly, wherever we find a place to send this  
14          blood, I will call Mr. Buting. They would be  
15          welcome to accompany our people, or whoever is doing  
16          the testing. They would be welcome to hire an  
17          expert to watch the testing. They could even send  
18          someone along to accompany the vial of blood  
19          wherever it goes. We'll make that opportunity  
20          available to them.

21          My concern is this, we're coming up  
22          quickly upon this trial date. And there are some  
23          places that I believe we may be able to send this  
24          vial of blood. Assume that this Friday I come up  
25          with a place that I believe is going to give us

1                   the -- accomplish the testing that we believe  
2                   would be appropriate in this case. I will notify  
3                   Mr. Buting where that will be. And he will be  
4                   welcome to send his expert or his people along.

5                   And the main thing I'm concerned is, if  
6                   I want to send one of our investigators to  
7                   Manitowoc County to get that blood, will we be  
8                   able to have access to it. That's why I'm asking  
9                   that that be unsealed and the Manitowoc County  
10                  officials know that, should a representative from  
11                  the State, and it may either be a Calumet County  
12                  sheriff or someone from DCI to come to pick up  
13                  that blood and they can take that blood from the  
14                  safe.

15                  ATTORNEY BUTING: And that's exactly what I  
16                  don't want to happen. If something happens this  
17                  Friday, then Mr. Gahn can contact me. If we reach  
18                  agreement, we can certainly notify the Court by  
19                  stipulation. You know, we could fax, email motions  
20                  back and forth. And the Court could certainly sign  
21                  an order promptly. I don't see that there is any  
22                  need at this time to say -- to give carte blanche  
23                  access to this.

24                  I have had this experience in other  
25                  counties, that the only way that I know of that

1           you can insure that the defense is notified --  
2           sometimes the Clerk doesn't realize that that's  
3           part of the requirement and they go ahead and  
4           release it to the State without telling us. The  
5           only way to do it, it is in a secured place now,  
6           sealed in a safe, with very -- we hope very  
7           limited access. And it should remain that way  
8           until -- unless and until the State can find  
9           somebody, if they wish, who is going to do some  
10          of the tests.

11           And with regard to the closeness of  
12          trial, this has been sitting in the Clerk's  
13          Office throughout the time of this prosecution.  
14          This was not some hidden evidence that the  
15          defense is dumping on the State at the last time.  
16          They had every bit the same opportunity we did to  
17          go search the record, particularly since  
18          Mr. Avery and his family, from the very  
19          beginning, have been claiming that the blood was  
20          planted against him by someone in this case.

21           And now we discovered that blood did  
22          exist where that could have happened. It was  
23          unsealed. The seals have been broken. And I  
24          think that the parties can work this out. If  
25          Mr. Gahn is concerned about the delay, part of

1           that is because they just chose not to  
2           investigate the case and Mr. Avery's claims  
3           thoroughly, like they should have.

4                         THE COURT: All right. I will make the  
5           following observations. And I hear the parties, I  
6           don't understand really there to be a dispute  
7           between the two parties as to the mechanism for  
8           testing the blood. The defense doesn't feel it  
9           necessary for the blood to be tested. The State  
10          indicates it does and is willing to allow the  
11          defense to participate in really, without  
12          restriction, in overseeing and the testing of the  
13          blood.

14                         And the defense is indicating, if the  
15          blood is tested, that's what it wants. So I'm  
16          anticipating that the parties are going to reach  
17          an agreement here. I will give you until --  
18          December 31st is a Sunday, yes, Sunday. So I  
19          will give you until Tuesday, the 2nd, to agree.

20                         If the parties don't agree, the State  
21          can file a motion to examine the blood on such  
22          terms as it deems appropriate. And the Court  
23          will take up that motion and set it for a hearing  
24          in very short order, if that's determined to be  
25          necessary. But I have to say, based on what I

1           hear the parties telling me on the record today,  
2           I'm not sure why that should be necessary.

3           ATTORNEY GAHN: Your Honor?

4           THE COURT: Yes.

5           ATTORNEY GAHN: May we also have relief  
6           from your January 19th date where you set that for  
7           the turnover, the list of rebuttal witnesses. Since  
8           I don't know if we'll be able to make that date, I  
9           would like to have relief from that also.

10          And the other final question I have is,  
11          assume on Friday there is a place we want to send  
12          this blood, is it -- would the mechanism of  
13          getting that blood into one of our sheriff's or  
14          DCI agent's custody to get it into the mail,  
15          simple as I will call Mr. Buting, we try to do a  
16          conference call Friday, and would it be as simple  
17          as you making a phone call to Manitowoc County  
18          saying so and so is going to come down on this  
19          date, say next Tuesday, you may release it to  
20          him. Is it that simple?

21          THE COURT: Well, you can fax me a  
22          stipulation. And certainly based on the  
23          stipulation, I can order that it be released under  
24          the terms of your stipulation. If you don't reach a  
25          stipulation, then it gets a little more complicated.

1                   With respect to the rebuttal witnesses,  
2 before I would allow a party to have relief from  
3 the deadline that's been set, I would like to  
4 make alternative arrangements for when the  
5 rebuttal witnesses would be notified.

6                   I will say on the record, that based on  
7 the late notice to the State of the development  
8 of this evidence, that certainly sounds like  
9 grounds for from relief from the existing  
10 deadline. But as far as acting on the motion  
11 that you just made on the record, I would take  
12 that up at such time as it's coupled with a  
13 description of when the notice would be provided.

14                  Is there anything else that either party  
15 wishes to take up on the record at this time? It  
16 was my understanding that the State, specifically  
17 Mr. Kratz, was looking for some clarification of  
18 discovery items.

19                  ATTORNEY KRATZ: I am, Judge. In chambers  
20 we discussed the lack of materials being provided to  
21 the State on February 1st. The State filed a  
22 reciprocal discovery demand with the defense. It  
23 was our hope that by the 15th of December, the date  
24 that the Judge had ordered for exchange of  
25 discovery, that we would have received the witness

1 statements, or reports from investigators that  
2 summarize the statements from witnesses.

3 We understand that expert reports may  
4 accompany an expert witness list sometime in  
5 early January. But the lay materials we had  
6 hoped would have been provided by the 15th, and  
7 if they are forthcoming, we would appreciate  
8 notice of that fact.

9 THE COURT: Mr. Strang.

10 ATTORNEY STRANG: The State had every right  
11 to expect that by December 15. Indeed, the Court's  
12 order set that as a general discovery deadline. I  
13 dropped the ball, or let it pass, being focused on  
14 the witness list at the time. We have a limited  
15 amount of material that I think does fall within the  
16 discovery statute. We discussed this in chambers.  
17 And I will make every effort to get that to  
18 Mr. Kratz, if not this week, then certainly between  
19 Christmas and New Years.

20 THE COURT: Mr. Kratz, anything else?

21 ATTORNEY KRATZ: No, Judge. If I get it by  
22 the first of the year, that will provide plenty of  
23 opportunity for preparation. Thank you, Judge.

24 THE COURT: Very well. Is there anything  
25 else either party wishes to bring up on the record

1 at this time?

2 ATTORNEY KRATZ: Could we just have a  
3 moment, Judge?

4 THE COURT: Yes.

5 ATTORNEY KRATZ: We understand, Judge, that  
6 some scheduling of logistic matters will be  
7 addressed by the Court later on today in a meeting.  
8 And there were some other scheduling and other  
9 agreements that were placed -- or were discussed in  
10 chambers, but nothing that I believe needs to be  
11 placed on the record at this time.

12 THE COURT: Thank you. Mr. Strang.

13 ATTORNEY STRANG: The only other matter I  
14 would have to raise, your Honor, is just a  
15 reiteration of our concern and our request that in  
16 any proceeding, telephonic or otherwise, in which  
17 the Court and the parties go beyond a discussion  
18 strictly limited to scheduling, we would like  
19 arrangements to be made for the participation in  
20 person or by telephone of Mr. Avery.

21 I realize that the schedule is fluid and  
22 that the Court may have to convene other  
23 hearings. Purely scheduling matters, of course,  
24 need not involve Mr. Avery. But to the extent we  
25 get into anything other than scheduling, we

1                   simply reiterate the request that he be included,  
2                   present in some practical fashion.

3                   THE COURT: All right. Well, certainly  
4                   there is a statute, aside from fundamental fairness,  
5                   that requires that that take place. And if there is  
6                   anything else that we have to go on record for that  
7                   doesn't involve scheduling, that's what we'll do.  
8                   Today's hearing was only scheduled to be a status  
9                   conference, but the parties notified the Court ahead  
10                  of time that there were some items to be dealt with  
11                  on the record and that's how we wound up here today.  
12                  If necessary, we'll do that again in the future.

13                  ATTORNEY STRANG: Thank you.

14                  THE COURT: Anything else today?

15                  ATTORNEY KRATZ: Not on the record, Judge.

16                  THE COURT: Very well. If not, we're  
17                  adjourned for today.

18                  ATTORNEY BUTING: Thank you, Judge.

19                  THE COURT: Let's go back on the record.

20                  Mr. Buting, you had a clarification question?

21                  ATTORNEY BUTING: Just the -- did the Court  
22                  rule then that the motion we filed is going to be  
23                  unsealed, or is unsealed?

24                  THE COURT: I intend to issue that order to  
25                  unseal the motion.

1 ATTORNEY BUTING: Okay.

2 THE COURT: With respect to the evidence  
3 that's the subject matter of the motion itself, I  
4 indicated that I would withhold ruling on that at  
5 this time pending what I anticipate will be an  
6 agreement between the parties. And if the parties  
7 do not come to an agreement, and the State asks for  
8 a motion to have the evidence unsealed, I will rule  
9 on that motion when it comes in.

10 ATTORNEY BUTING: So, in the meantime, the  
11 evidence that's the subject of the motion will  
12 remain sealed?

13 THE COURT: Yes.

14 ATTORNEY BUTING: Thank you. I just wanted  
15 to clarify that.

16 THE COURT: Very well. We're adjourned for  
17 today.

18 (Proceedings concluded.)

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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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               day of                       , 2007.  
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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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<b>W</b>	<p>want [7] 3/9 3/24 6/19 6/20 8/6 8/16 11/11 wanted [1] 16/14 wants [1] 10/15 was [18] watch [1] 7/17 way [4] 6/14 8/25 9/5 9/7 we [55] we'll [5] 5/13 7/19 11/8 15/7 15/12 we're [8] 5/1 5/13 5/18 5/18 7/10 7/21 15/16 16/16 week [3] 3/17 4/8 13/18 welcome [3] 7/15 7/16 8/4 well [6] 2/19 11/21 13/24 15/3 15/16 16/16 went [1] 3/16 were [5] 2/7 14/8 14/9 14/9 15/10 what [9] 3/3 6/13 7/9 7/12 8/15 10/15 10/25 15/7 16/5 what's [2] 4/13 4/14 when [3] 12/4 12/13 16/9 where [4] 5/12 8/3 9/22 11/6 wherever [2] 7/13 7/19 whether [2] 4/4 6/2 which [2] 6/14 14/16 who [6] 3/24 4/19 5/6 5/9 6/8 9/9 whoever [1] 7/15 why [2] 8/8 11/2 will [24] Williams [1] 2/15 willing [2] 5/19 10/10 Willis [1] 1/9 WISCONSIN [8] 1/1 1/3 1/12 1/14 1/16 2/2 17/1 17/6</p>		

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8

9 DATE: JANUARY 4, 2007

10 BEFORE: Hon. Patrick L. Willis  
Circuit Court Judge

11 APPEARANCES: KENNETH R. KRATZ  
12 Special Prosecutor  
On behalf of the State of Wisconsin.

13 NORMAN A. GAHN  
14 Special Prosecutor  
On behalf of the State of Wisconsin.

15 DEAN A. STRANG  
16 Attorney at Law  
On behalf of the Defendant.

17 JEROME F. BUTING  
18 Attorney at Law  
On behalf of the State of Wisconsin.

19 STEVEN A. AVERY  
20 Defendant  
Appeared in person.

22 \* \* \* \* \*

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

THE COURT: At this time the Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. This matter is scheduled this afternoon for a hearing on a motion that was filed yesterday by the State; specifically, a motion to exclude blood vial evidence, or in the alternative, to analyze the vial of blood. Will the parties present state their appearances for the record, please.

ATTORNEY KRATZ: The State appears by Calumet County District Attorney Ken Kratz, appearing as Special Prosecutor. Norm Gahn also appears as Special Prosecutor. And I should alert the Court that this is Mr. Gahn's motion.

ATTORNEY STRANG: Good afternoon. Steven Avery is here in person this afternoon. Jerome Buting of Buting and Williams appears on his behalf, as do I, Dean Strang of Hurley, Burish and Stanton. I think that covers it.

THE COURT: All right. I will indicate for the record that I have received -- I received by fax, it probably came in last night, I read it this morning, that is, the State's motion and the memorandum that was submitted in support of the motion.

I have also received and read the

1 defendant's response to the State's motion to  
2 exclude the blood vial evidence. I will give the  
3 parties a opportunity to briefly supplement the  
4 memoranda with oral argument, if they wish.

5 Mr. Gahn.

6 ATTORNEY GAHN: Thank you, your Honor. I  
7 believe that the Court can make an analysis under  
8 the cited cases in our brief of **State v. Richardson**  
9 and **State v. Denny**. The State will concede that  
10 there may be some relevance to this vial of blood to  
11 this trial, but I think that the analysis must go  
12 further by the Court and to look at the probative  
13 value of this and then to make a determination under  
14 904.03 whether this would be a delay of the trial,  
15 confusion of issues for the jury. And this complete  
16 analysis must be done by the Court.

17 I note from the response by the defense  
18 that at no time do they suggest or state that  
19 there is -- this vial of blood is admissible.  
20 And I believe that under the case law, that the  
21 Court should rule that this is inadmissible  
22 evidence for these reasons.

23 Conceding there may be some relevancy, I  
24 believe that the probative value is very low.  
25 And if one makes an analysis akin to the analysis

1                   the Court made in ***State v. Richardson***, you have  
2                   to look at all the assumptions that a jury is  
3                   going to have to make about this vial of blood.

4                   Now, I'm making these assumptions along  
5                   a ***Richardson*** analysis knowing that the defense  
6                   has not filed or given any type of offer of proof  
7                   of how they plan to connect the vial of blood to  
8                   Teresa Halbach's SUV. But the jury is going to  
9                   have to make the assumption that the blood in the  
10                  vial is Steven Avery's. They are going to have  
11                  to assume that it was planted some time between  
12                  November 3rd and November 5th, or if they --  
13                  maybe it was planted October 31st, or  
14                  November 1st, or 2nd. But that type of  
15                  assumption implies that perhaps a police officer  
16                  murdered Teresa Halbach and cut up her body and  
17                  planted this to try and frame Steven Avery.

18                  They would have to assume that the  
19                  police, or whoever planted it, knew that Teresa  
20                  Halbach was dead. And how could they know that.  
21                  The only way they could possibly know that would  
22                  be is if Steven Avery told them, or Mr. Dassey  
23                  told them -- and Mr. Dassey didn't say anything  
24                  until March 1st -- or one of the police actually  
25                  did the killing, or perhaps they got an anonymous

1 tip.

2           But there are so many factors out here,  
3 and so many assumptions that would have to be  
4 made, that this lends itself to confusion of  
5 issues and misleading the jury and, really, a  
6 purposeful attempt to distract their attention  
7 from focusing on the true issue in this case, and  
8 that is, whether Steven Avery murdered Teresa  
9 Halbach.

10          But there's also going to have to be  
11 assumptions made that some law enforcement  
12 officer had access to this vial of blood somehow,  
13 or was there complicity by the Clerk of Court's  
14 in Manitowoc County, or was it just --

15          This isn't a case of negligence we're  
16 talking about, you know, an intentional crime  
17 committed by law enforcement officers, and  
18 possibly along with the Clerk of Court's. This  
19 is an appalling allegation that's being made.

20          And there's so many assumptions, as I  
21 said, would have to be made by the jury, that I  
22 believe that this is a very low probative value  
23 to this evidence. And when you have a low  
24 probative value to the evidence, the analysis  
25 under a 904.03 examination certainly shows how

1           this would be such a waste of time and confusion  
2           of issues and distraction to the jury.

3           Because the Court, I believe from prior  
4           ruling, especially when we argued the 904.04 (b)  
5           other acts, other wrongs and crimes evidence, the  
6           Court wants this trial to focus on whether Steven  
7           Avery murdered Teresa Halbach and not get  
8           sidetracked on other issues and collateral  
9           issues. But if this vial of evidence comes in,  
10          it is just fraught with other issues such as is  
11          it Steven Avery's, who drew it, what happened  
12          when it was at Laboratory Corporation of America,  
13          who had access to it, what are the security  
14          procedures at the Manitowoc County Clerk of  
15          Court's Office.

16          There are just so many side issues and  
17          collateral issues, that I believe that it  
18          necessitates under a 904.03 analysis that this  
19          evidence lacks, number one, probative value and  
20          also would be a waste of time and confusion of  
21          issues, for the jury. And we ask the Court to  
22          not allow this evidence to come in.

23          I also want to address, I guess, sort of  
24          a preemptive strike I would like to make on this  
25          knowledge on our part, the State, and our access

1 to this vial of blood and the untimeliness of  
2 notifying us about the existence of it.

3 I want the Court to know that the  
4 prosecution team, I believe, exercised due  
5 diligence in looking for this vial -- a vial of  
6 blood. We recognized this early on and asked our  
7 detectives to search for it. And we have  
8 searched in all the places that one would expect  
9 to find a vial of blood, crime labs, Manitowoc  
10 County Sheriff's Department, law enforcement.  
11 And as I said, we exercised due diligence looking  
12 for it.

13 This vial of blood turns out to be in  
14 existence, but there's really a few people who  
15 knew about it. It was never in the control of  
16 law enforcement. And to try and associate the  
17 Manitowoc County Clerk of Court's office with law  
18 enforcement is a stretch. This is a public  
19 service. They serve the public. These are  
20 people who have taken, I imagine, an oath of  
21 office, and they have jobs, civil, and criminal,  
22 and all the other things that go along with the  
23 Clerk of Court's. They are not associated with  
24 law enforcement at all.

25 And I was very surprised to see that a

1           vial of blood, to turn up there. But we did  
2           look, and we looked to try and find it, because  
3           we felt that if they want to pursue a planting  
4           defense, fine, but how do you plant evidence if  
5           there is no blood.

6           Now they have come up with this, but  
7           this is information that was in the possession of  
8           Mr. Avery, he could tell them, hey, blood was  
9           drawn from me up in Fox Lake, or whatever it was,  
10          in 1996. And this was also a Innocence Project  
11          case, and that is something I think the defense  
12          is more aligned with than prosecution are aligned  
13          with.

14          And they had more of an opportunity to  
15          know and find out the existence of this vial of  
16          blood. And they knew about it at the latest in  
17          July, July 20th. It could have been earlier.  
18          But I believe that they viewed -- if they viewed  
19          it so importantly, and wanted it sealed, they  
20          should have told us about it.

21          I think they had a responsibility under  
22          971.23, the discovery statute, to tell us about  
23          this and give us the opportunity to test this.  
24          Because this is -- this is the crux of the case,  
25          this vial of blood now. And we need to meet the

1           defense and have the opportunity to test this  
2           vial to meet their defense.

3           And the defense in this case, and I just  
4           want to reiterate to the Court that, you're  
5           talking -- this is -- you're talking about  
6           people's reputations here. There is an  
7           allegation that are going to be made by the  
8           defense, and they have made them already, that  
9           perhaps some law enforcement officer, someone  
10          from Manitowoc County, who is sworn to protect  
11          the public, to serve the public, took this vial  
12          of blood -- and so callously disregard for the  
13          Halbach family -- planted this evidence in a car  
14          and didn't care who murdered Teresa Halbach.  
15          This is appalling. This is a despicable defense.

16          And also they are saying that someone in  
17          that Manitowoc County Courthouse, whether it be  
18          through complicity, or slipshod operations, that  
19          this place was just wide open for anybody to  
20          willy-nilly walk in and get access to it. And  
21          that's not what I found when I visited the  
22          Manitowoc County Clerk of Court's Office. I  
23          didn't find that at all. And it's just a  
24          despicable allegation and defense and we need to  
25          meet it, your Honor. We need to meet it full on.

1                   And I'm asking the Court, first, to rule  
2                   that under a **Richardson** and also a **Denny**  
3                   analysis, how is the defense going to connect the  
4                   vial of blood in the Manitowoc County Clerk of  
5                   Court's Office to the SUV of Teresa Halbach. How  
6                   do they make that connection? Just by saying so,  
7                   it exists?

8                   I mean, you could make that same  
9                   argument that if Mr. Avery donated blood, or one  
10                  was taken for a medical procedure, or blood was  
11                  drawn for any myriad of reasons, that, oh, just  
12                  because it exists, therefore, somehow, under all  
13                  those possible scenarios, the blood was taken by  
14                  someone and planted in the SUV. The connection  
15                  is there. It is not there. They have not met  
16                  the law under **Denny** or under a **Richardson**  
17                  analysis, so it should be excluded.

18                  But if the Court does not wish to  
19                  exclude it, we ask the Court to allow us time to  
20                  test it. And we want to test it with the FBI.  
21                  That may take three to four months to test it, so  
22                  we would be asking for a continuance.

23                  And the other concerns that we have are  
24                  the many, many potential appellate issues that  
25                  could come up, especially under a **Hicks, Moran**,

1 and **Armstrong** analysis on whether it be in the  
2 interest of justice, or ineffective assistance of  
3 counsel. There is evidence, a blood vial that  
4 can be tested chemically, that can be  
5 scientifically tested. And it can tell us  
6 whether the blood in Teresa Halbach's car came  
7 from that vial of blood. And I believe this case  
8 is too important, we have come too far, too long,  
9 and too many vicious allegations, against people  
10 who are public servants or law enforcement  
11 officers, have been made, that we must have the  
12 opportunity to have that vial and do the testing  
13 that we believe is suitable to meet their  
14 defense. May I just have one moment, your Honor?

15 THE COURT: Go ahead.

16 ATTORNEY GAHN: That's all I have. Thank  
17 you.

18 THE COURT: Mr. Buting. Or I got the brief  
19 from Mr. Mr. Buting; is it Mr. Strang?

20 ATTORNEY BUTING: We may both respond at  
21 different times, depending on the issues that come  
22 up, but Mr. Strang will take the lead here.

23 ATTORNEY STRANG: One of the good things,  
24 your Honor, that 8 or 900 years of history, with the  
25 English common law and coming across the Atlantic to

1                   the United States, has done for us is to make combat  
2                   in a courtroom ritual. And when the language  
3                   becomes very charged and the emotions become very  
4                   charged, as inevitably they will in a case in which  
5                   the most serious, horrible, and heinous crime is  
6                   alleged, it's good to have this tradition of  
7                   civility, and ritual control of a combat, to fall  
8                   back upon.

9                   And I agree that the potential  
10                  implications, as opposed to the allegations that  
11                  we made, because we have made very few  
12                  allegations, we have tried to present facts at  
13                  this point and to explore things that we have  
14                  found in the Manitowoc County Circuit Court. But  
15                  I agree with my friend, Mr. Gahn, that the  
16                  potential inferences from this are, indeed,  
17                  despicable in the sense of being unspeakable, in  
18                  the sense of being horrible, and in the sense,  
19                  particularly, impossibly true.

20                  And I go back to the starting point here  
21                  in noting the allegations that Steven Avery  
22                  murdered Teresa Halbach are despicable in the  
23                  very same way. The allegation that he had sex  
24                  against this young woman's will with her are  
25                  despicable, and vicious, in the very same way.

1                   And unlike every law enforcement officer  
2                   of Manitowoc County, Mr. Avery doesn't go home at  
3                   night while he is under these sorts of  
4                   allegations. Presumed innocent though he may be,  
5                   he sits here today in custody.

6                   And in large part, the issues that the  
7                   State raises now, the Court already has  
8                   addressed, after thorough briefing from both  
9                   sides, briefs filed in June, State's may have  
10                  actually been filed in May, I don't remember. I  
11                  know ours in response to the State's motion to  
12                  prohibit evidence of third party liability was  
13                  filed on or about June 26th.

14                  And the Court has ruled, on July 10 of  
15                  last year, just exactly what the disclosure  
16                  obligation was on the defense for extrinsic  
17                  evidence of planting, has ruled on what  
18                  inferences we might pursue, or argue, without  
19                  extrinsic evidence of planting. And I am glad to  
20                  hear this afternoon that counsel for the State  
21                  does not reiterate the written argument made  
22                  yesterday, that our disclosure was untimely,  
23                  under this Court's orders. Because by the time  
24                  this Court set a schedule on July 10 for  
25                  disclosure of this sort of evidence, the trial

1 had been moved to October 16. That meant July 10  
2 set a September 16 deadline.

3 Long before that deadline arrived,  
4 August 22 arrived, and the trial was moved to  
5 February 5. And after very thorough discussion  
6 and disagreement to be worked through and an  
7 exchange of drafts and going round and round and  
8 making at least two, and maybe three trips,  
9 between Mr. Buting and the defense investigators  
10 and the Manitowoc County Circuit Court, we  
11 decided to disclose this extrinsic evidence, or  
12 arguably extrinsic evidence of possible planting  
13 of Steven Avery's blood, to the State.

14 Not 30 days before trial as the Court's  
15 order required, but 60. And not to pursue this  
16 ex parte, as we had intimated in chambers we were  
17 considering at one point, but to pursue it in  
18 open court, in an unsealed fashion, and with  
19 service upon our adversaries.

20 Those weren't easy decisions, but the  
21 fact is that disclosure was not just timely here,  
22 it was 30 days before the deadline that the Court  
23 set after considering exactly the **Richardson**  
24 argument and the **Holmes vs. South Carolina**  
25 argument to which Mr. Gahn harkens back today.

1                         The issue, as I understand it here,  
2 primarily, is disclosure, and now, where do we go  
3 from there. To the extent the State is arguing  
4 to exclude evidence of possible planting, the  
5 Court's ruled on that. I don't know, unless  
6 there are questions from the Court that there's a  
7 need to revisit the briefing and the rulings on  
8 that earlier, particularly since the timing of  
9 disclosure now ought be resolved, because we more  
10 than complied with the Court's timing order.

11                         The vial clearly will be admissible.  
12 Its availability and proximity to members of the  
13 Manitowoc County Sheriff's Department comes in on  
14 undisputed facts to the extent of the location of  
15 the Clerk's Office, the location of the Sheriff's  
16 Department, the location within the Clerk's  
17 Office of two boxes or cartons that contain the  
18 1985 Avery file.

19                         And the 904.03 analysis, I think,  
20 benefits in a sense, from stepping back just a  
21 little bit, again, and understanding that from  
22 the beginning counsel for the State has  
23 estimated, as I recall, that it would take four  
24 to five weeks to present the State's  
25 case-in-chief against Mr. Avery on the despicable

1                   allegations that the State hopes to prove. And  
2                   that perhaps a week would be sufficient for the  
3                   defense case-in-chief in responding to those  
4                   allegations.

5                   Now, recently the State has suggested  
6                   that if there aren't some stipulations from the  
7                   defense this maybe four to five weeks is tight  
8                   for the State's case-in-chief. And I will say  
9                   this, one week is still adequate, or better than  
10                  adequate, for the defense case.

11                  So if we're to have a discussion about  
12                  all the linkages that would have to be made, and  
13                  all the witnesses that would have -- who would  
14                  have to be called, the balance pretty clearly  
15                  here tips in favor of the defense and against an  
16                  argument that this is collateral, or a waste of  
17                  time.

18                  This evidence goes directly to the  
19                  integrity of some of the most damning evidence  
20                  against Mr. Avery that the State intends to  
21                  offer. And that's the very small amounts of his  
22                  dried blood that the State will say were found in  
23                  Teresa Halbach's Toyota.

24                  He's been saying from the beginning, to  
25                  anybody with a microphone and TV camera,

1           initially in early November, 2005, that if his  
2       blood was in the Toyota, somebody planted it. So  
3       that hasn't been any secret about his defense and  
4       his view of the facts.

5           We, as his agents, to a large extent,  
6       played the hand that he dealt us, looked down the  
7       road to which he pointed us. That the State  
8       didn't look in the same places we did, alters not  
9       one wit this irreducible fact, the evidence here  
10      uncovered in the Manitowoc County Circuit Court,  
11      in the Clerk of Court's Office, was as available  
12      to the State, or to a member of the public, as it  
13      was to the defense.

14           I don't know that I'm going to go  
15      farther on arguing admissibility, because that's  
16      not primarily what we're here for today. But I  
17      do want to address the matter of further testing  
18      and an adjournment, and I think Mr. Buting is  
19      better equipped to speak to the specifics of  
20      possible testing.

21           We have tried and failed to get him,  
22      Steven Avery out on bail. It's been 14 months.  
23      It's been solitary confinement. And it's been  
24      under conditions where the taping of his every  
25      word, other than to counsel, for one reason, has

1           been used assiduously for the other reason, of  
2           gathering evidence by the State. And if he is to  
3           remain in custody, we will and do oppose the  
4           adjournment of this trial. We want it to go  
5           forward on February 5, if he is to remain in  
6           custody.

7           Now, the question of the State's ability  
8           or interest in testing can be separated from an  
9           adjournment. And, again, after talking about it  
10          with Mr. Buting, and his conversations with  
11          Mr. Gahn, who is a candid and accessible  
12          adversary, we believe that the blood in the vial  
13          that was found in the Clerk's Office can be  
14          partitioned, divided in a way that does not  
15          prejudice the defense and that would allow the  
16          State to undertake the testing it seeks to do.

17          I am assured by Mr. Gahn, and I accept  
18          his word entirely that, moreover, even the very  
19          small amounts of dried blood in the Toyota RAV  
20          are sufficient to allow partitioning or to allow  
21          testing by the State, without full consumption or  
22          spoliation of that dried blood evidence. I take  
23          him at his word. He is an expert in the area of  
24          blood and DNA.

25          So I think, that as a matter of testing,

1           the Court can fashion conditions that do not  
2           prejudice Steven Avery and that would allow the  
3           State to pursue the course of testing, any course  
4           of testing it may wish. The admissibility or  
5           relevance of the results of that testing, I  
6           cannot address and the Court cannot address at  
7           this point. Nobody has briefed it. We know very  
8           little about the proposed EDTA testing.

9                 The track record of admissibility in  
10           case law is not good, but it is also not terribly  
11           extensive. But, again, this is a separable  
12           issue, in the sense that testing can go forward.  
13           Admissibility and relevance of results of  
14           testing, or opinions formed on the basis of  
15           testing, can be addressed later, when there's  
16           more, factually, to work with.

17                 But if the State wants to test, and if  
18           Mr. Avery is to remain in custody, the trial  
19           ought go forward while the testing process is  
20           going forward. If Mr. Avery is instead to be  
21           released on stringent conditions that would  
22           assure the community's safety, and realistically  
23           remove any slight risk of flight he may  
24           represent, then the calculus changes entirely  
25           for the defense.

1                   We would not oppose an adjournment under  
2 those circumstances. We don't pursue testing  
3 ourselves. We don't know that we will. We  
4 aren't asking to. But we understand why the  
5 State wants to pursue that testing. And we also  
6 understand the potential ramifications, largely  
7 unknowable now, but certainly imaginable, of  
8 testing results that might cast doubt about a  
9 verdict previously rendered in this case.

10                  So, if this man could go home at night,  
11 as the law enforcement officers do, and as the  
12 rest of us do, with a GPS bracelet on his ankle,  
13 or checking in every day to the Two Rivers Police  
14 Department, or whatever the conditions are that  
15 send him home, we would not oppose the State's  
16 request for an adjournment to test.

17                  We may well oppose in the end the  
18 admissibility, the relevance of those test  
19 results, but that, again, is something the Court  
20 could address with the benefit of knowledge of  
21 the test results, presumably, and a chance to  
22 look at the type of testing that was done, the  
23 protocols, and what the case law may have to say  
24 about the admissibility of similar tests.

25                  We have not sought defense testing at

1                   this point ourselves, because as Mr. Buting said  
2                   the last time we were in court, we don't know of  
3                   a test that can be done that would be productive  
4                   or helpful. A federal decision from 2005 that  
5                   Mr. Buting uncovered, has a federal judge writing  
6                   in her decision that the FBI stopped doing the  
7                   very testing that Mr. Gahn now says the FBI will  
8                   do.

9                   Mr. Gahn's information is fresher and,  
10                  again, this is a man who knows what he's doing  
11                  and is candid. But our best information had been  
12                  that the FBI wasn't in this business.

13                  Mr. Buting can address the other lab  
14                  that the State has identified as being a possible  
15                  site for testing, and I have no basis on which to  
16                  dispute the State's assertion that there are, in  
17                  this whole country, but two laboratories capable,  
18                  presently, of doing this testing, the FBI and a  
19                  private laboratory the State has named.

20                  Realistically, for reasons Mr. Buting can  
21                  address, the private laboratory may not be a good  
22                  choice for either the State or the defense.

23                  So, I hope I have been clear. I  
24                  understand why the State wants to test. If the  
25                  presumption of innocence that he enjoys were

1           undergirded and backstopped here by letting him  
2           sleep where innocent people, or presumptively  
3           innocent people sleep, we would not oppose an  
4           adjournment.

5           The Court may deny the adjournment for  
6           its own reasons, but not over our objection, if  
7           bail were modified so that he didn't spend 4 more  
8           months, after 14, in jail, presumptively  
9           innocent, in solitary confinement, and with his  
10          every word to his loved ones listened to by  
11          police, for potential evidence.

12          If that state of life is to continue  
13          until he is tried, then Steven Avery opposes an  
14          adjournment, thinks that testing could go forward  
15          without prejudice to him, but reserves the right  
16          to challenge or support, conceivably,  
17          admissibility or relevance of test results and  
18          opinions flowing from those test results.

19          And I would like to turn it over to  
20          Mr. Buting to go give the Court a little bit  
21          better sense of why the 30 day testing option  
22          with a private lab may, in the end, not be  
23          feasible for either the State or the defense.

24           THE COURT: Mr. Buting.

25           ATTORNEY BUTING: Judge, just to give you a

1           little bit of background, I looked into this. And  
2           part of what we were doing when we discovered the  
3           possibility that Mr. Avery's blood vial may be in  
4           the Clerk's Office and recall that all we knew was  
5           that there was a box that said it was in there, the  
6           books we did not open until the Court granted  
7           permission in December.

8           But in my research, it did not appear  
9           that there was a credible lab available to do the  
10          kind of testing that Mr. Gahn now says the FBI is  
11          doing. And I don't know anything about their  
12          protocol and whether this is credible or not.  
13          But what I do know is that the kind of test he is  
14          talking about, this EDTA test, to be able to try  
15          and measure whether there is this preservative  
16          that is found in blood vials, certain blood  
17          vials, whether that can be detected in a  
18          bloodstain at a crime scene, never came up until  
19          the middle of the O.J. Simpson trial, at which  
20          point the FBI, for the first time, while the  
21          trial was going on, developed some sort of  
22          testing protocol.

23          Their expert was called, actually by the  
24          defense in the O.J. case, and was very helpful to  
25          the defense, and ultimately very embarrassing to

1                   the FBI, who was part of the whistle blower  
2                   allegations in the very lengthy investigation  
3                   that the FBI lab did of misconduct, or  
4                   negligence, or sloppy practices in their lab.  
5                   And that analyst, who had testified about the  
6                   EDTA test, was called to task for that very  
7                   testimony and that very test.

8                   Since that case, a few cases have gone  
9                   forward where it's almost -- in fact, it is  
10                  always the defense that seeks to use this kind of  
11                  a test to determine -- and in most cases I think  
12                  it's been post-conviction -- but to determine  
13                  whether or not the blood may have been planted  
14                  that was found at the crime scene.

15                  The alternate lab that the State  
16                  mentions in their motion, National Medical  
17                  Services located in Willow Grove, Pennsylvania,  
18                  has been severely discredited. And for that  
19                  reason, we didn't come to the Court and ask that  
20                  they do such a test.

21                  The federal case that Mr. Strang was  
22                  referring to, for some reason I could not find on  
23                  Westlaw, but it is in public record. It is on  
24                  the website, PACER website, for the United States  
25                  District Court and the Southern District of

1                   California, it's **Kevin Cooper vs. Jill Brown**,  
2                   Warden of San Quentin. And the District Court  
3                   Judge issued a very thorough, 160-page decision,  
4                   describing the protocol that was used for EDTA  
5                   test in that case.

6                   About 26 pages of the 160 concerned that  
7                   one issue, the EDTA protocol, how it was devised.  
8                   There were affidavits filed by the FBI in that  
9                   case, that federal judge says in a footnote that,  
10                  Although the FBI had been testing during the O.J.  
11                  Simpson case, they were no longer in the business  
12                  of doing EDTA tests. So when I saw that, my  
13                  knowledge was that, really, there was nobody  
14                  credible still doing these kinds of tests.

15                  THE COURT: What's the year of the case?

16                  ATTORNEY BUTING: The decision came out in  
17                  June of 2005. I didn't copy the whole 160 pages so  
18                  I don't have that, but the Case No. -- the local  
19                  Case No. is 04-CV-656 and I have a PDF I could  
20                  certainly forward to the Court, that I was able to  
21                  download from their website.

22                  In that case the defense used  
23                  Dr. Ballard from this National Medical Services.  
24                  And he was so severely discredited by not only  
25                  this court, but a prior court, **New Jersey vs.**

1                   **Pompey**, that I just want to read this so that you  
2                   realize that, frankly, that alternative is not on  
3                   the table as far as I can see, from either side,  
4                   to try and submit testing to there.

5                   What the court found in **Pompey**, as  
6                   repeated in this **Cooper** case, is that  
7                   Dr. Ballard's analytical methods were haphazard  
8                   and unreliable.

9                   In sum, he used valid science, gas  
10                  chromatography/mass spectrometry, to obtain a  
11                  product, glibly and unscientifically dismissed  
12                  EDTA sources other than the purple-topped tubes,  
13                  and took a gargantuan leap to a conclusion that  
14                  is unsupported by science, facts in the record,  
15                  or even common sense.

16                  Ballard skewed the presentation of his  
17                  data, obscured the significance of his findings,  
18                  and changed his hypotheses to suit defendant's  
19                  tampering theory. Ballard did not demonstrate  
20                  that his conclusions were predicated on a  
21                  reliable foundation. Rather, his constant  
22                  equivocations discredited his method of reasoning  
23                  and, thus, rendered his ultimate conclusion  
24                  worthless.

25                  So I say this just so that it is very

1           clear, I do not see that lab as any option for  
2           either side. And, therefore, we're left with, if  
3           Mr. Gahn's information is correct, I have no  
4           reason to doubt, but his information apparently  
5           now is that the FBI is back in the business of  
6           doing this. I don't know how they do it. And I  
7           would certainly reserve the opportunity to  
8           challenge the reliability or methods of protocol  
9           that they use, and may want to discuss with this  
10          Court further, how that should be done if that's  
11          -- testing is granted. But, clearly, the FBI is  
12          the only option, so I can understand why that is  
13          the State's preference. Thank you.

14                         THE COURT: Mr. Gahn.

15                         ATTORNEY GAHN: Just very briefly, your  
16          Honor. I think you can see that the defense at  
17          least agrees that there's something important about  
18          doing this testing, that traditionally it's been  
19          requested by the defense and has generally come up  
20          on post-conviction motions. The FBI does do this  
21          testing. I have spoken with them on a number of  
22          occasions, yesterday was the latest that I spoke  
23          with the chemist, toxicologist who would be doing  
24          this testing for us.

25                         I do not, as I stated in the brief, for

1           the Court's information, I said there were two  
2           places. I do not care to send it to National  
3           Medical Services. We want to send it to the FBI.  
4           That's where I believe the history, and  
5           experience, and methodology used by them is --  
6           will be to our benefit, should there be an  
7           admissibility hearing down the road.

8           But I think that the defense recognizes  
9           the importance of doing this testing. And if, as  
10          they say, this vial of blood goes to the  
11          integrity of our evidence, we have to test it,  
12          your Honor. And we have to test it at a  
13          credible, meaningful laboratory.

14          I don't think there is any way around  
15          this. We either test it now, or test it later.  
16          And the cases, I believe, under whether it be  
17          ineffective assistance of counsel, or whether it be  
18          the interest of justice, it's going to be  
19          tested later. That's my belief. And I think  
20          that our -- the history of these cases in  
21          Wisconsin indicates that it would be prudent to  
22          do it now instead of later.

23           THE COURT: Do I understand that, although  
24          the National Medical Services Laboratory is  
25          mentioned in your brief, that you share Mr. Buting's

opinion of their capabilities of doing this testing?

ATTORNEY GAHN: Let me put it this way, I share that there has been prior cases, or especially the case, the **Cooper** case, Mr. Buting, that that is in existence, and the National Medical Services, Dr. Ballard, did not fair well. Yes, I agree. And I do not care to send it there. Now, whether they have -- No, I agree, I do not believe that that is an appropriate lab to send it to.

THE COURT: And with respect to the FBI testing, has something changed at the FBI since Mr. Buting indicates they were criticized in the previous case.

ATTORNEY GAHN: I don't know, your Honor I  
don't know that they stopped doing it. I'm not  
aware of that. When I talked to the FBI -- I just  
do not know about that. All I know is that they can  
test it and they can quantify it.

I want to say something else. There are a few differences, though. And I know that Dr. Ballard did get beat up in some courts, and he did make some stretches and leaps in his conclusions. But as I recall the cases I read, and they are probably the same that Mr. Buting read, you were talking about, he was a defense

1 witness.

2 And they were talking about blood that  
3 was on fabrics, like on a person's shirt. There  
4 is a diffusion of that blood throughout the  
5 shirt, and it is difficult to try to determine  
6 the volume of what that blood would be, or what  
7 would be the volume of the EDTA in that, as  
8 compared to the volume of EDTA that's in the  
9 blood.

10 I don't ever recall a case that I read  
11 where they had the actual purple-topped tube  
12 where they say it's coming from to make a  
13 comparison, so that's a difference.

14 The other difference is is that  
15 according to the records that the defense  
16 provided me, Laboratory Corporation of America,  
17 two days after this blood was drawn by the nurse,  
18 made a spot card of it. So that is almost a  
19 control that would be very helpful in the  
20 interpretation of this case, if that control is  
21 still in existence.

22 Now, I have a call out to Laboratory  
23 Corporation of America. I talked to a Meghan  
24 Clement, and as I said in my brief, there are a  
25 lot of questions still we have to investigate and

1           look at. But if that spot card is available,  
2           then you have sort of like a control, that was  
3           taken right after the blood was drawn.

4           And that spot card, usually, are very  
5           fresh. They are free of any type of  
6           contaminates. And that's the purpose of them.  
7           You could get an EDTA level right there. And the  
8           other thing is, that we have blood that is on,  
9           like, the vinyl of the car, on the metal portion,  
10          and good photographs of it, things that there  
11          isn't any excuses, that one could possibly make a  
12          rational determination of the volume that is  
13          there.

14          And that's the difference with this  
15          case, than the ones I read where Dr. Ballard, I  
16          think did make some leaps, a few leaps from this  
17          fabric evidence, and whether it contained blood  
18          that would have come from a purple-topped tube.  
19          But we have the tube here. I also believe that  
20          if we get it, we could make some type of  
21          quantitation.

22          The problem is this, if you look on that  
23          Exhibit 3, that the defense sent us in their  
24          initial brief, from Laboratory Corporation of  
25          America, I can't tell whether they removed one or

1                   two milliliters. I don't know what tube this is.  
2                   I don't know if the nurse drew the full container  
3                   of the tube. I don't even know the size of the  
4                   tube.

5                   All these questions we are trying to  
6                   answer. And we have only -- And it's been very  
7                   difficult over the Christmas and New Year's  
8                   holidays finding people, mostly everyone is  
9                   operating under a skeletal crew in their offices.  
10                  We are trying to do, which in contact people,  
11                  that had we known about this back in July we  
12                  could have done it. And apparently the defense  
13                  has not pursued any of that.

14                  And I believe that they just like the  
15                  fact that there's this vial there. And they are  
16                  going to just draw their conclusions and try and  
17                  get the jury to speculate what all the  
18                  possibilities could have happened to that vial.  
19                  That's a -- We want to get to the truth. We want  
20                  to test this. And I believe we must test it.

21                  THE COURT: And what's the -- your brief  
22                  indicates that -- that the FBI will require three to  
23                  four months, is that because the test takes that  
24                  long or some other reason?

25                  ATTORNEY GAHN: I think it's a

1                   recalibration of their instrumentation.

2                   THE COURT: Explain that to me.

3                   ATTORNEY GAHN: Well, from my  
4                   understanding, is that every -- during  
5                   accreditation, you have to recalibrate all your  
6                   instruments that you do whatever your tests are on.  
7                   They are in that process of doing the recalibration  
8                   of their instrumentation. That's my understanding  
9                   of why it's three to four months.

10                  THE COURT: And is there -- Do you know  
11                  whether or not there's anything that can accelerate  
12                  that schedule? Do they understand that this case is  
13                  scheduled to go to trial in a month?

14                  ATTORNEY GAHN: Yes, I have made that clear  
15                  as far as -- and I asked and, no, they cannot do  
16                  that within that time frame.

17                  THE COURT: All right. What I'm going to  
18                  do today is take under advisement this weekend the  
19                  request of the State to adjourn the trial. That's  
20                  one of the issues that's raised here. And I want to  
21                  spend some time to think about that.

22                  With respect to the other issue that's  
23                  raised concerning the frame-up evidence, if you  
24                  will, I did go back and take a look at my notes  
25                  from July. And this is one case where I didn't

1 pay enough attention to my own notes. I did  
2 indicate in my notes to myself, that if there was  
3 going to be evidence introduced in support of a  
4 frame-up defense, that it should be dealt with by  
5 a motion in limine ahead of time.

6 At this point, the Court has been  
7 informed by the defense that the blood vial in  
8 the Clerk's Office would form the basis, or maybe  
9 the key element, of a defense case regarding an  
10 alleged frame-up. I don't know what other  
11 evidence the defense may be contemplating  
12 introducing as part of that defense. And in  
13 order to conduct an appropriate analysis under  
14 **Richardson** as to whether such evidence should be  
15 admissible, I have to know what it is.

16 We have a motions hearing scheduled for  
17 January 19th. What I'm going to order is that  
18 the defense provide the Court, in the form of a  
19 motion in limine, that whatever evidence it  
20 intends to introduce on the issue of a frame-up  
21 defense, by next Friday, so that I can review  
22 that evidence and we can be prepared to deal with  
23 the motion on the 19th of January. I will, on  
24 the issue of the request for and adjournment, get  
25 back to the parties early next week --

1                   Is there anything else today, keeping in  
2                   mind we still have, and I think we're still going  
3                   to keep it, the 9:00 status conference tomorrow?

4                   I want a telephone status conference. I want  
5                   to -- just to inventory things that have to be  
6                   addressed before we proceed on the 19th.

7                   ATTORNEY STRANG: There's one more thing  
8                   today. We have, tomorrow, at the end of the day, a  
9                   deadline on expert disclosure and also **Denny**  
10                  disclosure. I think we can hit -- I think we can  
11                  hit the expert disclosure.

12                  We could hit the **Denny** disclosure, but I  
13                  have lost a lot of time this week because of this  
14                  issue, and an unexpected trip to court, and also  
15                  because of the cancellation of a flight on  
16                  Tuesday morning, back from a weekend away, and  
17                  would like the opportunity to file, by Monday at  
18                  noon, the **Denny** response, rather than by tomorrow  
19                  at 4:30. I ran that by Mr. Kratz, I'm sure he is  
20                  not wild about it but, as always, he is courteous  
21                  and I think doesn't have any objection, but of  
22                  course that's the Court's call.

23                  THE COURT: Any objection from the State?

24                  ATTORNEY KRATZ: That's a professional  
25                  accommodation I'm willing to provide, Judge, not a

1 problem.

2 THE COURT: All right. That's acceptable  
3 to the Court. Anything else today?

4 ATTORNEY KRATZ: No, not today, Judge.  
5 Thank you.

6 THE COURT: Very we'll, we're adjourned for  
7 today.

8 (Proceedings concluded.)

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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 19th day of February, 2007.  
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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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<b>0</b>	adjourned [1] 36/6 adjournment [9] 17/18 18/4 18/9 20/1 20/16 22/4 22/5 22/14 34/24 <b>admissibility</b> [8] 17/15 19/4 19/9 19/13 20/18 20/24 22/17 28/7 <b>admissible</b> [3] 3/19 15/11 34/15	are [28] 4/10 5/2 6/13 6/16 7/19 7/23 8/12 9/7 9/16 10/23 11/10 12/16 12/22 12/24 15/6 18/20 20/14 21/16 29/19 29/24 30/24 31/4 31/5 32/5 32/10 32/15 33/6 33/7
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<b>S</b>	<p>sought [1] 20/25      sources [1] 26/12      South [1] 14/24      Southern [1] 24/25      speak [1] 17/19  <b>Special</b> [4] 1/12 1/14 2/11 2/12      specifically [1] 2/5      specifics [1] 17/19      spectrometry [1] 26/10      speculate [1] 32/17      spend [2] 22/7 33/21      spoke [1] 27/22      spoken [1] 27/21      spoliation [1] 18/22      spot [3] 30/18 31/1 31/4      ss [1] 37/1  <b>Stanton</b> [1] 2/17      starting [1] 12/20      state [43]  <b>State's</b> [10] 2/22 3/1 13/9 13/11      15/24 16/8 18/7 20/15 21/16      27/13      stated [1] 27/25  <b>States</b> [2] 12/1 24/24      status [2] 35/3 35/4      statute [1] 8/22      stenographic [1] 37/9      stepping [1] 15/20  <b>STEVEN</b> [15] 1/6 1/19 2/2 2/14      4/10 4/17 4/22 5/8 6/6 6/11 12/21      14/13 17/22 19/2 22/13  <b>still</b> [6] 16/9 25/14 30/21 30/25      35/2 35/2      stipulations [1] 16/6      stopped [2] 21/6 29/15  <b>STRANG</b> [5] 1/15 2/17 11/19 11/22      24/21      stretch [1] 7/18      stretches [1] 29/22      strike [1] 6/24      stringent [1] 19/21      submit [1] 26/4      submitted [1] 2/23      such [4] 6/1 6/10 24/20 34/14      sufficient [2] 16/2 18/20      suggest [1] 3/18      suggested [1] 16/5      suit [1] 26/18      suitable [1] 11/13      sum [1] 26/9      supplement [1] 3/3      support [3] 2/23 22/16 34/3      sure [1] 35/19      surprised [1] 7/25  <b>SUV</b> [3] 4/8 10/5 10/14      sworn [1] 9/10</p>	<p><b>Teresa</b> [10] 4/8 4/16 4/19 5/8 6/7      9/14 10/5 11/6 12/22 16/23      terribly [1] 19/10  <b>Tesheneck</b> [3] 1/24 37/4 37/19  <b>test</b> [28] 8/23 9/1 10/20 10/20      10/21 19/17 20/16 20/18 20/21      21/3 21/24 22/17 22/18 23/13      23/14 24/6 24/7 24/11 24/20 25/5      28/11 28/12 28/15 28/15 29/18      32/20 32/20 32/23      tested [3] 11/4 11/5 28/19      testified [1] 24/5      testimony [1] 24/7  <b>testing</b> [36] 11/12 17/17 17/20      18/8 18/16 18/21 18/25 19/3 19/4      19/5 19/8 19/12 19/14 19/15      19/19 20/2 20/5 20/8 20/22 20/25      21/7 21/15 21/18 22/14 22/21      23/10 23/22 25/10 26/4 27/11      27/18 27/21 27/24 28/9 29/1      29/11  <b>tests</b> [4] 20/24 25/12 25/14 33/6      than [7] 8/12 15/10 16/9 17/25      26/12 31/15 35/18  <b>Thank</b> [4] 3/6 11/16 27/13 36/5      that [246]      that's [20] 5/19 9/21 11/16 16/21      17/15 27/10 28/4 28/19 30/8      30/13 31/6 31/14 32/19 33/8      33/19 33/20 33/22 35/22 35/24      36/2  <b>their</b> [15] 2/7 5/6 9/2 11/13 23/11      23/23 24/4 24/16 25/21 29/1      31/23 32/9 32/16 33/1 33/8  <b>them</b> [7] 4/22 4/23 8/8 9/8 27/21      28/5 31/6      then [4] 3/13 19/24 22/13 31/2      theory [1] 26/19      there [38]      there's [9] 5/10 5/20 7/14 15/6      19/15 27/17 32/15 33/11 35/7      thereafter [1] 37/11      therefore [2] 10/12 27/2      these [7] 3/22 4/4 7/19 13/3 25/14      28/20 32/5      they [46]      thing [2] 31/8 35/7      things [5] 7/22 11/23 12/13 31/10      35/5      think [19] 2/18 3/11 8/11 8/21      15/19 17/18 18/25 24/11 27/16      28/8 28/14 28/19 31/16 32/25      33/21 35/2 35/10 35/10 35/21      thinks [1] 22/14      third [1] 13/12      this [112]  <b>thorough</b> [3] 13/8 14/5 25/3      those [6] 10/13 14/20 16/3 20/2      20/18 22/18      though [2] 13/4 29/20      three [4] 10/21 14/8 32/22 33/9      through [2] 9/18 14/6      throughout [1] 30/4      thus [1] 26/23      tight [1] 16/7      time [14] 2/1 3/18 4/11 6/1 6/20      10/19 13/23 16/17 21/2 23/20      33/16 33/21 34/5 35/13      timely [1] 14/21      times [1] 11/21      timing [2] 15/8 15/10      tip [1] 5/1      tips [1] 16/15</p>
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTIONS HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** JANUARY 19, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ  
Special Prosecutor  
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON  
Special Prosecutor  
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN  
Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG  
Attorney at Law  
18 On behalf of the Defendant.

19 JEROME F. BUTING  
Attorney at Law  
20 On behalf of the Defendant.

21 STEVEN A. AVERY  
Defendant  
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery, Case No. 05 CF  
3                   381. We are here this morning for a motions  
4                   hearing. Will the parties state their appearances  
5                   for the record, please.

6                   ATTORNEY KRATZ: On behalf of the State of  
7                   Wisconsin, your Honor, Ken Kratz, Calumet County  
8                   District Attorney; Norm Gahn, Assistant District  
9                   Attorney for Milwaukee County; Tom Fallon, from the  
10                  Department of Justice, all appear as Special  
11                  Prosecutors.

12                  ATTORNEY STRANG: Steven Avery appears in  
13                  person. Jerome Buting of Buting and Williams, to my  
14                  left, on his behalf. And Dean Strang of Hurley,  
15                  Burish and Stanton, as well.

16                  THE COURT: All right. I will indicate for  
17                  the record that I met briefly with counsel in  
18                  chambers before we began, to take an inventory of  
19                  motions that are outstanding and set up the order in  
20                  which they will be addressed this morning. The  
21                  first motion is the State's motion for relief from  
22                  pre-trial scheduling order. Mr. Kratz.

23                  ATTORNEY KRATZ: Mr. Gahn will handle that  
24                  motion.

25                  THE COURT: Okay. Mr. Gahn.

1                   ATTORNEY GAHN: Your Honor, I believe that  
2                   the motion that we filed speaks for itself. We're  
3                   just asking the Court -- Today was the deadline for  
4                   us to turn over rebuttal witnesses, and in light of  
5                   the recent events, we're asking to be relieved from  
6                   that, because we may need to do some additional  
7                   testing. We don't know yet if we will, but we're  
8                   asking the Court to relieve us from that  
9                   responsibility to reveal any of our rebuttal  
10                  witnesses, expert witnesses especially, today.

11                  And I have cited a **State v. Konkol** in  
12                  support for this request. And also our own  
13                  discovery provisions under 971.23 (1)(d) which  
14                  basically excludes rebuttal witnesses from what a  
15                  district attorney must disclose to the defendant.

16                  THE COURT: All right. Will it be  
17                  Mr. Strange or Mr. Buting?

18                  ATTORNEY BUTING: I have got it, Judge. We  
19                  don't have a real concern about their request,  
20                  assuming that it relates -- it's limited to this  
21                  issue of the blood vial and whether there's any  
22                  other testing that can still be done on it. I don't  
23                  know that at this point that there is any, and they  
24                  haven't decided if there is anything yet at all.

25                  But assuming that it is limited to that

1 and that something is ongoing between now and the  
2 next few weeks, we don't have any objection to  
3 extending the time for them to file any kind of  
4 notice. And, frankly, I'm sure that Mr. Gahn  
5 would share with us whatever results they are  
6 going to come up with anyway. I don't think that  
7 he's intending to do some ambush on this issue.

8 THE COURT: Mr. Gahn.

9 ATTORNEY GAHN: Your Honor, I don't want  
10 this to be limited to just the blood vial situation.  
11 It may involve other witness' testimony as far as  
12 the whole -- the fording or attacking the defense  
13 that may be presented in this case. So I don't want  
14 to just limit to that one area.

15 We have some additional investigation to  
16 do to look at in light of some recent documents  
17 also that have been filed by the defense. So we  
18 may not want that limited at all to just the  
19 blood vial, but all aspects of the defense; the  
20 location of the vial, where it was, who had  
21 custody of it, all -- everything. It's all  
22 related. It surrounds all of that issue. But  
23 it's not just to that, it may be other  
24 testimonial evidence.

25 THE COURT: Your motion refers to the blood

1                   vial and other related evidence. So I take it that  
2                   you are not looking for blanket relief from the  
3                   requirement of the pre-trial order, but you are  
4                   pointing out, that to the extent that other evidence  
5                   relates to the blood vial, that's the nature of your  
6                   request?

7                   ATTORNEY GAHN: That's correct your Honor.

8                   THE COURT: Mr. Buting.

9                   ATTORNEY BUTING: Well, I'm not sure how  
10                  that other related evidence would involve expert  
11                  witnesses. I thought that's what he was referring  
12                  to here. The Court's order, Paragraph 4 B 4, I  
13                  don't have right in front of me, but.

14                  THE COURT: It provides that the State  
15                  shall provide to the defense the identity of any  
16                  rebuttal expert witness the State intends to call,  
17                  along with copies of reports of any such expert, on  
18                  or before January 19. Goes on to provide, the State  
19                  may request additional time, if necessary, based on  
20                  the nature of any proposed but previously  
21                  unanticipated testimony of any named defense expert.

22                  ATTORNEY BUTING: So, again, I'm not sure  
23                  what other kind of expert testimony might be  
24                  involved in this, but as long as it's not a blanket  
25                  exemption from the Court's -- I think the Court does

1 have discretion to pose these kinds of deadlines.  
2 The Court did impose the deadlines, and imposed the  
3 deadlines against the defense as well, which we have  
4 complied with. So, I think maybe there needs to be  
5 more clarification later if there is something that  
6 we're not anticipating here. But otherwise --

7 THE COURT: Let me ask this, I understand,  
8 based on the previous arguments and information  
9 presented to the Court related to the type of  
10 testing that might be involved, that it may be  
11 difficult for the State to put any timetable on when  
12 information might be presented to the defense. But  
13 can there be a description, in terms of so much time  
14 before such evidence would be offered, that the  
15 information would be presented to the defense?

16 ATTORNEY GAHN: I don't know if I can  
17 commit to that, your Honor. Because it's just -- I  
18 don't know exactly, depending on future rulings,  
19 where we are going to be going. I guess at this  
20 juncture I would inform the Court that, as far as  
21 expert testimony, I suspect that testimony will be  
22 pertaining to the vial, but there may be other lay  
23 witnesses that we'll be presenting to thwart the  
24 overall defense of, we're talking the location, the  
25 security, and everything involved in the defense.

1                   And I simply would ask the Court to  
2 perhaps recognize **State v. Konkol** and what the  
3 Court has held, and also the statutory language  
4 which basically states that the State does not  
5 have to turn over its rebuttal witnesses to the  
6 defense.

7                   THE COURT: Mr. Buting.

8                   ATTORNEY BUTING: Well, on the other hand,  
9 the Court did impose the December 15th deadline for  
10 discovery, of all types of discovery. Now,  
11 obviously, some discovery may be forthcoming based  
12 on additional investigation that they have been  
13 doing, but I would expect that the State would be  
14 required, or should be required, to turn over such  
15 discovery immediately, as soon as they get it,  
16 rather than, you know, holding it back as some  
17 ambush that they are going to present in the  
18 rebuttal, whether it's lay or otherwise.

19                   I think that the discovery, the ongoing  
20 duty to supplement the discovery, should require  
21 prompt compliance, as we have been doing. We  
22 have turned over some reports just in the last  
23 few days, in fact.

24                   THE COURT: All right. What I'm going to  
25 do is this, the motion as I understand it requests

1                   relief from the pre-trial scheduling order in order  
2                   to allow the State to conduct scientific testing on  
3                   the blood vial and other related evidence. I  
4                   believe that this type of an extension was  
5                   contemplated at the time the pre-trial order was  
6                   issued, and so I'm going to grant the request as  
7                   it's framed.

8                   I'm gathering from the argument of the  
9                   parties that other issues could arise that may be  
10                  contested, but they haven't been presented,  
11                  specifically, to the Court at this time and I'm  
12                  not going to speculate about those. However,  
13                  given the recent time frame within which the  
14                  evidence described in the motion was first  
15                  presented to the State, I'm going to grant their  
16                  motion.

17                  The next item is the State's demand for  
18                  compliance with discovery requests. And I  
19                  believe that relates to the January 5 defense  
20                  disclosure of potential expert witnesses. Who  
21                  will be arguing this motion for the State?

22                  ATTORNEY GAHN: I will, your Honor.

23                  THE COURT: Mr. Gahn, you may proceed.

24                  ATTORNEY GAHN: Your Honor, I'm basically  
25                  going to rely upon the brief we filed in this

1 matter. I simply would highlight what is stated in  
2 our statute of 971.23 (2m)(am), which simply states  
3 that if -- that any relevant written, or reported  
4 statements of a witness named on a list under  
5 Paragraph A, including any reports or statements of  
6 experts made in connection with the case; or if the  
7 expert does not prepare a report, or statement -- or  
8 statement, a written summary of the expert's  
9 findings, or the subject matter of his or her  
10 testimony, including the results of any physical or  
11 mental examination, scientific test, experiment, or  
12 comparison that the defendant intends to offer in  
13 evidence at the trial.

14 It clearly states that, summary of the  
15 expert's findings. And reading what the  
16 defendant has submitted, certainly does not come  
17 anywhere close to telling us what are the  
18 findings of their expert.

19 They have not supplied any written  
20 reports which have been prepared by their experts  
21 but -- and they have not provided us with a  
22 summary that is telling us what the findings are.  
23 They have simply told us that their experts may  
24 or may not testify to something. They may agree  
25 with, they may challenge, they may disagree with,

1 what our experts have come up with.

2 This is telling us absolutely nothing.

3 I don't believe they are complying with the  
4 statute and I believe that the case that we  
5 cited, the **Schroeder** case, certainly stands for  
6 that proposition, that they tell us something. I  
7 mean this isn't really difficult. It's quite  
8 simple.

9 If they are going to call these experts  
10 to testify, tell us what they are going to say,  
11 what is the issue, and what are their findings,  
12 what are their conclusions, not this general  
13 broad, they may discuss some topic that is so  
14 broad in nature that there's no way for us to  
15 determine exactly what, you know, what their  
16 testimony is going to be. So I would ask the  
17 Court to require them to make this more definite  
18 and more certain. And provide us with a written  
19 summary of what their findings are.

20 I did speak with Mr. Buting, in our  
21 motion we also talked about the October 6th  
22 discovery demand that we filed that pertains to  
23 the DNA evidence specifically. Mr. Buting is  
24 going to look at that motion that we filed, that  
25 discovery motion that we filed. And my

1 understanding is that he's going to get with his  
2 expert and will comply as best he can with that,  
3 so we needn't discuss that. I believe that  
4 Mr. Buting will do that and take him at his word,  
5 and will provide us with the necessary  
6 information that we have asked for.

7 But overall, we still believe that we  
8 have not been -- that the statute has not been  
9 complied with.

10 THE COURT: Mr. Buting.

11 ATTORNEY BUTING: Judge, I assume the Court  
12 got the letter that I faxed yesterday.

13 THE COURT: It did.

14 ATTORNEY BUTING: Okay. I think we have  
15 more than adequately complied with the statute.  
16 And, in particular, the way the statute reads is,  
17 really, one of three things can be done. If a  
18 report is prepared, then the report is turned over.  
19 However, if there is no report prepared, then the  
20 statute says a written summary of the expert's  
21 findings or, and that's the important thing, or the  
22 subject matter of his or her testimony.

23 And as I understand, the State's  
24 complaint is that the disclosure doesn't  
25 specifically list each and every finding, if

1           that's the way that they want to term it, but the  
2       statute doesn't require that. The statute  
3       requires a summary of the subject matter of his  
4       or her testimony in lieu of that.

5           Now, we actually do include certain  
6       findings. There's some opinions specifically  
7       expressed in there of what we anticipate  
8       Dr. Fairgrieve may testify about, in particular,  
9       as well as Dr. White. It's perhaps a little  
10      less -- it's a little more vague maybe on the DNA  
11      expert, Dr. Friedman, but in part that's because  
12      we explain in the last paragraph that we're not  
13      offering any specific test results or  
14      manipulation of data through the genotype or  
15      various software types of thing.

16           So, I think clearly we have complied  
17      with the statute as to description of the subject  
18      matter. And really the **Anderson** case that I  
19      point out to the Court, -- First, before I get to  
20      that, the language of "this witness may testify  
21      about that" or, you know, rather than "will  
22      testify" is, really, simply a reflection of the  
23      fact that none of these experts may testify at  
24      all. The defense doesn't have to present any  
25      evidence.

1                   And so what we're saying by using that  
2                   language is that obviously this witness may or  
3                   may not testify. If the witness testifies, this  
4                   will be the subject matter of their testimony.  
5                   So to clear up any confusion about that, there's  
6                   no uncertainty as to what the subject matter will  
7                   be if they will testify.

8                   And in **Anderson**, the State was permitted  
9                   to introduce a witness at trial without any kind  
10                  of expert disclosure under the discovery statute,  
11                  but simply by saying in a motion in limine that  
12                  an expert will testify about the dynamics of  
13                  child sexual abuse and -- or actually the -- I  
14                  think the specific phrase was -- I don't recall  
15                  it exactly, but the witness was not even named,  
16                  much less any written summary of what they were  
17                  going to say.

18                  All that was disclosed was that there  
19                  would be an expert, unnamed, in the area of the  
20                  effects of child abuse, and disclosure, and all  
21                  of that. And the Court said that, in their view,  
22                  satisfied this discovery statute requirement of a  
23                  written summary of an expert's finding, or  
24                  subject matter of his testimony.

25                  So if that was adequate in **Anderson**,

1           this is way more than adequate under the statute.

2       As **Schroeder** says, **State vs. Schroeder**, that the  
3       State cites, the purpose of the discovery  
4       statutes is to enable the other side to prepare  
5       for the trial, not to do the preparation for  
6       them.

7           We have done that, we have presented the  
8       witnesses, the experts that we may use. If they  
9       testify, these are the subject matter. I think  
10      we were very specific as to what it is, what  
11      subject matter they would testify about, and  
12      there are some actual findings included in there.  
13      So I think that we have more than adequately  
14      satisfied the State's request.

15           As to the DNA, I did speak with Mr. Gahn  
16      beforehand. Some of what he asked for in his  
17      October discovery demand I didn't turn over  
18      because I thought it related only if Dr. Friedman  
19      had performed separate independent tests. I will  
20      take another look at that and I think that we  
21      will work out whatever remains in that. I will  
22      turn over whatever protocol, if he still wishes  
23      that, even though tests weren't done. But as to  
24      the others, I think we have more than satisfied  
25      the requirements.

1                   THE COURT: Mr. Gahn.

2                   ATTORNEY GAHN: Your Honor, even the  
3                   **Anderson** case, when I read the **Anderson** case that  
4                   Mr. Buting has provided under Westlaw printout, this  
5                   is a 15 page decision. And as far as the portion on  
6                   the statutory section, 971.23 (1), it's a mere one  
7                   paragraph of -- looks like 20 lines, and it really  
8                   is sort of an aside in the **Anderson** case.

9                   In fact, under **State v. Anderson**, the  
10                  Supreme Court case at 291 Wis. 2d, 673, this  
11                  **Anderson** case that the defense has cited was  
12                  reversed by the Supreme Court. And they don't  
13                  even mention this aspect. They don't even bring  
14                  it up that I could find in the 40 page decision.

15                  So the case being cited was reversed and  
16                  they didn't even address this very, very minor  
17                  issue. But even what is said in the **Anderson**  
18                  case is -- what their response to us has been:  
19                  These experts may testify to something; they may  
20                  not. They may agree. They may challenge.

21                  This is telling us absolutely nothing.  
22                  This isn't the spirit of the statute or the  
23                  spirit of the **Schroeder** case. If your expert is  
24                  going to testify, tell us what their findings are  
25                  and what their conclusions are so that we can

1 address that issue at trial. It is something  
2 that to state, as the defendant just said, that  
3 they gave a summary, I think he said -- if I  
4 could have just one moment here while I get that  
5 -- that it was, or the subject matter of his or  
6 her testimony.

7 Well, to state something like they may  
8 testify to DNA frequencies, well, that's not --  
9 that's such a broad expansive topic that tells us  
10 nothing. What exactly is your finding or your  
11 conclusion as to the statistical analysis.

12 They may or may not testify as to DNA  
13 protocols. Well, what, what, the protocols are a  
14 100 pages long, and they are all different types  
15 of, you know, quality assurance, quality control.  
16 What exactly is the finding or conclusion of your  
17 expert, that they have come up with. And they  
18 just have not provided us with anything close to  
19 that.

20 And I don't believe that's in the spirit  
21 of **Schroeder**, or in the spirit of the statute.  
22 And we would ask that they make a more definite  
23 and certain explanation to us of what their  
24 experts will testify to. Thank you, Judge.

25 THE COURT: All right. I took the

1                   opportunity to review the legal authorities cited by  
2                   the defense and also some other cases that  
3                   interpreted the statute in this case. I also read  
4                   the defense disclosure of potential expert witnesses  
5                   that was offered.

6                   And the Court concludes as follows:

7                   First, I think the defense adequately explained  
8                   its use of the term may in the sense that it  
9                   meant, not that this may or may not be this  
10                  expert's opinion, but rather that the State is  
11                  not -- or the defense is not required to produce  
12                  any expert testimony. And the defense used the  
13                  term may to indicate it was not committing to  
14                  call these experts, only that it may call them.  
15                  And I think that's perfectly appropriate.

16                  With respect to the meaning of the  
17                  statute, the operative statutory language reads  
18                  as follows: If an expert does not prepare a  
19                  report or statement, a written summary of the  
20                  expert's findings or the subject matter of his or  
21                  her testimony are what must be provided.

22                  In the case law I examined, I found the  
23                  most helpful explanation of that statutory  
24                  language, which admittedly when it uses the term  
25                  subject matter, could be somewhat ambiguous, the

1                   most helpful explanation I found was in the case  
2                   of **State v. Revels**, R-e-v-e-l-s, reported at 221  
3                   Wis. 2d, page 315. And at 330, the Court  
4                   summarized its interpretation of the statutory  
5                   language as follows:

6                   We agree with the State, that given the  
7                   language of Section 971.23 (2m) and its obvious  
8                   purpose, it must be construed to require  
9                   disclosure of relevant substantive information  
10                  that a defense expert is expected to present at  
11                  trial, whether in the form of findings, test  
12                  results, or a description of the experts proposed  
13                  testimony.

14                  The Court also finds that to be the most  
15                  reasonable interpretation of the statutory  
16                  language, given the purpose for which discovery  
17                  is supposed to be provided. As I take that  
18                  standard and apply it against the disclosure that  
19                  was presented by the defense, I find that some  
20                  cases, that some of the information provided by  
21                  the defense has met the standard, in other  
22                  situations it falls short.

23                  For example, I'm not going to read it  
24                  verbatim, but if counsel has the defense offer in  
25                  front of it, the first full paragraph on page 3,

1                         describing what Dr. Fairgrieve may testify about,  
2                         I view as consistent with the type of information  
3                         that is called for by the statute.

4                         If I look back at page 2 and read, for  
5                         example, that Dr. Fairgrieve may testify about  
6                         identification of human remains, including  
7                         specific deficiencies in the recovery of the  
8                         remains at issue in this case, the Court finds  
9                         that that type of information falls short of what  
10                        the statute requires. The other side is entitled  
11                        to know what are the specific deficiencies that  
12                        are going to be testified about.

13                       Otherwise, the discovery doesn't serve  
14                       its purpose. It doesn't allow the State to  
15                       prepare for the type of evidence that's going to  
16                       be admitted. And that's not to say that the  
17                       defense is required to do the State's work for  
18                       them, it's just to let the State know what work  
19                       it is going to have to perform on its own to  
20                       answer the claims made by defense experts.

21                       Another example, a little further on  
22                       page 2 is the role of temperature and duration in  
23                       the rendering of a human body to cremains. Well,  
24                       what is that role? The State is entitled to know  
25                       what the opinion -- or what the position of the

1           defense expert is, so that it can determine  
2           whether or not it agrees with that position, or  
3           whether or not it intends to dispute the  
4           findings.

5           Likewise, moving on to the statement of  
6           Dr. Friedman on page 5: It says he may be  
7           offered to testify about the reliability or lack  
8           thereof of the Wisconsin Crime Lab conclusions in  
9           this case. That's a conclusory statement that  
10          doesn't really address the type of information  
11          the statute calls for.

12          The defense is entitled to know, what is  
13          it that the defense expert finds unreliable about  
14          the Wisconsin Crime Lab conclusions, again, so  
15          that the party can answer it. And although its  
16          not at issue here, I would hold the State to the  
17          same standard -- standards in providing its  
18          expert information to the defense.

19          So the Court, necessarily in this case,  
20          cannot say with specificity exactly what the  
21          defense must do, but I do indicate that, with the  
22          examples I have given, I find that the defense  
23          disclosure of potential expert witnesses and  
24          summary of their expected testimony falls short  
25          of what the statute requires. And the Court will

1                   grant the State's demand for compliance, along  
2                   the lines outlined by the Court.

3                   The next item the Court will address is  
4                   the defendant's motion for disclosure of  
5                   exculpatory information, which was filed on  
6                   January 17th. Will that be Mr. Strang?

7                   ATTORNEY STRANG: Yes, that's I. Buting  
8                   gets the hard things and I get the easy ones. The  
9                   case law on the State's due process obligation under  
10                  the -- here the Fourteenth Amendment, to provide  
11                  exculpatory information known to it is not entirely  
12                  clear in terms of what request, or what specificity  
13                  of request a defendant must make to trigger fully  
14                  the State's obligation of disclosure of exculpatory  
15                  information.

16                  And it -- I think it used to be clear  
17                  that absent a defense request, with some  
18                  specifics about what it is the defendant thought  
19                  the State might have that is exculpatory, the  
20                  State did not have a due process duty. Now, I  
21                  think since **Brady** against **Maryland**, and assuming  
22                  almost 44 years, the defendant's obligation to  
23                  ask has somewhat eroded and been replaced by an  
24                  affirmative obligation of the State to tender.

25                  But, this is the only way, I suppose, in

1                   which I'm conservative, but I'm conservative on  
2                   this in the sense of, I thought it better  
3                   practice to ask, with as much specificity as I  
4                   could, for what it is I think the State may have,  
5                   and in doing so invoke the State's due process  
6                   duty to disclose to me.

7                   So this is a bit of a  
8                   belt-and-suspenders approach. It was preceded by  
9                   a narrower request, in writing to Mr. Kratz, that  
10                  I didn't file with the Court. But I thought,  
11                  given developments in the last couple months,  
12                  that it would be a good idea for me to make  
13                  specific requests and thereby trigger the State's  
14                  duty.

15                  These are ethical lawyers at the other  
16                  table, I expect them to comply with the duty.  
17                  And I don't know at this point the State -- or  
18                  the Court, really needs to take any action other  
19                  than inquiring of the State. And I will say that  
20                  I already know some information within the scope  
21                  of my request.

22                  And so it's not that I'm completely in  
23                  the dark necessarily on some of the information I  
24                  seek, rather in a case this serious, I'm seeking  
25                  to make sure that I have got it all. That if

1           there's something that goes to bias of a State's  
2           witness, or honesty, credibility of a State's  
3           witness, a State's -- a State witness' motives to  
4           testify falsely or to shade testimony, evidence  
5           that might support a defense or some mitigation  
6           of sentence, that I have asked for it and I have  
7           gotten everything they have of that stripe.

8           So that -- that's the reason for the  
9           motion. We don't have a specific dispute today.  
10          And as I say, other than inquiring probably of  
11         the State, I'm not sure that there's a ruling the  
12         Court needs to make on the **Brady** motion today.  
13          But it was better practice to file it in my view.

14           THE COURT: All right. Who'll be  
15         addressing this matter for the State? Mr. Fallon.

16           ATTORNEY FALLON: Yes, thank you. I would  
17         frankly acknowledge that I would have liked a little  
18         bit of time to digest the request of the defense as  
19         it is framed in the context of an exculpatory  
20         evidence request. I did not receive the document  
21         until last evening as I, likewise, was out of the  
22         office on Wednesday.

23           The first thing I guess I would like to  
24         address in response to counsel's comments, much  
25         of what he says I do not disagree with. This is,

1                   as he would say, a particularized or specific  
2                   demand as opposed to the general demand that is  
3                   part and parcel of every criminal case.

4                   But I think, again, his argument and his  
5                   request puts the cart before the horse to the  
6                   extent that just because one says it is  
7                   exculpatory, or potentially exculpatory, doesn't  
8                   necessarily make it so. And I recognize that  
9                   whether a bit of evidence or information is  
10                  admissible is not the determinative standard as  
11                  to whether something is exculpatory or  
12                  potentially exculpatory.

13                  So I acknowledge that and I wanted to  
14                  say that upfront. But in having said that, in  
15                  making a determination as to whether evidence is  
16                  exculpatory or not, there is a materiality  
17                  component here. And within the analysis of  
18                  materiality there is this overlapping concern,  
19                  overlapping of arguments as to whether such  
20                  evidence would even be admissible. So I think we  
21                  have to acknowledge that.

22                  And as I look at the information  
23                  requested, that's what I am struck by and that  
24                  is, is this information significantly material,  
25                  given all that we know now. And the Court has

1           had pretty extensive pleadings and briefs filed  
2           to evaluate the context in which this request is  
3           made. I have serious reservations as to whether  
4           it's truly material in the context of **Brady**. And  
5           I guess I would like to digest that and think  
6           about that further.

7           Secondly, I'm not convinced that the  
8           information is solely or exclusively in the  
9           domain or the possession of the State per se. We  
10          have, as counsel readily acknowledged, six  
11          additional pages of discovery from their  
12          investigator regarding information that he has  
13          unearthed in his interview of members of the  
14          clerk staff, buildings and grounds, maintenance  
15          individuals, and the like.

16          The question is, they have subpoena  
17          capability as well as the State to get  
18          information. I can represent that in terms of  
19          the prosecution files and information that we  
20          have available, we don't have any of the  
21          information available to us. It's not in our  
22          possession.

23          We will certainly look for the  
24          information, but I'm not conceding, for the sake  
25          of our argument here, that it's necessarily

1 material, or that they are entitled to it, or  
2 it's solely in our possession and we have the  
3 obligation to get it.

4 We will look at the information but,  
5 again, much of the import of what's being asked  
6 here will be the subject of additional motion and  
7 argument at the end of the day today. And that  
8 may or may not have an impact as to the  
9 materiality component.

10 I wish I could say more, but only having  
11 it an evening to digest this, that's about all I  
12 can say. We'll look at it. We'll make some  
13 inquiries, because there are some interesting  
14 questions there. But we by no means accept, for  
15 purposes of this, that it is an exculpatory  
16 information demand. We do not except that it is  
17 necessarily material. I'm not saying it's not  
18 relevant, I will concede that, but then we have  
19 that whole materiality component.

20 So that's our statement on this. We'll  
21 look into some of these matters, both as a  
22 courtesy and for our own information. We would  
23 certainly like to know some of this. I also  
24 believe that most -- much of this has been  
25 complied with, with respect to some of our recent

1           pleadings.

2           And I would acknowledge, for instance,  
3       Paragraph 2, our last pleading, I think we have  
4       answered that. Paragraph 5, I think recent  
5       discovery information, which should have been  
6       sent to defense regarding the vial of blood, I  
7       think that has been complied with already.

8           I would indicate with respect to item  
9       number 10 for instance, we are, ourselves,  
10      correctly so, we're waiting for a report from  
11      Mr. McCurdy at the FBI. We do not have that  
12      report. We have a request in. We're told it's  
13      coming, but we don't have it yet. So, in terms  
14      of those specifics, those I think I can provide  
15      to you.

16           With respect to the absence or presence  
17      of keys, I can tell you after the recent  
18      discovery that we sent to defense and discovery  
19      we received from them, I'm not sure with respect  
20      to keys and access issues that there are -- there  
21      is any more. We can certainly look.

22           But I think Investigators Wiegert and  
23      Fassbender did a round of interviews regarding  
24      that point and Defense Investigator Baetz, I  
25      believe it is, likewise did some. I'm not sure

1 there's much more to be had there.

2 Again, raising the question, I'm not  
3 convinced this is entirely in our bailiwick. But  
4 that's my comments at the moment. If I may  
5 confer with counsel for a second.

6 THE COURT: Fine.

7 ATTORNEY FALLON: And, again, as I said, I  
8 think a further discussion, perhaps regarding the  
9 two motions, at the end of the day, this can be  
10 discussed even more freely, so I will pass on that.

11 THE COURT: Mr. Strang.

12 ATTORNEY STRANG: There are three things I  
13 can add that will, I think, be helpful in reply.  
14 First, it's of course not at all uncommon that  
15 prosecutors dispute the materiality of information  
16 that may be exculpatory or dispute with the defense  
17 whether something is exculpatory.

18 Common situation, advocates on both  
19 sides look at facts from their peculiar  
20 perspective and experience, of course. I request  
21 that in such situations, the State follow -- take  
22 the high road in the sense of erring on the side  
23 of disclosure, recognizing that as lawyers who  
24 defend people, rather than prosecuting them, we  
25 may have a better sense of how to use something

1           in an exculpatory fashion, or of what exculpatory  
2           admissible evidence, something inadmissible may  
3           lead to.

4           If the State is unwilling to do that in  
5           its announced pursuit of the truth, which would  
6           suggest erring on the side of disclosure, there  
7           is available the option of tendering something  
8           that's questionable from the State's advantage  
9           point, to the Court, for an in camera and neutral  
10          determination.

11          I think for a lot of reasons that's less  
12          preferable than simply disclosing it and fighting  
13          later about what it means, but it is an available  
14          option. And if nothing else, ought be used here  
15          if the State has information about which  
16          materiality might be in dispute.

17          Second, and this is quite specific to  
18          this case, I recognize, and I want to make sure  
19          that the Court and counsel recognize here, the  
20          contours, as I see them, of the application  
21          particularly of a case like **Kyles vs. Whitley**,  
22          the 1995 U.S. Supreme Court decision that  
23          discusses, essentially, what is the State, or the  
24          prosecution mean.

25          Does it mean only the lawyers who sit at

1           counsel table or who are employed by a District  
2           Attorney's Office? Does it include law  
3           enforcement officers; if so, how deep within the  
4           department, so to speak, or within the  
5           investigating agency. And this case, happily, is  
6           not typical in this sense.

7           It's a Manitowoc County case, as a  
8           matter of venue and as a matter of original  
9           statutory law enforcement obligation. We can  
10          fight about how completely or what this means,  
11          but on November 5, 2005, some steps were taken to  
12          turn over some level of investigative control to  
13          the Calumet County Sheriff's Department. And  
14          there is no question that on or about November 5,  
15          I think it was November 5, but I could be off, a  
16          judge in this county entered an order appointing  
17          a Special Prosecutor from outside the county,  
18          hence, Mr. Kratz's appearance.

19          In my view, though, this lessens not at  
20          all the obligations of the Manitowoc County  
21          Sheriff's Department, to yield to the  
22          prosecutors, exculpatory information within its  
23          possession, at least if that's known by officers  
24          who took an active role in the investigation that  
25          led to the charges here.

1                   I further acknowledge that not only are  
2                   there institutional problems in out-of-county  
3                   people relating to in-county-people and, you  
4                   know, maybe the informal working relationships  
5                   aren't what they would be within a county,  
6                   between the D.A.'s Office and the Sheriff's  
7                   Department, but here, of course, the Manitowoc  
8                   County Sheriff's Department's conduct has been  
9                   put at issue by the defense. And we have had the  
10                  unusual situation of DCI investigators engaged in  
11                  interviews, quasi formal at least, law  
12                  enforcement interviews of Manitowoc County  
13                  Sheriff's Department or other Manitowoc County  
14                  personnel.

15                  So there are practical problems, but it  
16                  doesn't change, in my view, the due process  
17                  obligation in the end to route out information  
18                  that the Manitowoc County Sheriff's Department  
19                  may have, and to which the prosecution is  
20                  entitled, and as to which it has a due process  
21                  obligation to disclose to the defense.

22                  Third, the due process obligation, of  
23                  course, is ongoing. So if compliance is complete  
24                  today, it doesn't necessarily mean that it's  
25                  complete for all time, obviously, as information

1                   is gleaned.

2                   And counsel acknowledges, faithfully,  
3                   that the information covered by Paragraph 10  
4                   should be disclosed to the defense and says that  
5                   he can't disclose it yet, because he doesn't have  
6                   it. Well, if he doesn't have it, that's true, he  
7                   can't. So he has an ongoing obligation.

8                   We were told by a Calumet County officer  
9                   at the last hearing in Chilton, that this  
10                  information had been received from the FBI. But  
11                  that I was told, in fairness, the very same day,  
12                  was news to Mr. Kratz. And so I don't know, it  
13                  doesn't matter. The point is that the obligation  
14                  is ongoing and I'm sure the State will comply  
15                  with that.

16                  As to Paragraph 5, in specific, the  
17                  State has made reference in a recent filing to  
18                  what it says a phlebotomist says. But of all the  
19                  interviews recently disclosed to us concerning  
20                  the general topic of the blood vial, that's the  
21                  interview that's missing.

22                  We don't have a report of any interview  
23                  from the, I think the now retired, phlebotomist.  
24                  And I would expect to get that, if in fact the  
25                  State is representing what she says in a

1           pleading. I'm sure the State is doing that  
2           accurately, but I would expect to have the  
3           underlying witness statement. And I'm sure it  
4           will be disclosed by my friends at the next  
5           table.

6           So, this is an ongoing process and I  
7           will end where I started, which is to say the  
8           request has been made, the obligation triggered.  
9           And I don't know that the Court can enter  
10          specific rulings today, necessarily, but I wanted  
11          to make a record of it. And the nuances here of  
12          the relationship of some ranking members of the  
13          Manitowoc County Sheriff's Department with this  
14          particular prosecution team complicate, but don't  
15          alleviate, the State's duty.

16           THE COURT: Mr. Fallon.

17           ATTORNEY FALLON: Yes, one final point.  
18           And I guess this dovetails back into the recent --  
19           the discussion that we just held regarding relief  
20          from the pre-trial scheduling order. Because this  
21          is a perfect example of what is rebuttal testimony.

22           If the defense wants to put forth the  
23          defense that they are suggesting and implying in  
24          their pleadings to date, then they do so at their  
25          peril. The State has indicated -- sought relief

1                   from that order on the specific vial and the  
2                   other related matters, well, here is a related  
3                   matter.

4                   Now, admittedly, the whole concept of  
5                   rebuttal does not excuse one's obligations with  
6                   respect to what is potentially exculpatory  
7                   evidence, so I acknowledge that. But, again, it  
8                   is an example of the complexity of this case, and  
9                   the issues, and the import.

10                  Again, the State doesn't have to show  
11                  all of its cards with respect to how it will  
12                  respond and refute certain defenses which are  
13                  going to be proffered. We only have to show our  
14                  hand, or tip our hand, if such information is  
15                  going to be, quote, "truly exculpatory", in the  
16                  meaning of that phrase.

17                  And, again, as I had said, I would like  
18                  to review some of the law on that. I'm aware of  
19                  counsel's representations. In fact, I don't  
20                  disagree with much of what he said at all in  
21                  terms of what our obligations are. I'm quite  
22                  aware of those obligations. And the fact that  
23                  the prosecutor's obligation is to look in areas  
24                  immediately beyond their own office is pretty  
25                  well settled in the law. So, I don't take issue

1 with that.

2                 But, again, there is the relationship  
3 here between what is truly rebuttal and what is  
4 truly exculpatory. And if it is truly  
5 exculpatory, then counsel is absolutely correct.  
6 Anything short of that, then they go down the  
7 road at their peril, because we are entitled to  
8 respond as the law permits.

9                 And that's why the statute is written  
10 the way it is. And that's why rebuttal is set up  
11 the way it is, such that the State has a fair  
12 right to reply, since we have the burden of  
13 proof, beyond a reasonable doubt. Thank you.

14                 THE COURT: All right. First of all, I  
15 believe Mr. Strang is correct in the sense that I  
16 don't know there's much the Court can decide about  
17 this motion today. I'm just going to make a couple  
18 of observations. To the extent -- and I believe the  
19 parties agree with this -- to the extent the State  
20 possesses information that may be exculpatory, the  
21 obligation to share that with the defense goes  
22 beyond the need for the defense to make a motion.

23                 Case law requires it. Section 973 -- or  
24 971.23 (1)(h) requires it by statute. And  
25 certainly the State is aware of a number of

1                   criminal cases where convictions have been  
2                   reversed because of a failure to provide  
3                   exculpatory information.

4                   The motion for disclosure, to the extent  
5                   it draws attention to any exculpatory information  
6                   that the State may not have been aware of before  
7                   would assist the State, if you will, in  
8                   determining the existence of the information and  
9                   turning it over to the defense, if both parties  
10                  agree that it's exculpatory, the State, in any  
11                  case, runs a risk if it doesn't turn over  
12                  evidence that is later determined to be  
13                  exculpatory.

14                  If there's any evidence requested in the  
15                  motion that doesn't fall under the heading of  
16                  exculpatory evidence, and has not been previously  
17                  requested, the discovery deadline ended on  
18                  December 15th, so it would not have to be turned  
19                  over.

20                  In addition, I will note that whether or  
21                  not evidence may be exculpatory and may be  
22                  material to this case may depend on the outcome  
23                  of rulings on motions on which the Court has yet  
24                  to rule. And as defense counsel points out, the  
25                  State's duty is ongoing, so there may be a duty

1 to turn over evidence that hasn't been turned  
2 over yet, depending on future court rulings.

3 Having made those comments, which I  
4 think for the most part the parties reflect in  
5 their statements to the Court today, I'm not  
6 going to issue any ruling on the motion at this  
7 time. If at some point in time the defense  
8 doesn't receive something it feels it is entitled  
9 to receive that is in existence and wants to  
10 specifically renew the motion, I will take it up  
11 at that time.

12 But it appears to be, at this point,  
13 more of a work in progress, for the reasons that  
14 I have said. Some of the items the State  
15 contends that it has turned over, the materiality  
16 of other types of evidence, may still yet to be  
17 determined and may trigger at some point in the  
18 future -- in the near future -- an obligation to  
19 turn over additional information.

20 Next, the Court will take up the  
21 defendant's motion to exclude computer generated  
22 animations. And when I say take up, I'm just  
23 going to address it and recognize it as being  
24 outstanding. The Court has been provided earlier  
25 this morning with the information that is the

1 subject of the defendant's motions.

2 I will, because of the proximity of  
3 today's date to the start of the trial, get an  
4 explanation from the defendant of the basis for  
5 the motion, on the record. And also, hopefully,  
6 get some idea from the State of the reasons for  
7 which the information will be provided, as they  
8 may have relevance in determining whether or not  
9 the information is admissible. Who is going to  
10 present the State's position, Mr. Strang? Excuse  
11 me, the defense position. It's your motion.

12 ATTORNEY STRANG: I will. I understand the  
13 Court hasn't had a chance to look at the three  
14 animations at issue and, indeed, neither have we.  
15 We received the same CD's or DVD's today. We have  
16 had, and the Court has not until now, had copies of  
17 slides, for want of a better word, for two of the  
18 three animations.

19 The simple point, though, that ought not  
20 get lost in the shuffle here, is that I believe  
21 early on, in fact probably before Mr. Buting and  
22 I entered our appearances, Mr. Avery invoked his  
23 discovery rights under Section 971.23, without  
24 reservation. And it's a little bit unclear to me  
25 here how the State would explain or justify, with

1 good cause, the failure to disclose these  
2 exhibits, particularly the FBI animation, as to  
3 which we have seen nothing at all until today, I  
4 assume on the CD or the DVD we have, as gauged  
5 against the December 15, 2006 discovery cut off.

6 The underlying information I think in  
7 these animations isn't something newly  
8 discovered, isn't something that the State got  
9 only from the defense, and does relate to  
10 information and physical items that the State has  
11 had in its sole custody, at least as to the  
12 Toyota, since November 5, 2005.

13 And as to the Avery property, the  
14 underlying information as I understand it is  
15 drawn from the State's seven or eight day  
16 exclusive possession of the entire Avery  
17 property, again, from about November 5 to  
18 November 12, 2005, where even family members and  
19 people who lived on the property were excluded,  
20 by the State.

21 So there is a -- there is a tardiness  
22 issue here that is separate from, and stands  
23 independently of, the question then of relevance,  
24 completeness, fairness, and a 904.03 balancing  
25 that I have addressed at greater length on brief,

1           as to which there's no point in my offering  
2           further argument until the Court has had a chance  
3           to look at the exhibits. And for that matter the  
4           State hasn't had much chance here to respond in  
5           writing, if that's its wish.

6           THE COURT: All right. Who will be  
7           handling this for the State?

8           ATTORNEY KRATZ: I will, Judge.

9           THE COURT: Mr. Kratz.

10          ATTORNEY KRATZ: First and foremost, your  
11          Honor, let me explain what we're talking about.  
12          There are three different areas of the generation of  
13          summary exhibits that the State has had performed.  
14          Those include a computer generated virtual tour, if  
15          you will, of the Avery property itself, which  
16          includes buildings and curtilage which basically  
17          surround the Steven Avery trailer.

18          We have also asked for, and have  
19          received, a representation, or series of  
20          representations, to assist one of our expert  
21          witnesses, the anthropologist in this case, in  
22          describing what human remains were recovered to  
23          better assist the jury to understand from where  
24          on the human body, where on the skeleton, to be  
25          blunt about it, these items may be found.

1                   And lastly, we had performed, through  
2 assistance of the FBI, a representation of the  
3 victim's vehicle, which was recovered, which as  
4 this Court and defense knows, is of a highly  
5 probative nature, and items found within.

6                   Mr. Strang's submission, which I do  
7 request an opportunity to respond to in more  
8 detail, makes claims like, the angles depicted in  
9 the computer generated animations are not such  
10 that a human could make, and -- and that's true.  
11 I guess that's the point of demonstrative  
12 evidence.

13                  Demonstrative evidence, rather than  
14 original evidence, rather than the thing from  
15 which the demonstrative evidence is generated, is  
16 to assist the trier of fact. And the only thing  
17 that a Court has to determine, at least from an  
18 admissibility standpoint, is whether or not it's  
19 a fair representation of what it purports to  
20 show.

21                  Now, the State today, so that the Court  
22 understands what we were talking about, has  
23 provided 3 CD's, 3 discs, which are examples of  
24 those summary exhibits. I couldn't disagree with  
25 Mr. Strang more about the State's requirement or

1                   obligation to provide these things to the  
2                   defense.

3                   The defense is entitled to the actual  
4                   items that are seized, or measurements of, or  
5                   business records, or phone records, or photos.  
6                   But they aren't entitled to summary exhibits.  
7                   They are not entitled to maps, or timelines, or  
8                   charts, or diagrams. And even though these three  
9                   animations are computer generated, they are  
10                  clearly within the category of diagram.

11                  If we go to the most basic kind of a  
12                  diagram that juries sometimes see in an  
13                  automobile accident, the diagram of an  
14                  intersection, kind of an overview, where was the  
15                  car coming from. Well, that's not an angle that  
16                  is available to the human eye. But nobody would  
17                  suggest, that because it's from a different  
18                  angle, that it's somehow not relevant or not of  
19                  assistance to a jury.

20                  So to suggest that because it's -- I  
21                  think Mr. Strang is arguing, so nicely done,  
22                  because it is of a high-tech nature, because it's  
23                  computer generated, somehow that goes to its  
24                  admissibility, it is somehow prejudicial to  
25                  Mr. Avery. We do disagree.

1                   We will be able, at trial, or before if  
2                   the Court wishes, a more detailed offer of proof  
3                   to demonstrate how this demonstrative evidence,  
4                   how these summary exhibits, will be of benefit to  
5                   the jury, so that the jury can see in an  
6                   overview, or an overall representation, where  
7                   specific evidence is found, how it may relate, or  
8                   interrelate, to other evidence, and how,  
9                   certainly, it is not going to be cumulative.

10                  These are very well done. The timing of  
11                  them was for the State's presentation of its  
12                  case-in-chief. I provided them to the Court and  
13                  to the defense as a matter of courtesy. That's  
14                  how I'm looking at my provision of these. Again,  
15                  I don't think the entitlement to summary exhibits  
16                  occurs until the very moment, that day witness  
17                  intends to refer to them at trial.

18                  But in order to speed up the trial  
19                  process, which we're all, I think, sensitive to  
20                  in this case, I'm happy to have the Court review  
21                  these matters and to issue a pre-trial ruling.  
22                  And, again, would ask for an opportunity for more  
23                  detailed argument if, in fact, after reviewing  
24                  these, the Court has a question as to their  
25                  materiality or to their relevance at the time

1           that that might come up. That's all I have at  
2           least for today, Judge. Thank you.

3           THE COURT: Mr. Strang.

4           ATTORNEY STRANG: I agree with counsel up  
5           to a point, that if this properly is viewed as a  
6           summary exhibit under 910.06, which certainly the  
7           State is free to argue on brief, that it's the  
8           underlying physical items that the defendant is  
9           entitled to see, or examine, or to have, as a matter  
10          of the principle discovery statute, Section 971.23.  
11          I don't agree that the timing of the disclosure of  
12          this exhibit, therefore, is unimpeachable.

13           The defendant certainly is entitled to  
14          have his jury not consider irrelevant, unfair,  
15          overly suggestive, or unhelpful demonstrative  
16          evidence to the jury. This Court set a  
17          December 15 deadline for motions in limine, which  
18          would ordinarily be the way to address  
19          demonstrative evidence, or summary exhibits, or  
20          other things that might be excludable as not  
21          relevant or -- under Section 904.03.

22           And to time that with a discovery  
23          deadline, on the same day, by disclosing this  
24          after December 15 I'm, of course, in no position  
25          to make a motion in limine by December 15. And

1           my motion in limine to that extent necessarily is  
2           tardy, although I think without fault, because I  
3           can't move to exclude that which I haven't been  
4           told will be offered, or shown.

5           So timeliness in that sense here, very  
6           much remains an issue. And, again, the other --  
7           the other details about the fairness of the  
8           presentation are probably best addressed on paper  
9           and then by the Court's review, and ours, of the  
10          exhibits themselves.

11           THE COURT: All right. Neither party is  
12          asking the Court to make a ruling on this particular  
13          matter today. And since I haven't seen it, I think  
14          that's appropriate. The only comment I would  
15          reiterate is that this offered exhibit, or set of  
16          exhibits, whether they are admissible or not, may  
17          not be determined simply intrinsically by the  
18          exhibit, but the purpose for which it's offered.

19           At this point I don't know that yet.  
20          You know, the fact that they don't show  
21          shrubbery, or foliage, I think that was mentioned  
22          in the defense's motion, for some purposes that  
23          may be significant, for other purposes it may not  
24          be. So in order for the Court to evaluate the  
25          defendant's motion, I'm not only going to have to

1 see the exhibit, but be informed as to the  
2 purpose for which it's offered. And it's my  
3 understanding, counsel, that we're going to take  
4 this up at the final pre-trial on February 2nd.

5 ATTORNEY KRATZ: That's fine, Judge.

6 THE COURT: Okay. The next item, which I  
7 believe should be brief, is the Court, based on the  
8 stipulation submitted by the parties concerning the  
9 exclusion of witnesses at the trial, drafted a  
10 proposed order. The Court received a response from  
11 the defense with a couple of suggested  
12 modifications. I didn't receive anything back from  
13 the State. But do I take it, at this point, that  
14 with the modifications suggested by the defense,  
15 that the form of the order is acceptable to both  
16 parties?

17 ATTORNEY KRATZ: The Court may recall that  
18 this was the subject of a written stipulation by the  
19 parties. And since Mr. Strang and I jointly drafted  
20 that, we don't have an objection. Mr. Strang  
21 included, in at least in the Court's form of the  
22 exclusion order, one suggestion. With that -- with  
23 that one variance to the Court's offer, the State  
24 doesn't have any objection that the exclusion order  
25 be adopted and the Court can enter that order.

1                   ATTORNEY STRANG: Just so we're not going  
2                   past each other, I think I actually made two  
3                   changes. I don't have it in front of me.

4                   THE COURT: Right. Just for my own  
5                   information, Conrad Baetz, is he a defense  
6                   investigator?

7                   ATTORNEY STRANG: Yes.

8                   THE COURT: Very well. The next series of  
9                   motions that has been presented for the Court's  
10                  consideration deals with evidentiary matters, which  
11                  for the most part I believe the State wishes to  
12                  argue are inadmissible for, among other reasons,  
13                  being not probative and unduly prejudicial. And the  
14                  State has asked that the Court hear argument on  
15                  those motions in camera. So, before getting to the  
16                  motions, I will hear from the State on its request  
17                  to consider these matters in camera.

18                  ATTORNEY FALLON: Yes. Thank you, Judge.  
19                  The State does request that these matters be  
20                  addressed in camera. As the Court and the parties  
21                  are aware, there's been a flurry of briefing which  
22                  occurred since the first of the year on third party  
23                  liability and blood vial evidence.

24                  I have asked in our pleadings for oral  
25                  argument and that -- that the argument be an in

1 camera argument. My reasons are these:

2 First and foremost, there will be a  
3 great deal of discussion amongst the parties  
4 regarding facts which may or may not be facts  
5 heard by the jury. For instance, if the Court  
6 determines the evidence to be inadmissible, then  
7 those are facts which are not going to be  
8 disclosed or heard by the jury.

9 And given the nearness in time to the  
10 jury selection process and the potential for such  
11 prejudicial and possibly inflammatory argument,  
12 and fact, and statement being made this close in  
13 time to the selection process, runs a risk of  
14 contaminating the jury pool.

15 Additionally, the three matters to be  
16 discussed are all interrelated. The State sees  
17 the interrelationship far stronger than the  
18 defense, but I think the defense would agree,  
19 that to adequately discuss these motions, there  
20 will be a variety of facts that need to be  
21 brought out on the record, and discussed, and  
22 argued.

23 As a result of which, we do not want to  
24 run the risk of potential contamination of the  
25 jury pool this close to the jury selection

1           process. So, that's why the issues of third  
2           party liability, the admissibility of the blood  
3           vial evidence and, thus, the subsequent bias  
4           issues, need to be addressed in camera until a  
5           ruling is obtained. And that is the basis for  
6           our request.

7           THE COURT: Mr. Strang.

8           ATTORNEY STRANG: The State -- The Court is  
9           correct that this is the State's request, that the  
10          Court take up facts and available possible evidence  
11          that will have a great bearing on this trial outside  
12          of public scrutiny and outside the hearing of the  
13          media. The State has offered some good reasons for  
14          that.

15          I don't stand to oppose that today, in  
16          part because I am relying on counsel's assessment  
17          of where this factual discussion could take us.  
18          In the end, of course, this is one of these  
19          issues on which the Court cannot defer to the  
20          parties, because the Court has to speak for the  
21          broader public and speak for the First Amendment.  
22          And I don't presume to undertake that role, or to  
23          tell the Court how it should exercise its  
24          overriding public duty in that respect.

25          I do say that I -- I don't understand

1                   the State, by the use of the term "in camera" to  
2                   be seeking to exclude the defendant himself. And  
3                   I would ask that he participate. I understand it  
4                   to be the public and the public's representatives  
5                   of the media that would be excluded. And I  
6                   tender the decision to the Court.

7                   THE COURT: All right. First of all, that  
8                   is also the Court's understanding of the State's  
9                   request; I don't believe the State is asking that  
10                  the defendant be excluded. I will state for the  
11                  record that when I received the written arguments of  
12                  the State and read the request, I took the  
13                  opportunity to explore this issue a bit.

14                  Under Section 757.14 of the statutes,  
15                  they provide that sittings of every court shall  
16                  be public. And that is certainly the general  
17                  rule. It is extremely rare that a session of  
18                  court can be closed. I have been on the bench  
19                  for almost 10 years and I don't believe I have  
20                  ever closed a session of court.

21                  However, the law is that in certain rare  
22                  situations a sitting of court can be closed. The  
23                  leading case on the issue, as far as I can tell,  
24                  is **State ex rel. La Crosse Tribune vs. Circuit**  
25                  **Court**. It's a 1983 reported court decision.

1 Some of the most important language in that  
2 decision for our purposes reads as follows:

3 It has long been recognized that the  
4 requirement for public trials is subject to  
5 certain inherent powers of the court to limit the  
6 public nature of trials in certain respects where  
7 the administration of justice requires it.

8 The circumstances necessary to trigger  
9 the discretion to close a courtroom must be  
10 compelling. One circumstance which arguably  
11 could trigger a trial judge's discretion to close  
12 the court is that a fair trial could not  
13 otherwise be had.

14 The trial judge should recite on the  
15 record the factors that impel him to close the  
16 courtroom and why such factors override the  
17 presumptive value of a public trial. Findings of  
18 fact must be made with specificity, process must  
19 be a rational one and the rationality of it must  
20 be demonstrated on the record, showing that the  
21 conclusion was reached on facts of record, or  
22 which are reasonably derived by inference from  
23 the record.

24 A trial court is required to hold a  
25 hearing and publicly reach a conclusion based on

1                   the exercise of discretion prior to ordering a  
2                   closing. The parties and members of the public  
3                   present in court may appear at such hearing, that  
4                   is, the hearing that we have today, which is on  
5                   the record.

6                   As I said before, closing court  
7                   proceedings is rarely done, but I do find that in  
8                   this particular circumstance there are  
9                   circumstances which justify that decision. I  
10                  will be repeating some of the arguments made by  
11                  the parties, or primarily by the State here.

12                  But I first want to note for the record,  
13                  the Court is aware that this case has received,  
14                  at least for purposes of this county,  
15                  unprecedented public coverage. This has included  
16                  live television coverage of most of the court  
17                  proceedings, and in addition, video of the court  
18                  proceedings in their entirety have been posted on  
19                  media websites for persons who are not otherwise  
20                  available to view the proceedings.

21                  As a general rule, the Court views this  
22                  as a positive situation, that is, it enables the  
23                  public to see the court system in action. Court  
24                  proceedings are supposed to be public and the  
25                  participation of the media significantly assists

1           in that regard.

2           However, it can pose a problem in a case  
3       such as this where the publicity concerning the  
4       pre-trial hearings is widespread. And we're  
5       dealing with disputed matters relating to  
6       important pieces of evidence to the parties that  
7       some of which may determine -- be determined to  
8       become inadmissible and could be highly  
9       prejudicial and threaten fairness of the trial.

10          In this particular case, we're within 10  
11       days of beginning the jury selection process.  
12       This trial has already been delayed once for a  
13       number of months. And one of the important  
14       reasons advanced for the delay was the existence  
15       of previous publicity that could well be  
16       considered prejudicial and threaten the fairness  
17       of the trial. Given the fact the trial is not  
18       going to be starting until approximately 15  
19       months after the alleged offense, it's important,  
20       I think, not to unduly create a reason for  
21       another adjournment.

22          The Court also notes that it's  
23       impossible in this case, particularly, to  
24       successfully insulate potential jurors from the  
25       publicity that comes out of today's hearing. The

jury is going to be selected from Manitowoc County. This is not a case where we're bringing jurors in from a far-flung part of the state where they might not be exposed to the publicity from this hearing.

As I indicated, it's not just a normal motion hearing, it's a motion hearing that deals with evidence which is alleged by one party, in this case the State, to be inadmissible, to be arguably inflammatory, and highly, potentially prejudicial to threaten the fairness of the trial.

Finally, I will note that I believe the disadvantages of holding the hearings in camera can be somewhat alleviated by the fact that, to the extent the Court issues a decision -- and I will indicate in open session it's not likely to be issued today, I'm going to want an opportunity to review the arguments of the parties and their written submissions, many of which have been received simply in the last few days -- but at such time as the Court issues a decision, determining that any evidence is admissible, that ruling will be made public and immediately available to the public and to the media.

1                   So for those reasons the Court finds  
2                   that consideration of the evidentiary motions  
3                   that remain, and that have been described by the  
4                   State on the record, will necessarily be  
5                   conducted in camera; that is, out of view of the  
6                   public.

7                   I will take a recess at this time in  
8                   order to permit the courtroom to be cleared and  
9                   then we'll resume with the hearings. Mr. Gahn.

10                  ATTORNEY GAHN: Judge, just -- I have just  
11                  one very quick matter and I believe Mr. Kratz also  
12                  does. Regarding our issue number two this morning,  
13                  the demand for compliance with discovery, we had  
14                  asked on Page 8 of our brief that the compliance be  
15                  completed within three days. I would ask the Court,  
16                  would you make that part of your ruling?

17                  THE COURT: First, I would want to hear  
18                  from the defense as to the feasibility of that.

19                  ATTORNEY BUTING: Give me just one second  
20                  to look back in my notes here, for what I have to  
21                  do. And three, we're talking about three business  
22                  days, or I'm going to have to contact --

23                  THE COURT: Lets' name a day. Next week, I  
24                  assume you're talking about.

25                  ATTORNEY GAHN: Yes, you'll not include the

1 weekend.

2 THE COURT: Wednesday?

3 ATTORNEY GAHN: That will be fine, your  
4 Honor.

5 ATTORNEY BUTING: I think that should do.  
6 Yes, that would be the --

7 THE COURT: 31st.

8 ATTORNEY BUTING: No, 24th.

9 THE COURT: I'm sorry, I'm a week ahead,  
10 Wednesday, the 24th.

11 ATTORNEY GAHN: Thank you.

12 THE COURT: Mr. Kratz.

13 ATTORNEY KRATZ: Two things, Judge. The  
14 Court set today as a date by which the State should  
15 file proposed jury instructions, and recognizing  
16 that these may change and evidentiary rulings may  
17 affect them, I have that document for the Court and  
18 I wanted the record to reflect its filing.

19 Secondly, the Court had asked that, if  
20 either party contemplated the inclusion of any  
21 images, that is, photographs or other images,  
22 within its opening statements, power point  
23 presentation, or however else they may be  
24 included in its opening, that those be provided  
25 to the Court by today's date. I have prepared a

1           CD with the images the State intends to include  
2           in its opening. Both of these submissions, I  
3           should tell the Court, have been provided to  
4           Mr. Strang before the start of this hearing.

5           ATTORNEY STRANG: I acknowledge receipt of  
6           both, just as Mr. Kratz says. And I will note as  
7           well that we provided two letters by facsimile to  
8           the Court and counsel, both dated January 18, 2007;  
9           although, I think one only faxed early this morning  
10          to the Court and counsel relating to proposed jury  
11          instructions.

12          THE COURT: All right. I understand, I  
13          believe when I read Mr. Strang's letter, he  
14          indicated that because of the outstanding motions  
15          that have not yet been resolved, it was impossible  
16          to submit, necessarily, all jury instructions  
17          requested by the defense. I understand Mr. Kratz to  
18          be saying the same thing for the State. And the  
19          Court understands that, that both parties will be  
20          given a chance to supplement their requests for jury  
21          instructions pending the outcome of outstanding  
22          motions.

23          ATTORNEY KRATZ: Do we know whether the  
24          defense intends to offer any images during their  
25          opening statement, or whether they even intend to

1 give their opening at the start of the case?

2 ATTORNEY STRANG: I --

3 ATTORNEY KRATZ: If so, I ask for some  
4 notice or opportunity to object, just like the State  
5 has given.

6 THE COURT: I don't believe they are  
7 required to state today whether they are going to  
8 make an opening statement.

9 ATTORNEY STRANG: I'm not, but I will. And  
10 I will, I will be giving an opening statement, or we  
11 will, probably I will, I expect immediately after  
12 the State's. And my present intention is not to use  
13 exhibits in that opening. If that changes, I will  
14 disclose that to the State and to the Court if it  
15 wants, just as soon as I change my mind about that.  
16 But that would be a change of mind.

17 ATTORNEY KRATZ: That would be just fine,  
18 Judge. I don't need more notice than that, that's  
19 fine.

20 THE COURT: Anything else before we take  
21 our break?

22 ATTORNEY FALLON: No.

23 ATTORNEY KRATZ: No.

24 THE COURT: If not, lets report back in 15  
25 minutes.

( Recess taken. )

THE COURT: At this time we're back on the record. As I announced previously, this portion of the proceedings is being conducted in camera and the public is not present in the courtroom at this time. The next motion that I had up for consideration was the **Denny** motion.

Specifically, the defense filed a statement on third party responsibility indicating that as a first point that **Denny** did not apply to this case, but in the alternative, if the Court determined that **Denny** did apply, the defense identified a number of persons who could be considered possible perpetrators of the crime and explained the offer that would be made, of evidence to support those allegations. The State filed a memorandum to preclude third party liability evidence. Will Mr. Strang or Mr. Buting be handling? Mr. Strang, you may proceed.

ATTORNEY STRANG: Thank you. Let me just take care of a housekeeping issue first. We have a Manitowoc deputy in the courtroom who is a court officer. And I think for -- as much for his own good as anything, since his possible testimony or

1           facts about which he knows may come up at some point  
2           along the line here, we may want to excuse him so  
3           that he is clean, so to speak, and not subject to a  
4           cross about what he may have overheard bearing on  
5           the subject matter of his possible testimony. I  
6           don't have any -- again, I don't have any problems  
7           with this guy in particular, just probably is a good  
8           thing to do. Deputy Riddle.

9                         THE COURT: Well, we have --

10                  ATTORNEY STRANG: Oh, and we have Deputy  
11                  Tackes too. Okay.

12                  THE COURT: Does the State wish to be  
13                  heard?

14                  ATTORNEY FALLON: This seems to be a  
15                  security based issue. We'll defer to the Court and  
16                  counsel as to how you wish to proceed on this. To  
17                  me, I don't see it as much of an issue at all. But  
18                  if Mr. Strang has some significant concerns and the  
19                  Court has agreed, that's fine. I think the  
20                  determination should be made from a security based.  
21                  And if there's another officer available, great, if  
22                  not, then we'll have to -- Court will have to make a  
23                  determination whether you want to proceed with just  
24                  one bailiff.

25                  THE COURT: Let me suggest this. We're in

1                   here on an in camera basis, what if the Manitowoc  
2                   County bailiffs step just outside this door instead  
3                   of just inside, and that way we'll have some level  
4                   of security. But to the extent some of the motions  
5                   involving testimony by Manitowoc County Sheriff's  
6                   Department employees have not been addressed yet, I  
7                   assume that can take care of the defendant's  
8                   concern.

9                   ATTORNEY STRANG: Absolutely, I'm looking  
10                  to avoid an issue rather than create one. Stepping  
11                  outside the door would be fine. Mr. Avery has been  
12                  fitted with a stun belt, I don't know who has the  
13                  control on that, but.

14                  THE COURT: We have two Calumet county  
15                  officers here.

16                  ATTORNEY STRANG: Then we're fine. Then  
17                  we're just fine.

18                  THE COURT: Very well, we'll wait just a  
19                  couple minutes. If you want to stand outside this  
20                  door, Gary.

21                  OFFICER TACKES: Okay.

22                  THE COURT: Mike will be out one door, you  
23                  will be out the other.

24                  ATTORNEY STRANG: You know, your Honor, I  
25                  wrote a fair amount on **Denny** and I really have no

1                   desire to blather for the sake of hearing myself  
2                   talk, so if there's some focus the Court can give  
3                   me, or particular issue to address.

4                   THE COURT: Actually, I'm just giving you  
5                   an opportunity to supplement your memo. I will  
6                   indicate that I have read the written submittals by  
7                   the parties on these remaining issues at least four  
8                   or five times already. But at the time you wrote  
9                   yours you perhaps did not have the benefit of having  
10                  receiving the State's response, so if there's  
11                  anything else you wish to present at this time I  
12                  will receive it.

13                  ATTORNEY STRANG: Okay. Well, I -- I do  
14                  think it's important here at least to try to  
15                  separate **Denny** which, you know, is maybe  
16                  significantly different on its facts than this case,  
17                  to begin with, from **Richardson**. If only because the  
18                  Wisconsin Supreme Court in **Richardson** said this  
19                  isn't **Denny**, we're not going to apply **Denny** in this  
20                  context; indeed, we're going to reject the State's  
21                  invitation to apply **Denny** in the frame-up context  
22                  that **Richardson** addressed.

23                  And I -- **Denny** is not even a good fit to  
24                  begin with, as I argued on brief, and I shan't  
25                  repeat that. But the nitty-gritty here is, when

1           we -- when we suggest that there are others at  
2           the Avery property who had the same or no less  
3           apparent motive than Steven Avery to commit the  
4           crimes alleged in the Amended Information, and  
5           who had about the same opportunity and about the  
6           same direct connection, that really is about as  
7           far as the facts allow the defendant to go here,  
8           where the defense -- where the defendant's own  
9           assertion that I'm not guilty, always factually  
10          has been, at bottom, an assertion that I just  
11          didn't do it, and I can't shed any light for you  
12          on who did.

13           And there's no real persuasive motive  
14          that the State can offer for the crime; that is,  
15          you know, this isn't a case where the victim owed  
16          the defendant money, or there was a divorce  
17          ongoing or, you know, any -- any of the usual  
18          sort of causes of human action, or usual reasons  
19          that might lead to a homicidal anger, or to  
20          passion getting out of control, you know,  
21          murderous passion, not amorous passion.

22           We're really in no better position to  
23          tender a motive on the facts here than is the  
24          State. And that really is very different than  
25          *Denny*, where the very evidence the defendant

1                   wanted to offer was evidence of someone else's  
2                   motive. He had, you know, a motive that he  
3                   wanted the jury to consider, that another person  
4                   had. So it's a tough fit.

5                   THE COURT: Let me ask this.

6                   ATTORNEY STRANG: Sure.

7                   THE COURT: **Denny** doesn't require a  
8                   defendant to come up with **Denny** evidence. The  
9                   defendant certainly, here, is not obligated to say  
10                  these other persons could have done it, so I didn't  
11                  do it. The burden is on the State to prove that the  
12                  defendant did do it.

13                  ATTORNEY STRANG: Right.

14                  THE COURT: But I didn't understand your  
15                  pleading to be saying that you didn't want to offer  
16                  evidence that others did it; that is, not just --  
17                  the defense, as I understand it, is not simply going  
18                  to be that the evidence is not sufficient to prove  
19                  that Mr. Avery committed these crimes, but rather to  
20                  identify if not one person, a group of other people,  
21                  who did. And it seems that type of thing does get  
22                  you into **Denny**, does it not?

23                  ATTORNEY STRANG: It can and, certainly, as  
24                  I see the argument and the trial unfolding  
25                  factually, you know, we will be saying, what

1           investigative scrutiny did some of these other  
2        people get. Steven Avery became, very quickly, the  
3        focus of the investigation. And the State will say,  
4        well, that's right and we have got good reasons for  
5        him having been the focus.

6           What we want the jury to understand is  
7        that there were others who, at least initially,  
8        looked about equally situated as potential  
9        suspects. And not much investigative effort was  
10      expended on exploring whether they were good  
11      suspects, or whether they were easily excluded  
12      and, therefore, not viable or good suspects.

13       And at that level, if I understand the  
14      Court, I think that's not **Denny** at all. That's  
15      something we're free to do. And this is where I  
16      do agree with the Court that much of what we have  
17      presented in writing and orally, overlaps at some  
18      very -- connects up at some very general level in  
19      that you are getting into bias issues, an  
20      investigative bias, or a tunnel vision on one  
21      person of particular interest, when in fact an  
22      objective investigation might have looked at  
23      other people more seriously than the State did.

24       THE COURT: Let me stop you there. Who is  
25      going to handle this for the State? Mr. Fallon, if

1           the -- one of the State's investigators is on the  
2           stand and the -- they give their testimony and the  
3           defense says, well, why didn't you investigate  
4           further other people who you determined to be on the  
5           scene, on the date of the alleged crimes; does the  
6           State take the position that they have got to make a  
7           **Denny** showing to ask that question, or can they ask  
8           it, from the State's perspective?

9                   ATTORNEY FALLON: Your Honor, I think  
10                  that's just a backdoor way of introducing the  
11                  potential of a third party liability suspect. And I  
12                  guess as I'm sitting here listening to the Court and  
13                  counsel begin the argument, the first thought that  
14                  came to my mind is simply this, does the defense  
15                  want to introduce the evidence set forth in their  
16                  statement on third party responsibility, either in  
17                  their case-in-chief or on cross-examination? Do  
18                  they want to do that?

19                   THE COURT: I wonder the same things, but  
20                  we haven't gotten to that yet.

21                   ATTORNEY FALLON: Because I'm treating it  
22                  as a motion for introduction of that evidence, and  
23                  do they want to argue that one of those individuals  
24                  could have, or did, commit this offense. Then I can  
25                  respond to that. I think we're miscasting the

1 issue.

2 THE COURT: I'm trying to take this in the  
3 order in which it may come in. I'm saying that --  
4 and I asked myself this as I was reading the  
5 briefs -- if the State -- or if the defense, on  
6 cross-examination, asks a investigating officer, or  
7 officers, why they focused in on the defendant and  
8 did not investigate other suspects further -- or  
9 maybe they did investigate other suspects, at this  
10 point I have no way of knowing -- without referring  
11 to a specific other suspect, my own feeling is that  
12 at least that question doesn't get you into **Denny**.

13 ATTORNEY FALLON: Depends on what they want  
14 to do with the answer. And then the question is,  
15 well, then why is that relevant? Counsel will say,  
16 well, it goes to bias. Since when is bias and an  
17 institutional conundrum?

18 THE COURT: It may go to bias.

19 ATTORNEY FALLON: Then why is it relevant?  
20 Why is it material to whether or not Mr. Avery  
21 committed the offense? Sure, they can ask the  
22 question, my concern is, what are they going to do  
23 with the answer? What are the arguments to be made?  
24 It's a backdoor attempt at pointing a finger that  
25 somebody else committed the offense. Otherwise, the

jury is going to get sidetracked. That's the whole idea behind **Denny**. That's my take. I will let the Court and counsel continue.

THE COURT: All right.

ATTORNEY STRANG: Let's go at this from an element standpoint on the homicide charge. The jury has got to find that someone has been killed. And let's suppose the jury finds that they are satisfied that Teresa Halbach is killed. Then the next two things they have to decide are, was it Steven Avery who killed her, and did he do it intentionally. Those are the elements. And, you know, we can't hop over that second element, which is, is it the defendant who killed her.

One of the reasons that a jury reasonably might doubt whether the State has proven that he killed Teresa Halbach is to say to themselves, gee, I haven't heard any reason he would have to kill her that's any more compelling than the reason that his brother might have had to kill her, or that Scott Tadych or Robert Fabian might have had to kill her.

And I understand that they were there,  
and I don't think the police looked very hard at,  
for example, the fact that Earl Avery and Robert

1           Fabian give very different times for when they  
2         are out on the rabbit hunt, which is a short  
3         hunt, strange to do at darkness and, gosh, both  
4         of them probably have .22 rifles in their hands;  
5         although the police didn't bother to ask that  
6         either.

7           And we understand that Mr. Avery's back  
8         door to his trailer was broken open. And we  
9         don't know why a member of this family, or  
10        somebody who's riding around on a golf cart on  
11        the property, couldn't have gone into the back  
12        door of his trailer, either to put the .22 rifle  
13        there, or to take it from there, or both.

14           And we're interested in the fact that a  
15        cadaver dog hit on the golf cart that Earl Avery  
16        and Robert Fabian said they were riding around  
17        on, which then gets concealed in Mrs. Avery's,  
18        Delores Avery's, garage. And we have got some  
19        doubts here about whether the State got the right  
20        man.

21           I don't see that as being a **Denny**  
22        argument, although clearly it relates to other  
23        people in the same way that evidence would have  
24        to relate to other people if, you know, we were  
25        trying, you know, the 1912 attempt to assassinate

1           Theodore Roosevelt outside the Gilpatrick Hotel  
2           in Milwaukee where there is a whole crowd of  
3           people and the issue might have been who's the  
4           gunman. And --

5           THE COURT: Well, let me ask you this, I'm  
6           reading from **Denny** now and they conclude, while our  
7           decision establishes a bright line standard  
8           requiring that three factors be present, that is,  
9           motive, opportunity, and direct connection, our  
10          holding is consistent with the **Lasecki** language  
11          regarding the term "tendency".

12          So how can you argue that to be entitled  
13          to show **Denny** evidence you have got to have these  
14          three factors, but somehow if you only have two  
15          you don't?

16          ATTORNEY STRANG: No, I guess what I'm  
17          arguing is that I have got just as much as the State  
18          does on all three. You know. I can't tender a  
19          motive for one of these other people to have done  
20          this, but the State can't tender a motive for Steven  
21          Avery to have done it.

22          So it seems to me surpassingly odd that  
23          the defense, which bears no burden, is in the  
24          position here of having to jump hurdles that the  
25          State, in seeking to prove Mr. Avery guilty,

1           doesn't have to jump. And, indeed, on request,  
2           will get a jury instruction saying that they  
3           don't have to prove motive, but I do, if I want  
4           to challenge his guilt by pointing out --

5           THE COURT: How's that different from  
6           **Denny**? I assume the jury instruction was there at  
7           the time of **Denny** and they showed motive.

8           ATTORNEY STRANG: Because in **Denny**, it's  
9           motive that the defendant wanted to offer. And the  
10          facts of **Denny** are that he was excluded from  
11          offering the motive of a particular third person,  
12          evidence of that motive. **Denny**'s tough, I mean, it  
13          really is.

14          And, you know, everybody talks about it,  
15          myself included, for years, as if it's an  
16          immovable and unchallengeable feature of  
17          Wisconsin law. It never went above the Wisconsin  
18          Court of Appeals. And the footnote in  
19          **Richardson**, where the holding is we're not  
20          applying **Denny** here to frame-up, the footnote is,  
21          we have never approved **Denny** at all. So I take  
22          it **Denny** is a published decision it stands, but  
23          --

24           THE COURT: There's a Supreme Court  
25          decision authored by Justice Crooks that applied

1           **Denny**, I forget --

2           ATTORNEY STRANG: Yes.

3           THE COURT: -- the name of the case, but.

4           ATTORNEY STRANG: **Scheidell**, there is. And  
5           have -- And, again, I accept **Denny** as the law. It's  
6           not a great fit here, and how far beyond its facts  
7           it can be applied isn't clear to me, and that's what  
8           I tried to address in writing.

9           The proffer and, you know, Mr. Fallon  
10          asks a fair question, do you want to offer this.  
11          Yes, we do want to be able to offer the facts we  
12          proffered alternatively, if the Court finds that  
13          **Denny** applies. And we want to be able to offer  
14          them if it finds that **Denny** doesn't apply.

15          These are fair areas to explore, both as  
16          a matter of simple reasonable doubt, and as a  
17          matter of the bias that each individual  
18          investigative officer may have brought to the  
19          task where the person at issue was Steven Avery.

20          I guess, you know, specifically, as I  
21          read **Denny**, the defense that I want to offer,  
22          this evidence of a third person's motive. And I  
23          think the actual holding as opposed to the  
24          discussion in the dictum in **Denny** is that, if you  
25          want to offer evidence of motive of a particular

1           third person, motive alone is not enough. You  
2           also have to offer some evidence, you know, a  
3           plausible showing, or whatever the phrase is, of  
4           opportunity of that third person and of some  
5           direct connection to the offense.

6           So it's not enough that you say, hey, I  
7           want to show that the decedent had a bookie who  
8           was mad at him because, you know, he hadn't made  
9           good on his bets and had a reason to kill him.  
10          And when the facts are that the bookie,  
11          undeniably was in the City of New York, when the  
12          homicide occurred in Milwaukee, Wisconsin, and  
13          had no opportunity to have committed it, you  
14          know, then I understand **Denny** on those terms on  
15          why the motive wouldn't be relevant, wouldn't be  
16          enough.

17          This is very different. We're not  
18          seeking to offer a motive. What we're saying is  
19          we have got the same evidence of motive,  
20          opportunity, and direct connection to the crime  
21          as to this group of people, as the State does as  
22          to Steven Avery.

23          THE COURT: Well, and I agree with your  
24          summary of the holding in **Denny**, it is different to  
25          the extent that the defendant in that case wanted to

1 show evidence of motive. You are saying that's not  
2 what -- that's not part of the defense argument.

3 ATTORNEY STRANG: Not here. I don't have  
4 it any more than the State does.

5 THE COURT: Mr. Fallon.

6 ATTORNEY FALLON: Has he concluded his  
7 remarks?

8 THE COURT: I suspect --

9 ATTORNEY STRANG: It's helpful just to --

10 THE COURT: -- neither one of you has  
11 probably concluded your remarks --

12 ATTORNEY FALLON: That's what I meant to  
13 say.

14 THE COURT: -- but you're next, so you go  
15 ahead.

16 ATTORNEY FALLON: First of all, I take  
17 issue with three assumptions, or statements of  
18 counsel, one, that they are in exactly the same  
19 position as we are with respect to motive,  
20 opportunity, and direct connection to the crime.  
21 One, I dispute that.

22 But with respect to motive, however, the  
23 Court has ruled our evidence of motive  
24 inadmissible. So on the theory of the law of the  
25 case, apparently we do not have an explainable

1 reason why the crime occurred.

2                 However, opportunity clearly exists on  
3 this particular case. And more importantly, and  
4 most importantly, there is a direct connection,  
5 because the defendant's blood is the blood that  
6 is found in the SUV. It's the bullet fragment  
7 containing the victim's DNA found in the garage,  
8 the key is to the Toyota, is found in his  
9 residence. So there are direct connections  
10 unlike any of the others.

11                 Secondly, I take issue with counsel's  
12 characterization of **Denny**. **Denny** is not simply  
13 just about a defendant wishing to introduce  
14 motive evidence; although, I acknowledge that's  
15 how the case got to the Supreme Court. The  
16 defense was denied the opportunity to introduce  
17 the motive of this third person, in particular  
18 the motives attributed to one Gary Peterson over  
19 a \$130 debt, or the fact that Bill Cudahy also  
20 had a motive because a shotgun was exchanged for  
21 drugs and then that shotgun was ultimately sold,  
22 apparently, to the annoyance of one of the  
23 parties, as a result of which this Christopher  
24 Mohr was killed.

25                 That's what our facts there are. But if

1           the Court's attention can be directed to the  
2           **Denny** decision, it's more than about motive.  
3           Motive was the means, that's the -- as it were,  
4           if the Court is a card player, that's the ante  
5           that gets you in the game, that's jacks are  
6           better, to borrow the metaphor.

7           But the point of **Denny** is that -- and  
8           it's found on page 17, and I'm looking at the  
9           Westlaw, the headnotes 9 and 10, second  
10          paragraph, it says, in other words, there must be  
11          a legitimate tendency that the third person could  
12          have committed the crime. That's the whole idea  
13          behind it, is there a legitimate tendency, in  
14          which the legitimate tendency is the direct  
15          connection.

16          The legitimate tendency is demonstrated  
17          by motive. It's demonstrated by opportunity and  
18          the whole connection to the crime. That's what  
19          we're talking about here. And those are the  
20          circumstances, that's the context of **Denny**.

21          Now, looking at the defendant's  
22          statement on third party liability, what do we  
23          have? Again, our complaint is that, one, **Denny**  
24          clearly applies here. If they wish to introduce  
25          these facts, in direct examination or in their

1 case-in-chief, and then argue the inference to  
2 the jury that the police job was so bad, and by  
3 the way, look at how bad it was, these guys could  
4 have done it, then they have to comply with  
5 **Denny**. That's just cut and dried. I'm  
6 astonished that counsel would say that they don't  
7 have to apply, that it's not controlling here.

8 The law requires the Court to look at  
9 each person individually. So as the Court goes  
10 through this, there are alternative **Denny** proffer  
11 beginning at Page 9. They list two different  
12 categories, customer or friends category, and I  
13 think a family category. So I'm going to address  
14 my comments specifically, because I think the law  
15 requires the Court to address them specifically.

16 As to Scott Tadych, it's clear, and  
17 counsel acknowledges, there is no motive  
18 presented there. Opportunity, sure, he is on the  
19 property, I will concede that. But there's no  
20 connection. As a result of the no motive, and  
21 most importantly, no connection to the crime, and  
22 that's the key, it's not just the location, it's  
23 not the property, there has to be a connection to  
24 the crime. And that is the key here in analyzing  
25 all of these, there is no direct connection for

1           Scott Tadych to the crime. Therefore, evidence,  
2           cross-examined, case-in-chief, otherwise, should  
3           be and must be excluded.

4           Next, you have Robert Fabian and Earl  
5           Avery hunting rabbits. Counsel points out we  
6           have a time discrepancy, well, that's hardly  
7           unusual. If there was a situation, or a case, in  
8           fact, I doubt whether counsel has ever had one  
9           because I'm not sure I have, where witnesses say  
10          the exact same thing at the same time and  
11          everything lines up perfectly. Quite frankly,  
12          when that happens, then I know something stinks.  
13          I have yet to see it in my years of experience,  
14          where everything lines up so perfectly.

15          There's no connection, no motive, no  
16          connection to the crime, and just because he is  
17          on the property for that one hour or two hour  
18          period hunting rabbits, I suppose one could say  
19          that he had the opportunity. So for purposes of  
20          argument, we could concede that. But there again  
21          there is no direct connection and no motive.

22          Similarly, with respect to Andres  
23          Martinez, this one is rather interesting, because  
24          I think Andres Martinez, again, there's no  
25          motive, there's no opportunity, and there's no

1 connection. And, again, if they wish to offer  
2 evidence of third party liability here, I think  
3 Martinez is -- the potential admissibility of  
4 Martinez is governed by **Scheidell** to a certain  
5 extent, because it's another act. Although here,  
6 we apparently know that -- who the other actor is  
7 as opposed to, I think in **Scheidell** there was a  
8 question as to, I think it was unknown third  
9 parties and the adoption of this **Sullivan**  
10 analysis.

11 Well, whether you use **Sullivan** analysis,  
12 or whether you use a **Denny** analysis, under either  
13 way, Martinez does not meet the requisite  
14 admissibility standards. Under **Denny**, there is  
15 no motive, there's no opportunity, and there's  
16 nothing to directly connect. If you want to take  
17 a **Sullivan** analysis then, one, is the evidence  
18 offered for a proper purpose, sure, to suggest  
19 that somebody else may have committed the crime,  
20 okay, fine, that's a proper purpose.

21 However, on the next two steps of the  
22 analysis the Andres Martinez evidence is  
23 inadmissible. It does not meet the relevance  
24 determination because, as the Court is aware,  
25 relevance is a two-part determination. If I may

1 have a moment to elicit further, here it is.  
2 Relevance has two facets. The first  
3 consideration is whether the other acts evidence  
4 relates to a fact or proposition that is of  
5 consequence, and I think that's probably true in  
6 this case.

7 However, the second consideration is  
8 whether the other acts evidence has a tendency to  
9 make a consequential fact more or less probable.  
10 And given the nature of the assault and when that  
11 assault occurred, it's one -- it's so  
12 sufficiently dissimilar and unrelated to the  
13 circumstances of the Halbach murder that it fails  
14 on the relevancy prong.

15 And then, finally, even if it didn't  
16 fail there, it would certainly fail on balancing  
17 the probative value on the Andres Martinez  
18 assault of his girlfriend, with its potential  
19 prejudicial effect. In this case, confusion is  
20 the primary concern here, delay, waste of time,  
21 and a jury going down the wrong road, as opposed  
22 to trying to determine whether or not Mr. Avery  
23 is, in fact, the murderer.

24 So the fact that Andres Martinez  
25 attacked his girlfriend with a hatchet does not

1 add anything of consequence to our analysis here.

2 I don't need to comment further on these many  
3 inconsistencies to law enforcement.

4 THE COURT: Before we leave him, I don't  
5 know if I missed it in the defense offer, what would  
6 be the evidence connecting Mr. Martinez to the  
7 location of the crime at the time of the crime?

8 ATTORNEY STRANG: That's fuzzy. He, I  
9 think in the end denies having been there on October  
10 31. And there's a receipt for his son's car having  
11 been towed there on November 2, 2 days later. And  
12 he, in the end, says, well, that's the day I most  
13 recently went to the Avery's.

14 So it's -- Others -- others suggest that  
15 he may have been there and indeed been at a  
16 bonfire on October 31. But, you know, I can't --  
17 I don't have any ironclad evidence to put him  
18 there. Neither do I need to offer that.

19 What's -- One of the things that's so  
20 striking about Mr. Martinez is his first talk  
21 with the law enforcement officers, before he does  
22 start changing his story considerably, on some  
23 interesting details about his relationship with  
24 Steven Avery. His first statement includes what  
25 most experienced detectives would have recognized

1           as a confession to killing her, and sort of  
2           explored this strange statement, well, I'm going  
3           away for the rest of my life anyway, so I guess  
4           if they say I did it I could take responsibility  
5           for it. That's -- You know, that's exactly the  
6           kind of statement that people sometimes initially  
7           make in, ultimately, confessing a shameful crime.

8           Rather than sort of following that, or  
9           going into the crack that Mr. Martinez offered,  
10          what we have, these agents, according to their  
11          reports, saying is, oh, you know, we're not going  
12          to blame you for something you didn't do, and  
13          that's just the end of the matter. Really, you  
14          know, an interesting bit of tunnel vision there.

15          ATTORNEY FALLON: I guess I would dispute  
16          that, because I'm under the impression discovery has  
17          been provided and there's also, and I think counsel  
18          acknowledges it, they may not find it greatest in  
19          the world, but there is an alibi associated with  
20          Mr. Martinez in terms of his location. I believe  
21          there is evidence that he was out trick-or-treating  
22          with his kids.

23          ATTORNEY STRANG: With a 16 year old boy,  
24          who claims he skipped school, that's true. But, you  
25          know, what we do have to avoid here is getting into

1                   the very problem that **Holmes vs. South Carolina**  
2                   warns about. Now, **Holmes** approves, in general,  
3                   rules like **Denny**, and in fact cites **Denny**, as the  
4                   sort of rule that's, in general, permissible, but  
5                   says, look, you can't look in isolation at the  
6                   State's showing and say, boy, that looks strong  
7                   standing alone so, therefore, I'm not going to allow  
8                   competing defense evidence that standing alone  
9                   doesn't look as strong. That's what **Holmes** is  
10                  about. And particularly in arguing direct  
11                  connection, that's really what the State -- the  
12                  mistake the State is inviting the Court to make  
13                  here.

14                  THE COURT: I understand what **Holmes** says,  
15                  but as long as you focus on the evidence, or lack of  
16                  evidence, supporting the third party involvement, I  
17                  think you steer clear of **Holmes**' problems. If you  
18                  say I'm not going to look at your third party  
19                  evidence because there was DNA evidence connecting  
20                  Mr. Avery to the crime and that's enough for me,  
21                  then you are into a **Holmes** problem.

22                  ATTORNEY STRANG: Right, I agree.

23                  THE COURT: But I don't understand the  
24                  State to be making that argument here.

25                  ATTORNEY STRANG: Well, they are saying,

1           look, you know, the key's found in his trailer, and  
2           a bullet with Teresa Halbach's DNA, or a fragment of  
3           a bullet is found four months later in his garage.  
4           Now, in fact, there will be plenty of evidence at  
5           trial that Steven Avery did not have exclusive  
6           access to the garage. Others went in the garage.  
7           An issue why this bullet is found four months later,  
8           after multiple searches of the garage.

9                 I mean, the jury will have all kinds of  
10          evidence to consider in assessing the weight, if  
11          any, to give that bullet, including the fact that  
12          the bullet has also got DNA from a State Crime  
13          Lab analyst on it. I mean, that's -- that's  
14          just where we have to be careful, because, taken  
15          in isolation, finding a Toyota key in Mr. Avery's  
16          bedroom sounds terrible when you look at how many  
17          searches --

18                 THE COURT: Okay. Wait a minute, I  
19          interrupted Mr. Fallon just to ask about the  
20          evidence of Mr. Martinez so, Mr. Fallon, you may  
21          continue.

22                 ATTORNEY FALLON: Thank you. After  
23          Mr. Martinez, the defense then suggests that a  
24          couple of adolescent school girls, K.S. and A. MCK,  
25          that there was a group of people at a bonfire.

1 Again, those people, apparently Mr. Martinez has  
2 mentioned a Dawn Hauschultz, German spelling,  
3 H-a-u-s-c-h-u-l-t-z, Steven Avery and --

4 ATTORNEY STRANG: This is all part of the  
5 Martinez discussions?

6 ATTORNEY FALLON: Right.

7 THE COURT: Yes.

8 ATTORNEY FALLON: So, again -- All right.  
9 Then I will accept that. Apparently those aren't  
10 being offered as viable suspects.

11 Next, you have James Kennedy, again,  
12 opportunity solely because he happened to be on  
13 the property at the time.

14 THE COURT: Just, before we leave that,  
15 when was this bonfire, I don't know if I caught that  
16 from the offer?

17 ATTORNEY FALLON: I believe that was  
18 supposedly the night before.

19 THE COURT: October 30th.

20 ATTORNEY FALLON: Yes.

21 ATTORNEY STRANG: No.

22 ATTORNEY BUTING: No.

23 ATTORNEY FALLON: Well, there certainly was  
24 a fire, and we're going to introduce evidence of a  
25 fire on the night of the 31st, but there's evidence

1 of a bonfire before.

2 THE COURT: I'm looking at Page 13, and it  
3 says a schoolgirl and her friend, that Martinez,  
4 Dawn Hauschultz, Steven Avery, and another Steven  
5 had been at a bonfire and party at the Avery  
6 residence. A. MCK confirmed that she heard from  
7 Dawn Hanes that Martinez and his friends, Roberto  
8 Brooks, were at the Avery property on October 30th.  
9 When I put those two together, I read it as being a  
10 bonfire on October 30th.

11 ATTORNEY STRANG: There are two different  
12 statements there and the one girl does place it as  
13 Sunday night, October 30, the other doesn't.

14 ATTORNEY FALLON: I think it makes it all  
15 the more speculative and full of conjecture when one  
16 goes to analyze the admissibility or the possibility  
17 of any of those people, particularly Mr. Martinez,  
18 being involved.

19 ATTORNEY STRANG: That's a tough argument  
20 for the State to make where its own witnesses are  
21 going to be in conflict over whether there was any  
22 fire on October 31st. It's certainly the State's  
23 theory that there was. But it's going to present  
24 people who say I didn't see a fire on October 31.  
25 So, none of this is ideally crisp and clear.

1                   THE COURT: All right. Mr. Fallon, you may  
2 continue.

3                   ATTORNEY FALLON: Thank you. Again, with  
4 respect to Mr. James Kennedy, their **Denny** analysis,  
5 no motive and no direct connection to the crime are  
6 offered. So evidence regarding him should be  
7 excluded.

8                   With respect to the family members, you  
9 have a -- Charles Avery is the first one  
10 mentioned. Defense argues, well, apparently he  
11 may have a motive, but his motive is no greater  
12 than their client's because of the sex offender  
13 charges and/or convictions associated with both  
14 Charles and Earl Avery.

15                  As I noted in my pleading, one of them  
16 was actually convicted, the other was not. But  
17 there's nothing to directly connect Charles Avery  
18 or Earl Avery, for that matter, with the crime.  
19 Yes, they are connected to the crime scene, when  
20 one considers the salvage yard as the crime  
21 scene, or the location, but there's not a direct  
22 connection to the crime itself. And such  
23 allegations need more before the jury is going to  
24 have a finger pointed at one of the defendant's  
25 brothers.

1                   That gets us to the Dassey boys, which  
2 there are four: Bobby, Blaine, Bryan, and  
3 Brendan. We're excepting Brendan from the  
4 discussion for the obvious reasons. That leaves  
5 us the remaining three Dassey brothers.

6                   Again, the motive, the opportunity, and  
7 the connection are very, very thin. Motive,  
8 absolutely none. Connection to the offense,  
9 none. Opportunity, depending on which version of  
10 the time frame, arguably that could be conceded.  
11 But, again, certainly insufficient evidence  
12 connecting them to the offense in question.

13                  As a result, under a **Denny** analysis, for  
14 the defense to suggest and point a finger that  
15 one of the individuals mentioned in their  
16 statement is a viable suspect, such that the jury  
17 ought to consider that in evaluating the quality  
18 of the investigation, is a reach. It's going to  
19 lead to confusion. It's going to have the jury  
20 going down who knows what path. And it doesn't  
21 add anything to the possibility or reality of  
22 what the jury's actual determination or job is in  
23 this case, and that is to determine whether  
24 Mr. Avery is, in fact, the one who killed her.

25                  If they are going to suggest and imply,

1           or directly say in argument, that anyone of these  
2         6, 8, 10 people listed in that statement could  
3         have been the murderer, then they have got to  
4         have more than what they have shown us. So that  
5         evidence should be denied, Judge. Thank you.

6           THE COURT: Anything else on the **Denny**  
7         motion?

8           ATTORNEY STRANG: I would be reiterating  
9         the brief and I think, you know, I will stand on  
10        that. I don't think I'm waiving a thing. But  
11        the -- just to go back to the real basics here, I  
12        think that **Denny** does not apply at all. If the  
13        Court disagrees and finds that **Denny** does apply,  
14        then the facts we have offered in the alternative,  
15        we do wish to pursue on cross-examination,  
16        conceivably in the defense case-in-chief.

17           And I understand what the 904.03  
18         limitations might be on cumulative questioning or  
19         other cumulative evidence. But the Court does  
20         need to understand that some of the people we  
21         discuss, and James Kennedy, for example, would be  
22         a good example here, Dawn Hauschultz would be  
23         another one, are there not because we view them  
24         as suspects themselves, but because they are in a  
25         position to offer testimony that bears on the

1 activities of others.

2                   James Kennedy is there to say what he  
3 sees about Charles Avery and how peculiar it is  
4 that Charles Avery, at 3:00 on October 31, 2005,  
5 isn't in or around the office, and has to be  
6 hailed by shouting for five minutes or more and  
7 comes from behind the building. And James  
8 Kennedy is there to talk about the gray smoke  
9 that he sees rising from the center of, not  
10 Steven Avery's burn pit, but from the center of  
11 the salvage yard pit, at 3:00 on October 31,  
12 2005, or shortly after.

13                  So, you know, this -- and if the writing  
14 was inartful, I take the blame for that, it's my  
15 writing. But on the alternative hypothesis that  
16 **Denny** applies, I'm doing my level best here to  
17 assemble, from what the State did and didn't do,  
18 the evidence suggesting the least legitimate  
19 tendency to believe that these people had no  
20 lesser motive than Steve Avery, no lesser  
21 opportunity, and no lesser connection to the  
22 place of the offense.

23                  I mean, let's take the Dassey boys just  
24 to finish. There isn't any physical, direct  
25 connection between Brendan Dassey and the death

1                   of Teresa Halbach, but this 17 year old boy is  
2                   facing the rest of his life in prison on the  
3                   State's accusation, without any physical evidence  
4                   of a direct connection. Brendan Dassey, for all  
5                   that appears here, has the same encounter with  
6                   Teresa Halbach, or walks past her as he's getting  
7                   off the bus, that his brother, Blaine, does.

8                   Their really isn't any difference here  
9                   in apparent motive, opportunity, or direct  
10                  connection. And when we have Teresa Halbach's  
11                  bones being found, not just in Steven Avery's  
12                  burn pit, which has gotten all the public  
13                  attention, but some of them being found in a burn  
14                  barrel immediately behind the Janda house, where  
15                  the four Dassey boys live, is this something that  
16                  a jury ought to be allowed to consider in  
17                  deciding whether the State has proven Steven  
18                  Avery's guilt, beyond a reasonable doubt? You  
19                  bet it is.

20                  THE COURT: Let me ask this, let's say that  
21                  if, to the extent that **Denny** is not on all fours  
22                  because Denny sought to offer evidence of motive,  
23                  and you are saying the defense does not, then  
24                  what -- what does the defense contend are the rules  
25                  for determining whether third party liability can be

1 presented to the jury?

2 ATTORNEY STRANG: I'm sorry to be  
3 quarrelsome, but I don't know that we're talking  
4 about third party liability. We're talking about  
5 evidence of the activities and presence of others  
6 that has some tendency to make it less likely that  
7 Steven Avery was the person who murdered Teresa  
8 Halbach.

9 THE COURT: Well --

10 ATTORNEY STRANG: This is simply relevant  
11 evidence.

12 THE COURT: The thing is, if you look at  
13 **Denny**, **Denny** wasn't just saying that one specific  
14 person -- other person did it, he is other persons.  
15 He wanted to suggest multiple possibilities. It  
16 seems to me that while the defense in this case is  
17 not basing its claim on the allegation that others  
18 had motive, that in other respects you are trying to  
19 do essentially what **Denny** did. You are saying,  
20 look, there were these other people, and I can name  
21 them, who were in a position to commit this crime,  
22 who could have committed this crime, who were at the  
23 scene, had the opportunity. Isn't that what you are  
24 doing?

25 What are the rules -- From the defense

1 perspective, what are the rules the Court is to  
2 apply in determining whether or not the defense  
3 will be allowed to elicit testimony that these  
4 other person or persons could have committed the  
5 crime?

6 ATTORNEY STRANG: Relevance, 901 -- 904.01  
7 and 904.02, and the ordinary balancing under 904.03.  
8 Indeed, I mean, let's not kid ourselves, the State  
9 will name the people who were there. The State will  
10 elicit testimony on direct examination, from at  
11 least some of them, that they were there at the  
12 right time. The State will elicit evidence about  
13 the activities of some of them. The State will  
14 elicit, I'm sure, testimony from law enforcement  
15 officers about the persons with whom they spoke.

16 So when we explore bias, by showing that  
17 law enforcement officers immediately narrowed  
18 their focus, for practical purposes, to Steven  
19 Avery, we necessarily have to do that by showing  
20 what the broader focus would have included. It's  
21 just practical stuff.

22 Again, you know, the rabbit hunt is one  
23 example, but an example only. That -- This is a  
24 dynamic scene, there are a number of people  
25 there. And an unbiased investigation would have

1           pursued many of the facts that we have laid out  
2           in the alternative proffer. And the  
3           admissibility here is the same standard it is for  
4           the State's evidence, circumstantial though it  
5           is, that Steven Avery did it, which is, does it  
6           have some tendency to make it more likely that he  
7           committed the crime. This has some tendency to  
8           make it less likely.

9                         THE COURT: All right. Let me ask,  
10                 Mr. Fallon, with respect to **Denny**, at least one --  
11                 setting aside for the moment its significance, there  
12                 is at least one difference between **Denny** and what  
13                 the defense is attempting to do, and that is the  
14                 defense is saying, we're not offering a motive for  
15                 these alternative possible suspects. What's the  
16                 State's position on that issue?

17                         ATTORNEY FALLON: As I indicated earlier,  
18                 the State's position on that is that Denny is more  
19                 than just offering evidence about motive. The case  
20                 stands for the proposition that if you are going to  
21                 point the finger at a third party, you have to  
22                 establish the legitimate tendency. You have to  
23                 establish, which is primarily in the construct of is  
24                 there a direct connection. I think that's the --  
25                 the operative fact here.

1 THE COURT: No, but -- Let me rephrase my  
2 question. Is the State's position that, if a  
3 defendant wants to offer evidence that a third party  
4 or parties might be responsible for the crime, that  
5 the only way they can do that is if they provide  
6 motive plus opportunity and a direct connection to  
7 the crime, or is the State's position that, well,  
8 there's still this legitimate tendency test, but  
9 they have to -- if they are not going to use motive,  
10 they have to do -- show opportunity and direct  
11 connection?

12 ATTORNEY FALLON: Under **Denny**, they have to  
13 establish all three. Now, I want to address, if I  
14 may, because I think this dovetails into the point  
15 you are making --

16 THE COURT: Okay.

17 ATTORNEY FALLON: -- your request if **Denny**  
18 doesn't apply, then what do we apply.

I think counsel is correct, 904.01, .02,  
and .03 analysis is the analysis that would be  
the fall back position to determine the  
admissibility of this evidence. Then I would  
invite the Court to look at the evidence under  
that analytical framework as well.

Because, quite frankly, it's

1                   inadmissible under that framework, and here's  
2                   why. Relevance, as I mentioned earlier, has two  
3                   facets. First is whether the evidence relates to  
4                   a fact or proposition that is of consequence, and  
5                   why that may be met here.

6                   The second consideration for relevance  
7                   is what we all learned in law school years ago as  
8                   the materiality component of our relevant  
9                   statute. And that is whether the other act  
10                  evidence -- or not just other acts, excuse me,  
11                  whether the evidence has a tendency to make a  
12                  consequential fact more probable or less  
13                  probable.

14                  The fact that, for instance, Robert  
15                  Fabian was on a rabbit hunt with a .22, the fact  
16                  that there was a golf cart that was found rather  
17                  interesting by one of the cadaver dogs, the fact  
18                  that there was smoke in the middle of the salvage  
19                  yard as opposed to the far corner up on the upper  
20                  right side, great.

21                  But how does that really make a  
22                  consequence here, the consequence of fact more or  
23                  less probable. And even if you were to accept  
24                  the establishment of that second facet of  
25                  relevance, you still must then evaluate whether

1           the probity, the strength -- and this is where  
2           counsel misreads **Holmes**, and I think the Court  
3           happily noted that -- where you do consider the  
4           strength of what's being discussed here.

5           So is the probative value substantially  
6           outweighed by the prejudicial effect, by the  
7           confusion of issues, the potential of the jury  
8           being misled, undue time considerations, and  
9           things of that sort. And even in a 904.03  
10          balancing test, everyone of those individuals  
11          mentioned in the statement on third party  
12          liability fails to meet that standard, admittedly  
13          a lower standard of admissibility as well.

14          Because they -- I strongly challenge  
15          whether they meet that second facet of relevance,  
16          the old materiality. And even if they did, the  
17          probative value under all of the evidence known  
18          here is substantially outweighed by the  
19          prejudicial effect. Thank you.

20          THE COURT: All right. Let 's take a lunch  
21          break and then we'll come back and I will hear  
22          argument on the other issues. I'm in my office for  
23          lunch, so I will defer to counsel; how much time do  
24          you want?

25          ATTORNEY STRANG: Forty-five minutes to an

1 hour.

2 THE COURT: 1:15, does that work.

3 ATTORNEY FALLON: Sure.

4 THE COURT: See you at 1:15.

5 (Noon recess taken.)

6 THE COURT: At this time we are back on the  
7 record. All counsel and the defendant are present  
8 in the courtroom. When we left off before lunch the  
9 Court finished hearing argument on the third party  
10 evidence issue, that is, the **Denny** motion. Counsel,  
11 I'm not sure whether, next, it pays to take up the  
12 wrongful conviction issue or the planted blood issue  
13 first.

14 ATTORNEY FALLON: We would prefer to take  
15 the blood vial issue, the planted blood issue.

16 THE COURT: Any objection from the defense?

17 ATTORNEY BUTING: No.

18 THE COURT: Very well. I will hear from  
19 the defense first then. Who will be presenting this  
20 matter? Mr. Buting?

21 ATTORNEY BUTING: Yes.

22 THE COURT: Very well, you may proceed.

23 ATTORNEY BUTING: Like Mr. Strang said, we  
24 have pretty thoroughly set this forth in the written  
25 submission, so I don't want to repeat everything in

1 there, but I do want to point out a few things.

2 First, the **Richardson** case. I think we  
3 need to recognize and distinguish it a little bit  
4 from what we have here. And I understand I think  
5 the -- why that case was decided the way it was.

6 There's a very big difference between  
7 that case and this. That was a direct evidence  
8 case. There was a victim, or alleged victim, at  
9 the time, saying Mr. Richardson had sex with me,  
10 or raped me. He denied it. But balance -- And  
11 offered a convoluted argument of a frame-up that  
12 was collateral in part because he was two steps  
13 removed from the victim. Wasn't just the victim,  
14 wasn't just the victim's mother, it was his  
15 ex-wife who supposedly then got the victim's  
16 mother and the victim to frame him.

17 What the Court noted as the frame-up  
18 evidence, when it came to the question of  
19 probative value, how it had little probative  
20 value, they balanced it against the fact that he  
21 says, I didn't have sex with her, period.

22 Yet his semen was there. Her  
23 underclothes were found there. The injuries,  
24 significant injuries, torn hymen and what not.  
25 Which his frame-up evidence did not go to explain

1           any of. Wasn't like he was saying she, you know,  
2           deliberately injured herself, tore her hymen, did  
3           all this kind of stuff. His frame-up evidence  
4           did not go to explain away any of that evidence.

5           Now, this case, on the other hand, is a  
6           circumstantial case. There is no direct evidence  
7           that Mr. Avery committed this crime. Here, the  
8           proffered evidence does offer an explanation for  
9           some of the circumstantial evidence, directly.  
10          And I can just hear it right now, if this blood  
11          evidence is not allowed in, the prosecution is  
12          going to get up in their closing argument and  
13          they are going to say, no matter what doubt the  
14          defense may have raised about this, or that, or  
15          these other pieces of evidence, the bottom line  
16          is his blood was in her car. And that kills him.  
17          He said he was never in her car, his blood was in  
18          her car.

19          We will be standing there with our hands  
20          completely tied behind our back, unable to defend  
21          against the underlying accusation in this case,  
22          without this evidence. That's why, in this case,  
23          it goes directly to the heart of the right to  
24          present -- the constitutional right to present a  
25          defense.

1                   If this is -- Frankly, if we are not  
2                   allowed to do this, I think this case is going to  
3                   be reversed. Because there is no other way that  
4                   Mr. Avery can adequately defend himself against  
5                   these allegations, allegations that he made from  
6                   the very beginning of this case. I think even  
7                   before he was arrested, or certainly -- must have  
8                   been before he was arrested, because he was  
9                   saying it to the television camera, if my blood  
10                  is in that car, or my DNA is in that car, it was  
11                  planted, because I didn't go in that car. That's  
12                  the first point I want to make.

13                  Second point, I want to clear up  
14                  something here, because the State wants to link,  
15                  merge, **Denny** and **Richardson** in this case because  
16                  of the blood planting defense. And that's partly  
17                  because I think they wrongly assume that if the  
18                  police planted the blood, necessarily they also  
19                  murdered Teresa Halbach.

20                  And that does not follow logically and  
21                  it does not necessarily follow with the defense  
22                  that can be offered. Mr. Avery has never said  
23                  that. He is entitled to let the jury consider  
24                  that some other unknown individual may have  
25                  committed this murder and that the police are

1                   opportunistic and took the opportunity that was  
2                   presented to frame him, which thereby totally  
3                   destroyed his civil claim against them.

4                   That's why, for instance, it's entirely  
5                   unnecessary, therefore, for us to show that one  
6                   or more police officers had a motive to kill  
7                   Teresa Halbach. Because they are separate, what  
8                   the pleadings demonstrate is a motive to frame  
9                   Mr. Avery, and an opportunity to do it as well.

10                  So when they -- when they talk about --  
11                  Recognized, by the way, not being a civil case,  
12                  we don't have the opportunity to do depositions,  
13                  to question all of these officers ahead of time  
14                  and present, perhaps, as clear and thorough and  
15                  airtight an offer of proof as you would in a  
16                  civil case.

17                  These are police officers that, if they  
18                  were involved, necessarily, have covered their  
19                  tracks in a way that we have not been able to  
20                  pierce yet. Some more may come out at trial and  
21                  should come out at trial.

22                  But at this point we're limited by the  
23                  fact that how is any defendant going to ever  
24                  prove a direct connection saying that a witness  
25                  saw Lieutenant Lenk, or Sergeant Colborn, or

1 anyone else, take that vial of blood and put it.  
2 You know, it's almost impossible to expect in any  
3 case, a defendant being able to do that. The  
4 police control the scene, they control the  
5 evidence, they control the documentation of that  
6 evidence, the written documents.

7 Despite all that, I think we have  
8 already shown they slipped up and that there are  
9 indications that a reasonable jury has a right to  
10 hear, and look at, and consider when we're  
11 talking about whether there's a reasonable doubt  
12 that Mr. Avery committed this offense. And if  
13 there's --

14 And logically, if he says there's no way  
15 his blood could be in there, in that car, because  
16 he was never in the car, and his blood is found  
17 there, if he -- if evidence shows that there's an  
18 explanation that someone else put it there, then  
19 that also would tend to indicate at least a  
20 reasonable doubt about whether he committed the  
21 crime itself. Because it pulls the rug out from  
22 under one of the major pillars of the State's  
23 case and challenges the credibility and the  
24 reliability of everything else that they have  
25 brought up to try and point the finger against

1 Mr. Steven Avery.

2 The one thing that I want to say,  
3 though, about **Holmes**, **South Carolina vs. Holmes**,  
4 it's not that we're saying that **Holmes** overrules  
5 **Denny**, or that **Holmes** even overrules **Richardson**.

6 But there is one aspect of **Richardson** though,  
7 that may no longer survive, and that is, the  
8 whole idea that -- that you can -- that you weigh  
9 the strength of the State's case against the  
10 proffered evidence from the defense.

11 And in that case -- That's why I'm  
12 saying -- That case, by the way, has never been  
13 cited, as far as I could tell, by any other case  
14 authority in the country, since it was decided.  
15 And I think it's because it's a narrow case on  
16 those narrow facts.

17 But the analysis that they went through  
18 and that I went through earlier here, about how,  
19 yeah, he says he was framed by this girl, not by  
20 the girl or her mother, but by his ex-wife  
21 putting them all up to it, they didn't balance  
22 that say, well, let's look at that, but besides  
23 the fact there is semen, there's her bedclothes,  
24 there's the injuries, and ultimately they said --  
25 the analysis, as I see it, is that they said that

1 that outweighed the defense.

2           That's what I think **Holmes** says you can  
3 not do. **Holmes** says you have to look at the  
4 proffered defense evidence separate from the  
5 State's evidence. And at page 10 of the slip  
6 opinion, this really is the second to the last --  
7 or third to the last paragraph of the whole  
8 decision.

9           What they point out is, quote, just  
10 because the prosecution evidence, if credited,  
11 would provide strong support for a guilty  
12 verdict, it does not follow that evidence of  
13 third party guilt has only a weak, logical  
14 connection to the central issues in the case.

15          And where the credibility of the  
16 prosecution's witnesses or the reliability of its  
17 evidence is not conceded, the strength of the  
18 prosecution's case cannot be assessed without  
19 making the sort of factual findings that have  
20 traditionally been reserved for the trier of fact  
21 and that South Carolina did not purport to make  
22 in this case. I think we may fall into a similar  
23 trap here if we start trying to balance too much  
24 what the State's forensic evidence is versus  
25 Mr. Avery's in this case.

1                   But let me turn to some of the so-called  
2                   facts that the State has now presented in their  
3                   response. These facts, a number of them are  
4                   disputed and, therefore, the fact finder in  
5                   disputed facts should be the jury not the court,  
6                   because they go directly to Mr. Avery's right --  
7                   to the heart of his right to present a defense.

8                   For instance, Paragraph 5, Page 2, of  
9                   the State's response says that, Lenk placed  
10                  himself on duty at approximately noon, and  
11                  approximately 2:00 p.m. he arrived on the scene.  
12                  Well, right away, that's directly contradicted by  
13                  sworn testimony from Lieutenant Lenk that he  
14                  arrived at the property at 6:30 or 7:00. Lenk  
15                  never filed a report of those, his activities or  
16                  whereabouts.

17                  They have, as yet, produced no work  
18                  records of his. We did receive, however, some --  
19                  and by the way, some of the documents that we  
20                  have asked for in the **Brady** motion, should not be  
21                  implied to mean that -- that there isn't already  
22                  significant evidence that supports the arguments  
23                  we're making. We want to make sure there is  
24                  nothing else out there that would make it even  
25                  stronger.

1                   But we do have reports that Deputy  
2                   Inspector Schetter made showing the hours that  
3                   every officer worked on that day and what their  
4                   duties were. And that's what we put in our  
5                   proffer here. Lenk says he works 10 hours. We  
6                   also have logs that show when officers signed in  
7                   and signed out.

8                   And that goes to the Paragraph No. 6 in  
9                   Mr. Fallon's response, that a logbook is created  
10                  to account for the comings and goings of law  
11                  officers and others. Well, I would add, except  
12                  for Mr. Lenk. Because, according to the log  
13                  book, he never arrived at the scene of the Alvery  
14                  (sic) Salvage. And yet we know he was there  
15                  because they do show that he left.

16                  A reasonable inference that a jury, and  
17                  only a jury, should make is that he somehow snuck  
18                  in unnoticed. He was able to bypass that. And  
19                  if he was able to bypass that perimeter, or  
20                  whatever it was, then what else could he have  
21                  been able to bypass without there being  
22                  documentation.

23                  It doesn't necessarily require a huge  
24                  conspiracy of the entire police department. He  
25                  may have -- You know, the person who's the guard

1 who's checking people in in the logs, may or may  
2 not have been involved in this at all. If he was  
3 able to bypass that guard, he may well have been  
4 able to get to the vehicle.

5 These are factual contradictions,  
6 factual contradictions. They are not pure  
7 speculation, as Mr. Fallon would argue. He was  
8 there, but he never checked in. He said he  
9 worked 10 hours, but the only record of his work  
10 is, according to his testimony, four hours at  
11 most, 6:30 to 7:00 is when he arrived, I think he  
12 said under oath. And he left at 10:40.

13 Now, the State is perfectly free to  
14 explain to the jury, if they can, these factual  
15 contradictions away. But Mr. Avery is equally  
16 free to argue these factual contradictions to the  
17 jury in the way that he sees fit and that they  
18 fit and support his theory of defense.

19 Another fact, so-called fact, mentioned  
20 I believe in Paragraph 14, is that the DNA  
21 profile obtained from the key to the SUV was not  
22 blood, but another biological source. Well,  
23 actually, I don't believe that's been ruled out,  
24 according to the preliminary hearing testimony,  
25 because there was never a presumptive test done

1 on the key.

2 Visually, she didn't see it, but she  
3 swabbed it immediately for DNA. If all blood  
4 could be seen visually, there would be no reason  
5 for doing presumptive tests. So we don't know  
6 whether the source of his DNA at that point, on  
7 the key, could have been from the blood or not.

8 More importantly the blood is found in  
9 his house, where they had four days to obtain  
10 plenty of sources of his own DNA. It is not  
11 unusual to find someone's own DNA in their own  
12 house. It's all over the place. And on top of  
13 that, they have specific DNA samples from him,  
14 buccal swabs, in not just the Clerk's Office, but  
15 in the Manitowoc County Sheriff's Department,  
16 from prior DNA exoneration efforts. And that was  
17 verified by their own investigation.

18 Paragraph No. 14 in the so-called facts  
19 claims that this Marlene Kraintswood (sic)  
20 testified, as she's the phlebotomist, and that  
21 she drew the blood sample and that she was the  
22 one that put the hole in the tube top. Well, we  
23 have seen no such report. And his response  
24 earlier was, we don't have to show all of our  
25 cards. This is like in the nature of a rebuttal

1                   witness is what I'm assuming, he has got the  
2                   report.

3                   We have seen the interviews of everybody  
4                   else in the links of these, no pun intended -- of  
5                   this chain. But there's no report of this nurse.  
6                   Now, he may say they don't have to show all their  
7                   cards, but that's exactly what they are trying to  
8                   get the defense to do, number one.

9                   And number two, he can't put these facts  
10                  in here and make averments to the Court that they  
11                  are facts, if he is not even going to turn over  
12                  any reports that support it, to the defense. And  
13                  we have seen nothing of that.

14                  More importantly, the tube top was not  
15                  sealed. And we said that right in our papers, in  
16                  our moving papers, that the hole there is only  
17                  one of several ways that the blood could have  
18                  been taken. Whether the hole was put there, or  
19                  used -- an existing hole was used by inserting a  
20                  needle to withdraw it, or even more likely the  
21                  top is just pulled right off and blood, whatever  
22                  they need is taken out. Because it was unsecured  
23                  and there really would not even have been a need  
24                  to use a needle, you just pull the top right off.

25                  Paragraph 17, and this is an example of

1           how all of these so-called facts are jury  
2           questions that only a jury can decide. Moreover,  
3           testimony would reveal that neither Lenk, nor  
4           Sergeant Colborn, or anyone else associated with  
5           the wrongful conviction lawsuit entered the SUV  
6           on Saturday, November 5th.

7           Oh. Okay. So that's it. That's the  
8           end of the question, huh? We're just supposed to  
9           accept that and walk away and go home and say,  
10          Lenk is now saying that, that's all we need.  
11          Please, that is for a jury to decide. Lenk's  
12          credibility is already in question because he's  
13          been caught in inconsistencies under oath at  
14          best, perjury at best, for the defense  
15          perspective.

16          And the same that goes to their claim  
17          later that Lenk did no more than just prepare  
18          transmittal paper work. Again, that's what we're  
19          supposed to believe and just accept as a given  
20          fact instead of letting the jury know.

21          In essence, what they want us to do is  
22          just assume that it's a mere coincidence that  
23          Lenk is on these documents in 2002; that he's  
24          deposed as a witness in a civil case three weeks  
25          earlier; that he volunteers to search the

1 defendant's home, after his superiors have  
2 already determined there is a conflict of  
3 interest and with his department's involvement  
4 because of that very same lawsuit.

5 He doesn't tell, neither does Colborn,  
6 the new superior officers that he was a witness  
7 and involved in that case. He finds this magic  
8 key in plain view, when no else could, and he's  
9 still involved in the case, five months later, in  
10 March, after the Brendan Dassey so-called  
11 confession, when the bullet is found.

12 Now, we don't know, and I don't want to  
13 leave the Court with the impression that the only  
14 explanation is that Mr. Lenk planted that bullet  
15 there; we don't know that. There are other  
16 explanations, including one that it wasn't even  
17 her DNA on that bullet.

18 Because the evidence will also show that  
19 the DNA analysis of that bullet was flawed in  
20 that the control failed and included the  
21 analyst's own DNA, which by protocol means the  
22 test gets thrown out. But she applied for a  
23 deviation from that protocol in order to make the  
24 call.

25 And the evidence will also show that

1           that is the only time in her career she's ever  
2           even asked to deviate from a protocol. Again,  
3           those are questions that a jury is going to have  
4           to decide and the jury will hear.

5           So, really, what it comes down to is, it  
6           seems to me, the State is arguing that -- they  
7           are conceding that it's material, and it's  
8           relevant, that it's probative. But that really  
9           what it comes down to is that this is a waste of  
10          time, this is a confusion, there's unfair  
11          prejudice.

12          The unfair prejudice thing, let me just  
13          respond briefly to, since we are in closed  
14          hearing, we can talk about these inmate  
15          statements. They claim, well, the inmate -- the  
16          Court has already ruled these inmate statements  
17          to be inadmissible and that somehow they are  
18          prejudiced by that.

19          When, in fact, if they think that that  
20          is so critical to their case, that those  
21          statements are so important, they have an appeal,  
22          as of right, that they could have taken, or still  
23          could, under 974.05, **State vs. Eichmann**, which  
24          says that a -- an order that bars admission of  
25          evidence that, quote, might normally be

1 determinative to the success of the prosecution,  
2 gives them an automatic right to an appeal. And  
3 they haven't done that.

4 And the case also says that it's -- they  
5 give the State so much authority and discretion  
6 that they are the one -- the prosecution is the  
7 one to make the determination of whether the  
8 evidence that is excluded is that important to  
9 them or not.

10 So to argue that this somehow has  
11 prejudiced them so much, when they have other  
12 remedies, is really an auspicious argument. So  
13 it comes down to the confusion and delay, which  
14 is the last argument that they make, which is  
15 really a 904.03 argument.

16 And they argue that so much time is  
17 going to be taken up by the defense. Well, we  
18 just saw a calendar here that shows -- I don't  
19 remember how many days for the State's case, but  
20 basically four weeks, but only -- I'm sorry --  
21 with five days projected for the defense. As if  
22 any evidence that goes -- that would tend to  
23 indicate Mr. Avery is not guilty is somehow a  
24 waste of time. That's absurd.

25 They claim there would be an endless

1                   parade of witnesses. Well -- And that they would  
2                   be forced to present and hour by hour accounting  
3                   for Lieutenant Lenk and Colborn, or whatever.

4                   First of all, the State, in particular  
5                   those Manitowoc officers, put themselves in that  
6                   position. They chose to remain involved in this  
7                   investigation when it was obvious to everybody  
8                   else that they shouldn't be; not only on that  
9                   day, but even five months later, when Lenk is at  
10                  the scene again, still involved. It's a conflict  
11                  of interest. It demonstrates their bias and bias  
12                  is not a collateral matter, particularly when  
13                  it's this critical to the defense, and it's never  
14                  a waste of time.

15                  I disagree that every witness they  
16                  discuss in here has to testify and that that's  
17                  going to take forever. At some point they may --  
18                  We don't need to offer them, if they feel like  
19                  they need to, if they think that interviewing  
20                  witnesses 15 months later, when they could have  
21                  done it right away, that relying on 15 year old  
22                  -- 15 month old memories is probative, so be it.  
23                  It would be their choice to waste the jury's  
24                  time, not ours.

25                  So, for all of those reasons, I think

1           the defense has presented a very strong case of  
2           the importance, relevance, and, indeed, necessity  
3           that this blood vial evidence be introduced or  
4           presented in this case. So we oppose the State's  
5           motion to exclude.

6           If the Court has questions about, again,  
7           feel free to just throw them at me here if there  
8           is some legal issues or questions.

9           THE COURT: What is the defense's version  
10          of when the blood would have been taken from the  
11          Clerk's Office? Is it between --

12          ATTORNEY STRANG: It's not two years like  
13          the Court I think at one point -- or what Mr. Fallon  
14          argues something about from September 2003. We're  
15          not going to be offering that as, like, somehow  
16          these officers took a sample of his blood two years  
17          earlier and just hung on to it until the  
18          opportunity. I can't completely rule that out, but  
19          I think the most likely scenario is going to be that  
20          it was after Teresa Halbach's disappearance,  
21          probably after Teresa Halbach's disappearance was  
22          reported, which narrows it even more. But again --

23          THE COURT: So sometime between 10/31 and  
24          November, is it the 5th?

25          ATTORNEY BUTING: Yes, November 5th.

1                   ATTORNEY FALLON: Actually, she's reported  
2 missing on the 3rd.

3                   THE COURT: Okay.

4                   ATTORNEY FALLON: But last seen on the  
5 31st.

6                   THE COURT: Okay. So, November 3rd and  
7 November 5th. And I think there was -- and this may  
8 have been touched on this morning, the idea of who  
9 would have committed the crime and whether or not  
10 anyone from the Manitowoc County Sheriff's  
11 Department would have been committed -- or would  
12 have been involved in the commission of the  
13 homicide. That is not a part of the State's -- or  
14 the defense theory. Or I don't want to put words in  
15 your mouth; what is the theory?

16                  ATTORNEY BUTING: I think if we were going  
17 to argue that -- Well, probably -- probably the only  
18 ones that would fit that scenario would be Lenk and  
19 Colborn, because we think there's motive. At least  
20 there's bias. If that's strong enough motive to  
21 also involve killing. This is not going to be a  
22 primary defense that's offered.

23                  I think that -- I can't rule out that a  
24 jury could consider it, but they had opportunity  
25 because -- well, we don't know if they had

opportunity. We haven't determined exactly what they were doing on the 31st. That may be ruled out simply by producing the documents that we requested back on December 15th, I believe. They may have alibis for the actual crime itself. And so that may not even be an issue that the jury could even speculate on. It's more likely, frankly, that there are -- that these are independent events.

THE COURT: All right. I mean, I -- to leave even open the possibility that it would be alleged that either Lenk or Colborn were involved, the -- I mean, the argument would be that somehow because they were employees of the Manitowoc County Sheriff's Department, and the Manitowoc County Sheriff's Department was being sued by Mr. Avery for a claim that is, near as I understand it, was covered by insurance, I don't know what the limits on the policy might have been, but that either Lenk or Colborn felt they had a sufficient stake in that that would have been a motive for them to kill Teresa Halbach for the opportunity to frame Steven Avery?

ATTORNEY BUTING: Probably not. Very, very likely not. And my only hesitation in saying that

1           is, because I just don't know what they did or where  
2           they were on October 31st, even though we asked for  
3           it over a month ago. But unless we could show some  
4           connection, I mean I think in that instant you would  
5           have to satisfy **Denny**, and we don't have a  
6           connection of them to the scene.

7           But in any event, I think the motive is  
8           not a motive to kill. I think the motive is a  
9           motive to frame. And that's why the defense is  
10          coupled with not just the planting of the blood  
11          theory of defense, but also the investigative  
12          bias that ignored other likely suspects, to the  
13          point where they were getting preferential  
14          treatment in the case of Chuck Avery.

15          But also, the -- recognize that on  
16          November 5th, before the body had been found,  
17          when all they have is a vehicle with some blood  
18          in it -- in fact, at that point they didn't even  
19          have that, because nobody at the scene -- that's  
20          another important thing, none of the cops who  
21          originally arrived at the scene saw any blood in  
22          it, inside the RAV. It was broad daylight on a  
23          sunny -- maybe not sunny, but broad daylight on a  
24          Saturday morning, 11 a.m.

25           They have got flashlights with them and

1           they are looking in the car as well. They are  
2           able to see little pieces of paper with her name  
3           on it. They are able to see all this stuff and  
4           they don't see a piece -- a splotch of blood  
5           right on the ignition, where they were looking  
6           and shining around the whole dash area looking  
7           for the VIN number. That's very questionable.

8           But even without seeing all of that,  
9           when they go to apply for a warrant, search  
10          warrant, they are swearing under oath that they  
11          think there is probable cause to believe evidence  
12          of a crime, including homicide, occurred. So for  
13          whatever reason, whether they were involved in  
14          it, or perhaps more likely they know how these  
15          things turn out and they had enough at that point  
16          to realize that's where this was going, in all  
17          likelihood. I think that's the more likely  
18          scenario, but.

19           THE COURT: The -- I indicated to counsel  
20          when we were talking about setting up this hearing  
21          today, in terms of scheduling, that one matter that  
22          I -- concerned me was the question of whether bias  
23          evidence had to be related to a particular witness,  
24          or that whether or not there was some argument that  
25          bias could be imputed to an entire, in this case,

1 Sheriff's Department. Anything from the defense on  
2 that issue?

3 ATTORNEY BUTING: Mr. Strang is going to  
4 take on that issue, your Honor.

5 ATTORNEY STRANG: Only because I'm the one  
6 who took a look at that, your Honor, and to me the  
7 bottom line is that evidence of bias adduced on  
8 cross-examination, or conceivably extrinsic evidence  
9 of bias, is related to an individual witness. You  
10 know, it's the witness' bias that is relevant and  
11 important to a jury in assessing the witness'  
12 credibility at trial.

13 That said, one of the biases that we can  
14 have as human beings is, of course, an  
15 institutional bias. It's only one of the biases  
16 that may drive us, that may tilt our behavior,  
17 our words, in one way or another.

18 Now, I didn't find anything anywhere  
19 that addressed, specifically, cross-examination  
20 of an individual witness on the question of  
21 institutional bias. But again, I wouldn't expect  
22 to find that, because the issue is bias of the  
23 individual, which may have institutional roots.  
24 And there I did find, you know, some useful sort  
25 of comment by courts, not directly on point, but

1           it helped me to think about the question of bias  
2           as it relates to an individual witness.

3           When the U.S. Supreme Court has spoken  
4           of institutional bias, when its used that term,  
5           it's most often been in the context of a re -- a  
6           re -- a conviction at trial, a reversal on  
7           appeal, or a conviction after a guilty plea and  
8           then a reversal on appeal, a remand, and then the  
9           State upping the ante, or the court upping the  
10          ante, either with additional charges on the  
11          retrial, or with a longer sentence on the  
12          retrial. And defendants then challenging that on  
13          subsequent appeal as vindictive and a denial of  
14          due process.

15          And I think the very first time the U.S.  
16          Supreme Court spoke of institutional bias was in  
17          acknowledging that its decisions putting due  
18          process limits on higher sentences after remand,  
19          or additional charges after remand. And here I'm  
20          quoting the U.S. Supreme Court, "reflected  
21          recognition by the court of the institutional  
22          bias inherent in the judicial system against the  
23          retrial of issues that already have been  
24          decided", closed quote. And that's **United States**  
25          **vs. Goodwin**, 457 U.S. 368, at page 376, decided

1                   in 1982.

2                   The other common setting, or the other  
3                   setting in which the Supreme Court has spoken of  
4                   institutional bias is considering forced  
5                   medication or competency assessments, competency  
6                   to refuse medication, for example. And the court  
7                   recognizing that often these are done at state  
8                   mental hospitals, or state institutions by  
9                   psychologists or psychiatrists employed by the  
10                  state with an interest in furthering treatment as  
11                  the doctors think is recommended. And there  
12                  could be an institutional bias there that may  
13                  color the testimony of such witnesses in favor of  
14                  forcing medication.

15                  So, you know, what that says to me is,  
16                  of course, and I started thinking about it, I  
17                  mean, all of us, to the extent we work for an  
18                  institution or within an institution, may adopt  
19                  its interests as our own biases. This is why it  
20                  is not at all uncommon or improper for the State  
21                  to ask defense expert witnesses, how much are you  
22                  being paid, who is paying you.

23                  In other words, you know, the old  
24                  biblical comment in the Gospels, His bread I eat,  
25                  His song I sing. Also fair with the defense with

1 State witnesses to establish they are employed by  
2 the same sovereign who's prosecuting a defendant.

3 In civil cases, not at all uncommon or  
4 improper for one side's expert to be asked  
5 whether he or she has ever testified for the  
6 other side in a civil conflict. A toxic tort  
7 where an epidemiologist is called, for example  
8 or, you know, whatever the example might be. A  
9 medical malpractice case in which a particular  
10 M.D. is simply known as a plaintiff's doctor or  
11 as a defense doctor.

12 And again, that gets at the issue of  
13 institutional bias. We don't enshrine that as  
14 significant in and of itself, it is just an  
15 aspect of the individual bias that one explores  
16 with any witness, or may be entitled to explore  
17 with any witness.

18 So, in its application here, the State  
19 will call them. The State will call, I predict  
20 at least in its case-in-chief, a number of  
21 Manitowoc County Sheriff's Department employees.  
22 Indeed, every significant piece of physical  
23 evidence in this case against Steven Avery was  
24 discovered first by, or had present at the time  
25 of discovery, a Manitowoc County Sheriff's

1 Department employee.

2 So we're going to hear from these  
3 people. And will it be appropriate to  
4 cross-examine them, establish their employment,  
5 establish their awareness of the lawsuit against  
6 their department, establish that they take pride  
7 in their work and that they take pride in the  
8 reputation of their department, and that they  
9 felt that pride imperiled by the allegations that  
10 their own department had embarked on a course of  
11 action that had led to a 32 year sentence for a  
12 man who didn't convict -- commit the crime of  
13 which he was convicted.

14 Yes, that is appropriate, because that  
15 officer who wears that uniform is entitled to  
16 take pride in his work, in his uniform, in his  
17 department. And is entitled, I guess, in a  
18 sense, he's human, to have his actions, words,  
19 thoughts, affected subtly, perhaps even  
20 subconsciously, by his own human biases. We all  
21 have these. And that's why it's so important for  
22 bias to be explored. It's not a dirty word in  
23 the end, but it is essential for neutral fact  
24 finders in weighing sometimes difficult nuances  
25 of credibility.

1                   Now, as to some Manitowoc County  
2 Sheriff's Department employees, they had been  
3 pulled in directly to the civil lawsuit. They  
4 knew because the depositions were focused, in  
5 main, on their actions in prolonging the  
6 imprisonment of Steven Avery beyond 1995 or 1996.

7                   They knew by virtue of the deposition  
8 that their personal reputation was at stake, that  
9 their personal actions were under scrutiny, and  
10 that regardless of insurance coverage and what  
11 insurer had what layer, or whether there was a  
12 self-insured layer in there, or what the limits  
13 of the top layer of policy coverage were;  
14 regardless of all of that, do you think for a  
15 moment that a Lieutenant Lenk or a Sergeant  
16 Colborn wouldn't consider the fact that his  
17 personal ambitions for promotion, or for  
18 retaining his rank, or perhaps political  
19 ambitions, and low and behold in the fall of  
20 2006, Sergeant Colborn threw in his hat and ran  
21 for sheriff in this county; do you think for a  
22 moment they didn't consider the possibility that  
23 their interests were affected by the actions of  
24 their department at issue in that lawsuit and  
25 potentially by their own personal actions being

1                   called into question, regardless of how  
2                   defensible they may have thought their own  
3                   actions were?

4                   Of course not. It is information that  
5                   bears on bias. Does it have institutional  
6                   aspects, sure. It also has highly individual  
7                   aspects to it. And so that that's why I sort of  
8                   abjure the idea of adjectives in front of the  
9                   word bias, in the sense that it's bias that we  
10                  would be exploring. And, yes, it is linked to an  
11                  individual witness.

12                  We do not propose to come in and offer  
13                  evidence in the abstract simply to establish that  
14                  a department was biased and, therefore, every  
15                  member of it was biased. This is perhaps subtle,  
16                  but we may well, though, be entitled to explore  
17                  an individual witness' identification with his  
18                  department, identification with its reputation,  
19                  sense of his own reputation being at stake, or  
20                  his own actions being attacked, called into  
21                  question.

22                  And it would not be conceivably out of  
23                  line here to recall, for the Court to recall,  
24                  that on the witness stand on July 5, 2006, the  
25                  former sheriff of Manitowoc County revealed

1                   himself to be perhaps the last person in the  
2                   world, who's heard of Steven Avery, who's not yet  
3                   ready to accept that Mr. Avery was innocent of  
4                   the crime for which he was convicted, a rape for  
5                   which he was convicted of 1985. Page 7 of the  
6                   July 5, 2006 transcript -- and it sticks out with  
7                   me because I remember watching the Court's  
8                   reaction --

9                   THE COURT: I recall the answer.

10                  ATTORNEY STRANG: -- and my own at the  
11                  time. Would it be strange that a department headed  
12                  by a man who held that attitude might be affected by  
13                  that attitude in the hierarchy down the line? It  
14                  would not. Doesn't mean we get to go on at, you  
15                  know, to our heart's content, or forever, about  
16                  Sheriff Kenneth Peterson. I'm not suggesting that  
17                  necessarily comes in at all.

18                  But I am suggesting that where we work,  
19                  and what we do, and the things we commit our life  
20                  to, create in us biases that might be described  
21                  in part as institutional biases, just as the  
22                  United States Supreme Court has, and that these  
23                  are among the sources of bias, that it's  
24                  entirely appropriate for the defense to explore,  
25                  in a criminal case, and for the State to explore,

1 if the defendant elects to offer a defense  
2 case-in-chief himself.

3 THE COURT: All right. Let me ask,  
4 somewhat as a follow up to that, in terms of the  
5 defense offer to get the blood vial evidence in and  
6 the argument that the defense would make, do I  
7 understand it to be that, in considering what the  
8 defense feels is the bias of the witnesses and the  
9 opportunity and everything else, that it's Lenk and  
10 Colborn that are the subjects, if you will, of the  
11 defense claim?

12 ATTORNEY STRANG: Yes, and they may -- Yes,  
13 and we don't know that they necessarily would have  
14 acted directly. What we do know is that at the  
15 relevant time, James Lenk was not just a lieutenant,  
16 but as I understand it, the head of the detective  
17 bureau. So he's a person of brass, of rank in the  
18 department. And Andrew Colborn, of course, was a  
19 sergeant, albeit in the road patrol division, if I  
20 recall it, in November of 2005.

21 Do I know whether they directly acted,  
22 or whether by virtue of familiarity in rank  
23 within the department they may have known where  
24 to get a master key, or been able to ask someone  
25 for a key, obtain one, I don't know that. But

1                   the answer remains, I think, yes, that I believe  
2                   it would be Mr. Lenk or Mr. Colborn to whom,  
3                   alternately, we would have to ascribe a plan or  
4                   an exercise to plant blood.

5                   Now, by his presence, Detective Remiker,  
6                   also is around and Mr. Lenk, Lieutenant Lenk, is  
7                   Detective Remiker's superior. However, Detective  
8                   Remiker was not deposed in the 1983 action in  
9                   federal court. And although I have not read all  
10                  the depositions, I am unaware of his conduct with  
11                  respect to the 1985 conviction of Mr. Avery ever  
12                  becoming an issue at all. It would surprise me  
13                  if it had, because I think he joins the  
14                  department even after the 1995 or 1996 telephone  
15                  call from a Brown County law enforcement agency  
16                  that is the connection of Sergeant Colborn and  
17                  Lieutenant Lenk to this civil action.

18                  So Remiker is there. He's present. He  
19                  works for Lenk. But I'm not aware of any -- any  
20                  personal connection of Detective Remiker to the  
21                  lawsuit that Mr. Avery brought against Manitowoc  
22                  County. He has only the connection of working  
23                  for the Manitowoc County Sheriff's Department  
24                  under Lieutenant Lenk's supervision, in so far as  
25                  I know.

1                   THE COURT: Who will be speaking for the  
2 State? Mr. Fallon?

3                   ATTORNEY FALLON: Yes, I will be addressing  
4 the blood vial issue and Mr. Kratz will follow up  
5 with the bias discussion on behalf of the State.

6                   With respect to the blood vial evidence,  
7 I will begin there. The only thing that I will  
8 agree with by the defense is the fact that we  
9 actually begin in the same place, with the  
10 **Richardson** case. After that, I agree with very  
11 little, if anything, represented by the defense.

12                  **Richardson**, it does need to be  
13 distinguished. And I think it is important for  
14 the Court to consider exactly what **Richardson** was  
15 about and what **Richardson** actually held.

16                  Mr. Richardson was charged with a sexual  
17 assault, five counts, and one count of false  
18 imprisonment. His theory was that his estranged  
19 wife was framing him. He based that on the fact  
20 that, again, that his estranged wife was framing  
21 him. He based it on the fact that she called his  
22 divorce attorney and said that he, being  
23 Richardson, had sex with a 14 year old girl, two  
24 days prior to the charged event.

25                  Richardson also alleged that the mother

1           of the victim talked to his estranged wife the  
2           day of the assault, that his estranged wife gave  
3           the victim's mother the phone number of the  
4           divorce attorney. The victim's mom reported the  
5           assault to the attorney. And she initially had  
6           lied about making the call until she was  
7           impeached with phone records. Those are the  
8           facts.

9                 The defendant is merging the theories of  
10              **Richardson** and frame-up evidence with the **Denny**  
11              case. Because of the nature in which the  
12              frame-up defense, the planting of evidence --  
13              because that is the frame -- the planting of  
14              evidence by the police necessarily implies the  
15              police were involved in the death, either  
16              directly or in a cover up, of the death of Teresa  
17              Halbach.

18                 There's no other reasoned inference to  
19              be drawn. As a result, I think they have to  
20              comply with both **Denny** and **Richardson**.

21                 Teresa Halbach was last seen alive on  
22              October 31st. Presumably she had Tuesday and  
23              Wednesday off, although I think she had an  
24              appointment on Wednesday. But the important fact  
25              is that she was not seen or heard from by any

1 member of her family, or anyone else, on Tuesday  
2 and Wednesday, the 1st and 2nd of November.

3 She was reported missing on November 3rd  
4 and a missing person's investigation was  
5 commenced. At approximately 10:30 a.m. on  
6 Saturday, November 5th, her car was found by  
7 volunteer searchers on the Avery property,  
8 secreted with brush and debris, in the corner of  
9 the salvage yard farthest away from the  
10 defendant's residence. The vehicle was locked.

11 Now, let's step back in time, the time  
12 about 11 years ago. The defense requires us to  
13 do that. Eleven years ago this month,  
14 defendant's blood was drawn as part of a  
15 post-conviction relief motion process. Blood was  
16 drawn at Fox Lake Institution. Marlene Kraintz,  
17 M. Kraintz, the name on the paperwork, drew the  
18 blood.

19 It was sent out for analysis by Lab  
20 Corp., analyzed and eventually returned to the  
21 Clerk of Court's Office where, as far as anyone  
22 knows, it sits until June 19th, 2002. On that  
23 day the file is examined by the former District  
24 Attorney, E. James FitzGerald, and Wendy Paul of  
25 Project Innocence and two or three others,

1                   presumably at the request, or order, of Judge  
2                   Hazlewood, the original trial judge.

3                   The box was apparently resealed with  
4                   nothing more than scotch tape at the time. At  
5                   that time the blood was not sent with the  
6                   fingernail clipping and the one unknown pubic  
7                   hair, for analysis. It remained with the Clerk  
8                   of Court.

9                   Moving forward in time, the defendant is  
10                  exonerated and released after serving an  
11                  additional 12 years in prison for a crime he did  
12                  not commit. His case generates significant  
13                  interest and publicity. Many people come and  
14                  look at his court file, freely. As counsel noted  
15                  the last time around either in person or in a  
16                  call, the public has a right to examine the facts  
17                  and circumstances. The public includes the media  
18                  and anyone else who had a interest in the case.

19                  It's within that background that we were  
20                  asked to make two assumptions. And this is where  
21                  I think the defense proffer of proof fails, and  
22                  fails miserably. We are to assume that someone,  
23                  presumably a member of the Sheriff's Department,  
24                  gained access to the Clerk of Court's office, at  
25                  a time unknown.

1                   Even today when the Court asks the  
2                   defense to narrow the time frame, they can't say  
3                   for sure that it was a 2 year window, a 26 month  
4                   window from September of '03 until the end of  
5                   October of '05. Could be, although they think  
6                   most likely between November 3rd, 4th and 5th.

7                   But someone gained access to the Clerk's  
8                   Office, as I said, at a time unknown. Presumably  
9                   after he was free, could have been before. Or  
10                  was it after the lawsuit was filed, before this  
11                  alleged bias was supposedly created, this motive.  
12                  Apparently a motive and a bias to kill an  
13                  innocent 25 year old photographer, just so they  
14                  could get back at Mr. Avery for besmirching the  
15                  reputation and integrity of the Manitowoc Police  
16                  Department.

17                  Presumably we are asked to speculate  
18                  that happened, because the two bailiffs have a  
19                  key from the Sheriff's department. Perhaps the  
20                  Sheriff has one for emergency situations as well.  
21                  But the assumption falls woefully short. The  
22                  speculation, the conjecture, falls short of  
23                  what's required for admissibility. There's no  
24                  evidence to suggest anywhere, known at this time,  
25                  that a member of the Sheriff's Department, past

1 or present, ever actually touched or handled that  
2 vial of blood. Not one shred.

3 Part two, that someone planted some of  
4 that blood in Halbach's vehicle, sometime between  
5 October 31st and November 5th, or if you like,  
6 between November 3rd and November 5th.

7 Presumably that someone is a Sheriff's officer,  
8 because it would be mighty difficult for a member  
9 of the public to wander into that property and  
10 somehow gain access to a locked vehicle under  
11 cover of debris and brush and the like and  
12 managed to plant blood.

13 The suspects, as we now have clearly  
14 revealed, are apparently Lieutenant James Lenk  
15 and Sergeant Andy Colborn. I suggested in the  
16 State's reply to their proffer, Sergeant Colborn  
17 did not even get to the property until 5, 5,  
18 5:30 that evening on November 5th. Although he  
19 certainly was on the Avery property on the 4th  
20 and 5th for the consent searches previously  
21 discussed in motions.

22 But think about this, for them to have  
23 planted the blood to frame the defendant, they  
24 would have had to have known that she was dead.  
25 How could they have known that? Steven Avery

1           could have told them. If that was the case, we  
2           wouldn't be here. Brendan Dassey could have told  
3           them. Well, that's true, but he didn't tell  
4           anybody anything of noteworthiness until  
5           March 1st.

6           Perhaps there was an anonymous tip. But  
7           we're led to believe if the blood was removed  
8           from the Clerk's Office on November 3rd or 4th,  
9           or, look, presumably in the early morning hours  
10          of the 5th, and then it somehow got from here --  
11          somehow got from here out there, and then not  
12          only did it somehow get from here to there but it  
13          somehow got inside the locked vehicle, under a  
14          guard.

15          A fact from the hearing is known and in  
16          Detective Fassbender's testimony he was  
17          responsible in his efforts to cover the vehicle.  
18          Later in that afternoon the vehicle was finally  
19          removed by Crime Lab personnel at 8:42 p.m.

20          Crime Lab personnel arrived at 4:00 p.m.  
21          and were attending back and forth. They didn't  
22          stay with the vehicle. I think the testimony was  
23          they weren't constantly there. But the Crime Lab  
24          people, the field response unit arrived around  
25          4:00 and did a number of things. Chiefly among

1                   them was to take care of this vehicle.

2                   So presumably someone went in there and  
3                   planted the blood. You will recall the  
4                   testimony, I believe, and the information that's  
5                   been provided, that the vehicle was not opened  
6                   until the next day, at the Crime Lab, where it  
7                   was then processed in Madison, not in Manitowoc.

8                   So assuming that someone could have  
9                   got -- Well, we're led to make two assumptions:  
10                  Law enforcement found that vehicle on the 3rd or  
11                  4th and got it into it then, or they got into it  
12                  on the 5th. How did they do that? And if they  
13                  got in on the 3rd or the 4th, or the morning of  
14                  the 5th, then it stands to reason that they would  
15                  have had to have known that she was dead.

16                  Example, if that's the case, then is the  
17                  other evidence planted as well, the cell phone,  
18                  the palm pilot, the camera. Apparently we were  
19                  led to believe that Lieutenant Lenk planted the  
20                  key. And just because Lieutenant Lenk was  
21                  apparently on the property during the execution  
22                  of the March search warrant, he must have planted  
23                  the blood fragment too, the fragment with the  
24                  victim's DNA.

25                  Well, I can assure you there's only one

1 way that could have happened. You don't have a  
2 bullet fragment with Teresa Halbach's DNA on it  
3 unless you killed her. The fact that this is  
4 suggested is nothing short of preposterous and  
5 outrageous. We're not a court of law. Were we  
6 not dealing with pleadings regarding a man's  
7 defense on a charge of murder, we'd be dealing  
8 with a claim of slander and libel.

9                   Teresa Halbach's remains were not  
10 recovered until November 8th. And they were not  
11 sure. They knew -- they had a pretty good idea  
12 they were human bones on November 8th. And it's  
13 probably a reasoned inference that it was Teresa  
14 Halbach. But the identification that it was  
15 Teresa Halbach was a couple of days after that.

16                   So, it seems to me, if you are going to  
17 blame somebody for a crime, then you better damn  
18 well know a crime was committed. You can't frame  
19 somebody for a crime unless you know the crime  
20 was committed. And how do they know the crime  
21 was committed on the 3rd, or 4th, or 5th unless  
22 they did it, or unless they assisted in covering  
23 it up.

24                   Maybe they helped Brendan Dassey. But  
25 that, necessarily, by implication, implies law

1 enforcement's involvement in her death. And if  
2 that's the case, then **Denny** applies, because  
3 that's third party liability, somebody else did  
4 it. I want the evidence. Show me the evidence  
5 that Lenk and Colborn were responsible for the  
6 death of Teresa Halbach, before you got in here  
7 and have the nerve, the unmitigated gall to get  
8 up here and suggest that they were responsible  
9 for her death, by implication.

10 That's the distinction between  
11 Richardson and our case. Richardson did not  
12 suggest -- Richardson's frame-up theory did not  
13 imply that the victim's mother committed the  
14 assault. It did not imply that his estranged  
15 wife committed the assault. In fact, it doesn't  
16 imply that any one necessarily committed the  
17 assault. You can make a case; although counsel  
18 alluded to some facts that I don't think were in  
19 the Supreme Court opinion, probably were in the  
20 appellate opinion, or Court of Appeals opinion.

21 But one reading of that defense, that  
22 doesn't necessarily imply that the crime occurred  
23 at all, or implied, to the contrary, that someone  
24 else did it. And if that's the case, then the  
25 analysis in **Richardson** is still a half a bubble

1 off plumb because they should have used **Scheidell**  
2 if she has all these injuries indicative of a  
3 sexual assault and yet you don't know who did it.

4 So then there was a merger of a frame-up  
5 and a **Denny** argument -- or in **Scheidell** -- excuse  
6 me -- in **Richardson**. I'm speculating because  
7 that wasn't discussed, so we can't go down that  
8 road.

9 In this case it's clear inference that  
10 the Sheriff's Department in general, and now we  
11 know Lieutenant Lenk and Sergeant Colborn in  
12 particular, are involved, we are led to believe,  
13 because of some misconceived ill-gotten theory of  
14 bias of. Mr. Kratz will address this further.  
15 But I have to mention it.

16 Even though they were not defendants in  
17 the lawsuit, they had no personal liability, they  
18 had nothing at stake. They weren't even  
19 responsible for his original conviction in the  
20 first place. They were deposed as witnesses, as  
21 I understand it, because they failed to pass on  
22 some information after the fact regarding  
23 somebody else, presumably Mr. Allen, the actual  
24 perpetrator of the crime against Penny Beerntsen.

25 But they weren't responsible for his

1           wrongful conviction. They had nothing to do with  
2           it. They weren't defendants in the action.

3           You can't frame someone for murder  
4           unless you know the murder occurred. Let's think  
5           about it. I'm going to get in there and we'll  
6           sprinkle some blood around. Have got to do this  
7           quick, got to put some blood in the CDL  
8           (phonetic), here put some on the ignition key.

9           We'll put a spot here, another spot there. We'll  
10          do four spots. I have to open the car.

11          Depending on the location of where the  
12          blood is, hope nobody will see me, or well, maybe  
13          everyone did see me. So there must be more  
14          involved. How else could you sprinkle the blood  
15          in those locations.

16          And more importantly, unless they knew  
17          Teresa Halbach was dead, how did they know that's  
18          her blood in there. Seems to me you are taking  
19          an awful chance of planting blood there, if you  
20          don't know a crime has occurred, you don't know  
21          it's her blood. Not an unreasonable inference  
22          that it's her blood, but that's a pretty good  
23          risk to take. Obstruction of justice, that's  
24          felony behavior. Misconduct in office for a  
25          police officer, tampering with evidence, the list

1           goes on and on. I'm going to risk my career over  
2           that, I think not.

3           By implication, this frame-up theory is  
4           entirely different than the frame-up theory  
5           posited in **Richardson** and it necessarily implies  
6           police involvement. Because how can you take the  
7           chance of planting something unless you know the  
8           crime occurred. And how would they know the  
9           crime occurred, unless they were coconspirators.

10          Under that analysis **Denny** does apply.  
11          And there is no motive. There's no opportunity.  
12          And there's no connection for Remiker, Colborn,  
13          Lenk, or any other member of the Manitowoc County  
14          Sheriff's Department in this crime.

15          In the alternative, if you find that the  
16          State's argument is not compelling enough, that  
17          there's a merger of a frame-up theory with the  
18          **Denny** theory, and you wish to analyze this  
19          strictly under a 904.03 analysis under  
20          **Richardson**, the State would submit that the  
21          evidence is inadmissible under that theory as  
22          well.

23          The evidence has to be relevant. And as  
24          we have discussed the last time around, relevance  
25          has two facets. It is again, in the second facet

1           of relevance, the materiality component, where  
2           this falls short. It's not material.

3           And by the way, when you are evaluating  
4           materiality of evidence, you have to look at the  
5           evidence as a whole, you know. And this is where  
6           the defense, again, continues to misread and  
7           misinterpret the holding of **Holmes vs. South**  
8           **Carolina**. You still consider all evidence. You  
9           still evaluate it in determining materiality.  
10          You still have to evaluate it in the calculus of  
11          determining the probative value and whether the  
12          probative value is substantially outweighed by  
13          prejudicial effect, waste of time, confusion,  
14          etcetera.

15          The defense fails on part two, the  
16          materiality component, that facet of  
17          demonstrating that there is a connection -- and  
18          there's that word connection -- to the case at  
19          hand, a tendency to make a consequential fact  
20          more or less probable.

21          On the third step of the **Richardson**  
22          analysis, the balancing, there is unfair  
23          prejudice with respect to the existence of that  
24          vial of blood and its admissibility. Given the  
25          time frame involved here, the Court's

1 determination that preservative testing, EDTA  
2 testing, is not reliable enough, it certainly  
3 undermines the State's ability to reply, at least  
4 in a scientific mode, if not a practical mode --  
5 and I will get to that in a moment -- as to the  
6 probability, possibility, that this blood found  
7 in the Clerk of Court's office, which we still  
8 don't know how it would have gotten from here to  
9 the crime scene, other than by speculation or  
10 conjecture, was the same type of blood, was the  
11 source of the blood at the scene.

12 With respect to the inmate statements,  
13 I'll rely on the comments in my brief. But I  
14 think they need to be reconsidered if this  
15 evidence is admitted, and reconsidered because  
16 their probative value is now increased as a  
17 retort. Because it's evidence of a bias and a  
18 motive and intent.

19 It's evidence of this crime, possessed  
20 by the defendant, long before any supposed  
21 motive, bias, or evidence existed on behalf of  
22 Lieutenant Lenk, Sergeant Colborn, or any other  
23 member of the Manitowoc County Sheriff's  
24 Department.

25 In terms of the practical considerations

1           here, it seems to me there would be a great deal  
2           of witnesses called, whether it's the  
3           groundskeeper, whether it's members of the Clerk  
4           of Court's Office. Anybody ever seen Lieutenant  
5           Lenk in the Clerk of Court's office, when did you  
6           see him, how long ago was that.

7           And I point out that there was no reason  
8           for any of that questioning. No reason for that  
9           investigative purpose until the existence of this  
10          vial of blood was revealed. There's no reason to  
11          test what was in the car for preservatives.  
12          There's no reason to test what was in the car for  
13          cellular degradation, or any other type of test  
14          one may suggest, until the vial of blood  
15          presented itself. And likewise, there was no  
16          reason to interview every member of the Clerk's  
17          Office or interview the bailiffs where now we're  
18          supposed to.

19           I think the best example of this case  
20          getting sidetracked and going down the road of  
21          confusion and unrelated issues, is their demand  
22          for disclosure of exculpatory information. It  
23          reads, for all of the reasons stated in the  
24          State's brief, we're going to be looking at work  
25          schedules for Lieutenant Lenk, Sergeant Colborn,

1 and I'm not sure if Detective Remiker has now  
2 been thrown in the mix or not.

3 We're going to be looking at  
4 disciplinary records that apparently they want us  
5 to track down. We're going to be looking at  
6 access, who had keys, what were the codes to the  
7 Clerk of Court's Office. There's a key to get in  
8 the outside door and there's a code to get  
9 behind. So, who got the codes, when they got the  
10 codes, when were the codes changed.

11 Their disclosure form is an indictment  
12 of the folly of this argument and supports the  
13 State's theory that all we're going to do is go  
14 down the wrong track, more confusion, more delay.  
15 We're going to be spending time chasing down this  
16 vial of blood.

17 How can they have got into the Clerk of  
18 Court's Office. Could they get in on Thursday  
19 morning, was it Friday do you think, or maybe it  
20 was really early Saturday and then somebody got  
21 that blood out there. Well, who had keys and how  
22 did they get in.

23 It's still -- Their offer of proof fails  
24 and it fails miserably because there's nothing  
25 other than conjecture or speculation as to who

1           got into the Clerk of Court's Office, whether the  
2         vial itself was taken and then later returned, or  
3         a portion of the vial was taken and returned.

4           And just how did they do that? Did they  
5         use a needle and syringe? Did they pop the cork?  
6         Pour a little in their own beaker and secret  
7         themselves away? In other words, they  
8         burglarized the Clerk of Court, which  
9         interestingly enough is another act. That's a  
10        felony.

11          If it's a law enforcement officer, you  
12         have got burglary. You have evidence tampering.  
13         You have got misconduct in office. You have got  
14         obstructing of justice. I'm sure when we're done  
15         with this law school quiz, I could come up with a  
16         few more charges.

17          Confusion and delay will necessarily  
18         result by the admissibility of this evidence.  
19         And as a result, this evidence must and should be  
20         excluded. Thank you. Mr. Kratz will address  
21         bias.

22          THE COURT: Okay.

23          ATTORNEY KRATZ: I did not know if you had  
24         any other questions on the issue of the blood vial  
25         itself. I think -- I think Mr. Fallon made it clear

1           that the State's position is that there is no  
2           linkage. There is no connection between the vial of  
3           blood and the blood that's in the SUV.

4           I agree with much of what Mr. Strang  
5           said regarding bias, interestingly enough, in  
6           that it is not a collateral matter. It is  
7           something, when appropriately applied, that  
8           witnesses can be impeached with.

9           And as long as we're talking about cops,  
10          let me talk about bad cops, because that's what  
11          Mr. Strang and Buting are alleging here, Judge.  
12          Again, we're not talking about negligence, or  
13          something along those lines. We're talking about  
14          criminal behavior. We're talking about  
15          malfeasance.

16          And as my memorandum to the Court  
17          suggested, that when bias is involved, like the  
18          blood vial evidence, but bias is so interrelated  
19          here, when we're talking about criminal behavior  
20          of cops, there had better be some proof. There  
21          had better be something other than Mr. Buting  
22          standing up, because apparently he can, and  
23          saying, you know what, Lieutenant Lenk planted  
24          evidence, or Sergeant Colborn planted evidence.

25          And this institutional bias, or at least

1 some version of that that Mr. Strang has  
2 attempted to apply to Lieutenant Lenk and to  
3 Sergeant Colborn, at least if their theory is to  
4 be adopted, Judge, shouldn't stop there. What,  
5 then, difference is it that Lieutenant Lenk was  
6 embarrassed by Mr. Avery's lawsuit. Why not  
7 Detective Remiker? Why not Deputy Jost? Why not  
8 members of the Clerk of Court's Office, who may  
9 have been, as county employees, embarrassed?

10 And so what **Williamson** and the other  
11 bias cases do, is they don't allow that kind of  
12 questioning unless there is evidence, evidence  
13 that can be rationally related to that particular  
14 witness.

15 I'm glad that Mr. Strang mentioned  
16 Sheriff Peterson, because by at least example,  
17 the differences between Sheriff Peterson and a  
18 bias that he may hold, if he was ever in fact  
19 going to be a witness in this case, may be  
20 appropriate to go into this wrongful conviction,  
21 or this bias against Mr. Avery.

22 But that doesn't apply to Lieutenant  
23 Lenk, doesn't apply to Sergeant Colborn. And  
24 there is no evidence that it does. Again, Lenk  
25 and Colborn, not involved in the 1985 prior

1 conviction, not involved in the lawsuit.

2 Mr. Strang suggests that they are somehow pulled  
3 into the lawsuit. The Court already knows to  
4 what extent they are involved in this civil  
5 lawsuit; that is, giving a very short deposition.

6 And so, the embarrassment as a member of  
7 the Sheriff's Department, when dealing with  
8 professional reputations, when dealing with a  
9 slur of criminal misconduct, does not raise to  
10 the level of rationally related to a particular  
11 piece of evidence.

12 If this Court, however, is going to  
13 allow some kind of evidence about the 1985  
14 wrongful conviction, I have given suggestions on  
15 the last page. There are facts that do not  
16 include the lawsuit. There are facts of the  
17 wrongful conviction itself that could be offered  
18 as bias, but certainly should apply then to  
19 Lieutenant Lenk and Sergeant Colborn and  
20 everybody else.

21 And for those, and for that reason, the  
22 State believes that when the Court looks at  
23 **Williamson**, when the Court decides whether or not  
24 it's rationally related to any of these specific  
25 witnesses, although maybe not as impassioned as

1                   Mr. Fallon, just as strenuously, Judge, I'm  
2                   asking the Court to reject this kind of evidence.

3                   As they cannot, in fact I think the  
4                   defense may even agree that they cannot, connect  
5                   it directly to either of these two witnesses as  
6                   compared to the universe of other potential  
7                   witnesses from the Sheriff's Department and  
8                   shouldn't be allowed. That's all I have got,  
9                   Judge.

10                  ATTORNEY FALLON: Your Honor, I forgot to  
11                  mention one other thing in response to the defense  
12                  and that is on their right to present a defense.  
13                  With respect to that, I think the Court is familiar  
14                  with **South Carolina vs. Holmes** in the pleadings. I  
15                  just wanted to make the Court and counsel aware of a  
16                  decision that was decided two days ago dealing with  
17                  the right to present a defense. I have a copy for  
18                  the Court, Section 5 of the **Muckerheide**,  
19                  M-u-c-k-e-r-h-e-i-d-e, case.

20                  Part 5 deals with a defense right to  
21                  present a defense. And interestingly enough  
22                  there's a discussion of **Scheidell** and other acts  
23                  evidence contained with it. So I would ask the  
24                  Court to review that as you consider counsel --  
25                  one of counsel's opening points, the right to

1 present a defense. Because, again, here's the  
2 latest and the court acknowledging that that's  
3 not a limitless right or -- and one must  
4 introduce relevant and material evidence. So,  
5 thank you.

6 THE COURT: Thank you.

7 ATTORNEY BUTING: If I could just address  
8 the last point very briefly. I haven't thoroughly  
9 read the **Muckerheide**, I think is the way you  
10 pronounce it, **Muckerheide** or **Muckerheide** decision  
11 that Mr. Fallon is referring to, but I did briefly  
12 see it when it came down a couple days ago. That's  
13 the one where the defense wanted to offer evidence  
14 from, I believe the father, that -- it was a  
15 homicide while intoxicated, the passenger was  
16 killed. Mr. Muckerheide was the driver. He argued  
17 the passenger grabbed the wheel, forced him to  
18 crash.

19 And it was the affirmative defense for a  
20 homicide while intoxicated. And he had evidence  
21 that the victim's father was going to say that  
22 the victim had also done that when he, the  
23 father, was driving and so on and so forth.  
24 Well, the one -- Very little of the case deals  
25 with the constitutional right to present a

1 defense.

2                   What it does say when it gets to that  
3 point at the very end is it points out that  
4 Muckerheide was, nevertheless, allowed to present  
5 his entire defense and to make the argument that  
6 on that occasion the defendant did in fact grab  
7 the defendant's wheel. And the only evidence  
8 they didn't hear was minimally probative evidence  
9 that on a prior occasion, with a different  
10 driver, under different circumstances, the victim  
11 had gestured toward, or grabbed the steering  
12 wheel. That's very different than what we have  
13 here, where a complete explanation for very  
14 otherwise damning circumstantial evidence would  
15 be denied.

16                   Mr. Fallon just kept pounding away like  
17 there's no way this could be unless the officers  
18 killed her. They couldn't have done this  
19 planting unless they also were the ones that did  
20 the crime. They had to have killed her. He must  
21 have said that five or six different times in  
22 their argument. And it's just plain wrong. It's  
23 just simply wrong.

24                   On November 5th, at approximately 2:00  
25 p.m., which is around the same time, by the way,

1           in their new statement of facts, or first  
2           averment of facts, they say Lenk put himself on  
3           duty or -- I'm sorry -- arrived at the salvage  
4           yard. Meanwhile, Mr. Kratz, and Wiegert, and  
5           Remiker, and I believe also the D.A. Rohrer, were  
6           all over, at the same time, at Judge Fox's home  
7           in Two Rivers, I believe, presenting an affidavit  
8           in which they swore, under oath, that they  
9           believed they would find evidence of a homicide  
10          if permitted to search the Avery property. Now,  
11          we don't presume that that sworn testimony was  
12          false, yet, nevertheless, they were investigating  
13          this case as a homicide by the time Lenk  
14          supposedly even shows up at the scene, as early  
15          as 2:00 p.m.

16           It's not necessary to show murderous  
17          intent on the part of officers. We're showing  
18          opportunistic intent.

19           Mr. Fallon got -- made a very nice,  
20          passionate closing argument here, which I'm not  
21          going to repeat, or try and outdo at this point,  
22          except to say that, fine, make that argument to  
23          the jury. He is fully entitled to do that and  
24          he's going to be required to do that because of  
25          the conduct, not because as Mr. Kratz says, Jerry

1           Buting gets up here and just says it's so.

2           I'm not the one who put myself on duty  
3           at a homicide investigation when I knew that my  
4           boss had already recused the department,  
5           supposedly, from having leadership involvement.

6           I'm not the one who volunteered to go search the  
7           primary, in fact only suspect in the police's  
8           eyes, his very residence. I'm not the one who  
9           didn't tell the Calumet people that I was  
10          subpoenaed and involved in the civil case.

11          The reason they have to do all of this  
12          is because their people put it -- put themselves  
13          in that position. And for whatever reason, if  
14          it's purely coincidence, then a jury should  
15          decide that. I don't think it is.

16          I think there's more than sufficient --  
17          Remember **Richardson** says any tendency.

18          **Richardson** doesn't even require the legitimate  
19          tendency to show this. It's any tendency. And  
20          clearly this evidence has some -- any tendency to  
21          make a consequential fact less probable here.

22          That is, the consequential fact of who killed  
23          Teresa Halbach.

24          As I said before, if the blood isn't --  
25          if somebody put the blood of Steven Avery into

1           that RAV 4, then it's more probable that he is  
2           innocent of the crime that he's charged with.

3           He would impose an impossible burden. I  
4           don't know what he expects, that we're supposed  
5           to have a video tape, present a video tape of  
6           here is the perpetrator sneaking into the Clerk's  
7           Office. Here's what key he uses, we zoom in, you  
8           can see, aha, this is the key with serial number  
9           so and so which must have been taken from such  
10           and such, and insert it into the door, and there  
11           he is, he's grabbing the video -- the vial, and  
12           here's how he's taking it out of the vial, and  
13           here's where he goes.

14           That's ridiculous. It's impossible that  
15           you could ever -- any court would expect that  
16           kind of certainty, and everything else is pure  
17           speculation. It's not speculation. There's a  
18           series, a very careful series of steps that we  
19           have laid out in our motion in great detail,  
20           showing our cards, much more than they have.

21           Mr. Fallon and Mr. Kratz, from the  
22           State's perspective, anything that doesn't go  
23           down the track towards conviction is a waste of  
24           time. And that is simply not the case. That's  
25           why we have juries, that's why we have adversary

1 system in this country. And Mr. Avery is  
2 entitled and, indeed, required to present this  
3 defense of the blood vial evidence, this evidence  
4 as part of his defense that he is not guilty of  
5 this crime against Teresa Halbach. Thank you.

6 THE COURT: I know, Mr. Buting, that I  
7 asked you to do this I think earlier, but just so  
8 it's the last thing I hear before we conclude today;  
9 I want to make sure as I'm sitting in my office this  
10 weekend that I have a clear representation of what  
11 the defense offer is. That is that, as I understand  
12 it, and you can fill in the blanks or correct me  
13 when I'm wrong, either Lenk or Colborn would have a  
14 sufficient basis to be biased in this case, or a  
15 motive for planting evidence, however you want to  
16 put it, because of the fact that they have a  
17 connection with the Sheriff's Department, they work  
18 for the Sheriff's Department, they were deposed in  
19 the civil case some three weeks earlier. And I'm  
20 trying to remember is it one or both of them that  
21 received a telephone call or something in 1995, that  
22 they put in the file?

23 ATTORNEY STRANG: They were both questioned  
24 about their own personal involvement in that  
25 particular incident. One thing I forgot to add is,

1           they were not defendant's in the civil lawsuit yet,  
2           at that time, but that is not to say that they  
3           couldn't have been joined later as the discovery  
4           proceeded and the plaintiff's uncovered more  
5           wrongdoing or potential liability. Because from  
6           that point forward Mr. Avery sat another eight years  
7           in prison.

8                         THE COURT: Okay. The theory being that  
9           they were given some information that they should  
10          have followed up on that might have led to his  
11          exoneration sooner.

12                       ATTORNEY BUTING: Yes, and the call  
13          involved, frankly, Mr. Allen, the ultimate --

14                       ATTORNEY STRANG: Maybe you remember this  
15          past October -- I will take a stab at it -- I think  
16          the testimony from the two depositions was  
17          approximately this. That while he was working in  
18          the jail, Sergeant Colborn took a call from a law  
19          enforcement agency, the name of which he didn't  
20          remember at the time of the deposition, he thought  
21          maybe it was from Brown County.

22                       Realized that it wasn't a call that  
23          belonged in the jail, transferred the call to the  
24          Detective Bureau in the Sheriff's Department.  
25          And at that point, as I recall the deposition

1                   testimony, it breaks down in that Detective Lenk,  
2                   who would have been in the Detective Bureau at  
3                   that time, doesn't remember whether he got the  
4                   call or doesn't remember what it was about.  
5                   There was a -- and now I'm not remembering the  
6                   deposition testimony well. But it's sort of --  
7                   there's confusion there, and then both of them  
8                   write a report about this phone call, for the  
9                   first time on September 12, 2003, at Sheriff  
10                  Peterson's request, which is the day after Avery  
11                  has been released from prison.

12                  So they both write reports the day  
13                  after. And at that point they don't remember if  
14                  it's 1995 or 1996 when the phone call came in.  
15                  The gist of the phone call being from a law  
16                  enforcement agency saying we have someone here in  
17                  custody who says that he did a rape for which  
18                  someone else is in prison and it was in your  
19                  county.

20                  THE COURT: Well, it sounds from what you  
21                  are telling me, if that's the way it was presented,  
22                  Colborn did what he should have done, he got the  
23                  call at the jail and referred it to the Detective  
24                  Bureau.

25                  ATTORNEY BUTING: Well, but that was

1                   challenged in the deposition and his failure to  
2                   write any report --

3                   ATTORNEY STRANG: Maybe the sensible thing  
4                   to do is just submit the depositions in there.

5                   ATTORNEY BUTING: The point being, at that  
6                   point this information was just coming out and was  
7                   being -- they were being challenged on a memo that  
8                   not only their own reports, but also a memo that a  
9                   investigator in the Manitowoc District Attorney's  
10                  Office had written, which he had spoken to the two  
11                  of them. It was inconsistent with what they had  
12                  been testifying about, so it was their -- their own  
13                  involvement in that incident was being challenged.

14                  THE COURT: All right. At any rate, they  
15                  have these depositions three weeks earlier.  
16                  Sometime after November 3rd they, along with other  
17                  members of the Manitowoc County Sheriff's  
18                  Department, get the report that Teresa Halbach is  
19                  missing, right?

20                  ATTORNEY BUTING: Actually, Sergeant  
21                  Colborn, fortuitously or whatever, gets the call  
22                  from Investigator Wiegert, I believe. Learns  
23                  that -- or Dederling, one of the two -- learns that  
24                  one of the last places she had been, or one of the  
25                  last places she had been that day, she was last

1           seen, was the Avery residence. And says, okay, I  
2           will follow through. We'll get somebody out there  
3           to talk to him. Hangs up.

4                         And sometime shortly after that,  
5           Investigator Wiegert gets an unsolicited call  
6           from Lieutenant Lenk, which obviously means  
7           Colborn told Lenk. Lenk is, aha, Avery, let's  
8           find out more about this. And he then, on his  
9           own, not being asked to, calls Wiegert and starts  
10          asking and showing increased interest from that  
11          point on, personal interest.

12                      THE COURT: But that's on November 3rd.

13                      ATTORNEY BUTING: Yes.

14                      THE COURT: Then the vehicle is discovered  
15          on the 5th. What, was Officer Colborn on the scene  
16          on the Avery property on the 5th?

17                      ATTORNEY BUTING: Yes.

18                      THE COURT: I know Lenk was, you said.

19                      ATTORNEY BUTING: Lenk was. Colborn, I  
20          think the logs show him arriving around 5:00 p.m.  
21          Don't know if he was there earlier, before the logs  
22          began to be taken or not.

23                      ATTORNEY FALLON: I can add, Jerry, we  
24          asked about when that log started, and I think they  
25          started the log about 2:25, ballpark, so for what

1                   that's worth.

2                   ATTORNEY BUTING: So it's about three and a  
3                   half hours after the vehicle was -- not discovered,  
4                   but three and a half hours after the police arrived.

5                   ATTORNEY FALLON: Right.

6                   ATTORNEY BUTING: And again, the law  
7                   enforcement people and the head prosecutors were  
8                   gone from the scene by 2:00 -- no, between, I think  
9                   1:00 and 3:00. Rohrer, Mr. Kratz, Wiegert, Remiker,  
10                  they all left.

11                  THE COURT: What is the -- Does the defense  
12                  have a theory as to how either Mr. Colborn or  
13                  Mr. Lenk would have gotten into the vehicle to plant  
14                  the blood.

15                  ATTORNEY BUTING: We have several theories.  
16                  I don't know that -- Again, here we have to show all  
17                  our cards, they don't have to show anything.

18                  THE COURT: Well, here's the thing,  
19                  whatever the standard is, and I know the parties are  
20                  arguing what it is, but certainly there is some  
21                  burden that the defense has to meet.

22                  ATTORNEY BUTING: I understand.

23                  THE COURT: And if that's the one you are  
24                  asking.

25                  ATTORNEY STRANG: Sure.

1                   THE COURT: To give you a fair shake, I  
2 want to make sure I'm evaluating your request --

3                   ATTORNEY BUTING: Okay.

4                   THE COURT: -- with whatever showing you  
5 want to make. If you tell me, we have no idea, I  
6 will accept that answer. I'm just saying, what do  
7 you want the Court to consider.

8                   ATTORNEY BUTING: Well, the Court can  
9 consider what we have put in writing. And if you  
10 look at it carefully, you will see that there are  
11 some windows of opportunity in both in terms of time  
12 and in terms of physical opportunity.

13                  But by the way, the whole question of  
14 whether the vehicle was truly locked at the scene  
15 when first discovered is not as clear as the  
16 State would have you believe. Because the  
17 volunteer who discovered it said she thought that  
18 they checked the doors and they were locked, at  
19 the prelim this is her testimony; however, she  
20 also said she thought it was only a two-door, not  
21 a four-door.

22                  So that's inconsistent with her having  
23 checked all four doors, five doors, actually, if  
24 you include the hatch. Even if it was, who do  
25 you go to when you lock yourself out of the car?

1 Who do you call? The police.

2 We also have evidence they have seen the  
3 report that, from a locksmith, that this  
4 particular RAV 4 was very easily opened by these  
5 jimmies that police officers have. Poses no  
6 difficulties. And as is described in the written  
7 pleadings, the vehicle was covered actually with  
8 almost a ideal situation where it was obscured  
9 from the view of other officers by gigantic tarps  
10 creating a tent over it, hiding it from view of  
11 anybody, but obviously leaving access in and out  
12 at either end. So whether that's when it  
13 happened, that's another possibility.

14 It was also getting dark by, probably  
15 even before the Crime Lab arrived, because I  
16 believe sunset was at 4:30 and the Crime Lab  
17 didn't arrive until 4:00.

18 THE COURT: All right. Is there -- I will  
19 definitely reread your memorandum again; is there  
20 anything else you want to tell me this afternoon?

21 ATTORNEY BUTING: I don't think so. I  
22 think that really I think we have covered almost all  
23 the issues.

24 ATTORNEY FALLON: Your Honor, if you are  
25 going to do that then I would ask the Court to

1 consider this one circumstantial or coincidental  
2 fact. If the blood was planted in the vehicle, then  
3 it must have been entirely fortuitous that Pam Sturm  
4 happened upon that property of her own volition and  
5 by the grace of God found the car, unless of course  
6 she was told to go there, unless she's a  
7 conspirator.

8 Because if you're going to plant blood  
9 and then have it discovered, then how does that  
10 happen? Just coincidence? Who had the jimmy,  
11 that's a question. And, finally, I just ask the  
12 Court to think back at Special Agent Fassbender's  
13 testimony at the motion hearing. He said they  
14 attempted to put a tarp on, attempted to do a  
15 tent like thing, but were not successful because  
16 the wind and the weather prevented that from  
17 happening. So, and again, I certainly would  
18 invite the Court to check Pam Sturm's testimony  
19 at the prelim and the motion hearing, as you  
20 evaluate the proffer. Thanks.

21 THE COURT: All right. I realize that  
22 there's another motion related to these and that is  
23 the -- what would come in with respect to wrongful  
24 conviction evidence. I have the written proposals  
25 of the parties, or the written arguments with

1 respect to this issue, and I think Mr. Kratz  
2 addressed it somewhat in his comments as well.

3 ATTORNEY KRATZ: I did, Judge.

4 THE COURT: Is there anything else?

5 ATTORNEY KRATZ: No. No, I rely on my  
6 brief comments today but, not only the standards,  
7 but the number of facts that the Court will have to  
8 decide. What, if anything, is properly admitted for  
9 impeachment purposes, is laid out in my memo.

10 That's all.

11 THE COURT: Anything further from the  
12 State?

13 ATTORNEY KRATZ: The defense.

14 THE COURT: The defense, I'm sorry.

15 ATTORNEY STRANG: We laid out a proffer  
16 which is essentially everything we would like to  
17 offer on the wrongful conviction on the lawsuit.  
18 The State comes back saying none of it should come  
19 in but, alternately, here is four things, if you are  
20 going to let anything in. And the State omits  
21 entirely the lawsuit from its proposal. Will allow  
22 some very limited evidence as to the prior wrongful  
23 conviction.

24 When you read the four things, someone  
25 coming fresh to this would be left with the

1 impression that the State was on Steven Avery's  
2 side in that effort to exonerate this poor  
3 wrongfully convicted man. Because, why, it was  
4 the State Crime Laboratory that tested the DNA  
5 for him and found that it was good, that it was  
6 not his. And it was the State of Wisconsin  
7 joined in securing the defendant's release in  
8 2003.

9 My guess is the Court comes down  
10 somewhere in between the two poles that the  
11 parties have offered. It's -- It's the general  
12 impression that the State's limited presentation  
13 would leave is that this was somehow a joint  
14 effort to secure the release of a wrongfully  
15 convicted man for the 18 years that it took and  
16 decided that it was not as the docket sheet bears  
17 out.

18 And, again, what we offered was  
19 everything we would like to get in. I'm going to  
20 leave this one to the Court, the issues of bias,  
21 and impeachment, and credibility are pretty well  
22 framed here and I think the Court can strike a  
23 pretty good balance.

24 THE COURT: Anything else? If not, we are  
25 adjourned for today.

1                   ATTORNEY BUTING: Do you think that we  
2                   would know Monday on any or some of these?

3                   THE COURT: Depends how far I get this  
4                   weekend. As soon as I have got something for you, I  
5                   will let you know. I realize that this issue is  
6                   important to both parties so I'm going to take as  
7                   long as I feel I need to make a decision.

8                   ATTORNEY STRANG: Does the Court anticipate  
9                   a written ruling on these issues?

10                  THE COURT: I don't know that either yet.

11                  ATTORNEY STRANG: Very well.

12                  ATTORNEY FALLON: I'm sorry, I did not hear  
13                  that.

14                  ATTORNEY BUTING: I didn't hear.

15                  THE COURT: I said I don't know that either  
16                  yet.

17                  ATTORNEY BUTING: Oh, okay.

18                  (Proceedings concluded.)

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21  
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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 29th day of January, 2007.  
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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARING  
5 vs. JUROR QUESTIONNAIRE  
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** JANUARY 29, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ  
Special Prosecutor  
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON  
Special Prosecutor  
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN  
Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG  
Attorney at Law  
18 On behalf of the Defendant.

19 JEROME F. BUTING  
Attorney at Law  
20 On behalf of the Defendant.

21 STEVEN A. AVERY  
Defendant  
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery, Case No. 05 CF  
3                   381. Will the parties state their appearances for  
4                   the record, please.

5                   ATTORNEY KRATZ: The State appears by  
6                   Calumet County District Attorney Ken Kratz,  
7                   Assistant Attorney General Tom Fallon, Assistant  
8                   District Attorney Norm Gahn, all appearing as  
9                   Special Prosecutors.

10                  ATTORNEY STRANG: Good morning, Steven  
11                  Avery is here in person. He's represented by Jerome  
12                  Buting of Buting and Williams, and Dean Strang of  
13                  Hurley, Burish and Stanton.

14                  THE COURT: Very well. We had proceedings  
15                  set today to begin at 8:30 for the purpose of  
16                  administering jury questionnaires. Late last week  
17                  there were a few motions filed which needed to be  
18                  addressed before we begin the process of  
19                  administering the jury questionnaires. Therefore,  
20                  the Court set this matter for a hearing this  
21                  morning.

22                  The first item to take up is a motion  
23                  that was filed by the defense to dismiss the  
24                  sexual assault, kidnapping, and false  
25                  imprisonment charges. Mr. Strang, I believe you

1 will be heard with respect to that motion.

2 ATTORNEY STRANG: Thank you. In chambers,  
3 the Court had reached an understanding with counsel  
4 that the State, as I understand that, that agreement  
5 we reached in chambers, the State would announce  
6 it's intention to call Brendan Dassey in its  
7 case-in-chief, or not, by the close of business on  
8 January 22, 2007, a week ago.

9 When that day passed and the next,  
10 without word from the State, I concluded that  
11 silence had to be taken as an intention not to  
12 call young Mr. Dassey in the State's  
13 case-in-chief and considered, then, what to do  
14 about that.

15 This is something that has been close in  
16 mind for me since March 10, 2006, the filing of  
17 the Amended Information and the substantial  
18 disagreement that the parties had over the  
19 requirement, if any, that Wisconsin law imposed  
20 for the State to show, at least probable cause,  
21 for the first degree sexual assault, kidnapping,  
22 and false imprisonment charges that the Amended  
23 Information added, apparently by timing and by  
24 content of the Dassey Complaint, solely or almost  
25 solely on the strength of Brendan Dassey's

1 statements inculpating himself.

2 Now, with the benefit of about 10  
3 months, since March 10, and a review of the  
4 discovery, it appears to me, at least, that  
5 absent Mr. Dassey's testimony in Steven Avery's  
6 trial, there is no evidence, none, to support the  
7 charges of first degree sexual assault and  
8 kidnapping.

9 And while it is, I concede, a somewhat  
10 closer call, I don't think the State can support  
11 the charge of false imprisonment either, which  
12 includes an essential element of confinement or  
13 restraint. And because coercion is another  
14 essential element of false imprisonment,  
15 necessarily, means confinement or restraint  
16 during someone's lifetime, in their  
17 consciousness, or at least during their lifetime.

18 I think the State's evidence of that, if  
19 not naught, is clearly insufficient to sustain  
20 any reasonable fact finder in concluding that one  
21 or both of those essential elements of false  
22 imprisonment could be proven here.

23 I, therefore, on January 24, submitted  
24 our motion to dismiss the three counts that the  
25 Amended Information added. And, indeed, as I

1 understand the evidence the State has disclosed  
2 to the defense to date, as of March 10, 2006, not  
3 only did the State have no corroboration for the  
4 essential details of the first degree sexual  
5 assault, kidnapping, and false imprisonment  
6 charges filed by Amended Information, no  
7 corroboration beyond Brendan Dassey, the physical  
8 evidence that was known, or surely should have  
9 been known to the State, for months, on March 10,  
10 2006, tended to disprove, conclusively, some of  
11 Brendan Dassey's allegations.

12 So when Brendan Dassey said that I got  
13 off that school bus, and as picking up the  
14 narrative that the special prosecutor regaled a  
15 live TV audience with, and went down to the  
16 Steven Avery trailer, and claimed that he heard  
17 screaming coming from inside, and that he knocked  
18 on the door and there was no answer for awhile,  
19 and eventually a sweaty Steven Avery came to the  
20 door, and there in the back bedroom, manacled to  
21 a bed, was Teresa Halbach.

22 When those claims were being made on  
23 live television, the State knew that the school  
24 bus driver, who had dropped Brendan Dassey off  
25 that very time, and has no conceivable reason to

1 have lied, being a school bus driver, said that  
2 when she dropped him off, she saw Teresa Halbach,  
3 or a woman, out taking photographs of a van. I  
4 guess she wasn't manacled to a bed in Steven  
5 Avery's trailer if she was standing outside  
6 taking photographs as Brendan Dassey got off that  
7 bus.

8 And on March 10, when this Amended  
9 Information was filed, following eight and nine  
10 days after the successive live news conferences,  
11 the State had physical evidence, in its  
12 possession, making it impossible to believe that  
13 someone had been stabbed and slashed repeatedly  
14 on Steven Avery's bed. There was no blood in  
15 that bedroom.

16 And when Brendan Dassey said that we cut  
17 off some of her hair, or I did, at Mr. Avery's  
18 request, with a large knife, the State knew, or  
19 should have known, that not one strand of Teresa  
20 Halbach's hair was found anywhere in Steven  
21 Avery's trailer; indeed, not one detectable trace  
22 of Teresa Halbach's DNA, hair, blood, anything  
23 else, anywhere in his trailer. Not an iota of  
24 physical evidence to support the proposition that  
25 she was ever in the trailer, let alone raped

1                   there, imprisoned falsely there, held there as  
2                   the victim of a kidnapping. None.

3                   Is there any other evidence in the  
4                   massive discovery, that I command opposing  
5                   counsel for providing to us, any other evidence  
6                   at all, to support a claim of first degree sexual  
7                   assault, if we set aside Brendan Dassey as a  
8                   witness in this case? To my eyes, the answer is  
9                   no. None. Zero.

10                  In 20 minutes, we're going to have a  
11                  jury panel brought in here and they will need to  
12                  be told, if we are to understand sensibly their  
13                  answers, and if they are to answer sensibly, a 12  
14                  or 15 page questionnaire, whatever it is. They  
15                  will need to be told what charges are to be  
16                  tried, what charges are we to hear, what  
17                  allegations is the State making against the man  
18                  accused.

19                  And where there's no evidence,  
20                  evidently, I will stand corrected if there is,  
21                  and I'm sure counsel will correct me if I'm  
22                  wrong. But where in my line of sight there is no  
23                  evidence to support a first degree sexual assault  
24                  charge, or a kidnapping charge and insufficient  
25                  evidence at best to support a false imprisonment

1 charge, this jury should not be told that those  
2 charges exist and, indeed, they ought be  
3 dismissed.

4 We can address, then, whether that's a  
5 sufficient remedy. I think it's not. I think  
6 some further action will have to be taken by this  
7 Court to counteract the affect of allegations  
8 made against one young man, Defendant A, in a  
9 separate case, that were imported, although  
10 inadmissible, imported in the public mind, to  
11 impugn the presumed innocence of Defendant B, in  
12 an entirely separate case.

13 But the issue, first, is dismissal and,  
14 then, what more would be required.

15 THE COURT: Mr. Kratz.

16 ATTORNEY KRATZ: Thank you, Judge. After  
17 the State files an Information, the Defense has an  
18 opportunity, and in most instances an obligation, to  
19 bring a motion to dismiss. Mr. Strang did that on  
20 the 3rd of May, when he brought a motion to dismiss  
21 those three additional counts in the Information.

22 And this Court, after finding probable  
23 cause, believed that the six counts against  
24 Mr. Avery were supported by evidence that, if a  
25 jury was to hear, could be believed and could

1 sustain a conviction. Let me remind the Court,  
2 let me remind Mr. Strang, that it is the State's  
3 decision what charges go forward against a State  
4 defendant, not the defense attorney's and with  
5 all due respect, Judge, not the Court's.

6 The decision, however, on what to go to  
7 trial with and when that decision has to be made,  
8 is something that is ripe for discussion this  
9 morning. And although not a decision for the  
10 Court, and not a decision at the urging of the  
11 defense, this Court has to consider what factors  
12 the State must take into consideration when  
13 determining what charges go forward.

14 Necessarily in this case, and quite  
15 unfortunately in this case, we then have to talk  
16 about Brendan Dassey. I say, unfortunately,  
17 because under most circumstances, in fact, save  
18 this circumstance, I can't think of a time when  
19 it would be appropriate, in open court, on  
20 television, to discuss the status and the nature  
21 of plea negotiations in an ongoing case, in an  
22 ongoing criminal prosecution. I'm talking about  
23 Mr. Dassey's prosecution.

24 But Mr. Strang has made some of those  
25 things public. And in the Dassey case, some of

1           those things have been made public. So I'm going  
2           to limit my discussion of the plea negotiations  
3           in Dassey's case, to that which has already been  
4           public.

5           This Court already knows that in May of  
6           last year, 2006, a plea agreement had all been  
7           reached with Mr. Dassey, which included Mr.  
8           Dassey's deal, decision, agreement, to testify  
9           truthfully, in the Steven Avery case. When  
10          Mr. Strang so eloquently stands up and says the  
11          State has no proof, perhaps Mr. Strang forgets  
12          those times, or back to the time when Mr. Dassey  
13          had, in effect and in and through his lawyer,  
14          agreed to enter a plea and to testify against  
15          Mr. Avery.

16          It wasn't until Mr. Kachinsky, through a  
17          whole different story, was stripped of his  
18          ability to handle felony prosecutions by the  
19          State Public Defender's Office which, by the way,  
20          was almost instantaneously reinstated after  
21          Mr. Kachinsky agreed to get off of the Dassey  
22          case, that new lawyers were appointed in the case  
23          and plea negotiations began anew with Mr. Dassey.

24          This Court knows that those plea  
25          negotiations have been ongoing. And this Court

1           knows that the deadline for those plea  
2           negotiations was the 22nd of January. I agree  
3           with Mr. Strang that that was the time when the  
4           State was to hear from Mr. Fremgen, who is  
5           Mr. Dassey's new lawyer, as to whether or not,  
6           first of all, Mr. Dassey was going to change his  
7           plea; and, secondly, and perhaps more  
8           importantly, that if called as a witness in the  
9           Avery case, what posture, what position, would  
10          Mr. Dassey take.

11           This Court knows, that on the 24th of  
12          January, two days after the deadline, I received  
13          notification from Mr. Fremgen. I alerted the  
14          Court, I sent the Court and counsel a copy of  
15          Mr. Fremgen's letter setting forth what  
16          Mr. Dassey's position would be, if he was called.

17           Importantly, Judge, that letter  
18          indicates that Mr. Dassey, although if called in  
19          the Avery case would invoke his Fifth Amendment  
20          right against self incrimination, if granted use  
21          immunity by the Court, presumably upon a  
22          direction by the State, that Mr. Dassey would  
23          testify, would testify in the State's  
24          case-in-chief, would testify on rebuttal, or  
25          would testify when the State chooses to call him.

1           And, therefore, there is evidence as to the two  
2       counts that Mr. Strang claims, again, so  
3       fervently, that there's no evidence for, that Mr.  
4       Dassey would testify.

5           Now, that doesn't stop the analysis by  
6       the State. The three attorneys at this table  
7       have had long discussions about whether we should  
8       proceed with all six counts, or whether we should  
9       proceed with the four counts that don't require  
10      Brendan Dassey's testimony. That, again, Judge,  
11      is a decision solely within the province of the  
12      State, solely in the province of this table, as a  
13      matter of fact, as to whether or not we're going  
14      to proceed.

15       That decision doesn't have to be made by  
16      law until jeopardy attaches, until the jury is  
17      instructed by the Court as to what the charges  
18      are. Now, I understand that it is this Court's  
19      preference to tell the jury, today, what those  
20      charges are going to be, that within the context  
21      of the supplemental jury questionnaire to alert  
22      the jurors as to what those counts are going to  
23      be.

24       And so that puts us in a dilemma, if you  
25      will, in that the State wished to wait until

1 Friday, the 2nd, as we have told you in  
2 correspondence, as to whether or not we intended  
3 to call Brendan Dassey. If put to that question  
4 today, our inclination would be not to call  
5 Brendan Dassey, to either save Brendan Dassey for  
6 our case-in-chief, upon a grant of use immunity,  
7 or to save Brendan for rebuttal testimony, again,  
8 upon a grant of use immunity.

9                   Certainly, though, this Court would  
10 agree that he is available to testify in the  
11 Steven Avery case. And so, if we're going to  
12 instruct the jury as to what the charges against  
13 Mr. Avery are going to be, it is the safer  
14 position to just name the four charges from which  
15 we do not need Brendan Dassey. Again, our  
16 preference, if I can reiterate, is to wait until  
17 the 2nd, is to wait until Friday, when the State  
18 can decide how to proceed.

19                   Would, or is it possible that Brendan  
20 Dassey would change his mind about a plea  
21 agreement, between now and Friday, absolutely.  
22 Given the ongoing nature of the agreements,  
23 that's always possible. But, for practical  
24 purposes, if the Court wishes to know, wishes an  
25 inclination by the State, I'm happy to give that.

1                   But the bottom line is, this Court does  
2                   not have the authority to dismiss those two  
3                   counts. The State still could, if it chose, call  
4                   Mr. Dassey. Mr. Dassey was named as a witness.  
5                   When it was time to name our lay witnesses,  
6                   Brendan Dassey was named. He's included on our  
7                   witness list and so there shouldn't be any  
8                   surprise as to whether we can proceed with  
9                   Mr. Dassey or not.

10                  We may choose to call any of those  
11                  witnesses that we have named. We may choose to  
12                  only call a subset of those witnesses, and  
13                  Brendan Dassey is certainly one of those people  
14                  that's within that category.

15                  But to suggest that the State has no  
16                  evidence, to suggest even further than that, that  
17                  there need be some, what the defense has called,  
18                  "strong curative instruction", the State believes  
19                  is absolutely absurd. Any time use immunity is  
20                  conferred in a case, when there is two  
21                  defendants, which isn't unusual, those of us that  
22                  have been practicing criminal law for a long time  
23                  know that happens once in awhile, especially when  
24                  one defendant has given an inculpatory statement,  
25                  which inculpates another, those are called

1                   interlocking confessions. And when that happens,  
2                   it is not usual for use immunity to be conferred.

3                   To suggest, though, that the jury has to  
4                   be somehow informed, even before they are  
5                   selected, as to the nuance of the use immunity  
6                   statute, as to whether the State chooses to call  
7                   a witness or not, and, specifically, in this  
8                   case, that there should be some negative  
9                   inference taken, by the fact that the State  
10                  chooses not to call somebody, or that the State  
11                  chooses not to proceed on two counts, is simply  
12                  not supported by law.

13                  We're asking, then, that the Court  
14                  reject, first of all, the Defense motion to  
15                  dismiss. We're asking that the Court reject the  
16                  inclination to provide some curative instruction,  
17                  which certainly would prejudice the State; the  
18                  prejudice to the State, Judge, should be obvious.

19                  If we have to start this case swimming  
20                  upstream, if you will, in the face of some  
21                  instruction given to the jury that they should be  
22                  taking some negative view of the State, then we  
23                  intend to proceed on all six counts. We will.  
24                  If that's what this Court's inclination is, we  
25                  will go forward on all six counts. We will ask

1                   the Court to grant Mr. Dassey use immunity and we  
2                   will proceed on those six counts.

3                   If, however, the State is not so  
4                   inclined -- excuse me -- if the Court is not so  
5                   inclined, if the Court, like every other case, is  
6                   going to proceed to jury selection without  
7                   providing this strong curative instruction, or  
8                   not further contaminating the potential jury  
9                   pool, which recent pre-trial publicity, the State  
10                  believes and the State's argued already has, then  
11                  it is our inclination to proceed on the four  
12                  counts. Again, those four counts that do not  
13                  require Brendan Dassey, allowing us, as is within  
14                  our province, to make a decision as the trial  
15                  proceeds whether we call Brendan in our  
16                  case-in-chief, whether we call him in rebuttal,  
17                  or whether we choose not to call him at all.

18                  Thank you, Judge.

19                  THE COURT: Before I turn it back to  
20                  Mr. Strang, within your argument is there a motion  
21                  to dismiss the sexual assault and kidnapping  
22                  charges, or not?

23                  ATTORNEY KRATZ: Not until the Judge rules  
24                  on this motion. And -- And I don't mean to be cute  
25                  with the Court, and I think you understand, Judge,

1           that it's the curative instruction, your inclination  
2           that causes the State the most concern. I am, and I  
3           have, as you know, been candid with the Court, as a  
4           matter of courtesy. I have told you all along what  
5           our intention was going to be.

6           Without that curative instruction, the  
7           State, I will tell the Court, as I have told you  
8           candidly, intends to proceed on four counts,  
9           rather than six. But, if the Court is going to  
10          give a curative instruction, then we do have that  
11          objection.

12           THE COURT: I understand. Mr. Strang,  
13          briefly.

14           ATTORNEY STRANG: All due respect to  
15          counsel, the State is supposed to start every  
16          criminal case swimming upstream. And the strong  
17          current against which the State is supposed to be  
18          swimming is a presumption of innocence. That  
19          presumption of innocence has been eroded, if not  
20          eliminated, here, by the spectre of Brendan Dassey  
21          offering admissible, as opposed to inadmissible  
22          evidence.

23           It is too late to sit on the fence here.  
24          We can't very well tell this jury that there are  
25          four counts to be tried, and then tell them on

1           next Monday, oh, by the way, there is also a rape  
2           and a kidnapping. You can't do it. Neither can  
3           either side, as a practical matter, give an  
4           opening statement in this case, without knowing  
5           whether the alleged accomplice is testifying or  
6           not.

7           Now, Mr. Kratz was candid enough to  
8           concede, if one listened carefully, that  
9           Mr. Dassey is available to him, legally. The  
10          State can move for use immunity, the Court, then,  
11          grants that immunity. The case law suggests that  
12          the Defense has very little to say about that  
13          State request.

14          It is just too late, now, 10 months  
15          after these charges were filed, to say we'll tell  
16          you later. Because the jury questionnaire  
17          process is beginning and we can't rely on the  
18          answers these jurors give to whether they can try  
19          this case fairly, unless they know what it is  
20          they are trying, in outline. It is just too  
21          late.

22          And I agree, as an abstract matter, with  
23          much of what Mr. Kratz says about the black  
24          letter. The State decides what charges it will  
25          push forward on and which it will not.

1                   And I, also, let me be clear, if Brendan  
2 Dassey takes the witness stand on a similar  
3 chair, one county over, he has admissible  
4 evidence to offer, once he's sworn under oath.  
5 It may hurt Mr. Avery; it may help Mr. Avery; it  
6 may do a little of both. But it is admissible  
7 evidence, once he takes the stand. And until he  
8 sits down in a chair like that, nothing he's got  
9 to say is admissible on the State's offering, or  
10 at the State's instance, or over Defense  
11 objection.

12                  So the State has all the information it  
13 needs today, it's had it for months, to decide  
14 whether it's calling Mr. Dassey, to prove the  
15 three charges it added in the Amended  
16 Information, or not. This Court has a right, in  
17 managing this trial, and in selecting a jury, and  
18 ideally having it not be a waste of time, to know  
19 what charges it's trying, with the jury it's  
20 picking. And counsel have a right to be able to  
21 assess the answers these jurors give, on the  
22 knowledge that the jurors were given accurate  
23 information about something as basic as what the  
24 allegations are.

25                  THE COURT: All right.

1 ATTORNEY STRANG: It's time to decide.

2 THE COURT: First, a couple of comments  
3 with respect to the procedure for jury selection in  
4 this case. Because of the large number of jurors in  
5 the panel, the parties have previously agreed that  
6 we're going to be using a procedure in which, in  
7 large part, the questionnaire is taking the place of  
8 questions that would typically be asked on general  
9 voir dire.

10 It's a little different in the sense  
11 that the questionnaire is going to be filled out  
12 by the parties, off the record. But there  
13 certainly are similarities between the questions  
14 that are on the questionnaire and what typically  
15 is asked in general voir dire.

16 In order for the jurors to give accurate  
17 answers, and for the parties to assess those  
18 answers, I think it's necessary that the jurors  
19 be aware of the charges that the State will be  
20 pursuing against the defendant. That's why I  
21 would not feel comfortable giving the jurors a  
22 preliminary instruction, before they fill out the  
23 questionnaire, without the jurors knowing what  
24 the charges are going to be against the defendant  
25 in this case. So I don't think we can post --

1                   postpone the time within which the jurors are  
2                   going to know the charges.

3                   With respect to the curative instruction  
4                   issue, I will make the following comments: At  
5                   this point it would be difficult for the Court to  
6                   consider giving some type of curative  
7                   instruction, based on the evidence or lack of  
8                   evidence that the State has available to it to  
9                   produce that relates to the charges.

10                  To be sure, in the course of these  
11                  proceedings, the Court has gleaned some  
12                  information concerning evidence which each side  
13                  may choose to produce, but that's not been  
14                  fleshed out in any great detail. I understand  
15                  from the representations that have been made to  
16                  the Court that the State has, or has not, as time  
17                  has gone on, had an idea of what type of evidence  
18                  it might hope to gain from Mr. Dassey.

19                  I don't -- I'm not aware of anything to  
20                  suggest that the State has been acting in bad  
21                  faith in any regard. And quite simply put, I do  
22                  not believe that the State has engaged in any  
23                  conduct to this point which would warrant the  
24                  giving of some type of instruction unfavorable to  
25                  the State, should the State decide at this point

1 to dismiss some of the charges that have been  
2 filed. And so I'm not going to -- Whatever  
3 action the Court takes this morning, I'm not  
4 going to give some type of an extra instruction,  
5 I just haven't heard anything that would warrant  
6 it.

7 With that background --

8 ATTORNEY KRATZ: Judge, may I be heard then  
9 before --

10 THE COURT: Yes.

11 ATTORNEY KRATZ: -- you rule further?

12 THE COURT: Yes.

13 ATTORNEY KRATZ: If I could just have one  
14 more moment.

15 THE COURT: Go ahead.

16 ATTORNEY KRATZ: With those findings,  
17 Judge, the State is, at this time, because we  
18 believe it within the province of the State, moving  
19 that Counts, I believe it's 4 and 5, that is, the  
20 first degree sexual assault as a party to the crime,  
21 and the kidnapping, Count No. 5, be dismissed.

22 The State intends to proceed, then, on  
23 Counts 1, 2, 3, and 6. I will be happy to  
24 provide a Court with what will be called a second  
25 Amended Information, which will actually make

1           Count 6, Count 4, so that the jury isn't confused  
2           as to the number of counts or why there may be a  
3           gap in the -- those charges. Count 4 will be  
4           false imprisonment.

5           And the State intends, then, to proceed  
6           on those four counts rather than -- rather than  
7           the six counts. And I believe then, that  
8           relieves the Court of the obligation of having to  
9           rule upon this motion.

10          THE COURT: Mr. Strang, from the defense's  
11          standpoint I understand that you, based on your  
12          motion, were requesting the administration of the  
13          curative instruction as well, but I take it that the  
14          defense has no objection, given the Court's ruling  
15          on the instruction issue, to the dismissal of Counts  
16          4 and 5.

17          ATTORNEY STRANG: Provided that's a  
18          dismissal with prejudice, which is the Court's  
19          prerogative, once the State has moved to dismiss,  
20          not the State's; we don't object to a dismissal with  
21          prejudice of Counts 4 and 5.

22          THE COURT: I have dealt with this issue  
23          before. There's a, frankly, question as to how much  
24          power the Court has in that regard when a dismissal  
25          is granted at this stage in the trial.

1                   At this point, my inclination would be  
2                   to -- simply to grant the State's motion to  
3                   dismiss those counts. I'm not going to rule at  
4                   this time, nor do we have time to address the  
5                   issue, as to whether or not they would be with or  
6                   without prejudice. The law is, that the  
7                   dismissal, absent some other finding by the  
8                   Court, I believe is without prejudice. And I'm  
9                   not prepared today to do any more than that.

10                  ATTORNEY STRANG: Here's the problem, and  
11                  here's why the Court needs to take some further  
12                  curative action. Since March 10, up through the  
13                  WFRV report last night, for example, Steven Avery  
14                  has been presented as the man who allegedly raped,  
15                  mutilated and murdered Teresa Halbach.

16                  Now, the first question, I guess in a  
17                  bigger scale, this raises, is how many times will  
18                  Steven Avery be charged in Manitowoc County with  
19                  rapes he didn't commit, this makes two. And the  
20                  public, for 10 months, has been led to believe  
21                  that he's a rapist, in addition to all else they  
22                  might think about him.

23                  Where do we go, you know, forget getting  
24                  the 18 years back on the first one, where do we  
25                  go to get the last 10 months back? Where do we

1 go to get our presumption of innocence back, from  
2 a public who believes and has heard time and  
3 again that he is an alleged rapist, even before  
4 murder?

5 THE COURT: Right. I'm not precluding you  
6 from advancing that argument at some point in the  
7 future; I'm just saying I'm not prepared to make  
8 that ruling today.

9 ATTORNEY STRANG: And I want to be clear,  
10 then, on the record, that we are heading into a  
11 potential for mistrial by going forward on the false  
12 imprisonment count, if the Court's ruling permits  
13 the State to do that. And if the State believes  
14 that it will avail itself of the dismissal without  
15 prejudice, later to call Brendan Dassey, and to  
16 argue that there is no surprise and, therefore,  
17 under Wisconsin Statutes, an amendment of the  
18 Information should be permitted, or argue that it  
19 wants the Information to conform to the evidence it  
20 plans to adduce by calling Mr. Dassey, there will be  
21 a mistrial motion, and it will be a serious motion.

22 ATTORNEY KRATZ: If I may interrupt, Judge.

23 THE COURT: Yes.

24 ATTORNEY KRATZ: I will concede, just out  
25 of fairness to Mr. Strang and to the defense team,

1           that during the course of this trial, the State will  
2       not ask the Court reinstate those charges, will not  
3       ask the Court add the additional counts, even if  
4       Brendan Dassey is allowed to testify, that should at  
5       least get us through this proceeding.

6           THE COURT: All right. And with respect to  
7       the defense extra motion to dismiss the false  
8       imprisonment charge, I previously ruled, that given  
9       the law in the State of Wisconsin on preliminary  
10      examinations and the Court's duty and the ability of  
11      the State to add a charge that's factually related  
12      to the bindover, that the State has the right to do  
13      that. And I'm also not, obviously, at this point in  
14      the proceedings, in a position to say that the --  
15      there's no evidence that the State can produce to  
16      sustain that charge.

17           So the Court is denying the defense  
18       motion to dismiss the false imprisonment charge.  
19           I will grant the State's motion to dismiss  
20      Count's 4 and 5, the first degree sexual assault  
21      charge and the kidnapping charge.

22           ATTORNEY STRANG: That said, the State's  
23       proposal of a second Amended Information makes  
24       sense, given the state of the record and the Court's  
25       rulings.

THE COURT: All right. It was my understanding Mr. Fallon also wished to be heard on the jury selection process before we bring the jurors in for the questionnaires.

ATTORNEY FALLON: Yes, thank you, Judge.

Just a couple of preliminary thoughts. And I realize, at least I recollect from our phone discussion on Friday, that I think the balance of this will have to be addressed on Friday afternoon, I believe.

But I just wanted to point out that the Court's intent to limit the parties to 10 to 15 minutes of individual voir dire, to follow up on the juror questionnaire, which is about to be filled out by the jurors today, would arguably, and I note counsel and I, I think, are in agreement on this, that the 15 minute was arguably sufficient; although, I think both of us had serious concerns about that.

But when I replied to the defense submission on January 5th, as I represented I would and hearing no objection from the Defense and no objection from the Court, I was surprised that many of the submitted questions by the State were deleted, many were accepted.

1                   So my concern is that, at best case  
2 scenario, 15 minute individual voir dire was  
3 marginally sufficient given what I expected the  
4 supplemental juror questionnaire to contain; and  
5 that is, many of the suggestions or several of  
6 the suggestions that I agreed with from the  
7 Defense, as well as many of the State, the Court  
8 on its own chose to disregard several of the  
9 submissions of the State.

10                  And, presumably, that's in the Court's  
11 prerogative as I'm aware that jury selection,  
12 there is a vast amount of discretion afforded to  
13 the trial court. But, again, not hearing any  
14 objection from either the Court or opposing  
15 counsel, I expected to see a little more robust  
16 supplemental juror questionnaire.

17                  However, the Court has exercised that  
18 discretion and determined otherwise. Our comment  
19 is that I would like the Court to address the  
20 follow up voir dire procedures on Friday  
21 afternoon, because I'm not sure, quite frankly,  
22 that 10 to 15 minutes will allow counsel adequate  
23 time to explore other matters not included in the  
24 general -- or in the supplemental juror  
25 questionnaire.

1                   As I indicated earlier on, although it's  
2                   unusual and not advisable to use the supplemental  
3                   juror questionnaire as a stand in for general  
4                   voir dire, it certainly is possible, but -- and I  
5                   understand the Court's desire to not create an  
6                   unwieldily document for the prospective jurors.  
7                   But I would ask the Court to reconsider it's idea  
8                   as to how the follow-up voir dire is going to  
9                   occur.

10                  I'm very concerned, that at least from  
11                  the State's perspective, that we will not have  
12                  adequate time to pursue other matters in that  
13                  time frame.

14                  THE COURT: All right. We'll address that  
15                  further at the final pre-trial on Friday.

16                  At this time, I think I'm going to ask  
17                  the parties to remain here. I will go back and  
18                  have the clerk bring in the jurors, then I will  
19                  come back out on the bench and give the jurors  
20                  the preliminary information prior to their  
21                  completion of the questionnaire.

22                  And I believe there is agreement that  
23                  after the Court completes that process, we'll  
24                  take a short break to clear the courtroom so that  
25                  members of the press and members of the public

will be excused, since during the time the jurors will be completing the actual questionnaires, court will not be in session, and neither the parties nor I will be present.

So if you just sit tight, I will check on the process of the jurors and we'll get started. I think all of the seating in the courtroom, except for whatever is left in the back, will be needed for members of the jury panel.

(Brief recess.)

THE COURT: Ladies and gentlemen, this morning we are commencing the jury selection process in the case of State of Wisconsin vs. Steven A. Avery, Case No. 05 CF 381. This is a criminal case. In a moment I will read to you the crimes charged in the Information in this case.

The Information is nothing more than a written, formal accusation against a defendant, charging him with the commission of criminal acts. You are not to consider the Information as evidence against the defendant in any way. It does not raise an inference of guilt.

The Information in this case charges the defendant, Steven Avery, with being a party to

1                   the crime of first degree intentional homicide of  
2                   Teresa Halbach. Mr. Avery is also charged with  
3                   party to the crime of mutilating her corpse,  
4                   false imprisonment, and felon in possession of a  
5                   firearm.

6                   To each of the charges I have just read,  
7                   Mr. Avery has entered a plea of not guilty, which  
8                   means the State must prove every element of the  
9                   offenses charged, beyond a reasonable doubt. The  
10                  law presumes every person charged with the  
11                  commission of an offense to be innocent. This  
12                  presumption attends the defendant throughout the  
13                  trial, and prevails at its close, unless overcome  
14                  by evidence which satisfies the jury of his  
15                  guilt, beyond a reasonable doubt. The defendant  
16                  is not required to prove his innocence.

17                  The burden of proving the defendant  
18                  guilty of every element of the crimes charged is  
19                  upon the State. Before you can return a verdict  
20                  of guilty on any count, the State must prove, to  
21                  your satisfaction, beyond a reasonable doubt,  
22                  that the defendant is guilty on that count.

23                  The case is being prosecuted by Special  
24                  Prosecutor Kenneth Kratz. Mr. Kratz, if you can  
25                  please stand up.

1 ATTORNEY KRATZ: Good morning.

2 THE COURT: Thomas Fallon.

3 ATTORNEY FALLON: Good morning.

4 THE COURT: And Norman Gahn.

5 ATTORNEY GAHN: Good morning.

6 THE COURT: The defendant in this case is  
7 Steven Avery.

8 THE DEFENDANT: Good morning, ladies and  
9 gentlemen.

10 THE COURT: And Mr. Avery is being defended  
11 by attorneys, Dean Strang.

12 ATTORNEY STRANG: Good morning.

13 THE COURT: And Jerome Buting.

14 ATTORNEY BUTING: Good morning.

15 THE COURT: The trial itself is expected to  
16 take approximately six weeks. Sixteen members of  
17 the jury panel will be selected to serve on the  
18 jury. While only 12 members of the jury will arrive  
19 at the final verdict, 4 additional jurors are being  
20 selected to hear the case in the event members of  
21 the jury should have to be excused before the jury  
22 retires to deliberate. Should there be more than 12  
23 jurors remaining at the close of the evidence, the  
24 alternate jurors will be selected by lot.

25 The process we are about to engage in is

called voir dire. Its purpose is to assure that the jury ultimately impaneled to hear this case is comprised of people who are not biased or prejudiced. The jurors must be citizens who can fairly and impartially decide the facts of the case, based solely upon the evidence presented in court, and will then follow my instructions as to the law applicable to those facts.

We are using the proceeding today to have all prospective jurors complete a written questionnaire. Some jurors will be called back for further individual questioning beginning next Monday, February 5th. Whether and in what order you will be called back is determined by a random computer selection process.

Should you be required to return, the Clerk's Office will contact you by telephone with a time and date to return. Some of you may be excused without participating in individual voir dire. The voir dire process is going to require that you disclose publicly, a certain amount of personal information about yourselves and your families, that you may otherwise want to keep to yourself. It is, unfortunately, necessary.

In special circumstances, exceptions may

1 sometimes be made to insure the privacy of your  
2 answers. You will have to indicate on the  
3 questionnaire if you think you have a valid  
4 reason to ask for an exception.

5 This morning we will proceed as follows:  
6 In a few minutes the Clerk will hand each of you  
7 a written questionnaire which you are to complete  
8 under oath. Please take your time and answer all  
9 questions as completely and accurately as you  
10 can. If you are uncertain about how to answer  
11 any question, please note your uncertainty in  
12 your written answer.

13 I will not be available to individually  
14 answer any questions you may have as you complete  
15 the questionnaire.

16 When you have completed and signed your  
17 questionnaire, return it to the Clerk, who will  
18 turn all the completed questionnaires over to me.

19 After you complete your questionnaire  
20 this morning, you will be excused for the  
21 remainder of the day.

22 After some prospective jurors have been  
23 brought in and questioned individually, next  
24 week, the lawyers and I will confer to decide if  
25 any juror should be excused for cause, that is,

1 for any legally sufficient reason. If I rule  
2 that any prospective juror is to be excused for  
3 cause, that particular panel member will be told  
4 and released from further service in this case.

5 After a sufficient number of prospective  
6 number of jurors have been questioned  
7 individually, the lawyers will be permitted to  
8 exercise their peremptory challenges upon those  
9 remaining on the panel. Once the peremptory  
10 challenges have been exhausted, a jury of 16  
11 persons will be seated to hear the trial.

12 The process of jury selection will take  
13 some time, as you can see. I ask you to be  
14 patient while we are concerned with matters that  
15 don't involve you personally. I strongly suggest  
16 that you bring something back to read while you  
17 wait next week, should you be called back for  
18 individual voir dire.

19 It is estimated by the lawyers that it  
20 will take six weeks to try the case once the jury  
21 has been selected. You should all have received  
22 a letter asking you to request to be excused in  
23 advance, if a case of that length would cause you  
24 any extraordinary personal hardship.

25 Those who responded that it would, and

1           whose reasons were found to be sufficient, have  
2           already been excused. The Court understands that  
3           serving on a jury for six weeks presents a  
4           significant inconvenience to most people. That  
5           is an unfortunate but necessary price we pay for  
6           the system of justice that we enjoy.

7           If any of you has a reason, now, to  
8           believe that you would suffer some exceptional  
9           hardship, other than the convenience (sic) jury  
10          service causes everyone to sit on a case of this  
11          duration, please give specific reasons in your  
12          response to the pertinent question on the  
13          questionnaire.

14          This case has received a substantial  
15          amount of publicity in the newspapers, and on  
16          radio and television. That you are aware of the  
17          publicity does not, by itself, disqualify you.  
18          If, however, that publicity has caused you to  
19          form some opinions about the case already, and  
20          you think you might be unable to put those  
21          opinions aside and listen to the evidence with an  
22          open mind, please be candid about it on your  
23          answers to the relevant questions on the  
24          questionnaire, and when you are questioned  
25          individually.

1                   After the trial starts, it is absolutely  
2                   essential that the jurors who are chosen for the  
3                   case learn nothing whatsoever about it from any  
4                   source, other than the evidence presented in the  
5                   courtroom. The jury will be obliged to that end  
6                   not to read, listen to, or watch any news  
7                   accounts of the trial, nor to talk or let anyone  
8                   else, including one another, talk to them, about  
9                   any aspect of the case, until it is over.

10                  I also instruct you that, for so long as  
11                  we are engaged in the process of jury selection,  
12                  you are not to read, listen to, or watch any news  
13                  accounts of this case or of the proceedings, nor  
14                  talk to anyone or let anyone else talk to you  
15                  about any aspect of the case. That means not  
16                  listening to radio accounts about the case, not  
17                  reading any newspaper accounts, and not watching  
18                  television news coverage of this matter.

19                  As we conduct the voir dire process, you  
20                  will naturally be meeting each other and talking  
21                  among yourselves. It is extremely important,  
22                  however, that you do not discuss this case,  
23                  including the voir dire questions, or your  
24                  answers to any of those questions.

25                  Do not share anything that you may know,

1 or any opinions or impressions you may have,  
2 about the case, with any other prospective juror.  
3 Do not talk about your individual answers to the  
4 questionnaire or any questions you are asked in  
5 open court with anyone. Both the State and  
6 Mr. Avery are entitled to have a completely fair,  
7 openminded and impartial jury sit in judgment in  
8 this case.

9 You will be asked many questions  
10 intended to enable me and the lawyers to draw  
11 some inferences about your attitudes. As you  
12 answer the questions, I ask you to ask yourself,  
13 do I have any reason to question my own  
14 impartiality, to suspect that I might be  
15 prejudiced for or against the State or the  
16 defendant, for any reason.

17 In other words, are you aware of  
18 anything which would prevent you from rendering a  
19 fair and impartial verdict, based solely on the  
20 evidence presented in this courtroom, and the  
21 instructions I will give you at the end of the  
22 trial so -- as to the law applicable to this  
23 case. If so, please be truthful in making that  
24 known to us.

25 Finally, I want you to know that the

1                   Court recognizes that each of the jurors selected  
2                   to serve in this case is being asked to perform  
3                   an important civic duty at a significant personal  
4                   sacrifice of time and attention. While it's not  
5                   the same as serving in the military, for example,  
6                   in a sense the jurors are being drafted into  
7                   government service for six weeks.

8                   Your service in this case imposes a  
9                   greater burden than we ask of most citizens. I  
10                  would ask you to keep in mind, however, the deep  
11                  personal satisfaction that you can receive from  
12                  knowing, should you be selected as a juror, that  
13                  you answered the call of your government and  
14                  served with honor by rendering a verdict based  
15                  not on any preconceived motions -- or notions,  
16                  but only on the evidence introduced at trial and  
17                  the instructions given to you by the Court.

18                  At this time, before we break, I'm going  
19                  to ask the Clerk to swear the panel.

20                  THE CLERK: Would all of the jurors please  
21                  rise and raise your right hand.

22                  (Jury panel sworn.)

23                  THE CLERK: Please be seated.

24                  THE COURT: All right. Members of the jury  
25                  panel, in a minute you are going to be coming back

1                   here to complete your questionnaires. Because of  
2                   the fact Court will not be in session during that  
3                   time, we're going to clear the courtroom of everyone  
4                   else before we ask you to do so.

5                   So at this time the clerks and the  
6                   bailiffs will escort you back to the other  
7                   courtroom that you started in. You will be there  
8                   for few minutes. You can take a rest stop if you  
9                   need to, and then you will be brought back here  
10                  to complete your questionnaires. You may stand  
11                  at this time and be escorted out.

12                  (Jury panel not present.)

13                  THE COURT: All right. The prospective  
14                  jurors have now all left the courtroom. Counsel,  
15                  anything else further before we go off the record?

16                  ATTORNEY STRANG: The Court's instructing  
17                  on publicity, it probably would be a good idea to  
18                  add the internet.

19                  ATTORNEY FALLON: Right, that was the only  
20                  thought I had.

21                  THE COURT: All right. Thank you. We will  
22                  adjourn at this time, and I will see you back at  
23                  10:30.

24                  ATTORNEY STRANG: Thank you.

25                  (Court in recess.)

(Second half of jury panel present.)

THE COURT: Ladies and gentlemen, this morning we are commencing the jury selection process in the case of State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. This is a criminal case. In a moment I will read to you the crimes charged in the Information in this case.

The Information is nothing more than a written formal accusation against a defendant, charging him with a commission of criminal acts. You are not to consider the Information as evidence against the defendant in any way. It does not raise an inference of guilt.

The Information in this case charges  
that the defendant, Steven Avery, or the  
Information charges the defendant, Steven Avery,  
with being a party to the crime of first degree  
intentional homicide of Teresa Halbach.

Mr. Avery is also charged with party to the crime of mutilating her corpse, false imprisonment and felon in possession of a firearm.

To each of the charges I have just read, Mr. Avery has entered a plea of not guilty, which means the State must proof every element of the offenses charged, beyond a reasonable doubt. The

1 law presumes every person charged with the  
2 commission of an offense to be innocent. This  
3 presumption attends the defendant throughout the  
4 trial and prevails at its close, unless overcome  
5 by evidence which satisfies the jury of his  
6 guilt, beyond a reasonable doubt. The defendant  
7 is not required to prove his innocence.

8                 The burden of proving the defendant  
9 guilty of every element of the crimes charged is  
10 upon the State. Before you can return a verdict  
11 of guilty on any count, the State must prove, to  
12 your satisfaction, beyond a reasonable doubt,  
13 that the defendant is guilty of that count.

14                 This case will be prosecuted by Special  
15 Prosecutor Kenneth Kratz. Mr. Kratz.

16                 ATTORNEY KRATZ: Good morning.

17                 THE COURT: Attorney Thomas Fallon.

18                 ATTORNEY FALLON: Good morning.

19                 THE COURT: And Attorney Norman Gahn.

20                 ATTORNEY GAHN: Good morning.

21                 THE COURT: The defendant, Steven Avery, is  
22 present in court today.

23                 THE DEFENDANT: Good morning, ladies and  
24 gentlemen.

25                 THE COURT: Mr. Avery, will be represented

1 by Attorney Dean Strang.

2 ATTORNEY STRANG: Good morning.

3 THE COURT: And Attorney Jerome Buting.

4 ATTORNEY BUTING: Hello.

5 THE COURT: The trial itself is expected to  
6 take approximately six weeks. Sixteen members of  
7 the jury panel will be selected to serve on the  
8 jury. While only 12 members of the jury will arrive  
9 at the final verdict, 4 additional jurors are being  
10 selected to hear the case in the event members of  
11 the jury should have to be excused before the jury  
12 retires to deliberate. Should there be more than 12  
13 jurors remaining at the close of the evidence, the  
14 remaining alternate jurors will be selected by lot.

15 The process we're about to engage in is  
16 called voir dire. Its purpose is to assure that  
17 the jury ultimately impaneled to hear this case  
18 is comprised of people who are not biased or  
19 prejudiced. The jurors must be citizens who can  
20 fairly and impartially decide the facts of the  
21 case, based solely on the evidence presented in  
22 court, and who will then follow my instructions  
23 as to the law applicable to those facts.

24 We are -- We are using the proceedings  
25 today to have all prospective jurors complete a

1                   written questionnaire. Some jurors will be  
2                   called back for further individual questioning  
3                   beginning next Monday, February 5. Whether and  
4                   in what order you will be called back is  
5                   determined by a random computer selection  
6                   process.

7                   Should you be required to return, the  
8                   Clerk's Office will contact you by telephone with  
9                   a time and date to return. Some of you may be  
10                  excused without participating in individual voir  
11                  dire. The voir dire process is going to require  
12                  that you disclose publicly, a certain amount of  
13                  personal information about yourself and your  
14                  families, that you might otherwise want to keep  
15                  to yourself. It is, unfortunately, necessary.

16                  In special circumstances, exceptions may  
17                  sometimes be made to insure the privacy of your  
18                  answers. You will have to indicate on the  
19                  questionnaire if you believe you have a valid  
20                  reason to ask for an exception.

21                  We'll proceed as follows: In a few  
22                  minutes the Clerk will hand each of you a written  
23                  questionnaire which you are to complete under  
24                  oath. Please take your time and answer all  
25                  questions as completely and accurately as you

1 can. If you are uncertain about how to answer  
2 any question, please note your uncertainty in  
3 your written answer.

4 I will not be available to individually  
5 answer any questions you may have.

6 When you have completed and signed your  
7 questionnaire, return it to the Clerk, who will  
8 turn all the completed questionnaires over to me.  
9 After you complete your questionnaire, you will  
10 be excused for the remainder of the day.

11 After some prospective jurors have been  
12 brought in and questioned individually, next  
13 week, the lawyers and I will confer to decide if  
14 any should be excused for cause, that is, for any  
15 legally sufficient reason. If I rule that any  
16 prospective juror is to be excused for cause,  
17 that particular panel member will be told and  
18 released from further service in this case.

19 After a sufficient number of prospective  
20 jurors have been questioned individually, the  
21 lawyers will be permitted to exercise their  
22 peremptory challenges upon those remaining on the  
23 panel. Once the peremptory challenges have been  
24 exhausted, a jury of 16 persons will be seated to  
25 hear the case.

1                   The process of jury selection will take  
2                   some time, as you can see. I ask you to be  
3                   patient while we are concerned with matters that  
4                   don't involve you personally. I strongly suggest  
5                   that you bring something back to read while you  
6                   wait, should you be called back for individual  
7                   voir dire next week.

8                   It is estimated by the lawyers that it  
9                   will take six weeks to try the case once the jury  
10                  has been selected. You should all have received  
11                  a letter asking you to request to be excused in  
12                  advance if a case of that length would cause you  
13                  any extraordinary personal hardship.

14                  Those who responded that it would, and  
15                  whose reasons were found to be sufficient, have  
16                  already been excused. The Court understands that  
17                  serving on a jury for six weeks presents a  
18                  significant inconvenience to most people. That  
19                  is an unfortunate but necessary price we pay for  
20                  the system of justice that we enjoy.

21                  If any of you has a reason, now, to  
22                  believe that you would suffer some exceptional  
23                  hardship, other than the convenience (sic) jury  
24                  service causes everyone to sit on a case of this  
25                  duration, please give specific reasons in your

1 response to the pertinent question on the  
2 questionnaire.

3 This case has received a substantial  
4 amount of publicity in the newspapers, and on  
5 radio and television. That you are aware of the  
6 publicity does not, by itself, disqualify you.  
7 If, however, that publicity has caused you to  
8 form some opinions about the case already, and  
9 you think you might be unable to put those  
10 opinions aside and listen to the evidence with an  
11 open mind, please be candid about it in your  
12 answers to the relevant questions on the  
13 questionnaire and when you are individually  
14 questioned.

15 After the trial starts, it is absolutely  
16 essential that the jurors who are chosen for the  
17 case learn nothing whatsoever about it from any  
18 source, other than the evidence presented in this  
19 courtroom. The jury will be obliged to that end  
20 not to read, listen to, or watch any news  
21 accounts of the trial, nor to talk or let anyone  
22 else, including one another, talk to them, about  
23 any aspect of the case, until it is over.

24 I also instruct you that, for so long as  
25 we are engaged in the process of jury selection,

1           you are not to read, listen to, or watch any news  
2           accounts of the case or of the proceedings, nor  
3           talk to anyone or let anyone else talk to you  
4           about any aspect of the case. That means not  
5           listening to the radio news accounts about the  
6           case, not reading any newspaper accounts, not  
7           watching television news coverage of this matter  
8           and not searching the internet for information  
9           about the case.

10           As we conduct the voir dire process, you  
11           will naturally be meeting each other and talking  
12           among yourselves. It is extremely important,  
13           however, that you do not discuss this case,  
14           including the voir dire questions, or your  
15           answers to those questions.

16           Do not share anything you may know, or  
17           any opinions or impressions you may have, about  
18           the case, with any other prospective juror. Do  
19           not talk about your individual answers to the  
20           questionnaire or to any questions you are asked  
21           in open court with anyone, including your fellow  
22           jurors. Both the State and Mr. Avery are  
23           entitled to have a completely fair, open-minded  
24           and impartial jury sit in judgment upon this  
25           case.

1                    You will be asked many questions  
2                    intended to enable me and the lawyers to draw  
3                    some inferences about your attitudes. As you  
4                    answer the questions, I ask you to ask yourself,  
5                    do I have any reason to question my own  
6                    impartiality, to suspect that I might be  
7                    prejudiced for or against the State or the  
8                    defendant for any reason.

9                    In other words, are you aware of  
10                  anything which would prevent you from rendering a  
11                  fair and impartial verdict, based solely on the  
12                  evidence to be presented in this courtroom, and  
13                  the instructions I will give you at the end of  
14                  trial as to the law applicable to the case. If  
15                  so, please be truthful in making that known to  
16                  us.

17                  Finally, I want you to know that the  
18                  Court recognizes each of the jurors selected to  
19                  serve in this case are being asked to perform an  
20                  important civic duty at a significant personal  
21                  sacrifice of time and attention. While it is not  
22                  the same as serving in the military, in a sense  
23                  the jurors are being drafted into government  
24                  service for six weeks.

25                  Your service in this case imposes a

1 greater burden than we ask of most citizens. I  
2 would ask you to keep in mind, however, the deep  
3 personal satisfaction you can receive from  
4 knowing, should you be selected as a juror, that  
5 you answered the call of your government and  
6 serve with honor by rendering a verdict based not  
7 on any preconceived notions, but only on the  
8 evidence introduced at trial and the instructions  
9 given you by the Court.

10 At this time I will ask the Clerk to  
11 swear the members of the jury panel. Will you  
12 all please stand.

13 THE CLERK: Please raise your right hand.  
14 (Jury panel sworn.)

15 THE CLERK: Please be seated.

16 THE COURT: Members of the jury panel,  
17 because you are going to be completing a  
18 questionnaire while court is not in session, we're  
19 going to take a few minutes to clear the courtroom.

20 At this point, I'm going to ask you all  
21 to stand and be escorted by the bailiffs and  
22 court personnel back to the other courtroom for a  
23 few minutes. Once the courtroom here is cleared,  
24 you will be brought back here and given your  
25 questionnaires.

1                   As indicated earlier, after your  
2 questionnaires are completed, you can hand them  
3 to the Clerk and you will be free to leave for  
4 the day. You may rise and be escorted back to  
5 the other courtroom at this time.

6                   (Jury panel not present.)

7                   THE COURT: You may be seated. The members  
8 of the jury panel have now left for the other  
9 courtroom and the courtroom is clear.

10                  Counsel, I would ask, this is our last  
11 time on the record for today, I would ask you to  
12 stop back in chambers after we're done, just so  
13 we can clarify the agenda for the pre-trial on  
14 Friday.

15                  ATTORNEY BUTING: Judge, can I make one  
16 question here?

17                  THE COURT: Yes.

18                  ATTORNEY BUTING: It didn't occur to me  
19 when you read it the first time and as I listened  
20 this time; do the jurors know that they will not be  
21 sequestered for the full six weeks?

22                  THE COURT: Well, they haven't been told  
23 that they would be sequestered. They haven't been  
24 told that they have not been. I suppose we'll have  
25 to address that in individual voir dire. I will

1 notify them of that fact at the outset.

2 ATTORNEY BUTING: Okay. Might just be  
3 something to be aware of if we get questionnaires  
4 where people talk about hardships, that maybe they  
5 are thinking it would be a bigger burden than it  
6 really will be, since they will be able to go home.  
7 Probably should have discussed this earlier, but it  
8 just slipped my mind.

9 THE COURT: All right. Thank you, anything  
10 else?

11 ATTORNEY KRATZ: No.

12 THE COURT: Very well, we're off the record  
13 for today.

14 (Proceedings concluded.)

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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 9th day of August, 2007.  
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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, PRE-TRIAL

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** FEBRUARY 2, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ  
Special Prosecutor  
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON  
Special Prosecutor  
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN  
Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG  
Attorney at Law  
18 On behalf of the Defendant.

19 JEROME F. BUTING  
Attorney at Law  
20 On behalf of the Defendant.

21 STEVEN A. AVERY  
Defendant  
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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THE COURT: At this time the Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here today for a final pre-trial conference in this matter. Will the parties state their appearances for the record, please.

ATTORNEY KRATZ: Your Honor, the State appears by Calumet County District Attorney, Ken Kratz appearing as Special Prosecutor. Also appearing as Special Prosecutors include Tom Fallon from the Department of Justice and Norm Gahn from the Milwaukee District Attorney's Office.

ATTORNEY STRANG: Good afternoon. Steven Avery appears in person. Jerome F. Buting of Buting and Williams represents him, as does Dean Strang of Hurley, Burish and Stanton.

ATTORNEY KRATZ: Judge, I'm sorry, before we proceed with our agenda this afternoon, I had alerted the Court that I was going to make a technical change to the Information. That's been done to a four count Information as represented on Monday. I am prepared to file that original with the Court. Mr. Strang has already received a copy.

THE COURT: Very well, you may give the Clerk the original at this time.

There are a number of items for the

Court to address today. The first one I have on the list is the State's motion for release of blood vial evidence and blood spot cards for scientific testing. Who's going to be speaking on behalf of the State?

ATTORNEY GAHN: I will, your Honor.

ATTORNEY STRANG: Your Honor, if I may, before we get to that, the defense acknowledges receipt of the second Amended Information. Because actual objections to a jurisdictional and otherwise have been raised, I preserve those. We appear specially, to that extent, not waiving objections to the second Amended Information, but acknowledge receipt of it and waive reading.

THE COURT: Thank you. Mr. Gahn.

ATTORNEY GAHN: Thank you, your Honor. In our motion that we filed we are asking the Court to release the vial of blood that is currently under seal in the Clerk of Court's Office here in Manitowoc County. The defense has filed a response and that response levels allegations that we are trying to try this case by ambush, or at the minimum, trying to be cute --

THE COURT: All right. Let's stop right there, because if the defense has filed a written

1 response, I don't have it. When did it come in?

2 ATTORNEY BUTING: Yesterday.

3 THE CLERK: I don't have it.

4 THE COURT: Check with Robbie. Was an  
5 original filed with the Clerk?

6 ATTORNEY BUTING: Yes.

7 THE COURT: The clerk is indicating she  
8 doesn't have it.

9 ATTORNEY BUTING: I have a copy, and with  
10 the attached exhibits. We faxed that, it says it  
11 was received.

12 THE COURT: All right. At any rate, I have  
13 a copy at this time. And I trust, Mr. Gahn, from  
14 your comments, that the State has a copy.

15 ATTORNEY GAHN: I'm sorry, please, your  
16 Honor?

17 THE COURT: I trust from your comments,  
18 since you made response to the defendant's response,  
19 that you have a copy?

20 ATTORNEY GAHN: Yes, your Honor.

21 THE COURT: All right. I now have one, so  
22 you may proceed.

23 ATTORNEY BUTING: Do you want to take a  
24 moment, your Honor, and read it first before we  
25 proceed.

THE COURT: Just a minute. All right. I have a copy of this document, but I didn't understand that this document referred to the blood vial evidence.

ATTORNEY BUTING: Did I give you the wrong one? I gave you the wrong one.

THE COURT: All right. Mr. Gahn, you may proceed.

ATTORNEY GAHN: Thank you, your Honor. I would like to just recap a little bit the chronology of events and what brings us here today. On December 6, we were notified that this vial of blood existed in the Clerk of Court's Office. And on January 3rd, we filed our motion to exclude blood vial evidence, or in the alternative, would the Court grant continuance for us, to allow us to test that vial of blood.

By written decision and order on January 9th, this Court denied our motion for the continuance to test the vial and reserved ruling on our motion to exclude the blood vial evidence.

The following day, on January 10th, I was informed by law enforcement officers who were involved in this case that they had received a call from the U.S. Attorney's Office. And the

1           U.S. Attorney's Office had expressed concern over  
2           the decision not allowing us time to test this  
3           vial, and offered their services, shall we say  
4           their pull, or whatever, to expedite testing that  
5           we would like to see done with the resources  
6           available to them, namely the Federal Bureau of  
7           Investigation.

8                 At that time, we made the decision that  
9                 we would like to see what your ruling was,  
10                because we felt that we had a rather compelling  
11               and powerful argument for the Court to rule that  
12               the blood vial does not come in. And so we  
13               waited for your decision on that, on that issue.

14               And we also felt that we were in a good  
15               position and felt that that decision was likely  
16               because the Court had granted a continue --  
17               denied our motion for continuance. In any event,  
18               the decision came down last Tuesday and the Court  
19               has decided that the evidence of the blood vial  
20               is going to come in in this trial.

21               The Court ruled that although we found  
22               the probative value rather low for this evidence,  
23               I think the Court based its decision upon the  
24               Sixth Amendment right of the defendant to present  
25               a defense, and we understand that. But the Court

1           also noted in its decision that the Court would  
2           entertain any request, by the State, to test that  
3           blood, should we wish to pursue that. And that  
4           is precisely why we're here today. We're going  
5           to ask you, your Honor, to unseal that blood and  
6           we would like to send that off for chemical  
7           testing, or what other test that we deem  
8           appropriate.

9                 Some of them, it's difficult to say how  
10          we want to test it, because we don't know the  
11          condition of the blood yet. And until that blood  
12          is examined and just determine what shape it is  
13          in, that will determine what test we will pursue.

14                 But we will be able to pursue the  
15          testing for EDTA, which we originally asked the  
16          Court to give us the continuance. And we are  
17          told that the FBI will have that testing  
18          completed before the close of this trial. I  
19          think that speaks to the vast difference in  
20          influence that an Assistant District Attorney  
21          from Milwaukee County has with the FBI Lab and  
22          the U.S. Attorney. But we're told that that can  
23          be accomplished.

24                 I would ask the Court to reconsider the  
25          thoughts that the Court put down in its decision

1           about the **Cooper** case. There are some vast  
2           differences with the situation that we have and  
3           that **Cooper** case. And I would ask the Court to  
4           recall that in my argument I thought that I laid  
5           out those differences well, I thought.

6           The **Cooper** decision was brought by the  
7           defense. It was a post-conviction hearing. And  
8           up until now, I don't know, I could not find a  
9           decision where the State brought a request for  
10          EDTA testing. It's generally brought by the  
11          defense. And in that case, they simply had stain  
12          samples. And the individual, the person, the lab  
13          that tested those was claiming that just the mere  
14          presence of EDTA in the sample, therefore,  
15          indicates it came from a vial of blood with EDTA.

16          I agree that there were some stretches  
17          made by the defense in the **Cooper** case. But this  
18          case is different. We have standards to compare  
19          to the EDTA levels, if there are any, in Teresa  
20          Halbach's SUV. We have the vial itself and we  
21          also have standards that are at Laboratory  
22          Corporation of America.

23          And this makes this a vastly, vastly  
24          different situation than what the **Cooper** case  
25          presented. And I believe that the testing that

1           would be done in this case, we would clearly,  
2           clearly meet the **Walstad** standard here and that  
3           whatever issues the defense has would go to the  
4           weight of the evidence and not to the  
5           admissibility. Because even a reading of the  
6           **Cooper** case, all the experts agree that the  
7           underlying scientific principles, the ability to  
8           test substances for the presence of various  
9           chemicals, is well established and has been for  
10          many, many years.

11           We believe that it is critical that we  
12          be given the opportunity to test this vial of  
13          blood and present those results at trial. I  
14          believe that the testing that we will be able to  
15          accomplish before the trial is over will clearly  
16          show that the blood in Teresa Halbach's SUV did  
17          not come from this vial of blood that is in  
18          this -- in this building.

19           Now, the defense does not like the case  
20          of **State v. Konkol**, but unfortunately for them,  
21          it's the law. We have the right to meet their  
22          defense in rebuttal and we really don't have to  
23          tell them how we're going to do it, but we're  
24          telling them today how we're going to do it. And  
25          they take their chances, if they are going to go

1 down this planting defense, at their peril.

2                   The defendant's response to our motion  
3 for access to the blood vial evidence, in a way,  
4 I think strongly supports our position, that we  
5 be given the opportunity to conduct the  
6 scientific testing. If the Court would look on  
7 Page 6, Paragraph 4 of their response, the  
8 defense intends to use the vial as an exhibit and  
9 to bring it into the courtroom. And they state  
10 that they want to have it as an exhibit in court  
11 and display this and any alteration of the  
12 condition of the vial.

13                  They talk about the amount of liquid,  
14 the condition of the top, in order to demonstrate  
15 the viability of the defense that the vial was  
16 tampered with by officers. And then they state  
17 directly, or through agents -- What concerns me  
18 here, is that this is flying right in the face of  
19 your decision to allow the blood vial in. But  
20 you did place limitations on how far they can go  
21 with this planting frame-up defense.

22                  Who are the agents of these officers  
23 they are talking about? And it seems that we are  
24 now back with bailiffs in this courtroom, clerks,  
25 anyone who works in the Manitowoc County Clerk of

Court's Office, maintenance personnel, anyone who had a key to that office, anyone who had the combination to the door that you -- second door that you get in. All of these people now seem to be -- could they have been the agents of one of these deputy sheriffs.

Furthermore, to bring this vial into court and show it to the jury, to show the amount of liquid, the condition of the top, you are now again -- this seems to fly in the face of what your court order was in your decision to place limitations. Do we now have to call the North Carolina people to see how they put the stopper on; the nurse; the phlebotomist who pulled -- that took the blood out into this vial, into this vacutainer; is that why the hole is in the purple top.

The information and the exhibits to the defendant's initial motion to seal this evidence indicates that the box was crushed in transit. Did that cause, perhaps, the stopper of the tube to be dislodged ever so slightly? These are just questions that we are going to be going off on, that I believe was not the intent of the Court when it rendered its decision.

1                   But more importantly, if they are  
2                   allowed to bring this vial into the courtroom and  
3                   start discussing quantity, how much is in it,  
4                   whether the stopper tube has been tampered with,  
5                   or whether there's been a breach by a needle  
6                   through the top, you are getting into, now,  
7                   scientific matters.

8                   And you are going to be looking at, the  
9                   jurors, the color that's there, the viscosity of  
10                  blood. There are so many, now we're getting into  
11                  areas that it cries out for chemical testing. If  
12                  this is what their intention to do, they are  
13                  basically bringing in science into the courtroom,  
14                  about that vial of blood, and that is not  
15                  correct. This can only be answered by testing  
16                  this vial of blood.

17                  Giving us the opportunity to test it and  
18                  show the defense, and show the world, what this  
19                  defense is, that these officers would plant blood  
20                  in Teresa Halbach's car, we have to have that  
21                  opportunity. The minute they bring that vial in,  
22                  we have to have had been given the opportunity to  
23                  test it, your Honor.

24                  I'm concerned for the Halbach family and  
25                  Teresa Halbach, that they get the trial that they

1           deserve. But also, just as importantly, I know  
2           from 22 years experience as an Assistant District  
3           Attorney, and 10 years in law enforcement with  
4           the Criminal Investigation Division of the United  
5           States Army, I always know that there is always a  
6           sort of a -- can be a tension between the police  
7           and the prosecutors.

8                 But the relationship we have is embraced  
9           by each other. And when two officers are accused  
10           of what they are being accused of, for the last  
11           week these two deputy sheriffs have been on the  
12           broadcast news, and on the print media, and  
13           painted as if they could do something like this.

14               And as a prosecutor, we have a  
15           responsibility to do everything we can to also  
16           restore their good names. These deputy sheriffs  
17           have protected this community. They put their  
18           lives on the line. They get into situations that  
19           none of us want to deal with in life.

20               They are both good solid decent family  
21           men. They are kind men. They are gentlemen.  
22               I'm sure everyone in this room knows them. They  
23           deserve to have their reputations protected. And  
24           we can best do that by allowing us the  
25           opportunity to test that vial of blood and

1 show -- and show the world that the blood that is  
2 in Teresa Halbach's car did not come from this  
3 vial of blood.

4 In the Wisconsin case of **State v. Migliorino**, 489 NW 2nd, 678, they quote from the  
5 United States Supreme Court. And they state  
6 that, absent a constitutional provision statute  
7 or evidentiary rule to the contrary, the law is  
8 entitled to every person's evidence.

9  
10 As former Chief Justice Warren Burger  
11 emphasized, for a unanimous Supreme Court, the  
12 need to develop all relevant facts in the  
13 adversary system is both fundamental and  
14 comprehensive. The ends of criminal justice  
15 would be defeated if judgments were to be founded  
16 on a partial or speculative presentation of the  
17 facts.

18 The very integrity of the judicial  
19 system and public confidence in the system depend  
20 on full disclosure of all the facts within the  
21 framework of the rules of evidence to ensure that  
22 justice is done. It is imperative to the  
23 function of courts that compulsory process be  
24 available for the production of evidence needed  
25 by either the prosecution or by the defense. And

1           that's in ***United States v. Nixon***, 418 U.S., 683,  
2           1974 decision.

3           And a few years later, in ***United States***  
4           ***v. Robinson***, at 485 U.S. 25, 1988, the Supreme  
5           Court stated, The central purpose of a criminal  
6           trial is to decide the factual question of the  
7           defendant's guilt or innocence. To this end, it  
8           is important that both the defendant and the  
9           prosecutor have the opportunity to meet, fairly,  
10          the evidence and arguments of one another. And  
11          for us to meet, fairly, the allegation that these  
12          two deputy sheriffs, these sworn officers who  
13          have taken an oath of office, would do something  
14          so despicable, and so criminal, necessitates us  
15          to have the opportunity to show how uncorrect,  
16          and untrue, and vile that allegation is. That's  
17          all I have, Judge, thank you.

18           THE COURT: Mr. Buting.

19           ATTORNEY BUTING: Well, Judge, it seems to  
20          me we're having nothing more than a rehash of the  
21          State's previous motion, which this Court considered  
22          thoroughly and denied for good reason. We object to  
23          any testing at this time, other than fingerprint  
24          testing. We say that we have no objection to the  
25          State bringing in some fingerprint analyst to

1 examine the vial, as it is, in the Clerk's Office.  
2 But we do object, as I say in my response, at this  
3 late 11th hour, to any opening of the vial and doing  
4 tests on the vial of blood itself.

5 If this motion had been filed long a  
6 ago, it may be different. But one thing that  
7 Mr. Gahn left out of his chronology here, they  
8 were notified, by the way, December 6th, that was  
9 two months before trial, that this blood existed.  
10 And no motion was forthcoming at that time. No  
11 EDT motions forthcoming.

12 And I'm not usually in the habit of  
13 reading people's emails in Court, but it wasn't  
14 one sent to me, in any event. So I think the  
15 Court needs to recognize, that in the Crime Lab  
16 records is an email dated almost one year ago,  
17 February 6th of 2006, to the Crime Lab analyst.

18 And at that time, a year ago, this email  
19 demonstrates the State was aware of and  
20 considering the possibility of EDTA tests. It  
21 says, quote, "Norm agreed that the bloodstains  
22 (or a couple anyway) should be tested for EDTA  
23 preservative to deflect the absurd suggestion  
24 that cops are carrying around vials of blood. I  
25 know your lab doesn't or can't test for it, but

1                   Norm suggests the Lab of Hygiene might. Do you  
2                   think that's a good idea, or should we go to a  
3                   private lab?

4                   One year ago they knew about this  
5                   potential EDTA test. And I don't have the answer  
6                   to that particular email, but the answer is, that  
7                   they didn't do it. And they didn't test it  
8                   because they were afraid they would find EDTA in  
9                   the stains in the RAV-4, and that the defense  
10                  would have another argument that this was planted  
11                  evidence. That's what's going on here, Judge.

12                  Just to make clear, Judge, this email I  
13                  am referring to was in discovery. So it wasn't  
14                  -- I received it legitimately. If the Court  
15                  wants to see that paragraph, or the whole email  
16                  is fine. But the point being here is that this  
17                  has been a strategy, a -- a game of sorts, that  
18                  the State has been playing, gambling that things  
19                  would turn out the way they want, rather than  
20                  doing the test.

21                  Now that they have lost, they are trying  
22                  to come back and do something, again. They are  
23                  trying to reverse it. That's evident from  
24                  Mr. Gahn's own comments.

25                  December 6 is when they were notified,

1 officially, that there was a blood vial in the  
2 Clerk's office. No motion was made at that time.  
3 They wait a month, to January 4th, before they  
4 move to exclude it, or to continue the trial for  
5 testing. Now, he's telling us, for the first  
6 time, that when we were last discussing this, the  
7 Court and counsel for the defense were told that  
8 the FBI would take about three months, or four  
9 months, or whatever it was going to be, to retool  
10 and be able to do this test, because they do not  
11 even do EDTA tests anymore.

12 They stopped doing them because they are  
13 not reliable. They haven't done them since the  
14 O.J. Simpson trial 10 years ago. They were going  
15 to have to recalibrate their entire chemical lab  
16 in order to be able to even do these tests for  
17 this one case. Why? Because now the State is  
18 desperate. So, now we hear, though, on  
19 January 10th, that Mr. Gahn was told, oh, the  
20 U.S. Attorney is involved. U.S. Attorney's  
21 Office now says they are going to get the FBI to  
22 be able to do it.

23 Well, did we have a motion on  
24 January 10th? No. Did we have a motion on the  
25 11th, the 12th, or any of the succeeding days?

1           No. Because they gambled, they took a gamble  
2           that you were going to exclude the blood vial  
3           evidence and they lost. They took a chance. It  
4           was a strategic decision the State made. And  
5           everyone has got to live with it.

6           At this point, we have got jurors who  
7           have been on the verge of being selected. We  
8           have got everything ready for trial to begin on  
9           Monday. And this trial cannot begin on Monday if  
10          there are going to be any tests. Because as I  
11          point out, **State vs. Wold**, the Supreme Court  
12          decision, in my motion, it is very clear that if  
13          scientific tests are to be done, the other side  
14          has a right to its own sequential tests,  
15          surrebuttal tests.

16          On Page 4 of my motion, I quote from  
17          **Wold**, W-o-l-d, The need for full and fair  
18          disclosure is especially apparent with respect to  
19          scientific proof and the testimony of experts.  
20          This sort of evidence is practically impossible  
21          for an adversary to test or rebut at trial,  
22          without an advance opportunity to examine it  
23          closely.

24          We have a -- We would have a surrebuttal  
25          right to present our own evidence debunking

1           whatever the FBI comes up with here. Because as  
2           Mr. Gahn points out, every single reported case  
3           where EDTA has been tried -- has been offered as  
4           evidence, has been the defense doing it. And the  
5           State has presented witness after witness, expert  
6           witnesses, to say that it is not reliable and it  
7           should not even be admissible and they have  
8           debunked it.

9                 Now, all those witnesses we would have a  
10          right to bring into this court and rebut whatever  
11          they would come up with, but we can't do that  
12          now. It's too late. Because they took a gamble  
13          and lost.

14                 As I understand it, this EDTA test is  
15          the only thing they are asking for now. And the  
16          Court has ruled on that. And there's no way at  
17          this point the Court can reverse that without  
18          postponing the trial, which we object to.

19                 Mr. Avery is in custody. He has a right  
20          to proceed. And he should not be punished or  
21          prejudiced because of some strategy, failed  
22          strategy, foolish strategy perhaps, in hindsight,  
23          but certainly a presumptuous one, to presume that  
24          this Court was going to rule in their favor and  
25          exclude it in the first place.

1                   Especially when we see now, that a full  
2 year ago, they knew that this was going to be an  
3 issue. They knew from the very beginning when he  
4 said it was planted. They have had plenty of  
5 time. This email proves that in February they  
6 were talking about doing these tests a year ago,  
7 and chose, deliberately chose, not to do that.

8                   So if these officers have to sit through  
9 a proceeding or news -- news reports that somehow  
10 make them seem vile, I think was the term,  
11 whatever, so be it. That's the strategy that the  
12 State took. That's the path that they took.  
13 That's where this trial is going.

14                  And it's a jury who is going to decide  
15 if they are good and decent people, solid decent  
16 people, or not. The jury who hears the evidence  
17 as to -- that shows what they did or didn't do in  
18 this case, will make that decision.

19                  They want to show the world that this  
20 blood in the RAV did not come from the vial.  
21 That's absurd. They call the defense absurd. If  
22 they were able to do that, we would have been  
23 hearing about this long before today.

24                  Still, after two months, they have not  
25 been able to present the Court with one single,

1           scientifically valid, reliable test that could be  
2           done at this point, on the vial of blood, that  
3           would somehow prove what they would love it to  
4           prove. It doesn't -- There are no tests.

5           There will be EDTA in the stains in the  
6           RAV. There will be EDTA in the blood tube.  
7           There will be EDTA in the RAV because, according  
8           to the State's experts in every other case, EDTA  
9           is a common chemical that is found in the  
10          environment, especially in cleaning products,  
11          Armor All, automobile type products. It's there.

12          So there are no tests, that I have  
13          heard, either before court or in court, or from  
14          Mr. Gahn, there are no tests that are going to  
15          prove what they want it to prove. That is,  
16          somehow -- it's not like they are going to be  
17          able to do some perfect fingerprint or DNA type  
18          of test and say this came from the vial, this  
19          couldn't have come from the vial.

20          For them now to wait. The **Konkol** case,  
21          let me just talk about that for a minute. **Konkol**  
22          says that the State can, in rebuttal, they can  
23          use an expert. That case was an OWI case where  
24          the State presented, in rebuttal, a blood alcohol  
25          absorption expert, to rebut the defense that was

1           presented, which is, I couldn't have been a .12  
2           because I only had one drink. And several other  
3           witnesses were presented, said we saw him, he  
4           only had one drink.

5           The defense objected when this witness  
6           came in in rebuttal, saying this witness wasn't  
7           on the witness list. **Konkol** examined the statute  
8           that requires disclosure of witnesses. It's  
9           971.23 (1)(d). That's all **Konkol** did. And that  
10          does specifically say that there is an exception  
11          for rebuttal or impeachment witnesses.

12          This is entirely different. This  
13          request falls under (5) of 971.23, which would be  
14          a motion for scientific testing. And as I think  
15          the case law is clear, that motion could have  
16          been made earlier and we would have had no reason  
17          to object, or no right to object, because then  
18          there would have been time for sequential  
19          testing, for the defense to have a lab of its  
20          choosing, probably to call one of the State's  
21          former prosecution witnesses in many of these  
22          other cases, to say, this EDTA stuff is voodoo  
23          science, you can't prove anything. Yeah, we can  
24          test for EDTA, but it doesn't tell us anything.  
25          It can't prove one way or the other.

1                   And now we can't do that if they are  
2                   allowed to start testing now and suddenly spring  
3                   it on us in the middle of a trial. It would  
4                   require -- I just point out to the Court, look at  
5                   that **Cooper** case. Look at how long, how many  
6                   hearings they had, how many evidentiary lengthy  
7                   hearings with experts and battles of experts that  
8                   court had on that one issue.

9                   That's what we would be looking at here  
10                  if we go through this trial, suddenly they bring  
11                  up some test and they want to argue that it  
12                  somehow proves one thing, when other experts will  
13                  say, no, it doesn't. And we're going to have to  
14                  take a -- we're going to have to postpone the  
15                  trial, send the jurors home, and come back in a  
16                  few months. It's just -- it's impossible.

17                  And I point out in 971.23 (5), unlike  
18                  the witness list statute, which does make an  
19                  exception for rebuttal or impeachment witnesses,  
20                  there is no such exception in (5). It doesn't  
21                  say that you can present these in rebuttal, or  
22                  you can hold off and put in tests in rebuttal,  
23                  you know, in the middle of a trial.

24                  And, clearly, when you look at **Wold** and  
25                  you see, it's just common sense that the other

1           side has a right to respond. And when you are  
2           talking about scientific tests you can't just  
3           suddenly, after five weeks of trial, or six weeks  
4           of trial, find an expert who is going to come in,  
5           look at this, test it, and be available to rebut  
6           it. It's just too late.

7           And not only is it too late, the State  
8           has still, and this is very important, it's not  
9           like something is being -- going to be kept from  
10          the world, or something is going to be kept from  
11          the jury that would otherwise answer this  
12          question. There is no test that will prove  
13          whether this -- If there was a test that would  
14          prove it, I would have asked for it. Because  
15          then I believe it would show that the blood in  
16          the vial is the same blood that is in the RAV-4.

17          But I have done the research and  
18          Mr. Gahn has done the research too. And there  
19          are no tests that will prove that and that's why  
20          we haven't heard of any yet. So we're not  
21          holding anything back from the world or the jury  
22          by not doing these tests.

23          Mr. Gahn points out **Migliorino** and talks  
24          about how the law is entitled to every person's  
25          evidence. And I think **Nixon, United States vs.**

1           **Nixon**, talks about that as well, but there are  
2           limits, of course. If the law -- If either side  
3           was allowed to present whatever evidence they  
4           want, then we would be presenting evidence at the  
5           trial of other suspects that could have committed  
6           this crime. A number of them, we could have  
7           presented evidence of.

8           Instead, we have to go to trial and we  
9           can't answer -- or we can't answer the questions  
10          of the jury, who did it if he didn't. We tried.  
11          We offered a number of witnesses, but this Court  
12          ruled, under the law, as it was entitled to, that  
13          that evidence should not come in, similarly here.

14          Not every piece of evidence that either  
15          side wants, gets to come in. There are limits on  
16          it. And this Court has ruled on them already in  
17          this case. To do otherwise, now, would  
18          jeopardize a mistrial, having to retry this case  
19          all over, and simply because the State took a  
20          gamble and lost.

21          So, for all those reasons, I move to --  
22          the Court to deny this motion, with one  
23          exception, that we have no objection to being  
24          able to present fingerprints -- a fingerprint  
25          test to the jury, whatever. I'm assuming that

1 can be done in a way that won't alter the vial.  
2 They have Super Glue type things, that are more  
3 or less invisible, that won't detract from it.  
4 But we have a right to present this blood vial to  
5 the jury so that they can see it in the condition  
6 that it is, and then draw whatever reasonable  
7 inferences there are from that evidence. Thank  
8 you.

9 THE COURT: Mr. Gahn.

10 ATTORNEY GAHN: Very briefly, your Honor.  
11 I'm sorry, very briefly, your Honor. The timing was  
12 perfect in this case by the defense. They knew  
13 about this vial of blood at least in July, last  
14 July. And, of course, Mr. Avery knew about it on  
15 January 2nd of 1996, when the vial of blood was  
16 drawn from his arm in the prison system. So I  
17 suspect they have known about this from the very,  
18 very beginning.

19 They waited until December 6 to put this  
20 on us. It wasn't until the following week, I  
21 believe the 14th, that we actually all went and  
22 looked and actually determined that there was a  
23 vial of blood in the Clerk of Court's Office.

24 And as I explained to the Court, too,  
25 there's no games here. This is too serious of a

1 case. We don't play games here. To get the  
2 answers -- get the answers to the questions that  
3 I had, over that Christmas holiday period, was  
4 difficult, the professors at the universities,  
5 the science departments, the laboratories, and it  
6 wasn't until when I brought the motion on January  
7 3rd that we had the information that we felt was  
8 important to us and that we felt comfortable and  
9 confident that we would be able to present very  
10 valid reliable scientific evidence to this court.

11 As far as the email goes and that we  
12 knew about a year ago, yes, we did talk about it  
13 but the decision was made, and the very  
14 reasonable decision was made, as is shown in the  
15 **Cooper** case. We didn't know there was a vial of  
16 blood in existence. And to test the stains in  
17 the SUV, we knew about how ubiquitous in nature  
18 the EDTA is. And it probably wouldn't have been  
19 helpful or wouldn't have told us anything. And  
20 that's the difference between all the cases and  
21 the facts we have here.

22 Yes, the FBI does not routinely do this  
23 test, because it's rarely, if ever, asked for by  
24 the State. This is a defense motion that they  
25 want to bring in. But here we have standards to

1 compare it to. Certainly it isn't like a DNA  
2 test, but in principle it is like DNA.

3 You can have the bloodstains in the car,  
4 but it doesn't tell you anything unless you have  
5 a standard to compare them to. And we have blood  
6 stains in this car here and we have ED -- we have  
7 a vial of blood that is a standard. In a North  
8 Carolina, at the lab, there is a standard that  
9 makes this just a vastly different case.

10 I don't understand why they are so  
11 afraid of this testing. If their theory of  
12 defense is correct, I would think that they would  
13 also embrace this and welcome it. Don't they  
14 want to know whether the blood in the car came  
15 from the vial of blood.

16 Your Honor, I believe that this case is  
17 so different that we will meet the **Walstad**  
18 requirements in an admissibility hearing. The  
19 Court has indicated, I believe all along, that  
20 it's willing to release that evidence to parties  
21 if they wish to test it. I think that the  
22 decisions that we made are reasonable. They make  
23 sense.

24 And now that we know that this testing  
25 can be done and accomplished in the time frame

1           that I was told it could not be, but for the  
2           assistance of the U.S. attorney, the problem is  
3           that once that vial of blood is brought into the  
4           courtroom, and jurors are being told questions,  
5           or to look at the vial, and look at the color,  
6           and look at the amount that's in there, that's  
7           still in liquid form, look at the top, look at  
8           the stopper; you are now getting into areas of  
9           science and you are going to be -- and without  
10          having answers and science, the jurors will be  
11          forced to widely speculate.

12           How much was in there? How much was  
13          used at Laboratory Corporation of America? How  
14          much was there in the SUV? Is there more blood?  
15          It just cries out for us to have that opportunity  
16          to test it and to answer all these questions,  
17          once and for all, put it to rest.

18           And, again, we will preserve one half of  
19          that, whatever is in that tube. They can do  
20          testing concurrently. And this belief that, oh,  
21          they can't do anything about it now until they  
22          see our results, is not true. They know the  
23          exact same experts that were called in the **Cooper**  
24          case.

25           And I think everyone, and the Court read

1           the case, all the scientists that were called  
2           agreed on the underlying scientific  
3           underpinnings, the instrumentation, and the  
4           ability of the scientific chemistry labs,  
5           toxicology labs, whatever they are, to test for a  
6           particular substance using the instrumentation  
7           that they have now.

8                 The only question is, the interpretation  
9           of the data. They know who those experts are  
10           now. They can line someone up, the very second  
11           that the data comes off to us from the FBI can be  
12           shipped to them and they are ready to -- They can  
13           move on this. They don't have to wait to see it  
14           and then look for an expert. They can find one  
15           right now. And if they want to do their own  
16           testing, whatever that may be, they can also do  
17           it right now.

18                 So I would ask the Court, as I said, I  
19           believe the Court has indicated all along its  
20           willingness to allow this testing. And I think  
21           that the most important thing here for the Court  
22           to recognize is that once that vial is brought  
23           into the courtroom and it's talked about in a  
24           scientific fashion, we must, we must have the  
25           opportunity to answer those scientific questions.

1           And, again, I just cannot, cannot emphasize too  
2           much asking you to give us the chance to restore  
3           the reputations of these fine deputy sheriffs.

4           That's all I have. Thank you so much.

5           THE COURT: All right.

6           ATTORNEY BUTING: Judge, I just have a --

7           THE COURT: Go ahead.

8           ATTORNEY BUTING: -- response to that. Not  
9           a big response. We have still not heard from  
10          anybody, any expert, that will say that such a test  
11          exists that can restore the reputation of these  
12          officers or whatever. This is -- Mr. Gahn is being  
13          disingenuous if he is comparing this in any way to  
14          DNA where you can look at one, look at the other,  
15          and say, yes, there is a match.

16           There is no such test. If there was  
17          such a test, we would have heard about it  
18          already. We would have had something presented.  
19          We would have an expert here today who would be  
20          opining, yes, we can do that. But we haven't  
21          heard anything. We're just hearing these wild  
22          assumptions that maybe there might be such a  
23          thing.

24           The -- They ask, don't we want to know,  
25          wouldn't we like to know if there was? Well, we

1           already know from all the experts we have talked  
2           to, that there is no such test that can do that  
3           comparison. But if they want us to know so much,  
4           then let Mr. Avery out on bail. He's the one who  
5           is sitting in solitary confinement for 15 months  
6           while they made a choice not to test earlier,  
7           when they could have. It's too late to do that  
8           now without postponing the whole trial.

9                 The argument that we can do concurrent  
10          tests is totally disingenuous because Mr. Gahn  
11          knows, as the Court knows, there are no other  
12          labs that do this that are reliable or -- other  
13          than the one that was -- reputation has been  
14          battered in two cases, including the **Cooper** case.

15                 There, frankly, are no labs to do it at  
16          all, not even the FBI, until right now, for this  
17          one test. So how are we going to go find someone  
18          else to do it. We would have to go outside the  
19          country somewhere, assuming there is even anybody  
20          else anywhere who does. We can't do that.

21                 The Court indicated a willingness to  
22          entertain some sort of testing. But I don't  
23          think the Court entertained a willingness to  
24          reconsider the whole issue of whether we should  
25          allow an EDTA tests. If there was some sort of

1           easily done type of test, that wouldn't delay the  
2           proceedings, that's what I understood the Court's  
3           willingness to do. And that's what we would have  
4           been willing to do two months ago, if there was  
5           any such test.

6           I haven't found any. Mr. Gahn hasn't  
7           found any. There are none. The answer is going  
8           to have to be left up to the jury in this case,  
9           as to whether it came -- whether the stains came  
10          from the vial or not. And nothing that could be  
11          done before, probably nothing even after, is  
12          going to answer that question, one way or the  
13          other. And I think that's all. Thank you.

14           THE COURT: All right. Well, based on the  
15          developments as they have been presented to the  
16          Court over the last few weeks, it's obvious that  
17          both parties regard the blood vial evidence, as it's  
18          been referred to, as important in this case. The  
19          information provided to the Court, although there  
20          hasn't been an evidentiary hearing on the matter, is  
21          that the defense had some knowledge of the existence  
22          of the blood vial in the Clerk's Office last July.  
23          And the State indicates it was not notified of the  
24          existence of the vial until early December.

25           Given the relatively late notice to the

1 State, first of all, I'm not aware of anything  
2 that I would characterize as undue delay on the  
3 part of the State. From all indications, they  
4 were surprised to learn of the existence of the  
5 vial, and EDTA testing is not something that is  
6 as standardized even as DNA testing, to the  
7 extent you can call DNA testing standardized.  
8 That's also a development of recent years.

9                 Ultimately, criminal trials are all  
10 about a search for truth. And at this point in  
11 the game, the Court is not being asked to  
12 determine whether any test results from the blood  
13 in the vial are admissible, but simply whether or  
14 not the State should be given the opportunity to  
15 attempt to test the blood in the vial in order to  
16 determine if there is admissible evidence that  
17 will assist the jury. I think that it's only  
18 fair in this case to permit the State to be given  
19 an opportunity to do that.

20                 If there is probative evidence that can  
21 be derived from testing the blood in the vial, I  
22 think it's important to both parties that such  
23 evidence be presented to the jury, regardless of  
24 which party the evidence supports. So I am going  
25 to grant the State's motion to have access to the

1                   blood vial evidence for testing.

2                   In the course of the arguments from the  
3                   parties, there were a couple of things that  
4                   became apparent to the Court. First of all, the  
5                   defense has a legitimate interest in determining  
6                   any -- the existence of any fingerprint evidence  
7                   on the vial. And the vial will have to be  
8                   secured in order to test for fingerprint  
9                   evidence, before any blood is withdrawn to do a  
10                  blood sample.

11                  I also believe that the defense should  
12                  have the right to have the sample split, in the  
13                  event the defense finds a lab that can do EDTA  
14                  testing, or any other testing that the defense  
15                  may feel is meaningful in this case, so that they  
16                  have an opportunity to conduct that testing.

17                  The Court, in it's previous ruling,  
18                  refusing to continue the trial, commented on the  
19                  difficulties expressed in the **Cooper** case with  
20                  determining the significance of levels of EDTA in  
21                  blood. But the **Cooper** case didn't address the  
22                  question of comparability. In this case, it's  
23                  alleged, as part of the defense, as I understand  
24                  it, that the blood in the victim's vehicle may  
25                  have come from the vial in the Clerk's Office.

1                   And the Court is not prepared to say,  
2                   and has been presented with no evidence to  
3                   suggest that there may not be a meaningful  
4                   comparison of EDTA levels in the blood vial and  
5                   EDTA levels in the blood found in the victim's  
6                   vehicle. So I think at least the potential here  
7                   exists for admissible evidence.

8                   And until testing is done, the Court  
9                   simply isn't in a position to rule on it's  
10                  eventual admissibility. The only thing the Court  
11                  knows for sure is that if I deny access to the  
12                  blood vial at this time the Court would never  
13                  have a chance to consider such evidence. So I'm  
14                  going to grant the State's motion on that basis.

15                  ATTORNEY BUTING: Your Honor.

16                  THE COURT: Yes.

17                  ATTORNEY BUTING: If the Court is going to  
18                  do that, then the defense reluctantly moves to  
19                  postpone this trial, to continue it, because  
20                  otherwise we are being ambushed here. We will not  
21                  be able to respond to whatever the State comes up  
22                  with. It's just impossible, when you think about  
23                  the undertaking that we have to do between now and  
24                  the next four or five weeks, the number of  
25                  witnesses, we're going to be in court all day long.

1           We are not going to be able to respond to whatever  
2       it is they come up with. That's what **wold** talked  
3       about.

4           In fairness to his constitutional right  
5       to have a fair trial, there's no way that we can  
6       possibly prepare to rebut whatever the State  
7       comes up with. Now, it may be that what the  
8       State comes up with is favorable to the defense.  
9       But we don't know that at this time point, that's  
10      the problem.

11           And the only remedy, if the State does  
12      dig up some sort of evidence that they think is  
13      helpful to them and hurtful to the defense, the  
14      only remedy will be to adjourn the trial at that  
15      point. And with this kind of a trial, we can't  
16      do that. We will have taken a months worth of  
17      testimony and then we will have -- we will be  
18      back in front of the Court moving to adjourn.  
19           And you will be risking a mistrial and reversal  
20      of this case on appeal, because this man wouldn't  
21      have a right to rebut whatever the State is  
22      doing. It's that simple.

23           THE COURT: Response from the State.

24           ATTORNEY GAHN: Yes, your Honor. Again,  
25      they made this tactical and strategic decision last

1           July not to tell us about it and wait until  
2           December. This is what their decision was. And  
3           this is what **Konkol** is all about, and what rebuttal  
4           evidence and rebuttal testimony is all about.

5           I do take issue with their saying they  
6           can't do anything about this. There's plenty  
7           they can do. And this Court has read that **Cooper**  
8           decision. We know who the experts are and we  
9           know what the issues are. They can prepare right  
10          now getting an expert lined up. I have talked to  
11          experts who said you can -- once the data comes  
12          off from the FBI, send the data. It's not going  
13          to take long to look it over and say is this  
14          valid or is it not valid. The issues here are  
15          the interpretation of the data.

16          No one is going to come in and question  
17          the underlying scientific principles here. They  
18          can start working on this now, lining someone up,  
19          lining up their arguments. And it will be the  
20          same type of arguments that were in the **Cooper**  
21          case, the ubiquitousness of this type of a  
22          chemical in the community, and society, and the  
23          environment. They can start working on that  
24          right this moment.

25           And, again, they can take their sample.

1           There are other tests that I believe can be done,  
2           that they could do if they wished not to do EDTA  
3           testing. Just the fact of, you know, quantifying  
4           it, how much is in that vacutainer? How much did  
5           Meghan Clement use at Laboratory Corporation of  
6           America. There are other things. What is the  
7           breakdown? We are looking into things, even the  
8           nature of is there an irreversible effect of  
9           hemoglobin in the blood, at some point does it  
10          turn a different color.

11           These are things that they also, I'm  
12          sure, have been looking at and discussing among  
13          themselves. So I don't think -- they are not  
14          being caught off guard on this. We're giving  
15          them an awful lot of information. And I,  
16          obviously, will tell the Court the very moment we  
17          get this information from the FBI. It will be  
18          sent to them, immediately, and as soon as we  
19          possibly can. And I will be checking with the  
20          FBI on a regular basis and hoping, you know, can  
21          we get it, to get it as soon as we possibly can.

22           THE COURT: All right. You know, I'm  
23          hearing different things from the parties today. I  
24          know in the defense's earlier argument, defense  
25          counsel I believe indicated that no one, perhaps, is

1 capable of doing this testing, or no one at least  
2 other than the FBI. So, if that would be true, the  
3 question could be asked, what would be the benefit  
4 of granting an adjournment after the FBI results  
5 came in, if nobody else is capable of doing the  
6 testing. And it's a little hard for me to accuse  
7 the State of ambushing the defense, when the defense  
8 knew of the existence of the vial of blood in July,  
9 but didn't inform the State until December.

10 Those comments aside, at this point the  
11 Court is not ruling on the admissibility of the  
12 test results, the Court is simply being asked to  
13 give the State an opportunity to do the testing.  
14 And given the relatively late stage in the game  
15 in which the State acquired knowledge of the  
16 blood vial evidence, I believe it's fair to give  
17 them a chance to do so and that's what I'm going  
18 to do. Mr. Strang.

19 ATTORNEY STRANG: Well, the motion for  
20 continuance reluctantly is offered because, in fact,  
21 the Court is being asked to do more than give the  
22 State an opportunity for testing. Tacitly, but  
23 unavoidably, when the question is EDTA testing, the  
24 Court also is being asked to deny the defense an  
25 opportunity to do independent EDTA testing.

1                   It is true, I suppose, that we could go  
2                   now, if we had -- didn't have a trial to start on  
3                   Monday, we could go and find experts who would  
4                   testify in general about the reliability of EDTA  
5                   testing. We could, in theory, do that, if we  
6                   weren't starting a trial on Monday.

7                   But the Court well knows, and counsel  
8                   has acknowledged in the hearing in Chilton, to  
9                   the Court, that there are two labs, and two labs  
10                  only, in this country, that have ever done EDTA  
11                  testing. One of them thoroughly discredited in  
12                  North Carolina, the other the FBI, which  
13                  apparently is recalibrating and is willing to  
14                  undertake that now.

15                  The only way, as we have discussed  
16                  before, and as I think this Court's decision  
17                  recognized, the only way that we could do  
18                  independent testing, as opposed to bringing in a  
19                  cat bird to criticize the FBI testing, would be  
20                  to obtain from the FBI, if it will yield its  
21                  protocols, obtain the FBI protocols and then try  
22                  to find a university lab with an analytic chemist  
23                  who is willing to try to follow the FBI protocol  
24                  and undertake independent testing, assuming that  
25                  that university was equipped with the same gas

1 chromatograph or infrared spectrometry machine,  
2 or whatever the FBI uses.

3 I have no idea what the protocol is.  
4 And, indeed, we were given to understand that the  
5 FBI is recertifying and reexamining its own  
6 protocol. So there is no way to do defense  
7 testing here at a reputable lab, or with  
8 reputable scientists, other than sequentially,  
9 none.

10 And it is, therefore, a motion to deny  
11 the defense a chance to meet, with independent  
12 testing, the State's rebuttal offering. And I  
13 understand the Court's ruling and the impulse to  
14 say, eventually this is going to get tested, so  
15 let's have it out, let's thrash it out, it's  
16 admissible or it's not, it helps the defense or  
17 it helps the State. I understand that.

18 And as I have said from the beginning,  
19 if I didn't have a client in custody, I would  
20 have joined the motion for adjournment. I'm  
21 curious too, and I realize that as a practical  
22 matter, some day the blood vial is going to be  
23 tested for EDTA. Partitioning the sample is not  
24 in itself prejudicial, we have acknowledged that.  
25 The testing is going to be done some day.

1                   But when it's done during trial, with  
2                   nothing more than a promise, heard today for the  
3                   first time that, no, it's not three to four  
4                   months, we can get the results from the FBI  
5                   before the end of trial, the necessity here on  
6                   this test, for sequential testing, means  
7                   necessarily that we are being denied the  
8                   opportunity to do independent testing.

9                   That's a due process right and a fair  
10                  trial right that Mr. Avery has. And forced to  
11                  choose between sitting in jail for another six  
12                  months, or whatever it is, and a fair trial,  
13                  forced to that choice, I guess you will take the  
14                  fair trial and due process. And that's the  
15                  specific problem here.

16                  I'm not worried about fingerprints or  
17                  viscosity. Once EDTA is the rebuttal point, then  
18                  the surrebuttal point also is EDTA, and that may  
19                  require independent testing. And independent  
20                  testing on these circumstances cannot be done  
21                  until we have the FBI protocol and an opportunity  
22                  to find somebody willing to get into that  
23                  business, who hasn't been discredited as a  
24                  charlatan and a fraud, as have the people in  
25                  North Carolina. So, yes, it is a reluctant

1 motion for a continuance, but we don't have a  
2 realistic choice.

3 THE COURT: Anyone from the State wish to  
4 be heard?

5 ATTORNEY GAHN: This would have been a  
6 wonderful conversation to have last August. That's  
7 all I have to say.

8 THE COURT: Well, the Court denied the  
9 State's motion for a continuance in part because I  
10 ruled that if the State had wanted to do EDTA  
11 testing on the blood found in the victim's vehicle,  
12 it could have been done so earlier. I think the  
13 defense is somewhat in the same boat here. If they  
14 wanted to do EDTA testing on the blood in the vial,  
15 efforts for that could have been started earlier.

16 If it's possible, and I understand the  
17 defense may be telling me that there is no other  
18 lab, other than the FBI, that does such testing  
19 now. And maybe there will be one that does some  
20 some day. Maybe it will be one year, maybe it  
21 will be two years, maybe it will be five years  
22 from now. But I don't think the Court can simply  
23 postpone the trial to some point indefinitely in  
24 the hopes that some day there may be another lab  
25 that can do EDTA testing to double check whatever

1           results the FBI comes up with, if the FBI comes  
2           up with any results.

3           So, as I indicated, I'm not going to  
4           preclude the State from taking a chance at  
5           attempting to test the blood in the vial, simply  
6           because of possibilities that may or may never  
7           come about.

8           ATTORNEY STRANG: Your Honor, again, I  
9           don't have access to the FBI lab. I couldn't get  
10          going on EDTA testing earlier, couldn't if I wanted  
11          to. The defense has no access to the FBI lab. And  
12          the FBI is the only organization in this country --  
13          and I don't think Mr. Gahn will disagree with  
14          that -- that has a protocol for doing the testing he  
15          wants to do.

16          And, you know, the insinuation that we  
17          were late overlooks the fact we beat by nine days  
18          our deadline for disclosing exactly this type of  
19          information. And also overlooks the fact that  
20          this was in a public record that anybody in the  
21          world and apparently a bunch of different media  
22          organizations walked in and looked at from 2003  
23          on.

24          So, you know, we really are in a  
25          position where we are being denied a fair trial

1 and due process opportunity to do independent  
2 testing on the facts that this Court has in front  
3 of it here. I don't have a choice but to ask for  
4 a continuance and to object throughout here that  
5 we haven't had a chance to meet the State's  
6 proposed rebuttal.

7 THE COURT: I don't know if the State has  
8 weighed in yet on the request for a continuance.  
9 Let's do this, I'm going take a 10 minute break,  
10 since I don't think that request was known to  
11 anybody until now. And then I will hear from the  
12 State, if the State wishes to be heard after coming  
13 back.

14 ATTORNEY GAHN: Thank you, Judge.

15 (Recess taken.)

16 THE COURT: Does the State wish to be heard  
17 on the defense motion for a continuance of the  
18 trial?

19 ATTORNEY GAHN: Your Honor, I understand  
20 what the defense is saying that, you know, at one  
21 point we did ask for a continuance, and we did. But  
22 at that time, we were under the impression that the  
23 testing that we want done could not be completed in  
24 time. And that is why we asked it, and now, with  
25 the assistance of the United States Attorney, we are

1 able to get that testing done in sufficient time.

2 I truly believe, and if I felt that  
3 there were anything unfair about this I would  
4 tell the Court and be candid, but I feel  
5 comfortable enough stating that I think they can  
6 prepare for this, for this EDTA testing. They  
7 know who the experts are. They know who, around  
8 the country, where they can go to. I just think  
9 that they can adequately prepare for these test  
10 results.

11 I will tell the Court I will do  
12 everything I can to get whatever materials I can  
13 to them early on. I will start making my calls,  
14 if not today on Monday. And I will try to get as  
15 much material about the FBI and their protocol  
16 and their operation and get it to them as soon as  
17 I possibly can.

18 But we believe that we are ready for  
19 trial. I believe that we owe it to the Halbach  
20 family to get this trial going, under way, and  
21 complete this trial. So we do not join in any  
22 request for any continuance of this matter.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Perhaps the Court would  
25 be kind enough to put one very direct question to

1           Mr. Gahn, who's the acknowledged expert on  
2           scientific testing, and EDTA testing in specific  
3           here. And that question is this, is Mr. Gahn aware  
4           of one credible laboratory that presently, today,  
5           can do EDTA testing of the exact sort he proposes to  
6           do, other than the FBI.

7           THE COURT: Mr. Gahn.

8           ATTORNEY GAHN: No, your Honor, but I will  
9           say this much, they are making it sound like this is  
10          something that is so unusual. The FBI doesn't  
11          routinely and normally do this, nor does -- first of  
12          all, because it's rarely asked for by the State.  
13          Also, I suspect private laboratories do not engage  
14          in it because there's probably no money in it,  
15          because it is so rarely asked for on any occasion.

16          But that doesn't mean that a university  
17          research facility, or any other laboratory that  
18          has the machinery and instruments or gas  
19          chromatograph and all the instruments wanted,  
20          cannot ramp up for this test and tool -- retool  
21          their equipment. That's my understanding.  
22          Someone can. You can analyze any elemental  
23          substance. Any chemical, basically, can be  
24          analyzed with the instruments at any lab or  
25          research facility that a university has. That's

1 my understanding.

2 You know, your Honor, you see cases in  
3 the newspaper about someone suspects that someone  
4 was poisoned by some unique poison, this one  
5 recently in Britain or something. I'm sure that  
6 some laboratory had to ramp up and retool or  
7 something to test for this specific chemical.  
8 This isn't something that's so bizarre or  
9 unusual. This is normal, normal chemical  
10 substance analysis by any laboratory.

11 ATTORNEY STRANG: So this is where the  
12 Court finds itself on a continuance, as I understand  
13 it. Until an hour ago, all of us were under the  
14 understanding, that is the Court and the defense  
15 table, were under the understanding, that even the  
16 FBI, which has done EDTA quantitation testing in the  
17 past, would need three or four months to do it.

18 Now, we're told that before the end of  
19 this trial, so presumably sometime between now  
20 and the middle of March, through the fortuitous  
21 intervention of the United States Attorney in  
22 Milwaukee, the FBI can speed up the earlier  
23 timeline that all of us were given. I have no  
24 statutory right to call on the FBI. Neither can  
25 I expect the United States Attorney, or anyone

1           else, to help me find a new lab that has never  
2           done this sort of testing, to do it in six weeks,  
3           or five weeks, let alone the three to four months  
4           that even the FBI initially was saying it needed.

5           There are exactly two lawyers  
6           representing Mr. Avery. Both of them will be in  
7           Chilton five days a week, beginning on Monday.  
8           And the Court also will have to entertain, before  
9           we can do any testing, a motion under **Ake**, A-k-e,  
10          *vs. Oklahoma*, because I expect that it is likely,  
11          it seems to me and I have not checked this, I  
12          haven't gotten quotes, but where you are asking  
13          somebody to spool up, from the start, to do  
14          independent testing that they have not done  
15          before, once they get FBI protocols, I suspect  
16          that the cost of that will be well beyond the  
17          cost that my firm can bear. Because this isn't  
18          coming out of Mr. Avery's pocket, long ago were  
19          his resources exhausted.

20           And so the Court will have that due  
21          process consideration under **Ake vs. Oklahoma** to  
22          consider as well. Although, the process of  
23          getting quotations and casting about North  
24          America for universities that might be willing to  
25          get into this business, in theory, could begin,

1           were we not in trial.

2           So that that's where the Court finds  
3           itself functionally. We are being denied here to  
4           do independent testing on EDTA or its  
5           quantitation. I object to that on constitutional  
6           grounds, fair trial, and due process. A  
7           continuance of some months would remedy that.

8           There's the issue of Mr. Avery's right  
9           to a speedy trial and his custodial status.  
10          Perhaps that could and should be revisited  
11          because it was, after all, the Court's reliance  
12          on the new charges in the Amended Information  
13          that caused this Court, in large part, as I  
14          recall, to raise the bail by \$250,000, last  
15          spring.

16          And now, of course, the most serious of  
17          those three new charges in the Amended  
18          Information are no longer. And perhaps what goes  
19          around comes around on that, but that's not for  
20          today.

21          What is for today is a reluctant request  
22          on due process and fair trial grounds, on the  
23          record we have made, for a continuance and an  
24          opportunity, realistic opportunity, to assess the  
25          FBI results, to meet them, to have an evidentiary

1 hearing under **Walstad** on the admissibility of  
2 those results, whether they are favorable or  
3 unfavorable to the defense. And to do  
4 independent testing as by our best lights, in the  
5 defense of Mr. Avery, and in presenting his case,  
6 as the Court has allowed it with the contours of  
7 its rulings, to a jury, so that he will have a  
8 fair trial the first time. And those are the  
9 bases for my motion for continuance.

10 THE COURT: Anything else from the State?

11 ATTORNEY GAHN: No, your Honor.

12 THE COURT: Well, as I indicated earlier,  
13 the Court feels it's getting conflicting messages  
14 here about the extent to which anyone, other than  
15 the FBI, can do the testing. If it can be done  
16 within a matter of a few months, it seems to me the  
17 State -- or the defense has known of the existence  
18 of the blood vial since last July, and I'm not sure  
19 I fully understand at this point why the testing  
20 could not be done.

21 It appears that the defense is asking to  
22 do the testing in response to whatever results  
23 the FBI might come up with, but in any event, the  
24 defense did not disclose to the State the  
25 existence of the blood vial until early December.

1           With that timeline, the Court finds it unlikely  
2           that the results of the FBI testing would have  
3           come before today, or at least much before today,  
4           soon enough before today to give the defendant an  
5           opportunity to do other testing, if it's even  
6           possible. And if it is possible, and if the  
7           Court splits the samples today, each party would  
8           have the same opportunity to have the same amount  
9           of time to get test results in.

10           So I am not going to adjourn the trial.  
11           I am going to grant the State's motion for access  
12           to the blood vial. The one item that I did not  
13           address originally, I indicated that the defense  
14           could have a split sample of the blood in the  
15           vial, that the vial would have to be tested for  
16           fingerprints before any analysis of the blood was  
17           done. I do not know if the defense at this point  
18           has enough photos of the vial to -- for whatever  
19           the defense may want to show with respect to the  
20           vial as part of its case here.

21           ATTORNEY STRANG: We could use more photos  
22           because, of course, the vial, when it's shown to the  
23           jury, physically, will be missing, presumably, about  
24           half the blood that's in it now. You know, the  
25           State, in a cocaine delivery case, doesn't go

1 forward to a jury on photos, it brings in the  
2 cocaine. And a felon in possession of a firearm  
3 case, the State brings in the gun.

4 We're functionally allowed to bring in  
5 only the altered vial to show this jury. We have  
6 argued that in the motion -- or in the response  
7 that Mr. Buting filed, which again goes to  
8 fairness of the trial. The next best alternative  
9 is to take good photos showing the current  
10 quantity of the blood and video footage, or  
11 moving footage, showing that the blood is in a  
12 liquid form today.

13 So that would be our alternate request,  
14 without abandoning any of the arguments that I  
15 have just made, of course. And then there's also  
16 the matter of the blood spot cards that the Court  
17 has not yet addressed.

18 ATTORNEY BUTING: Judge, I just want to  
19 clear up the record at one point, because you said  
20 you have been getting conflicting messages. What I  
21 want to make clear is, whenever we discovered that  
22 there may have been a blood vial in the court file,  
23 there were no labs, anywhere, that we could find  
24 that would test this. So it's not like we made a  
25 decision not to test it. Mr. Gahn will concur with

1           that.

2           Because other than this one Ballard Lab,  
3           there was no -- which has been totally -- which  
4           was considered disreputable by all the reported  
5           courts, there were no other labs doing this test,  
6           including the FBI. The FBI is only doing this  
7           test now because of this case. So I just want to  
8           make it clear that this wasn't some strategic  
9           decision we made not to do the test, there was  
10          nobody we could go to.

11           THE COURT: All right. How can the  
12          photographing of the exhibit suggested by the  
13          defense be accomplished and still allow the vial to  
14          be made available for testing?

15           ATTORNEY GAHN: Well, I do know that they  
16          took plenty of photos when we were all together down  
17          in the Clerk's Office. Also had a film camera and  
18          took moving pictures, also, of the vial and still  
19          photographs.

20           Let me just back up a moment and make  
21          this suggestion. I would ask the Court to rule  
22          that the fingerprinting of the vial, and the  
23          styrofoam box, and cardboard box be accomplished.  
24          But I would ask the Court to leave that to the  
25          discretion, of what order it would be done, with

1                   the FBI analyst.

2                   The reason is this, I don't want any  
3                   type of superglue, any type of fuming used that  
4                   perhaps may interfere with the chemical testing  
5                   that will be done. It may be prudent and the FBI  
6                   say, look, we would rather get the blood out of  
7                   the vial first and would do it all gloved and  
8                   then to do the fingerprinting, so as not to  
9                   interfere with the chemical analysis. I don't  
10                  know the answer to that, but I would ask that  
11                  your ruling be that fingerprinting be  
12                  accomplished and the order of it be left to the  
13                  scientists.

14                  THE COURT: The FBI is going to do the  
15                  fingerprinting?

16                  ATTORNEY GAHN: What I was thinking of  
17                  doing was that the FBI is going to be doing the  
18                  packaging of the vial for us. I was going to have  
19                  one of our officers involved in this to be present  
20                  and take custody, immediately, of the cardboard box  
21                  and the styrofoam box. And then the actual  
22                  fingerprinting of the vial, I would ask the FBI to  
23                  accomplish, you know, when they think it is the  
24                  better time to do that. And that's how I would like  
25                  to see the order be.

1                   THE COURT: If the defense is allowed on  
2 Monday to take whatever photos or video of the vial  
3 it wants, you can have it on Monday; would that  
4 work?

5                   ATTORNEY STRANG: How do we do that?

6                   ATTORNEY GAHN: Judge, we'll make it work.  
7 We would prefer to take it -- I will tell you this,  
8 I will ask the FBI, and I would hope and, I mean,  
9 they have never denied other requests before, would  
10 they have their photography unit make very, very  
11 good still photographs of it for us, that I'm sure  
12 would be better than any of us could do. I would  
13 ask that be accomplished beforehand, once they get  
14 the vial. I will ask that, I don't think they will  
15 deny that. If they do, then we'll make other  
16 arrangements.

17                  THE COURT: Mr. Fallon.

18                  ATTORNEY FALLON: If I may have a moment  
19 with counsel?

20                  THE COURT: Go ahead.

21                  ATTORNEY GAHN: I have just been informed  
22 that we have available video camera that we could  
23 make available to them this afternoon and they could  
24 take all the pictures they want of the blood vial,  
25 this afternoon.

1                   THE COURT: I know the defense has some  
2                   photos already.

3                   ATTORNEY STRANG: Yes.

4                   THE COURT: I'm not sure what else is --

5                   ATTORNEY STRANG: We do have some photos  
6                   already, not intended at the time to be a  
7                   replacement for having the physical evidence at  
8                   trial. This is an exhibit in the custody of the  
9                   Court and it's now being handed over to a party and  
10                  the jury won't have it. So that's been the Court's  
11                  ruling and the next best alternative is to allow us  
12                  to photograph, with the idea of alternate evidence  
13                  being offered to the jury, video and still.

14                  I object to fingerprint testing being  
15                  done after this vial has been handled for testing  
16                  and there's an obvious spoliation problem with  
17                  destroying or smudging fingerprints that  
18                  otherwise may be identifiable. But, again, a  
19                  Court exhibit is being turned over, over our  
20                  objection, to the other side. And now a course  
21                  of action is being proposed that presents the  
22                  real risk of spoliation of fingerprint evidence.

23                  THE COURT: Well, what opportunity to  
24                  photograph or video the exhibit is the defense  
25                  requesting?

1                   ATTORNEY STRANG: Before it goes, we need a  
2 chance to photograph it still and videotape it. I'm  
3 not sure what video equipment the State has. I'm  
4 not opposed to using their video equipment. I know  
5 we're in court this afternoon and we're starting a  
6 trial on Monday morning so.

7                   ATTORNEY GAHN: Is there access to this  
8 building on Saturday or Sunday, that they could do  
9 it?

10                  THE COURT: I'm sure there could be.

11                  ATTORNEY GAHN: Could we work that out?

12                  ATTORNEY STRANG: Your Honor, look I'm  
13 moving from Madison up to trial tomorrow and I'm  
14 starting trial on Monday. I'm not anticipating, nor  
15 do I have time, resources, or personnel to be  
16 arranging for trips to Manitowoc the weekend before  
17 a trial.

18                  ATTORNEY GAHN: Your Honor, may I just have  
19 another suggestion. How about this, how about  
20 release it to our representatives here from Calumet  
21 County Sheriff's Department and DCI will take it  
22 back to Calumet County where they have an office set  
23 up and where they will be this weekend and they can  
24 do their photographing at the Sheriff's Office in  
25 Calumet County this weekend.

1                   We won't open it. We'll wait until they  
2                   are present and they can photograph it from  
3                   taking it out of the cardboard box and then  
4                   opening up the styrofoam box and photograph  
5                   there.

6                   THE COURT: Who is going to be doing the  
7                   photography work for the defense?

8                   ATTORNEY STRANG: I have no idea, probably  
9                   one of the two people here, unless we can get our  
10                  defense investigator, and I don't know his  
11                  availability for this tomorrow. I didn't expect  
12                  this.

13                  ATTORNEY FALLON: Your Honor, we would note  
14                  that there was a extensive video shot on  
15                  December 14th, so this would be an adjunct or a  
16                  supplement to previous video and photographs.

17                  THE COURT: Well, everybody is going to be  
18                  back here on Monday, it's perhaps unfair to the  
19                  defense, if they weren't planning on doing  
20                  photography today, which they may well not have been  
21                  doing, so I will give them until the end of Monday  
22                  to make arrangements to do whatever photographing or  
23                  videoing of the exhibit they wish and then I will  
24                  release it -- order it released to the State.

25                  ATTORNEY GAHN: Your Honor, would you just,

1 to conform your decision with the written order,  
2 that this also includes the spot cards that are in  
3 North Carolina?

4 THE COURT: Actually, I haven't heard  
5 anything about the spot cards. I don't know if  
6 there's an objection to those. I, frankly, don't  
7 know what they are because until your motion, I  
8 didn't really hear them referred to.

9 ATTORNEY GAHN: When -- If the original  
10 testing was done in 1996, my understanding is the  
11 blood was drawn from Steven Avery on January 2nd.  
12 And on January 4th of 1996, Laboratory Corporation  
13 of America received the blood vial in question.  
14 They did the initial Innocence Project DNA testing  
15 and came up with inconclusive results.

16 As part of their testing protocol, upon  
17 receipt of a vial of blood, they open up the  
18 vial, and they put it on what are called spot  
19 cards. Spot cards preserve the blood sample, as  
20 best they can. And that is what they do their  
21 testing from, these spot cards. My  
22 understanding, there's a number of them.

23 When I talked to the FBI, they thought  
24 those would be helpful in interpreting the EDTA  
25 data, because here you have samples of that blood

1 vial, which were taken two days afterwards.

2 Presumably Laboratory Corporation of America has  
3 maintained them, better than a liquid blood vial  
4 sitting in the Clerk of Court's Office. These  
5 were maintained in a different setting, and one  
6 could see if there's any type of degradation to  
7 them and they would be important.

8 THE COURT: So the blood from the cards  
9 came from the vial that's downstairs in the Clerk's  
10 Office?

11 ATTORNEY GAHN: Yes.

12 ATTORNEY BUTING: Judge, maybe, I'm  
13 misunderstanding the theory here, but if the blood  
14 that was in the vial is what was used to plant -- or  
15 was planted in the vehicle, then the relevance will  
16 be what was the -- what's the EDTA in the vial, not  
17 what it was 11 years ago. I don't see how -- how  
18 that's going to have any relevance to this test.

19 THE COURT: Well, at this point, given the  
20 fact the Court is not an EDTA expert, frankly, I  
21 don't know what relevance it has, but I'm not being  
22 asked to rule on it's admissibility today, the Court  
23 is just being asked to allow the defense to test it.

24 ATTORNEY STRANG: No, no, the State.

25 THE COURT: Or the State, to test it. And

1 I can't think of a reason not to allow that.

2 ATTORNEY STRANG: Well, if you want the  
3 defense to be heard, Laboratory Corporation of  
4 America was a defense hired consultant in 1996.  
5 This was defense testing, done at the defense  
6 request, not jointly with the State. So, what we're  
7 being asked now is for the Court to order, on the  
8 1985 file, that defense expert in North Carolina be  
9 required to yield to the State of Wisconsin work  
10 product that was done at the defense request and at  
11 the defense expense at the time. So that the State  
12 and the State alone can do EDTA testing here to the  
13 exclusion of the defense.

14 It's probably not relevant given what's  
15 been ordered so far. You know, I'm -- I'm not  
16 inclined to stand in the way of the march of  
17 knowledge but, again, this is -- this is just  
18 sort of a power play and a grab for a chance to  
19 do testing that we won't be able to repeat, or  
20 meet, or consider doing independently. I think  
21 the record, including on January 4, 2007 really  
22 is very clear about the fact that there is  
23 presently, today, no one in the business of doing  
24 EDTA testing that the State apparently is  
25 prevailing upon the FBI to do for it and it only.

1                   To preserve, you know, our options,  
2 whatever they may be, long after this trial is  
3 over, I suppose, if the Court is going to order  
4 the defense to give up work product of a defense  
5 expert then -- and, you know, also order that  
6 half of those spot cards be preserved inviolate,  
7 in the hope that some day there will be money,  
8 and time, and another lab to do defense testing,  
9 and prove that the State's tests shouldn't have  
10 been considered in isolation at this trial.

11                  THE COURT: How many spot cards are there?

12                  ATTORNEY GAHN: I don't know, your Honor.  
13 I believe there are more than one. And I -- When I  
14 read the laboratory notes -- and although the --  
15 Mr. Strang is portraying this as a work product,  
16 this was by order and by stipulation of the parties.  
17 And as my understanding when I read it was --

18                  ATTORNEY STRANG: No, the testing was not,  
19 the withdrawal of the blood for the purpose of  
20 defense testing was by court order of Judge  
21 Hazlewood and by stipulation of the State of  
22 Wisconsin, the testing was not joined. That's  
23 simply the fact, as I understand it.

24                  ATTORNEY GAHN: But, again, that case is  
25 over with now, it's a public record. And I do

1 believe that we did prepare an order for Judge Fox  
2 to ask him to relinquish whatever jurisdictional  
3 control he may have over it. We're prepared to go  
4 to that Court and ask him to sign that and that you  
5 be given the authority to make decisions on the  
6 blood evidence.

7 ATTORNEY STRANG: And to that, we don't  
8 object, but the blood spot cards are not a public  
9 record, never have been, it's defense work product.  
10 We object to the whole road on which the State and  
11 the Court have embarked today, this included.

12 THE COURT: Well, I would agree that the  
13 spot cards, as they have been characterized for the  
14 Court today, are different from the blood vial in  
15 the sense that it's not part of the court record.  
16 I'm not -- What I don't understand and what I'm not  
17 sure the parties have addressed is the significance  
18 of that. And when I say that, I say that I have not  
19 ever been requested before to issue an order that  
20 the contractor of the defense, if you will, turn  
21 information over to the State. It's not the same as  
22 simply ordering that something in a court file be  
23 released.

24 ATTORNEY STRANG: But, you know, the  
25 position we're in here, of course, is that if we

1           don't agree to it, and the State eventually  
2        convinces this Court to allow the FBI's results,  
3        with no opportunity for us to rebut them, then we  
4        will also hear testimony that we tried to prevent  
5        the FBI from having access to something that might  
6        have been relevant to its testing, so --

7           THE COURT: I don't think the Court would  
8        allow that if I didn't order the information  
9        disclosed. I'm not sure -- I don't believe that  
10       would be proper for a jury.

11          ATTORNEY GAHN: I guess I would quote,  
12        again, from the **Migliorino** case that I cited before,  
13        this is every man's evidence. And the State and  
14        defense is entitled to it. This is going to be  
15        important evidence.

16          THE COURT: I think, though, that the  
17        defense is entitled -- and this is difficult without  
18        knowing how many cards there are -- the defense  
19        would be entitled to retain some, for their own  
20        purposes, either at this point or some point in the  
21        future. That doesn't seem an unreasonable request  
22        to the Court.

23          ATTORNEY GAHN: I suspect that if there's  
24        one spot card, I would request the -- her name is  
25        Meghan Clement, who is in charge of the forensic

1                   unit there, cut it in half. We'll preserve one  
2                   half. If there are two spot cards, we'll take one,  
3                   and save one for the defense.

4                   THE COURT: I'm going to want to know more  
5                   information about the spot cards before I rule on  
6                   that part of the request. So I'm not going to rule  
7                   on that part today.

8                   ATTORNEY GAHN: Okay.

9                   THE COURT: I will just rule on the blood  
10                  vial.

11                  ATTORNEY GAHN: So, are we waiting till  
12                  Monday that we can take the blood vial --

13                  THE COURT: Yes.

14                  ATTORNEY GAHN: -- Monday afternoon, or  
15                  upon their completion of whatever.

16                  THE COURT: Yes.

17                  ATTORNEY GAHN: Okay. Thank you, Judge, we  
18                  will prepare another order.

19                  THE COURT: All right. The next item is  
20                  the defense motion to exclude computer generated  
21                  animations.

22                  ATTORNEY STRANG: I'm sorry, before we go  
23                  to that, I think we need a ruling from the Court on  
24                  whether it's reconsidering its earlier order that  
25                  fingerprint testing had to be completed before the

1 State removes the blood vial for EDTA testing.

2 THE COURT: I'm going to allow the FBI to  
3 make that decision for the reasons that I don't have  
4 the scientific knowledge to know the significance of  
5 one being done before the other. If the FBI acts in  
6 some way that either the fingerprint evidence or the  
7 blood evidence results are compromised, I assume  
8 that the defense expert can address that.

9 We do have notice of defense experts  
10 that will be testifying and criticizing, in some  
11 respects, the methods that were used by the State  
12 to produce test results. So I'm not going to  
13 specify the order -- the order in which the tests  
14 are conducted.

15 ATTORNEY GAHN: Your Honor, I must get back  
16 to Milwaukee, may I have leave of the Court to go.

17 THE COURT: Yes.

18 ATTORNEY GAHN: Thank you, Judge.

19 THE COURT: All right. We'll move on,  
20 then, to the defense motion to exclude computer  
21 generated animations.

22 ATTORNEY KRATZ: Judge, from a timing  
23 standpoint, I do recognize that we have six or seven  
24 different matters to hear. We have witnesses -- or  
25 a witness that is standing by from the State Patrol.

1           He's also been kind enough to prepare for the  
2           defense and for the Court documents which sets forth  
3           his methodology in the creation of demonstrative  
4           evidence.

5           Those include the scene models that we  
6           talked about, include the -- both interior models  
7           of the defendant's trailer and garage, as well as  
8           the exterior overviews of the Avery property. He  
9           also deals in a second set of explanations for  
10          the Court, some information regarding skeletal  
11          models, and is prepared to provide testimony as  
12          to animations.

13          I believe that Mr. Strang had expressed  
14          at least the most serious objection -- and I'm  
15          sure he will correct me if I'm wrong, but the  
16          most serious objection to actual moving images.  
17          But having made those prefatory comments, Judge,  
18          since Mr. Austin's testimony is not only likely  
19          to mirror that that I provided the Court now in  
20          writing, although there maybe some additional  
21          information, Mr. Strang and I, in correspondence  
22          before this hearing, recognize that final  
23          decisions on admissibility will need to come  
24          closer in time to -- to the trial or during the  
25          trial.

1                   I'm wondering if the Court wishes to  
2 review the written submissions. I can make for  
3 the Court and Mr. Strang, copies of the DVD's,  
4 that is the animations themselves. That will  
5 give the Court a fair understanding of what we're  
6 talking about. And perhaps in the interest of  
7 getting through some of these other issues that,  
8 frankly, need to be decided before Monday, it's  
9 my recommendation that we do that.

10                  Because this -- even with Mr. Strang's  
11 opinion and, please, Mr. Strang, correct me if  
12 you think I'm wrong, but this is something that  
13 probably can wait until we get into trial or  
14 closer to trial. And necessarily, in some  
15 instances must, must wait for that. I will do it  
16 now, Judge, and I'm happy to present this.

17                  In all candor, this may take the better  
18 part of an hour to present the offer of proof and  
19 our explanation of these demonstrative exhibits.  
20 And I'm, certainly, as I mentioned, happy to  
21 proceed. But I do note on our agenda there are  
22 things that, quite frankly, have to be decided  
23 today before we move into the balance of jury  
24 selection on Monday.

25                  THE COURT: All right. Mr. Strang.

1                   ATTORNEY STRANG: In the main, Mr. Kratz is  
2 right, we can't conclude this issue today, even if  
3 we start it, because the Court will need to take  
4 some testimony from Trooper Austin while he is  
5 physically here, present, and able to show things to  
6 me, at least, and to the Court, at least the two of  
7 us. He's probably shown these things to counsel for  
8 the State before, so we could get started by  
9 telephone, but couldn't finish.

10                  I also note that in the three new  
11 memoranda that Mr. Kratz just gave us, and I  
12 think I gave the Court, dated -- each of the  
13 three, dated January 29, 2007. The thinnest of  
14 those memoranda is entitled new model renderings.  
15 And this includes things that are altogether new,  
16 that I haven't seen before, and didn't know were  
17 coming.

18                  The most -- Probably the most  
19 significant being No. 3 on Page 1 of the  
20 January 29, 2007 memorandum entitled new model  
21 renderings. So, you know, if it would take an  
22 hour of testimony for the State to do its direct  
23 examination and its proffer, we're probably  
24 talking about an hour of cross-examination, and  
25 wouldn't finish the issue today, in any event.

1           So, I think I land where Mr. Kratz does, just  
2           probably the better thing to do is to move to  
3           other issues today and address this, I guess,  
4           during trial or --

5           ATTORNEY KRATZ: What I could also do --  
6           I'm sorry to interrupt Mr. Strang. What I could  
7           also do, Judge, is perhaps show the Court and  
8           counsel the animation that's been performed. That  
9           is something that you don't have, and that's the  
10          moving part, so that at least you can get an idea of  
11          what we're going to be talking about.

12          I will be happy to make both the Court  
13          and counsel copies of those finished products,  
14          and would have anyway, before we seek to admit  
15          them. That will only take probably five minutes,  
16          or even less. And then my suggestion is to move  
17          on to the next item on the agenda. I will call  
18          Trooper Austin and apologize since he's been  
19          waiting since 1:00, but that just seems practical  
20          to me.

21          THE COURT: So you have a five minute  
22          presentation?

23          ATTORNEY KRATZ: Even less, yeah.

24          THE COURT: All right. Well, it will -- I  
25          have already looked at the looseleaf you gave me

1 before, on the computer screen, which I assume  
2 duplicate the information in the looseleaf. I will  
3 take a look at this now, and then we'll move on to  
4 the next item.

5 ATTORNEY KRATZ: While the projector is  
6 warming up, Judge, I will tell the Court that the  
7 animation, as I told the Court previously, was  
8 prepared by Trooper Austin. This animation, there's  
9 two of them, the first is the scene model, that is,  
10 a view of the Avery salvage property, and what the  
11 State believes are important landmarks and items of  
12 evidence. It also includes a skeletal animation for  
13 which Mr. Strang expressed at least less objection,  
14 but something that he may -- he may talk about.

15 The animation that I'm going to be  
16 showing the Court here contains -- it's a  
17 composite, if you will, of 4,000 or so individual  
18 images, all computer generated, but put together  
19 to create the animation. And Mr. Austin will  
20 eventually talk about that. This animation is a  
21 15 frame per second animation. The final version  
22 would be, I believe it's 30 frames per second,  
23 but would most likely look very much the same.

24 So the record should reflect then that  
25 I'm showing the Court something called a scene

1 overview animation, which again is that -- the  
2 composite of the computer generated animations.  
3 Is there any way to turn down the lights at all,  
4 or would you like not to do that? As we watch  
5 this, Judge, if I may, Trooper Austin indicated  
6 the 15 frame per second rather than the 30 frames  
7 per second will have the most impact on things  
8 like the gravel road, it won't be as sparkly. It  
9 will be a smoother -- a smoother version.

10 Trooper Austin also indicated any of the  
11 text that he's placed into this animation can  
12 obviously be deleted, should that be necessary.  
13 And as I mentioned to the Court, this was brought  
14 in lieu of any jury view or scenes.

15 (Watching the animation).

16 ATTORNEY KRATZ: The record should then  
17 reflect, your Honor, that the scene overview has  
18 concluded. The Court has been instructed that the  
19 anthropologist in this case will be testifying as  
20 to -- excuse me -- as to some cranial defects which  
21 she and the pathologist describe to the jury as  
22 entrance wounds.

23 The location of those will be obviously  
24 of interest from this animation that I'm showing,  
25 although created by Mr. Austin, was under the

1 immediate direction of Anthropologist Leslie  
2 Eisenberg. It's about 30 seconds long, Judge.  
3 And, again, the theory of its admissibility and  
4 underlying modeling technique will be described  
5 for the Court, as mentioned, before beginning  
6 this part of our presentation. I will be  
7 providing the Court with copies therefrom, as  
8 well as additional testimony from Mr. Austin at  
9 the time of the submission of these trial  
10 exhibits. With that, Judge, the State is happy  
11 to move on to our next matter on the agenda.

12 THE COURT: Mr. Strang, is there anything  
13 you wanted to add before we move on?

14 ATTORNEY STRANG: Only that I note two  
15 things for the Court's consideration. One, as to  
16 neither of these, apparently, do we still have the  
17 final version, the version the State proposes to use  
18 at trial. And two, as to the cranial defects  
19 animation at least, this would also be true of the  
20 other skeletal representations when one reads  
21 Trooper Austin's report closely, these are, in fact,  
22 reports of Leslie Eisenberg. And they are well past  
23 untimely under the Court's October 19, 2006  
24 scheduling order for disclosure of expert witness  
25 reports.

1                   THE COURT: All right. Anything else on  
2 that today?

3                   ATTORNEY KRATZ: Not for today, thank you,  
4 Judge.

5                   THE COURT: Next, we'll move on then to the  
6 defendant's motion to preclude expert witness  
7 testimony and compel disclosure of potentially  
8 exculpatory evidence. Mr. Buting, is that yours?

9                   ATTORNEY BUTING: Yes, Judge. Did the  
10 Court get a copy of that one?

11                  THE COURT: I do.

12                  ATTORNEY BUTING: Unfortunately, I can't  
13 find mine. Did I take it back?

14                  THE COURT: You gave it to me earlier, but  
15 I think I gave it back to you.

16                  ATTORNEY BUTING: I have a copy.

17                  THE COURT: Well, I take it back, I have  
18 got the original here. I don't know if this is the  
19 one that's supposed to go to the Clerk of Court's.  
20 Do you have one?

21                  THE CLERK: No.

22                  ATTORNEY BUTING: Judge, I attached two  
23 exhibits to it. The State has complained that  
24 defense wasn't specific enough with their reports,  
25 and I attached these two reports to show you, at

1                   least with regard to these two FBI reports, these  
2                   are incredibly sketchy. There's two different ones.

3                   The first one, Exhibit 1, is very  
4                   recent, dated January 12th. Actually, we just  
5                   received it, I believe, on the 29th of January.  
6                   Again, way past the expert witness disclosure  
7                   deadline, so two days ago we get this report.  
8                   And it talks about three different shipments of  
9                   specimens received. Are you at the right -- Are  
10                  you on Exhibit 1?

11                  THE COURT: Yes.

12                  ATTORNEY BUTING: November 8, 14th and  
13                  December 27th. It labels them as just -- gives them  
14                  two identification numbers, but there's nothing to  
15                  tell us what they are, other than bone fragments.  
16                  There's bone fragments -- there's 1, 2, 3, 4, and  
17                  then 31 in another shipment. They identify these as  
18                  Q-11, Q-12, and so on up to Q-45. But these reports  
19                  tell us nothing about what they are, where they came  
20                  from, whether they came from the burn pit, whether  
21                  they came from one or more burn barrels, whether  
22                  they came from a completely different location, a  
23                  quarry, or what, or whether even they are human.

24                  So this report tells us nothing, really,  
25                  other than to say that we can't do any

1 mitochondrial DNA from it. So that's the first  
2 concern.

3 Second concern is, the very last  
4 paragraph says, if you turn to that second page,  
5 it says that, the processed DNA generated from  
6 these samples is being returned to the Crime Lab.  
7 Well, if they processed these items for DNA, they  
8 must have some results, and these results are not  
9 being turned over. So we don't know whether they  
10 are exculpatory or not at this point. But  
11 obviously some testing was done, if it wasn't  
12 mitochondrial, what was it, and where are those  
13 results? Okay.

14 THE COURT: Okay.

15 ATTORNEY BUTING: All right. So those are  
16 the two concerns with regard to that particular one.  
17 And I also noted that attached is Exhibit 2, is  
18 actually the earlier report from this particular DNA  
19 Unit of the FBI. And you will see that it lists  
20 item Q-1 as charred remains, but that's it. That's  
21 all we received from this unit.

22 So there is a gap missing between items  
23 Q-2 and Q-10, apparently another nine items have  
24 been tested by the FBI, this unit, and we have  
25 never received any results. Are they

1           exculpatory? Are they inconclusive? We don't  
2           know, except it's obvious that they are done and  
3           we haven't been -- those reports weren't turned  
4           over along with the other reports of the experts.  
5           So if this expert is going to testify then,  
6           obviously, we would need to know the results of  
7           all of his tests, not just selected ones.

8                         So, again, if they have done tests on  
9           the 35, whatever it is, bone fragments, most  
10           recently, and gotten something that's not  
11           exculpatory, then it's -- I'm sorry -- that's not  
12           inculpatory, then it is exculpatory, by  
13           definition, to us.

14                         Same thing here, if those items Q-2 to  
15           Q-10 were tested and nothing inculpatory was  
16           found then, again, in this case, by definition,  
17           they are exculpatory and should have been turned  
18           over. And then, finally, on that particular  
19           report, Exhibit 2, the only finding that's given  
20           is that Teresa Halbach cannot be excluded -- this  
21           is on the second page -- cannot be excluded as  
22           the source of the Q-1 charred remains.

23                         But then it goes on and it lists some  
24           data base, but there is no opinion provided about  
25           what that data base is, what the relevance is,

1                   whether it matters. There's no further opinions,  
2                   or conclusions, or findings drawn from that. So  
3                   again, I mean both of these reports are very  
4                   cryptic, far more cryptic than anything we have  
5                   turned over that the Court found was not  
6                   sufficient compliance with the statutory  
7                   obligation of turning over findings, summary of  
8                   testimony, and what not of experts. So for that  
9                   reason, these should either be excluded or the  
10                  State should file amended ones that do satisfy  
11                  the statute and, further, they should turn over  
12                  immediately the potential exculpatory results.

13                  Thank you.

14                  THE COURT: All right. Mr. Fallon, are  
15                  you --

16                  ATTORNEY FALLON: Thank you.

17                  THE COURT: -- handling this?

18                  ATTORNEY FALLON: Yes. Well, once again,  
19                  I'm here arguing to the Court that just because  
20                  counsel chooses to label something exculpatory,  
21                  doesn't make it so. I wish the world were as simple  
22                  as counsel would suggest, that if it's not  
23                  inculpatory it must be exculpatory, or vice versa.

24                  With respect to the reports, let's take  
25                  Exhibit No. 1 first. Exhibit No. 1, I find

1           rather interesting because it is a report  
2           prepared by FBI Analyst Douglas Hares or --  
3           excuse me -- I'm taking them in reverse order,  
4           Exhibit No. 2, a report by Douglas Hares.

5           The report is dated January 17th, 2006.  
6           And only now is there apparently a question  
7           regarding the sufficiency of that report. In  
8           answer to that, I would offer this information to  
9           the Court, and counsel is certainly aware of it.  
10          Quite some time ago the entire protocol of the  
11         FBI, with respect to this analysis, was provided  
12         to the defense. A CD with the data generated,  
13         during the course of the analysis, has been  
14         provided, much like the genotype or geno scan  
15         information which was turned over pursuant to the  
16         Wisconsin Crime Laboratory's DNA analytical  
17         procedures and protocols and data generated.

18          Finally, we have the report itself of  
19         Mr. Hares. And I think, simply answered, it is  
20         what it is, that Teresa Halbach cannot be  
21         excluded. It uses the counting method, which is  
22         pretty much accepted in all laboratories. And  
23         it's rather interesting to hear a concern about  
24         the counting method, which is usually offered by  
25         the defense as a means to supposedly undermine,

1                   for whatever reason in their minds, the  
2                   significance of the results or the findings  
3                   there.

4                   The report has been provided. All of  
5                   the underlying data has been provided. And the  
6                   opinions that will be rendered by Mr. Hares are  
7                   contained in the exhibit. That's it. There --  
8                   As I say, there ain't no more. It is what it is.  
9                   Those are the only opinions, if in fact we even  
10                  have an opinion, offered by Mr. Hares with  
11                  respect to the statistical counting.

12                  THE COURT: Let me stop you there. There's  
13                  a sentence in Mr. Buting's brief, on Page 4, that  
14                  says, Mr. Avery, this moves the Court to prevent any  
15                  testimony from the DNA analyst and Exhibit 2,  
16                  Douglas Hares, other than his opinion that Teresa  
17                  Halbach cannot be excluded as a source of the  
18                  charred remains. I take it that at least to the  
19                  extent Mr. Hares would testify about this report,  
20                  you are telling me that's exactly right.

21                  ATTORNEY FALLON: His report is what it is.

22                  THE COURT: Okay.

23                  ATTORNEY BUTING: And that's all -- that's  
24                  the only opinion that would be rendered from this  
25                  report? See that's what's not clear. If that's all

1                   this Douglas Hares is going to say, fine.

2                   ATTORNEY FALLON: In my discussions with  
3 co-counsel, Mr. Gahn, that's my understanding. I  
4 mean, if that should somehow change in the next 24  
5 hours, I would be happy to let Court and counsel  
6 know. But as Mr. Gahn advised me, the opinions  
7 expressed in the report are the opinions which are  
8 going to be offered.

9                   THE COURT: All right.

10                  ATTORNEY FALLON: And as I said, they have  
11 all the data. And here it is a year and two weeks  
12 after the report was generated and it's probably 10  
13 months since provided in discovery.

14                  With respect to the other exhibit, this  
15 one I can speak to with even greater detail and  
16 surety. I have had discussions with the analyst  
17 here, Mr. Les McCurdy, and I guess I would  
18 preface my remarks here by indicating that  
19 Mr. McCurdy's findings are already reflected in  
20 Dr. Leslie Eisenberg's report, which has been  
21 provided to the defense.

22                  For whatever reason, the FBI was late in  
23 providing their written report of the oral  
24 findings that they already provided to  
25 Dr. Eisenberg. But, nonetheless, I did ask

1                   Mr. McCurdy about the language that counsel finds  
2                   so troubling. And I learned that the last  
3                   paragraph, which begins on Page two, the  
4                   submitted items will be returned under separate  
5                   cover etcetera, is language that is apparently  
6                   standard language in all FBI reports, regardless  
7                   of whether DNA is generated or not.

8                   I would direct the Court's attention to  
9                   the preceding paragraph. It says, due to the  
10                  condition of the submitted bone fragments, no  
11                  mitochondrial DNA examinations were conducted. I  
12                  verified that with Mr. McCurdy on the phone, both  
13                  yesterday and this morning.

14                  Knowing that counsel has had problems  
15                  and has been doubtful of representations that the  
16                  State made in the past, I asked him, would you  
17                  provide an amended report further explaining that  
18                  no DNA extractions were occurred. And he did, in  
19                  fact, provide us with an amended report, taking  
20                  care of that, and I provided two copies to the  
21                  defense.

22                  No DNA was extracted from those bones,  
23                  because it wasn't possible. Their condition had  
24                  deteriorated as a result of the fire, to such a  
25                  degree that DNA could not be extracted.

1                   And, finally, I'm troubled by, again,  
2                   the insinuation and representations that we must  
3                   be hiding things. So, for counsel's benefit,  
4                   because we don't have to do this, but in the  
5                   interest of providing the information and getting  
6                   this trial going, I will offer this information  
7                   to counsel.

8                   The FBI uses the letter Q, capital Q,  
9                   designation for items submitted, and we have  
10                  items 1 through 45. Items 1 and 2, were Calumet  
11                  Sheriff's tag numbers 7926 and 7927. Q-3, which  
12                  counsel finds mysterious, and I would only  
13                  suggest that he review previous discovery, was  
14                  the Sure Shot Camera. Q designation 4 through 10  
15                  were the cell phone parts. Q-11 and 12 was Item  
16                  No. 9597, cranial pieces from the burn pit behind  
17                  the defendant's garage. And I believe -- and I'm  
18                  not sure of the circumstances, but it was  
19                  originally tagged 8318.

20                  ATTORNEY BUTING: Which one was that, I'm  
21                  sorry?

22                  ATTORNEY FALLON: Q-11 and 12. Q-13  
23                  through 38 were items in 7964, from Burn Barrel 2.  
24                  Items Q-39 through 45 were designated Items 8675.  
25                  And we believe that's referred to in many places in

1                   the discovery as the Radandt debris pile. So I  
2                   think that clears up the information which is -- all  
3                   has been provided, and examined, and discussed at  
4                   length.

5                   So I'm at a loss, quite frankly, to  
6                   explain further the purpose of this motion. I  
7                   think we have resolved, I think to all  
8                   satisfaction, what the circumstances here. So  
9                   without any further comment I will rest.

10                  ATTORNEY BUTING: Judge, one last matter is  
11                  still not clear. On Page 3 of my motion, I point  
12                  out, it is not clear whether any of these items that  
13                  were sent to the FBI have been determined to be  
14                  human or not. Because there's many, many non-human  
15                  bones that were in these barrels, pits, and  
16                  everything else. So I don't know if counsel knows  
17                  that, but this report, one of my concerns is the  
18                  report doesn't say that. We don't know whether  
19                  these are human or not human, in fact, until he told  
20                  me today what these were, the report wouldn't tell  
21                  you that. So that's still an additional concern.

22                  THE COURT: You are referring now to the --

23                  ATTORNEY BUTING: Exhibit 1 that has items  
24                  Q-11 through Q-45.

25                  THE COURT: Mr. Fallon, is that information

1 provided anywhere in submittals?

2 ATTORNEY FALLON: Can't be identified,  
3 that's the whole idea. There was an attempt at  
4 mitochondrial DNA, or any DNA for that matter. They  
5 are still suspected possible.

6 THE COURT: Q-11, 12, 13, 14, through  
7 Q-14.8 and Q-15 through 45, none of those were able  
8 to be identified.

9 ATTORNEY FALLON: That wasn't the question  
10 counsel asked. Counsel asked on items I believe 13  
11 through 45. I believe the other items have been  
12 identified.

13 THE COURT: Okay.

14 ATTORNEY BUTING: Well, the simple question  
15 is, Q-11 and Q-12, if those have been identified as  
16 the cranial; is that what you are saying?

17 ATTORNEY FALLON: Those are cranial pieces.

18 ATTORNEY BUTING: Okay. So those have been  
19 identified as human. But as to the others, for  
20 instance, Q-39 through 45, labeled as Radandt debris  
21 pile, simple question is, were those human or were  
22 they not?

23 ATTORNEY FALLON: You know what we know?

24 ATTORNEY BUTING: Well, what opinion will  
25 be expressed by an expert?

1                   ATTORNEY FALLON: Well, the opinions are  
2 set forth in the laboratory reports from the FBI  
3 analyst that mitochondrial DNA was not possible to  
4 determine that. And Dr. Eisenberg has already  
5 indicated in her reports, suspected or possible, and  
6 the question is, is that even admissible. But  
7 that's for another day.

8                   ATTORNEY BUTING: That's fine. So these  
9 experts will not render any opinion on that; is that  
10 right?

11                  ATTORNEY FALLON: As I understand it. I'm  
12 confirming that with Dr. Eisenberg.

13                  THE COURT: There was a reference on Page 5  
14 of Mr. Buting's brief to other experts for whom he  
15 indicates the defense has not received reports, Carl  
16 Adrian, Eric Smith and Robin Cotton. Are those --  
17 As I understand it, those are witnesses that the  
18 State named, but no reports were provided?

19                  ATTORNEY BUTING: Correct. Judge, I -- the  
20 Carl Adrian one I believe is -- he is the one who  
21 did a similar kind of recreate laser measurements of  
22 the RAV 4, if I stand corrected. Am I right,  
23 counsel?

24                  ATTORNEY FALLON: Yes.

25                  ATTORNEY BUTING: And as to that, we have

1 still not seen any reports. Eric Smith, I'm not  
2 sure who he is, what his report is. Robin Cotton, I  
3 know who she is and I have definitely not received  
4 any report from her. She's in Boston, a former DNA  
5 expert at Cellmark. So if they have gotten -- if  
6 they are intending to put in another DNA expert,  
7 there have been zero reports from her.

8 THE COURT: Mr. Fallon.

9 ATTORNEY FALLON: With respect to Robin  
10 Cotton, I guess counsel should consider himself  
11 fortunate that he has one potential rebuttal  
12 witness. Mr. Gahn has not advised me as to whether  
13 or not she will be appearing and/or whether she's  
14 even written a report relative to this particular  
15 case.

16 THE COURT: And Mr. Adrian and Mr. Smith?

17 ATTORNEY FALLON: Mr. Adrian is, as  
18 represented, he's an analyst who put together a  
19 computer generated animation of the SUV. I will let  
20 Mr. Kratz speak to that. He's more familiar with  
21 Mr. Adrian.

22 ATTORNEY KRATZ: I'm sorry, Judge, Mr.  
23 Adrian -- the Court has already received the SUV  
24 animation in anticipation of that. Defense counsel  
25 received a disc of all the measurements that were

1                   created from Mr. Adrian's work product. There is no  
2                   report, other than the item itself, that is, the  
3                   computer animation itself.

4                   ATTORNEY FALLON: I would have to check,  
5                   that was the one thing that I ran out of time trying  
6                   to run down, but I believe the last gentleman, may  
7                   very well be simply one of the many agents from the  
8                   FBI who may have had a hand in the chain of  
9                   evidence.

10                  Counsel has reminded me that Mr. Smith  
11                  is the tool mark analyst at the FBI. We're not  
12                  planning on calling him.

13                  ATTORNEY BUTING: Are not?

14                  ATTORNEY FALLON: Are not.

15                  ATTORNEY BUTING: Well, as to Mr. Adrian  
16                  then, if he has no report, and I guess the summary  
17                  of his testimony would be the animation that is  
18                  being offered to -- as a substitute. Certainly,  
19                  there's nothing like that for Robin Cotton. So,  
20                  we're way past the deadline and I would move the  
21                  Court to exclude any testimony from Robin Cotton.

22                  THE COURT: I understood the State to be  
23                  saying they would not be offering any testimony from  
24                  her in their case-in-chief.

25                  ATTORNEY FALLON: That's my understanding.

1                   THE COURT: I also understand the State to  
2                   be reserving the right to introduce her in rebuttal  
3                   under **Konkol**.

4                   ATTORNEY FALLON: Correct.

5                   ATTORNEY BUTING: So she will not be  
6                   allowed to testify in the State's case-in-chief.

7                   THE COURT: In the case-in-chief, right.  
8                   Mr. Buting, does that address the concerns that you  
9                   have raised in that motion?

10                  ATTORNEY BUTING: I believe so.

11                  THE COURT: I'm not sure if you require an  
12                  order, but if you wish an order to -- reduced to  
13                  writing, the indications that the State made, you  
14                  may do so and submit it to Mr. Fallon for his  
15                  approval, and you can submit it to the Court for  
16                  signature.

17                  All right. The next item is from the  
18                  defendant's motion to dismiss of last week. The  
19                  Court addressed the three counts. The State  
20                  moved to dismiss two of them. The Court denied  
21                  the defense motion to dismiss the third. But,  
22                  Mr. Strang, I believe there was another portion  
23                  of that motion which you wish to bring up again.

24                  ATTORNEY STRANG: Right. This is -- This  
25                  is an issue that I have raised in several different

1 forms or settings since the spring of 2006. And at  
2 its core, or germ, are the March 1 and March 2, 2006  
3 news conferences that the State conducted laying out  
4 on March 1 the purported statements of, at that  
5 point, an unnamed relative of Steven Avery in a live  
6 televised news conference format. The Court has the  
7 DVD of that news conference and I think has viewed  
8 it.

9                   And then the following day, March 2, and  
10 this is the news conference that was preceded by  
11 the warning of its graphic content and urging  
12 that young people under a certain age, and  
13 friends and relatives of Ms Halbach not watch,  
14 because of the graphic content. And in that news  
15 conference the State identified Brendan Dassey  
16 and gave a very gripping narrative, chilling and  
17 horrifying narrative, of what the State imagined  
18 to have occurred at the Avery property, based on  
19 what was then Brendan Dassey's purported version  
20 of events.

21                   The March 10 Amended Information  
22 followed directly from Mr. Dassey's version at  
23 the time, and the version laid out on March 1 and  
24 March 2, 2006. Mr. Dassey himself disavowed that  
25 version in large part not later than May 13,

1           2006. The physical evidence disproved most of  
2         the gory details that the State presented on  
3         March 1 and March 2, in particular.

4           But in the public mind, we have had 10  
5         months of seepage of those details. Ten months  
6         of the public believing that Steven Avery is an  
7         alleged rapist in this case, and alleged to have  
8         kidnapped Teresa Halbach in addition to murdering  
9         her.

10          And the fruit that that 10 months and  
11         that those two press conferences have born, is  
12         there for all to see in the 144, something fewer  
13         than that, jury questionnaires, where time and  
14         again jurors are telling us that their opinions,  
15         many of them unalterable, according to the jurors  
16         -- prospective jurors reports, are traceable, not  
17         just to publicity, but many of these prospective  
18         jurors say -- cite in particular Brendan Dassey's  
19         supposed confession, and the power of it,  
20         although inadmissible, the power of it in the lay  
21         mind, as to Mr. Avery.

22          The questionnaires now are, of course,  
23         are a part of the court record. Court, I assume,  
24         has reviewed those, as have I. At least one  
25         prospective juror specifically cites Mr. Kratz's

1 statements about Brendan Dassey's confession, as  
2 the source of her opinions.

3 And, you know, I don't remember now what  
4 language the juror used in response to question  
5 43, or question 69, question 74, and just how  
6 unalterable that opinion was. But that, again,  
7 is now a matter in the Court's record that could  
8 be reviewed if necessary.

9 There may have been more than one juror.  
10 I read these questionnaires very quickly because  
11 of the work that all of us have confronted this  
12 week as we prepare for trial on Monday. The  
13 presumption of innocence has been lost here. And  
14 it happened -- that -- that dissipation happened,  
15 I think, about March 1, March 2, or as a result  
16 of those comments.

17 And now 10 months later, of course,  
18 Mr. Avery is not facing a rape charge at all, not  
19 facing a kidnapping charge, the State has elected  
20 to go forward on a false imprisonment charge that  
21 I think cannot make it to a jury, unless there's  
22 evidence that the State has, of which I'm unaware  
23 through the discovery process, and I have posed  
24 that problem in my motion to dismiss the false  
25 imprisonment count and the other two counts.

1                   And I have expressed it here in court,  
2                   the risk we will run if the State, in fact, has  
3                   insufficient evidence of false imprisonment here,  
4                   in the context of the highly inflammatory, highly  
5                   prejudicial news conferences, together, running  
6                   on March 1 and March 2 alone, setting aside the  
7                   other six televised news conferences, just those  
8                   two together running to 56 minutes or more,  
9                   followed by the 10 months of the drumbeat in the  
10                  media on this case, reiterating the State's  
11                  allegations.

12                  So dismissing those two counts isn't  
13                  enough. Dismissing the third, false imprisonment  
14                  count, isn't enough here to restore the  
15                  presumption of innocence to which Mr. Avery  
16                  constitutionally is entitled. The Court needs to  
17                  do something more. And the jury questionnaires  
18                  that we have now reviewed bear that out.

19                  I will make a further record, I'm sure,  
20                  on Monday, in moving to strike for cause a number  
21                  of additional jurors -- I'm sorry -- prospective  
22                  jurors, people who filled out jury questionnaires,  
23                  on which the State and the defense did not agree  
24                  that there was cause to strike. I will move to  
25                  strike a number of additional jurors as having

1           unalterable opinions and, therefore, not being  
2           fit for service as a juror in this case.

3           But I would like to see this Court take  
4           some firm action to try to save at least 30  
5           members of this panel, if they can be saved, as  
6           appropriate, open-minded, potential jurors who  
7           are willing to follow the Court's instructions  
8           and, indeed, the constitutional rules of criminal  
9           procedure in this country.

10          The Court is going to have to do  
11          something to restore that presumption of  
12          innocence. I suggested a curative instruction.  
13          I laid it out. There is no particular magic to  
14          my language, but it would have to be a strong  
15          instruction, and more than once repeated, just as  
16          the message about Brendan Dassey's accusation  
17          against Steven Avery has been more than once  
18          repeated. And the message about the first degree  
19          sexual assault charge and the kidnapping charge  
20          have been more than once repeated.

21          The Court faces -- I realize the Court  
22          can't give a counteracting instruction as many  
23          times or as powerfully as the initial message was  
24          heard. But the Court has got to try, here, to  
25          erase that prejudicial effect of the last 10

1           months, now confirmed in its unfairness by the  
2           fact that the State did not commit to calling  
3           Brendan Dassey by the deadline that we had agreed  
4           and the Court had set, may not and is not going  
5           forward on two of the charges that are brought,  
6           on March 10, 2006.

7           Lest there be any question at all about  
8           the power of those accusations, now dismissed,  
9           and at their time, resting only on the  
10          inadmissible claims of Brendan Dassey, lest there  
11          be any question about the power of those at all,  
12          this Court, an experienced judge, a skilled  
13          lawyer for many years before that, this Court was  
14          moved by those allegations to say that \$500,000  
15          bail for this man is not enough, and that there  
16          is a stronger case against him now, greater  
17          incentive to flee, or to fear conviction, and  
18          increased the bail, as I recall, by \$250,000 to  
19          \$750,000 citing the new charges in the Amended  
20          Information, that at the time I believed rested  
21          only on the inadmissible claims of Brendan  
22          Dassey, and the time now has confirmed the State  
23          cannot corroborate and cannot advance to a jury  
24          even in opening statement, unless it commits to  
25          call Brendan Dassey. And that's why at least two

1           of those counts have been dismissed.

2           When those kinds of accusations and  
3           those new charges, move a Court to raise by  
4           50 percent an accused's bail, I have a pretty  
5           good sense of what they do in the lay mind, among  
6           this jury pool, in terms of persuading that jury  
7           pool that the case looks much stronger against  
8           Mr. Avery than, in fact, it turned out to be.

9           But that's what we're up against. And  
10          I'm asking this Court to take strong curative  
11          action, whether it's my instruction, or one of  
12          the Court's own writing, or some other curative  
13          step designed to restore to Mr. Avery the  
14          presumption of innocence that due process and a  
15          fair trial require.

16          THE COURT: Who will be addressing this  
17          matter for the State?

18          ATTORNEY KRATZ: I will, Judge.

19          THE COURT: Mr. Kratz.

20          ATTORNEY KRATZ: I am quite certain that  
21          Mr. Strang does not want to enter into a debate at  
22          this time as to the relative strength of the State's  
23          case. I would argue with Mr. Strang and his  
24          conclusion that the State does not have as strong a  
25          case now as it did on March 1st. Obviously, the

1 State believes it has a much stronger case now than  
2 it did on March 1st, given the physical evidence  
3 that's been detailed.

4 And we have become familiar with, that  
5 notwithstanding, Judge, that the jurors who have  
6 been unable, for whatever reason, to presume  
7 Mr. Avery innocent, or the jurors who have  
8 indicated to this Court an unwillingness to  
9 follow instructions, have already been stricken.  
10 We'll be making a record of that on Monday.

11 But as far as the risk of jurors who  
12 cannot follow instructions, or who have some  
13 preconceived notion, that's already taken into  
14 account in the jury process. And that's not  
15 unique to the Avery case, that is a process that  
16 this Court engages in each and every time we try  
17 to pick a fair and impartial jury.

18 Mr. Strang's suggestion of some curative  
19 instruction necessarily requires this Court to  
20 place some blame upon the State; that is, that  
21 there was some unfair publicity in this case. I  
22 will remind the Court that that very motion was  
23 brought by Mr. Strang many, many months ago.

24 This court made specific findings that  
25 the State did not engage in any behavior that

1                         violated Supreme Court Rule 20:3.6, that the  
2                         State, through its comments, that this Court, I  
3                         believe made findings, included invited response  
4                         and other reasons for those comments, did not  
5                         preclude, and do not preclude, the defendant of a  
6                         fair trial. And so, to suggest at this point,  
7                         that even after making those findings months and  
8                         months ago, that the defense is now somehow  
9                         entitled to some damning instruction, some  
10                         instruction that suggests that the State's  
11                         behavior, or the State's comments in this case  
12                         were improper, is just not warranted.

13                         This Court has cautioned counsel, that  
14                         is, counsel for the State and counsel for the  
15                         defense, as to extra judicial comments. And to  
16                         my knowledge one party has abided by that; that  
17                         is the State, that since March 2nd, no extra  
18                         judicial statements of any significance have been  
19                         made in this case. I can't say that for  
20                         Mr. Buting or for the defense, but the State has  
21                         certainly abided by this Court's admonition.

22                         Let me also suggest, Judge, that to  
23                         engage, or to go down this road of curative  
24                         instructions, would necessitate the Court  
25                         explaining the nuance of use immunity and the

1           reasons why a prosecutor may decide what charges  
2           to go forward with, or what charges to not go  
3           forward with. Mr. Dassey's inconsistent  
4           statements, again, are hardly unique to a  
5           criminal defendant like Mr. Dassey, but certainly  
6           are not of the substance that some curative  
7           instruction is made of.

8                 Let me close, Judge, in saying that, as  
9                 I argued earlier this week, the State could have  
10               proceeded on the rape and kidnapping charges.  
11               The fact that we have chosen not to, the fact  
12               that we have chosen to either save Mr. Dassey  
13               for, if not case-in-chief, a rebuttal witness,  
14               and the conference of use immunity is solely  
15               within the province of the State, not something  
16               that the Court or the defense has any say so in.  
17               And with that having been said, any curative  
18               instruction is improper, would prejudice the  
19               State, would ask the Court reject that  
20               possibility. Thank you, Judge.

21                 THE COURT: Anything else, Mr. Strang?

22                 ATTORNEY STRANG: Well, the notion that the  
23                 State ending its extra judicial comments after  
24                 March 2nd solves the problem is a little bit like  
25                 the away team in a baseball game saying, well, I had

1 my at bats in the top of the first, I hit a home  
2 run, and now the remedy is not to allow the home  
3 team to come to the plate in the bottom of the first  
4 and not to play the rest of the innings.

5 We, in fact, haven't given a single news  
6 conference, or called people to our office, or  
7 set up a bank of microphones, or given a  
8 warning about graphic content, let alone given  
9 eight news conferences. And, functionally, we  
10 have been unable to reclaim the presumption of  
11 innocence here. And the Court need only look at  
12 the jury questionnaires we have to see just  
13 exactly which side here has had its impact on  
14 public opinion before this case gets tried.

15 THE COURT: All right. The parties will  
16 have an opportunity in individual voir dire to  
17 further explore what opinions the jurors have, what  
18 they may have seen or heard, what they come into  
19 this case with. The Court will listen to the  
20 comments of the jurors during voir dire.

21 And if I feel a need to address anything  
22 in the form of an instruction to the jury, the  
23 Court generally at the start of the trial gives  
24 the jurors some preliminary instructions,  
25 including information on the substantive charges.

1           And I will make my ruling on the motion  
2           explicitly, or implicitly, at that time, with the  
3           instructions to the jurors.

4                         The next item is a motion from the  
5           defense regarding courtroom security. Mr.  
6           Strang.

7                         ATTORNEY STRANG: I think we were also  
8           going to address the second motion in limine.

9                         THE COURT: Oh, I'm sorry, you're right, I  
10           passed over that one, that was the next one.

11                         ATTORNEY STRANG: But that turns out, I  
12           think, to be fairly easy. After some conversations  
13           with Mr. Kratz, I'm satisfied that I now can  
14           reconstruct the information I was seeking as to the  
15           first part of that motion in limine.

16                         And as the second part, concerning some  
17           converted telephone calls, I will simply make a  
18           record of what I think we discussed in chambers,  
19           or my recollection of what we discussed in  
20           chambers is that the State is working on some  
21           conversations. I know what it means by conversion  
22           now.

23                         When it has those done, it will offer to  
24           the defense the opportunity to see the closed  
25           captioning, so to speak, for the realtime

1 transcription that it proposes to offer as to  
2 some recordings. We'll have a chance, I assume,  
3 to assure ourselves that the recordings  
4 themselves were not altered or redacted in a way  
5 that would make them less than complete, and that  
6 the transcription is accurate.

7 And I also understand from our  
8 discussion in chambers that I should not expect  
9 any objection from the State, or any resistance  
10 from the Court, to giving an appropriate jury  
11 instruction on transcripts being aids to  
12 understanding evidence, but not evidence in  
13 themselves, that the recordings themselves are  
14 the evidence.

15 So, if I understood our conversation  
16 about part two of my second motion in limine  
17 correctly, then at this point the Court simply  
18 can hold the issue in abeyance.

19 THE COURT: All right. Maybe I missed it,  
20 the \*67 issue. Do I understand --

21 ATTORNEY STRANG: That's part one. And I  
22 think we're squared away on that.

23 THE COURT: Okay. All right. At this time  
24 the Court will move on then to the defendant's  
25 motion concerning courtroom security. Mr. Strang.

1                   ATTORNEY STRANG: Yes, your Honor, the  
2 State hasn't responded, but I have been provided by  
3 the Court, and I think counsel for the State have as  
4 well, the January 28, 2007 letter from Sheriff Jerry  
5 Pagel of Calumet County. And I guess the inference  
6 I draw from Sheriff Pagel's letter is that he  
7 believes that security measures at trial ought  
8 include what I have called a stun belt. I guess  
9 Sheriff Pagel uses the same term in his letter.

10                  So, as I understand it here, it falls to  
11 the Court to decide whether there's manifest  
12 necessity for such a security measure. And the  
13 case law is pretty thin in Wisconsin, although  
14 there is some, not on this particular restraint,  
15 there's a good deal of case law both in other  
16 states and in federal courts around the country.

17                  And I have provided the Court a  
18 smattering of it, not -- I couldn't possibly  
19 provide all of it. I have relied in particular  
20 here on the neighboring state of Illinois, both  
21 because of the recency of the Illinois Supreme  
22 Court's decision on this type of restraint and  
23 because its detail and usefulness of the factors  
24 it suggests trial courts take into consideration.

25                  But the burden either rests on the

Court, or on the State, to justify such a restraint as necessary and consistent with the defendant's Sixth and Fourteenth Amendment rights to a fair trial, the assistance of counsel, confrontation, and to testify in his own defense, if he chooses. The burden, I'm sure, does not rest on the defense here, and that's between the Court and the State. I'm not sure exactly where it does rest. But there would have to be an evidentiary providing, I think, and some findings by the Court, on necessity, if the Court is considering deferring to Sheriff Pagel's apparent wishes.

THE COURT: Anything further, Mr. Strang?

15 ATTORNEY STRANG: Not at the moment, I  
16 guess.

17                   THE COURT: Okay. This, as Mr. Strang  
18 indicated, it's -- this issue is not necessarily a  
19 prosecution versus defense type motion. It's a  
20 matter for the Court to determine, based on  
21 considerations for courtroom security, but does the  
22 State wish to be heard?

23 ATTORNEY KRATZ: Yes, very briefly, Judge.  
24 The State echos the Court's feeling that this is not  
25 a prosecution issue. I do have a personal opinion

1           as the person who would be seated 5 feet from  
2           Mr. Avery during this trial, as to whether some  
3           security is necessary.

4                 But from the prosecution's standpoint,  
5           the only comment we have as to Mr. Strang's  
6           suggestions that this raises to a due process  
7           right, is how does the defendant wearing a stun  
8           belt a fact -- affect, excuse me, his ability to  
9           participate, how does it affect his ability to  
10          speak with his attorney, or in any other way to  
11          participate in the proceedings?

12               This is a security issue. I don't tell  
13          the sheriff how to run his jail, or how to do  
14          courtroom security, and we have got a deal that  
15          he doesn't tell me how to run my office, at least  
16          not very often. So, with that having been said,  
17          Judge, we'll leave it to the Court and to Sheriff  
18          Pagel as to a decision on the courtroom security  
19          issues. Thank you.

20               THE COURT: All right. I have the letter  
21          from Sheriff Pagel in front of me. I'm not sure,  
22          Mr. Strang, if the defense is in agreement with the  
23          Court making its decision based on the reasons given  
24          by Sheriff Pagel for his request, or whether you  
25          wish to question Sheriff Pagel.

1                   ATTORNEY STRANG: I am not in agreement  
2                   with that. Because at a minimum some of these  
3                   issues would need elaboration. The letter's a  
4                   helpful starting point and, indeed, in my motion I  
5                   have conceded that these are serious crimes.  
6                   There's no gainsaying that. It is the most serious  
7                   crime with which one can be charged in the State of  
8                   Wisconsin, so that -- that -- you know, that factor  
9                   weighs in favor of restraint, standing by itself.  
10                  Some of these others, as I say, at a minimum would  
11                  need evidentiary development.

12                  THE COURT: Do you wish to question Sheriff  
13                  Pagel?

14                  ATTORNEY STRANG: Yes, by doing so I'm not  
15                  taking on a burden, I gather?

16                  THE COURT: No, you are providing  
17                  information to the Court to assist the Court in  
18                  making its decision.

19                  ATTORNEY STRANG: Very well, I'm happy to  
20                  do that.

21                  THE COURT: All right. Sheriff Pagel.

22                  **SHERIFF GERALD PAGEL**, called as a  
23                  witness herein, having been first duly sworn, was  
24                  examined and testified as follows:

25                  THE CLERK: Please be seated. Please state

1                   your name and spell your last name for the record.

2                   THE WITNESS: Gerald Pagel, P-a-g-e-l.

3                   **DIRECT EXAMINATION**

4 BY ATTORNEY STRANG:

5 Q. Just as a matter of background here, we all know  
6                   the answers to the questions I'm going to ask,  
7                   preliminarily, but someone else reading the  
8                   transcript later may not. Quickly, you have been  
9                   the Calumet County Sheriff for some time, and at  
10                  all times since November 5, 2005 through today?

11 A. That is correct.

12 Q. You are responsible both practically and  
13                  statutorily for administration of the Calumet  
14                  County Jail?

15 A. That's correct.

16 Q. Mr. Avery has been detained in the Calumet County  
17                  Jail since November 9, 2005?

18 A. That is correct.

19 Q. Continuously?

20 A. Yes.

21 Q. So you have been his keeper, in effect, here as a  
22                  pre-trial detainee?

23 A. Yes.

24 Q. He hasn't been serving any sentence or on any  
25                  probation or parole hold, during that time, to

1           your knowledge?

2 A.   That is correct.

3 Q.   You have overall operational responsibility for

4       the Calumet County Jail?

5 A.   Yes.

6 Q.   But as a practical matter you get information

7       from officers whose immediate job

8       responsibilities are the jail and the jail only?

9 A.   That would be correct.

10 Q.   And the person we might describe as most directly

11       or most immediately in charge of the jail over in

12       Chilton is -- Is it Captain or Lieutenant Byrnes?

13 A.   Lieutenant Byrnes.

14 Q.   Am I right about his direct responsibility?

15 A.   That would be correct.

16 Q.   Okay. And then there is a Sergeant Hemauer who

17       reports to Lieutenant Byrnes?

18 A.   That is correct.

19 Q.   Who has also got a good deal of direct

20       responsibility for the jail?

21 A.   Yes.

22 Q.   Does most of your information come through either

23       Lieutenant Byrnes or Sergeant Hemauer?

24 A.   Would come from Lieutenant Byrnes as well as

25       other individuals working within the jail.

1 Q. Okay. This, as I understand the rules of  
2 evidence, Sheriff Pagel, and for the Court's  
3 benefit, I think this is one of these proceedings  
4 to which the rules of evidence don't apply. So  
5 what I'm telling you is that I'm going to ask you  
6 for hearsay. I'm going to accept hearsay. We  
7 don't have a problem with hearsay here as long as  
8 it's reliable. It would be helpful if you could  
9 tell me when you know something personally and  
10 when you are relying on word from Lieutenant  
11 Byrnes or someone else.

12 A. That will be done, yes.

13 Q. Okay. Did you have the good sense to bring your  
14 January 28 letter with you?

15 A. Yes, I did.

16 Q. All right. We should probably mark that as an  
17 exhibit. Is that an extra copy?

18 A. Yes, it's not signed, but it's a copy.

19 Q. That's fine.

20 (Exhibit 1 marked for identification.)

21 Q. All right. And we have marked this as Exhibit 1.  
22 It is now stapled. But is that your January 28,  
23 2007 letter to Judge Willis?

24 A. Yes, it is.

25 Q. I understand that's an unsigned copy, but the

1                    substance of the letter is what you wrote?

2 A. That is correct.

3 Q. Let's go to Paragraph 1, if you would. To whom

4                    has Mr. Avery made the statements that you

5                    ascribe to him in Paragraph 1?

6 A. Those were statements that were heard being

7                    discussed in phone conversations that Mr. Avery

8                    had and was relayed to me by the investigators

9                    working this case.

10 Q. Do you remember when those statements were made?

11 A. No, I do not know when they were made.

12 Q. Do you remember how many times Mr. Avery made

13                    such statements?

14 A. No, I would have to defer that to the

15                    investigators.

16 Q. Mark Wiegert or Tom Fassbender?

17 A. That would be correct.

18 Q. Okay. And did you -- You haven't set out here

19                    the verbatim statements that you are describing

20                    being told about, have you?

21 A. No, these were -- this was information that was

22                    provided to me by the investigators who indicated

23                    that they heard these conversations or heard

24                    words mentioned by Mr. Avery during these

25                    conversations.

1 Q. To this effect?

2 A. Yes.

3 Q. Okay. Do you remember about -- about when one or  
4 the other of these investigators told you about  
5 these conversations?

6 A. They had mentioned it to me prior; however, when  
7 I was informed that there had been a motion  
8 filed, I specifically went and spoke with them  
9 and they, again, furnished me with the  
10 information that is contained within this letter.

11 Q. Okay. When you say they told you about it prior,  
12 can you give me a time frame how --

13 A. No, I cannot. It was just generally spoken to me  
14 and comments were made to insure that I was made  
15 aware of these comments, to ensure, again, that  
16 action, or specific information, would be  
17 provided to the staff running the jail, to ensure  
18 their safety, and to ensure that he, meaning  
19 Mr. Avery, would not do anything to try to  
20 jeopardize their safety, or to escape from jail.

21 Q. Can you put a year on when you first heard about  
22 this?

23 A. I would imagine it would have been last year.

24 Q. 2006?

25 A. Yes.

1 Q. Okay. Early in the year, late in the year?

2 A. I can't tell you. I don't know.

3 Q. Did you take any specific action in the jail?

4 A. I know -- I know that the jail staff was  
5 informed. Lieutenant Byrnes was informed, just  
6 to be made aware of.

7 Q. All right. And one way to take these is that  
8 Mr. Avery might harm himself, correct?

9 A. Could be. Yeah, they could be taken that way.

10 Q. And, in fact, you are aware that Lieutenant  
11 Byrnes has gently inquired of Mr. Avery, on a  
12 number of occasions, whether he is inclined to  
13 harm himself?

14 A. Yes, that's correct.

15 Q. And you have been assured that he is not inclined  
16 to harm himself?

17 A. That is what I have been informed by Mr. Byrnes.

18 Q. Okay. Indeed, other than one brief period in  
19 which I know Mr. Avery has not been confined in a  
20 segregation cell or a cell you can watch someone  
21 24 hours a day, correct, he's been in a regular  
22 pod or cell?

23 A. Yeah, he's been in his cell block.

24 Q. Okay. As to comments that he needs to get out of  
25 here, is that kind of thing all that uncommon for

1           people who are locked in a jail?

2       A. Well, you have to look at the seriousness of them  
3           and you have to -- also you have to take them as  
4           a general comment, but you have to be also  
5           concerned about those type of comments.

6       Q. Sure. And I understand that. And if -- When you  
7           think someone really may be planning a jail  
8           break, an escape, there are some measures you can  
9           take, correct, within the jail?

10      A. Yes, there would be.

11      Q. You could cut off all visitation, correct?

12      A. Yes.

13      Q. You have never done that with Mr. Avery?

14      A. No.

15      Q. You could frisk contact visitors, defense  
16           lawyers, or probation agents, police officers for  
17           that matter, just to make sure that they are not  
18           passing anything, physically, to Mr. Avery,  
19           correct?

20      A. That would be.

21      Q. You have never seen a need to do that?

22      A. No.

23      Q. You could put someone in segregation if you  
24           suspected an escape attempt?

25      A. You could, but it might not always be the best

1                   thing to do for that type of situation either.

2 Q.    Okay. Have you had an experience, as sheriff,  
3                   when you were aware of an actual escape attempt  
4                   by any inmate of the jail, convicted, or  
5                   pretrial, anybody at all?

6 A.    Prior to discovery of something, is that what you  
7                   are referring to?

8 Q.    Right. Right.

9 A.    Not that I'm aware of.

10 Q.    Awareness of a plan to try to escape?

11 A.    No, I can't say that since I have been sheriff I  
12                  have, no.

13 Q.    Do you have contingency plans for that if it were  
14                  to happen?

15 A.    There would be some plan put in place, yes.

16 Q.    Okay. But no such plan has been implemented as  
17                  to Mr. Avery at any time?

18 A.    No, there has not.

19 Q.    As a routine matter, in the jail, even though he  
20                  is not convicted of anything, administratively  
21                  you folks, I don't want to say regularly, as if  
22                  it's a fixed cycle, but with some frequency  
23                  jailers come in and examine the entire cell  
24                  without the inmate in it?

25 A.    Yes, they would do searches.

1 Q. And that's been done in Mr. Avery's case,  
2 correct?

3 A. I would hope so.

4 Q. Okay. Do you know so or?

5 A. It's a general practice for them to do that and I  
6 would assume that they have done that, yes.

7 Q. Right. You have no reason to think that the  
8 habit of occasional cell checks hasn't been  
9 followed with Mr. Avery?

10 A. That's correct.

11 Q. Has anybody told you that they, you know, found a  
12 cake with a nail file in it or, you know, bed  
13 sheets tied together, or anything that suggested  
14 an escape?

15 A. No, I have not been told.

16 Q. And I don't mean to be cute about that, but  
17 whatever it is that inmates might do suggesting  
18 escape?

19 A. That has not been given to me, no. That has not  
20 been provided to me.

21 (Attorney and witness talking over each other.)

22 Q. Nothing's been found in Mr. Avery's cell?

23 A. No, I'm not aware of anything like that, yes.

24 Q. Any homemade weapons been found in his cell at  
25 any time?

1 A. No.

2 Q. Something that might be used to hurt a guard?

3 A. Nothing was found.

4 Q. Okay.

5 A. While he was in our custody.

6 Q. All right. Has he acted out violently at any

7 time while he's been in your jail?

8 A. Not that I'm aware of. I have not been told that

9 he has.

10 Q. Do you think you probably would have been told if

11 it had happened?

12 A. Yes.

13 Q. So he hasn't -- he hasn't been segregated for

14 behavior problems at any time?

15 A. No he has not.

16 Q. He has been kept alone, if you will, or without

17 cellmates or even pod mates for most of the time

18 there, correct?

19 A. Per your request, yes.

20 Q. And that's where I was going. I mean, part of

21 that was driven by my request, correct?

22 A. That is correct.

23 Q. And you have been kind enough to honor that with

24 a proviso that if you got real full, you might

25 have to move people in, correct?

1 A. That is correct, that was the agreement.  
2 Q. Okay. So that wasn't -- that wasn't a measure  
3 that was implemented because you were afraid  
4 Mr. Avery might hurt a fellow inmate?

5 A. No.

6 Q. You did have some concern, as I recall, at some  
7 point, that because of his notoriety and the  
8 publicity attending his case, that another -- not  
9 a specific inmate -- but some other inmate  
10 conceivably might try to take a poke at him or  
11 hurt him at some point?

12 A. That would be a correct statement, yes.

13 Q. Okay. Steven Avery is about 5 foot 6?

14 A. I would say 5 foot 5, 5 foot 6, yes.

15 Q. And he's put on a little weight, I think,  
16 since -- sorry about that -- but -- but, I don't  
17 know, 200 pounds or something, roughly, probably?

18 A. Yeah, I would say so.

19 Q. Okay. He doesn't have access to free weights or  
20 exercise equipment in the jail, does he?

21 A. No, he does not.

22 Q. Could we go to Paragraph 2 in your letter.

23 A. Sure.

24 Q. You refer to several individuals who have been  
25 interviewed; are you relying here, again, on

1                   information from Mr. Wiegert, or Mr. Fassbender,  
2                   or other investigators?

3       A. That would be correct.

4       Q. Do you have any -- any -- I guess the specifics  
5                   are that these were all things included in  
6                   Mr. Kratz's other acts motion?

7       A. Part of it, yes, part of his motion.

8       Q. Okay. So the Court -- the Court already has  
9                   before it some more details about the information  
10                  you are describing in general in Paragraph 2?

11      A. That would be correct.

12      Q. Okay. Paragraph 3, in general, you are saying,  
13                  look, we have got information that witnesses are  
14                  concerned about testifying and have indicated  
15                  that they are fearful?

16      A. Yes, this has been given, again, to the lead  
17                  investigators, that they are fearful, concerned  
18                  for their safety, having to testify against  
19                  Mr. Avery in court.

20      Q. Okay. And what you have done is reassure those  
21                  people that their safety is an important  
22                  consideration to you?

23      A. Yes, that was done by, again, the lead  
24                  investigators when they spoke with them, that  
25                  their safety would be of utmost concern.

1 Q. Sure. And that's -- This was not the first time  
2 that you, or people in your department, have had  
3 citizens or potential witnesses express concern  
4 about testifying in a criminal case?

5 A. That would be a correct statement, yes.

6 Q. In fact, it's not uncommon for that sort of  
7 concern to be raised with you?

8 A. That would be true, yes.

9 Q. This is in the general nature of that experience  
10 of yours as an officer?

11 A. Well, these individuals have expressed a sincere  
12 concern to have to testify. It's not like, well,  
13 I don't want to, or I wish I didn't have to.  
14 They are concerned. They have expressed their  
15 concern to be in court and to have to testify and  
16 to be in the same courtroom with him. So they  
17 have expressed a deep concern for their safety.

18 Q. Are these people who you know or have been told  
19 have -- have an aversion, or a revulsion for  
20 Mr. Avery, just as sort of a global matter, they  
21 just don't like him?

22 A. I don't know if it's that, or the fact that they  
23 know of his demeanor. I don't know how far you  
24 want me to go with that but. They, you know,  
25 again, it's a concern that they have expressed.

1           And that's why I placed that in the letter.

2   Q.    Sure. And some of them may know him, or have had  
3           some past experience with him?

4   A.    Yes.

5   Q.    Okay. You are not aware of any threat that he's  
6           made to any witness, or potential witness?

7   A.    Not that I'm aware of, no.

8   Q.    Every -- every non-contact visit that Mr. Avery  
9           has in the Calumet County Jail is tape recorded?

10   A.    Every non?

11   Q.    Non-contact visit?

12   A.    Yes, as it is with other inmates.

13   Q.    With everybody else?

14   A.    Yes.

15   Q.    Right. This isn't a special measure for  
16           Mr. Avery?

17   A.    No, it is not.

18   Q.    Every telephone call that he makes out of the  
19           jail is recorded just as every telephone call  
20           that every inmate in the jail is recorded?

21   A.    That is correct.

22   Q.    In this case, if there's any difference at all,  
23           the investigators on the case assiduously listen  
24           to Mr. Avery's tapes, correct?

25   A.    That is correct.

1 Q. So you would expect that if he had made threats  
2 to specific witnesses, those would have been  
3 reported to you in your capacity as sheriff?

4 A. They probably would have been. I would have been  
5 informed of them, yes.

6 Q. Number -- Paragraph 4 --

7 A. Yes.

8 Q. -- refers to a specific conversation or  
9 conversations, a telephone dialogue between  
10 Mr. Avery and his father?

11 A. That is correct.

12 Q. All right. When did that happen?

13 A. Again, I can't give you a specific date; I know  
14 it was, again, I believe in 2006.

15 Q. But whether it was the beginning of the year, the  
16 middle, or the end, you don't know?

17 A. I would have to refer that to Investigator  
18 Wiegert.

19 Q. All right. Do you know the nature of the  
20 comments as to Mr. Fassbender and Mr. Wiegert?

21 A. Yes, I do.

22 Q. What is that?

23 THE WITNESS: You want me to elaborate,

24 your Honor?

25 THE COURT: Yes.

THE WITNESS: Okay.

2 A. There was a conversation between Mr. Avery and  
3 his father in which they -- Special Agent  
4 Fassbender and Wiegert -- comment was made that  
5 they wanted to cut off his testicles or cut off  
6 their testicles and drag them behind, or  
7 Investigator Wiegert behind a pickup truck.

8 Q. Just Mr. Wiegert?

9 A. I believe it was Mr. Wiegert, yes.

10 Q. And was it Allen Avery who made that comment or  
11 Steven Avery?

12 A. I believe it was Al towards -- I believe,  
13 Mr. Allen Avery was making the comment, to which  
14 Steven laughed, heartily.

15 Q. Okay. So this was a statement not made by Steven  
16 Avery, but he laughed in response to his father's  
17 statement?

18 A. That is correct. That's the way I have been  
19 told.

20 Q. All right. Both Mr. Wiegert and Mr. Fassbender  
21 are law enforcement agents, obviously?

22 A. Yes, that's correct.

23 Q. Both of them would be armed, ordinarily?

24 A. Yes.

25 Q. While on duty?

1 A. Yes.

2 Q. Are law -- Are sworn law enforcement officers  
3 allowed to carry their sidearm weapons in court  
4 in Calumet County, if you know?

5 A. Yes, they are.

6 Q. Both of these men are in the prime of life, for  
7 want of a better word?

8 A. Yes.

9 Q. I mean, they are young. I mean, they are in  
10 their 30's, 40's, whatever it is they are?

11 A. Yes.

12 Q. Okay. And they, in fact, were also the two  
13 officers who arrested Mr. Avery on November 9,  
14 2005, weren't they?

15 A. Yes, they would have been involved, I'm sure, in  
16 the arrest.

17 Q. It's probably been awhile, so I'm going to offer  
18 you an exhibit, just to help refresh your  
19 recollection.

20 (Exhibit No. 2 marked for identification.)

21 Q. I have marked this as Exhibit 2. And what it is  
22 is a DCI report, looks like Special Agent  
23 Fassbender is the author of this one. And it  
24 details a meeting with Mr. Avery on November 9  
25 2005, and his arrest pursuant to an arrest

1 warrant?

2 A. Okay.

3 Q. Yeah, and then, you know, continues from there.

4 My -- The copy I have given you sort of helpfully  
5 has what we call a Bates Stamp Number on the  
6 bottom right corner, begins State?

7 A. Okay.

8 Q. And the first page is State 0536?

9 A. Yes, okay.

10 Q. If you go to State 0546?

11 A. Okay.

12 Q. At the top, what we have is -- and I think this  
13 is Mr. Fassbender authoring the report, yes.

14 Yeah, the reporting law enforcement officer on  
15 the front is Thomas Fassbender. And what he is  
16 doing starts at the bottom of the preceding page.  
17 He is describing here Investigator Wiegert and  
18 himself informing Steven Avery about 12:47 in the  
19 afternoon that they had an arrest warrant for  
20 him.

21 A. Okay.

22 Q. And they are out at Earl Avery's house, which is  
23 where they found Mr. Avery that -- Steven Avery  
24 that day. And as I read it, what Investigator  
25 Wiegert told Steven, that in arresting him he

1           would not place him in handcuffs if Steven was  
2           cooperative and did not cause any problems. And  
3           Steven advised that he would not cause any  
4           problems. Do you see that at the top of  
5           Page 0546?

6       A. Okay. Yes. I see that, yes.

7       Q. Now, people like me wish that law enforcement  
8           officers would show that sort of humanity and  
9           judgment more often, but in point of fact, this  
10          is unusual to take someone into custody and not  
11          handcuff them, isn't it?

12      A. They are given discretion of whether or not they  
13          wish to handcuff individuals.

14      Q. Right. And in your experience, more often than  
15          not that discretion is exercised in favor of  
16          handcuffing someone who's just being arrested  
17          pursuant to an arrest warrant, correct?

18      A. Well, again, it's done for several different  
19          reasons; if they feel that individual needs to be  
20          handcuffed, they will.

21      Q. Right.

22      A. If they wish to possibly gain that individual's  
23          cooperation or gain rapport with that individual,  
24          they may not.

25      Q. Sure. And that's where the discretion comes in?

1 A. That is correct.

2 Q. Or maybe someone is very aged, or has bad

3 arthritis, or whatever it is?

4 A. Yes, there's a number of things that would be

5 taken into consideration --

6 Q. Sure.

7 A. -- or could be.

8 Q. Someone, an arrestee, might be well known to the

9 officer and, you know, the officer figures he

10 knows this person's character well enough to make

11 that judgment call, correct?

12 A. Yes, that would be something that they could, but

13 again, the whole situation has to be weighed.

14 Q. Right. And -- And whatever the considerations

15 were, what we know here is that Investigator

16 Wiegert and Mr. Fassbender felt comfortable

17 coming down on the side of not handcuffing Steven

18 Avery when they arrested him on this case?

19 A. According to this report, yes.

20 Q. Transporting him in a car, correct?

21 A. Yes.

22 Q. That was a DCI car, right?

23 A. I don't know.

24 Q. I think it says that. I'm sorry, and it's

25 further down that page, the middle paragraph that

1           says at 12:50 p.m.?

2 A. Okay.

3 Q. So they're -- They are driving Mr. Avery off to  
4       get his DNA taken?

5 A. Okay. Well, yes, okay, would have been  
6       Mr. Fassbender's vehicle, yes.

7 Q. You are familiar with that car, aren't you?

8 A. Yes, I am.

9 Q. It's not a cage car?

10 A. No, it's not.

11 Q. You haven't heard anything about Mr. Avery taking  
12      that opportunity, when freshly put under arrest,  
13      to try to hurt Mr. Wiegert, or try to hurt  
14      Mr. Fassbender, have you?

15 A. No, I have not.

16 Q. Do you think you would have heard that?

17 A. I'm sure I would have.

18 Q. Finally, Paragraph 5, I think I have heard about  
19      this person, but I want to make sure that I'm  
20      thinking of the same one you are.

21 A. Okay.

22 Q. There's a woman who holds herself out as a  
23      pastor, or a minister, who comes to visit  
24      Mr. Avery, correct?

25 A. That is correct.

1 Q. All right. And she has a pastoral assistant, or  
2 an assistant minister, or someone with her often,  
3 correct?

4 A. That is correct.

5 Q. Also a woman?

6 A. Yes.

7 Q. Have you met both these women?

8 A. Yes, I have.

9 Q. These two ministers?

10 A. Mm-hmm.

11 Q. Without insulting anyone, are these two women  
12 both at least 70 years old if they are a day?

13 A. They would be elderly, yes.

14 Q. Okay. And I'm not suggesting you know exactly  
15 how old they are?

16 A. That is correct, I do not.

17 Q. Elderly women who are apparently ministers by  
18 vocation?

19 A. Yes, that's what I have been informed.

20 Q. And they also minister to, or have played some  
21 pastoral role, apparently, with Jodi Stachowski?

22 A. Okay. I'm not aware if --

23 Q. Oh, okay. Maybe -- Then let me go at it this  
24 way.

25 A. Okay.

1 Q. Was Jodi Stachowski the first -- the third person  
2 in the car on this incident?

3 A. Yes.

4 Q. All right. So there's these two elderly female  
5 ministers and Jodi Stachowski in the car?

6 A. Yes.

7 Q. And as I understand, the car comes up alongside,  
8 or stops at the same red light or something as a  
9 Sheriff's Department van or car in which  
10 Mr. Avery was being taken to court?

11 A. Yes, in Manitowoc. But they had noticed that  
12 this vehicle had been following them from the  
13 City of Chilton.

14 Q. Probably going to the same court appearance  
15 Mr. Avery was going to, right?

16 A. Yes.

17 Q. Okay. And the best way from Chilton to Manitowoc  
18 is Highway 151?

19 A. That would be correct.

20 Q. And I'm not going to get into your routes of  
21 travel, but in any event, Mr. Avery was going to  
22 Manitowoc, from Chilton, for a court appearance?

23 A. That is correct.

24 Q. Okay. Did these three women wave to Mr. Avery,  
25 or what exactly did they do when their car was

1           nearby?

2       A. I know they made contact, but again, I know that  
3           the officers felt uncomfortable with this vehicle  
4           following them and also felt very uncomfortable  
5           when the vehicle pulled up beside them and they  
6           realized who it was.

7       Q. All right. When you say contact, there was no  
8           physical contact made?

9       A. No. Visual.

10      Q. Visual contact. Okay. So Mr. Avery is in the  
11           Sheriff's car and the three women are in one of  
12           their cars?

13      A. Right.

14      Q. All right. You are not aware of Mr. Avery saying  
15           anything at all in your custody to try to arrange  
16           this encounter, are you?

17      A. We haven't been able to determine how the  
18           arrangement was made. All we were informed of is  
19           that they waited for the vehicle to pass while  
20           they were parked at the Kwik Trip in Chilton and  
21           then proceeded to follow the vehicle from that  
22           location to Manitowoc.

23      Q. All right. If there were arrangements, and if  
24           Mr. Avery had been a party to them, you would  
25           have a recording of that, wouldn't you?

1 A. I would hope so, yes.

2 Q. All right. And those have been listened to and

3 there's been no evidence that Mr. Avery was part

4 of any arrangements there may have been, right?

5 A. That I'm aware of, yes.

6 Q. Okay. Did Mr. Avery try to escape when he saw

7 these two elderly women and Jodi Stachowski in

8 the car?

9 A. No, he did not.

10 Q. Did he do anything inappropriate at all?

11 A. Not that I'm aware of.

12 Q. Do you think someone would have told you if he

13 had?

14 A. Yes.

15 Q. Did the two elderly ministers brandish weapons,

16 or try to run the car off the road, or do

17 anything overt?

18 A. No. No.

19 Q. Okay. Was just --

20 A. But we -- they were --

21 Q. A feeling of discomfort.

22 A. Yes. They were informed that we did not look

23 favorably upon that, and that it would not happen

24 again or action would be taken.

25 Q. And they were informed of that later, but not

1                   much later, correct?

2 A. Not much later, no.

3 Q. Right.

4 A. It was within a day or so.

5 Q. Somebody spoke to the minister or the minister's

6                   assistant, said huh-uh, that -- you are not going

7                   to be coming up and waving at Mr. Avery, right?

8 A. Yes. Lieutenant Byrnes took care of that, yes.

9 Q. Okay. That didn't result in an arrest or

10                  anything like that, just a warning?

11 A. A warning, yes.

12 Q. All right. Mr. Avery didn't have to be warned

13                  about the incident because he didn't do anything,

14                  right?

15 A. He was in custody and he was not warned, no. I

16                  can't say that he wasn't told that we didn't

17                  appreciate that. He may have, and I'm not aware

18                  if he was.

19 Q. Oh, sure, I understand, but I mean, he didn't

20                  take any action that required any sort of

21                  discipline or warning of him?

22 A. That is correct.

23 Q. Um, do you understand -- Just so that we're on

24                  the same page, you understand that nothing in my

25                  motion is intended to have any impact at all on

1                   your jail, correct?

2 A. That is correct.

3 Q. Or on transport of Mr. Avery anywhere?

4 A. That is correct.

5 Q. Okay. You understand that my motion is talking  
6                   only about things that happened in the courtroom?

7 A. Yeah, I understand that.

8 Q. Okay. Thank you.

9                   ATTORNEY STRANG: That's all I have, your  
10                  Honor.

11                  THE COURT: Mr. Kratz, do you have any  
12                  questions?

13                  ATTORNEY KRATZ: Just two points of  
14                  clarification.

15                   CROSS-EXAMINATION

16 BY ATTORNEY KRATZ:

17 Q. As I understand, Sheriff, you have brought  
18                  somebody with you here today who can describe in  
19                  better terms than you the use of the stun belt,  
20                  and if there's any questions of the Court as to  
21                  how that might, not only in theory but in  
22                  practice, work in this case?

23 A. That is correct. The deputy that I have brought  
24                  with me has been trained by the company in the  
25                  use of the stun belt. And he in turn is a

1           trainer of other -- other jailers at the Calumet  
2           County Sheriff's Department.

3       Q. Lastly, for point of clarification, since I'm not  
4           really asking questions to make a record, the  
5           arrest on the 9th of November of Mr. Avery, was  
6           that for what's called a status offense; that is,  
7           having been a convicted felon who had possessed a  
8           firearm, not an arrest for homicide or any  
9           related charges; is that right?

10      A. That is accurate.

11                   ATTORNEY KRATZ: That's all I've got,  
12                   Judge, thank you.

13                   THE COURT: You may be seated.

14                   THE WITNESS: Okay.

15                   THE COURT: Mr. Strang, are there any other  
16                   witnesses you wish to question?

17                   ATTORNEY STRANG: I don't need to question  
18                   anybody else. I will be happy to argue the point,  
19                   and I would move the admission of Exhibits 1 and 2.

20                   THE COURT: Any objection to the exhibits?  
21                   Very well, they are admitted. Mr. Strang.

22                   ATTORNEY STRANG: Well, first of all,  
23                   within the broad limits that the constitution or  
24                   state law may require, I'm fully in agreement with  
25                   the proposition that sheriffs should run jails and

1           sheriffs should have a good deal of latitude in  
2           being responsible in deciding how to handle prisoner  
3           or detainee movement.

4                 The motion really goes no further than  
5           proceedings in a court and, indeed, it's a little  
6           bit narrower than that, proceedings in a  
7           courtroom when the jury is present, or potential  
8           jurors may be present. So I'm not asking this  
9           Court to superintend security arrangements or the  
10          handling of Mr. Avery or anyone else in custody,  
11          beyond proceedings for which the Court itself,  
12          not the sheriff, is directly responsible.

13                 And I -- I have come to know a little  
14          casually, a little bit, Sheriff Pagel, in the  
15          last year, and have been impressed with his  
16          thoughtfulness, and his candor, and the way he's  
17          treated defense counsel.

18                 That said, I don't think that the record  
19          here rises anywhere near the level that would be  
20          necessary to justify a stun belt or any similar  
21          restraint being used, in this case, in a  
22          courtroom in which jurors, or potential jurors,  
23          are present. The Illinois Supreme Court's list  
24          of considerations, I'm sure not intended to be  
25          exhaustive, and not adopted at all by any

1 Wisconsin court so far as I know, nevertheless,  
2 are pretty useful and cover a lot of things that  
3 a court reasonably might consider here.

4 The seriousness of the present charge is  
5 given. It's a serious charge. The defendant's  
6 temperament and character, we have heard some  
7 general stuff about, nothing that suggests any  
8 specific risk in this case, or to any person in  
9 this case. And the Court itself has had an  
10 opportunity to observe Mr. Avery directly when he  
11 is in court.

12 Now, since November, 2005, and we have  
13 been here a number of times, and I'm certainly  
14 aware of nothing menacing, or inappropriate, or  
15 ill-behaved, that he's ever done in court. So I  
16 think that's a positive factor here on balance,  
17 or at very worse a neutral. The defendant's age  
18 and physical characteristics, he is not  
19 particularly young. He is not highly muscular,  
20 or sculpted, or physically huge, someone who's a  
21 great deal larger than the average law  
22 enforcement officer, or the average human being  
23 for that matter.

24 His past record, he has a past record.  
25 It's less lengthy than many people the Court sees

1           parade through here, or sit at counsel table,  
2           including many who are not restrained in a stun  
3           belt. There's no record of past escapes or  
4           attempted escapes by Mr. Avery. And, indeed,  
5           Sheriff Pagel was candid enough to tell us that  
6           since November 9, 2005, there doesn't seem to  
7           have been any planning, or any effort by him  
8           suggesting an intention to escape.

9                 Any threats by the defendant to harm  
10          others or create a disturbance, there's nothing  
11          as to creating a disturbance. And the only  
12          threats we have, it turns out now, I guess, were  
13          made by the defendant's father, not by Steven  
14          Avery, and his response was to laugh.

15                 That's hard to gauge as between father  
16          and son. We have all been -- or at least the men  
17          in the room have been in the position of being a  
18          son at some point in their lives. And for  
19          myself, I know I have -- during his lifetime I  
20          laughed at some of the things my father said  
21          rather than get into an argument or a  
22          confrontation.

23                 So it's hard to put much weight on that  
24          conversation, particularly where the threat, if  
25          it, you know, if the threat it was meant to be,

1           as opposed to venting, or hyperbole, or just  
2           inappropriate show of support and anger on behalf  
3           of one's son. It's hard to put any real weight  
4           on that, particularly where the question is not  
5           whether Allen Avery should be in a stun belt, but  
6           whether Steven Avery ought be in a stun belt.

7           We don't have any evidence of  
8           self-destructive tendencies of the defendant.  
9           There doesn't seem to be any risk of mob violence  
10          or attempted revenge by others. And it's worth  
11          noting here that the Halbach family and their  
12          friends and supporters have been, at all times,  
13          while I've been around, entirely well-mannered,  
14          dignified.

15          Absolutely nothing coming from the  
16          Halbach family that would suggest that they have  
17          any intention, other than respecting the dignity  
18          of the Court, respecting the human dignity of the  
19          people in the courtroom, Mr. Avery included, and  
20          conducting themselves honorably as they have  
21          every minute they have been here, in these  
22          proceedings. And I would extend that to anybody  
23          I have seen sitting on their side of the  
24          courtroom, so to speak, whether those are  
25          friends, or friends of Teresa's, more distant

1 relatives.

2 I don't know who they are, but I haven't  
3 seen anybody in this courtroom, on either side,  
4 honestly, who has caused any problem, or behaved  
5 inappropriately in any way that I know. And I  
6 have been in past murder prosecutions and I'm, as  
7 this Court probably is aware, when that kind of  
8 tension is in the air, it just hasn't been here  
9 in this case.

10 There's nothing to suggest a possibility  
11 of rescue attempts by other offenders still at  
12 large. The only person the State contends to be  
13 another offender is himself in custody. The  
14 State has been pretty clear that at least as to  
15 third party actors, there's one and one only that  
16 they think there even would be appropriate  
17 evidence about, and as I say, he is in -- he is  
18 in custody.

19 I understand, I'm putting myself in the  
20 shoes of a law enforcement officer, I can  
21 understand why one might be uncomfortable about a  
22 car appearing to follow on the way to court. And  
23 in pulling alongside at the red light, or  
24 whatever it was.

25 But, you know, the reality is here, this

1           turns out to be the right Reverend Granny  
2           Clampett, and her septuagenarian sidekick, and  
3           Mr. Avery's girlfriend. And nobody does  
4           anything, apparently, other than wave or look at  
5           Mr. Avery, and he does nothing at all.

6           So, again, even if this were a showing  
7           sufficient to put Granny Clampett in the stun  
8           belt, it doesn't warrant putting Steven Avery in  
9           one. And it's worth noting there that, you know,  
10          Mr. Avery's every word is listened to. And as  
11          the Court knows from a prior motion, he is not  
12          having contact visits with either of these two  
13          ministers. These are through the glass and they  
14          are tape recorded. So the Calumet County  
15          Sheriff's Department or some investigator on this  
16          case would know if Mr. Avery had participated in  
17          some planning for this, you know, car incident on  
18          the way to court.

19           Size and mood of the audience, again, I  
20          already covered. It doesn't suggest restraining  
21          Mr. Avery. The nature and physical security of  
22          the courtroom is actually very good in Calumet  
23          County. The jail is right down the secured  
24          hallway. I expect there will be deputies in the  
25          courtroom. Spectators are going through a

1 magnetometer, so no one is going to pass a weapon  
2 to Mr. Avery, or use a weapon against him, not  
3 that a stun belt on him would help alay that  
4 concern in any event.

5 So I think, in the end, the adequacy and  
6 availability of the usual alternate remedies,  
7 which is to have bailiffs, and we have two case  
8 agents here rather than just one, both of whom I  
9 expect may well be armed during this trial,  
10 really more than suffices here.

11 And without going into the gruesome  
12 details of the cases, I include enough in my  
13 motion to make clear, I think, that what we're  
14 talking about with an 8 second, 50,000-volt jolt  
15 to the kidneys is electrocuting someone. It's  
16 not intended to be lethal, but similar devices  
17 have been.

18 The law review I cited collects some of  
19 that information. And it is almost common sense  
20 to understand that cardiac arrhythmia or other  
21 problems could be caused by this. People  
22 defecate involuntarily, not infrequently, when  
23 these things are activated. They urinate on  
24 themselves involuntarily. And they are  
25 incapacitated, not just for the time of the jolt,

1 but for a long time after.

2 You have a mistrial is what happens, I  
3 think, when these things go off, or at least you  
4 have a serious mistrial issue, which the Ohio  
5 Supreme Court had to deal with, and ultimately  
6 affirmed the trial court's decision not to grant  
7 a mistrial, but it was -- it was a serious issue.

8 And the manufacturer of the react device  
9 at least advertises it as something that gives  
10 law enforcement total psychological control over  
11 the person wearing the belt. Well, when he is on  
12 trial, facing life in prison, and trying to  
13 decide whether to testify, trying to assist  
14 counsel, trying to confront, in the  
15 constitutional sense, the witnesses against him,  
16 an accused has the right not to be under the  
17 total psychological control of his adversaries,  
18 and sitting their fearing that if he says  
19 something wrong, or does something that a  
20 sheriff's deputy doesn't like, or just by  
21 accident, since accidental activation of these  
22 devices are well reported in the cases, that this  
23 device will go off and incapacitate him.

24 So we're talking about a very serious  
25 device here and something that is intended and

1           only can be expected to have a very strong  
2           psychological impact on the person wearing them.  
3           Has a psychological impact on me wondering  
4           whether, if I happen to have my arm around him  
5           when this thing goes off whether I, too, will be  
6           knocked to the floor and lose control of my  
7           bowels.

8                 I just don't think there's a record here  
9           that warrants it in a courtroom. And a courtroom  
10           is the only thing we're talking about.

11                 THE COURT: All right. Anything from the  
12           State?

13                 ATTORNEY KRATZ: Very briefly, Judge,  
14           Mr. Pagel reminds me that the kind of belt that  
15           Mr. Strang is alluding to is not the kind used by  
16           the Calumet County Sheriff's Department and can be  
17           inquired further should the Court need to do that.

18                 I would ask the Court take judicial  
19           notice not only of Mr. Avery's criminal history,  
20           but the pleadings in this case, including our  
21           other acts motion, would note that not all  
22           factors that Mr. Strang has alluded to are of  
23           equal importance when considering this security  
24           issue. Obviously, the seriousness of the  
25           offense, the facts alleged in the Complaint, his

1                   history of violence, all, the State believes, are  
2                   more important than whether a 70 year old woman  
3                   waved at Mr. Avery at some point in the past.

4                   And, finally, would point the Court to  
5                   the appellate decision of **State vs. Russ**,  
6                   R-u-s-s, decided in 2005. And I know that's a  
7                   shackle case not a stun belt case, but does, when  
8                   at least complaining about some due process  
9                   violations, place upon the defense a burden -- a  
10                  burden of proof that there be some actual  
11                  prevention of communicating with their clients in  
12                  order to establish that there's been some  
13                  deprivation on a constitutional or due process  
14                  level. That's all the comments I have. And once  
15                  again, Judge, we'll defer to the Court as to the  
16                  court security issue. Thank you.

17                  ATTORNEY STRANG: And I certainly have no  
18                  objection to the Court taking judicial notice of the  
19                  files in this case, or for that matter, of  
20                  Mr. Avery's prior record.

21                  THE COURT: All right. I'm going to take a  
22                  minute -- I'm not going to take it today -- but I'm  
23                  going to go back and look at the other acts motion.  
24                  It's been a while since I looked at that, and I will  
25                  give the parties a decision next week.

1                   I think that wraps up our agenda for  
2 today, does it not, counsel?

3                   ATTORNEY FALLON: If it does, I did want to  
4 clarify one point. I'm sitting here thinking, and I  
5 don't remember how the final answer came out in our  
6 discussion with Mr. Buting on the bones. And I  
7 don't know if he's going to prepare an order or not,  
8 but just so it's clear that any opinions regarding  
9 what's human or what's not human, or whatever, the  
10 only opinion on that is going to come from  
11 Dr. Eisenberg. And that the only thing that the FBI  
12 mitochondrial report says, that we weren't able to  
13 determine any mitochondrial identification as that  
14 may pertain to the issue of human or non-human, or  
15 animal, or what have you.

16                  So, I mean, those are the only two  
17 entities that could offer any evidence,  
18 vis-a-vis, that particular question or issue.  
19 And so it's whatever the reports say. I mean --  
20 So I just wanted to be sure. I can't remember  
21 how we left it, but I didn't want to leave  
22 anybody with a misunderstanding of what may or  
23 may not come down the road, it's all in  
24 Dr. Eisenberg's report.

25                  THE COURT: That's my understanding or my

1           recollection, Mr. Buting; does that square with  
2           yours?

3           ATTORNEY BUTING: Yes.

4           THE COURT: All right. We're adjourned for  
5           today. Mr. Kratz.

6           ATTORNEY KRATZ: What time did you want us  
7           here on Monday, I had forgotten?

8           THE COURT: We're going to start at 8:30.  
9           So try and get here around 8:20. We'll start with  
10          bringing a juror in at 8:30.

11          ATTORNEY STRANG: Where is here?

12          THE COURT: Here is going to be this  
13          courtroom. We're adjourned for today.

14          ATTORNEY KRATZ: Thank you, your Honor.

15          (Proceedings concluded.)

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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 19th day of February, 2007.  
16  
17  
18

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL  
5 vs. VOIR DIRE - DAY 1  
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8

9 **DATE:** FEBRUARY 5, 2007

10 **BEFORE:** Hon. Patrick L. Willis  
Circuit Court Judge

11 **APPEARANCES:**

12 KENNETH R. KRATZ  
13 Special Prosecutor  
On behalf of the State of Wisconsin.

14 THOMAS J. FALLON  
15 Special Prosecutor  
On behalf of the State of Wisconsin.

16 DEAN A. STRANG  
17 Attorney at Law  
On behalf of the Defendant.

18 JEROME F. BUTING  
19 Attorney at Law  
On behalf of the Defendant.

20 STEVEN A. AVERY  
21 Defendant  
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery. It's Case No.  
3                   05 CF 381. This proceeding is scheduled this  
4                   morning for the beginning of individual voir dire of  
5                   the jury panel members. Will the parties state  
6                   their appearances for the record, please.

7                   ATTORNEY KRATZ: State appears by Calumet  
8                   County District Attorney Ken Kratz and Assistant  
9                   Attorney General Tom Fallon, both appearing as  
10                  Special Prosecutors.

11                  ATTORNEY BUTING: Buting and Williams by  
12                  Attorney Jerome Buting appearing on behalf of  
13                  Mr. Avery, who's present. Also Dean Strang.

14                  THE COURT: Very well, I will note at the  
15                  outset that no members of the jury panel are present  
16                  in the courtroom at this time. The jurors are  
17                  present -- or the jurors who will be questioned this  
18                  morning are present and assembled in the jury room.

19                  They will be brought into the courtroom  
20                  one by one for individual voir dire. I would  
21                  also note, before we commence individual voir  
22                  dire, that the parties in this case have agreed  
23                  to a jury selection process in which the  
24                  questions normally asked by the Court on general  
25                  voir dire have been, in large part, replaced by a

1           lengthy jury questionnaire completed by the  
2           members of the jury panel last week.

3           The Court in that questionnaire  
4           incorporated many, though not all, of the  
5           questions proposed by the parties for inclusion  
6           in the questionnaire. To assure that adequate  
7           instructions concerning the questions on the  
8           questionnaire were given to the jurors and that  
9           all questionnaires were completed, the  
10          administration of the questionnaires took place  
11          in the courtroom last week.

12          The Court was not actually in session  
13          while the questionnaires themselves were being  
14          completed. However, the Court was in session to  
15          give the jurors instructions before the  
16          questionnaires were completed. At this time I  
17          wish to confirm on the record that that process  
18          is acceptable to both of the parties in this  
19          case. Mr. Fallon.

20           ATTORNEY FALLON: Yes, your Honor, that is  
21          acceptable. I don't know if this is the point but  
22          we did have some questions regarding the time  
23          limits, but other than that that process seems fine.

24           THE COURT: Very well. Mr. Buting or  
25          Mr. Strang.

1                   ATTORNEY STRANG: As I recall the part of  
2     this process that was acceptable to the defense is  
3     the special jury questionnaire substituting for the  
4     Court's general voir dire questions. We were not  
5     happy with the lawyer's part of general voir dire  
6     being eliminated entirely by the questionnaire  
7     process.

8                   But we have no objection to the manner  
9     in which the administration of the questionnaire  
10    was handled, the distribution of it and the  
11    jurors filling it out, outside of Mr. Avery's  
12    presence or counsel's presence. And we too will  
13    have the same objections to the Court's proposed  
14    limit on individual voir dire.

15                  THE COURT: I understand you may have been  
16    unhappy, but I didn't understand that there was an  
17    objection made to the process as it's gone thus far.

18                  ATTORNEY STRANG: I don't know that we have  
19    ever been on the record about this, have we? And I  
20    don't mean to be saying anything different.

21                  THE COURT: I don't know if we have been on  
22    the record of it, I know it's been discussed. I was  
23    not under the impression that either party was going  
24    to make an objection to the procedure as it's gone  
25    this far. Although, I did understand that the

1           parties both were concerned about any time limits  
2           that the Court placed on individual voir dire  
3           questions.

4                         ATTORNEY STRANG: Okay.

5                         THE COURT: And I also understand that the  
6           party -- each of the parties, as I mentioned  
7           earlier, submitted questions that the Court did not  
8           include on the questionnaire, which I assume the  
9           parties, if they wish, will follow up on in  
10           individual voir dire.

11                        ATTORNEY STRANG: Right. And again, I  
12           don't mean to be saying anything different than we  
13           have discussed off the record. I don't have any  
14           objection to the procedure as the Court just  
15           described it. I do think I recall saying, and I  
16           thought Mr. Fallon was of the same mind, we were  
17           concerned about the lawyers not having any  
18           general -- or maybe it was Mr. Gahn who joined in on  
19           this -- any opportunity to address the panel as a  
20           whole. And that's all I meant to be saying just a  
21           moment ago.

22                       But I have no objection, again, to the  
23           Court's portion of general voir dire having been  
24           committed to the questionnaire and I understand  
25           that the Court used some of our questions and not

1           others of our questions and I'm not objecting to  
2           that. So, if there's been some miscommunication,  
3           I don't mean to be saying anything different than  
4           I have said off the record.

5           THE COURT: Well, I think it's important to  
6           know for the record whether or not there's any  
7           objections to the jury selection procedures that's  
8           taken place thus far. I thought, actually, the  
9           parties submitted written correspondence agreeing to  
10          this, but I don't have it committed to memory.

11          ATTORNEY STRANG: And I don't, you know, so  
12          much of this has been done off the record, I don't  
13          have all of it committed to memory either. As a  
14          practical matter, provided we get adequate time for  
15          individual voir dire of jurors, there's not going to  
16          be any great harm to Mr. Avery in not having had an  
17          opportunity to talk to the panel as a whole.

18          And I understand that voir dire is a  
19          process committed largely to the Court's  
20          discretion. So, I mean, I'm just trying to make  
21          a record of what I thought some months of  
22          conversations were. And I will stand corrected  
23          if it's my memory that has failed or I have not  
24          understood clearly.

25          THE COURT: All right. Well, the Court has

1           been on the record, at least before the  
2           administration of the questionnaires, with the  
3           explanation of the procedure at that time. I'm not  
4           sure if the defendant is making an objection at this  
5           time to the use of the questionnaires to replace  
6           general voir dire or not, but at least I certainly,  
7           until this time, did not understand that there was  
8           an objection to any portion of the jury selection  
9           procedures to this point. Though I do understand  
10          that the -- both parties wish to be heard today on  
11          the limit that the Court has set for individual voir  
12          dire; that is, I wanted to limit each party to 15  
13          minutes of individual voir dire with respect to each  
14          individual juror.

15           As I have indicated to the parties  
16          earlier, the parties can request additional time  
17          if they feel it's necessary, depending on the  
18          answers given by any of the individual jurors to  
19          questions that are asked on individual voir dire.  
20          However, I would note that the information on the  
21          questionnaires themselves is far in excess of the  
22          information which is normally gleaned from  
23          general voir dire proceedings.

24           Because of the size of the panel in this  
25          case, I question the efficacy of the normal

1 process of general voir dire where you ask jurors  
2 to raise their hands. Not only that, in many  
3 cases, when jurors don't raise their hands, the  
4 Court doesn't know if they are just thinking  
5 about an answer or, because of social pressure,  
6 don't want to be the only ones to raise their  
7 hands, whereas when we give them a jury  
8 questionnaire, they have to answer every  
9 question.

10 So I did feel in this case that the use  
11 of an extensive questionnaire was the most  
12 effective way to glean the information that the  
13 Court would normally glean in the course of  
14 general voir dire. And at least to this point, I  
15 haven't understood that either party objected to  
16 that procedure.

17 ATTORNEY STRANG: Why don't I take a moment  
18 with counsel for the State, off the record, just to  
19 see whether I'm the outlier in terms of, you know,  
20 my recollection.

21 THE COURT: All right. We'll take a short  
22 break, go off the record.

23 (Brief recess taken.)

24 THE COURT: All right. We're back on the  
25 record.

1                   ATTORNEY STRANG: That was helpful, thank  
2 you for the indulgence, your Honor. With  
3 Mr. Fallon's help, I remember now two conversations  
4 bearing on this, one of which I can place as  
5 happening in the jury room, off the record, and the  
6 other I can't place at all; although, Mr. Fallon  
7 specifically recalls it being one of our Friday  
8 afternoon off the record telephonic conferences in  
9 which he raised a concern about normally a  
10 supplemental jury questionnaire is exactly that, it  
11 supplements general voir dire, and I joined that  
12 concern.

13                  And then in the jury room, I think it  
14 was Mr. Gahn who inquired of the Court, oh, does  
15 this mean we are not going to have a chance to  
16 talk to the panel as a group and to get some  
17 interaction how one reacts to another's answer or  
18 experience. And I chimed in on that or I may --  
19 I don't know if I started that conversation or  
20 Mr. Gahn chimed in, but he and I, I think, both  
21 spoke.

22                  And that led to a further discussion  
23 apparently about individual voir dire perhaps  
24 being a good solution to avoid losing a large  
25 panel if there was an inadvertent answer by one

1 juror that would have presented a problem for the  
2 whole panel. And I think at that point some  
3 consensus developed that we could pursue the  
4 individual voir dire route and maybe accomplish  
5 most of what we need to. This was before the  
6 Court had suggested a 10 or 15 minute time limit  
7 per side on individual voir dire.

8 So I think the issues get linked. I  
9 mean, we're in a discretionary area where, you  
10 know, the Court has the discretion to deny the  
11 lawyers questioning on general voir dire of the  
12 whole panel, and to implement an individual voir  
13 dire procedure. But that procedure will have to  
14 be sufficient in the end to allow the parties two  
15 opportunities, one, to ascertain if there is a  
16 basis to move to strike a juror for cause;  
17 objective bias, subjective bias, or some other  
18 cause.

19 And two, to allow the parties to  
20 exercise their peremptory strikes intelligently.  
21 And certainly, as to the accused at least, that's  
22 a right with constitutional footing under both  
23 Wisconsin and the federal constitutions,  
24 Article 1, Section 7 and 8 of the Wisconsin  
25 Constitution and the Fourteenth Amendment of the

1                   United States Constitution.

2                   So the two issues do become linked.

3                   There isn't any harm to Mr. Avery in the loss of  
4                   general voir dire by the lawyers, provided that  
5                   individual voir dire adequately makes up for the  
6                   loss of general and allows those two critical  
7                   purposes of voir dire to be accomplished in the  
8                   end.

9                   THE COURT: So does -- Do I take that to  
10                  mean that the defendant has no objections to the  
11                  conduct of the voir dire procedure to this point,  
12                  but the defendant still is concerned about the  
13                  length of time the Court is allowing for individual  
14                  voir dire and may object if the defense doesn't feel  
15                  that time is enough?

16                  ATTORNEY STRANG: Yes.

17                  THE COURT: Okay. Anything else from  
18                  either of the parties on the voir dire procedure as  
19                  it's been conducted to date?

20                  ATTORNEY FALLON: Other than previously  
21                  discussed, no.

22                  THE COURT: All right. Now, do any  
23                  party -- either of the parties wish to make comment  
24                  at this time about the Court's proposed procedure  
25                  from this point forward? And just to reiterate for

1                   the record, as we discussed scheduling in this  
2                   matter in the past, I indicated that because of  
3                   the -- well, the need both to get sufficient  
4                   information on voir dire to allow the parties to  
5                   intelligently exercise their peremptory strikes and  
6                   evaluate the jury panel, on the one hand, and on the  
7                   other hand, to have voir dire conducted within a  
8                   reasonable period of time, I did indicate to the  
9                   parties previously that I thought that 15 minutes  
10                  per juror on voir dire, from each party, that 15  
11                  minutes worth of questions on individual voir dire  
12                  for each party should be sufficient to enable each  
13                  of the parties to consider the information gleaned  
14                  on individual voir dire, in addition to the  
15                  information on the jury questionnaires, to  
16                  intelligently evaluate the jurors for their  
17                  objectivity.

18                  As counsel has indicated in their  
19                  comments, I believe both parties have concerns  
20                  they wish to place on the record with respect to  
21                  that ruling. Mr. Fallon, I will hear from you  
22                  first.

23                  ATTORNEY FALLON: Thank you, your Honor.  
24                  The State would take issue with a 15 minute time  
25                  limit with respect to questioning the individual

1                   jurors. We realize it's been the Court's  
2                   prerogative to determine the procedure and the  
3                   manner in which jury selection is conducted. But  
4                   when the State submitted it's proposed supplemental  
5                   jury questionnaire on December 1st, the State was  
6                   still, I believe, laboring under the impression  
7                   that, first of all, that it would be a supplement to  
8                   the general juror questionnaire which every juror  
9                   fills out and is in abbreviated form.

10                  I think we were unsure as to how much  
11                  general voir dire, if any, would occur in the  
12                  case. I agree with counsel's rendition, we did  
13                  have a conference in chambers, I think it was in  
14                  November, where this issue was brought up. And  
15                  at that time there was a discussion regarding  
16                  general voir dire, as counsel represented. And I  
17                  think it might have been myself who said, well,  
18                  there are some advantages to an individual voir  
19                  dire to lessen the likelihood of any  
20                  contamination of the panel as a whole by  
21                  responses obtained from certain members,  
22                  especially on questions regarding subjective  
23                  bias.

24                  And I think the parties at that time  
25                  were under the impression, and that I think

1 argument carried the day, but at that time there  
2 was no time limit, we were not laboring under the  
3 impression that there would be any time limit to  
4 the individual voir dire.

5 My second comment is that when the State  
6 submitted it's questionnaire on December 1st and  
7 then did not hear any significant objection from  
8 the defense or the Court, the State was under the  
9 impression that just about all the questions in  
10 its questionnaire would be asked or be part of  
11 the general questionnaire here. And not having  
12 any communications or any objections from the  
13 Court, or even concerns expressed by the Court,  
14 and no objections from the defense, we were under  
15 the impression that those questions would be  
16 asked.

17 And that, again, would I think have  
18 expedited, at least from the State's perspective,  
19 the follow-up time on individual voir dire.  
20 After all, that's the purpose of voir dire after  
21 the use of a supplemental juror questionnaire, is  
22 to follow up on the answers. And since several  
23 questions were omitted, I may very well have 10  
24 to -- well, depending on the juror -- 5 to 12  
25 minutes per juror just asking the questions that

1                   were not included. And then I may have anywhere  
2                   from no questions to five or six or seven  
3                   questions to follow up on the answers which are  
4                   included.

5                   So, from that perspective, I am  
6                   concerned that a time limit of 15 minutes per  
7                   juror would be inadequate for us to flush out the  
8                   potential of subjective or objective bias. I  
9                   would state for the record, in my review, that I  
10                  don't see any issues of statutory bias  
11                  confronting us.

12                  But in terms of subjective bias and of  
13                  seven or eight possible objective bias cases, it  
14                  seems to me that the 15 minute time limit seems  
15                  unreasonable, in all fairness to the Court, and  
16                  doesn't provide an ample opportunity to explore  
17                  those two issues. So as a result of which, we  
18                  would ask leave of the Court to be relieved from  
19                  15 minutes.

20                  Now, having said that, I fully  
21                  acknowledge that there are several jurors here  
22                  that I may have very few questions for, other  
23                  than the ones I originally submitted in the jury  
24                  questionnaire, which were not included. In which  
25                  case, 15 minutes may very well do the trick.

1           There may be others that will take longer.

2           So, from the State's perspective, we  
3           would ask the Court be a little more patient with  
4           the parties. It's not like I foresee an hour per  
5           juror here like that. It's nothing -- I don't  
6           see that happening in the case, but it just seems  
7           to me that 15 minutes would not allow us adequate  
8           time to explore these potential bias issues. So  
9           we would ask the Court's indulgence to be more  
10          patient with the parties and provide a little  
11          more time to explore those issues. Thank you.

12           THE COURT: Mr. Strang.

13           ATTORNEY STRANG: Thank you, your Honor.  
14          Perhaps for the first time in this case, and I hope  
15          not for the last, I find myself entirely in  
16          agreement with Mr. Fallon's comments. All of it, I  
17          adopt it. And that's the defense position as well.  
18          I will amplify, to this extent, that I expect too  
19          that there may be some jurors as to which a 15  
20          minute block of time would be adequate for the  
21          defense table to conduct individual voir dire, just  
22          as he is guessing that perhaps there are some for  
23          which 15 minutes would suffice for the State's  
24          questions.

25           But it won't come as any surprise to the

1                   Court that it also seems to me probable that when  
2                   the State has fewer than 15 minutes of  
3                   questioning, we may well have more for any given  
4                   juror, and vice versa. So I think the time  
5                   limits are not sufficient to permit at least -- I  
6                   will speak only for Mr. Avery here -- both to  
7                   ascertain accurately any -- any reason to strike  
8                   the juror for cause and intelligently to exercise  
9                   his peremptory strikes, which you are limited to  
10                  seven.

11                  They are not -- Wisconsin doesn't  
12                  sprinkle peremptory strikes generously, even in  
13                  the most serious felony cases. So these have to  
14                  be used wisely. And I don't think that the time  
15                  limits the Court proposes will allow that as to  
16                  either of those two essential aspects of voir  
17                  dire.

18                  THE COURT: All right. I'm going to, at  
19                  this point, use the 15 minutes as a guide. I'm not  
20                  going to gong the attorneys if they get past that  
21                  point and I will monitor it. Obviously, since we  
22                  haven't had individual voir dire with any juror yet,  
23                  the Court cannot determine for certain whether or  
24                  not 15 minutes is sufficient for the parties.

25                  I would like to confirm before we start,

1 for the record, that both of the parties were  
2 given access to all the juror questionnaires that  
3 were completed by the jury panel last week and  
4 the parties have provided to the Court the  
5 identification of a number of jurors that they  
6 jointly are recommending be excused for cause.

7 The Court has not formally ruled on  
8 those requests at this time but I have used the  
9 parties recommendations in establishing the order  
10 in which jurors are called in for individual  
11 questioning this morning; that is, passing over  
12 the jurors that the parties indicate they are  
13 individually recommending be stricken for cause.  
14 So that will affect the order in which the jurors  
15 are called in today.

16 The Court will make further rulings on  
17 the motions of the parties at a later time unless  
18 either party has any objection.

19 ATTORNEY STRANG: No, and I certainly can  
20 confirm that the juror questionnaires were copied  
21 timely and completely by the Clerk's Office. And we  
22 had those late Monday afternoon, January 29, just as  
23 promised.

24 THE COURT: Anything else from the State?

25 ATTORNEY FALLON: Nothing else, your Honor.

1 ATTORNEY STRANG: Should we -- Should we  
2 note the sequence numbers of the jurors who were  
3 joint recommendation for excuse for cause.

4 THE COURT: I think that would be  
5 appropriate on the record. Actually, I have the  
6 email in front of me so I can read it at this time.  
7 To save time I will just use the numbers rather than  
8 the names. It's jurors numbered, 1, 2, 9, 15, 16,  
9 22, 29, 31, 40, 42, 43, 46, 48, 58, 62, 64, 80, 83,  
10 84, 85, 88, 92, 94, 95, 99, 104, 108, 112, 116, 117,  
11 124, 130, 141, 142, and 143. And I think the  
12 parties notified the Court before we began today  
13 that they would indicate the general reasons for the  
14 joint recommendations. Mr. Fallon, were you going  
15 to address that?

16 ATTORNEY FALLON: Yes, your Honor. Counsel  
17 and I, Mr. Strang and I, conversed by telephone late  
18 Thursday afternoon, after our initial review of the  
19 proposed panels. It basically comes down to this,  
20 the vast majority of those excused are excused for  
21 cause based on our assessment of subjective bias  
22 under the statute.

23 There were other jurors excused for  
24 economic hardship reasons, primarily they were  
25 the sole breadwinners in their home and the

1 potential of six weeks without adequate income  
2 would be an unfair hardship upon them.

3 And, finally, there was a smaller group  
4 of individuals who were excused for cause based  
5 on either physical or mental health reasons.

6 And a fourth group included those who  
7 were a mix of subjective bias and either mental  
8 health or economic hardship.

9 Those are the ones that we have agreed  
10 to on Thursday evening. There probably will be a  
11 few more during the course of the day as both  
12 counsel have reviewed the case law regarding  
13 objective and subjective bias. So there may be a  
14 few more sprinkled throughout the day that we  
15 would come to agreement upon, but that's the  
16 status as of now.

17 THE COURT: Thank you. Mr. Strang.

18 ATTORNEY STRANG: The Court read the list  
19 of sequence numbers of excused jurors correctly.  
20 And, again, I agree with Mr. Fallon's comments. The  
21 Court certainly is welcome to include the email,  
22 from which it just read, in the record.

23 And the format of that was that  
24 Mr. Fallon and I agreed, after our Thursday  
25 afternoon telephone call, that I would draft the

1 proposed email to your Honor, but send it only to  
2 Mr. Fallon. He would look at it to make sure  
3 that I hadn't loused it up. And if he was  
4 satisfied that I had done it correctly, he simply  
5 would forward it to the Court. And that's what  
6 he did the following morning, Friday, February 2.

7 THE COURT: All right. I will print a  
8 clean copy of the email for the record since I  
9 marked up the one I had. Is there anything else  
10 either party wishes to address before we bring in  
11 the first juror?

12 ATTORNEY STRANG: One thing that I wish to  
13 address, came up in chambers just this morning.  
14 Greg Conway of the Green Bay law firm of Liebmann,  
15 Conway, Olejniczak, & Jerry wrote to the Court by  
16 fax on Friday, copied me, but I haven't seen that  
17 yet because I haven't been in my office, I moved up  
18 to this neck of the woods, concerning two WFRV  
19 reporters and a letter they each received from --  
20 bearing my signature stamp. And the short of it is  
21 is that Mr. Conway is exactly right. When I had my  
22 secretary send out a merged letter to all of the  
23 people on the defense witness list, I didn't  
24 distinguish those very few who, in fact, were  
25 excepted from the exclusion order that the Court

1                   entered.

2                   And both Angenette Levy and Olga  
3                   Halaburda, and for that matter, every other  
4                   member of the media are excepted from,  
5                   e-x-c-e-p-t-e-d, the exclusion. And they are  
6                   free to sit in and watch the trial proceedings.  
7                   And the mistake was simply that I sent the same  
8                   letter to all defense witnesses in fact, you  
9                   know, again, it was just my signature stamp and  
10                  then it enclosed a copy of the Court's exclusion  
11                  order. So the mistake is mine. And members of  
12                  the media are not excluded or otherwise covered  
13                  by the sequestration order.

14                  THE COURT: Very well. Anything else?

15                  ATTORNEY FALLON: We would agree with that.  
16                  We don't have any problem with exempting them from  
17                  the order.

18                  THE COURT: All right. At this time we'll  
19                  have the first juror brought in. That will be  
20                  Daniel Slaby, Juror No. 3. Mr. Slaby, before we  
21                  begin, the Clerk will administer an oath to you.

22                  THE CLERK: If you would please stand and  
23                  raise your right hand.

24                  (Juror sworn.)

25                  THE CLERK: Please be seated.

THE COURT: Mr. Slaby, like all the other members of the jury panel, you have already completed a jury questionnaire in this case. The next step in voir dire proceedings is to give the opportunities for the -- to give the opportunity to the attorneys for the parties to ask you some additional questions in order to make sure that you can be a fair and impartial juror.

There are a couple of other pieces of information I wanted to pass on to you. Although I did not indicate it last week, while the trial in this case is expected to last approximately six weeks, the jurors will not be sequestered. That means the jurors will be permitted to return home after court proceedings every day.

This decision is made possible by an assurance that the jurors will not read any news media accounts of the trial or talk to anyone else about it during the trial. So that will remain very important should you be selected as a juror.

I also wanted you to know that although these proceedings are open, no cameras are permitted in the courtroom during voir dire proceedings. And the news media is not allowed

1 to identify individual jurors by name in news  
2 reports. And in addition, jurors who are  
3 selected to serve in the trial will not be on  
4 camera during the trial itself.

5 If you are not stricken for cause  
6 following the proceedings this morning, you will  
7 receive further written instructions as to when  
8 to return to court. With that background,  
9 Mr. Fallon, you may begin your voir dire.

10 **VOIR DIRE EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. Good morning, Mr. Slaby.

13 A. Good morning.

14 Q. I just have a few questions for you. Hopefully  
15 they will be easy enough for you. We're not  
16 looking to embarrass anyone. We're just looking  
17 for some information to help us in selecting a  
18 jury.

19 So, first of all, do you have any close  
20 friends or relatives who work in the media  
21 business; newspapers, television, radio internet?

22 A. No, I don't.

23 Q. You do not, okay. Are you an individual when you  
24 see a news story or you find something  
25 interesting in the news, do you use other sources

1 to investigate the information behind the story,  
2 like for instance some people go to libraries and  
3 check out books and read up on things, or  
4 magazines. Today the most common item is the  
5 internet. Do you have a tendency to search out  
6 for the story behind the story as it were?

7 A. No, not usually.

8 Q. Okay. There's a possibility in this particular  
9 case that there may be some testimony from a  
10 co-defendant. Do you have any opinions as to the  
11 appropriateness of someone who's accused of a  
12 crime testifying against the other co-defendant  
13 in a case?

14 A. No.

15 Q. In your day-to-day affairs, talking with people,  
16 in your work, or even in your personal  
17 relationships, if you find that someone has  
18 not -- has not been correct in providing you some  
19 information, in so far as it's inconsistent with  
20 something they previously said to you or is  
21 inconsistent with something that someone else  
22 said, do you have a tendency to disregard that  
23 opinion on its face or do you look further?

24 A. Probably just disregard.

25 Q. All right. And so, if you have a tendency to

1                   disregard, would you disregard everything that  
2                   person told you or just that particular opinion  
3                   or viewpoint?

4         A. Probably depends on the person.

5         Q. All right. And what are some of the things that  
6                   you would look at in determining -- in making  
7                   that determination?

8         A. I don't really -- I don't know what you're  
9                   asking.

10        Q. Okay. Well, if -- What do you do for a living  
11                   again?

12        A. I'm a maintenance worker.

13        Q. All right. And if there's a snafu at the job,  
14                   say one of your workers didn't conduct or perform  
15                   a task up to appropriate standards, and they had  
16                   told you that they did, and someone else, or a  
17                   few from your own knowledge, realized that they  
18                   had not, do you have a tendency to disregard  
19                   everything that person tells you, or everything  
20                   they do, or do you look at other factors in  
21                   determining that person's credibility?

22        A. Probably just disregard.

23        Q. Okay. Have you or anyone close to you ever been  
24                   in charge of writing any safety guideline for  
25                   setting up or enforcing safety standards in your

1           work?

2       A.    No.

3       Q.    Okay. In your line of work or in any previous  
4           job, have you ever been required to conduct any  
5           internal investigations or follow up on any  
6           behavior or activities of fellow employees?

7       A.    No.

8       Q.    Okay. How long have you been a resident of  
9           Manitowoc County?

10      A.    My whole life.

11      Q.    All right. In general, how would you rate the  
12           job that the Sheriff's Department is doing in  
13           dealing with crime as well as the public at  
14           large; would you say they are doing an excellent  
15           job, a good job, a fair job, or a lousy job?

16      A.    I would say fair, fair job.

17      Q.    Okay. And what causes you to say they have been  
18           doing a fair job?

19      A.    I have nothing to suggest that they are doing a  
20           poor job.

21      Q.    All right. You are just a tough grader?

22      A.    Just -- I don't really have a positive or a  
23           negative opinion on it.

24      Q.    Okay. In terms of your general impression, when  
25           a police officer testifies in court, in your mind

1           how likely is it that he or she would lie under  
2           oath; very likely, somewhat likely, not very  
3           likely or not very likely at all?

4       A. Not very likely.

5       Q. Okay. And why would you say that?

6       A. Just that he is under oath and probably doing his  
7           or her job.

8       Q. Okay. In your mind, how likely is it that a law  
9           enforcement agency would conspire to convict an  
10          innocent person; very likely, somewhat likely,  
11          not very likely, not at all likely?

12      A. Not very likely.

13      Q. And why would you say that?

14      A. I really don't know what they would gain from it.

15      Q. Okay. In your mind, how likely is it that a law  
16          enforcement agency would plant or tamper with  
17          evidence to secure an arrest and/or a conviction;  
18          very likely, somewhat likely, not very likely,  
19          not at all likely.

20      A. Not very likely.

21      Q. Okay. Again, any particular reason why you have  
22          that general opinion?

23      A. Same reason.

24      Q. All right. In your job as a maintenance  
25          professional, do you use industrial solvents or

1           cleaning products such as bleach and things of  
2           that sort to help you perform your job?

3       A. Very few. Very few chemicals.

4       Q. Okay. What kind of work, maintenance work,  
5           exactly do you do?

6       A. Well, we -- building maintenance, plant  
7           maintenance. We do some cleaning. Just a wide  
8           variety. Something different every day.

9       Q. Okay. So you don't actually -- actually have to  
10          do real cleaning or anything. You are kind of  
11          the handy man fixer up?

12      A. Right.

13      Q. Okay. All right. I notice you brought a couple  
14          of books in; do you like to read?

15      A. I usually don't have time to read.

16      Q. In your spare time, do you like to work on  
17          puzzles or do you just hate doing puzzles?

18      A. I'm not a puzzle person. Not a puzzle person.

19      Q. Okay. Generally, what kind of books do you like  
20          to read?

21      A. Outdoor adventure maybe.

22      Q. Okay. Have you ever seen the movie, "A Thin Blue  
23          Line"?

24      A. No, I haven't.

25      Q. Okay. Would you consider yourself a -- more of a

1           detail oriented person, or are you a big picture  
2           guy?

3       A. Probably a big picture person.

4       Q. Okay. Have you ever used a magazine publication  
5           such as Auto Trader, or anything like that, to  
6           sell a vehicle or purchase a vehicle or anything  
7           like that?

8       A. No.

9       Q. Never used the internet to buy or sell, ever try  
10          that?

11      A. I probably looked on the internet when I was  
12          looking to buy a vehicle.

13      Q. Okay. All right. Have you ever read or heard  
14          anything regarding Project Innocence here in  
15          Wisconsin?

16      A. I probably never read anything about it.

17      Q. All right. Have you heard anything about it?

18      A. Probably with this story is the only time I have  
19          ever heard of it.

20      Q. Okay. Any opinions on the project, or the idea  
21          behind it, or anything like that? Good idea, bad  
22          idea?

23      A. It's probably a good idea.

24      Q. Okay. Generally, do you think the criminal  
25          justice system is either too lenient or too harsh

1           when it deals with those accused of a crime? Do  
2           you have any opinion? Too harsh, too lenient,  
3           just right?

4       A. I think it's fair.

5       Q. Okay. Now, I note from your questionnaire, on  
6           one of the questions you were asked, have you  
7           ever known anyone who was killed accidentally or  
8           otherwise, you indicated your wife's cousin was  
9           killed in a fire. Apparently relatively  
10          recently.

11      A. Yes, it was in the fall.

12      Q. In the fall, okay. Can you tell us a little bit  
13          about that. Was it an accidental fire or was the  
14          fire intentionally set?

15      A. It was an accidental fire.

16      Q. Okay. So there hasn't been any litigation or any  
17          investigation regarding that fire?

18      A. No. No.

19      Q. Okay. You also indicated in your questionnaire  
20          that you have some prior jury experience.  
21          Overall, was that a good experience?

22      A. Yes.

23      Q. Was there anything about that experience that  
24          makes you wonder whether you could sit through  
25          the process as a juror again and evaluate facts,

1           and deliberate, and anything about it?

2 A. I don't think it would be a problem.

3 Q. Okay. That's all I have.

4           THE COURT: All right. Mr. Strang.

5           ATTORNEY STRANG: Sure. Thanks.

6           **VOIR DIRE EXAMINATION**

7 BY ATTORNEY STRANG:

8 Q. This is really an awkward way to talk to someone,  
9       but try to let me feel awkward and you not. All  
10      right. How do I pronounce your name?

11 A. Slaby.

12 Q. Okay. That's how you pronounce your name.

13 A. Right. I hear it different ways but.

14 Q. Okay. I'm going to try to do it the way you do.

15 A. We hear it different ways, but Slaby is how.

16 Q. Slaby.

17 A. Right.

18 Q. Mm-hmm. So how long have you worked at Manitowoc  
19       Ice?

20 A. A little over four years.

21 Q. And at Red Arrow -- I have your questionnaire, at  
22       Red Arrow and Mirro, were those longer periods of  
23       time?

24 A. I -- Red Arrow was brief, but I worked at Mirro  
25       for 12 years.

1 Q. Same kind of stuff?

2 A. Maintenance, yes.

3 Q. And so how does -- how does a big picture guy,  
4 you know, who is not really a detailed guy, how  
5 do you get drawn into maintenance?

6 A. Well, it was just something that always  
7 interested me, fixing things, building things,  
8 since I was a kid so.

9 Q. That makes sense. Cars too or?

10 A. I worked on cars when I was younger.

11 Q. Mm-hmm. See part of what -- part of what I'm  
12 interested in is you are not a TV watcher, or not  
13 much I'm gathering, so what do you do when you  
14 have spare time?

15 A. I remodel my home. For the last three years  
16 that's what I have been doing.

17 Q. You guys own your home?

18 A. Yes, I just -- The TV watchers -- I work second  
19 shift, so I don't --

20 Q. So like four to midnight?

21 A. I don't -- Yeah, I work like 2:30 to midnight so.

22 Q. Yeah.

23 A. I don't.

24 Q. Yeah.

25 A. I'm busy all day so.

1 Q. Right. That sort of explains that.

2 A. Right.

3 Q. When do you see the daughters?

4 A. I see them in the morning before they go to

5 school.

6 Q. Mm-hmm. Sort of design your sleep schedule

7 around --

8 A. Right.

9 Q. -- being able to do that?

10 A. Right.

11 Q. Are you a Monday to Friday guy, or do you wind up

12 weekends too?

13 A. I work a lot of Saturdays too.

14 Q. Just 'cause that's the schedule at Manitowoc Ice?

15 A. I just -- It's overtime, voluntary overtime. I

16 work quite a bit of overtime too.

17 Q. It sounds like -- like your wife also has a

18 full-time job that's -- you didn't say that, but

19 that's what I read into your description of her

20 job.

21 A. Yes, she works full-time.

22 Q. So what you told us was that the radio maybe was

23 the most common way you have gotten some news

24 about this case?

25 A. I would think the radio, that's what -- I will

1 have the local radio on in the morning.

2 Q. To and from work, or while you guys are --

3 A. Usually --

4 Q. -- having breakfast?

5 A. -- on my way to take my daughters to school.

6 Q. So you pick up snatches of this because it's--

7 A. Right.

8 Q. -- local news? Do you read the paper?

9 A. No, I don't.

10 Q. Do you guys get the paper?

11 A. No, we don't get the paper.

12 Q. Yeah. Okay. So what do you know about Brendan

13 Dassey?

14 A. Well, I know that he's the nephew and he is also

15 charged in the case.

16 Q. Yeah. Actually, not right in this -- in front of

17 this judge --

18 A. Right.

19 Q. -- but he's charged here in the same county.

20 A. Yes.

21 Q. Have you followed at all, you know, what's gone

22 on in his case?

23 A. Not recently.

24 Q. When -- sort of when did you last track that or

25 hear about it?

1 A. It's probably been two months, three months  
2 maybe.

3 Q. What was it, I mean what do you --

4 A. I can't even recall the last time I heard a thing  
5 about him.

6 Q. The nephew. Okay.

7 A. Right.

8 Q. Do you remember what it was you heard?

9 A. No, probably just the name came up.

10 Q. Mm-hmm. How many -- how many guys do you work  
11 with, you know, like side by side at work or are  
12 you off on your own for most of your time at  
13 work?

14 A. It's myself and two other mechanics.

15 Q. And do you guys tend to be teamed up or --

16 A. We're usually on our own.

17 Q. Mm-hmm. Okay. So how much sort of, you know,  
18 gas-bagging at work, or yakking about this case  
19 have you overheard?

20 A. I don't know how to -- I couldn't really put a  
21 time on it.

22 Q. Well, no, and I'm not really asking you to do  
23 that, nobody could do that. But has this case  
24 been a source of, or subject of some chatty chat  
25 at work or, you know, do you guys -- are you guys

1           talking about ice fishing, or the Packers, or  
2           something else?

3       A. Well, we talk about a lot of things, so I'm sure  
4           the case has come up, we talked about it.

5       Q. What do you know about the statements that  
6           Brendan Dassey supposedly made?

7       A. I think I did see the news conference when it  
8           first came out. I did watch that.

9       Q. The one that Mr. Kratz --

10      A. Yes.

11      Q. I mean -- Okay.

12      A. Yes.

13      Q. Do you remember one, two -- it's been a while,  
14           but do you remember anything about that news  
15           conference?

16      A. I can remember most of it probably. I couldn't  
17           repeat it, but I remember the --

18      Q. Sort of gist of it?

19      A. Yeah, if you want to call it that.

20      Q. Did it curl your hair? That news was pretty  
21           shocking stuff.

22      A. It was pretty graphic, yes.

23      Q. So, how does somebody with a 17 year old daughter  
24           react to that.

25      A. Well, it -- it -- like you said, it made my hair

1           curl. Disturbing is what it was.

2       Q. Yeah, so here I'm representing the guy who didn't  
3           make all those statements, the guy the news  
4           conference wasn't directly about but, you know,  
5           did this get linked to Steve Avery in your head  
6           or, I mean, did you see this -- that press  
7           conference as being about more than Brendan  
8           Dassey? Can you just tell me about that.

9       A. Sure, it did. Because I believe they were  
10           talking about Steven Avery in the story too, both  
11           names were mentioned.

12      Q. Mm-hmm. Okay. Of course, at that time, you are  
13           not sitting there thinking, gee, I may be a  
14           possible juror some day.

15      A. No.

16      Q. But, I mean, you have had college. I mean, you  
17           not only graduated from high school, it looks  
18           like you had --

19      A. Technical college, Yes.

20      Q. Yeah, I mean you have gone to school beyond high  
21           school?

22      A. Yes.

23      Q. So you know -- You know that in our country  
24           someone is presumed innocent unless and until the  
25           State can prove them guilty beyond a reasonable

1                   doubt?

2       A.   Yes.

3       Q.   And that's stuff you have heard, I assume?

4       A.   Yes.

5       Q.   Do you buy into that? Do you take that to heart?

6       A.   Yes, I do.

7       Q.   So, how -- You know, if you were sitting in  
8                   Steven Avery's chair, knowing that you are  
9                   possibly going to be judging you, you know, if  
10                  you're sitting in this chair, you had seen this  
11                  news conference and it's about both Brendan and  
12                  Steven; would you -- would you want you as a  
13                  juror, would you view you as someone who can say,  
14                  yeah, I can put that aside, I assume they got the  
15                  wrong guy here?

16                   ATTORNEY FALLON: Your Honor, I'm sorry, I  
17                  have to object to that. Asking the juror to put  
18                  themselves in the shoes of the defendant, I think is  
19                  improper question.

20                   THE COURT: Why don't you try and rephrase  
21                  the question Mr. Strang.

22       Q.   Do you think -- I mean, as you sit here today, do  
23                  you presume that they got the wrong guy?

24       A.   I believe that --

25                   ATTORNEY FALLON: I'm going to have to

1 object, that's not the standard.

2 THE COURT: I'm going to sustain the  
3 objection.

4 ATTORNEY STRANG: Okay. I mean, I think it  
5 is. I'm trying to get at, do you presume him  
6 innocent, which would mean he didn't do it.

7 ATTORNEY FALLON: No, I have to object.

8 THE COURT: I'm going to sustain the  
9 objection again.

10 Q. Does the news conference make you tend to think  
11 that maybe he is guilty?

12 A. I -- I believe that he's innocent until proven  
13 guilty in the court. That's what I believe.

14 Q. And, again, look, you are under oath, obviously  
15 you are doing your best, there really are no  
16 wrong answers here, I mean, there really aren't,  
17 as long as they are truthful. I'm just trying to  
18 get at, you know, whether this is something you  
19 can do. And you have told me you believe he's  
20 innocent, unless these folks can prove him  
21 guilty.

22 A. Yes, that's what I believe.

23 Q. And I -- What I'm trying to get at, is that -- do  
24 you believe that in your gut, or is that  
25 something that you know, you know, that's the way

1           our system works, this is a great country, it's  
2           one of the freedoms we have, or the protections  
3           we have as citizens. Sort of at what level do  
4           you believe that? In other words, is that a big  
5           picture belief, or is that a detailed belief as  
6           to this case?

7       A. I'm just going to say that I believe that he is  
8           innocent until proven guilty.

9       Q. The two other cases on which you were a juror,  
10          you actually sat on both those, you were one of  
11          the 12?

12      A. Yes.

13      Q. Okay. Have you been called for jury duty any  
14          other times?

15      A. No, this is my third time --

16      Q. Third time.

17      A. -- being called as juror.

18      Q. And were the -- The other two cases, were they  
19          both here in Manitowoc County, or was one of them  
20          federal?

21      A. They were both here.

22      Q. In this courthouse?

23      A. Yes.

24      Q. So, actually, you have never been kicked off, or  
25          not selected as a juror?

1 A. One of the times I was kicked off on one of the  
2 trials, but I sat -- I was called the two times  
3 previous and I did sit on trials both times.

4 Q. Yeah. Okay. And kicked off is, you know what I  
5 mean, I mean you were one of the big group, but  
6 not one of the 12?

7 A. I did get, yes.

8 Q. One time. Okay. And you weren't -- You were not  
9 the foreperson either time, right?

10 A. What do you mean?

11 Q. You weren't the foreman of the jury?

12 A. No.

13 Q. Either time?

14 A. No, I wasn't.

15 Q. Do you remember anything about the criminal case  
16 you were on?

17 A. Yes.

18 Q. What the guy was charged with?

19 A. He was charged with driving without a license.

20 Q. Okay. And you all found him guilty?

21 A. Yes, we did.

22 Q. Did you go into that one saying, hey, I presume  
23 this guy is innocent and I'm going to wait and  
24 see whether they can prove to me, beyond a  
25 reasonable doubt, that he did it?

1 A. Yes.

2 Q. And was your experience pretty good with the rest

3 of the jurors doing that?

4 A. Yes.

5 Q. You didn't have to say, hey, wait a minute, you

6 know, we've got some instructions here, you guys

7 ought to follow these?

8 A. No.

9 Q. Did the guy who was on trial that time for

10 operating; was it without a license or --

11 A. Right.

12 Q. -- after suspension or something? Did he

13 testify?

14 A. Yes, he did.

15 Q. Should somebody do that if they are on trial?

16 A. He was acting as his own lawyer.

17 Q. Therefore had a fool for a client.

18 A. Right.

19 Q. But, I mean, do you think someone ought to do

20 that whether they are representing themselves or

21 they have a lawyer, if they are accused of a

22 crime and you didn't do it? What's your view

23 about whether they should or shouldn't testify?

24 A. I would think that it would help the case if he

25 did testify.

1 Q. Tell me about that.

2 A. I believe that it gives you a chance to prove  
3 your innocence.

4 Q. Because you have the right to testify?

5 A. Right.

6 Q. And you say it helps. Did it help you as a  
7 jury -- a juror, to hear that?

8 A. Yes.

9 Q. I mean, a lot of us, fair-minded people, often  
10 say, I want to hear both sides of the story. I  
11 don't want to make up my mind until I hear both  
12 sides. Is that something --

13 A. Right.

14 Q. -- the way you approach the world too?

15 A. Right.

16 Q. So, what if I don't call Mr. Avery as a witness?  
17 I don't know if I will or won't, but what if I  
18 don't; how does that affect the way you look at  
19 the case?

20 A. I -- I don't really know what that would do.

21 Q. You are going to hear in this case -- If you wind  
22 up on the jury, you are going to hear that he was  
23 convicted once before, in Manitowoc County, of a  
24 crime it turned out he really didn't commit; have  
25 you heard anything about that?

1 A. Yes.

2 Q. The Innocence Project stuff?

3 A. Yes.

4 Q. And, first of all, I mean, do you have any

5 questions about whether he did or didn't commit

6 that 198 -- it was in 1985 -- the 1985 charges?

7 A. No, I don't have any questions.

8 Q. That is, you know, when the State Crime Lab did

9 new DNA testing and said it wasn't him, it was

10 another guy, you haven't had any reservations

11 about that, or have you?

12 A. Well, I believe it was a shame that it happened.

13 Q. Right. But I mean, you haven't said, I bet he's

14 guilty anyway?

15 A. No.

16 Q. And, I mean, you find out that he did testify in

17 that case, in his own behalf, and got convicted

18 anyway. And I mean, do you understand why that

19 experience might make him, in particular, a

20 little bit reluctant about testifying in his own

21 behalf again?

22 ATTORNEY FALLON: I'm going to -- Well, I

23 will let it go.

24 A. Yes.

25 Q. Why else might someone who is not guilty decide

1           not to testify in his own behalf?

2       A. He might not want to speak in front of people,  
3           like me.

4       Q. I was going to say, why does that one come to  
5           mind first. Well, yeah, that's -- absolutely.  
6           The guy you had on your prior criminal jury  
7           didn't have a lawyer, would lawyers enter into  
8           that, I mean our advise or our views?

9       A. Sure.

10      Q. As to what he might do?

11      A. Yes.

12      Q. What other reasons might somebody just decide,  
13           no, I'm going to rely on my presumption of  
14           innocence. I'm not going to take the witness  
15           stand?

16      A. That's also his right.

17      Q. That's true. And I take it you don't have any  
18           beef with the law in that respect?

19      A. No.

20      Q. Okay. We have asked you, both of us have asked  
21           you a little bit about -- Mr. Fallon called him  
22           the co-defendant, I'm calling him by his name --  
23           Brendan Dassey, and his statements, or at least  
24           the news conference that you heard. Have you  
25           ever had an experience, or read about something,

1           had this touch you, where somebody admitted doing  
2           something he actually did not do, or she actually  
3           did not do? I mean, one of your kids ever done  
4           that, for example, when they were little, fessed  
5           up to something they hadn't done?

6       A. Usually the other way around.

7       Q. Yes, it is usually the other way around. But I'm  
8           just, do you think it's possible that people can,  
9           under the right or wrong circumstances, admit  
10          doing something they really didn't do?

11      A. I guess it's possible.

12      Q. I know I can't give you names or anything, but  
13           I'm aware of an occasional circumstance where  
14           maybe there is a high publicity crime and  
15           somebody who is "a couple bubbles off plumb"  
16           comes forward to the police and says he did it,  
17           for the attention, sort of an attention seeking,  
18           weird motive; have you heard of that sort of  
19           thing?

20      A. Yes.

21      Q. But when you hear -- when you hear a prosecutor  
22           or a witness, police officer, somebody saying  
23           somebody confessed or admitted their involvement;  
24           what's your -- what's your first reaction to the  
25           power of that?

1 A. I guess I would want to believe it.

2 Q. Why?

3 A. Because of who it's coming from, meaning the  
4 police officer, or whoever is telling us.

5 Q. Right, yeah. And they might well believe it. I  
6 mean, you would assume that they believed it.  
7 But what about the actual person who supposedly  
8 made this statement himself; do you think -- What  
9 I'm getting at is, are you saying, well, you  
10 know, if he admitted it, game over, nobody would  
11 admit killing someone if they hadn't really done  
12 it? Or are you somebody who says, geez, does  
13 that make sense, I wonder if he really did do  
14 what he's claiming he did?

15 A. It didn't make sense at the time I heard it.

16 Q. Okay. You -- On your questionnaire, there was  
17 this question that asks you -- I don't expect you  
18 to remember this and I can't remember the exact  
19 language of it either, but there's a question  
20 that says, look, you are going to be told, in  
21 deciding which witnesses to believe, that a law  
22 enforcement officer is just like every other  
23 witness, got to consider the same things in  
24 deciding how much weight to give his or her  
25 testimony just like you would any other witness

1           under the sun. And you answered, yes, you could  
2           follow that sort of instruction.

3       A. Yes.

4       Q. You could live with that. And then, Mr. Fallon  
5           followed up a little on that and asked you to  
6           rank or rate how likely it was that a law  
7           enforcement officer would not tell the truth on  
8           the stand. And I want -- I want to pick up from  
9           there with you. How likely is it that anyone,  
10          any witness who's sworn under oath, would lie on  
11          the witness stand?

12      A. Not very likely.

13      Q. In other -- I mean, and I don't want to put words  
14           in your mouth, but the way you look at the world,  
15           you say, you know for most people an oath means  
16           something.

17      A. Yes, I believe that.

18      Q. And I, you know, I mean, do you agree that there  
19           are probably some people out there who just don't  
20           care about an oath and would lie in spite of  
21           having sworn?

22      A. Yes, I'm sure that happens.

23      Q. But you are saying most people at least, the oath  
24           matters to them?

25      A. Yes.

1 Q. Is there any reason that the oath should matter  
2 more to a police officer as opposed to, you know,  
3 a truck driver, a school bus driver, you know, a  
4 homemaker, or anybody else?

5 A. It shouldn't matter.

6 Q. What the job is you mean?

7 A. Right.

8 Q. Going back now, I'm just sort of going through  
9 the questionnaire a little bit, but going back to  
10 the jury service, and you were asked after you  
11 told us about what juries, and when, and what  
12 kind of case, you were asked how you felt about  
13 that service. And you wrote, I had no negative  
14 feelings about serving as a juror.

15 I'm curious about that, about why  
16 because, I mean, I know it's inconvenient at  
17 best, and sometimes it costs people money, in  
18 terms of lost income; how come you had no  
19 negative feelings about serving as a juror?

20 A. I thought it was an interesting process and I  
21 thought it was fair.

22 Q. Fair to whom?

23 A. Fair to the suspect.

24 Q. Yeah, but how about fair to you, I mean, is what  
25 I'm wondering?

1 A. It was fair to me. I didn't have any objections  
2 to serving.

3 Q. And I didn't ask you how long the civil case  
4 went; do you remember about how long a trial that  
5 was?

6 A. I think that was like a week, five days,  
7 something like that.

8 Q. And the guy represented himself, and the  
9 operating without a license case had to be one,  
10 two days at the most?

11 A. That was a one day.

12 Q. So, if we -- if you wind up on this jury, and you  
13 wind up having to come and go, come and go, you  
14 know, to Chilton, for six weeks; how is that  
15 going to affect you at work or -- I mean, I'm not  
16 trying to pry into your home finances, but how is  
17 that going to affect you with all the hats you  
18 wear, dad, employee, husband, member of your  
19 union, member of your church? How is that going  
20 to affect you?

21 A. It won't affect me at work.

22 Q. They will be cool about it?

23 A. Well, I will be paid for jury service.

24 Q. Okay. And other stuff, I mean, can you fit this  
25 into your life?

1 A. It's an inconvenience, but I can fit it in.

2 Q. Have I asked anything, or for that matter, did  
3 Mr. Fallon ask anything that, you know, caused  
4 you to think of some other issue you should bring  
5 up with us, or something the Court, or both sides  
6 should know about, you know, your getting into  
7 this six week project, if you do?

8 A. No.

9 ATTORNEY STRANG: Okay. Thanks. I'm good.

10 THE COURT: All right. Thank you,  
11 Mr. Slaby. Linda will now escort you out from the  
12 courtroom.

13 Counsel, does either party have any  
14 motion with respect to this juror?

15 ATTORNEY FALLON: There's no motion from  
16 the State.

17 THE COURT: Mr. Strang?

18 ATTORNEY STRANG: No, no motion here.

19 THE COURT: Very well. That juror will be  
20 considered on the panel. At this time we're going  
21 to take a -- let's make it a seven minute break.  
22 We'll come back at 10:30 and resume with the next  
23 juror.

24 (Brief recess taken.)

25 THE COURT: At this time we're back on the

1 record and juror, Diane Free, is in the courtroom;  
2 is that correct?

3 MS FREE: Yes.

4 THE COURT: Ms Free, you have already  
5 completed a jury questionnaire in this case. At  
6 this point, we're moving on to the next step in the  
7 voir dire proceedings which gives the attorneys for  
8 each of the parties a chance to ask you some  
9 questions in order to determine whether you can be a  
10 fair and impartial juror in this case.

11 There's a few pieces of information I  
12 didn't provide to you last week that I wish to  
13 now, that is, to assure you that the jurors in  
14 this case are not going to be sequestered,  
15 meaning that you will be able to, during the time  
16 of the trial, come home every evening before  
17 reporting back the next day.

18 And we're doing that because of the  
19 assurance from the jurors that the jurors will  
20 not listen to any news media accounts of this  
21 trial, or talk to anyone about it. As long as we  
22 can be assured of that it won't be necessary to  
23 sequester the jury.

24 I also want you to know that, although  
25 the voir dire proceedings today are held in open

court, no cameras are permitted in the courtroom during voir dire proceedings. The press is not allowed to identify you by name as a juror in this case. And should you be selected to serve on the jury, television cameras are not permitted to photograph the jury, nor are there any still photos of the jury during the trial.

Finally, I will let you know that, unless you are stricken for cause today, you will be asked to come back to court in a few days for final jury selection. And you will get instructions by telephone further about that later.

Very well. At this point, then, we'll proceed to individual voir dire. Mr. Fallon.

THE CLERK: Judge, do you want her sworn.

THE COURT: Oh, I'm sorry, yes, we'll have the Clerk swear you in at this time.

THE CLERK: Will you please stand and raise your right hand.

(Juror sworn.)

THE CLERK: Please be seated.

THE COURT: Mr. Fallon.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

1 Q. Good morning, Ms Free.

2 A. Good morning.

3 Q. I'm Tom Fallon. I'm an Assistant Attorney  
4 General with the Wisconsin Department of Justice.  
5 To my left is Mr. Ken Kratz. He is also a  
6 Special Prosecutor. He's the District Attorney  
7 in Calumet County. There will be one other  
8 prosecutor assisting us, Mr. Norm Gahn, from  
9 Milwaukee. But we wanted to welcome you and say  
10 good morning.

11                   We have reviewed your questionnaire and  
12 just have a few questions about that, and some  
13 general questions as well. If you could tell us  
14 a little bit about what you do with the City of  
15 Manitowoc Library.

16 A. When someone requests a book, I'm the one that  
17 goes and pulls it off the shelf. I don't work  
18 for the library, in effect. I work for the  
19 library system. The library system has five --  
20 five employees. That means I work also for Two  
21 Rivers, Brillion, Chilton, Kiel, New Holstein. I  
22 deliver books. If you request a book in Chilton  
23 from our library, I bring it out there.

24 Q. Would it be fair to say that you are a book  
25 lover?

1 A. I love books, yes.

2 Q. What kind of books do you like to read?

3 A. Everything.

4 Q. Do you?

5 A. I like biographies, the most.

6 Q. Fiction, non-fiction, both?

7 A. Both.

8 Q. Yeah. All right. Do you like historical novels  
9 as well?

10 A. I'm not much on romance.

11 Q. All right.

12 A. But anything else.

13 Q. How long have you worked with the library system?

14 A. Either 15 and a half or 16 and a half years; I'm  
15 not quite sure.

16 Q. Okay. All right. I also noted from your  
17 questionnaire, you are currently president of  
18 your union?

19 A. Yes.

20 Q. The AFSCME local chapter.

21 A. Yes.

22 Q. How do you like that? How do you like to be the  
23 prez?

24 A. It's okay. I'm doing it because no one else  
25 will.

1 Q. All right. What kind of duties do you have as  
2 the local union president?

3 A. I call the meeting to order. I make sure all the  
4 agenda is followed, that if we have new members  
5 they are sworn in. Mainly just following the  
6 procedure, that we get reports from each  
7 committee.

8 Q. How long have you held that position?

9 A. I think about four years.

10 Q. Okay. Do you enjoy it?

11 A. It depends on the weather.

12 Q. Okay.

13 A. If it's cold out on that Tuesday night, no.

14 Other than that, it's a chance to get together  
15 and talk to people.

16 Q. Do you involve yourself in any of the  
17 negotiations, labor negotiations?

18 A. No, none at all.

19 Q. You are not on the bargaining team or anything  
20 like that?

21 A. No.

22 Q. Okay. Would you say your local union is active?  
23 Is there a lot of work, a lot of volunteer time  
24 you have tied up in this?

25 A. I think the local itself is active. My

1 participation is that one night a month. I  
2 don't --

3 Q. Okay.

4 A. -- hand out leaflets, or go pounding on doors,  
5 or.

6 Q. So, if you were selected as a juror in this case,  
7 that wouldn't interfere too much with your  
8 responsibilities?

9 A. Oh, no. No.

10 Q. Okay. Where would you say you get most of your  
11 information from the media, your news?

12 A. Mostly the radio. Like I said, I drive three  
13 afternoons a week so I'm in the van. I don't  
14 subscribe to the paper. Occasionally I will go  
15 on line and look at the paper. I only listen to  
16 the news until the obituaries are over, then I  
17 turn to a music station.

18 Q. Okay. All right. As someone who's a book lover,  
19 would I be correct in surmising that you are an  
20 individual who likes to receive and process  
21 information?

22 A. Yes.

23 Q. Okay. If you see something of interest on the  
24 news, or you hear something of interest on the  
25 radio, are you the type of person who might stop

1           at the library, or better yet, use your computer  
2           at home, to look for the story, or the story  
3           behind the story, or any other information  
4           associated with that?

5       A. I'm trying to recall if I have ever done that.  
6           Occasionally, if I hear of an author, an author I  
7           read, who has a new book, or I check up on the  
8           authors, the author's websites to see if they are  
9           coming out with a new book, like the new Harry  
10          Potter book. I know when that's going to come  
11          out. I check my author's list.

12      Q. My daughter would like to know the answer to  
13          that; when is it coming out?

14      A. June 21st.

15      Q. All right. I will mention that to her. Have you  
16          done any -- Well, let me ask this question first.  
17          Have you paid much attention to any of the media  
18          accounts of this particular case, Mr. Avery's  
19          situation?

20      A. I have heard of it. You would have to live in a  
21          cave not to. I don't think an undue amount, but  
22          I am aware of it.

23      Q. Have you done any looking behind the scenes, as  
24          it were, or followed up on anything of interest  
25          in any of the stories?

1 A. No.

2 Q. Okay. And as I note from your report, you don't  
3 really have any opinions regarding the  
4 circumstances facing Mr. Avery, his guilt, or his  
5 innocence, or any of that?

6 A. No, I believe the media has found him guilty.

7 Q. Okay.

8 A. I believe they can make you believe whatever they  
9 want.

10 Q. All right. But have you been swayed by them?

11 A. No.

12 Q. Okay. Any particular reason why you haven't been  
13 swayed?

14 A. They are not going to tell me what to think.

15 Q. That's a good reason. All right. Speaking of  
16 the media, do you have any friends or relatives,  
17 family members, who actually work for the media?

18 A. No.

19 Q. Okay. Now, I note from the questionnaire, you  
20 don't have any prior jury experience?

21 A. No.

22 Q. As you sit and think about the prospect of being  
23 a possible juror in this case, is there any  
24 particular philosophical belief, or religious  
25 tenet that you adhere to that you think might

1 present a problem for you being a juror?

2 A. I don't believe so.

3 Q. All right. Do you think you would be able to  
4 follow the instructions as provided on the law,  
5 by Judge Willis, if he told you what the law is,  
6 and this is your job, you would be able to follow  
7 those?

8 A. Yes.

9 Q. Have you, or anyone ever close to you, ever been  
10 in charge of writing any safety guidelines or  
11 setting up or enforcing safety standards?

12 A. No.

13 Q. Okay. What did you do before you got into the  
14 library business?

15 A. I was a homemaker.

16 Q. Okay.

17 A. I was lucky to be a stay at home mom.

18 Q. How long have you been a resident of Manitowoc  
19 County?

20 A. I was born here.

21 Q. You were born here. All right. In terms of your  
22 familiarity with the Sheriff's Department, being  
23 a lifelong resident; do you feel they are doing a  
24 good job in dealing with crime and dealing with  
25 the public, or a poor job, or how would you rate

1                   their performance?

2   A. I don't really know that much about it. I have  
3       never had to report a crime, so I have never --

4   Q. Okay.

5   A. -- had them knocking on my door for anything.

6   Q. In your -- Well, do you have any opinions as to  
7       the situation when a police officer, or law  
8       enforcement officer, is testifying in a court of  
9       law, whether it's likely or unlikely that they  
10      would lie under oath?

11   A. I don't think they would be more likely or  
12       unlikely than anyone else, they are just --

13   Q. They are just people?

14   A. Yeah, they are no different than you or I.

15   Q. All right. How about in your thinking, are they  
16       any more likely, or less likely than anyone else  
17       to conspire to convict an innocent person?

18   A. I don't really know, I'm not --

19   Q. All right. Do you have any opinion, or how  
20       likely it is a law enforcement agency would plant  
21       or tamper with evidence to secure an arrest? I  
22       mean, do you think they would be that concerned  
23       about crime that they would go that far? Do you  
24       think that's likely, or unlikely, or not likely  
25       at all?

1 A. I think they would be more likely to want to get  
2 the guilty party rather than anyone.  
3 Q. And not convict anyone innocent?  
4 A. Right.  
5 Q. Are you a puzzle person?  
6 A. Yes.  
7 Q. Do you like to work on puzzles?  
8 A. Yes.  
9 Q. What kind of puzzles do you like to work on?  
10 A. Jigsaw, crossword puzzles.  
11 Q. All right. Do you like word puzzles as well?  
12 A. That's a crossword puzzle.  
13 Q. Okay. Yeah. All right. Would you consider  
14 yourself more of a detail oriented person, or are  
15 you more of a big picture person?  
16 A. Detail.  
17 Q. Okay. Why would you say that?  
18 A. I'm a list maker. I like to cross things off my  
19 list, one thing at a time.  
20 Q. Okay. So I would take it you would consider  
21 yourself pretty organized?  
22 A. Yes, very much so.  
23 Q. Would that be how you got into the library  
24 system?  
25 A. No, that's because I liked books.

1 Q. Okay.

2 A. As I get older, I want things in a certain way,  
3 my way.

4 Q. Right. I think we all do. Since you work in the  
5 library system, I will ask, are you familiar with  
6 a trade publication called Auto Trader, a  
7 magazine to sell automobiles?

8 A. No.

9 Q. Have you heard, read, or seen anything regarding  
10 the Project Innocence that is a program here in  
11 Wisconsin?

12 A. I have heard of it. I believe it's students from  
13 Madison. And the reason I actually paid  
14 attention to it is one of my sons attended UW  
15 Madison. So that's what caught my eye -- or my  
16 ear about it.

17 Q. All right. The son who attended Madison, did he  
18 go on to law school?

19 A. No.

20 Q. Or just on to graduate experience?

21 A. Just accounting.

22 Q. Now, the project has as its primary goal to free  
23 those who were wrongfully convicted. Do you have  
24 any particular problem with that, or do you think  
25 that's a good idea, good program, bad program?

1 A. I think it's a very good program.

2 Q. Okay. Do you follow the media accounts of --

3 well, the day-to-day activities of the criminal

4 courts here in Manitowoc County? Do you know

5 what people have been accused of and who's being

6 convicted of what?

7 A. No.

8 Q. Do you follow much of that?

9 A. No.

10 Q. Do you have any opinion as to whether the court

11 system here in Manitowoc, for instance, is too

12 harsh or too lenient?

13 A. I have no opinion.

14 Q. No opinion. Okay. Would you like to serve on

15 this jury?

16 A. Actually, I would.

17 Q. Okay.

18 A. I'm finding the whole process very interesting,

19 very enlightening.

20 Q. Tell us about that.

21 A. I have never had any contact with it before. I

22 mean, I have been through a divorce, that's about

23 my big --

24 Q. Right.

25 A. It's different than being in a divorce. It's

1                   very precise, very organized.

2 Q.        Okay.

3 A.        It's very interesting.

4 Q.        All right. Have you ever been even called for  
5                   jury duty before?

6 A.        No.

7 Q.        This is your first call?

8 A.        Yes.

9 Q.        Is there any chance that if you were selected as  
10                  a jury -- as a juror in this case, that six weeks  
11                  of jury service would be -- is there any hardship  
12                  for you that would be associated with that?

13 A.        No, I mean, outside of my days being tied up, but  
14                  financially or health wise, no.

15                   ATTORNEY FALLON: That's all we have.

16                   THE COURT: Thank you, Mr. Fallon. Mr.  
17                   Strang.

18                   ATTORNEY STRANG: Thank you.

19                   **VOIR DIRE EXAMINATION**

20 BY ATTORNEY STRANG:

21 Q.        I did not catch this at the beginning, but do you  
22                  prefer Mrs. Free, or Ms Free.

23 A.        I prefer Diane.

24 Q.        Okay. I'm probably -- I prefer Dean, but I'm  
25                  probably not allowed to do that.

1 A. Doesn't matter, I have earned both of them. It  
2 doesn't matter.

3 Q. All right. I will be formal, to a certain  
4 extent. Your husband, is he a union guy too?

5 A. Yes.

6 Q. Same one, AFSCME?

7 A. Yes.

8 Q. Same local?

9 A. Yes.

10 Q. And I'm curious, you -- it sounded to me, or read  
11 to me, in reading your questionnaire, as if you  
12 had picked up most of the information you have  
13 about this case from the radio.

14 A. Yes.

15 Q. What radio station do you listen to?

16 A. WOMT. WOMT.

17 Q. Okay. Which is?

18 A. It's the city.

19 Q. Right. It's local?

20 A. Local, yeah.

21 Q. Is that 1240?

22 A. Yes.

23 Q. AM. Do you ever call in?

24 A. No.

25 Q. No.

1 A. No.

2 Q. Why not?

3 A. I would feel like they -- people would know who  
4 it was. No, I prefer to be anonymous.

5 Q. While we're on anonymity, I'm curious whether in  
6 your 15 and a half or 16 and a half years,  
7 whatever it is, in the library system here, in  
8 the last five years or so, have you gotten pulled  
9 in at all to the issue about the federal  
10 government coming and asking libraries to say  
11 what people are looking at on the internet or  
12 what books --

13 A. Right to privacy, I know about it because it  
14 happens in the libraries. It is not my job, so  
15 I'm not really -- I'm not the person that checks  
16 out. I'm not the person that you would talk to  
17 about what your child is reading. All I do is  
18 pull the books off the shelf and deliver them to  
19 the appropriate library. I don't deal with the  
20 public at all.

21 Q. Okay. But as a union president have you been  
22 pulled into a discussion about that --

23 A. No.

24 Q. -- sort of policy or a change in our world? Any  
25 opinions about it?

1 A. I guess I have opinions both ways. I shouldn't  
2 be entitled to know what my children are reading.  
3 At the same time, there has to be a cut off for  
4 that. If they are 15 and they are reading about  
5 homosexuality, they are okay, that's -- you know,  
6 there is a personal choice, there is a time for  
7 that.

8 Q. Okay. So, back to the radio -- Okay. Do you  
9 read the Herald Times Reporter?

10 A. Very, very seldom. I don't subscribe to it. If  
11 I do, I usually look at the obituaries and the  
12 births.

13 Q. Okay. I was going to repeat an old George Burns  
14 line about looking at the obituaries, but I  
15 won't. Do you have a newspaper you would prefer  
16 to the Herald Times if it's a matter of, hey, I  
17 have an hour to sit down with the newspaper?

18 A. No, I will read my book. I will read a book.

19 Q. So, on this case, what do you know about Brendan  
20 Dassey?

21 A. I know that he's Steven Avery's nephew, that he  
22 confessed and recanted his confession. That's  
23 about it.

24 Q. How did you pick that up?

25 A. I believe it was on the radio. I think so.

1 Q. So, if someone confesses and then recants the  
2 confession, I guess one of the two times he is  
3 lying, right?

4 A. Yes.

5 Q. Do you know of any reason someone might confess  
6 falsely to something they didn't do?

7 A. I can imagine, he's 16 years old, or what was at  
8 the time. He's under pressure. He's -- I have  
9 never been questioned by the police, but I think  
10 at 16 he is very impressionable, he would want to  
11 please whoever he is talking to.

12 Q. And in your mind, you know, whether the  
13 confession is true or the recantation is true,  
14 what, in your mind, does this have to do with  
15 Steven Avery?

16 A. Nothing, actually. It's a he said, she said type  
17 of thing, prove it.

18 Q. And on proving it, or the he said, she said, you  
19 probably know enough civics to know that -- and  
20 you actually got this from the questionnaire --  
21 that in this country a person accused of a crime  
22 can -- he can testify on his own behalf.

23 A. Yes.

24 Q. Gets to be treated just like any other witness?

25 A. Yes.

1 Q. Is that -- Is that acceptable to you? Is that,  
2 you know, a good rule of law.

3 A. Yes, it's his right.

4 Q. And he also has the flip side, he also can  
5 decline to testify and rely on --

6 A. He doesn't have to prove his innocence.

7 Q. Why not?

8 A. The prosecution has to prove his guilt. He's  
9 presumed innocent. We all are.

10 Q. Right. But my question is, why are you happy to  
11 live with a system, if you're happy to live with  
12 a system, where the guy with the most at stake  
13 doesn't have to say a word?

14 A. That's just -- I don't know. That's the way I  
15 was brought up. You are presumed innocent. He  
16 is. I am. It's my right.

17 Q. If you -- If you wind up on this jury, would --  
18 and I decide -- Jerry Buting and I decide not to  
19 call Steven Avery as a witness, is there going to  
20 be a voice in your head, back when you are  
21 deliberating a verdict saying, I don't know, I  
22 needed to hear from Mr. Avery himself?

23 A. I don't believe so. He also has the right not to  
24 testify.

25 Q. And in the end, he will do one or the other.

1 A. But he does not have to prove that he's innocent.

2 He is innocent until -- until it's proven that he  
3 is not.

4 Q. And I -- And that's -- that is good big picture  
5 abstraction stuff but, you know, you are a  
6 details person and --

7 A. He's already said he didn't do it.

8 Q. Okay. And nothing -- nothing that you have heard  
9 on the radio, or seen in the paper, or caught a  
10 glimpse of on TV, has that shaken you off that at  
11 all; can you hang onto that?

12 A. I believe I can. They said he was guilty years  
13 ago and he wasn't.

14 Q. He testified then, you will learn.

15 A. I did not know that.

16 ATTORNEY FALLON: Your Honor, I'm going to  
17 impose an objection to the phrasing of that  
18 question. Are we not introducing facts or --

19 THE COURT: Your objection is sustained.

20 Q. What do you find in Star Magazine that tickles  
21 your fancy?

22 A. The crossword puzzle. That's the first thing I  
23 do. They actually have three little crossword  
24 puzzles in there.

25 Q. Any of them acrostics or are they all straight

1           crossword puzzles?

2 A.       One is a word search, one is like a celebrity, if

3       you know the celebrity's name, one is just a

4       regular crossword puzzle.

5 Q.       Do you do them all?

6 A.       Yes.

7 Q.       Time yourself?

8 A.       No, I don't even finish them all.

9 Q.       Ever listen to NPR on the weekends, National

10      Public Radio.

11 A.       No.

12 Q.       Or Will Shorts, the puzzle master?

13 A.       No.

14 Q.       Okay. You know, as you are -- if you are on the

15      jury, and the time, you know, you will be told

16      you can't talk about the case or decide it until

17      the very end. And when the time comes to try to

18      reach a verdict with 11 other jurors, and you are

19      working through did the State prove these

20      charges, beyond a reasonable doubt; do you feel

21      well equipped or not? How well equipped do you

22      feel to get in and wrestle with scientific

23      evidence?

24 A.       I'm not a professional, but I feel I am not

25      unintelligent. I'm of average. I feel equipped

1 to do it.

2 Q. Do you think that scientific evidence in and of  
3 itself is entitled to more weight or less weight  
4 than other types of evidence?

5 A. I'm not quite sure what you mean by scientific  
6 evidence.

7 Q. Yeah. Well, here is where I'm going with that.  
8 You like to make lists. You like the feeling of  
9 checking things off your lists. You are oriented  
10 toward detail. And that's, you know, if we get  
11 into DNA evidence, for example, or collecting  
12 minute pieces of things, looking for trace  
13 evidence of things, preserving evidence, that can  
14 get very detailed. And then when you hear people  
15 from the Crime Lab, they will talk about  
16 procedures or protocols they have. They are also  
17 essentially lists that they go down on doing  
18 things.

19 And that's where I'm going is, whether  
20 that's likely to resonate with you more or less,  
21 how it's likely to compare to, you know, maybe  
22 just some fellow off the street who happened to  
23 see something, or is testifying to something he  
24 saw or heard?

25 A. I think you have to give it all equal weight. It

1           is a puzzle, put the pieces together.

2 Q.    That works. I'm just asking for your answer.

3           And that's all I have got unless there's  
4           something that has come out of this that has  
5           caused you to say, boy, I probably should tell  
6           these -- tell the Court about X or Y or Z.

7 A.    No, I can't think of anything.

8                   ATTORNEY STRANG: Thanks much.

9                   THE COURT: All right. Ms Free, you can  
10          stand up and Linda will escort you from the  
11          courtroom.

12          Either party have a motion with respect  
13          to Juror 3?

14          ATTORNEY FALLON: No.

15          ATTORNEY STRANG: No.

16          THE COURT: Very well. The Court will  
17          consider her on the list. We'll bring in Jason  
18          Rezash.

19          Mr. Rezash, please remain standing, the  
20          Clerk will administer an oath.

21          THE CLERK: Raise your right hand.

22                   (Juror sworn.)

23          THE CLERK: Please be seated.

24          THE COURT: Mr. Rezash, you have already  
25          completed a jury questionnaire in this case. This

1                   morning we're moving on to the next phase of jury  
2                   selection which is the chance for the attorneys to  
3                   ask questions of you relating to your qualifications  
4                   as a juror.

5                   Before we begin, I wanted to pass on a  
6                   few items of information that I did not mention  
7                   last week. First of all, the jurors who are  
8                   selected to hear this case will not be  
9                   sequestered. That means the jurors will be able  
10                  to come back and forth to their homes each day at  
11                  the conclusion of the trial. We're doing that  
12                  after receiving the assurance of the jurors that  
13                  they will not listen to any accounts of this  
14                  matter in the news media, or watch anything on  
15                  television, or discuss the case with anyone else.

16                  Also, I want you to know that although  
17                  these proceedings are in open court, no cameras  
18                  are allowed in the courtroom during the voir dire  
19                  proceedings. And the press is not allowed to  
20                  identify individual jurors by names in any news  
21                  reporting of this matter. Finally, the jurors  
22                  who are selected to serve on the jury in this  
23                  case will not be on camera at any time during the  
24                  trial.

25                  If you are not stricken for cause after

1                   the proceedings today, you will get instructions  
2                   to return to court in the next few days for the  
3                   next step in the juror selection process.

4                   Mr. Fallon, at this point you may begin.

5                   ATTORNEY FALLON: Thank you.

6                   **VOIR DIRE EXAMINATION**

7                   BY ATTORNEY FALLON:

8                   Q. Good morning. And if you could help me out and  
9                   pronounce your last name for me.

10                  A. Rezash.

11                  Q. Rezash. Very good. My name is Tom Fallon, Mr.  
12                  Rezash. I'm an Assistant Attorney General  
13                  assisting in the prosecution of this case. Lead  
14                  counsel is to my left, Mr. Ken Kratz, District  
15                  Attorney for Calumet County. Thank you for  
16                  coming this morning.

17                  I note from your questionnaire that you  
18                  work at the Point Beach Nuclear Plant as a  
19                  security officer?

20                  A. Correct.

21                  Q. How long have you been there?

22                  A. Almost five years.

23                  Q. Have you always been in the security component at  
24                  the plant, or did you have other duties before  
25                  that?

- 1 A. No, always security.
- 2 Q. Tell me a little bit about the security duty that
- 3 you have at the plant.
- 4 A. It's kind of like regulating what comes in and
- 5 protecting the plant I guess. Making sure no
- 6 firearms, or explosives, or anything would enter
- 7 the plant to harm the employees and general
- 8 public.
- 9 Q. Okay. Do you work then at the gate, or are you
- 10 inside the building making rounds, or exactly how
- 11 do you perform that function?
- 12 A. It depends where you are scheduled for the day.
- 13 Sometimes you are inside, rotating through, and
- 14 other times you are at the gate for incoming
- 15 traffic, personnel and vehicles.
- 16 Q. As a security officer, are you licensed or
- 17 permitted to carry weapons with you?
- 18 A. Yes, I have two permits, permit for a firearm and
- 19 private security permit through the State of
- 20 Wisconsin.
- 21 Q. And how long have you held those permits?
- 22 A. Private security permit, probably, well, the
- 23 extent that I have been there, almost five years.
- 24 And the firearm permit, probably about four.
- 25 Q. Okay. In your capacity as security officer, have

1           you ever had to use a show of force, or use any  
2           weapon that you have been trained to use?

3       A. No, not outside of training.

4       Q. And do you periodically receive update trainings?

5       A. Yes, throughout the year.

6       Q. I also note you put down formal education, you  
7           said seven years, I'm assuming that's -- is that  
8           high school and college, or is that college and  
9           after college.

10      A. No, that's just college.

11      Q. Okay. Any particular specialty that you took at  
12           the technical college?

13      A. I was started out in engineering and then kind of  
14           got sick of math, so I switched to elementary  
15           education.

16      Q. All right. Engineering, to elementary education,  
17           to security; how did that come about?

18      A. I took a break from school and needed a full-time  
19           job, so I got a job out at the plant. And I'm  
20           capable of doing my homework at work, so I kind  
21           of went back part time.

22      Q. All right. Do you enjoy the job that you have?

23      A. No.

24      Q. Okay. Any particular reason?

25      A. It's too boring. I need to keep busy.

1                   THE COURT: Counsel, I'm going to interrupt  
2 you briefly, could you approach the bench, please.

3                   ATTORNEY FALLON: Sure.

4                   (Side bar taken).

5 Q. Couple more questions, Mr. Rezash, really  
6 quickly. You indicated you had some chemistry  
7 and DNA training in Lakeland.

8 A. No, that wasn't through Lakeland, that was  
9 through UW school system. I have had chemistry  
10 classes, so. I don't know nothing pertaining to  
11 DNA, just chemistry.

12 Q. Okay. Now, on one particular question on the  
13 questionnaire has some concern for us, and it was  
14 one question you left blank. So I would like to  
15 talk to you a little bit about that. The  
16 question was, based on the information from any  
17 source that you have received, do you have an  
18 opinion as to Mr. Avery's guilt or innocence.  
19 And you answered yes, and then you said, from  
20 seeing and reading the news, and discussing the  
21 case with others, I believe he is guilty as  
22 charged. But the reason he's going to trial is  
23 because that's the law.

24                   And the follow-up question which you  
25 didn't answer was, should you be selected to

1           serve as a juror, could you set those opinions  
2           aside and base your decision only on the evidence  
3           presented in court and the instructions that  
4           Judge Willis gives you. So I want to talk just a  
5           little bit briefly about that.

6           You said, but the reason this is going  
7           to trial is because that's the law; what did you  
8           mean by that?

9       A. That's our -- Well, that's the law. That's the  
10      way the ground work was set. I mean, you are  
11      entitled to a trial. That's what I meant by it.

12      Q. All right. So, if you think that he is guilty  
13      from the media accounts, is there any way that  
14      you can set those opinions aside and decide this  
15      case strictly on what the evidence is that's  
16      presented in the courtroom, as opposed to what  
17      you hear outside?

18      A. Honestly, probably not.

19      Q. Why is that?

20      A. That's just my belief. I don't know, based on  
21      all accounts that I have read, I don't know.  
22      That's kind of the opinion I have already formed.

23      Q. So even if the judge were to tell you that  
24      Mr. Avery is presumed innocent unless and until  
25      Mr. Kratz and I can prove him guilty, you would

1           not follow that instruction and listen to the  
2           evidence?

3       A. Probably not.

4           ATTORNEY FALLON: I have no further  
5           questions for this witness.

6           THE COURT: Any questions from the defense?

7           ATTORNEY BUTING: No, Judge, no questions  
8           at all.

9           THE COURT: All right. Mr. Rezash, if you  
10          follow the Clerk, she'll lead you to the next stop.  
11          Does either party have a motion or do the parties  
12          have a joint motion to make?

13           ATTORNEY FALLON: We'll move to strike the  
14          juror.

15           ATTORNEY BUTING: We join.

16           THE COURT: All right. I believe based on  
17          the answers given by the juror in court today and  
18          the answers on the questionnaire, that Mr. Rezash  
19          could not set his opinions aside and be a fair and  
20          impartial juror here. So the Court will order that  
21          he be stricken for cause. And we'll move on to the  
22          next juror.

23           Ms Temme, I'm going to ask you to stand  
24          for a minute, first, while the Clerk swears you  
25          in.

1                   THE CLERK: Raise your right hand.

2                   (Juror sworn.)

3                   THE CLERK: Please be seated.

4                   THE COURT: Ms Temme, you have already

5                   filled out a questionnaire at court proceedings last  
6                   week, today we're moving on to the next phase of  
7                   jury selection which is individual voir dire. The  
8                   attorneys for each of the parties have a chance to  
9                   ask you some questions.

10                  Before we begin those questions, I

11                  wanted to add some information to what I provided  
12                  you last week, that is, to notify you that the  
13                  jurors selected in this case will not be  
14                  sequestered during the trial, meaning the jurors  
15                  will be able to come home every evening after the  
16                  proceedings and stay at home. We made that  
17                  decision assuming the commitment of the jurors to  
18                  not listen to any news media accounts about this  
19                  case, or see anything on television or the  
20                  internet, or discuss the case with anyone else.

21                  I also want you to know that although  
22                  these proceedings are in open court, no cameras  
23                  are permitted in the courtroom during voir dire  
24                  proceedings and the media is not allowed to  
25                  identify any of the individual jurors by name.

In addition, should you be selected to serve in this case, the jurors are not permitted to be photographed during the trial or appear in any television accounts of the trial.

I note that you did request in your questionnaire permission to provide some answers should the question be raised in private. I have asked the attorneys to notify me before asking you any such questions. And if you believe they ask you any such questions before I get notified, let me know and I will take your request up at that time.

Finally, if you are not stricken for cause after today's proceedings, you will receive a telephone notice within the next few days as to when to return for the next step.

Mr. Fallon, at this time you may begin.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

Q. Good morning.

A. Good morning.

Q. My name is Tom Fallon. I'm an Assistant Attorney General with the Department of Justice here in Wisconsin and I'm assisting in the prosecution of this case. To my left is Ken Mr. Kratz, the

1                   Special Prosecutor, and he's from Calumet County.

2                   He's the District Attorney. Thanks for coming in  
3                   this morning. We have a few questions to help us  
4                   in selecting a jury.

5                   I would like to begin with a little bit  
6                   about your work; you work at Manitowoc Ice?

7   A. Mm-hmm. Yes.

8   Q. And how long have you worked for them?

9   A. Ten years. It will be eleven in April.

10   Q. And what kind of work do you do, specifically,  
11                   for them?

12   A. Inside customer service for our international  
13                   market.

14   Q. Okay. And are you in marketing, sales,  
15                   distribution; how would you characterize what you  
16                   do?

17   A. Customer service.

18   Q. Customer service.

19   A. Order entry and just taking care of the  
20                   customer's --

21   Q. Okay.

22   A. -- requests, maintaining their orders, shipping.

23   Q. Any employment before your time with Manitowoc  
24                   Ice?

25   A. I worked for Kaysun Corporation.

1 Q. What did you do for them?

2 A. Also customer service.

3 Q. Okay. I'm not from the area, so forgive me; what

4 does Kaysun Corporation, what do they do?

5 A. Custom injection molding company.

6 Q. Okay. I also see from your questionnaire you

7 have an associate degree for a legal assistant.

8 A. Mm-hmm.

9 Q. All right. Did you pursue any employment in the

10 legal field?

11 A. I was an intern at a local law firm, but it

12 didn't last long, no.

13 Q. I have to ask, since I'm still in the legal

14 field; was there anything -- the pursuit of law

15 not interest you?

16 A. Pretty much the pay.

17 Q. Okay.

18 A. And no benefits, yeah.

19 Q. Have you had any occasion at all to use any of

20 the legal training that you had?

21 A. No.

22 Q. No. Okay. Now, I also note from your

23 questionnaire, there were several individuals

24 that you indicated that you were at least

25 familiar with on some level. And one of them is

1           Mr. Curt Drumm, how do you know Mr. Drumm?

2       A. I think he was like a year older than me in high

3           school, so we kind of new each other just in

4           school.

5       Q. All right.

6       A. Not really that familiar, just he's kind of a

7           personality in town too. Does some fundraisers

8           so he is known for that.

9       Q. Okay. So he is kind of well known?

10      A. Yes.

11      Q. All right. And you went to school with him,

12           that's four familiarity, okay. How about Ms

13           Debbie Knox?

14      A. She was the vice principal at Wilson Jr. High

15           School when my daughter was attending that

16           school.

17      Q. Do you know her well?

18      A. No.

19      Q. Would you -- I forgot to ask, would you say you

20           are friends, or acquaintance, or just know

21           Mr. Drumm?

22      A. I know him, but I guess if I would see him on the

23           street, we would probably say hi and maybe have a

24           short conversation.

25      Q. Okay. You also indicated that you were familiar

1           with the District Attorney here in Manitowoc,  
2           Mark Rohrer; how do you know Mr. Rohrer?

3       A. He was a neighbor about a year ago. Not like a  
4           neighbor in our neighborhood, I guess the  
5           neighborhood I lived in about a year ago. And we  
6           maybe in -- I might have known him from being in  
7           some community theatre activities.

8       Q. Would you consider yourself close friends, or  
9           close acquaintances, or just someone that you  
10          know?

11      A. Someone I know that I would probably say hi to  
12          and have a small conversation with.

13      Q. All right. A couple other questions from your  
14          questionnaire -- Oh, by the way, you also know  
15          the Clerk of Court's, Lynn Zigmunt?

16      A. She was an employee at the law office that I was  
17          shortly employed at.

18      Q. Okay. Did you develop any friendship or strong  
19          acquaintance from working with her at that time?

20      A. No.

21      Q. In other words, just someone that you worked with  
22          very briefly at this point in the past?

23      A. Right. And if we would see each other, I would  
24          probably say hi and have a short conversation,  
25          just basic.

1 Q. You also expressed an opinion that Mr. Avery,  
2 when asked if you had an opinion on his guilt or  
3 innocence, you indicated you did. And you said,  
4 he seems to be involved in the disappearance of  
5 Teresa Halbach. Why do you say that?

6 A. Just because of what I have heard on the news and  
7 the newspapers, prior.

8 Q. Okay. And where do you get most of your news  
9 about this particular case that kind of led you  
10 to that opinion; was that television, radio,  
11 newspaper, internet?

12 A. I think it was mostly the radio.

13 Q. Mostly radio. Okay. Now, you followed that up  
14 with an answer to the question, if you were  
15 selected to serve as a juror, could you set those  
16 opinions aside and base your decision only on the  
17 evidence presented in court, and you answered  
18 yes; are you confident in your ability to do  
19 that?

20 A. Yes.

21 Q. Any particular reason why you have that opinion?

22 A. I just think I could -- I would be able to listen  
23 to both sides and give an honest answer.

24 Q. Okay. Now, you -- On one question you were  
25 asked, if you served on a jury, how do you think

1           you would feel about that service. And you said  
2           you would find it very interesting. Any  
3           particular reason about that? Was that from  
4           perhaps your legal training?

5       A. It's -- The legal system is very interesting, how  
6           it works, so I think it would be real  
7           interesting.

8       Q. Okay. And any particular reason why you find it  
9           interesting?

10      A. Just that, you know, things need to be proven. I  
11           mean, if you do something, it's not just cut and  
12           dry as to what someone might say on one side or  
13           the other, it has to be -- the whole thing has to  
14           be presented and then decided by a jury, I guess,  
15           so it's interesting.

16      Q. So you like the give and take, and the arguments,  
17           and the evidence, and you find that interesting?

18      A. Yes.

19      Q. You wouldn't find that tedious or boring?

20      A. No.

21      Q. Now, one of the other questions in your  
22           questionnaire that might be of some concern to us  
23           is you thought that it might be, perhaps, a  
24           hardship if you are selected as a juror?

25      A. My employer asked me to say that it was a

1           hardship for him. I think they would manage.

2 Q. So it's more of a hardship for your employer than  
3           it is for you?

4 A. I think they would manage.

5 Q. Okay. Well, is that -- But I think in fairness  
6           to you, we should ask, are you concerned with  
7           that, I mean, if you were selected as a jury  
8           (sic) that this might have an adverse impact on  
9           the job or anything?

10 A. No, I don't think it would.

11 Q. Okay. So they were just kind of teasing you,  
12           half kidding, have serious, we would rather have  
13           you here than there?

14 A. Yeah.

15                   ATTORNEY FALLON: I will defer my last set  
16           of questions for the end.

17                   THE COURT: Mr. Strang or Mr. Buting.

18                   ATTORNEY BUTING: I will do this, Judge.

19                   **VOIR DIRE EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Is it Temme, is that how you --

22 A. Terri Temme, yes.

23 Q. Okay. My name is Jerome Buting. This is Dean  
24           Strang. And you understand that we represent  
25           Steven Avery, right?

1 A. Yes.

2 Q. I'm going to focus in a little bit on, there's  
3 been a lot of publicity in this case, right, you  
4 are aware of that?

5 A. Mm-hmm.

6 Q. You know, I would like to really get down to --  
7 to why you think he -- it seems he's involved and  
8 what you have learned about the case over -- I  
9 understand you read the newspaper, the Herald  
10 Times, right?

11 A. Mm-hmm.

12 Q. Do you read that regularly?

13 A. I get it every day. Yeah, I get the paper.

14 Q. And have you followed the news articles about the  
15 Steven Avery case?

16 A. To tell you the truth, after probably the last,  
17 over the summer and up till now, not really, no.

18 Q. Kind of got tired of it after awhile, it was all  
19 -- in the spring it seemed to be there all the  
20 time?

21 A. I was busy traveling with work also, out of the  
22 country and stuff, so it was, yeah, not important  
23 to me.

24 Q. You had work out of the country?

25 A. Mm-hmm.

1 Q. Where did you go?

2 A. I went to Leon, France in July, and to Hangzhou,

3 China in October.

4 Q. Oh, okay. And that's to help service customers

5 over there?

6 A. Our sister companies are transferring over to

7 the -- we're all going on to the same computer

8 system, so I was a mentor for both areas.

9 Q. Okay. I see. That was probably pretty

10 interesting, I imagine, right?

11 A. It was very interesting.

12 Q. You also listen to the radio; what station would

13 that be?

14 A. Well --

15 Q. For news, I'm talking about.

16 A. I listen to public radio in the morning, before I

17 go to work. And I can't really get too many

18 radio stations at my job. I don't know why, it's

19 just because. So I think it's Cub radio that I

20 listen to.

21 Q. So do you listen to 1240 WMOT (sic) much, or

22 1360?

23 A. I can't get those stations.

24 Q. You don't listen to them?

25 A. I can't get them and, no, and I don't listen to

1                   them.

2   Q.  Driving to work or anything like that, you stick  
3       with public radio?

4   A.  Mm-hmm.

5   Q.  You heard some publicity, I assume, about Brendan  
6       Dassey?

7   A.  Mm-hmm.  Yes.

8   Q.  Tell me what you have learned about that, about  
9       him.

10   A.  That he is also somehow involved in this, in the  
11       disappearance of Teresa Halbach.  Somehow he's  
12       involved in that.

13   Q.  Do you know the details of what he supposedly  
14       said?

15   A.  I don't really know the details of what he said.  
16       I just know that it seems that he was in the  
17       vicinity and was there at some time.

18   Q.  Did you happen to hear on the radio, or see on  
19       TV, any press conferences about Brendan Dassey?

20   A.  I don't recall.  I mean, I don't remember paying  
21       much attention to that at all.

22   Q.  Have you read anything about how he has --  
23       subsequently recanted his confession, that is,  
24       taken it back?

25   A.  No.  It's my understanding that he confessed and

1           then he's been held ever since then.

2 Q.       Okay. So you haven't heard anything about  
3           whether or not he's later withdrawn that  
4           confession?

5 A.       No, I don't know.

6 Q.       Or anything about that. Okay. Did the story,  
7           did it bother you when you heard it?

8 A.       Initially, when -- about Mr. Avery and -- yes,  
9           mm-hmm.

10 Q.       Which part are you talking about? Are you  
11           talking about when Mr. Avery was first arrested  
12           and they were looking for Teresa and all of that,  
13           or later, the Brendan Dassey part of it.

14 A.       Oh, um, the before part, when they were looking  
15           for her.

16 Q.       So, did you see on the news when she was still  
17           missing and they were looking for her, and they  
18           hadn't found her vehicle or anything like that?

19 A.       Yes.

20 Q.       Did you -- Did you volunteer to go help search  
21           for her?

22 A.       No.

23 Q.       You have a daughter who is 21 and single, right?

24 A.       Mm-hmm, yes.

25 Q.       I mean, does that bother you, in particular did

1           you -- were you thinking about how this might  
2           have happened to your own daughter and how  
3           horrible something like that would be?

4       A. Actually no, I didn't.

5       Q. No. Why not?

6       A. Because it seems that I feel she's safe. I don't  
7           know. I guess I didn't really think about that.

8       Q. So it's not something that you were ever  
9           concerned could happen to your daughter?

10      A. Of course, I worry about her. As a mother I  
11           worry about her, but I never imagined something,  
12           you know, terrible happening or.

13      Q. Sure. Now, when you say that you -- It seems  
14           from what you have read and heard on the radio, I  
15           guess, it seems that he's -- Mr. Avery is  
16           involved in some way. How do you think you can  
17           set that aside now and -- if you were selected as  
18           a juror?

19      A. I consider myself a very fair and honest person  
20           and I think I would be able to objectively listen  
21           to both sides of information and make an honest,  
22           objective decision.

23      Q. Do you think that sometimes people in the media,  
24           the way it's portrayed, they may seem guilty, or  
25           that it's a cut and dried case, but in reality

1           things might be very different?

2   A.   Right.

3   Q.   And you think you could look at this case that  
4       way?

5   A.   I could look at it very objectively. Like, I  
6       guess I have learned not to always believe what  
7       the media says.

8   Q.   You are familiar with the concept of the  
9       presumption of innocence, I assume?

10   A.   Maybe.

11   Q.   Well, do you know that defendants are presumed  
12       innocent?

13   A.   Presumed innocent, mm-hmm.

14   Q.   And in Mr. Avery's case, can you tell us today  
15       that you presume him to be innocent, even with  
16       everything you have heard or read? Be honest.

17   A.   I'm going to say, yes, mm-hmm.

18   Q.   You kind of struggled with that for a little bit,  
19       you just really wanted to be sure; is that what  
20       you're --

21   A.   Yes, I wanted to be sure.

22   Q.   Searching to make sure that you really believe  
23       that, right?

24                           THE WITNESS: Mm-hmm. Yes. Sorry.

25   Q.   Now, there's another -- This is something that

1           defense attorneys always have to sort of struggle  
2           with, is the whole idea of whether or not to call  
3           the defendant as a witness at the trial. Some  
4           people think that, you know, if a defendant  
5           testifies, well, you know, why should we believe  
6           him. He's got everything at stake here, right,  
7           he's just trying to save his skin?

8         A. Mm-hmm.

9         Q. Some people think why didn't he take the stand,  
10          he is hiding something; how do you come down on  
11          that? Let me ask you it this way, do you think  
12          that Mr. Avery should testify and tell his side  
13          of the story? As a juror, is that what you want  
14          to hear?

15        A. I don't think it would make any difference to me  
16          if he did or did not take the stand, or it  
17          wouldn't make me feel either way that because he  
18          did take the stand, like, what you said, like  
19          people think that some people who take the stand  
20          will be --

21        Q. Can you think of any reasons why someone would  
22          choose not to testify if they were accused of  
23          some serious crime like this?

24        A. Because they have people like you, lawyers, to do  
25          the speaking for them?

1 Q. Okay. Or maybe they are not good with public  
2 speaking?

3 A. Mm-hmm.

4 Q. Things of that nature.

5 A. Mm-hmm.

6 Q. So, if -- But if Mr. Avery did testify, would you  
7 be able to set aside those feelings you have had,  
8 things you have read in the newspaper, or heard,  
9 and really judge him like any other witness?

10 A. Yes, I think I could.

11 Q. You really think you could?

12 A. Mm-hmm.

13 Q. Okay. I appreciate that. There are some  
14 questions about, you know, what kind of  
15 television shows you watch, CSI, and all those  
16 Law and Order kinds of things. And you said you  
17 don't watch those shows at all?

18 A. No.

19 Q. Do you -- Have you ever watched any police movies  
20 or stories, Law and Order crime kind of things?

21 A. I watch 48 hour Mystery, that's about the only  
22 type of show like that I watch. Okay.

23 Q. Do you think that there's -- the police are more  
24 or less likely to lie under oath than any other  
25 witness?

1 A. I would think they are less likely to lie under  
2 oath.

3 Q. Okay. And why is that?

4 A. Because they are part of the community. I don't  
5 know. They are held up as an upstanding, you  
6 know, citizen, protecting us. So I think they  
7 would be honest in their answers.

8 Q. Okay. Do you think that they would be -- Can you  
9 think of any circumstance where maybe officers  
10 wouldn't tell the truth under oath?

11 A. No, I can't.

12 Q. So, if a police officer were to testify, there  
13 would be no doubt in your mind that that officer  
14 would always be telling the truth?

15 A. Yes, I would think that he was always telling the  
16 truth.

17 Q. Now, if the judge instructed you that you are to  
18 judge police officers just like any other  
19 witness, determine their credibility, weigh what  
20 they say against the other evidence, how they  
21 act, their demeanor, all of that; would you be  
22 able to do that, or do you think that you would  
23 just listen to the police officers and say, boy,  
24 if -- you know, if they are up there, they have  
25 got to be telling the truth.

1 A. I think I could be objective. I think I could  
2 listen to what they have to say and base what  
3 they say objectively. I'm not sure how to say  
4 that.

5 Q. Do you think that sometimes police officers can  
6 get personally involved in their investigations,  
7 really care about what they are doing?

8 A. Yes, I believe that.

9 Q. Do you think that they can -- maybe sometimes  
10 that they become convinced of someone's guilt and  
11 focus on that one person?

12 A. I guess that's possible, yes.

13 Q. Do you think that it's possible that they could  
14 be wrong about that, though?

15 A. I do. Yup, yes.

16 Q. Do you think sometimes that if a police officer  
17 is so involved, so convinced of his case that  
18 sometimes they might be tempted to cross the line  
19 a little bit?

20 A. Yes, I guess, you know, being a human being,  
21 we're all tempted in some way. You know, could  
22 be, yes.

23 Q. Maybe even cross the line to maybe shade their  
24 report a little bit to make it look a little bit  
25 different, or change a few words about what

1           someone says; is that possible?

2       A. I guess it's possible, yes, because human error  
3           can happen, or.

4       Q. But then if they would come into court and  
5           testify about that, perhaps they wouldn't really  
6           be telling the truth then. How would you judge  
7           whether they are telling the truth or not if you  
8           have a situation like that?

9       A. Have to just listen to everything that's being  
10           said, I guess.

11      Q. Now, do you understand that the -- You understand  
12           that the State has the burden of proof, right?

13      A. Yes.

14      Q. And that Mr. Avery, like any defendant, doesn't  
15           have to prove his innocence, correct?

16      A. Correct.

17      Q. Do you think that's a good idea?

18      A. As far as having the burden of proof on the State  
19           or?

20      Q. Yes.

21      A. Yes.

22      Q. Do you think it's fair that they have this very  
23           high burden of proof, beyond a reasonable doubt?

24      A. Yes.

25      Q. And that the defense can just sit here and do

nothing?

2 A. Well --

3 Q. We better not.

4 A. I would expect -- Yeah, I would expect that the  
5 defense would do something. But that's part of  
6 our judicial, I guess, because if an innocent --  
7 that's the way we, I guess, find, you know,  
8 innocence and guilt, is through this process.

9 Q. Sure. But do you think that if the defense  
10 decides to put on a defense, if we decide to put  
11 on witnesses; are you going to make us prove that  
12 Mr. Avery is not innocent -- I'm sorry, is  
13 innocent, not guilty, just because we decide to  
14 put on some witnesses and put on a case?

15 A. Can you say that --

16 ATTORNEY FALLON: I was going to object to  
17 the phrasing of that question because I'm not sure  
18 it accurately deals with the standard that's to be  
19 expected of the juror.

20 THE COURT: Mr. Buting, why don't you try  
21 rephrasing it.

22 ATTORNEY BUTING: Sure. I'll rephrase it.

23 Q. I guess what I'm trying to ask here is, are you  
24 going to be able to really hold the State to the  
25 burden of proof and not make Mr. Avery have to

1 prove he's innocent of this charge, even if he  
2 decides to put on some witnesses -- or we decide  
3 to put on some witnesses on his behalf?

4 A. Yes, that's how I understood it would be, that  
5 the State has to prove innocence.

6 Q. Okay.

7 A. I'm sorry. Whatever.

8 Q. That's fine.

9 A. I think I got mixed up, but I think -- do you  
10 understand what I meant by that?

11 Q. I believe so, yeah. Okay. Do you not watch any  
12 of the shows that have any kind of -- actually 48  
13 Hours sometimes deals with forensic science  
14 things of that nature, doesn't it?

15 A. I think so, I don't -- it probably does.

16 Q. Do you have any particular view on forensic  
17 science, that it's -- do you think it's entitled  
18 to greater weight, is more believable than  
19 perhaps other types of evidence?

20 A. Yes, it seems to be -- has been helpful in the --  
21 recently for, you know, things that have happened  
22 in the past for people that have been proven  
23 innocent.

24 Q. Okay. So DNA in particular, right?

25 A. Mm-hmm.

1 Q. And that it can, in some instances actually prove  
2 someone is innocent, right?

3 A. Mm-hmm.

4 Q. Like Mr. Avery, right?

5 A. Yes.

6 Q. You are aware of what happened to him, right?  
7 The 1985 conviction he was later exonerated from?

8 A. Yes.

9 Q. Did you have any questions or lingering doubt  
10 about that and think, oh, maybe he just really is  
11 guilty and got off somehow?

12 A. No.

13 Q. You are convinced he really was wrongly convicted  
14 in that case?

15 A. Yes.

16 Q. Do you think, though, that not talking about DNA  
17 here in particular here, but other types of  
18 science, do you think that science is just  
19 infallible and that people don't make mistakes,  
20 or do you think that it's really a question of  
21 are you going to look at what it's based on, and  
22 what kind of research is behind it, and what sort  
23 of tests are being done?

24 A. I think people can make mistakes in science. And  
25 it's -- I'm not sure if I answered that

1           correctly, or the way you --

2   Q.   Probably not well phrased.  But are you going to  
3       be -- There will be some scientific evidence in  
4       this case and at times it may get sort of dry;  
5       are you going to be interested in following that,  
6       though?

7   A.   Yes, of course.

8   Q.   Looking at all of it, not just the end result,  
9       but just what went into it as well?

10   A.   Yes.

11   Q.   One thing, I thought was kind of interesting, you  
12       are involved in community theatre you said?

13   A.   Yes.

14   Q.   What do you do with that?  Do you act?

15   A.   Mm-hmm.  I sing and act and dance.  It's just a  
16       hobby.

17   Q.   How long have you been doing that?

18   A.   Hmm, maybe 15 or 20 years.

19   Q.   Okay.  What's the group that you -- What's the  
20       name of the community theatre?

21   A.   I do a Heart-A-Rama fundraiser in the spring,  
22       that's for the Heart Association.  And then maybe  
23       once or twice a year I do a show out at the UW  
24       Center for a fundraiser for the theatre groups,  
25       kids for theatre.  So maybe now it's once every

1 other year.

2 Q. That's something you really enjoy though?

3 A. It's a hobby, yeah. People say I'm good, but I  
4 should keep my day job.

5 Q. All right. And Mr. Rohrer is involved in that  
6 too?

7 A. He used to be a long time ago. I don't recall  
8 ever being in a same show with him. But he was  
9 involved in Masquers, I believe, yeah.

10 ATTORNEY BUTING: Okay. That's all I have  
11 for out here, Judge.

12 THE COURT: All right. Just a second.

13 ATTORNEY BUTING: Thank you very much.

14 **VOIR DIRE EXAMINATION**

15 BY THE COURT:

16 Q. Ms Temme, I have a few questions for you, just to  
17 follow up on the questions about police officers,  
18 that Mr. Buting was asking you about. There may  
19 be, during the course of the trial, questions  
20 raised about the credibility of some of the  
21 police officers.

22 I understood from your answer that you  
23 believed they should be more credible because of  
24 the nature of their job. But I also believe you  
25 indicated you understood that, as humans, they

1           are just like others and may not tell the truth  
2           sometimes; is that correct?

3       A. Yes.

4       Q. Not notwithstanding your belief about the fact that  
5           by the virtue of their job they should always  
6           tell the truth, if you're selected as a juror,  
7           will you be able to assess their credibility just  
8           like any other witness?

9       A. Yes.

10           THE COURT: All right. Thank you.

11           Counsel, do I take it from your comments that at  
12           this point you wish to follow up with a couple  
13           questions that, for which confidentiality was  
14           requested.

15           ATTORNEY FALLON: Yes.

16           ATTORNEY BUTING: Yes.

17           THE COURT: I'm going to indicate at this  
18           time, the law on this subject, first of all,  
19           presumes that voir dire proceedings are open. But  
20           in specific narrow situations, they can be closed to  
21           address specific personal matters involving  
22           sensitive questions.

23           I did have the jurors who filled out the  
24           questionnaires indicate specifically if they felt  
25           that their answers to any questions fell into

1           that category. And in this case, there was a yes  
2           answer to that. I have reviewed this jurors  
3           questionnaire and determined that the answers she  
4           referred to and the nature of those answers, do  
5           fall into the area of deeply personal matters  
6           which are to be kept out of the public domain.  
7           And that she made an affirmative request to have  
8           such matters be kept confidential.

9                 Therefore, at this time, the Court is  
10           going to allow the counsel to address those  
11           matters, and those matters alone, in camera.  
12           That is, I will briefly clear the courtroom at  
13           this time of all parties except court personnel.  
14           If you wait just outside the door, we'll have the  
15           bailiff notify you as soon as that portion of the  
16           questioning has been completed and invite  
17           everybody back into the courtroom.

18                 I should also notice that I did receive  
19           an inquiry from counsel for WFRV, their counsel  
20           in New York, last week, asking if any further  
21           court proceedings in this matter would be  
22           conducted outside the presence of the public. I  
23           notified that attorney and sent, by email, a copy  
24           of that letter to all of the other news media on  
25           the Court's emailing list, that with this narrow

1 exception that we're dealing with here, the Court  
2 did not anticipate that further proceedings would  
3 be closed in any fashion.

4 I also indicated that if that attorney  
5 or any others wished to be present to be heard  
6 before the proceedings were closed, to please let  
7 me know ahead of time so I could recognize the  
8 attorney and give the attorney a chance to be  
9 heard. So before we close these proceedings, are  
10 there any attorneys here representing any news  
11 media that wish to be heard before we briefly  
12 close these proceedings? I do not see any, so at  
13 this time, then, we'll clear the courtroom for a  
14 few minutes. If you wait nearby in the hall, I  
15 will have the bailiff notify you immediately as  
16 soon as you can come back in.

17 (Proceedings closed.)

18 (Following portion sealed.)

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13 (Open court.)  
14 THE COURT: All right. At this time the  
15 Court is back open. I will have the Clerk escort Ms.  
16 Temme outside the courtroom. Counsel, does either  
17 party have a motion to make?

ATTORNEY FALLON: No motion from the State.

19 THE COURT: Mr. Buting?

ATTORNEY BUTING: No motion, Judge.

21 THE COURT: Very well. The Court will  
22 include Ms Temme in the panel. Counsel, I think to  
23 move along I'm just going to take a half hour for  
24 lunch. I don't know if you want to take it now or  
25 after the next juror. What's your feeling? All

1                   right. Let's take a break now and let's report back  
2                   at 12:35.

3                   I will also indicate that because of the  
4                   rate at which we're going, I told them this  
5                   afternoon to bring in eight jurors rather than  
6                   the 15 that we had discussed. But I also want to  
7                   let you know, we may go late this afternoon if we  
8                   need to make some headway. All right. I'll see  
9                   you in a half hour.

10                  (Noon recess taken.)

11                  THE COURT: At this time we're back on the  
12                  record. I believe it's Jacqualine Ungrodt, the next  
13                  juror, correct?

14                  JURY BAILIFF: Yes.

15                  THE COURT: All right. You can bring her  
16                  in at this time. Ms Ungrodt, if you will please  
17                  raise your right hand, we'll have the Clerk swear  
18                  you.

19                  (Juror sworn.)

20                  THE CLERK: Please be seated. Ms Ungrodt,  
21                  you have already filled out a juror questionnaire  
22                  last week. Today we're moving on to the next step  
23                  in the juror selection process, which is the chance  
24                  for the attorneys for each side to individually ask  
25                  questions to make sure that the juror meets the

1 qualifications.

2 I have a few pieces of information that  
3 I didn't pass on last week. First of all, the  
4 jurors selected to hear this case will not be  
5 sequestered for the length of the trial. We're  
6 doing that because of the fact the jurors are  
7 being instructed not to view any news media  
8 accounts of the case, or talk with anyone else  
9 about it. If the jurors can do that, there will  
10 not be a need to sequester the jury.

11 Also you should know, although these  
12 proceedings today are open, no cameras are  
13 permitted in the courtroom during the voir dire  
14 process and the news media is not allowed to  
15 identify individual jurors by name in news  
16 reports. In addition, the jurors who are  
17 selected to serve in this matter will not be on  
18 camera, in any television proceedings or news  
19 accounts during the course of the trial itself.

20 If after today's proceeding you are  
21 still a member of the panel, you will receive  
22 telephone instructions in a few days as to when  
23 to report back to court. At this time then we'll  
24 permit the attorneys to ask their questions.

25 Mr. Fallon, are you going to be taking things for

the State?

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. My name is Tom Fallon. I'm an Assistant Attorney  
7 General working for the Wisconsin Department of  
8 Justice. And I'm one of the prosecutors in this  
9 case. Norm Gahn is the other, and to my left is  
10 Mr. Kratz, who I understand you are at least  
-1 somewhat familiar with.

12 A. Yes.

13 Q. Okay. I guess we should probably start there.  
14 Your husband is an attorney?

15 A. Yes.

16 Q. Forgive me, but I'm not from this area, so what  
17 kind of law does your husband practice?

18 A. General practice, estate planning, just that kind  
19 of thing.

20 Q. All right. Does he do any criminal defense work?

21 A. No.

22 Q. Has he done any municipal prosecution or special  
23 prosecution work in his career?

24 A. Yes, he has.

25 Q. What can you tell us about that experience, that

1           you recall?

2       A. I know he was Corporation Counsel for Calumet  
3           County for many years. I can't be more specific  
4           than that.

5       Q. You also indicated that you are familiar with Tim  
6           Halbach?

7       A. I met Attorney Halbach once. I have not had a  
8           conversation with him. It was a social event.

9       Q. All right. Since that time you have not had any  
10           contact or any encounters with Mr. Halbach?

11      A. Correct.

12      Q. How long ago was it that you first met him at  
13           this social occasion?

14      A. It was either August or September of last year.

15      Q. All right. So during the pendency of these  
16           proceedings?

17      A. Yes.

18      Q. All right. During that introduction as it were,  
19           did the matter of his sister's case come to  
20           light, or any --

21      A. No.

22      Q. -- part of your discussion?

23      A. No.

24      Q. You -- The fact that you have now met the brother  
25           of the victim in this particular case, does that

1           cause any question in your mind as to whether you  
2           could be fair and impartial if selected as a  
3           juror in this case?

4       A. No.

5       Q. All right. You sound pretty comfortable with  
6           that, so let me ask you a follow-up. How do you  
7           know Mr. Kratz?

8       A. Socially, through the Calumet County Bar  
9           Association dinners.

10      Q. All right. Would you consider yourself a friend,  
11           acquaintance, or Mr. Kratz is someone that you  
12           know from the bar encounters?

13      A. Acquaintance, we have had a couple of  
14           conversations, I guess I could say that.

15      Q. When was the last time that you and Mr. Kratz had  
16           any conversation?

17      A. That would have been the last dinner, which would  
18           have been August or September of last year.

19      Q. During the course of your conversation, did that  
20           involve any discussion of the case at all?

21      A. Specifically, I will try to remember. I know I  
22           mentioned to him, we were sitting across from  
23           each other at dinner, that I had been summoned  
24           for jury duty. And I don't remember exactly what  
25           I said. I probably made some smart remark about

1 being my luck I would get the big trial. And I  
2 think I probably told him I thought from what I  
3 had read at that point that Mr. Avery was guilty.

4 Q. All right. That's just based on the media  
5 accounts?

6 A. Yes, it would have been.

7 Q. All right. Now, in the questionnaire, you  
8 likewise used the phrase probably guilty. And  
9 that's fine that you have that opinion. But let  
10 me ask -- And that I assume is based strictly on  
11 what you read in the media, not from any other  
12 conversations with anyone else?

13 A. Correct.

14 Q. Okay. You likewise indicated that you would be  
15 able to set those opinions aside and base your  
16 decision, if you are selected as a juror, solely  
17 on the evidence presented in the court, and the  
18 instructions you receive from Judge Willis; is  
19 that correct?

20 A. Yes, it is.

21 Q. How is it, or why you feel that you could set  
22 aside, you know, the probable guilt opinion  
23 formed from the media coverage and decide this  
24 case on what's presented in court?

25 A. Well -- excuse me. Media coverage is probably

1           not too reliable with factual things. Maybe so,  
2           but I don't put much faith in that and I think  
3           I'm able to hear evidence and make a decision on  
4           that.

5       Q. All right. Now that the Court has advised you  
6           that sequestration is not likely here, assuming  
7           all the jurors are willing to abide by Judge  
8           Willis' instructions; is there any other  
9           particular impediment in your mind to the  
10          possibility of serving as a juror?

11      A. No.

12      Q. You also indicated in your questionnaire, if I  
13           change topics just a bit here, that you had some  
14           prior jury experience, you were on a civil case  
15           some years ago?

16      A. Yes.

17      Q. How did you find that experience?

18      A. It was interesting. I was taking classes, legal  
19           classes with the paralegal program at LTC at the  
20           time.

21      Q. All right.

22      A. So it was very interesting.

23      Q. I'm going to digress since you have given me that  
24           opportunity there. Did you pursue paralegal or  
25           legal assistant training?

1 A. I completed the legal classes for the paralegal.

2 Q. Okay. Did you ever engage in that practice?

3 A. I was working for my husband at the time. If he

4 would let me, I would.

5 Q. Okay. That's fair enough. How long did you work

6 in that capacity?

7 A. It was around 10 years. Some of that part time.

8 Didn't work in the summers when our children were

9 home from school.

10 Q. All right. Okay. Well, returning again to my

11 original question about the prior jury

12 experience. I take it that was just a personal

13 injury case as you note here, a tavern owner was

14 found not negligent for some -- can you tell us a

15 little bit about the nature of the case?

16 A. If I remember correctly, it was a long time ago,

17 I think it was a gentleman was escorted out of

18 the tavern by the owner and there were steps

19 leading down and the gentleman fell and, of

20 course, sued the owner of the tavern.

21 Q. Do I read correctly between the lines that the

22 gentleman probably deserved to be escorted from

23 the tavern?

24 A. I would think so.

25 Q. Okay. Why did you find the experience

1                   interesting?

2     A. I think the process itself is very interesting.

3                   And with our legal system, it's -- to see that  
4                   part of it, you see how it works.

5     Q. All right. To see it from the other side.

6     A. The other side.

7     Q. All right. In that case that you were a juror,  
8                   were you a foreperson?

9     A. No.

10    Q. Anything about the deliberation process and  
11                   working with your fellow jurors that raises any  
12                   question in your mind about your ability to  
13                   fulfill that role again if you were selected?

14    A. No.

15    Q. Okay. Do you currently have any close friends or  
16                   relatives who are currently or have recently  
17                   worked in the news industry in any capacity?

18    A. No.

19    Q. Are you one of those individuals, if they find  
20                   something interesting in the news might very well  
21                   get on the internet and do a little background  
22                   homework to see if there's more information about  
23                   the story, or some more facts that might help you  
24                   form a more informed opinion?

25    A. No.

1 Q. Okay. Pretty much take the news coverage for  
2 what it is?

3 A. Yes.

4 Q. Have you, or maybe even your husband, given the  
5 nature of his work or at least as a former  
6 Corporation Counsel, ever been in charge of  
7 writing any kind of safety guidelines or setting  
8 up any safety standards for any type of business  
9 or industry, or anything like that?

10 A. I can't speak for him, because I don't know, but  
11 I have not.

12 Q. You have not. Okay.

13 A. Yes.

14 Q. Okay. Are you a lifelong resident of this area?

15 A. No.

16 Q. How long have you been in Manitowoc County? How  
17 long have you been here?

18 A. About 35 years.

19 Q. In that time frame, do you have any opinion as to  
20 how the Manitowoc Sheriff's Department is doing  
21 their job, in terms of dealing with crime and  
22 representing the public; do you feel they are  
23 doing a good job, bad job, excellent, poor, no  
24 opinion?

25 A. As far as I know they are doing a good job.

1 Q. In your questionnaire, you indicated that you  
2 would be able to weigh the testimony of a law  
3 enforcement officer the same way you would any  
4 other witness. In other words, you wouldn't give  
5 their testimony anymore credibility than any  
6 other witnesses. Why do you feel that way?

7 A. Sounds a lot different when you say that and then  
8 what I wrote. I guess maybe I meant that I  
9 wouldn't give necessarily more credibility  
10 because -- I'm sorry. I didn't do a good job of  
11 answering that one.

12 Q. Well, it's probably not you, it's probably me.  
13 You know, we lawyers aren't always as artful with  
14 our language as we should be.

15 A. That's misleading. I really don't know how to  
16 correct what I was saying there. I would  
17 certainly -- somebody in an official capacity in  
18 their job and reporting things, I would give more  
19 reliability to their testimony.

20 Q. Let me rephrase the question here or read the  
21 question, excuse me, exactly as it's written and  
22 then we'll talk about it and that way I will dig  
23 myself out of the hole I just created.

24                   The law requires jurors to evaluate  
25                   their credibility just as that of any other

witness; that is, jurors are prohibited from giving more or less credibility to the testimony of a law officer simply because the witness is a law officer. And if selected as a juror, would you be able to assess the credibility of law officers on this basis, and you indicated yes; is that accurate?

A. Yes, I guess I can't argue with that. I'm sorry.

Q. Well, we just want to make sure you are clear on that. There is not any confusion in your mind, you would be able to judge their credibility like you would anyone else?

A. Yes. I did not remember the way the question was.

Q. That's my fault for in the way the question was asked. All right. Do you like to work on puzzles? Are you a puzzle person?

A. Occasionally, it's not a passion.

Q. All right. what kind of puzzles would you work on? Word puzzles, jigsaw puzzles?

#### A. Crossword puzzles.

Q. Crosswords. Okay. Would you consider yourself a detail oriented person or are you kind of a big picture type of approach to problem solving?

A. Probably more detailed.

1 Q. All right. And why did you think so, or what  
2 tells you -- what suggests that answer to you?

3 A. I guess because that's what I usually take care  
4 of in the things that I'm involved with, the  
5 details.

6 Q. So you run the show at home, keep the family  
7 business, as it goes, on task, I take it?

8 A. Well, partially, and plus other things that I'm  
9 involved with.

10 Q. Okay. What are some of those other things you  
11 are involved with, some hobbies or other outside  
12 things?

13 A. Things I mentioned, boards I'm on and that.

14 Q. All right. I see that you serve on the County  
15 Library Board?

16 A. Yes.

17 Q. Any chance that you are familiar with --  
18 ATTORNEY STRANG: Diane Free.

19 Q. -- Diane Free? Do you know a Diane Free? She  
20 works for the County Library System.

21 A. I don't know the employees, it's just the board.  
22 I'm with the board.

23 Q. So you're just with the board. I see. Okay.

24 A. Right.

25 Q. All right. I see that you are also a secretary

1           of the board and you are also a president -- is  
2           that the Kiel Board of Appeals?

3       A. Yes.

4       Q. Tell me about that Kiel Board of Appeals  
5           chairperson; what's that's all about?

6       A. That's if someone disputes a building inspector's  
7           granting a permit for building and wants to  
8           dispute that, then they come to the Board of  
9           Appeals to appeal that.

10      Q. All right. And you are the chairperson on that?

11      A. Yes.

12      Q. In that capacity, do you then listen to the  
13           presentation more or less of both sides and then  
14           do you like cast a vote in -- in your capacity as  
15           chairperson, or is that determined by others, or  
16           how does that work?

17      A. We usually have the information before the  
18           meeting.

19      Q. All right.

20      A. It has to be published and we do listen to anyone  
21           that wants to speak. It's just our side and  
22           their's, in essence. But, yes, we do make a  
23           motion and vote on that part, the whole board  
24           does.

25      Q. All right. So in that capacity, as a board

1                   chairperson, you are working with the Village or  
2                   Town of Kiel?

3       A. City of Kiel, mm-hmm.

4       Q. City. Okay. Very good. All right. Do you  
5                   enjoy that?

6       A. Yes, I do.

7       Q. What is it about that job that you enjoy?

8       A. It's just interesting. I just enjoy it, that's  
9                   all.

10      Q. Fair enough.

11                   ATTORNEY FALLON: That's all I have, Judge.

12                   THE COURT: Mr. Strang.

13                   **VOIR DIRE EXAMINATION**

14      BY ATTORNEY STRANG:

15      Q. Do you prefer Mrs. Ungrodt or Ms. Ungrodt or?

16      A. Whatever you wish is fine.

17      Q. First of all, am I pronouncing the last name  
18                   right?

19      A. Ungrodt, but you're close.

20      Q. I want to be better than close if I can. I'm  
21                   just going to pick up right where Mr. Fallon left  
22                   off for a couple minutes. The Kiel Board of  
23                   Appeals, how many folks sit on that board?

24      A. Right now, there are seven -- I'm sorry, five,  
25                   that sit on it.

1 Q. And the City Clerk is assigned to take minutes or  
2 something?

3 A. Correct.

4 Q. Okay.

5 A. Correct.

6 Q. And this -- this would be variance disputes,  
7 zoning disputes, that kind of thing?

8 A. Well, yes, variance. Generally it's a variance.

9 Q. Okay. And is it typically the kind of thing by  
10 the time it gets to the board that you chair that  
11 someone is going to go away happy and someone is  
12 going to go away unhappy?

13 A. As in most things, probably so, yes.

14 Q. I'm not trying to be cute about that.

15 A. No. Right. They either are granted the variance  
16 or they are not granted it.

17 Q. And are the disputes the kind that people tend to  
18 invest a lot of emotion, or are they not?

19 A. Sometimes they are, yes.

20 Q. So there can be pitched feelings about these at  
21 times at least?

22 A. Yes.

23 Q. Okay.

24 A. Not often, but sometimes.

25 Q. And the hearing process, of course, you get

1           written submissions before probably a night time  
2           hearing or an evening hearing that you have  
3           occasionally?

4     A.    Yes, mm-hmm.

5     Q.    But that's all published?

6     A.    Yes.

7     Q.    The public is free to come and be heard?

8     A.    Yes.

9     Q.    Sort of municipal government?

10    A.    Correct.

11    Q.    And as a decision making style or process, are  
12       you more comfortable about something where you  
13       expect to hear from both sides?

14    A.    I'm sorry, I don't understand.

15    Q.    In a criminal case, you may not hear as much from  
16       the defense as you do from the prosecution. Do  
17       you know why?

18    A.    No, I don't.

19    Q.    Okay. Are you familiar with the presumption of  
20       innocence?

21    A.    Yes.

22    Q.    Are you familiar with the concept in this country  
23       that the prosecution, the state, the government,  
24       whoever the sovereign is, bears the burden of  
25       proof, beyond a reasonable doubt?

1 A. Yes.

2 Q. And that the defense has no burden of proof?

3 A. Yes.

4 Q. So -- And that's where I'm going, Mrs. Ungrodt.

5 Would you -- You come into this telling us,

6 commendably, I mean with commendable candor, that

7 you think Steve Avery is probably guilty?

8 A. Yes.

9 Q. I'm getting the sense that you are a person that

10 chooses your words carefully?

11 A. I have learned that over the years, yes.

12 Q. So probably was a considered choice when you said

13 probably?

14 A. Yes.

15 Q. And as you come into this thinking Steve Avery is

16 probably guilty, what am I going to have to do or

17 what is he going to have to do to persuade you

18 otherwise?

19 A. I think you just told me he doesn't have to do

20 anything.

21 Q. Yeah, but I'm interested in what you are going to

22 tell me about you as a decision maker. I'm not

23 so interested in the broad platitudes of the law

24 here.

25 A. Okay.

1 Q. I'm interested in learning a little bit about how  
2 you will live with that, or whether you can live  
3 with that, if you are selected to serve on this  
4 jury?

5 A. Live with making a decision, is that what you are  
6 asking?

7 Q. Right. Would you expect to hear from Mr. Avery  
8 in this case if you sat?

9 A. I don't know if he would or not.

10 Q. All right. And I guess, you know, wouldn't an  
11 innocent man testify?

12 A. Not necessarily.

13 Q. Why not?

14 A. As you said, he doesn't have to prove his own  
15 innocence.

16 Q. Right. And that, I'm confident that Judge Willis  
17 will instruct you in words close to that. But  
18 again, let's get into the details as you say.  
19 Why wouldn't an innocent man testify and say I  
20 didn't do it?

21 A. Well, I don't know a reason that wouldn't happen.

22 Q. If Mr. Buting and I, with Mr. Avery, decide not  
23 to call him as a witness; is that something that  
24 will weigh on you particularly here, as you sit  
25 here saying I think he's probably guilty?

1       A. I don't think so. I don't know for sure. I  
2                  would have to, you know, have that happen and see  
3                  how I felt. I can't always predict how I'm going  
4                  to feel about something.

5       Q. And I want you to expand on that a little bit.  
6                  It's a perfectly fair answer. In fact, it's a  
7                  terrific answer saying I don't know as you just  
8                  did. But what's the tug? What's the conflict  
9                  you feel?

10      A. I don't know if -- perhaps if it appeared that  
11                  the prosecution had -- or needed to affirm a  
12                  matter of innocence. I really don't know. I'm  
13                  sorry, I don't know how to answer that, other  
14                  than that.

15      Q. You know, one of the things that -- the way --  
16                  sort of the delicate ways in which our system  
17                  works is that a judge turns over fact finding to  
18                  12 people from the community. I suppose even  
19                  though a judge might think he is just as good a  
20                  fact finder as anyone else. And at the same time  
21                  the 12 people on the jury turn over law finding  
22                  or instruction on the law to the judge, even  
23                  though we all come with ideas about what the law  
24                  is or should be.

25                  And you strike me has a fairly strong

1           personality. Can you, and will you, take  
2           instruction on the law from the Judge even if you  
3           don't necessarily agree with it or wouldn't write  
4           it the same way yourself?

5       A.    Absolutely.

6       Q.    Why?

7       A.    Because I am a firm believer in our laws and  
8           abiding by them and try to, I think.

9       Q.    You came to this area of the state about 35 years  
10          ago --

11      A.    Yes.

12      Q.    -- you said. Were the first years before that  
13          spent in Madison, or in that area?

14      A.    Was in Madison prior to that, yes. And then  
15          Oshkosh after for three years before we moved  
16          here.

17      Q.    Was your husband from this area?

18      A.    No, he is from northern Wisconsin.

19      Q.    In any event, really, Manitowoc County, Kiel is I  
20          think where you have done -- you raised your  
21          children in the main and have lived your life for  
22          35 years. But I also see a lot of connections to  
23          Calumet County in your questionnaire; how did  
24          that come about?

25      A.    Well, part of Kiel lies in Calumet County.

1 Q. Oh, is that right?

2 A. Yes. So it's -- Yes.

3 Q. Okay. It's one of these cities that split?

4 A. A small part of the city is in Calumet County.

5 Q. Okay. And is the library board joint between

6 Calumet and Manitowoc County?

7 A. No. No, we're Manitowoc County.

8 Q. But you are also on the Calumet County Library

9 Board, if I understand?

10 A. Not -- Well, I'm on the Manitowoc County/Calumet

11 County. I'm on the system library board. They

12 have a library system which is two counties,

13 Calumet and Manitowoc.

14 Q. Is combined?

15 A. Right, as a system, yes.

16 Q. I'm sorry, we were going past each other.

17 A. Perhaps I misunderstood.

18 Q. That's what I was asking, so it's a two county

19 system?

20 A. Yes.

21 Q. And Mr. Ungrodt was, for a number of years, the

22 Corporation Counsel of Calumet County?

23 A. Yes.

24 Q. You told us, and it's not a surprise, that you

25 don't remember exactly how many years, but this

1           was more than 10 or something probably?

2   A.   Oh, yes, more than 10 years ago, yes. Or more

3           than 10 years --

4   Q.   In total?

5   A.   -- in Corporation Counsel.

6   Q.   Yes.

7   A.   I would say at least 10 years that he was.

8   Q.   Sure.

9   A.   I could be wrong.

10   Q.   You anticipated my next question which is, you

11           know, do you know remember about how long ago he

12           stopped serving as the Corporation Counsel for

13           Calumet County?

14   A.   It's been a long time. I would say perhaps

15           between 15, or 15 years or more.

16   Q.   But he still enjoys the annual, I assume, bench

17           bar dinner, or something, in Chilton?

18   A.   Yes, he does a lot of work in Calumet County

19           also, so, yes. Belongs to both county bar

20           associations.

21   Q.   And there is an annual dinner in Calumet County,

22           bar association?

23   A.   Yes.

24   Q.   Which is a relatively small bar association I

25           think?

1 A. Yes.

2 Q. I only say that because I have seen a picture on  
3 the wall in the Calumet County Courthouse. So  
4 these gatherings, if you include spouses, do  
5 these tend to be 25 or 30 people?

6 A. I would say 30 at least, but perhaps more. It  
7 depends.

8 Q. Something in that 30, 30 plus range?

9 A. Yes, I believe so.

10 Q. Okay. And Mr. Kratz has been a distinguished  
11 member of that bar association for probably 20,  
12 22 years. Is this an annual sort of thing where  
13 you would bump into Ken Kratz yearly, about, at  
14 the bar dinner?

15 A. Well, with a small number of people you do. See,  
16 I don't know that we've -- Well, of course we  
17 knew who we were, or each other was and --

18 Q. No.

19 A. And it was just as a social gathering.

20 Q. I understand that. And I'm sure, you know, with  
21 even if there's 35 people, you talk to some  
22 people one year and other people the next, I  
23 assume. But, really, you have seen him annually,  
24 at least, for a number of years?

25 A. Yes.

1 Q. And this past late summer, early fall, the two of  
2 you were seated at the same table?

3 A. Correct.

4 Q. Was that by choice or was seating assigned?

5 A. Happenstance, just the way people sat down I  
6 think.

7 Q. Okay. Just where they plopped down. And I'm not  
8 -- It's clear you can't remember the details and  
9 there's no reason you should. But you were  
10 guessing that maybe you said, I have been  
11 summoned for jury duty and with my luck, you  
12 know, I'll wind up --

13 A. Oh, yes. I'm sure I said that, something like  
14 that.

15 Q. And you think you probably made a comment to  
16 Mr. Kratz that this guy was probably guilty?

17 A. I probably did, yes.

18 Q. That was certainly an opinion you held at the  
19 time?

20 A. Yes.

21 Q. Now, I guess I'm curious about what, if any,  
22 follow-up there was from Mr. Kratz to this bit of  
23 conversation?

24 A. I don't -- excuse me -- I don't recall that he  
25 specifically said anything. Probably just looked

1           at me like -- didn't say anything. I don't think  
2           you offered any -- I don't remember if he did.

3 Q.        Okay. Nothing that stands out, in any event?

4 A.        Correct.

5 Q.        When did you -- if you could put your finger on  
6           it approximately, when did you come to the  
7           opinion that Mr. Avery is probably guilty?

8 A.        I don't really know exactly when it was. It had  
9           been almost a year by the time, last fall, and  
10          against my better judgment, I guess I did make a  
11          decision based on what I heard through the media.

12 Q.        Mm-hmm. But you can't now tell me whether that  
13          was back in November of 2005, or March of 2006,  
14          or some other time?

15 A.        No, I'm sorry, I can't.

16 Q.        And your husband still is in the active practice  
17          of law?

18 A.        Yes, he is.

19 Q.        You -- I think you said maybe it was 10 years  
20          that you worked for him as his --

21 A.        Off and on, yes.

22 Q.        I guess that's right, when the kids were home for  
23          the summer.

24 A.        That's when we first moved to the area. So it's  
25          been a long, long time ago?

1 Q. If you were to end up on this jury knowing, as  
2 the Judge just told you, that you would not be  
3 sequestered, or at least presumptively here, the  
4 jury would not be sequestered during the trial;  
5 how would you go six weeks with a husband who is  
6 a lawyer in this area for a long time, and not  
7 talk about the case with him?

8 A. He doesn't talk to me about anything that goes on  
9 in his office. We have never done that with  
10 that. And I'm sure that would not be a problem.  
11 He knows I wouldn't do it, too.

12 Q. Of course. This isn't in his office so he  
13 doesn't have that ethical responsibility. I mean  
14 this is a matter of public comment, to put it  
15 mildly.

16 A. He has as much respect for the system as I do and  
17 I don't think he would ask me anything. He knows  
18 I wouldn't say anything.

19 Q. You -- Mr. Fallon asked you a question or two  
20 about working puzzles?

21 A. Yes.

22 Q. And you allowed as how they are not a passion of  
23 yours, but you might occasionally do that?

24 A. Yes.

25 Q. What is a passion of yours? How do you -- What

1           engages you as a way to spend your time?

2       A. As I probably put in my questionnaire I love to  
3           read and I love to garden, I guess those, and my  
4           family.

5       Q. What drew you to the library board? You are  
6           really on two, because you are on the Kiel City  
7           Library Board.

8       A. Correct. And the county one.

9       Q. What drew you to that work?

10      A. Well, it was I -- because I do read a lot and I  
11           take a lot of library books out and was asked  
12           many years ago by our local librarian if I would  
13           consider being on the county board, which I was  
14           first. And then after that, was on the -- was  
15           appointed by the mayor at that time to be on the  
16           city board.

17      Q. Mm-hmm. What do you read?

18      A. Just about everything except romance novels and  
19           science fiction.

20      Q. Okay. You met Tim Halbach at the most recent bar  
21           dinner that you described, the 2006.

22      A. Yes.

23      Q. Did you know by name, immediately, who he was?

24      A. No, I think my husband told me who he was before  
25           that time.

1 Q. That he was a brother of Teresa Halbach.  
2 A. Yes, that's correct.  
3 Q. And that rang a bell with you?  
4 A. Well, I knew who he was when I met him. And I  
5 was told who he was before I met him.  
6 Q. Before you were introduced?  
7 A. Because I did not know the family.  
8 Q. Okay. So once you were introduced, you knew the  
9 connection?  
10 A. Yes, mm-hmm.  
11 Q. Was this just a passing introduction?  
12 A. Yes. Yes.  
13 Q. Nothing more than that?  
14 A. No conversation, just hello, nice to meet you  
15 type thing, yes.  
16 Q. He -- I mean, I have met him too and he's a nice  
17 young lawyer; would you agree?  
18 A. Yes, I guess so. He seemed a nice person.  
19 Q. I mean, is there a degree of sympathy you feel  
20 for him?  
21 A. I think I would have sympathy for any family  
22 member who has had a tragic thing happen within  
23 their family.  
24 Q. You mentioned, just sort of briefly in your  
25 questionnaire, a minor sort of chronic health

1           problem. Is that something you are comfortable  
2           talking about publicly?

3       A. Sure. It's just sinus -- sinus problems. You  
4           can tell I'm so stuffy now, and it's just, yeah.  
5           Just, yes.

6       Q. And I guess I'm here to tell you that a six week  
7           trial is a bit of a grueling experience, or it  
8           can be, for everyone involved. What -- If  
9           there's anyway you can give us a sense, what's  
10          the likelihood we lose you to an infection or you  
11          really get seriously under the weather during a  
12          six week stretch of the winter?

13      A. I can't answer that. I never know. It just  
14          happens. I get up in the morning and it's there.

15      Q. It's not seasonal?

16      A. It's more in the winter time.

17      Q. Okay. And when it's there, is it incapacitating?

18      A. Pretty much so if I don't have antibiotics to  
19          take right away. The first couple days are  
20          always the worse, yeah, for that.

21      Q. Does getting run down, or being stressed, or  
22          exceptionally busy, get tied to this chronic  
23          problem?

24      A. Not that I'm aware of, but it's possible.

25      Q. But that's all I'm asking is you never noticed,

1           boy, I've been burning the candle at both ends  
2           and now I have got myself a bad sinus infection?

3       A. I have not noticed any correlation between the  
4           two.

5       Q. Okay. Let's say you sit on this jury, in the  
6           end. And just -- Let's just suppose that you  
7           come to the conclusion, after thinking very  
8           carefully about all the evidence at the end, that  
9           the State just hasn't proven one or more charges  
10          against Mr. Avery and that you are duty bound to  
11          vote not guilty on one or more charges, okay?

12      A. Mm-hmm.

13      Q. Let's just hypothetically assume that. How do  
14          you think the community, in which you have lived  
15          for 35 years, would take your not guilty verdict?

16                   ATTORNEY FALLON: Objection, relevance,  
17          appropriate of that question.

18                   THE COURT: As it's phrased, I'm going to  
19          sustain the objection.

20      Q. What I'm trying to get at, Mrs. Ungrodt, is  
21          jurors can get some unwanted attention no matter  
22          what verdict they return. Some of them may want  
23          attention but, you know, jurors in general can  
24          get unwanted attention. And you know, it's no  
25          secret, this case has been highly public, right?

1 A. Yes.

2 Q. Do you think you could handle the social stigma,  
3 or the reaction of people in a relatively small  
4 city, in which you have lived for 35 years?

5 A. Yes.

6 ATTORNEY FALLON: I still object. The  
7 question is, can she follow the requirements of the  
8 law, notwithstanding these other factors. Not  
9 whether -- Not the question as phrased. I object to  
10 the manner in which the question is posed.

11 THE COURT: Well, it's closer to an  
12 acceptable question than the last form was and I  
13 think the juror understood it and gave her answer.  
14 So I'm going to allow it.

15 ATTORNEY FALLON: All right.

16 Q. I'm sorry your answer was?

17 A. I answered yes to your question.

18 Q. Why? Why would you be able to follow the law and  
19 your juror's duty in spite of all that?

20 A. Just the way I am. I would do it. If I feel I  
21 have done something right, then I won't back down  
22 from it.

23 Q. Thank you.

24 A. Yes.

25 **VOIR DIRE EXAMINATION**

1 BY THE COURT:

2 Q. I have a few follow-up questions. I think they  
3 are largely clarification. In answer to a couple  
4 of questions on the questionnaire you indicated,  
5 I believe, as I read your answers, that based on  
6 the news reports that you had heard, you thought  
7 that the defendant was probably guilty --

8 A. Yes.

9 Q. -- is that correct?

10 A. Yes, your Honor.

11 Q. And you also answered yes to the question whether  
12 you would be able to set aside those opinions and  
13 base your decision only on the evidence presented  
14 in court?

15 A. Yes.

16 Q. So you understand that at trial, the defendant  
17 starts off with a clean slate and, in fact, that  
18 you couldn't find him guilty unless you concluded  
19 the State proved it, beyond a reasonable doubt.

20 A. Yes, mm-hmm.

21 Q. So you believe you could set aside the opinion --  
22 The opinion that you had is just based on what  
23 you have heard, but you would not let that affect  
24 your judgment as a juror?

25 A. That's correct.

1 Q. And with respect to Mr. Kratz, do I understand  
2 that your testimony was, or your answers were  
3 that you see him approximately once a year at  
4 this bar dinner?

5 A. I believe that is correct, your Honor, yes.

6 Q. And other than a casual hello plus the exchange  
7 you described to us, that's the extent of your  
8 communication with him?

9 A. Yes.

10 Q. If -- To take off on one of Mr. Strang's  
11 questions, if at the end of trial, based on the  
12 evidence you thought that a not guilty plea -- or  
13 not guilty verdict was warranted, and you voted  
14 not guilty; would you have any problems facing  
15 Mr. Kratz after that, based on whatever your  
16 acquaintance is with him?

17 A. No.

18 THE COURT: All right.

19 ATTORNEY STRANG: I have just a brief  
20 follow up, your Honor.

21 THE COURT: Go ahead.

22 **VOIR DIRE EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q. What have you heard either from the media or your  
25 husband about this case in the last week?

1       A. Nothing, I have avoided everything, just as I was  
2                   instructed to do so.

3                   ATTORNEY STRANG: One question, just like I  
4                   said.

5                   THE COURT: The Clerk will escort you out  
6                   of the courtroom at this time.

7                   Counsel, any motion from either party?

8                   ATTORNEY FALLON: No motion from the State.

9                   ATTORNEY STRANG: I do. I'm going to move  
10                  to strike Ms Ungrodt for cause, your Honor, both  
11                  subject of an objective bias, I guess in the  
12                  framework that the Wisconsin Supreme Court lately  
13                  has given us in the last 10 years or so. I didn't  
14                  like -- Well, they were honest, but I thought the  
15                  answers to the questions about having an opinion as  
16                  she comes into this case were a problem.

17                  She comes in thinking him probably  
18                  guilty, rather than presumably innocent. And  
19                  having learned a little bit more about her  
20                  contact with Mr. Kratz, which of course has been  
21                  perfectly appropriate, although it's a casual  
22                  acquaintance, it's one that's renewed annually,  
23                  or nearly, from the sound of it. And during the  
24                  pendency of this case involved sharing a dinner  
25                  table and raising the topic of this case, at

1                   least briefly, coupled with now having been  
2                   introduced to Tim Halbach.

3                   I think we're just, you know, we're at a  
4                   point here where discretion suggests excusing her  
5                   for cause, given the size of the panel we have  
6                   drawn and the composite issues that her  
7                   questionnaire and this individual voir dire  
8                   process raised. You know, I don't know what to  
9                   make of the chronic sinus problem. But I had  
10                  some concern about that, too. And I will simply  
11                  leave that as it is. The Court heard the same  
12                  thing I did, but I would -- I think on balance  
13                  this is a juror better off excused.

14                  THE COURT: Mr. Fallon.

15                  ATTORNEY FALLON: Thank you, Judge. While  
16                  I'm sensitive to counsel and the Supreme Court  
17                  suggestion regarding the bias issue, I just don't  
18                  really feel, based on the answers by Mrs. Ungrodt,  
19                  that we need to excuse her. Taking them I guess in  
20                  reverse order, starting with subjective bias, she  
21                  indicated that from the media accounts he is  
22                  probably guilty. I think that was the answer to  
23                  question No. 40.

24                  Then with respect to question 42, she  
25                  repeated that same comment. But I think it's

1           significant to point out that from the media  
2           coverage, two things. One, we did have a  
3           judicial determination that he was probably  
4           guilty, and that was clearly reported in the  
5           media. And she, as counsel aptly noted,  
6           carefully chose her words and didn't say he is  
7           guilty, that he was probably guilty. Well, quite  
8           frankly, that's an accurate action statement of  
9           what the procedural posture of the case is.

10           Secondly, but more importantly, with  
11           respect to question 43, and I did ask about it,  
12           perhaps clumsily the first time, but did repeat  
13           it and the Court did repeat it, that she does  
14           strike me as a woman with great respect for the  
15           law and the system, being married to someone who  
16           has chosen this honorable profession for work to  
17           be done. She did participate in the profession  
18           herself, and she said, yes, I can set that  
19           opinion aside and listen to the evidence. As it  
20           were, it was only a probable opinion.

21           So, you know, given her very clear  
22           answers and her respect for the system, I think  
23           we should take the juror at her word when she  
24           says, yeah, I can set that aside, and form my  
25           opinion based on what I hear in court.

1                   With respect to the objective bias  
2                   question, I likewise think there's been, you  
3                   know, an insufficient showing, even giving  
4                   deference, as it were, to the concerns of the  
5                   defense regarding the objective bias argument,  
6                   based on the fact that she, once a year, runs  
7                   into Mr. Kratz. As indicated -- As I listened to  
8                   her, she had no problem voicing her opinions as  
9                   to, well, if the case called for a not guilty  
10                  verdict, or a count called for not guilty  
11                  verdict, I could do it.

12                  And in response the Court's question and  
13                  counsel's question, I don't think she strikes me  
14                  as a woman who's beholdening to anyone, her  
15                  husband, or Mr. Kratz, or Mr. Halbach. Mr. Kratz  
16                  and Mr. Halbach are individuals that she  
17                  occasionally runs into once a year, twice a year  
18                  at best.

19                  So I don't think the objective bias  
20                  argument is appropriate. The objective bias, I  
21                  believe the test is whether or not a reasonable  
22                  or prospective juror's state of mind, whether a  
23                  reasonable juror would be considered biased under  
24                  those circumstances, and based on what we know,  
25                  because the Court is entitled to look at all the

1           facts and circumstances surrounding the  
2           encounter.

3           And I believe the recent objective bias  
4           case out of Milwaukee County is certainly ample  
5           proof of that fact. The case -- and if I can  
6           find it in a moment -- in which an employee of  
7           the Milwaukee County District Attorney's Office  
8           who works out at juvenile court was -- she was an  
9           administrative assistant, was called to serve on  
10          a criminal jury downtown on a felony matter and  
11          was found not to be objectively biased even  
12          though she worked for the same person as the  
13          prosecutor. And that's E. Michael McCann,  
14          District Attorney for Milwaukee County. That's a  
15          Supreme Court opinion in **State vs. Dale Smith**.

16          So when you consider all the facts and  
17          circumstances, acknowledging that it is a mixed  
18          question of law and fact, I don't think there's a  
19          sufficient basis for a determination of objective  
20          bias. Thank you.

21          ATTORNEY STRANG: I will add only to that,  
22          that I think the objective bias question doesn't  
23          stop where counsel has explained it. She worked in  
24          her husband's law office during the time he was  
25          Corporation Counsel for Calumet County. One of his

1           clients there, presumably then, as a matter of  
2           statute in this state, would have been the Calumet  
3           County Sheriff's Office so. And I'm not suggesting  
4           that's a subjective bias issue in this instance, but  
5           I think it, as well, has a bearing on objective  
6           bias.

7           THE COURT: Well, there have been a number  
8           of answers given by this juror, or a number of  
9           subject matter areas that the defense has raised.  
10          Referring to the last one first, I think she said it  
11          was -- she thought it was more than 15 years ago  
12          that her husband was Corporation Counsel for Calumet  
13          County. And I'm not sure, given that long passage  
14          of time, whether one could say that objectively a  
15          person in her position couldn't put that aside and  
16          be impartial.

17          I'm not sure that the defense is arguing  
18          objective bias in that particular issue, but I  
19          don't believe -- I believe, number one,  
20          objectively, someone could and, subjectively, I  
21          believe she indicated she could. And I see no  
22          reason not to believe her on that point.

23          I asked a few follow-up questions of my  
24          own with respect to her connection to Mr. Kratz.  
25          It appears to be of the most casual nature;

1                   namely, once a year at a bar gathering. She  
2                   indicated today that she passed on to Mr. Kratz,  
3                   some months ago, essentially, what she told us  
4                   today, which is that she had been summoned to  
5                   jury duty. She was worried it might be this  
6                   case. And she said she may well have told him  
7                   she thought that the defendant was probably  
8                   guilty, which is consistent with the answers  
9                   given on her plea questionnaire.

10                  She indicated that either Mr. Kratz said  
11                  nothing in return, or if he did, she doesn't  
12                  remember what it is. I don't find that there was  
13                  any meaningful conversation with the two about  
14                  the case. I don't find that there was any  
15                  conversation between the two, other than what she  
16                  related. And I don't believe that very limited  
17                  contact would either make her subjectively or  
18                  objectively biased.

19                  And she indicated specifically, in  
20                  answer to my question, that she would not feel  
21                  any inclination to be worried about facing  
22                  Mr. Kratz if she should find that the evidence  
23                  introduced by the State was insufficient to prove  
24                  guilt of Mr. Avery in this case; that is, she  
25                  could render a not guilty verdict and not feel

1 for any reason that she could not face Mr. Kratz.

2 Her encounter with Tim Halbach was even  
3 briefer than that, apparently. I believe she  
4 said she just met him once. There was no  
5 discussion about this case or the facts involving  
6 the disappearance of Mr. Halbach's sister.

7 Finally, with respect to the answers in  
8 her questionnaire about believing at the time,  
9 based on news reports, that she felt based on  
10 those reports the defendant was probably guilty,  
11 but she also indicated she could set aside that  
12 belief if selected as a juror in this case.

13 I think probably the most helpful  
14 discussion that I could find in Wisconsin case  
15 law that applies here is in the case of **Hammill**  
16 **vs. State**, reported at 89 Wis. 2d, 404. It's a  
17 1979 case and understandably precedes the current  
18 subject -- or statutory bias, subjective bias,  
19 objective bias, differentiation used by the  
20 courts now. But I think the rules as they apply  
21 to the effect on pre-trial publicity and a  
22 juror's ability to be impartial are the same.

23 In that case, the Court quoted from a  
24 United States Supreme Court case in relevant part  
25 as follows: It is not required, however, that

1                   jurors be totally ignorant of the facts and  
2                   issues involved. To hold that the mere existence  
3                   of any preconceived notion as to the guilt or  
4                   innocence of an accused without more is  
5                   sufficient to rebut the presumption of a  
6                   prospective juror's impartiality, would be to  
7                   establish an impossible standard.

8                   I think if a juror gives any inclination  
9                   that they have qualms, hesitations, or wouldn't  
10                  be able to set aside the effects of pre-trial  
11                  publicity, that would be one thing. But this is  
12                  a juror whose husband is an attorney. She  
13                  indicated in her answers that she clearly  
14                  understands the presumption of innocence, the  
15                  need to follow the Judge's instructions.

16                  She indicates she takes that obligation  
17                  very seriously and would be able to follow it.  
18                  And I'm satisfied, based on all her answers, that  
19                  she is neither subjectively or objectively  
20                  biased. Therefore, the Court is going to deny  
21                  the request to excuse her for cause.

22                  THE COURT: The next juror is I believe  
23                  Cherri Haskell, correct? Ms Haskell, if you will  
24                  remain standing, please, we'll have the Clerk  
25                  administer the oath.

1                   THE CLERK: Please raise your right hand.

2                   (Juror sworn.)

3                   THE CLERK: Please be seated.

4                   THE COURT: Ms Haskell, you have already  
5 completed a jury questionnaire in this case. Today  
6 we're going to proceed to the next step of jury  
7 selection which is individual voir dire. Each of  
8 the attorneys will be given an opportunity to ask  
9 you some questions in order to determine whether you  
10 are qualified to sit as a juror in this case.

11                  I have a couple of pieces of information  
12 to pass on to you which were not addressed last  
13 week. First of all, I want to make sure the  
14 jurors understand that the jury in this case is  
15 not going to be sequestered, which means that  
16 although the trial is expected to go on for six  
17 weeks, you will be able to come home at the end  
18 of the session each day and then come back the  
19 following morning.

20                  Our ability to not sequester the jurors  
21 is based on the agreement of the jurors that they  
22 will not listen to any news media accounts of  
23 this case, not read anything, see anything on  
24 television, or look up anything on the internet,  
25 or discuss the case with anyone else either in

1                   your family or otherwise.

2                   I also want to assure you that although  
3                   the proceedings are open, we are not allowing  
4                   cameras in the courtroom during the voir dire  
5                   process. The members of the news media are not  
6                   allowed to identify individual jurors in this  
7                   case. And should you be selected to serve as a  
8                   juror, there will not be any cameras that are  
9                   allowed to show the members of the jury during  
10                  the course of the trial itself.

11                  If you remain on the jury panel after  
12                  questioning today, you will get a telephone call  
13                  in the next couple of days letting you know when  
14                  you are to return to court again. At this point  
15                  then, we'll have the attorneys ask their  
16                  questions. Mr. Fallon.

17                  **VOIR DIRE EXAMINATION**

18                  BY ATTORNEY FALLON:

19                  Q.     Good afternoon, Ms Haskell. My name is Tom  
20                  Fallon. I'm an Assistant Attorney General with  
21                  the Department of Justice, one of the prosecutors  
22                  in the case. To my immediate left is Mr. Ken  
23                  Kratz, the Calumet County District Attorney and  
24                  Special Prosecutor as well. Thank you for coming  
25                  this afternoon.

1                   I have a few questions to follow up on  
2                   the information that you provided last week, so  
3                   bear with me. You indicate that you work for  
4                   your husband at Lakeshore Industrial. I'm not  
5                   from the area, so if you could tell me a little  
6                   bit about what Lakeshore Industrial is and what  
7                   your role as office manager, what kind of things  
8                   do you do?

9                  A. It's just me and my husband. And we build  
10                 lifting cages.

11                 Q. I'm sorry?

12                 A. We build lifting cages that hang from cranes.

13                 Q. Oh, sure. All right.

14                 A. I run the office. I do the -- It's just me and  
15                 him so I do all the sales and everything and  
16                 bookkeeping and he builds the cages.

17                 Q. All right. So it's clearly a family run business  
18                 and you are the only two employees?

19                 A. Yes.

20                 Q. Okay. All right. Well, how long have you been  
21                 engaged in that business?

22                 A. Seven years.

23                 Q. Okay. And through the entire seven years, has it  
24                 just been you and your husband running the  
25                 business?

1 A. Yes.

2 Q. And sole employees of the business?

3 A. Yes.

4 Q. Okay. I note from the questionnaire that you did  
5 not answer yes or no, and based on the  
6 information that you have just given me, I'm  
7 going to reask one of the questions. If this  
8 case does in fact go six weeks, the question is,  
9 is there any reason that has not previously been  
10 ruled on by the Court or why you would suffer any  
11 exceptional personal hardship if you are selected  
12 to serve as a juror in this case?

13 In other words, if there are just the  
14 two of you, is this going to be a problem for you  
15 and your husband if you get selected as a juror  
16 for six weeks?

17 A. It will be tough on him.

18 Q. Well, tell us a little bit about that. Because  
19 if it's going to be a problem, we would probably  
20 like to know that. So is there anyone else who  
21 can pinch hit for you?

22 A. We may be able to find somebody to help out,  
23 yeah.

24 Q. How much of a hardship on the business would it  
25 be if you were selected as a juror?

1 A. Well, he would be taking all the sales calls  
2 while he's trying to do the manufacturing. So he  
3 has to stop what he's doing.

4 Q. So he would be doing the service as well as the  
5 production?

6 A. Yes.

7 Q. Have you contemplated plans for someone to pinch  
8 hit for you, if in fact you are selected?

9 A. Yes, we have asked somebody.

10 Q. Do you have assurances that you will be covered  
11 as best as --

12 A. Not yet.

13 Q. Oh, not yet.

14 A. We thought we would wait and see.

15 Q. All right. Good prospect?

16 A. Hopefully.

17 Q. All right. Thank you. One of the other things  
18 that was somewhat noteworthy about the  
19 information you provided is that you indicated  
20 that you apparently have not been following this  
21 case in the media?

22 A. At first I did and I just haven't lately.

23 Q. All right.

24 A. I'm not much of a news person.

25 Q. How much -- How long ago did you stop paying

1                   attention, as it were; are we talking months?

2   A. Yeah.

3   Q. Last summer or even before that?

4   A. Probably at least six months.

5   Q. At least six months. All right. You indicated  
6       you are not much of a news person. Where, or  
7       primarily, do you get your news sources? Are you  
8       radio, television, T.V., newspaper, if you do get  
9       something?

10   A. I read Sunday's paper.

11   Q. Sunday paper. All right. Do you listen to the  
12      radio at all in your car or at work?

13   A. Yes.

14   Q. Any media coverage of this case that you gleaned  
15      from the radio, that stands out?

16   A. No.

17   Q. All right. In terms of law enforcement, you  
18      answered one question, you have a brother-in-law  
19      that is a sheriff?

20   A. Yes.

21   Q. And where is that?

22   A. In Georgia.

23   Q. Macon, Georgia?

24   A. Yes.

25   Q. Is he the sheriff or is he a deputy?

1 A. He actually does the training for -- for the  
2 sheriffs. He does --

3 ATTORNEY STRANG: I'm having difficulty  
4 hearing the juror with the noise in the back.

5 THE COURT: I'm having the bailiff quiet  
6 the jurors down a bit.

7 A. I will speak up. He's in charge of the training.

8 Q. All right. He's a training officer for the Macon  
9 County Sheriff's Department?

10 A. Yes.

11 Q. All right. Do you consider yourself more of a  
12 detail oriented person or a big picture type of  
13 person?

14 A. Detail.

15 Q. You are a detail person. All right. Would you  
16 consider yourself someone who enjoys working on  
17 puzzles, or not?

18 A. No.

19 Q. Not a puzzle person. No word puzzles, no jigsaw,  
20 no crossword, no nothing?

21 A. (Shakes head. No verbal response.)

22 Q. Okay. Fair enough. Next some, just general  
23 questions. Are you familiar with a project  
24 that's here in Wisconsin called Project  
25 Innocence?

1 A. No.

2 Q. All right. Let me ask, how much of Mr. Avery's

3 background do you know?

4 A. None.

5 Q. None. You have not followed his --

6 A. Just from what I heard in the beginning.

7 Q. Okay. And do you recall what you may have heard

8 in the beginning?

9 A. That he was arrested before and then found

10 guil -- innocent, I'm sorry.

11 Q. He was found guilty and then he was --

12 A. Yeah.

13 Q. -- exonerated.

14 A. Yes.

15 Q. So you are familiar with that?

16 A. Yes.

17 Q. But you haven't really followed his situation or

18 his plight other than that?

19 A. No.

20 Q. Okay. Have either you or your husband ever used

21 a publication such as Auto Trader to sell a car,

22 or buy a car, or anything like that?

23 A. No.

24 Q. Do you like movies?

25 A. Yes.

1 Q. Have you ever seen the movie "The Thin Blue  
2 Line"?

3 A. No.

4 Q. Okay. How long have you been a resident of  
5 Manitowoc County?

6 A. Eight years.

7 Q. And where did you live before that?

8 A. Florida.

9 Q. Florida. In your eight years here in the  
10 Manitowoc area, have you ever had any encounters  
11 with the Sheriff's Department, either in your  
12 business capacity or personal capacity, or  
13 anything like that?

14 A. No.

15 Q. Do you have an opinion now as to whether you  
16 think the Sheriff's Department is doing a good  
17 job with dealing with crime and the public, or  
18 just a fair job, or no opinion?

19 A. I think they do pretty good.

20 Q. Any particular reason that leads you to that  
21 conclusion?

22 A. Compared to living in Florida, they do a real  
23 good job.

24 Q. All right. Where in Florida did you live?

25 A. Orlando.

1 Q. Based on your previous answers, I suspect the  
2 answer to this question is no, but I'll ask  
3 anyways. Do you have any -- you or your husband  
4 have any close friends or relatives who have  
5 worked for or are currently working for the news  
6 industry, working in the media at all?

7 A. No.

8 Q. Before the business -- Well, were you and your  
9 husband engaged in this same business in Florida  
10 or is this something you started once you came to  
11 Manitowoc?

12 A. Just started it when we moved here.

13 Q. What did you do before that, when you were in  
14 Florida?

15 A. He worked for a crane company, welding.

16 Q. And yourself?

17 A. I was in insurance.

18 Q. Insurance agent?

19 A. Not an agent, just clerical.

20 ATTORNEY FALLON: That's all I have.

21 THE COURT: Mr. Strang.

22 **VOIR DIRE EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q. Thank you. Hi. I'm going to pick up on a couple  
25 of questions that you have already been asked,

1           then we'll see where we go from there. You and  
2           your husband have talked about finding somebody  
3           to cover for you if you land on this jury. Would  
4           you guys have to pay that person?

5 A. Yes.

6 Q. Okay. So, I'm not trying to pry into finances,  
7           but is that going to turn out to be a significant  
8           financial difference than the way things are now  
9           for the household or no?

10 A. No.

11 Q. Something you can do without a huge problem?

12 A. Yes.

13 Q. You told us a little bit about Florida and,  
14           specifically, that compared to the Sheriff's  
15           Department around Orlando, the folks here do a  
16           terrific job, or something close to that. What  
17           was your beef, if you will, with law enforcement  
18           down in the Orlando area?

19 A. I didn't have a problem with the law enforcement,  
20           but there was a lot of crime.

21 Q. Oh, in the area in which you lived?

22 A. Yes.

23 Q. Okay. Is that part of the reason why you moved  
24           back up here?

25 A. Yes. We had children, so we wanted to raise them

1 somewhere safe.

2 Q. Mm-hmm. Okay. You're originally from the U.P.;  
3 is that --

4 A. Michigan. Not the U.P., but Michigan.

5 Q. Oh. Okay. I thought it was the Upper Peninsula.  
6 I stand corrected. What do you -- sort of get  
7 back to the publicity that you absorbed or saw  
8 about this case back before you sort of unplugged  
9 or tuned out; what do you remember about Brendan  
10 Dassey?

11 A. I didn't hear much about that.

12 Q. The name ring a bell?

13 A. That he was arrested.

14 Q. Okay. Is he related to Steven Avery?

15 A. Yes, I know that.

16 Q. Do you know how?

17 A. Nephew.

18 Q. And when he got arrested, was that still while  
19 you were sort of following this case a little  
20 bit?

21 A. Yeah.

22 Q. You stopped following it after that. A long time  
23 after or right after or?

24 A. Probably a few months after.

25 Q. And what do you know about -- I mean, other than

1           that he was arrested? What you have you heard or  
2           read about him?

3       A. Well, I just heard that he was involved with it.

4       Q. And how does that -- In your mind, does that have  
5           a bearing on Steve Avery?

6       A. No, I have no opinion on it.

7       Q. Well, but I mean, I think you correctly  
8           identified Brendan as Steve Avery's --

9       A. Yeah.

10      Q. -- nephew.

11      A. Yeah.

12      Q. So does the one case have a bearing on the other?

13      A. No.

14      Q. Why not?

15      A. Well, they are together, but I mean, I don't know  
16           the facts about it.

17      Q. Okay. So do you remember being told Brendan --  
18           or hearing, reading, that Brendan made some  
19           statements, you know, confessions, whatever you  
20           want to call it?

21                   ATTORNEY FALLON: I'm going to object to  
22                   the phrasing of the question.

23                   THE COURT: I will sustain the objection.

24      Q. What do you remember hearing about any statements  
25           Brendan Dassey may have made?

1 A. He just said that he was -- that he did do it,  
2 and he was involved in it, and that Steven  
3 threatened him, I guess.

4 Q. And what does that make you think about Steven  
5 Avery?

6 A. No comment on it. I don't have a comment. I  
7 can't base my fact -- I don't know.

8 Q. When you say you don't have a comment, are you  
9 thinking something but you don't want to tell me,  
10 or you are not thinking?

11 A. I don't really know.

12 Q. Okay. The Judge will, I think, eventually  
13 instruct whoever is on the jury here that in  
14 America a person accused of a crime is presumed  
15 innocent; is that something you have heard  
16 before?

17 A. Yes.

18 Q. Okay. Does that make sense to you?

19 A. Yes.

20 Q. Do you agree with that?

21 A. Yes.

22 Q. You know, given that you have heard at least, or  
23 read something about this case, why would you  
24 presume Mr. Avery innocent?

25 A. I'm not saying that he is.

1 Q. Okay. What do you think?

2 A. I really don't know.

3 Q. But if you were told you had to presume him

4 innocent, why would you do that?

5 A. I can't say if he's innocent or guilty, I really

6 don't know.

7 Q. Could you follow an instruction that told you to

8 presume him innocent?

9 A. I don't understand what you mean.

10 Q. An instruction, that's a lawyer word. If Judge

11 Willis eventually looks at the jury and says, I,

12 the Judge, am instructing you that Mr. Avery,

13 like any criminal defendant in this country, is

14 presumed to be innocent, is that an instruction

15 you think you could honor and follow?

16 A. Yes.

17 Q. If the Judge further told you, here in our

18 country, the State bears the burden of proving

19 someone accused of a crime, guilty beyond a

20 reasonable doubt; is that a concept you have

21 heard before?

22 A. Yes.

23 Q. Is that a rule you could follow?

24 A. Yes.

25 Q. Not just in general, but in this case?

1 A. Yes.

2 Q. And when I say -- You know, you are a detailed  
3 person, let me give you a specific setting. If  
4 the Judge instructed you that Mr. Avery is  
5 presumed innocent and the State bears the burden  
6 of proving him guilty, beyond a reasonable doubt,  
7 if it can and, you know, some juror said, on the  
8 second day of the trial, boy, this guy is guilty  
9 as the day is long; is that something you could  
10 correct the juror, or bring that to the Judge's  
11 attention?

12 ATTORNEY FALLON: Objection.

13 THE COURT: Sustained.

14 A. That I could --

15 Q. Could you honor that -- No --

16 THE COURT: Just a minute, I sustained the  
17 objection.

18 ATTORNEY STRANG: Right.

19 Q. You can't answer that question, so I'm going to  
20 move on.

21 A. I'm sorry.

22 Q. That's okay. It's my fault, not yours. What I'm  
23 trying to get at is whether this is a rule that  
24 you can take to heart, you personally?

25 A. Yes.

1 Q. Do you think that a person charged with a crime  
2 should testify in his own behalf?

3 A. Yes.

4 Q. Why?

5 A. To get their side.

6 Q. Okay. And if the rules turn out to be that the  
7 person can testify if he or she wants to, has a  
8 perfect right to do that, but also does not have  
9 to testify, and if the person chooses not to  
10 testify, the jury is told they can't consider  
11 that; is that a rule you can follow?

12 A. Yes.

13 Q. And I guess why, since we're starting with you  
14 thinking, yeah, he should testify so I get to  
15 hear that side of the story too?

16 A. I didn't understand the question.

17 Q. Why then could you follow a rule that says, nope,  
18 if you only get to hear one side of the story,  
19 the burden of proof still rests with the State  
20 and you can't consider the fact that the  
21 defendant did not testify?

22 A. Then I would have to follow that rule.

23 Q. But if I understood you, your first inclination  
24 would be to want to hear both sides?

25 A. Yes.

1 Q. Can you think of any reasons why an innocent  
2 person might choose not to testify?

3 A. Their words might get twisted.

4 Q. Okay. Okay. How about lawyers, are lawyers  
5 likely to have any affect on that?

6 A. Yes.

7 Q. How so?

8 A. By changing their frame of wording.

9 Q. Okay. So, in other words, the lawyers on the  
10 other side might do that?

11 A. Yes.

12 Q. How about the lawyers on the defendant's side; do  
13 we have any input in that, or affect on whether  
14 somebody testifies or not?

15 A. I don't think so.

16 Q. Okay. And I guess the bottom line is -- Do you  
17 like Mrs. Haskell, or Ms Haskell?

18 A. Mrs.

19 Q. Mrs. Okay. The bottom line is, if for whatever  
20 reason Mr. Buting and I don't call Mr. Avery as a  
21 witness, or he does not testify; can you still  
22 presume him innocent and hold the State to a  
23 burden of proof, beyond a reasonable doubt?

24 ATTORNEY FALLON: That's asked and  
25 answered. She said she could follow the instruction

1                   on presumption of innocence, burden of proof.

2                   THE COURT: She did, but I will allow it.

3                   It's a specific question.

4                   A. Yes, I could.

5                   Q. Let me turn it around. If he decided to testify,  
6                   could you consider his testimony just the same as  
7                   any other witness you would hear?

8                   A. Yes.

9                   Q. You left unanswered one question in your  
10                  questionnaire. It was No. 43, not that you will  
11                  remember that. The question was, if you have  
12                  formed any opinions as to Mr. Avery's guilt or  
13                  innocence, based on information from any source,  
14                  would you be able, should you be selected to  
15                  serve as a juror, to set aside those opinions and  
16                  base your decision only on the evidence presented  
17                  in court and the instruction given you by the  
18                  Judge? So I will ask you.

19                  A. I thought I answered that.

20                  Q. Nope. But the answer is yes?

21                  A. Yes.

22                  Q. Okay.

23                   THE COURT: Actually, in fairness to the  
24                  juror, I should note that the Court didn't artfully  
25                  word that because it starts out saying, if you

1                   formed any opinions, so if the juror hasn't formed  
2                   any maybe they would feel they didn't have to answer  
3                   that one.

4                   ATTORNEY STRANG: Thank you much. That's  
5                   all I've got.

6                   THE COURT: All right. The Clerk will  
7                   escort you out of the courtroom at this time, Ms  
8                   Haskell.

9                   Counsel, any motion from either party?

10                  ATTORNEY FALLON: No motion from the State.

11                  ATTORNEY STRANG: I have no motion specific  
12                  as to that juror. But I do need to be heard before  
13                  we bring in the next juror.

14                  THE COURT: All right. Ms Haskell will be  
15                  in then and we can wait a minute before bringing in  
16                  the next one.

17                  ATTORNEY STRANG: I have encountered from  
18                  the State a number of objections to questions of  
19                  mine on individual voir dire that I regard not only  
20                  as proper and unexceptionable, but necessary here.  
21                  Probably not phrased in a sterile way, but there is  
22                  no requirement of which I'm aware of that sterility  
23                  control the process of individual voir dire or  
24                  general voir dire.

25                  And I need to air out just exactly what

1 parameters the Court thinks I'm invading, or what  
2 the objections are so that we can deal with that.  
3 Because my voir dire here is being hampered  
4 materially.

5 ATTORNEY FALLON: I understand where  
6 counsel is coming from and it's not something that I  
7 ordinarily object to. Here are my only two concerns  
8 or complaints. One, I just don't think it's fair to  
9 interject facts, for instance, regarding what the  
10 juror should know about the past. The question is  
11 what do they know about the past.

12 You know, constantly interjecting  
13 opinions about, well, he testified in the first  
14 case and he was found guilty and shouldn't have  
15 been, and what if he doesn't testify in this  
16 case; I mean, that's conditioning of the jury.  
17 That's one set of questions that I do strongly  
18 take exception to, the introduction of facts as  
19 opposed to let's find out from them what they  
20 think the facts are, or what they know the facts  
21 to be.

22 The other questions regarding the  
23 presumption of innocence and the burden of proof  
24 and it -- I understand exactly where he's going  
25 to and most of it I don't object to. My problem

1           is it is in the wording. Because the presumption  
2           of innocence, the real essence is -- well, can  
3           you take it to heart, or do you believe in it.  
4           Well, that's nice, and it might be helpful, but  
5           the real question is, can you accept it and will  
6           you follow it. That's the essence of it.

7           And whether they are going to get warm  
8           and fuzzy over it, is not the issue here. And so  
9           I understand completely where counsel is going.  
10          And I emphasize with that. I just object to the  
11          phrasing on those issues. Because they are  
12          important. They are certainly entitled to know  
13          that information. My objection there is strictly  
14          the way they are being approached and asked.

15          ATTORNEY STRANG: Well, with all due  
16          respect, the question whether a juror can or will  
17          follow a legal rule satisfies the issue of cause to  
18          excuse them. And the question of what a juror  
19          believes, what a juror accepts, how a juror reacts  
20          to propositions, is this something that sticks in  
21          the craw, or something that makes the juror want to  
22          stand up and wave an American flag, is exactly the  
23          sort of thing that goes to the second purpose of  
24          voir dire, which is the intelligent exercise of a  
25          peremptory strike.

1                   And it's also entirely appropriate in  
2                   this case or any other, to give some concrete  
3                   meaning to an abstraction like the presumption of  
4                   innocence. Because here that means they got the  
5                   wrong guy. That means he didn't do it. That's  
6                   what I'm presuming or I'm asking a juror to  
7                   presume and I have a right to have them presume.

8                   So to get them talking and get some  
9                   sense of what it is these people really believe,  
10                  and what it is they will simply live with a  
11                  bridal on or not spit out the bit, is the essence  
12                  of what we're trying to do in deciding how to  
13                  exercise but seven peremptory strikes.

14                  THE COURT: Well, I'm not sure how I can  
15                  respond precisely to comments that relate to a  
16                  variety of objections, some of which I have  
17                  sustained, some of which I have overruled. I recall  
18                  a couple of the questions related to something  
19                  involving the defendant testifying at the 1985 case.  
20                  It's not immediately apparent to me why that would  
21                  be relevant to this case. I don't think it's  
22                  something necessarily that the jury is going to  
23                  hear.

24                  I have to confess it hasn't been the  
25                  subject of any pretrial motions and perhaps

1           there's an explanation I haven't heard yet, but  
2           to the extent that the questions start getting  
3           into specific evidence, especially evidence that  
4           the jury may or may not hear, the Court is going  
5           to be reluctant to allow those types of  
6           questions.

7           In other cases, the Court sustained the  
8           objection simply based on the phrasing of the  
9           question. And I don't think I can give you any  
10          advance indication as to whether or not I might  
11          sustain or overrule any other objection, other  
12          than to make those comments.

13          I agree that the -- both parties are  
14          entitled to some flexibility in order to draw out  
15          the juror and get an honest answer to questions  
16          that are directly relevant to determining whether  
17          or not the jury can be impartial. But once the  
18          parties start getting into hypothetical  
19          questions, or questions that might be somewhat  
20          misleading, I will sustain objections.

21          ATTORNEY STRANG: Well, of course, the fact  
22          that he testified in 1985 and was convicted all the  
23          same, is not at all hypothetical. And it's a  
24          wonderful specific concrete example that may bring  
25          home to a juror the importance of this rule that we

1 have, that one has a privilege not to testify in a  
2 criminal case, if you're the accused. And innocent  
3 people well might choose to do that for good  
4 reasons.

5 THE COURT: Well, that's true, but it's not  
6 necessary to ask the question in this case and it is  
7 something that may well be determined to be  
8 irrelevant evidence if it was attempted to be  
9 introduced in trial. And I just don't see the  
10 necessity or reason for it.

11 ATTORNEY STRANG: Well, the reason is that  
12 we've got -- I don't know, I can't give the Court a  
13 number right now. But we have several jurors who  
14 wrote on their questionnaires, I need to hear the  
15 defendant, or an innocent man would testify, words  
16 to that effect. We have got jurors who have written  
17 down that opinion, and jurors -- I should say  
18 prospective jurors, panel members. And my guess,  
19 knowing human nature, is that for everyone who has  
20 written it down, there are three or four who believe  
21 it and haven't written it down. And I clearly am in  
22 a position, representing someone who may not testify  
23 in this case.

24 THE COURT: Don't get me wrong, I'm not  
25 saying that you can't ask questions that are meant

1 to ask the jury if they can accept our rule that the  
2 defendant doesn't have to testify. But I don't  
3 think it's necessary to tell the jurors, and  
4 Mr. Avery did testify in his 1985 case in order to  
5 drive home the point. That's what I'm saying.

6 ATTORNEY FALLON: And, you know, just an  
7 example, then if counsel wants to ask the question,  
8 well, can you think of any reasons why the person  
9 wouldn't want to testify and, you know, we have the  
10 advice of counsel, we have the inartful speaker, and  
11 perhaps a few others things they would like to  
12 suggest. Does that mean that I get to say, well,  
13 what do you think of the fact that he has got six  
14 inconsistent statements about what he did in the  
15 first eight days of this investigation. What about  
16 the fact that he has a felony record. I mean, I can  
17 play that routine too, but I don't want to. I don't  
18 think it's appropriate. I just think we're opening  
19 a box here.

20 THE COURT: Well, I agree that if the  
21 questions go too far in that regard, I would stop  
22 them. If a juror says, no, I can't think of any  
23 reason why the defendant wouldn't want to testify,  
24 that doesn't necessarily make the juror unqualified.  
25 It just may mean that the juror can't come up with a

1 specific reason.

2 But as long as the question is brief.

3 It probably -- There are a number of jurors, and  
4 it's not just this trial, it's any criminal  
5 trial, will get up and say, yeah, I think the  
6 defendant should testify, so I can hear the  
7 defendant's side of the story. The defense is  
8 entitled to a brief education to explain to the  
9 jury why our rules don't require that. And as  
10 long as the time isn't abused, I'm going to allow  
11 it.

12 ATTORNEY FALLON: I don't have any  
13 objection to that.

14 THE COURT: Diane, can you do another one  
15 before we take our break? How are you doing?

16 COURT REPORTER: I think we can take our  
17 break.

18 THE COURT: All right. Let's take our  
19 break. We'll resume in 15 minutes, 25 to 3.

20 (Recess taken.)

21 THE COURT: The next juror is John Carbon,  
22 correct?

23 ATTORNEY FALLON: Correct.

24 THE COURT: Mr. Carbon, if you can remain  
25 standing, the Clerk will administer the oath.

1           Please stand.

2           THE CLERK:   Raise your right hand.

3                         (Juror sworn.)

4           THE CLERK:   Please be seated.

5           THE COURT:   Mr. Carbon, you have already  
6                         completed a questionnaire in this case. This  
7                         afternoon we're moving on to the second step of jury  
8                         selection which is individual voir dire. The  
9                         attorneys will each have a chance to ask you some  
10                        questions this afternoon.

11                  Before we proceed, I wanted to tell you  
12                       a few things that I didn't tell you last week.  
13                  First of all, the jurors in this case are not  
14                       going to be sequestered. That means if you are  
15                       selected on the jury, you are going to be able to  
16                       go home and sleep at home every day. And we're  
17                       doing that because we received a commitment from  
18                       the jurors not to listen to any news media  
19                       accounts of this matter, watch any television,  
20                       read any newspapers, or explore it on the  
21                       internet, or discuss it in any way with anyone.

22                  I also want you to know that although  
23                       these proceedings are open to the public, we  
24                       don't permit television cameras in the courtroom  
25                       during the voir dire process and the press is not

allowed to identify individual jurors by their names in news reports. And finally, for those jurors who are selected to serve on the jury in this case, the cameras are not permitted to show the faces of the jurors at the trial.

6                   If you are -- If you continue on the  
7                   jury after questioning today, you will receive  
8                   instructions by telephone when to return later  
9                   this week. With that background then, Mr.  
10                  Fallon, you may begin your questioning.

## **VOIR DIRE EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q. Good afternoon, sir.

14 A. Good afternoon.

15 Q. Is it Carbon or Carbon.

16 A. Carbon.

17 Q. Carbon. Thanks for coming. I just have a few  
18 questions to follow up on some of the information  
19 you provided last week. My name is Tom Fallon.  
20 I'm an Assistant Attorney General with the  
21 Wisconsin Department of Justice and I'm assisting  
22 the prosecutors in this case. All right.

23                           Mr. Carbon, I noted from your  
24                           information here that -- I take it you were a  
25                           brake press operator?

1 A. Right.

2 Q. Are you currently retired?

3 A. Yes, I am.

4 Q. And how long have you been retired, sir?

5 A. 2002, May 31st.

6 Q. 2002.

7 A. Right.

8 Q. Okay. And where did you work when you --

9 A. Invincible.

10 Q. Invincible.

11 A. Yes.

12 Q. All right. And how long did you work for them?

13 A. Thirty-five years.

14 Q. Were you a brake press operator all that time?

15 A. Yes, I was.

16 Q. Okay. One of the other things that you reported,

17 I take it that you are not much of a newshound?

18 A. No, I'm not.

19 Q. All right. And most of the news that you do get,

20 it seems to be you have a preference for

21 television news?

22 A. That's right.

23 Q. All right. You are not much of a newspaper or

24 magazine guy?

25 A. No.

1 Q. All right. Yet, you report that you have not  
2 received much publicity in this case, or at least  
3 much that you remember. Is it because you just  
4 haven't followed this case?

5 A. Well, I have no interest in it so far.

6 Q. Okay. Fair enough. As a result, you don't have  
7 any opinions as to the guilt or innocence of Mr.  
8 Avery or anybody else?

9 A. No, I don't.

10 Q. All right. If you were selected as a juror in  
11 this particular case, is there any hardship,  
12 economic or health-wise that may --

13 A. None whatsoever.

14 Q. None whatsoever. So you are feeling pretty good?

15 A. Yes, I am.

16 Q. Very good. You indicated in your report that you  
17 would be able to follow any instructions that  
18 Judge Willis gave you and apply that?

19 A. Yes, I would.

20 Q. All right. And you would, if you were selected,  
21 base your opinion as to the guilt or innocence of  
22 Mr. Avery solely on what you hear in court; is  
23 that right?

24 A. Yes.

25 Q. All right. In other words, whatever evidence

1           that the State may present, or the defense  
2           presents, whatever occurs in the courtroom is  
3           what you would base your opinion on and nothing  
4           else?

5       A. Right.

6       Q. All right. And you would be able to accept the  
7           Court telling you that Mr. Avery is presumed  
8           innocent and unless or until the State can  
9           convince you otherwise?

10      A. Right.

11      Q. All right. And you would be able to follow that?

12      A. I sure would.

13      Q. Okay. And you understand that Mr. Avery doesn't  
14           have to take the stand or testify?

15      A. Right.

16      Q. All right. And you wouldn't hold that against  
17           him if he did?

18      A. No, I would not.

19      Q. All right.

20      A. That's his privilege.

21      Q. All right. Similarly, if he did take the stand  
22           and decide to provide some information to the  
23           jury, you would evaluate his believability the  
24           same way you would any other witness?

25      A. Yes, I would.

1 Q. All right. Now, do you have any close friends or  
2 relatives who are working in the media or have  
3 recently worked in the news industry?

4 A. No, I don't.

5 Q. No. All right. Do you have a computer at home,  
6 sir?

7 A. No, I don't.

8 Q. All right. And as I recall, you do not have any  
9 prior jury experience; is that right?

10 A. No, I don't.

11 Q. Okay. As you think about this particular case  
12 and the possibility that you would be selected as  
13 a juror, is there anything in your background,  
14 any personal philosophes or religious beliefs, or  
15 anything of that nature which might cause you  
16 some concern in terms of being a juror?

17 A. No.

18 Q. All right. You would have no problem  
19 deliberating in determining guilt or innocence?

20 A. Not one bit.

21 Q. Okay. In your capacity as a brake press operator  
22 at Invincible, did you ever, or were you ever  
23 involved in any security matters with the company  
24 or the shop?

25 A. No, I was not.

1 Q. Not your area of expertise?

2 A. No.

3 Q. Okay. Excuse me. Since you didn't or haven't  
4 followed this case very closely in the media, do  
5 you have any strong recollections about anything  
6 that you may have heard at this time?

7 A. No, I don't.

8 Q. Okay. How long have you been a resident or  
9 member of Manitowoc County, sir?

10 A. 1960 I moved into Manitowoc.

11 Q. Okay. 1960.

12 A. I was born in Branch. I lived out there for 21  
13 years and I'm 67 so.

14 Q. I'm sorry? You were born where?

15 A. Born in Branch. And I lived in Branch until I  
16 was 21.

17 Q. Very good. All right. So you have a fair amount  
18 of experience. Do you think the Sheriff's  
19 Department is doing a good job, bad job, or fair  
20 job, or no job at all, in terms of dealing with  
21 crime?

22 A. I think they are doing okay.

23 Q. Doing all right?

24 A. Sure.

25 Q. Do you have any strong opinions regarding your

1                   experience with law enforcement?

2 A. No, I don't.

3 Q. All right. Have you had any encounters with law  
4 enforcement?

5 A. No.

6 Q. Okay. Any family members or any friends have any  
7 bad experiences that they shared with you?

8 A. No, they haven't.

9 Q. Okay.

10                   ATTORNEY FALLON: That's all I have for  
11 this witness.

12                   THE COURT: All right. Mr. Buting.

13                   ATTORNEY BUTING: Thank you, Judge.

14                   **VOIR DIRE EXAMINATION**

15 BY ATTORNEY BUTING:

16 Q. Good afternoon, Mr. Carbon.

17 A. Good afternoon.

18 Q. My name is Jerome Buting, and Dean Strang and I  
19 are defending Mr. Avery, I assume you understand  
20 that.

21 A. Okay.

22 Q. Let me ask you, now you are retired for the last  
23 three years, four years?

24 A. Four.

25 Q. Okay. And you stay here year round?

1 A. Yes, I do.

2 Q. What do you generally do with your day?

3 A. I go for walks and I watch the boob tube.

4 Q. Okay. Do you have friends you socialize with,

5 get together and --

6 A. Oh, we go to the bar once a week and play

7 cribbage.

8 Q. Okay. And are they friends you had for a long

9 time?

10 A. Oh, yes.

11 Q. Okay. Good friends?

12 A. Yes.

13 Q. Okay. And you say you watch a fair amount of TV?

14 A. Yes, I do.

15 Q. During the day and in the evening as well,

16 probably?

17 A. Basketball, football, stuff like that.

18 Q. So does this -- As you are socializing with your

19 friends, did this case ever come up in any

20 discussions, like, hey, did you hear about this

21 or that or what do you think about --

22 A. Not really.

23 Q. Do you remember when it was charged originally?

24 A. I think it was a couple years ago. I don't

25 remember.

1 Q. Okay. Can you tell me what it was you recall  
2 hearing when it was first charged?

3 A. Just that he was accused of murdering Ms Halbach.

4 Q. And at some point did you later hear news reports  
5 about another person who was also charged?

6 A. No, I haven't.

7 Q. Never heard about a nephew.

8 A. Oh, yes, yes, young Dassey.

9 Q. Brendan Dassey.

10 A. Yes.

11 Q. Brendan Dassey.

12 A. Yes, I'm sorry.

13 Q. Where did you hear about that; did you see that  
14 on TV?

15 A. That was on TV also.

16 Q. Okay. Did you see the press conference that was  
17 on TV for that?

18 A. No, I haven't.

19 Q. You know what I mean by press conference with --

20 A. I haven't. That I haven't seen.

21 Q. Okay.

22 A. I couldn't have had the TV on at the time. I  
23 don't know.

24 Q. Okay. But you recall seeing something on TV  
25 about it?

1 A. Yes, I did.

2 Q. What do you recall learning about it, the

3 details? What do you remember?

4 A. Just that they were supposed to have stabbed her,

5 mutilated her. That's about the only thing I

6 remember.

7 Q. And did you -- What did you think when you heard

8 that story; was it a pretty graphic detail?

9 A. Yes, it was.

10 Q. Did it bother you to hear those?

11 A. Yes, it did.

12 Q. Did you believe it to be true?

13 A. I don't know if it's true or not.

14 Q. But when you initially heard that, did you just

15 assume, well, it must be true?

16 A. Not really. Not really.

17 Q. Did you think otherwise? Did you think, well,

18 this is kind of a strange story, I'm not sure

19 this really makes sense?

20 A. I don't know if it makes sense or not, you know,

21 I really don't know.

22 Q. Okay. Did you -- Did it have any affect on the

23 way you thought, or do you think it had any

24 affect on whatever feeling or opinion you might

25 have had about Steven Avery as opposed to Brendan

1           Dassey?

2       A. Not really.

3       Q. Do you recall any details about him being  
4           involved, that is, Steven Avery being involved,  
5           according to Brendan Dassey's first statement?

6       A. Just through the news media and that was about  
7           it.

8       Q. Right. So, in that news media though, you  
9           learned a story of what this young man apparently  
10          initially said, right?

11      A. Yes.

12      Q. Okay. And through the news media, have you ever  
13          heard any other versions of it since then, any  
14          differences in that story?

15      A. No, I haven't.

16      Q. Have you ever heard whether or not the young man,  
17          Brendan Dassey, has since tried to take back that  
18          story, had to change the story, or anything of  
19          that sort?

20      A. No.

21      Q. Just never heard any of that? What about through  
22          talking with your friends?

23      A. We don't even bring it -- discuss it, my friends.

24      Q. Okay. After having heard all that you did hear,  
25          though, pretty graphic details, as you see

1           Mr. Avery sitting here today, do you really think  
2           you think you can give him the presumption of  
3           innocence?

4       A. I really don't know, sir.

5       Q. Be kind of hard?

6       A. I don't know if he's innocent or guilty. I have  
7           no idea.

8       Q. Well, if -- the Judge will instruct you that when  
9           any defendant, including Mr. Avery, comes to  
10          court here, at the beginning of his trial, he's  
11          presumed innocent.

12      A. That's true.

13      Q. No matter what you may have heard in the news?

14      A. That's true.

15      Q. Do you think sometimes things you hear in the  
16          news aren't true?

17      A. Oh, yeah, and I imagine some things in the paper  
18          aren't true.

19      Q. Okay. Would that be true for television as well?

20      A. Yes.

21      Q. Because you primarily get your news from  
22          television; is that right?

23      A. Right.

24      Q. Okay. And you understand that generally the  
25          defense doesn't get to answer the charges that a

1           prosecutor brings until the trial? A lot of  
2           times you don't hear the other side until a  
3           trial?

4       A. Okay. I didn't know that.

5       Q. Okay. Did you think the defense should be  
6           calling press conferences and responding to it?

7       A. Not really.

8       Q. The fact that you haven't heard any press  
9           conference from the defense, or defense  
10          attorneys, that, you know, publicly, not only  
11          deny the charge but, you know, pick it apart  
12          piece by piece; does that have any affect on you?

13      A. No, it doesn't.

14      Q. Do you think that the defense needs to  
15          demonstrate here in court, prove to you why  
16          Mr. Avery is not guilty of this charge?

17      A. I think so.

18      Q. Why do you think so?

19      A. Because he has got to prove his innocence.

20      Q. He does?

21      A. Yes.

22      Q. Why is that?

23      A. Right now he is charged with murder.

24      Q. Okay. So you think if somebody like Mr. Avery is  
25          charged with murder, something so serious and all

1           the details that you did hear at one point, it's  
2           really necessary for him to now prove that he is  
3           not guilty; is that what you are saying?

4       A. I would think so.

5       Q. Well, do you feel pretty strongly about that?

6       A. Yes, I do.

7       Q. Why?

8       A. He's just got to prove his innocence.

9       Q. Do you also think that that means that he should  
10          take the witness stand and testify and present  
11          his side of it?

12      A. I think that's up to him if he wants to testify.

13      Q. So that's different, you feel differently about  
14          that part of it?

15      A. Yes.

16      Q. You don't feel that in order to prove that he is  
17          innocent he would have to testify; is that right?

18      A. That's right.

19      Q. What if he did testify, would you think maybe he  
20          is just up there trying to save his own skin, and  
21          say whatever he wants, or whatever he needs to?

22      A. No, I don't think so.

23      Q. Why not?

24      A. Well, he's trying to prove that he's innocent,  
25          that's why he took the stand.

1 Q. Okay. You know, either way it goes is a tough  
2 decision, whether you take the witness stand or  
3 not. And, you know, defense attorneys always  
4 struggle with that decision, whether they should  
5 advise their client to do it or not, take it one  
6 way or the other. And can you promise me that if  
7 you are on this jury, you are not going to hold  
8 it against him either way, whether he does  
9 testify or doesn't?

10 A. That's right, I will promise that.

11 Q. Okay. Where do you get together and play  
12 cribbage?

13 A. Do I have to say the bar?

14 Q. Sure.

15 A. Saucy's.

16 Q. Saucy's.

17 A. Yes.

18 Q. And that's where, in Manitowoc?

19 A. Yes, up on Washington Street.

20 Q. Okay.

21 A. It's also a sports bar.

22 Q. Okay. Is that something you do pretty much every  
23 day?

24 A. No, just on Wednesdays.

25 Q. Just Wednesdays. Okay. During the day, or

1                   evening, or both?

2       A. 9:30 it starts. But now we haven't for the last

3                   three weeks because there wasn't enough players.

4                   You have to have at least four players.

5       Q. 9:30, in the evening?

6       A. Morning.

7       Q. Morning, I see.

8       A. 9:30, I'm in bed.

9       Q. Okay. I try to be, but it doesn't work out that

10                  way. What television channels do you usually

11                  watch?

12      A. Channel 11. And in the morning, I think 4:30, if

13                  I get up early, I watch Channel 5 or 7. Very

14                  seldom 2.

15      Q. Seldom 2, but the other 3?

16      A. Yeah, 11, 5 and 7.

17      Q. Okay.

18      A. Or 26, I believe it is.

19      Q. And is it -- You mentioned getting up in the

20                  morning and watching something, is it -- do you

21                  often have -- Are you often home in the evenings

22                  like 6:00, 5:00?

23      A. Sure am.

24      Q. Okay. Is the TV often on?

25      A. It's on, yes.

1 Q. And is it -- At that time of day, usually those  
2 channels have local news or half our news  
3 broadcast.

4 A. Not at 4:30 in the morning. It's usually world  
5 news.

6 Q. Okay. But I mean in the evening, I'm talking  
7 about?

8 A. Oh, yes.

9 Q. 5 or 6:00.

10 A. Local news, yes.

11 Q. So that's usually on in your house? The news is  
12 on?

13 A. Yes.

14 Q. But you don't pay much attention to it, or do  
15 you?

16 A. No. Sometimes I'm in the kitchen making a  
17 sandwich or something, or a bowl of soup.

18 Q. Okay. Do you think if Mr. Avery should try and  
19 prove that he's innocent of this charge; do you  
20 think that means that he would have to prove to  
21 you who really did it? If he didn't do it, who  
22 did?

23 A. Not really. But that's why he's taking the stand  
24 on his own behalf, to see if he can prove his  
25 innocence, I would think.

1 Q. Well, is there any way he could prove his  
2 innocence if he didn't take the witness stand?

3 A. If he had more witnesses, yes.

4 Q. Okay. So if he had a case, or maybe through  
5 questioning -- cross-examination of the State's  
6 witnesses, bringing out information that way?

7 A. Sure.

8 Q. Okay. So you do think it would be possible for  
9 him to convince you that he's innocent even  
10 without him testifying?

11 A. Yes.

12 Q. Okay. Do you think it would be possible to  
13 convince you of that if he couldn't also tell you  
14 who did do this horrible crime?

15 A. That would be hard.

16 Q. It would be hard to convince you unless you knew  
17 that someone else -- unless he showed you who did  
18 it?

19 A. Yes, or could prove it.

20 Q. Well, let me ask you this. If somebody is  
21 innocent of a crime and they didn't do it, and  
22 they don't have the police to go investigate; how  
23 would somebody solve the crime? How could you  
24 expect a defendant like Mr. Avery to solve the  
25 crime and prove who did do it?

- 1 A. That would be hard to say.
- 2 Q. I mean, do you think that someone could do that?
- 3 Is that something you really think a defendant
- 4 would be able to do?
- 5 A. If it's -- Yeah, I think so. I think if he wants
- 6 to prove himself innocent, he would go looking
- 7 for somebody that -- or a possible killer.
- 8 That's my opinion.
- 9 Q. Okay. But do you believe that -- or would you
- 10 hold Mr. Avery to that burden and say, hey, you
- 11 know, I'm sorry, if you can't show me who else
- 12 did it, if it's not you, then I'm going to have
- 13 to say you did it, you are guilty?
- 14 A. Not really.
- 15 Q. No? I mean, do you think it's possible that you
- 16 could be convinced that Mr. Avery is not guilty,
- 17 beyond a reasonable doubt?
- 18 A. Sure.
- 19 Q. Without really knowing who is the guilty party?
- 20 A. I think so.
- 21 Q. You could?
- 22 A. Sure.
- 23 Q. Why? You seem to say something other than that a
- 24 few minutes ago?
- 25 A. Well, I don't want to contradict myself.

1 Q. Yeah, well, that's okay. We're just talking  
2 here. You are just being honest. Why do you  
3 think that now it is possible?

4 A. Will you repeat the question, please.

5 Q. Do you think that it would be possible for you to  
6 come back and find Mr. Avery not guilty, if he  
7 wasn't able to prove to your satisfaction, who  
8 really is the murderer?

9 A. I think I could.

10 Q. Pardon me?

11 A. I think so. I don't know.

12 Q. Well, think about it. Do you really think that  
13 he -- if I understand you, you are telling me  
14 that you won't be able to find him not guilty  
15 unless he can also prove to you -- solve the  
16 crime, who else did it?

17 A. It's so darn hard to say.

18 Q. All right. Now, you have been in the area for  
19 quite some time; do you know where the Avery  
20 Salvage Yard is?

21 A. No, I don't.

22 Q. Have you ever been there?

23 A. No.

24 Q. Have you ever met any of the Avery's?

25 A. No, I haven't.

1 Q. Chuck Avery, for instance?

2 A. No.

3 Q. Don't know him from Adam?

4 A. No.

5 Q. Do you know, have you ever talked to anybody  
6 about this case and told them that you thought  
7 Steven Avery was guilty?

8 A. No, I haven't.

9 Q. Okay. Now, I think you said you have never had  
10 any -- any encounters with the police at all; is  
11 that right? In all your years, you have never  
12 had a ticket even?

13 A. Oh, sure. I have got picked up for drunken  
14 driving.

15 Q. Okay. One time?

16 A. Twice.

17 Q. Twice. Okay. What was your experience like with  
18 the officers in that instance?

19 A. Very good.

20 Q. Fine, no problems with it?

21 A. Not a bit.

22 Q. Did you feel like you were treated fairly the  
23 whole way?

24 A. Yes, I was.

25 Q. Did you plead guilty or go to trial?

1 A. I pleaded guilty.

2 Q. Okay. Because you felt you were guilty, right?

3 A. Yes, I did.

4 Q. If you thought you were not guilty, would you  
5 have gone to trial?

6 A. Yes, I would have.

7 Q. Do you think police officers are -- when they  
8 take the witness stand in a case and take an oath  
9 to swear to tell the truth; do you think that  
10 they are more or less likely than the ordinary  
11 person to really honor that oath and tell the  
12 truth?

13 A. I think so.

14 Q. Let me rephrase that. Do you think that the  
15 police are more likely to be telling the truth  
16 when they take the witness stand than the  
17 ordinary witness, just because they are police?

18 A. Well, that's what they are hired for, to take the  
19 oath, to tell the truth, isn't it?

20 Q. Well, they are hired to --

21 A. To protect the law.

22 Q. Sure. Okay. Can you -- Have you ever heard of  
23 or can you conceive of any situations where maybe  
24 police officers may not tell the truth under  
25 oath?

1 A. No, I haven't. I never been to a trial, so I  
2 wouldn't know.

3 Q. Okay. But do you think -- Can you consider the  
4 possibility that that may occur?

5 A. That might hurt?

6 Q. That may occur. That sometimes police officers  
7 may not follow the oath?

8 A. I don't think so.

9 Q. You don't think so.

10 A. No, because it could be perjury.

11 Q. Okay. What about ordinary people that come in,  
12 ordinary persons, people like yourself, do you  
13 think if they come in and -- into a trial, take  
14 the oath to swear the truth; do you think that  
15 they will always tell truth?

16 A. No, I think they could fib a little bit.

17 Q. They can fib?

18 A. Yes, I do.

19 Q. Okay. But wouldn't that be perjury too?

20 A. Yes, it would.

21 Q. So -- But you think an ordinary person might be  
22 able to do that, actually perjure themselves, but  
23 police officers would not?

24 A. I think so. Yes.

25 Q. Why is that?

1 A. I just feel strongly for that. Because a police  
2 officer, he don't want to lose his job.

3 Q. Okay.

4 A. A regular citizen doesn't care. That's my  
5 opinion.

6 Q. Okay. Now, if the Judge instructed you, though,  
7 that under the law you have to judge a police  
8 officer's testimony exactly the same way as any  
9 other witness, and you can't give any greater  
10 weight to the fact that they are police officers  
11 in determining whether or not they are telling  
12 the truth; do you think you would be able to do  
13 that?

14 A. I think so.

15 Q. Why? How could you put aside those feelings you  
16 just said and judge them just like any other  
17 witness?

18 A. I really don't know about that one.

19 Q. Would have a hard time doing that?

20 A. Yes.

21 Q. That's because you feel very strongly that police  
22 officers really wouldn't lie; is that it?

23 A. Well, they shouldn't.

24 Q. Okay. That's fine. I appreciate your honesty.  
25 One last area I want to just ask you about,

1           briefly. Do you know anything about Mr. Avery's  
2           background?

3       A. No, I do not. Not a bit.

4       Q. Do you know anything about the Innocence Project;  
5           have you ever heard of that?

6       A. The what?

7       Q. The Innocence Project.

8       A. Innocence?

9       Q. Innocence Project. An outfit out of Madison that  
10          helps free people who have been wrongly convicted  
11          of crimes and are in prison?

12      A. Yes.

13      Q. You have had heard of that?

14      A. Yes.

15      Q. Okay. Have you heard of that organization and  
16          its involvement with Mr. Avery?

17      A. Yes, that he spent 18 years that he wasn't  
18          supposed to.

19      Q. Okay.

20      A. Or 17, whatever it was.

21      Q. So you do recall that?

22      A. Yes, I do.

23      Q. And do you have any concerns or doubts that maybe  
24          he was or was not really innocent all that time?

25      A. No, I didn't. Never brought it up. Never

1           discussed it with anybody.

2   Q.    I mean, as you sit here today, is there any doubt  
3        in your mind that he was wrongly convicted?

4   A.    Yes, I think he was wrongly convicted.

5                   ATTORNEY BUTING: Okay. Thank you, very  
6        much.

7                   MR. CARBON: You're welcome.

8                   THE COURT: Mr. Fallon, do you have some  
9        follow-up?

10                  ATTORNEY FALLON: Yes.

11                  **VOIR DIRE EXAMINATION**

12          BY ATTORNEY FALLON:

13   Q.    Mr. Carbon, if I could clarify a point or two.  
14        Now, I want to revisit this presumption of  
15        innocence so that we're not confused. If the  
16        Court -- I should say, when the Court instructs  
17        you that only the State has a burden of proof  
18        here, that only I, as a member of the prosecution  
19        team, have the burden of proof, beyond a  
20        reasonable doubt, of his guilt, the Court tells  
21        you that burden is on the State, I represent the  
22        State, and tells you that Mr. Avery doesn't have  
23        to prove anything; can you accept that?

24   A.    Sure can.

25   Q.    Will you be able to follow that if you were

1           selected, when you got to deliberate this case?

2       A. To the best of my knowledge.

3       Q. You would do your best?

4       A. Yes, I would.

5       Q. Okay. The only other area I had was for a  
6           follow-up on police officer testimony. In your  
7           questionnaire, which you may remember having  
8           filled out last -- I think it was a week ago  
9           Monday, you answered a question, this question:

10          Some of the witnesses in this case will be  
11           members of law enforcement. The law  
12           requires jurors -- The law requires jurors to  
13           evaluate their credibility just as that of any  
14           other witness.

15           That is, jurors are prohibited from  
16           giving more or less credibility to the testimony  
17           of a law officer simply because the witness is a  
18           law officer. If selected as a juror, would you  
19           be able to assess the credibility of law officers  
20           on this basis? And you answered yes.

21           Now, counsel asked you a very good  
22           question on that point. And although you feel  
23           that law enforcement officers should be honest,  
24           and should tell the truth, and it's part of their  
25           job; if Judge Willis tells you that may well be,

1           but you are to evaluate their credibility, their  
2         believability, their honesty the same way you  
3         would any other witness, will you follow that  
4         instruction?

5 A. I sure will.

6 Q. You will do your best?

7 A. Yes, I will.

8 Q. All right.

9                           ATTORNEY FALLON: That's all I have.

10                  THE COURT: I have got a couple of  
11         follow-up questions. Touch on things that actually  
12         both defense counsel and Mr. Fallon did.

13                           **VOIR DIRE EXAMINATION**

14 BY THE COURT:

15 Q. When Mr. Buting was questioning you -- Well, let  
16         me step back. One of the disadvantages of voir  
17         dire is we ask jurors questions before they have  
18         gotten my instructions. You said you have never  
19         been to a trial before; is that correct?

20 A. That's right.

21 Q. There are some rules that apply in trials. And  
22         in a criminal trial perhaps the most important  
23         rule is that the defendant does not have to prove  
24         his innocence. As Mr. Avery sits here today, he  
25         is not guilty. And he stays not guilty unless

1           the State can prove his guilt, beyond a  
2           reasonable doubt; do you understand that?

3       A. Yes, I do.

4       Q. And he's not required to prove his innocence.

5       A. Okay.

6       Q. He doesn't have to say who did it, other than,  
7           you know, someone else did it, he doesn't have to  
8           tell you who the other person was. He doesn't  
9           have to do anything. The State has to prove,  
10          beyond a reasonable doubt, that he did it before  
11          you, as a juror, could vote guilty; do you  
12          understand that?

13      A. Yes, I do.

14      Q. And I know you said a few minutes ago you thought  
15          he had to prove his innocence; do you know that  
16          that's not true?

17      A. That's true.

18      Q. Now, let me ask you this. Regardless of what you  
19          believe, if I instruct you that you can only vote  
20          guilty if you can find that the State proved his  
21          guilt, beyond a reasonable doubt; can you follow  
22          that instruction?

23      A. To prove him guilty only and not innocent?

24      Q. That means -- You can't find him guilty unless  
25          the State proves his guilt beyond a reasonable

1                   doubt?

2       A.   Is that up to the individual juror, to make up  
3                   his mind?

4       Q.   That's what jurors do.

5       A.   Right.

6       Q.   But you, as a juror, can't require the defendant  
7                   to prove his innocence, you have to find that the  
8                   State proved his guilt; do you understand the  
9                   difference?

10      A.   Yes.

11      Q.   What does the difference mean to you?

12      A.   The State has got to prove him guilty and the  
13                   defense not guilty, right?

14      Q.   Actually, the defendant doesn't have to prove  
15                   anything.

16      A.   No, he doesn't. He doesn't have to testify,  
17                   that's his opinion.

18      Q.   I think you understand that, that he doesn't have  
19                   to testify. But not only doesn't he have to  
20                   testify, he doesn't have an obligation to prove  
21                   anything. The State has to prove he's guilty.

22                   Can you follow that instruction?

23      A.   Sure can.

24      Q.   And do you understand that the defendant doesn't  
25                   have to prove his innocence?

1 A. Right. He doesn't have to testify.

2 Q. Now, with respect to your comments about police  
3 officers, do you agree -- I know you said police  
4 officers are supposed tell the truth, and you are  
5 right. That's when they get hired, one of the  
6 things they do is they are supposed to tell the  
7 truth. But do you understand that in the case of  
8 a few police officers, sometimes they don't?

9 A. That is true.

10 Q. Have you ever heard of a dishonest police  
11 officer?

12 A. I never had, no.

13 Q. Never met one?

14 A. No.

15 Q. Do you believe that an officer could be?

16 A. Yes, they could. I believe they could. Any  
17 human being could. They are all human.

18 Q. Okay. If some police officers testify at this  
19 trial, will you be able to evaluate their  
20 testimony just like anybody else?

21 A. I think so, yes.

22 Q. If you listen to the testimony and you think  
23 something a police officer tells you doesn't  
24 sound like the truth, will you determine --  
25 accept that determination?

1 A. Yes, I will.

2 THE COURT: Anything else, counsel? I will  
3 give you a chance for some follow-up, if you wish.

4 ATTORNEY BUTING: No, your Honor.

5 ATTORNEY FALLON: (Shakes head.)

6 THE COURT: All right. You can take  
7 Mr. Carbon to the hallway.

8 MR. CARBON: Okay. Thank you.

9 ATTORNEY BUTING: Thank you, sir.

10 JUROR: Thank you. Have a good  
11 afternoon.

12 ATTORNEY FALLON: Thanks.

13 THE COURT: Any motion from the State?

14 ATTORNEY FALLON: I'm going to say no. And  
15 it's based on just my feeling or intuition. I think  
16 he means well. I just think he had a hard time  
17 grasping the concept. And I think once the Court  
18 explained to him what the rules are, I didn't get an  
19 indication from him that he could not follow them.  
20 Admittedly, there was some concern, counsel did  
21 raise and interesting question as to whether perhaps  
22 there was a hearing issue.

23 I didn't get that. I just -- My  
24 impression was we were dealing with a gentleman  
25 who is not very sophisticated or knowledgeable in

1           the law, and had some ideas about what he thought  
2           the rules were. And I think once they were  
3           explained to him, I didn't see any reason why he  
4           wouldn't necessarily follow them. I'm not going  
5           to jump on him and strike for cause.

6                         THE COURT: Mr. Buting.

7                         ATTORNEY BUTING: Judge, I move to strike.  
8                         He was very nice gentleman. I think he was trying  
9                         to be honest, but I think he was confused. This is  
10                        a situation where, this is an example, I guess,  
11                        where it's not enough just to ask the jurors will  
12                        you follow this instruction and tell them what it is  
13                        and then they say, yes, yes, I will.

14                       The Court very wisely asked -- and I  
15                        don't -- Actually I think counsel was talking  
16                        with my partner at the moment and didn't actually  
17                        hear the response, but the Court asked him to,  
18                        tell me what you think that means, and his  
19                        response I think was telling. Because even after  
20                        you told him that the defendant did not -- that  
21                        he enjoyed the presumption of innocence and  
22                        didn't have to prove his innocence, his response  
23                        was, yeah, the State has to prove he's guilty and  
24                        the defendant has to prove he is not guilty.  
25                        That's his right, to testify.

1                   And then you went off on the issue of,  
2                   you know, you understand he doesn't have to prove  
3                   he's innocent and then he says, well, you're  
4                   right, that's his right not to testify. He  
5                   doesn't have to testify, I think was his words.  
6                   He's confused. You know he's -- maybe it is a  
7                   lack of sophistication. Maybe there's some  
8                   hearing issues as well; although, I don't think  
9                   that's it. I think he's just going to have  
10                  difficulty. This is going to be a problem that  
11                  we may have to deal with in the future. We have  
12                  enough jurors I think to deal with it.

13                  THE COURT: There are reported cases where  
14                  sometimes the Courts of Appeal uphold a judge's  
15                  decision to leave a defendant -- or a juror on the  
16                  panel, based on observations of his demeanor to  
17                  explain answers that are questionable. This is a  
18                  case where when he was asked some leading questions,  
19                  including by me, he gave answers that on the  
20                  transcript may look correct, but I have got concerns  
21                  about whether he was really tracking, following  
22                  things, and most importantly, able to follow  
23                  instructions. So while he might be passable as a  
24                  juror, I have sufficient doubt that I'm going to  
25                  grant the defense motion to strike this juror.

1 ATTORNEY BUTING: Thank you, your Honor.

2 THE COURT: Ms Schmidt, please remain  
3 standing for a minute. I will have the Clerk  
4 administer the oath.

5 (Juror sworn.)

6 THE CLERK: Please be seated.

7 THE COURT: Ms Schmidt, you have already  
8 completed a jury questionnaire in this case. This  
9 afternoon we're moving on to the next stage of the  
10 jury selection process which is individual voir  
11 dire. That means the attorneys for the parties will  
12 have an opportunity to ask you some questions.

13 Before that begins, there's a couple  
14 other pieces of information I wish to pass on to  
15 you. First of all, I want to make sure you know  
16 that the jury in this case will not be  
17 sequestered. That means that if you're selected  
18 for the jury, during the estimated six weeks of  
19 the trial you will be able to go home every night  
20 and then come back for the jury trial the next  
21 day.

22 We're doing that because of the  
23 requirement that the members of the jury not  
24 observe any news media accounts of the trial,  
25 either in the newspaper, television, radio, the

1                   internet, or anywhere else, and make sure that  
2                   you don't talk about the case with anyone else.

3                   I also want you to know that although  
4                   these proceedings are open, that is, open to the  
5                   public, no cameras are permitted in the courtroom  
6                   during the voir dire process. The press is not  
7                   allowed to identify you as a potential juror in  
8                   this case. And the jurors that are selected to  
9                   serve in this case are not being permitted to be  
10                  shown on camera during the course of the trial.

11                  If you remain on the jury panel after  
12                  today's proceedings you will be notified by  
13                  telephone in a few days when to return back to  
14                  court. At this time then I will permit  
15                  Mr. Fallon to begin questioning for the State.

16                  **VOIR DIRE EXAMINATION**

17                  BY ATTORNEY FALLON:

18                  Q.     Good afternoon, Ms Schmidt.

19                  A.     Good afternoon.

20                  Q.     My name is Tom Fallon. I'm an Assistant Attorney  
21                  General with the Wisconsin Department of Justice.  
22                  I'm one of the prosecutors in this case. And we  
23                  each have just a few questions to follow up on  
24                  some of the information you provided last Monday  
25                  in your questionnaire and a few other related

1           questions to help us in selecting the jury this  
2           week.

3                 In terms of the information provided, I  
4                 take it you are currently just working at home?

5     A. Yes, sir.

6     Q. Okay. And you have formally did some work at a  
7           temporary service?

8     A. Yes, sir. Most of the time I stayed at home --

9     Q. Okay.

10    A. -- taking care of my family.

11    Q. I see, yes, and you have done well, you have  
12       three sons and a daughter.

13    A. Four sons, there wasn't room on the paper for the  
14       other one.

15    Q. When you did work outside of the home, what type  
16       of work did you do?

17    A. Well, it varied. If I worked at the temporary  
18       service it was like sorting bolts or packing. If  
19       I worked at some place else it was probably like  
20       K Catering Service type of thing, that's about  
21       it.

22    Q. So you did a variety of things?

23    A. Yes.

24    Q. Okay. How often did you work in the temporary  
25       service?

- 1 A. Well, my youngest son is 14, so I just said I  
2 started working about six years ago again.
- 3 Q. And what was the last thing you did when you  
4 worked for the temporary service; what kind of  
5 work was it?
- 6 A. Sorting and packing.
- 7 Q. And for whom did you do that work?
- 8 A. Kaysun. Well, it's through ABR, but I believe it  
9 was Kaysun Corporation.
- 10 Q. Kaysun Corporation. You did answer one question,  
11 and I don't mean to pry, but we did want to make  
12 sure that it would be all right with you. But on  
13 one question, in terms of health concerns, you  
14 indicated high blood pressure.
- 15 A. Yes, sir.
- 16 Q. Okay. Is it more or less under control or is  
17 that something --
- 18 A. I take a pill every morning. And I usually do  
19 that about 5:00 so.
- 20 Q. And if you were able to keep up that regimen, do  
21 you think your blood pressure would be under  
22 control such that you could sit as a juror?
- 23 A. I think so. I think so.
- 24 Q. Otherwise it shouldn't present a problem for you?
- 25 A. No, sir.

1 Q. Is that a recent condition you have been working  
2 with or is it something --  
3 A. Um, I would say it's about eight years that I  
4 have been diagnosed with it --  
5 Q. Okay.  
6 A. -- and have been taking pills for it.  
7 Q. All right. So you are pretty experienced then in  
8 managing it and keeping it under control?  
9 A. Yes, sir.  
10 Q. Thanks. Of the sources of news that you have,  
11 where would you say you get most of your news  
12 from?  
13 A. The radio.  
14 Q. From the radio?  
15 A. Yes, sir.  
16 Q. And what type of stations do you listen to.  
17 A. WOMT, that's from morning until about 9:00. Then  
18 it goes to a Sheboygan station I believe. I  
19 don't know what it is, but they play gentle, easy  
20 listening music.  
21 Q. Okay.  
22 A. Then it's back to -- back to WOMT, and that's on  
23 until about 6, 7 at night.  
24 Q. Have you been following the coverage of this case  
25 on the radio?

1 A. No, sir. Every time it came on I turned it off  
2 or I walked out of the room.

3 Q. Is there any particular reason why you --

4 A. I wasn't interested in --

5 Q. Okay.

6 A. -- anything like that.

7 Q. So would it be fair to say you really haven't  
8 followed the coverage of this case hardly at all?

9 A. Yes, sir, I guess you could say that.

10 Q. All right. You are aware that Mr. Avery is  
11 accused of killing Teresa Halbach; I take it you  
12 are aware of that?

13 A. Yes.

14 Q. Okay. But you haven't paid attention to any of  
15 the details?

16 A. Not as far as what's going on, no.

17 Q. All right. Can you tell us a little bit about  
18 what you actually do remember from what little  
19 you have listened to or watched?

20 A. Mostly the names that have appeared. Mr. Avery,  
21 Ms Halbach, that's all.

22 Q. All right. Do you recognize the name Dassey,  
23 Brendan Dassey? Is that a name you are familiar  
24 with?

25 A. I know the name, it appeared once in a while, but

1           I don't know what it's --

2 Q.       You don't know the --

3 A.       -- what it's concerning, no.

4 Q.       You don't know the connection --

5 A.       No, sir.

6 Q.       -- of that name with the case?

7 A.       No, sir.

8 Q.       All right. You indicated in your questionnaire  
9           that you did watch at least one type of  
10          television crime show, that being CSI, crime  
11          scene investigation.

12 A.       Yes, sir.

13 Q.       How often do you watch that show?

14 A.       Well, it depends on if we have other things going  
15          on around the house like butchering or stuff.  
16          It's not every week, I know that. And when I do  
17          watch it, it's mostly for to see the people, not  
18          what they are doing, but because the story line  
19          once in a while is interesting.

20 Q.       You like the characters?

21 A.       Yes.

22 Q.       Okay. You indicated you found the show somewhat  
23          realistic; any particular reason why that would  
24          be?

25 A.       Well, sometimes how they scrape the fingernails

1 and things like that.

2 (Changed microphone batteries.)

3 THE COURT: All right. I think we can  
4 resume.

5 Q. Very good. I think -- Let's see, where were we?  
6 We were talking about CSI and whether it was --

7 A. Realistic or not?

8 Q. Realistic or not.

9 A. The thing I watch when the story gets kind of  
10 confusing is, well, like, that I know they take  
11 fingernail scrapings. And the rest of the stuff  
12 is kind of iffy because you don't know for sure.

13 Q. In terms of its reliability, or whether or not we  
14 have the capability of doing it?

15 A. You probably have the capability, but they show  
16 things, every week, or whatever, is supposed to  
17 be a crime has been committed. And I know that  
18 things don't happen that way, you know, it's got  
19 to be usually a longer period of time. They  
20 don't have them every day.

21 Q. Or at least they're not solved every day.

22 A. I certainly hope they're not solved every day.

23 Q. All right. I'm going to go back to one of the  
24 first questions, you indicated farming and  
25 butchering; what kind of farm does your family

1 run?

2 A. It's -- Well, it's a working farm, but we have  
3 cattle, and we have pigs, and we have chickens,  
4 and ducks, and geese. And my husband and my son  
5 run -- we have 80 acres. And then woods, the  
6 guys all go to the woods and make wood for the  
7 winter that we can burn in the house.

8 Q. Not a dairy farm per se?

9 A. No, it's not a dairy farm. The cattle are beef.

10 Q. Okay. Is that the primary source of income for  
11 the farm, the beef?

12 A. Yeah, and the chickens?

13 Q. The pork?

14 A. Well, the pork mostly is for ourselves.

15 Q. Okay. Very good. You did leave one question  
16 unanswered that is of some importance. Two  
17 questions actually, and I guess I will close with  
18 those two. One question, you were asked if you  
19 were served -- if you served on a jury, or you  
20 were selected for this particular jury, how would  
21 you feel about that service?

22 A. It wouldn't bother me.

23 Q. All right.

24 A. The only thing that would probably bother me  
25 would be making up my mind at the end, if it

1           was -- if it happened the way that was presented  
2           to me, or not.

3   Q.   All right. So in other words to actually getting  
4       down to making a decision might be kind of  
5       difficult, weighing the evidence?

6   A.   Yes.

7   Q.   All right. But there's nothing else about the  
8       process that --

9   A.   No.

10   Q.   -- you would find difficult?

11   A.   No.

12   Q.   Okay. And the last question we touched briefly  
13       upon in the beginning with health and family, but  
14       it's very possible this case will go six weeks.  
15       As Judge Willis told you, you know, you would be  
16       able to go home every night and things of that  
17       sort. But is there any particular personal  
18       hardship or, you know, would this be really hard  
19       on the family business or anything like that if  
20       you were here eight, nine hours a day as opposed  
21       to being back managing the family business at  
22       home?

23   A.   No, sir. My husband is retired. He runs most of  
24       the business around there if people stop for eggs  
25       or whatever. And my older son is in -- he's a

1 senior this year. And the next one is an 8th  
2 grader, the 12 year old, yeah. Not my oldest  
3 son, he's away from the house, but the second  
4 youngest.

5 Q. Okay. In all your years here in Manitowoc in  
6 that business, have you ever had any encounters  
7 with the Manitowoc Sheriff's Department?

8 A. Not that I know of. They might have, you know,  
9 stopped for some reason or other, but I couldn't  
10 tell you for sure.

11 Q. All right. Do you have any impressions at all as  
12 to whether you think they are doing a good job  
13 for you here in Manitowoc, bad job, a fair job in  
14 terms of --

15 A. It must be fair because I haven't had any  
16 complaints about anybody.

17 Q. Okay. Do you have any friends or family members  
18 who work in the news business?

19 A. No, sir.

20 ATTORNEY FALLON: That's all. Thank you.

21 THE COURT: Mr. Buting.

22 ATTORNEY BUTING: Thank you, Judge.

23 **VOIR DIRE EXAMINATION**

24 BY ATTORNEY BUTING:

25 Q. Good afternoon ma'am. My name is Jerome Buting

1           and I, along with Dean Strang, are the attorneys  
2           representing Mr. Avery here today; do you  
3           understand that?

4       A. Yes.

5       Q. Okay. I want to follow up on a few of  
6           Mr. Fallon's questions and maybe some of my own  
7           as well. All right. First of all, I heard you  
8           mention that most of the time you have worked in  
9           the home, but occasionally you worked at a  
10          temporary service, right?

11      A. Yes, sir.

12      Q. You mentioned Kaysun Corporation?

13      A. Yes, sir. That was through ABR. And they sent  
14          me out there before Christmas, 2005.

15      Q. Okay.

16      A. And it was just packing bolts -- not bolts. It  
17          was like little -- little gear things. And they  
18          had to inspect them as far as if the ringings  
19          were tight or not?

20      Q. Okay.

21      A. And then the person inspected them and then they  
22          were given to us and we had to pack them. And  
23          that was all we had to do.

24      Q. Is that the only time you worked for Kaysun?

25      A. Yes, sir.

1 Q. Do you happen to know a woman who also worked  
2 there, I'm not sure if it's the same time, by the  
3 name of Terri Temme?

4 A. No, sir.

5 Q. Okay. Before today, did you know any of the  
6 jurors that you've -- prospective jurors that you  
7 have encountered?

8 A. No, sir.

9 Q. They are all strangers to you?

10 A. Yes, sir.

11 Q. Okay. Let's talk about what you have heard,  
12 maybe at the very beginning, about this case in  
13 the media, okay?

14 A. Yes, sir. That's about all I heard, the very  
15 beginning.

16 Q. Okay. Tell me what -- what you recall hearing  
17 about this case in the media at the very  
18 beginning.

19 A. What do I recall, gee, well, that someone was  
20 murdered and they are assuming that Mr. Avery did  
21 it. And they said -- I think they told me Ms  
22 Halbach's name. But I can't remember anything  
23 else on it, because like I said, I wasn't  
24 interested in it at the time.

25 Q. And do you remember any information about why

1           they were assuming Mr. Avery was involved?

2   A. No, sir.

3   Q. Okay. Did you ever hear any details about anyone  
4       who may have made any confessions?

5   A. No, sir. See, if we're not busy around the farm  
6       at that time, which is about 6:00, and it's after  
7       our meal time, and it's usually after our chore  
8       time, and I have other things to do if we're  
9       butchering, or if the kids need help with their  
10      school work. Very seldom that we listen to the  
11      news. And then when I go up at 6:00, I usually  
12      have game shows on like Jeopardy.

13   Q. Sure. Well, I think at one point you said that  
14       every time anything about this case came on you  
15       would turn it off the radio, or you would walk  
16       out of the room?

17   A. I would.

18   Q. Why?

19   A. Well, I wasn't interested in that.

20   Q. Well, okay. But --

21   A. Mostly the radio is on for music.

22   Q. Sure.

23   A. And we hear, once in a while, bits and pieces of  
24       news, but mostly it's for the weather.

25   Q. But if the radio is just sort of on in the

1           background, sounds like for hours and hours a  
2           day, right?

3       A. All day, yes.

4       Q. Okay. What is it about any kind of reports about  
5           this case, though, that would make you want to  
6           turn it off?

7       A. I don't know, sir. I just didn't -- wasn't  
8           interested in it.

9       Q. Was there something about it that you just said I  
10          have heard enough of this, I have heard too much  
11          of this, I'm sick of this?

12      A. Could be in the beginning. I don't know what it  
13          is, I just turn it off.

14      Q. Is there anything you heard that made you sick to  
15          your stomach, or disgusted, or --

16      A. Well, I didn't hear the whole report, I couldn't  
17          tell you. I just didn't hear it.

18      Q. Okay. When other news would come on, would you  
19          turn off the radio, or walk out of the room,  
20          other reports of other --

21      A. Most of the time I listen, but not always. It's  
22          like -- it's like background effect stuff. It  
23          goes in one ear and out of other.

24      Q. Sure.

25      A. And doesn't stop in between to register.

1 Q. Sure, I understand. But other news reports in  
2 other cases perhaps, other crimes even, or other  
3 things that are going on, you would just kind of  
4 let the radio play.

5 A. Yeah, that's about it.

6 Q. You wouldn't turn it off or walk out of the room?

7 A. Well, I don't turn it off even when it was on  
8 about Mr. Avery, I just kind of ignored it, you  
9 know.

10 Q. Okay. So it wasn't --

11 A. You don't listen totally to it, you just kind of.

12 Q. So you are not saying that you really turned it  
13 off because you were -- because this case would  
14 come on the radio?

15 A. I turned it off because that was me turning it  
16 off, I just turned it off.

17 Q. And the fact that Mr. Avery's case might have  
18 been being reported on the radio at that moment  
19 you're saying it had no connection --

20 A. No, sir.

21 Q. -- to your decision to turn it off?

22 A. No, sir.

23 Q. Okay. So when you listen to the radio, is it --  
24 WOMT, has -- they have got news in the early  
25 morning, correct, and don't they then change over

1           to a music format at some point?

2 A.    I'm trying to think. At 5:00, when the radio

3        goes on, I'm usually making lunch for my son.

4        And then they have a little -- a little

5        chatter --

6 Q.    A little call in?

7 A.    -- in between them.

8 Q.    Yeah, okay.

9 A.    In between them.

10 Q.    Okay.

11 A.    And then they have like Be My Guest or something

12       on that order, and music in between.

13 Q.    Okay. And is it -- But is it mainly talk and

14       news all day long, or do they convert over to

15       music --

16 A.    Mostly it's music all day long. There's a couple

17       shows I know, like Be My Guest, or something like

18       that. Those I don't listen to because I'm

19       usually doing something else.

20 Q.    Okay. All right. Now, when you were talking

21       about the CSI, that you said was the only one;

22       you do try and watch that one pretty regularly?

23 A.    Yeah. But I'm more interested in the story line

24       as far as like the people. This girl was going

25       out with that guy --

1 Q. I see.

2 A. -- or this one got married, or stuff like that.

3 Q. You're more interested in that than the story  
4 about the crimes that they happen to be  
5 investigating?

6 A. Right.

7 Q. Okay. I see. And do you -- do you think that  
8 the scientific tests that they do, or they claim  
9 to do on the show, are all tests that in fact  
10 really can be done, or are done?

11 A. I would say -- I would say most of the tests  
12 could be done.

13 Q. Okay.

14 A. I don't know for a fact that they are positively  
15 done, but I would say that they could be done.

16 Q. Okay. And they are usually pretty good at  
17 finding evidence when a crime happened, they are  
18 pretty quick at finding evidence right there that  
19 proves it, right?

20 A. Yes. But how long does it take, only an hour to  
21 show all this interesting stuff, but I'm sure it  
22 takes longer than that to run it through a  
23 regular lab.

24 Q. Sure, but as a result of that you think that it's  
25 pretty likely that real police are able to do

1           that too, that if there's -- if a real crime took  
2           place, they are able to get there on the scene  
3           and find the evidence that will prove it, right?

4       A. I would think so.

5       Q. Okay. And if they were not able to find any --  
6           or significant evidence, or evidence that you  
7           might expect they would find at the crime scene,  
8           if that was missing in a real case like this,  
9           would that -- would that trouble you.

10      A. If the evidence that the person says is there  
11           isn't?

12      Q. No, if the evidence that you would think should  
13           be there is not.

14      A. No, I don't think so, they have to show me  
15           exactly what was there.

16      Q. I appreciate that. Thank you. Now, you have --  
17           I'm sorry did you say you have four children,  
18           four sons?

19      A. Yeah, four sons and a daughter. But there wasn't  
20           room enough on the paper for the last one.

21      Q. Okay.

22      A. So I kind of dropped him off.

23      Q. One got the short straw there?

24      A. I guess so.

25      Q. Is that son still at home?

1 A. Yes, he is. He's only 14.

2 Q. Three sons at home, 35 year old still there.

3 A. Yes, sir.

4 Q. Does the 35 year old work on the farm with your

5 father -- your husband?

6 A. He does most of the work because my husband has a

7 sciatic nerve.

8 Q. Okay.

9 A. And then he can't run around with the tractors

10 and stuff. But the older son does quite a bit.

11 Q. Okay.

12 A. But he also works for EVM. He's a foreman.

13 Q. Okay. Do any of your sons, or your husband for

14 that matter, do they ever talk about this case,

15 what they heard about the Steven Avery case?

16 A. They might talk to themselves about it, they

17 haven't mentioned it around the table.

18 Q. That's not something they talk to you about?

19 A. Not at the meal time.

20 Q. Okay. Well, what about after they heard that you

21 were selected as a prospective juror for this

22 case, did they talk to you about it at all?

23 A. No. No.

24 Q. Did they talk to you about it in the last week at

25 all?

1 A. No.

2 Q. And have you heard of any opinions that they have  
3 about whether he, Mr. Avery, is guilty or not  
4 guilty?

5 A. They might have opinions, but I don't listen to  
6 them?

7 Q. Well, how would you know they would have them if  
8 you don't listen to them?

9 A. Well, because they go out to the greenhouse, or  
10 wherever, out to the barn, and I usually stay in  
11 the house so I don't know what they were  
12 discussing?

13 Q. So you are just guessing that maybe they have  
14 opinions?

15 A. That's right.

16 Q. I see. Okay. Now, the Judge is going to tell  
17 you about -- he's going to give you a number of  
18 instructions, sort of rules of the game that you  
19 will have to follow. And one of those is the  
20 presumption of innocence. Have you heard of  
21 that?

22 A. Yes.

23 Q. Okay. What is that -- Well, strike that. Do you  
24 think that Mr. Avery is presumed innocent right  
25 now?

1 A. Yes, sir.

2 Q. Do you think that he must have done something or  
3 he wouldn't be here, we wouldn't have gotten this  
4 far in the proceeding so that we're coming up on  
5 the trial?

6 A. Yes, sir. I would put it that way exactly.

7 Q. Pardon me?

8 A. I would put it that way exactly.

9 Q. You think he must have done something?

10 A. Well, yes.

11 Q. Why do you think that?

12 A. Well, because otherwise he wouldn't be in a  
13 courtroom.

14 Q. Okay. Do you think sometimes people who are  
15 completely innocent of any crime whatsoever find  
16 themselves in the position Mr. Avery is in here?

17 A. Yes.

18 Q. So why do you think that that couldn't apply to  
19 Mr. Avery now?

20 A. That he's innocent? That he is innocent until  
21 proven guilty.

22 Q. Okay. What I'm asking, though, is a moment ago  
23 you said that you think that he must have done  
24 something in order to get himself in the position  
25 he is at right now?

1 A. Yes, sir.

2 Q. Why?

3 A. Well, evidently he is in jail. And other people  
4 that are in jail also, but they have different  
5 trials set up for them. Gosh, I don't know how  
6 to put it.

7 Q. Well, just try, you are doing fine.

8 A. Um, well, first of all, all of you people are in  
9 line ready to get even with him or whatever. And  
10 we don't know until the facts are shown if he is  
11 guilty or not guilty. And right now he's  
12 innocent.

13 Q. Okay. Well, then why do you think he must have  
14 done something wrong if he is here today?

15 A. Because evidently all you people gave evidence to  
16 the cops, and police, excuse me, and -- and they  
17 arrested him for it.

18 Q. Okay. That's fair. Do you think, though, that  
19 sometimes the evidence that the police get may --  
20 Strike that. I'm not going to get hypothetical  
21 here. Let me put it this way, do you know  
22 anything about Mr. Avery's background or past?

23 A. I know he was in jail before. I have no idea  
24 why. I know that he was -- he got out, because  
25 something proved him wrong, different.

1 Q. Okay. Something proved that he was innocent?

2 A. Yes.

3 Q. And do you have any doubts about whether he was  
4 really innocent?

5 A. At that time?

6 Q. Yeah.

7 A. I don't know anything about the case at that  
8 time.

9 Q. Okay. Well, do you assume that since he was  
10 released from prison, he must -- everybody must  
11 agree he really was innocent?

12 A. Yes, sir.

13 Q. Okay. Do you think then that it's possible -- I  
14 mean there's an example right here, where  
15 sometimes someone gets this far and they get to  
16 the position of Mr. Avery, in fact, they get much  
17 farther, they are actually convicted wrongly. So  
18 can you consider that Mr. Avery, just because  
19 he's here today, for this trial, may be entirely  
20 innocent of this crime?

21 A. Yes, sir, I believe he is.

22 Q. Okay. Do you think that -- By the way, do you  
23 know any police officers at all, personally?

24 A. Not personally. I know Dicky France (phonetic)  
25 is constable in Town of Two Rivers, but that's as

1 far as I know.

2 Q. Okay. Do you think that if a police officer  
3 comes to court and testifies, takes the oath,  
4 swears to tell the truth, that necessarily a  
5 police officer will always tell the truth under  
6 oath?

7 A. No, sir.

8 Q. Why not?

9 A. Well, everybody has a tendency to fib once in a  
10 while, and just because they are a police officer  
11 doesn't mean that they don't have that tendency.

12 Q. Sure. So you would judge a police officer on the  
13 witness stand the same as any other witness?

14 A. Yes, sir.

15 Q. Just because they have a uniform or badge doesn't  
16 make them any more truthful than the ordinary  
17 witness; is that right?

18 A. That's right.

19 Q. Okay. Thank you. Do you think that police  
20 officers can -- when you say fib, if you're  
21 fibbing under oath, that's really perjury, is it  
22 not?

23 A. I believe so.

24 Q. Do you think police could actually go that far?

25 A. Yes.

1 ATTORNEY BUTING: I think that's enough.

2 Thank you, very much, ma'am.

3 THE COURT: All right. We'll have the  
4 Clerk escort the juror out of the room.

5 Counsel, any motion from either party?

6 ATTORNEY FALLON: None from the State.

7 THE COURT: Mr. Buting.

8 ATTORNEY BUTING: No, your Honor.

9 THE COURT: All right. That juror is in.

10 I have received a request. There's a Julie Dorn,  
11 she's No. 18, she has to go to work at 11 tonight.  
12 Maybe she's going to go home to sleep after this.  
13 But we'll take her out of order and take her next.

14 Ms Dorn, could you raise your right  
15 hand, we'll have the Clerk administer the oath.

16 (Juror sworn.)

17 THE CLERK: Please be seated.

18 THE COURT: Ms Dorn, you have already  
19 completed a jury questionnaire in this case. Today  
20 we're moving on to the next step of the jury  
21 selection process which is individual voir dire.  
22 The attorneys for each of the parties have a chance  
23 to ask you some follow-up questions.

24 Before we begin that process, I want to  
25 pass on a few bits of information to you. First

of all, I want you to know that the jurors selected in this case will not be sequestered. That means you will be able to go home each night after each day of trial. We made that decision because of the instruction to the jurors that they not listen to any news media accounts of this case either on radio, television, newspaper, the internet, or anywhere else, and also that you not discuss the case with anyone else.

Although these proceedings today are open, no cameras are permitted in the courtroom during the voir dire process and the news media is not allowed to identify individual jurors by name in news reports. In addition, once the trial starts, the cameras are prohibited from showing any of the jurors such that any of them could be identified.

If you remain on the jury after today's proceedings, you will receive a telephone call in a day or two letting you know when to report back. With that background then, Mr. Fallon, you may begin.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

25 Q. Good afternoon, Ms Dorn. My name is Tom Fallon.

1 I'm an Assistant Attorney General for the  
2 Wisconsin Department of Justice. And I'm one of  
3 the prosecutors in the case. And I wanted to  
4 follow up with a few questions about the  
5 information you provided in your jury  
6 questionnaire and a few other related matters.  
7 Thanks for coming this afternoon. I know you are  
8 a third shifter so.

9 A. Mm-hmm.

10 Q. That wreaks havoc with your schedule. And in  
11 that regard, if we could just start there. You  
12 indicate you are a line operator; what is that?

13 A. Just run a press and you assemble the parts, pack  
14 them, different job every night.

15 Q. Oh, okay. So you are on like an assembly line?

16 A. Nope, not necessarily. Just the press that you  
17 are working out of and sometimes you are working  
18 off a line.

19 Q. I see.

20 A. It's a different job every night.

21 Q. And how long have you been working at the Bemis  
22 Manufacturing?

23 A. Bemis Manufacturing, total about eight years, two  
24 years full-time.

25 Q. Two years full-time. And before that, what were

1           you doing?

2       A. Before that I was unemployed. I stayed home with  
3           the kids. And before that was 15 years at  
4           Richardson Brothers in Falls.

5       Q. Richardson Brothers Furniture?

6       A. Furniture, in Sheboygan Falls.

7       Q. All right. Was that sales, marketing, office?

8       A. Factory, assembler.

9       Q. Assembly. Very good. How long have you been  
10           working the third shift?

11      A. Third shift, about seven years.

12      Q. As shifts go, do you like third shift?

13      A. Mm-hmm. Mm-hmm.

14      Q. If you were selected as a juror in this  
15           particular case, I take it that wouldn't present  
16           any particular health or financial hardship for  
17           you?

18      A. No.

19      Q. If you were selected as a jury, would that be all  
20           right; do you think you would enjoy the  
21           experience, or tolerate it, or how would you feel  
22           about it?

23      A. I wouldn't mind it.

24      Q. And as I see from the note here, if I remember  
25           correctly, I don't think you have had jury

1                   experience before; is that right?

2       A.   No.   No.

3       Q.   There were a couple of questions regarding your  
4                   knowledge of the facts in this case.  Presumably  
5                   that would have come from media coverage.  Am I  
6                   correct in assuming that because of the fact you  
7                   work the third shift your exposure to the TV  
8                   coverage is limited?

9       A.   I don't really see -- I mean, I seen some of it,  
10                  but I don't really have to watch it.  I mean, I  
11                  go to work at -- I start at 11:00 at night, work  
12                  until 7 in the morning, get home at 7:30, do a  
13                  load of wash, go to bed.

14      Q.   Right.

15      A.   Get up, start supper, so it's like there's no  
16                  time really.

17      Q.   Okay.  So, even if time permitted, you wouldn't  
18                  say that this was a case of interest to you.

19      A.   Not a necessity.  I had other stuff to do.

20      Q.   Right.  The press of day-to-day living takes it's  
21                  toll?

22      A.   Mm-hmm.  Mm-hmm.

23      Q.   All right.  Okay.  Let me ask, then, a couple of  
24                  related questions.  In terms of the media  
25                  exposure that you have had in this case, would

1           you say most of it comes from radio, television,  
2           newspaper, magazine, what?

3       A. It would have been television.

4       Q. Television. All right. And have you followed  
5           any of the recent coverage at all in the case?

6       A. No.

7       Q. No. Specifically, what do you recall about the  
8           case from information provided by the media,  
9           particularly the television?

10      A. From what I have seen, from what I watched on  
11           television?

12      Q. Yeah.

13      A. That she was missing, and then the arrest, and I  
14           think that was -- it wasn't too much. It was  
15           just -- Those are the two things that caught my  
16           attention.

17      Q. All right.

18      A. I don't remember. I mean, I don't really follow  
19           it.

20      Q. Okay. And when asked whether you had formed any  
21           personal opinions about the case, based on that  
22           information, you said no?

23      A. Right.

24      Q. Do you have any opinions today?

25      A. No.

1 Q. As to guilt, or innocence, or anything about the  
2 case?

3 A. No, we were told not to watch anything, or read  
4 anything, not listen to anybody.

5 Q. And you followed those instructions?

6 A. Yup.

7 Q. Very good. How long have you been a resident of  
8 Manitowoc County?

9 A. Manitowoc County, since 1987.

10 Q. During that time, have you had any encounters or  
11 any experiences with the Manitowoc Police  
12 Department, or the Manitowoc Sheriff's  
13 Department?

14 A. No.

15 Q. Do you have any opinions as to whether you think  
16 the Sheriff's Department is doing a good job, a  
17 bad job, a fair job, in terms of fighting crime  
18 and serving the public?

19 A. I --

20 Q. Don't have an opinion one way or the other?

21 A. No.

22 Q. Okay. That's all right. Now, in your  
23 questionnaire there were a number of questions  
24 that were designed to see if you would follow the  
25 instructions of the judge and the law, if you

1                   were selected as a jury -- as a juror, excuse me.

2                   One of those questions dealt with the fact that

3                   Mr. Avery is presumed to be innocent, unless and

4                   until the State can prove him guilty, beyond a

5                   reasonable doubt; do you accept that?

6   A. Right.

7   Q. Do you have any problem understanding that?

8   A. No.

9   Q. And do you think you would be able to follow on

10                  Judge Willis' instructions on that?

11   A. Mm-hmm.

12   Q. Is that a yes?

13   A. Yes. Okay.

14   Q. She's trying to type it all down so.

15   A. Sorry.

16   Q. Very good. Similarly, Mr. Avery has the right to

17                  testify in this case and he also has a right not

18                  to testify in this case. And if he does not

19                  testify in this case, you won't hold that against

20                  him?

21   A. No.

22   Q. All right. In other words, you understand that

23                  he has a right not to testify?

24   A. Right.

25   Q. Okay. And you wouldn't consider that adversely

1           against him if he doesn't testify, in terms of  
2           deciding, in the end, whether he's guilty or  
3           innocent?

4       A. Right.

5       Q. It would be on other evidence that was presented?

6       A. The other evidence provided.

7       Q. Okay. And you have no problem with that?

8       A. No.

9       Q. And you can follow that instruction?

10      A. Right.

11      Q. Okay. Are you a movie watcher?

12      A. Am I a movie watcher, yeah.

13      Q. Have you ever seen a movie called the Thin Blue  
14           Line.

15      A. No.

16      Q. In terms of your approach to, oh, forming an  
17           opinion or solving a problem; do you consider  
18           yourself a detail oriented type of person or are  
19           you a big picture person?

20      A. Could you repeat?

21      Q. Well, in terms of going about trying to  
22           understand a particular point, or trying to  
23           evaluate or solve a particular problem; are you  
24           kind of a bottom line, big picture, or do you  
25           want to know all the details?

- 1 A. Detail.
- 2 Q. You are a detail person. Okay. All right. As a
- 3 detail person, are you one who likes to solve
- 4 puzzles, or riddles, or things of that sort?
- 5 A. Sometimes.
- 6 Q. In terms of the puzzles you work on, are those
- 7 jigsaw puzzles, or word puzzles, crosswords, what
- 8 kind of --
- 9 A. Word puzzles.
- 10 Q. Word puzzles.
- 11 A. Jigsaw once in a while, not puzzles, but mostly
- 12 words.
- 13 Q. Okay. Have you ever used a publication such as
- 14 Auto Trader to buy or sell a car?
- 15 A. No.
- 16 Q. Okay. Are you familiar with the publication at
- 17 all?
- 18 A. No.
- 19 Q. Since you have had -- not had any prior jury
- 20 experience, let me ask this question. Do you
- 21 have any particular religious, moral, or
- 22 philosophical beliefs that you think might make
- 23 it difficult for you to sit and deliberate on the
- 24 guilt or innocence of a person?
- 25 A. No.

1 Q. All right. Do you think you would be able to  
2 comfortably handle that task?

3 A. Right.

4 ATTORNEY FALLON: That's all I have for the  
5 witness.

6 THE COURT: Mr. Strang.

7 **VOIR DIRE EXAMINATION**

8 BY ATTORNEY STRANG:

9 Q. Hi.

10 A. Hi.

11 Q. I'm Dean Strang. This is Jerome Buting. And  
12 we're defending Steve Avery. Back to the  
13 beginning, you were born in Chilton.

14 A. Mm-hmm.

15 Q. How long did you stay in Chilton?

16 A. I was born in Chilton but we lived in New  
17 Holstein.

18 Q. Oh, okay, New Holstein. So you grew up in New  
19 Holstein?

20 A. No, grew up in Kiel.

21 Q. And hence, Kiel High School.

22 A. Mm-hmm.

23 Q. Kiel High School doesn't pull kids in from New  
24 Holstein?

25 A. No, it's about three -- three, four mile

1 difference.

2 Q. Okay. And then you gave me the -- or gave us the  
3 street address where you and your family live  
4 now, but I don't know what town that is. I'm  
5 sorry.

6 A. It would still be Kiel. It's a Kiel School  
7 District, yup.

8 Q. Today?

9 A. Mm-hmm.

10 Q. Okay. And you have been there, gosh, in that  
11 house, for the last 20 years or so?

12 A. Right.

13 Q. The cheerleading volunteering, is that for your  
14 daughter?

15 A. Pardon?

16 Q. The cheerleading volunteering that you do; is  
17 that for your daughter?

18 A. Right. Yeah.

19 Q. Could be your son.

20 A. My daughter.

21 Q. Okay. They are twins, the younger?

22 A. Right, they are twins.

23 Q. And how involved are you guys at the church.

24 A. Church twice a month. One of the boys, Cody's  
25 basketball games, he plays for St. Peter and

1           Paul. That's about it.

2   Q.    Okay. That answered my other question, Sts.

3           Peter and Paul?

4   A.    Mm-hmm.

5   Q.    Bemis, this is what -- this is -- well, you have

6           got sort of a habit of working down in the Falls,

7           I guess, right?

8   A.    Right.

9   Q.    When you are working. Do these guys run a full

10           third shift?

11   A.    Yes.

12   Q.    Just same as the other two?

13   A.    Right.

14   Q.    And the -- this sort of swing operation where you

15           may be doing a different job every night; is that

16           true of the other two shifts as well?

17   A.    Mm-hmm. Right.

18   Q.    Now, does that mean you are working with

19           different people every night as well?

20   A.    Right. Mm-hmm.

21   Q.    Okay. So you really do get --

22   A.    Or you are by yourself. Depends if it's a one or

23           two person job.

24   Q.    Right. Depending on the job you get, so you get

25           a foreman or someone who assigns you --

1 A. Right.

2 Q. -- this or that?

3 A. Different schedule every night when you come in.

4 Q. Okay. Maybe since it's a full shift I can guess

5 the answer to this, but I will ask you. Is -- is

6 there a radio, you know, sort of playing all the

7 time?

8 A. We can bring our own radios in.

9 Q. And do you do that to help pass the time?

10 A. Yup. Yup.

11 Q. What's on the radio between 11 at night and 7 in

12 the morning?

13 A. Classic rock, the Buzz out of Milwaukee.

14 Q. Okay.

15 A. That's about all we listen to. I don't listen to

16 104.5. I don't care for it, too much talking.

17 I'd rather listen to music.

18 Q. Listening to music.

19 A. Be a long night if you don't have it.

20 Q. Right. And the talk shows get real weird at

21 night. So you are a music -- you are listening

22 to music?

23 A. Right.

24 Q. No TV at work?

25 A. No.

1 Q. I'm assuming. Tell me -- Tell me what you know  
2 about Brendan Dassey.

3 A. I saw the arrest of Brendan. Kind of like was  
4 Steven's arrest. That was it.

5 Q. Okay. When you say you saw the arrest of it,  
6 like a news conference?

7 A. That he was supposedly -- supposedly involved.  
8 That's it.

9 Q. Was that news conference sort of thing with  
10 microphones?

11 A. Right. Yup. Kind of bringing him in the  
12 courtroom. Had the orange -- I believe orange.  
13 I don't know.

14 Q. Okay. So you actually saw footage of the court?

15 A. Right. I saw him.

16 Q. Of the court stuff.

17 A. Right. Heard that he was arrested.

18 Q. Okay. And did you watch -- One of the  
19 prosecutors and a sheriff gave a news conference  
20 two days in a row; did you see that?

21 A. No.

22 Q. Okay.

23 A. Didn't see no conferences at all.

24 Q. Got it. And what -- when -- so back to -- back  
25 to Brendan Dassey, what else do you know about

1                   him, or have you heard?

2       A. A nephew. The nephew was arrested. Brendan  
3                   Dassey, the name, a nephew, and relation of  
4                   the --

5       Q. Other than being Steven Avery's nephew, did you  
6                   connect up, you know, the charges against Brendan  
7                   with the charges against Steven in any way?

8       A. What do you mean connect?

9       Q. Do you see them as linked together, tied together  
10                  in any way, one affecting the other?

11      A. I don't know. Just heard about an arrest. I  
12                  didn't really hear the details on it. If I would  
13                  have seen the conference or whatever, I would  
14                  have heard more about it. But I really can't say  
15                  because I didn't hear a lot about it.

16      Q. I'm trying to sort of explore that. Have you  
17                  heard anything that Brendan supposedly said?

18      A. No. No.

19      Q. So -- So let's talk about this trial since this  
20                  is just Steven Avery's trial. What do you think  
21                  about innocence or guilt as you sit here now?

22      A. You have to have the evidence, innocent until  
23                  proven guilty.

24      Q. Okay. So you sort of -- Are you just sort of  
25                  starting with, hey, I don't know anything and I

1 assume he's innocent, let's hear the evidence?

2 A. Whatever is set out in front of a person, that's  
3 how you -- I mean, to me that's how you figure  
4 out if they are guilty or innocent. I don't know  
5 enough about -- to say if he is or not.

6 Q. All right. As the case gets started, if you are  
7 on the jury, and you start hearing the evidence,  
8 are you somebody who's going to want to hear both  
9 sides?

10 A. Yup.

11 Q. Does that mean that you think he really better  
12 testify? I mean, seriously, I just need to know.

13 A. I would like to hear -- Yeah, I would like to  
14 hear, but if he decides not to, there still  
15 should be evidence.

16 Q. Okay. And in fact, I think the Judge will -- I  
17 shouldn't -- I'm not trying to do his job, I can  
18 barely do mine. But I think the Judge will tell  
19 you that a defendant, you know, somebody charged  
20 with a crime --

21 A. Right.

22 Q. -- can decide to testify. And if he does, then  
23 you treat him like any other witness.

24 A. Right. Right.

25 Q. Decide what you believe or what you don't.

1 A. Right.

2 Q. Or he can decide not to testify. I mean, is this  
3 familiar to you?

4 A. Right. I think it was mentioned when he spoke  
5 before, when we did our questionnaire.

6 Q. Right.

7 A. I remember him telling us that.

8 Q. Right. And so, you know, that's a tough call, I  
9 guess. Can you think of reasons why someone who  
10 really didn't do it might not testify --

11 A. No. No.

12 Q. -- all the same?

13 A. No.

14 Q. Like if he really didn't do it he would testify?

15 A. No.

16 Q. No. Why not testify?

17 A. Because evidence, you have to look at the  
18 evidence.

19 Q. So in other words, he could just say, hey, I  
20 didn't do it, but they can't prove I did, so I'm  
21 just going to rely on the fact they can't prove  
22 it, and I'm innocent; is that something you could  
23 accept?

24 A. Right. Mm-hmm.

25 Q. And do you know that Mr. Buting and I, as his

1           lawyers, might have something to say about, you  
2           know, advising him whether he should or shouldn't  
3           testify?

4       A. Right. Yeah. Mm-hmm.

5       Q. Can you live with that role of the lawyers kind  
6           of butting in?

7       A. Yeah.

8       Q. When I say can you live with it, can you  
9           accept --

10      A. Deal with it, yeah.

11      Q. -- it?

12      A. Accept it, yeah. Mm-hmm.

13      Q. These are the rules --

14      A. Yup. Mm-hmm.

15      Q. -- and that's how it works.

16      A. Mm-hmm.

17      Q. You were asked a question on the questionnaire to  
18           the effect of, you know, when you hear a police  
19           officer testify, can you weigh their testimony  
20           just like any other witness?

21      A. Right.

22      Q. And you said yes.

23      A. Mm-hmm.

24      Q. Do you think that there's anything about being a  
25           police officer that makes you less likely to lie

1           under oath than any other person who is under  
2           oath?

3       A. No, they are just like you or I. I mean, I would  
4           see them as that.

5       Q. Okay.

6       A. They just wear the uniform for their shift and  
7           that's it.

8       Q. Yeah, okay. UPS guys have a uniform?

9       A. Yup.

10      Q. Police officers?

11      A. Mm-hmm.

12      Q. Okay. If you're allowed to serve on this jury,  
13           are you willing to let the police officers just  
14           be human like everybody else?

15      A. Yeah.

16      Q. Not going to hold them to a higher standard?

17      A. No. No.

18      Q. Okay. By the way, have you been sitting back  
19           there all day?

20      A. Yup.

21      Q. And you would normally be sleeping from about 8  
22           to 4 or something?

23      A. I get home at 7:30. I lay down from about 8:30  
24           to about 1:30. And on the weekend I sleep like a  
25           normal person. So it works out pretty good for

1               me. Some people it don't.

2 Q. Okay. So have you bumped into anybody you know?

3 A. Here?

4 Q. Yeah.

5 A. No.

6 Q. Okay. And it gets pretty loud.

7 A. There's a joke teller in there.

8 Q. Okay. All right. Are people talking about this

9 case at all, or they just --

10 A. No, they were talking about jokes, how long it's

11 taking. We're timing it, about 45, 50 minutes a

12 person.

13 Q. All right.

14 A. You know. About where everybody works they were

15 just asking.

16 Q. Yeah.

17 A. Trying to get to know each other.

18 Q. Will you take a hit financially if you get stuck

19 on this jury for six weeks?

20 A. No.

21 Q. It will be all right with work?

22 A. Yup, uh-huh.

23 Q. And any concerns about -- I mean, your kids

24 aren't real young, but do you have any concerns

25 about being away from them?

1 A. No. No, they are 13 and 16.

2 Q. They may be at that age where they want you away  
3 for awhile.

4 A. Yeah, there's another one to run them to  
5 basketball or whatever.

6 Q. Okay. Did you grow up on a farm?

7 A. No, in the city.

8 ATTORNEY STRANG: I think that's -- I think  
9 that's -- Just a minute. I'm good, thank you for  
10 being patient.

11 THE COURT: All set. Ms Dorn, the Clerk  
12 will take you out of the room.

13 Any motion from either party?

14 ATTORNEY FALLON: No.

15 ATTORNEY STRANG: No.

16 THE COURT: Very well. This juror is in.  
17 Counsel, before we proceed further, let me take a  
18 little inventory here. It's my understanding that,  
19 referring to the sheets, 14, 17, and 20 are now --  
20 are now being jointly requested to be excused?

21 ATTORNEY BUTING: Oh, that was this  
22 morning, wasn't it?

23 ATTORNEY STRANG: Yeah, 14, 17, 20, 23, and  
24 27.

25 THE COURT: Okay. I have got 14, 17, 20,

1           23, 27 and 36.

2           ATTORNEY STRANG: I don't know about 36. I  
3           know I'm going to move to strike him.

4           ATTORNEY FALLON: Just give me a minute, I  
5           might be able to join you in that. If I could have  
6           a moment, Judge, to check my numbers.

7           THE COURT: All right. Let's go off the  
8           record for a second.

9           ATTORNEY STRANG: Sure.

10           (Off record discussion.)

11           THE COURT: Just for the record, counsel,  
12           and to confirm again, it's my understanding that the  
13           parties are jointly recommending that the following  
14           jurors be excused: 14, Anthony Kabat; 17, Brad  
15           Erdman; 20, Thomas Kubichka; 23, Audrey Gagnon; 27,  
16           Mark Groth; and 36, Jerome Reszczyski. There may be  
17           others tomorrow, but at least through 36, those are  
18           the ones that are jointly recommended?

19           ATTORNEY FALLON: Yes, Judge.

20           ATTORNEY STRANG: That's correct.

21           THE COURT: Very well. The Court will  
22           excuse those jurors. And I don't know if you folks  
23           have the information yet. Number 34, Ryan Manley,  
24           it turns out is now a Milwaukee resident.

25           ATTORNEY FALLON: Yes, I think we got

1 information last Monday, or afternoon, or something.

2 At least I was advised that he had moved to  
3 Milwaukee, I guess.

4 THE COURT: All right. So we're going to  
5 do two more jurors. The next one will be Sharon  
6 Thorne.

7 All right. Ms Thorne, before we begin  
8 the Clerk will administer the juror's oath to  
9 you.

10 THE CLERK: Raise your right hand, please.

11 (Juror sworn.)

12 THE CLERK: Please be seated.

13 THE COURT: Ms Thorne, you have already  
14 completed a questionnaire in this case, today we're  
15 going on to the next step of jury selection which is  
16 individual voir dire by the attorneys for both  
17 parties. In a minute they will ask you a few  
18 questions.

19 Before we begin, I want to pass on a few  
20 additional notes for your information. The jury  
21 that is selected in this case will not be  
22 sequestered. That means for the duration of the  
23 trial, which may go six weeks, the jurors will be  
24 permitted to go home every evening after the  
25 trial is over for the day. We're doing that with

the understanding that the jurors will not observe any reports involving this matter on any news media, either newspaper, radio, or television, the internet, or discuss the matter with anybody else.

You should also know that although these voir dire proceedings are open to the public, no cameras are allowed in the courtroom during voir dire proceedings. And the news media is not allowed to identify individual jurors by name in any news reports. In addition, the jurors selected to serve in this case will not be on camera during any portion of the trial. The news media is not allowed to show the juror's faces during the trial.

In the event you are selected to stay on the jury panel after today's questioning, you will receive a notification by telephone as to when to report back to court. It will probably be in the next two or three days.

With that background information,  
Mr. Fallon, you may begin.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

Q. Good afternoon.

1 A. Good afternoon.

2 Q. Thank you for your patience with us. I  
3 understand you have been having some fun at our  
4 expense, so I suppose that's deserved. Just  
5 wanted to follow up with some questions based on  
6 the information that you gave us last Monday in  
7 the questionnaire.

8 My name is Tom Fallon. I'm an Assistant  
9 Attorney General with the Wisconsin Department of  
10 Justice. I'm one of the prosecutors in this  
11 case. And I guess I would like to begin with a  
12 couple of questions about your work situation.  
13 So tell me, where it is you work again, Kroll's;  
14 what is that?

15 A. Kroll's East, Green Bay, as a waitress.

16 Q. Okay. So that's a restaurant then?

17 A. Mm-hmm.

18 Q. All right. And how long have you worked there?

19 A. Just since October.

20 Q. Okay. And prior to that you worked in a -- for a  
21 couple of temporary services?

22 A. Mm-hmm.

23 Q. Is that a yes? She has got to type down yes or  
24 no so.

25 A. Okay.

1 Q. The others don't work out to well. What kind of  
2 work did you do when you were subbing out, as it  
3 were, for the temp service?

4 A. Factory assembly work.

5 Q. Okay. And how long did you work for those  
6 temporary services? ABR, how long did you work  
7 for them?

8 A. About 10 months.

9 Q. Okay. And the Flex Staff Service?

10 A. About a year.

11 Q. About a year, okay. And then you worked for  
12 Mirro Company?

13 A. Mm-hmm.

14 Q. And how long did you work for them?

15 A. 11 years.

16 Q. And what kind of work did you do for Mirro?

17 A. Paragon Electric in Two Rivers.

18 Q. Okay.

19 A. Assembling timers.

20 Q. So a fair amount of factory work?

21 A. Right.

22 Q. Piece work, assembly production?

23 A. Right.

24 Q. Okay. Very good. The reason I asked those  
25 questions is that, as you have no doubt learned

1           through the process, this case may very well take  
2           six weeks to try, when it's all said and done.  
3           And if you are selected for the jury, that means  
4           you will be here 8, 9 hours a day. So our  
5           concern is you indicated you didn't think there  
6           would be any hardship for you. Having thought  
7           all that through and a week to think about it,  
8           are you still confident that you will be able to  
9           financially make it through that six week period?

10          A. Yes.

11          Q. All right. Now, in terms of hobbies and  
12           interesting things, you indicated you like to  
13           fill in puzzles. Are those crossword puzzles or  
14           other types of puzzles?

15          A. Fill ins, they look like a crossword puzzle.  
16           They give you the word, and you just have to fit  
17           them in the puzzle, what I was doing all day  
18           today.

19          Q. All right. And do you like to do that because  
20           you find it challenging, or relaxing, or any  
21           particular reason?

22          A. Relaxing.

23          Q. Okay. Any other kind of puzzle work that you  
24           like to do?

25          A. No.

1 Q. Okay. So you lived in Manitowoc County all your  
2 life?

3 A. Right.

4 Q. All right. During that time, have you had an  
5 opportunity to form any opinions as to the local  
6 Sheriff's Department? Do you think they do a  
7 good job in fighting crime, a fair job, a lousy  
8 job; do you have any opinion on that?

9 A. No problem. I have no -- They do their job all  
10 right I figure.

11 Q. In other words, you don't hear any complaints to  
12 your --

13 A. No.

14 Q. Okay.

15 A. No.

16 Q. Now, the other couple questions I have for you,  
17 you indicate you get your news, I guess,  
18 primarily from television, not from newspapers.  
19 How often do you watch news telecasts?

20 A. I don't watch much TV at all.

21 Q. You don't?

22 A. No, I'm not.

23 Q. If you don't get your news from the TV, do you  
24 get your news from any other source?

25 A. No, I don't get a newspaper.

1 Q. Are you a computer person at all?

2 A. No, I don't have a computer.

3 Q. Okay. Now, in response to one question here, if

4 you were aware of the publicity, you didn't

5 answer yes, but you answered further with a brief

6 explanation. And you said, just some news

7 coverage, local Green Bay channels, very little.

8 As a result of that information, you went on to

9 say you haven't really formed any opinions in

10 this case?

11 A. No.

12 Q. From time to time, do you ever talk about the

13 case, or any of the news with any friends or

14 family members, or anything like that?

15 A. No.

16 Q. Okay. If you are not a TV person, what do you do

17 with your -- with your spare time? You say --

18 A. When it's nice outside, I'm outside a lot.

19 Q. I'm sorry?

20 A. When it's nice outside, I'm outside a lot,

21 camping. I like going in the woods walking my

22 dog. Just hang out with the girls, I mean, you

23 know, having our little coffee klatsch.

24 Q. Oh, do you. Okay.

25 A. Stuff like that, go out for lunch.

1 Q. All right. And I take it, then, with some of the  
2 women that you hang out with you don't really  
3 talk about news that much, just talk about  
4 cooking gardening, and --

5 A. Girl stuff.

6 Q. Girl stuff. All right. That's fair. All right.  
7 And how often do you get together with the girls  
8 and just kick things around?

9 A. At least a couple times a month.

10 Q. Okay. Do you ever discuss the major events of  
11 the day in your coffee klatsch?

12 A. Well, like when it happened that -- in the  
13 blowing up the building --

14 Q. The World Trade Center.

15 A. Well, yeah, that was big talk.

16 Q. Sure.

17 A. Stuff like that, but, no, not really.

18 Q. Generally, it's not usually a newsworthy  
19 discussion like this?

20 A. No.

21 Q. Okay. Very good. Do you know anyone in the  
22 media that you are friends with, or any family  
23 members that work in the media that you might  
24 talk with from time to time?

25 A. Nope, none.

1 Q. All right. In terms of the little bit of media  
2 coverage that you ever experienced in this case,  
3 can you tell us what you do recall about the news  
4 that you did see in terms of the information, or  
5 what facts you think you may have as a result of  
6 the media coverage?

7 A. I don't really watch it, the news. Mainly just  
8 the weather. I put it on for the weather and  
9 that's it.

10 Q. Okay. Very well. So you don't have any  
11 particular impressions or what's going on with  
12 respect to this case at all?

13 A. None.

14 Q. Okay. In your work with the temporary services,  
15 working with producing and manufacturing  
16 products, and working on the assembly line, and  
17 piece work, and things of that sort; were you  
18 ever -- ever in charge of anyone, or supervising  
19 anyone in that capacity?

20 A. No.

21 Q. Okay. Did you ever write any safety guidelines,  
22 or suggest any safety guidelines, or setting up  
23 of any when you are working with the equipment or  
24 other people in producing?

25 A. On a Safety Committee, yes.

1 Q. Oh, you did. Okay. Tell us about that.

2 A. Just mark down the dangers on the job that we

3 could see that workers were doing.

4 Q. Okay.

5 A. And how they were performing and the problems

6 that it could cause.

7 Q. All right. And how did you -- Did you like that

8 experience, having some input like that?

9 A. Mm-hmm, yeah.

10 Q. Did you find it valuable?

11 A. Yeah.

12 Q. In terms of coming up with some ideas and

13 guidelines, was that kind of a group process?

14 A. Mm-hmm.

15 Q. Is that a yes?

16 A. Yes, monthly group.

17 Q. All right. And so you would periodically revisit

18 the guidelines and safety concerns?

19 A. Right.

20 Q. Okay. Do you consider yourself, you know, in

21 terms of evaluating opinions, or trying to solve

22 problems, or just generally in looking at things

23 in this world, do you consider yourself a detail

24 oriented person, or a big picture type of person,

25 bottom line approach?

1 A. Well, I'm not sure.

2 Q. Okay. Have you ever used any magazine or

3 publication, such as Auto Trader, to buy or sell

4 a vehicle?

5 A. No.

6 Q. Okay. All right. Have you ever read, or heard,

7 or seen anything in the news or in your

8 discussions with the girls, anything about this

9 Project Innocence in Wisconsin?

10 A. Nope.

11 Q. All right. Or do you know what it is?

12 A. No.

13 Q. It's a group of professionals, based in Madison,

14 that seek to exonerate people who were wrongfully

15 accused; does that ring a bell to you at all?

16 A. No.

17 Q. Okay. Do you know anything about Mr. Avery's

18 background or his past?

19 A. None.

20 Q. Not a thing.

21 A. Uh-uh.

22 Q. All right. In terms of your employment situation

23 and particularly the safety guidelines and

24 concerns and producing these products; would you

25 consider yourself one who follows those rules and

1 guidelines?

2 A. Yes.

3 Q. And that they are there for a particular reason,  
4 for instance safety, or to enhance production?

5 A. Right. Yes.

6 Q. All right. You don't have any problem following  
7 those rules or anything?

8 A. No.

9 Q. Now, in this particular case, Judge Willis here,  
10 if you are selected, will advise you of some of  
11 the rules and principles which will guide us  
12 during the course of the trial; would you be able  
13 to follow those rules?

14 A. Yes.

15 Q. Now, you indicated in your questionnaire you  
16 would accept the fact that Mr. Avery is presumed  
17 innocent until the State, that's our team here,  
18 unless or until we prove him guilty, beyond a  
19 reasonable doubt. You can follow that  
20 instruction?

21 A. Yes.

22 Q. And do you accept that as a important principle?

23 A. Mm-hmm. I do.

24 Q. Okay. Now, you have never served on any jury  
25 before; is that correct?

1 A. No, I haven't.

2 Q. All right. Is there any philosophical reason,  
3 any moral reason, or religious reason, as you  
4 think about your own experiences in life, which  
5 gives you a reason to doubt whether you could  
6 serve as a juror in this case?

7 A. No. Uh-uh.

8 Q. If you were selected as a juror in this case,  
9 would that be all right with you?

10 A. Fine.

11 ATTORNEY FALLON: All right. That's all I  
12 have.

13 THE COURT: Mr. Strang.

14 ATTORNEY STRANG: Thank you.

15 **VOIR DIRE EXAMINATION**

16 BY ATTORNEY STRANG:

17 Q. Hi, I'm Dean Strang. This is Jerome Buting,  
18 Steven Avery. And he's prosecuting, and we're  
19 defending, Mr. Avery.

20 A. All right.

21 Q. And I will tell you right now, I'm not from  
22 around here. And I thought I had a pretty good  
23 sense of Manitowoc County, but I don't know where  
24 Greenleaf is. I know vaguely where County NN is.

25 A. Out in the country.

1 Q. So where is it?

2 A. 15 miles west of Denmark.

3 Q. 15 miles west of Denmark.

4 A. By Wrightstown and --

5 Q. So you are near Brown County?

6 A. Just a little bird out there.

7 Q. You are near Brown County sort of.

8 A. Mm-hmm. Actually across the street is Brown  
9 County line. Mm-hmm.

10 Q. And then how far --

11 A. Between K and Z is where I live. Between  
12 Kellnersville and Maribel, there's a little  
13 country road between there?

14 Q. Got it.

15 A. I'm right on the borderline of it all. I have a  
16 Greenleaf address. I'm Manitowoc County.  
17 Township of Cooperstown. It goes on and on.

18 Q. And do you have family around?

19 A. Mm-hmm. A brother in Appleton. A brother in  
20 Appleton.

21 Q. Your folks still around?

22 A. No, they are both gone.

23 Q. So there's just the one brother, but he's over in  
24 Appleton?

25 A. Mm-hmm.

1 Q. I understand Mrs. Kroll died this weekend.

2 A. Yes, she did. Mm-hmm. 94.

3 Q. 94 years old.

4 A. Yup.

5 Q. How did you wind up waitressing after doing  
6 factory work?

7 A. My girlfriend, we worked together at Paragon in  
8 1983. And she's been working there for about  
9 five years. So she got me into the restaurant.  
10 She knew I always wanted to leave factory. And I  
11 always talked I wanted to get out of factory. So  
12 she said there was openings, she said why don't  
13 you try it. So I did.

14 Q. And how is it?

15 A. I like it.

16 Q. Kroll's is a place where everybody is a regular,  
17 basically?

18 A. Right.

19 Q. So what do you -- as you are warming up people's  
20 coffee, what do you chitty chat with them about?

21 A. All kind of things, the weather?

22 Q. Whatever is on their mind?

23 A. Green Bay Packers, of course, because you are in  
24 Green Bay.

25 Q. How else.

1 A. Yes. Is Favre coming back, that's another thing.

2 Q. All right. So, I mean, so this sort of suits

3 you; I mean, are you social that way, it sounds

4 like?

5 A. Oh, yeah.

6 Q. I'm sitting here saying now that I finally have a

7 woman under oath, I could ask what girl talk is,

8 since I have always wondered all my life.

9 A. Something besides not underneath looking at an

10 engine, changing oil and stuff like that.

11 Q. All right. So look, you know, what do you know

12 about Brendan Dassey? If you don't know anything

13 about Steven Avery, what do you know about

14 Brendan Dassey.

15 A. I don't know.

16 Q. Have you ever heard of the name?

17 A. I went, way back, to school with a Dassey?

18 Q. Which one?

19 A. Peter Dassey. And I know a Paul Dassey. I just

20 know because they live in Two Rivers, the name.

21 But I have no idea, you know, for any personal

22 thing about them or anything.

23 Q. Or any connection --

24 A. No.

25 Q. -- to this --

1 A. No.

2 Q. -- case?

3 A. Right. Just lived in Two Rivers all my life and

4 they lived there too. And the name.

5 Q. Was Peter in your class?

6 A. No. Uh-uh.

7 Q. But you knew him through school?

8 A. Right.

9 Q. And, you know, this is all -- this is all pretty

10 new to you if you haven't been on a jury before.

11 A. Mm-hmm.

12 Q. And I don't think you have ever been in trouble,

13 have you?

14 A. No.

15 Q. And so if you wind on this jury, which could be

16 six weeks --

17 A. Right.

18 Q. -- are you going to want to hear from both sides

19 in this case?

20 A. Well, yeah. you can't make a decision until you

21 know what it's all about totally.

22 Q. Yeah. And there's -- there's some things that

23 could interfere with that. And I want to talk

24 you to about those and get your take on them.

25 The State -- I think as you have been told a

1           couple times now, the State has the burden of  
2           proof in this case. They have to prove Steve  
3           Avery guilty, beyond a reasonable doubt, if they  
4           can. So flip that around, what does that mean  
5           that we have to prove?

6         A. That he's innocent.

7         Q. Actually, nothing. We don't have to prove  
8           anything, because they have to prove he's guilty.  
9           I don't have to prove he's innocent.

10        A. Okay.

11        Q. If the Judge tells you those are the rules, can  
12           you grab on to that and follow those rules?

13        A. Mm-hmm.

14        Q. Is that yes?

15        A. Yes.

16        Q. I'm sorry. The court reporter will throw a  
17           pencil at me or something if I don't get a yes or  
18           no out of the you.

19                   I think it's a natural human thing to  
20           want to hear both sides if you are going to be  
21           fair and all that. And I'm sure we'll do stuff  
22           in this trial, but do you understand we don't  
23           have to prove him innocent? We really don't, in  
24           the end. Can you follow that rule --

25        A. Yeah.

1 Q. -- if you wind up on the jury?

2 A. Sure.

3 Q. And it's the same thing with him testifying. I  
4 don't know, do you figure that, well, if a guy  
5 didn't do it he would get up on the stand and  
6 testify that he didn't do it?

7 A. It's not that easy.

8 Q. It's not that easy? Why not?

9 A. It's just not.

10 Q. Actually, it's not that easy.

11 A. It's not.

12 Q. But I'm wondering why you say so?

13 A. Just from like the past, of what my mom and dad  
14 used to say about the legal system and that.

15 Q. Who were they?

16 A. That's my mom and dad.

17 Q. Yeah, I know what but --

18 A. The way they would talk and that. I mean, just  
19 said don't get into trouble because it ain't that  
20 easy to get out of it.

21 Q. Okay. It is true. And the Judge has also told  
22 you, and he will tell you a bunch of times again  
23 I think, that in America, someone who's accused  
24 of a crime is presumed innocent. They start the  
25 trial that way. They go through the trial

1           presumed innocent. And only if the jury  
2           eventually decides at the end that the State  
3           proved it, beyond a reasonable doubt, is the  
4           person no longer presumed innocent. He gets  
5           found guilty in that case.

6         A. Mm-hmm.

7         Q. And that idea, that someone is presumed innocent,  
8           bumps up against -- I think in the real world  
9           bumps up against a tendency of people to say,  
10          well, he's here, he is sitting in the defendant's  
11          table, wouldn't be here if he hadn't done  
12          something. And is that, you know, is there a  
13          voice in your head saying that too?

14        A. Just have to wait and see what's all summed up,  
15          you know.

16        Q. Do you think he must have done something, though,  
17          to be charged and to be here?

18        A. Apparently.

19        Q. I don't know.

20        A. Somebody must know something.

21        Q. Somebody has alleged something?

22        A. Yes.

23        Q. But that's the point, somebody has made a claim.  
24          And that's the point is, he is presumed innocent.

25        A. I guess that's what we're here to find out.

1 Q. That's -- That's why you are here. That's why we  
2 have a jury, in the end. So, you know, as you  
3 say, it's not that easy on whether he testifies  
4 or doesn't testify. And I guess what I need to  
5 know is, when the Judge gives you the rules to  
6 follow, are you going to follow them?

7 A. Of course.

8 Q. And, you know, some things we do because we have  
9 to, some things we do because we believe in it  
10 and we want to. Where do you fall on that, on  
11 things like being presumed innocent and the State  
12 having the burden or proof?

13 A. Just have to wait and see what I hear and sum it  
14 up that way.

15 Q. But are you following those rules because you are  
16 told to and that, you know, they are rules you  
17 have to follow, or do you say to yourself those  
18 rules make sense to me, and if I were charged  
19 with a crime, that's what I would want?

20 A. Basically, I will have to just see how it turns  
21 out, see what's said, and see how the evidence  
22 all goes, and how it all falls in place. You  
23 know, that's all I can really say. Can't say he  
24 is guilty, can't say he is not guilty. I don't  
25 know.

1 Q. But can you presume that he is not guilty?

2 A. Apparently. Maybe. I don't know.

3 Q. This is perfect, you are being very straight with  
4 me, which is what I need, you know, to help me  
5 make decisions about whether we want you or not.  
6 And if you are going to be on the jury, you have  
7 got to get past, apparently, or maybe. And it's  
8 okay to tell me if you are not going to get past  
9 apparently or maybe.

10 ATTORNEY FALLON: I'm going to object to  
11 that. That's a mischaracterization of the law, at  
12 least in terms of -- Well, I don't want to argue in  
13 front of her.

14 THE COURT: There is some ambiguity in the  
15 question. Let's move on to the next question.

16 Q. You will be asked to take an oath if you are on  
17 the jury, that you are going to follow the  
18 Judge's instructions.

19 A. I will be able to, yes.

20 Q. Presuming him innocent is one of those.

21 A. Right.

22 Q. There's a bunch of other instructions too.

23 A. Mm-hmm.

24 Q. Okay. Do you think you will be able to do that?

25 A. Yes.

1 Q. So let me just come out and ask you, do you want  
2 to be on this jury?

3 A. Sure.

4 Q. Why?

5 A. I find it interesting. I never done it before.  
6 Just find it interesting.

7 Q. What if this trial goes six weeks and takes you  
8 away from your life for six weeks?

9 A. I'm aware of that already.

10 Q. And you still want to do it?

11 A. Sure.

12 Q. Just for the new experience? Just because it's  
13 interesting? Or is there any other reason?

14 A. It's a lifetime experience. I may never be able  
15 to do it again.

16 Q. Do what?

17 A. To be in court, to make the decision?

18 Q. Okay.

19 ATTORNEY STRANG: Thank you.

20 THE COURT: Anything else, Mr. Fallon?

21 ATTORNEY FALLON: Nothing, thank you.

22 THE COURT: Very well. The Clerk will  
23 escort you out of the courtroom at this time, Ms  
24 Thorne.

25 Any motion from either party?

1 ATTORNEY FALLON: None from the State.

2 ATTORNEY STRANG: None here.

3 THE COURT: All right. Ms Thorne will be  
4 in the jury pool -- or panel.

5 Ms Whalen, please raise your right hand.

6 The Clerk will administer the oath.

7 (Juror sworn.)

8 THE COURT: Ms Whalen, first let me  
9 apologize in our delay of getting to you today. You  
10 have the honor of being the last juror we are going  
11 to be voir diring today. You have already completed  
12 a questionnaire in this case and today we're  
13 proceeding on to the next phase of jury selection  
14 which is individual voir dire. Each of the  
15 attorneys, in a few minutes, will have an  
16 opportunity to ask you some follow-up questions to  
17 the information requested in your questionnaire.

18 I can tell you that the jurors who are  
19 selected in this case will not be sequestered.  
20 That means that after each day of the trial you  
21 will be able to go back home. We're doing that  
22 because the jurors will be required not to listen  
23 to any news media accounts on the radio, not to  
24 watch anything on TV, or read anything in the  
25 newspaper, or on the internet. And jurors will

1 also have to agree not to discuss the case with  
2 anyone during the course of trial.

3                 Although the proceedings today are open,  
4 during the voir dire process cameras are not  
5 permitted in the courtroom. And you should know  
6 that the press is not allowed to identify the  
7 names of the jurors in any news accounts of the  
8 case. You should also know that if you are  
9 selected to serve as a juror, during the course  
10 of the trial, cameras are not permitted to show  
11 the identity of the jurors; that is, show their  
12 faces or any part that's recognizable.

13                 After the questioning today, if you  
14 remain on the jury panel, you will be asked to  
15 come back in a couple days. The Clerk's Office  
16 will notify you by telephone of exactly when and  
17 where. With that background, then, Mr. Fallon,  
18 you may proceed with your questions.

19                 ATTORNEY FALLON: Thank you.

20                 VOIR DIRE EXAMINATION

21 BY ATTORNEY FALLON:

22 Q. Good afternoon. My name is Tom Fallon. I'm an  
23 Assistant Attorney General with the Wisconsin  
24 Department of Justice. I'm one of the  
25 prosecutors in the case. Thank you for your

1           patience. I would like to follow up with some  
2        questions on some of the information you provided  
3        last week in the questionnaire and a few other  
4        related questions.

5           First and foremost, I see that you are  
6        currently employed at the -- I can't quite read  
7        your writing, a plating company here in  
8        Manitowoc?

9       A. Yes.

10      Q. All right. And you're a quality control person?

11      A. Yes.

12      Q. Tell us a little bit about what that involves.

13      A. That's where I check the finished products as  
14       they come off the line, making sure they are more  
15       or less perfect for the consumer.

16      Q. All right. How long have you been working there?

17      A. It will be 21 years in March.

18      Q. All right. And have you always worked in the  
19       quality control division, as it were?

20      A. Um, I -- I have done it for three and a half  
21       years previously, and I just wanted to get back  
22       on the assembly line. And I did that for a  
23       while, and they needed somebody to go back in  
24       quality control and I volunteered. And I really  
25       like it.

1 Q. All right. And how long is this tour of duty, as  
2 it were, on quality control? When did you go  
3 back and resume that duty?

4 A. How long have I been on it?

5 Q. Yeah, just recently, last 3 or 4 years or longer?

6 A. Just that I came back on it was like April of  
7 this last year.

8 Q. April. Okay. All right. How long had you been  
9 away from it?

10 A. Five years.

11 Q. Okay. Now, there is a question regarding your  
12 employment that we wanted to explore with you.  
13 And in answer to the last question on the  
14 questionnaire, you were asked, is there any  
15 reason that has not previously been ruled on by  
16 the Court, why you should -- or you would suffer  
17 exceptional personal hardship if selected to  
18 serve as a juror, you answered, yes, you thought  
19 so because of a large house payment, and that you  
20 might need it to continue working to ensure that  
21 you could meet your financial obligations with  
22 your home.

23 A. Mm-hmm.

24 Q. Is that still the case?

25 A. Well, yeah. We do have a large house payment,

1           but I think we can make do.

2 Q.   All right. So are you suggesting to us then that

3        you are in a situation where you would not be

4        paid if you were selected as a juror?

5 A.   I don't know.

6 Q.   Okay.

7 A.   If the company pays me, I have no idea.

8 Q.   All right.

9 A.   I already said that I would take vacation.

10 Q.   All right. Six weeks vacation?

11 A.   No, I only have four weeks.

12 Q.   So you would suffer a couple weeks without pay

13       then, possibly, potentially, you just don't know?

14 A.   Yes.

15 Q.   All right. Are you comfortable with that? I

16       mean, is that really going to put your family in

17       a financial bind?

18 A.   No, I guess, you know, there's always a will,

19       there's always a way?

20 Q.   Okay. All right. I want to talk a little bit

21       about some of the publicity which has attended to

22       this case. As a lead in to that, do you watch

23       the news fairly regularly?

24 A.   Um, like I said, we just built a new home, and

25       we're still tinkering with it, so the news isn't

1           really always on. It is now and then, if I just  
2           happen to be in the room or -- but it's not  
3           always on. I used to get the paper, but I only  
4           get it on the weekends.

5 Q. All right. Have you followed the -- we'll start  
6           with the television, have you followed the  
7           television coverage with respect to this case?

8 A. In the beginning I did, but then after a while it  
9           was getting overwhelming so now I don't watch it.

10 Q. All right. When do you think was the last time  
11           you watched any television coverage of the status  
12           of the case, or the proceedings, or what have  
13           you; how long ago did you stop watching?

14 A. About a week ago when you told me not to, for  
15           one.

16 Q. All right.

17 A. But before that was months. Because it just  
18           became always on there.

19 Q. Okay. So you really stopped watching months ago  
20           and you have been earnest about it after  
21           receiving the directive from the Court.

22 A. Mm-hmm.

23 Q. That's a yes?

24 A. Yes.

25 Q. She has to hear the word.

1 A. Sorry.

2 Q. All right. How about the newspaper coverage,  
3 have you stopped reading the paper, the news  
4 articles as well?

5 A. I saw on Sunday's paper, Steve's picture, and  
6 right away I turned it over.

7 Q. All right. You didn't read any of the article at  
8 all?

9 A. No.

10 Q. All right. Prior to receiving the directive from  
11 the Court, when was the last time you read any  
12 newspaper accounts of the case and the status and  
13 things of that sort.

14 A. Probably when that Dassey boy, whatever, when  
15 that happened.

16 Q. Okay.

17 A. That's probably the last time.

18 Q. All right. So that might have been last March.

19 A. Yeah, because it was just so much every day.

20 Q. Well, what do you recall reading or hearing about  
21 the case involving Mr. Dassey?

22 A. That he got picked up, that he was going to jail,  
23 that he was from Mishicot High School, that he  
24 was more or less involved in it, you know. To  
25 me, again, it was just another constant reminder

1           of, you know, what happened.

2   Q. All right. Do you recall any of the details  
3       regarding his arrest or any of the statements  
4       he's alleged to have made?

5   A. Yeah, he was saying that he was involved with it.

6   Q. Okay. That's the extent of what you recall?

7   A. Yeah, to me that's just gibberish, you know, you  
8       hear it and you hear it, and after awhile you  
9       don't want to hear it.

10   Q. Okay. Now, as a result of that initial media  
11       splurge of coverage, did you form any long  
12       lasting, solid opinions about the guilt or  
13       innocence of Mr. Avery?

14   A. No.

15   Q. All right. As you sit here today, do you have an  
16       opinion as to his guilt or innocence?

17   A. Actually, no, I don't. Because -- you could --  
18       it could go either way.

19   Q. All right.

20   A. Maybe she was in love with him and maybe she was  
21       trying to break it off, or maybe he, you know, I  
22       just -- I don't --

23   Q. There's too much you don't know.

24   A. Yeah, just too much.

25   Q. All right.

1 A. That's why I didn't want to listen or read it any  
2 more.

3 Q. You didn't want to what?

4 A. Listen or read.

5 Q. Oh, listen or read about. I got you. All right.  
6 In your responses here, you said, well, yes and  
7 no. On the one hand, I think he did it. On the  
8 other hand, I don't think he did it. Could you  
9 kind of elaborate on your --

10 A. Well, that's just what I mean. You know, you  
11 hear people at work say, well, yeah, he did it,  
12 he did it, he did it. But then it's like what  
13 evidence do you have.

14 Q. Right. And the fact that -- In terms of one  
15 question, on the one hand, I believe he did it,  
16 and on the other hand, then again, I believe he  
17 was framed; where does that come from? What  
18 opinion is that based on?

19 A. Um, that's probably what I read.

20 Q. Okay.

21 A. Yeah.

22 Q. All right. So in other words, you are willing to  
23 give either side a fair shake, as it were, as the  
24 evidence is presented.

25 A. Yeah, because I have no evidence.

1 Q. Right. Okay.

2 A. What I hear is what people say.

3 Q. Now, importantly, do you think that whatever  
4 opinions you have you can set those aside, and if  
5 you were selected as a juror, you could decide  
6 this case solely on what you hear in the  
7 courtroom, and not so much what your husband  
8 might say, or any of your friends and colleagues  
9 at work, you can decide this case just on what  
10 the evidence in the room is?

11 A. Actually, nobody at our house talks about it, or  
12 even at work.

13 Q. Okay.

14 A. It's pretty much an old thing now.

15 Q. All right.

16 A. Yes, I think I could.

17 Q. All right. Excuse me. Just so I'm clear, I  
18 thought you said that -- okay -- that there was  
19 apparently a time where people did talk about the  
20 case quite a bit at work, but you are telling us  
21 that that's pretty well subsided now?

22 A. Mm-hmm.

23 Q. That's a yes?

24 A. Yes.

25 Q. Okay. So there's not a great deal of discussion

1           about it at the current time?

2 A.       I work with a lot of Mexicans.

3 Q.       Okay.

4 A.       So, it's just maybe two of us --

5 Q.       All right.

6 A.       Caucasians.

7 Q.       All right.

8 A.       Nobody talks about it.

9 Q.       Okay. Is that all right with you, that no one is  
10           talking about it?

11 A.       Yes, that's fine.

12 Q.       Okay. In terms of being able to set aside your  
13           opinion -- I will get to that in a minute. I'm  
14           going to follow up with something else here. On  
15           one question you indicated that you, yourself, or  
16           your family, were victims of a crime; is that  
17           correct?

18 A.       Yes.

19 Q.       I think you said you were robbed in 1993?

20 A.       Yes.

21 Q.       And the people were arrested?

22 A.       Yes.

23 Q.       Okay. Were they prosecuted to your knowledge?

24 A.       Yes.

25 Q.       Were they convicted?

1 A. Yes.

2 Q. Did the case actually proceed to court, or were

3 you ever a witness, or was it resolved before a

4 formal trial?

5 A. That was so far -- or such a long time ago. Yes,

6 we did go to court.

7 Q. Okay. Did you actually give some testimony at

8 one point, in a preliminary hearing maybe, or a

9 trial.

10 A. My husband sat upfront and I was like in the back

11 a little bit.

12 Q. Okay.

13 A. And we just had to point him out, if that was the

14 right person.

15 Q. Okay. Was that in front of a jury or just a

16 judge?

17 A. Just a judge.

18 Q. Okay. What did you think of that process?

19 A. It was cool.

20 Q. All right. Well, as a victim of a crime, do you

21 think you were dealt with appropriately,

22 respected, and --

23 A. Yes, I do.

24 Q. Okay. And as far as law enforcement's

25 involvement, was that a good experience, bad

1                   experience for you?

2     A. It was good, they were very good to us.

3     Q. All right. Is that your only personal experience  
4       with law enforcement here in Manitowoc?

5     A. Yes.

6     Q. Was that the Sheriff's Department, or Police  
7       Department, or who would have been involved in  
8       that?

9     A. County maybe.

10    Q. County sheriff?

11    A. Yes.

12    Q. All right. You also indicated you have a friend,  
13       or family member, who is a law enforcement  
14       officer?

15    A. Yes.

16    Q. Is that with the city police, or the county  
17       sheriff, or one of the surrounding  
18       municipalities?

19    A. The city.

20    Q. City police officer. Okay. Is that a son,  
21       nephew?

22    A. It's a son.

23    Q. Okay. And how long has he been a member of the  
24       Manitowoc Police Department.

25    A. I'm going to say about 10 years, maybe.

1 Q. All right. Well, let me ask you this question,  
2 then, since you have had a good experience with  
3 the sheriff, and your son is a police officer, I  
4 want to ask you about a question that you filled  
5 out on the questionnaire.

6 And it says the law requires jurors to  
7 evaluate the credibility of police officers just  
8 as that of any other witness; that is, jurors are  
9 prohibited from giving more or less credibility  
10 to the testimony of a law enforcement officer  
11 simply because the witness is a law officer. If  
12 selected as a juror, would you be able to assess  
13 the credibility of law officers on this basis,  
14 and you answered yes. Is that still your answer  
15 today?

16 A. On the credibility of the law officer?

17 Q. Yes.

18 A. Yes, I think so.

19 Q. All right. Then the tougher question is, well,  
20 given your positive experience with the Manitowoc  
21 Sheriff, and your son being a police officer,  
22 would you have a tendency -- it seems to me you  
23 might have a tendency to weigh their testimony  
24 more favorably than you would somebody else;  
25 would that be the case?

1 A. Toward the Manitowoc police officer?

2 Q. Well, any officer?

3 A. Well, the evidence has got to be there, you know.

4 You have to not be prejudiced either way, you

5 have to be just focused.

6 Q. All right. So is that what you mean when you say

7 you would evaluate their believability, their

8 credibility, the same as any other witness?

9 A. Yes.

10 Q. Okay. Now, you also had a prior jury experience,

11 I see; is that correct?

12 A. That's right.

13 Q. What kind of case was it, you said it was a

14 criminal case? Do you recall what the issue was?

15 A. I'm not sure what criminal and the other thing

16 is, but I think it's criminal. The lady said

17 that her purse was stolen.

18 Q. Right.

19 A. And whoever stole it wrote checks at various

20 different stores. And as we went through the

21 case, we checked her checks that were written

22 from that day, back a year, to two years, to five

23 years, and the handwriting was all the same.

24 Q. All right.

25 A. So it was like only a day.

1 Q. A day long. So it was kind of like a forging a  
2 check or --

3 A. Yes.

4 Q. Or uttering or something of that nature?

5 A. Right.

6 Q. And was that a good experience, bad experience,  
7 for you?

8 A. It was good.

9 Q. Yeah. What was good about it? Why did you find  
10 it a good experience?

11 A. Well, I was never involved in anything like that  
12 and it was interesting.

13 Q. Okay. Was there anything about that experience  
14 that raises a question in your mind today as to  
15 whether you could be a juror and deliberate with  
16 your peers and reach a verdict in a case such as  
17 this?

18 A. I just think I'm an honest person and I ain't  
19 going to lie about something. I think I could do  
20 a good job.

21 Q. All right. Did you enjoy the deliberation  
22 process with your colleagues, the give and take  
23 in the jury room?

24 A. Yes.

25 Q. All right. One moment. In that case, do you

recall if -- whether or not the defendant testified in that case?

A. She did.

Q. She did. And would it have mattered to you, in retrospect, if the defendant -- if she did not testify, if she invoked her right not to testify?

A. Well, she had a real good case going until we saw her checks.

Q. Well, if -- In this case, if the Court instructed you that the defendant, Mr. Avery, doesn't have to testify, that he has a constitutional right not to testify, would you accept that and not hold that against him?

A. No.

Q. You would not accept it or you would accept it?

A. I would accept it, and I wouldn't hold it against him.

Q. You would not?

A. No.

Q. Okay. So you feel pretty comfortable you could decide this case based on the evidence which is presented and not on any other outside factor?

A. Yes.

Q. Okay.

ATTORNEY FALLON: That's all I have for the

1 witness.

2 THE COURT: Mr. Buting.

3 ATTORNEY BUTING: Thank you, Judge.

4 **VOIR DIRE EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q. Good afternoon. Actually, it's evening now, I  
7 guess. My name is Jerome Buting. This is  
8 Attorney Dean Strang and Steven Avery. I want to  
9 follow up on a few questions, mostly follow up,  
10 and I have just a few of my own as well. Let me  
11 kind of go in reverse order.

12 This -- The trial that you were a juror  
13 on the last time, it was some sort of a forgery  
14 type case. Was there a handwriting comparison  
15 expert that was presented to the Court?

16 A. I can't remember that far back, but I think so.

17 Q. Okay. When you said that she had a good case  
18 going until you looked at the handwriting on the  
19 checks --

20 A. All the checks were put on the table.

21 Q. In the jury room or in the courtroom?

22 A. Jury room.

23 Q. Okay. But I'm wondering was this something that  
24 the jurors came up with on their own and said,  
25 well, let's look at these, see if we can see if

1                   the handwriting matches or --

2 A. I think it was put out on the table and they

3                   showed it to us, but then they gave it to us to

4                   look at closer in our room.

5 Q. Okay. So you think there was actually someone in

6                   court who was an expert, talking about

7                   handwriting?

8 A. Yes.

9 Q. There's a curve here and that sort of thing? You

10                  have to say yes or no.

11 A. Yes.

12 Q. Okay. That was convincing evidence for you?

13 A. Yes.

14 Q. Now, Mr. Fallon asked you about police officers

15                  testifying and whether you could -- would hold

16                  them to a different standard or whether you could

17                  treat them the same as any other witness?

18 A. Yes.

19 Q. Do you think that police officers, if they would

20                  take the witness stand, swear to tell the truth,

21                  the whole truth, nothing but the truth, that they

22                  could still lie under oath?

23 A. Police officer?

24 Q. Yes, law enforcement officers.

25 A. I don't see why they --

1 Q. I'm sorry?

2 A. No, I don't think they should be able to. I

3 think if they are taking an oath, they should not

4 lie.

5 Q. Well, do you think that anyone who takes the oath

6 is always going to be telling the truth from the

7 witness stand?

8 A. Well, they should.

9 Q. Yes, I understand they should, but do you think

10 everyone will?

11 A. I'm not sure.

12 Q. Well, I'm going -- Let me ask it a different way.

13 When I say will, I don't mean predicting in this

14 trial. What I mean is, do you think that people

15 sometimes do get on the witness stand, swear to

16 tell the truth, but yet still lie?

17 A. Yes, I do.

18 Q. Okay. Ordinary people, right?

19 A. Yes.

20 Q. And do you think that police officers may also do

21 that, or do you think that because they are

22 police officers, law enforcement, they are

23 incapable of doing that?

24 A. They shouldn't, but you're right, they can.

25 Q. Sometimes there's just bad cops?

1 A. Yes.

2 Q. Sometimes police officers feel pressure to do  
3 something?

4 A. Yes.

5 Q. Sometimes they think they have got the guilty  
6 guy, but they want to make sure of it, so they do  
7 what it takes to get him?

8 A. Yes.

9 Q. Okay. Sometimes police officers may cross the  
10 line in order to get what they believe is the  
11 proper ends to justify the means?

12 A. Well, you know, cops go to school to learn not to  
13 do that. And you would think that they wouldn't,  
14 but you are right, there are the bad ones.

15 Q. Okay. Now, you talked about how at the beginning  
16 the publicity that you heard in this case was  
17 just overwhelming at some point, right?

18 A. Yes.

19 Q. And I'm not sure if you said it was mainly from  
20 television, or television and news coverage --  
21 television and newspaper coverage?

22 A. It was both.

23 Q. Okay. So did you read all of the details when  
24 the case was first charged back in November, and  
25 when she was reported missing, and there was an

1                   arrest, and all that?

2 A. Yes, I did.

3 Q. Did you ever read the Criminal Complaint

4                   yourself, the actual Criminal Complaint?

5 A. That was in the paper?

6 Q. Well, I think it was -- Let me ask it this way,

7                   did you ever go on line on the internet?

8 A. No, we never go on the computer. My son plays

9                   with it once in a while. And I'm so computer

10                  illiterate that. But I do use the computer at

11                  work, but it's only work stuff.

12 Q. There's been quite a few proceedings that have

13                  actually been televised live, or at least large

14                  sections of it.

15 A. Yeah.

16 Q. Have you seen some of those?

17 A. Well, like I said, I see it on and I turn the

18                  channel.

19 Q. I understand that's how it is now, but let's go

20                  back to when you were first learning about it.

21 A. Oh, when I was first learning about it?

22 Q. Yes.

23 A. It was interesting because I kind of like my son

24                  being in the law enforcement. I kind of think it

25                  was interesting. Maybe I should have been a law

1                   officer or something. But I think it's very  
2                   interesting. But you read about it, or it's  
3                   mostly the TV that draws you. But after awhile,  
4                   it's just like -- it's like it goes on, and on.  
5                   It's like boring, an old story.

6       Q.    Sure. But, for instance, the preliminary hearing  
7                   in this case; do you recall that? Did you watch  
8                   any of that, or where you actually saw witnesses  
9                   in court testifying?

10      A.    I don't recall that.

11      Q.    Okay. In the Brendan Dassey story, you mentioned  
12                   some of the things that he -- he made some  
13                   alleged statements that he was involved, I think  
14                   is the way you put it, right?

15      A.    Yes.

16      Q.    Do you remember any of the details of what his  
17                   story was?

18      A.    Yes, I do.

19      Q.    And -- Well, why don't you tell me what you  
20                   actually recall of that.

21      A.    He was involved with Steve, sexually assaulting  
22                   her, and possibly choking her, or stabbing her.  
23                   I'm not sure. I guess it was done in the  
24                   bedroom, you know. But then you read that and  
25                   it's like, you know, not this again. I just

1           don't like -- It's like a story, you know.

2   Q.   So, did you find those details pretty gruesome  
3       when you first heard them? I mean, did they  
4       really --

5   A.   Upset me?

6   Q.   Upset you, or make you sick.

7   A.   No. No.

8   Q.   Having heard all of that, do you think you can  
9       actually look at Mr. Avery sitting here and  
10      actually presume him innocent?

11   A.   Sure.

12   Q.   And why is that?

13   A.   Because I -- I have got to see all the evidence.  
14       I have to see why he did it. And I just -- I got  
15       to, you know, like -- everybody is innocent until  
16       proven guilty.

17   Q.   Or whether he did it, not just why?

18   A.   Or whether he did it.

19   Q.   So you really want to hear evidence. You don't  
20      want to rely on --

21   A.   No, I mean?

22   Q.   -- things you have heard in the media, or  
23       anything like that?

24   A.   Newspapers aren't always right, neither is the  
25       media.

1 Q. Now, in your questionnaire, you say that -- one  
2 of the questions is asked, if you discussed the  
3 case at length with any other person. And you  
4 mentioned your husband?

5 A. Yeah, we talk about everything.

6 Q. Okay. That's good, but in this particular  
7 instance; did you have disputes? Did you guys  
8 disagree?

9 A. I think he thinks the same as I, you know. They  
10 have got to prove that he did it, if he did it at  
11 all.

12 Q. Okay. You mentioned, though, that a number of  
13 people -- I don't know if it's friends or  
14 neighbors -- that all were saying they just think  
15 he is guilty, and you said -- you sort of  
16 disagreed with that, wait a minute, let's wait  
17 and see what the evidence is?

18 A. Yeah. Yes.

19 Q. But your husband is not one of those people?

20 A. Yes, he is.

21 Q. He's one that thinks he may be guilty, or  
22 probably is guilty?

23 A. Well, he's just like me, he would like to see all  
24 the evidence put out on the table, if he did it.

25 Q. What about your son, that's the police officer;

1 have you talked to him about this?

2 A. No.

3 Q. Not at all?

4 A. No, not really.

5 Q. Pardon me?

6 A. Not really.

7 Q. Well, let's get past the not really. How about

8 at all?

9 A. Not at all.

10 Q. Never once, you have never talked to him about

11 this?

12 A. No.

13 Q. Do you know -- I'm sorry, what is your son's

14 name?

15 A. Jason Koenig.

16 Q. Could you spell the last name.

17 A. K-o-e-n-i-g.

18 Q. Do you know if he had any involvement in the

19 investigation of this case, the search, or any of

20 that stuff?

21 A. I don't believe so, he works second shift.

22 Q. Okay. He's never told you that he's had any

23 involvement at all?

24 A. No. I think he keeps his work to himself.

25 Q. Okay. You also said in your questionnaire that,

1           you know, as to whether you had formed any  
2           opinion, you said, well, on the one hand  
3           sometimes -- it's sort of like you are kind of  
4           torn. Sometimes I believe he did it. Other  
5           times I think, well, wait a minute, I believe he  
6           was framed. Is that what you are trying to say?

7       A. Yeah, you get a group of people at the bar, for  
8           instance, they are just going to on, and on, and  
9           on. It's like, you know. If you get in the  
10          right group of people, they are going to sit  
11          there and drag him down. But then you get in  
12          another group of people and they say the same as  
13          I, you know. You've got to put the facts on the  
14          table. You don't just convict somebody because  
15          he lives there or because you saw him drive past  
16          the house.

17       Q. So -- But when you say that maybe he was framed;  
18          are you thinking framed by whom?

19       A. It's a possibility it could be anybody. It could  
20          be his brother. It could be a police officer.  
21          It could be the man down the street. It could be  
22          anybody. I'm not saying they did or they didn't.  
23          I just.

24       Q. You are just open to that possibility?

25       A. I don't know what happened.

1 Q. But what I would like to know, if you're open to  
2 that possibility, I would like to know, because  
3 your son is police officer, I would think that  
4 you would be the last person who would be open to  
5 that possibility.

6 A. Well, like I said, he keeps his work to himself.  
7 He don't talk about nothing, who he stopped, or  
8 who he's involved arresting, or nothing like  
9 that.

10 Q. So, has he ever said anything to you that would  
11 give you any reason to think that maybe sometimes  
12 police officers might not be all on the up and  
13 up?

14 A. No. He is real happy with his job. No, he  
15 doesn't say nothing.

16 Q. I don't mean his particular department, I mean  
17 just in general.

18 A. He doesn't talk about none of his work.

19 Q. And if you were on this jury, if you were  
20 selected for this jury and you came back with a  
21 not guilty verdict; would that be a problem with  
22 you and your son, do you think?

23 A. No, I don't think so.

24 Q. I mean, think about that, because you have to --  
25 you would have to take an oath to do your duty,

1           and follow your conscience, and what the evidence  
2           says. And I would like to be sure that you are  
3           not going to be thinking, oh, my gosh, I can't --  
4           I can't do this and then face my son.

5 A. And to make my son mad at me?

6 Q. Well, or --

7 A. He's got to understand what I'm doing.

8 Q. So that wouldn't be a problem is what you are  
9           saying?

10 A. No.

11 Q. And that goes for your friends and your husband  
12           as well?

13 A. Right.

14 Q. Okay. Do you know Chuck Avery?

15 A. Not personally, but when we were in high school,  
16           or I was in high school. There was like a  
17           bonfire there. And we would go and say --  
18           somebody said, oh, that that's him, the person  
19           that owns the place. Oh. So I don't really  
20           think I talked to him ever, I just know of him.

21 Q. So that would be like how many years ago you're  
22           talking?

23 A. Oh, my God, I don't know, the '70's maybe.

24 Q. Oh, okay.

25 A. I'm old.

1 Q. Not as old as I am.

2 A. Probably passed you up.

3 Q. Now, given what you have heard from the alleged

4 statement of Brendan Dassey, the nephew, and all

5 of those details; did you believe them at the

6 time you heard them? Did you think, hey, this is

7 the truth, this is it, this is what happened?

8 A. I did in the beginning -- or maybe I even still

9 do, because why would anybody volunteer that?

10 Q. Well, that's a good question. Do you think that

11 people might sometimes admit or confess to things

12 they didn't do? Have you heard of that?

13 A. No, I never -- Well, maybe to take the burden off

14 another person a little bit.

15 Q. Okay. Have you ever read of people who, you

16 know, for all kinds of reasons, either because

17 they are pressured by the police, or because of

18 their mental condition, or whatever it might be,

19 that they might, in fact, admit to something

20 that's really not true, that they didn't do?

21 A. Yeah, it is a possibility. He -- I don't know,

22 for some reason he may have just said it. I

23 don't know. I don't know how to answer that

24 question, or why he said it, or if it happened.

25 Q. Or if he did it, or if he said it, or whatever.

1           What if -- What would you do, or how would you go  
2           about evaluating, if you heard any evidence of  
3           that in this case, and I'm not saying you are  
4           going to, but just how would you go about  
5           evaluating whether or not it was a true  
6           confession or not?

7       A.    I would really have to look at the facts. He  
8           doesn't seem to be talking right now, so the  
9           facts at the time.

10      Q.    When you say he doesn't seem to be talking right  
11           now; what do you mean?

12                   ATTORNEY FALLON: I'm going to object to  
13                   this line of inquiry. I think this is beyond the  
14                   scope of what we need to accomplish here.

15                   THE COURT: I'm going to sustain the  
16                   objection. It goes into too much speculation about  
17                   what the evidence may or may not be.

18      Q.    Are you referring to some news reports you've  
19           heard about the boy, Brendan Dassey?

20      A.    Like when he was first arrested, all the gossip  
21           that went around and what was in the paper. Is  
22           that -- that doesn't seem to be in the paper  
23           anymore.

24      Q.    Okay.

25      A.    You don't hear of.

1 Q. Did you read or hear that he had since retracted  
2 the confession and said that it's --

3 A. I think somebody at work told me that.

4 Q. Okay. So you would look to see whether there was  
5 any underlying evidence that would support the  
6 statement before you would determine if it was  
7 true or not?

8 A. Well, you would have to.

9 ATTORNEY BUTING: All right. Thank you,  
10 very much, ma'am.

11 THE COURT: All right. The Clerk will  
12 escort you from the courtroom.

13 Will there be a motion from either  
14 party?

15 ATTORNEY FALLON: None from the State.

16 ATTORNEY BUTING: No.

17 THE COURT: All right. Anything else  
18 today, before we adjourn?

19 ATTORNEY FALLON: What time tomorrow, 8:30?

20 THE COURT: 8:30. Very well. We'll see  
21 you at 8:30.

22 ATTORNEY BUTING: One last thing, it  
23 occurred to me when we could hear the jurors in the  
24 back; are they in that jury room?

25 THE COURT: They are.

1                   ATTORNEY BUTING: Okay. I'm just  
2                   wondering, since we can hear them, and they're not  
3                   microphoned, and we are miked, are we sure that they  
4                   are not, in that location -- I thought they were  
5                   going to be across the hall in that area.

6                   THE COURT: That's a very good question.  
7                   First of all today, one of the disadvantages of them  
8                   making a lot of noise is that they disturbed us a  
9                   bit, but it also assures that they could not hear  
10                  us. Actually, before we started using the courtroom  
11                  a few days ago, I had somebody come out and speak on  
12                  the -- over the PA system. And I went inside, there  
13                  is a fan that's on pretty consistently in there,  
14                  that tends to drum out the noise here. Especially  
15                  where nobody was raising their voice. So I'm  
16                  confident that they -- even had they been quiet,  
17                  which they weren't, I don't think they would have  
18                  been able to hear the proceedings.

19                  ATTORNEY BUTING: Okay.

20                  THE COURT: All right. We're adjourned for  
21                  today.

22                  (Proceedings concluded.)

23  
24  
25

1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 9th day of April, 2007.

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL  
5 vs. VOIR DIRE - DAY 2  
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** FEBRUARY 6, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:**

12 KENNETH R. KRATZ  
Special Prosecutor  
13 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON  
Special Prosecutor  
15 On behalf of the State of Wisconsin.

16 DEAN A. STRANG  
Attorney at Law  
17 On behalf of the Defendant.

18 JEROME F. BUTING  
Attorney at Law  
19 On behalf of the Defendant.

20 STEVEN A. AVERY  
Defendant  
21 Appeared in person.

22 \* \* \* \* \*

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery, Case No. 05 CF  
3                   381. We're here this morning for the second day of  
4                   individual voir dire. Will the parties state their  
5                   appearances for the record, please.

6                   ATTORNEY KRATZ: State by Ken Kratz and Tom  
7                   Fallon, Judge.

8                   ATTORNEY STRANG: Steven Avery in person;  
9                   Jerome Buting and Dean Strang representing.

10                  THE COURT: All right. Counsel, I  
11                  understand you have some matters you wish to take up  
12                  before we begin with the first juror today.

13                  ATTORNEY KRATZ: Judge, I have one thing.  
14                  I provided Mr. Strang and Buting with a  
15                  correspondence which includes four images that the  
16                  State intends to use in its opening. The Court may  
17                  recall that on January 18th I provided the Court  
18                  with images that we intended to use.

19                  Some of those images were updated, are  
20                  changed and I replaced a couple of them with  
21                  photos rather than diagrams. I don't know that  
22                  Mr. Buting and Strang are going to object; at  
23                  some point we need to be heard about this, but I  
24                  wanted to alert the Court. I will provide your  
25                  Clerk with those four new images. And Mr. Strang

1 and Mr. Buting have a copy.

2 And sometime before the openings, Judge,  
3 we'll have to discuss whether or not there is an  
4 objection. I just wanted to note that the  
5 replacement or the exchange of those I'm  
6 proposing today, but we can bring that up  
7 sometime before the openings. Thank you, that's  
8 all I have.

9 THE COURT: All right.

10 ATTORNEY STRANG: I acknowledge receipt of  
11 the latter. There won't, I don't expect, be any  
12 objection to the substitution of new images one and  
13 two. Images three and four raise -- they are from  
14 the Tim Austin animation and I'm in agreement that  
15 before openings we probably need to have the  
16 evidentiary hearing on that entire exhibit, so that  
17 Mr. Kratz knows whether he can use it or not in his  
18 opening statement. I understand Trooper Austin, we  
19 think, is back in the country. I shouldn't speak  
20 for Mr. Kratz on that, but that was the sense I had  
21 in speaking with him.

22 ATTORNEY KRATZ: I told Mr. Strang I would  
23 find out at the break, Judge, so I can alert the  
24 Court.

25 THE COURT: Very well. All right.

1 Anything else before we bring in the first juror?

2 ATTORNEY FALLON: Yes, Judge. Counsel and  
3 I have had an opportunity late last night and again  
4 this morning to discuss the potential of agreeing on  
5 additional jurors to be struck for cause. I would  
6 indicate, I think we have agreement on three. There  
7 may well be a fourth, but the State did want to hear  
8 from the prospective juror before we made a final  
9 decision on that.

10 In terms of those that we have agreed to  
11 strike for cause, we have agreed that Juror No.  
12 44 would be struck for cause. Upon review of his  
13 questionnaire, I think the Court will note that  
14 this prospective juror has had discussions with a  
15 witness in the case and has some information,  
16 thus, that would be available to him, not from  
17 the courtroom proceedings. And the parties  
18 believe that it would be better not to take a  
19 risk relative to that juror.

20 The other two jurors, the parties have  
21 agreed, there is some question as to either side,  
22 but the parties have agreed that Juror No. 37 and  
23 Juror 39 would be excused. We have a question as  
24 to whether Juror 37, we have received some  
25 information that she may not have been following

1                   the Court's directive regarding media coverage in  
2                   the past 7 to 10 days since receiving her notice.  
3                   And there's also a question of objective bias for  
4                   that witness.

5                   With respect to No. 39, we're agreeing  
6                   with the defense request. There may be a  
7                   subjective bias issue on No. 39, but there's  
8                   also, looks like a child care hardship issue, if  
9                   the Court looks. This woman, a grandmother,  
10                  apparently has care of a 7 year old. And the 7  
11                  year old would be lacking in supervision if this  
12                  woman were selected as a juror. So for those  
13                  reasons, we would ask that Jurors 37 and 39 be  
14                  struck for cause as well.

15                  ATTORNEY STRANG: I -- I agree as to all  
16                  three. And I -- I simply will add that, as to Juror  
17                  No. 44, there's clearly a pretty firmly held opinion  
18                  on the merits of the case, in addition to the  
19                  comments that Mr. Fallon made.

20                  THE COURT: All right. I will review those  
21                  questionnaires later. But I understand I will  
22                  review them with the understanding both parties are  
23                  requesting that those jurors be left out for cause.

24                  With respect to the order today, we're  
25                  going to begin with Juror 19. I think he was the

1                   last person here yesterday, who asked to be first  
2                   today since he sat around yesterday.

3                   And then Juror 25 requested to be called  
4                   earlier because she has to work this afternoon.  
5                   So after 19, we'll go to 25, then go back in  
6                   order. Anything else before we begin?

7                   Oh, one other thing I did want to  
8                   mention. I gave to defense counsel -- and I  
9                   think they were going to pass on a copy to the  
10                  prosecution -- a draft of the substantive  
11                  instruction that the Court was going to include  
12                  in the preliminary instructions to the jurors. I  
13                  under -- I will be providing the parties and take  
14                  comment before we begin a complete set of  
15                  preliminary instructions, which I believe I'm  
16                  required to do. But I wanted to pass on a copy  
17                  of the proposed substantive instructions, first,  
18                  since those are often the -- can be the source of  
19                  comments from the parties.

20                  If there's nothing else, we will bring  
21                  in Mr. Nelesen at this time. All right.

22                  Mr. Nelesen, at this time the clerk will  
23                  administer the oath to you.

24                  THE CLERK: Will you raise your right hand,  
25                  please.

(*Juror sworn.*)

THE CLERK: Please be seated.

THE COURT: Mr. Nelesen, you have already completed a jury questionnaire in this case. This morning we're moving on to the next phase of jury selection which is individual voir dire. In a minute the attorneys for each of the parties will be able to ask you some follow up questions to the information that you included in your questionnaire.

I will let you know that the jurors selected to hear this case will not be sequestered during the jury; that is, you will be permitted to return home at the end of every court session. And we're able to do that because of a requirement that the jurors not learn anything during the course of the trial from the news media regarding this case.

So the instruction that the jurors are not to read any newspapers, watch any television accounts, listen to the radio, or read anything on the internet, or talk to anyone else about the case will continue throughout the trial.

I also want you to know that although the court proceedings today are open to the public, no cameras are permitted in the courtroom.

1                   during voir dire and members of the news media  
2                   are not permitted to identify the jurors by name  
3                   at any time.

4                   In addition, should you be selected to  
5                   serve as a juror, you should know that during the  
6                   course of the trial the cameras in the courtroom  
7                   are not permitted to show the faces of the jurors  
8                   or show anything that would identify the jurors  
9                   in any way, to any viewers.

10                  In the event you remain as a juror  
11                  following questioning today, you will get a  
12                  telephone call within the next few days letting  
13                  you know when to report back to court.

14                  At this time, then, Mr. Fallon, you may  
15                  begin your questioning.

16                  **VOIR DIRE EXAMINATION**

17                  BY ATTORNEY FALLON:

18                  Q.     Good morning, Mr. Nelesen.

19                  A.     Good morning.

20                  Q.     My name is Tom Fallon and I'm an Assistant  
21                  Attorney General for the State of Wisconsin and  
22                  I'm one of the prosecutors in this case. To my  
23                  left is Mr. Kratz, the lead prosecutor and he's  
24                  the Calumet County District Attorney. Thank you  
25                  for coming this morning. Sorry we kept you late

1                   last night.

2       A. That's all right.

3       Q. We'll do our best to get you in and out of here  
4                   this morning. I wanted to start with a few  
5                   questions from the information you provided in  
6                   your questionnaire. And, first of all, ask you a  
7                   couple of questions regarding your employment.  
8                   And I see you are a mechanic at the transport  
9                   company?

10      A. Correct.

11      Q. How long have you been employed there as a  
12                  mechanic?

13      A. Almost two years.

14      Q. Two years?

15      A. Yes.

16      Q. Prior to that, any other employment?

17      A. Yeah, I worked as a mechanic in Appleton for a  
18                  year. And previously I worked at the same  
19                  company I do now, for about a little under four  
20                  years.

21      Q. Okay. The reason I ask is, if you were to be  
22                  selected as a jury -- as a juror, excuse me, for  
23                  the jury, the case may very well take six weeks  
24                  or so to try, which means you may very well be  
25                  not reporting to work for six weeks. And I just

1                   wanted to make sure.

2                   On the last question of the  
3                   questionnaire, you expressed that you didn't  
4                   think that would be any particular hardship for  
5                   you. So we wanted to make sure that was the  
6                   case, that if you were selected as a juror, this  
7                   wouldn't be any kind of economic hardship. Is  
8                   that still the case?

9         A. Well, I think for anybody with -- going without  
10                  wages for, you know, that period of time, I think  
11                  that would pose some type of a problem, I would  
12                  think. You know, my savings account would  
13                  probably be drained, but I don't think I would --  
14                  I don't think I would die because of it. I don't  
15                  think I would starve to death because of it.

16         Q. All right. But do you -- you do have a concern  
17                  as to whether or not you would have sufficient  
18                  income to meet your expenses?

19         A. Oh, definitely, yeah, I would say so. I have  
20                  bills like anyone else, loan payments that I do  
21                  have to make, just like anyone else.

22         Q. All right.

23         A. And I would, like I said, I would think,  
24                  hopefully, that I would have enough in my savings  
25                  to, you know, be able to make those payments for

1           that amount of time. But I probably wouldn't  
2           have anything left, you know, for some other  
3           bills, I wouldn't think.

4       Q.    Have you conferred with your employer as to  
5           whether there would be any compensation  
6           forthcoming at all if you were?

7       A.    He hasn't got back to me as of yet.

8       Q.    All right. So it's still somewhat of an open  
9           question?

10      A.    Yeah. I would think so, yeah.

11      Q.    All right. If per chance in the next couple of  
12           days, if you hear anything more on that, would  
13           you be so kind as to advise the court personnel  
14           of that and we'll certainly take that into  
15           consideration.

16      A.    Okay. Sure, I can do that.

17      Q.    Thank you. The next bit of information that you  
18           provided of some interest for the parties here is  
19           the fact that you are at least somewhat familiar  
20           with the Avery Salvage Yard?

21      A.    Yeah, a little bit. I have purchased a couple of  
22           car parts from there in the past.

23      Q.    All right. How often would you say you have  
24           frequented the yard?

25      A.    I think I was probably there maybe three times.

1 Q. During these occasions that you were at the  
2 salvage yard, did you wander through the yard and  
3 the property at all or were you just basically --  
4 A. No, I wasn't allowed to.  
5 Q. You weren't allowed to. You were just at the  
6 office --  
7 A. Just went in the front office there, you know,  
8 asked for the part that I needed, and they got it  
9 and ...  
10 Q. All right.  
11 A. I just bought it and left.  
12 Q. When was the most recent or the last time you  
13 were there conducting some business at the  
14 salvage yard?  
15 A. I would say probably five or six years ago.  
16 Q. All right. Do you recall meeting any of the  
17 people there or recognize any of the names?  
18 A. No, I don't recognize any of the names.  
19 Q. All right. On each of the occasions, your  
20 business was limited to the office area?  
21 A. Yes.  
22 Q. Okay. With respect to your news sources, could  
23 you tell us where you -- if you were to -- you  
24 checked a number of potential news sources from  
25 radio, to television, newspapers, neighbors and

1           things of that sort. If you were to think about  
2           it now, what would you say is the medium in which  
3           you get most of your information?

4       A. I would probably say the newspaper.

5       Q. The newspaper. Okay. Do you regularly read the  
6           paper?

7       A. Not regularly, no. I would say two to three  
8           times a week.

9       Q. Okay. Have you been following the -- this  
10           particular case with any interest in the  
11           newspaper or television?

12      A. I have read about it, but I haven't really  
13           followed it with any interest.

14      Q. All right. Have you watched any of the  
15           television coverage of the case?

16      A. Yeah, I have seen a little bit of it in the past,  
17           you know, just what they had on the news and what  
18           not.

19      Q. On the news?

20      A. Yeah.

21      Q. Have you watched any of the actual courtroom  
22           proceedings on television or through the  
23           internet?

24      A. No, I have not.

25      Q. Okay. Now, in the question as to whether you

1 have formed any opinions based on the information  
2 that's been available in the media and elsewhere;  
3 you would say, well, from what I have read I  
4 would think that he was guilty, but I'm sure that  
5 there is more to the case that I don't know  
6 about.

7 A. That is correct.

8 Q. All right. Is that your heartfelt opinion as you  
9 sit here today?

10 A. I would say from what I have read, I think any  
11 --any -- any person would, you know, tend to, you  
12 know, think -- think that he were guilty through  
13 the information provided in newspapers and what  
14 not where I got my information. I think anyone  
15 would probably think that.

16 Q. All right. Now, the next question that was asked  
17 in the questionnaire, and I think the one that  
18 the Court and the parties are most interested in,  
19 is whether any of those opinions that you have  
20 formed as a result of information obtained in the  
21 media could be set aside, if you were selected as  
22 a juror, and you could decide this case just on  
23 what information is presented in court?

24 A. I would like to think that I could. But I  
25 would -- I wouldn't guarantee that I could

1           actually do that.

2   Q.   All right. All right. That's a perfectly  
3       understandable and honest response, I think. The  
4       question then becomes is, although you are not  
5       100 percent sure is what you wrote here, are you  
6       certainly willing to listen to the instructions  
7       of the Judge?

8   A.   Oh, definitely.

9   Q.   Excuse me. And if you were instructed that your  
10      duty as a juror, as it were, is to decide the  
11      case based solely on the information contained or  
12      presented at trial, you would make your best  
13      effort to do that?

14   A.   Yes, I would.

15   Q.   All right. Is there any other reason, you know,  
16      personal philosophy, conscience, religious  
17      reason, any other reason that you are aware of  
18      that, you know, causes you to doubt whether you  
19      could give us your best effort and follow the  
20      instruction?

21   A.   I would say a little bit of conscience.

22   Q.   Okay. Let's talk a little bit about that; what  
23      is -- what concern do you have there?

24   A.   Well, it's a big decision to make.

25   Q.   All right.

1 A. And it's nothing that I would take lightly and  
2 it's a very difficult decision.

3 Q. All right.

4 A. It's not the fact that -- I wouldn't say it would  
5 be that I would be very nervous about it, but  
6 it's -- it's just not anything taken lightly.  
7 It's not -- somebody didn't just, you know, steal  
8 a candy bar from the gas station or anything;  
9 that would be taken lightly. This is a serious  
10 issue.

11 Q. All right.

12 A. And I think anyone would, you know, have a little  
13 conscience about it.

14 Q. All right. So could I infer or could the Court  
15 and the parties infer, that because this is a  
16 matter of grave importance, a very weighty  
17 matter, that you would give us your best effort  
18 in following the instructions that were given to  
19 you?

20 A. Yes.

21 Q. All right. You indicated that you do have a  
22 friend who is a police officer; is that correct?

23 A. That's correct.

24 Q. All right. And who would that be?

25 A. Officer David Flemal.

1 Q. David?

2 A. Flemal.

3 Q. Okay.

4 ATTORNEY BUTING: I'm sorry, Fleming?

5 MR. NELESEN: Flemal.

6 Q. (By Attorney Fallon)~ All right. And how do you  
7 know Officer Flemal?

8 A. He lives down the street from me.

9 Q. All right. Do you regularly get together with  
10 him and discuss the world's events as it were or  
11 just --

12 A. No, not really. We pretty much just talk motor  
13 sports.

14 Q. About what, sports?

15 A. Motor sports and stuff like that.

16 Q. Motor sports. Yes, I see you are a stock car  
17 fan; is he as well?

18 A. I used to race motocross and he is into  
19 motocross.

20 Q. Motocross?

21 A. Yeah.

22 Q. All right.

23 A. So we talk about that a lot.

24 Q. All right. How often do you get together with  
25 Officer Flemal?

1 A. I would say I talk to him every three weeks to a  
2 month.

3 Q. Okay. Do your conversations ever get to the more  
4 serious matters such as a case like this or  
5 criminal justice issues in general or anything  
6 like --

7 A. No, that's just his job. We just -- We're just  
8 -- We just talk on a friends personal level.

9 Q. Okay. So do you think that your acquaintance  
10 with Officer Flemal would in any way impact your  
11 ability to be fair and impartial in this case?

12 A. No, that wouldn't affect it.

13 Q. What?

14 A. No, that wouldn't affect it.

15 Q. Okay. Thank you. Do you have any close friends  
16 or relatives that are currently working in the  
17 news industry?

18 A. Not that I'm aware of, no.

19 Q. Okay. Do you own a computer?

20 A. Yes, I do.

21 Q. All right. Do you occasionally surf the  
22 internet?

23 A. Yeah, I look for race car stuff on the internet.

24 Q. All right. Do you ever use the internet to get  
25 some more information regarding news stories or

1           events that are current events?

2       A. No.

3       Q. All right. Have you looked at any of the  
4           coverage or information regarding this case on  
5           the internet?

6       A. No, I have not.

7       Q. All right. In terms of this case, can you recall  
8           for us, as best you can, what you do remember or  
9           think you know about the case from the media  
10          coverage, at least as it pertains to Mr. Avery?

11      A. Um, I can't remember a whole lot. Just let me  
12          think about this for a second. Can you be a  
13          little more descriptive as to what you are  
14          asking?

15      Q. Well, let's see, do you -- do you remember any  
16          press conferences or original arrest reports  
17          involving Mr. Avery or any other person's  
18          association with?

19      A. I don't remember any arrest reports or anything  
20          like that. I didn't really read that much into  
21          it.

22      Q. Okay.

23      A. Pretty much just looked at it on the front page,  
24          read a little bit of it, wasn't really interested  
25          in it --

1 Q. Okay.

2 A. -- went on to the next thing.

3 Q. Would it be fair to say you don't really have any

4 strong opinions about the guilt or innocence?

5 A. I have my opinions.

6 Q. Okay. Well, tell us, let's talk about that.

7 What -- what are your opinions?

8 A. Like I stated in the questionnaire, my opinions,

9 from what I have gotten, from what I have read,

10 would -- I think would tend to -- for anyone to

11 think that he was guilty.

12 Q. All right.

13 A. I think that's pretty much just human nature, but

14 that's all that they read.

15 Q. Okay.

16 A. Or all that I read, I should say.

17 Q. All right.

18 A. I read a little bit up on it as far as, you know,

19 what had actually happened. A little bit of the

20 information about the vehicle and blood found in

21 the vehicle, I had read some about that.

22 Q. All right.

23 A. And that he had weapons in his house, things like

24 that.

25 Q. All right. Any other particular details that

1 stand out in your mind at the moment?

2 A. No, not really that stand out in my mind.

3 Q. All right. And are you familiar at all with the  
4 circumstances regarding the arrest of a fellow by  
5 the name of Dassey?

6 A. Yeah, I have heard a little bit about him.

7 Q. All right. And what do you recall about that?

8 A. I recall that he was questioned and admitted that  
9 he was involved with it and had contributed in  
10 the crime as well.

11 Q. All right. Do you remember any particular  
12 details regarding statements that he made?

13 A. Um, not -- not any real details.

14 Q. All right.

15 A. Just that he was pretty much just involved.

16 Q. All right. Okay. I note from your questionnaire  
17 that you don't have any prior jury service, but I  
18 did want to ask, is there anything as you sit  
19 here today and think about your own philosophy,  
20 or conscience, or personal beliefs, or any  
21 religious beliefs; is there anything in that area  
22 that you think might give you a problem or make  
23 it difficult for you to be a juror in this case?

24 A. I would say for anyone it would be a difficult  
25 thing. Just, as I stated before, it's not a

1 matter to be taken lightly.

2 Q. All right.

3 A. And I think it's a very big decision and it  
4 would -- it would bother me, yeah.

5 Q. All right. I think I probably did not artfully  
6 ask that question. I understand it would be  
7 difficult. I guess what I'm driving at is, is  
8 there any firm, personal beliefs that you hold  
9 that, for instance, you could not sit in judgment  
10 of another person and assess their guilt or  
11 innocence based on the information provided?

12 A. No, I think I could do that.

13 Q. Okay. In your profession as a mechanic, have you  
14 ever been called upon to participate in writing  
15 any safety guidelines or enforcing any safety  
16 standards for work as a mechanic?

17 A. Sure, I have. I have to do a lot of safety  
18 stuff, make sure people are doing their job in a  
19 correct manner and not doing something that's,  
20 you know, going to get them or someone else hurt.

21 Q. All right. Do you enjoy that work?

22 A. Sure, yes.

23 Q. And why is that?

24 A. I enjoy being a mechanic and I enjoy working with  
25 others and I enjoy helping people out when they,

1           you know, need help with something.

2   Q.   Is there any type of satisfaction that you derive  
3           from ensuring that you have a safe work  
4           environment for yourself and others?

5   A.   Yeah, I would say so.

6   Q.   Okay. How long have you been a resident of  
7           Manitowoc County?

8   A.   All my life.

9   Q.   All right. How would you rate the job that the  
10           Manitowoc County Sheriff's Department is doing in  
11           your community in terms of dealing with crime or  
12           servicing the public in other ways; good, bad,  
13           fair, excellent?

14   A.   I would say they do a good job.

15   Q.   Okay. Any particular experiences that you have  
16           had or anything in particular that helps you  
17           reach that opinion?

18   A.   No, I don't really have any reasons why I reached  
19           that opinion I just think --

20   Q.   I'm sorry, I couldn't --

21   A.   I don't really have any reasons. I would think  
22           that they do a fairly good job.

23   Q.   That's your perception of things?

24   A.   Yeah.

25   Q.   Okay. Since you are a mechanic and interested in

1           automobiles, have you ever used a publication  
2           such as *Auto Trader*, to buy or sell a car?

3       A. I used CarSoup to try to sell a car, but it  
4           didn't sell. so.

5       Q. You used what?

6       A. CarSoup, carsoup.com.

7       Q. Okay.

8       A. I used that to try to sell a car, but it didn't  
9           sell so, other than that, nothing, no.

10      Q. Didn't have much luck?

11      A. No.

12      Q. Are you familiar with the publication *Auto*  
13           *Trader*?

14      A. Yeah, I have seen it.

15      Q. Okay. In terms of your approach to making a  
16           decision or, for instance, writing your safety  
17           guidelines, or making such policy decisions like  
18           that; would you consider yourself a detail  
19           oriented person or a big picture person or?

20      A. I would say I get into some detail, yeah.

21      Q. All right. And are you a movie goer?

22      A. I would say no.

23      Q. All right. Have you ever seen or heard about a  
24           movie called *The Thin Blue Line*?

25      A. No, I haven't.

1 Q. Okay.

2 ATTORNEY FALLON: That's all I have. Thank  
3 you.

4 THE COURT: Mr. Strang.

5 ATTORNEY STRANG: Thank you.

6 **VOIR DIRE EXAMINATION**

7 BY ATTORNEY STRANG:

8 Q. Okay. Sir, you have seen us all stand up  
9 awkwardly in front of a group, a room full of  
10 people, but I'm Dean Strang; this is Jerome  
11 Buting; and Steve Avery. We're the defense  
12 lawyers.

13 A. Okay.

14 Q. How do I pronounce your last name?

15 A. Nelesen. Nelesen.

16 Q. Nelesen?

17 A. Yes.

18 Q. Okay. Thanks. The place you are living now, you  
19 have been in about seven months?

20 A. What was that?

21 Q. The place you are living now, you have been in  
22 that house about seven months?

23 A. Yeah, I would say, yes.

24 Q. Do you rent or own?

25 A. Actually, I live with my parents.

1 Q. Okay.

2 A. Right now.

3 Q. Okay.

4 A. Yes.

5 Q. And had you been in a place of your own before

6 that?

7 A. Yeah, I lived with my girlfriend.

8 Q. And are you -- I don't need to know reasons or

9 anything, but are you looking to move back into a

10 place of your own soon or?

11 A. Yes, yes. This is -- Where I'm living right now

12 is a temporary.

13 Q. Okay. So does that -- where I'm going with that

14 is, really, does this contribute to your concern

15 about building up a savings account a little bit

16 or getting, you know, having --

17 A. Yeah, I'm in the process of trying to purchase a

18 house right now.

19 Q. Okay. All right. So let's sort of go from 0 to

20 100 in about 6 seconds here. It's not just that

21 the trial may last -- well may last six weeks,

22 okay, but at the end of the trial, and we can

23 more or less guess how long the evidence and

24 arguments might go, but at the end of the trial,

25 the people left on the jury have to deliberate?

1 A. Correct.

2 Q. And there's no way to know how long that will go?

3 A. No.

4 Q. Only those 12 people, you know, and they don't  
5 know, because it's a matter of you are not done  
6 until you -- ideally, until you all 12 agree on  
7 the verdicts for however many charges you are  
8 considering.

9 A. Okay.

10 Q. So we have no -- none of us have any way of  
11 predicting how long that would go. And my  
12 concern, since that comes at the very end, is  
13 that, you know, would the deliberations and  
14 sticking it through and working through the  
15 evidence as long as it took, be something you  
16 could do when you are already at the end of five  
17 or six weeks of being out of work? You see what  
18 I'm worried about?

19 A. I didn't really take that into consideration. I  
20 wasn't aware that it was going to be that much of  
21 an added time. I had heard and I was told that  
22 it would probably take -- it could take up to a  
23 month, but I didn't really consider that there  
24 was added time at the end of it.

25 Q. And I have no way of knowing.

1 A. That makes -- Yeah, that makes matters a little  
2 bit different, yeah.

3 Q. Okay. I'm not trying to suggest that that would,  
4 you know, go on indefinitely?

5 A. It could take a week or six months is what you  
6 are saying.

7 Q. Or 10 minutes, I mean. But, you know, none of us  
8 have, and you don't have, any way of knowing.

9 A. Right.

10 Q. Because it's, you know, deliberation is about 12  
11 people trying to agree on things that, you know,  
12 involve looking back over four or five, six weeks  
13 of evidence. And I -- You know, you are very --  
14 I have noticed that you are very empathetic in  
15 the sense of, you know, that the problems you see  
16 you say everybody would have. I mean anybody  
17 would feel this is a tough decision and all that.

18 A. Right.

19 Q. But right now it is sort of about you and  
20 whether, you know, whether you really would be  
21 putting yourself in a hole by getting into this?

22 A. I would, definitely. But if that's what I'm  
23 asked to do, then I guess that's what I'm asked  
24 to do.

25 Q. Okay. I wanted to hear a little more about what

1           you -- what you really like about being a  
2           mechanic; what lights you up about it? I mean  
3           your hobby ties into that pretty closely with  
4           stock car racing?

5       A. Oh, definitely. And that's one thing that would  
6           go down the tubes too, so that's another  
7           consideration of mine.

8       Q. What do you mean by go down the tubes, I'm sorry,  
9           Mr. Nelesen?

10      A. Stock car racing is pretty expensive.

11      Q. Oh, okay.

12      A. And I have worked pretty hard to be able to  
13           afford it.

14      Q. Right.

15      A. And it takes a good percentage of my money to do  
16           that.

17      Q. You actually race?

18      A. Yes, I do.

19      Q. Okay. Are you the driver?

20      A. Yes, I am.

21      Q. Okay. And, you know, up here, I mean -- meaning  
22           up here in the northern part of the country?

23      A. Yeah.

24      Q. I associate that with being a seasonal sort of a  
25           sport, but do you travel around to places where

1           it's warmer?

2 A.   No, I don't. It -- Pretty much just regional.

3 Q.   Okay. And how, in terms of the season for that,

4        how -- how much of the expense is coming up in

5        February, March?

6 A.   A great deal of the expense.

7 Q.   Tell me about that.

8 A.   Well, as far as -- to give you an example, in the

9        class that I race, I'm looking at coming up

10      with -- trying to come up with 6 to \$8,000 for

11      just one engine. So that's a great deal of money

12      for someone, for me, to come up with. And I have

13      been saving up for it for quite a long time.

14     Probably half way through last year and all

15     winter I have been saving up for that.

16 Q.   Is this the time of year where you are in the

17      garage at night?

18 A.   All the time.

19 Q.   Getting the car ready for May?

20 A.   Yeah, exactly.

21 Q.   Okay. So you are spending the money now?

22 A.   Oh, yeah, faster than it's coming in, yeah.

23 Q.   And any purse or any winnings you might get --

24 A.   That all goes right back into the operation.

25 Q.   And those wouldn't come until the warmer weather?

1 A. Correct.

2 Q. Okay. So back to what -- what -- what lights you  
3 up about being a mechanic?

4 A. I just like to work with my hands. It's just  
5 something about cars, something about engines  
6 that just. I think each person has something  
7 that they can just get into, get involved with  
8 and forget about all the stress in their lives.  
9 And when I'm working on things like that, my  
10 stress just goes away.

11 Q. It goes away?

12 A. Yeah.

13 Q. And yet you also like working with people?

14 A. Yeah, I get along with -- I like to talk a lot.

15 Q. Mm-hmm.

16 A. And I --

17 Q. Me too.

18 A. And, yeah, I just like to talk a lot and I like  
19 to get along with people. Meet different people.

20 Q. Mm-hmm.

21 A. It's just -- I don't know if it's right or wrong,  
22 it's just part of my personality.

23 Q. Why would it be right or wrong?

24 A. I don't know that's --

25 Q. Yeah.

1 A. It's just part of my personality.

2 Q. Okay. So is -- I mean, is it the actual physical

3 labor, having your hands in the, you know --

4 A. Oh, definitely.

5 Q. -- that you like, as opposed to, you know, the

6 math of --

7 A. Oh, no.

8 Q. -- adjusting a carburetor or whatever?

9 A. No, I'm terrible at Math.

10 Q. Okay.

11 A. But it's just getting in there and trial and

12 error and doing those things. It's a challenge,

13 to see if I can do what needs to be done to go

14 faster. That's pretty much all it is, is a

15 challenge.

16 Q. Is -- Is this something where sort of cutting and

17 scraping your hands up is a regular part of life

18 for you?

19 A. Oh, yeah. Definitely, yeah.

20 Q. You have got bandaids around?

21 A. Well, I usually don't wear bandaids, just dirt

22 gets in there and I just leave it, keep working.

23 I have pretty much done it my whole life, so I'm

24 used to that.

25 Q. Okay. The three times you have been out to Avery

1           Auto Salvage --

2 A.       Mm-hmm.

3 Q.       -- that was just looking for parts for cars you

4       were working on?

5 A.       Yeah, just -- just street driven cars that I had

6       at the time.

7 Q.       And are there -- are there other auto salvage

8       yards in the area you have snooped around, you

9       know, shopped at?

10 A.       Sure. Sure, definitely.

11 Q.       Poked around?

12 A.       Yes.

13 Q.       Pretty much all of them in the area, or is it

14       unusual?

15 A.       Yeah, I would say probably 75 percent of them in

16       the area.

17 Q.       How about Norb's in Denmark?

18 A.       No, not that far away. I haven't gone that far

19       away.

20 Q.       But in like the immediate Manitowoc --

21 A.       Yeah, the immediate Manitowoc area.

22 Q.       And you, I gathered from what you said to

23       Mr. Fallon, that you don't have any memory of who

24       it was you dealt with at the Avery yard?

25 A.       No, I don't. I don't know who it was.

1 Q. Or even --

2 A. Just somebody that worked there. I don't know.

3 I just came in and picked up a part --

4 Q. Yeah.

5 A. -- and left.

6 Q. Okay. Or even if it was the same guy the three  
7 times you have been there?

8 A. No, I couldn't really tell you that.

9 Q. Okay. Tell me what you know -- and I don't want  
10 to do that to you. Tell me what you -- what you  
11 have read, or what you have learned, what you may  
12 know about Brendan Dassey, from the newspaper or  
13 the TV.

14 A. For the most part, just that he was involved --  
15 involved in the crime. I didn't really read a  
16 whole lot on it. I pretty much just go through  
17 the sports section and stuff like that. But, you  
18 know, I read over, you know, read a paragraph or  
19 so. Then just, like I said, turn the page with  
20 just a loss of interest. But I would say just  
21 mostly that he was just involved --

22 Q. Mm-hmm.

23 A. -- in the entire thing.

24 Q. Did you get -- did you get a sense of any of the  
25 gruesome details?

1 A. Not a lot, no.

2 Q. Okay. And what is -- What does Dassey have to do

3 with Steven Avery's case, in your mind? What's

4 the connection if any?

5 A. Well, if he was -- I would say if he was involved

6 in the crime, I would say he would have

7 everything to do with it.

8 Q. If he, who he?

9 A. I would say -- what is his name, Dassey?

10 Q. Yeah.

11 A. Yeah, I'm not sure -- I'm not sure what his first

12 name was.

13 Q. Brendan.

14 A. Brendan, yeah. I would say if -- well, if from

15 what I have read in the newspaper that he was

16 involved, I would say he would be involved with

17 the entire crime, from what I have known.

18 Q. Yeah. No, I know. I mean, I understand you are

19 getting this from the papers and the TV. I-- I

20 got that. And -- but do I hear you saying that,

21 based on what has been reported to you about

22 Brendan, that it's more likely that Steven Avery

23 is guilty?

24 A. I would say one would tend to believe that, yes.

25 Q. And why -- why would you tend to believe that?

1 A. Because I would say that's pretty much what they  
2 had said in the newspaper.

3 Q. Mm-hmm.

4 A. That's what they had -- how can I say this -- he  
5 admitted to participating in the crime and that  
6 they were both involved in it.

7 Q. Do you have a sense that, you know, a 16 or 17  
8 year old like Brendan Dassey would not have  
9 admitted to the crime if he didn't do it?

10 A. I wouldn't see why he would admit to it if he  
11 didn't do it.

12 Q. If -- if you heard evidence about, or -- or, you  
13 know, the lawyers made arguments about why  
14 someone might confess to something he didn't do;  
15 is that something you would be able to listen to  
16 fairly, consider?

17 A. I would say I could listen to it fairly, yes.

18 Q. But it sort of strikes you as ...

19 A. It strikes me as odd.

20 Q. Odd, yeah.

21 A. Yes.

22 Q. Sure. What do you make of the fact that Steven  
23 Avery is here, you know, that he is sitting in  
24 the defendant's chair?

25 A. He was asked to be here. I don't really make

1 anything of it, I would expect him to be here.

2 Q. Does it suggest he probably did something wrong?

3 A. I would say people think that he did something  
4 wrong. I wouldn't want to go and say that he  
5 did, that is not really my decision and shouldn't  
6 be my opinion right now. But I would say he is  
7 here for a reason.

8 Q. Yeah. And, I mean, it is sort of your opinion  
9 that we're after now. And it's -- the good thing  
10 about this is -- I mean, you are being really  
11 candid about that and that's helpful. And the --  
12 you will -- you would be told, if you were a  
13 juror, that Steven Avery is presumed innocent.

14 A. Exactly.

15 Q. Starts presumed innocent and he remains presumed  
16 innocent unless and until the State could prove  
17 him guilty?

18 A. And that's a very difficult thing to do, yes.

19 Q. Yeah, it is. It is a hard thing to do. And  
20 given, you know, what you have read and thought  
21 about the case, you are not 100 percent sure that  
22 you could do that, but you would try?

23 A. I would say that would be, yes. I would say that  
24 would be the case, yes.

25 Q. And I feel like I'm putting words in your mouth

1           so I want to stop doing that, but.

2 A.       No, that's all right.

3 Q.       Okay. Have you seen or heard anything really

4       recently in the paper or on the --

5 A.       No, I haven't.

6 Q.       -- the TV about this?

7 A.       No.

8 Q.       Why?

9 A.       I was told to not read the newspaper, not watch

10      the news if it pertained to that.

11 Q.       Okay. And before you were told that, were you

12      still tuning in?

13 A.       If something was on, I probably watched a couple

14      minutes of it, but not to my knowledge I haven't

15      really gone out and ran to the TV to watch it or

16      anything like that.

17 Q.       Rented a TV.

18 A.       Yeah. I haven't really followed it strongly.

19 Q.       Yeah.

20 A.       It's just something that was on.

21 Q.       And since you were told not to, you have obeyed

22      that?

23 A.       Since I was told not to, I didn't have any --

24      didn't read the newspaper or anything like that

25      or didn't watch the news.

1 Q. Mm-hmm. Let me get a feel for when -- you know,  
2 when it is you stopped. You -- have you heard  
3 anything about a blood vial?

4 A. Yes.

5 Q. And that's got some role?

6 A. Yeah, something about the -- it was planted and  
7 this and that. I forgot all about that.

8 Q. Okay. But that --

9 A. That did strike -- did jog my memory, yeah.

10 Q. Okay. A related topic on whether -- you know,  
11 whether you really can presume Steven Avery  
12 innocent, would be the choice whether he  
13 testifies or not. And, I mean, is it -- do you  
14 think, basically, most fair people want to hear  
15 both sides of a story?

16 A. Definitely they want to hear both sides.

17 Q. And how about you?

18 A. Yes, I would definitely want to hear both sides.

19 Q. Okay. Do you -- Do you understand that in  
20 America, if you are charged with a crime, you can  
21 do either of two things; you could choose to  
22 testify and then you would sort of be like any  
23 other witness?

24 A. Mm-hmm.

25 Q. We do have a right to testify when we're accused

1           of a crime in this country, even though we're the  
2           person who's got to, you know --

3       A. Okay.

4       Q. -- might want to be saving our own skin. And  
5           then also, you have a right not to testify. And  
6           the jurors get told that they can't consider that  
7           in any way in deciding whether the State's proved  
8           the person guilty, beyond a reasonable doubt.

9           Were you familiar with those two basic notions?

10      A. No.

11      Q. Okay. If the Judge were to tell you at the end  
12           of the case, you know, and I don't know what  
13           words he would use, but if he were to tell you  
14           that you may not consider the fact that Mr. Avery  
15           did not testify, as any evidence of guilt or in  
16           deciding the case; is that an instruction you  
17           could follow?

18      A. I would do what he asked me to do, yes.

19      Q. And would you do it happily or willingly as  
20           opposed to, you know, well, I have to?

21           ATTORNEY FALLON: I'm going to object to  
22           that question.

23           THE COURT: I'm going to allow it.

24           MR. NELESEN: Could you repeat that?

25      Q. Sure. Would you do that, you know, willingly and

1                   without reluctance, or would you do it because,  
2                   I'm doing it because this is my duty to do it?  
3       A. I would say there would be some reluctance.  
4       Q. Okay. Do you think if -- Do you think it would  
5                   be an easy decision for a person accused to make,  
6                   whether to testify or not in his own behalf?  
7       A. I don't think so.  
8       Q. Why not?  
9       A. I'm not exactly sure. I just don't think it  
10                  would be a difficult.  
11       Q. You don't think it would be difficult, or you  
12                  don't think it would be easy?  
13       A. I don't think it would be difficult, but I don't  
14                  really understand what would all be involved.  
15       Q. Mm-hmm. Do you figure that Mr. Buting and I  
16                  might have some input on that? Opinions that we  
17                  would offer him?  
18       A. I would say, yeah, that's your job.  
19       Q. Right. And let me see if you would agree with  
20                  this, you know, if you are the defendant and you  
21                  take the witness stand, some people on the jury  
22                  may be saying, well, of course he's denying it,  
23                  he doesn't -- you know, he doesn't want to get  
24                  convicted. He's the one with everything at  
25                  stake. And on the other hand, if you don't take

1           the witness stand, jurors might be saying, well,  
2           if he didn't do anything wrong, why doesn't he  
3           just get up and tell us, you know, an innocent  
4           guy would have nothing to hide. Do you see the  
5           sort of dilemma --

6       A. Exactly.

7       Q. -- there? And in the end, you know, because you  
8           are not going to be able to get into his head or  
9           my head in that decision making process --

10      A. Mm-hmm.

11      Q. -- I would need to be comfortable that you really  
12           would and could live with the Judge's instruction  
13           that; if he testifies, he's like any other  
14           witness; if he doesn't testify, you can't  
15           consider that as any evidence of his guilt?

16      A. I would say I could do that, yes.

17      Q. You told us in your jury questionnaire that -- I  
18           forget exactly how you put it, but it was pretty  
19           good, that -- oh, I'm terrible at math?

20      A. Yeah, I am.

21      Q. That's exactly how you put it. This case, on  
22           both sides, may involve a certain amount of  
23           scientific evidence and testimony about  
24           scientific evidence, you know, collection of  
25           evidence, testing of evidence in certain ways.

1 A. Mm-hmm.

2 Q. People who do that for a living and have some  
3 expertise in, you know, whatever, ballistics, or  
4 DNA, or whatever it might be.

5 A. Mm-hmm.

6 Q. And I don't mean to suggest that that would  
7 require a jury full of mathematicians, but is  
8 that sort of testimony something that you  
9 anticipate as finding boring, or interesting, or  
10 what do you think?

11 A. I would say it would be interesting.

12 Q. Why?

13 A. Probably for the fact that it's something that I  
14 don't know about and I like to learn new things.

15 Q. Mm-hmm.

16 A. Whether I'm good at them or not, I like to learn  
17 new things and I think it would be interesting.

18 Q. And what if there were, let's say, two or more  
19 experts and they weren't in complete agreement,  
20 or they were even in disagreement about the  
21 meaning of certain things, or what certain  
22 findings were; how would you sort that out if  
23 this is all new to you?

24 A. I would say that each person has their own  
25 opinion, their own views, of how it would be.

1           And I can't really answer how I would actually  
2           sort that out.

3 Q.       But you would listen to both?

4 A.       Oh, definitely, yes.

5 Q.       And then weigh them and --

6 A.       And make a decision, I guess, yes.

7 Q.       Mm-hmm. Okay. Let me just check with Mr. Buting  
8           and see if he thinks I have missed anything?

9 A.       Okay.

10 Q.       I did miss something.

11 A.       Okay.

12 Q.       I realize David Flemal is just your friend --

13 A.       Yes.

14 Q.       -- down the street, but I want to explore police  
15           officers a little bit more with you. There will  
16           be a number of police officers or law enforcement  
17           officers who testify in this case from different  
18           agencies and departments?

19 A.       Mm-hmm.

20 Q.       And there was a question on the questionnaire  
21           about this: You will probably be told that a law  
22           enforcement officer who testifies is considered  
23           like any other witness.

24 A.       Right.

25 Q.       And do you -- do you think in your experience and

1           in your belief, is a police officer less likely  
2           to lie under oath than other people might be?

3       A. I would say, yeah.

4       Q. Why?

5       A. I would say they are more involved with the law  
6           and I think they probably would take it more  
7           seriously than an average person.

8       Q. Okay. And that said, setting aside robo cop  
9           movies, do you agree that law enforcement  
10          officers are human, like the rest of us?

11      A. Definitely, yes.

12      Q. Imperfect, I guess, like the rest of us?

13      A. Yes.

14      Q. Make mistakes like the rest of us?

15      A. Yes.

16      Q. Have personal motives or wants and wishes, just  
17           like the rest of us?

18      A. Yes.

19      Q. So, I don't hear you saying that a police officer  
20           never could lie under oath, you just think it's  
21           probably less likely than comparing him or her to  
22           the average joe on the street?

23      A. Yes.

24      Q. Would you at least consider the possibility, be  
25           open to and listening for the possibility, that a

1                   police officer, a law enforcement officer, might  
2                   have a reason to shade the truth or not remember  
3                   something accurately?

4       A. If that's what I was asked to do, then that would  
5                   be what I would have to do.

6       Q. Okay. There would be some resistance to that  
7                   idea or ...

8       A. I would say yes.

9       Q. And in putting together all the evidence that you  
10                  would hear, since Mr. Avery is saying he is not  
11                  guilty --

12      A. Mm-hmm.

13      Q. -- do you think that he, or we for that matter,  
14                  ought to have to show you who did kill Teresa  
15                  Halbach?

16      A. I would think that would be a good thing, yeah.

17      Q. Okay. Sure it would be a good thing. Do we have  
18                  to do that in order to convince you that Steven  
19                  Avery didn't?

20      A. I would say yes.

21                   ATTORNEY STRANG: All right. I think I'm  
22                  done, thank you, very much.

23                   **VOIR DIRE EXAMINATION**

24      BY THE COURT:

25      Q. Mr. Nelesen, I have got some follow-up questions

1           for you. I take it from a number of your answers  
2           that you don't come into court today being  
3           familiar with many of the rules that apply in a  
4           criminal case.

5 A. No, I don't.

6 Q. I want to follow up, for example, on Mr. Strang's  
7           last series of questions?

8 A. Mm-hmm.

9 Q. For one thing, in a criminal case, the defendant  
10          is not obligated to prove his guilt or his  
11          innocence, the State has to prove that he is  
12          guilty before a jury can return a guilty verdict?

13 A. Correct.

14 Q. Do you understand that?

15 A. Yes, I do.

16 Q. That means that a defendant that -- does not have  
17          to convince the jury who might have done it, if  
18          it wasn't the defendant; the State has to prove  
19          that the defendant did it and prove that, beyond  
20          a reasonable doubt?

21 A. Now I understand, yes.

22 Q. Likewise, I think you testified that you had read  
23          some things about this case and based on what you  
24          had read, you thought it appeared the defendant  
25          was guilty, but that if the Court instructed you

1           that you had to put those feelings aside, you  
2           could follow that instruction?

3       A. Yes.

4       Q. And that, in fact, is -- would be the Court's  
5           instruction. Over the course of a six week  
6           trial, the jury is going to hear a lot more about  
7           this case than has been in the news media.  
8           Sometimes information in the news media isn't  
9           accurate.

10      A. Yes.

11      Q. But in any event, the jury that is selected will  
12           have to agree to base the decision only on the  
13           evidence in court and ignore anything else. If  
14           you're selected as a juror, do you feel you can  
15           do that?

16      A. I would like to think that I could do that. Yes  
17           or no answer, that's tough. I would say yes.

18      Q. Is there something specific that gives you pause  
19           in answering that question?

20      A. Definitely, everything that I have read.

21      Q. And when you say everything that you have read,  
22           you will probably hear some of the things that  
23           you have read in court, but you are going to hear  
24           a number of those items disputed as well.

25      A. That's true.

1 Q. Will you be able to evaluate the evidence as it  
2 comes into court, as it is introduced at the  
3 trial, in making your decision?

4 A. Yes.

5 Q. And will you be able to base your decision only  
6 on that evidence and not on anything you might  
7 have read before?

8 A. Yes.

9 Q. You feel if I instruct you to do that you can do  
10 that?

11 A. Yes.

12 THE COURT: All right. At this time we'll  
13 have the Clerk escort you from the courtroom.

14 ATTORNEY STRANG: May I ask --

15 THE COURT: All right. Just a second. Go  
16 ahead.

17 ATTORNEY STRANG: I don't know if counsel  
18 has a follow up, but I do have one.

19 **VOIR DIRE EXAMINATION**

20 BY ATTORNEY STRANG:

21 Q. Putting it altogether, do you want to be on this  
22 jury?

23 A. Do I want to be? No.

24 Q. Why?

25 A. It's a very big decision. Whatever the decision

1           would be, is a lot for a person to live with.

2           That, in fact, financial issues is a difficult  
3           situation to deal with as well. So to answer  
4           your question, do I want to be, no.

5           ATTORNEY STRANG: Thank you.

6           THE COURT: Mr. Fallon, do you have  
7           anything else?

8           ATTORNEY FALLON: (No verbal response.)

9           THE COURT: Very well. Linda, you may  
10          escort Mr. Nelesen from the courtroom.

11          (Wherein the juror is excused.)

12          THE COURT: Counsel, does either party have  
13          any motion? Mr. Fallon?

14          ATTORNEY FALLON: Your Honor, the State  
15          does not; I think the juror is acceptable.

16          THE COURT: Mr. Strang.

17          ATTORNEY STRANG: I really hate to do this  
18          and I don't expect that we'll have to do it again,  
19          or at least not often, but I think we need three  
20          minutes to talk. I really do, about this one.  
21          Just, I mean, Mr. Buting and I and Mr. Avery.

22          THE COURT: All right. I will give you  
23          exactly three minutes and then we'll come back out.

24          ATTORNEY STRANG: Thank you.

25          (Brief recess.)

1                   THE COURT: Mr. Strang.

2                   ATTORNEY STRANG: Thank you, very much.

3                   The defense is not making a motion to strike.

4                   THE COURT: Very well. The Court will  
5                   accept this juror. And bring the next one in and  
6                   that will be Nicole Knier. Ms Knier, if you can  
7                   remain standing the Clerk will administer the oath.

8                   THE CLERK: Raise your right hand.

9                   (Juror sworn.)

10                  THE CLERK: Please be seated.

11                  THE COURT: Ms Knier, you have already  
12                  completed a jury questionnaire in this case. This  
13                  morning we're moving on to the next phase of jury  
14                  selection which is known as individual voir dire.  
15                  Each of the attorneys, or the attorneys for each of  
16                  the parties will have an opportunity to ask you some  
17                  questions that relate to your qualifications as a  
18                  juror and follow up questions to the information on  
19                  the questionnaire.

20                  I did want you to know that should you  
21                  be selected as a juror in this case, the jurors  
22                  will not be sequestered; that means that at the  
23                  end of the trial every day you will be able to go  
24                  home and then come back to court the next day.

25                  I also want you to know that although

1 today's proceedings are open to the public,  
2 during individual voir dire we do not permit  
3 cameras in the courtroom and the news media is  
4 not permitted to give the names of the jurors to  
5 the public. Also, during the trial itself the  
6 cameras are not permitted to show the jurors in  
7 any way such that any of the individual jurors  
8 can be identified.

9                   After today's proceedings, if you are  
10 still deemed to be a member of the jury panel,  
11 you will get a phone call in the next day or two  
12 telling you when to report. It will be sometime  
13 this week.

14                   With that background, Mr. Fallon, you  
15 may begin.

16                   **VOIR DIRE EXAMINATION**

17 BY ATTORNEY FALLON:

18 Q. Good morning. My name is Tom Fallon. I'm an  
19 Assistant Attorney General for the State of  
20 Wisconsin. I'm one of the prosecutors in this  
21 case. To my left is Mr. Ken Kratz, the lead  
22 prosecutor and he is the District Attorney in  
23 Calumet County. We're helping out Manitowoc  
24 County. Let me first ask, are we pronouncing  
25 your last name correctly; it's Knier?

1 A. Yeah.

2 Q. Okay. Very good. One of the first questions

3 that I would like to ask is your employment

4 situation, as it relates to the possibility of

5 your being selected as a juror. All right. In

6 your questionnaire, you told us that you are

7 presently employed by a Jim Skarda, a linebacker?

8 A. Yes.

9 Q. Tell us what kind of --

10 A. It's a bar.

11 Q. Okay. And so you are a bartender by trade?

12 A. Yeah.

13 Q. All right. And how long have you worked at that

14 location?

15 A. About six years.

16 Q. All right. And I understand you are also a

17 student?

18 A. Yup.

19 Q. And where do you attend school?

20 A. I'm going to Blue Sky; it's in Green Bay; it's a

21 massage school.

22 Q. All right. And how often or when is school held?

23 A. It is held one day a week, every Thursday.

24 Q. Every Thursday?

25 A. Correct.

1 Q. And where are you in relation to the curriculum  
2 as it were; is this like a regular semester  
3 schedule?

4 A. We are set to graduate March 8th, but they are  
5 making special circumstances so I could be  
6 home-schooled for the rest of it.

7 Q. All right. So it wouldn't -- if you were  
8 selected as a juror, it wouldn't mess up your --

9 A. No.

10 Q. -- your massage training?

11 A. No.

12 Q. Okay.

13 A. I'm far enough along.

14 Q. I'm sorry?

15 A. I said I'm far enough along.

16 Q. Okay. Very good. How about your job as a  
17 bartender and your ability to support yourself in  
18 the interim; is that okay?

19 A. Yeah, it should be.

20 Q. All right. So you are not too concerned for any  
21 economic hardship if you were selected?

22 A. Not overly.

23 Q. Okay. You also indicated in your questionnaire  
24 that you have at least some information or some  
25 knowledge in the field of medicine. Could you

1 tell us a little bit about that. Is that the  
2 massage training?

3 A. Yeah, with the massage training, it's actually  
4 medical massage and medical terminology is what  
5 I'm good at.

6 Q. Well, tell us a little bit about that.

7 A. Just from watching different programs and stuff,  
8 I can pick out what they are not saying  
9 correctly; what they are saying correctly; that  
10 sort of a thing.

11 Q. Okay. And how long have you been at least  
12 studying the medical angle as it relates to the  
13 massage therapy business?

14 A. For about a year. I started last March. And  
15 before that I was also a certified nurses  
16 assistant.

17 Q. All right. And where were you a certified  
18 nursing assistant?

19 A. Different nursing homes in the area.

20 Q. All right. And how long did you do that work?

21 A. About two years.

22 Q. All right. I take it that work brought you in  
23 contact with RNs and physicians?

24 A. Correct.

25 Q. All right. Would you consider yourself the

1           curious type as it were and would ask questions  
2           about medical --

3 A. Yes.

4 Q. -- procedures and things?

5 A. Mm-hmm. Yes, I like to know things.

6 Q. All right. Occasionally I have got to make a few  
7       notes.

8 A. That's okay.

9 Q. All right. Now, you indicated that you knew a  
10      few people of interest, I think, to the Court and  
11      the parties here. So I wanted to ask you a  
12      little bit about your familiarity with them. You  
13      indicated you are familiar with a Debbie Knox,  
14      and you believe that Debbie Knox to be a junior  
15      high principal; is that correct?

16 A. She was, while I was in junior high.

17 Q. She was the principal when you were there?

18 A. Well, assistant principal but, yeah.

19 Q. All right.

20 A. She was my neighbor growing up as well.

21 Q. She was your neighbor growing up. Okay. How  
22      well do you know her?

23 A. I guess pretty well, I went to school with one of  
24      her sons too. I graduated with him.

25 Q. And how long ago was that?

- 1 A. I graduated in 2001, so five years ago.
- 2 Q. You said that she was a neighbor; literally the
- 3 person next door or just down the street?
- 4 A. Just down the street.
- 5 Q. All right. Since you lived on the same street,
- 6 did you, other than the school setting, did you
- 7 have much opportunity to interact with each other
- 8 or just with her son?
- 9 A. No, just more acquaintances.
- 10 Q. Just acquaintances. Okay. Have you ever been to
- 11 her house or anything for gatherings or anything?
- 12 A. No.
- 13 Q. All right. Are you still friendly with her son?
- 14 A. No, I believe he's going to school somewhere.
- 15 Q. Okay. When you -- I take it she was the
- 16 assistant principal at the high school?
- 17 A. Junior High.
- 18 Q. Junior High. When you were a student, did you
- 19 have any occasion to have any discussions or
- 20 contacts with her during your time as a junior
- 21 high student?
- 22 A. I tried not too.
- 23 Q. Okay. Was she kind of the disciplinarian?
- 24 A. Yeah.
- 25 Q. All right. So you were successful in not having

1           any run-ins, as it were?

2 A.    Correct.

3 Q.    All right. So, I mean other than that occasion  
4       or for that reason, you really didn't have any  
5       contact with her at the school?

6 A.    No.

7 Q.    Okay. Well, I would like to talk a little bit  
8       about the news business and a little bit about  
9       the coverage of this case. Where would you say  
10      that you get most of your news from; the  
11      newspapers, radio, television, internet?

12 A.    Usually like the TV and newspapers, if I get a  
13      chance to read them.

14 Q.    All right. And how often do you watch the news  
15      coverage on TV?

16 A.    Not very often.

17 Q.    Not very often.

18 A.    I have a two year old son; I don't get a chance  
19      to watch TV.

20 Q.    All right. How about when you are tending bar;  
21      is it --

22 A.    No, it's mostly ESPN or something like that.

23 Q.    All right. So it's a sports bar that you are  
24      working at?

25 A.    Right.

1 Q. So there's not a lot of news coverage there other  
2 than sports coverage?

3 A. A lot of people talking about it but ...

4 Q. All right. Well, I noticed that you did mention  
5 that, that you sometimes -- things of word of  
6 mouth or you might have talked to people, patrons  
7 of the tavern. Was there any extensive  
8 discussion on your part of these proceedings or  
9 the case, or just casual stuff that you overhear  
10 from the public?

11 A. Just casual. I'm doing a job. I'm not there to  
12 really get into in depth conversations with  
13 people.

14 Q. All right. Have you followed the coverage of  
15 this case much at all?

16 A. I try not to.

17 Q. All right. Any particular reason why you try not  
18 to?

19 A. I try not to listen to the bad things I guess.

20 Q. To bad things. Okay. Do you recall, as you sit  
21 here today, any of the coverage or any of the  
22 details of what Mr. Avery is supposed to have  
23 done?

24 A. Yeah.

25 Q. Well, tell us about what you remember hearing.

1 A. Just what, I guess, Fox 11 is the only station  
2 that they have ever watched at the bar, if they  
3 do watch a newscast. And that's about it.

4 Q. All right.

5 A. I guess when the accusations or whatever you want  
6 to call them, when they were first on the news,  
7 that was the first time that I really watched  
8 anything about it.

9 Q. All right. So if you have seen any news coverage  
10 is when you were tending bar, not at home?

11 A. Not really.

12 Q. All right.

13 A. I usually watch PBS or something.

14 Q. Okay. Now, you kind of gestured toward  
15 Mr. Kratz; do you remember seeing him on  
16 television?

17 A. Yeah.

18 Q. All right. And that was several months ago?

19 A. Mm-hmm.

20 Q. That's a yes?

21 A. Yes.

22 Q. You have to --

23 A. Sorry.

24 Q. Okay. What do you remember about his appearance  
25 on television?

1 A. Just what he was -- I guess when he was saying  
2 what happened.

3 Q. Okay. Do you recall any of the details that --  
4 that he may have provided?

5 A. Yeah, because they were pretty graphic.

6 Q. All right. And was this coverage in relationship  
7 to a fellow by the name of Brendan Dassey?

8 A. It was both.

9 Q. Both. All right.

10 A. Both parties, I believe. I can't remember, it  
11 was a couple months ago.

12 Q. All right. Now, you said it was pretty graphic,  
13 do you recall any particular details regarding?

14 A. Just what they said that had happened.

15 Q. All right.

16 A. That is public knowledge, I guess.

17 Q. Okay. Well, if you could tell us, I know it may  
18 not be easy for you, but we want to make sure  
19 that we have an understanding of what you think  
20 you may know about the case and that will help  
21 Mr. Strang and I.

22 A. I guess just what they said had happened to  
23 Teresa, the series of events that had been  
24 published in the news, like with her being tied  
25 up and that sort of a thing.

1 Q. Okay. What else do you remember that is supposed  
2 to have happened to her?

3 A. Yeah. That she had gotten burned in a burn  
4 barrel or something like that.

5 Q. All right.

6 A. Like I said, I don't remember exact quotes so.

7 Q. Okay. All right. Now -- Now, I don't mean to  
8 put words in your mouth so tell me if I'm wrong,  
9 but I'm getting this feeling that, because it was  
10 somewhat graphic in terms of how she is supposed  
11 to have died; is that one of the reasons why you  
12 haven't paid much attention, or not?

13 A. No, I just don't watch the news.

14 Q. You just don't watch the news, okay.

15 A. Too many bad things happening in the world to  
16 worry about.

17 Q. All right. As a result of your, you know,  
18 tending bar and seeing some of the news coverage,  
19 including some of the coverage of Mr. Kratz, have  
20 you formed any opinions at all as to whether  
21 Mr. Gave -- Mr. Avery is guilty or innocent of  
22 this?

23 A. I think it could go either way.

24 Q. All right. And that -- So --

25 A. To me, you have to prove it either way.

1 Q. All right. In other words, the State has to  
2 prove he's guilty?

3 A. Yup.

4 Q. All right. Now, do you think the defense has to  
5 prove anything?

6 A. In a way, yeah.

7 Q. Why do you feel that?

8 A. Because if -- why would someone just make  
9 something up, I guess.

10 Q. You mean, why would the State make something up?

11 A. Yeah.

12 Q. All right. But if the Court were to instruct you  
13 that Mr. Avery and his lawyers, and they will  
14 talk with you at some length about this, but if  
15 the Court were to tell you that, you know, they  
16 don't have to prove anything --

17 A. Mm-hmm.

18 Q. -- not one blessed thing. They don't have to  
19 call one witness, put in one piece of evidence,  
20 not a thing. They can sit there like bumps on a  
21 log. And unless the State has proved to you,  
22 beyond a reasonable doubt, that he is guilty, you  
23 would have to find him not the guilty; do you  
24 understand that?

25 A. Yeah.

1 Q. Do you think you could do that?

2 A. Yeah, but you would like to think that they would  
3 have to find holes in here, in theories. Because  
4 I can't just believe everything out of your mouth  
5 is true either.

6 ATTORNEY STRANG: I didn't catch the  
7 answer, I'm sorry.

8 ATTORNEY BUTING: Could you read it back.

9 THE COURT: We'll have the reporter read it  
10 back.

11 (Last answer read back.)

12 Q. Well, what if the only effort, or you could say  
13 evidence, presented by the defense, came in the  
14 cross-examination of the witnesses that Mr. Kratz  
15 and I called to the stand and they vigorously  
16 challenged the assertions of those witnesses.  
17 Under some circumstances, do you think that would  
18 be enough to raise a doubt in your mind, a  
19 reasonable doubt in your mind of his guilt?

20 A. Yeah, but not beyond all other things that could  
21 be brought up.

22 Q. All right. Well, if the Court were to tell you  
23 that the burden of proof here is beyond a  
24 reasonable doubt, not all doubt; you would be  
25 able to accept that?

1 A. Yeah.

2 Q. Okay. And if the Court were to tell you that the  
3 State is the only one with the burden of proof  
4 and Mr. Avery, as he sits here today, is presumed  
5 innocent, can you accept that?

6 A. Mm-hmm.

7 Q. That's a yes?

8 A. Like I -- Yeah. Like I said, it can -- it could  
9 go either way.

10 Q. Okay. I'm not quite sure. We're having a little  
11 confusion as to when you say it could go either  
12 way. If you could kind of explain that a little  
13 bit more for us.

14 A. I guess if your -- your thought process is good  
15 enough that it's beyond a reasonable doubt, then  
16 I'm going to go with you. But if their thought  
17 process is it's beyond a reasonable doubt, then  
18 it's not.

19 Q. In other words, if their process raises a doubt,  
20 you would find him not guilty?

21 A. Correct.

22 Q. Raises a reasonable doubt?

23 A. Yes.

24 Q. All right.

25 A. And if yours does I would find him.

1 Q. All right.

2 A. Yeah.

3 Q. Okay. Now, just so that I'm clear, you answered  
4 that you yourself have not formed any opinions at  
5 all?

6 A. No.

7 Q. All right. And do you think that you would be  
8 able to make a decision as to his guilt or  
9 innocence solely on the evidence which is  
10 presented during the course of the trial?

11 A. Yeah. Yes.

12 Q. Is there any question in your mind about that?

13 A. No.

14 Q. Okay. You also had some interesting comments  
15 regarding television shows like *CSI* and *Bones*,  
16 having medical terminology courses, some of the  
17 words they used do not make sense to what is  
18 going on in the scene?

19 A. Yeah.

20 Q. Tell us about that.

21 A. Like if you watch shows, even ER, some of the  
22 medical terminology is just crazy. It's not even  
23 relevant to what is happening. Like they will be  
24 talking about someone's, like, PSA levels and  
25 that's a prostate thing, when they are working on

1           their lungs. They just use it to sound like they  
2           are smart, I guess.

3       Q. All right. And that opinion comes from your  
4           experience as a certified nursing assistant and  
5           now in the massage therapy?

6       A. Yeah.

7       Q. All right. As part of your massage therapy, are  
8           you taking any physical therapy courses?

9       A. It's, well, all of massage therapy is kind of  
10           physical I guess, but it's not -- it's not the  
11           stretching and stuff --

12      Q. All right.

13      A. -- that a physical therapist would do.

14      Q. But it's not the same curriculum as you would  
15           have as -- if you were to go to school for a  
16           physical therapist --

17      A. No.

18      Q. -- you would agree? Okay. You also indicated  
19           that you are at least familiar with a member of  
20           the Manitowoc County Sheriff's Department?

21      A. Correct.

22      Q. Kelli Tice?

23      A. Yup.

24      Q. How do you know Kelli Tice?

25      A. She is my boyfriend's aunt.

1 Q. All right. How well do you know her?

2 A. Fairly well, we go over to her house often.

3 Q. All right. In your visits to her, do you discuss

4 the events of the news and things of that sort?

5 A. The news, yes, but she's very -- she knows what

6 she does as a job; she takes it as being

7 important and she doesn't say anything.

8 Q. All right. In other words, she doesn't discuss

9 her work with you at all?

10 A. No, she's very adamant on that.

11 Q. Okay. Does -- Has this case ever come up in

12 discussion?

13 A. It's come up, but not to any extent.

14 Q. All right. Tell us about that?

15 A. Just, what have you heard on the news today.

16 This is what I have heard on the news. That sort

17 of thing.

18 Q. All right. And so whatever is discussed is just

19 whatever happened to be the headline of the day?

20 A. Yeah.

21 Q. All right. And she hasn't discussed any inside

22 information that she may have or anything?

23 A. No.

24 Q. No. She doesn't do that?

25 A. No. She's a sergeant in the jail. So she

1           doesn't see a lot of this side of it I guess --

2 Q.       Okay.

3 A.       -- or she hasn't at least discussed it with me.

4 Q.       All right. You also indicated that you did know  
5           someone who was killed and that there was a  
6           prosecution. Can you tell us a little bit about  
7           that?

8 A.       It was two of my friends, actually. One of  
9           them -- They both had left the party at the same  
10          time and one had gone the opposite way down the  
11          road and they collided. And one of them was  
12          killed and the other one was a person who ran  
13          into them.

14 Q.       Okay. So both of them were at the same party and  
15          they --

16 A.       Correct.

17 Q.       They left and went different directions but then  
18          somehow --

19 A.       Yup, it's a circle drive and --

20 Q.       I see.

21 A.       -- and one had gone out and T-boned --

22 Q.       All right.

23 A.       -- the other one.

24 Q.       Okay. And there was a prosecution. Was there  
25          alcohol related in this?

1 A. Yes.

2 Q. Okay. Is there anything about that experience

3 that makes you wonder whether you could be fair

4 and impartial as a juror in -- on a case like

5 this?

6 A. No, they are completely unrelated.

7 Q. Okay.

8 A. It was a vehicle accident.

9 Q. Okay. What do you like to do for your hobbies in

10 your spare time?

11 A. Go horseback riding, that sort of thing, go

12 four-wheeling.

13 Q. Horseback riding and four-wheeling?

14 A. Mm-hmm.

15 Q. Do you -- any other pursuits? Do you like to --

16 well, work -- read books, work on puzzles,

17 boardgames, or play cards or any of those things?

18 A. We usually play cards, but I would like -- I

19 would like to do puzzles but, like I said, I have

20 a two year old and it's just not possible.

21 Q. All right. Does the two year old just take your

22 time --

23 A. Yes.

24 Q. -- or just take over the puzzle?

25 A. Both.

1 Q. All right. If you were selected as a juror, is  
2 there any concerns for the care of your two year  
3 old if you are here for eight or nine hours a  
4 day?

5 A. My boyfriend is laid off of work right now.

6 Q. All right.

7 A. And so -- he -- and he lives with -- we live  
8 together.

9 Q. All right. So he's comfortable being the dad for  
10 a while?

11 A. Not happy about it but, yeah.

12 Q. All right. Are you worried about it, though?

13 A. Not really.

14 Q. Okay. Do you own a computer?

15 A. Yes.

16 Q. Do you use the internet frequently?

17 A. Mm-hmm. Yes. Sorry.

18 Q. Okay. Do you use the internet to read up on  
19 information, or stories, or anything that's of  
20 particular interest to you?

21 A. No, I use it to pay my bills and do my banking.

22 Q. All right. So you are a very practical user of  
23 that?

24 A. Yes.

25 Q. Business only and not that much entertainment

1                   from the computer?

2 A. No, don't have time.

3 Q. Okay.

4                   ATTORNEY FALLON: That's all I have for  
5                   this witness.

6                   THE COURT: Mr. Strang.

7                   ATTORNEY STRANG: Thank you.

8                   **VOIR DIRE EXAMINATION**

9 BY ATTORNEY STRANG:

10 Q. So, I'm Dean Strang and this is Jerome Buting and  
11                   Steven Avery. We stood up in front of you, I'm  
12                   sure, last week, but. Mr. Buting and I are  
13                   defending Mr. Avery. And sort of in deciding  
14                   what to make of you here, I want to hear more  
15                   about your work hours at Linebackers?

16 A. It varies every week. I'm not on a set schedule.  
17                   It's pretty much my only job so he puts me on  
18                   whenever -- whenever he feels like it, I guess.

19 Q. Is it always evening hours?

20 A. For the most part. There are some days that I  
21                   work, too.

22 Q. Okay.

23 A. They are willing to work around it, I guess.  
24                   They are willing to work around my hours here, I  
25                   guess.

1 Q. Okay. So you're -- What, you would continue to  
2 work at Linebackers?

3 A. I would like to.

4 Q. Are they open until bar time?

5 A. Yeah.

6 Q. And do you -- When you work the evening, do you  
7 go to bar time?

8 A. Yes, for the most part, if there's not people  
9 there, you close early.

10 Q. Okay. Sure. But for the most part, they would  
11 be open until last call?

12 A. Yeah.

13 Q. And is that a full-time job? I mean, usually  
14 when you are not sitting on juries and doing  
15 things like that?

16 A. It's about, I don't know, I would say 15 to 20  
17 hours a week.

18 Q. Okay.

19 A. Which is full -- I guess full-time for me but --  
20 or full-time for a bartending job, too, I guess.

21 Q. And you have got -- You are going to school  
22 obviously and you have also got a job at Family  
23 Video?

24 A. Correct.

25 Q. What do you do there?

1 A. Just customer service, just checking people out I  
2 guess.

3 Q. Video rental --

4 A. Yeah.

5 Q. -- store? How many hours a week is that usually.

6 A. Maybe five. It's just whenever they need  
7 someone.

8 Q. Okay. Are you going to continue to do that if  
9 you are on the jury?

10 A. They don't have me on the schedule right now  
11 because they are waiting to see what's going on.

12 Q. Okay. And the school, they made arrangements for  
13 you to finish up at home?

14 A. Yeah, because I told them of the possibility of  
15 this and I didn't want to miss out, I guess, on  
16 graduation.

17 Q. Right. And -- But are there some course  
18 requirements that you will have to show them that  
19 you have completed at home?

20 A. Yeah. We are done with the majority of our  
21 classes. We have had final exams. It's pretty  
22 much you just finish up what we've been doing.  
23 And we're starting one new class and that's what  
24 they're kind of worried about. Because they  
25 don't know how I'm going to get that class in.

1           But if worse comes to worse, they told me I can  
2           take an extension and graduate with the August  
3           class.

4   Q.    Okay. Would they be checking up with you at home  
5           to make sure you are doing the class?

6   A.    No. I don't know how it would work, but they had  
7           just said that, don't worry about it, we'll take  
8           care of it. I'm a straight A student there, they  
9           are not worried about me failing anything.

10   Q.    Okay. Do you think that you would try to keep  
11           your hours at Linebackers from being cut back  
12           during the trial?

13   A.    I don't think that's possible because, like I  
14           said, I work maybe one or two days a week. And  
15           like during the day, and that I would just have  
16           to give them up, I guess.

17   Q.    Okay. How long has your boyfriend been laid off?

18   A.    He's been laid off since the beginning of  
19           January.

20   Q.    So what sort of -- I mean, how bad is the  
21           financial hit going to be?

22   A.    Not very, we just got our tax returns.

23   Q.    Okay. So you can kind of coast on that for -- if  
24           you have to?

25   A.    I would not like to, but I have to.

1 Q. And he would take care of your son during the  
2 day?

3 A. Yes.

4 Q. Would that leave you enough time with your son if  
5 you were busy five days a week in trial?

6 A. Yeah, I don't have to spend every second with  
7 him, I guess.

8 Q. Mm-hmm.

9 A. And he usually stays up to 11:00 at night anyway.

10 Q. Okay. Do you want to be on the jury?

11 A. It doesn't matter to me.

12 Q. Why doesn't it matter to you?

13 A. Because, in a way it makes me nervous, I guess.  
14 And in a way, it would be kind of interesting, I  
15 don't know.

16 Q. Tell me what -- Let's start, first things first,  
17 you said in a way it makes you nervous; tell me  
18 why it makes you nervous.

19 A. Because it's intimidating. It's a big trial.  
20 You know, you are deciding the fate of someone's  
21 life; it's not something to be taken lightly.

22 Q. And what would be interesting about it?

23 A. Just to actually hear it first hand instead of  
24 hearing it through patrons or through, like,  
25 newscasts or something and to be able to form

1           your own opinion instead of listening to the  
2           media.

3   Q.   So, let's say you end up on the jury and then you  
4       are tending bar and you are working eight to  
5       close one night during the week; TV is on over  
6       the bar?

7   A.   Yes.

8   Q.   And is this -- This is a sports bar?

9   A.   Correct.

10   Q.   And now you have got regulars at Linebackers?

11   A.   Yes.

12   Q.   Okay. I mean, it's not like next to a Holiday  
13       Inn or something?

14   A.   No.

15   Q.   Okay. So it's mostly a regular crowd?

16   A.   Yeah.

17   Q.   These guys are going to know you are on the jury,  
18       aren't they?

19   A.   More than likely.

20   Q.   Okay. Bar talk being bar talk, how in the world  
21       would you insulate yourself from everybody  
22       talking about what the TV is playing?

23   A.   The same way that I have done it this far; just  
24       -- I don't listen to them. You serve their  
25       drinks and you walk away, or you don't

1           participate in the conversation. That's just  
2           like talking about politics, you never  
3           participate in it.

4   Q.    But don't you have to -- I mean, don't you have  
5           to chat people up a little bit to get decent  
6           tips?

7   A.    Make different conversation. Happened last  
8           night, we just started talking about ATV-ing  
9           instead.

10   Q.    Okay. Somebody brought up this trial with you --

11   A.    Yes.

12   Q.    -- last night? What did they -- What were they  
13           saying?

14   A.    Just, they were starting to talk about the jury  
15           thing and I'm like, I already know, you don't  
16           have to tell me and I don't want to talk about it  
17           and we brought up a different subject.

18   Q.    And -- But they knew you were on the panel here?

19   A.    I don't know if they knew. I just said I didn't  
20           want to talk about it. That's how I am about  
21           most things. If there's like a murder in a  
22           different county or, whatever, I usually -- I  
23           don't like to talk about it.

24   Q.    Okay.

25   A.    Most of the talk is about the stock market or the

1           war in Iraq anyway, so it's not like -- I'm sure  
2           it will change now that it's actually going to  
3           trial, but.

4       Q.   Fox 11 is the channel that's -- I'm assuming ESPN  
5           and stuff --

6       A.   Mm-hmm.

7       Q.   -- like that is on, but Fox 11 is the news  
8           channel on at the bar?

9       A.   It tends to be, like if a customer wants to  
10           watch -- It usually happens about 5:00 in the  
11           afternoon, someone wants to watch the news, just  
12           to see the weather.

13      Q.   Sure.

14      A.   Either that or we'll have the weather channel on.

15      Q.   Did you -- Did you happen to see a two part  
16           series last May that FOX 11 did; it included the  
17           Manitowoc County sheriff at the time?

18      A.   No, I don't think I did.

19      Q.   Okay. It was about the Steven Avery case or  
20           about him?

21      A.   No.

22      Q.   That doesn't ring a bell?

23      A.   No.

24      Q.   Okay. I think you said the news conferences that  
25           Mr. Kratz had, those two, you watched that?

1 A. Yeah.

2 Q. Were you at work --

3 A. Yeah.

4 Q. -- during those?

5 A. Mm-hmm.

6 Q. Okay. And what do you -- how did you react to, I  
7 think you called them graphic details, how did  
8 you react to that, hearing those?

9 A. Well, if it happened or not, I guess it's  
10 horrible that someone would do that.

11 Q. Mm-hmm.

12 A. That's how I reacted to it and you just kind of  
13 (witness made sound) and walk away.

14 Q. Yeah, I mean, it's one of these --

15 A. Yeah, that's just like when you hear moms --

16 Q. -- bone chilling things?

17 A. -- that stab their kids, it makes you sick.

18 Q. Mm-hmm.

19 A. But it's not your direct life, so you move on.

20 Q. Right. Okay. But -- I mean, it's one of  
21 these -- I mean no murder is good, but this is  
22 one of these that made you particularly sick?

23 A. Yeah.

24 Q. Is that -- Are those details something you have  
25 ever been able to put out of your mind?

1 A. Yeah, it's not something I think of every day.  
2 It doesn't govern my life.  
3 Q. No. No. And I'm not -- I'm not suggesting it  
4 does, but you, for example, you remembered here  
5 today the image of Teresa Halbach being tied up?  
6 A. Correct.  
7 Q. And her body being burned?  
8 A. Mm-hmm.  
9 Q. What other images have stuck with you?  
10 A. Like the fly by of the house. I don't know.  
11 (Court reporter couldn't hear.)  
12 A. The fly by, like the helicopter or whatever it  
13 was that was over the top of their house.  
14 Q. Mm-hmm.  
15 A. That sort of a thing.  
16 Q. And were you -- Are you aware that Brendan  
17 Dassey's statements have a lot to do with --  
18 A. Yeah, that was part of the news conference that I  
19 listened to.  
20 Q. Okay. What do you think of those statements?  
21 Did you believe them; did you not believe them;  
22 what did you think?  
23 A. I don't know, if they are true, I guess that puts  
24 a complete hole in your case.  
25 Q. In my case?

1 A. Yeah.

2 Q. You know, I don't represent Brendan Dassey?

3 A. I know. I'm just saying, if his testimony --

4 Q. Sure.

5 A. -- is the absolute, honest to God truth, well,

6 then, that's the case right there, I guess.

7 Q. What would you do if the State did not call

8 Brendan Dassey in this case?

9 A. I think that would be stupid. They would have a

10 reason to call him, I guess. I don't know.

11 There's a lot of ifs.

12 Q. Yeah, in other words, you heard all this terrible

13 stuff, but do you still expect to hear it here?

14 A. Yeah.

15 Q. I mean, the Judge, I think, will tell you that

16 the only thing you can consider is --

17 A. What's --

18 Q. -- the evidence you hear in the courtroom?

19 A. Yes.

20 Q. But how would you -- How would you put that image

21 of this tied up young woman out of your mind?

22 A. I don't think about it. It's like when my friend

23 got killed I didn't -- after I went to the

24 funeral and stuff, you don't -- you don't tend to

25 think of bad things because then it just puts you

1           in depression. That's why half the world is on  
2           Prozac.

3       Q. Let me chase -- Let me -- Prozac reminded me  
4           of -- of massage, which is a good way to deal  
5           with stress and depression, I assume, right?

6       A. Mm-hmm.

7       Q. How -- You may have said this and I just zoned  
8           out, didn't catch it. But how -- how long -- If  
9           you go straight through massage school, how long  
10          does it take?

11      A. It's a year course.

12      Q. And that's if you are a full-time student, so to  
13          speak?

14      A. Yeah. It's one 12 hour day --

15      Q. A week?

16      A. -- which is considered full-time to them.

17      Q. Right. And is one of the things you learn about,  
18          in the massage therapy program, the human  
19          skeleton?

20      A. Yes.

21      Q. What kind of detail do you learn about the human  
22          skeleton?

23      A. We had to learn and memorize every bone, every  
24          muscle, origins, insertions, that sort of a  
25          thing.

1 Q. Mm-hmm. And so are you familiar with looking at  
2 skeletons, or models of skeletons?

3 A. Yes. And we went to a cadaver lab up at NWTC.

4 Q. To see the muscle and the connection to bone  
5 or --

6 A. Yup, to see what a person looks like when they  
7 are dissected, I guess.

8 Q. Mm-hmm. Okay. Was that helpful in learning  
9 massage technique?

10 A. Yes and no. I mean, you kind of figure out how  
11 big muscles are. It's easy to see a picture of  
12 it, but when you see it in real life, you learn  
13 how it actually looks.

14 Q. How big -- how big it actually is. Okay. And do  
15 you -- Do you think that you know a great deal  
16 more about the human skeleton than the average  
17 person on the street?

18 A. I would like to think that, but I know from  
19 doctors, I don't know more than them.

20 Q. No, but the -- a doctor isn't the average person  
21 on the street, right?

22 A. Right.

23 Q. Most streets anyway. How about the -- you  
24 obviously had some schooling to be a certified  
25 nursing assistant, too?

1 A. Yes.

2 Q. How long was that?

3 A. I think like eight weeks. It wasn't very much.

4 Q. Okay. Also some training there about the human  
5 skeleton?

6 A. Yes and no. It was more about like different  
7 pathologies and stuff you would come in contact  
8 with in the actual field.

9 Q. Okay. So most of your training about the  
10 skeletal system has been in the massage --

11 A. Correct.

12 Q. -- school? I'm going to go -- I'm going to go  
13 back now to the news conferences following  
14 Brendan Dassey's arrest. That was about -- give  
15 or take, about 11 months ago now, I guess. And  
16 so after 11 months of that, do you have an  
17 opinion today about whether Mr. Avery probably is  
18 guilty, might be guilty?

19 A. Yes and no. I guess, I don't -- like I said, I  
20 would like to believe that someone can prove,  
21 beyond a reasonable doubt, either way.

22 Q. Mm-hmm.

23 A. I would like, you know, if they can prove it,  
24 well then it's proven, you know. Nothing is fact  
25 until it is proven.

1 Q. Right. And if I understood your answers before,  
2 the same would apply to us?

3 A. Yes.

4 Q. We would have to prove, beyond a reasonable  
5 doubt, that he did not do it?

6 A. Well, I'm not -- Yes, I guess that's the best way  
7 of saying it. I understand that it's not your  
8 job to prove that he's innocent, but it's your  
9 job to prove that he is not guilty.

10 Q. Okay. And would that include proving, to your  
11 satisfaction, who did do it if Mr. Avery didn't?

12 A. No. It's -- It's -- It's his case; it's not  
13 anyone else's case.

14 Q. Okay. And would it include Mr. Avery testifying  
15 in his own behalf?

16 A. That's your job; I don't know.

17 Q. That's my job?

18 A. Yeah.

19 Q. Okay. Do you think that someone who really  
20 didn't do a crime he was charged with would  
21 testify?

22 A. I don't know. It depends on if it's to his  
23 benefit or not, if he can bring something to the  
24 case that is going to get him off I guess, then  
25 why wouldn't you. If you're worried about

1                   tripping up, then you wouldn't go on the stand  
2                   either.

3       Q.    Mm-hmm.  And if you're worried about tripping up,  
4                   does that mean you are guilty, or there are other  
5                   reasons you might be worried about tripping up?

6       A.    Either way, you could, you know -- You could just  
7                   get nervous and say the wrong thing.

8       Q.    Mm-hmm.  Do you think if you (sic) took the  
9                   witness stand, some people on the jury might be  
10                  saying, well, of course he's denying it, you  
11                  know, he wants to save his skin?

12      A.    Yeah, but then if he's denying it and they can  
13                  prove that he's lying, well, then, they have to  
14                  prove it.

15      Q.    Right.  Okay.  In the end, I think the Judge  
16                  would tell you -- If Mr. Avery testified, I think  
17                  the Court would tell you that you weigh his  
18                  testimony just like you would weigh any other  
19                  witness, consider whether you believe it or not,  
20                  in the same way you make that decision as to any  
21                  other witness?

22      A.    Mm-hmm.

23      Q.    Can you follow that?

24      A.    Yeah, that would just be like if Brendan would  
25                  testify, then, it would be the same, you wouldn't

1 weigh his testimony over anyone else's.

2 Q. Mm-hmm. Okay. And if Mr. Avery decided not to  
3 testify or if we, with him, decided that, I think  
4 the Court would tell you, in so many words, that  
5 a defendant has an absolute right not to testify  
6 and that you may not consider that in any way as  
7 evidence of guilt, or consider it at all in  
8 deciding whether the State has proven Mr. Avery  
9 guilty beyond a reasonable doubt?

10 A. I understand that.

11 Q. Is that an instruction --

12 A. It makes sense.

13 Q. It would make sense to you?

14 A. Yeah.

15 Q. Why?

16 A. Because why -- Just because, like, if I didn't  
17 want to go out and talk to you today, doesn't  
18 mean that I have anything wrong with the case;  
19 it's just that I don't want to talk.

20 Q. Gosh, even if this is the time to talk, now or  
21 never, it's your trial?

22 A. I don't know. It depends on, does he have  
23 something to hide. Is that --

24 Q. Well, and that's the question, would you be  
25 sitting there wondering, after the trial was over

1           and you were trying to decide on your verdict,  
2           gosh, does he have something to hide, is that why  
3           he didn't testify; is that something you would be  
4           wondering?

5       A. It's something in the back of everyone's mind, I  
6           guess.

7       Q. In addition to the, you know, the publicity about  
8           Brendan Dassey and Steven Avery back in early  
9           March last year, have you heard anything else  
10          about Mr. Avery's background?

11      A. Well, it's public knowledge. It was published  
12          how many years ago and it was published when he  
13          got out of prison.

14      Q. What?

15      A. Well, when he got out of prison, they said, you  
16          know, the reason he was in prison and whatever.  
17          And now when they convicted him, of course, you  
18          know, that's the first thing they bring up, is  
19          all these other convictions that he had, that  
20          have nothing to do with the case. I don't  
21          understand why. That's just like if you get  
22          pulled over for drunk driving they bring up all,  
23          like your drug paraphernalia and stuff that  
24          doesn't have anything to do with it.

25      Q. Okay. And I guess what I'm -- one of the things

1           I'm interested in is, have you heard that  
2           Mr. Avery was let out of prison because some DNA  
3           tests showed that someone else, not him,  
4           committed that crime?

5       A. Yeah, it was big news. I don't think there's  
6           really anyone that hasn't heard it.

7       Q. Uh-huh. And do you have any doubt about that?

8       A. No. If they proved it with DNA evidence, that's  
9           kind of scientific, that's your proof right  
10           there.

11      Q. Mm-hmm. Okay. And do you think -- Do you think  
12           that experience that he had, being convicted of  
13           something he didn't do and then getting out of  
14           prison later, do you think that has any bearing  
15           on this case?

16      A. It's completely different events.

17      Q. So no bearing one way or the other, or what do  
18           you think?

19      A. I don't know. I guess there's -- there is some  
20           bearing I guess, because you have to consider the  
21           mind state that you are in when you get done with  
22           prison. You have to consider that now he's going  
23           after the county for however many dollars or  
24           whatever. There's different ways to look at it.

25      Q. You say going after the county, you are talking

1           about this lawsuit?

2   A. Yes.

3   Q. Okay. What have you heard about the lawsuit?

4   A. Just that he's -- a wrongful conviction lawsuit  
5       or something, I think it is.

6   Q. And you heard of that on the TV?

7   A. Yeah. Well, when he was let out, they had said  
8       shortly thereafter that he was going to be doing  
9       that. Probably do the same thing, you can't  
10      blame him.

11   Q. Right. Okay. What have you heard recently about  
12      this case --

13   A. Nothing really.

14   Q. -- on the news?

15   A. Just because it said however many -- or two  
16      months ago or whatever when we got that  
17      questionnaire, not to watch anything, so I have  
18      actually tried to stick by that.

19   Q. Okay. Have you heard anything about a vial of  
20      blood?

21   A. No, not really. I maybe heard something about it  
22      with people talking in the bar, but not really  
23      anything I paid attention to.

24   Q. What did you hear?

25   A. Just that there's a vial of blood that was opened

1           and it was his blood. I don't know. That was  
2           about it.

3 Q. Where was the vial of blood?

4 A. I have no idea.

5 Q. Okay.

6 A. I didn't pay attention. I don't like to.

7 Q. Okay. But I mean, so you know a little bit about  
8           that, not too much?

9 A. Mm-hmm.

10 Q. Anything else at all that you can remember  
11           hearing, bar talk or on the TV?

12 A. No. People say a lot of things in the bar; it  
13           doesn't mean they are true.

14 Q. People do say a lot of things in a bar. Your --  
15           Kelli Tice is both a friend of yours, according  
16           to your questionnaire?

17 A. Basically.

18 Q. And your boyfriend's aunt?

19 A. Yeah.

20 Q. Right. You guys are over there a lot you said.  
21           And I'm wondering --

22 A. Well, we go over there for birthday parties. And  
23           we used to go over there once or twice a week and  
24           just hang out, watch American Idol, whatever.

25 Q. Yeah, just hang out. Your boyfriend is close to

1           his aunt --

2 A.   Yes.

3 Q.   -- in other words? Do you still see her once a

4       week or something like that?

5 A.   I haven't seen her much lately. Her son just got

6       out of the hospital for a brain tumor.

7 Q.   Okay. So she's pretty --

8 A.   Yeah. So she's pretty --

9 Q.   Tied up.

10 A.   -- pre-occupied.

11 Q.   Yeah. And when -- when he is better and she's

12       back in the swing of things, do you expect you

13       will continue to see a lot of her?

14 A.   Well, she's relation, you can't exactly just not

15       go see her.

16 Q.   Yeah. No, I know. I mean, I'm just -- This is a

17       bad period she's going through, but you guys --

18 A.   Yeah.

19 Q.   -- will be spending time together again?

20 A.   Yeah.

21 Q.   Okay. And I'm -- I have no idea whether she

22       would be a witness here. I have no reason to

23       think she will or won't. But, in general, if we

24       just step away from Kelli; do you have any view

25       on whether law enforcement folks, you know,

1           police officers, deputy sheriffs, those kind of  
2           people, are more likely or less likely to tell  
3           the truth under oath, than Joe Blow, the man on  
4           the street?

5       A. You would hope so.

6       Q. Why?

7       A. Because anyone can lie to you at any point in  
8           time; it doesn't mean anything if they are a  
9           police officer or not.

10      Q. So why -- so why do you say you would hope so?

11      A. You would hope that if you take an oath you  
12           actually mean it.

13      Q. Oh, everyone?

14      A. Yes.

15      Q. Whether you are a police officer or not?

16      A. Yes.

17      Q. Okay. And so, I guess if I understand you, you  
18           would hope everybody would tell the truth under  
19           oath?

20      A. Yeah, that's kind of like why I didn't lie on my  
21           thing. There's no point in me lying; I don't  
22           want to be thrown in jail.

23      Q. That's sensible. And you are just, if I  
24           understand you, you are saying a police officer  
25           is no more or less likely, because of his or her

1                   job, to tell the truth or not tell the truth,  
2                   than anyone else?

3       A. No, like I said, everyone should tell the truth.  
4                   If not, then that just -- I don't know. I guess  
5                   I like to be pleasantly naive that everyone tells  
6                   the truth when they are under oath.

7       Q. Okay. What if you have to make tough decisions,  
8                   though, because one person is saying one thing  
9                   under oath and another person is saying the  
10                  opposite, let's say under oath, what do you do?

11      A. You take whoever has the most backing behind  
12                  them. Like if you are saying one thing and I'm  
13                  saying the other, if there's more people that are  
14                  saying the same thing that I am, well, then, you  
15                  would almost have to think that I would be  
16                  telling the truth versus you.

17      Q. If the State, here in this trial, called more  
18                  witnesses than the defense called, you know, just  
19                  by counting noses if the State called more  
20                  witnesses than the defense, would that suggest by  
21                  itself to you that the State had more proof?

22      A. Not necessarily. They all could be up here  
23                  saying different things. Like if you have a  
24                  police officer versus one of his family members  
25                  or something, they are going to say different

1 things.

2 If you pull every member up in his  
3 family, they are all going to say -- they'll all  
4 have different views on the story. They are not  
5 all going to be -- they didn't -- they weren't  
6 all there? I don't know.

7 Q. I'm -- and who's the family, whose family?

8 A. Steven's family. If you -- Like, let's say they  
9 would call up every member of his family, not all  
10 of them were sitting in the same place at the  
11 same time. They all have different views on it.  
12 They are all going to say something different.

13 Q. Okay. Same with police officers?

14 A. Yeah, like if you pull a police -- two police  
15 officers up here, one of them is going to say,  
16 like, if they were here two different days, one  
17 of them is going to say one thing and the other  
18 one is going to say basically the same thing, but  
19 in a different way.

20 ATTORNEY STRANG: I'm all done with you.

21 Thank you.

22 **VOIR DIRE EXAMINATION**

23 BY THE COURT:

24 Q. Ms Knier, I have a few follow-up questions to ask  
25 you about some of the answers that you gave. One

1           of the disadvantages of voir dire is we put the  
2           jurors in your situation before they have heard  
3           the instructions from the Court. And I just want  
4           to make sure that -- that you are in a position  
5           to follow those instructions if you're selected  
6           as a juror.

7           One of your statements was, and I  
8           believe it was based on the press conference that  
9           you recalled, that you would expect the State to  
10          call Mr. Dassey to the stand because your  
11          recollection of the press conferences, he would  
12          have useful information for them.

13          A. Yes.

14          Q. One of the instructions the Court will give you  
15          is that you have to base your decision only on  
16          the evidence that's introduced at the trial.  
17          Mr. Dassey may or may not testify at the trial,  
18          for a variety of reasons.

19           And examples of why we don't allow  
20          jurors to base their decision on things outside  
21          the courtroom is, if Mr. Dassey testified, the  
22          jury won't know whether maybe he didn't make the  
23          statements that were reported; maybe the State  
24          decided the statements weren't true and decided  
25          not to call him; maybe the State decides not to

1 call him for some other reason.

2 If he doesn't testify, the jurors won't  
3 know, but the jury will be instructed and have to  
4 agree to make their decision only on the evidence  
5 that comes in at the trial. Will you be able to  
6 do that if you are selected as a juror?

7 A. Yeah, that's what I'm saying. It's to their  
8 advantage to pull him up here, if what he's  
9 saying is correct. And I don't know what he's  
10 all said, but if he has all this knowledge or  
11 whatever, it would be to their advantage.

12 Q. All right. But if they don't call him to the  
13 stand, you have to base your decision --

14 A. Yeah.

15 Q. -- on what you do hear at trial? You can't  
16 speculate on what he might have said?

17 A. Yeah.

18 Q. You can --

19 A. Yeah, I understand that.

20 Q. -- agree to do that? Okay. Finally, I know you  
21 indicated in answer to a burden of proof  
22 question, that as a juror, correct me if I'm  
23 wrong here, I think you were hoping that one  
24 side's case or the other would be proved, beyond  
25 a reasonable doubt, so that would make your

1           decision easier to make?

2   A.  Yes.

3   Q.  One of the instructions you will get is that it's  
4       the State's burden to show that Mr. Avery is  
5       guilty of any particular charge, beyond a  
6       reasonable doubt, before you find him guilty.  If  
7       you find that the State's met its burden, beyond  
8       a reasonable doubt, then you can vote guilty.  
9       And, likewise, if you're convinced after hearing  
10      the evidence, that you are convinced beyond a  
11      reasonable doubt he is not guilty, then it's  
12      easy, you vote him not guilty.

13           But there's other things that could  
14      happen in between.  You might hear the evidence  
15      as a juror and think, well, you know, based on  
16      the evidence, I think there's a chance he is  
17      guilty; it's not proof beyond a reasonable doubt  
18      that he's innocent, but I don't think, beyond a  
19      reasonable doubt, that the proof shows he is  
20      guilty either.  And if you wind up feeling like  
21      that, you have to vote not guilty.  Do you  
22      understand that?

23   A.  Yeah.

24   Q.  Is that something you can do if you're selected  
25      as a juror?

1 A. Yes.

2 Q. The Court will also instruct the jurors at the  
3 end of the trial -- and at this point we don't  
4 know if Mr. Avery will testify or not, but let's  
5 say that he doesn't testify -- if he doesn't  
6 testify, the jury will be instructed that he is  
7 not obligated to testify and the jury can't hold  
8 that against the defense. That means, as I said  
9 before, the jury will have to make its decision  
10 just based on the evidence that did come in.

11                   And you can't be speculating about  
12 saying, well, you know, I don't think the State  
13 proved their case, but I sure would have liked to  
14 have heard from the defendant, so I don't know.  
15 If he -- If he doesn't testify, you can only base  
16 your decision on what you did hear; can you do  
17 that if you are selected as a juror?

18 A. Yeah, that makes sense.

19 Q. Okay. And the last thing is, and this related to  
20 some questions that I believe were asked later  
21 pertaining to the credibility of witnesses. And  
22 I think I understood you correctly, but I want to  
23 make sure that I did.

24                   There will be another instruction that  
25 will say, that in evaluating the credibility of

1           the witnesses and who you believe, that you can't  
2           base it solely on the number of witnesses that  
3           each side puts on the witness stand. Because, as  
4           the juror, you have the right, if you wish, to  
5           say, I find this witness or that witness more  
6           credible than even four or five witnesses from  
7           the other side. And if you believe that that's  
8           the case, then you should follow your own  
9           conclusions. Can you do that if you are selected  
10          as a juror?

11         A. Mm-hmm. Yes. I'm sorry.

12           THE COURT: All right. We're going to have  
13           the Clerk escort you from the courtroom at this  
14           time.

15           ATTORNEY FALLON: Excuse me, your Honor, I  
16           have a couple follow-ups --

17           THE COURT: All right.

18           ATTORNEY FALLON: -- if I may.

19           THE COURT: Go ahead, Mr. Fallon.

20           ATTORNEY FALLON: Thank you.

21           **VOIR DIRE EXAMINATION**

22         BY ATTORNEY FALLON:

23         Q. Ms Knier, I wanted to follow up on something that  
24           Mr. Strang and Judge Willis asked you, if I may.  
25           If Mr. Dassey does not appear as a witness, then

1           you seem to have an opinion that he would be more  
2           favorable to the State than to the defense.

3           So let me ask this, if he did not appear  
4           as a witness in the case, for whatever reason,  
5           would you hold that against the State in  
6           evaluating the rest of the case --

7       A. No.

8       Q. -- in determining whether there was a proof  
9           beyond a reasonable doubt?

10      A. No, you base that on what you hear in court.

11      Q. All right. So the fact that he -- So we  
12           wouldn't, then, be stupid, as it were, for not  
13           calling them.

14      A. Well, the reason I said that is, if you have all  
15           that evidence, then why wouldn't you present it.  
16           But that's your own business; I'm not a lawyer.

17      Q. All right.

18      A. But you said that you have to base it on what you  
19           hear in court and that's what you base it on.

20      Q. Right. So whether -- If we don't call him or the  
21           defense doesn't call Mr. Dassey as a witness, you  
22           are not going to hold it against either side if  
23           he does not appear --

24                           ATTORNEY STRANG: I object to that. I  
25                           object to that suggestion.

1                   THE COURT: I will sustain the objection.

2                   ATTORNEY FALLON: Then I'll -- It's another  
3 way of asking the general question.

4 Q. If he doesn't appear as a witness, you are not  
5 going to hold it against --

6 A. No, I just said that.

7                   ATTORNEY FALLON: All right. That's fine.

8                   THE COURT: All right. The Clerk will  
9 escort you out of the courtroom.

10                  (Wherein the juror was excused.)

11                  THE COURT: Counsel, any motion from either  
12 party? Mr. Fallon.

13                  ATTORNEY FALLON: I think we both are  
14 agreeing that the juror should be struck for cause.

15                  THE COURT: Should be struck for cause?

16                  ATTORNEY FALLON: Yes.

17                  THE COURT: All right. I will hear both of  
18 you.

19                  ATTORNEY STRANG: I'm in agreement. I

20 think she knows too much from out of court.

21 She's -- Her exposure, at least to the March 1,  
22 March 2 news conferences, or one or the other at  
23 least, was fairly intense. We got confusing and  
24 somewhat conflicting responses on basic questions  
25 here.

1                   And, although, I don't think any of us  
2                   were trying to put words in her mouth, she was  
3                   very ready to agree with the drift of the  
4                   question from all of us. But when we -- when we  
5                   got more open-ended answers, I think they  
6                   invariably suggested at least cause to strike for  
7                   an inability to understand and live with the  
8                   presumption of innocence, the burden of proof,  
9                   deciding a case only on the evidence presented.

10                  Beyond that, as a practical matter, too,  
11                  I will add that I have real concern about a juror  
12                  here who would be burning the candle at both  
13                  ends, as this woman clearly would with  
14                  employment; in addition, employment in a place  
15                  where she's going to be barraged with discussion  
16                  about the trial.

17                  Now, I'm not saying a bartender or  
18                  anybody else here by profession in this instance  
19                  falls into statutory bias, or even objective  
20                  bias, but the reality here, with this young  
21                  woman, is that in the aggregate there are just a  
22                  great number of risk factors and I think more  
23                  than adequate to add up to cause to strike.

24                  THE COURT: Mr. Fallon.

25                  ATTORNEY FALLON: Yes. My concern is a

1           little more specific dealing with the interjection  
2           of the Dassey issue. I was not comfortable with the  
3           witness' responses both orally and in demeanor wise.

4           I was also concerned by the fact that in  
5           terms of the reasons why Mr. Dassey may or may  
6           not appear as a witness. Chief among them is the  
7           fact that he stands accused of this crime and he  
8           has a Fifth Amendment right not to testify.

9           The question or the suggestion that  
10          whether the State believes his testimony or not  
11          or whether the defense believes his testimony or  
12          not, the fact that he is listed on both witness  
13          lists; I'm not comfortable at all with the manner  
14          in which that issue was dealt with and more  
15          importantly and more to the point, with her  
16          responses on that. And for that reason, we would  
17          ask that she be struck for cause.

18           THE COURT: All right. Based on the  
19          concerns regarding the juror's familiarity with the  
20          factual background, I'm going to strike her for  
21          cause, based on the recommendation of both parties.  
22          You know, I would indicate, as far as burden of  
23          proof and those types of questions, we're bringing  
24          jurors in here who haven't been instructed yet. I  
25          didn't find fault with her in that area.

1                   ATTORNEY FALLON: No. And I'm glad you  
2                   brought that up, I was just wondering and I hadn't  
3                   had a chance to mention this to counsel and I'm  
4                   beginning to wonder if, before we start our  
5                   questioning of the jury, as to whether or not we  
6                   might want to tell them what the general rules are  
7                   before we do this. It's just an idea. That may  
8                   speed the process or at least eliminate some  
9                   potential confusion.

10                  It is rather interesting, after all  
11                  these years, and perhaps I have just been in the  
12                  practice of law too long and take much too much  
13                  for granted, but it's quite clear that many of  
14                  our jurors, hard working, decent, law abiding  
15                  citizens, unfortunately, don't really have a very  
16                  good command of the principles in this.

17                  And you know, I'm wondering if the  
18                  manner in which we're going about this is -- is  
19                  creating more confusion than resolving confusion.  
20                  So I just throw a suggestion out there. Maybe we  
21                  might want to tell them what some of these  
22                  general principles are before we start.

23                  THE COURT: All right. I'm not -- To this  
24                  point, we're in individual voir dire. I'm not going  
25                  to go through lengthy instructions before each

1 juror. I would suggest that counsel can assist in  
2 this regard by not kind of deliberately leading them  
3 down a wrong path or an open path, or leading them  
4 to believe that they have the right to use other  
5 rules to decide the case.

6 But I think it's, you know, to have --  
7 to get a prospective juror who isn't familiar  
8 with the rules that they have to follow, to start  
9 saying, well, yeah, I would like to hear from the  
10 defendant. Well, that's not unusual for someone  
11 who's not familiar with the rules of court.

12 In many cases, the jurors have to be  
13 instructed that the defendant doesn't have to  
14 testify and they are not permitted to draw an  
15 adverse inference from that. And I'm not sure  
16 how productive it is to ask them a bunch of  
17 questions about it before they know what the rule  
18 is.

19 It's important that they understand the  
20 rule to be sure, but I'm not sure that it  
21 necessarily raises significant red flags to have  
22 them, when they are unfamiliar with the rule, to  
23 start out feeling otherwise.

24 At any rate, let's take our morning  
25 break at this time and we'll come back and start

1 with the next juror.

2 ATTORNEY STRANG: When do you want us back?

3 THE COURT: Let's say 10 minutes after 11.

4 We'll have a 13 minute break.

5 (Recess taken.)

6 THE COURT: All right. At this time we'll  
7 bring the next juror, Gerald Shedad, into the  
8 courtroom. Go ahead, Linda. Please raise your  
9 right hand and we'll have the Clerk administer the  
10 oath.

11 (Juror sworn.)

12 THE CLERK: Please be seated.

13 THE COURT: All right. Is it Mr. Shedad?

14 MR. SHEDAL: Yes.

15 THE COURT: Mr. Shedad, you have already  
16 completed a jury questionnaire in this case. Today  
17 we're moving on to the next phase of jury selection  
18 which is the individual voir dire process. The  
19 attorneys for each of the parties will have a  
20 chance, this morning, to ask some follow-up  
21 questions to the questions that are on the  
22 questionnaire.

23 I can tell you that should you be  
24 selected as a juror in this case, the jurors will  
25 not be sequestered during the trial; that means

you will be able to return home every evening after the proceedings are done for the day. We will continue to require the jurors not gain any information about the case through any of the news media; that is, newspaper, radio, television, or the internet; and that jurors not talk to anyone about the case.

I can also tell you, that although the proceedings today are open to the public, we do not allow cameras in the courtroom during the voir dire process. And the news media is prohibited from disclosing the names of jurors during the course of the trial.

In addition, I can tell you that the jurors who are selected to hear this case will not be on camera at any point during the trial itself.

If you are still part of the jury panel after the questioning today, you will get a telephone notice as to when to report back to court, later this week. Mr. Fallon, you may begin.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

Q. Good morning, Mr. Shedal.

1 A. Good morning.

2 Q. My name is Tom Fallon, I'm an Assistant Attorney  
3 General with the Wisconsin Department of Justice  
4 and I'm one of the prosecutors on this case. To  
5 my left is Mr. Ken Kratz, the District Attorney  
6 from Calumet County and lead prosecutor here.

7 Good morning and thank you for coming.

8 There were a couple of things in your  
9 questionnaire that has peaked the interest of  
10 Court and counsel and we would like to talk with  
11 you about them, to assist us in selecting a jury  
12 today. I guess the matter of primary interest,  
13 at least for the moment, is that you have  
14 expressed that you are at least somewhat familiar  
15 with several members of Mr. Avery's family; is  
16 that correct?

17 A. That's correct.

18 Q. All right. And you work at a place called  
19 Federal Mogul here in Manitowoc?

20 A. Correct.

21 Q. Forgive me, but I'm not familiar with that  
22 business, can you tell me what it is?

23 A. Sure. It's a factory that we make piston rings  
24 for the automotive market.

25 Q. You make what?

- 1 A. Piston rings for the automotive market.
- 2 Q. Oh, piston rings. Okay. So is your association  
3 with members of his family because of they are in  
4 the salvage business and you are in the  
5 automotive parts; is that the connection?
- 6 A. No, that is not. There's members of his family  
7 that work by us.
- 8 Q. That work with you. Okay. And which members of  
9 his family work with Federal Mogul?
- 10 A. There's Marie Avery. She used to work for me,  
11 but now she just moved to the weekend, to the  
12 second shift. And then there's Bobby Dassey.
- 13 Q. Okay.
- 14 A. He works the weekend shift there. He was working  
15 for me in the past. And then there is one other  
16 one, sorry, I can't remember her name. She works  
17 at the other plant down the road.
- 18 Q. The other plant is -- you say you couldn't  
19 remember the name. Carla?
- 20 A. Carla. Right.
- 21 Q. All right. Did you at some time work with her  
22 directly?
- 23 A. No, I did not.
- 24 Q. All right. Do you work with, I think you said  
25 Marie it was?

1 A. Right.

2 Q. And with Bobby?

3 A. Right.

4 Q. All right. And you have worked directly with  
5 them?

6 A. Yes, I have.

7 Q. Do you know them fairly well?

8 A. No, no, not really.

9 Q. All right.

10 A. They got hired. They put in their -- like their  
11 probationary period on my shift and then they  
12 went -- they moved on to the next shift that they  
13 got hired for.

14 (Loud noise.)

15 THE COURT: We have got a battery. That's  
16 what happens when the battery goes in the  
17 microphone. Don't be alarmed.

18 Q. (By Attorney Fallon)~ As a result of your  
19 familiarity with these three family members --  
20 Well, let me ask a couple of first preliminary  
21 questions. Have you had any discussions at all  
22 regarding this case, with them?

23 A. No, I have not and they never talked about it. I  
24 just kind of put two and two together.

25 Q. All right. And meaning that you figured out that

1           they were actually related to him; is that what  
2           you are saying?

3       A. Right.

4       Q. Okay.

5       A. Well, the one -- the one I didn't know he was  
6           related to until I filled out that questionnaire.  
7           Marie, I didn't know if she was related for sure  
8           or not until I filled that out, then I seen her  
9           name on there, then I knew it was.

10      Q. All right. And now you actually worked with  
11           Marie and Bobby; is that correct?

12      A. Right.

13      Q. Now, during the -- How long did you work with  
14           them?

15      A. Well, I'm a supervisor there and throughout the  
16           day, I would say maybe 15 minutes a day.

17      Q. All right.

18      A. Not a real lot but, yes, I did.

19      Q. Did you get to know them fairly well?

20      A. No.

21      Q. Did you have any personal conversations with them  
22           other than, you know, beyond the point of the  
23           business, as it was?

24      A. No.

25      Q. All right. All right. Now, in answer to

1           question -- toward the end of the questionnaire,  
2           you were asked: Is there anything or any reason  
3           at all, however personal or private, that makes  
4           you feel you should not serve as a juror on this  
5           case, or that if selected to serve you could not  
6           be fair and impartial? And you first said, no,  
7           you crossed that out and answered yes. And you  
8           added, I work with Steven's relatives and then  
9           you said the number three, presumably that means  
10          that's the three relatives you work with?

11         A. Right.

12         Q. All right. Tell us why, is that your opinion,  
13           your feeling today?

14         A. Yeah, pretty much.

15         Q. All right. Let's talk a little bit about that.  
16           Why would that make you uncomfortable --

17         A. Well --

18         Q. -- what concerns does it raise?

19         A. Well, I don't know -- I don't know what to --  
20           Just say if it would, whatever way it went, I  
21           don't know how they would take it toward me.

22         Q. Okay.

23         A. I guess that's about the only reason.

24         Q. Well, you think that they might feel -- some  
25           animosity for you --

1 A. Right.

2 Q. -- some anger?

3 A. That's pretty much what I'm saying right now.

4 Q. All right. I mean, do you have any fears of any

5 type of family retribution?

6 A. No, no.

7 Q. Okay.

8 A. Not at all.

9 Q. All right. Do you work with them regularly?

10 A. No, they are -- they no longer work for me.

11 Q. All right. So they are entirely in different

12 shifts with different projects and things?

13 A. Correct. Right.

14 Q. All right. Now, if any of them were to appear as

15 witnesses in this case, would that create some

16 problems for you?

17 A. Uh-uh, I don't feel it would.

18 Q. All right. Why would that not create any

19 problems?

20 A. I guess I don't know how to answer that. I don't

21 know.

22 Q. All right. But if you were to -- So, it's not so

23 much that you know them from work, that if you

24 feel you could evaluate their testimony the same

25 as you would any other witness?

1 A. Sure.

2 Q. All right. So your sole concern here is you are  
3 a little bit worried about how they may feel  
4 about you should, for instance, you were to enter  
5 a verdict of guilty?

6 A. Right.

7 Q. Do you have that feeling if you were to enter a  
8 verdict of not guilty?

9 A. Yeah, I would have to say the same.

10 Q. All right.

11 A. Both ways.

12 Q. Could you kind of tell us a little bit why you  
13 have that feeling?

14 A. Well, I have been -- I just heard this through  
15 the grapevine at work, that other people, that  
16 someone else did talk to Bobby in the past and  
17 they -- they filled me in on a couple of things.

18 And ...

19 Q. All right. I want to make sure that I can follow  
20 you here. You are saying that someone you know  
21 has spoken to Bobby Dassey?

22 A. Mm-hmm.

23 Q. Presumably about something related to the case?

24 A. Right. And then I heard --

25 Q. And then --

1 A. -- from that person.

2 Q. And it was passed on to you?

3 A. Right.

4 Q. Do you recall today what that was?

5 A. Geez, basically that -- that -- that his brother,

6 Brendan --

7 Q. Okay.

8 A. -- wasn't involved.

9 Q. Was or was not?

10 A. Was not.

11 Q. All right. And anything else that this person

12 otherwise had informed you of?

13 A. No, I don't think.

14 Q. All right.

15 A. Uh-uh.

16 Q. One second.

17 (Discussion between attorneys.)

18 Q. (By Attorney Fallon)~ Is there any -- any other

19 information that you have from an outside source

20 regarding what may or may not have happened in

21 this case involving either Steven Avery or

22 Brendan Dassey?

23 A. No. I don't know of anything else, no.

24 Q. All right. So what you are suggesting, then, is

25 that you had this one conversation with, I take

1           it a fellow employee?

2 A. Right.

3 Q. Who supposedly talked to Bobby Dassey, at least  
4       about some aspect of this case. And the one bit  
5       of information that you recall coming to your  
6       attention was what you have told us?

7 A. Right.

8 Q. All right. Anything else at all, any other bit  
9       of information?

10 A. Uh-uh, nothing.

11 Q. Nothing. All right. Okay. How long have you  
12      worked at Federal Mogul?

13 A. Twenty-four years.

14 Q. And I see that you are a supervisor of  
15      approximately 30 employees?

16 A. Correct.

17 Q. How long have you been in a supervisory role?

18 A. Eighteen, nineteen years.

19 Q. Okay. And I take it you are a -- Are you a life  
20      long resident of Manitowoc?

21 A. Well, I actually live in Newton.

22 Q. I mean, Manitowoc County.

23 A. Manitowoc County, yes, I am.

24 Q. Yeah, okay. Okay. Have you -- Let me first ask,  
25      you checked your news sources as radio,

1           television and newspapers as your primary sources  
2           of information. Of those three, where do you get  
3           most of your news?

4       A. I would have to say probably the TV.

5       Q. All right. And any particular news channels that  
6           you watch?

7       A. Channel 5.

8       Q. You watch Channel 5. All right. Have you  
9           watched the coverage of this case on Channel 5?

10      A. Bits and pieces of it. The majority of the time  
11           when I do get a chance to watch it is usually  
12           like on a Friday morning.

13      Q. All right.

14      A. Other than that, not really, only because I'm at  
15           work at that time. I start work at 4:30 in the  
16           morning.

17      Q. I was just going to ask, what are your hours?

18      A. I work from 4:30 to 4:00, 12 and a half hours.

19      Q. Okay. And how many days a week?

20      A. Four days a week, Monday through Thursday.

21      Q. Okay. When -- Do you watch the evening news at  
22           all after you get home?

23      A. No, most of the time when I get home I hit the  
24           couch and I take a nap.

25      Q. All right. Have you followed any of the news

1 coverage, any of the newspaper coverage of the  
2 case, Sunday papers maybe or ...

3 A. Yeah, here and there I pick up bits and pieces of  
4 it, yes.

5 Q. All right. When was the last time you recall  
6 either reading something in the newspaper or  
7 listening to a news broadcast involving the case?

8 A. This morning I looked at the Herald-Times  
9 Reporter. I seen the headlines from yesterday.

10 Q. All right.

11 A. That's what I seen.

12 Q. You saw the headlines. Did you read any of the  
13 article?

14 A. Yeah, that -- basically that it's in the process  
15 of -- probably about within the first paragraph.

16 Q. All right.

17 A. Yup.

18 Q. And did you read anything more than the  
19 paragraph?

20 A. No.

21 Q. All right. Have you listened to anything on the  
22 television recently about the case?

23 A. No.

24 Q. What was the last thing -- Other than what you  
25 saw from the headline in that first paragraph

1           this morning; what was the last thing you recall  
2           hearing about the case or reading about the case  
3           before this morning?

4     A.    I would have to say it goes back to last week,  
5           Tuesday, after the jury selection has been  
6           started.

7     Q.    Okay.

8     A.    I did read that.

9     Q.    You mean after you came in and filled out the  
10           questionnaire?

11    A.    Right.

12    Q.    So the next morning you read the paper or  
13           listened to the news broadcast?

14    A.    No, I did read the paper.

15    Q.    You did read the paper on that Tuesday about the  
16           selection process?

17    A.    Yeah.

18                   THE COURT: Excuse me, Mr. Fallon.

19                   Counsel, can you approach.

20                   ATTORNEY STRANG: Sure.

21                   (Side bar taken.)

22                   ATTORNEY FALLON: Your Honor, I don't have  
23                   any more questions.

24                   THE COURT: Mr. Shedal, at this time the  
25                   Clerk will escort you out.

1 MR. SHEDAL: Okay.

2 (Wherein the juror was excused.)

3 THE COURT: I will indicate for the record  
4 at this time I did not ask Mr. Strang if he had any  
5 questions because when I called counsel to the bench  
6 I was informed that the parties would be jointly  
7 requesting to excuse this juror.

8 And based on the answers given, both the  
9 failure to follow the Court's admonition about  
10 not reading anything further about this case and  
11 the answers concerning the defendant's contacts  
12 with members of the defendant's family at work,  
13 plus hearing things about this case, I believe  
14 there's more than an adequate basis for excusing  
15 the juror. And I believe that's the joint  
16 recommendation of the parties as well. Correct,  
17 counsel?

18 ATTORNEY FALLON: That's correct, Judge,  
19 from the State.

20 ATTORNEY BUTING: That's correct.

21 ATTORNEY FALLON: We wanted to flush that  
22 out.

23 THE COURT: Very well, the Court will order  
24 this juror excused and we will move on to Nathan  
25 Klein.

ATTORNEY STRANG: Judge, just so you know, the way we're doing it here is I do two, he does two, I do two, he does two. So he's got the next two.

THE COURT: All right. Mr. Klein, please remain standing and the Clerk will administer the oath to you.

THE CLERK: Please raise your right hand.

(Juror sworn.)

THE CLERK: Please be seated.

THE COURT: Mr. Klein, you have previously completed a juror questionnaire in this case. This morning we're moving on to the next phase of the jury selection process which is known as voir dire. The attorneys will have a chance to individually ask you some follow-up questions to the information on the questionnaire.

I can tell you that the jurors selected to hear this case will not be sequestered; that means the jurors will be permitted to return home each day and spend the rest of the day at home. We're doing that because of the order to the jurors not to follow any news media accounts concerning this case and not to discuss it with anyone during the course of the trial.

1                   I can also inform you that although the  
2                   voir dire proceedings today are open, no cameras  
3                   are permitted in the courtroom today and the news  
4                   media is prohibited from disclosing the names of  
5                   the jurors in news media accounts of this matter.

6                   Finally, should you be selected to serve  
7                   as a juror in this case, the cameras are not  
8                   permitted to take shots that identify who the  
9                   jurors are at the trial itself.

10                  If you are continued for jury duty after  
11                  this morning's proceedings, you will receive a  
12                  telephone call later this week letting you know  
13                  when to report back to Court. Mr. Fallon, at  
14                  this time you may begin.

15                  ATTORNEY FALLON: Thank you, your Honor.

16                  **VOIR DIRE EXAMINATION**

17                  BY ATTORNEY FALLON:

18                  Q. Good morning, Mr. Klein.

19                  A. Good morning.

20                  Q. My name is Tom Fallon and I'm an Assistant  
21                  Attorney General with the Wisconsin Department of  
22                  Justice. I'm one of the prosecutors in this  
23                  case. To my immediate left is Mr. Ken Kratz, the  
24                  District Attorney from Calumet County and the  
25                  lead prosecutor in this case. Good morning and

1           thanks for coming.

2           We would like to ask a few follow-up  
3       questions about some of the information you  
4       provided last week in the questionnaire. And  
5       after I'm done, Mr. Buting will ask a few  
6       questions of you and then perhaps the Court.

7           I would like to begin a little bit, I  
8       think first off, with your employment. I see  
9       that you are currently employed at the Burger  
10      Boat Company?

11     A.    Correct.

12     Q.    All right. And you are a carpenter?

13     A.    Correct.

14     Q.    All right. And how long have you been a  
15      carpenter?

16     A.    Two years at Burger Boat.

17     Q.    I'm sorry?

18     A.    Two years at Burger Boat.

19     Q.    Two years. And so would you say your vocation as  
20      it were is woodworking then?

21     A.    Yes.

22     Q.    And how long have you been involved in that  
23      pursuit?

24     A.    Since high school.

25     Q.    All right. And how long would that be, 7, 8

1           years?

2   A. Yeah.

3   Q. Now, am I correct, I wanted to follow up with one  
4       of your other activities, some may call it  
5       employment, some may call it volunteer work. But  
6       I see that there's a notation here that you do  
7       some volunteer firefighting?

8   A. That is correct.

9   Q. With the Two -- Town of Two Rivers?

10   A. Yup.

11   Q. How long have you been involved in that?

12   A. The past four years.

13   Q. Four years. And have you actually had occasion  
14       to go out and use those skills and fight some  
15       fires?

16   A. Yes, many, and accidents.

17   Q. All right. And what other duties as a volunteer  
18       fireman are you occasionally called upon to do,  
19       other than fight fires or respond to accidents?

20   A. Sometimes helping out with the community with  
21       searches such as this case.

22   Q. Right.

23   A. Do volunteering for Salvation Army to ring the  
24       bells at local establishments.

25   Q. Okay.

1 A. That's about it.

2 Q. All right. Do you enjoy that work?

3 A. Yes.

4 Q. All right. The reason I ask is, the question you

5 gave and as you have just indicated now,

6 volunteer searches much like were employed in

7 this case. So let me ask you a little bit about

8 that. You indicated in your questionnaire that

9 you had planned on assisting in the search for

10 Teresa Halbach since apparently other members of

11 your department did participate?

12 A. That's correct.

13 Q. All right. And if I may, what happened that

14 resulted in your not participating?

15 A. It happened to fall on a weekday, the day that we

16 were gathering to go and I was not able to. You

17 have enough vacation to use to go out and do the

18 search.

19 Q. So you had your other work responsibilities?

20 A. Correct, for Burger Boat Company.

21 Q. At the Burger Boat, is that ...

22 A. Yes.

23 Q. Okay. Since you missed out on that opportunity,

24 if you -- if it had fallen on let's say a

25 vacation day or a holiday of sorts; would you

1 have participated then?

2 A. Yes.

3 Q. Did you have any discussions or -- with any of  
4 those of your colleagues who did participate in  
5 the search?

6 A. Briefly, yes, as to what, at this time I don't  
7 really recall.

8 Q. Okay. You don't recall any discussion or  
9 anything you had with them regarding what they  
10 may have seen, or done, or heard, or any of that?

11 A. Just one story of a possum or some type of animal  
12 that was inside a vehicle that one of the guys  
13 stirred up and got startled by it, but.

14 Q. All right. So --

15 A. More or less small talk and nothing of, you know,  
16 major.

17 Q. Small talk and humorous anecdotes?

18 A. Right.

19 Q. And not much substance?

20 A. Correct. Yes.

21 Q. Okay. And how many of those conversations do you  
22 think you had?

23 A. A few, less than five I will say.

24 Q. Less than five?

25 A. Yes.

1 Q. And when was the last time you would have talked  
2 with any of your colleagues about that search or  
3 about their role in the search for Teresa  
4 Halbach?

5 A. Talking was probably done a week after it  
6 happened.

7 Q. All right.

8 A. Everything settled down at that time.

9 Q. You haven't had any recent discussions with any  
10 of those colleagues about the case?

11 A. No.

12 Q. Okay. Was there anything about the -- even the  
13 humor part of it, was there anything about that  
14 that makes you wonder or doubt in your mind  
15 whether you could be fair and impartial in this  
16 case, if you were selected as a juror?

17 A. Not necessarily, no.

18 Q. I'm sorry, not necessarily?

19 A. No. No.

20 Q. Okay. All right. Well, I would like to talk a  
21 little bit about the media coverage of this case  
22 and your familiarity with it. Where would you  
23 say you get most of your news from; radio,  
24 television?

25 A. Radio.

1 Q. Radio?

2 A. Yes.

3 Q. And why would that be?

4 A. Radio is played all day at work, every day.

5 Q. And what hours do you normally work?

6 A. 7 till 3:30.

7 Q. And is that a five day a week job?

8 A. Yes.

9 Q. Monday through Friday?

10 A. Correct.

11 Q. Okay. When you get home from work, do you watch  
12 television, or do you do chores, or have some  
13 fun, or what do you do in your off hours?

14 A. I do chores.

15 Q. All right. And while the chores are being done,  
16 do you listen to the radio or listen to the  
17 television while you are doing things or not?

18 A. Usually the television is on, yes.

19 Q. All right. Is it on news channel, sports channel  
20 or what generally is on in the background as it  
21 were?

22 A. Cops, actually.

23 Q. Cops.

24 A. Yeah.

25 Q. Okay. All right. What can you recall now about

1           the coverage of this case? Is there any  
2           particular information, particular story or fact  
3           that kind of, you know, sits in your mind right  
4           now.

5       A. Burning barrel.

6       Q. The burning barrel?

7       A. Yup.

8       Q. All right. What else sticks in your mind?

9       A. The camera, the burning barrel, the vehicle, the  
10          nephew.

11      Q. Okay. What fact or what information about the  
12          nephew sticks in your -- in your memory right  
13          now?

14      A. The -- His admittance to part of this.

15      Q. All right. Are you -- Can you recall any of the  
16          details or any of the information that he -- that  
17          is attributed to him?

18      A. Meaning as what he admitted to?

19      Q. Right.

20      A. The cutting of hair, taking part of the actions.

21      Q. Okay. Do you remember what he supposedly had  
22          done?

23      A. I believe I remember him saying that he had cut  
24          portions of her hair.

25      Q. Okay.

1 A. Would you like me to go into more detail.

2 Q. Well, it would be helpful for us, we're trying to

3 have an idea as to how familiar are you may or

4 may not be with some of the facts in the case.

5 A. Taking part in the rape of her.

6 Q. Okay. Anything else that you recall?

7 A. Them are the ones that stand out the most to me.

8 Q. Okay.

9 A. Oh, and the school bus driver seeing her after

10 3:30.

11 Q. Okay. And is the TV the primary source of that

12 information, or is that the radio, or is it fuzzy

13 in your head?

14 A. I couldn't tell you exactly which was for what.

15 Q. Okay.

16 A. But I would say 75 percent radio, 25 percent

17 television.

18 Q. Okay. Now, as a result of that information, you

19 were asked some questions in the questionnaire as

20 to whether or not you formed any opinion based on

21 the information that was available in the media.

22 And you answered: It's hard to say, the news is

23 so one-sided. One should hear both sides. And

24 the nephew's confession doesn't help him.

25 When you say, it doesn't help him, are

1           you referring to Mr. Dassey or Mr. Avery?

2   A.   Mr. Avery.

3   Q.   All right.

4           (Court reporter asked him to repeat.)

5   A.   Mr. Avery.

6   Q.   Now, can you elaborate on that, when you say the  
7       news is so one-sided, what do you mean by that?

8   A.   A lot of times when the news would start, you  
9       would see the picture of Steven Avery with the  
10      black and white striped jail suit.

11   Q.   Right.

12   A.   Almost implying that he's guilty already, before  
13      the Court has done their thing.

14   Q.   Okay. So what did you think about that, is that  
15      fair or unfair?

16   A.   Very unfair, I believe.

17   Q.   Okay. Well, tell us about that, why is that  
18      unfair?

19   A.   Because it's giving the public the presumption  
20      that he is already guilty.

21   Q.   All right. And he's entitled to the presumption  
22      of innocence, correct?

23   A.   Right. Entitled to a fair trial.

24   Q.   Right. And he remains innocent until the State  
25      proves him guilty, beyond a reasonable doubt; is

1           that right?

2   A.   That's correct.

3   Q.   All right. And if you were selected as a jury  
4       person in this case, would you be able to accept  
5       that principle and apply it as the Judge  
6       instructed you?

7   A.   Yes.

8   Q.   All right. Now, do you expect Mr. Avery to prove  
9       anything in this case?

10   A.   Yes. Yeah, I would.

11   Q.   All right. And what would that be? What do you  
12      think he needs to prove?

13   A.   To prove that he is not the guilty one of this as  
14      to --

15   Q.   Okay. If the Court were to tell you and I would  
16      imagine, in fact, I'm quite confident the Court  
17      will tell you that Mr. Avery doesn't have to  
18      prove anything and that only the State, the only  
19      party with a burden of proof is the State. And  
20      the only thing that has to be proved is whether  
21      he is guilty, beyond a reasonable doubt. Do you  
22      understand that?

23   A.   Yeah.

24   Q.   All right. And if, for instance, Mr. Avery chose  
25      not to present any evidence and just simply

1           picked apart the State's case, if you were not  
2           satisfied, beyond a reasonable doubt, of his  
3           guilt, would you vote for not guilty? Even if he  
4           did not put on any case, he just criticized the  
5           State's case.

6       A. It would be difficult to not hear his side of the  
7           story if he was --

8       Q. All right.

9       A. -- not to.

10      Q. And if the Court instructed you that they don't  
11           have to present any evidence, that they may just  
12           simply criticize the State's case and that would  
13           be it; would you still be able to follow that  
14           direction?

15      A. As long as the solid evidence is brought forward  
16           and can be proven.

17      Q. All right. So in other words, if the State does  
18           prove to you, beyond a reasonable doubt, you  
19           would vote that he was guilty?

20      A. I guess, yes. Yes.

21      Q. Okay. In answer to a question regarding  
22           scientific evidence, do you have any special  
23           interest in any type of scientific analysis such  
24           as fingerprint, hair, or DNA; you indicated yes.  
25           And then in your description, you said not to

1           pursue it, but in court it is very dependable.

2           Can you tell us what you mean by that?

3       A. It's factual. It's 100 percent correct. If you  
4           can scientifically prove it as to what it is,  
5           where it is, when it happened, that's cold, hard  
6           evidence. In my opinion, that can make or break  
7           a case. It will tell you whether you are guilty  
8           or not.

9       Q. All right. So are you suggesting that as someone  
10          who would be asked to evaluate and weigh the  
11          evidence, you would give greater weight to the  
12          scientific evidence because you think it's more  
13          accurate than say testimony from witnesses?

14      A. Yes.

15      Q. Okay. What about the people who are presenting  
16          the evidence, the scientific evidence; do you  
17          find them more believable than someone say who is  
18          not a scientist or a doctor?

19      A. Yes.

20      Q. Why would that be?

21      A. More credible. They have more at risk.

22      Q. And is that because they have more information  
23          regarding the topic they are talking about or  
24          just because they are a scientist?

25      A. Because they know more about it in general, as a

1 whole. I mean, it's -- it's what they do.

2 Q. All right. Well, what would happen, in your  
3 mind, if you had two scientists who disagreed?

4 They'd run the same test and one scientist says,  
5 well, I think it's A and the other guy says, no,  
6 I think it's B; what do you do with that?

7 A. Get some more scientists.

8 Q. I'm sorry.

9 A. Get some more scientists.

10 Q. Get some more scientists. Well, that's a good  
11 answer, but let's assume for the sake of our  
12 discussion that resources are limited and we  
13 can't just run out and get another scientist, so  
14 how would you evaluate their testimony?

15 A. I guess you would have to go to the next best  
16 thing, a step below --

17 Q. Okay. And what do you think?

18 A. -- go from there.

19 Q. What would that be?

20 A. Any other type of evidence or eyewitness,  
21 whatever the case may be, I mean, the next best.

22 Q. Well, I guess what I'm driving at here is, would  
23 you be able to evaluate the scientist's testimony  
24 the same way you evaluate the testimony of the  
25 lay witnesses to make a determination as to who

1           is more credible or whose theory carries the day?

2   A. Yes. I mean, one will obviously make more sense

3        to one person than another.

4   Q. All right. You indicated also in your

5        questionnaire that on one occasion you witnessed

6        a hit-and-run accident and filed a report; is

7        that correct?

8   A. Correct.

9   Q. Are you aware as to how that may or may not have

10      turned out?

11   A. No.

12   Q. All right. You never received any more

13      information or any feed back on your ...

14   A. Nope.

15   Q. Okay. How did you feel about that?

16   A. Kind of hurt in a way, actually, that a citizen

17      takes time out of his day to pursue a suspect

18      that struck a school bus and kept going.

19   Q. Okay.

20   A. And I followed the individual to their residence

21      or wherever they ended up parking and the police

22      did come and I filed a report with them and that

23      was the last I ever heard of it.

24   Q. All right. So you don't know if the particular

25      person was ever prosecuted and convicted, or

1           whatever?

2       A.    Nope, I have no idea.

3       Q.    Well, since you don't know the outcome, let me  
4           ask this; the fact that no one advised you as to  
5           what was happening or what occurred as a result  
6           of your report, does that create some concern for  
7           you in terms of dealing with law enforcement or  
8           other witnesses that may appear in this case?

9       A.    No, I don't believe it has any bearing on this.

10      Q.    All right. Now, you indicated you have a cousin  
11           who's a law enforcement officer?

12      A.    Yeah, Allouez or Green Bay or ...

13      Q.    I'm sorry?

14      A.    In Green Bay, Brown County.

15      Q.    Brown County?

16      A.    Something like that.

17      Q.    You gave us his name here, is he a Brown County  
18           sheriff or is he a police officer in one of the  
19           municipalities?

20      A.    I think he is a sheriff. I'm not 100 percent on  
21           it.

22      Q.    Okay.

23      A.    I don't have regular contact with him.

24      Q.    All right. So he wouldn't necessarily -- He is  
25           not family, or is he?

1 A. He's -- he's a cousin of mine.

2 Q. A cousin.

3 A. But we're not, you know, real close that we see

4 each other, anything like that.

5 Q. Okay.

6 A. Once a year.

7 Q. Special holidays you might run into him?

8 A. Right.

9 Q. Okay. So you don't have occasion to talk with

10 him about his work?

11 A. No.

12 Q. Okay. Now, you also expressed some familiarity

13 with a case involving a co-worker who apparently

14 was convicted of involuntary manslaughter?

15 A. Yes. Yes.

16 Q. How long ago did that happen?

17 A. I worked with this individual probably six, seven

18 years ago. And I'm sure this case happened well

19 before that, probably when he was younger.

20 Q. Oh.

21 A. It's nothing that was recent, but that's the

22 closest thing I could think of to this question.

23 Q. Okay. So it was not like that it happened when

24 you were working together and he had to serve

25 some time?

1 A. No.

2 Q. This was something he told you about after the  
3 fact?

4 A. Yes. Yes.

5 Q. All right. Did that have any particular lasting  
6 impression on you in terms of the justice system  
7 at all?

8 A. No.

9 Q. Did he think he was treated fairly?

10 A. I never really asked him --

11 Q. All right.

12 A. -- or nor was it spoke of too much, you know.

13 Q. All right. Did you have any impression from him  
14 as to what -- how he might feel about that  
15 experience, based on the discussion you had with  
16 him?

17 A. Like I say, I felt sorry for him more than  
18 anything.

19 Q. All right. Any chance in your mind that that  
20 experience, as related to you by the co-worker,  
21 would have any affect on your ability to be a  
22 juror in this case?

23 A. No.

24 Q. Do you have any friends, or relatives, or anybody  
25 that works in the news business?

1 A. No.

2 Q. Okay. Do you own a computer?

3 A. Yes.

4 Q. All right. Do you use the internet for a news

5 source for you?

6 A. No. No.

7 Q. All right. And what do you use your computer

8 for?

9 A. Searching for items, information and email.

10 Q. Okay. Do you ever use it to buy and sell

11 anything?

12 A. No. No.

13 Q. Pay bills or anything?

14 A. Rarely.

15 Q. Okay. Have you ever heard of a publication

16 called the *Auto Trader Magazine*?

17 A. Yes.

18 Q. Do you read it or use it from time to time?

19 A. Yes --

20 Q. You do?

21 A. Yes --

22 Q. I'm sorry, I don't mean to --

23 A. Yes, from time to time.

24 Q. All right. Have you ever purchased a vehicle, or

25 sold a vehicle, or anything with the use of *Auto*

- 1           *Trader?*
- 2   A. I don't believe so.
- 3   Q. All right. Have you used it to find, perhaps, a
- 4        vehicle that might be of interest to you?
- 5   A. Yes and compare prices and milage.
- 6   Q. Okay. Do you know any of the people that work
- 7        for that magazine by any chance?
- 8   A. No.
- 9   Q. Okay. As a carpenter and a woodworker at the
- 10      company, I would imagine that shop safety and
- 11      equipment safety might be important
- 12      considerations for you?
- 13   A. On a daily basis, yes.
- 14   Q. All right. In your capacity as a carpenter have
- 15      you ever participated in writing up any safety
- 16      standards or guidelines, or things of that sort,
- 17      to help manage the production of products?
- 18   A. No, never to write up anything or put into
- 19      effect.
- 20   Q. All right. Have your opinions ever been sought
- 21      by anyone who was putting together some kind of
- 22      safety guideline or policy for say the use of a
- 23      piece of equipment, or the creation of a
- 24      particular product?
- 25   A. Yes, yes. I'm on the safety committee at Burger

1                   Boat Company.

2 Q. You are.

3 A. We meet monthly and always discussion on what we

4 can do better or how to make things safer.

5 Q. Do you enjoy participating in that type of work?

6 A. Yes, it reflects of my volunteer firefighting and

7 first responder training.

8 Q. Okay. Do you watch movies at all in your spare

9 time or?

10 A. Not many.

11 Q. Not many, okay. Do you consider yourself a

12 detail oriented guy or more of a big picture

13 person?

14 A. Very detail oriented.

15 Q. Okay. Any particular examples you can give us?

16 A. My job.

17 Q. All right. Are you -- Let's talk about that, are

18 you a rough carpenter or a finish carpenter?

19 A. Finish carpenter.

20 Q. Okay. And your carpentry work has been primarily

21 as a finish carpenter?

22 A. Yes. I had rough carpentry experience.

23 Q. Sure.

24 A. Plenty of that, yes, but ...

25 Q. Okay. And the carpentry work that you are doing,

1           is it -- can you give us some examples of the  
2           types of work you do?

3       A. I'm a level three carpenter at Burger Boat, top  
4           level. And right now I am running the pilot  
5           house on one of the boats that we're putting out.  
6           It's kind of a one person room where the boat is  
7           controlled from. So I'm in the process of doing  
8           that entire room by myself.

9       Q. Okay.

10      A. Which is a --

11      Q. It's a big project?

12      A. I have a big responsibility.

13      Q. Sure. Now, do you occasionally supervise other  
14           help or is this pretty much your show?

15      A. I supervise other help, yes.

16      Q. You do.

17      A. Yes.

18      Q. Okay. Do you enjoy the supervisory role?

19      A. Yes, makes me feel good that I'm teaching  
20           somebody else something.

21      Q. All right. So you like that instructor aspect of  
22           it?

23      A. To a point, yes.

24      Q. A little frustrating I imagine from time to time?

25      A. It can be, yes.

1 Q. Do you have a tendency to exact the same  
2 standards of professionalism from those you  
3 supervise as you do from yourself?

4 A. Yes.

5 Q. All right. As I recall, you do not have any  
6 prior jury experience; is that correct?

7 A. That's correct.

8 Q. All right. Is there anything about the jury  
9 process or being a juror who's asked to  
10 deliberate on guilt or innocence of another  
11 person, is there anything about that process you  
12 think might be a problem for you, that you might  
13 not be able to perform that duty?

14 A. That duty in itself, if I were to be selected, it  
15 wouldn't be a problem.

16 Q. Okay.

17 A. I mean, I would step up and do it but, overall, I  
18 prefer not to.

19 Q. Not to have to do it?

20 A. Yes.

21 Q. But if you were called upon to perform the  
22 service, you would be able to do it?

23 A. Yes, I would.

24 Q. Okay. That's fair enough.

25 ATTORNEY FALLON: I will pass the juror.

1 THE COURT: Mr. Buting.

2 ATTORNEY BUTING: Thank you, Judge.

3 **VOIR DIRE EXAMINATION**

4 BY ATTORNEY BUTING:

5 Q. Mr. Klein, I'm Jerome Buting. This is Attorney  
6 Dean Strang. And we're representing Mr. Avery.  
7 Okay. You probably saw us last week briefly, but  
8 this is our first chance to talk. I see you have  
9 got a six week old little girl?

10 A. Yes, that's correct, seven now.

11 Q. Are you getting any sleep?

12 A. A couple hours a night, yes.

13 Q. She's still keeping you up quite a bit?

14 A. Yeah.

15 Q. Would that be a problem if you were selected on  
16 the jury, do you think?

17 A. It could be for my wife's sake more, without me  
18 there being able to help as much or throughout  
19 the day.

20 Q. But do you think you would be able to at least  
21 get a night's sleep?

22 A. I could get enough sleep to function, yes, I  
23 would not be sleeping --

24 Q. Okay.

25 A. -- during the day.

1 Q. A lot of us have been through that and it's  
2 sometimes very difficult to get enough sleep to  
3 be functioning during the day, but you think you  
4 could do that?

5 A. Yes.

6 Q. Okay. Let me ask you, I'm going to go over a  
7 number of things that Mr. Fallon already did, but  
8 I have some others as well. The information that  
9 you have learned from the media, radio or  
10 whatever, you also mentioned, though, that you  
11 have learned information -- you get news from  
12 co-workers?

13 A. Correct.

14 Q. What kind of information about this case have you  
15 gotten from them, do you think?

16 A. Nothing, you know, greater than what was  
17 expressed on the news the day before, just small  
18 talk at work, the next day, after the news was  
19 published.

20 Q. Do people sort of speculate about various  
21 theories of what happened?

22 A. Yes. There's speculation of guilty and not  
23 guilty. Kind of depends on the day or what was  
24 last broadcast on the news.

25 Q. Right. And have you been exposed to people who

1 have got theories that he is guilty, and if so,  
2 what are those? What are you hearing?

3 A. Just like I said, yeah, some people say he is  
4 guilty and some don't. What more are you looking  
5 for?

6 Q. Is it more 50/50 or is it more people thinking he  
7 is guilty than not guilty, or I mean are you  
8 hearing both equally?

9 A. It depends on the day.

10 Q. Okay.

11 A. What was last on the news.

12 Q. Okay. Speaking of what was last on the news, how  
13 much -- how recent have you heard anything on the  
14 news or heard co-workers talking about anything  
15 on the news?

16 A. At work, it's hard, you can't get away from a  
17 radio at work. You try to stay away from it, but  
18 you can't, there's radios everywhere and they are  
19 on constantly. So it would have been Monday  
20 morning.

21 Q. This week?

22 A. Yes.

23 Q. Did you try and avoid listening to?

24 A. Yes. Yes, been to different areas, and sometimes  
25 you come across it. But I have tried to avoid

1           the radio, but have not been able to the entire  
2           time.

3       Q.    Okay. Did you hear information, some discussion  
4           in the news about a blood vial?

5       A.    Yes.

6       Q.    Did you -- What, can you give me a summary of  
7           what you heard about that?

8       A.    They were going to test it for the chemical in  
9           the blood, to see if it was in fact blood from  
10          the vial that was stored in the Manitowoc  
11          Courthouse.

12      Q.    Okay. And so you learned it was stored -- I  
13          mean, you heard that whole story, basically?

14      A.    Yes.

15      Q.    So you have heard information about some of what  
16          the defense is as well?

17      A.    Yes.

18      Q.    Have you formed any opinions about that, that  
19          this is a crazy defense or it's a possible  
20          defense?

21      A.    It's very possible.

22      Q.    Okay.

23      A.    The tests will -- should tell us.

24      Q.    Okay. What if the tests can't tell you? What if  
25          in this instance science won't be able to prove,

1           one way or the other, the source?

2 A.    It's on to the next.

3 Q.    Then you look at something else.

4 A.    Correct.

5 Q.    You also mentioned that you had heard really

6        quite a bit about Brendan Dassey's statements?

7 A.    Yes.

8 Q.    Initial statements, right?

9 A.    Yes.

10 Q.   Have you also heard of other reports where he

11      recanted that statement?

12 A.   Yes.

13 Q.   Where he's denied it and said that it was false

14      and all of that?

15 A.   Yes.

16 Q.   And have you heard information about how evidence

17      may or may not support or corroborate that?

18 A.   Not in detail, by any means. And I can't really

19      say if I have ever heard that or not.

20 Q.   Okay. That's fair. You do -- you put quite a

21      bit of faith in science, I understand, right?

22 A.   Yes.

23 Q.   And you like it -- is that because you'd like --

24      it's cut and dried, or you hope that it's cut and

25      dried?

- 1 A. I would hope that it's cut and dried, yes.
- 2 Q. What about if there's a lack of science, lack of
- 3 evidence that can be scientifically proved where
- 4 you might think there should be?
- 5 A. I would think we could do more to obtain it. I
- 6 would think that there are ways of getting it,
- 7 unless there would be a time restriction upon it.
- 8 Q. Okay. Well, what if -- you expect science to be
- 9 able to help corroborate what someone says?
- 10 A. Yes, I would hope that it can, to put more faith
- 11 in what that person has said.
- 12 Q. Okay. And if in fact it seems to disprove it or
- 13 doesn't corroborate what someone says; does that
- 14 -- what effect does that have?
- 15 A. That would lead me to believe that that person
- 16 has got the wrong information that they are
- 17 telling us.
- 18 Q. Okay. Either inaccurate or just false?
- 19 A. Correct.
- 20 Q. Okay. You said that you -- I forgot how you put
- 21 it, people presenting the evidence, whether they
- 22 are actual scientists or perhaps technicians, you
- 23 would tend to think or view as more credible?
- 24 A. Correct.
- 25 Q. Because they have more at risk; what did you mean

1 by that?

2 A. It's -- It's their life. It's their livelihood.  
3 It's -- It's their job. It's what they depend  
4 on. It's what they do everyday.

5 Q. Do you think that they can make mistakes?

6 A. Everybody makes mistakes, yes.

7 Q. Okay. And that sometimes the results, the  
8 science they produce, might be mistaken because  
9 they make mistakes?

10 A. Yes, it can be.

11 Q. And are you capable of looking at the whole  
12 picture to see whether or not -- have you ever  
13 heard the phrase "garbage in garbage out"?

14 A. Yes.

15 Q. Okay. So you have to look very carefully and  
16 listen to the witnesses very carefully to  
17 understand if the results are the kind of science  
18 that you hope it would be?

19 A. Yes.

20 Q. Okay. Now, given what you have heard, all you  
21 have heard about this nephew's story, in the news  
22 media; what if you didn't hear any of that at the  
23 trial, would you be able to put all that aside?

24 A. It would be difficult but -- to put it aside --  
25 it can be done.

1 Q. So what if the State didn't call Brendan Dassey  
2 at all and you never heard from him?

3 A. I guess we would have to go on to the next and  
4 try to prove it in another way. But it seemed  
5 like it was major, major information that could  
6 be used one way or another.

7 Q. And would you -- would you hold that against the  
8 State, that somehow, well, if they are not  
9 putting on that evidence they must not, you know,  
10 they are hiding something or they don't have --  
11 maybe it's not true, or would you be speculating  
12 about that?

13 A. I don't know if I would hold it against them  
14 either way, if they put him on or if they took  
15 him off. I just know that this information  
16 probably would be critical to the case.

17 Q. Okay. But if the Judge instructed you that you  
18 have to really put aside all of that and forget  
19 all of that and really decide this case just on  
20 the evidence that comes into court and that you  
21 can consider maybe lack of evidence that comes  
22 in, but not focusing and speculating about other  
23 things you have heard; would you be able to  
24 follow that?

25 A. Yes.

1 Q. Okay. Did you -- If you have heard about how  
2 Brendan Dassey has recanted at some point, have  
3 you ever encountered or heard of people who have  
4 confessed falsely?

5 A. No.

6 Q. Can you think of any reasons why someone would  
7 confess to something they didn't do when they are  
8 being talked to by the police?

9 A. No, I can't possibly think why somebody would  
10 confess to something that they have not done.

11 Q. Have you ever -- You have never heard of any  
12 situations where people have actually falsely  
13 confessed and then turns out not to be true?

14 A. No.

15 Q. Okay. So that would be a completely new  
16 experience for you?

17 A. Yes.

18 Q. Do you think it's impossible that someone would  
19 do that or could do that?

20 A. I'm sure there are people that do it, but like I  
21 said, I don't see why anybody would, or for what  
22 reason.

23 Q. Okay. Do you think it's possible that sometimes  
24 people feel pressured by the police to say things  
25 that they didn't -- they wouldn't otherwise?

1 A. I could never see myself doing it, you know. I  
2 guess there may be a possibility and I'm sure  
3 there is a possibility because I'm sure people  
4 have done it, but I don't see any reason why or  
5 to what pressure the police could put on you to  
6 make you confess to something.

7 Q. So -- But would you be able to listen to  
8 witnesses that talk about -- not how you or what  
9 you would do, not evaluate it in terms of whether  
10 you would do something --

11 A. Right.

12 Q. -- but whether or not someone else would falsely  
13 confess?

14 A. I would be able to listen to it, yes.

15 Q. Okay. Now, your cousin is a deputy sheriff, you  
16 believe?

17 A. Yeah.

18 Q. And you work in -- As a volunteer fireman, you  
19 probably work with some law enforcement --

20 A. Correct.

21 Q. -- officers as well?

22 A. Yup.

23 Q. Do you ever work with Manitowoc County sheriffs?

24 A. Yes.

25 Q. Which ones?

1 A. Specific names?

2 Q. Do you know?

3 A. I don't know the specific name, but there is

4 usually a certain police officer individual

5 that's kind of in our territory, that usually

6 gets to the same accident calls that we're at, or

7 blocks down roads for house fires, but I don't

8 know his name, no.

9 Q. Okay. So it's not -- is it not -- is it

10 necessarily the same person every time?

11 A. No, not every time, but a lot of the time he is

12 the same one, usually there.

13 Q. And is your only encounter with that deputy when

14 you are at, like, the scene of an accident or

15 something like that?

16 A. Yes. Yes.

17 Q. Traffic control or whatever?

18 A. Yup.

19 Q. So, you don't really discuss his or her work?

20 A. No.

21 Q. Do you think that police officers who would come

22 into court and take the oath and testify are

23 necessarily more truthful than the ordinary

24 average witness?

25 A. Yeah, I would say they are a little more

1           truthful, yes.

2 Q.       Okay. Why?

3 A.       They have a higher job and a higher duty to  
4       withhold and stand up for.

5 Q.       Okay. Do you think that -- So you think, then,  
6       the police are less likely to lie about something  
7       under oath than the ordinary person?

8 A.       Yes.

9 Q.       Do you think that they would -- Does that mean  
10      that they would not ever?

11 A.       No, everybody -- anybody can lie. I'm not saying  
12      a police officer does not lie.

13 Q.       Okay.

14 A.       So.

15 Q.       Do you think sometimes police get personally  
16      involved in an investigation and convince  
17      themselves that --

18 A.       Yes, yeah.

19 Q.       -- convince themselves that this person is guilty  
20      and they got to make sure that he's convicted?

21 A.       Yes.

22 Q.       Do you think sometimes police would cross the  
23      line in order to try and make sure that -- that  
24      they think the right person is?

25 A.       I would hope that's not how it works but, yeah,

1           it can happen.

2 Q.    Okay.

3 A.    It could happen.

4 Q.    All right. The -- Let me go back for just one  
5           minute. Your wife, is she off work, I assume, on  
6           maternity leave?

7 A.    Yes.

8 Q.    Would you be financially -- have financial  
9           hardship if you were selected for the jury, then?

10 A.   It would make things extremely tight. I'm aware  
11           now that we're eligible for unemployment, but it  
12           is not up to what I currently make. There  
13           wouldn't be a lot of extra things going on at my  
14           household.

15 Q.    But you think you could get by for six weeks?

16 A.   Prefer not to but, yes, it could be done.

17 Q.    If it's your duty and you are selected you could  
18           do it?

19 A.   Yes, I would step up.

20 Q.    Okay. I appreciate that. You work with your  
21           hands?

22 A.   Yup.

23 Q.    And I know you try to follow safety procedures,  
24           right?

25 A.   Yes.

1 Q. But do you find you often get little cuts and  
2 things on your hands, when you are working with  
3 your hands?

4 A. Yes.

5 Q. All right. Mr. Fallon talked about some things  
6 or asked you about whether you would expect to  
7 hear or would like to hear Mr. Avery's side of  
8 the case; do you recall that?

9 A. Yes.

10 Q. And that brings up a quandary for any defense  
11 attorney because you have already -- you have got  
12 this sort of catch-22, when you are trying to  
13 advise your client, should you testify or not  
14 testify.

15 If the defendant takes the stand, some  
16 people will maybe think he's just trying to save  
17 his own skin, he is self-interested, why should  
18 we believe what he says. And yet he's a witness,  
19 or she's a witness in the case, whatever it is;  
20 would you be able to judge Mr. Avery as a  
21 witness, if he testifies, just like any other  
22 witness?

23 A. Yes.

24 Q. And not discount what he says just because he's a  
25 defendant and has an interest in the case?

1 A. Yes.

2 Q. If the Judge instructed you, could you follow  
3 that kind of an instruction?

4 A. Yes.

5 Q. And, then, on the other hand, if he didn't  
6 testify, that's the other fear that defense  
7 attorneys sometimes have, well, is the jury going  
8 to think he has something to hide, you know, why  
9 doesn't he testify. A lot of people want to hear  
10 both sides.

11 A. I would want to hear both sides as well.

12 Q. And can you think of reasons, though, why  
13 sometimes a defendant may not testify, that has  
14 nothing to do with whether they are guilty or have  
15 anything to hide?

16 A. I could not think of a reason why one would not  
17 want to testify for himself or herself.

18 Q. Well, can you conceive of people who maybe are --  
19 don't speak well in public, or aren't articulate,  
20 get confused, things like that that they are  
21 concerned about?

22 A. I don't think that would be something that should  
23 prevent one from doing that.

24 Q. And what about, you know, what if -- what if  
25 their attorney says I don't think you should

1           testify, I mean, that's a factor if you have to  
2        consider?

3       A. Yes. Repeat what you are asking.

4       Q. Well, let me ask you this. If Mr. Avery didn't  
5        testify, would that affect you and your ability  
6        to be fair and render a proper verdict?

7       A. I would continue with getting to the verdict. I  
8        guess it would have some bearing on it, that he  
9        would not speak for his own defense.

10      Q. Okay. But now, you will hear, or you may hear  
11       the Judge instruct you, if that would occur, that  
12       every person has a constitutional right not to  
13       testify and part of that because it's not the  
14       defendant's burden to prove that he's innocent,  
15       right?

16      A. Okay.

17      Q. And if the Judge instructs you that you have to  
18       look at the State's case and the defendant  
19       doesn't have to take -- to testify and assume any  
20       kind of burden of proof and that you have to,  
21       therefore, not consider or speculate why he did  
22       or didn't testify; would you be able to follow  
23       that kind of an instruction?

24      A. Yes, if that were the instruction from the Judge  
25       and that's what we had to follow and that's what

1           we had to do, that's where we would go from it.

2   Q.    Okay. Now, in this case, though, you know, I'm  
3       concerned because of all the theories that people  
4       talk about, that you have heard. And I'm  
5       concerned that you may say, well, if Mr. Avery  
6       didn't do this, who did?

7   A.    Correct.

8   Q.    I mean, that's only natural, right?

9   A.    That's exactly what I would think.

10   Q.    But you understand that, if the Judge instructs  
11      you that you can't require Mr. Avery to prove  
12      anything, are you still going to say, hey, you  
13      know, unless he can prove to me who actually did  
14      this crime, I can't find him not guilty?

15   A.    I would have that feeling, but I would still make  
16      up my decision for the Court at the time. I  
17      would still be wondering that after the case has  
18      been settled, yes.

19   Q.    And I can tell, because of your interest in  
20      the -- how certain science can be, that you like  
21      to have something cut and dried, you like an  
22      answer?

23   A.    Yes.

24   Q.    Right?

25   A.    Yes.

1 Q. But you have to understand that if you're  
2 selected on this jury, the question you are not  
3 going to be told -- Well, I take that back.

4 You may find yourself in a situation  
5 where you have heard all the evidence from the  
6 State and you are just not convinced, beyond a  
7 reasonable doubt, that Mr. Avery did it, but you  
8 also won't know, necessarily, who did if --  
9 commit this crime if not him; is that going to  
10 trouble you or will you be able to render a  
11 verdict of not guilty if you really have  
12 reasonable doubt that he did it?

13 A. I will be able to render a verdict one way or the  
14 other, you know, at the time.

15 Q. Okay.

16 A. And then I would definitely look forward to  
17 hearing more in the future as to where the case  
18 has gone from there.

19 Q. Okay. So after hearing all of this, do you think  
20 this is a case that you want to be a jury on?

21 A. No --

22 Q. Juror on?

23 A. -- I do not want to be a juror on.

24 Q. But you would do so if it's your duty?

25 A. That's correct.

1 Q. And you wouldn't have regrets and would you be  
2 willing to stick it out and do whatever it takes,  
3 no matter how long it requires deliberating,  
4 after the case is over?

5 A. It's my duty and that's what I would do. I would  
6 have regrets of lost time and lost wages and so  
7 on and so forth of that sort and hope that it  
8 wouldn't drag out beyond the estimated six weeks.  
9 But, yeah, there could be regrets of things that  
10 I missed, the money that I missed out on, but I  
11 could step up and do it, yes.

12 Q. All right.

13 A. Not top on my list of things to do.

14 Q. I don't think it's on top of most people's list,  
15 but it is a civic duty and we appreciate you  
16 coming here today even and taking time out. So,  
17 thank you, sir.

18 A. Thank you.

19 **VOIR DIRE EXAMINATION**

20 BY THE COURT:

21 Q. Mr. Klein, I have just one follow up. The -- One  
22 disadvantage of the jurors in your position is  
23 you haven't heard the instructions yet, so you  
24 don't know what the rules are that the Court is  
25 going to give you. But I can tell you that one

1           of them is, that if you're selected as a juror,  
2           that the jurors have to base their decision only  
3           on the evidence that they hear.

4       A.    Correct.

5       Q.    You have indicated both that you have some  
6           familiarity with Mr. Dassey's confession and also  
7           the recantation of that. We have a trial, you  
8           may or may not hear any testimony about that for  
9           a variety of reasons, that may or may not have  
10          anything to do with the credibility or  
11          believability of anything Mr. Dassey has said.

12           If no evidence comes in, will you be  
13          able to base your decision only on the evidence  
14          that comes in at the trial and not speculate  
15          about what other evidence might have been?

16       A.    I would do my best, but not to say that that  
17          wouldn't still be in the back of my mind, whether  
18          it would make -- make me lean one way or the  
19          other at the final verdict, I really can't say.  
20           I would hope that it wouldn't under your  
21          advisory. But I would definitely do my best  
22          and ...

23       Q.    Do you believe, as you sit here today, that you  
24          can do that?

25       A.    Ninety percent, yes. And there's still a little

bit of me that I would hope I would be able to.

Q. Well, if something doesn't come in, you really don't know what you are missing, right? You don't know how it would cut?

A. Correct.

Q. Can I ask you, what is it that gives you -- what gives you concern? Why do you feel you -- why are you only at 90 percent?

A. Due to the media and then the drastic -- drastic events that were brought up, you know. I guess that doesn't necessarily give me an opinion, but it gives me faith that there can be some closure to this.

Q. Well, if you are a juror you are going to hear a lot more evidence --

A. Correct.

0. -- than there's been --

A. Correct.

Q. -- in the press? And I will instruct you at the end of the trial, if you're selected as a juror, that you can only base your decision on the evidence that you hear. Can you do that?

A. Yes. Yes, I would put everything else aside and do that.

THE COURT: All right. I will have the

1 clerk escort you from the courtroom.

2 (Juror not present).

3 THE COURT: Counsel, is there any motion  
4 from either party?

5 ATTORNEY FALLON: None from the State.

6 ATTORNEY BUTING: Could we have a couple  
7 minutes to confer on this one, too, your Honor,  
8 please?

9 THE COURT: Yes, you may. I will be back  
10 in two minutes.

11 (Brief recess.)

12 ATTORNEY BUTING: Judge, we would move to  
13 strike this juror for cause. I'm concerned that  
14 he's unable to really commit to follow the Court's  
15 instructions. He's obviously been exposed to great  
16 detail about Mr. Dassey's confession, which may or  
17 may not come in. And he seemed to have -- although  
18 he said some positive things too and I think he was  
19 being very honest, trying to tell us how he feels.  
20 Overall, I don't think he's really committed to set  
21 aside his prior knowledge and decide it only on the  
22 evidence in this court.

23 There is the other issue I frankly meant  
24 to follow up with him and forgot, which is the  
25 Court's instruction not to listen or hear

1 anything about the case. And he's, even just  
2 yesterday, already been hearing things on the  
3 radio. And I don't think deliberately, but as he  
4 described it, it seems like it's almost  
5 impossible for him not to be exposed to media  
6 reports about what's going on in the case.

7 And probably as this case develops and  
8 as there may be significant, even sensational  
9 developments, who knows, it's going to be all  
10 over his work place. He says he tries to avoid  
11 it. He goes here, he goes there and the radio is  
12 on everywhere. His co-workers are going to be  
13 talking to him. It's almost --

14 THE COURT: Wait a minute. If he is on the  
15 jury, how is he going to hear these things?

16 ATTORNEY BUTING: Well, if he's --

17 THE COURT: He's not going to be at work,  
18 is he?

19 ATTORNEY BUTING: Well, he -- I guess it  
20 wasn't clear. He did say he was working first  
21 shift, didn't he? So maybe that's true, maybe while  
22 the case is going on he won't. But he has  
23 already -- Despite the Court's instruction, he has  
24 already been exposed and listened to radio. And  
25 whether it was intentional or not, I think it's --

1                   you know, it's indicative of problems he may well  
2                   have.

3                   But the biggest problem is -- is that  
4                   he's just honestly saying that he doesn't  
5                   think -- he is not committing to the Court that  
6                   he really can set aside whatever prior  
7                   information he's learned and decide this only on  
8                   the evidence in the court. So I think he should  
9                   be struck for cause.

10                  THE COURT: Mr. Fallon.

11                  ATTORNEY FALLON: Thank you, Judge. This  
12                  is one where we would disagree with the defense. I  
13                  think that Mr. Klein did his level best to answer  
14                  the questions as best he could.

15                  I take him at his word when he says -- I  
16                  think his last answer was probably the most  
17                  telling in his -- and capsulizes his summary of  
18                  his presentation today. And that is simply this,  
19                  that while he may not want to do something or he  
20                  may not fully embrace everything here, he is  
21                  willing to, as he said, step up, meet his civic  
22                  duty. He is willing to follow the instructions  
23                  of the Court. He indicated he would do his best  
24                  to do so.

25                  And the fact that he may only be

1           90 percent certain that he can follow the  
2         instructions is, quite frankly, right there.  
3         That's what you would expect. I think if you  
4         would ask anybody in this room, are you  
5         100 percent sure you could put this out of your  
6         mind, are you 100 percent sure you can do this  
7         and that, and I would venture to guess that most  
8         people in this room wouldn't tell you I'm  
9         100 percent sure of anything in this world.

10           And I think, as an example, there is a  
11         case, it's not directly on point, but when you  
12         get these somewhat equivocal answers, not  
13         100 percent certainty that they can follow the  
14         instruction or not 100 percent sure of that, the  
15         courts have held that any witness who expresses  
16         that level of understanding, that level of  
17         commitment, should be deemed an adequate juror.

18           You might want to take a look at **State**  
19         **vs. Erickson**, for instance, a particular juror in  
20         there was talking about the victimization that  
21         she may have experienced herself. She was a  
22         sexual abuse victim many years earlier. And in  
23         responding to a couple of questions she said,  
24         well, no, I don't think so. When the court asked  
25         her if she could be fair and impartial, she said

1 I think so.

2 I mean, those are equivocal responses  
3 but, you know what, they are honest responses  
4 from the heart and I think that's what Mr. Klein  
5 gave us. He indicated he would be willing to  
6 give us his level best. And I think that his  
7 presentation is, quite frankly, what you would  
8 expect.

9 THE COURT: All right. The --

10 ATTORNEY BUTING: Just a brief response.

11 THE COURT: Go ahead.

12 ATTORNEY BUTING: The -- I don't think that  
13 these are -- I don't think that these answers were  
14 equivocal, but convincing that he could still set  
15 everything aside. I think he was being honest and  
16 in that regard he was trying to do his best.

17 But it's not enough for a juror just to  
18 say I'll try. They don't have to say I'm  
19 100 percent but they have got to make some sort  
20 of a commitment. And he was very clear, even  
21 with the Court's efforts to talk with him, that  
22 he says it's in the back of his mind, he can't --  
23 he doesn't really think he's going to be able to  
24 put all this aside. So, for those reasons, I  
25 think he should be stricken.

1                   THE COURT: All right. This is a situation  
2 where the Court understands the objection to be that  
3 the juror is subjectively biased; that is, that he  
4 is unable, based on his exposure to this pre-trial  
5 publicity, to put it behind him.

6                   This is also a situation where the  
7 Court's observation of the juror; that is, his  
8 demeanor as he was giving his answers comes into  
9 play. Yesterday, I struck a juror based on the  
10 fact that he gave answers that were -- seemed to  
11 be acceptable, but his demeanor didn't strike me  
12 as indicating that -- that I could just take his  
13 answers at face value.

14                  In this case, the Court's observations  
15 of the demeanor of this witness, I believe that  
16 he is very aware of his duty and very conscious  
17 of the need to follow that duty. And he is  
18 aware -- well, he's been aware of publicity  
19 relating to an alleged inculpatory statement that  
20 Mr. Dassey gave, but is also aware that  
21 Mr. Dassey has recanted it. And he is also -- so  
22 he knows there's some dispute. And I believe,  
23 based on his answer, that he is committed to  
24 putting that behind him, if no evidence is  
25 introduced on that issue at trial.

I believe also, based on his demeanor, that he has the commitment and the willingness to do so. And his 90 percent, if you will, argument or statement before he finally said just yes at the end, is based on the fact that he recognizes that he's human and he believes he could put it behind him, but like anyone else, nobody can say for sure until the time actually comes.

I'm satisfied, based on my observations of this juror, that he could be a fair juror in this case. And, therefore, the Court is not going to strike him for cause.

Counsel, we'll take our noon break at this time and resume at 10 after one, because we're going to have to make a little better headway than we have been making thus far. So I will see you at 10 after 1.

ATTORNEY BUTING: Could we make that just  
1:15, your Honor, an extra five minutes.

THE COURT: All right. I will make it 1:15, but I have to say, I was hoping not to go later today, but we may have to. I will see you at 1:15.

(Noon recess taken.)

THE COURT: At this time we're back on the

1 record. Counsel, before we bring in the next juror,  
2 I did, in my explanation on Mr. Klein, forgot to  
3 address on the record the radio issue. My  
4 recollection of his statement was that he -- because  
5 of the radio being on at his place of employment,  
6 that it was impossible to completely avoid it, but  
7 that he has, since he received the instruction from  
8 the Court, attempted to avoid listening to reports  
9 on the radio and left the area, or I forgot exactly  
10 what his words were. But it appeared to the Court  
11 from whatever his exact words were, that he was  
12 attempting to comply with the Court order and had  
13 not been exposed to any meaningful publicity since  
14 he has been instructed to avoid publicity. For that  
15 reason, I did not choose to excuse him on that  
16 basis.

17 All right. At this point, we'll bring  
18 in Mr. Saari, who is I believe Juror 26, the next  
19 juror on the list. Mr. Saari, at this time the  
20 Clerk will administer the oath to you.

21 THE CLERK: Raise your right hand.

22 (Juror sworn.)

23 THE CLERK: Please be seated.

24 THE COURT: Mr. Saari, you have already  
25 completed a written questionnaire in this case. And

1 today we're moving on to the next phase of the jury  
2 selection process which is individual voir dire.  
3 The attorneys for each of the parties will have an  
4 opportunity to ask you some follow-up questions to  
5 the answers you gave in your questionnaire.

6 Before we begin with those questions, I  
7 want to make sure that you know that the jurors  
8 who are selected to serve in this case will not  
9 be sequestered. That means that at the end of  
10 the court proceedings every day the jurors will  
11 be brought back here to Manitowoc and permitted  
12 to go home.

13 The Court will continue throughout these  
14 proceedings to require that the jurors not be  
15 exposed to any news media accounts concerning  
16 this case; that is, radio, television, newspaper  
17 or the internet.

18 And I also want to let you know that  
19 although these proceedings are open today, the  
20 Court does not allow cameras in the courtroom  
21 during jury voir dire and the media is prohibited  
22 from disclosing the names of the jurors during  
23 the course of the trial.

24 And, finally, if you are selected to  
25 serve on a jury -- on the jury in this case, you

1 should know that the cameras are not permitted to  
2 show the faces or any other identifying  
3 characteristics of the jurors during the trial.

4 After the questioning today, if you  
5 remain on the panel, you will get a phone call in  
6 a day or two telling you when to report back,  
7 sometime later this week.

8 At this time, Mr. Fallon, you may begin  
9 questioning for the State.

10 **VOIR DIRE EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. Good afternoon, Mr. Saari.

13 A. Good afternoon.

14 Q. My name is Tom Fallon. I'm an Assistant Attorney  
15 General with the Wisconsin Department of Justice.  
16 And I'm one of the prosecutors in this case. To  
17 my left here is Mr. Ken Kratz. He's the lead  
18 prosecutor in this case and he's the District  
19 Attorney in Calumet County. Good afternoon and  
20 thanks for being here.

21 The Court and counsel here would like to  
22 follow up with some questions of you, based on  
23 the information you provided last week in the  
24 questionnaire. So I would like to begin with a  
25 little bit about your employment. If you can

1 tell me how long you have worked for the company.  
2 A. Two years.  
3 Q. And have you performed -- What is a material  
4 handler?  
5 A. Forklift driver, operate a forklift.  
6 Q. All right. And have you been employed doing that  
7 particular duty for the two year period?  
8 A. Yes.  
9 Q. All right. Have you performed any other  
10 functions for Northern Labs?  
11 A. I worked in the office for a little while.  
12 Q. You will have to speak up just a little bit.  
13 A. I worked in the office for a little while doing  
14 computer work.  
15 Q. Doing computer work.  
16 A. Yeah.  
17 Q. Okay.  
18 A. For like a month.  
19 Q. What kind of computer work did you do?  
20 A. Data entry.  
21 Q. All right. Do you consider yourself fairly  
22 proficient in the use of the computer?  
23 A. Yeah.  
24 Q. All right.  
25 A. I would think so.

1 Q. And do you have one at home?

2 A. Yeah.

3 Q. And do you use it frequently?

4 A. Mainly for playing games.

5 Q. For playing games.

6 A. Yeah.

7 Q. Do you get any news or any information from the

8 internet that way?

9 A. Not really.

10 Q. Okay. How long did you do the data entry work at

11 Northern Labs?

12 A. For like a week.

13 Q. What kind of material or what kind of product do

14 you work with at Northern Labs?

15 A. Car waxes, car soaps. What else do they do?

16 Kaboom, mostly Orange Glo products.

17 Q. I'm sorry, mostly?

18 A. Orange Glo. Orange Glo.

19 Q. Okay. And do you work with any industrial

20 solvents or cleaners, or things of that sort?

21 A. No, I'm in distribution warehouse. Everything

22 that's hazardous is in the other warehouse.

23 Q. Okay. So you are just in the actual usable

24 product division as it were?

25 A. Yeah.

1 Q. Okay.

2 A. Finished goods.

3 Q. All right. Forgive me, but I was -- I was unsure  
4 as to how to read your -- or interpret an answer  
5 that you gave. So let me kind of read it back to  
6 you, if you can kind of explain it to me. In the  
7 question: Please list all groups or  
8 organizations in which you participate or are a  
9 member; and you write --

10 A. DCI.

11 Q. Right. What is that?

12 A. Doesn't have a name any more, but just like a  
13 card tournament for playing cards.

14 Q. Oh, okay.

15 A. For a card game.

16 Q. Is it kind of like a club?

17 A. Yeah, like a social group.

18 Q. Okay. What kind of card games do you like to  
19 play?

20 A. It's Magic Gathering. It's like a Pokémon game  
21 kind of, but more challenging.

22 Q. Like Pokémon, you said?

23 A. Yeah, kind of like that, but more challenging.

24 Q. Forgive me, but age has caught up with me I'm  
25 afraid. Can you tell me a little bit about the

1 type of game. I mean, what kind of game is it?

2 Is it a game of skill, chance, or what kind of

3 game?

4 A. Everything like skill, chance, strategy. Your

5 mental ability to watch everything.

6 Q. All right. In terms of something perhaps that

7 I'm a little more familiar with, is it anything

8 like poker or anything like Texas Hold 'em, or

9 bridge, or penuchle, or ... Is it anything like

10 any of those games?

11 A. I would say it's kind of like poker; you have got

12 to have the poker face kind of when you are

13 playing.

14 Q. All right. So it's as much as playing the cards

15 as it is the person who is holding the cards?

16 A. Yeah.

17 Q. Okay. Is there a fair amount of bluffing

18 associated with that game?

19 A. Yeah, I would think so.

20 Q. What is it about the game that you find

21 interesting or appealing?

22 A. The amount of people that show up at, like,

23 tournaments when you have it.

24 Q. All right.

25 A. Last one I went to was in Illinois. There was

1           like 3,000 people --

2 Q.   Really?

3 A.   -- 2,000 people.

4 Q.   All right. How often do you travel for the

5 tournaments?

6 A.   Maybe three times a year.

7 Q.   All right. And the last one was in Illinois;

8 when was that?

9 A.   About two weeks ago.

10 Q.   And where, Chicago area?

11 A.   Yeah, outskirts of Chicago. I can't remember

12 what the name of the city was.

13 Q.   And -- Well, I have got to ask; how did you do?

14 A.   Not very good.

15 Q.   No?

16 A.   No.

17 Q.   Did you make it through the first couple of cuts

18 or?

19 A.   They do like a bunch of mini tournaments. I got

20 like 4th in one of them.

21 Q.   All right.

22 A.   There was like 35 people in it so.

23 Q.   All right. Now, are there prizes or is this

24 money or ...

25 A.   First, second and third place get prizes.

1 Q. They get prizes.

2 A. They get cards.

3 Q. Okay. And do the cards have a value?

4 A. Yeah, each card -- There's cards that came out  
5 when the game started and it's -- they can go up  
6 to like \$2,000, \$10,000. It can be expensive.

7 Q. All right. Is there an entry fee associated with  
8 the tournament?

9 A. Yeah, it's usually like each pack of cards costs  
10 between 3 and \$4. And you get 3 packs to build a  
11 deck.

12 Q. Okay.

13 A. And then you play with that. So it's like -- I  
14 think they charge \$20 and then they use the  
15 remaining money to give out prizes.

16 Q. Okay. And so the last tournament had as many as  
17 3,000 participants?

18 A. Yeah, throughout the whole day.

19 Q. All right. In terms of sources for your news,  
20 you checked the newspapers and television; which  
21 one of those would you say you get most of your  
22 news from?

23 A. I would say television.

24 Q. All right. And what kind of -- or -- Well, first  
25 of all, what time of day would you ordinarily

1           listen to television newscasts?

2   A.   In the mornings, usually before I go to work --

3   Q.   All right.

4   A.   -- around 5:00.

5   Q.   All right. And what are your hours?

6   A.   For work?

7   Q.   Yup.

8   A.   Six to two.

9   Q.   Six to two. So what do you do when you get home

10           from work?

11   A.   Depends on what I have planned. Usually either

12           watch TV, make something to eat, go to the Y, go

13           down to the card shop, play cards. That's

14           basically it.

15   Q.   All right. And newspapers, how often do you read

16           the newspapers?

17   A.   I usually get the Sunday paper.

18   Q.   All right. And maybe, what, one other day of the

19           week maybe, or just Sunday?

20   A.   Just the Sunday paper.

21   Q.   All right. Considering the television and the

22           Sunday papers, have you followed this particular

23           case at all through the media?

24   A.   I haven't really seen it in the paper. No, I

25           would say I haven't followed it.

1 Q. Okay. When do you recall last seeing an article  
2 in the paper or last hearing a television  
3 broadcast regarding the events of this case?

4 A. I can't say that I have.

5 Q. Anything -- Well, let's just -- anything in the  
6 last month for instance?

7 A. I usually don't look at the front page. I  
8 usually just look at classifieds.

9 Q. Okay. While we're there, anything in particular  
10 that you're looking for in the classified  
11 section?

12 A. Apartments.

13 Q. Okay.

14 A. Anything for sale in the classifieds like  
15 couches, dressers.

16 Q. Okay. Are you living at home now?

17 A. No, I live in an apartment.

18 Q. In an apartment. So you're thinking of moving  
19 up, as it were, a better apartment?

20 A. Yeah.

21 Q. All right. How long have you been living on your  
22 own?

23 A. Like five years.

24 Q. Okay. All right. What, if anything, can you  
25 tell us that you remember hearing or reading

1           about this case in either the television, news,  
2           or the Sunday paper?

3       A. I remember somebody talking about at work that  
4           there was a box of blood that was tampered with  
5           or something.

6       Q. Okay.

7       A. Something like that.

8       Q. And when do you recall hearing that?

9       A. That was maybe -- I can't remember when I heard  
10          that. I just remember it at work, somebody  
11          talking about it.

12      Q. Would that have been fairly recently or was that  
13          some time ago?

14      A. I would say it was pretty recent.

15      Q. Okay. So that was not from the media, but just  
16          one of your co-workers.

17      A. Yeah, just somebody talking about it.

18      Q. All right. Were they talking directly to you or  
19          were they talking, you know, in a conversation  
20          with somebody else and you just happened to be  
21          standing by or nearby?

22      A. They were talking between each other and I walked  
23          past them.

24      Q. Okay.

25      A. I heard about it.

1 Q. Okay. Did you participate or join in in the  
2 conversation at all?

3 A. No.

4 Q. Did you continue on your way or did you stop and  
5 listen to some of the conversation or ...

6 A. I was talking to the other two that were next to  
7 him.

8 Q. Okay. So you were talking to two other people --

9 A. While they were talking about something.

10 Q. -- in close proximity to these two having a  
11 discussion?

12 A. Yeah.

13 Q. And do you recall any more of the conversation  
14 that the other two were having regarding this box  
15 of blood?

16 A. That's basically all they were talking about was  
17 that it was either tampered with or somebody put  
18 it there. I don't remember.

19 Q. I'm sorry, I couldn't quite hear you.

20 A. They said it was tampered with or somebody placed  
21 it somewhere. I can't remember what they were --  
22 I wasn't really listening to what they were  
23 saying.

24 Q. Okay. So you remember hearing those words --

25 A. Yeah.

1 Q. -- but you don't have a context in which to place  
2 them?

3 A. Yeah.

4 Q. What else, if anything, do you remember hearing  
5 about the case, not necessarily from that  
6 conversation, but any other conversation or any  
7 other news coverage of it?

8 A. I can't say that I -- That's the only thing I  
9 have really heard.

10 Q. All right. Do you ever remember reading or  
11 hearing anything about a fellow by the name of  
12 Dassey?

13 A. Dassey, Dassey. There was a guy at work that  
14 talked about Dassey.

15 Q. Okay. What do you recall hearing about that  
16 fellow?

17 A. Um, that he -- What did he do? Um, something  
18 about him getting off a school bus and -- What  
19 was he doing? I just remember him -- that he was  
20 getting off a school bus and he was going --  
21 Where was he going? I can't remember where he  
22 was going.

23 Q. Okay.

24 A. But ...

25 Q. Anything else stick in your mind about after he

1           got off the school bus as to what might have  
2           happened or what he might have said happened?

3       A. That he was -- I'm trying to think.

4       Q. If you can't remember, that's fine. We're just  
5           trying to see what might be up in your head  
6           there. That's all.

7       A. I just -- It was hearsay. I don't know what they  
8           were -- They talked about that one a lot at work.  
9           And I just don't really -- I didn't really pay  
10           attention too much to them.

11      Q. Okay. They talk about it a lot at work but you  
12           apparently have not been interested in the  
13           discussion?

14      A. I usually talk with -- There's two people that  
15           are usually talking about it and I don't really  
16           talk to them too much.

17      Q. Okay. Do you have any opinion at all regarding  
18           Mr. Avery's guilt or innocence, based on anything  
19           that you heard from the news or anything that  
20           anybody at work has been saying or talking?

21      A. I really don't know, either way.

22      Q. Okay. Do you watch much TV, I mean, regular  
23           television shows?

24      A. Regular television, yeah.

25      Q. Now, you indicated that in your way of thinking

1           that shows like *Crime Scene Investigation* and  
2           *Bones* are not very realistic. Can you tell us a  
3           little bit why you think that.

4       A. Most of them aren't really based off of true  
5           stories or ...

6       Q. Do you watch those shows frequently?

7       A. I watch -- what is it -- crime scene special  
8           victim's unit I think it's called, maybe twice a  
9           week.

10      Q. Okay. So even though you don't find it very  
11           realistic, is there a particular reason why you  
12           watch it once or twice a week?

13      A. It's interesting. My girlfriend likes watching  
14           it.

15      Q. All right. All right. Now, you said you had a  
16           couple of interesting experiences, I just wanted  
17           to ask you about. You said at one time your dad  
18           was accused or arrested for spanking your younger  
19           brothers, but the case never went anywhere. Can  
20           you tell us a little bit about that experience.

21      A. Yeah, he was -- What happened was, my two little  
22           brothers, they -- there was flies in our bedroom  
23           from because it's hot out in the summer. They  
24           had took everything out from underneath the  
25           cupboard, bleach, Drano, and just put it all over

1 our floor in our bedroom.

2 So my dad spanked them because they  
3 weren't supposed to go underneath there. My mom  
4 took them to the hospital, and she told them they  
5 had bruises. The police came to my dad's work  
6 and took my dad.

7 And after I think it was a month or two,  
8 it got thrown out for -- I don't remember. It  
9 was something with the judge. I don't remember  
10 what it was.

11 Q. How old were your little brothers at the time?

12 A. I want to say five and seven.

13 Q. Okay. So, as I -- as I understand it, they were  
14 trying to get some cleaning materials and in  
15 their youthful exuberance kind of made a mess of  
16 things in the bedroom?

17 A. Yeah. A really big mess. There was a thick goop  
18 on the floor.

19 Q. I'm sorry?

20 A. There was a thick goop on the floor.

21 Q. All right. So in their effort to clean things up  
22 they kind of made things worse?

23 A. Yeah.

24 Q. All right. So that did not set well with your  
25 dad?

1 A. No.

2 Q. Okay. So he spanked them and your mom took them  
3 in for some medical treatment?

4 A. Yeah, to see if they had poisoning from anything  
5 that was under the sink.

6 Q. Oh, from all the chemicals that they were playing  
7 with?

8 A. Yeah.

9 Q. And then they had to explain how they got the  
10 bruises?

11 A. Yeah.

12 Q. Okay. Did that experience -- Does that, or would  
13 that have any affect on your ability to be a  
14 juror in this case, your encounter? I assume  
15 that the police were involved in that?

16 A. Yeah, there was two police officers.

17 Q. Okay.

18 A. I don't know, they seemed -- they seemed okay.  
19 Didn't seem to -- They just came in and asked us  
20 questions, like, if he ever did anything to us.

21 Q. Okay.

22 A. But it was -- it was a bad experience, but it  
23 wasn't a bad experience with the police officers.

24 Q. Okay. Just kind of embarrassing for the family  
25 in other words?

1 A. Right.

2 Q. In terms of how law enforcement handled  
3 themselves, you were not -- it was not a bad  
4 experience from that perspective?

5 A. I think if they would have, you know, took into  
6 consideration what was going on, it wouldn't have  
7 even went that far, but ...

8 Q. So, in other words, you might disagree with their  
9 judgment to make an arrest?

10 A. Yes.

11 Q. But in terms of, otherwise, how they dealt with  
12 you and your mom they seemed fair otherwise?

13 A. Yeah, I would say so.

14 Q. Okay. Now, you also had an experience with law  
15 enforcement. If you can tell us a little bit  
16 about that. You said you were with -- in your  
17 friend's car and looks like you were involved in  
18 an accident of some sort. Tell us about that  
19 experience.

20 A. We were driving down Dewey Street by Wal-Mart.  
21 And there was a car that was stopped, but he  
22 didn't have his blinker on. And then he turned  
23 his blinker on and then we hit the back of him.  
24 And we slid a little bit. And then when we got  
25 out of the car, the police -- there was a lady

1           police officer, woman police officer, and then  
2           later on a guy showed up. And then the woman was  
3           trying to question me and she just walked away,  
4           basically.

5 Q.        Okay. Were you the driver of the car?

6 A.        No, I was sitting in the back seat. I was trying  
7           to explain to her. You know, she asked me what  
8           happened and then she kind of just walked away.

9 Q.        Okay. That is the -- And that was a Manitowoc  
10          Police Department?

11 A.       I think so. That was right by Wal-Mart. I think  
12          she was a Manitowoc police.

13 Q.       Well, did she have a blue law enforcement outfit  
14          or a brown one?

15 A.       God, that was -- I think it was a brown one.

16 Q.       Brown?

17 A.       Yeah, I think so.

18 Q.       Okay. Have you had any other encounters with law  
19          enforcement?

20 A.       Not that I can think of --

21 Q.       Okay.

22 A.       -- off the top of my head.

23 Q.       Did your friend get a ticket out of that  
24          incident?

25 A.       He got a ticket but then he went to the

1                   courthouse and he got it cut in half, I think it  
2                   was.

3       Q.    So he got a reduced fine?

4       A.    Yeah.

5       Q.    Okay. How did that experience with the police  
6                   officer -- how did that sit with you?

7       A.    Not very well.

8       Q.    Okay. Well, tell us why. Tell us about that.

9       A.    She didn't listen to what I had to say.

10      Q.    Okay.

11      A.    That's -- That's about it.

12      Q.    Did she take some time to interview your friend  
13                   who was driving and get his version of what  
14                   happened?

15      A.    The other officer took me and my -- the other guy  
16                   who was in the car, took him to school and took  
17                   me home.

18      Q.    Okay. Took him to school and took you home. How  
19                   long ago was this?

20      A.    I would say two years, maybe a little longer.

21      Q.    Well, the reason I ask these questions is there  
22                   will probably be a fair amount of testimony from  
23                   law enforcement officers, some police officers,  
24                   some sheriffs officers, some state agents, maybe  
25                   some state patrol individuals. So is there

1 anything about your two encounters with law  
2 enforcement that makes you doubt whether you can  
3 evaluate their testimony the same way you would  
4 any other witness?

5 A. I don't know. It -- I guess it would depend on  
6 how they answer questions or --

7 Q. Okay.

8 A. -- how they act. I don't know.

9 Q. All right. Depending on how they answer the  
10 questions or how they act; that's a good answer.  
11 Anything in particular you might be looking for  
12 in terms of giving their testimony a fair shake?

13 A. I don't know. I ...

14 Q. Okay. Well, if the Court instructs you that you  
15 are to evaluate their credibility, their  
16 believability, their honesty, the same way you  
17 would any other witness, would you be able to  
18 follow that instruction, even though you have had  
19 these two other experiences in your youth?

20 A. I think I could.

21 Q. All right. You would give it your best shot?

22 A. Yeah.

23 Q. Okay. And in that regard, in the terms of  
24 evaluating the evidence in this case, if you were  
25 selected as a juror, do you think you could

1           decide the guilt or innocence of Mr. Avery, based  
2           solely on the evidence that is presented in  
3           court?

4         A. I think so, yeah.

5         Q. All right. Is there anything about your previous  
6           experiences with law enforcement that really  
7           makes you wonder, or really have a doubt in the  
8           back of your head whether you could do that?

9         A. Personally, I think it was just that one lady,  
10           she seemed like she was having a bad day.

11        Q. Okay. And we all have bad days, don't we?

12        A. Yeah.

13                   ATTORNEY FALLON: All right. That's all I  
14                   have for this witness. Thank you.

15                   THE COURT: Mr. Buting.

16                   ATTORNEY BUTING: Thank you, Judge.

17                   **VOIR DIRE EXAMINATION**

18        BY ATTORNEY BUTING:

19        Q. Good afternoon. My name is Jerome Buting. And  
20           I, along with Dean Strang here, are the attorneys  
21           for Steven Avery. I assume you understand that.

22        A. Mm-hmm.

23        Q. I have some follow-up questions and a few others  
24           for you, sir. You say that you play computer  
25           games?

1 A. Yeah.

2 Q. Do you also have Xbox?

3 A. No.

4 Q. Or play stations?

5 A. I have a game cube that my friend gave me that I

6 never play.

7 Q. Okay. Do you ever play games like Grand Theft

8 Auto?

9 A. I played it once.

10 Q. Okay. That game and maybe some other games you

11 have had the opportunity to play; do they involve

12 games where people can sort of -- fantasy games

13 where people can pretend to do things they

14 couldn't really do?

15 A. Yeah, I would say so.

16 Q. And in Grand Theft Auto they are actually

17 pretending to do crimes?

18 A. Yeah.

19 Q. Some of them pretty bloody crimes, right?

20 A. Yeah.

21 Q. Including sexual assaults, shootings?

22 A. I think you can do shootings in Grand Theft Auto,

23 but I don't know about sexual assaults.

24 Q. Okay. Any of these other games that you have

25 seen that you play that people can do those kinds

1           of things?

2 A.     Just the Grand Theft Auto, I think.

3 Q.     Do you know some people who just seem to be -- I  
4           don't know if obsessed is the word, but they play  
5           so many of these games that it's almost like  
6           their life; do you know people like that?

7 A.     I know one kid like that, yeah.

8 Q.     Yeah. Okay. The name of this tournament, did  
9           you call it Magic Gathering or Magic --

10 A.    Magic, The Gathering.

11 Q.    Magic, The Gathering.

12 A.    Yeah.

13 Q.    And is that probably your, like, number one hobby  
14          would you say, or number one outside interest?

15 A.    Yeah, it used to be. I kind of slowed down a  
16          little bit with it since I started working.

17 Q.    How long have you been involved with that  
18          particular thing?

19 A.    Oh, probably like seven years, I would say.

20 Q.    Oh, okay, so it's -- Are people still doing  
21          Pokémon or has that kind of died out?

22 A.    That's kind of died out.

23 Q.    This has -- but this has had longer staying power  
24          it sounds like?

25 A.    Yeah, this has been since I think 1990, I think

1           or -- no.

2 Q.       Okay.

3 A.       Around there somewhere.

4 Q.       Somewhere like that.

5 A.       Yeah.

6 Q.       And these -- these cards have acquired, like,  
7            collector's value, particularly the early ones  
8            that come out?

9 A.       Yeah.

10 Q.       These prior incidents that you have had with  
11          police, so your father was actually charged with  
12          a crime for simply trying to discipline his  
13          children, right?

14 A.       It's been a while, I think so, yeah, I'm pretty  
15          sure.

16 Q.       He came to court?

17 A.       I wasn't at court, so I don't ...

18 Q.       Okay. But as far as you know he had to -- he had  
19          to -- did he have to get a lawyer?

20 A.       Yes.

21 Q.       Okay.

22 A.       I think so.

23 Q.       And the case proceeded for a couple of months you  
24          said?

25 A.       Yeah, it was. Yeah.

1 Q. And eventually a judge or somebody threw the case  
2 out?

3 A. Yeah.

4 Q. So your father got lucky, basically, right?

5 A. Well, I don't know if it was lucky. I think it  
6 was just something that -- I don't know how to  
7 explain that.

8 Q. Well, okay. I understand. Were you surprised it  
9 even went that far before it finally got dropped?

10 A. Yeah, I was kind of surprised I would say.

11 Q. In fact, I think you said that -- I mean, that  
12 was a serious charge, right?

13 A. Yeah.

14 Q. Some sort of felony child abuse probably, right?

15 A. I think it was child abuse that he was charged  
16 with.

17 Q. Okay. And you said that you thought if -- maybe  
18 if the police, at the very beginning, had maybe  
19 taken into consideration all the circumstances,  
20 it never would have gone that far, right?

21 A. Yeah.

22 Q. And then you had another incident with apparently  
23 a Manitowoc County sheriff deputy. If she was  
24 wearing brown; was it in Manitowoc County?

25 A. Yeah, it was in Manitowoc. It was right by

1 Wal-Mart where it happened.

2 Q. Okay. Where you were concerned, again, that  
3 officer wasn't listening to your side and wasn't  
4 listening to all of the circumstances, right?

5 A. Right.

6 Q. So if you had a couple of experience then where  
7 you noticed that officers can sometimes, you  
8 know, almost have tunnel vision and just focus on  
9 one aspect of what's going on and ignore some  
10 other things that are going on around the  
11 outside?

12 A. Um, that would -- yeah, that would kind of seem  
13 like what it was.

14 Q. Okay. In fact, in your case where the officer  
15 didn't even want to hear another witness who was  
16 sitting right there, right?

17 A. Yeah.

18 Q. Do you think that that's -- you said that that  
19 officer was just maybe having a bad day you  
20 thought?

21 A. That's what it seemed like, I don't know.

22 Q. Okay. On the other hand, your father experienced  
23 something similar, right?

24 A. Yeah, that was in Michigan, I think it was.

25 Q. Okay. But do you think that -- that police

officers can -- can do that, that they can sometimes get too focused on one part of the case or one part of their investigation and just kind of, you know, full speed ahead down this road and that's it?

A. It seems like it, yeah, with the two that I encountered.

Q. Okay. Is that the only two times that you have encountered police?

A. That I can -- that I can remember, yeah.

Q. Okay. Now, do you think that police officers if they come -- actually come into court and testify and take an oath to swear the truth; do you think that they are more or less likely to tell the truth than the ordinary citizen who comes into court and takes the very same oath? Or the same?

(Court reporter couldn't hear.)

Q. Or the same, in other words, are they more likely, less likely, or the same likely?

A. I would say the same.

Q. Okay. So there's -- You don't think there's anything about officers that makes them more believable or more trustworthy when they take the oath than an ordinary citizen, right?

A. Yeah, I would say that's right.

1 Q. Okay. Do you think it's possible a police  
2 officer could lie under oath?

3 A. Yeah, I think it's possible.

4 Q. Just like anyone else?

5 A. Yeah.

6 Q. All right. Do you think it's possible that  
7 police officers would get so invested in their  
8 case that they want to get somebody they think is  
9 guilty and maybe cross the line in doing so?

10 A. I don't know.

11 Q. Have you ever heard of that happening?

12 A. I have heard of that like on TV, but I don't know  
13 if ...

14 Q. Okay. So you have seen it on TV where sometimes  
15 police officers cross the line, right?

16 A. Yeah.

17 Q. The CSI shows and, you know, they get real  
18 personally involved. And of course in those  
19 shows there's usually no doubt about who the  
20 guilty person is, right?

21 A. Right.

22 Q. And the officers are usually portrayed as heroes  
23 because they are going after the guilty guy and  
24 really getting him, right?

25 A. Yeah.

1 Q. But you can -- Can you see that if that happens  
2 in real life and they happen to be focused on the  
3 wrong person, that that could be a serious  
4 problem?

5 A. Yeah, that would be a problem.

6 Q. Okay. And if you're selected as a juror in this  
7 case, will you be able to evaluate all the  
8 evidence and consider the possibility that maybe  
9 they have focused on the wrong guy?

10 A. If that's part of the evidence ... Yeah, I would  
11 think so, if it's part of what I have to look at.

12 Q. All right. What do you know about Mr. Avery's  
13 background?

14 A. Runs or owns a junkyard.

15 Q. Okay. Do you know anything about a situation  
16 where he spent a long time in prison and was  
17 exonerated by DNA?

18 A. Um, yeah, I heard about that. He was -- That's  
19 basically all I heard, that he was in prison and  
20 that he was left out because of DNA.

21 Q. That he was wrongly convicted actually, right?

22 A. Yeah.

23 Q. And you heard that from media, or from your  
24 co-workers, or what?

25 A. He was -- My dad was talking about it.

1 Q. And was your dad -- There was no doubt in your  
2 mind or your dad's mind that Mr. Avery was, in  
3 fact, wrongly convicted and spent all that time  
4 in prison, right?

5 A. Right.

6 Q. So, as he sits here today, given what you have  
7 heard from your co-workers and what little  
8 information you have had, can you presume that he  
9 is innocent of these charges?

10 A. I haven't really heard too much. I don't really  
11 know what's ...

12 Q. Well, do you think the fact that he is here today  
13 and that this case has progressed as far as it  
14 has, right up to a trial here; do you think that  
15 that means that he must have done something  
16 wrong?

17 A. Yeah, must mean, yeah, he done something wrong.  
18 I don't know.

19 Q. Why would you think that?

20 A. Because he is charged for -- is it the murder of  
21 Teresa, I think it was.

22 Q. Okay. Well, your father was also charged?

23 A. Yeah.

24 Q. And you know Mr. Avery was also charged and  
25 convicted once, wrongly, right?

1 A. Mm-hmm.

2 Q. Correct?

3 A. Correct.

4 Q. Did you know that that case went all the way to a

5 trial as well?

6 A. I didn't know that, no.

7 Q. Okay. So do you think, then, the mere fact that

8 someone, not just Mr. Avery, the mere fact that

9 someone gets this far in the process and has to

10 have a jury to decide, means that it's more

11 likely than not that they have done something

12 wrong or they wouldn't have gotten as far --

13 gotten themselves in this situation, or they

14 wouldn't have found themselves in this situation

15 in the first place?

16 A. Um ...

17 Q. You're not sure about that?

18 A. Yeah, I don't know.

19 Q. Is that because you are having a hard time seeing

20 how somebody could be innocent and be sitting

21 here?

22 A. Well, my dad was kind of in the same situation

23 so, or in that situation where he was innocent

24 and he was still sitting there.

25 Q. Mm-hmm.

1 A. So I could see how an innocent person could still  
2 be.

3 Q. Okay. I appreciate that. And so, I mean, given  
4 that knowledge and the Judge will instruct you  
5 that you will have to presume Mr. Avery innocent.

6 A. Yeah.

7 Q. And -- But I want to be sure that that's not just  
8 something that you are going to mouth back or  
9 parrot back, yes, I can do that. Do you really  
10 believe that you can do that, that you can  
11 presume Steven Avery innocent and unless and  
12 until, or if the State can prove otherwise,  
13 beyond a reasonable doubt?

14 A. Yeah, I think -- I'm positive I can do that, that  
15 he's innocent before.

16 Q. Okay. Now, along with that there's sort of a  
17 complicated quandary that any defendant finds  
18 himself in and that is the question of whether or  
19 not the defendant should testify at the trial.

20 A. Okay.

21 Q. Do you know that a defendant has a constitutional  
22 right not to testify?

23 A. Yeah, I know that.

24 Q. You have learned that, right?

25 A. Yeah.

1 Q. Okay. On the other hand, a defendant may choose  
2 to testify and Mr. Avery may choose to testify,  
3 but that some people might tend to discount  
4 whatever he says because he's the defendant, he's  
5 in trouble, he will say whatever he needs to say  
6 and not listen to him like any other witness; can  
7 you see that problem?

8 A. Yeah, I can see that problem.

9 Q. So, when Mr. Strang and I are talking amongst  
10 each other, trying to decide whether Mr. Avery  
11 should take the stand, we have to know if you can  
12 promise that you won't -- that you will follow  
13 the Judge's instruction, that if he doesn't  
14 testify, you can't use that against him, can't  
15 consider it in fact in any way, or if he does  
16 testify, you have to consider him like any other  
17 witness; can you promise to do that?

18 A. Yeah, I can promise to do that.

19 Q. Do you think, though, that if he doesn't testify  
20 that he's hiding something?

21 A. I couldn't really say. I don't know if -- I  
22 don't think he would be hiding anything if he  
23 doesn't testify, I don't know.

24 Q. Why, because there's other reasons that somebody  
25 might not testify besides the fact that they are

1           actually guilty; I mean, they could be completely  
2           innocent and choose not to? Do you think that?

3       A. Yeah, they could. I don't know. I couldn't -- I  
4           don't know why, but I think -- I think they  
5           could. I don't know.

6       Q. You are going to hear a lot of testimony, or a  
7           lot of evidence about a crime. And if -- if  
8           Mr. Avery says he didn't do it, you may wonder,  
9           well, then who did, right?

10      A. Right.

11      Q. Human nature. Are you going to expect that  
12           Mr. Avery is going to have to convince you who  
13           did it, if he didn't?

14      A. Depends, I don't know if he was there when it  
15           happened or when.

16      Q. Well, if -- in other words, if -- are you going  
17           to say, look, if -- if the defendant -- if the  
18           defense can't tell us who really did kill this  
19           woman, then it must be him and I'm going to find  
20           him guilty?

21      A. So you are, like, saying if he didn't do it  
22           somebody else did, but nobody knows who, right?

23      Q. Yeah, that may well be the way the evidence comes  
24           in. And if you -- Go ahead.

25      A. I just drew a blank right when you started

1 talking.

2 Q. Okay. If you -- I guess what I'm asking then is,  
3 if the State puts on its case and you have a  
4 reasonable doubt that Mr. Avery may not have  
5 committed this crime, but you start thinking and  
6 you're talking among other jurors and you say,  
7 well, yeah, but if he didn't do it then who did.  
8 Come on, I mean, somebody did it. It's got to be  
9 him, we haven't heard anything else. We don't  
10 know anybody else.

11           But if you still have a doubt, from the  
12 State's case, that Mr. Avery did it, will that be  
13 enough for you to render a verdict of not guilty,  
14 or will you be still searching and holding the  
15 defendant out to some burden of convincing you  
16 who really did this crime?

17 A. I would be instructed to go by the evidence, so I  
18 would have to, you know, whatever is shown, I  
19 don't know.

20 Q. You have to what?

21           ATTORNEY FALLON: I'm sorry --

22 A. Go by whatever is -- I don't know how to put  
23 that.

24 Q. Let me put it this way, do you think that -- do  
25 you understand that Mr. Avery does not have any

1 burden of proof at all in this case?

2 A. No. No, I didn't know that.

3 Q. Oh, you didn't know that. Okay. Well, the Judge  
4 will tell you that the State has the entire  
5 burden of proof in any criminal case. And that  
6 the defendant can just sit here, in fact, and do  
7 nothing. And if the State doesn't present a  
8 strong enough case, you have to find not guilty?

9 A. Oh, okay.

10 Q. Or the defendant could, you know, progressively  
11 challenge, cross-examine all the State's  
12 witnesses and not choose to put on any of his own  
13 witnesses or her own witnesses. And if -- if the  
14 State didn't convince you, beyond a reasonable  
15 doubt, you would have to find not guilty, okay?

16 A. Okay.

17 Q. So I just want to be sure that if the Judge tells  
18 you that Mr. Avery does not have to prove his  
19 innocence, that he is presumed innocence --  
20 innocent, that you are going to be able to follow  
21 that instruction and not fall back on what's kind  
22 of human nature, which is, hey, well, who did it  
23 if he didn't?

24 A. Yeah.

25 Q. You will follow the instructions?

- 1 A. Yes.
- 2 Q. All right. What about if you -- if you felt that  
3 way, that is, if you felt that the State had not  
4 convinced you, beyond a reasonable doubt, and  
5 thought about, therefore, voting for a verdict of  
6 not guilty; would you be concerned about what  
7 your family or friends might think about you?
- 8 A. Yeah. A little bit, yeah, I would say I would.
- 9 Q. Because most of your family, or friends, or  
10 circle of people you know have strong opinions  
11 already?
- 12 A. The people at work, most of them have strong  
13 opinions.
- 14 Q. And that opinion is what?
- 15 A. They both -- they go either way. Some say he is  
16 guilty, some say he is innocent.
- 17 Q. Okay. So if you became convinced that a not  
18 guilty verdict was the appropriate one, you would  
19 still have some fear --
- 20 A. Yeah, there would still be a -- what would you  
21 call it -- there would still be people who would  
22 probably be upset or whatever.
- 23 Q. And would that bother you? Sounds like it would  
24 bother you a little bit?
- 25 A. Yeah, I would say it would bother me a little bit

1           that they would be upset, but ...

2   Q.   Do you think you would be -- that concern that  
3       you would have would be enough that it might  
4       change your mind and cause you not to vote not  
5       guilty?

6   A.   It could go either way so that, you know, because  
7       there's people there that think he's innocent, or  
8       he is guilty, or so it could go either way.

9   Q.   So if it came back guilty, there would be people  
10      upset too?

11   A.   Yeah.

12   Q.   So what I'm asking, then, is aware of the fact  
13      that you may get some sort of a reaction either  
14      way, would you be able to put that aside when you  
15      are in the jury room and deliberating on what the  
16      proper verdict should be?

17   A.   Yeah, I believe I could.

18   Q.   Well, having heard everything you had today, let  
19      me just ask you one last question. Do you -- Do  
20      you feel like you want to be on this jury?

21   A.   Not really.

22   Q.   Is it something you would feel like you would do,  
23      though, if it was your civic duty, if you had to?

24   A.   Yeah.

25   Q.   All right. Thank you, very much.

1 A. Thank you.

2 THE COURT: All right. At this time the  
3 clerk will -- Mr. Fallon.

4 ATTORNEY FALLON: There is one matter that  
5 I just noticed, neither counsel followed up on and  
6 it was a question related to possible hardship that  
7 was not answered on the questionnaire. Do we want  
8 to ask about that, Question 76 went unanswered?

9 THE COURT: I will ask it.

10 ATTORNEY FALLON: Okay.

11 **VOIR DIRE EXAMINATION**

12 BY THE COURT:

13 Q. Mr. Saari, there was a question on the  
14 questionnaire that asked, because the trial could  
15 take approximately six weeks, whether or not that  
16 would pose any type of hardship for you if you're  
17 selected to serve on the jury. You did not  
18 answer that question; does that mean that it  
19 would not be a hardship for you to serve?

20 A. There wasn't anything going on.

21 THE COURT: Okay. All right. Thank you.  
22 At this time the Clerk will escort you from the  
23 courtroom.

24 (Wherein the juror was excused.)

25 THE COURT: Is there a motion from either

1 party regarding this juror?

2 ATTORNEY FALLON: Not from the State.

3 ATTORNEY BUTING: Not from the defense,  
4 Judge.

5 THE COURT: All right. Very well,  
6 Mr. Saari is in.

7 ATTORNEY BUTING: Judge, I do have a  
8 further comment, though, on the last juror,  
9 Mr. Klein.

10 THE COURT: Okay.

11 ATTORNEY BUTING: Based on -- Following up  
12 with the Court's comments right after lunch that you  
13 thought that although he had -- there was some  
14 question about his exposure to information and media  
15 after he was told not to, the Court said that it  
16 didn't seem like he had been exposed to anything  
17 significant. But, in fact, I think he has.

18 He testified that he specifically knew  
19 about an order to test this blood vial that would  
20 supposedly show one way or another whether it was  
21 a source of planting. Now, that decision was  
22 made by this Court in this court at 3:30 p.m. on  
23 Friday, a full five days after the jurors had  
24 come in here and were told to avoid any publicity  
25 or anything significant. And that evidence may

1           not even be admissible, even if it is tested,  
2           this Court has said.

3           So now we've got somebody who has been  
4           exposed to significant information that may not  
5           be admissible and contrary to what the Court had  
6           ordered. And that's right, probably not at work  
7           because he got off work at 3:30, so he wouldn't  
8           have heard about that decision at work. It must  
9           have been some time after that, perhaps on the  
10          weekend, or on the radio there, or somehow he had  
11          been exposed to that information, which wasn't  
12          ruled on by this Court until 3:30 Friday  
13          afternoon.

14           THE COURT: Mr. Fallon.

15           ATTORNEY FALLON: Well, I see counsel's  
16          point, but I'm not sure that it's all that perfectly  
17          clear that that is the case. Because the issue of  
18          the blood vial and whether there should be an  
19          adjournment, whether it should be tested, whether it  
20          should be excluded, has been the object of quite a  
21          bit of litigation since January 4th.

22           And there are a number of people that  
23          when you talk to who think they may have  
24          understood the news correctly and have not, you  
25          know, understood the news correctly. In fact,

1 just a personal anecdote, I had people ask me, so  
2 the Judge has decided to keep the vial out. And  
3 at that point in the proceeding the only thing  
4 that had been filed was the motion to exclude it.  
5 So the people have heard something.

6 But I'm not entirely sure that Mr. Klein  
7 was of that -- in other words, that what he  
8 thought he heard about the blood vial must have  
9 come after 3:30 on Friday afternoon, I'm not  
10 convinced the record reveals that at all. And I  
11 defer to the Court's original ruling. I think  
12 you had it right, he is doing his absolute level  
13 best to avoid any of that. He just happened to  
14 hear something about a blood vial on the radio  
15 and testing it.

16 THE COURT: All right. Well, I will try to  
17 take a look this evening at that part of the  
18 transcript again, but I didn't -- I suppose there  
19 are a number of possible explanations for any  
20 comment he would have made regarding the blood vial.  
21 It has been in the news. The motions regarding the  
22 blood vial have been pending and have been heard for  
23 the last month and a half or so.

24 I just -- My primary impression from him  
25 was that he had attempted to avoid being exposed

1 to publicity, but recognized that because of the  
2 place where he works it was impossible to  
3 completely avoid exposure because of the fact  
4 that the radio is on at his place of employment.

5 But I will take Mr. Buting's comments  
6 into consideration, take another look at the  
7 transcript and address it again tomorrow if I  
8 feel there is a need for the Court to reconsider  
9 its decision.

10 ATTORNEY BUTING: Thank you, your Honor.

11 ATTORNEY FALLON: I would also offer,  
12 there's nothing that says we couldn't bring him back  
13 and clarify that point either if absolutely  
14 necessary, if there's any doubt in the transcript.

15 THE COURT: All right. At this point,  
16 then, we'll move on to Mr. Stonebraker. Mr. Saari  
17 is in.

18 Okay. Mr. Stonebraker, please just  
19 stand there a minute.

20 THE COURT: All right. At this time,  
21 Mr. Stonebraker, the Clerk will administer the oath.

22 THE CLERK: Raise your right hand, please.

23 (Juror sworn.)

24 THE CLERK: Please be seated.

25 THE COURT: Mr. Stonebraker, you have

1           already completed a written questionnaire in this  
2           case. Today we're moving on to the next phase of  
3           juror selection which is the individual voir dire  
4           process. The attorneys for the parties will have a  
5           chance this afternoon to ask some follow-up  
6           questions to you concerning answers that you gave in  
7           your questionnaire.

8                 Before they begin, I want to make sure  
9                 that you understand that the jurors who are  
10               selected in this case will not be sequestered;  
11               that is, at the end of trial each day they will  
12               be permitted to go home. And with respect to  
13               today's proceedings; although these are open to  
14               the public, during the voir dire process we do  
15               not permit cameras in the courtroom and members  
16               of the media are prohibited from disclosing your  
17               name in any media reports of these proceedings.

18                 In addition, should you be selected to  
19                 serve on the jury, cameras will not be permitted  
20                 to take any shots at the trial that disclose the  
21                 identity of the jurors.

22                 In the event you are still on the panel  
23                 after today's questioning, you will get a phone  
24                 call in the next day or two letting you know when  
25                 you have to report back to court.

1                   Mr. Fallon, at this time you may begin  
2                   your questioning.

3                   **VOIR DIRE EXAMINATION**

4                   BY ATTORNEY FALLON:

5       Q.    Good afternoon, Mr. Stonebraker. My name is Tom  
6                   Fallon, I'm an Assistant Attorney General with  
7                   the Wisconsin Department of Justice. I'm one of  
8                   the prosecutors in this case. And to my left is  
9                   Mr. Kratz, the Calumet County District Attorney  
10                  and lead prosecutor in this case. Good afternoon  
11                  and thanks for returning to help us out this  
12                  week.

13                  I would like to first begin with you  
14                  telling us a little bit about your duties and  
15                  responsibilities at we energies, at the power  
16                  plant. If you would, tell us a little bit about  
17                  what you do there.

18       A.    I'm an instrument control technician, which is  
19                  part of the maintenance department. We service  
20                  the instrumentation of the plant, the automatic  
21                  control systems, and we do what they call  
22                  surveillance tests, which is on the reactor, and  
23                  make sure everything is working right and all the  
24                  safety systems are operating correctly.

25       Q.    All right. And how long have you been employed

- 1           at the plant doing that type of work?
- 2   A.   In May, it will be 18 years.
- 3   Q.   Have you done any other duties or have you had
- 4       any other responsibilities at the plant other
- 5       than the control technician?
- 6   A.   Yeah, the first two years I was there I was an
- 7       auxiliary operator. Which that's the guys
- 8       that -- they run the plant, out in the plant
- 9       itself, not the ones in the control room.
- 10   Q.   Okay.
- 11   A.   Although a lot of that time was in training; it
- 12       takes awhile to train for that.
- 13   Q.   I'm at a loss because I'm not very familiar with
- 14       nuclear stuff; what -- what is an auxiliary
- 15       operator?
- 16   A.   They would be the guys that go out and turn
- 17       valves, take logs on equipment.
- 18   Q.   Okay.
- 19   A.   That kind of thing.
- 20   Q.   All right. So you did that for two years and
- 21       then for the past, what, 16 or 18 you --
- 22   A.   Sixteen.
- 23   Q.   Sixteen, an instrument control tech -- control
- 24       technician?
- 25   A.   Correct.

1 Q. Okay. And prior to that, you served in the  
2 United States Navy?

3 A. Yeah, I did have a job in between, the  
4 questionnaire said three years, though, so.

5 Q. Okay.

6 A. But, yes, I was in the Navy.

7 Q. Sure. What did you do in between then?

8 A. I was a Rad Con Technician at Maryland Naval  
9 Shipyard, which I believe is closed now.

10 Q. All right.

11 A. That was in Vallejo, California, near San  
12 Francisco.

13 Q. Oh, sure. What kind of work did you do there?

14 A. I was a Radiation Control Technician. We -- We  
15 did surveys to make sure that there wasn't  
16 radiation getting outside of the -- It was a  
17 shipyard.

18 Q. Okay.

19 A. So we're just making sure we do radiation surveys  
20 and contamination surveys. Make sure all the  
21 radiation and contamination was where it was  
22 supposed to be.

23 Q. And what type of duties did you have in the  
24 United States Navy?

25 A. I was an Electronics Technician for the nuclear

1           field, which meant that I worked -- I was on the  
2           USS Enterprise. And I worked in the engineering  
3           spaces where the reactors were, propulsion  
4           reactors.

5           And I was an electronics technician. We  
6           were the -- We would operate the plant. They  
7           have a control panel and we would do that. There  
8           was some other watch stations too where you would  
9           just monitor the equipment. And, you know, we  
10          did maintenance and stuff too.

11         Q. Okay. And how long did you -- Well, let's see, I  
12          see you were six years in the Navy?

13         A. Correct.

14         Q. All right. Were you based primarily here in the  
15          United States or did you get to travel a bit?

16         A. We were based in the United States, but we  
17          traveled. I did two oversea deployments.

18         Q. Okay. Where did you go?

19         A. Philippines, Hong Kong, Singapore, Pakistan,  
20          Australia, France and Italy.

21         Q. All right. That's moving around pretty good.  
22          How much time in Australia?

23         A. About a week.

24         Q. On your questionnaire, you indicated you consider  
25          yourself at least somewhat knowledgeable in the

1                   area of chemistry?

2       A.   We had -- Yeah, I wouldn't consider myself an  
3                   expert at all, but we had a fair amount of  
4                   training on chemistry.

5       Q.   All right. And is that training something that  
6                   you rely upon today to assist you in performing  
7                   the duties as a instrument control technician?

8       A.   No.

9       Q.   All right. Have you -- Have you used any of that  
10                  chemistry background training in your current  
11                  responsibility at all?

12      A.   No, the chemistry training I got was in the Navy.  
13                  And it was just part of a well-rounded background  
14                  for being a nuclear operator.

15      Q.   All right. In terms of nuclear reactors and the  
16                  science behind them, were you called upon to  
17                  learn how they actually work and --

18      A.   Absolutely.

19      Q.   -- and -- All right. And how much science would  
20                  you say you had been exposed to; in other words,  
21                  classroom type of work or ...

22      A.   Depends on how you want me to quantify it. We  
23                  had quite a bit. It would be somewhat equivalent  
24                  to a college degree.

25      Q.   All right. Was that -- That was in -- training

1           that was mandated for the type of work you were  
2           doing --

3       A.    Correct.

4       Q.    -- in other words?

5       A.    Right.

6       Q.    And so you had a fair amount of it, a couple  
7           years worth of training; on-the-job training, I  
8           would I imagine.

9       A.    There was -- Well, first I had training in  
10          electronics because I was going to be an  
11          electronics technician. And then I went to  
12          nuclear power school, which was all classroom.  
13          And, then, after that there was prototype  
14          training I went to in Idaho and that was hands  
15          on. And each of those was about six months.

16       Q.    Okay. All right. So how do you like being a  
17          manager of a softball team?

18       A.    Oh, it's -- I like softball a lot. I play on two  
19          different teams. It's fun. And I forgot to put  
20          on there I'm on the Manitowoc County -- or  
21          Manitowoc Rec Department Softball Commission.

22       Q.    All right.

23       A.    So, I like softball a lot; I enjoy it.

24       Q.    What do you do for the Rec Commission; what kind  
25          of responsibilities or --

1 A. Well --

2 Q. -- what's your level of participation?

3 A. Yeah, we haven't had any meetings for a while so

4 I'm not sure what's going on with that, but when

5 we did have meetings we would talk about ways to

6 improve the diamonds in Manitowoc, in the city.

7 Q. All right.

8 A. Like we had discussions about, some of the fields

9 needed new benches. We would talk about rules,

10 improvements, you know, things like that. Bat --

11 We had things for checking bats to make sure

12 people weren't using illegal bats, things like

13 that.

14 Q. All right. No cork bats?

15 A. Right. Well, the equivalent in softball would be

16 a titanium bat so.

17 Q. All right. Do you like managing people?

18 A. I don't really do it that much. I don't mind it.

19 I mean, a little, sure.

20 Q. All right. Did you have supervisory

21 responsibilities when you were in the Navy?

22 A. No. Um, some people, the rank I was at did, but

23 I didn't.

24 Q. All right. Were you -- Did you work mostly alone

25 or were you on, like, a team of technicians; how

1 did you ...

2 A. In the Navy?

3 Q. Yeah.

4 A. We -- The Enterprise had four different plants.

5 They had two reactors each and they would assign

6 us to one particular plant.

7 Q. Right.

8 A. So -- And then it would be divided by jobs, you

9 know, like the mechanic or electrician types,

10 they would be different. So we had -- it's been

11 a long time but, we had 12 or so guys that I

12 would work directly with.

13 Q. All right. Do you work with a team right now or

14 are you pretty much on your own as an instrument

15 control technician?

16 A. We have a shop of about 20 guys, not counting

17 supervisors.

18 Q. All right. You are not one of the supervisors?

19 A. No.

20 Q. All right. In your role as an instrument control

21 technician, have you been involved in writing of

22 safety guidelines or setting up or enforcing

23 safety standards for working with the reactors

24 and other technical equipment at the plant.

25 A. We have procedures for virtually everything we do

1           and I have -- I did spend some time doing  
2           procedure writing, so, yes.

3       Q. All right. Did you enjoy having a hand in that?

4       A. It was interesting. It's nice to do something a  
5           little different every once in a while. The deal  
6           was that I was just temporarily assigned to it  
7           for a couple years. You know, they kind of  
8           rotate people through.

9       Q. Right.

10      A. So.

11      Q. All right. Very good. Well, I would like to  
12           talk to you a little bit now about some of the  
13           information or what you think you may know about  
14           our particular case. And I would like to begin  
15           with the news media and coverage of the case.  
16           You indicate you get most of your news from the  
17           radio and the internet?

18      A. Yeah, mostly the internet.

19      Q. All right. You are not much of a television guy,  
20           then?

21      A. I never watch, or almost never watch, the local  
22           news. And I don't care to watch the national  
23           news all that much either.

24      Q. Okay. What kind of radio or what radio stations  
25           do you regularly listen to?

1 A. Either a Christian radio stations or like talk  
2 radio.

3 Q. Okay.

4 A. And sports, sports talk also.

5 Q. Okay. What type of talk radio, any particular  
6 station or --

7 A. Well --

8 Q. -- broadcaster that you find interesting?

9 A. Yeah, I live so close to where I work and the  
10 only time I ever listen to it is when I'm in the  
11 car for my 12 minute drive in. But when I -- the  
12 little bit I hear is, like, sometimes I will hear  
13 the end of Rush Limbaugh or Mark Belling out of  
14 Milwaukee.

15 Q. Okay. But then these are, as you say, short  
16 listens as it were?

17 A. Very short. And if I -- if I go home and I drive  
18 into Manitowoc to do a shopping trip or  
19 something, I might listen to it too. But I --  
20 If, like, if you were to ask me my total time in  
21 a week, I would say a couple hours, maybe.

22 Q. Okay. Of all the time that you are in the car?

23 A. Right. And even then, sometimes I will listen to  
24 a CD or sports --

25 Q. Right.

1 A. -- radio, whatever, so.

2 Q. What kind of workweek do you have at the plant, I

3 mean, is it regular 40 hour week, or less, more?

4 A. Normally, we work five 8 hour days. Then for

5 refueling outages we work six 12 hour days.

6 Q. I'm sorry, during what?

7 A. Six 12 hour days, that's starting a refueling

8 outage.

9 Q. Oh.

10 A. Each unit, we have one of those every 18 months.

11 It's a two unit plant.

12 Q. Gotcha. All right. In terms of your internet

13 experience, what kinds of things do you use the

14 internet for; do you get your news there, or any

15 other purpose, or ...

16 A. Well, I don't generally go to a news site like

17 cnn.com or abc.com, or any of that kind of stuff.

18 I mostly read blogs and columns.

19 Q. Okay.

20 A. And then I'll -- There's a few TV shows I watch.

21 And I like to read on, you know, shows -- sites

22 that talk about those. For a couple of them, not

23 all of them, but ...

24 Q. Right. All right. Given that background, in

25 terms of your exposure to coverage of this

1           particular case, where would you say you have  
2           heard or experienced most of the news from; the  
3           radio, the internet, or some other source?

4       A. I haven't read anything on the internet. The  
5           radio, a lot of times when I'm driving it will  
6           be -- if its on the hour I will hear the six or  
7           seven minute newscast they have.

8       Q. Right.

9       A. And a couple times I heard something about it.  
10          When the first -- When it first happened I did  
11          see some stuff, they put up a TV in our shop to  
12          show the -- I can't even remember exactly which  
13          event it was. I think it was when they announced  
14          they were filing charges. And we watched that  
15          for like 10 minutes. And really hasn't been that  
16          much.

17       Q. So you only remember that one time, seeing a  
18          televised newscast?

19       A. Correct.

20       Q. Okay.

21       A. Did you say anything about newspapers; I can't  
22          remember?

23       Q. That's coming up.

24       A. Okay.

25       Q. We're still on the internet and the radio and the

1           one television newscast?

2 A.       Okay.

3 Q.       So the radio, you might have, if it's the top of

4       the hour --

5 A.       Right.

6 Q.       -- you catch whatever they throw at you?

7 A.       A little blurb, yeah.

8 Q.       Right. And nothing on the internet; you don't

9       use that to read up on the case, for instance?

10 A.       Right. Right. I don't go, like, to the

11       heraldtimesreporter.com. I have gone there a few

12       times.

13 Q.       Mm-hmm.

14 A.       Never for that case.

15 Q.       Okay.

16 A.       It would always be something specific I might

17       have an interest in.

18 Q.       All right.

19 A.       You know.

20 Q.       Do you recall, then, seeing any newspaper

21       articles on the case?

22 A.       Yes.

23 Q.       Okay. Anything in the last month?

24 A.       Well, my in-laws, my wife's parents, live with us

25       and they subscribe to the Herald-Times Reporter.

1 I never read it cover to cover because it just  
2 doesn't interest me that much. Typically, what I  
3 will do is I will scan the cover, see any big  
4 goings on that I didn't hear about. And so I did  
5 see an article recently about charges being  
6 dropped.

7 Q. Okay.

8 A. Which I sort of knew any way.

9 Q. Right.

10 A. But I didn't read it.

11 Q. You didn't read it?

12 A. No.

13 Q. So you just looked at the headline and moved on?

14 A. Right. Oh, there was another article right next  
15 to it that talked about jury selection and  
16 because I was in the process, I was kind of  
17 interested. And I started reading it and it -- I  
18 saw that it didn't pertain to the facts of the  
19 case so I went ahead and read that article.

20 Q. You did or did not?

21 A. I did.

22 Q. Okay. And that just talked about this process  
23 you are involved in now?

24 A. Correct.

25 Q. Okay. Did you read any other articles or any

1           other coverage of the case, or any discussion of  
2           what might or might not be evidence in the case?

3       A. The only things I ever read in the newspaper,  
4           other than what I just mentioned, was when it  
5           first happened, I remember reading an article and  
6           I would read part of it and then they would start  
7           talking about things that I didn't really care  
8           about or didn't care to read about, so I, you  
9           know, just basically enough to get a general idea  
10          what was going on. I wasn't interested in the  
11          particular details.

12      Q. Okay. And that was many months ago, maybe more  
13          than a year?

14      A. Yeah, whatever it was. Yeah.

15      Q. All right. Well, based on what you have seen and  
16          read and heard on the radio, have you formed any  
17          opinion as to whether Mr. Avery is guilty or  
18          innocent of the offenses for which he is charged?

19      A. Well, I know that, judging by what I do hear, the  
20          little bit I hear and by what people talk about,  
21          they all seem to think he's guilty.

22      Q. Right. But on the questionnaire, when asked  
23          specifically if you formed any opinions based on  
24          the information from any source --

25      A. Right.

1 Q. -- you said you had no opinion yourself?

2 A. Yeah, I really haven't followed it close enough.

3 I mean --

4 Q. Okay.

5 A. -- you know, I know what other people think. If  
6 you backed me into a corner and threatened me and  
7 made me say one way or the other, I would  
8 probably go with what everybody else seems to  
9 think, but I don't know that much about it.

10 Q. Right. You haven't followed it really enough to  
11 form -- make an informed --

12 A. No, I don't follow that kind of news.

13 Q. Okay. You also said that whatever information  
14 you do have you would be able to set aside and  
15 decide this case solely on whatever the evidence  
16 is presented, if you were selected from a jury?

17 A. Correct.

18 Q. As a juror. Do you think you can still do that?

19 A. Yes.

20 Q. All right. Is there any -- anything that you  
21 have experienced that really raises a question in  
22 your mind as to whether you could follow the  
23 Court's instruction and simply decide this case  
24 based on what the evidence is in the courtroom  
25 and not on any of this other stuff?

- 1 A. Not that I'm aware of.
- 2 Q. All right. Okay. I just have one last couple  
3 questions I wanted to ask you about. I see from  
4 some of the information in your questionnaire  
5 that either you, or someone very close to you,  
6 was a victim of a robbery many years ago?
- 7 A. I was.
- 8 Q. You were. All right. And as far as you know,  
9 the suspects were never located?
- 10 A. Correct.
- 11 Q. Were you still in the Navy at that time or was it  
12 just --
- 13 A. It was when I was in high school.
- 14 Q. Oh.
- 15 A. I worked at a fast food place in Fresno,  
16 California and that's when it happened.
- 17 Q. All right. So that's not anywhere -- that was in  
18 California?
- 19 A. Correct.
- 20 Q. I forgot to check, are you -- you are from the  
21 San Francisco area?
- 22 A. I was born there. I lived in California until  
23 1989 when I moved here to work at Point Beach.
- 24 Q. Okay.
- 25 A. Not counting Navy time.

1 Q. Right. So is there anything about that  
2 experience, having been a victim 26 years ago,  
3 that makes you question whether or not you could  
4 be fair and impartial in this case?

5 A. No.

6 Q. All right. Were -- Did you have an opportunity  
7 to interact with the police in --

8 A. Yes.

9 Q. All right.

10 A. They took me downtown to the police station and I  
11 looked through mug shot books and never saw the  
12 people so. And that was the last I ever heard of  
13 it.

14 Q. All right. Very good. Thank you, sir.

15 THE COURT: Mr. Strang.

16 **VOIR DIRE EXAMINATION**

17 BY ATTORNEY STRANG:

18 Q. You probably saw us all stand up briefly and  
19 awkwardly last week, but --

20 A. Oh, yes.

21 Q. I'm Dean Strang and Jerome Buting and Steven  
22 Avery. The two of us are defending Mr. Avery.

23 A. Right.

24 Q. Some -- Some simple questions initially just  
25 about the 18 years you have had at Point Beach.

1 A. Sure.

2 Q. During your time there, have you met a woman  
3 named Lori Dassey?

4 A. Yes.

5 Q. Have you met a guy named Jason Rezash?

6 A. No.

7 Q. Okay. How did you meet Lori Dassey?

8 A. Oh, let's see, about 10 years ago, 10 or 11 years  
9 ago, like I mentioned, with the procedure or  
10 anything, occasionally you would get temporarily  
11 assigned to another area and I was assigned to  
12 corrective actions for awhile and she was one of  
13 the clerks there.

14 Q. And how long were you in that area, in corrective  
15 actions?

16 A. It's been a long time, but six to nine months.

17 Q. So you worked with her during that period of  
18 time?

19 A. She was in the area; I didn't work closely with  
20 her. As a matter of fact, she wasn't even in  
21 corrective actions. She -- Her cubical was in --  
22 nearby. So I didn't really directly work with  
23 her.

24 Q. And is this -- is this a large enough staff at  
25 this place that if you're not assigned to

1                   somebody's area you just don't --

2 A. That's correct.

3 Q. -- see them?

4 A. There's -- There's a lot of people there that I  
5                   see their face and I know who they are and a lot  
6                   -- so many times when I would get introduced to  
7                   somebody and, oh, you know, I have heard of that  
8                   person, but I had no idea the name and the face  
9                   kind of thing.

10 Q. So how do you remember Lori's name?

11 A. One reason is because there was somebody at my  
12                  church that had the same last name. And then, I  
13                  talked to her a few times, you know, and just as  
14                  a courtesy, like, if I were to meet her  
15                  somewhere, like run into her at Wal-Mart or  
16                  something and I would say hi, might talk for 20  
17                  seconds, how are the kids kind of thing. But  
18                  other than that --

19 Q. Mm-hmm.

20 A. -- you know, never -- sort of was never friends  
21                  with her, never did anything with her outside  
22                  work or even at work, other than, you know,  
23                  professional duty kind of thing.

24 Q. What's her connection to this case?

25 A. Somebody told me that she used to be married to

1           the defendant, but I didn't even know that at the  
2           time.

3       Q.    Okay. And when is the last time you have spoken  
4           to Ms Dassey?

5       A.    I ran into her at Wal-Mart about a month ago,  
6           like I said, I had talked to her like 30 seconds,  
7           you know, hi, how's it going kind of thing.

8       Q.    Mm-hmm. Okay. Do you know anything about Steven  
9           Avery through her?

10      A.    No.

11      Q.    Or by people talking about her?

12      A.    That's kind of how I found out she had been  
13           married to him was just by, you know, gossip kind  
14           of thing.

15      Q.    Right. And what did they tell you other than  
16           she --

17      A.    They just told me that she was, like, his  
18           ex-wife, you know. That's all I remember them  
19           ever saying.

20      Q.    Not anything more?

21      A.    No.

22      Q.    Kids together or?

23      A.    No idea.

24      Q.    Okay.

25      A.    And I didn't put that on the questionnaire

1 because it was just a few days ago that I even  
2 found this out so.

3 Q. That's fine. No. That's fine. Because you are  
4 at Point Beach I thought --

5 A. Right. Right.

6 Q. -- I would ask. Actually, I have several  
7 questions about Point Beach?

8 A. Sure.

9 Q. And no particular order, Mr. Stonebraker, but are  
10 you -- are you -- I understand you are a member,  
11 but are you active in the International  
12 Brotherhood of Electrical Workers?

13 A. Oh, the union?

14 Q. Yeah.

15 A. No, I'm kind of a middle-of-the-road guy on  
16 unions.

17 Q. What does that mean?

18 A. I tend to be more conservative politically,  
19 but -- and unions are very left wing, but I'm  
20 glad we have a union. I will say it that way,  
21 because I have seen the company do things that I  
22 wouldn't agree with. And I'm glad the union  
23 keeps them from doing it. There's, like,  
24 management people that aren't in the union.

25 Q. Right.

1 A. But on the other hand, I think unions sometimes  
2 have too much power. So, you know, it's -- I  
3 think it's good that they exist, but I don't  
4 think they should have too much power.

5 Q. Yeah. And when you say too much power, over the  
6 individual member or over the --

7 A. No, I mean --

8 Q. -- operation?

9 A. No, over the company.

10 Q. The company. Okay. Is it a closed shop, were  
11 you required to join?

12 A. Yes. Yes.

13 Q. Or a union shop I should say?

14 A. Correct.

15 Q. Okay. And is -- I don't know the answer to this,  
16 but is Point Beach one of the nuclear plants in  
17 this nation that, since sometime shortly after  
18 September 11, 2001, I think, everybody has been  
19 issued a red card, or no?

20 A. I don't have a red card.

21 Q. Everybody is empowered to shut the place down if  
22 there are unsafe conditions?

23 A. If anybody has a safety concern, they would --  
24 they are encouraged to bring it up, yeah.

25 Q. Mm-hmm. Okay. But there's no specific mechanism

1           for that?

2       A. Well, there's -- It's a little like the military,  
3           there's -- it's similar to a chain of command,  
4           you know. We bring up the concerns, they would  
5           investigate it first, obviously, you know, so  
6           they don't just always shut the plant down --

7       Q. Right.

8       A. -- and find out, well, that was dumb.

9       Q. Right.

10      A. So, yeah.

11      Q. Okay. While you were in the Navy, let's see,  
12           you -- obviously you volunteered probably close  
13           to right out of high school?

14      A. That's correct, I got out of high school in June  
15           and I went in the Navy in September. But I  
16           was -- I don't remember what they call it any  
17           more. I signed up, like, in January of that  
18           year, I believe.

19      Q. Mm-hmm. And had the summer off and then went  
20           in --

21      A. Yeah, I purposely waited. I figured I wanted to  
22           have one more summer off before I went in.

23      Q. Right. And at that point you were still out in  
24           the Fresno area?

25      A. That's correct, yes.

1 Q. Was the USS Enterprise your only shipboard  
2 assignment?

3 A. Correct.

4 Q. So you were land based for the rest of your two  
5 tours, or whatever?

6 A. It's only one tour to be in the nuclear program,  
7 because of so much training, we were required to  
8 sign up for six years.

9 Q. Okay.

10 A. So I was in the Navy for two years and four  
11 months before I even made it to the ship.

12 Q. And how long were you on the Enterprise?

13 A. That would have been three years and about eight  
14 months.

15 Q. So really the balance of --

16 A. Oh, that's correct, yes.

17 Q. -- of your tour?

18 A. Yes.

19 Q. And did you -- I think, essentially, you have  
20 answered this next question, that you were never  
21 submarine based?

22 A. No, I volunteered, but they had too many  
23 volunteers, so I ended up on a carrier.

24 Q. Okay. Did the volunteering to be submarine based  
25 involve anything more than simply volunteering?

1           Was there a battery of tests or ...

2       A. No. No, they encouraged you because -- I guess  
3           because a lot of times they -- they were short of  
4           people for submarines, so we were kind of  
5           encouraged. And there was a monetary --

6       Q. Incentive?

7       A. -- like one hundred dollars a month. It wasn't  
8           really all that much, but on the money you are  
9           making in the Navy it was a good amount. And  
10           plus that was 25 years ago.

11      Q. Right. And were you particularly interested in  
12           serving on a submarine, or it was just a money  
13           thing?

14      A. All the people that I was in contact, like the  
15           recruiters and stuff -- not -- well, not all the  
16           recruiters are nuclear, obviously. I'm guessing  
17           that maybe they had some -- I don't know. They  
18           just kind of encouraged me the whole way along.

19                   It sounded interesting. I remember  
20                   thinking that the last thing I wanted to do was  
21                   be on a carrier. And then that's what I ended up  
22                   on; although I was glad in retrospect, but ...

23      Q. Why?

24      A. Well, I get motion sickness. And submarines,  
25                   once they get under water and down a ways they

1           don't have any trouble. But when they are near  
2           the surface, modern submarines are designed to be  
3           under water not on the surface. Where as in  
4           World War II it was the other way around. So  
5           they rock and roll a lot on the surface and I  
6           would have been miserable.

7       Q.    Me too. You obviously got to travel the world a  
8           bit, thanks to the U.S. Navy. And one thing that  
9           stood out on your questionnaire here is an  
10          interest in geopolitics. Could you tell us just  
11          a little bit more --

12      A.    Sure.

13      Q.    -- about that?

14      A.    That relates to something I forgot to put on  
15          hobbies, which would be I like war games,  
16          basically historical games.

17      Q.    Mm-hmm.

18      A.    And my interest in geopolitics kind of grew out  
19          of that. I'm very interested in World War II and  
20          all the interactions between the countries and  
21          stuff that went on and also in the modern world.  
22          I just find it fascinating, the interaction  
23          between countries and why they do this and that.

24      Q.    And at the same time you -- I think the words you  
25          used were, I don't care to listen much to the

1           national news, at least on TV?

2 A. Right.

3 Q. What's -- Where's the cleft there or the  
4         distinction that you draw between this area of  
5         great interest and then not caring to watch the  
6         national news on TV?

7 A. You're just saying because they would cover that  
8         kind of thing?

9 Q. Well, I don't know that they cover it very well,  
10       but I'm just curious --

11 A. Well --

12 Q. -- where the shift in the interest is?

13 A. Well, I don't -- I don't think they -- First of  
14       all, I don't think the people that cover it on TV  
15       that you can understand it very well. And I  
16       don't -- I don't think they give accurate  
17       information, partly due to ignorance, but also  
18       they -- I guess if you are talking about foreign  
19       policy, I would be what you might call a hawk.  
20       I -- I wouldn't say an extreme hawk, but I -- I  
21       -- I strongly believe this country should stand  
22       up for itself. And the news media tend to not  
23       feel that way.

24 Q. Okay.

25 A. So that would be, I guess, be the main thing.

1 Q. The interest in war games, this would not be so  
2 much of the reenactment variety, I'm taking, you  
3 know, civil war or revolutionary war  
4 reenactment --

5 A. No.

6 Q. But rather the --

7 A. Board games --

8 Q. -- geopolitics --

9 A. Or computer.

10 Q. Okay. And that's right, you mentioned that you  
11 subscribe to *Games For Windows Magazine*?

12 A. Yeah, actually, they send it to me. I used to be  
13 a subscriber. I let it run out and they have  
14 been sending it to me for like seven years. It  
15 says it expires in '09 and I never paid for that  
16 but they -- I don't know why but ...

17 Q. But in any event, you are interested in board  
18 games or computer based --

19 A. Yeah --

20 Q. -- games?

21 A. I like strategy games. I don't really get into  
22 the first person shooters.

23 Q. Okay.

24 A. Like Doom, that kind of games. They are very  
25 violent. And I don't want my kids to play those

1 kind of games. And also I get motion sick, so  
2 even if I liked them, it would just make me sick  
3 to play them so.

4 Q. But the strategy?

5 A. Yeah, I really like strategy games, yeah.

6 Q. And you mentioned an interest in blogs and  
7 getting -- getting, I guess, some news, if you  
8 will, from blogs. Are you drawn to more  
9 specialized blogs with people with a deeper  
10 expertise in these areas.

11 A. There's only one blog I read regularly that would  
12 be that kind of thing. There was some others I  
13 used to read that were about TV shows, you know,  
14 like --

15 Q. What are the blogs you read --

16 A. Um --

17 Q. --regularly or semi --

18 A. Well, the --

19 Q. -- regularly?

20 A. -- main one I read that is not a TV base -- or  
21 talking about TV is called vox populi.

22 Q. Vox Populi?

23 A. Yeah.

24 Q. Mm-hmm.

25 A. And it's -- I don't really think the guy is

1           really a nice guy, if you know what I mean. And  
2           I don't -- I just read him quite a bit, but he is  
3           pretty sharp and in general I tend to agree with  
4           his views. And I don't know, I don't even  
5           remember how I found it. I think it was linked  
6           from something else. Oh, I know what it is, he  
7           has a column on worldnetdaily.com. And I was  
8           reading his column once and it said they have a  
9           blog so I checked it out and I have been reading  
10          it for a couple years.

11 Q.       Mm-hmm. And what other blogs?

12 A.       One is -- I don't know if it's exactly a blog,  
13           it's about the TV show *Lost*. There's one about  
14           the TV show *Battlestar Galactica*. Occasionally  
15           the Voxx one will have a link to a different one  
16           and I will check it out, but it's nothing I have  
17           kept reading regularly.

18 Q.       Do you read Lakeshore Laments here in --

19 A.       Never heard of it.

20 Q.       -- you know, the Manitowoc area. It's a  
21           Manitowoc area blog. Okay. And moving to the  
22           radio, for the 12 minutes in the car, to and from  
23           work.

24 A.       Okay.

25 Q.       Sounds like given your work hours you kind of

1           catch the end of Limbaugh sometimes, some of Mark  
2           Belling --

3 A.       Right.

4 Q.       -- maybe? Out of what, WISN?

5 A.       WISN, yes.

6 Q.       And are you someone who ever calls into these  
7       shows?

8 A.       I called into Belling's show once or twice, but  
9       that's when I first started listening. That  
10      would be like in 1993 time frame.

11 Q.       Mm-hmm.

12 A.       And it wasn't a pleasant experience; he's kind of  
13      a jerk. So, no, typically I'm not.

14 Q.       Okay. Is he a jerk when you agree with him?

15 A.       You don't have to be a nice guy to be smart about  
16      things.

17 Q.       Okay.

18 A.       In fact, my wife hates his show because of how he  
19      is, so.

20 Q.       I wanted to go to your wife just in the financial  
21      context here. She's -- You have listed her as a  
22      homemaker.

23 A.       Correct.

24 Q.       And I counted eight children --

25 A.       Yes.

1 Q. -- you have been blessed with? If you end up in  
2 this jury, you know, for five, six weeks, or  
3 whatever it turns out to be; is this going to  
4 create a, I mean, a serious --

5 A. Not at all.

6 Q. -- financial hardship?

7 A. Because we energies will pay me.

8 Q. So you are covered --

9 A. Right.

10 Q. -- financially. How about otherwise, in terms of  
11 family hardship?

12 A. From what I can gather, since it's not going to  
13 be sequestered, at least from what I hear, I  
14 don't think I would be gone a whole lot longer  
15 than I am normally. I don't know for sure  
16 exactly but, you know, they don't run court until  
17 8:00 at night, as far as I know.

18 Q. I hope not.

19 THE COURT: Not when the jury is here, but  
20 we may today.

21 Q. And the specific comment you made, I wanted to  
22 follow up on from Mr. Fallon's questions. You  
23 described somebody, management or somebody  
24 setting up a TV in the shop?

25 A. Oh, yeah. Every big news event that's happened

1           since I worked there, when we -- in the first  
2           Gulf War they set up a TV; for the OJ trial they  
3           set up a TV; for 911 they set up a TV. So for  
4           this, like I said, I think it was the  
5           announcement of the filing of charges, they set  
6           it up.

7 Q. Who's they?

8 A. Just guys at the shop. We have a TV if, like, if  
9           we have a safety meeting, they will have a video  
10          we watch. So just wheel the TV out. And, you  
11          know, being electronics kind of guys and stuff,  
12          they have rigged up an antenna going into the  
13          shop. You know, management tolerates it for big  
14          news events, but it's not a normal thing.

15 Q. I got it. And I just want to nail down, if at  
16          all possible, you said it was, you think when it  
17          was first charged. And there were two possible  
18          first charged sort of events here. One would be  
19          November of 2005, when Steven Avery was first  
20          charged. And the other would be, probably March  
21          of 2006, when Brendan Dassey was first charged.

22 A. Is it that long ago? I didn't realize it was  
23          that long ago. I believe it was Mr. Avery.

24 Q. The first of those, way back?

25 A. Yeah.

1 Q. Okay. Do you remember any news conferences when  
2 Brendan Dassey was charged, later?

3 A. No.

4 Q. Okay. And the TV, was that up one day or was  
5 that a series of days?

6 A. One day for, oh, it was probably a couple hours  
7 because, we turned it on and they said, oh,  
8 coming, you know, coming right up, we're going to  
9 have this news conference, you know, an hour  
10 later they finally get started so.

11 Q. What do you remember of the news conference?

12 A. Not much. I remember -- the main thing I  
13 remember was they -- that was interesting, was  
14 that the, I believe it was Calumet County was  
15 heavily involved in it. But I -- I don't know.  
16 I couldn't give you a whole lot of details. They  
17 were announcing, you know, murder charges, that  
18 kind of thing, but ... And the, you know, the  
19 victim's name, that kind of thing.

20 Q. Sure. Later, in March of 2006, do you recall  
21 anything about what Brendan Dassey supposedly  
22 said?

23 A. I have heard some stuff here and there about him;  
24 nothing I can remember concretely. Something  
25 about, I thought -- well, I don't know if I even

1           heard what he said. My knowledge about him is  
2           that, I guess, he might have helped supposedly in  
3           the commission of the crime but, I don't know  
4           that much about him.

5       Q.    Okay. And where that goes is, you know, you  
6           heard, I guess in a news conference or something,  
7           when Steven Avery was charged, you know, a little  
8           bit about Brendan supposedly being involved --

9       A.    Right.

10      Q.    -- in the event. And you were a little surprised  
11           to hear that much time had passed. So, here we  
12           are, a trial starting, as you look across the  
13           room at the guy two seats over from me, in your  
14           mind do you presume him innocent? Do you think  
15           he's probably guilty? Do you have no opinion?  
16           What's your sense of it?

17      A.    Well, like I said before, I mean, if you -- if I  
18           had to guess one way or the other, I would say  
19           guilty. But I don't know enough of the facts to,  
20           you know, if you wanted a solid opinion I would  
21           say, well, show me some stuff, you know, I mean.

22      Q.    Which is a natural reaction. And let me ask you,  
23           though, first, when the Judge instructs you that  
24           you are to presume Mr. Avery innocent --

25      A.    Correct.

1 Q. -- is that an instruction you can and will  
2 follow?

3 A. Yes.

4 Q. Willingly?

5 A. Sure.

6 Q. Okay.

7 A. I think he should get a fair trial. I mean, I  
8 would never want to send a guilty man to prison.  
9 And I would, you know --

10 Q. An innocent man to prison?

11 A. I'm sorry, yeah. Sorry.

12 Q. That's okay. That's all right. I think I knew  
13 what you meant, I think.

14 A. Yeah.

15 Q. And as a matter of a fair trial and proving  
16 stuff, are you aware of the rule in America that  
17 in a criminal case the government, the State,  
18 whoever the sovereign is, alone, bears the burden  
19 of proving someone guilty, beyond a reasonable  
20 doubt?

21 A. Yes, I am.

22 Q. Which is to say, and I think you will hear this  
23 from the Court, that the defendant has no burden  
24 of proving anything?

25 A. Correct.

1 Q. Does that make sense to you?

2 A. Yes.

3 Q. Why should one side not have to do anything and

4 the other side carry all the load?

5 A. That would be because, if you have committed a

6 crime, they should have to prove that you did it.

7 You shouldn't have to prove that you didn't. You

8 shouldn't have to prove that you didn't do it.

9 Just because that's a lot harder I think than

10 proving that you --

11 Q. Proving a negative?

12 A. Right. Exactly.

13 Q. And in the same vein, I guess, if we're not able,

14 in the end, to prove who did kill Teresa Halbach,

15 if Steven Avery didn't; will you hold that

16 against us or, again, is this something where, if

17 you are not satisfied the State proves Steven

18 Avery guilty beyond a reasonable doubt, and you

19 would love to know who did kill Teresa Halbach,

20 but you are not satisfied it was him, are you

21 willing to return a not guilty verdict?

22 A. Yes, if that's what the evidence shows.

23 Q. Without requiring us to prove who did kill her,

24 if he didn't?

25 A. That's irrelevant.

1 Q. And, you know, I'm not -- I'm not saying that I'm  
2 necessarily, or Mr. Buting, or for that matter  
3 Mr. Avery, are going to sit here like a bump on a  
4 log throughout the trial, although we could,  
5 under the law, and just rely on the State having  
6 the burden of proof. But one of the decisions  
7 that ultimately we will have to make at this  
8 table is whether Mr. Avery takes the witness  
9 stand and testifies. Do you want to hear from  
10 him, if you are a juror?

11 A. I would say yes.

12 Q. And can you accept and live with and respect and  
13 honor a system that says he does not have to  
14 testify if he chooses not to?

15 A. Absolutely.

16 Q. And, indeed, if he doesn't testify, that's no  
17 evidence of guilt and can't be considered, I  
18 think the Court will tell you.

19 A. Right, I understand that.

20 Q. And can you follow that?

21 A. Yes.

22 Q. By the same token, if at this table we should  
23 decide that he does testify, the law, as I think  
24 the Judge will tell you, is that he is entitled  
25 to have his testimony considered like any other

1                   witness. All the same considerations in deciding  
2                   what weight to give to a witness' testimony apply  
3                   to the accused, if he testifies. Is that also a  
4                   rule you can live with?

5       A. Yeah, I don't see anything unreasonable about it  
6                   at all. I'm not even sure why you are asking,  
7                   actually, I mean --

8       Q. Well --

9       A. -- what else would you do?

10      Q. You know, because we're asking people to be  
11                   honest and some people have a problem with the --

12      A. Yeah.

13      Q. -- with the rule?

14      A. Yeah.

15      Q. You know, it's -- I understand it's human nature  
16                   to want to hear both sides?

17      A. Right.

18      Q. You may not hear all of one side here. You may  
19                   just have to live with that and -- and be asked  
20                   to return a not guilty verdict all the same. And  
21                   so it's important to know whether, you know,  
22                   whether you can do that?

23      A. Right.

24      Q. Have you heard anything recently about a blood  
25                   vial?

1 A. Only hearsay at work.

2 Q. What?

3 A. One of the guys at the shop said something one

4 time about it, but I couldn't tell you any

5 specifics.

6 Q. Okay.

7 A. Especially since I got a notice I, you know, they

8 start talking about it, I just go away.

9 Q. Sure. Okay.

10 A. And even if I knew details, what I hear from one

11 of the guys in the shop doesn't mean anything.

12 I'm smart enough to know that.

13 Q. Depends on who, probably, in the shop, right?

14 A. Um, no, not when it comes to if I'm going to

15 decide if he's guilty or not.

16 Q. Sure, on something big, I understand. Last sort

17 of question, or two, or three I have for you.

18 Are you -- Are you a very active member at

19 Lighthouse Assembly of God?

20 A. What do you mean by active? We go there every

21 Sunday, if that's what you want to know.

22 Q. Are you involved? Are you a deacon, or on the

23 church --

24 A. No, I'm not on the board or anything.

25 (Court reporter couldn't hear.)

1 A. I'm not on the board.

2 Q. I'm sorry, we're probably talking over each  
3 other. That's my fault, not yours; I'm supposed  
4 to know better.

5 Did your church do anything with respect  
6 to the disappearance or death of Teresa Halbach?

7 A. Not that I know of. I -- I highly doubt it. I  
8 was -- I was going there at the time and I don't  
9 remember anything.

10 Q. Okay. Good.

11 ATTORNEY STRANG: That's what I have got  
12 for you. Thank you.

13 THE COURT: All right. The Clerk will  
14 escort you out of the courtroom at this time.

15 (Wherein the juror was excused.)

16 THE COURT: Any motion from either party?

17 ATTORNEY FALLON: Not from the State.

18 ATTORNEY STRANG: I do. Without being  
19 punctilious about, you know, the Court's order on  
20 avoiding the media, this is someone who, I guess,  
21 took his in-laws' newspaper, they live with him so  
22 the paper comes to the house, and read part of one  
23 and all of a second article well after he was told  
24 to avoid exactly that kind of thing on -- on this  
25 case. Probably the next day.

1                   In some cases I wouldn't raise that. In  
2                   this one, with the pervasive pre-trial publicity  
3                   we have and this juror, of course, saw some of it  
4                   apparently in November, 2005, where this at some  
5                   level got equated in terms of bringing a TV into  
6                   the shop with September 11 and other really, you  
7                   know, very significant events.

8                   I-- I think we have to be very tight  
9                   about enforcing the Court's order on avoiding the  
10                  publicity, so I move to strike for cause. I  
11                  don't have a broader reason than that as to  
12                  Mr. Stonebraker.

13                  THE COURT: Mr. Fallon.

14                  ATTORNEY FALLON: I can appreciate the  
15                  concern for following court rules and guides, but as  
16                  Mr. Stonebraker indicated, the only thing he looked  
17                  at was information regarding the jury selection  
18                  process. And on balance, based upon all of his  
19                  other responses, and I think counterbalanced by the  
20                  fact of all the other, I think, relatively, I don't  
21                  want to say extraordinary, but relatively  
22                  comprehensive efforts on his part to avoid  
23                  discussions at work, to avoid other ancillary forms  
24                  of information or sources of information, I don't  
25                  think there is a basis to strike him at all.

1                   THE COURT: All right. If there was a  
2 violation of the Court's order here, I think it was  
3 very minimal. He seemed to be aware of it at the  
4 time he picked up the paper. He stopped reading the  
5 other article about the case, indicated he did read  
6 the jury selection article.

7                   My impression was that because he felt  
8 that particular article not dealing with the  
9 facts of the case, but just jury selection, with  
10 which he was already involved, wasn't encompassed  
11 by the Court's order.

12                  At this stage of the game, the Court  
13 hasn't fully had the opportunity to directly  
14 address the jurors in detail about the Court's  
15 restriction. They have been told on somewhat  
16 cursory terms about avoiding the media. And I  
17 think in his other answers he indicated he  
18 recognized that and avoided any discussions at  
19 work where discussions had taken place before.

20                  So I think it was a *di minimus*  
21 violation, if any at all. And based on all his  
22 other answers, I'm more than satisfied that he  
23 can be fair and impartial. So the Court is going  
24 to deny the motion to strike this juror for cause  
25 and keep him on the panel.

1                   We're going to take our afternoon break  
2                   at this time. I did want to say something to the  
3                   attorneys. I have been giving the attorneys some  
4                   latitude in the time limit that I set originally.  
5                   But I want to let both parties know that if  
6                   there's too much questioning on things like  
7                   Pokémon like games that have no real direct  
8                   relevance to the selection of the jury, I'm going  
9                   to interpose my own objection.

10                  I don't like to do that because I  
11                  realize it can be somewhat embarrassing to the  
12                  attorneys, but I think we have to stick on track  
13                  a little bit if we're going to make some headway  
14                  here. Stick to more directly relevant questions.  
15                  So I will see you at 3:25.

16                  (Recess taken.)

17                  THE COURT: Counsel, I'm informed that  
18                  Juror 33, Ms Abendroth, although she was going to  
19                  come here at one, has been here since this morning.  
20                  So we're going to take her out of order.

21                  ATTORNEY STRANG: She's someone we -- She's  
22                  someone we have a motion to strike on.

23                  THE COURT: We do?

24                  ATTORNEY STRANG: I do. I don't think the  
25                  State joins it, but ...

1                   THE COURT: Prior to voir dire?

2                   ATTORNEY STRANG: I think we should.

3                   THE COURT: All right. Mr. Strang, I will  
4                   hear your motion then at this time.

5                   ATTORNEY STRANG: The Court may want to  
6                   pull the questionnaire.

7                   THE COURT: I have it in front of me.

8                   ATTORNEY STRANG: The -- I think the main  
9                   issue arises in the answer to No. 74 -- Question  
10                  No. 74.

11                  THE COURT: I'm going to take a look.

12                  ATTORNEY STRANG: And then we have also --  
13                  I mean, she has got a specific connection; she --  
14                  she works at a credit union, I gather at which the  
15                  Avery family banks, and is concerned about facing  
16                  them in an employment context where presumably she  
17                  would feel, you know, that she had an employment  
18                  duty not to avoid the contact.

19                  Further the answers to Questions 40, 41  
20                  and 42, well, especially --

21                  (Court reporter couldn't hear.)

22                  ATTORNEY STRANG: Questions 40 and 42, you  
23                  know, explain the manner in which she's pre-judged  
24                  the case. And although she says in Question 43 that  
25                  she can set that aside, she appears to have both a

1 pretty well-formed prior opinion about the case and  
2 an understandable concern about social stigma or  
3 consequences. And I think there's probably more  
4 than adequate reason to strike for cause.

5 THE COURT: Mr. Fallon.

6 ATTORNEY FALLON: I can see counsel's  
7 concern. We briefly talked about it before. But as  
8 I indicated, I thought at least we should hear her  
9 out and get an idea as to really whether there is a  
10 heartfelt or deepfelt fear, or just a reasoned  
11 concern, or what have you.

12 As noted, with respect to Question 43,  
13 she believes she could set aside whatever  
14 opinions she may have as a result of media  
15 coverage, the question -- or the answer, I don't  
16 think, as framed, is really no different than, I  
17 think that he might be guilty, based on the  
18 coverage.

19 I don't see any distinction between that  
20 and the guilt issue, unless one wants to say,  
21 well, it's more directly related to a defense of  
22 the case. But the bottom line is, it goes to  
23 guilt. I don't see any difference there. And  
24 she goes on to say, I can set that opinion aside.

25 So in terms of just on the paper, it

1           seems to me we ought to at least hear the woman  
2           out. And it may turn out that she would be an --  
3           unsuitable for jury service. If counsel wants,  
4           they can go first if they think they can get to  
5           that point faster, that's fine. Seems to me on  
6           the paper, we ought to hear her out.

7           THE COURT: All right. Here's what I'm  
8           going to do. I'm going to bring the juror in, I'm  
9           going to ask questions first relating to question  
10          No. 74. If I feel, based on those answers, that I'm  
11          going to grant the defense's motion, I'm going to  
12          simply excuse the juror.

13           ATTORNEY FALLON: That's fine.

14           THE COURT: If not, I will turn her over to  
15          the parties.

16           ATTORNEY FALLON: That's fine.

17           THE COURT: Ms Abendroth, please raise your  
18          right hand and the Clerk will administer the oath to  
19          you.

20           (Juror sworn.)

21           THE CLERK: Please be seated.

22           THE COURT: Ms Abendroth, you have already  
23          completed a written questionnaire in this case.  
24          Today we're moving on to the next phase of jury  
25          selection, which is voir dire. We're going to ask

1                   you some questions relating to your qualifications  
2                   as a juror.

3                   I will notify you that the jury in this  
4                   case will not be sequestered, that is, the jurors  
5                   will be permitted to return home after each day  
6                   of trial. The jurors will continually be  
7                   instructed not to listen to any news media  
8                   accounts of this case, or read anything in the  
9                   newspaper, watch anything on television, or from  
10                  any other source.

11                  Today's proceedings are open to the  
12                  public, but the Court does not permit cameras in  
13                  the courtroom during voir dire proceedings and  
14                  the media is not permitted to disclose the names  
15                  of the jurors in the media reports of today's  
16                  proceedings.

17                  **VOIR DIRE EXAMINATION**

18                  BY THE COURT:

19                  Q. I do have a question for you at the outset  
20                  relating to your answer to Question 74 in the  
21                  questionnaire. To refresh your memory, the  
22                  question was: Is there anything, or any reason  
23                  at all, however personal or private, that makes  
24                  you feel you should not serve as a juror in this  
25                  case, or that if selected to serve, you could not

be a fair and impartial juror?

You answered yes and indicated I would be uncomfortable returning to work after the trial knowing that many of his family members that I wait on would have been in the courtroom and recognized me from the jury.

ATTORNEY STRANG: Your Honor, I'm sorry to interrupt, but maybe we could approach, sidebar, just very briefly. I apologize.

THE COURT: Okay.

(Side bar taken.)

12 Q. (By The Court)~ Couple things. You did indicate  
13 that, later on your questionnaire, that this was  
14 something you wished to address in private. The  
15 Court is somewhat limited in personal matters  
16 that it can address in that fashion. The law  
17 does not permit me to address this particular one  
18 in private. You are employed where?

19 A. Shoreline Credit Union.

20 Q. Okay. And do I understand from your answer that  
21 members of the defendant's family are customers  
22 at that credit union?

23 A. That's correct.

24 Q. Okay. And I think I understand your answer, but  
25 can you explain in a little more detail what you

1 mean.

2 A. Um, I don't know if I can.

3 Q. Do I take it from your answer that you -- your  
4 concern is that if you were a juror and if the  
5 jury reached a guilty verdict, that you would  
6 feel very uncomfortable after returning to work  
7 because of the situation you would be in.

8 A. I think, yeah, that's what I was getting at.

9 Q. And just to confirm what I think is my reading of  
10 your answer, you feel that, that subliminally or  
11 not, it could have an affect on your ability to  
12 be fair and impartial.

13 A. Yes, that's correct.

14 Q. Do you still feel that way today?

15 A. Yes, I do.

16 THE COURT: All right. I'm going to have  
17 the Clerk escort you from the courtroom at this  
18 time.

19 (Wherein the juror was excused.)

20 THE COURT: All right. Counsel, the Court  
21 is satisfied, based on the elaboration from the  
22 answer in the questionnaire and from my own  
23 observation of the demeanor of the juror, that  
24 objectively she would have a rational basis for her  
25 concern and I believe her concern is sincere. So

1 I'm going to grant the defense motion to excuse this  
2 juror for cause.

3 ATTORNEY FALLON: We have no objection.

4 THE COURT: The next juror we'll hear from  
5 then will be John Lawrence. All right. You are  
6 Mr. Lawrence?

7 MR. LAWRENCE: Yup.

8 THE COURT: Mr. Lawrence, please raise your  
9 right hand and I'm going to have the Clerk  
10 administer the juror's oath to you.

11 (Juror sworn.)

12 THE CLERK: Please be seated.

13 THE COURT: Mr. Lawrence, you have already  
14 completed a written questionnaire in this case.  
15 Today we're moving on to the next phase of the jury  
16 selection process which is individual voir dire.

17 The attorneys for each of the parties  
18 will have an opportunity this afternoon to ask  
19 you some questions that relate to your  
20 qualifications as a juror.

21 Before I have them begin those  
22 questions, I want to make sure you understand  
23 that the jury in this case will not be  
24 sequestered. That means that after each day of  
25 trial the jurors will be able to go home and

1 spend the time at home until the next day of the  
2 trial.

3                   The jurors will continue to be  
4 instructed, as they already have, that the jurors  
5 are not to watch any news media accounts of this  
6 case, either on television, listen to anything on  
7 the radio, read anything in the newspapers or the  
8 internet, or communicate in any way with anyone  
9 else about the case, outside the courtroom.

10                  I also want to make sure you understand  
11 that while these are court proceedings today,  
12 meaning they are open to the public, the Court  
13 does not permit cameras in the courtroom during  
14 voir dire proceedings and members of the press  
15 are not permitted to use your name in any news  
16 accounts of today's proceedings.

17                  In addition, should you be selected to  
18 serve on the jury, the camera operators are not  
19 permitted to show the jury during the trial, in  
20 any fashion, that allows anyone to identify who  
21 the jurors are.

22                  If you remain on the jury panel after  
23 questioning today, you will get a phone call in  
24 the next day or two that will tell you when to  
25 come back for the next step in the jury selection

process. Mr. Fallon, you may begin your questions at this time.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

Q. Good afternoon, Mr. Lawrence.

A. Good afternoon.

Q. My name is Tom Fallon. I'm an Assistant Attorney General with the Wisconsin Department of Justice and one of the prosecutors in the case. To my immediate left is Mr. Ken Kratz, the Calumet County District Attorney and the lead prosecutor in this matter. Thanks for coming back this afternoon. We have just a few questions for you to follow up on some of the information provided by you in last week's questionnaire.

16 I see from your questionnaire you are 20  
17 years of age?

A. Yes.

Q. All right. And you are currently employed at the Piggy Wiggy Store here in Manitowoc?

A. Correct.

22 Q. And how long have you worked for them?

A. For three years.

24 Q. For three years. All right. So I tak

worked for them

1 A. Correct.

2 Q. All right. And you graduated from Manitowoc  
3 Lutheran High School?

4 A. Correct.

5 Q. That was just a year or so ago?

6 A. Yup.

7 Q. All right. All right. At this time are you  
8 still living at home or are you on your own?

9 A. I'm living at home.

10 Q. All right. The reason I ask is I wanted to  
11 inquire as to, if you were to be asked to serve  
12 as a juror in this case, we may tie up six weeks  
13 or perhaps a little bit more of your time; would  
14 that cause a problem for you with your employment  
15 for instance?

16 A. No.

17 Q. All right. As far as you know, you would still  
18 have a job when you returned?

19 A. Right.

20 Q. You have taken care of that or at least explored  
21 that with your employer?

22 A. Yes.

23 Q. Okay. Very good. All right. I see that you  
24 also list music and computers as one of your  
25 hobbies. What do you do with computers or what

1           do you like to do with them?

2   A.   Just surf the internet.

3   Q.   All right. Is there any particular types of

4       things that you look for when you surf the

5       internet; news, entertainment, sports, whatever?

6   A.   Usually music related material.

7   Q.   All right. Any particular type of music that you

8       are interested in?

9   A.   Everything, basically.

10   Q.   All right. Do you download a fair amount of

11       music?

12   A.   Once in a while.

13   Q.   All right. Do you use your computer, then, to

14       play the music for you? Is that --

15   A.   Yes.

16   Q.   All right. How much time do you spend of your

17       free time listening to music?

18   A.   Whenever I'm free, there's music always playing.

19   Q.   All right. Do you ever use your computer or the

20       internet to assist in getting you news?

21   A.   Not really.

22   Q.   All right. Where do you get most of your news

23       from?

24   A.   Word of mouth.

25   Q.   Word of mouth. Do you listen to radio at all?

1 A. Not really.

2 Q. All right. How about television?

3 A. Like, I watch -- What do you mean?

4 Q. Do you regularly watch, for instance, Fox news or

5 Channel 5 news out of Green Bay or, like --

6 A. I don't really watch the news too much.

7 Q. No. Do you read the local paper?

8 A. Occasionally.

9 Q. Once a week, less than that?

10 A. Less than that.

11 Q. If you do read a paper, is it the Sunday paper

12 for instance or ...

13 A. Probably the Sunday paper.

14 Q. Probably the Sunday paper. All right. You

15 indicated you get some news by word of mouth.

16 And from whom, then, would that be? Is that

17 friends, or people at work, or what?

18 A. Just whoever, usually my mother.

19 Q. Okay. Within that framework, what can you tell

20 us about this particular case that you remember

21 hearing either from your mom, or from television,

22 or any other source? What do you know of the

23 case?

24 A. I have actually requested my mother not to say

25 anything.

1 Q. All right. And why did you make that request?  
2 A. Because I'm supposed to.  
3 Q. That's from the letter from the Court?  
4 A. Yes.  
5 Q. All right. So you have honored that request?  
6 A. Yes.  
7 Q. All right. And how long ago did you receive that  
8 request from the Court?  
9 A. I'm not too sure exactly, maybe a month or so  
10 ago.  
11 Q. All right. Let me ask you a little bit about  
12 what you may remember or what you may have been  
13 exposed to prior to receiving the directive from  
14 the Court. Do you have any particular  
15 recollection of any newscasts, or press  
16 conferences, or any information regarding the  
17 circumstances of Mr. Avery's arrest and charging?  
18 A. I never really followed it much.  
19 Q. All right. What about a fellow by the name of  
20 Brendan Dassey, have you ever followed the events  
21 regarding his arrest?  
22 A. I have never heard of him.  
23 Q. Never heard of him. All right. As you sit here  
24 today, can you recall any information that you  
25 learned from either the television, the radio, or

1           some other source?

2 A.       No.

3 Q.       Not a thing?

4 A.       I never followed it really.

5 Q.       I'm sorry?

6 A.       I never really followed it.

7 Q.       All right. Okay. So is it fair to say, then,

8           you really have formed no opinion regarding the

9           circumstances --

10 A.       That's right.

11 Q.       -- here. That would be correct?

12 A.       Yes.

13 Q.       All right. I see here that you have never served

14           as a juror before?

15 A.       No.

16 Q.       All right. Is there any reason you can think

17           now, you know, your own personal philosophy, or

18           maybe some directive from your conscience, or

19           some religious belief, perhaps, that makes you

20           question whether you could follow the rules of

21           the Court and actually be a juror in this case?

22 A.       No.

23 Q.       Would you like to be a juror in this case?

24 A.       It doesn't bother me either way.

25 Q.       Doesn't bother you either way. If you were

1           selected as a juror, do you think you would find  
2           it interesting?

3       A. Yeah.

4       Q. All right. Can you -- Any idea why you think it  
5           might be interesting?

6       A. A new experience.

7       Q. All right. Any other reason?

8       A. Not really.

9       Q. Is there anything about the case or what you  
10          think the issues might be which you find  
11          interesting?

12      A. Not really.

13      Q. I'm a little bit at a loss. Is there any reason  
14          why you -- if you don't really know anything  
15          about it, is there -- why you would find it  
16          interesting?

17      A. I have never been involved with something like  
18          this before, so I thought it would be  
19          interesting.

20      Q. Okay. Meaning the court process itself?

21      A. Yes.

22      Q. Okay. Now, it doesn't appear from the  
23          information provided on your questionnaire, but I  
24          thought I would ask anyways; have you had any  
25          encounters with the police?

1 A. Myself?

2 Q. Yes.

3 A. No.

4 Q. All right. Anyone in your family have any

5 encounters with the police?

6 A. I'm pretty sure my father has, but I haven't

7 really heard much about it before.

8 Q. Okay. Has he ever discussed those -- that

9 encounter or those circumstances with you?

10 A. Not at all.

11 Q. Do you have any -- either you or he, have any

12 particular opinions as to, you know, how good or

13 how bad a job the local police department is

14 doing?

15 A. Not at all.

16 Q. How about the sheriff's department?

17 A. Not at all.

18 Q. No discussion?

19 A. No.

20 Q. No. All right. Now, I see that you have a

21 friend or family member who is a police officer;

22 you have an aunt?

23 A. Yes.

24 Q. In Chicago?

25 A. Yes.

1 Q. And is she with the Chicago Police Department?

2 A. I believe so, yeah.

3 Q. All right. Do you know what she does for them?

4 A. I'm not too sure.

5 Q. All right. You don't know if she works patrol,

6 or is in investigations, or ...

7 A. I'm not sure at all.

8 Q. You don't know. You don't see her very often?

9 A. Not too often.

10 Q. Okay. Have you ever discussed her job with her

11 when you saw her?

12 A. No.

13 Q. All right. One of the questions you answered yes

14 to and I wanted to follow up a little bit on your

15 thinking as to how you arrived at that answer.

16 And this case will involve, pretty likely, quite

17 a few police officers or law enforcement officers

18 who would testify in court. All right.

19 And the question was that the jurors

20 would be instructed that you are not to give any

21 more weight or less weight to the credibility of

22 the police officer's testimony than you would to

23 any other witness. And you thought that you

24 could follow that instruction and you would find

25 that to be true; is that correct?

1 A. Yes.

2 Q. Tell me about that. Do you think a police  
3 officer is more or less likely to lie on the  
4 stand than any other person would be, or would  
5 they be the same as any other person?

6 A. They would be the same to me.

7 Q. Okay. And why would that be?

8 A. I don't see a difference really --

9 Q. All right.

10 A. -- about people.

11 Q. There's no difference by virtue of their oath of  
12 office or their duty as police?

13 A. Yeah.

14 Q. All right. And to you they are just regular folk  
15 who are doing a job?

16 A. Yes.

17 Q. And so they have all the same strengths and  
18 weaknesses as anyone else?

19 A. Yes.

20 Q. Okay. Do you have any familiarity with the  
21 criminal justice system at all?

22 A. Not really.

23 Q. All right. Did you study it when you were in  
24 high school at all?

25 A. Yeah, a little bit. Law, politics.

1 Q. All right. Are you aware that as Mr. Avery sits  
2 here today he's presumed innocent?

3 A. Yes.

4 Q. All right. And you -- Therefore, if you were  
5 to -- in order to find, for instance, him guilty  
6 of this offense, the State would have to prove,  
7 beyond a reasonable doubt, that he was involved  
8 in the crime for which he is charged?

9 A. Yes.

10 Q. You understand that?

11 A. Yes.

12 Q. All right. And he doesn't have to do anything;  
13 you understand that?

14 A. Yes.

15 Q. All right. Would you expect him to have to prove  
16 something in court?

17 A. No.

18 Q. All right. And why not?

19 A. Because the evidence has to be proved beyond a  
20 reasonable doubt.

21 Q. All right. All right. Does the law require him  
22 to do anything?

23 A. No.

24 Q. All right. And you think you can follow those  
25 rules?

1 A. Yes.

2 Q. All right.

3 ATTORNEY FALLON: I will pass the juror.

4 THE COURT: Mr. Strang.

5 ATTORNEY STRANG: Thank you. I'm having a  
6 little bit of trouble hearing because of the  
7 background noise. So maybe, Mr. Lawrence, if you --  
8 if you could just try to speak up a little bit.

9 MR. LAWRENCE: All right.

10 ATTORNEY STRANG: That would help. Thank  
11 you.

12 **VOIR DIRE EXAMINATION**

13 BY ATTORNEY STRANG:

14 Q. So, I'm Dean Strang, Jerome Buting, Steven Avery.  
15 You probably saw us stand up last Monday in  
16 court. Mr. Buting and I are defending Mr. Avery,  
17 so we're the defense lawyers. And I wanted to  
18 pick up at the very beginning for you, okay. You  
19 told us that you were born in Illinois?

20 A. Yes.

21 Q. How long did you live in Illinois?

22 A. A little less than a year.

23 Q. And then where to?

24 A. To Manitowoc.

25 Q. So, by the time you were just a little bitty --

1 A. Yes.

2 Q. -- kid you were up here? And when you say

3 Manitowoc, you mean the City of Manitowoc?

4 A. Yes.

5 Q. So you spent, basically, your whole life --

6 A. Yes.

7 Q. -- here? How often do you see your aunt or

8 other -- other relatives, if there are any, in

9 Chicago?

10 A. I saw them maybe once every six years. I barely

11 see them.

12 Q. Okay. And were you born in Chicago, or near

13 there, or some --

14 A. In Evanston, Illinois.

15 Q. -- other place in Illinois? In Evanston,

16 Illinois. Okay. And what, I mean sort of just

17 moving up through your life, what were you --

18 what were you good at or interested in at

19 Manitowoc Lutheran?

20 A. Well, could you rephrase that question.

21 Q. What were your favorite subjects or what did you

22 -- what did you like about --

23 A. Music class, I enjoyed, religion class.

24 Q. Mm-hmm. Did you pick up an instrument? Do you

25 play one or more instruments?

- 1 A. I picked up the guitar a little bit.
- 2 Q. When?
- 3 A. I would say maybe six years ago.
- 4 Q. Mm-hmm. So that would have been, like, beginning
- 5 of high school?
- 6 A. Yeah.
- 7 Q. Do you still play?
- 8 A. From time to time.
- 9 Q. And anything else?
- 10 A. Not really.
- 11 Q. So the interest in music, listening, singing,
- 12 playing?
- 13 A. Everything.
- 14 Q. All of it?
- 15 A. I enjoy it, yes.
- 16 Q. And are you a good singer?
- 17 A. I'm okay.
- 18 Q. In other words, were you in choir, or chorus, or
- 19 that kind of thing?
- 20 A. No, I never did that.
- 21 Q. Okay. At high school at least?
- 22 A. Yeah.
- 23 Q. How about academic subjects, what lifted you up
- 24 and what didn't?
- 25 A. I enjoy sciences.

1 Q. Biology, physics?

2 A. Yeah, biology.

3 Q. Okay. What about biology attracted you?

4 A. I don't know. I just enjoyed the teacher and the

5 way he taught it. I enjoyed it.

6 Q. And did you start at Piggly Wiggly while you were

7 still in high school?

8 A. Yes.

9 Q. As a stocker?

10 A. Yes.

11 Q. And do you do that full-time now?

12 A. No, I'm just part-time.

13 Q. What do you do with the rest of your time?

14 A. Um, listen to music. I don't know. Go to

15 concerts, hang out with my friends.

16 Q. What sort of concerts?

17 A. Everything. I listen to every type of music.

18 Q. Or what's the last one you recall going to?

19 A. Spud Monkey in Milwaukee.

20 (Court reporter asked him to repeat the name.)

21 A. Spud Monkey, S-p-u-d.

22 Q. At the place on Farwell?

23 A. In Milwaukee?

24 Q. Yeah.

25 A. It was at the Miramar Theater.

1 Q. At the Miramar, okay. And what -- what -- I'm  
2 sorry. What does part-time mean at Piggly  
3 Wiggly; how many hours?

4 A. Well, they usually have me like 40 hours because  
5 I work pretty hard.

6 Q. But they are still treating you as a part-timer?

7 A. Yeah, because I don't want to work there all my  
8 life. I'm trying to get into welding.

9 Q. Oh, okay. At LTC?

10 A. Yeah, I took a class at LTC.

11 Q. And what sort of welding?

12 A. Every type of welding, tag, wire welding.

13 Q. When you say you are trying get into that, how  
14 are you going about trying to get into welding?

15 A. I help out on my friend's farm once in a while  
16 with their -- I weld random things.

17 Q. Mm-hmm. And then would you be looking to catch  
18 on with a company here in --

19 A. Probably work with my friend. He is thinking  
20 about starting a business in a couple years.

21 Q. Okay. What shift do you tend to work at Piggly  
22 Wiggly, or does it --

23 A. Morning.

24 Q. -- change around? Morning?

25 A. Yes.

1 Q. Which means what?

2 A. Eight to five.

3 Q. Monday through Friday or do you get weekend hours

4 too?

5 A. It varies.

6 Q. They will hold your job, but would you have any

7 income coming in if you were on this jury?

8 A. They said whatever days I'm free I can just call

9 and go in. They said they would pretty much work

10 around me.

11 Q. Okay. But they are not intending to pay you --

12 A. No.

13 Q. -- as if you were working while you are on jury

14 duty?

15 A. No.

16 Q. And can you take the financial hit?

17 A. I think I could handle it.

18 Q. When you say you think you could handle it, do

19 you have some --

20 A. Well, I have bills to pay.

21 Q. -- reservation about that? You have bills to

22 pay?

23 A. Yeah, insurance.

24 Q. Sure. But do you have an idea about how you can

25 manage that?

1 A. Yeah, I have a good amount of money saved up.

2 Q. Okay. The issue on that is really -- just so you  
3 know, the issue is we all think the trial may go  
4 six weeks, but at the end of the trial, whenever  
5 that is, whether that's five or six weeks, or  
6 whatever, at the end of trial the jury gets the  
7 case to deliberate and try to reach a verdict.

8 And there's no way for you or any of us  
9 to know how long that process will take because  
10 it's just until 12 people can agree, if they can  
11 agree, they try to. So there's no way to know  
12 how long that is. And I want to make sure that  
13 you are not going to be in deciding Steven  
14 Avery's fate and worried instead about, you know,  
15 boy, I got bills due that I can't pay.

16 A. I'm not really worried at all.

17 Q. Okay. And, I mean, we're -- I know this is  
18 awkward to be discussing with a stranger, but are  
19 we clear on that?

20 A. Yes.

21 Q. Okay. You said a few minutes ago that the name  
22 Brendan Dassey did not ring a bell with you?

23 A. No.

24 Q. Okay. Have you heard about anybody supposedly  
25 confessing in this case?

1 A. No.

2 Q. Heard anything at all about who's been arrested  
3 or when?

4 A. No.

5 Q. Okay. But there's only one guy sitting here in  
6 the defendant's chair, right?

7 A. Yes.

8 Q. Why would you come in presuming him innocent if  
9 he is here and he's the guy on trial?

10 A. Because we have to prove that it's beyond a  
11 reasonable doubt that he is guilty, so he is  
12 innocent right now.

13 Q. And who's got to prove that?

14 A. Prove that he is guilty?

15 Q. Right.

16 A. These guys.

17 Q. That's true. What do I have to prove?

18 A. That he is innocent or remain -- I don't know.

19 Q. No, you're doing fine.

20 A. He is still innocent; you have to defend that.

21 Q. Yeah, I'm defending him. And, actually, I think  
22 the Judge will tell you that the defense, in a  
23 criminal case, doesn't have to prove anything.  
24 There is no, you know, what lawyers and judges  
25 call burden of proof, on the defendant in a

1                   criminal case. So I'm sure we will take an  
2                   active role in the trial, but we wouldn't have  
3                   to, technically.

4       A. Yeah.

5       Q. We could just rely on, as you say, these guys  
6                   have to prove it. Can you -- Can you honor and  
7                   respect and follow the rules in the system that  
8                   says only one side has to prove anything and the  
9                   other side gets to --

10      A. Oh, yeah.

11      Q. -- sit there?

12      A. Yes.

13      Q. Why shouldn't we have to prove him innocent?

14      A. Because he is innocent until he is proven guilty.

15      Q. How about, you know, the issue -- one of the  
16                   issues at this table is, should Mr. Avery  
17                   testify? And that's tough because if he takes  
18                   the stand and he testifies, you know, people may  
19                   be saying, well, he's the one person in this room  
20                   who's got everything at stake, so of course he's  
21                   going to get up and say he did not do it. But if  
22                   he doesn't get up and testify, people may be  
23                   saying, well, what's he got to hide. If he's  
24                   innocent, why not just get up and tell us he's  
25                   innocent. So you see the problem?

1 A. Yeah.

2 Q. And the way that American courts deal with that  
3 is to say the defendant has a right to testify if  
4 he wants to. And if he testifies, he gets  
5 treated like every other witness; the juror is  
6 supposed to consider him just like everyone else,  
7 you know, weigh and decide whether they believe  
8 him or not.

9                   And if he decides not to testify, that's  
10 his absolute constitutional right. And in that  
11 case, American judges tell juries everywhere in  
12 this country, that the defendant's decision not  
13 to testify is his right and that there's --  
14 that's no evidence of guilt. And, in fact, it  
15 can't even be considered by the jury in deciding  
16 what verdicts to bring back. Are those rules you  
17 can follow?

18 A. Yes.

19 Q. Do they make sense to you?

20 A. Yes.

21 Q. You talked -- You talked a little bit a few  
22 minutes ago, too, about saying, look -- and I'm,  
23 you know, I'm just -- as I heard it, you correct  
24 me if I'm wrong, cops are human like everybody  
25 else. Police officers, you hope they don't lie

1           under oath, but you hope everybody doesn't lie  
2           under oath and police aren't more or less likely  
3           to violate that oath than anyone else; did I  
4           understand you --

5       A. Yes.

6       Q. -- right? Are there things, though, just like a  
7           defendant has a stake in a criminal case, can you  
8           see how the police officers who spend weeks or  
9           months investigating the case, might also develop  
10           a stake in the outcome of that case?

11      A. Depends on their personality. I can't really  
12           tell.

13      Q. Yeah, that's actually a good answer. I mean, is  
14           it just a job or how intense are they; is that  
15           where you are going with that?

16      A. Yeah.

17      Q. But would you at least be open to looking at,  
18           gee, what motivations might a police officer have  
19           to shade his testimony? Even if he doesn't know  
20           he's doing it, you know, just bias kind of  
21           creeping in. Are you open to considering that  
22           kind of ...

23      A. Yeah, I suppose. But I would hope I wouldn't  
24           have to. I would hope I could take him for his  
25           word.

1 Q. Right. I mean, we all hope we can take a witness  
2 for their word, but are you willing to dig a  
3 little deeper if you have to --  
4 A. Yeah.  
5 Q. -- with any witness?  
6 A. Yeah.  
7 Q. I don't mean just police officers; I mean any  
8 witness. Are you willing to dig a little bit --  
9 A. Yeah.  
10 Q. -- to see what -- what might make this witness  
11 tick, what sort of biases they might have?  
12 A. Sure.  
13 Q. At least consider that?  
14 A. Yeah.  
15 Q. Do you think there are circumstances where some  
16 law enforcement officers might find themselves  
17 doing something they otherwise never would do in  
18 terms of, you know, planting evidence, or  
19 misstating what they found, or where they found  
20 it, or -- I don't know, I mean, just sort of  
21 crossing over a line?  
22 A. Could you restate that.  
23 Q. Are there circumstances where a police officer,  
24 like anyone else, might be tempted to do that  
25 kind of thing?

1 A. Yeah, I'm sure.

2 Q. And I don't know whether you will decide they did

3 or didn't or you will even hear evidence one way

4 or the other of that, but if you do, are you open

5 to considering it?

6 A. Yes.

7 Q. In the end, I guess the question is, are you

8 willing to consider all the evidence that you

9 hear, weigh all of it, decide what you believe

10 and make up your mind, based on the evidence?

11 A. Yes.

12 Q. And I guess, you know, we're all lucky, you

13 included, that you come into this not knowing a

14 lot about this case, right?

15 A. Yup.

16 Q. Is there anything at all you do know about this

17 case that bothers you or that just causes you to

18 say, eh?

19 A. Nothing at all.

20 Q. And you said if you wind up on the jury that

21 would be okay with you, as I heard you?

22 A. Yes.

23 Q. Because it will be interesting, be something new.

24 And at the end of the case, though, in addition

25 to being interesting and new and a learning

1                   experience, you would be asked to do about the  
2                   most serious thing we ask citizens to do and  
3                   that's decide whether someone is guilty or not  
4                   guilty of some very serious accusations.

5                   The accusation here starts with a young  
6                   woman being murdered. And I don't know that it's  
7                   interesting to make that decision. How do you  
8                   think you would deal, at age 20, or 21, whenever  
9                   your next birthday is, with that kind of  
10                  responsibility?

11                 A. I suppose it would be a little tough, but it's my  
12                 duty, I guess; I will stick it through.

13                 Q. Have you ever known of someone or, you know, read  
14                 of someone, heard of someone, confessing to a  
15                 crime that he actually did not commit?

16                 A. What do you mean?

17                 Q. Well --

18                 A. Who --

19                 Q. Hmm?

20                 A. Could you restate that.

21                 Q. Have you ever heard of that, of someone doing  
22                 that, confessing to a crime that he really didn't  
23                 do?

24                 A. Not really.

25                 Q. Can you think of any reason someone might do

1           that, admit a crime he didn't commit?

2   A. I don't know why you would do that. I don't  
3       know.

4   Q. Someone who's very young, impressionable and  
5       could be lead around, for example, promised  
6       something or, you know, kind of ...

7   A. I don't know. I don't understand why anyone  
8       would do that.

9   Q. How about someone who was trying to protect  
10      someone else, taking the fall himself?

11   A. I still don't see a way -- a reason why he would  
12      do that.

13   Q. How about -- and I'm not suggesting this -- that  
14      it would be here, but how about someone who's  
15      just flat out crazy, mentally ill?

16   A. Then, I suppose, I guess.

17   Q. If you hear testimony about why human beings  
18      occasionally do confess to something they didn't  
19      do, will you -- will you hear that testimony,  
20      will you consider it?

21   A. Yes.

22   Q. Just like all the other evidence?

23   A. Yes.

24   Q. You liked biology in school and science in  
25      general; if you sit on this jury, are you going

1           to be looking for scientific evidence?

2 A. Depends what it is, probably, maybe.

3 Q. And why would you want scientific evidence as  
4         opposed to, you know, an eyewitness, or a police  
5         officer, or other kinds of evidence?

6 A. I'm looking for every evidence and it's just not  
7         scientific alone.

8 Q. Is there anything special about scientific  
9         evidence that --

10 A. No.

11 Q. -- really, you think, makes it especially  
12         valuable?

13 A. No.

14 Q. If there's -- If there turns out not to be  
15         scientific evidence on certain things that you  
16         would expect, how are you going to react to that?

17 A. Well, depends. I would have to actually be  
18         through it and see what happens.

19 Q. Come at it with an open mind --

20 A. Yes.

21 Q. -- and decide that? Okay.

22                   ATTORNEY STRANG: I think that's it for me.

23                   Thank you.

24                   MR. LAWRENCE: You're welcome.

25                   THE COURT: All right. Mr. Lawrence, the

1 Clerk will escort you from the courtroom at this  
2 time. Excuse me, Mr. Lawrence -- you are right  
3 that's the easiest way to get out.

4 (Wherein the juror was excused.)

5 THE COURT: Any motion from either party?

6 ATTORNEY STRANG: No, not on Mr. Lawrence.  
7 I think -- Are we approaching, next, one of the  
8 jurors the parties had agreed --

9 THE COURT: The next one I have got listed  
10 is Juror 35, August Schuette.

11 ATTORNEY STRANG: Oh, okay, then we're one  
12 away.

13 THE COURT: So we'll have Mr. Schuette come  
14 in and Mr. Lawrence is in.

15 ATTORNEY KRATZ: Just to alert you,  
16 Judge, I will be questioning Mr. Schuette.

17 THE COURT: Very well.

18 ATTORNEY FALLON: How many jurors do we  
19 have left back there?

20 THE COURT: Um -- Mr. Schuette, please  
21 raise your right hand and the clerk will administer  
22 the oath to you.

23 (Juror sworn.)

24 THE CLERK: Please be seated.

25 THE COURT: Mr. Schuette, you have already

1 completed a written questionnaire in this case.

2 MR. SCHUETTE: Right.

3 THE COURT: This afternoon we're moving on  
4 to the next phase of the jury selection which is the  
5 voir dire part of the process. In a minute the  
6 attorneys will each be given an opportunity to ask  
7 you some questions that are follow-ups to the  
8 information you provided in your questionnaire.

9 Before we get to that, I can inform you  
10 that the jurors selected to hear this case will  
11 not be sequestered; that is, at the end of trial  
12 each day the jurors will be brought back to  
13 Manitowoc and permitted to go home.

14 The rule that the Court has already  
15 imposed, prohibiting the jurors from having any  
16 exposure to any news media accounts of this case,  
17 will continue. And the jurors are also  
18 prohibited from discussing the case with anyone  
19 until the case is over.

20 Although today's proceedings are open to  
21 the public, during voir dire we do not permit  
22 cameras in the courtroom and the members of the  
23 media are prohibited from identifying any of the  
24 jurors by name in their news reports.

25 You should also be aware, that in the

1           event you are selected to serve on the jury,  
2           cameras are not permitted to identify the jurors  
3           in any way during the course of the trial.

4           If you are selected to remain on the  
5           jury panel after today's questioning, you will  
6           receive a telephone call in the next day or two  
7           letting you know when to report back to court.

8           At this time, then, I will permit the  
9           attorneys to ask their questions. Mr. Kratz, you  
10          may proceed.

11           ATTORNEY KRATZ: Thank you, Judge.

12           **VOIR DIRE EXAMINATION**

13          BY ATTORNEY KRATZ:

14          Q.       Mr. Schuette, good afternoon. My name is Ken  
15           Kratz, I'm the Calumet County District Attorney.  
16           I'm serving as a Special Prosecutor in this case.  
17           Joining me this afternoon is Tom Fallon.  
18           Mr. Fallon is an Assistant Attorney General. He  
19           is also a Special Prosecutor on this case. And  
20           we will not only be asking you questions this  
21           afternoon, but we'll be presenting the case  
22           together, if you are selected to serve on that.

23           This part of the jury selection process  
24           is meant to follow up individually with questions  
25           that you have answered on a questionnaire. Let

1           me assure you that it's not meant to  
2           unnecessarily pry into your personal life or to  
3           embarrass you. We're simply trying to get the  
4           most impartial jury that we can and so there are  
5           a couple follow-up questions that we do need to  
6           ask of you.

7                 Let me first start, Mr. Schuette, with  
8           your prior employment. I understand that you are  
9           a retired gentleman, but had served and had  
10           worked, what looks like most of your life, in the  
11           retail store business; is that correct?

12          A. That's correct.

13          Q. You were president and manager of a department  
14           store; was that here in Manitowoc?

15          A. Yes, it was, sir.

16          Q. Could you describe the nature of that store,  
17           please; what kind of goods was it that you sold?

18          A. It was a general department store, established as  
19           a family department store, established in 1849, a  
20           long time. And our family ran it for about 145  
21           years. And it sold just a general classification  
22           of merchandise: Men's and women's wear, home  
23           furnishings, appliances and, at one time,  
24           groceries.

25          Q. When was it, sir, that you retired from that

1 business?

2 A. 1992.

3 Q. And upon your retirement, was the business sold  
4 or was it carried on by other family members or  
5 other concerns?

6 A. The business was acquired by my stepson-in-law,  
7 Peter Burbach, and he ran it for two years and  
8 then he closed it in 1994.

9 Q. I understand also from your questionnaire that  
10 you have some higher education including college  
11 and graduate school; is that correct?

12 A. Correct.

13 Q. The area of graduate studies, was that in  
14 business and management or was that in some other  
15 kind of area?

16 A. It was a work study course at the City College in  
17 New York. I worked in a department store and  
18 went to classes.

19 Q. All right. So what would now be called an  
20 internship or something like that --

21 A. Yes.

22 Q. -- but you also received some kind of educational  
23 credit for that; is that right?

24 A. Correct. Work and educational credit.

25 Q. All right. Also indicates in your questionnaire

1           that you served in our armed forces; is that  
2           right?

3       A. That's correct.

4       Q. You served in Germany at least through 1946 and  
5           attained, as I understand it, the rank of  
6           sergeant?

7       A. Correct.

8       Q. As a sergeant, I believe you were stationed in  
9           Germany at the time?

10      A. Right.

11      Q. Did that require you to have supervisory  
12           responsibility over other soldiers?

13      A. Yes, I obtained the rank of sergeant and I had, I  
14           think, six under men -- six other men that worked  
15           with me. We were in charge of some of the arm --  
16           armors, some of the weapons and ammunition and  
17           that type of thing and several ammunition dumps  
18           in Berlin.

19      Q. As a member of the armed services, Mr. Schuette,  
20           did you ever have the situation of being involved  
21           in any investigative proceedings or court martial  
22           proceedings or anything where you may have either  
23           been called upon as a witness or some other  
24           manner participated in those kind of proceedings?

25      A. No, I did not.

1 Q. Have you ever been a witness in a case before in  
2 a criminal or a civil case in court?

3 A. I have not.

4 Q. I note from your questionnaire that you are  
5 pretty active in obtaining information. Let me  
6 ask you, Mr. Schuette, where do you think you  
7 obtain most of your news from; would it be the  
8 newspaper, or television, or the internet, or  
9 some combination?

10 A. Newspaper, primarily, and television news  
11 reports. I also -- we also follow that.

12 Q. Do you subscribe to the local newspaper here?

13 A. Correct, I do.

14 Q. And are you a regular reader of that?

15 A. I feel I am, yes.

16 Q. And do you watch your television, at least the  
17 news portion of television, regularly?

18 A. Generally, yes, I do.

19 Q. With that having been said, have you some  
20 background information of this case that is the  
21 reason that you have been called in today?

22 A. Well, I think anybody who does read the  
23 newspapers, local papers, and watches the  
24 television stations certainly has to have some  
25 feeling about news in general coming out of this

1                   community.

2 Q. Right.

3 A. So I certainly have -- I wouldn't say I have  
4                   intently watched or read about this case, but I  
5                   certainly have done some. I have some awareness  
6                   of it.

7 Q. Let me go back about 15 months, to November of  
8                   2005; do you remember some of the early reports  
9                   of a young photographer, a young woman, Ms  
10                  Halbach, being missing, that there was a search  
11                  for her and some law enforcement efforts to find  
12                  her? Do you remember those stories?

13 A. Yes. I was aware of some of them, yes.

14 Q. Were you also made aware, sometime thereafter, of  
15                  Mr. Steven Avery's involvement and eventually his  
16                  arrest or being implicated in Ms Halbach's  
17                  disappearance?

18 A. Yes, I would have been aware of that.

19 Q. Let me ask you, Mr. Schuette, after being aware  
20                  early on in this case, at any time, did you form  
21                  an opinion as to Mr. Avery's guilt or innocence,  
22                  or are you the kind of person, generally and  
23                  specifically in this case, did you reserve  
24                  judgment on that to wait to hear more about the  
25                  case?

1 A. I would be inclined to want to hear more about  
2 it.

3 Q. Now, I asked kind of a two part question; I  
4 apologize for that. Is that generally your  
5 philosophy; that is, about things that you read  
6 in not only the newspaper or hear on television,  
7 but any information that you might glean from  
8 some source, you are the kind of person that will  
9 want to check into the details yourself before  
10 forming an opinion about them?

11 A. I would feel I would. I think in my business  
12 career I was not quick to jump to conclusion. I  
13 think I liked to -- I'm not an impulsive type  
14 person, so I think I'm inclined to try and get  
15 all the facts in business or in other news.

16 Q. Now, running a business for, I think you said 45  
17 years, if I'm --

18 A. Worked there 45, ran it 35.

19 Q. If I'm reading this correctly, that required, I  
20 suspect, a great deal of not only hard work in  
21 the amount of hours, but also attention to  
22 detail. Would that be a fair assumption on my  
23 part?

24 A. Correct, yes.

25 Q. How many employees, at any given time, did you

1 have under you?

2 A. Oh, full and part time, 40, approximately 40, 30

3 or 40.

4 Q. And I suspect by the nature of the retail

5 business, some of those individuals came and

6 went; in other words, it wasn't the same 40

7 people, there were --

8 A. No, it wasn't.

9 Q. -- there were individuals in retail sales that

10 would move on to other employment --

11 A. Correct.

12 Q. -- is that right? I note in your questionnaire

13 that you are familiar with the internet. Let me

14 ask you if you're an active user of the internet

15 and how often and what kinds of purposes you

16 might use the computer for?

17 A. I'm really not too active in the internet. I do

18 have a computer. I do have availability to the

19 internet. Seems though I use my computer mainly

20 for word processing, spread sheets, email. I

21 really don't delve into the internet too much

22 except maybe for informational purposes.

23 Q. All right.

24 A. Not news necessarily. Not news but ...

25 Q. I have to ask, Mr. Schuette, the spread sheets,

1           data basis or things like that, are you still  
2           employed now or what -- what is it that you are  
3           making data basis of at this point?

4       A. Data spread sheets and letter writing, that type  
5           of thing.

6       Q. All right.

7       A. And I use it mainly for tax information,  
8           checkbook information, that type of thing.

9       Q. I understand. All right.

10      A. I don't really --

11      Q. So you keep some of your more detailed records on  
12           the computer.

13      A. Sorry.

14      Q. I note from your response that you have many  
15           children, all of which, if I read correctly, have  
16           either college or advanced degrees. One of them,  
17           it looks like is in the radio or media business;  
18           am I reading that correctly?

19      A. Correct.

20      Q. Can you tell me what that child does and where  
21           they're -- where they're employed?

22      A. Yes, he is a stepson. I have a second marriage.  
23           My wife was a widow and I was a widower. We have  
24           been married for 26 years. Her oldest child,  
25           David Kollath (phonetic) is a general manager of

1           a public radio station in Kenosha, Wisconsin.

2   Q. All right. Have you and your stepson either  
3       discussed this case, specifically, or do you  
4       discuss the media business, generally, with him?

5   A. No, we really don't. I don't recall that we have  
6       discussed this case. I know we have not recently  
7       and I don't even recall if he might have casually  
8       mentioned it a year, year and a half ago. And we  
9       don't see David that often, so we don't discuss  
10      the radio business.

11   Q. All right. I understand. Being a very long time  
12      member of the Manitowoc community, have you  
13      formed an opinion about the Sheriff's Department  
14      and what kind of job you feel that the Sheriff's  
15      Department here in Manitowoc is doing? I guess,  
16      generally, in fighting crime or just in their  
17      day-to-day operations; have you formed such an  
18      opinion?

19   A. Well, my opinion would be positive. As far as I  
20      know, I think they are doing a commendable job.  
21      I'm not aware that they are doing anything but  
22      that, so it would be positive.

23   Q. You may, in fact, if you are called to testify  
24      (sic) in this case, you will hear from law  
25      enforcement officers who will be asked to

1           testify. Let me ask you, Mr. Schuette, since law  
2 enforcement officers are people like -- like  
3 anybody else and subjected to the same biases or  
4 prejudices as anybody else; are you able, despite  
5 your positive general reaction towards officers,  
6 to consider a law enforcement officer's testimony  
7 like that of any other witness?

8 A. Like what?

9 Q. Like that of any other witness that might  
10 testify. Are you able to consider their  
11 testimony and not give them more credit or less  
12 credit just because they are a police officer?

13 A. Well, I think I would accept whatever they say in  
14 a general mode. I respect the police officers.  
15 I think that they should be thorough and  
16 investigate things well, so I would certainly  
17 respect what they have to say.

18 Q. Is there anything that you have learned from this  
19 case, specifically, that you have a question  
20 either about the nature of the investigation, the  
21 thoroughness of it, or anything that's come to  
22 light, that as you sit here today you think that  
23 we should know going into this case?

24 A. No, I don't.

25 Q. Mr. Schuette, have you ever used or are you aware

1                   of a publication known as Auto Trader Magazine?

2   A. No, I'm not.

3   Q. Have you ever heard of a project in the State of  
4       Wisconsin which is called Project Innocence, a  
5       project which is -- or has at least as it's  
6       primary goal, the exoneration of those  
7       individuals who have been wrongfully accused or  
8       convicted?

9   A. Yes, I am aware of that program.

10   Q. Do you believe that is a positive, that is a good  
11      program?

12   A. I would think that would be positive, yes.

13   Q. Are you aware of Mr. Avery's past connection with  
14      Project Innocence?

15   A. Correct, I am.

16   Q. Can you tell me what you recall of Mr. Avery --  
17       and not just the Project Innocence, but what you  
18       may know of his past, generally, that may help us  
19       in some of our future questions?

20   A. Well, I'm aware of his conviction and a prior  
21       offense. I'm aware of the fact that he served a  
22       substantial amount of time in prison. And I'm  
23       aware that Project Innocence pursued this and he  
24       was released from prison; it was determined  
25       another person committed the crime for which

1           Steven Avery was convicted.

2   Q.   And he was exonerated, that is, he was freed as a  
3           result of --

4   A.   Correct.

5   Q.   -- of that project?

6   A.   I'm aware of that, yes.

7   Q.   Were you aware of the nature of the exoneration;  
8           that is, it was based upon DNA or scientific  
9           evidence?

10   A.   Yes, I think I was aware of that. That was the  
11           way in which he was exonerated.

12   Q.   I'm going to ask you just generally,  
13           Mr. Schuette, are you a believer in the sciences,  
14           specifically in DNA evidence, and from what you  
15           have heard or read, do you believe that to be an  
16           accurate form of identification, especially in  
17           criminal cases?

18   A.   From what I understand, yes. I am aware of that  
19           and seems -- seems as though it is -- is a true  
20           scientific project.

21   Q.   The last question I have of you, Mr. Schuette, is  
22           as you have thought about sitting on this case,  
23           as you have thought about one of the 12 members  
24           of your community that may have to sit in  
25           judgment of Mr. Avery; do you believe that would

1           be a positive experience for you, individually,  
2           or is that something that you would not be  
3           looking forward to?

4       A. I'm sure it would be a positive experience. I  
5           can't honestly say I would look forward to it,  
6           but in the event that I would be chosen. I think  
7           I could render a fair and carefully deliberate  
8           reasoning to arrive at whatever result would be  
9           arrived at.

10      Q. And you would be willing to follow whatever  
11           instructions the Judge may have on the law in  
12           this case?

13      A. Yes, I would.

14                   ATTORNEY KRATZ: That's all the questions I  
15                   have of this prospective juror. Thank you, Judge.

16                   THE COURT: Mr. Buting.

17                   MR. BUTING: Thank you, Judge.

18                   **VOIR DIRE EXAMINATION**

19           BY MR. BUTING:

20      Q. Good afternoon, Mr. Schuette. My name is Jerome  
21           Buting. This is Dean Strang. And this is,  
22           obviously, Steven Avery. And you recognize that  
23           we are representing him today?

24      A. Correct.

25      Q. Okay. I have some questions about some things

1                   that Mr. Kratz hasn't talked about. And I also  
2                   have some follow-up on some things that he has.  
3                   Okay.

4                   You have obviously been a member of this  
5                   community a long time. And as president of a  
6                   department store -- I apologize, but I'm not from  
7                   here, so I'm not familiar with the store -- but  
8                   as a result of that position in the community,  
9                   were you on leadership councils or Chambers of  
10                  Commerce, or things of that nature?

11                 A. Yes. I was involved with a number of  
12                 organizations, yes.

13                 Q. Could you just tell me what those were, in  
14                 leadership positions?

15                 A. Well, the Chamber of Commerce, I was on the Board  
16                 of Directors; Junior Chamber of Commerce, I was  
17                 on the Board of Directors. There's a foundation  
18                 called the West Foundation of which I was the  
19                 vice president. I was involved in the Manitowoc  
20                 County Historical Society on the Board of  
21                 Directors.

22                 I'm trying to think if there were any  
23                 more, but ... I have been a downtown  
24                 Manitowoc -- Retail Trade Commission of Downtown  
25                 Manitowoc, Chamber of Commerce. I've just been

1           pretty much involved with a lot of the community  
2           affairs. I'm on the Rotary Club right now.

3 Q. You are on the Rotary Club?

4 A. I'm a Rotarian, correct.

5 Q. And do you attend regularly, what, once a month?

6 A. Well, hopefully, weekly.

7 Q. Once a week, okay.

8 A. It's a weekly meeting, yes.

9 Q. Okay. And in that context, do you -- do you ever  
10          hear people talking about this case?

11 A. On occasion but, you know, I don't hear a lot of  
12          it. I suppose there will be more now. But, no,  
13          I do not hear a lot of that discussed.

14 Q. Okay. You still play tennis?

15 A. I still play tennis.

16 Q. Good for you. And you mention volunteer work;  
17          what kind of volunteer work do you do?

18 A. I do Meals-on-Wheels --

19 Q. Okay.

20 A. -- too. And I volunteer at the Historical  
21          Society in their building. And they have a very  
22          nice historical village out in the country.  
23                 I help transport some people who need  
24          some help, some stroke victims, mainly stroke  
25          victims, who need to get to an exercise place.

1                   I used to help an elderly gentleman with  
2                   most of his grocery shopping and doctors and that  
3                   type of thing. He is no longer with us. But I  
4                   do that -- that type of volunteer work.

5 Q. So it sounds like you keep pretty busy?

6 A. I keep quite busy.

7 Q. And do you also travel out of town for long  
8                   periods of time or are you primarily here year  
9                   round?

10 A. We have a small place up in Door County so  
11                   summers, long weekends we spend up there.

12 Q. Okay.

13 A. We no longer make long travel trips out of the  
14                   state or out of the country. We did at one time,  
15                   but not too much any more. We kind of stick  
16                   around home.

17 Q. Okay. You don't try and go some place warmer in  
18                   the winter?

19 A. Oh, I love Manitowoc. I love blowing snow.

20 Q. Okay. Now, you have six children or step  
21                   children?

22 A. Correct.

23 Q. Grandchildren?

24 A. Ten.

25 Q. Ten, okay. And granddaughters? All boys or

1           girls?

2       A. Let's see, I should know. Two granddaughters  
3           and -- no, three granddaughters. So would be  
4           seven grandsons.

5       Q. Okay. And what's the range of ages from the --  
6           of all your grandchildren?

7       A. The oldest is -- must be 24 and the youngest is  
8           seven.

9       Q. Okay. And what age are your granddaughters?

10      A. 16, 14, and 12.

11      Q. Okay. So not in the middle 20's, not close to --

12      A. No.

13      Q. -- Teresa Halbach's age or anything of that sort?

14      A. Correct.

15      Q. Okay. Did -- When you heard about this case, did  
16           you identify it with your granddaughters at all,  
17           what would it be like if this happened to my  
18           granddaughters, anything of that nature?

19      A. No, I did not.

20      Q. In your questionnaire, you mention -- Well, let  
21           me get to that in a second. Sounds like you keep  
22           pretty current on all the news from a number of  
23           different sources, right?

24      A. I try to.

25      Q. Do you have an opinion about how accurate the

1 media is in reporting on, particularly, criminal  
2 cases?

3 A. Sometimes I feel that they don't get the whole  
4 story. I'm sure they aren't really complete in  
5 all of the facts. I feel -- I think they do the  
6 best they can and sometimes the facts aren't  
7 really easily available and maybe they shortcut  
8 some of them.

9 Q. Do you find yourself watching the local news more  
10 than the cable, like CNN or Fox news outlets, or  
11 do you watch those too?

12 A. We watch those also. We pretty much watch the  
13 local news, Channel 2, or 5. You know, the 5  
14 clock news, or 6 o'clock news, or whatever fits  
15 our time schedule.

16 Q. Do you tend to watch a particular programs in the  
17 evening like, you know, the Bill O'Reilly show,  
18 or Larry King, or any of those kinds of things?

19 A. We watch some of those, Reilly or Larry king.

20 Q. Anyone that's a particular favorite?

21 A. Not really. I think as far as Larry King is  
22 concerned, depends on who he's having on.  
23 Sometimes it's interesting information, sometimes  
24 it's pretty boring, so we skip around.

25 Q. And how about radio news; do you listen to the

1           radio much?

2       A. Probably WOMT, the local news station, maybe at  
3           the early -- the early broadcast, the 7 a.m.  
4           broadcast.

5       Q. Now, does that -- that station does have some  
6           call in shows, doesn't it?

7       A. Sure.

8       Q. Do you -- Have you ever called into any of the  
9           radio stations?

10      A. No, I have not. I don't listen to those too  
11           much.

12      Q. Now, you have been in this community for ...

13      A. All my life.

14      Q. All your life.

15      A. Right.

16      Q. And you have never had jury duty before?

17      A. I have not, no.

18      Q. You ever talk to the jury clerk about that?

19      A. No, I have not.

20      Q. How that ever happened?

21      A. No, my wife has been called four times.

22      Q. Has she really?

23      A. Yeah.

24      Q. Okay. Has she ever served?

25      A. On one case, I believe.

1 Q. Speaking of your wife, you mention her, that's  
2 Shirley, right?

3 A. Correct.

4 Q. Okay. That -- One of the questions we ask,  
5 No. 41, was whether you have talked with any  
6 people, at length, about this particular case and  
7 you said, yes, your spouse.

8 A. Mm-hmm.

9 Q. What sort of things have you talked about or what  
10 have you talked with her about?

11 A. Well, I think just a general opinion about the  
12 whole situation. And I would think it's pretty  
13 hard for anybody who keeps a little bit abreast  
14 of the news here to overlook this whole case. I  
15 would think --

16 Q. Sure.

17 A. -- it would have to be. And so just, you know,  
18 maybe what -- what happened today or when the  
19 news comes on, we might casually discuss it.

20 Q. Mm-hmm. And I don't mean to imply there's  
21 anything at all wrong with talking to your spouse  
22 about it.

23 A. No, I'm sure it's pretty normal for --

24 Q. Sure.

25 A. It would be a little hard for somebody not to

1 talk.

2 Q. Sure. Especially something like this.

3 A. Sure.

4 Q. But, obviously, I assume you probably respect  
5 your spouse's opinion on things as well, right?

6 A. In most cases, yes.

7 Q. Not necessarily all, but ...

8 A. Correct, not all.

9 Q. Does she have a particular opinion about whether  
10 or not Mr. Avery is guilty or innocent?

11 A. Well, for some reason she kind of questions his  
12 guilt.

13 Q. Okay.

14 A. She just ...

15 Q. And does she -- Have you talked with her further  
16 about that to see if you agree or disagree with  
17 those doubts that she still has?

18 A. No, not really. This is her opinion. She just  
19 doesn't feel that she's convinced that this is a  
20 guilty situation.

21 Q. Okay. And what about you, do you have any?

22 A. I don't -- I don't strong -- At this point, I  
23 think as I mentioned, I don't strongly disagree  
24 with her. I think there are probably a lot of  
25 questions to be answered. And so I'm not totally

1           convinced that the case has been presented  
2           totally. And I think if I served on the jury I  
3           would like to see -- and I'm sure both sides  
4           would be presented.

5 Q. Mm-hmm. And you --

6 A. So I'm not adamant as to what -- what the guilt  
7       or not, innocence is.

8 Q. So you understand that at this point Mr. Avery is  
9       presumed innocent, though, right?

10 A. Absolutely.

11 Q. And despite all the -- Would it be fair to say  
12      that the media presentation that you have seen,  
13      you have seen a lot of it, has skewed more  
14      towards making him look guilty?

15 A. Probably, yes.

16 Q. Okay. And despite all of that, do you think that  
17      you can still presume him innocent?

18 A. I feel I could, yes.

19 Q. Is that because you realize they are probably not  
20      giving you the whole story?

21 A. Correct.

22 Q. Okay. And I recognize that -- Well, what's the  
23      most recent thing you can recall hearing reported  
24      on the news about this particular case?

25 A. I really haven't been following it much in the

1           last two or three weeks as requested by the  
2           Judge. But very frankly, it's pretty hard to  
3           avoid headlines.

4       Q.    Sure.

5       A.    Sunday's Herald-Times had a very big section  
6           about the whole case and chronological dates. I  
7           did not read it, but I did not miss the headline.

8       Q.    Some -- I have discovered some restrooms that you  
9           go into, you're standing there and you can't miss  
10          it, it's posted on the wall.

11      A.    That could be, that's right. It's pretty hard,  
12           or the 5 o'clock news on Channel 2, it's our lead  
13          story is and the name Avery comes up. And  
14          generally I will either leave the room or turn it  
15          off or something. And I'm not a purist, but I'm  
16          trying to at least follow the Judge's  
17          recommendations. I'm trying to think what the  
18          most recent thing would be. Last month.

19      Q.    Do you recall discussions about a blood vial?

20      A.    Yes. Yes. There was something about that, I  
21          didn't pursue the whole thing. It was something  
22          about DNA evidence and there was a blood vial  
23          some place. It was used -- Well, I think it was  
24          used to exonerate him from his original  
25          conviction.

1 Q. And that it was located in the Clerk's Office?

2 A. Yeah, I'm not sure quite how that whole thing  
3 happened, how they found it.

4 Q. Now, I'm going to get back to something on that  
5 in a minute. But before I forget, I want to ask  
6 you, you mentioned your awareness that Mr. Avery  
7 was wrongly convicted --

8 A. Yes.

9 Q. -- and spent a substantial period of time in  
10 prison?

11 A. Correct.

12 Q. And, in fact, it was determined that another  
13 person had committed that crime?

14 A. Yes.

15 Q. And do you have any doubts of your own about  
16 whether or not that's true, that he really was  
17 wrongly committed?

18 A. No.

19 Q. Convicted?

20 A. I did not have any doubt about that.

21 Q. And how do you feel about -- or how did you feel  
22 when you learned that somebody from your  
23 community in Manitowoc, where you have grown up  
24 all your life, had been wrongly convicted?

25 A. It's a tragedy. It's a shame. What else can you

1 say.

2 Q. Sure.

3 A. A man's -- A young man's -- 20 years of his life  
4 was wasted.

5 Q. Do you -- You are also aware a civil lawsuit was  
6 filed?

7 A. Yes, I am.

8 Q. Are you aware of the individuals that were  
9 directly accused in the lawsuit of misconduct  
10 leading to his wrongful conviction?

11 A. Not all of them. I remember the sheriff, Tom  
12 Kocourek, I think was involved in that. I'm not  
13 sure, I don't know who the district attorney was  
14 at that time, so I suppose he was.

15 Q. Well, I noticed in your questionnaire you  
16 mentioned when we asked about people that -- long  
17 list of names that you might know, you mentioned  
18 Thomas Kocourek.

19 A. Correct.

20 Q. And how do you know him?

21 A. Very casually.

22 Q. Okay.

23 A. The business I was in we met -- maybe I sold Tom  
24 a pair of socks or a suit or something sometime.  
25 So I have known him on a very casual basis, a

1           name recognition and --

2 Q.       Okay. I see.

3 A.       -- that's about all.

4 Q.       So no personal knowledge of him?

5 A.       Not at all. No.

6 Q.       Did you ever talk to him about the Steven Avery  
7           wrongful conviction?

8 A.       No.

9 Q.       Nothing of that sort?

10 A.       No, not at all.

11 Q.       And you also mentioned Curt Drumm.

12 A.       Mm-hmm.

13 Q.       How do you know him?

14 A.       He's been a friend of the family. I think he's  
15           my daughter's age. I have known him since  
16           kindergarten and I have known his father and  
17           mother for a long time.

18 Q.       Now, if he were to testify -- and I don't know  
19           that he will -- You recognize a lot of these  
20           people on this list are not necessarily all going  
21           to testify, thankfully, but would you be able to  
22           be objective and judge what he would testify  
23           about?

24 A.       You mean Curt Drumm?

25 Q.       Yes.

1 A. Yes, I certainly could accept his forthrightness  
2 and honesty, yes.

3 Q. Well, could you also judge him like any other  
4 witness, or would you -- would you be maybe too  
5 sympathetic towards him because it's somebody you  
6 know, that you would assume he is not going to  
7 lie, I won't go beyond that?

8 A. No, I don't think I would have any personal  
9 interest in his testimony or consider him  
10 differently than any other witness.

11 Q. Okay. And I assume that applies to Thomas  
12 Kocourek too?

13 A. Correct.

14 Q. Now, one of the things Mr. Kratz asked you about  
15 was police officers and whether you would be  
16 willing to consider their testimony as witnesses  
17 like any other witness; do you recall that?

18 A. Yes, I do.

19 Q. Do you think, though, that because police  
20 officers are, you know, they -- they are sworn to  
21 serve and protect, enforce the law, that if they  
22 were to take the witness stand and take the oath  
23 that they, therefore, would be more likely to  
24 tell the truth than an ordinary citizen, or would  
25 it be the same?

1 A. Hmm. Well, I would hope more likely. I would  
2 hope.

3 Q. Okay. But, now, if the Judge gave you an  
4 instruction that said, despite what you may hope,  
5 they are the same as any other witness and they  
6 are human beings, that you must judge their  
7 credibility, their truthfulness or  
8 non-truthfulness the same as any other witness,  
9 would you be able to do that?

10 A. Oh, sure.

11 Q. Okay. You did say, I think -- and maybe I just  
12 misunderstood you -- you said, I think I would  
13 respect what they have to say. But if you got  
14 that kind of an instruction from the Judge, I  
15 assume you would be able to also question what  
16 they say, just as any other witness; is that  
17 right or not? Or would you just respect and  
18 accept what they say, unquestionably?

19 A. Well, I suppose if what they respond, their  
20 response seems to be logical, I would accept it  
21 as being truthful. But, no, I would certainly --  
22 I don't know if I would give a police officer any  
23 more credibility than another witness.

24 Q. Okay. Because as a juror, if you're selected,  
25 you will have to do that, you will have to -- you

1       may hear -- I'm not saying necessarily police  
2       officers, but you may hear different things from  
3       different witnesses. And you may have to judge,  
4       which one am I going to believe. And it could be  
5       police officers, it may not be, but that's a task  
6       you may find yourself having to do.

7       A. I would understand that, yes.

8       Q. Okay. You also said that you expected police to  
9       be thorough, right?

10      A. In general, I would expect them to, yes.

11      Q. Okay. And if you hear evidence that questions or  
12       challenges that, challenges whether or not the  
13       police were very thorough in this case in looking  
14       at all of the evidence and all of the options and  
15       possibilities, would you be able to consider  
16       that?

17      A. Sure. Yes.

18      Q. Do you think the police sometimes get so engaged,  
19       personally, in an investigation that they may  
20       tend to go down one tunnel and, you know, focus  
21       on one area rather than being as objective as  
22       possible and covering all the bases? Do you  
23       think that's possible?

24      A. I think if I would get contrary information that  
25       seems logical I would have to weigh this and

1 accept it, if that would be the case.

2 Q. Okay. I appreciate that. And if you also heard  
3 evidence or reason to think that maybe the police  
4 went even farther in this case and crossed the  
5 line and, you know, were doing things that were  
6 improper and possibly even illegal; would you be  
7 able to consider that?

8 A. I would be able to, if the evidence so indicates,  
9 yes.

10 Q. Now, since you -- I don't remember if -- No, I  
11 don't think Mr. Kratz did ask you about this.  
12 You talked about the initial sort of flood of  
13 information when Teresa Halbach was missing and  
14 then Mr. Avery was arrested; do you also, though,  
15 recall the whole Brendan Dassey aspect of the  
16 case?

17 A. I'm aware of some of the media coverage of him,  
18 yes.

19 Q. Okay. Did you see the -- any of the press  
20 conferences when those charges were brought --

21 A. No, I did not.

22 Q. -- back in March? Okay.

23 A. No.

24 Q. Can you just tell us what you recall hearing  
25 about Brendan Dassey's involvement in the matter?

1 A. My understanding is that Brendan Dassey is Steven  
2 Avery's nephew. And it must have been October  
3 31st, or November 1st, or something, he  
4 approached Steven Avery's cabin, home, whatever  
5 it was, and came into the property. And Teresa  
6 Halbach was there. And his uncle -- I did not  
7 get all the details, but for some reason I think  
8 there was a sexual assault that took place. And  
9 after that she was murdered. This is all the  
10 information that I understand. And the body  
11 disposed of.

12 Q. Okay. And did you also hear -- Well, let me ask  
13 you this, what if -- I assume that you would  
14 consider that pretty damning evidence for  
15 Mr. Avery, right? Against Mr. Avery?

16 A. If this in fact happened, yes, I certainly would  
17 have to.

18 Q. Well, what if the State never called Brendan  
19 Dassey to the trial and you never heard that  
20 story from him, would you be able to put that out  
21 of your mind and focus just on what evidence they  
22 do present?

23 A. I think I would. As I understand, if we are  
24 instructed to be objective in our observation and  
25 observe and use only the evidence presented, I

1 think that's what would have to be decided.

2 Q. So you wouldn't assume necessarily that maybe  
3 that there is other evidence out there and maybe  
4 that is what happened but they just are not  
5 telling me; you wouldn't -- you wouldn't look at  
6 it that way?

7 A. I think as a jury you have to base your  
8 conclusions on the evidence presented.

9 Q. Okay.

10 A. And I think I would do that.

11 Q. Okay. Hard as it may be, you think you could?

12 A. Yes, I think I could.

13 Q. Okay. Did -- Do you also recall, then, that --  
14 that Brendan Dassey later recanted that  
15 confession, that is, took it back?

16 A. Yes, I'm aware of that, correct.

17 Q. And were you aware of any -- Well, strike that.  
18 Can you think of any reasons why somebody would  
19 falsely confess, confess to something -- admit  
20 that they did something like this when they  
21 really didn't?

22 A. I can't think of any reason, but it seems as  
23 though I understand that there are some rather  
24 severe interrogation procedures sometimes done by  
25 investigators. I don't know if a person could be

1 coerced into something like this or not.

2 Q. Okay. That's something that you would be open to  
3 considering, though, if it -- if you did hear  
4 from Mr. Dassey, or young Brendan Dassey; is that  
5 right?

6 A. I think I could be open to do that, sure.

7 Q. Would you also consider whether or not any other  
8 evidence corroborated a story like that, physical  
9 evidence, or lack of physical evidence; is that  
10 something you would consider?

11 A. The story of Brendan Dassey's involvement?

12 Q. Yes.

13 A. If there was other evidence, I would certainly  
14 consider it.

15 Q. And if there wasn't evidence that would  
16 corroborate it, in fact would tend not to?

17 A. That has to be considered, I would assume, yes.

18 Q. Yes. Well, if you have never been to a trial  
19 before -- I know you have never been on a jury,  
20 but have you ever sat through a trial before --

21 A. No, I have not.

22 Q. -- as a spectator? Do you ever watch Court TV?

23 A. No, I don't.

24 Q. Well, you may or may not know, but a defendant  
25 has a constitutional right not to testify in

1           their own case.

2       A. I'm aware of that, yes.

3       Q. Okay. And a defense attorney always has sort of  
4           a difficult decision to make, which is whether or  
5           not they should call the defendant in the trial,  
6           whether they should testify or not testify.

7           Because there's always a concern that if a  
8           defendant does testify and takes the witness  
9           stand, that a jury may not believe him anyway  
10           because they will think, well, he's the person  
11           with the most at stake, why should we believe  
12           him, right?

13      A. Correct.

14      Q. On the other hand, if they -- if he doesn't  
15           testify, then there's concern that some jurors  
16           may think, well, what's he hiding; why doesn't he  
17           tell his side of the story; we want to hear both  
18           sides. What about you; do you -- would you have  
19           any concerns like that?

20      A. I don't think so. I guess I could understand  
21           where, as you pointed out, a defendant would have  
22           a hard time being very forthright about the  
23           situation. I would think it would be difficult  
24           in these cases for them to testify.

25      Q. By forthright, you mean convincing?

1 A. Or honest, truthful.

2 Q. You think a defendant would have a hard time  
3 being truthful or just being believably truthful?

4 A. Either one.

5 Q. Well, see, that's one of the concerns is that,  
6 you know, if a defendant does testify and the  
7 jury just thinks, well --

8 ATTORNEY KRATZ: Judge, I'm going to  
9 interpose an objection. I don't know if Mr. Buting  
10 is asking a question here or giving his closing  
11 argument. He can ask the question, Judge. He's  
12 gotten an answer and now it's speech time. And I'm  
13 interposing an objection, telling this witness (sic)  
14 what the next problem is with his answer.

15 THE COURT: Well, the subject matter is  
16 legitimate, why don't you rephrase the question,  
17 Mr. Buting.

18 MR. BUTING: Okay.

19 Q. (By Mr. Buting)~ Would you -- Would you be  
20 able -- If Mr. Avery did, with our advice, if we  
21 suggested that he take the witness stand and he  
22 testified in this case, would you tend not to  
23 believe him just because he's the defendant in a  
24 case?

25 A. I suppose it would depend on the evidence

1           presented prior to his testimony. And -- All  
2           right. Frankly if -- and I'm sure he would not  
3           admit to the crime, if there's other evidence  
4           that would indicate -- and I don't know what it  
5           could be -- that it did happen and he was guilty  
6           of it, then I suppose a person would be a little  
7           inclined to doubt his denial.

8 Q.        Okay. But my question is, looking at his  
9           testimony alone first, with the mere fact that  
10          because he is charged in this case and decides to  
11          testify, would you hold that against him and  
12          not -- not -- I mean, let's say another -- any  
13          other witness testifies and the evidence that you  
14          are talking about that comes in earlier tends to  
15          contradict that witness, I assume you would have  
16          that same concern, right?

17 A.        Correct.

18 Q.        So, can you give Mr. Avery -- if he does testify,  
19          can you give him the same benefit and the same  
20          consideration of it as any other witness who  
21          would testify; that is, consideration of whatever  
22          his motives would be to falsify, the consistency,  
23          or -- you would get a jury instruction for any  
24          witness, to judge the credibility, and you would  
25          have to apply it the same for the defendant.

1            Could you do that?

2    A. Yes, I think I could. Yes.

3    Q. And, on the other hand, if Mr. Avery didn't  
4        testify, would you be sitting there thinking,  
5        aha, well, you know why not, he must be guilty,  
6        or what's he hiding?

7    A. No, I don't think I would. I don't think that  
8        would make that much difference.

9    Q. Okay. And, in fact, the Judge would instruct you  
10      that you are not to consider it in any way --

11   A. Right.

12   Q. -- and you would be okay with that?

13   A. Mm-hmm.

14   Q. You have to say yes or no.

15   A. Yes, I think I could. Yes.

16            MR. BUTING: All right. Well, thank you,  
17      very much, sir.

18            MR. SCHUETTE: You're welcome.

19            MR. BUTING: I appreciate it.

20            **VOIR DIRE EXAMINATION**

21   BY THE COURT:

22   Q. Mr. Schuette, I just want to clear up a couple  
23   things because I think some of the later  
24   questions were pretty long. And I want to make  
25   sure I understand the answer.

As Mr. Buting indicated, one thing the Court will instruct the jury in this case is that if the defendant should choose not to testify, the jury cannot draw any adverse inference from that, that somehow indicates the defendant's guilt. If the defendant doesn't testify, the burden is still on the State to prove his guilt, beyond a reasonable doubt, and you would have to base your decision on the other evidence that came in. Could you follow that instruction?

11 A. Yes, I could.

12 Q. And by the same token, if the defendant does  
13 testify, there's another instruction that I  
14 cannot remember verbatim but, essentially, you  
15 have to treat him like any other witness and base  
16 your decision on his credibility, on the same  
17 factors you use for other witnesses, taking all  
18 the other evidence into account and other  
19 considerations and decide whether you think he's  
20 telling the truth, just like any other witness.  
21 Can you do that?

22 A. Yes, I could.

23 THE COURT: Thank you. The Clerk will  
24 escort you from the courtroom.

25 MR. SCHUETTE: Thank you.

(Wherein the juror was excused.)

2 THE COURT: Counsel, does either party have  
3 a motion with respect to this juror?

4 ATTORNEY KRATZ: Not by the State, your  
5 Honor.

6 MR. BUTING: Not by the defense, your  
7 Honor.

17 MR. BUTING: What happened with No. 36?

18 ATTORNEY FALLON: We agreed to that  
19 already.

20 THE COURT: Yes, I had previously been  
21 informed that that was --

22 MR. BUTING: That's a cause, okay.

23 THE COURT: Right.

24 ATTORNEY STRANG: And we still have the  
25 other three that we jointly proposed for cause, I

1 think that the Court has not ruled on?

2 ATTORNEY FALLON: I think he did.

3 THE COURT: I will -- I'm going to talk to  
4 the Clerk before we start tomorrow morning and go  
5 back and make sure anybody I haven't excused for  
6 cause is addressed. We'll take a break at this  
7 time.

8 MR. BUTING: I'm sorry, what were the two  
9 -- what were the two, Flint and --

10 THE COURT: The two remaining are No. 41,  
11 Marian Flint and No. 45, Daniel Petermann.

12 MR. BUTING: All right. Thank you.

13 ATTORNEY KRATZ: Judge, when would you like  
14 us back, I'm sorry, 5, 10 minutes?

15 THE COURT: You make the call, Diane. How  
16 much time do you want?

17 COURT REPORTER: If we're doing two  
18 more, I would say 15 minutes.

19 THE COURT: Fifteen?

20 COURT REPORTER: Yes.

21 THE COURT: Okay, 15 minutes, 5:20.

22 (Recess taken.)

23 THE COURT: At this time we're back on the  
24 record. And the next juror is Marian Flint.

25 Ms Flint, please raise your right hand

1 and the Clerk will administer the oath.

2 (Juror sworn.)

3 THE CLERK: Please be seated.

4 THE COURT: Ms Flint, you have already  
5 submitted a written questionnaire in this case. At  
6 this point we're going on to the next phase of juror  
7 selection which is individual voir dire. The  
8 attorneys for each of the parties will have a chance  
9 to ask you some questions to follow up on the  
10 answers that you gave in your questionnaire.

11 Before that, I can tell you that the  
12 juror that is selected in this case will not be  
13 sequestered. That means at the end of each court  
14 day you will be able to go back home.

15 I can also tell you that although the  
16 proceedings today are open to the public. There  
17 are no cameras allowed in the courtroom during  
18 individual voir dire and the media is not allowed  
19 to disclose the names of the jurors in their  
20 reports to the public.

21 In addition, if you are selected to  
22 serve on the jury in this case, the cameras will  
23 not be permitted to show the jurors at the trial.

24 Even after today, I will remind you if  
25 you are still on the jury panel, that you are to

1 continue not reading anything about this case,  
2 watching anything on television, listening to  
3 anything on the radio, or discussing the case in  
4 any manner with anyone.

5 Mr. Fallon, are you going to be handling  
6 this one? You may begin.

7 **VOIR DIRE EXAMINATION**

8 BY ATTORNEY FALLON:

9 Q. Good afternoon, Mrs. Flint, my name is Tom  
10 Fallon. I'm an Assistant Attorney General with  
11 the Wisconsin Department of Justice. And I'm one  
12 of the prosecutors in the case. To my left is  
13 Mr. Ken Kratz, the Calumet County District  
14 Attorney. And Mr. Kratz here is the lead  
15 prosecutor of this case involving Mr. Avery.  
16 Good afternoon. Thank you, very much, for your  
17 patience. I know it's a long wait as we  
18 long-winded lawyers chat out here with some of  
19 your peers.

20 I wanted to follow up with a few  
21 questions regarding some of the information you  
22 provided last week in your questionnaire to help  
23 us in selecting a jury for this case. Let me  
24 first begin, I note that for your principal  
25 occupation you note homemaker, but somewhere I

1 have this feeling that perhaps you might have had  
2 some experience as a teacher, or a teachers aide,  
3 or --

4 A. My daughter is a teacher's aide.

5 Q. Your daughter is?

6 A. Mm-hmm. And my son is a teacher.

7 Q. All right. Did you have some teacher training?

8 A. Yes.

9 Q. I see. Okay. But chose to raise a family  
10 instead?

11 A. That's correct.

12 Q. Okay. Very well. Have you ever worked outside  
13 of your home?

14 A. No, I haven't.

15 Q. Okay. And by the way, I looked at your  
16 questionnaire and, please, accept all of our  
17 condolences for the passing of your father.

18 A. Thank you.

19 Q. I understand that took a fair amount of your  
20 time.

21 A. Yes, it did.

22 Q. Well, now that that has passed, what do you think  
23 you might like to do with some of your extra time  
24 there?

25 A. I think I would probably donate some of my time,

1           volunteer at the facility where my dad was for  
2           the last seven years.

3 Q. Okay.

4 A. Because they were really good to him.

5 Q. All right.

6 A. They can always use an extra hand.

7 Q. I bet that's true. Do you like to read or travel  
8           or what do you like do?

9 A. I love to read.

10 Q. You do.

11 A. I've tried traveling in the past 15 years; and  
12           I'm not much of a traveler.

13 Q. Not much of a traveler. So, like fine wine, you  
14           don't travel very well?

15 A. No.

16 Q. All right. What kind of books or things do you  
17           like to read?

18 A. Well, I like romance novels.

19 Q. All right.

20 A. I like a good mystery. I like Nicholas Sparks  
21           books.

22 Q. Okay. What is it about his books that you like?

23 A. Well, they're easy to read. He sounds like a  
24           very loving husband and father.

25 Q. Okay. And is there a general theme or part of

1           his books that you find particularly attractive  
2           that brings you back to his writing?

3       A. Well, *Message In a Bottle* was one to speak of. I  
4           like Clive Cussler's books too. As a matter of  
5           fact, I'm going to start reading one of those.

6       Q. All right. I note you have done some other  
7           volunteer work. Can you tell us something about  
8           your volunteer work, the Order of the Eastern  
9           Star Shrine Auxiliary, St. James Church. Tell us  
10          about some of your volunteer work.

11      A. Order of Eastern Star, I was a Star Point. We  
12          raised a lot of money for charity. Shrine  
13          Auxiliary, I was the treasurer for that group.  
14          And there, again, we raised a lot of money for  
15          the Children's Hospitals.

16      Q. Right. How long were you associated with the  
17          Shrine group?

18      A. I would say about four or five years and then it  
19          folded.

20      Q. I see. Were you the treasurer during that time  
21          frame?

22      A. Yes. Mm-hmm.

23      Q. So, with you managing the purse strings, you did  
24          well?

25      A. I hope so.

1 Q. Very good. And how about Memorial Hospital?

2 A. I was working for the auxiliary there, patient

3 service, mail, guiding patients around.

4 Q. All right. And senior ice skating, tell us about

5 that.

6 A. Yes, I did ice skate for six years with the

7 senior group at Expo. We brought our own music,

8 our kind of music, and had camaraderie in the

9 group. Was fun.

10 Q. Do you still skate?

11 A. No, two years ago I thought my balance wasn't

12 quite right and I didn't think it was best if I

13 break an arm.

14 Q. All right. So you passed on it?

15 A. Yes.

16 Q. How long did you skate?

17 A. Six years.

18 Q. All right.

19 A. With the seniors.

20 Q. Now, interesting, did you take up skating in your

21 senior years or did you skate when you were

22 younger?

23 A. I skated as a child; my dad taught all three of

24 us kids to skate.

25 Q. All right. And this is figure skating, dance?

1 A. Yes.

2 Q. Excellent. All right. Well, I would like to  
3 talk to you a little bit about, first of all,  
4 some of the people that may appear during the  
5 course of this case and I see one of the  
6 individuals you identified as Mr. Drumm.

7 A. If it's the Curtis Drumm that's a pilot, that  
8 would be the one; I know his mother.

9 Q. He's the one. If -- We're not really sure  
10 whether he will be a witness in this case or not,  
11 but if he were, do you think you could evaluate  
12 his testimony the same way you would evaluate  
13 anyone else's, even though you know his mom  
14 pretty well?

15 A. Oh, sure, I think so, yes.

16 Q. In other words, you wouldn't give his testimony  
17 any more weight or any less weight than anybody  
18 else?

19 A. No.

20 Q. Okay. All right. One of the things of great  
21 interest to all of us here is a lot of the  
22 publicity that's attended to this particular  
23 case. And I wanted to ask you a few questions  
24 about that. In terms of the news that you get  
25 for day-to-day, you -- you seem to be of --

1                    somewhat of an avid reader and somewhat informed;  
2                    radio, newspapers, television and magazines.  
3                    If -- Looking at those, where would you say the  
4                    greatest source of your news comes from?  
5     A. Probably the radio, early in the morning.  
6     Q. All right. What kind of radio do you listen to,  
7                    stations or ...  
8     A. Basically WOMT.  
9     Q. The local station?  
10    A. Yes.  
11    Q. Okay. All right. And how often do read the  
12                    newspapers?  
13    A. Well, I don't get a newspaper, but my brother  
14                    saves them for me and so I may read a paper three  
15                    times a week.  
16    Q. Okay. All right. And television, how often do  
17                    you watch television?  
18    A. I would say every evening, watching *Jeopardy*, lot  
19                    of public TV. I like the programming on public  
20                    TV.  
21    Q. Okay. Do you watch much of the newscast on the  
22                    local public television stations?  
23    A. Well, I used to, but I haven't ever since I got  
24                    the notice that I was going to be on a jury. And  
25                    I received that letter back in June of 2006. And

1           I thought there was a possibility that maybe I  
2           would be called so, therefore, I was extremely  
3           careful not to watch things.

4   Q.    Okay. And so you think that was at least -- so  
5           you stopped listening to the news coverage last  
6           summer?

7   A.    Yes.

8   Q.    Okay.

9   A.    I watched the national news.

10   Q.    Sure.

11   A.    You know, with Tom Brokaw, when he was on, and  
12           his replacement Brian Williams. Those I do  
13           watch.

14   Q.    Okay. In terms of local media coverage, you  
15           haven't followed any of the recent events  
16           regarding the case?

17   A.    Nothing recent, no.

18   Q.    Okay. Based on up to that point of time where  
19           you had -- I assume you at least followed the  
20           case somewhat?

21   A.    Yes.

22   Q.    All right. And in your questionnaire you  
23           indicated you haven't really formed any opinions  
24           about this case?

25   A.    No. No, I haven't.

1 Q. And would that be because you just don't have any  
2 information upon which to form an opinion or just  
3 hasn't been all that interesting?

4 A. I think that there's always two sides to every  
5 story.

6 Q. Okay. All right. Well, one of the questions  
7 that the -- that's set forth in the questionnaire  
8 is, would you be able to decide this case solely  
9 on the information which is presented during the  
10 trial and not on any of the information that you  
11 may have gotten from the media or any other  
12 opinions that you may have had?

13 A. That's right. Just from the information we get  
14 here.

15 Q. Right. And you are pretty comfortable you can --  
16 and confident you can follow that directive?

17 A. Oh, yes.

18 Q. All right. You have never served as a juror  
19 before?

20 A. No.

21 Q. Ever been called to jury duty?

22 A. No.

23 Q. So just a little bit of a surprise?

24 A. Yes. Yes.

25 Q. All right. Just your luck, right?

1 A. Well, it's a good learning experience.  
2 Q. All right. Do you think that based on any of  
3 your background, any -- anything that you have,  
4 any philosophy, or conscience, or any religious  
5 beliefs that makes you doubt whether you could  
6 sit and determine the guilt or innocence of  
7 someone, based on the evidence which is presented  
8 in court?

9 A. I'm sorry, I didn't understand that.

10 Q. Yeah, is there anything -- Do you have any  
11 personal philosophy, personal beliefs, or  
12 conscience, or any other reason you think you  
13 would not be able to sit and be a juror to  
14 determine guilt or innocence?

15 A. No, I don't.

16 Q. Okay.

17 ATTORNEY FALLON: I don't have any more for  
18 this witness.

19 THE COURT: Mr. Buting.

20 ATTORNEY BUTING: Thank you, Judge.

21 **VOIR DIRE EXAMINATION**

22 BY ATTORNEY BUTING:

23 Q. Good evening.

24 A. Good evening.

25 Q. May I call you Mrs. Flint, is that what ...

1 A. Sure.

2 Q. Okay. My name is Jerome Buting. And myself,  
3 along with Dean Strang, are defending Steven  
4 Avery. I assume you understand that.

5 A. Yes.

6 Q. And I have some, a few follow-up questions from  
7 your questionnaire and then some of my own that  
8 maybe you haven't thought much about yet.  
9 Because you -- you said you used to watch quite a  
10 bit of news until like the past summer?

11 A. Right.

12 Q. So I assume you saw the news when Mr. Avery was  
13 first arrested?

14 A. Yes.

15 Q. Did you see the news conferences that Mr. Kratz  
16 was involved in?

17 A. Yes.

18 Q. That would have been in November, when he was  
19 first announcing an arrest?

20 A. Yes.

21 Q. Okay. And did you also learn later that -- First  
22 of all, do you know the name Brendan Dassey?

23 A. Yes.

24 Q. Mr. Avery's nephew?

25 A. Yes.

1 Q. Okay. And you, did you also see the news  
2 conferences for that?

3 A. Yes.

4 Q. And did you assume that, therefore, the case was  
5 solved and we now know what happened?

6 A. No.

7 Q. Why not?

8 A. As I said, there's always two sides to a story.  
9 And I'm not always sure that when the news media  
10 is saying things, that they are saying them  
11 right.

12 Q. Sure. But now, in this instance, you actually  
13 saw a news conference, right?

14 A. Yes.

15 Q. Which went on for a half hour or something like  
16 that, right?

17 A. Mm-hmm.

18 Q. So, you actually heard Mr. Kratz, sitting over  
19 here, describing what -- what he now believed --

20 A. Yes.

21 Q. -- the evidence would show?

22 A. Right.

23 Q. After hearing a prosecutor, a special prosecutor  
24 make those kinds of statements, wouldn't you then  
25 be inclined to say, okay, I guess I believe this

1           is -- this is really what happened?

2   A.   No.

3   Q.   Why not?

4   A.   Well, I know he saw it that way, but that doesn't  
5       mean that I have to see it that way.

6   Q.   Okay. Very good. So you recognize that lawyers  
7       are advocates for their position?

8   A.   Yes.

9   Q.   And that maybe they might be presenting something  
10      in one way that supports their position, but  
11      maybe you might see it different?

12   A.   Yes.

13   Q.   Okay. But now when you -- when you heard the  
14      story of -- that Brendan Dassey allegedly gave,  
15      or said, or was -- supposedly said, what -- what  
16      did that make you feel about this case?

17   A.   Sad, shocked.

18   Q.   Mm-hmm. The details were pretty graphic?

19   A.   Very.

20   Q.   Kind of make your hair curl?

21   A.   Very. As a mother, when you have children.

22   Q.   Yes.

23   A.   Yes.

24   Q.   I can imagine. What I'm wondering, though, is  
25       after hearing that and having that reaction,

1           which is perfectly natural and okay, I'm not  
2           criticizing that, and then you see my client,  
3           Mr. Avery, right here; how can you look at him  
4           and say I -- at this time I presume him innocent?

5       A. He hasn't been proved guilty, though, at this  
6           point. He has to be proven guilty and I don't  
7           have those details.

8       Q. Well, is that just a matter of a mere formality,  
9           you know, we have just got to go through the  
10          trial and then -- and then it will be all over,  
11          or do you think there's more to it?

12      A. There could be more to it.

13      Q. Did you -- So looking at him, you are telling me  
14           that despite what you heard on that day at that  
15           press conference, you don't think that you have  
16           been so affected by it that you can't be a fair  
17           jury -- juror in this trial?

18      A. No, I don't.

19      Q. And why?

20      A. I think I have to have more proof.

21      Q. Okay. Now, did you also learn in the news media  
22           that this young man, Brendan Dassey, 16 year old,  
23           has since recanted that confession?

24      A. No, I didn't hear that.

25      Q. You didn't.

1 A. No.

2 Q. Did you hear that there was -- that there were  
3 different stories that he was giving, changing  
4 things?

5 A. No, I didn't hear that either.

6 Q. Didn't hear any of that?

7 A. No.

8 Q. Okay. Can you think of any reason why someone  
9 would confess to something that they didn't do?

10 A. That's a tough one. No, I really can't.

11 Q. Do you think -- Have you ever heard of people  
12 that have falsely confessed to something and then  
13 obviously been proven that they didn't do it?

14 A. Not offhand, no.

15 Q. Okay. If you heard from -- If you heard any  
16 evidence or testimony about why that might  
17 happen, why people might be inclined or coerced  
18 even to say things that aren't true, is that  
19 something you could consider?

20 A. Yes.

21 Q. Do you think it's possible that that could  
22 happen?

23 A. Yes.

24 Q. And if you heard testimony about certain  
25 techniques that police investigators and

1           detectives use when they question people, that  
2           might -- might risk the possibility that people  
3           would do something like say something that isn't  
4           true that they didn't do; is that something you  
5           would consider?

6         A. Yes, it's possible.

7         Q. Now, when you said that you want to hear more  
8           proof in this case before you make up your  
9           mind -- By the way, let me go back for a second  
10          about what you might have heard. Have you heard  
11          anything, any kind of news reports in the paper  
12          or anything about a blood vial?

13        A. Yes, I did.

14        Q. You did hear that?

15        A. Yes.

16        Q. What did you hear about that?

17        A. I just heard it was found in the Clerk of Court's  
18          Office.

19        Q. Okay. And did you hear anything else that you  
20          recall about it, or why that matters or doesn't  
21          matter, or ...

22        A. I really don't know.

23        Q. Okay. All right. That's fine. Now, do you know  
24          where you would have heard that from, if you  
25          haven't been watching the news?

1 A. I probably heard it on the radio.

2 Q. Okay. So you have heard some things about the

3 case since June, but it's been more on the radio,

4 not the TV?

5 A. And I haven't been sitting down and studying it.

6 Q. Right. Right. And I know in your questionnaire

7 you said that you are in a widow's group?

8 A. Yes.

9 Q. What is that exactly?

10 A. Actually, it came out of a bereavement class.

11 Q. Okay.

12 A. And we enjoyed each other's company so much that

13 we started going out to dinner once a month, to a

14 different restaurant every Friday night.

15 Q. Okay. And you mentioned that you think you might

16 have talked about this case?

17 A. With some of the gals, yeah.

18 Q. With some of the gals?

19 A. Mm-hmm.

20 Q. Do you know what was said or what kind of

21 opinions were expressed?

22 A. No, not opinions. I think they were just

23 expressing what they had or what we all had heard

24 either on the radio or on TV.

25 Q. Did anything about their discussions influence

1           your opinion about --

2 A. Not at all.

3 Q. -- the case or what you thought?

4 A. Not at all.

5 Q. Okay. Now, I assume -- It doesn't seem like you

6       have had much contact with the police over your

7       life?

8 A. No, never.

9 Q. Do you watch police shows, cop shows, crime

10      shows?

11 A. Not really, that's not my favorite.

12 Q. Okay. But you have seen them over the years?

13 A. Not to watch them for a whole hour, though.

14 Q. Okay. Do you think that police officers, simply

15      because they are police officers and they have a

16      badge and they swear an oath to protect and obey

17      the law and enforce the law, do you think that

18      when they come into court and testify on the

19      witness stand, if they do, and take the oath,

20      that -- that they necessarily are more believable

21      than the ordinary witness who comes in and takes

22      that oath?

23 A. Well, I think for somebody my age, we were taught

24      to respect the police and definitely believe what

25      they said.

1 Q. Sure. And so do you think that because of that  
2 teaching and that belief, that it would be hard  
3 for you to judge them differently, I mean, to  
4 question whether or not what they are telling is  
5 really the truth?

6 A. No, I don't think so.

7 Q. You don't. Okay. Why not? If you have been  
8 taught to believe the police; why not?

9 A. I just believe that they would get up there and  
10 tell the truth; if they are sworn to tell the  
11 truth, they would tell the truth.

12 Q. Okay. So -- So what I'm asking you then is,  
13 because of that, you don't think -- I mean it  
14 would be difficult for you to question whether  
15 they were telling the truth or not, you would  
16 just assume that they are; is that right?

17 A. Yes.

18 Q. All right. Well, what if the Judge -- if the  
19 Judge instructed you, though, that you really  
20 can't do that, that police officers are just like  
21 any other witness and they are human beings and  
22 they have the same failings, the same motives or  
23 biases as anybody else and that you have to judge  
24 their credibility the same way that you would any  
25 other witness?

1 A. I think I would be able to do that.

2 Q. Okay. Why, if you believe what you said a few  
3 minutes ago, why would you be able to do that?

4 A. You got me there. I'm not sure how to answer  
5 that. I'm assuming somebody is on the witness  
6 stand and they are -- they were at the scene and  
7 investigating early and wouldn't they -- to my  
8 mind, they would not put anything false in their  
9 report. I would think they would be honest  
10 enough to write down exactly what they saw and  
11 found.

12 Q. Okay. We would hope so. But my question is,  
13 if -- if you hear evidence and questions that are  
14 put to the police officers that maybe challenges  
15 that belief and maybe makes you question, look a  
16 little deeper and think, maybe they weren't being  
17 quite as honest as you thought.

18 A. That is possible.

19 Q. And if the Judge instructed you that you -- you  
20 have to look beyond just their badge and their  
21 role and look at them as human beings who are the  
22 same as any other witness who might have reasons  
23 to lie --

24 A. Okay. Yeah. All right.

25 Q. -- do you think you could do that?

1 A. I think so.

2 Q. It seems like it would be tough?

3 A. I think every instance is a little different too,

4 it depends on what they would be talking about.

5 Q. Sure, I understand that. And I don't mean to

6 just put you on the spot with some hypotheticals,

7 but do you think sometimes that police officers

8 might get, you know, personally invested in their

9 job or in their investigation such that they --

10 well, let's say, perhaps, even to think that the

11 person is guilty and they want to make sure that

12 the person is convicted because they think he's

13 guilty?

14 A. Well, I would hope not.

15 Q. You don't think so?

16 A. I would hope not.

17 Q. Okay. Well, we would all hope not, but if you're

18 sitting on this jury you are going to have to

19 make some decisions about which witnesses to

20 believe and whether they are really telling the

21 truth, the whole truth.

22 A. Yes.

23 Q. And some of those witnesses may very well be

24 police officers?

25 A. Okay.

1 Q. And so, you know, as Mr. Avery's lawyer, I need  
2 to know whether you can promise the Court that  
3 you will be able to do that in this case or  
4 whether this -- this case is maybe just too hard  
5 for you to do that in, to really be able to look  
6 at the police officers the same as anybody else,  
7 use the -- follow the Court's instruction and  
8 apply that instruction to them and not just  
9 assume, because when you hope that they wouldn't  
10 be dishonest that, therefore, they couldn't be.  
11 Do you think you could do that?

12 A. Well, if -- How do I want to say this. If an  
13 officer was out there and he wasn't telling the  
14 truth, I'm assuming somebody was going to say  
15 something else, perhaps one of you two gentleman,  
16 that would make it look like he wasn't telling  
17 the truth. So I think you would have to be in  
18 that instance to be able to question --

19 Q. Sure.

20 A. -- was that testimony true or was it false.

21 Q. And if -- And if you are in that situation and if  
22 those questions were put --

23 A. I would think about that.

24 Q. You would think about that?

25 A. Yes.

1 Q. You would seriously give consideration to the  
2 possibility that, despite what you hope, maybe  
3 that officer has not been telling the truth?

4 A. Sure. Yes.

5 Q. And would that go so far as to even believe the  
6 possibility that the police were doing more than  
7 just coming in and not telling the truth, but  
8 maybe even crossing the line and changing words  
9 in reports of what witnesses said, or even  
10 planting evidence against somebody because they  
11 wanted to make sure that that person was  
12 convicted?

13 A. That is also possible.

14 Q. Okay. Well, I understand you haven't heard any  
15 evidence right now, so I'm not trying to put you  
16 on the spot that way.

17 A. No.

18 Q. All I want to know, is if you are open to  
19 consider all of the evidence, including evidence  
20 that might look that way --

21 A. Yes.

22 Q. -- despite your upbringing and your hopes and  
23 everyone's hopes?

24 A. Yes.

25 Q. Okay. That's fair. Thank you. Do you think

1           that if you did hear all the evidence in this  
2           case and you really had a reasonable doubt that  
3           the State had proven one or more of these  
4           charges, beyond a reasonable doubt, in other  
5           words, you really had reasonable doubt about  
6           whether Mr. Avery was guilty, you would be able  
7           to come back to your community and your widow's  
8           group and say, I voted not guilty?

9     A. Yes.

10    Q. And they would be okay with that?

11    A. Yes.

12    Q. You would be okay with it?

13    A. Yes.

14    Q. So there wouldn't be any -- any fear of  
15       retribution that you might get?

16    A. No.

17    Q. Okay. I didn't think --

18    A. I'm counting on the other people too, this isn't  
19       just my decision. It would be their decision --  
20       the other jurors' decision as well as mine.

21    Q. Sure. There's 12 people, right.

22    A. Yup.

23    Q. And we talked a little bit about presumption of  
24       innocence. You recognize, also, that the State  
25       is the one that has the entire burden of proof?

1 A. Yes. Mm-hmm.

2 Q. And that they have to convince you, beyond a  
3 reasonable doubt?

4 A. Yes. That's what the Judge told us last week,  
5 Monday.

6 Q. Okay. I wonder, though, in this particular case,  
7 you know, people -- might be perfectly  
8 understandable for you to think, well, you know,  
9 if Mr. Avery is not guilty of this, if he didn't  
10 kill that poor young woman, then who did? Right?  
11 I mean --

12 A. Yes, I have thought of that.

13 Q. Okay. Would you expect -- In order to be able to  
14 come back with a verdict of not guilty in this  
15 case, would you expect that Mr. Avery would have  
16 to convince you who really did kill her?

17 A. From the little information that I have right  
18 now, I don't think I can answer that.

19 Q. Well --

20 A. I don't know enough about Mr. Dassey.

21 Q. I'm not asking you to answer who else would have?

22 A. Okay.

23 Q. I'm not asking that. Maybe that's what you  
24 think?

25 A. Yes.

1 Q. What I'm asking is, would you expect that  
2 Mr. Avery would have to convince you not only  
3 that he didn't do it but here's the name of  
4 person who did?

5 A. He might not know.

6 Q. That's right, he might not know.

7 A. No.

8 Q. And so, therefore, how could he, right?

9 A. Right.

10 Q. So it's -- If I understand you, then, if he's  
11 unable to present evidence in court that  
12 convinces you that somebody else is guilty of  
13 this crime, you are not going to say, well,  
14 therefore, he has to be guilty --

15 A. No.

16 Q. -- and it must be him? You will look at the  
17 State's case and their burden, right, because Mr.  
18 Avery doesn't have to prove himself innocent; is  
19 that right?

20 A. He is innocent until he is proven guilty.

21 Q. Okay. And if he -- if he is not -- He also  
22 isn't -- doesn't have to prove his own innocence  
23 either, right?

24 A. Oh, yes, he does.

25 Q. He does?

1 A. I think so.

2 Q. Why?

3 A. Well, if he knows something that he is not  
4 saying, that would make somebody else guilty, he  
5 has to share that too.

6 Q. Well, what if he doesn't know, how could he?

7 A. Well, then he couldn't.

8 Q. You see what I'm saying, though?

9 A. Yes.

10 Q. You know, I have to know whether or not you are  
11 going to say, look, I think it's terrible that  
12 this poor young woman was killed and somebody has  
13 to pay for that. And since I don't know who  
14 else, I'm going to have to say that Mr. Avery is  
15 the one who's guilty.

16 A. No.

17 Q. You won't do that, will you?

18 A. No.

19 Q. And along those lines, you just said something  
20 about, well, if he knows something, he should  
21 tell us. There's -- There's always the question  
22 in any criminal case, for a defense attorney,  
23 which is whether or not the defendant should  
24 testify, or not testify.

25 A. I understand that, yes.

1 Q. And would you think that in order for you to find  
2 him, Mr. Avery, not guilty, that you would want  
3 to hear from him first?

4 A. Not necessarily.

5 Q. Why not?

6 A. Well, I think if he wanted to say something, I  
7 think he would tell you.

8 Q. Okay. And you understand that we, Mr. Strang and  
9 I, have, you know, input here and would advise  
10 him whether or not to testify, right?

11 A. Right, yes.

12 Q. Well, the Judge will give you an instruction that  
13 a criminal defendant, it's one of the rights we  
14 have in our constitution, not only do they not  
15 have to prove their innocence, but they also do  
16 not -- they have a right not to testify, if  
17 that's what they choose to do?

18 A. Okay.

19 Q. And that you can't -- If Mr. Avery does choose  
20 not to testify, you can't consider that in any  
21 way against him?

22 A. No.

23 Q. You can't hold that against him?

24 A. I understand that.

25 Q. On the other hand, if Mr. Avery does choose to

1           testify, do you think you would be able to listen  
2           to his testimony just like any other witness?

3       A. Yes.

4       Q. And consider it?

5       A. Yes.

6       Q. You wouldn't think just because he's a defendant,  
7           you know, I just can't believe anything he says?

8       A. No.

9       Q. You're sure of that?

10      A. Yes.

11      Q. Okay. All right. Just one last question, do you  
12           think you want to be on this jury?

13      A. Yes.

14      Q. Okay. Why?

15      A. I think it's a good learning experience. If he  
16           would be guilty, for the family of Teresa  
17           Halbach, he should be found guilty beyond that  
18           reasonable doubt. And if he is not guilty, he  
19           won't be found guilty.

20      Q. And you want to be one of the 12 people who make  
21           that kind of decision?

22      A. That's a tough call. I realize that's a big  
23           responsibility. And I told the people out in the  
24           outer room, that when I came in here last Monday  
25           I told God, I can't do this on my own. But I

1 know that he will know and he will help me do  
2 this.

3 Q. So you -- you realize what a serious, serious  
4 responsibility --

5 A. Absolutely.

6 Q. -- this is?

7 A. Very much so.

8 Q. But you think you could be fair and undertake  
9 that responsibility?

10 A. Yes.

11 Q. Okay.

12 ATTORNEY BUTING: Thank you, very much,  
13 ma'am. I appreciate it.

14 MRS. FLINT: You're welcome.

15 THE COURT: I just wanted to ask a couple  
16 follow-up questions.

17 **VOIR DIRE EXAMINATION**

18 BY THE COURT:

19 Q. I think that it was clarified at the end, but the  
20 question of police officers as witnesses --

21 A. Yes.

22 Q. -- I think you indicated at the beginning that  
23 you would expect them to tell the truth because  
24 that's part of their duty as a police officer?

25 A. Right.

1 Q. And that is true. But as Mr. Buting indicated  
2 and there was a question on the questionnaire  
3 about this, actually. And the question read as  
4 follows: Some of the witnesses in this case will  
5 be members of law enforcement. The law requires  
6 jurors to evaluate their credibility just as that  
7 of any other witness; that is, the jurors are  
8 prohibited from giving any more or less  
9 credibility to the testimony of a law officer  
10 simply because the witness is a law officer.

11 A. Okay.

12 Q. Do you believe that you can follow such an  
13 instruction?

14 A. Yes.

15 Q. There will be another instruction at the trial  
16 given to the jurors that sets out the factors  
17 that the jurors are to consider in evaluating the  
18 credibility; that is, the believability of each  
19 witness. And they are the same whether the  
20 witness is a police officer or not.

21 They include whether the witness has an  
22 interest or lack of interest in the result of the  
23 trial; the conduct, appearance and demeanor of  
24 the witness on the witness stand; the clearness  
25 or lack of clearness of the witness'

1           recollections; the reasonableness of the witness'  
2           testimony; and bias or prejudice, if any has been  
3           shown.

4           Those are among the things you are to  
5           consider. And if you are a juror you will have  
6           to assess the credibility of all witnesses,  
7           including police officers, on that basis. That  
8           means you have to look at each of them and make a  
9           determination whether they are telling the truth  
10          or not. Do you think you can do that if you're a  
11          juror?

12         A. Yes.

13         Q. And can you apply the same standards to police  
14          officer witnesses as you do to other witnesses?

15         A. Yes.

16           THE COURT: Okay. All right. The Clerk  
17          will take you and escort you from the courtroom at  
18          this time.

19           (Wherein the juror was excused.)

20           THE COURT: Counsel, any motion from either  
21          party?

22           ATTORNEY FALLON: None from the State.

23           ATTORNEY BUTING: No, your Honor.

24           THE COURT: Very well, Ms Flint will be in  
25          the jury pool.

1                   ATTORNEY FALLON: Judge, counsel pointed  
2                   out, I thought you had made a ruling on Nos. 37 and  
3                   39, that we had asked to be excused for cause; did  
4                   you make that ruling or ...

5                   THE COURT: I think I indicated earlier,  
6                   actually I'm not sure those are the only two for  
7                   which I have not made a ruling yet. I was going to  
8                   have the Clerk inventory the jurors before we start  
9                   tomorrow morning and go over all of those.

10                  ATTORNEY FALLON: Oh. All right. Very  
11                  good.

12                  THE COURT: So we have got one juror left  
13                  today and I believe it is Mr. Petermann. All right.  
14                  Mr. Petermann, if you will please raise your right  
15                  hand, the Clerk will administer the oath.

16                  (Juror sworn.)

17                  THE CLERK: Please be seated.

18                  THE COURT: Mr. Petermann, first let me  
19                  apologize. By luck of the draw, you have the honor  
20                  of being the last juror we're going to be  
21                  questioning today. You may recall you already  
22                  filled out a written questionnaire in this case.

23                  MR. PETERMANN: Correct.

24                  THE COURT: Today we're proceeding to the  
25                  next step of the jury selection process which is

1 voir dire. It gives the attorneys an opportunity to  
2 ask you some follow-up questions to information that  
3 you provided on your questionnaire.

4 Before we begin with the attorney's  
5 questioning, I wanted to notify you of a few  
6 things. First of all, the jury in this case will  
7 not be sequestered. That means that if you are  
8 selected to the juror -- jury, you will be able  
9 to -- you will be permitted to return home each  
10 day at the end of the proceedings for that day.

11 The jurors will continue to be governed  
12 by the Court's order on not paying any attention  
13 to any news media accounts of this case whether  
14 on radio, television, the newspaper, or talking  
15 with anyone else.

16 These voir dire proceedings today are  
17 held in open court, but the Court does not allow  
18 cameras in the court during voir dire  
19 proceedings. And you should also know that  
20 members of the news media, while they are  
21 permitted to be here, cannot use your name in any  
22 news reports as a juror.

23 And in addition, if you are selected to  
24 serve on the jury, the camera will not be able to  
25 identify you in anyway during the trial itself.

1                   In the event you remain on the jury  
2                   panel after we conclude today, you will be given  
3                   a telephone call in the next few days letting you  
4                   know when to report back to court.

5                   Mr. Fallon, you may begin.

6                   **VOIR DIRE EXAMINATION**

7                   BY ATTORNEY FALLON:

8                   Q.     Good evening, Mr. Petermann, my name is Tom  
9                   Fallon. I'm an Assistant Attorney General for  
10                  the Wisconsin Department of Justice. I'm one of  
11                  the prosecutors in this case. I wanted to ask  
12                  you a few questions about the information you  
13                  provided last week and perhaps a few other odds  
14                  and ends questions as well. Thank you for being  
15                  so patient with us as we attempt to go through  
16                  this process.

17                  I guess I would like to begin with a  
18                  little bit about your work at the Brillion Iron  
19                  Works. How long have you worked for them?

20                  A.     Thirty-five years.

21                  Q.     Thirty-five years. And what type of work do you  
22                  do for them?

23                  A.     General laborer, pour iron, shake out, run a  
24                  machine, kind of everything really.

25                  Q.     Okay. What kind of machine is it, a press or ...

1 A. It's a molding machine.

2 Q. Molding.

3 A. Yeah.

4 Q. All right. All right. Enjoy your work?

5 A. It pays pretty good. Yeah, it's a good job.

6 Q. That raises an interesting question. If you are

7 selected as a juror in this case, I think you

8 have been advised that the case may go on for

9 approximately six weeks or so and then followed

10 by some deliberation time. We don't know how

11 long that would be. Would the selection of

12 yourself as a juror, would that create any

13 economic hardship on you at all in terms of your

14 work or anything?

15 A. No, I'm not really.

16 Q. Okay. So you will -- you would be paid or you

17 will be --

18 A. Yeah, we get jury pay.

19 Q. Okay. Very good. I see from your questionnaire

20 you have hunting and racing as your -- some of

21 your hobbies or pastime activities; what kind of

22 hunting do you like to do?

23 A. Mostly deer.

24 Q. Deer. All right. And what kind of racing?

25 A. Stock car.

1 Q. Stock car?

2 A. Yeah.

3 Q. Now, do you actually race a bit yourself or are

4 you just a fan of the racers?

5 A. No, I race myself.

6 Q. Do you? Very good. What kind of car do you

7 race?

8 A. '99 Monte Carlo.

9 Q. All right. Let's see. How long have you been

10 involved in the racing business?

11 A. Since 1981 -- 1980, actually. I didn't race in

12 '80, but I helped another guy out.

13 Q. And how often do you race each year?

14 A. Um, this year, I think we're scheduled for 16

15 events.

16 Q. Sixteen events. Now, is this a bit of a costly

17 expenditure for you or just a --

18 A. It can be.

19 Q. -- casual hobby?

20 A. It can be. You can spend whatever you want,

21 really, but for me, I don't really do that.

22 Q. You don't spend a great deal of money?

23 A. No. And nobody gives me a lot either so.

24 Q. All right. When does the season start up for

25 you?

- 1 A. The second last Thursday in May, I think, is when  
2 we're starting this year.
- 3 Q. All right. So have -- are you in the preparation  
4 time frame now for racing?
- 5 A. Yeah. Oh, yeah. Yeah.
- 6 Q. Do you do all your own work on your car?
- 7 A. Most of it, yeah.
- 8 Q. All right. Any modifications or is this just  
9 your basic stock 99?
- 10 A. No, it's pretty much a race car.
- 11 Q. It is.
- 12 A. Yeah. Oh, yeah.
- 13 Q. Are you pretty much a solo operator or do you  
14 have like a team or a couple guys that help you  
15 out?
- 16 A. My sister helps me out and there's another guy  
17 helps me out. But really, the work on the car, I  
18 mostly do it myself.
- 19 Q. All right.
- 20 A. It's mostly on race days when they come help me.
- 21 Q. Okay. And what kind of work does your sister  
22 help you with?
- 23 A. Changing tires.
- 24 Q. Okay.
- 25 A. Yeah.

1 Q. So she's pretty handy?

2 A. Yeah, just more somebody around, you know.

3 Q. All right. Okay. Okay. I see you belong to a

4 couple -- a hunting club and this Fox River

5 Racing; is that the club that you belong to --

6 A. Right.

7 Q. -- for stock car racing?

8 A. Mm-hmm.

9 Q. And Holy Family Church. Do you have any -- How

10 long have you been involved with the hunting

11 club?

12 A. Oh, 25 years probably.

13 Q. Longer than your racing or about the same?

14 A. No, I think it was longer with that.

15 Q. Okay. And I take it you are somewhat active in

16 your church?

17 A. I usher a little bit and my son helps me with

18 that.

19 Q. Very good. Now, I note from your questionnaire

20 you circled one name, a person that you might

21 know, a William Brandes, but you had a question

22 mark. The William Brandes that you know, what

23 does he do for a living?

24 A. He works at Manitowoc here, the foundry, the

25 Aluminum Foundry.

1 Q. The foundry?

2 A. Yeah. And he is from Brillion.

3 Q. He is from Brillion.

4 A. Yeah.

5 Q. Do you know if he's a volunteer firefighter?

6 A. Not really.

7 Q. Okay. It's hard to say whether -- Let me ask

8 this, it's a better way of asking. Have you

9 followed this particular case much in the media?

10 A. I usually watch the news, you know, 6:00 news or

11 5:00 news --

12 Q. All right.

13 A. -- in the evening, but ...

14 Q. All right. Have you watched the news recently?

15 A. No, not too much.

16 Q. All right. Did you get a notice from the Court

17 about watching any news coverage of this case?

18 A. Yes.

19 Q. All right. And have you been able to follow that

20 directive?

21 A. It's hard but, yeah, kind of walk away on it,

22 yeah.

23 Q. Okay. Where do you get most of your news from,

24 the television or newspaper?

25 A. More television.

- 1 Q. All right. Would you consider yourself a regular  
2 watcher of the TV news?
- 3 A. Yeah, I would.
- 4 Q. Any particular channels you watch or you watch  
5 them all about the same?
- 6 A. When I'm out in the shop I maybe have 11 on, but  
7 in the house, I probably have Channel 2 on but.
- 8 Q. All right. So you occasionally have the  
9 opportunity of seeing television at the shop?
- 10 A. Yeah.
- 11 Q. All right. Is that frequently that that happens  
12 or is that just on occasion?
- 13 A. That's more on occasion out there.
- 14 Q. Okay.
- 15 A. Usually if I'm working out there, I can't even  
16 pay attention to it.
- 17 Q. Sure. Are you -- You don't regularly read the  
18 newspaper I take it?
- 19 A. No, I used to get it, but I don't no more.
- 20 Q. Okay. What, if anything, do you remember hearing  
21 about this case from the television or radio  
22 broadcast?
- 23 A. The search, when they were searching.
- 24 Q. Searching when she was a missing person?
- 25 A. Yeah.

1 Q. All right. Anything else?

2 A. Um ...

3 Q. Anything about his arrest or being charged?

4 A. Well, yeah. Um, yeah, it's mostly that. You  
5 know, it's general -- generally what was on TV,  
6 really.

7 Q. All right. Do you recall hearing about a fellow  
8 by the name of Brendan Dassey at all?

9 A. Yeah.

10 Q. All right. Did you watch any of the coverage  
11 regarding his arrest?

12 A. Just that he was arrested, you know, and that was  
13 about it, really.

14 Q. Do you remember any of the details that were  
15 surrounding his arrest? Did you watch any press  
16 conferences or any particular media coverage on  
17 the details of his arrest, of what he might have  
18 said or didn't say?

19 A. Just that there was a rape involved and stuff.  
20 They disposed of the body, I guess.

21 Q. All right. Was there any connection in your mind  
22 between Mr. Dassey's arrest and that of  
23 Mr. Avery?

24 A. I suppose it could be, yeah.

25 Q. Could be, but you don't have any clear connection

1           in your head?

2       A. Well, it seems that way, but it's, you know, is  
3           that the way it is, I don't know.

4       Q. All right. In any event, based on the  
5           information that you have, have you formed any  
6           opinions at all regarding this particular case?

7       A. Not really, no.

8       Q. All right. You answered no on the questionnaire.  
9           I wanted to make sure that that's still your view  
10          at this time. Is there any recent media coverage  
11          that may have changed your opinion, that you are  
12          aware of?

13      A. No.

14      Q. All right. As you sit here today, do you have  
15          any opinion at all as to whether Mr. Avery is  
16          guilty or not guilty of the offenses charged?

17      A. No.

18      Q. You don't have any opinion at all?

19      A. No.

20      Q. Is there any question in your mind that you could  
21          set aside this outside information that you have  
22          received from the television and radio broadcast  
23          and decide Mr. Avery's guilt or innocence solely  
24          on the evidence which is presented during the  
25          trial, if you are selected as a juror?

1 A. I believe I could.

2 Q. All right. Are you a lifelong resident of

3 Manitowoc County?

4 A. No, I lived in Calumet County for about five or

5 six years.

6 Q. Calumet County for a few years.

7 A. Yeah.

8 Q. And I see you were born in Brown County?

9 A. Yeah, that was just the birth place.

10 Q. Just the birth place?

11 A. Yeah.

12 Q. Hospital?

13 A. Yeah.

14 Q. When did you live in Calumet County, sir?

15 A. Probably about like '87 to '92, somewhere around

16 there.

17 Q. All right. And then you moved to your current

18 address in Brillion?

19 A. Correct.

20 Q. All right. And was that for work purposes or

21 just a better house deal?

22 A. Well, we bought a house.

23 Q. Okay. Good. During your time in Calumet County,

24 did you ever have occasion to meet with, or talk

25 to, or interact with any Calumet County Sheriff's

1           officers or police officers?

2 A. I knew Larry Pagel.

3 Q. You knew Sheriff Pagel?

4 A. Larry Pagel, not Sheriff Pagel.

5 Q. Oh, Larry Pagel.

6 A. Yeah, he was an investigator I think.

7 Q. He was an investigator.

8 A. Yeah.

9 Q. All right. Anyone else that you had any contact  
10       with?

11 A. There was Yoder, I can't remember his first name  
12       but ...

13 Q. All right. Okay. Were they just friends,  
14       acquaintances or ...

15 A. Um, I don't remember how I got to know Yoder, but  
16       Pagel, he had a cottage down by my dad's land, he  
17       rented.

18 Q. Oh, I see.

19 A. And that's kind of how I knew him. He was in  
20       sportsmen's club too.

21 Q. Okay. All right. Would you say you were good  
22       friends or just casual acquaintances?

23 A. Casual acquaintance.

24 Q. All right. Wouldn't see him that often?

25 A. No.

1 Q. Okay. Now how about here, since you moved to  
2 Manitowoc County, have you had occasion to have  
3 any law enforcement contacts or become friendly  
4 with any of the officers or anything like that?

5 A. No, not really.

6 Q. Any of the firefighters in your area?

7 A. I know some of the firefighters from Brillion.

8 Q. Who do you know?

9 A. Police chief. There's Dale Gailoff (phonetic).

10 Q. Mm-hmm.

11 A. There's really a bunch of them. There's a couple  
12 Behnkes.

13 Q. Okay.

14 A. Some of -- most of them I work with, you know.

15 Q. Okay.

16 A. That I know so.

17 Q. Now, because you work with some of those who have  
18 connection to law enforcement, do you think if  
19 you were selected as a juror that you could  
20 evaluate the testimony of a law enforcement  
21 officer the same as you would evaluate the  
22 testimony of any other witness who appeared in  
23 the case?

24 A. Yes.

25 Q. All right. So just because they are a law

1 enforcement officer and because you happen to  
2 know a few law enforcement officers, you wouldn't  
3 weigh their testimony more credibly than you  
4 would someone else's?

5 A. No.

6 Q. All right. You feel pretty comfortable and  
7 confident that you could do that?

8 A. Yes, I do.

9 Q. Now, there was one last couple questions I had  
10 for you here. Apparently you had a sister who  
11 was killed in an automobile accident?

12 A. Correct.

13 Q. All right. Was that a long time ago or recently?

14 A. No, 1967.

15 Q. Oh, quite a while ago.

16 A. Yeah.

17 Q. All right. Was it simply just an accident or was  
18 there some, you know, perhaps some criminal  
19 malfeasance there?

20 A. I remember my folks going to court in with it,  
21 but I don't remember what the outcome, I didn't  
22 really get nothing out of it I don't think.

23 Q. Okay. You don't remember whether there was just  
24 a civil suit or a criminal case about how she --

25 A. I thought -- I think it was civil.

1 Q. Okay.

2 A. Okay.

3 Q. All right. Okay. Do you -- Did you have any  
4 personal experience in that in terms of --

5 A. No.

6 Q. -- being a witness or talking to any --

7 A. No.

8 Q. -- body?

9 A. I went to school. We never went to court  
10 proceedings, nothing.

11 Q. Okay. All right. So you were just a teenager at  
12 the time then?

13 A. 15.

14 Q. Right.

15 A. Yeah.

16 Q. Okay. Anything about that experience that makes  
17 you wonder whether it would be a good idea or a  
18 bad idea for you to be a juror in this case?

19 A. From that, no.

20 Q. Okay.

21 ATTORNEY FALLON: All right. That's all I  
22 have.

23 THE COURT: Mr. Strang.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY STRANG:

1 Q. Hi, Dean Strang, Jerome Buting, Steven Avery.  
2 You probably saw us last week, briefly. Where --  
3 Where did you live in Calumet County when you  
4 were there from '87 to '92.  
5 A. Just a little bit north of Brillion.  
6 Q. A little north of Brillion?  
7 A. Yeah, it was on W580 Harvester Road was the  
8 actual address.  
9 Q. And the mailing address?  
10 A. W580 Harvester Road.  
11 Q. No, no. I mean -- I'm sorry, the post office,  
12 the town?  
13 A. Oh, Brillion.  
14 Q. Brillion?  
15 A. Yeah.  
16 Q. Yeah. And, actually, part of Brillion lies in  
17 Manitowoc County and part in Calumet, I think,  
18 right?  
19 A. The city?  
20 Q. Or is that not so?  
21 A. Not the city.  
22 Q. The city is all in Manitowoc?  
23 A. No, in Calumet.  
24 Q. Oh. Okay.  
25 A. Okay. But if you seen, my address is Brillion

1                   too.

2 Q. Mm-hmm.

3 A. But that's in Manitowoc.

4 Q. You are on the Manitowoc side?

5 A. Yeah.

6 Q. Okay. So you really didn't move very far?

7 A. Mm, I think it's about 6 miles.

8 Q. Yeah. And you told -- One of the things you told  
9 us in the questionnaire is that you're acquainted  
10 with Teresa Halbach's brother?

11 A. Just slightly.

12 Q. Which one?

13 A. I'm not even sure of his first name. My mother  
14 had died like a year and a half ago.

15 Q. Mm-hmm.

16 A. And now my dad is transferring some land and we  
17 went to this attorney to try to take care of  
18 this.

19 Q. Mm-hmm.

20 A. And my dad signed the land over to me and my  
21 siblings and we put it into a LLC.

22 Q. Mm-hmm.

23 A. And Mr. Halbach, I think he dotted the i's and  
24 the t's for that paper.

25 Q. Sure.

1 A. And he also did a lease agreement because some of  
2 the land is rental and he drew those papers up on  
3 that.

4 Q. Okay.

5 A. But when I was there, I didn't -- I didn't know  
6 it was him. I knew it like a day later, my  
7 sister told me. I think they only used like  
8 first name, but like I say, I don't remember.

9 Q. Sure. Tim?

10 A. That could be it.

11 Q. Tim Halbach. Okay. And about how long ago was  
12 this?

13 A. I think it was the 25th; it was a Thursday, in  
14 January.

15 Q. Oh. Like --

16 A. Just briefly.

17 Q. -- a month ago?

18 A. Yeah.

19 Q. So it -- Was it your siblings who set up this  
20 LLC?

21 A. Yeah, me and my siblings. Yeah.

22 Q. And, then, the LLC is the technical owner of the  
23 land that your dad sold?

24 A. Right. Right.

25 Q. Okay.

1 A. Yeah, he gave it to us. He transferred it,  
2 really.

3 Q. Yeah. And, then, is it a -- is it a working farm  
4 or it has a business purpose, commercial purpose?

5 A. It's farm and it's, like, lake property rental.

6 Q. Mm-hmm.

7 A. Okay. And there's cottages there that rent. And  
8 the lawyer wanted us to actually have a signed  
9 lease, because my dad never did before.

10 Q. Laurie wanted? Oh, the lawyer.

11 A. Yeah.

12 Q. The lawyer did. Okay. And so this is -- How  
13 many siblings do you have?

14 A. Besides me?

15 Q. Yeah.

16 A. Four.

17 Q. All five of you went in on this?

18 A. Right.

19 Q. Okay. And the five of you, or the LLC, are  
20 paying the lawyer?

21 A. We didn't pay nobody yet. I think my dad is  
22 going to take care of it.

23 Q. Okay.

24 A. But I didn't pay nothing yet.

25 Q. And do you know, did the lawyer set up the LLC?

1 A. I don't really know.

2 (Changing battery in the microphone.)

3 Q. That's what happens when the battery dies.

4 THE COURT: She just shuts that off. As  
5 soon as they put a battery in, everything will be  
6 fine.

7 Q. (By Attorney Strang)~ All right. So are you and  
8 your siblings, or at least some of the five of  
9 you, officers of this LLC?

10 A. My sister is.

11 Q. And directors, that kind of thing?

12 A. We just, actually just set it up.

13 Q. Right.

14 A. And my sister is the head of it. My sister is  
15 the head of it. She's taking care of it.

16 Q. Okay. And then the LLC will rent out these  
17 cabins or cottages?

18 A. Right.

19 Q. Like a summer vacation sort of --

20 A. That's what it is, yeah.

21 Q. And do you all plan to continue running the LLC  
22 and getting some income out of it?

23 A. For the near future, yeah.

24 Q. Okay.

25 A. Yeah.

1 Q. And then the lawyer, this Mr. Halbach --

2 A. Well, I don't know if he's a lawyer. It was

3 Twohig somebody and Schneider.

4 Q. Right, Twohig, Rietbrock, da, da, da, in downtown

5 Chilton?

6 A. Yeah.

7 Q. But you met Mr. Halbach there?

8 A. Yeah.

9 Q. Doing legal work for the LLC?

10 A. Right.

11 Q. And he's the one who set up the LLC?

12 A. I believe so, because he explained it to us.

13 Q. Right.

14 A. Yeah.

15 Q. Okay. And then do you plan to have him involved

16 in the tax documents and the annual report that

17 the LLC will file?

18 A. I have no idea.

19 Q. Okay. All right. What you know is you are not

20 doing that, I assume, right?

21 A. Yeah.

22 Q. Okay. You -- You mentioned that you had stopped

23 getting the newspaper and I wanted to pick up on

24 that. Why did you cancel your newspaper?

25 A. Um, racing takes a lot of time and I just found I

1           was -- wasn't keeping up, you know, reading so it  
2           didn't feel like it paid to get it anymore.

3 Q.        Okay. It wasn't that you got ticked off?

4 A.        No. No.

5 Q.        Okay. Let's go back to the, you know, the  
6           details you know about this case or at least the  
7           publicity you heard about the case and let's sort  
8           of explore that a little bit more. What did you  
9           think about, you know, when you heard that a  
10          young woman went missing and turns up dead and  
11          maybe her body has been burned? What did you  
12          think about all that?

13 A.        Yeah, it's, you know, it's tragic. You know, you  
14          wonder who would do something like that, you  
15          know, but ...

16 Q.        Not exactly what you want happening in your  
17          neighbor.

18 A.        No, I have two daughters, too.

19 Q.        Yeah. Did you -- Did you -- Did that occur to  
20          you when you first heard about this, the ages  
21          aren't all that different, actually?

22 A.        No. Yeah, you worry about that, you know. I  
23          think any father would.

24 Q.        So do I. And that's why I'm wondering why you  
25          don't have an opinion about it. Because I do

1 think any father would worry about that.

2 A. You mean, when I wrote the paper? When I wrote  
3 on that paper, you mean?

4 Q. Yeah. Yeah. Or you said -- How can you not have  
5 an opinion about this?

6 A. I -- Yeah, I guess you would really.

7 Q. I mean, I'm not trying to set you up.

8 A. Yeah.

9 Q. I'm defending Steven Avery, but I really need to  
10 know, you know, sort of what we're up against,  
11 and get at that. I mean, it's -- you are human,  
12 I want to know what the opinion is.

13 A. Yeah, I do, you know, worry about her. I'm  
14 worried about my kids.

15 Q. Yeah, and this is the guy they charged?

16 A. Yeah.

17 Q. So, is he probably guilty, probably done  
18 something really horrible?

19 A. The Court has to prove that, I guess.

20 Q. Actually, they have to prove it.

21 A. Well, yeah, I'm sorry. Yeah.

22 Q. Yeah, right. I mean, it comes out in court and  
23 that's all good, you know, that's all good  
24 American civics stuff. But I want to get at, you  
25 know, where I'm starting with you.

1                   ATTORNEY FALLON: Your Honor, could counsel  
2 approach the bench?

3                   THE COURT: Sure.

4                   (Side bar taken.)

5                   THE COURT: All right. Mr. Petermann, at  
6 this time I'm going to allow you to leave the  
7 courtroom with the Clerk.

8                   MR. PETERMANN: Okay.

9                   THE COURT: I will let you know,  
10 Mr. Petermann, because of the -- and this has  
11 nothing to do with anything wrong you did, but  
12 because of your relationship to the --

13                  MR PETERMANN: Okay.

14                  THE COURT: -- the legal --

15                  MR. PETERMANN: That's fine.

16                  THE COURT: -- the legal relationship to  
17 the brother of the victim and the fact that he is an  
18 attorney for your organization, that makes you  
19 disqualified as a juror.

20                  MR. PETERMANN: That's fine.

21                  THE COURT: So the Clerk will escort you  
22 from the courtroom.

23                  (Wherein the juror was excused.)

24                  THE COURT: Counsel, for the record, it's  
25 my understanding that both parties are jointly

1 requesting that this juror be excused for cause?

2 ATTORNEY STRANG: We certainly have no  
3 objection to it.

4 ATTORNEY FALLON: I will make the motion.

5 I think we have to. I realize that there is a  
6 question here as to whether or not there's been  
7 developed a solid objective bias case under the  
8 standards. But even in other cases, most notably  
9 the **Lindell** case. There's an opportunity that -- In  
10 fact, the language is as follows: We caution and  
11 encourage a circuit court to strike prospective  
12 jurors for cause when the circuit courts reasonably  
13 suspect that juror bias exists.

14 They go on to say: To err on the side  
15 of striking prospective jurors who appear to be  
16 biased, even if perhaps the appellate court would  
17 not reverse their determination of an  
18 impartiality. And, again, I'm not 100 percent  
19 convinced, based on his limited involvement in  
20 the family's LLC; nonetheless, I think in  
21 fairness, there is that appearance and that he  
22 should be struck for cause.

23 ATTORNEY STRANG: I'm convinced. We will  
24 join the motion.

25 THE COURT: All right. The Court will

1           grant the parties joint motion and strike that juror  
2           for cause.

3           We're going to resume at 8:30 tomorrow.  
4           Couple of things before we leave. I allowed  
5           members of the news media to have laptops in  
6           these proceedings, but that was done with the  
7           understanding that they wouldn't be making  
8           noises. I believe they are equipped with  
9           features to keep them from beeping. So please  
10          address that before anyone returns tomorrow. And  
11          I believe that's all I have got today, so counsel  
12          I will see you at 8:30 tomorrow.

13          (Proceedings concluded.)

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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 31th day of August, 2007.  
16  
17  
18

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
21  
22  
23  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL  
5 vs. VOIR DIRE - DAY 3  
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

---

8 **DATE:** FEBRUARY 7, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:**

12 KENNETH R. KRATZ  
Special Prosecutor  
13 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON  
Special Prosecutor  
15 On behalf of the State of Wisconsin.

16 DEAN A. STRANG  
Attorney at Law  
17 On behalf of the Defendant.

18 JEROME F. BUTING  
Attorney at Law  
19 On behalf of the Defendant.

20 STEVEN A. AVERY  
Defendant  
21 Appeared in person.

22 \* \* \* \* \*

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF  
3 381. We're here this morning to begin the third day  
4 of individual voir dire. Will the parties state  
5 their appearances for the record, please.

6                   ATTORNEY FALLON: Good morning, your Honor,  
7 may it please the Court. The State appears by  
8 Assistant Attorney General Tom Fallon and special  
9 prosecutor, along with special prosecutor Ken Kratz.

10                  ATTORNEY BUTING: Steven Avery is here in  
11 person; Jerome Buting represents him, as does Dean  
12 Strang.

13                  THE COURT: All right. There's a few  
14 matters we have to clear up from yesterday before we  
15 call out the first juror. First, at this time I had  
16 a chance to look at the jury questionnaires; there  
17 were three jurors yesterday that the parties jointly  
18 recommended be stricken for cause and I believe the  
19 Clerk has the names and numbers.

20                  THE CLERK: It was Juror No. 44, Kevin  
21 Cayemberg; Juror No. 37, Mary Lukes; and Juror  
22 No. 39, Betsy Roedig.

23                  THE COURT: Does that square with the  
24 party's recollection?

25                  ATTORNEY STRANG: Yes.

1 ATTORNEY FALLON: Yes, that's correct,  
2 Judge.

3 THE COURT: All right. I have reviewed the  
4 questionnaires in those cases and I agree with the  
5 party's recommendations; those three jurors will be  
6 stricken for cause. I also indicated to the parties  
7 before we began today that -- Well, first of all, at  
8 the outset, the Court had indicated it wished to  
9 place a 15 minute limit on each party for individual  
10 voir dire of the jurors.

11 The parties were both heard on the  
12 record and felt that time would be too short. I  
13 indicated, I believe, that I would monitor the  
14 situation and somewhat loosely apply the limit.

15 Having heard the voir dire of the jurors  
16 who have been questioned to date, the Court  
17 believes that if unnecessary visiting with the  
18 juror questions are eliminated and repetitive  
19 questions are eliminated, I'm not sure that I  
20 have heard any juror for which 20 minutes per  
21 side would not have been sufficient. So I'm  
22 going to impose a 20 minute limit on each side  
23 for questioning any particular juror.

24 I do have a timer here that I will be  
25 using. The way it's set up, and I don't think I

1 can overrule it, but perhaps it's helpful. It  
2 gives a short little beep at every five minute  
3 interval. So the beep you hear today will not be  
4 the laptops of the media, but will be coming from  
5 the timer.

6 And when the last one goes off, if the  
7 parties wish, I will give you just a brief  
8 warning that you have got five minutes left. I  
9 won't give it, if the parties don't wish me to,  
10 but if you find it of assistance, I will.  
11 Counsel.

12 ATTORNEY FALLON: I understand the Court's  
13 reasoning and we'll do our best to abide by the time  
14 limit and see how it goes. But as I think about the  
15 last couple of days, quite frankly, notwithstanding  
16 media perception, I don't think we're doing all that  
17 badly or going all that slowly.

18 Actually, it feels almost about right, a  
19 little tedious yesterday. But our concern is  
20 having adequate time to explore the issues. And  
21 like I said, the State will do its best to abide  
22 by the 20 minute time limit.

23 But as I think about it, I don't think  
24 on average we have spent more than 40 to 45  
25 minutes on average per juror. And as the Court

1           is aware, the parties have agreed to strike for  
2           cause somewhere in the vicinity of 50 jurors.  
3           Thereby saving a great deal of time. But in  
4           terms of right now, we'll see how it goes and we  
5           may renew our request for extended time depending  
6           on how it goes.

7                         THE COURT: Mr. Strang.

8                         ATTORNEY STRANG: I do object to the time  
9                         limit for a number of reasons, acknowledging that  
10                  the Court has broad discretion in controlling voir  
11                  dire and superintending the process of jury  
12                  selection. But the overriding concern here as the  
13                  Court itself acknowledges -- and I know the Court  
14                  understands this -- is that we're trying a case in  
15                  which a man -- the rest of his life hangs in the  
16                  balance.

17                  And for the other side of the courtroom  
18                  in which the public has an enormous and  
19                  legitimate interest and one family in particular  
20                  has a very deep personal interest, picking 16  
21                  fair jurors who come to this case after 15 months  
22                  of publicity that has been unusual in its  
23                  pervasiveness and in its consistency, without  
24                  ascribing or characterizing it further, there's  
25                  been an enormous amount of publicity in this

1 case.

2 And it is not at all unreasonable here  
3 for the parties to explore in voir dire well  
4 beyond the bases for cause in striking a juror,  
5 but explore further the information that will  
6 allow each side intelligently to exercise the few  
7 peremptory strikes the Wisconsin law allows each  
8 side.

9 In two long days of voir dire I -- I and  
10 Mr. Buting collectively have made exactly one  
11 objection to a question posed by the State. And  
12 as this Court knows, I'm not shy about making  
13 objections and neither is Mr. Buting. So we made  
14 one objection because we thought there was one  
15 objectionable question in two days.

16 We have not posed a single question  
17 between the two of us that we thought  
18 objectionable. We don't intend discourtesy to  
19 the Court and we don't intend to do improper  
20 things.

21 The State has made a few, several,  
22 although not a great number of objections to our  
23 questions, some of which the Court has sustained  
24 and some of which it has overruled. But in the  
25 main, I expect that counsel at the next table

1           would join me in agreeing that neither side has  
2           wandered off into inappropriate material.

3           Now, when the Court times each side, on  
4           each juror, and a little chime is going off,  
5           we're chilling not just the lawyers, but more  
6           importantly, the person who is trying to open up  
7           in an alien environment and give us some  
8           information that's very personal to a bunch of  
9           strangers, about themselves, about their  
10          attitudes and about their deepest held  
11          convictions.

12          And with a chime going off every five  
13          minutes, I don't expect the same level of candor  
14          from jurors who are already uncomfortable and in  
15          an alien environment surrounded by strangers who  
16          do very different things with their working lives  
17          than they do.

18          So if -- if the Court is of a mind to  
19          set some time limits and I certainly understand,  
20          I share the desire to be out of here before 6 or  
21          6:30 at night, because of all the work we have to  
22          do after we leave court. But if the Court was  
23          going to do that, I would ask the Court, instead,  
24          to set something like a three and a half hour a  
25          day limit on each side and let us apportion that

1 time as we will.

2 Because it is -- One of the other  
3 problems with a 20 minute limit per side per  
4 juror is that not all potential jurors are  
5 created equal. Some of them -- some of them can  
6 be accepted, or for that matter excused, in five  
7 or 10 minutes total.

8 Some of them are well worth an hours  
9 total exploration. And if that happens to be 40  
10 minutes by the State and 20 minutes by the  
11 defense on one juror and, you know, 30 minutes by  
12 each side on the next; that's just the way it is,  
13 in my view. Each one of these people is  
14 individual and presents individual issues for the  
15 respective sides in this lawsuit.

16 So, we're in an area of the Court's  
17 discretion; I understand and respect that. I'm  
18 asking the Court to exercise it a little bit  
19 differently in hope here of flushing out, not  
20 just cause to excuse a juror, but all the  
21 information we reasonably can hope to have so  
22 that we might exercise, intelligently, our  
23 peremptory strikes when there's everything at  
24 stake at the defense table and enormous  
25 legitimate interests at stake at the State table.

THE COURT: All right. I want to -- in  
light of those comments I want to make a few  
additional ones of my own to make sure that the  
Court's ruling here is not misconstrued. First of  
all, I will state for the record that the Court is  
very appreciative of the efforts that counsel for  
both sides in this case have made to thoroughly  
review the written questionnaires that were used and  
agree to strike, before individual voir dire, those  
jurors whose answers demonstrate that they would  
have a great difficulty meeting the qualifications  
of a jury in this case.

I am not imposing the time limit as a punishment for the conduct of the parties. I believe that the attorneys have been very responsible. When it comes to whether questions on voir dire are objectionable, it's often more of an art than a science.

19 It's not so much that a particular  
20 question is or is not objectionable and certainly  
21 in this case the Court recognizes that a  
22 legitimate area of inquiry from both parties on  
23 voir dire is the extent to which jurors have been  
24 exposed to pre-trial publicity and the effect  
25 that that might -- that that publicity might have

1           on their actions as a juror. And if it appears  
2           that any particular juror has been so exposed  
3           that 20 minutes is simply not enough, I'm not  
4           saying the Court would not entertain a request  
5           for longer time.

6           However, there are some other questions  
7           that have been asked, many of which is, you know,  
8           taking the first five minutes to ask the juror  
9           something about their background, whether it be  
10          employment, or hobbies, or whatever, that isn't  
11          particularly germane to the qualifications of the  
12          juror. And I'm looking with the time limit to  
13          get the parties past that and into the meat of  
14          voir dire a little bit quicker.

15          If I felt that by imposing a 20 minute  
16          limit either party would be prejudiced to the  
17          point that they couldn't get the information that  
18          they need to evaluate jurors, I wouldn't set the  
19          time limit. I'm setting it based on my  
20          observations of what's happened so far. And  
21          while it's not the primary consideration, I'm  
22          also trying to give a little consideration to the  
23          jurors who are waiting to be called out here.

24          So, with that background, before we  
25          begin, then, there was also a question -- and I

1           will stick the timer on the floor in order to  
2           muffle, to the extent possible, the noise it  
3           makes. I think you will find it's not as loud as  
4           what we were hearing from some of the laptops  
5           yesterday.

6           There was one other remaining issue from  
7           yesterday relating to the juror, Nathan Klein,  
8           and his -- the answers he gave to questions  
9           relating to his exposure to radio at work and the  
10          fact that he heard something within the last  
11          week, I believe it was on Monday, about blood  
12          vial evidence. I have reviewed -- and have the  
13          parties received this page and a half?

14           ATTORNEY STRANG: No.

15           ATTORNEY FALLON: No.

16           THE COURT: Why don't you come up and take  
17          a look at it now. My review of the answers that he  
18          gave to the questions was consistent with my  
19          recollection at the time; that is, he indicated he's  
20          at work; the radio is always on at work; he did hear  
21          news last Monday about the blood vial and the  
22          State's request to test it.

23           He was candid in describing that he had  
24          heard that; although, he indicated he tries to  
25          avoid listening to the radio while at work, but

1           had -- did admit that he heard this particular  
2        story. He indicated that he thought that -- that  
3        the planting of the blood vial evidence was a  
4        possible defense in this case. He was hoping  
5        that there would be some results from the tests,  
6        but if there weren't, he said that, then, he  
7        would look at something else.

8           First of all, I would note, I believe  
9        he -- based on the answers he gave, he has  
10       attempted to comply with the court order as best  
11       he can. Obviously, should he be selected as a  
12       juror in this case, he won't have to worry about  
13       being exposed to the radio at work because he  
14       won't be at work.

15       Secondly, I would note that, in the  
16       scheme of things, the danger that pre-trial  
17       publicity would prejudice a juror in this case is  
18       far greater with respect, for example, to what  
19       they heard or remember about Mr. Dassey's  
20       statements, which may or may not come in at  
21       trial.

22       I think that this is not such a major  
23       item that it could be expected to have a dominant  
24       effect or foreclose him from indicating as he  
25       did, that he could put his exposure to pre-trial

1                   publicity behind him and become a fair juror and  
2                   base his decision only on the evidence introduced  
3                   at trial. So I don't believe there is a basis  
4                   for excusing Mr. Klein and he will remain as part  
5                   of the jury panel in this case.

6                   ATTORNEY STRANG: Just a couple things to  
7                   make the record clear on that, your Honor. The  
8                   transcript excerpt the Court invited us to look at  
9                   when we approached the sidebar were pages 139 and  
10                  140 of the February 6, 2007 transcript of  
11                  proceedings. (Court reporter note: Those page  
12                  numbers may not match after the transcript is  
13                  completely transcribed.)

14                  And I think the ruling concerning  
15                  scientific testing to which the juror -- or  
16                  Mr. Klein, the prospective juror, referred  
17                  concerned the Court's February 2, 2007 ruling on  
18                  allowing testing; although, the Court already has  
19                  ruled or previously has ruled that the results of  
20                  such tests at present are inadmissible and may  
21                  not -- and the possibility of doing EDTA testing  
22                  may not be mentioned by either side.

23                  THE COURT: Mr. Fallon, is that a fair  
24                  summary from your perspective?

25                  ATTORNEY FALLON: Not quite. It is with

1 respect to a ruling the Court issued I believe in  
2 January relative to the presence or absence of EDTA;  
3 however, it does not encompass other potential  
4 scientific testing.

5 Secondly, if not -- and it hasn't been  
6 directly or -- filed or stated in court, but  
7 that, I think, decision is subject to review and  
8 a motion to reconsider since that determination  
9 was held without evidentiary hearing, without  
10 facts, without argument and was based upon, to my  
11 recollection and knowledge, an unpublished  
12 Federal District Court opinion out of California  
13 dealing with a post-conviction motion. So with  
14 those caveats, I accept counsel's representation.  
15 But the State's position is that the ruling  
16 relative to Juror Klein is appropriate.

17 THE COURT: All right. Well, what the  
18 Court did rule is the Court was going to allow, and  
19 has allowed, the State to conduct tests on the blood  
20 vial from the Clerk's Office. I have also provided  
21 that sufficient sample be set aside to allow the  
22 defense to do the same. And I specifically reserved  
23 ruling on the admissibility of any test results  
24 should any test results be obtained. Otherwise, I  
25 believe Mr. Strang's summary of things is accurate.

1                   ATTORNEY STRANG: Okay. Am I correct that  
2                   the current state of rulings of the law of the case  
3                   is that EDTA testing is not admissible and as things  
4                   stand that that was the Court's January something  
5                   order and that neither side may mention the  
6                   possibility of doing EDTA testing to the jury?

7                   THE COURT: Well, those are two different  
8                   things. First of all, the Court did not rule that  
9                   EDTA test results are not admissible. The Court  
10                  ruled, in essence, if I can summarize my ruling,  
11                  that they have not been proven to be of such  
12                  reliability that they justified an adjournment of  
13                  the trial in this case to await the results of such  
14                  testing.

15                  And I did that based on the information  
16                  that the parties provided me, which both parties  
17                  represented was the best information on the  
18                  state-of-the-art of such testing; namely, the  
19                  California decision to which Mr. Fallon referred.  
20                  I do not believe I was asked to rule on the  
21                  admissibility of EDTA test results, I have not  
22                  done so at this time. There are no EDTA test  
23                  results.

24                  As to whether either party could mention  
25                  them in an opening statement or otherwise, I

1           think the rule would be the same as it is with  
2           other evidence. I don't recall being asked to  
3           make any such ruling, nor do I recall that I made  
4           such a ruling.

5           ATTORNEY STRANG: We probably both should  
6           go back and look at the written ruling, then,  
7           because maybe my recollection is faulty.

8           THE COURT: Okay.

9           ATTORNEY FALLON: Your Honor, if I may make  
10          one comment on the voir dire process, just to clear  
11          up the record and to make a point. We accept the  
12          Court's ruling, but I would like the record to  
13          reflect that what many perceive as five minutes of  
14          chit chat questions by the State, or the defense for  
15          that matter, as they begin their voir dire process,  
16          while we agree that it does not go directly to the  
17          potential of a strike for cause, it has two very  
18          valid purposes.

19           One, information obtained during that  
20          introductory questioning is quite valuable in  
21          determining how one would exercise their  
22          peremptory challenges.

23           And secondly, picking up on a point that  
24          Mr. Strang made earlier, it's incredibly  
25          difficult to start a conversation with somebody

in saying, well, good morning, sir, I understand you were a victim of a crime and how do you feel about that.

It seems to me that there ought to be at least some time for a person to walk into a courtroom such as this, with all these people looking at them where they are clearly the fish in the bowl, and make some human effort to relax them and engage them such that -- so that they can honestly answer the questions.

So that's the reason for that question, for those types of questions. And I just want the record to be clear about it. It's not like we're wasting time or trying to be buddy-buddy with jurors.

THE COURT: Well, that's one of the reasons I'm setting a time limit rather than objecting to when the Court may believe that the number of visiting questions is excessive. I think the best way to police it is to simply set a time limit.

All right. If there's nothing else,  
we'll bring in Jean Koch.

Ms Koch, if you will raise your right hand, the Clerk will administer an oath to you.

(Juror sworn.)

1                   THE CLERK: Please be seated.

2                   THE COURT: I know that people with the  
3 spelling of your last name sometimes pronounce it  
4 differently; how do you pronounce it?

5                   MS KOCH: Koch.

6                   THE COURT: Ms Koch. All right. You have  
7 already filled out a written questionnaire in this  
8 case. This morning we're moving on to the next step  
9 of the jury selection process which is individual  
10 voir dire. Each of the attorneys will have a chance  
11 to ask you some questions and for the most part as a  
12 follow-up to answers that you gave on your written  
13 questionnaire.

14                  Before they begin, I can tell you that  
15 at this time the jurors who are selected to serve  
16 on the jury in this case will not be sequestered;  
17 that is, they will be permitted to return home at  
18 the end of court proceedings each day, before  
19 reporting back to court the following day.

20                  We're doing this with the understanding  
21 that the jurors will not attempt to learn  
22 anything about this case and not be exposed to  
23 any media coverage of it, either in the  
24 newspapers, television, radio, or the internet  
25 and that the jurors will not discuss the case

1           with anyone, including other jurors or family  
2           members, until the case is concluded.

3           I can also tell you, that although the  
4           proceedings today are open to the public, we do  
5           not permit cameras in the courtroom during jury  
6           voir dire. And members of the media are not  
7           permitted to disclose the names of the jurors in  
8           their reports.

9           In addition, you should know that should  
10          you be selected as a juror in this case, any  
11          cameras that cover the trial are not permitted to  
12          show the jury in any way that would identify  
13          individual members of the juror -- of the jury.

14          Finally, if you are still on the panel  
15          after today's proceedings, you will receive a  
16          telephone call in the next day or two letting you  
17          know when to report back to court for the next  
18          part of the process.

19           Mr. Fallon, you may begin.

20           **VOIR DIRE EXAMINATION**

21          BY ATTORNEY FALLON:

22          Q.     Good morning, Ms Koch.

23          A.     Good morning.

24          Q.     My name is Tom Fallon. I'm an Assistant Attorney  
25          General with the Wisconsin Department of Justice.

1 I'm one of the prosecutors in this case. To my  
2 immediate left is Mr. Ken Kratz, the lead  
3 prosecutor. He is currently the Calumet County  
4 District Attorney. Again, good morning and  
5 thanks for coming in this morning.

6 We have a few questions, both myself and  
7 the defense, Mr. Strang I believe, of you  
8 regarding some of the information you provided  
9 last week to help us in selecting a jury.

10 First, I'm sorry, I'm not from the area,  
11 but what kind of business is Two Rivers  
12 Improvement; is it home improvement?

13 A. Twin Rivers Improvement, it's a home improvement  
14 business. We do residential and commercial  
15 buildings, windows, doors, siding, roofing,  
16 remodeling.

17 Q. Okay. How long have you been actively engaged in  
18 that business?

19 A. Since 1988.

20 Q. All right. Very good. Thank you. I also  
21 noticed from your questionnaire, that you are  
22 familiar with our Clerk of Court?

23 A. Yes.

24 Q. Janet. All right. Your familiarity with her,  
25 does that raise any question in your mind as to

1           your ability to be a fair and impartial juror in  
2           this case?

3       A. No. I don't know if it's the same Janet.

4       Q. Okay.

5       A. Because I do know one, but it might be somebody  
6           else.

7       Q. Do you know this young lady?

8       A. No. So is it -- I know a different Janet.

9       Q. All right. Very good. That solves one mystery.

10      Thank you. The next area I would like to ask you  
11       about is some of the pre-trial publicity that's  
12       attended to this case. And you indicated you are  
13       at least familiar with some of that publicity.

14       And in your questionnaire you indicated you get  
15       your news sources from radio, television and the  
16       internet. So if we could start there. If you  
17       could tell me a little bit; of those three, where  
18       do you get the majority of your news?

19       A. From TV.

20       Q. From the television?

21       A. Mm-hmm.

22       Q. And is it the regular evening newscasts or ...

23       A. Yeah, the regular evening newscasts, yeah.

24       Q. Do you watch any special news programs at all or  
25       just the regular news?

1 A. I watch a lot of Court TV.

2 Q. Court TV?

3 A. Yeah.

4 Q. All right. Okay. In terms of the radio, how

5 much news do you get from the radio sources?

6 A. Just in the mornings when I'm getting ready for

7 work; I will have the radio on. And that's all I

8 hear, is just the morning news.

9 Q. All right. And in terms of your business

10 practice, I mean, generally, what hours do you

11 keep?

12 A. I usually work from like 8 until 1 or 2 in the

13 afternoon.

14 Q. All right.

15 A. It depends on how busy we are, otherwise if

16 someone is at the office, then they will sit in

17 for me and then I just answer the business phone

18 at home.

19 Q. I see. All right. When you are at home, do you

20 have the TV or radio on in the background, or

21 not?

22 A. I have Court TV on.

23 Q. You have Court TV on. All right. Very good. In

24 terms of the internet, how much news or what kind

25 of news do you obtain from the internet?

1 A. Not much.

2 Q. Not much?

3 A. No. No.

4 Q. That's more for --

5 A. I just check the Herald-Times Reporter on the

6 internet --

7 Q. Right.

8 A. -- once in a while, but I really don't go into it

9 that much.

10 Q. So it's not a major news source?

11 A. No. No.

12 Q. Have you watched any of the proceedings

13 associated with this case on the internet, for

14 instance?

15 A. No.

16 Q. All right. Have you watched any of the

17 proceedings as reported on television?

18 A. Yes.

19 Q. All right. And tell us a little bit about that;

20 how much would you say you have observed?

21 A. Well, in the evening news, I usually watch what's

22 coming up, or what's going to be going on in the

23 next week or so. I had seen a couple weeks ago,

24 it was in regards to the Dassey --

25 Q. Right.

1 A. -- trial. But I really don't watch that much of  
2 it, you know. If it's on, I will listen to it,  
3 but otherwise it's --

4 Q. Mm-hmm.

5 A. It's been on the news for so long that, you know,  
6 it just -- I don't know.

7 Q. All right. Did you receive an advisory from the  
8 Court asking that you refrain from watching any  
9 of the newscasts?

10 A. Yes.

11 Q. All right. And have you been able to abide by  
12 that request?

13 A. Yes.

14 Q. All right. With respect to the information you  
15 have, you did offer an opinion; have you formed  
16 any personal opinions about this case, based on  
17 the publicity? And you used the phrase, I know  
18 he's guilty.

19                   But then, specifically, with respect to  
20 the question: Have you yourself formed any  
21 opinion, based on the information from any  
22 source, as to his guilt or innocence, you said  
23 no. So I wanted to talk to you a little bit  
24 about that.

25                   Based on the information that you have

1           in your head, right now, do you have an opinion,  
2           do you think you know enough, do you have an  
3           opinion as to whether he is guilty or not?

4       A. Yes.

5       Q. Okay. And what is your opinion?

6       A. Right now I would say he is guilty.

7       Q. All right. And that is based on the information  
8           that you received from the media?

9       A. Right.

10      Q. All right. And you realize you have not received  
11           any other information, either from the State  
12           directly or perhaps from the defense? Is that  
13           correct?

14      A. Right, yes.

15      Q. All right. Now, if the Court were to instruct  
16           you, and the Judge will in fact instruct you if  
17           you were selected as a juror, that you would be  
18           required to set that information aside and be  
19           asked to decide Mr. Avery's guilt or innocence  
20           strictly on the evidence presented in the  
21           courtroom?

22      A. Mm-hmm.

23      Q. In other words, you would have more access to  
24           more information as a juror than you would  
25           listening to the media. Do you think that you

1           could set aside the information that you have and  
2           decide this case strictly on the evidence?

3       A. Oh, yes, just listening to both sides I would --  
4           I would need a lot more detail into, you know ...

5       Q. All right.

6       A. So I would --

7       Q. Go ahead, I'm sorry.

8       A. So I would love to hear both sides, you know,  
9           their ...

10      Q. All right. Well, let's talk a little bit about  
11           that. You understand that the State is the only  
12           one that has something to prove in the case; in  
13           other words, we have to prove his guilt, beyond a  
14           reasonable doubt, otherwise you must find him not  
15           guilty; do you understand that?

16      A. Yes.

17      Q. And could you accept that ruling --

18      A. Yes.

19      Q. -- that principle from the Court?

20      A. Yes.

21      Q. All right. And do you understand that Mr. Avery  
22           and his attorneys, they don't have to present any  
23           evidence at all? Do you understand that?

24      A. Yes.

25      Q. All right. And as a matter of fact, if they

1           chose not to do anything but just sit there --

2 A. Mm-hmm.

3 Q. -- you may have to decide this case solely on  
4       information provided by the State. And if it  
5       does not reach -- if it does not convince you,  
6       beyond a reasonable doubt, you must acquit him;  
7       do you understand that?

8 A. Yes.

9 Q. You -- Could you follow those instructions, if  
10      that's what the Judge instructed you --

11 A. Yes.

12 Q. -- to do?

13 A. Yes, I could.

14 Q. Is there any question in your mind that you could  
15      follow those instructions?

16 A. No.

17 Q. Let's talk a little bit about that. Why? You  
18      seem pretty confident in your ability to do that  
19      even though you have all this exposure to the  
20      media coverage.

21 A. Mm-hmm.

22 Q. Why do you think that you would be able to honor  
23      the Judge's request and decide this strictly on  
24      what's presented in court?

25 A. Um, I don't know how to answer that.

1 Q. Okay. Well, take your time and if you can think  
2 about it, please tell us why you feel so  
3 confident. There may be lots of reasons. You  
4 may be one who has a belief in our system. You  
5 may find instructions from the Court something  
6 that is your duty. There could be lots of  
7 reasons. I'm just wondering, what seems to  
8 strike a chord in the back of your head saying,  
9 you know, I could do that. Any thoughts?

10 A. I just don't know what to say. I'm nervous. I'm  
11 very nervous.

12 Q. I see that. And I don't mean to really put you  
13 on the spot that much. But, it's -- Because it's  
14 a matter of grave importance to both the State  
15 and the defense as to whether or not you would be  
16 able to do that and that's why we ask. All  
17 right.

18 Another question that follows up on  
19 that, on that presumption of innocence, is this  
20 question: You would be instructed, if you were a  
21 juror, that Mr. Avery is presumed to be innocent  
22 throughout the trial and he cannot be found  
23 guilty of any offense, unless and until the State  
24 has proven each element of that offense, beyond a  
25 reasonable doubt. Should you be selected as a

1                   juror, would you be able to follow the  
2                   instruction in reaching a verdict?

3                   And you didn't answer yes or no, but you  
4                   did go on to write: I feel right now that he is  
5                   guilty. I know we just kind of touched upon  
6                   that, but as the Court will instruct you, he is  
7                   presumed innocent as he sits here today.

8                   A. Mm-hmm.

9                   Q. Do you have any problem with that principle?

10                  A. No.

11                  Q. Do you accept that?

12                  A. Yes.

13                  Q. All right. And do you feel that you could honor  
14                  that presumption if the Court instructed you?

15                  A. Yes.

16                  Q. Is there any other reason, as you think about  
17                  this particular case? I see you have not been a  
18                  juror before; is there anything about the  
19                  process, or the prospect of being a juror, that  
20                  makes you wonder whether you could fulfill that  
21                  role, whether you could honor these principles?

22                  A. No.

23                  Q. Another point, and counsel will ask a great deal  
24                  about it, but I wanted to touch upon it as well.  
25                  You seem to have no problem with the fact that

1           Mr. Avery does not have to testify in this case  
2           if he doesn't want to. And if, as a juror, you  
3           could not and must not hold that against him.

4           And you indicated you could follow that  
5           principle?

6       A. Right.

7       Q. You accept that as --

8       A. Yes.

9       Q. -- a basic tenet of our law?

10      A. Yes.

11      Q. All right. And -- But what if he did testify,  
12           would you be able to evaluate his believability,  
13           his credibility, his honesty, the same way you  
14           would any other witness?

15      A. Yes.

16      Q. All right.

17      A. Yeah.

18      Q. And the fact that he happens to be accused of a  
19           pretty serious crime, you wouldn't weigh his  
20           testimony any more or any less than anyone  
21           else's?

22      A. No. No.

23      Q. All right. You feel pretty comfortable with  
24           that?

25      A. Mm-hmm. Yes.

1 Q. That you could follow that instruction?

2 A. Yes.

3 Q. All right. And one last point, you did -- you  
4 did feel that there was so much evidence provided  
5 against Mr. Avery in the media that it would be  
6 difficult to set aside your opinions. Do you  
7 feel that -- still feel that way, or do you think  
8 that you would be able to set those opinions  
9 aside?

10 A. I would probably be able to set them aside.

11 Q. All right. In other words, you would give it  
12 your best effort?

13 A. Right, I would, to listen to what everybody has  
14 to say.

15 Q. And -- Because it's most important to us that you  
16 be able to decide this case strictly on the  
17 evidence that's presented in court?

18 A. Yes.

19 Q. And you can do that?

20 A. Yes.

21 ATTORNEY FALLON: Pass the juror.

22 THE COURT: Mr. Strang.

23 ATTORNEY STRANG: Thank you.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY STRANG:

1 Q. Dean Strang, Jerome Buting, Steven Avery. We're  
2 the two lawyers defending Steven, in case you  
3 missed us when we stood up and sat down last  
4 Monday. Look, I'm a little nervous too, so.

5 A. Good. I'm more nervous than you.

6 Q. You probably are. I mean, I'm probably more used  
7 to sitting in courtrooms. But this is  
8 nerve-racking for everyone. And beyond that, you  
9 know, it -- it takes a lot of candor and a  
10 certain amount of courage on your part to answer  
11 questions honestly and say, look, I have an  
12 opinion, whether it's about guilt or innocence.  
13 And I -- You know, the questionnaire you filled  
14 out was signed under penalty of perjury. You did  
15 your best --

16 A. Mm-hmm.

17 Q. -- I'm sure, to be honest on that?

18 A. Yes.

19 Q. And you wrote in response to Question No. 40: I  
20 know he -- I think you mean, I know he's guilty?

21 A. Mm-hmm.

22 Q. Is that yes?

23 A. Yes. I'm sorry.

24 Q. No. No. The court reporter will get on me --

25 A. Okay.

1 Q. -- if I don't remind you about that.

2 A. Yes.

3 Q. And then in response to Question 43, you wrote:

4       There's so much evidence against him that it  
5       would be difficult to change my mind. You wrote  
6       that?

7 A. Yes.

8 Q. Was that -- That was true at the time?

9 A. Yes, it was.

10 Q. Still true today?

11 A. It's -- It would be difficult to change my mind.

12 Q. Do you still know he's guilty?

13 A. Do I still know he's guilty?

14 Q. As you did last Monday?

15 A. Ah, yes.

16 Q. Do you still feel right now that he is guilty, as  
17       you wrote in response to Question 69?

18 A. Yes.

19                   THE COURT: Counsel, I think I'm going to  
20       stop your questioning at this time. Ms Koch, at  
21       this time the Clerk will escort you from the  
22       courtroom.

23                   MS KOCH: Okay.

24                   (Wherein the juror was excused.)

25                   THE COURT: You may be seated. Without

1 argument, Mr. Strang, does the defense have a motion  
2 at this time?

3 ATTORNEY STRANG: I move to strike the  
4 juror for cause.

5 THE COURT: Any response from the State?

6 ATTORNEY FALLON: No.

7 THE COURT: All right. I think this is a  
8 juror who would try her best to follow the  
9 instructions for the Court, but based on her candid  
10 answers on the questionnaire and what she reiterated  
11 today, I think she would have too much difficulty in  
12 doing so and, therefore, I believe there is basis to  
13 strike her for cause and the order will -- the Court  
14 will order that she be stricken for cause. The next  
15 juror is James Diedrich.

16 Mr. Diedrich, would you raise your right  
17 hand, please, and the Clerk will administer your  
18 oath.

19 (Juror sworn.)

20 THE CLERK: Please be seated.

21 THE COURT: Mr. Diedrich, you have already  
22 completed a questionnaire in this case, which the  
23 attorneys have had a chance to review. This morning  
24 we're moving on to the next phase of the jury  
25 selection process which is known as voir dire. The

1           attorneys will have an opportunity to ask you some  
2           follow-up questions to the information that you  
3           provided on your questionnaire.

4                 Before we proceed with their questions,  
5           I want to make sure you understand that the  
6           jurors in this case will not be sequestered.  
7           That means the jurors will be permitted to return  
8           home each day after the court proceedings. And  
9           we're doing that based on the obligation of the  
10          jurors not to be exposed to any news media  
11          accounts of this case during the trial, whether  
12          it be through television, radio, the newspaper,  
13          the internet, or any other source. The jurors  
14          will also be prohibited from discussing the case  
15          with anyone, including other jurors or family  
16          members, during the course of the trial.

17                 You should know, also, that although  
18          these proceedings are open to the public today,  
19          the Court does not permit cameras in the  
20          courtroom during the voir dire process and  
21          members of the media are not allowed to identify  
22          you by name when reporting on today's  
23          proceedings.

24                 In addition, the jurors who are selected  
25          to serve in this case, will not be on camera at

1           any time during the trial itself. In the event  
2           that you continue to be a member of the jury  
3           panel after today, you will get a phone call in  
4           the next day or two, letting you know when to  
5           report back to court.

6                           Mr. Fallon, you may begin at this time.

7                           **VOIR DIRE EXAMINATION**

8                           BY ATTORNEY FALLON:

9                   Q.     Good morning, Mr. Diedrich.

10                  A.     Good morning.

11                  Q.     My name is Tom Fallon. And I'm an Assistant  
12                       Attorney General and -- with the Wisconsin  
13                       Department of Justice. I'm one of the  
14                       prosecutors in this case. To my immediate left  
15                       is Mr. Ken Kratz, the Calumet County District  
16                       Attorney and lead special prosecutor.

17                       We wanted to follow up with a few  
18                       questions from the information from your  
19                       questionnaire. Then there is one area that's of  
20                       great importance to us and I suspect to you as  
21                       well. And what I wanted to do is start with your  
22                       employment situation. I see that you are a  
23                       plumber by trade.

24                  A.     Yes.

25                  Q.     Do you work for a company or are you on your own?

1 A. I work for a company.

2 Q. All right. And how long have you worked for  
3 them?

4 A. This company, eight years.

5 Q. All right. Now, the matter that we wanted to  
6 explore with you was the answer to the very last  
7 question in the questionnaire that you provided.  
8 This may very well be a six week trial. And as a  
9 result of which, you would be here probably nine  
10 hours a day and not at your employment, your work  
11 situation.

12 Now, if you were selected as a juror,  
13 would that present a hardship to you? And you  
14 seem to indicate that it would. Wanted to talk  
15 to you a little bit about that. Tell us, if you  
16 were selected, would you have income still coming  
17 in?

18 A. My employer will not reimburse me --

19 Q. He will not.

20 A. -- for the time off.

21 Q. All right. And -- And I take it from the rest of  
22 the information provided you're -- you are the  
23 main bread winner in your family?

24 A. My wife is also employed.

25 Q. She's employed, but I take it that it would be

1                   extremely difficult for your family to continue  
2                   if you did not have income coming in?

3       A. It would be difficult. I wouldn't say extremely  
4                   difficult.

5       Q. All right.

6       A. It would present problems.

7       Q. All right. Well, that's what we're trying to  
8                   figure out on the hardship, just how much of a  
9                   hardship it would be. I mean, if it's going to  
10                  really severely impact your ability to provide  
11                  for your family, then, you know, you will be  
12                  excused. But if you think you can manage through  
13                  this, then we'll continue, but. Tell us,  
14                  honestly, if you think this is going to put you  
15                  in such a financial hole, then ...

16      A. I don't believe it will put us in such a  
17                  financial hold as, like, we would be living on  
18                  the street or ... I think we could get through  
19                  it.

20      Q. All right. Then, my last question on this area  
21                  is, do you think that you will be worried more  
22                  about making ends meet at home without a paycheck  
23                  coming in, than you would about listening to the  
24                  evidence in the case?

25      A. No. I'm under the assumption that we can collect

1           unemployment during that period also.

2   Q.   All right. Then, will you have a job when you --  
3       If you were selected, would you have a job when  
4       the case -- when your jury duty was over? Would  
5       you be able to go back to the same plumbing  
6       company?

7   A.   Yes.

8   Q.   All right. And you have assurances of that?

9   A.   Yes.

10   Q.   Okay. All right. The -- This probably is a good  
11      way to introduce the topic of publicity and  
12      impact. There was one other question that you  
13      answered that was of somewhat of a concern for  
14      you. And the question was that you as a juror  
15      would be instructed not to read, watch, or listen  
16      to any news accounts of this trial, whatsoever,  
17      until it was over and not to talk with anyone  
18      about the case, not even to one another, until  
19      you retire to deliberate on its verdict. And the  
20      Court said this rule would be strictly enforced.  
21      And you said would you find it difficult to  
22      follow such an instruction. And you said you  
23      would find it difficult. Can you tell us about  
24      that?

25   A.   I think I was more, between when we filled the

1 questionnaire out till this point, just because  
2 of the nature of my work, I listen to the radio  
3 all day and you are just going to pick things up  
4 from people talking or.

5 Q. Sure. Well, if you were selected as a juror, you  
6 understand that you would be here and not at  
7 work?

8 A. Correct.

9 Q. So your radio time --

10 A. Correct.

11 Q. -- would be eliminated from that perspective?  
12 But the question is aimed at, you know, when you  
13 are not here as a juror and you head home and,  
14 you know, perhaps on the weekends you might be  
15 out to dinner with your wife or something and,  
16 you know, somebody may recognize or know that you  
17 are one of the jurors and they might want to talk  
18 to you; do you think you could be able to say,  
19 I'm sorry, I can't talk about it?

20 A. I would be able to say that.

21 Q. Right.

22 A. I still feel you are going to be able to pick up  
23 people talking.

24 Q. Right.

25 A. You are not going to be able to shut it out

1           totally.

2   Q.   All right.  Would you be able to just walk away,  
3           then, from those situations?

4   A.   I believe I could.

5   Q.   All right.  And -- So the question is, we  
6           understand it might be difficult, the question  
7           is:  Would you do your absolute level best to  
8           follow that directive from the Court?

9   A.   I believe I could, yes.

10   Q.   All right.  And on that note, with respect to  
11           publicity, let's talk a little bit about the  
12           publicity that you have been exposed to.  I take  
13           it almost from our discussion here that most of  
14           the news you get might very well come from the  
15           radio?

16   A.   Correct.

17   Q.   All right.  As I surmise, that's because it's  
18           always on, whether you are in the truck or at the  
19           shop, you are listening to the radio --

20   A.   Exactly.

21   Q.   -- most of the time?  All right.  Before we hit  
22           to the radio, do you -- you do say you get some  
23           of your news from the television?

24   A.   Correct.

25   Q.   All right.  And how much of your news do you get

1                   from the television?

2 A. Um, about 25 percent, 30 percent.

3 Q. All right. And so am I guessing here that you  
4                   might just turn on the evening news before you go  
5                   to bed?

6 A. After work.

7 Q. After work. All right. And in terms of the  
8                   publicity which is attended to this case, is most  
9                   of the publicity that -- related to this case,  
10                  come from the radio or the television for you?

11 A. More from the television.

12 Q. All right. And, specifically, what do you  
13                  recall -- Well, before I even get to that  
14                  point -- When you originally were notified that  
15                  you could or might possibly be a juror in this  
16                  case, I believe the Court sent you a letter  
17                  asking that you refrain from, as best you could,  
18                  media coverage of this case; did you get that  
19                  correspondence?

20 A. Yes.

21 Q. All right. And have you made it a conscious  
22                  effort to refrain from being exposed to the ...

23 A. As best as I could.

24 Q. All right. Could you tell us a little bit about  
25                  what you have heard recently about the

1           proceedings, if anything?

2 A.       I heard some charges were dropped.

3 Q.       All right.

4 A.       And that the neph -- Dassey will not be giving

5           any testimony in this case.

6 Q.       Will not or may not?

7 A.       May not.

8 Q.       Okay. And what else do you recall?

9 A.       That's about it.

10 Q.       Anything else?

11 A.       Not that I can recall.

12 Q.       All right. Now, thinking back, going back a

13           couple of months, many months ago, do you recall

14           watching any news coverage of Mr. Dassey's arrest

15           or involvement?

16 A.       I recall some of it.

17 Q.       All right. What do you recall?

18 A.       That he admitted to doing the crime.

19 Q.       All right.

20 A.       With Steven Avery.

21 Q.       All right. Any details stick out in your head?

22 A.       Not any particular details.

23 Q.       All right. Now, if for instance Mr. Dassey did

24           not appear in this trial, did not testify, for

25           who knows what reason, do you think that if you

1           were selected as a juror you could decide this  
2           case solely on the evidence which is introduced  
3           in the trial of Mr. Avery and not on what you  
4           heard in the media?

5       A. I would think that in my mind it would always be  
6           there.

7       Q. All right.

8       A. I don't know if I could totally block it out.

9       Q. All right. If the Court were to instruct you  
10          that as a juror that would be your duty, to make  
11          any and all reasonable possible effort to block  
12          it out and decide this case solely on the  
13          information presented, do you think you could do  
14          that?

15      A. Being honest, I always think that that would be  
16          in the back of my mind.

17      Q. All right. So you don't think that you would be  
18          able to follow that directive and decide this  
19          case because of the pre-trial publicity?

20      A. I don't think I could.

21      Q. All right.

22                   ATTORNEY FALLON: I don't have any more  
23          questions.

24                   THE COURT: The defense have any questions?

25                   Let me ask this, is there going to be a joint

1 recommendation to the Court here?

2 ATTORNEY STRANG: I think so, if I  
3 understand --

4 ATTORNEY FALLON: Probably.

5 ATTORNEY STRANG: -- eyes and winks.

6 THE COURT: All right. Mr. Diedrich, we're  
7 going to have the Clerk escort you from the  
8 courtroom at this time.

9 (Wherein the juror was excused.)

10 THE COURT: Counsel.

11 ATTORNEY FALLON: I think we have to  
12 concede the obvious here, Judge. It appears that  
13 he's been quite frank and doesn't think he can set  
14 that information aside and to me it's probably too  
15 much of a risk.

16 THE COURT: Mr. Strang.

17 ATTORNEY STRANG: Yeah, I agree. One of  
18 the ironies of picking a jury is, I think this was,  
19 on my honesty scale, probably the most forthcoming  
20 person we have had walk in here, or at least among  
21 them, but I think we have got to let him go for  
22 cause.

23 THE COURT: All right. The Court agrees,  
24 Mr. Diedrich will be stricken for cause. Next we'll  
25 hear from Mr. Brotski.

1                   ATTORNEY STRANG: Could I have a minute to  
2 make a motion before that?

3                   THE COURT: Yes.

4                   ATTORNEY STRANG: Only in part, I mean in  
5 part, but only in part, because of the 20 minute  
6 time limitation the Court has imposed this morning,  
7 I'm going to move to strike, prospectively here,  
8 every -- every juror who's heard a news conference  
9 about Brendan Dassey or Steven Avery from March 2  
10 back.

11                  I mean nothing -- I'm not worried about  
12 anything after March 2, but from March 2 back,  
13 you know, if they have heard those news  
14 conferences and remember them, for all of the  
15 reasons I have argued in this case from the  
16 motion for sanctions that I filed last spring or  
17 summer up through the motion to dismiss a couple  
18 of the counts and the request for curative steps  
19 by the Court.

20                  And in light of the limitations now on  
21 the time to explore and possibly rehabilitate  
22 someone who has got that kind of gripping  
23 information about Mr. Dassey or Mr. Avery, I'm  
24 just going to move to strike for cause all of  
25 them who saw that -- those news conferences

1 through March 2 or any of them.

2 I realize that we have got a number of  
3 people in the qualified group of 16 who did see  
4 that, but there comes a point where there's a  
5 tipping point. And the Court, so far, has not  
6 taken the curative steps that we have requested.

7 This -- This is an alternative curative measure  
8 that I'm suggesting. And, again, the urgency for  
9 it went up a bit this morning with the time  
10 limitations on voir dire.

11 THE COURT: Mr. Fallon.

12 ATTORNEY FALLON: Well, I take it, Counsel,  
13 you are asking for those who saw conferences from  
14 November 9th through March 2nd; is that the time  
15 frame or is it from March 2nd to now?

16 ATTORNEY STRANG: No, no, no. November 5  
17 to March --

18 ATTORNEY FALLON: November --

19 ATTORNEY STRANG: -- 2005, through March 2,  
20 2006. I'm not worried about anything after that.  
21 And I'm not going back and moving to strike any of  
22 the 16 we have already qualified.

23 ATTORNEY FALLON: I guess my take on that,  
24 Judge, is for obvious reasons we would object to  
25 that. First and foremost, the first thing that

1           comes to my mind is that that's a premature and it's  
2           an insufficient record upon which to make a class  
3           action objection, based on perceived or anticipated  
4           bias.

5           Secondly, it seems to me that much of  
6           those concerns have already been addressed as  
7           best we could by this Court and the steps that we  
8           have taken in this case since May. And those  
9           include an adjournment of the trial from  
10          beginning of September to, then, the middle of  
11          October, until now. So it is 15 months since the  
12          date of the crime and 11 months since any news  
13          conference at all, from the State, relative to  
14          the events of the crime.

15          Secondly, we have engaged in a jury  
16          questionnaire process, which I think was directly  
17          aimed at flushing out those who may have too much  
18          of a bias or at least think they have too much of  
19          a bias based on the pre-trial publicity.

20          And we have expected a fair process and  
21          we have expected that we would have to exclude a  
22          fair number, a large number of jurors. In fact,  
23          we have 50 or so more. Not all of them for  
24          subjective bias, some for economic hardship. But  
25          I think the process that we are engaged in is

1 working.

2 And third, I guess I would note that it  
3 is the defendant's constitutional right. He had  
4 the opportunity to waive that right and ask for a  
5 jury from another county, but instead wanted to,  
6 for a lack of a better term, take his chances  
7 with the juror -- jury of his peers here in  
8 Manitowoc. That is his right that is his choice.

9 As a result, we're obviously going to do  
10 a lot more sifting and winnowing from the  
11 prospective jurors, those who do not have such a  
12 bias, to participate in the case. So I think we  
13 have a take, as counsel eloquently argued about  
14 an hour ago, each juror is different. Each one  
15 takes more time. Each one has a different set of  
16 issues, a different set of perspectives,  
17 interests and biases which need to be explored.

18 And I don't think that we can sit here  
19 and just simply say, because you have seen two  
20 news conferences, you are out. I think that's  
21 unfair to them. It's unfair to the State. And  
22 quite frankly, oddly enough, I think it's unfair  
23 to Mr. Avery, so we would oppose the request.

24 THE COURT: All right. Well, the Court is  
25 going to deny the motion to, on a wholesale basis,

1 disqualify any juror who may have seen these news  
2 conferences. The Court believes that while a juror  
3 who has seen the news conferences certainly raises  
4 some concerns about the juror's ability to be fair  
5 and impartial if selected in this case. The  
6 questioning to date has proved that there are some  
7 people who are capable of doing that and both  
8 parties have agreed about that.

9 There are a number of mitigating factors  
10 in terms of causing prejudice to the jurors. The  
11 news conferences took place nearly a year ago. A  
12 number of the jurors were aware that, since the  
13 initial news conferences, Mr. Dassey has recanted  
14 at least parts of his earlier statements.

15 In some cases the jurors have been  
16 exposed to information about blood being planted  
17 and -- and the jurors are aware of defenses as  
18 well as the initial reports from the State.

19 Finally, there are a number of jurors  
20 who are capable of setting aside that  
21 information. They have been asked questions by  
22 the defense to suggest that there may be -- if  
23 the Dassey confession evidence comes in, there  
24 may be witnesses who explain why, even a  
25 confession, if it was made, may not be true.

1                   The Court has allowed a variety of  
2                   questions and I think that it's just simply  
3                   unfair to say that any juror who saw the news  
4                   conferences cannot possibly be fair and  
5                   impartial. A number of them were, a number of  
6                   them have been stricken, but some of them  
7                   weren't. And I think the process to this point  
8                   has worked fairly and I don't see a reason to  
9                   believe it won't continue to do so.

10                  All right. At this point --

11                  ATTORNEY STRANG: Um --

12                  THE COURT: Yes.

13                  ATTORNEY STRANG: Should we just -- should  
14                  we just take up one other matter in the hope of  
15                  speeding it up while we're pausing. The next juror  
16                  is Kevin Brotski and I don't know of any advance  
17                  issue about him. But the one after that is David  
18                  Holschbach, No. 51. This was one that I had asked  
19                  counsel to look at and I -- I don't think it's even  
20                  going to be a close call to be honest.

21                  He knows Lieutenant James Lenk. He not  
22                  only knows former Sheriff Kenneth Peterson, but  
23                  he appears to be a fairly good friend of the  
24                  Peterson's. And his answers to Questions 42 and  
25                  74 make me think he's just got firmly held

1           opinions that we're not going to put aside  
2           entirely. I'm not sure it's time well spent to  
3           bring him in.

4           THE COURT: Mr. Fallon.

5           ATTORNEY FALLON: I'm aware of counsel's  
6           concerns. I had check marked this prospective juror  
7           as one, for lack of better terms, on the bubble.  
8           But my reason for not immediately agreeing to a  
9           stipulation for cause is the juror's answer to  
10          Question 43 was, yes, that whatever opinions he had  
11          he could set aside.

12          He does know, apparently, the retired  
13          sheriff. It seems to me that there were some  
14          things that were worth exploring here. Now, if  
15          the Court wants to review the questionnaire and  
16          thinks that there's, on balance, too much and  
17          it's not worth the effort at all, then that's  
18          fine. If you want to dismiss him for cause,  
19          that's fine.

20          But my way of thinking is, if a juror --  
21          taking the man at their word thinks that, at  
22          least based on what they knew at the time they  
23          filled out the questionnaire, that they could be  
24          fair, notwithstanding that they know some of the  
25          potential witnesses; although, I look at these

1 and I don't know how many of them are really  
2 significant witnesses, other than Mr. Lenk.

3 We don't know how he knows Lieutenant  
4 Lenk or what level of friendship, if any, they  
5 have. And that's my reason for saying, well,  
6 maybe we should just talk to him and see, you  
7 know, what the situation is. And if it turns out  
8 that he's intimately acquainted with these  
9 gentlemen then, of course, we will probably have  
10 to excuse him.

11 ATTORNEY STRANG: I respect that  
12 prerogative and I'm willing to talk to anyone. But  
13 the problem questions here are 42, 59, 60, 71 and  
14 74. And the acquaintance with -- it's not just Lenk  
15 and Peterson, there's a number of other potential  
16 witnesses who I view as less significant. This just  
17 seems cumulatively like someone who is not on the  
18 bubble, but -- but likely to be stricken for cause.

19 If the State and the Court want to spend  
20 some time with him, I understand that.

21 THE COURT: I --

22 ATTORNEY FALLON: Maybe the Court might  
23 want to ask a couple of questions of that  
24 prospective juror.

25 THE COURT: Well, if it was just an

1 acquaintance with Mr. Lenk and Mr. Peterson and -- I  
2 might be inclined to do it, but when I couple that  
3 with the answer to Question 74, any other  
4 information, it's getting difficult for me to  
5 perceive what answers this juror is going to give  
6 that are going to make him qualify to be a juror.

7 ATTORNEY FALLON: All right.

8 THE COURT: So, does the State have any  
9 objection to the Court striking him for cause?

10 ATTORNEY FALLON: I don't have any  
11 objection.

12 THE COURT: All right. The Court will  
13 order, then, that Mr. Holschbach be stricken for  
14 cause. And we'll bring in Mr. Brotski at this time.

15 Mr. Brotski, will you raise your right  
16 hand, please, and the Clerk will administer an  
17 oath to you.

18 (Juror sworn.)

19 THE CLERK: Please be seated.

20 THE COURT: Mr. Brotski, you have already  
21 completed a questionnaire in this case. This  
22 morning we're proceeding to the next step of voir  
23 dire which is allowing the parties to ask you some  
24 questions as a follow-up to the information you gave  
25 on your questionnaire.

1 You should know that the jurors in this  
2 case will not be sequestered during the trial;  
3 that is, they will be permitted to return home  
4 each day. And we're doing that because the  
5 jurors are being ordered not to learn anything  
6 about the case further through the news media,  
7 whether it be newspaper, television, radio,  
8 internet or anything else. The jurors will also  
9 be prohibited from discussing the case with  
10 anyone, including any family members or other  
11 jurors, until the case is concluded.

12 Today's proceedings are open to the  
13 public; however, the Court does not permit  
14 cameras in the courtroom during voir dire. And  
15 the media is not allowed to identify individual  
16 jurors by name in any news reports.

17                           In addition, the jurors who are selected  
18                           to serve in this case will not be on camera  
19                           during the trial.

If you are permitted to continue as a juror in this case, you will receive notice as to when to report back to court again.

23 Mr. Fallon, at this you may begin.

## **VOIR DIRE EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q. Good morning, Mr. Brotski.

2 A. Good morning.

3 Q. My name is Tom Fallon. I'm an Assistant Attorney  
4 General with the Wisconsin Department of Justice,  
5 one of the prosecutors in this case. To my  
6 immediate left is Mr. Ken Kratz, the Calumet  
7 County District Attorney and lead special  
8 prosecutor for this matter. Good morning and  
9 thanks for coming in.

10 We wanted to begin with asking you some  
11 questions, some follow-up questions regarding  
12 your questionnaire in terms of determining your  
13 suitability for jury service in this case. First  
14 and foremost, I see you are a mason. How long  
15 have you been engaged in that practice?

16 A. Nine years.

17 Q. All right. And have you spent all that time with  
18 the same company?

19 A. Yes.

20 Q. All right. And do you hold any particular levels  
21 of mason certification or -- like a master --

22 A. No.

23 Q. All right. If you were selected as a juror in  
24 this case, you understand that this case may very  
25 well last six weeks or so?

1 A. Yes.

2 Q. And as a result of which, you would be here and  
3 not doing some mason work. Just want to make  
4 sure that that would not cause you any economic  
5 hardship, either directly or maintaining your  
6 family and things of that sort?

7 A. No.

8 Q. All right. So you are comfortable that you will  
9 have either income and/or a job waiting for you  
10 when you are done with your jury service?

11 A. Yes.

12 Q. Okay. Very well. I take it from the information  
13 provided that you are not one who follows the  
14 news regularly?

15 A. Correct.

16 Q. All right. And where do you get your news from  
17 primarily; radio, television?

18 A. Primarily magazines.

19 Q. All right.

20 A. I like watching ABC World News.

21 Q. Okay.

22 A. I like watching the bigger news.

23 Q. All right. So you don't pay that close attention  
24 to the local news, but you do pay more attention  
25 to the national or world news?

- 1 A. Yes.
- 2 Q. Okay. Do you read the local newspapers at all?
- 3 A. No, I do not get it.
- 4 Q. All right. Do you own a computer?
- 5 A. No.
- 6 Q. All right. So you don't use the internet at all?
- 7 A. No.
- 8 Q. Not even at work?
- 9 A. No.
- 10 Q. Okay. In terms of the radio, do you listen to  
11 the radio when you are at work?
- 12 A. Yes.
- 13 Q. All right. With respect to the radio, is it on  
14 constantly or is it just at certain times of the  
15 day that you have time to listen to the radio?
- 16 A. Certain times.
- 17 Q. All right. And do you catch many newscasts?
- 18 A. No.
- 19 Q. You do not?
- 20 A. No, not really.
- 21 Q. All right. Then, I guess my question for you,  
22 sir, is, in terms of the publicity associated  
23 with this case, are you familiar with much of it,  
24 or any of it, or ...
- 25 A. A little bit of it.

1 Q. All right. Can you tell us a little bit what  
2 you -- what you know about the case from the  
3 information you have heard in the media or the  
4 guy next door?

5 A. I know Steven Avery is charged with murder.

6 Q. Okay. Any -- any of the details in your head as  
7 to, you know, the circumstances surrounding the  
8 crime or anything like that?

9 A. No, not really.

10 Q. All right.

11 A. I just know he is charged with murder and that's  
12 really about it.

13 Q. Okay. How about a fellow by the name of Brendan  
14 Dassey; have you heard anything about him?

15 A. I have heard of his name before.

16 Q. All right.

17 A. He's his cousin, or nephew, or uncle, or  
18 something like that.

19 Q. Okay. Do you know any of the circumstances  
20 regarding his arrest or his potential  
21 involvement?

22 A. No, I do not.

23 Q. All right. You haven't seen or listened to any  
24 media or news conferences regarding that?

25 A. No.

1 Q. Okay. Just so I'm clear, you didn't answer one  
2 particular question but -- and it may be because  
3 you haven't formed any opinion, but I just wanted  
4 to clarify this for us. If you were selected to  
5 serve as a juror in this case, do you think you  
6 could decide this case solely, simply, on the  
7 information that you hear in the courtroom and  
8 not from what you may hear at work, or the guy on  
9 the street, or anywhere else?

10 A. Yes.

11 Q. All right. Is there any -- any doubt in your  
12 mind about that?

13 A. No, no doubt.

14 Q. All right. Okay. The other area of -- that I  
15 wanted to talk with you about, is the fact that  
16 there will be a fair number of police officers  
17 and police testimony in this case. And it's -- I  
18 take it from your questionnaire that you haven't  
19 had any police contacts in your life?

20 A. No.

21 Q. Never had any -- never filed a complaint or been  
22 in any, you know, jams where you were ticketed,  
23 or arrested, or anything?

24 A. I have had a speeding ticket.

25 Q. Okay. But nothing else?

1 A. No.

2 Q. Okay. And how did that encounter -- was that a  
3 local police officer, like a Manitowoc police  
4 officer, or county sheriff, or ...

5 A. County sheriff.

6 Q. All right. And was there anything about that  
7 experience -- Well, first of all, let me ask you  
8 this; do you feel you were treated fairly?

9 A. Yeah. Yes.

10 Q. So you don't have any complaints about how you  
11 were treated by the sheriff or -- regarding the  
12 matter?

13 A. No, I was speeding and I got a ticket.

14 Q. All right. And you paid your fine and that was  
15 it?

16 A. Yeah.

17 Q. Okay. Do you think, then -- I just wanted to  
18 make sure, you answered the question yes, but I  
19 wanted to talk a little bit about it with you  
20 that in terms of evaluating police officer  
21 testimony in this case, you would be required to  
22 evaluate their believability, their honesty,  
23 their credibility, the same way you would  
24 evaluate the testimony of any other witness; do  
25 you think you could do that?

- 1 A. Yes.
- 2 Q. All right. Very good. Last group of questions I  
3 had for you is, you realize that -- and you seem  
4 to have a good command of this in your  
5 questionnaire -- but I wanted to make sure  
6 that -- that we're all on the same page here,  
7 that Mr. Avery is presumed innocent as he sits  
8 here today?
- 9 A. Yes.
- 10 Q. And that he remains innocent unless and until we  
11 can convince you, as a juror, of his guilt,  
12 beyond a reasonable doubt?
- 13 A. Yes.
- 14 Q. Do you understand that?
- 15 A. Yes, I do.
- 16 Q. And you accept that principle?
- 17 A. Yes, I do.
- 18 Q. And you can follow that?
- 19 A. Yes, I can.
- 20 Q. All right. And you realize that if we fail to  
21 convince you, beyond a reasonable doubt, that you  
22 would have to acquit Mr. Avery, you would have to  
23 find him not guilty?
- 24 A. Yes.
- 25 Q. All right. Even if perhaps there is some

1 question as to whether the real murderer is ever  
2 located; do you understand that?

3 A. Yes, I do.

4 Q. All right. And you understand that he has a  
5 right not to present a defense at all? In other  
6 words, they may do nothing and the only evidence  
7 that's presented is that presented by the State,  
8 and if we fail to convince you, you still must  
9 acquit: do you understand that?

10 A. Yes, I do.

11 Q. All right. And do you think you might have any  
12 problem following that instruction?

13 A. No, I don't.

14 ATTORNEY FALLON: All right. Pass -- Hold  
15 on.

16 Q. (By Attorney Fallon)~ My colleague here reminded  
17 me of one last question I forgot to ask. Do you  
18 have an interest in serving on this jury?

19 A. No. If I'm chosen, that's my right, or if I'm  
20 not. That's my duty, you know, that's ...

21 Q. So it doesn't matter to you whether you are  
22 selected as a juror or not but -- so in other  
23 words, if selected you will serve, if not, you  
24 won't?

25 A. Right.

1 Q. Okay. Thank you.

2 A. Yup. You're welcome.

3 THE COURT: Mr. Buting.

4 ATTORNEY BUTING: Yes, thank you, Judge.

5 **VOIR DIRE EXAMINATION**

6 BY ATTORNEY BUTING:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. My name is Jerome Buting, this is Dean Strang and  
10 we are defending Steven Avery. I would like to  
11 follow up on just a few issues and then touch on  
12 some others that we haven't talked about. Your  
13 mason experience, are you -- do you belong to a  
14 union?

15 A. No, I do not.

16 Q. No. Do you belong to any organizations at all?

17 A. No, I don't.

18 Q. Do you like attend a church or belong to a church  
19 or anything like that where you -- you -- Do you  
20 go to any meetings with groups of people?

21 A. No.

22 Q. What do you do for -- for spare time when you get  
23 home?

24 A. Play with my children. I have a two year old and  
25 a five year old. That's really about it.

1 Q. Okay.

2 A. Pretty boring.

3 Q. Well, that's takes up a lot of time, I know.

4 That takes up a lot of time. Your wife is --

5 Does your wife work outside the home, I think you  
6 said she did?

7 A. Yes, she's a nurse at Aurora.

8 Q. Oh, okay. And does she have -- Does she work  
9 everyday or just part time?

10 A. Weekends.

11 Q. Weekends.

12 A. Weekend nights.

13 Q. Okay. Do you, you know, between taking care of  
14 the kids and job duties and all that, do you talk  
15 to your wife about current events or things that  
16 are in the news?

17 A. Well, yeah.

18 Q. Okay.

19 A. Yes.

20 Q. Does -- Has she ever talked to you at all about  
21 what she's heard or watched on TV or anything  
22 about the Steven Avery case?

23 A. Well, I was told in the first letter that we got  
24 that I wasn't supposed to discuss it with anyone,  
25 so we haven't been talking about anything that

1           she might know or that I might know.

2 Q.    Okay. And when did you get that letter?

3 A.    That was the first letter to come to the 29th, or  
4        come for the questionnaire.

5 Q.    So that was, like, you got that sometime in  
6        December or November; do you recall?

7 A.    I don't recall.

8 Q.    Okay.

9 A.    I'm sorry.

10 Q.   Up to that point, though, had you -- You know,  
11       there's a lot of publicity about the case in the  
12       early stages, particularly last November -- or  
13       not last November, November of '05 up through  
14       March, April, in that time period; did you -- did  
15       the two of you talk about it at that time?

16 A.   No, not really.

17 Q.   She didn't express any opinions to you all about  
18       what she thought?

19 A.   Not that I can recall.

20 Q.   Okay. And co-workers?

21 A.   No, we just -- we get to work and we work.

22 Q.   Okay.

23 A.   We have got our own jobs.

24 Q.   Okay. So, even -- even highly publicized local  
25       crimes don't really interest you at all?

1 A. Not really.

2 Q. Much more focused, you did say you like world

3 news?

4 A. Yes.

5 Q. You have a more global view, is that it --

6 A. Yes.

7 Q. -- or national?

8 A. National.

9 Q. Okay. All right. Now, you mentioned that you

10 had heard of Brendan Dassey, you knew the name?

11 A. Yeah, I know the name.

12 Q. And you knew that he was somehow connected with

13 Mr. Avery at least in the media portrayals?

14 A. I know he's his uncle or cousin.

15 Q. Okay.

16 A. Cousin, I believe.

17 Q. And beyond that, what is -- why is he newsworthy?

18 A. Just that he is in -- I know he's somebody -- he

19 has something to do with this, that the name is

20 really familiar to me.

21 Q. Okay.

22 A. He's connected with some -- some of this or ...

23 Q. Allegedly, right?

24 A. Yeah, or something.

25 Q. Do you know whether -- Do you recall any

1           information about whether he has given any  
2           statements or admissions, or denials, or anything  
3           of that sort?

4     A.    No.

5     Q.    Okay. And in the last week, after you came and  
6           filled out the questionnaires, did you, even  
7           inadvertently, hear anything about the case,  
8           anything that was going on or coming up, anything  
9           of that sort?

10    A.    No, I haven't been watching the news.

11    Q.    Do your friends and co-workers know that you have  
12          been summoned as a potential juror?

13    A.    Yes, they know, my boss does.

14    Q.    He does?

15    A.    Yes.

16    Q.    And have they talked to you about the case?

17    A.    No, I'm -- I'm laid off right now.

18    Q.    Oh, you are?

19    A.    It's a seasonal job.

20    Q.    I see.

21    A.    Yes.

22    Q.    I was going to ask you, if you work in the cold  
23          like this it must be ...

24    A.    No. No, I'm laid off right now.

25    Q.    Okay. Do you work on, what, residential or

1 commercial buildings?

2 A. Residential.

3 Q. Residential. So it's just kind of a slow time

4 for that anyway?

5 A. Yes.

6 Q. So you work with your hands every day?

7 A. Yes.

8 Q. Get dirty, get your hands dirty, cut your hands?

9 A. Yes.

10 Q. Pretty frequent part of the occupation?

11 A. Yes.

12 Q. Okay. But you can deal with it, you just -- you

13 just live that way, live with your hands always

14 kind of beat up; is that it?

15 A. Right, yes.

16 Q. Okay. Do you know any police officers?

17 A. My dad is an ex-police officer.

18 Q. Oh, he is?

19 A. Yes.

20 Q. Where did he work?

21 A. Two Rivers.

22 Q. Okay. Did he -- Is he retired or did he take a

23 different job?

24 A. Retired.

25 Q. Retired. How long was he an officer there?

1 A. About 10 years or maybe 15.

2 Q. Okay. Do you know what his rank was when he  
3 retired?

4 A. A lieutenant.

5 Q. He was a lieutenant, okay.

6 A. Yes.

7 Q. So did he talk about his work at all?

8 A. No.

9 Q. Did he like being a police officer?

10 A. Yes.

11 Q. Well, I imagine that, with that experience, with  
12 your dad being a police officer, a lieutenant  
13 even, you learned to respect police, right?

14 A. Yes.

15 Q. Natural, I mean we're all taught to respect  
16 authority of police officers, right?

17 A. Yes, right.

18 Q. How long ago did he actually retire?

19 A. Has to be four or five years now.

20 Q. Okay. So not too long ago?

21 A. No, not too long ago.

22 Q. But you were out of the house then, right, or  
23 were you still living at home?

24 A. No, I was out of the house.

25 Q. You have been married how long?

1 A. Four years.

2 Q. Okay. Now, I wonder if a police officer comes  
3 into court and testifies and you will hear from a  
4 number of them, this is a criminal case,  
5 obviously police are involved, right?

6 A. Right.

7 Q. Do you think that because they are police  
8 officers and, you know, sworn, with badges and,  
9 you know, to serve and protect and uphold the  
10 law, that they are less likely to lie under oath  
11 than the ordinary person?

12 A. No.

13 Q. Why not?

14 A. That they will lie or won't? Sorry, I don't  
15 understand the question.

16 Q. Let me rephrase it so you do.

17 A. Sorry.

18 Q. Do you think that because police officers are who  
19 they are and they are a sworn occupation, that  
20 just because of that they are necessarily less  
21 likely to lie under oath than the ordinary  
22 person?

23 A. A police officer is human, anyone can lie, you  
24 know.

25 Q. Okay. And do you think that people, humans, are

1           capable of lying under oath?

2 A. Yes.

3 Q. That just because they take the witness stand and  
4       take the oath you can't necessarily assume  
5       everything coming out of there mouth is going to  
6       be the truth?

7 A. Yes.

8 Q. Okay. So would you be able to judge a police  
9       officer's testimony, just the same way, then, as  
10      an ordinary person's testimony, to decide whether  
11      that officer is really telling the truth or not?

12 A. Yes.

13 Q. Do you think that if you sat on this jury and  
14      listened to the evidence and had a reasonable  
15      doubt that Mr. Avery was guilty and, therefore,  
16      found him not guilty, do you think you would get  
17      any flak from your father or that, you know, any  
18      -- any other family or friends would think less  
19      of you, how could you do that?

20 A. I don't think so.

21 Q. Why not?

22 A. Because I just don't, I don't think that that  
23      would happen.

24 Q. What if in the course of the testimony you also  
25      came to the opinion that there was at least a

1           reasonable suspicion that police officers really  
2           did some bad things here, maybe even planted  
3           evidence, would you be concerned about, you know,  
4           what your father might think, you know, how could  
5           you -- how could you think that about officers  
6           like I was? Wouldn't it be hard?

7       A. No, he wouldn't, my father is not like that.

8       Q. Your father would --

9       A. He would understand and -- how I feel and he  
10      respects my opinions.

11      Q. Do you think that that's -- that's possible in  
12      life, that police officers could do such a thing?

13      A. Sure, anyone can do such a thing, I feel.

14      Q. Now, was your dad a detective at times too?

15      A. No, I don't think so. He didn't talk much about  
16      his work.

17      Q. Okay.

18      A. I just knew his rank and he was a police officer.

19      Q. Okay. Do you think sometimes that officers,  
20      because they are human, they get, you know,  
21      personally involved in their case and their work,  
22      maybe even to the point where they form an  
23      opinion about somebody and they think that person  
24      is guilty and they work towards that -- with that  
25      in mind?

1 A. I don't understand the question.

2 Q. Okay. Do you think that police officers may,  
3 sometimes because they get personally involved in  
4 a case, they may come to a conclusion that this  
5 person is guilty and maybe shade things a little  
6 bit in order to try and ensure that -- that they  
7 get the guy?

8 A. It's happened before --

9 Q. Okay.

10 A. -- I'm sure.

11 Q. Okay. And you would be open to consider all the  
12 possibilities that that may have happened in this  
13 case?

14 A. Yes.

15 Q. Do you know anyone who has ever been arrested by  
16 the police; friends, or co-workers, or anything?

17 A. No.

18 Q. Do you watch any cop shows on TV?

19 A. No.

20 Q. None. Do you ever -- Maybe in movies, have you  
21 ever seen any depictions of the way police  
22 officers can interrogate, particularly  
23 detectives, interrogate witnesses or suspects to  
24 try and get them to talk?

25 A. Yes.

1 Q. Do you think that sometimes people may actually  
2 confess to something that's not true?

3 A. Yes.

4 Q. Why?

5 A. Pressure.

6 Q. Okay. From the police?

7 A. Yes.

8 Q. And how do you go about judging whether or not  
9 something somebody says is true or not.

10 A. I don't understand, again.

11 Q. How would you -- If you heard witnesses testify  
12 about something, how would you go about judging  
13 whether what they were saying was the truth?  
14 Would you listen to -- Would you look at their  
15 demeanor while they are saying it?

16 A. I would listen to what they have to say and judge  
17 by that.

18 Q. Okay. And look to see if there's any other  
19 corroboration for what they say?

20 A. Yes.

21 Q. What do you think of -- What do you think of  
22 scientific evidence?

23 A. I don't know much about it.

24 Q. Okay. Don't know much about DNA, for instance?  
25 Have you heard much about it?

1 A. No.

2 Q. Okay. Do you -- Will you be interested in  
3 listening to witnesses who are just describing  
4 technical scientific type of things?

5 A. I think it would be interesting.

6 Q. Okay. Would you listen to witnesses who come in  
7 and do that, expert witnesses, in fact, who are  
8 specialists in that area, and judge their -- what  
9 they say, the same as any other witness?

10 A. Yes.

11 Q. Or would you just assume, well, they know more  
12 than I do, they must be right?

13 A. No.

14 Q. Okay. Now, you do know from the questionnaire  
15 and probably just from civics courses and all  
16 that, that the -- that a defendant has no burden  
17 of proof; is that right?

18 A. Right.

19 Q. So that Mr. Avery doesn't have to prove that he  
20 is innocent of this crime?

21 A. Right.

22 Q. But do you really feel that way? Do you really  
23 think that, in your heart-of-hearts, you are not  
24 going to require Mr. Avery, if he is not guilty  
25 of this crime, are you going to think, well,

1           then, who did? If he can't show me who else did,  
2           then it must be him?

3 A. I don't understand, again.

4 Q. Well --

5 A. I feel every man is innocent until they can prove  
6           to me otherwise.

7 Q. Okay.

8 A. That's how I feel.

9 Q. All right. Well --

10 A. If that's the question you are asking.

11 Q. That's not exactly, but I appreciate that. In  
12           this case, though, you are going to -- I think it  
13           will be natural human nature to wonder who really  
14           did do this crime if it's not Mr. Avery. Okay?  
15           I mean, somebody did and that will be a given.  
16           You are nodding yes; are you following me?

17 A. Yes, I'm following you.

18 Q. Okay.

19 A. Yeah.

20 Q. Okay. And what I'm wondering is, if you will be  
21           able to put aside the natural feeling that, well,  
22           you know, we haven't heard who else could have  
23           done it, I mean it must be him because we don't  
24           know who else. I want you to be clear that you  
25           can do that -- that you won't do that, I should

1 say, that you won't ask us to prove to you who  
2 did this crime; can you do that?

3 A. Yes, I can.

4 Q. It's their job to do that; do you understand?

5 A. Yes.

6 Q. And if you decide that they haven't proved,  
7 beyond a reasonable doubt, that Mr. Avery is  
8 guilty of this crime, then you can't worry about  
9 who did, other than hope that they follow up and  
10 do some further investigation and get the right  
11 person, right?

12 A. Right.

13 Q. And you are confident that you are going to be  
14 able to do that; you are not going to put any  
15 burden on him?

16 A. Yes.

17 Q. Well, along those lines, how would you feel if he  
18 didn't testify?

19 A. That's his right.

20 Q. Okay. And that goes along with his right and his  
21 constitutional right not to have to prove his  
22 case, right?

23 A. Right.

24 Q. Prove his innocence. On the other hand, this is  
25 something that defense attorneys have to struggle

with, deciding whether to put their witness -- their client on the witness stand. What if he does testify, are you going to think, just because he's a defendant that, you know, I can't really believe what he's going to say, he's trying to save his own skin?

A. No.

Q. You will be able to judge him just like any other witness?

A. Yes, I will.

11 Q. And if he doesn't testify, you are not going to  
12 hold that against him, you will be able to follow  
13 the judge's instruction?

14 A. Yes, I will.

15 Q. Okay. As part of what you have heard, just  
16 generally, about the case, have you heard  
17 anything about a vial of blood?

18 A. I heard something about it. I know a vial is  
19 going to be introduced or something.

20 Q. Okay. And that -- Have you heard anything about  
21 the defense, of why that's important to the  
22 defense, what it may or may not mean?

23 A. (No verbal response.)

24 Q. Okay.

25 ATTORNEY STRANG: You better get an answer.

1 Q. You have to say yes or no?

2 A. No.

3 Q. Okay. The court reporter has to take down the  
4 answers.

5 ATTORNEY BUTING: That's all I have. Thank  
6 you, sir.

7 MR. BROTSKI: Thank you.

8 THE COURT: All right. The Clerk will  
9 escort you from the courtroom at this time,  
10 Mr. Brotski.

11 (Wherein the juror was excused.)

12 THE COURT: Any motion from either party?

13 ATTORNEY FALLON: None.

14 ATTORNEY BUTING: No, Judge.

15 THE COURT: All right. Mr. Brotski is in.  
16 All right. Just a minute. All right. Let's take a  
17 break at this time. We'll resume at 20 minutes to  
18 11.

19 ATTORNEY FALLON: I wonder if you could --  
20 It was the reason for the exchange of a note. Can  
21 you tell us when you sent that letter to the jurors  
22 asking them to refrain. I'm not sure we got a copy  
23 and right now that date escapes me.

24 THE COURT: Okay. I will find that out.

25 ATTORNEY FALLON: Okay.

1 THE COURT: I know there was one juror who  
2 referred back to a letter like in June of last year;  
3 that was a letter -- and I think I informed counsel  
4 of this off the record -- that was sent to the  
5 members of the panel, but did not indicate what the  
6 case was. And I think in the juror's answer she  
7 said, kind of read into it -- I don't remember if it  
8 was a he or a she -- Well, I figured it was this  
9 case, so I stopped paying attention, but that letter  
10 did not mention the case or say anything about  
11 publicity; it was only the later letter. And I will  
12 find out when that was sent.

13 ATTORNEY FALLON: All right. Thank you.

14 (Recess taken.)

19 ATTORNEY FALLON: Thank you, Judge.

20 THE COURT: Let's see. I think the next  
21 juror we have up is Mr. Mahler.

22 THE CLERK: Yes.

23 ATTORNEY FALLON: Yes.

THE COURT: Very well. Mr. Mahler, if you  
can raise your right hand, the Clerk will administer

1 the oath to you.

2 (Juror sworn.)

3 THE CLERK: Please be seated.

4 THE COURT: Mr. Mahler, you have already  
5 filled out a written questionnaire in this case.  
6 Today we're moving on to the next phase of jury  
7 selection which is voir dire. The attorneys will  
8 have a chance, in a few minutes, to ask you some  
9 follow-up questions to the information that you  
10 provided in your questionnaire.

11 Before we get to that I want to make  
12 sure you know that if you are selected as a juror  
13 in this case the jurors will not be sequestered;  
14 that means the jurors will be permitted to return  
15 home at the end of court proceedings each day.

16 The rule that the jurors are to learn  
17 nothing about this case from the news media or  
18 anyone else will continue, so that means you have  
19 to avoid any reporting of the case on the radio,  
20 television, the newspaper, the internet, anywhere  
21 else and not discuss the case with anyone,  
22 including other jurors or even members of your  
23 own family.

24 In addition, I can tell you that,  
25 although today's proceedings are open to the

1                   public, the Court does not permit cameras in the  
2                   courtroom during voir dire proceedings and  
3                   members of the news media are not permitted to  
4                   identify jurors by name in their news reports.

5                   If you are selected to serve as a juror  
6                   in this case, you should know that the cameras  
7                   that cover the trial will not be permitted to  
8                   show the jurors in the manner which identifies  
9                   them as well.

10                  If you are permitted to stay on the  
11                  jury, after this part of the proceedings, you  
12                  will be given a notice in the next few days, by  
13                  telephone, as to when to report back to court.

14                  Mr. Fallon, you may begin.

15                  VOIR DIRE EXAMINATION

16                  BY ATTORNEY FALLON:

17                  Q.     Good morning. Is it Mahler or Mahler?

18                  A.     It's Mahler.

19                  Q.     Mahler. Good morning, sir. My name is Tom  
20                  Fallon, I'm an Assistant Attorney General with  
21                  the Wisconsin Department of Justice. I'm one of  
22                  the prosecutors in this case. To my immediate  
23                  left is Mr. Ken Kratz, Calumet County District  
24                  Attorney and lead special prosecutor. Thanks for  
25                  coming in this morning and thank you for your

1                   patience.

2                   Both sides have some questions we would  
3                   like to ask you regarding some of the information  
4                   contained in your questionnaire and perhaps cover  
5                   a few areas not covered by the questionnaire. I  
6                   think a matter of great interest, and you might  
7                   detect a bit of envy on our part, but I note from  
8                   your questionnaire that you manage to be retired  
9                   at what appears to be a rather young age. What  
10                  did you do before retiring?

11                 A. Um, I was in the cleaning business. And I have  
12                 been a musician, as a hobby.

13                 Q. And how long were you in the cleaning business?

14                 A. Ten years.

15                 Q. Ten years.

16                 A. Twelve years.

17                 Q. Now, you were an employee or did you own or run a  
18                 business?

19                 A. I worked with the gentleman who owned the  
20                 business for about eight years and then he was  
21                 dying of stomach cancer and I ...

22                 Q. -- took over the business?

23                 A. My wife purchased the business from him.

24                 Q. Okay. All right. And do you still keep your  
25                 hand in that business?

1 A. Yeah, something to keep busy. I work like six  
2 hours a week --

3 Q. All right.

4 A. -- on my time.

5 Q. Okay. Tell me about the music business. How  
6 long have you been involved in music?

7 A. Thirty-two years.

8 Q. All right.

9 A. Or 23 years, I'm sorry.

10 Q. Twenty-three years.

11 A. Twenty-three years, right.

12 Q. All right.

13 A. Since I was 16.

14 Q. And is it a business that's more of a hobby or do  
15 you actually use it to earn income?

16 A. Well, I do earn income from it.

17 Q. All right.

18 A. Not very much. I mean, if you weigh out what you  
19 spend on the equipment and all the other stuff, I  
20 don't make any money at it.

21 Q. All right. What type of music are you involved  
22 with?

23 A. A variety.

24 Q. All right.

25 A. I do variety. I'm the lead singer and bass

1           player, used to be a guitar player.

2 Q.   Lead singer and you play base and lead guitar.

3 A.   Rhythm guitar. Rhythm.

4 Q.   Okay. This -- excuse me -- this group you are

5       involved with, how many are involved in that?

6 A.   It was five, now it's just me, my wife and lead

7       guitar player, until we can find a drummer.

8 Q.   And how many gigs a month do you normally do?

9 A.   It varies.

10 Q.   Okay. All right. I see, also, from your

11      hobbies, that you like computers?

12 A.   Yes, sir.

13 Q.   What particular tasks or how do you use the

14      computer, for what purpose?

15 A.   My mixing down music, recording music, writing

16      out lyrics, typing out lyrics, that kind of

17      stuff.

18 Q.   Do you use the computer at all for information

19      purposes or to get news?

20 A.   No, I don't.

21 Q.   All right. In that regard, I would like to talk

22      a little bit about your familiarity or lack there

23      of media coverage with respect to this case.

24      And let me first ask you, you indicated you get

25      your news from three sources; radio, television

1 and newspaper?

2 A. Right.

3 Q. Of those three, where would you say you get the

4 lion's share of your news information?

5 A. Usually the Sheboygan Press.

6 Q. Sheboygan Press?

7 A. Yeah.

8 Q. All right. So you are a regular reader of that?

9 A. Yeah, pretty much so.

10 Q. How about television and radio?

11 A. I'm not much into television because there's

12 nothing really on there I care to see.

13 Q. All right.

14 A. And radio, I listen to the music, that's about

15 it.

16 Q. Okay. So you don't listen to any news shows or

17 talk radio? It's just for the music?

18 A. No, I don't really care for it.

19 Q. I'm sorry?

20 A. I don't really care for news.

21 Q. All right. Just haven't shown an interest in it?

22 A. No, I'm more into the music and stuff like that.

23 Q. All right. If you could do us a favor and maybe

24 lean forward a little bit and talk into that

25 microphone?

1 A. I can't move the chair so.

2 Q. I understand, it's a little difficult, but --

3 A. All right.

4 Q. -- we do need to hear your responses. Thanks.

5 A. Yes, sir.

6 Q. In terms of the media coverage attended to this

7 case, have you seen any of the newscasts or media

8 coverage of this case at all?

9 A. No. At the beginning of -- I mean, I remember my

10 wife saying something about -- that Teresa was

11 missing. I remember that part. And then she

12 told me something later about some fire pit or

13 something, but that's about all I know.

14 Q. All right. Excuse me, you haven't followed any

15 of the newscasts, then, or any of the information

16 that's been developed other than the original

17 breaking of the story?

18 A. Right.

19 Q. All right. You have listened or heard nothing on

20 the radio recently or nothing on the television

21 recently?

22 A. No, I haven't really listened to the radio at

23 all.

24 Q. All right. And from the information you provided

25 in your questionnaire you indicated you haven't

1           formed any opinions based on the small amount of  
2           information you currently have?

3       A. No, I have no opinion.

4       Q. All right.

5       A. Because I don't know -- I don't know any of the  
6           evidence or anything.

7       Q. Okay. Well, then, let me just conclude this  
8           aspect of the questioning with this question, if  
9           you were selected as a juror in this case, do you  
10          think that you would be able to decide the guilt  
11          or innocence of Mr. Avery solely on what you hear  
12          in the courtroom; in other words, the evidence  
13          which is presented and on no other source?

14      A. That's correct.

15      Q. All right. You have no problem with that?

16      A. No.

17      Q. All right. Since you are into music and those  
18          types of endeavors, I thought I would ask, do you  
19          watch old movies or are you a movie guy?

20      A. I like the old Jerry Lewis, Dean Martin movies.

21      Q. All right. Do you ever watch any documentaries,  
22          anything on law enforcement, or anything like  
23          that?

24      A. I think one of my favorite shows I watched on TV  
25          was *Law and Order*, but that's --

1 Q. All right.

2 A. -- probably the only thing that I see that was  
3 worth watching on television.

4 Q. Okay. Did you ever see a documentary called the  
5 *Thin Blue Line*?

6 A. I have heard of the name, but I have never.

7 Q. You have never seen it?

8 A. No.

9 Q. Okay. The next area of inquiry that I have for  
10 you is any encounters that you or your family may  
11 or may not have had with the local police  
12 department or the sheriff's department. Have you  
13 yourself had any reason to call upon them for  
14 services or had any interaction with them?

15 A. Not at all.

16 Q. All right. Any other members of your family have  
17 any encounters with the police or law  
18 enforcement?

19 A. My son -- my stepson, I mean.

20 Q. Okay.

21 A. This was about a year ago, he wrote out  
22 prescriptions for himself, which was kind of --

23 Q. Okay. Any --

24 A. -- dumb on his part.

25 Q. -- and he didn't have any -- and he shouldn't

1 have been doing that, right?

2 A. Right.

3 Q. All right. And was he arrested for that?

4 A. Yes, he was.

5 Q. Okay. Based on your experience for that, or with

6 that, did you have any direct contact with the

7 police or the sheriff's department in that

8 incident?

9 A. No, since he's not my son, my wife --

10 Q. Okay.

11 A. -- you know, I stay out of it.

12 Q. Sure.

13 A. It's better if I stay out of it.

14 Q. All right. Well, let me ask you this, then, I

15 imagine you might have had at least some

16 discussion of that happening, with your wife?

17 A. No.

18 Q. Okay.

19 A. She doesn't like me getting involved in --

20 Q. -- in the family business?

21 A. It's like get out of here, stay out--

22 Q. All right.

23 A. -- it's none of your business.

24 Q. So you didn't have any discussions as to the

25 appropriateness of the law enforcement activity

1           or involvement in that.

2   A.   No.

3   Q.   Okay. So you don't have any particular opinion  
4        regarding how the case was handled or anything  
5        like that?

6   A.   No, I don't know anything about it.

7   Q.   Okay. Fair enough. In terms of how you go about  
8        approaching solving a problem, or even in your  
9        interacting with other people, in discussing and  
10       formulating opinions, would you consider yourself  
11        a detail oriented type of guy or are you more of  
12        a big picture perspective, bottom line approach  
13        to things?

14   A.   I try to piece together things.

15   Q.   Okay. So, do I interpret that to mean you do  
16        kind of look at the details?

17   A.   Right. I'm articulate --

18   Q.   Okay.

19   A.   -- when it comes to things like that.

20                   ATTORNEY BUTING: I'm sorry, I couldn't  
21        hear that.

22   A.   I'm articulate when it comes to, you know, like  
23        my music, picking things apart and trying to put  
24        it all together.

25   Q.   All right. So the nature of your -- your

1                   interest, your hobby in music, makes you tend to  
2                   be more of a detail oriented approach in terms of  
3                   putting together music, or scoring it, or writing  
4                   it?

5       A. Right. To get it to where it's just ...

6       Q. So the words fit the music?

7       A. Right.

8       Q. Okay.

9       A. And the feeling is there and everything comes  
10                  together.

11      Q. Okay. All right.

12                  ATTORNEY FALLON: That's all I have.

13                  THE COURT: Mr. Buting.

14                  ATTORNEY BUTING: Thank you, Judge.

15                  VOIR DIRE EXAMINATION

16      BY ATTORNEY BUTING:

17      Q. Good morning.

18      A. Good morning.

19      Q. My name is Jerome Buting. This is Dean Strang  
20                  another Jerry -- Dean and Jerry combination, but  
21                  not like the movies that you have seen. We  
22                  represent Steven Avery. And I want to follow up  
23                  on a few things that -- that Mr. Fallon has asked  
24                  you, but also get into some different issues that  
25                  maybe will come up and you are going to have to

1 consider. All right?

2 A. Okay.

3 Q. First, just in more general background, your  
4 name -- it may be just a coincidence, but are you  
5 related in any way to the Peter Mahler that has a  
6 cleaning -- office cleaning business in the  
7 Milwaukee area?

8 A. No, sir.

9 Q. Okay. Just a coincidence, I guess. You have  
10 two -- you list two female children at age 17;  
11 are those twins or are they from different  
12 marriages?

13 A. My daughter was from my first marriage, one of  
14 them, and she's living with her mother. And the  
15 other one is living with us and she's my  
16 stepdaughter.

17 Q. I see. Okay. I thought maybe she was a  
18 stepdaughter, but you didn't mention your stepson  
19 in here so maybe that's --

20 A. Yeah, he's in -- He's like 23 or something like  
21 that.

22 Q. So he's out on his own?

23 A. Correct.

24 Q. Okay. And your wife is retired also?

25 A. Yes.

1 Q. Well, when you say retired, it wasn't clear to  
2 me, you have -- you still have the cleaning  
3 business?

4 A. I do it to keep busy.

5 Q. Okay.

6 A. My wife has a trust fund out of Milwaukee.

7 Q. Your wife has what?

8 A. A trust fund out of Milwaukee; she gets dividends  
9 every month.

10 Q. Oh, I see. Okay. So that's your primary source  
11 of income and you don't have to worry so much  
12 about the cleaning business?

13 A. Correct.

14 Q. Okay. But is your wife, your current wife -- how  
15 long have you been married to your current wife?

16 A. Ten years.

17 Q. Okay. And she's in the band too?

18 A. Right.

19 Q. What does she do?

20 A. She plays the piano.

21 Q. Okay. And you play around Manitowoc County,  
22 Sheboygan, what's your area?

23 A. Manitowoc, Sheboygan, Plymouth, tri-county pretty  
24 much.

25 Q. Okay. And you mentioned you have actually sung

1                   the National Anthem at Road America?

2 A. Right, for all the races I do.

3 Q. Okay. That's something you have done for quite a

4                   while?

5 A. The past seven years.

6 Q. Well, okay. Are you interested in racing too

7                   or ...

8 A. Yeah, I said if my voice ever went, I would get

9                   into racing.

10 Q. So, do you work on cars yourself?

11 A. No, I just have a love for the racing thing.

12 Q. So you have a love for the racing, but you are

13                   not -- you are not really mechanically inclined

14                   or ...

15 A. No, I never really got totally into it. I just

16                   like watching --

17 Q. Okay.

18 A. -- especially the motorcycle races.

19 Q. You would like to be the driver and not the one

20                   who -- not the mechanic?

21 A. Right.

22 Q. Okay. Now, in terms of knowledge that you gained

23                   about this case, it sounds like your wife is

24                   really the one that was the source of any

25                   information?

1 A. Yeah, she -- I guess she's been keeping up on it,  
2 watching the news on it.

3 Q. Okay. So she does. She shows an interest in it?

4 A. Right.

5 Q. And she likes to talk with you about it on  
6 occasion apparently, right?

7 A. Right.

8 Q. Sometimes it's hard to remember when someone  
9 says, you know, tell us what it is you remember  
10 about -- remember hearing. And sometimes you  
11 don't -- doesn't come to mind, certain things,  
12 but you actually really did hear them, you just  
13 don't recall at this moment. So, I just want to  
14 maybe explore that a little bit, okay?

15 A. Okay.

16 Q. For instance, Brendan Dassey, have you heard of  
17 him?

18 A. I have never, no.

19 Q. Have you heard anything about a nephew of  
20 Mr. Avery?

21 A. I have heard about the nephew, but I don't  
22 remember names or anything.

23 Q. Didn't connect the name. Okay. What have you  
24 heard about the nephew as has been reported?

25 A. I don't recall.

1 Q. Okay. Do you recall any -- anything either you  
2 heard on the news or that you talked about with  
3 your wife about the nephew that involved his  
4 alleged confession or admission to certain  
5 things?

6 A. No, she never discussed anything about the  
7 nephew.

8 Q. Or anything about his later recanting of those  
9 confessions and --

10 A. No.

11 Q. -- denying it?

12 A. I did not hear anything about that.

13 Q. Okay. Did you -- In talking with your wife, did  
14 you ever hear anything about, you know, what it  
15 is that Mr. Avery was supposedly supposed to have  
16 done here?

17 A. I remember that Teresa was missing. And that's  
18 about all I remember of it. And supposedly he  
19 was accused of her disappearance, but that's  
20 about what I know.

21 Q. Okay. And when you say, Teresa, did you know her  
22 at all?

23 A. No, just by my wife and some of the things I have  
24 seen in the paper.

25 Q. And what kind of things do you recall having seen

1           about her or learned about her?

2       A. I know she was from -- I don't even remember  
3           where she lived.

4       Q. Do you know what she did, you know, how and why  
5           she was missing or involved in this at all?

6       A. I have no clue.

7       Q. Okay. Other than your stepson, which you  
8           probably wisely stayed out of, have you had  
9           any -- ever had any exposure to the police  
10           yourself?

11      A. Eleven, twelve years ago, a Manitowoc Sheriff  
12           picked me up because of a computer mistake in  
13           Sheboygan with Child Support.

14      Q. Okay.

15      A. Said I was behind on my child support, but I  
16           wasn't.

17      Q. And when you say picked you up, did they actually  
18           take you down and book you and all that?

19      A. Yeah, and brought me to Manitowoc County Jail.

20      Q. And how long did you sit in jail?

21      A. I was -- I think in Manitowoc for one day and  
22           then I was transferred to Sheboygan until Monday  
23           morning, because they picked me up on a Friday  
24           which was kind of weird. Then I sat for the  
25           weekend because there was nothing they could do.

1           So Monday morning my wife came in, paid a little  
2           bit on my child support, just to get me out and  
3           take care of that situation. But, you know, I  
4           never missed a payment, but it was a computer  
5           glitch that --

6   Q.   Mm-hmm.

7   A.   -- happened.

8   Q.   So -- So you had to spend a whole weekend in jail  
9           for something really that was just a mistake?

10          You didn't --

11          A.   Right.

12          Q.   Wasn't your fault.

13          A.   That is correct.

14          Q.   Well, how did you feel about the system when that  
15           happened?

16          A.   I mean, mistakes happen. You know, there was  
17           nothing I could do about it, so I just -- I  
18           accepted it.

19          Q.   Okay. What do you know about Mr. Avery's  
20           background?

21          A.   I know he owned some kind of business out here  
22           somewhere.

23          Q.   Do you know anything about the -- all the  
24           information about how he was wrongly imprisoned  
25           for many years and was later exonerated when DNA

1 tests proved he didn't do the crime?

2 A. Yeah, I seen one news report when he got out, you  
3 know, out of jail the first time.

4 Q. Yeah, I have seen that many times; he looks --  
5 looks quite a bit different today, doesn't he?

6 A. Yeah, a little shorter in person.

7 Q. That beard that he had was quite a bit different  
8 too. But, you know, in that environment you have  
9 to adjust, I suppose. Did you also read anything  
10 or hear anything about how he had a lawsuit  
11 against Manitowoc County ...

12 A. I might have heard bits and pieces about it, but  
13 I don't know much about it.

14 Q. ... because of that whole experience? Did you --  
15 Do you have any opinion about whether or not it  
16 was -- that was a good idea or a bad thing for  
17 him to try and sue because of his wrongful  
18 conviction?

19 A. I don't have any opinion on that.

20 Q. Okay. Other than that one encounter with -- that  
21 was a Manitowoc County sheriff you said?

22 A. That's correct.

23 Q. Any other contacts with the police even when you  
24 were growing up as a teenager or, you know, out  
25 after curfew, any kind of -- not arrest but times

when you have encountered the police?

2 A. Yes, speeding tickets, things like that.

3 Q. Do you think that the police officers, because  
4 they take an oath, get a badge, you know, that  
5 they are supposed to serve and protect, that --  
6 that somehow if they come into court and testify,  
7 that -- that they are always going to tell the  
8 truth?

9 A. I think they would.

10 Q. Well, you think they would or you'd hope they  
11 would?

12 A. Well, as their, you know, oath, if they took the  
13 oath. I feel they should.

14 Q. Okay. That's fine. But do you think that simply  
15 because of that, because of their position and,  
16 you know, we're taught to respect police  
17 officers, of course?

18 A. That's correct.

19 Q. That if you heard testimony from them, that you  
20 might give that greater weight and think that  
21 they are more reliable and trustworthy than other  
22 ordinary citizens you may hear from?

(Cellphone rang.)

24 A. No. Okay. That distracted me. Okay. Could you  
25 repeat the question.

1 Q. Sure, I'm sorry about that. Do you think that --  
2 that because police are police, that if they come  
3 into court and testify, that what they say, that  
4 you will look at that as being more reliable and  
5 more trustworthy than maybe you would something  
6 that you hear from the witness stand that comes  
7 from an ordinary citizen?

8 A. No, I don't, because the police are just telling  
9 their side of the story, just like all the other  
10 witnesses.

11 Q. And that they are human too, right?

12 A. That's correct.

13 Q. And that -- Do you think it's possible, then,  
14 that police may also be mistaken about things?

15 A. Well, you know, just because it's coming from an  
16 officer doesn't mean it's the facts and totally  
17 the facts on the case.

18 Q. Okay. Do you think it's possible that police  
19 get, you know, personally involved in a case  
20 where they are invested and they really care  
21 about the outcome, they are not just sort of,  
22 just the facts, ma'am, that kind of thing?

23 A. Well, I think they are just, you know, like I  
24 said, they are just telling what they discovered  
25 from the case, you know. And it's -- I have --

1           you know, it has to be all weighed out.

2   Q.   If you heard evidence that might indicate that  
3        they -- that police officers in this case maybe  
4        were a little more personally involved in things  
5        related to Mr. Avery, would you be able to  
6        consider whether those -- that kind of  
7        involvement or motive might affect what they are  
8        saying on the witness stand?

9   A.   What do you mean by "personally involved"?

10   Q.   Well, I don't want to get into all the evidence  
11      here. I mean, if you're selected, you will hear  
12      some of it, but ...

13   A.   That's correct.

14   Q.   But the Judge will give you an instruction that  
15      police officers are to be judged as witnesses  
16      just the same as any other witness; that is, that  
17      they have no special aura about them that makes  
18      them more honest or trustworthy than any other  
19      witness.

20                  You have to judge their demeanor, what  
21      they say, what the facts are, if there's any  
22      corroboration or conflicting information. And  
23      what I want to understand is if you can do that?

24   A.   Yes.

25   Q.   And can you do it even if it means more than just

1           that maybe the police are shading or -- or even  
2           lying about something. Can you do that and  
3           consider whether or not the police crossed the  
4           line in this case and went -- went way beyond  
5           what simple investigating is?

6       A. Well, I judge their evidence just as I would any  
7           other witness, the same, you know. They don't  
8           have -- You know, they are just telling what they  
9           know and the other people are testifying -- are  
10          telling what they know. And there's no  
11          difference between an officer and somebody else  
12          who is testifying.

13      Q. All right. Well, you say they are just telling  
14          what they know, but do you understand that  
15          sometimes witnesses come into court and even  
16          under oath, that they tell lies?

17      A. Right. I do.

18      Q. And if you are selected on this jury, you are  
19          going to have make those kinds of judgments and  
20          judgment calls as to whether a person is really  
21          telling the truth or not?

22      A. Yes, I understand that.

23      Q. Okay. And you can do that for police officers  
24          just as the same as others?

25      A. That's correct.

1 Q. Now, you may also -- You have a lot of -- Well, I  
2 don't know if you have or not. Did you have  
3 musical training or did you kind of teach  
4 yourself?

5 A. I took a half a year of lessons and then I got  
6 tired of lessons so I learned on my own and  
7 pretty much play by ear. I mean, I know the  
8 chords and stuff, but I play by ear.

9 Q. Did you ever take any music theory or learn about  
10 any music theory?

11 A. No.

12 Q. Okay. So, in terms of your knowledge of science,  
13 do you have any particular background of that or  
14 mathematics?

15 A. No.

16 Q. Well, you may hear some scientific evidence in  
17 this case that will come from expert witnesses  
18 and will you be able to listen to their testimony  
19 and judge what they say with the same kind of  
20 standards as any other witness?

21 A. Yes.

22 Q. In other words, just because they --

23 A. -- are professionals.

24 Q. -- are experts in their field, what they say may  
25 or may not be completely accurate; you have to

1           listen to all -- all of what they say.

2 A. Right.

3 Q. Okay. Let me go back for just one minute. The  
4       -- In terms of what you have heard maybe from  
5       your wife or just picked up; have you heard  
6       anything at all about a blood vial?

7 A. Um, no, I haven't heard anything about that.

8 Q. Nothing about a blood vial.

9 A. No.

10 Q. Okay. Now, you like to -- Well, let me ask you  
11      this, one of the questions talked about, a  
12      defendant's right not to testify. And I think  
13      you understood that in your questionnaire, at  
14      least you answered, yes, you could follow that.

15 A. Right.

16 Q. But do you think that if you didn't hear directly  
17      from Mr. Avery testifying at this trial that that  
18      would be a problem for you?

19 A. Not at all.

20 Q. You wouldn't be concerned about why he didn't  
21      testify, why haven't I heard his side?

22 A. No.

23 Q. Why not?

24 A. Because, you know, I would listen to every, you  
25      know, everybody's input on what they had to say

1           about the case and I would make my decision on  
2           that.

3       Q.   Well, on the other hand, if he did take the  
4           witness stand and testify, would you think that,  
5           well, you know, I'm not going to really believe  
6           much of what he says because he's the defendant  
7           in the case, he has got everything at stake?

8       A.   No, I would listen to his side of the story also.

9       Q.   You could treat him the same as any other witness  
10          you are saying?

11      A.   That's correct.

12      Q.   So, either way, you are not going to hold it  
13          against him or us, his attorneys obviously will  
14          be talking with him about that decision. You  
15          will be able to make sure that doesn't affect  
16          your decision in the case?

17      A.   That's correct, either way.

18      Q.   And if at the end of this case you believe that a  
19          crime was committed, a very serious crime was  
20          committed, but you have a reasonable doubt  
21          whether Mr. Avery did the crime, will you be able  
22          to return a verdict of not guilty even if he, or  
23          we, are unable to show who is, in fact, the  
24          guilty party?

25      A.   I don't understand the question.

1 Q. Well, if you hear the evidence and you decide  
2 that, yes, in fact, a very serious crime, a  
3 murder, occurred here; it's maybe human nature to  
4 think, well, if Mr. Avery didn't do it, then who  
5 did, right? I mean, can you -- do you -- Can you  
6 see that?

7 A. Yeah, I can understand that.

8 Q. But, what you have to understand is that the  
9 defense doesn't have a burden of proof. And  
10 that -- What I want to know is whether you are  
11 going to be thinking, hey, you know, somebody did  
12 this and we have got to convict somebody of this  
13 crime, and if it's not Avery, he hasn't shown us  
14 who it is, who did do it, so we're just going to  
15 go ahead and find him guilty?

16 A. No, I wouldn't.

17 Q. Why not?

18 A. Because it would be wrong.

19 Q. Okay. So you really will look at the State's  
20 case to see whether the State's proven to you,  
21 beyond a reasonable doubt, that Mr. Avery is the  
22 guilty party?

23 A. That's correct, I will look at both sides.

24 Q. And even if coming out of that you say, well,  
25 this is really sad, I wish -- Somebody did this.

1           I know somebody did this. And the defense hasn't  
2         proven to me who did, but the State also hasn't  
3         proven, beyond a reasonable doubt, that Mr. Avery  
4         did, you will be able to return a not guilty  
5         verdict?

6         A. That's correct.

7         Q. Okay.

8           ATTORNEY BUTING: Thank you, sir.

9           THE COURT: All right. Mr. Mahler, the  
10       Clerk will escort you from the courtroom at this  
11       time.

12           (Wherein the juror was excused.)

13           THE COURT: Any motion from either party?

14           ATTORNEY FALLON: None from the State.

15           ATTORNEY BUTING: No, Judge.

16           THE COURT: Mr. Buting, you must have good  
17       timing in your head, you concluded exactly on --

18           ATTORNEY BUTING: I heard that. And I  
19       thought --

20           THE COURT: You beat the clock, though.

21           ATTORNEY BUTING: I didn't know if that was  
22       the extra five minutes over or not.

23           THE COURT: All right. We'll bring in Ms  
24       Gosz at this point.

25           Ms Gosz, if you can raise your right

1 hand, the Clerk will administer the oath to you.

2 (Juror sworn.)

3 THE CLERK: Please be seated.

4 THE COURT: Ms Gosz, you have already  
5 completed a written questionnaire in this matter.  
6 Today we're moving on to the next step in the jury  
7 selection process which is known as voir dire. The  
8 attorneys for each of the parties will have an  
9 opportunity to ask you some questions today that  
10 relate to your qualifications as a juror.

11 Before they begin, I can tell you that  
12 if you are selected as a juror in this case, the  
13 jury will not be sequestered. That means the  
14 jurors will be permitted to go home each day at  
15 the end of the court's proceedings for that day.

16 The jurors will continue to be required  
17 not to obtain any information about the case from  
18 any news media; that would be radio, television,  
19 newspaper, the internet, or anything else. And  
20 the jurors will also continue to be prohibited  
21 from talking to anyone about the case, including  
22 family members or other members of the jury.

23 The proceedings today are held in open  
24 court, but during the voir dire process the Court  
25 does not allow cameras in the court. And the

1           news media is not permitted to identify the  
2           jurors by name in any news reports of today's  
3           proceedings.

4                 In addition, if you are selected to  
5           serve on the jury, you should know that at the  
6           trial itself, the cameras which may be present  
7           are not permitted to focus on the jurors or  
8           identify them in any way.

9                 If you are to remain on the jury panel  
10          after today's questioning, you will be notified  
11          in the next day or two when to report back to  
12          court.

13                 I believe Mr. Kratz is going to be  
14          questioning you now on behalf of the State.

15                 ATTORNEY KRATZ: Thank you, Judge.

16                 **VOIR DIRE EXAMINATION**

17          BY ATTORNEY KRATZ:

18          Q.     Ms Gosz, good morning. My name is Ken Kratz, I'm  
19          the Calumet County D.A., and special prosecutor  
20          in this case, lead counsel in this case. Mr. Tom  
21          Fallon who is with me is an Assistant Attorney  
22          General. He will be assisting in the prosecution  
23          as well.

24                 As the Judge told you, this is the time  
25          for some follow-up questions. We all received

1           your written responses in your questionnaire.

2           This process is not mean -- is not meant to  
3           embarrass you or to pry into your personal life,  
4           at least unnecessarily. We're trying to get the  
5           most impartial jury --

6       A. Okay.

7       Q. -- that we can.

8       A. I understand.

9       Q. And that's why we're doing this. Your employment  
10          with Natural Ovens Bakery as a packaging  
11          supervisor, you described that as packaging  
12          bakery items; is that the whole gambit of bakery  
13          items or is this just bread or something?

14      A. Bread, buns, bagels, muffins, cookies.

15      Q. All the good stuff, right?

16      A. All the good stuff, yeah.

17      Q. All right. Ms Gosz, interestingly you noted that  
18          you don't watch TV or the news very much. You  
19          don't read the newspapers.

20      A. No.

21      Q. You don't gather news from any other source  
22          except I think you mentioned your neighbors. I  
23          was interested in that response; what does that  
24          mean?

25      A. Well, I pretty much get up in the morning, get

1                   the kids off to school. Then I get to work. And  
2                   being in charge of the department, I never know  
3                   what time I'm going to get done. Sometimes I'm  
4                   lucky enough where it's 8 hours, but more times  
5                   than not it's usually 9 or 10.

6                   So that means I don't usually get home  
7                   until 6. Then I'm trying to get the kids some  
8                   supper, homework. And I don't really -- I don't  
9                   get the newspaper. I just -- I know my friends  
10                  laugh at me because I really never know what's  
11                  going on, but my life pretty much revolves around  
12                  my job and my family and that's about it.

13                  Q. I understand. The information that you do  
14                  receive from your neighbors, did any of that  
15                  include the case for which you have been called?

16                  A. No, there's a lady that lives across the street  
17                  that every once in a while if I go out and get  
18                  the mail or whatever, you know, will stop and  
19                  talk and, oh, did you hear this, did you hear  
20                  that. I will be, like, not in regard to this,  
21                  but just general stuff, and I'll be like, no.  
22                  And she always laughs at me, you know, but, so,  
23                  yeah, I'm pretty boring I guess.

24                  Q. Let me ask you just directly, Ms Gosz; do you  
25                  know anything about the Steven Avery prosecution?

1 A. I mean, truthfully, I have heard his name, her  
2 name, and -- and any more full details, not  
3 really, because I really don't pay attention to.

4 Q. By her name, who are you talking about?

5 A. Teresa.

6 Q. Teresa Halbach?

7 A. Yes.

8 Q. Okay. Did you know what Mr. Avery has been  
9 charged with?

10 A. Mm-hmm.

11 Q. And did you receive that, again, just by kind of  
12 hearing things around town or around your  
13 community?

14 A. Yeah.

15 Q. You mentioned in your questionnaire that you have  
16 not formed an opinion as to Mr. Avery's guilt or  
17 innocence. I assume that remains today; is that  
18 correct?

19 A. Correct.

20 Q. And if the Judge was to instruct you that you  
21 should decide the case only on what you heard in  
22 the courtroom; that is, by witnesses or exhibits,  
23 or other kinds of evidence, will you be able to  
24 do that?

25 A. Definitely.

1 Q. Now, the State has the burden of proof. It's  
2 beyond a reasonable doubt. But the defendant  
3 doesn't have to prove anything in this case. I  
4 think you understood that in your  
5 questionnaire --

6 A. Mm-hmm.

7 Q. -- are you willing, then, to presume, as  
8 Mr. Avery sits here today, that he's innocent and  
9 that will remain until and unless the State can  
10 prove, beyond a reasonable doubt?

11 A. Yup.

12 Q. You are willing to do that?

13 A. Definitely.

14 Q. And that's something, not just generally, but  
15 specifically in this case, that you are able to  
16 do?

17 A. That's what I believe.

18 Q. Have you yourself, Ms Gosz, had the misfortune of  
19 having contact with law enforcement officials  
20 ever in your life?

21 A. No.

22 Q. Are you familiar at all with the Manitowoc County  
23 law enforcement community? Or let me ask you  
24 this question, because this is something that you  
25 might have an opinion on. Do you have an opinion

1           as to how the Manitowoc County Sheriff's  
2           Department is generally doing regarding crime  
3           prevention, or how they handle criminal  
4           investigations?

5       A. I really don't know one way or another. I mean,  
6           I don't have an opinion one way or the other,  
7           because I have never really had any personal  
8           things to do with the law, I guess.

9       Q. All right. Have any family, or friends, or  
10          anything like that ever had run-ins with the law  
11          or have complained about the Sheriff's Department  
12          or anything else in our law enforcement community  
13          here?

14      A. No. No, actually, you know what, I did call one  
15          time, just to question. And this is probably, I  
16          don't know if it's even worth saying, but my  
17          daughter had stayed overnight by a friend's  
18          house. And my sister works second shift and was  
19          coming home from work and saw her out with her  
20          friends at like quarter to 12 at night. And I'm,  
21          like, I thought we had some kind of --

22      Q. Curfew.

23      A. Curfew. So I just called inquiring about that  
24          and they're, like, yeah, it's midnight. And I'm,  
25          like, it was 10 to, these are, like, 15 year old

1           girls, why didn't they at least stop and question  
2           them and they said, because they weren't breaking  
3           the law. And I'm, like, okay, makes sense.

4 Q. Until after midnight.

5 A. Yeah.

6 Q. Okay.

7 A. So I just took care of it myself.

8 Q. Other than taking care of your children and  
9           working and I understand that you are a married  
10          lady; is that right?

11 A. Mm-hmm.

12 Q. And I suspect your husband takes some of your  
13          time as well?

14 A. Yup.

15 Q. Other than that, what do you do for fun or for  
16          hobbies?

17 A. Scrap booking is basically the thing I do a lot  
18          of.

19 Q. All right. Do you enjoy puzzles or anything like  
20          that?

21 A. Uh-uh.

22 Q. Have you ever?

23 A. No.

24 Q. Or you just don't now?

25 A. Not particularly.

1 Q. You are a high school graduate, I note, and was  
2 wondering if in high school you had any interest  
3 in any particular subjects?

4 A. Not really.

5 Q. You have no educational background after high  
6 school; is that right?

7 A. Correct.

8 Q. You ever watch any shows on TV that deal with  
9 science, either scientific evidence or the  
10 sciences generally?

11 A. Well, I watch *Law and Order* occasionally.

12 Sometimes forensic files is on either before or  
13 after, I'm not quite sure.

14 Q. Those shows typically deal with a area of science  
15 that's called DNA analysis.

16 A. Yup.

17 Q. Are you familiar with that at all?

18 A. Yup.

19 Q. Do you generally accept that as a accurate way to  
20 make identifications, at least from a forensic  
21 stand --

22 A. I believe so.

23 Q. -- or aspect? What I'm getting at, Ms Gosz, is  
24 there isn't anything that you have heard or read  
25 or in your history that brings DNA analysis into

1 question for you or anything like that?

2 A. Uh-uh.

3 Q. All right.

4 THE COURT: Ms Gosz, if you can answer yes  
5 or no to the questions --

6 MS GOSZ: I'm sorry.

7 THE COURT: -- it will make life easier for  
8 the court reporter. Thank you.

9 MS GOSZ: It's easier to spell yes than  
10 mm-hmm. Okay.

11 ATTORNEY KRATZ: It is.

12 MS GOSZ: Sorry.

13 Q. (By Attorney Kratz)~ Are you aware of Mr. Avery's  
14 history or a project in Wisconsin called Project  
15 Innocence?

16 A. No.

17 Q. All right. Ms Gosz, I understand that you at  
18 least provide some income to your home; your  
19 husband is employed as well?

20 A. Yes.

21 Q. Would being on a jury for what is estimated to be  
22 about six weeks; would that create a financial  
23 hardship for you?

24 A. No.

25 Q. Can you tell me why?

1 A. Because Natural Ovens supports the community on  
2 the basis that if do you have to report for jury  
3 duty, they will supplement my income.

4 Q. That's nice. That's good.

5 A. Mm-hmm.

6 Q. You have had to, at least since you got the  
7 notice about this case, thought of the  
8 possibility of being a juror on the Steven Avery  
9 case?

10 A. Mm-hmm. I'm sorry. Yes.

11 Q. Yes. Is that something that you believe would be  
12 interesting? Is that something that you would  
13 look forward to doing or, quite honestly, would  
14 prefer not to do?

15 A. I don't know if look forward is the appropriate  
16 way to say, but I definitely believe that being a  
17 juror is part of your civic duty and I certainly  
18 would be there to do that if you guys called upon  
19 me to be there.

20 Q. You would agree to serve and if called by the  
21 Court or by the attorneys to be one of those  
22 jurors asked for this very important  
23 responsibility, you would step up and do that; is  
24 that right?

25 A. Yes.

1 Q. Okay. The last area of inquiry I have and the  
2 Judge has told you that you will be able to go  
3 home at night after each day of jury service.

4 But it looks like you are involved, in some  
5 respects, with your son's Cub Scouts --

6 A. Mm-hmm.

7 Q. -- is that right? Do you have any contact with  
8 any of their parents? Are you a den mother or  
9 something --

10 A. No.

11 Q. -- like that?

12 A. No, I just take him to the meetings because my  
13 husband works second shift so that makes me the  
14 Cub Scout parent.

15 Q. All right. Kind of like a soccer mom, just with  
16 -- with Cub Scouts, right?

17 A. Yeah.

18 Q. You would be able, then, to avoid contact with  
19 other citizens and avoid contacting --

20 A. Mm-hmm.

21 Q. -- other people and talking about this case; is  
22 that right?

23 A. Definitely.

24 Q. If I could have just a moment.

25 ATTORNEY KRATZ: I think that's all we

1 have, Judge. Thank you.

2 THE COURT: All right Mr. Strang.

3 ATTORNEY STRANG: Thank you.

4 **VOIR DIRE EXAMINATION**

5 BY ATTORNEY STRANG:

6 Q. Good morning.

7 A. Good morning.

8 Q. I'm Dean Strang and this is Jerry, or Jerome,  
9 Buting and Steven Avery. We're the two lawyers  
10 defending Mr. Avery. Let's start with your  
11 husband a little bit, if I may.

12 A. Mm-hmm.

13 Q. Roman is a sanitation supervisor?

14 A. Mm-hmm.

15 Q. Is that with a municipality or is it with a  
16 private company?

17 A. No, it's -- Natural Ovens has their own  
18 sanitation crew, that's on Natural Oven's  
19 payroll.

20 Q. Okay. So he's actually at Natural Ovens --

21 A. Yup.

22 Q. --too?

23 A. Yeah.

24 Q. All right. And he works second shift?

25 A. Mm-hmm.

1 Q. Which means 4 to midnight or ...

2 A. He works 1:30 to 9:30.

3 Q. All right. Are his hours consistent or does  
4 he --

5 A. Yes.

6 Q. -- get called in for snow plowing or ...

7 A. No. No. It's very consistent.

8 Q. Okay. So, if you -- if you were tied up in a  
9 jury trial for let's just say six weeks  
10 approximately and having to go to Chilton every  
11 morning and come back every evening --

12 A. Mm-hmm.

13 Q. -- so adding on to the day at both ends; someone  
14 is able to get the kids off to school or ...

15 A. Yeah, see, right now a neighbor takes my daughter  
16 because he's got a daughter that's the same age  
17 that goes to the same school and he's on his way  
18 to work anyway.

19 Q. Mm-hmm.

20 A. And my son, I drop off by that same neighbor  
21 because they have kids that are his age, also,  
22 that takes him to school. And that same  
23 individual picks both my kids up from school, so  
24 I'm not responsible for any of that at this  
25 point.

1 Q. You are covered --

2 A. Yup.

3 Q. -- and I suppose your daughter is old enough to

4 sort of keep an eye on your son?

5 A. Yeah, she's basically the babysitter until I get

6 home. So she does that every day now for me.

7 Q. Okay. Has your husband talked about this case at

8 all?

9 A. No.

10 Q. Have any opinions on it?

11 A. No.

12 Q. When you first heard that Teresa Halbach --

13 Halbach went missing and, you know, they decided

14 she had been killed --

15 A. Mm-hmm.

16 Q. -- what was your reaction to that?

17 A. Well, you have concern because if it can happen

18 to her it can happen to anybody.

19 Q. Including your daughter?

20 A. Yeah.

21 Q. I mean, did you react as a mom?

22 A. Probably.

23 Q. When you say probably, I mean, do you --

24 A. Well, that's probably the way -- that's probably

25 the thinking I had because I'm very strict with

1           my daughter and always wanting to know where she  
2           is.

3   Q.   I picked up on that.

4   A.   Yeah.

5   Q.   Were you meaning to call the police on her or you  
6           were just checking?

7   A.   Well, I wanted to inquire about the curfew  
8           because I just thought that it was kind of weird  
9           that there would be a police -- and I guess the  
10          reason I called, I didn't state that before is,  
11          my sister had stated to me that there was a  
12          patrol officer, like, in the vicinity.

13   Q.   Mm-hmm.

14   A.   So I just was kind of curious why they  
15          wouldn't -- and, no, the curfew wasn't in effect  
16          as far as they weren't breaking any laws in  
17          essence, but still, three 15 year old girls out  
18          at that time of night, I just thought that maybe  
19          he would at least question, say, hey, you know,  
20          it's getting close to that time, do you guys  
21          think you should head home? Do you need a ride?  
22          You know, so I guess I was just inquiring on that  
23          nature.

24   Q.   Okay. Sure. So you're protective, you reacted  
25          to this as something horrible and if it could

1           happen to her, it could happen to anyone.

2 A.       Mm-hmm.

3 Q.       Were you glad to hear that they caught the guy?

4 A.       I guess, in my opinion, it remains to be seen if

5       they have really caught the person.

6 Q.       Okay. And that's sort of where I'm going. I

7       mean, are you concerned that they have not caught

8       the guy?

9 A.       I guess I have really drawn no conclusion yet

10      because I don't really listen to what is said,

11      one way or another.

12 Q.       Mm-hmm. And I -- We all would need to know but,

13      you know, let's -- let's be honest about it, at

14      this table, we have got a real immediate interest

15      in knowing that, if you sit on Mr. Avery's jury,

16      you can come into this presuming him innocent.

17 A.       Definitely.

18 Q.       You know, and I was glad to hear, I don't know

19      that they have the guy.

20 A.       I mean, that's truly what this is all about

21      right, to make sure that the right person is

22      given the punishment needed for the crime that's

23      been committed. But the fact remains that it's

24      the right person and that's what everybody's job

25      here is to prove or not prove.

1 Q. Okay. And let's pick up on that. I want to pick  
2 up on that because you say everybody's job here  
3 is to prove or not prove. You know, to get -- to  
4 get past sort of legal jargon --

5 A. Mm-hmm.

6 Q. -- it's not everybody's job here to prove that.  
7 It's not the Judge's job to prove that and it's  
8 actually not our job at all to prove that.

9 A. And I probably shouldn't generalize in saying  
10 everybody. It's just everybody has their part in  
11 the trial.

12 Q. Right.

13 A. You know what I'm saying?

14 Q. And I'm not picking on you.

15 A. Okay.

16 Q. Okay. I don't mean to pick on you, it's just --  
17 that's why I'm trying to, you know, let's get  
18 into a discussion about this.

19 A. I understand.

20 Q. The job to prove guilt lies with the State and  
21 the State here happens to be represented by the  
22 two gentleman, the two lawyers to my left.

23 A. Correct.

24 Q. And then our job is to defend Mr. Avery, but  
25 those are very different jobs; do you understand

1           that?

2 A.   Oh, definitely.

3 Q.   In the sense that we don't have to prove

4       anything --

5 A.   Right.

6 Q.   -- to you?

7 A.   I understand.

8 Q.   Doesn't mean we're going to sit here like a bump

9       on a log. I mean, I'm talking to you now --

10 A.   Mm-hmm.

11 Q.   -- which technically Mr. Avery doesn't have to

12       have a lawyer do.

13 A.   Right.

14 Q.   But in the end, we don't have to prove anything

15       to you or convince you of anything; do you accept

16       that?

17 A.   I understand that, yes.

18 Q.   Can you -- Can you follow the rules in the system

19       that works like that?

20 A.   I believe so.

21 Q.   I mean, because I guess at some level it's

22       natural, obviously, to say there are two sides to

23       every story and I would like to hear both

24       sides --

25 A.   Mm-hmm.

1 Q. -- before I make a decision?

2 A. Right.

3 Q. Do you react that way too?

4 A. I think so.

5 Q. I mean, just in everyday life?

6 A. Right.

7 Q. But when it comes to law in America and burdens

8 of proof, these folks do have the only burden.

9 A. Correct.

10 Q. They have to prove it, beyond a reasonable doubt.

11 If -- if he were to decide anyway to testify in

12 his own behalf, I think the Court would tell you,

13 the Judge would tell you, that you would weigh

14 his testimony just like any other witness.

15 A. Mm-hmm.

16 Q. Yes?

17 A. Yes. Sorry.

18 Q. Okay. And, you know, just decide like you would

19 any other witness, whether I believe it, or I

20 don't believe it, or how much of it I believe, or

21 how much weight I give it?

22 A. Right.

23 Q. Okay. Can you do that?

24 A. I believe I can.

25 Q. Even knowing that he's the one person in the

courtroom with sort of everything at stake?

2 A. I think so.

3 Q. He also -- The flip side of this is that he has a  
4 right under the American constitution and  
5 Wisconsin constitution, for that matter, to say  
6 I'm not going to testify. I'm not -- I'm not  
7 going to testify. I'm going to keep my silence.

8 A. Right.

9 Q. What are some of the reasons somebody might do  
10 that if he was accused of a crime?

11 A. I'm not really sure.

## 12 Q. Advice from lawyers?

13 A. I guess could be a possibility.

14 Q. A sense that he could get tripped up by lawyers  
15 on the other side?

16 A. I suppose that could also be a possibility.

17 Q. Fear the jurors might not believe him because he  
18 does have a lot at stake?

19 A. I suppose there's a lot of outstanding  
20 circumstances that could make someone want to or  
21 not want too. I guess it's up to the individual.

22 Q. Right. And the point of all that, I mean, you  
23 are exactly right I think. And the point is,  
24 that's why in the end, if a defendant does not  
25 testify, a Court will tell you you can't even

1 consider it.

2 A. Mm-hmm.

3 Q. It's not evidence of guilt. It cannot be  
4 considered by you. And the question is always  
5 did the State prove the case beyond a reasonable  
6 doubt?

7 A. Right.

8 Q. Precisely so people aren't engaging in guessing  
9 about why he didn't testify if he does not.

10 A. Right.

11 Q. Is that a rule you can follow?

12 A. I believe so.

13 Q. When you say you believe so, talk to me about --  
14 you're qualifying it just a little bit. I want  
15 to hear about that.

16 A. I guess I understand that each person has  
17 different feelings on, you know, how they say  
18 things or the body language they use that maybe  
19 they decide that they don't want to say something  
20 because they don't want something to be misread.

21 I mean, I know for a fact, being a  
22 supervisor where I work, I have been training a  
23 new person to assist me and people say, well, I  
24 don't like the body language she uses. And she  
25 means totally nothing by it, but they interpret

1           it the wrong way.

2 Q.    Right.

3 A.    So I have to go back and clarify that with them  
4       in saying, you know, she totally didn't mean  
5       anything by that, that's just her personality,  
6       that's just the way she expresses herself. And  
7       once you get to know her, you will understand  
8       that that's how she is. And then they get past  
9       that.

10 Q.    Right.

11 A.    It can be interpreted the wrong way.

12 Q.    Sure. And courtrooms are actually very, very  
13       tough places to get to know someone.

14 A.    Exactly.

15 Q.    It's pretty formal and --

16 A.    Mm-hmm.

17 Q.    Yeah, so that's -- I mean, that's very helpful to  
18       hear. And so, you said I believe so, that I can  
19       follow that rule; and are you -- have you sort of  
20       finished explaining to me why you think the rule  
21       does make sense --

22 A.    Right.

23 Q.    -- and you would follow it if the Judge gave it  
24       to you?

25 A.    Right, because some things could be

1 misinterpreted.

2 Q. Okay. And you'll follow it if the Judge --

3 A. Correct.

4 Q. -- tells you that? Okay.

5 A. Correct.

6 Q. So understanding how you reacted and how you  
7 felt, how pretty much everybody felt, when the  
8 announcement came out about Teresa Halbach's  
9 death and someone being arrested for it; what was  
10 your reaction a few months later when you heard  
11 that Brendan Dassey, a 16 year old boy, had also  
12 been arrested?

13 A. I guess I really don't -- I really didn't hear.  
14 That was probably even less than the previous  
15 things. I really didn't hear anything about it.  
16 Again, maybe in passing somebody mentioned that a  
17 relative had also been arrested, but that's  
18 basically all I heard.

19 Q. So --

20 A. And I didn't inquire any more. You know, I just  
21 -- I just do my thing and I just really don't pay  
22 attention to those things.

23 Q. Sure. Tell me about -- Tell me about work in  
24 that respect. How many people are you  
25 supervising?

1 A. About 30.

2 Q. Really? Okay. And are they on a line or are  
3 they moving around?

4 A. We're all basically -- Well, I shouldn't say all.  
5 Basically two different rooms depending on if  
6 it's packaging or at the end of the day when  
7 we're loading the semis. I interact with a  
8 handful of them, basically working on a line next  
9 to them, depending on the day. Like today, if I  
10 had been at work I had meetings all day. So then  
11 that really limits the amount of people that I'm  
12 with.

13 Q. Right.

14 A. Usually if I have meetings all day today, that  
15 means tomorrow I have got tons of paperwork to do  
16 in my office. So then I really don't see a lot  
17 of people in regards. That's where I have my  
18 assistants to help me out running the floor.

19 Q. And I was going to ask you about that. Are  
20 there -- Among these 30 people you supervise, are  
21 there team leaders --

22 A. Yes.

23 Q. -- or foremen?

24 A. Yeah, I have an assistant supervisor that assists  
25 me. I have a lead person that runs the floor

1           when I need to call her off on other duties. And  
2           then I have another supervisor that works our  
3           morning shift because we have a shift that starts  
4           at 2 a.m. in the morning. And then I have  
5           another supervisor that runs basically our  
6           loading crew in the afternoon and she has an  
7           assistant as well.

8 Q.       And all those people report to you?

9 A.       Correct.

10 Q.       So you have an office away from --

11 A.       Yes.

12 Q.       -- the two rooms?

13 A.       Yes.

14 Q.       But also spend some time out in the room?

15 A.       Yes.

16 Q.       And are many of the 30 people you supervise folks  
17           you actually worked shoulder to shoulder with  
18           before you were promoted?

19 A.       I would say a handful of them because in the last  
20           few years we have had some turn over.

21 Q.       Mm-hmm. Is -- Is -- Is there a packing machine  
22           running --

23 A.       Oh, yes.

24 Q.       -- in one of those rooms?

25 A.       Yes. It's loud in our room.

1 Q. Okay.

2 A. Oh, yeah. The inspector actually just came in  
3 and we have to mandate ear plugs now because it's  
4 too loud in there.

5 Q. Okay. So chitty chat is difficult for --

6 A. Oh, yeah.

7 Q. -- a number of reasons?

8 A. Me giving out directions a lot of times is  
9 difficult, you have got to scream because they  
10 can't hear you or I have to walk across the room,  
11 or if somebody is heading that way, hey, do me a  
12 favor -- tell so and so, you know --

13 Q. Tap them on the shoulder?

14 A. Yeah.

15 Q. That kind of thing?

16 A. Yeah.

17 Q. And then so, likewise, in that work place, radios  
18 aren't something people can do to help pass time?

19 A. They want them on, but you can't hear them  
20 anyway. Like on Sundays, when the football is  
21 on, let's turn the game on, it's like all you can  
22 hear is, oi, oi, oi. It's just more annoying to  
23 me than anything so I'm just like I would rather  
24 we didn't.

25 Q. Okay. Yeah, and where I was going was just, I

1           want to get a better feel for why, you know,  
2           there's not water cooler talk, so to speak --

3       A. Oh.

4       Q. -- about this case --

5       A. Yeah, no.

6       Q. -- where you work?

7       A. No. And we do have a lunchroom that employees  
8           can go in for their breaks, but my husband  
9           doesn't drive, so I usually go and pick him up  
10          for work. So my lunchtime is spent driving to go  
11          get him and coming back. So I don't have the  
12          off -- you know, like on break interaction with  
13          my employees that most people do.

14      Q. Mm-hmm. Okay. You may -- You may, if you sit on  
15          this jury, hear something about a confession or,  
16          you know, statements that Brendan Dassey made, or  
17          you may not. But if you do, there will be an  
18          issue about whether, you know, he made those  
19          statements and then took them back --

20      A. Mm-hmm.

21      Q. -- later. And there will be an issue about which  
22          is it. Did he really do it like he said at one  
23          time or did he really not do like he said at  
24          other times. And so the question for lawyers is,  
25          you know, the false confession, the possibility

1           of a false confession?

2 A.       Mm-hmm.

3 Q.       And I'm wondering whether anything in your

4       experience has opened you up to the possibility

5       that sometimes people, for any number of reasons,

6       admit doing something they really didn't do?

7 A.       I guess I don't have any particular incident

8       that's happened to me personally, in regards to

9       that.

10 Q.       When you are in there, when you have got your

11       disciplinary hat on --

12 A.       Yeah.

13 Q.       -- or, you know, work rule enforcement hat on as

14       a supervisor --

15 A.       Uh-huh.

16 Q.       -- have you ever had one employee take the fall

17       for another one?

18 A.       Not that I'm aware of.

19 Q.       Okay. Do you watch out for that?

20 A.       I guess it's something that's never really

21       happened, so I guess I really can't say I do.

22 Q.       Okay.

23 A.       Usually, we'll hear both sides, you know, and

24       usually it's one saying one way. And usually the

25       person at fault will come around and say, hey, I

1           made a mistake. And, you know, because the end  
2           result is hopefully getting them back on a level  
3           where they have to work with each other for 8  
4           hours or more so, you know, a day.

5       Q.    Right.

6       A.    So at least get them civil.

7       Q.    Right. Yeah, exactly. And if you hear evidence  
8           here in this case about what factors, what things  
9           might cause people under the right circumstances  
10          to admit something they didn't do, will you be  
11          open to hearing that sort of testimony?

12      A.    Yes.

13      Q.    You mentioned girlfriends, neighbors. And I  
14          think you said girlfriends, or maybe you just  
15          said friends. I don't know. But do you have a  
16          group of friends who you tend to see regularly?

17      A.    Not really.

18      Q.    You mentioned this when you were saying people  
19          always tease you because you don't know what's  
20          going on.

21      A.    Oh, co-workers.

22      Q.    Oh, okay.

23      A.    Yeah.

24      Q.    Just about not knowing what's going on?

25      A.    Yeah.

1 Q. If you sat on this jury, at the end, you and 11  
2 other people are going to have a huge  
3 responsibility, which is what?

4 A. To decide if he's guilty or innocent.

5 Q. That's right. Guilty or not guilty, in any  
6 event. And big decision either way it goes,  
7 right?

8 A. Definitely.

9 Q. Regardless of what you do, are you worried at all  
10 about the next workday when you come back after  
11 this long trial is over and having everybody, you  
12 know, all your co-workers who do know what's  
13 going on, saying why did you find him guilty, or  
14 why did you find him not guilty?

15 A. Am I worried about it, no. Are they going to do  
16 it, probably. Because they're already, oh, did  
17 you get selected, did you get selected. And I'm,  
18 like, don't know any more than you do. And if it  
19 happens it happens, if it doesn't, it doesn't.  
20 You know, you just play it one day at a time.

21 Q. Mm-hmm. Can you stand up to that?

22 A. Oh, definitely, because people have already at  
23 work, you know, if -- now that they know that I  
24 potentially could be a juror, they're like, well,  
25 da, da. I'll be like, no, I don't want to hear

your opinion. The Judge has instructed that I'm not to listen to anything and that includes you. Well, it's just my opinion. I said, but he said I still can't take your opinion. Granted, what it means to me is probably nothing more than their opinion, but it was still something that was told we're not supposed to do.

Q. Do you want to be on this jury?

A. I have always wanted to be a juror, maybe not necessarily for a trial of this magnitude but, yeah. I have always wanted to do it.

Q. Why?

A. Because I find the whole court process to be intriguing. It's -- It would be interesting. Basically that's what, you know, the country is founded on. You know, it's just, I guess, in that degree.

ATTORNEY STRANG: Okay. Thank you.

MS GOSZ: You're welcome.

THE COURT: All right. At this time, Ms Gosz, we'll have the Clerk escort you from the courtroom.

(Wherein the juror was excused.)

THE COURT: Any motion from either party?

ATTORNEY FALLON: No.

1 ATTORNEY STRANG: No.

2 THE COURT: All right. This juror is in.

3 At this time we're going to take our lunch break.

4 We'll report back at quarter to one. I would like  
5 to see counsel for just 30 seconds in my chambers  
6 before you leave.

7 (Noon recess taken.)

8 THE COURT: At this time we will go back --  
9 oh -- I will go back on the record. Will the  
10 parties state their appearances for the record,  
11 please.

12 ATTORNEY FALLON: Good afternoon, your  
13 Honor, the State continues in its appearance by  
14 Assistant Attorney General Tom Fallon and Ken Kratz,  
15 special prosecutors.

16 ATTORNEY STRANG: Good afternoon. Steven  
17 Avery in person; Jerome Buting and Dean Strang on  
18 his behalf. And we have some further joint motions  
19 if the Court wishes to entertain those now.

20 THE COURT: That would be fine.

21 ATTORNEY FALLON: Your Honor, the parties  
22 had a chance to more closely inspect the  
23 questionnaires of four additional jurors. I think  
24 we have reached agreement that these four jurors  
25 could likewise be struck for cause; most of them

1           subjective bias primary reason, although I think  
2           No. 73 could be both subjective and objective bias,  
3           perhaps even a statutory bias argument could be  
4           made.

5           But in any event Jurors 61, 63, 70, I  
6           think we're in agreement should be struck for  
7           subjective bias reasons. And No. 73, I think an  
8           argument could be made touching upon all three of  
9           the forms of bias, statutory, objective and  
10           subjective. And in any event, I believe there is  
11           a joint motion to excuse those jurors.

12           ATTORNEY STRANG: That is a joint motion  
13           for the reasons that Mr. Fallon has explained.

14           THE COURT: All right. The Court then will  
15           excuse -- let's see -- it's Dean Schneider, James  
16           Wagner, Andrew Wimmer and Jesse Gibas.

17           ATTORNEY FALLON: Gibas, right.

18           THE COURT: The Court will order, then,  
19           that those jurors be excused. Counsel, I think the  
20           next juror that's up is William Mohr.

21           ATTORNEY FALLON: That's correct, Judge. I  
22           wanted to address one other matter and just for  
23           convenience purposes or expediency, I'm not sure  
24           which is the best terminology here, but the Court  
25           asked us to look at No. 74.

1                   THE COURT: Yes.

2                   ATTORNEY FALLON: Ordinarily I'm not sure  
3                   that we would get to that juror today on our list,  
4                   but if need be we could. I have shared our copy of  
5                   the questionnaire with the defense. And on paper,  
6                   he looks fine. There's only one matter that is of  
7                   some importance that would require an inquiry. So I  
8                   don't know, you said he was already here, even  
9                   though we may not get to him, so I don't know how  
10                  you wanted to deal with him.

11                  THE COURT: All right. Well, we'll simply  
12                  leave him here today then.

13                  ATTORNEY STRANG: I think he's going to  
14                  wind up going, but I tend -- I tend to agree with  
15                  Mr. Fallon in the sense, if it's just on paper; I  
16                  don't know that cause appears --

17                  THE COURT: Okay.

18                  ATTORNEY STRANG: -- on the face of the  
19                  paper.

20                  THE COURT: I would agree with that.

21                  ATTORNEY STRANG: I think we're going to  
22                  lose him but ...

23                  THE COURT: I will also let you know, and I  
24                  don't know that this appears on paper either, but  
25                  the next juror, William Mohr, his spouse, Alice

1 Mohr, is a recently retired employee of the Clerk of  
2 Court's Office who is, during the pendency of this  
3 trial, back working at the Clerk of Court's Office  
4 to help fill in for the staff shortage down there  
5 during the trial. That may speed things along for  
6 your questioning. And -- But I did want to make the  
7 parties aware of that fact.

8 ATTORNEY FALLON: Could we have a moment  
9 just to --

10 THE COURT: Go ahead.

11 ATTORNEY FALLON: -- contemplate the  
12 meaning of all that?

13 THE COURT: Yes.

14 ATTORNEY FALLON: We'll proceed.

15 THE COURT: Then we'll bring William Mohr  
16 out as the next juror.

17 Mr. Mohr, please raise your right hand  
18 and the Clerk will administer the oath.

19 (Juror sworn.)

20 THE CLERK: Please be seated.

21 THE COURT: Mr. Mohr, you have already  
22 completed a written questionnaire in this case.  
23 This afternoon we're moving on to the next phase of  
24 jury selection which is voir dire.

25 The attorneys for each of the parties,

1           in a few minutes, will have a chance to ask you  
2           some questions relating to your qualifications as  
3           a juror. You should know that if you are  
4           selected to serve as a juror in this case, that  
5           the jury will not be sequestered. That means you  
6           will be able to report home each day after the  
7           trial proceedings are completed for that day.

8                 The jurors will continue to be  
9           prohibited from learning anything about this case  
10           through the media; be it radio, television,  
11           newspaper, the internet, or any other source.  
12           And the jurors will be prohibited from discussing  
13           the case, either among themselves, or with anyone  
14           else, including members of their family.

15                 The proceedings today are open, but  
16           during voir dire we do not allow cameras in the  
17           courtroom and the members of the media are not  
18           permitted to disclose the names of potential  
19           jurors or jurors in their news accounts of these  
20           proceedings. In addition, if you're selected to  
21           serve as a juror, the cameras will not be  
22           permitted to show the jury during the trial.

23                 At this time we will proceed to voir  
24           dire questioning. Mr. Fallon.

25                 ATTORNEY FALLON: Thank you.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

Q. Good afternoon, Mr. Mohr.

A. Yes.

Q. My name is Tom Fallon and I'm an Assistant Attorney General with the Wisconsin Department of Justice. I'm one of the prosecutors in this case. To my immediate left is Mr. Ken Kratz. He's a Calumet County District Attorney and special prosecutor as well.

Thank you for coming in this afternoon.

The point of the afternoon session here is to follow up on some of the information that you provided in your questionnaire last Monday. And that's where we'll begin.

Seems to me you have a few relationships with which are of interest to the parties here. And the Court has just advised us, we're under the impression that your wife is an employee of the Clerk of Court's Office?

A. Yes, a temporary employee.

Q. All right. And temporary at the current time as I understand?

A. Yes.

0. All right. And she previously worked at the

1           Clerk of Court's Office?

2   A.   Yes.

3   Q.   All right. Has she officially retired and is

4       just coming back to help out?

5   A.   Correct.

6   Q.   All right. Could you tell us when she retired?

7   A.   Um, June of '05, I believe.

8   Q.   June of '05. All right.

9   A.   Yes.

10   Q.   Okay. And how long did she work in the office;

11       do you recall?

12   A.   13 or 14 years.

13   Q.   All right. Had she had other county employment

14       before she was in the Clerk's Office?

15   A.   No.

16   Q.   All right. And her current duties in the Clerk's

17       Office, if you know, are what?

18   A.   Just the Clerk of Court.

19   Q.   All right. Very good. And you said temporary,

20       is it for a period of time longer than the

21       expected length of this trial or is it ...

22   A.   No, just about the six week period.

23   Q.   Just to help out for the overload as a result of

24       the trial?

25   A.   Right.

1 Q. Okay. More to the point, how well do you know  
2 any of your wife's co-workers?

3 A. That was one of the questions I wanted to ask  
4 about.

5 Q. All right.

6 A. I believe the question stated, do you personally  
7 know, and then they went quite a lengthy list of  
8 names.

9 Q. Right.

10 A. And that the word personally was, the more I  
11 thought about it after I filled this out, I  
12 wondered what they meant by personally.

13 Q. Okay.

14 A. I have been to parties with one or two  
15 individuals on that list, like a graduation  
16 party, a Christmas party, things of that nature.

17 Q. All right. Well, let's -- let's change the  
18 adjective from personally or the -- and go to, of  
19 the individuals in the office say, for instance,  
20 do you know the woman here, Janet Bonin?

21 A. Yes.

22 Q. All right. Would you say that you are a friend,  
23 a close friend, close acquaintance, casual  
24 acquaintance; how would you describe your  
25 knowledge of her?

1 A. Casual acquaintance.

2 Q. Okay.

3 A. By that I mean, once a year maybe I see her --

4 Q. All right.

5 A. -- out.

6 Q. In a setting other than the courthouse?

7 A. Right.

8 Q. All right. Who else in the office would you say  
9 is in that category, casual acquaintance,  
10 somebody that you would know?

11 A. Probably Mary Jo Murray.

12 Q. Mary Jo Murray?

13 A. Murray.

14 Q. Okay.

15 A. And under the same casual acquaintance.

16 Q. Sure. All right. Do you know the Clerk of  
17 Court, Lynn Zigmunt?

18 A. About the same.

19 Q. Okay.

20 A. Acquaintance.

21 Q. Anyone else that you can think of that you have  
22 at least some kind of casual relationship with?

23 A. Probably Brenda, she's been ... Brenda Smith.

24 Q. All right.

25 A. Actually, several of them, I mean they have all

1           been to the same Christmas party --

2 Q.       Right.

3 A.       -- or birthday or graduation party.

4 Q.       Parties, right.

5 A.       So, Nicole. I don't remember a lot of the other  
6           names.

7 Q.       All right. Are any of them -- Would you consider  
8           any of them close friends, you know, somebody  
9           that you see more often, more socially, than  
10          these traditional Christmas gatherings or special  
11          occasion events?

12 A.       Brenda, we had a -- what you call a -- AA  
13          meetings, alcohol --

14 Q.       Right. Sure.

15 A.       We used to gather, but we don't even do that any  
16          more.

17 Q.       All right.

18 A.       That was like a once a month thing and we just  
19          did that --

20 Q.       Sure.

21 A.       -- over the winter.

22 Q.       Okay.

23 A.       And we haven't done that this winter --

24 Q.       All right.

25 A.       So --

1 Q. Okay. Well, the reason we ask is, there's a  
2 possibility that some of those individuals may  
3 show up as witness in this case; it's still yet  
4 to be determined if that occurs. And so the  
5 question is, since your wife has worked in that  
6 office for a number of years and is now  
7 temporarily filling in, if that were to occur  
8 would you have a problem, would you be  
9 uncomfortable as a juror trying to assess the  
10 credibility of these witnesses?

11 A. No.

12 Q. All right. You feel that you could evaluate  
13 their testimony the same as you would any other  
14 witness that might appear in the case?

15 A. Yes.

16 Q. All right. You feel pretty confident about that.

17 A. Yes.

18 Q. Even though your wife is now back working in the  
19 office as a temporary clerk and should you be  
20 selected as a juror in this case; do you have any  
21 worries or concerns about the affect or any  
22 feedback you would get from a verdict you reach,  
23 whether it's a guilty verdict or a not guilty  
24 verdict? Do you think that might cause some  
25 problems at home, or any other issues for you and

1           your wife?

2   A. No, certainly not.

3   Q. All right. Okay. Now, there was one other  
4       relationship that I wanted to clarify. In answer  
5       to the question, do you know or are you  
6       acquainted with any member of Steven Avery's  
7       family or any of his relatives, you answered yes.  
8       I think you said my wife's brother's wife is a  
9       cousin. Would that be your sister-in-law is a  
10      cousin of Mr. Avery?

11     A. My wife's sister-in-law.

12     Q. Your wife's sister --

13     A. Through marriage this is.

14     Q. Okay.

15     A. And it would be a distant cousin, like a third or  
16       possibly a fourth --

17     Q. Okay.

18     A. -- cousin.

19     Q. You are sure that it's third or fourth degree  
20       cousin?

21     A. Yeah.

22     Q. Okay. Not anything closer than that?

23     A. No.

24     Q. Do you have occasion at all to see the  
25       sister-in-law at all?

1 A. Once a year maybe --

2 Q. All right.

3 A. -- Christmas time --

4 Q. All right.

5 A. -- possibly.

6 Q. Have you had any contact with her or any member

7 of her family since this case has grabbed the

8 headlines, as it were?

9 A. No.

10 Q. All right. The fact that you have this

11 relationship, does that make it uncomfortable for

12 you to be a juror in this case and to have to

13 render a verdict of either guilty or not guilty,

14 based on the evidence?

15 A. No.

16 Q. All right. You feel pretty confident that you

17 would be able to decide this case solely on the

18 evidence that's presented in the trial and

19 without deference to any association through

20 the -- your -- through marriage or through your

21 wife's work?

22 A. Yeah, that wouldn't have any impact on it.

23 Q. All right. And you are pretty confident of that?

24 A. Yes.

25 Q. All right. Okay. There's been a, as you are

1           probably aware, a fair amount of publicity about  
2           this case, so I want to start with that. And  
3           there's several questions of interest to both  
4           parties, relative to the publicity. Now, when  
5           you were asked the question in your  
6           questionnaire, you indicated you haven't formed  
7           any opinions based on the publicity; is that  
8           correct?

9         A. That's correct.

10        Q. All right. And you say, have you discussed this  
11           case at length with any other persons, you  
12           answered yes. And in your explanation, you said  
13           you have maintained that Mr. Avery could be  
14           innocent; is that correct?

15        A. Yes.

16        Q. With whom would you have had that discussion?

17        A. Oh, my brothers and sisters and also on my wife's  
18           side, her brothers and sisters.

19        Q. Okay. All right. So you have had some family  
20           discussion regarding this particular case?

21        A. Yes.

22        Q. All right. In terms of that discussion, during  
23           the course of it, was any of the expected or  
24           anticipated evidence in this case part of the  
25           discussion, the arguments, or the give and take?

- 1 A. What do you mean by expected?
- 2 Q. Well, for instance, when you discussed the case
- 3 with your brothers and sisters and your wife's
- 4 brothers and sisters, I would imagine, you know,
- 5 there would be some, well, I think he's guilty
- 6 because of X, Y and Z; somebody else say, well,
- 7 you know, I'm not so sure about that because of
- 8 A, B and C. I mean is that the kind of
- 9 discussion that you are having?
- 10 A. Mm-hmm.
- 11 Q. All right. So my question, then, to you, sir, is
- 12 what information do you have or that was
- 13 presented to you during the course of these
- 14 discussions; what kind of information did the
- 15 media provide you that was fueling the discussion
- 16 as it were?
- 17 A. That the evidence was found at the salvage yard,
- 18 the body, and it was in the burn barrel; there
- 19 was keys found in the trailer, that belonged to
- 20 the car, her car.
- 21 Q. Right. Any discussion regarding a fellow by the
- 22 name of Brendan Dassey and what he may or may not
- 23 have said as part of the family discussion?
- 24 A. Yes, his name was brought up. And it was just
- 25 kind of, yes, he could have been there; no, he

1           couldn't have been there. Just, nothing  
2           definite. Nothing definitive. It was just ...

3 Q. All right. Was there any discussion from any of  
4       the family members regarding the details of what  
5       Mr. Dassey is reported to have described  
6       happened?

7 A. If I remember right, just something said about,  
8       he was physically there at the time it happened.

9 Q. All right. Do you recall any other details that  
10      are attributed to Mr. Dassey's description of the  
11      events?

12 A. None.

13 Q. All right. In terms of the coverage of this  
14      case, did you recently receive a letter from  
15      Judge Willis asking you to refrain from reading  
16      and watching the news relative to this case?

17 A. Yes.

18 Q. All right. And have you been able to abide by  
19      that?

20 A. Yes.

21 Q. What's the last thing you remember seeing, or in  
22      the news -- or hearing about in the news,  
23      regarding this case, before you stopped paying  
24      attention altogether?

25 A. Just that the trial was going to take place this

1 week --

2 Q. All right.

3 A. -- as soon as they had the jurors picked.

4 Q. All right. So you haven't paid attention to any  
5 of the recent news articles or any of the issues  
6 that the lawyers have been arguing in court about  
7 or any of that?

8 A. No.

9 Q. All right. And you are not familiar with any  
10 discussion of any blood, or blood evidence, or  
11 anything like that?

12 A. There was some vial, or blood vial found.

13 Q. Okay. What do you recall or remember about that?

14 A. It was supposedly tampered with.

15 Q. All right.

16 A. It was unsecured or in an unsecured area.

17 Q. All right. And do you have any recollection as  
18 to where that area would be or any other details  
19 about that?

20 A. I believe it was in the Clerk of Court Office.

21 Q. Okay. All right. And the fact that there's the  
22 possibility of some evidence that's associated  
23 with the police, where your wife works; is that  
24 going to present any problems for you?

25 A. No.

1 Q. All right.

2 A. No, I believe that happened while she was not  
3 employed there.

4 Q. All right. And what -- what do you believe  
5 happened while she was not employed there?

6 A. I -- I don't know.

7 Q. Okay. I was just curious as to your choice of  
8 words, when you said -- why you chose that choice  
9 of words, in terms of whatever happened, or you  
10 believe it happened when she wasn't employed  
11 there. So I'm thinking that you must have  
12 something in your head that something must have  
13 happened?

14 A. Well, they said that blood had been tampered  
15 with.

16 Q. Okay.

17 A. And I'm saying that must have happened sometime  
18 prior to her going back there as a temporary.

19 Q. Okay.

20 A. That's all.

21 Q. Now, why do you say that?

22 A. I believe that evidence came out about -- it was  
23 before she started there as a temporary. That  
24 evidence must be a couple weeks old, for sure.

25 Q. All right.

1 A. And she just started working there this last  
2 Monday.

3 Q. All right. Well, if it came to pass that the  
4 evidence was in the possession of the Clerk's  
5 Office for 10 years, would that change your  
6 opinion and make it perhaps difficult for you to  
7 sit on this case?

8 A. No.

9 Q. It would not?

10 A. It would not make it.

11 Q. All right. And why wouldn't it?

12 A. She didn't have accessibility to the sample.

13 Q. Okay.

14 A. So I feel it didn't affect her.

15 Q. All right. And how would you know that?

16 A. She told me that.

17 Q. All right.

18 ATTORNEY FALLON: Could I have a moment,  
19 your Honor.

20 Q. (By Attorney Fallon)~ Just a couple more  
21 questions. So I take it there's been at least  
22 some discussion in your family, with your wife,  
23 about this blood vial?

24 A. That was the only discussion --

25 Q. All right.

1 A. -- that she did not have accessibility to the  
2 sample.

3 Q. Okay. Any other discussion as to who may have  
4 had access to the blood vial?

5 A. I don't believe so.

6 Q. Are you reasonably sure or just nothing that  
7 comes to your mind right now?

8 A. Nothing comes to my mind now.

9 Q. All right. Now, you indicated that -- that in  
10 the discussions with the family members you  
11 maintain that it's possible that Mr. Avery could  
12 be innocent; is that correct?

13 A. That's correct.

14 Q. All right. And what was your thinking or how did  
15 that come to pass?

16 A. Well, I believe every person is innocent until  
17 proven guilty. And I will look at the evidence  
18 presented and come up with the -- hopefully a  
19 fair and just judgment on this.

20 Q. Okay. You feel pretty confident in your ability  
21 to do that?

22 A. Yes.

23 Q. Okay. Also, I note from your questionnaire that  
24 it looks like you had an encounter with an  
25 individual who was not all that pleasant and was

1           attempting to fight with you; is that correct?

2   A.   That's correct.

3   Q.   And you made a complaint to the police  
4        department?

5   A.   Well, we were both taken into custody that  
6        evening.

7   Q.   All right.

8   A.   And I never saw this person before in my life.  
9        And in fact I tried avoiding him and when I  
10      turned my back on him, he jumped me and that's  
11      when the police showed up. It was right at the  
12      intersection of Washington and 8th Street. So it  
13      was a pretty prominent intersection in town.

14   Q.   Sure.

15   A.   And good thing they came along when they did  
16      because they pulled him off of me and they kept  
17      asking him what I done to make him want to fight  
18      with me. And they asked -- they asked him that  
19      three times and I wondered, does -- is there a  
20      relationship there; why would they put it that  
21      way.

22   Q.   Mm-hmm.

23   A.   And they asked me, do you know this person and  
24      why do you want to fight with him. And I says, I  
25      told you already, I don't want to fight with him.

1 I refused to fight. And when I turned my back,  
2 that's when he jumped me --

3 Q. Mm-hmm.

4 A. -- and that's when you people showed up.

5 Q. Okay. So it was just happenstance that they  
6 showed up right at that moment?

7 A. Right.

8 Q. Okay. And did you know the guy?

9 A. No, never saw him in my life.

10 Q. Never saw him before?

11 A. No.

12 Q. All right. So it was a mystery to everyone as to  
13 why he decided to pick a fight with you?

14 A. Yes.

15 Q. Okay. And apparently there was no follow-up  
16 report filed, or no charges filed, or any of that  
17 sort?

18 A. No, the police said they would, after they  
19 released us the next morning --

20 Q. Right.

21 A. -- they said that they would call to find out, or  
22 to let us know if they are going to press charges  
23 or not. And they never called.

24 Q. All right. Now, was that -- Did -- That other  
25 guy had -- can you think of any reason, I mean,

1 did he have too much to drink? I mean, did he  
2 mistake you for somebody else? Did -- Any idea?

3 A. I think he maybe thought my car should have been  
4 going faster than what it was, because he was  
5 right on my bumper.

6 Q. I see.

7 A. I had a '68 Camaro Rally Sport. It was a nice  
8 looking vehicle.

9 Q. All right.

10 A. And he stayed right on my bumper. And it was  
11 foolish of me to pull into the Pizza Garden  
12 parking lot. I should have went right to the  
13 police station.

14 Q. I see. So he was a traffic vigilante as we say.  
15 All right.

16 A. Yeah, I couldn't shake him. I tried a couple --  
17 going from north of town to the Pizza Garden,  
18 which was right downtown. I tried a couple of  
19 side streets and I couldn't shake him. I thought  
20 I was in his way, you know.

21 Q. All right.

22 A. But he just kept right on me.

23 Q. Okay. Well, how did you feel about the fact that  
24 the police didn't ask the D.A. to press charges?

25 A. I felt, at the time, that they didn't do their

1 job. But thinking back on it, I thought, well,  
2 it was his word against my word and they just  
3 came upon two people fighting, so I suppose I  
4 could see their side of it too.

5 Q. All right. In retrospect, do you think it was  
6 handled fairly or unfairly?

7 A. I would have to say fairly --

8 Q. All right.

9 A. -- just going by their evidence and what -- what  
10 I told hem.

11 Q. All right. So, with the passage of time, you  
12 have had the ability to reflect on it and have a  
13 somewhat, I suspect, different perspective than  
14 you had that night when it happened?

15 A. Right.

16 Q. Okay. All right. Well, the reason that's of  
17 some importance to all of us here is that there's  
18 going to be fair amount of testimony from law  
19 enforcement officers of all sizes and shapes and  
20 departments and what have you, police and sheriff  
21 and the like. And one of the things as a juror  
22 you will be asked to do is to evaluate the  
23 credibility of witnesses.

24 And the Court will be instructing you  
25 that you should evaluate the credibility, the

1                    honesty, the believability of all of the  
2                    witnesses the same. In other words, just because  
3                    they are a police officer, or an expert witness,  
4                    or even a defendant, for that matter, you should  
5                    evaluate their testimony the same as you would  
6                    anyone else. Do you think you could follow that  
7                    instruction?

8 A. Yes, I do.

9 Q. All right. Is there any doubt in your mind,  
10                  based on this, you know, encounter with this  
11                  crazy guy that, you know, although you might have  
12                  wanted to see charges pressed years ago; is there  
13                  any way that would affect your ability to  
14                  evaluate the testimony of the officers the same  
15                  as you would any other witness?

16 A. No, that wouldn't affect it.

17 Q. All right. Now, apparently you have also had, I  
18                  take it, some good experiences with the Manitowoc  
19                  Sheriff's Department. You mentioned some work  
20                  they do with the fire department?

21 A. Yes.

22 Q. Have you an association with the fire department  
23                  at all?

24 A. No, I'm a volunteer fireman.

25 Q. Oh, you are a volunteer, that was what I was

1           getting at.

2       A. Yes.

3       Q. All right. So tell me about your encounters  
4           working with the Sheriff's Department as a  
5           volunteer fireman?

6       A. On certain accident scenes out in the country, we  
7           would need traffic control. And at times they  
8           would block intersections or block off parts of  
9           the road, whatever we needed, when they had  
10          personnel available to do that. But, now, most  
11          of the time, it's just the fire departments  
12          themselves that are doing the traffic control.

13      Q. I see. So when you -- So, did you have any  
14          direct contact with members of the sheriff's  
15          department for traffic control or firefighting  
16          duties, as a volunteer.

17      A. I would have to say no.

18      Q. Okay. All right. But -- So your opinion or your  
19          impression then comes from just your volunteering  
20          and being on the scene. And it -- I take it, it  
21          generally seemed to you that everything was  
22          working smoothly and people were doing what they  
23          were supposed to and getting along?

24      A. That's correct.

25      Q. Okay. Now, as a volunteer fireman, have you ever

1           participated, for instance, in any missing person  
2           searches or anything like that?

3       A.    A number of years ago there was a search in the  
4           Town of Two Creeks, where I am a volunteer in, of  
5           a missing person.

6       Q.    In the town of -- I'm sorry?

7       A.    Two Creeks.

8       Q.    Two Creeks, okay. And what kind of role did you  
9           have assisting in that?

10      A.    We walked down the road, Highway 42, looking in  
11           culverts for a possible body.

12      Q.    Okay.

13      A.    And places where a body could be dumped.

14      Q.    Sure. Was there any -- was the person located at  
15           all?

16      A.    No.

17      Q.    All right. How long were you involved in the  
18           search?

19      A.    Oh, part of an afternoon, I will say two, three  
20           hours.

21      Q.    All right. Were you part of a -- an overall team  
22           or organized plan of searching, or were you just  
23           more or less on your own?

24      A.    Yes. It was through the fire department. It was  
25           -- most of the department was involved.

1 Q. Okay. Who was coordinating the search, by the  
2 way, overall; the sheriff or a local police, or  
3 who was helping orchestrate the search, or was it  
4 just some private citizens?

5 A. I believe it was under direction of the county  
6 traffic department.

7 Q. County traffic department, okay.

8 A. They are the ones who page us out for any fire  
9 calls or anything, so, I'm thinking that  
10 direction would have had to come through them.

11 Q. Okay. Did you find that -- How did you like that  
12 experience of participating in a missing person  
13 search, only to find no person?

14 A. I was glad it turned out that way.

15 Q. All right. And why was that, almost afraid that  
16 you would find somebody deceased?

17 A. Yeah. And wondered what the -- what the  
18 condition would be --

19 Q. Right.

20 A. -- of that body.

21 Q. Now, in terms of the big picture perspective  
22 here, was that person ever located, to your  
23 knowledge?

24 A. I don't remember. That's quite a number of years  
25 ago.

1 Q. Okay. Now, since this case, you might, if  
2 selected as a juror, hear evidence that's how  
3 this case started. The fact that you have  
4 participated in one of those searches, does that  
5 raise any question in your mind as to whether you  
6 would be able to listen to the evidence in this  
7 case and decide this strictly on what's presented  
8 in this case?

9 A. That wouldn't bother me.

10 Q. Okay.

11 ATTORNEY FALLON: One moment.

12 Q. (By Attorney Fallon)~ I just have a couple last  
13 questions. I see you served on a jury once  
14 before.

15 A. Yes.

16 Q. Was that a -- a civil case or a criminal case?  
17 And the reason I ask is you checked civil, but  
18 you said you found a verdict of guilty, so I'm --  
19 what kind of -- if you could tell us a little bit  
20 about the case?

21 A. Yeah, I'm confused as far as civil or criminal,  
22 it was a drunken driving charge.

23 Q. Oh, I see. Okay. All right. Well, that could  
24 be either one. All right. So how long did the  
25 trial last?

1 A. It was just one day.

2 Q. All right. And were you asked to make a  
3 determination, based on reasonable doubt, or was  
4 the burden for the prosecutor clear and  
5 convincing evidence?

6 A. It was beyond a reasonable doubt.

7 Q. Okay. How long did the deliberations go? An  
8 hour, two hours, three?

9 A. I'm going to say an hour.

10 Q. All right. Were you the foreperson?

11 A. No.

12 Q. Okay. Was there anything about the experience of  
13 working with your peers, other community members,  
14 in evaluating the evidence and debating the pros  
15 and cons of each side's arguments; was there  
16 anything about that experience that causes or --  
17 any question in your mind as to whether you could  
18 perform that role again, even in this case, where  
19 the stakes are much higher?

20 A. No, that wouldn't bother me.

21 ATTORNEY FALLON: All right. I will pass  
22 the juror for now.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Thank you.

25 **VOIR DIRE EXAMINATION**

1 BY ATTORNEY STRANG:

2 Q. Good afternoon, Mr. Mohr.

3 A. Yes, good afternoon.

4 Q. I'm Dean Strang and this is Jerome Buting and  
5 Steven Avery. We're the defense lawyers  
6 defending Mr. Avery. Let me go to this incident  
7 where the fellow jumped on you?

8 A. Okay.

9 Q. That was, I think you said that was right here;  
10 it wound up at the corner of 8th and Washington?

11 A. Yes.

12 Q. Was it the Manitowoc Police Department who  
13 happened on you?

14 A. Yes.

15 Q. It had nothing to do with the sheriff's  
16 department?

17 A. Right.

18 Q. And if I under -- if I understood you correctly,  
19 you come here today presuming Mr. Avery innocent?

20 A. Right.

21 Q. And you haven't made any further decision or  
22 opinion about the case other than he, like anyone  
23 charged with a crime, is presumed innocent?

24 A. Correct.

25 Q. What I -- What I need to know is that, then, if

1           you are asked in the end to be one of the people  
2           who actually serve on the jury, that you would  
3           consider any evidence that we offer just as you  
4           would consider any evidence the State offers?

5       A. Right.

6       Q. That you would be willing to consider both sides?

7       A. Right.

8       Q. If we offer evidence?

9       A. Yeah.

10      Q. All right. You understand, first of all, that we  
11       don't have any burden of proof, the accused in  
12       this country has no burden to prove himself  
13       innocent; rather the State or the government has  
14       the burden to prove him guilty, beyond a  
15       reasonable doubt?

16      A. Correct.

17      Q. And that's a rule you can follow?

18      A. Yup.

19      Q. However, if we would call witnesses for the  
20       defense, maybe, for example, a witness to explain  
21       why someone might confess to something he really  
22       didn't do, if that became an issue in the case,  
23       would you listen to that sort of testimony from  
24       the defense, just as you would listen to the  
25       State's testimony?

1 A. Yes.

2 Q. If we offered evidence tending to suggest that  
3 law enforcement officers had a bias in the case,  
4 or reasons to get out of line, cross a line,  
5 would you at least listen to that evidence with  
6 an open mind?

7 A. Yes.

8 Q. One of the things that's difficult in any  
9 criminal case, both for the man or woman accused  
10 and for the defense lawyers is to decide whether  
11 the accused should testify in his own defense or  
12 not testify. Do you understand that in this  
13 country, a person accused of a crime has the  
14 right to choose to do either; that is, to testify  
15 or to decline to testify?

16 A. Yes.

17 Q. Is that a rule that you can live with if the  
18 Court instructs you on it?

19 A. Yes.

20 Q. You can follow that?

21 A. Yes.

22 Q. And if Mr. Avery, with our advice, were to decide  
23 to take the stand and testify, could you consider  
24 his testimony just as that of any other witness?

25 A. Yes.

1 Q. You, of course, don't know, you can't know,  
2 whether you would believe him or not believe him,  
3 just like you couldn't know whether you would  
4 believe or not believe any other witness?

5 A. That's correct.

6 Q. But you would hear him and consider the same  
7 factors in deciding whether to believe him or  
8 not?

9 A. Yes.

10 Q. Same with a police officer; regardless whether we  
11 called the police officer or the State called  
12 him?

13 A. Yes.

14 Q. What if Mr. Avery, again, on our advice, decided  
15 not to testify, would you be able and willing,  
16 you know, really to follow and embrace the rule  
17 from the Court that the defendant's decision not  
18 to testify is something you cannot consider as  
19 any evidence of guilt and, in fact, cannot  
20 consider at all in deciding whether the State has  
21 proven him guilty beyond a reasonable doubt;  
22 could you follow that rule?

23 A. Could you explain that again.

24 Q. It got long, I'm sorry. If he decides not to  
25 testify --

1 A. Okay.

2 Q. -- in this trial, he does not take the witness  
3 stand --

4 A. I wouldn't have a problem with that.

5 Q. -- could you follow a rule that says you can't  
6 even consider it, cannot even consider that fact  
7 in weighing the evidence and deciding your  
8 verdict?

9 A. Yes, I could.

10 Q. Can you see, or do you agree, I guess I will ask  
11 you, that the defendant faces the risk, if he  
12 does testify, that people will think he's up  
13 there going to say anything to try to save his  
14 skin? Can you see how that might be a concern if  
15 you are the defendant?

16 A. Yes, but I wouldn't -- that thought wouldn't have  
17 entered my mind.

18 Q. Okay. Your mind, but you can see how it might  
19 enter the accused's mind?

20 A. Right.

21 Q. And at the same time, can you see how the accused  
22 might say, boy, if I don't testify, will the  
23 jurors think I'm hiding something, or that I must  
24 be guilty, otherwise I would get up and say I was  
25 innocent? Can you see how he might -- he might

1           feel that way?

2   A.   Mm-hmm.

3   Q.   Yes, no?

4   A.   Yes.

5   Q.   Okay. But in the end, you are willing to live by  
6       rules that say you can't speculate on those  
7       reasons, you are just here to consider the  
8       evidence and decide whether the State has proved  
9       the case, beyond a reasonable doubt?

10   A.   That's correct.

11   Q.   Suppose that, at the end of all the evidence from  
12      either side or both, you were left with the sense  
13      that the defendant could be guilty, but that you  
14      were not convinced of it, beyond a reasonable  
15      doubt, and yet you didn't know who did kill this  
16      young woman, if he didn't. Could you vote not  
17      guilty if you just were not convinced, beyond a  
18      reasonable doubt, that Mr. Avery was the one who  
19      killed Teresa Halbach?

20   A.   Yes, I could.

21   Q.   And live with the uncertainty about who did it?

22   A.   Yes.

23                   ATTORNEY STRANG: That's all I have. Thank  
24       you very much.

25                   THE COURT: Anything else? If not, Mr.

1 Mohr, we'll have the Clerk escort you from the  
2 courtroom at this time.

3 (Wherein the juror was excused.)

4 THE COURT: Counsel, is there a motion from  
5 either party?

6 ATTORNEY FALLON: From the State there will  
7 be, your Honor. I didn't move right away, I wanted  
8 to hear Mr. Mohr's response to the rest of my  
9 questions and to Mr. Strang's as well and think  
10 about this. And I have come to the conclusion that  
11 we believe that Mr. Mohr should be struck for cause  
12 and would so move.

13 My concern is wholly related to the  
14 potential that witnesses from the Clerk's Office  
15 will be called to the stand in this case. I am  
16 concerned by the fact that if he were selected as  
17 a juror, he would have knowledge about the  
18 workings of the office which may extend beyond  
19 that which is introduced as evidence.

20 He's already had a discussion with his  
21 wife regarding what she knows or does not know of  
22 the existence of this vial of blood and whether  
23 she had access to it. And based on what the  
24 parties know, in terms of the circumstances of  
25 the evidence, I'm not sure that he has all the

1 information.

2                   Nonetheless, I think that what we have  
3 here is an individual that -- I'm not sure if  
4 it's best articulated as an objective bias or a  
5 statutory bias, most likely objective bias for  
6 his -- by his association with potential  
7 witnesses. Admittedly, they are casual  
8 acquaintances, but then again, his wife worked in  
9 that office during much of the time in which that  
10 vial of blood was part of a previous proceeding  
11 and he's had those discussions. And quite  
12 frankly, I think the possibility of -- of -- of  
13 information extraneous to what is introduced is  
14 too high to take that chance. And we move that  
15 he be struck for cause.

16                   THE COURT: Mr. Strang.

17                   ATTORNEY STRANG: Thank you, your Honor.  
18 There is not cause to strike Mr. Mohr. Let's go  
19 back, for starters, to the case that Mr. Fallon  
20 cited yesterday arising out of District 1, District  
21 1 Court of Appeals, in which someone who actually  
22 was an employee of the District Attorney's Office of  
23 Milwaukee County, albeit in the Juvenile Section,  
24 not downtown, herself served on a juror (sic).

25                   And the law of Wisconsin was that that

1           was not cause for a strike, where she said that,  
2           although employed by the same agency that was  
3           prosecuting the criminal case, she could be fair  
4           in the case. This is at least two steps removed  
5           from that situation.

6           One, the Manitowoc County Clerk's Office  
7           is not involved in this case, either as a  
8           prosecuting party, a defending party, or an  
9           investigating party.

10          Second, there is no claim by the  
11         defense, certainly no claim by the State, of  
12         which I'm aware, of any wrong doing by anyone in  
13         the Clerk's Office to the extent that some member  
14         of the Clerk's Office may be a witness in the  
15         case. It would not be where his or her own  
16         conduct is at issue at all. It would be to  
17         establish a physical location of a box or a file  
18         and what was known about it's condition if  
19         anything.

20          So the casual acquaintance with Janet  
21         Bonin, for example, who I think we have all  
22         agreed we aren't going to call as a witness so  
23         that she can continue to serve as the Clerk,  
24         really would have no bearing at all on any claim,  
25         defense, prosecution theory being offered in the

1 case.

2 And the familiarity with, let's say,  
3 Lynn Zigmunt, who conceivably could be a witness,  
4 a casual acquaintance, one time a year, maybe at  
5 the Christmas party or the graduation party,  
6 sounds to me ever so much like Jacqueline  
7 Ungrodt's acquaintance with Mr. Kratz, the woman  
8 who is married to the former Corporation Counsel  
9 of Calumet County and sees Mr. Kratz annually at  
10 the bar dinner, the bench bar dinner, whatever it  
11 is.

12 Indeed, that sounds like a longer  
13 standing annual renewal and more recently sharing  
14 the same table over dinner during the pendency of  
15 this case. It sounded like a closer connection  
16 and that was not cause to strike Mrs. Ungrodt, in  
17 the Court's view. So we're removed from that, I  
18 think, considerably here with Mr. Mohr.

19 And I can't -- I can't think of any  
20 other reason, nor have I heard one, that would be  
21 offered to strike him for cause. So --

22 THE COURT: Let me help focus the  
23 argument --

24 ATTORNEY STRANG: Sure.

25 THE COURT: -- for the parties a bit here.

1           Neither party is arguing, and I agree in terms of  
2           subjective bias, it appears this would be a very  
3           good juror. He seems to have a concept of what a  
4           juror's duty is and be willing to fill it. And in  
5           terms of familiarity with members of the Clerk's  
6           Office, I'm not sure that that alone would give the  
7           Court too much concern; although, I don't know what  
8           evidence the parties intend to introduce.

9                         What bothers me a bit is that because --  
10          he mentioned in one answer that he spoke to his  
11          wife and learned that she would not have access  
12          to the -- to the disputed evidence, the blood  
13          vial, that in the course of deliberations he may  
14          know something about the operation of the Clerk's  
15          Office that wasn't brought in in evidence, by  
16          virtue of his wife having worked there. And  
17          the -- if some juror asks a question, in the  
18          course of their deliberations, the difficulty he  
19          may have in disclosing, discussing, or taking  
20          into consideration, just for his own  
21          deliberations, knowledge about the operations of  
22          that office that were not part of the evidence in  
23          this case. That I view as a concern.

24                         ATTORNEY STRANG: And here is why I think  
25          it's not a concern. This Court was very clear in

1           it's written ruling on the admissibility of evidence  
2           concerning the vial of blood that the only period of  
3           time we're allowed to talk about is November 3,  
4           November 4 and November 5, 2005.

5           Now, that's clearly a period of time  
6           when his wife was not employed at the Clerk's  
7           Office, either as a full-time person, because she  
8           had retired some months earlier, or in the  
9           temporary position that apparently she assumed  
10          just -- I wasn't clear whether it was Monday,  
11          February 5 or Monday, January 29, when he said  
12          last Monday. But I took it as one or the other,  
13          that she began her temporary employment here in  
14          2007.

15          So given the limitation that the Court  
16          has placed on evidence concerning possible access  
17          to the blood vial, he just would not be in a  
18          position to know anything from his wife.

19          THE COURT: Well, I understand that, but  
20          what about the questions about how difficult it is  
21          to get into the office, where those files are  
22          typically kept, that type of thing. I mean, she  
23          could have some background information that isn't  
24          necessarily date specific that could --

25          And, again, I'm operating at a

1                   disadvantage here; I don't know what evidence you  
2                   folks are going to be introducing. But it seems  
3                   to me that, my biggest concern, as I evaluate his  
4                   qualifications as a juror are, would be  
5                   information that he may possess that may be  
6                   difficult to point a finger to now, because  
7                   nobody knows the significance of it.

8                   ATTORNEY STRANG: Well, that's right. And,  
9                   you know, the record we have, none of that was  
10                  brought out, but beyond that, you know, we had a  
11                  young woman yesterday whose boyfriend's aunt is  
12                  Kelli Tice with the sheriff's department. Now,  
13                  might she know something about the operation of the  
14                  Manitowoc Sheriff's Department that would cause her  
15                  to be considering that information in weighing  
16                  testimony about the operation of that department,  
17                  sure, but, you know, this is --

18                  THE COURT: This is a little closer than  
19                  that, though, he's said he's already talked to her  
20                  about it, his wife, and she said that she didn't  
21                  have access to it.

22                  ATTORNEY STRANG: She said that she had no  
23                  access to it, as I understood him, that's correct.

24                  THE COURT: Yeah.

25                  ATTORNEY STRANG: And I'm not saying it's a

1           perfect match. I'm just saying that we're going to  
2           have these connections and we're going to have to  
3           rely, in the end, on the instruction the Court will  
4           give the jurors that they are to decide the case  
5           only on the evidence before them.

6           I mean, goodness knows, we have been  
7           concerned about that and up to this point the  
8           Court hasn't been willing to do anything curative  
9           beyond that. So I -- And, you know, I don't  
10          think anything more would be necessary here.  
11          This is someone who, at least I took him to be  
12          comfortable following the rules, so to speak, as  
13          the Court gives them.

14           THE COURT: Mr. Fallon.

15           ATTORNEY FALLON: Thank you. Just for the  
16          record, the case to which I referred to the other  
17          day and to which counsel refers again today is **State**  
18          **vs. Dale Smith**, common spelling, 2006, Wisconsin  
19          Opinion No. 74. It's a Supreme Court opinion.

20           I think I do see a difference between  
21          the **Smith** case and the judicial -- or excuse me,  
22          the administrative assistant who worked for the  
23          District Attorney's Office out in juvenile court  
24          who was then seated as a juror for a felony court  
25          case downtown.

1                   And the distinction is that she had no  
2 other connection whatsoever with the case that  
3 she sat as a juror on, other than through the  
4 ranks, she worked for the same person as the  
5 prosecutor, downtown. And the prosecutor, in  
6 fact, if I recall correctly, did not know this  
7 person well, if at all.

8                   In the case at hand, we have a possible  
9 juror here who knows several people in the  
10 office. He has, again, as I said, asked  
11 questions of his wife regarding this vial of  
12 blood, which may or may not be introduced and may  
13 or may not be a big factor or central focus of  
14 the case. Its future remains to be seen.

15                  But having said that, the Court made the  
16 comments that I would make now, and that is,  
17 there are other bits of information and that  
18 includes access to the Clerk's Office who had --  
19 who may or may not have had keys, who may or may  
20 not have access to the cipher lock to get through  
21 the second security door and the like.

22                  And there's a variety of possible bits  
23 of evidence which could be introduced, or for  
24 whatever reason are omitted by the parties. And  
25 that evidence, it may be omitted by error because

1           we overlooked it or there may be an intentional--  
2           well, I don't want to ask that question.

3           And the possibility that that juror may  
4           know the answer or could find out the answer,  
5           raises a question relative to the possibility of  
6           objective bias existing and/or developing during  
7           the course of the trial. And that's why I think  
8           it is different. And if we take the general  
9           proviso of the **Lindell** case, I think the  
10          appearance or the prospect of bias occurring is  
11          at least real enough to justify an excuse for  
12          cause. Thanks.

13          ATTORNEY STRANG: Well, although, by my eye  
14          on the clock, Mr. Fallon's voir dire went well over  
15          the 20 minutes the Court had described, the juror is  
16          still here; I mean, we can -- we can ask these  
17          questions. There's just nothing here suggesting  
18          that he's got any extra knowledge of the procedures  
19          of that office or any way to know what the access  
20          was or what the procedures were --

21          THE COURT: Okay.

22          ATTORNEY STRANG: -- during the period of  
23          time.

24          THE COURT: I think that's a valid  
25          suggestion. I will note the defense that time

1 didn't come close to using their 20 minutes, so  
2 that's a fair suggestion. Let's bring the juror  
3 back in. I will give both parties an opportunity.

4 ATTORNEY STRANG: Does the Court want to  
5 start.

6 THE COURT: I will let you start.

7 You may be seated Mr. Mohr. The parties  
8 have a few more questions they would like to  
9 address to you. I will let -- Mr. Strang, you  
10 may continue.

11 **VOIR DIRE EXAMINATION**

12 BY ATTORNEY STRANG:

13 Q. Lucky you. Was your wife, Alice Mohr, employed  
14 in any fashion at the Clerk of Court's Office  
15 between November 3 and November 5, 2005?

16 A. Yes.

17 Q. I -- I'm sorry, I -- I understood you to say she  
18 retired in June of 2005 was I wrong about that.

19 A. Maybe, Janet -- Can you help me with that, Janet?  
20 I thought it was June 2005.

21 THE CLERK: I know the answer.

22 THE COURT: I'm told the Clerk knows the  
23 answer. I don't know if the parties want that -- I  
24 mean the juror --

25 ATTORNEY FALLON: I don't have any problem

1           with her providing the answer. We're just trying to  
2           figure out the parameters of where we are.

3           THE COURT: It's not a question of a  
4           witness at a trial so.

5           ATTORNEY STRANG: No, let's get the answer.

6           THE CLERK: No, she wasn't.

7           ATTORNEY STRANG: Okay. All right.

8 Q. (By The Court)~ Is that good enough for you?

9 A. Sure.

10 Q. Okay. Have you ever -- In connection with this  
11 case, have you ever discussed with your wife the  
12 specifics of who had access to what areas of the  
13 Clerk's Office.

14 A. No.

15 Q. Was the discussion with her more simply that she  
16 did not have access to whatever this file was  
17 with the vial of blood?

18 A. Correct.

19 Q. Did she tell you anything at all about whether it  
20 was possible or not possible for someone outside  
21 the Clerk's Office to have obtained access to the  
22 vial of blood between November 3 and November 5,  
23 2005?

24 A. I don't remember if she did or not, if it was. I  
25 don't know if it's possible.

1 Q. But in any event, I guess she wasn't working  
2 there during those three days?

3 A. Which three days?

4 Q. November 3 to November 5, 2005.

5 A. Correct.

6 Q. And if -- if the Court instructs you, in the end,  
7 if you serve on the jury, the Court instructs you  
8 to decide this case only on the evidence you hear  
9 in the courtroom, not anything you may know or  
10 think you know from the media, or from your wife,  
11 or from a neighbor, or any other source than  
12 outside this courtroom; can you follow the  
13 instruction scrupulously to decide this case only  
14 on the evidence you heard in court?

15 A. Yes.

16 Q. Including if that evidence were to conflict with  
17 something you think your wife might say if you  
18 asked her; can you follow the Court's rule to  
19 decide the case, only on the evidence you  
20 actually hear in this courtroom?

21 A. Yes.

22 Q. Any question at all about that?

23 A. I wouldn't be asking my wife because if I would  
24 be on the jury, I would be prohibited to talk to  
25 her about it.

1 Q. And would you live with that rule too?

2 A. Yes.

3 Q. Thank you.

4 THE COURT: Mr. Fallon.

5 ATTORNEY FALLON: Thank you.

6 **VOIR DIRE EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. Mr. Mohr, when did you have the discussion with  
9 your wife regarding the possibility of her having  
10 access or not having access to the vial of blood?  
11 When did that occur?

12 A. I'm not real good on dates here.

13 Q. Within the last month?

14 A. I would say yes.

15 Q. All right. Was there anyone else present other  
16 than just the two of you?

17 A. No.

18 Q. As best you can, can you tell us what was  
19 discussed. What did she tell you, everything  
20 that you can recall of that conversation?

21 A. Just that the vial was in the office and that it  
22 was in an unsecure area -- or maybe I picked that  
23 up off the TV, I'm not sure now.

24 Q. Okay.

25 A. But that's all I remember.

1 Q. Okay. Did she describe to you how it was not  
2 possible for her, or how she could not have had  
3 access to the vial?

4 A. No.

5 Q. She just said, Bill, I didn't have any access to  
6 it. Did you ask the question or did she  
7 volunteer it to you?

8 A. She volunteered it to me.

9 Q. Okay. Any particular reason how that came up in  
10 the conversation?

11 A. Probably since we heard it on the news.

12 Q. Okay. Do you recall what you heard on the news?

13 A. Just basically that, that it was a vial of blood,  
14 old -- old sample of blood.

15 Q. Okay.

16 A. And that it had been tampered with. And I  
17 believe the TV showed a security tape or  
18 something that you could see was ripped or  
19 something off of that sample.

20 Q. And how do you know -- Do you know if it's been  
21 tampered with or is that just an impression you  
22 have, or where does that come from?

23 A. Just took the media's word for it.

24 Q. Okay. Why would you take the media's word for  
25 that?

1 A. That's the only source. And don't get me wrong,  
2 I take everything that the media says with a  
3 grain of salt.

4 Q. All right.

5 A. I don't necessarily believe it or not believe it.

6 Q. All right. So do you have an opinion right now  
7 as to whether that sample was tampered?

8 A. No.

9 Q. All right. So you are just using that phrase  
10 because that's how it was portrayed by the media?

11 A. Right.

12 Q. All right. So, it's your recollection that your  
13 wife just volunteered that information?

14 A. Yes.

15 Q. Okay. One second. Where did your wife tell you  
16 the vial was located, such that she did not have  
17 access to it?

18 A. She just -- If I recall the words, it was in a  
19 file. That's all she said.

20 Q. In a file.

21 A. In a file.

22 Q. So you don't know if it was in a secured or  
23 unsecured area?

24 A. No, I don't.

25 Q. And if it's in an unsecure area, she would have

1 had access to it?

2 A. I suppose if she would have known that it was  
3 there, maybe she didn't even know it was there.  
4 I have no idea.

5 Q. All right. So you are just taking her at her  
6 word when she says, I didn't have access to it?

7 A. Correct. Yeah. I don't know the office myself.  
8 I don't know the layout, so I wouldn't even know  
9 where it's stored. It was a surprise to me to  
10 find out that something like that would be stored  
11 in that office.

12 Q. Right.

13 ATTORNEY FALLON: That's all.

14 **VOIR DIRE EXAMINATION**

15 BY THE COURT:

16 Q. Mr. Mohr, do you recall getting the letter from  
17 the Court a month or so ago notifying you about  
18 your service in this trial and asking you not to  
19 talk to anybody about it or watch any more news  
20 media coverage?

21 A. Yes, I do.

22 Q. The letter?

23 A. Yes.

24 Q. Do you know if -- Did this discussion with your  
25 wife; do you know if it happened before or after

1           you got the letter?

2   A. I really can't say for sure.

3   Q. Have you had any other discussions about this  
4       case with your wife other than on that one  
5       occasion.

6   A. No.

7   Q. And this question may have been asked already,  
8       but just to clarify, did you, other than  
9       remembering your wife's statement that she didn't  
10      have access to this file, was there any other  
11      discussion you had with her about this case and  
12      the evidence in the Clerk's Office?

13   A. No.

14                  THE COURT: All right. The Clerk will  
15      escort you from the courtroom at this time.

16                  (Wherein the juror was excused.)

17                  THE COURT: Any further brief argument from  
18      either party?

19                  ATTORNEY FALLON: Quite frankly, I think  
20      the responses helped the State both on this argument  
21      and in -- with respect to the potential evidence of  
22      this case. I think the information obtained --  
23      possessed by Mr. Mohr is very helpful to the State  
24      and it would be great to have him on the jury, quite  
25      frankly. But I don't want to take a chance that

1                   this conviction is reversed as a result of  
2                   information that he has that no other juror may  
3                   have.

4                   And can you just possibly imagine the  
5                   discussion, let's just say, for instance, the  
6                   vial of blood was a central aspect of the case,  
7                   because we still don't know if it is. But let's  
8                   assume that it is. And let's assume there was a  
9                   question about who had access, or who would have  
10                  known where it was.

11                  Can you imagine the discussion, I mean  
12                  after the arguments of counsel, and Mr. Mohr were  
13                  to say, well, geez, my wife works there and she  
14                  didn't even know where it was, how can we expect  
15                  one of these officers to perhaps have snuck in  
16                  there and gotten it.

17                  I mean, it's powerful, great stuff,  
18                  helps us, but I don't want to take a chance of  
19                  this conviction being reversed because of a juror  
20                  has knowledge of the internal workings and the  
21                  viable possibilities or impossibilities of access  
22                  to that office. And as further evidence, he  
23                  can't separate right now whether it's in a secure  
24                  or unsecure area and he doesn't even know if he  
25                  got that from his wife or the media. In

1                   fairness, this person should not sit as a juror.

2                   THE COURT: Mr. Strang.

3                   ATTORNEY STRANG: I disagree. I mean  
4                   there's no risk of the conviction being reversed on  
5                   this; we're the ones who are opposing the motion to  
6                   strike him for cause. And by the time -- Just if  
7                   the Court's rulings remain as they are and are not  
8                   reconsidered in any way, the jury in the end will  
9                   know a lot more from the evidence about where this  
10                  vial was, who may have had access to it, than  
11                  Mr. Mohr presently knows from the TV. And that,  
12                  what he knows from the television or the media,  
13                  sounds to me like more than he knows from Mrs. Mohr.

14                  THE COURT: All right. The Court's  
15                  impression from Mr. Mohr when he came back is that  
16                  he does not remember -- well, he doesn't remember  
17                  much detail about what he was told. He doesn't  
18                  really remember whether the information he does  
19                  have, limited as it may be, came from his wife or  
20                  from the news media.

21                  I -- I don't -- I don't believe he  
22                  claims or would claim to possess any specific  
23                  enough information that would impact this case  
24                  one way or another. He only had one discussion  
25                  with his wife and it appears to relate to just

1                   her feelings, whether she had access to the  
2                   evidence.

3                   And it does not appear to have been in  
4                   great detail, nor do I believe that it happened  
5                   after the Court's letter went out. It appears  
6                   to -- because it doesn't mention any testing of  
7                   the blood, but rather the existence of the blood  
8                   evidence, I believe that relates back to the  
9                   December hearing over in Chilton. So, I'm going  
10                  to accept Mr. Mohr as a juror in this case.

11                  Counsel, because of the fact that we  
12                  were concerned about running short on jurors this  
13                  morning, they called some in slightly out of  
14                  order. I think these are jurors who would be  
15                  called in any event, so I'm looking at No. 66 as  
16                  the next juror to call, if you have got that  
17                  questionnaire ready. Because of the length of  
18                  time the jurors have been waiting.

19                  ATTORNEY BUTING: So the other ones coming  
20                  up are not here yet?

21                  THE COURT: No, they are here, but they got  
22                  here later than these. As a courtesy to the jurors.

23                  The other thing I would note is, at the  
24                  break, I would like to address Juror 74, because  
25                  he falls into the same category, been here since

1                   this morning; actually, I think it was earlier.

2                   But let's take Juror 66, Mr. Pederson at this  
3                   time.

4                   ATTORNEY STRANG: Let me -- Let me just  
5                   give the Court a heads up. We only grabbed the  
6                   questionnaires through No. 72, thinking we were safe  
7                   because only 12 were coming here.

8                   THE COURT: Okay. We'll -- I will give you  
9                   a copy to look at at the break.

10                  ATTORNEY BUTING: We have looked at 74  
11                  already, though.

12                  THE COURT: You have?

13                  ATTORNEY STRANG: Right, but --

14                  ATTORNEY BUTING: We're ready for that one.

15                  ATTORNEY STRANG: But in terms of being  
16                  ready, we --

17                  THE COURT: I hope that's the last one.  
18                  But we'll take Juror 66 at this time.

19                  Mr. Keehan, please raise your right hand  
20                  and the clerk will swear you in.

21                  (Juror sworn.)

22                  THE CLERK: Please be seated.

23                  THE COURT: Mr. Keehan, you have already  
24                  filled out a questionnaire in this case, today we're  
25                  moving on to the next phase of jury selection which

1           is voir dire. The attorneys for the parties will  
2           have a chance in a few minutes to ask you some  
3           questions regarding the case.

4                 Before we get to that, I want to let you  
5           know that the jurors in this case will not be  
6           sequestered. That means at the conclusion of  
7           court proceedings each day the jurors will be  
8           permitted to return home.

9                 We're able to do that because of the  
10          requirement that the jurors not learn anything  
11          about this case from the media during the course  
12          of the trial; either radio, television,  
13          newspaper, internet, or anything else. And that  
14          the jurors continue to be prohibited from  
15          discussing the case with anyone, including other  
16          jurors and members of their families during the  
17          course of the trial.

18                 Although the proceedings today are open,  
19          no cameras are allowed in the courtroom during  
20          voir dire and the media is prohibited from  
21          disclosing the identity of jurors in reports of  
22          these proceedings.

23                 In addition, should you be selected to  
24          serve as a juror, the cameras are not permitted  
25          to show the jurors during the trial. In the

event you continue on in this case, you will be notified in a day or two when you are to return to court.

At this time, Mr. Fallon will ask you some questions.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

Q. Good afternoon, sir.

A. Good afternoon.

10 Q. My name is Tom Fallon. I'm an Assistant Attorney  
11 General with the Wisconsin Department of Justice.  
12 I'm one of the prosecutors in this case. To my  
13 immediate left is Mr. Ken Kratz, Calumet County  
14 District Attorney and lead prosecutor in this  
15 matter. Good afternoon and thank you for coming  
16 back this afternoon.

Court and counsel, we have some questions for you to follow up on some of the information you provided in your questionnaire to assist us in selecting a jury in this case.

I guess I would like to begin with, just briefly, a little bit about your employment. How long have you worked at your current paper company?

25 A. 15 years.

1 Q. All right. And what duties have you performed  
2 for the company?

3 A. I have been driving roll clamp truck for the last  
4 11 years and then I was, like, general helping  
5 between different jobs --

6 Q. Right.

7 A. -- wherever they needed me, until I took this job  
8 that I'm on now.

9 Q. All right. All right. And one of the primary  
10 purposes for inquiring about your work situation  
11 is, as you have probably figured out from the  
12 questionnaire and perhaps other sources, this may  
13 be a rather lengthy trial.

14 A. Yeah.

15 Q. Might run six weeks?

16 A. Yeah.

17 Q. Is there any concern in your mind as to whether  
18 you would be able to have sufficient income to  
19 support yourself and your family if you were  
20 selected as a jury -- juror during this time?

21 A. I don't think so. The only thing that would be  
22 is because I run a small part-time business. We  
23 would have weekends off, right?

24 Q. Right.

25 A. Okay. No, I wouldn't have no problem. My

1 company does pick up part of the -- of the money  
2 for jury duty, so ...

3 Q. Okay. What kind of part time business do you run  
4 on the weekends?

5 A. I chain saw carve part-time -- or everyday, I  
6 should say. That's what I was doing this morning  
7 when they called me.

8 Q. All right. I saw that from your questionnaire.  
9 What kind of carvings do you do?

10 A. Basically everything you can think of. We have  
11 done from bears, eagles, gnomes. The nativity  
12 scene in Two Rivers by the park across from the  
13 courthouse --

14 Q. Right.

15 A. -- I have done that.

16 Q. Okay.

17 A. The only other one would be along Memorial Drive,  
18 that big bear by the Honey Pot and then the sign  
19 I carved.

20 Q. All right. So you are pretty active with that  
21 business?

22 A. Yeah, it's -- it's -- right now it's starting to  
23 pick up again for spring and then into summer.  
24 Fall, mostly is my busiest time.

25 Q. All right. Now is that the business that your

1           wife is involved in as well?

2 A. Yeah, she does most of the staining or painting

3           on it.

4 Q. Okay.

5 A. Yeah.

6 Q. Any other employees that might be dependent upon

7           you and your wife for that work, that you might

8           be letting down?

9 A. No, we just go by, basically by orders. People

10          call me. It's by word of mouth. No advertising,

11          no web pages or nothing like that, so ...

12 Q. Okay. Very well. Next thing I wanted to talk

13          about is your familiarity with some of the

14          potential witnesses in this particular case.

15          Apparently you recognize the names of Brendan and

16          Brian Dassey?

17 A. Yes. My -- I had noted on there too, that my son

18          went to school -- grade school at Reedsville.

19 Q. All right.

20 A. I don't know the exact date when it was. It was

21          -- God, I would have to say maybe third, second

22          grade, somewhere in that area.

23 Q. All right. And your son went to school with

24          which one?

25 A. Brandan (sic), actually, is the same age as my

1                   son.

2 Q. Okay. All right. And how about Brian Dassey?

3 A. I wasn't quite sure on the age differences. I  
4         know both boys did go to Reedsville at one time,  
5         many, many years back. I -- Like I said, I don't  
6         know for sure what year. I was thinking maybe it  
7         was 15, 20, 17 years ago, something like that.

8 Q. Okay.

9 A. No, it would have to be less. It would have to  
10         be maybe 10, maybe 12 years ago. I don't know  
11         the exact date. I would have to ask my son. He  
12         would know for sure, but I know it was grade  
13         school.

14 Q. All right. Did you yourself have any  
15         interactions with either Brendan or Brian?

16 A. No, never knew the kids.

17 Q. All right. Were they close friends of your son,  
18         do you think?

19 A. No, no, he had them in maybe a class and that was  
20         it.

21 Q. All right.

22 A. Like I said, he only knew him for maybe a year or  
23         two and that was it.

24 Q. So, they weren't, like, close friends --

25 A. No.

1 Q. -- or acquaintances --

2 A. No.

3 Q. -- they just happened to be in the same  
4 classroom?

5 A. Yeah, same class.

6 Q. All right. Well, since you happen to know them  
7 and there's a possibility that one or both of  
8 them may appear, it's still a very open question  
9 as to that; the fact that they may appear as  
10 witnesses in this particular case, would that  
11 cause you any concern as to whether you could be  
12 a juror in this case?

13 A. No.

14 Q. All right. Do you think you could evaluate their  
15 testimony, their credibility, their  
16 believability, their honesty, the same as you  
17 would any other witness?

18 A. Yes.

19 Q. All right. As you are no doubt aware and from  
20 some of the comments that you made in your  
21 questionnaire, this case has received a pretty  
22 fair amount of publicity?

23 A. Yes.

24 Q. All right. So we want to talk a little bit about  
25 that, if we could. You indicated that you get

1           your news from a variety of sources; radio,  
2           television, newspapers, neighbors, etcetera.

3           Given those sources, which one would you say  
4           provides you with the greatest information  
5           regarding this?

6       A. I would have to say the morning news. It's  
7           basically I watch it for about an hour in the  
8           morning until I get back outside; 6:30 get my kid  
9           up for school, my son. And then it's probably  
10          until about 7:30 when I flip it off, so ... And  
11          then it's sporadic. It's when I'm here, while  
12          I'm getting my son ready for school and getting  
13          my stuff going for the day, so...

14      Q. So, it's on as background noise as it were --

15      A. Yeah, more or less. Yeah.

16      Q. -- for that first hour in the morning while  
17          everybody is getting ready?

18      A. Yes.

19      Q. Okay. Do you read the newspapers regularly?

20      A. No, very seldom. It's maybe once or twice a  
21          week. And if it is, it's at work and it's  
22          usually a day late paper that we get --

23      Q. Okay.

24      A. -- that somebody just tosses on the table, so...

25      Q. Okay. So that's not a regular source of news for

1           you?

2   A.   No.  No.  Usually weekend paper and that's about  
3           it.

4   Q.   All right.  Weekend, Sunday paper?

5   A.   Yeah, Sentinel, Press Gazette.

6   Q.   Okay.  Sentinel, meaning the Milwaukee Sentinel?

7   A.   Yes, I'm sorry, yes, Milwaukee sentinel.

8   Q.   And the Green Bay Press Gazette?

9   A.   Yeah.

10   Q.   Okay.  Now, you also mentioned radio as a  
11       possible source for your news.  Tell us a little  
12       bit about that, how much of that?

13   A.   APL, I listen to, so it's very seldom.  They have  
14       a news thing in the morning, maybe five minutes.  
15       And that's about it.  And they really don't talk  
16       a lot about it.

17   Q.   So it's just a real encapsulated --

18   A.   Yeah.  Yeah.

19   Q.   -- headline news for the day.

20   A.   Yeah.  I try to listen to more music than news,  
21       so ...

22   Q.   Okay.  All right.  All right.  Given that -- And  
23       how about your neighbors?

24   A.   No, I don't.  We live about a quarter mile off  
25       the highway where I live now and our nearest

1           neighbor is about two miles away --

2 Q. All right.

3 A. So, there's -- And it's just an elderly women --  
4           woman that we -- that is our neighbor, so ...

5 Q. And with this weather, I'm sure it's a long walk  
6           up that driveway?

7 A. Oh, yeah. Just a little bit.

8 Q. All right. Based on that -- those sources of  
9           information, what do you recall hearing about  
10          this case? I mean, we're interested in knowing  
11          how much you have heard about it.

12           What's your first -- Well, we'll start  
13          with your first recollection of the case?

14 A. I knew two of the guys that were on the  
15          Kellnersville Fire Department that were in the  
16          search. But I really didn't talk to them. My  
17          son goes to school with their kids. They had  
18          said a few things about it.

19           Then, mostly from the newspaper,  
20          television. When we would go out you talk to  
21          people, people talked about it --

22 Q. Right.

23 A. -- stuff like that.

24 Q. So that's kind of the word of mouth source?

25 A. Yeah, it's -- that's basically the way it is.

1           Like at work, it's a lot of guys that work second  
2       shift. We don't see a lot of news because  
3       everybody is doing things in the morning before  
4       you get to work. And then that's how, you sit  
5       around the lunch table and a few people talk and  
6       that's about it.

7   Q. All right.

8   A. So ...

9   Q. Have there ever been any extensive discussions  
10      regarding the media coverage or the information  
11      provided by the media?

12   A. No, just bits and pieces as people talk about it,  
13      but that's about it.

14   Q. All right.

15   A. You know, other than, just general stuff, yeah.

16   Q. I'm sorry?

17   A. Just general stuff.

18   Q. All right.

19   A. Yeah.

20   Q. What's the next thing you remember after the  
21      initial search and all that; what's the next  
22      media bit of information you recall?

23   A. Just the arrest and stuff that, they had found  
24      the body --

25   Q. Okay.

1 A. -- and things like of that nature.

2 Q. Okay. Any details stick out in your mind from  
3 that earlier coverage?

4 A. No, not really. I really don't, anything on, you  
5 know, top off my head, no, I can't think of  
6 anything. Like I said, the way the finding and  
7 then the arrest and stuff like that. But I  
8 really didn't pay much attention to it. I'm just  
9 finishing up building a log home, so I'm working  
10 on that besides my other stuff, so, that's what  
11 we've been doing.

12 Q. Just a little busy.

13 A. Yeah, I really don't pay a lot of attention to  
14 the news --

15 Q. All right.

16 A. -- or politics, or the last election that's been,  
17 so ...

18 Q. All right.

19 A. Try to turn it off so I don't have to listen to  
20 it.

21 Q. All right. That's fair enough. There is one  
22 thing that's of some interest, since your son  
23 went to school with one or both of the Dassey  
24 boys; did you pay any more attention to the case  
25 when Mr. Dassey was arrested?

1       A. No, actually, I didn't even know about it until  
2               my son had said that he had knew Brendan from  
3               school. And we didn't even know he was at  
4               Reedsville at that time.

5               Well, then close friends of ours that do  
6               live in Reedsville, their -- would be his brother  
7               -- friend of ours brother was on the school board  
8               and then they were talking about it. And that  
9               was the only thing that I knew about it. So I  
10               never even knew that they were living in the area  
11               at that time. So that was the only time that was  
12               ever brought up.

13      Q. So you have -- you did not watch any of the media  
14               coverage or -- regarding his arrest or any of his  
15               involvement in the case?

16      A. No, just what people talk about at work. So I  
17               did not -- I saw a little bit of it, but I really  
18               didn't pay much attention to it.

19      Q. Okay. In terms of what people talked about at  
20               work, can you recall any of that conversation at  
21               this time?

22      A. No, just basically what they had heard on the  
23               news, you know, like I said, when the arrest was  
24               made and the other stuff that they had found, the  
25               search that was going on. But that was about it,

1           the normal stuff people would usually talk about,  
2           you know, when it's going on.

3           I mean, they are still talking about it  
4           now, but like I said, I don't pay a lot of  
5           attention to it. Because we take breaks at  
6           different times. It's when you get a break or  
7           when you can, that's when you go. And sometimes  
8           there may be one person or there may be five in  
9           there and there might be nobody in there at all,  
10           so ...

11          Q. In the break room you are talking about?

12          A. Yes, in the break room, I'm sorry.

13          Q. Sure. Are there any details at all that stick in  
14           your head from any of that break room  
15           conversation?

16          A. When they had found the body I believe -- I know  
17           there was a number of people that were talking  
18           about it.

19          Q. Okay.

20          A. And then how they had found it. And then I know  
21           a guy had said that he had talked to a friend or  
22           a brother of his that was in the search and then  
23           that, you know, that they were checking the cars  
24           and stuff like that, but that was about it.

25          Q. All right. No other details as to how she died,

1           or what happened, or any of the those details,  
2           none of that sticks in your head?

3       A. No, nothing. I know they had said something  
4           about there was a rape, I believe.

5       Q. Okay.

6       A. But that was, you know ...

7       Q. That's only from what you heard in the break  
8           room --

9       A. Yeah, that's only from what I heard, yeah, from  
10           other guys talking and people, but nothing. I  
11           don't remember reading anything about it. I know  
12           I heard it on the TV. I know Channel 11 was  
13           broadcasting it, but that was -- that was about  
14           it.

15      Q. So it's all pretty fuzzy?

16      A. It's not fuzzy. I mean, I know what had happened  
17           or what they had reported on TV.

18      Q. Well, that's what I'm trying to get at, if you  
19           could tell us what you remember there?

20      A. I know they were searching for the body because  
21           it's -- or searching for her. Then it went to  
22           what I remember next is that they had found her  
23           at the junkyard. And then the coverage on TV, I  
24           know they had showed it from an aerial view,  
25           roped off, where they found -- they thought they

1           found the body.

2 Q.       Mm-hmm.

3 A.       And then how they were coming up with some of the  
4           evidence and stuff like that, so ... Like I  
5           said, it was bits and pieces. It's not that I  
6           was paying attention to it the whole time so ...

7 Q.       Okay. All right. Well, we would like to ask you  
8           some questions about, you know, as a result of  
9           these various sources of information. You know  
10          the break room chatter and some of the coverage  
11          you saw on TV and the like. Right now, I mean,  
12          as Mr. Avery sits here, do you have any opinion  
13          as to whether you think he's guilty or not?

14 A.       Yes, I do.

15 Q.       Okay.

16 A.       Yeah.

17 Q.       All right. What is your opinion?

18 A.       That he is probably guilty, yes.

19 Q.       Probably?

20 A.       Yeah, probably guilty. But like I said, we were  
21          told by the Judge before and then in the letters,  
22          that we have to keep an open mind and, you know,  
23          until the evidence is brought in front --

24 Q.       Right.

25 A.       -- so...

1 Q. So that's just an impression you have based on  
2 the break room chatter --

3 A. Yes.

4 Q. -- and what the media coverage is?

5 A. Yes. Yes.

6 Q. All right. Now, you -- Are you saying that's --  
7 you have a real strong opinion on that, or that's  
8 just the impression that is held by you or the  
9 community?

10 A. Yeah, held by the community, the impression the  
11 way people are talking.

12 Q. Right.

13 A. For me personally, I have no opinion right now,  
14 you know.

15 Q. You don't know?

16 A. I don't know. I don't know the whole -- the  
17 whole story. Like I said, I haven't been really  
18 keeping up with everything. I do have other  
19 things besides the TV, newspapers, so ...

20 Q. Right. So, in terms of whatever that information  
21 -- or not whatever, but the information that you  
22 have been exposed to; do you feel pretty  
23 confident you can set that aside and follow the  
24 Judge's advice and --

25 A. Yeah, I think so.

1 Q. -- if you were selected as a juror, you could  
2 decide this case just based on what you hear in  
3 the courtroom?

4 A. I think so, yes.

5 Q. All right. Now, you realize that Mr. Avery is  
6 presumed innocent?

7 A. Yes.

8 Q. All right. And that he remains innocent unless  
9 and until we can convince you with solid evidence  
10 that he is guilty, beyond a reasonable doubt?

11 A. Yes.

12 Q. All right. And you accept that --

13 A. Yes.

14 Q. -- that he doesn't have to do anything?

15 A. No.

16 Q. All right.

17 A. Right.

18 Q. And that the only one with a burden of proof or  
19 responsibility in this courtroom is the State?

20 A. Yes.

21 Q. All right. Okay.

22 ATTORNEY FALLON: I will pass the juror.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Thank you.

25 **VOIR DIRE EXAMINATION**

1 BY ATTORNEY STRANG:

2 Q. And thank you. I want to start by asking you how  
3 to pronounce your last name.

4 A. Keehan.

5 Q. Keehan?

6 A. Yes.

7 Q. Okay. And I'm Dean Strang, Jerome Buting, Steven  
8 Avery. Jerry Buting and I are defending  
9 Mr. Avery. Did I -- Did I catch, and I'm not  
10 sure I did, but did I -- did I understand you  
11 correctly that you work second shift at  
12 Weyerhauser?

13 A. Yes, I do.

14 Q. So when does that shift run.

15 A. From 2 until 10. And usually by the time I get  
16 home, it's 10:30. And then from 10:30, I have a  
17 shop, so I work outside either on carvings or I'm  
18 working on a Jeep right now, so ...

19 Q. You're not carving a jeep, presumably?

20 A. No, no, I'm doing fabrication work on it.

21 Q. Okay. You -- You asked a question about whether  
22 we were going to go weekends?

23 A. Yeah.

24 Q. And I'm not so sure the lawyers really can answer  
25 that.

1 A. Okay.

2 Q. It would be for the Court to answer, but let me  
3 ask you a little bit about whether weekends would  
4 change the balance for you on the hardship  
5 question?

6 A. No, just that it would give me more time to do my  
7 sideline job, Saturday it would be. I mean, I do  
8 carve Saturdays now, because I work second. But  
9 usually mornings is when I do carving to keep up  
10 with my orders.

11 Q. Right. It was pretty clear, correct me if I'm  
12 wrong --

13 A. Yeah.

14 Q. -- it was pretty clear to me that you produce  
15 some income from these carvings.

16 A. Yes.

17 Q. It's not just pure hobby.

18 A. No. No. Actually, there was a meeting I had  
19 gone to -- well, we were supposed to go to two  
20 weeks ago in Wisconsin Dells. I do most of the  
21 Chapters of Wisconsin Water Foul. I don't know  
22 if you're familiar with that. And then I sell  
23 them at cost, carvings, and then they auction  
24 them off at their banquets for --

25 Q. Sure.

1 A. -- money itself. And then I have a few churches  
2 I have to do, Roncalli High School, I have an  
3 order to do for their auction coming up, so ...

4 Q. So these are orders with firm delivery deadlines?

5 A. Yeah, I have April, March, I believe, is where I  
6 have a few that I have. I have some stuff  
7 already done and built up for inventory, so to  
8 speak.

9 Q. Mm-hmm.

10 A. So ...

11 Q. Okay. I think this is going to be okay, but you  
12 are the guy that has to say. And certainly at  
13 the end of the case there would -- when all the  
14 evidence is in and the lawyers, we have all had  
15 our say, the jury gets the case to decide,  
16 obviously?

17 A. Yeah.

18 Q. And at that point, it's entirely possible that,  
19 you know, that it would not be an 8:30 to 5 kind  
20 of --

21 A. Yeah, I understand that. Yeah.

22 Q. For however long the jury deliberations went on.

23 A. Right.

24 Q. Which none of us can control and you can't even  
25 predict because that's up to the 12.

1 A. Yeah, I understand that. I'm just saying if  
2 there wouldn't be working weekends kind of a --  
3 So ...

4 Q. Okay. I mean --

5 A. Yeah.

6 Q. Look, there's no shame in saying this is a  
7 problem.

8 A. Yeah.

9 Q. We just need to know now --

10 A. No, no.

11 Q. If it will --

12 A. It will not be a problem.

13 Q. Okay.

14 A. I will make it work. It is not a problem.

15 Q. All right. What high school does your son go to?

16 A. Reedsville.

17 Q. And you -- The connection to Brendan and Brian  
18 Dassey is really just through your son?

19 A. Yes. And then, like I said, friends of ours that  
20 do live in Reedsville and his brother was on the  
21 school board at that time, they had mentioned it  
22 a few times.

23 But like I said, I have never known  
24 Brendan and never met Brendan or his brother.  
25 Like I said, the only time I knew they were there

1           is when my son had said that Brendan had gone to  
2           school with him, or he was in the same class.

3           And I don't know what grade it was, I really  
4           didn't ask him, so ...

5 Q.       What else did your son tell you about Brendan?

6 A.       He was in the slow part of classes. He wasn't in  
7           their class, but he had his own teacher --

8 Q.       Mm-hmm.

9 A.       -- with a few others kids so that -- He wasn't --  
10          I don't know how to explain there. How do you  
11          say that, not handicapped, but he was just a slow  
12          learner.

13 Q.       Right. Right.

14 A.       So that was all that he had said about it. He  
15          didn't know Brendan -- He knew Brendan, but he  
16          didn't hang around with him. He wasn't friends  
17          with him, so ...

18 Q.       Okay. I mean, so did your son tell you that  
19          Brendan was in some of our regular classes with  
20          us --

21 A.       Yes.

22 Q.       -- and some of them he would be taken out --

23 A.       Correct.

24 Q.       -- with a small --

25 A.       Yes.

1 Q. -- group of --

2 A. Yes.

3 Q. -- other kids?

4 A. Yeah.

5 Q. Just to help the slower learner?

6 A. Yes. Like I think it was Math class and -- I  
7 don't what their class room was, but their was  
8 two classes that he was in a different class for,  
9 or with them, so ...

10 Q. Okay. All right. Anything else at all that he  
11 told you about -- about, you know, more recent  
12 stuff --

13 A. No.

14 Q. -- or what he thought about the allegations?

15 A. No, nothing.

16 Q. Okay. And in answering Mr. Fallon on something  
17 when he was asking you about publicity after  
18 Brendan got charged, you may remember that Steven  
19 was charged back --

20 A. Yes.

21 Q. -- in November of 2005?

22 A. Yes.

23 Q. And then Brendan Dassey gets charged in -- right  
24 at the beginning of March, 2006.

25 A. Yeah. I kind of remember a little bit on the TV

1           about it. But that was -- his involvement, I  
2           really don't remember what was said about -- I  
3           just know that he was arrested. My son had  
4           brought it up and said that he went to school  
5           with him, but that was basically about it.

6       Q.    Okay. And you said you saw a little bit and I  
7           understand you don't remember, necessarily, all  
8           the details of that. But do you remember, was it  
9           a news conference you saw, or a 6 o'clock news  
10          report, or a court proceeding, since some of  
11          those have been televised? Do you remember kind  
12          of what it was you saw?

13       A.    If it was anything, probably be in the morning  
14          during the news at 6:30, 7:00. Just that they  
15          were bringing him in to -- I remember seeing him  
16          on TV, he was in handcuffs and then a jumper suit  
17          and that they were taking him here at the  
18          courthouse or the jail and then they were  
19          transferring him to Sheboygan, I believe.

20       Q.    Okay.

21       A.    So that was about it and then that they were  
22          charging him with helping out with the murder,  
23          something to that affect.

24       Q.    So probably more like a news report?

25       A.    Yeah.

1 Q. Not so much a news conference?

2 A. No.

3 Q. Did you see Mr. Kratz, the gentleman closest to  
4 you, in any, you know, news appearances or news  
5 conferences?

6 A. No, seen his face on TV, but that was about it.

7 Q. Okay. All right. WAPL, that's your station so  
8 to speak?

9 A. Yeah, I've listened to that and sometimes the  
10 Razor on 94.

11 Q. Out of Milwaukee?

12 A. I believe so. I don't know for sure. It's  
13 occasionally, my son flips my channels on me all  
14 of the time so it's kind of whatever, if it gets  
15 too head bang music, I have got to turn it off.

16 Q. Okay.

17 A. So ...

18 Q. And that was where I was going is WAPL is sort of  
19 a classic rock --

20 A. Yes.

21 Q. -- or '70s rock --

22 A. Yeah.

23 Q. -- format?

24 A. Yeah, it's -- And that's occasionally I listen to  
25 it in the morning.

1 Q. Are you a talk radio guy at all?

2 A. No, no, I really don't listen to any.

3 Q. Or call in?

4 A. No.

5 Q. Any of that?

6 A. No.

7 Q. Did your -- When your son told you this little  
8 bit about Brendan, did he, that is your son, did  
9 he, you know, sort of characterize this in any  
10 way for you, like that he was surprised, or he  
11 wasn't surprised, or he didn't think Brendan  
12 could do something like this, or he could see  
13 just how he could do it, any of that kind of  
14 subjective stuff, if you know what I mean?

15 A. No, the only thing he had said, that he was  
16 surprised that he seen Brendan on the TV and that  
17 the kids at school were talking about it.

18 Q. Mm-hmm.

19 A. As to anything else, no he never said nothing.

20 Q. Are you -- You are, obviously, a member of the  
21 paper workers, which is an AFL-CIO affiliate?

22 A. Yeah, we just joined steel workers through the  
23 AFL-CIO.

24 Q. Okay. And you're in a union shop where you had  
25 to join the union?

1 A. Yes, sir.

2 Q. Okay. And are you active in the union?

3 A. No, I'm not. Just a member, because where I

4 work, I have to be a member of the union.

5 Q. Right.

6 A. So that's -- that's ...

7 Q. You pay your dues?

8 A. That's right, yeah.

9 Q. Okay. Is that -- Is that something that you are

10 happy about, or sticks in your craw, or a little

11 of both depending on --

12 A. No, the union is good in some ways, and some ways

13 not, but the only thing is they just upped our

14 dues again, so, I'm not real happy about that.

15 Q. Okay. And you are no longer a foreman, but you

16 were for a time a foreman on the second shift?

17 A. Yes, that was at Valders' Stone and Marble when I

18 used to work there. I was there for nine and a

19 half years and I was a shift general foreman on

20 second, so ...

21 Q. Okay.

22 A. I didn't know if that pertained to anything so I

23 just wrote it down.

24 Q. Sure, that's good. And I'm not going to go

25 deeply into this, I have a specific reason for

1           asking this; I don't know what a clamp truck is?

2       A. In the paper mill I work it's -- we make  
3           cardboard boxes, mostly tissue boxes, like you  
4           see your Viva --

5       Q. Sure.

6       A. -- or stuff like that. And what I do is I bring  
7           in 8,000 pound rolls of paper and it's a huge  
8           forklift with a V-6 Chevy engine in it. And it  
9           clamps the paper. And I bring it in, I lay it on  
10          the floor, they run one off the roll and then I  
11          take it back out.

12      Q. Okay. But it's an open cab --

13      A. Yes, yeah.

14      Q. -- and not something with a radio in it?

15      A. No, no. It's in the plant.

16      Q. Got it. I was -- I ended up a little bit  
17          confused, which is probably me not you. But  
18          on -- on opinions of Mr. Avery's guilt, or  
19          possible, probable guilt, is this something that  
20          you tend to think at this moment he's guilty or  
21          your sense is that other people tend to think he  
22          is guilty?

23      A. No. I kind of think he is, yes.

24      Q. Okay.

25      A. And a lot of people, I believe they do think he

1           is.

2   Q.   And do you hear -- I mean, of the folks you are  
3       hanging around with, do you hear anybody taking  
4       the contrary position sort of saying, oh, you  
5       know, I think -- I think he didn't do it or ...

6   A.   Nothing -- nobody that I work with. My wife had  
7       said that there were a few people she works with  
8       in Green Bay that had talked about that they  
9       figured he was set up in a way, so ...

10   Q.   Where does Lois work?

11   A.   De Leers Millwork in Green Bay. She's a cabinet  
12      maker.

13   Q.   Okay. So she's getting some chitty chat about  
14      this too?

15   A.   Yeah. Yeah. Yeah.

16   Q.   And then you and she talk about it some.

17   A.   Not too often, usually when I talk to her it's at  
18      night, usually on my break I will call her from  
19      the cell phone and then I talk to her. Because  
20      by the time I get home, she's already in bed.  
21      She's up at 4 to be at work at 5.

22   Q.   She's a first shift?

23   A.   Yeah, so we -- the only time we talk during the  
24      week is on the phone or write a note.

25   Q.   Okay. So where she's at, she tells you that

1           maybe there's some split opinion, where the  
2           people you're around, they all think he is  
3           guilty?

4       A. Yeah, pretty much. Yeah, Green Bay, they are  
5           kind of different talk.

6       Q. Okay. Or apparently, that's your wife's  
7           experience.

8       A. Yeah.

9       Q. And, you know, it looks like you don't have a  
10           daughter or anything?

11      A. Yeah, she's -- actually goes to school in Fox  
12           Valley and she works and lives in Fox -- in the  
13           Fox Valley -- in Appleton I should say. She's  
14           19.

15      Q. Oh, okay, so you do have --

16      A. Yeah, I have an older daughter and then my son is  
17           17.

18      Q. Okay. I'm sorry, you didn't list the daughter,  
19           is that just because she's out of the house?

20      A. Yeah, I didn't know if it pertained because she's  
21           over 18, so I didn't know and she's pretty much  
22           on her own.

23      Q. Sure. Sure. And I'm sorry, she's in the Fox  
24           Valley somewhere?

25      A. Yeah, she goes to Fox Valley Tech. She lives in

1                   Appleton, on the east side, so ...

2 Q. Right. She's a full-time student or something?

3 A. Full-time student and then she works part-time?

4 Q. And not married?

5 A. No, not yet, I hope.

6 Q. Well, I mean, so she's not that much younger than

7                   Teresa Halbach was. And when this -- when this

8                   all broke, so to speak, or came out, was this

9                   part of your reaction as a dad?

10 A. More when she went missing, yeah, you know, it

11                   kind of puts it in the back of your head, I would

12                   believe, but, yeah, a little bit.

13 Q. Sure.

14 A. Yeah.

15 Q. Okay. So, I mean, I can ask this a number of

16                   ways, but why would you not think Steven Avery is

17                   guilty, given what everybody around you is saying

18                   and the media and, you know, your daughter.

19 A. Why wouldn't I not think he is not guilty?

20 Q. Yeah, why would you not think he is guilty?

21 A. Yeah, I mean, automatically, it was the first

22                   thought, but until I was given the letter by the

23                   Judge that we should consider this a different

24                   way, well, then it was, you know, trying to think

25                   of it that way, so ...

1 Q. Right, I mean --

2 A. You know.

3 Q. -- everybody -- everybody gets to have their  
4 opinion, but I guess if you are a juror, then you  
5 have to take on a different role?

6 A. Yes, that's the way I had taken it. Yeah, and  
7 then so trying to think of it as a different way,  
8 I believe, so ...

9 Q. Yeah, and -- and I really -- I really do  
10 appreciate that. I think that's -- that's right.  
11 And by the same token, I need your -- I really  
12 need your honesty in telling me whether you have  
13 any questions about your ability to set aside,  
14 you know, the perfectly understandable opinions  
15 you have formed over a period of time, as you  
16 come into the prospect, at least, of serving on  
17 this jury. If you have any doubts about that,  
18 you should tell us about those now.

19 A. If I have doubts of being on the jury or ...

20 Q. Your ability to set aside those opinions  
21 entirely.

22 A. No, I think I can. Like I said, since before I  
23 had not really thought about it until now, when  
24 I'm actually -- I have to think about it. And I  
25 have been thinking about it. And it's -- it's a

1           lot -- a lot of pressure, so to speak. But I  
2           think I can if I was selected as a jury (sic).  
3           So ...

4       Q. And where do you feel the pressure; what is  
5           exactly the pressure you are feeling on that?

6       A. God, I don't know. It's more, if I'm going to be  
7           on the jury and then having to -- if I have to,  
8           can put somebody behind bars or, you know,  
9           that -- that way, I guess.

10      Q. Sure.

11      A. I mean, in talking to people at work that have  
12           found out that I am being selected for this,  
13           telling me that, you know, we should be doing the  
14           right thing. It's like, you know, I'm not  
15           listening to what you guys are telling me, so  
16           it's pretty much trying to keep an open mind --

17      Q. Okay.

18      A. -- is what I'm saying.

19      Q. Okay. But you are getting some pressure, in  
20           other words --

21      A. Oh, yeah.

22      Q. -- from people saying --

23      A. Yes.

24      Q. -- convict him, do the right thing?

25      A. Oh, yeah. Oh yeah.

1 Q. Yeah.

2 A. Yes.

3 Q. So that's one kind of pressure you could be  
4 feeling. Are you also feeling pressure about,  
5 you know, stuffing down or quieting down the  
6 little voice in your own head that says, gee, I  
7 think -- I think he probably is guilty?

8 A. Yeah. Oh, yeah. Yeah.

9 Q. Okay. And I think I heard you say that in any  
10 really serious case, you would probably feel a  
11 lot of pressure about actually making a decision  
12 that's a thumbs up or a thumbs down. It has a  
13 huge impact on people.

14 A. Yeah, probably somewhat, yeah. Like I said, I  
15 told them that it would be, as the evidence was  
16 brought forth, I think then I could keep an open  
17 mind on that, you know.

18 Q. Okay. So let's say you serve on the jury and you  
19 go all the way through and, you know, you just  
20 are not convinced, based on the evidence, that  
21 the State has proven this, beyond a reasonable  
22 doubt.

23 And I'm going to make it harder on you.  
24 I'm going to ask you to assume that you say, you  
25 know, he might have done it. Strang and Buting,

1           they didn't convince me that he didn't do it. He  
2           might have done it, but I'm just not convinced,  
3           beyond a reasonable doubt, that he did it. So,  
4           under the law, I have to vote not guilty.

5           If you came to that, I don't know if you  
6           will or won't, but if you did come to that, can  
7           you take what you are going to get the next  
8           morning or the next afternoon at work?

9       A. Yeah, I think so.

10      Q. Why?

11      A. It's something I would have to live with, not  
12           them. So, I mean, whatever they say it's -- I  
13           mean, I only work with these guys for eight  
14           hours. It's not like I have to live with them,  
15           so ... Yeah, I ...

16      Q. Well, they are going to make -- they might make  
17           you feel like they have to live with it, if you  
18           hear comments like, oh, you let him back out on  
19           the street.

20      A. Mm-hmm.

21      Q. Can you do that?

22      A. Yeah, I don't see why not. Yeah. Yeah, I have  
23           no problem with that.

24      Q. One thing that we'll have to decide at this  
25           table, the three of us, is whether Mr. Avery

would testify in his own defense. And that's a tough call because, you know, on the one hand, if the defendant testifies, somebody could say, well, of course he's going to get up and deny it, you know, he's trying to save his skin. If he decides not to testify, then people may say, what's he got to hide.

(Loud noise.)

THE COURT: That's our signal that the battery is going on the microphone. So, we'll take a short break. It's very subtle.

Mr. Strang, you may continue.

ATTORNEY STRANG: Thank you.

Q. (By Attorney Strang)~ If you -- So, if he doesn't testify, you know, has he -- has he got something to hide or, you know, geez, if I was charged and I didn't do it, I would get up and say that I didn't do it. Are you likely to have either one of those feelings or both?

A. I don't think so. Isn't it basically on what the evidence you guys bring to us, that we have to decide.

Q. What those guys bring.

A. I'm sorry, what they have to.

25 Q. Yeah. Now, that's not to say that we won't

1           cross-examine people or we may even call  
2           witnesses. But the real bottom line on it is the  
3           Judge, the Judge's instructions, which will be, I  
4           think, to this effect: One, if Mr. Avery  
5           testifies, you have to consider him like any  
6           other witness. Consider the same things you  
7           would in deciding whether you believe anyone  
8           else.

9         A. Mm-hmm. Okay.

10        Q. Okay. He is just another witness. Or, two, I  
11           think the Judge will tell you, in effect, if  
12           Mr. Avery does not testify, you can't even  
13           consider that. You can't speculate on why he  
14           didn't. You can't consider it evidence of guilt.  
15           You can't consider it at all in deciding whether  
16           the State proved him guilty, beyond a reasonable  
17           doubt. Can you follow those instructions?

18        A. Yes, I think I could.

19        Q. You may hear -- While we're talking about  
20           witnesses, you may hear evidence tending to  
21           suggest that police officers are not telling the  
22           truth, one or more police officers are not  
23           telling the truth in reports or on the witness  
24           stand.

25                           That can be a hard pill for people to

1           swallow. The police officers are sworn to uphold  
2           the law. They generally do. They are people we  
3           look up to often. But in the end, you have to  
4           consider them as any other witness, too, and  
5           weigh, do I believe this? What are the reasons?  
6           Does this testimony make sense or not make sense  
7           to me? Can you do that?

8 A. I think, so.

9 Q. Can you envision a circumstance in which a police  
10          officer might lie under oath?

11 A. No, I don't.

12 Q. Can you envision a circumstance where any witness  
13          might lie under oath?

14 A. Possibly, I don't know, it's ...

15 Q. Okay. And that's where I'm going at?

16 A. Yeah.

17 Q. Do you think the oath is so important to people  
18          that no one ever violates an oath?

19 A. I would hope so. I would hope so, that it would  
20          be.

21 Q. Well, we all hope so.

22 A. Yeah, but is it, I don't know.

23 Q. Okay. And other than if you have seen a robo cop  
24          movie, have you ever met a police officer who  
25          wasn't human?

1 A. No.

2 Q. Okay. So if the question really is, can you let  
3 them be human too and weigh their testimony just  
4 like you would weigh the testimony of any other  
5 witness?

6 A. Yeah, I suppose I could.

7 Q. It sounded like -- If you have questions about  
8 that, please just say so. There's no wrong  
9 answer here.

10 A. No, I don't have any questions about that.

11 I'm -- I mean, if they swear the oath, then I'm  
12 hoping that they are telling the truth.

13 Q. So am I.

14 A. Yes.

15 Q. But in the end, if testimony conflicts and you  
16 have to make a choice ...

17 A. Can I make that choice?

18 Q. Yeah.

19 A. I think I can.

20 Q. You will probably hear a good deal of scientific  
21 evidence in this case as well. And then you may  
22 hear evidence about the absence of scientific  
23 evidence. Is scientific evidence something that  
24 you think you can pay attention to?

25 A. I think so, yes.

1 Q. How do you think it rates as compared to other  
2 types of evidence, eyewitness testimony or other  
3 witnesses?

4 A. I really can't answer that, I don't know the  
5 difference. You mean, if somebody is telling me,  
6 or if they are showing me on a slide show, is  
7 that what you are saying?

8 Q. Yeah, it's a clumsy question. Do you put any  
9 special stock in science as being especially  
10 certain or one hundred percent black/white kind  
11 of thing or no?

12 A. You mean like as in DNA evidence or stuff like  
13 that?

14 Q. Sure.

15 A. I would think so, yes, it should be.

16 Q. Okay.

17 A. Yes.

18 Q. That is, if the science is good?

19 A. Yes. I would, yeah.

20 Q. But even if it's -- even if it's an expert who's  
21 testifying to some specialized scientific  
22 knowledge; do you understand that witness you  
23 also have to weigh as just another witness?

24 A. Yes. Are you asking me to -- if I could  
25 understand it, I would think so, yes.

1 Q. Okay. What do you know, if anything, about  
2 Mr. Avery's background with being let out of  
3 prison because of DNA showed that someone else  
4 committed the crime he was convicted for?

5 A. It's what I know or what I heard?

6 Q. Heard.

7 A. What I heard. Basically a group of college  
8 students had found something with the DNA, that's  
9 about it. And that he was released after 18  
10 years, I believe, or 13.

11 Q. Long time?

12 A. Yeah, it was a long time.

13 Q. Yes. Do you have any questions about whether he  
14 really was innocent of that, it was a mistaken  
15 conviction?

16 A. No, I have no questions about that.

17 Q. My last question, although I may ask you why, but  
18 really my last question is, do you want to be on  
19 this jury?

20 A. Kind of teetering, yes and no.

21 Q. So tell me why?

22 A. I don't know. It more is the length of the  
23 trial, I believe, would be one of them. But I  
24 don't know. I have never done it before, so I --  
25 I'm kind of -- I'm kind of not sure if I want to

1           be. So ... It's hard to explain.

2 Q. Yeah, but you are doing all right. I mean, you  
3       have never done it before, is that a pro or a  
4       con?

5 A. Yeah. Yeah, I guess it would be a pro.

6 Q. Like a learning experience?

7 A. Yes. Yeah. People I have talked to that have  
8       been on jury duty and said they were the same  
9       way, but once they did it, it was -- it was a  
10      good experience.

11 Q. Okay. And the length of the trial is something  
12      new that I'm sort of hearing from you, I think.  
13      That sounded like a minus.

14 A. No, just that it's -- I mean, I can do it. It's  
15      not a problem, it's just that, you know, the  
16      length of it, being off of work and stuff like  
17      that, so, I mean, but it's not a problem. It's  
18      -- If I have to, I have to; if I don't, I don't.  
19      It's not ...

20 Q. Okay.

21 A. So, yeah, I don't know how else to explain it.  
22      You know, it's just ...

23 Q. Nobody wants to be drafted?

24 A. Yeah. That's it, yeah, there you go. Yeah.

25 Q. Okay. Thanks.

## **VOIR DIRE EXAMINATION**

BY THE COURT:

Q. Mr. Keehan, just a follow-up. I think I understood most of your answers, but you indicated that, based on what you have heard and read so far in the media and from other people, you think the defendant is guilty?

A. Yes.

Q. Based on what you --

A. Based on what I have heard and seen, yeah.

Q. But you also indicated that if you were selected for the jury you could follow the Court's instructions and base your decision only on the evidence?

A. I believe I could, yes.

Q. You understand, if you're on the jury and we go to trial, everybody starts from zero.

A. Yes.

Q. That's essentially what it means. Nothing's proven, except the evidence that comes in at trial, the State starts from scratch. You can only base your decision on the evidence that comes in. Even in light of what you heard before today, do you feel that you can base your decision on the evidence at trial if you're

1 selected to serve?

2 A. I think I could, yes.

3 THE COURT: All right. The Clerk will  
4 escort you from the courtroom at this time.

5 (Wherein the juror was excused.)

6 THE COURT: Counsel, any motion from either  
7 party?

8 ATTORNEY FALLON: None from the State.

9 ATTORNEY STRANG: I do. I do, and I  
10 realize this is a tough one because it's -- so much  
11 of it is -- is demeanor and a sense of ambivalence  
12 of this gentleman. And I think you -- I would have  
13 to cast it as subjective bias. I mean, he was  
14 candid about telling us the opinion he is coming  
15 into with. And I also took him at his word when he  
16 said he, you know, he really would try to follow the  
17 rules and set that aside.

18 So, you know, this is tough, because I  
19 don't get to make the demeanor and the  
20 credibility call, the Court does. But I -- I'm  
21 left with a real sense of unease about the  
22 understandable bias that he comes into.

23 And one thing that was -- that really  
24 sort of crystalized this for me was his -- his  
25 volunteered comment that he's getting some

1 pressure from co-workers saying, you got to do  
2 the right thing here and convict this guy. I  
3 mean, those weren't his exactly his words, but  
4 that was -- that's what he -- he said in his own  
5 words.

6 So this is one of these tough ones. I  
7 understand that it's close and so much of it  
8 turns on things that won't appear in black and  
9 white on the paper. But I think there's cause to  
10 let him go and we're hearing that with the  
11 reluctance about the length of the trial and  
12 weekends and feeling pressure in different ways.  
13 So I'm going to move to strike him and I  
14 understand why the State is not and not joining  
15 that, but that's my motion.

16 THE COURT: All right. I also agree this  
17 is a situation, as in many cases, where the Court's  
18 decision is based on the demeanor of the witness.  
19 However, I come to a different conclusion than the  
20 defense did. I did ask a follow-up question or two  
21 because I was concerned, based on the witness'  
22 statement -- or the juror's statements, which I  
23 believe were quite honest and forthright.

24 He frankly admitted, based on what he's  
25 read and heard so far, essentially, if he had to

1 say something today, he would say, based on what  
2 he knows, that the defendant is guilty. But he  
3 also seemed to express a clear understanding of  
4 the fact that if selected as a juror he would  
5 have to set those opinions aside. I believe he  
6 can.

7 He did not go into extensive detail of  
8 any reasons why I think he could not set his  
9 opinions aside; that is, he hasn't been following  
10 the case so closely that his -- his mind is made  
11 up. I also sat back and took notice when he gave  
12 the answer to the question about, well, I, you  
13 know, get pressure from my co-workers and they  
14 are telling me to do the right thing.

15 But I was more impressed with his answer  
16 where he said that, yes, if I didn't think the  
17 State met its burden I would vote not guilty and  
18 that's because I have to live with myself more  
19 than I'm concerned about living with them.

20 That showed me that this is a juror who  
21 I believe has the courage of his convictions and  
22 I believe him when he says he can set his  
23 opinions aside and follow the evidence at trial.  
24 So I'm going to retain him as a juror in this  
25 case.

1                   ATTORNEY STRANG: Maybe the Court solved  
2                   the problem, but the Court was cutting in and out on  
3                   the microphone and it may have gotten better after  
4                   the Court adjusted the mike.

5                   THE COURT: Yeah, I'm not sure, since I'm  
6                   not battery powered I'm not sure where the problem  
7                   is coming from. But I may have to take a look at  
8                   it.

9                   At any rate, let's take our break at  
10                  this time. Counsel, what I would like you to do  
11                  is take a break and stop in at chambers at 3:15.  
12                  We still have a significant number of jurors back  
13                  there. I would like to cut some of them loose.  
14                  So we'll be talking about how far we're going to  
15                  go today.

16                  ATTORNEY FALLON: Thank you.

17                  (Recess taken.)

18                  THE COURT: All right. At this time we're  
19                  back on the record, outside the presence of any  
20                  members of the jury panel. Mr. Strang, you  
21                  indicated you had a matter you wished to bring up.

22                  ATTORNEY STRANG: I do, very briefly. I  
23                  wanted to clarify my comments about the demeanor of  
24                  Patrick Keehan, the last juror we spoke with. Just  
25                  out of fairness to him and -- and so that I really

1           am clear, it was a demeanor issue, but it was not  
2           dishonesty I was hearing. It was discomfort that I  
3           was hearing with him. I didn't have any honesty  
4           issue at all. I just -- The ambivalence and the  
5           discomfort was the demeanor point that I was  
6           raising.

7           THE COURT: Okay. That's the way I  
8           understood it as well.

9           We're dealing here with information from  
10          jurors, rather than testimony. And I don't know  
11          quite how to approach this, but I feel compelled  
12          to tell the parties that there was a reference in  
13          the statements from one of the jurors to AA  
14          meetings and I only wish to point out to the  
15          parties that AA doesn't always mean the first  
16          thing that necessarily comes to your mind.

17          ATTORNEY STRANG: Oh, we need to know that.  
18          Do we know what it does mean?

19          THE COURT: Well, Janet Bonin, the Clerk,  
20          is the one that brought it to my attention. As we  
21          know, I think some questions were asked of her  
22          because she knew the juror. Janet, go ahead.

23          THE CLERK: They call them attitude  
24          adjustment meetings, that's what the AA means.

25          ATTORNEY STRANG: Okay. That's great,

1 because we did jump to the -- not about Janet or  
2 anybody else but ...

3 THE COURT: I don't think any questions  
4 were asked that referred to Alcoholics Anonymous,  
5 which is perhaps the most common usage. And so I  
6 don't know at this point what to make of it or not  
7 make of it, but it's also the type of information  
8 that many times jurors would be asked to be kept  
9 confidential.

10 ATTORNEY STRANG: Right.

11 THE COURT: And I don't want anybody to  
12 draw any inferences from just the fact that letters  
13 were used without any information about what it was  
14 the juror was talking about. Obviously, at this  
15 point, the juror is no longer here so there's  
16 nothing further we can do about it.

17 ATTORNEY BUTING: Judge, speaking of  
18 confidentiality, you realize that this next juror,  
19 Question No. 75, he did answer yes. I don't know  
20 that it's the kind of material or subject that you  
21 would want or think should be discussed privately,  
22 but he did ask.

23 THE COURT: All right. This is  
24 Mr. Pederson.

25 ATTORNEY BUTING: Yes.

1                   THE COURT: Let me briefly review that. I  
2                   think I can probably address his concern in my  
3                   opening comments as part of it. Thank you for  
4                   pointing that out to the Court, however.

5                   All right. At this point we're going to  
6                   take one juror out of order who has been here  
7                   quite a while today. That is, Mr. Pederson,  
8                   Juror 66. So we will have him come in at this  
9                   time.

10                  ATTORNEY KRATZ: I'll be examining him,  
11                  Judge.

12                  THE COURT: Okay. Mr. Pederson, please  
13                  raise your right hand and the Clerk will administer  
14                  the oath to you.

15                  (Juror sworn.)

16                  THE CLERK: Please be seated.

17                  THE COURT: Mr. Pederson, you pronounce  
18                  your name that way?

19                  MR. PEDERSON: Yes.

20                  THE COURT: Mr. Pederson, you have already  
21                  filled out a written questionnaire in this case.  
22                  Today we're moving on to the next phase of the jury  
23                  selection process which is known as voir dire.

24                  During this portion of the process, the  
25                  attorneys for the parties can ask you questions

1           in order to follow up on some of your answers in  
2           your questionnaire that address your  
3           qualifications to serve as a juror in this case.

4                 Before we get to those questions, I have  
5           some information to pass on to you. First of  
6           all, the jurors selected in this case will not be  
7           sequestered. That means that at the end of the  
8           court proceedings every day the jurors will be  
9           permitted to return home. The prohibition on any  
10          exposure to news media accounts of the case will  
11          continue.

12               That means that the jurors will not be  
13          permitted to obtain information about the case  
14          from any newspaper, television, radio, or  
15          internet sources and the jurors will continue to  
16          be required not to discuss the matter, including  
17          with any other jurors or with any family members  
18          during the course of the trial.

19               I can also tell you that although the  
20          proceedings today are open to the public, during  
21          voir dire we do not allow cameras in the  
22          courtroom and the jurors are not permitted to be  
23          photographed.

24               I can also tell you that the law does  
25          not allow the media to identify jurors in news

1           reports of these matters. And also, should you  
2           be selected as a juror in this case, cameras are  
3           not permitted to show the faces of the jurors,  
4           such that any individual jurors can be  
5           identified.

6           If you are retained on the jury panel  
7           after questioning today, you will receive a  
8           telephone call in the next day or two notifying  
9           you when to report back to court.

10          I note, before I allow Mr. Kratz to  
11         begin questioning, in your answer to Question 75  
12         of the questionnaire, you indicated matters that  
13         you regarded as personal and I think they related  
14         to your possible identification as a juror. I  
15         hope I have identified your concerns.

16          MR. PEDERSON: Yes, you have.

17          THE COURT: Thank you. All right.

18          Mr. Kratz, you may proceed.

19          ATTORNEY KRATZ: Thank you.

20          **VOIR DIRE EXAMINATION**

21          BY ATTORNEY KRATZ:

22          Q. Mr. Pederson, as the Judge has eluded, my name is  
23           Ken Kratz. I'm the Calumet County D.A. and the  
24           special prosecutor in this case, lead counsel.

25          Seated with me this afternoon is Tom Fallon. He

1           is an Assistant Attorney General who will be  
2           helping not only in this process, but through the  
3           presentation of the case. I would like to  
4           welcome you for this part of the process.

5           Mr. Pederson, you have filled out a  
6           lengthy questionnaire and we do have some  
7           follow-up questions on that questionnaire. I  
8           understand, based upon your response, that you  
9           have learned quite a bit about this case through  
10          various sources. Let me ask you first, would you  
11          say that most of your news comes from radio, or  
12          internet, or TV, or what source?

13         A. Yeah, I haven't followed it very closely. I have  
14          seen headlines in some newspapers and there was  
15          one article I skimmed in a newspaper. And I have  
16          seen some headlines on TV and I have heard a few  
17          things on the radio.

18         Q. When you say you haven't followed it very  
19          closely; do you mean lately you haven't or even  
20          back from when this case first started?

21         A. Even back. I can tell you the facts I know or --  
22          well, shouldn't be considered facts at this  
23          point, but I can tell you what I think I know.

24         Q. At least the news reports, what it is that you  
25          have heard from news reports, why don't you go

1           ahead and start there and we'll have some  
2           follow-ups.

3       A. Well, what I heard reported was that the body was  
4           found on Mr. Avery's property. And I read some  
5           comments Mr. Avery made about his nephew. And  
6           there was a headline or something to the effect  
7           of -- well, there was something about a vial of  
8           blood and that's about what I know.

9       Q. All right.

10      A. So ...

11      Q. Mr. Pederson, based upon those news reports, your  
12           questionnaire indicates that you may have formed  
13           an opinion, or at least the media reports may  
14           have directed you one way or another regarding  
15           the guilt or innocence of Mr. Avery; is that  
16           correct?

17      A. Yes, at this time I do have an opinion.

18      Q. And I think your opinion is that Mr. Avery may in  
19           fact be guilty of the charges for which he faces;  
20           is that correct?

21      A. Correct.

22      Q. You also indicate, however, in your  
23           questionnaire, that if instructed by the Court to  
24           set aside those opinions, which the Court  
25           undoubtedly would do, that you believe that you

1           would be able to do that; is that still your  
2           opinion today?

3       A. I believe I would be able do that.

4       Q. All right. Why don't we start there since that  
5           is a extremely important topic. If the Judge  
6           instructs you that that's what you have to do; in  
7           other words, if the defendant sits in this  
8           courtroom presumed innocent --

9       A. Correct.

10      Q. -- would you be able to follow that instruction?

11      A. I believe so.

12      Q. If the Judge instructs you that the only decision  
13           that he wants any juror to make is based upon  
14           information that comes from evidence, that is,  
15           from witnesses, or documents, or other admitted  
16           evidence in the case; would you be able to base  
17           your decision solely upon that evidence and set  
18           aside, perhaps, what you may have read, or what  
19           you may have heard, or what you may have thought  
20           that you knew coming into the case?

21      A. I believe so.

22      Q. All right. If the Judge instructs that you must  
23           do that, Mr. Pederson, can you give us your  
24           assurance that that is in fact what you will do  
25           as a juror?

1 A. Yes.

2 Q. All right. You understand, I suspect, that the  
3 difference between news reports, that is, what  
4 the news may report some people may have said or  
5 what may have been found and what actually might  
6 be introduced in evidence of a case?

7 A. Correct, I do.

8 Q. Are you familiar with Mr. Avery himself, or his  
9 history, or his connection with something called  
10 the Project Innocence in Wisconsin?

11 A. Well, I understand that he had been previously,  
12 apparently, falsely accused and convicted. And  
13 based on DNA evidence, he was exonerated  
14 eventually.

15 Q. All right.

16 A. So -- And I understand also that -- that there  
17 was a civil case that he won against the County  
18 of Manitowoc.

19 Q. All right. Would knowledge of those facts or, at  
20 least what you think you know of Mr. Avery's  
21 past, would that affect your decision making in  
22 this case, or would you be able, again, to set  
23 that aside and base your decision solely on the  
24 evidence in this case?

25 A. I could set that aside.

1 Q. In your questionnaire, you mentioned that you  
2 have some background in DNA evidence, at least  
3 some general knowledge of it, and more  
4 specifically in the area of chemistry; is that  
5 right?

6 A. Well, yeah, I would say, perhaps some very  
7 general knowledge. I have some knowledge of  
8 chemistry. I'm by no means an expert, but I do  
9 have some general knowledge.

10 Q. Let me ask you this, Mr. Pederson, do you hold an  
11 opinion, at least generally, that DNA evidence is  
12 reliable in what you have heard or what you have  
13 come to understand about DNA analysis, that it  
14 provide courts or provides other investigators a  
15 good basis for making positive identifications?

16 A. Yes, I believe it's reliable. I understand it  
17 is.

18 Q. In your questionnaire, you mention that you had  
19 some knowledge of a woman by the name of Lori  
20 Dassey. Can you tell me about that, please.

21 A. Well, I understand that she was the wife of  
22 Mr. Avery and that's about all I know. And I  
23 work with her.

24 Q. Do you work with her on a daily basis?

25 A. No.

1 Q. How well do you know Ms Dassey?

2 A. Just at a professional level. I have never

3 discussed anything about --

4 Q. Do you work in the same department or the same

5 area?

6 A. No, we work in separate buildings and in

7 different departments.

8 Q. Do you ever have occasion to speak with her

9 either about personal matters or anything other

10 than work related topics?

11 A. Not to date.

12 Q. Has Ms Dassey ever had an occasion to talk to you

13 either about Steven Avery, about her marriage, or

14 about any part of this case?

15 A. Not to date.

16 Q. If instructed by the Court, which I'm sure it

17 would occur if you were a juror in this case,

18 could you assure us that you would have no such

19 conversations with Ms Dassey, or anybody for that

20 matter, regarding the facts and circumstances

21 surrounding this case?

22 A. Yes, I could.

23 Q. Mr. Pederson, you appear to be the primary bread

24 winner within your home, would working for --

25 excuse me -- would serving for a six week trial

1           create a financial hardship for you or your  
2       family?

3       A. No, it would not.

4       Q. Is there a reason for that?

5       A. Well, the policy at my place of employment, I  
6       understand, is they would continue paying me my  
7       nominal salary through the course of a jury  
8       trial.

9       Q. All right. Have you had any contacts at all with  
10      Manitowoc County law enforcement? I notice that  
11      you mentioned there was a vandalism case that you  
12      had reported. But did you -- have you had any  
13      other more specific contacts with law enforcement  
14      agencies?

15      A. There's one I forgot to mention on there, I have  
16      a neighbor who is a police officer and I don't  
17      know his name.

18      Q. Is he a Manitowoc County sheriff's deputy or work  
19      for some municipality?

20      A. I believe he works for the Manitowoc City Police,  
21      I believe.

22      Q. All right. Have you had any discussions with  
23      your neighbor about this case or about the facts  
24      or circumstances surrounding this case?

25      A. No, I have not.

1 Q. You say that you have an overall positive opinion  
2 of the job that the Manitowoc County law  
3 enforcement community is doing?

4 A. Yes, I do. I have no reason to not have that, I  
5 guess.

6 Q. Mr. Pederson, is there any reason that I may not  
7 have asked you that you believe disqualifies you  
8 to sit on this case, or anything that we haven't  
9 asked either in writing or from me orally today,  
10 that you believe we should know that would  
11 disqualify you as a potential juror?

12 A. None that I can think of.

13 Q. All right.

14 ATTORNEY KRATZ: That's all the questions I  
15 have of this particular juror, Judge. Thank you.

16 THE COURT: All right. Mr. Buting.

17 ATTORNEY BUTING: Yes, thank you, Judge.

18 **VOIR DIRE EXAMINATION**

19 BY ATTORNEY BUTING:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. My name is Jerome Buting and I, along with Dean  
23 Strang, are defending Steven Avery here today.

24 A. Mm-hmm.

25 Q. Okay. I have, first, some background questions,

1           if you don't mind. Do you have a degree in  
2           engineering?

3       A. Yes.

4       Q. What kind of engineering?

5       A. Well, I have a degree in electrical engineering  
6           and also a degree in physics.

7       Q. Okay. And both of those are from the University  
8           of North Dakota?

9       A. Correct.

10      Q. And you have four children?

11      A. Yup.

12      Q. And your wife is not employed outside the home?

13      A. Correct.

14      Q. And you are not originally from this area; is  
15           that right?

16      A. That's correct.

17      Q. You are from Missouri?

18      A. Well, I was born in Missouri and then I also  
19           lived there during high school for two years.

20      Q. Your father move around; your family move around?

21      A. No, I moved to Missouri and lived with my  
22           grandparents for -- there's family issues, so I  
23           lived with my grandparents for two years --

24      Q. I see.

25      A. -- during high school.

1 Q. During high school?

2 A. Yup.

3 Q. And where were you before that?

4 A. Before that, I was in North Dakota.

5 Q. Okay. So you were born in Missouri, then grew up

6 mostly in North Dakota?

7 A. Born in Missouri and I understand about six

8 months of age we moved to Connecticut and then

9 when I was probably second grade, moved to North

10 Dakota.

11 Q. Okay.

12 A. So ...

13 Q. Missouri kind of has the nickname of the "show me

14 state", right?

15 A. Yeah.

16 Q. Did you live there long enough to adopt that

17 yourself, that motto?

18 A. I don't think so.

19 Q. Well, in this case, you are going to have to, if

20 you're a juror. You are going to have to adopt

21 that motto that the State has to show you.

22 A. Okay. I understand what you are saying.

23 Q. Okay.

24 A. They have the -- They -- The burden is upon them

25 to present the evidence is what you are saying.

1 Q. Right. Now, as long as we're talking about that,  
2 the defense may or may not present any evidence.  
3 You know, in any criminal trial, we could just  
4 sit here and do nothing and let them fail to  
5 convince you, beyond a reasonable doubt. We're  
6 not going to do that here. I will let you know;  
7 we're not going to just sit here. We will  
8 cross-examine their witnesses and we'll probably  
9 put on some of our own.

10 A. Okay.

11 Q. Maybe, maybe not.

12 A. Mm-hmm.

13 Q. But if we do that, if we do put on any witnesses  
14 and do put on a defense, are you going to say to  
15 us, show me that Mr. Avery is innocent?

16 A. No, that's -- Yeah, I can see where you are  
17 going, that can be -- I can see where that could  
18 be a tough distinction to draw.

19 Q. It is. It is kind of unnatural for jurors  
20 because --

21 A. Right.

22 Q. And sometimes, you know, they teach defense  
23 attorneys, sometimes the best defense is to put  
24 on no defense, because it forces the jury to look  
25 at the State's evidence and the State's evidence

1           only. And if they --

2 A. Mm-hmm.

3 Q. -- are unable to convince you, then that's it,  
4       you don't do any weighing. Now, on the other  
5       hand, when the defendant puts on any evidence,  
6       the natural tendency is, you kind of weigh one  
7       side against the other.

8 A. Right.

9 Q. And you say, well, which one is more believable,  
10      or which one is more credible and that tends to  
11      get jurors away from their real function which is  
12      to first decide, has the State convinced me,  
13      beyond a reasonable doubt. That's what you would  
14      have to do here. And it's really, I think, kind  
15      of an unnatural way of doing things and probably  
16      for a scientist it's very unnatural. But do you  
17      think you could do that?

18 A. I believe so.

19 Q. Along those lines -- might as well deal with this  
20      right now --

21 A. Uh-huh.

22 Q. -- is the question of whether or not a defendant  
23      testifies at a trial. And for some of the same  
24      reasons attorneys -- defense attorneys may advise  
25      their clients not to take the stand, because they

1           are concerned maybe that the jurors are going to  
2           start thinking, well, has he convinced me that  
3           he's innocent.

4                         And that's a real risk. And so  
5                         sometimes, that's one reason maybe defense  
6                         attorneys say, don't put the client on. There's  
7                         other reasons, the concern that if a defendant  
8                         does testify that jurors may not listen to what  
9                         he says, they may not believe him or her because  
10                        after all, they are the defendant.

11          A. Mm-hmm.

12          Q. They got everything -- They have got reasons and  
13                 motives to lie, right? Can you understand that  
14                 concern?

15          A. Yes, I can, yup.

16          Q. But if you're selected for this jury, the Judge  
17                 will, I'm sure, instruct you that if the  
18                 defendant testifies, you have to take his  
19                 testimony just like any other witness. You have  
20                 to weigh his testimony the same way as anybody  
21                 else. You can't just discount his testimony  
22                 by -- because of his status as a defendant. Can  
23                 you do that?

24          A. Yes.

25          Q. And on the other hand, if he -- if he does not

1           testify, the Judge will also instruct you that  
2           you cannot consider that in any way. You can't  
3           speculate on why he didn't testify. You can't  
4           hold it against him. You can't think he must  
5           have had something to hide, or whatever. You  
6           really have to put that completely out of your  
7           mind.

8       A. I understand.

9       Q. Will that be hard for you to do? I mean, are you  
10          the kind of person that likes to hear both sides?

11      A. Well, generally, I think I am the kind of person  
12          that likes to hear both sides.

13      Q. I think most people are.

14      A. So ... Yup.

15      Q. So, again, it's kind of an unnatural thing that  
16          we ask jurors to do.

17      A. Right.

18      Q. But it's based on hundreds of years of law and  
19          practice. And there are very, very good reasons  
20          for it. And if you are selected for the jury,  
21          you have to promise -- you have to promise the  
22          Court and the attorneys and everybody that you  
23          really will follow that instruction; do you think  
24          you can?

25      A. Yes.

1 Q. Okay.

2 A. I think I can. It's a -- Yup.

3 Q. It's something you really have to just keep in

4 your mind and, you know, whenever those other

5 thoughts come in, you have got to say, wait a

6 minute, I have to -- I'm not supposed to do that.

7 Okay?

8 A. Right.

9 Q. Now, as a scientist, I mean, you are familiar

10 with the scientific method, right?

11 A. Yes.

12 Q. Which is, among other things, involves testing,

13 replicating those tests, having a peer review of

14 those tests?

15 A. Yup.

16 Q. And that until somebody is able to do that, just

17 because someone may -- Well, strike that. Let me

18 ask it this way. Have you ever heard of junk

19 science?

20 A. Oh, yeah.

21 Q. Do you think there is a lot of that out there?

22 A. There is.

23 Q. What is -- In your mind, what is that?

24 A. Well, people posit theories and -- and they --

25 they may, you know, back it up with evidence, but

1           they really haven't tested it and it's not  
2           repeatable. And, typically, when they do that,  
3           the facts, or supposed facts, sometimes they are  
4           facts and true, but you don't see the whole  
5           picture.

6                         So they are telling you facts and  
7                         framing them in a way that supports a theory.  
8                         And they are not showing you other things that  
9                         aren't consistent with that.

10          Q.        Okay. And -- So when -- when a -- sometimes  
11                 actual scientists with degrees come forward and  
12                 have those opinions and express those --

13          A.        Correct.

14          Q.        -- opinions. And -- But you, as a scientist, can  
15                 recognize that they are not always true?

16          A.        Yes.

17          Q.        They are theories. They may be true, but until  
18                 they have been replicated and studied by others  
19                 and reported on, they may not be, right?

20          A.        Mm-hmm.

21          Q.        You have to say yes or no for the court reporter.

22          A.        Yes.

23          Q.        Okay. Now, forensic science is a little bit in a  
24                 world of its own when it comes to that. And I  
25                 wonder how much knowledge you have about forensic

1 science and how much has been tested and  
2 replicated and how much is not. Do you have any  
3 knowledge about that?

4 A. Very little.

5 Q. Okay.

6 A. I don't think I have much knowledge of that.

7 Q. Okay. Well, in this case, you may or may not  
8 hear some challenges to the basis of opinions  
9 that are presented. That is, not -- not  
10 necessarily the underlying science, but maybe the  
11 -- the interpretations, the conclusions that you  
12 can draw from things. Okay? Is that something  
13 you would be able to listen to and discriminate  
14 and consider?

15 A. I believe so.

16 Q. If -- So if an expert testifies here in this  
17 trial and expresses an opinion, because that  
18 person is an expert or scientist at some level,  
19 are you going to just accept it more than you  
20 would any other opinion?

21 A. Not necessarily. Even in junk science, in the  
22 press, there's experts with sometimes widely  
23 differing opinions, even in real science for that  
24 matter.

25 Q. Okay. And even in -- in forensic science, crime

1           labs, have you heard of problems where crime labs  
2           have been shown not to be reliable results -- or  
3           not to have reliable results?

4       A. I haven't heard of that, but I can imagine that  
5           happening.

6       Q. Have you heard even the FBI lab was examined in a  
7           number of instances because of problems that they  
8           were having with reliability with their results?  
9           Had you heard that?

10      A. I hadn't heard that.

11      Q. You hadn't, okay. You mentioned that DNA, you  
12           believe DNA is -- is reliable, right?

13      A. Yeah, generally. Yup.

14      Q. Is it infallible?

15      A. No, it is not infallible.

16      Q. Okay. And more importantly, do you look beyond  
17           just the result, or will you look beyond just the  
18           result to find out how the result was obtained in  
19           the scientific process?

20      A. Yeah. That's what you -- Yes.

21      Q. Okay. And you have probably heard garbage in  
22           garbage out?

23      A. Yes.

24      Q. And you are familiar with that?

25      A. Yup.

1 Q. And so, for instance, if evidence is not  
2 collected properly and it's contaminated right  
3 then and there --

4 A. Mm-hmm.

5 Q. -- no matter what the result is later, it's  
6 garbage in, it's going to be garbage out?

7 A. Yeah. Typically, yeah, that's the way it is.

8 Q. Okay.

9 A. So ...

10 Q. Do you follow protocols in your ...

11 A. Yes, I do.

12 Q. Okay.

13 A. In my place of employment --

14 Q. Yes.

15 A. -- I think you're ...

16 Q. Yes.

17 A. Yes.

18 Q. Scientific protocols that are set out for testing  
19 or whatever?

20 A. Yeah, I think it would be fair to call them  
21 scientific, yeah.

22 Q. Okay.

23 A. You could look at it that way.

24 Q. Well, are you familiar -- I mean, in general,  
25 with laboratory or scientific tests, certain

1           protocols are followed, are designed to, you  
2           know, through the process.

3       A. Yes.

4       Q. Yes. Okay. And if someone doesn't follow that  
5           protocol, deviates from that protocol; is that  
6           something you would consider in terms of whether  
7           to accept the reliability of the results?

8       A. It is a reason to question the reliability of the  
9           results, yes.

10      Q. Okay. Do you ever watch CSI shows, those kinds  
11           of things?

12      A. No.

13      Q. Cold Case, or any of those?

14      A. Uh-uh. I have seen -- I don't know if I have  
15           even seen a whole episode, but I have seen them  
16           on -- seen them on television. I don't even know  
17           if I have sat through a whole episode, but ...

18      Q. Okay. All right. Let me switch here for a  
19           minute, topics entirely, and go back to something  
20           that Mr. Kratz asked you. Your contact with Lori  
21           Dassey, sounds like you haven't really talked  
22           personally with her about her marriage or her  
23           relationship with Mr. Avery?

24      A. No, I haven't.

25      Q. Have you heard talk around the plant or, you

1 know, of other people maybe who have?

2 A. Yes, I have.

3 Q. And have you heard any negative things about that  
4 relationship or about Mr. Avery?

5 A. Yes, I have.

6 Q. Could you please tell us what kinds of things you  
7 have heard.

8 A. Well, I heard that she was divorced from him  
9 because -- well, the words I heard were to the  
10 effect that he wasn't a very nice individual.  
11 That's what I remember hearing.

12 Q. Do you remember any details about what  
13 allegations perhaps were made?

14 A. Yeah, actually there was -- recently I was  
15 walking by a cubicle at my office and they were  
16 chatting about the case. There's a number of  
17 people who were up for jury duty where I work, or  
18 potential jurors.

19 Q. Yeah, we have noticed that, seems to be a  
20 productive pool, but go ahead.

21 A. Anyway, but -- but one thing I did overhear was  
22 that he had sent some kind of threats or  
23 something when he was incarcerated or something  
24 to that affect.

25 Q. Were those other people who were -- who had also

1           gotten, you know, a summons like you and were  
2           going to be in the pool?

3       A. No, they weren't. As far as I know, they weren't  
4           people who had gotten summons.

5       Q. You -- You know people who have gone through  
6           messy divorces?

7       A. Yeah.

8       Q. Do you know sometimes a lot of negative,  
9           bitter --

10      A. Yeah.

11      Q. -- talk goes on?

12      A. Yeah.

13      Q. And can you imagine that someone who is wrongly  
14           convicted and imprisoned and then also taken away  
15           from his wife and kids and has his visitation cut  
16           off might have some pretty strong feelings?

17      A. I can.

18      Q. Might even say some pretty nasty things.

19      A. Yeah, I can understand that.

20      Q. Would you be able to put -- put -- set aside any  
21           of those -- any information you may have heard  
22           outside of court about whatever bitterness or,  
23           you know, nasty things there might have been in  
24           that relationship?

25      A. Yes.

1 Q. And not let it influence your verdict at all  
2 here?

3 A. Yes.

4 Q. Okay. And did anybody at the place where you  
5 work, do they know that you were also one of the  
6 ones who had gotten the summons?

7 A. Yes.

8 Q. And did anybody come up to you and talk to you  
9 about it or ask you any questions?

10 A. Yeah, they have -- they have -- they have asked  
11 me questions and mostly with regard to where they  
12 are at in the jury selection process. Mostly  
13 about that.

14 Q. Has anybody tried to talk to you about the case  
15 or the facts?

16 A. Um, yeah, people have kind of ribbed me about it.  
17 And I walked away a few times when I felt like it  
18 was getting -- you know, things were being said  
19 that I shouldn't hear.

20 Q. Sure.

21 A. Because I'm --

22 Q. When --

23 A. A potential juror.

24 Q. -- you say ribbed you, that's kind of like ...

25 A. Rib. Ribbed.

1 Q. Okay.

2 A. Like prod me, joke around kind of.

3 Q. What kind of things were they saying?

4 A. Well, some people would, you know, joke around

5 and say I'm going to let him off. Other people

6 would say go in there and tell them you're going

7 to hang him and you will get off the jury pool

8 and things like this, so ...

9 Q. So, you're getting some advice on how to get out

10 of this --

11 A. Ha, ha, ha, yeah.

12 Q. -- responsibility. Did any -- Did you take any

13 of that to heart?

14 A. No.

15 Q. Any concerns that no matter which way your

16 verdict is that maybe when you come back that you

17 might be -- you might get more ribbing or

18 something more serious, that people will be angry

19 at you if you voted one way as opposed to

20 another?

21 A. Well, that's crossed my mind. It's crossed my

22 mind. I haven't been terribly concerned about it

23 but, you know, I mean, it's a potential

24 ramification for a juror.

25 Q. Sure, in a high publicity case like this

1           especially, right?

2 A. Right.

3 Q. And do you think that you would be more likely to  
4       get those kinds of comments if you returned a not  
5       guilty verdict, than if you returned a guilty  
6       verdict?

7 A. I think if I return a not guilty verdict, I may  
8       be more likely to get those comments; that's my  
9       opinion.

10 Q. And how does that make you feel, then, in terms  
11      of whether you can really be a fair and honest  
12      jury -- juror in this case?

13 A. Well, I believe I can be an honest juror in this  
14      case. If I return a not guilty verdict and get  
15      flak, then, I'd probably get kind of upset. But,  
16      I mean, I -- I don't think it will influence my  
17      decision.

18 Q. Can you ensure us, not just that you don't think;  
19      can you say, I promise it's not going to  
20      influence?

21 A. Yes, I can. I promise.

22 Q. Okay.

23 A. It won't influence my decision.

24 Q. Because you will have to live with it one way or  
25      the other, they won't.

1 A. That's correct.

2 Q. Okay. You also mentioned some knowledge about

3 Mr. Avery's wrongful conviction. I think you

4 used the word, apparently he was wrongly

5 convicted; was there any doubt in your mind that

6 he was --

7 A. Well, based on what was said in the press, it's

8 pretty obvious he was wrongfully convicted.

9 Q. Right.

10 A. And that based on DNA evidence.

11 Q. Right.

12 A. I mean, that's the big thing there.

13 Q. And that it also matched someone else who was

14 actually a suspect all along?

15 A. Oh, I hadn't heard that part of it.

16 Q. You hadn't heard that part of it?

17 A. No.

18 Q. Okay.

19 A. But that's good that that -- anyway --

20 Q. Okay.

21 A. -- whatever. It's immaterial, I guess, in this

22 case, but ...

23 Q. It's immaterial unless there's some harboring --

24 unless you harbored some doubts like maybe he

25 somehow --

1 A. Okay.

2 Q. -- got off on a technicality or something like  
3 that. If you had any doubts like that, then I  
4 would like to know that.

5 A. Well, in my mind if the DNA evidence didn't match  
6 Mr. Avery, then it's pretty certain that he  
7 wasn't the perpetrator of the crime, so ...

8 Q. Okay.

9 THE COURT: Mr. Buting, you are going to  
10 have to wrap it up.

11 Q. Well, I -- I really appreciate your candor, sir,  
12 but there is something that is a little bit  
13 concerning and that's mainly that you -- what you  
14 wrote in your questionnaire, that at this time I  
15 believe he's guilty, but I don't know this beyond  
16 a reasonable doubt; is that still the way you  
17 feel?

18 A. Yes.

19 Q. You see, if you're selected as a juror here,  
20 you've got to -- you've got to change that  
21 opinion. You can't have that opinion because you  
22 have to presume that he is innocent --

23 A. Correct.

24 Q. -- right now?

25 A. I understand that.

1 Q. And that's different than saying I think he's  
2 guilty, but I'm just not at a reasonable doubt  
3 yet. You can't start off that way?

4 A. I understand, presumed innocent.

5 Q. And do you really think -- And, you know, I  
6 really appreciate your honesty and the Court and  
7 counsel does too. Do you really think that you  
8 can put aside those feelings, because it's hard  
9 for anybody to, and really give Mr. Avery the  
10 benefit of the presumption of innocence, if you  
11 are selected as a juror?

12 A. Yes.

13 THE COURT: All right. Mr. Pederson, at  
14 this time I'm going to have the Clerk escort you  
15 from the courtroom.

16 MR. PEDERSON: Okay. Thank you.

17 (Wherein the juror was excused.)

18 THE COURT: Are there any motions from  
19 either party?

20 ATTORNEY KRATZ: Not from the State, your  
21 Honor.

22 ATTORNEY BUTING: No motion, your Honor.

23 THE COURT: Okay. All right. Mr. Pederson  
24 will be in the jury panel. Next is Mr. Dao.

25 Please raise your right hand, Mr. Dao.

1 (Juror sworn.)

2 THE CLERK: Please be seated.

3 THE COURT: Mr. Dao, you are welcome to  
4 keep your jacket on if you wish, but if you want to  
5 take it off, you can as well.

6 Mr. Dao, you have already completed a  
7 written questionnaire in this case. Today we're  
8 moving on to the next phase of jury selection  
9 which is the voir dire process.

10 Each of the attorneys will have an  
11 opportunity to ask you some questions, most of  
12 them will probably be follow-ups to information  
13 that you gave on your written questionnaire.

14 Before we get to that point, I want you  
15 to be aware of a few things. First of all, the  
16 jury in this case will not be sequestered during  
17 the trial. That means that at the end of the  
18 trial proceedings each day, the jurors will be  
19 permitted to return home for the evening and then  
20 report back the next day for jury service.

21 The Court will continue the prohibition  
22 on learning anything about the case through the  
23 news media. That means that jurors cannot listen  
24 to reports on the radio, read things in the  
25 newspaper, watch television, check the internet,

1           or do anything like that to get information about  
2           the case during the trial. And the jurors are  
3           also not allowed to talk about the case with my  
4           one, including other jurors or members of their  
5           families.

6           The proceedings today are open to the  
7           public, but we do not allow cameras in the  
8           courtroom during voir dire, so the news media is  
9           not here to film you. In addition, members of  
10          the media cannot use your name in their reports  
11          of the proceedings in this case. And, finally,  
12          if you are selected as a juror, the cameras in  
13          the courtroom at that time will not be permitted  
14          to show the faces of the jurors.

15          If you are retained as a juror after the  
16          questioning today, you will be given a telephone  
17          call in the next day or two to let you know when  
18          to report back to court.

19           Will it be Mr. Kratz or Mr. Fallon? Mr.  
20          Fallon, you may proceed.

21           **VOIR DIRE EXAMINATION**

22          BY ATTORNEY FALLON:

23          Q.     Good afternoon, sir. How are you?

24          A.     Good afternoon.

25          Q.     Could do you pronounce your name for us?

1 A. Hoang.

2 Q. And you're -- Very good. Mr. Hoang?

3 A. Yes.

4 Q. Very good. My name is Tom Fallon. I'm an  
5 Assistant Attorney General. I work for the State  
6 of Wisconsin in Madison. And I'm one of  
7 prosecutors, that's one of the persons attempting  
8 to prove this gentleman's guilt, Mr. Avery.

9 Working with me, right to my left, is  
10 Mr. Kratz. He's the District Attorney in the  
11 nearby county, Calumet County. And he is also  
12 the lead special prosecutor in this matter. So,  
13 again, good afternoon and welcome.

14 This is part of our jury selection  
15 process and the attorneys, myself and Mr. Kratz  
16 and Mr. Strang and Mr. Buting have a few  
17 questions to follow up on some of the information  
18 you provided in the questionnaire.

19 I guess I would like to begin with your  
20 questionnaire and ask you a question about your  
21 comfort in participating in the process, since I  
22 guess English is not your first language,  
23 correct?

24 A. Correct.

25 Q. All right. Let me just first say that I -- I --

1           I thought your responses to the questions were --  
2           were accurate. They made sense, so. We -- I  
3           just wanted to explore your answer as to how  
4           comfortable you are with English. All right?  
5 A.        Okay.  
6 Q.        How long have you been in our country?  
7 A.        Um, in May will be 13.  
8 Q.        13 years?  
9 A.        Wait, hold on. Let me think, let's see. I came  
10          in U.S. May 22, 1992, so, actually, going on 15  
11          years.  
12 Q.        Fifteen years. All right. So you would have  
13          been about 10 years old at the time.  
14 A.        Yes.  
15 Q.        All right. So your education has been here in  
16          America?  
17 A.        Yes.  
18 Q.        All right. And how long have you been speaking  
19          English pretty comfortably?  
20 A.        I would say starting, probably, junior high --  
21 Q.        All right.  
22 A.        -- and high school years.  
23 Q.        And how far, again, did you go in school, sir?  
24 A.        I went to LTC for a year I was going to finish  
25          it, but I guess work kind of interfered with my

1 education, so I kind of stop awhile.

2 Q. All right. So you take a little break from  
3 education to make some money to work?

4 A. Yeah.

5 Q. All right. What were you studying at Lake (sic)?

6 A. I study accounting.

7 Q. Anything else in particular that struck you as  
8 interesting?

9 A. Mostically (phonetic) just business, computer,  
10 technology, things like that.

11 Q. Very good. Were you doing good in school?

12 A. I would say somewhat.

13 Q. Very good. Now, at any point in the proceedings  
14 this afternoon, if I ask a question, or the  
15 Judge, or either of Mr. Strang or Mr. Buting, if  
16 whoever asks a question and you are not real sure  
17 what we're asking, you know, please, tell us, you  
18 know.

19 A. Okay.

20 Q. And believe me, it's more likely going to be our  
21 fault than yours, the way the question is asked,  
22 it could be just us lawyers goofing it up, so  
23 bear with us. All right?

24 A. Okay.

25 Q. Okay. One of the important questions that we

1           wanted to ask you about is, this case has  
2           received a great deal of publicity. Lots of news  
3           coverage about it. And we just wanted to ask you  
4           a few questions about what you may have seen on  
5           the television, or heard on the radio, or read in  
6           the newspaper. All right?

7       A. (No verbal answer.)

8       Q. I see you don't spend a lot of time watching the  
9           news on television; is that...

10      A. No.

11      Q. All right. And would it be fair to say that you  
12           get most of your information from the newspaper?

13      A. I would say somewhat --

14      Q. All right.

15      A. -- newspaper.

16      Q. Okay. And where else do you get, you know, some  
17           news as to what's going on?

18      A. Sometime I run into, like, article on internet --

19      Q. All right.

20      A. -- if I got free time to search the web.

21      Q. Okay. So you do use -- you have a computer at  
22           home?

23      A. No, I use the computer at work --

24      Q. All right.

25      A. -- or else library sometime.

1 Q. Okay. And what are some of the things that you  
2 like to read up on, using the computer?

3 A. Honestly, anything, I guess.

4 Q. All right. Well, it could be sports; it might be  
5 something about accounting or bookkeeping; it  
6 might be news; world events; maybe what's going  
7 on back in your home country; any of those  
8 things?

9 A. I read, somewhat, sports, little bit news.

10 Q. Okay.

11 A. On how the world is going.

12 Q. Okay. Do you remember reading, for instance,  
13 we'll start with the internet. Do you remember  
14 reading anything about this case on the internet?

15 A. No, I haven't.

16 Q. All right. Have you seen anything on the  
17 television at all about this case?

18 A. No.

19 Q. No, not any of the newscasts or anything?

20 A. Starting last week, we came here to do the  
21 questionnaires. I did later, I went by my  
22 girlfriend's workplace. And I accidentally saw,  
23 like, you know, a title of article there, but I  
24 didn't actually read it.

25 Q. Okay.

1 A. So other than that I have no idea.

2 Q. Okay. So you are not really familiar with any of  
3 the facts about this case?

4 A. No.

5 Q. Okay. All right. Good. There's one other  
6 question that I wanted to just touch base with  
7 you on and that was toward the end of the  
8 questionnaire. And then I will finish up with  
9 some general principles of how our system works  
10 to make sure that you understand those.

11                   But one of the things that you did say  
12 in the back of your questionnaire, in response to  
13 the question, do you hold any religious or  
14 philosophical beliefs that forbid you from  
15 rendering judgment or, you know, basically  
16 determining guilt or innocence; determining  
17 whether somebody actually committed a crime or  
18 not.

19                   And you answered yes. And I was  
20 wondering if you could explain a little bit  
21 further your Buddhism and how that may impact  
22 your ability to be a juror for us.

23 A. Well, in my family, we have very strong belief in  
24 Buddhism.

25 Q. Okay.

1 A. And part of that is, like, we not supposed to  
2 judge other people, or any objects, or person.

3 Q. Okay.

4 A. Also, it's always believe that if somebody done  
5 something, we give them another chance to make it  
6 right.

7 Q. Mm-hmm. Okay. Well, let me ask about that  
8 judgment. Now, is that a judgment in the sense  
9 of a spiritual judgment, or -- or does it also  
10 include trying to decide whether something  
11 happened or not, or whether somebody did  
12 something or did not do something? Can you tell  
13 me a little bit more about the judgment which is  
14 contemplated in that Buddhist tenet.

15 A. From what I known and learned, mostly from  
16 what we seen and what is appearing, somewhat  
17 spiritual, but mostly, just, don't judge  
18 anybody and until, you know, knowed all the  
19 facts.

20 Q. Okay.

21 A. But majority of it, just -- just that we don't  
22 judge anybody, no either they did something right  
23 or wrong.

24 Q. Okay. Well, one of the purposes for a trial like  
25 this in the United States is to try to determine

1           whether somebody actually committed a crime, did  
2           something wrong. And that determination is  
3           usually left to 12 people like yourself; 12  
4           citizens who sit in the jury box and they listen  
5           to all the evidence, as much facts as the  
6           lawyers, that's lawyers here and at that table,  
7           choose to present to the jurors. And they put  
8           all that information in there and then the jury  
9           decides whether the person committed the crime or  
10          not?

11         A. Okay.

12         Q. Do you understand that?

13         A. Yes.

14         Q. Okay. Now, given that process, is this something  
15          that you could do with your religious belief, or  
16          do you think your Buddhism would say, you know,  
17          that's not something we should do?

18         A. Honestly, from my point of view, I would think  
19          it's more like probably not be able to do it.

20         Q. You don't think you would be able to do it?

21         A. No.

22                           ATTORNEY FALLON: Okay. I'm going to stop  
23                           there.

24                           THE COURT: Any questions from the defense?

25                           ATTORNEY STRANG: I do.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY STRANG:

Q. I'm sorry. Mr. Hoang, my name is Dean Strang and this is Jerome Buting and Steven Avery. We're the defense. And let me just pick up where Mr. Fallon left off with you, if that's all right.

In your country, here in your country,  
jurors are finders of facts. The Judge is the  
finder of law, jurors are finders of facts, I  
think you will learn. And 12 people in the end  
will determine here what the facts are, at least  
whether the State has proven, beyond a reasonable  
doubt, the facts as it alleges. Is the process  
of deciding facts something that you do in your  
everyday life?

17 A. I will say, yes.

18 Q. I mean, in some sense, I suppose we all have to  
19 decide facts, is the price on a gallon of orange  
20 juice at Pick and Save lower than the price on  
21 the orange juice at Copps, or something. But, of  
22 course, the facts here are more serious than  
23 that, but in the end, that's what you will be  
24 asked to do, is to find facts and to apply a  
25 burden of proof. And you understand that in your

1           country here, the burden of proof, to prove the  
2           accused person guilty, beyond a reasonable doubt,  
3           lies with the State, not with the defense?

4       A. I'm sorry.

5       Q. Sure, let me try it again. Mr. Avery is charged  
6           with some crimes?

7       A. Okay.

8       Q. Right. Here, in America, in the country you and  
9           I share, the government has the burden of proving  
10          its accusations, beyond a reasonable doubt. They  
11          have to prove him guilty under the facts and the  
12          law. He does not have to prove himself innocent.  
13          Is that something you understand and can accept?

14      A. Yes.

15      Q. If the Judge instructs you that the State has the  
16          burden to prove guilt, beyond a reasonable doubt,  
17          could you follow that instruction?

18      A. Yes.

19      Q. If the Court instructs you that, here in your  
20          country, a person accused of a crime is presumed  
21          to be innocent, unless and until the State can  
22          prove him guilty, beyond a reasonable doubt;  
23          could you follow that instruction?

24      A. Yes.

25      Q. In collaboration with 11 other jurors, if you

1           serve on this jury, do you think you can try to  
2           reach a consensus about the facts and whether the  
3           accusations here are proven, beyond a reasonable  
4           doubt, or not?

5 A. I think I can.

6 Q. Can you follow the Judge's instruction on the law  
7           of the United States of America and the State of  
8           Wisconsin in doing that?

9 A. Yes.

10 Q. As he sits here now, do you have any opinion at  
11           all about whether Mr. Avery is guilty or not  
12           guilty of the charges he faces? Can you hold on  
13           to that neutrality, that evenness, not having an  
14           opinion one way or the other, until you have  
15           heard all of the evidence in this case and have a  
16           chance to decide the facts?

17 A. I think I can.

18 Q. Would you listen to any witnesses the State  
19           called and give their testimony your fair and  
20           honest attention?

21 A. Yes.

22 Q. And when one of the two defense lawyers asks  
23           questions of those witnesses on  
24           cross-examination, will you also listen to that  
25           testimony and give it your fair and honest

1 consideration?

2 A. Yes.

3 Q. If we decide to present witnesses, and we don't  
4 have to do that, but if we did decide to present  
5 witnesses, would you listen to our witnesses and  
6 give them the same fair and honest consideration  
7 that you would give the State's witnesses?

8 A. Yes.

9 Q. Including when the prosecutors are asking  
10 questions of our witnesses?

11 A. Yes.

12 Q. If Mr. Avery decides to testify, could you  
13 consider him in the same way you would consider  
14 every other witness in deciding the facts?

15 A. Yes.

16 Q. What if he decides not to testify, knowing that  
17 he does not have to prove himself innocent and he  
18 simply, with our advice, decides not to testify;  
19 could you follow the Court's instruction that you  
20 may not consider that as a mark against  
21 Mr. Avery, or as any evidence of his guilt,  
22 indeed, you may not consider that at all in  
23 deciding the facts or whether the State has  
24 proven guilt, beyond a reasonable doubt?

25 A. I guess I can do that.

1 Q. If this was asked, I apologize, and just stop me,  
2 because I missed it if it was asked. But if you  
3 had the privilege and the duty of serving on this  
4 jury, which could go six weeks or something like  
5 that, would it cause you or your family any  
6 financial hardship so extreme that the Court  
7 ought to consider that?

8 A. Honestly, at this time, yes, it would be.

9 Q. And tell me a little bit about that Mr. Hoang, if  
10 you would?

11 A. Well, as of a year ago, I did had problem with  
12 credit cards, so I filed bankruptcy and that.  
13 And I still be able to keep my car and my truck  
14 and continue payments on that. And plus, right  
15 now, I been working at this one company for a  
16 year.

17 Q. Yes.

18 A. Mostly all my earning incomes go toward the cars,  
19 the insurance, somewhat toward the food and  
20 rents. Right now I stay with my girlfriends.

21 Q. Mm-hmm.

22 A. And in household, she got three kids, so mostly  
23 we're trying to help each other out.

24 Q. Right. And you work at Great Lakes Technical?

25 A. Technology.

1 Q. Technology. Do you know whether they will  
2 continue to pay your salary if you are on jury  
3 duty or not?

4 A. I did speak to the human resource about couple  
5 days ago and notified them that I might be  
6 selected for this. And according to the handbook  
7 is only saying that it will pay up to eight hours  
8 a day, or the max is 10 days. So that's why I  
9 ask them, what happen if this trial take, you  
10 know, six weeks or more. And I didn't hear any  
11 answer back yet, according to that.

12 Q. Okay. They are checking on that or do you expect  
13 an answer back on that?

14 A. Yeah, I expect an answer back from that.

15 Q. But you don't have it yet?

16 A. No.

17 Q. Okay. And it looks like you don't have a second  
18 part-time job?

19 A. No.

20 Q. Okay.

21 ATTORNEY STRANG: Just one moment, if I  
22 may, Mr. Hoang and your Honor.

23 Q. (By Attorney Strang)~ Do you have any way of  
24 knowing when you may have an answer from your  
25 employer on whether they would continue to pay

1                   your -- your salary, beyond 10 days?

2       A. Honestly, I don't know, because the headquarters  
3                   in Plymouth, that's where everything is down  
4                   there. And here -- We have HR here, but  
5                   everything that I go to her, she have to confirm  
6                   with the owners down there.

7       Q. Okay. So, you don't know when --

8       A. So, honestly I don't know when.

9       Q. -- you'll have an answer. Okay. I think -- I  
10                  think those are all the questions I have. Thank  
11                  you.

12      A. Okay.

13                  THE COURT: I have got a couple.

14                  **VOIR DIRE EXAMINATION**

15      BY THE COURT:

16      Q. I want to refer back to your answers about how  
17                  your religion might affect your ability to serve  
18                  as a juror in this case.

19      A. Okay.

20      Q. If you are selected for the jury, you and the  
21                  other 11 jurors will have to determine whether  
22                  the State has proven, by facts beyond a  
23                  reasonable doubt, that the defendant is guilty of  
24                  this charge. And if the jury finds the State has  
25                  met its burden, then they are instructed to find

1           the defendant guilty. But if the jurors find  
2           that the State has not met the burden, then they  
3           find the defendant not guilty. Will your  
4           religious beliefs affect your ability to make  
5           that decision?

6       A. I would say no.

7       Q. That they won't affect it?

8       A. From what I learned, you know, we not supposed to  
9           do it, but since I have been here long enough and  
10          I did kind of understand somewhat the law, so I  
11          would say I can put somewhat aside and make that  
12          decision myself.

13                   THE COURT: Okay. I just -- The legal  
14          system doesn't make people give up their religious  
15          beliefs in order to be jurors.

16       A. Okay.

17       Q. That's what I want to make sure of. I don't want  
18           to be -- I want to make sure that the legal  
19          system isn't putting pressure on you to do  
20          something that you don't want to do. We -- The  
21          legal system wants to honor your conscience and  
22          let you exercise it as you wish.

23                   Do you feel that in some way you would  
24          have to sacrifice your beliefs, or do you just  
25          feel comfortable that you could -- you could

serve as a juror and it wouldn't force you to compromise your religious beliefs in any way?

A. Honestly, right now, I would say half and half.

Q. I can only ask you to give an honest answer. If that's the most honest answer you have, I will accept that answer. That's the way you feel?

A. Honestly, I don't think I should be able to do it due to what I somewhat have very strong belief in.

10 THE COURT: Okay. All right. Thank you.

11 The Clerk will escort you from the courtroom at this  
12 time.

(Wherein the juror was excused.)

14 THE COURT: Is there a motion from either  
15 party?

16 ATTORNEY FALLON: I think, reluctantly,  
17 otherwise, I think the juror is suitable, although  
18 the economic hardship issue developed by Mr. Strang  
19 at the end is also a consideration. But there's  
20 something about his approach that suggests to me he  
21 really wants to participate in that process since  
22 he's now in this country and wants to be part of the  
23 system.

24                   But I guess I was not entirely convinced  
25                   that he is comfortable with that, given his

1           religious upbringing. And I think we ought to  
2           honor that. And even if he has some doubt and is  
3           half and half, I just don't think we should put  
4           him in that situation.

5                         THE COURT: Mr. Strang.

6                         ATTORNEY STRANG: This is a very, very  
7                         tough call. The Court's questions were appropriate.  
8                         And I understand the possible financial hardship  
9                         issue. And I understand the conscience issue. And  
10                  where civic duty collides with conscience, as people  
11                  express that through obligations to family, or  
12                  obligations to faith, it gets very tough.

13                  And what I -- what I really would like  
14                  to do here and propose, is that the Court give  
15                  him an instruction that we want to hear, by  
16                  tomorrow night or by Friday morning, what the  
17                  employer's position is, if he's heard, he can't  
18                  force it, but if he's heard, on the wage  
19                  replacement issue.

20                  If he has no assurance that he will be  
21                  paid beyond 10 days, or he's been told he won't  
22                  be, then I equally, reluctantly, would join the  
23                  motion and acknowledge he has to be struck for  
24                  cause. If the wage issue goes away, the hardship  
25                  issue goes away, I think it's worth asking him

1           there whether that affects the half and half  
2           answer he gave on this conflict between duty and  
3           privilege as a naturalized citizen of this  
4           country to participate in the institutions of his  
5           new country and honoring his faith. And so, in a  
6           sense, I'm asking the Court to hold the motion in  
7           abeyance; I may have to join it in the end.

8           THE COURT: I agree that if the only  
9           outstanding issue were the financial issue I would  
10          be inclined to consider the defense recommendation  
11          here. But my primary concern and this is another  
12          one of those misdemeanor cases, when Mr. Fallon  
13          finished his questions the -- I got the impression  
14          that the juror just felt uncomfortable and following  
15          up what he wrote in his written questionnaire did  
16          not feel he would be able to serve in this case.

17          When Mr. Strang asked a number of  
18          questions specifically related to the duty of a  
19          juror, he was giving answers that indicated he  
20          could serve. And because of that ambiguity, I  
21          asked him a few follow-up questions which I tried  
22          to tailor as specifically I could to recognize  
23          the balance between a juror who's interested in  
24          serving with getting the opportunity to do so and  
25          yet not asking a juror to sacrifice his religious

1 beliefs in order to be a juror.

2 I believe that the juror understood the  
3 nature of the questions and my observation of his  
4 demeanor suggested that he held, I guess, a  
5 wrestling match in his own conscience with  
6 whether or not he felt he could reconcile his  
7 religious beliefs with the duties that would be  
8 imposed upon a juror. And based on the last  
9 answers that he gave, I felt that he genuinely  
10 felt that his service as a juror would compromise  
11 his religious beliefs.

12 He indicated he holds those near and  
13 dear to him. And that serving as a juror could  
14 well compromise those beliefs. And I think while  
15 we ask a lot of jurors in terms of time, in terms  
16 of attention and in terms of sacrifice, one thing  
17 we don't ask them to do is give up religious  
18 beliefs to serve as a juror. And for that  
19 reason, I'm going to excuse this juror.

20 THE COURT: The next juror is Mr. Lafond.

21 All right. Mr. Lafond, please raise  
22 your right hand and the clerk will administer the  
23 oath.

24 (Juror sworn.)

25 THE CLERK: Please be seated.

1                   THE COURT: Mr. Lafond, you have already  
2 completed a written jury questionnaire in this case.  
3 Today we're moving on to the next phase of jury  
4 selection which is the voir dire process.

5                   In a few minutes the attorneys will have  
6 an opportunity to ask you some questions that  
7 relate to your qualifications as a juror. Many  
8 of them will follow up on answers that you gave  
9 in your questionnaire.

10                  Before we get to that, I can inform you  
11 that the jury in this case will not be  
12 sequestered. That means that members of the jury  
13 will be permitted to return home each day after  
14 court and then come back the next morning.

15                  Because of that fact, we will continue  
16 the requirement that the jurors not be exposed to  
17 any information about this case from any news  
18 media including newspapers, television, radio and  
19 the internet. And that the jurors not converse  
20 about the case with anyone including members of  
21 their families or other jurors until it's time to  
22 deliberate at the close of the case.

23                  These proceedings today are open to the  
24 public, but we do not permit cameras in the  
25 courtroom during the voir dire process. And the

1 media is not allowed to disclose the names of  
2 jurors in news reporting of this case.

3 In addition, if you are selected to  
4 serve on the jury, cameras are not permitted to  
5 film the jurors during the trial process itself.

6 If you remain as a juror after  
7 questioning today, you will get telephone  
8 instructions within the next day or two letting  
9 you know when it's time to return to court.

10 Mr. Fallon.

11 **VOIR DIRE EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q. Good afternoon. Is it Mr. Lafond?

14 A. Lafond, yes.

15 Q. Very good. My name is Tom Fallon. I'm an  
16 Assistant Attorney General with the Wisconsin  
17 Department of Justice. I'm a prosecutor in this  
18 particular case. I'm working with Mr. Ken Kratz.  
19 He is the gentleman to my left, the District  
20 Attorney in Calumet County. And he's the lead  
21 prosecutor in this prosecution.

22 We're here this afternoon to follow up  
23 and ask some additional questions of you, based  
24 on your responses that you provided in the  
25 questionnaire last Monday. I wanted to begin

1           briefly, rather quickly, with a few questions  
2           regarding your employment. I see by trade you  
3           are a tool and die maker?

4       A. I was until Paragon Electric moved out of town.

5       Q. All right.

6       A. I have been a machinist for the last seven years.

7       Q. Okay. And you are currently with HMF  
8           Innovations?

9       A. Yes.

10      Q. If you would help me out, I'm not from the area,  
11           so what kind of business is that?

12      A. We make specialty machinery for people all over  
13           the country, a lot of house testing equipment, a  
14           lot of jobs for Caterpillar, a lot of jobs for  
15           right around town here.

16      Q. Okay. So is it heavy equipment that you are  
17           involved in producing?

18      A. It can be anything from real tiny stuff up to  
19           machinery that's 100 and 150 feet long.

20      Q. All right. Very good. And how long have you  
21           been with the new company here?

22      A. Seven years.

23      Q. Seven years, I see, okay. All right. Now, the  
24           other thing I wanted to verify with you is a  
25           response that you gave us to the very last

1 question in the questionnaire.

2 Recognizing the fact that this case may  
3 very well go six weeks, in which case from most  
4 likely Monday through Friday, for about nine  
5 hours a day or so, you will be tied up involved  
6 in the court proceedings if you are selected as a  
7 juror. Would that cause any financial hardship  
8 on you and/or your family if you were away from  
9 work that long?

10 A. No.

11 Q. All right. So you have, I take it, some  
12 assurances that you will be able to at least have  
13 sufficient income during this period if you were  
14 selected as a juror?

15 A. My company will pay for it, he said.

16 Q. All right. Very good. Okay. I see for some of  
17 the civic groups that you are involved in you are  
18 involved with the Knights of Columbus at your  
19 local church?

20 A. Mm-hmm, yes.

21 Q. All right. And chairman of the spaghetti dinner  
22 and the church bingo and the Men's Club and those  
23 are all associated with your church?

24 A. Basically, yes, mm-hmm.

25 Q. And is -- The church that you belong to is St.

1           Peter, the Fisherman?

2   A. Yes, it is.

3   Q. Okay. Very good. All right. Have you been a  
4       long time member of those various organizations?

5   A. Pretty much all my life, 25, 30 years, yeah.

6   Q. All right. Are you -- I take it, then, you are a  
7       life long resident of this area, Manitowoc  
8       County?

9   A. Yes. Yes, mm-hmm.

10   Q. Okay. All right. Well, a matter of concern to  
11       all of us in selecting the jurors for this case  
12       is how much they may have heard about the case in  
13       the media and whether that's led to any really  
14       strongly held or felt opinions about the case and  
15       things of that sort. So that's what I would like  
16       to talk about at this moment. All right?

17   A. Sure.

18   Q. First, it looks like you get your news sources  
19       from a variety of sources, or radio, television,  
20       and the newspapers and that you do read the  
21       newspaper daily; is that correct?

22   A. That's correct.

23   Q. And you also apparently watch, fairly regularly,  
24       the news broadcasts?

25   A. Yes.

1 Q. Okay. Now, do you get your news from any other  
2 source, like say the internet perhaps; do you  
3 have a computer at home that you might use,  
4 or ...

5 A. We have got a computer, but I don't -- I don't  
6 use it for news.

7 Q. Okay. Okay. Did you receive a directive from  
8 the Court, oh, about three weeks or so ago,  
9 asking that since you might be a juror in this  
10 particular case that you would -- it would be  
11 appreciated if you would refrain from reviewing  
12 or listening to any of the news commentary  
13 regarding this case? Did you get that?

14 A. Yes, I did.

15 Q. All right. And have you been able to honor that  
16 request?

17 A. Not totally, the newspaper is the easy part, but  
18 the place that I'm employed at is a small machine  
19 shop and we have radios playing all day long in  
20 every corner. The news is on all day long and so  
21 I have heard some of it at work, you know --

22 Q. Okay.

23 A. -- different things. Mostly about jury selection  
24 has been this week.

25 Q. All right. Well, let me ask you, then, just

1           figuring in the last three weeks, we'll work with  
2           that bit of information. What do you recall  
3           hearing either on the radio or from any other  
4           news source about the case?

5       A. Well, I remember something last Friday about some  
6           blood that's going to be tested, whether or not  
7           it's got this preservative in or something.

8       Q. Okay.

9       A. That's the only thing that really pops into my  
10          mind.

11      Q. Okay. What about anything involving the charges  
12          in the case, or anything involving a fellow by  
13          the name of Brendan Dassey, any of that ring a  
14          chord with you?

15      A. Well, yeah, I wasn't real sure if it was in the  
16          last three weeks, but I believe he's -- he had  
17          confessed to helping out and now he's recanted  
18          that story --

19      Q. Okay.

20      A. -- and taken it back.

21      Q. All right. Anything else that you recall now,  
22          just from that in the last three weeks, that  
23          you ...

24      A. No.

25      Q. All right. How about when the case first broke,

1           when the news story first broke about this woman,  
2           Teresa Halbach's disappearance and within the  
3           week, the arrest of the defendant here,  
4           Mr. Avery. Did you follow those telecasts?  
5 A.       Very closely.  
6 Q.       You did?  
7 A.       Mm-hmm. Yes.  
8 Q.       All right. And did you follow the media coverage  
9           with respect to the arrest of Mr. Dassey and --  
10          and his statements regarding his involvement from  
11          about 11 --  
12 A.       Yes.  
13 Q.       -- 11 months ago?  
14 A.       Sure. Yes, I did.  
15 Q.       All right. And do you recall any of the details  
16          from either one of those media coverage?  
17 A.       Of his arrest, or of the reasons for his arrest?  
18 Q.       Yeah, whatever you can tell us that you recall.  
19 A.       Well, just that he was arrested. And then I  
20          remember seeing pictures of a red house trailer.  
21          And they had pictures of a burn pit and stuff,  
22          where supposedly her body had been burned. And  
23          they had found bone fragments. I'm sure -- I  
24          can't think of a lot of things right now. I'm  
25          sure if you jog my memory, there will be a lot

1 more things.

2 Q. Okay.

3 A. But I watched pretty much all of it.

4 Q. All right.

5 A. We were pretty much glued to the TV.

6 Q. Okay. So it would be fair to say that you  
7 followed the case fairly closely up until you got  
8 the directive from the Court?

9 A. Yes, mm-hmm.

10 Q. All right. Well, here's the reason we ask these  
11 questions. And in the questionnaire, in response  
12 to one question you said, have you formed any  
13 personal opinions based on the publicity. And  
14 you said, yes, based on the publicity, that he  
15 may be guilty.

16 And then the next question was -- or the  
17 two questions later, you were asked, have you  
18 formed any opinion yourself, based on the  
19 information that you had from any source, of his  
20 guilt or innocence. And you said, yes and you  
21 said, again, he may be guilty.

22 You followed that up with an answer to a  
23 question that the Court will advise you that, if  
24 you are selected as a juror, you would be  
25 required to set aside that information that you

1           heard in the media and decide this case only on  
2           the evidence which is presented during the trial.

3           And you answered that case -- or that  
4           question yes. Do you feel -- still feel you  
5           would be able to do that, or do you feel that  
6           your opinion is pretty well set, based on all the  
7           information that you have from following the case  
8           so closely?

9       A. I guess I would have to say that my opinion is  
10          pretty well set but, you know, if there was earth  
11          shaking type evidence that would change my mind,  
12          sure. But whether or not that happens, I don't  
13          know, but my mind is pretty well -- pretty well  
14          made up, sure.

15      Q. Yeah. So in other words, you know -- so your  
16          answer to the question might be different, then,  
17          today from last week; in other words, you don't  
18          think you would be able to set aside that  
19          information?

20      A. Like I said, if it was something that was -- that  
21          really changed my mind, yeah. I mean, it would  
22          have to be something really substantial that  
23          everything that I have heard right now in through  
24          the media, I formed an opinion that is fairly  
25          strong and it would not be easy to change it,

1           but ...

2   Q. All right. Even though Mr. Avery is presumed  
3       innocent?

4   A. Even though.

5   Q. Okay. One second, please.

6           ATTORNEY FALLON: We don't have any more  
7       questions for the witness.

8           THE COURT: All right. The Clerk will  
9       escort you from the courtroom at this time.

10          (Wherein the juror was excused.)

11          THE COURT: Counsel, do you have a joint  
12       motion to make?

13          ATTORNEY FALLON: I think it's quite  
14       apparent the witness is -- or excuse me, the juror  
15       is fairly well set in his ways; although his  
16       questionnaire didn't seem to read that way, I think  
17       we have to take his comments at his word. And I  
18       would just as soon see if there's -- I think there's  
19       one last juror there we might be able to talk to,  
20       but it didn't seem that this would be all that  
21       productive. No, I think he would need to be struck  
22       for cause.

23          THE COURT: Does the defense agree?

24          ATTORNEY STRANG: On this one, I have to  
25       agree.

1                   THE COURT: The Court agrees as well. We  
2 will -- The Court will order the juror stricken for  
3 cause and we'll take Tim Holsen as the last juror  
4 today.

5                   Mr. Holsen, please raise your right hand  
6 and the Clerk will swear you in.

7                   (Juror sworn.)

8                   THE CLERK: Please be seated.

9                   MR. HOLSEN: Thank you.

10                  THE COURT: Mr. Holsen, you have already  
11 completed a written questionnaire in this case. At  
12 this time we're moving on to the next stage of voir  
13 dire -- or the next stage of the jury selection  
14 process which is known as voir dire.

15                  The attorneys have a chance to ask you  
16 some questions as follow-up to the information  
17 you provided on your questionnaire.

18                  Before we get to that, I have got a few  
19 pieces of information to pass on to you. First  
20 of all, the jury in this case will not be  
21 sequestered. That means that the jurors will be  
22 permitted to return home each day after the trial  
23 and return the next morning.

24                  The prohibition on learning anything  
25 from the news media will continue throughout the

1 trial; that is, the jurors cannot consult the  
2 television, radio, newspapers, the internet, or  
3 anything else to learn anything about the case,  
4 other than the evidence presented in court. And  
5 the jurors are prohibited from discussing the  
6 case with anyone, including family members and  
7 other jurors until it's time to deliberate.

8 Although the proceedings today are open,  
9 the Court does not allow cameras in the courtroom  
10 during voir dire proceedings. And the news media  
11 is not permitted to disclose the names of jurors.

12 In addition, if you are selected to  
13 serve on the jury, any cameras at the trial will  
14 not be permitted to show the jurors in anyway  
15 that identifies who they are.

16 If you are continued as a juror after  
17 proceedings today, you will receive telephone  
18 instructions in the next day or two letting you  
19 know when to return to court.

20 Mr. Fallon, will you be asking questions  
21 for the State?

22 ATTORNEY FALLON: Yes, thank you.

23 THE COURT: Very well.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q. Good afternoon, Mr. Holsen, my name is Tom  
2 Fallon. I'm an Assistant Attorney General with  
3 the Wisconsin Department of Justice and I'm one  
4 of the prosecutors in this case. I'm based in  
5 Madison, helping out here. To my immediate left  
6 is Mr. Ken Kratz, the District Attorney for  
7 Calumet County. He's also a special prosecutor  
8 and the lead prosecutor in this matter.

9                   This is our opportunity, as attorneys,  
10 to follow up and ask a few additional questions  
11 of you, based on some of the information you  
12 provided last week, to help us in selecting a  
13 jury for this case.

14                   First, had a couple of general questions  
15 regarding your employment. As I understand it,  
16 you are currently with the Kohler Company?

17 A. That's correct.

18 Q. And what do you do for them? You are into  
19 supervising but ...

20 A. I'm a supervisor of materials, management,  
21 shipping; actually about four departments.

22 Q. Okay. And how long have you been with that  
23 company?

24 A. Twenty-two years.

25 Q. Just wanted to verify, one of the responses you

1           gave is a consideration for all of us here. On  
2           the very last question of the questionnaire,  
3           there is -- or there was a question regarding if  
4           this case were, in fact, to take six weeks, as to  
5           whether that would cause some particular hardship  
6           for you.

7           And there's -- kind of looks like there  
8           might be two angles here for us to explore. So  
9           let me, first, take the obvious one. Would you  
10          be allowed to take leave of absence, as it were,  
11          from the Kohler Company to sit as a juror if you  
12          were selected?

13         A. Yes, I would.

14         Q. Okay. So you would be able to have sufficient  
15          income coming in?

16         A. Yes.

17         Q. Okay. And the second part of it is, one of the  
18          things that was mentioned on page three of your  
19          questionnaire and again at the end, and you're  
20          involved in some online schooling?

21         A. Yes, I'm going to UW Stout for my Bachelor's  
22          Degree, online. So I'm taking classes currently.

23         Q. All right. And this is all distance learning, I  
24          guess --

25         A. Right.

1 Q. -- as they say?

2 A. Correct.

3 Q. How much time does that take of your day to

4 participate in that?

5 A. Twelve hours a week. Approximately twelve hours

6 a week.

7 Q. Twelve hours a week. And is that something where

8 you are actually participating in a class that's

9 live online, or is it something that's -- you

10 download the course assignments, for instance,

11 work on them and then complete them? How does it

12 work.

13 A. Correct. There's quizzes online and then papers

14 due online.

15 Q. All right.

16 A. So online time is probably, you know, three to

17 four hours a week; the rest is all study.

18 Q. Study, okay.

19 A. Correct.

20 Q. And when do you normally do that work?

21 A. Usually on weekends.

22 Q. Okay. All right. So, if -- Technically

23 speaking, then, if the Court were not in session

24 on the weekends and you got home at say 6 o'clock

25 every night, would you still be able to continue

1           with the online work?

2 A. I think so, yeah.

3 Q. Okay. All right. Well, the other matter of  
4           concern to us is the -- any opinions or thoughts  
5           you may have about the case as a result of quite  
6           a bit of publicity. And it seems that at least  
7           you are familiar with some of that publicity.  
8           You get news from both radio and television; is  
9           that right?

10 A. Correct.

11 Q. Of the two, which one would you say you get most  
12           of your news from?

13 A. Probably the television.

14 Q. All right. And let's start there. How often do  
15           you watch the local TV news?

16 A. Nightly.

17 Q. Nightly?

18 A. Mm-hmm.

19 Q. Okay. So my next question, then, is have you at  
20           all been following this case since it's  
21           inception?

22 A. Since it's inception, pretty much, yeah. See,  
23           it's close to home. I live real close to  
24           Mishicot, so it's close to home. Yes, I have  
25           been following it.

1 Q. All right. And have you lived in Mishicot for a  
2 substantial period of time?

3 A. Yes, since 2000.

4 Q. Since 2000. So you have been there the last  
5 seven years and you were born in Manitowoc, in --

6 A. Right.

7 Q. -- the city here?

8 A. Correct.

9 Q. Did you live in the city before you moved to  
10 Mishicot?

11 A. Yes.

12 Q. Okay. So, you have got a little bit of a commute  
13 down to Kohler?

14 A. Yeah.

15 Q. Okay. All right. I will get back to the  
16 television in just a second. I also see that you  
17 read the newspapers fairly regularly?

18 A. Correct.

19 Q. Which papers do you read?

20 A. Mostly online, Herald-Times, Sheboygan Press and  
21 sometimes the Green Bay Press Gazette.

22 Q. All right. Do you read all three papers pretty  
23 regularly or is it one week you might read one  
24 and the next week --

25 A. Yeah, it's intermittently --

1 Q. Okay.

2 A. -- during the week, yeah.

3 Q. Whatever seems to strike your interest?

4 A. Following sports a little bit and business.

5 Q. Would it be fair to say if one paper has a story  
6 that kind of strikes your interest you might  
7 follow that story in the paper for a couple  
8 days --

9 A. Correct.

10 Q. -- and then switch back to one of the other  
11 papers?

12 A. Correct.

13 Q. Okay. All right. Now, with respect to this  
14 particular case, what coverage do you remember --  
15 Well, first of all, I'm going to do this in  
16 reverse order. A couple weeks ago, I believe you  
17 may have received or should have received a  
18 letter from the Court advising you that the  
19 possibility of being a juror was rather imminent?

20 A. Correct.

21 Q. And that you were asked not to watch or pay  
22 attention to any more media whenever you could  
23 avoid it?

24 A. Correct.

25 Q. All right. And did you receive the letter?

1 A. Yes, I did.

2 Q. Okay. Have you been able to follow the Court's  
3 advice?

4 A. For the most part. I mean, it's still on just  
5 about every news channel every time you turn it  
6 on. But I make an effort to leave the room when  
7 it comes on, so.

8 Q. Okay. All right. In terms of any coverage of  
9 the case, in say the last three weeks or four  
10 weeks, within the last month; what, if anything,  
11 or what do you remember seeing or hearing about  
12 the coverage of the case during that period?

13 A. Basically, just some of the charges that were  
14 brought against Mr. Avery.

15 Q. Okay.

16 A. That was a big thing. And, then, of course, a  
17 little bit about the jury selection, until I  
18 received that letter.

19 Q. All right. Any particular details of any of the  
20 court proceedings in the last three or four  
21 weeks? Anything strike your fancy, or catch your  
22 interest, or do you happen to overhear at work,  
23 or anything?

24 A. You know, it's pretty hard, everybody talks about  
25 it everywhere. So I try to ignore it and not,

1           you know, make conversation about it. So I would  
2           have to answer that nothing in particular strikes  
3           me at this time.

4       Q. All right. All right. Well, let's take about  
5           the -- the -- the one year period before that.  
6           Would you say you followed this case closely  
7           or ...

8       A. Yeah, I would say closely, yes.

9       Q. All right. And have you watched any of the --  
10           any news conferences or just the news stories?

11      A. Mostly just the news stories.

12      Q. All right.

13      A. And the big part is when it was developing, you  
14           know, everybody wanted to know what was going on,  
15           what was happening. And being a small community,  
16           it was, you know, of interest.

17      Q. So in November, December of 2005 and January,  
18           February, March of 2006, you paid pretty close  
19           attention?

20      A. Yes, very close.

21      Q. All right. How about through this past summer?

22      A. Tapered off quite a bit.

23      Q. All right.

24      A. The media got a hold of it and it became less  
25           interesting, I guess.

1 Q. I'm sorry?

2 A. The mediate -- media became more interested. It  
3 became more widespread and I guess my interest, I  
4 withdrew a little bit.

5 Q. All right. Starting when?

6 A. Probably this summer.

7 Q. Okay.

8 A. This past summer.

9 Q. All right. Well, we wanted to talk to you about  
10 some of the opinions you may or may not have  
11 formed as a result of all that media coverage and  
12 ask you this. I mean, you, first of all,  
13 understand that as Mr. Avery sits here today, the  
14 law presumes him innocent?

15 A. Correct.

16 Q. You understand that?

17 A. I understand that.

18 Q. All right. And do you accept that principle?

19 A. I do accept that, yes.

20 Q. Okay. Now, I know there's been an awful lot of  
21 media coverage here, so we'll get right to the  
22 point. Have you formed any opinion that he is  
23 guilty, based strictly on what the media has told  
24 you of the facts?

25 A. No.

1 Q. All right. Are you concerned about the manner --  
2 Well -- All right. Let me ask it this way. Is  
3 there anything about Mr. Avery, or his family, or  
4 his past that has led to forming any kind of  
5 opinions about his guilt or innocence?

6 A. I don't know the family.

7 Q. Okay.

8 A. But being from a small area, you do hear rumors  
9 so, you know, I have heard some of those.

10 Q. All right. All right. Now, these rumors, can I  
11 assume you are taking them for just what they  
12 are, rumors?

13 A. Correct.

14 Q. All right. And has -- has that information all  
15 led to any opinions of his guilt, based on rumor?

16 A. You know, let me give you a little background.  
17 Coming from Manitowoc, it's just a little bit  
18 bigger than where I live now, Francis creek. And  
19 when you move to a small community like Francis  
20 Creek, everybody knows everybody and everybody  
21 talks. And a lot of that is just rumors. I try  
22 not to get caught up in that; I really do.

23 Q. All right. So you don't pay much attention to  
24 that.

25 A. No, sir.

1 Q. All right. Well, so just that I'm clear, as he  
2 sits here today, you don't have any particular  
3 opinion of his guilt or innocence?

4 A. No, sir.

5 Q. All right. And the Court did ask, in the  
6 questionnaire here, is if you did have any  
7 opinions or any thoughts regarding the crime or  
8 his involvement or whatever, that if you were  
9 selected as a juror you would be asked to set  
10 that aside and decide his guilt or innocence  
11 solely on the evidence which we present in the  
12 courtroom?

13 A. To the best of my ability, correct.

14 Q. Right. And you answered yes?

15 A. Correct.

16 Q. Do you still feel that way --

17 A. Yes, I do.

18 Q. -- today? Okay.

19 A. Yup.

20 Q. I wanted to also follow up with a couple of other  
21 questions regarding some experiences that you  
22 have had with law enforcement, if I may?

23 A. Sure.

24 Q. I'm just struggling just a bit, as the light goes  
25 down and my age goes up, my ability to read

1           without my reading glasses diminishes ever so  
2           slightly. But it looks like you have had some  
3           experiences with some of the county law  
4           enforcement officers. So tell us a little bit  
5           about that.

6       A. Sure. I was good friends with Tom Jansen, who  
7           was a county officer for a number of years. And  
8           our kids were very close, a lot of sporting  
9           activities, camping, things like that. He has  
10           since moved to the western part of the state and  
11           really haven't had much contact with him.

12      Q. All right. And how long ago did he move away?

13      A. That was probably a year and a half ago.

14      Q. All right. But you were pretty good friends up  
15           to that point?

16      A. Yes, we were, yeah.

17      Q. Okay. Did he ever talk about the business of law  
18           enforcement with you?

19      A. No.

20      Q. All right.

21      A. No, we kept that separate. We really didn't talk  
22           work, we just had more fun with family and  
23           friends.

24      Q. Okay. So no plumbing and no law enforcement?

25      A. Exactly. No toilets and --

1 Q. Work and -- All right. Very good.

2 A. -- no law enforcement.

3 Q. Now, you also indicated that you did have -- was

4 it a friend or a friend's son was killed on an

5 ATV accident?

6 A. That is correct, yeah.

7 Q. Now, was that something that was a pure

8 accident --

9 A. Yeah.

10 Q. -- or was there something --

11 A. Pure accident.

12 Q. Okay. So there was no reason for any law

13 enforcement investigation?

14 A. No.

15 Q. Just a sad occurrence?

16 A. Exactly.

17 Q. Okay. All right. Now, because you were such

18 good friends with this former officer, Tom

19 Jansen, do you think your friendship with him

20 would have any impact on your ability to evaluate

21 a law enforcement officer's testimony the same

22 way you would evaluate any other person's

23 testimony?

24 A. I would still hold it in high regard, so.

25 Q. All right. All right. That's fair, you would

1 expect them to be credible, right?

2 A. Very credible, yes.

3 Q. Okay. However, when it comes to a court of law,  
4 there's an instruction the Court will provide to  
5 all the jurors and it tells you that we take all  
6 witnesses as they are and that those witnesses  
7 should be evaluated on the same standard; in  
8 other words, treated the same. You look at them  
9 and you determine their believability, their  
10 honesty, their credibility, the same as you would  
11 any other person; do you think you could do that?

12 A. Yes.

13 Q. Okay.

14 ATTORNEY FALLON: I will pass the juror.

15 THE COURT: Mr. Buting.

16 ATTORNEY BUTING: Thank you, Judge.

17 **VOIR DIRE EXAMINATION**

18 BY ATTORNEY BUTING:

19 Q. My name is Jerome Buting and I, along with  
20 Attorney Dean Strang, defend Mr. Avery here,  
21 okay?

22 A. Okay.

23 Q. Now, Mr. Holsen, you were here last week and  
24 filled out one of these questionnaires, right?

25 A. That's correct, sir.

1 Q. And you took your time and carefully read all the  
2 questions?

3 A. Yes, I did.

4 Q. And you answered them really from the heart?

5 A. Yes, I did.

6 Q. And, in fact, you signed it, swearing that it was  
7 true; is that right?

8 A. That's correct.

9 Q. Under penalty of perjury?

10 A. Yes, sir.

11 Q. And last week, you were asked if there was any  
12 reason that you could not be a fair and impartial  
13 juror?

14 A. Correct.

15 Q. And you said, yes, there was. And you said that  
16 this is so close to home and I have kids that go  
17 to Mishicot and we have heard so much about it,  
18 if I were selected I would do my best to be fair?

19 A. That's correct. I still feel the same way, yes.

20 Q. But, then, you also said, in answer to a question  
21 Mr. Fallon asked, if you had any opinions that  
22 had been formed --

23 A. Mm-hmm.

24 Q. -- today. And I don't know if you forgot what  
25 you said last week, but when you were asked that

1 question, if you had formed any personal opinions  
2 about the case based on publicity, last week you  
3 said, yes, you had; do you remember?

4 A. Yes.

5 Q. And you had said that -- one of your opinions was  
6 that the Avery family has problems?

7 A. That's, again, you know, what we hear as rumors  
8 and it's hard when you are a small community like  
9 we are, you hear everything.

10 Q. Sure, I know you do.

11 A. And, you know, I guess I'm just trying to balance  
12 that, sir, so.

13 Q. Sure, but that's an opinion --

14 A. I understand.

15 Q. -- that's an opinion that last week, when you  
16 filled this out, you had said you had formed,  
17 correct?

18 A. Correct.

19 Q. Okay. And you also expressed some real concern  
20 about the knowledge that you had gotten from the  
21 coverage, right?

22 A. Correct.

23 Q. And you said that, when asked to describe what  
24 you remember about it, you used these terms about  
25 how sad and how savage it was and that it was so

1           close to home, that my kids -- and that my kids  
2           saw it and that it -- it had ties with Mishicot  
3           school with Branden?

4       A.    Correct.

5       Q.    Is that where your kids go?

6       A.    Correct.

7       Q.    They go to the same high school as Brendan  
8           Dassey?

9       A.    Correct.

10      Q.    Were they in the same grade as him?

11      A.    I believe -- Eric is 15 and my daughter is 13, so  
12           they are a year younger, I believe.

13      Q.    Okay. And you also said that you were concerned,  
14           or you asked if you discussed this case at length  
15           with any other persons and you said, yes, my  
16           wife, as we are concerned about our kids?

17      A.    Correct.

18      Q.    As they go to the same school as some Avery's and  
19           how close to home it is.

20      A.    Mm-hmm. Correct.

21      Q.    Right?

22      A.    Mm-hmm.

23      Q.    So, you're concerned that there could be some --  
24           maybe some fall out if ...

25      A.    Correct. It's a small community.

1 Q. It's a small community and if you -- if you voted  
2 to -- for not guilty -- or if you voted Mr. Avery  
3 guilty, you would be concerned about some  
4 retribution?

5 A. Either way.

6 Q. Either way.

7 A. Either way.

8 Q. And it is a small community. And that's a pretty  
9 hard thing to put aside, right?

10 A. Correct.

11 Q. And we're not asking you to be super human here.  
12 I mean, you are a human being like everybody else  
13 and, you know, you are not expected to be a  
14 perfect juror in every case, right?

15 A. Understood, correct.

16 Q. You may be a perfectly fine juror in some cases  
17 and others maybe not?

18 A. That's correct.

19 Q. And in this case, you also talked about how, if  
20 you had formed any opinion whatsoever about  
21 Mr. Avery's guilt or innocence and, again, last  
22 week you said, yes, you had?

23 A. Correct.

24 Q. And that you mentioned the past history of  
25 Mr. Avery and the gore of it, as covered by TV

1 news, papers, and radio, right?

2 A. Correct. Let me explain a little bit. Most of  
3 this was directed at my children, you know, as  
4 any parent, very concerned about them. So,  
5 that's -- that's the answer.

6 Q. And did you -- Did you see a news conference  
7 where Mr. Kratz, in fact, warned that any  
8 children under the age of 15 should probably not  
9 listen to it?

10 A. I do not recall.

11 Q. Or did your wife see that and talk to you about  
12 it?

13 A. That's possible. I don't think I saw it. I have  
14 heard about it a little bit but. I mean, it's  
15 just -- it's a -- it's a -- Again, let me put it  
16 this way, it's a sad case and you don't ever want  
17 your children exposed to things like that that  
18 happen in the world, unfortunately.

19 Q. Right. And so I'm wondering, you know, given all  
20 of that and it's closeness to home and the way  
21 that it's really -- really affected your feelings  
22 and your -- about your children and your wife's  
23 concerns --

24 A. Right.

25 Q. -- if you really think that you would be a good

1                   juror for this case?

2       A. I would say no, but if -- if I was called to do  
3                   so, I would do so.

4       Q. Okay. Well, I mean, you are called to try and  
5                   be -- you're called to be a fair jury -- juror.  
6                   And if, in a particular case, if that's asking  
7                   too much of you, there's nothing to be ashamed  
8                   of, you understand that?

9       A. Understood.

10      Q. And that if this is really something that you  
11                   just think would be too difficult, there's no  
12                   shame whatsoever in telling the Court that you  
13                   really think you wouldn't be a good juror in this  
14                   case?

15      A. Okay. And I -- Actually, I probably wouldn't be,  
16                   being it's so close to home and that's why I  
17                   wrote it.

18      Q. Okay. I appreciate that. I just wanted to  
19                   clarify it --

20      A. Sure.

21      Q. -- because today it seemed like -- and sometimes  
22                   when jurors come in to Court, they feel like they  
23                   don't want to say that they can't be a fair juror  
24                   because that reflects on them. And it's not  
25                   really true. I mean, we all have different life

1           experiences and this one obviously hit very close  
2           to you.

3       A.    Correct.

4       Q.    So I want you to -- It's important because,  
5           Mr. Avery, despite what all you have heard,  
6           Mr. Avery -- you haven't heard it all. And he  
7           deserves the presumption of innocence and  
8           deserves to start with jurors who have a clean  
9           slate and can start, really, from zero?

10      A.    Okay.

11      Q.    And if you are not somebody who can do that, then  
12           in all honesty, I wish you would please tell us  
13           that.

14      A.    Okay. I already have.

15      Q.    That you can't?

16      A.    Correct.

17      Q.    Thank you. I appreciate that, sir.

18      A.    No problem.

19                   THE COURT: All right. We'll have the  
20                   Clerk escort you from the courtroom at this time.

21                   (Wherein the juror was excused.)

22                   THE COURT: Mr. Buting, does the defense  
23                   have a motion?

24                   ATTORNEY BUTING: I do. I move to strike.

25                   THE COURT: Anything from the State?

1                   ATTORNEY FALLON: No, we'll join, based on  
2 the last set of responses; I think it's evident.

3                   THE COURT: The Court agrees. The Court  
4 will order that Mr. Holsen be stricken for cause.  
5 And I will see you at 8:30 tomorrow morning.  
6 Anything before we go?

7                   ATTORNEY FALLON: Just a quick question,  
8 Judge, how far down the list should we prepare to  
9 --in other words, how many do you think you will be  
10 calling in tomorrow, so that we'll have all of the  
11 information?

12                  THE COURT: I would say, well, to be safe  
13 14; hopefully, it won't take us that many.

14                  ATTORNEY STRANG: And Mrs. Gonia is the  
15 first one.

16                  THE COURT: She is the next one, correct.

17                  ATTORNEY STRANG: Okay. Thank you.

18                  ATTORNEY FALLON: That comes up to, by my  
19 count, Juror No. 87.

20                  ATTORNEY BUTING: Pretty much finishes that  
21 second page completely.

22                  ATTORNEY FALLON: Right. That would take  
23 us through the second page.

24                  ATTORNEY BUTING: Yes.

25                  ATTORNEY FALLON: That's what I had come up

1 with.

2 ATTORNEY BUTING: Okay.

3 THE COURT: The last juror is what number?

4 ATTORNEY STRANG: Eighty-seven maybe.

5 ATTORNEY FALLON: Juror No. 87 would be 14.

6 THE COURT: Okay.

7 ATTORNEY FALLON: That's what I come up  
8 with.

9 THE COURT: Okay. Let's do that, prepare  
10 up to 87.

11 ATTORNEY FALLON: All right.

12 THE COURT: All right. Just a second,  
13 here's the jurors I have got left. I got No. 60.

14 ATTORNEY FALLON: Yes.

15 THE COURT: Sixty-five.

16 ATTORNEY FALLON: Correct.

17 THE COURT: Sixty-seven.

18 ATTORNEY FALLON: Yes.

19 THE COURT: Sixty-eight.

20 ATTORNEY FALLON: Yes.

21 THE COURT: Seventy-one.

22 ATTORNEY FALLON: Correct.

23 THE COURT: Seventy-two.

24 ATTORNEY FALLON: Yes.

25 THE COURT: Seventy-four.

1 ATTORNEY FALLON: Yes.

2 THE COURT: Seventy-five.

3 ATTORNEY FALLON: Seventy-five is excused.

4 THE COURT: Seventy-five is out.

5 ATTORNEY FALLON: They are excused.

6 THE COURT: Okay. Seventy-six.

7 ATTORNEY FALLON: Yes.

8 THE COURT: Seventy-seven.

9 ATTORNEY FALLON: Seventy-seven, oh, that's

10 the one that we kicked. That was already out.

11 ATTORNEY KRATZ: Did you?

12 ATTORNEY FALLON: Yes.

13 ATTORNEY KRATZ: I didn't have that written

14 down.

15 THE COURT: All right. So 78, 79, 81.

16 ATTORNEY FALLON: Right.

17 THE COURT: Eighty-six.

18 ATTORNEY FALLON: And 87.

19 THE COURT: Let's include 88. Oops, 88 --

20 ATTORNEY BUTING: Eighty-eight is gone. I

21 don't have 77 off.

22 ATTORNEY FALLON: That was --

23 THE COURT: To be safe, let's go through

24 91.

25 ATTORNEY BUTING: Okay.

1                   THE COURT: Okay.

2                   ATTORNEY FALLON: Okay. So that's 90 and  
3 91. That's fine.

4                   (Proceedings concluded.)

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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 10th day of September, 2006.  
16  
17  
18

---

19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
21  
22  
23  
24  
25

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL  
5 VOIR DIRE DAY 4

6 vs. Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

9

10 **DATE:** FEBRUARY 8, 2007

11 **BEFORE:** HON. PATRICK L. WILLIS  
12 Circuit Court Judge

13 **APPEARANCES:**

14 KENNETH R. KRATZ  
15 Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 THOMAS FALLON  
18 Special Prosecutor  
19 On behalf of the State of Wisconsin.

20 NORMAN A. GAHN  
21 Special Prosecutor  
22 On behalf of the State of Wisconsin.

23 DEAN STRANG  
24 Attorney at Law  
25 On behalf of the defendant.

JEROME BUTING  
Attorney at Law  
On behalf of the defendant.

STEVEN A. AVERY  
Defendant  
Appeared in person.

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2                   Reported by Jennifer K. Hau, RPR

3                   Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery. It's Case No.  
3                   05 CF 381. Uh, we are here today continuing with  
4                   the process of jury selection. Will the parties  
5                   state their appearances for the record, please?

6                   ATTORNEY FALLON: Good morning, Your  
7                   Honor. May it please the Court, State appears by  
8                   Assistant Attorney General Tom Fallon, and Ken  
9                   Kratz, special prosecutors.

10                  ATTORNEY BUTING: Morning, Your Honor.  
11                  Jerome Buting and Dean Strang appearing with  
12                  Mr. Avery.

13                  THE COURT: All right. Before we  
14                  resume, uh, voir dire this morning, uh, I think  
15                  yesterday the Court was informed that the -- I'm  
16                  not sure that my notes are specific enough here,  
17                  but I had jurors 75 and 77 listed as  
18                  possibilities that the parties would be, uh,  
19                  jointly requesting that they be excused for  
20                  cause.

21                  ATTORNEY FALLON: Um, I had Juror No. 75  
22                  as being previously excused by the Court and, uh,  
23                  77, I -- I thought that that may have been  
24                  discussed either Monday or Tuesday.

25                  THE COURT: That does ring a bell about

1                   Juror 75. I will, um, try to verify that with my  
2                   judicial assistant. Um, I don't have the reason  
3                   committed to memory but, um -- All right. We'll  
4                   address those issues later and bring in the first  
5                   juror at this time, which is Juror No. 60, Judith  
6                   Kania.

7                   Ms. Kania, at this time I'll ask you to  
8                   raise your right and the clerk will administer  
9                   the oath.

10                  (Juror sworn)

11                  THE CLERK: Please be seated.

12                  THE COURT: Uh, Ms. Kania, you've  
13                  already completed a jury questionnaire in this  
14                  case. Today we're moving on to the next step of  
15                  jury selection process which is called voir dire.  
16                  Uh, in this stage each of the attorneys, or the  
17                  attorneys for each side, will be permitted to ask  
18                  you some additional questions that relate to your  
19                  qualifications as a juror.

20                  Uh, before we get to their questions, I  
21                  want to pass some information on to you. First  
22                  of all, if you are selected as a juror in this  
23                  case, I want you to know that the jurors will not  
24                  be sequestered. That means that the jurors will  
25                  be permitted to return home each day, uh, after

1                   that day's proceedings in the trial, and, uh,  
2                   because of that fact, the Court will continue the  
3                   restriction that the jurors not be exposed to any  
4                   type of media information about the case, be it  
5                   radio, television, newspaper, the internet or any  
6                   other source, and jurors will continue to be  
7                   prohibited from discussing the case, uh, with  
8                   anyone, including members of their family or  
9                   other jurors until all of the evidence has been  
10                  received.

11                  Uh, you should also know that, although  
12                  these proceedings today are open to the public,  
13                  the Court does not allow cameras in the courtroom  
14                  during individual voir dire and the media is not  
15                  permitted to identify the jurors by name in any  
16                  media reports of these proceedings.

17                  In addition, should you be selected as a  
18                  juror, you should know that, uh, while cameras  
19                  are permitted in the courtroom during the trial,  
20                  they're not permitted to, uh, show the members of  
21                  the jury.

22                  Um, in the event you, uh, continue on  
23                  the jury panel after today, uh, you'll get a  
24                  telephone call probably sometime today letting  
25                  you know when you will be reporting back for the

1 next step in the process.

2 Mr. Fallon? All right at this time

3 Mr. Fallon, uh, will ask you questions.

4 **VOIR DIRE EXAMINATION**

5 BY ATTORNEY FALLON:

6 Q Good morning.

7 A Good morning.

8 Q Um, my name is Tom Fallon. I'm an Assistant  
9 Attorney General with the Wisconsin Department of  
10 Justice and I'm one of the prosecutors in this  
11 case. To my immediate left is Mr. Ken Kratz, the  
12 Calumet County District Attorney and lead  
13 prosecutor.

14 We're here this morning to follow up  
15 with some, uh, questions regarding the  
16 information you provided last week, uh, to help  
17 us in, uh, selecting a jury for this case.

18 Um, first of all, is your last name  
19 pronounced Kania?

20 A Kania. Right.

21 Q All right. Very good. Um, and do you prefer  
22 Miss? Missis?

23 A Missis is good.

24 Q Very good. All right. Um, very good. Uh,  
25 you're currently employed at the, uh, uh, Forder

1 (phonetic) Needle Company here in Manitowoc?

2 A Foster.

3 Q Or -- sorry?

4 A Foster Needle.

5 Q Foster? Okay. Very good. And, uh, how long

6 have you been employed there?

7 A Twenty years.

8 Q Uh, and you're a furnace operator?

9 A Yes.

10 Q What, exactly, does that entail?

11 A I take needles out of a box and put them on a

12 conveyor belt that goes into a furnace to heat them

13 up.

14 Q Oh, I see. Okay. And, uh, previously you worked

15 at, uh, the Mirro Aluminum Company?

16 A Um-hmm.

17 Q And what did you do for them?

18 A I worked in the Teflon department, spraying the

19 Teflon on the --

20 Q All right.

21 A -- pans.

22 Q And, um, how long did you, uh, work for them?

23 A I think it was four years.

24 Q Very good. Now, um, if you were, uh, selected as

25 a juror in this case, um, you've previously

1           indicated that, even if the case were to take six  
2           weeks or, perhaps, a tad longer, uh, that  
3           wouldn't, um, cause any financial hardship as  
4           near as you can figure?

5     A    I don't think so.

6     Q    All right. So you feel pretty comfortable about  
7           your ability to serve, uh, for that extended  
8           period?

9     A    I think so.

10    Q    Okay. All right. Um, I want to talk, now, if I  
11           may, about, uh, the, uh, pretrial publicity that  
12           this case has generated. From my review of the  
13           information you provided, it -- it appears that  
14           you, um, at least watch the news somewhat  
15           regularly?

16    A    Um-hmm. Yes.

17    Q    All right. And, um, you indicated you get your  
18           news from the newspapers, television and, uh,  
19           discussions with your neighbors?

20    A    Right.

21    Q    All right. Um, excuse me, of those, where would  
22           you say you get the majority of your news?

23    A    Television.

24    Q    From television?

25    A    Um-hmm.

1 Q All right. Uh, in terms of the television  
2 coverage, how often do you watch the -- the news  
3 on television?

4 A Every day.

5 Q All right. And, um, in addition to the -- the  
6 news programs, do you watch any special news  
7 events or special news channels?

8 A No.

9 Q All right. Um, with respect to the coverage of  
10 this particular case, did you follow it closely,  
11 somewhat closely or not at all?

12 A Somewhat.

13 Q Somewhat. Uh, about three weeks ago, uh, the  
14 Court sent out a letter to prospective jurors,  
15 uh, asking them to refrain from, um, reading or  
16 listening to any of the coverage about this case.  
17 Have -- Did you get that letter?

18 A I think I did. Yes.

19 Q All right. And have you been able to honor that  
20 request?

21 A Not exactly. No.

22 Q Okay. Well, we'll talk a little bit about that.  
23 And let's just start, say, from the last three  
24 weeks or so. Uh, approximately -- well, tell us  
25 what news coverage of the -- of this case that

1           you recall being, uh, exposed to.

2       A    Well, I guess, general, most of the details, you  
3           know. What all happened.

4       Q    Okay. Well, tell us about that. Whatever you  
5           can remember hearing about the case in the last  
6           couple of weeks.

7       A    Last couple weeks, huh? Okay. Um, oh, boy. I guess  
8           the van, the way it was covered up in -- in the -- in  
9           the salvage yard.

10      Q    Okay.

11      A    And the key found in the house.

12      Q    All right.

13      A    And I guess the nephew confessing that he helped  
14           Mr. Avery kill, if he did, um, um --

15      Q    All right. Any -- anything else stick in your  
16           mind? Anything about blood evidence? Anything  
17           about --

18      A    Yeah. There was some blood evidence that --

19      Q    What do you recall hearing about that?

20      A    That it was put in the van, somehow. It was in the  
21           van. Put it that way.

22      Q    All right. Now, did that come from, um -- that  
23           information, did that come from, uh, television,  
24           from reading the newspaper, or your husband, or  
25           friends, or how do you think you came upon that?

1 A I think maybe the newspaper.

2 Q From the newspaper?

3 A Uh-huh.

4 Q All right. Do you read the newspaper regularly?

5 A Yes. Uh-huh.

6 Q And, um, daily?

7 A Yes.

8 Q All right. Uh, have you been reading the news  
9 coverage about this case, um, in the last three  
10 or four weeks?

11 A Sometimes, yes.

12 Q Sometimes. All right. Um, well, based on the  
13 information that you have read in the paper, you,  
14 um, answered a question, um, first, that the only  
15 person you really talk about this with, I take  
16 it, is your husband?

17 A Um-hmm.

18 Q That's a yes?

19 A Yes.

20 Q Okay. Um, when asked if you had any specific  
21 opinion as to Mr. Avery's guilt or innocence  
22 based on what you've seen and heard, uh, you  
23 indicated, uh, while just in general the news  
24 media about the evidence found in the home and  
25 the junk yard, and you seemed to indicate earlier

1           that, um, most of the evidence seems to point to  
2           Mr. Avery but that's just what you heard.

3       A    Right.

4       Q    All right. Is -- is that your impression still  
5           as you sit here today?

6       A    I guess I still do feel he's guilty.

7       Q    All right.

8       A    From what I heard.

9       Q    From what you heard?

10      A    Right.

11      Q    All right. Now, you do understand, um -- Well,  
12           let me ask you this, because there are a couple  
13           of questions that you, uh, forgot to answer here  
14           and we want to ask about those. Uh, one of the  
15           questions is, um, if you have formed any opinions  
16           as to Mr. Avery's guilt or innocence, based on  
17           information from any source, would you be able,  
18           should you be selected as a juror, to set aside  
19           those opinions and base your decision only on the  
20           evidence presented in court?

21      A    It would be quite hard.

22      Q    All right. And why would that be?

23      A    Because I guess I feel in my gut that he's guilty.

24      Q    Okay. Even though you understand he is presumed  
25           innocent?

1 A Right.

2 Q All right. You don't think you could accept any  
3 ext -- instruction from the Court that you should  
4 honor that presumption of innocence and decide  
5 his guilt only on the evidence presented?

6 A I'm not really sure, but I don't think so.

7 Q You don't think so?

8 A No.

9 Q All right.

10 ATTORNEY FALLON: I have nothing else.

11 THE COURT: All right. Um, Mr. Strang, are  
12 you willing to forgo your right to question this --

13 ATTORNEY STRANG: I -- I am. Thank you,  
14 Your Honor.

15 THE COURT: All right. Uh, at this time,  
16 Ms. Kania, we'll have the clerk escort you from the  
17 courtroom.

18 (Wherein juror is escorted out)

19 THE COURT: The parties have a joint  
20 recommendation with respect to this juror?

21 ATTORNEY FALLON: Uh, yes. I think the  
22 answers are rather clear, and her inability to,  
23 um, uh, refrain from the latest coverage I think  
24 make her, uh, unsuited for this service.

25 THE COURT: Does the defense concur?

1 ATTORNEY STRANG: The motion's joint.

2 THE COURT: Uh, the Court feels there's  
3 clear -- a clear basis here to excuse this juror  
4 for cause and the Court will do so.

5 Uh, next bring in Mr. Mueller. Uh, Mr.  
6 Mueller, please raise your right hand and the  
7 clerk will administer the oath to you.

8 (Juror sworn)

9 THE CLERK: Please be seated.

10 THE COURT: Uh, Mr. Mueller, you've already  
11 completed a written questionnaire in this case.  
12 Today we're moving on to the next step in the jury  
13 selection process which is known as voir dire. Uh,  
14 during this process, the attorneys for each of the  
15 parties will have a chance to ask you some follow-up  
16 questions to the information that you provided in  
17 your questionnaire. Before that questioning begins,  
18 uh, there are a few pieces of information I wish to  
19 pass onto you.

20 First of all, if you are selected as a  
21 juror in this case, you should know the jury will  
22 not be sequestered. That means you will be  
23 permitted to return home at the end of the court  
24 proceedings, uh, each day and then report back  
25 the following day. Uh, because of that fact,

1           we're going to continue to require that the  
2           jurors not, uh, be exposed to any news media  
3           coverage concerning the case, whether it be from  
4           radio, television, newspapers, or the internet.

5           In addition, the jurors are not  
6           permitted to discuss the case with anyone during  
7           the trial, including, uh, other jurors or members  
8           of the jurors' families.

9           The proceedings today are open, but  
10          during voir dire, the Court does not allow  
11          cameras in the courtroom and you should also know  
12          that members of the media are prohibited from  
13          identifying the jurors by name in any news  
14          reports concerning this matter.

15          Finally, if you are selected on the  
16          jury, you should also know that the cameras,  
17          while they're permitted in the courtroom during  
18          the trial, are not permitted to show the jurors  
19          in any way that identifies them.

20          Uh, in the event you continue to be  
21          eligible as a juror after the questioning this  
22          morning, you'll get a telephone call later today  
23          letting you know when to report for the next step  
24          in the process.

25           Mr. Fallon, go ahead.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

Q Good morning. My name is Tom Fallon and I'm an Assistant Attorney General with the Wisconsin Department of Justice. I'm one of the prosecutors in this case. To my immediate left is Mr. Ken Kratz, uh, Calumet County District Attorney and special prosecutor as well. Good morning and, uh, thanks for coming in, and is it pronounced Mueller or Miller?

A Mueller.

Q Mueller. Uh, Mr. Mueller, we have a -- a few, uh, additional questions for you based on some of the information you provided last week in the questionnaire and like to follow up on that if we could.

Um, first, I'd like to simply ask, um,  
you currently, uh, work at Riesterer and, uh,  
Schnell?

A Yes.

Q All right. Uh, service technician, I take it?

A Yes.

Q And how long have you been with them?

A      Seven years.

Q Um, and, uh, previous place you worked at, um,

1                   Siemers Holsteins?

2 A       Yes.

3 Q       Is that a -- a dairy, uh --

4 A       Dairy farm.

5 Q       -- operation?

6 A       Yes, that's correct.

7 Q       All right. What did you do for them?

8 A       Um, maintenance.

9 Q       Okay. And how long did you work for them?

10 A       Four years. And I still work part-time for them.

11 Q       You still work -- I'm sorry?

12 A       I work part-time in summer for them.

13 Q       Part-time? Okay. If you could just speak up  
14                  just a little bit more because we're having a  
15                  little trouble hearing you, okay? Thanks. Um,  
16                  you've had some, uh, technical college  
17                  experience?

18 A       Yes.

19 Q       All right. And, uh, accounting and bookkeeping?

20 A       No.

21 Q       Hmm?

22 A       No.

23 Q       No? Um, let's see. Uh, you indicated, uh, in a  
24                  question, have you ever taken courses in or do  
25                  you consider yourself knowledgeable in any of the

1                   areas, you checked accounting. Was that a -- an  
2                   error?

3 A                Uh, no. With -- I do part-time farm work.

4 Q                Okay.

5 A                And I do run a small cash crop operation. So I do do  
6                my books --

7 Q                Ah.

8 A                -- in my accounting that way.

9 Q                Okay. So just, uh, the nature of your work --

10 A               Yes.

11 Q               -- gets you a little bit into that field.

12 A               Yes.

13 Q               Keeping track of the money and all.

14 A               Yes.

15 Q               Okay. I gotcha. Okay. Uh, the next, uh --  
16               Well, let me ask one, uh, question related to  
17               your employment. Uh, the last question of the  
18               questionnaire asks, uh, a question about, um,  
19               whether your selection as a juror would cause any  
20               type of economic hardship or something for you,  
21               and you indicated that, uh, no, that it would  
22               not, even if the case were to last, say, six  
23               weeks or, perhaps, a little bit longer. Uh, is  
24               that still the case today?

25 A               Yes.

1 Q Okay. So you -- you feel reasonably comfortable  
2 you'll have sufficient income or you have  
3 sufficient savings set aside to carry you through  
4 the -- the six-week period?

5 A I should, yes.

6 Q Okay. All right. Well, I'd like to talk a  
7 little bit about some of the pretrial publicity  
8 that this case has, um, generated, and, uh, I  
9 note, uh, from your questionnaire that, um, you  
10 have a variety of news sources?

11 A Yes.

12 Q Okay. Um, radio, television, newspapers,  
13 neighbors, and, um, you say other from  
14 conversations at taverns or other social events,  
15 I take it?

16 A Yes.

17 Q Okay. Well, when you look at all those sources,  
18 where would you say you get most of your news  
19 from?

20 A Mostly be from the newspaper and TV.

21 Q Newspaper and television? All right. And, um,  
22 you read the newspaper pretty regularly?

23 A Yes.

24 Q All right. And television news you watch --

25 A Pretty much every night.

1 Q -- every night? Do you watch the, um, five  
2 o'clock, six o'clock, ten o'clock news or --  
3 A Mostly ten o'clock.  
4 Q Ten o'clock? And, um -- and you do listen to the  
5 radio?  
6 A Yes.  
7 Q All right. And, uh, is the radio on at work  
8 wherever you're working?  
9 A Yes.  
10 Q All right. And what kind of station? Is there  
11 a -- is it a talk radio? A news station? Or  
12 music that's mostly --  
13 A Pretty much music.  
14 Q All right. Uh, so you don't listen to a news  
15 station network that much?  
16 A No.  
17 Q No?  
18 A No.  
19 Q Okay. Um, you were asked, uh -- Well, let me ask  
20 you this: Uh, about, well, maybe three weeks or  
21 so ago, uh, did you get a letter from the Court  
22 asking, uh -- letting you know that you were a  
23 possible prospective juror and, uh, to refrain  
24 from reading any of the newspaper coverage or  
25 listening to any of the television coverage of

1           the case?

2   A   Yes.

3   Q   All right. And were you able to comply with  
4           that?

5   A   Not fully.

6   Q   Okay. Well, what happened or was it --

7   A   Basically being in a bar. You know, they have the  
8           news on.

9   Q   Okay.

10   A   See it. Um, you know, just stopping by my folks and  
11           they had a -- the paper out and you'd see something.

12   Q   Right. Um, I realize that you would -- you know,  
13           it's pretty hard to avoid headlines and something  
14           coming over the -- the airways, but I guess  
15           the -- uh, the question probably is more aptly  
16           asked is, did you pay close attention to the  
17           story on the television or did you read any of  
18           the stories in the newspaper?

19   A   Yes.

20   Q   You did. All right. And, uh, what do you  
21           recall, um, uh, seeing on the television or  
22           learning about the case, say, just in the last  
23           three weeks?

24   A   Uh, about the vial of blood.

25   Q   Okay. And what do you recall hearing or seeing

1                   about that?

2 A               That it was possibly tampered with.

3 Q               All right. Uh, what else?

4 A               Um, that was pretty much the last of it that I heard.

5 Q               All right. Um, any details about that stick in

6                   your head?

7 A               Not really.

8 Q               Okay. Um, how about the time period, say, in the

9                   year before that? You know, uh, before you got

10                  the letter going back to January or December.

11                  January of '06 or December of '05, uh, November

12                  of '05. Do you remember any of the coverage when

13                  the case first broke?

14 A               Yes.

15 Q               All right. And, um, would you say you followed

16                  the events as reported in the news closely or not

17                  too closely?

18 A               Uh, I followed them pretty closely.

19 Q               You did. Um, how about, um, from, um, March, uh,

20                  of last year through the summer and into this

21                  fall? Were you still following the case closely

22                  or not closely?

23 A               Uh, I was following it pretty close.

24 Q               Okay. All right. Well, um, the reason I ask is

25                  that, uh, you indicated, uh, in answer to a

1           question, um, have you formed any personal  
2           opinions about this case based on the publicity,  
3           and you said, no. Is that your -- is that still  
4           accurate today?

5       A    Yes.

6       Q    Okay. And, um, the other question was, uh, have  
7           you formed any opinions whatsoever of -- of  
8           Mr. Avery's guilt or innocence based on anything  
9           you read or heard in the -- in the paper, the  
10          television, or the tavern, or anywhere else, and  
11          you indicated, no.

12       A    Yes.

13       Q    All right. Is -- is that still your, uh, opinion  
14          today? You don't really have an opinion on his  
15          guilt or innocence?

16       A    Yes.

17       Q    Okay. Now, do you -- The Court will, uh,  
18          instruct you that, you know, just as Mr. Avery  
19          sits here today, he's presumed innocent. He's  
20          presumed not to have done one blessed thing. And  
21          do you understand that?

22       A    Yes.

23       Q    Okay. And the Court will ask you to accept that  
24          proposition and decide this case solely on the  
25          evidence that's presented in the courtroom.

1 A Yes.

2 Q Do you think you can do that?

3 A Yes.

4 Q All right. Is there any question or doubt in

5 your mind that you would be able to do that?

6 A Little bit.

7 Q Okay. Well, let's talk a little bit. What

8 raises some concern in your mind?

9 A Well, there's a lot of talk there was, uh -- with the

10 police tampering, possibly.

11 Q Right.

12 A And that other stuff, um --

13 Q What's the other stuff?

14 A Uh, they had something that the cops or the police

15 had mishandled some evidence that was found in -- you

16 know, it's just hard to meet the -- you don't know

17 what was all tampered with or --

18 Q Or not?

19 A Or not.

20 Q All right. All right. So, in other words, you

21 really don't know what happened in the case as

22 you sit here today?

23 A Yes.

24 Q Okay. So the fact that you don't know about any

25 of the facts or what the evidence will be, um, do

1           you think that would make it easier for you to  
2           accept the proposition that Mr. Avery is innocent  
3           until he's proven guilty, or harder?

4   A   Probably make it harder.

5   Q   All right. Not knowing anything would make it  
6           harder?

7   A   Yeah.

8   Q   Why would that be?

9   A   Because you wouldn't know -- You're making a judgment  
10           on, you know, stuff that he -- you don't know what  
11           was all --

12   Q   I'm sorry?

13   A   Don't know what was all messed with.

14   Q   Okay.

15   A   Or what was -- what was there and what was added, and  
16           so I got a feeling it would be hard for me to make a  
17           decision that way.

18   Q   Okay. Well, as you go through, um, your  
19           experiences in life you make decisions every day  
20           based on the information that you have in front  
21           of you; right?

22   A   Yes.

23   Q   Okay. So if, um, the attorneys here, if we, um,  
24           are presenting the evidence over the course of  
25           the -- the trial -- and especially the State,

1           we're the ones that have the burden of proof, not  
2           Mr. Avery, you understand that?

3       A    Yes.

4       Q    And we have to prove him guilty beyond a  
5           reasonable doubt, and -- and if we don't, then  
6           you must find him not guilty. Do you understand  
7           that?

8       A    Yes.

9       Q    All right. So if after, um -- do you realize  
10          that after six weeks of, uh, sitting as a juror,  
11          you will have a -- a -- a far greater bit of  
12          knowledge than you do right now?

13      A    Yes.

14      Q    All right. And, uh, because right now, I think  
15          you said you really don't know what happened or  
16          who did what; correct?

17      A    Yes.

18      Q    All right. So if we're both -- if the State is  
19          starting from zero, from ground level, um,  
20          wouldn't it seem easier for you to accept the --  
21          the possibility that Mr. Avery is -- is innocent  
22          until proven guilty?

23      A    Yes.

24      Q    I'm sorry?

25      A    Yes.

1 Q Okay. All right. Okay. Now, you indicated  
2 that, um -- I take it you watch some television  
3 shows like, uh, *Crime Scene Investigation* or  
4 *Bones* or --

5 A Yes.

6 Q Law enforcement type shows?

7 A Yes.

8 Q And you indicated that you found them, um, very  
9 realistic?

10 A Yes.

11 Q All right. Tell us about why you think they're  
12 realistic. Very realistic.

13 A Only pretty much kind of just sum up how the crime  
14 scene processing and how just following evidence, um,  
15 looking at different things that can factor in a --  
16 in a case.

17 Q Okay. Um, do you think everything that you see  
18 on the -- on these television shows, that the,  
19 um, investigators can do on television, that  
20 those things can be done in real life?

21 A Yes.

22 Q All of them?

23 A Yes.

24 Q Okay. Do you think it can be done as quickly as  
25 it is done on the television shows?

1 A No.

2 Q I'm sorry?

3 A No.

4 Q No? Okay. Um, what else is, um, not as

5 accurately portrayed in those shows as, uh -- as

6 your understanding of what happens in the real

7 world on crime scene investigations?

8 A Uh, just the time, basically, that it takes for them

9 to, uh, I don't know, look at the evidence and all

10 that.

11 Q All right. Well, you don't really believe that

12 law enforcement has the ability to flash back to

13 when the crime occurred and try to figure out who

14 did what, do you?

15 A Uh, no.

16 Q Okay. So that would be a little somewhat

17 unrealistic?

18 A Yes.

19 Q Okay. And, um, do you think that there could be

20 mistakes made?

21 A As to?

22 Q Well, during the investigative process. I mean,

23 they don't seem to make any mistakes on the

24 television, do they?

25 A I'd like to think they don't.

1 Q Okay. You'd like to think who doesn't; the  
2 television or the real world?

3 A The real world.

4 Q Okay. Um, are mistakes possible in your mind?

5 A Yes.

6 Q Okay. Okay. Um, I also noted from your, uh,  
7 report that, uh, you, uh, at least know, I think,  
8 uh, Deputy Jost?

9 A Yes.

10 Q All right. And how do you know Deputy Jost?

11 A Um, he was one of the officers at a traffic accident  
12 I was at. And he is also related to one of my  
13 friends.

14 Q He's related to one of your friends? Um, how  
15 often do you, uh, speak with Officer Jost?

16 A Uh, maybe once a year.

17 Q Okay. So he's not really a close friend or an  
18 acquaintance?

19 A Not to me, no.

20 Q Okay.

21 A Just through --

22 Q You just --

23 A -- friends I know.

24 Q Okay. You just know who he is.

25 A Yes.

1 Q Okay. So you haven't had any discussions of,  
2 uh -- about law enforcement or investigations or  
3 anything like that with him?

4 A No.

5 Q Okay. Now, you said he was at some, um, accident  
6 scene that you were, uh --

7 A Yes.

8 Q -- at? Tell us about that.

9 A Uh, basically, it was a girl that was going to pull  
10 out into the intersection and stopped kind of halfway  
11 through it and I rear-ended her with my truck.

12 Q Okay. All right. And, um, he was the one that  
13 responded?

14 A He was the one that responded, yes.

15 Q Okay. And, um, how did that -- how did that go?  
16 Was that -- do you think it was all handled  
17 fairly and appropriately?

18 A Yes.

19 Q Okay.

20 A It was --

21 Q Was there any complaints? Did you think anything  
22 was not handled right or that, perhaps, you  
23 weren't sure you did fairly or anything like  
24 that?

25 A No.

1 Q No. Okay. But apparently you have had some  
2 contacts, or you're at least aware of some  
3 contacts where um, um, things did not go so well  
4 with law enforcement?

5 A Yes.

6 Q All right. Well, tell us about that.

7 A Uh, my friend, who had a DWI probably six months ago,  
8 was, um -- had a law enforcement that was supposedly  
9 dropping off, uh -- I don't know if it was some  
10 tickets or citation or something, and once in a while  
11 there would be a police car sitting on our road. Um,  
12 he would not call my friend telling him that he was  
13 going to drop off the papers. He'd just more or less  
14 pop in or stop in randomly.

15 Q Okay.

16 A Um, but he would be sitting on the road couple of --  
17 uh, probably, say, three or four times just with the  
18 car shut off, no lights on, just sitting.

19 Q Okay.

20 A Um, and once in a while he wouldn't even stop in.  
21 He'd just be parked out there and neighbors would  
22 drive through and see a police car sitting with no  
23 lights on or nothing.

24 Q Just sitting -- just sitting on the side of the  
25 road?

1 A Yeah. Parked. Waiting.

2 Q So, um, did you consider that some form of  
3 harassment just because the officer was sitting  
4 on the road?

5 A Yeah. We felt -- or at least I felt -- because it  
6 was really -- he wasn't making any attempt to contact  
7 my friend just to say, I'm going to be here, I'll  
8 stop in at this time, or are you available at this  
9 time to receive these citations or tickets, and more  
10 or less just kind of felt like he was waiting or  
11 trying to find something that was --

12 Q Something else wrong?

13 A -- that was wrong, yeah, or --

14 Q Okay. Um, is it possible that the officer was  
15 monitoring traffic or -- or, perhaps,  
16 investigating some other matter in addition to  
17 dropping off these citations for your friend?

18 A Not on a small country road I don't think.

19 Q I'm sorry?

20 A We live on a small country road so it's not a --

21 Q Not very likely?

22 A All -- all the neighbors know pretty much everybody.

23 Q Okay.

24 A And --

25 Q All right. Well, given that experience, um, do

1           you think that, um, if there were a lot of, uh,  
2           police officers and sheriff's deputies testifying  
3           in this case, that you could evaluate their  
4           testimony the same as you would any other witness  
5           or do you think you would be much harder on them?

6     A    I would --

7     Q    I'm sorry?

8     A    What do you mean by that? I'm --

9     Q    Well, the -- the Court will -- will give you an  
10           instruction, if you're selected as a juror, as to  
11           how to evaluate the credibility, the  
12           believability, the honesty of witnesses. And the  
13           instruction the Court will give you will tell you  
14           that you should evaluate all witnesses the same  
15           way. You know, you consider how they look and  
16           how they act on the stand, and how they talk, and  
17           whether they're consistent or not consistent with  
18           a previous statement.

19               In other words, you would evaluate all  
20           the witnesses the same and you wouldn't hold  
21           anything against one police officer, or a -- or a  
22           scientist, or, uh, even Mr. Avery, if he were to  
23           testify, and yet you would evaluate their  
24           believability according to the same standard?

25     A    Yes.

1 Q Do you think you could do that or do you think  
2 you'd be harder on the police?

3 A No. I believe I could do that.

4 Q Okay. There's no doubt in your mind about that?

5 A Yes.

6 Q Okay. Um, my last question is, um, the Court  
7 will be instructing you, uh, not to read, watch,  
8 or listen to any accounts of the trial if you  
9 were selected as a juror. Uh, and, uh, the  
10 Court, uh, did note in the questionnaire here  
11 that the rule would be strictly enforced. And  
12 when asked if you would find it difficult to  
13 follow such an instruction you indicated, yes.

14 Can -- can you tell us why you would have a hard  
15 time following that?

16 A No. I -- like I said, you go out. I live a sociable  
17 life, too, and if they got it on at a bar, or people  
18 are talking about it, ain't going to go out of my way  
19 to talk about it, but it will be still following or  
20 seeing what's going on.

21 Q Well, do you think you'd be able to say to them,  
22 hey, look, you know, I'm on this jury, I -- I --  
23 we just can't talk about this. Do you think  
24 you'd be able to tell your friends that?

25 A No.

1 Q You couldn't do that?  
2 A No, I couldn't.  
3 Q Um, do you think you'd be able to just turn off  
4 the television and walk out of a room?  
5 A Uh, probably be kind of hard. I live with three  
6 other guys, so --  
7 Q All right. So you don't -- you don't think you  
8 could abide by that Court's instruction?  
9 A It would be hard to.  
10 Q All right.

11 ATTORNEY FALLON: Um, I don't have any  
12 other questions for this witness, Judge.

13 THE COURT: All right. Mr. Strang?  
14 Mr. Strang.

15 VOIR DIRE EXAMINATION

16 BY ATTORNEY STRANG:

17 Q Hi. Uh, Dean Strang, Jerome Buting, Steven  
18 Avery. Um, this, uh, Deputy Jason Jost, um, do  
19 you like the guy? Not like the guy?

20 A Yes. I have respect for him, yes.

21 Q Okay. Um, how about police officers in general,  
22 just to cut right through it, do they -- do they  
23 ever lie?

24 A I've never really dealt with any of them.

25 Q Do you think they might lie on oath just like

any -- under oath just like anyone else or no?

2 A Could be, yes.

3 Q Same as any other witness? Or more likely? Less  
4 likely?

5 A Maybe less likely.

6 Q Okay. Um, I think that's all I have. Thanks.

## **VOIR DIRE EXAMINATION**

8 BY THE COURT:

9 Q Um, Mr. Mueller, the, uh -- some questions were  
10 asked about, uh, news accounts. You indicate  
11 that if the Court told you not to, uh, see any  
12 news accounts of this case that you could, uh --  
13 you'd not be of -- you'd not be able to follow  
14 that direction?

15 A It would be hard to, yes.

16 Q And tell me why again?

17 A Well, basically, I like going -- I go out like  
18 everyone else, and, you know, if you're standing,  
19 talking and there's a news flash or something, um,  
20 you know, you got to respect other people for wanting  
21 to see it. But -- I don't know. It's -- it's going  
22 to be all around. It's going to be hard not to  
23 notice it.

24 Q When you talk about when you go out, what --  
25 going out where?

1 A Uh, I usually go out to taverns. Um, you know, I  
2 like my fire -- Friday night fish fry. And through  
3 the fire department, you know, a lot of people talk.  
4 We usually get done with a meeting or a drill we --  
5 downstairs we turn the news on, um, you know, see  
6 what local fires have happened and what else is all  
7 on.

8 Q Okay.

9 THE COURT: Any --

10 **VOIR DIRE EXAMINATION**

11 BY ATTORNEY STRANG:

12 Q When -- when -- when people talk or watch the --  
13 the TV on this case around you, um, they talk  
14 about whether Avery's guilty or not guilty?

15 A Yes.

16 Q What do they tend to think?

17 A Is -- If he's guilty or not?

18 Q Yeah.

19 A Um, majority of people think he's guilty.

20 Q And how about you?

21 A I'm undecided on it.

22 Q So to stay undecided, as -- as you would need to  
23 be for a few weeks, can you stay away from that  
24 kind of conversation with a court ordering you to  
25 do it?

1 A I guess I'd have to if the Court's ordering me to do  
2 it.

3 Q The Court would be ordering you.

4 A Yes.

5 Q Um, it would be just a few weeks. After the  
6 trial was over, of course, you could do whatever  
7 you wanted. But during this trial with a court  
8 order, can you stay away from that kind of stuff?

9 A It's going to be hard. Probably not.

10 Q Okay. Thanks.

11 THE COURT: All right. The clerk will  
12 escort you from the courtroom at this time.

13 (Wherein juror is escorted out)

14 THE COURT: Counsel, does either party  
15 have a motion?

16 ATTORNEY FALLON: Uh, yes, Your Honor,  
17 I -- I do. I think, um, the juror must be struck  
18 for cause. Uh, one, he indicated that he really  
19 didn't think he could abide by the Court's  
20 instruction to refrain from media coverage and  
21 discussing the matter and I think we have to take  
22 him at his word, especially in light of the fact  
23 that he continued to monitor news reports even  
24 after receiving the Court's letter instructing  
25 him otherwise.

1                   And, um, I think based on that  
2 information he has to be excused. It's just too  
3 much of a risk.

4                   THE COURT: Mr. Strang?

5                   ATTORNEY STRANG: Uh, I -- I can't  
6 honestly oppose that.

7                   THE COURT: Okay. Uh, the Court agrees.  
8 The juror will be ordered stricken for cause. We'll  
9 move on to the next juror which I believe is, uh,  
10 let's see, Mr. Gray. Mr. Gray, please raise your  
11 right hand and the clerk will administer the oath to  
12 you.

13                   (Juror sworn)

14                   THE CLERK: Please be seated.

15                   THE COURT: Uh, Mr. Gray, you've already  
16 completed a written jury questionnaire in this case.  
17 Today we're moving on to the next phase of the jury  
18 selection process which is known as voir dire.

19                   The attorneys for each of the parties  
20 will have an opportunity to ask you some follow-  
21 up questions relating mostly to information that  
22 you provided on the questionnaire. Uh, before we  
23 begin that process, uh, there's a few pieces of  
24 information I wish to pass on to you.

25                   First, the jury in this case will not be

1           sequestered. That means the jurors will be  
2           permitted to return home at the end of each day  
3           following the conclusion of court proceedings.  
4           Uh, because of that fact, we will continue to  
5           require that the jurors not be exposed to any  
6           media accounts of the case; whether it be by  
7           television, radio, newspaper, internet, or  
8           otherwise, and the jurors will continue to be  
9           prohibited from discussing the case with anyone,  
10          including the other jurors, during the trial, or  
11          any family members.

12           You should know that although these  
13          court proceedings today are open to the public,  
14          Court does not permit cameras in the courtroom  
15          during the jury selection process, and the media  
16          is prohibited from disclosing the names of the  
17          jurors in any media accounts.

18           In addition, should you be selected to  
19          serve on the jury, uh, while cameras are allowed  
20          to cover the trial, they're not permitted to, uh,  
21          show the jurors during the trial.

22           If you remain on the jury panel after  
23          questioning today, you'll receive a telephone  
24          call later today to let you know when to return  
25          to court. Mr. Fallon.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY FALLON:

Q      Good morning, sir.

A Morning.

Q My name is Tom Fallon. I'm an Assistant Attorney General with the Wisconsin Department of Justice. I'm a prosecutor in this case. To my immediate left is Mr. Ken Kratz, uh, the Calumet County District Attorney and special prosecutor.

10 Uh, good morning and thanks for  
11 returning, helping us out. Um, the attorneys  
12 have a few questions for you to follow up on some  
13 of the information you provided last week in your  
14 questionnaire, and, uh, we appreciate your help.

15 I see, Mr. Gray, that you're currently  
16 retired from, uh, GTE?

17 A That's correct.

18 Q Okay. And, uh, you were there 35 years?

19 A That's correct.

20 Q What -- what position or what did you do for GTE?

21 A A number of positions. Um, primarily in the, uh,  
22 central office equipment, large systems. Um, I  
23 installed, maintained, modified, changed.

24 Q Okay. All right. During your, uh, time there --  
25 Excuse me. During your time there, did you have

1           any supervisory responsibilities --

2 A       Yes.

3 Q       -- or run any departments or anything?

4 A       Yes.

5 Q       Tell us about that.

6 A       Uh, I was first level, um, um, supervisor at, uh,

7           Slinger -- in the Slinger area for awhile, uh, and

8           then transferred back up to Two Rivers from Slinger.

9 Q       Okay. And how many people did you supervise or

10          oversee?

11 A       I believe 11.

12 Q       Okay. And how long did -- did you do the

13          supervisory -- or how long were you a supervisor?

14 A       Couple years.

15 Q       Couple years?

16 A       Uh-huh.

17 Q       Did you enjoy it?

18 A       Yes.

19 Q       You did. Okay. Uh, I also see that, uh, you,

20          um, served in the, uh, Air Force?

21 A       Yes.

22 Q       Uh, and what did you do in the Air Force?

23 A       Communications.

24 Q       And what did that involve? What type of

25          communication work were you involved in?

1 A Uh, communications at, uh, radar sites.

2 Q Okay.

3 A Uh, that would be tying a -- a -- radar units

4 together for communications to talk to each other and

5 that sort of thing.

6 Q Connecting a system, in other words, so that

7 everybody could talk?

8 A Yes.

9 Q I see. And you did that for, uh, four years did

10 I see?

11 A I served four years, yes.

12 Q Four years? All right. And what rank did you

13 achieve before retiring from that?

14 A E-4.

15 Q And -- what -- what is that?

16 A Well, that would be Airman First.

17 Q Airman First. Okay. Did you enjoy your, um,

18 time in the Air Force?

19 A Yes.

20 Q Yeah?

21 A Yeah. It was good.

22 Q Well, you seemed to hesitate a little. I just

23 thought I'd ask. You know, sometimes --

24 A Good and bad.

25 Q Yeah, I would imagine. All right. Um, okay. I,

1       um, see that, uh, you do, uh -- you like to  
2       travel in your spare time. Um, what kind of  
3       traveling do you like to do? Is that around  
4       here? This country? Or do you travel overseas  
5       much? Or --

6   A   No, not overseas. Um, my family lives in Texas. We  
7       go there a lot.

8   Q   Okay.

9   A   Um, and we -- we visit national parks and that sort  
10      of thing.

11   Q   I see. Okay. All right. Well, one of the  
12      things of concern to, um, all of us here that  
13      we'd like to talk to you about is, um, the news  
14      coverage which has attended this trial, or the  
15      prospect of this trial, and ask you some  
16      questions about that.

17                  And it appears that you obtain your news  
18      from a variety of sources; radio, newspaper,  
19      television, and magazines. And let me first ask,  
20      where would you say you get the -- the vast  
21      majority of your news? Or is it evenly split?

22   A   The vast majority would be newspaper.

23   Q   From the newspaper.

24   A   Yeah.

25   Q   All right.

1 A Various newspapers.

2 Q Okay. What papers, uh, do you read?

3 A Uh, the *Milwaukee Sentinel*, the *Green Bay Press*, and

4 the, uh, *Manitowoc Herald Times*.

5 Q All right. And do you read, uh, them, uh, daily

6 or regularly?

7 A Pretty much. Not all three but, um, I -- I read the

8 paper almost every day.

9 Q Okay. So you're reading one -- at least one of

10 those papers every day?

11 A Yes.

12 Q Okay. And, uh, how about, uh, television news?

13 A Very little.

14 Q Very little. All right. Um, and, uh, magazines.

15 What kind of magazines do you regularly read?

16 A *National Geographic*, that sort of thing.

17 Q All right. Uh, any news magazines like

18 *U.S. World Report*, or *Forbes*, or anything like

19 that?

20 A Many years ago but not anymore.

21 Q Okay. All right. Okay. I see from your

22 questionnaire that once you received your

23 notification from the Court you made a conscious

24 effort to avoid any news, um, about the case; is

25 that correct?

1 A That's very true.

2 Q All right. And, uh, as you sit here today you

3 can tell us that in the last three weeks you've

4 managed to pretty much avoid the news coverage?

5 A It's impossible to avoid all that --

6 Q Sure.

7 A -- but, yes.

8 Q Okay.

9 A Yeah.

10 Q You haven't read any detailed articles or --

11 A No.

12 Q -- anything? All right.

13 A No. I had my wife sensor the paper for me.

14 Q All right. And, um, any -- did you see anything

15 on television or hear anything on the radio?

16 A No. On television, not at all.

17 Q Okay.

18 A Um, the radio, just short blurbs.

19 Q Sure. Um, and as I see your, um, questionnaire,

20 you indicate you haven't formed any opinions at

21 all one way or another about this particular

22 case?

23 A No.

24 Q So as you sit here today you don't have any

25 opinion at all as to whether Mr. Avery is guilty

1           or innocent of what he's been charged with?

2   A   No. That's what the trial is for.

3   Q   Okay. So you have no problem at this time  
4       presuming him innocent until or unless he's  
5       proven guilty beyond a reasonable doubt?

6   A   No.

7   Q   Okay. And you think you can follow that and  
8       accept that principle, uh, as this trial would  
9       begin if you were selected as a juror?

10   A   Yes, I believe so.

11   Q   Okay. All right. I just have one, uh, last  
12      question: You did indicate that you did have  
13      some concern about possibly serving as a jury --  
14      uh, as a juror. I understand your mother is, uh,  
15      ill down in San Antonio?

16   A   That's correct.

17   Q   All right. Um, what -- how is she doing lately?

18   A   I talked to my sister Tuesday and she's a little  
19      better. Her attitude and, uh, will to survive is --  
20      is much improved.

21   Q   She's on the uptake, more or less, at least for  
22      the time being?

23   A   Yes.

24   Q   Okay. Um, is she at home or is she hospitalized?

25   A   Uh, she's -- hospital, therapy and nursing home for

1           the last four, five months.

2 Q       Okay. But she seems to be relatively stable at  
3           the current time?

4 A       Yes.

5 Q       Okay.

6 A       Her, um -- she had an operation on her hip and it --

7 Q       Sure.

8 A       -- got infected and that sort of thing, and, uh, the  
9           last time I talked to my sister, then she said the  
10          wound was, quote, healing. Finally.

11 Q       All right. So things seem to be getting better.

12 A       Better, yes.

13 Q       Okay. All right. Um, thanks. That's all I  
14          have.

15                   ATTORNEY FALLON: I'll pass the juror.

16                   THE COURT: Mr. Strang?

17                   ATTORNEY STRANG: Thank you, Your Honor.

18                   **VOIR DIRE EXAMINATION**

19 BY ATTORNEY STRANG:

20 Q       Um, good morning.

21 A       Morning.

22 Q       Uh, Dean -- Dean Strang, Jerome Buting, Steven  
23           Avery. Um, Mr. Buting and I, uh, are defending  
24           Mr. Avery. Um, and I -- I thought I would, um,  
25           start by going back, um, just a little bit with

1           you. Um, you mentioned that you had been parish  
2           president, or maybe you still are, um, parish  
3           president.

4       A    Yeah, that was '70's and '80's.

5       Q    Okay.

6       A    A long time ago.

7       Q    And how long did you do that? You said two  
8           terms, but I don't know how long the terms were.

9       A    Each was a year.

10      Q    Each was one year?

11      A    Um-hmm.

12      Q    Okay. And then sat on the parish school board as  
13           well?

14      A    For several years.

15      Q    Uh, again, in the '70's and '80's?

16      A    Yes.

17      Q    When your -- when your boys were growing up?

18      A    That's correct.

19      Q    Are you still active in the parish?

20      A    Um, not as much as I used to be but, yeah, I still do  
21           some volunteer work.

22      Q    And as -- as we come a little bit closer in time,  
23           now, um, I'm -- I'm just sort of curious, um, how  
24           much you and your wife followed, um, the  
25           disappearance of Teresa Halbach, and then, um,

1           the discoveries, um, you know, on what people  
2           have been calling the Avery property?

3       A    Yes.

4       Q    Uh, and then the arrest of Steven Avery?

5       A    Yes.

6       Q    Did you follow that pretty closely, initially?

7       A    In the early days, yes.

8       Q    Okay. And, um, what do you mean by "the early  
9           days", Mr. Gray?

10      A    In the first, uh, month, two months. That -- that  
11           time period through there. Yeah.

12      Q    Okay. And, uh, followed it pretty closely how?

13      A    With the -- the news, the paper, that sort of thing,  
14           but I -- I wouldn't say I followed it closely. I  
15           knew it was going on, but, uh, I had other things  
16           too.

17      Q    Sure. Okay. And -- and even back then, um, I  
18           guess where I'm going is were you -- were you  
19           picking up most of what you did through the  
20           newspaper --

21      A    Yes.

22      Q    -- as opposed to watching TV in the middle of the  
23           day or something?

24      A    Yes. I never watch television in the day.

25      Q    Okay. Um, do you -- do you re -- remember a

1                   young man named Brendan Dassey?

2 A         The name, yes, um-hmm.

3 Q         And what do you know about, um, young Brendan

4                   Dassey?

5 A         Personally, nothing.

6 Q         Well, I mean, know from the paper or --

7 A         Oh. That he was -- he's being -- he's implicated.

8 Q         Okay. And any -- any understanding of how or why

9                   he's implicated or --

10 A        Yes. Uh, that was -- that came out very early.

11 Q        Tell -- tell me a little bit about that. What --

12                   what you've learned from the paper or TV or

13                   wherever.

14 A        That he was, uh -- was accused, arrested, uh,

15                   questioned, that sort of thing. And, uh, that, uh,

16                   he gave some sort of confession.

17 Q        Um-hmm. Did you hear that he later took that

18                   confession back or recanted?

19 A        Yes, I did.

20 Q        Um, do you remember how you heard about the

21                   confession and then the recantation?

22 A        Probably in the paper.

23 Q        What do you suppose all of that has to do with

24                   Steven Avery?

25 A        I'm not sure.

1 Q Um, how about your wife? Have you -- you and  
2 your wife discussed the case back in the early  
3 days?

4 A No. The -- back then, yeah, we did to some extent.  
5 Yes. Um-hmm.

6 Q Did -- does she have any opinion about whether  
7 Mr. Avery did it, or didn't do it, or --

8 A She said she definitely wouldn't want to be on the  
9 jury.

10 Q Okay. What did -- what did that mean?

11 A That she couldn't, uh, get the -- the details out of  
12 her mind.

13 Q Oh. Okay.

14 A Um-hmm.

15 Q Uh, just that they -- all of the allegations  
16 and --

17 A Yes.

18 Q -- the ugliness of it --

19 A Yes.

20 Q -- all? How about you? I mean, these are ugly  
21 allegations. Um, uh, how -- how has that  
22 affected you?

23 A I can, um, erase things in my mind so that they --  
24 you know, if it -- they're not important, I pay no  
25 attention to them.

1 Q And, I guess, are these important? Is it  
2 important when a young woman goes missing and  
3 then apparently --

4 A I'm not talking about the -- the act. I'm talking  
5 about since I was in the, uh, jury pool.

6 Q Okay. And -- but I am talking about the --

7 A Is there a picture still in my mind?

8 Q Yes.

9 A Yes. Yes.

10 Q What -- what's the picture?

11 A That, uh, a young woman shouldn't be violated.

12 Q Um, violated meaning raped, or killed, or --

13 A Any --

14 Q -- her body mutilated or --

15 A Any of the above.

16 Q Any of that? Okay. Um, and do you react to that  
17 in specific as a young woman shouldn't be or that  
18 shouldn't happen to anyone?

19 A To a human being.

20 Q A human being? Um, do you -- do you have  
21 grandkids?

22 A Yes.

23 Q And is there a level at which you're reacting to  
24 this as a grandfather with grandkids who may be  
25 about that age or in their 20's?

1 A No. No.

2 Q Okay. Um, what do you know about Mr. Avery's  
3 background before that? Specifically, um --

4 A I'd --

5 Q (Unintelligible) -- or conviction.

6 A I -- I remember, uh, the first time Mr. Avery was --  
7 was convicted, but, uh, had long since not thought  
8 anything at all about it.

9 Q You actually remember the first trial involving  
10 Mr. Avery?

11 A I remembered the first, uh, incidents and, uh,  
12 conviction.

13 Q Okay.

14 A As far as the trial details, no.

15 Q Right. But the -- but the conviction, and then  
16 do you -- do --

17 A That it occurred.

18 Q -- do you remember what eventually happened with  
19 that conviction --

20 A Yes, I do.

21 Q -- many years later?

22 A Yes, I do.

23 Q What?

24 A It was thrown out. Um --

25 Q And do you have -- do you -- do you know why?

1 I'm just --

2 A Yes. Because of the DNA.

3 Q Okay. And what -- what was your reaction to that

4 when that conviction gets thrown out because of

5 the DNA?

6 A Honestly, I thought the Sheriff's Department bungled

7 the job.

8 Q Um, and that the State Crime Lab got it right

9 with the -- the DNA was -- Gregory Allen was the

10 guy who committed the rape and the assault, not

11 Steven Avery?

12 A That's my understanding, yes.

13 Q And do -- um, did -- did you then hear about the

14 lawsuit?

15 A Yes.

16 Q What was your reaction to that?

17 A I thought he had a right to it.

18 Q Um, now, you know, all of us, obviously, bring

19 the little bits and pieces of what we know and

20 think with us, and when you assemble all of that

21 together and then make --

22 A Um-hmm.

23 Q -- you know, whatever efforts --

24 A Um-hmm.

25 Q -- you can to take on the role of a juror --

1 A Yes.

2 Q -- um, are you quite comfortable that if you  
3 served here, uh, you could view Mr. Avery as  
4 starting with a -- a clean slate all together?

5 A Yes. Yes.

6 Q Uh, why?

7 A Because I feel that everybody has the right to a fair  
8 hearing.

9 Q Um-hmm. Wouldn't -- mustn't he have done  
10 something here if he's in the courtroom sitting  
11 in that chair?

12 A My position is accused doesn't mean guilty.

13 Q Not even maybe guilty or probably guilty?

14 A No. Maybe, but not until after the trial.

15 Q Okay. And, um, who would you expect to prove him  
16 guilty or innocent here?

17 A Mr. Kratz.

18 Q Or the people at this table at least?  
19 (No verbal response)

20 Q Okay. Uh, beyond a reasonable doubt? Could you  
21 hold them to that standard?

22 A Yes.

23 Q If the Judge instructed that was the standard?

24 A Correct.

25 Q Do you expect Mr. Buting and I to prove him

1                   innocent?

2   A    No. Just to refute their evidence.

3   Q    Right. And -- and I expect we probably will, um,  
4                   attack or -- or try to show another side to some  
5                   of their evidence. Some of their evidence we  
6                   probably won't have any -- any dispute with. But  
7                   whatever we do, can you bear in mind and honor  
8                   the rule that we don't have to do anything? We  
9                   don't have to prove a blessed thing to you?

10   A    Yeah.

11   Q    Um, that is, Mr. Avery or any -- you know, his  
12                  lawyers acting for him --

13   A    Yeah.

14   Q    -- do not have to prove his innocence?

15   A    Yes.

16   Q    Is that something you can accept?

17   A    Yes.

18   Q    So the only burden of proof lies with the  
19                  State --

20   A    Yes.

21   Q    -- and its lawyers, um, to prove him guilty  
22                  beyond a reasonable doubt?

23   A    Yes.

24   Q    Now, uh, as I've said, I'm not -- we're not going  
25                  to sit here like bumps on a log. That's just not

1           what we do. Um, and if we cross-examine some  
2           witnesses, you would listen to that evidence just  
3           as you would to the direct testimony?

4       A    Yes.

5       Q    Or the direct examination of those witnesses?

6       A    Yes.

7       Q    Um, one of the decisions we would have to make at  
8           some point would be whether to call witnesses of  
9           our own in what's called the defense case --

10      A    Um-hmm.

11      Q    -- whether to put on a defense case at all.

12      A    Yeah.

13      Q    Um, if we put on a defense case, will you give  
14           our witnesses, Mr. Avery's witnesses, the same  
15           fair consideration you would give the State's  
16           witnesses?

17      A    Yeah. Yes.

18      Q    Um, the toughest call in that respect is whether  
19           to call Mr. Avery as a witness or not. Um, if --  
20           if he's innocent, would you expect him to  
21           testify?

22      A    Not if he doesn't want to.

23      Q    Why not?

24      A    Because that's his right.

25      Q    I understand. And that's -- you know, as a

1 matter of the American Constitution and, uh,  
2 our -- our core values here, that's -- you know,  
3 that's the correct answer everyone would say.

4 But, um, it's tougher to follow that  
5 sometimes in real life. Why do you think you  
6 could follow the Judge's instruction that  
7 Mr. Avery has a right not to testify and you  
8 can't consider that as any evidence at all?

9 A That's what I believe.

10 Q That is -- that is what you believe.

11 A What I believe. That's it.

12 Q That's why you spent your time in the Air Force?

13 A Well, no. It's just what I believe.

14 Q Yeah. Okay. Um, how about if he does testify?  
15 If he were to testify, um, I would think it might  
16 be natural for a juror to say, well, of course he  
17 denies doing it. You know, he's not going to get  
18 up and admit it. He's trying to save himself.

19 Um, would you come at it with that attitude?

20 A I don't know if you'd call it an attitude, but it's  
21 true, he -- he doesn't want to -- he doesn't plead  
22 guilty, he doesn't want to be guilty, so, yeah.

23 Q Right. Right. But, um --

24 A Uh, neither. I wouldn't take it either way.

25 Q Okay. And -- and, really, in the end, I think

1           that the -- the law that the Court probably would  
2           give you is if he testified --

3       A    Um-hmm.

4       Q    -- um, he would be considered like any other  
5           witness?

6       A    I suppose.

7       Q    You would weigh his testimony, listen carefully,  
8           and decide whether you believe it or not believe  
9           it --

10      A    Yeah.

11      Q    -- just like you would anybody else --

12      A    Yes.

13      Q    -- testifying?

14      A    Yes.

15      Q    Could you do that?

16      A    Yeah.

17      Q    Um, there are other witnesses, um, who present  
18           similar problems for some people in evaluating,  
19           but this is sort of the flip side from -- from --  
20           at least for many people. Um, law enforcement  
21           officers will testify here. Some of them will be  
22           in uniform.

23      A    Um-hmm.

24      Q    Um, and, um, when you hear a law enforcement  
25           officer testify, are -- are you willing and able

1           to look at him or her as just another human being  
2           and just another witness?

3   A   Yeah, I think so. Um-hmm. He's sworn an oath.

4   Q   Who's like any witness who's taken an oath --

5   A   Um-hmm.

6   Q   -- to tell the truth. But what I'm getting at is  
7           do you think there's anything about, um, going  
8           into the profession of law enforcement that makes  
9           you more likely or less likely than someone in  
10          any other calling in life to tell the truth under  
11          oath?

12   A   No, I don't think so.

13   Q   Um, you -- you would be able to listen to a law  
14          enforcement officer's testimony and weigh it just  
15          as you would Mr. Avery's or, you know, um, any  
16          other citizen or witness who might be called?

17   A   Yeah, I think so. Um-hmm.

18   Q   Um, you sound just a little bit tentative about  
19          that. Maybe you could -- maybe you could talk --

20   A   No. A -- a witness is a witness. They're sworn.  
21          Uh, they're -- they're not supposed to lie.

22   Q   Right.

23   A   So I would accept what they say.

24   Q   But -- and -- and that's what we all want to do.  
25          The -- the messy reality of life in trials is

1           that sometimes, um, in fact, not infrequently,  
2           one witness is saying black and another witness  
3           is saying white --

4 A       Um-hmm.

5 Q       -- on some point that matters.

6 A       Um-hmm.

7 Q       So they both can't be correct.

8 A       Yeah.

9 Q       Um, and the issue is whether you come into this  
10          with some bias for or against --

11 A       No.

12 Q       -- a witness just because of the clothes they're  
13          wearing or the job they have?

14 A       No. No.

15 Q       In the end, you may have to sort out conflicting  
16          testimony?

17 A       Correct.

18 Q       And can you consider all witnesses evenly and  
19          equally from the starting point in doing that?

20 A       Yeah.

21 Q       Did your, um, telephone installation, or, you  
22          know, I guess it was larger systems you were  
23          working with, did the installation and  
24          maintenance of those systems require of you, um,  
25          better than an average grasp of electrical

1           engineering or --

2 A       Yes.

3 Q       -- at least of electronics?

4 A       Yes.

5 Q       Did you acquire that in the Air Force or at least

6           get training in that?

7 A       Started the air, but, uh, continued going to school

8           afterward. But, uh, through the company and that --

9           that sort of thing.

10 Q       Okay. Um, did that, um, strike a cord with you,

11           um, in -- in terms of an interest in science at

12           all or --

13 A       Uh, very much. Yeah.

14 Q       Yeah.

15 A       In electronics, um-hmm.

16 Q       In electronics in --

17 A       Yes.

18 Q       -- specific?

19 A       Um-hmm.

20 Q       Okay. Um, do you -- and I'm -- I'm curious what

21           you bring of that interest or that bent, um, to

22           the courtroom in looking at or expecting

23           scientific evidence?

24 A       Easy. It's, um, logic. Math, electronics is pure

25           logic.

1 Q Okay. And would you extend that to other, um,  
2 physical sciences? Like the -- like biological  
3 science?

4 A Um, yeah, somewhat. Uh, no. No. Uh, electronics is  
5 math and math is straight. Yeah. It's pure logic.  
6 No, um, biological -- you mean, human, animal. Yeah.  
7 No, there are too many variations there.

8 Q Um, variations in terms of how the specimens are  
9 collected, or preserved, or tested?

10 A Oh, specimens. Oh. No. That -- that I -- I -- I  
11 don't know. I have no idea.

12 Q Okay. Um, but, again, what I'm -- what I'm  
13 interested in is if somebody comes in and they've  
14 got, let's say, expertise in ballistics --

15 A Um-hmm.

16 Q -- do you understand what I mean by --

17 A Yes.

18 Q -- ballistics? Um, looking under a microscope  
19 at, uh, bullets, or fragments of bullets, or  
20 cartridge casings --

21 A Um-hmm.

22 Q -- um, sometimes the boring of, uh, short or long  
23 barrels on firearms. Um, so they come in with  
24 this specialized expertise.

25 A Right.

1 Q Um, are you likely to give them much more credit  
2 simply because of that expertise?

3 A Yes.

4 Q Uh, tell me a little bit about why?

5 A As an expert, they -- theoretically, they know what  
6 they're doing. It's a science. It's what they do.

7 Q Um-hmm.

8 A So -- so, yeah, I respect -- I respect that.

9 Q Okay. And -- and are you willing and able to  
10 probe on whether they've done good science in a  
11 particular case?

12 A If the subject comes up, sure.

13 Q Sure. Okay. So even if the principles are  
14 sound --

15 A Um-hmm.

16 Q -- you'd be willing to look at, well, was the  
17 human part of -- of the process also sound?

18 A The human part of the evidence gathering? Is that  
19 what you're saying?

20 Q Evidence gathering, evidence maintaining,  
21 evidence testing, that kind of thing?

22 A I would want to make sure that there was a -- uh, an  
23 unbroken train.

24 Q Look at the whole -- the whole series of  
25 events --

1 A Um-hmm.

2 Q -- that lead to the scientific testimony?

3 A Yeah.

4 Q Okay. While we're on that, um, in more recent

5 weeks, let's say in the last, oh, eight weeks,

6 roughly, seven, eight weeks, um, have you heard

7 anything about a blood vial that --

8 A I heard --

9 Q -- referred to this case?

10 A I've heard about a blood vial, but I don't know what

11 they were talking about.

12 Q What the status is or what role, if any, it

13 plays?

14 A That's right.

15 Q Um, how did you hear about that?

16 A Before I could get out of the room when the

17 television was on.

18 Q Okay. All right. No. That -- Yeah. No.

19 I'm -- I hope that didn't sound accusatory --

20 A No.

21 Q -- you know. Um, do you remember about when?

22 Was it before or after Christmas?

23 A I think it was after Christmas.

24 Q Okay. Did that cause you to form any opinion at

25 all about the case?

1 A I wondered what they were talking about, but that's  
2 all.

3 Q So more wondering than having an opinion?

4 A Beg your pardon?

5 Q More wondering than actually having an opinion?

6 A Yeah.

7 Q Um, last -- last area. Um, do you want to serve  
8 on the jury in this case?

9 A Want to? No. Will? Yes.

10 Q Okay. Um, will, because it's a -- a civic duty?

11 A Yeah.

12 Q And why not want to?

13 A I would just as soon not. I would prefer not to. I  
14 can't tell you why. I just would prefer not to.

15 Q Okay. And, um, I'm just -- I'm going to explore  
16 that just a little bit, and if it gets  
17 uncomfortable, tell me. All right?

18 THE COURT: I'm -- I'm sorry, Mr. Strang.

19 Time's up.

20 JUROR GRAY: Beg your pardon?

21 THE COURT: At this time, we'll have the  
22 clerk escort you from the courtroom.

23 (Wherein juror is escorted out)

24 THE COURT: Is there a, um, motion from  
25 either party?

ATTORNEY FALLON: There's no motion from the State, thank you.

ATTORNEY STRANG: No motion.

THE COURT: All right. Mr. Gray is accepted. Um, I think before we take our break, the -- I know the next juror -- I'm not sure of the reason why, but the next juror on the list was scheduled to come in this afternoon. Perhaps we can take Mr. Wardman, who might be a shorter questioning than the -- the rest of them, and I know he waited yesterday, so I'd like to get him in today.

ATTORNEY STRANG: I -- I will object, um, Your Honor, to the truncation of my voir dire of the preceding witness. Although I -- I did not have a motion for cause, um, I had two, or three, or four, or five minutes left of, um, important voir dire of that juror about his reservations, if any, about undertaking the responsibility of deliberations.

THE COURT: All right. Your objection's noted. Uh, Mr. Wardman, please raise your right hand and the clerk will administer the oath.

(Juror sworn)

THE CLERK: Please be seated.

THE COURT: Uh, Mr. Wardman, you've

1           already filled out a, uh, juror -- written juror  
2           questionnaire in this case. Today we're moving  
3           on to the next step of the proceedings, which is  
4           known as voir dire. The attorneys will each have  
5           a chance to ask you some questions, which, for  
6           the most part, will follow up on information that  
7           you provided in your questionnaire.

8           Before we get to those questions, um, I  
9           want to make sure you understand that the jurors  
10          selected in this case will not be sequestered.  
11          That means the jurors will be -- be permitted to  
12          return home each day at the end of court  
13          proceedings for that day. And because of that,  
14          the jurors will continue to be subject to the  
15          rule that, uh, they cannot have any media  
16          exposure to this case either in radio,  
17          television, newspaper, the internet.

18          Uh, and jurors will not be permitted to  
19          discuss the case with anyone, including family  
20          members or other jurors until it's time to  
21          deliberate.

22          The proceedings in this case are open,  
23          but during voir dire, the Court does not allow  
24          cameras in the courtroom, and, uh, members of the  
25          media are prohibited from using your name in any

1                   court reports about -- or any news media reports  
2                   about this case.

3                   If you are selected to serve as a juror,  
4                   uh, you should know that, uh, while cameras may  
5                   be in the courtroom for the trial, they're not  
6                   permitted to show the jurors.

7                   Uh, in the event you remain on the jury  
8                   panel after today's proceedings, you'll get  
9                   another call, probably sometime later today,  
10                  telling you when to report back.

11                  Mr. Fallon, you may begin.

12                  **VOIR DIRE EXAMINATION**

13                  BY ATTORNEY FALLON:

14                  Q      Good morning, Mr. Wardman.

15                  A      Morning.

16                  Q      My name is Tom Fallon. I'm an Assistant Attorney  
17                  General with the Wisconsin Department of Justice.  
18                  I'm one of the prosecutors in this case. To my  
19                  immediate left is Mr. Ken Kratz, the Calumet  
20                  County District Attorney, and lead special  
21                  prosecutor in this matter.

22                  Um, thanks for coming in this morning.  
23                  We had a few questions we wanted to, uh, follow  
24                  up with, uh, based on the information you  
25                  provided last week. Sorry we didn't get to you

1           yesterday. I know you were here.

2           Um, I have a couple of, uh, preliminary  
3        questions, then I just wanted to talk about one  
4        area of concern, uh, to all of us here.

5           Um, my first question is, if you can  
6        help me out because I'm not from the area, um,  
7        you indicated you're not currently employed and  
8        your principle occupation used the designation  
9        E-C-K?

10          A     Yeah. Eck Foundry.

11          Q     Oh, Eck Foundry.

12          A     Yeah.

13          Q     Oh, I'm sorry. Okay. What kind of, um, work did  
14        you do at the foundry?

15          A     I was a lead man on the -- and worked on the bench in  
16        the clean air room.

17          Q     Lead man?

18          A     Lead man.

19          Q     Okay. Can you tell me a little bit about -- I'm  
20        not quite familiar with that. What -- what does  
21        that person do?

22          A     It was my job to see that the castings were cleaned  
23        right and shipped out.

24          Q     Okay. Um, did that involve any supervisory  
25        responsibilities?

1 A Yes, some.

2 Q Okay. Tell us about that.

3 A I had to watch the guys and -- and train them and

4 everything --

5 Q I see.

6 A -- so they knew what they were doing.

7 Q Okay. And how long were you a supervisor of

8 sorts?

9 A Um, I believe it was 21 years.

10 Q Twenty-one years. Okay. And how long did you

11 work at the, uh, factory?

12 A Twenty-eight.

13 Q Twenty-eight. So 21 out of the 28 years you were

14 in some responsibility as a supervisor for

15 others?

16 A Yes.

17 Q Okay. Okay. Um, you indicated in terms of, uh,

18 volunteer work two things of interest to us. Uh,

19 Union 301? That's associated with the -- the

20 foundries work --

21 A Yes.

22 Q -- that you did?

23 A Yes.

24 Q Okay. And what, uh, specific, uh --

25 A Oh, I -- I don't do -- dealing with the, uh, union no

1 more.

2 Q Okay.

3 A I didn't know if you meant now or --

4 Q Well --

5 A -- if ever.

6 Q Well, thanks for clearing that -- I was going to,  
7 uh, get to that. But you're no longer in the,  
8 uh --

9 A Union, no.

10 Q Okay. No -- Okay. So you don't even do any  
11 volunteer work or currently --

12 A I do volunteer work but not for the union.

13 Q Not for the union. Okay. Very good. Um, how  
14 long were you in the union?

15 A Twenty-eight years.

16 Q All right. So even as -- even though you had  
17 some supervisory responsibilities, you were  
18 still, uh, a member of the union at the foundry?

19 A Yes.

20 Q I see. Okay. Did you have any, uh, special  
21 responsibilities as a member of the union like  
22 maybe being a steward or anything --

23 A Yes.

24 Q -- like that?

25 A I was a steward.

1 Q You were. Okay. And how long were you a union  
2 steward?

3 A Three years.

4 Q Okay. Uh, was that toward the end of your time  
5 before retirement or was that earlier on in your  
6 career?

7 A Earlier on.

8 Q Okay. Did you enjoy that union work?

9 A Yes.

10 Q You did. Okay. Were you -- were, uh, you  
11 involved in representing any of your colleagues  
12 in any, uh, labor disputes or, um, management  
13 labor issues of any kind?

14 A One.

15 Q Just one. All right. And how was that process?

16 A Uh, he got some, uh, disciplinary action.

17 Q Okay. Um, do you think it was overall on balance  
18 appropriately handled?

19 A Yes, it was appropriately handled.

20 Q Okay. Um, in your, um, work at the foundry, um,  
21 were you responsible for drawing up any security  
22 guidelines or, uh, safety guidelines for work at  
23 the foundry of the people you were supervising?

24 A Uh, well, we had some insurance guys there that one  
25 time, and we did -- yeah, a little bit.

1 Q A little bit. But it wasn't a big part of what  
2 you were doing?

3 A No.

4 Q Okay. Um, in terms of problem-solving and -- and  
5 dealing with, um, uh -- or -- or formulating  
6 opinions, or speaking with people, trying to  
7 understand a point of view, would you consider  
8 yourself a -- a big picture person or more of a  
9 detail-oriented guy?

10 A Detail, I think.

11 Q Okay. Um -- Okay. Tell me about the volunteer  
12 work you do at the Sheriff's Department.

13 A Uh, we go on -- uh, out on patrol and we check, uh,  
14 houses and that, if people have went on vacation, and  
15 abandoned cars, and just keep our eyes open.

16 Q And how often do you do that?

17 A Uh, once a week.

18 Q Now, you're not a, um, licensed law enforcement  
19 officer --

20 A No.

21 Q -- correct? All right. And you're not carrying  
22 a weapon when you're assisting?

23 A No.

24 Q Okay. Um, but you do ride in the squad car with  
25 other deputies?

1 A No.

2 Q Oh, you don't. Okay. Well, tell us how you work

3 then?

4 A It's both -- uh, both of us are volunteers and we --

5 we get four hour shifts.

6 Q Oh. So there's just you and one other guy who

7 help out?

8 A Correct. There's always two.

9 Q Okay. How do you get your assignments? Or how

10 do you know what to do?

11 A Uh, we have a, um -- I forget, now, what they -- how

12 they say it, but it's -- it's a book, and it tells us

13 which, uh -- where to go.

14 Q Okay. And these are people who may be out of

15 town and have apparently asked the Sheriff's

16 Department to keep an eye on things to make sure

17 that no one breaks in?

18 A Correct.

19 Q I see. Okay. So do you use a -- a county

20 vehicle or do you use your own car?

21 A County.

22 Q Okay. How long have you been doing that, sir?

23 A Uh, since November last year.

24 Q Okay. And, um, when did you retire, by the way,

25 from the foundry?

1 A Uh, '99. I crushed three vertebrae in my back. I'm  
2 on disability.

3 Q Okay. I'll come back to the volunteer work in a  
4 minute. But I just want to make sure, uh,  
5 because of your disability and your back injury,  
6 um, would serving on a juror -- on a jury, and,  
7 you know, it might require sitting for an hour  
8 and a half or two hours at a time, um, before you  
9 get a break, would that cause any problems for  
10 you in being -- as being a juror or do you think --

11 A No. If I get too much pain or something I just take  
12 a pill.

13 Q Okay. And, um, does that affect your ability to  
14 think and remember things if you have to take any  
15 pain medication?

16 A No.

17 Q Okay. So it's pretty well under control then?

18 A Yes.

19 Q Okay. All right. Um, in terms of the, um -- the  
20 volunteer work, then, for the Sheriff's  
21 Department, during, uh -- I take it you're still  
22 doing that today?

23 A Yes.

24 Q And once a week for four hours?

25 A Yes.

1 Q Okay. Um, while engaging in that work, have you  
2 had an opportunity to, uh, meet or become  
3 familiar with various members of the, uh,  
4 Sheriff's Department?

5 A Not -- not right now, no.

6 Q Okay.

7 A Because I just started.

8 Q Oh, just started. So --

9 A Well, since November.

10 Q Was that November of '06 or November --

11 A Six.

12 Q Oh. So this is just for the last three months?

13 A Yes.

14 Q I see. Okay. All right. Um, I believe you said  
15 in your questionnaire you do have, um, one son  
16 that is a member of the Sheriff's Department?

17 A Yes, I do.

18 Q Okay. Now, um, how long has he been a member of  
19 the Sheriff's Department?

20 A Oh, five -- five years I think.

21 Q All right. And, uh, do you ever have occasion to  
22 talk shop with your son about law enforcement  
23 work in general?

24 A Not much, no. He won't tell me much.

25 Q All right. Um, very good. Well, let me ask, uh,

1 because this is a -- a matter of interest to all  
2 of us here, um, if you were selected as a juror  
3 in this case, and since your son is a member of  
4 the Manitowoc Sheriff's Department, and since  
5 there will be a pretty fair number of police  
6 officers, and sheriff's deputies, and state  
7 patrol officers, and other law enforcement people  
8 testifying, do you think you could evaluate their  
9 testimony the same as you would any other  
10 witness?

11 A Yes, I believe I could.

12 Q Okay. In other words, you don't think you'd be,  
13 you know, more favorably disposed to believing  
14 them than you would over any other witness?

15 A No.

16 Q Okay. And you realize they're human just like  
17 anybody else? They can make a mistake? And they  
18 might even lie as much as the next guy?

19 A Yes.

20 Q All right. So as a juror, your job is to listen  
21 and evaluate their testimony the same as you  
22 would any other witness?

23 A Yes.

24 Q All right. And you think you could do that?

25 A Yes.

1 Q You feel pretty confident about that?

2 A Yes, I do.

3 Q Okay. Um, um, just one last couple of questions.

4 Uh, have you ever had any other law enforcement

5 experience other than just the past three months

6 of -- of helping out?

7 A No.

8 Q All right. Uh, any law enforcement training at

9 all?

10 A No. None.

11 Q Okay. And -- well, do you think that you could

12 accept, uh, an instruction from the Judge that if

13 you were selected as a juror in this case, you

14 could presume that Mr. Avery is innocent unless

15 and until the State can prove him guilty beyond a

16 reasonable doubt?

17 A Yes.

18 Q All right. You accept that basic proposition in

19 our law?

20 A Yes, I do.

21 Q All right. And you feel comfortable that you can

22 abide by that?

23 A Yes.

24 Q All right. And, um, I take it from your

25 questionnaire that you don't have any opinions of

Mr. Avery's, um, guilt or innocence at -- at all  
at this time?

A No.

Q All right. Um, so you feel that you can give both the State and Mr. Avery a fair shake in this trial?

A Yes, I believe I can.

Q And that you would decide his guilt or innocence only on what the evidence is that is presented during the course of the trial?

A Yes.

Q All right. Is there any concern in your mind that if, you know, you thought and you listened to all the evidence, you say, geez, I just don't think the State, uh, convinced me. Do you think you could, uh, be comfortable rendering a verdict of not guilty?

A Yes.

Q All right. And do you think that would cause any concern or any problems with, perhaps, talking to your son who's a law enforcement officer? Do you think that might hinder your relationship at all?

A No.

Q All right.

25 ATTORNEY FALLON: I'll pass the juror.

1 THE COURT: Mr. Buting?

2 ATTORNEY BUTING: Thank you.

3 **VOIR DIRE EXAMINATION**

4 BY ATTORNEY BUTING:

5 Q Good morning.

6 A Good morning.

7 Q My name's Jerome Buting, and this is Attorney  
8 Dean Strang, and we represent Steven Avery.

9 Okay? I'd like to, uh, pick up on some things  
10 that Mr., uh -- Mr. Fallon spoke about, but also  
11 a few other things. But -- but let me first ask,  
12 your volunteer work that you do with the Sheriff,  
13 um, can you tell me why you decided to do that?

14 A I wanted something to do.

15 Q Okay. But, you know, there's lot of -- lots of  
16 things you can volunteer for. Why that  
17 particular --

18 A I kind of wanted to see what they -- what they did.

19 Q Okay. But why? I mean --

20 A I was curious.

21 Q Do you have a particular interest in law  
22 enforcement though?

23 A No.

24 Q I mean, you could volunteer for, you know,  
25 Habitat for Humanity or the --

1 A I don't have to do that much walking.

2 Q Okay. Um, your -- was it your son's involvement

3 with the Department maybe that piqued your

4 interest a little bit?

5 A Yeah, that was a little bit, too.

6 Q Had you ever wanted to be in law enforcement?

7 Thought, you know, be kind of interesting to do?

8 A No, not really.

9 Q How did the opportunity arise for you to do this?

10 A I heard that you could, uh, volunteer.

11 Q Um, and so who did you meet and what did you do?

12 A Uh, Peggy Holmes. I met her, and talked to her, and

13 she signed me up. They did a background check on me

14 and I got in.

15 Q Okay. And you -- you actually have a squad car

16 that you drive around?

17 A Yeah. It says "volunteer" on the side.

18 Q Okay. Um, and you work with another gentleman?

19 A Yes.

20 Q Or woman?

21 A Sometimes, yes.

22 Q And your son is -- what is his rank or what --

23 A He's a sergeant.

24 Q He's a sergeant?

25 A Yes.

1 Q Same last name?

2 A Yes.

3 Q Does he -- has he had any involvement in the

4 Steven Avery case?

5 A Yeah. He's standing outside the door.

6 Q Okay. So, um -- so he's had du -- duties here

7 in -- in the courthouse; right?

8 A Yes.

9 Q Um, did you ever talk to him about this at all?

10 A No.

11 Q Ever talk to him about the Avery case?

12 A No. But he had to take training or something for

13 some kind of gizmo they've used. Other than that,

14 no.

15 Q Stun belt?

16 A Yeah.

17 Q Okay. So he talked to you about the training he

18 had to do for that?

19 A Yeah. He mentioned it. That was about it. Because

20 I asked him why he had to go to school.

21 Q Do you think that, um -- do you think the police

22 officers would come into court and lie?

23 A Yeah.

24 Q Under oath?

25 A Yeah.

1 Q Why?

2 A Because they can get away with it.

3 Q How do they get away with it?

4 A Some judges believe them.

5 Q Okay. Um, and juries as well?

6 A Yeah.

7 Q Do you think that they have any more inclination

8 or likelihood of lying than -- than another -- any

9 other witness?

10 A No.

11 Q Would you think that they feel like they can get

12 away with it more easily than, say, another --

13 any other witness?

14 A It depends on the situation.

15 Q Do you think sometimes they're -- they're good at

16 lying under oath?

17 A Yeah.

18 Q Better than the average person?

19 A No.

20 Q So why do you think they're good?

21 A They get away with it.

22 Q Have you ever heard of that happening?

23 A Yeah.

24 Q When or where?

25 A When I went to court.

1 Q Okay. And you went to court on -- on a OWI case?

2 A Yeah.

3 Q Can you tell me a little bit about what happened  
4 there?

5 A Yeah. They arrested me. I had one beer. I wasn't  
6 drunk. But the reason I got into it with them is I  
7 always keep three bucks over my sun adviser and they  
8 took it. And I knew if I brought it up in court that  
9 they would, you know, laugh it off and -- and think I  
10 was pulling something. But I never said, boo. The  
11 officer brought it up that I said I rob -- uh, that  
12 he robbed me.

13 Q Okay.

14 A And the judge believed him.

15 Q Okay. So you were pulled over. Was this a first  
16 offense OWI?

17 A Yes.

18 Q How long ago was this?

19 A Ten years.

20 Q And was this the Sheriff's Department?

21 A No. Police. I don't even think he's an officer  
22 anymore.

23 Q Okay. Do you know what department?

24 A No.

25 Q Manit --

1 A Just city.

2 Q Manitowoc though?

3 A Yeah.

4 Q Okay. And you're saying that when you were

5 arrested, you had -- this -- this officer took

6 three dollars cash that you had in --

7 A Yeah.

8 Q -- your car? Um, and did you bring that up in

9 court?

10 A No.

11 Q But he brought it up and said that you claimed

12 he -- that he stole something from you?

13 A That he took the money, yeah.

14 Q Okay. And then did you respond to that in court

15 and say, no, it's -- I mean, he did, yes,

16 officer -- yes --

17 A I didn't say nothing because it ain't going to do me

18 no good.

19 Q So you actually sat there and saw him lie under

20 oath?

21 A Yes.

22 Q Right in front of your face?

23 A Yes.

24 Q And the judge believed him?

25 A Yeah.

1 Q In your opinion anyway. Um, how did that make  
2 you feel?

3 A Mad, but there ain't nothing I can do about it.

4 Q You think it happens to others, too?

5 A I don't know. That I couldn't tell you.

6 Q Do you, uh -- do you think it's possible that in  
7 this case, the Steven Avery case, that officers  
8 would come in -- into court and lie?

9 A I don't know. I'd have to hear them.

10 Q Do you think officers could do -- or deputies,  
11 or -- or any law enforcement officer, could do  
12 more than just lie under oath, but maybe even  
13 cross the line and falsify a report?

14 A Yeah.

15 Q What about crossing the line and actually  
16 planting evidence or altering evidence in some  
17 way?

18 A Depends if he didn't like him.

19 Q Depends what?

20 ATTORNEY FALLON: I'm sorry?

21 THE WITNESS: Depends if he didn't like  
22 him.

23 Q (By Attorney Buting) Meaning the defendant?

24 A Yeah.

25 Q So if an officer just really didn't like a

1           particular defendant, you could see situations  
2           where they might actually go to the -- to the  
3           length of planting evidence or tampering it with  
4           evidence in a case?

5       A    Maybe.

6       Q    Have you ever heard of that happening?

7       A    No.

8       Q    Do you have any reason to believe that people in  
9           the Manitowoc County Sheriff's Department would  
10          be capable of doing such a thing?

11      A    I wouldn't think so.

12      Q    Do you have any reason to believe that -- that  
13          they could not? I mean, in other words, because  
14          your son is there, and you're volunteering there,  
15          do you think that it's just not possible that  
16          anybody in that Department would do such a thing?

17      A    It's possible.

18      Q    What if you came to the conclusion that that  
19          happened in this case, um, that somebody in the  
20          very department that you volunteer for would do  
21          such a thing such as tampering with evidence or  
22          planting evidence? How would that make you feel?

23      A    Mad.

24      Q    Mad?

25      A    Yes.

1 Q Would that affect your -- your verdict?

2 A Yes.

3 Q How?

4 A I don't know. I -- I would plead not guilty for him.

5 Q Do you think that there would be any

6 repercussions afterwards for you?

7 A No, I don't think so.

8 Q Do you think the people in the department that

9 you volunteer for would be unhappy with you?

10 A I don't think so.

11 Q If this involved, in this case, very high ranking

12 members of the department you work for,

13 sergeants, lieutenants, things of that nature, do

14 you think that, uh, they would be unhappy if you

15 would return a not guilty verdict?

16 A I don't think so, no.

17 Q Well, now your son is a sergeant. Um, what if

18 you came to the conclusion that another sergeant,

19 or even someone above him, had committed

20 misconduct in this case? Would you be capable of

21 rendering a not guilty verdict?

22 A Yes.

23 Q Do you think your son would be unhappy with that?

24 A No.

25 Q Why not?

1 A Because it's -- I'm being honest.

2 Q Has he ever told you anything about the Sheriff's  
3 Department that would lead you to, um, think that  
4 this, um -- that this kind of misconduct could be  
5 possible?

6 A No. He don't talk about his work.

7 Q All right. Could you tell me what you know about  
8 this case from publicity, media?

9 A They say he killed her and burned her up. That's  
10 about it.

11 Q And what -- what's your view about that?

12 A I -- I hate to say it, but I ain't really got no  
13 view.

14 Q Well, do you think --

15 A It's wrong, but --

16 Q Why do you say you hate to say it?

17 A I don't know. I just don't know what to tell you.

18 Q Well, do you think that the media's portrayal of  
19 Mr. -- the things you hear in the media about  
20 Mr. Avery, uh, makes it look like he's probably  
21 guilty or probably innocent?

22 A I'm undecided with that, because I didn't get to see  
23 that much and then he told me -- the Judge told me  
24 not to watch. So I -- I ain't seen nothing.

25 Q Okay. Did you see any press conferences in this

1 case? By the --

2 A No.

3 Q -- the Sheriff?

4 A No.

5 Q Prosecutor?

6 A No. I seen it way in the beginning and that was  
7 about it.

8 Q And can you remember any details about what  
9 you -- you heard or saw?

10 A No. They just showed it -- I think it was his farm  
11 and, um, trailer house, and the tape around the  
12 barrel, and that was about it.

13 Q Okay. Do you know the name Brendan Dassey?

14 A No.

15 Q Do -- or if I refer to him as -- as Mr. Avery's  
16 nephew, do you recall any reports about him?

17 A Uh, yeah. Uh, not really. Well, I knew he was  
18 involved but that was it. I didn't real -- I really  
19 don't watch the news that much I'm sorry to say.

20 Q Okay. Well, you -- you say you knew that he was  
21 involved. Did you hear any news reports that he  
22 had made any kind of statements admitting that he  
23 was involved or --

24 A No.

25 Q Did you ever hear any reports that he had, uh,

1           later denied his involvement and recanting the  
2           confession? Withdrawing the confession? Do  
3           you --

4     A     No.

5     Q     -- remember -- you hadn't heard anything about  
6           that at all?

7     A     No.

8     Q     Do you think that's possible that somebody might  
9           confess to something that's -- that they didn't  
10          really do?

11    A     Yes.

12    Q     Why?

13    A     Under duress.

14    Q     Pressure from the police?

15    A     Well, anybody.

16    Q     Okay.

17    A     Family or something.

18    Q     Um, did you hear anything in the news reports  
19          about, um -- about a blood vial?

20    A     No.

21    Q     Have you heard anything at all about whether  
22          there might be any kind of tampering with  
23          evidence or planting of evidence?

24    A     No.

25    Q     Do you remember Mr. Avery's statements when he

1           was first arrested in which he denied any  
2           involvement and claimed somebody was trying to  
3           frame him?

4   A    Yeah. Yeah, I think I did.

5   Q    What's your thought about that?

6   A    Nothing.

7   Q    Do you -- um, do you think that -- I mean, as  
8        you -- as you look at this case and what you've  
9        heard about this case, do you think Steven  
10      Avery's being framed?

11     A    I don't know.

12     Q    Think it's possible that he is?

13     A    I -- I don't know. I can't answer that.

14     Q    Okay.

15     A    Couldn't even tell you.

16     Q    You don't -- you don't know one way or the other;  
17       right?

18     A    Right.

19     Q    You don't know whether he's guilty either?

20     A    Correct.

21     Q    What do you know about his past? Can you tell me  
22        what you know about Mr. Avery?

23     A    I seen it when he got out.

24     Q    Out of prison?

25     A    Yes.

1 Q Okay. So you knew that he was wrongly convicted?

2 A Yes. And I was surprised to hear him on the next

3 time on the news about him.

4 Q About him suddenly being charged with something?

5 A Yes.

6 Q Okay. Any doubt in your mind that he was wrongly

7 convicted and spent all that time in prison?

8 A The first time?

9 Q Yeah.

10 A Yeah. They were wrong.

11 Q They were wrong?

12 A Yes.

13 Q Okay. And, uh, how did you feel about that?

14 A I don't know how to say that. He's just -- be --

15 they were wrong, but I know it happens.

16 Q You know it happens?

17 A Yes.

18 Q Okay. How do you know it happens?

19 A They did it to him.

20 Q Okay. Um, were you also aware of a lawsuit that

21 he filed?

22 A Yeah.

23 Q Against the county?

24 A Yes.

25 Q Do you have any thoughts or opinions about that?

1 A I think he should get the money.

2 Q Okay. Let me just brief -- very briefly go over

3 a couple of other things here. Did you, uh -- in

4 your OWI case, uh, it sounds like you actually

5 had a hearing?

6 A Yes.

7 Q Um, did you go to a trial?

8 A Yes.

9 Q Did you have a lawyer?

10 A Yes.

11 Q Did you testify?

12 A No.

13 Q You didn't take the witness stand?

14 A No, I don't think I did.

15 Q Okay. Um, did your lawyer -- or did you

16 understand that you had a constitutional right

17 not to testify?

18 A No.

19 Q Uh, is there some particular reason why you did

20 not? Or you --

21 A I just didn't know. I didn't know until now.

22 Q That you had a right not to?

23 A Yes.

24 Q Um, did, uh --

25 ATTORNEY FALLON: Your Honor, I'm going

1 to -- can we approach the bench?

2 THE COURT: Sure.

3 (Discussion off the record)

4 Q (By Attorney Buting) The, uh -- the  
5 questionnaire that you filled out I think, uh,  
6 had a question that -- that told you about a -- I  
7 don't recall the number right now, but I think it  
8 told you that the defendant has a right -- a  
9 constitutional right not to testify if he -- he  
10 and his lawyer so choose?

11 A If you say so. I don't remember.

12 Q You don't remember?

13 A Sorry to say, no. I just filled it out to get out.

14 Q Okay. Um, well, just to quickly go over with  
15 you, the -- the Judge will instruct you that if  
16 Mr. Avery chooses not to testify under the -- you  
17 know, if it's our advice that he not testify,  
18 that you can't consider that against him in any  
19 way. Um, in other words, some people might think  
20 if a defendant doesn't testify, you know, he must  
21 have something to hide?

22 A Yes.

23 Q Is that something you might be concerned about?

24 A No.

25 Q So if Mr. Avery chooses not to testify, will that

1           affect you in any way in thinking that -- that  
2           he's still innocent?

3       A     No.

4       Q     And if he does testify, uh, will you be able to  
5           consider his testimony just the same as any other  
6           witness?

7       A     Yes.

8       Q     Or will you think that he's more likely to lie  
9           just because he's the defendant in the case and  
10          he's trying to get off?

11      A     Possible.

12      Q     Well, will you be able to consider his testimony  
13          in the same way as any other witness though?

14      A     Oh, yes.

15      Q     Okay. You show -- you watch, uh, *C.S.I.* shows, I  
16          think; right?

17      A     Yes.

18      Q     And, uh, it's your opinion that they are very  
19          realistic?

20      A     Some of them. Some of it, yes.

21      Q     Do you think that the -- for instance, the  
22          evidence that they can find at crime scenes is --  
23          is -- all those tests, that that's pretty  
24          realistic?

25      A     Pretty much.

1 Q Maybe that --

2 A Surprised at what they find, yeah.

3 Q Okay. Maybe they can't do them as quickly as  
4 they show on TV, but the tests, themselves,  
5 you'd -- you tend to think they're realistic?

6 A Yes.

7 Q And so, uh -- I mean, most crime scenes you'd  
8 expect there would be lots of evidence available?

9 A Yes.

10 Q And if there wasn't -- if there was a lack of  
11 physical evidence at a crime scene, is that  
12 something that would give you concern about  
13 whether or not there might be reasonable doubt?

14 A Yes.

15 Q Let me ask you this final question: Uh, do you  
16 want to be on this jury or do you not want to be  
17 on this jury?

18 A It's a tossup. Maybe. I don't want to be.

19 Q You don't want to -- you prefer not to be?

20 A Yeah.

21 Q Why?

22 A I, um -- I like what I do for the Sheriff's  
23 Department. I hate to miss it.

24 Q And -- and you think -- you really think that  
25 you'd be able to sit back there in that jury room

and, um, not be in some way biased against  
Mr. Avery just be -- I mean, because you work so  
closely with that Sheriff's Department?

A No.

Q All right. Thank you.

THE COURT: All right. We'll have the clerk escort you from the courtroom at this time, Mr. Wardman.

(Wherein juror is escorted out)

THE COURT: Um, Counsel, is there a motion from either party?

ATTORNEY FALLON: None from the State.

ATTORNEY BUTING: No, Your Honor.

THE COURT: All right. Uh, Mr. Wardman will be considered in. And, um, we'll take a break at this time. Report back at 5 minutes to 11.

(Recess had at 10:42 a.m.)

(Reconvened at 10:58 a.m.)

THE COURT: Before we bring in the next juror, I just wanted to, uh, make a follow-up response to defense counsel's objection on the, uh -- uh, my imposition of the 20-minute time limit on the questioning of Mr. Gray. Uh, as I think I indicated yesterday, I allowed at least each of the parties once to exceed the 20-minute time limit

1 because I thought the nature of the answers being  
2 given by the juror warranted it.

3 In the case of, uh, Mr. Gray, uh, I did  
4 not detect any answers that he gave to questions  
5 along the way that would have indicated the  
6 questions could not be handled within 20 minutes  
7 and that is why I terminated the questioning.

8 Uh, I believe our next juror is, uh, No.  
9 71, Nancy Steinmetz.

10 Uh, Ms. Steinmetz, please raise your  
11 right hand and the clerk will administer the oath  
12 to you.

13 (Juror sworn)

14 THE CLERK: Please be seated.

15 THE COURT: Uh, Ms. Steinmetz, you've  
16 already completed a written jury questionnaire in  
17 this case. Uh, this morning we're going to move on  
18 to the next step of the jury selection process which  
19 is known as voir dire.

20 The attorneys for each of the parties  
21 will have a chance to ask you some questions  
22 relating to your qualifications of a juror. For  
23 the most part they will follow up on answers that  
24 you gave in your jury questionnaire.

25 Before we begin those questions, I want

1                   you to know that the jurors in this case will not  
2                   be sequestered. That means at the end of court  
3                   proceedings each day the jurors will be permitted  
4                   to return home.

5                   Uh, because of that fact, we will  
6                   continue to require that the jurors not be  
7                   exposed to any publicity concerning this case  
8                   during the trial, whether it be from radio,  
9                   television, newspapers, the internet, or any  
10                  other source. And, in addition, the jurors will  
11                  be prohibited from, uh, communicating with anyone  
12                  about the case, including other jurors or members  
13                  of the jurors' family.

14                  These proceedings today are open to the  
15                  public, but the Court does not allow cameras in  
16                  the courtroom during jury voir dire proceedings,  
17                  and the members of the media are not permitted to  
18                  use the names of the jurors in their reporting of  
19                  this matter.

20                  In addition, uh, should you be selected  
21                  to serve as a juror, you should know that while  
22                  there may be cameras in the courtroom during the  
23                  trial, they're not permitted to focus on the  
24                  jurors in a way that discloses the identity of  
25                  the jurors.

1                   Uh, finally, if you remain on the jury  
2                   panel after today's proceedings, you'll be  
3                   notified when to record -- report back to court  
4                   again. Uh, it will probably be a notification  
5                   sometime today.

6                   JUROR STEINMETZ: Okay.

7                   THE COURT: At this time, I believe  
8                   Mr. Kratz will be, uh, asking you questions on  
9                   behalf of the State.

10                  ATTORNEY KRATZ: Thank you, Judge.

11                  **VOIR DIRE EXAMINATION**

12                  BY ATTORNEY KRATZ:

13                  Q       Ms. Steinmetz, good morning. My name is Ken  
14                   Kratz. I'm the Calumet County District Attorney.  
15                   I'm the lead prosecutor in this case. With me  
16                   this morning is Tom Fallon --

17                  A       Morning.

18                  Q       -- from the Department of Justice, Attorney  
19                   General's Office. He'll be assisting not only  
20                   this morning but also throughout the, uh -- the  
21                   case.

22                  Uh, I note, uh, Ms. Steinmetz that you  
23                   currently work at the American Club; is that  
24                   correct?

25                  A       Correct.

1 Q And you are involved in, uh, some kind of, um, a  
2 secretarial position? At least answering phones;  
3 is that right?

4 A Telecommunications.

5 Q Okay. Could you describe that a little more in  
6 detail? What is it that you do there?

7 A Um, I take the incoming calls and, uh, direct them to  
8 the correct place of business.

9 Q It's a rather large facility so I suspect there's  
10 a lot of incoming calls or places throughout  
11 them; is that --

12 A Correct.

13 Q -- is that correct? You've done it for 22 years;  
14 is that right?

15 A No, I've done that for about, uh, four years. About,  
16 um, ten years prior to that I was still at the  
17 American Club and I was in a supervisory position in  
18 the, uh, banquet area.

19 Q Ms. Steinmetz, uh, where would you say that you  
20 get most of your news from; the television,  
21 newspapers, or some other sources?

22 A Um, not much of anywhere. Um, I was working night  
23 shift so I didn't watch the news. Um, don't get a  
24 newspaper. We do get a *Newsweek* which I read a  
25 little bit once in a while, but that's about it.

1 Q Is -- could be more of a national or world  
2 publication?

3 A It's a -- a world news. If we do see something, um,  
4 I take my 20-minute break up in the break room and  
5 they do have a TV, but it's set at world news, and  
6 then I guess the *Newsweek* is kind of like more of a  
7 world news.

8 Q Do I understand that you're still working, uh,  
9 second shift, or a later shift, or has that gone,  
10 uh, to a different shift?

11 A About six months ago I -- my -- my hours changed. I  
12 do three days during the day and then I do two -- two  
13 night shifts.

14 Q All right. Uh, your husband is involved in  
15 farming?

16 A Correct.

17 Q And, uh, has that been for most of his life?

18 A All of his life.

19 Q All right. Ms. Steinmetz, if you do receive any  
20 local news because of where you work, would it be  
21 fair to assume that it, um, may be more centered  
22 in the Sheboygan County area rather than  
23 Manitowoc or is that not necessarily true?

24 A To be honest with you, I don't know much news about  
25 anything I guess.

1 Q Not much about either, huh?

2 A No.

3 Q All right.

4 A No.

5 Q Have you, um, heard of, uh, the case for which

6 you are summoned here as a potential juror; the

7 Steven Avery case?

8 A About, oh, over a year ago maybe, um, around

9 Halloween time, um, just very little bit of it. Not

10 much of anything. And then day goes on as -- as

11 normal. I -- I didn't --

12 Q Are you gen --

13 A -- pay attention to it.

14 Q I'm sorry to interrupt you. Are you generally

15 aware of the allegations against Mr. Avery?

16 A I am at this point, yes.

17 Q Did you become aware of those because of your

18 involvement in this case and the instructions by

19 the Judge, or was that from, uh, either a news

20 source or out in the community somewhere?

21 A Um, that, um -- when I got my first questionnaire,

22 um, in October, and it said from this period to this

23 period, and I'm thinking, well, my husband just got

24 his jury duty, and it's only a month, and he has to

25 call in. And I've never been asked before, and I'm

1 thinking, well, this is a little strange.

2 And I mentioned it to, um, one of my,  
3 uh, associates, and she says, oh, I bet I know  
4 what it is, and she went on the computer, and she  
5 says, I bet it's the, uh, Avery case, and I said,  
6 no way. And that was about all that I got  
7 involved on that, because then if it was, I  
8 shouldn't be trying to see what I could find out  
9 about it or anything.

10 Q About three weeks ago, or perhaps even a little  
11 more, you received a letter from the Judge, uh,  
12 instructing you not to watch any news accounts or  
13 not to read anything about this case; is that  
14 right?

15 A Correct.

16 Q Have you been able to do that?

17 A No. I see a flash, my ears close, my -- my eyes  
18 close. I plug my ears, count to 50. So, no, I have  
19 seen absolutely nothing.

20 Q All right. So you've done your absolute best --

21 A My absolute best.

22 Q -- to avoid any, uh, any influence. That's good.

23 Ms. Steinmetz, uh, do you watch, uh, much  
24 television, uh, at home in the evenings or,  
25 specifically, shows that, uh, may be a

1                   crime-related *C.S.I.* or anything like that?

2   A   Um, on occasion we will watch, um, *C.S.I.* Not very  
3                   often. Not very often at all. Um --

4   Q   Let me just stop you there. Does that kind of  
5                   show or that topic, if you will, of show, does  
6                   that interest you?

7   A   It -- not -- it's a little bit interesting but, um,  
8                   you know, I -- I -- it's not something that I have to  
9                   turn on to watch. It's just something that we turn  
10                  on because there's nothing else on at the time or  
11                  we've, uh -- just don't have anything else to do. We  
12                  just flip the stations and once in a while we -- we  
13                  watch it.

14   Q   Do you watch any other, um, shows that are not  
15                  necessarily, uh, only entertainment but perhaps  
16                  more of a documentary nature? *Forensic Files* or  
17                  anything that --

18   A   No.

19   Q   -- are -- are, uh, depictions of what is supposed  
20                  to be real life kinds of cases?

21   A   No. We watch, um, a lot of the Discovery Channel,  
22                  how do you make this, or how is this made. Um, I  
23                  watch, um, *Gray's Anatomy*. I like that. I watch  
24                  *Ugly Betty*. And that's about as late as I stay up.  
25                  And by the time you get home from work, and make

1 dinner, and clean up, you know, there's only a little  
2 bit of time that we might sit in front of the tube.  
3 And I'm in bed by nine.

4 Q All right. I suspect from *Gray's Anatomy* or any  
5 of those kind of shows, uh, you don't necessarily  
6 believe that you have a good grasp, of, uh, the  
7 medical field or anything like that, do you?

8 A No. It's just entertainment. Kind of who's doing  
9 what with who. A little soap opera.

10 Q Are you familiar with a -- a kind of evidence  
11 called DNA evidence?

12 A Yes.

13 Q Tell me what you know about that.

14 A From what I know, it's just that DNA can be matched  
15 up to fit another person's identity. That it's like,  
16 um, a fingerprint where only one person has the  
17 specific little things that show up in the DNA.

18 There are --

19 Q That it's unique to one -- one --

20 A Exactly.

21 Q -- person and nobody else has the same DNA?

22 A Right. It's like --

23 Q All right.

24 A -- a fingerprint. It can't be related to anyone  
25 else.

1 Q And from what you've known or heard about that  
2 on, uh -- on TV, would you suspect that to be,  
3 um, relatively accurate kinds of information? In  
4 other words, that that is an accurate way to, uh,  
5 identify either evidence or individuals from  
6 which DNA came?

7 A I would think it would be pretty darn close to  
8 accurate.

9 Q All right. What I'm asking, though, is, is there  
10 anything that you know about DNA evidence that  
11 causes you pause or concern about that kind of  
12 analysis or that kind of evidence?

13 A No, I don't think so.

14 Q Have you had any, uh, run-ins -- I -- I -- I note  
15 that your answer was, no, but let me ask you this  
16 a little broader. Experiences, perhaps, with the  
17 Manitowoc County law enforcement, uh, officials  
18 that in some way questions you, uh, either about  
19 their integrity or about the job that they're  
20 doing?

21 A No.

22 Q You have a generally positive or negative view  
23 about how the Manitowoc law enforcement community  
24 is -- is doing their job?

25 A I've only been in Manitowoc maybe a handful of times.

1 Q I meant the county. The --

2 A The county.

3 Q -- entire county law enforcement community. Do  
4 you know -- uh, do you have an opinion about how  
5 they're doing their job?

6 A None whatsoever.

7 Q Do you feel safe in your community?

8 A Yes.

9 Q Okay. Um, Ms. Steinmetz, uh, would you consider  
10 yourself a detailed-oriented person that likes to  
11 make lists and things like that, or do you  
12 consider yourself more of a big picture kind of a  
13 person?

14 A Uh, detail orientated. In fact, we just had a little  
15 appreciation thing with all the employers two weeks  
16 ago and I got a little plaque saying that the  
17 detail-orientated, you know, team worker. That type  
18 of thing.

19 Q All right. That's nice. Do you like puzzles?

20 A Somewhat. Not real difficult ones, but --

21 Q What kind of puzzles do you like?

22 A Um, I like the kind where you can just kind of like  
23 find the words within. Um --

24 Q Word search?

25 A Yes. That's -- otherwise I don't do too much for

1           puzzles.

2   Q   All right. Uh, not a jigsaw puzzle person or  
3           anything like that?

4   A   No.

5   Q   Ms. Steinmetz, if you had to serve on this, uh,  
6           perhaps six-week jury process, would that cause  
7           any personal or financial hardship for you?

8   A   No.

9   Q   Let me ask you this, Ms. Steinmetz: Once you,  
10           even several months ago, thought that you might  
11           possibly be on this important jury --

12   A   Um-hmm.

13   Q   -- did you look forward to that? Do you look  
14           forward to being a member of this jury or would  
15           you kind of, uh, feel awkward or concerned about  
16           that?

17   A   I don't feel awkward. Um, I -- I -- it's probably  
18           like a 50-50. Um, I -- I would, um, take it very  
19           seriously. It would kind of -- if I knew that I was  
20           part of it, it's like, okay, um, I'm -- was selected,  
21           I'm a fairly smart person, I think, but it would  
22           still have -- it's -- it's a major decision that  
23           would be -- you'd have to be really sure --

24   Q   Sure.

25   A   -- about, you know. So it -- it's kind of like a

1 50-50.

2 Q So you would take your responsibilities very  
3 seriously and you'd be able to listen to the  
4 instructions that the Court would give you in  
5 deciding this case; is that what --

6 A Yes.

7 Q -- you're telling us?

8 A Yes.

9 Q All right. And although, um, maybe not looking  
10 forward to it, if asked to serve, you'd certainly  
11 do that; is that right?

12 A Yes.

13 Q Now, you have all sons; is that right?

14 A Yes, I do.

15 Q No daughters?

16 A No daughters.

17 Q Um, are any of your sons married?

18 A One is married. My oldest.

19 Q And do you have any grandchildren?

20 A No.

21 Q Have either of your sons or your daughter-in-law  
22 spoken to you about the Steven Avery case?

23 A No.

24 Q Do you know if they're aware of it?

25 A I think so, because when I, um, got my first notice,

1 I had it up on the refrigerator, and when they would  
2 come home, you know, that it might be, but we haven't  
3 talked about anything with it.

4 Q Okay. You've told us in your questionnaire --  
5 and -- and -- and I'm almost through here -- but  
6 you've told us in your questionnaire that, uh,  
7 you have not formed an opinion about Mr. Avery's,  
8 uh, guilt or innocence, and any opinion that you  
9 may have, you'd be able to set aside deciding  
10 this case solely on the evidence as presented.

11 Is that still true today?

12 A Very much so.

13 Q As Mr. Avery sits here, uh, today he is presumed,  
14 uh, innocent, uh, and may or may not, um, testify  
15 in, uh, this case. Uh, are you familiar at all  
16 with those legal principles that we have in this  
17 country?

18 A Uh, it's my understanding that a person's innocent  
19 until proven, without a question, guilty.

20 Q And when you hear evidence, either from law  
21 enforcement officers, scientists, or -- or  
22 citizens, would you be able to listen to  
23 everybody's testimony, giving that testimony such  
24 weight as you believe it's entitled to receive?

25 A Yes.

1 Q Is there anything, Mrs. Steinmetz, that I haven't  
2 asked you? Uh, any pause that you have about,  
3 uh, sitting on this jury, or something, uh, that,  
4 uh, perhaps wasn't in the questionnaire that you  
5 feel would disqualify you as a potential juror in  
6 this case?

7 A No.

8 Q All right.

9 ATTORNEY KRATZ: With that, that's all I  
10 have, Judge. Thank you.

11 THE COURT: All right. Mr. Buting?

12 ATTORNEY BUTING: Thank you, Judge.

13 **VOIR DIRE EXAMINATION**

14 BY ATTORNEY BUTING:

15 Q Good morning.

16 A Good morning.

17 Q Um, how do you pronounce your name?

18 A Steinmetz.

19 Q Steinmetz. Okay. Spelled a little differently  
20 sometimes.

21 A It is. I -- my first four years of marriage I  
22 spelled it wrong. Until mother-in-law pointed it  
23 out.

24 Q Well, my name's Jerome Buting, this is Dean  
25 Strang, and we represent Steven Avery.

1 A All right.

2 Q Uh, we really appreciate you coming here today,  
3 and, uh, I can tell you really, um, take this  
4 seriously. You have, uh -- well, I'll talk about  
5 your sons in just a minute, but your --

6 A Okay.

7 Q -- your husband's a -- a farmer. So you live --  
8 what kind of a farm is it? Dairy farm?

9 A It's a -- a dairy farm. He's, uh -- he was raised as  
10 a farmer. Um, he had his, um, own business. He was  
11 an AI technician. And then, um, one of the farms  
12 that he would do his breeding at, they were enlarging  
13 and they had persuaded him to give his business up  
14 and relocate to this other farm. And it's a very  
15 large dairy farm, and he just -- he's just a farmhand  
16 worker.

17 Q Oh, I see. So it's, uh -- it's not his farm --

18 A No, it is not. No.

19 Q Okay. Yeah, because I was wondering why none of  
20 your sons decided to go into farming or work with  
21 him, but I guess that explains it.

22 A One was going to college for veterinarian medicine,  
23 but he made the decision, well, it -- it wasn't for  
24 me, and I have to be happy, and so he went into a  
25 different field.

1 Q I see one of them's in the Peace Corps.

2 A That's the one that was going to be a veterinarian,  
3 yes.

4 Q Is he overseas then or --

5 A Him and his wife are in, um, Costa Rica.

6 Q Okay. So do you get to see them, uh, very often  
7 or --

8 A No. I haven't seen them since they left in, uh,  
9 first part of June.

10 Q Okay. Now, I know you've, uh -- sounds like  
11 you've done a good job of trying to shield  
12 yourself from any -- any information in the news,  
13 but, um, every once in a while some blurb will  
14 come on the radio, perhaps, or do you listen to  
15 the radio when you drive?

16 A I have a CD in the car.

17 Q Okay. So let me just ask you: Are you familiar  
18 with the name Brendan Dassey?

19 A No.

20 Q Okay. Have you heard anything about a blood  
21 vial?

22 A No.

23 Q Okay. You've done very well.

24 A Thank you. I've tried really hard.

25 Q Um, you said that you've had no real, uh,

1                   exposure to police, or you didn't -- you didn't  
2                   have any opinion one way or the other about kind  
3                   of job Manitowoc County Sheriff's Department is  
4                   doing?

5     A    No. I just get aggravated when solicitation calls  
6                   from them, and they identify themselves, and I'm  
7                   thinking, oh, my God, what happened? Someone get  
8                   hurt in the family? And it's just a solicitation for  
9                   donation and --

10    Q    Yeah.

11    A    -- I just ask them, please don't call back.

12    Q    Okay.

13    A    That's about as close as I come to them.

14    Q    Okay. Do you think that, um -- you're going to  
15                   be hearing from -- testimony from police officers  
16                   in this case --

17    A    Um-hmm.

18    Q    -- and one of the things you -- you have to do  
19                   when you're a juror, if you're selected, is to  
20                   determine the truthfulness or untruthfulness of  
21                   what people testify about. Do you think that if  
22                   somebody takes the witness stand and takes the  
23                   oath, anybody, that they're always going to tell  
24                   the truth?

25    A    I would like to think they do.

1 Q Okay. But do you think -- in reality, do you  
2 think they always do?

3 A Yes. I think so. I think if -- Yes, I do.

4 Q Okay. Well, what if in this case, as a juror,  
5 you hear testimony from one witness that does not  
6 seem to be true, that seems to be inconsistent  
7 with what another witness has said, or maybe even  
8 directly contrary to what they, them --  
9 themselves, said at a different time --

10 A Um-hmm.

11 Q -- how are you going to deal with that?

12 A I'd have to think that somewhere someone wasn't being  
13 completely honest and we would have to, um, probably  
14 just continue to hear what others have to say, and be  
15 a matter of putting the, uh, pieces together so that  
16 if the person that wasn't being truthful would end up  
17 somehow stumbling over things, because if you keep  
18 saying untruths, you end up getting caught up into  
19 something, and something would probably show up more  
20 definite that they weren't truthful.

21 Q Okay. Um, what I'm getting at is that -- that,  
22 you know, if you're selected as a jury -- juror  
23 on this case, you're -- you're going to have to  
24 do more than just assume or -- that everything  
25 that's said on that witness stand is the truth.

1 A Um-hmm.

2 Q You're going to have to -- the Judge will  
3 instruct you how to determine the credibility of  
4 witnesses and what -- you look at their demeanor,  
5 and what they say, and when -- what they said in  
6 the past, and all of those factors you consider,  
7 um, to resolve any -- any question about whether  
8 the person's telling the truth. Do you think you  
9 can do that?

10 A Yes, I do.

11 Q Okay. And, in particular, if law enforcement  
12 officers, sheriff's deputies, or police officers  
13 come up and take the witness stand, the Judge is  
14 going to tell you that you have to also treat  
15 them the same way as any other witness and judge  
16 their credibility the same way. Do you think you  
17 can do that?

18 A Yes.

19 Q You don't think that just because they're police  
20 officers there's just no way they would ever lie  
21 under oath?

22 A Um, I don't know. They probably could. They're just  
23 like anybody else. If -- if a normal person lies  
24 under oath, I mean -- but I -- I -- again, I would, I  
25 don't know, be -- I would like to think they

1           wouldn't.

2   Q    Sure. You -- you'd hope not. We'd all hope  
3           that --

4   A    Exactly.

5   Q    -- of everybody. But, um, you may have to make  
6           those kinds of determinations in this case, and I  
7           want to be sure that you're -- you feel able to  
8           do that.

9   A    I do.

10   Q    Okay.

11   A    I do.

12   Q    Okay. Do you think that if you heard evidence  
13           that -- that gave you reason to -- to be  
14           concerned that, perhaps, the police did even a  
15           little bit more than lie under oath, but that  
16           maybe even they -- they became so involved and  
17           convinced that the person was guilty that they  
18           crossed the line and either would alter their  
19           reports or maybe even plant evidence against a  
20           person, do you -- would you consider that?

21   A    Well, it -- it would be -- wouldn't it be difficult  
22           to know if they planted evidence or whatever for me  
23           to assume that until several other people and  
24           everything's coincided together?

25   Q    Sure.

1 A I mean, I wouldn't be able to make that decision  
2 knowing someone says, well, this, this, this. I have  
3 nothing to base that --

4 Q Sure.

5 A -- that isn't the truth until, perhaps, other things  
6 come together on it.

7 Q Right. And -- and, obviously, you've heard no  
8 evidence at this point, so I'm not asking you  
9 to -- to make any kind of decisions in -- at this  
10 point, but I'm just wondering if you will be open  
11 to listen to all of the evidence and to consider,  
12 um, whether, you know, if -- if some evidence  
13 tends to point that way --

14 A Um-hmm.

15 Q -- um, whether you would consider that as a  
16 possibility or whether, because of some of  
17 your -- your beliefs that you bring into the  
18 case, you would just say, no, there's just no  
19 way. I can't even accept that would ever happen.

20 A No. Um, I'm -- I'm completely open-minded. Um --

21 Q Okay.

22 A -- very open-minded.

23 Q Okay. I -- I -- I can see that. I appreciate  
24 that. Um, and the, uh -- one of the questions in  
25 the questionnaire, um, goes along with a -- an

1 instruction sometimes the judges give, and it  
2 talks about a defendant's constitutional right  
3 not to testify?

4 A Um-hmm.

5 Q And sometimes that's hard for people because  
6 they -- they want to, you know, in their -- their  
7 daily lives, when you try and find out -- make  
8 decisions, you like to hear both sides. Are you  
9 one of those kinds of people that like to hear  
10 both sides before you make a decision?

11 A Um, yes. However, if, um, let's say Mr. Avery's, um,  
12 side has all these witnesses and you feel comfortable  
13 in that, I -- why would, um -- if -- and if Mr. Avery  
14 isn't comfortable with going up there and having  
15 someone try to tear him down a little bit, and it  
16 wouldn't be to his benefit if he felt that the other  
17 witnesses were positive for you, why would he go up  
18 and possibly have it be a negative for himself?

19 Q Okay. And so -- so you could follow the -- the  
20 Court's instruction that you're not supposed to  
21 consider that decision against him in some way,  
22 or speculate?

23 A Correct.

24 Q And, uh, because of the -- because the State has  
25 the -- the burden of proof, um, if the defense

1 did put on any witnesses, would you hold us up to  
2 some burden and say, well, you haven't proven  
3 your case?

4 A I don't know.

5 Q Because what -- what you have to do is you have  
6 to look only at -- at -- means you have to look  
7 at the State's case and see if the State has  
8 convinced you beyond a reasonable doubt.

9 A Correct.

10 Q And I just want to be sure that you -- you're not  
11 going to impose some burden on Mr. Avery to prove  
12 that he's innocent.

13 A No.

14 Q You can do that?

15 A I can do that.

16 Q Okay. All right. Thank you very much, ma'am.  
17 Appreciate it.

18 A All right.

19 THE COURT: At this time, uh, the clerk  
20 will escort you from the courtroom.

21 JUROR STEINMETZ: I think I need a glass  
22 of water. Thank you, everyone.

23 ATTORNEY BUTING: Thank you.

24 (Wherein juror is escorted out)

25 THE COURT: Counsel, any, uh, motion from

1 either party?

2 ATTORNEY KRATZ: I've never had a juror  
3 thank me before, Judge, but, uh, there's no  
4 motion by the State.

5 ATTORNEY BUTING: No motion by the  
6 defense, and, uh, for the record, if you would  
7 note, I only took about 12 minutes, I think.

8 THE COURT: Right. I note that. Perhaps  
9 that was why she was thanking you. I'm not sure.  
10 But at any rate, we'll keep her on the panel and  
11 move on to the next juror which is Mary Lou Salomon.

12 Uh, Ms. Salomon, I'll ask you at this  
13 time to raise your right hand, please. The clerk  
14 will administer the oath.

15 (Juror sworn)

16 THE CLERK: Please be seated.

17 THE COURT: Ms. Salomon, you've already  
18 completed a written jury questionnaire in this  
19 case. Uh, this morning we're moving on to the  
20 next phase of jury selection which is known as  
21 voir dire.

22 During this part of the process, the  
23 attorneys for each of the parties will be  
24 permitted to ask you some questions that relate  
25 to your qualifications as a juror. For the most

1 part, they'll be follow-up questions to  
2 information that you provided with your  
3 questionnaire.

4 Before we get to those questions, I can  
5 inform you that the, uh, jurors who are selected  
6 in this case will not be sequestered. That is,  
7 they will be permitted to return home each day at  
8 the conclusion of each day of the court  
9 proceedings and then return the next day.

10 Because of that fact, we'll continue to  
11 require that the jurors, uh, not be exposed to  
12 any news media accounts of the case, whether it  
13 be from television, radio, newspaper, or the  
14 internet, or any other source, and, in addition,  
15 the jurors will be prohibited from, uh, talking  
16 to anyone else, or communicating in any way about  
17 the case. That would include other jurors or  
18 members of the jurors' families.

19 The proceedings this morning are open to  
20 the public, but the Court does not permit cameras  
21 in the courtroom during the jury selection  
22 process. Uh, and the, uh, news media are not  
23 permitted to use the names of jurors in any news  
24 accounts of the proceedings today.

25 If you are selected as a juror, you

should also know that while there may be cameras in the courtroom during the trial, they are not permitted to, uh, focus on or identify the jurors in any way.

If you remain on the jury panel after the questioning today, you'll get a call probably later this afternoon, uh, letting you know when to report back to court.

9                           Um, Mr. Fallon, are you handling this  
10                          one?

(No verbal response)

THE COURT: Very well.

## **VOIR DIRE EXAMINATION**

14 BY ATTORNEY FALLON:

15 Q Good morning, Ms. Salomon.

16 A Good morning.

17 Q My name is Tom Fallon. I'm an Assistant Attorney  
18 General with the, uh, Wisconsin Department of  
19 Justice. I'm one of the prosecutors in the case.  
20 To my immediate left is Mr. Ken Kratz, uh, the  
21 Calumet County District Attorney and lead special  
22 prosecutor for this matter.

23 Good morning and, uh, thank you for  
24 coming in today and helping us out. I'd like to  
25 begin with a -- a few questions, um, about your,

1       um -- I guess your former work. Uh, you were,  
2       uh, editor of a community newspaper?

3 A     Yes.

4 Q     All right. And, what kind of publication was  
5       that? Is it weekly? Daily?

6 A     It was monthly.

7 Q     A monthly?

8 A     Right. And, uh, it was basically homeowner's board  
9       notes. Um, the sheriff would submit a report.

10 Q     Okay.

11 A     Library -- local library.

12 Q     All right.

13 A     That type of information.

14 Q     Did you cover anything, as some people would say,  
15       some of the hard news stories of the -- of the  
16       time?

17 A     No.

18 Q     Okay. So this was just more, uh, community?  
19       What's going on in the community?

20 A     Right. Right.

21 Q     Okay. Um, did you enjoy that work?

22 A     Very much.

23 Q     Yeah. And how long did you do it?

24 A     Twenty-nine years.

25 Q     Were you the editor for the entire time?

1 A Yes.

2 Q Okay. Uh, would it be fair to say you enjoyed

3 writing or was it more the whole --

4 A I didn't have to do a lot of --

5 Q All right.

6 A -- the writing.

7 Q Okay.

8 A You know, it was kind of an assembly process.

9 Q Oh, so you enjoyed putting the paper together?

10 A Yes.

11 Q Okay.

12 A Um-hmm.

13 Q I gotcha.

14 A But for want of a title, that's what they called me.

15 Q Fair enough. Uh, did you get to choose the

16 headline as the editor or did you leave that to

17 the writer of the article?

18 A No, it was all mine.

19 Q Okay. All right. Well, um, I also have to ask,

20 because I was struck by, um, two things, uh,

21 hobbies of yours that looked interesting. Um,

22 Civil War, uh, and blue grass music. Interesting

23 mix. I -- to me they wouldn't seem to go

24 together. Um, what is it about, uh, the Civil

25 War that you find interesting?

1 A Uh, there's a lot of family history --

2 Q Okay.

3 A -- with the county, which is basically what brought

4 my son and I here. Um --

5 Q Okay.

6 A The monument that's at the corner of the courthouse

7 property is ancestors and --

8 Q Oh, very good. All right. And, um, I see, yes,

9 you're originally from Lincoln, Nebraska, but you

10 spent some time in the state of Washington?

11 A A lot of time, yes.

12 Q All right. And then how long have you been in

13 Manitowoc County then?

14 A Two years.

15 Q I see. Oh, all right. So you're recent to this

16 area?

17 A Yep.

18 Q Um, so you have, um -- through, uh, generations

19 you have a family connection to this county then?

20 A Yes, um-hmm.

21 Q I see. Uh, is that -- that's directly connected

22 to, uh, Civil War service?

23 A Yes. All of it. Um-hmm.

24 Q All right. Uh, and, um, how about, uh, blue

25 grass music? What -- what do you find

1                   interesting about that?

2 A       Um, just the rhythm, I guess. I --

3 Q       Uh, have you been a fan of blue grass for quite

4                   some time?

5 A       Uh, no, not really. Not really. Basically, we got

6                   involved in the Two Rivers shows that -- that come

7                   monthly and --

8 Q       All right.

9 A       -- find that it's, uh, very enjoyable.

10 Q       Very well. Well, let me ask -- um, I see, from

11                   your other pursuits you're a Sunrise Optimist

12                   and, of course, the Civil War Roundtable, uh, and

13                   other historical, uh, events. Um, in -- in your

14                   involvement in those cases have you, uh, been

15                   called upon to, um, offer, uh, opinions or

16                   directions for the organization at all? I mean,

17                   any kind of, uh, supervisory advise -- advising

18                   that you might do with those volunteer groups?

19 A       Not advisory, no.

20 Q       Okay. All right. Well, let me ask then, as a

21                   person who was, um, at least in the media, at

22                   least in the print media business for, uh, some

23                   time, um, do you, um, regularly get your news

24                   from, uh, the newspaper, or television, or where

25                   would you say you got most of your news from?

1 A Probably television.

2 Q All right. And, uh, how often do you watch, uh,

3 televised news casts?

4 A Basically, I have CNN on for company during the day.

5 Q All right.

6 A But, watch it, um, I can't say that I do.

7 Q So it's background information?

8 A Right.

9 Q Um, in terms of your news casts, do you prefer,

10 uh, a more, uh, national or global perspective

11 than the local news? Is that what I'm detecting?

12 A Yes.

13 Q All right. Um, have you paid -- Uh, I see you

14 get the local paper here just on the weekends?

15 A Right.

16 Q All right. Now, um, the reason we ask is we want

17 to get at least an understanding of -- of what

18 you may be familiar with or how much you -- you

19 have heard about the case through both, uh, the

20 newspaper and television coverage of it.

21 And, um, about three weeks ago or so,

22 uh, you, I believe, received a letter from the

23 Judge advising you that you were a prospective

24 juror in this matter, and I think it, uh, asked,

25 that, uh, among other things, that you refrain

1           and make any reasonable effort not to watch any  
2           of the news coverage or the -- read any of the  
3           newspapers and -- and the like. Did you get that  
4           letter?

5     A    Yes, I did.

6     Q    All right. And have you been able to abide by  
7           it?

8     A    Yes, I have.

9     Q    All right. Uh, prior to getting that letter, um,  
10           had you followed the case at all in the media  
11           coverage?

12    A    Uh, I was aware of it, but, uh, not as a daily thing  
13           or a -- or a -- no.

14    Q    There wasn't anything particularly interesting  
15           about it that -- that had you follow it closely?

16    A    Uh, no, I don't think so.

17    Q    All right. Um, well, one of the reasons we ask  
18           these questions is that we're hopeful that  
19           prospective jurors come in with -- without any  
20           opinions about the case at all, and -- and that's  
21           what we'd like to ask. Um, based on your  
22           familiarity with, uh, the media coverage that you  
23           have, uh, seen and/or read, do you have any  
24           opinion today at all as to whether Mr. Avery is  
25           guilty or innocent of the charges leveled against

1                   him?

2   A   Um, no, I wouldn't think that I do.

3   Q   All right. Well, you -- you -- you answered no  
4                   last week, and I did detect a little bit of a  
5                   hesitancy. Um, do you -- do you have an opinion  
6                   as to whether you think he's guilty or not, or --

7   A   No, I don't.

8   Q   Okay.

9   A   My hesitancy was basically for media coverage in  
10                  general, I guess.

11   Q   Okay. So, in other words, you have some reason  
12                  to doubt whether you have all of the information?

13   A   Yes.

14   Q   All right. Fair enough. Um, you understand, uh,  
15                  that in this particular case Mr. Avery is  
16                  presumed innocent unless and until the State can  
17                  convince the jury beyond a reasonable doubt of  
18                  his guilt?

19   A   Yes.

20   Q   All right. And, uh, you would be instructed on  
21                  that principle by the Court here, and do you have  
22                  any problem in accepting it and following it?

23   A   No, I do not.

24   Q   All right. Um -- okay. Now, I just wanted to  
25                  touch base on, uh, one other, um, matter. Well,

1           two matters. Um, one of the last questions that  
2       you were asked last week is, um, you were advised  
3       that there's a possibility, in fact a pretty good  
4       possibility, this case may last six weeks.

5           And, uh, we wanted to make sure that all  
6       of the prospective jurors in this case wouldn't  
7       suffer any kind of emotional or financial  
8       hardship if they were selected to, uh, serve as a  
9       juror. And you indicated, uh, at that time that  
10      you didn't think that would pose any problem for  
11      you. Is that still your opinion today?

12     A    Yes.

13     Q    Okay. Um, in terms of, uh, evaluating, uh,  
14      witnesses and testimony, uh, that will be  
15      presented during the course of the trial, uh,  
16      you'll be instructed that you would evaluate the  
17      believability, the honesty, or the credibility  
18      of -- of witnesses according to the same  
19      standard. In other words, you would look at and  
20      treat all witnesses alike and evaluate them for  
21      their truthfulness, their honesty, the same as  
22      you would any other person, do you understand?

23     A    Um-hmm.

24     Q    All right. And that includes police officers?  
25           So even if a police officer were, uh, to take the

1 stand, and there'll be quite a bit of law  
2 enforcement testimony in this case, you would be  
3 required to evaluate their truthfulness the same  
4 as you would any other person regardless of  
5 whether they were a police officer, or a  
6 scientist, or a -- or a truck driver, you would  
7 treat them all alike in evaluating their  
8 believability. Do you think you can do that?

9 A I think I can.

10 Q All right. All right. Um, and, lastly, I just  
11 had a question, uh, would you like to serve on  
12 this jury or would you rather not?

13 A I don't really think I have a --

14 Q An opinion?

15 A -- an opinion on that.

16 Q Okay.

17 A I --

18 Q So you're a fatalist. Whatever happens, happens?

19 A Well, I don't know about fatalist, but --

20 Q Very good. Thanks very much.

21 THE COURT: All right. Uh, Mr. Strang?

22 **VOIR DIRE EXAMINATION**

23 BY ATTORNEY STRANG:

24 Q Morning.

25 A Morning.

1 Q I'm Dean Strang, and this is Jerome Buting, and  
2 Steven Avery. We're -- we're defending  
3 Mr. Avery. That is, Jerry Buting and I are. Um,  
4 by starting in 1850 and moving forward, I don't  
5 mean to suggest I'm going to take all that much  
6 time with you, but, um, the, uh -- the, uh, mid  
7 19th Century connections to this county, were  
8 they on your husband's side of the family or on  
9 your side of the family?

10 A My husband's side.

11 Q Okay. And, um, how long did you spend in  
12 Lincoln, Nebraska as a little girl?

13 A Uh, probably year-and-a-half.

14 Q And then off to the state of Washington?

15 A Yes.

16 Q Um, is it Burien? Is -- I'm not sure I'm reading  
17 your handwriting correctly on the town. I see  
18 Reynold?

19 A Where I went to school.

20 Q Yes.

21 A Burien, um-hmm.

22 Q Burien. Um, is that western Washington or  
23 eastern Washington? I don't -- I'm not familiar  
24 with Burien.

25 A It's, uh -- it's basically south of Seattle.

1 Q Okay.

2 A Yeah.

3 Q Just south of Tacoma or well south?

4 A No, not south. No. It's -- it's closer to Seattle

5 than Tacoma.

6 Q Oh, okay.

7 A Yeah. It's not --

8 Q So it's --

9 A -- even halfway.

10 Q -- it's in the metropolitan area?

11 A Yes.

12 Q Okay. Um, and did you, um -- did you move -- two

13 years ago, did you move directly to Manitowoc

14 with your son from western Washington?

15 A No. Um, my husband had passed away about 12 years

16 ago --

17 Q Um-hmm.

18 A -- but, um, I had a big house that I got rid of, got

19 rid of my business, and, um, he said, my -- my son

20 was living in Appleton at the time, and --

21 Q Oh.

22 A -- he said, well, why don't you try Wisconsin? So I

23 said, well, I'd try a couple of winters here, because

24 they are different than the winters I think I was

25 used to.

1 Q Um-hmm.

2 A And, um, I think they were rather mild winters. So  
3 that's -- basically, I've been in the state for four  
4 years, but --

5 Q Okay. Um, you, um, paused a little bit and  
6 confessed some hesitation, um, a few moments ago  
7 and said that that was about media coverage. I  
8 want to hear a little bit more about your  
9 hesitation with respect to media coverage.

10 A Well, since I get almost all of my information from,  
11 basically, television, I, uh -- I don't know, I guess  
12 maybe I view it all as being edited to pull your  
13 chain. Um --

14 Q Okay. Um --

15 A I know the programming is. That's the way I feel,  
16 but I think sometimes the news is that way also.

17 Q Well, they're in a business?

18 A Right.

19 Q Right? I mean, it's -- most of the media are for  
20 profit; right?

21 A Yes.

22 Q Um, was -- was the community newspaper that you,  
23 you know, ran, published, edited, was that, um, a  
24 for profit -- profit thing or was -- was that a  
25 not for profit?

1 A It was a for profit run by a non-profit organization.

2 Q Was it part of a little chain of community  
3 newspapers?

4 A No. No.

5 Q Independent?

6 A Yes.

7 Q Um, let's -- let's get into some stuff that, in  
8 general, concerns the -- the relationship of the  
9 government to the citizen, okay? A little bit?

10 Um, you'll be told, I think, by the Judge that  
11 the lawyers at that table over there representing  
12 the state of Wisconsin bear the burden of proof  
13 in this case. Um, and that the lawyers at this  
14 table, or Mr. Avery for that matter, do not bear  
15 any burden of proof. Is that a system within  
16 which you can function well? Rules you can  
17 accept?

18 A I think I probably can, yes. I -- I have not had any  
19 experience before with --

20 Q On a jury?

21 A On a jury, right.

22 Q Right. Um, but this is -- this is a -- a  
23 criminal accusation rather than a civil  
24 accusation, so in civil case each side may have a  
25 burden of proof on this point or that point.

1           Here, only the State has the burden of proof the  
2           Judge will tell you. And it's a very high  
3           burden. Uh, it's proof beyond a reasonable  
4           doubt.

5           Um, is there anything about that scheme,  
6           if you will, that set of legal rules -- I don't  
7           mean anything bad by scheme -- but that set of  
8           legal rules, um, that you could not work with  
9           him?

10          A   I don't believe so.

11          Q   Um, we may take an active role in the case.  
12           We're -- we're entitled to do that, and I expect  
13           that Mr. Buting and I won't sit like bumps on a  
14           log, but, um, can you promise today that you  
15           would not hold us to proving Steven Avery's  
16           innocence?

17          A   Yes.

18          Q   Rather, you would hold them to proving his guilt?

19          A   Yes.

20          Q   Um, if we offer testimony or exhibits, um, will  
21           you consider the defense offerings just the same  
22           as you would consider the State offerings?

23          A   Yes, I would.

24          Q   One of the toughest questions in offering  
25           evidence or not for the people at this table is

1           whether Mr. Avery should testify in his own  
2           defense. Um, are you familiar with the rule in  
3           America that a defendant has a privilege not to  
4           testify in his trial if he chooses?

5       A    Yes.

6       Q    Um, are you also aware under American law and our  
7           constitution that the defendant has an absolute  
8           right to testify in his own defense if he  
9           chooses?

10      A    I would assume that, yes.

11      Q    If Mr. Avery, in the end, testified, um, would  
12           you be able to treat him just like any other  
13           witness in deciding whether you believe him?

14      A    I think I could, yes.

15      Q    And if -- if the decision at this table was that  
16           he was not going to testify, um, would you want  
17           to know why?

18      A    Possibly.

19      Q    I -- I'm going to confess that was a bit of a  
20           trick question, because you won't learn why, and,  
21           uh, if he makes that decision, you'll actually be  
22           told, I think, by the Judge, that you simply  
23           cannot consider, um, the fact that the defendant  
24           did not testify in deciding whether the State  
25           proved him guilty beyond a reasonable doubt.

1                   Um, but I -- it was a trick question. I  
2                   don't mean to be tricking you. Do you -- can you  
3                   understand why there might be a number of reasons  
4                   that someone who says he's innocent, nevertheless  
5                   does not take the witness stand and testify in  
6                   his own defense?

7   A   Yes, I think so.

8   Q   Um, I -- you mentioned some of them, I think,  
9                   that may be worried about being tripped up by  
10                  lawyers on the other side? That -- that may be  
11                  one reason?

12   A   I don't know that that crossed my mind.

13   Q   What does cross your mind?

14   A   Well, basically, I guess the only case that I've ever  
15                  paid any attention to was the O. J. Simpson case.

16   Q   Um-hmm.

17   A   And whether that was also edited for the public, I  
18                  don't know.

19   Q   And how do you link that up to a defendant not  
20                  testifying? As I recall, Mr. Simpson did not  
21                  testify --

22   A   He did not. Right.

23   Q   -- in that case, and what -- what connection are  
24                  you drawing there?

25   A   Um, only that that's my only, I guess, frame of

1 reference --

2 Q Um-hmm.

3 A -- um, as to why a -- a defendant would or would not  
4 choose to testify.

5 Q Well, and in the end, because there are so many  
6 reasons that may go into it, some of them having  
7 to do more with the defense lawyers than -- than  
8 the accused himself, in -- because there are so  
9 many reasons, you'll simply be told you -- you  
10 can't speculate about that or even consider, um,  
11 the fact that a defendant did not testify if  
12 that's the choice in the end. Um, and I just  
13 need to know whether you can follow that rule if  
14 the Court instructs you that way?

15 A I think I could, yes.

16 Q You come here, um, without any opinion at all,  
17 which is about guilt or innocence, which is what  
18 a potential juror should be, um, saying sitting  
19 today in your chair, um, and I -- I simply need a  
20 commitment from you, if you -- if you can offer  
21 it to me, that when the Judge instructs you that  
22 the presumption of innocence stays with  
23 Mr. Avery, not just today but through the entire  
24 trial, right up to the time the jury begins to  
25 deliberate its verdict at the very end of the

1 case, that presumption of innocence never  
2 waivers, never changes, until you begin your  
3 deliberations, and then you decide guilt or  
4 innocence. Is that an instruction you can  
5 follow?

6 A Yes, I can.

7 Q Some of the agents of the State, um, who may  
8 testify -- uh, will testify, I'm sure, are law  
9 enforcement officers from a variety of agencies.  
10 You'll see law enforcement officers testifying  
11 here. You've already answered in your  
12 questionnaire that you could follow an  
13 instruction that you would consider their  
14 testimony just like the testimony of any other  
15 witness who may be from any other calling or  
16 vocation under the sun.

17 Um, and I'm -- I'm going to explore that  
18 a little bit. Do you -- do you accept that under  
19 the right circumstances a law enforcement  
20 officer, just like anyone else, might violate the  
21 oath and testify to something untruthful even  
22 though sworn to tell the truth?

23 A Yes.

24 Q You don't think law enforcement officers have any  
25 special proclivity to tell the truth under oath

1           or, for that matter, to lie under oath, do you?

2   A    Uh, no.

3   Q    Uh, you accept that they're human just like  
4        everyone else who would take the witness stand?

5   A    Yes.

6   Q    Um, have you had any experience where you thought  
7        a law enforcement officer was not honest?  
8        Whether you've seen it on CNN or experienced it  
9        in your personal life?

10   A    No, I have no personal experience with it.

11   Q    But you're open to considering their motives to  
12      testify truthfully or falsely, um, their  
13      potential biases or prejudices, their weaknesses  
14      of recollection, just like anyone else's?

15   A    Like anyone else's.

16   Q    You're relatively new to -- to this area, and,  
17      actually, just four years in Wisconsin. Have you  
18      picked up anything along the way about  
19      Mr. Avery's more distant past conviction in 1985,  
20      um, that later, uh, was overturned when DNA  
21      established that another man actually committed  
22      the crime, not Mr. Avery?

23   A    I -- I heard that story, yes.

24   Q    Okay. Where did you pick that up?

25   A    Uh, basically from television.

1 Q Okay. Um, do you -- do you have any questions  
2 about that? Any -- any lingering doubt that  
3 maybe Mr. Avery was guilty, or any belief that  
4 because he wasn't guilty, he was really innocent,  
5 that that somehow affects how you would look at  
6 this case?

7 A No. I didn't have any other feelings on it either  
8 way.

9 Q Well, did you hear about the lawsuit that  
10 followed his exoneration and release?

11 A Yes.

12 Q What -- what were your opinions about that  
13 lawsuit as a Manitowoc County taxpayer?

14 A Um, I think at the time I hadn't been in the state  
15 for very long and, um, I don't know that I gave that  
16 a whole bit of consideration either.

17 Q One -- one way or the other?

18 A Right.

19 Q Okay. I think that's all I have for you. Thank  
20 you.

21 THE COURT: Mr. Fallon?

22 ATTORNEY FALLON: Yes. I have one  
23 question for the juror.

24 **VOIR DIRE EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q Um, I'm just curious about your reference to the  
2 O. J. Simpson case. Does that have any impact on  
3 you as you sit and possibly end up as a juror in  
4 this case?

5 A I don't think so. No, I haven't.

6 Q I mean, do you have any opinion about that case  
7 or anything that might, uh, affect your  
8 deliberations here?

9 A Other than I'm probably one of the few that still  
10 thinks that he might be innocent.

11 Q Okay. All right. Um, in terms of evaluating  
12 this particular, um, case here, you would decide  
13 this case, though, solely on what the information  
14 is that we present?

15 A Yes.

16 Q Okay. Thanks.

17 THE COURT: All right. The, uh, clerk will  
18 now escort you from the courtroom.

19 (Wherein juror is escorted out)

20 THE COURT: Counsel, any motion from  
21 either party?

22 ATTORNEY FALLON: None from the State.

23 ATTORNEY STRANG: No, Your Honor. Thank  
24 you.

25 THE COURT: Very well. Uh, Ms. Salomon

1           will be, uh, in the jury panel. We'll take our, uh,  
2           lunch break at this time. Uh, how about 12:45  
3           report back?

4                         ATTORNEY KRATZ: That's fine. Thank  
5                         you, Judge.

6                         ATTORNEY FALLON: Uh, Judge, did you  
7                         check on those two jurors? The, uh -- I think it  
8                         was 75 and 77? I had 75 already excused and --

9                         THE COURT: Seventy-five was excused by the  
10                         Court. There was an illness question, actually. I  
11                         don't think that juror even completed the  
12                         questionnaire.

13                         ATTORNEY FALLON: Okay. Right.

14                         THE COURT: Um, seventy-seven, my, um, uh,  
15                         court reporter informs me that she could find  
16                         nothing in her notes except a mention late yesterday  
17                         about the fact that there was a question but nothing  
18                         to show that, uh --

19                         ATTORNEY FALLON: All right. I thought  
20                         that was included in one of our previous  
21                         discussions. Thanks.

22                         (Recess had at 11:58 a.m.)

23                         (Reconvened at 12:48 p.m.)

24                         THE COURT: At this time we'll go back on  
25                         the record. Um, Mr. Strang, I believe there was a

1 matter you wished to bring up before we call the  
2 first juror?

3 ATTORNEY STRANG: Yes, thank you. I  
4 received a letter by hand-delivery this morning  
5 from the Manitowoc County District Attorney  
6 who's, uh, named on the defense witness list, and  
7 I think the, um, sensible thing to do here is  
8 just to excuse him altogether from the  
9 sequestration order.

10 I -- I don't think there's any realistic  
11 concern that the order would be necessary in his  
12 instance, so I suggest we simply exempt him from  
13 it.

14 THE COURT: Any objection from anyone?

15 ATTORNEY FALLON: No.

16 ATTORNEY STRANG: No. Thank you.

17 ATTORNEY FALLON: No objection.

18 THE COURT: All right. The Court will, uh,  
19 grant that request and excuse the district --  
20 Manitowoc County District Attorney from the  
21 exclusion order for witnesses in this case.

22 Um, Counsel, I was going to call the,  
23 uh -- one of the next jurors out of order.

24 There's a Mr. -- I'm not sure how he pronounces  
25 his name. It's No. 87, David Guckeisen or

1 Guckeisen. He's the only juror who's been  
2 waiting around since this morning.

3 ATTORNEY KRATZ: All right.

4 THE COURT: Um, I'll give you a couple  
5 minutes to, uh, take a look at his questionnaire  
6 before we call him in.

7 ATTORNEY KRATZ: Thank you.

8 THE COURT: Please raise your right hand,  
9 sir.

10 (Juror sworn)

11 THE CLERK: Please be seated.

12 THE COURT: And it's Mr. Guckeisen; is  
13 that correct?

14 JUROR GUCKEISEN: That's correct, Your  
15 Honor.

16 THE COURT: Mr. Guckeisen, you've  
17 already filled out a written questionnaire in  
18 this case. Today we're moving on to the next  
19 phase of jury selection which is, uh, individual  
20 voir dire. Each of the attorneys, uh, will have  
21 an opportunity to ask you some, uh, questions,  
22 relating to your qualifications as a juror. In  
23 most cases, the questions will be follow-ups to  
24 information you provided in your written  
25 questionnaire.

1                   Before we get to that, uh, part of the  
2 proceedings, I can tell you that the jurors in  
3 this case who are selected will not be  
4 sequestered. That is, they will be able to  
5 return, uh, home each day after the court  
6 proceedings for that day.

7                   Uh, and that although the proceedings,  
8 uh, today in court are open to the public, the  
9 Court does not permit cameras in the courtroom  
10 during voir dire proceedings.

11                  Uh, in addition, the media is not  
12 allowed to disclose the names of the jurors in  
13 reports of these proceedings.

14                  Finally, if you are selected to serve as  
15 a juror, the cameras that cover the trial will  
16 not be able to, uh, show the jurors in any way  
17 that allows identification of who they are.

18                  Uh, I can tell you that if you remain  
19 eligible as a juror after the questioning today,  
20 uh, you'll get another telephone call from the  
21 Clerk's Office probably later today letting you  
22 know when to report back to court.

23                  Mr. Fallon, are you going to handle this  
24 one?

25                  ATTORNEY FALLON: Yes.

1 THE COURT: Very well.

2 **VOIR DIRE EXAMINATION**

3 BY ATTORNEY FALLON:

4 Q Good afternoon, Mr. Guckeisen.

5 A Good afternoon.

6 Q Um, my name is Tom Fallon. I'm an Assistant  
7 Attorney General with the Wisconsin Department of  
8 Justice, and I'm one of the special prosecutors  
9 in this case. Uh, to my immediate left is  
10 Mr. Ken Kratz, the Calumet County District  
11 Attorney and lead prosecutor. Um, thanks for,  
12 uh, coming back this afternoon.

13 I wanted to ask you a few questions  
14 about some of the information you provided in  
15 your questionnaire last week, and, uh, if I may,  
16 like to begin with, uh, a little bit about your,  
17 um, employment history.

18 I see that you're, um -- I take it  
19 you're currently working at, um, KMC Stamping and  
20 Laser Form?

21 A Correct.

22 Q All right. What kind of business is that?

23 A It's a metal stamping-type business. Um, mostly  
24 metals. Uh, parts for cars, tractors, trucks.

25 Q And what position do you hold with them?

1 A I am the CAD-CAM programmer. That's Computer-aided  
2 Design, Computer-aided Manufacturing.

3 Q So what does it do?

4 A Actually, what I do is I'll take a formed up object  
5 and metal and lay it out in the flat and then program  
6 one of the three laser machines to cut it out.

7 Q I see. And how long have you been doing that  
8 work, sir?

9 A Since 19 -- around 1978.

10 Q Okay. So quite sometime, 26, 7, 8 years?

11 A Approximately, right.

12 Q And that's in, um, Port Washington, Wisconsin?

13 A That's correct.

14 Q So you've got a little bit of a commute, do you?

15 A Yeah. Forty-four miles one way, every day.

16 Q Every day. And how many days a week? Five?

17 A Five. Sometimes six, but usually it's five.

18 Q Okay. And, uh, you've previously worked at a  
19 location in, uh, Mequon?

20 A Um-hmm.

21 Q And, uh, what did you do for -- is it, uh,  
22 Biersach and Neidermeyer?

23 A Right. It was the same thing.

24 Q Oh, same kind of work?

25 A Same kind of work, correct.

1 Q And, uh, I see, also, you did, uh, some work for  
2 the, uh, Kiel Police Department?

3 A Right. Um-hmm.

4 Q And what kind of work is that, sir?

5 A I was there for approximately 11 years. That was,  
6 uh, approximately seven years part-time, four years  
7 full time.

8 Q Uh, seven full and four part? Or did I have that  
9 the other way around? Seven part --

10 A Seven part-time and four full time.

11 Q Okay. And what did you do for them?

12 A I was a police officer.

13 Q Okay.

14 A And --

15 Q You were.

16 A The seven years part-time was reserve police, and  
17 then part-time police officer.

18 Q All right. Now, what kind of duty did you have,  
19 uh, when you were at the Kiel, uh, Department?

20 A Uh, just your normal patrolman-type of duty.  
21 Checking doors, uh, making arrests, uh, speeding, you  
22 know, domestics, which -- whatever came up, that's  
23 what we would do.

24 Q All right. Now, I see, also, from your, um,  
25 questionnaire you have some, uh, experience as a

1                   fingerprint technician?

2 A   Yes. That's when I was on the force.

3 Q   Oh, you were.

4 A   Um-hmm.

5 Q   Okay. Well, tell us about that.

6 A   I came down and had classes, uh, down in the  
7       basement, across the street I believe it was, and to  
8       learn how to categorize and to take fingerprints --  
9       fingerprints the proper way, cat -- classify them,  
10      and then make out the documents to send them in for,  
11      you know, registration or classification.

12                  And then try to, uh, take a fingerprint  
13      and check on the parts we -- or the prints we had  
14      at the time to see if there was any type of  
15      matches with the certain criteria that was, uh --  
16      at that time. Now they don't do that much  
17      anymore but --

18 Q   Okay.

19 A   -- you know, when you did it physically --

20 Q   Right.

21 A   -- one at a time, and -- and try to find out --

22 Q   Right. And are you referring to today the -- lot  
23      of it is automated; is that --

24 A   Right. Yeah. Today most of it is auto -- automated  
25      with the checking to find out, you know, rather than

1           five or six different, uh, cards, now they just kind  
2           of go through the database and find any matches and  
3           then work that way.

4   Q   All right. And then you start and check that  
5           from there?

6   A   Right.

7   Q   Okay. Now, when you were with the Kiel  
8           Department, was there anyone else on the  
9           Department who, uh, shared those duties or were  
10          you, uh, the fingerprint guy?

11   A   Um, actually there was another which would be, um,  
12          Rick Sloan. He was the chief at -- a few years back  
13          and he did some fingerprinting, too. But, usually,  
14          because of my shift being, uh, three to eleven in the  
15          afternoon, evening, that's when the fingerprinting  
16          was done for people that were going to go, like, uh,  
17          for, serv -- uh, into, uh, service, or people that  
18          were coming to be nationalized and go through their  
19          procedures to become a American citizen, we'd have to  
20          fingerprint them.

21   Q   Sure.

22   A   Children, so that in case they got lost we could find  
23          them again.

24   Q   Okay. Um, I take it from your history, then,  
25          that you did that work, uh, or were doing that

1           job the same time you were doing your metal  
2           stamping work?

3       A    No, that --

4       Q    No?

5       A    -- was prior to metal --

6       Q    Oh, that was prior to --

7       A    Prior to metal --

8       Q    I see.

9       A    -- stamping. Correct.

10      Q    So your, uh, uh, law enforcement experience, uh,  
11           preceded your experience in the metal stamping  
12           business?

13      A    That's correct. Um-hmm.

14      Q    So it's been, then, 28 years or so since you were  
15           in law enforcement?

16      A    Yeah, just about. Um-hmm. Approximately.

17      Q    Uh, as a fingerprint analyst, did you have  
18           occasion to go to crime scenes and -- and attempt  
19           to lift prints from scenes?

20      A    Yes. In fact, uh, there was a couple. One I recall  
21           was a, um, car theft.

22      Q    Okay.

23      A    And we lifted the prints. Eventually going through  
24           and sending them into the state of Wisconsin, the  
25           crime lab for the FBI, we did find out whose they

1           were because they weren't on any records we had, of  
2           course.

3   Q   Right. Right. Uh, did you, uh, have occasion to  
4       work any homicides, uh, for use with  
5       fingerprinting?

6   A   No. No.

7   Q   Okay.

8   A   Nothing in that. We've had, you know, dead  
9       body-types things, or expired people calls, but this  
10      was no homicides. These were natural deaths on all  
11      of them.

12   Q   I see. All right. Now, as a result of having  
13      worked in law enforcement, I would imagine you  
14      have, uh, some friends who are still in law  
15      enforcement?

16   A   Right. That's --

17   Q   And --

18   A   -- correct.

19   Q   And --

20   A   They are actually retired.

21   Q   They are all retired?

22   A   They're all retired, right.

23   Q   However, I note from the questionnaire that you  
24      are at least familiar with Investigator, uh,  
25      Dedering?

1 A I'm not sure. That's why I circled it. What would  
2 his first name be? Because I do know one. And I  
3 don't know --

4 Q This is a John.

5 A -- if it's the right one. John?

6 Q This is a John Dederling, Calumet County?

7 A Yes, I would know who he was, but that's 20, 30 years  
8 ago.

9 Q So you can't say that you're like close friends  
10 or --

11 A No.

12 Q -- acquaintances --

13 A No.

14 Q You just recog --

15 A Not at all. No.

16 Q You just recognize the name?

17 A I just recognize the name. That's why.

18 Q All right. Who else, um, do you, um -- well, who  
19 would you consider a close friend or a close  
20 acquaintance, um, that is in law enforcement now  
21 or has retired from law enforcement?

22 A I would say, uh, a retired detective from Manitowoc  
23 County, which would be Larry Conrad, and, also, uh,  
24 retired chief of police of the city of Manitowoc. I  
25 mean, we get together couple times a year, but that's

1           not where once a week we're together or, you know, we  
2           talk once a week. It's three or four times a year.  
3           Basically, it's going to car swap meets. That's  
4           about it.

5   Q   All right. And what would, uh, that person --  
6           the retired, uh, chief's name be?

7   A   Rich Brey. Rich Brey.

8   Q   All right.

9   A   B-r-e-y.

10   Q   Oh.

11   A   Richard.

12   Q   Thank you.

13   A   Okay.

14   Q   All right. Now, um, as you might -- as you might  
15           imagine, there's, uh, going to be a -- a fair  
16           amount of, um, law enforcement testimony  
17           associated with a case like this.

18   A   Um-hmm.

19   Q   And, uh, the question that we all have in our  
20           minds, uh, is that since you were a former law  
21           enforcement officer, uh, do you think that you  
22           could evaluate the testimony of a law enforcement  
23           officer the same as you would any other witness  
24           in determining whether they were telling the  
25           truth or not?

1 A Yeah. That's the way I was brought up. I -- I would  
2 have to answer yes to that.

3 Q All right. So you wouldn't give them any more  
4 slack or any less slack than you would any other  
5 witness in evaluating their credibility?

6 A No, I don't believe so.

7 Q All right. Now, I did want to touch base with  
8 one, um, health-related issue, uh, just in case  
9 you were, uh, selected as a juror. You mention  
10 you -- uh, you have, um, some high blood pressure  
11 which is, uh, treated by medication?

12 A Um-hmm.

13 Q Um --

14 A Exactly.

15 Q Okay. Uh, is that more or less under control  
16 such --

17 A Oh, yes. Yes. It actually isn't really that high,  
18 but they thought just as, you know, kind of a  
19 preventive-type thing I take the medication, so --

20 Q And otherwise then your health is good?

21 A Correct.

22 Q Okay. Now, uh, I'm sure you recognize from  
23 reading the last, uh, uh, question, uh, that, um,  
24 this trial may very well go for, um, six weeks or  
25 so. And I believe the Court has already answered

1           one primary question of yours, and that is the --  
2           whether the jury would be sequestered?

3       A    Correct. Yes.

4       Q    Well, since -- assuming that the jurors are able  
5           to follow the Judge's instructions that's not  
6           likely to happen, um, is there any other reason  
7           why you think you might not be able to serve as a  
8           juror if you were selected?

9       A    No, absolutely not.

10      Q    All right. Um, the other -- or area of, uh,  
11           two -- two other incidental questions, uh,  
12           considering your law enforcement experience and  
13           that you work with computers and in the stamping  
14           business, would you consider yourself a -- a  
15           detail-oriented person or more of a big picture  
16           guy when it comes to forming opinions or solving  
17           problems or the like?

18      A    Probably more of a detail-type person.

19      Q    Okay. Um, and, uh, you hate working on puzzles  
20           or is that all right?

21      A    I work on puzzles every day, I guess, so, yeah, I do  
22           like it.

23      Q    Okay. Um, very good. Let's talk a little bit  
24           about, um, publicity, uh, with this, uh, case.  
25           It looks like you get most of your news, uh, from

1                   the television?

2   A   Actually -- Excuse me. Actually, I very rarely watch  
3                   news.

4   Q   Okay. Um, have you been following the events of  
5                   this case very much at all?

6   A   Uh, when it first started, you know, when everything  
7                   came about, then I watched it, but, like I say, I  
8                   very seldom watch any news or anything. With working  
9                   full-time, and then I have two part-time, uh, uh, you  
10                  could say jobs, or whatever, and, uh, businesses, you  
11                  might say, so I very seldom get the chance to watch  
12                  news, so I haven't been watching anything in a long  
13                  time now.

14   Q   All right. Um, did you recently receive a letter  
15                  from the Court about three weeks ago advising you  
16                  that there was a possibility you could be a juror  
17                  in this case and asking that you refrain from  
18                  watching or reading about any of the coverage of  
19                  this case?

20   A   Yes, I did.

21   Q   All right. And were you able to abide by that  
22                  request?

23   A   Yes, I was. Uh-huh.

24   Q   All right. All right. Um, so based on the  
25                  information that you had early on, you know,

1           going back a year or so ago, have you formed any  
2           opinions about whether Mr. Avery is guilty or  
3           innocent of the charge for which he's been, um --

4 A       Actually, I have not.

5 Q       No opinion?

6 A       Because I didn't see both sides of the question or  
7           the other side of the coin.

8 Q       Right.

9 A       In other words, like, you only hear one thing, you  
10          don't hear both, so --

11 Q       All right. So you're saying that there's just  
12          not enough information for you based on your  
13          little exposure to it to make any opinion list.

14 A       Absolutely right. Um-hmm.

15 Q       All right. Now, you understand from your  
16          previous work, I would imagine, as a law  
17          enforcement officer, that Mr. Avery is, uh,  
18          presumed innocent unless and until the State can  
19          prove him guilty beyond a reasonable doubt?

20 A       Yes.

21 Q       Now, as law a law enforcement officer, do you  
22          accept that proposition?

23 A       Yes.

24 Q       All right. And, uh, when the Court instructs you  
25          on that, that you would follow that instruction?

1 A Yes.

2 Q All right. And you understand, of course, that,  
3 uh, as part of that whole process, Mr. Avery  
4 doesn't have to present a defense at all?

5 A That's what his Honor told us, uh, when we -- about a  
6 week or so ago. He expressed that to us.

7 Q All right.

8 A Um-hmm.

9 Q So you're aware of that and you realize that if  
10 they presented no evidence at all, it's  
11 entirely -- you'd have to evaluate his guilt or  
12 innocence solely on the evidence that Mr. Kratz  
13 and I would present to you?

14 A That would be correct.

15 Q All right.

16 A Um-hmm.

17 Q And if we didn't convince you beyond a reasonable  
18 doubt, you'd have to find him not guilty even if  
19 he didn't say a word?

20 A Yes.

21 Q All right. And do you think --

22 A That's correct.

23 Q Do you think you could do that?

24 A I believe I could.

25 Q All right. That's all I have.

1 ATTORNEY FALLON: I'll pass.

2 THE COURT: All right. Mr. Buting?

3 ATTORNEY BUTING: Thank you, Judge.

4 **VOIR DIRE EXAMINATION**

5 BY ATTORNEY BUTING:

6 Q Good afternoon.

7 A Good afternoon.

8 Q My name's Jerome Buting and this is Dean Strang.

9 We're the attorneys defending Steven Avery.

10 A Okay.

11 Q You mentioned that you had two part-time jobs in  
12 addition to your job as a, uh, CAD programmer?

13 A Correct. These are actually two part-time  
14 businesses. One is, um, auto cleaning and detailing  
15 products, and I've just started a part-time locksmith  
16 business.

17 Q Okay. And those part-time, uh -- the -- the auto  
18 detailing thing, is that something you do in the  
19 evenings?

20 A Actually, I don't do the detailing. I sell the  
21 products. And it's -- this time of the year you  
22 don't sell much of it because of being cold. But in  
23 the summer I go to swap meets and sell it there. So  
24 usually just products. I don't do the service,  
25 actually, myself.

1 Q I see. Are these things like Armor All and --  
2 or -- or similar types of products?

3 A It's a similar type, yes.

4 Q Not that name brand though?

5 A Right. Not that name brand.

6 Q And the locksmith, uh, business is something  
7 that's, uh, recent?

8 A Right. I been doing it for about three years. But I  
9 actually started a business as such just a little  
10 over two years ago.

11 Q And how did you learn how to work on locks?

12 A I went to a class at, uh, Fox Valley Tech in  
13 Appleton. It was a -- over a week class and we  
14 became certified.

15 Q Okay. You have to have some kind of state  
16 certification for that or --

17 A No, you don't, actually. And not in this state.

18 Q Okay. And so that's just something you do in the  
19 evenings or weekends or --

20 A Correct. That's exactly right.

21 Q Your, uh, groups or organizations that you  
22 mentioned in your questionnaire, um, Associated  
23 Locksmiths of America? What -- what is that  
24 exactly?

25 A That's actually a large group of locksmiths. You

1           belong to that and they give you information. You  
2           can buy books or manuals through it. Um, they used  
3           to have an online chat line where you could ask  
4           questions, but they took care of that, so we can't do  
5           that anymore. But it's a lot for information that  
6           you might not know or lot of, uh, older locksmiths  
7           will put on that you, you know, gain knowledge doing  
8           it that way.

9       Q     Okay. You also mention Wisconsin Law Enforcement  
10      Officers Association? Are you still a member of  
11      that?

12      A     Yeah. I'm an inactive member. But I've been in that  
13      since I was in the, uh, police department in Kiel,  
14      which was 1977, around in that area.

15      Q     Okay. So do you go -- go to any meetings or  
16      anything like that?

17      A     No.

18      Q     Um, by being inactive, I mean, what -- what do  
19      you -- do you get publications mailed to you or  
20      what --

21      A     Right.

22      Q     -- do you do?

23      A     We -- we do get a -- a publication, but it's -- they  
24      call it "inactive." In other words, they'll send you  
25      publications, but you don't go to meetings or

1 anything as such. You know, just -- I give them the  
2 money and they send me a, uh -- a magazine once in a  
3 while or, uh, you know, some information, but that's  
4 about as far as that would go.

5 Q Now, how did you make the transition from being a  
6 police officer to a CAD programmer?

7 A I was -- I started off just working with the sheet  
8 metal after I had resigned from the Kiel Department,  
9 and, uh, at that point everything was done manually,  
10 and they started getting more updated technology with  
11 computers, and I gradually worked into that. And  
12 that's how I started, and -- and just continued on  
13 going into this type of work.

14 Q So it wasn't something that -- that you started  
15 before you left, uh, the police department? It  
16 was --

17 A No.

18 Q -- something after?

19 A No.

20 Q May I ask why you resigned from the police  
21 department?

22 A Uh, was a lot of small town politics. That's, uh,  
23 what -- I got to the point where, finally, I didn't  
24 believe I was doing the people or the citizens of  
25 Kiel justice because I couldn't do my job because of

1           these politics that were going on. And I felt that,  
2           uh, there was nothing I could do, so I ended up  
3           resigning.

4       Q    Were there, um, problems that -- that you were  
5           having in -- internally in the police department  
6           with supervisors or anything of that sort?

7       A    Not so much internally but, uh, it had to do with the  
8           city government you might say.

9       Q    I mean, I don't mean to pry, really. It's --  
10          it's, uh -- but I -- I need to know a little bit  
11          about your background and how you have -- how you  
12          come into the -- the situation you might find  
13          yourself.

14                   Were -- were they, uh -- I mean,  
15          complaints of this -- that they were -- they had  
16          against -- about -- about your job performance or  
17          something that --

18       A    It wasn't so much as a job performance. It was like,  
19          uh, nit-picky little things like fuzz on your -- the  
20          hammer of your gun. And we had cloth seats in the  
21          squad car, so you're bound to get that.

22                   But, um, they were to the point where  
23          they would walk or ride their bikes at two, three  
24          o'clock in the morning, and following me around  
25          to see if I was checking doors, of what I was

1                   doing, and it just got to the point where, you  
2                   know, it was more of a harassment-type thing.

3                   It wasn't, they could say, well, you're  
4                   not doing your job, or you're not doing it well  
5                   enough, but all this other culmination of  
6                   nit-picky things and --

7 Q               Um-hmm.

8 A               -- I just --

9 Q               Sure.

10 A               -- didn't feel that I was serving the community to  
11               the best I could.

12 Q               And were these, um -- you said city government.

13               Was this like the city Mayor or the --

14 A               Mayor and the -- and some of the councilmen.

15 Q               Um, and were they harassing just you or others in  
16               the department as well?

17 A               Actually, it was me, because when I was hired, there  
18               were two on the city council that wanted a relation  
19               of their's hired at that time, and because he wasn't,  
20               that's what started this all off.

21 Q               I see.

22 A               And it just kept getting worse so --

23 Q               Sure. Okay. I understand. You also mentioned,  
24               uh, that you knew a Mike Klaeser on the witness  
25               list?

1 A What Mike Klaeser would that be? Because I do know a  
2 Mike Klaeser, but if it's the right one or wrong one  
3 I don't know.

4 Q I believe he's the Calumet, uh, coroner?

5 A No. No. The one I know is, uh -- runs a, uh, bait  
6 shop in Kiel. That's Mike Klaeser, so --

7 Q Okay.

8 A Okay.

9 Q Thank you. Well, I don't think we'll be hearing  
10 from him. Um, so you have an interest in, uh --  
11 in terms of magazines, you seem to have an  
12 interest in vehicles; *Vintage Trucks, Model T,*  
13 *Tow Times*, those --

14 A Um-hmm. I -- I like older cars. I can't afford  
15 them, but I like them.

16 Q Ever work on them? Uh, you know, kits or doing  
17 mechanical work with engines?

18 A Yeah, on my own vehicles. I've got a -- an '88 Ford  
19 Bronco, and that's a show truck, so I do all my own  
20 work on that, but --

21 Q Sort of a hobby you like to do? Work on --

22 A When I --

23 Q -- with your hands?

24 A -- get a chance. Right.

25 Q Okay. Now, you said you remember some -- from --

1           well, if -- if -- in terms of your source of  
2           knowledge of news, would it be more TV or, um,  
3           newspapers, or internet, or what?

4       A    Actually, if I do see any news, it's on the internet.  
5           But I don't subscribe to a paper, I don't watch much  
6           television, except maybe like the history channel, or  
7           discovery, or learning. That's because a lot of  
8           times I get home too late to be able to watch news  
9           anyway, so --

10      Q     Sure.

11      A     -- it's something that you can get up for the next  
12           day going back to work, so --

13      Q     So when you say, "internet," what kind of cites  
14           are -- do you get your news from on the internet?

15      A     Actually, it would be like from the Manitowoc *Herald*  
16           *Times* and --

17      Q     Okay.

18      A     -- *Sheboygan Press*. Just kind of local news.

19      Q     Okay. So you do get some local news. It's just  
20           through the -- the internet instead of --

21      A     Right. And it's very, very seldom, unless there's  
22           something that I really wanted to see or find out  
23           about. But --

24      Q     You remember when this case first arose, though,  
25           is that what you said?

1 A Yeah.

2 Q You do recall?

3 A Yes. Last year sometime. I couldn't tell you when,  
4 but --

5 Q And what do -- what do you recall about it?

6 A The only thing that I can recall about it was that  
7 there was a lady that was missing, and that there was  
8 being search -- or she was being searched for, and  
9 that who was possibly being accused of this, and  
10 where it was, which I have no idea where that was  
11 taken place but -- and that's about as far as it  
12 went, you know.

13 Q Do you recall seeing any news conferences or  
14 seg -- excerpts from news conferences with  
15 Mr. Kratz or Sheriff Pagel?

16 A No, I don't recall ever seeing that.

17 Q Does the name Brendan Dassey mean anything to  
18 you?

19 A No, sir.

20 Q Um, do you know -- remember hearing anything  
21 about the nephew of Mr. Avery?

22 A I've heard about a nephew, but I couldn't say what  
23 the name was.

24 Q Well, can you tell me what you heard about that  
25 nephew?

1 A Um, that he might have had something to do with it.  
2 That's what I saw on the news and that's as far as it  
3 went.

4 Q Okay. So you recall something about, um, uh,  
5 statements that he may have made initially  
6 admitting involvement?

7 A That's the only thing I do remember.

8 Q Any of the details of that story that he first  
9 told?

10 A Not really. No, sir.

11 Q And did -- did you also learn about his later  
12 recantations of that confession?

13 A No, sir, I did not.

14 Q Okay. Um, have you heard anything about a blood  
15 vial involved in this case, potentially?

16 A No, sir, I have not.

17 Q Have you talked to any -- I'm sorry. Are you,  
18 uh -- you're single? Okay. Um, do you have a  
19 significant other that you confide in and talk  
20 to --

21 A No, sir.

22 Q -- those things? Have you talked to other people  
23 in the community about this case at all? Heard  
24 their opinions?

25 A That would have been months ago. Lately, not. I --

1 I -- since we got the, uh, letter from the Judge, I  
2 try to stay out of any conversations or anything like  
3 that. If they start, I just tell them I ain't going  
4 to talk about it as such, and that's --

5 Q Sure.

6 A -- about it.

7 Q Well, that's good. I appreciate that. But  
8 months ago, when you would talk to people,  
9 what -- what sort of opinions were you hearing?  
10 That he was -- Mr. Avery was probably guilty? Or  
11 that he was probably being framed? Or what were  
12 you hearing?

13 A Actually, just about what you were saying. It's  
14 both. That he was being framed; no, he was guilty;  
15 um, no, he wasn't guilty. And this was personal  
16 opinions from people. I have no idea, you know,  
17 where they were basing them off of. I would assume  
18 TV and rad -- and radio, or whatever, but, you know,  
19 I have no clue where they were getting their  
20 information.

21 Q And did you ever -- I mean, did you have any  
22 leaning either way yourself when you would hear  
23 and talk to these people?

24 A Not actually, because I don't watch that much about  
25 it, and I didn't at the time either, so I really

1           wasn't up on it to say, yeah, okay, he was, or he is  
2           guilty, or, no, he's not guilty, he's being framed,  
3           and why he's being framed, I would have no clue,  
4           so --

5   Q    Okay. Do you know anything about his background?

6   A    The only thing that I know about a background is  
7           possibly because he have a junk dealership or junk  
8           yard. That's about it.

9   Q    Well, do you that -- do you know anything about  
10          the wrongful conviction that he had? He was  
11          in -- where he was in prison and there was, um --  
12          exonerated when -- by DNA that matched somebody  
13          else for the real crime?

14   A    That I heard about.

15   Q    You did hear about that?

16   A    But I just heard, you know, bits and pieces that  
17          that's what had happened, but that's as far as it --  
18          it went with that, too.

19   Q    And what do you think about that?

20   A    It's hard to say. If that's the truth, okay, then.  
21          But I haven't heard both sides of that story either.  
22          And I kind of am one of these detail-type people.  
23          Unless you tell me both sides, I can't make an  
24          opinion on it.

25   Q    So do you -- so you're not -- you're not sure, in

1           fact, whether he was actually innocent even of  
2           that case?

3       A    I don't know, because I don't know the circumstances.  
4           Like you were saying, um, he was exonerated because  
5           of something. Well, that's all I know about it. I  
6           don't know what it was or what it -- you know, what  
7           it entailed. That's just the part that you had  
8           mentioned.

9       Q    Do you also recall anything about a lawsuit that  
10           was filed after that?

11      A    No, sir.

12      Q    You, uh -- just a few more things here. You --  
13           you mentioned, uh, court TV, and then you put,  
14           parentheses, "*Cops*." What -- what does that  
15           mean?

16      A    That's a show that they show once in a while on court  
17           TV, uh --

18      Q    Oh, I see.

19      A    -- called *Cops* and --

20      Q    So, you don't -- you watch that particular show.  
21           Do you watch trials or any segments of trials?

22      A    No. The only thing that -- and -- and I put it on  
23           there, but I can't think the exact name of it. It's  
24           got something to do with *48 Hours*, where it's  
25           homicide, and then they go out and they think they

1           got the party. It's supposed to be a live-type  
2           thing. Lot of times you get the wrong person because  
3           of what you're expect -- expecting or suspecting, and  
4           when it -- the real stuff comes out, then they wind  
5           up that that's not the person anyway. But I get to  
6           watch those maybe once, twice a month or so.

7       Q    You mentioned that, uh -- actually, as I look at  
8           the question, maybe it wasn't the best phrase.  
9           It asks whether you've had any good or bad  
10          experiences with Manitowoc County Sheriff's  
11          Department. You checked, yes. But then your  
12          answer -- I can't tell whether that's good or bad  
13          experiences?

14      A    Oh, it was good experiences, because at that time I  
15          was, um, in law enforcement. So we would bring  
16          people over to the -- the facility across the street,  
17          or we'd have to come over here for court. But that  
18          was only when I was on the police department. Other  
19          than that, I've never had any bad experiences with  
20          any law enforcement agency.

21      Q    Either while you were a -- an officer or, uh --  
22          either within your own department, or your  
23          experience maybe with others, that -- have you  
24          ever encountered a situation where police  
25          officers maybe shade the truth a little bit?

1 A I hate to say this, but, yes, I did at one point.

2 Q To -- now, I'm not going to ask you to name any  
3 names or anything of that sort, but did it  
4 involve, uh, actually coming into court and  
5 testifying under oath?

6 A It never got that far.

7 Q Okay.

8 A It never came to court.

9 Q Did it involve changing reports or something of  
10 that nature, or monkeying around with the  
11 evidence, or --

12 A Doctoring the report a little bit as to times.

13 Q Okay. And, uh, did anybody ever find out about  
14 it?

15 A Uh, if I'm not mistaken, the police chief did find  
16 out about it.

17 Q Okay. Now, would you be able to listen to police  
18 officers testifying here and, uh, consider the  
19 possibility that maybe something like that or  
20 worse happened in this case?

21 A It's possible. You know, it, uh -- everybody's  
22 human, and, you know, everybody can make a mistake  
23 now and then or, you know, change their opinion of  
24 something. So I can't say, you know, for certain  
25 that because a law enforcement officer walked up here

1           right now and said, this is what happened, that  
2           that's a hundred percent true.

3       Q     But, realistically, uh, if you -- if you search  
4           your heart of hearts, you know, as a former  
5           police officer still involved with the  
6           association and having that affinity to them, do  
7           you really think that you would maybe be a little  
8           bit partial towards officers coming in and  
9           testifying?

10      A     I'm sure, somewhat, you know, being human as I am, I  
11           somewhat have that, but you have to listen to the  
12           evidence and weigh that evidence of what is going on  
13           at the particular time.

14      Q     So it would be hard for you to, uh, consider the  
15           possibility that -- that one or more officers in  
16           this case may have even planted evidence?  
17           Something that serious?

18      A     I'd hate to think so, but, um, it could be possible.  
19           Anything's possible nowadays.

20      Q     And you'd be able to consider that?

21      A     If it came to it, yes.

22      Q     Would you --

23      A     Or there was evidence as such.

24      Q     Okay. And would you require that Mr., uh --  
25           Mr. Avery actually prove that to you in order to

find him not guilty?

A I'd have to go with what, uh, the evidence did show.

If there was evidence that what this officer said was true, then I would have to worry about somebody saying, no, it isn't true, and explaining it to me why it isn't. In other words, the two sides of that story.

Q Well, if you, um -- if you heard evidence that --

9           that gave you a, um, sus -- reasonable doubt,  
10          real concerns, maybe some suspicions that,  
11          perhaps, this was done, but not conclusive  
12          videotape evidence proving that this -- some  
13          evidence was planted in this case, would you --  
14          would you consider that as part of the overall  
15          evaluation of the evidence of whether or not  
16          there's reasonable doubt?

17 A Oh, certainly. Certainly, I would.

18 Q Or would you require that Mr. Avery actually  
19 prove that conclusively to you before you could  
20 even consider it?

21 A Excuse me. If I had doubts about something that I  
22 heard, I would not have to have him prove elsewhere.  
23 I would, uh, weigh that with the rest of the  
24 testimony that would come out and work it from there.  
25 In other words, um, it would be maybe he

1 can't prove that it's wrong, but maybe I have a  
2 real good suspicion it is. And then I would have  
3 to weigh that with the rest of the things that  
4 are being said and shown, etc.

5 Q Okay. And, uh, you mentioned last week his Honor  
6 told you that you, um -- that Mr. Avery has a --  
7 a right not to even testify or present any  
8 defense at all; right?

9 A That's correct.

10 Q Is that a new concept for you?

11 A I don't think it is. I'd heard of it before. I've  
12 never been involved in it, of course. But I've heard  
13 of it.

14 Q Well, you mentioned that you'd -- you're -- you'd  
15 like to hear both sides. Several times you've  
16 said that in -- in other contexts. So you're the  
17 kind of person who likes to hear both sides  
18 before you decide something?

19 A I would like to, but if there is an overwhelming  
20 doubt in my mind to where I could not say guilty or  
21 innocent right there and then, I could make a  
22 judgment then at that point, and then there would not  
23 be a reasonable doubt to convict Mr. Avery.

24 Q Then there would not be or --

25 A There would be a reasonable doubt not to convict him.

1           That's what I was trying to say.

2   Q    Okay.

3   A    Not to convict.

4   Q    And would you hold those two lawyers over there  
5           to the entire burden of proof? Make them prove  
6           Mr. Avery guilty beyond a reasonable doubt and  
7           not require Mr. Avery to do anything?

8   A    Well, as far as the Judge had mentioned, I guess  
9           that's what is supposed to happen. We have to prove  
10          him -- or I shouldn't say myself. But he has to be  
11          proven to be guilty as he's assumed innocent right  
12          now.

13   Q    I understand the Judge is going to instruct you  
14          of that. What I just want to understand is can  
15          you -- I mean, for some people that's hard. Not  
16          everybody is a perfect jury for every case.

17                 Some cases are -- you know, you may be a  
18          very good juror in one case, but not in another.

19   A    Um-hmm.

20   Q    And sometimes people come into a case and say --  
21          and in their heart of hearts they think, you  
22          know, I really just don't think this is right for  
23          me. Um, I would have to hear from Mr. Avery  
24          first, for instance. Is that something that --  
25          that you might worry about or might have concerns

1           about?

2       A    That would be hard to say, because I'm not in the  
3           situation right now where Mr. Avery is not going to  
4           testify or whatever. But, I'd still have to go with  
5           the premise that he is innocent until he's actually  
6           proven guilty. So if he doesn't want to testify,  
7           that's his, uh, choice and his position.

8       Q    Well, do you realize that there could be a lot of  
9           reasons why someone -- a defendant may not  
10           testify? In other words, can you imagine someone  
11           to be innocent and still not testify?

12      A    I can imagine it could be.

13      Q    Okay. And so if the Judge instructs you, you  
14           can't consider that if that happens, you have  
15           to -- you'll be able to follow that?

16      A    Right. Exactly.

17      Q    And, on the other hand, if he does testify, and  
18           he might, there's a whole lot of things that --  
19           to be decided, would you be able to listen to his  
20           testimony just like any other witness?

21      A    Sure. Exactly. I would have no problem with that.

22      Q    So having thought about all of this, and  
23           understanding some of the issues, not a lot of it  
24           is -- well, is this really -- is this really a  
25           jury you think you can or should sit on?

1 A I believe I should. I believe I really should,  
2 because --

3 Q Why?

4 A -- I don't have a bias one way or the other right  
5 now. Um, I can't say whether he's guilty or innocent  
6 because I don't know anything about the trial as  
7 such, or about the accusations, or anything else,  
8 being that I don't see very much news, etc., I don't  
9 watch it, and, um, so I would be a -- a biased person  
10 and have to weigh the evidence on both sides to find  
11 out which was which, and whether he would be, in my  
12 eyes, guilty or he would be innocent.

13 Q All right. Well, thank you, sir. Appreciate it.

14 THE COURT: All right. Thank you,  
15 Mr. Guckeisen. The, uh, clerk will escort you from  
16 the courtroom at this time.

17 (Wherein juror is escorted out)

18 THE COURT: Counsel, any motion from either  
19 party?

20 ATTORNEY FALLON: None from the State.

21 ATTORNEY BUTING: Judge, I do have a  
22 motion, actually, and it's not to -- to strike  
23 this juror, yet, but it's to defer a decision on  
24 it, because -- and I -- I -- as I look at the  
25 computer-generated random list, um, taking jurors

1           out of order hasn't been a problem to now, but as  
2           I look at it now, we're getting close to the end,  
3           and it's possible that, um, there may be four  
4           other jurors in line that we would end up  
5           seating, or should end up seating before this  
6           juror.

7           And, in fairness, to make sure that  
8           there's completely random and that both sides  
9           have a fair opportunity, I think we should go  
10          back to that and, uh, if -- you know, if we need  
11          to talk to Mr. Defore (phonetic), for instance,  
12          out of line, he might -- let's see. I -- I see  
13          that there's, um -- he would be the fourth in  
14          line anyway, so, you know, we might be able to do  
15          that, but, you know, it may very well be that  
16          those next four would be seated as proper jurors,  
17          in which case we would never get to this one.

18           THE COURT: Mr. Fallon?

19           ATTORNEY FALLON: Um, in -- interesting  
20          argument, but we're in the same boat, I guess.  
21          If we have a juror who passes, I think we ought  
22          to seat them. Um, it -- sure, we have concerns  
23          regarding the next, uh, several jurors being  
24          called in as well. Uh, in fact, um, I have my  
25          doubts as to whether a couple of them will make

1                   the grade as it were.

2                   Um, if he -- if he, uh, passes, he  
3                   passes. He should be seated. Um, the fact that  
4                   he happened to be here early or whatever, is --  
5                   is fine. Uh, you know, it works both ways as the  
6                   next several jurors will soon --

7                   THE COURT: All right.

8                   ATTORNEY FALLON: -- demonstrate here.

9                   THE COURT: Well, um, it's probably a  
10                  reason for, uh, not taking any jurors, after  
11                  Mr. Guckeisen, on the list from here on out until  
12                  we've got them. Um, I think there's something to be  
13                  said for the defense's argument.

14                  What I'm going to do at this time is  
15                  include him, or at least on a contin --  
16                  conditional basis, include him as a member of the  
17                  jury given the instruction that he may be called  
18                  back.

19                  Uh, if we somehow do wind up with enough  
20                  jurors in front of him, uh, then, uh, we'll take  
21                  the ones in order in front of him.

22                  ATTORNEY BUTING: Thank you very much.

23                  THE COURT: So, next we're -- Uh, yes,  
24                  we'll take Mr. Defere next. And after that, we go  
25                  back in order.

1                   ATTORNEY FALLON: Well, Judge, what --  
2                   you know, the -- the very same argument will come  
3                   up with respect to this prospective juror as  
4                   well, whether it's the defense who makes the  
5                   motion or we make the motion.

6                   ATTORNEY BUTING: He's No. 4, I believe  
7                   and -- or am -- am I missing -- miscounting this?  
8                   Oh, I'm skipping Wichlacz -- oh, so maybe --

9                   THE COURT: We're going to take Mr. Defere,  
10                  then I'll go back exactly in order.

11                  ATTORNEY FALLON: All right.

12                  THE COURT: Uh, Mr. Defere, please raise  
13                  your right hand and the clerk will swear you in.

14                  THE CLERK: Please be seated.

15                  (Juror sworn)

16                  THE COURT: Um, Mr. Defere, you've already  
17                  completed a written jury questionnaire in this case.  
18                  Uh, today we're moving on to the next step of the  
19                  jury selection process which is voir dire.

20                  The attorneys for each of the parties  
21                  will have a chance to ask you some questions  
22                  today that relate to your qualifications as a  
23                  juror. In many cases, there'll be follow-up  
24                  questions to the answers that you gave in your  
25                  written questionnaire.

1                   Uh, before we begin with the  
2 questioning, I can tell you that the jury in this  
3 case is not going to be sequestered. That means  
4 that at the end of the trial each day the jurors  
5 will be permitted to go home. Um, we're able to  
6 do that because there'll be a continuing  
7 obligation on the part of the jurors not to learn  
8 anything from the news media about the case.

9                   That is, not to, uh, learn anything from radio,  
10 television, newspapers, or the internet about the  
11 case, and, also, not to discuss -- make sure you  
12 don't discuss the case with anyone, including any  
13 other members of the jury, until it's time to  
14 deliberate at the close of the trial, uh, or  
15 any -- anyone else, including members of your  
16 family, during the trial.

17                  These proceedings are open to the public  
18 today, but the Court does not permit cameras in  
19 the courtroom during the jury selection process.  
20 Uh, in addition, the media is not allowed to  
21 disclose the name of the jurors, uh, as we con --  
22 conduct this process.

23                  And if you are selected for the jury,  
24 uh, you should know that during the trial there  
25 may be cameras in the courtroom, but they're not

1           permitted to focus on the jurors in any manner  
2           that individually identifies them.

3           Uh, if you, uh, remain on the jury  
4           panel, you'll receive instructions before you  
5           leave today, uh, as to, uh, when you may be  
6           called back.

7           Mr. Fallon, are you handling this one  
8           for the State?

9           ATTORNEY FALLON: I am.

10           VOIR DIRE EXAMINATION

11           BY ATTORNEY FALLON:

12           Q      Good afternoon, Mr. Defere.

13           A      Good afternoon.

14           Q      My name is Tom Fallon. I'm an Assistant Attorney  
15           General with the Wisconsin Department of Justice,  
16           uh, and I am one of the prosecutors in this case.  
17           To my immediate left is Mr. Ken Kratz, the  
18           Calumet County District Attorney and lead special  
19           prosecutor in this prosecution.

20           Um, thanks for coming in this afternoon.

21           Uh, we have some, uh, questions to ask, um, of  
22           you based on the information you provided in your  
23           questionnaire last week, all right?

24           A      I understand.

25           Q      All right. And if you could speak clearly so our

1 reporter here can take down what you're saying,  
2 that would really help us out. Um, I want to  
3 begin with, uh, you are currently not employed;  
4 is that correct?

5 A Yes. I'm a student at LTC.

6 Q And what are you studying at LTC?

7 A My GED.

8 Q I'm sorry?

9 A My GED.

10 Q Okay. And that's, uh -- just so I'm clear,  
11 you're working for your, uh, graduate equivalency  
12 degree? Your high school degree?

13 A Yes, sir.

14 Q All right. How long have you been employed in  
15 that capacity? Or, excuse me, going back to  
16 school in other words?

17 A Since I've been laid off in late October.

18 Q And --

19 A Using time wisely.

20 Q I'm sorry?

21 A Use the time wisely.

22 Q All right. Where were you laid off from?

23 A Tower Tech.

24 Q Okay. And what did you do for them?

25 A Yard man.

1 Q How long were you employed by them?

2 A Three-and-a-half-months.

3 Q And why were you laid off?

4 A I believe they got slow. They -- they never really

5 gave me an answer. They laid several -- several of

6 us off at the same time.

7 Q Okay. They never gave you an explanation?

8 A No, not really. They left me a voicemail one morning

9 and just said they didn't need us no more.

10 Q Okay. Did you, uh, happen to call in and ask,

11 hey, what's up, or what's going on?

12 A Yes. And most I got from it was slow or nothing

13 really direct.

14 Q Are you collecting any unemployment?

15 A Yes, I am.

16 Q And how long have you been collecting

17 unemployment?

18 A Since, I believe, November 1.

19 Q All right. Uh, and your, uh, wife works I take

20 it?

21 A Yes.

22 Q All right. Now, um, if you were, uh, selected as

23 a juror in this particular case, there's a, uh,

24 good possibility that your service would last for

25 a period of six weeks. Um, would that cause any

1 economic hardship on you and/or your wife, uh,  
2 during that time where you're, uh, here, uh --

3 A No, not really.

4 Q All right. You think you'd have adequate funds  
5 to, uh, get you through this time frame?

6 A Yes.

7 Q All right. Very good. Prior to working at, um,  
8 Tower Tech, where did you -- where were you  
9 employed?

10 A Labor Ready.

11 Q And what did you do for them?

12 A That was a temporary service. I worked at Northern  
13 Labs for awhile.

14 Q And what did you do in that capacity?

15 A Forklift driver.

16 Q All right. And how long did you work there?

17 A Um, probably about three months until I got hired at  
18 Tower Tech.

19 Q All right. And, uh, prior to that, where were  
20 you employed?

21 A Um, probably through Labor Ready, couple other  
22 temporary services. Um, I couldn't tell you names  
23 offhand right now. They bounced me around a little  
24 bit.

25 Q All right. Well, tell us about the job that

1           you've held the longest.

2   A    Mirro.

3   Q    And how long did you work for them?

4   A    Little over six years.

5   Q    All right. And what did you do for them?

6   A    Material handler, forklift driver.

7   Q    And, um, how come you are not with that company?

8   A    The place shut down and moved to Mexico.

9   Q    Okay. All right. So has it been a little tough

10           finding steady work since then?

11   A    Yes. Um, for about a year we moved down to Waukesha,

12           and there I went to school for ATS. That's how I

13           ended up back in Manitowoc, but --

14   Q    All right.

15   A    -- it was my goal. I want a house up here, too.

16   Q    Now, uh, I understand you belong to one, uh -- a

17           motorcycle club?

18   A    Yes, I do.

19   Q    And what's the name of that club?

20   A    Immortals --

21   Q    All right. And what's --

22   A    -- Motorcycle Club.

23   Q    I'm sorry?

24   A    Immortals Motorcycle Club.

25   Q    And what type of club -- club is that?

1 A It's a motorcycle club. Just bunch of guys get  
2 together. They ride together. We have charities, a  
3 Wal-Mart charity. And just hang out.

4 Q All right. Now, is it, uh -- does it have a good  
5 reputation? This motorcycle club?

6 A To be honest, some people have a bad reputation with  
7 it, some people are hard workers and have families,  
8 or --

9 Q Uh-hmm.

10 A -- upright citizens.

11 Q Uh, do some consider it a -- a gang, for lack of  
12 a better term?

13 A I don't.

14 Q Well, I mean, how about others?

15 A I don't think so. We're considered a club.

16 Q All right. Uh, as a club, have you had any, uh,  
17 encounters with law enforcement officers?

18 A Um, not me directly. As a club, you know -- club,  
19 you know, oriented, but I'm sure there's other  
20 members that have been.

21 Q All right. But has, uh, law enforcement had, uh,  
22 problems with the club? The organization as  
23 itself?

24 A Um, trying to think. Probably before I was in.

25 Q All right. How long have you been a member of

1           this club?

2 A       Um, about four years.

3 Q       And when did you join?

4 A       Was it -- maybe 2001, maybe. I couldn't tell you  
5           offhand.

6 Q       All right. What were the initiation, uh,  
7           responsibilities to gain admittance to the club?

8 A       Um, just be around. Be a good member. Help people  
9           out. Somebody was moving or something, they call you  
10          up, go give them a hand.

11 Q       Okay. All right. Now, in terms of your, um,  
12          association with this club, uh, have you ever had  
13          any direct contact with members of law  
14          enforcement?

15 A       Not with the club, but I have separately.

16 Q       All right. And, in fact, you've had a number  
17          of -- of contacts with law enforcement; is that  
18          correct?

19 A       Yes.

20 Q       All right. Um, uh, a number of arrests; is that  
21          correct?

22 A       Yes.

23 Q       All right. Uh, tell us about those, please?

24 A       Where do you want me to start?

25 Q       Uh, well, the beginning is always a good spot.

1 A I had a problem with drinking for a long time.

2 Q Okay.

3 A I've got several drunk drivings.

4 Q All right.

5 A I got a few disorderly conducts. I couldn't tell you

6 how many.

7 Q Okay. Um, how about a battery complaint?

8 A Yeah, I probably got one of them.

9 Q All right. And, uh, how many drunk drivings do

10 you think you've had?

11 A Three. Not proud of them.

12 Q All right. And how many disorderly conducts?

13 A I probably had a couple.

14 Q All right.

15 A You probably know better than me.

16 Q So you've had a -- a fair amount of contact with

17 the law enforcement system; is that correct?

18 A Yes, I do.

19 Q And when was the last time you were arrested and

20 convicted of an offense, sir?

21 A Um, December, maybe.

22 Q December of --

23 A Sheboygan County. December of this last year.

24 Q All right. December of '06?

25 A Yep.

1 Q All right. And what was that for?

2 A Um, I believe it was battery. It was altercation in

3 a bar.

4 Q Excuse me. Is, um -- is that matter still

5 pending, sir?

6 A No, that's closed.

7 Q It is? All right. Were you convicted of

8 battery?

9 A Yes.

10 Q Are you on probation?

11 A No.

12 Q Uh, what -- what was the penalty?

13 A I believe it was just a fine.

14 Q You believe or it was?

15 A That's all I paid. I was -- I didn't get nothing

16 else out of it.

17 Q I'm sorry?

18 A I didn't get nothing else out of it. It was just a

19 fine.

20 Q All right. So you've had a number of disorderly

21 conducts, at least two batteries, and three OWI

22 convictions?

23 A Yes.

24 Q All right. So, would it be fair to say that you

25 had, um, significant contact with law enforcement

1           officers in your life?

2   A   Yes.

3   Q   All right. And, uh, you are, uh, just so I'm  
4        clear, 34 years of age?

5   A   Yes.

6   Q   Now, let's talk about your, uh, contact with law  
7        enforcement. In those cases were you treated  
8        fairly?

9   A   Yes.

10   Q   All right. You have no problem with the  
11       activities of the law enforcement officers?

12   A   Nope.

13   Q   All right. Let's -- let's take those, uh, OWI,  
14       uh, matters. Um, did you plead guilty to those  
15       offenses or did you take any of those to trial?

16   A   The last one I took to court.

17   Q   All right.

18   A   To trial.

19   Q   All right. And, uh, where was that, sir?

20   A   Uh, Manitowoc County.

21   Q   All right. And, um, do you know, uh, which  
22       branch of court or who your judge was?

23   A   I think it was this courtroom.

24   Q   All right.

25   A   I couldn't tell you which judge it was anymore.

1 Q All right. And, uh, during the course of that,  
2 uh, uh, trial, was there testimony from the law  
3 enforcement officers?

4 A I believe so. Yes.

5 Q All right. You believe so?

6 A I -- it's been five years, Your Honor. Yes, I  
7 believe -- or District Attorney. I'm nervous. Yes,  
8 there was testimony.

9 Q All right. And, uh, how many officers testified  
10 in that case?

11 A One, two. I couldn't remember. There was a couple.

12 Q All right. Uh, in -- in your own defense, were  
13 any witnesses called?

14 A I believe so. I -- I don't remember.

15 Q You don't remember.

16 A I -- I believe so, but I don't remember.

17 Q Did you testify?

18 A I think -- yeah, yeah, I did. I did.

19 Q All right. And, uh, you were convicted?

20 A Yes, I was.

21 Q All right. Did the law enforcement officers tell  
22 the truth?

23 A Best of their abilities, yes. Best of their ability,  
24 you know, yes.

25 Q All right. And did you tell the truth?

1 A Yes.

2 Q All right. Um, if they were telling the truth  
3 and you were telling the truth, both of you can't  
4 be right, can they?

5 A Um, how do I explain? I was wrong for the drunk  
6 driving. I did it. But circumstances happened  
7 weren't quite accurate.

8 Q As reflected how, sir?

9 A The way things went. That -- when he entered my  
10 house, when it all went down, I think there was  
11 confusion. It was dark. I don't think things went  
12 down the right -- everything was seemed.

13 Q All right. Well, what does that have to do with  
14 whether you were driving under the influence or  
15 not?

16 A My attorney, I think, was trying to get me off on a  
17 technicality.

18 Q All right.

19 A And -- and that's where I think he was coming around  
20 where the whole -- the whole situation wasn't right.

21 Q Well, did the officers, uh, testify truthfully  
22 regarding your driving ability that night?

23 A Um, I wasn't in the car. I was in my house.

24 Q All right. But were you driving?

25 A Yes, but no one seen me.

1 Q Okay. Were you -- had you been drinking when you  
2 were driving?

3 A Yes.

4 Q All right. And you were under the influence when  
5 you were driving?

6 A Yes.

7 Q Okay. Did you -- and you testified that you were  
8 not under the influence?

9 A I never said that. It -- it's -- what it was, was  
10 the way they entered my house. It's not -- it's not  
11 really about the officers being right/wrong. They  
12 testified. I did. But some laws my lawyer believed  
13 were broken when they entered my house.

14 Q All right.

15 A That's -- that was the -- what my lawyer had -- was  
16 going across trying to get to the bottom of.

17 Q All right.

18 A It's been over, like, five years. Like I said, I  
19 don't remember everything right now.

20 Q All right. Well, how about in this, uh, very  
21 last case? The one you -- where you were  
22 convicted of battery? Uh, what happened in that  
23 case?

24 A We were out. I just got out of school -- AT -- ATS  
25 School, Sun Prairie. Friend of mine wanted to take

1           me out. I got back, so we went out. He brought  
2           another --

3           COURT REPORTER: Slow down, please.

4           JUROR DEFERE: Oh, okay. I apologize.  
5           And he wanted to take me out for a couple of  
6           drinks. We met up with a friend of his. Um, he  
7           got in some trouble at -- at a bar, and we told  
8           him, leave. Get away from us.

9           So we went on our merry way and did what  
10          we had to do. And then we ran into him little  
11          bit later on in the evening. We walked in. He  
12          was -- he's a very mouthy person. He was getting  
13          beat on about -- by about three, four people. I  
14          noticed it right away and I went over to his  
15          defense. I regret going over to his defense  
16          because he never thanked me afterwards. And then  
17          we all -- we got arrested.

18 Q        (By Attorney Fallon) All right. And, uh, you  
19          were convicted of battery?

20 A        Yep.

21 Q        All right.

22 A        I didn't fight it. I -- I knew I was wrong. I  
23          should have turned my head and let him get beat on  
24          because he -- he had it coming.

25 Q        Right.

1 A Maybe it sounds bad but it's true.

2 Q All right. Now, let me go back to something for  
3 a minute. Um, how about your other, uh, drunk  
4 driving matters? Uh, were the -- did you review  
5 the police reports associated with your arrests?

6 A The other two drunk drivings?

7 Q Yes.

8 A Um, right. Them were like probably '94, '95. I  
9 haven't look at them in years, but I was driving. I  
10 got -- I was arrested, drunk drivings. No excuse,  
11 but, actually, going into remembering the details of  
12 the police report, I don't remember none of that no  
13 more.

14 Q All right. Well, were you treated fairly by the  
15 officers?

16 A Yes.

17 Q All right. And, uh, uh, they were truthful in  
18 their representations in the reports?

19 A I would think so. Yes, I would think so. It's been  
20 so many years.

21 Q All right. But you don't know?

22 A I don't remember.

23 Q All right.

24 A That's probably the correct way of saying it.

25 Q Well, there's going to be a fair amount of law

1 enforcement testimony associated with this case,  
2 Mr. Defere, and, uh, the question of, uh, concern  
3 to all of us, and especially the State here, is  
4 whether or not you can evaluate the law  
5 enforcement officers' testimony, uh, fairly and  
6 impartially, and given your, uh, criminal  
7 history, do you think you can do that?

8 A Yes, because if I can't, because this is a big case,  
9 there's a lot of people on the line here, if I feel  
10 that I can't be honest, I would tell you right now I  
11 can't be honest about it.

12 Q All right. And what makes you think that you  
13 will be, uh, comfortable in evaluating the  
14 testimony of the police officers in this case?

15 A If I feel uncomfortable about anything that goes on  
16 here, I will let whoever I need to know that I cannot  
17 be on the jury no more.

18 Q All right.

19 A If I feel impartial towards anybody, or I don't  
20 understand or anything, I'm going to come forward  
21 because this is -- this is not a joke. This is not a  
22 drunk driving case.

23 Q All right. All right. Appreciate that. Now,  
24 have you been following this case at all?

25 A No, not really. We don't have local channels. We

1           got Sat -- Dish Network and we got no basic channels.  
2           My wife tells me a little bit about it, but that's  
3           about it. I told -- not since I had to come in here,  
4           I -- anybody's talked to me, I told them, I don't  
5           want to know anything about it.

6 Q       All right. What have you heard about the case?

7 A       Mr. Avery's -- Mr. Avery's been arrested for murder.  
8           There's some blood stuff in a folder or something,  
9           and didn't -- going to court back and forth. Like, I  
10          haven't really been following this seriously.

11 Q       All right. What else do you, uh, recall hearing  
12          about the publicity in this case?

13 A       I don't -- you can't believe everything you hear.

14 Q       Right.

15 A       It's --

16 Q       Well, have you heard -- have you heard anything  
17          about a -- a guy by the name of Dassey?

18 A       Oh, the broth -- the cousin or -- the cousin of it?  
19          Cousin of Mr. Avery? Yeah, I've heard -- yeah,  
20          he's -- he's -- yeah, he's accused of the murder,  
21          too.

22 Q       All right. What do you remember hearing about  
23          his involvement?

24 A       He's party to a crime.

25 Q       All right.

1 A I don't -- I don't know a whole great deal about it.

2 Q Well, do you recall any of the details which  
3 were, uh, supposedly, um, described by Mr. Dassey  
4 upon his arrest?

5 A No, I don't remember. And I've been purposely not  
6 watching the news or paying any attention to it.  
7 I -- before I really paid much attention to it. I  
8 got enough things in my own life to really care about  
9 anybody else.

10 Q I won't argue with that.

11 A I don't drink no more. If you're thinking of drunk  
12 drivings.

13 Q My, um, question, um, is that, uh, can you tell  
14 us a little bit about what your wife told you  
15 about the case in your discussions with her?

16 A That's been well over a week ago. She follows it. I  
17 don't.

18 Q She follows the case?

19 A Yeah. I don't.

20 Q Does she follow it pretty closely?

21 A Not really. She -- she hears something on the news  
22 before she goes to bed. That's about it.

23 Q Well, then how would you know if she's been  
24 following the case?

25 A She watches TV. She watches TV at night. I know she

1           watches it.

2 Q       How do you know she watches it?

3 A       She watched -- Well, she goes to bed at night, I'm in  
4           the living room watching my shows, and she goes in  
5           the bedroom and watches her TV every night.

6 Q       Okay.

7 A       So --

8 Q       I guess if you haven't talked that much to her,  
9           I'm just curious as to how you would know that  
10          she's watching the coverage of this as opposed to  
11          anything else?

12 A       She'll watch the news in general. She watch --  
13          whatever comes on, she watches it.

14 Q       Okay. Including this?

15 A       Yeah. See, in -- let me explain. In our bedroom, we  
16          have no satellite, and she has a little TV, black and  
17          white TV, that's where she watches our local stuff.  
18          I sit in my living room, my 40-inch -- 40-inch TV and  
19          I watch my shows. My sci-fi, my history channels,  
20          that's what I get into. Public news and local stuff  
21          like that don't trip my trigger.

22 Q       Okay. All right. But, uh, so you've at least  
23          had some discussions, I take it, with your wife  
24          about what's going on with this case?

25 A       Before I was -- I had to come in here.

1 Q All right?

2 A But not a whole lot, because don't -- stuff like

3 this -- this murder cases, or anything with -- or

4 forensics doesn't trip my trigger.

5 Q All right.

6 A It does my wife. I'll be honest about that.

7 Q Okay. Just a couple, uh, questions and I'll be

8 done. Do you have any opinion at all, Mr., uh,

9 Defere, as to whether, uh, Mr. Avery is guilty of

10 the offense for which he's charged?

11 A I can't make that -- I can't make assumption.

12 Q All right. Why not?

13 A The trial's not done.

14 Q Right.

15 A Haven't heard all the facts.

16 Q Right. And what if the only facts you hear in

17 the case are those presented by the State, and he

18 chooses to present no facts at all?

19 A Told me it's up to just go by the facts. Whatever is

20 presented to us is all we got to go on.

21 Q All right. And if the State fails to convince

22 you beyond a reasonable doubt, would you acquit

23 Mr. Avery?

24 A Would that be the -- would that be the -- what we'd

25 have to do? I don't understand what you're saying

1 right now.

2 Q All right. Well, you -- you've had, uh, a case  
3 of your own where the jury was instructed that if  
4 they were going to convict you of drunk driving,  
5 they had to be convinced beyond a reasonable  
6 doubt that you were, uh, driving under the  
7 influence; right?

8 A Yeah.

9 Q All right.

10 A So -- so you're basically saying if the facts are  
11 stated that if you brought the facts out stating that  
12 he was guilty? Is that what you're saying?

13 Q Right. Well, what if -- what if we didn't quite  
14 convince you beyond a reasonable doubt, but yet  
15 you didn't hear anything from the, uh -- from Mr.  
16 Avery and his lawyers? Would you find him guilty  
17 or would you find him not guilty?

18 A I don't know what I would do.

19 Q You don't know what you'd do?

20 A I don't -- I don't know what I would do. I -- I  
21 don't.

22 Q Well, if the score -- Court were to instruct you  
23 that you don't have to, um, uh -- you can't hold  
24 it against him if he chose not to put any  
25 evidence in, if he chose not --

1 A Okay. Okay.

2 Q -- to testify?

3 A I follow you. Um, so basically is saying if he's --

4 if -- I guess I'd have to go with the evidence.

5 If -- if there's not enough to convict him, then

6 that's the way it would have to be.

7 Q All right. So what would you determine -- would

8 you vote guilty or not guilty then?

9 A Probably not guilty.

10 Q All right.

11 ATTORNEY FALLON: Um, I notice that my  
12 time's about -- I'll pass this juror.

13 THE COURT: Mr. Buting?

14 **VOIR DIRE EXAMINATION**

15 BY ATTORNEY BUTING:

16 Q Good afternoon, sir. Um, my name's Jerome  
17 Buting, and this is Dean Strang, and we're both  
18 the attorneys representing Steven Avery here  
19 today. I appreciate your coming here and being  
20 so forthright.

21 A I'm nervous.

22 Q I can understand that. Almost everybody who sits  
23 up there is. Really. You're not alone.

24 Um, Mr., uh, Fallon went through great  
25 detail your background and your contact with the

1           police, but I take it that you can put aside any  
2           of those instances and not let that affect you in  
3           evaluating the testimony or the evidence in this  
4           case; is that right?

5       A    Yes.

6       Q    And, in fact, in, uh, most of those instances it  
7           seems like, uh, you admit you were in the wrong?

8       A    I'm the -- yes, I'm no angel.

9       Q    Okay. You've had some problem with alcohol and  
10          you've been honest about that. We appreciate  
11          that. Really. And you're trying to work on that  
12          right now?

13      A    Since I've been married and my wife don't drink, I  
14          don't. Very seldom. I'll admit, I drink maybe once  
15          a month, but it's better than what it used to be,  
16          four times a week, but --

17      Q    Okay.

18      A    I got a good woman.

19      Q    I'm glad to hear that. And you, um -- you feel  
20          confident that if selected for this jury, you  
21          could follow the Judge's instructions?

22      A    Yes.

23      Q    And that you would bring whatever life  
24          experiences you have to this case just like any  
25          other jury -- juror; right?

1 A Could you, um, explain what you mean?

2 Q All right. Let -- that may be a bad question.

3 But you're, uh -- despite whatever contacts you  
4 may have had with the police, you're not going to  
5 be un -- unduly favorable or sympathetic to the  
6 defense; right?

7 A What's in my past has got no part with this.

8 Q Has nothing to do with Mr. Avery at all?

9 A No. This -- this is between right or wrong and --  
10 and what happened. If I -- if anything that's my  
11 life is going to affect me or affect anything going  
12 on here, I -- I'd tell you -- I'd tell you right now,  
13 I'm not the person to pick.

14 Q I appreciate that, sir. I -- I really do. Um, I  
15 think you understand this is very serious matter  
16 for both sides.

17 A It's -- it's also going to be a burden on all of us  
18 jurors. It's going to be a burden on -- on us. We  
19 got to put our life on hold for six weeks. It's  
20 going to affect me looking for a job and, you know,  
21 so on and so on, my wife, and daily -- daily things  
22 to do around the house and --

23 Q Sure. But --

24 A It's not a joke.

25 Q And knowing all that, you're still willing to --

1 to serve and do your civic duty?

2 A It's my duty, just like there -- our soldiers are  
3 overseas fighting for us. If we can't be proud  
4 Americans like they're being proud over there, what  
5 good are they -- are they fighting for? Got to be  
6 that way.

7 Q All right. Thank you very much, sir. Appreciate  
8 it.

9 THE COURT: All right. Uh, Mr. Defere,  
10 the, uh, clerk will escort you from the courtroom.

11 (Wherein juror is escorted out)

12 THE COURT: Counsel? Mr. Fallon?

13 ATTORNEY FALLON: May I confer?

14 THE COURT: Go ahead.

15 ATTORNEY FALLON: Obviously, this juror  
16 causes the State some concern, so we're  
17 deliberating as to whether we want to make a  
18 motion to strike for cause. And I guess on  
19 balance, we are going to make that request. Um,  
20 it's a close question in some respects, and in  
21 others, a rather clear one.

22 We're going to move that the juror be  
23 struck for cause on the, uh, theory of -- of  
24 objective bias. Um, although the juror's actual  
25 answers seemed adequate, some would say more than

1           adequate, to, uh, justify seating the juror, I'm  
2           concerned that given the big picture here, that  
3           those answers may not very well be credible.

4           We have an individual, um -- and he'd  
5           like us to believe that he's turning his life  
6           around and he's, uh, straightening himself out,  
7           uh, apparently recently getting married, etc.,  
8           but I guess even that does not ring true. After  
9           all, he has a December, 2006 conviction for  
10          battery in Sheboygan County, and by my account,  
11          that is only, uh, six weeks ago, seven.

12          Uh, this is an individual with, uh,  
13          three OWI convictions, several disorderly  
14          conducts, and another additional battery  
15          conviction, with numerous law enforcement  
16          contacts.

17          I also, uh, have a question, uh, to  
18          doubt the, uh, circumstances surrounding his  
19          affiliation with the motorcycle club as being  
20          entirely on the up and up.

21          I think that applying the objective bias  
22          standard, uh, could a reasonable person hearing  
23          all they have heard about Mr. Defere come to a  
24          reasoned conclusion that he could give the State  
25          a fair shake? I think one would have to say, not

1           withstanding his answers, that a reasonable  
2           person would not come to that conclusion. And,  
3           uh, as a result, given the extensive criminal  
4           history and the recency of it, uh, 2005 and 2006,  
5           uh, we'd ask the Court to strike this juror for  
6           cause.

7           Um, like I said, the, uh -- the words  
8           seemed good, but they don't match, I don't think,  
9           the background and the recent history, and I --  
10          I'm unconvinced by his demeanor. Uh, he strikes  
11          me as somebody who's a little too anxious and a  
12          little too willing to waive the flag.

13          And I know that may sound harsh, um, but  
14          that's our assessment of this juror and would ask  
15          that he be struck for cause.

16           THE COURT: Mr. Buting?

17           ATTORNEY BUTING: Judge, we object to  
18          that. There's no -- no grounds for cause for  
19          this juror. Yes, I can understand why the State  
20          doesn't want him on the panel. Obviously, the  
21          State will intend to use a peremptory given the  
22          rather grueling cross-examination Mr. Fallon gave  
23          this young man, but the fact of the matter is not  
24          only did he answer the questions appropriately,  
25          the -- the explanations were appropriate and his

1 demeanor was appropriate.

2 This is a man who, yes, he's had some  
3 difficulties with the law and he freely admitted  
4 it, but I didn't hear him blaming the State for  
5 any of them. He's blamed himself. He admits he  
6 had an alcohol problem. Even the most recent  
7 one, he admits he was trying to help a friend and  
8 he should have stayed out of it. He's not  
9 blaming the State.

10 He's not somebody coming in here and  
11 saying, you know, I've got a vendetta against the  
12 police or against prosecutors. It's a young man  
13 who's had difficulties, but there's no reason to  
14 think that he can't put those aside like any  
15 other juror who's -- former police officers, if  
16 we want to believe his answers.

17 All jurors bring their life experiences  
18 with them collectively to the jury, and this  
19 gentleman has every bit as much a right to do his  
20 civic duty, to sit on this jury, as anyone else.  
21 So I -- I -- I think there's absolutely no record  
22 to justify striking this juror for cause, and I  
23 would move to deny the State's motion.

24 THE COURT: All right. Well, I -- I  
25 understand why the, uh, State would be initially,

1           uh, concerned, given the juror -- or the juror's,  
2           uh, record, um, but I have to say that based on not  
3           only the content of his answers, but his demeanor,  
4           uh, I found him to believable -- be believable.

5           It would have been, um -- I'm sure it  
6           was difficult, in a courtroom of a number of  
7           people, for him to, uh, discuss and admit his  
8           criminal past, although it's misdemeanors and,  
9           um, uh, drunk driving, and it didn't involve  
10          felonies, but I -- I thought he was believable  
11          and forthright.

12          He acknowledged his culpability, I  
13          think, with respect to virtually every conviction  
14          that he had. It's true that he did contest, uh,  
15          his -- I believe it was his most recent OWI, but  
16          he, frankly, indicated that it was based more not  
17          on his own feeling that he was not guilty, but on  
18          a theory of defense his attorney recommended, and  
19          he pursued it.

20          He said on a couple of it -- and a -- a  
21          couple of occasions he believed that he had been  
22          treated fairly by officers, and I just didn't  
23          detect anything in his answers to, um, suggest  
24          that, uh, he was not being forthright with those  
25          answers.

1                   Um, he also seemed to have a solid grasp  
2                   on the fact that this case involves charges more  
3                   serious than any of the ones he was involved with  
4                   himself. And, um, I -- I think he is -- he is  
5                   aware of the fact, he recognizes the  
6                   responsibility, and, uh, has indicated that he  
7                   could, um, uh, safely face that responsibility  
8                   and be a part of the jury in this case. So I'm  
9                   going to deny the motion and make him part of the  
10                  jury panel.

11                  Uh, let's see. Jenny, how are you  
12                  doing? Do you want a break or do you want to  
13                  take one?

14                  COURT REPORTER: Let's do one more.

15                  THE COURT: Okay. How about Mr.  
16                  Wichlacz?

17                  THE CLERK: We have --

18                  THE COURT: Well, no, we're taking them  
19                  in order now. Oh, oh, is he here yet?

20                  THE CLERK: I don't know. There were  
21                  only three ladies in there when I was there.

22                  THE COURT: Okay. How about -- well --

23                  ATTORNEY FALLON: He's not -- No. 68  
24                  was, uh -- or is he not here yet either?

25                  THE COURT: Well, for --

1                   THE CLERK: I'll go check.

2                   THE COURT: Yeah. See if he's here.

3                   Let's start taking them in order.

4                   Ms. Barber, please raise your right hand  
5                   and the -- the clerk will administer the oath.

6                   (Juror sworn)

7                   THE CLERK: Please be seated.

8                   THE COURT: Uh, Ms. Barber, you've already  
9                   filled out a written jury questionnaire in this case  
10                  last week. Today we're moving on to the next phase  
11                  of jury selection, which is the voir dire process.

12                  The attorneys for both sides will have  
13                  an opportunity to ask you some questions that  
14                  relate to your qualifications to serve as a  
15                  juror. In many cases those questions will relate  
16                  back to, um, answers that you gave on your  
17                  written questionnaire.

18                  Before we begin the questioning, I can  
19                  let you know that the, uh, jurors selected to  
20                  hear this case will not be sequestered. That  
21                  means the jurors will be permitted to go home  
22                  each night after the day's proceedings. And, uh,  
23                  because of that fact, there will be a continuing  
24                  uh, ban on any juror exposure to news media  
25                  accounts of the case, whether it be on

1 television, radio, the newspapers, the internet,  
2 or anywhere else.

3 In addition, the jurors will be  
4 prohibited from discussing the case with anyone  
5 during the course of the trial, including any  
6 family members, or even the other jurors, until  
7 all of the evidence in the case has been  
8 received.

9 Today's proceedings are, uh, not closed  
10 to the public, but during voir dires, uh,  
11 proceedings, the Court does not allow cameras in  
12 the courtroom. In addition, the members of the  
13 news media are not permitted to disclose the  
14 names of the jurors in their reports of the court  
15 proceedings today.

16 Uh, finally, you should know that if  
17 you're selected to serve as a juror in this case,  
18 there may be cameras in the courtroom, but  
19 they're not permitted to show the faces of the  
20 jurors.

21 Uh, in the event that you remain on the  
22 jury panel after questioning today, you'll  
23 receive further instructions, probably by a  
24 telephone call later today, as to when to report  
25 back to court. Mr. Kratz, you may begin.

1 ATTORNEY KRATZ: Thank you, Judge.

2 **VOIR DIRE EXAMINATION**

3 BY ATTORNEY KRATZ:

4 Q Good afternoon, Ms. Barber.

5 A Good afternoon.

6 Q I'm Ken Kratz, the Calumet County District  
7 Attorney, who will be serving as lead prosecutor  
8 in this case. With me this afternoon is Tom  
9 Fallon. Mr. Fallon's an Assistant Attorney  
10 General. He works for the Department of Justice.  
11 He'll be assisting me not just this afternoon,  
12 but also through the presentation of -- of this  
13 trial.

14 As the Judge has explained, there are  
15 some follow-up questions to your answers given,  
16 uh, in your questionnaire, uh, that we need to  
17 ask of you.

18 Um, first of all, you, um, still work  
19 at, uh, Worthington Cylinders; is that correct?

20 A Yes, I do.

21 Q And that's in Chilton --

22 A Yes.

23 Q -- is that correct? All right. How long have  
24 you, uh, worked at that position?

25 A Twenty-eight years. I had to try and think.

1 Q All right. You've indicated on the, um,  
2 questionnaire that you had previous employment at  
3 Chilton Products; is that correct?

4 A Yes. Um, Worthington Cylinders took over the Chilton  
5 Products half of the cylinders, so altogether in that  
6 company building I've been there 28 years.  
7 Worthington -- I've been there with Worthington for  
8 four, because they bought out --

9 Q All right. I know that, but probably nobody else  
10 in this room does.

11 A Okay.

12 Q That -- that's why I -- I asked that, Ms. Barber.

13 A Okay.

14 Q The, um, connection with, uh, Chilton, that is  
15 the connection with Calumet County, also, uh,  
16 causes you to have some familiarity with  
17 Mr. Pagel; is that right?

18 A Yes.

19 Q Can you describe that?

20 A Actually, Jerry and I went to school together.

21 Q All right.

22 A And that's how I know him. I know him enough to go  
23 to him and say, hi, Jer, how's things, and --

24 Q All right. Have you had any discussions with  
25 Mr. Pagel about this particular case?

1 A No, I haven't.

2 Q You were aware, however, early on of Mr. Pagel's,  
3 uh, involvement in the investigation of this  
4 case?

5 A Actually, not. The last time I saw him, none of this  
6 had happened, so --

7 Q What I'm saying is, you realized early on in this  
8 investigation --

9 A Oh.

10 Q -- that Mr. Pagel was involved in the  
11 investigation?

12 A Yes. That's why I put it down.

13 Q And did you also realize early on that my office,  
14 that is the Calumet County D.A.'s Office, uh, had  
15 taken over responsibility of the prosecution in  
16 the case?

17 A No, not really.

18 Q All right. Ms. Barber, where is it that you, uh,  
19 most often receive your news?

20 A Most often, uh, television.

21 Q And, uh, had you recalled, and as you sit here  
22 this afternoon, do you recall, uh, television  
23 news stories regarding this case?

24 A Yes.

25 Q Let's go way back to the beginning of this case

1           in early November of 2005. Did you remember  
2           reports of, uh, Teresa Halbach having been  
3           missing and there was some missing persons or  
4           search efforts for her?

5     A    Yes.

6     Q    You didn't participate in the search for Ms.  
7           Halbach at all, did you?

8     A    No, I didn't.

9     Q    Do you know Ms. Halbach's family or, uh, anybody  
10          that might be related to her?

11    A    No.

12    Q    You live in Valders; is that right?

13    A    Yes.

14    Q    Which would be just over the Calumet  
15          County/Manitowoc County border; is that right?

16    A    About seven miles in, yes.

17    Q    All right. Now, uh, you don't know Investigator  
18          Mark Wiegert?

19    A    No, I don't.

20    Q    Ms. Barber, uh, you mentioned in your report that  
21          you've had some contact with law enforcement, uh,  
22          officials. Uh, we're going to talk about your  
23          son in -- in -- in just a moment, but --

24    A    Okay.

25    Q    -- um, have you personally had any contact with

1 law enforcement officials that in any way has  
2 left a bad taste in your mouth about police  
3 officers generally?

4 A No.

5 Q Have you had any contacts with law enforcement  
6 that, uh, have been positive in nature? They've  
7 helped you either, um, solve a crime for which  
8 you may have been a victim or, uh, maybe just  
9 helped on -- on some citizen call that you might  
10 have made?

11 A I have to answer no to that. Um, if I could preface  
12 some of it?

13 Q Sure. Go ahead.

14 A I'm a member of the Calumet County Fair Board. Every  
15 Labor Day weekend I was in charge of cleaning the  
16 restrooms for the fair. The police officers patrol  
17 the grounds all night. My contact with some of them  
18 have been through the course of the evening, sitting  
19 and having a cup of coffee at three o'clock in the  
20 morning when we were finished.

21 Q Okay.

22 A You know, all of those are positive things.

23 Q Would that be Calumet County Sheriff's, uh,  
24 Officers, or city of Chilton officers, or both  
25 that --

1 A Both.

2 Q -- would help with that? Are you familiar with,  
3 uh, the former chief, uh, Mr. Albedyll, from  
4 Chilton?

5 A Yes, I am.

6 Q And would those, uh, contacts have been positive  
7 as well?

8 A Definitely.

9 Q Now, Ms. Barber, you had, uh, mentioned quite  
10 candidly in your responses that your son had had,  
11 uh, a legal problem or run-in with the law?

12 A Okay. I had two different sons.

13 Q Two different sons?

14 A Two different counties.

15 Q Two different counties, two different run-ins?

16 A Yes.

17 Q Let's talk about, uh, the one that you mentioned  
18 here. There was a -- a burglary, uh, conviction?

19 Uh, which, uh --

20 A That was my youngest son.

21 Q Your youngest? And about how long ago did that  
22 happen?

23 A Oh, I'm going to say 18 years.

24 Q So quite a long time ago?

25 A Yeah. He was -- he just turned 18 and you know how

1           stupid they can be at --

2 Q       I do.

3 A       -- 18.

4 Q       I have a --

5 A       Me, too.

6 Q       -- 19-year-old son. What, uh -- what county did

7        that occur in?

8 A       Calumet.

9 Q       And the, um, prosecution, um, since it was 18

10       years ago, um, may have been actually just before

11       I became district attorney, Mr. Poppy was

12       probably the D.A. then?

13 A       Yes, he was.

14 Q       Is there anything about that prosecution, uh,

15       that you felt your son was treated unfairly or

16       anything -- anything like that?

17 A       Um, well, I felt the kid that was in it -- it with

18       him should have gotten a little harsher. The kid

19       with him was only 17 and he got slapped on the hand

20       and --

21 Q       Well, since I wasn't involved, I'm going to ask

22       you a very, uh, direct question. The fact that,

23       um, my predecessor, the former district attorney,

24       was involved in that case, would you in any way

25       hold that prosecution against our case here?

1           That is, against either me --

2   A    No, not at all.

3   Q    -- or our --

4   A    I didn't hold it against the Court either. You know,

5           he -- he deserved what he got. I just felt it should

6           have gone a little further.

7   Q    I understand. There was also, um, at least after

8           his conviction, you mentioned some, uh,

9           misunderstanding or some problem with his

10          receiving, um, Huber or --

11   A    No.

12   Q    -- work release privileges?

13   A    Other son.

14   Q    Oh, we're on the different case?

15   A    Exactly.

16   Q    All right. Let me just finish up with your

17          youngest son. Was there --

18   A    All right.

19   Q    -- anything else -- you'll have to wait until I'm

20          done talking. She can't take down both of us at

21          the same time.

22   A    Okay.

23   Q    Is there anything about your youngest son's

24          conviction, um, that, uh, was either handled

25          inappropriately, uh, or after his, um,

1           supervision or contact with law enforcement that  
2           you feel was handled inappropriately?

3       A    No, I don't.

4       Q    All right. You said that there was another son  
5           that was involved in something?

6       A    Yes my --

7       Q    And --

8       A    -- second. That was Manitowoc County.

9       Q    What kind of case was that?

10      A    That was, um, drunken driving, fleeing.

11      Q    About how long ago was that, Ms. Barber?

12      A    Fifteen years.

13      Q    Did that result in a conviction?

14      A    Yes.

15      Q    And did it result in any kind of a punishment for  
16           your second son?

17      A    He -- nine months in jail.

18      Q    Is there anything about that investigation or  
19           prosecution that you believe was inappropriately  
20           handled?

21      A    No.

22      Q    By the way, each of these sons, have they, um,  
23           for lack of a better turn -- uh, term,  
24           straightened themselves out and doing well now?

25      A    Yes, they have.

1 Q Okay. Any other law enforcement contacts either  
2 positive or negative that you think that we  
3 should know about to consider whether or not you  
4 should serve on this jury?

5 A That would be the only --

6 Q Um, you consider yourself a -- a detail-oriented  
7 person? Do you make a lot of lists?

8 A No.

9 Q So you're more of a big picture --

10 A Apparently.

11 Q Ms. Barber, are you aware -- and I think that  
12 you've mentioned that you are -- at least  
13 generally familiar with some TV shows that deal  
14 with, uh, crime scene investigations; *C.S.I.*, or,  
15 um, shows like that; is that correct?

16 A Right.

17 Q Do you enjoy that kind of topic?

18 A Yes, I do.

19 Q You must be familiar, then, with a kind of  
20 forensic identification which is called DNA  
21 evidence; is that right?

22 A Right.

23 Q From what you've read, or what you've known, or  
24 what you've seen on TV, do you believe that to be  
25 generally a, uh -- a -- a --

1           scientifically-accepted principle? In other  
2           words, you think that that's an accurate way for  
3           identification in crime scene-type cases?

4       A    Yes, I do.

5       Q    Anything that you've learned about DNA analysis,  
6           uh, or DNA testing that you at all question those  
7           results?

8       A    No.

9       Q    Are you familiar with Mr. Avery at all, and his  
10          past?

11      A    Um, from originally, that would be about it. Um,  
12          when it first -- when he first got let out of jail  
13          and --

14      Q    Tell me about that. What do you remember?

15      A    That, um, he was wrongfully convicted, spent 18 years  
16          in prison, and then, finally, was able to be let out.  
17          I'm not sure I remember what came up that -- I think  
18          the person who identified him said he was the wrong  
19          person or something. I'm not real familiar with -- I  
20          just remember him going on the Channel 11's makeover,  
21          and getting his hair cut, and --

22      Q    All right.

23      A    -- spruced up.

24      Q    Do you remember that, uh, wrongful conviction, or  
25          his exoneration, that is, his release in that

1 case, was the result of DNA evidence?

2 A Now that you mention it, yes.

3 Q All right. And, generally, at least that concept  
4 of, uh, exonerating people that are wrongfully  
5 convicted, do you believe that to be a good  
6 thing?

7 A Yes, I do.

8 Q Are you familiar with something called the  
9 Innocence Project?

10 A That's the group out of Madison that investigates  
11 certain crimes?

12 Q Investigates, uh, people that they believe have  
13 been wrongfully accused or convicted?

14 A Okay. Yes. I -- I have heard of it.

15 Q All right. Ms. Barber, since this would be a  
16 six-week trial, do you have any concerns that  
17 sitting on this jury would cause you some  
18 financial or other kind of hardship?

19 A No.

20 Q Uh, would your company continue to pay you if you  
21 had to sit on this jury?

22 A Oh, yes.

23 Q Last question, and this is, I guess, more a -- of  
24 a general question than something specific, but  
25 is this something -- something that you want to

1 do? Is this a jury you'd like to serve on?

2 A Yes, I would.

3 Q Can you tell me why?

4 A I just feel I'm open-minded enough, um, to hear all  
5 the facts. I -- I feel I was fair with pretty much  
6 everything I do.

7 Q So you believe that you'd be able to evaluate  
8 both sides, you'd be able to evaluate the  
9 evidence, listen to the witnesses' testimony,  
10 attribute whatever weight you think it deserved,  
11 and make a reasonable decision?

12 A Yes, I do.

13 ATTORNEY KRATZ: That's all the  
14 questions I have, Judge. Thank you.

15 THE COURT: Mr. Strang?

16 ATTORNEY STRANG: Thank you.

17 **VOIR DIRE EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q And thank you for coming in. My name is Dean  
20 Strang, and --

21 A Hi, there.

22 Q -- this is Jerome Buting -- and --

23 A Hi.

24 Q -- Steven Avery, uh, after his makeover. Um --

25 A Yeah.

1 Q And, uh, I -- I, too, appreciate you coming in,  
2 probably sitting around for a good bit of time  
3 waiting for us.

4 Um, easy one first, and I'm probably  
5 being way too cautious on this, but you're on the  
6 Manitowoc side of the county line?

7 A Yes.

8 Q You live in Manitowoc County?

9 A Yes.

10 Q Okay. Um, and -- and yet, you're -- you --  
11 you're clearly very involved, still, in civic  
12 life in Chilton, uh, Calumet --

13 A Yes.

14 Q -- County? Uh, tell me a little bit about that.  
15 How that came -- comes to be?

16 A The Calumet County Fair Board?

17 Q Um-hmm.

18 A Well, all you had to be was a stockholder in the fair  
19 association to become on the board of directors, and  
20 I just felt it was something I enjoyed doing. Taking  
21 part in the fair, and --

22 Q Sure.

23 A -- putting my input in where I could -- I actually  
24 thought I did a good job.

25 Q Okay. Any -- any particular responsibility on

1           the board for one aspect of the annual fair or  
2           not?

3       A    Well, I was in charge of the restroom cleaning.

4       Q    Uh-huh.

5       A    And, if -- my judge of going to other fairs, and  
6           everybody has to use the restroom, half the time you  
7           don't want to walk into them. I made it my point  
8           that people weren't going to shy away because it was  
9           not clean. So --

10      Q    You got it. Um, and you graduated from Chilton  
11           High School?

12      A    Yes, I did.

13      Q    How long did you spend living in the Chilton  
14           area?

15      A    I moved into the Manitowoc/Valders area in '89, so up  
16           until --

17      Q    Up until then --

18      A    Right.

19      Q    -- did you live right in Chilton or --

20      A    Yes, I did.

21      Q    Okay. Um, do you have any grandkids?

22      A    Seven.

23      Q    How old is the oldest?

24      A    Nineteen.

25      Q    And the youngest?

1 A She was a year in June.

2 Q Okay. Uh, is -- is the 19-year-old a -- a young

3 man or young woman?

4 A Young woman.

5 Q Uh, in the area? All -- all seven of them?

6 A She goes to, um, cosmetology school in Appleton.

7 Q Uh-huh. And, um, you noted here that your, um --

8 your husband has a chronic health condition that,

9 you know, often can be controlled by medication

10 or diet?

11 A Right.

12 Q Um, does that give you any concern about being

13 away from the home eight hours a day or nine

14 hours a day?

15 A No. No. In fact, Sunday he leaves for South

16 Carolina for a week. He's a construction

17 millwright --

18 Q Oh.

19 A -- so they send him all over the country. He pretty

20 much is okay.

21 Q Oh.

22 A Yeah.

23 Q Okay. I -- I just -- I just wanted to be sure.

24 A I'm sorry. I --

25 Q You know, we -- this can be -- I mean, being on

1           a -- on a jury is something of a hardship, but  
2           there should be a limit to --

3       A    Right.

4       Q    -- just how much of a hardship. Um, active in  
5           your union --

6       A    Yes.

7       Q    -- obvious, I think?

8       A    Well, I was an officer in my union. I still am a  
9           union member.

10      Q    Um-hmm. Have you ever been a steward?

11      A    I was the financial officer, and on the bargaining  
12           committee, and safety committee, and I was -- well,  
13           being on the bargaining committee, I was a steward,  
14           so -- same --

15      Q    One -- one in the same. Yeah. Okay. Um, so  
16           when -- when this all first came up, when Teresa  
17           Halbach disappeared, and they were looking for  
18           her, and then they arrested Steven Avery, um,  
19           did -- did you follow this pretty closely at the  
20           time?

21      A    No.

22      Q    Okay.

23      A    Not really. I -- the names were unfamiliar --

24      Q    Sure.

25      A    -- and I guess it wasn't something that I really took

1           an interest in.

2   Q    Okay. And that -- that's sort of what I'm  
3       exploring. I mean, some people might react to  
4       this as a mom, or as a grandmother, others not  
5       react to it at all if it's not connected, and I'm  
6       just -- I'm just trying to gauge how much you  
7       sort of plugged into -- into this?

8   A    Well, pretty much not much.

9   Q    Um-hmm.

10   A   I mean, un -- unless it's, I guess, something that  
11      directly involves me, I guess I -- I can hear it and  
12      just -- no, it's -- it's nothing that I followed that  
13      close.

14   Q    Okay.

15   A   I mean, I didn't go out of my way to grab a newspaper  
16      article and read it or make it a point that that's  
17      where I had to be, in front of the television, and --

18   Q    Got it.

19   A   -- usually had something better.

20   Q   Okay. No, I -- I've got it. I just --

21   A   Okay.

22   Q   Um, now, by the same token, you know, here it is  
23      more than a year later, he's here, we're in  
24      court, do you assume he's probably guilty? Do  
25      you assume he's probably innocent? Do you have

1           any --

2   A    I really have no judgment on that at all. I -- I  
3       never really looked at it in the way -- one way or  
4       another. It's -- it's something that I guess needed  
5       to be proved first.

6   Q    Well, why is he here if he didn't do something  
7       wrong?

8   A    Well, that's what I'd like to know.

9   Q    Okay. And, in finding that out, I mean, you  
10      know, of course you'd like to know that --

11   A    Right.

12   Q    -- and finding that out, whose job is that to  
13      show you? Their's? Mine? Both?

14   A    I would think both. I -- I feel both sides really  
15      should present everything.

16   Q    Um-hmm. Um, very natural feeling. And you're --  
17      now, you're walking into a legal system that has  
18      some different rules for nearly ancient or at  
19      least five or six hundred years worth of reasons,  
20      I guess, um, and I think Judge Willis will tell  
21      you, and I'm quite confident he'll tell you, that  
22      in a criminal case like this it's actually just  
23      the State that has the burden of proof. The  
24      lawyers at this table. They -- they have the  
25      only burden of proving anything, and they have to

1 prove Mr. Avery guilty beyond a reasonable doubt  
2 if they can.

3 A Okay.

4 Q Um, we don't have to prove him innocent.

5 A Okay.

6 Q Can you accept that and live with those rules?

7 A Sure. It's a rule.

8 Q It -- it is a rule. And the question is whether  
9 you would resist that or, in the end, not be able  
10 to follow that for --

11 A No, I feel that's -- if that's the rule, and that's  
12 what needs to be done, that's what should be done  
13 then.

14 Q Right. And I'm -- I'm only predicting what the  
15 Court's going to tell you. I mean, in the end,  
16 the Court's going to give you the rules, not me.

17 A Okay.

18 Q Um, just trying to predict, since I've been doing  
19 this for awhile. Um, and, um, you know, another  
20 rule in that respect that we would have to know  
21 that you can live with, and I think you've  
22 already told me you -- you can and you do, is  
23 that he's presumed innocent. That is, Steve  
24 Avery is.

25 A Right.

1 Q Not just today, actually, but through this whole  
2 trial, right up until the end when -- when you  
3 folks, the jury, starts to deliberate.

4 A Right.

5 Q Okay. Only then do you decide what happened, but  
6 you've got to presume him innocent right up until  
7 you walk into the jury room and start  
8 deliberating.

9 A Exactly.

10 Q Okay. Um, now, you know, there are two sides  
11 here. He does have a couple of lawyers, and  
12 we're not going to just sit here, although we  
13 could, under the law. Um, so if we cross-examine  
14 the State's witnesses, will you listen to their  
15 answers when Jerry Buting or I are asking them  
16 questions just as when the prosecutors are?

17 A Yes.

18 Q Weigh it the same?

19 A Yes.

20 Q How about if we actually call witnesses of our  
21 own as defense witnesses? Will you consider  
22 Mr. Avery's evidence just as you would the  
23 State's?

24 A Yes, I would.

25 Q Um, and the same would be true if they

1           cross-examine our witnesses? Will you listen to  
2           the answers given when they ask questions?

3       A    Yes.

4       Q    Okay. The toughest call on -- on a witness would  
5           be Mr. Avery, himself. Uh, and here's, again, an  
6           area where there's specific rules. Um, because  
7           there are a whole variety of reasons, even an  
8           innocent person might not testify. Um, if  
9           Mr. Avery decided not to testify, I think the  
10          Court will tell you that you can't consider that  
11          at all as any evidence of guilt or even consider  
12          it at all in deciding whether the State has  
13          proven him guilty beyond a reasonable doubt. Can  
14          you do that?

15       A    Yes.

16       Q    Even if you don't hear the other side of the  
17          story straight from the horse's mouth, so to  
18          speak?

19       A    Yes.

20       Q    Um, do you understand that there -- there may be  
21          a variety of reasons why an innocent person would  
22          not testify in his own defense?

23       A    Yes, I do. I -- because I watch *C.S.I.* --

24       Q    Um-hmm.

25       A    -- any, really, court dramas, um, like *S.H.A.R.K.*, I

1 mean, he's a -- portrayed as an excellent D.A. They  
2 bring out the fact that defendants do not need to  
3 talk --

4 Q Um-hmm.

5 A -- or say anything. And I guess that's -- I accept  
6 that.

7 Q Okay. Um -- And I don't -- I don't watch a lot  
8 of these shows, actually, but the one I tune into  
9 once in a while is *Law and Order*, and it strikes  
10 me, and see if you share the same experience,  
11 basically the storylines in *Law and Order* are  
12 either the guilty guy gets convicted or the  
13 guilty guy gets off somehow?

14 A Yeah.

15 Q I don't see a lot of storylines with innocent  
16 guys. Um, I don't know about *C.S.I.* or --

17 A Well, the -- *C.S.I.* never goes into court. I was  
18 trying --

19 Q Sure.

20 A -- to pick one out that I watch.

21 Q Ab -- absolutely. And I -- I just -- I guess is  
22 there room in your mind for an innocent man being  
23 wrongly charged?

24 A Oh, sure.

25 Q And in that regard, you paused for a little bit

1           when Mr. Kratz asked you, um, whether you think  
2           exonerating wrongfully convicted people is a good  
3           thing or not. You paused and you gave --

4 A       Well, I had to think about that.

5 Q       Yeah.

6 A       You know, it's -- it's one of those, hmm, and then  
7           you think about it a minute, and, yes. That's --

8 Q       Is -- is -- I mean, would the concern be that  
9           somebody not get out on just a technicality?

10 A       Oh, definitely. It's --

11 Q       But if -- if someone was truly, actually  
12           innocent, I -- I take it you would not want them  
13           sitting in prison --

14 A       Right.

15 Q       -- for a crime they actually didn't do?

16 A       Exactly.

17 Q       So, I mean, in his situation where the DNA proved  
18           that a specific other man actually did the rape,  
19           not him, it excluded him and showed who did do  
20           the rape --

21 A       Right.

22 Q       -- you would want somebody like that, I assume,  
23           to get out of prison that day; right?

24 A       Yes.

25 Q       Okay.

1 A And I -- actually, when it came out, I was -- I was  
2 glad to hear it, you know, that everything was  
3 justified, that they were able to do something like  
4 this for him.

5 Q Right. Okay. And did -- did you hear about the  
6 lawsuit that he filed after getting out?

7 A I -- I heard something about it. I -- it's probably  
8 like the rest of the -- I wasn't involved. The  
9 name's not familiar.

10 Q But did the -- did the sympathy stick with him or  
11 go away when you found out that he filed a  
12 lawsuit to try to get some money for that?

13 A Well, to me it would be only fair, that if he was  
14 wrongly convicted of something, to -- to lose 18  
15 years of pay. It's only fair that he gets the chance  
16 to make it up.

17 Q I hear the union steward.

18 A I'm sorry.

19 Q No. No. Um, not at all. Um, um, you'll hear a  
20 lot of law enforcement officers, um, testify  
21 here, um, maybe for both sides, but -- but  
22 regardless who calls them, you know, there are a  
23 lot of law enforcement officers testify. I will  
24 ask, and I think the Court will instruct you,  
25 that in weighing the testimony of a police

1           officer or a law enforcement officer, um, to  
2        consider that person's testimony just like you  
3        would any other human being who took the witness  
4        stand. Can you do that?

5   A   Oh, yes. I mean they're human. They're human  
6       beings.

7   Q   Right. I --

8   A   Okay.

9   Q   Exactly.

10   A   That's --

11   Q   Any -- any witness here will be, and, um, I --  
12       you would hope that every witness would tell the  
13       truth under oath?

14   A   Yes.

15   Q   Um, but is a law enforcement officer any more  
16       likely to honor that oath than anyone else who  
17       does some other line of work?

18   A   It shouldn't be. Everyone who takes an oath to tell  
19       the truth should be telling the truth --

20   Q   Right.

21   A   -- no matter who they are.

22   Q   And in -- can you look beyond the badge and --

23   A   Oh, yes.

24   Q   -- and decide, do I believe this? Does it make  
25       sense? Is there a reason this person might or

1           might not lie? And consider every witness in  
2           that way, including police officers?

3       A    Oh, yes.

4       Q    What -- what, if anything, have you heard about a  
5           blood vial? A vial of blood that may be at issue  
6           in this case?

7       A    That -- if it came up, it came up after I got my  
8           paper from the courthouse, and I -- I have a mute  
9           button on my TV that's getting a real healthy  
10          workout.

11      Q    Okay. So you -- the answer is you just don't  
12          know anything at all about it?

13      A    No, I don't.

14      Q    Okay. All right. Um, last sort of question or  
15          two, um, you work with a number of people at  
16          Worthington?

17      A    Yes, I do.

18      Q    Um, whatever your verdict would be, if you -- if  
19          you serve on this jury, when you go back to work,  
20          my guess is there are going to people -- be  
21          people who think you did the right thing, and  
22          people who are not very happy with you.

23      A    Right.

24      Q    How are you going to deal with that?

25      A    Well, I'll put it this way, I work the fifth shift at

Worthington. That's ten p.m. Friday night to ten a.m. Saturday, and then ten p.m. Saturday night to ten a.m. Sunday. There aren't a lot of people I work with during those hours. On, um, Saturday nights there's usually three of us in the plant.

Q Okay. But what about the Calumet County Fair Board, when that comes around late next summer?

A I have pretty broad shoulders. I've been known to --  
I have people that like me and they don't like me.  
That's the way it is. No matter what I do, they, um,  
I have -- I have people that just don't like me for  
whatever reason. I don't understand why, but -- and  
then I -- I have good friends, and my good friends  
will support whatever I do.

Q That's all I need to know. Thank you.

A All right.

## **VOIR DIRE EXAMINATION**

BY THE COURT:

Q Ms. Barber, I have just one question. Uh, you mentioned earlier that you knew, uh, Jerry  
Pagel --

A Yes.

Q -- from school. Uh, should he be called as a witness in this case you'd have to judge his testimony just as any other witness and not be

either favorably inclined or unfavorably inclined based on your acquaintance with him --

A Right.

Q -- which I gather is not close, but you know who he is?

A Right.

Q Uh, if you're selected as a juror, would you give any more or less weight to his testimony should he be called to testify?

10 A I wouldn't give more or less.

11 THE COURT: Thank you. The, uh, clerk  
12 will --

13 ATTORNEY STRANG: I -- I'm sorry. I --  
14 I -- I had one followup --

15 THE COURT: Okay.

16 ATTORNEY STRANG: -- on that.

## **VOIR DIRE EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q I think you just moved to Valders in 1989?

20 A Yes.

21 Q Did you -- did you know former Police Chief  
22 Wiegert?

23 A No.

24 Q Okay.

25 A No. Actually, I don't know my neighbors either.

1 Q Okay.

2 THE COURT: Um, Linda will escort you from  
3 the courtroom at this time.

4 (Wherein juror is escorted out)

5 THE COURT: Counsel, any motion from either  
6 party?

7 ATTORNEY KRATZ: No.

8 ATTORNEY STRANG: No, Your Honor.

9 THE COURT: All right. If not, the Court  
10 will accept Ms. Barber as a juror. We'll take our  
11 afternoon break at this time and resume at, uh, five  
12 after three. Uh, in two minutes I'd like to see the  
13 counsel in my chambers.

14 ATTORNEY BUTING: What time af -- after  
15 three?

16 THE COURT: Five after.

17 (Recess had at 2:45 p.m.)

18 (Conclusion of reporting by Jennifer Hau)

19

20

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1 STATE OF WISCONSIN      )  
2                            )SS.  
3 COUNTY OF MANITOWOC )

4                            I, Jennifer K. Hau, Official Court  
5                            Reporter for Circuit Court Branch 3 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 \_\_\_\_ day of \_\_\_\_\_, 2007.

16  
17  
18  
19                          \_\_\_\_\_  
20                          Jennifer K. Hau, RPR  
21                          Official Court Reporter  
22  
23  
24  
25

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL  
5 vs. VOIR DIRE - DAY 4  
Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** FEBRUARY 8, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:**

12 KENNETH R. KRATZ  
Special Prosecutor  
13 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON  
Special Prosecutor  
15 On behalf of the State of Wisconsin.

16 DEAN A. STRANG  
Attorney at Law  
17 On behalf of the Defendant.

18 JEROME F. BUTING  
Attorney at Law  
19 On behalf of the Defendant.

20 STEVEN A. AVERY  
Defendant  
21 Appeared in person.

22 \* \* \* \* \*

23 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 (Continued proceedings reported by Diane Tesheneck.)

2 THE COURT: All right. At this time we're  
3 back on the record without any jurors present in the  
4 courtroom. During the break, counsel informed me  
5 they were -- they would be talking about one juror  
6 for which there may be a motion.

7 ATTORNEY FALLON: Right. There may be one  
8 other one that may roll into that, may be able to  
9 take care of two here.

10 THE COURT: Okay.

11 ATTORNEY FALLON: Apparently, your Honor,  
12 the parties have reached an agreement that two of  
13 the upcoming jurors will be excused for cause. That  
14 would be Juror No. 77 and Juror No. 78. Juror  
15 No. 77 for statutory and objective bias reasons and  
16 Juror No. 78 for subjective bias, based on the  
17 answers to the questionnaire on Juror No. 78. And  
18 on Juror No. 77, based on status of current arrest  
19 history.

20 THE COURT: All right. Mr. Strang, is that  
21 correct?

22 ATTORNEY STRANG: It is a joint motion as  
23 counsel said.

24 THE COURT: All right. Based on my review  
25 of the questionnaires in each of those cases, I

1 believe there's a basis for the party's motion. So  
2 the Court will order that Jurors 77 and 78 be  
3 excused for cause.

4                   Janet, are there any other jurors up  
5 till this point, in the number order, that have  
6 not been called, but have not been excused  
7 either? Were there any other jurors unaccounted  
8 for, either questioned and excused or questioned  
9 and accepted, that are open?

10                  THE CLERK: No, not that I'm aware of.

11                  THE COURT: Very well, then we'll bring in  
12 Mr. Wichlacz. Just a second, Linda, hold on. Yes.

13                  ATTORNEY FALLON: The parties have been  
14 talking about the Juror No. 8, I think it was, from  
15 Monday.

16                  THE COURT: Okay.

17                  ATTORNEY FALLON: Has developed a recent  
18 issue regarding her potential hardship.

19                  THE COURT: Yes.

20                  ATTORNEY KRATZ: We thought before she  
21 became No. 30 we should deal with that issue so that  
22 there isn't a question as to --

23                  THE COURT: Okay.

24                  ATTORNEY KRATZ: That we did have somebody  
25 in abeyance, if you will.

1                   THE COURT: Yes, this is --Well, the 8th  
2 juror selected, Juror No. 13 on the list.

3                   ATTORNEY FALLON: Yes.

4                   THE COURT: I can indicate for the parties  
5 that this is Mary Whalen, that she was originally, I  
6 believe on the first day --

7                   ATTORNEY FALLON: Yes, she was the last one  
8 seated on Monday.

9                   THE COURT: Yes. Seated on Monday.

10                  Indicated at the time that she initially claimed  
11 hardship for a couple of reasons, financial and also  
12 transportation responsibilities with respect to her  
13 family. She, it turns out, is the sole source of  
14 transportation for her husband. And recognized,  
15 only after she left court, that while she could take  
16 him to court, there was no one to bring him home.  
17 And they live out in the country where there really  
18 wasn't anybody else to provide transportation. So  
19 she has requested that she be excused because of the  
20 hardship on her family.

21                  Does either party have any objection to  
22 the Court granting her request?

23                  ATTORNEY KRATZ: No, Judge.

24                  THE COURT: Mr. Strang?

25                  ATTORNEY STRANG: No, Judge.

THE COURT: All right. The Court, then, will excuse Ms Whalen. And, then, we will at this time move on to questioning Mr. Wichlacz, Juror 68.

ATTORNEY STRANG: As I have Mary Whalen,  
she's No. 13 not No. 8.

THE COURT: Well, she was the 8th juror selected and No. 13 in the order.

ATTORNEY STRANG: Sorry.

11 THE COURT: Oh, was she?

12 THE CLERK: -- is what I had her at.

13 THE COURT: Let me see.

14 ATTORNEY KRATZ: Yeah, but we had taken  
15 somebody out of order.

20 ATTORNEY KRATZ: We are and this will be my  
21 examination, Judge.

22 THE COURT: Very well. Mr. Wichlacz,  
23 please raise your right hand and the Clerk will  
24 administer the oath.

25 (Juror sworn.)

1                   THE CLERK: Please be seated.

2                   THE COURT: Mr. Wichlacz, first of all, am  
3 I pronouncing your name correct?

4                   MR WICKLASS: Wichlacz.

5                   THE COURT: Wichlacz. Very well. You have  
6 already filled out a written jury questionnaire in  
7 this case. Today we are moving on to the next stage  
8 of the jury selection process which is referred to  
9 as voir dire.

10                  In this stage, the attorneys for each of  
11 the parties have an opportunity to ask you  
12 questions that bear on your ability to serve as a  
13 juror in this case. Many of the questions will  
14 be follow-up questions to information provided in  
15 the questionnaire.

16                  Before we get to the attorney's  
17 questions, I can tell you that the jurors who are  
18 selected to serve in this case will not be  
19 sequestered; that is, at the end of the trial  
20 proceedings each day, they will be permitted to  
21 return home.

22                  Because of that fact there will continue  
23 to be a prohibition on any exposure of the jurors  
24 to information about the case in any form of news  
25 media; be it radio, television, newspapers,

1                   internet, or any other sources. And in addition,  
2                   the jurors will be prohibited from speaking to  
3                   anyone about the case. That would include family  
4                   members, as well as other members of the jury,  
5                   until it is time to deliberate.

6                   Although the court proceedings today are  
7                   held in open court, no cameras are permitted in  
8                   the courtroom today during these voir dire  
9                   proceedings and the members of the news media are  
10                  not permitted to use the names of jurors in any  
11                  news reports.

12                  If you are selected to serve on the jury  
13                  in this case, you should also know that while  
14                  cameras may cover the trial, they are not  
15                  permitted to show the jury in any way that  
16                  identifies any members of the jury.

17                  In the event you are retained on the  
18                  jury panel after the proceedings today, you will  
19                  receive a notice, probably sometime later today,  
20                  letting you know when to report back to court.

21                  THE COURT: Mr. Strang, at this point you  
22                  may begin your questioning.

23                  ATTORNEY KRATZ: Mr. Kratz, but I will,  
24                  Judge.

25                  THE COURT: Okay. Sorry, Mr. Kratz.

## **VOIR DIRE EXAMINATION**

BY ATTORNEY KRATZ:

Q. Mr. Wichlacz, good afternoon. My name is Ken Kratz, I'm the Calumet County District Attorney. I represent the State in this case and will be the lead prosecutor. Seated with me this afternoon is Tom Fallon. Mr. Fallon is a attorney with the Department of Justice, Assistant Attorney General, will be assisting not only today but also through the entire trial. Good afternoon.

As the Judge explained this is our opportunity to ask you some additional questions and follow up on some responses that you gave in your written questionnaire. Let me first start with your most recent employment. I understand that your principal occupation was manager of a grocery store; is that correct?

A. Well, the grocery department at the -- well, it was Sentry, now it's Piggly Wiggly.

Q. All right. And for how long had you engaged in that employment?

A. Well, I'm still there part-time. It's going on about 45 years.

Q. I understand, Mr. Wichlacz, that you have two

1           children, a son and a daughter; is that correct?

2   A.    Correct.

3   Q.    Your son is a member of the City of Manitowoc  
4           Police Department; is that right?

5   A.    Yes, that's correct.

6   Q.    And your daughter is an attorney?

7   A.    Yes.

8   Q.    Could I ask your son's name, please?

9   A.    Rob Barbier.

10   Q.   I'm sorry?

11   A.   Rob Barbier.

12   Q.   And your daughter?

13   A.   Katie Brown.

14   Q.   Let's start with the obvious, your son being a  
15       Manitowoc County law enforcement officer. Have  
16       you had an occasion to speak with your son about  
17       this case?

18   A.   Just briefly. It was just that he was involved  
19       in the search of the property.

20   Q.   All right. Did your son --

21   A.   That's about all he said.

22   Q.   Did your son tell you what was engaged in those  
23       search efforts?

24   A.   Pardon?

25   Q.   Did your son tell you what he did in those search

1           efforts?

2       A. Just -- just that they were looking around and  
3           that's about all he said. He didn't say they  
4           found anything or -- I guess that covers it.

5       Q. Your son is not on the witness list, but like  
6           several other law enforcement and other  
7           volunteers, he was involved in the search for Ms  
8           Halbach; is that right?

9       A. For the car.

10      Q. All right.

11      A. Yes.

12      Q. Was he also involved after the car was found; do  
13           you know if he was on the property?

14      A. I don't think so. I think he was just, once they  
15           found the car I think he was done.

16      Q. All right. Now, Mr. Wichlacz, I'm going to move  
17           directly to a -- an answer of interest, if not a  
18           concern; that is, that based upon the publicity,  
19           you had come into this case believing that  
20           Mr. Avery was guilty, or at least the publicity  
21           pointed in that direction. Do you still hold  
22           that opinion?

23      A. Yes.

24      Q. You also indicate, however, more importantly,  
25           that despite that initial opinion, that you would

1           be able to set that aside and base your decision  
2           solely on the evidence in this case; do you still  
3           hold that opinion?

4       A. Well, yes, to a point.

5       Q. Well, you better explain that. What does that  
6           mean?

7       A. Well, from the news coverage, I would guess that  
8           Mr. Avery is guilty. In fact, I would say he is  
9           guilty from the coverage, from what I have heard.  
10          Now, I guess if a bolt of lightening came down  
11          and told me he was innocent, I might believe it,  
12          but it's just kind of overwhelming.

13      Q. I understand that.

14      A. I'm sure from what I have heard from you, that  
15          you passed out to the press, and I'm sure you  
16          have more than we haven't heard about, so ...

17      Q. And --

18      A. I would -- I would -- I guess at this point I  
19          would find it very difficult.

20      Q. And so as Mr. Avery sits here, although legally  
21          he may be presumed innocent; that is, the Court  
22          may instruct you that he is presumed innocent --

23      A. Yes.

24      Q. -- you don't come into this case feeling that at  
25          all; is that right?

1 A. Right. I know that's backwards. I know he  
2 should be innocent, but ...

3 Q. But you wouldn't be able to set that aside?

4 A. I don't believe so.

5 ATTORNEY KRATZ: That's all the questions I  
6 have for this witness, Judge. Thank you.

7 THE COURT: Any questions for the defense?

8 ATTORNEY BUTING: No, your Honor.

9 THE COURT: All right. Mr. Wichlacz, at  
10 this point Linda will escort you from the courtroom.

11 (Wherein the juror was excused.)

12 THE COURT: Do the parties have a joint  
13 motion on this juror?

14 ATTORNEY KRATZ: Yes, Judge, the State  
15 would acknowledge that this witness should be struck  
16 for cause.

17 ATTORNEY BUTING: I join in that.

18 THE COURT: All right. Based on the  
19 witness' answers, the Court will excuse Mr. Wichlacz  
20 as a juror for cause in this case.

21 The next juror would be Donald Kickland.

22 ATTORNEY FALLON: Who is the next one?

23 THE COURT: Donald Kickland, Juror 81.

24 Mr. Kickland, will you stand and raise your right  
25 hand, please.

(*Juror sworn.*)

THE CLERK: Please be seated.

THE COURT: Mr. Kickland, you have already completed a written juror questionnaire in this case.

MR. KICKLAND: Yes.

THE COURT: This afternoon we're moving on to the next stage of the jury selection process which is called voir dire. The attorneys for each of the parties will have a chance to ask you some questions that bear upon your qualifications as a juror. For the most part, they will be follow-up questions to the information that you provided on the questionnaire.

Before we get to those questions, I can tell you that the jurors selected to serve in this case will not be sequestered during the trial. That means at the end of court proceedings each day the jurors will be permitted to return home and then report back to duty the next morning. Because of that fact, the Court is continuing the prohibition on any exposure of the jurors to any publicity regarding this case, whether it be from television, radio, newspaper, internet, or any other source.

1                   And in addition, the jurors are  
2 prohibited from discussing the case with anyone,  
3 including members of the juror's family, or even  
4 other jurors, until all the evidence has been  
5 received.

6                   Although the proceedings in court are  
7 open to the public today, because this is part of  
8 the jury selection process, the Court does not  
9 permit any cameras in the courtroom today. And  
10 the members of the media are not permitted to  
11 disclose the identity of the jurors in any news  
12 reports.

13                  If you are selected to serve as a juror  
14 in this case, I can also tell you that while  
15 there may be cameras in the courtroom covering  
16 the trial, they are not permitted to show the  
17 jurors.

18                  In the event you are chosen to continue  
19 on the jury panel after questioning today, you  
20 will receive instructions as to when to report to  
21 court again. Mr. Fallon, you are handling this  
22 one?

23                  **VOIR DIRE EXAMINATION**

24 BY ATTORNEY FALLON:

25 Q. Good afternoon Mr. Kickland.

1 A. Good afternoon.

2 Q. My name is Tom Fallon. I'm an Assistant Attorney  
3 General with the Wisconsin Department of Justice.  
4 I'm one of the prosecutors in this case. To my  
5 immediate left is Mr. Ken Kratz, the Calumet  
6 County District Attorney. He's the lead  
7 prosecutor. Again, good afternoon and thanks for  
8 returning.

9 A. Okay.

10 Q. The attorneys have a few questions regarding some  
11 of the information you provided in your  
12 questionnaire last week and wanted to follow up  
13 on those if we may. First issue, just somewhat  
14 of a routine one. You indicate that you do wear  
15 a hearing aide so --

16 A. Yes.

17 Q. -- is that -- am I -- Do you hear me comfortably?

18 A. I hear you well.

19 Q. All right. And when Judge Willis was talking to  
20 you you --

21 A. Yes.

22 Q. -- could hear him well?

23 A. Yes. Mm-hmm.

24 Q. All right. I'm going to turn off my microphone  
25 and see how that sounds.

1 A. Okay.

2 Q. I have a couple of questions for you?

3 A. You have a couple questions for me.

4 Q. All right. So you hear that just fine.

5 A. I hear that just fine. Just like wearing

6 glasses, I can't read without them, but it helps.

7 Q. I'm familiar with that. All right. Okay. You

8 are a retired barber by trade?

9 A. Yes, I barbered from 1954 until 1983.

10 Q. Okay.

11 A. Got out of school in '54.

12 Q. And from 1983 to 1990, Department of -- was that

13 Regulation and Licensing?

14 A. Yes, I worked for the Department of Regulation.

15 I was assigned to the Barber and Cosmetology

16 Academy Board and also the Pharmacy Examining

17 Board.

18 Q. I see. So -- Okay. So you kind of kept your hand

19 in the business, more or less.

20 A. Yeah. Yeah.

21 Q. All right. Did you enjoy that work?

22 A. Yes.

23 Q. All right. What did you like about it?

24 A. Well, when these people submit their application

25 for barber shop, or beauty shop, or school,

1           electrolysis, or drugstore, they needed to send  
2           in also a floor plan. And my duties were to go  
3           to these locations and inspect them and give them  
4           their location license.

5 Q. All right. Did you -- Was that -- Were you  
6           limited to the Manitowoc County area or did you.

7 A. No.

8 Q. -- range further?

9 A. At that time, in 1983, there were three of us.  
10          We were given territories. My territory was -- I  
11          had about 80 percent of Milwaukee County, Racine  
12          County, Kenosha County, Rock County; in other  
13          words, all the way to Prairie Du Chien. Grant  
14          County, Madison. I had most -- I had the City of  
15          Madison, and therefore south.

16 Q. So you had the whole south part of the state?

17 A. Yes.

18 Q. I imagine that kept you pretty busy?

19 A. Yes, it was a nice job.

20 Q. All right. And as a result of that, I see that  
21          either from your work and your schooling, you had  
22          some background in accounting and bookkeeping?

23 A. Yes, being a barber, I guess, at the time when I  
24          was barbering, this was in the '70s I took some  
25          night courses. Help with my doing my own book

1           work and also to know people, adjustment,  
2           psychology, human behavior. I was interested in  
3           that.

4 Q. Yeah, I was going to ask you how you got from  
5           barbering to psychology, but the more I think  
6           about it, it's probably not that great a jump, is  
7           it?

8 A. No, you do listen to people.

9 Q. Right.

10 A. It helps with communication, gives you an  
11           understanding.

12 Q. All right. And how long did you study your  
13           psychology or human behavior?

14 A. Those were evening courses, like one semester of  
15           the psychology and human behavior. And the  
16           accounting was there for the same, one semester.

17 Q. Very good.

18 A. It was not to be a career. It was just something  
19           I guess I wanted to do.

20 Q. All right. And I see for your spare time you  
21           like to play golf and play cards?

22 A. Yes.

23 Q. Among other pursuits?

24 A. Yes.

25 Q. Well, how are you hitting 'em these days?

1 A. Well, it's kind of cold now, but last summer -- I  
2 do quite well --  
3 Q. All right. Good for you.  
4 A. -- in golfing. And in the wintertime I go to the  
5 senior center and play cards.  
6 Q. All right. And what card games do you like to  
7 play?  
8 A. This morning we played some sheephead (sic).  
9 Q. All right.  
10 A. And occasionally some cribbage. I like the  
11 numbers.  
12 Q. All right. And you, I take it for some of the  
13 organizations you belong to, in addition to the  
14 church and bowling, you are a volunteer driver  
15 for Red Cross?  
16 A. Yes, I did that from 1992 until they terminated,  
17 at December 31st of 2006. So I gave them over 14  
18 years.  
19 Q. Very well. And something, a Mason, past member,  
20 tell me little bit about your Mason experience?  
21 A. That's as a Mason, I'm an active Mason now.  
22 Q. All right.  
23 A. I'm a past member of maybe a Fish and Game and  
24 Isaac Walton league.  
25 Q. Oh, all right. I misread that.

1 A. Yeah, I was involved with Isaac Walton League for  
2 many, many years.

3 Q. I see.

4 A. And past president, 1974. State director a few  
5 years. And let's see, Fish and Game, just more  
6 of a friendship.

7 Q. All right. Well, I would like to talk to you a  
8 little bit more now about some of the things that  
9 are more directly related to the business at  
10 hand. And I see from your questionnaire, you  
11 know a few people that may or may not appear as  
12 witnesses in this case. You know Mr. Curt Drumm?

13 A. Okay. My wife is -- It's through my -- Basically  
14 she's -- she's a teacher with the -- out at  
15 Woodland Dunes. And I know he's a member there.  
16 And they had a retirement party over here at the  
17 Maritime Inn at that time for Bernie when he  
18 retired. It's more -- more due to a social  
19 thing. I have never went out with him or eat  
20 with him, or this and that. Just know who he is.

21 Q. You just know who he is. Okay. Well, how about  
22 Lieutenant Todd Hermann; how do you know him?

23 A. From 19 -- let's see 1992, approximately 15  
24 years, Tom Kocourek came to the Isaac Walton  
25 League soliciting for some money so they have a

1 place for rifles and that stuff here at the  
2 county, across the street here at the County Jail  
3 here.

4 Q. Okay.

5 A. I guess he was soliciting money. And we gave him  
6 some money for that. And he also brought up that  
7 they are having a volunteer program. And when I  
8 heard that, I approached him on it at that  
9 meeting, that I would be interested in  
10 volunteering. And he told me I should contact  
11 his secretary, Leist. I believe her name is  
12 Leist. I don't quite remember exactly. So I got  
13 a hold of her the next day. And I registered.

14 And then I think Mike Bushman and Rick  
15 Torrington were the two people that trained a few  
16 of us to be volunteers with the Sheriff's  
17 Department. Basically, we took the cars to get  
18 them washed, take them to like Maritime Ford and  
19 to garages to have them repairs, take them to  
20 Quick-Lube for oil changes. Did some escort for  
21 funerals.

22 Oh, yeah, then we escorted a building to  
23 the Historical Village. Deliver supplies. It  
24 had nothing to do with enforcement or  
25 investigation. Strictly -- It's mostly with the

1           cars and transportation escorts.

2 Q.     Background support?

3 A.     Yeah, that's basically it.

4 Q.     Sure. And that's -- so that's your only  
5           acquaintance?

6 A.     Yeah, basically, yes. There were times maybe  
7           Mike Bushman wasn't there, then Hermann was  
8           there. He just told us to take this car and that  
9           car. So nothing -- nothing outside of the  
10          volunteer time.

11 Q.     Sure. And how about Tom Kocourek?

12 A.     Well, he was sheriff at the time.

13 Q.     All right.

14 A.     So there was always an appreciation. And there  
15          was some certificates given out for volunteer  
16          hours and, of course, you get to shake his hand.  
17          He thanked us.

18 Q.     All right.

19 A.     In other words, nothing to do with investigation  
20          or enforcement.

21 Q.     All right. So it's just -- in other words, you  
22          don't really know him well, you just met him  
23          through your volunteer work and a couple of hand  
24          shakes?

25 A.     Yes. And then I do volunteer at Holy Family

1           Hospital for their network and occasionally I see  
2           him walking through and we say hi.

3 Q.       All right.

4 A.       But that's about it.

5 Q.       Just a casual acquaintance, then?

6 A.       They do that with everybody as a courtesy.

7 Q.       Casual acquaintance, then?

8 A.       I -- If you asked me how many children he has, I  
9           don't know.

10 Q.       Okay. Fair enough. All right. Well, as you  
11          might suspect, with a case like this, there's  
12          been a fair amount of publicity. And in your  
13          questionnaire, you report that you are at least  
14          aware of some of the publicity associated with  
15          this case?

16 A.       Until I got the letter from Judge Willis' office  
17          approximately January, I believe around the  
18          middle of January, the 15th, I will say, not to  
19          watch television, read the paper and things like  
20          that and I abide by it.

21 Q.       All right. And so, well, prior to receiving that  
22          letter, were you at least aware of some of the  
23          publicity in the case?

24 A.       I read the paper.

25 Q.       All right. So you have a general idea of what's

1                   going on?

2       A. Yes.

3       Q. All right. And did you read the paper regularly,  
4                   daily?

5       A. Well, I subscribe to the Manitowoc Herald-Times  
6                   and I read it every day.

7       Q. Okay.

8       A. Except until the last three or four weeks now, I  
9                   kind of omit the trial, which we were asked to  
10                  do. So I had not read that. When I see the  
11                  headlines, that's as far as it goes.

12      Q. All right. Well, you were asked a question and  
13                  this is one of great interest to all of us here  
14                  and that is whether, based on all the information  
15                  that you had available to you, prior to receiving  
16                  the Judge's letter, whether you had any opinion  
17                  as to whether Mr. Avery is guilty or innocent.  
18                  And you answered no.

19      A. I learned one thing, you have to learn what the  
20                  facts are and see what the evidence are.

21      Q. All right. So you formed no opinion as you sit  
22                  here today?

23      A. I have no opinion.

24      Q. All right. Well, associated with that is, do you  
25                  think that if you were selected as a juror in

1           this case you could decide the guilt or innocence  
2           of Mr. Avery solely on the information which was  
3           presented during the course of these proceedings?

4       A. I will listen to all, everything. I will listen  
5           to everything first and then after, when it's  
6           done, I would then make my decision.

7       Q. Okay. And you are willing to work with your  
8           other jurors in reaching that decision, I assume?

9       A. I will do my best.

10      Q. All right. Now, you realize that the State,  
11           that's Mr. Kratz and myself and one of our other  
12           colleagues, we're the ones with the burden of  
13           proof; in other words, we have to prove that  
14           Mr. Avery is guilty, beyond a reasonable doubt.  
15           And if we fail to do that, then you must return a  
16           verdict of not guilty; do you understand that?

17      A. Yes, I understand that.

18      Q. All right. And as part of that, Mr. Avery  
19           doesn't have to say or do anything. The only  
20           burden in this courtroom is on the State, the  
21           prosecution, to try and convince the jurors that  
22           he is guilty beyond a reasonable doubt; do you  
23           understand that?

24      A. I would listen to both sides and make my  
25           evaluation from that.

1 Q. But if they chose not to put on any case and the  
2 only evidence you had was the evidence that was  
3 presented by the State, and if after you saw it  
4 and you thought and thought and thought and you  
5 talked with your fellow jurors and you just  
6 didn't think the State had proven his guilt,  
7 beyond a reasonable doubt, would you vote not  
8 guilty?

9 A. Yes, not guilty.

10 Q. All right. Now, I see you did serve on a jury  
11 once before; is that correct?

12 A. Yes.

13 Q. All right. Can you tell me a little bit about  
14 the case, as best you can remember, looks like it  
15 was a while ago?

16 A. I don't remember the exact year. Seems to me 6,  
17 8 years, late '90's, maybe 2000. I just don't --  
18 I don't -- I didn't write it down, so. I -- I  
19 was called in a couple times. And the time that  
20 I sat on a jury, it -- it -- what the case was  
21 about was forgery. It was a forgery and they had  
22 the evidence. And they had -- it involved a bank  
23 and all the proof was there.

24 Q. Okay.

25 A. They had witness forgery. It was a forgery case.

1           We reached a verdict on that case.

2 Q.   And you found the person guilty?

3 A.   Yes, the jury found the person guilty.

4 Q.   All right. Now, during that case, did the person  
5       who was accused of committing the forgery, did  
6       that person take the witness stand or choose not  
7       to, or do you recall?

8 A.   I -- I will be honest with you, I don't remember.  
9       I remember the witnesses being there. I do not  
10      know if she was on -- no, I just -- just don't  
11      remember if she was on the witness stand or not.

12 Q.   Well, we ask that because that's of some interest  
13      to all of us here and want to make sure that you  
14      understand that a defendant need not take the  
15      stand, doesn't have to take the stand, doesn't  
16      have to say anything. And as the rules are, you  
17      can't hold that against him or consider their  
18      failure to take the stand in deciding whether  
19      they are guilty or not guilty; do you understand  
20      that?

21 A.   Yes, I understand that.

22 Q.   And you accept that principle?

23 A.   When a person makes a decision not to go on the  
24      stand that's -- that's -- that's their affair and  
25      I understand that.

1 Q. Okay. So, and you can decide this case without  
2 paying any mind to that?

3 A. Yes, I can do that.

4 Q. All right. Now, just a couple of other  
5 questions. Based on your, you know, experience  
6 in regulation and licensing and your experience  
7 as a juror and just your general experiences in  
8 life, as you go about solving a problem, as you  
9 go about formulating an opinion or an idea, do  
10 you consider yourself kind of a picture person or  
11 more of a detail oriented guy?

12 A. I was a -- Myself and what I am and what I do, to  
13 me is, I'm not a big picture person. I'm more  
14 down to earth. I don't have a problem helping  
15 people across the street, that's what we do with  
16 the Red Cross. You need patience, you need to be  
17 able to open up doors for other people, show a  
18 little courtesy. It doesn't matter who it is, if  
19 it's young or old.

20 Q. Right. Well, in terms of do you -- are you one  
21 who pays close attention to details or not so  
22 much?

23 A. Well, to help and assist other people you have to  
24 be very tentative. You have to be able to pick  
25 up what they -- without being asked to do, to go

1           in and pitch in and help them out. You can see  
2           that.

3 Q.        Sure.

4 A.        Yes, you do pay attention to other people.

5 Q.        Okay.

6 A.        It's very, very important.

7 Q.        In your spare time, do you ever work on puzzles?

8           Do you like to work on puzzles, or do you not?

9 A.        Puzzles?

10 Q.       Yeah.

11 A.       No, I'm a reader.

12 Q.       You're a reader.

13 A.       Yeah, I'm reading Michener right now, Chesapeake.

14           It's a bay out on the east coast.

15 Q.       James Michener novel?

16 A.       I like novels.

17 Q.       You said you were reading Chesapeake?

18 A.       Yes, by Michener.

19 Q.       By Michener.

20 A.       That's what I'm reading now. I like to read. I  
21           rather do that than set puzzles.

22 Q.       All right. Do you dislike puzzles or just  
23           don't --

24 A.       No, I don't mind puzzles. I just rather read.  
25           It's just a matter of choice.

1 Q. All right. I see that you do watch a show, like,  
2 called Crime Scene Investigation, CSI?

3 A. I kind of watch it on Thursday night, yeah. I  
4 got interested in it a couple of years ago and I  
5 have been following that one.

6 Q. So, and you found that show somewhat realistic?

7 A. It's interesting. It's fun, some appears to be  
8 real, yes.

9 Q. And some not so realistic?

10 A. Well, I'm not sure.

11 Q. Okay.

12 ATTORNEY FALLON: I'll pass the juror.

13 THE COURT: Mr. Strang.

14 ATTORNEY STRANG: Thank you.

15 **VOIR DIRE EXAMINATION**

16 BY ATTORNEY STRANG:

17 Q. Dean Strang, Jerome Buting, Steven Avery.

18 A. Good afternoon.

19 Q. Collectively the defense. And I want to go back  
20 just a little bit on some background that  
21 Mr. Fallon touched on. How long have you been a  
22 Mason?

23 A. Late '70s.

24 Q. And --

25 A. 1970, late '70s.

1 Q. If you don't mind my asking, what degree have you  
2 attained?

3 A. Well, I -- I took the ark (phonetic) right, so I  
4 ended up at the Triple I Shrine down in  
5 Milwaukee. Then, being out of town a lot and  
6 then I took a demit from it so. From all the  
7 bodies except a Mason. I'm retired so I took  
8 demit from the Shrine.

9 Q. Okay. And you retired now?

10 A. I'm going to -- I'm 71. I will be 72 in April,  
11 29th.

12 Q. The -- The work you did for the Department of  
13 Regulation and Licensing, that was paid work, I  
14 think, right, or were you volunteering there too?

15 A. Oh, no, I was employed by the Department of  
16 Regulation and Licensing. I think I was about 48  
17 years old when I made the change from my own  
18 business as a barber here in Manitowoc. And  
19 through a friend that encouraged me to apply for  
20 it, they were looking for two people at that  
21 time. He thought I would make a good State  
22 inspector?

23 Q. Mm-hmm.

24 A. -- and investigator for the Cosmetology and  
25 Barber Examining Board at that time. And I took

1           the test and got a pretty good score and got the  
2           job.

3       Q.    What -- Did you think of that in a sense as law  
4           enforcement?

5       A.    When I applied for it, it was the understanding  
6           that I would investigate their complaints.

7       Q.    Right.

8       A.    And do their inspection for a new location and do  
9           unannounced inspections.

10      Q.    Right. Right.

11      A.    And their complaints would involve like  
12           unlicensed practice.

13      Q.    Mm-hmm.

14      A.    And also you need a little knowledge about hair.  
15           People do, as far as being competent, people do  
16           get burns in their skin from the perm burns --

17      Q.    Right.

18      A.    -- and stuff like that.

19      Q.    Right.

20      A.    And heat. And unsanitary practice like soiled  
21           towels and things. You need to change towels on  
22           every patient or customer, things like that.

23      Q.    So what drew you to this sort of law enforcement  
24           aspect of that work?

25      A.    The law enforcement, well, they have the Barber

1 Cosmetology Examining Board. And I also, later  
2 on, I did the Pharmacy Examining Board. They do  
3 have Administrative Code, which was set up by  
4 their examining board, which needs to be  
5 enforced.

6 Q. But what -- And my question is, what drew you to  
7 want to do that sort of law enforcement work?

8 A. Okay. There's a fellow by the name of Mr. Hansen  
9 and he worked for social service. He encouraged  
10 me to take this up. It was his idea. Actually,  
11 I turned him down. And he approached me again on  
12 it and asked me if I sent in that application. I  
13 said, no, he said I have one with me, would you  
14 sign it. I said, yes. So it was actually an  
15 encouragement through another person.

16 Q. Okay. And, then, when you were looking for some  
17 volunteer work, you have done a lot of volunteer  
18 work over --

19 A. Yeah, fire department, Silver Creek Fire  
20 Department, spent some years there. Yes, I did.

21 Q. Isaac Walton, Holy Family Hospital.

22 A. Yes, active right today. In fact, I was  
23 scheduled at Harbortown from 12 to 4. And I left  
24 there at 2:00 to meet my appointment with you  
25 people.

1 Q. So what was the -- Since you have so many  
2 volunteer activities and opportunities, what was  
3 the attraction to doing volunteer work for the  
4 sheriff's department in particular?

5 A. Oh, okay. As I explained, in 1992, it was in the  
6 wintertime, like about this time of the year.  
7 The sheriff, Tom Kocourek, came to the Isaac  
8 Walton League and also he was there to raise some  
9 funds to have a rifle range over here at the  
10 jail.

11 Q. Right. Yeah, and I don't mean to interrupt. I  
12 don't mean to interrupt. I heard the story --

13 A. Okay.

14 Q. -- of how you heard about it.

15 A. Mm-hmm.

16 Q. But what was attractive about doing that? Why  
17 did you --

18 A. When I asked him --

19 Q. -- choose to do that?

20 A. When I asked him what it involved with, he told  
21 me about the cars and transportation, escorting,  
22 things like that. I said, good, that gets me out  
23 in the county, get a chance to take things to  
24 Mishicot. We made a couple trips to the nuclear  
25 plant. Then he said, funeral things, well, I

1           like people, I like to get out.

2 Q.    Okay.

3 A.    Kind of get to know your surrounding area here in  
4       Manitowoc County.

5 Q.    And interact with people?

6 A.    Yes, I like people best.

7 Q.    Okay. When you first heard about the crimes  
8       charged here, did they -- did they shock you?  
9       Did they horrify you? What was your reaction?

10 A.   You mean the crime, like?

11 Q.   The crimes charged here, the accusations against  
12      Mr. Avery?

13 A.   I think any crime that I hear, as well as  
14      Mr. Avery's, it's -- it's -- it's a shock.

15 Q.   And did you react to that here? I mean this  
16      isn't any crime. I mean, a young woman going  
17      missing and then being found dead and someone  
18      being arrested is unusual here?

19 A.   Well, I don't know either one, but to me it is --  
20      I have feelings for people.

21 Q.   Right.

22 A.   All people. And when something tragedy happens,  
23      I mean, it's sad. I mean, it's something that  
24      needs to be checked out, found out and just see  
25      what's going on. Let's get the facts.

1 Q. Right. And here he is, this is the man the State  
2 of Wisconsin has hailed into court, so to speak.  
3 Do you think he's probably done something wrong  
4 otherwise he wouldn't be here?

5 A. I don't know. I really don't know if he did  
6 something wrong or not. I have -- It's what one  
7 party says and what another party says.

8 Q. Okay.

9 A. I have to sort that out.

10 Q. Let's follow that up a little bit. You explained  
11 to -- when Mr. Fallon was questioning you, that  
12 you would listen to everything --

13 A. Right.

14 Q. -- here before deciding, making a decision only  
15 at the end. And that's good, but I need -- we  
16 need to go one step further on that. The -- the  
17 essential further step is in hearing and  
18 listening to everything here and deciding the  
19 case after you have heard everything here, can  
20 you also put aside everything you heard before  
21 you came to the courtroom?

22 A. I was -- I was -- I should be able to handle  
23 that. I think I can do that.

24 Q. So, in other words, I think the Court will tell  
25 you, will instruct you at the end, that you get

1           to decide the case only on the evidence you have  
2           heard in court?

3       A. That's correct.

4       Q. Is that something you can do?

5       A. That I can do.

6       Q. Now, he will tell you you don't set your common  
7           sense aside or leave that at the door, but in  
8           terms of evidence, you don't get to consider what  
9           you heard before you came to court; do you  
10          understand that?

11      A. Anything in the past is in the past, we start  
12          today.

13      Q. Right. And you would not consider what you heard  
14          in the past?

15      A. No, we will not use the past.

16      Q. Okay.

17      A. Only from today on, whatever we hear, that's what  
18          we would make our decision on.

19      Q. Okay. And there's a natural inclination to want  
20          to hear both sides of the story, I suppose,  
21          right, to make a fair decision?

22      A. Yes.

23      Q. But you may not hear both sides, or both sides  
24          equally, in a criminal case. Because only the  
25          State has any burden of proving anything to you.

1           Do you understand that?

2   A. Yes, I understand that.

3   Q. And while we don't sit like bumps on a log,

4           neither will we necessarily try to prove to you

5           anything. In other words, I may not try to prove

6           that Steven Avery is innocent. I may concentrate

7           on showing that they have not proved him guilty.

8   A. Okay. I understand that.

9   Q. You understand the difference?

10   A. Yes, I do.

11   Q. And let's get at that a little bit. Let's

12           suppose at the end of all of the evidence, you

13           have heard their witnesses, maybe we'll call some

14           witnesses, maybe not, but you have heard all the

15           testimony, you have heard the arguments of the

16           lawyers on both sides.

17                 Now you are back with 11 other people

18           and you are going to decide, okay. And let's say

19           you, personally, come to the decision that, you

20           know, Mr. Avery might be guilty. Maybe he --

21           maybe I even think he is probably guilty. But

22           I'm not convinced, beyond a reasonable doubt,

23           that he is guilty. I don't know if he's

24           innocent, because they didn't prove to me he is

25           innocent either. I think he may be guilty. He

1           is probably guilty. But I don't believe it  
2           beyond a reasonable doubt. What verdict would  
3           you vote to return if that's how you weighed out  
4           all the evidence?

5       A. What verdict, would I give? If you don't give me  
6           unreasonable doubt, then he would be not guilty.

7       Q. Okay. In other words, if he is maybe guilty,  
8           your verdict would be not guilty; did I  
9           understand you?

10      A. Well, I know, the way you explained it to me, you  
11           have to prove that he is guilty. If he's not  
12           proven, then he's not guilty.

13      Q. Beyond a reasonable doubt?

14      A. Reasonable doubt, correct.

15      Q. Okay. All right. Let's -- let's consider the  
16           possibility that he does not testify. And I  
17           think you said, well, that's his own affair?

18      A. Right.

19      Q. In some ways, though, it's your affair if you are  
20           on the jury. And I think the Court would tell  
21           you, if Mr. Avery chose not to testify, that you  
22           simply could not consider that. It's not  
23           evidence of guilt. It's not evidence of  
24           anything. It's not evidence at all. Could you  
25           work within that rule?

1 A. Yes, I can work with that rule.

2 Q. Now, suppose he does testify, let's suppose, for  
3 whatever reason, we all here decide that he is  
4 going to testify and he gets up on the stand.  
5 Are you going to be sitting there saying, well,  
6 how can I believe what he says, he is, you know,  
7 he is the guy in the hot seat. He's the guy with  
8 everything to lose. Are you going to say that or  
9 will you be able to listen to him just like any  
10 other witness?

11 A. I would listen to him. Because in the past, when  
12 I went to a beauty shop or a barber shop, I  
13 listened to everybody.

14 Q. Okay. Probably 29 years as a barber, my guess is  
15 you heard a whole lot of gossip.

16 A. Well, everybody has things to tell me.

17 Q. Some of it turns out to be right?

18 A. And some is very interesting too.

19 Q. Right. Okay. And that's why we do what we do in  
20 courtrooms?

21 A. I understand.

22 Q. To try to weed out some of the stuff that just  
23 might be very interesting, but not so red hot in  
24 it's reliability. That you can do?

25 A. Yes, I can do that.

1 Q. Okay. Having now worked in law enforcement with  
2 the Department of Regulation and Licensing and  
3 volunteered for six years or something at the  
4 sheriff's department; do you tend to think that  
5 law enforcement officers, people with a badge,  
6 are more likely to be truthful than all of the  
7 rest of us?

8 A. Okay. When I was with the sheriff's department  
9 that was -- that's almost nine years ago since I  
10 left them. And I would -- I would say the people  
11 that I associated with, with the State of  
12 Wisconsin, I will go back it up there with them  
13 first. I worked with other -- other  
14 investigators and therefore and inspectors and I  
15 respect them.

16                   And the same thing here, if it's a  
17 voluntary thing, you go there in the morning and  
18 they send you out with the cars and stuff so you  
19 really don't get in depth with them too much.  
20 They are not there to mislead us, just take the  
21 car, do this, drop this and that off. So it was  
22 very -- it was very -- congenial, I mean.

23 Q. Right.

24 A. It was more or less a fun thing. They made it  
25 fun and made it easy for us. Our opinion, they

1                   were very thoughtful of us volunteers.

2 Q.   And my question is, with those warm feelings for  
3       good police officers --

4 A.   Yeah.

5 Q.   -- does that carry over to where you would say,  
6       you know, I trust police officers and their word  
7       more than I trust other people, just because of  
8       the job they have?

9 A.   Well, I'm basing it on my experience with them,  
10      yes. Same as at Holy Family Hospital. I respect  
11      the coordinator of volunteer services.

12 Q.   Mm-hmm.

13 A.   You respect them and you trust them.

14 Q.   But the rules here will be, I think as the Court  
15      will tell you --

16 A.   I understand.

17 Q.   -- that all witnesses come on equal. It doesn't  
18      matter what clothing they wear or whether they  
19      have a badge?

20 A.   No, doesn't matter.

21 Q.   They are all human. You consider their testimony  
22      all in the same sorts of ways?

23 A.   Right. Yeah, being a Mason, you have to respect  
24      everybody and your leaders.

25 Q.   Okay. And that's something you can do here?

1 A. Yes.

2 Q. Do you think it's possible that a law enforcement

3 officer could lie under oath?

4 A. Yes, they can lie.

5 Q. Even under oath?

6 A. Some do.

7 Q. How do you know that?

8 A. Reading books.

9 Q. Okay.

10 A. Reading books, reading somebody's non-fictions.

11 Q. And I suppose other witnesses can lie under oath,

12 too, can't they?

13 A. It can happen, yeah. That's something that

14 doesn't end.

15 Q. What if it -- What if you heard evidence that

16 went beyond that and went to planting evidence?

17 A. I have to listen to it, I have to know what the

18 facts are.

19 Q. Okay. You are not just going to rule that out,

20 say that's ridiculous, could never happen?

21 A. No, no, no, I would not rule that out. I would

22 -- I like to hear about it. I like to know what

23 I'm talking about.

24 Q. Okay. Have you heard anything about a blood

25 vial, a tube of blood in this case?

1 A. That's about it. I know of it and then of course  
2 I haven't followed up on it in the last almost  
3 four weeks.

4 Q. And that's because of the letter you got from the  
5 court or some other reason?

6 A. Well, I think it was -- I think it was on news  
7 before I got the letter from the court.

8 Q. Right. And what did you learn about this tube of  
9 blood?

10 A. Nothing, I don't know.

11 Q. Okay. In terms of planting evidence, how much  
12 proof is it that you would want before you  
13 decided something was or was not planted?

14 ATTORNEY FALLON: I object to that  
15 question.

16 THE COURT: That objection is sustained.

17 Q. (By Attorney Strang)~ What -- What kinds of  
18 things other than Mr. Michener and his books do  
19 you like to read?

20 A. Oh, I read Liberia (sic).

21 Q. Other -- other than -- other than James Michener?

22 A. Oh, I see. Others. I was thinking of other  
23 books that he wrote, I'm sorry.

24 Q. No, no. What kind --

25 A. My mistake, you said it right. I kind of like

1           Clancy, some of his non-fictions are pretty good.

2           Don (sic) Clancy, he wrote some nice --

3           especially *General Horner*, he was pretty

4           interesting over there, back in the '90s there.

5           Ended up running to space, pretty interesting.

6           Stuff like that.

7   Q.    Okay. Two more quick things. What do you know,

8           if anything, about Mr. Avery's past?

9   A.    None. Oh, well, I shouldn't say none. I don't

10          know him as a person, except that he was released

11          from prison. He was found innocent of a rape

12          charge.

13   Q.    And is that something you accept?

14   A.    Why, sure. It's public record. I mean, it shows

15          that he was not guilty. I except that fact.

16   Q.    And last question, or maybe two if there's a

17          follow-up. But do you want to serve on this

18          jury?

19   A.    I would be willing to do that.

20   Q.    But do you want to?

21   A.    Yes.

22   Q.    Why?

23   A.    Well, when I was a young fellow, I was drafted.

24          This was at the end of the Korean War, 1953. I

25          graduated, the Korean War ended shortly after I

1                   was drafted. I wanted to serve my country. Of  
2                   course, they didn't have hearing aids like they  
3                   do now.

4                   But anyway, they told me that, we're not  
5                   going to draft you. We're going to give you 4F  
6                   because you have a hearing problem. And I might  
7                   miss an assignment and cause some lives. Those  
8                   fellows served two, three years for their country  
9                   and more. And this gives me a chance to serve my  
10                  county, my community.

11                  Q. And your country?

12                  A. I want to do that. It gives me a chance to do  
13                   something. I'm going to be 72 and I would be  
14                   willing to do that.

15                  Q. Thank you.

16                  THE COURT: All right. Thank you,  
17                   Mr. Kickland, Linda will escort you from the  
18                   courtroom at this time.

19                  MR. KICKLAND: Thank you.

20                  (Wherein the juror was excused.)

21                  THE COURT: Counsel, any motion from either  
22                   party?

23                  ATTORNEY FALLON: No motion from the State.

24                  ATTORNEY STRANG: I don't have a motion,  
25                   but because I got burned a few years ago in a case

1           in Richland County, I do have some residual  
2           questions about his hearing. With both lawyers  
3           there were some answers that were not responsive to  
4           the questions. It was okay when we were up very  
5           close to the microphones.

6           But I do have some concern about that.  
7           And I also have a strong feeling that people with  
8           a hearing disability ought to be able to serve on  
9           juries, but as I say, I got burned on that. I  
10          made that mistake before.

11           THE COURT: All right. Mr. Kratz.

12           ATTORNEY KRATZ: Thank you, Judge. Calumet  
13          County is blessed with a system which allows for and  
14          encourages individuals with hearing problems to  
15          serve. We have hearing assistance devices for  
16          jurors. And should Mr. Kickland be invited to serve  
17          on this case, that would be available to him in  
18          Calumet County.

19           THE COURT: All right. My own impression  
20          was, I know Mr. Fallon turned his microphone off and  
21          spoke to the juror and I had trouble hearing a  
22          little bit. I mean could hear what Mr. Fallon was  
23          saying, but I think without the benefit of the  
24          microphone it was not that loud and I thought that  
25          the juror heard it pretty well.

1                   I think certainly with the benefit of a  
2 hearing assistance device, which I also use in my  
3 courtroom periodically, I think it should work.  
4                   And I also try to watch the witnesses myself to  
5 make sure they get up to the microphone and  
6 invite any juror who can't hear any answer to  
7 raise their hand during the course of the trial  
8 whether they have a hearing problem or not and  
9 ask them to repeat it. So I agree that can be a  
10 problem in some cases, but I thought he -- he did  
11 well.

12                  ATTORNEY STRANG: As long as we all keep an  
13 eye on it, I think he would be fine.

14                  THE COURT: Okay. Thank you. I know the  
15 parties mentioned they may have some motions  
16 regarding other jurors; how about Juror 86, she's  
17 next on the list, are there any objections to her?

18                  ATTORNEY FALLON: Well --

19                  THE COURT: If she --

20                  ATTORNEY BUTING: Question 74 and 69.  
21 Question 74 and 69 are the --

22                  THE COURT: Okay. Let me check.

23                  ATTORNEY STRANG: The context would be --

24                  ATTORNEY BUTING: And 43.

25                  THE COURT: I'm sorry. I'm looking at

1           Question 74; what were the other numbered questions?

2           ATTORNEY BUTING: 43 and 69.

3           ATTORNEY FALLON: Okay. I'm sorry, the  
4           questions for the next --

5           ATTORNEY STRANG: The questions for Debra  
6           Nicholson.

7           ATTORNEY FALLON: Do we have one juror  
8           after No. 86?

9           THE COURT: We have three more, actually.  
10          Next juror would be 90.

11          ATTORNEY FALLON: 91.

12          THE COURT: Oh, 90 and 91.

13          ATTORNEY FALLON: Oh, yes. Okay.

14          ATTORNEY STRANG: We have some concern  
15          about 91; although, I think that looks on paper like  
16          a better bet than 86 -- No. 86.

17          THE COURT: Is the defense asking to have  
18          86 excused for cause before questioning?

19          ATTORNEY STRANG: I would if it will speed  
20          things up. I also -- I understand that this is an  
21          on the bubble situation.

22          ATTORNEY FALLON: If you were to look off  
23          paper, No. 90 might be the surest bet, but it all  
24          depends on whether you want to deviate from the  
25          order.

1                   THE COURT: Well, we have 86, 90, 91, and  
2                   93 here.

3                   ATTORNEY FALLON: I think two out of four  
4                   look pretty good. You might have three out four  
5                   depending on how you want to do it.

6                   THE COURT: We need one by my count.

7                   ATTORNEY FALLON: Right.

8                   THE COURT: Will the parties stipulate to  
9                   passing over 86 and moving on to 90?

10                  ATTORNEY STRANG: Sure, not striking her  
11                  but passing over her?

12                  THE COURT: And if she gets selected, she  
13                  would be No. 30.

14                  ATTORNEY FALLON: This next one would be  
15                  the last --

16                  ATTORNEY STRANG: But does that include  
17                  Mr. Guckeisen?

18                  THE COURT: Yes. He is in in any event  
19                  now, even if 86 -- 86 if accepted would be 29 and  
20                  Mr. Guckeisen is 87, he would be 30.

21                  ATTORNEY STRANG: I see, okay. No, then I  
22                  don't have any problem with going to No. 90.

23                  THE COURT: All right. So the parties are  
24                  not going to ask the Court to excuse 86 at this  
25                  time, but are you going to stipulate to taking the

1                   juror out of random order and questioning Juror 90,  
2                   first?

3                   ATTORNEY STRANG: I think to be very  
4                   technical, I am moving to excuse No. 86 for  
5                   subjective bias, but I have no problem if the Court  
6                   wants to hold that in abeyance and moot it out.

7                   THE COURT: All right. With the  
8                   understanding that if 90 is in, the game is over.

9                   ATTORNEY STRANG: If that's the count,  
10                  right.

11                  THE COURT: Okay. All right. All right.  
12                  Let's have Ms Piaskowski in, then.

13                  Ms Piaskowski, if you will please raise  
14                  your right hand, the Clerk will administer the  
15                  oath.

16                  (Juror sworn.)

17                  THE CLERK: Please be seated.

18                  THE COURT: Ms Piaskowski, you have already  
19                  completed a written jury questionnaire in this case.  
20                  Today we're moving on to the next step in the jury  
21                  selection process which is voir dire.

22                  The attorneys for each of the parties  
23                  will have an opportunity to ask you some  
24                  questions pertaining to your qualifications as a  
25                  juror. For the most part, they will be follow-up

1           questions to the information that you provided on  
2           your questionnaire.

3           Before we get to those questions, I can  
4           tell you that the jury selected in this case will  
5           not be sequestered; that means that after each  
6           day of the trial the jurors will be permitted to  
7           return home. Because we're allowing the jurors  
8           to return home, the prohibition on any exposure  
9           to news media coverage will continue. That means  
10          the jurors will be prohibited from being exposed  
11          to any information about this case on the  
12          television, radio, newspaper, internet, or any  
13          other source.

14          And in addition, the jurors are  
15          prohibited from discussing the case with anyone,  
16          including members of the juror's family and even  
17          the other jurors until it's time to deliberate at  
18          the close of the case.

19          The court proceedings today are being  
20          held in open session, but the Court does not  
21          permit cameras in the courtroom during the voir  
22          dire proceedings and the news media is not  
23          permitted to disclose the identity of the jurors  
24          in their news reports.

25          In addition, should you be selected as a

1                   juror in this case, you should know that while  
2                   there may be cameras in the courtroom covering  
3                   the trial, they are not permitted to show the  
4                   jurors.

5                   In the event you remain on the jury  
6                   panel after questioning today, you will be  
7                   notified shortly when you are to report back to  
8                   court. Mr. Fallon, at this time you may proceed.

9                   **VOIR DIRE EXAMINATION**

10          BY ATTORNEY FALLON:

11          Q.     Good afternoon, Ms Piaskowski.

12          A.     Good afternoon.

13          Q.     How are you?

14          A.     I'm fine.

15          Q.     My name is Tom Fallon. I'm an Assistant Attorney  
16                   General with the Wisconsin Department of Justice.  
17                   I'm one of the prosecutors in this case. And I  
18                   would like to ask a few questions to follow up on  
19                   some of the information you provided last week.

20          A.     Okay.

21          Q.     By the way, thank you for your patience. I'm  
22                   sure we have probably interrupted your  
23                   afternoon's activities. Let me first begin by  
24                   asking just a couple of questions. You currently  
25                   work at Lakeshore --

1 A. Cap.

2 Q. What kind of business is that?

3 A. It's Community Action Program.

4 Q. How long have you worked for them?

5 A. It will be two years. It was two years.

6 Q. And what kind of work do you do for --

7 A. I am --

8 Q. -- that program?

9 A. -- sub-contracted out at Human Services in

10 Manitowoc.

11 Q. All right.

12 A. I work in Child Protective Services.

13 Q. Okay. And since you are familiar with Child

14 Protective Services, what aspect of that do you

15 do?

16 A. I'm a family support worker.

17 Q. I see. Okay. Have you always been a family

18 support worker?

19 A. No, I haven't. I have worked as a nurse's aide

20 and still do casually. Also worked at a

21 Montessori School.

22 Q. Did you teach or were you just an aide?

23 A. Assistant teacher.

24 Q. Assistant teacher. Very good. How long -- Do

25 you still keep your hand in that, did I hear you

1 say?

2 A. No. No. They keep me pretty busy where I am.

3 Q. Okay. All right. Now, in terms of a number of  
4 interests, or at least some schooling you have  
5 had, you have checked off a number. I suspect  
6 now from what you have told us that makes sense,  
7 you have some background in law, some psychology,  
8 some medicine, some corrections. Is that as a  
9 result of the Community Action Program and the  
10 people that you work with in that system?

11 A. Yeah, there was certain courses we had to take  
12 and follow up on. My role at my job right now is  
13 going into homes and helping parents to get their  
14 children back. They are all usually under 10  
15 years old.

16 Q. All right. So this activity, it's not so much  
17 the investigative work as to determine whether  
18 services are needed, but your job is to go back  
19 in and help put the family back together and get  
20 everybody back on track?

21 A. Exactly.

22 Q. All right. Have you ever been involved in the  
23 investigative angle to determine whether or not  
24 services are needed in the first place?

25 A. No.

1 Q. Okay. So you have been strictly a service  
2 provider almost?

3 A. Right. I can make referrals if I walk into a  
4 home and feel something is unsafe. Yes.

5 Q. All right. Okay. Can you tell me a little bit  
6 about one of your hobbies, what is the  
7 Mississippi Exchange Program?

8 A. It's a long story. I'll make it very short.  
9 It's bringing up black children from the south  
10 and they stay with a Wisconsin family from  
11 anywhere, 10 days to the whole summer. And the  
12 point of the whole program is to have black  
13 children interact with white children. Where we  
14 go is the Delta. Mississippi burning took place  
15 there.

16 Q. Sure.

17 A. The Klan is still very prominent down there. So  
18 it's -- a lot of children down there have never  
19 touched white skin.

20 Q. So, this is a program to promote racial harmony?

21 A. Right. Exactly.

22 Q. Do you yourself get to travel down to the Delta  
23 area?

24 A. All the time.

25 Q. You do?

1 A. Fourteen times I have been down there.

2 Q. I'm sorry?

3 A. Fourteen.

4 Q. Okay. How often do you get down there, once or

5 twice a year?

6 A. I go twice a year.

7 Q. Okay. I'm going to guess that you probably find

8 that pretty rewarding?

9 A. Oh, I love it, yes.

10 Q. What's the most -- the most fun about it? What

11 really trips your trigger? What really -- What

12 did you like?

13 A. Um, the friendships, you know. It's an

14 eye-opening experience, truly. Whites do not

15 talk to me when I'm down there.

16 Q. Really?

17 A. No, I get called a "nigger lover". I get called

18 lots of things. So, it's not Wisconsin, that's

19 for sure. It's like visiting family again. You

20 know, we had the same boy for nine years now. So

21 when I go down there, I live with his family for

22 the amount of time I stay there.

23 Q. Okay. And how often are you down there for, a

24 week or two at a time?

25 A. Usually -- Well, I just started going down

1 longer.

2 Q. Okay.

3 A. This year it will be two weeks I stay down there.

4 Q. All right. So I imagine you have developed a  
5 fair amount of confidence in yourself and a fair  
6 amount of thick skin.

7 A. Oh, yes, very much so.

8 Q. Very good. I would like to ask you a few  
9 questions, if we may, about what you might know  
10 about this case. You may or may not know there's  
11 been a fair amount of publicity associated with  
12 it. And we would like to ask you a little bit  
13 about that. In terms of the news, where do you  
14 get most of your news from; radio, television,  
15 newspapers?

16 A. I will turn the radio on in the morning, usually,  
17 before I get the kids up, so WOMT. It will be on  
18 for maybe a half an hour or so. And then if time  
19 permits I read the paper at night. But I do not  
20 watch the news at night at all. I don't have  
21 time. Usually my cases are at night.

22 Q. Right.

23 A. The kids are -- The cases I have, the children  
24 are in school usually, so my visits are at night.

25 Q. All right. So do you work like a 3 to 10 kind of

1           hours?

2       A. I don't have set hours, it depends. Tuesday,  
3           Wednesday, Thursday I have one family that I pick  
4           the kids up from school and supervise the visit  
5           with mom until 6:30.

6       Q. Right.

7       A. Something like that. Then I return them to  
8           foster care. So I don't get home until 7, 8 --

9       Q. All right.

10      A. -- and then I spend time with my family and ...

11      Q. Hit the sack?

12      A. Hit the sack.

13      Q. All right. In terms of publicity, associated  
14           with this particular case, do you have any  
15           recollection at all; do you know much about  
16           what's going on?

17      A. Well, of course, you know.

18      Q. You are aware he's been charged with murder --

19      A. Yes.

20      Q. -- right?

21      A. Yes.

22      Q. But beyond that, are any of the details -- do you  
23           know much about any of the details?

24      A. Not the nitty gritty details, no. Of course,  
25           when it first happened, you know, everybody was,

1           you know. But I was not by any means glued to  
2           the TV watching it.

3       Q.    Right.

4       A.    I was at work. Steven Avery, as far as I know,  
5           has never been involved with Human Services or  
6           anything. I have never heard the name before all  
7           of this happened so.

8       Q.    Okay. Never heard the name before any of this  
9           case came up?

10      A.    No.

11      Q.    All right. We'll get back to that in just a  
12           moment. But I would guess about maybe three,  
13           four weeks ago, you might have gotten a letter  
14           from the Court advising you that you were a  
15           prospective juror and asking that you refrain  
16           from any of the media coverage that might be  
17           attending to the trial. Did you get that letter?

18      A.    Yes.

19      Q.    And were you able to comply with its request.

20      A.    Um, you're going to think this is -- Well, what  
21           happened was, I didn't even read that bottom  
22           paragraph.

23      Q.    Right.

24      A.    And so I just saw the top part if it and  
25           everybody is saying, are you sure it's not this

1 case. I go, I don't think so. No, I didn't get  
2 a separate letter. And, then, maybe a week ago I  
3 read -- or read the bottom. I went, oh, oh,  
4 yeah, it is -- it is Steven Avery's case.

5 So, no, I did not discuss it or talk  
6 about it, because I didn't even finish reading  
7 the whole letter, unfortunately. I read when I  
8 needed to be here and what time and that was it.

9 Q. Okay. Did you read any -- see any of the news  
10 coverage lately on the case?

11 A. Uh-uh.

12 Q. Not a thing?

13 A. I don't watch the news at night --

14 Q. Okay.

15 A. -- so. If it's in the paper, I happen to see it.  
16 And, of course, I do a jail visit here, so I do  
17 see the cameras out here --

18 Q. Right.

19 A. -- quite a bit.

20 Q. And according to the information you provided,  
21 you have no opinion, whatsoever, about anything  
22 in this case. In other words, you don't have any  
23 opinion as to whether he is guilty or innocent at  
24 this particular time?

25 A. Truthfully, I think I did until, like, I did hear

1           about one instance that I kind of changed my mind  
2           a little bit so kind of put me more neutral.

3   Q.    Okay. Well, tell us -- Well, let's start with --  
4           We'll start with how you feel right now. I mean,  
5           do you have an opinion?

6   A.    Now I'm more neutral than I was in the beginning,  
7           yes.

8   Q.    Okay. All right. And so when you say neutral,  
9           does that mean you have no opinion or it could go  
10          either way or what do you think?

11   A.    I think it could go either way.

12   Q.    Okay. What was the event that brought you to  
13          neutral or ground zero as it were?

14   A.    I started out at neutral, too. But at first I  
15          thought, no way, no, he couldn't have did this.  
16          He just got out. There's no way.

17   Q.    Right.

18   A.    And then the specific event that made me kind  
19          of -- after I heard all -- hearing what people  
20          are saying and what not, I think, oh, my gosh,  
21          yes, he did. And then the vial of blood that  
22          they were talking about.

23   Q.    What did you hear about that?

24   A.    Just that it was unlocked or available to the  
25          public.

1 Q. Okay.

2 A. Something to that sort.

3 Q. Is that something from the media or just you

4 picked up?

5 A. Word. Word. Word of mouth.

6 Q. Word of mouth. Okay.

7 A. Yeah.

8 Q. Okay. Okay. Excuse me, one moment, I managed to

9 run out of ink. And when did that come to your

10 attention?

11 A. Probably was shortly when it came out in the

12 news. I mean, I don't know exactly.

13 Q. All right. Recently or way back when?

14 A. Couple weeks ago, talking about it.

15 Q. All right. And that somehow brought you back to

16 neutral?

17 A. I don't want to say neutral but, you know, placed

18 some doubt in my mind, you know.

19 Q. Okay. So would it be fair to say you don't

20 really have a strong opinion either way as to his

21 guilt or his innocence, you just don't know?

22 A. Yeah.

23 Q. All right. Well, one of the things that you will

24 be instructed here by the Court -- and defense

25 counsel will talk a little bit about this as

1           well, but you will be asked, if you were selected  
2           as a juror in this case, to decide this case  
3           solely on the evidence which is presented during  
4           the course of the trial and not based on anything  
5           anybody would have told you at work or any other  
6           friend, or family member, or anything like that;  
7           that any decision reached by the jury in this  
8           case would have to be just on the evidence  
9           presented in court. Do you understand that?

10          A. Mm-hmm.

11          Q. All right. And is that a yes?

12          A. Yes.

13          Q. Okay.

14          A. Yes, I do.

15          Q. Do you think you could do that, follow that rule?

16          A. Yes.

17          Q. Okay. Is there any doubt in your mind that you  
18           would be able to base your decision solely on the  
19           evidence that's presented?

20          A. I truly hope so, yes.

21          Q. Okay. Now, a part of that, also, is the fact  
22           that the State has the burden of proof here. I  
23           would imagine you are familiar with that from  
24           your work in protective services. But the State  
25           is the one who has to prove that someone is

1                guilty, beyond a reasonable doubt. Correct?

2 A. Right.

3 Q. And if they can't do that, then the jury must  
4        come to the decision of not guilty?

5 A. (No verbal response. Nods head.)

6 Q. All right. You accept that?

7 A. Yes.

8 Q. All right. And that would include, even if for  
9        instance Mr. Avery and his attorneys chose not to  
10      put any evidence in at all and the only evidence  
11      that you had to consider was that presented by  
12      the State. And if they didn't convince you, if  
13      we didn't convince you, beyond a reasonable  
14      doubt, of his guilt, you would have to vote not  
15      guilty?

16 A. (No verbal response. Nods head.)

17 Q. All right. And you would -- you understand that?

18 A. Yes.

19 Q. And you could do that if that's what you felt in  
20      your heart-of-hearts, after all the evidence is  
21      in you say, geez, maybe he is, or he might be,  
22      but I'm not convinced beyond a reasonable doubt,  
23      so I have got to vote not guilty?

24 A. Yes.

25 Q. You understand that?

1 A. Yes.

2 Q. And you could do that if that was what you -- the

3 decision you came to?

4 A. Yes.

5 Q. Okay. All right. Math is never a favorite

6 subject.

7 A. I was going to say what are you laughing at.

8 Q. Well, I share your pain.

9 A. Yes, my children do too.

10 Q. You have a friend who's a detective in the

11 Juvenile division, I see, or not?

12 A. Yes, I do, but he got a promotion so -- and I

13 never got a chance to even -- can I say his name?

14 Q. Oh, sure, please. We were going to ask who he

15 might be.

16 A. Oh, Larry Ledvina.

17 Q. Larry --

18 A. Ledvina.

19 Q. Ledvina. Okay. Does he work for the sheriff's

20 department, police department or ...

21 A. He's with the -- I have to look at somebody for

22 help.

23 ATTORNEY BUTING: Sheriff.

24 A. Sheriff. Is that where he is? You can tell we

25 don't talk work when we do go out. His son and

1           my son are very, very good friends.

2 Q. Are good friends.

3 A. And I work with his wife so.

4 Q. Okay. But you don't talk any law enforcement  
5       shop as it were?

6 A. No, no. I get told I don't park in the white  
7       lines sometimes, you know, in front of the  
8       building, but no we don't talk shop.

9 Q. So you don't talk -- So you have a deal, you  
10      don't talk child support services and he doesn't  
11      talk law enforcement?

12 A. No, not too often. When he was with juveniles  
13      and we did respite, I would say, do you know this  
14      kid, oh, yeah, you know, that kind of thing, but  
15      otherwise, no, we don't.

16 Q. Okay.

17 A. We stick to basketball, football.

18 Q. All right. Well, it may turn out, in fact, I'm  
19      pretty sure, that there will be a fair amount of  
20      law enforcement witnesses who will be asked to  
21      testify in this particular case. And one of the  
22      jobs of the jurors in this case will be to  
23      evaluate their credibility.

24                   And having been at least somewhat  
25      involved in the system, do you think you can

1 evaluate the credibility of a law enforcement  
2 officer or -- the same way you would evaluate the  
3 credibility of any other witness?

4 A. Yes.

5 Q. All right. In other words, you wouldn't hold  
6 them to any higher standard, or any lesser  
7 standard than you would any other witness that  
8 would appear?

9 A. No, no. I would expect them to tell the truth.

10 Q. All right. Well, we would all hope so. But you  
11 may be called upon to make a decision as to  
12 whether some officers are being truthful or  
13 untruthful during the course of the trial; do you  
14 think you could do that?

15 A. Yes.

16 Q. Sure. All right. Now, I just want to verify a  
17 couple of things. If you were selected as a  
18 juror, the trial may very well go six weeks,  
19 maybe a little longer, maybe a little less. Kind  
20 of hard to guess, as you might know. Is there  
21 any hardship that you think that might cause?  
22 You answered no last week, but we just wanted to  
23 touch base with you on that issue, make sure  
24 there wouldn't be any problem if you were  
25 selected as a juror.

1 A. Not that I can foresee, no.

2 Q. Okay. Just a related question. I forgot to ask

3 about your work. In working with families in

4 need and providing services, do you consider

5 yourself kind of a big picture person, bottom

6 line approach to things, or are you more of a

7 detail oriented, step-by-step approach to problem

8 solving or opinion forming?

9 A. People I work with, I -- I do have formed my

10 opinions on them, until I get to know them. We

11 work -- We do work step-by-step. It is a

12 step-by-step process for some of my families --

13 Q. Okay.

14 A. -- you know, to get unsupervised visits --

15 Q. Sure.

16 A. -- to get their children back.

17 Q. Right. So when you are trying to orchestrate

18 that and you're trying to put a family back

19 together, are you one who really pays a lot of

20 attention to the details, or are you thinking,

21 you know, big picture, what's going to work best

22 for this group? How do you go about it? If you

23 were to assess your own approach.

24 A. Well, right now, I'm in the middle of doing that

25 with a family. And we got the oldest child; we

1 have a date to go home. And we are doing the  
2 step-by-step process. We are looking into the  
3 future.

4 Q. Sure.

5 A. You know, we do a little bit of both, I guess.

6 Q. Okay.

7 A. It's a very hard question.

8 Q. Well, may not be an easy answer.

9 A. Depends, yeah, depends what kind of case I have  
10 at the moment or ... There's was, you know,  
11 little baby steps --

12 Q. Sure.

13 A. -- that grew bigger.

14 Q. All right. That may be it. Just one moment.

15 Oh, yes. The one area I forgot to follow up on,  
16 you were asked if you had any positions of  
17 leadership and you indicated you were on the  
18 Board of Directors for Project Self Help and  
19 Awareness?

20 A. That's the Mississippi program, yes.

21 Q. Oh, that's the Mississippi program.

22 A. Yes. Yes.

23 Q. I see. So you have a fairly prominent role in  
24 setting up the program and setting some of the  
25 policies?

1 A. Yes, yes. Right now we're doing newspapers and  
2 sending articles out to get more families, so.

3 Q. Sure.

4 A. That would be my hardship, yes.

5 Q. Okay.

6 A. At home, but.

7 Q. So you might have to put a little of that on the  
8 back burner for awhile?

9 A. Yes.

10 Q. Do you do that during the daytime or is that  
11 something you do at night after you get home?

12 A. I don't do much of anything at night when I get  
13 home, I'm pretty tired so.

14 Q. Okay. Fair enough.

15 ATTORNEY FALLON: I guess that's it. I  
16 will pass the juror. Thank you.

17 THE COURT: All right. Mr. Buting.

18 ATTORNEY BUTING: Thank you.

19 **VOIR DIRE EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Good afternoon.

22 A. Hello.

23 Q. It's almost evening.

24 A. Yes.

25 Q. My name is Jerome Buting. This is Dean Strang.

1           And we're, obviously, the defense attorneys for  
2           Mr. Avery here today. I appreciate your candor.  
3           And your questionnaire had some very interesting  
4           background things, most of which Mr. Fallon has  
5           covered.

6           But I want to talk a little bit about  
7           this Mississippi Exchange Program. Maybe some  
8           day I will be able to talk to you more about it,  
9           but I won't get into it in great detail today.  
10          But it seems like a very interesting program I  
11          have never heard of. And I wonder some of the  
12          lessons you may have learned from that, how you  
13          apply that in your job and in your life and how  
14          you may come to this jury with that.

15          You talked about how when you go down  
16          there many -- or some of the whites really  
17          ostracize you. Apparently don't like you, or  
18          maybe even the young black kids that you are  
19          trying to help?

20          A. It's not necessarily just the children. I could  
21          be walking with the grandmother of the boy that  
22          stays with us and I have gotten told to walk  
23          behind him.

24          Q. You have gotten told by someone else?

25          A. A white man.

1 Q. Okay. So, I mean, that's a pretty --

2 A. Because I'm walking with a black woman, yes.

3 Q. That's a pretty snap judgment that somebody is  
4 making, right?

5 A. Oh, yeah, yeah.

6 Q. And I guess so you have had some real hard,  
7 sometimes cruel examples of what happens when  
8 people judge too quickly?

9 A. Yes.

10 Q. And that, you know, if sometimes they don't take  
11 the time to look deeper and more carefully at a  
12 situation, they can completely misread you or the  
13 situation entirely?

14 A. Correct, yes.

15 Q. Unfortunately, way too many people in this day  
16 and age still have closed minds I guess, right?

17 A. Yes, especially, yeah.

18 Q. Do you think there's people up here in Wisconsin  
19 like that too?

20 A. I don't notice it so much in Manitowoc because so  
21 many people know my family and know Eric. We did  
22 have one issue with, actually, a law officer. We  
23 have a lake and Eric and my husband were putting  
24 the pier in -- or the raft in, which is something  
25 that floats so many feet from your pier. And my

1                   husband had yelled, go get the wrench, or  
2                   whatever, so Eric just hopped on the paddle boat  
3                   and took it over there. And the DNR was out and  
4                   saw him on the paddle boat without a life jacket.  
5                   And the first thing the law officer said was  
6                   where's that's black boy, find that black boy.

7                   So needless to say, they both got  
8                   tickets for \$250 for not having ... But when we  
9                   brought up the black boy situation, we did get it  
10                  dropped. So I do find that, yes, you know.

11 Q. Even up here, sure.

12 A. Yeah.

13 Q. That, of course, is sort of a racial bias --

14 A. Mm-hmm.

15 Q. -- or snap judgment. But there could be other  
16 ways that people are biased as well and make snap  
17 judgments and, you know, make the wrong  
18 judgments, right?

19 A. Of course.

20 Q. Now, going to your knowledge or the information  
21 that you got when you -- it wasn't clear to me, I  
22 think you said it wasn't really the news so much  
23 that you -- the TV news that you so much heard  
24 about, it was what came on the radio and word of  
25 mouth, is that more how you have heard about this

1 case?

2 A. Yes.

3 Q. And --

4 A. Of course, the beginning of the case, like I  
5 said, was on the news constantly. I mean, if the  
6 TV was on, it was interrupted or something by --

7 Q. Right.

8 A. -- by that, but ...

9 Q. And the news conferences, did you see those?

10 A. I saw a few of them, I believe.

11 Q. Okay. Now, it sounds like, though, even when you  
12 first heard it come up -- come out, did you also  
13 hear any of Mr. Avery on the news or saying that  
14 he was framed, this isn't true?

15 A. I don't believe ever hearing him speak. I have  
16 seen pictures of him being released.

17 Q. Okay. What about, did you hear from word of  
18 mouth from other people that, the other side, he  
19 was saying right from the beginning, that I was  
20 framed or I'm being framed?

21 A. Yes, I have heard that.

22 Q. Okay. And it sounds like, at least initially,  
23 your sort of gut reaction was maybe that's right  
24 because I can't imagine him doing this, he just  
25 got out, right?

1 A. Right.

2 Q. And then as you heard a little bit more evidence  
3 that was being leaked out into the media, you  
4 started to question that?

5 A. Exactly.

6 Q. Okay. But it's only recently, now, that you  
7 started to reconsider that, now that you heard,  
8 well, hey, there is a blood vial of some sort,  
9 right?

10 A. Mm-hmm, yes.

11 Q. Okay. So, are you even open to the possibility  
12 that maybe he is being set up or was set up,  
13 framed?

14 A. I don't know. I don't know how to answer that.  
15 I don't know enough.

16 Q. It's not something that you completely wouldn't  
17 even consider, or is it?

18 A. Possibly. I mean, I guess, that's what put that  
19 little bit of doubt in my mind --

20 Q. Mm-hmm.

21 A. -- you know, when I first heard it, yes.

22 Q. Perhaps, if somebody was so biased against him  
23 that they would go to such a step?

24 A. I hate to think that would happen but ...

25 Q. Mm-hmm. Now, you -- you actually work in the

1                   court system; it wasn't entirely clear to me  
2                   what? You work with CHIPS cases, is that it;  
3                   child in need of protection and services?

4 A. Some of them are.

5 Q. Okay. Some are, some aren't, some you get in  
6                   without actual ...

7 A. The majority of them are CHIPS.

8 Q. Okay.

9 A. Some like us so much that are voluntary, they  
10                  want that.

11 Q. Okay. But it sounds like you have had some  
12                  exposure to the court -- a courtroom setting and  
13                  the rules of court and all of that?

14 A. I do not go to court.

15 Q. Oh, you don't.

16 A. No, very rarely, unless a client wants me there  
17                  for support. I will get a court order that says  
18                  they need to comply with their weekly visits with  
19                  me and follow through with, you know, whatever  
20                  the judge may say at the time, you know.

21                   I have had to -- I was court ordered to  
22                  go to every doctor appointment, that kind of  
23                  thing. But not necessarily do I come to the  
24                  courtroom, no.

25 Q. Okay. But you do understand, it sounds like,

1           some of the basic principles of burden of proof?

2 A. Yes.

3 Q. And beyond a reasonable doubt?

4 A. Mm-hmm.

5 Q. And that the State has to prove everything?

6 A. Yes.

7 Q. If -- On the other hand, if the defense --

8           Mr. Fallon asked you, if -- if we just did  
9           nothing and didn't put on any kind of case or  
10          evidence at all, would you be able to look at the  
11          State's case and still decide if you have a  
12          reasonable doubt and if they haven't proved it to  
13          you, beyond a reasonable doubt, come back not  
14          guilty, right?

15 A. Mm-hmm. Yes.

16 Q. Okay. If, on the other hand, we -- we did  
17          present some evidence, some witnesses, or  
18          cross-examination of the State's witnesses,  
19          presenting evidence to you, would you start  
20          thinking, well, okay, now I've got to see whether  
21          they have convinced me, whether the defense has  
22          proven to me that he is innocent?

23 A. Of course, yes, I mean --

24 Q. See --

25 A. I would have to take --

1 Q. Okay.

2 A. Am I reading you wrong when you ...

3 Q. No, I think what you're doing is perfectly  
4 natural. Most people want to hear both sides.

5 A. Right.

6 Q. And want to kind of weigh one against the other.

7 A. Right.

8 Q. But when you come into court, the instructions  
9 tell you -- the Judge will tell you that the  
10 State has the entire burden of proof and that  
11 even if we present any evidence, you don't shift  
12 the burden to us and say, oh, okay, now did the  
13 defense prove their case?

14 A. Mm-hmm.

15 Q. You still have to keep your focus on, you know,  
16 your eye on the ball, which is, did the State  
17 prove their case, beyond a reasonable doubt --

18 A. Right.

19 Q. -- while considering the defense evidence, but  
20 not actually requiring us to prove anything?

21 A. Right.

22 Q. It's a little bit hard to do, but do you think  
23 you can do it?

24 A. I believe I could.

25 Q. Okay. Let me ask it this way. If -- If

1           Mr. Avery, with us, through us, was not able to  
2       prove who did this crime, would you still be able  
3       to find him not guilty, if you had a reasonable  
4       doubt whether he did it?

5       A. I believe that to find him not guilty I would  
6       have to have no doubts in my mind at all.

7       Q. Okay. But to find him not guilty --

8       A. You would have to prove I would have no doubt. I  
9       would have to be 100 percent --

10      Q. Okay.

11      A. -- without a doubt.

12      Q. And that's even if -- even if we couldn't show  
13       who did kill her, let's say, even if we couldn't  
14       show the real person who did this crime, as long  
15       as you -- you still had doubts about whether he  
16       did it, you could -- you would come back not  
17       guilty?

18      A. If I had doubts that he still -- I guess I'm  
19       still not understanding.

20      Q. That's my fault. I guess I'm not being clear.  
21       Go ahead.

22      A. The State would have to prove to me that there is  
23       no doubt in my mind that he did not do it; that  
24       is what I feel. I'm not, like, maybe, maybe not,  
25       you know, that kind of person. But you would

1           have to, also, prove to me that there's no way he  
2           did it.

3       Q.    We would have to prove that?

4       A.    Well, yeah. I would like, you know, by your  
5           testimony, or whatever you show me, I would like  
6           to be able to walk away with a good conscience  
7           thinking Steven did not do this, or Mr. Avery did  
8           not do this.

9       Q.    Okay. Well, let's --

10      A.    I believe in my heart either he was set up,  
11           someone else did it, or something.

12      Q.    So what if --

13      A.    I'm not asking -- I'm not thinking you would have  
14           to give me a name and an address, that kind of  
15           thing. If that's what you mean.

16      Q.    Yes, of the real killer.

17      A.    Right. Right.

18      Q.    Okay. All right. So what if after hearing all  
19           the evidence, including the defense evidence --

20      A.    Okay.

21      Q.    -- you thought, well, gosh, I don't know, maybe  
22           he did it, maybe probably Steven Avery did it  
23           but, gosh, I just don't know, there's these real  
24           serious doubts I have. I'm not 100 percent  
25           convinced that he is innocent, on the other hand,

1       I have some reasonable doubts about whether he is  
2       guilty. Do you think you could come back with a  
3       not guilty verdict if you felt that way?

4       A. I guess it's hard to answer that right now. I  
5       would like to think that, in my heart, if I was  
6       100 percent.

7       Q. See, what you -- what you have to focus on is --

8       A. The facts, I know. And, you know, I would have  
9       to be fairly confident in my answer. I mean,  
10      it's a -- it's a man's life --

11      Q. Right.

12      A. -- on the line. I would do my best, yes, I  
13      guess.

14      Q. Okay. So, if the Judge instructed you that what  
15      you really have to focus on is to be sure you  
16      have no doubt --

17      A. Mm-hmm.

18      Q. -- whether he is guilty; the focus is not whether  
19      you have no doubt whether he's innocent?

20      A. Mm-hmm.

21      Q. Do you understand the difference?

22      A. Yes.

23      Q. Because otherwise you would be making him prove  
24      that he's innocent.

25      A. Mm-hmm.

1 Q. Do you see the difference?

2 A. Right.

3 Q. And you can do that?

4 A. I can try.

5 Q. Okay. I appreciate that. Now, since you have a

6 friend in the sheriff's department, although, you

7 didn't even know he was in the sheriff's

8 department?

9 A. Well, I -- shows how much we talk work, yeah. I

10 knew he was in the sheriff's department and he

11 was in juvenile -- he worked with the juveniles.

12 I did not know where his promotion led him to. I

13 know where his office is, I know how to get to

14 him, but I don't know.

15 Q. Okay. All right. Do you -- Do you think you

16 would have trouble facing him at your son's next

17 basketball or football game if you came back not

18 guilty?

19 A. No.

20 Q. Even if part of the defense was that somebody in

21 his department crossed the line and was really

22 trying to frame or set up Steven Avery?

23 A. No. I don't know whose in his department. No.

24 Q. That would not bother you?

25 A. No.

1 Q. Okay. Now, I can tell that you are very  
2 dedicated to your job and your work, that's very  
3 important, right?

4 A. It is, yes.

5 Q. And that's fine. Can you look at your jury  
6 service the same way, that for the next six weeks  
7 this would be -- if selected, this would be your  
8 job and you would want to do just as good a job  
9 and just as thorough a job at this responsibility  
10 as your own job?

11 A. I would like to think so, yes.

12 Q. Okay. I'm almost done, but there's one last  
13 thing --

14 A. That's fine.

15 Q. -- I forgot, on what your prior knowledge would  
16 have been. You mentioned hearing a news  
17 conference when the case was first charged; do  
18 you -- do you know the name Brendan Dassey?

19 A. Yes.

20 Q. The nephew?

21 A. Yes.

22 Q. Okay. And have you heard some information about  
23 him and can you tell me briefly what that is?

24 A. What I know about him?

25 Q. Yes.

1 A. Is that what you are asking me?

2 Q. Yes.

3 A. I know, probably what everybody else knows that,  
4 you know, he said he got off the bus. He heard  
5 some noise. He went to Mr. Avery's trailer, that  
6 part. And that he participated in Teresa's  
7 death.

8 Q. Okay.

9 A. Then a few weeks later, I heard that he said he  
10 did not do that.

11 Q. Okay. Can you -- Are you familiar with the --  
12 with anybody who has ever falsely confessed to  
13 something they didn't do, before?

14 A. No. No, usually it zaps them. The people I work  
15 with.

16 Q. Sure. Can you conceive of any reasons why  
17 somebody might, a 16 year old in particular?

18 A. I probably -- and this wasn't really touched on  
19 with you, sir, but he -- Branden?

20 Q. Brendan.

21 A. Yeah, my son is 16 so, of course, you know he  
22 knows friends from Mishicot. And when all this  
23 happened he said, someone he knew said that he  
24 was so quiet they couldn't imagine him doing  
25 that. He was just a quiet boy that they couldn't

1           imagine him doing that. And I can vividly  
2           remember my son coming home and saying that.

3 Q. Okay. What if -- what if the State didn't call  
4           Brendan Dassey at all in this case; would that be  
5           a problem for you?

6                           ATTORNEY FALLON: Object to that question.

7                           THE COURT: Based on the form of the  
8                           question, I will sustain the objection.

9                           ATTORNEY BUTING: Okay. Let me rephrase  
10                          this.

11 Q. (By Attorney Buting)~ What if, since you have  
12                          heard that whole story, what if --

13 A. Which whole story are you talking about?

14 Q. The one you --

15 A. My son, or the first one.

16 Q. The one that you said you heard Brendan Dassey  
17                          say about getting off the bus --

18 A. Right.

19 Q. -- and all of that?

20 A. Okay.

21 Q. Since you have heard all of that, what if you had  
22                          -- had to sit through this trial and never hear  
23                          any of that, never hear that story at all; would  
24                          you be able to put that out of your mind and  
25                          decide the case only on the facts here?

1 A. Apparently I would have to if it wasn't brought  
2 up. If it wasn't --

3 Q. If for some reason he didn't testify in this case  
4 and you never heard that story and any of it, or  
5 you heard some -- some of it, but maybe not all  
6 of it, whatever, the point being, could you block  
7 out any of that outside information you had heard  
8 and focus only on the evidence that you hear in  
9 court?

10 A. I would do my best.

11 Q. Okay. Well, knowing all of that, is this a case  
12 you think you would like to be on the jury? Do  
13 you want to be on this jury?

14 A. I don't know if anybody wants to be on a jury. I  
15 guess I'm very -- I'm like -- my friends are  
16 asking me that too. I'm very much, if it's meant  
17 to be, it's meant to be, you know.

18 Q. Okay.

19 A. I will do my best to abide by the law and, you  
20 know, do what I have to do. But, no, I don't  
21 want to give up going to State. I'm sure  
22 Roncalli is going to State this year. No, I  
23 would rather be doing that with my family, if  
24 that's what you are asking me. But if I get  
25 picked to serve, I will serve and do it to the

1           best of my ability, yes.

2 Q.    Okay. That's fine. Thank you. Very much.

3           THE COURT: Mr. Fallon.

4           **VOIR DIRE EXAMINATION**

5 BY ATTORNEY FALLON:

6 Q.    Yes, I want to clarify something.

7 A.    Okay.

8 Q.    And I don't want you to have the wrong  
9       impression.

10 A.    Okay.

11 Q.    And I'm not sure what you have. You keep saying  
12       if I'm not 100 percent sure, or the State would  
13       have to prove -- you said the State would have to  
14       prove that there's no doubt of his guilt?

15 A.    Right.

16 Q.    All right. Now, you understand that the State's  
17       burden of proof is to prove beyond a reasonable  
18       doubt?

19 A.    Reasonable doubt.

20 Q.    Not beyond all doubt.

21 A.    Okay.

22 Q.    Not to the exclusion of any doubt. It's not a  
23       hundred percent.

24 A.    Okay.

25 Q.    So, in other words, can you give the State a fair

1           shake. I don't want you to hold the State to a  
2           standard that the Court is going to instruct you  
3           is --

4 A. I think I'm thinking more in my mind, you know.  
5           I want to be -- be able to sleep at night too.

6 Q. Right.

7 A. You know, and -- but...

8 Q. Well, do you understand there's a --

9 A. Yes.

10 Q. A difference --

11 A. A reasonable doubt.

12 Q. Beyond all doubt --

13 A. Yes.

14 Q. -- no doubt and a reasonable doubt?

15 A. Right.

16 Q. All right. And you have that squarely in your  
17 head. And, well, if Judge Willis were to say,  
18 when it came time to start deliberations, you  
19 would have to determine whether he is guilty,  
20 beyond a reasonable doubt. In other words, you  
21 are not going to hold the State to a standard  
22 higher than that?

23 A. Okay. Yes.

24 Q. Do you accept that?

25 A. Yes.

1 Q. Okay. And do you have an idea in your head where  
2 that all lies out?

3 A. Yes.

4 Q. Okay. The Court will describe it much -- in more  
5 detail later on but ...

6 A. And that's a lot of what, you know, I have never  
7 been on a jury before so some of that you will  
8 have to pinpoint for me and clarify.

9 Q. The Judge will take care of that.

10 A. That's his job?

11 THE COURT: I'm actually going to do some  
12 of that right now. I have a few questions to ask  
13 you.

14 MS PIASKOWSKI: Okay.

15 **VOIR DIRE EXAMINATION**

16 BY THE COURT:

17 Q. I'm going to try to phrase the questions as best  
18 I can, along the lines of the instructions that  
19 the jury would get at the close of the trial.

20 A. Okay.

21 Q. First, and the parties on voir dire, as they are  
22 permitted to do, you know, ask you for attitudes.  
23 But one of the things that -- one of the  
24 commitments we have to get out of jurors is that  
25 they are able to follow the instructions given by

1                   the Court even if they might judge things  
2                   differently in the absence of any instructions.

3                   So, first of all, with respect to the  
4                   burden of proof, the burden of proof is for the  
5                   State to prove, beyond a reasonable doubt, that  
6                   Mr. Avery is guilty of any of these particular  
7                   charges. Mr. Avery does not have a burden to  
8                   prove anything. And at the end of the trial, the  
9                   Court will instruct you that you can only find  
10                  Mr. Avery guilty of any charge if you are  
11                  convinced, beyond a reasonable doubt, that he's  
12                  guilty. Do you understand that?

13                  A. Yes.

14                  Q. Is that an instruction you think you can follow?

15                  A. Yes.

16                  Q. And that means, for example, if you get in the  
17                  jury room and you are thinking to yourself, well,  
18                  you know, the State introduced some evidence to  
19                  show that he is guilty. And, you know, I think  
20                  there's a chance that Mr. Avery is guilty, but I  
21                  have also got some serious doubts.

22                  And while I know in your answers you  
23                  said you would like to be 100 percent sure, you  
24                  might not be 100 percent sure, either of guilty  
25                  or not guilty. But unless you are sure, beyond a

1           reasonable doubt, that he is guilty, you would  
2           have to vote not guilty; is that an instruction  
3           you can follow?

4       A. Yes.

5       Q. If I instruct you at the end of the case that  
6           those are the rules, can you follow those?

7       A. Yes.

8       Q. One other thing I wanted to mention related to,  
9           you, like many of the jurors, have been exposed  
10          to some publicity concerning this matter. And as  
11          Mr. Buting explained, if you're selected to serve  
12          as a juror, another important instruction will be  
13          that you have to base your decision only on the  
14          evidence that you hear in court.

15           Some of the information that's been on  
16          the news may not be brought forward as evidence  
17          at court. And you can't be speculating, well,  
18          did that not come in because it didn't happen, or  
19          because of some other reason.

20           You just have to base your decision only  
21          on what you hear in the courtroom. And you can't  
22          wonder why other evidence that you may have  
23          thought you were going to hear didn't come in.  
24          And you can't speculate about why it didn't come  
25          in.

1                   I know you have indicated today that you  
2                   have heard some things in the news that tend to  
3                   make you feel both ways. But if you're selected  
4                   as a juror, you have to commit to make your  
5                   decision only on the evidence that does come in  
6                   and what you do hear; that is, what you do hear  
7                   in the courtroom. Do you feel that you can do  
8                   that if you are selected as a juror?

9     A. Yes. Yes.

10    Q. Do you have any questions about it that you want  
11       to ask?

12    A. No. No. I have a 12 year old that is very good  
13       about, if it's on the radio, he will turn it off.  
14       He says, mom can't hear that, or the paper, gets  
15       rid of that ever since, so.

16                   THE COURT: All right. At this time,  
17       Linda -- we'll have Linda escort you out of the  
18       courtroom.

19                   MS PIASKOWSKI: Okay. Thank you.

20                   (Wherein the juror was excused.)

21                   THE COURT: Now, counsel any motions from  
22       either party?

23                   ATTORNEY FALLON: None from the State.

24                   ATTORNEY BUTING: None from the defense.

25                   THE COURT: All right. Ms Piaskowski will

1           be made a part of the jury panel. And I believe  
2           that brings us to 30; is that the count of everyone?

3           ATTORNEY FALLON: That's what I have.

4           THE COURT: Janet, I will ask you first.

5           THE CLERK: That's what I have.

6           THE COURT: Okay. Now, with respect to  
7           proceedings from this point forward, the parties  
8           made a suggestion earlier today to the Court that  
9           was on a tentative basis, I believe, depending on  
10          events today, which we have done that; we have 30  
11          jurors. The parties would be prepared to exercise  
12          their peremptory challenges tomorrow morning at  
13          9:00; is that correct?

14           ATTORNEY FALLON: Yes.

15           THE COURT: That works for both parties?

16           ATTORNEY STRANG: I think 9:00 is fine if  
17          we're out of here pretty soon.

18           THE COURT: Well, we're going to be out of  
19          here pretty soon.

20           ATTORNEY STRANG: That's fine.

21           THE COURT: We're not dealing with anything  
22          else today. So ... All right. We'll meet back in  
23          this courtroom, then, at 9:00 tomorrow for  
24          peremptory challenges.

25           And it's also my understanding, the

1           parties suggested to the Court and as I think  
2           about it, I think it's a good suggestion, that we  
3           address the defense motion regarding the State's  
4           demonstrative exhibits that it wishes to make  
5           part of its opening statement, tomorrow afternoon  
6           in Chilton. 1:00?

7           ATTORNEY STRANG: Sure.

8           THE COURT: Does that work for the parties?

9           ATTORNEY STRANG: Sure.

10          ATTORNEY BUTING: Yes.

11          THE COURT: I also would like to address  
12         any comments that the parties have regarding my  
13         opening instructions, at that time.

14          ATTORNEY STRANG: In Chilton?

15          THE COURT: In Chilton. And I will ask the  
16         parties at this time, is there anything else they  
17         feel should be on the agenda for tomorrow afternoon?

18          ATTORNEY BUTING: Just a little  
19         clarification, are we doing the peremptories with  
20         the jurors here in the courtroom or are we doing  
21         that --

22          THE COURT: No, they will be here in the  
23         courtroom.

24          ATTORNEY BUTING: Okay. They will be here  
25         in the courtroom and then we'll be back and forth

1 and when we get -- we have exercised all of them,  
2 the Clerk will read them off and the rest will go.

3 THE COURT: Right. Normally, the attorneys  
4 sit at counsel table and pass the sheet back and  
5 forth.

6 ATTORNEY FALLON: That's fine.

7 ATTORNEY BUTING: I just wanted to be sure  
8 we're still doing it that way.

9 ATTORNEY FALLON: Right. That was my  
10 concern as well, to make sure that all 30 were here.

11 THE COURT: They will be here.

12 ATTORNEY FALLON: Okay.

13 THE COURT: Now, because of seating, some  
14 of them will be in the front row or the front two  
15 rows of the audience behind you. We can't fit 30  
16 jurors in the jury box. But I know the parties like  
17 to be able to see their faces, so you will be able  
18 to do that.

19 ATTORNEY FALLON: Good.

20 THE COURT: Anything else on the agenda for  
21 tomorrow afternoon?

22 ATTORNEY STRANG: No. And it's at least  
23 possible that I may be flying solo at that hearing;  
24 we haven't decided that entirely.

25 THE COURT: Okay. For the benefit of the

1 news media here, that means that the no camera rule  
2 will still be in effect in the morning for the jury  
3 selection. However, I think the parties, and  
4 perhaps the media as well, may want to use tomorrow  
5 afternoon's proceedings in Chilton as a dry run.  
6 Those proceedings will be open to the public and  
7 cameras are permitted. So I think that addresses  
8 media concerns. Anything else before we adjourn  
9 today?

10 ATTORNEY FALLON: I can't think of  
11 anything, but for whatever reason I just -- I seem  
12 to be -- I just have this gnawing feeling that there  
13 is something we're omitting, but not of any great  
14 consequence that we can't deal with tomorrow.

15 THE COURT: All right. We will see you at  
16 9:00 tomorrow.

17 (Proceedings concluded.)

18  
19  
20  
21  
22  
23  
24  
25

1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 10th day of September, 2007.  
16  
17  
18

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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     Tom [6] 9/7 16/2 21/24 23/11 35/7      54/15      tomorrow [8] 95/12 95/23 96/5      96/17 97/21 98/4 98/14 98/16      took [8] 18/24 22/17 32/3 32/6      32/7 32/25 57/14 75/3      top [1] 61/24      Torrington [1] 22/15      touch [1] 69/23      touched [3] 31/21 57/19 86/18      towels [2] 33/21 33/21      town [1] 32/5      track [1] 56/20      trade [1] 17/8      tragedy [1] 36/22      trailer [1] 86/5      trained [1] 22/15      transcribed [1] 99/11      transcript [3] 1/23 99/8 99/12      transcription [1] 99/11      transportation [5] 5/12 5/14 5/18      23/1 35/21      travel [1] 57/22      trial [17] 1/4 7/19 8/14 9/10 14/18      15/16 25/9 49/7 53/6 54/3 61/17      65/4 69/13 69/18 87/22 91/19      92/8      trigger [1] 58/11      Triple [1] 32/4      trips [2] 35/24 58/11      trouble [2] 48/21 84/16      true [2] 76/14 99/12      truly [2] 58/14 65/20      trust [3] 43/6 43/7 43/13      truth [1] 69/9      truthful [2] 42/6 69/12      Truthfully [1] 62/25      try 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<b>W</b>	<b>wrote [2]</b> 45/23 46/2 <b>Y</b> <b>year [8]</b> 27/16 35/6 58/5 58/6 59/3 86/17 88/22 94/12 <b>years [18]</b> 9/24 20/18 21/2 21/5 21/24 27/17 31/4 32/17 34/20 41/14 42/3 42/9 47/8 47/25 55/5 55/5 56/15 58/20 <b>yelled [1]</b> 75/1 <b>you're [6]</b> 30/12 61/20 70/18 80/3 93/11 94/3 <b>young [4]</b> 29/19 36/16 46/23 73/18 <b>yourself [5]</b> 29/10 57/22 59/5 70/5 92/17 <b>Z</b> <b>zaps [1]</b> 86/14 <b>zero [1]</b> 63/13

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, JURY TRIAL - DAY 5  
5 PEREMPTORY STRIKES &  
6 vs. MOTION HEARING - MANITOWOC COUNTY  
MOTION HEARING - CALUMET COUNTY  
Case No. 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

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9 **DATE:** FEBRUARY 9, 2007

10 **BEFORE:** Hon. Patrick L. Willis  
11 Circuit Court Judge

12 **APPEARANCES:** KENNETH R. KRATZ  
Special Prosecutor  
13 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON  
Special Prosecutor  
15 On behalf of the State of Wisconsin.

16 NORMAN A. GAHN-Present in Manitowoc only.  
Special Prosecutor  
17 On behalf of the State of Wisconsin.

18 DEAN A. STRANG  
Attorney at Law  
19 On behalf of the Defendant.

20 JEROME F. BUTING-Present in Manitowoc only.  
Attorney at Law  
21 On behalf of the Defendant.

22 STEVEN A. AVERY  
Defendant  
23 Appeared in person.

24 \* \* \* \* \*

25 **TRANSCRIPT OF PROCEEDINGS**

1                   Reported by Diane Tesheneck, RPR

2                   Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2                   the case of State of Wisconsin vs. Steven Avery,  
3                   Case No. 05 CF 381. Will the parties state their  
4                   appearances for the record, please.

5                   ATTORNEY KRATZ: Good morning, your Honor.  
6                   The State of Wisconsin appears by Calumet County  
7                   District Attorney Ken Kratz appearing as lead  
8                   special prosecutor in this case. Also appearing on  
9                   behalf of the State is Tom Fallon, Assistant  
10                  Attorney General with the Department of Justice and  
11                  Norman Gahn, Assistant District Attorney from  
12                  Milwaukee County, also appearing as special  
13                  prosecutors.

14                  ATTORNEY STRANG: Good morning, Steven  
15                  Avery is here in person, your Honor. Jerome F.  
16                  Buting represents him, to my right, and Dean A.  
17                  Strang.

18                  THE COURT: Very well, we are here this  
19                  morning to complete the process of jury selection.  
20                  The remaining members of the jury panel are now in  
21                  the courtroom. At this time the Clerk will call the  
22                  jury panel members by name and the jury bailiff will  
23                  show the panel members where to be seated.

24                  THE CLERK: Daniel Slaby, Diane Free, Terri  
25                  Temme, Jacqualine Ungrodt, Cherri Haskell, Barbara

1                   Schmidt, Sharon Thorne, Julie Dorn, Paul Nelesen,  
2                   Nathan Klein, Philip Saari, Michael Stonebraker,  
3                   John Lawrence, August Schuette, Marian Flint, Kevin  
4                   Brotski, Richard Mahler, Tami Gosz, William Mohr,  
5                   Patrick Keehan, Melvin Pedersen, Henry Gray, Nancy  
6                   Stienmetz, Mary Lou Salomon, Carl Wardman, Laura  
7                   Barber, Scott Defere, Donald Kickland, David  
8                   Guckeisen, Patricia Piaskowski.

9                   THE COURT: Members of the jury panel, as I  
10                  explained last week, now that 30 qualified jurors  
11                  have been identified, the parties will be exercising  
12                  what are known as peremptory challenges. Each side,  
13                  on an alternating basis, is permitted to strike  
14                  seven members of the jury panel.

15                  The 16 remaining jurors will hear the  
16                  evidence in this case. At the conclusion of the  
17                  trial, the names of the alternate jurors will be  
18                  drawn by lot and 12 jurors will deliberate and  
19                  render verdicts in this case. The parties will  
20                  now begin the process of exercising their  
21                  peremptory strikes. The courtroom is to remain  
22                  quiet until that process has been completed.

23                  (Peremptory strikes made.)

24                  THE COURT: At this time the Court will  
25                  read the names of the persons who have been selected

1 to serve on the jury in this case. When you hear  
2 your name read, please stand.

3 Daniel Slaby, Diane Free, Terri Temme,  
4 Barbara Schmidt, Sharon Thorne, Julie Dorn, Paul  
5 Nelesen, Nathan Klein, August Schuette, Marian  
6 Flint, Richard Mahler, William Mohr, Henry Gray,  
7 Nancy Steinmetz, Carl Wardman, Laura Barber.

8 Those of you who are still seated will  
9 not be serving on the jury in this case and your  
10 jury service in this matter is complete. On  
11 behalf of Manitowoc County, I want to thank you  
12 for your service. I do have one final  
13 instruction to read to you before excusing you  
14 this morning.

15 Your service in this case is completed.  
16 You do not have to answer questions about the  
17 case from anyone other than the Court. There is  
18 no requirement that you maintain secrecy  
19 concerning your participation in this case, but  
20 you do not have to discuss the case with anyone  
21 or answer any questions about it.

22 At this time the Court will ask that the  
23 jurors who are currently seated -- those of you  
24 who are standing can sit; the rest of you can  
25 stand at this time and the bailiff will escort

1 you to the jury room.

2 ATTORNEY STRANG: Your Honor, there will be  
3 a motion that should be addressed before anyone is  
4 excused.

5 THE COURT: Do you wish to do that in the  
6 presence of the jurors?

7 ATTORNEY STRANG: I do not.

8 THE COURT: Pardon me?

9 ATTORNEY STRANG: I do not.

10 THE COURT: Oh, okay. All right. Take  
11 them to the Branch 1 jury room on the other side.  
12 You can follow the bailiff.

13 (Excused jurors taken to the Branch 1 jury room.)

14 THE COURT: All right. As soon as the  
15 bailiff gets back we will have the other jurors  
16 retire to this room.

17 At this time those jurors who have been  
18 selected to serve on the jury in this case may  
19 rise and the bailiff will escort you to this jury  
20 room. They will be coming back out, Shirley.

21 JURY BAILIFF: Okay.

22 (Chosen jurors taken to Branch 2 jury room.)

23 THE COURT: The Court will note for the  
24 record that the jurors are now in the jury room,  
25 outside of the courtroom. Mr. Strang.

1 ATTORNEY STRANG: Thank you, your Honor.

2 Outside the presence of the jury now, given the  
3 demographics of those approximately 90 jurors we saw  
4 physically from the panel and the State's use of one  
5 of its seven peremptory strikes to strike  
6 Mr. Lawrence, I feel bound to make a motion to  
7 reverse that State peremptory strike under -- on  
8 authority of **Batsen vs. Kentucky** and cases that  
9 follow.

10 I will make the following record as a  
11 matter of prima facie showing. The highest  
12 sequenced numbered juror whom we examined was  
13 No. 90, by my count. Of course, there were a  
14 number of jurors struck by joint motion before we  
15 got to 90, so we didn't see 90 human beings here.

16 But of those we did see over the last  
17 four days one and one only appeared to be at  
18 least partly of African/American heritage, and  
19 that was Mr. Lawrence. I noticed one other  
20 person who appeared clearly, at least to my eyes,  
21 to be not of European ancestry and that was  
22 Huang (sic) Dao, first name, H-u-a-n-g, last name  
23 D-a-o.

24 Of -- Of those two people, only  
25 Mr. Lawrence was in the final pool of 30. As I

1 say, I can't comment, I don't know his ethnicity  
2 or his parentage, but to the eye he looks to have  
3 at least one parent of -- ultimately African  
4 heritage, describe him as a light-skinned black  
5 man with a relaxed curl for his hairdo.

6 The other jurors in the final 30 appear  
7 to me to be of -- what I will call European  
8 ancestry; that is, Caucasian or white-skinned, in  
9 the vernacular. So I -- I think there's a prima  
10 facie showing.

11 I note as well that although the Court  
12 ultimately found cause for striking Huang Dao,  
13 Mr. Huang was a juror we sought to keep and,  
14 indeed, I think I wanted him held in abeyance if  
15 nothing more. The motion to strike Mr. Dao was  
16 the State's.

17 Again, that's a different matter in the  
18 sense that the Court found cause. And I believe  
19 I acknowledged that, you know, there were --  
20 there was a basis for the State's motion for  
21 cause and I recognize the potential issues there.

22 I add that only for the full context in  
23 moving to set aside the State's use of its  
24 peremptory strike against Mr. Lawrence as a  
25 matter of due process under the Fourteenth

1                   Amendment to the United States Constitution and  
2                   the correlative provisions of Article 1 of the  
3                   Wisconsin Constitution.

4                   THE COURT: Who will be responding on  
5                   behalf of the State?

6                   ATTORNEY FALLON: I will, your Honor.

7                   THE COURT: Mr. Fallon.

8                   ATTORNEY FALLON: Yes. Thank you.  
9                   Actually, I find the motion rather stunning from  
10                  counsel very accomplished as Mr. Strang.  
11                  Nonetheless, I have several responses, both legal,  
12                  practical, and the like.

13                  First and foremost, the first step in  
14                  any **Batsen** challenge is that the defendant must  
15                  show that he or she is a member of a cognizable  
16                  group and that the prosecutor has exercised  
17                  peremptory strikes to remove members of the  
18                  defendant's race from the venire. So unless  
19                  counsel is suggesting that Mr. Avery is of  
20                  African/American descent that would be a new  
21                  revelation to the State.

22                  And even if that were the case, I would  
23                  indicate for the Court that we seriously thought  
24                  yesterday that we were going to move to strike  
25                  Mr. Lawrence for cause. We were not -- We

1           weren't as quite certain as we are this morning,  
2           but we believe that Mr. Lawrence lied on his  
3           questionnaire.

4                 In fact, if the questionnaire is to mean  
5                 anything, it's a significant question. We were  
6                 uncertain because we wanted to verify as best we  
7                 could and we think we have, although nothing is  
8                 100 percent certain. But he, in answer to  
9                 question, I think it is Question 54, Have you,  
10                 any members -- any family members or anyone close  
11                 to you ever been a suspect and arrested for or  
12                 charged with a criminal offense?

13                 First, we thought it was Mr. Lawrence  
14                 himself who had been arrested and has a pending  
15                 drug offense. But it turns out there is a John  
16                 O. Lawrence, Sr., age 44, whom we believe to be  
17                 this juror's father, with pending offenses; in  
18                 fact, he has a number of pending drug offenses.

19                 And he indicated no. And I believe he  
20                 indicated there was no contacts with law  
21                 enforcement of any kind. And that caused us some  
22                 great concern. We were, last evening, working on  
23                 the CCAP program and trying to verify as much as  
24                 we can. But we believe this John O. Lawrence,  
25                 Jr. to be the son of the John O. Lawrence, Sr.

1 with a criminal history.

2                   Would also indicate for the Court that  
3 another matter concerned the State and that is  
4 the youth of this man. And, obviously, at the  
5 young age of 20, it's very hard for someone of  
6 that age to distinguish themselves in the  
7 community, but he did not impress us with a  
8 significant work history, for any of that to  
9 suggest to us that he had a claim or a sufficient  
10 stake in the community relative to the  
11 deliberation process.

12                  But primarily, we are under the  
13 impression, based upon our information, that he  
14 was not truthful in his questionnaire and, quite  
15 frankly, he should have been struck for cause.  
16 We wanted to do our best to try to verify as best  
17 we can. Lots of phone calls late into last  
18 night. And we believe that he is, in fact,  
19 related, as best we can, given the name and same  
20 middle initial and the junior and what have you.

21                  As a result of which, so we have a legal  
22 basis, this is not a **Batsen** issue. Two, we have  
23 a juror who we believe lied. And three, we have  
24 the demographics of he did not distinguish  
25 himself; he did not look to us like he would be a

1 responsible dedicated juror, notwithstanding the  
2 responses he gave. And those are our reasons.

3 Hold on. Is there a concession that Mr. Avery is  
4 not a member of the cognizable class?

5 ATTORNEY STRANG: Mr. Avery, is not  
6 African/American. And it has been established since  
7 1990 or 1991, by the United States Supreme Court, in  
8 **Powers v. Ohio**, that one need not be a member of the  
9 same ethnic group or other cognizable class as the  
10 struck juror to raise a **Batsen** challenge; **Powers vs.**  
11 **Ohio**, United States Supreme Court, if my memory  
12 serves even closely.

13 So I think that lays to rest entirely  
14 the first defense the State offers, which is the  
15 legal one. As to the factual defense, the jury  
16 questionnaires will be part of the record, but I  
17 recall nothing in which Mr. Lawrence offered his  
18 middle initial or his middle name.

19 Now, whether there's a John O. Lawrence,  
20 Sr., who is in fact his father, I don't know. My  
21 recollection is the juror made a comment about  
22 not knowing much about his father or not having  
23 much contact. And I don't really -- don't  
24 remember exactly what he said and I could be a  
25 mile wide there. But the transcript would --

1           would bear that out. I do recall him listing Jr.  
2           on his questionnaire. I do not recall a middle  
3           initial.

4           THE COURT: All right. The Court does not  
5           have the **Batsen** test committed to memory; it's not  
6           something that gets raised very often. Mr. Fallon.

7           ATTORNEY FALLON: Well, there is a recent  
8           Wisconsin Supreme Court case. I'm aware of **Powers**.  
9           There is a 2003 Wisconsin Supreme Court case **State**  
10          **vs. Lamon**, L-a-m-o-n, setting forth the three step  
11          process, as well, that could be examined.

12          THE COURT: All right. I'm going to take a  
13          short recess. And then we'll go back on the record.

14          Before I do that, let me ask, as long as  
15          we're on the record, something I meant to ask  
16          earlier: Subject to the objection raised by the  
17          defense, are the 16 jurors that the Court has  
18          identified, the jury that each party selected  
19          based on their peremptory strikes.

20          ATTORNEY FALLON: I believe the panel left  
21          reflects the -- accurately those which were struck  
22          by the State.

23          ATTORNEY STRANG: So do I.

24          THE COURT: Thank you.

25          (Brief recess taken.)

1                   THE COURT: At this time we are back on the  
2 record outside the presence of both the at least  
3 tentatively excused jurors and the jurors who have  
4 been tentatively selected to serve on the jury  
5 panel. The defense has made a motion challenging  
6 the State's decision to exercise one peremptory  
7 challenge for the purpose of removing a juror who  
8 appears to be of a minority race in this case.

9                   I'm not sure that that fact is disputed;  
10 that is, I believe that both parties recognize  
11 Mr. Lawrence would fall into the category of  
12 somewhat of a minority race.

13                  ATTORNEY STRANG: And I -- I think so, but  
14 I also -- I was going to add one further factual  
15 agreement that we were able to come to, I think,  
16 during the break. I think when we went back and  
17 checked, Mr. Lawrence did not list his middle  
18 initial on his handwritten questionnaire, but the  
19 middle initial O. is listed on the computer printed  
20 voir dire list in its various sorts from the Court.  
21 That's -- the one the parties have is dated  
22 January 26, 2007.

23                  So the name as given on the  
24 questionnaire is John Lawrence, Jr. The name on  
25 the computer voir dire list is John O. Lawrence,

1 without a Jr. or Sr. designation and that's at  
2 least agreed on the defense part.

3 THE COURT: All right. The first issue is  
4 whether or not a defendant wishing to raise a **Batsen**  
5 challenge has to be a member of a minority class  
6 himself in order to do so. Based on the Court's  
7 reading of the case law, specifically, the **Powers**  
8 case, to which the Court was referred and which is  
9 actually cited in a footnote in the **Lamont** case at  
10 page 762, where the Wisconsin Supreme Court  
11 recognizes that a defendant of whatever race is  
12 entitled to a jury selected without discrimination  
13 by the authority of **Powers**.

14 So I don't believe the fact that  
15 Mr. Avery himself may not be a minority -- may  
16 not be a member of a minority race is sufficient  
17 to preclude the defendant raising a **Batsen**  
18 challenge to the dismissal of Mr. -- or the  
19 striking of Mr. Lawrence in this case. The Court  
20 believes, then, that it is required to apply the  
21 **Batsen** analysis to this case.

22 The first step of a defendant raising a  
23 **Batsen** challenge is to make a prima facie showing  
24 that the prosecution has exercised a peremptory  
25 challenge on the basis of race. As I indicated a

1 minute ago, I don't believe that there's a  
2 dispute in this case that that part of the test  
3 has been met. Mr. Lawrence appears to be the  
4 only remaining minority member on the panel. And  
5 the State did exercise a peremptory challenge to  
6 remove him from the panel.

7 The next part of the test goes on to  
8 provide that if the defendant satisfies this  
9 threshold, the burden then shifts to the  
10 prosecution to articulate a race neutral  
11 justification for the disputed challenges, or in  
12 this case, the challenge. In this case, the  
13 State has offered two explanations, as I  
14 understand it, for the removal.

15 The first one and the primary one is  
16 that the State believes that the juror was not  
17 truthful on the juror questionnaire, specifically  
18 Question 54 relating to whether or not --  
19 Actually, I don't have a questionnaire in front  
20 of me; can somebody read me, for the record, the  
21 exact question?

22 ATTORNEY FALLON: Sure. Have you, any  
23 family members, or anyone close to you ever been a  
24 suspect in, arrested for, or charged with a criminal  
25 offense? He checked no.

THE COURT: Okay. So the question required the juror to indicate not only whether the juror himself fell into that category, but whether or not any family member fell into that category. The prosecutor, Mr. Fallon, indicates that the defendant -- or the juror answered that question no. That is not disputed.

It does also not appear to be disputed that a gentleman with the same name, except Sr., as the juror in this case who is identified as Jr. on his questionnaire, has a record of a number of convictions, in addition to a pending charge at this time. The State indicated that they attempted to conclusively determine whether or not the John Lawrence with the criminal record was John Lawrence, Jr.'s father.

The age appears to match. And we now know that the middle initial also appears to match. The fact that one is a Sr. and one is a Jr. adds additional support to the argument that it appears he may well be the father.

And because of that fact, the State argues it had a valid reason to -- non-race related to exercise a strike against Mr. Lawrence. The State also argues that, based

1           on his young age and lack of employment that his  
2           commitment to the community may also be an issue  
3           in this case. So the Court is satisfied that the  
4           State has articulated a legitimate race neutral  
5           reason for challenging Mr. Lawrence.

6           The application of the third part of the  
7           test was a point of dispute in *Lamont*. There were  
8           some dissents in that case, or least one that I  
9           know for sure, by the Chief Justice. And I  
10          attempted, during the break, to review not only  
11          the majority decision, but the dissent as well.  
12          And the Court is satisfied that under the  
13          approach of either the majority or the dissent in  
14          *Lamont*, that the State in this case has met its  
15          burden.

16          Specifically, I believe that while there  
17          is not conclusive evidence, or the State did not  
18          come up with conclusive evidence, it came up with  
19          some fairly compelling evidence to strongly  
20          suggest that the juror in this case was the -- or  
21          is the son of the John Lawrence, Sr. who has the  
22          criminal record and that the answer given by the  
23          juror may well not have been truthful. The Court  
24          cannot say conclusively it was not truthful, but  
25          there was certainly a good faith reason for

1 coming to that conclusion that is not related to  
2 the race of the juror.

3 Part of the test outlined by the  
4 dissent, which would apply -- require courts to  
5 engage in more thorough analysis or a stricter  
6 test, however you like to phrase it, indicates  
7 that the part of the Court's duty is to assess  
8 the credibility of the prosecutor and the reasons  
9 given for the striking of the juror.

10 In this case, I can find nothing, based  
11 on what the Court recalls to be the demeanor of  
12 the State in questioning the juror, or the reason  
13 given for the strike, that would suggest that  
14 anything was motivated by race. I believe that  
15 the reasons given by the State, under the  
16 totality of the circumstances, and I'm not really  
17 aware of any other circumstances that would call  
18 their decision into question here.

19 While it's true that under the **Powers**  
20 decision the -- a defendant who's not even a  
21 minority can raise the challenge, it's a little  
22 difficult to see, applying the totality of the  
23 circumstances, why the race of the juror in this  
24 case would have any special significance. There  
25 is no reason why, to the extent a minority juror

1           would be more sympathetic to a minority  
2           defendant, that that would be a reason -- an  
3           improper reason for the State to attempt to  
4           remove him from the jury. We don't have a  
5           minority defendant here.

6           But I'm certainly not basing my decision  
7           entirely on that. As I recognize -- or as the  
8           case law dictates, the defense can raise the  
9           issue here. But to the Court, it adds additional  
10          credibility to the State's argument that it made  
11          the request it did, or made the decision it did,  
12          on a race neutral basis.

13          I believe in the State's argument it  
14          emphasized the criminal record element of the  
15          father more than the second reason, but that's an  
16          additional reason which the State could have  
17          used. I'm focusing more in my decision on the  
18          reasonable grounds to suspect untruthfulness on  
19          the questionnaire.

20          So, the Court will deny the defense  
21          motion in this case. With that, is there  
22          anything else either party wishes to raise before  
23          bringing the jurors back?

24           ATTORNEY BUTING: Judge, just -- just one  
25          thing, real quickly, I want to put on record. In

1 speaking with Mr. Gahn today, it appears there may  
2 be some confusion over what the Court's order on the  
3 test -- the test of the samples for this EDTA, or  
4 whatever. My understanding was that the State would  
5 preserve sufficient sample of the vial of blood for  
6 any defense testing and that we would get sufficient  
7 sample of the actual RAV 4 stains that were being  
8 tested by the FBI.

9                   Mr. Gahn was under the impression that  
10 any other stains in the RAV 4 that had not been  
11 tested or that would be -- would satisfy that  
12 part of it. I just want to put on the record  
13 that I disagree with that. I think the defense  
14 needs to have half of the actual stains that are  
15 being tested -- actual stains from the RAV 4 that  
16 are being tested and about which any opinion  
17 might be given by the FBI.

18                   And I believe that was what we discussed  
19 in court. It's not clear in the hand -- or the  
20 written order, which was handed to me in the  
21 middle of jury selection, but I think that's what  
22 we anticipated.

23                   THE COURT: Mr. Gahn.

24                   ATTORNEY GAHN: I will just state that I  
25 don't know if I'm disagreeing with Mr. Buting at

1           this point or not. All I know is that I do recall  
2           that we talked about splitting the blood vial  
3           evidence. But there are five blood stains from the  
4           RAV 4.

5           Three of them were -- And of those 5,  
6           DNA testing was done and each of the five showed  
7           to be the blood of Steven Avery. Three of those  
8           five have been sent to the FBI. The FBI may be  
9           taking one of those and I will find that out  
10          hopefully before noon. They may be consuming one  
11          of them. They don't know.

12          But I do know that my understanding of  
13          the order was we would preserve sufficient sample  
14          of blood stains from the RAV 4. I know for sure  
15          we have got four that are preserved. Whether one  
16          of them maybe consumed, that's kind of up to the  
17          tester. So I, whatever, if it is, then I will  
18          ask them to find a larger stain, see if we can  
19          cut it in half and then I will ask them to test  
20          that one too. I mean, I don't know if there is  
21          disagreement here yet or not.

22          THE COURT: The focus at the argument was  
23          on splitting the blood vial sample; I recall that.

24          ATTORNEY GAHN: Right.

25          THE COURT: I -- All I will say is, I think

1           it's important if this line of examination is  
2           pursued, for the defense to also have an opportunity  
3           to perform testing on blood that was found in the  
4           vehicle. Sitting here as the judge and not an  
5           expert in the analysis of blood, I'm not going to be  
6           issuing orders about whether or not a blood stain  
7           can be split -- a particular blood stain can be  
8           split because, frankly, I don't know if that's  
9           scientifically possible.

10           The Court's ultimate concern would be  
11           the element of fairness. And I think its  
12           important that in some scientific fashion that  
13           both parties get a chance to analyze the blood  
14           sample in the car to the extent that's feasible.

15           ATTORNEY BUTING: Well, Judge, I just want  
16           to be very clear on the record, because it is my  
17           understanding and I think it was clear before, that  
18           in order for fairness to be preserved here, we -- it  
19           is not enough to say we get some other sample. We  
20           need half of these stains that the FBI is going to  
21           be testing, because the EDTA levels will vary  
22           depending upon where in the car, what the substrate  
23           is, fabric, medal, whatever. And that was a big  
24           issue in the **Cooper** case and so that's why I want to  
25           make sure that that's clear that that's a concern

1 for us here.

2 THE COURT: All right. Let's do this.

3 Mr. Gahn, you check with your folks at the FBI and  
4 see if it's feasible to split a sample of a stain or  
5 stains in the vehicle. If the parties still have an  
6 agreement, you can come back to court, but I just  
7 don't feel I have enough information in front of me  
8 to address a difference of opinion if there is one.

9 Is there anything else before we bring  
10 back the jurors who have been selected? And I  
11 take it, that based on the Court's decision  
12 denying the defendant's **Batsen** motion, the jurors  
13 who are not selected can now be released?

14 ATTORNEY STRANG: Yes.

15 THE COURT: Okay. Very well. Janet, can  
16 you have them bring in the jurors? You can let  
17 Linda know the other jurors can be released.

18 THE CLERK: They are not going to be in any  
19 order.

20 THE COURT: They don't have to, we can put  
21 14 in the box and then the extra two in front.

22 (Wherein the jury panel was brought in.)

23 THE COURT: You may be seated. Members of  
24 the jury panel, and I'm going to address you that  
25 way because you have not been sworn as jurors yet,

1           that will happen on Monday. I will be giving you  
2           some preliminary instructions on Monday and one of  
3           them will include what you just experienced, which  
4           is, from time to time the jurors may be excused from  
5           the courtroom for the Court to hear arguments from  
6           the parties.

7                         For purposes of this morning's  
8           proceedings, in just a minute the Court is going  
9           to excuse you for the day. But while you are  
10          back in the jury room you will be receiving  
11          instructions concerning transportation  
12          arrangements for Monday, when the trial is  
13          scheduled to begin. If you have any questions  
14          concerning any of those arrangements, please pass  
15          them on to the bailiff. And if necessary, they  
16          will be addressed by the Court.

17                         Before I excuse you today, I want to  
18          again stress that you are to make certain that  
19          you have no exposure to any media coverage of the  
20          trial until you reach your verdicts in this case.  
21          As I have previously informed you, the jury will  
22          not be sequestered during this trial, but that  
23          decision is dependent on your commitment that you  
24          will not listen to, watch, or read any news  
25          accounts of the case during trial, nor discuss

1                   the case with anyone, including members of your  
2                   family or other jurors.

3                   For these reasons, I'm going to order  
4                   that for the duration of the trial, you simply  
5                   not watch the local news on television. Do not  
6                   listen to the local news on the radio. And do  
7                   not read the newspaper unless you first have  
8                   someone remove any articles about this case from  
9                   the paper. That is of vital importance.

10                  In addition, and I think one of the  
11                  jurors brought this up in voir dire, using the  
12                  mute button should a promo or something come on  
13                  TV while you are watching another show or  
14                  anything regarding this case. Please take those  
15                  type of steps to consciously avoid any exposure  
16                  to the case that may inadvertently be presented  
17                  to you during the course of the trial.

18                  If you are inadvertently exposed to any  
19                  information about this case during the trial,  
20                  please notify the jury bailiff. At this time,  
21                  I'm going to excuse you for today, subject to the  
22                  transportation instructions you will be receiving  
23                  shortly.

24                  ATTORNEY FALLON: Your Honor, one other  
25                  reminder about the internet access as well.

1                   THE COURT: Oh, I did not include internet  
2 access, but that would also be exposure to the case  
3 which is prohibited. Do not look on the internet  
4 for any information about this case. Thank you, Mr.  
5 Fallon.

6                   (Jury panel not present.)

7                   THE COURT: Counsel, is there anything else  
8 before we adjourn to Chilton this afternoon.

9                   ATTORNEY STRANG: One brief thing, which  
10 is, given how long this ran this morning, I'm  
11 wondering if we could push back to 1:30 this  
12 afternoon; I have to get the materials for that  
13 hearing back in Appleton.

14                  THE COURT: Okay. I do have one request;  
15 do the parties have any idea how long they think the  
16 proceedings may take this afternoon? I know -- I  
17 assume there's going to be -- or I was led to  
18 believe there would be some evidence regarding the  
19 motion about the materials the State wishes to  
20 present during the opening.

21                  ATTORNEY KRATZ: That's the smallest part,  
22 Judge, the admissibility hearing on the  
23 demonstrative evidence. And Mr. Austin from the  
24 State Patrol will be available for live testimony in  
25 that regard.

1                   We do have some other matters that --  
2                   both as to opening statements and some other  
3                   evidentiary matters. With -- with my best guess,  
4                   Judge, we should be out of there by, if we start  
5                   at 1:30, by 3:30 or 4:00, if that would please  
6                   the Court.

7                   ATTORNEY STRANG: I'm guessing a little bit  
8                   longer. I would have guessed the computer generated  
9                   animation hearing, between testimony and argument  
10                  might go an hour and a half or even two,  
11                  conceivably. And there will be some substantial  
12                  discussion on the preliminary jury instructions.

13                  And I will try to catch up with counsel  
14                  for the State before -- if I can, before we get  
15                  to that, just to see whether there's areas of  
16                  agreement on the substantive part of the  
17                  preliminary jury instructions.

18                  THE COURT: Okay. All right. We'll see  
19                  you at 1:30 in Chilton.

20                  (Noon recess.)

21                  (Proceedings reconvened at Calumet County Courthouse.)

22                  THE COURT: At this time the Court calls  
23                  State of Wisconsin vs. Steven Avery, it's Case No.  
24                  05 CF 381. This matter is scheduled for a motion  
25                  hearing this afternoon. Will the parties state

1                   their appearances for the record, please.

2                   ATTORNEY KRATZ: State appears by Calumet  
3                   County District Attorney Ken Kratz, also by Tom  
4                   Fallon with the Department of Justice.

5                   ATTORNEY STRANG: Good afternoon. Steven  
6                   Avery in person and Dean Strang on his behalf.

7                   THE COURT: All right. And we're here this  
8                   afternoon I believe, first, to hear a motion filed  
9                   by the defendant to exclude the use of computer  
10                  generated animations in the State's opening  
11                  statement, for purposes of today; is that correct?

12                  ATTORNEY KRATZ: Judge, the issue is the  
13                  admissibility of the animations, generally. There  
14                  is a second issue that needs to be decided regarding  
15                  images that would be used in opening statements both  
16                  by the State and the defense. They are related in a  
17                  sense, but the admissibility hearing regarding the  
18                  demonstrative evidence generally, and the computer  
19                  generated scene images, as well as animation,  
20                  specifically, will need to be ruled on by the Court  
21                  this afternoon.

22                  THE COURT: All right. Mr. Strang, it's  
23                  your motion I will let you add to that if you wish.

24                  ATTORNEY STRANG: Well, I agree with  
25                  Mr. Kratz and, indeed, it is simpler than that.

1           What we ought to deal with is just the admissibility  
2           of the computer generated animations. Because if,  
3           or to the extent they are admissible, then, of  
4           course, there is no objection to Mr. Kratz using  
5           images from them in his opening statement.

6           I say of course, I mean, I guess that  
7           doesn't necessarily follow, but it is a fact here  
8           that if the underlying animations are admissible,  
9           I don't have a quarrel with him using a few  
10          slides from them in his opening statement. And  
11          he already has shown me those that he wishes to  
12          use.

13           ATTORNEY KRATZ: I'm sorry, Judge, just to  
14          complete that point, there is the more global  
15          question, though, if there are any other objections  
16          to images that I have proposed in openings, I just  
17          simply wanted to make a record of that before  
18          Monday, otherwise we're ready to proceed.

19           THE COURT: All right. You may proceed.

20           ATTORNEY KRATZ: Judge, I have heard at  
21          least from one member of my staff that at least the  
22          Court's microphone isn't picking up very well in the  
23          house. This is probably a good opportunity to set  
24          volume levels and the like. We can do that during  
25          the hearing, of course, but I at least wanted to

1           alert the Court that it's a little quiet, at least  
2           for the house, the people behind us, not being able  
3           to hear very much.

4           THE COURT: My recollection is that  
5           somewhere there is a remote control device around  
6           here that allows me to control the volume, but I'm  
7           not sure where it is.

8           SHERIFF PAGEL: One should be yours, two,  
9           the clerks, three is the -- four and five should  
10          be --

11          ATTORNEY KRATZ: One is the bench.

12          THE COURT: Number one is the bench.

13          ATTORNEY KRATZ: That's much better  
14          already.

15          THE COURT: Is that satisfactory?

16          ATTORNEY KRATZ: Perfect.

17          THE COURT: Wonderful.

18          ATTORNEY KRATZ: Thank you, Judge. The  
19          State will call Tim Austin to the stand.

20          ATTORNEY STRANG: While Mr. Kratz is  
21          setting up, there was an issue Mr. Fallon suggested,  
22          which is keeping media cameras off of the laptop  
23          screens of counsel for both sides. I don't know if  
24          that's already covered by the media order or if we  
25          need to address it.

1                   THE COURT: I don't have a copy of the  
2 media order in front of me, but I know it referred  
3 to materials that counsel use on their table. And I  
4 will indicate today that if the order as written  
5 does not specify images on laptop computers it's  
6 meant to apply to all materials on the table, and  
7 that specifically includes laptop computers.

8                   ATTORNEY KRATZ: Tim.

9                   THE CLERK: Raise your right hand.

10                  **TROOPER TIMOTHY AUSTIN**, called as a  
11 witness herein, having been first duly sworn, was  
12 examined and testified as follows:

13                  THE CLERK: Please be seated. Please state  
14 your name and spell your last name for the record.

15                  THE WITNESS: My name is Timothy Austin,  
16 A-u-s-t-i-n.

17                  ATTORNEY KRATZ: Mr. Austin, if you could  
18 pull the microphone down towards you. Would you  
19 once again state your name for the record.

20                  THE WITNESS: Yes, sir. My name is Timothy  
21 Austin.

22                  DIRECT EXAMINATION

23 BY ATTORNEY KRATZ:

24 Q. Mr. Austin, how are you employed?

25 A. I'm employed as a trooper with the Wisconsin

1                   State Patrol.

2 Q.     How long have you been a state trooper?

3 A.     I have been with the patrol since July of 1996,

4                   about 10 1/2 years.

5 Q.     And do you have any specific responsibilities

6                   with the State patrol?

7 A.     Yes, I'm assigned to the Wisconsin State Patrol

8                   Academy, to the Technical Reconstruction Unit.

9 Q.     Mr. Austin, have you brought with you here a

10                  document which is known as a curriculum vitae?

11 A.    Yes, sir, I have.

12 Q.    And for lack of a better term, is the common

13                  knowledge of this kind of a document called a

14                  resume, or something like that?

15 A.    Yes, they are. Essentially outlines my training

16                  and experience in the field of reconstruction

17                  activities.

18 Q.    I have handed you what's been marked for

19                  identification as Exhibit No. 1; could you tell

20                  us what that is, please?

21 A.    Yes, sir, this is the document you referred to.

22                  It's my curriculum vitae that goes over my

23                  education, training, certification.

24 Q.    And at least for purposes of this hearing, if you

25                  could just briefly indicate whether or not you

1 have a specific education, training, and  
2 experience that permits you, on behalf of the  
3 State Patrol, to create images for use not only  
4 for investigative purposes, but for use in court  
5 proceedings?

6 A. Yes, sir. I hold certification as an instructor  
7 in the field of forensic mapping and the use of  
8 Total Station technology for collecting  
9 measurements at scenes.

10 Q. Mr. Austin, in this case, were you asked on  
11 behalf of the State of Wisconsin to assist in  
12 creation of images at or near a property known as  
13 the Avery Salvage Yard?

14 A. Yes, sir. I was contacted to provide forensic  
15 mapping services ultimately leading to the  
16 creation of scale diagrams and three dimensional  
17 models.

18 Q. When did you first become involved in this case?

19 A. Without referencing my notes, I believe it was  
20 November 5th, 2005.

21 Q. The same day that the law enforcement personnel  
22 took control of the Avery property, executed  
23 search warrants, and otherwise began their search  
24 efforts; is that right?

25 A. Yes, sir. That's correct. It was late in the

1                   afternoon on that day when I was contacted.

2   Q.  Mr. Austin, did you then spend time on the Avery  
3       salvage property itself and did you in fact take  
4       some measurements and perform other duties which  
5       allowed you to create these images?

6   A.  Yes, sir.  For the next approximately seven days,  
7       myself and a team of law officers forensically  
8       mapped and measured the entire Avery Salvage Yard  
9       property.

10   Q.  To assist the Court and counsel in providing your  
11       testimony today, I'm going to have you refer to  
12       the image that has been portrayed on the screen.  
13       Can you tell us what we're looking at, please?

14   A.  What you are looking at is an aerial photograph  
15       that I believe was taken by State Patrol Pilot,  
16       Trooper Dennis McConnell.  It shows the Avery  
17       salvage yard property referred to before and some  
18       of the surrounding properties and landscape.

19   Q.  Now, so the Court understands where some of these  
20       images are going to be coming from, you provided  
21       counsel, that is the prosecution and the defense,  
22       as well as a copy for the Court, of some figures  
23       or images that ultimately have made it's way into  
24       a binder of yours; is that correct?

25   A.  Yes, sir, that's correct.  This is one of many

images that I put in a document entitled a Forensic Mapping and Scenery Construction Report.

Q. To complete the record, Mr. Austin, I have handed you what's been marked as Exhibit No. 2. Can you tell us what that is, please.

A. Exhibit 2 is a DVD containing my narrative report, digital photographs taken by myself and other State Patrol Officers, and other logs documented by the State Patrol. Essentially, the

0 All right Did you bring that binder with you?

A. Yes, sir. I have a black and white copy.

Q. Can you just hold it up for us and show us what you are talking about.

A. This binder here is the one I'm referring to.

Q. So Exhibit No. 2 is a electronic version of all the information that's included in that binder. And again, the relevant portions, other than some of the measurements and the like, but at least the figures that you will be referring to have all been provided to counsel and the Court; is that your understanding?

A. Yes, sir, that's correct.

24 ATTORNEY KRATZ: Okay. Just to - so that I  
25 don't forget, more than anything else, Judge, I am

1                   going to move for the admission of Exhibits 1 and 2  
2                   at this time?

3                   ATTORNEY STRANG: No objection.

4                   THE COURT: All right. Those exhibits are  
5                   admitted. I have one question, has -- or maybe it's  
6                   still coming -- has the image that we're looking at  
7                   on the screen been identified in some fashion yet?

8                   ATTORNEY KRATZ: It has not, Judge. It is  
9                   about to be.

10                  THE COURT: Very well. Go ahead.

11                  ATTORNEY KRATZ: Mr. Strang indicates,  
12                  Judge, that my mike should be up a little bit as  
13                  well as Mr. Austin's. This is probably the time --

14                  SHERIFF PAGEL: I think three would be for  
15                  Mr. Austin.

16                  THE COURT: And State should be 4 or 5.

17                  ATTORNEY KRATZ: Mine says mike 4  
18                  underneath, Judge.

19                  ATTORNEY STRANG: Mine is mike 5.

20                  THE COURT: I'm hearing some type of  
21                  buzzing periodically. I don't know if it's coming  
22                  over the sound system or where, but if it's not  
23                  bothering the parties, we'll proceed.

24                  ATTORNEY KRATZ: I think what happens,  
25                  Judge, with this sound system, when you talk, as you

1           might know, our microphones cut out. When the Court  
2           talks, they don't want anybody else talking at that  
3           time, which is probably a good idea. But I think  
4           the system then picks up yours, if we overlap a  
5           little bit. And I think that's what's causing that,  
6           but we'll move forward.

7       Q.    (By Attorney Kratz)~ Mr. Austin, are you able  
8           then to -- With the image that we're referring to  
9           here, are you able to find that figure and could  
10          you please identify that in your materials?

11      A.    Yes, sir. May I reference my binder?

12      Q.    Please do.

13      A.    If I may, sir.

14      Q.    Go ahead.

15      A.    That photograph is Figure 3, which appears on  
16          Page 10 of my narrative report.

17      Q.    So at that scene that you have identified as the  
18          Avery salvage property, then, I think you began  
19          telling us that you took some measurements. Can  
20          you tell us about that.

21      A.    Yes, sir. The bulk of the measurements were  
22          taken using an electronic device called a Total  
23          Station, that's made by a company called  
24          Geodimeter?

25      Q.    Can you spell that for us.

- 1 A. Yes, sir, G-e-o-d-i-m-e-t-e-r.
- 2 Q. What is Total Station?
- 3 A. Total Station essentially is an electronic
- 4 device. It measures distance and angles to
- 5 document an objects position in 3D space,
- 6 basically measures along an X, Y, Z access on a
- 7 standard coordinate system.
- 8 Q. What is Total Station typically used for in your
- 9 line of work, if you understand what I'm asking
- 10 you?
- 11 A. The Total Station, we utilize that in the
- 12 reconstruction unit for taking measurements at
- 13 both crash and crime scenes.
- 14 Q. You mentioned that Total Station assists in
- 15 taking measurements, can you very briefly tell us
- 16 how that occurs.
- 17 A. Are you asking me how the instrument works, or
- 18 how it records measurements?
- 19 Q. Sure.
- 20 A. Essentially, the instrument locates itself, if
- 21 you will, in 3D space. And then, if I'm taking a
- 22 measurement to you, Mr. Kratz, the instrument
- 23 recognizes that it's going say -- turning 90
- 24 degrees towards you, an elevation of maybe down
- 25 two degrees. The instrument recognizes that

1 change in elevation or change in angle and then  
2 assigns or calculates what your coordinates would  
3 be in relationship to me.

4 Q. I see. So, it isn't just simply a tape measure,  
5 me to you, that would be one access, if you will,  
6 but it's actually a three dimensional measurement  
7 that is being taken; is that correct?

8 A. Yes, sir, that's correct.

9 Q. So, in lay terms, is that even more accurate than  
10 a tape measurer or a one dimensional measuring  
11 device?

12 A. When you look at adding in the operator factor,  
13 if you will, yes, the Total Station is going to  
14 be more accurate than if we had strung out, you  
15 know, a thousand foot of tape at the Avery  
16 salvage lot.

17 Q. All right. How many days were you involved in  
18 taking measurements at the Avery property?

19 A. May I, again, reference my notes.

20 Q. Sure.

21 ATTORNEY STRANG: The witness ought to feel  
22 free to look at whatever he needs, whenever he  
23 needs.

24 THE COURT: Very well.

25 THE WITNESS: Thank you, sir.

1 A. We began the mapping on November 5th and finished  
2 the mapping at the Avery property on  
3 November 12th.

4 Q. So that was really the entire time that law  
5 enforcement had control of the property; is that  
6 right?

7 A. Yes, sir.

8 Q. You mentioned that during that time frame you  
9 were involved in taking these measurements  
10 individually. How many of those days were you  
11 personally out there, if you remember?

12 A. I believe that I was there for six of those seven  
13 days.

14 Q. And during that time, Trooper Austin, do you know  
15 how many individual measurements were taken  
16 through and by use of this Total Station process?

17 A. Yes, sir, there were over 4100 measurements taken  
18 at the Avery Salvage Yard.

19 Q. I assume, based upon what you know of Total  
20 Station and your use and the certifications for  
21 that piece of equipment, you have an opinion as  
22 to its accuracy?

23 A. Yes, sir. My opinion is that Total Station is  
24 obviously very accurate. In fact, the maximum  
25 induced error that an instrument gives us is only

1 about three seconds.

2 To explain, a circle is divided into 360  
3 degrees. Each degree is divided into 60 minutes.  
4 Each minute is divided into 60 seconds. The  
5 Total Station is accurate to within three  
6 seconds.

7 Essentially, in this particular case,  
8 our longest shot is about 1200 feet. That comes  
9 out to be an accuracy of about less than half an  
10 inch.

11 Q. After the measurements are obtained by you, and  
12 after the data is compiled, could you tell me the  
13 first step in the creation of images. And let's  
14 first talk about two dimensional images.

15 A. Certainly. The Total Station stores it's data  
16 internally in its on board data collector. We  
17 download the data from the Total Station and we  
18 bring it into a computer aided drawing program.  
19 In this case, we used a software program called  
20 CAD Zone to begin processing that information.

21 Q. I'm going to, once again, direct your attention  
22 to the in-house screen. We have to come up with  
23 a better name for that as we go through the  
24 trial. If you could tell me what figure we're  
25 looking at here and if this is an image that may

1           better describe a two dimensional drawing or  
2           representation that's created.

3       A. Yes, the particular picture, if you will, you  
4           have on the board is Figure 4 from my narrative  
5           report. What this shows is the two dimensional  
6           view, meaning it is straight or completely  
7           orthogonal, looking straight down on this portion  
8           of the Avery Salvage Yard?

9       Q. I'm sorry, do you have a laser pointer with you?

10      A. No, sir, I do not.

11      Q. I'm going to give you mine.

12      A. Thank you.

13      Q. Trooper Austin, please feel free to use that as  
14           you are describing things so we can better  
15           understand what you are talking about. Go ahead.

16      A. Sir, if I -- if I may, do you have Figure 5? It  
17           might be easier to help explain this.

18      Q. I'm sure I have everything.

19      A. What I have asked you to do is essentially zoom  
20           out and look at the entire Avery property that  
21           was diagrammed and mapped. The portion you  
22           showed us before, which was Figure 4, is a  
23           closeup of this upper northeast corner, which is  
24           the primary business buildings, if you will, for  
25           the Avery Salvage Yard.

1                   So if you want to go back to Figure 4,  
2                   at least we know now what portion of the main  
3                   diagram it is from. So, now, we essentially zoom  
4                   in on that northeast corner and we can see this  
5                   would be the main road coming in. This is a  
6                   gravel driveway, if you will, that runs east and  
7                   west.

8                   Here is a storage building, the main  
9                   shop, and here's a private residence. So we have  
10                  taken a small portion of that area that was  
11                  mapped and, now, looking at our diagram, straight  
12                  from above, looking down at a specific corner of  
13                  it.

14                  Q. Now, diagrams like this, two dimensional  
15                  diagrams, is that what are commonly used in  
16                  trials or when there are triers of fact, to help  
17                  juries or judges understand evidence?

18                  A. Yes, sir. We very commonly use two dimensional  
19                  diagrams such as this to help show the scene or  
20                  show where objects are or distances of particular  
21                  items.

22                  Q. Although this is much nicer, the concept really  
23                  isn't any different than a blackboard or a  
24                  chalkboard that might be used to help describe,  
25                  or help understand some evidence; is that fair?

1       A. As technology has evolved, we have moved from the  
2           chalkboard, to the easel, to two dimensional  
3           diagrams. And as technology continues to  
4           improve, we're going to move ahead also.

5       Q. Let's move ahead today, then. After your two  
6           dimensional images are created, are you able to,  
7           then, with the Total Station and the measurements  
8           that are gained therefrom, create three  
9           dimensional modeling?

10      A. What I discussed, the Total Station, a few  
11           questions ago, I mentioned that the Total Station  
12           measures in 3D space. That's the X coordinate, Y  
13           coordinate, and now the Z coordinate, which gives  
14           us height or elevation to objects.

15           So we have the information there, just  
16           that we now bring that data into a second  
17           computer program. This one is called forensic  
18           3D, which allows us to draw or create diagrams in  
19           3D space, so we can add that height, elevation  
20           element to objects.

21      Q. I'm going to, once again, direct your attention  
22           to the screen, ask if you can tell us what this  
23           figure is, what it shows, and how it helps  
24           explain your process?

25      A. This is Figure 8 from my narrative report. It's

1       on Page 14. This shows an unrendered three  
2       dimensional image. When I say unrendered, what I  
3       mean is, it does not have any textures applied to  
4       three dimensional surfaces. As you can see, our  
5       garage building, our vehicles are white. They  
6       essentially haven't been painted, if you will. I  
7       haven't applied any type of textures to those  
8       objects.

9       Q. The application of the texture, then, how is that  
10      process created?

11      A. In many cases, the software will allow us to take  
12       a photograph of a particular texture. What I  
13       mean by that, if I was diagramming this desk, I  
14       could take a photograph of the wood and paste  
15       that wood, that photo of the wood, on the model.

16                  In this case, in this particular garage,  
17       we photographed the siding on that garage so that  
18       we could apply it to our three dimensional model.

19       Q. And so you aren't only guessing at what the  
20       different colors and the different textures of  
21       objects are, but you take them from images that  
22       you retrieve from the property; is that right?

23      A. In most cases. I don't like the word guessing,  
24       because there are some that I did apply textures  
25       from a personal library. For example, the paint

1           on the truck, I did not photograph the paint on  
2           that particular truck. I applied a general black  
3           car paint texture to it. What we do see on the  
4           garage --

5 Q. By the way, what figure are you referring to now?

6 A. I'm sorry, this is Figure 9. It's the same  
7           image; however, it has now been rendered in the  
8           software. Again, what we do see here, however,  
9           is that texture mapping process on the garage  
10          building.

11 Q. Your three dimensional modeling, could you  
12          describe, not just in this case, but in other  
13          cases that you have been asked to testify and  
14          other cases that your colleagues have been asked  
15          to testify, what is the advantage of 3D modeling  
16          versus the two dimensional images that we saw, as  
17          a jury or a trier of fact may consider?

18 A. When we look at two dimensional image, again,  
19          we're just looking straight down on that  
20          particular area. What's difficult for us to  
21          appreciate, any type of spacial relationship or  
22          geometric perspective, if you will.

23           In other words, we don't know, or it's  
24          more difficult to actually visualize how that  
25          scene looked, or how objects are related to each

1           other. When we now take that into a three  
2           dimensional model, we can get a better  
3           understanding of how that scene looked or how  
4           objects are, again, in relationship to each  
5           other.

6       Q. All right. You were asked, then, by the State,  
7           by the prosecution, to take these 4100 plus  
8           measurements, all of the data, including all the  
9           photographs that you both obtained, and viewed,  
10           and created some modeling for us; is that right?

11      A. Yes, sir. I have to add, though, we did not  
12           model the entire Avery property in 3D.

13      Q. Why not?

14      A. I think I would still be working on it today if I  
15           modeled that in 3D.

16      Q. All right.

17      A. Also, the work that I did was under the direct  
18           supervision of the lead investigators or  
19           yourself. And it was determined that we probably  
20           really don't need the entire property done in  
21           three dimensions.

22      Q. Now, because this is a adversary system, in other  
23           words, because there's the defense, and the  
24           prosecution, is it typical for one side or  
25           another to ask you or direct you to create images

1                   for use at trial?

2       A. Yes, when you look at the work that I did, and I  
3                   know we're going to get deeper into this, but  
4                   there are evidentiary areas that I don't  
5                   necessarily know about. And I need that  
6                   guidance, for persons to tell me what is  
7                   important, and what is not important, in a  
8                   diagram.

9                   It's very typical for one side to tell  
10                  me what they would like to see. Many of these  
11                  exhibits I designed to assist others, in  
12                  explaining to you, or to a jury, what it is that  
13                  they did out there at the scene.

14      Q. Let me just talk about that just briefly. So,  
15                  other than you showing, if you will, or being  
16                  able to show the jury the scene itself, did we  
17                  ask you to provide or create these images to  
18                  allow investigators or law enforcement officers  
19                  that found evidence, or even other experts, to  
20                  use those images to better explain or describe  
21                  the evidence that they may have found, or their  
22                  testimony.

23      A. Yes, sir. It's one thing to be able to, if you  
24                  will, sit in this box and verbally explain where  
25                  something was positioned. But to be able to

1 physically show that geometric relationship; in  
2 other words, where it is compared to other  
3 objects, helps persons to better understand where  
4 these items are located, where they are in  
5 relationship to other items.

6 Q. Let's talk about some interiors first, all right.  
7 And you were asked to do some modeling, not just  
8 in the yard itself, or in the exterior -- or is  
9 it easier to talk about exteriors first?

10 A. It's your option, sir.

11 Q. Doesn't matter to you, I'm sure. All right.  
12 Let's talk about some interiors. I'm going to  
13 show you Figure No. 31. Let's talk about what  
14 we're looking at here, first.

15 A. Sir, this is Figure 31, found on Page 32 of my  
16 narrative report. What we're looking at here is  
17 an overview of a residence that was on the  
18 salvage yard property. And what I have done with  
19 this particular model is, I have hidden the roof.  
20 In other words, if the roof is a layer, I turned  
21 the roof off, so that we can see all of the rooms  
22 together.

23 Q. Let me just stop you there. I'm sure Mr. Strang  
24 and I at some point will establish the  
25 foundation, but Exhibit 31, we're looking at

1           Steven Avery's residence?

2   A. Yes, sir.

3   Q. All right. Go ahead.

4   A. Again, what I have done is taken the roof off, or  
5        rather, hidden the roof from the model so that we  
6        can look at all the various rooms that are inside  
7        of his residence. If you think of -- remember  
8        the old overhead projectors, you could lay one  
9        piece of plastic over it, and another, and  
10       another, essentially we have taken one off so  
11       that we can see what's underneath the roof in  
12       this case.

13   Q. Now, Figure No. 31 is an unlabeled, or a clean,  
14       if you will, image. Were you also asked, and did  
15       you provide labels, if the Court allows, and if  
16       the State, or whatever party actually wishes to  
17       present them, believes it would be helpful for  
18       the jury?

19   A. I provided you with two separate images, one  
20       being unlabeled, which we just saw on the screen,  
21       and I also provided you with one having labels,  
22       in other words, there's text and leader arrows  
23       identifying various rooms.

24   Q. What are we looking at now?

25   A. This is the image I just described. It is the

same one you had previously; however, this one has text and leader arrows identifying various rooms in the residence.

Q. And through all the images -- in fact, I'm going to have you look at, I think it's Exhibit No. 4. You have a packet of images up there, could you tell us what Exhibit 4 is.

A. Yes, sir, I believe these are those images that I provided you with. They are 4 by 6 prints of these rendered models. And there should be label versions and unlabeled versions in these envelopes.

Q. And for assistance of the Court and really trying to anticipate what the Court's direction may be, to me, to the State, in use of some of these images, you have created a hard copy, or a set of all of your figures, both labeled and unlabeled, so that a record can be made, that is, if some of the documents -- some of the images might be introduced and some may not, we're able to just put in the ones that are acceptable to the Court, and perhaps to counsel, as well; is that right?

A. Yes, sir, that's correct.

24 ATTORNEY KRATZ: Just to complete the  
25 record, Judge, although we will have originals, the

1           entire packet which has been provided to the Court  
2           in a 8 1/2 by 11 form, all those images are in  
3           Exhibit No. 4. I would ask the Court receive those  
4           for purposes of the record at this time.

5           THE COURT: Any objection?

6           ATTORNEY STRANG: None.

7           THE COURT: Those are received.

8 Q. (By Attorney Kratz)~ Now, other than the  
9        buildings including Mr. Avery's trailer, were you  
10      asked to do some interior renderings of  
11      Mr. Avery's garage?

12 A. Yes, sir.

13 Q. And could you tell me, if we look at one of those  
14      figures, direct me to one that might be helpful.  
15      Exhibit 41?

16 A. Yes, sir, Exhibit 41.

17 Q. I'm showing you what's been labeled, then, as  
18      Exhibit 41; what are we looking at?

19 A. Sir, Figure 41 is an overview of the garage that  
20      you asked about. Again, I hid or turned off the  
21      roof layer so we could see what's inside of that  
22      garage.

23 Q. I'm sorry, this is Figure 41, it might be from  
24      Exhibit No. 2, if I'm remembering correctly. Why  
25      don't you take the laser pointer and just very

1           briefly tell us the items that you have been  
2           asked to place inside of that garage?

3       A. Inside of the garage, there's a Suzuki Samurai  
4           vehicle that was in the garage when I completed  
5           the forensic mapping of that location. Next to  
6           that is a snowmobile. There's also a snowmobile  
7           on the opposite side of the Suzuki Samurai.

8                   And then around the border, around the  
9           walls here, we see various tools, if you will.  
10           There's a tool chest in the back. There's an air  
11           compressor. Next to that is a welder. There's a  
12           freezer and a filing cabinet in here. Various  
13           larger items that we can use to locate anything  
14           else we need to find in the garage.

15       Q. Let me ask you, Trooper Austin, without the  
16           assistance of this computer generated image,  
17           would a jury or a trier of fact ever be able to  
18           see something like this?

19                   ATTORNEY STRANG: That really is not a  
20           proper question.

21                   ATTORNEY KRATZ: I can ask it a different  
22           way perhaps, Judge.

23                   THE COURT: Go ahead.

24       Q. (By Attorney Kratz)~ The computer generated  
25           images, does it allow anybody, not just a trier

1           of fact, but anybody in the courtroom, to  
2           visualize a scene from an angle or from a  
3           perspective that the human eye could not?

4       A. That's why I believe that the three dimensional  
5           models are important. In this case, you know, we  
6           would never be able to have an overview of the  
7           garage interior without removing -- excuse me --  
8           removing the roof as we did in the three  
9           dimensional model.

10           The same with the house. And we can  
11           then move about in this model to gain other  
12           perspectives so that we can, you know, perhaps  
13           from a different viewpoint, look at those spatial  
14           relationships we discussed earlier.

15       Q. When talking about three dimensional, it is that  
16           relationship, that is, the relationship between a  
17           piece of evidence to a fixed object, or to a  
18           known location that's important; is that what  
19           your testimony was?

20       A. Yes, sir.

21       Q. All right. Let's talk about exteriors for just a  
22           moment. I'm going to have you -- have you look  
23           at Figure No. 10 and tell us what we're looking  
24           at?

25       A. Figure No. 10, Mr. Kratz, is an overview of the

1           entire area that I did model, in three  
2           dimensions.

3       Q.     Does that include what would be known as the  
4           Steven area -- excuse me -- Steven Avery  
5           residence and curtilage, as well as the Barb  
6           Janda and Dassey residence and area surrounding?

7       A.     In previous slides, we looked at a residence, in  
8           the interior, and that Steven Avery residence is  
9           over here. The garage we looked at is next to  
10          that residence.

11                   In terms of a directional relationship,  
12          in this particular view, north would be to the  
13          bottom of the screen. And, yes, I'm sorry, to  
14          finish your question, sir, the Barb Janda  
15          residence is over here on the left side of your  
16          screen, and her garage.

17       Q.     I'm going to have you look at just a couple of  
18          other images, Image No. 16.

19       A.     Yes, sir. Figure No. 16 is also from my report.  
20          Essentially, we have moved our camera to get a  
21          different perspective of the Steven Avery  
22          property. This allows us to see both the  
23          residence, the garage, as well as some other  
24          items I was asked to include in the model.

25       Q.     Were one of those items, or two of those items

1           that we're going to talk about, first of all, the  
2           van, the Dodge Caravan, I believe; is that shown  
3           in this image?

4       A. Yes, sir. The Dodge Caravan is this red colored  
5           vehicle down here in the lower left portion of  
6           your screen.

7       Q. For the Court's information and just as by way of  
8           offer of proof, the evidence in this case will be  
9           that was the vehicle that Teresa Halbach was  
10          asked to come and take a picture of. Were you  
11          also asked to include a burn barrel that was  
12          found, or that you took dimensions of, and  
13          measurements of, on this property?

14      A. Yes, sir. Both the mini-van and the burn barrel  
15          were in place when I did the forensic mapping, so  
16          they were located with the Total Station. The  
17          burn barrel you are referring to is over here on  
18          the right side of your screen.

19      Q. And not going into any detail, because that's  
20          what the trial is for, but was it your  
21          understanding that there is some evidence that  
22          was recovered from the interior of that burn  
23          barrel?

24      A. That is my understanding, sir.

25      Q. Now, as I understand, you're able to move the

1                   camera around, if you will. Figure No. 20 is an  
2                   example of that. Can you tell us what we're  
3                   looking at.

4       A. Sir, that is indeed Figure No. 20 from my  
5                   narrative report. What we have done from that  
6                   previous slide you had up is we have moved our  
7                   position further to the south. And we're now  
8                   looking to the northwest, to the back of the  
9                   trailer -- I'm sorry -- residence we discussed  
10                  before, and the back side of the garage, and  
11                  items that were identified to me as being of  
12                  evidentiary value, behind that garage.

13     Q. Although Figure 20 shows some of the same items  
14                  that Figure No. 16 would be, this is a different  
15                  angle and, again, something that the human eye  
16                  would not be able to accomplish; is that correct?

17     A. And we're moving in closer from that last point,  
18                  which allows us to see items in better or greater  
19                  detail as they have been modeled here. So, yes,  
20                  I do agree with you.

21     Q. Last example that I'm going to give you, and  
22                  again, these are just by way of example, Figure  
23                  No. 23, tell me what we're looking at.

24     A. Sir, this is Figure No. 23 from my narrative  
25                  report. We have moved further to the southeast,

1           where we were before, and looking at the back  
2           side of Steven Avery's residence. We're now  
3           looking at the backside of the Barbara Janda  
4           residence, and some other items back here that I  
5           was asked to include in the model.

6       Q. All right. Trooper Austin, a little bit out of  
7           your area of expertise by crash reconstruction  
8           and crime scene reconstruction, were you asked to  
9           assist another expert, an anthropologist in this  
10          case, in the creation some other images?

11      A. Yes, sir. I was asked to work closely and under  
12          Dr. Leslie Eisenberg, to create additional model  
13          images.

14      Q. Were you able to perform that task?

15      A. Yes, I physically met with Dr. Eisenberg in  
16          Madison and had lengthy communications with her,  
17          after meeting with her person, to create model  
18          images that would help her to explain her  
19          findings in this case.

20      Q. Now, I don't expect -- in fact, let me just ask  
21          you, much of what you were asked to create, did  
22          you know what it was that you were creating? I'm  
23          not sure how to ask that. Why don't you tell us  
24          how that process culminated.

25      A. Yes, I was asked to create the model, which is my

1           area of expertise. However, what she wanted me  
2           to assist her with was creating skeletal models  
3           so that we could point out locations of various  
4           bones. That is certainly outside of my area of  
5           expertise, that's why I worked closely with her,  
6           and directly under her, so she could explain, I  
7           would like a leader arrow pointing to this bone,  
8           and this bone is called a, and the name of that  
9           bone.

10          Q. All right. I have a figure on the screen, it's  
11           just the -- a picture of a female skeleton.  
12           We're not going to show these because that will  
13           be Dr. Eisenberg's area of expertise, but could  
14           you just briefly describe how these skeletal  
15           models were created?

16          A. The base skeletal model, that would be the one  
17           without any type of textures to it, I obtained  
18           from the FBI in Quantico, Virginia. They sent me  
19           a CD containing various skeletal models.

20           I chose the female skeleton as was most  
21           appropriate in this case. I then applied a bone  
22           texture to it, received approval from  
23           Dr. Eisenberg, and then met her in person to  
24           again show close ups or different bone locations  
25           on that model.

1 Q. All right. And, again, those have been created,  
2 provided to the Court and to counsel -- excuse  
3 me -- and are included in your images, both  
4 Exhibit No. 4, as well as Exhibit No. 2; is that  
5 correct?

6 A. Yes, sir. They are on the DVD I provided to you  
7 and they should be in the photographs also -- or  
8 the 4 by 6 images rather.

9 Q. All right. Let's leave the scene mapping or  
10 modeling then and let's talk a little bit about  
11 animations. Were you asked to create animations  
12 as well?

13 A. Yes, sir, I was.

14 Q. And could you tell us about that process, please.

15 A. To create motion, essentially we need numerous  
16 still images of those still renders. In fact, we  
17 need about 30 of them for every second of motion  
18 that we want to create. If you were to think  
19 back perhaps to a child's toy where we would have  
20 something in the corner and we flip through those  
21 pages and we see that object changing or going  
22 into motion, that's kind of what we're doing  
23 here. We're putting image, after image, after  
24 image to create that effect of moving through a  
25 scene.

1 Q. Now, in lieu of, or instead of taking the jury to  
2 the Avery salvage property in the middle of  
3 February, did I ask you to create a walk through,  
4 if you will, of the Steven Avery property, the  
5 Barb Janda property, and the surrounding  
6 curtilage?

7 A. Yes, sir, you did.

8 Q. And I know that we showed the Court your first  
9 draft of that, it was probably last week  
10 sometime; have you made some improvements to  
11 that?

12 A. Yes, sir, I have made some minor changes to that.

13 Q. I have given you another exhibit, I think it's  
14 Exhibit 3; is that right?

15 A. Yes, sir.

16 Q. Tell us what that is?

17 A. Exhibit 3 is the disk I gave you maybe an hour or  
18 so ago with the final version of the animations.

19 THE COURT: And for the record, Judge, I  
20 have given Mr. Strang his own version of that. And  
21 I will be asking that the Court accept Exhibits 3 --  
22 have I moved Exhibit 4, Janet, do you know?

23 THE CLERK: Yes.

24 ATTORNEY KRATZ: Yeah, Exhibit 3, then, I  
25 would offer at this point to complete the record.

1                   THE COURT: Any objection?

2                   ATTORNEY STRANG: Not for purposes of this  
3 hearing.

4                   THE COURT: That exhibit is admitted.

5 Q. As I play this animation, Mr. Austin -- or let me  
6 ask this first question, what improvements did  
7 you make, and how long did it take to create, and  
8 what kind of process was involved?

9 A. The version I gave to you last week, my draft  
10 version, was completed at 15 frames per second,  
11 meaning there were 15 images for every second of  
12 animation. I felt it looked somewhat choppy. I  
13 therefore re-rendered it at 30 frames per second,  
14 which gives it a much more fluid sense of motion,  
15 if you will.

16                  I also felt that in that draft the  
17 gravel did not appear as it should in the  
18 animation. Because the way the software looks at  
19 the reflection of light, the gravel essentially  
20 appeared to sparkle. I, therefore, changed the  
21 gravel texture so it doesn't have that reflective  
22 capability to it.

23 Q. Once again, this animation, as well as all of  
24 your other still images, do you believe that they  
25 will assist, not only the trier of fact, that's

1                   the jury, but other witnesses in explaining  
2                   evidence that's found or the relationship between  
3                   that evidence and fixed objects?

4       A. Mr. Kratz, as we put these 5200 pictures into  
5                   motion, or make them give that impression of  
6                   motion, that's going to help myself, you, jury  
7                   members, to be able to, again, see where items  
8                   are located to each other. As we go from one end  
9                   of the scene to the other, or then back around to  
10                  the backside, if you will, we're going to get a  
11                  better understanding of what exactly the geometry  
12                  is of that particular property.

13      Q. I'm going to play this DVD that's been created  
14                  and just invite you to chime in, if you will,  
15                  when that becomes appropriate.

16                   ATTORNEY KRATZ: The record should reflect,  
17                  Judge, that this is Exhibit No. 3. And I have asked  
18                  Mr. Austin to -- to narrate as we go through.

19      Q. Go ahead, Mr. Austin.

20      A. Mr. Kratz, what I have done is, I started at the  
21                  southeastern portion of that property, if you  
22                  will. And we're going to come in by those --  
23                  that Dodge Caravan, which as we talked about  
24                  before, was identified to me as being of  
25                  evidentiary value. We are then going to pause in

1 front of that Caravan and identify it using a  
2 beader, and that is text and arrow.

3 Q. Between this rendering and the one last week, did  
4 you also remove some things?

5 A. I did change some of the text and I will bring  
6 that up when we get to that point, what was  
7 changed from the previous version.

8 Q. All right.

9 A. Forgive me, I did forget to tell you this  
10 earlier, sir, another change I made is, I slowed  
11 down the camera as we pan across the top of the  
12 residence, so you will see it slightly slower as  
13 we move from room to room.

14 Moving from the Caravan to the Steven  
15 Avery residence, what we'll do is we'll fade that  
16 roof out so we can see the interior of that  
17 residence. Now, as we move between these rooms,  
18 this is one of the changes I made. It's a little  
19 bit slower than what you saw last week.

20 Q. As we're looking at all these images, how many  
21 separate images are we actually seeing?

22 A. There's over -- For the entire animation  
23 sequence, there's over 5200 images that were  
24 rendered to create this.

25 Q. How long did it take to create this?

1       A. I utilized three separate computers to try to  
2                  speed up the process. I started last Friday and  
3                  I finished last night.

4       Q. So any delay wasn't intentional on your part?

5       A. No, sir. Moving from the residence to the  
6                  garage, similar to the still image you showed us  
7                  before, Mr. Kratz, we're going to fade the roof  
8                  out so we can see the inside of the garage.

9       Q. If you haven't added any images, all these things  
10                 that we're seeing were there while you were  
11                 taking the measurements; is that correct?

12      A. That's correct. From here, Mr. Kratz, we're  
13                 moving from the overview of the garage. We put  
14                 the roof back on, if you will, and now we're  
15                 looking at items behind the garage. And I have  
16                 added -- these were in last week's version. I  
17                 have added labels identifying Steven Avery  
18                 residence and we see we are now at the Steven  
19                 Avery garage.

20      Q. The darker area to the left, would that be what  
21                 is known as the burn area, or where some other  
22                 very important items, including some bone  
23                 fragments were found?

24      A. Yes, sir, that's my understanding. We're now  
25                 moving to the southeast. We're going to go

1                   behind the Barb Janda property and we're going to  
2                   identify that residence, as well as the burn  
3                   barrels that were positioned behind that house.

4                   Those burn barrels were there. I did  
5                   the forensic mapping, so those have been -- their  
6                   location was mapped. This is one of the changes  
7                   in the text. Previous to today that said,  
8                   Janda/Dassey burn barrels. I have taken the  
9                   names off, so it just says burn barrels there.

10          Q. Some other witness may identify who actually had  
11                   control of those burn barrels; was that the  
12                   reason for that change?

13          A. Yes. From those burn barrels we're now moving  
14                   back to the front of the Steven Avery property  
15                   and we're going to show the geometric location of  
16                   the burn barrel position there. And, again, when  
17                   we show the text here, this previously stated  
18                   Steven Avery burn barrel, it now just states burn  
19                   barrel when she show that header.

20                   And this is, essentially, the end of the  
21                   animation generated here. We have seen those  
22                   images I discussed before, those 5,000 images,  
23                   and we're fading out to close off the animation.

24          Q. Now, this afternoon we're not going to show the  
25                   skeletal animations, but was roughly the same

process used to assist the jury, ultimately, and probably through the narration of either an anthropologist or a pathologist with what they believe is some important evidence found in this case?

6 A. Yes, the second animation you are referring to  
7 was generated in exactly the same manner. It's  
8 not as long, there's only slightly over 600  
9 images to generate that one. And I don't know if  
10 you viewed that last week, if you did, there are  
11 no changes to it at all. That one was not  
12 altered in any way.

13 Q. Finally, Mr. Austin, asked a little different way  
14 and perhaps in more technical jargon, are the  
15 images that you created, these computer generated  
16 images, true and accurate depictions of the items  
17 that are portrayed within them, at least to the  
18 best of your ability to create them?

19 A. Yes, sir.

20 Q. All right. For purposes of this admissible  
21 hearing, that's all I have of Mr. Austin. Thank  
22 you, Judge.

23 THE COURT: Mr. Strang.

24 ATTORNEY STRANG: Thank you.

25 | **CROSS-EXAMINATION**

1 BY ATTORNEY STRANG:

2 Q. And thank you, Mr. Austin. I just very briefly  
3 want to understand the Total Station a little bit  
4 better. When you say that device locates itself  
5 in space, is this through the assistance of a  
6 global positioning satellite?

7 A. No, sir. May I try to reexplain?

8 Q. Sure. Yes.

9 A. If I can. When I set the Total Station up, if  
10 you take a point directly underneath that  
11 instrument, essentially, that's our -- we call it  
12 a zero point. If you're to think back to say  
13 high school geometry, we have our X axis and we  
14 have our Y axis, and we also have our Z axis,  
15 which is our height. So that point directly  
16 below the instrument, that we have created is  
17 000. It will then will take the angle and  
18 distance to you, sir, and then it would recognize  
19 your position, then, both horizontally and  
20 vertically.

21 Q. Okay. And does it do that by laser?

22 A. Yes, sir.

23 Q. So, it's sending laser beam and then measuring  
24 the time back to a reflective surface or receptor  
25 on the Total Station?

1       A. We have a -- it's a two-man operation, if you  
2           will, sir. If the piece or the item we were  
3           measuring was over by you, or if you were  
4           standing by that, I would give you a prism, which  
5           is on staff, and you would hold that directly on  
6           that item, or directly over it, and, yes, it  
7           would reflect back from that prism.

8       Q. So, what it's measuring then is not the item, but  
9           the prism that someone is holding on or near the  
10          item you are trying to map?

11      A. Correct. The Total Station knows, or we tell it  
12          how tall it is by measuring it. We also tell it  
13          how tall the prism is so it mathematically  
14          calculates to compensate for that height. So it  
15          still -- it's measuring to the prism, but what it  
16          is determining is the coordinate to the item at  
17          the bottom of the staff.

18      Q. Okay.

19                   ATTORNEY STRANG: And I may need to have  
20                  the kind assistance of Mr. Kratz. May I call on  
21                  that?

22                   ATTORNEY KRATZ: Please.

23                   ATTORNEY STRANG: If we -- For example, if  
24                  we went to something with the four burn barrels  
25                  behind Barb Janda's trailer.

1                   ATTORNEY KRATZ: Give me the figure number,  
2                   Mr. Strang.

3                   ATTORNEY STRANG: I don't have the  
4                   foggiest.

5                   THE WITNESS: Mr. Kratz, can we look at  
6                   Figure 23.

7                   ATTORNEY KRATZ: You certainly can.

8                   THE WITNESS: It's on Page 24, would that  
9                   work, sir?

10                  ATTORNEY STRANG: Beautiful, just fine.

11 Q. (By Attorney Strang)~ The barrels themselves, as  
12                  they are modeled here, look like they are  
13                  supposed to have holes in them; is that right?

14 A. I applied a rust colored texture to them. I  
15                  don't believe it is supposed to depict holes. It  
16                  is supposed to depict just a rusty color.

17 Q. Just something you picked off the digital pallet  
18                  that the program provides?

19 A. There's a library, if you will, that's with it.  
20                  And I did pick a rust color to give the  
21                  impression that it's a rusty barrel.

22 Q. Okay. I thought when we were having our virtual  
23                  flyer one that I saw dark spots that I took to be  
24                  holes in the barrels. Maybe -- Maybe it was my  
25                  imagination of what the image was supposed to be.

1       A. If there were dark spots on there, and I think I  
2           do believe there are, it's designed just to --  
3           just to show an old barrel, not designed to show  
4           any type of hole.

5       Q. So, one who is looking at this and says, boy,  
6           gee, there look like a lot of holes in those burn  
7           barrels, is seeing something that's simply  
8           supplied by your imagination, or the computer's  
9           choice of replication of a background, or a color  
10          that you have selected?

11      A. For the barrel, could someone get that  
12           impression, from what you are telling me, yes.

13      Q. Okay. And I'm not trying to tell you, I'm just  
14           asking you. I mean if it looks like a hole, that  
15           doesn't mean there was a hole in the barrel?

16      A. Right. You said you got that impression so,  
17           obviously, somebody could, yes.

18      Q. Or I could have serious mental problems, I  
19           suppose. But setting that aside, if it looks  
20           like a hole, that doesn't mean there is a hole  
21           there?

22      A. In that case, again, that was a texture from a  
23           library designed to show -- in fact, I believe it  
24           was for -- simply for a burn barrel that I  
25           utilized.

1 Q. Excuse me?

2 A. The texture I assigned it was from a library for  
3 a burn barrel.

4 Q. Oh, okay. And just -- I'm just trying to get a  
5 better feel for the -- I'm particularly  
6 interested in the three dimensional process. You  
7 consistently use the term model to describe the  
8 images that you have created for the State. Why  
9 do you use the term model?

10 A. That's the term that's mostly used in the  
11 industry, if you will, the software program I'm  
12 using is generally used in the jewelry or marine  
13 or both design industries. And these are  
14 generally referred to as models. I could just  
15 the same refer to them as a three dimensional  
16 scaled diagram, perhaps it's just a term that's  
17 been instilled in me from when I received the  
18 training.

19 Q. Sure, but one thing you mean to denote by  
20 choosing the word model is that this is not a  
21 photograph in the sense that people have  
22 understood that term for the last 150, 160 years  
23 or so?

24 A. That's correct. No, I would never try to state  
25 this is a photograph of the scene. It's not.

1 Q. It's not a photographic depiction in the sense of  
2 something that is as accurate as a photograph  
3 might be?

4 A. I don't know if I agree with you on accurate, the  
5 geometry here, everything is accurate.

6 Q. And I'm with you on that. I'm with you on  
7 geometry and spatial relationships, okay. You  
8 and I don't have any quarrel at all, at least for  
9 now, about that, and I don't know that we ever  
10 will.

11                   But in terms of the details that a human  
12 eye might take in, a hole in a metal burn barrel,  
13 chipped paint on the side of the garage, graffiti  
14 on the side -- I'm not suggesting there was  
15 graffiti -- but graffiti on the side of a garage,  
16 a broken window pane, a lone leaf left on a tree,  
17 those sorts of visual details here, the model  
18 doesn't even purport to capture?

19 A. That's correct. No, you would see those in your  
20 crime scene photographs.

21 Q. So what the model is useful for, among other  
22 things I guess, but primarily, is showing us  
23 relationships in space, of one item to another,  
24 for example, true?

25 A. Yes.

1 Q. Okay. And does the model -- or does the Total  
2 Station, which you eventually download to the  
3 forensic 3D software, does the Total Station do a  
4 good job, for example, of capturing the  
5 circumference of the opening at the top of a burn  
6 barrel?

7 A. To map location of the burn barrel, each  
8 particular one, what I would do is, I would take  
9 three points on there. And I can use those three  
10 points in the CAD software to create a perfect  
11 circle, if you will. So, you know, I don't  
12 actually go around and go over every half inch  
13 with the prism. Three points, because that's  
14 what I need to create a circle.

15 Q. Okay. So if we look at the four burn barrels,  
16 what you have done with your partner who's  
17 holding the prism for you on the stick, is you  
18 have gone to three separate points on the top of  
19 each one of those four burn barrels?

20 A. Correct. There would be three points on each  
21 barrel, for those four there.

22 Q. Okay. And then the computer says, I know what to  
23 do now, I will create a perfect circle?

24 A. Well, I have to tell it to do that. You know, I  
25 will, essentially, in the software I have got

1           various options, editing, drawing tools,  
2           etcetera. I will tell it, I'm going to draw a  
3           circle and I'm going to give you three points. I  
4           then identify those three points and my circle is  
5           generated.

6       Q. Got it. So, again, within the limitations here,  
7           if what we were interested in knowing is, you  
8           know, how far from the side door on Barb Janda's  
9           trailer is the cluster of four burn barrels, this  
10          would be a very good tool for doing that,  
11          correct?

12      A. If I wanted to -- Are you asking me if I wanted  
13           to physically measure that distance using the CAD  
14           environment, or to get a perspective view?

15      Q. A perspective view.

16      A. Then, yes, I agree, this would be the tool.

17      Q. Okay. And, indeed, I suppose you could use the  
18           software to spit out the exact -- not spit out,  
19           but to tell you, if you were to run a cord line  
20           from the middle of the four burn barrels to the  
21           door knob on the side door of the trailer, we  
22           could get down to a fraction of an inch the  
23           distance of that cord line, correct?

24      A. Yes, we could.

25      Q. But as to what the burn barrels actually look

1           like to a human eye, or would look like in a  
2           photograph, we shouldn't be relying on the model  
3           to give us?

4       A. I agree.

5       Q. Now, if we go back, with Mr. Kratz's assistance,  
6           to Figure 9, is that possible?

7                   ATTORNEY KRATZ: Sure.

8       Q. Okay. Now -- And I'm also going to be interested  
9           in Figure 10 eventually. But on Figure 9, I see  
10          what looks to me like rather dramatic shadows of  
11          two lovely leafy trees, casting across the bottom  
12          half of that picture.

13      A. Yes.

14      Q. Is that what that looks like?

15      A. Yes.

16      Q. And the measurements here were taken between  
17          November 5 and November 12, 2005?

18      A. Yes.

19      Q. Okay. If I have my directions about right,  
20          should I be alarmed by a catastrophic change in  
21          the planet earth's orbit and tilt that I now have  
22          a strong sun shining out of the northwest, in  
23          early November, 2005, in the northern hemisphere?

24      A. If I can put this particular item in perspective,  
25          and perhaps I should have done that with

1           Mr. Kratz. The page that this is on, on Page 14  
2           of my report, is talking about the forensic 3D  
3           software package. And the image right before  
4           this one is one of the unrendered garage. And  
5           this one is shown in my report directly  
6           underneath it as showing a rendered version.

7           And my point here, the point is in the  
8           report was to show how we can generate these  
9           models with the various textures on them. This  
10          is in no way -- This particular view is not -- or  
11          with the shadows, is not shown any later in the  
12          report when I'm talking about the scene models.  
13          And these are actually not leafy trees, these are  
14          the pine type trees that are up near the  
15          residence that you are seeing. So I would not  
16          try to purport that this is how it looked on  
17          November 5th, 6th, 7th through the 12th, 2005.  
18          This was to show the software.

19          Q. So how do the lovely long shadows of the pine  
20          trees get in there.

21          A. I turned the sun on in this particular case to  
22          show, again, the software's capabilities. You  
23          will see in the other renderings, the sun I  
24          actually have off. You will see some shadowing,  
25          but the sun giving directionality has not been

1           turned on. I did not intend to depict any time  
2           of day, specific time of day, in any of the  
3           models you are seeing, you know, that are  
4           designed to show you the actual scene or any  
5           animation.

6       Q.   Or to suggest the orientation of sun to the  
7           scene?

8       A.   No, I did not do that or did I have any intention  
9           of doing that.

10      Q.   Okay. And when we see trees in your models,  
11           particularly the ones that are leafless, as they  
12           might be in early November around here, they all  
13           look the same to me. Are these simply trees that  
14           the computer generates for the purpose of  
15           suggesting that there is a tree in that spot in  
16           space.

17      A.   This software package allows me to actually  
18           specify different types of trees and to specify  
19           different seasons. You would see your apple  
20           blossoms in the spring and apples in the summer.  
21           I, for the purpose of being demonstrative of  
22           their being a tree, I did not vary the trees at  
23           all. So you are very correct in that all of the  
24           leafless trees are the same. The only difference  
25           is in their size.

1 Q. Okay. And in general, then, there's a certain  
2 amount of artistry, if you will, on your part or  
3 on the part of the operator turning the sun on or  
4 off, selecting color palet, that kind of thing,  
5 to help make this an attractive model, if you  
6 will.

7 A. The intent is not to be attractive, if you will.  
8 It's to show that there is a tree in this  
9 position, that this item is a barrel. But do we  
10 have some liberty, if you will, of picking what  
11 tree is going to go in there, or what texture is  
12 going to be there. I suppose. I do the best I  
13 can to try to make that as close as possible.

14 Q. No. And please don't take this as an attack.  
15 And by attractive, I understand you are not  
16 planning to send this home so mom can put it on  
17 the refrigerator. But it's designed to give us a  
18 sense of reality, or the illusion of reality of a  
19 real scene, correct?

20 A. The design is to give you an idea. And I  
21 mentioned these buzz words before about geometric  
22 perspective and spacial relationships.

23 Q. Right.

24 A. But to give you an idea of how that scene is laid  
25 out. It's not, as you mentioned before, it is

1           not designed to give you a photograph, or a  
2           photographic image of what that scene looks like.

3       Q. So whether to color the garage, or what color to  
4           make it, whether to turn on the sun, or leave the  
5           sun turned off, you know, which direction the  
6           shadows should fall, whether there should be  
7           shadows, how to color the gravel, these are all  
8           just decisions you have to make, in good faith.  
9           I'm not suggesting anything to the contrary. But  
10          these are just artistic decisions, for want of a  
11          better word, in presenting something that looks  
12          other than just shades of gray?

13       A. Yes, those are decisions that I made.

14       Q. Okay. And then there's, you know, you don't have  
15          to buy into the label artistic, I don't mean  
16          anything by it. I don't mean to pick a fight by  
17          that. But in addition to those kinds of  
18          decisions that you made, in creating your  
19          exhibits here, there are also some decisions that  
20          were made either by Mr. Kratz, or by Mr. Wiegert,  
21          or Mr. Fassbender, primarily, correct?

22       A. As to the colors that were used?

23       Q. No, no, other decisions as to the depictions;  
24          specifically, what items would be included?

25       A. Oh, yes.

1 Q. Okay. And those decisions simply were made by an  
2 advocate, or people on one side of this lawsuit,  
3 for demonstrative purposes?

4 A. Can you say that one more time. I did not  
5 understand the lawsuit part.

6 Q. Sure. Some of the decisions about what to  
7 include, simply were made by either Mr. Kratz, as  
8 one of the lawyers for the State, or one of the  
9 two lead investigators on the case, or their  
10 purposes of showing or demonstrating what they  
11 would like to show or demonstrate.

12 A. Yes, that's correct.

13 Q. Okay. Now, I'm quite certain, knowing these  
14 gentleman somewhat, that they didn't ask you to  
15 include anything that was made up, made up out of  
16 faux pas. And you also were on the scene,  
17 correct?

18 A. Yes.

19 Q. So, did you satisfy yourself that the things you  
20 were asked to include in fact were things present  
21 at least at some time between November 5 and  
22 November 12th?

23 A. If I understand your question correctly, are you  
24 asking if I'm satisfied everything I have  
25 depicted was at that scene during that time?

1 Q. Yes.

2 A. Yes.

3 Q. Okay. Nothing was added in. In other words, if  
4 we -- if we go to Figure 41, again, with  
5 Mr. Kratz's help.

6 A. Overview of the garage, sir?

7 Q. Yes. Yes, with the roof peeled off. So, if we  
8 go to that, there, in fact, was, looks like a  
9 John Deere lawn mower or tractor, present in the  
10 scene at some point while you were there?

11 A. Yes, sir.

12 Q. There were two snowmobiles, each a flank of the  
13 Suzuki Samurai, not just one?

14 A. Yes.

15 Q. Okay. But now, to go in the other direction, or  
16 the converse of this, there also were items  
17 present that have been omitted from these models,  
18 correct?

19 A. Yes. Omitted or not measured. There were a lot  
20 of debris, for lack of a better word, in that  
21 garage.

22 Q. Okay. So while we haven't added anything in that  
23 wasn't there, we have taken out some things that  
24 were there?

25 A. Taken out or they weren't measured when I was

1           there.

2   Q.   And if they weren't measured, they cannot be  
3        included?

4   A.   If they weren't measured, then you are not going  
5        to see them in there, denoted as being in a  
6        specific location.

7   Q.   So someone looking at this Figure 41, for  
8        example, unless he or she was able to look at a  
9        photograph taken at about the same time, would  
10      not understand that the garage, in fact,  
11      contained a whole lot more items and clutter than  
12      it appears to in the model?

13   A.   I believe I understand your question. Like if I  
14      were to look at the -- there's a table back here  
15      denoted in silver or grayish color. There were  
16      items on that table, if you will. There were --  
17      I can even tell you what they are: Parts, or  
18      boxes, or other items. No, I denoted the  
19      location of that table, but not everything that  
20      was on it.

21   Q.   Right. In fact, your recollection is that the  
22      table top was all but covered with junk and  
23      miscellaneous things.

24   A.   Yes.

25   Q.   Okay. Likewise, the garage floor was not

1 covered, but quite cluttered with all kinds of  
2 parts and miscellaneous stuff?

3 A. There were more items in that garage than what  
4 were depicted in this particular perspective.

5 Q. Perhaps the most striking example of this, if you  
6 went to Figure 31.

7 A. The residence over here?

8 Q. Yes.

9 ATTORNEY STRANG: Is your Honor able to  
10 follow along?

11 THE COURT: Yes, I am following along. I  
12 have hard copies of the exhibits and I'm looking at  
13 them.

14 Q. Okay.

15 ATTORNEY KRATZ: Do you need something from  
16 me?

17 ATTORNEY STRANG: Figure 31 would be great,  
18 just for the spectators.

19 ATTORNEY KRATZ: With or without arrows?

20 ATTORNEY STRANG: Right now, either is  
21 okay. Very well.

22 Q. If the uninitiated took the model in Figure 31 as  
23 an entirely accurate representation of the way  
24 Mr. Avery's home looked, one would conclude that  
25 at least as to his living room and dining room,

1           he had a fairly minimalist philosophy of interior  
2           design.

3       A. In fact, I documented that in my narrative too,  
4           sir, that items in those rooms were not measured,  
5           you know, what the furniture that was there.  
6           Yes, without -- if they weren't shown a crime  
7           scene photograph, or they weren't told that this  
8           is designed just to show relationships of certain  
9           objects, yeah, they would not probably have an  
10          understanding that there were other items there.

11      Q. Things like couches, and chairs, and fairly large  
12          pieces of furniture?

13      A. I remember two chairs. I don't remember having a  
14          couch.

15      Q. Okay. But in other words, there's some  
16          significant pieces of furniture that just aren't  
17          here?

18      A. That's correct.

19      Q. Okay. And so the things that are included  
20          reflect some editorial judgment on the part of  
21          the State in this instance?

22      A. Or items that I, like I say, I didn't actually  
23          get to the chairs that you were referring to  
24          there by the time our warrant ran out that day.  
25          So, yeah, there's also some judgment on my part

when I was in there as to what items I could get to in the time allotted.

Q. Fair enough. Fair enough. And throughout making these slides, in a number of ways, you were guided by the requests of, let's just say agents of the State, in directing you on which of the available items that actually were there should be included and which should be omitted from the image or the model?

10 A. Yes, that's correct.

11 Q. Now, in explaining that such direction is common  
12 in your work, you told the Court that this is  
13 common to rely on one side or the other in a  
14 lawsuit, for that sort of direction?

15 A. The bulk of the work that I do, as -- as  
16 Mr. Kratz pointed out, is -- is in crash  
17 reconstruction.

18 Q. Yes.

19 A. And a lot of the diagrams that I do for crash  
20 reconstruction, we don't show everything in those  
21 aspects either. We'll actually usually collect  
22 more information than we need, or on the flip  
23 side, we can't show every single crack that's in  
24 the pavement.

25 So that's what I meant by it's

1           relatively common to only show certain aspects or  
2           for certain things to be omitted. You know, I'm  
3           never going to intentionally omit something of an  
4           evidentiary value for either side, but I think it  
5           would be impossible to show everything.

6       Q. And that's not where I'm going. What I'm saying  
7           is, you are getting your direction from one side?

8       A. Yes.

9       Q. Not from two sides?

10      A. That's correct.

11      Q. And because you are employed by the Wisconsin  
12           State Patrol, when would the defense ever be, in  
13           a criminal case, the defense ever be suggesting  
14           what should be included and what not included in  
15           a model?

16      A. Typically, that has not happened. I did offer to  
17           Mr. Kratz, you know, that we could add additional  
18           items if there was something that you  
19           particularly wanted displayed or shown in there.  
20           I haven't heard anything back on that yet. But,  
21           no, typically we don't call the defense attorney  
22           up and say what do you want in the diagram. Or,  
23           you know, I guess I haven't had a chance where  
24           they have approached me and said can you add  
25           this. I have been asked in court to draw in

1           where something was on a diagram but, no, not the  
2           scenario that you are portraying. That's not  
3           happened to me.

4       Q.    It's the first I'm hearing of it too. And, you  
5           know, they are entitled to create their own  
6           demonstrative exhibits. They just are, just the  
7           same way I am.

8                          The point is, you are someone at the  
9                          technical reconstruction unit of the Wisconsin  
10                          State Patrol Academy more typically would assist  
11                          the prosecution in preparing such exhibits?

12      A.     That's correct and that's how it was in this  
13                  case, as you point out, yes.

14      Q.     Here we can use this just as well as anything,  
15                  the -- the items that are shown, all of them were  
16                  mapped with the forensic station or the Total  
17                  Station?

18      A.     No, a lot of these items were manually -- the  
19                  measurements were manually recorded. It would be  
20                  possible, but very difficult, to set the  
21                  instrument up in a small bedroom, as you will,  
22                  that we had here in the residence. It was  
23                  quicker just to manually, if you will, measure  
24                  those positions.

25      Q.     Fair enough. Fair enough. And those

1           measurements may have been taken at different  
2           times, by different people?

3       A. No, I took -- the measurements that you are  
4           seeing here were taken by me on the last date.  
5           So, obviously, they are going to be at different  
6           times, but I was in there at one, you know, all  
7           at one time frame, if you will.

8       Q. Okay. And, again, don't -- I'm just using this  
9           demonstratively so to speak, okay, so don't get  
10          carried away with just the image of, but in  
11          general, the images we have seen, the mapping,  
12          whether done by the Total Station, or done  
13          manually, was done at different times?

14      A. Oh, I'm sorry, I misunderstood your question.  
15          Yes, they were all done, you know, in the course  
16          of one day. Then we would call it a day, go  
17          home, come back the following day, reset up, or  
18          do a different area, or finish that location.

19      Q. And during the time you were on scene, doing the  
20          mapping, there were 50 or 100 other law  
21          enforcement officers also on the scene, executing  
22          at least a couple of search warrants; you were  
23          aware of that?

24      A. Yes. They were never in the immediate area we  
25          were working in. It's a very large area,

1                   obviously.

2   Q.   Right.

3   A.   A lot of the searchers were down in the -- where  
4       the vehicles were in the salvage yard.  But,  
5       yeah, I do know, for example, that there were  
6       probably 60 of my co-workers that were out there  
7       doing searches.

8   Q.   Okay.  And you have no way of knowing what items  
9       law enforcement officers may have moved before  
10      you got around to mapping the dimensions and  
11      location of those items?

12   A.   If that happened, I wouldn't know.

13   Q.   I would like to go briefly to the skeleton model.  
14      Just an unlabeled image.  There we go.  Great.  
15      That works fine.  This thing actually came off a  
16      CD that the FBI sent to you?

17   A.   Yeah, I contacted their -- was it their  
18      Structural Imaging Unit -- I would have to look  
19      at the particulars, and requested a -- Structural  
20      Design Unit of the FBI and requested a skeletal  
21      model in a standard CAD, be in a drafting format.  
22      They sent me what's called a DXF file, which  
23      means drawing exchange file, that my software  
24      could also read.  So, yes, I did obtain this from  
25      the FBI.

1 Q. Okay. And was the -- was the depiction on the  
2 FBI's CD or DVD, whatever it was, a photograph,  
3 or was that image itself a computer generated  
4 image of some kind?

5 A. What they gave me was, you know, for lack of a  
6 better term, we discussed it before, was a three  
7 dimensional model. It was actually the CAD file,  
8 if you will, would have been similar to my final  
9 overall scene of the Avery property. This was  
10 just a file, if you will, of a female skeleton,  
11 which then I can move around in 3D space.

12 Q. Sure.

13 A. Or put the texture, or label accordingly. So it  
14 wasn't a picture they gave me, was the actual  
15 model itself.

16 Q. Again computer generated?

17 A. Yeah, a computer electronic file. Yes.

18 Q. Yes. And as to whether it was a female skeleton,  
19 you simply you relied on the label assigned to  
20 the file?

21 A. I trusted the FBI. And I trusted Dr. Eisenberg  
22 to confirm, yes, this is female.

23 Q. Okay. And if you know, do we have a height on  
24 this skeletal model?

25 A. On the model itself?

1 Q. Yes.

2 A. I think -- I think I have it right around 5 feet.

3 I would have to go back and look, sir.

4 Q. But in any event, that's a number you could give

5 us, or dimension you could give us as height?

6 A. Of the skeleton?

7 Q. Yes.

8 A. Yes, I could go back and see what that was.

9 Although, everything -- if I were to adjust that

10 model's height, everything would be

11 proportionate, meaning if I made it 5 feet tall

12 or if I made it 20 feet tall, the relative size

13 and proportion would remain the same.

14 Q. Okay. So this can't be taken to depict any

15 particular person, in other words?

16 A. No, that's not my intention here at all. It was

17 to help Dr. Eisenberg to point out specific bone

18 locations.

19 Q. Right. The knee bone connects to the shin bone,

20 and one can see where the knee bone would be in

21 relationship to the shin bone?

22 A. Yes.

23 Q. Okay. That's fine. So let me go to some

24 specific questions. And here it will be useful,

25 not so much to use the screen, but just the

1 binder we have here, we all have the same one.

2 A. Okay.

3 Q. Now, we have been describing three dimensional  
4 models. But of course, none of them are, right?  
5 We're looking at the flat pieces of two  
6 dimensional paper, or flat images on a screen?

7 A. Yes, it's a flat screen.

8 Q. The illusion of the third dimension is  
9 perspective provided by mathematical algorithm?

10 A. Yes.

11 Q. The design of the software itself, or the design  
12 of the algorithms that create the illusion of  
13 three dimensional space are not something that  
14 are your work product?

15 A. That's correct.

16 Q. Not something in which you are expert?

17 A. No, I'm not a programmer.

18 Q. So this is -- this is a commercially available,  
19 or proprietary software package that somebody in  
20 the Wisconsin State Patrol Academy purchased and  
21 you use.

22 A. The first part of your question is correct. The  
23 Wisconsin State Patrol Academy did not purchase  
24 this. This is something that, as a trainer of  
25 the software, that I have from them. So this is

1           not something the State Patrol has purchased yet.

2 Q.    Sure. Okay. And that will teach me to ask  
3       compound questions. If we go to Figure 17?

4 A.    The exterior of the trailer, sir, or the  
5       residence, rather.

6 Q.    Yes, looks like that to me. You have no idea  
7       what, if anything, duck tape may have to do --  
8       duck tape under the porch may have to do with  
9       anything in this case, do you?

10 A.   No.

11                   ATTORNEY STRANG: Do we have a labeled  
12       version of that?

13                   ATTORNEY KRATZ: Sure.

14 Q.    Okay. But somebody asked you to include some  
15       duct tape --

16 A.    Yes, that's correct.

17 Q.    -- in this figure. And didn't give you exactly  
18       where the duct tape was supposed to be?

19 A.    No, that's based off of a photograph.

20 Q.    So, quite honestly, you simply tell us you here  
21       that are doing an approximation?

22 A.    Yes.

23 Q.    Again, whether duct tape has anything to do with  
24       anything, you have no idea?

25 A.    That's correct.

1 Q. Okay. Likewise, in Figure 18, you refer to a  
2 number of items, a vehicle bench seat, a mallet,  
3 tire cords, a rake, and here, again, you tell us  
4 placement is to be deemed as being approximate,  
5 correct?

6 A. Yes, sir.

7 Q. So this is something that you just decided where  
8 to put these items in the model?

9 A. I tried to do the best I could to explain in the  
10 narrative here as to how the items were placed.  
11 The one you pointed out here, yeah, they had been  
12 moved before I forensically mapped that location.  
13 I relied on photographs taken by the State Patrol  
14 Trooper Jim Reese, to put those items in place.  
15 So I did do what I could to note which items were  
16 mapped and which were based on photographic  
17 evidence.

18 Q. But we could look at the photographs, if he  
19 wanted to know where the items were.

20 A. Which I did in this case. But now our view here,  
21 we've moved up to -- I don't know what our  
22 elevation is here, looks like somewhere around 50  
23 feet, looking down, so we can see the entire  
24 area.

25 Q. So if we wanted to pretend we were 55 feet tall,

1 now we can do that.

2 A. I don't think the intention would be for play  
3 acting, just to get a good overview.

4 Q. Right. But that's the point of view so to speak.

5 A. Yes.

6 Q. Okay.

7 THE COURT: Excuse me, Mr. Strang. Let me  
8 ask just one question. The approximate location,  
9 based off of the photos, is that a number of photos,  
10 or one photo that showed all these items?

11 THE WITNESS: There were several photos I  
12 was able to utilize. I can't tell you, your Honor,  
13 how many I had at that point. Trooper Reese did  
14 take several shots behind there with the camera.  
15 And for some of these, if it was possible, I also  
16 utilized aerial photographs so that we can see the  
17 vehicle bench seat in one of those. But if I could  
18 use -- the more I could use, obviously, the better.

19 THE COURT: Go ahead, Mr. Strang.

20 Q. There were a number of area photographs taken,  
21 some of which you used to assist you?

22 A. Yes.

23 Q. Were any of those done with a zoom lens?

24 A. I would have to look at my notes to see what  
25 Trooper McConnell did or what type of camera he

had, or focal lens. I guess I don't know because I wasn't involved in those.

Q. And it's not worth the time. Did you look at them digitally?

A. Yes.

Q. Okay. So we know they were digital photographs at least?

A. Yes.

Q. And, therefore, we could use Photoshop, or something on the computer, to enlarge or minimize the view of part of those photographs.

A. That is correct. There were also some non-digital pictures that I believe were arranged to be taken by DCI, which showed items also. Those were not digital, but you could look at them and see.

Q. Okay. If you go to Figure 32 --

ATTORNEY KRATZ: Labeled?

ATTORNEY STRANG: Either way.

Q. -- this is the bathroom?

A. Yes.

Q. Okay. There's a bathroom door, but it looks like the doorway has disappeared?

A. The material on the -- I'm going to use a laser pointer here, sir.

1 Q. Sure.

2 A. The material on this wall is the same as the  
3 material on this wall. And you see this, this is  
4 a shadow from this wall coming down. It's going  
5 to be in the rendering or perhaps how we're  
6 displayed here was printed.

7 There is an opening here, but because  
8 the wall behind it is identical in texture, it  
9 gives us the illusion, if you will, in that  
10 picture, that it's a solid wall. But we do see a  
11 shadow from this back wall in here, which shows  
12 us that there really is an opening there. If I  
13 would have made this wall darker or this wall  
14 darker you would see a difference.

15 Q. I would see a doorway?

16 A. Yes. Do you see what I mean about the shadow  
17 that's back here? The shadow is actually on that  
18 hallway wall, so that's why we're seeing it  
19 inside, by looking through the door.

20 Q. Okay. So, it's not a situation where there was  
21 an error in measurement or something that caused  
22 the computer to think there was no doorway into  
23 the bathroom?

24 A. No, it's the fact that I have the same texture on  
25 that wall as I do on the other wall and that in

1           this particular render gives us that -- I don't  
2           want to say optical illusion, for lack of a  
3           better term, it appears to us that that door is  
4           missing.

5       Q.    Here, again, this isn't another example where  
6           you, quite forthrightly, in the report, told us  
7           that you are approximating the location of the  
8           guns?

9       A.    That's correct. And you're right, that is  
10          mentioned in the report.

11      Q.    If we go to Figure 36-A now, you may not know  
12          enough about this case to understand this, but  
13          this sort of model is something that the lawyers  
14          have been probably spending a fair amount of time  
15          looking at. And I have seen photographs  
16          depicting the same basic area.

17                   So just for the Court's benefit, there  
18          are a very noticeable pair of men's slippers just  
19          to the left of the key in the photographs, of the  
20          same area that you have modeled here. Have you  
21          seen those photographs too?

22      A.    Yes, I was given a singular photograph in this  
23          case to show me the location of that key. And I  
24          was asked to put that key in. I am aware of the  
25          slippers they are talking about.

1 Q. And the outlet on the wall?

2 A. That's correct.

3 Q. Okay. So is that the kind of thing that you are  
4 simply told, don't bother about the outlet on the  
5 wall, don't bother about the slippers, just show  
6 us the approximate location of the key?

7 A. I was asked about the outlet on the wall by the  
8 prosecution, and that one I would have had  
9 difficulty putting in without having  
10 measurements. I did not measure the outlets or  
11 light switches when I was there. I felt  
12 comfortable putting the key on the carpeting on  
13 the floor, but I did not feel comfortable in  
14 putting the outlet in.

15 Q. An earlier draft of this -- and I understand it  
16 was just a draft -- had no key fob on the key  
17 correct?

18 A. That's correct.

19 Q. No little blue or purple strap. Were you asked  
20 to add that back in?

21 A. That didn't exist at that point, in the previous  
22 draft. I believe you are referring to the one I  
23 had delivered to you back in December, what was  
24 in there was a generic key, if you will. It was  
25 not the actual key or a model of the key that was

1                   found.

2                   After that version came out, I was asked  
3                   to put in, if you will, the actual key. So I was  
4                   given access to it. I took measurements of that  
5                   key and, hence, you see it in this particular  
6                   version.

7       Q.    Okay. And as we go through, we don't need to  
8                   stop particularly on each one of these, but  
9                   Figures 37 and 38, you have got cross-hatched  
10                  areas, shows approximate locations of things; is  
11                  that again based on photographs, or just  
12                  somebody's description to you of where bleach or  
13                  duct tape was found?

14     A.    Yes, and yes. There were photographs of both of  
15                  these items. In fact, looking at my photographs  
16                  that I took when I was in the residence, the  
17                  bleach you are referring to in Figure 37 was in  
18                  place. But, yes, those are based on requests  
19                  they be in and/or based on statements and  
20                  photographs.

21     Q.    Go to Figure 44, if you would.

22     A.    Yes.

23     Q.    Now, here some color has been added for  
24                  highlighting, specifically, blue color, correct?

25     A.    You are referring to the truss. I apologize, my

1           version is black and white.

2 Q.     Do you have the -- Do you have your little --  
3           your writing at the top, your captioning?

4 A.     Yes, you are referring to the mark, I can see it  
5           in the one Mr. Kratz put up. Yeah, I thought  
6           that was a blood print?

7 Q.     Now, the blue coloring is something added by you?

8 A.     Yes.

9 Q.     Just to highlight an area?

10 A.    Yes. I believe as I wrote here, it was shaded  
11          blue to make the area differ from the remainder  
12          of the other sections of the trusses. I did that  
13          to show a location.

14 Q.     The location is where at least someone told you  
15          there were some marks on a ceiling truss?

16 A.     I actually, when we surveyed -- This part, we did  
17          use the Total Station for and myself and other  
18          officers involved saw those marks ourselves. So  
19          that actual location is correct on these. As to  
20          do they have any value, I don't know. But we  
21          mapped out that location and we put -- I put them  
22          in there.

23 Q.     Whether the marks themselves that you have  
24          highlighted have anything to do with anything,  
25          you have no idea?

1 A. That's correct, sir.

2 Q. The next slide, Figure 45 -- Are we using, in  
3 Figure 45, the scene as it looked in March, 2006  
4 or the scene as it looked in November, 2005, as a  
5 starting point for the model?

6 A. The original model -- and if I'm not following  
7 you, please, please stop me.

8 Q. Oh, sure.

9 A. The original model that's here is based on  
10 forensic mapping that I did back in November of  
11 2005. Now, what my intention to depict here is  
12 items that were denoted by investigators in March  
13 of 2006.

14                    Apparently they had gone back in and  
15 found some items of evidentiary value. And  
16 that's what this and the following photograph are  
17 designed to -- excuse me -- I mean photograph  
18 image, are designed to depict, is items that they  
19 noted during that examination.

20 Q. But the items themselves were among those that  
21 were mapped in November, 2005, or were they  
22 simply added in, based on new information in  
23 March, 2006?

24 A. The paint thinner, I think, as I talked about  
25 before, I didn't map the items that were on top

1           of that particular bench. I did observe, after  
2           reading the reports and looking back at my  
3           photographs that I took when I was in the garage,  
4           the paint thinner was in place. I can't tell you  
5           exactly, say it's 3 inches over, 4 inches back.  
6           I can't do that.

7       Q.    Sure.

8       A.    That's why it says approximate.

9       Q.    Was the blackjack creeper?

10      A.    The blackjack creeper was in place when I was  
11           there. And that one I could put in based on the  
12           items around it. It's right up against that air  
13           compressor and by the welder, so I had no  
14           difficulty in putting that in.

15      Q.    Although, you had not mapped it?

16      A.    No, the location of the blackjack creeper was not  
17           noted; however, the compressor behind it, there  
18           is a lawn mower in front of it, a waste paper  
19           basket, and a welder right there. So that was --  
20           I was very confident in putting that in place.

21      Q.    All right. Very briefly, we don't even -- I  
22           don't think we need the images because they don't  
23           have figure numbers, but there are some close up  
24           views of the skeletal model showing defects, what  
25           you have described as defects, or probably Dr.

1 Eisenberg described as defects, in the mental  
2 foramen and in the parietal bone, true?

3 A. Yes, sir.

4 Q. And on those you simply picked, or Dr. Eisenberg  
5 has picked at random, which side of the head to  
6 use as in modeling those defects?

7 A. I believe that -- I guess I don't feel  
8 comfortable discussing that. I was directed that  
9 it's the left side of the head at this particular  
10 location of the parietal bone. Again, as  
11 Mr. Kratz pointed out, that's well outside of my  
12 area of expertise. I generated these models  
13 under her supervision and for Dr. Eisenberg.

14 Q. Okay. I'm interested in the text then, I guess,  
15 just to nail that down on page 56.

16 A. I'm there, sir.

17 Q. You write, in part, however, it is unknown from  
18 which side of the mandible the fragment  
19 originated. For demonstration purposes only the  
20 model shown below depicts the left side of the  
21 head.

22 ATTORNEY KRATZ: Judge, I'm sorry, the  
23 mandible is the jaw.

24 ATTORNEY STRANG: Right. Yes, it is.

25 ATTORNEY KRATZ: Dr. Eisenberg will testify

1                   exactly where the defect is on the cranial defect.

2                   But other than that, your Honor, the text is what it  
3                   is.

4                   THE COURT: I must have a different Page  
5                   56, because my Page 56 doesn't show a jaw.

6                   A. I'm sorry, Mr. Strang, could you repeat the  
7                   question.

8                   Q. Well, the question was, am I right that simply  
9                   for purposes of illustration here, what you are  
10                  saying at least is, you are using the left side  
11                  of the mandible.

12                  A. I believe, and thank you for refreshing my memory  
13                  on this one, what I did in that case, that I  
14                  showed one of the mental foramen which, again,  
15                  well outside my area of expertise, my  
16                  understanding is it's a opening for a blood  
17                  vessel in the jaw. There's blood on each side of  
18                  the jaw. I depicted one of them. I believe the  
19                  text says after that, that the mental foramen on  
20                  the right side of the jaw is similarly located.

21                  Q. Very well. Technically, if you were asked, would  
22                  it be possible to start with, you know, Figure  
23                  31, for example, and then add in one arrow or  
24                  label at a time, like a PowerPoint presentation,  
25                  to use something much simpler, with which I'm

- 1                   familiar with?
- 2 A. You are asking that could be done?
- 3 Q. Yes, could that be done technically?
- 4 A. Oh, yes.
- 5 Q. Without an unreasonable amount of work?
- 6 A. No, it would not be unreasonable at all.
- 7 Q. Okay. What you have given us here are all or  
8                   nothing. All the labels, or none of the labels,  
9                   on the figures that -- for which we can choose  
10                  labeled or unlabeled?
- 11 A. Yes. What I did was I gave -- obviously, I  
12                  couldn't do that in the report. Essentially, as  
13                  you said, it's all or nothing here.
- 14 Q. Right.
- 15 A. What I gave Mr. Kratz was 4 X 6 prints and  
16                  electronic versions of either, yes, all or  
17                  nothing. But, no, it would not be any difficult  
18                  amount of work to separate those out, or to put  
19                  them into a PowerPoint presentation.
- 20 Q. There's nothing magic about PowerPoint, but my  
21                  point -- my point simply was, if some of the  
22                  labels were acceptable to the Court or the  
23                  parties, and not others, is that something you  
24                  could do without a great deal of trouble?
- 25 A. If that were the decision, and either you or

1           Mr. Kratz were to direct me as to what has to be  
2           done, yes, we could make that happen.

3       Q.    Okay. And similarly, no big deal to take out  
4           words in some of the labels, if that was the  
5           decision? So, in order words, it could be  
6           garage, rather than Steven Avery's garage, just  
7           for example?

8       A.    That's correct. And just to go a step further if  
9           I may, sir.

10      Q.    Sure.

11      A.    In the animation, that would be relatively easy  
12           also.

13      Q.    Okay.

14      A.    The difficulty would be if we had to re-render  
15           some of those approaches, that would take a  
16           lengthy amount of time. But the textural parts  
17           in there can be altered rather simply.

18      Q.    All right. And I think my last question is, the  
19           new DVD that I was just given this afternoon, do  
20           you think that, without any purchase of  
21           proprietary software, I could pop that in a  
22           laptop and run the virtual tour, or stop it, or  
23           sort of use the exhibit as well?

24      A.    Yes, there's nothing proprietary about it. It's  
25           written to an M-PEG 2 Format, meaning any DVD

1 player can read that.

2 Q. Okay. And that can be stopped or backed up, that  
3 kind of thing, by the person running the laptop?

4 A. Yes, just as if you were going to put a regular  
5 movie in there, you could pause it, or reverse,  
6 or fast forward.

7 ATTORNEY STRANG: Thanks. That's all I  
8 have.

9 ATTORNEY KRATZ: Nothing for this hearing,  
10 Judge.

11 THE COURT: All right. Your witness is  
12 excused. We'll take our break at this time, give  
13 the reporter a rest. Come back in 15 minutes.

14 ATTORNEY KRATZ: Judge, on this issue we  
15 don't anticipate any more testimony; do you want a  
16 brief argument?

17 THE COURT: I will hear the argument after  
18 we get back.

19 ATTORNEY KRATZ: What time do you want us  
20 back?

21 THE COURT: Fifteen minutes, quarter to  
22 four.

23 (Recess taken.)

24 THE COURT: At this time we're back on the  
25 record, I will hear argument on the defendant's

1 motion regarding the animations. I think,  
2 Mr. Strang, we'll let you go first, I'm sure you  
3 know exactly what the objections are.

4 ATTORNEY STRANG: Sure. I think we can  
5 narrow the scope considerably. In the end, I don't  
6 think there will be any real problem at all with the  
7 skeletal model. And I can work through with  
8 Mr. Kratz or his colleagues any minor issues that  
9 remain.

10 But I think -- I think where we're  
11 heading on that is that they have already removed  
12 color highlights on bones, which was good. And  
13 we're probably heading toward unlabeled images,  
14 first, and then adding labels as a witness  
15 describes, you know, whatever it is that the  
16 arrow would come in for. And I don't think that  
17 editorial content of the labels on the skeletal  
18 model would be any issue at all. They are just  
19 really using formal names for bones. So I think  
20 that will wash out.

21 I will talk a little bit about  
22 proportion and, you know, get a better  
23 understanding of that now that I have a  
24 foundation from Trooper Austin on that. But I  
25 don't expect that the Court will need to address

1           that and we probably would withdraw the motion so  
2           far as the skeletal models go -- or model.

3           The Avery property, you know, this  
4           northwest corner of the 40 acre parcel will  
5           present some difficulty, perhaps, and just to  
6           describe what it is for the Court. I don't have  
7           a good vocabulary for this because, at least to  
8           me, not being involved in, you know, air crash  
9           cases or personal injury cases, where a great  
10          deal of money is at stake, computer generated  
11          animations are new to me, even though they are  
12          not new to the profession, particularly.

13          But the concern, if I can articulate it,  
14          is that the models come so close to a realistic  
15          or photographic quality that it's easy to forget  
16          that they just are not. The photographic eye of  
17          a video camera picks up everything within it's  
18          field of focus and there's no opportunity for  
19          somebody to say, well, I want this flower pot in,  
20          but the watering can over there, I want that  
21          taken out.

22          Now, obviously, with digital photographs  
23          we actually can do that kind of thing now. But  
24          in the traditional sense, a video recording or a  
25          photograph gives a true depiction. These do not.

1           But what's included is so deceptively good -- and  
2           I don't mean in a pejorative sense perceptively,  
3           but it's so realistic appearing that it's easy, I  
4           think, for a juror to forget that he or she is  
5           looking at a collection of pixels that reflects  
6           editorial judgment on everything other than the  
7           geometry.

8           And I will simply take the geometry and  
9           the spatial relationships off the table here.  
10          I'm not concerned about the accuracy of the  
11         algorithm. I'm not concerned about the accuracy  
12         of measurements, whether they are manual or done  
13         with the Total Station device. That can be  
14         developed easily enough and understood by way of  
15         foundational questions on direct, or a few simple  
16         questions on cross-examination. And jurors then  
17         can understand that, well, you know, there may be  
18         some slight human error in spatial relationships.  
19         Not worried about that, or the geometry, if the  
20         Court will.

21          Where I get worried is things like holes  
22         in burn barrels. That kind of thing, it is very  
23         easy to assume that there really must be a hole  
24         in the burn barrel if it looks like there's a  
25         hole in the burn barrel.

1                   Or easy to assume that, you know, the  
2                   dog was standing out at the end of his leash, if  
3                   he's standing out at the end of his leash in the  
4                   depiction here. It's all that much easier to  
5                   lose track of the fact that we're not depicting  
6                   anything as it would have been, necessarily, on  
7                   October 31, 2005.

8                   We just -- There's no way of knowing.  
9                   These are later creations based on later  
10                  measurements. We'll also have to work some on  
11                  labeling, but my expectation would be that  
12                  collaboratively the State and the defense could  
13                  come to some agreement on labeling as to the  
14                  trailer and the Janda trailer and the surrounding  
15                  yard, for want of a better word.

16                  We may even get -- We may, we're not yet  
17                  today, but we may get to some agreement on  
18                  something like the image that has a rake and tire  
19                  cords and a mallet and a number of items shown in  
20                  approximate locations. It may be that if the  
21                  State introduces photographs taken during the  
22                  same week, that photographically show the scene,  
23                  it may be that I'm a lot less concerned about a  
24                  demonstrative representation once the jury  
25                  understands, here are the photographs and here's

1           the diagram, which, you know, which is really  
2           intended just for argument or illustration and  
3           not for pictographic accuracy. We're not there  
4           yet, we may be able to get there on that topic.

5           The greatest concern and the one on  
6           which we probably do need the Court's help is the  
7           garage. The garage, as depicted in the models  
8           here, really is materially different than the  
9           garage was in real life. And I say to myself,  
10          here, this is where the differences are so  
11          material that, you know, an actual jury view of  
12          the garage would be better than a virtual tour of  
13          the garage.

14          And the problem may be exasperated by  
15          the fact that for whatever reason, at least the  
16          photographs that Mr. Buting and I have seen of  
17          the garage, aren't particularly good and they are  
18          not particularly numerous. So I don't know,  
19          here, that -- there may be photographs I have not  
20          seen, not that they haven't been given to me, but  
21          just that there's such a mass of photographs, I'm  
22          not sure I have looked at every photograph we  
23          have.

24          But it may be that there are photographs  
25          I have not seen or things that could be blown up

1           that would allow the jury to see the garage as it  
2           actually was. Because the differences are  
3           material and they may be material to arguments  
4           that the State wants to make. They could  
5           potentially become misleading if one is relying  
6           on the -- on the computer model only as to the  
7           garage.

8           Could something fit in the garage; could  
9           something have been laid down in the garage; the  
10          truss marks; the marks on the truss. I have no  
11          reason to think that the State will be able to  
12          show the relevance here at all of marks on a  
13          truss, so to have an image that takes the roof  
14          off, gives the juror a view that, as the witness  
15          said, probably is not humanly possible to have.

16          And then on top of it, highlights  
17          something that may have nothing at all to do with  
18          anything, in fact, as far as I know does have  
19          nothing at all to do with anything relevant or  
20          probative here. It becomes unfair. So that --  
21          that -- the garage really is where most of the  
22          points of contention lie. And whether we can get  
23          there with photographs that would allow the jury  
24          to take them proper in a fair context, a  
25          demonstrative model of the garage, I don't know.

1                   And, you know, as I say, the trailer,  
2                   would I be much happier with just a video camera  
3                   walk through, which may or may not have been done  
4                   at the scene, I don't know. I think it would be  
5                   more accurate, but there probably are enough  
6                   photographs in the end, or there may be enough  
7                   photographs of the trailer that we can live with  
8                   modeling as long as the Court gives a good  
9                   instruction on what a demonstrative exhibit may  
10                  or may not be used for properly.

11                  THE COURT: Mr. Kratz.

12                  ATTORNEY KRATZ: Thank you, Judge. I  
13                  appreciate Mr. Strang's concessions regarding  
14                  admissibility. And that's what this hearing is.  
15                  It's not to decide the weight that a jury may give  
16                  to these items, but simply whether or not they are  
17                  admissible.

18                  We're left with, then, the standards of  
19                  admissibility for demonstrative evidence, which  
20                  is one of the simplest formulas for a Court to  
21                  apply in admissibility hearings. And it's simply  
22                  whether it will assist the jury and whether the  
23                  probative value may be outweighed by  
24                  countervailing factors, the 904.03 analysis.

25                  Demonstrative evidence in and of itself

1           is certainly admissible. As Mr. Austin  
2           testified, if a citizen can come down from a  
3           witness stand and draw an intersection on a chalk  
4           board without one measurement -- without it being  
5           at all to scale and that's admissible, there  
6           shouldn't be any question regarding admissibility  
7           of these kinds of images; that is, with in excess  
8           of 4100 measurements and being perfectly, not  
9           only to scale, but of geometric proportions.

10           Here's a case, Judge, **State vs.**  
11           **Peterson**, the 1998 decision in Wisconsin, just  
12           cite it just for the record, at 222 Wis. 2d, 449  
13           which describes the thing that I'm talking about;  
14           that is, the determination of admissibility  
15           requires this Court consider the degree of  
16           accuracy in the recreation; the complexity and  
17           duration of the demonstration; whether there is  
18           other available means of proving the same facts;  
19           and those risk factors that I talked about, that  
20           is the risk that may impact on the fairness of  
21           the trial.

22           This Court has heard from Mr. Austin and  
23           I think there's no question as to the accuracy of  
24           these images. And I also think there is no  
25           question that it will assist the trier of fact.

1           The only real objection that I can envision would  
2       be in the area or the point where we talk about  
3       it being cumulative; that is, the State even  
4       recognizes that we do reach a tipping point that  
5       there may be a time when too many demonstrative  
6       exhibits are being offered.

7           But to reach that level, Judge, we're  
8       talking about so far down the path of relevance  
9       and so many exhibits, that we really aren't  
10      talking about a relevancy issue anymore; we're  
11      talking about the same exhibit being shown over  
12      and over. The State certainly doesn't intend to  
13      do that.

14           That's why these are State exhibits.  
15           That's why these are animations rather than  
16       simulations. And let me just parenthetically,  
17       Judge, describe for the Court and argue that we  
18       aren't talking simulations we're talking  
19       animations, which are simply representations of  
20       objects that are shown within them and that  
21       includes the animation.

22           Simulations, Judge, are when a computer  
23       is asked to draw conclusions from data. Those  
24       are the reconstructions and the like and that  
25       isn't what we're talking about here. This Court

1           need not approach any analysis about the science  
2           that's involved since that appears to be  
3           unconverted.

4                 And so for this hearing, Judge, I am  
5                 asking the Court rule on admissibility of the  
6                 scene images, both interior and exterior, as  
7                 being of the accuracy contemplated by a trial  
8                 court. They will assist the trier of fact and  
9                 there is no risk of a fairness problem.

10               Mr. Strang is free to describe or supplement any  
11                 of these animations or computer -- excuse me,  
12                 we're talking about computer images, with  
13                 photographs.

14               We are not prohibiting the defense, nor  
15                 have we ever, of the creation of their own  
16                 diagrams or their own renderings. These are  
17                 State exhibits and the jury will certainly be  
18                 told that. So we're asking the Court, again,  
19                 rule on the admissibility of the -- both the  
20                 interior and exterior property images.

21               As far as the skeletal images, I  
22                 appreciate, again, Mr. Strang's concession and  
23                 withdrawal of his objection. Dr. Eisenberg, I'm  
24                 sure, will talk about the bones and those all  
25                 appear accurate representations.

1                   And then, finally, Judge, as to the  
2                   animations, that is the moving images, the 5200  
3                   images that are placed side by side, in lieu of,  
4                   or instead of, a jury view; I don't know what  
5                   better way we could have created something to  
6                   show the jury spatial relationships,  
7                   relationships of evidence to known and fixed  
8                   objects.

9                   There's nothing that I believe that is  
10                  unfair or prejudicial in what we have seen. And  
11                  so, not just for opening statements, your Honor,  
12                  but when other witnesses may be asked to use  
13                  these images, I will ask leave of the Court to be  
14                  allowed to do that.

15                  Let me also assure the Court and  
16                  Mr. Strang that I expect that we'll still have to  
17                  deal with relevance or materiality issues,  
18                  especially with things like the garage, or  
19                  trusses, or the like. But as far as whether or  
20                  not these images are admissible, the unbalance  
21                  and Exhibit 4 are all of the images that have  
22                  been provided to the Court. With the testimony,  
23                  which I would ask the Court to adopt, of  
24                  Mr. Austin, we'll ask the Court accept those as  
25                  demonstrative evidence in this case. That's all

1 I have.

2 THE COURT: Mr. Strang.

3 ATTORNEY STRANG: I'm in full agreement  
4 with Mr. Kratz that animation presents no separate  
5 problem; that is, if the image is fair and not  
6 materially misleading and, therefore, potentially  
7 helpful to the jury and the ability to move or  
8 change the point of view in the image is not  
9 objectionable.

10 And I disagree that there's no  
11 simulation involved here, but there certainly is  
12 no dynamic simulation in the sense we don't have  
13 a 747 taking off and then a depiction of a  
14 catastrophic failure and resulting explosion, for  
15 example.

16 The simulation we do have is the removal  
17 of the rooftops, which is a simulation. Now,  
18 that isn't so much my problem as it is things  
19 like highlighting parts of a truss or, you know,  
20 labeling things in an editorial and potentially  
21 misleading kind of way. So I don't know,  
22 although there is some simulation here, I don't  
23 know that it's a problem in and of itself.

24 The real problem where this stops  
25 becoming helpful to a jury is where it tends to

1                   mislead a jury into believing that the scene  
2                   looked very different than it actually looked.  
3                   And that's primarily an issue of the garage,  
4                   which if it can't be offset by good photographs  
5                   of the garage as it actually was during the  
6                   evening of November 5, I think there we do have  
7                   something that's not helpful to the jury because  
8                   it confuses or misleads the jury.

9                   And the Court either would have to  
10                  exclude that or be very careful about both the  
11                  cautionary instruction with it and any labeling.  
12                  I would ask the Court to exclude altogether any  
13                  highlighting as really not helpful and, indeed,  
14                  affirmatively unhelpful.

15                  THE COURT: All right. The parties have  
16                  both cited to the Court to the case of **State vs.**  
17                  **Peterson**, 1998 Court of Appeals case. And although  
18                  that case deals with a videotape that was taken  
19                  later, the Court agrees that much of the rationale  
20                  and the explanation of the law in that case appears  
21                  to apply here.

22                  The Court in that case indicated that  
23                  before a videotape demonstration could be  
24                  admitted, it would have to be demonstrated that  
25                  it was conducted under conditions reasonably

1           similar to the conditions existing at the actual  
2           event. The same standard I think will apply  
3           here; that is, the animations, are they  
4           reasonably similar to what the appearance was at  
5           the scene at the time.

6                 The case goes on to provide, even if  
7           this foundation is established, the trial court  
8           may, in its discretion, include the videotape  
9           demonstration upon a finding that the probative  
10          value of the tape is outweighed by its  
11          prejudicial affect. As I understand the defense,  
12          that may be part of its argument with respect to  
13          the garage.

14                 At this point in time, the parties have  
15          asked for guidance and I'm going to attempt to  
16          give some guidance. It's difficult. I'm not in  
17          a position to address the motion to the extent it  
18          asks me to specifically exclude something,  
19          because I don't have enough foundation.

20                 For example, the garage. At this point,  
21          I don't know enough about the evidence to know  
22          what the significance of clutter in the garage is  
23          going to be. I would say at this point, based on  
24          the defense's concern, I would want to see a  
25          foundation from the State laid before that

1           particular image would be allowed in. That's an  
2           image that shouldn't be used as part of an  
3           opening statement presentation.

4           With respect to some of the other  
5           concerns expressed by the parties, for example,  
6           the concern that the jury might feel that the  
7           animation shows holes in the burn barrels;  
8           there's further language in **Peterson** where the  
9           Court says, if enough of the obviously important  
10          factors in the case are duplicated in the  
11          experiment and if the failure to control other  
12          possibly relevant variables as explained and if  
13          the jury is aided, the Court should let the  
14          evidence in.

15          As I viewed that particular exhibit, I  
16          wasn't struck by the fact that it looks like  
17          there's holes in the burn barrel, but I agree  
18          from looking at it that perhaps that's a possible  
19          conclusion the juror could come to. In the  
20          Court's mind, that type of thing can be fairly  
21          easily explained away by simply saying that that  
22          type of detail is not attempted to be shown by  
23          this exhibit. In many cases, I suspect there's  
24          going to be photographs that do provide more  
25          detail and can certainly help put any animation

1 into perspective for the jury.

2 With respect to the concerns about any  
3 labeling that is disputed, it seems to me that's  
4 easily enough addressed by requiring a witness to  
5 lay a foundation before any labeling comes in,  
6 unless it is agreed by the parties ahead of time.

7 It certainly wouldn't be unusual for a witness to  
8 get up to a blackboard at a trial and draw a  
9 diagram and say here is where I found the key or  
10 whatever it was. And as long as there is a  
11 witness that testifies to the location of  
12 something like that, it seems to me that the  
13 computer aided images can be a useful means of  
14 showing the jury what it is the witness is  
15 testifying to.

16 Something like the truss marks in the  
17 garage, which I have to confess at this point I  
18 have no idea what the significance of them might  
19 be, that type of thing would require foundation  
20 before an exhibit showing -- pointing an arrow to  
21 truss marks, would be admissible.

22 There would have to be a prior showing  
23 that there's a foundation that a witness found  
24 something there and also the Court would have to  
25 hear any objections as to relevance. I don't

1 know what relevance marks on a truss might have.

2 With respect to the exhibits showing  
3 approximate locations, the labels would depend  
4 on, No. 1, the significance of a precise  
5 location. If there's a rake or a mallet in a  
6 yard and whether it's one foot one way or the  
7 other doesn't make a tremendous difference.

8 Approximate location may well be enough. If its  
9 location is vital and its precise location can  
10 not be determined, that could be a different  
11 story.

12 I'm not sure, based on the evidence  
13 presented and what I know at this point that I  
14 can provide the parties with much more guidance.  
15 It appears that the defense is willing to  
16 acknowledge the concept of the relevance of some  
17 of these computer exhibits and that there's --  
18 objections are only going to be raised to certain  
19 exhibits. That's all the guidance I can give the  
20 parties at this point.

21 ATTORNEY STRANG: I can help a little bit  
22 more too, just to clean things up. Mr. Kratz has  
23 some actual photographs that he intends to use as  
24 PowerPoint slides in his opening and the photographs  
25 are not objectionable in the opening presentation.

1                   THE COURT: Okay. Obviously, the opening  
2 has to be addressed at this point because the  
3 opening comes before there is any evidence. Are  
4 there -- Is there a dispute as to any computer  
5 generated exhibits that the State wishes to use in  
6 its opening that the defense objects to?

7                   ATTORNEY STRANG: I have seen them. I'm  
8 trying to remember if the garage is one of the  
9 slides and I can't. I just don't remember.

10                  ATTORNEY KRATZ: There is one image, Judge,  
11 of the interior of the garage. Let me -- I had  
12 offered it because this is where two bullet  
13 fragments were found. I can replace this, probably,  
14 with a photo, evidence tent 9 and 23A. And until  
15 that foundation is reached, if this will satisfy  
16 Mr. Strang and with leave of the Court, I will  
17 simply replace this with a photo. There's nothing  
18 special about this, Judge, that I have to --

19                  THE COURT: Well, again, for further  
20 guidance of the parties and I -- I have some  
21 reservations, because at this point Mr. Strang is  
22 indicating there may not be any photos that show  
23 what it really looked like. But if you had a photo  
24 that showed how cluttered the garage was and it was  
25 followed immediately by an exhibit such as this,

1 just to show the location of the evidence, the jury  
2 would then have both an idea -- a clear idea from  
3 this exhibit of where the evidence was found and a  
4 clear exhibit -- idea from the photo of exactly what  
5 the garage looked like and I would probably admit  
6 both of them.

7 ATTORNEY KRATZ: I intended to do that.  
8 And, in fact, Judge, you have this photo of the  
9 garage. And, in fact, in my opening, it is intended  
10 to put the computer animation right after this  
11 photo. This is a March 1st photo. Does show the  
12 clutter. Shows tent 9, does not show tent No. 23,  
13 which, for the Court's information, it would be --  
14 or the second bullet.

15 THE COURT: Is the defense satisfied that  
16 if the other exhibit immediately follows this one  
17 that it's not objectionable? I'm assuming this is  
18 what the defense means by clutter; it would qualify  
19 as clutter in my book.

20 ATTORNEY STRANG: Yeah, and there was -- a  
21 whole vehicle is missing here, of course. This is  
22 in March. But -- Well, let me say this, I mean, I  
23 have no objection to the use of this photograph in  
24 the opening statement. This is something that's  
25 going to be admissible and, indeed, we have

1           stipulated the foundation or authenticity --  
2           authenticity I should say of I think every  
3           photograph the State wants to offer. This would be  
4           relevant.

5           THE COURT: Well, for purposes of ruling on  
6           the opening, I will, since I'm seeing both exhibits  
7           now, if this exhibit is part of the opening and if  
8           the objection to the garage photo is that it doesn't  
9           accurately depict the amount of clutter in the  
10          garage, if the computer exhibit immediately follows  
11          this one, I think it's allowable. To me, the  
12          combination of the two adequately informs the jury  
13          of other relevant variables that have to be  
14          explained and this photo certainly appears to  
15          explain those variables.

16           ATTORNEY KRATZ: Very well, thank you,  
17          Judge. Do I understand, then, that the balance of  
18          the images that have been provided both to counsel  
19          and to the Court will be met without objection?

20           THE COURT: Well, I think Mr. Strang  
21          objected to a series of labeling items. Possibly --

22           ATTORNEY KRATZ: No, for opening, Judge.

23           ATTORNEY STRANG: Oh, for opening.

24           ATTORNEY KRATZ: For my opening images,  
25          that's what we're talking about now, I thought.

1 ATTORNEY STRANG: What other images?

2 ATTORNEY KRATZ: There's one of the house,  
3 this one.

4 ATTORNEY STRANG: I didn't think there was  
5 any problem with that image.

6 ATTORNEY KRATZ: Very well, thank you.

7 THE COURT: I would say this, if you are  
8 showing that in the opening and if there's a series  
9 of pieces of furniture that are missing and I see  
10 this one appears to have more furniture than the  
11 other one I looked at, but it would be helpful in  
12 the opening to at least make a mention to the jury  
13 of limits that apply to the animation. Since they  
14 will be seeing it at a time when they haven't  
15 received any evidence.

16 ATTORNEY KRATZ: Very well, thank you.  
17 That actually takes care of two of our motions  
18 today.

19 THE COURT: Are there any other items  
20 related to the computer generated animations that  
21 require addressing at this time?

22 ATTORNEY KRATZ: I will -- And I appreciate  
23 the Court's direction and general statement as to  
24 admissibility. I will continue to work with  
25 Mr. Strang between now and next week, when offered.

1 I suspect that Trooper Austin will give a version of  
2 what he did today and perhaps the non-objectionable  
3 images can be shown. And, then, before and until  
4 those foundations are laid, we can address those  
5 more objectionable images as the trial unfolds.  
6 That seems to be the most reasonable approach. But,  
7 once again, I will discuss that with Mr. Strang.

8 THE COURT: All right. There is one other  
9 issue on the agenda today and that was the original  
10 instructions or the preliminary instructions to be  
11 given to the jury prior to trial. I have provided  
12 the parties previously with a draft of instructions  
13 the Court was proposing to give.

14 The statute that covers this provides  
15 that, if the Court gives additional instructions  
16 beyond the ones specified in the statute, they  
17 shall be disclosed to the parties before they are  
18 given. And either party may object to any  
19 specific instruction or proposed instructions of  
20 its own to be given prior to trial. It's my  
21 understanding at least the defense had  
22 instructions it wished to submit; I don't know  
23 about the State.

24 But given the hour and the fact I'm not  
25 sure what the parties will be doing this weekend,

1           but I know I will be in my office, let me suggest  
2           this, if either party wishes to either object to  
3           instructions I have included or propose  
4           additional instructions that it requests be  
5           given, you can put those in a Word document and  
6           email them to me. I will get them this weekend  
7           and on Sunday I will email back to you the  
8           proposed opening instructions that I will give,  
9           after consideration of any suggestions from  
10          either party. Will that work?

11           ATTORNEY GAHN: I just have one quick one  
12          that I think would solve it all if we could do it,  
13          if you want to just hear about it. One thing that I  
14          propose through it, under the 110, under your first  
15          degree intentional homicide, when you have elements  
16          of the crime, I think that it states here that  
17          before the jury can find the defendant guilty --  
18          says the defendant or Brendan Dassey. I think  
19          that's troublesome because I think we need to cross  
20          out Brendan Dassey. We have to focus on -- because  
21          the jury could find Brendan Dassey committed this  
22          and by reading this also find Steven Avery guilty.

23           THE COURT: Well, just wait a minute. The  
24          State is the party charging party to the crime here.  
25          And I believe that, granted, you wouldn't get,

1 reading from just that sentence alone, what you are  
2 asking for, but if you move on to the jury's  
3 instruction portion, you have to find you have to be  
4 satisfied by a reasonable doubt that the defendant  
5 committed both elements of the crime or that he  
6 intentionally aided and abetted.

7 If you're going by the party to the  
8 crime theory, the first element is that someone  
9 else in this case, Mr. Dassey, committed the  
10 crime. And then you have to go on to find that  
11 Mr. Avery aided and abetted. I think that's  
12 taken from the form instruction.

13 ATTORNEY GAHN: I read it as if, if they  
14 were to find Mr. Dassey committed the offense that  
15 they could find the defendant -- I just think it  
16 would be clearer if we left the name out of Brendan  
17 Dassey and just said the defendant comma and either  
18 do one of four things: Either put as a party to a  
19 crime, or put as a principle, or as an aider and  
20 abettor, or put as a person concerned with the  
21 commission of a crime, or fourth, as a person who is  
22 a party.

23 I have seen it done all those four  
24 different, or in concert with another, and leave  
25 the name Brendan Dassey out. I wonder what

1           Mr. Strang thinks of that because I don't think  
2           it's beneficial to Mr. Avery.

3           THE COURT: Well, Mr. Strang.

4           ATTORNEY STRANG: I do have my own  
5           objections to it from a different angle. And I like  
6           -- I like the Court's idea of putting this in  
7           writing. And if I -- I think Word comes as part of  
8           the Windows Office Suite, so it's probably on this  
9           box somewhere. I always use Word Perfect.

10          THE COURT: I think even if you send it in  
11           Word Perfect I could open it.

12          ATTORNEY STRANG: In other words, the Court  
13           does not want it in PDF because that would require  
14           retyping.

15          THE COURT: Right.

16          ATTORNEY STRANG: Okay.

17          THE COURT: Yes.

18          ATTORNEY STRANG: Let me figure -- I will  
19           try -- I will try to figure out how to get into Word  
20           and address it. But -- But as to a preview, I think  
21           the Court has created a duplicity problem by -- by  
22           joining together the first degree intentional  
23           homicide and the mutilation of a corpse counts.

24          And I, too, have some concerns about the  
25           way that Brendan Dassey is added to the

1           substantive elements under 1010. Although, I  
2           mean, Brendan Dassey is the person as to whom  
3           Steven Avery is supposed to be the party to the  
4           crime. I mean, that clearly is the State's  
5           theory, so I don't know that Mr. Dassey ought to  
6           come out altogether.

7           THE COURT: If both parties prefer to -- I  
8           joined them because they are both charged as a party  
9           to the crime. If both parties want completely  
10          separate instructions for each one, I will honor  
11          that request.

12          ATTORNEY STRANG: Let me work on it. We'll  
13          obviously copy each other on any emails. What I can  
14          do, the Court has a note, the pages aren't numbered,  
15          but the Court asked, does the defense wish that I  
16          notify the jury of the agreement that Mr. Avery had  
17          an unreversed felony conviction, on the felon in  
18          possession charge?

19          THE COURT: Yes.

20          ATTORNEY STRANG: And I do, I think we  
21          ought to be just upfront with the jury about that.

22          THE COURT: Okay. I don't know that that's  
23          -- I think I have been informed that it was the  
24          intention of the parties to place that on the  
25          record, but I don't know that it's been done yet.

1                   ATTORNEY STRANG: My intention is to  
2 stipulate away the second element of felon in  
3 possession of a gun. We will not challenge the  
4 second element. The jury should consider it proven;  
5 that is, that the defendant had been convicted of a  
6 felony before November 5, 2005.

7                   THE COURT: As long as I have your comments  
8 by 7:00 Sunday morning, that will be fine.

9                   ATTORNEY STRANG: We can exchange email  
10 addresses off the record.

11                  THE COURT: Okay. Anything else this  
12 afternoon?

13                  ATTORNEY KRATZ: We'll probably be  
14 submitting ours this afternoon yet, Judge, but if I  
15 could just have a moment.

16                  ATTORNEY FALLON: Your Honor, there is one  
17 other matter that I would -- I think the Court is  
18 aware, that I will be submitting correspondence to  
19 the Court and Mr. Strang will respond at some time.  
20 Hopefully we can get that done by Sunday, but that  
21 may be a tall order, as well. But there's that one  
22 other matter that I will be sending correspondence  
23 on.

24                  THE COURT: I understand. And I understand  
25 that sometime before Monday morning I'm going to

1 receive something on that; that's my understanding.

2 ATTORNEY STRANG: Maybe -- The jury is  
3 coming at -- or we're starting at 9:00 with the jury  
4 on Monday?

5 THE COURT: Yes.

6 ATTORNEY STRANG: Maybe we ought to be here  
7 at 8:00.

8 THE COURT: I think that would be -- well,  
9 at least by 8:30.

10 ATTORNEY KRATZ: We'll be here at 8:30;  
11 that's fine, Judge.

12 THE COURT: Okay.

13 ATTORNEY KRATZ: That's all. Thank you.

14 THE COURT: All right. We're adjourned for  
15 today.

16 (Proceedings concluded.)

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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 10th day of September, 2007.  
16  
17  
18

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
21  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, POST-CONVICTION MOTION

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** MAY 22, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ  
Special Prosecutor  
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON  
Special Prosecutor  
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN  
Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG  
Attorney at Law  
18 On behalf of the Defendant.

19 JEROME F. BUTING  
Attorney at Law  
20 On behalf of the Defendant.

21 STEVEN A. AVERY  
Defendant  
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery, Case No. 05 CF  
3                   381. We are here this morning -- or this afternoon  
4                   to hear the defendant's motion for a new trial.  
5                   Will the parties state their appearances for the  
6                   record, please.

7                   ATTORNEY KRATZ: Good afternoon, Judge, the  
8                   State appears by Calumet County District Attorney  
9                   Ken Kratz, Assistant Attorney General Tom Fallon,  
10                  Assistant District Attorney Norm Gahn, appearing as  
11                  special prosecutors.

12                  ATTORNEY STRANG: Steven Avery is present  
13                  in person; he is in custody. Jerome Buting and Dean  
14                  Strang appear on his behalf.

15                  THE COURT: All right. I will indicate for  
16                  the record I have received and reviewed the  
17                  defendant's written motion for a new trial with  
18                  arguments that consist of 39 pages. I also received  
19                  the State's response to defendant's motion for new  
20                  trial, specifically addressing issue number one.

21                  I have read, more than once, each of  
22                  those documents. But if either party desires to  
23                  supplement the written argument with anything  
24                  additional today, I will give the parties an  
25                  opportunity to do so. Mr. Strang, on behalf of

1                   the defendant, since it's your motion.

2                   ATTORNEY STRANG: Well, I'm happy to do  
3                   that. I think probably since the briefing on our  
4                   side is reasonably lengthy and the arguments many,  
5                   it would be, in all likelihood, more helpful to the  
6                   Court if I responded to questions, or if there's an  
7                   area that the Court wants me to address, I'm happy  
8                   to do that.

9                   THE COURT: Well, from your perspective, I  
10                  guess I was looking primarily at anything you might  
11                  want to say in response to the submission I received  
12                  from the State yesterday.

13                  ATTORNEY STRANG: Sure. The State and I  
14                  are agreed on the basic rule in Wisconsin in a  
15                  criminal case, which is that inconsistent verdicts  
16                  alone don't require, in and of themselves, a new  
17                  trial in a criminal case.

18                  It's a very different rule in a civil  
19                  case, of course, and that -- that's troubling  
20                  just considering the -- the interests at stake in  
21                  civil and criminal cases, why the law would be  
22                  more tolerant of -- of inconsistent verdicts in  
23                  the criminal setting with liberty at stake, than  
24                  in the civil with a shifting of money or an  
25                  allocation of damages for loss being at stake.

1                   But the rule is as it is. I have tried  
2 to explain here why the verdicts necessarily are  
3 inconsistent. And the State, I think, in arguing  
4 there is no necessary inconsistency, misses the  
5 fact that the testimony, which was undisputed, in  
6 the end, about bullet holes to the skull, two  
7 particular areas of the head, either of which the  
8 State's testimony suggested would have been  
9 fatal, itself was a disfigurement for a  
10 mutilation of a corpse, for purposes of the first  
11 element of the mutilating a corpse charge.

12                  So it won't do here to say that a jury  
13 might have found that Mr. Avery killed Ms  
14 Halbach, but not been persuaded, beyond a  
15 reasonable doubt, that he burned her body. The  
16 burning wouldn't have been necessary to establish  
17 mutilation of a corpse.

18                  Beyond that, I think there is a  
19 necessary inconsistency and that the challenge I  
20 offer to the Court is to rethink the a priori  
21 assumption that Court's seem to apply that it's  
22 the acquittal that's not warranted under law,  
23 when that happens, rather than the conviction.

24                  At least behind the veil, so to speak,  
25 or without knowing more, there would be no reason

1 to go into a case with an assumption that a jury  
2 would nullify in the defendant's favor, rather  
3 than in the State's favor. It seems to me those  
4 two possibilities are in equipoise and there's no  
5 reason, no good justification, then, for allowing  
6 inconsistent verdicts to stand on the unproven  
7 and, I think, illogical assumption that the  
8 defendant has gotten the benefit of the  
9 inconsistent verdict, rather than the State.

10           Here, I thought it made sense to address  
11 another possible reason justifying the difference  
12 in treatment between civil cases, where there is  
13 very little tolerance for inconsistent verdicts,  
14 and criminal cases where there is much greater  
15 tolerance for them.

16           Addressing a point on the criminal side  
17 that it seems to me could augur in favor of the  
18 rule, as it stands, and the State's position  
19 here, which is the State, because of the double  
20 jeopardy clause, arguably would bear all the  
21 burden of a retrial if one were granted for  
22 inconsistent verdicts.

23           The defendant could stand on his  
24 acquittal and demand a retrial, only on the count  
25 of conviction, thereby putting the State in a

1 position where it couldn't get the benefit of  
2 multiple counts. And I, you know, whatever  
3 may -- may be said in support of the double  
4 jeopardy bar of retrial, that strikes me as  
5 having some logical appeal, in terms of  
6 tolerating the inconsistent verdict, rather than  
7 prejudicing the State on a retrial in that  
8 fashion.

9                   And so what Steven Avery has offered to  
10 do is to waive jeopardy, which indeed is waivable  
11 under the Fifth Amendment and the Fourteenth  
12 Amendment to the United States Constitution and  
13 correlative provision of the Wisconsin  
14 Constitution to waive jeopardy as to the  
15 mutilating a corpse count, so that both he and  
16 the State are back at square one, or in  
17 equivalent positions on a retrial.

18                   Moreover, the inconsistent verdict  
19 problem doesn't go to the third count here, felon  
20 in possession of a firearm at all. On that  
21 basis, we have not sought to set aside the guilty  
22 verdict on the felon in possession count. So the  
23 parties can be put back where they were, ex ante  
24 here, by virtue of Mr. Avery's willingness to  
25 waive jeopardy on a grant of a new trial on the

homicide, to waive jeopardy on the mutilating a corpse count so that that may be retried in tandem.

That's, I think, the thrust of our argument. It rests, in the end, on due process and fairness and not treating a criminal defendant disadvantageously as compared to a civil party, also, again, challenging what is to me a logically unsupportable a priori assumption that in a case of inconsistent verdicts, it's always the defendant who's gotten the benefit of the jury's compromise.

THE COURT: All right. Mr. Kratz.

ATTORNEY KRATZ: Judge, I do ask the Court consider our written position. It's clear, at least to the prosecution, that the State of Wisconsin law is that this Court is not permitted, by the theory of inconsistent verdicts, to set aside this -- this verdict and would ask the Court follow existing Wisconsin case law and not make new law, or not upset the precedential value that Mr. Strang asked this Court to do. And on that issue, then, Judge, I would ask the Court adopt our position and deny the motion. That's all. Thank you.

THE COURT: Very well. Mr. Strang,

1 anything else?

2 ATTORNEY STRANG: No, your Honor.

3 THE COURT: The Court will address each of  
4 the bases raised by the defense in its motion for  
5 new trial. The first one more extensively than the  
6 others, because the others have already been the  
7 subject of prior Court rulings.

8 On the issue of inconsistent verdicts, I  
9 will note, first, that the Court has not been  
10 able to locate, and I don't believe I have been  
11 cited to any reported Wisconsin criminal case in  
12 which a conviction has been reversed because of  
13 verdicts that were alleged to be inconsistent. I  
14 do agree with the State that the leading  
15 Wisconsin case on the issue appears to be **State**  
16 **vs. Thomas**, a Court of Appeals case and what  
17 appears to be the most recent authority on the  
18 subject.

19 I will note at the outset, that's a case  
20 that, in the Court's opinion, provides a more  
21 extreme example, if you will, of verdicts that  
22 were inconsistent because the charge on which the  
23 defendant in that case was found not guilty was  
24 armed robbery. And that charge was a predicate  
25 for the charge in which the defendant was

convicted; specifically, intimidation of a victim.

The charge of intimidation of a victim required, as one of its elements, that the defendant in the case had committed a crime. And the only crime that was really the subject of the testimony or argument was the armed robbery charge on which the defendant was acquitted.

The following excerpts from that opinion, in the Court's mind, are significant here. The Court ruled in ***Thomas*** that juries have always had the inherent and fundamental power to return a verdict of not guilty, irrespective of the evidence.

The Court went on to hold that the jury here was instructed, that if it was satisfied that the State had proven, beyond a reasonable doubt, all of the elements of armed robbery, it should find the defendant guilty of armed robbery. But that if it was not so satisfied, then it must find the defendant not guilty of armed robbery. This distinction between must and should in criminal law is long standing in American jurisprudence.

The Court went on to hold, the fact that

1           a not guilty verdict is inconsistent with another  
2           verdict finding the defendant guilty, does not  
3           require, or by itself permit, reversal of a  
4           judgment entered on the finding of guilt, since  
5           there is no way of knowing whether the  
6           inconsistency was the result of leniency,  
7           mistake, or compromise.

8           The defense candidly and I think  
9           properly, in its argument, acknowledges that the  
10          State of Wisconsin law is such that it is  
11          difficult, if not impossible, to have a verdict  
12          on a particular count reversed on the basis that  
13          it's inconsistent. I, as a circuit judge, do not  
14          have the power to second guess the law as it has  
15          developed in this case in the Wisconsin Supreme  
16          Court and the Courts of Appeal. These arguments  
17          are probably more properly addressed to the Court  
18          of Appeals should this matter be appealed.

19           I would note, finally, that the defense  
20          in this case did introduce independent evidence  
21          challenging the State's contention of the burn  
22          site location. And it's possible that the jury  
23          could have doubts on that particular charge,  
24          which it did not have on the homicide charge.

25           Verdicts are not necessarily entirely

1           consistent or entirely inconsistent. And it  
2           appears to the Court that the verdicts in this  
3           case, to the extent there is a sense of degree,  
4           or at least is not inconsistent, as the verdicts  
5           were in the **Thomas** case.

6           But in conclusion, I do not believe  
7           there is a basis, in Wisconsin law, to question  
8           the jury's verdict on a homicide charge, on the  
9           basis of inconsistency with the verdict on the  
10          mutilation charge.

11          The defense in this case sets forth  
12          other reasons why the Court should consider  
13          granting a new trial. The next one in order  
14          deals with the three counts which were -- well,  
15          two of which were dismissed before the trial  
16          started, and one of which the Court dismissed  
17          before the case went to the jury. The Court has  
18          already addressed that argument in prior rulings,  
19          specifically, elements of the argument that is  
20          made in the brief, and I'm not going to do so in  
21          detail here.

22          I would note that in this pleading and  
23          in prior pleadings, there was a reference to the  
24          statements of Mr. Dassey as being inadmissible.  
25          In the Court's mind, I have always viewed them as

1 being potentially inadmissible, but not  
2 necessarily inadmissible. Mr. Dassey was never  
3 offered as a witness.

4 We don't know if he would have asserted  
5 a right to his Fifth Amendment right to remain  
6 silent, whether there would have been an order  
7 for him to -- if the State had requested it, how  
8 the Court would have ruled. And I don't think,  
9 as part of the defense argument, that the Court  
10 would agree that the State never had any  
11 admissible evidence to proceed on those counts,  
12 because it was a bit early in the game to  
13 characterize any statements Mr. Dassey may have  
14 made as inadmissible.

15 The defense also reiterates its  
16 disagreement with the Court's decision not to  
17 strike a juror for cause during the course of the  
18 trial; specifically, a juror who some six or  
19 seven years earlier had sat in as a juror in a  
20 civil case in which one of the State's witnesses,  
21 Detective David Remiker, was a plaintiff.

22 The Court has previously ruled, or did  
23 rule during the course of the trial, that there  
24 was not sufficient grounds to strike that juror  
25 for cause. The Court stands by that ruling. I

1           would note, in addition, today, that the juror in  
2           question was removed from the jury -- from the  
3           jury as one of the alternates who did not  
4           deliberate. So the juror in question did not  
5           actually deliberate on the verdicts.

6           I also note, in reference to the two  
7           cases relied on by the defense in the argument,  
8           that there are significant factual differences  
9           between those cases and the juror in this case.

10          The first case cited by the defendant  
11          was **State vs. Delgado**. In that case, the juror  
12          in question was asked, as were other jurors on  
13          voir dire, whether they had any history or  
14          personal experience with sexual assaults. The  
15          juror did not answer the question at the time,  
16          but disclosed during deliberations that the  
17          juror, in fact, had been a sexual assault victim  
18          herself. And the juror's statement during the  
19          deliberations demonstrated that her history did  
20          affect her service as a juror in that case.

21          In this case, there is no indication,  
22          that the Court can see, that the juror was not  
23          candid during voir dire. I went back and read  
24          her written questionnaire in which she did  
25          disclose that she was, in fact, a juror in a

1           civil case some five to six years earlier. She  
2           did not name the parties in that case. I don't  
3           believe she remembered who -- what those names  
4           were. She was not asked during oral examination  
5           further details about the case.

6           She, in the Court's mind, candidly  
7           disclosed to the Court, without being invited to  
8           do so, during the course of the trial, that once  
9           she saw Mr. Remiker on the stand, she recognized  
10          him as the plaintiff in the case in which she had  
11          deliberated. She indicated she did not have a  
12          recollection as to whether or not he testified in  
13          that case. And I saw no reason, and continue to  
14          see no reason, to doubt her recollection in that  
15          regard. It's not unusual to forget, after six or  
16          seven years, what the details were of a  
17          particular case, even if you sat on it as a  
18          juror.

19           The Court also believes that the facts  
20          in this case are distinguishable in a number of  
21          ways from the **Faucher** case, a second case cited  
22          by the defense. The juror in that case indicated  
23          that the juror recognized one of the witnesses as  
24          a former next door neighbor. And the juror  
25          indicated that in her opinion the witness was a

1 girl of integrity who wouldn't lie.

2 That's significantly different from this  
3 case where the only contact between the juror and  
4 Detective Remiker was the exposure of Detective  
5 Remiker to the juror in the course of a trial  
6 some six or seven years earlier. And the juror  
7 had no opinion as to Mr. Remiker's credibility  
8 because the juror could not even remember if  
9 Mr. Remiker had testified in the case. So I  
10 think there's significant differences between  
11 this case and the case in which jurors were ruled  
12 to have been jurors who should have been stricken  
13 in the past.

14 The next item raised by the defendant is  
15 the Court's denial of the defendant's **Batsen**  
16 Challenge to a minority juror who was stricken by  
17 the State. The Court is not going to elaborate  
18 on its prior decision sustaining that strike. As  
19 the Court noted at the time, and as the defense  
20 points out, the fact that the defendant in this  
21 case is not himself a member of a minority group  
22 did not prevent him from raising the **Batsen**  
23 challenge. But the Court finds that under the  
24 rule of **Batsen**, the decision to strike the juror  
25 was not improper.

1                   The defense also argues that the Court  
2                   erred in excluding the testimony of Manitowoc  
3                   County Coroner, Debra Kakatsch. The Court  
4                   excluded the testimony during the course of the  
5                   trial under Section 904.03 because the Court  
6                   determined that the probative value of the  
7                   offered testimony was significantly outweighed by  
8                   a potential confusion of the issues and  
9                   considerations of undue delay and waste of time.

10                  To elaborate on the Court's earlier  
11                  decision, at the outset of the investigation of  
12                  this case, once the police became involved,  
13                  responsibility for the investigation of the case  
14                  was turned over by the Manitowoc County District  
15                  Attorney to the Calumet County District Attorney.  
16                  And the Wisconsin Department of Criminal  
17                  Investigation was brought in almost immediately.

18                  The decision was made because of  
19                  Mr. Avery's pending lawsuit against Manitowoc  
20                  County. And I believe it's important to keep in  
21                  mind that while it was the actions of the  
22                  Manitowoc County Sheriff's Department that no  
23                  doubt formed the basis of the lawsuit, the  
24                  Manitowoc County Sheriff's Department is not an  
25                  independent entity that was the subject of the

suit, it's Manitowoc County. And Coroner Kakatsch was also an employee of Manitowoc County.

While it's true that representatives of the sheriff's department participated in the investigation, the supervisory role was ceded to Calumet County and the State of Wisconsin. And Coroner Kakatsch would have had a supervisory role had she participated.

More significantly and directly involved, as far as her testimony would have gone, she could only offer testimony of what she would have done had authority not been turned over to Calumet County and the State. She had no significantly relevant testimony or probative evidence to offer on factual matters related to the crime.

The Court gave the defense more than adequate opportunity to highlight the motives that members of the Manitowoc County Sheriff's Department conceivably could have had against the defendant. In the Court's judgment, it would have been a waste of time to make a five week trial even longer by allowing the testimony of what a witness might have done had the witness

1 participated in the investigation.

2                   The Court does acknowledge that the  
3 defendant certainly had a right to introduce  
4 evidence critical of the State's handling of the  
5 forensic cremains evidence in this case. The  
6 defendant was given adequate opportunity to do so  
7 in the form of cross-examination of the State's  
8 witnesses and the testimony of Dr. Scott  
9 Fairgrieve, its own witness.

10                  That evidence was directly probative and  
11 more than sufficient to address this particular  
12 part of the defense case. The Court concludes  
13 that Coroner Kakatsch had no particular expertise  
14 that would have added anything to the defense  
15 argument.

16                  The defendant also argues that the Court  
17 erred in allowing Mark LeBeau's testimony. He  
18 was the FBI expert that testified about EDTA test  
19 results. Again, this issue was thoroughly  
20 addressed during the trial. I'm not going to  
21 repeat everything again. But given the learning  
22 curve, if you will, of the Court, with respect to  
23 EDTA evidence, both before the trial and during  
24 the course of the trial, I would make the  
25 following observations:

1                   The Court is not being critical of  
2 either party for not conducting EDTA tests  
3 earlier. Each party was free to make whatever  
4 strategic decision it wished to make on this  
5 point, that is, to conduct EDTA testing or not  
6 testing.

7                   With respect to the scientific state of  
8 EDTA testing itself, the Court, based on the  
9 testimony at the trial, and the pre-trial briefs  
10 that were submitted by the parties earlier, comes  
11 to the following conclusions:

12                  At least at this point there is no one  
13 standardized procedure for testing the presence  
14 of EDTA in blood samples, primarily because of a  
15 lack of demand for such testing.

16                  The Court also concludes, however, that  
17 testing for the presence or absence of EDTA  
18 appears to be scientifically possible. Certainly  
19 the FBI expert, Mr. LeBeau, who testified,  
20 believes it is.

21                  And as the Court understood the  
22 testimony of defense witness, Janine Arvizu,  
23 while she was critical of some of the methods  
24 employed by the FBI and the conclusions that were  
25 drawn from the methods employed, I do not recall

1 anything in her testimony to suggest that EDTA is  
2 something that cannot be measured in blood  
3 samples with proper testing protocols.

4                   While it's true that the FBI at this  
5 point may have more experience in this area than  
6 private labs, the Court does not believe there is  
7 anything special about the FBI's experience or  
8 equipment that would make the FBI uniquely  
9 qualified to test for EDTA. In fact, Ms Arvizu's  
10 testimony suggested that a private lab may well  
11 have utilized alternative procedures to do a  
12 better job.

13                  Finally, I would note that the defense  
14 has argued alternatively during the latter stages  
15 of the pre-trial proceedings and the trial  
16 itself, either that EDTA testing is unavailable  
17 or unreliable, but, then, at the same time,  
18 argued that the Court should have continued the  
19 trial in this case to permit the defendant to  
20 conduct EDTA testing.

21                  Given the defense experts criticism of  
22 the methods employed by the FBI, the Court  
23 believes that the defendant could just as easily  
24 have conducted EDTA testing before the trial as  
25 at this time. The decision not to test, the

1 Court believes, was the defendant's decision and  
2 cannot form the basis of an argument for a new  
3 trial at this point.

4 Finally, the defense alleged that there  
5 were other errors committed by the Court,  
6 including rulings on the searches, the  
7 admissibility of the bullet on which the victim's  
8 DNA was found and other motions that the Court  
9 ruled on during the course of these proceedings.  
10 In all likelihood, many of the Court's rulings  
11 may be the subject of challenge in an appeal of  
12 this matter, but the Court finds no reason at  
13 this time to reconsider those rulings.

14 For all those reasons, the Court is  
15 going to deny the defendant's motion for a new  
16 trial at this time. And we will proceed to  
17 sentencing which is scheduled for 1:30 on  
18 June 1st.

19 I will inform counsel that I had my  
20 judicial assistant contact the PSI writer. I  
21 understand it's expected to be available  
22 Thursday, that is, two days from today. Is there  
23 anything further from either party this  
24 afternoon?

25 ATTORNEY KRATZ: Did the Court want me to

1 draft an order?

2 THE COURT: Yes, I would like you to draft  
3 an order, please.

4 ATTORNEY STRANG: Two things, one, I think  
5 the Court misspoke factually on the third issue  
6 concerning the juror we contend should have been  
7 stricken for objective bias. It is true the juror  
8 did not serve, but that was not because she was an  
9 alternate who was excused. We used the extra  
10 peremptory strike that we agreed, with the State,  
11 the parties would have to remove her because the  
12 Court had not removed her for cause.

13 THE COURT: Well, the Court understands  
14 that to be a method that the parties agreed to, to  
15 select the alternate jurors who would not serve, but  
16 I do agree that that was the procedure that the  
17 parties agreed to.

18 ATTORNEY STRANG: And, secondly, does the  
19 Court know whether the PSI will be mailed to  
20 counsel, or is it to be picked up or ...

21 THE COURT: I would suggest that the  
22 parties contact the PSI writer directly for that.  
23 And if there are problems with getting it in a  
24 timely fashion, notify the Court. I'm trying to  
25 think, this Thursday would be --

1 ATTORNEY STRANG: The 24th.

2 THE COURT: -- the 24th. And that would be  
3 eight days before the scheduled sentencing date.

4 ATTORNEY BUTING: Would the Court have any  
5 objection if it's faxed. I have received -- some  
6 counties will do that. I don't know whether it's --

7 THE COURT: Let's do this, after we go off  
8 the record, let's go back in my chambers and contact  
9 the PSI writer and attempt to resolve this.

10 Anything else on the record today?

11 ATTORNEY KRATZ: No.

12 ATTORNEY STRANG: No.

13 THE COURT: Very well, we're adjourned for  
14 this afternoon.

15 (Proceedings concluded.)

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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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.

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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23  
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39 [1] 2/18	aside [2] 6/21 7/18	carefully [1] 24/8
<b>9</b>	asked [3] 7/21 13/12 14/4	case [46]
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, SENTENCING HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** JUNE 1, 2007

9 **BEFORE:** Hon. Patrick L. Willis  
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ  
Special Prosecutor  
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON  
Special Prosecutor  
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN  
Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG  
Attorney at Law  
18 On behalf of the Defendant.

19 JEROME F. BUTING  
Attorney at Law  
20 On behalf of the Defendant.

21 STEVEN A. AVERY  
Defendant  
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven Avery, Case No. 05 CF  
3                   381. We are here this afternoon for the sentencing  
4                   hearing in this case. Will the parties state their  
5                   appearances for the record, please.

6                   ATTORNEY KRATZ: Good afternoon, Judge, the  
7                   State appears by Calumet County District Attorney  
8                   Ken Kratz and Assistant Attorney General Tom Fallon,  
9                   both appearing as Special Prosecutors.

10                  ATTORNEY STRANG: Good afternoon, as well.  
11                  Steven Avery is here in person, in custody; Jerome  
12                  Buting of Buting and Williams on his behalf, as well  
13                  as Dean Strang of Hurley, Burish and Stanton.

14                  THE COURT: Okay. I will indicate for the  
15                  record that the defendant was found guilty and  
16                  convicted, following a jury trial, on March 18,  
17                  2007, of first degree intentional homicide and felon  
18                  in possession of a firearm. The crime of first  
19                  degree intentional homicide is a Class A felony  
20                  which -- which carries a mandatory penalty of life  
21                  in prison.

22                  However, the Court is required to make a  
23                  determination as to if, and when, the defendant  
24                  is eligible for extended supervision. The  
25                  choices are: Eligibility after 20 years of

1                   incarceration, eligibility after a date set by  
2                   the Court which can be no earlier than 20 years  
3                   of incarceration, or the Court can determine that  
4                   the defendant is not eligible for release to  
5                   extended supervision.

6                   The charge of felon in possession of a  
7                   firearm is a Class G felony which is punishable  
8                   by a fine of up to 25,000 or up to 10 years in  
9                   prison consisting of no more than 5 years initial  
10                  confinement and no more than 5 years of extended  
11                  supervision.

12                  The Court has previously ordered and has  
13                  been provided with a copy of the Presentence  
14                  Investigation Report in this case. I believe the  
15                  writer of that document, Ms Czechanski, is  
16                  present somewhere in Court. Have both of the  
17                  parties received a copy of the Presentence  
18                  Investigation Report? Mr. Kratz?

19                  ATTORNEY KRATZ: We have, Judge.

20                  THE COURT: And Mr. Buting?

21                  ATTORNEY BUTING: We have.

22                  THE COURT: Mr. Buting, have you had a  
23                  chance to review the Presentence Investigation  
24                  Report with your client?

25                  ATTORNEY BUTING: Yes, I have.

THE COURT: I understand from a previous submission I received last week, involving statements given by Brendan Dassey, that the Defense disputes background information presented in the presentence attributed to Mr. Dassey. I suppose before we proceed further I should allow you to elaborate on that.

ATTORNEY BUTING: Thank you, Judge. Before I do, let me say, also, there's -- there's other background information about Mr. Avery's family, education, those sorts of things, we don't have any objection to, or claim that there are any significant inaccuracies in that portion of the presentence.

However, the presentence describes the description of the offense as well as her recommendation for disposition. Clearly, those sections rely heavily on the one statement of Brendan Dassey that was introduced at his trial; that is, a portion of the March 1st, 2006, interrogation. We absolutely do object to any consideration or reliance by the Court at sentencing on any of those facts.

We believe they are untruthful, inaccurate, false, and misleading. And as the

1           Court knows, a defendant has a due process  
2           constitutional right to be sentenced only upon  
3           accurate information.

4           Cite just a couple of cases, **Townsend**  
5           **vs. Burke**, 334 U.S. 736, and **U.S. vs. Tucker**, 404  
6           U.S. 443. Also some Wisconsin cases, **State vs.**  
7           **Mosley**, 201 Wis. 2d, 36, that's a Court of  
8           Appeals 1996 case. And more recently, **State vs.**  
9           **Groth**, G-r-o-t-h, 258 Wis. 2d, 889, that's a  
10          Court of Appeals 2002 decision in which the  
11          sentencing was reversed.

12          And, basically, what those cases hold is  
13          that it is paramount that the Court base its  
14          sentence on accurate information, not false, or  
15          inaccurate, or misleading information.

16          In the **Groth** case, there was allegations  
17          made that the defendant, in the past, had beaten  
18          pregnant women, I think was the facts in that  
19          case. And it was later determined that the  
20          district attorney was relying on inaccurate  
21          information and that was enough for the Court to  
22          actually reverse the sentence.

23          Here, Mr. Dassey, I'm confident from the  
24          submission that we sent, which is 58 pages long,  
25          a memorandum, as well as all of the transcripts

1 and all of the DVDs, the version of Mr. Dassey's  
2 numerous stories that was presented at his trial,  
3 is only one of a number of versions. And it's  
4 misleading for the presentence writer, or this  
5 Court, to consider that version of events as  
6 reliable and accurate when, in fact, it's not.

7 I should note, also, that,  
8 unfortunately, that version which has been, we  
9 believe in our case, largely disproved,  
10 factually, by the lack of physical evidence to  
11 corroborate it, that version describes a very  
12 cruel death for Teresa Halbach, a torture, more  
13 or less, for which there is no factual support,  
14 other than the one version given by Brendan  
15 Dassey, a 16 year old young man with limited  
16 mental facilities, who we believe was imposed  
17 upon by the psychological police interrogation  
18 techniques that we set forth in the attachment.

19 The only evidence of how Teresa Halbach  
20 died was presented at our trial, which was that  
21 there was a gunshot to the head. It was unclear,  
22 at least it was unproven, in my mind, whether  
23 that even occurred while she was alive or dead.  
24 I don't think that was possible to have been  
25 proven.

1                   But to assume that what she suffered at  
2                   the hands of anyone, much less Mr. Avery or Mr.  
3                   Dassey, is the version of events that were  
4                   presented in the March 1st confession is -- is a  
5                   stretch because there's no evidence to support it  
6                   whatsoever. And all of the physical facts tended  
7                   to disprove that version.

8                   It's unfortunate that that's the -- the  
9                   image that the Halbach family and friends are  
10                  left with, as an example, or a picture of what  
11                  she went through when, in fact, that very well --  
12                  she may have gone through nothing at all like  
13                  that.

14                  Mr. Avery and his attorneys do not know  
15                  how Teresa Halbach died. That she did die is --  
16                  was proven by the State in this case, but how she  
17                  died was not. And, certainly, no evidence, no  
18                  reliable, accurate information, was presented  
19                  that this Court can rely on, that she suffered  
20                  before she died, that she was tortured, that she  
21                  was begging for her life, any of that, which not  
22                  only pervades the presentence report itself, but  
23                  also the attached letters from the family and  
24                  friends, who -- some of whom highlight that very  
25                  issue; that is, it's not just that she died, but

1           it's the manner in which she died that they take  
2           such offense at, and understandably so.

3           But, again, what I'm asking this Court  
4           to do is twofold. One, to take no consideration  
5           and to rely -- to not rely on, at all, anything  
6           in the presentence report that describes Teresa  
7           Halbach's death in the manner in which Brendan  
8           Dassey, on that one portion of the interview,  
9           said it happened.

10          And two, because these presentence  
11         reports are not used just today, these also go  
12         into the offender's correctional file, with the  
13         Department of Corrections, I'm asking that the  
14         Court order that this be rewritten and that all  
15         references to that Brendan Dassey version be  
16         stricken.

17          I don't think it's enough to just order  
18         on the record that you are not considering it. I  
19         think the Court also has to have this rewritten  
20         and resubmitted, absent all of those disputed  
21         facts, because they are disputed, they are  
22         inaccurate, and they would be a violation of  
23         Mr. Avery's due process rights for the Court to  
24         consider them.

25          THE COURT: All right. I will ask the

1 State, at this time, if they have any response to  
2 that particular request before I, Mr. Buting, go  
3 back to you about any other matters in the PSI which  
4 may be of concern.

5 ATTORNEY KRATZ: Are you asking for a  
6 response as to Mr. Buting's confidence in the  
7 unreliability of the statements, or that it should  
8 be rewritten or resubmitted, or both?

9 THE COURT: Well, both.

10 ATTORNEY KRATZ: All right. Mr. Buting's  
11 personal confidence in the unreliability of  
12 Mr. Dassey's statements is of very little help for  
13 this Court. Mr. Buting can have his own personal  
14 opinion as to the reliability, as Mr. Dassey's jury  
15 could have an opinion as to the reliability of his  
16 statements. I will note for this Court that the law  
17 permits this Court consider any version of the  
18 events which are supported by evidence; in fact, to  
19 consider uncharged, unproven offenses, even conduct  
20 for which a defendant has been acquitted. **State vs.**  
21 **Leitner**, L-e-i-t-n-e-r, and other cases, stand for  
22 that proposition.

23 I will, however, Judge, just so that we  
24 can move on with the real purpose of today's  
25 hearing, that is the sentencing, indicate that

1                   the State's position, although obviously  
2                   disagreeing with virtually everything that  
3                   Mr. Buting has just told the Court, indicate that  
4                   Mr. Avery was convicted in this case, with what  
5                   the State believes was overwhelming  
6                   circumstantial and scientific evidence.

7                   Although the Defense has attempted, at  
8                   this point, to complain about evidence which was  
9                   not introduced nor needed to convict Mr. Avery,  
10                  and which may be relevant for another sentencing,  
11                  or even for some other hearings, it is not  
12                  relevant for today's purposes.

13                  The State does intend and the State will  
14                  be asking the Court sentence Mr. Avery, based  
15                  upon the evidence presented in this case, on the  
16                  defendant's own criminal history, on the victim's  
17                  character, on the victim impact that is to be  
18                  introduced, and not as to Mr. Dassey's statement,  
19                  or at least not to give or intend undue reliance  
20                  upon those admissions.

21                  Finally, Judge, it is the State's  
22                  position that this Court has no authority to  
23                  direct the presentence writer to rewrite or  
24                  resubmit a PSI because Mr. Buting may think that  
25                  the facts or versions stated therein are

1 disputed, or Mr. Buting thinks that they are  
2 unreliable. The Court can give the version of  
3 events and the weight to that, what the Court  
4 deems appropriate.

5 This Court is in a very good position  
6 since it has sat through this entire case for the  
7 last 18 months. Certainly, I'm sure,  
8 individually, has developed a version of events  
9 for which a sentence can be derived and we would  
10 ask the Court do that. That's all we have today,  
11 Judge, thank you.

12 THE COURT: All right. Mr. Buting, are  
13 there any other parts of the PSI which the defendant  
14 wishes to suggest corrections to?

15 ATTORNEY BUTING: Factually, no, but if I  
16 could just respond to the last portion of  
17 Mr. Kratz's comments. It's not a matter of just  
18 personal opinion, whether I believe Brendan Dassey's  
19 March 1st story or not.

20 What we're talking about is a  
21 constitutional right to due process. Yes, the  
22 Court can consider facts that even -- that come  
23 from uncharged offenses, or even cases for which  
24 there was an acquittal.

25 But there has to be -- The information,

1           the Court has to find, is accurate and reliable  
2           in order to rely upon them. And what we're  
3           saying is, to Brendan Dassey's statements, none  
4           of his statements are accurate or reliable enough  
5           for this Court to consider at sentencing.

6           And if the State disputes that, then  
7           we'll be happy to have a hearing and present all  
8           of the evidence that we have presented through  
9           live witnesses, right here in this packet that we  
10          submitted to the Court. If not, if the State  
11          wishes to move on, then the Court cannot consider  
12          them, or rely upon them, is the actual language  
13          from the case law.

14          The Court may not rely on inaccurate  
15          facts. And if they are disputed facts, they have  
16          to be resolved in some way. And if the Court  
17          chooses to resolve them by relying on them, then  
18          the Court has to so state.

19          As far as the Court's authority on the  
20          presentence, certainly the Court has the  
21          authority to order the presentence to be modified  
22          or amended, the Court is the one that orders the  
23          presentence. The presentence writer is supposed  
24          to be independent to the Court.

25          And if -- if the -- I believe it's the

1           **Mosley** case, **Mosely** and **Groth** talk about the  
2       problems when there are inaccurate -- when there  
3       is inaccurate information in the presentence  
4       itself; and that those are the facts that are  
5       being disputed, that's what needs to be  
6       addressed.

7           And because they do go to the Department  
8       of Corrections, the Court should order, and can  
9       order, that that be deleted, if the Court chooses  
10      not to rely on it. If the Court wants to rely on  
11      those at a sentencing, then this material can  
12      stay. But, obviously, that's an issue, then,  
13      that can be addressed on post-conviction, with  
14      Mr. Avery, later. But what we're asking is that  
15      the Court not consider or rely upon any of  
16      Mr. Dassey's statements and that they be deleted  
17      from the presentence as well.

18           THE COURT: It's my understanding, unless I  
19       misunderstood the State, that with respect to the  
20       circumstances surrounding the charges in this case  
21       themselves and the conviction, that the State is  
22       going to ask the Court to rely simply on the  
23       evidence that was introduced at the trial, which was  
24       certainly thorough, covered five weeks, I was there.  
25       Mr. Kratz, am I speaking correctly?

1                   ATTORNEY KRATZ: That is correct, Judge,  
2 yes.

3                   THE COURT: So the State is not going to  
4 ask -- be asking the Court to consider the extra  
5 statements from Mr. Dassey that are described in the  
6 PSI?

7                   ATTORNEY KRATZ: That's right.

8                   THE COURT: All right. Mr. Buting, is  
9 there anything else about the PSI that you wish to  
10 bring up at this time? I'm talking now by way of  
11 the factual background provided.

12                  ATTORNEY BUTING: Sure, but let me just  
13 point out that the PSI or -- it's not entirely clear  
14 to me whether the State intends to rely on -- the  
15 State did mention they want the Court to sentence on  
16 victim impact.

17                  And if there are statements in the PSI,  
18 letters that are attached and they may perhaps be  
19 repeated or similarly stated in court today with  
20 live statements that refer specifically to the  
21 manner in which Teresa Halbach died, as a  
22 particular impact on the victim, and if those --  
23 again, that coming solely from the one Brendan  
24 Dassey version on March 1st; and if that is going  
25 to be relied on by the State in justification of

1                   their recommendation or the Court in  
2                   justification of its sentence, we have the same  
3                   problem, I think.

4                   THE COURT: Well, I think you are talking  
5                   about two different concepts. The victims have a  
6                   right to express their feelings, whatever they are,  
7                   and express their beliefs, whatever they may be.  
8                   And I don't think the Court is in a position to tell  
9                   them they can't feel a certain way, or believe  
10                  certain facts.

11                  But as far as the facts that the Court  
12                  will be using to assess the severity and scope of  
13                  the offense, maybe I'm wrong, but I understood  
14                  that both parties were going to be asking the  
15                  Court to consider the evidence that was  
16                  introduced at the trial in this case. Now, if  
17                  I'm missing something, let me know, but that's my  
18                  understanding.

19                  ATTORNEY BUTING: That's fine.

20                  THE COURT: Mr. Kratz?

21                  ATTORNEY KRATZ: That's fine, Judge.

22                  THE COURT: All right. Mr. Buting,  
23                  anything else?

24                  ATTORNEY BUTING: Other than what the Court  
25                  chooses to do about the presentence, which you could

1 do at the end if you wish or you could --

2 THE COURT: I understand that you are  
3 making a separate request. At this time I will  
4 simply note for the record that the defendant  
5 disputes the account of what happened as it's  
6 attributed to Brendan Dassey in the PSI; and that  
7 neither of the parties are going to be asking the  
8 Court, in their sentencing arguments, to rely on  
9 that information; and that the defendant is making a  
10 separate request for further action from the Court  
11 as to the content of the PSI itself. That's never  
12 been requested of me before and I'm not prepared to  
13 answer that from the bench today, but I will take  
14 your request under advisement.

15 ATTORNEY BUTING: Thank you.

16 ATTORNEY KRATZ: Judge, if I could have  
17 just a moment. We're prepared, Judge, thank you.

18 THE COURT: All right. At this time I will  
19 indicate that the Court has read the attachments to  
20 the PSI, which include a -- one letter in support of  
21 the defendant, the defendant's own statement, and a  
22 significant number of written statements from  
23 victims and members of the victim's family.

24 I will, in a few minutes, offer any  
25 victims a chance to make statements to the Court.

1           But before I get to that, I would like to ask the  
2           parties if there is any other testimony from  
3           anyone, or any other statements from anyone, that  
4           either party wishes to present to the Court  
5           today, other than victim impact statements.

6           ATTORNEY KRATZ: Not by the State, your  
7           Honor.

8           ATTORNEY STRANG: We anticipate no  
9           testimony, but I expect that Mr. Avery may wish to  
10          exercise his right to allocution.

11          THE COURT: And I will certainly grant him  
12          that right, after I hear the arguments of the  
13          parties. With that, then, we'll proceed to Victim  
14          Impact Statements. Mr. Kratz.

15          ATTORNEY KRATZ: Judge, before proceeding  
16          to that, it is a responsibility of this Court, at  
17          the time of sentencing, to inquire of the State  
18          whether all provisions of Chapter 950 have been  
19          complied with. I will tell the Court that they  
20          certainly have in this case. This course -- excuse  
21          me -- this Court understands that the victim's  
22          family has been in attendance throughout these  
23          proceedings, and the sentencing hearing is no  
24          exception thereto.

25           Written impact statements have been

1                   provided. There is no restitution request, as  
2                   noted in the presentence, and I think the Court  
3                   needs to make a specific finding of that. And  
4                   with that, Judge, we are prepared, then, to hear  
5                   from five relatives of Teresa Halbach. And when  
6                   the Court is ready to hear those statements, I  
7                   can introduce them at that time.

8                   THE COURT: You may do that at this time.  
9                   I'm going to ask you to share your microphone at the  
10                  podium with anyone who chooses to make a statement.

11                  ATTORNEY KRATZ: What I'm going to do,  
12                  Judge, is I'm going to have the individuals identify  
13                  themselves, their relation to Teresa, and then  
14                  provide their statement. I will also tell the  
15                  Court, as the Court understands, at the conclusion  
16                  of the five impact statements, we do have a DVD  
17                  video to play, which is approximately three minutes  
18                  in length. I will introduce that before it is  
19                  played. The first statement will be given by Maria  
20                  Halbach. Maria.

21                  MARIA HALBACH: Good afternoon, Judge  
22                  Willis.

23                  I have always been taught that  
24                  everything happens for a reason. This belief has  
25                  been challenged in the last year and a half. I

1 continue to struggle with why or what reason  
2 there could be behind the suffering Teresa went  
3 through, but I guess some things are bigger than  
4 we can understand.

5 Life seemed so simple on October 29th,  
6 2005, when I was with Teresa. Little did I know  
7 that this would be the last time I would see her,  
8 that at that moment, when we're out living life  
9 and having some fun, someone in the world was  
10 plotting to take Teresa's life.

11 I was brought up in the same small town  
12 as Teresa. I got to know Teresa in middle  
13 school. We made many great memories throughout  
14 our friendship.

15 We camped out in high school. We went  
16 to dances. We went through boyfriends. We had  
17 fights with girlfriends. Skydived. She was  
18 there to see each of my children as they were  
19 starting their lives. Through it all, Teresa was  
20 always there with a smile and had something  
21 lighthearted to say.

22 I was blessed to fall in love with a  
23 Halbach and join this amazing family. What you  
24 see is what you get. Teresa, and everyone who  
25 surrounded her, are full of faith, love, and true

1                   kindness.

2                   One of the ways that Teresa's murder has  
3                   affected me is in the feeling, the emotion that  
4                   is completely foreign to me, and that is anger.  
5                   Anger is not something I'm used to feeling. I  
6                   did not understand what it felt like to truly  
7                   feel angry with another person until the events  
8                   of Teresa's death began to unfold.

9                   Just when we thought things could not  
10                  get any more horrifying, it did. I would get a  
11                  phone call, an email, or read the newspaper and  
12                  another detail was displayed that was beyond the  
13                  realm of our imagination.

14                  I was raised to forgive those who sin  
15                  against me or someone that I love. The statement  
16                  sounds great and it is easily said; however, it  
17                  has been put to the test. Forgiving someone who  
18                  does not take responsibility for their actions is  
19                  not an easy task.

20                  The events that took place on  
21                  October 31st, 2005, have not only affected me,  
22                  but they have affected my children. I have three  
23                  children. Two of my children were near and dear  
24                  to Teresa. And my third child never even got the  
25                  chance to meet her. Zachary was born one month

1 after Teresa's death.

2 My children have had to learn more about  
3 death and the horrifying acts that other people  
4 are capable of, at a very young age. A piece of  
5 their innocence and their childhood was taken  
6 from them when Teresa was so brutally taken from  
7 us.

8 My husband and I are raising our  
9 children in the same way Teresa was raised, to  
10 trust in the greater good that exists in people.  
11 We were raised to trust and be optimistic.  
12 Teresa's murder shook this trust and temporarily  
13 set in place a sense of insecurity and  
14 skepticism.

15 However, I'm not going to allow Steven  
16 Avery to take my life away from me, as he did  
17 Teresa. I'm going to continue to live life like  
18 Teresa. Teach my children to do the same. They  
19 still look to the stars at night to find the  
20 brightest one. This is the star that represents  
21 Teresa.

22 The course of events surrounding  
23 Teresa's death do not overshadow her life. We  
24 may not know the reason, but life is too short to  
25 focus on this. My faith has led me to believe

1                   that this crime is horrific and unthinkable;  
2                   however, our place is not vengeance, our place is  
3                   justice.

4                   Justice for Teresa is to be assured that  
5                   the people who hurt her and humiliated her are  
6                   never allowed the opportunity to hurt someone  
7                   like this again. It is in your hands, Judge  
8                   Willis, to hold Steven Avery accountable for his  
9                   actions and not let him hurt again. He needs to  
10                  be put behind bars for the rest of his life,  
11                  until he has to answer to the ultimate judge.  
12                  Thank you.

13                  KERI LOWE: Good afternoon, Judge. A  
14                  part of a parent's role is many --

15                  THE COURT: Excuse me, can you state your  
16                  name for the record.

17                  KERI LOWE: I'm Keri Lowe; I'm Teresa's  
18                  cousin.

19                  THE COURT: Go ahead.

20                  KERI LOWE: A part of a parent's role is  
21                  many different things: First, to protect her  
22                  from all; protect from harm, evil and bad  
23                  influences in society.

24                  Secondly, you create a positive  
25                  environment for children to observe and grow.

1 Furthermore, you instill values that only hope --  
2 that you only hope will carry on with them  
3 through life.

4 Finally, you raise them to be confident,  
5 strong, outgoing, and full of life.

6 A parent is a provider of strength;  
7 physically, emotionally and intellectually.  
8 Because of the evils in society, my role as a  
9 mother is different. I still protect. I still  
10 do the things moms do. When something tragic  
11 happens to your family your world changes.

12 I'm a Halbach family member with three  
13 young girls. I'm now dealing with issues and  
14 situations I never foresaw. Explaining to my  
15 girls how an innocent woman's life was taken, for  
16 no apparent reason, leads to many unanswered  
17 questions.

18 Keeping faith, being strong and being  
19 positive are difficult attributes to maintain  
20 after an incident as this. I hope the outcome  
21 will help me as a parent show all, especially  
22 young children such as my three girls, how  
23 society will protect us from evil.

24 Life goes on; however, we have a void  
25 that will never be replaced or forgotten. Please

1           help my role as a parent and show me that we will  
2       all be protected. Judge Willis, for our sake and  
3       our children's, please put Steven Avery away for  
4       life without parole. Thank you.

5           THE COURT: Would you state your name and  
6       your relationship to Teresa, please.

7           RHONDA BEHNKE: My name is Rhonda Behnke  
8       and I'm Teresa's cousin.

9           THE COURT: Go ahead.

10          RHONDA BEHNKE: Dear Judge Willis, How  
11       do I start a letter to tell someone how much a  
12       person meant to me, because it so personal and  
13       heartfelt that I have never had to let all those  
14       kinds of emotions and feelings known to public.

15          To know what I lost losing Teresa in my  
16       life affects me and my family very much. I  
17       couldn't list everything that she has meant to me  
18       and all she's been to me. I know what I feel is  
19       a loss of a friend; a cousin; a brilliant,  
20       artistic, creative person; someone who could  
21       imagine so deep; a person who could find good in  
22       everything.

23          I have lost my daughters only now  
24       knowing or hearing of the good that Teresa did,  
25       and not seeing or experiencing it firsthand.

1                   Teresa's laugh, hearing it once, you  
2                   would think that you would never be able to  
3                   forget it. You would never imagine not being  
4                   able to not hear it again. It's not that you  
5                   want to forget it, but it's very distant now.

6                   Her love was one in a million,  
7                   unconditional love, not judging, never thinking  
8                   twice kind of love. We weren't ready for Teresa  
9                   to be taken away from us. We weren't ready to  
10                  say our goodbyes and we never really did get to  
11                  say goodbye.

12                  The talent the world can't see through  
13                  her eyes anymore, the beautiful depth of her  
14                  pictures, the true things she could only bring  
15                  out in people, the love no child can feel from  
16                  her, the love of a husband and of being a mom,  
17                  the laugh we will never hear again, and the loss  
18                  we feel every day.

19                  Like I said, how do you tell a stranger  
20                  the love and hurt you feel with losing someone as  
21                  wonderful and beautiful as Teresa. Saying this  
22                  isn't even half of what my heart feels every day.

23                  So, I am not a judge and I am not -- and  
24                  I know I don't have say into what happens to  
25                  Mr. Avery. All I know is that I do have an

1                   opinion. I wish to see Mr. Avery serve life in  
2                   prison with no parole.

3                   Why do I feel this way, because Teresa's  
4                   life was taken with no good reason. She did not  
5                   want to leave us this way. She did not ask for  
6                   this to happen to her.

7                   And I feel we're here to defend her life  
8                   and her death. We're here to make sure that  
9                   Mr. Avery gets what he deserves for taking not  
10                  only Teresa's life, but also her future and our  
11                  futures with her.

12                  So, please, Judge Willis, look into the  
13                  hearts of this Teresa Halbach family. Look at  
14                  us, in our hearts, and see what is missing. See  
15                  what Mr. Avery took from us; a beautiful,  
16                  wonderful young lady who meant the world to us  
17                  and who we will miss every day. Thank you.

18                  MIKE HALBACH: Mike Halbach, Teresa's  
19                  younger brother. Honorable Judge Willis, my  
20                  family and I would never choose to be involved in  
21                  a situation like this. We never chose to feel  
22                  heartbreak, to feel loss.

23                  But Steven Avery chose my sister,  
24                  Teresa. He thought only of himself. He chose to  
25                  end her life. He chose to retain his sins inside

1                   himself and to point blame at everyone else. He  
2                   chose not to hold himself accountable and ask for  
3                   forgiveness, but to make a jury of 12 of his  
4                   peers decide if he was accountable or not.

5                   They did that, and in doing so, have put  
6                   you in the position you are in now. As God  
7                   guided Teresa's life, let him guide your decision  
8                   now. It's your choice. I ask that you sentence  
9                   Steven Avery to life in prison without parole.

10                  Thank you.

11                  TIM HALBACH: Tim Halbach, Teresa's  
12                  older brother. Judge Willis, at first I wasn't  
13                  going to speak today because, quite honestly, I  
14                  didn't think you'd need any more convincing that  
15                  Steven Avery should get life without parole.

16                  He killed my sister. And in doing that,  
17                  he took the life of someone that he barely knew  
18                  and completely disregarded the ramifications that  
19                  his actions would have, not only ending Teresa's  
20                  life, but the affects it would have on her  
21                  family, her friends, and this community. And for  
22                  that alone, he deserves to spend the rest of his  
23                  life in prison.

24                  But putting that aside for the moment,  
25                  and after thinking about more whether or not to

1 speak today, I felt compelled to come here and  
2 speak to you, because, as Teresa's big brother, I  
3 instinctively always try to look out for her.  
4 And although there is nothing I can do for her  
5 now, what I can do, and what I am doing, is  
6 standing here today and respectfully asking this  
7 Court to send Steven Avery to prison, without the  
8 possibility of parole, to ensure that he never  
9 does this again, to someone else's sister.

10 Finally, for the past 19 months, we hope  
11 that -- my family and I have hoped that our love  
12 for Teresa was shown in our words and our  
13 actions. Judge Willis, we want you to see this  
14 type -- we want you to see the type of person  
15 Teresa was and why we'll always -- why we will  
16 always carry her spirit with us.

17 We have a presentation that Teresa made  
18 when she was -- videos that Teresa made when she  
19 was 22 years old. And this -- we want you to see  
20 who Steven Avery took from us. Thank you.

21 (Video playing.)

22 TERESA HALBACH: I love hugs. I love --  
23 I have a theory that you need nine hugs a day in  
24 order to feel loved.

25 I love being happy.

1           I love knowing that I have nothing to  
2 complain about.

3           I love knowing that my family is  
4 healthy, that I have a lot of friends.

5           I love making people laugh. I love  
6 laughing.

7           I love when people compliment me.

8           I love the Beatles.

9           I love God.

10          I love knowing that I like who I am.

11          I love taking pictures. I love holding  
12 a camera in my hand.

13          I love kids. I love babies.

14          I love traveling. I love talking about  
15 traveling.

16          I love being myself with everyone I  
17 know.

18          I love No Doubt and Gwen Steffani.

19          I love my sisters, my mom, my whole  
20 family, of course. I don't hate anyone. I love  
21 a lot of people. I feel loved.

22          Um, so let's say I die before I'm 31.

23          Let's say I die tomorrow. I don't think I will,  
24 I think I have a lot more to do. I just want  
25 people I love to know that whenever I do die, I

1 just want people to know that whenever I die,  
2 that I was happy, that I'm happy with what I did  
3 with my life.

4 The only thing, is if it happened now,  
5 is that I wish I could have became a mother,  
6 because that's the one thing I have always known  
7 that I want, to be a mom, so... But there's a  
8 reason for everything. And I will be a good mom  
9 one day. I will. As long as I'm happy.

10 Okay. That's enough.

11 THE COURT: Is there anything else from  
12 either party before closing argument?

13 ATTORNEY KRATZ: No, Judge. I would ask  
14 that the Court, having previously received the  
15 video, the DVD that has been shown, include the  
16 Court's copy as part of the official file and  
17 official record of these proceedings. Other than  
18 that, Judge, the State only has argument. Thank  
19 you.

20 THE COURT: Any objection from the Defense?

21 ATTORNEY STRANG: No, the State's request  
22 should be granted.

23 THE COURT: All right. The Court will do  
24 so. All right. Mr. Kratz, I will hear from you  
25 first.

1                   ATTORNEY KRATZ: Thank you, Judge. The  
2                   only decision that this Court has pursuant to  
3                   Section 973.014 is whether the defendant should be  
4                   eligible for extended supervision. This still  
5                   requires the Court, like any sentencing, to consider  
6                   the three primary sentencing factors; that is, the  
7                   gravity of the offense, the character of the  
8                   offender, the need to protect the public.

9                   And my comments this afternoon will  
10                  track those three primary factors; the first  
11                  being gravity of the offense. Obviously, there  
12                  is no more serious offense in Wisconsin than  
13                  first degree intentional homicide, that for which  
14                  the defendant has been convicted. The PSI writer  
15                  and the evidence, in fact, recognizes that this  
16                  particular homicide was premeditated; that is, it  
17                  was planned. And Mr. Avery targeted Ms Halbach  
18                  as his victim and this became not just a  
19                  senseless, but what the State argues to be a  
20                  sadistic crime.

21                  The Defense, as you heard today,  
22                  complained about the versions as to the manner of  
23                  death and, certainly, what lead up to it. But  
24                  whatever version this Court adopts, there is no  
25                  sanitized or polite way to describe and discuss

1 how this lovely young woman was killed.

2                   The community's worst nightmare, the  
3 State argues, is violence perpetrated against  
4 somebody, either random or targeted, for no  
5 apparent reason. And when considering, then, the  
6 gravity of this particular offense, we're asking  
7 the Court consider the violence that was used, as  
8 well as the surrounding circumstances.

9                   The character of the defendant is  
10 perhaps easiest to discuss when looking at the  
11 defendant's past. Whenever Mr. Avery was not  
12 incarcerated, that is, when he was not in prison  
13 or jail and when he was allowed to make his own  
14 kinds of decisions, we look at the kind of  
15 behaviors that he engaged in. It's clear, Judge,  
16 that Mr. Avery chose criminal behavior as the  
17 preferred type of behavior, since he was a very  
18 young man.

19                   Page 6 of the presentence report  
20 chronicles Mr. Avery's criminal history, which  
21 this Court knows includes several burglary  
22 convictions for which he was placed on probation.  
23 His probation was revoked and, thereafter, sent  
24 to prison.

25                   It includes a horrific story of torture

1 of an animal committed by Mr. Avery in 1982.

2 And, finally, in 1985, includes  
3 endangering the safety of a young woman by  
4 forcing her off the roadway, pointing a gun at  
5 her and ordering her into his vehicle. This  
6 pattern of behavior certainly goes to the  
7 character of the defendant and is all behavior  
8 while Mr. Avery was not in a locked up or  
9 confined setting.

10 The presentence also chronicles how  
11 Mr. Avery behaved after his release in 2003, and  
12 most particularly, includes the statements of his  
13 then girlfriend, Jodi Stachowski, where she  
14 describes Mr. Avery's bad temper, describes him  
15 as being abusive, describes threats to kill him  
16 and, in fact, claims by Mr. Avery that he could  
17 get away with it if he chose to kill Ms  
18 Stachowski.

19 I didn't read anywhere, Judge, in this  
20 presentence report, nor in the volumes of  
21 information that, certainly, I had available to  
22 me in preparing for the trial, that would suggest  
23 any mitigating or redeeming social qualities that  
24 Mr. Avery brings before this court. Certainly no  
25 remorse has been showed, no acceptance of

1 responsibility, which in and of itself is not a  
2 significant factor, but when considering the  
3 character of the defendant, it is certainly  
4 something that this Court can and should  
5 consider.

6 Lastly, Judge, the need to protect the  
7 public perhaps is the most important of the three  
8 primary factors for the Court to consider. And  
9 this Court has the opportunity, as you heard not  
10 only in oral statements today but in written  
11 submissions, to ensure that this kind of crime  
12 never happens, at least by Mr. Avery's hand.

13 The presentence writer describes Mr.  
14 Avery as being a very high risk to reoffend. And  
15 in the presentence writer's words, suggests that  
16 this Court guarantee that Mr. Avery never see the  
17 light of day again, outside of the prison walls.

18 The victim's family, which is important  
19 and appropriate for this Court to consider, all  
20 suggest that Mr. Avery have no possibility of  
21 release, not only piece of mind for the family,  
22 but, again, considering his recidivism or risk to  
23 reoffend.

24 And, finally, Judge, I think it  
25 appropriate for this Court to consider those

1 values and those considerations that the  
2 community has. Although, certainly not something  
3 that is well publicized, this is a small  
4 community, something difficult for the State to  
5 imagine a community being more impacted by a  
6 crime than that committed by Mr. Avery.

7 Assurance for the community, that is,  
8 assurance that Mr. Avery will not be available to  
9 commit these other crimes, is something  
10 appropriate for this Court to consider.

11 That brings me, then, Judge, to our  
12 recommendations and brings me to that point in  
13 this trial that is a very important part of the  
14 trial; that is, of course, the sentencing and the  
15 State's recommendations.

16 The Halbach family has been forced not  
17 only to come to terms with the loss of a loved  
18 one, but also to consider her last moments on  
19 earth, at the hands of Mr. Avery. This Court,  
20 through the past 18 months, has also heard, that  
21 despite the high quality and professional  
22 investigation that was performed, that law  
23 enforcement officers have been subjected to both  
24 professional and personal attack throughout,  
25 including allegations of criminal wrongdoing

1                   themselves.

2                   In fact, Judge, the entire community,  
3                   that is, Northeast Wisconsin, has been required  
4                   to endure a year and a half of a combination of  
5                   very sad news, a combination of witnessing what I  
6                   will characterize as legal gamesmanship, in one  
7                   version or another, of the term "poor Steven  
8                   Avery".

9                   Well, today, Judge, is the day that the  
10                  Halbach family and law enforcement and the entire  
11                  community has waited for. It's the day when  
12                  justice will reign down upon this cold-blooded  
13                  killer. When this community, through this court,  
14                  and through this Judge, tells Steven Avery that  
15                  your evil deeds will be punished, that you will  
16                  be held accountable for your cowardly, for your  
17                  senseless acts, the State then believes, and only  
18                  then, justice is going to be served.

19                  The Court has seen a videotape today and  
20                  the Court has heard from many of Ms Halbach's  
21                  family and friends and knows now, or at least  
22                  should know, that Teresa Halbach was a genuinely  
23                  lovely young woman. Her whole life was ahead of  
24                  her. She was a talented photographer; loved by  
25                  her family and by her friends; was active in the

1                   community; and her loss continues to be felt by  
2                   all of those individuals who knew her and who  
3                   loved her.

4                   It isn't just how she died that has  
5                   caused pain and has horrified this family, but  
6                   the memory of how she lived and the memory of the  
7                   kind of person that she could have become, that  
8                   is so painful.

9                   Judge, I'm asking, on behalf of the  
10                  State of Wisconsin, that this Court consider the  
11                  gravity of the offense, the character of the  
12                  defendant, the need to protect the public and  
13                  sentence this man to life imprisonment without  
14                  the possibility of release; that is, without the  
15                  possibility of an extended supervision time.

16                  There is, Judge, a second count; that  
17                  is, possession of a firearm by a felon, which I  
18                  guess necessarily isn't discussed in great detail  
19                  in this case, but the State will argue that  
20                  Mr. Avery receive a consecutive period of  
21                  confinement. What the State has available is 5  
22                  years initial confinement, 5 years extended  
23                  supervision. We're asking the Court include that  
24                  as a consecutive sentence to whatever it is that  
25                  the Court decides as to the homicide count.

1           That's all the comments we have, Judge.

2           I will remind the Court, which I'm sure  
3         the Court already knows, Mr. Avery will have the  
4         opportunity to have some credit applied to  
5         whatever sentence the Court imposes. That would  
6         be from, I believe, the 9th of November, 2005,  
7         when he was first taken into custody. That's all  
8         Judge. Thank you.

9           THE COURT: All right. Mr. Strang, I  
10         believe you are going to argue for the Defense.

11           ATTORNEY STRANG: I am, but I'm going to  
12         turn to Steven Avery now, first, because I think if  
13         he is to speak, he should do that first. And I  
14         expect that what he has to say will not be easy for  
15         anyone sitting behind me and it won't be easy for  
16         him, but I at least would invite him to speak now if  
17         he wishes.

18           THE COURT: Mr. Avery, do you -- You have  
19         the right to allocution. If you wish, I would let  
20         you speak after the attorneys have made their  
21         arguments, but I will also grant your attorney's  
22         wish and let you speak now, if you wish to speak  
23         now.

24           THE DEFENDANT: Yes, your Honor.

25           THE COURT: Mr. Strang, has the order been

1                   discussed with Mr. Avery? Does he understand he  
2                   could speak after you are done if he wishes?

3                   ATTORNEY STRANG: Yes.

4                   THE COURT: All right. Mr. Avery, I will  
5                   hear from you at this time.

6                   THE DEFENDANT: Well, your Honor, I'm sorry  
7                   for the Halbach's family, Teresa Halbach's family,  
8                   what they are going through, the pain, the hate they  
9                   got. There's nothing else going to bring her back,  
10                  you know. And my family, what they are going  
11                  through, and everybody's friends, and the community,  
12                  it's hurting everybody.

13                  And for myself, Teresa Halbach I didn't  
14                  kill. I am innocent of what all of this. And I  
15                  figure later on, I will prove myself innocent. I  
16                  will take it from there. That's all I got.

17                  Thank you.

18                  THE COURT: All right. Mr. Strang.

19                  ATTORNEY STRANG: Thank you, your Honor.  
20                  One of the things we're left to do in every human  
21                  endeavor is to take each other, one another, just as  
22                  we are and just as we find ourselves today. We  
23                  aren't given impressions, none of us are given the  
24                  ability, entirely, to shape even our own future let  
25                  alone the future of a world we would imagine or want

1 to live in as perfected.

2 If your Honor or anyone else in this  
3 courtroom had a way to prevent one more murder  
4 from ever happening in this human family,  
5 anywhere in the world or in the State of  
6 Wisconsin as one small corner of the world, I  
7 willingly would follow your honor or anyone else  
8 to the ends of that world in pursuit of ending  
9 the time when human beings kill one another.

10 It's a subject on which I feel deeply. And what  
11 I feel doesn't much matter here, but I would do  
12 that.

13 If I could get governments to stop  
14 killing people; if I could get men to stop  
15 killing women; if I could get parents to stop  
16 killing their kids; if I could stop human  
17 killing, I would follow anyone who had the  
18 solution for that.

19 We never have been able to stop it for  
20 as long as human beings have lived in society.  
21 Since -- I guess since homo erectus yielded to  
22 homo sapiens, we have acted without much  
23 sapientiae -- to use the Latin in our specie's  
24 name -- far too often and we have killed one  
25 another.

1                   Since I despair of ever stopping murder,  
2                   I would say this, that my wish, my secondary wish  
3                   short of stopping murder, would be that every,  
4                   every person who has the misfortune of being  
5                   murdered might be grieved as Teresa Halbach has  
6                   been grieved. Everyone of them, I wish they  
7                   could be grieved by as many loved ones, by a  
8                   family and a group of friends who have shown as  
9                   much dignity, who have shown as much decency, who  
10                  have as much bedrock faith in human beings to  
11                  rely upon when it gets as bad as it can get. I  
12                  would wish that for anyone. If there has to be  
13                  another murder somewhere today, I would wish that  
14                  for the victim.

15                  And it brings your Honor, unfortunately,  
16                  to what to do. And, understandably, the people  
17                  to my left, who are themselves loyal workers  
18                  within one of the institutions of the state, one  
19                  of the institutions of criminal justice as we  
20                  attempt to administer it as human beings; and the  
21                  people behind them who, as law enforcement  
22                  officers, also are members of a state institution  
23                  dedicated to criminal justice; and in the  
24                  community behind them, who, because we live in a  
25                  community, want to have faith in our state

1           institutions and in the hope of justice in  
2           criminal cases.

3           I understand, I think well after 20  
4           years of doing this work and even thinking about  
5           it from time to time, why there is the need and  
6           the desire and the rightful wish to rely on those  
7           institutions of criminal justice. They are the  
8           front end institutions of criminal justice with  
9           whom and with which we have the most direct  
10          contact.

11          It is the police who respond to the  
12          missing person. It is the State, through its  
13          police and district attorney, who investigate the  
14          murder, who seek to bring the perpetrator to  
15          justice; the district attorney who must file  
16          charges, prosecute them in court.

17          Your Honor belongs to one of the  
18          institutions of criminal justice that work at the  
19          front end of our search for justice, presides  
20          over a trial, imposes sentence. It is natural  
21          and right to want to rely on these institutions.

22          What I ask today, concretely, is that we  
23          leave room to rely, as well, on the back end  
24          institutions of the same state, the same system  
25          of pursuing criminal justice. At the back end,

1                   the state institutions that we find are the  
2                   Department of Corrections and the Parole  
3                   Commission which continues to exist in that name,  
4                   although it is extended supervision that the law  
5                   now describes for the Parole Commission's  
6                   consideration.

7                   There is reason not to exclude those  
8                   back end institutions from the State's effort to  
9                   pursue criminal justice as well. They serve  
10                  useful purposes and, indeed, today marks the end  
11                  of the role of the front end institutions of  
12                  criminal justice.

13                  The circuit court completes its final  
14                  act today, or shortly after, with the entry of a  
15                  final judgment. The police have completed their  
16                  work, for functional purposes. The district  
17                  attorney, finally, is relieved of the burden of  
18                  this case; and if there's to be an appeal, passes  
19                  it to still another institution in the assemblage  
20                  of our state institutions that pursue criminal  
21                  justice.

22                  So today, after about 19 months, just  
23                  over a year and a half, the front end  
24                  institutions have completed their work and done  
25                  their best. The back end institutions, if this

1                   Court were to do as I will ask the Court, will  
2                   not begin to make decisions about Steven Avery  
3                   until they have had 20 years of experience with  
4                   him, rather than 19 months.

5                   They won't begin to consider what should  
6                   be done with him until they have had 20 years  
7                   direct experience with Steven Avery and, I hope,  
8                   20 years of experience with the Halbach family  
9                   and with the community who loved Teresa Halbach.

10                  Concretely, my plea today is simply to  
11                  place the same faith in the back end institutions  
12                  of criminal justice that we repose on the front  
13                  end institutions. So mine, your Honor, is a plea  
14                  to preserve the prospects of progress.

15                  We find, today, someone who is  
16                  unremorseful, who is not prepared to ask for  
17                  forgiveness, who asserts innocence. That's who  
18                  we find today. It is beyond our power to know,  
19                  in any godlike way, whether the claim of  
20                  innocence is false or true; and if false, why it  
21                  is made. It simply is beyond our power.

22                  What we can do and what we must do,  
23                  because we're human, is rely on the good  
24                  functioning of the front end institutions of  
25                  criminal justice, interlocking as they are, but

1           each with their own character: Court, jury -- an  
2           important front end institution in our system of  
3           justice; prosecution; police. We have to rely on  
4           them.

5           We cannot pretend to have an omniscient  
6           knowledge about what's in his heart or what he  
7           did. And we are right to rely on these  
8           institutions. It's the best we can do today.  
9           But if we are to do our best, then we will leave  
10          open the prospects for progress. And we will  
11          repose the same reliance and faith in the back  
12          end institutions that our state provides in its  
13          pursuit of criminal justice.

14          Progress is not just possible, it's  
15          unavoidable for everything that lives. I think  
16          progress for Steven Avery is not just possible,  
17          it's unavoidable. Progress for the Halbach  
18          family, and all those in the community who loved  
19          Teresa Halbach, is not just possible, it's  
20          inevitable. Every living thing progresses. And  
21          progress, indeed, for the state's own  
22          institutions of criminal justice, is not just  
23          possible, it is inevitable.

24          I speak of the truth, that everything  
25          that lives, that is vital, progresses; only death

1           is static. Life, inevitably, invariably, is  
2           dynamic; only death is static. I take these as  
3           truths.

4                 And in saying that, I ask your Honor,  
5           today, to impose a life sentence and not a death  
6           sentence. I ask your Honor to impose a dynamic,  
7           vital sentence of life that will leave the full  
8           role for the other institutions of criminal  
9           justice into whose hands you will tender Steven  
10           Avery today and whose work will be longer, more  
11           intimate than the work of the front end  
12           institutions can be and who themselves will have  
13           the benefit of progress.

14                 To pretermit the work of the Parole  
15           Commission and the Department of Corrections  
16           today is to render static the rest of Steven  
17           Avery's biological life; to render static the  
18           participation of the Halbach's in the horror that  
19           brings them here; and to render static, as to  
20           Steven Avery at least, every further and human  
21           improvement that may come to our institutions.

22                 It is to impose a death sentence with  
23           only the indeterminate and uncontrollable factor  
24           of the cessation of biological functioning to  
25           intervene. It is to cut off all prospects of

1 progress, to deny parole eligibility.

2 Now, people who are a lot smarter than I  
3 am argue about whether progress is necessarily  
4 regenerative or whether it's degenerative;  
5 whether progress necessarily, in the end, means  
6 expansion or collapse; whether progress  
7 necessarily is good or whether sometimes the  
8 progress of human life and the world is bad.

9 But we don't have to get into that  
10 debate because there is always progress in life.  
11 It moves forward. It's dynamic. And when the  
12 institutions are left in place and left the  
13 powers that they can exercise, it will be dynamic  
14 and not static. Progress is good. Whether it  
15 leads to collapse or expansion, whether it is  
16 regenerative or degenerative, it's good.

17 Steven Avery not only may change, he  
18 necessarily will change, over time. It may give  
19 him a chance, some day, to ask for the  
20 forgiveness that the Halbach's wish to hear him  
21 solicit. And he would have a reason to do it,  
22 here, among us, the human family, rather than on  
23 knee, bent in prayer, if indeed the prospect of  
24 eligibility for extended supervision is left open  
25 as a prospect for progress.

The Halbach's will change, because they will live. By the year 2025, I urge your Honor to give them a chance to speak again, to speak to the Parole Commission, to tell the parole commission what, then, in 2025, is in their hearts and in their minds. And I expect that they would have that opportunity again in 2030, or 2035, in 2045, perhaps.

Don't expect parole or extended supervision to be granted at its first opportunity, if ever. And as part of why I say we don't have to decide what progress means in the end, because the outcome may be the same. Steven Avery may die of natural causes tomorrow. He may die of natural causes when he is 85. And it may well be, if your Honor imposes the life sentence that I ask, that he dies in prison at age 85. That well may be.

Eligibility for extended supervision is no promise of its grant. And if in 2025, or 2035, or 2045, the Halbachs view Mr. Avery's proper place as remaining behind prison walls, then the Parole Commission ought to hear that. And they ought to have a chance to say it.

And if they feel something differently,

1                   which of course I can't predict, no one with any  
2                   humility could predict, then the Parole  
3                   Commission ought to hear that as well.

4                   All I can say with any confidence, the  
5                   one narrow prediction I can make with any  
6                   confidence at all, is that if, for example, Mike  
7                   Halbach is given a chance to speak again, 25  
8                   years from now or 30 years from now, my confident  
9                   prediction is that he will not photocopy the  
10                  eloquent written statement he submitted with the  
11                  presentence report. He will not photocopy the  
12                  already different and progressed eloquent written  
13                  statement he gave here today.

14                  He will not stand on those words alone  
15                  at 45, eloquent as they were for a 25 year old  
16                  today. He will have progressed. There will be  
17                  new nuance, new life experience, new perception  
18                  and understanding that will have been acquired.  
19                  And it may lead him to say that Steven Avery  
20                  should remain in prison. So be it. It's  
21                  something worth hearing and it's a prospect for  
22                  progress we ought not cut off.

23                  The state institutions of criminal  
24                  justice themselves will change and grow and  
25                  progress over the 20 years before Mr. Avery even

1           would be eligible for consideration of extended  
2           supervision, under the best of circumstances.

3           Thank heavens that in 1985 progress was  
4           not pretermitted as to one of Mr. Avery's prior  
5           convictions. Thank heavens progress was possible  
6           within our institutions of criminal justice. I  
7           do thank heaven for that.

8           And if this conviction is rightly  
9           obtained and a guilty man is behind bars, then we  
10          will know that better in 20 years, or 30 years,  
11          or 40 years, or 50 years. We will know that with  
12          more certainty than we know it today. It's the  
13          nature of progress and the refinement of human  
14          institutions.

15          So, whatever the outcome, whether he  
16          never is released on extended supervision in his  
17          lifetime or whether he is, there will have been  
18          growth, greater understanding, a hope of  
19          reconciliation or even redemption. And all of  
20          that will come with progress.

21          To pretermmit that prospect of progress  
22          today by saying that the back end institutions of  
23          criminal justice have no role to play, there will  
24          be no consideration of eligibility, or no  
25          eligibility and no consideration for extended

1 supervision, is to draw a line in time after  
2 which progress cannot benefit or affect Steven  
3 Avery, or the Halbach family, or as to him, the  
4 institutions of criminal justice.

5 Now, your Honor, in no other field of  
6 human endeavor known to me do we cut off the  
7 prospect of progress. If 10 years from now  
8 Mr. Avery comes down with some dread disease,  
9 comes down with cancer and he has to be treated  
10 in the Department of Corrections and he is turned  
11 over to those who practice medicine instead of  
12 practicing law; they will not say we can and will  
13 treat you only with the methods of diagnosis and  
14 treatment and cure known in 2007. If the cancer  
15 occurs in 2017, they will treat him with the  
16 benefits of human progress through the day in  
17 which he's diagnosed.

18 If some psychological need develops for  
19 him or for anyone else in the Department of  
20 Corrections and we turn from law to psychology,  
21 that psychologist will not say, you were  
22 incarcerated in 2005 and, therefore, I will treat  
23 you only on the basis of the body of knowledge  
24 that we had in 2005, although the calendar today  
25 says 2030. It would be unthinkable in any other

1 field of human endeavor.

2 Historians, for example, do not feel  
3 themselves bound to assess Abraham Lincoln's life  
4 by what was known about it in 1865. In every  
5 other area of human endeavor we rely on and draw  
6 the benefits from progress. Law should do the  
7 same and it can.

8 We have institutions at the back end of  
9 our system of criminal justice just as competent,  
10 just as dedicated, as those at the front end.  
11 And those institutions will be able to make  
12 contemporaneous judgments and judgments on the  
13 basis of 20, or 25, or 30, or 40, or 50 years  
14 experience, not the year and a half under which  
15 all of us labor today.

16 Finally, I want to say that if your  
17 Honor accepts the invitation to foreclose  
18 consideration for extended supervision today,  
19 your Honor, in doing so, and I don't -- I  
20 understand that these are the wishes of most of  
21 the people in this room, certainly those to your  
22 Honor's right, behind me.

23 But I say, all the same, that if your  
24 Honor takes up that invitation, then from this  
25 day forward, as a matter of criminal justice,

1                   quite apart from the role she will continue to  
2                   play in the hearts of her friends and her family  
3                   and her community, but as a matter of criminal  
4                   justice, if your Honor takes up that invitation,  
5                   Teresa Halbach becomes an abstraction and one  
6                   quickly forgotten, because there are a lot of  
7                   murders in our human family.

8                   But if the Halbachs and the community  
9                   have the chance to speak and be heard by the  
10                  institutions of criminal justice that work at the  
11                  back end, their words will be actuated by their  
12                  memories of Teresa Halbach's values, by their  
13                  memories of her life, by the memories of what she  
14                  believed in. Their words will be actuated, in  
15                  part, by that.

16                  And 20 years from now, those who loved  
17                  her best will speak for Teresa Halbach and speak  
18                  accurately of what she valued and loved. Thirty  
19                  years from now they will do that. And 20 and 30  
20                  and 40 years from now, the Parole Commission will  
21                  have to consider Teresa Halbach, not as an  
22                  abstraction, but as somebody who's part of  
23                  progress and, therefore, vital in the way that I  
24                  have described it.

25                  And if the words that people speak at

1           that point, actuated by love and memory of Teresa  
2           Halbach, are words without mercy, words without  
3           reconciliation, words of fear for the community  
4           safety, then so be it. Then so be it. He should  
5           hear it, the Parole Commission should hear it, we  
6           all should hear it. And if they are something  
7           else, then so be that. We can't know what will  
8           happen between now and then. I ask your honor  
9           only to let it happen.

10           I'm asking the Court to take the harder  
11           course, the one that is not easy, but also the  
12           one that is not pointless. I'm asking the Court  
13           to show as much faith in the back end  
14           institutions of criminal justice as in its front  
15           end institutions. I'm asking the Court to  
16           preserve the prospects of progress.

17           In making that request, I want to add  
18           that I agree entirely with those who loved Teresa  
19           Halbach, about one point they made unanimously in  
20           particular; that is this, that there are many  
21           lessons to learn from the life of Teresa Halbach,  
22           many lessons that can be learned from the life of  
23           Teresa Halbach. Unfortunately, I know of only  
24           one lesson that can be learned from Teresa  
25           Halbach's death; and that is, that imposing death

1           on another human being is easy and it's pointless  
2           and it's wrong.

3           And in the hope that we have all learned  
4           that one lesson from her death, I'm asking this  
5           Court not to take the easy course, not to take  
6           the pointless course, but to preserve the  
7           prospects of progress. And with progress, to  
8           allow the lessons of Teresa Halbach's life  
9           themselves to live.

10          I'm asking the Court to exercise its  
11          discretion under Section 973.014 (1g)(a), 1 and  
12          to leave Mr. Avery eligible, eligible for  
13          consideration for extended supervision in 20  
14          years. I have not the slightest expectation,  
15          today, that he will walk out of prison in his  
16          lifetime. But I have a hope and a faith in  
17          progress, including his. And so, in a real  
18          sense, I'm asking for the life sentence, not the  
19          death sentence.

20          THE COURT: Does the State have anything in  
21          rebuttal?

22          ATTORNEY KRATZ: No, thank you, Judge.

23          THE COURT: Mr. Avery, although I have  
24          already heard from you, traditionally, the Court  
25          allows the defendant to have the last word, if you

1           will, and I'm going to give you another chance to  
2       say anything additional, if you wish. I will let  
3       you speak with your attorneys for a few minutes,  
4       first, if you want. And if there's any other  
5       statement you wish to make to the Court, I will  
6       allow you to make it at this time.

7           ATTORNEY BUTING: He is fine.

8           THE COURT: Very well. I'm going to take a  
9       recess at this time to review the arguments of the  
10      parties, the statements of the victims, and other  
11      information that's been presented. The Court will  
12      be back out with a sentence in about 20 minutes.

13           (Recess taken.)

14           THE COURT: Before the Court announces its  
15      sentence in this case, I want to remind all those  
16      present that this is a court of law. The Court  
17      recognizes the emotional nature of this case and its  
18      importance to all parties involved; however, any  
19      vocal outburst or displays of emotion will not be  
20      tolerated. Any violation will result in removal  
21      from the courtroom and possible arrest.

22           At the outset, I wish to express the  
23      Court's sympathy to Mr. and Mrs. Halbach and the  
24      other members of the Teresa Halbach family.  
25      During the course of these proceedings, I have

1                   had the opportunity to observe how your family  
2                   has handled an extremely difficult situation with  
3                   dignity and poise.

4                   I'm sure that your ability as a family  
5                   to focus on the joy and happiness of Teresa's  
6                   life, rather than the tragic circumstances of her  
7                   death, has been a source of strength for your  
8                   family as well as an inspiration to other  
9                   families who have experienced personal tragedies.

10                  The Court is highly aware that in many  
11                  ways this case is unique, even among homicide  
12                  cases which, fortunately, are rare in this  
13                  county. This was the longest criminal trial in  
14                  the history of Manitowoc County. The case has  
15                  received more publicity than any other trial in  
16                  the counties history. But, nevertheless, the  
17                  rules that the Court is to apply in sentencing  
18                  are the same as they are for other criminal  
19                  cases.

20                  At the conclusion of the trial, the  
21                  Court instructed the jury that the jurors were  
22                  not to be swayed by sympathy, prejudice, or  
23                  passion. The State, the defendant, and the  
24                  victim are all entitled to the same consideration  
25                  from the Court in imposing a fair and just

1 sentence in this case.

2 With respect to sentencing  
3 recommendations on the homicide charge, the State  
4 has recommended that the Court impose the  
5 mandatory sentence of life in prison without the  
6 possibility of extended supervision.

7 The Defense has recommended that the  
8 Court impose a sentence of life in prison, but  
9 authorize eligibility for extended supervision  
10 after 20 years.

11 The PSI writer recommends that the Court  
12 impose a sentence which will not allow for the  
13 defendant's release from prison.

14 Those are the recommendations presented  
15 to the Court today.

16 The law in Wisconsin directs the Court  
17 to consider three primary factors; specifically,  
18 the severity of the offense, the character of the  
19 offender and the needs of society. The law also  
20 requires the Court to impose the minimum amount  
21 of custody or confinement which is consistent  
22 with these factors.

23 Although in a case of first degree  
24 intentional homicide the Court is required to  
25 impose a life sentence, the Court understands

1                   this directive to apply to its determination of  
2                   when and if a defendant, sentenced to life in  
3                   prison, is eligible for extended supervision.

4                   First of all, with respect to the  
5                   gravity of the offense, the charge of first  
6                   degree intentional homicide is the most serious  
7                   crime known to the law. The evidence in this  
8                   case, although largely circumstantial, was more  
9                   than sufficient, in the Court's mind, to sustain  
10                  the jury's verdict and the Court so ruled earlier  
11                  in this case.

12                  We know that the victim in this case,  
13                  Teresa Halbach, suffered at least two gunshot  
14                  wounds to her head. Because of the condition of  
15                  the body, it could not be conclusively stated  
16                  whether the gunshots were the cause of her death  
17                  or whether other means were used and the gunshots  
18                  were post mortem.

19                  The blood evidence demonstrated that at  
20                  some point after the death, Mr. Avery, the  
21                  defendant, transported Teresa Halbach's body in  
22                  the back of her vehicle.

23                  There was also evidence introduced at  
24                  trial that the defendant lured Teresa Halbach to  
25                  his home on that day.

1                   There was evidence that he specifically  
2                   requested that she be the person sent to take the  
3                   photo of the vehicle for sale.

4                   There was also evidence that there were  
5                   two cell phone calls he made to her on that day  
6                   on which he blocked his number indicating a  
7                   desire to conceal his identity.

8                   Because of the condition of the body  
9                   that was discovered, there were many things about  
10                  the homicide that, necessarily, are not known.  
11                  Among those are the defendant's precise  
12                  motivation for committing this crime. However,  
13                  while the motivation cannot be known with  
14                  certainty, the circumstantial and scientific  
15                  evidence was strong that the defendant's actions  
16                  in killing Teresa Halbach were premeditated.

17                  The effects of this crime on the  
18                  victim's family will be permanent. Teresa  
19                  Halbach's vibrant life was brutally taken from  
20                  her at a very young age. Her parents, siblings,  
21                  and other family members have lost a loved one  
22                  forever, as emotionally detailed in their  
23                  statements to the Court. This is not a case in  
24                  which any tool of restorative justice can repair  
25                  the devastating and permanent damage caused by

1 Mr. Avery's actions.

2                   With respect to the other charge, the  
3 felon in possession of a firearm charge, the  
4 severity of that charge is generally determined  
5 by the circumstances in which the weapon was  
6 possessed. In this case, those circumstances are  
7 aggravated because the weapon was used in  
8 connection with an intentional homicide.

9                   Moreover, there's no evidence to suggest  
10 that the homicide in this case was the result of  
11 any loss of temper or anything in that area, but  
12 rather was the result of a calculated murder. In  
13 addition, the victim in this case had no prior  
14 meaningful relationship of any kind with the  
15 defendant, Steven Avery.

16                  The Court is also directed to consider  
17 the character of the offender. That background  
18 is contained largely in the Presentence  
19 Investigation Report. Mr. Avery was 43 years old  
20 at the time the crimes in this case were  
21 committed.

22                  The record shows that, while he is  
23 somewhat below average in intelligence, he is not  
24 mentally impaired in any sense. There's no  
25 evidence of any serious health problems to speak

1 of.

2 Mr. Avery was previously married and had  
3 four children. He was divorced while serving a  
4 17 and a half year prison sentence for felony  
5 convictions in two cases. First, for endangering  
6 safety by conduct regardless of life as a  
7 repeater, and felon in possession of a firearm in  
8 Case 85 FE 3.

9 The second sentence arose out of what  
10 everyone now acknowledges were wrongful  
11 convictions for attempted first degree  
12 intentional homicide and related charges in Case  
13 85 FE 118.

14 The record contained in the PSI  
15 demonstrates that Mr. Avery has been regularly  
16 involved in criminal activity during those  
17 portions of his adult life when he was not  
18 incarcerated.

19 At age 18 he was convicted of his first  
20 two felonies, two burglary counts for Manitowoc  
21 County. He was originally placed on probation.  
22 That probation was subsequently revoked for other  
23 criminal violations and he was sentenced to two  
24 years in prison.

25 At about the same time, he was convicted

1           on three misdemeanor theft counts that were  
2           amended down from three burglary counts, for  
3           crimes committed in Marinette County.

4           At age 20, he was again convicted of a  
5           burglary in Marinette County and received a 15  
6           month prison sentence, served concurrently with  
7           his first prison sentence.

8           Approximately a month after the  
9           Marinette County burglary conviction, Mr. Avery  
10          was convicted in Manitowoc County of cruelty to  
11          animals, a charge which arose out of an incident  
12          in which he poured gasoline on a cat and threw  
13          the cat into a bonfire. After the cat escaped  
14          the fire and ran into the yard, Mr. Avery  
15          reportedly poured more gasoline on the cat, so  
16          that it would burn to death.

17          The Court has -- or did exclude evidence  
18          of this crime and other crimes committed by  
19          Mr. Avery, during the trial, because of their  
20          highly prejudicial effect. However, at  
21          sentencing, these crimes become relevant as  
22          evidence of the defendant's character.

23          While the incident involving the cat  
24          occurred many years ago, it does demonstrate a  
25          level of cruelty that the Court finds difficult

1 to rationalize simply as a mistake of youth.

2                   In 1985, at age 22, Mr. Avery committed  
3 his most serious felonies, before the charges in  
4 this case. He was convicted of endangering  
5 safety by conduct regardless of life as a  
6 repeater and felon in possession of a firearm as  
7 a repeater. For those charges, he received a 6  
8 year prison sentence.

9                   The Complaint in that case indicated  
10 that at 5:30 in the morning, on January 3rd,  
11 1985, Sandra Morris was driving to drop off her  
12 infant daughter at her grandparents before  
13 reporting to work. On County Highway Y, a  
14 vehicle driven by Mr. Avery came up from behind,  
15 pulled alongside of her vehicle and struck the  
16 side of it forcing her to stop.

17                  Mr. Avery got out of the car. She  
18 recognized him when he got out and approached her  
19 vehicle, while he was pointing a rifle at her.  
20 He originally ordered her to get into his  
21 vehicle, but when she pointed out that her infant  
22 child was in the car and it would freeze if left  
23 alone, Mr. Avery allowed her to leave.

24                  By the time he was 24 years old, when he  
25 was sentenced to the prison sentences that

1                   included the sentence on the wrongful conviction,  
2                   Mr. Avery had been convicted of five felonies and  
3                   four misdemeanors.

4                   He did not commit any crimes, needless  
5                   to say, during the next 17 and a half years that  
6                   he spent in prison. However, while in prison, he  
7                   sent written correspondence and an audiotape  
8                   threatening to kill his wife. The threats were  
9                   considered serious enough that his former wife  
10                  obtained an order prohibiting him from contact  
11                  with his children.

12                  His only convictions following his  
13                  release from prison in September, 2003, are the  
14                  convictions in this case.

15                  While the majority of Mr. Avery's adult  
16                  life has been spent in prison, and a significant  
17                  portion of that time was for a crime he did not  
18                  commit, the fact remains that, during his time  
19                  out of prison as an adult, Mr. Avery has  
20                  regularly committed crimes, including serious  
21                  felonies.

22                  Before leaving the character of the  
23                  offender issue, I want to make one point. The  
24                  Court gives no weight, whatsoever, to Mr. Avery's  
25                  refusal to admit guilt in this case. The Court

1 believes it would be improper to consider that as  
2 an aggravating factor. It is Mr. Avery's  
3 absolute right to maintain his innocence, even in  
4 the face of the jury's verdicts in this case.  
5 One need only look at Mr. Avery's wrongful  
6 convictions in the 1986 case to understand the  
7 rationale for this rule.

8 While the defendant's acknowledgment of  
9 guilt can be considered as a mitigating factor,  
10 and that is not present here, nevertheless, the  
11 converse of the rule is not true. A refusal to  
12 admit guilt is not an aggravating factor.

13 The most important factors, from the  
14 Court's perspective, on the issues of severity of  
15 the offense and character of the offender are,  
16 first, the vicious nature of the crime in this  
17 case. The indications that Mr. Avery consciously  
18 selected the victim in this case, the fact that  
19 there was no rational reason for the crime, no  
20 prior relationship to the victim, this wasn't a  
21 domestic dispute; it appeared to be simply a  
22 calculated, premeditated murder.

23 There were probably other background  
24 explanations for what happened, but the Court is  
25 not going to speculate as to what those might be,

1                   or go beyond the evidence that was introduced at  
2                   the trial.

3                   With respect to the character of the  
4                   offender, the Court finds it to be most  
5                   significant that Mr. Avery has been involved in  
6                   serious criminal activity, on a regular basis,  
7                   during those times of his adult life when he was  
8                   not incarcerated. Significantly, while most  
9                   criminals become more law abiding as they get  
10                  older, the record demonstrates Mr. Avery's crimes  
11                  have gotten more serious as he's gotten older,  
12                  culminating with the homicide of Teresa Halbach  
13                  in this case.

14                  The final consideration for the Court  
15                  is -- or are, the needs of society. In the  
16                  Court's opinion, those needs are the most  
17                  important factor in this case. I have to say,  
18                  Mr. Avery, that what particularly strikes the  
19                  Court as I was preparing for today's proceedings,  
20                  as the -- is the continuing danger that you pose  
21                  to those around you, evidenced not only by the  
22                  homicide in this case, but by its timing in your  
23                  life.

24                  Whatever crimes may have been a part of  
25                  your past, at the time you committed this

homicide, everything suggested that your life was poised to take a turn for the better. By October 31 of 2005, you had legitimately become a standard barer for the success of the Wisconsin Innocence Project. Nobody doubted that you were innocent of the crimes for which you were exonerated, and that project was instrumental in securing your freedom.

The fact that everyone acknowledged that you had been wrongly convicted made you a subject of sympathy, not only in this community, but across the State. The State legislature introduced legislation which bore your name, extending greater protections to those accused of crimes in order to reduce the future potential for wrongful convictions. Legislators were questioning whether the State shouldn't be increasing the maximum amount of compensation which can be awarded to persons who were wrongfully incarcerated.

You were also the plaintiff in a civil suit against Manitowoc County, which promised to bring you significant compensation for your lengthy period of wrongful incarceration. Even with the specter of the homicide charges in this

1 case hanging over your head, your attorneys were  
2 able to settle that case for \$400,000. However,  
3 despite having the widespread sympathy of the  
4 public, and the prospects for a significant  
5 financial award, you committed the horrible crime  
6 that brings you here to be sentenced today.

7 All the evidence suggests that this was  
8 not a crime of passion, but rather of planned  
9 premeditation. There is no indication, that I  
10 saw in the trial, that you were under the  
11 influence of alcohol or drugs at the time. The  
12 victim was not a acquaintance with which you had  
13 any particular relationship that could have given  
14 rise to any type of domestic disturbance, but was  
15 a mere business acquaintance. Moreover, the  
16 crime was not the result of a youthful lapse of  
17 judgment; you were 43 years old at the time you  
18 committed the crime.

19 In terms of assessing your danger to  
20 society, the evidence forces me to conclude that  
21 you are probably the most dangerous individual  
22 ever to set foot in this courtroom.

23 Your attorney has argued eloquently that  
24 the Court should make you eligible for release at  
25 some point in the future. But from what I see,

nothing in your life suggests that society would ever be safe from your behavior.

One of the things that strikes me the most is that, as you have grown older, your crimes have increased in severity. This crime was committed at a time when you were 43 years old. Given the trend of your crimes, society has a legitimate right to be concerned that there is a serious risk you would reoffend and commit serious offenses if you were ever permitted to be released from prison.

The moral need for punishment as a result of the gruesome murder in this case, coupled with the danger that the Court believes you pose to society based on your prior history and the premeditated and senseless nature of the homicide in this case, compels the Court to conclude you should not be free again.

For the foregoing reasons, on the first degree intentional homicide charge, the Court sentences you to life in prison and determines that you will not be eligible for release to extended supervision.

On the felon in possession of a firearm charge, the Court sentences you to a penalty of

1           10 years in prison, consisting of 5 years initial  
2           confinement, followed by 5 years extended  
3           supervision; that sentence to run concurrent with  
4           your sentence on the first degree intentional  
5           homicide charge.

6           In light of the Court's sentence on the  
7           first degree intentional homicide charge, the  
8           Court is not going to set any specific conditions  
9           of extended supervision on the possession of a  
10          firearm charge.

11          The Court has been notified that, in  
12          terms of sentence credit, you are entitled to  
13          credit of 568 days, that being the period of time  
14          from November 9 of 2005, to the present.

15          I'm required to notify you that you will  
16          be losing your voting rights as a result of your  
17          conviction in this case. We have a paper that  
18          explains those rights for you.

19          I also have for you a Written  
20          Explanation of Indeterminate Sentence, which the  
21          Court is required to prepare on the firearms  
22          charge. I will hand that to you before you leave  
23          today.

24          I will also notify you that you do have  
25          the right to seek post conviction relief in this

1 case. You have 20 days in which to file a notice  
2 of motion. We have a form your attorneys will go  
3 over with you before you leave today. Is there  
4 anything further from either party?

5 ATTORNEY KRATZ: No, Judge.

6 THE COURT: Mr. Strang.

7 ATTORNEY STRANG: No.

8 THE COURT: If not, these proceedings are  
9 adjourned.

10 (Proceedings concluded.)

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1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 12TH day of July, 2007.

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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, 05 CF 381

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

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8 **DATE:** September 28, 2009  
9 **BEFORE:** Hon. Patrick L. Willis  
Circuit Court Judge

10 **APPEARANCES:**

11 THOMAS J. FALLON  
Special Prosecutor  
12 On behalf of the State of Wisconsin.

13 KENNETH R. KRATZ  
Special Prosecutor  
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN  
Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 SUZANNE L. HAGOPIAN  
Attorney at Law  
18 On behalf of the Defendant.

19 MARTHA K. ASKINS  
Attorney at Law  
20 On behalf of the Defendant.

21 STEVEN A. AVERY  
Defendant  
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1                   THE COURT: At this time the Court calls  
2                   State of Wisconsin vs. Steven A. Avery, Case No. 05  
3                   CF 381. Will the parties present state their  
4                   appearances for the record.

5                   ATTORNEY FALLON: Good morning, your Honor,  
6                   may it please the Court, the State appears by  
7                   Assistant Attorney General Tom Fallon and District  
8                   Attorney Ken Kratz as Special Prosecutors.

9                   ATTORNEY HAGOPIAN: Steven Avery appears in  
10                  person with his attorney, Suzanne Hagopian, and  
11                  Martha Askins.

12                  THE COURT: Very well, we are here this  
13                  morning on the defendant's post-conviction motion.  
14                  I will note for the record the defendant has filed a  
15                  post-conviction motion seeking a new trial on two  
16                  separate grounds.

17                  The defendant alleges, as the Court  
18                  understands the motion, that the trial court  
19                  committed error by excluding evidence of third  
20                  party liability at the trial; and second, the  
21                  defendant alleges the trial court committed error  
22                  by improperly excusing a juror with a claimed  
23                  family emergency, following the first day of  
24                  deliberations. I will stop here, Attorney  
25                  Hagopian, and ask if you want to rephrase that.

1 I briefly summarized it, but.

2 ATTORNEY HAGOPIAN: No, that's fine.

3 THE COURT: Very well. One note, at the  
4 outset, the Court did grant the defendant's request  
5 to submit a portion of the post-conviction motion,  
6 that is, documents relating to the claimed error in  
7 excusing the juror, under seal. I did that with the  
8 understanding that, following the evidentiary  
9 portion of today's hearing, those documents would be  
10 released. And I will issue an order, following the  
11 hearing today, releasing all of the documents that  
12 have been filed in connection with the  
13 post-conviction motion, from their sealed status.

14 I will also indicate that, before  
15 today's hearing, the parties filed briefs on the  
16 issue of whether or not the juror who was  
17 excused, who is the subject of that portion of  
18 the post-conviction motion, would be permitted to  
19 testify at today's hearing.

20 The parties indicated to the Court they  
21 took opposite positions on that question and the  
22 Court permitted the parties to file briefs with  
23 the Court. Those briefs are included in the  
24 documents which will be -- which were originally  
25 admitted under seal, but which will be released

1 at the conclusion of today's hearing.

2                   The State challenges the defendant's  
3 offer of that testimony both on grounds of  
4 relevance and as being prohibited by Section  
5 906.06 of the Wisconsin Statutes. With respect  
6 to the relevance of the proffered testimony, the  
7 defense agrees, and the Court agrees, that as it  
8 relates to some of the defendant's arguments, the  
9 testimony would be irrelevant. That is, for  
10 example, to the extent the defendant alleges that  
11 the Court committed structural error in the  
12 procedure that was used to exclude the juror, the  
13 evidence would not be relevant.

14                  However, the defendant argues that,  
15 under other of its theories, specifically the  
16 possibility that an appeals court would require  
17 that the defendant show prejudice as a result of  
18 the Court's actions, the evidence could have  
19 relevance. And the Court agrees that both as it  
20 relates to the defendant's allegations of  
21 prejudice and the claim of ineffective assistance  
22 of counsel -- Whoever has the child in the back  
23 of the room is going to have to leave the  
24 courtroom immediately. To the extent it relates  
25 to the prejudice claim and the ineffective

1 assistance of counsel claim, the evidence could  
2 have relevance and the Court will, therefore,  
3 allow the excused juror to testify.

4 In addition, there's an issue of whether  
5 or not the evidence is prohibited under Section  
6 906.06 (2), which is a statute that in general  
7 prohibits testimony from a juror when it's used  
8 to impeach a verdict. Specifically, the  
9 introductory portion of the statute reads as  
10 follows: Upon an inquiry into the validity of a  
11 verdict or indictment, a juror may not testify as  
12 to any manner or statement occurring during the  
13 course of the jury's deliberations.

14 The Court accepts the defendant's  
15 arguments that while the type of testimony  
16 described in the statute is of the type that  
17 would be prohibited should the verdict be  
18 questioned, in this case the evidence is offered  
19 for a different purpose, that is, as it relates  
20 to the procedure used to excusing the juror and,  
21 therefore, the statute does not prohibit the  
22 juror from testifying.

23 That is not to say that anything the  
24 juror might say would be relevant, but the Court  
25 concludes that the juror is not prohibited from

1                   testifying in any respect, for those reasons.

2                   Unless there's something further from either  
3                   party at this time, Attorney Hagopian, you may  
4                   call your first witness.

5                   ATTORNEY HAGOPIAN: Very well, thank you.

6                   THE COURT: Just a second.

7                   ATTORNEY FALLON: Your Honor, thank the  
8                   Court for the ruling. We do have a motion to  
9                   sequester expected witnesses.

10                  THE COURT: Any objection from the defense?

11                  ATTORNEY HAGOPIAN: No.

12                  THE COURT: Very well, any other witnesses  
13                  who will be testifying should be excused from the  
14                  courtroom at this time. I see Attorney Strang  
15                  leaving the courtroom. Are there any other  
16                  witnesses in the courtroom who the defendant intends  
17                  to call?

18                  ATTORNEY HAGOPIAN: Our investigator, I  
19                  think, is going to leave.

20                  THE COURT: Very well.

21                  ATTORNEY FALLON: We're not going to oppose  
22                  if the investigator wishes to stay, because Officer  
23                  Wiegert is here on our behalf as well. So we don't  
24                  have any objection if their investigator wishes to  
25                  remain here, because we intend to have Officer

1                   Wiegert present, not anticipating calling him, but  
2                   one would never know.

3                   ATTORNEY HAGOPIAN: All right. Thank you.

4                   THE COURT: Okay. That's acceptable to the  
5                   defense then, so the defense investigator and  
6                   Officer Wiegert may stay in the courtroom. Attorney  
7                   Hagopian, you may call your witness.

8                   ATTORNEY HAGOPIAN: I would call Richard  
9                   Mahler.

10                  ATTORNEY FALLON: While we're waiting for  
11                  Mr. Mahler, if the record would reflect that  
12                  Attorney Gahn has joined the prosecution table.

13                  THE COURT: So noted.

14                  THE CLERK: Please raise your right hand.

15                  **RICHARD R. MAHLER**, called as a witness  
16                  herein, having been first duly sworn, was  
17                  examined and testified as follows:

18                  THE CLERK: Please be seated. Please state  
19                  your name and spell your last name for the record.

20                  THE WITNESS: Richard R. Mahler,  
21                  M-a-h-l-e-r.

22                  DIRECT EXAMINATION

23                  BY ATTORNEY HAGOPIAN:

24                  Q. Mr. Mahler, how old are you?

25                  A. Forty-four.

1 Q. Are you employed?

2 A. Yes.

3 Q. And where are you employed?

4 A. I work in retail.

5 Q. Are you married?

6 A. Yes.

7 Q. How long have you and your wife been married?

8 A. Thirteen years.

9 Q. Is it correct that you were selected to serve as

10 a juror in this case, that being State vs. Avery?

11 A. Yes.

12 Q. Was that in early February, 2007?

13 A. That's correct.

14 Q. Would you agree that this was a very high profile

15 case?

16 A. Yes, I do.

17 Q. Had you ever before served on a jury?

18 A. No, I did not.

19 Q. How did you feel about being selected to serve on

20 this jury?

21 A. I thought it would be an honor to look at

22 evidence and base a decision on the evidence.

23 Q. How did your wife feel about the fact that you

24 had been chosen to serve on the jury?

25 A. She was kind of excited because it was such a

1           high profile case and, I mean, she thought it  
2           would be interesting for me to be on a jury.

3   Q.   Had your wife been upset about something that had  
4       been reported in the media at the time the jury  
5       was selected?

6   A.   Yes, ma'am.

7   Q.   Do you recall what it was in the press report  
8       that had upset your wife?

9   A.   That I was a musician living off my wife's money.

10   Q.   Now, your name didn't appear in that media report  
11       did it?

12   A.   No, ma'am.

13   Q.   What about your wife's name, did that appear in  
14       the press account?

15   A.   No, it did not.

16   Q.   But your wife was able to figure out who they  
17       were talking about?

18   A.   Yes, ma'am.

19   Q.   Was your wife upset about that report to the  
20       point that she did not want you to serve on the  
21       jury?

22   A.   No.

23   Q.   When you began your jury service, were you and  
24       your wife having marriage problems?

25   A.   No, we were not.

1 Q. And as a juror in this case, as the trial got  
2 under way, were you present in court for the  
3 lawyers' opening statements?

4 A. Yes, I was.

5 Q. Were you present in court for all of the witness'  
6 testimony?

7 A. Yes, I was.

8 Q. And were you also there in court for the lawyers'  
9 closing arguments?

10 A. Yes, I was.

11 Q. That whole process took a number of weeks, didn't  
12 it?

13 A. That's correct.

14 Q. Do you remember about how long you were here  
15 listening to the case?

16 A. Five weeks, roughly.

17 Q. Now, during those five weeks when you were in  
18 court, right up to the very end of trial, were  
19 you permitted to go home each night?

20 A. Yes, I was.

21 Q. Were you permitted to go home on the weekends?

22 A. Yes.

23 Q. And did you, in fact, go home to your family each  
24 night and on the weekends, while this trial was  
25 going on?

- 1 A. Yes, that is correct.
- 2 Q. Was there a point in the trial when the jury was
- 3 not allowed to go home?
- 4 A. That was during deliberations.
- 5 Q. During about the time of deliberations?
- 6 A. Yes.
- 7 Q. Now, if I, when questioning you, use the word
- 8 sequestered, do you know what I'm talking about?
- 9 A. It means lock down.
- 10 Q. Lock down.
- 11 A. Can't go home, can't do nothing, no TV, sit in
- 12 your room and do nothing.
- 13 Q. Now, is it correct that you were among the 12
- 14 jurors who were given the case and began
- 15 deliberations?
- 16 A. Yes.
- 17 Q. And when that began, when the deliberations
- 18 began, do you recall how many nights you had
- 19 spent away from home?
- 20 A. I believe it was one night.
- 21 Q. Where did the jurors stay while you were
- 22 sequestered?
- 23 A. The Best Western in Chilton.
- 24 Q. And now, at that point, when you're sequestered,
- 25 five weeks, six weeks after you were selected to

1           serve on this jury, at that point were you and  
2           your wife having marriage problems?

3       A. No.

4       Q. Did you feel that your wife was still generally  
5           supportive of your jury service?

6       A. Yes, I do.

7       Q. I would like to direct your attention,  
8           specifically, to the day that deliberations  
9           began, which was March 15 of 2007; do you  
10          remember that day?

11      A. Yes, I do.

12      Q. Do you recall approximately how long the jury  
13          deliberated that day?

14      A. We deliberated for four hours.

15      Q. At some point, were the deliberations completed  
16          for the night?

17      A. Yes, ma'am.

18      Q. Was it your expectation that deliberations would  
19          begin again the next day?

20      A. That is correct.

21      Q. What was your mood as deliberations ended for the  
22          night, on March 15th?

23      A. I was exhausted but, really, it was done for the  
24          day.

25      Q. What was your feeling, in just a general sense,

1           as to how things had gone during deliberations  
2           that day?

3       A. I was frustrated.

4       Q. And why was that?

5       A. Because of some comments in the deliberations.

6       Q. And what sort of comments, just generally?

7       A. One of the jurors made a statement before looking  
8           at the evidence.

9       Q. And that made you feel frustrated?

10      A. Yes, it did.

11      Q. What did you do after deliberations were done for  
12           the day?

13      A. We were escorted to the bus, and from the bus we  
14           went to Seven Angels Restaurant.

15      Q. And did all of the jurors go out to eat together?

16      A. Yes, we all did.

17      Q. And you mentioned you were transported there by a  
18           bus?

19      A. That's correct.

20      Q. And were you in the company of bailiffs, or  
21           officers, or who was with you?

22      A. Bailiffs and state patrol officers. And I'm not  
23           sure if there was county, but I know there were  
24           plenty of state patrol officers around.

25      Q. So then you're at dinner at Seven Angels; was

1           there anyone present during the dinner, other  
2           than the jurors?

3       A. The bailiff and, like I said, the other officers,  
4           state patrolmen.

5       Q. At any point during the dinner did Sheriff Pagel  
6           arrive?

7       A. Some time during dinner, yes, he did.

8       Q. And do you recall what was the occasion for him  
9           to arrive at the restaurant?

10      A. Some of the jurors felt that they wanted to have  
11           an alcoholic drink and I guess Sheriff Pagel  
12           stated that the judge said it was okay.

13      Q. And in this restaurant, were the jurors seated in  
14           some sort of separate room, away from the public?

15      A. Yes, we were all in like a side banquet room,  
16           with the doors closed.

17      Q. And when Sheriff Pagel arrived, did he come into  
18           that banquet room where the jurors were?

19      A. Yes, he did.

20      Q. Did he then leave after telling the jurors that  
21           you could have a drink?

22      A. I don't recall.

23      Q. Could you describe the seating arrangement at the  
24           restaurant?

25      A. It was in a -- tables were in kind of a U shape,

1 I believe, with a couple tables in the center,  
2 that's what I remember.

3 Q. And who were you sitting next to?

4 A. I was sitting next to Juror Carl.

5 Q. And do you recall his last name?

6 A. Yes, Wardman.

7 Q. Now, Carl Wardman, he was another juror serving  
8 on the case?

9 A. Yes, ma'am.

10 Q. Did you speak with Mr. Wardman at dinner that  
11 night?

12 A. I didn't catch the question.

13 Q. Did you speak with Mr. Wardman at dinner that  
14 night?

15 A. Yes, I did.

16 Q. And what did you say to him?

17 A. I told him that I was frustrated with  
18 deliberations.

19 Q. And did Mr. Wardman have a response for you?

20 A. Yeah, if you can't handle it, why don't you just  
21 leave.

22 Q. I'm sorry, I'm having a little trouble hearing  
23 you. Could you speak up.

24 A. If you can't handle it, why don't you tell them  
25 and just leave.

1 Q. Could you describe Mr. Wardman's tone of voice  
2 when he made that comment?

3 A. Pretty much the way I stated it. You know, if  
4 you can't handle it, then, you know, tell them  
5 and just leave. Just kind of sarcastic tone of  
6 voice.

7 Q. And how did you interpret Mr. Wardman's comment  
8 to you?

9 A. Verbally threatening.

10 Q. Did you feel physically threatened by him?

11 A. No.

12 ATTORNEY FALLON: I'm sorry, I can't hear  
13 the witness.

14 A. No, ma'am.

15 Q. (By Attorney Hagopian)~ When you said you felt  
16 verbally threatened, what do you mean by that?

17 A. It was just his tone of voice and demeanor when  
18 he said it.

19 Q. And how did your exchange with Mr. Wardman leave  
20 you feeling?

21 A. I felt threatened and upset.

22 Q. You had earlier testified to even before going to  
23 dinner that night to feeling somewhat frustrated  
24 by the deliberations?

25 A. That's correct.

1 Q. Was Mr. Wardman at all involved in your feeling  
2 of frustration from the deliberations?

3 A. Yes, he is the one who made the statement as we  
4 walked into the jury room.

5 Q. What was the statement that was made?

6 ATTORNEY FALLON: Objection, relevance and  
7 hearsay.

8 THE COURT: Counsel.

9 ATTORNEY HAGOPIAN: As to hearsay, we're  
10 not offering it for its truth, but merely for the  
11 effect on the listener. And the relevance is in  
12 terms of his explanation as to why Mr. Mahler was  
13 feeling the way he was.

14 THE COURT: I will allow it.

15 A. He said he's --

16 (Court reporter couldn't hear.)

17 A. He said, he's fucking guilty.

18 Q. And was that very early in the deliberations?

19 A. That was right as we got into deliberations.

20 Q. Had there been a preliminary vote taken by the  
21 jury that day during deliberations?

22 A. Yes, there was.

23 Q. What was your vote?

24 A. I voted not guilty, based on I wanted to look at  
25 all the evidence and make a decision based on

1           that evidence.

2 Q.       And do you know what Mr. Wardman's vote was?

3 A.       No, I can just guess. I have no clue what his  
4           vote was.

5 Q.       And when you say guessing, would it be correct to  
6           say that you are relying on the comment that he  
7           made --

8 A.       Yes.

9 Q.       -- basically arriving in the deliberation room?

10 A.       Yes, ma'am.

11 Q.       So, after dinner, did you then return to the  
12           motel with the other jurors?

13 A.       That's correct.

14 Q.       And I assume you were taken back to the motel on  
15           a bus?

16 A.       Yes.

17 Q.       All of the jurors together?

18 A.       With state patrolmen --

19 Q.       Mm-hmm.

20 A.       -- all over the place.

21 Q.       What did you do when you got back to the motel?

22 A.       We were escorted to our rooms.

23 Q.       Did -- Were you aware, were jurors all staying in  
24           their rooms or did some other things happen?

25 A.       At first, we were all pretty much in our rooms.

1 Q. Was there an area the jurors were allowed to  
2 congregate?

3 A. Yes, in the evening, they had a television with  
4 VCR tapes or movies that we could watch.

5 Q. Because I assume you didn't have a TV in your  
6 individual room, did you?

7 A. No.

8 Q. And you didn't have a telephone in your room?

9 A. No, ma'am.

10 Q. At some point, then, after you're back from  
11 dinner, back in your motel room, did you decide  
12 to call home?

13 A. Yes, I did.

14 Q. And what did you -- So you didn't have a phone in  
15 your room; what did you have to do to make  
16 arrangements to call home?

17 A. Well, there was -- I noticed a couple other  
18 jurors calling home from a phone that the bailiff  
19 had, a cell phone.

20 Q. Were you aware, prior to your arrival back to --  
21 at the motel that evening, that jurors were  
22 allowed to call home?

23 A. No, I didn't.

24 Q. But you saw other jurors doing that?

25 A. Yes.

1 Q. And why did you decide to call home?

2 A. I decided to call home just to check in, to let

3 her know everything was okay.

4 Q. And when you refer to "check in and let her

5 know", are you referring to your wife?

6 A. Yes, ma'am.

7 Q. Did you have any information at that point that

8 your wife was trying to reach you?

9 A. No, not at all.

10 Q. Did you have any information that your wife had

11 called a bailiff, or anyone else at the motel, to

12 report a family emergency?

13 A. No.

14 Q. Were you able to speak with your wife?

15 A. Yes, I was.

16 Q. And you were doing this on the bailiff's cell

17 phone, correct?

18 A. That is correct.

19 Q. Were you in your private room or somewhere else

20 in the motel?

21 A. We were in the group TV room that we were

22 watching movies in.

23 Q. Did you tell your wife how you were feeling?

24 A. No.

25 Q. In that conversation, did your wife tell you

1                   something about your stepdaughter?

2 A. Yeah, she said that there was an accident.

3 Q. How old was your stepdaughter at that time?

4 A. Seventeen.

5 Q. Now, the mention of an accident, did that come up  
6                   immediately in the conversation?

7 A. No.

8 Q. So you and your wife had conversed about other  
9                   matters before there was any mention of an  
10                  accident?

11 A. Just how I was doing. I told her I was doing all  
12                  right.

13                   ATTORNEY FALLON: I'm sorry, I'm having a  
14                  real hard --

15 A. I told her that I was doing okay, that I was all  
16                  right.

17 Q. (By Attorney Hagopian)~ And it was then, after  
18                  some discussion, that there was mention of an  
19                  accident?

20 A. That's correct.

21 Q. Did your wife tell you that your stepdaughter was  
22                  in the hospital?

23 A. No, she did not.

24 Q. Did she tell you that your stepdaughter was  
25                  injured in any way?

- 1 A. No, she did not.
- 2 Q. Did your wife tell you that you needed to come  
3 home?
- 4 A. No.
- 5 Q. Did you sense that your wife was upset that  
6 evening?
- 7 A. Yes, I did.
- 8 Q. Did you know why?
- 9 A. No.
- 10 Q. Did you think your wife would divorce you if you  
11 did not come home that night?
- 12 A. No, not at all.
- 13 Q. When you then ended the conversation with your  
14 wife, did you hand the cell phone back to the  
15 bailiff?
- 16 A. Yes, I did.
- 17 Q. As you handed the cell phone back to the bailiff,  
18 did you tell the bailiff that you had a family  
19 emergency?
- 20 A. Not that I recall.
- 21 Q. What did you do?
- 22 A. I went back to my room.
- 23 Q. And what were your thoughts at that point?
- 24 A. After sitting in my room for awhile, I was  
25 uncertain what was happening at home.

1 Q. You were uncertain about what was going on at  
2 home?

3 A. That's correct.

4 Q. Were you also feeling frustrated?

5 A. Yes, I was.

6 Q. And what was the source of that frustration?

7 A. That conversation at dinner.

8 Q. So were you still upset about your exchange at  
9 dinner that night, with Mr. Wardman?

10 A. Yes, I was.

11 Q. Were you still upset about how things were going  
12 in deliberations?

13 A. Yes.

14 Q. What did you do next?

15 A. I believe I talked to one of the state patrolmen,  
16 outside my door.

17 Q. What did you tell the state patrol officer?

18 A. And I told him that I needed to talk to the  
19 bailiff.

20 Q. And what was the officer's response?

21 A. He said he would get the bailiff to my room.

22 Q. And what happened next?

23 A. As I recall, the bailiff came in and said he  
24 would get ahold of Sheriff Pagel.

25 Q. Did you provide any information to the bailiff at

1           that point?

2   A. Yes, that there was a family emergency I had to  
3        deal with at home.

4   Q. And that was the extent of the conversation, as  
5        you recall?

6   A. As I recall, yes.

7   Q. So the bailiff said he would get Sheriff Pagel.  
8       Did Sheriff Pagel arrive, then, at some point?

9   A. Yes, he did, with the bailiff.

10   Q. And where were you when Sheriff Pagel arrived?

11   A. I was in my hotel room.

12   Q. And you had been in your motel room this entire  
13       time, from after when you spoke to the state  
14       patrolman, until Sheriff Pagel arrived?

15   A. Yes.

16   Q. And when Sheriff Pagel arrived, did he actually  
17       come inside the motel room with you?

18   A. Yes, he did.

19   Q. Was there anyone present in that room, other than  
20       you and Sheriff Pagel?

21   A. I believe the bailiff was there with him.

22   Q. And did you speak with Sheriff Pagel?

23   A. Yes, I did.

24   Q. Did Sheriff Pagel say anything to you?

25   A. Yes, I guess he was asking what was going on.

1 Q. And what did you tell Sheriff Pagel?

2 A. That there was some kind of an accident at home,  
3 family emergency.

4 Q. Did you tell him anything else?

5 A. Just that I felt I needed to go home.

6 Q. Do you recall if you told Sheriff Pagel that your  
7 stepdaughter's car had been totaled?

8 A. No, I don't recall saying anything like that.

9 Q. What did Sheriff Pagel do when you told him that  
10 you needed to go home?

11 A. He said he would get ahold of the judge.

12 Q. Were you present when Sheriff Pagel spoke with  
13 the judge?

14 A. Yes, I was.

15 Q. Do you remember where that occurred?

16 A. That was in my hotel room.

17 Q. So it's you and Sheriff Pagel in your room,  
18 possibly the bailiff as well?

19 A. Right.

20 Q. And Sheriff Pagel was on the phone with the  
21 judge; is that correct?

22 A. As I recall, yes.

23 Q. And is Sheriff Pagel using his own cell phone?

24 A. Yes, he was.

25 Q. Could you hear what the sheriff was saying to the

1                   judge?

2       A. I remember him talking to the judge, but I don't  
3                   remember what he was saying.

4       Q. Now, at some point after this encounter with  
5                   Sheriff Pagel and the call to the judge, did you  
6                   yourself speak with Judge Willis?

7       A. Yes, I did.

8       Q. And whose phone were you using?

9       A. Sheriff Pagel's.

10      Q. And where were you when this conversation with  
11                  the judge took place?

12      A. In my hotel room.

13      Q. Was Sheriff Pagel present while you were speaking  
14                  with the judge?

15      A. Yes, he was.

16      Q. Do you recall where he was in relation to you,  
17                  the distance?

18      A. Couple feet.

19      Q. Would he have been able to hear what you were  
20                  saying?

21      A. Yes.

22      Q. Approximately how long did your conversation with  
23                  the judge last?

24      A. Two minutes.

25      Q. What, to the best of your recollection, did you

1 tell the judge?

2 A. I told him that there was a family emergency at  
3 home. And I recall him asking if I needed --  
4 sure I needed to go home.

5 Q. So you told the judge there was a family  
6 emergency and you needed to go home?

7 A. Yes.

8 Q. Did you say anything else?

9 A. Not that I recall.

10 Q. Did the judge ask you if your stepdaughter was in  
11 the hospital?

12 A. No, he did not.

13 Q. Did the judge ask you if your stepdaughter was  
14 injured?

15 A. No, he did not.

16 Q. Did you tell the judge, in that conversation,  
17 that your marriage was in trouble?

18 A. No, I did not.

19 Q. Did you tell the judge that you and your wife  
20 were having trouble before the trial had even  
21 begun?

22 A. No.

23 Q. What happened next?

24 A. I handed the phone back to Sheriff Pagel and then  
25 I waited in my room and got my stuff together.

1 Q. Did the judge say anything to you at the end of  
2 that conversation?

3 A. He said I was free to go.

4 Q. Had you told the judge the full story about why  
5 you wanted off the jury that night?

6 A. No, I did not.

7 Q. What did you not tell the judge?

8 A. About my conversation with Mr. Wardman.

9 Q. Had your stepdaughter actually been in an  
10 accident?

11 A. No, ma'am.

12 Q. What had happened to her?

13 A. Her car was having troubles. She just had car  
14 troubles.

15 Q. When did you find that out?

16 A. Upon my arrival at home.

17 Q. And once you were home, what were your feelings  
18 about having gotten off the jury?

19 A. I was frustrated and angry with myself.

20 Q. Did you feel like you had let yourself down?

21 A. I felt like I left myself down and all parties  
22 involved.

23 Q. When did you start to feel that way?

24 A. A few hours after I got home.

25 Q. So you felt that way even before the jury had

1           come back with a verdict?

2 A.   That's correct.

3 Q.   Does this still bother you today?

4           ATTORNEY FALLON: Objection, relevance.

5           THE COURT: Attorney Hagopian.

6           ATTORNEY HAGOPIAN: I think it just may  
7           offer some further explanation as to why he's here  
8           today.

9           THE COURT: I'm going to sustain the  
10          objection.

11 Q.   (By Attorney Hagopian)~ Mr. Mahler, the way you  
12          have spoken in your testimony today, is that your  
13          typical manner of speaking?

14 A.   No, ma'am.

15 Q.   What is your typical manner?

16 A.   I'm usually pretty happy. Pretty -- I don't feel  
17          as nervous --

18 Q.   Mm-hmm.

19 A.   -- as I do right now.

20 Q.   The way you are speaking today, is that how you  
21          would speak when you are feeling upset about  
22          something?

23 A.   Yes, ma'am.

24           ATTORNEY HAGOPIAN: That's all I have.

25           Thank you.

1 THE COURT: Mr. Fallon.

2 ATTORNEY FALLON: Thank you.

3 CROSS-EXAMINATION

4 BY ATTORNEY FALLON:

5 Q. Good morning, Mr. Mahler.

6 A. Good morning.

7 Q. Would you say you have a pretty fair recollection  
8 of the events of March 15th, 2007?

9 A. Yes, I do.

10 Q. Very well. What time did you begin deliberations  
11 on March 15th, 2007?

12 A. It was in the afternoon, like one -- around 1:00.

13 Q. And what time did you call it a day,  
14 deliberating?

15 A. It was like 4, 4:30 roughly.

16 Q. At the end of deliberations that day, what was  
17 the first stop the jurors made when they left the  
18 courthouse? Did they go to the hotel? Did they  
19 go to the restaurant? What did they do first?

20 A. We went to the restaurant.

21 Q. And you went to Seven Angels?

22 A. That is correct.

23 Q. And there were the 12 jurors, correct?

24 A. That's correct.

25 Q. And there were bailiffs, correct?

1 A. That's correct.

2 Q. How many bailiffs?

3 A. I believe one.

4 Q. And there were some law enforcement officers

5 providing security detail, correct?

6 A. That is correct.

7 Q. All right. There were some sheriffs deputies?

8 A. As I recall.

9 Q. A state patrol officer or two?

10 A. Yeah, there were plenty of state patrol officers.

11 Q. All right. And you got to the restaurant on the

12 bus that was provided by the county, correct?

13 A. That is correct.

14 Q. Who did you sit with on the bus?

15 A. I don't recall.

16 Q. Did you have any conversations with anyone on the

17 bus, on the way to dinner?

18 A. No, sir.

19 Q. You testified that you had an unpleasant exchange

20 with Mr. Wardman at dinner. Prior to that dinner

21 conversation, you had no other conversation with

22 Mr. Wardman, correct?

23 A. That is correct.

24 Q. And thus, the only time that you had any exchange

25 with Mr. Wardman was at this brief dinner

1           exchange, correct?

2   A.   That is correct.

3   Q.   What did you have for dinner?

4   A.   I believe it was some kind of -- like a French

5       dip type of sandwich.

6   Q.   How did it come to pass that you were sitting

7       next to Mr. Wardman?

8   A.   I just -- I don't know, I just sat down.

9   Q.   Just coincidence that you ended up sitting next

10      to Mr. Wardman?

11   A.   I don't know why, I just sat down.

12   Q.   So it was a coincidence?

13   A.   Pretty much so.

14   Q.   All right. How long were you at the dinner --

15       excuse me -- How long were you at dinner or

16       having dinner at Seven Angels?

17   A.   About an hour or so, as I recall.

18   Q.   Not a long dinner; is that correct?

19   A.   That is correct.

20   Q.   All right. What did Mr. Wardman have?

21   A.   I don't recall.

22   Q.   And from your questioning by counsel, I take it

23       that you only had one exchange with Mr. Wardman,

24       correct?

25   A.   That's right.

1 Q. I'm sorry?

2 A. Yes.

3 Q. All right. So you had no other small talk, as it

4 were, with Mr. Wardman, whatsoever?

5 A. No.

6 Q. And so at some point, was this before dinner,

7 during dinner, or after dinner, that you had this

8 exchange with him?

9 A. It was during dinner.

10 Q. And so out of the blue, without having any

11 discussion beforehand, you turned to him and told

12 him you were frustrated about the deliberations

13 that afternoon?

14 A. That is correct.

15 Q. All right. And he said, well, if you can't

16 handle it, then you should just tell them that

17 you want to leave, correct?

18 A. Yes.

19 Q. There was no other exchange between the two of

20 you, correct?

21 A. No, sir.

22 Q. I'm sorry?

23 A. No, sir.

24 Q. Thank you. Did you find participating in the

25 trial itself, as a juror, to be stressful?

1 A. Yes, sir. I believe we all did.

2 Q. And it was stressful, why?

3 A. Because to me it was because of certain things  
4 that were said during deliberations.

5 Q. Well, I'm not getting to deliberations. I'm  
6 talking about the trial itself, listening to the  
7 evidence for the five weeks before deliberations,  
8 was that stressful?

9 A. No, sir, I didn't feel it was.

10 Q. Okay. So it would be fair to say that the first  
11 time you felt stress was during the initial four  
12 hours of deliberations; is that correct?

13 A. That is correct.

14 ATTORNEY FALLON: May I have a moment,  
15 please.

16 Q. (By Attorney Fallon)~ You found the deliberations  
17 stressful because you attribute a cavalier  
18 comment to one of the jurors, Mr. Wardman,  
19 correct?

20 A. That's correct.

21 Q. All right. What other stress, other than that  
22 one comment, now I'm talking during  
23 deliberations, caused you stress?

24 A. There was a couple of different jurors that made  
25 statements, but his stood out the most to me.

1 Q. All right. So there was the one statement that  
2 he made and a statement or two attributed to  
3 other jurors, seemingly suggesting too cavalier  
4 approach for your liking; is that it?

5 A. To me, it just seemed they were more willing to  
6 look at the evidence.

7 Q. I'm sorry, they were what?

8 A. To me it seemed that they weren't willing to sit  
9 down and look at the evidence.

10 Q. So, there was a comment from Mr. Wardman and a  
11 comment from how many other jurors?

12 A. Two others.

13 Q. All right. So there were three jurors that you  
14 didn't think were taking this seriously enough?

15 A. That's correct.

16 Q. All right. And that made you stressful?

17 A. As far as doing my civil duty, yes.

18 Q. All right. Were you upset about that?

19 A. Yes, I was.

20 Q. Were you distraught?

21 A. I was angry.

22 Q. You were angry?

23 A. Yes, sir.

24 Q. And who did you express your anger to?

25 A. I basically held.

1 Q. All right. So you didn't respond to Mr. Wardman  
2 when he made his first comment during  
3 deliberations?

4 A. I did not.

5 Q. You did not respond to the other two jurors  
6 either, correct?

7 A. That is correct.

8 Q. All right. So you didn't impress upon them the  
9 serious nature of the deliberations, correct?

10 A. I did mention too that during the deliberations,  
11 that we're here to look at the evidence. I  
12 didn't direct it to the three jurors, but I said  
13 to everybody, that we should look at the  
14 evidence.

15 Q. All right. All right. So there were those three  
16 comments that were made by three different jurors  
17 during the initial deliberations stage?

18 A. Yes, sir.

19 Q. All right. There were no other comments,  
20 correct?

21 A. No, sir.

22 Q. The rest of the time was actually spent looking  
23 at the evidence and talking about things, as  
24 jurors do, correct?

25 A. The majority of us, yes.

1 Q. All right. So that night, you had no prior  
2 conversation with Mr. Wardman, whatsoever, before  
3 you leaned over to him during dinner and told him  
4 you were frustrated by that afternoon's events?

5 A. No, I did not.

6 Q. And you had no further conversation with him,  
7 after he made what you termed to be a sarcastic  
8 comment about, then you should just leave?

9 A. No, I had no other comment -- or no other  
10 conversations with him.

11 Q. All right. And you had no conversation with any  
12 other juror about your frustrations, correct?

13 A. No, not during --

14 Q. Dinner?

15 A. -- dinner.

16 Q. Correct?

17 A. That's correct.

18 Q. All right. On the bus ride back to the hotel,  
19 who did you ride with?

20 A. I don't recall. I don't know.

21 Q. Did you have -- You didn't have any conversation  
22 with anyone on the bus regarding the day's  
23 events, your frustrations, I mean, correct?

24 A. No, sir. We were bound to not talk about it.

25 Q. All right. You got back to the hotel or motel;

1           what time was it?

2   A. I believe it was like 6, 6:30, something like

3        that.

4   Q. What was the first thing you did?

5   A. We were escorted to our hotel rooms.

6   Q. You were escorted to your room?

7   A. That's correct.

8   Q. Who escorted you to your room?

9   A. The sheriff -- The state patrol.

10   Q. A state patrol officer?

11   A. Yes. They walked us up the steps.

12   Q. How many bailiffs were there?

13   A. I do recall there was one.

14   Q. All right. Do you recall the bailiff's name?

15   A. No, I don't.

16   Q. He had been a bailiff with this jury for quite

17       some time, had he not?

18   A. Yes.

19   Q. All right. You do not recall his name at this

20       time?

21   A. No, sir.

22   Q. Did you have conversation with anyone else at

23       dinner, about family, about work, music?

24   A. No, not during the meal.

25   Q. Not during dinner?

1 A. No.

2 Q. On the bus ride back to the hotel?

3 A. No.

4 Q. When you got to the hotel, your first stop was

5 immediately to your room?

6 A. Yes.

7 Q. How long were you in your room?

8 A. Three, four hours, as I recall.

9 Q. Three or four hours.

10 A. Yes, sir.

11 Q. What did you do during the three or four hours?

12 A. I believe I went to sleep.

13 Q. So you had no conversation with anyone --

14 A. Not until --

15 Q. -- after returning to the motel?

16 A. Not until I found, you know, I found out there

17 was movies.

18 Q. What time was that?

19 A. That was probably around 9:30, 10:00.

20 Q. Well, if I were to tell you that court records

21 reflect that you had a conversation with Judge

22 Willis about your need to leave, about 9:00,

23 would that be incorrect?

24 A. I don't recall.

25 Q. You have no recollection of that?

1 A. I don't recall what time it was.

2 Q. All right. So, just so I'm clear, you went back

3 to your room and stayed in your room for a period

4 of time, you think you took -- you went to sleep?

5 A. As I recall, yes.

6 Q. So up to this point, you were frustrated?

7 A. Yes, I was.

8 Q. You were angry?

9 A. Yes.

10 Q. You were distraught?

11 A. I -- Yes.

12 Q. All right. And all as a result of your exchange

13 at dinner with one other juror; is that correct?

14 A. That is correct.

15 Q. That exchange at dinner lasted 10 seconds?

16 A. Yes.

17 Q. And as a result of that exchange, you felt

18 threatened; is that correct?

19 A. That is correct.

20 Q. All right. You were -- Did you feel -- Well,

21 let's talk about that. Why did you feel

22 threatened?

23 A. It was by the way he said it and his comment at

24 the beginning of deliberations.

25 Q. All right. And why did you feel threatened by

1           that, his tone of voice?

2 A.       His demeanor, the way he said it.

3 Q.       Did you feel it was going to seriously jeopardize

4       your ability to be a juror?

5 A.       I don't believe it did.

6 Q.       You don't believe that it did, correct?

7 A.       I felt -- No, that I didn't feel that it would.

8 Q.       I'm sorry, you are going to have to be clearer,

9       Mr. Mahler.

10 A.       I didn't feel it would affect my judgment as a

11       juror, no.

12 Q.       All right. So, in other words, being a juror,

13       you were going to more or less stick to your guns

14       and review the evidence and then decide, after

15       you reviewed everything, as you thought the

16       evidence merited, correct?

17 A.       That is my -- That was my intention.

18 Q.       That was your intention. And even though you had

19       this unpleasant exchange with Mr. Wardman, that

20       was still your intention when you went to your

21       room that night, correct?

22 A.       Yes.

23 Q.       All right. And it obviously wasn't that

24       threatening because you mentioned it to no one,

25       correct?

1 A. I'm not the kind that usually tells. You know, I  
2 sometimes hold a lot of things in. I don't  
3 express my anger.

4 Q. All right. But you didn't mention anything to  
5 the bailiff, correct?

6 A. No, sir.

7 Q. And you didn't mention any of this concern or  
8 threatening behavior to any of the troopers,  
9 correct?

10 A. No, sir.

11 Q. And you didn't mention it to the sheriff's  
12 deputies who were assisting in the security  
13 detail, correct?

14 (Court reporter couldn't hear.)

15 A. No, sir.

16 Q. All right. Now, at some point you woke up and  
17 you proceeded to this common room?

18 A. That's correct.

19 Q. And when you got to that room, who was present?

20 A. The bailiff and a bunch of other jurors.

21 Q. All right. And what was going on in the common  
22 room when you arrived?

23 A. There were jurors watching television and I  
24 noticed that other jurors were talking on the  
25 cell phone with their spouses.

1 Q. All right. And the bailiff was there, correct?

2 A. That is correct.

3 Q. And what did you do?

4 A. After -- Well, when I noticed that other jurors

5 were calling their spouses, I asked if I could

6 call home.

7 Q. All right. And you asked the bailiff this,

8 correct?

9 A. That's correct.

10 Q. You asked if you could use his phone, right?

11 A. Yes, sir.

12 Q. And he agreed to allow you to call home, correct?

13 A. That's right.

14 Q. And he stood nearby as you called home, correct?

15 A. That's correct.

16 Q. All right. And you called home and spoke to your

17 wife?

18 A. Yes, sir.

19 Q. All right. And you have just told us that your

20 relations with your wife were just fine, correct?

21 A. Yes, sir.

22 Q. All right. You have a warm, loving relationship,

23 correct?

24 A. Yes, sir.

25 Q. All right. And you feel secure and safe in

1           telling her things that you may not tell other  
2           individuals, correct?

3       A. Yes, sir.

4       Q. All right. And you have been married for how  
5           many years, 15 years?

6       A. Thirteen.

7       Q. Thirteen years. All right. And often times you  
8           have told her and expressed things to her that  
9           you pretty much keep to yourself and don't tell  
10          others, right?

11       A. Yeah, I try.

12       Q. And in this particular case, you were so upset  
13          and so distraught, but you didn't mention  
14          anything to your wife about the stress of the  
15          deliberations, correct?

16       A. No, sir, because I was sworn not to say anything  
17          to her about anything in deliberations.

18       Q. All right. Now, in your conversations with your  
19          wife, she told you your stepdaughter had been in  
20          an accident?

21       A. That's correct.

22       Q. All right. She was still upset about the report  
23          that appeared in the press, during the initial  
24          selection process, about you living on the  
25          proceeds of a trust fund that she had, correct?

- 1 A. Didn't seem that's why she was upset that  
2 evening.
- 3 Q. I'm coming to that. But at the time of the  
4 deliberations, even after five or six weeks, that  
5 was still a sore point with her, right?
- 6 A. I believe it was, yes.
- 7 Q. All right. Now, in the phone conversation that  
8 night, March 15th, there was no discussion of  
9 that press report, correct?
- 10 A. Not at all.
- 11 Q. All right. Did she tell you that your  
12 stepdaughter's car was totaled?
- 13 A. No.
- 14 Q. She did not tell you that?
- 15 A. No, sir.
- 16 Q. All right. She was upset that your stepdaughter  
17 was in an accident?
- 18 A. I didn't know why she was upset.
- 19 Q. But she told you that your stepdaughter was in an  
20 accident?
- 21 A. That's correct.
- 22 Q. All right. And you assumed that she was upset  
23 because of the accident?
- 24 A. That's correct.
- 25 Q. All right. You never asked if she was hurt,

1 right?

2 A. No, sir.

3 Q. And your wife never told you if your stepdaughter

4 was hurt, or did she?

5 A. No, she did not.

6 Q. She didn't tell you, right?

7 A. That's correct.

8 Q. All right. She also could have been upset

9 because you weren't there for family support,

10 because of the accident, correct?

11 A. I suppose that could be.

12 Q. That could be part of the --

13 A. Part of it, right.

14 Q. -- of the reason for her seeming upset to you?

15 A. I believe it could be, yes.

16 Q. All right. And how would you characterize her

17 demeanor on the phone?

18 A. She just seemed upset.

19 Q. Seemed upset. How did she seem upset to you?

20 A. Her tone of voice.

21 Q. All right. Was she crying?

22 A. I couldn't tell.

23 Q. Did she raise her voice?

24 A. No.

25 Q. Did she lower her voice too much?

1 A. I don't believe so, no.

2 Q. What was it about the tone of her voice that led

3 you to believe that she was upset?

4 A. It was the way she was talking to me, she just

5 seemed kind of like I'm talking to you now, you

6 know, kind of upset, nervous, whatever. I

7 couldn't -- It was the way she was talking.

8 Q. All right.

9 A. She wasn't talking like she usually talks to me.

10 Q. Did she tell you she wanted you to come home?

11 A. No, sir.

12 Q. She didn't tell you that?

13 A. No, sir.

14 Q. But you felt that you should go home?

15 A. I felt under the circumstances, yes.

16 Q. That you should go home?

17 A. Yes.

18 Q. Because you thought that there was a crisis at

19 home, that you should be there to help out?

20 A. I didn't know what was going on and I was worried

21 about what was happening, yes.

22 Q. How long did the conversation last between you

23 and your wife?

24 A. About five minutes.

25 Q. And that was in the common room?

1 A. Yes, sir.

2 Q. With the bailiff nearby?

3 A. That's correct.

4 Q. And he was there close enough to make sure that

5 there was no discussion regarding the status of

6 deliberations or the case, correct?

7 A. Yes, sir.

8 Q. So he could hear what you were saying?

9 A. Yes, I believe so.

10 Q. What did you say to the bailiff when you were

11 done speaking with your wife?

12 A. I just handed him the phone.

13 Q. You didn't say anything?

14 A. Not that I recall, no.

15 Q. You didn't say anything about the nature of your

16 conversation with your wife?

17 A. No, not that I --

18 Q. You didn't tell him that your wife seemed upset?

19 A. No.

20 Q. You didn't say anything that maybe you needed to

21 go home?

22 A. Not that I recall, no.

23 Q. All right. So after the conversation, you left

24 the common room and you went back to your room?

25 A. That is correct.

1 Q. Were you escorted back to your room, or did you  
2 walk alone?

3 A. There were state patrolmen that escorted us or  
4 were down the halls to ...

5 Q. So did they escort you, or were they just well  
6 placed in the hallway to observe your movements?

7 A. They were -- I remember I was escorted to my  
8 room.

9 Q. All right. And was your room nearby, or was it a  
10 longer walk?

11 A. It was a longer walk.

12 Q. All right. You got to your room, the trooper  
13 watched you walk into your room; is that correct?

14 A. That's correct.

15 Q. And you went into your room and you were there  
16 alone?

17 A. That's right.

18 Q. All right. And you were in your room how long,  
19 before you decided you needed to speak to  
20 someone?

21 A. I don't recall how long I was there.

22 Q. What was your mood at that time?

23 A. I was upset, worried.

24 Q. You were worried about what was going on at home.

25 A. That's correct.

1 Q. You didn't really know what was going on at home;  
2 is that what you are telling us?

3 A. That's correct.

4 Q. All right. So there was this reference to a car  
5 accident, but the reason for your concern was  
6 more that you had no idea what was going on; is  
7 that correct?

8 A. The uncertainty, yes.

9 Q. The uncertainty of the situation made you upset?

10 A. That's correct.

11 Q. And it caused stress?

12 A. Yes, sir.

13 Q. And you were distraught?

14 A. Yes, sir.

15 Q. And primarily, as a result of the tone of voice  
16 that your wife was talking to you about?

17 A. Yes, sir.

18 Q. All right. What did you talk about in that  
19 conversation?

20 A. We talked about how things were going, you know,  
21 how I was doing, how I was feeling.

22 Q. All right. How you were doing, how you were  
23 feeling. And you told her you were doing, okay?

24 A. Yes, sir.

25 Q. So far so good, as it were; is that right?

1 A. Yes, sir.

2 Q. You didn't complain to her that you were feeling  
3 down, correct?

4 A. I don't know.

5 Q. You didn't tell her you certainly weren't feeling  
6 threatened, right?

7 A. I don't remember saying anything like that.

8 Q. Basically, you tried to put her at ease and tell  
9 her everything was all right with you, correct?

10 A. Yes, sir, without going into details of  
11 deliberations or anything.

12 Q. Right. But generally, your mood, you said you  
13 talked about how each of you were feeling and you  
14 told her you were fine, right?

15 A. (Witness nods.)

16 Q. Is that a yes?

17 A. Yes, sir.

18 Q. Thank you. All right. After some period of time  
19 in your room, you decided that you need to speak  
20 to someone. How much time would you say elapsed  
21 before you, after mulling these things over, you  
22 stepped into the hallway, right?

23 A. Yes. I don't remember.

24 Q. All right. And who did you speak to in the  
25 hallway?

- 1 A. State patrol officer.
- 2 Q. All right. And you didn't tell him anything  
3 other than what?
- 4 A. That I needed to talk to a bailiff.
- 5 Q. All right. And he said he would get the bailiff?
- 6 A. Yes, sir, as I recall.
- 7 Q. All right. So he told you to remain in your  
8 room, correct?
- 9 A. Yes, sir.
- 10 Q. All right. So you went to your room -- back in  
11 your room?
- 12 A. Yes, sir.
- 13 Q. All right. And he went and got the bailiff?
- 14 A. That's correct.
- 15 Q. All right. Now, if I told you that bailiff's  
16 name was Oscar, would that ring a bell?
- 17 A. Yes, sir.
- 18 Q. That was the bailiff, right?
- 19 A. Yes, sir.
- 20 Q. All right. So Oscar came to your door, right?
- 21 A. As I recall, yes.
- 22 Q. All right. Did he come into your room?
- 23 A. I believe he did.
- 24 Q. All right. All right. What did you tell Oscar?
- 25 A. That there was a family emergency and I felt I

1 had to go home.

2 Q. Did you give him any details on the family  
3 emergency?

4 A. No.

5 Q. Did you tell him your stepdaughter was in an  
6 accident?

7 A. Not that I recall.

8 Q. Did you tell him your wife was upset?

9 A. Not that I remember.

10 Q. You didn't tell him it was the uncertainty of the  
11 situation which led you to believe you should go  
12 home?

13 A. Not that I recall, no.

14 Q. All right. So Oscar told you that he would get  
15 the sheriff, right?

16 A. That's correct.

17 Q. All right. It's your testimony that you talked  
18 to Sheriff Pagel first, correct?

19 A. After I talked to the bailiff --

20 Q. Right.

21 A. -- I believe, yes.

22 Q. The first person you talked to after Oscar was  
23 Sheriff Pagel?

24 A. That's correct.

25 Q. You told Sheriff Pagel that your stepdaughter was

1           in an accident?

2 A.    That's correct.

3 Q.    You told him that the vehicle was totaled?

4 A.    I don't recall that.

5 Q.    You told him that your wife was very upset about

6       the accident?

7 A.    I don't recall.

8 Q.    You don't recall saying that?

9 A.    No, I was pretty upset at the time.

10 Q.    You were upset at the time?

11 A.    I was upset with --

12 Q.    And you were upset at the time because you

13       couldn't figure out why your wife was upset?

14 A.    That's correct.

15 Q.    You also told him that your wife was still upset

16       because of the media reports regarding this trust

17       fund issue, correct?

18 A.    I don't recall that.

19 Q.    You don't recall telling him that?

20 A.    No, sir.

21 Q.    Could you have told him that?

22 A.    I might have.

23 Q.    All right. Could you have told him that your

24       wife was upset about the accident; could you have

25       told him that?

- 1 A. It's probable, possible.
- 2 Q. It's probable, possible. All right. You told  
3 him that your wife was upset by the amount of  
4 time that you were away from the home because of  
5 the length of this trial, right?
- 6 A. I don't recall.
- 7 Q. You don't recall. You could have told him that?
- 8 A. I don't recall.
- 9 Q. You don't recall. You would characterize your  
10 demeanor in your conversation with Mr. Pagel as  
11 being upset?
- 12 A. Yes, sir.
- 13 Q. Distraught?
- 14 A. Yes, sir.
- 15 Q. All right. Really concerned about what was going  
16 on at home?
- 17 A. Yes, sir.
- 18 Q. All right. You certainly suggested or implied  
19 that you had some marital difficulties with your  
20 wife, with Mr. Pagel, correct?
- 21 A. I don't recall saying anything like that.
- 22 Q. You didn't imply or impress upon him that it was  
23 vital for your marriage that you be excused and  
24 go home and attend to those family issues?
- 25 A. I don't recall.

1 Q. You don't recall?

2 A. No, sir.

3 Q. Specifically, and exactly, what did you tell

4 Sheriff Pagel when he came to your room?

5 A. As I recall, that I told him there was a family

6 emergency that I had to attend to at home.

7 Q. That was it?

8 A. That's what I recall telling him.

9 Q. That's what you recall.

10 A. Yes, sir.

11 Q. All right. And he said he would contact the

12 judge?

13 A. Yes, sir.

14 Q. All right. He left your presence?

15 A. I believe he did.

16 Q. All right. And he contacted someone, or did

17 something, he was gone?

18 A. Yes, sir.

19 Q. For a few minutes?

20 A. Mm-hmm.

21 Q. He returned?

22 A. That's correct.

23 Q. All right. And when he returned, he had a cell

24 phone?

25 A. Yes, sir.

1 Q. And at that particular point, he dialed the cell  
2 phone and you believed him to be contacting Judge  
3 Willis?

4 A. That's correct.

5 Q. All right. And he and Judge Willis had a brief  
6 conversation?

7 A. I believe so, yes.

8 Q. How long?

9 A. I don't recall.

10 Q. Seconds?

11 A. He just put me on the phone.

12 Q. He put you on the phone right away?

13 A. Pretty much so, yes.

14 Q. All right. So you didn't overhear any  
15 conversation, at that particular point, between  
16 Sheriff Pagel and Judge Willis?

17 A. I don't recall much of a conversation.

18 Q. You recall no conversation?

19 A. Much of a conversation, right.

20 Q. And your impression was it was very brief and he  
21 then handed you the phone so that you could speak  
22 to the judge?

23 A. Yes, sir.

24 Q. All right. And at that particular point, you  
25 spoke to the judge?

- 1 A. That's correct.
- 2 Q. All right. At that particular point, when you
- 3 spoke to the judge, you were upset?
- 4 A. Yes, sir.
- 5 Q. You were distraught?
- 6 A. Yes, sir.
- 7 Q. You were concerned about what was going on at
- 8 home?
- 9 A. That's correct.
- 10 Q. In fact, you were concerned primarily because you
- 11 had no idea what was going on at home?
- 12 A. That's correct.
- 13 Q. All right. You told the judge that your
- 14 daughter, your stepdaughter, was in an accident?
- 15 A. That's correct.
- 16 Q. You told him that the vehicle had been totaled?
- 17 A. I don't recall.
- 18 Q. You told the judge that your wife was very upset
- 19 about the accident?
- 20 A. I believe that's what I told him, yes.
- 21 Q. All right. You also told him that your wife was
- 22 upset about the amount of time that you were
- 23 spending away from home because of the
- 24 requirements of this trial?
- 25 A. I don't recall that.

1 Q. You don't have any recollection of that?

2 A. No, sir.

3 Q. All right. You could have told the judge that?

4 A. I don't recall if I did or not.

5 Q. You told the judge that the family and friends  
6 and your wife were still somewhat embarrassed by  
7 those news reports about the trust fund issue,  
8 right?

9 A. I don't recall saying that.

10 Q. You don't have any recollection of saying that to  
11 the judge?

12 A. No, sir.

13 Q. You told the judge you were having marital  
14 difficulties, correct?

15 A. I don't recall saying that to him.

16 Q. You have no recollection of that?

17 A. No, sir.

18 Q. You impressed upon the judge that it was vital  
19 that you go home to preserve your marriage,  
20 because you were concerned about that, correct?

21 A. I don't recall saying that.

22 Q. When you were speaking with the judge, you spoke  
23 very quietly, right? That's your demeanor?

24 A. I believe I sounded upset.

25 Q. All right. And your tone of voice, you spoke

1               quietly?

2 A. I don't -- I believe I was talking, you know,  
3               like I am right now.

4 Q. Slowly?

5 A. That's correct, like I was upset --

6 Q. Somewhat --

7 A. -- and nervous.

8 Q. I'm sorry, go ahead.

9 A. Well, I was talking like I am, basically, now.

10 Q. Somewhat monotone?

11 A. Correct.

12 Q. You told the judge that the trial was putting a  
13               strain on your marriage, didn't you?

14 A. I don't recall that.

15 Q. You have no recollection of that?

16 A. No, sir, none at all.

17 Q. What impression were you trying to create with  
18               the judge, in this conversation with him?

19 A. I was upset.

20 Q. All right. What other impression? What did you  
21               want the judge to conclude, after his discussion  
22               with you?

23 A. That I should be let go.

24 Q. That you should be allowed to return home,  
25               correct?

1 A. Yes, sir.

2 Q. So your conversation with him was designed to  
3 accomplish that objective, right?

4 A. Under the circumstances, yes.

5 Q. All right. You certainly left the judge with the  
6 impression that your marriage might very well be  
7 at stake because --

8 ATTORNEY HAGOPIAN: Objection, that would  
9 be beyond the scope of his knowledge.

10 ATTORNEY FALLON: I will rephrase.

11 THE COURT: Go ahead.

12 Q. (By Attorney Fallon)~ It was your intent to  
13 create the impression that your marriage was at  
14 stake?

15 A. I don't believe so.

16 Q. Your conversation with the judge lasted less than  
17 five minutes, right?

18 A. About two, three minutes, yeah.

19 Q. And Sheriff Pagel was present the entire time of  
20 that conversation, correct?

21 A. Correct.

22 Q. And he was just a few feet away from you during  
23 the course of that conversation, right?

24 A. Yes, sir.

25 Q. All right. At the end of the conversation, the

1           judge told you you could be excused?

2       A. That's correct.

3       Q. All right. And he told you that he would not  
4           publicly disclose the reasonings, on the record,  
5           correct?

6       A. As I believe, yes, that's what he said.

7       Q. All right. And you thanked him for that,  
8           correct?

9       A. Yes, sir.

10      Q. You were concerned about your family privacy in  
11           those issues, at the time, correct?

12      A. Yes.

13      Q. All right. Mr. Mahler, in your conversation with  
14           Sheriff Pagel, before the call with Judge Willis,  
15           you never mentioned anything about your concerns  
16           of being verbally threatened by another juror,  
17           correct?

18      A. No, sir.

19      Q. You never mentioned anything to the bailiff,  
20           Oscar, that this was a concern, correct?

21      A. No, sir.

22      Q. All right. And the bailiff was the one who was  
23           actually in charge of the juror's well-being,  
24           correct?

25      A. Yeah, I believe so.

1 Q. That was his job, as far as you could tell?

2 A. Mm-hmm. Yes, sir.

3 Q. And you never mentioned anything about your  
4 concerns with the jury or, more particularly,  
5 this incident at the restaurant, correct?

6 A. No, sir.

7 Q. All right. And in your conversation with Judge  
8 Willis, you did not tell him about that?

9 A. No, I was pretty much concerned about what was  
10 happening at home.

11 Q. All right. And the real reason you wanted to go  
12 home was what was occurring at home, or what you  
13 didn't know, but certainly was concerning to you,  
14 at home?

15 A. Yes, that was.

16 Q. That was the reason you wanted to go?

17 A. Yes, sir.

18 Q. So if -- In an effort to get home, you told the  
19 judge that you were having marital problems,  
20 didn't you?

21 ATTORNEY HAGOPIAN: Objection, asked  
22 several times and answered.

23 THE COURT: Sustained.

24 Q. (By Attorney Fallon)~ Mr. Mahler, the  
25 preservation of your marriage was more important

1           than your duty as a juror, correct?

2 A. I don't believe, no.

3 Q. You don't believe so?

4 A. It had nothing to do with my marriage.

5 Q. I'm sorry?

6 A. It had nothing to do with my marriage.

7 Q. But you told the judge that it did?

8 A. I don't recall --

9                           ATTORNEY HAGOPIAN: Objection.

10 A. -- saying that.

11                           ATTORNEY HAGOPIAN: Covering the same  
12 ground.

13                           THE COURT: I'm going to sustain the  
14 objection.

15 Q. (By Attorney Fallon)~ All right. Did you intend  
16 to deceive the judge?

17 A. I don't recall saying --

18 Q. You don't recall saying any of those things I  
19 asked you about, is that correct?

20 A. About my marriage being in trouble, no. And my  
21 intention wasn't to deceive the judge.

22 Q. Your intention was to get home?

23 A. Under the circumstances, yes, right.

24 Q. And those circumstances were the problems at  
25 home?

1 A. The uncertainty of what the accident, or  
2 whatever, what I thought was an accident.

3 ATTORNEY FALLON: Pass the witness.

4 THE COURT: Any redirect?

5 ATTORNEY HAGOPIAN: Yes, please.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY HAGOPIAN:

8 Q. Mr. Mahler, you made reference that you had  
9 entered into deliberations with the plan of how  
10 you wanted to proceed; is that right?

11 A. That's correct.

12 Q. And what was your thought about what you wanted  
13 to do in deliberations?

14 A. My object was --

15 ATTORNEY FALLON: Objection, beyond the  
16 scope of cross.

17 THE COURT: Counsel.

18 ATTORNEY HAGOPIAN: There had been  
19 testimony, at some length, elicited on cross, as to  
20 his reaction and things that were actually said  
21 during deliberations. And that's what I am leading  
22 to, following up on that.

23 ATTORNEY FALLON: The question is his state  
24 of mind and what occurred that evening, not what he  
25 was planning to do the next day.

THE COURT: As the question is phrased, I'm going to sustain the objection.

Q. (By Attorney Hagopian)~ You testified about some comments that were made by the jurors in this first day of deliberations; do you recall that testimony?

A. Yes, ma'am.

Q. And how did those comments leave you feeling?

A. I felt hopeless. I felt angry. I was angry and  
I felt hopeless.

Q. And one of the jurors who made the comment, as you described, quite immediately, that he is guilty, that's one of the comments you are referring to that left you feeling frustrated?

A. Yes. There were similar comments from two other jurors.

Q. So then, at dinner, when you were seated next to Mr. Wardman, and you made the comment that you were feeling frustrated; in your own mind, what were you referring to?

A. I was referring to his comment, without directly pointing the finger at him.

Q. And it was after you made the comment, in your own mind referring to his behavior during deliberations, that he then responded to you,

1                   correct?

2     A.   That's correct.

3     Q.   And your testimony was that his -- his  
4                   comment was that you should try to get off the  
5                   jury?

6     A.   Yes.

7     Q.   And how did you take that comment?

8     A.   As a verbal threat.

9     Q.   And I would like you to explain what you mean by  
10                  a verbal threat. In your own mind, at that time,  
11                  what did you think he was trying to tell you?

12                   ATTORNEY FALLON: Objection, asked and  
13                  answered.

14                   THE COURT: Sustained.

15     Q.   (By Attorney Hagopian)~ You have testified, that  
16                  when you spoke with the judge, that you were  
17                  feeling frustrated and you were upset. Part of  
18                  that frustration was your family situation?

19     A.   Yes.

20     Q.   Was there some other thoughts in your mind at  
21                  that time that were troubling you?

22     A.   It was a mixture of what was said during  
23                  deliberations, at lunch, and then all of a sudden  
24                  the family emergency hit.

25     Q.   And when you refer to the deliberations, what

specifically are you referring to?

A. To the comment that Carl and two other jurors had made.

Q. And are you also, then, referring to the comment that was made by Mr. Wardman at dinner?

A. Yes.

Q. So when you spoke to the judge, you did want off the jury; is that right?

ATTORNEY FALLON: Objection, leading.

Q. (By Attorney Hagopian)~ When you spoke to the judge, what were you hoping to accomplish?

A. To go home and find out what was really going on.

Q. Had you been instructed by the Court about what you could and couldn't talk about, in terms of the deliberations?

A. Pretty much anything about the trial, we weren't allowed to talk to anybody about.

Q. And was it your understanding that you should not be talking to other people about what was going on in deliberations?

A That is correct

Q. Did you think it would, in any way, be improper for you to talk with your wife about what happened in deliberations that day?

A Yes it would have been improper

1 Q. Would it have -- Also, in your own mind, would  
2 you have thought maybe it wasn't proper to talk  
3 about that with the bailiff?

4 A. I felt it was improper to talk about it with  
5 anybody.

6 Q. When you spoke with your wife that evening, and  
7 there was mention of an accident, did your wife  
8 provide you with any details about this accident?

9 A. Not at all.

10 Q. Did you ask her specific questions about the  
11 accident?

12 A. No, I didn't ask her.

13 Q. So there's mention of an accident and then what  
14 happens in the conversation?

15 A. I just said, well, I got to get going, I will  
16 talk to you later.

17 Q. You were questioned some about this press report  
18 about a trust fund that I would like to ask if  
19 you remember a day, I'm referring to March 12th  
20 of 2007, that would have been a few days before  
21 the case went to the jury. Do you remember being  
22 brought in and questioned by the judge, each  
23 juror, one by one?

24 A. Yes, ma'am.

25 Q. You specifically remember that day and you

remember, were you in the courtroom or somewhere else?

A. We were in a back room.

Q. And do you recall at that time some reference being made to that press report?

A. I don't recall.

Q. Would it refresh your recollection to take a look at the transcript of that? I have here --

THE WITNESS: Yes, ma'am. Yes, sir.

15 | THE WITNESS: Yes, it would help.

16 THE COURT: Go ahead.

17 ATTORNEY FALLON: I'm going to object as to  
18 the relevance of the transcript during the jury  
19 selection process as it pertains to his state of  
20 mind on the night the decision to excuse him.

1 you show Mr. Fallon the transcript.

2 ATTORNEY HAGOPIAN: Certainly.

3 (Off record discussion.)

4 ATTORNEY FALLON: That's fine, Judge, I  
5 will withdraw the objection.

6 THE COURT: Very well.

7 ATTORNEY HAGOPIAN: May I approach the  
8 witness?

9 THE COURT: Yes, you may.

10 Q. (By Attorney Hagopian)~ Mr. Mahler, I'm showing  
11 you a transcript dated March 12, 2007. I'm on  
12 page 32. I'm actually going to ask you to start  
13 reading at line 24. It refers to officer as  
14 being the speaker, however, I believe Mr. Fallon  
15 will agree that that must be a typographical  
16 error and that was actually you speaking.

17 ATTORNEY HAGOPIAN: Is that correct,  
18 Mr. Fallon?

19 ATTORNEY FALLON: That would be my  
20 understanding of the general context of the  
21 discussion, it appears to be a misnomer.

22 Q. (By Attorney Hagopian)~ I would ask you then to  
23 start reading on line 24, continue on to the next  
24 page and read through line 16?

25 THE COURT: And you are asking him to read

1                   it to himself?

2                   ATTORNEY HAGOPIAN: Yes, please.

3                   A. Okay.

4                   Q. (By Attorney Hagopian)~ Okay. Have you completed  
5                   reading that?

6                   A. Yes, ma'am.

7                   Q. I will take that back then. And I'm going to ask  
8                   you, then, in that questioning by the Court, did  
9                   you raise with the Court the incident where there  
10                  had been a press report that had caused some  
11                  upset for your wife?

12                  A. Yes, ma'am.

13                  Q. And were you asked whether that would affect you  
14                  now, at this point in the trial, shortly before  
15                  deliberations were to begin?

16                  A. Yes.

17                  Q. And did you feel at that point that this was  
18                  going to affect your ability the serve as a  
19                  juror?

20                  A. Not at all.

21                  Q. And as far as you can recall, Mr. Mahler, in  
22                  your -- whatever you told Sheriff Pagel when he  
23                  came into your motel room, you do not recall  
24                  mentioning your wife's upset about this press  
25                  report?

1 A. No, ma'am.

2 Q. And to the best of your recollection, you do not  
3 recall mentioning that in your conversation with  
4 the judge?

5 A. No.

6 Q. Is it fair -- If the judge, when you spoke with  
7 him by phone that evening, had asked you for  
8 details about the accident, would you have been  
9 able to provide them?

10 A. No, ma'am.

11 Q. And when you refer to your upset about your  
12 family situation, did you feel -- what was your  
13 feelings in terms of what you have described as  
14 the uncertainties?

15 A. I just wasn't sure what was happening at home.  
16 And I was upset, like anyone would probably be,  
17 with uncertainty of the situation.

18 Q. And your lack of knowledge about the accident,  
19 about what was going on at home, these would be  
20 matters that could be clarified with some further  
21 follow up with your family?

22 A. Yes.

23 Q. But that never happened, right?

24 A. No, ma'am.

25 ATTORNEY HAGOPIAN: That's all I have.

1           Thank you.

2           THE COURT: Mr. Fallon, anything?

3           ATTORNEY FALLON: Nothing.

4           THE COURT: Very well. You are excused.

5           We'll take our morning break at this time and resume  
6           at 5 minutes to 11.

7           (Recess taken.)

8           ATTORNEY FALLON: Your Honor, before we  
9           proceed, I think counsel and I would like to  
10          introduce Exhibit No. 1, which is the Court's  
11          memorandum on the issue we just talked about.

12          THE COURT: The Clerk will mark it. It is  
13          marked. Very well.

14          ATTORNEY FALLON: Very well. Thank you.

15          THE COURT: And is it stipulated that it's  
16          being admitted, or you are simply marking it?

17          ATTORNEY FALLON: I believe admitted.

18          ATTORNEY HAGOPIAN: Admitted. Although  
19          could I just look at the second page of that, just  
20          to make sure?

21          ATTORNEY FALLON: It's got the addendum.

22          ATTORNEY HAGOPIAN: It does. Okay.

23          ATTORNEY FALLON: Yup.

24          THE COURT: Very well, Exhibit 1 is  
25          admitted. Attorney Hagopian, you may call your next

1 witness.

2 ATTORNEY HAGOPIAN: We call Dean Strang.

3 **ATTORNEY DEAN A. STRANG**, called as a  
4 witness herein, having been first duly sworn, was  
5 examined and testified as follows:

6 THE CLERK: Please be seated. Please state  
7 your name and spell your last name for the record.

8 THE WITNESS: Dean A. Strang, S-t-r-a-n-g.

9 **DIRECT EXAMINATION**

10 BY ATTORNEY HAGOPIAN:

11 Q. Is it correct, Mr. Strang, that you and Attorney  
12 Jerry Bruting (sic) were trial counsel for  
13 Mr. Avery in this case?

14 A. Not initially, but eventually, yes.

15 Q. And you were -- you or your law firm was retained  
16 by Mr. Avery?

17 A. Initially, I and my law firm were retained, and  
18 then Jerry Buting was retained after that.

19 Q. And you were the first attorney to represent  
20 Mr. Avery in this case, were you?

21 A. No.

22 Q. Is it correct that his first attorneys were  
23 appointed by the Public Defender's Office?

24 A. That's my understanding.

25 Q. And the defendant must be found indigent in order

1           to qualify for public defender appointment; isn't  
2           that right?

3       A. At least past an initial appearance, that's my  
4           understanding.

5       Q. How was Mr. Avery able to afford to retain you?

6       A. He settled the civil action he had pending under  
7           42 U.S.C. 1983 and all -- or substantially all of  
8           those proceeds went to retaining counsel.

9       Q. And that lawsuit, the civil action, was related  
10          to his wrongful conviction; is that right?

11      A. Yes.

12      Q. When you agreed to represent Mr. Avery, did you  
13          or your law firm enter into a written retainer  
14          agreement with Mr. Avery?

15      A. The firm did, yes.

16      Q. Did that agreement require Mr. Avery to pay a  
17          specific fee to retain your law firm?

18      A. Yes. And my recollection is that it was to be a  
19          flat fee. So, yes, he had to pay a specific fee  
20          to retain us and that was all we were going to  
21          get.

22      Q. The record shows that you were retained in about  
23          February of 2006 and the trial began a year  
24          later, February of 2007. When the trial began,  
25          how much of the fee had been expended for

1                   Mr. Avery's representation?

2       A. I cannot be certain of that, but if forced to  
3                   guess, I would say all of it, and then some,  
4                   before trial began.

5       Q. To your knowledge at that time, did Mr. Avery  
6                   have additional funds to put towards his legal  
7                   representation?

8       A. No, nothing significant. There may have been an  
9                   old car somewhere, or snowmobile, but nothing  
10                  that was worth the trouble to try to ask him to  
11                  sell or give to us.

12      Q. Did the retainer agreement specify at what point  
13                  your representation of Mr. Avery would end?

14      A. Going by memory here, I think we agreed to  
15                  represent him through a first trial and  
16                  sentencing, if necessary, but not on a retrial or  
17                  any post-conviction or appeal proceedings.

18                  That's memory, but that's my recollection.

19      Q. So if a mistrial had been declared under the  
20                  terms of the retainer agreement, would you or  
21                  your law firm have been obligated to represent  
22                  Mr. Avery at a second trial?

23      A. As I recall the agreement, no.

24      Q. I'm now going to direct your attention toward the  
25                  end of trial; and specifically, I'm referring to

1           March 15 of 2007, that was the day when closing  
2           arguments were completed and the jury began  
3           deliberations. Do you have a recollection of  
4           that day?

5       A. Sure, in a general sense.

6       Q. That evening of March 15th, were you informed at  
7           some point that the jury had stopped deliberating  
8           for the day?

9       A. Yes.

10      Q. How did you learn that?

11      A. I think by -- you know, I'm sure by a phone call.  
12           And whether that came into my cell phone or to --  
13           I think I had a working telephone in the  
14           apartment that I was renting, but in any event it  
15           would have been a telephone call.

16      Q. And do you recall approximately what time that  
17           was?

18      A. No, is the short answer to that. It was either  
19           getting toward or well into maybe time for  
20           dinner.

21      Q. When you received the news that the jury had  
22           stopped for the day, was it your understanding  
23           that the jury would resume deliberations the next  
24           day?

25      A. Yes.

1 Q. After having been told that the jury was done for  
2 the night, what did you do?

3 A. I know approximately, I may be compressing time  
4 here because I just don't remember exactly when I  
5 was told we could stand down for the evening, but  
6 at least at some point after that what I remember  
7 doing is collecting Mr. Buting and suggesting  
8 that we go have dinner and a beer.

9 Q. Now, you had been in trial for, what, about six  
10 weeks at that point?

11 A. I think at least or, you know, something right  
12 around there, yeah.

13 Q. How were you feeling that evening?

14 A. Exhausted. I mean, if I'm recalling this  
15 correctly, I had given my portion of the defense  
16 closing argument the same day as Mr. Kratz's  
17 rebuttal and the judge's instructions. And  
18 that's the day we're talking about, I think,  
19 right?

20 Q. You had completed your arguments, correct.

21 A. Okay. So I was having the sort of let down you  
22 have after a closing argument.

23 Q. Did you have a drink with dinner that night?

24 A. I remember we went out for Mexican food. It was  
25 in a strip mall somewhere not far from the

1           southeast corner of the city of Appleton, where  
2           Jerry and I both were staying.

3           Couldn't possibly tell you the  
4           restaurant or exactly where it was, but it was a  
5           Mexican restaurant in a strip mall. And when I  
6           have Mexican food I have a negra modelo beer.  
7           And at no other time do I drink negra modelo  
8           beer, so, yes, I had a negra modelo beer very  
9           shortly after getting to the restaurant and  
10          getting somebody's attention.

11         Q.    Okay. And do you recall, were you feeling the  
12          effects of the alcohol while you were at the  
13          restaurant?

14         A.    Yes, I was. I think I only had one beer. I'm  
15          sure I would have been legal to drive --

16         Q.    Mm-hmm.

17         A.    -- but I could feel the beer.

18         Q.    At some point that evening did you receive a  
19          telephone call from Judge Willis?

20         A.    Yes.

21         Q.    Did this occur while you were still at the  
22          restaurant?

23         A.    Yes.

24         Q.    Do you have any recollection as to the time?

25         A.    In my head, it was about 8:30. That could be --

1           that could be off one way or the other, but  
2           that's -- that's my recollection. And I think  
3           the phone call came into my cell phone, as  
4           opposed to Jerry's. That's my recollection.

5   Q.   So the phone call comes on your cell phone; I  
6           assume you were the one who answered it?

7   A.   That's how I recall it.

8   Q.   And did you speak directly with Judge Willis?

9   A.   Yes.

10   Q.   To your knowledge, was there anyone else on the  
11           line, aside from you and Judge Willis?

12   A.   I can't believe the phone call would have  
13           happened without someone from the prosecution  
14           either already on the line or being added  
15           immediately. But, honestly, the only one I  
16           remember speaking was Judge Willis. And, you  
17           know, I remember I spoke a little bit. But --  
18           so, no, I can't tell you for sure that someone  
19           from the prosecution team was on there, but I  
20           would be quite surprised if one or more of the  
21           prosecutors were not.

22   Q.   But at least as you are sitting here today, you  
23           don't have any recollection of having heard, for  
24           example, District Attorney Kratz say anything  
25           during the conversation?

1 A. I really don't. It doesn't mean he wasn't on the  
2 phone, I just don't remember anyone other than  
3 the judge speaking and, you know, my reacting.

4 Q. So you are on the phone, Judge Willis is on the  
5 phone, that much you recall?

6 A. That's what I recall.

7 Q. Was Attorney Buting on during this call at all?

8 A. I don't think so, because if -- I think it came  
9 into my cell phone, and if that cell phone had a  
10 speaker phone feature, I surely never figured out  
11 how to use it or had any interest in using it.  
12 And so, you know, I think that what was -- I know  
13 Jerry was there and I remember him being there,  
14 but I think that I was probably relaying tidbits  
15 to him.

16 Q. What did Judge Willis tell you in that phone  
17 conversation?

18 A. Well, approximately, as I recall --

19 Q. Yeah.

20 A. -- what he said is that he had been notified  
21 maybe by the sheriff's department, I don't know  
22 that I was given a name, but by the sheriff's  
23 department, that a situation had arisen with a  
24 juror. And my recollection is that it was  
25 presented to me as being urgent and serious. And

1           I'm distinguishing, I mean, that it was a serious  
2           situation, something important, but that it was  
3           also emergent or urgent.

4   Q.   I'm sorry, could you -- I didn't quite understand  
5           the last.

6   A.   It was not just serious, it was something urgent,  
7           something that needed to be tended to  
8           immediately, was the impression I got during that  
9           conversation.

10   Q.   In that conversation, do you recall, did the  
11           judge tell you which juror was seeking to be  
12           excused?

13   A.   I'm sure he did. I don't recall that, but I know  
14           which juror we were talking about. I can't  
15           attribute it to that first conversation with  
16           100 percent certainty, but he probably told me.

17   Q.   And which juror are we talking about, in your  
18           mind?

19   A.   Mr. Mahler.

20   Q.   Yes. Okay. And in that phone conversation,  
21           again, this is at the restaurant, with Judge  
22           Willis, was there any discussion about how to  
23           handle the situation?

24   A.   Yes.

25   Q.   What was proposed?

1 A. I don't remember what was proposed. What I think  
2 I remember is what was agreed upon, or settled,  
3 which is that the judge would make his own  
4 inquiry of the juror. And if the facts presented  
5 to him, or suggested to him by someone in the  
6 sheriff's department, were born out by the  
7 judge's inquiry, that the juror would be excused,  
8 would be relieved of further duty on the case.

9 Q. Your recollection is that that was something that  
10 was agreed upon in the conversation?

11 A. Agreed, acquiesced to, yes. I mean, I didn't --  
12 I don't recall my squawking about that or  
13 objecting.

14 Q. Do you recall if you were the one who had  
15 proposed that?

16 A. No, I don't, but maybe I did. I mean, I -- It's,  
17 you know, I just have an impressionistic  
18 recollection that the judge was sort of driving  
19 the suggestion, or the resolution.

20 Q. So that in that phone conversation, did you agree  
21 that the judge should speak with the juror?

22 A. Yes, or I mean, agreed or didn't object to that  
23 course. My own recollection is that that was the  
24 best -- that was the best that was going to  
25 happen at that point.

1 Q. And when you agreed, or acquiesced, was it your  
2 understanding that the judge would be speaking  
3 with the juror, without either you or Mr. Buting  
4 present?

5 A. Yes.

6 Q. Was it your understanding that Mr. Avery would  
7 also not be present?

8 A. Yes.

9 Q. And as part of that, again, that conversation,  
10 did you agree or acquiesce that the judge should  
11 also remove the juror?

12 A. Yes, if -- if the facts were as they had been  
13 presented to the judge, you know, were as  
14 represented by the sheriff's department or  
15 something very close to that, yes. And I really  
16 don't mean to be splitting hairs on agreeing or  
17 acquiescing. This was -- I don't remember who  
18 proposed.

19 Q. Mm-hmm.

20 A. I don't remember the full discussion, but I think  
21 by the end there was a consensus that this was  
22 the course of action the judge would take.

23 Q. And at that time, when that decision was made,  
24 did you have a recollection of who this juror  
25 was, which juror was Richard Mahler?

1 A. Oh, sure.

2 Q. Okay. What did you think of him?

3 A. Focus me a little bit on that.

4 Q. Well, during the course of trial, were you paying  
5 some attention to the jurors, as the trial went  
6 on?

7 A. Not that much. It's one of my shortcomings, as a  
8 trial lawyer, to be honest. But I was aware of  
9 who he was.

10                  In voir dire, I had this sense that he  
11 would not be a follower necessarily, that this  
12 was someone who, you know, wasn't a standard  
13 government issue human being. He was -- had  
14 maybe his own drummer, so to speak. I'm not  
15 trying to make a joke about being a musician, but  
16 he was someone who was likely to come to his own  
17 views of the case, I thought, and I didn't have  
18 any sense where he would end up.

19                  Was he more likely a prosecution juror  
20 or defense juror, that I had no sense. But I had  
21 the sense that he would probably prove to be a  
22 relatively strong juror.

23 Q. And that the characteristics that you had  
24 ascertained from the individual voir dire, that  
25 he would be able to come at his own decision,

1           would that be something you would view as  
2           favorable, favorable quality in a juror?

3       A. Not necessarily. You know, this isn't something  
4           I ascertained, it's something I guessed,  
5           surmised, intuited, from the sort of unhelpful  
6           process that is voir dire.

7       Q. That night, when the situation arose, did you  
8           have a strategic reason for trying to get Richard  
9           Mahler off the jury.

10      A. No. No, I mean not -- No, I didn't want this man  
11           off the juror -- off the jury, on his merits. I  
12           certainly did have a concern that if he was  
13           distracted by a family tragedy, or something that  
14           was weighing heavily on him, that he might be  
15           someone who would be inclined not to deliberate  
16           fully or with a, you know, an exclusive focus on  
17           the case. But that wasn't a concern I had before  
18           the phone call. I wasn't out to get rid of this  
19           juror.

20      Q. In the conversation with Judge Willis that  
21           evening, was there any discussion of the  
22           Wisconsin Supreme Court's decision in **State vs.**  
23           **Lehman**?

24      A. In the phone call while we were --

25      Q. In the phone call at the restaurant.

1 A. -- at the Mexican restaurant. Not that I recall,  
2 no.

3 Q. Were you familiar with that decision as you spoke  
4 with Judge Willis?

5 A. No, and that's why I think it didn't come up. I  
6 remember not knowing exactly what our options  
7 were at that point, if the juror got excused.

8 Q. Did you become aware, familiar with that decision  
9 at some point after that conversation?

10 A. Later on, yes, later on that evening. I'm quite  
11 certain there was not a second beer. I think  
12 dinner was either gulped down or cut short. And  
13 I went back and got on Westlaw, at some point  
14 earlier than I would have preferred to.

15 Q. When you agreed to have the Court speak with the  
16 juror and remove him if the information was  
17 confirmed, did you consider whether Mr. Avery and  
18 his attorneys had a right to be present during  
19 that inquiry?

20 A. I knew we did. He had a right, personally, to be  
21 present if the Court was speaking to a juror and  
22 he certainly also had what I see as an  
23 independent right to have counsel present during  
24 such conversation with a juror.

25 Q. Did you consult with Mr. Avery about whether he

1           wanted to be present during the Court's inquiry  
2           with the juror?

3       A. No, I couldn't, he was in the Calumet County  
4           Jail.

5       Q. So you were also not able to consult with him  
6           about whether he wanted this particular juror  
7           taken off the jury?

8       A. No.

9       Q. In your mind at that time, again you are still at  
10           the restaurant, in this conversation, what did  
11           you think would happen if you had objected to the  
12           procedure that was discussed, the Court talking  
13           to the juror and excusing him? What if you had  
14           objected to that and told the Court that  
15           Mr. Avery and his attorneys had a right to be  
16           present?

17      A. What would have happened is necessarily  
18           speculative. But I -- right or wrong, I had the  
19           impression that this was serious enough and  
20           urgent enough that some contact between the judge  
21           and the juror just was very likely to happen that  
22           night, at best, or that the juror would be let go  
23           on the say so of the sheriff's department.

24                   I can't say the judge said that, I'm  
25                   just -- that was the sense I had, was that sort

1           of the best safeguard we were going to get was to  
2           have the judge talk to the juror. I don't recall  
3           any conversation about reconvening that night in  
4           court. Maybe we had it, I just don't recall any  
5           conversation like that, or even I don't recall  
6           talking about doing this in the morning.

7           It was -- I felt like at the time -- I  
8           mean, bluntly, my sense at the time was this was  
9           not a time for temporizing or worrying too much  
10          about legal niceties. That was just my sense.

11 Q. Well, when you agreed to the juror's removal, did  
12          you have any information about an accident?

13 A. Yes, I think what we were told, and judge was  
14          attributing this to the sheriff's department, was  
15          that maybe a stepdaughter of the juror had been  
16          in a car accident; that neither she nor anyone  
17          else had been killed, as far as anyone knew; but  
18          whether she was injured or in the hospital, or  
19          whether others were injured or in the hospital,  
20          seemed unknown at that point; and that in a  
21          related way the juror's wife had about had it  
22          with his absence, or his service on the jury; and  
23          that this car accident was sort of a last straw  
24          and she was threatening to walk out of the  
25          marriage. That was, as I recall, what was

1                   presented, secondhand, by the judge, to us.

2 Q. Mm-hmm. Did you have any information that, for  
3                   example, the stepdaughter was hospitalized?

4 A. No, my recollection is that we were told that was  
5                   unknown, that no one had died, but I don't think  
6                   we knew whether anyone was in the hospital or  
7                   not.

8 Q. And you refer to this information as having come  
9                   from the sheriff's department; is that correct,  
10                  as far as you knew?

11 A. I think that's what the judge said.

12 Q. Was there any, to your recollection, any specific  
13                  mention that the information came from Sheriff  
14                  Pagel?

15 A. I don't remember that now. Is it possible, yes,  
16                  but I don't remember it being attributed to any  
17                  particular employee of the sheriff's department.

18 Q. When you agreed that the judge could speak with  
19                  the juror and remove him if information was  
20                  confirmed, were you aware that Sheriff Pagel had  
21                  spoken with Mr. Mahler?

22 A. I don't think I was. I don't recall that. I  
23                  can't exclude it entirely.

24 Q. Would it have concerned you, had you known that  
25                  the sheriff was speaking with the juror?

1 A. Yes, but I think it would have concerned  
2 Mr. Buting more.

3 Q. And why is that, why do say that?

4 A. He was more suspicious of Sheriff Pagel. And I  
5 tried to maintain a line of communication there,  
6 a cordial working relationship with the sheriff.

7 Q. And when you authorized, or agreed for the Court  
8 to speak with the juror, did you expect that  
9 Sheriff Pagel would be involved in that  
10 communication?

11 A. I don't know that I had an expectation one way or  
12 the other.

13 Q. Were you provided, again, in this conversation  
14 with the judge, were you provided any information  
15 as to how this situation about the accident had  
16 come to the juror's attention?

17 A. Might have been, I don't remember -- I don't  
18 remember being told that, I might have been. May  
19 have been that the jurors all had been allowed to  
20 call home. I guess I'm guessing. I don't recall  
21 specifically how this came to the juror's  
22 attention.

23 Q. You didn't have any specific information that the  
24 wife had been calling in to report a problem?

25 A. If I did, I don't remember it now, that's

1           possible, but I don't remember it.

2       Q.    So, there's a conversation with the judge, all  
3           this is occurring at the restaurant, there's an  
4           understanding of how the judge should handle it.  
5           And what happened next in terms of your knowledge  
6           of the situation?

7       A.    Well, I think there was a second phone call that  
8           Mr. Buting placed to Judge Willis. But I only  
9           think that because I have seen a page of  
10          Mr. Buting's cell phone record more recently. I  
11          didn't remember --

12      Q.    Okay.

13      A.    -- that Jerry Buting had placed a call to the  
14          judge. Without that cell phone record, my  
15          recollection would be that at some point that  
16          night we were told that it was fait accompli,  
17          that the juror had been interviewed by the judge  
18          and the judge had excused the juror. I think I  
19          knew that before I went to bed that night.

20      Q.    Okay. So, when you got back to your apartment,  
21          your best recollection is that you knew at that  
22          point that Juror Mahler was off?

23      A.    I don't know if it was before I got back to the  
24          apartment, but some -- some time before I went to  
25          bed. And it probably was either before I got to

1                   the apartment or very soon thereafter. Because,  
2                   as I say, I did go on Westlaw and start doing  
3                   some research to see if I could determine what  
4                   our options were then.

5       Q.   And that's when you discovered the **Lehman**  
6                   decision?

7       A.   Yes, I found **Lehman**.

8       Q.   So then I turn your attention to the next day,  
9                   it's March 16, 2007; was there a meeting in  
10                  chambers that morning with Judge Willis and the  
11                  attorneys?

12      A.   Yes.

13      Q.   Was Mr. Avery present during that in chambers  
14                  conference?

15      A.   No. No, the initial meeting with the judge and  
16                  the lawyers in chambers, Mr. Avery was not  
17                  present for that.

18      Q.   And by the time of that in chambers conference,  
19                  had you spoken to Mr. Avery about the juror's  
20                  removal?

21      A.   I don't think so.

22      Q.   So as far as you knew, when you went into that in  
23                  chambers conference, your understanding would  
24                  have been that Mr. Avery still had no knowledge  
25                  of the fact that a juror had been taken off the

jury?

A. My recollection is that we had not, that Mr. Buting and I had not spoken to him before going to chambers the morning of March 16. So, if he knew, that didn't come from us.

Q. Was there some discussion of the **Lehman** decision in that conference?

A. Yes, I mean, as I recall it, more or less simultaneously, the judge and I discovered that we each had found **Lehman** and we had copies of it.

Q. And in part, relying on that decision, was there some discussion of the options available now that a deliberating juror had been removed?

A. Yup. Yes.

Q. And what options were discussed?

A. Well, I think -- I think all the lawyers and the Court were in agreement that there were three options. One, you could continue with 11 jurors; two, you could declare a mistrial; three, you could insert an alternate juror, if one had been retained, into the group, to restore it to 12. And that if you did that, the jurors would have to be instructed to begin deliberations anew.

And I think there also was consensus that each of the two sides had an absolute veto

1           in the sense that any -- either of the two  
2           options would have allowed deliberations to go  
3           forward, required the assent of both sides.

4           Could have forced a mistrial, to put it  
5           succinctly, either side could have.

6       Q.   And it was the understanding at that point that  
7           indeed there was an alternate available?

8       A.   We had retained an alternate, yes.

9       Q.   And while you were still in that in chambers  
10          conference, did the parties reach an agreement of  
11          which of the options to take?

12      A.   My recollection is, no, that at some point I or  
13          Jerry, or both of us, said we have got to go talk  
14          to Steven.

15      Q.   But was there some at least tentative agreement  
16          among the attorneys and the Court as to which  
17          option would be taken?

18      A.   I think that we were all leaning toward plugging  
19          in the retained alternate juror and continuing  
20          deliberations with 12, although deliberations  
21          would have to start afresh. I think we were  
22          leaning that way by the time Mr. Buting and I  
23          left chambers to go down and speak with Mr. Avery  
24          in the jail.

25      Q.   And even in that conference, may there have been

1           some discussion of drafting the appropriate  
2           instruction to give the jury, if the sub -- if  
3           the alternate were put in?

4       A. I can't place the exact time at which that  
5           discussion occurred, but at some point, yes, we  
6           talked about an instruction and settled, I think,  
7           on the wording of an instruction. I can't place  
8           that at the initial meeting in chambers before  
9           Mr. Buting and I spoke to Mr. Avery. Maybe,  
10          maybe not.

11      Q. When the decision ultimately was made to  
12          substitute in the alternate, was it your  
13          understanding that **Lehman** would allow the parties  
14          to consent to putting in an alternate during  
15          deliberations?

16      A. As long -- excuse me -- as long as deliberations  
17          started over, yes.

18      Q. And you have testified that you had found **Lehman**  
19          the night before and were familiar with that by  
20          the time of the in chambers conference. Had you  
21          also researched whether there had been any  
22          changes to the relevant statute since **Lehman** was  
23          decided?

24      A. I did not.

25      Q. So, did you ultimately agree to the option of

1           substituting in the alternate with the belief  
2           that that was an option permitted under Wisconsin  
3           law?

4       A. Yes.

5       Q. So after this in chambers conference, then, you  
6           went to meet with Mr. Avery?

7       A. Yes.

8       Q. And that took place at the jail; is that right?

9       A. Yes, it did.

10      Q. Who was present?

11      A. Jerry Buting, Steven Avery, and I.

12      Q. How long did that meeting last?

13      A. Something under 20 minutes, close to 20 minutes.

14      Q. That 20 minutes would have been from the time you  
15           arrived at the jail until the time you left?

16      A. I have looked at that page from my trial notes,  
17           and as I recall, the notes say 8:45 to 9:05. And  
18           I have a habit about keeping time with  
19           conferences with the detained or incarcerated  
20           clients.

21           And I note the time when I'm walking  
22           through the security door, the last locked door,  
23           and then I note the time when I leave the secure  
24           area of the jail or prison. I don't -- I  
25           don't -- you know, I don't write down the time

1           when the client walks in the interview room, or  
2           the booth, or wherever we're meeting. Because  
3           that's unpredictable, how long that's going to  
4           take the jail personnel to get the client there.  
5           And usually what I'm doing at that point is  
6           writing down the things we're going to discuss.

7       Q.    So, based on your note showing that time of a 20  
8           minute time frame, that would be the absolute  
9           longest the conversation with Mr. Avery took?

10      A.    Right. The conversation with Mr. Avery would  
11           have been a little bit shorter than that. The  
12           Calumet County Jail was very prompt about getting  
13           Mr. Avery into the interview room that we used.  
14           I think because -- I think because he was the  
15           only inmate in the adjoining pod, but we never  
16           had to wait long.

17      Q.    And what was discussed in that meeting with  
18           Mr. Avery?

19      A.    The fact that we lost a juror, the night before,  
20           and what the three options were at this point,  
21           going forward.

22      Q.    And those would have been the three options you  
23           just described in your testimony?

24      A.    Right. And -- And I also would have explained --  
25           I did explain to Mr. Avery that, in the end,

1                   which of these three options to choose was his  
2                   choice.

3       Q.   And so as part of this discussion, did you tell  
4                   Mr. Avery he could have a mistrial?

5       A.   I did.

6       Q.   Did you give him any advice about taking a  
7                   mistrial?

8       A.   I advised that he not take a mistrial. I steered  
9                   him toward introducing the alternate juror into  
10                  the deliberations.

11      Q.   And in part of your discussion with him about  
12                  whether to take a mistrial, did you talk to him  
13                  about whether you would be representing him at a  
14                  second trial?

15      A.   We must have then, and I remember more than one  
16                  such conversation with Mr. Avery. And one of  
17                  those must have been then, in this meeting on the  
18                  16th.

19      Q.   And what did you tell him?

20      A.   If you have a mistrial, which you have a right to  
21                  do, they will try you again. This isn't a case  
22                  where they are going to, you know, make a  
23                  meaningful offer for a lesser disposition. The  
24                  case will go to trial again and neither Jerry nor  
25                  I will be able to represent you, financially. We

1 just can't and won't do that, through a second  
2 trial.

3 Q. At any point in that discussion of the options,  
4 did you advise Mr. Avery that he should proceed  
5 with 11 jurors?

6 A. No.

7 Q. Why did you not recommend that?

8 A. Because I never would.

9 Q. Why?

10 A. Twelve is better than eleven. I mean, you know,  
11 look, you want to win the case, but placing, so  
12 to speak, is a mistrial, in my business. And you  
13 have got one more chance to get a mistrial with  
14 12 jurors than you do with 11. The dynamic is  
15 different.

16 Q. If substitution of a juror, during deliberations,  
17 was not a legal option, would you have advised  
18 Mr. Avery to proceed with 11?

19 A. I'm sorry, I zoned out a moment.

20 Q. Sure. You had talked about mistrial and you  
21 recommended substituting, correct?

22 A. Yup.

23 Q. You did not recommend going with eleven?

24 A. I recommended that we not go with 11.

25 Q. If --

1 A. Strongly.

2 Q. -- substitution of a juror was not an option  
3 allowed under law, would you then have advised  
4 Mr. Avery to proceed with 11 jurors?

5 A. No.

6 Q. If the choices allowed by law would have been go  
7 with 11 or have a mistrial, which option would  
8 you have recommended?

9 A. Well, I don't know, and here's why I don't know,  
10 because I would have been saying mistrial and I'm  
11 not sure Mr. Buting would have. That's  
12 something, had we known that there were only two  
13 options, that's something that would have  
14 required a real discussion, between me and  
15 Mr. Buting, to reach agreement ourselves, before  
16 we spoke to Steven, because we weren't going to  
17 go into a client and, you know, have his two  
18 lawyers be giving him directly conflicting advice  
19 or bickering about what we thought he ought to  
20 do, in front of him.

21 Q. So, if I understand your testimony, you  
22 personally, if given the choices of 11 jurors or  
23 a mistrial, would have preferred the mistrial,  
24 correct?

25 A. Yes.

1 Q. But you are unsure whether Attorney Buting would  
2 have preferred 11 or a mistrial?

3 A. To this day, I'm unsure of that. But, you know,  
4 we had -- we had made an agreement which became  
5 sort of solemn over time. We had made an  
6 agreement, the day Jerry Buting agreed to get  
7 into the case, that we would not play it for the  
8 fumbles, that we were going to try to win this  
9 trial. We wanted, you know -- we wanted not  
10 guilty verdicts down the line. And Jerry had  
11 secured my agreement before he agreed to come in  
12 as co-counsel.

13 And that agreement, interestingly enough  
14 in this trial, was one we had to come back to and  
15 reaffirm at a number of different junctures.  
16 This was one of those. And if the choices had  
17 been two, not the three that we thought, that  
18 would have been a juncture that would have  
19 required a real serious conversation about, you  
20 know, do we go for broke or do we take a  
21 mistrial.

22 Q. But just to make sure then I understand, the  
23 declining of a mistrial was with the  
24 understanding that the option that was chosen,  
25 substituting in the alternate, was a legally

1           permissible option?

2   A.    Absolutely, yes.

3   Q.    I'm going to show you a court memo that is dated  
4           March 16th, 2007, and has been marked as an  
5           exhibit. And I just want to ask if you are  
6           familiar with that.

7   A.    Yes.

8   Q.    You have seen that before?

9   A.    I have.

10   Q.    How did you become aware of that memo?

11   A.    Judge Willis told us, I think the morning of  
12           March 16, that he either had or was going to  
13           prepare a memo like this, just to memorialize  
14           what had happened the night before.

15   Q.    And so you were told about it, do you recall,  
16           though, when you actually saw it?

17   A.    I don't.

18   Q.    Do you think it was that same day?

19   A.    I don't, but I honestly, in my mind, I saw this  
20           after trial, for the first time. But I could be  
21           wrong about that, it could have been that day, it  
22           could have been the next day. In my head, for  
23           whatever reason, I think I didn't see this until  
24           after trial. Perfectly possible I'm wrong about  
25           that.

1                   ATTORNEY HAGOPIAN: I will take that back.  
2                   And then I think that's all I have for now. Thank  
3                   you.

4                   ATTORNEY ASKINS: Judge, at this point, we  
5                   would turn our attention to the other issue and  
6                   should I just go ahead and proceed with Mr. Strang,  
7                   or what did you want to do in terms of the Court's  
8                   schedule today?

9                   THE COURT: Why don't you go ahead and get  
10                  started.

11                  ATTORNEY ASKINS: Okay. Thank you.

12                  DIRECT EXAMINATION CONTD

13                  BY ATTORNEY ASKINS:

14                  Q. Mr. Strang, I would like to change subjects here  
15                  and ask you about some other matters relating to  
16                  Mr. Avery. Now, prior to the trial in this case  
17                  there were a number of motions filed by each side  
18                  to resolve certain potential trial problems; is  
19                  that correct?

20                  A. Yes.

21                  Q. In fact, there was lots of pre-trial litigation,  
22                  lots of pre-trial motions, correct?

23                  A. You know, both sides filed a number of motions  
24                  and briefs.

25                  Q. And prior to the trial, do you recall filing with

1           the Court a request to be able to introduce  
2           evidence at the trial of alternative persons who  
3           may have been responsible for Mr -- for Ms  
4           Halbach's death?

5       A. Yes. And at least one brief supporting that  
6           motion.

7       Q. And, ultimately, the Court issued a ruling on  
8           that; is that correct?

9       A. Yes.

10      Q. And do you recall that the Court ordered that you  
11           could not present evidence that a third party,  
12           other than Brendan Dassey participated in the  
13           commission of these crimes; is that also correct?

14      A. Yes, generally. Let me tell you what I remember  
15           about that, and I haven't gone back and looked.  
16           But my recollection is that the judge ruled that  
17           **Denny** applied. And that under **Denny** we had not  
18           made a sufficient showing as to anyone, other  
19           than Brendan Dassey, and the State, I think, gave  
20           us Brendan Dassey. I think they conceded Brendan  
21           Dassey, for **Denny** purposes. But I think beyond  
22           Brendan Dassey, the Court ruled that we had not  
23           made the necessary showing that would allow us to  
24           argue specific third party liability.

25      Q. Now, a minute ago you used a phrase that you and

1           Mr. Buting -- and I'm not going to get it exactly  
2           right -- had an agreement not to play for  
3           fumbles, but for the win, correct?

4       A. Yes.

5       Q. And I'm wondering why you made that agreement;  
6           what was the purpose for that sort of agreement  
7           between you and Jerry, or the rationale behind  
8           it?

9       A. And it's -- I realize it sounds funny because I  
10          don't take any case planning to lose, you know.  
11          You try to win everything that you think is going  
12          to trial. But this was a matter of specific  
13          discussion. And Jerry brought it up, in our  
14          first meeting in my office, when he was  
15          considering entering an appearance.

16           And, you know, it was, look, Dean, if  
17          I'm going to get in, I'm not interested in a  
18          mistrial. I'm not interested in appellate  
19          issues, you know, for their own sake. I'm  
20          interested in trying to win this case.

21           And while I don't remember the details  
22          of that conversation, it had to do, and the  
23          reason we struck that agreement, or really, you  
24          know, reached an accord deeper than ordinary  
25          professional obligation, was that this was Steven

1           Avery we were talking about. This was somebody  
2           who had spent 18 years in a cage for a crime he  
3           didn't commit.

4           And I'm an officer of the court. I work  
5           in the system. I have given my professional life  
6           to our system of justice and I didn't want that.  
7           And I think, to his credit, the first one who  
8           decided he didn't want that happening again, on  
9           his watch, was Jerry Buting. And that's the gist  
10          of the conversation that we had. So if we're  
11          going to do this, we are going to try to win this  
12          case.

13         Q. Now, the Judge's ruling on third party liability,  
14           and I will either refer to it as the **Denny** ruling  
15           or the ruling on third party liability; did that  
16           affect your trial strategy?

17         A. Sure.

18         Q. I would like to direct your attention to the  
19           opening statement. You presented the opening  
20           statement on the part of the defense, correct?

21         A. Yes.

22         Q. You have tried many cases in your career?

23         A. Maybe not as many as you think, but.

24         Q. As an experienced defense attorney, however, you  
25           would agree that you are an experienced defense

1 attorney?

2 A. I guess, relatively speaking, I'm getting more  
3 experience by the day, but.

4 Q. As a defense attorney, do you have a specific way  
5 that you approach an opening statement to a jury?  
6 Is there something that you are trying to  
7 accomplish?

8 A. Grab their attention, give them a coherent  
9 narrative that embraces and advances the theory  
10 of defense.

11 Q. And that was true in Mr. Avery's case as well?

12 A. That's what I tried to do.

13 Q. In light of the Court's ruling, then, did the  
14 Court's third party liability ruling affect your  
15 approach to the opening statement?

16 ATTORNEY FALLON: Objection, relevance, the  
17 opening --

18 ATTORNEY ASKINS: I'm sorry, I can't hear  
19 the objection.

20 ATTORNEY FALLON: Objection, relevance.

21 THE COURT: Mr. Fallon.

22 ATTORNEY FALLON: Yes, the opening  
23 statement is not evidence and nor is it argument.  
24 It's a statement of what is expected to occur. It's  
25 an oratorical device. It is not argument. It is

1                   not evidence. And, therefore, is irrelevant to the  
2                   specific and narrow focus of this post-conviction  
3                   motion.

4                   THE COURT: Attorney Askins.

5                   ATTORNEY ASKINS: Judge, ultimately the  
6                   question is going to be raised about what effect  
7                   the -- or what prejudice, what effect there was on  
8                   this case, due to the Court's third party liability  
9                   ruling. And I think the opening statement being  
10                  part of the whole defense case is certainly relevant  
11                  to how this case was handled differently.

12                  THE COURT: Well, I largely agree with  
13                  Attorney Fallon on this one. I will let you ask a  
14                  couple questions as an introduction into the  
15                  evidence portion of the case and certainly the  
16                  closing argument, but.

17                  ATTORNEY ASKINS: Very well, thank you.

18                  THE COURT: Go ahead.

19                  Q. (By Attorney Askins)~ Would you like me to repeat  
20                  the question?

21                  A. No, I think I have it in my mind. Had the **Denny**  
22                  ruling gone our way, we would have settled on one  
23                  or more people as to whom we thought we had the  
24                  best case, that they had committed the crime.

25                  And I would have presented a theory of defense in

1           my opening statement that identified that person  
2           or those persons that stopped short of, and  
3           explain to the jury why I was not taking on the  
4           burden of persuasion in the end of proof beyond a  
5           reasonable doubt.

6           But the theory of defense would have  
7           been shaped around the person we thought probably  
8           committed the crime. And I would have had a  
9           chance in that opening statement to blunt the  
10          thrust of the prosecution argument that I  
11          expected, which was, if you are saying the police  
12          planted evidence to frame Mr. Avery, or to make  
13          it appear that Mr. Avery committed the crime, if  
14          you're saying that, then you must also be saying  
15          that the police killed Ms Halbach, which we  
16          weren't saying.

17          But unable to point to the person we  
18          think did, we were -- we were wide open on the  
19          flank to that prosecution attack. And I would  
20          have shaped -- tried to shape an opening  
21          statement that took that opportunity for attack  
22          away from the State.

23          Q. Let's turn now to the actual evidence at the  
24          trial. You were able to illicit testimony that  
25          Teresa Halbach was good at getting so-called

1                   hustle shots; is that correct?

2       A. Yes. Can't tell you from whom, but I know that  
3                   came in.

4       Q. Did the trial court's third party liability  
5                   ruling affect your ability, in your mind, to  
6                   elicit other testimony relating to hustle shots?  
7                   And what I mean by -- I should back up. When I  
8                   say other testimony, testimony other than what  
9                   you did elicit.

10      A. That I don't -- That I don't remember, tying the  
11                   **Denny** ruling to hustle shots.

12      Q. All right.

13      A. Honestly, Jerry was more focused on the hustle  
14                   shots than was I, but I don't remember that.

15      Q. Now, another -- or one important piece of  
16                   evidence in the State's case was the blood inside  
17                   of Ms Halbach's vehicle, correct?

18      A. Yes.

19      Q. Did the trial court's ruling on third party  
20                   liability affect how you would respond to that  
21                   evidence at the trial?

22      A. It took away the ability to suggest that persons  
23                   other than law enforcement officers had access to  
24                   bloody bandages, bloody towels, blood drips that  
25                   came from Steven Avery. He had cut his finger

1           badly some time I think shortly before Ms Halbach  
2           disappeared, or right after, somewhere in there.

3   Q.   Another blood source, you have stated, how would  
4       that matter?

5   A.   Well, if his blood was found in her car, as the  
6       people from -- or, you know, Sherri Culhane was  
7       going to testify, that's a big problem for the  
8       defense. How did it get there, if it wasn't  
9       Steven Avery who bled in the car. The **Denny**  
10      ruling left us only the police as the possible  
11      source of that blood, if it wasn't directly from  
12      Steven Avery.

13                  The people who were on that property  
14       regularly, though, would have had, presumably,  
15       access to Steven's trailer or to places where he  
16       disposed of bandages, things he had bled on.

17   Q.   As a defense attorney, have you previously  
18       defended a client on a theory that the -- that  
19       client was framed in some fashion by the police?

20   A.   Certainly not in the first chair, at least not  
21       that I remember in the first chair. It is an  
22       enormously unappealing defense, for obvious  
23       reasons.

24                  And I think I second chaired Jim Shellow  
25       in a trial in which that was essentially the

1 argument as to an FBI agent who had elicited a  
2 statement from the client. That is, I know I  
3 second chaired Jim. And I remember the trial and  
4 I think Mr. Shellow's argument in that was that  
5 the FBI agent had set up the client in some  
6 fashion. That's the only thing that even comes  
7 close, that I remember as I sit here.

8 Q. And I think you stated, is that a difficult or an  
9 easy argument to make to a jury?

10 A. You know, it's not an argument that most jurors,  
11 most jurors, come in prepared to accept. You  
12 know, there are some who just don't like or trust  
13 law enforcement. But, you know, the norm, so far  
14 as in my experience with jurors, is that they  
15 presuppose the good faith, competence, and  
16 honesty of law enforcement officers as a group.

17 Q. I'm going to refer to the State's rebuttal  
18 closing argument in this case, in it and this is  
19 a quote from the transcript and I'm going to ask  
20 you a question following that.

21 The quote is this, Despite Mr. Buting  
22 trying to sell you on the fact that we're not  
23 saying the cops did it, that's exactly what they  
24 are saying. That's exactly what they are arguing  
25 to you and you have to be prepared to go there.

1                   Closed quote.

2                   In light of the trial court's **Denny**  
3                   ruling, did this argument from the State surprise  
4                   you or did you expect that argument?

5       A.    Expected that from the get go. That's the  
6                   argument I would have been making if I were  
7                   Mr. Kratz. I think I tried, you know -- I  
8                   think -- I think, in opening statement, I told  
9                   the jury, we're not saying the police killed Ms  
10                  Halbach.

11      Q.     Did the trial court's third party liability  
12                  ruling affect how you would handle this expected  
13                  argument from the State?

14      A.     Yes. I think I could have taken it away, had I  
15                  been able to say, this probably is who killed Ms  
16                  Halbach and this is why they had a motive to put  
17                  it on Steven. And in doing so, they found a very  
18                  receptive audience in law enforcement, who were  
19                  happy to believe him guilty.

20      Q.     All right. I would like to turn your attention  
21                  now to Bobby Dassey, one of the State's  
22                  witnesses; you recall his testimony at trial, in  
23                  general?

24      A.     In general.

25      Q.     And do you recall that he was one of the

1           individuals you identified in your third party  
2           liability briefs as a potential alternative  
3           suspect?

4       A. Yes. Yes, I think -- I think we identified all  
5           of the Dassey brothers who lived with their  
6           mother as, I think, as potential third party  
7           perpetrators.

8       Q. And now you did the cross-examination of Bobby,  
9           do you recall doing the cross-examination?

10      A. Yes.

11      Q. All right. And did the trial court's third party  
12           ruling affect your cross-examination of Bobby  
13           Dassey?

14      A. Yes, I think there is a very, very good  
15           likelihood. I can't say this for sure, because  
16           we're talking about a ruling we never got, you  
17           know, but had the **Denny** ruling gone the other  
18           way, I think there's a very good possibility that  
19           Bobby Dassey would have been cross-examined by me  
20           as someone who potentially was a murderer.

21      Q. Just drawing your attention to a couple of -- and  
22           I'm not going to go into a great amount of detail  
23           about this, but were there areas that you thought  
24           would be fruitful to cross-examine Bobby on,  
25           Bobby Dassey?

1 A. The mutual and mutually exclusive alibi that he  
2 and Scott Tadych offered each other would have  
3 been the one that comes to mind.

4 Q. Had you looked at Mr. Dassey's, Bobby Dassey's  
5 chronology that day, his timeline for where he  
6 was and when?

7 A. Well, I'm sure that I had. We had all the  
8 interviews of law enforcement with Bobby Dassey.

9 Q. Would you have treated Mr. Dassey differently  
10 about the so-called joke that Mr. Avery had  
11 supposedly made to him?

12 A. Almost surely.

13 Q. How so?

14 A. That could have been handled as a blame shifting  
15 effort by someone who himself was culpable,  
16 rather than having to handle it as, oops, you  
17 made a mistake, you didn't really mean to suggest  
18 that Mr. Avery was serious about that.

19 Q. Now --

20 A. Could have been handled as something, you know,  
21 that he never heard.

22 Q. Excuse me?

23 A. It could have been handled as something that  
24 Bobby Dassey never heard and was saying to point  
25 an accusatory finger at his uncle.

1 Q. Now, another individual was Scott Tadych, who was  
2 the State's witness; do you recall Mr. Tadych?

3 A. Oh, yes.

4 Q. And you did the cross-examination of him as well?

5 A. I did.

6 Q. And do you recall that he was also identified as  
7 a possible third party suspect?

8 A. Yes.

9 Q. Did the Court's **Denny** ruling affect your  
10 cross-examination of Mr. Tadych?

11 A. Almost surely.

12 Q. Can you give some examples of how the Court's  
13 ruling affected your handling of Mr. Tadych, or  
14 more specifically, your cross-examination?

15 A. I expect that I would have projected to  
16 Mr. Tadych, or to the jury, in my attitude toward  
17 Mr. Tadych, my tone of voice, the manner of my  
18 questioning, the view that he was a probable  
19 murderer.

20 Q. You mentioned the mutual alibi with Mr. Bobby  
21 Dassey; would that have been a source of  
22 cross-examination as well?

23 A. It was anyway. I would have tried to develop  
24 that at greater length, including the  
25 improbability of the whole notion that these two

1           guys going hunting, you know, Dassey at Tadych's  
2           place, and Tadych somewhere past Dassey's place.

3           You know, the improbability of that  
4           could have been developed on cross of both of  
5           them, including, you know, Bobby Dassey's claim  
6           that he took a shower before going hunting, not  
7           something a bow hunter likely would do.

8 Q.          How about other witnesses, and I understand that  
9           the ruling did not go your way; however, had the  
10           ruling gone your way, would you have considered  
11           calling other witnesses in Mr. Avery's defense?

12 A.         Potentially, if allowed, witnesses to  
13           Mr. Tadych's temper; witnesses to Mr. Tadych's  
14           attempt to sell a .22 caliber long rifle, shortly  
15           after this; a witness to Mr. Tadych bolting out  
16           of work, ashen faced, shortly after this, when he  
17           heard that one of the Dassey boys either had been  
18           arrested or was being questioned by the police.

19 Q.         Other than Mr. Tadych, any other types of  
20           evidence or witnesses who you might have called,  
21           I mean other than witnesses relating to  
22           Mr. Tadych? Anybody else who you think you might  
23           have called?

24 A.         That -- Now, we're beyond my ability to sort of  
25           reconstruct this. The ruling did not go our way

1           so we tried a different case than we would have  
2           tried had the ruling gone our way. That's just  
3           the nature of pre-trial rulings, significant ones  
4           in any event.

5       Q. Fair enough. So now we move on to the closing  
6           argument and both you and Mr. Buting made closing  
7           arguments, correct?

8                   ATTORNEY FALLON: Your Honor, I'm going to  
9           impose an objection. I have listened now for about  
10           the last 30 minutes on this line of questioning, and  
11           it occurs to me that this line of questioning is  
12           entirely irrelevant to the specific focus of the  
13           post-conviction motion, which was, in effect, did  
14           the Court err in making the ruling that you made at  
15           that time, based on the argument presented by the  
16           defense and the arguments presented by the State, as  
17           to the existence of the evidence at the time.

18                   And this last 35 minutes here of what is  
19           in effect speculation as to what might have  
20           occurred, could have occurred, we would have done  
21           this, or we might have done that, doesn't really  
22           shed any light whatsoever on whether or not the  
23           Court was wrong, or committed an error in  
24           deciding whether the evidence of third party  
25           liability should have gone the other way. I

1 don't see its relevance.

2 THE COURT: Attorney Askins.

3 ATTORNEY ASKINS: Your Honor, it is  
4 relevant because, as I mentioned earlier, ultimately  
5 this question is going to be addressed in terms of  
6 prejudice, and what we're establishing today is  
7 prejudice. And the other response that I would  
8 have, first of all, is that we're now closing in on  
9 the last two questions that I have for Mr. Strang  
10 and so the objection is a little late in this  
11 process.

12 But this is also information that the  
13 Court did not have at the time that it made the  
14 **Denny** ruling. This information that we're  
15 eliciting today is information that you had not  
16 heard prior to today's date. And so I think it's  
17 useful for you to have that, to understand what  
18 is part of our motion relating to **Denny**.

19 ATTORNEY FALLON: If I may respond.

20 THE COURT: Go ahead.

21 ATTORNEY FALLON: We haven't heard any  
22 evidence. What would the evidence have been, that  
23 is where the essence of the prejudice argument,  
24 assuming for the sake of this brief discussion that  
25 prejudice must be shown under these circumstances.

1           But the real question is, what is the evidence, not  
2           what counsel's strategy would have been, or how  
3           counsel might have changed his opening, or how  
4           counsel might have cross-examined Mr. Dassey  
5           differently or Mr. Tadych differently. The question  
6           is, what would the evidence have been if elicited.  
7           There is no evidence.

8                         THE COURT: All right. Well, this is a  
9                         post-conviction motion hearing rather than a trial,  
10                  I'm not going to anticipatorily decide that the  
11                  defendant doesn't have an argument to make based on  
12                  this line of questioning. I will let the State make  
13                  that argument in its written brief. Attorney  
14                  Askins, I'm going to permit you to continue.

15                         ATTORNEY ASKINS: Thank you, your Honor.

16           Q. (By Attorney Askins)~ Turning to the closing  
17                  argument, as I was asking you before, did the  
18                  trial court's ruling affect your closing argument  
19                  to the jury?

20           A. Yes, I -- there's a specific instance that I can  
21                  recall in the -- I -- The defense split the  
22                  closing argument, Mr. Buting went first, I went  
23                  second. He said something suggesting that  
24                  someone else may have been the culprit, during  
25                  his closing argument. I don't remember the

1           details now, but I think it probably was  
2           Mr. Kratz who objected and wanted to be heard.

3           And my recollection is that at some  
4           point in chambers, so maybe it was at the end of  
5           the day, or at some break, before I started my  
6           closing argument, I think I was told, you know,  
7           Strang, you better go back, you better go out and  
8           clean up the mess that Buting made or, you know,  
9           sort of pull back from the position he took,  
10          otherwise there may be a curative instruction by  
11          the Court, which as I recall is what Mr. Kratz  
12          wanted.

13         Q.    I had asked earlier if you have a theory of how  
14          you approach an opening statement to a jury.  Do  
15          you also have a kind of a theory of how to  
16          approach a jury in your closing argument?

17         A.    Again, with a narrative that I hope reaffirms the  
18          facts that I expected to elicit for the jury and  
19          that reaffirms the theory of defense as  
20          consistent with the evidence the jury heard, and  
21          that, if possible, inspires the jury to hold firm  
22          to the rules by which we try cases in this  
23          country, and offers them a narrative in a theory  
24          that fits better with the facts than the  
25          competing narrative that the State offers.

1 Q. Did you understand the trial court's ruling to  
2 prohibit you from offering a coherent theory that  
3 some specific other individual did this?

4 A. I couldn't argue that anyone other than Brendan  
5 did it, that was the nature of the Court's ruling  
6 as I understood it.

7                   And I think I went back and tried to  
8 retract or smooth over whatever it is Jerry had  
9 argued in his portion of the closing argument  
10 that had resulted in the objection and the  
11 colloquy, whether that was in the courtroom or in  
12 chambers.

13 ATTORNEY ASKINS: I have no other  
14 questions, your Honor.

19 ATTORNEY FALLON: 1:15 is fine.

20 THE COURT: 1:15.

21 ATTORNEY HAGOPIAN: That's fine.

22 THE COURT: Very well, we'll see you back  
23 at 1:15.

24 (Noon recess taken.)

25 THE COURT: All right. Mr. Strang, you may

1           be seated. At this time we're back on the record.

2           Attorney Askins, I believe you completed your  
3           direct, correct?

4           ATTORNEY ASKINS: That's correct, your  
5           Honor.

6           THE COURT: All right. Mr. Fallon.

7           ATTORNEY FALLON: Good afternoon, counsel.

8           THE WITNESS: Good afternoon.

9           CROSS-EXAMINATION

10          BY ATTORNEY FALLON:

11         Q. If we could take a moment or two to get a little  
12           information regarding your background, I think  
13           that would be beneficial. As I understand it,  
14           Mr. Strang, you have extensive practice in both  
15           federal and state courts here in Wisconsin?

16         A. Sure. I mean, I won't quibble with the  
17           adjective, but yes, both federal and state court.

18         Q. All right. In fact, at one time, you were the  
19           federal defender, I believe, in the eastern  
20           district, was it?

21         A. I was the first federal defender in Wisconsin, I  
22           was initially the eastern district of Wisconsin  
23           and then three or four years in we added the  
24           western district of Wisconsin.

25         Q. So at some point you were the -- Well, first of

1           all, tell us what the federal defender is?

2       A. It's a public defender position, but representing  
3           the indigent only in federal court on federal  
4           prosecutions.

5       Q. And how long did you hold that position?

6       A. Five years, almost to the day.

7       Q. And I believe you were just telling us at some  
8           point your responsibilities included the whole of  
9           Wisconsin?

10      A. Both districts, yes, which encompassed the whole  
11           of Wisconsin together.

12      Q. All right. And prior to that time, you had  
13           experience as a criminal defense attorney,  
14           correct?

15      A. Yes, about 11 and a half, 12 years of criminal  
16           defense experience before I became the federal  
17           defender.

18      Q. All right. And how long ago or how long has it  
19           been since you stepped down from the position as  
20           the federal defender?

21      A. I stepped down on August 1, 2005.

22      Q. So, in terms of experience, you have roughly 20  
23           years of criminal defense practice experience?

24      A. Twenty-one.

25      Q. All right. And as I understand it, you have, at

1           least on two occasions, argued cases before the  
2           United States Supreme Court?

3       A. The second time I was only the co-author of the  
4           brief and at counsel table I didn't argue **Booker**,  
5           but I argued a case in the U.S. Supreme Court  
6           before that.

7       Q. All right. And on that -- particularly on that  
8           **Booker** case, that was a pretty significant piece  
9           of legislation -- of case law, was it not?

10      A. In the little world of federal --

11      Q. Sentencing.

12      A. -- criminal law and sentencing, yes, it was a  
13           significant case.

14      Q. And you were successful in arguing that the  
15           federal sentencing scheme was unconstitutional?

16                   ATTORNEY HAGOPIAN: Objection, relevance.

17                   And I think there is some relevance to the general  
18           experience, but this sort of level of detail, I just  
19           don't think it's relevant.

20                   ATTORNEY FALLON: Well, if one of the  
21           allegations here, Judge, is that counsel was  
22           ineffective, we're certainly entitled to know of his  
23           experience.

24                   THE COURT: I hope we're not going to be  
25           spending a lot more time on it, but I will allow you

1 to ask a couple questions.

2 ATTORNEY FALLON: I have about four or five  
3 more questions.

4 Q. (By Attorney Fallon)~ You are or have been an  
5 adjunct professor of law at Marquette University  
6 Law School?

7 A. Yes.

8 Q. You similarly have been or are an adjunct  
9 professor of law at the University of Wisconsin  
10 Law School?

11 A. That's also true.

12 Q. And you currently have that position at the  
13 University of Wisconsin, do you not?

14 A. Yes, and at Marquette, although I'm not teaching  
15 a class this semester at Marquette.

16 Q. In fact, in classes that you teach, you have  
17 taught classes on federal law, federal crimes?

18 A. Well, I taught a course for three years, or four  
19 years, or something, at Marquette Law School  
20 called Federal Crimes and Federal Criminal  
21 Procedure, one course.

22 Q. And you have taught courses on evidence?

23 A. I have taught evidence once, last spring, at UW  
24 and expect to do it again next spring.

25 Q. All right. And was that state rules of evidence

1           or federal?

2       A. Both, because of the diploma privilege, but a  
3           focus on the federal rules of evidence.

4       Q. And you have also taught on Fourth Amendment  
5           Search and Seizure Law?

6       A. I teach -- With Marcus Berghahn, I teach a  
7           seminar on the Fourth, Fifth, and Sixth  
8           Amendments, at -- again, at the University of  
9           Wisconsin Law School.

10      Q. And the Fifth Amendment talks about both  
11           interrogation law and even fair trials and double  
12           jeopardy. You cover those topics?

13      A. We don't -- We actually don't cover double  
14           jeopardy, but you have got the right amendment.

15      Q. All right. And you are also on faculty for the  
16           National Criminal Defense College in Macon,  
17           Georgia, correct?

18      A. Yes.

19      Q. And you have been on that faculty for about 10  
20           years?

21      A. Yes.

22      Q. And that's a school designed to educate and teach  
23           trial skills to defense attorneys from around the  
24           country?

25      A. Yes. And to some extent outside the country.

1                   Criminal defense lawyers only, that's correct.

2 Q. You have authored a number of law review  
3                   articles?

4 A. Co-authored one, authored and published two, and  
5                   then another one is coming out this fall, later  
6                   this fall.

7 Q. All right. And this one coming out this fall is  
8                   entitled what?

9 A. Becoming What We Pretend To Be, Casual Rhetoric  
10                  In American Criminal Justice. Get it while it's  
11                  hot.

12 Q. And you have also have been involved in the anti  
13                  death penalty movement, correct?

14 A. Not so actively now, but yes, very actively in  
15                  the mid-nineties to late-nineties.

16 Q. Lectured, debated, wrote on the issue?

17 A. Yes, to all three.

18 Q. All right. In this particular case, I believe  
19                  you already expressed this, but I want to be  
20                  clear, the ultimate goal in this case, at least  
21                  as you and Mr. Buting set out, was to obtain an  
22                  acquittal?

23 A. Yes.

24 Q. And that, in this case, would have been three not  
25                  guilty verdicts, correct?

1 A. As the case went to the jury, that's right.

2 Q. All right. Now, you would agree with me,  
3 counsel, that a trial lawyer's decisions  
4 throughout the course of handling a case like  
5 this are an effort to achieve that objective, an  
6 acquittal; you make decisions with that goal in  
7 mind?

8 A. In this case?

9 Q. Yes.

10 A. Yes. And I'm sorry, I mean to the extent that  
11 it's a case where the client is saying I'm  
12 innocent, I didn't do it --

13 Q. Right.

14 A. -- and I want to go to trial, then I could speak  
15 more generally and agree with you, yes.

16 Q. All right. That would be the point, your point  
17 is well taken. And certainly in this particular  
18 case, a not guilty verdict on a charge of  
19 homicide for Teresa Halbach was definitely in  
20 Mr. Avery's best interest, right?

21 A. Yes.

22 Q. All right. Now, a criminal defense attorney, in  
23 representing a client and representing their  
24 interest, has what often is referred to in the  
25 law as a fiduciary obligation, right?

1 A. I view it that way. I don't know how often I  
2 have seen fiduciary duty apply to the criminal  
3 defense role, but I view it that way.

4 Q. All right. And would you express, then, to us,  
5 your understanding of what that obligation is,  
6 that fiduciary obligation?

7 A. Well, as I understand it, it would be to put the  
8 client's interest first and to act in a way that  
9 advances his legitimate interests so far as  
10 possible, while obeying the ethical and other  
11 societal rules that bind lawyers, and in general  
12 bind all of us.

13 Q. All right. And with that in mind, with that  
14 obligation in mind, you make decisions which you  
15 believe are in the best interest of your client,  
16 directed toward the goal of an acquittal?

17 A. Yes, some decisions are the clients to make,  
18 others are committed to the lawyer, but I think  
19 no matter who's the ultimate decision maker, I  
20 would agree with you that I try to come to a  
21 course or a decision that is in the client's  
22 legitimate best interest.

23 Q. And you would agree that sometimes, whether it's  
24 a decision or a recommendation to a client for  
25 their decision, sometimes that's a very difficult

1           process, the decision making process?

2 A. Oh, sure.

3 Q. Or deciding on a recommendation?

4 A. Yes, I do agree with that.

5 Q. All right. And sometimes it's unpleasant?

6 A. Yes.

7 Q. Sometimes contentious?

8 A. Rarely, but yes, that has happened.

9 Q. And sometimes you may make an argument or a  
10 recommendation to the Court because your client  
11 thinks that's what should be done?

12 A. Now, you are speaking generally, beyond this  
13 case?

14 Q. Generally, yes. I mean, you may not always agree  
15 with your client, and they may want -- but if  
16 it's their decision --

17 A. Yes.

18 Q. -- and if it's legal and appropriate, you have to  
19 go that way?

20 A. If you can't dissuade them from a poor but  
21 permissible choice, then, yes, unless it's --  
22 unless it's a matter that's so clearly committed  
23 to my judgment, yes, I would go that way or ask  
24 to withdraw.

25 Q. All right. Now, returning again to decisions,

1           sometimes, and I'm talking generally now,  
2           sometimes decisions are made jointly with you and  
3           the client together?

4       A. Ideally, yes.

5       Q. Right.

6       A. And, yes, I mean I try to work toward that on  
7           every decision, to the extent I can, with a  
8           client.

9       Q. The goal being to forge a consensus between you  
10          and your client?

11      A. An understanding, a mutual reliance, trust. And  
12          it's a good way to check in to see that we're --  
13          you know, we still view the case the same way.

14      Q. Right. And, however, as I think you have just  
15          said, sometimes decisions are those that are  
16          solely for the client?

17      A. Yes.

18      Q. All right. And sometimes there are just other  
19          decisions which are best made and solely the  
20          purview of the lawyer?

21      A. At least by law committed to the lawyer's  
22          judgment, that's right.

23      Q. Certainly. But good practice is to at least kick  
24          those things around with your client before you  
25          decide on a course of action?

1 A. That's -- that's the best practice. You -- I  
2 think most people, or at least I will speak for  
3 myself, I fall short of that sometimes, but that  
4 is certainly what I view as the best practice.

5 Q. Regardless of the situation, whether it's a joint  
6 decision, the client's decision, or you as the  
7 lawyer's decision, the goal is to make a decision  
8 which is in the best interest of the client?

9 A. That is the goal.

10 Q. All right. As to the night of March 15th, you  
11 first became aware there was a problem when you  
12 received a call from Judge Willis, correct?

13 A. Yes, that's my recollection.

14 Q. And now, as recalled, the jury went out about  
15 1:00 that afternoon, on March 15th?

16 A. Well, I don't know, I recall things as being a  
17 little later in the day, but it was some time in  
18 the afternoon.

19 Q. And they quit around 5:30?

20 A. There, again, I thought it was later, but it's  
21 not like I have a specific recollection or a note  
22 or anything.

23 Q. When the call came from the Court, I believe you  
24 have already told us you were having dinner at a  
25 Mexican restaurant and Mr. Buting was with you?

1 A. Yes, I was awaiting food. We had ordered, but  
2 the food had not arrived when the call came.  
3 Q. And when the call came in, you were the one doing  
4 the talking for the defense team primarily, with  
5 the judge, correct.  
6 A. That's how I recall it, yes.  
7 Q. And your best recollection is is that Mr. Buting  
8 was nearby and you were relaying the comments  
9 that were made to you by the Court?  
10 A. Yes. And that -- and that Mr. Buting could  
11 overhear my end of the conversation.  
12 Q. Certainly. And you don't recall Mr. Kratz being  
13 in on the conversation, but you fully expect he  
14 was?  
15 A. That's true.  
16 Q. All right. And he said -- The reason you don't  
17 remember him, probably, is that he said very  
18 little during that conversation, correct?  
19 A. That would explain it, I mean, that would be one  
20 plausible explanation.  
21 Q. All right. Now, in terms of your recollection as  
22 to the information you were receiving, the Court  
23 advised you that it had received some information  
24 from Sheriff Pagel concerning Juror Mahler,  
25 correct?

1 A. I don't remember Sheriff Pagel being identified  
2 personally. That doesn't mean that Judge Willis  
3 didn't say it, I just don't recall it being  
4 attributed specifically to Jerry Pagel or any  
5 other person by name.

6 Q. But you do recall the Court saying, I have been  
7 made aware or I have been told this information.

8 A. Yes. And beyond that, I remember the Court  
9 attributing it to the sheriff's department,  
10 someone. I knew the source was the sheriff or  
11 someone in his employ.

12 Q. In other words, the impression you were left with  
13 is that it was an, for lack of a better term, an  
14 official source of information?

15 A. For lack of a better term.

16 Q. All right. And the Court advised you that  
17 Mr. Mahler apparently was advised that his  
18 stepdaughter was in a car accident earlier that  
19 evening, correct?

20 A. That was part of what I recall, right.

21 Q. And there was some information relayed to the  
22 Court that the vehicle which she was driving was  
23 totaled, heavily damaged?

24 A. That well could have been relayed to me. I don't  
25 remember that specifically. My recollection is

1           no one was killed, extent of injuries or property  
2           damage, unknown.

3       Q. Unknown?

4       A. That's my recollection.

5       Q. However, there was other information that his --  
6           that the juror's wife was very upset by the  
7           accident and the amount of time that he had been  
8           away from the family?

9       A. As I recall it, the sense was this was the last  
10          straw, with the juror's wife. This just, last  
11          straw, put it over the edge.

12      Q. And part of the reason for that last straw  
13          impression was, some of the media had attributed  
14          to the information that he revealed during voir  
15          dire that apparently a large source of his income  
16          was coming from his wife's trust fund apparently?

17      A. I believe that now. I don't know whether I heard  
18          that in the first phone call, or when that piece  
19          of explanation came about. But I understand that  
20          came to be part of the story.

21      Q. All right. So as you think about it now, it's  
22          easier for you to connect those two pieces than  
23          maybe it was that night?

24      A. My memory just is not fresh on this phone call.

25      Q. All right. The Court provided you with

1 information. I believe you testified on direct  
2 examination that you -- you were certainly  
3 impressed with the apparent urgency of the  
4 situation?

5 A. And, again, that's his objective impression that  
6 I remember best as opposed to --

7 Q. Specific --

8 A. -- objective events or words.

9 Q. All right. As opposed to specific details, you  
10 remember being impressed that this is an urgent  
11 or very important situation?

12 A. Serious and urgent.

13 Q. And as a result, you were then impressed with the  
14 fact that it needed to be addressed, somehow,  
15 sooner rather than later?

16 A. That's what I thought the Court was  
17 communicating. I mean, that's the sense I got  
18 from what Judge Willis was saying, yes.

19 Q. All right. Part of that sense of urgency came  
20 from the fact that the juror's marital state was  
21 certainly becoming an issue. In other words,  
22 there was a sense that maybe his marriage was on  
23 the rocks and that helped contribute to the  
24 urgent impression you were left with?

25 A. The information the judge was relaying to me,

1           that was a piece of it, you know, that the wife  
2           might walk out or something terrible might happen  
3           as a matter of the juror's marriage.

4       Q.    Right. All right. So with that information, did  
5           you ask the Court to hold for a moment and you  
6           and Mr. Buting discuss, well, what do you think  
7           we should do, or was it kind of a free flow  
8           evolving discussion as to what do you think we  
9           should do?

10      A.    I don't remember. As a matter of reconstruction,  
11           because I have seen one page of Mr. Buting's cell  
12           phone records, as a matter of reconstruction, I  
13           surmise that I probably said, your Honor, let us  
14           get back to you in a few minutes. Let us talk  
15           about this and call you back soon. Because it  
16           appears that, if I'm remembering right, like  
17           8:59 p.m. Mr. Buting places a call on his cell  
18           phone to the judge.

19      Q.    All right.

20      A.    And I had -- My cell phone was sort of old and  
21           the battery was dying. It didn't -- It didn't  
22           last very long and all I had was a car charger  
23           when I was up trying Mr. Avery's case. So it  
24           would make sense that we would switch to Jerry's  
25           better cell phone.

1 Q. All right. So your recollection is that there  
2 must have been some discussion between you and  
3 Mr. Buting as to how you should proceed, or what  
4 your recommendation to the Court would be as to  
5 how you guys should proceed?

6 A. This is something that I would have wanted to  
7 talk to Jerry about and that we would have viewed  
8 as co-counsel as being a collaboratively made  
9 decision, if circumstances permitted that.

10 Q. And while we're on that topic, is it fair to say  
11 that the responsibility for handling this case  
12 was split equally, or were you more lead counsel?

13 A. Both. The agreement was that I was lead counsel  
14 and would be the tie breaker, so to speak, if we  
15 needed one, but that we really would try to  
16 operate as equals and share responsibilities.  
17 And I think the division of labor was as close to  
18 equal as you can get.

19 Q. All right. In any event, after discussion or  
20 consulting with Mr. Buting to assess the defense  
21 strategy here, for your part of the conversation,  
22 it was ultimately agreed that the Court should  
23 investigate this report further before any final  
24 decision could be made as to what to do with the  
25 juror, right?

1 A. Right. I mean, if you really want my subjective  
2 recollection or sense of this, it was convincing  
3 Judge Willis to talk to the juror before acting  
4 and before removing the juror, was sort of the  
5 best we were going to get. That's how I recall  
6 it, rightly or wrongly.

7 Q. And both you and Mr. Buting were in agreement  
8 with that plan, that we should at least verify  
9 whatever this report is before we make any  
10 decisions?

11 A. Yes.

12 Q. And as --

13 A. Well, we in the sense of having at least the  
14 judge do that.

15 Q. Right.

16 A. Right.

17 Q. And as a result, with the agreement of Mr. Kratz  
18 and Mr. Buting, you advised the Court to go ahead  
19 and attempt to ascertain whether the report of  
20 this juror's problem was in fact accurate?

21 A. I doubt that I advised the Court to do anything,  
22 and I can only assume Mr. Kratz agreed. I don't  
23 remember in the end, anyone objecting.

24 Q. That was my next question. No one objected to  
25 the Court's inquiry?

1 A. Not that I recall.

2 Q. And you certainly had plenty of opportunity to do  
3 so?

4 A. Well, sure, informally, we were -- I don't think  
5 there was a court reporter. I don't think we  
6 were on the record or being recorded. So in some  
7 sense, we had no opportunity to object in the way  
8 lawyers use that term. Informally, in terms of  
9 expressing an opinion, no one was cutting us off.

10 Q. Right. And there was no opinion expressed during  
11 the phone conversation that this would be a bad  
12 idea?

13 A. I don't -- Yeah, I don't recall anyone  
14 expressing, you know, affirmatively, this would  
15 be a bad idea.

16 Q. Now, at the time that the decision was made that  
17 the Court should inquire further, well, that  
18 decision at that time, you believed, was in the  
19 best interest of Mr. Avery, correct?

20 A. Yes.

21 Q. And -- And one of the reasons were that you would  
22 certainly be concerned that if there -- that if  
23 Mr. Mahler's mental state, you -- would somehow  
24 become an issue if he were remaining on the panel  
25 as well, correct?

1 A. Well, sure, that he would be a distracted juror.

2 Now, I want to make clear, that although I  
3 thought, given the range of possibilities that I  
4 perceived, having the judge talk to the juror was  
5 in Mr. Avery's best interest, yes.

6 As I said, I also thought that I was  
7 acting, in some ways, in a broader moral sense,  
8 in the juror's best interest, or in the interest  
9 of his family. And as I suggested on direct,  
10 this just felt like a time where you -- where I  
11 shouldn't stand on legal niceties. That may have  
12 been a mistake, but that's how I -- that's how I  
13 took it and I was, at least in part, considering  
14 the juror and his family.

15 Q. And as a matter of fact, during that  
16 conversation, several of the individuals did  
17 express concern for his emotional state, for his  
18 well-being, the juror's? I mean that -- the  
19 feeling that you just expressed, you were not the  
20 only one to express some concern for Mr. Mahler's  
21 well-being?

22 A. I remember the judge expressing that.

23 Q. Right.

24 A. Yes. And Mr. Kratz may have, I don't remember  
25 him speaking, but.

1 Q. And you would also be concerned, as a lawyer, if  
2 Mr. Mahler had remained on the panel, that his  
3 mental state could affect the deliberations,  
4 generally, of other jurors?

5 A. I don't think I agree. I think the specific  
6 concern that I had was that if he remained on the  
7 jury, and whatever the events were at home were  
8 weighing heavily on him, that he might be  
9 inclined to rush through deliberations or not  
10 hold to a sincerely held belief about the weight  
11 of the evidence.

12 Q. All right. And -- But you have had enough cases  
13 where you are experienced to realize that one  
14 juror with a problem like that can have an affect  
15 on the overall panel's deliberations, right?

16 A. I can't draw on my own experience on that one, I  
17 have never had anything really very close to this  
18 arise before.

19 Q. But you have never had a particular juror who was  
20 distracted or any -- had any other problems such  
21 that that juror's demeanor and mental state  
22 affected the deliberations of the panel as a  
23 whole?

24 A. Well, I have certainly seen, you know, jurors  
25 come out with a hung jury or a verdict where

1           someone appeared to be in tears or in some  
2           emotional distress, but I really don't think I  
3           had ever lost a juror during deliberations  
4           before. That's why I did not know what the  
5           options were. That's why I had to get on Westlaw  
6           that night.

7       Q. In any event, you did tell the Court that if the  
8           Court were able to verify the preliminary report  
9           that it received regarding the problems he was  
10          experiencing, it would be appropriate to excuse  
11          him?

12      A. Whether I said it or I told anybody that in the  
13          end, I was part of that consensus, as I recall.

14      Q. And Mr. Buting was in agreement with that?

15      A. Yes, he must have been. I don't remember us, you  
16          know -- I didn't overrule him, so to speak, on  
17          that.

18      Q. And you would agree that the decision to excuse  
19          that juror, under the circumstances as you  
20          believed them, was in the best interest of  
21          Mr. Avery?

22      A. Given the information I had and the range of  
23          possibilities as I perceived them, yes,  
24          understanding that I was also thinking about the  
25          juror's interests.

1 Q. So, at some point you did become aware that the  
2 Court did excuse Mr. Mahler?

3 A. I'm sure I knew that before I went to bed that  
4 night. I don't think we learned that the next  
5 morning in chambers.

6 Q. And one of the reasons you have that belief is  
7 you, as you said, hit the books, or as we say  
8 today, hit the computer and did some research?

9 A. Right. Yes, that is part of why I -- and, you  
10 know, just in general, I recall knowing that the  
11 night of the 15th, I guess, when this came up.

12 Q. All right. And so when you went to bed that  
13 night, you and Mr. Buting -- Well, let me not  
14 assume that. After you found the **Lehman** case,  
15 I'm assuming that you had some discussions with  
16 Mr. Buting as to what you thought that case  
17 meant, on its own, and then what it meant for  
18 your decision as it pertains to Mr. Avery's case?

19 A. Here's what I think happened. His apartment was  
20 right below mine and I think I printed off  
21 **Lehman**, decided there was nothing newer than  
22 that, that was something like a 1982 case,  
23 thereabout.

24 Q. Right.

25 A. Printed it off. Took it down, I think, to

1 Jerry's apartment. My recollection is that he  
2 was going to call Kathy, who is his wife and law  
3 partner, and bounce it off her and see if she had  
4 ever bumped into this situation or could help.  
5 But I think it wasn't very long before I got down  
6 there and said, you know, I think I have the  
7 case.

8 Q. All right. And so you and he then discussed what  
9 you thought the case meant and how it might  
10 affect Mr. Avery's case?

11 A. Right. It was -- As I recall, it was a Justice  
12 Abrahamson opinion, so it took a while to read,  
13 but, yes.

14 Q. Another time. When you went to bed that night,  
15 then you were aware of the fact that, at least as  
16 you believed them, there were three options  
17 available to you, and more particularly, to  
18 Mr. Avery? When I say you I mean you and  
19 Mr. Buting.

20 A. Right. I think we knew those three options when  
21 we retired.

22 Q. And as you talked about, the one option was  
23 proceed with 11?

24 A. Yes.

25 Q. Another option was a mistrial?

1 A. Yes.

2 Q. And then the third option was, let's go with the

3 substitute juror?

4 A. Yes.

5 Q. All right. And as I understood your comment, you

6 have a firm personal philosophy of not advising

7 to go with 11 jurors?

8 A. Right. And that would be consistent with what I

9 learned from the people who mentored me.

10 Q. And one of the reasons for that is, that

11 regardless, if there is to be a conviction, it's

12 going to take 12 and not 11, so there's an extra

13 person there?

14 A. Yup.

15 Q. And the other option is, if there's a 12th juror,

16 then there's at least -- I'm not going to get

17 into statistics, but there's at least one more

18 opportunity that you might have a juror that's

19 not convinced and you are going to have a

20 mistrial?

21 A. Yes.

22 Q. Thus there would be no conviction for your

23 client?

24 A. That's right.

25 Q. And even though its not a conviction -- or excuse

1                   me -- even though it's not an acquittal, it's not  
2                   a conviction, so it's still in your client's  
3                   interest?

4     A. He lives to fight another day.

5     Q. He lives to fight another day.

6     A. That's right. That's right.

7     Q. All right. So with the benefit of the 12th  
8                   juror, the substitute juror, then it would have  
9                   been true that by substituting that juror, you  
10                  kept your client's right to a 12 person jury  
11                  firm?

12    A. I don't want to quibble with you on firm, but I  
13                  -- but I will -- I will agree that, yes, in the  
14                  end he had 12 jurors who returned the verdicts.

15    Q. Returned the verdicts. And by having a 12th  
16                  juror, you then also had that -- you still had  
17                  that additional option that maybe a mistrial  
18                  would result, because there was still one more  
19                  person the State had to convince before a  
20                  conviction could be obtained, right?

21    A. Well, we had no way of knowing which way the jury  
22                  was split or leaning but, yes, there were 12  
23                  people who had to agree unanimously, one way or  
24                  the other at that point, not 11.

25    Q. So in this sense, the opportunity for a mistrial

1 still existed?

2 A. Sure, I mean, they hadn't returned a verdict, so  
3 there's always a possibility that they will  
4 deadlock, I suppose.

5 Q. Right. Now, you told us about the fee agreement  
6 and the handshake with Mr. Buting about -- that  
7 you would go all out for an acquittal in this  
8 particular case. In terms of assessing this  
9 case, you also felt fairly good about how the  
10 case went in for the defense, did you not?

11 A. At trial's end?

12 Q. I'm sorry?

13 A. At trial's end?

14 Q. Yes.

15 A. Yes, I thought that it had gone in about as well  
16 as it could, taken as a whole.

17 Q. Right. All right. And so when it came down to  
18 discuss these three options with your client, you  
19 had to make a recommendation to him as to which  
20 option you thought was in his best interest,  
21 right?

22 A. Yes.

23 Q. And how much time did you spend with him  
24 discussing the option of proceeding with just the  
25 remaining 11 jurors?

1 A. Almost none. I would have -- I would have made  
2 very clear I thought that folly.

3 Q. And as I understood your testimony, that was --  
4 there was clear agreement by Mr. Buting on that  
5 point, with you?

6 A. Right, no disagreement, certainly.

7 Q. So you told him about the option, but you really  
8 made short shrift of any discussion as to whether  
9 that was in his best interest?

10 A. That's fair.

11 Q. All right. So, in effect, then, the time spent  
12 with him was the discussion of should we mistry  
13 this case or should we go with the substitute  
14 juror. The balance of your time with him was  
15 discussing those possibilities?

16 A. At least the balance of the substantive  
17 discussion, I agree.

18 Q. All right. And with respect to assessing this  
19 case, you recommended, I believe you said,  
20 against mistrial?

21 A. Yes.

22 Q. Mr. Buting agreed with that recommendation?

23 A. Yes, I think we were speaking jointly, not at the  
24 same time, but I think we agreed, yes, we'll take  
25 the 13th juror, the alternate, put her in, start

1           deliberations over.

2   Q. All right. And you would agree with me, would  
3       you not, that the parties, meaning yourself and  
4       Mr. Buting, and the three of us, Mr. Gahn,  
5       Mr. Kratz and myself, had contemplated the very  
6       possibility that we would have need for a  
7       substitute juror?

8   A. Yes. Who's idea that was, I don't have any  
9       recollection now, but, yeah, we kept a 13th. I  
10      think excused two alternates and kept one for the  
11      purpose of having a spare, so to speak, if we ran  
12      into trouble.

13   Q. And as a matter of fact that was the result of a  
14      somewhat extensive process, was it not?

15   A. What I remember, that I could describe fairly as  
16      extensive, is that I think we horse traded so  
17      that it was -- it was really sort of wired who  
18      the one remaining alternate would be.

19   Q. As a matter of fact, it was you, was it not, who  
20      suggested that the parties exchange one  
21      additional peremptory strike of the three  
22      alternates, thereby leaving one alternate left?

23   A. It certainly could have been. I mean that level  
24      of detail, I don't remember, but that sounds like  
25      me. I mean, that --

1 Q. Yes.

2 A. That sounds right.

3 Q. All right. And as a matter of fact, you had one  
4 particular juror in mind that you wanted to  
5 strike because a previous motion to strike for  
6 cause was denied?

7 A. Yes, that's right. That's right. I think there  
8 had been a motion to strike for cause.

9 Q. All right. And as result of some familiarity  
10 with one of the witnesses?

11 A. I don't remember why. I remember there was one I  
12 really wanted to see go.

13 Q. All right. And the State also removed one juror  
14 that was a concern to all parties as a result of  
15 some activities that occurred shortly before the  
16 end of the trial?

17 A. I think so, something that had to do with maybe  
18 brandy Manhattans, at a fish fry.

19 Q. Something about a juror being a little too  
20 talkative at a fish fry.

21 A. Yeah.

22 Q. All right. So the parties horse traded, as it  
23 were, thereby we left one alternate juror on the  
24 panel.

25 A. That's how I recall it.

1 Q. And then we took the additional step of agreeing  
2 that that juror would be sequestered at the  
3 hotel, all by herself?

4 A. Yeah, I think that's probably right. Do I recall  
5 that specifically, no, but that sounds right.

6 Q. All right. Because we didn't want to run the  
7 risk of her somehow being contaminated by any  
8 news accounts or discussions with family,  
9 correct?

10 A. I'm sure. I'm not disagreeing if you have a  
11 better recollection than that.

12 Q. So when it came time to actually be faced with  
13 the decision here, the parties had contemplated  
14 and prepared for this eventuality?

15 A. The lawyers, at least on the defense side, it was  
16 just the lawyers. We had not included Mr. Avery,  
17 probably, in any of that.

18 Q. In any of that.

19 A. Probably not.

20 Q. In your view, that was -- these are the kinds of  
21 questions that lawyers routinely make, based on  
22 their experience?

23 A. Yes and no. This is something I should have  
24 discussed with Mr. Avery, but because he was not  
25 admitted to bail, or he was unable to make the

1 bail the Court had set, and I think Sergeant  
2 Wiegert in particular, or Detective Wiegert, was  
3 listening assiduously to his phone calls at the  
4 end of each week; we just didn't share things  
5 with Mr. Avery that we should have.

6 Q. But the question is, with respect to the lawyers  
7 in this case agreed that -- to this option being  
8 available?

9 A. Yes.

10 Q. All right. When you recommended against mistrial  
11 to Mr. Avery, what other reasons did you give  
12 him? You talked about the situation, the  
13 agreement you had with Mr. Buting, but what other  
14 reasons, what other thoughts, crossed your mind?

15 A. Well, it crossed my lips. I mean, I told Mr.  
16 Avery, you know, if this case gets mistried, it's  
17 not going away, you know.

18 It's a very serious case. They are  
19 going to re prosecute this. You know, you are  
20 going to face another jury trial and you won't  
21 have us as your lawyers. We tried to say that  
22 nicely and gently, but he was entitled to that  
23 truth. He was not going to have us as his  
24 lawyers.

25 And as a practical matter, what that

1           meant is that he would have to rely on counsel  
2           appointed by the State Public Defender. That was  
3           information we had -- I thought, had to share  
4           with him.

5           I think I'm really pretty certain that I  
6           told him, hey, the case went in, you know, about  
7           as well as it could have. You know, we won some,  
8           we lost some but, you know, overall, you take  
9           this on the whole, it went in about as well as it  
10          could have, for the defense. That I'm quite sure  
11          I told him.

12         Q. And you believe that you and Mr. Buting did the  
13          best you could on this case?

14         A. Oh, geez, that's a -- that's a God question, in  
15          some ways. I mean --

16         Q. Well, you worked very hard on this case?

17         A. We worked very hard on the case, that's true.

18         Q. And you believe that you said that it went in as  
19          well as it could, and we can't account for  
20          everything in trial work, can you?

21         A. Right. I mean, about as well as we could have.  
22           The calculus really was, is this case likely to  
23          go in better for the defense the second time, and  
24          I thought probably not.

25         Q. Right. And one of the reasons is, you thought

1           that you and Mr. Buting gave him his best chance  
2           at an acquittal, based on the record you made?

3       A. There's probably some arrogance in that but, yes.

4       Q. And you knew at a retrial the prosecution would  
5           have an opportunity to dissect whatever defense  
6           strategy there was and attempt to deal with it on  
7           a retrial?

8       A. Yes, that's a two way street but, of course, yes.

9       Q. And certain evidentiary developments that  
10           occurred during the course of the trial would  
11           have affected any possible retrial of this case,  
12           specifically, reference the EDTA issue?

13      A. Yes. I think that was part of the calculation,  
14           or should have been and rightly was part of the  
15           calculation.

16      Q. As to what might likely occur on any type of  
17           retrial?

18      A. Right. One could assume that there would be some  
19           months between the Court declaring a mistrial and  
20           then impaneling a new jury.

21      Q. And that --

22      A. With the change of counsel, there well could have  
23           been a year.

24      Q. And that was my next question, could have been at  
25           least nine months and probably more?

1 A. It well could have been.

2 Q. And that would have been 9 or 10 or 12 more

3 months in the local county jail for your client?

4 A. As matters stood, I mean, one would renew a bail

5 motion, but he was not able to come close -- he

6 and his family could not come close to posting

7 the bail that the Court set.

8 Q. Right. And finally, you had a pretty good

9 idea -- Well, let me rephrase that. You at least

10 had some idea who the alternate juror would be

11 when she was substituted in?

12 A. I knew her name.

13 Q. You knew the name.

14 A. Sure.

15 Q. And it wasn't someone that you moved to strike

16 either for cause or for any peremptory challenge

17 earlier on, right?

18 A. I'm not answering that one because, you know, A,

19 there will be a transcript of what I did or

20 didn't do. And, B, I have no recollection of

21 whether I moved to strike that juror at any

22 point.

23 Q. All right. But in terms of whatever impression

24 you had, you were left with the impression that

25 she was at least an acceptable or an okay juror

1 to assume the role as the 12th juror?

2 A. Specifically, what my opinion was, that she was  
3 the best of the three alternates. You know, if  
4 we were going to have an alternate retained,  
5 during deliberations, this woman was the one to  
6 pick.

7 Q. But we didn't know who the alternates were until  
8 the names came out of the tumbler, right?

9 A. I think that's right, but it was after that point  
10 we knew there were three.

11 Q. Three.

12 A. And my view was, of those three this is the one I  
13 would pick --

14 Q. If you had to --

15 A. -- if I had to choose, right.

16 Q. Now, in your discussions with Mr. Avery,  
17 regarding whether he should follow your advice or  
18 not, he certainly didn't insist on proceeding  
19 with 11 jurors, did he?

20 A. No.

21 Q. And he accepted your recommendation that a  
22 mistrial was probably not the best choice?

23 A. Yeah, he accepted it. I really think I steered  
24 this decision --

25 Q. Right.

1 A. -- to the outcome.

2 Q. But that's not the first time you have had a  
3 discussion with a client and recommended  
4 strongly, or softly, or to use your phrase,  
5 steered a client toward a decision which you  
6 believed was in their best interest?

7 A. Oh, it's not the first time at all.

8 Q. No. In fact, it's somewhat -- it's often quite  
9 routine?

10 A. I do it commonly.

11 Q. All right.

12 A. I think it's the first time I ever told a client  
13 to turn down a mistrial.

14 ATTORNEY FALLON: May I approach?

15 THE COURT: Yes.

16 Q. (By Attorney Fallon)~ Counsel, I'm showing you  
17 what has been received as Exhibit No. 1, I  
18 believe you have previously identified that?

19 A. Yes.

20 Q. The Court provided us with that memo on the 16th,  
21 did it not?

22 A. I don't recall that. I'm not denying it. It's  
23 dated the 16th. In my mind, I first saw this  
24 after trial, which of course is impossible, if it  
25 was given to me on the 16th. I would have looked

1 at it.

2 Q. Do you want to take a moment to look it over,  
3 specifically page two? Read page two to  
4 yourself.

5 A. The second paragraph --

6 Q. Yes.

7 A. -- is the one you are trying to invite --

8 Q. Yes.

9 A. -- me to consider? Yeah, I read it, but I don't  
10 know if the judge is saying he prepared the memo  
11 this morning or prepared the memo to elaborate  
12 the comments on the record this morning.

13 Q. But we had a discussion in chambers at 8:30 as  
14 well?

15 A. Right, probably was 8:30.

16 Q. All right. But you would agree that the Court  
17 did provide you with that memorandum?

18 A. Oh, yes, absolutely.

19 Q. All right.

20 A. I don't know if when is a big deal --

21 Q. Right.

22 A. -- but.

23 Q. As you read it over now, there's nothing in there  
24 that strikes you as being inconsistent with your  
25 memory of those events, is there?

1 A. I didn't read the whole thing. If you want me to  
2 answer that I'm going to read the whole thing  
3 then.

4 Q. Sure.

5 A. You know, the only thing I really -- I recall  
6 differently is, I think the first call from the  
7 judge to my cell phone happened, you know, before  
8 9:00 p.m. I would have -- you know, I think it  
9 more like 8:30.

10 Q. Quarter to nine, something like that?

11 A. Yeah, but I mean, earlier than that. And then  
12 the rest of it, you know, is consistent with my  
13 recollection, to the extent I have one. And this  
14 sort of prompts me to recall, but I think in the  
15 first conversation there was some discussion  
16 which the judge was expressing reluctance to go  
17 too far into the details of the marital  
18 difficulties, or not, you know, not wanting to  
19 embarrass or pry unnecessarily. And, you know,  
20 that I agreed that some deftness there was  
21 appropriate.

22 Q. In other words, the Court was struggling to  
23 balance the competing objectives that were at  
24 play here?

25 A. That was my sense.

1 Q. All right. All right. Thank you. As a result  
2 of, then, Mr. Avery accepting your recommendation  
3 to proceed with 12, that then put into play a  
4 series of events regarding just how we were going  
5 to do that, in terms of integrating a brand new  
6 juror, correct?

7 A. Yes.

8 Q. All right. And I believe that the parties were  
9 in agreement. And I think based on some of the  
10 research the parties had done, is that they would  
11 have to be instructed as a group again, to start  
12 over?

13 A. Right.

14 Q. And that they should be told to start over?

15 A. That much I got from **Lehman**, or that's -- you  
16 know, I read **Lehman** to require that.

17 Q. And as a matter of fact, the first step we took  
18 in the process was to invite the new juror in and  
19 make sure that she had obeyed her responsibility  
20 not to listen to any media accounts, or anything  
21 of that sort; in other words, we wanted to make  
22 sure that her knowledge base hadn't been tainted  
23 by outside information? We had a colloquy with  
24 the juror, correct?

25 A. I really don't remember that. I'm sure it's a

1 matter of record. I'm not disputing whatever the  
2 transcript shows.

3 Q. And we did bring the jury back in as a whole and  
4 have them reinstated, and the jury was  
5 instructed to accept the new juror and to begin  
6 deliberations anew?

7 A. Yes, I remember being in the courtroom, all the  
8 lawyers, Mr. Avery. I remember the jury coming  
9 back in and an instruction to that effect being  
10 given. I have no specific recollection of  
11 details.

12 ATTORNEY FALLON: May I?

13 THE COURT: Yes.

14 Q. (By Attorney Fallon)~ I'm showing you what has  
15 been marked as Exhibit 2?

16 (Witness asks for a break.)

17 THE COURT: We'll take a short break at  
18 this time, resume in five minutes.

19 (Recess taken.)

20 THE COURT: Mr. Fallon, you may continue.

21 ATTORNEY FALLON: Just a few more questions  
22 on this issue, counsel.

23 Q. (By Attorney Fallon)~ I provided you what has  
24 been marked for identification purposes as  
25 Exhibit No. 2; do you recognize it?

- 1 A. This must be the instruction the jurors were  
2 given after the alternate joined them.
- 3 Q. And there was no objection from you or Mr. Buting  
4 as to the content of that instruction, correct?
- 5 A. I don't want to be quarrelsome, I don't remember.  
6 I'm going to let the record speak on that, if  
7 that's acceptable.
- 8 Q. Very well. All right. Let's change gears a  
9 little bit and ask, if I may, a few questions on  
10 the third party liability question. We have  
11 referred to it as the Court's **Denny** ruling, so I  
12 will use that terminology, if that's acceptable?
- 13 A. Sure.
- 14 Q. The Court's ruling did not preclude you from  
15 pointing a finger at Brendan Dassey, correct?
- 16 A. That's right.
- 17 Q. And in this particular case, you chose not to  
18 introduce any evidence or point the finger that  
19 way?
- 20 A. That's right.
- 21 Q. The Court's ruling still allowed you to suggest,  
22 and you so argued, that some unknown, some other  
23 person, committed this murder?
- 24 A. Yes. I mean, we certainly were allowed a  
25 reasonable doubt argument and I think your

1 request, generally, was fair.

2 Q. And so the impact of the ruling specifically was  
3 that you couldn't point a particular finger at a  
4 particular suspect?

5 A. Or suspects, yes.

6 Q. Or suspects, or more than one. All right. The  
7 ruling still permitted you to argue and  
8 cross-examine witnesses with the idea in mind  
9 that the police framed Mr. Avery?

10 A. Yes, I mean, at least in the sense of suggesting  
11 the police may have planted evidence, yes. And I  
12 paused because there may have been -- I think  
13 there was a separate motion argument and ruling  
14 on that issue, if my memory serves.

15 Q. Well, there was the blood vial issue, right?

16 A. I thought even apart from that. I may be wrong,  
17 but the short answer to your question was, yes,  
18 we were able to argue planting of evidence.

19 Q. And you were then able to choose, as a lawyer,  
20 which bits of evidence you would actually argue  
21 were planted by the police?

22 A. Yes.

23 Q. In other words, you had your choice of suggesting  
24 that the blood was planted?

25 A. In the Toyota?

1 Q. Yes.

2 A. Yes.

3 Q. You had the opportunity to argue that the police

4 planted the key?

5 A. Yes.

6 Q. In fact, you also argued that the bones, the

7 fragments identified as Teresa Halbach, were

8 actually moved from some place else to the fire

9 pit behind his house, correct?

10 A. That argument was not directed toward the police.

11 That's not on the topic we're discussing. The

12 blood, yes. The key, we had -- we were able to

13 develop an evidentiary basis to make those

14 arguments.

15 Q. And you chose not to make the argument with

16 respect to the bones in the fire pit,

17 specifically?

18 A. Chose not to argue that the police moved the

19 bones?

20 Q. Yes.

21 A. I didn't argue that the police moved the bones

22 and, you know ...

23 Q. That some unknown person did?

24 A. The perpetrator, I think, was the gist of my

25 argument and the police were not the perpetrator.

1 Q. Now, you realized that the prosecution was going  
2 to argue that the way the frame up theory was  
3 positive, that a reasonable conclusion, in fact,  
4 an almost irrefutable conclusion, was that they  
5 would have had to have been involved in the  
6 crime. You knew that argument was coming?

7 A. I didn't know it, I anticipated that you would  
8 make what I sort of think of as a false premise  
9 argument, that if we argued that the police were  
10 involved in planting evidence, to believe that  
11 you would have to believe that the police also  
12 committed the underlying crime.

13 Q. In fact, I made that argument in the  
14 suppression -- in the motion hearing two weeks  
15 before trial.

16 A. I don't recall that, but I certainly anticipated  
17 it and, you know, probably anticipated it  
18 before -- two weeks before the trial, if you made  
19 that argument then.

20 Q. Right.

21 A. It didn't take a genius to anticipate that  
22 argument.

23 Q. Exactly. Now, there was quite a bit of evidence  
24 in this particular case that was available for  
25 you to poke holes at or question its reliability?

1 A. I don't know how to agree or disagree with that.  
2 I mean, the Court's rulings circumscribed the  
3 available evidence in some ways, opened it up in  
4 other ways.

5 You know, there was a whole series of  
6 rulings, obviously, that had an affect on both  
7 the evidence the parties would have available to  
8 them and the arguments they might make based on  
9 that evidence, or the inferences they might ask  
10 the jury to draw, so.

11 Q. That's my point, the rulings that while they may  
12 close some doors, they open other doors that  
13 previously weren't there, as you just said.

14 A. Right. And I'm not going to --

15 Q. My next question is, can you give us an example  
16 of that?

17 A. Of what?

18 Q. Of a Court's ruling opening an avenue or opening  
19 a door you hadn't previously thought of?

20 A. No, you know, a door the Court did not close, for  
21 example, would have been -- I know there were  
22 some doors the Court left open and I can't come  
23 up --

24 ATTORNEY ASKINS: Judge, excuse me, I would  
25 like to interpose an objection. I'm not sure what

1                   the relevance is of this is.

2                   THE COURT: Mr. Fallon.

3                   ATTORNEY FALLON: The relevance is that  
4                   they have spent some time talking about trial  
5                   strategy and supposed impact of the Court's ruling  
6                   in this particular case. My argument is that the  
7                   Court's ruling, or I'm trying to get counsel to talk  
8                   about the fact that this ruling does, for whatever,  
9                   there's a cause and there's effect. There's a  
10                  liability and there's an availability of other  
11                  arguments and other approaches to the evidence. And  
12                  that's what I'm probing here, this relative to the  
13                  prejudice issue. I will rephrase the question.

14                  THE COURT: Okay.

15                  ATTORNEY FALLON: That's probably the best  
16                  way to go here.

17       Q. (By Attorney Fallon)~ All right. You indicated  
18                  on examination that you would have approached the  
19                  handling of witness, Bobby Dassey, differently;  
20                  is that correct?

21       A. It's reconstructive necessarily, but, yes, I  
22                  think I probably would have approached Bobby  
23                  Dassey differently if the **Denny** ruling had gone  
24                  our way, rather than against us.

25       Q. All right. And I think you said you would have

1                   treated him more as a murderer?

2       A. As a potential murderer, I probably would have  
3                   projected that attitude, you know, taken that  
4                   position as a foundation for my cross. If that  
5                   makes sense to you.

6       Q. What evidence did you have that Bobby Dassey  
7                   killed Teresa Halbach?

8       A. He potentially is the last one to admit seeing  
9                   her. His only alibi is Scott Tadych. His story  
10                  about deer hunting is improbable, at least  
11                  because of the showering. His recollection of  
12                  time frames is different than the bus driver.

13                  And I think we had a good argument that  
14                  she was, because of the habit and the sort of  
15                  likelihood that she's getting to each stop along  
16                  her school bus route at the same time, five days  
17                  a week, that she was a more reliable witness in  
18                  that respect.

19                  He has access to Steven's trailer. He  
20                  has access to the guns in his own home.

21                  And, you know, if you're asking for  
22                  direct evidence, no, I didn't have a confession.  
23                  We could have presented a circumstantial  
24                  evidence, in much the same way the State did  
25                  here, against Mr. Avery.

1 Q. But you would agree there was no direct evidence  
2 connecting Mr. Dassey to the murder?

3 A. I don't know that I can agree or disagree, as I  
4 sit here now, at that level of detail, I'm sorry.

5 Q. There's no physical evidence?

6 A. No -- No forensic evidence, no trace evidence?

7 Q. Right.

8 A. None that I'm aware of, that's right.

9 Q. No blood?

10 A. Of Bobby Dassey?

11 Q. Yup.

12 A. None that I know.

13 Q. And none of Teresa Halbach's was apparently  
14 located anywhere inside the Dassey trailer,  
15 correct?

16 A. Or the Avery trailer.

17 Q. Or the Avery trailer, which makes it rather  
18 unusual if somebody was trying to frame him,  
19 wouldn't they put evidence there?

20 A. Arguably they did leave a gun there.

21 Q. Well, they left a gun.

22 A. With masking tape, saying Steve's gun, or  
23 something like it.

24 Q. Only it wasn't Steve's gun, was it?

25 A. I don't remember whose -- the masking tape is

1           what I remember, and I think I -- I think I all  
2           but gave the jury the felon in possession count  
3           in closing argument, if memory serves.

4   Q.    But that's not my question, what you did in  
5           closing argument.

6   A.    No, I'm sorry.

7   Q.    The question is the evidence. So you would have  
8           taken a different tone of voice?

9   A.    Attitude, I mean, the cross would have been  
10          outlined differently and the projected attitude  
11          to the witness, I think, would have been  
12          different, yes.

13   Q.    All right. But that's not evidence, correct?

14   A.    No, that's -- No, it's part of the courtroom  
15          mosaic. It's considered by juries. It's not  
16          within the definition of evidence.

17   Q.    And you were able to cross-examine Mr. Dassey  
18          about the so-called joke, the Court's ruling did  
19          not preclude you from crossing him on the joke,  
20          correct?

21   A.    That's correct. That's correct.

22   Q.    And you would agree, as trial counsel, there are  
23          several ways for lawyers to deal with issues such  
24          as that. There's not just one way to  
25          cross-examine a witness when something happens

1 like that.

2 A. Oh, I agree with that. I think the point is that  
3 one's theory of defense drives the  
4 cross-examinations, just as its drives the direct  
5 examinations and the decisions about who to call,  
6 if anyone, in a defense case, if you're defending  
7 the case, and the theory -- your theory drives  
8 all of those decisions. So I think, in a sense,  
9 I'm agreeing with you.

10 Q. And so the ruling did not preclude you from  
11 cross-examining them on the joke?

12 A. No, I was allowed to cross-examine him.

13 Q. What evidence did you have that Scott Tadych  
14 murdered Teresa Halbach?

15 A. Just circumstances that would have allowed the  
16 inference. I ticked through some of them on  
17 direct examination. I'm not going to sit here  
18 and pretend to recall all of it.

19 But I think his foreman, or his boss,  
20 had some helpful potential testimony about his  
21 violent nature, his angry nature, the day he runs  
22 out of work ashen faced when one of the Dassey  
23 boys is picked up by the police, or talked to by  
24 the police. Mutual alibi with Bobby Dassey.

25 Changes in his story about when he sees flames,

1 how high the flames are, how big the fire is.

2 I mean, this is -- this is someone who,  
3 as I recall, testified differently on a number of  
4 points, than the statements he had made to  
5 Calumet County sheriff's officers earlier.

6 Q. And you pointed out those inconsistencies in the  
7 cross-examination of Mr. Tadych, didn't you?

8 A. Some of them, I did, yes, times, height of  
9 flames.

10 Q. Height of flames, the passing of Mr. Dassey on  
11 the roadway?

12 A. I didn't do much with that.

13 Q. But you cross-examined him, you had that  
14 opportunity?

15 A. Oh, sure, I had the opportunity to cross-examine  
16 Mr. Tadych, agreed.

17 Q. And you knew that afternoon Mr. Tadych was  
18 nowhere near that property, was he?

19 A. I don't know that at all.

20 Q. He was up visiting his mother in the hospital;  
21 there were numerous witnesses to that, correct?

22 A. Well, as a matter of fact, I think he said there  
23 were none. And no one testified they had seen  
24 him visit his mother at Bellin. But that was his  
25 story, that he had been up visiting his mother at

1           Bellin hospital, as I recall it.

2   Q.   And there are witnesses that could have been  
3           called to substantiate that, had it been  
4           necessary?

5   A.   I don't know that at all.

6   Q.   You and I both know that in trying a particular  
7           case you pick and choose what evidence is going  
8           to be delivered to the jury during the course of  
9           a trial, correct?

10   A.   Sure.

11   Q.   And you make decisions on whether or not the  
12           evidence is needed or necessary at the time  
13           before it's presented to the jury for  
14           consideration?

15   A.   If I were you, I would have decided no such  
16           evidence to corroborate Mr. Tadych was necessary  
17           because he wasn't available to us as a **Denny**  
18           suspect.

19   Q.   And that's because there was no evidence that  
20           directly connected him to that crime?

21   A.   I mean, we're getting back to arguing the  
22           briefing.

23   Q.   What evidence did you have that he was trying to  
24           frame his brother-in-law, or soon to be  
25           brother-in-law?

1       A. What evidence did I have? Changing the story, I  
2           guess, and putting Steven out by a bonfire at the  
3           side of a garage, different times depending on  
4           when you asked him.

5       Q. But he wasn't the only one to put him by a  
6           bonfire, was he?

7                   ATTORNEY ASKINS: Objection, your Honor, I  
8                   think this goes beyond the scope of our direct.

9                   THE COURT: Well, cross-examination isn't  
10                  limited by direct.

11                  ATTORNEY ASKINS: Then I guess I would have  
12                  to question the relevance, your Honor.

13                  ATTORNEY FALLON: They are the ones saying  
14                  that the record is such that they have been  
15                  prejudiced by the Court's ruling. I'm looking for  
16                  what the law requires as introduction of evidence  
17                  upon which a court makes a ruling. And we're  
18                  probing for the evidentiary underpinnings of the  
19                  argument they are now advancing.

20                  THE COURT: All right. I did rule in the  
21                  defense favor before on the theory that some showing  
22                  of prejudice should be allowed, so I'm going to  
23                  allow your questions to proceed as well.

24        A. I paused as I did, and I will defer to all of you  
25                  who have read the transcript presumably, and I

1 have not, of the trial. But I can't remember  
2 another witness who put Steven Avery -- at trial,  
3 who put Steven Avery at a bonfire. Maybe I'm  
4 forgetting someone, but I don't remember any  
5 other trial witness who did that. I think  
6 Mr. Fabian talked about seeing a fire in the one  
7 burn barrel to the south and east maybe of, or  
8 north and east of Mr. Avery's trailer, but I --  
9 again, I will defer to all of you who have read  
10 the transcript.

11 Q. My point is, if you had evidence, it was  
12 presented in your motion to the Court in an  
13 effort to get the Court to rule in your favor and  
14 permit this type of -- permit this type of  
15 argument?

16 A. I think I did the best I could in that brief to  
17 lay out the available evidence that I thought  
18 bore on making the **Denny** showing. That I agree.

19 Q. And going back to the point I was making earlier,  
20 you and I both know, as trial counsel, that there  
21 is what is in the record and what is actually  
22 used by the lawyers in their case. And then  
23 there's a whole other set of facts and other  
24 information which is available, that the lawyers,  
25 for whatever reason, tactical or otherwise, chose

1           not to use or introduce in evidence?

2 A. That's generally true. That's right.

3 Q. And in this particular case, there was a  
4           substantial amount of police investigation that  
5           was developed?

6 A. Yeah. I'm not -- I mean, I'm not going to  
7           quarrel with the adjective.

8 Q. But the point being is that there easily could  
9           have been other witnesses to many events, they  
10           just weren't called as witnesses, because for one  
11           party or the other decided they didn't need to  
12           use them.

13 A. I can agree with that, in general.

14                   ATTORNEY ASKINS: Your Honor, excuse me. I  
15           just want to interject because -- and this is a  
16           little unusual because, of course, Mr. Fallon  
17           participated at the trial, but he is prefacing many  
18           of his so-called questions with, my point is. And I  
19           would ask that the attorney be instructed that we're  
20           going at questions now, not points that he is  
21           attempting to establish with this witness, or with  
22           this witness.

23                   THE COURT: I understand his usage of the  
24           phrase to mean the point of my question is.

25                   ATTORNEY ASKINS: All right.

1                   THE COURT: That's the way I'm taking it.  
2                   ATTORNEY ASKINS: Thank you, your Honor.  
3                   ATTORNEY FALLON: Going to pass the  
4                   witness.

5                   THE COURT: Any redirect?

6                   ATTORNEY HAGOPIAN: Yes, please.

7                   **REDIRECT EXAMINATION**

8 BY ATTORNEY HAGOPIAN:

9 Q. Mr. Strang, I would like to direct your attention  
10                  back, again, to the conversation you had with  
11                  Judge Willis on March 15th, while you were at the  
12                  restaurant. When the judge explained to you the  
13                  problem with the juror, was it your understanding  
14                  that at that point the judge had not personally  
15                  spoken with the juror?

16 A. Yes.

17 Q. Was it your understanding that the information  
18                  that was being imparted to you was, at best,  
19                  secondhand?

20 A. Yes, someone in the sheriff's department, to  
21                  judge, to me.

22 Q. Did you, in fact, know that someone in the  
23                  sheriff's department had spoken with the juror?

24 A. I think I understood that from what the judge was  
25                  telling me. The information the judge got was

1                   coming from the sheriff's department, so I  
2                   inferred that someone in the sheriff's department  
3                   had spoken to the juror.

4   Q.   So, was it your understanding that at the time  
5                   this information was imparted to you, that Judge  
6                   Willis had had no opportunity to observe the  
7                   demeanor of the juror?

8   A.   That was my understanding. I don't know if he  
9                   said this or not, but I had the sense that the  
10                  judge was calling me from his home.

11   Q.   So the judge would have had no opportunity to  
12                  personally assess whether this juror was upset or  
13                  distraught?

14   A.   At the time of the first call to me?

15   Q.   Yes.

16   A.   So I assumed.

17   Q.   And in that conversation, did you know, did you  
18                  have any information that this juror, Mr. Mahler,  
19                  may have had some concerns about how some other  
20                  jurors were approaching the deliberations?

21   A.   No.

22   Q.   Did you have any information that perhaps  
23                  Mr. Mahler was having some problem with another  
24                  juror?

25   A.   No.

1 Q. Did you have any information that Mr. Mahler had  
2 felt verbally threatened by another juror?

3 A. No.

4 Q. And in this conversation and when you authorized  
5 the Court to speak with and then to remove the  
6 juror, it's correct that you also, personally,  
7 had no opportunity to assess the demeanor of the  
8 witness?

9 A. That's true.

10 Q. Excuse me, not the witness, but the juror.

11 A. The juror, Mr. Mahler, no, that's true.

12 Q. There was some indication that this juror may  
13 have been upset, or a part of his emotional  
14 status was due to his wife's upset about some  
15 press report; do you recall that?

16 A. Do I recall hearing that in that first telephone  
17 conversation?

18 Q. Yeah, in that conversation.

19 A. I can't place it there. I know I heard it at  
20 some point, it well could have been in that first  
21 conversation.

22 Q. You could have heard that in the conversation?

23 A. Yeah, I could have, yes.

24 Q. And that wasn't the first time you had heard  
25 something about his wife being upset about a

1 press report, correct?

2 A. Gosh, off the top of my head, I don't remember an  
3 earlier time, but.

4 Q. Do you remember a few days earlier, was on  
5 March 12th, when the Court conducted an  
6 individual voir dire of each of the jurors?

7 A. Yes. I couldn't have told you the date, but in a  
8 little conference room down the hall from -- from  
9 Judge Poppy's chambers in Calumet County, I  
10 think.

11 Q. And Richard Mahler was among the jurors who was  
12 individually questioned; do you recall that?

13 A. I think we went through all of them, I think,  
14 that day.

15 Q. And do you recall in that individual voir dire  
16 whether Mr. Mahler had referred to his wife's  
17 upset about a press report at the time of jury  
18 selection?

19 A. That -- that rings a bell. That rings a bell  
20 with me, but I couldn't give you details or  
21 even --

22 Q. Would it --

23 A. -- really assert to you with complete confidence  
24 that he said it in that individual voir dire.

25 Q. Would it refresh your recollection to take a look

1 at the transcript of the individual voir dire?

2 A. Sure, and I'm not disputing the transcript, I  
3 mean it does ring a bell, but.

4 ATTORNEY HAGOPIAN: May I approach, your  
5 Honor?

6 THE COURT: Go ahead.

7 Q. (By Attorney Hagopian)~ I'm going to ask you to  
8 take a look at the transcript from March 12,  
9 2007. And page 32, beginning at line 24, there's  
10 a reference here, actually, to officer speaking  
11 and I believe the State has agreed that that must  
12 be a typographical error and actually was  
13 referring to Mahler. And if you would begin  
14 reading there and on to the next page?

15 A. I remember the gist of this.

16 Q. Okay. So is it, then, your recollection -- Did  
17 you read through line 14 on page 33?

18 A. No, I read through line 24 --

19 Q. Okay.

20 A. -- on page 33.

21 Q. Okay. So in that individual voir dire, then,  
22 Mr. Mahler raised the issue of his wife's upset?

23 A. Yes.

24 Q. And that was referring back to the time of jury  
25 selection?

1 A. Yes.

2 Q. And the Court asked Mr. Mahler if that was going  
3 to affect his ability to continue serving on this  
4 jury?

5 A. Right, and in effect he said, no, that he could  
6 deal with that.

7 Q. And he could handle that. And so you -- you were  
8 present for that individual voir dire on the  
9 12th?

10 A. Yes, I was.

11 Q. And you would have been familiar with that when  
12 you received the call from the Court on March  
13 15th indicating a problem with this juror?

14 A. Yes. And I would hazard a guess that I would  
15 have remembered it, three days later, unlike now.

16 Q. You have testified that you were concerned that  
17 perhaps the best you could accomplish that night,  
18 in that conversation with Judge Willis, was to  
19 have the judge talk to the juror before excusing  
20 him. Is that -- Do you recall that testimony?

21 A. Yes.

22 Q. So, was it your concern that if somehow you  
23 objected to this process, objected to the Court  
24 talking to the juror, that the judge might just  
25 excuse Mr. Mahler without even speaking with him?

1 A. That was my concern. Now, I can't attribute that  
2 to anyone other than myself. I mean, that was  
3 just an impression, was that the best we were  
4 going to get was having the judge speak directly  
5 to the juror.

6 Q. But is it also your recollection that when --  
7 that at some point you told the judge you needed  
8 to confer with Mr. Buting about this and you  
9 would get back to him?

10 A. It's a -- That's a reconstructed recollection, in  
11 the sense I know I would have wanted to talk to  
12 Mr. Buting, arrive at an agreement. We, like the  
13 day before, or two days before, very recently  
14 before this, Jerry Buting and I had had a set to  
15 over a decision I had made without consulting  
16 him. It was probably two days before. Because I  
17 didn't consult him, he was home preparing his  
18 part of the closing argument and I was here -- or  
19 I was at the courthouse in Chilton.

20 We had had a real disagreement over that  
21 for, first real conflict. So I know I would have  
22 been attuned, the night of the 15th, to bringing  
23 Jerry into the loop and making a collaborative  
24 decision on this. And I now know there was a  
25 phone call. I didn't remember that phone call

1           until you and Ms Askins showed me the page from  
2           the cell phone records, but there was a cell  
3           phone call from Mr. Buting's phone to the judge's  
4           telephone number, I think. So, I'm  
5           reconstructing what I believe must have happened.

6       Q.   So your best recollection, though reconstructed  
7           at this point, is that you did ask for time to  
8           confer, although perhaps not a lot of time, but  
9           that the judge did permit you to confer and get  
10          back to him?

11      A.   Right, that's my -- that's my best recollection  
12          as I sit here.

13      Q.   Now, there was reference to the -- what was  
14          agreed to was that the Court could speak with  
15          Mr. Mahler, and if the information was  
16          verified -- is that a fair word to use, verified?

17      A.   Right.

18      Q.   That he could then dismiss the juror.

19      A.   Right. And I want to -- I'm sorry not --

20      Q.   Let me just ask.

21      A.   Sure.

22      Q.   By verified, you took that to mean that the Court  
23          would be speaking with Mr. Mahler, correct?

24      A.   Right.

25      Q.   And that that would be occurring off the record?

1 A. Yes.

2 Q. And there wasn't any plan, as part of this  
3 agreement, that the judge would report back to  
4 you about what he learned from Mr. Mahler before  
5 excusing him?

6 A. You know, I don't -- I don't remember. I think  
7 we had given him the authority to go ahead and  
8 excuse the juror if he decided that the report  
9 from the sheriff's department was verified. I  
10 think we had, you know, that we had agreed that  
11 that's what the judge would do.

12 Q. So would it be fair to say that the verification  
13 to you didn't come, really, until the next  
14 morning, when --

15 A. I think I knew that night.

16 Q. You knew the juror was removed?

17 A. I think so. I really do. I think so.

18 Q. But any information that you obtained about what  
19 Mr. Mahler told the judge would have come after  
20 Mr. Mahler was removed from the jury, correct?

21 A. Yes, I think that's right. In other words, I  
22 think when I heard it, it had happened, the Court  
23 had excused Mr. Mahler. And then I think we were  
24 told the details that the judge got and where the  
25 judge stopped short rather than pushing the

1                   juror, and the judge's impression that the juror  
2                   was very -- you know, was distraught, or in some  
3                   emotional distress.

4       Q.   There -- You were asked on cross-examination  
5                   that, well, you know, even though you didn't take  
6                   a mistrial you still held out the possibility  
7                   that you could have had a hung jury; do you  
8                   remember that --

9       A.   Yes.

10      Q.   -- questioning? But you -- That morning, on  
11                   March 16th, you didn't have any doubt in your  
12                   mind you could have had a mistrial at that point?

13      A.   Yes, I had a right to have a mistrial that  
14                   morning, or Steven did, Steven Avery did.

15      Q.   And that was your reading of **Lehman**?

16      A.   Yes. And I think had I told Steven Avery we  
17                   should have taken the mistrial, he would have  
18                   said, okay, and we would have had a mistrial.

19      Q.   It was equally clear in your mind that you were  
20                   not going to be the attorney representing him in  
21                   the second trial?

22      A.   I was not.

23      Q.   And that was made clear to Mr. Avery as well?

24      A.   Yes, not just in the fee agreement, but the  
25                   morning of the 16th.

1 Q. Now, had this case gone to a second trial, would  
2 you have cooperated with successor counsel?

3 A. Sure.

4 Q. You would have shared your discovery that you  
5 have obtained?

6 A. Well, sure.

7 Q. That next attorney could have obtained the  
8 transcripts of the first trial?

9 A. Sure. Probably would have shared my trial notes.

10 Q. You testified that you had steered Mr. Avery to  
11 not take the mistrial?

12 A. Yes.

13 Q. And is it correct that that steering away from a  
14 mistrial was with the belief that what you were  
15 steering him to, substituting the alternate, was  
16 allowable under the law?

17 A. Yes.

18 ATTORNEY HAGOPIAN: That's all I have.

19 That's on the juror issue. In fact, I think that's  
20 all we have for you.

21 THE COURT: Very well, Mr. Fallon.

22 ATTORNEY FALLON: Nothing from the State.

23 THE COURT: Witness is excused. Counsel,  
24 you may call your next witness.

25 ATTORNEY HAGOPIAN: Call Attorney Jerry

1 Buting.

2 ATTORNEY FALLON: Judge, while we're  
3 waiting for the witness, could counsel and I  
4 approach?

5 THE COURT: Sure.

6 (Off record discussion.)

7 THE CLERK: Please raise your right hand.

8 **ATTORNEY JEROME BUTING**, called as a  
9 witness herein, having been first duly sworn, was  
10 examined and testified as follows:

11 THE CLERK: Please be seated. Please state  
12 your name and spell your last name for the record.

13 THE WITNESS: Jerome Buting, B-u-t-i-n-g.

14 **DIRECT EXAMINATION**

15 BY ATTORNEY HAGOPIAN:

16 Q. Mr. Buting, is it correct that you, along with  
17 Attorney Dean Strang, were trial counsel for  
18 Mr. Avery in this case?

19 A. Yes.

20 Q. I would like to direct your attention to near the  
21 end of trial and, specifically, the date is  
22 March 15, 2007. That's the day on which closing  
23 arguments were completed and the jury began  
24 deliberations; do you have some recollection of  
25 that day?

1 A. Yes, I do.

2 Q. And, specifically, that evening, did you and  
3 Attorney Strang go out to dinner that night?

4 A. Yes, we did. I believe it was some time after 8.  
5 We were told the jury had quit for the day, that  
6 they were going for dinner themselves and that we  
7 could sort of stand down, so to speak.

8 Q. And would you just, please, briefly describe your  
9 mood at dinner that night?

10 A. Well, it was the end of a six week trial, we were  
11 obviously exhausted. And it was always a release  
12 when you finish the closing arguments. You're  
13 still on -- you're still tense, waiting for the  
14 jury verdict, as we were in this particular case,  
15 but once we were told that the jury had retired  
16 for the night, we were able to relax a little  
17 bit, and we were able to have a couple beers  
18 for -- have dinner, and retire early, probably  
19 was the plan.

20 Q. And is it fair to say that you felt that your  
21 work was over for the night?

22 A. Yes.

23 Q. And then at some point that evening did you or  
24 Mr. Strang receive a telephone call from Judge  
25 Willis?

1 A. We did.

2 Q. And that was still while you were at the  
3 restaurant?

4 A. Yes.

5 Q. Do you recall whether you spoke directly to Judge  
6 Willis in that conversation when the judge  
7 called?

8 A. Sure. My recollection, it's been two and a half  
9 years, so it's a little unclear to me, but as I  
10 pieced it together, my recollection is the first  
11 call probably came in to my partner, Dean  
12 Strang's cell phone. I don't know whether he  
13 held it up to my ear, or whether -- I think more  
14 likely he just spoke to the judge himself and  
15 then relayed to me what information he was  
16 getting, in that first call.

17 Q. And in that first call, at least as the  
18 information was relayed to you, did you learn  
19 that there was a problem with a juror?

20 A. Yes, I did. My understanding was that there  
21 was -- there was a serious problem with one of  
22 the jurors, a crisis, an emergency sort of  
23 situation, that the juror's daughter or  
24 stepdaughter had been in a serious car accident.

25 I don't recall whether -- I know that

1                   the impression I had was not that she was  
2                   seriously injured. I don't recall whether she  
3                   was injured at all, but I knew that it was a very  
4                   serious accident. Maybe the car totaled,  
5                   something like that, and that the juror's wife  
6                   was upset at him that -- at how much of the time  
7                   during the trial he was apparently unavailable to  
8                   her.

9                   And the situation was sort of like, here  
10                  it is, you know, now I'm alone, I have to deal  
11                  with this crisis. And there was apparently some  
12                  kind of reference to their marital problems and  
13                  that this was sort of the last straw, and he  
14                  wanted off. He had felt like he had to get off.  
15                  The impression I got was that the juror was just  
16                  really sort of falling apart and asking to be  
17                  excused.

18 Q. Now, do you recall, this information is imparted,  
19                  it's relayed to you, was there any discussion at  
20                  that point about how to handle the situation?

21 A. I think -- I don't recall whether the first phone  
22                  conversation, or whether it was the second one,  
23                  but I believe that at some point during that  
24                  first call Dean said, well, let me talk -- We'll  
25                  talk about it and we will get back to you

1 shortly.

2 And the impression was that we had to  
3 talk quickly and get back to him within a few  
4 minutes, 15, 20 minutes, something like that. I  
5 don't know whether in that first call the option  
6 came up that the judge could make some contact  
7 with the juror himself, or whether that came up  
8 as a way of dealing with it in the second call.

9 Q. What is your recollection about a second call,  
10 how that came about?

11 A. I believe, and actually I checked my cell phone  
12 records for this because I just couldn't recall  
13 exactly the sequence, and just before 9:00 I  
14 apparently made a phone call. I must have called  
15 a number the judge gave me, and had, I believe it  
16 was a 12 minute phone call.

17 The judge must have conferred in  
18 Mr. Kratz, because I don't think I knew how to do  
19 that with my phone. At least I don't recall  
20 doing that. But I'm sure he must have been on,  
21 somehow involved in the conversation.

22 At some point, in one of those two  
23 calls, the decision was made that the judge  
24 would -- My impression was that this information  
25 had come to the judge from one of the bailiffs,

1           that this juror was falling apart and that there  
2           was this crisis. I had no indication that there  
3           was any contact between the sheriff and the juror  
4           or anything like that. I don't think I knew that  
5           until much later.

6           But at any rate, my recollection is that  
7           the judge suggested that perhaps he could contact  
8           the juror, speak to the juror directly, and at  
9           least verify that the information he was getting  
10          was correct, that the juror was really  
11          distraught.

12          And I don't recall exactly, my  
13          recollection was that that was the judge's  
14          suggestion, that he came up with. I don't  
15          recall, certainly, suggesting it, but I can't be  
16          sure who did.

17 Q. And so part of what was ultimately decided, if I  
18          understand your testimony, is that the judge  
19          would speak with the juror; is that correct?

20 A. Yes.

21 Q. Was there also an agreement that the judge would  
22          be permitted, or you would agree that the judge  
23          should remove the juror if the information was  
24          confirmed or verified?

25 A. Yes. And the agreement was that that could be

1           done right then, that night. For some reason it  
2       never occurred to any of us, I guess, to  
3       reconvene in court.

4           The impression I got was that this was  
5       the sort of crisis that needed to be resolved  
6       immediately. And at the time, that seemed to be  
7       the most efficient way to deal with it.

8 Q. So that night, then, as you are at the  
9       restaurant, as the information comes in, as you  
10      are making a decision what to do and the decision  
11      is made, was it your understanding that the judge  
12      would be speaking to the juror without either you  
13      or Attorney Strang present?

14 A. That's correct.

15 Q. And was it your understanding that Mr. Avery  
16      would also not be present?

17 A. That's correct.

18 Q. As this situation with the juror was discussed at  
19      the restaurant, did you know which juror was  
20      having the difficulty?

21 A. Yes, I did.

22 Q. And were you able to place that juror, you knew  
23      which --

24 A. Oh, yes.

25 Q. -- juror was being talked about?

1 A. Yes.

2 Q. Had you formed an opinion about him over the  
3 course of the trial?

4 A. Yes, I thought he was a favorable juror for the  
5 defense. At the beginning of the trial he was  
6 sort of a wild card, I would say. He struck me  
7 as somebody who kind of traveled to the beat of  
8 his own drum, so to speak, which in this sort of  
9 a case I thought could cut either way. But as  
10 the case went on, you know, sometimes it's  
11 difficult to read from jurors the kind of  
12 feedback you get during the trial.

13           But I was not pleased that he was one of  
14 the ones who -- or the one that this happened to.  
15 There was two or three others that I would have  
16 been very pleased if I had heard they were --  
17 wanted to be discharged, but certainly not this  
18 one.

19 Q. So that night when you were forced into making a  
20 decision on how to proceed, did you have a  
21 strategic reason for wanting to get Richard  
22 Mahler off the jury?

23 A. No, I had no -- no such reason to get him off; I  
24 would have preferred he stay.

25 Q. You have been a criminal defense lawyer for a

1           number of years; isn't that right?

2   A.   Twenty-eight.

3   Q.   Twenty-eight?

4   A.   Yes.

5   Q.   Now, before Mr. Avery's case, had you ever  
6        encountered a situation like this, where a  
7        question rose during deliberations about a  
8        juror's ability to continue to serve?

9   A.   No.

10   Q.   Had you previously had the need to research the  
11        legal question about the procedure to follow when  
12        a juror is asking to be removed?

13   A.   No. I think that if this had happened during the  
14        day, when we had been standing by waiting for  
15        juror questions, or things of that nature, no  
16        matter what the crisis or emergency might have  
17        been, I think it would have been much easier.

18           My instinct would have been, well, let's  
19        convene in court. Let's talk to the juror. But  
20        this happening at whatever it was 8:30, 9:00 at  
21        night, it did not occur to me that we should have  
22        done that. Apparently nobody thought of that.

23   Q.   So it's fair to say that when the situation came  
24        up, while you were at the restaurant, you were  
25        not familiar, for example, with the Supreme

1                   Court's decision in ***State vs. Lehman?***

2       A. Oh, no, absolutely not, when we got that call, I  
3                   had never -- never -- well, if I had read the  
4                   case, it would have been 20 years ago or  
5                   something when it first came out, but I had never  
6                   had the need to apply it before.

7       Q. And you testified here that you and Mr. Strang  
8                   did have some opportunity, although perhaps not  
9                   very long, but to confer about the information  
10                  you received --

11      A. Yes.

12      Q. -- talk about what to do. Do you recall in that  
13                  time you had for conferring, was there any  
14                  discussion between you two about whether  
15                  Mr. Avery had a right to be present during the  
16                  Court's questioning of the juror?

17      A. No.

18      Q. When you agreed that the Court should be able to  
19                  speak with Juror Mahler, and remove him if the  
20                  information was confirmed, were you aware of case  
21                  law indicating that Mr. Avery had a right to be  
22                  present, with his attorneys, when the Court  
23                  questioned the deliberating juror?

24      A. You know, I don't know if I was aware of specific  
25                  case law on that point, but I think, again, if

1           this had happened during the day, my instincts  
2           certainly would have been that -- I did know  
3           that, generally, a judge is not supposed to  
4           confer with a deliberating juror without the  
5           attorneys present.

6           That's why any questions that there  
7           might be go back and forth in writing. The judge  
8           would then convene the attorneys and say the  
9           juror has a question and that sort of thing. And  
10          then if it's answered in anyway other than a  
11          written response, the juror is presented in court  
12          with the defendant present.

13          I knew all of that, but somehow this  
14          circumstance, this crisis emergency that seemed  
15          to be presented just did not -- it didn't seem to  
16          fit that same scenario.

17          Q. When you agreed to have the Court speak with  
18           Mr. Mahler, had you consulted with Mr. Avery  
19           about whether he wanted to be present?

20          A. No, we did not.

21          Q. And when you agreed that the Court could remove  
22           this juror, had you consulted with Mr. Avery  
23           about whether he wanted to have Mr. Mahler taken  
24           off the jury?

25          A. No, we did not.

1 Q. That evening, when this information was conveyed  
2 to Attorney Strang and then relayed to you, was  
3 there any information passed along about how the  
4 problem at home had come to the juror's  
5 attention?

6 A. I don't actually recall. The impression I got  
7 was that his wife had called. I think the  
8 information was that his wife had called and  
9 somehow got through to him, which I think was  
10 sort of the other reason I thought that this was  
11 really a crisis, an emergency, because I didn't  
12 think that the jurors would be able to have any  
13 contact, that the rules would not allow them to  
14 have contact with somebody from home, unless it  
15 was an emergency.

16 Q. And, again, at the time when you agreed that the  
17 judge could speak with and remove Juror Mahler,  
18 were you aware that Sheriff Pagel had spoken with  
19 Mr. Mahler?

20 A. Absolutely not.

21 Q. Would it have concerned you, had you known  
22 Sheriff Pagel was involved in the communications  
23 with Juror Mahler that evening?

24 A. Very much.

25 Q. Why is that?

1       A. Sheriff Pagel was in no way anybody that I would  
2           consider uninterested in the case, just the  
3           opposite. He was the supervisor of the primary  
4           investigators in the case, at least the Calumet  
5           County part of it.

6                   I was -- He was not sworn as a bailiff.  
7                   My understanding was that the only ones who would  
8                   be in contact with the jurors directly would be  
9                   the bailiffs. And my understanding of what  
10                  happened that night was that the bailiff, and the  
11                  bailiff only, spoke to the juror and handed the  
12                  phone -- or spoke to the judge directly. That  
13                  all communication went from the juror, to the  
14                  bailiff, to the judge, without any go between.

15                  And, certainly, had I known that Sheriff  
16                  Pagel had any direct contact with any of those  
17                  jurors, not just Mr. Mahler but anybody, I would  
18                  have objected and probably moved for a mistrial.

19       Q. When you agreed to have the Court speak with the  
20                  juror, did you expect that Sheriff Pagel would in  
21                  any way be involved in that communication?

22       A. Absolutely not.

23       Q. That, for example, Sheriff Pagel would be  
24                  standing nearby when Richard Mahler spoke with  
25                  the judge?

1       A.    Absolutely not. You know, I later learned that,  
2                  that he was nearby, I thought in the parking lot  
3                  or something like that, which struck me as kind  
4                  of odd. Even that struck me as sort of odd. You  
5                  know, maybe the nature of this case, where we had  
6                  to raise a police frame-up defense, made me  
7                  especially suspicious of any of the investigating  
8                  officers. So I would have been especially  
9                  attuned to any objection had I known that.

10      Q.    So you didn't have any information that, in fact,  
11                  Sheriff Pagel had spoken with Juror Mahler inside  
12                  Mr. Mahler's private motel room?

13      A.    No, I had no such information.

14      Q.    If you had known that the information was going  
15                  from Mr. Mahler to Sheriff Pagel, to the judge,  
16                  how would you have responded?

17      A.    I would have objected, as I said.

18      Q.    And by objecting, is there anything you would  
19                  have insisted upon?

20      A.    Probably a mistrial at that point. I don't know  
21                  that any remedy short of that would have  
22                  satisfied me. I obviously would have spoken to  
23                  my co-counsel about it, but from my own personal  
24                  view, there would have been nothing short of a  
25                  mistrial at that point because we just don't know

1                   what kind of communication there might have been  
2                   with Mr. Pagel.

3                   And I know, for instance, that we made a  
4                   big deal in our pre-trial motions about there not  
5                   being even any Manitowoc County deputies involved  
6                   as bailiffs in the case. And then when we  
7                   learned that the Court had two retired  
8                   individuals that were bailiffs and that had done  
9                   this before that were not employed by the Calumet  
10                  County Sheriff's Department at that point, or  
11                  Manitowoc, it was -- that was a comforting  
12                  arrangement that we were agreeable to.

13                  Q. So just so the record is clear here, you knew  
14                  that Sheriff Pagel was the sheriff in Calumet  
15                  County?

16                  A. Absolutely, yes.

17                  Q. And that several of his employees had testified  
18                  as witnesses for the State in this case?

19                  A. Certainly.

20                  Q. Then, I would like to turn your attention to the  
21                  next day, March 16th, and specifically the record  
22                  shows that there was an in chambers conference  
23                  that morning with Judge Willis and the attorneys;  
24                  do you recall that?

25                  A. Yes, I do.

1 Q. Was Mr. Avery present during that in chambers  
2 conference?

3 A. No.

4 Q. By the time of that in chambers conference, had  
5 you spoken with Mr. Avery about the juror's  
6 removal?

7 A. No, we had not.

8 Q. Did you know, by that point, that Mr. Mahler had,  
9 in fact, been taken off the jury?

10 A. Yes.

11 Q. Was there some discussion in that in chambers  
12 conference of what options were available, given  
13 that the deliberating juror had been removed?

14 A. Yes. I believe -- My recollection is there must  
15 have been a third call, a brief call, perhaps to  
16 Mr. Strang's phone later that night that told us  
17 that the judge did, in fact, speak with the juror  
18 and had confirmed it and excused him. But  
19 somehow or another we knew that clearly.

20 We then were, I believe, told let's  
21 discuss what we're going to do the next day and  
22 that was kind of left at that. We went back to  
23 our apartments where we were living. Mr. Strang  
24 did some research, found the case of **State vs.**  
25 **Lehman**. I believe I read it that night. We came

1           into the chambers the next day. We thought that  
2           that case applied.

3           I think the judge might have also found  
4           that case as well and presented it as what we  
5           thought at the time were three options, which was  
6           either a mistrial -- three options when a  
7           deliberating juror is removed for cause, either a  
8           mistrial; a proceeding with just 11 jurors; or  
9           the defendant, and only if the defendant, agreed,  
10           the third option would be to substitute in one of  
11           the alternates to begin deliberations anew.

12           That's what the -- at the time of that  
13           case, as I understood the case, *State vs. Lehman*,  
14           the statute was silent on whether an alternate  
15           juror could be brought in in the middle of  
16           deliberations. And in that case the defendant  
17           had objected and the Court reversed and ordered a  
18           new trial.

19           In our case, I thought that was still  
20           the status of the statute. I didn't do any  
21           independent research. And Mr. Strang hadn't  
22           discovered, apparently neither had the Court or  
23           the prosecutor discovered, that the statute was  
24           changed after the *Lehman* case.

25           The *Lehman* case was never reversed by

1 another court case. We knew that. We had  
2 checked that. But somehow that the statute had  
3 been changed and that the procedure for alternate  
4 jurors had been changed, by statute, to require  
5 them to be dismissed when the case goes to the  
6 jury.

7 Q. So, in that conference that morning with the  
8 Court and prosecutors, was there -- among those  
9 three options was there some agreement reached as  
10 to how the parties would like this to proceed?

11 A. In the chambers, before we spoke with Mr. Avery,  
12 I don't know that we committed to anything. I  
13 think we discussed the three options and  
14 everybody seemed to think those were what was  
15 available. And then we were, then, to go speak  
16 with our client and discuss the options with him.

17 Q. Okay. So then you met with Mr. Avery at the jail  
18 that morning?

19 A. Yes.

20 Q. And that would have been after the in chambers  
21 conference?

22 A. Yes.

23 Q. And that was the first time that you had spoken  
24 with him that day, correct?

25 A. Can I just clarify that the attorney/client

1                   privilege has been waived for this portion of  
2                   the -- so that I can discuss the --

3   Q.   Yes, my understanding is that by having made the  
4                   allegations that we did, that the attorney/client  
5                   privilege is waived to the extent of the  
6                   allegations made in the motion.

7   A.   Sure. Yes, we did, then, have a discussion with  
8                   Mr. Avery.

9   Q.   And do you recall approximately how long that  
10                  meeting lasted?

11   A.   I would say 10 to 20 minutes, something like  
12                  that.

13   Q.   Do you remember who did most of the talking, you  
14                  or Mr. Strang?

15   A.   Probably Mr. Strang. I think he took the lead.

16   Q.   And in that meeting, was that the time when  
17                  Mr. Avery first learned that a deliberating juror  
18                  had been removed?

19   A.   Yes.

20   Q.   Did you, in that meeting, tell Mr. Avery that he  
21                  could have a mistrial?

22   A.   Yes, I'm sure we did.

23   Q.   What advice did you give him about a mistrial?

24   A.   I'm sure we talked about all three options. And  
25                  the one that was off the table from the

1 beginning, was to proceed with just 11 jurors.

2 That was never anything that I would have  
3 advised, or Mr. Strang, and I think we told  
4 Mr. Avery that.

5 So really, it came down to the two  
6 remaining ones, which is a mistrial or substitute  
7 in the alternate juror. And I think it was my  
8 advice, ultimately, but I think we told him it  
9 was his choice, but ultimately we were telling  
10 him, both of us I think were telling him, that  
11 probably we should proceed with the alternate  
12 juror.

13 And, unfortunately, part of that  
14 calculus, so to speak, involved the simple  
15 financial economic reality that neither one of us  
16 would be available on a retrial, if the case had  
17 been mistried, and would have to start all over,  
18 another six weeks, six months down the road, or  
19 whatever, that realistically we were not going to  
20 be able to be his attorneys.

21 And that was in the fee agreement, that  
22 was something I felt bad about at the end, as I  
23 walked out, I felt like it was kind of a  
24 Hobbesian choice, so to speak, for Mr. Avery, a  
25 difficult choice, that he either had to accept an

1 alternate juror, or he had to agree to a  
2 mistrial, where he would no longer have his  
3 attorneys, at the second trial, that he would be  
4 left with a court -- or public defender or public  
5 defender appointed counsel.

6 Q. So that was specifically something discussed with  
7 Mr. Avery, in that --

8 A. It was.

9 Q. -- 10 to 20 minute meeting?

10 A. It was.

11 Q. And when you discussed with him the option of  
12 substituting in the alternate, was that presented  
13 as an option that was permitted by law?

14 A. Yes, we thought it was.

15 Q. By that next morning, you were familiar with the  
16 **Lehman** decision you testified, correct?

17 A. Yes.

18 Q. But is it also correct, if I understand your  
19 testimony, that you had not gone the step of  
20 checking whether there had been any statutory  
21 changes since **Lehman**?

22 A. That's correct.

23 Q. You also testified that going with 11, 11 jurors,  
24 was off the table, so I take that to mean that  
25 was something you expressly advised Mr. Avery

1                   against; is that correct?

2       A. Yes, I'm sure we did. I don't even remember more  
3                   than a brief discussion. That was not really  
4                   even an option. I think we were pretty clear  
5                   that neither one of us would ever have agreed to  
6                   losing one addition -- you know, one -- one of --  
7                   one 12th of the minds required for a jury. So we  
8                   didn't really delve into that very much with him,  
9                   but it certainly was not presented to him as  
10                  something we would recommend.

11      Q. If the choices that actually had been allowed by  
12                  law would have been to proceed with 11 or to have  
13                  a mistrial, which of those two options would you  
14                  have recommended to Mr. Avery?

15      A. We would have recommended a mistrial, even with  
16                  the fact that we would not have been his  
17                  attorneys, unless somebody could have figured out  
18                  a way to pay us so that we could take care of our  
19                  responsibilities to our employees and the  
20                  financial requirements that we have as law firms.  
21                  Even given that, we would not have recommended  
22                  proceeding with 11 jurors.

23      Q. And based upon your experience representing  
24                  Mr. Avery over those many months, do you believe  
25                  that he would have taken your advice had you

1 recommended a mistrial?

2 A. He would have.

3 Q. On the morning of March 16, when a decision was  
4 made not to take a mistrial, had you at that  
5 point become aware that Sheriff Pagel had spoken  
6 with Juror Mahler the night before?

7 A. No.

8 Q. Had you known that, would it have affected your  
9 thinking about whether to take a mistrial?

10 A. It would have. It would have. I would have  
11 immediately said this is a mistrial.

12 Q. I just want to, so the record is clear, show you  
13 Exhibit 1 and ask if this is something that you  
14 have seen before.

15 A. Yes, it is.

16 Q. And what I'm showing you is the Court's memo  
17 dated March 16, 2007?

18 A. Correct.

19 Q. Do you recall how you became aware of the memo?

20 A. I don't clearly remember when we got this. I  
21 think it was after the trial, after the verdict,  
22 but I don't know for sure. My recollection was  
23 that it was -- Well, it says right here that the  
24 Court prepared this memo to elaborate on comments  
25 I made on the record this morning, so that the

1 record concerning why the juror was excused would  
2 be complete.

3 So it sounds like it was written after  
4 we had had the in chambers conference, after we  
5 had met with Mr. Avery, after we had gone back  
6 reported what the decision was, and after we had  
7 convened in court and announced the issue, and  
8 colloqued Mr. Avery. And then it was -- We had  
9 gone through all of that before this memo was  
10 even prepared. And that would be consistent with  
11 my recollection, that it was some time after all  
12 of that.

13 ATTORNEY HAGOPIAN: I do not have anything  
14 further.

15 THE COURT: All right. I think, Counsel,  
16 we'll take our afternoon break at this time and  
17 resume at quarter to four.

18 ATTORNEY HAGOPIAN: Thank you, your Honor.

19 ATTORNEY ASKINS: Thank you.

20 (Recess taken.)

21 THE COURT: Attorney Askins, are you going  
22 to be taking this part of the direct examination?

23 ATTORNEY ASKINS: Yes, your Honor.

24 THE COURT: You may proceed.

25 **DIRECT EXAMINATION, CONTD.**

1 BY ATTORNEY ASKINS:

2 Q. Mr. Buting, I'm going to change direction here  
3 and talk about some different subjects. Prior to  
4 Mr. Avery's trial, there were a number of motions  
5 filed by each side to outline or resolve  
6 potential trial problems; is that correct?

7 A. Yes.

8 Q. And to resolve evidentiary or anticipate  
9 evidentiary problems; would you agree?

10 A. Yes.

11 Q. And one of the areas in which the parties hashed  
12 out this sort of thing was relating to so-called  
13 **Denny** evidence; is that right?

14 A. Yes, it is.

15 Q. And do you recall that the Court ultimately  
16 ordered the defense to be prohibited from  
17 presenting evidence that any third party, other  
18 than Mr. Brendan Dassey, participated in the  
19 commission of the crimes against Ms Halbach?

20 A. That's correct.

21 Q. Now, did the Court's ruling have an affect on  
22 your trial strategy?

23 A. Yes, it did, very much. The way -- the way we  
24 analyzed it -- Let me just speak for myself. The  
25 way I analyzed it, because of the pre-trial

1                   publicity, specifically the press conference that  
2                   Mr. Kratz had when Brendan Dassey was arrested,  
3                   that presented a version of events that were so  
4                   horrific that we knew there was a great deal of  
5                   prejudice against Mr. Avery in the community, and  
6                   we knew that that version was simply false, we  
7                   knew that that version would not be presented by  
8                   the State at the trial because we could very  
9                   easily disprove it with all of the physical  
10                  evidence.

11                  I felt that this could not be just a  
12                  reasonable doubt case, where you would pick apart  
13                  the State's case and leave all these unanswered  
14                  questions, that it was my feeling from early on,  
15                  that we really needed to win this case. We  
16                  really needed to be able to point the finger at  
17                  another suspect.

18                  And that was -- We thought there were  
19                  several other suspects and that we -- I felt that  
20                  the -- that this became a sort of an O.J. Simpson  
21                  case where it was, you know, if O.J. Simpson  
22                  didn't do it, then who did, is what everybody  
23                  thinks. I felt that if it was the same way with  
24                  Steven Avery, that we would have a very hard time  
25                  getting a not guilty. Maybe a hung jury, but

1           certainly not a not guilty, and that's what we  
2           were trying for.

3           So we really wanted to show the jury  
4           that not only was he not guilty, but here's  
5           another person there who could have been guilty,  
6           or could be guilty, so that they could have some  
7           sort of comfort level in returning a not guilty  
8           verdict.

9       Q. Now, understanding that the ruling did not go the  
10      defense way, might you have called other  
11      witnesses, in addition to the witnesses you did  
12      call?

13      A. Yes. It affected us two ways: One, in the way  
14      that we would cross-examine the witnesses that  
15      the State called. And also in the way that --  
16      the decisions we had as to what witnesses to  
17      call.

18      Q. Without going into a great amount of detail, can  
19      you explain in what way cross-examination would  
20      have been different?

21      A. Well, with two of the people that we believed  
22      were prime suspects in the case, two of them were  
23      State's witnesses, one of whom, in fact, was  
24      quote, unquote, the star witness that the State  
25      relied on a great deal, and that was Bobby

1 Dassey.

2 Bobby Dassey and Scott Tadych were --  
3 had no alibi other than each other. We knew that  
4 there was -- we believed that we could show that  
5 Bobby Dassey was lying, that we had an  
6 independent, disinterested witness in the school  
7 bus driver, who could place Ms Halbach on the  
8 Avery property an hour later than he had said.

9 But, we were not able to cross-examine  
10 him, and in fact, in Mr. Kratz's closing argument  
11 and perhaps the rebuttal -- must have been the  
12 rebuttal, because I don't think the school bus  
13 driver was mentioned in his first -- he weighed  
14 the two against each other and said, you know,  
15 Bobby Dassey's more credible than the school bus  
16 driver.

17 Well, one reason Bobby Dassey might have  
18 appeared more credible than the school bus driver  
19 on the timing of all of this, is because we  
20 weren't able to cross-examine Bobby Dassey as a  
21 potential perpetrator. He was a witness, neutral  
22 witness, unbiased. And yet, we had ways  
23 of cross-exam -- or we would have used ways to  
24 cross-examine that would have presented both him  
25 and Mr. Tadych as potential suspects that the

jury should consider as perpetrators.

Q. Although Attorney Strang was able to cross-examine Bobby Dassey, correct?

A. Sure. Actually, I believe he -- Mr. Strang cross-examined both Tadych and Bobby Dassey. But the way you cross-examine somebody when they are an interested witness who is trying to save their own skin, because they could be a guilty party, is very different than the way you cross-examine a witness when your hands are tied and you are not allowed to do that.

So, you know, you may be able to present inconsistencies in the versions -- various versions of a witness, from one time to the next, and I think he did that, but without showing a motive for the witness to fabricate, you leave the jury with, and you leave the State with the ability to just argue, well, these are minor inconsistencies. They don't matter. This is an otherwise uninterested party.

Very different than you would if there was, for instance, if it's a snitch in a case, an informant, or somebody who is a suspect who, therefore, has a motive, that a neutral witness wouldn't.

1 Q. Now, you did the primary closing argument in this  
2 case; do you recall your closing argument?

3 A. I do.

4 Q. Did the trial court's **Denny** ruling affect your  
5 closing argument?

6 A. Very much.

7 Q. As an experienced defense attorney, what do you  
8 try to accomplish in a closing argument?

9 A. Well, certainly reasonable doubt is where you  
10 start. As I said, in this case, though, I wanted  
11 to be able to do more. I wanted to be able to  
12 give the jury not just reasons to doubt the  
13 evidence the State had massed against Mr. Avery,  
14 but also to consider that there were other  
15 suspects, other people with opportunity, access,  
16 and as much motive as Mr. Avery, which is to say  
17 really none that anybody could divine. But that  
18 was our argument, before the trial, about why we  
19 thought we should be allowed to do that.

20 I believe at one point I was  
21 interrupted, or there was an objection to my  
22 cross-examination, by Mr. Kratz, when I had --  
23 What I tried to do throughout the trial, in order  
24 to try and get around, as best we could, the  
25 **Denny** ruling, of course, the **Denny** ruling, we

1           knew there was **Kyles vs. Whitley**, U.S. Supreme  
2           Court case that said that we could explore the  
3           bias, investigative bias of the officers. And so  
4           as a very weak substitute to being able to point  
5           the finger at another suspect, we tried to show  
6           that there were other suspects that the police  
7           just didn't investigate.

8           We weren't able to cross-examine the  
9           suspects themselves that way, but we could -- we  
10          could point out to the jury that so and so didn't  
11          have an alibi and wasn't asked, or claimed to  
12          have an alibi and the police didn't follow up,  
13          and that sort of thing. So I think I was at a  
14          point in my closing where I was trying to  
15          contrast Bobby Dassey's testimony with Lisa  
16          Buchner, the bus driver.

17          And at one point I said, made reference  
18          to Mr. Kratz's claim that Bobby Dassey was the  
19          last person to see Teresa Halbach alive, and I  
20          said, well, that may be true if he was the  
21          killer, or something like that, and was objected  
22          to.

23          And as I recall we -- I was allowed to  
24          proceed to the end of the closing. We took a  
25          break, and then the -- there was discussion about

1           Mr. Kratz wanted the jury to be instructed  
2           about -- that I was -- I don't know, I don't  
3           remember exactly how it was, the record would  
4           show that. But somehow or another I was  
5           basically squashed in my ability to try and paint  
6           somebody else as a suspect, which I thought I  
7           really couldn't do any way.

8           That, frankly, was just a slip of the  
9           phrasing. I hadn't actually intended to go into  
10          that in my closing, but clearly that was the  
11          line, the line the State was drawing, and they  
12          weren't going to let me go past it.

13          Q. Your understanding was you could not name  
14          particular individuals in your closing argument  
15          as alternative suspects?

16          A. The most I could do was argue that the State  
17          failed to investigate other possible suspects. I  
18          couldn't name any. I couldn't explain why  
19          someone would lie because I believed they were a  
20          suspect. I couldn't do any of that.

21          Q. Now, you were able, it seemed, to talk a little  
22          bit about the so-called hustle shot; is that  
23          correct, during the course of the trial?

24          A. Yes.

25          Q. And if I recall the testimony correctly, I think

1           maybe the receptionist at *Auto Trader*, or one of  
2           the other individuals there, testified to what a  
3           hustle shot is. Is that your recollection?

4         A. Yes.

5         Q. And you obviously were there, I'm reading the  
6           transcript, I'm thinking that you were able to  
7           get a little bit of information in about the  
8           so-called hustle shot theory of the defense. Is  
9           that -- Am I reading too much into that  
10          transcript, or was there something there about  
11          the hustle shot?

12        A. Well, one of the -- one of the theories that we  
13          were working on was that the real killer was  
14          somebody that she had done a hustle shot with, so  
15          to speak, and that it seemed absurd that you  
16          would call the office, leave a paper trail, you  
17          know, here, come on out to Avery Road, and that  
18          you would then kill that person, when you had  
19          such an easy link.

20           But that I knew that hustle shots were  
21          arrangements that the individual photographers  
22          made on their own, rather than a referral for a  
23          job from the front office. So, as I understood  
24          this process, the only record of when one of the  
25          photographers would hustle their own business, or

1           their own business, the only record of that and  
2           who that person was would come after the fact,  
3           when the photographer would then submit a bill to  
4           *Auto Trader* and get paid double what they would  
5           otherwise.

6           So, to me that made a lot more sense, as  
7           the sort of scenario where somebody would have  
8           killed her, if it was somebody in a situation  
9           like that. I'm not sure when I first started  
10          getting into that information, the State was --  
11          knew where I was going with it, and whether, you  
12          know, whether they knew that I was trying to  
13          develop a possible other suspect theory without  
14          really getting into who or naming anybody.

15          But that much I was able to get into,  
16          and I argued that to the jury, that she had a  
17          history of that, just within the last month. I  
18          forget what it was, 10 or 12 cases like that  
19          where she had hustled. She was good at her job,  
20          obviously, and she was able to get that kind of  
21          business. But I couldn't point the finger at any  
22          particular individual as a suspect who did that.

23 Q.       The trial court's ruling, then, did have an  
24       affect on your development of the hustle shot  
25       theory; is that correct?

1 A. Yes. If I could just explain how.

2 Q. Sure.

3 A. Specifically, we thought that she had -- was on  
4 her way out from the Avery property, having  
5 completed her job with Steven Avery, when one of  
6 these other suspects flagged her down and  
7 suggested that she take another picture, hey,  
8 I've got another car over here, or truck, or  
9 something, and that they, in fact, were the ones  
10 that were the perpetrator, after that.

11 Q. And did you feel that you could have developed  
12 that theory of other possible suspects had the  
13 Court ruled for the defense in the **Denny** area?

14 A. Yes, I did.

15 ATTORNEY ASKINS: I have no further  
16 questions for this witness.

17 THE COURT: Mr. Fallon.

18 ATTORNEY FALLON: Thank you.

19 CROSS-EXAMINATION

20 BY ATTORNEY FALLON:

21 Q. Mr. Buting, as I understand it, you have  
22 practiced primarily criminal defense law for  
23 approximately 28 years?

24 A. That's correct.

25 Q. The extent or the vast majority of your practice

1           is in criminal defense?

2   A.   Almost exclusively.

3   Q.   All right. And you have been in your own  
4       business, your own law practice, for several  
5       years now, correct?

6   A.   Yes, it's 16 years.

7   Q.   And prior to that time you worked at a couple of  
8       different law firms; is that correct?

9   A.   I worked at the Public Defender's Office,  
10      Milwaukee Trial, for the first nine years of my  
11      career, and then I was in a private firm for  
12      about three or four years, and then I opened my  
13      own practice.

14   Q.   Then you opened your practice?

15   A.   Right.

16   Q.   And your practice is primarily state court  
17      practice, or do you do some federal criminal  
18      defense work as well?

19   A.   I do some federal, but the great bulk is state  
20      court.

21   Q.   All right. You have argued cases before the  
22      Wisconsin Court of Appeals?

23   A.   Yes.

24   Q.   And you have argued cases in front of the  
25      Wisconsin Supreme Court, correct?

1 A. Yes.

2 Q. I believe you have also been admitted to the U.S.

3 Supreme Court bar?

4 A. Yes.

5 Q. Argued a case there?

6 A. I have not.

7 Q. You have not yet.

8 A. I have filed briefs and petitions, opposed

9 petitions, but not had a case actually accepted

10 in the Supreme Court.

11 Q. All right. And you have tried a significant

12 number of cases as a defense attorney, correct?

13 A. Yes.

14 Q. All right. Over a hundred?

15 A. Probably not. I was trying to think about that

16 the other night, probably somewhere in the area

17 of 50. I had a much higher volume when I was a

18 public defender.

19 Q. Public defender than private practice?

20 A. Right.

21 Q. Right. All right. I'm going to -- We'll start

22 with the juror issue, all right?

23 A. Sure.

24 Q. Okay. There's some background stuff that I just

25 want to talk about. We have kind of walked all

1           around it today, but we don't have anything on  
2           the record. We'll get into more detail, but just  
3           generally, at the time the call came in, as near  
4           as you recollect or believed, you and Mr. Strang  
5           were in the Appleton area having dinner?

6         A. Yes, I believe it was.

7         Q. And Mr. Kratz, as far as you knew, was at home?

8         A. I had no idea where he was.

9         Q. And he lives in the Appleton area, right?

10        A. I'm not sure I even knew that, but.

11        Q. All right. And since the jury had retired, you  
12           knew that Judge Willis, or at least believed that  
13           Judge Willis and his staff had returned here to  
14           Manitowoc?

15        A. I assume so.

16        Q. All right. And that Mr. Gahn and I were  
17           elsewhere, Chilton, or someplace else?

18        A. I had no idea exactly where you were.

19        Q. The point being is that when this all occurred on  
20           the night of March 15th, we were all spread out  
21           in different locations in the area?

22        A. That's fair to say, yes.

23        Q. Okay. Now, we have had some discussion, I think  
24           from co-counsel and from yourself, that you had a  
25           fee agreement to represent Mr. Avery through the

initial trial and sentencing; would that be fair?

A. Through the initial trial and in the event there was a sentencing, we hoped there wasn't, obviously, but, yes, I believe it went that far.

Q. And you obtained from him a fee for those services, a flat fee agreement I believe it's called?

A. Correct.

Q. All right. And the flat fee in this case that was -- was split between you equally?

A. It wasn't exactly equal. There was -- I took a lesser amount initially, with the understanding that Mr. Strang's firm would be responsible for any costs that exceeded the amount that they put into a trust account as a reserve for costs.

Q. All right. And what was the amount that the fee  
agreement was for?

A. I believe -- He had settled his civil rights case for 400,000. By the time the -- those civil rights attorneys took their share of it and the costs, I think he came out with about 240,000. And I took 100, Mr. Strang took -- I don't remember exactly how much. I think there was 20 in reserve, so he was probably 120.

We knew even then, though, with the

1           amount of work that this -- although it initially  
2           sounded like a lot, that when you break it down  
3           to the amount of work we were going to have to do  
4           on this case, we knew it wasn't going to be  
5           enough, so there -- enough certainly to go  
6           through it twice. And so that's why we put in  
7           the fee agreement that this was going to be a one  
8           trial only.

9       Q. One trial only deal. And so some of that money  
10      had to be set aside for expenses associated with  
11      the investigation and preparation for the ...

12      A. Correct.

13      Q. Not just your attorney time?

14      A. That's right.

15      Q. Right. Okay. All right. So let's back up. And  
16      as I understand it, when you originally came on  
17      in this particular case, the agreement was that  
18      you and Mr. Strang would -- would do your  
19      darndest to obtain an acquittal in this case? I  
20      think he used the phrase you weren't going to  
21      just play for the fumbles, you were going to go  
22      for the win.

23      A. That's right. And that was -- that was my view  
24      all along, was that we were -- you know, that we  
25      were going to try and win this with a not guilty

1                   verdict, not just a hung jury or a mistrial,  
2                   because we thought that Mr. Avery was innocent  
3                   and that he had suffered 18 years of wrongful  
4                   conviction and that he deserved a resolution in  
5                   this one trial.

6                   And that was our strategy all along.  
7                   That was one of the reasons why we were working  
8                   on the whole idea of trying to offer the jury  
9                   some other suspect.

10          Q.     All right. And you had the feeling going in that  
11               he deserved the best -- the very best defense  
12               that could be mounted?

13          A.     That's right.

14          Q.     All right.

15          A.     And I think we gave him the very best effort that  
16               we could.

17          Q.     All right. And you would agree that when you  
18               have decisions to make as a lawyer in this  
19               particular case, that some decisions are made in  
20               conjunction with the client and his wishes?

21          A.     That's right.

22          Q.     All right. Some wishes -- some decisions are  
23               made solely by the client?

24          A.     That's right.

25          Q.     All right. And in those situations, you do your

1           best to make a recommendation to them, and that  
2           recommendation is based on what you think is in  
3           his best interest?

4       A. That's right. And -- But we do try and present  
5           the options fairly, and -- and, you know, present  
6           to him what we think the law allows or what it  
7           doesn't allow. And in the particular instance of  
8           this alternate juror substitution in we, frankly,  
9           got that wrong, I think. I think everybody did.

10      Q. And while we're on that point, but what it turns  
11           out is, it did give you and Mr. -- you, meaning  
12           you and Mr. Strang and Mr. Avery, it did give you  
13           a third option that may or may not have been  
14           there otherwise?

15      A. The **Lehman** case?

16      Q. Well, in terms of how we came to this decision in  
17           this case, there was the third option of  
18           proceeding with a substitute juror?

19      A. Right. We thought that that was still available  
20           by law and that was what we recommended to him.

21      Q. All right. And you recommended it to him because  
22           that third option was based on everything that  
23           you knew at the time, that that was in  
24           Mr. Avery's best interest to go with that option  
25           rather than the other -- either one of the other

1 two?

2 A. We felt that, yes.

3 Q. All right. And that's because the -- I take it  
4 from your comments on direct examination you are  
5 not a fan, as it were, of proceeding with 11  
6 jurors?

7 A. That's right.

8 Q. All right. And why not?

9 A. I don't think -- I don't think it's ever a good  
10 idea to give up one 12th of your mind, collective  
11 mind of a jury. Twelve people, that one extra  
12 person can bring a perspective that the other 11  
13 don't have. And I think there's a reason we have  
14 got 12, we have always had 12. And I have never  
15 agreed to a situation where we proceed with 11.

16 Q. And in this particular case, viewing that you had  
17 three options, you did not believe that a motion  
18 for mistrial, based on what you knew at the time,  
19 was in the best interest, all things considered.

20 A. That was a very difficult choice because we knew  
21 that he could -- could have gotten a mistrial and  
22 that that would have been, frankly, a guaranteed  
23 mistrial. And what made it so difficult is that,  
24 you know, in most first degree homicide cases, if  
25 you get to the point where you have a chance to

1           get a guaranteed mistrial, I think most of the  
2           time I advise a client to do that.

3           In this case, though, we had the  
4           difficult calculus that we knew that if we did  
5           that he would have other counsel, and we had to  
6           explain that to him. I think it would have been  
7           unfair to say, okay, let's get a mistrial, and  
8           say, oh, by the way, we're not going to be your  
9           lawyers.

10          I didn't feel good about doing it  
11          because I had a responsibility to Mr. Avery, and  
12          we did our best. But we also had economic  
13          realities of our own law firms, and our own  
14          employees. And we had to, you know -- we  
15          couldn't -- we already spent an entire year on  
16          the case, probably were making \$10 an hour by  
17          then. And so that made it difficult in this  
18          case, and I don't know that I ever encountered  
19          that dilemma before.

20 Q.       And I think, as you said earlier, you thought  
21       that you had done, under all circumstances, the  
22       very best that you could with the presentation of  
23       the case?

24 A.       I did.

25 Q.       All right. And it would be fair to say, looking

1                   at it from your perspective, you meaning the  
2                   defense attorney's perspective, that the case  
3                   went in about as well as one could expect, all  
4                   things considered?

5       A.   I did, with perhaps the one exception being the  
6                   EDTA FBI test, that was sort of sprung on us in  
7                   the middle of the trial, when we didn't have a  
8                   chance to redo our own test.

9                   But otherwise, I thought that the --  
10                  that and the fact that the State, I think wisely,  
11                  decided not to call Brendan Dassey as a witness,  
12                  because I think the case might have gone in  
13                  better had that actually -- if we had just  
14                  brought in that elephant in the room and we had  
15                  just dealt with him, showed the jurors how that  
16                  information that they may have gotten elsewhere  
17                  and was hard to unring the bell that they had  
18                  heard, we were hoping that you would call Brendan  
19                  Dassey so we could expose the confessions as  
20                  false. And then that would have made the case go  
21                  in better. But absent that, I think the case  
22                  went in about as well as we could hope.

23       Q.   And you realize, of course, you had no control  
24                  over what prosecution strategy would be selected  
25                  and implemented?

1 A. We didn't. Although we did consider calling  
2 Brendan Dassey ourselves, and thought that that  
3 was just too risky to do, so we did not.

4 Q. So the point being, is that all things  
5 considered, evaluating, you were reasonably  
6 comfortable with the status of the evidence that  
7 the jury was now considering?

8 A. Sure.

9 Q. All right. And as you presented these options to  
10 Mr. Avery, based on the effort that you have put  
11 in and the amount of work, you believe that you  
12 and Mr. Strang presented him with his best  
13 opportunity at obtaining an acquittal, or perhaps  
14 a mistrial if the jury came to that point?

15 A. Given the constraints that we had with the **Denny**  
16 motion, and the EDTA test, yes.

17 Q. All right. And if, in fact, there had been a  
18 retrial, then both sides would have the  
19 opportunity to reevaluate each other's trial  
20 strategies and adjust accordingly?

21 A. That's correct.

22 Q. All right. And as it pertains to Mr. Avery's  
23 situation, all things considered, you thought it  
24 was in his best interest for the current jury to  
25 continue to deliberate on the status of the

1                   evidence that they had been presented?

2 A. Given the information I had, yes.

3 Q. All right. In fact, the parties had contemplated  
4                   the very possibility that there would be a need,  
5                   or there might be a need for a substitute juror  
6                   by the manner in which the alternates were  
7                   removed from the panel, correct?

8 A. You know, I was trying to recall what sort of  
9                   discussions we had, and I haven't seen the whole  
10                  transcript myself, but I don't know whether it  
11                  was on the record or whether these were in  
12                  chambers discussions, what sort of discussions we  
13                  had as a group on what to do with the alternates.  
14                  And I don't think we ever -- I know none of us  
15                  ever saw the statute that says that they should  
16                  be dismissed once the case is submitted to the  
17                  jury. And I don't recall what discussions were  
18                  made for how that alternate juror would be  
19                  housed.

20 Q. All right. Let me try to jog your recollection  
21                  here. Is it not true that Mr. Strang, your  
22                  colleague, suggested that rather than removal  
23                  of -- rather than determining the identity of the  
24                  alternates by -- let me rephrase that. Once the  
25                  identity of the alternates was determined by lot,

1           he suggested that the parties each take one  
2           peremptory challenge to remove the alternate,  
3           such that there would be one left?

4       A. That's right.

5       Q. Right. And in that particular case, the defense  
6           had their eyes on one particular juror who turned  
7           out to be an alternate, that they did want  
8           removed from the panel, correct?

9       A. That we did want removed?

10      Q. Yes.

11      A. Yes, there was one particular juror that we  
12           thought had been talking about the case, should  
13           have been removed in a voir dire that I think  
14           that we had in chambers, and wasn't. I think  
15           we're talking about the same one.

16      Q. And there was one other juror who was somehow --  
17           in the middle of trial remembered some prior  
18           association with a witness?

19      A. That's right.

20      Q. Right.

21      A. Yes.

22      Q. And so each of those jurors were removed in this  
23           process of one peremptory for each team?

24      A. Correct. But as I recall, that discussion, I  
25           actually wasn't initially party to that. I think

1           we had some conflict in chambers when I --

2           Mr. Strang had made an agreement that I wasn't  
3           quite as comfortable with when we talked about  
4           it.

5           But that was before the closings had  
6           even begun. And that was back, I think the day  
7           before the closings, when counsel was working  
8           on -- with the Court on jury instructions. And I  
9           think that's the way that came about.

10          Q. In any event, the lone remaining alternate was  
11           agreeable to both sides?

12          A. Yes. And, actually, I thought that if -- if we  
13           had to have her as a juror, that she would be an  
14           all right juror for the defense. That was the  
15           sense that I had.

16          Q. And the parties agreed that she would be  
17           sequestered in the -- in the hotel, but in an  
18           entirely different area from the rest of the  
19           jurors, just in case a need did arise, correct?

20          A. You know that's the part I do not recall. I  
21           don't know if I was absent for that part of the  
22           discussion, but I -- for instance, I was trying  
23           to consider what arrangements were made for her  
24           security.

25           There was only two bailiffs that had

1           been sworn, and I don't know how exactly it was  
2           agreed that that juror would be kept separate,  
3           which -- who would eat dinner with her, would  
4           there only be one bailiff with the other 12. I  
5           just don't remember any of those kinds of  
6           discussions, and so I don't know that -- that I  
7           was actually part of that discussion or not. I  
8           just can't recall.

9       Q. All right. In any event, when you came in the  
10      next day, you were aware that the Court had  
11      already excused Mr. Mahler?

12      A. I believe we learned that that night before, yes.

13      Q. Right. So you had the night to at least sleep on  
14      it, as it were, and contemplate what was likely  
15      to occur the next day?

16      A. Yes.

17      Q. And you did a little research, reviewed the  
18      **Lehman** case?

19      A. I did none of the -- I did no independent  
20      research. I know Mr. Strang did find -- did some  
21      research, found **Lehman**. He Sheppardized it, as  
22      they say, found that it wasn't overruled, it was  
23      still good law, case law anyway. And so -- And  
24      then when we came into chambers, I believe the  
25      Court had also found that case, or maybe yourself

1           as well, so that was the basic extent.

2   Q.   And the Court at that time, also in that early  
3       morning conference in chambers, before you went  
4       to talk with Mr. Avery, the Court filled us in as  
5       to the -- more of the events of the night before?

6   A.   I don't know what more of the events there were  
7       that we were filled in, I don't recall that.

8   Q.   Nothing?

9   A.   I don't.

10   Q.   At that particular point, then, you asked for  
11       time to go consult with Mr. Avery, as to the  
12       likely course of events?

13   A.   Yes.

14   Q.   And that particular time, you realized that  
15       Mr. Avery, and only Mr. Avery, held the mistrial  
16       key in his hand?

17   A.   That's right.

18   Q.   And whether or not the case was going to be  
19       mistried, go with 11, or go with the substitute,  
20       that decision was going to be his?

21   A.   With our advice.

22   Q.   With your advice?

23   A.   Yes.

24   Q.   All right.

25   A.   Although I will say --

1 Q. Well, let me ask a question.

2 A. Okay. Go ahead.

3 Q. You also agree that the prosecution had really no  
4 say in what any of those three options were, that  
5 was entirely a defense call?

6 A. The prosecution's only say would have been to  
7 present the new statute that said one of those  
8 options wasn't on the table. And none of us  
9 caught that, and so we presented the wrong set of  
10 options to Mr. Avery.

11 Q. I understand your point of view. My question  
12 was, on the options that you believe you had, and  
13 the ones you presented to Mr. Avery, the  
14 prosecution had no choice; it was entirely his  
15 choice as to which of those three options?

16 A. The prosecution's choice could have been, excuse  
17 me, Judge, the only option here is mistrial or  
18 11. Other than that, I don't think the  
19 prosecution could have controlled the decision,  
20 but I think the prosecution could have corrected  
21 it --

22 Q. And that's assuming, for the sake of argument,  
23 that anyone knew of that particular change?

24 A. That's right.

25 Q. Based on the information that was presented,

1           however, that morning, the choice was  
2           Mr. Avery's?

3       A. Yes.

4       Q. Okay. And when you sat down with Mr. Avery, you  
5           recommended, rather quickly, against proceeding  
6           with 11?

7       A. That's right.

8       Q. And the discussion then centered on, well, should  
9           we mistry it or should we go with 12?

10      A. That's right.

11      Q. And, ultimately, you recommended to him that you  
12           proceed with the substitute juror?

13      A. That's right.

14      Q. And at that particular time, and under the  
15           circumstances as they existed, you believed that  
16           that was in his best interest?

17      A. Yes.

18      Q. And he was agreeable with your recommendation?

19      A. He was. He was agreeable with virtually all of  
20           our recommendations throughout the trial.

21      Q. He trusted you?

22      A. He did.

23      Q. All right. He believed that you were operating  
24           in his best interests?

25      A. He did.

1 Q. And you were operating in his best interests?

2 A. We tried. We missed this particular point, but  
3 we tried.

4 ATTORNEY FALLON: If I may have a moment,  
5 Judge.

6 THE COURT: Go ahead.

7 ATTORNEY FALLON: Pass the witness.

8 THE COURT: Any redirect?

9 ATTORNEY HAGOPIAN: Just a very few  
10 questions, please.

11 **REDIRECT EXAMINATION**

12 BY ATTORNEY HAGOPIAN:

13 Q. Now, you have testified that, in your view, the  
14 alternate who was left was generally an agreeable  
15 juror, from your perspective?

16 A. Yes.

17 Q. But before the situation arose on the night of  
18 March 15th, you also viewed Mr. Mahler as an  
19 agreeable juror, from your perspective?

20 ATTORNEY FALLON: Objection, asked and  
21 answered. He already commented on what he thought  
22 was Mr. Mahler's suitability.

23 THE COURT: He did. I guess I viewed the  
24 question as foundational for another question. So  
25 contingently, at least, I'm going to allow it.

1 Q. (By Attorney Hagopian)~ And in fact, you had  
2 testified that you viewed Mr. Mahler as perhaps  
3 favorable to the defense?

4 A. I did. And I think Mr. Avery preferred him. The  
5 one thing that Mr. Avery was able to provide us  
6 assistant with -- assistance with in the trial  
7 was to try and -- that sort of -- the body  
8 language that the jurors were showing, something  
9 only a defendant can tell is, are you getting  
10 good vibes or good feelings from particular  
11 jurors.

12 They are not always accurate because  
13 sometimes jurors can't be read that easily, but I  
14 do recall that he was disappointed when we told  
15 him, in the morning, that Mr. Mahler was gone,  
16 because he thought that he was a juror that he  
17 was comfortable with or was -- I don't remember,  
18 specifically, if he was getting really good vibes  
19 from him, but he thought that he was a favorable  
20 witness -- or, I'm sorry, a favorable juror.

21 Q. You have also testified that you entered into  
22 this case with Mr. Strang with the strategy that  
23 you were trying for a not guilty verdict?

24 A. That's right.

25 Q. You wanted to win?

1 A. That's right.

2 Q. But would you also say, and I gleaned from your  
3 testimony that there would be some instances  
4 where you felt that you could no longer pursue  
5 that goal, that a mistrial would be necessary?

6 A. Certainly. In fact, I think we made several  
7 motions for mistrial during the process of the  
8 case. Renewed them at the end, especially  
9 involving the EDTA testing and that sort of  
10 thing.

11 So we moved for mistrial. There were  
12 some circumstances where we felt a mistrial would  
13 be necessary, but it wasn't a goal sometimes you  
14 shoot for as, you know, playing for the fumble,  
15 or whatever it might be, to try and -- Sometimes  
16 in a case, if you get a mistrial, there's a  
17 potential for negotiations, better negotiations  
18 than you had the first time. I never thought  
19 that that was realistic in this case, so that  
20 wasn't a strategy we were shooting for.

21 Q. Was it your thought that in the instances where  
22 the goal of a not guilty verdict would have to  
23 yield to the necessity for a mistrial, would be  
24 when there was some error that you thought was so  
25 grave that it really impacted the case --

1 A. Yes.

2 Q. -- severely?

3 A. And that would be true in the instance of any  
4 contact between a juror and Mr. -- and Sheriff  
5 Pagel, as I gave an example. I would have, even  
6 though I wanted to win, and even though I thought  
7 the case had come in well, had I known that, I  
8 would have viewed that as so serious. Again, I  
9 was hypervigilant, suspicious, conspiratorial,  
10 whatever, about police involvement in this case,  
11 because of what we -- the way we thought it  
12 developed.

13 And if there had been any inkling that  
14 Sheriff Pagel was having direct contact with  
15 deliberating jurors, everything we -- I said  
16 about wanting to win this case would have gone  
17 out the door and I would have recommended a  
18 mistrial. That's one example.

19 Q. You have also referred to your understanding of  
20 the law about substituting in an alternate as a  
21 mistaken view, correct?

22 A. I believe so now that I have looked at the  
23 statute that was analyzed in *Lehman*, which was  
24 silent on the issue, and then shortly thereafter,  
25 the statute that was enacted which specifically

1           says that jurors -- alternates shall be  
2           dismissed, I forget the exact phraseology, but  
3           when the case is submitted to the jury.

4                 I don't think if I had seen that  
5                 statute, and if I had known of it, I would have  
6                 suggested to Mr. Avery that he had that third  
7                 option.

8 Q.          So that would have been another example of an  
9                 instance where your desire for a not guilty  
10                 verdict would have had to yield to the need for a  
11                 mistrial?

12 A.         It would because, as I said, the 11 jury -- 11  
13                 juror option was never something I would  
14                 consider. And then he would have been left with  
15                 just mistrial or 11 jurors, and I would have  
16                 recommended mistrial.

17                 ATTORNEY HAGOPIAN: That completes our  
18                 questioning.

19                 THE COURT: Anything else, Mr. Fallon?

20                 ATTORNEY FALLON: Tempting, but no.

21                 THE COURT: All right. You are excused.

22                 THE WITNESS: Thank you. Am I no longer  
23                 sequestered?

24                 ATTORNEY HAGOPIAN: Yes, that would be my  
25                 view.

1                   THE COURT: Yes, and free to leave as well?

2                   ATTORNEY HAGOPIAN: Yes, free to leave.

3                   Your Honor, may I request about a 10 minute recess.

4                   THE COURT: Yes.

5                   ATTORNEY HAGOPIAN: Thank you.

6                   (Recess taken.)

7                   THE COURT: Attorney Hagopian, are there  
8                   any further witnesses for the defense?

9                   ATTORNEY HAGOPIAN: No, there are not.

10                  THE COURT: Are there any witnesses for the  
11                  State?

12                  ATTORNEY FALLON: Your Honor, the State has  
13                  decided not to pursue rebuttal witnesses on this  
14                  matter. However, we would ask the Court to engage  
15                  in a colloquy with Mr. Avery regarding his decision  
16                  not to testify in this post-conviction matter.

17                  THE COURT: All right. Well, that's new  
18                  ground for me. I'm not sure what his rights are in  
19                  a post-conviction hearing. But Mr. Avery, assuming  
20                  that your rights are similar to what they are in a  
21                  criminal hearing, do you understand that --

22                  Frankly, I'm hesitant to say that you  
23                  have a constitutional right to testify at this  
24                  hearing, because I don't know if you do. Do the  
25                  attorneys have any authority for such a right

1 existing?

2 ATTORNEY FALLON: Your Honor, I think there  
3 is one by implication, similar to the trial right,  
4 because this does involve evidentiary testimony. It  
5 involves decision making that affected the outcome  
6 in the case, and it is his case. And I think he  
7 would have the right to testify or not to testify,  
8 similar to a trial.

9 Secondly, and also by implication, there  
10 is a creature in the common law known as  
11 ineffective assistance of appellate counsel. And  
12 I want to make sure -- we have just had that  
13 experience -- they have conferred with him. And  
14 I think prudence suggests that we go over the  
15 matter with him. Because it is, in fact, his  
16 case and his decisions, again, based on the  
17 recommendations of counsel. And I would like the  
18 record to reflect that they have been adequately  
19 considered.

20 THE COURT: Very well. I'm certainly  
21 willing to engage in a colloquy that I believe I can  
22 word such as to cover the situation where there is  
23 or is not a constitutional right.

24 Mr. Avery, let me ask you, first, it's  
25 my understanding that you have just had some time

1                   during the recent break to confer with your  
2                   attorneys about whether or not you would be  
3                   testifying at today's post-conviction motion  
4                   hearing; is that correct?

5                   THE DEFENDANT: Yes, it is.

6                   THE COURT: Do you feel that you have had  
7                   adequate opportunity to confer with your attorneys  
8                   about your decision whether or not to testify?

9                   THE DEFENDANT: Yes, I did.

10                  THE COURT: Do you understand that you may,  
11                  at least, have a constitutional right to testify at  
12                  this hearing, even if you didn't agree with your  
13                  attorneys, should they have advised you not to  
14                  testify?

15                  THE DEFENDANT: Yes.

16                  THE COURT: And let me ask you this, is it  
17                  your decision, even independent of any advice you  
18                  may have received from your attorneys, not to  
19                  testify at today's hearing?

20                  THE DEFENDANT: Yes.

21                  THE COURT: And do you make that decision  
22                  with the understanding that if you disagreed with  
23                  them and wanted to testify you may well have a right  
24                  to do so?

25                  THE DEFENDANT: Yes, I do.

1                   THE COURT: Do you feel you have had  
2                   adequate time to make your decision in this case?

3                   THE DEFENDANT: Yes.

4                   THE COURT: And do you have any questions  
5                   you wish to ask at this time of either me or your  
6                   attorneys about your right to testify at this  
7                   hearing?

8                   THE DEFENDANT: No, I have no questions.

9                   THE COURT: Very well, the Court will -- is  
10                  satisfied that, as I indicated, whether or not you  
11                  have a constitutional right to testify at this  
12                  hearing, that you have independently made the  
13                  determination, along with in consultation with your  
14                  attorneys, not to testify.

15                  Otherwise, at this point, Counsel, my  
16                  intention would be to set a briefing schedule.  
17                  And I will ask the defense, first, how much time  
18                  you need to submit a brief in support of your  
19                  post-conviction motion?

20                  ATTORNEY HAGOPIAN: Our preference, your  
21                  Honor, would be to write the brief, at least, and  
22                  have it in final form, once we have the transcript  
23                  from today's hearing.

24                  THE COURT: That's a fair question. I  
25                  actually had a note to myself, which I neglected to

1           read, asking when we might have a transcript.

2           Diane, what do you think?

3           COURT REPORTER: I would say two weeks.

4           THE COURT: Okay. That puts us to -- let's  
5       see -- October 12th.

6           ATTORNEY HAGOPIAN: Then I would ask that  
7       we would have two weeks, then, upon receipt of the  
8       transcript, to submit our brief.

9           THE COURT: All right. Let's say, assuming  
10      that the transcript is to you by October 12th, we'll  
11      set it at October 26th, with the understanding that  
12      if for some reason the transcript is delayed, you  
13      have the right to request an extension of that date.  
14      Mr. Fallon, how much time for the State to respond?

15           ATTORNEY FALLON: I guess I was under the  
16      impression, based on previous discussions, that  
17      there was going to be a simultaneous briefing, so  
18      that the Court would have adequate time to decide  
19      the case and meet the December 1st deadline.  
20      Counsel is now suggesting they want additional  
21      briefing and reply brief --

22           THE COURT: Well, I'm perfectly willing  
23      to -- What if we had both of you submit briefs by  
24      the 26th and then replies by the -- how about the  
25      4th of November, to give me -- that's about 10 days

1 to give me an opportunity to get it, because I think  
2 I'm going to issue a written decision in this case  
3 and I don't know that it's going to be short.

4 ATTORNEY HAGOPIAN: I have no objection to  
5 the simultaneous briefing, but I would ask the Court  
6 if we could have, and then the State as well, but we  
7 really feel we would need two weeks to file a  
8 response brief. And the reason, your Honor, is that  
9 we have basically had our argument out here,  
10 available to the State, for some time. And, they  
11 understandably, have not submitted anything in  
12 writing as to their position.

13 THE COURT: All right. So October 26th for  
14 initial briefs and November 9 for replies?

15 ATTORNEY HAGOPIAN: That would be very  
16 good.

17 THE COURT: Does that work for the State?

18 ATTORNEY FALLON: It's not very good for my  
19 schedule, but I will just have to make it work.

20 THE COURT: All right. Is there anything  
21 further either party believes needs addressing  
22 today?

23 ATTORNEY FALLON: What day is November 9th,  
24 if I could ask?

25 THE COURT: These are both Mondays. If

1           anybody has a different day request, now is the time  
2           to make it.

3           ATTORNEY FALLON: Could I have until Friday  
4           of that week?

5           THE COURT: All right. Why don't I do --  
6           Let's do both of these then. Let's make it -- Just  
7           to avoid the need for any adjournments, I'm going to  
8           give you Friday, the 30th, for your initial briefs.  
9           And I sure hope I'm looking at a 2009 calendar here,  
10          this isn't my bench -- but, yes. I'm sorry, just a  
11          second. Okay. The 30th -- Friday, the 30th, for  
12          initial briefs, and Friday November 13th for  
13          replies.

14           ATTORNEY FALLON: Thank you.

15           THE COURT: And if I have to request one of  
16          the parties to ask for another extension from the  
17          Court of Appeals, I will let you know.

18           ATTORNEY HAGOPIAN: Certainly.

19           THE COURT: Anything else?

20           ATTORNEY HAGOPIAN: No.

21           THE COURT: Very well, we're adjourned for  
22          today.

23           ATTORNEY FALLON: Thank you.

24           (Proceedings concluded.)

25

1 STATE OF WISCONSIN    )  
2                         )ss  
3 COUNTY OF MANITOWOC )

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 9th day of October, 2009.  
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19                       Diane Tesheneck, RPR  
20                       Official Court Reporter  
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