

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, MOTION HEARINGS

5 vs.

6 Case No. 05 CF 381

7 STEVEN A. AVERY,

8 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 "affect 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 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 unbiased 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.

1 ATTORNEY FALLON: I do have two requests of
2 the Court. I would ask the Court to take judicial
3 notice of the fact that the Criminal Complaint in
4 this case, charging Mr. Avery with first-degree
5 intentional homicide, was filed, I believe, on
6 November 15th, 2005. And I would further ask the
7 Court to take judicial notice of the fact that the
8 preliminary examination in this case occurred on or
9 about December 6th, 2005.

10 ATTORNEY STRANG: I think it's appropriate
11 for the Court to take judicial notice of anything on
12 the docket, or in the court files, on this case.
13 And, indeed, as we proceed to further briefing, or
14 argument on this, I also may ask the Court to take
15 notice of, you know, certain dates, for example,
16 when the Original Criminal Complaint was filed.

17 THE COURT: All right. The Court will do
18 so. We have got one more witness on this issue?

19 ATTORNEY FALLON: That's correct. We're
20 going to defer to the defense to call that witness.
21 We're going to rest our presentation of evidence.

22 THE COURT: All right. I'm going to take a
23 10 minute break at this time and then we'll come
24 back at that time and hear that witness.

25 (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.

1 (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.

21 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 to.

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

1 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 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 to 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

1 Mr. Avery as to how he was doing, how he was
2 adjusting in the jail, correct?

3 A. Yes.

4 Q. As a matter of fact, you would review everything
5 from his visitation list, to his medication
6 needs, to his entertainment needs, whatever the
7 case may be; you wanted to see if he was
8 adjusting correctly?

9 A. Yes.

10 Q. And comfortably?

11 A. Yes.

12 Q. All right. How often would these meetings take
13 place with Mr. Avery?

14 A. I couldn't say specifically, I know I tried to
15 speak with him weekly, it's probably not that
16 frequent any more.

17 Q. And as a matter of fact, you did have a meeting
18 with him on November 30th; would that be correct?

19 A. I guess.

20 Q. Well, perhaps I can show you a page from the
21 report.

22 (Exhibit 14 marked for identification.)

23 ATTORNEY FALLON: May I approach?

24 THE COURT: Yes.

25 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 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 Dederling, 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

1 last people she had contact with, on the phone,
2 we thought that would be a good place for us to
3 start.

4 Q. And, indeed, Sheriff Pagel had done a flyover of
5 the property just the day before, correct?

6 A. That's correct.

7 Q. And did he see anything of suspicion?

8 A. Not that I am aware of.

9 Q. Not that you are aware of?

10 A. Not that I'm aware of.

11 Q. But at least you had some idea of how massive the
12 undertaking would be. How many -- Approximately
13 how many vehicles do you think there were there
14 in the salvage yard?

15 A. At that time, I didn't know. As a result of
16 consequence, or the other search warrants that we
17 did, you know, I have a good idea now how many
18 vehicles there were out there.

19 Q. Which is?

20 A. I believe there was roughly 3,800 vehicles.

21 Q. Okay. So, approaching 4,000 vehicles. And
22 Sheriff Pagel saw that in it's totality, from the
23 air, on November 4th, right?

24 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 Dederling 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.

23 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)
)ss
2 COUNTY OF MANITOWOC)

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

Dated this 27th day of July, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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