

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

3 STATE OF WISCONSIN,

4 PLAINTIFF, SENTENCING HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** JUNE 1, 2007

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

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

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

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

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

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

21 STEVEN A. AVERY
22 Defendant
Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We are here this afternoon for the sentencing
4 hearing in this case. Will the parties state their
5 appearances for the record, please.

6 ATTORNEY KRATZ: Good afternoon, Judge, the
7 State appears by Calumet County District Attorney
8 Ken Kratz and Assistant Attorney General Tom Fallon,
9 both appearing as Special Prosecutors.

10 ATTORNEY STRANG: Good afternoon, as well.
11 Steven Avery is here in person, in custody; Jerome
12 Buting of Buting and Williams on his behalf, as well
13 as Dean Strang of Hurley, Burish and Stanton.

14 THE COURT: Okay. I will indicate for the
15 record that the defendant was found guilty and
16 convicted, following a jury trial, on March 18,
17 2007, of first degree intentional homicide and felon
18 in possession of a firearm. The crime of first
19 degree intentional homicide is a Class A felony
20 which -- which carries a mandatory penalty of life
21 in prison.

22 However, the Court is required to make a
23 determination as to if, and when, the defendant
24 is eligible for extended supervision. The
25 choices are: Eligibility after 20 years of

1 incarceration, eligibility after a date set by
2 the Court which can be no earlier than 20 years
3 of incarceration, or the Court can determine that
4 the defendant is not eligible for release to
5 extended supervision.

6 The charge of felon in possession of a
7 firearm is a Class G felony which is punishable
8 by a fine of up to 25,000 or up to 10 years in
9 prison consisting of no more than 5 years initial
10 confinement and no more than 5 years of extended
11 supervision.

12 The Court has previously ordered and has
13 been provided with a copy of the Presentence
14 Investigation Report in this case. I believe the
15 writer of that document, Ms Czechanski, is
16 present somewhere in Court. Have both of the
17 parties received a copy of the Presentence
18 Investigation Report? Mr. Kratz?

19 ATTORNEY KRATZ: We have, Judge.

20 THE COURT: And Mr. Buting?

21 ATTORNEY BUTING: We have.

22 THE COURT: Mr. Buting, have you had a
23 chance to review the Presentence Investigation
24 Report with your client?

25 ATTORNEY BUTING: Yes, I have.

1 THE COURT: I understand from a previous
2 submission I received last week, involving
3 statements given by Brendan Dassey, that the Defense
4 disputes background information presented in the
5 presentence attributed to Mr. Dassey. I suppose
6 before we proceed further I should allow you to
7 elaborate on that.

8 ATTORNEY BUTING: Thank you, Judge. Before
9 I do, let me say, also, there's -- there's other
10 background information about Mr. Avery's family,
11 education, those sorts of things, we don't have any
12 objection to, or claim that there are any
13 significant inaccuracies in that portion of the
14 presentence.

15 However, the presentence describes the
16 description of the offense as well as her
17 recommendation for disposition. Clearly, those
18 sections rely heavily on the one statement of
19 Brendan Dassey that was introduced at his trial;
20 that is, a portion of the March 1st, 2006,
21 interrogation. We absolutely do object to any
22 consideration or reliance by the Court at
23 sentencing on any of those facts.

24 We believe they are untruthful,
25 inaccurate, false, and misleading. And as the

1 Court knows, a defendant has a due process
2 constitutional right to be sentenced only upon
3 accurate information.

4 Cite just a couple of cases, **Townsend**
5 **vs. Burke**, 334 U.S. 736, and **U.S. vs. Tucker**, 404
6 U.S. 443. Also some Wisconsin cases, **State vs.**
7 **Mosley**, 201 Wis. 2d, 36, that's a Court of
8 Appeals 1996 case. And more recently, **State vs.**
9 **Groth**, G-r-o-t-h, 258 Wis. 2d, 889, that's a
10 Court of Appeals 2002 decision in which the
11 sentencing was reversed.

12 And, basically, what those cases hold is
13 that it is paramount that the Court base its
14 sentence on accurate information, not false, or
15 inaccurate, or misleading information.

16 In the **Groth** case, there was allegations
17 made that the defendant, in the past, had beaten
18 pregnant women, I think was the facts in that
19 case. And it was later determined that the
20 district attorney was relying on inaccurate
21 information and that was enough for the Court to
22 actually reverse the sentence.

23 Here, Mr. Dassey, I'm confident from the
24 submission that we sent, which is 58 pages long,
25 a memorandum, as well as all of the transcripts

1 and all of the DVDs, the version of Mr. Dassey's
2 numerous stories that was presented at his trial,
3 is only one of a number of versions. And it's
4 misleading for the presentence writer, or this
5 Court, to consider that version of events as
6 reliable and accurate when, in fact, it's not.

7 I should note, also, that,
8 unfortunately, that version which has been, we
9 believe in our case, largely disproved,
10 factually, by the lack of physical evidence to
11 corroborate it, that version describes a very
12 cruel death for Teresa Halbach, a torture, more
13 or less, for which there is no factual support,
14 other than the one version given by Brendan
15 Dassey, a 16 year old young man with limited
16 mental facilities, who we believe was imposed
17 upon by the psychological police interrogation
18 techniques that we set forth in the attachment.

19 The only evidence of how Teresa Halbach
20 died was presented at our trial, which was that
21 there was a gunshot to the head. It was unclear,
22 at least it was unproven, in my mind, whether
23 that even occurred while she was alive or dead.
24 I don't think that was possible to have been
25 proven.

1 But to assume that what she suffered at
2 the hands of anyone, much less Mr. Avery or Mr.
3 Dassey, is the version of events that were
4 presented in the March 1st confession is -- is a
5 stretch because there's no evidence to support it
6 whatsoever. And all of the physical facts tended
7 to disprove that version.

8 It's unfortunate that that's the -- the
9 image that the Halbach family and friends are
10 left with, as an example, or a picture of what
11 she went through when, in fact, that very well --
12 she may have gone through nothing at all like
13 that.

14 Mr. Avery and his attorneys do not know
15 how Teresa Halbach died. That she did die is --
16 was proven by the State in this case, but how she
17 died was not. And, certainly, no evidence, no
18 reliable, accurate information, was presented
19 that this Court can rely on, that she suffered
20 before she died, that she was tortured, that she
21 was begging for her life, any of that, which not
22 only pervades the presentence report itself, but
23 also the attached letters from the family and
24 friends, who -- some of whom highlight that very
25 issue; that is, it's not just that she died, but

1 it's the manner in which she died that they take
2 such offense at, and understandably so.

3 But, again, what I'm asking this Court
4 to do is twofold. One, to take no consideration
5 and to rely -- to not rely on, at all, anything
6 in the presentence report that describes Teresa
7 Halbach's death in the manner in which Brendan
8 Dassey, on that one portion of the interview,
9 said it happened.

10 And two, because these presentence
11 reports are not used just today, these also go
12 into the offender's correctional file, with the
13 Department of Corrections, I'm asking that the
14 Court order that this be rewritten and that all
15 references to that Brendan Dassey version be
16 stricken.

17 I don't think it's enough to just order
18 on the record that you are not considering it. I
19 think the Court also has to have this rewritten
20 and resubmitted, absent all of those disputed
21 facts, because they are disputed, they are
22 inaccurate, and they would be a violation of
23 Mr. Avery's due process rights for the Court to
24 consider them.

25 THE COURT: All right. I will ask the

1 State, at this time, if they have any response to
2 that particular request before I, Mr. Buting, go
3 back to you about any other matters in the PSI which
4 may be of concern.

5 ATTORNEY KRATZ: Are you asking for a
6 response as to Mr. Buting's confidence in the
7 unreliability of the statements, or that it should
8 be rewritten or resubmitted, or both?

9 THE COURT: Well, both.

10 ATTORNEY KRATZ: All right. Mr. Buting's
11 personal confidence in the unreliability of
12 Mr. Dassey's statements is of very little help for
13 this Court. Mr. Buting can have his own personal
14 opinion as to the reliability, as Mr. Dassey's jury
15 could have an opinion as to the reliability of his
16 statements. I will note for this Court that the law
17 permits this Court consider any version of the
18 events which are supported by evidence; in fact, to
19 consider uncharged, unproven offenses, even conduct
20 for which a defendant has been acquitted. **State vs.**
21 **Leitner**, L-e-i-t-n-e-r, and other cases, stand for
22 that proposition.

23 I will, however, Judge, just so that we
24 can move on with the real purpose of today's
25 hearing, that is the sentencing, indicate that

1 the State's position, although obviously
2 disagreeing with virtually everything that
3 Mr. Buting has just told the Court, indicate that
4 Mr. Avery was convicted in this case, with what
5 the State believes was overwhelming
6 circumstantial and scientific evidence.

7 Although the Defense has attempted, at
8 this point, to complain about evidence which was
9 not introduced nor needed to convict Mr. Avery,
10 and which may be relevant for another sentencing,
11 or even for some other hearings, it is not
12 relevant for today's purposes.

13 The State does intend and the State will
14 be asking the Court sentence Mr. Avery, based
15 upon the evidence presented in this case, on the
16 defendant's own criminal history, on the victim's
17 character, on the victim impact that is to be
18 introduced, and not as to Mr. Dassey's statement,
19 or at least not to give or intend undue reliance
20 upon those admissions.

21 Finally, Judge, it is the State's
22 position that this Court has no authority to
23 direct the presentence writer to rewrite or
24 resubmit a PSI because Mr. Buting may think that
25 the facts or versions stated therein are

1 disputed, or Mr. Buting thinks that they are
2 unreliable. The Court can give the version of
3 events and the weight to that, what the Court
4 deems appropriate.

5 This Court is in a very good position
6 since it has sat through this entire case for the
7 last 18 months. Certainly, I'm sure,
8 individually, has developed a version of events
9 for which a sentence can be derived and we would
10 ask the Court do that. That's all we have today,
11 Judge, thank you.

12 THE COURT: All right. Mr. Buting, are
13 there any other parts of the PSI which the defendant
14 wishes to suggest corrections to?

15 ATTORNEY BUTING: Factually, no, but if I
16 could just respond to the last portion of
17 Mr. Kratz's comments. It's not a matter of just
18 personal opinion, whether I believe Brendan Dassey's
19 March 1st story or not.

20 What we're talking about is a
21 constitutional right to due process. Yes, the
22 Court can consider facts that even -- that come
23 from uncharged offenses, or even cases for which
24 there was an acquittal.

25 But there has to be -- The information,

1 the Court has to find, is accurate and reliable
2 in order to rely upon them. And what we're
3 saying is, to Brendan Dassey's statements, none
4 of his statements are accurate or reliable enough
5 for this Court to consider at sentencing.

6 And if the State disputes that, then
7 we'll be happy to have a hearing and present all
8 of the evidence that we have presented through
9 live witnesses, right here in this packet that we
10 submitted to the Court. If not, if the State
11 wishes to move on, then the Court cannot consider
12 them, or rely upon them, is the actual language
13 from the case law.

14 The Court may not rely on inaccurate
15 facts. And if they are disputed facts, they have
16 to be resolved in some way. And if the Court
17 chooses to resolve them by relying on them, then
18 the Court has to so state.

19 As far as the Court's authority on the
20 presentence, certainly the Court has the
21 authority to order the presentence to be modified
22 or amended, the Court is the one that orders the
23 presentence. The presentence writer is supposed
24 to be independent to the Court.

25 And if -- if the -- I believe it's the

1 **Mosley** case, **Mosely** and **Groth** talk about the
2 problems when there are inaccurate -- when there
3 is inaccurate information in the presentence
4 itself; and that those are the facts that are
5 being disputed, that's what needs to be
6 addressed.

7 And because they do go to the Department
8 of Corrections, the Court should order, and can
9 order, that that be deleted, if the Court chooses
10 not to rely on it. If the Court wants to rely on
11 those at a sentencing, then this material can
12 stay. But, obviously, that's an issue, then,
13 that can be addressed on post-conviction, with
14 Mr. Avery, later. But what we're asking is that
15 the Court not consider or rely upon any of
16 Mr. Dassey's statements and that they be deleted
17 from the presentence as well.

18 THE COURT: It's my understanding, unless I
19 misunderstood the State, that with respect to the
20 circumstances surrounding the charges in this case
21 themselves and the conviction, that the State is
22 going to ask the Court to rely simply on the
23 evidence that was introduced at the trial, which was
24 certainly thorough, covered five weeks, I was there.
25 Mr. Kratz, am I speaking correctly?

1 ATTORNEY KRATZ: That is correct, Judge,
2 yes.

3 THE COURT: So the State is not going to
4 ask -- be asking the Court to consider the extra
5 statements from Mr. Dassey that are described in the
6 PSI?

7 ATTORNEY KRATZ: That's right.

8 THE COURT: All right. Mr. Buting, is
9 there anything else about the PSI that you wish to
10 bring up at this time? I'm talking now by way of
11 the factual background provided.

12 ATTORNEY BUTING: Sure, but let me just
13 point out that the PSI or -- it's not entirely clear
14 to me whether the State intends to rely on -- the
15 State did mention they want the Court to sentence on
16 victim impact.

17 And if there are statements in the PSI,
18 letters that are attached and they may perhaps be
19 repeated or similarly stated in court today with
20 live statements that refer specifically to the
21 manner in which Teresa Halbach died, as a
22 particular impact on the victim, and if those --
23 again, that coming solely from the one Brendan
24 Dassey version on March 1st; and if that is going
25 to be relied on by the State in justification of

1 their recommendation or the Court in
2 justification of its sentence, we have the same
3 problem, I think.

4 THE COURT: Well, I think you are talking
5 about two different concepts. The victims have a
6 right to express their feelings, whatever they are,
7 and express their beliefs, whatever they may be.
8 And I don't think the Court is in a position to tell
9 them they can't feel a certain way, or believe
10 certain facts.

11 But as far as the facts that the Court
12 will be using to assess the severity and scope of
13 the offense, maybe I'm wrong, but I understood
14 that both parties were going to be asking the
15 Court to consider the evidence that was
16 introduced at the trial in this case. Now, if
17 I'm missing something, let me know, but that's my
18 understanding.

19 ATTORNEY BUTING: That's fine.

20 THE COURT: Mr. Kratz?

21 ATTORNEY KRATZ: That's fine, Judge.

22 THE COURT: All right. Mr. Buting,
23 anything else?

24 ATTORNEY BUTING: Other than what the Court
25 chooses to do about the presentence, which you could

1 do at the end if you wish or you could --

2 THE COURT: I understand that you are
3 making a separate request. At this time I will
4 simply note for the record that the defendant
5 disputes the account of what happened as it's
6 attributed to Brendan Dassey in the PSI; and that
7 neither of the parties are going to be asking the
8 Court, in their sentencing arguments, to rely on
9 that information; and that the defendant is making a
10 separate request for further action from the Court
11 as to the content of the PSI itself. That's never
12 been requested of me before and I'm not prepared to
13 answer that from the bench today, but I will take
14 your request under advisement.

15 ATTORNEY BUTING: Thank you.

16 ATTORNEY KRATZ: Judge, if I could have
17 just a moment. We're prepared, Judge, thank you.

18 THE COURT: All right. At this time I will
19 indicate that the Court has read the attachments to
20 the PSI, which include a -- one letter in support of
21 the defendant, the defendant's own statement, and a
22 significant number of written statements from
23 victims and members of the victim's family.

24 I will, in a few minutes, offer any
25 victims a chance to make statements to the Court.

1 But before I get to that, I would like to ask the
2 parties if there is any other testimony from
3 anyone, or any other statements from anyone, that
4 either party wishes to present to the Court
5 today, other than victim impact statements.

6 ATTORNEY KRATZ: Not by the State, your
7 Honor.

8 ATTORNEY STRANG: We anticipate no
9 testimony, but I expect that Mr. Avery may wish to
10 exercise his right to allocution.

11 THE COURT: And I will certainly grant him
12 that right, after I hear the arguments of the
13 parties. With that, then, we'll proceed to Victim
14 Impact Statements. Mr. Kratz.

15 ATTORNEY KRATZ: Judge, before proceeding
16 to that, it is a responsibility of this Court, at
17 the time of sentencing, to inquire of the State
18 whether all provisions of Chapter 950 have been
19 complied with. I will tell the Court that they
20 certainly have in this case. This course -- excuse
21 me -- this Court understands that the victim's
22 family has been in attendance throughout these
23 proceedings, and the sentencing hearing is no
24 exception thereto.

25 Written impact statements have been

1 provided. There is no restitution request, as
2 noted in the presentence, and I think the Court
3 needs to make a specific finding of that. And
4 with that, Judge, we are prepared, then, to hear
5 from five relatives of Teresa Halbach. And when
6 the Court is ready to hear those statements, I
7 can introduce them at that time.

8 THE COURT: You may do that at this time.
9 I'm going to ask you to share your microphone at the
10 podium with anyone who chooses to make a statement.

11 ATTORNEY KRATZ: What I'm going to do,
12 Judge, is I'm going to have the individuals identify
13 themselves, their relation to Teresa, and then
14 provide their statement. I will also tell the
15 Court, as the Court understands, at the conclusion
16 of the five impact statements, we do have a DVD
17 video to play, which is approximately three minutes
18 in length. I will introduce that before it is
19 played. The first statement will be given by Maria
20 Halbach. Maria.

21 MARIA HALBACH: Good afternoon, Judge
22 Willis.

23 I have always been taught that
24 everything happens for a reason. This belief has
25 been challenged in the last year and a half. I

1 continue to struggle with why or what reason
2 there could be behind the suffering Teresa went
3 through, but I guess some things are bigger than
4 we can understand.

5 Life seemed so simple on October 29th,
6 2005, when I was with Teresa. Little did I know
7 that this would be the last time I would see her,
8 that at that moment, when we're out living life
9 and having some fun, someone in the world was
10 plotting to take Teresa's life.

11 I was brought up in the same small town
12 as Teresa. I got to know Teresa in middle
13 school. We made many great memories throughout
14 our friendship.

15 We camped out in high school. We went
16 to dances. We went through boyfriends. We had
17 fights with girlfriends. Skydived. She was
18 there to see each of my children as they were
19 starting their lives. Through it all, Teresa was
20 always there with a smile and had something
21 lighthearted to say.

22 I was blessed to fall in love with a
23 Halbach and join this amazing family. What you
24 see is what you get. Teresa, and everyone who
25 surrounded her, are full of faith, love, and true

1 kindness.

2 One of the ways that Teresa's murder has
3 affected me is in the feeling, the emotion that
4 is completely foreign to me, and that is anger.
5 Anger is not something I'm used to feeling. I
6 did not understand what it felt like to truly
7 feel angry with another person until the events
8 of Teresa's death began to unfold.

9 Just when we thought things could not
10 get any more horrifying, it did. I would get a
11 phone call, an email, or read the newspaper and
12 another detail was displayed that was beyond the
13 realm of our imagination.

14 I was raised to forgive those who sin
15 against me or someone that I love. The statement
16 sounds great and it is easily said; however, it
17 has been put to the test. Forgiving someone who
18 does not take responsibility for their actions is
19 not an easy task.

20 The events that took place on
21 October 31st, 2005, have not only affected me,
22 but they have affected my children. I have three
23 children. Two of my children were near and dear
24 to Teresa. And my third child never even got the
25 chance to meet her. Zachary was born one month

1 after Teresa's death.

2 My children have had to learn more about
3 death and the horrifying acts that other people
4 are capable of, at a very young age. A piece of
5 their innocence and their childhood was taken
6 from them when Teresa was so brutally taken from
7 us.

8 My husband and I are raising our
9 children in the same way Teresa was raised, to
10 trust in the greater good that exists in people.
11 We were raised to trust and be optimistic.
12 Teresa's murder shook this trust and temporarily
13 set in place a sense of insecurity and
14 skepticism.

15 However, I'm not going to allow Steven
16 Avery to take my life away from me, as he did
17 Teresa. I'm going to continue to live life like
18 Teresa. Teach my children to do the same. They
19 still look to the stars at night to find the
20 brightest one. This is the star that represents
21 Teresa.

22 The course of events surrounding
23 Teresa's death do not overshadow her life. We
24 may not know the reason, but life is too short to
25 focus on this. My faith has led me to believe

1 that this crime is horrific and unthinkable;
2 however, our place is not vengeance, our place is
3 justice.

4 Justice for Teresa is to be assured that
5 the people who hurt her and humiliated her are
6 never allowed the opportunity to hurt someone
7 like this again. It is in your hands, Judge
8 Willis, to hold Steven Avery accountable for his
9 actions and not let him hurt again. He needs to
10 be put behind bars for the rest of his life,
11 until he has to answer to the ultimate judge.
12 Thank you.

13 KERI LOWE: Good afternoon, Judge. A
14 part of a parent's role is many --

15 THE COURT: Excuse me, can you state your
16 name for the record.

17 KERI LOWE: I'm Keri Lowe; I'm Teresa's
18 cousin.

19 THE COURT: Go ahead.

20 KERI LOWE: A part of a parent's role is
21 many different things: First, to protect her
22 from all; protect from harm, evil and bad
23 influences in society.

24 Secondly, you create a positive
25 environment for children to observe and grow.

1 Furthermore, you instill values that only hope --
2 that you only hope will carry on with them
3 through life.

4 Finally, you raise them to be confident,
5 strong, outgoing, and full of life.

6 A parent is a provider of strength;
7 physically, emotionally and intellectually.

8 Because of the evils in society, my role as a
9 mother is different. I still protect. I still
10 do the things moms do. When something tragic
11 happens to your family your world changes.

12 I'm a Halbach family member with three
13 young girls. I'm now dealing with issues and
14 situations I never foresaw. Explaining to my
15 girls how an innocent woman's life was taken, for
16 no apparent reason, leads to many unanswered
17 questions.

18 Keeping faith, being strong and being
19 positive are difficult attributes to maintain
20 after an incident as this. I hope the outcome
21 will help me as a parent show all, especially
22 young children such as my three girls, how
23 society will protect us from evil.

24 Life goes on; however, we have a void
25 that will never be replaced or forgotten. Please

1 help my role as a parent and show me that we will
2 all be protected. Judge Willis, for our sake and
3 our children's, please put Steven Avery away for
4 life without parole. Thank you.

5 THE COURT: Would you state your name and
6 your relationship to Teresa, please.

7 RHONDA BEHNKE: My name is Rhonda Behnke
8 and I'm Teresa's cousin.

9 THE COURT: Go ahead.

10 RHONDA BEHNKE: Dear Judge Willis, How
11 do I start a letter to tell someone how much a
12 person meant to me, because it so personal and
13 heartfelt that I have never had to let all those
14 kinds of emotions and feelings known to public.

15 To know what I lost losing Teresa in my
16 life affects me and my family very much. I
17 couldn't list everything that she has meant to me
18 and all she's been to me. I know what I feel is
19 a loss of a friend; a cousin; a brilliant,
20 artistic, creative person; someone who could
21 imagine so deep; a person who could find good in
22 everything.

23 I have lost my daughters only now
24 knowing or hearing of the good that Teresa did,
25 and not seeing or experiencing it firsthand.

1 Teresa's laugh, hearing it once, you
2 would think that you would never be able to
3 forget it. You would never imagine not being
4 able to not hear it again. It's not that you
5 want to forget it, but it's very distant now.

6 Her love was one in a million,
7 unconditional love, not judging, never think
8 twice kind of love. We weren't ready for Teresa
9 to be taken away from us. We weren't ready to
10 say our goodbyes and we never really did get to
11 say goodbye.

12 The talent the world can't see through
13 her eyes anymore, the beautiful depth of her
14 pictures, the true things she could only bring
15 out in people, the love no child can feel from
16 her, the love of a husband and of being a mom,
17 the laugh we will never hear again, and the loss
18 we feel every day.

19 Like I said, how do you tell a stranger
20 the love and hurt you feel with losing someone as
21 wonderful and beautiful as Teresa. Saying this
22 isn't even half of what my heart feels every day.

23 So, I am not a judge and I am not -- and
24 I know I don't have say into what happens to
25 Mr. Avery. All I know is that I do have an

1 opinion. I wish to see Mr. Avery serve life in
2 prison with no parole.

3 Why do I feel this way, because Teresa's
4 life was taken with no good reason. She did not
5 want to leave us this way. She did not ask for
6 this to happen to her.

7 And I feel we're here to defend her life
8 and her death. We're here to make sure that
9 Mr. Avery gets what he deserves for taking not
10 only Teresa's life, but also her future and our
11 futures with her.

12 So, please, Judge Willis, look into the
13 hearts of this Teresa Halbach family. Look at
14 us, in our hearts, and see what is missing. See
15 what Mr. Avery took from us; a beautiful,
16 wonderful young lady who meant the world to us
17 and who we will miss every day. Thank you.

18 MIKE HALBACH: Mike Halbach, Teresa's
19 younger brother. Honorable Judge Willis, my
20 family and I would never choose to be involved in
21 a situation like this. We never chose to feel
22 heartbreak, to feel loss.

23 But Steven Avery chose my sister,
24 Teresa. He thought only of himself. He chose to
25 end her life. He chose to retain his sins inside

1 himself and to point blame at everyone else. He
2 chose not to hold himself accountable and ask for
3 forgiveness, but to make a jury of 12 of his
4 peers decide if he was accountable or not.

5 They did that, and in doing so, have put
6 you in the position you are in now. As God
7 guided Teresa's life, let him guide your decision
8 now. It's your choice. I ask that you sentence
9 Steven Avery to life in prison without parole.
10 Thank you.

11 TIM HALBACH: Tim Halbach, Teresa's
12 older brother. Judge Willis, at first I wasn't
13 going to speak today because, quite honestly, I
14 didn't think you'd need any more convincing that
15 Steven Avery should get life without parole.

16 He killed my sister. And in doing that,
17 he took the life of someone that he barely knew
18 and completely disregarded the ramifications that
19 his actions would have, not only ending Teresa's
20 life, but the affects it would have on her
21 family, her friends, and this community. And for
22 that alone, he deserves to spend the rest of his
23 life in prison.

24 But putting that aside for the moment,
25 and after thinking about more whether or not to

1 speak today, I felt compelled to come here and
2 speak to you, because, as Teresa's big brother, I
3 instinctively always try to look out for her.
4 And although there is nothing I can do for her
5 now, what I can do, and what I am doing, is
6 standing here today and respectfully asking this
7 Court to send Steven Avery to prison, without the
8 possibility of parole, to ensure that he never
9 does this again, to someone else's sister.

10 Finally, for the past 19 months, we hope
11 that -- my family and I have hoped that our love
12 for Teresa was shown in our words and our
13 actions. Judge Willis, we want you to see this
14 type -- we want you to see the type of person
15 Teresa was and why we'll always -- why we will
16 always carry her spirit with us.

17 We have a presentation that Teresa made
18 when she was -- videos that Teresa made when she
19 was 22 years old. And this -- we want you to see
20 who Steven Avery took from us. Thank you.

21 (Video playing.)

22 TERESA HALBACH: I love hugs. I love --
23 I have a theory that you need nine hugs a day in
24 order to feel loved.

25 I love being happy.

1 I love knowing that I have nothing to
2 complain about.

3 I love knowing that my family is
4 healthy, that I have a lot of friends.

5 I love making people laugh. I love
6 laughing.

7 I love when people compliment me.

8 I love the Beatles.

9 I love God.

10 I love knowing that I like who I am.

11 I love taking pictures. I love holding
12 a camera in my hand.

13 I love kids. I love babies.

14 I love traveling. I love talking about
15 traveling.

16 I love being myself with everyone I
17 know.

18 I love No Doubt and Gwen Steffani.

19 I love my sisters, my mom, my whole
20 family, of course. I don't hate anyone. I love
21 a lot of people. I feel loved.

22 Um, so let's say I die before I'm 31.
23 Let's say I die tomorrow. I don't think I will,
24 I think I have a lot more to do. I just want
25 people I love to know that whenever I do die, I

1 just want people to know that whenever I die,
2 that I was happy, that I'm happy with what I did
3 with my life.

4 The only thing, is if it happened now,
5 is that I wish I could have become a mother,
6 because that's the one thing I have always known
7 that I want, to be a mom, so... But there's a
8 reason for everything. And I will be a good mom
9 one day. I will. As long as I'm happy.

10 Okay. That's enough.

11 THE COURT: Is there anything else from
12 either party before closing argument?

13 ATTORNEY KRATZ: No, Judge. I would ask
14 that the Court, having previously received the
15 video, the DVD that has been shown, include the
16 Court's copy as part of the official file and
17 official record of these proceedings. Other than
18 that, Judge, the State only has argument. Thank
19 you.

20 THE COURT: Any objection from the Defense?

21 ATTORNEY STRANG: No, the State's request
22 should be granted.

23 THE COURT: All right. The Court will do
24 so. All right. Mr. Kratz, I will hear from you
25 first.

1 ATTORNEY KRATZ: Thank you, Judge. The
2 only decision that this Court has pursuant to
3 Section 973.014 is whether the defendant should be
4 eligible for extended supervision. This still
5 requires the Court, like any sentencing, to consider
6 the three primary sentencing factors; that is, the
7 gravity of the offense, the character of the
8 offender, the need to protect the public.

9 And my comments this afternoon will
10 track those three primary factors; the first
11 being gravity of the offense. Obviously, there
12 is no more serious offense in Wisconsin than
13 first degree intentional homicide, that for which
14 the defendant has been convicted. The PSI writer
15 and the evidence, in fact, recognizes that this
16 particular homicide was premeditated; that is, it
17 was planned. And Mr. Avery targeted Ms Halbach
18 as his victim and this became not just a
19 senseless, but what the State argues to be a
20 sadistic crime.

21 The Defense, as you heard today,
22 complained about the versions as to the manner of
23 death and, certainly, what lead up to it. But
24 whatever version this Court adopts, there is no
25 sanitized or polite way to describe and discuss

1 how this lovely young woman was killed.

2 The community's worst nightmare, the
3 State argues, is violence perpetrated against
4 somebody, either random or targeted, for no
5 apparent reason. And when considering, then, the
6 gravity of this particular offense, we're asking
7 the Court consider the violence that was used, as
8 well as the surrounding circumstances.

9 The character of the defendant is
10 perhaps easiest to discuss when looking at the
11 defendant's past. Whenever Mr. Avery was not
12 incarcerated, that is, when he was not in prison
13 or jail and when he was allowed to make his own
14 kinds of decisions, we look at the kind of
15 behaviors that he engaged in. It's clear, Judge,
16 that Mr. Avery chose criminal behavior as the
17 preferred type of behavior, since he was a very
18 young man.

19 Page 6 of the presentence report
20 chronicles Mr. Avery's criminal history, which
21 this Court knows includes several burglary
22 convictions for which he was placed on probation.
23 His probation was revoked and, thereafter, sent
24 to prison.

25 It includes a horrific story of torture

1 of an animal committed by Mr. Avery in 1982.

2 And, finally, in 1985, includes
3 endangering the safety of a young woman by
4 forcing her off the roadway, pointing a gun at
5 her and ordering her into his vehicle. This
6 pattern of behavior certainly goes to the
7 character of the defendant and is all behavior
8 while Mr. Avery was not in a locked up or
9 confined setting.

10 The presentence also chronicles how
11 Mr. Avery behaved after his release in 2003, and
12 most particularly, includes the statements of his
13 then girlfriend, Jodi Stachowski, where she
14 describes Mr. Avery's bad temper, describes him
15 as being abusive, describes threats to kill him
16 and, in fact, claims by Mr. Avery that he could
17 get away with it if he chose to kill Ms
18 Stachowski.

19 I didn't read anywhere, Judge, in this
20 presentence report, nor in the volumes of
21 information that, certainly, I had available to
22 me in preparing for the trial, that would suggest
23 any mitigating or redeeming social qualities that
24 Mr. Avery brings before this court. Certainly no
25 remorse has been showed, no acceptance of

1 responsibility, which in and of itself is not a
2 significant factor, but when considering the
3 character of the defendant, it is certainly
4 something that this Court can and should
5 consider.

6 Lastly, Judge, the need to protect the
7 public perhaps is the most important of the three
8 primary factors for the Court to consider. And
9 this Court has the opportunity, as you heard not
10 only in oral statements today but in written
11 submissions, to ensure that this kind of crime
12 never happens, at least by Mr. Avery's hand.

13 The presentence writer describes Mr.
14 Avery as being a very high risk to reoffend. And
15 in the presentence writer's words, suggests that
16 this Court guarantee that Mr. Avery never see the
17 light of day again, outside of the prison walls.

18 The victim's family, which is important
19 and appropriate for this Court to consider, all
20 suggest that Mr. Avery have no possibility of
21 release, not only piece of mind for the family,
22 but, again, considering his recidivism or risk to
23 reoffend.

24 And, finally, Judge, I think it
25 appropriate for this Court to consider those

1 values and those considerations that the
2 community has. Although, certainly not something
3 that is well publicized, this is a small
4 community, something difficult for the State to
5 imagine a community being more impacted by a
6 crime than that committed by Mr. Avery.

7 Assurance for the community, that is,
8 assurance that Mr. Avery will not be available to
9 commit these other crimes, is something
10 appropriate for this Court to consider.

11 That brings me, then, Judge, to our
12 recommendations and brings me to that point in
13 this trial that is a very important part of the
14 trial; that is, of course, the sentencing and the
15 State's recommendations.

16 The Halbach family has been forced not
17 only to come to terms with the loss of a loved
18 one, but also to consider her last moments on
19 earth, at the hands of Mr. Avery. This Court,
20 through the past 18 months, has also heard, that
21 despite the high quality and professional
22 investigation that was performed, that law
23 enforcement officers have been subjected to both
24 professional and personal attack throughout,
25 including allegations of criminal wrongdoing

1 themselves.

2 In fact, Judge, the entire community,
3 that is, Northeast Wisconsin, has been required
4 to endure a year and a half of a combination of
5 very sad news, a combination of witnessing what I
6 will characterize as legal gamesmanship, in one
7 version or another, of the term "poor Steven
8 Avery".

9 Well, today, Judge, is the day that the
10 Halbach family and law enforcement and the entire
11 community has waited for. It's the day when
12 justice will reign down upon this cold-blooded
13 killer. When this community, through this court,
14 and through this Judge, tells Steven Avery that
15 your evil deeds will be punished, that you will
16 be held accountable for your cowardly, for your
17 senseless acts, the State then believes, and only
18 then, justice is going to be served.

19 The Court has seen a videotape today and
20 the Court has heard from many of Ms Halbach's
21 family and friends and knows now, or at least
22 should know, that Teresa Halbach was a genuinely
23 lovely young woman. Her whole life was ahead of
24 her. She was a talented photographer; loved by
25 her family and by her friends; was active in the

1 community; and her loss continues to be felt by
2 all of those individuals who knew her and who
3 loved her.

4 It isn't just how she died that has
5 caused pain and has horrified this family, but
6 the memory of how she lived and the memory of the
7 kind of person that she could have become, that
8 is so painful.

9 Judge, I'm asking, on behalf of the
10 State of Wisconsin, that this Court consider the
11 gravity of the offense, the character of the
12 defendant, the need to protect the public and
13 sentence this man to life imprisonment without
14 the possibility of release; that is, without the
15 possibility of an extended supervision time.

16 There is, Judge, a second count; that
17 is, possession of a firearm by a felon, which I
18 guess necessarily isn't discussed in great detail
19 in this case, but the State will argue that
20 Mr. Avery receive a consecutive period of
21 confinement. What the State has available is 5
22 years initial confinement, 5 years extended
23 supervision. We're asking the Court include that
24 as a consecutive sentence to whatever it is that
25 the Court decides as to the homicide count.

1 That's all the comments we have, Judge.

2 I will remind the Court, which I'm sure
3 the Court already knows, Mr. Avery will have the
4 opportunity to have some credit applied to
5 whatever sentence the Court imposes. That would
6 be from, I believe, the 9th of November, 2005,
7 when he was first taken into custody. That's all
8 Judge. Thank you.

9 THE COURT: All right. Mr. Strang, I
10 believe you are going to argue for the Defense.

11 ATTORNEY STRANG: I am, but I'm going to
12 turn to Steven Avery now, first, because I think if
13 he is to speak, he should do that first. And I
14 expect that what he has to say will not be easy for
15 anyone sitting behind me and it won't be easy for
16 him, but I at least would invite him to speak now if
17 he wishes.

18 THE COURT: Mr. Avery, do you -- You have
19 the right to allocution. If you wish, I would let
20 you speak after the attorneys have made their
21 arguments, but I will also grant your attorney's
22 wish and let you speak now, if you wish to speak
23 now.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Strang, has the order been

1 discussed with Mr. Avery? Does he understand he
2 could speak after you are done if he wishes?

3 ATTORNEY STRANG: Yes.

4 THE COURT: All right. Mr. Avery, I will
5 hear from you at this time.

6 THE DEFENDANT: Well, your Honor, I'm sorry
7 for the Halbach's family, Teresa Halbach's family,
8 what they are going through, the pain, the hate they
9 got. There's nothing else going to bring her back,
10 you know. And my family, what they are going
11 through, and everybody's friends, and the community,
12 it's hurting everybody.

13 And for myself, Teresa Halbach I didn't
14 kill. I am innocent of what all of this. And I
15 figure later on, I will prove myself innocent. I
16 will take it from there. That's all I got.
17 Thank you.

18 THE COURT: All right. Mr. Strang.

19 ATTORNEY STRANG: Thank you, your Honor.
20 One of the things we're left to do in every human
21 endeavor is to take each other, one another, just as
22 we are and just as we find ourselves today. We
23 aren't given impressions, none of us are given the
24 ability, entirely, to shape even our own future let
25 alone the future of a world we would imagine or want

1 to live in as perfected.

2 If your Honor or anyone else in this
3 courtroom had a way to prevent one more murder
4 from ever happening in this human family,
5 anywhere in the world or in the State of
6 Wisconsin as one small corner of the world, I
7 willingly would follow your honor or anyone else
8 to the ends of that world in pursuit of ending
9 the time when human beings kill one another.
10 It's a subject on which I feel deeply. And what
11 I feel doesn't much matter here, but I would do
12 that.

13 If I could get governments to stop
14 killing people; if I could get men to stop
15 killing women; if I could get parents to stop
16 killing their kids; if I could stop human
17 killing, I would follow anyone who had the
18 solution for that.

19 We never have been able to stop it for
20 as long as human beings have lived in society.
21 Since -- I guess since homo erectus yielded to
22 homo sapiens, we have acted without much
23 sapientiae -- to use the Latin in our specie's
24 name -- far too often and we have killed one
25 another.

1 Since I despair of ever stopping murder,
2 I would say this, that my wish, my secondary wish
3 short of stopping murder, would be that every,
4 every person who has the misfortune of being
5 murdered might be grieved as Teresa Halbach has
6 been grieved. Everyone of them, I wish they
7 could be grieved by as many loved ones, by a
8 family and a group of friends who have shown as
9 much dignity, who have shown as much decency, who
10 have as much bedrock faith in human beings to
11 rely upon when it gets as bad as it can get. I
12 would wish that for anyone. If there has to be
13 another murder somewhere today, I would wish that
14 for the victim.

15 And it brings your Honor, unfortunately,
16 to what to do. And, understandably, the people
17 to my left, who are themselves loyal workers
18 within one of the institutions of the state, one
19 of the institutions of criminal justice as we
20 attempt to administer it as human beings; and the
21 people behind them who, as law enforcement
22 officers, also are members of a state institution
23 dedicated to criminal justice; and in the
24 community behind them, who, because we live in a
25 community, want to have faith in our state

1 institutions and in the hope of justice in
2 criminal cases.

3 I understand, I think well after 20
4 years of doing this work and even thinking about
5 it from time to time, why there is the need and
6 the desire and the rightful wish to rely on those
7 institutions of criminal justice. They are the
8 front end institutions of criminal justice with
9 whom and with which we have the most direct
10 contact.

11 It is the police who respond to the
12 missing person. It is the State, through its
13 police and district attorney, who investigate the
14 murder, who seek to bring the perpetrator to
15 justice; the district attorney who must file
16 charges, prosecute them in court.

17 Your Honor belongs to one of the
18 institutions of criminal justice that work at the
19 front end of our search for justice, presides
20 over a trial, imposes sentence. It is natural
21 and right to want to rely on these institutions.

22 What I ask today, concretely, is that we
23 leave room to rely, as well, on the back end
24 institutions of the same state, the same system
25 of pursuing criminal justice. At the back end,

1 the state institutions that we find are the
2 Department of Corrections and the Parole
3 Commission which continues to exist in that name,
4 although it is extended supervision that the law
5 now describes for the Parole Commission's
6 consideration.

7 There is reason not to exclude those
8 back end institutions from the State's effort to
9 pursue criminal justice as well. They serve
10 useful purposes and, indeed, today marks the end
11 of the role of the front end institutions of
12 criminal justice.

13 The circuit court completes its final
14 act today, or shortly after, with the entry of a
15 final judgment. The police have completed their
16 work, for functional purposes. The district
17 attorney, finally, is relieved of the burden of
18 this case; and if there's to be an appeal, passes
19 it to still another institution in the assemblage
20 of our state institutions that pursue criminal
21 justice.

22 So today, after about 19 months, just
23 over a year and a half, the front end
24 institutions have completed their work and done
25 their best. The back end institutions, if this

1 Court were to do as I will ask the Court, will
2 not begin to make decisions about Steven Avery
3 until they have had 20 years of experience with
4 him, rather than 19 months.

5 They won't begin to consider what should
6 be done with him until they have had 20 years
7 direct experience with Steven Avery and, I hope,
8 20 years of experience with the Halbach family
9 and with the community who loved Teresa Halbach.

10 Concretely, my plea today is simply to
11 place the same faith in the back end institutions
12 of criminal justice that we repose on the front
13 end institutions. So mine, your Honor, is a plea
14 to preserve the prospects of progress.

15 We find, today, someone who is
16 unremorseful, who is not prepared to ask for
17 forgiveness, who asserts innocence. That's who
18 we find today. It is beyond our power to know,
19 in any godlike way, whether the claim of
20 innocence is false or true; and if false, why it
21 is made. It simply is beyond our power.

22 What we can do and what we must do,
23 because we're human, is rely on the good
24 functioning of the front end institutions of
25 criminal justice, interlocking as they are, but

1 each with their own character: Court, jury -- an
2 important front end institution in our system of
3 justice; prosecution; police. We have to rely on
4 them.

5 We cannot pretend to have an omniscient
6 knowledge about what's in his heart or what he
7 did. And we are right to rely on these
8 institutions. It's the best we can do today.
9 But if we are to do our best, then we will leave
10 open the prospects for progress. And we will
11 repose the same reliance and faith in the back
12 end institutions that our state provides in its
13 pursuit of criminal justice.

14 Progress is not just possible, it's
15 unavoidable for everything that lives. I think
16 progress for Steven Avery is not just possible,
17 it's unavoidable. Progress for the Halbach
18 family, and all those in the community who loved
19 Teresa Halbach, is not just possible, it's
20 inevitable. Every living thing progresses. And
21 progress, indeed, for the state's own
22 institutions of criminal justice, is not just
23 possible, it is inevitable.

24 I speak of the truth, that everything
25 that lives, that is vital, progresses; only death

1 is static. Life, inevitably, invariably, is
2 dynamic; only death is static. I take these as
3 truths.

4 And in saying that, I ask your Honor,
5 today, to impose a life sentence and not a death
6 sentence. I ask your Honor to impose a dynamic,
7 vital sentence of life that will leave the full
8 role for the other institutions of criminal
9 justice into whose hands you will tender Steven
10 Avery today and whose work will be longer, more
11 intimate than the work of the front end
12 institutions can be and who themselves will have
13 the benefit of progress.

14 To pretermite the work of the Parole
15 Commission and the Department of Corrections
16 today is to render static the rest of Steven
17 Avery's biological life; to render static the
18 participation of the Halbach's in the horror that
19 brings them here; and to render static, as to
20 Steven Avery at least, every further and human
21 improvement that may come to our institutions.

22 It is to impose a death sentence with
23 only the indeterminate and uncontrollable factor
24 of the cessation of biological functioning to
25 intervene. It is to cut off all prospects of

1 progress, to deny parole eligibility.

2 Now, people who are a lot smarter than I
3 am argue about whether progress is necessarily
4 regenerative or whether it's degenerative;
5 whether progress necessarily, in the end, means
6 expansion or collapse; whether progress
7 necessarily is good or whether sometimes the
8 progress of human life and the world is bad.

9 But we don't have to get into that
10 debate because there is always progress in life.
11 It moves forward. It's dynamic. And when the
12 institutions are left in place and left the
13 powers that they can exercise, it will be dynamic
14 and not static. Progress is good. Whether it
15 leads to collapse or expansion, whether it is
16 regenerative or degenerative, it's good.

17 Steven Avery not only may change, he
18 necessarily will change, over time. It may give
19 him a chance, some day, to ask for the
20 forgiveness that the Halbach's wish to hear him
21 solicit. And he would have a reason to do it,
22 here, among us, the human family, rather than on
23 knee, bent in prayer, if indeed the prospect of
24 eligibility for extended supervision is left open
25 as a prospect for progress.

1 The Halbach's will change, because they
2 will live. By the year 2025, I urge your Honor
3 to give them a chance to speak again, to speak to
4 the Parole Commission, to tell the parole
5 commission what, then, in 2025, is in their
6 hearts and in their minds. And I expect that
7 they would have that opportunity again in 2030,
8 or 2035, in 2045, perhaps.

9 Don't expect parole or extended
10 supervision to be granted at its first
11 opportunity, if ever. And as part of why I say
12 we don't have to decide what progress means in
13 the end, because the outcome may be the same.
14 Steven Avery may die of natural causes tomorrow.
15 He may die of natural causes when he is 85. And
16 it may well be, if your Honor imposes the life
17 sentence that I ask, that he dies in prison at
18 age 85. That well may be.

19 Eligibility for extended supervision is
20 no promise of its grant. And if in 2025, or
21 2035, or 2045, the Halbachs view Mr. Avery's
22 proper place as remaining behind prison walls,
23 then the Parole Commission ought to hear that.
24 And they ought to have a chance to say it.

25 And if they feel something differently,

1 which of course I can't predict, no one with any
2 humility could predict, then the Parole
3 Commission ought to hear that as well.

4 All I can say with any confidence, the
5 one narrow prediction I can make with any
6 confidence at all, is that if, for example, Mike
7 Halbach is given a chance to speak again, 25
8 years from now or 30 years from now, my confident
9 prediction is that he will not photocopy the
10 eloquent written statement he submitted with the
11 presentence report. He will not photocopy the
12 already different and progressed eloquent written
13 statement he gave here today.

14 He will not stand on those words alone
15 at 45, eloquent as they were for a 25 year old
16 today. He will have progressed. There will be
17 new nuance, new life experience, new perception
18 and understanding that will have been acquired.
19 And it may lead him to say that Steven Avery
20 should remain in prison. So be it. It's
21 something worth hearing and it's a prospect for
22 progress we ought not cut off.

23 The state institutions of criminal
24 justice themselves will change and grow and
25 progress over the 20 years before Mr. Avery even

1 would be eligible for consideration of extended
2 supervision, under the best of circumstances.

3 Thank heavens that in 1985 progress was
4 not pretermitted as to one of Mr. Avery's prior
5 convictions. Thank heavens progress was possible
6 within our institutions of criminal justice. I
7 do thank heaven for that.

8 And if this conviction is rightly
9 obtained and a guilty man is behind bars, then we
10 will know that better in 20 years, or 30 years,
11 or 40 years, or 50 years. We will know that with
12 more certainty than we know it today. It's the
13 nature of progress and the refinement of human
14 institutions.

15 So, whatever the outcome, whether he
16 never is released on extended supervision in his
17 lifetime or whether he is, there will have been
18 growth, greater understanding, a hope of
19 reconciliation or even redemption. And all of
20 that will come with progress.

21 To pretermitt that prospect of progress
22 today by saying that the back end institutions of
23 criminal justice have no role to play, there will
24 be no consideration of eligibility, or no
25 eligibility and no consideration for extended

1 supervision, is to draw a line in time after
2 which progress cannot benefit or affect Steven
3 Avery, or the Halbach family, or as to him, the
4 institutions of criminal justice.

5 Now, your Honor, in no other field of
6 human endeavor known to me do we cut off the
7 prospect of progress. If 10 years from now
8 Mr. Avery comes down with some dread disease,
9 comes down with cancer and he has to be treated
10 in the Department of Corrections and he is turned
11 over to those who practice medicine instead of
12 practicing law; they will not say we can and will
13 treat you only with the methods of diagnosis and
14 treatment and cure known in 2007. If the cancer
15 occurs in 2017, they will treat him with the
16 benefits of human progress through the day in
17 which he's diagnosed.

18 If some psychological need develops for
19 him or for anyone else in the Department of
20 Corrections and we turn from law to psychology,
21 that psychologist will not say, you were
22 incarcerated in 2005 and, therefore, I will treat
23 you only on the basis of the body of knowledge
24 that we had in 2005, although the calendar today
25 says 2030. It would be unthinkable in any other

1 field of human endeavor.

2 Historians, for example, do not feel
3 themselves bound to assess Abraham Lincoln's life
4 by what was known about it in 1865. In every
5 other area of human endeavor we rely on and draw
6 the benefits from progress. Law should do the
7 same and it can.

8 We have institutions at the back end of
9 our system of criminal justice just as competent,
10 just as dedicated, as those at the front end.
11 And those institutions will be able to make
12 contemporaneous judgments and judgments on the
13 basis of 20, or 25, or 30, or 40, or 50 years
14 experience, not the year and a half under which
15 all of us labor today.

16 Finally, I want to say that if your
17 Honor accepts the invitation to foreclose
18 consideration for extended supervision today,
19 your Honor, in doing so, and I don't -- I
20 understand that these are the wishes of most of
21 the people in this room, certainly those to your
22 Honor's right, behind me.

23 But I say, all the same, that if your
24 Honor takes up that invitation, then from this
25 day forward, as a matter of criminal justice,

1 quite apart from the role she will continue to
2 play in the hearts of her friends and her family
3 and her community, but as a matter of criminal
4 justice, if your Honor takes up that invitation,
5 Teresa Halbach becomes an abstraction and one
6 quickly forgotten, because there are a lot of
7 murders in our human family.

8 But if the Halbachs and the community
9 have the chance to speak and be heard by the
10 institutions of criminal justice that work at the
11 back end, their words will be actuated by their
12 memories of Teresa Halbach's values, by their
13 memories of her life, by the memories of what she
14 believed in. Their words will be actuated, in
15 part, by that.

16 And 20 years from now, those who loved
17 her best will speak for Teresa Halbach and speak
18 accurately of what she valued and loved. Thirty
19 years from now they will do that. And 20 and 30
20 and 40 years from now, the Parole Commission will
21 have to consider Teresa Halbach, not as an
22 abstraction, but as somebody who's part of
23 progress and, therefore, vital in the way that I
24 have described it.

25 And if the words that people speak at

1 that point, actuated by love and memory of Teresa
2 Halbach, are words without mercy, words without
3 reconciliation, words of fear for the community
4 safety, then so be it. Then so be it. He should
5 hear it, the Parole Commission should hear it, we
6 all should hear it. And if they are something
7 else, then so be that. We can't know what will
8 happen between now and then. I ask your honor
9 only to let it happen.

10 I'm asking the Court to take the harder
11 course, the one that is not easy, but also the
12 one that is not pointless. I'm asking the Court
13 to show as much faith in the back end
14 institutions of criminal justice as in its front
15 end institutions. I'm asking the Court to
16 preserve the prospects of progress.

17 In making that request, I want to add
18 that I agree entirely with those who loved Teresa
19 Halbach, about one point they made unanimously in
20 particular; that is this, that there are many
21 lessons to learn from the life of Teresa Halbach,
22 many lessons that can be learned from the life of
23 Teresa Halbach. Unfortunately, I know of only
24 one lesson that can be learned from Teresa
25 Halbach's death; and that is, that imposing death

1 on another human being is easy and it's pointless
2 and it's wrong.

3 And in the hope that we have all learned
4 that one lesson from her death, I'm asking this
5 Court not to take the easy course, not to take
6 the pointless course, but to preserve the
7 prospects of progress. And with progress, to
8 allow the lessons of Teresa Halbach's life
9 themselves to live.

10 I'm asking the Court to exercise its
11 discretion under Section 973.014 (1g)(a), 1 and
12 to leave Mr. Avery eligible, eligible for
13 consideration for extended supervision in 20
14 years. I have not the slightest expectation,
15 today, that he will walk out of prison in his
16 lifetime. But I have a hope and a faith in
17 progress, including his. And so, in a real
18 sense, I'm asking for the life sentence, not the
19 death sentence.

20 THE COURT: Does the State have anything in
21 rebuttal?

22 ATTORNEY KRATZ: No, thank you, Judge.

23 THE COURT: Mr. Avery, although I have
24 already heard from you, traditionally, the Court
25 allows the defendant to have the last word, if you

1 will, and I'm going to give you another chance to
2 say anything additional, if you wish. I will let
3 you speak with your attorneys for a few minutes,
4 first, if you want. And if there's any other
5 statement you wish to make to the Court, I will
6 allow you to make it at this time.

7 ATTORNEY BUTING: He is fine.

8 THE COURT: Very well. I'm going to take a
9 recess at this time to review the arguments of the
10 parties, the statements of the victims, and other
11 information that's been presented. The Court will
12 be back out with a sentence in about 20 minutes.

13 (Recess taken.)

14 THE COURT: Before the Court announces its
15 sentence in this case, I want to remind all those
16 present that this is a court of law. The Court
17 recognizes the emotional nature of this case and its
18 importance to all parties involved; however, any
19 vocal outburst or displays of emotion will not be
20 tolerated. Any violation will result in removal
21 from the courtroom and possible arrest.

22 At the outset, I wish to express the
23 Court's sympathy to Mr. and Mrs. Halbach and the
24 other members of the Teresa Halbach family.
25 During the course of these proceedings, I have

1 had the opportunity to observe how your family
2 has handled an extremely difficult situation with
3 dignity and poise.

4 I'm sure that your ability as a family
5 to focus on the joy and happiness of Teresa's
6 life, rather than the tragic circumstances of her
7 death, has been a source of strength for your
8 family as well as an inspiration to other
9 families who have experienced personal tragedies.

10 The Court is highly aware that in many
11 ways this case is unique, even among homicide
12 cases which, fortunately, are rare in this
13 county. This was the longest criminal trial in
14 the history of Manitowoc County. The case has
15 received more publicity than any other trial in
16 the counties history. But, nevertheless, the
17 rules that the Court is to apply in sentencing
18 are the same as they are for other criminal
19 cases.

20 At the conclusion of the trial, the
21 Court instructed the jury that the jurors were
22 not to be swayed by sympathy, prejudice, or
23 passion. The State, the defendant, and the
24 victim are all entitled to the same consideration
25 from the Court in imposing a fair and just

1 sentence in this case.

2 With respect to sentencing
3 recommendations on the homicide charge, the State
4 has recommended that the Court impose the
5 mandatory sentence of life in prison without the
6 possibility of extended supervision.

7 The Defense has recommended that the
8 Court impose a sentence of life in prison, but
9 authorize eligibility for extended supervision
10 after 20 years.

11 The PSI writer recommends that the Court
12 impose a sentence which will not allow for the
13 defendant's release from prison.

14 Those are the recommendations presented
15 to the Court today.

16 The law in Wisconsin directs the Court
17 to consider three primary factors; specifically,
18 the severity of the offense, the character of the
19 offender and the needs of society. The law also
20 requires the Court to impose the minimum amount
21 of custody or confinement which is consistent
22 with these factors.

23 Although in a case of first degree
24 intentional homicide the Court is required to
25 impose a life sentence, the Court understands

1 this directive to apply to its determination of
2 when and if a defendant, sentenced to life in
3 prison, is eligible for extended supervision.

4 First of all, with respect to the
5 gravity of the offense, the charge of first
6 degree intentional homicide is the most serious
7 crime known to the law. The evidence in this
8 case, although largely circumstantial, was more
9 than sufficient, in the Court's mind, to sustain
10 the jury's verdict and the Court so ruled earlier
11 in this case.

12 We know that the victim in this case,
13 Teresa Halbach, suffered at least two gunshot
14 wounds to her head. Because of the condition of
15 the body, it could not be conclusively stated
16 whether the gunshots were the cause of her death
17 or whether other means were used and the gunshots
18 were post mortem.

19 The blood evidence demonstrated that at
20 some point after the death, Mr. Avery, the
21 defendant, transported Teresa Halbach's body in
22 the back of her vehicle.

23 There was also evidence introduced at
24 trial that the defendant lured Teresa Halbach to
25 his home on that day.

1 There was evidence that he specifically
2 requested that she be the person sent to take the
3 photo of the vehicle for sale.

4 There was also evidence that there were
5 two cell phone calls he made to her on that day
6 on which he blocked his number indicating a
7 desire to conceal his identity.

8 Because of the condition of the body
9 that was discovered, there were many things about
10 the homicide that, necessarily, are not known.
11 Among those are the defendant's precise
12 motivation for committing this crime. However,
13 while the motivation cannot be known with
14 certainty, the circumstantial and scientific
15 evidence was strong that the defendant's actions
16 in killing Teresa Halbach were premeditated.

17 The effects of this crime on the
18 victim's family will be permanent. Teresa
19 Halbach's vibrant life was brutally taken from
20 her at a very young age. Her parents, siblings,
21 and other family members have lost a loved one
22 forever, as emotionally detailed in their
23 statements to the Court. This is not a case in
24 which any tool of restorative justice can repair
25 the devastating and permanent damage caused by

1 Mr. Avery's actions.

2 With respect to the other charge, the
3 felon in possession of a firearm charge, the
4 severity of that charge is generally determined
5 by the circumstances in which the weapon was
6 possessed. In this case, those circumstances are
7 aggravated because the weapon was used in
8 connection with an intentional homicide.

9 Moreover, there's no evidence to suggest
10 that the homicide in this case was the result of
11 any loss of temper or anything in that area, but
12 rather was the result of a calculated murder. In
13 addition, the victim in this case had no prior
14 meaningful relationship of any kind with the
15 defendant, Steven Avery.

16 The Court is also directed to consider
17 the character of the offender. That background
18 is contained largely in the Presentence
19 Investigation Report. Mr. Avery was 43 years old
20 at the time the crimes in this case were
21 committed.

22 The record shows that, while he is
23 somewhat below average in intelligence, he is not
24 mentally impaired in any sense. There's no
25 evidence of any serious health problems to speak

1 of.

2 Mr. Avery was previously married and had
3 four children. He was divorced while serving a
4 17 and a half year prison sentence for felony
5 convictions in two cases. First, for endangering
6 safety by conduct regardless of life as a
7 repeater, and felon in possession of a firearm in
8 Case 85 FE 3.

9 The second sentence arose out of what
10 everyone now acknowledges were wrongful
11 convictions for attempted first degree
12 intentional homicide and related charges in Case
13 85 FE 118.

14 The record contained in the PSI
15 demonstrates that Mr. Avery has been regularly
16 involved in criminal activity during those
17 portions of his adult life when he was not
18 incarcerated.

19 At age 18 he was convicted of his first
20 two felonies, two burglary counts for Manitowoc
21 County. He was originally placed on probation.
22 That probation was subsequently revoked for other
23 criminal violations and he was sentenced to two
24 years in prison.

25 At about the same time, he was convicted

1 on three misdemeanor theft counts that were
2 amended down from three burglary counts, for
3 crimes committed in Marinette County.

4 At age 20, he was again convicted of a
5 burglary in Marinette County and received a 15
6 month prison sentence, served concurrently with
7 his first prison sentence.

8 Approximately a month after the
9 Marinette County burglary conviction, Mr. Avery
10 was convicted in Manitowoc County of cruelty to
11 animals, a charge which arose out of an incident
12 in which he poured gasoline on a cat and threw
13 the cat into a bonfire. After the cat escaped
14 the fire and ran into the yard, Mr. Avery
15 reportedly poured more gasoline on the cat, so
16 that it would burn to death.

17 The Court has -- or did exclude evidence
18 of this crime and other crimes committed by
19 Mr. Avery, during the trial, because of their
20 highly prejudicial effect. However, at
21 sentencing, these crimes become relevant as
22 evidence of the defendant's character.

23 While the incident involving the cat
24 occurred many years ago, it does demonstrate a
25 level of cruelty that the Court finds difficult

1 to rationalize simply as a mistake of youth.

2 In 1985, at age 22, Mr. Avery committed
3 his most serious felonies, before the charges in
4 this case. He was convicted of endangering
5 safety by conduct regardless of life as a
6 repeater and felon in possession of a firearm as
7 a repeater. For those charges, he received a 6
8 year prison sentence.

9 The Complaint in that case indicated
10 that at 5:30 in the morning, on January 3rd,
11 1985, Sandra Morris was driving to drop off her
12 infant daughter at her grandparents before
13 reporting to work. On County Highway Y, a
14 vehicle driven by Mr. Avery came up from behind,
15 pulled alongside of her vehicle and struck the
16 side of it forcing her to stop.

17 Mr. Avery got out of the car. She
18 recognized him when he got out and approached her
19 vehicle, while he was pointing a rifle at her.
20 He originally ordered her to get into his
21 vehicle, but when she pointed out that her infant
22 child was in the car and it would freeze if left
23 alone, Mr. Avery allowed her to leave.

24 By the time he was 24 years old, when he
25 was sentenced to the prison sentences that

1 included the sentence on the wrongful conviction,
2 Mr. Avery had been convicted of five felonies and
3 four misdemeanors.

4 He did not commit any crimes, needless
5 to say, during the next 17 and a half years that
6 he spent in prison. However, while in prison, he
7 sent written correspondence and an audiotape
8 threatening to kill his wife. The threats were
9 considered serious enough that his former wife
10 obtained an order prohibiting him from contact
11 with his children.

12 His only convictions following his
13 release from prison in September, 2003, are the
14 convictions in this case.

15 While the majority of Mr. Avery's adult
16 life has been spent in prison, and a significant
17 portion of that time was for a crime he did not
18 commit, the fact remains that, during his time
19 out of prison as an adult, Mr. Avery has
20 regularly committed crimes, including serious
21 felonies.

22 Before leaving the character of the
23 offender issue, I want to make one point. The
24 Court gives no weight, whatsoever, to Mr. Avery's
25 refusal to admit guilt in this case. The Court

1 believes it would be improper to consider that as
2 an aggravating factor. It is Mr. Avery's
3 absolute right to maintain his innocence, even in
4 the face of the jury's verdicts in this case.
5 One need only look at Mr. Avery's wrongful
6 convictions in the 1986 case to understand the
7 rationale for this rule.

8 While the defendant's acknowledgment of
9 guilt can be considered as a mitigating factor,
10 and that is not present here, nevertheless, the
11 converse of the rule is not true. A refusal to
12 admit guilt is not an aggravating factor.

13 The most important factors, from the
14 Court's perspective, on the issues of severity of
15 the offense and character of the offender are,
16 first, the vicious nature of the crime in this
17 case. The indications that Mr. Avery consciously
18 selected the victim in this case, the fact that
19 there was no rational reason for the crime, no
20 prior relationship to the victim, this wasn't a
21 domestic dispute; it appeared to be simply a
22 calculated, premeditated murder.

23 There were probably other background
24 explanations for what happened, but the Court is
25 not going to speculate as to what those might be,

1 or go beyond the evidence that was introduced at
2 the trial.

3 With respect to the character of the
4 offender, the Court finds it to be most
5 significant that Mr. Avery has been involved in
6 serious criminal activity, on a regular basis,
7 during those times of his adult life when he was
8 not incarcerated. Significantly, while most
9 criminals become more law abiding as they get
10 older, the record demonstrates Mr. Avery's crimes
11 have gotten more serious as he's gotten older,
12 culminating with the homicide of Teresa Halbach
13 in this case.

14 The final consideration for the Court
15 is -- or are, the needs of society. In the
16 Court's opinion, those needs are the most
17 important factor in this case. I have to say,
18 Mr. Avery, that what particularly strikes the
19 Court as I was preparing for today's proceedings,
20 as the -- is the continuing danger that you pose
21 to those around you, evidenced not only by the
22 homicide in this case, but by its timing in your
23 life.

24 Whatever crimes may have been a part of
25 your past, at the time you committed this

1 homicide, everything suggested that your life was
2 poised to take a turn for the better. By October
3 31 of 2005, you had legitimately become a
4 standard barer for the success of the Wisconsin
5 Innocence Project. Nobody doubted that you were
6 innocent of the crimes for which you were
7 exonerated, and that project was instrumental in
8 securing your freedom.

9 The fact that everyone acknowledged that
10 you had been wrongly convicted made you a subject
11 of sympathy, not only in this community, but
12 across the State. The State legislature
13 introduced legislation which bore your name,
14 extending greater protections to those accused of
15 crimes in order to reduce the future potential
16 for wrongful convictions. Legislators were
17 questioning whether the State shouldn't be
18 increasing the maximum amount of compensation
19 which can be awarded to persons who were
20 wrongfully incarcerated.

21 You were also the plaintiff in a civil
22 suit against Manitowoc County, which promised to
23 bring you significant compensation for your
24 lengthy period of wrongful incarceration. Even
25 with the specter of the homicide charges in this

1 case hanging over your head, your attorneys were
2 able to settle that case for \$400,000. However,
3 despite having the widespread sympathy of the
4 public, and the prospects for a significant
5 financial award, you committed the horrible crime
6 that brings you here to be sentenced today.

7 All the evidence suggests that this was
8 not a crime of passion, but rather of planned
9 premeditation. There is no indication, that I
10 saw in the trial, that you were under the
11 influence of alcohol or drugs at the time. The
12 victim was not a acquaintance with which you had
13 any particular relationship that could have given
14 rise to any type of domestic disturbance, but was
15 a mere business acquaintance. Moreover, the
16 crime was not the result of a youthful lapse of
17 judgment; you were 43 years old at the time you
18 committed the crime.

19 In terms of assessing your danger to
20 society, the evidence forces me to conclude that
21 you are probably the most dangerous individual
22 ever to set foot in this courtroom.

23 Your attorney has argued eloquently that
24 the Court should make you eligible for release at
25 some point in the future. But from what I see,

1 nothing in your life suggests that society would
2 ever be safe from your behavior.

3 One of the things that strikes me the
4 most is that, as you have grown older, your
5 crimes have increased in severity. This crime
6 was committed at a time when you were 43 years
7 old. Given the trend of your crimes, society has
8 a legitimate right to be concerned that there is
9 a serious risk you would reoffend and commit
10 serious offenses if you were ever permitted to be
11 released from prison.

12 The moral need for punishment as a
13 result of the gruesome murder in this case,
14 coupled with the danger that the Court believes
15 you pose to society based on your prior history
16 and the premeditated and senseless nature of the
17 homicide in this case, compels the Court to
18 conclude you should not be free again.

19 For the foregoing reasons, on the first
20 degree intentional homicide charge, the Court
21 sentences you to life in prison and determines
22 that you will not be eligible for release to
23 extended supervision.

24 On the felon in possession of a firearm
25 charge, the Court sentences you to a penalty of

1 10 years in prison, consisting of 5 years initial
2 confinement, followed by 5 years extended
3 supervision; that sentence to run concurrent with
4 your sentence on the first degree intentional
5 homicide charge.

6 In light of the Court's sentence on the
7 first degree intentional homicide charge, the
8 Court is not going to set any specific conditions
9 of extended supervision on the possession of a
10 firearm charge.

11 The Court has been notified that, in
12 terms of sentence credit, you are entitled to
13 credit of 568 days, that being the period of time
14 from November 9 of 2005, to the present.

15 I'm required to notify you that you will
16 be losing your voting rights as a result of your
17 conviction in this case. We have a paper that
18 explains those rights for you.

19 I also have for you a Written
20 Explanation of Indeterminate Sentence, which the
21 Court is required to prepare on the firearms
22 charge. I will hand that to you before you leave
23 today.

24 I will also notify you that you do have
25 the right to seek post conviction relief in this

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case. You have 20 days in which to file a notice of motion. We have a form your attorneys will go over with you before you leave today. Is there anything further from either party?

ATTORNEY KRATZ: No, Judge.

THE COURT: Mr. Strang.

ATTORNEY STRANG: No.

THE COURT: If not, these proceedings are adjourned.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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

Dated this 12TH day of July, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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