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ATTORNEYS AT LAW
PO Box 1528
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UNDER SEAL
STATE OF WISCONSIN v. STEVEN AVERY
Case No. 05-CF-381
Defendant's Notice Concerning Interference
with Right to Counsel

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED
JUN 16 2006
CLERK OF CIRCUIT COURT

STATE OF WISCONSIN

SEALED
CIRCUIT COURT

MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2005-CF-381

STEVEN A. AVERY,

Defendant.

**DEFENDANT'S NOTICE CONCERNING
INTERFERENCE WITH RIGHT TO COUNSEL**

Steven A. Avery, by counsel, now gives notice to the Court and opposing counsel about a potential infringement on his right to counsel under the Sixth and Fourteenth Amendments to the United States Constitution and under Article I, Section 7 of the Wisconsin Constitution. He puts the Court and the state on notice that any further inquiry of Orville O. Jacobs, an inmate in the Calumet County Jail, will constitute deliberate elicitation of information about the pending charges from Mr. Avery by an agent of the state, contrary to Mr. Avery's right to counsel. But Mr. Avery asks now only that the Court inquire into and establish on the record the reasons for Mr. Jacobs' incarceration with Mr. Avery.

1. Discovery materials disclosed by the state reveal that Mr. Jacobs repeated to agents of the state certain statements by Mr. Avery on April 14, 2006. See Discovery pages STATE5680 to STATE5686, attached.

2. As of April 14, 2006, on the information now available to defense counsel, it appears that the state did not deliberately elicit information from Mr. Avery about the pending charges through Mr. Jacobs. Compare *Massiah v. United States*, 377 U.S. 201, 206 (1964); *Fellers v. United States*, 540 U.S. 519, 523-25 (2004); *United States v. Henry*, 447 U.S. 264, 268, 269-75 (1980); *Maine v. Moulton*, 474 U.S. 159, 176 (1985); *State v. Lee*, 122 Wis. 2d 266, 270-73, 274-80, 362 N.W.2d 149, 150-52, 152-55 (1985).

3. However, any further inquiry of Mr. Jacobs about Mr. Avery's statements would support a strong inference that the state has encouraged Mr. Jacobs at a minimum to keep his ears open or otherwise to obtain statements about the pending charges from Mr. Avery. For purposes of the Sixth Amendment right to counsel, deliberate elicitation of information by agents of the state is broader than interrogation and Mr. Jacobs' role may rise to that level.

4. Concern about Mr. Jacobs' proximity to Mr. Avery in the Calumet County Jail is heightened by the fact that CCAP reveals no obvious reason for Mr. Jacobs to be in jail at all. According to CCAP, Mr. Jacobs has no open case pending in any of the 71 counties in Wisconsin that are on CCAP (Portage County still is not,

counsel believe). Mr. Jacobs does have two closed cases from Calumet County in 2006 on which total forfeitures of \$375 and \$249 were due April 21 and April 20, 2006, respectively. CCAP shows both forfeitures as still due. Possibly, then, Mr. Jacobs is serving a commitment in lieu of payment of the forfeitures. But that would not explain his presence in the Calumet County Jail on or before April 12, 2006, since neither forfeiture then had come due.

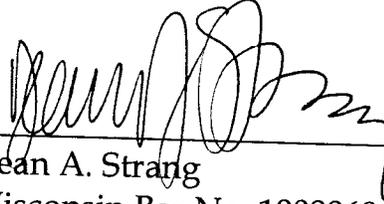
5. There may be some other valid explanation for Mr. Jacobs' presence in the Calumet County Jail not disclosed by the CCAP records, or that defense counsel have missed. For that reason, Mr. Avery requests that the Court inquire of the state the reasons for Mr. Jacobs' presence in the Calumet County Jail and make the answer a matter of record in this case.

WHEREFORE, Steven A. Avery requests an inquiry on the record into the reasons for the presence of Orville O. Jacobs in the Calumet County Jail with Mr. Avery. He also gives notice that he will consider any further state inquiry of Mr. Jacobs about statements allegedly made by Mr. Avery about the pending charges to be deliberate elicitation of information from Mr. Avery, contrary to his federal and state constitutional rights to counsel.

Dated at Madison, Wisconsin, June 15, 2006.

Respectfully submitted,

HURLEY, BURISH & STANTON, S.C.



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CALUMET COUNTY SHERIFF'S DEPARTMENT

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File Number

Complaint No.
05-0157-955

TYPE OF ACTIVITY: Supplemental Report

DATE OF ACTIVITY: 04/12/06

REPORTING OFFICER: Correctional Officer Cheryl Mason

MAY 01 2006
Calumet County
District Attorney

On Wednesday, 04/12/06, at approximately 1435 hours, I (Correctional Officer CHERYL MASON) was approached by Inmate ORVILLE O. JACOBS. Inmate JACOBS just finished with bible study and was being escorted by myself back to D block where he was currently being housed. Inmate JACOBS asked me if any of the other cellblocks were open yet. I asked him if he needed to be moved. Inmate JACOBS stated he may need to be moved soon but can wait until another bed opened up. I asked Inmate JACOBS if he was having any trouble with Inmate AVERY and Inmate JACOBS stated, no nothing like that. Inmate JACOBS stated that AVERY was getting on his nerves. I advised Inmate JACOBS that we could move him immediately. Inmate JACOBS stated he could handle it for a little bit more, that it was probably just his new meds that he was on. I advised Inmate JACOBS that if he needed to be moved at any time that he could request to do so. Inmate JACOBS was fine with this.

Upon our conversation, Inmate JACOBS made statements to me of what he had heard from Inmate AVERY. Inmate JACOBS seemed to becoming irritated with the statements that AVERY was making in D block. Inmate JACOBS stated that Inmate AVERY had mentioned that the blood found by the washer and dryer and the headboard must have come from his dog. Inmate AVERY apparently stated that his dog cut his tongue. I then advised Inmate JACOBS that I would be informing an investigator. I asked Inmate JACOBS if he would like to speak to an investigator about this. Inmate JACOBS stated that he did not know what good it would do, since they probably have all of that already. I did not question Inmate JACOBS nor Inmate AVERY on the statements made to me.

At this time, I informed Inv. WIEGERT of the statements made to me by Inmate JACOBS.

Correctional Officer Cheryl Mason
Calumet Co. Jail
CM/bdg

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CALUMET COUNTY SHERIFF'S DEPARTMENT

Complaint No.
05-0157-955

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File Number

TYPE OF ACTIVITY: Telephone Contact with Correctional Officer Cheryl Mason

DATE OF ACTIVITY: 04/12/06

REPORTING OFFICER: Inv. Mark Wiegert

On 04/12/06, I (Inv. WIEGERT of the CALUMET COUNTY SHERIFF'S DEPARTMENT) received a phone call from Correctional Officer CHERYL MASON. CHERYL indicated she was contacted by ORVILLE JACOBS who is an inmate in the county jail. CHERYL further stated ORVILLE had informed her STEVEN AVERY told him (ORVILLE) that the blood on the headboard from his bed would be from his dog. CHERYL further stated to me ORVILLE told her the blood located behind the washer and dryer at STEVEN's property was also from the dog.

I asked CHERYL if she had asked ORVILLE any questions to which CHERYL stated she had not; she had just listened to what he had to say. I informed CHERYL she should not ask ORVILLE any questions and I would contact him at a later date.

Investigation continues.

Inv. Mark Wiegert
Calumet Co. Sheriff's Dept.
MW/bdg

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CALUMET COUNTY SHERIFF'S DEPARTMENT

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File Number

Complaint No.
05-0157-955

TYPE OF ACTIVITY: Interview of:

Orville O. Jacobs
DOB 07/20/72
206 Court Street
Chilton, WI 53014

DATE OF ACTIVITY: 04/14/06

REPORTING OFFICER: Inv. Mark Wiegert

On 04/14/06, I (Inv. WIEGERT of the CALUMET COUNTY SHERIFF'S DEPARTMENT) and DCI Special Agent TOM FASSBENDER did go to the county jail where we met with ORVILLE JACOBS in an interview room. Prior to speaking with ORVILLE, I did read ORVILLE his Miranda Rights to which ORVILLE indicated he understood and agreed to speak with us. A copy of that Miranda Rights form will be included with this report.

ORVILLE stated to us over the last few weeks, he had been talking with STEVEN AVERY who is in the same cellblock as ORVILLE. According to ORVILLE, they were talking about a bonfire and STEVEN had told ORVILLE that his nieces and nephews were supposed to come to his house on the weekend for the fire. STEVEN also mentioned to ORVILLE about burning four tires and ORVILLE stated to me he thought that was weird to burn that amount of tires if you were going to have kids around the fire. STEVEN also told ORVILLE that BRENDON was the only one at the fire with him. STEVEN also stated to ORVILLE that if he would have burned her (TERESA), there would be other bones there. STEVEN also stated to ORVILLE that he (STEVEN) knows that you would have to crush the rest of the bones that would not burn.

ORVILLE went on to say that when they talked again, STEVEN told him that STEVEN's girlfriend had told STEVEN that the police had found blood on the headboard that was located in his bedroom. STEVEN also told ORVILLE the police would not find anything on the mattress. ORVILLE stated to STEVEN at that time the only way there would not be any blood there was if you had cleaned it with bleach or if you had plastic over the mattress. ORVILLE stated after he had said this to STEVEN, STEVEN stopped talking to him.

ORVILLE then told us that prior to them having the conversation about the mattress, STEVEN AVERY stated to ORVILLE that he (STEVEN) knew that really good bleach could get rid of blood.

ORVILLE went on to tell us that also during the conversations, they talked about his niece. ORVILLE believed his niece's name to be CANDY. STEVEN stated to ORVILLE that was the one he supposedly had sexually assaulted; however, STEVEN told ORVILLE that he (STEVEN) had letters from the niece saying how much she liked him and that it was her stepdad, EARL,

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CALUMET COUNTY SHERIFF'S DEPARTMENT

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who was assaulting her. STEVEN told ORVILLE he had spent a lot of time with his niece and talked to her because no one else wanted to be around her.

STEVEN also told ORVILLE his sister, BARBARA, has porn on her computer and if it was ever found, there would also be trouble.

STEVEN also mentioned to ORVILLE there was supposed to be an aerial view of TERESA HALBACH's vehicle in the yard with its doors open when the yard was closed off.

I asked ORVILLE if anybody from law enforcement had asked him to get information from STEVEN AVERY to which ORVILLE stated nobody had asked him to do that, he was coming forward on his own freewill.

Special Agent FASSBENDER and I informed ORVILLE that he was not to ask STEVEN AVERY any questions about anything regarding this case.

I asked ORVILLE if he would be willing to write a written statement to which ORVILLE agreed to do. Included in this report will be ORVILLE's written statement.

Investigation continues.

Inv. Mark Wiegert
Calumet Co. Sheriff's Dept.
MW/bdg

STATE5683

CALUMET COUNTY SHERIFF'S DEPARTMENT
206 Court Street, Chilton, Wisconsin

DATE 4-14-06

TIME 15:39

COPY

WARNING AND WAIVER OF RIGHTS

I. The law requires that you be advised that you have the following rights:

- 1. You have the right to remain silent.
- 2. Anything that you say can and will be used against you in court.
- 3. You have the right to consult with a lawyer and to have him present with you while you are being questioned.
- 4. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning.
- 5. You have the right to stop answering any questions at any time.

II. **WAIVER**

- 1. Do you know and understand each of these, your rights which I have explained? yes
- 2. Understanding these rights do you wish to make a statement? yes

X Chilton
Signature

M. W. J.
Witness

Thomas J. Foubert
Witness



VOLUNTARY STATEMENT

DATE 4-14-06 PLACE Calumet County Jail

Time Statement Started _____ A.M. 3:53 P.M.

I, the undersigned, Orville O Jacobs

Address, 925 S Madison St Chilton

Phone Number, _____, being _____ years of age; D.O.B. 7-20-72

do hereby make the following statement to Mark Wiegert & Tom Falsbender he having first identified himself as a law enforcement

Over the last couple of weeks I've talked to Steve Avery. On one occasion we were talking about the bon fire that he was suppose to have at his house with his nieces & nephew on the weekend. He mentioned about burning four tiers and I thought that it was wierd to burn that amount of tiers if you were going to have kids there. He said Brandon was the only one there. Also he stated that he said if he had burned her ~~were~~ we were were the rest of the bones. He said that he knows that the morgs have to crush the rest of the bones that don't burn. The next thing we talked about was he was told by his girlfriend that they had found blood on the head board from his room and that the police wouldnt find any thing on the mattress. I said to him that the only way they wouldnt if you didnt do it because it was cleaned with bleach or if you had plastic over the mattress and after I said that to Steve he stopped talking to me about it. He Also stated that before this that he knew really good bleach could get rid of blood. The other things he said is that his niece "Candy" I believe to be her name the

WITNESSES:

[Signature]

[Signature]

(Signature of Person giving voluntary statement)

Time Statement Finished _____ A.M. _____ P.M. Date 4-14-06

COPY

VOLUNTARY STATEMENT

DATE _____ PLACE _____

Time Statement Started _____ A.M. _____ P.M.

I, the undersigned, _____

Address, _____

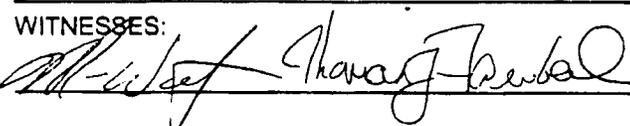
Phone Number, _____, being _____ years if age; D.O.B. _____

do hereby make the following statement to _____ he having

first identified himself as a _____

one he was suppose to of sexually assaulted. That he has letters from her saying how much she liked him and that it was her step dad Earl that was assaulting her. Steve also said that he spent alot of time with her and talked to her because no one else wanted to be around her. Steve told me that his sister Barbara has porn stuff on her computer and that if it was found they would be in trouble. Also he said that there is suppose to be a ariel view of Terressa Halbucks vehical in the yard with its doors open when ~~at~~ the yard was all closed off. That when I was put in by Steven Avery that no law enforcement asked me to get any information from him.

I was told by law enforcement that I can not ask Steve Avery any questions about the crime or try to prey any information from him as well.

WITNESSES:



(Signature of Person giving voluntary statement)

Time Statement Finished _____ A.M. 4:18 P.M.

Date 2/14/06