

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
(Green Bay Division)

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STEVEN A. AVERY,

Plaintiff,

v.

MANITOWOC COUNTY,  
THOMAS H. KOCOUREK, individually  
and in his official capacity as  
Sheriff of Manitowoc County,

CASE NO. 04-C-986

DENIS R. VOGEL, individually  
with respect only to his executive, administrative  
and advice and counsel functions  
and in his official capacity as  
District Attorney of Manitowoc County,

Defendants.

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AFFIDAVIT OF WALTER F. KELLY

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STATE OF WISCONSIN }  
                                  } SS.  
MILWAUKEE COUNTY }

Walter F. Kelly, being first duly sworn, testifies and states as follows:

1. I am an attorney licensed to practice, inter alia, in the State of Wisconsin and the United States District Court for the Eastern District of Wisconsin.
2. Along with attorney Stephen M. Glynn I represented Steven A. Avery in connection with the above-captioned case beginning October 30, 2003 and continuing to the present.
3. Attached hereto as Exhibit A to this AFFIDAVIT is my letter agreement of October 31, 2003 with Steven A. Avery, sent by me to him on that date, and signed by him and returned

to me on November 4, 2003.

4. I met with Mr. Avery and his parents at the Wisconsin Innocence Project at the Remington Center of the University of Wisconsin Law School on October 30, 2003. I reached agreement with Mr. Avery on the terms of Exhibit A on that date and prepared and sent the letter agreement the following day.

5. As I had indicated to Mr. Avery I would do, I met with attorney Stephen M. Glynn on November 3, 2003, and he agreed to join in representing Mr. Avery.

6. I had no knowledge that Mr. Avery and his parents had met with attorneys Robert Gingras and Paul Kinne on October 30, 2003 until November 4, 2003 when I was informed by Professor Keith Findley of the Innocence Project that Mr. Kinne had informed him that such a meeting had occurred and that Mr. Kinne's law firm had a contract with Mr. Avery to represent him in connection with his wrongful incarceration in 1985.

7. Between November 4 and November 10, 2003, Mr. Avery confirmed to me and, to my knowledge, to Professor Findley that he wanted to be represented by Mr. Glynn and me and not by Mr. Gingras and Mr. Kinne. During that same period I spoke with Mr. Kinne and told him what Mr. Avery had told me about wanting to be represented by me. Mr. Kinne told me that Mr. Avery had told him only that he wanted to delay the case and that he was undecided about representation. Mr. Kinne informed me that Mr. Gingras was out of the office but suggested a phone conference between the three of us on November 10, 2003.

8. I spoke with Mr. Gingras and Mr. Kinne on November 10, 2003 at 10:30 a.m. Mr. Kinne stated that Mr. Avery had told Mr. Kinne recently that he was undecided about representation. I responded that I had spoken with Mr. Avery recently and related to him Mr. Kinne's statements to me; I told Mr. Kinne and Mr. Gingras that Mr. Avery disagreed with what

Mr. Kinne had represented to me to be Mr. Avery's statements to him, that Mr. Avery told me that he wanted me to represent him, and that Mr. Avery told me that "they", referring to Mr. Kinne and Mr. Gingras, had been calling him and he had been telling them that he wanted me, not them, to represent him.

9. Mr. Gingras and Mr. Kinne said that Mr. Avery was still undecided, and that they were going to meet with him on Wednesday, November 12, 2003.

10. I have read paragraphs 14 through 16 of Mr. Gingras' AFFIDAVIT. I did not tell Mr. Gingras that prior to Mr. Avery signing my letter agreement I knew that Mr. Avery had already signed a fee contract with his firm. In fact, my knowledge was to the contrary; I didn't even know of Mr. Avery's visit with Mr. Kinne and Mr. Gingras until late afternoon on November 4, 2003, when Professor Findley told me of his conversation with Mr. Kinne on that afternoon. I did not tell Mr. Gingras that Mr. Avery had fired his law firm; rather, I told him that under Wisconsin law Mr. Avery had a right to select whatever lawyer he wanted to represent him.

11. Mr. Gingras told me that he had a lien on the case; I told him that I thought under Wisconsin law such a lien was unenforceable, if the client did not agree to the representation and no work had been done on the case by the attorney seeking to enforce the lien.

12. Mr. Gingras proposed that we work together on the case; I told him that that was a "no-go", because I was already working with Mr. Glynn, but that I would double check with Mr. Avery about that.

13. I spoke with Mr. Avery the next day; he told me that he did not want to work with Mr. Gingras and Mr. Kinne and that he was not meeting with them the next day, Wednesday the 12<sup>th</sup>.

14. I have read paragraph 21 and Exhibit H of Mr. Gingras' AFFIDAVIT. In the final

sentence of the first paragraph of Exhibit H Mr. Gingras asserts that “[p]rior to signing that fee agreement, you were aware that Mr. Avery had an agreement with my firm to represent him with respect to his claims.” That statement is not true; I had no such awareness.

15. On April 7, 2004 Mr. Glynn and I completed the pre-filing investigation and research stated in my letter agreement of October 31, 2003 with Mr. Avery. By covering letter of April 8, 2004, Exhibit B to this AFFIDAVIT, we explained to Mr. Avery the most important aspects of his case, our opinions that his case was meritorious, albeit difficult, and our commitment to represent him; and we enclosed our AGREEMENT, Exhibit C to this AFFIDAVIT, which Mr. Avery signed on April 26, 2004.

16. Attached hereto as Exhibit D to this AFFIDAVIT is a letter of September 1, 2004 from Attorney Richard Cayo, representing Mr. Glynn and me, to attorney Gingras, who responded by letter of October 20, 2004, which is attached as Exhibit E to this AFFIDAVIT.

17. Attached hereto as Exhibit F to this AFFIDAVIT is the STATEMENT summary of Walter F. Kelly, S.C. for fees in this case.

18. Attached hereto as Exhibit G to this AFFIDAVIT is the COSTS summary of Walter F. Kelly, S.C. for costs incurred in this case.

19. Attached hereto as Exhibit H to this AFFIDAVIT is the STATEMENT of Glynn, Fitzgerald & Albee, S.C. for fees and expenses incurred in this case.

20. In Exhibit B to this AFFIDAVIT Mr. Glynn and I explained to Mr. Avery the difficulty of his case. As Exhibits F, G & H demonstrate, we worked hard to develop Mr. Avery’s claims both factually and legally; there can be no doubt that this case was extraordinarily challenging by any professional standard in the field of affirmative damages litigation to enforce constitutional rights pursuant to 42 U.S.C. § 1983. The difficulty of the case increased during its

development due to the necessity to obtain and analyze over 10,000 pages of records from multiple sources, including some reluctant sources, and to depose adversarially over 30 witnesses, many of them reluctant police witnesses. In addition, the case became complicated by issues concerning the politics of Wisconsin State Claims Board and legislative consideration of parallel claims by Mr. Avery, as well as by issues concerning the investigation conducted by the Attorney General of Wisconsin and her staff in response to a request from the District Attorney of Manitowoc County. Finally, in addition to the issues we described to Mr. Avery in our letter of April 8, 2004, there developed issues concerning the res judicata and collateral estoppel and indispensable parties affirmative defenses.

The above statements are true and accurate to the best of my recollection.

Dated this \_\_\_\_\_ day of March, 2006 at Milwaukee, Wisconsin.

\_\_\_\_\_  
Walter F. Kelly

Subscribed and sworn to before me  
this \_\_\_\_ day of March, 2006.

\_\_\_\_\_  
Notary Public, State of Wisconsin.  
My commission expires: \_\_\_\_\_