

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 15

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** MARCH 2, 2007

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

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

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

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

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

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

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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(Jury not present.)

At this time the Court calls State of Wisconsin vs. Steven Avery, Case No. 05 CF 381. We're here this morning for a continuation of the trial in this matter, outside the presence of the jury at this time. Will the parties state their appearances for the record, please.

ATTORNEY KRATZ: Good morning, Judge. The State appears by Calumet County District Attorney, Ken Kratz, Assistant Attorney General Tom Fallon, Assistant District Attorney Norm Gahn, all appearing as special prosecutors.

ATTORNEY STRANG: And good morning. At this table is Steven Avery and Jerome Buting and Dean Strang.

THE COURT: All right. Is there a matter the parties wish to take up before we bring in the jurors?

ATTORNEY FALLON: I don't think we have anything other than previously.

THE COURT: Very well. At this time, then, we'll bring in the jury.

(Jury present.)

THE COURT: You may be seated. And, Mr. Fallon, you may call the State's first witness

1 today.

2 ATTORNEY FALLON: Thank you. The State
3 would call Mr. Kenneth Olson to the stand.

4 **KENNETH B. OLSON**, called as a witness
5 herein, having been first duly sworn, was
6 examined and testified as follows:

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

9 THE WITNESS: Kenneth B. Olson, O-l-s-o-n.

10 **DIRECT EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. What do you do for a living?

13 A. I'm a forensic scientist at the State Crime
14 Laboratory in Madison. My main duties are as a
15 trace evidence examiner. And trace evidence
16 includes paint, glass, fibers, explosives,
17 metals, anything that needs chemical
18 identification that doesn't fit into either
19 toxicology or drug analysis.

20 I'm also involved in our Field
21 Response Program, going to crime scenes. And I'm
22 also a bloodstain pattern examiner.

23 Q. All right. And how long have you been employed
24 at the Wisconsin State Crime Lab?

25 A. Almost 27 years.

1 Q. And during that particular time, how long have
2 you been doing or involved in the field of trace
3 evidence analysis?

4 A. That's been my main duty since I was hired at the
5 laboratory.

6 Q. And how long have you been involved in field
7 response operations?

8 A. I have been involved in field response since I
9 have been employed at the laboratory, also.

10 Q. All right. Are you currently a member of a Field
11 Response Team?

12 A. I'm no longer actively on call, but I will assist
13 if they need help at crime scenes.

14 Q. All right. How are you involved in this case,
15 Mr. Olson?

16 A. I was asked to examine certain charred items that
17 was recovered from the Avery property; items that
18 were recovered from a burning barrel and then
19 some charred skull fragments.

20 Q. And why are you here today?

21 A. I'm here to explain the results of my
22 examination.

23 Q. All right. First of all, let's find out a little
24 bit about yourself, please. Can you tell us what
25 your educational background is.

1 A. I have a bachelors of science degree, with a
2 major in chemistry from the University of
3 Wisconsin at Superior.

4 Q. When did you receive that degree?

5 A. In June of 1980.

6 Q. And have you pursued any post-graduate studies of
7 any nature?

8 A. I attended a few courses in business management.

9 Q. All right. As a member of the trace evidence
10 unit, how many individuals are there in that
11 particular unit?

12 A. At the Madison laboratory there are two
13 scientists, myself and my colleague.

14 Q. All right. And as a member of that particular
15 unit, have you attended trainings during the past
16 27 years?

17 A. Yes. When I was hired, I went through an
18 extensive on-the-job training in the different
19 areas that -- in the materials that I analyze.
20 And since being employed at the laboratory, I
21 have attended numerous training seminars and
22 courses in the area of trace evidence.

23 Q. And how often do you attend these types of
24 courses?

25 A. It varies. I suppose it averages once a year.

1 Q. All right. And with respect to your training and
2 experience, have you received any specialized
3 training which assisted you in terms of
4 performing any of the examinations in this
5 particular case?

6 A. In the area of elemental analysis, I have had
7 training using the scanning electron microscope
8 with an energy dispersive x-ray analyzer. And
9 that instrument is used for identifying different
10 elements.

11 Q. And when we're saying elements, can you give us
12 an example or an idea of what kind of elements
13 that you are looking at with this particular
14 instrument?

15 A. Well, we can examine approximately 70 different
16 elements. They include carbon, oxygen, nitrogen,
17 iron, lead, titanium, magnesium, just a broad
18 spectrum of elements.

19 Q. And what are some of the objects and items that
20 you are routinely called upon to examine in your
21 trace evidence unit?

22 A. As far as elemental analysis?

23 Q. Sure.

24 A. I routinely analyze paint samples, using a scan
25 electron microscope energy dispersive x-ray,

1 SEMEDX for short. Use it for glass samples,
2 unknown powders, explosives and questioned
3 metals.

4 Q. All right. Have you testified in courts of law
5 during the past 27 years you have been with the
6 Crime Lab?

7 A. Yes, I have.

8 Q. And approximately, do you have an estimate as to
9 how many times you have been called to testify in
10 cases?

11 A. Approximately 165 times.

12 Q. And have you -- During those times, have you been
13 called upon to express or render expert opinions
14 regarding your findings?

15 A. Yes, I have.

16 Q. And of those 165 times, do you have an idea as to
17 approximately how many of them were trace metal
18 or trace evidence related testimony?

19 A. The majority of my testimony has been in the area
20 of trace evidence. And it's well over 100 times
21 I testified in trace evidence.

22 Q. When did you first become involved in this case,
23 Mr. Olson?

24 A. I first became involved in December of 2005. I
25 was given some items from a burning barrel to

1 examine.

2 Q. And did you examine the contents of a barrel?

3 A. Yes, I did.

4 Q. All right. And what did you find in your
5 examination of the barrel?

6 A. The material that was submitted to me were
7 charred items and in there was a charred portion
8 of a Motorola cellphone, a charred Canon
9 PowerShot A310 camera, and assorted other
10 electronic components.

11 Q. Now, is your laboratory capable of extracting
12 data from those types of items, or not?

13 A. No, I was just told to examine them to see if I
14 could give any information as to what those items
15 might be.

16 Q. What other -- Does your particular trace unit
17 have a supply of products on hand to assist you
18 in attempting to identify severely burned items
19 such as this?

20 A. No, we don't.

21 Q. As a result of which, did you make any
22 recommendations with respect to your initial
23 findings?

24 A. I reported what I found in that charred debris to
25 Investigator Tom Fassbender with DCI.

1 Q. All right. In addition to those items, what
2 other charred debris were you asked to examine as
3 part of this case?

4 A. I was asked to examine some charred skull
5 fragments that had a defect in them that was
6 consistent with high energy projectile.

7 Q. All right. And, first of all, I would like to
8 direct your attention to Exhibit -- Exhibit 391.
9 And I'm going to hand you a laser pointer. Do
10 you recognize Exhibit 391, in particular the item
11 on the right?

12 A. Yes, I do.

13 Q. All right. And what is that?

14 A. Exhibit 391 is a photograph of that charred skull
15 fragment that I examined.

16 Q. All right.

17 A. And the defect, or the hole in the skull, is this
18 area right up in here.

19 Q. All right. And as part of your analysis, do you
20 routinely assign an item number or a Crime Lab
21 identification number to assist you in working
22 with these items?

23 A. Yes, we do.

24 Q. And what item designation was Exhibit 391 given?

25 A. Exhibit 391 was item EJ.

1 Q. All right. I'm going to have Exhibit 392
2 displayed. All right. And do you recognize that
3 item?

4 A. Yes, I do.

5 Q. And what is Exhibit 392?

6 A. Exhibit 392 is the other side of that charred
7 skull fragment. This would be the external
8 surface. And the defect or the hole in the skull
9 is up in this area right here.

10 Q. Now, I see that there is an arrow shaped marker
11 depicted on this outer view of Exhibit 392; do
12 you know what that is?

13 A. Yes, I do.

14 Q. And what is that?

15 A. The triangular shaped marker in Exhibit 392 is a
16 little piece of copper tape that I made into a
17 point of an arrow so it will help me locate the
18 area on the bone that I need to examine with the
19 microscope and to do my elemental analysis.

20 Q. When did you receive these items?

21 A. These items were submitted to the laboratory on
22 February 15th, 2006. And I examined them --
23 started examining them on February 16, 2006.

24 Q. Describe for us, if you will, how item EJ
25 appeared when you first accepted and began

1 working on it?

2 A. Item EJ, Exhibit 392, appears very similar when I
3 examined it. It's a charred skull fragment that
4 had been, obviously, in a fire.

5 Q. All right. And how is it packaged, tell us about
6 the appearance of the item in its packaging?

7 A. This item, item EJ, was one of two items that
8 were submitted in the laboratory in sealed
9 plastic bags that were received in a sealed box.

10 Q. All right. And how were they labeled; did that
11 assist you in performing the requested
12 examination?

13 A. This item, which was the one I examined, there
14 were three bags in item EJ. This one was
15 identified as a charred cranial fragment with a
16 entrance defect. And that's what I concentrated
17 my examination on.

18 Q. All right. And what about the other bags that
19 were part of the EJ designation; were they
20 subject to examination?

21 A. No, those were labeled as cranial refits and they
22 didn't have any defects. And I was more
23 interested in looking at the hole in that item.

24 Q. All right. Now, you mentioned there was one
25 other item in addition to EJ; what item was that?

1 A. That was item EK.

2 Q. All right. Did you conduct any examinations of
3 item EK?

4 A. No, I did not.

5 Q. And why did you not conduct any examinations?

6 A. The bag, that item EK, was labeled as cranial
7 bone fragments, dental fragments, nothing that
8 had a defect or hole that I would be interested
9 in.

10 Q. Now, with respect to item EJ, can you tell us,
11 specifically, using the laser pointer, what part
12 of that item did you examine and why did you
13 examine it?

14 A. I examined this area right up in here, is where I
15 concentrated most of my analysis. And through my
16 training and experience, that bullets, when they
17 go through bone or hard objects, if they are a
18 lead bullet, which most bullets are, you can
19 sometimes get a --

20 ATTORNEY BUTING: Objection, your Honor, I
21 don't know that he's -- this is a trace chemist, I
22 don't know that he is qualified to be talking about
23 bullets and what they do and don't do.

24 ATTORNEY FALLON: I will rephrase the
25 question.

1 THE COURT: Very well.

2 Q. (By Attorney Fallon)~ Were there specific -- Was
3 there specific information that you had with
4 respect to the condition of the defect that you
5 have identified, that caused you to examine it
6 more closely?

7 A. Yes, this defect is consistent with a high energy
8 projectile.

9 Q. I understand, but my question is, what,
10 specifically, did you -- were you -- why were you
11 asked to examine -- I realize it has a defect,
12 but what other information did you have to assist
13 you that caused you to examine that specific
14 crescent shape there?

15 ATTORNEY BUTING: Move to strike the last
16 answer as well, your Honor.

17 THE COURT: You mean the answer about
18 the --

19 ATTORNEY BUTING: The answer that was not
20 responsive to Mr. Fallon's question about high
21 energy projectiles.

22 ATTORNEY FALLON: That's not his objection
23 and we're rephrasing the question.

24 ATTORNEY BUTING: I move to strike it.

25 THE COURT: I think he's moving to strike

1 the answer that came after his objection, if I'm not
2 mistaken.

3 ATTORNEY BUTING: Yes.

4 THE COURT: The Court will strike that
5 answer as nonresponsive, which I think Mr. Fallon
6 recognized by rephrasing his question.

7 ATTORNEY BUTING: Yes.

8 THE COURT: Go ahead, Mr. Fallon.

9 Q. (By Attorney Fallon)~ Rephrasing the question,
10 Mr. Olson, what additional information did you --
11 Well, let's strike it this way. Did you have any
12 x-rays that you examined before conducting this
13 examination of item EJ?

14 A. No, I didn't.

15 Q. All right. But at that particular point -- Let's
16 get at it this way. What did you find when you
17 looked at the crescent shape that you have
18 identified there, the defect area?

19 A. When I analyzed that area for elemental analysis,
20 I detected the presence of lead.

21 Q. Okay. We'll come back to that in a moment. In
22 addition to item EJ, were you asked to examine
23 any other cranial fragments?

24 A. Yes, I was.

25 Q. All right. And did you obtain some cranial

1 fragments?

2 A. Yes, I did.

3 Q. And from whom did you obtain those fragments.

4 A. I obtained some more cranial fragments from
5 Dr. Leslie Eisenberg.

6 Q. And approximately when did you obtain additional
7 cranial fragments?

8 A. On November 17th, 2006.

9 Q. And when did you begin your analysis of these
10 additional fragments?

11 A. I started examining those cranial fragments on
12 November 21st of 2006.

13 Q. All right. I'm going to have Special Agent
14 Fassbender hand you some photographs. Beginning
15 with the top exhibit, I believe it is designated
16 Exhibit 429; is that correct?

17 A. That's correct.

18 Q. Do you recognize that exhibit?

19 A. Yes, I do.

20 Q. What is Exhibit 429?

21 A. Exhibit 429 is a photograph of item KQ, the
22 cranial fragment with the entrance defect that I
23 received from Dr. Leslie Eisenberg.

24 Q. All right. And directing your attention, then,
25 to the screen, is that the very same exhibit that

1 you are holding in your hand?

2 A. Yes, it is.

3 Q. All right. And describe, if you will, in more
4 detail, item KQ, upon your receipt of it?

5 A. I'm sorry, could you repeat that?

6 Q. Yes, specifically, I just want to ask you to
7 describe that -- Well, let's do it this way.
8 Describe for us, if you will, the size or
9 contours of the defect.

10 A. The bone fragment itself is an inch and a
11 quarter, approximately, by an inch and three
12 quarters in size.

13 Q. All right. And so that's from top to bottom and
14 across the exhibit there?

15 A. That's correct.

16 Q. All right. And the defect itself was
17 approximately how much?

18 A. It appears to be about -- the diameter of that
19 crater is about a half inch.

20 Q. All right. And I would like to show you, also,
21 Exhibit 398 at this particular time. And do you
22 recognize Exhibit 398?

23 A. Yes, I do.

24 Q. And is item KQ present in Exhibit 398?

25 A. Yes, it is.

1 Q. And if you would use the pointer and describe for
2 us, if you will, where that is.

3 A. Item KQ is this bone fragment right here in the
4 upper left hand corner.

5 Q. All right. And if we could zoom in on that. And
6 what were you examining with respect to item KQ?

7 A. I was particularly interested in these bright
8 spots here, which indicates it could be a dense
9 metal.

10 Q. All right. And with respect to item KQ, did you
11 use the scanning electron microscope to conduct
12 your analysis of those particles?

13 A. Yes, I did.

14 Q. All right. And finally, there should be the next
15 exhibit in front of you?

16 A. Exhibit 429 or 4 --

17 Q. 430.

18 A. 430.

19 Q. Yes. And what is Exhibit 430?

20 A. Exhibit 430 is a photograph of item KQ, but the
21 inner surface. The previous exhibit was the
22 outer surface. And Exhibit 430 is the inner
23 surface.

24 Q. All right.

25 A. That's what's being displayed right now.

1 Q. All right. And did you examine the inner surface
2 of the defect area, as well as the outer surface,
3 on this particular item?

4 A. Yes, I did.

5 Q. All right. And finally, there's one more
6 exhibit. And I believe Exhibit 431.

7 A. Yes.

8 Q. All right. And what is Exhibit 431?

9 A. Exhibit 431 is a photograph of an x-ray of other
10 charred bone fragments.

11 Q. All right. And particularly with respect to
12 Exhibit 431, was there a Crime Lab designation
13 assigned to that item?

14 A. Yes, there was.

15 Q. All right. And what was that?

16 A. That was item KR.

17 Q. All right. All right. Now, with respect to your
18 findings, I would like to redirect your
19 attention, again, to item EJ, Exhibit 392; did
20 you find traces of elemental lead in the area of
21 that defect?

22 A. Yes, I did.

23 Q. And tell us about what you found.

24 A. I was examining the entrance defect approximately
25 in this kind of lower left hand corner.

1 ATTORNEY BUTING: I'm sorry, is this item
2 EJ we're talking about?

3 ATTORNEY FALLON: Yes, this is item EJ,
4 Exhibit 392.

5 A. I examined this area in here and found traces of
6 elemental lead.

7 Q. All right. And with respect to Exhibit 92, what
8 -- were there more than one location or area
9 within that defect that you examined?

10 A. Yes, there was.

11 Q. And what did you find with respect to other
12 possible locations of elemental lead?

13 A. In this area, I examined three different areas
14 and found elemental lead -- traces of elemental
15 lead. In this area, I examined and did not
16 find -- I found what were very low amounts of
17 lead, but it was too low for me to call. So,
18 essentially, I did not find any lead in this area
19 over here.

20 Q. All right. And did you examine other areas of
21 that particular fragment, Exhibit 392?

22 A. Yes, I did.

23 Q. And approximately how many areas did you examine
24 on this one particular exhibit?

25 A. Approximately 12 different areas that I examined.

1 Q. All right. And I know it might be kind of
2 difficult with that photograph, but could you
3 give us a general idea of what other locations
4 that you examined for the possibility of
5 elemental lead?

6 A. I examined approximately seven locations here and
7 approximately five locations down in here, as a
8 control area.

9 Q. All right. Well, let's begin, we talked about
10 areas one, two, and three, and you mentioned
11 something about five, six, and seven. Let's talk
12 a little bit about those areas. What, if
13 anything, did you find with respect to areas
14 five, six, and seven.

15 A. I did not find any elemental lead in five. Area
16 six and seven, which was right next to it, over
17 here, I saw what began to look like the presence
18 of lead, but it was too low of a level for me the
19 call.

20 Q. All right. Now, Mr. Olson, you used the laser
21 pointer to point to a particular area. And would
22 I be accurate in describing that that would --
23 the area you pointed to, five, six and seven, was
24 on the edge or the beginning, as it were, of the
25 defect area?

1 A. Yes, it is.

2 Q. All right. And one, two, and three were actually
3 in the defect area?

4 A. Either on or slightly in, yes.

5 Q. All right. How about the other areas, 8, 9, 10,
6 11 and 12, with respect to the exhibit, where are
7 they located?

8 A. These would be down in this area here.

9 ATTORNEY FALLON: All right. If the record
10 would reflect, the witness is pointing to the bottom
11 edge of Exhibit 392 of the photograph which is
12 depicted.

13 Q. (By Attorney Fallon)~ What did you find at those
14 locations?

15 A. I did not find any traces of elemental lead.

16 Q. All right. Now, you mentioned something -- Well,
17 first of all, let me ask, what was the purpose of
18 testing those locations, 5, 6, 7, and most
19 notably, 8 through 12?

20 A. I was examining those areas, away from the
21 entrance defect, to have a control area where I
22 would not think or suspect to find any lead.

23 Q. And could you explain for the jury the concept of
24 a control?

25 A. The control is just a sample that you expect to

1 have certain results, usually negative results,
2 in this same type of material that you are
3 analyzing.

4 Q. All right. So how does performing these control
5 tests assist you in assessing your findings in
6 the other locations, particularly one, two, and
7 three?

8 A. It adds more weight to my findings, finding
9 elemental lead in those areas around the defect.
10 And then not finding it in the other areas goes
11 more to the point that -- that there is traces of
12 lead in that entrance defect.

13 Q. All right. Now, let's talk a little bit about
14 item EK; did you examine EK?

15 A. No, I did not.

16 Q. And why was EK not examined?

17 A. There was no entrance defect on those charred
18 skull fragments.

19 Q. All right. And do you recall what they were
20 labeled or how they were submitted to you?

21 A. Those would have been labeled cranial, facial,
22 dental, I believe.

23 Q. All right. All right. Again, now, returning to
24 item KQ, which we have depicted in Exhibit 398
25 and I believe in Exhibit 429 and 430. You

1 conducted a similar analysis of this particular
2 item?

3 A. Yes, I did.

4 Q. All right. And you were examining more closely
5 the bright white particles which appear on this
6 particular exhibit?

7 A. Yes, I was particularly interested in those
8 bright spots. That would be indicative of a more
9 dense material, such as lead.

10 ATTORNEY FALLON: And for the record,
11 Exhibit 398 depicts several cranial fragments. The
12 witness is describing the fragment which appears at
13 the upper left hand corner of the exhibit as a
14 whole.

15 Q. (By Attorney Fallon)~ I would like to direct your
16 attention then back to Exhibits 429 and 430. We
17 will start with Exhibit 429. All right. And,
18 again, is this the inner or outer depiction of
19 Exhibit 4 of item KQ?

20 A. This would be the outer surface of that skull
21 fragment.

22 Q. All right. And then we'll start with the outer
23 surface, did you find -- did you examine -- You
24 said you examined the area near the defect?

25 A. Yes, I did.

1 Q. All right. Did you find elemental lead at any of
2 the locations you examined at this -- at this --
3 in this particular defect?

4 A. Yes, I did.

5 Q. And what did you find?

6 A. I found elemental lead corresponding to those
7 bright spots in this entrance defect.

8 Q. Now, in this particular case, was it more than a
9 trace, or less than a trace; reference, you know,
10 item EJ, comparatively speaking, was there more
11 or less lead that you detected here?

12 A. There was considerably more lead in this sample
13 than there was in item EJ.

14 Q. All right. And similarly, did you have a control
15 for your examination on this outer surface of
16 item EJ, Exhibit 429?

17 A. Yes, I did.

18 Q. And if you would be so kind as to point with your
19 laser pointer to the control areas.

20 A. The control area was in this -- approximately
21 this area.

22 ATTORNEY FALLON: The record is reflecting
23 that he's pointing to the right side of his marker
24 arrow, towards the top, almost the same height as
25 the point of the arrow.

1 THE COURT: Record will so reflect.

2 ATTORNEY BUTING: That's fine.

3 ATTORNEY FALLON: Thank you.

4 Q. (By Attorney Fallon)~ And just so that we're
5 clear, the areas where you did find the elemental
6 lead, if you would be so kind, with your pointer,
7 to indicate that area on the exhibit.

8 A. Right in this area, on and in the beveled area.

9 Q. On and in the beveled area. Very well, thank
10 you. Now, did you similarly examine the inside
11 of item KQ.

12 A. Yes, I did.

13 Q. All right. I would like to direct your
14 attention, then, to Exhibit 430. And just so
15 that we're clear, counsel advised me I may have
16 misspoke. KQ item is our Exhibits 429 and 430;
17 is that correct? Just so that -- I may have
18 misspoke.

19 A. Item KQ is -- 429 is the outer surface and 430 is
20 the inner surface of item KQ.

21 Q. All right. And we have Exhibit 430 on the screen
22 now, which is the inner surface?

23 A. That's correct.

24 Q. All right. Now, tell us about your analysis of
25 this particular item, how did you begin?

1 A. I concentrated my examination, elemental
2 examination, around the entrance defect and
3 inside the bevel of this item.

4 Q. All right. And in that particular area, did you
5 find elemental lead?

6 A. Yes, I did.

7 Q. And approximately where on the exhibit, if you
8 are able to tell us, that you found this?

9 A. On the edge of the defect and inside of the
10 bevel.

11 Q. All right. And approximately how many locations
12 did you test in or on the beveled area?

13 A. I believe it was four.

14 Q. All right. And in those four locations, did you
15 find the presence of elemental lead at each of
16 those locations?

17 A. Yes, I did.

18 Q. And with respect to their locations and comparing
19 it to item EJ, was there more or less lead
20 associated with item KQ or EJ?

21 A. There was considerably more lead in this
22 particular item KQ.

23 Q. All right. And in terms of locations three and
24 four, if you are able, can you direct us,
25 roughly, where locations three and four would be?

1 A. Three would be approximately here and four would
2 be approximately here, both of them inside the
3 bevel.

4 Q. All right. And with respect to comparing
5 locations one and two with three and four, what
6 did you find with respect to the amounts of
7 elemental lead that was present?

8 A. In areas three and four, inside the bevel, there
9 was even more lead concentrated in those areas
10 than in areas one and two.

11 Q. All right. Similarly, with respect to your
12 testing of the inside of item KQ, Exhibit 430,
13 were there any control locations that you
14 utilized to assist you in interpreting your
15 results?

16 A. Yes, there were.

17 Q. And if you would be so kind as to take your
18 pointer and indicate generally where the control
19 areas were utilized?

20 A. I believe the control area was in this area.

21 Q. All right. You are talking to the area
22 immediately to the right and at the bottom of the
23 marker that you placed on this exhibit?

24 A. That's correct.

25 Q. All right. In the control area, did you find the

1 presence of any lead?

2 A. No, I did not detect the presence of lead in that
3 area.

4 Q. All right. Now, we would like you to take a look
5 at Exhibit 431, please. Do you recognize
6 Exhibit 431?

7 A. Yes, I do.

8 Q. Were you called upon to examine that particular
9 piece?

10 A. Yes, I was.

11 Q. And similarly --

12 ATTORNEY BUTING: Can you just identify
13 what that is, x-ray or photo.

14 A. It's a photograph of an x-ray.

15 ATTORNEY BUTING: Okay.

16 Q. (By Attorney Fallon)~ And it was your
17 understanding this was, again, another cranial
18 piece that you were given by Dr. Eisenberg?

19 A. Yes, it was another cranial piece and a
20 particular in interest was the lower piece had a
21 bright spot consistent with a higher density type
22 material.

23 Q. All right. And upon examination of KR -- Well,
24 first of all, let me ask, did you examine KR
25 using the same methods you did with KQ and EJ?

1 A. No, because when I examined that item I did not
2 see the material here present on the tiny bone
3 fragment. It wasn't on the bone any longer. It
4 was -- It just wasn't there.

5 Q. All right. So there were no conclusions that
6 could be drawn as to what that artifact was?

7 A. That's correct.

8 Q. All right. Did that particular artifact have any
9 entrance, or suspected entrance defect, like
10 items EJ and KQ?

11 A. No, it did not.

12 Q. All right. Mr. Olson, your opinion that item EJ,
13 Exhibit 392, has traces of elemental lead in the
14 defect area, do you hold that opinion to a
15 reasonable degree of scientific certainty?

16 A. Yes, I do.

17 Q. Your opinion that item KQ, Exhibits 429 and 430,
18 at locations one, two, three, and four contained
19 elemental lead, do you hold that opinion to a
20 reasonable degree of scientific certainty?

21 A. Yes, I do.

22 Q. And your opinion that item KR, which did not have
23 a suspected entrance defect and showed no traces
24 of elemental lead; do you hold that opinion to a
25 reasonable degree of scientific certainty.

1 A. Yes, I do.

2 ATTORNEY FALLON: Subject to cross, we
3 would move into evidence Exhibits 429, 430 and 431.

4 THE COURT: Any objection?

5 ATTORNEY BUTING: No objection.

6 THE COURT: Those exhibits are admitted.
7 Mr. Buting.

8 ATTORNEY BUTING: Thank you, Judge.

9 **CROSS-EXAMINATION**

10 BY ATTORNEY BUTING:

11 Q. Good morning, sir.

12 A. Good morning.

13 ATTORNEY BUTING: If counsel could be so
14 kind as to put up Exhibit 398 for a moment, please.

15 Q. (By Attorney Buting)~ Now, just leaving it at
16 this magnification for a second, this is a
17 photograph of an x-ray of -- which is it?

18 A. That is a projection of a photograph of an x-ray.

19 Q. Okay. Which item is it, KQ, or is it EJ?

20 A. It's neither.

21 Q. Well, this item up here?

22 A. That item is item KQ.

23 Q. Okay. So the one in the upper left is KQ.

24 ATTORNEY BUTING: Okay. Could we just look
25 at 429 for a minute, please.

1 Q. (By Attorney Buting)~ You're quite sure this is
2 the same item as we just saw on the x-ray.

3 A. Yes, it is.

4 Q. Well, on this item, maybe it's just my eyes, but
5 if you look at the far right side, there is a
6 rather prominent projection, almost looks like a
7 large nose sticking out or something, right?

8 A. That's correct.

9 Q. I didn't see that on 398.

10 ATTORNEY BUTING: Could we go back and look
11 at that for a minute?

12 ATTORNEY FALLON: Certainly.

13 ATTORNEY BUTING: Could we maybe zoom in on
14 this upper?

15 Q. (By Attorney Buting)~ Where is that marking?
16 Where is that part -- that little projection that
17 we just saw in the other photograph? Where is it
18 on this x-ray? I don't see it.

19 A. It is not there. This x-ray was taken before
20 Dr. Eisenberg attempted to do her refits. And
21 the piece that I got was after the refit. And
22 when I got it, it was broken --

23 Q. Oh.

24 A. -- and that piece that you are seeing --

25 Q. Okay.

1 A. -- is from another portion of the cranial.

2 Q. Okay. So what you saw -- When you saw it, it had
3 been changed slightly, that piece had been broken
4 off?

5 A. Yes, it did not look like that.

6 Q. Okay. Well, that's good. I'm glad you cleared
7 that up.

8 ATTORNEY BUTING: You can take that down
9 now, counsel, that's fine. Thank you.

10 Q. (By Attorney Buting)~ Do you -- Do you know what
11 item FL is in your lab?

12 A. No, I do not.

13 Q. Well, there's been evidence, the jury has heard
14 that item FL has been identified and talked about
15 quite a bit here as a alleged bullet fragment,
16 right? Okay. You will accept that?

17 A. I will accept that, yes.

18 Q. Okay. You were not given item FL, to do any
19 examination of?

20 A. No, I was not.

21 Q. So you didn't test the chemical composition of
22 item FL?

23 A. No, I did not.

24 Q. So you cannot say that the trace items of lead
25 that you saw in either one of these two cranial

1 fragments came from item FL; isn't that right?

2 A. That's correct.

3 Q. Okay. Now, you were given some other duties
4 besides this trace analysis of cranial fragments
5 in this case, right?

6 A. That's correct.

7 Q. And at one point, I believe in April, you were
8 actually asked to examine a headboard?

9 A. Yes, I was.

10 Q. And that, for the record, is an item that's -- I
11 don't know if you gave the designation or it was
12 already designated, this for you, or by someone
13 else in your lab before you got it, as item GI?

14 A. That's correct.

15 Q. And you were looking -- Among other things, you
16 were looking for the possible presence of rope
17 fibers on that headboard, right?

18 A. That's correct.

19 Q. And was it your understanding that you were
20 looking for the possible presence of rope fibers
21 on the spindles of that headboard to see whether
22 there was any evidence of possible rope being
23 used as a restraint?

24 A. That's correct.

25 Q. Did you find any rope fibers?

1 A. No, I did not.

2 ATTORNEY BUTING: Thank you, no further
3 questions.

4 THE COURT: Any redirect?

5 ATTORNEY FALLON: Sure.

6 **REDIRECT EXAMINATION**

7 BY ATTORNEY FALLON:

8 Q. What is the main elemental composition of a
9 bullet?

10 A. Lead.

11 Q. .22 caliber bullets contain lead?

12 ATTORNEY BUTING: Objection. This has been
13 -- I think this was testified to by the prior
14 witness.

15 ATTORNEY FALLON: Well, he asked, this is
16 appropriate redirect.

17 ATTORNEY BUTING: Okay.

18 THE COURT: I believe it is.

19 ATTORNEY BUTING: That's fine.

20 Q. (By Attorney Fallon)~ The .22 caliber bullets
21 contain lead?

22 A. Almost 99 percent lead.

23 ATTORNEY FALLON: That's all. Thank you.

24 **RECROSS-EXAMINATION**

25 BY ATTORNEY BUTING:

1 Q. Bullets also contain -- or bullets are composed
2 of different elements, right?

3 A. The major component is lead, but depending if
4 they want to harden the lead, they will add
5 antimony or tin to the bullet to make it harder.
6 Some bullets have copper jackets with a lead
7 core. Some bullets have a silver tipped or
8 aluminum coating with a lead core.

9 Q. Right. So some bullets are coated, some bullets
10 are not?

11 A. Correct.

12 Q. You did not test item FL to see whether it was a
13 coated or non-coated, did you?

14 ATTORNEY FALLON: Objection, asked and
15 answered. He asked if he tested FL at all and he
16 said no.

17 THE COURT: It's a fair summary question, I
18 will allow it.

19 Q. (By Attorney Buting)~ Is that right?

20 A. Could you repeat it, please.

21 Q. You did not test item FL to see if it was a
22 coated or non coated bullet?

23 A. I did not examine item FL.

24 ATTORNEY BUTING: That's all. Thank you.

25 THE COURT: All right. The witness is

1 excused.

2 THE WITNESS: Thank you, your Honor.

3 THE COURT: You're welcome.

4 ATTORNEY FALLON: Could we have a quick
5 sidebar?

6 THE COURT: Sure. Is it relating to
7 scheduling, I take it?

8 ATTORNEY FALLON: Yes.

9 THE COURT: All right. Members of the
10 jury, we're going to take a short break. We'll
11 resume in a few minutes. I will remind you not to
12 discuss the case during your break.

13 (Jury not present.)

14 THE COURT: You may be seated.

15 ATTORNEY FALLON: We're going to go check
16 and see on the progress that Dr. Jentzen is making.

17 THE COURT: If he is not here yet, is he
18 reachable by cellphone?

19 ATTORNEY FALLON: He may very well be. I
20 believe Mr. Gahn is checking on that.

21 THE COURT: Let me know in chambers what
22 you find.

23 ATTORNEY FALLON: Sure. Thank you.

24 (Recess taken.)

25 (Jury present.)

1 THE COURT: Mr. Gahn, you may call the
2 State's next witness.

3 ATTORNEY GAHN: Thank you, your Honor. The
4 State would call Dr. Jeffrey Jentzen to the stand.

5 **DR. JEFFREY JENTZEN**, called as a witness
6 herein, having been first duly sworn, was
7 examined and testified as follows:

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

10 THE WITNESS: Dr. Jeffrey M. Jentzen, M.D.
11 J-e-f-f-r-e-y J-e-n-t-z-e-n.

12 **DIRECT EXAMINATION**

13 BY ATTORNEY GAHN:

14 Q. Dr. Jentzen, what is your occupation?

15 A. I'm a forensic pathologist employed as a medical
16 examiner for Milwaukee County.

17 Q. And are you a licensed physician in the State of
18 Wisconsin?

19 A. I am.

20 Q. And how long have you been licensed to practice
21 medicine in the State of Wisconsin?

22 A. For 20 years.

23 Q. And did you practice anywhere before coming to
24 Wisconsin?

25 A. I was in Minnesota.

1 Q. Would you please outline, for the jurors, your
2 educational background from residency on?

3 A. I graduated from White State Medical School in
4 Detroit. I, then, did a four year anatomic and
5 clinical pathology residency at Hennepin County
6 Medical Center in Minneapolis.

7 Following that I did a year of special
8 training in field of forensic pathologist at the
9 Medical Examiner's Office in Minneapolis. I was
10 the assistant medical examiner in Minneapolis for
11 approximately six months before coming to
12 Milwaukee in 1987 as the medical examiner.

13 Q. And what are the duties of a medical examiner?

14 A. I typically oversee the administrative functions
15 of the office. I supervise other forensic
16 pathologists and trainees. I direct a forensic
17 drug laboratory, supervise other death
18 investigators who go out to crime scenes in the
19 Milwaukee County area. And I perform autopsies
20 and testify in courts.

21 Q. Are you on the staff or are you affiliated with
22 any universities or academic institutions?

23 A. Yes, I'm a professor of pathology at the Medical
24 College of Wisconsin.

25 Q. And have you had teaching responsibility?

1 A. Yes.

2 Q. Could you explain those to the jury.

3 A. Typically, we have a forensic fellowship program
4 so we teach and train other pathologists to
5 become forensic pathologists. We're one of about
6 35 training programs in the country. We also
7 teach medical students, pathology residents, and
8 other under graduate -- and other under graduate
9 programs.

10 Q. And what professional societies or associations
11 have you been active in?

12 A. I'm a member of the local State Medical Examiner
13 and Coroner's Association. I'm also the -- on
14 the -- member of the National Association of
15 Medical Examiners where I'm currently the vice
16 president of the organization. And I'm a fellow
17 of the American Academy of Forensic Sciences.

18 Q. And do you specialize in any particular branch or
19 field of medicine?

20 A. Yes, forensic pathology.

21 Q. And what exactly is forensic pathology?

22 A. Well, pathology in general is the study of
23 disease and injury. And it's broken down into
24 two rather broad categories.

25 And anatomic pathology has to do with

1 tissues; for example, skin, bone, heart muscle,
2 etcetera. And clinical pathology deals with
3 components of the body's liquids; for example,
4 what's in the blood, the urine, bile, etcetera.
5 And forensic pathology utilizes aspects of both
6 clinical pathology and anatomic pathology as they
7 pertain to general questions of the law.

8 Q. And are you board certified?

9 A. Yes.

10 Q. And would you explain -- excuse me -- explain to
11 the jurors the significance of being board
12 certified?

13 A. Board certification indicates that you have taken
14 a prerequisite course of study, you have
15 completed that course of study and taken a
16 standardized examination. And I have -- I am
17 board certified with the American Board of
18 Pathology and Anatomical, Clinical and Forensic
19 Pathology.

20 Q. And are you the author of any specific papers
21 that deal with the field of pathology?

22 A. Yes, I have written a number of papers on various
23 topics, in the field of forensic pathology,
24 predominantly. I have also co-authored a book on
25 death scene investigation and training

1 individuals to do death scene examinations,
2 etcetera.

3 Q. Have you ever received any honors or special
4 recognition in your field?

5 A. I -- I have been recognized in some areas, yes.

6 Q. Could you explain those to the jurors.

7 A. I have -- I have developed a child death review
8 team in Milwaukee County for the last 15 years
9 and we have been recognized for that.

10 We have also developed other testing
11 methods and genetics to determine drug
12 metabolism.

13 And I have been recognized as in the
14 position of the vice president and president
15 elect as I think an individual who would be a
16 leader in the field.

17 Q. And would you look at, in front of you, I believe
18 there is a document there which has been marked
19 as Exhibit 432?

20 A. Yes.

21 Q. Do you see that?

22 A. Yes, this is a copy of my curriculum vitae. It's
23 roughly around 24 pages and it documents the
24 papers and presentations and other types of
25 academic efforts that I have done over the last

1 20 years.

2 Q. Now, Doctor, approximately how many autopsies
3 have you performed in your career?

4 A. I typically perform, personally, between 250 and
5 300 autopsies a year. And then I supervise other
6 pathologists and trainees and forensic
7 pathologists in their cases. So I see a number
8 of cases. Our office typically would perform
9 around 1,000 or 1100 autopsies per year.

10 Q. And how many times have you testified in court as
11 a forensic pathologist?

12 A. I would estimate that probably -- We get a number
13 of subpoenas, but I would estimate that I
14 probably testified once a week for the past 20
15 years.

16 Q. Could you put a number on this, please?

17 A. Probably -- I would say probably around 500 or
18 1,000 times.

19 Q. Thank you. Have you ever been rejected --

20 A. No.

21 Q. -- as an expert. Now, how did you become
22 involved in this case, Doctor?

23 A. I was contacted by yourself in a telephone
24 conversation and asked if I would assist in the
25 examination of some bone materials.

1 Q. And how would you describe your role in this
2 case?

3 A. I would describe myself as a -- somebody who was
4 brought in as a consultant.

5 Q. And have you been a consultant before.

6 A. Yes.

7 Q. And what type of cases have you been a consultant
8 on?

9 A. For example, I was recently in a child death
10 case; I was a consultant. Other cases related to
11 cause and manner of death; interpretation of
12 gunshot wounds; and frequently asked by district
13 attorneys around the State to inquire and make
14 judgment on that. And I also consult with public
15 defenders and other attorneys who might have
16 questions related to injury and disease.

17 Q. How did this -- a case like this, where you are
18 in the role of a consultant, differ from the
19 typical case that you would receive at the
20 Milwaukee County Medical Examiner's Office?

21 A. Well, in our routine business we would go to the
22 scene of sudden and unexpected deaths that occur
23 in the county. I might personally -- If there
24 were a particular type of case, I might
25 personally examine the scene myself and observe

1 materials at the scene, consult with law
2 enforcement personnel at the scene.

3 And then, basically, process the body
4 myself, examine x-rays and other materials,
5 perform the autopsy, look at the tissues under
6 the microscope with the assistance of a drug
7 analyst. I might interpret drug levels in
8 testing. And then if it were a case in Milwaukee
9 County, I would determine the cause and manner of
10 death and sign the death certificate.

11 In this case, my role was limited, as a
12 consultant, to look at some material and render
13 an opinion.

14 Q. And is that because the traditional autopsy would
15 not be performed in a case such as this?

16 A. And, yes, that's true, plus -- well, an autopsy
17 is basically an examination of a deceased person.
18 In some cases, you have more material than are --
19 and tissue than in other cases.

20 But in this case, it would be that I
21 would not have performed the examinations myself,
22 as far as the autopsy or dissection. And in this
23 case my role is limited to examining small pieces
24 of bone fragments and rendering an opinion.

25 Q. Would you explain to the jury what you did in the

1 course of your investigation in this case?

2 A. I was requested to go to Madison. And at the
3 Dane County Coroner's Office I met with
4 Dr. Leslie Eisenberg, the forensic
5 anthropologist, and some attorneys and other
6 individuals.

7 And we examined -- I was shown the
8 material that Dr. Eisenberg had previously
9 examined. I reviewed her report and I -- and she
10 showed me some bone fragments. I also examined
11 some x-rays of those bone fragments. And on the
12 basis of those materials, I rendered an opinion.

13 Q. Did you also review various Crime Lab reports in
14 this case?

15 A. Yes, I did. As well as the -- although I wasn't
16 at -- I never went to the scene of this case, I
17 was shown photographs and given laboratory
18 information, looked at the x-rays and the
19 reports.

20 Q. As part of your job as medical examiner, did you
21 have experience with examining burned body parts?

22 A. Yes.

23 Q. About how many cases have you been involved in
24 where there were burned body parts?

25 A. I would say on a routine basis we would examine

1 probably around 10 charred bodies per year, in
2 our office.

3 Q. And as part of your job as medical examiner, do
4 you have experience with interpreting x-rays?

5 A. Yes, in a general forensic sense, interpreting
6 trauma and injury, yes.

7 Q. How are they used in your work?

8 A. We typically take x-rays on all pediatric cases,
9 all gunshot wounds, stab wounds, and cases where
10 there's some concern over identification.

11 Q. And as part of your job as medical examiner, do
12 you have experience with bullets and bullet
13 fragments?

14 A. Yes.

15 Q. On an annual basis, approximately how many cases,
16 involving gunshots to the skull, would you see in
17 the Milwaukee County Medical Examiner's Office?

18 A. I would give a rough estimate at probably around
19 100 to 120.

20 Q. Now, I believe you stated that you met with
21 Dr. Eisenberg and you actually examined bone
22 fragments in this case?

23 A. I did.

24 Q. Could you basically describe to the jurors, what
25 was the condition of these bones that you

1 examined?

2 A. I would describe the bones as fragmented and
3 charred. There was no intact skull fragments.
4 And Dr. Eisenberg had separated out bone
5 fragments from the skull and from other areas and
6 so I was able to look at just small fragments of
7 the bone -- bony material, as well as the x-rays
8 of those areas.

9 Q. In particular, did you examine certain skull
10 fragments?

11 A. Yes.

12 Q. And was there anything unusual about some of
13 those skull fragments that you observed?

14 A. Yes, on two of the fragments, one fragment
15 Dr. Eisenberg identified to me as the left
16 parietal skull, or a bone from the left parietal
17 skull. And the parietal bone, and I'm pointing
18 to that area just about above my ear, the
19 parietal bone is the -- a rather large flat bone
20 that -- there's one on the right and the left
21 side.

22 And Dr. Eisenberg identified a fragment
23 of that bone and also there was a fragment that
24 she identified as the left occipital bone. The
25 occipital bone is the bone that's in the back of

1 the skull, in this area. And I'm pointing to
2 that area behind and below my left ear.

3 Q. Was there any particular reason Dr. Eisenberg
4 pointed these two skull fragment pieces out to
5 you?

6 A. Those fragments were noted, by herself and the
7 initial examining pathologist, to have a defect
8 called internal beveling on the fragments and so
9 I paid particular attention to those bones;
10 although, I did make a gross examination of
11 multiple skull bones that she had demonstrated.

12 Q. I'm going to put up on the screen what has
13 previously been marked as Exhibit 390, and has
14 been testified to by Dr. Eisenberg as a left
15 parietal bone area; did you examine this?

16 A. Yes.

17 Q. And there is a laser pointer there on the desk,
18 Doctor.

19 A. Yes.

20 Q. Could you point out to the jurors this beveling
21 area and maybe amplify a bit on that for the
22 jurors.

23 A. In addition to the beveling area, there was a
24 semi-circular defect that has a shape on it that
25 I would interpret as a portion of a whole. And

1 this area, we're talking about the inside portion
2 of the skull, so this area you can see is
3 fragmented.

4 And if you would imagine a stone or
5 something striking glass and the way the glass
6 fragments; it's the same thing for a bullet going
7 through the skull. Typically there's an internal
8 beveling that occurs on an entrance wound. And
9 characteristically there's external beveling
10 noted as the bullet exits the skull.

11 And we use these characteristics to help
12 identify and determine where an entrance or exit
13 wound would be on a skull, if there were two
14 different types of perforation. So it would be
15 my opinion that this is consistent with a
16 perforating entrance gunshot wound -- I'm sorry
17 penetrating entrance gunshot wound.

18 Q. And did you also review an x-ray that would be
19 associated with this particular piece of skull
20 fragment?

21 A. Yes.

22 Q. And I'm going to put up on the large screen what
23 has previously been marked as Exhibit 397. And
24 I'm going to ask you if you could again describe
25 for the jurors what this shows?

1 A. Yes, this is the left parietal bone fragment.
2 Again, you can see the internal beveling and the
3 semi-circular perforation and there's also some
4 small radio dense fragments that I'm pointing to
5 with the pointer. I can see probably about two
6 or three on the picture from here. And those are
7 characteristic of metallic fragments the bullet
8 imparts to the target as the bullet travels
9 through bony material. It's a common finding in
10 certain gunshot wounds to the skull and other
11 bony fragments.

12 Q. And, again, did this support your original
13 conclusion about this being an entrance gunshot
14 wound?

15 A. Yes.

16 Q. I'm going to show you what has been marked as
17 Exhibit 393, and previously testified to by
18 Dr. Eisenberg as a bone fragment from the
19 occipital area, and ask you if you recognize
20 this?

21 A. Yes, that's the bone fragment located, according
22 to Dr. Eisenberg, in the left occipital region.

23 Q. And, again, did you actually see this bone
24 fragment when you were at Dr. Eisenberg's office?

25 A. Yes.

1 Q. And, again, would you take the pointer and just
2 explain to the jurors, again, this beveling
3 process that you have described about -- with the
4 parietal?

5 A. Again, one can see the internal beveling pattern
6 that's prominent here and there is a
7 semi-circular appearance to the edge of the bony
8 fragment.

9 Q. And, again, what did that indicate to you?

10 A. It was my opinion that that was consistent with a
11 gunshot wound, entrance gunshot wound.

12 Q. And did you also review an x-ray that would be
13 associated with this?

14 A. I did.

15 Q. And I'm going to show you what has been marked as
16 Exhibit 398? And, again, would you take the
17 laser point and point to any areas of particular
18 interest for the jurors.

19 A. Yes, I'm pointing to the bony fragment on the
20 photograph and, again, on the semi-circular area
21 with the internal beveling. There is a rather
22 localized area of multiple radio dense fragments.
23 And it would be my opinion that these would be
24 consistent with and suggestive of metallic lead
25 type fragments that the bullet delivers to the

1 bone as it's it passing through the bone. Could
2 I expound on that?

3 Q. Please.

4 A. The bone is actually -- the bone in the skull is
5 actually kind of like a wafered cookie.

6 There's -- there's a bony -- a bony surface on
7 the outer portion, a bony surface on the inner
8 portion and the material in the inside is rather
9 porous. It's actually where there's bone marrow
10 and that's how the bone grows.

11 And so we call the outer table, the
12 outer portion of the skull. And the inner table
13 is the inner table -- is the inner portion of the
14 skull. And the portion between is -- is -- is
15 rather porous. And, then, as you can see in this
16 area, this is predominantly where these small
17 metallic fragments are pushed into or imparted
18 into the bony tissue.

19 Q. Based upon your examination of the skull
20 fragments and the x-rays and all the associated
21 records and reports that you reviewed in this
22 case, do you have an opinion, to a reasonable
23 degree of medical certainty, as to the manner of
24 Teresa Halbach's death?

25 A. Yes, I do.

1 Q. And what is that opinion?

2 A. It would be my opinion that she died as a result
3 of gunshot wounds to the head and that the manner
4 of her death would be homicide.

5 Q. And based upon your examination of the skull
6 fragments and x-rays and all the associated
7 reports in this case, do you have an opinion, to
8 a reasonable degree of medical certainty, as to
9 the cause of Teresa Halbach's death?

10 A. Yeah, I believe that she -- her -- the cause of
11 her death would be the gunshot wound to the head.
12 And the manner would be the homicidal
13 designation.

14 ATTORNEY GAHN: Thank you, Doctor. That's
15 all I have.

16 THE COURT: Mr. Strang.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. Dr. Jentzen, about what -- when, I should say,
20 was it that Mr. Gahn first called you to consult
21 on this case?

22 A. I would say it was the early portion of November,
23 or very late portion of October.

24 Q. 2006?

25 A. Yes.

1 Q. Just about a year after you understood that the
2 bones were examined, or the fragments of bones
3 were?
4 A. I would say so, yes.
5 Q. Give or take?
6 A. Yeah.
7 Q. Okay. And it was also well after you knew that
8 Steven Avery had been charged in the homicide of
9 Teresa Halbach?
10 A. I had knowledge of that through the regular
11 media, yes.
12 Q. Sure. Widely reported case?
13 A. Right.
14 Q. You knew of it just from reading the paper, or
15 looking at the internet, or whatever you do?
16 A. Yes.
17 Q. All right. And when you got involved, you come
18 over to Madison, you look at some bone fragments
19 that Dr. Eisenberg has set out for you?
20 A. Yes. Actually we looked at all the bone
21 fragments that she had, yeah.
22 Q. She identified for you the parietal bone
23 fragments?
24 A. Correct.
25 Q. She identified for you the occipital bone

1 fragments?

2 A. Correct.

3 Q. You were not able to identify those bones
4 yourself?

5 A. I could probably identify them as a skull bone
6 fragment, but it would be difficult for me to
7 place them specifically into a left occipital and
8 parietal bone.

9 Q. Okay.

10 A. And that would be in the area of expertise of an
11 anthropologist.

12 Q. Reasonable in your view to rely on
13 Dr. Eisenberg's expertise in telling you where in
14 the skull she thought these bones came from?

15 A. Correct.

16 Q. The meeting that you described with
17 Dr. Eisenberg, you said that there were others
18 there, including some attorneys?

19 A. Correct.

20 Q. Just to be clear, there were not defense
21 attorneys there?

22 A. Correct.

23 Q. The attorneys were both from the State or
24 prosecution?

25 A. The three attorneys at the table, yes.

1 Q. Fair enough. Okay. Now, you, I gather although
2 you were only -- well, you didn't do an autopsy
3 here, as you said?

4 A. Correct.

5 Q. Although you were in a consultant role, you asked
6 for the information you thought might be helpful
7 to forming an opinion?

8 A. Yes. I examined what I would typically examine
9 in a case where I was asked to consult, autopsy
10 protocol laboratory tests, if they were
11 available; scene investigation materials on a --
12 police reports. It would be consistent with the
13 same type of examination I would do if it was any
14 other kind of forensic examination.

15 Q. You asked for all of the information available
16 that you thought might help you in forming your
17 opinions?

18 A. Specifically, within my area of expertise, yes.

19 Q. I mean, you know, your opinions are within your
20 area of expertise?

21 A. Correct.

22 Q. So you were interested in information that might
23 bear on the opinion you hoped to form?

24 A. Correct.

25 Q. None of the information you requested was

1 withheld from you, was it?

2 A. Not to my recollection, no.

3 Q. You got what you thought you needed?

4 A. Yes.

5 Q. Here, as in any other case involving a charge of
6 a homicide, you understand that the personal
7 stakes are high for the family of the victim?

8 A. Yes.

9 Q. The family of the defendant?

10 A. Yes.

11 Q. The defendant himself?

12 A. Yes.

13 Q. It's a serious case when the allegation is
14 homicide, obviously?

15 A. Yes, as I mentioned, I probably testify on
16 probably 50 to 100 homicide type cases a year.

17 Q. Right. And you're -- because you're a forensic
18 pathologist, every time you testify, to some
19 extent your own reputation is -- is at stake?

20 A. I make opinions based on the evidence that I'm
21 given and use my background experience in
22 training and education to make opinion
23 statements, correct.

24 Q. Sure. And you want those opinions to be
25 expressions that you can stand behind

1 confidently?

2 A. To the best of my ability, yes.

3 Q. Stake your reputation to?

4 A. Yes.

5 Q. And, of course, any time you testify, just as
6 today, you are testifying under oath?

7 A. Yes.

8 Q. You came here, as I understand it, offering two
9 specific opinions: One, the more general, would
10 be manner of death; am I correct?

11 A. Correct.

12 Q. And then, the second, and more specific in a
13 sense, would be cause of death?

14 A. Correct.

15 Q. All right. Let's start with the more general,
16 manner of death. We have heard a little bit
17 about this, but not from a pathologist or medical
18 examiner. In your work, we could say that there
19 are four determined manners of death; is that
20 right?

21 A. Typically five.

22 Q. All right. One would be accidental?

23 A. Correct.

24 Q. No special order here, but one of these is
25 accidental, another is natural?

1 A. Yes.

2 Q. A third would be suicide?

3 A. Yes.

4 Q. And fourth, homicide?

5 A. Yes. Fifth is undetermined.

6 Q. Very good. That's the one we didn't hear about

7 yesterday. Unexplained or undetermined is your

8 term of choice?

9 A. Undetermined, yes.

10 Q. All right. We'll use undetermined. So that

11 would be the fifth manner of death, which is

12 different than the other four in the sense that

13 it's -- it's what you say when you don't know?

14 A. It's what we say when we can't definitively

15 determine between, or distinguish between, for

16 example, an accident and a suicide, or a homicide

17 and an accident, yes.

18 Q. Sure. Okay. And then, if we descend to the

19 specific cause of death, there is as many as

20 there are the ways that people die in some sense.

21 I mean, this would be a gunshot in one case, it

22 would be a drug overdose in another, you would

23 try to identify the drug, if you could --

24 A. Correct.

25 Q. -- in that instance?

1 A. Correct.

2 Q. It may be just any -- any of a number of ways
3 that can cause people to die?

4 A. Yes.

5 Q. All right. And what you do in establishing cause
6 of death, if you can, is be as specific as
7 possible?

8 A. Yes. And I would say, based on the materials and
9 evidence that's present, we make an opinion on
10 that, yes.

11 Q. All right. And by specific as possible, let's,
12 since you are talking today about gunshots, let's
13 use a gunshot case. When you get a full course
14 or, you know, most of the course, you may find
15 multiple gunshot wounds in evidence at autopsy?

16 A. Yes.

17 Q. When that happens, you make an effort, to the
18 extent medically possible, to determine which of
19 the gunshot wounds would have led to death?

20 A. Yes. And in some cases there are multiple wounds
21 and others I would describe as non-lethal and
22 others are potentially lethal.

23 Q. Sure.

24 A. Others are definitely lethal.

25 Q. Sure. So -- And, again, just by way of example,

1 if someone has five gunshot wounds, you may be
2 able to say, for example, that two of these
3 definitely would have been lethal; two definitely
4 would not have been lethal in the ordinary course
5 of medical care; and maybe the fifth, possibly
6 lethal?

7 A. Correct.

8 Q. Something like that. And just as an example.

9 A. Yes.

10 Q. All right. Now, here you saw evidence of two
11 gunshot entrance wounds?

12 A. Yes.

13 Q. To bones that you could identify, personally, as
14 probably being from a human skull?

15 A. Correct.

16 Q. And as to which you had more specific locations
17 from Dr. Eisenberg?

18 A. Yes.

19 Q. You saw no bones displaying anything you viewed
20 as an exit wound?

21 A. Correct.

22 Q. A bullet leaving the body.

23 A. Correct.

24 Q. You, therefore, were not able to draw any
25 conclusions about what we might call wound track?

1 A. Correct.

2 Q. The direction or angle at which a bullet
3 penetrates the body?

4 A. I would say, based on the material that I had, I
5 wasn't able to do that, correct. In some cases,
6 when you have more intact specimens, you can
7 certainly render more definitive --

8 Q. Sure?

9 A. -- opinions as to wound track, direction of fire,
10 that type thing.

11 Q. But those were not opinions you were able to form
12 or render here?

13 A. Correct.

14 Q. Now, tell the -- I mean, in your opinion, the
15 cause of death here was one or two gunshot
16 wounds?

17 A. Yes.

18 Q. To the head?

19 A. Correct.

20 Q. All right. Tell, the ladies and the gentlemen of
21 the jury all of the information you have in this
22 case that allows you to conclude that either of
23 the two bullets here first struck skull bone
24 while the victim was alive?

25 A. Okay. Could you repeat that question.

1 Q. Sure. I would like you to simply tell the ladies
2 and gentlemen of the jury what information you
3 have here that allows you to conclude that either
4 of these gunshot wounds occurred while the victim
5 was alive, that is, bullet struck bone, while
6 that person was alive?

7 A. I don't specifically think that there's any one
8 piece of information that would say that the
9 person was alive, with a beating heart, or an
10 intact brain. There's material and I was given
11 information that there was a spent bullet
12 recovered at the scene that contained the blood
13 specimens of the decedent.

14 And that would be indicative to me that
15 the bullet had passed through the brain at a
16 time, whether it was liquified blood, or that it
17 wasn't going through specifically bone fragments.
18 And I would think that that would be the
19 predominant -- that would be information that I
20 think would be helpful in making that type of
21 opinion.

22 Q. All right. We have certainly had testimony that
23 Teresa Halbach's DNA was found on a bullet
24 fragment?

25 A. Right.

1 Q. I, at least, recall no testimony that Teresa
2 Halbach's blood was found on a bullet fragment,
3 but the jury will decide in the end, that. And
4 in a sense it doesn't matter.

5 Is there any way to distinguish the
6 bullet you -- hole you saw, either one, from a
7 gunshot that was fired into the head of an intact
8 corpse, from a gunshot that was fired into the
9 head of a living person?

10 A. I don't think I could make a definitive
11 determination based on whether the individual was
12 in a peri-mortem time frame or whether the
13 individual was skeletonized. It would be my
14 opinion that the wounds showed an intact, robust
15 bone that is consistent with what I would say
16 non-skeletonized material, meaning that these
17 look like -- typically like an entrance wound
18 through a bone of a person who is not a skeleton.

19 And the way -- the reason I described
20 that and I would make that -- that clarity is
21 that in a skeletonized bone, where you have got
22 dried bone material, as the bullet passes through
23 it, I would suspect that there would be a
24 different kind of fracturing and that it wouldn't
25 get the same type of gunshot wound, particularly

1 in the parietal bone fragment that I can see.

2 That would just be my opinion on that.

3 Q. Okay. So, you know, I'm trying to track you
4 here, but as I understand, you think these bullet
5 holes were made before the body was in a purely
6 skeletal condition?

7 A. Yes.

8 Q. All right. Let's go back to the question I
9 asked. The gunshot wounds to the bones you
10 observed, would be indistinguishable if the
11 bullet had hit the bone 30 minutes after the
12 person had expired or 3 seconds before the person
13 expired?

14 A. I would agree with that, yes.

15 Q. You would. And if the person was 30 minutes
16 expired when the bullet hits bone for the first
17 time, then the gunshot did not cause the death,
18 true?

19 A. If the individual was dead before the gunshot --
20 sustained the gunshot wound to the head, then the
21 bullet would not have caused the death.

22 Q. The bullet wounds you saw are as consistent with
23 a bullet striking a non-skeletal body after
24 death, as they are with a bullet striking the
25 skull before death?

1 A. I would say so, yes.

2 Q. If death occurred before the first bullet struck
3 bone here, then there was another cause of death
4 entirely, as a matter of logic, wasn't there?

5 A. I would agree with that, yes.

6 Q. And as to -- In that situation, as to cause of
7 death, you cannot give an opinion?

8 A. Are you talking about specifically in this case
9 or are you talking about if I have got a skull
10 with two bullet holes in it without any other
11 information?

12 Q. Well, let's start without any other information.

13 A. I would say that the two gunshot wounds to the
14 head are highly suspicious for a non-intentional,
15 or the individual would not have done it
16 themselves, because of the multiple nature of the
17 injury.

18 Q. Sure.

19 A. And with the caveat that, you know, whether it
20 was done before or after the person died.

21 Q. Okay. So, let's -- let's unpack that. If we
22 have two gunshots to the head, we're highly
23 doubtful that this is suicide?

24 A. I would say so, yes.

25 Q. Right. Most suicides --

1 A. Assuming that these were the ones that caused her
2 death --

3 Q. Sure.

4 A. -- yes.

5 Q. Most suicides don't get off a second shot?

6 A. Correct.

7 Q. All right. You would suspect homicide?

8 A. Correct.

9 Q. But you also would have to suspect accidental
10 death if you had gunshot holes in a skull, absent
11 other information.

12 A. I wouldn't suspect that there would be two
13 perforations with a accidental type -- or two
14 entrance wounds with an accidental type death,
15 unless it was a multiple missiles; for example,
16 like a buck shot injury, or something along those
17 lines.

18 Q. Sure. And in that instance it would be relevant
19 information if the deceased was found dressed in
20 blaze orange in shrubbery, in the middle of the
21 woods in the third week of November. That's
22 information that might be relevant to determining
23 whether two gunshot wounds to the head were
24 accidental or homicidal?

25 A. I would say that would be helpful information

1 yes.

2 Q. Sure. You would need more information, in any
3 event?

4 A. Yes.

5 Q. By homicide, if we back up on manner of death, we
6 didn't explain that here, but this, in your
7 argot, homicide would mean the intentional
8 causation of another persons death?

9 A. That a homicide in my, would be that the death
10 was caused by another person, correct.

11 Q. Correct. And it does not necessarily connote
12 legal liability, homicide in that sense?

13 A. I don't make those determinations.

14 Q. Right. So if something later proves to be, let's
15 say a justified shooting in self defense, it's
16 still a homicide in your world because it's one
17 person causing the death of another?

18 A. Correct.

19 Q. All right. Now, back closer, I guess to this
20 case, you can't tell whether these bullet holes
21 in the skull were made before death or after
22 death. You can -- You can tell only that they
23 are made before the remains are skeletal?

24 A. Correct.

25 Q. All right. And if the bullet wounds were made

1 after death, then necessarily something else is
2 the cause of death?

3 A. I would agree with that.

4 Q. And as to what that might be, there's almost
5 nothing you could rule out, based on the
6 information you had?

7 A. Based on the evidence that I have, yes.

8 Q. So --

9 A. There could be other -- There could be other, for
10 example, drugs or something along those lines --

11 Q. Sure.

12 A. -- that I don't have access to.

13 Q. And we could sit here all a day on that, but
14 someone could have been strangled and then shot
15 after -- after they --

16 A. Certainly is possible.

17 Q. -- expired.

18 A. Yes.

19 Q. Beaten, shot after they expired.

20 A. Correct.

21 Q. Drugs, as you say, a drug overdose, shot after
22 they had died of the drug overdose?

23 A. Correct.

24 Q. And I won't go on but, in other words, there's
25 nothing that you can say about opining on cause

1 of death, if the gunshot wounds occurred after
2 death?

3 A. On the cause of death, yeah, I would say so.

4 Q. And then, likewise, once -- once we don't have a
5 cause of death, it's similarly difficult to
6 assign a manner of death?

7 A. Well, medical examiners and forensic pathologists
8 don't make determinations on manner of death in a
9 vacuum. We utilize, as I mentioned, evidence
10 from the scene. And if we can go to the scene,
11 personally, we use that information. Or if we
12 can't, then we use photographs and other people's
13 reports to use that information.

14 We use laboratory data. We use evidence
15 that's recovered. And we -- we put that together
16 and we render our opinion as to what the manner
17 of death is. We don't do it in a vacuum with a
18 single piece of information, in isolation from
19 all others.

20 Q. Of course not. Of course not. And in a cause of
21 death, for example, you cited to these jurors,
22 your understanding that a bullet or bullet
23 fragment was found with what you thought was
24 blood of the victim on it. And that, initially,
25 factored into your opinion on cause of death?

1 A. That was one of the things, yes.

2 Q. Sure. You now acknowledge, that as long as the
3 remains weren't skeletal, blood or DNA could have
4 been left on that bullet, passing through the
5 skull of a dead person?

6 A. Correct.

7 Q. Likewise, with manner of death you, of course,
8 consider all the information you have, that's
9 almost obvious, isn't it?

10 A. Correct.

11 Q. And some of the information you have here is that
12 the bone fragments you saw were burned?

13 A. Correct.

14 Q. Badly burned?

15 A. Correct.

16 Q. Burned to the point that they had fragmented and
17 fallen apart?

18 A. Yes.

19 Q. That suggested to you, in your line of work, some
20 effort to conceal the body or disguise the body?

21 A. Exactly.

22 Q. And you said to yourself, now, with that
23 information, why would someone want to conceal
24 the fact of death. Well, one obvious reason
25 would be that the death itself, you know, the

1 fact that the person died, might be incriminating
2 or awkward in some way.

3 A. That would be information that would be valuable,
4 yes.

5 Q. Sure. And an effort to conceal death is
6 something you see frequently, or at least not
7 infrequently, in homicide cases?

8 A. Correct.

9 Q. It's also something you will see less frequently,
10 but it's happened in your experience, you will
11 see this in accidental deaths, on occasion?

12 A. I would say it would be pretty rare, yes.

13 Q. Well, let's -- let's offer some paradigms and see
14 if you have had these kinds of cases in your
15 experience. None of them -- And I'm not
16 suggesting any of these paradigms bear any
17 similarity to this case, but I want to explore
18 the relation between an unknown cause of death
19 and the manner of death.

20 A. Sure.

21 Q. Okay? A young teenager who's become pregnant out
22 of wedlock, feels a great deal of shame about
23 that, conceals the pregnancy, ultimately gives
24 birth by herself, the baby dies for want of
25 medical care and an effort is made to conceal the

1 newborn.

2 A. And you are giving that as an example of what --

3 Q. Concealment.

4 A. -- manner of death?

5 Q. Concealment in connection with an accidental
6 manner of death.

7 A. I don't know if I would attribute that to an
8 accidental manner of death; it would depend upon
9 the totality of the information that's available.

10 Q. Sure.

11 A. Resuscitation efforts, evidence of trauma and
12 injury on the child, age, etcetera. So, again,
13 you can't take a specific issue and look at it in
14 isolation. You need all the information.

15 Q. Understood. And sometimes in the sort of
16 paradigm that I have explained, sometimes,
17 unfortunately, the young mother will smother the
18 infant or do something active to cause the
19 infant's death, other times it simply the lack of
20 medical care, the infant can't thrive or survive?

21 A. Correct.

22 Q. Dies of, in a sense, a natural cause or an
23 accidental cause, for want of medical care at the
24 time of birth?

25 A. Again, I don't know if we're talking about an

1 accident or ...

2 Q. Right.

3 A. -- or another type of injury, that you are
4 talking about.

5 Q. Yes.

6 A. But I think it would be very rare to call a death
7 like that an accident.

8 Q. All right.

9 A. There -- I mean, there might be other examples.

10 Q. Another example would be, something you may have
11 run across, two people involved in an adulterous
12 affair or liaison and one drops dead of a heart
13 attack. Some effort may be made under those
14 circumstances to conceal the fact, or at least
15 the timing or place of death.

16 ATTORNEY GAHN: Objection, your Honor, as
17 to relevancy of this.

18 THE COURT: Mr. Strang.

19 ATTORNEY STRANG: I'm simply trying to
20 establish that there are instances in which
21 accidental death, as a manner, will be matched with
22 concealment.

23 THE COURT: Is that in dispute?

24 ATTORNEY STRANG: Is that in dispute?

25 THE COURT: Do you acknowledge that such

1 circumstances can exist?

2 THE WITNESS: I would acknowledge that
3 there's concealment in some cases, your Honor, but
4 examples that are given here, I don't think I would
5 agree with. Could I expound on that?

6 THE COURT: Go ahead.

7 ATTORNEY STRANG: Sure.

8 A. I have never seen a individual burned in an
9 attempt to conceal an adulterous affair and
10 somebody who dies suddenly during an act of
11 intercourse. On occasion, we will see
12 individuals who die from drug overdoses that
13 would be dumped at a different location, but it
14 would be very uncommon or rare to see any
15 mutilation or other types of bodily disruption to
16 hide that kind of death.

17 Q. Okay. Fair enough.

18 A. And so the type of burning and charring that I
19 would see in this case would be, in my opinion
20 and my experience, most consistent with homicidal
21 type of manners of death and extremely rare in
22 others.

23 Q. Fair enough. Okay. You simply, you think this
24 is most consistent, you can't rule out other
25 possibilities?

1 A. I can't rule out other possibilities beyond --
2 beyond the impossible, correct.

3 Q. Well, and one of the problems we have here is
4 that we're dealing -- we're in a forensic
5 setting, the intersection of the pathology with
6 law, correct?

7 A. Yes.

8 Q. And you know that there is both a first degree
9 intentional homicide charge that these folks will
10 have to decide and a mutilating a corpse charge
11 they will have to decide, correct?

12 A. I'm not aware of what the -- of what the legal
13 standards are being used here as far as --

14 Q. Or what the charges are?

15 A. And what the charges are.

16 Q. You are familiar with the fact that Wisconsin has
17 a crime for mutilating or concealing a corpse?

18 A. I am, yes.

19 Q. All right. And you are familiar that Wisconsin
20 has a crime of first degree intentional homicide?

21 A. I am aware of that, yes.

22 Q. All right. And you are not -- Your field of
23 expertise does not allow you to render an opinion
24 on who fired a shot, or shots, into this skull?

25 A. No. I don't have that information, no.

1 Q. Your area of expertise does not allow you to
2 render an opinion on who caused the burning or
3 charring of the bone fragments you saw?

4 A. That's correct.

5 Q. And whether one or more, two, three, four,
6 however many people are involved, in one or the
7 other of those alleged crimes, you are not able
8 to say?

9 A. In this case I can't, no.

10 Q. Right. And whether one person is involved in one
11 offense, but not in the other, you are not able
12 to say?

13 A. Correct.

14 Q. All right. So these are the reasons for my
15 questions and I guess in the end, what you are
16 telling us is that your opinion on manner of
17 death rests in part on the fact that you see
18 gunshot entrance wounds?

19 A. Correct.

20 Q. And then rests on the burning or charring that
21 you saw here, of the skeleton?

22 A. Correct. Could I expound on that?

23 Q. Well, I don't want to -- if you have useful
24 information --

25 A. There may be other issues.

1 Q. -- you can answer that question.

2 A. There may be other issues related to the
3 determination of manner of death, in addition to
4 simply the evidence of gunshot wounds and the
5 evidence of concealment.

6 Q. And are there other specific issues here that you
7 rely upon in offering the opinion that homicide
8 is the manner of death here?

9 A. I would have other information, yes.

10 Q. Do you have other information in this case?

11 A. Yes.

12 Q. That came from the police?

13 A. It came from the investigators, yes.

14 Q. All right. Your opinion, in any event, is that
15 homicide was the manner of death?

16 A. Correct.

17 Q. You did not view this as unexplained?

18 A. Correct.

19 Q. Notwithstanding the fact that you cannot here,
20 as I understand you, assign a cause of death
21 other than by assuming that the bullet holes were
22 made, at least one of them was made, while the
23 person was alive?

24 A. Correct.

25 Q. Just to be perfectly clear here, in the end, as

1 you sit here today, you can't tell this jury
2 whether one or both of these gunshots were made
3 while the person was alive?

4 A. That would be correct, yes.

5 Q. If they were made after death, they did not cause
6 the death?

7 A. That would be true, also.

8 Q. But your opinion remains that gunshot is the
9 cause of death?

10 A. Correct.

11 ATTORNEY STRANG: That's all I have.

12 THE COURT: Mr. Gahn.

13 ATTORNEY GAHN: Thank you, your Honor.

14 REDIRECT EXAMINATION

15 BY ATTORNEY GAHN:

16 Q. Dr. Jentzen, you talked about, as a medical
17 examiner, not viewing one particular piece of
18 information in a vacuum and you talked about
19 having helpful information and looking at the
20 totality of the circumstances; would you explain
21 what all of that means, to the jurors, in the
22 context of this case.

23 A. Well, on a daily basis, the medical examiner, I
24 mean, for example, I would investigate hundreds
25 of deaths a year. And that investigation entails

1 seeing information: History, medical history of
2 the individual, habits and social habits of the
3 individual, past medical history, and then,
4 finally, the appearance of the body. Possibly
5 the position of the body in some cases, at the
6 scene, may determine whether the death is an
7 accident or a natural death, based simply on the
8 position and other artifacts that we would see on
9 the body.

10 Medical examiners and coroners do this
11 on a routine basis and looking at individual
12 cases. And to take one specific area or one
13 single piece of information and to say that this
14 is an accident, or a homicide, or a undetermined
15 case, I think is not real consistent with how
16 medical examiners and coroners function in
17 evaluating and investigating deaths.

18 On a daily basis, we make determinations
19 as to cause and manner of death, based on
20 evidence, information, scene investigation,
21 medical history.

22 Q. And how many years have you been in the
23 profession as a medical examiner?

24 A. This is my 21st year as a medical examiner for
25 Milwaukee.

1 Q. And did you state that annually you will look at
2 maybe 100 cases involving gunshot wounds to the
3 skull?

4 A. Typically our office would investigate between, I
5 would say, roughly 100 to 120 or 30 homicides and
6 probably 100 to 130 or 40 suicides. And 60 to 70
7 percent of those are gunshot wounds. And the
8 vast majority of those are to the head and upper
9 torso areas. Many times there's multiple wounds,
10 there's different types of ammunition.

11 And in addition, that we attend lectures
12 and other educational programs to expand our
13 understanding of both the -- the bodies, and the
14 projectiles and weapons, and the circumstances,
15 and we render opinions, legally bound -- binding
16 that determine cause and manner of death where
17 there is a lot at stake.

18 ATTORNEY STRANG: Your Honor, I object to
19 the reference to a legally binding determination of
20 this witness, that's entirely out of place and the
21 jury should be told that there is no legally binding
22 determination by this witness.

23 ATTORNEY GAHN: I don't believe that's what
24 the doctor was saying.

25 THE COURT: Well, I agree, I guess it

1 depends on your definition of legally binding, but
2 to the extent, certainly, it invades the province of
3 the jury, the Court agrees very strongly, that's the
4 jury's determination in this case. And I will
5 instruct the jury to that affect. I'm not sure of
6 the context in which it was used.

7 ATTORNEY GAHN: I took it to mean that he
8 just gives opinions in cases that other people make
9 decisions on. That's what I took the context in.

10 THE COURT: Anything else?

11 ATTORNEY GAHN: Yes.

12 Q. (By Attorney Gahn)~ Doctor, do you believe that
13 you had sufficient information in this case to
14 render an opinion as to manner of death and cause
15 of death?

16 A. Yes.

17 Q. And today you are in Calumet County testifying,
18 right?

19 A. Correct.

20 Q. If this case had happened in Milwaukee County and
21 with all the information that you know in this
22 case, would you have rendered an opinion as to
23 manner and cause of death, if this were your case
24 in the Milwaukee County Medical Examiner's
25 Office?

1 A. I would have rendered the same opinion.

2 Q. And is that opinion -- And, again, what is your
3 opinion as to the manner of death of Teresa
4 Halbach?

5 A. It would be my opinion that she died as a result
6 of gunshot wounds to the head and the manner of
7 her death is homicide.

8 ATTORNEY GAHN: Thank you. That's all I
9 have.

10 THE COURT: Anything else, Mr. Strang?

11 ATTORNEY STRANG: No, thank you.

12 THE COURT: All right. The witness is
13 excused. Members of the jury, that is all the
14 evidence that we're going to hear today. At this
15 time I'm going to excuse you for the rest of the
16 day. I will let you know in a minute, because of
17 the order of things, why. Before I do that, since
18 we are adjourning for the weekend, at this point I
19 want to read to you the warning that you have heard
20 before, but it's still very important.

21 The Court's decision not to sequester
22 the jury during the trial in this case is
23 dependent on the jurors not listening to,
24 watching, or reading any news accounts of the
25 case, nor discussing it with anyone, including

1 members of your family or other jurors.

2 For these reasons it is vital that you
3 do not listen to any conversation about this
4 case. Do not read any newspaper or internet
5 reports or listen to any news reports on radio or
6 television about this case.

7 To assure that you are not exposed to
8 any improper media coverage, the Court has
9 ordered that, for the duration of the trial, you
10 do not watch the local news on television, do not
11 listen to the local news on radio, and do not
12 read the newspaper unless you first have someone
13 remove any articles about the case. In addition,
14 you are not to visit any internet websites or web
15 logs which may include any information about the
16 case.

17 Since we are breaking for the weekend, I
18 understand that some of you may be working at
19 places of employment. Do not discuss the case
20 with any employers, employees, or patrons, do not
21 volunteer your status as a juror to anyone.

22 If anyone attempts to discuss the case
23 with you, politely but firmly notify them that
24 you are prohibited from discussing the case. If
25 you're involuntarily exposed to any information

1 about the case from any source, take steps to
2 immediately avoid any further exposure.

3 Should you be exposed to any reports or
4 communications from any source concerning the
5 case during the trial, or should you become aware
6 of anything you believe may affect your ability
7 to serve as a juror, you should not discuss your
8 concerns with any other jurors but should report
9 any concerns to the jury bailiff.

10 Now, I have also told you, previously,
11 that occasionally during the trial there will be
12 times when the Court has to take up matters with
13 the attorneys, outside the presence of the jury.
14 There is going to be one such occasion on Monday.
15 And because it is a matter which may take the
16 greater part of the day, rather than have you
17 sitting around and waiting until we're finished,
18 I'm not going to have the jury report for duty on
19 Monday. I'm going to have you report for duty on
20 Tuesday at the normal time.

21 Because of the fact that you are not
22 going to be here on Monday and it's a weekday, I
23 want to make especially sure that you pay
24 attention to the warning I just read, that is,
25 make sure you don't discuss it with anyone, avoid

1 any exposure to the case.

2 But it is necessary for the Court to
3 hear information outside your presence on Monday
4 and for that reason you will not be reporting on
5 Monday but reporting on Tuesday morning, at the
6 normal time. With that, I will excuse you for
7 the weekend at this time.

8 ATTORNEY GAHN: Your Honor, may I move in
9 Exhibit 432, the CV of Dr. Jentzen?

10 ATTORNEY STRANG: No objection.

11 THE COURT: All right. That exhibit is
12 admitted.

13 (Jury not present.)

14 THE COURT: You may be seated. Appears the
15 jury is not disappointed that we'll be going home
16 early. All right. Then, on Monday, we'll report
17 back to this courtroom at the normal time. Correct,
18 counsel?

19 ATTORNEY STRANG: Yes, sir.

20 THE COURT: All right. I will see you
21 then.

22 ATTORNEY FALLON: Your Honor, could we have
23 an accounting on the exhibits; there's a number of
24 exhibits that may not have been moved in that we
25 would like to move into evidence at this time. And

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then if the Clerk would check her score cards.

THE CLERK: Sure.

THE COURT: I have to address another matter at this time. Let me suggest this, why don't the attorneys meet with the clerk first thing Monday morning. If you discover there is action that needs to be taken with respect to any of the exhibits, we'll do it at that time.

ATTORNEY FALLON: All right. Thank you.

(Proceedings concluded.)

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

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

Dated this 21st day of November, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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