

Practical “Rules” for Cross-Examination

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Trial Academy

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The first rule of cross-examination is that there are no absolute rules of cross-examination. There are merely guidelines and suggestions. Every cross-examination is different, and has to be approached with flexibility. But cross-examination is certainly not the time to shoot from the hip. You must be prepared, confident and have clear goals. The difference between an average and a great cross-examination can be as little as one simple question. The learned skill is to get in and get to the important issues and then get out without being hurt in the process. Perhaps Mick Jagger said it best: “You can’t always get what you want, but if you try sometime, you just might find, you get what you need.”

1. STOP

The late Professor Irving Younger had four simple “rules” for cross-examination:

- When you are winning, STOP;
- When you do not know what to do, STOP;
- When you have made your point, STOP; and
- Before you get hurt, STOP.

This may seem like a strange first rule, but cross-examination is a dangerous time of the trial for you. More things can go wrong than go right. Keep in mind the principle physicians follow, *primum non nocere* (“First, do no harm.”).

You should set your goals, and plan your cross. Then sit down. It should be long enough, and no longer.

There is nothing worse than not stopping in time. For an example, see *Appendix A*.

2. PREPARE

- a. A good cross-examination starts long *before* you get to court.
 - Cross examination is 90% preparation.
 - There are no short cuts, you must know and understand the facts cold.
 - You must know and understand the substantive issues, i.e. the medicine, science, etc.
 - You must know and understand the applicable law.
 - Don't let your client pay for your lack of preparation.
- b. Investigate to prepare.
 - i. Know the witness
 - (1) Learn all you can.
 - (2) Know her written and other statements inside and out.
 - (3) Has she testified before? Has she written or lectured on the relevant issues?
 - (4) Search the web (Facebook, Twitter, YouTube, blogs).
 - (5) Any collateral issues?
 - (a) Arrests.
 - (b) Bankruptcies.
 - (c) Judgments.
 - (d) Prior lawsuits.

- (6) Are there “hot button” issues for the witness?
- ii. Know your opponent.
 - (1) How carefully has she prepared the witness?
 - (2) What type of objections will she make?
 - (3) What type of redirect can you expect?
- iii. Know the law.
 - (1) Understand the evidentiary principles and the proper scope of impeachment.
 - (2) Consider getting an advance ruling if there is a particularly significant issue.
- iv. Know the Judge.
 - (1) How far will the judge let you go?
 - (2) When does the judge like to break? Plan your examination accordingly.
 - (3) Does the judge allow you to approach the witness, or do you have to ask permission?

Simply put, preparation and hard work are two of the few common denominators in any effective cross-examination. You can only succeed if you put forth maximum effort beforehand. Do the investigation, do the research, and prepare thoroughly. Then practice. Your hard work will pay dividends when it counts – in front of the jury.

3. REMEMBER YOUR AUDIENCE

You are there to persuade the jury – not the witness, the client, your opponent or the judge (unless it is a nonjury trial). So target your cross to the jury.

- a. Even the greatest concession from a witness will be lost if the jury does not understand the testimony, and why it is important. So make sure that you use language that every juror will understand.
 - Adjust your approach based upon the specific jury in each and every case. If you have jurors with different levels of education, make sure they can all follow. If one of the jurors has particular expertise (i.e., an engineer, someone with military experience) consider exploiting that in your choice of language and themes.
- b. It goes without saying that you want the jury on your side. To be on your side the jurors have to not only believe you, they have to like you. No one makes enemies on a jury faster than an arrogant attorney who talks down to the jurors or to a witness (particularly one they like). But to believe you, the jury has to understand the evidence. Just be careful not to belittle the jury (this begins in jury selection) in your attempt to simplify the evidence. Take stock in your jury, take what you learned through jury selection, and adjust your approach – and your attitude – accordingly.

4. SET YOUR GOALS

Before standing up to do a cross-examination, you must know what you want to accomplish. Your preparation may suggest your goals, but you can't decide for sure until you hear the direct examination.

Remember you do not have to cross. If the witness hasn't hurt your case, doesn't have any favorable testimony to offer or is immune to any attempt to discredit her, your best strategy may be to say, "Your Honor, no questions."

If you do decide to cross, consider what you want to accomplish. Do you think the witness can help your case? In other words, do you think that through your cross you can get testimony that helps prove your case? Then you want to do a "positive cross." Alternatively, do you think you need to use your cross to discredit the witness or your opponent's case? Then you want to do a "negative cross."

a. Positive Cross

- Confirm favorable facts.
- Develop new facts that bolster your case.
 - Watch for "scope" objections.
 - You can make the witness your own, but will then have to ask non-leading questions.

b. Negative Cross

- Demonstrate error or confusion.
 - Witness might be wrong.
 - Witness might not have had best view, or might have been influenced by other factors (police suggestion, intimidation by other side).
- Demonstrate bias.
 - Relationship to party.
 - Interest in outcome.
 - Pecuniary interest.
 - Any reason witness might be lying, or embellishing testimony.

- Impeach the witness.
 - Bad acts.
 - Prior statements.
 - Learned treatises.

It is hard to do both a positive cross and a negative cross with the same witness. If you must try, do positive cross first. Once you have started a negative cross, the witness is unlikely to cooperate in your positive cross.

5. ORGANIZE

You must plan your cross, and craft it in a way that accomplishes your goals. Writing it out word for word is difficult, because you will need to adapt to unexpected testimony on direct, objections and rulings, and the answers the witness gives you on cross. The better approach is to create an outline, which can be supplemented based on the testimony on direct.

List the answers you want to solicit. Ask the necessary questions to get there. List appropriate page numbers of a deposition or other exhibit that may be necessary for impeachment.

Break your outline down by subject matter. Have one main point per section. Many lawyers find it effective to announce the subject matter so the jury understands the organization of the cross. For example, you might say, "Ms. Witness, I would now like to ask you about the events that occurred immediately after the accident." Announcing the topic like this helps the jury understand where you are going. This is sometimes referred to as the "Chapter Technique" since you are announcing chapter headings.

It is important to create a road map for your cross-examination. And while it is certainly ok to write out some of your questions, try to avoid scripting your entire cross. That will likely result in you becoming tied to your notes instead of listening, adapting, and going with the flow. It is better to have a detailed outline of the points you want to make and the

subject areas you must cover. You are in full control – get the witness there.

For an example of an outline, see *Appendix B*. Include in your outline a reminder to look at any notes you have about the direct testimony.

6. CONTROL

A good cross-examination is “in control.” “Of what?” you ask. Everything. The entire cross is a performance for the jury, and you want to control.

- a. Control the witness.
 - i. To control the witness, control the questions and the subject matter.
 - (1) Limit the boundaries of the possible answer.
 - (2) Break the question down into basic components.
 - (3) Control the tone.
 - (4) Control the pace.
 - (5) Controlling the answers.
 - (6) Of course the best control comes with “yes” and “no” answers.
 - (7) A good technique to control the cross is to phrase questions so as to elicit a simple “yes” for an answer. A witness who says “yes” repeatedly is sometimes said to be on the “Yes Train.”
 - ii. Do not provide the opportunity for the witness to wiggle out of the point that you just made.

- iii. Be prepared to force a witness to answer your question. You can have a question read back. You can insist on a yes or no answer (if properly phrased). Avoid asking the judge to help, unless really necessary.
- b. Control yourself.
 - i. Maintain eye contact.
 - ii. Use dynamic voice and tone.
 - iii. Be aware of your body language.
 - iv. Don't be afraid of using exhibits.
 - (1) Exhibits and demonstrative evidence make a cross-examination more interesting.
 - (2) More interesting means jurors pay more attention.
 - (3) Enumerate key concessions on a chart or projector.
 - v. Control your temper, unless you choose not to.
- c. Control yourself.
 - i. Know the rules of evidence, and how to phrase your questions to avoid objections and interruptions. Keep your opponent seated.

7. ELICIT ONE FACT PER QUESTION

The easiest and best way to control a witness is to ask short, simple questions that establish only one fact. Phrased in a way that they call for a “yes” or “no,” such questions allow you to control the examination.

- Easy for jury to follow.
- Creates clean record.
- Sets the rhythm.
- Get the witness on the “Yes Train.”

Not only does it create a cleaner record, keeping the testimony simple will allow you to use a building block approach and fashion a more effective summation. If the question is short and simple, it pressures the witness to keep her answers short. If the witness persists in lengthy replies to short questions, she appears non-cooperative. For a good example, see *Appendix C*.

8. BE FLEXIBLE

No matter how carefully you prepare, set your goals and try to control what happens, something unexpected can always happen. The witness may be evasive or refuse to cooperate. The witness may say something you weren’t expecting. The judge may strike important portions of the testimony. When these things happen, you must be flexible and adapt. Don’t let the jury see you sweat. Jurors watch body language.

To be a great trial lawyer you must have the ability to think quickly on your feet. This is never truer than in the world of cross-examination. You have to adapt, improvise and overcome.

This goes back to only having an outline of your cross as opposed to a question by question play book. You must remain flexible and adjust your cross-examination in part based upon the direct you just witnessed.

Maybe the last thing the witness says is where you decide to begin, maybe you stick to your original plan. You must listen very carefully and make any necessary adjustments on the fly. No one said it was easy.

A terrific example of a trial lawyer staying focused on the goal while being flexible and listening to the witness and reacting to the answers can be found in *Appendix D*.

9. USE YOUR OWN STYLE

The most important thing to remember when it comes to style is to be yourself. Do not try to imitate someone else's cross. You may have been impressed by a bulldog of a trial lawyer you've seen in court, but if your personality is more easy-going, you won't be able to become another person. You will fail and the jury will notice. Adjust your personal style to the case and to the jury, but never go outside of your own comfort zone.

10. MASTER THE BASICS

Like any skill, cross examination requires that you master certain basic techniques, so you can call on them whenever you need. Two of the most important basic techniques are using a statement to refresh a witnesses' recollection, and impeaching a witness with a prior inconsistent answer.

- a. Refresh Recollection of a Witness. "I Don't Recall!"
 - i. Witness **MUST** say: "I don't recall" or "I don't remember" or some variation. Otherwise, the judge won't allow you to refresh their recollection.
 - ii. Tell witness you will show them something to see if it helps refresh their recollection.
 - You can show them anything to refresh their recollection.

- It can be a police report, a medical report, a book excerpt, a photograph, a map, etc.
- Does not have to be that witness' prior statement or report.

iii. What to do:

- (1) Mark document or item for identification. (This is done by asking the Court to have the document marked for identification. It is then given to the reporter who marks it. If you know you may be using the document, or if it is a document you may want to put into evidence at some point, you can have it "pre-marked for identification" which means you ask the Court Reporter before the trial starts or the day it starts to pre-mark your items/exhibits.)
- (2) Show the document to the witness. "I am showing you what we have marked for identification as Exhibit ____."
- (3) Instruct the witness to look at the document and read it to themselves. Because the document is only marked for identification and is not in evidence, neither you nor the witness can read it out loud to the jury. Most judges will let you describe it in general terms, i.e. "This is a police report dated September 20, 2012." (Depending on what the document is, you may want to direct the witness to a particular place on the document for their review. If it is a book, or several pages, you may want to direct them to the appropriate page.)
- (4) Once the witness has finished reviewing the document, ask, "Does that refresh your recollection as to . . ."

(5) Repeat your initial question.

For an example, see *Appendix E*.

b. Impeaching with a prior statement. The “TEMPO” Technique.

You can use this technique when the witness says something inconsistent with her prior statement.

- i. Trap the witness. Get witness to commit to current version. Leave no escape route.
- ii. Emphasize importance of prior statement. Authenticate and validate it.
- iii. Mark the statement (make sure opponent has it).
- iv. Pound witness with it. Read it yourself or have witness read it.
 - (1) If you read it, you can emphasize it the way you want, and don’t give witness chance to explain. Ask witness “Did I read that correctly?” not “Is that what you wrote/said?”
 - (2) If you have witness read it, there is added impact of having inconsistent testimony come from same mouth.
- v. Offer exhibit, under appropriate circumstances. Give or show it to jury.

The Tempo technique is further outlined in *Appendix F*. For an example of it in action, see *Appendix G*.

* * * * *

One of the finest trial lawyers in New York State was Jack Litman, a longtime leader of the NYSBA Criminal Justice Section, and a mentor to countless young defense lawyers. Jack was particularly known for his skillful cross-examinations, especially of medical witnesses in the many homicide cases he tried. An example of one of his cross-examinations, illustrating mastery of many of the “rules” discussed in this outline, is found in *Appendix H*. Jack, who passed away a few years ago, would be glad to know young lawyers are still learning from him.

APPENDIX A

1 with crack cocaine?

2 A Yes.

3 Q Have you ever been a user of crack cocaine?

4 A No.

5 Q You have used marijuana?

6 A Yes.

7 Q Now, when you met Donald Benjamin did you tell him
8 how old you were?

9 A Yes.

10 Q All right. Well, you told him you were nineteen;
11 right?

12 A No. Told --

13 Q You didn't tell him you were nineteen when you met
14 him?

15 A No, I told him I was seventeen.

16 Q All right. Was that the first day you met him?

17 A Yes.

18 Q Okay. Is something that you said to him for what
19 reason?

20 A What do you mean by that?

21 Q Why did you tell him how old you were, is that
22 something you usually tell people when you met them?

23 A Because he asked.

24 Q And it's your testimony that you did not tell him
25 you were nineteen when you met him?

1 A Yes, I didn't tell him I was nineteen.

2 Q Now, you said that you met him in May of 1996, is
3 that right?

4 A Yes. Around April or May.

5 Q Around April or May of 1996, and it was your
6 understanding that he had been in jail prior to meeting
7 him, is that right?

8 A Yes.

9 Q Did you have any understanding how long he had been
10 in jail?

11 A No.

12 Q Did you have an understanding he had been in jail
13 since the previous year, since 1995?

14 A No.

15 Q Okay. Now, in 1996, in July, you had your
16 eighteenth birthday, is that right?

17 A Yes.

18 Q All right. You were born just, for the juries
19 knowledge, on July 28th of 1978?

20 A Yes.

21 Q All right. So on July 28th of 1996 you turned
22 eighteen?

23 A Yes.

24 Q Now, I want to ask you some questions about the
25 incident where you were arrested with Jeff Evans, do you

APPENDIX B

1. MATERIALS HE REVIEWED

Ask to see file.

This is everything? All you reviewed.

Other materials.

Whole file.

Report.

Prior drafts.

- Submit any drafts to defense for review/editing before finalizing.

Copies of record.

- Writing on them.
- Notes on them.
- Highlights on them.

2. ACCIDENT CAPABLE OF CAUSING INJURIES

MVA can fracture clavicle

Can cause partial tear of rotator cuff.

- Supra spinatus tendon.

MVA can cause injury to disc.

Can cause bulging "annular bulge"

Can press against thecal sac

Those conditions are capable of causing:

- Pain.
- Neurologic deficits.

- Decreased reflexes.
- Decreased sensation.
- Decreased motion.

3. AREAS OF AGREEMENT

My client was involved in a car crash on May 26, 2007

That client sustained a fracture of his clavicle in that crash

Fracture was comminuted?

And displaced?

4. DEGENERATIVE DISC DISEASE

You attribute this to degenerative disc disease?

Many people have degenerative disc disease without symptoms?

Most people in 40s have degenerative discs.

Plaintiff was in his 40s.

From work history?

Worked without interruption from time he was 15 until the accident.

Worked without any time off for injuries.

Without time off for degenerative disc symptoms.

Crash 5/27/07

Had severe complaints consistent with back problem since the crash.

And has not gone back to work on the orders of his treating physicians.

So doctor, looking at his work history you would admit that the crash changed the health of his lower back.

5. ASYMPTOMATIC DEGENERATIVE DISC DISEASE CAN BE AGGRAVATED BY ACCIDENT

You can see degenerative changes on x-ray or MRI and be asymptomatic

And be mildly symptomatic.

One episode of lower back pain and stiffness; two week duration

No treatment

Is mild

No functional impairment

Testify that that was mild or minimal.

Person

- Radiating pain
- Neurologic deficits
- Decreased reflexes
- Decreased sensation
- Decreased motor strength.

That would be an aggravation.

6. NO PRIOR INJURY TO OTHER PARTS

You have reviewed prior medical records you received from the defense attorneys.

You have had a chance to review them all.

You agree with me that there is no indication in there whatsoever that plaintiff had any prior problems with his shoulder; no prior problems with his arm; no prior problems with his neck.

7. ROLE AS DEFENSE DOCTOR

"Restrictive Rules"

Where are they found?

Who told you the rules?

Restricted, not full assessment

No doctor patient relationship exists or is implied.

You are doing job.

Job not to act as doctor for plaintiff.

Not there to render any advice.

Not there to treat.

Not there to get him better.

Sole purpose is to fulfill assignment from the law firm that was paying you.

8. EXAMINATION OF PLAINTIFF

Now in your examination of plaintiff, that process started with an interview regarding his history?

How long was that part of process?

You characterized him as "cooperative."

Plaintiff answered all of the questions you posed to him?

Was it your impression that he told you everything you asked honestly?

Then you left examining room and reviewed films.

Then you did physical examination.

Plaintiff complied with your requests during the examination.

He fully cooperated

Plaintiff's attorney was there – making notes.

Plaintiff testified it took you 14 minutes to do physical exam.

You agree

Plaintiff also testified you made no notes at the time of exam.

You agree

9. GO TO DIRECT

10. BIAS AS DEFENSE DOCTOR

You are no longer seeing patients.

And is it true that you have not treated patients for about ____ years now?

- Do not operate
- Do not order tests
- Do not prescribe medicine

But you do still have an office?

Office exclusively exists so that defense attorneys can schedule examinations, in cases where they are defending individuals, of plaintiffs that are suing their clients

And you conduct examinations of people who are not your patients?

And then you issue a report to someone about your opinions regarding the examinee?

You are paid for doing those examinations.

And if you later come to court to testify about the examination as you are doing today, you get paid for that too?

Done exams for defense attorney before?

How many?

Done exams for her firm?

How many?

Testified for her or her firm?

How many exams do a year or month or week?

All for law firm defending claims against people who are injured?

Most?

Percentage?

How many times testify per year or month?

All for law firms defending claims against people who are injured?

Charge for each and every claim?

How much?

Charge for testimony?

How much?

That income is your sole source of income

Dependent on these law firms who defend against claims by injured people for new referrals.

Depend on these law firms to send you new cases?

APPENDIX C

1 Q You didn't take any written notes
2 of what that interview resulted in, correct?

3 A No, ma'am.

4 Q What you're testifying here to
5 today, is simply your recollection of what you
6 believe the interview was on February 20th, 2009;
7 correct?

8 A Yes, ma'am.

9 Q At the scene, you testified that
10 you saw a MINI Cooper that had been rolled over,
11 correct?

12 A Yes, ma'am.

13 Q My client, [REDACTED] was
14 standing outside the vehicle, correct?

15 A Yes, ma'am.

16 Q The engine wasn't running, was it?

17 A No, ma'am.

18 Q The keys were not in the ignition,
19 were they?

20 A No, ma'am.

21 Q The other individual that you
22 testified to as being a passenger, was also
23 standing outside the vehicle, correct?

24 A Yes, ma'am.

25 Q There were no people in the

1 vehicle, correct?

2 A No, ma'am.

3 Q At some point in time after you
4 spoke with my client, you inventoried that vehicle,
5 is that right?

6 A Yes, ma'am.

7 Q There was no alcohol found in that
8 vehicle, correct?

9 A Not to my memory.

10 Q No drugs found in that vehicle,
11 correct?

12 A No, ma'am.

13 Q Now, when you saw [REDACTED] at the
14 scene of this accident, he had cuts to his face; is
15 that correct?

16 A Correct.

17 Q He had been in the vehicle that
18 rolled over, you did ascertain that; correct?

19 A Yes, ma'am.

20 Q So, it's fair to say that there was
21 a possibility that he had a head injury, is that
22 correct?

23 A Yes, ma'am.

24 MR. BARCA: Objection, Your Honor
25 as to speculation.

1 THE COURT: Sustained.

2 Q You said, he also had cuts to his
3 hands, is that correct?

4 A Yes, ma'am.

5 Q Now, you testified that when you
6 saw him, his eyes appeared glassy; is that correct?

7 A Yes, ma'am.

8 Q You had never seen Mr. [REDACTED]
9 prior to February 20th, 2009, had you?

10 A No, ma'am.

11 Q You don't know him, do you?

12 A No, ma'am.

13 Q Are you aware he's a 73 year old
14 man?

15 A Yes, ma'am.

16 Q You became aware of that, that
17 evening, correct?

18 A Yes, ma'am.

19 Q There is a possibility that it
20 could be due to something else, correct?

21 MR. BARCA: Objection, Your Honor.

22 THE COURT: I'll allow it.

23 A Yes, ma'am.

24 Q You also testified, that my client
25 Mr. [REDACTED] had slurred speech, correct?

1 A Yes, ma'am.

2 Q It's fair to say, that somebody who
3 has been in a car accident could have a head
4 injury, correct?

5 MR. BARCA: Objection. Your Honor.

6 THE COURT: I'm going to sustain
7 that.

8 Q Somebody who has slurred speech,
9 could have slurred speech as a result of something
10 other than alcohol or drug impairment, correct?

11 A Yes, ma'am.

12 Q Now, you never ascertained whether
13 my client was under any medical care at that time,
14 did you?

15 A Not at that time, ma'am.

16 Q You never ascertained that my
17 client suffered from high blood pressure at that
18 time, did you?

19 A Not at that time, ma'am.

20 Q You didn't ascertain as to whether
21 or not he was on any other medication, did you?

22 A Not at the scene, ma'am.

23 Q Not at the scene. So, when you got
24 to the hospital, you learned that he was on
25 medication?

1 A I didn't interview him at the
2 hospital, those are standardized questions.

3 Q Did you ever learn that my client
4 was on medication?

5 A No, ma'am.

6 Q You also testified that Mr. [REDACTED]
7 had impaired, I believe it was impaired motor
8 condition, that's the way it's listed on your
9 Supporting Deposition; is that correct?

10 A Yes, ma'am.

11 Q That impaired motor condition you
12 testified, was an indication that he could have
13 been impaired by alcohol or substance abuse,
14 correct?

15 A Yes, ma'am.

16 Q Impaired motor condition could also
17 be the result of some other thing, isn't that
18 correct?

19 A Yes, ma'am.

20 Q After speaking with my client, you
21 testified that you ascertained that he was coming
22 from home and going to a store; is that correct?

23 A Yes, ma'am.

24 Q Are you familiar with the
25 Supporting Deposition that was filled out in this

1 case?

2 A No, ma'am.

3 Q No?

4 A No, ma'am.

5 Q As part of your preparation for
6 testimony here today, you did not review the
7 Supporting Deposition that was filed as supporting
8 documents to the simplified traffic informations
9 that were filed in this case?

10 A No, ma'am.

11 Q In preparation for testimony here
12 today, you did not review the simplified traffic
13 informations that were filed in this case, is that
14 right?

15 A That was the only thing I had
16 access to, ma'am.

17 Q Were the simplified traffic
18 informations?

19 A Were Trooper Peters notes from the
20 accident.

21 Q You had access to Trooper Peters
22 notes from the accident, is that correct?

23 A Yes, ma'am.

24 Q So, it's fair to say that you
25 reviewed the arrest paperwork here, isn't that

1 right?

2 A Yes, ma'am.

3 Q Part of the arrest paperwork is the
4 Supporting Deposition, isn't it?

5 A It's not on-line. I only have
6 access to what's on-line.

7 Q You reviewed the incident report in
8 this case --

9 A Yes, ma'am.

10 Q -- prior to testifying?

11 A Yes, ma'am.

12 Q You reviewed the accident report,
13 is that correct?

14 A Yes, ma'am.

15 Q Trooper Peters filed out the arrest
16 paperwork in this case, is that right?

17 A Yes, ma'am.

18 Q When it came to indicating what
19 field sobriety tests had been performed with regard
20 to Mr. [REDACTED] that information was given to
21 Trooper Peters by you, is that correct?

22 A Yes, ma'am.

23 Q Trooper Peters was not with you
24 when you performed the field sobriety test, is that
25 right?

1 A Yes, ma'am.

2 Q So, anything that's in the
3 Supporting Deposition that Trooper Peters filled
4 out, is based on what he was told by you; is that
5 fair to say?

6 A As far as the SFST's; yes, ma'am.

7 Q You testified that you performed a
8 horizontal nystagmus test, is that right?

9 A Yes, ma'am.

10 Q You testified that Mr. [REDACTED]
11 performed appropriately on the horizontal
12 nystagmus, isn't that fair to say?

13 A Yes, ma'am.

14 Q There were no indicators, is that
15 right?

16 A On the horizontal?

17 Q On the horizontal, that's what I'm
18 talking about?

19 A Yes, ma'am.

20 Q You further testified, that you
21 performed a vertical nystagmus test; is that right?

22 A Yes, ma'am.

23 Q On the vertical nystagmus test, you
24 indicated that there was some indication to you
25 that his ability had been impaired; is that fair to

1 say?

2 A Yes, ma'am.

3 Q Yet, when you reported to Trooper
4 Peters, you didn't indicate to him that you
5 performed a vertical nystagmus test; is that right?

6 A That's the only thing I performed
7 is the horizontal nystagmus test.

8 Q I thought you performed the
9 horizontal and the vertical?

10 A The horizontal and vertical
11 nystagmus I performed.

12 Q Those are two different tests,
13 isn't that right?

14 A They are part of the same test.

15 Q Trooper, vertical nystagmus is one
16 test and the horizontal nystagmus is a second test,
17 correct?

18 A Correct.

19 Q Two different names, correct?

20 A Yes.

21 Q Now, you testified with regard to
22 the nystagmus test, that you used a pen in front of
23 my client's eyes in order to perform that test; is
24 that correct?

25 A Yes, ma'am.

APPENDIX D

1 CROSS-EXAMINATION:

2 BY MR. MURRAY:

3 Q Sir, will you admit that you're a thief?

4 A No.

5 Q No?

6 A I wouldn't.

7 Q Didn't you plead guilty to being a thief?

8 A Yes, I did.

9 MR. DUSZKIEWICZ: Objection.

10 BY MR. MURRAY:

11 Q I am sorry, yes?

12 A Yes, I did.

13 MR. DUSZKIEWICZ: Objection.

14 THE COURT: Has been answered.

15 BY MR. MURRAY:

16 Q You have pled guilty to stealing the grill from the
17 porch of those people you didn't even know; right?

18 A Yes, I did.

19 MR. DUSZKIEWICZ: Objection.

20 THE COURT: Overruled.

21 BY MR. MURRAY:

22 Q You also steal batteries from Hills?

23 A Yes, I did.

24 Q Okay. And you were born on June 16th, 1972?

25 A Yes, sir.

1 Q Also steal your mother's car?

2 A On occasion, yes, I have.

3 Q Steal checks from your mother?

4 A No, I have not.

5 Q Steal any checks from your mother?

6 A Never.

7 Q Would you admit to me that are you liar?

8 MR. DUSZKIEWICZ: Objection.

9 THE WITNESS: Would I admit to you that I was
10 a liar?

11 BY MR. MURRAY:

12 Q Yes.

13 A No, I would not.

14 Q Well, didn't you just tell the lawyer over here,
15 Mr. Doyle, the one in the blue suit, that you swore,
16 falsely swore to the police?

17 A If they write the statement, I just went along with
18 it.

19 Q Well, my question was didn't you just admit to Mr.
20 Doyle that you falsely swore --

21 A Yes, I did.

22 Q -- in making a statement to the police?

23 A Yes, sir.

24 Q Do you think that, do you think that makes you a
25 liar?

1 A No.

2 Q Before you -- do you recall testifying in the grand
3 jury in June 17, 1997?

4 A Yes.

5 Q Went to a building in Buffalo?

6 A Yes.

7 Q Not this building, a newer building?

8 A Yes, I did go to a --

9 Q Were you represented by a lawyer at that time?

10 A No, I was not.

11 Q You weren't represented by a lawyer, but you were
12 getting advice from the investigators, is that right?

13 A Yes, yes, I was.

14 Q The narcs, so to speak?

15 A Yes.

16 Q And the narcs had been harassing you over thirty
17 times you said?

18 A Numerous, yes.

19 Q And these narcs were threatening you too also,
20 weren't they?

21 A Yes.

22 Q They were threatening you, and they were saying
23 things like, Dale, the hammer is about to drop, weren't
24 they?

25 A On numerous occasions, yes.

1 Q Numerous occasions, and they were talking about a
2 hammer that might put you in jail for twenty or thirty
3 years?

4 MR. DUSZKIEWICZ: Objection.

5 THE WITNESS: They never said it like that,
6 but --

7 BY MR. MURRAY:

8 Q What?

9 A They never said it that way, but yeah.

10 Q But that was the idea, wasn't it?

11 A Yes, sort of.

12 Q That, that you had, that you, if you don't get on
13 board, then you might be in jail for twenty or thirty
14 years, that is what they were saying to you?

15 A Yes.

16 MR. DUSZKIEWICZ: Objection, he said they
17 didn't say that.

18 THE COURT: Go ahead.

19 BY MR. MURRAY:

20 Q And they told you there was only one way out for
21 you; right?

22 A No.

23 Q Well, they told you that they could help you;
24 right?

25 A Yes.

1 Q And they told you that they could help you only if
2 you could help them; right?

3 A Yep.

4 Q And they told you that if you didn't help them they
5 wouldn't help you?

6 A Correct.

7 Q And they told you that they couldn't cut the deals,
8 but they would talk to the prosecutor, and get you a
9 real good deal, didn't they?

10 A Yes.

11 Q And they told you that you might be able too, you
12 might be able to stay out of jail completely, they might
13 be able to help you stay out of jail; right?

14 A Yes.

15 Q And at the time that you were talking with them
16 they were telling you that the U.S., that the Federal
17 drug laws are really strict, didn't they?

18 A They are.

19 Q No, no, my question is they told you that, didn't
20 they?

21 A They are, yes, they told me that.

22 Q They made that clear to you, didn't they?

23 A Yes.

24 Q And they told you that the Federal drug laws with
25 the kind of quantity you were involved with had

1 mandatory minimum sentences; right?

2 A No, they never said nothing like that.

3 Q Okay. But they told you, they made it clear you
4 might be in jail for many, many years; right?

5 A No, I have never actually been busted with anything
6 over a bag of marijuana.

7 Q No, no, my point, didn't you just tell me that they
8 made it clear to you that you might go to jail --

9 A Yes.

10 Q -- for something like ten or twenty years?

11 A I could have gotten that, yes.

12 Q Right?

13 A If I would have been busted.

14 Q Now, what were some of the ways that they harassed
15 you?

16 A Dumped my car out.

17 Q They what?

18 A Frequently stopped me and dumped my car out.

19 Q They would stop you?

20 A Yep.

21 Q Even when you weren't doing anything wrong?

22 A Yep.

23 Q Tear your car apart?

24 A Three times on my way out of work they dumped my
25 car right on the side of the road, yes.

1 Q And you are saying they did this without any legal
2 justification?

3 A No, just other than, just stopped me and gave me a
4 hard time.

5 Q Well, that must have been terrible, wasn't it?

6 A . Yep.

7 Q What else did they do to harass you?

8 A Show up at my work, show up at my house.

9 Q You think they were doing that to try to intimidate
10 you?

11 A Yes, I'm sure they were, but, they followed me too,
12 every where he went.

13 Q Must have made you very uncomfortable?

14 A Yes, on occasion, yes.

15 Q Did you feel threatened by this?

16 A No, at first it was game.

17 Q At first it was a game?

18 A Yes.

19 Q What other kind of things did they do to harass
20 you, you said thirty times?

21 A They followed me to drug houses, tried to grab me
22 when I was coming out and numerous things, tell me
23 exactly what I said while I was there, and da, da, da,
24 on down the line.

25 Q Well, is it fair to say that they were making your

1 life a living hell at that point?

2 A Yes, they were.

3 Q Okay. So they were making your life a living hell,
4 and then they threatened you with something like ten or
5 twenty years in jail; right?

6 A Yes.

7 Q And then they gave you, and then they gave you --

8 MR. DUSZKIEWICZ: Objection, Judge --

9 THE COURT: Let him answer the question.

10 MR. MURRAY: I thought he just nodded, he said
11 right verbally.

12 THE COURT: Did you say right?

13 THE WITNESS: Yes, they did harass me.

14 THE COURT: Go ahead.

15 MR. DUSZKIEWICZ: Well, I am sorry, Judge,
16 that is not a responsive answer.

17 THE COURT: No, he said you are correct.

18 MR. DUSZKIEWICZ: No, he said they did harass
19 me.

20 THE COURT: Go ahead.

21 BY MR. MURRAY:

22 Q Well, after they made your life a living hell, then
23 they threatened you with something like twenty or thirty
24 years in jail, isn't that the truth?

25 A Well, they never threatened me with no thirty years

1 in jail, no.

2 Q Twenty, something like ten or twenty, that was the
3 idea, wasn't it?

4 A Maybe, I don't know.

5 Q Did they tell you that -- did they tell you that if
6 you didn't help them out, then you might miss out;
7 right?

8 A No, they didn't say that either.

9 Q Did they tell you you had to do it now and not
10 wait?

11 A Nah, they sent people like Child Protective
12 Services over, and did their own little thing.

13 Q What did they do?

14 A Harass me just like the rest of them.

15 Q Huh?

16 A Harassment.

17 Q You have got to keep your voice --

18 A They harassed me.

19 Q What kind of harassment?

20 A Child Protective Service harassment.

21 Q How did they harass you?

22 A They show up, they want to see your kids, they want
23 to see how you are living, whatever.

24 Q Okay. Well, that would have been hard to live
25 with, wouldn't it, that kind of --

1 A Yes.

2 Q -- campaign of harassment?

3 A Yes.

4 Q And they made a recommendation to you; right?

5 A What do you mean by that?

6 Q They told you what they wanted you to do, they
7 wanted you to help them, right?

8 A Yes, they made a bargain with me, yes.

9 Q They wanted you to help make cases against other
10 people, didn't they?

11 A Yes, they did.

12 Q And that was, that was the deal that they offered
13 you, you help us make cases against other people, then
14 we can help you with leniency?

15 A Yes.

16 Q Now, you dealt with a lot of lawyers in your day,
17 haven't you?

18 A Yes, I have.

19 Q You have been --

20 A They are all junk.

21 THE COURT: We won't take a vote on that.

22 BY MR. MURRAY:

23 Q Well, you have done a lot of plea bargaining too,
24 haven't you?

25 A Yes, I have.

1 Q And usually when you do plea bargaining you have a
2 lawyer; right?

3 A Yep.

4 Q And a lot of times when you go to court the Judge
5 makes you get a lawyer, don't they?

6 A Yep.

7 Q They say don't come back without a lawyer, you have
8 heard that before, haven't you?

9 A Yes, I have.

10 Q But this was different, because you didn't have a
11 lawyer with you when you went into the grand jury, did
12 you?

13 A No, I did not.

14 Q All right. And the investigators told you you
15 didn't need a lawyer, did they -- didn't they tell you
16 that?

17 A They told me if I wanted one, I could have one, --

18 Q Right, but they --

19 A -- it wasn't necessary.

20 Q They told you you didn't need a lawyer; right?

21 A Wasn't necessary, no.

22 Q They told you it wasn't necessary?

23 A Yes.

24 Q So they told you, you go along with us, and you
25 don't even need a lawyer, isn't that what they told you?

1 A Yes.

2 Q Now, you do have a lawyer now; right?

3 A Yes, I do.

4 Q It's that bald headed man sitting back there in the
5 white shirt, right?

6 A Yes, it is.

7 THE COURT: No fisticuffs.

8 BY MR. MURRAY:

9 Q Is he representing you on this investigation
10 involving your drug trafficking of huge quantities of
11 cocaine?

12 A No, he is not.

13 Q Is that because of other legal problems that you
14 have. That's why he is representing me, for other legal
15 reasons, yes.

16 Q What kind of legal reasons?

17 A Possession and sale of LSD.

18 Q Oh, and didn't you tell Mr. Doyle here that you
19 lied to the police about the LSD --

20 A Yes, I did.

21 Q -- that you were charged with?

22 A Yes, I did.

23 Q But you are not a liar?

24 A No, I am not.

25 Q Well, you know that if the prosecutor thinks that

1 you have been a real helpful witness he might be able to
2 help you, don't you?

3 A Ain't no prosecutor that ever helped me, no.

4 Q No prosecutor ever helped you?

5 A Nope.

6 Q Well, you were never, you were never charged, even
7 though you admitted that you were involved in bringing
8 large quantities of cocaine into Olean, you haven't been
9 prosecuted?

10 A No, I haven't.

11 Q Well, who do you have to thank for that?

12 A Don't know.

13 Q God?

14 A Never been caught red-handed, I guess, is the truth
15 for that matter.

16 Q You got caught red-handed selling LSD, didn't you?

17 A Sure did, I got set up by my best friend.

18 Q Then you just lied when you said you were never
19 caught red-handed, didn't you?

20 A Not for cocaine trafficking, no.

21 Q When did you first start -- you say that you were a
22 cocaine user, when did you first start using cocaine?

23 A '95, '96.

24 Q How often were you using it?

25 A In the beginning, once or twice, then after that --

1 Q Once or twice what?

2 A Once or twice when I could get it.

3 THE COURT: Once or twice -- a week or a
4 month?

5 THE WITNESS: If I got it twice in a week then
6 I did it, yes.

7 THE COURT: Yes.

8 BY MR. MURRAY:

9 Q Well, how often would you get it?

10 A Once or twice a week.

11 Q So you were using it once or twice a week when you
12 started?

13 A Yes.

14 Q And then did you start using it more?

15 A Yes.

16 Q Then did you start using it every day?

17 A Then after while I could use it four or five times
18 a week, yes.

19 Q And during the same period you were abusing
20 alcohol; right?

21 A Yes, I was drinking at the time.

22 Q In fact, you have had six alcohol related arrests;
23 right?

24 A Yes.

25 MR. DUSZKIEWICZ: Objection.

1 THE COURT: Sustained.

2 BY MR. MURRAY:

3 Q Because of alcohol you damaged a Mr. and Mrs.
4 Wilber McCan's porch, didn't you?

5 A Yes, I did.

6 Q And besides the crack and the alcohol, you were
7 also smoking marijuana during this period, right?

8 A Yes, I was.

9 Q Was it during this period you were using LSD too?

10 A No, I wasn't.

11 Q When did you start using LSD?

12 A When it came around.

13 Q When did it come around?

14 A In the summertime.

15 Q Summer of what year?

16 A '96, '97.

17 Q Do you think all of this alcohol abuse and
18 marijuana abuse, and LSD abuse might have affected your
19 brain?

20 A Probably.

21 Q Not a good way either?

22 A Couldn't say.

23 Q And after you were working as a confidential
24 informant you tried to make a buy from people, isn't
25 that a fact?

1 A Yes, I did.

2 Q How many people did you try to make buys from?

3 A Probably fifteen I would say.

4 Q And you tried to make buys from fifteen people
5 after you were talking with the investigators and you
6 were trying to make cases against other people; right?

7 A Yes, I did.

8 Q And when was it that you became a confidential
9 informant?

10 A '95, '96, I guess.

11 Q And the investigators targeted you at people;
12 right?

13 A Yes, they did.

14 Q The target was the person that you were suppose to
15 make a buy from; right?

16 A Yes.

17 Q And they would wire you all up like a monkey on a
18 string, wouldn't they?

19 A Sometimes, sometimes no.

20 Q sometimes they would wire you, sometimes they
21 wouldn't?

22 A Yes.

23 Q Were you paid?

24 A Sometimes, yes.

25 Q Paid in what, cocaine?

- 1 A No.
- 2 Q Paid in money?
- 3 A Yep.
- 4 Q Paid in what you could steal?
- 5 A No.
- 6 Q Who gave you the money?
- 7 A Police gave me some money.
- 8 Q Police gave you some money?
- 9 A Yes.
- 10 Q When did they start giving you money?
- 11 A They gave it to me on two occasions.
- 12 Q When was the first time they gave you money?
- 13 A When they made -- I made a couple of buys for them,
14 and a couple of people were convicted and arrested, I
15 got a check for some money.
- 16 Q How much?
- 17 A I don't know, maybe seventy bucks.
- 18 Q Don't give me the maybe seventy bucks, tell me how
19 much you were paid, sir?
- 20 A I don't know.
- 21 MR. DUSZKIEWICZ: Objection.
- 22 BY MR. MURRAY:
- 23 Q You were what?
- 24 A I don't know.
- 25 Q You don't know, you can't tell the jury how much

1 you were paid?

2 A It was like seventy bucks two, three years ago.

3 Q So it's your testimony that that was, was that your
4 reward?

5 A I don't know.

6 Q You don't know?

7 A No.

8 Q You think it was coincidence that you got the check
9 after somebody was convicted?

10 A No, just figured --

11 Q That is the way it works, that is what you figured,
12 right?

13 A It's cash, yes.

14 Q You get paid to help convict people, is that what
15 the idea is?

16 A Yes.

17 Q Okay. How much more money, you said you were paid
18 twice?

19 A Yes.

20 Q You were only paid twice?

21 A Yes, seventy dollars.

22 Q Were only paid twice by check, or only paid twice
23 ever by the police?

24 A Twice ever.

25 Q Twice ever, well, that first time you got the

1 check, when was that?

2 A I couldn't even tell you, don't know.

3 Q You can't tell me the date when you got that check?

4 A Don't know. It sat in the mail box for awhile, and
5 when I got --

6 Q I guess you didn't need any money?

7 A No, I didn't at the time.

8 Q Didn't need any money?

9 A No, I was working a good job.

10 Q Over at the Castle Restaurant?

11 A No.

12 Q Where?

13 A I was working at Cooper Industries.

14 Q So you let that check set in the mail box, weren't
15 you worried about thieves coming and ripping it off?

16 A Yeah.

17 Q I mean, a gas grill isn't even safe in Olean?

18 A Yes, probably only a few dollars, wasn't nothing to
19 me.

20 Q You told me it was seventy dollars, didn't mean
21 anything to you?

22 A No.

23 Q Did you cash that check yourself?

24 A No, I signed it over and gave it to my mother, I
25 believe.

1 Q Is that to make up for property you had stolen from
2 her?

3 A No.

4 Q Is that because you didn't want -- was the check
5 payable to you in your name?

6 A Yes, it was.

7 Q What about the second time you say you got paid?

8 A They gave me fifty dollars in cash.

9 Q Did you sign a receipt?

10 A Nope.

11 Q No?

12 A Nope.

13 Q Kind of under the table money, huh?

14 A Just gave me the cash, yep.

15 Q What?

16 A Just gave me the cash, yes.

17 Q Who gave you the cash?

18 A Don't remember.

19 Q You don't remember who gave you cash?

20 A No, I don't.

21 Q Was it a man or a woman?

22 A It was man.

23 Q Was he white or black?

24 A I couldn't tell you, they was -- I met all along
25 maybe fifteen different officers, couldn't tell you.

1 Q And this man, that you can't even tell us who it
2 was or when it was, he just gave you some cash?

3 A Yes.

4 Q And that was part of your reward, wasn't it?

5 A Maybe, maybe not.

6 Q Well, that was, that was what you were getting paid
7 that money for your -- helping the police, right?

8 A Maybe so.

9 Q Helping the prosecution, right?

10 A Maybe so.

11 Q Wasn't a gift, was it?

12 A I don't know.

13 Q I mean you weren't, it wasn't like they weren't
14 your relative or anything giving you a gift, right?

15 A No, they weren't.

16 Q You don't think they gave it to you just because
17 they liked your personality, do you?

18 A No, I am sure they didn't like me.

19 Q Well, this money that they gave you, did they have
20 any agreement with you how much money you would get?

21 A No, that was never no agreement.

22 Q So it was like you just thought that the more they
23 like you, then maybe the more likely they will give you
24 a reward; right?

25 A Yep.

1 Q The more helpful you are in convicting somebody
2 maybe you might get the reward; right?

3 A Yep.

4 Q The more people you convict, maybe the bigger
5 reward you get, huh?

6 A Maybe so.

7 Q Maybe the longer somebody goes to jail then maybe
8 the bigger the money you get?

9 A I wouldn't know, couldn't know.

10 Q Do you know Cindy and Mike Connors?

11 A I don't know.

12 Q Cindy and Michael use to live over at Alder Court,
13 does that ring a bell?

14 A Oh, Okay. yes.

15 Q Crack smokers; right?

16 A Yes. I know them as different people.

17 Q What?

18 A I know them as different names.

19 Q What do you know them as?

20 A Roxanne and Mike.

21 Q They were smokers; right, he was a carpenter,
22 right?

23 A He was a fix it guy, yeah.

24 Q Fix it guy, and you use to drop them off over at
25 the Derby Hotel, didn't you?

1 A Sure did, yes.

2 Q And they use to go over there to smoke with JB,
3 because they were pathetic crackheads just like him,
4 isn't that the truth?

5 A Maybe so, yes.

6 Q And that is where you -- and that is how you knew
7 where JB lived, because you use to drop some other
8 crackheads over there to go over and smoke crack with
9 JB; right?

10 A Maybe so, on occasion, yes.

11 Q So you wanted to -- that is how you figured you
12 would sprinkle in a little bit of information to try to
13 get away with your lie; right?

14 A No.

15 Q You said you went to JB's room at the hotel?

16 A I have been to his house, yes.

17 Q Describe the house?

18 A It's a big apartment building, it's got a huge
19 porch. You got to have somebody let you in, and you got
20 to go upstairs and his house is like third door down on
21 the right -- left; right.

22 Q It's on the third floor?

23 A No, second -- first floor, second floor.

24 Q It's on the first floor?

25 A It was the second floor, you go upstairs, it's

1 basically the first floor if you ask me, yes.

2 Q Why did you say the third floor?

3 A I said I don't know if there is a third floor. I
4 am saying it was like the third door down on the left
5 was his.

6 Q So if I get this right, after something like fifty
7 trips to traffic in drugs; right?

8 MR. DUSZKIEWICZ: I am sorry, is that a
9 question, Judge?

10 MR. MURRAY: I'm not finished yet, I was
11 interrupted by Mr. Duszkievicz.

12 THE COURT: You said right, question mark.

13 MR. MURRAY: But I was on, I was rolling in.

14 THE COURT: Oh, you were rolling.

15 MR. MURRAY: It was like a semicolon.

16 THE COURT: Start this downhill roll again.

17 BY MR. MURRAY:

18 Q All right. So after you say you make something
19 like fifty trips with large quantities of drugs, you
20 don't even get arrested for that; right?

21 A Never been caught.

22 Q Well, did you -- and you didn't get caught, but you
23 did it so that, you are cooperating so that you won't
24 get caught; right?

25 A Maybe so, yes.

1 Q Well, maybe so, isn't that the truth, isn't that
2 why you want to help the Government, to help yourself? A
3 Yes, maybe so.

4 Q And you want to help the Government in your their
5 efforts to convict people so that you can escape jail;
6 right?

7 A Maybe.

8 Q Maybe. And even though, and even after you cut
9 that kind of a deal with the investigators, you still
10 been out there committing crimes?

11 A Yes, I did.

12 Q Stealing?

13 A No.

14 Q Lying?

15 A No.

16 Q So you will admit to being a thief, but you won't
17 admit to being a liar?

18 A No.

19 THE COURT: No which?

20 THE WITNESS: What is that?

21 THE COURT: You said, no, you admit to being a
22 thief --

23 THE WITNESS: I have stolen on occasion, but I
24 am not --

25 THE COURT: And, I gather, you do not admit to

1 being a liar?

2 THE WITNESS: I am not a liar, I am not lying,
3 no.

4 THE COURT: All right. Just wanted to
5 straighten it out for the jury.

6 BY MR. MURRAY:

7 Q And you think that if you keep your part of that
8 bargain then the Government will keep their part of the
9 bargain, and the hammer won't ever drop on you; right?

10 A I can't say for sure, no.

11 Q And you -- but that is what you are hoping for,
12 isn't it?

13 A No, I can't say that either, no.

14 Q Well, you don't want them to drop the hammer on you
15 now; right?

16 A If I go to jail, then I will end up in jail, yes.

17 Q You wouldn't like that, would you?

18 A No, but --

19 Q So you want them to keep up their part of the
20 bargain; right?

21 A If they want to, yes.

22 Q And you want to try to keep up your part of the
23 bargain so that they will keep up their part of the
24 bargain; right?

25 A No, I wasn't hoping to come back here again, no.

1 Q No, my point is you want them to think that you
2 kept your part of the bargain, so that they will keep
3 their part of the bargain and not drop the hammer on
4 you, isn't that true?

5 A Yes.

6 Q And didn't you tell us your part of the bargain was
7 to try to help the Government convict people?

8 A Yes, it was.

9 MR. MURRAY: Thank you. No further questions,
10 Judge.

11 THE COURT: Mr. Duszkieвич.

12 THE COURT: Oh, you have some, Mr. Jay, sorry.
13 I thought you indicated no, but go ahead.

14 CROSS-EXAMINATION:

15 BY MR. JAY:

16 Q When did you first learn you were going to be here
17 testifying today?

18 A They sent me a paper saying I was suppose to be
19 here November 27, but do not show up on that date.

20 Q And it got changed?

21 A They will call me and let me know.

22 Q All right. And did this come by mail to you?

23 A No, they delivered it.

24 Q Did somebody deliver it?

25 A They delivered it in person.

APPENDIX E

1 Q You saw two individuals standing
2 outside of the vehicle, is that right?

3 A Yes.

4 Q You testified that they were the
5 occupants of the vehicle, is that right?

6 A Yes.

7 Q But you never saw them in the
8 vehicle, did you?

9 A No.

10 Q You didn't see my client who you
11 identified as [REDACTED], ever sitting in the
12 driver's seat of that vehicle, did you?

13 A No.

14 Q When you arrived at the scene was
15 the engine running of the vehicle?

16 A I don't recall.

17 Q Would it help if you looked at, as
18 we consider, your DWI paperwork?

19 A Sure.

20 MS. WALLACH: Your Honor, I believe
21 the Supporting Deposition is marked for
22 identification as Number 1, I'll hand my
23 copy of it to the trooper.

24 Q Can you look at it and when you're
25 done look up, please.

1 (Whereupon, the witness complies)

2 Q Trooper Peters, did that refresh
3 your recollection as to whether or not the engine
4 was running of the vehicle?

5 A Yes.

6 Q Was the engine running of the
7 vehicle?

8 A It's not indicated on the report.

9 Q So, if it's not indicated on the
10 report, does that mean it was not running?

11 A Yes.

12 Q The keys were not in the ignition,
13 were they?

14 A I don't recall.

15 Q I ask you if it would refresh your
16 recollection to look at your Supporting Deposition,
17 again?

18 A Yes.

19 Q I ask that, that be handed back to
20 the witness, again it's marked for identification
21 as 1.

22 (Whereupon, the witness complies)

23 Q Officer, after looking at the
24 Supporting Deposition, does that refresh your
25 recollection as to whether or not the keys were in

1 the ignition?

2 A Yes.

3 Q The keys were not in the ignition
4 were they?

5 A That's not indicated on my report.

6 Q If it's not indicated on the
7 report, it would mean that the keys were not in the
8 ignition; correct?

9 A Yes.

10 Q Now, also on your Supporting
11 Deposition, as well as, your incident report, you
12 indicate that you observed my client, [REDACTED]
13 to have injuries; is that correct?

14 A Yes.

15 Q The injuries that you indicate in
16 your incident report consist of cuts to the face
17 and the head, is that right?

18 A Yes.

19 Q Also, [REDACTED] vehicle was on
20 its roof when you arrived at the scene; is that
21 correct?

22 A Yes.

23 Q Now, you indicated that my client
24 displayed certain conditions, including being
25 unstable on his feet; is that right?

1 A Yes.

2 Q You indicated that you had been
3 trained in DWI identification and identifying
4 people whose abilities are impaired by the
5 intoxication of alcohol, is that correct?

6 A Yes.

7 Q One of the signs of it might be
8 unstable on his feet, correct?

9 A Yes.

10 Q Also being unstable on his feet,
11 might be an indication that he had a head injury;
12 is that correct?

13 A Yes.

14 Q Now, you also indicated that my
15 client had an impaired motor condition; is that
16 correct?

17 A Yes.

18 Q When you said, he had an impaired
19 motor condition, you indicated that was based on
20 your observations of him at the scene; is that
21 correct?

22 A Yes.

23 Q Again, you have been trained in
24 identification of people who have been possibly
25 impaired by alcohol, and that impaired motor

1 condition would be an indication of that; correct?

2 A Could you repeat that?

3 Q An impaired motor condition would
4 possibly be an indication of somebody who is
5 impaired by alcohol, correct?

6 A Yes.

7 Q It also could possibly be a
8 condition of somebody who suffered a head injury,
9 couldn't it?

10 MR. BARCA: Objection, Your Honor.

11 That would be speculation.

12 THE COURT: Overruled.

13 A Yes.

14 Q Now, you indicated that you spoke
15 with my client at the scene of the accident;
16 correct?

17 A Yes.

18 Q When you spoke to the him, you
19 didn't ascertain from him whether he suffered from
20 any medical conditions, did you?

21 A I don't recall.

22 Q Would it refresh your recollection
23 if I told you that my client suffered from high
24 blood pressure, does that refresh your
25 recollection?

APPENDIX F

IMPEACHMENT BY PRIOR INCONSISTENT STATEMENT
THE "TEMPO" TECHNIQUE

Example:

Q: Officer, there are occasions when you call your dispatcher to find out more about a 911 call?

A: No, not really.

The witness has just said something inconsistent with a prior statement. You must trap the witness, by leaving no doubt (note the "not really") about the inconsistency.

Q: You never call dispatch to find out about a 911 call?

A: No.

Q: Never?

A: No, never.

Ok, now the witness is trapped. Time to set the stage for the prior statement, and emphasize its importance.

Q: Do you recall giving a deposition in this case?

A: Yes.

Q: That was about one year ago?

A: Yes.

Q: You were asked questions at the office of the County Attorney?

A: Yes.

Q: You prepared carefully for that deposition?

A: Yes.

Q: You knew the deposition was important?

A: Yes.

Q: You prepared with the County Attorney?

A: Yes.

Q: You read over your manuals before testifying?

A: The one manual.

Q: You thought about the issues that might come up?

A: Yes, I guess.

Q: You knew the deposition was an important event, so you fully prepared yourself?

A: Yes.

Q: When you gave this deposition testimony, you were under oath?

A: Yes.

Q: You swore to tell the truth?

A: Yes.

Q: The same oath you took today?

A: Yes.

Now the importance of the statement is emphasized. Take deposition to stenographer and ask him or her to please mark it exhibit __ for identification. Show to opposing counsel and state "I'm showing exhibit __ for identification to opposing counsel."

Q: Your Honor, may I approach the witness?

Q: Officer, you've given testimony under oath before about this accident, haven't you?

A: Yes.

Q: Showing you what has been marked defense _ for identification, this is a transcript of your prior testimony, correct?

A: Yes.

If the prior answer is substantively good for your case, and is not just being offered to show he's a liar, add:

Q: You told the truth when you answered these questions on [date of earlier testimony], didn't you?

A: Yes.

Now comes the "pounding." Point out the inconsistency.

Q: Directing your attention to page __, line __, were you asked this question and did you give this answer: "Question: There are occasions when you call your dispatcher to find out more about a 911 call? Answer: Yes."

A: Yes, I guess I did.

[NOTE: Press the issue. If the witness appears to hesitate after you read the question and answer, or if they're squirrely, ask: "Did I read that correctly?"]

You can let it end there and move on, or you can go a bit farther to wrap things up if you are confident the witness won't fight you:

Q: So, in fact, there are occasions when you call your dispatcher to find out more about a 911 call?

A: Yes.

Q: And your earlier answer, that you never do was wrong?

A: Yes.

Now, if you wish, you can offer the inconsistent statement into evidence. This will allow you to show it to the jury (just the lines that show the inconsistency), now or in summation.

APPENDIX G

1 Doctor. Is it true that you testified, in your estimate, in
2 the year 2007, you did as many as 81 of these examinations for
3 medical defense firms?

4 A. That probably is about right, yes.

5 Q. And in 2007, that you did at least 64?

6 A. I suppose, if I was -- I mean, I -- I would think I
7 did more than that, quite honestly.

8 Q. You've done hundreds of these exams in the past few
9 years, haven't you?

10 A. Yeah, I've done hundreds, for sure.

11 Q. You do about 10 a month or more; is that right?

12 A. I don't do 10 a month. I would say that I do
13 probably eight a month.

14 Q. Okay. And you gave an office address on Delaware
15 when you sat down and started testifying. That's your office
16 for doing these examinations; is that right?

17 A. That's correct, yes.

18 Q. You don't -- you don't see any patients, because you
19 don't treat any patients anymore; is that right?

20 A. That's correct.

21 Q. And that office is open solely for the purpose of
22 scheduling these examinations for defense firms; is that
23 correct?

24 A. Correct.

25 Q. And, in fact, you don't even live in Buffalo anymore,

1 you come in from Florida, you come in from Canada to do these
2 exams and then you go back; isn't that right, sir?

3 A. Yes, that's correct.

4 Q. And, sir, you feel -- you feel, sir, that you are --
5 you are qualified, that you are fit to offer these opinions
6 because of your training, your experience, and your practice as
7 an orthopedic surgeon; is that right, sir?

8 A. That's correct.

9 Q. Okay. And you've done this from the year at least
10 2001 forward, that's what you've been doing; is that right,
11 sir?

12 A. That's correct.

13 Q. And you've been earning income doing that; is that
14 right, sir?

15 A. That's correct.

16 Q. Okay. You've been earning substantial income doing
17 that?

18 A. I do.

19 Q. Hundred percent of your income now comes from doing
20 these exams?

21 A. Hundred percent of my professional income certainly
22 does, yes.

23 Q. And you have not treated a patient for almost eight
24 years now?

25 A. Probably a little less than that, but that's close.

1 Q. You do not operate?

2 A. I do not.

3 Q. You do not order tests?

4 A. Almost never.

5 Q. You do not prescribe medications?

6 A. Well, I mean, not to the people I'm seeing.

7 Q. Who do you prescribe medications to?

8 A. Well, occasionally for myself.

9 Q. Doctor, isn't that an ethical violation for a
10 physician to prescribe himself medication?

11 A. Not at all. No, it is not. They're not narcotics,
12 you know. Every once in a while, I need an antiinflammatory
13 drug.

14 Q. Are you still licensed as a physician?

15 A. I am.

16 Q. Now, I -- I think -- I just want to clarify something
17 for the jury. I think you referred at one point to this --
18 these examinations that you do as independent medical
19 examinations. Have you used that terminology to refer to
20 these?

21 A. I have.

22 Q. And you put it on your report; is that right?

23 A. Yes.

24 Q. Now, in terms of independent, just so the jury's
25 clear, you weren't selected by Judge NeMoyer to do an

1 examination in this case; is that right?

2 A. No, I was not.

3 Q. You weren't selected by me; is that right?

4 A. No.

5 Q. You weren't selected by Greg Laughlin?

6 A. No.

7 Q. You weren't selected by any of his physicians to do
8 this examination?

9 A. No.

10 Q. You were selected by Mr. Schule and his firm to do
11 this examination; is that right?

12 A. Correct.

13 Q.. All right. So, sir, in 2003, that single year, you
14 told us that you were doing these examinations, you were
15 earning substantial income from doing these examinations, using
16 your medical background, training and experience to do these
17 examinations, write these reports and testify for defense
18 firms; is that right, sir?

19 A. Correct.

20 Q. Isn't it true, Doctor, that in that year, 2003, when
21 you were doing these things, that you filed a Court pleading
22 that you swore to swearing that you were disabled from any
23 occupation involving -- that you were reasonably fit for by
24 education, training and experience?

25 A. No.

1 Q. Did you not file that sworn pleading in 2003 swearing
2 that you were disabled from that occupation, sir?

3 A. No, that's not true.

4 (Whereupon, a Sworn Pleading was then marked
5 Plaintiff's Exhibit 18 for identification.)

6 BY MR. DOYLE:

7 Q. Doctor, I'm going to show you what we marked for
8 identification as Plaintiff's Exhibit 18, which, on the cover
9 of it, appears the word summons. I'm going to let you look at
10 the whole thing, but just for the record, there's a
11 verification with a signature James J. White Jr.; is that your
12 signature?

13 A. That's my signature, yes.

14 Q. That's a verification page swearing that you have
15 read the foregoing document and that the same is true, to your
16 knowledge?

17 A. Right.

18 Q. You duly swore to that before a notary public; is
19 that correct?

20 A. Correct.

21 Q. I'm going to show that to you, Doctor, I'll let you
22 look at any part of it you want, but I'm going to ask you
23 specifically to review paragraphs 14 through 17 -- pardon me,
24 13 through 17, read those to yourself.

25 A. Okay. How about 12?

1 Q. Any part that you want, Doctor.

2 A. Okay. Right. That's correct.

3 Q. Doctor, does that refresh your memory that, in 2003,
4 you filed a sworn statement pleading in Court swearing that you
5 were disabled from performing the duties of any gainful
6 occupation for which you were reasonably fitted by education,
7 training or experience?

8 A. I don't read it that way, quite honestly. Okay. I
9 don't read it that way.

10 Q. You don't read it that way?

11 A. No, I don't.

12 Q. Did you file a statement in 2003 that you recall
13 swearing to the fact that you were disabled?

14 A. Yeah, I was -- a certain part of my activities, I was
15 disabled from performing.

16 Q. And did you -- did you swear that you were disabled
17 from performing the duties of any gainful occupation for which
18 you were reasonably fitted by education, training or
19 experience?

20 A. Not any activity, certain activities.

21 Q. Well, at the time, Doctor, you were working as a
22 physician doing these examinations, were you not?

23 A. I was.

24 Q. Using your training, background and experience,
25 correct?

1 A. Exactly.

2 Q. And you were earning -- Doctor, you were earning
3 hundreds of thousands of dollars a year doing that?

4 A. Correct.

5 Q. From 2003 up to the present; is that correct?

6 A. Correct.

7 Q. And -- and what experience, Doctor, gave you -- in
8 your opinion, entitle you to do these examinations, your
9 experience as an orthopedic surgeon?

10 A. As an orthopedic surgeon, as somebody who is
11 fellowship trained in spine surgery and as someone who did
12 spine surgery for 16 years.

13 Q. And as --

14 A. 17.

15 Q. And as regarding this statement, this sworn statement
16 that you said you recall filing in 2003 with the Court, did you
17 swear in this statement that you are not performing the duties
18 of any gainful occupation as an orthopedic surgeon for which
19 you were reasonably fitted by education, training or
20 experience?

21 A. Obviously that -- I disagree with your interpretation
22 of that. I'm sorry.

23 Q. Take a look at Paragraph 23, Doctor.

24 A. Okay. Yes, it does say that.

25 Q. It does say that?

1 A. Yes, it does.

2 Q. You did make that sworn statement to Court?

3 A. Well -- well, I did sign it, and -- but I
4 certainly -- I never have said that I couldn't be employed
5 doing certain activities. The -- whatever you call that
6 complaint, whatever it is, was because I couldn't stand to
7 operate as a spine surgeon. That was the disability.

8 Q. Sir, your -- the claim that you -- you just said that
9 you filed and you admitted this particular language, that claim
10 was rejected by the Court, wasn't it?

11 A. It was.

12 Q. And you appealed that; is that right?

13 A. I did.

14 Q. And your appeal was rejected by the Court in
15 Rochester?

16 A. It was.

17 Q. And you appealed that to the highest Court in the
18 state, the Court of the Appeals of New York; is that right?

19 A. I guess it was, yes.

20 Q. And that appeal was rejected as well?

21 A. Yes, it was.

22 Q. Now, Doctor, you've told us about the income that you
23 earn doing these examinations. You told us that you do this
24 work for a number of different defense firms and entities.
25 Let's specifically talk about Mr. Schule's firm. You know that

1 Mr. Schule works at a firm that -- that is known by the name of
2 Kenny, Shelton, Liptak & Nowak, I think, if I'm getting that
3 right?

4 A. Correct.

5 Q. That firm is one of your repeat customers?

6 A. Yes.

7 Q. You do work on files that they refer to you; is that
8 right?

9 A. That's correct.

10 Q. And you get paid for that --

11 A. I do.

12 Q. -- correct? All right. Now, Doctor, between the
13 years 2002 and 2007, five-year period, the first five years,
14 basically, you were doing this independent medical examination,
15 isn't it true that the Kenny, Shelton firm, Mr. Schule's firm,
16 paid you \$611,000 for your examinations and your reports and
17 your testimony?

18 A. I do not know that. That may be true. I'm not
19 saying it isn't.

20 Q. Well, let's make sure there's no doubt about it,
21 Doctor.

22
23 (Whereupon, a Transcript was then marked
24 Plaintiff's Exhibit 19 for identification.)

24 BY MR. DOYLE:

25 Q. And, Doctor, I'm going show you what we've marked for

1 identification as Plaintiff's Exhibit 19, which is a transcript
2 of testimony in a prior case, the Ona, O-N-A, Patton case tried
3 in front of Judge John Michalek. And the attorney that called
4 you and questioned you was a Brian McDonald from the firm of
5 Kenny, Shelton. I'm going to ask you, you can look at any part
6 of it you want, Doctor, specifically I wanted to ask you
7 about -- to read a certain part and ask if that refreshes your
8 memory.

9 A. Okay.

10 Q. If you could start here and continue to this page.
11 Read it to yourself, Doctor, and I'll ask you if it refreshes
12 your memory.

13 A. Yes, you're right.

14 Q. So having read that, does that refresh your memory
15 that you testified under oath that, between 2002 and 2007, that
16 Mr. Schule's firm has paid you \$611,191.62 for your work on
17 behalf of files that they have sent to you?

18 A. Correct.

19 Q. Now, Doctor, by the way, your testimony in that case,
20 the Patton case, that was pursuant to a subpoena that had been
21 served on you by the -- well, strike that. Let me -- first of
22 all, the Patton case was a case in which you examined a person
23 who claimed to be injured and came in and testified on behalf
24 of the Kenny, Shelton firm; correct?

25 A. I'm sure it is. I don't remember this now.

1 Q. And the -- you were paid for your work; is that
2 right?

3 A. Sure.

4 Q. In this case?

5 A. Yes.

6 Q. And in that case, that testimony that you gave about
7 the amount of money that had been paid on files sent to you by
8 the Kenny, Shelton firm, that only came about because the
9 attorney in that case had given -- served a subpoena on you for
10 that information?

11 A. I'm sure that's correct.

12 Q. Okay. And in this case, Doctor, did I serve a
13 subpoena on you for some information?

14 A. You did.

15 Q. Okay. And as a result of that, were you ordered by
16 the Court and advised that you were to come in to provide
17 information for the last two years, so from 2007 --

18 A. Yes.

19 Q. -- to the present?

20 A. Yes.

21 Q. Okay. And so your work, and Mr. Schule referred to
22 this about the number of cases that they had had, your work and
23 your examination for the number of files and the number of --
24 the amount of money that had been paid to you for the Kenny,
25 Shelton files in the last two years, that came about because of

1 my subpoena and the court order; is that right?

2 A. That's correct.

3 Q. And tell the jury, Mr. Schule mentioned it and you
4 answered it, I think there were 22 files in the last two
5 years --

6 A. Correct.

7 Q. -- that you've worked on on behalf of the Kenny,
8 Shelton firm?

9 A. Yes.

10 Q. Mr. Schule's firm? How much money have they paid
11 you -- pardon me, strike that. Let me ask you this question:
12 How much money have you been paid on those files in the last
13 two years?

14 A. 178,000.

15 Q. So if my math is correct, Doctor, since 2002, the
16 Kenny, Shelton firm has sent files to you to do examinations,
17 to write reports, to come into Court, if they request you to,
18 correct?

19 A. Correct.

20 Q. Where, when you come into Court, you almost always
21 testify that the person isn't hurt, that there's no causal
22 relationship, and that there were preexisting conditions,
23 correct?

24 A. Well, based on the information available to me, if
25 that's what I've said, that's what I've said.

1 Q. And for this work, in the last seven years, you've
2 been paid \$700,900, almost \$800,000 correct?

3 MR. DOYLE: I have no further questions, Judge.

4 THE COURT: Counsel.

5 MR. SCHULE: No questions.

6 THE COURT: Okay. Thank you, Doctor. You are
7 excused.

8 THE WITNESS: Thank you.

9 THE COURT: Can I see the attorneys up here,
10 please?

11 (Discussion off the record.)

12 THE COURT: Jurors, that's going to conclude the
13 testimony for today. You'll hear from one witness tomorrow
14 morning, it will be brief, and you'll hear the attorney's
15 summations. And the county will pay for your lunch
16 tomorrow, so when you come in, first thing in the morning,
17 the court clerk will provide you with a luncheon menu from
18 whatever restaurant we're currently using, and as I pointed
19 out, Bob gets a free lunch too. But I do want it brought
20 to your attention that the attorneys and the other court
21 personnel do not get a free lunch, nor do I, only Bob.
22 With that understanding, see you tomorrow morning at 9:40.
23 Okay?

24 (The Members of the Jury were excused for the evening.)

25

APPENDIX H

JACK T. LITMAN

CROSS FROM THE MURDER TRIAL. PEOPLE v. DAVID TSE.
OF THE STATE'S FORENSIC PATHOLOGIST

VERDICT: NOT GUILTY
ON ALL CHARGES

LITMAN, ASCHE, LUPKIN & GIOIELLA
45 BROADWAY ATRIUM
NEW YORK, NEW YORK 10006
(212) 809-4500

7all

Veress - People- direct

1029

A Wounds 2, wound 4, wound 5, 6, 8, 9, wound 10,
wound 11, 12, wound 17.

Q Making a total of eleven wounds? Is that right?

THE COURT: That's right.

A Yes.

Q Doctor, how many of those shots went through Andy
Liang's heart?

A Can I say the number wounds?

Q Sure.

A Wound 4 probably. Wound 5, yes. Wound 6, yes.
Wound 10, yes. Wound 11, yes.

Q Is that it?

A Yes.

MR. WAPLES: I have nothing else, your

Honor.

THE COURT: All right, Mr. Lieman.

MR. LITMAN: Yes.

CROSS-EXAMINATION

BY MR. LITMAN:

Q Dr. Veress, it is your opinion that all of these
wounds, ^{to} the body of Andy Liang took place within a very short
period of time, ^{is} is that right?

A This is my opinion, yes.

Q Indeed, within seconds, is that right?

1 A Yes.

2 Q Next, you agree, sir, that as you previously
3 expressed an opinion that he died either during the sequence
4 of wounds or immediately thereafter, is that right?
5

6 A He could have died immediately after but the most
7 likely during.

8 Q But could --

9 A I would think.

10 Q But he could die immediately thereafter, is that
11 right?

12 A Yes, it is possible.

13 Q Now, that a person could die immediately thereafter --
14 withdrawn.

15 You told us that some of the wounds could have
16 caused death in and of themselves, is that right?

17 A Yes.

18 Q Certainly if they were not treated internal bleeding
19 would have eventually led to death, is that right?

20 A Yes.

21 (Continued on following page)
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Q. Now, a wound may be fatal eventually. You are not saying, doctor, that when a person is shot, that he cannot utilize and indeed perform physical activity, isn't that correct?

A. Depending upon the location of the wound.

Q. ^{Do} You agree that Lester Adelson, who ^{authored} ~~wrote~~ the book Pathology of Homicide, wrote what you consider to be a learned treatise in the subject of forensic pathology?

A. Yes.

Q. You would agree that Warner Spitz, wrote the medical legal something or other of the pathology, that's also a recognized text in the field?

A. Yes.

Q. And Dr. DiMaio's book on gunshot wounds is also a recognized text in the field?

A. Yes, sir.

Q. And you're aware there, are you not sir, of examples of a person whose heart was totally annihilated by a gunshot wound, blown to smithereens and that person could undergo activity for ten, fifteen, twenty seconds, you're aware of that, sir?

A. That's their opinion.

Q. That's what?

A. That's their opinion.

1 Q. Their opinion is their opinion not based sir on
2 the fact that the brain has reserve at least ten or fifteen
3 seconds of oxygen so that if the heart is completely
4 annihilated totally annihilated, that the brain can still
5 function and perform activity and dictate motor activity,
6 isn't that correct?
7

8 MR. WAYLES: Objection.

9 THE COURT: No, overruled.

10 Q. Isn't that correct, sir?

11 A. Certain coordination can persist for a few moments
12 but not long.

13 Q. For certain numbers of seconds, is that correct,
14 sir?

15 A. That's correct.

16 Q. Now, would it be fair to say sir, that you did
17 this autopsy throughout an eight hour period on June the
18 10th, 1988, is that correct?

19 A. Yes, I did.

20 Q. And during that time, of course you were doing
21 other autopsies as well?

22 A. That's what I don't recall. Whatever else I
23 handled on that date, I cannot tell you.

24 Q. You testified before the Grand Jury that you may
25 well have been doing other things at the same time, is that

1
2 right?

3 A. Yes, probably.

4 Q. And it would be fair to say sir, that since you do
5 so many autopsies, you really don't recall this one other
6 than what you wrote down, is that correct?

7 A. Yes, sir.

8 Q. And indeed, that's why one tries to be as accurate
9 and as complete as possible in detail when one creates an
10 autopsy report, is that correct?

11 A. Yes, sir.

12 Q. Because months later or in this case now years
13 later, the only thing you can really rely on is what you
14 wrote down, is that right, sir?

15 A. That's correct.

16 Q. Now, you notice sir, did you not, a very large
17 scar on the stomach of Andy Liang from the area that I am
18 pointing to here on my chest all the way down here, is that
19 right, sir?

20 A. Yes, I did.

21 Q. And indeed that scar was about 35 centimeters
22 long, is that correct?

23 A. If I indicated in my protocol, yes, it is.

24 Q. And that indicated to you, did it not sir, that
25 Andy Liang in fact had been operated on previously for other

gunshot wounds, is that correct?

MR. WAPLES: Objection.

THE COURT: Sustained.

Q. Did that indicate to you, that scar, that that had been part of a surgical procedure, sir?

A. Yes, sir.

Q. Did you check the prior hospital records, if any, of Andy Liang to determine whether or not he had been previously shot, sir?

MR. WAPLES: Objection.

A. No.

THE COURT: Sustained. Answer is stricken.

The jury will disregard.

Q. Did you check to see whether there were any prior hospital records of Andy Liang from April the 9th, 1987, sir?

MR. WAPLES: Objection.

THE COURT: Sustained.

Q. Now, it is clear, is it not, sir that when you examined -- it is clear is it not, sir that when you examined the body of Andy Liang for gunshot residue, you found none, is that correct?

A. Yes.

Q. And that you did with the naked eye, right?

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A. Yes.

Q. In addition to examining the body and the wounds themselves, you of course also examined the clothing, is that correct?

A. Yes, I did.

Q. So that on the shirt for example, you also, am I correct, found no evidence of gunshot residue, is that correct?

A. I could not see any but you have to understand that the shirt was soaked in blood and to see through that, it's sometimes very difficult to recognize any residue, sir.

Q. But you certainly didn't see any?

A. No, I did not.

Q. And to you, that means that assuming that this weapon, which is Exhibit 22A, People's Exhibit 22A in evidence, that the person that utilized this weapon, assuming this is the weapon that caused these shots, was at a minimum distance, minimum distance of a foot and a half from the body of Andy Liang when Andy Liang was shot, is that correct?

A. That's consistent with it.

Q. No, no, not consistent with that doctor.
Consistent means it could happen and it couldn't happen too, that's what consistent means, right?

1 A. Yes.

2 Q. And consistent doesn't mean that's what it is, it
3 means maybe yes, maybe no, correct?

4 A. Yes, yes.

5 Q. I'm not asking consistent.

6 A. Yes.

7 Q. I'm asking as a fact, there's no debate, that this
8 weapon, assuming this is the one that fired the shots, was
9 at a minimum of eighteen inches from the body of Andy Liang
10 when the shots came out of the muzzle?

11 A. Yes, it was.

12 Q. And of course it could have been two feet away or
13 two and a half feet away, is that correct?

14 A. That's correct.

15 Q. But one thing -- withdrawn.

16 You are also absolutely sure about this as well, none
17 of the shots, none of them was what you would call a contact
18 wound, is that correct?

19 A. Yes, sir.

20 Q. A contact wound means, does it not, when the
21 muzzle of the weapon is held for example right against the
22 person?

23 A. That's correct.

24 Q. Correct. None of them was that?

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A. No.

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Q. So in no instance, whether Andy Liang was standing, falling, or on the ground, did whoever did the shooting go over to him put the gun to him and fire?

6

A. No.

7

Q. That never happened, correct?

8

A. That's correct.

9

Q. Now, in addition to there being no contact wounds, would you also agree that there was no, what you might call near contact wounds?

12

A. Yes.

13

14

15

Q. And a near contact wound is a wound that occurs when the muzzle of the weapon is close, within several inches, is that right?

16

A. Yes.

17

18

19

20

Q. And when the muzzle of the weapon is fired within several inches of the body, that also leaves very tell tale marks on the body of the person that you as a medical examiner would recognize in an instant, is that right?

21

A. Yes.

22

23

24

25

Q. So, again, whether Andy Liang was standing, falling or on the ground at any time during the shooting, you agree, do you not, that at no time did the shooter approach and bring the gun even close to the body of Andy

1 Liang to make a near contact wounds, is that correct?

2 A. I agree with that.

3 Q. Indeed, sir, all of the shots are consistent with
4 having been fired from the same distance between the shooter
5 and Andy Liang, is that correct?

6 A. Yes.

7 THE COURT: That means maybe yes, maybe no.

8 THE WITNESS: Same distance, approximately.

9 Q. Now, doctor, would you be kind enough to explain
10 to the jury what the term rigor mortis means?

11 A. Rigor mortis means the establishment, setting in
12 of rigidity of the muscles.

13 Q. So, is it not a common phenomenon after a person
14 dies, depending in great measure on the weather conditions,
15 that rigor mortis within hours begins to set in, is that
16 correct?

17 A. It starts right away after death and step by step
18 it sets in different areas of the body.

19 Q. Indeed sir, it starts about two to four hours
20 after death, isn't that correct?

21 A. Different opinions.

22 Q. Different opinions. Would you accept the opinion
23 of your colleague, Dr. Plank?

24 A. Yes, I do.

Q. Certainly competent enough to figure out whether a person has rigor mortis, is that right?

A. Yes.

Q. And he, so far as you know, actually went to 7 Division Street to look at the body of Andy Liang while it was there, correct?

MR. WAPLES: Objection.

A. Yes.

Q. And he got there sometime between nine and 10 o'clock?

MR. WAPLES: Your Honor, I object. He has no basis for knowledge.

THE COURT: Sustained. There's no factual basis for that.

Q. You've looked at documents which were prepared in the ordinary course of business by the Medical Examiners Office that Dr. Plank created?

A. Yes, I did.

Q. And of course those records are part of the business of the medical examiner to create, is that right?

A. Yes.

Q. And they detail things that the medical examiner does in the ordinary course of business, isn't that correct?

A. Yes.

Q. Just like this autopsy report, is that right?

A. That's correct.

Q. And you of course reviewed that file in the medical examiners office many times, haven't you?

A. Yes, I did.

Q. And you saw of course the writings of Dr. Plank, didn't you?

A. I did.

Q. And you saw that Dr. Plank --

MR. WAPLES: Objection, your Honor.

THE COURT: Sustained.

Q. You've spoken to Dr. Plank, haven't you?

A. I don't recall.

MR. LITMAN: Could we mark this please as a defense exhibit -- what number are we up to R?

These three pages could kindly be marked collectively as defense Exhibit R for identification?

(So marked as Defense Exhibit R for identification)

MR. LITMAN: Could I approach with Mr. Waples for a second please?

(Whereupon, the following sidebar conference was held out of the hearing of the jury:)

AP

THE COURT: Yes.

MR. LITMAN: Thank you.

CROSS EXAMINATION (Cont'g)

BY MR. LITMAN:

Q. Now, you mentioned what you are positive about is a re-entry wound and that is that wound number 19 that went in and out the arm up here caused wound 12, correct sir?

MR. MAPLES: Objection.

A. Yes.

MR. MAPLES: That was not his testimony

but --

Q. That is your testimony?

THE COURT: He acknowledges that that's his testimony.

Q. Correct?

A. It's consistent with.

Q. And also the one 18 could also have re-entered the body, isn't that correct?

A. I don't know where.

Q. You don't know where. But it's perfectly consistent with the arm being like this and having been shot here and then shot here and re-entering the body, correct?

A. It is possible. I could not identify the re-entrance.

1
2 Q. But certainly the position in which I'm holding my
3 arm like this is consistent with these two shots having been
4 fired --

5 A. As you are holding it but an arm not necessarily
6 is held, being held this way. It could be held this way.

7 THE COURT: Indicating --

8 Q. I'm not --

9 THE COURT: Indicating an arm outstretched as
10 opposed to bent and against the body.

11 Q. Doctor, the question I asked, if the arm is held
12 this way, that wound is consistent with it, is it not?

13 A. Which one?

14 Q. I couldn't hear you?

15 A. Which one, which wound?

16 Q. Eighteen?

17 A. Eighteen is an entrance and exit.

18 Q. That's correct. And the way I'm holding my arm is
19 consistent with the way it could have occurred, if a shooter
20 was standing opposite the person, isn't that correct?

21 A. I'm very sorry. I did not understand your
22 question in the beginning.

23 Q. Forgive me, sir.

24 A. I was confused.

25 Q. Forgive me. You concede, do you not, that wound

18, when it went in the arm and out of the arm, could well have exited the chest -- entered the chest afterwards, correct?

A. Yes, it could.

Q. Okay. Same thing is true with this graze wound, it could have come off the hand and entered the chest, isn't that correct?

A. Oh, yes, it could.

Q. Now, sir, you removed blood from the body of the deceased at the beginning of your autopsy, didn't you?

A. Yes, I did.

Q. And after you removed blood from the body of the deceased at the beginning of your autopsy, you put it in a bottle, didn't you?

A. In more than one bottle.

Q. More than one bottle.

And the bottles that you put ^{it} ~~him~~ in were plastic or glass?

A. At that time, I have no personal recollection. We probably still had some glass bottles and plastic. I cannot remember what they were, they were bottles I know.

Q. And then you screwed something on the top like a jar cap?

A. Yes.

1
2 Q. And when you put it in the bottle, was the bottle
3 empty?

4 A. Before I put it in, yes, the bottle was empty.

5 Q. So the bottle is completely empty, then you put
6 the blood into several bottles?

7 A. Yes.

8 Q. Then you screwed the bottle caps?

9 A. Yes.

10 Q. And then sometime after you finish the autopsy,
11 you remove them from the autopsy room, is that correct?

12 A. No, the ways I do is --

13 Q. That date.

14 A. As I finish the autopsy, I put everything in a
15 marked bucket.

16 Q. Marked bucket.

17 A. All the organs, tissues, whatever. And I put,
18 myself, in the refrigerator, in the mortuary and it stays
19 there.

20 Q. When, during the autopsy, when you started at ten
21 when you took the blood until 6 o'clock that you finished,
22 did you bring it to the refrigerator?

23 A. Not during the time.

24 Q. I'm sorry?

25 A. Not during the time.

1
2 Q. Okay.

3 A. After I finish.

4 Q. After you finished?

5 A. Yes.

6 Q. So you took the blood at 10 o'clock, correct,
7 after you began?

8 A. Not necessarily ten o'clock because as you
9 remember as I testified I do many things before I start the
10 autopsy itself. I started working on the case at 10
11 o'clock. I honestly don't know what time I made my first
12 incision.

13 Q. Taking the blood is one of the first things you
14 do?

15 A. That's right. That's correct.

16 Q. All right. So close to the beginning of when you
17 began your autopsy is when you took the blood?

18 A. If I can, if I can be more specific. I started
19 autopsy at 10 o'clock. I am sure I did not make my first
20 incision until 1 o'clock because I had so many things to do.

21 Q. So you took the blood at approximately 1 o'clock?

22 A. Sometimes after.

23 Q. And then after you finished the autopsy, after 6
24 o'clock, you took the bottles into which you had placed the
25 blood and you brought them to the refrigerator?

1

2

A. Yes, sir.

3

4

5

Q. How long after 6 o'clock was it that you brought the blood that you had put into these empty bottles to the refrigerator?

6

A. I don't know. I do not know.

7

Q. Could it have been as late as 8 o'clock at night?

8

A. It could.

9

Q. Or even later?

10

11

A. I don't believe so because I was so tired that I just could not stay up.

12

13

14

Q. Now, the analysis by toxicology of whether or not there was for example any cocaine in the body of Andy Liang was not done by you, is that correct?

15

A. That's correct.

16

17

Q. That is a department there that's headed up by a person named?

18

A. Dr. Stajic.

19

Q. Dr. Stajic?

20

A. Stajic. S T A --

21

Q. -- A J I C?

22

A. That's correct.

23

24

Q. And it was that group of people that analysed to see if there was for example any cocaine?

25

A. Yes, sir.

Q. Now, let us talk about, if we can now, wound number 14.

You do recall that, don't you?

A. Yes, I do.

Q. How many times have you testified under oath that wound number 14 was an entrance wound?

A. I believe twice.

Q. Excuse me?

A. Twice, I believe.

Q. And on both of those occasions, you were questioned not by me, but by a prosecutor, is that right?

A. Yes.

Q. Now, not only did you describe wound number 14 as an entrance wound -- withdrawn.

You described wound number 14 as an entrance wound in your autopsy report, correct?

A. Yes, I did.

Q. And you left it that way for almost three years, correct?

A. Yes.

Q. You testified once in the Grand Jury in December of 1988 that it was an entrance wound, correct?

A. Yes.

Q. And you testified again in January of 1990 that it

1
2 was an entrance wound is that correct?

3 A. Whenever it was, yes, I did.

4 Q. Now, in addition to describing it as an entrance
5 wound, you also described a track, you say that you saw a
6 track. Why don't you tell the ladies and gentlemen of the
7 jury please, and you can look at your autopsy report if you
8 need, this track that you say existed?

9 A. There is a wound of the left groin area and
10 corresponding to that there are injuries, laceration the
11 soft tissues. Including this area the pelvic bone has some
12 fractures.

13
14
15 (Continued on the following page)
16
17
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19
20
21
22
23
24
25

DE 9/1

Veress - Peepin - cross

1116

Q Could you be kind enough -- let me see if I can rephrase that question. Withdraw.

I am asking you if you would be kind enough to please describe to us the track of the wound, No. 14.

MR. WAPLES: Judge, I am not sure with respect to the question why Mr. Litman is directing Dr. Veress attention to, a description given at a previous time, or a description that he believes now.

Q Dr. Veress, you have testified several times already that you don't have an independent recollection of this autopsy other than what you wrote down in the report, correct?

A Yes.

Q Now, tell the jury what you wrote down.

A Yes.

I wrote down that there is an entrance wound of the left inguinal area.

Q How far above the left heel?

A It is 90 centimeters above the left heel.

Q Three-and-a-half inches.

A Yes.

Q How far to the left?

A Ten centimeters to the left from the anterior midline.

9/2

Vereen - People - cross

1117

Q Can we stop for a second.

The midline is a real or an imaginary line that goes right down the center of our body, is that right?

A Yes.

Q As a medical examiner, what you are supposed to do is to describe the areas where wounds are by, among other things, the distance ^{from} over that midline, is that right?

A Yes.

Q The anterior again means the front of the body.

A Yes.

Q Please continue with this description of this entrance wound that you made when you saw the body.

A The wound is a circular defect --

Q Circular in shape.

A You want me to read the autopsy report?

Q It is in evidence, you can read it, please.

A The wound is circular in shape with a diameter of 1.5 centimeters and surrounded by a rim of abrasions which has a thickness of .3 centimeters.

The surrounding skin surfaces are free of flame burns, smoke, smudges or unburnt gunpowder tattoos.

Q May I stop you for a second?

When you say surrounding skin surfaces are free of, that is what you told us before, there is no gunshot residue,

1 9/3

Vernon - People - cross

1118

2 is that right?

3 A Yes.

4 Q You then now describe a track of the wound?

5 A Yes.

6 Q Please tell us the track that you say you saw on
7 June 10, 1988.

8 A I am reading from my autopsy report:

9 The wound perforates the skin, takes a direction
10 upward, fractures the crista of the iliac bone on the left
11 side and after penetration of about ten centimeters, the bullet
12 is falling in pieces.

13 In areas small copper jacketed pieces are found and
14 some poppy-seed-like pellets.

15 Q Now, when you -- withdrawn.

16 By the way, when you make an autopsy report, you
17 don't write it, in fact you dictate it into a machine while
18 you are actually doing the autopsy, is that right?

19 A No, sir.

20 Q You make notes?

21 A I cannot dictate it when my hands are busy with
22 the scapular and other things.

23 Q So you take notes, is that right?

24 A Yes, I do.

25 Q O.K.

9/4

Veress - People- cross

1119

After you take your notes you then dictate it, is that right?

A Yes.

Q After you dictate it you read the report for accuracy, completeness, and details?

A Yes.

Q Allright.

Could you tell us, please, how it was that you saw the wound track that went upwards and fractured the crista of the iliac bone on the left side, and that after a penetration of about two centimeters the bullet fell into pieces?

How did you see that as an entrance wound over here (indicating)?

A Because that was my interpretation at that time, as I took a look on the wound it was consistent with an entrance wound.

Q Now you're telling us that not only was that not an entrance and that is an exit but that this is not even a track, is that right?

A I didn't say that.

Q Is that a crack from the exit now?

A Could be the track of the exit, yes.

Q If that is the track of the exit, where did it come from?

A I don't know.

9/3

Veress - People - cross

1120

Q According to you, it disappeared after ten casing meters?

A Because at the time I identified that wound it appeared to be that it was an entrance wound. Since then I learned that it is not an entrance wound, that certain evidence has been shown to me which convinced me that it is not an entrance wound.

You have to understand, sir, that certain wounds because of the location on the body surfaces are very difficult to identify. That there is an entrance and exit wound, and this one was one of them.

Q Did you --

A Can I finish?

Q Please do.

A That the evidence that was given to me, and it was convincing that it is an exit wound, I changed my mind.

Q So, in other words, this autopsy report that Mr. Wepler put into evidence before, part of it is based on what someone else told you, is that right?

THE COURT: Sorry, which autopsy report?

MR. LITMAN: What is the exhibit number, I, I think.

THE WITNESS: No, sir.

Q Didn't you change part of it at the end?

9/6

Veress - People - cross

1121

A Yes, I did.

Q That was, as you told us, based on what someone else told you?

A Someone presented to me some evidence which was convincing to change my mind, and I did.

Q Now, when you wrote 14 was an entrance, and you swore twice in the grand jury that it was an entrance, is it not the fact, sir, that never did you indicate that you had any hesitation saying that it was an entrance wound. Is that right?

A Sir, at the time I was one hundred percent sure with the information in my hand that this is an exit wound.

After some other evidence --

Q You mean entrance?

MR. NAPLES: Your Honor, may he finish his answer?

THE COURT: All Mr. Litman is doing is correcting him. I think you misspoke when you said you were sure it was an exit wound --

THE WITNESS: I am very sorry if I did.

THE COURT: Finish your answer.

THE WITNESS: Yes.

I was sure at the time. I was sure that it was an entrance wound.

1 9/7

Verasa - People - cross

1122

2 Q That was based on what you saw at the autopsy?

3 A Yes.

4 Q Let me ask you this, Doctor:

5 You are familiar, are you not, with shopping in a
6 supermarket?

7 A Yes, I do.

8 Q The rest of us buy food in the supermarket from time
9 to time?

10 A Yes, I do.

11 Q You know sometimes they have in supermarkets pyramids
12 of fruit, like grapefruits or even tomatoes stacked up, right?

13 A Yes.

14 Q And if you take one off the top you take it and
15 the rest of it is O.K., is that correct?

16 A Most of the time, yes.

17 Q But if you take one off the bottom, sometimes the
18 whole bunch of fruit falls down with it, is that correct?

19 A Yes, it does.

20 Q O.K., now, Doctor.

21 You have described to the jury what you say are
22 the tracks of all of these other wounds is the torso of Andy
23 Liang, correct?

24 A Yes.

25 Q Not a single one of those, according to you,
corresponded with coming out in the area that, now we agree,

1 8/8

Verens - People- cross

1123

2 is an exit wound, is that right? No. 14?

3 A (No response)

4 Q Is that right?

5 A (No response)

6 Q You have described some of the other entrance wounds
7 as coming out where 14 is, is that right?

8 A I don't know where is the entrance wound for 14, yes.

9 Q But, Doctor, there must be an entrance wound, is
10 that right?

11 A Yes, absolutely.

12 Q If there is an entrance wound that means that one
13 of the entrance wounds and the track from that entrance wound
14 that you described, by logic, must be incorrect, because it
15 must have come out on 14?

16 MR. WAPLES: Objection, your Honor. It doesn't
17 follow as a matter of --

18 THE COURT: I have no problem with the substance
19 but just as to the form.

20 MR. LITMAN. One more question.

Q Doctor, the exit wound on 14 must -- you would agree -- have an entrance wound somewhere in this body, is that right?

A Yes.

Q You have described the tracks, at least what you say, where all of these other wounds went inside the body, correct?

A Yes.

Q None of these other tracks lead to the exit at Wound 14, correct?

A Yes.

Q Therefore, one of these other tracks must be incorrect, isn't that right, Doctor?

MR. WAPLES: Objections.

THE COURT: Overruled.

Q Is that right, Doctor?

A You have to understand when you are dealing with so many interacting trajectories in the body, so many internal injuries, so many wounds on the body surfaces, that sometimes you just can't figure out certain wound trajectories and this is one of them.

Q What you are saying is, given the multiplicity of the wounds in this case, you cannot really be sure on all of the wounds where or which direction they actually traveled in,

1 9/10

Verona - People - cross

1125

2 is that right?

3 A I didn't say that.

4 Q Well, Doctor, then the answer is no?

5 MR. WAPLES: May be finish?

6 MR. LITMAN: Pardon me, I think this calls
7 for a yes or no answer.

8 THE COURT: Yes, if you want a yes or no answer
9 you are entitled to one.

10 MR. LITMAN: Thank you.

11 Q Doctor, I asked you, is it correct that because of
12 the multiplicity of the wounds, you couldn't really figure out
13 the tracks of all the wounds? Just yes or no.

14 A I cannot answer it with a yes or no.

15 Q Let me ask it to you this way, doctor, if I could:

16 Let's assume hypothetically speaking, that there
17 are only two bullet wounds in the body, O.K.?

18 One of the wounds enters the body and goes through
19 the body and exits, O.K.?

20 The other wound is a wound in the inguinal area,
21 all right?

22 Do you understand the suggestion I am giving to you?

23 A Yes.

24 Q O.K., now. You do your autopsy and you say, looking
25 at the body, dictating your report, the one wound has no

entrance that went through the body and exited. That inguinal wound there is the groin that is an entrance, O.K.?

Thereafter things are brought to your attention about the wound and other things, and you conclude that that inguinal wound is not an entrance, it is an exit, O.K.?

A Yes.

(Continued on following page)

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6 Veress - People - Cross

Q Do you understand the hypothetical question?

A Yes.

Q Would you agree then, sir, that the track that you gave for the first wound is either incorrect, or there is another entrance wound that you just missed in the body?

Would you agree?

MR. MAPLES: Hypothetically speaking, of course.

MR. LITMAN: Hypothetically speaking.

THE COURT: Yes.

A I agree with that, that one wound what I identified would be entrance and exit, there is no problem with that.

With the second one, if I didn't find the bullet in the body and I -- the entrance wound?

Q And now you agree it is an exit?

MR. MAPLES: I think we are talking about a hypothetical.

MR. LITMAN: Judge --

THE COURT: Yes.

MR. LITMAN: This is cross-examination.

THE COURT: Counsel has put a hypothetical question to you and only a hypothetical question.

Let's try it again.

Veress - People - Cross

MR. LITMAN: Sorry.

THE COURT: Try it again.

MR. LITMAN: All right.

Q The entrance wound of what you now agree is
the exit wound 14, you can't find, right?

A That's right.

Q Was it bullet wound one?

A No.

Q Was it bullet wound two?

A No.

Q Was it bullet wound three?

A No.

Q Was it four?

A No.

Q Five?

A No.

Q Six?

A No.

Q Seven?

A I don't know.

Q Not for't know?

A No.

Q Doctor, do you know how you described to this
jury before wound number seven?

Veress - People - Cross

A Sir, if you give me time that I go in the details of the wound, I will answer and it will be an able answer.

I just can't answer like that of 19 wounds, you know, which one went in which way.

Q Doctor, you have had this case for three years. Do you realize how important your testimony is here, sir?

MR. MAPLES: Objection.

A I know.

THE COURT: Sustained, don't argue with the witness, just put questions to him.

Q Did the wound, number seven, cause exit wound
14? Yes or no?

MR. MAPLES: Your Honor, can you instruct the witness if he needs time to answer the question, he should take the time?

THE COURT: Absolutely.

Sir, let me ask you a question.

THE WITNESS: Yes, your Honor.

THE COURT: Not you, Mr. Litman.

THE WITNESS: Sorry.

THE COURT: As I understand it as you sit here now, you cannot say if wound 14 is

an exit wound, you cannot say where the entrance is that corresponds to that exit, am I correct?

THE WITNESS: Yes, sir.

THE COURT: Have you, before today, examined any of the other wounds that you found in the body to see if they corresponded to the exit wound at 147

THE WITNESS: No.

THE COURT: Can you make such an examination of your notes to make a determination now?

When I say now, I don't mean this minute, but overnight, for example.

THE WITNESS: (No response.)

THE COURT: Would your notes, in other words, reveal that?

THE WITNESS: I don't think so.

MR. LITMAN: May I go back to my questioning?

THE COURT: Yes.

Q Did number seven cause exit wound 147

A No.

Q Did eight?

A No.

Q Did nine?

A No.

Q Did ten?

A No.

Q Did 11?

A No.

Q Did 12?

A No.

Q Did 13?

A It could.

Q 13 could have?

A Yes.

Q Doctor, do you remember how you described to the jury that exit wound 13 went into the body, basically, where I am pointing here? If you will be kind enough to look at me, would you look up for a second?

THE COURT: Doctor. The question — thank you.

Did you not describe to the jury the bullet wound 13 went into the body here and came out over here (indicating)?

THE COURT: Describe it for the record.

MR. LITMAN: Right on the left side of my chest, below the nipple area, off to the

Veress - People - Cross

back on the flank side over here.

Q Didn't you describe to the jury that is where
13 went?

A I am sorry, it is not consistent, no. I am
sorry.

Q You mean —

A I overlooked it.

Q So 13 didn't do it either?

A No.

Q How about 15?

A No.

Q How about 16?

A No.

Q How about 17?

A 17 could.

Q 17 could?

A Yes.

Q Do you remember how you described 17 to the
jury?

A Yes.

Q You had 17 —

A Yes.

Q — going in over here (indicating).

THE COURT: Indicating the left side.

Veress - People - Cross

Q — the left side, and going across the body and winding up on the right side; is that right?

A I have to check how that wound 17 goes.

Q Please do.

A This is --

Q Don't you have 17?

A This is the wound, 17, that actually I lost contact with the wound.

I don't know exactly where it ends.

Q But you have an ending here in your description, if I can ask the question, please, that it enters the abdominal cavity and in the areas in the posterior? Where is the posterior?

A In the back.

Q In the back?

A Yes.

Q The inguinal wound is in the front, is that right?

A It is in front, yes.

Q But number 17 continues in the posterior, in the back abdominal wall, is that correct?

A Yes.

Q So that didn't cause it either?

A Sir, I just said it is possible.

Vereas - by People - Cross

1165

D R . J O S E P H V E R E S S , ~~resumed~~.

CROSS-EXAMINATION (CONTINUED)

BY MR. LITMAN:

Q Good morning, Doctor.

A Good morning.

Q We were talking at the end about wound number
17, Doctor.

Do you recall?

A Yes, sir.

Q I am sorry.

A Yes, sir.

Q And with respect to wound number 17 you have
already testified, sir, yesterday that in response to
a question by Mr. Waples as to the general path as it
progressed through the body that "17 is from front to
back, from left to right, downwards." Is that right?

A Yes.

Q Now, if you would be kind enough -- with the
pen that is provided to you, and in front of you, and
with the Court's permission, if you can come off the
witness stand and take that pen and go over here to Exhibit
5 in evidence --THE COURT: Is it possible to turn that
chart a little more so that I can see it,

too, as well as the jury?

(Whereupon, the court officer complies with the request.)

THE COURT: All right, that is good enough.

MR. LITMAN: Can you see it, sir?

THE COURT: As long as the jurors can.

They are more important than I.

Okay, as long as the jurors can see it.

BY MR. LITMAN:

Q Now, Doctor, am I correct in here, pointing out 17, which is here on the left flank of the body and of the three human drawings here, the one in the middle of Exhibit 5, is that correct --

A It is not the flank, it is the left side of the chest.

Q The left side of the chest?

A Yes.

Q If you would be kind enough to take an arrow from 17 and draw in the general direction with an arrow, please, from the front to the back of the body, from left to right downwards.

Show us the track of that bullet, please.

A It could be something like that.

Q No, no, Doctor. You see where 17 is?

MR. WAPLES: Your Honor, I object.

We are talking about two-dimensions here,
and I think Mr. Litman is quarreling.

THE COURT: The record should show that
there is a front view of the human body
on this chart.

A profile view, also, and the back
view.

MR. LITMAN: Yes.

THE COURT: When Mr. Litman asked the
question, Dr. Verese began to draw the line
on the front view.

Q Dr. Verese, do you see the side view of the
body where the number 17 is written?

A Yes.

Q That is the only place on the whole chart
where you have written the number 17 and shown the entrance
wound, sir?

A That's right.

Q Okay.

Over here on 17, that is the front of the
body to the left of the number 17?

A Yes.

Q Is the back of the body to the right of the

number 17?

A Yes.

Q Okay.

From here you see where the number is?

A Yes.

Q Start there and show us the track of the bullet as best you can in that two-dimensional drawing that the bullet goes from the front to the back of the body.

A Like this (indicating).

Q Draw it in, if you would be kind enough.

Draw it in, please, and make a mark.

THE COURT: All right.

(The witness complies with request.)

THE COURT: A line with an arrow was drawn.

Q Would you be kind enough to put your initials next to that, sir?

A Yes.

Q Thank you.

It is clear then, Doctor, is it not, that if that is the track of the bullet toward the back of the body, that the bullet did not come out towards the front which is where 14 would be, is that right, sir?

A Yes.

Q Since we have now eliminated every other wound, could you tell us, please, again which entrance wound caused the exit at wound 14?

MR. NAPLES: Objection, asked and answered several times.

THE COURT: Overruled.

A If I tell you about the case again, the possibility is that wound 17 could take a projectile downward after fracturing the rib down to the pelvic area, hit the crest of the ilium bone, bounce the back, and it could exit at side 14.

Q You didn't see any of this or note any of that at the autopsy, is that right?

A At the time --

Q Is that right?

MR. NAPLES: Objection, that is a misstatement, Judge.

A Yes.

THE COURT: No.

MR. LITMAN: Judge --

THE COURT: No, the question and the answer will stand.

MR. LITMAN: Thank you.

Q In fact, Doctor, isn't it a fact that wound

number 16, the one in the back, if I may lift my jacket here, basically over here (continuing) —

THE COURT: In the mid of the back.

Q — a little off to the left —

A Yes?

Q — went in here and came out were 14 is?

MR. MAPLES: Objection, asked and answered yesterday.

THE COURT: Overruled.

A No.

Q Doctor — withdrawn.

MR. LITMAN: Your Honor, at this time I would offer into evidence Defendant's Exhibit E, pursuant to our discussion, the one paragraph of the report that has been previously referred to, created by Dr. Plank on June 9, 1988 after his visit Number 7 Division Street, sir.

THE COURT: Okay.

What we will do, since that one paragraph is admitted into evidence, we will provide a photocopy as a substitute which contains only the one paragraph.

MR. LITMAN: Okay.

THE COURT: All right.

But it is admitted as Defendant's Exhibit — what is the next exhibit number?

MR. LITMAN: R, it was already marked R.

THE COURT: All right.

(Document previously marked as Defendant's Exhibit R for identification was received in evidence.)

Q Doctor, I wonder if you would be kind enough, if you could just show the witness, because I have to show him what portion, here, sir, is the paragraph that is admitted into evidence, starting with the word "body", and ending with the word "face", okay?

A Yes.

Q I wonder if you would be kind enough to read out loud that medical finding of Dr. Plank's.

A "Body lying on floor. No rigor. Multiple gun wounds, some liver, left face."

Q Now, could you please tell the jury what -- withdrawn.

You pronounce it rigor?

A Yes, r-i-g-o-r.

Q Rigor, some say rigor and some say rigur.

That refers to rigormortis; is that right?

A Yes.

Q So that at the time Dr. Flank got there, sometime after 9:00 at night, his finding was that there was no rigormortis, is that right?

A Yes.

Q No rigormortis means that there was no hardening of the muscles, is that right, sir?

A Yes.

Q So that the muscles could be opened and manipulated?

A Yes.

Q Like arms and hands and fingers?

A Yes.

Q Now, sir, is it your opinion, sir, is it not, that it was the combination of all the wounds that caused death?

A Yes.

Q Is it also your opinion, sir, that you cannot tell whether any wounds to the body of Andy Liang occurred after death?

A I cannot.

Q That means you agree with that, you cannot tell whether any of the wounds occurred after death, is that right?

1
2 A It is my opinion that no wounds occurred after
3 death.

4 Q Now, sir, with respect to what has been referred
5 to as the grazed wound, do you recall that, sir?

6 A Yes.

7 Q That is the one where you looked at that large
8 blow-up on the photograph there, sir?

9 A Yes.

10 Q Would you agree that that grazed wound just
11 touched the surface right here (indicating)?

12 THE COURT: Indicating the area between
13 the thumb and the fourth finger.

14 MR. LITMAN: On the back of the right
15 hand.

16 Q Would you agree it just touched the surface?

17 A Yes, it is a superficial --

18 Q I didn't hear you.

19 A It is a superficial wound.

20 Q And it "just touched the surface of the
21 skin," do you agree?

22 A Yes.

23 Q Now, in terms of the activity that a person
24 could perform, physical activity after being shot, could
25 a person, if he was standing out next to a table or a

desk, less on the table?

Could a person do that, sir?

A Yes, sir.

Q Do you agree, sir, with Dr. Adelson, whose book you agreed is a learned text in the field, is that right?

A Yes.

Q When he said that many fatally injured persons carry out surprising varieties of voluntary activity before they succumb, do you agree with that?

A Yes.

Q Further, that victims with even perforating cardiac gunshot wounds have survived for several minutes, or longer, and have continued to walk, drive their own automobiles, or to do any one of the large number of complicated activities before death supervened? Do you agree with that?

A Yes.

Q Doctor, you cannot state with a reasonable degree of medical certainty what position the body of Andy Liang was in or what position the gun was in vis-a-vis that body when each or any of these wounds occurred, is that right?

MR. MAPLES: Which gun are we talking

Q Anything is possible, Doctor.

Did it do it?

A I don't know.

Q Doctor, isn't it a fact that wound 16, the one that went in the back, this one here (indicating), is the one that came out here, number 16?

Isn't that the one that did, Doctor?

A Yes, that is not the way, as I find it, on the autopsy.

Q Sorry?

A That is not the way, as I found it when I performed the autopsy.

I found the bullet for that entrance wound.

Q You found the bullet for 16?

A Yes.

MR. LITMAN: Would this be a good place to stop and can we pick this up tomorrow morning?

THE COURT: Yes, 10:00.

Ladies and gentlemen, please remember the admonition that I have been giving you.

It is very important that you follow these and I will see you at 10:00 tomorrow

about?

THE COURT: I am assuming that Mr. Litman was talking about the gun that fired the bullets into Andy Liang.

Q You cannot tell us the position of the shooter or the position of the body, is that right?

A No, I cannot.

Q Now, Doctor, when you saw Andy Liang for the first time at the medical examiner's office on the morning of June 10, 1968 at that time the shirt of Andy Liang had been soaked with blood; is that right?

A Yes, it was.

Q Now, if you would be kind enough to look — withdraws.

MR. LITMAN: Your Honor, could I hold this up so the jury can see it and witness at the same time, and if I go back far enough, you can too, sir.

THE COURT: Closer to the jury, please.

MR. LITMAN: All right.

THE COURT: All right.

MR. LITMAN: Thank you.

Q Doctor, if you would be kind enough to look, for example, at People's Exhibit 25-C, and 25-D,

okay?

A Yes.

Q Do you see these are photographs that we have heard about that were taken by the Scene Unit personnel from the Police Department sometime starting after 7:50, 7:55 p.m. on the evening of June 9th. okay?

A Yes.

Q You see here on the photograph G, basically the front right side of the shirt and part of the left side of the shirt?

Do you see that, sir?

A Yes.

Q Do you see here on Exhibit H, some of the right side, or most of the right side of the shirt, and a little bit of the left side of the shirt?

Do you see that shirt?

A No, here I see most of the left and a little of the right.

Q Excuse me, did I say the reverse?

Most of the left side, sorry, and a little bit of the right?

A Yes.

Q Now, would you agree, sir, that when you saw the shirt for the first time it was much, much more soaked

with blood than what you see here?

A Oh, definitely.

Q Definitely?

A Yes.

(Continued on Page 1198.)

Q. Now, are you aware whether or not, for example, the police moved the body around alot at 7 Division Street,

A. I do not know.

Q. And you don't know how the body was thereafter transported, for example, as you told us?

A. I do not know.

Q. You don't know if it was thrown into a body bag or what the people did in the morgue truck or whatever, you don't know?

A. I don't know. I have no information for that.

Q. Doctor, with respect to the surgical intervention -- let me withdraw that.

With respect to the surgical intervention about which we spoke yesterday that you observed on the body of Andy Liang, do you remember making a notation with respect to that in your findings of the gastro internal tract?

A. Gastro intestinal tract.

Q. What did you find?

A. I found some areas with sutures.

Q. So that he had been subjected to some prior surgery?

A. Yes.

Q. Did you also notice any scarring on his buttocks that indicated anything?

1
2 A. As I recall on one side I noticed that there was a
3 small scar, yes.

4 Q. That looked like?

5 A. It was an irregular scar as I recall.

6 Q. Did you note anywhere that that appeared to you to
7 be a wound of some sort, a prior wound.

8 MR. MAPLES: Objection, your Honor.

9 THE COURT: Sustained.

10 MR. LITMAN: I'll move on, forgive me.

11 Q. Now, you mentioned something about a potential for
12 shoring on wound one. Do you remember you said it is
13 consistent?

14 A. Yes, sir.

15 Q. Anyba yea maybe no, correct?

16 A. It is consistent with shoring, yea.

17 Q. And you remember what you said about "consistent"
18 yesterday?

19 A. Yes.

20 Q. And did you, in the autopsy report, make any note
21 whatsoever that it was consistent with shoring in any way at
22 all?

23 A. No, I did not.

24 Q. And this is the autopsy report that you create for
25 completeness, accuracy, and details, correct?

1

2

A. Yes.

3

4

Q. Indeed there is no mention of shoring with respect to any wound at all in the autopsy report; is that correct?

5

A. Yes, sir.

6

7

Q. And the only one you've mentioned as maybe yes maybe no is wound number one; is that correct?

8

A. That is correct.

9

10

Q. Now, you told us about Andy Liang's weight and height as you measured it on the autopsy table?

11

A. Yes, sir.

12

13

Q. In your view, to a reasonable degree of medical certainty, was he a well-nourished person?

14

A. Yes, he was.

15

16

Q. In fact, you made a note of that in your autopsy report?

17

A. Yes.

18

19

20

21

Q. And, by the way, these photographs, sir, that were taken at the Medical Examiner's Office, were you the photographer or is there a person there who actually takes them?

22

A. There is a photographer who takes the pictures.

23

Q. Okay.

24

25

MR. LITMAN: Your Honor, I would ask that this be marked as Exhibit 5 I guess for

identification.

(A photograph marked Defendant's Exhibit 8
for identification)

Q. Now, doctor, I have removed from People's 16 what
you have referred to as poppy seed pellets. This is the
thing in evidence that you identified for us yesterday?

A. Yes, sir.

Q. And did I hear you correctly that these are, in
fact, small pieces of lead that are inside of a copper
jacketing?

A. Yes, sir.

Q. And now, the next exhibit I have in my hand is
People's Exhibit 17 and this has these very small little
blue plastic pearls like balls; is that correct?

A. Yes, sir.

Q. These fit over that type of a bullet which is
sold, commonly called a glaser bullet?

A. Yes, absolutely correct.

Q. That sits on top of this copper jacketing in which
are these little pellets?

A. Yes.

Q. Now, is that, Defense Exhibit 8, a photograph and
accurate representation of the same items that I just showed
you that were taken by the photograph at the medical

Examiner's office about the time of the autopsy?

A. Yes, it is.

MR. LITMAN: I offer that into evidence as
Defendant's Exhibit A, your Honor.

MR. MAPLES: No objection.

THE COURT: All right received Exhibit A.

(No marked is in evidence)

THE COURT: It has been marked, sir.

Q. Now, Doctor, let me show you exhibit J-J which is
in evidence. You have already identified this for us
yesterday; is that correct?

A. Yes.

Q. And this is an x-ray taken of the body of Andy
Liang showing an area basically from the neck area down to
the bottom of the thoracic spine; is that correct?

A. Yes.

Q. And I think that we mentioned yesterday that --

MR. LITMAN: One quick second, your Honor.

Could I come near the witness, your Honor?

THE COURT: Go ahead.

MR. LITMAN: Thank you.

Q. If you can see it otherwise I'll get the box in a
second that near where you see where I'm pointing which is
the x-ray of bullet L-1, that is at the level of the first

1

2

thoracic spine?

3

A. Yes.

4

Q. And may I then correctly put the number one up
here?

5

A. Yes.

6

Q. And the next thoracic spine would be two, is that
correct?

7

A. Yes.

8

Q. May I correctly do that?

9

A. Yes.

10

Q. The next one is three?

11

A. Yes.

12

Q. The next one is four?

13

A. Yes.

14

Q. Correct?

15

A. Yes.

16

Q. The next one is five?

17

A. Yes.

18

Q. Six?

19

A. Yes.

20

Q. Correct?

21

A. Yes.

22

Q. Seven?

23

A. Yes.

1

2

Q. Ninth?

3

A. Yes.

4

Q. Tenth?

5

A. Yes.

6

Q. Tenth?

7

A. Yes.

8

Q. Eleven?

9

A. Yes.

10

Q. Twelve?

11

A. Yes.

12

Q. And this would be the beginning of the first
lumbar spine, is that correct?

14

A. Yes.

15

16

17

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19

20

21

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THE COURT: All right. The record should
show what Mr. Litman has done, as he questioned
the witness was with a marking pen to mark each
spine to which he has referred in the thoracic
region and also the one identified as the first
lumbar.

MR. LITMAN: Thank you, your Honor.

Q. Now, Doctor, let me show you Exhibit 3-1 for
identification.

Now, if you could take the one you have in front
of you and bring it to yourself if you would.

1 You can see, can you not, where the eighth
2 thoracic spine is, this one right over here (indicating).

3 THE COURT: Mr. Litman is pointing to 3-1.

4 That is in evidence?

5 MR. LITMAN: It is.

6 THE COURT: 3-1 in evidence.

7 Q. We will mark that one eight, if I can see it.
8 Here. Maybe I have to mark it like this. This is eight, of
9 course, the one underneath it is nine, correct, sir?

10 A. Yes.

11 Q. The one underneath that one is ten. Correct?

12 A. Yes.

13 Q. The one underneath that, hold on for one second,
14 forgive me, Mr. Maples.

15 The one underneath that would be eleven; is that
16 correct?

17 A. Yes.

18 Q. The one underneath that would be twelve?

19 A. Yes.

20 Q. And then we go, after twelve, to the first lumbar
21 spine; is that correct, sir?

22 A. Yes.

23 Q. Then the second lumbar spine?

24 A. Yes.

1

2

Q. the third?

3

A. Yes.

4

Q. And the fourth?

5

A. Yes.

6

7

8

9

Q. Now had this been correctly marked on exhibit J-I starting with eight, nine, ten, eleven and, twelve, the first lumber, the second lumber, the third lumber and the fourth lumbar spine, sir?

10

A. Yes.

11

Q. Thank you. If I may have this now.

12

13

14

15

16

Now, doctor, I asked you yesterday when Mr. Waples was introducing a variety of exhibits, whether or not, in fact, where you say you found bullets you found them and you recall saying you won't remember, you rely on what you wrote down in the notes?

17

A. Yes.

18

19

Q. And you have no independent recollection; is that correct?

20

A. No, I don't.

21

22

23

Q. And you don't have an independent recollection but what we do have, do we not, is a road map right here in these X-rays, correct?

24

A. Yes.

25

Q. Because these X-rays are taken before you made any

1 surgical intervention into the body; is that correct, sir?

2 A. Yes.

3 Q. And they show the positions, do they not, of
4 objects that are opaque, like bullets?

5 A. Yes.

6 Q. Now, Doctor, let us talk first, if we could, about
7 the wound you call L-3. Do you remember that one --
8 withdrawn, forgive me, the wound you called, "you designated
9 number five I'm sorry?

10 A. Yes, I remember.

11 Q. And you said that from that wound at the end of
12 the track you recovered a bullet which you designated L-3;
13 is that correct?

14 A. Yes.

15 Q. That is the one you tell us lacerated the heart
16 and the thoracic aorta?

17 A. Yes.

18 Q. Then wound up in the spinal Canal at L-7?

19 A. I said it enters at T-7.

20 Q. Well, Doctor, with your eyes you can't look
21 through the body as an x-ray can, correct?

22 A. That's correct.

23 Q. And when the x-rays were taken at the beginning of
24 the autopsy, before you intervened inside the body, they had
25

1 not been developed and handed to you?

2 A. Yes.

3 Q. You then had to look with your eyes as to what you
4 saw?

5 A. Yes, I did.

6 Q. Can you tell the jury that you saw at the level of
7 T-7 in the spinal canal the bullet you called L-5?

8 A. No.

9 MR. LITMAN: With the court's permission
10 could the witness come off the stand?

11 THE COURT: Yes.

12 Q. Doctor, what I have plugged in and turned on is
13 one of these typical x-ray boxes that you use all the time,
14 right?

15 A. Yes.

16 Q. And I'm putting on the box People's Exhibit 3-J
17 okay?

18 A. Yes.

19 Q. Now, just for the jury here, because they didn't
20 have a chance to see this when we did this before, there the
21 spinal area is made up of vertebra bones that sit one on top
22 of the other, is that correct?

23 A. Yes, that's correct.

24 Q. And we can see, if we look carefully, for example,
25

the sixth, the spinal area underneath that, the seventh spinal area, underneath that the eighth then the ninth and tenth; is that correct?

A. Yes.

Q. Now, this, we have agreed is the seventh spinal, excuse me the seventh thoracic spine or the seventh vertebra in the thoracic area; is that correct?

A. Yes.

Q. Do you, sir, see, first of all, at the level of L-7 any bullet at all?

A. No.

Q. No bullet at L-7. Excuse me, T-7 is not even a bullet there to begin with?

A. It is not there.

Q. Show us where people's Exhibit / is?

A. It is in the spinal canal.

Q. It is in the spinal canal you say?

A. Yes.

Q. That is what you are telling us?

A. Yes.

Q. I put it to you, Doctor, this bullet over here people's Exhibit /, is nowhere near the spinal canal, but, in fact, you can see this, if you can look carefully, see the area I'm pointing to right over here, that is this

bullet, right here. The area I'm pointing to is at the level of about T-9, T-10 all the way over in the left chest.

I want to you look at this and you tell us whether or not this bullet which is L-5 is not that thing right over there?

A. It is not.

Q. It is not?

A. No.

Q. That is your opinion?

A. Yes.

Q. That is your opinion, sir?

A. Yes.

Q. Do you want to hold on to this please. Do you see the bullet that you call L-5 in the spinal canal anywhere?

A. No, I don't.

Q. It is not on the x-ray anywhere; is that correct?

A. That's correct.

Q. Where did you find the bullet?

A. In the spinal canal.

Q. Where?

A. Below T.

Q. Below T?

A. Yes.

Q. This thing like floated down the river somewhere?

MR. MARLES: Objection.

THE COURT: Sustained.

MR. LITMAN: Withdrawn.

Q. Where below 7 was it at T-8, sir, yes or no?

A. I don't know.

Q. Was it at T-9?

A. I don't know.

Q. Was it at T-10?

A. I don't know.

Q. Was it at T-11?

A. No.

Q. T-12?

A. I don't know.

Q. Lumbar 1?

A. I don't know.

Q. You did an autopsy of this man and you don't know where that bullet was? Is that correct, you don't know where it was?

A. I know it was in the spinal canal.

Q. Now, if I may, let me show you, if I may, sir, this little photograph which I would ask to be designated or deemed defendant's Exhibit X for identification, sir.

THE COURT: All right.

(A small photograph of a bullet deemed marked)

defense T for identification)

Q. Doctor, if you would be kind enough to look over here at this bullet which is L-5 and I'll give you a magnifying glass and if you would look at this photograph, and would you tell us if the photograph is a fair and accurate representation of bullet L-5, sir?

A. Yes, it is.

Q. Thank you.

MR. LITMAN: Your Honor, I would move T in evidence.

THE COURT: Along with your magnifying glass.

MR. LITMAN: I don't want to give that up right away, Judge. If you wish.

THE COURT: Received.

(Deemed marked in evidence)

MR. MARLES: May I see it, Judge.

MR. LITMAN: Sure. Forgive me.

Q. Now, Doctor, I'm going to affix this right over here next to this little area here. Do you see this little opaque area I'm pointing to?

A. Yes.

Q. I will place this on the diagram in evidence.

THE COURT: Just designate the area you are pointing to.

Q. I'm about to. On the x-ray just so we are clear about this, the x-ray reverses things; is that correct, sir? So that the left side of the body is over here on the right of the x-ray and the right side of the body is on the left side of the x-ray as we are looking at it; is that correct?

A. Yes.

Q. There is no debate. In fact, your office puts an L on that side to show it is the left side; is that right?

A. Yes.

Q. Now, given is that I have affixed Defendant's Exhibit T, sir, over on the right side, the left side, forgive me, over on the left side of the chest at the level of about near the top of T-10 next to this opaque area over here?

A. Yes.

Q. All the way over on the left side of the body. Would you agree at least, Doctor, that I've fairly described where I put this little sticker?

A. Yes.

Q. And you are telling us that in your opinion Defendant's Exhibit T which is L-3 is not this thing, this opaque thing right next to it, that is your opinion, sir?

A. Yes.

Q. Okay. Would you be kind enough to resume the

stand for a moment.

MR. LITMAN: Could I close this off and get to this in a few minutes?

THE COURT: Yes.

Q. Now, Doctor, with respect to the wound that you have and you told us you did this arbitrarily because you don't know the sequence of the shots, designated wound number one?

A. Yes.

Q. You recall which one that one is?

A. Yes.

Q. And that is the one that enters into the body at the level of the neck. About how many centimeters from the midline of the body, sir, six?

A. Yes, it is six.

Q. A little bit more than two and a half centimeters. Exactly 2.54 centimeters is one inch; is that correct?

A. Yes.

Q. So six centimeters is two inches and a little bit, two inches and a third or something like that?

A. Yes.

Q. Okay. So it is at the area just a little off the center; is that right?

A. Yes.

Q. And the exit area, although the bullet you say was near it and still in the body, didn't come out of the body, is in the back how many centimeters off the midline now to the left in the back?

A. It is very close to the midline.

Q. About one centimeter away?

A. It is very close to the midline.

Q. Your report says one centimeter, doesn't it?

A. I say it is one centimeter.

MR. MAPLES: It is two centimeters.

A. Two centimeters.

Q. That is less than an inch?

A. Yes.

Q. Now, you used right to left, front to back, downward. When we talk about right to left, we are talking about, if we are standing facing each other, just a slight twist here; is that correct?

if someone were to shoot a bullet straight at me, if I were to turn myself just slightly like this (indicating) and you were to shoot me here the angle would be the same; is that right?

A. Yes.

Q. And now we talk about downward. Tell us please how far down the bullet went from when it entered the body

to the exit wound at the back.

What is the drop, would you agree, sir, it is about two inches.

THE COURT: You say the "drop" you mean the drop from absolute horizontal?

MR. LITMAN: That's correct, sir. Thank you.

A. Yes, it is approximately.

Q. Two inches?

A. Yes.

Q. So that if you were facing me and I were Andy Liang standing, if I turned just a little bit like this (indicating) and leaned over, that could get that angle; is that right?

A. Yes, it could.

Q. And you saw in the x-ray, you saw in the x-ray L-1 right here (indicating)?

A. Yes.

MR. LITMAN: Your honor, I would offer into evidence, when I can get it off this one, as Defendant's Exhibit U a photograph of L-1.

Mr. Sapler, sir.

MR. ~~SAPLER~~ ^{SAPLER}: Judge, I'm not prepared to accept Mr. Litman's representation at this point that this is L-1. Perhaps he should ask some

questions.

THE COURT: I agree.

MR. LITMAN: Sure. Will you be kind enough to give me L-1, Mr. Maples.

Q. Here is the magnifying glass if you need it, sir. This is L-1. Look at this photograph and can you tell us, sir, whether or not the photograph you see is a fair and accurate representation of L-1?

A. It is.

U. Thank you.

MR. LITMAN: I offer it into evidence, your Honor.

THE COURT: That is Defendant's Exhibit U for identification offered, Mr. Maples.

MR. MAPLES: No objection, Judge.

THE COURT: Received in evidence.

(So marked in evidence)

Q. I have affixed L-1, have I not, Doctor, on exhibit J-J next to what you tell us is L-1 right up at the level of the first thoracic spine, correct, sir?

A. Yes.

Q. And that is L-1?

A. Yes.

U. And that you can tell by looking at the x-ray, is

1
2 that correct?

3 A. Yes.

4 Q. And but there, you tell us, is not L-5?

5 A. That's correct.

6 Q. Now, sector, with respect to wounds, two, three
7 and four, they converge to areas at the back; is that
8 correct?

9 A. Yes.

10 Q. And, in fact, the track of two could really go
11 into three and the track for three could really have ^{gone}
12 into two and the track of three ~~what happened~~ may have ^{gone}
13 into four because they are in the same general area.

14 A. That's right.

15 Q. It is hard with all of these tracks in the body to
16 keep track of the tracks; is that correct? (LAUGHTER!)

17 A. Yes.

18 Q. Now, with respect to those as well, sir, what we
19 are talking about, for example, on two is nine centimeters
20 to the left of the midline in terms of where it enters the
21 body?

22 A. Yes.

23 Q. And you did not mention in your report how many
24 centimeters to the left of the midline it exited, correct?

25 A. No.

Q. There you called from right to left which means if it entered nine centimeters to the left of the midline, and if it is going from right to left it has to be a little bit further than nine centimeters on the back?

A. Yes.

Q. Right?

A. Yes.

Q. And there is a drop, if I understood your measurements correctly, of about six and three quarter inches, is that right?

A. Yes.

Q. In terms of, if we are standing facing each other and you had the gun, if I turn like this and lean over that would create that angle (indicating); is that correct?

A. Yes, it would.

Q. And the same thing is true, is it not, of wound number three, which starts three centimeters to the left of the midline and again you have no position for the exit marking, how many centimeters it is off the midline, but there is a drop of four and three quarter inches; do you agree with that, sir?

A. Yes, I do.

Q. Same positioning that we did before, sir, (indicating) you could be in front of me face-to-face, my

turning to to the left and leaning forward; is that right
sir?

A. Yes.

Q. And the same thing is true with respect to wound
number four, is it not, sir, where there is a drop of three
and seven eighths inches starting three centimeters to the
left of the midline and exiting five centimeters to the left
of the midline?

A. Yes.

Q. Same angle?

A. It is.

Q. He is turned to the left leaning forward, correct,
sir (indicating)?

A. Yes, it is.

Q. This is one of those that probably hit the heart?

MR. MAPLES: Objection.

MR. LITMAN: Withdrawn.

Q. Did you say to us yesterday that wound number four
probably hit the heart?

A. Yes, sir.

Q. Well, when you looked at the track if you did, did
you see it hit the heart.

MR. MAPLES: Objection.

THE COURT: No. Overruled.

Did you observe, did you observe in your autopsy any marks or wounds which indicated that it hit the heart.

Q. Wound number four now.

A. In the trajectory the penetration of the bullet, the heart is, and that is why I said probably hit it, injures the heart. You have to understand the heart has many injuries and to separate them as to a particular one, it is almost impossible.

Q. Well, you didn't seem to have any problem with the other ones that you mentioned. This is the one that got the word "probably", is it the only time I heard that word?

A. This is my opinion, sir, of what I observed at the time.

Q. This was the first of the wounds that you looked at that the supposedly hit the heart; is that right?

A. Yes.

Q. You say that wound five, the one that you tell us entered the canal at the seventh thoracic spine or seventh thoracic vertebra —

A. Yes.

Q. — that was clearly, was it not, a glaser bullet, correct?

A. This is my opinion.

Q. And now, a glazer bullet, as I think you mentioned before, has these pellets, lead pellets lots of them inside of a copper jacketing shell that surrounds it?

A. Yes.

Q. And with this blue ball at the top, correct?

A. Yes.

Q. And when it goes into the body presumably that copper jacketing might open up, correct?

A. Yes.

Q. Releasing the bullets, correct?

A. Yes.

Q. And well, Doctor, at the level of -- by the way the pellets, there are a lot of them in these things, I mean several hundred in each one?

A. Yes.

Q. At the level of X-7, sir, I'm sorry I can't see it over there. If you would be kind enough with the permission of the court, if you could come down over here.

At the level of X-7, you see if I could just one second.

THE COURT: Mr. Litman, tell us again is he looking at J-J.

MR. LITMAN: Yes, he is, I remember. He is looking at J-

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Q. J. So we are clear about it, Doctor, this is the bullet fragment that you recovered, ~~isn't~~ this is L-5?

A. Yes.

Q. This is the one you tell us was in the spinal canal?

A. Yes.

Q. And you can see, can you not, that this couldn't house any bullets, the pellets came out of this thing?

A. Yes.

Q. Do you see at the level here of where you say it entered in?, I mean you see like a whole bunch of pellets?

A. I see pellets.

Q. Really. How many do you see at the level of it?

A. There is one here.

Q. You see one?

A. Yes.

Q. Now about the other two hundred and ninety-nine, air?

MR. MAYLES: Objection.

THE COURT: Sustained.

Q. Excuse me, -- how many -- You said there are several hundred in each one, correct?

A. Yes.

Q. Where are the several hundred minus one pellet in

the area of T-7? Do you see anything there? Do you see anything there?

A. Sir I have seen one pellet there.

Q. You have seen one pellet there?

A. Yes.

Q. All right. Thank you.

THE COURT: Mr. Litman --

Q. You do see, however, forgive me, ladies and gentlemen, I can walk back a little built.

You do see however, do you not, a whole bunch of pellets over here on the left side of the chest don't you, sir (indicating), in the area I'm pointing where I affixed Defendant's Exhibit 1 which is a photograph of L-5?

A. Yes. I see a lot not, just there, many other places too.

Q. Predominantly over here in the left chest, correct, sir?

A. Yes.

THE COURT: Mr. Litman --

MR. LITMAN: I'm sorry.

(A discussion was held off at sidebar off the record)

THE COURT: Ladies and gentlemen, we will recess now for lunch. I hope and pray that we

will resume at 2:15. I will be here ready to go.
See you later.

(The jury left the courtroom)

THE COURT: Doctor, you are excused. Please
don't discuss your testimony.

THE WITNESS: I have to come back at what
time?

THE COURT: 2:15.

(The witness left the courtroom)

THE COURT: The record should show I'm
turning over to Mr. Maples for his investigators
an official list of the addresses and telephone
numbers of the jurors as received from the County
Clerk with the understanding that while it may be
shared by the lawyers, it will be disclosed to
no one other than Mr. Maples's investigators for
the purpose of conducting an investigation.

CONTINUED ON NEXT PAGE

Veress - People - cross

Dr. JOSEPH VERESS, previously duly sworn, resumed the stand and testified further as follows:

MR. LITMAN: Thank you, your Honor.

THE COURT: All right, you may continue, Mr. Litman.

CROSS-EXAMINATION

BY MR. LITMAN:

Q Good afternoon, sir.

A Good afternoon.

Q One of the purposes of the autopsy report is to make notes of unusual findings, correct, sir?

A Yes.

Q Now, if we could return to this for a moment.

MR. WAPLES: Your Honor, what we have done in the recess to move things along is that we have substituted another copy of the X-ray, the two X-rays that have been previously shown and marked as People's Exhibits 3-J and 3-I in evidence.

MR. LITMAN: We have already marked for the defense, with the exact same number but this is now Defendant's 3-J in evidence and Defendant's 3-I.

What I did with Mr. Waples and the witness, is that we transferred over the two labels that had

1
2 been affixed -- I shouldn't say labels, they are
3 little photographs, one is L-1, and put it where
4 the doctor said, and one as L-3, which is next to
5 the side of the left chest.

6 That is a fixture and now it is on Defendant's
7 Exhibit 3-J and I.

8 THE COURT: All right, mark them for identifica-
9 tion.

10 (X-rays marked Defendant's Exhibits 3-I and 3-J
11 for identification.)

12 BY MR. LITMAN:

13 Q Now, Doctor, in your testimony yesterday you'
14 described a term as an intercostal space, is that right?

15 A Yes.

16 Q And intercostal space simply means the space between
17 the two ribs?

18 A Yes.

19 Q Would it be fair to say that the intercostal space,
20 one, is the space between rib 1 and rib 2?

21 A Yes.

22 Q And, for example, the seven intercostal space would
23 be the space between the 7th and 8th ribs?

24 A Yes.

25 Q O.K., now, if you would be kind enough to look --
withdrawn.

Verese - People - cross

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MR. LITMAN: Your Honor, can I put this up here?

THE COURT: Sure.

Q This is Exhibit 3-J in evidence.

You see here where the number 1 is, indicating the first rib as it comes around?

A Yes.

Q You see the number 2 here, over here on the side, indicating the second rib which comes into level of thoracic spine 2, curving all the way around and coming down (indicating)?

A Yes.

Q And then we have rib No. 3 which goes right into thoracic spine, 3, and that curves, the rib does, all the way around and comes all the way down here (indicating)?

A Yes.

Q The next one we have, the next marking would be rib No. 4, which goes into thoracic spine 4, comes all the way around and comes down over here (indicating)?

A Yes.

Q And then 5, of course, would come down here; 6, et cetera?

A Yes.

Q O.K.

A Yes.

Q The markings are accurate as to the nomenclature of each rib?

A Yes, that's right.

Q Now, Doctor, I wonder if you would be kind enough and we could take this little piece of paper on which I have written L-5, and please place it -- I am now putting back up People's Exhibit J-J, copy of that same X-ray.

If you would be kind enough to put L-5 at the level of the 7th thoracic spine near the spinal canal, if you would put that on there, please, where you say it entered the spinal canal.

A All right.

(A sticker is affixed to the shadow box x-ray)

MR. LITMAN: The record should indicate -- withdrawn.

You don't mind if I put it so we can read it the right way?

THE WITNESS: No.

MR. LITMAN: O.K., the record should indicate the doctor has placed, your Honor, a little piece of paper on which is written L-5 next to the No. 7 on the thoracic spine.

Q Now, Doctor -- withdrawn.

MR. LITMAN: Your Honor, let me ask the Court's

guidance. I want to use something, should I use the back of this or get a blackboard? I just want to draw something.

THE COURT: To amuse yourself?

MR. LITMAN: No, I hope not.

How about that, can we get a piece of paper on the chart?

THE COURT: Yes, why don't you use the back of the chart. I am sure Mr. Naples won't mind.

MR. NAPLES: If it is going to go into evidence --

THE COURT: That is why I am concerned, but I have a blackboard but I am interested in preserving it as evidence.

MR. LITMAN: O.K., then.

Could I use the back of the chart?

THE COURT: The back of the chart will be all right.

MR. LITMAN: O.K.

BY MR. LITMAN:

Q Doctor, I am going to draw over here two sort of parallel lines, O.K. Can you see that?

A Yes.

Q And let's assume that this is the front of the body,

4/7

Veress - People - cross

1232

you know, near where the chest is, O.K.?

So let's assume this is at least in layman's terms this would be the back?

A Yes.

Q Now, in the center of the chest you used the word sternum for us before, is that right?

A Yes.

Q And you called that the breastbone?

A Yes.

Q And that is a completely thick bone right here in the center of our chest, is that right?

A Yes.

Q I am going to put something over here with an arrow, at the chest level and call this the sternum.

Now, at the other side, at the back, you go straight through the breastbone to the back and wind up near where the apical vertebrae is, is that right?

A Yes.

Q Now, would it be fair to say, and believe me I am not making an anatomical drawing here, that if we went straight back like this (indicating), that when you get back toward the back that essentially what you have back here is a layer of spinal bone, thick bone, which is the vertebrae, and then inside of it is the spinal canal, and inside of that the spinal

4/8

Varase - People - cross

1233

cord?

A Yes.

Q Sort of like this, where this would be the vertebrae and inside of that would be the canal, and inside of that would be the cord?

A Yes.

Q O.K., now, what you are telling us is that wound No. 5, which we have, according to you, this L-5, People's Exhibit 7 is evidence, struck the sternum, correct?

A Yes.

Q Hit the sternum and then went through whatever is between the sternum ^{and} the back, and then fractured ~~the~~ the vertebra?

A Yes.

Q Is that what you are telling us?

A Yes.

Q Now, those are two pretty thick bones, the sternum and the vertebra, is that right?

A Yes.

Q And then this bullet, L-5 -- withdrawn.

- There are basically two types of bullets that you found in connection with this case, both of which are commercially sold?

A Yes.

4/9

Veress - People - arms

1234

Q This other one called conventional.

A Yes, conventional.

Q The conventional one for example --

This feels like one of them -- would be this kind of a thing, is that right?

A Yes.

Q Which I am taking this out of People's Exhibit 10, which is in fact marked L-10. This is one of the conventional types that we are talking about.

A Yes.

Q O.K.

And the glacier-types you are talking about is like L-5?

A Yes.

Q Just the copper jacketing with the lead pellets inside?

A Yes.

Q L-5 is definitely of the glacier-type, the non-conventional one, correct?

A Yes.

Q And that one tends to open up and the pellets go out?

A Yes.

Q Is that right?

A Yes.

4/10

Verasa - People- cross

1235

Q And all other things being equal — it is not made to penetrate as far as the normal case, correct?

A That is the purpose of the design.

Q O.K., and you were telling us that the one that, the purpose of the design of which is not to penetrate that far, L-5, penetrated the sternum, went through the rest of the body, penetrated the sternum, and you found it in the spinal canal?

A Yes.

(Continued on following page)

Veress - by People - Cross

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Q Even though we can't see it anywhere near
the spinal canal?

A Yes.

Q Now, did you note in your autopsy report any
injury, whatever, to the spinal cord?

A I did not.

Q Did you note any hemorrhaging of the spinal
cord?

A I did not.

Q Did you note any laceration of the spinal
cord?

A I did not.

Q Doctor, this wound that you designated as
number 5 entered the body at the level of the second
intercostal space?

A I say the --

Q Sorry?

A We are talking about L-5?

Q Yes, wound 5.

A Second intercostal space.

Q The second intercostal space?

A Yes.

Q And the second intercostal space we can see
over here (indicating), can we not, Doctor?

Veress - by People - Cross

1237

A (No response.)

Q I'll show it to you and then with your Honor's permission, show it to you.

Is the space between 2 and 3 somewhere about this level (indicating), is that right, sir?

A (No response.)

Q That is the second intercostal space at the level of the sternum.

This is rib 2 and this is 3 (indicating), somewhere over here (indicating), is that right?

A No, it is not correct.

Q You told me before that it is correct?

A No, sir.

Q You were counting from the back, I am counting from the front.

A That's right.

Q The position from the front is different than you show it here.

This is, in fact, what you were saying is the back.

The position in the front is where the ribs curve like this (indicating)?

MR. MAPLES: Is Mr. Litten asking a speech or asking a question?

THE COURT: Ask a question.

Q Isn't it a fact that the second intercostal space in the front is right over here (indicating)?

A No, sir.

Q It is not?

A No.

Q You would agree that this is an accurate representation of the skeletal system, Doctor?

A Yes, it is.

Q Okay.

Do you see here what is marked as the first lumbar vertebrae here?

A Yes.

Q Right over here, this area (indicating)?

A Yes.

Q That is the 12th thoracic?

A Yes.

Q The 11th thoracic is here (indicating)?

A Yes.

Q The 10th?

A Yes.

Q Okay, let's look at the 10th thoracic, that is in this area (indicating)?

A Yes.

Q This is the first rib, first intercostal space?

A Yes.

Q The second (indicating)?

A Yes.

Q The second intercostal?

A Yes.

Q The third rib and the third intercostal and
the fourth rib is at the left of the 10th thoracic spine;
is that right?

A No.

Q The first rib, correct?

A Yes.

Q Second rib, correct? (Indicating.)

A No.

Q This is not the second rib? (Indicating.)

A This is the first rib.

Q This is the first rib? (Indicating.)

A Yes.

Q Here? (Indicating.)

A Yes.

Q This is the second? (Indicating.)

A Yes.

Q This is the third? (Indicating.)

A Yes.

1
2 Q This is the fourth (indicating)?

3 A Yes.

4 Q Fifth (indicating)?

5 A Yes.

6 Q Sixth (indicating)?

7 A Yes.

8 Q Okay, now.

9 The second intercostal space is over here
10 (indicating)?

11 A Yes, that is the second intercostal.

12 Q That you think is at what level, sir,
13 approximately?

14 A The second intercostal space, period.

15 Q But can you tell us, sir, where it is, via-a-vis
16 the thoracic spine on the back?

17 MR. MAPLES: You are talking about Andy
18 Liang, or a diagram, Mr. Litman?

19 THE COURT: Well --

20 MR. LITMAN: Excuse me, I assume that
21 most human beings --

22 THE COURT: At this time we are talking
23 about general anatomy, not specifically
24 as to Andy Liang.

25 Now, you want to know at what level

Veress - by People - Cross 1241

of the -- vis-a-vis the spine, at what level
is the second intercostal space?

MR. LITMAN: Yes.

THE COURT: That is the space between
the first and second rib?

MR. LITMAN: No, the second and third.

THE COURT: Second and third, I am sorry.

A That must be the area between the second and
third thoracic vertebrae.

Q The second and third thoracic vertebrae?

A Yes.

Q Where is the 10th thoracic spine vis-a-vis
the 10th intercostal space?

A In the back.

Q In the front?

A In the front it is below the area of the
xyphoid process.

Q Below what --

A The xyphoid process.

Q How far down is that, Doctor?

A It is actually down at the -- just below the
thoracic cage.

Q Now, assume for the moment, if you would,
Doctor, assume, okay, that this thing over here next

Veress - by People - Cross

1242

to which is the photograph, in fact, in L-5 --

A Yes?

Q -- which you assume that for the moment, just assume that for the moment, okay?

A Okay.

Q If, in fact, that is the case, Doctor, would you say that the track of the wound, assuming that is where L-5 winds up, okay, is again from front toward the back, from right all the way over toward the left chest?

If that is L-5?

A From the x-ray picture you cannot say.

Q Doctor, I am asking you if you would assume it, if you would, for purposes of the question.

A I am assuming, but from the x-ray picture I cannot say.

Q Doctor, just assume it for the purpose of the question.

If you would be kind enough, okay?

A Yes.

Q Thank you.

If you would assume that L-5 is, in fact, where it is on Defense Exhibit 3-J, all right --

A Yes?

Q -- and wound 5, 5 enters the chest, goes downward and up to the side on the left, from right to left, is that right, sir?

A You can assume, but these are all assumptions, sir.

Bullets can travel in the body in every direction, so --

MR. LITMAN: Your Honor, forgive me, sir.

Could I ask the witness to answer the question?

THE COURT: He has answered it.

MR. WAPLES: I think he did.

THE COURT: He has answered it.

Q If it wound up over here, it is again consistent with the body, like this, with you looking straight at me; is that right (indicating)?

THE COURT: Indicating --

Q Turning toward the left, looking forward, is that right, sir?

A Yes.

Q Let's talk.

If -- let's talk, if we can, about wound number 6, sir.

Wound number 6 is six, seven centimeters to

the right of the midline in the chest area, sir?

A Yes.

Q And you told us that it winds up, you found that -- you said yesterday when I asked you these questions at Page 1002:

"QUESTION: L-6, sir, again you marked just at the moment that you recovered this from the body of Andy Liang, is that right?

"ANSWER: Yea.

"QUESTION: And you found that off on the side of the left chest, is that right?

"ANSWER: No, that was on the right."

And then I said, "Excuse me.

"ANSWER: That was on the right.

"QUESTION: On the right chest?

"ANSWER: Yes.

"QUESTION: On the left?

"ANSWER: On the right chest.

"QUESTION: Right chest?

"ANSWER: Yes.

Do you remember giving those answers yesterday?

A Yes, sir.

Q But, of course, it is not on the right chest, is it?

1
2 A I am very sorry, I just overlooked it as I
3 see it now and it is on the left side.

4 Q Left?

5 A Yes, probably I looked at another wound, I
6 am very sorry.

7 It was an error on my part, it was on the
8 left.

9 Q All right now.

10 If you would be kind enough, I think you told
11 us that this wound up at the level of T-8, all the way
12 in the left chest, is that right, sir?

13 A I say T-8 and 9, yes.

14 MR. LITMAN: I would like to put this
15 x-ray here.

16 (Puts another x-ray in shadow box.)

17 Q Would it be fair to say, Doctor, that all
18 the way over on the left chest at the level of about
19 T-8 or 9, you see what appears to be a bullet right here?

20 THE COURT: You were looking at three?

21 MR. LITMAN: Yes, J-J for the People,
22 in evidence.

23 Q Is that right?

24 A Yes.

25 Q Would it be fair to say we could put L-6 to

correspond to that right here?

A Yes.

Q Okay.

MR. LITMAN: I have affixed a little piece of paper on which is written L-6 as that area, your Honor.

Q Now, this one goes across the body, basically, and drops maybe about, not too far, an inch and-a-half, two inches, would go in over here and essentially wind up in the left chest, correct?

A Yes.

Q Again with the body turned and a little bit bent the way I am doing now, is that right?

A Yes.

Q Let's talk about wound number 7.

You told the jury that wound number 7 had the general track of right to left, is that right?

A Yes.

Q In fact, it's left to right, isn't it, Doctor?

A (No response.)

Q Isn't it really left to right, Doctor?

A Sorry, my notes indicate right-left.

Q Okay.

You testified that the wound terminates with

these fragments here, okay, that comes out of People's Exhibit 9, one of which you marked L-7?

If you wish to look at it, sir, here is a magnifying glass.

A No. L-7.

Q That that wound, you said you found this at the level of the 8th thoracic spine on the side chest wall on the right side.

Then you said, when I questioned you with this question:

"QUESTION: You are sure of that?

"ANSWER: That is what my notes say."

Correct?

A Yes.

Q I will open this a little bit.

On the side of the chest, on the right side: is that right?

A Yes.

Q You see where I am pointing on the right side?

A Yes.

MR. LITMAN: The record indicates that I am pointing on the seam of my shirt on the right side.

THE COURT: Yes.

MR. LITMAN: May I?

THE COURT: Yes.

Q All right now, the bullet entered the body
three centimeters from the right midline, is that right?

A (No response.)

Q Is that right, sir?

A I am checking it, yes.

(Continued on Page 1249.)

2 Q. Three centimeters is a little more than an inch
3 off the midline, if I can use the midline of my shirt where
4 the buttons are, a little off the middle here (indicating),
5 right?

6 A. Yes.

7 Q. So the bullet went this way (indicating), right,
8 that is left to right, isn't it, Doctor?

9 A. I'm sorry. My notes indicate right to left.

10 Q. I know, but forget the notes for a second. If we
11 can look at the body for a moment, this is left to right,
12 isn't it (indicating)?

13 A. Yes, it is.

14 Q. Okay. So your notes which indicate that it
15 entered three centimeters from the midline and wound up all
16 the way on the right chest by necessity mean that it went
17 left to right, correct?

18 MR. WAPLES: Objection.

19 THE COURT: I think the witness has agreed it
20 went left to right; am I right, sir.

21 MR. WAPLES: He was talking about Mr.
22 Litman's demonstration.

23 THE COURT: Mr. Litman's demonstration.
24 Did he not demonstrate to you to your
25 satisfaction, sir, that the bullet went left to

2

right?

3

THE WITNESS: Sir, he did not. He showed it

4

to me that it went in from the right side to the

5

right side. That is what he demonstrated to me.

6

Q. That's left to right?

7

THE COURT: Sir, it entered --

8

MR. MAPLES: Objection.

9

THE WITNESS: It entered three centimeters

10

from the midline on the right. Sir, there is the

11

midline.

12

Q. Right?

13

A. I say this is three centimeters to the right, so

14

it entered the right chest cavity on the right side.

15

Q. Correct. And it went -- keep standing up if you

16

don't mind for a minute -- and it went on the right side

17

further to the right?

18

A. I have to check my protocol, sir. I'm very sorry.

19

Q. Now, Doctor --

20

MR. MAPLES: Judge, I think the witness is

21

trying to answer the question.

22

THE COURT: Sir, you are checking your notes

23

now?

24

THE WITNESS: Yes, sir.

25

THE COURT: To answer the 1st question,

2

correct?

3

THE WITNESS: Yes.

4

THE COURT: Mr. Litman, let's give the doctor

5

a moment to do that?

6

THE WITNESS: Yes, sir.

7

THE COURT: All right. He has done it.

8

Q. Now, you say it is left to right or right to left?

9

A. I say my right to left.

10

Q. Doctor, you've done this with all the wounds in

11

the case?

12

A. Yes.

13

Q. You analyzed whether something goes from left to

14

right based upon the anatomy of a person as if the person is

15

lying on the ground facing up; is that correct?

16

A. Yes.

17

Q. So if something, for example, goes in on the right

18

chest and goes further off to the right, it is going from

19

left to right; isn't that correct?

20

A. Not in this case. Sir, in my description I say

21

that I find the fragments close to the spine which indicates

22

that there is a distance between three centimeters from the

23

right to the left. If a projectile flies from this

24

direction down towards the spine, it is from right to left

25

mildly.

2 Q. Doctor, let me try again, what you swore to under
3 oath yesterday, I asked you where you found L-7, this is
4 what you swore to under oath yesterday. You found this at
5 the level of the eighth thoracic spine on the side chest
6 wall on the right side, on the side chest wall over here on
7 the side (indicating).

8 THE COURT: Stop for a second. If I may.

9 Mr. Litman, you have my permission to open your
10 jacket, point to where you assert the fragments
11 were found.

12 MR. LITMAN: On the side chest wall
13 (indicating).

14 THE COURT: I didn't say make a speech. I
15 said point.

16 MR. LITMAN: Yes.

17 THE COURT: Now, Doctor, is that where these
18 fragments were found?

19 THE WITNESS: No.

20 Q. Is that what you said yesterday?

21 A. No, sir.

22 Q. Could you please tell us what the level of the
23 eighth thoracic spine means on the side chest wall on the
24 right side?

25 A. Can I read the phrase?

2 Q. No. With the permission of the court, please
3 answer what you said yesterday.

4 MR. MAPLES: Objection.

5 THE COURT: Sir, I would simply like to know,
6 I hope the jury would like to know, where the
7 fragments were found.

8 would you describe for us in a somewhat
9 graphic way, not too graphic, but graphic enough,
10 where you found the fragments so we can know?
11 Pointing with a finger is permitted. Where did
12 you find the fragments?

13 You can demonstrate on a court officer if you
14 want.

15 MR. LITMAN: Or on me if you want.

16 THE COURT: Let's use a court officer, your
17 donor.

18 THE WITNESS: If I could use the anatomical
19 graph it would help me.

20 THE COURT: Do you have that anatomical
21 chart.

22 MR. LITMAN: Use this.

23 THE WITNESS: I can use this too. We are
24 with the entrance wound about three centimeters to
25 the right and I find bullet fragments just to the

2 side of the spine on the right side around the
3 level of eight I saw.

4 Q. The gentleman is pointing here (indicating) to the
5 right side on this x-ray at about the level of T-8; is that
6 correct?

7 A. Yes.

8 THE COURT: When we say to the right side for
9 those of us unfamiliar with these terms, it is a
10 little to the right of the spine, right.

11 MR. LITHAN: Correct.

12 MR. WAPLES: Accept it appears on the left
13 side in the x-ray.

14 THE COURT: When we say "right", we all
15 understand we are talking about not the right side
16 as you look at the body, but the right side of the
17 body itself as it looks straight up, okay.

18 so it just to the right of the spine at the
19 level of T-8, correct?

20 THE WITNESS: Correct.

21 THE COURT: That's where you found the
22 fragments?

23 THE WITNESS: Yes.

24 Q. That's what you say?

25 A. Yes.

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2

THE COURT: The witness is pointing to the

3

entrance as being about three centimeters to the

4

right of midline?

5

THE WITNESS: Ye^{es}, sir.

6

Q. Now, Doctor, would you please show the jury

7

where -- you still have that exhibit up here?

8

THE COURT: Which exhibit are you looking

9

for.

10

MR. LITMAN: The one we were looking at, the

11

one that contains L-7. Right here.

12

Q. You have a multiplicity of fragments?

13

A. Yes.

14

Q. Show us where they are in the diagram here, not

15

the diagram, the X-ray, where are they?

16

A. There are some pellets near.

17

Q. These are not pellets?

18

A. The fragments are not there.

19

Q. Sir, these are not pellets, these are large

20

fragments compared to the little poppy seed things. What

21

you see here are the little poppy seed things. Where are

22

all the big things, where are they?

23

A. It is not shown here.

24

Q. Did they disappear?

25

A. No, they don't disappear.

2 Q. where are they?

3 A. They can move. They can move with the soft
4 tissues. If they are imbedded in the soft tissues I will
5 remove from the soft tissues, sir.

6 Q. This is where you say you found L-7; is that right
7 sir, just where I put the little sticker that says L-7?

8 A. Okay.

9 Q. Okay?

10 A. Yes.

11 Q. Now, is it not a fact -- that is yours, that is
12 yours too -- what is, in fact, L-7 is this right over here
13 (indicating) this conglomeration of stuff over here which is
14 at the level of lumbar one all the way over on the right
15 chest wall; isn't that where it is?

16 A. I don't know sir.

17 Q. You don't know?

18 A. You show me an x-ray loaded with pellets and
19 bullet fragments.

20 Q. Forgive me. I'm not showing you an x-ray loaded,
21 I'm showing you the x-ray of And... Liang's body.

22 MR. WAPLES: Your honor, this is
23 argumentative.

24 THE COURT: I wish we could stop the
25 argument.

2 Q. This is the x-ray of Andy Liang's body isn't it?

3 A. Yes.

4 Q. And isn't that L-7 where I'm pointing to right now
5 (indicating)?

6 A. I don't know.

7 Q. You don't know?

8 A. No.

9 MR. LITMAN: Your Honor, the area where I was
10 pointing, so the record is clear, is basically
11 at the level of lumbar one all the way over on the
12 right chest wall, sir.

13 Can the record indicate that I'll show it to
14 your honor, the level of lumbar one all the way
15 over on the right chest wall.

16 THE COURT: That is what Mr. Litman is
17 pointing to.

18 MR. LITMAN: Thank you.

19 Q. You don't know, Doctor?

20 A. No, I don't.

21 Q. But yesterday you did say it was on the side chest
22 wall?

23 MR. WAPLES: Objection. Asked and answered.

24 THE COURT: Yes. Sustained.

25 Q. And if it were over, sir (indicating), 'f it were

2 over on the right chest wall where you said you didn't know,
3 over her, if it were there, then the body would have been
4 turned this way (indicating)?

5 THE COURT: Indicating.

6 MR. LITMAN: Swinging towards the right.

7 Q. Is that right, if he was straight on, the shot
8 would have gone like this (indicating), correct?

9 THE COURT: The record should reflect that
10 Mr. Litman turned his left shoulder towards the
11 witness and his right shoulder away from the
12 witness at an angle and he has pointed to an entry
13 somewhere left of, somewhere to Mr. Litman's right
14 or midline with an exit or a termination point on
15 the side seam of his shirt.

16 MR. LITMAN: Correct.

17 Q. Sir, I would have to be turned this way
18 (indicating) if it entered here and wound up here
19 (indicating)?

20 Just look at, mer.

21 A. It means that there is an angle or incident from
22 the left.

23 Q. From here that way I'd have to be turned this way
24 and maybe bent over a little bit, right (indicating)?

25 A. I cannot answer that to you. I can't tell you

2 that there is an angle ever incidence.

3 Q. My left shoulder would have to be this way
4 (indicating) for it to go in here and wind up here?

5 MR. MAPLES: Under that hypothetical version,
6 your Honor.

7 THE COURT: Yes.

8 If you will forgive me, from my point of view
9 it is better put that at least one way for a
10 bullet to have entered where Mr. Litman is now
11 pointing and ended where he is now pointing with
12 his right hand, at least one way for it to have
13 done that would be for it to have entered as Mr.
14 Litman is now standing fired in that direction
15 given the configuration of his body?

16 THE WITNESS: Yes, it is consistent with
17 that.

18 Q. Just so we are clear on one thing, Doctor, with
19 the right to left and left to right, forgive me for boring
20 everybody with this. Do you have this thing. Over here is
21 drawn in wound two, for example, wound three and wound four,
22 do you see that?

23 A. Yes.

24 Q. On the left side or the chest in the front?

25 A. Yes, sir.

2 Q. And that the exits although they were there were
3 intersecting trajectories and you weren't sure, but
4 basically they come out two, three, four further to the left
5 on the back; is that correct?

6 A. Yes.

7 Q. They started on the left side of the front and
8 they go further to the left in the back. You called that
9 right to left, correct?

10 A. Yes.

11 Q. Right?

12 A. Yes.

13 Q. So that if a bullet enters on the right side and
14 comes out further on the right, that would be left to right;
15 is that correct.

16 MR. MAPLES: Judge this has been asked and
17 answered.

18 THE COURT: Yes. I think we have gone over
19 it.

20 MR. LITMAN: I thought he didn't, but perhaps
21 the point is made.

22 Q. The next one is wound number eight, correct, sir?

23 A. Yes.

24 Q. And that goes in seven centimeters to the right of
25 the midline

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2 A. Yes.

3 Q. And it comes out further to the right, according
4 to you, ten centimeters?

5 A. Yes.

6 Q. That would be left to right, correct?

7 A. Yes, it is.

8 Q. But you have it right to left?

9 A. Yes, that is correct.

10 Q. Basically, Doctor, that shot is almost like a
11 straight on shot; is that right, sir?

12 A. I'm very sorry. I couldn't hear.

13 Q. It is basically is almost a straight on shot?

14 A. Yes, it is.

15 Q. All right. Number nine is another one in the
16 right chest, correct, sir?

17 A. Yes.

18 Q. And basically almost straight on with the body
19 could have been turned a little bit towards the left the way
20 I'm looking at you now (indicating); is that correct, sir,
21 coming in right to left?

22 A. Yes.

23 Q. All right. Doctor, now, let's look at ten.

24 You say that in ten that the bullet winds up at
25 the level of the ninth thoracic spine; is that correct?

RA

2 A. Yes.

3 Q. You see this bullet, it is a pretty distinctive
4 bullet, it has this little hook off here on the side
5 (indicating)?

6 A. I can see it.

7 Q. You see that?

8 A. Yes.

9 Q. Where it is right there, right, Doctor
10 (indicating), don't look at your notes, just look at the
11 x-ray if you could for a second. Isn't that it right there?

12 A. Yes.

13 THE COURT: For the record.

14 MR. LITMAN: Your Honor indicate that what
15 I'm pointing to is between this essentially T-11
16 and T-12 here, sir, on exhibit 3-J for defense in
17 evidence:

18 Q. Photograph of L-10, sir?

19 A. Yes, similar.

20 Q. I'll put it right next to where you said it was,
21 right here, okay?

22 A. Yes.

23 MR. MAPLES: Does Mr. Litman offer objects
24 into evidence or does he just bypass the court and
25 the prosecution?

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2

MR. LITMAN: Excuse me. I offer it into

3

evidence. Forgive me, Mr. Waple. I offer it

4

into evidence.

5

THE COURT: How about "forgive me, Judge"?

6

How about that?

7

MR. LITMAN: I'm just offering it as Defense

8

Exhibit V.

9

THE COURT: Sir, this photograph that Mr.

10

Litman just pasted on this x-ray, is it a

11

photograph of -- what was the object.

12

MR. LITMAN: L-10.

13

THE COURT: Answer?

14

THE WITNESS: Very similar, yes.

15

THE COURT: Is it a photograph of it or not?

16

THE WITNESS: It is similar of that bullet.

17

THE COURT: It looks like it?

18

THE WITNESS: It looks like it.

19

THE COURT: All right.

20

MR. LITMAN: I offer it in evidence as

21

Defendant's Exhibit V, sir.

22

THE COURT: V.

23

MR. WAPLES: Doctor do you know if it is a

24

photograph of L-10 as opposed to L-16 or bullet A

25

or anything else?

MA

2

THE WITNESS: I don't know I don't know no.

3

MR. WAPLES: Objection?

4

MR. LITMAN: People versus Miranda.

5

THE COURT: You didn't have to cite the case,

6

admitted, Exhibit V.

7

(So marked in evidence)

8

MR. LITMAN: Thank you.

9

THE COURT: We will get to double letters

10

soon, Mr. Litman.

11

MR. WAPLES: On the understanding it look-

12

something like L-10.

13

THE COURT: The qualifying testimony is that

14

it looks similar.

15

Q. Now, I'm putting prosecution's Exhibit 3-J up

16

there and we will take a piece of paper for L-10 -nu you say

17

you found it at the ninth thoracic spine; is that correct?

18

A. Yes.

19

Q. On which side, the left or the right?

20

A. I think on the left.

21

Q. You think on the left, like about over here, sir

22

(indicating)?

23

A. Yes.

24

MR. LITMAN: Your Honor, let the record

25

reflect I've placed on prosecution's Exhibit 3-J a

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2

piece of yellow stickum on which is written L-10

3

at the area of the right thoracic spine on the

4

left where the doctor indicated it should go.

5

Q. Now, of course, here, sir, you don't see any
bullet do you?

7

A. I agree.

8

Q. You agree?

9

A. Yes.

10

Q. And this one was in the vertebra?

11

A. Yes.

12

Q. Inside the bone?

13

A. Yes.

14

Q. Embodied in the bone?

15

A. Yes.

16

Q. Not floating around somewhere in the bone?

17

A. That's correct.

18

MR. WAPLES: Objection. Move to strike.

19

THE COURT: Sustained.

20

Q. Let on the other one where you see it, it is now

21

down one, two almost three vertebrae

22

A. Yes.

23

Q. By the way, how many -- withdrawn.

24

How many centimeters off the midline do you say

25

that this bullet entered the body?

RM

2 A. which one are we talking about?

3 Q. The same one, wound ten, sir?

4 A. Eighteen centimeters to the right.

5 THE COURT: What sir?

6 THE WITNESS: Eighteen centimeters to the
7 right.

8 Q. Did you actually measure that?

9 A. Yes, I did.

10 Q. Now, wound ten is essentially right on top of the
11 right nipple of the deceased; is that right?

12 A. Yes.

13 Q. Without drawing this out so much, isn't the right
14 nipple off the midline at the most twelve?

15 A. It depends upon who you are. Smaller men or
16 smaller women it is smaller.

17 MR. WAPLES: Can the witness please answer
18 the question without interruptions.

19 THE COURT: Yes.

20 Q. Smaller men, the distance would be smaller off the
21 midline, larger men the it would be larger?

22 A. Yes.

23 Q. Would you think I'm a little larger than Andy
24 Liang, sir?

25 A. I cannot answer that question. I don't know your

2 wait, your height.

3 Q. How much did the guy weigh?

4 A. I don't know your height, anything.

5 Q. You don't know my height?

6 A. No.

7 Q. Could you make an approximation, Sir, I'm standing
8 right in front of you?

9 A. I always measure body lengths.

10 Q. You want to measure me please?

11 A. Sixty-eight inches.

12 Q. How tall did you say I am?

13 A. Sixty-eight inches as I measured there, but I
14 don't know if you gave me the right measuring strip.

15 Q. Doctor, I didn't manufacture this, believe me.

16 A. If it is sixty inches then you are sixty plus as
17 I measure it there.

18 Q. You agree I'm sixty-eight inches, five feet. The
19 last time I checked I'm sixty plus too.

20 AR. MAPLES: Could we put a question please.

21 Q. Doctor, would you say that I'm approximately five
22 foot ten inches tall, I mean would you say that?

23 A. Yes, I would say that.

24 Q. And would you say that I am considerably more than
25 120 pound, would you say that?

2 A. I believe you are.

3 Q. Now, so I'm a little larger than a five foot eight
4 inch 120 pounds man; is that correct?

5 A. Yes.

6 Q. Considerably?

7 A. Not considerably.

8 THE COURT: All right, come on.

9 Q. Isn't it a fact that the distance off the midline
10 to the right nipple is at most twelve or thirteen inches?

11 ~~_____~~

12 A. No. I cannot tell that for sure.

13 THE COURT: We are dealing with centimeters,
14 yes?

15 A. Your's is around ten centimeters.

16 Q. You think his is eighteen?

17 A. I measured eighteen.

18 Q. Again, Doctor, this one is from right to left just
19 slightly with a bend because it is a slight drop in height;
20 is that correct?

21 A. Yes.

22 Q. Wound number eleven, Doctor, that is below wound
23 number ten, also right on the right nipple; is that correct?

24 A. Yes.

25 Q. And you have that as eighteen centimeters off the

2 midline?

3 A. Yes.

4 Q. If you would look at the x-ray, sir, look at this
5 bullet, do you see it right there (indicating), sir?

6 A. I'm very sorry, which one did you show me?

7 A. Right here (indicating)?

8 A. Yes. I see a shadow there.

9 Q. Is that a bullet?

10 A. No. It does not look to me the same.

11 Q. It doesn't look to you to be the same?

12 A. No.

13 MR. LITMAN: Your Honor, so the record is
14 clear, what the witness has been pointing to, what
15 I showed him is, this is a bullet though in your
16 estimation, correct, sir.

17 THE COURT: Indicating on the x-ray, is that
18 is J-J.

19 MR. LITMAN: 3-1.

20 THE COURT: Between T-10 and T-11?

21 THE WITNESS: May I see the labeling on that.

22 Q. That is L-11. Do you want the magnifying glass?

23 A. I don't need it.

24 Q. You can't tell?

25 A. The x-ray is different than this.

2 Q. In your opinion?

3 A. Yes.

4 Q. Okay. But that spot, as your Honor pointed out,
5 is between T-10 and T-11 on that?

6 A. Yes.

7 Q. Now, Doctor, this thing over here, which is L-11,
8 forgive me, you say you found at the level of of T-9; is
9 that correct?

10 A. Yes.

11 Q. And all the way over on the left side of the
12 chest, correct?

13 A. Posterior chest.

14 Q. I'm sorry?

15 A. Posterior chest I say.

16 Q. Forgive me?

17 A. Posterior chest I say.

18 Q. All the way over on the left chest.

19 A. Yes. MAPLES: He did not say that.

20 A. Left side of chest I just said.

21 Q. Well, Doctor, forgive me, but do you remember what
22 you said yesterday about that?

23 A. I'm sorry, I don't remember what I said.

24 Q. Well, page 1014, Mr. Maples:

25 "And you tell us that People's Exhibit 11,

2 which you marked L-11, you found at the level of
3 the ninth thoracic spine all the way over on the
4 side of the left chest; is that correct?

5 "ANSWER: That's correct."

6 Did you say that under oath yesterday, yes or no?

7 A. "All the way" I don't recall.

8 Q. Excuse me?

9 A. "All the way" I don't recall I said.

10 MR. LITMAN: Would you stipulate I have read
11 accurately from an accurate transcript of the
12 recording from yesterday?

13 MR. WAPLES: I object at this time.

14 THE COURT: You object.

15 MR. WAPLES: Yes.

16 THE COURT: He won't stipulate.

17 MR. WAPLES: Not at this time. I don't have
18 my copy with me.

19 MR. LITMAN: Would you look at my copy
20 please.

21 MR. WAPLES: Have him show it to the doctor,
22 your honor.

23 Q. Here, doctor, read to yourself from page 1014 of
24 your testimony yesterday with respect to L-11?

25 A. You said that "all the way".

2 Q. what did you say? what was your answer?

3 A. I said, correct. I said that's correct, but what
4 I meant was on the left side, the but not real --

5 Q. You meant that is correct, but not really correct?

6 MR. WAPLES: Objection.

7 THE COURT: Sustained.

8 in other words, when you said it was correct
9 yesterday you didn't mean that?

10 THE WITNESS: Your Honor --

11 THE COURT: You didn't mean that?

12 THE WITNESS: I don't know what you mean by
13 that, whether I meant it or not.

14 THE COURT: Five minutes everybody.

15 (The jury left the court room)

16 (A short recess was taken).

17 THE COURT: Let's go on the record.

18 THE COURT: Mr. Waples is complaining that
19 the defense lawyer should not openly ask opposing
20 counsel for a stipulation in front of the jury
21 and I don't disagree with that.

22 MR. LITMAN: Sorry.

23 MR. WAPLES: I would ask he not do it again.

24 THE COURT: Don't ask him for a stipulation
25 in front of the jury. If you want to ask him for

2 a stipulation, do it quietly, privately. Do it at
3 sidebar. Don't stick something in front of
4 opposing counsel's nose and ask him for a
5 stipulation because you know how you would react
6 if he did it to you.

7 MR. LITMAN: It was done to me by so many
8 lawyers when I was a prosecutor.

9 THE COURT: Then why should we do it? It is
10 not fair.

11 MR. LITMAN: If it is the transcript of the
12 court proceeding, sir.

13 THE COURT: Sir, don't do it.

14 MR. LITMAN: I won't do it if your honor
15 doesn't want it.

16 THE COURT: Don't do it in front of the jury.

17 MR. LITMAN: Okay.

18 THE COURT: It was a grand standing when they
19 did it to you. It has not changed its character
20 in all of the years.

21 MR. LITMAN: It is a stipulation as to a
22 record. I won't do it.

23 THE COURT: Don't do it in front of the jury.
24 Can I have the X-ray.

25 CONTINUED ON NEXT PAGE

A F T E R R E C E S S

THE CLERK: People against David Tee.

The defendant, his counsel, the interpreter,
and the assistant district attorney are present.

This is outside of the presence of the jury.

THE COURT: Are you ready, Mr. Litman?

MR. LITMAN: Yes.

THE COURT: Dr. Veress, please take the stand.

Dr. J O S E P H V E R E S S, previously duly sworn,
resumed the stand and testified further as follows:

THE COURT: All right, bring in the jury.

(Whereupon, the jurors entered the courtroom
and take their respective seats in the jury box.)

THE CLERK: All sworn jurors are present and
all parties are present, your Honor.

THE COURT: All right, Mr. Litman, you may con-
tinue.

CROSS-EXAMINATION

BY MR. LITMAN: (Cont'g)

Q By the way, you are looking at notes that you made
for the purpose of helping you testify?

A Yes, I did.

Q Could I see them, please.

A Yes. (Handing)

MR. MAPLES: For the record, a copy has been given Mr. Litman some time ago.

MR. LITMAN: Can we approach for a moment, please?

THE COURT: Side bar?

MR. LITMAN: Yes.

(There was discussion at side bar among the Court and counsel, out of the hearing of the jury and the audience, as follows:)

MR. LITMAN: To quote a colleague of mine where I practice law, the Damon case says you don't reveal that you turned over the Rosario material in front of the jury. In fact, the Court of Appeals says that, so I would appreciate it if Mr. Maples did not make such comments in front of the jury and I'll verify whether in fact these particular notes I had from before, because I am not sure I do.

Maybe I do, but even if I did, he had no right to say that in front of the jury, the way I understood the Damon case, sir.

That is my application.

THE COURT: What application?

MR. LITMAN: Not to make those comments in the future.

THE COURT: I'll make the following comment:

I appreciate what the law says but it is getting to the point where one good turn is getting to deserve another. What is sauce for the goose is good for the gander. There are a variety of other expressions.

Listen, you two, if you want to play the game, then you play the game.

Mr. Litman, you are hardly in a position to complain given some of the stuff that you have been doing throughout the trial.

Let's just get on with this and get this over with, and get the witness off the stand.

MR. LITMAN: O.K.

(The side bar discussion concluded and the trial resumed in open court, as follows:)

BY MR. LITMAN:

Q Doctor, if you would be kind enough to take the x-ray which is People's Exhibit J-J in evidence, right here, here is a sticker for L-11 and take it, please, and just put it on the x-ray where you found the bullet.

Put it at the level of the 9th thoracic spine or on the left chest.

A All right.

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Q Doctor, you have put or affixed a label to L-11 over here.

Do you see the bullet where you put it?

A I see some pellets.

Q The question is do you see the bullet, L-11?

A No, I don't.

Q This thing over here (indicating).

A No, I don't.

Q That bullet went into the right nipple, sir, correct, went across the body easily, is that right?

A Yes.

Q So that it would be consistent, wouldn't it -- with drawn.

If my body were horizontal, almost, turning in you shot here it would go right across the body, is that right?

A Yes.

MR. LITMAN: With my body turned with my right shoulder toward the witness and my left shoulder away, is that correct?

THE COURT: That's right.

MR. LITMAN: Thank you.

Q Let's talk about wound No. 12. That is the one that is the reentry wound, Doctor, is that right?

A If I see my papers, may I?

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Q Yes.

(Papers handed to the witness)

A Thank you. Yes, sir.

Q That is clearly a glasier wound, correct, bullet, correct?

A I just can't tell.

Q Do you have anywhere on your notes whether it is a glasier or a regular, the bullet that caused wound No. 12?

A I don't have it marked glasier.

Q Do you have it marked conventional?

A On my notes I have no marks made at all.

Q Sir, so we are clear on this, what we are talking about is Wound No. 12, this one right over here, is that right?

A Yes.

THE COURT: Indicating?

MR. LITMAN: Indicating on People's Exhibit 4-B, of the two bullet wounds in the left chest that are shown here, the one further to the left in the photograph, sir.

Q That is the one -- withdrawn.

MR. LITMAN: Your Honor, can that be for the record, please?

THE COURT: It is on the record.

MR. LITMAN: Thank you.

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Q That is the case where the re-entry from the upper arm, correct?

A Yes.

Q Now, you know, do you not, that the re-entry in the upper arm, from the upper arm -- withdrawn.

The bullet that went through the upper arm --

A Yes?

Q -- fractured a bone?

A Yes.

Q The bone it fractured is the humerus bone, is that right?

A Yes.

Q There is no question but that that is -- was a glassier bullet, is that right?

A I don't know, sir.

Q Can't you tell by looking at the X-ray, sir?

A If you show me what the X-ray shows.

Q The X-ray, if it is a glassier bullet, would show pellets in the path, is that right, the conventional has no pellets, is that right?

A Yes.

Q O.K. Look at Defendant's Exhibit J-G, which is the copy of prosecution's J-G, which I will offer into evidence as Defendant's G.

MR. WAPLES: I have no objection to duplicate sets of X-rays being put in if defense wishes it, your Honor.

THE COURT: All right, mark it as Defendant's Exhibit 3-G.

(Whereupon, 3-G for identification was marked as 3-G into evidence.)

Q Now, sir, you see by looking at Defense 3-G -- withdrawn.

MR. LITMAN: Your Honor, may I put this up?
Forgive me?

THE COURT: All right.

Q This is an X-ray, is it not, of the left side of Andy Liang's chest, and this is the area above the elbow, the left arm, is that right?

A Yes.

Q And you can clearly see the fracture of the humerus bone right here, indicating?

A Yes.

Q In the path of that fracture you can see these little poppy seed pellets?

A Yes.

Q So there is no debate that that was a glassier bullet, is that right?

1 6/8

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2 A (No response)

3 Q Is that right, sir?

4 A I don't know if it is on the wound or on the skin
5 surface, by the x-ray.

6 Q Do you see the things right here in the area of
7 the fracture?

8 A Yes.

9 Q Isn't that a glasier bullet that caused that? Do
10 you see the pellets there?

11 A I see the pellets but I don't know if it is in the
12 wound or on the skin surface.

13 Q On the skin surface?

14 A Yes.

15 Q Do you think each one of these pellets could be on
16 the skin surface?

17 A I can't tell you for sure. Some of them could be
18 on the skin surface, since we have so much gunshot wounds,
19 and some of those can be just deposited on the skin surface.

20 Q This is clearly the one that broke the humerus,
21 though?

22 A No question about it.

23 Q After it broke the humerus and entered the body?

24 A It re-entered the body, yes.

25 Q It certainly could be -- withdrawn.

2 If any one of those pellets is inside then it is a
3 glasier bullet, is that right?

4 A Yes, I agree with you.

5 Q Did you --

6 A I still would expect more pellets there if it opens
7 up.

8 Q You would expect more there?

9 A Yes.

10 Q And the others that are the glasier that you saw
11 before, you don't even see any glasier pellets?

12 (Continued on Page 1283.)
13
14
15
16
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25

MR. WAPLES: Objection.

Q And the ones we showed you before?

THE COURT: Sustained.

Q Doctor, that bullet then, you said, went across the body after it re-entered on the left chest, it went towards the right side of the body; is that right?

A Yes.

Q And it went towards the right flank, is that correct?

A Yea.

Q Now, so there is no doubt about it, the right flank is over here (indicating)?

A Rather on the back.

Q Further on the back?

A Yes.

Q So even around, past the seam of my shirt, like back where I am pointing?

A You are just about right.

Q Now, let's try and see if we can get the level. You say that that bullet struck the right kidney?

A Yes.

Q Correct?

A That's right.

Q And that the track of it was going down, is that correct?

A Yes.

Q And that it wound up, if it is going down after striking the kidney, either at the level of the kidney or a little bit below the level of the kidney? Would that be fair to say?

A It is fair to say.

Q At what level is the kidney on the right side of the body, air, in terms of the thoracic spine?

A It is below the thoracic spine.

Q In fact, the right kidney is in the area of about, let's say, lumbar 3?

A Again, we have individual variations, but yes, it is right down there.

Q Now, in fact, that is what Grey's Anatomy says, too, right?

A I studied it a long time ago, air.

Q Okay.

But about the level of lumbar 3, right?

A Yes.

Q Now, let's look, please, at People's Exhibit J-1 in evidence.

In J-1 in evidence, there is one bullet.

One bullet, that is anywhere close to the right flank below or near lumbar 3, is that right?

A (No response.)

Q Is that correct, sir?

A Yes, that is on the right side.

Q And the only one that is near lumbar 3, or below it on the right side is this thing right over here (indicating), is that right?

A Yes.

MR. LITMAN: Your Honor, could the record indicate that I am pointing to an opaque area on the x-ray, all the way on the right side, a little bit below lumbar 3?

THE COURT: As you look at the x-ray in the lower left-hand corner?

MR. LITMAN: Yes, which is the right side of the person.

Q Okay?

A Yes.

Q Now, Doctor, how is it possible that this thing over here --

THE COURT: Indicating?

Q -- L-12 -- withdrawn.

That L-12 does not look like this at all,

1
2 does it, Doctor?

3 We can all look at it. This is a full bullet,
4 right?

5 THE COURT: Indicating the item?

6 MR. LITMAN: That we picked out before.

7 Q That doesn't look like that at all, correct,
8 Doctor?

9 A It depends how the x-ray is.

10 Q Doctor --

11 A It depends how the x-ray hits the bullet.
12 The direction of the x-ray can't give this
13 configuration.

14 Q Is that your sworn testimony?

15 A Yes.

16 Q As to a reasonable degree of medical certainty?

17 A Yes, it depends.

18 Q This twisted bullet can look like this?

19 A Yes, sir.

20 It depends on the angle that the x-ray hits
21 it.

22 Q And you were telling us, is it your sworn
23 testimony, that this L-12 is this on the x-ray?

24 MR. WAPLES: Your Honor, he hasn't said
25 that.

A Yes.

Q That is your testimony?

A That is what my notes indicate.

THE COURT: Going along by that.

Q You were going along by that?

A Yes.

Q I am placing on People's Exhibit 3-I in evidence a little stick-on label that says L-12, where you say you found L-12; is that right?

A Yes.

Q Doctor, I want you to look, if you would, at x-ray 3-I in evidence, People's Exhibit 3-I in evidence, and if you would, go down to the level of lumbar 1, lumbar 2, here. (Indicating.)

Is this not, right there where I am pointing on the left side although the left side of the film as you are looking at it, but the left side of the body, is not L-12?

A I don't know.

Q You don't know?

A No.

MR. LITMAN: Your Honor, let the record indicate that I was pointing to -- this certainly is a bullet of some sort?

THE WITNESS: Yes.

MR. LITMAN: -- I am pointing to the opaque part here on People's Exhibit 3-I, which is essentially at the bottom of lumbar 1, near the top of lumbar 2, as one looks at the x-ray film, the one to the right, sir.

THE COURT: All right.

MR. LITMAN: May the record so indicate your Honor?

THE COURT: Yes.

Q Doctor, this full bullet, L-16, this is what you call a conventional bullet, this one here?

A Can I see it?

Q This is L-16, which is People's Exhibit 12 in evidence.

Doesn't that look a whole lot more like this?

If I shoved it to the jury, what we are talking about, what appears to be this bullet right over here (indicating).

THE COURT: Indicating the lower left-hand corner.

Q Where you have L-12?

A It is more similar to that.

Q Then to your L-12?

1
2 A Yes.

3 Q So that you may have confused the track of
4 bullet wound 12; is that right, sir?

5 A Yes, I could.

6 Q In fact, sir, if, as you said you may well
7 have confused it, is it not the track of 12 that is wound
8 12, winds up over here at the first lumbar spine to the
9 left of it?

10 A I just don't know.

11 Q You don't know anymore?

12 A Yes.

13 Q In fact, that would make more sense, wouldn't
14 it, already broke a bone, the humerus which would slow
15 the bullet down a bit, is that right?

16 A Yes, it can.

17 Q It entered the six intercostal space, which
18 is pretty far down, and would wind up just to the left
19 of lumbar one, which is basically like that, if a person
20 went like this (indicating); is that right, Doctor?

21 A Sir, it is possible, but I just have the only
22 one recollection by my autopsy report and I referred
23 to that.

24 Q Now, you realize, sir, that if, in fact, L-16
25 which you said looks like a lot more like it, this thing

1
2 over here on the side (indicating) is, in fact, that
3 bullet that bullet wound 16 doesn't have the track you
4 say it has where L-16 wound up, would you agree with
5 that?

6 A The bullet's penetration, in my opinion, is
7 the way -- as I describe them, it might have happened
8 happened that -- because of the multiplicity of the
9 projectiles I could make a human error and I mislabeled
10 it.

11 Q Now, we can talk about wound 13.

12 Wound 13, sir, is basically, is not, if I
13 move my coat back here --

14 MR. LITMAN: Your Honor, all right?

15 THE COURT: Yes.

16 Q -- from front to back, it comes in over here
17 and there is an exit right over here on the flank, a
18 little bit to the back, right?

19 A Yes.

20 THE COURT: Please describe it.

21 MR. LITMAN: Yes, your Honor.

22 I am pointing to an area that is below
23 the nipple on the left side of the chest and
24 my thumb is pointing in the general area of
25 an exit wound a little bit past the left seam

of my shirt, a little bit either on the side or on the back, however you view it.

Q Doctor, that is basically a straight-on shot; is that right, sir?

A Yes.

Q If the person were like this (indicating)?

A Yes.

Q We will skip 14 for the moment and go on to wound 15, sir.

Now, this, sir, if you would be kind enough to look at it, comes from this envelope which is in evidence as People's Exhibit 13 and that is bullet L-15, is that right, sir?

A Yes.

Q Take a look at this, please.

Just pick that up for a moment.

That is this one right over here, is that right, Doctor?

A It is a different shadow.

Q If you turned this, this doesn't look like this, Doctor, this one right over here?

You can hold it any way you wish.

MR. LITMAN: Two that are about the level of 12 and one further down, Mr. Waples.

1
2 A It doesn't look to me the same, No.

3 THE COURT: We are looking at Exhibit
4 3?

5 MR. WAPLES: People's Exhibit 3-1 in
6 evidence.

7 A It looks different to me.

8 Q It looks different to you but you are not
9 really sure?

10 A I just can't tell you that much.

11 From x-rays you have certain shadows which
12 is with some sort of contrast and it is deforming.

13 It seems to be different than the x-ray shows.

14 Q You say that this was found at the level of
15 the second lumbar vertebra?

16 A Yes.

17 Q Right against the vertebra, in the vertebra?

18 A I say in the abdominal cavity -- sorry, sir,
19 sorry.

20 Q No.

21 A Sorry, yes.

22 I say against the vertebra, yes.

23 Q Right against the vertebra?

24 A Yes.

25 Q And so there is no debate about it, if I can

again lift my shirt, the vertebra is what we can feel if we put our hands against our back?

A Yes.

Q It is right at the back of the break, right smack in the middle?

A No, actually what you feel is that you feel the spinal process of the vertebra.

Q The vertebra is a little in front of that?

A The body of the vertebra is in front and between the two you have the spinal canal.

So actually what you are feeling, you are just feeling the least portion of the vertebra when you do that.

Q The thicker portion is the one that is in front if a bullet were to go to the chest towards the back?

A Yes.

Q To protect the canal and the cord?

A Yes, and support the body.

Q Right here, right in front of what we can feel in our back is where the vertebrae are located, is that right?

A In front, yes.

Q Okay now.

1
2 You say that this bullet entered on the left
3 side, lateral left side over here somewhere, is that
4 right (indicating)?

5 A Further down, further down.

6 Qq Here (indicating)?

7 A Yes, yes.

8 THE COURT: Indicating roughly about
9 the left seam of Mr. Litman's shirt,
10 somewhere above the belt.

11 THE WITNESS: Yes.

12 Q And where I am pointing to is basically at
13 the first lumbar level, right here?

14 A I don't know.

15 Q Doctor, I mean I don't know if you can tell
16 where I wear my belt --

17 A I cannot tell you.

18 Q But it is basically right here where the first
19 lumbar level is?

20 A I don't know where your lumbar is, it is down
21 there. I know that for sure.

22 Q I know for sure, too.

23 Okay, this bullet, if it winds up where you
24 said it did, went straight across the back, it right
25 here (indicating), and then went straight and lodged?

1
2 It went this distance?

3 Do you see where I have my fingers?

4 A Yes.

5 Q Like this (indicating).

6 THE COURT: Indicating about four inches
7 or so across the back.

8 MR. LITMAN: I cannot see, what do you
9 have to say, your Honor.

10 I don't know if it that much, but
11 whatever you think it is.

12 THE COURT: That is what I said.

13 MR. LITMAN: Okay.

14 Q Just a short distance, right?

15 A Yes.

16 Q I am sorry?

17 A Yes, it is.

18 I said 10 to 15 centimeters.

19 Q And that would be consistent -- withdrawn.

20 If you had the gun in your hand shooting me,
21 if I turned just like this to the side and you shot like
22 this?

23 A It is consistent with that.

24 Q Not with my back fully to you, then the bullet
25 would go forward but to the side so that the bullet goes

right here and just goes right against the lumbar vertebra, is that right (indicating)?

A Yea.

Q You say this wound up at the level of the second lumbar vertebra?

A Yes.

Q Let me just give you another one of those stick-ins that will say L-15.

 If you would be kind enough, sir, to affix this to the left side at about the level right up against the vertebra, right up against the vertebra L-2.

A Right.

(Witness complies with request.)

MR. LITMAN: The Doctor has affixed on People's 3-I in evidence a little stick-in on which is written L-15 on the right side of the spinal vertebra, but which is really the left side.

THE WITNESS: It is on the left.

Q But on the right side of the film because the x-ray switches things.

 On the right side of the film, but on the left of the vertebra, correct?

A Yes.

MR. LITMAN: The record should so
indicate.

THE COURT: Yes.

Q Now, as you said, if in the course of a shooting
the person who was shot turned away, just turned exposing
his left flank, that shot would be just what we saw,
is that right?

A Yes, sir.

Q Now, we come to the one shot that is in the
back, going inside the back, towards the front.

MR. WAPLES: Objection to the speech,
your Honor.

(Continued on Page 1298.)

7-1 1

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2

THE COURT: No, it is all right. Go ahead.

3

Q. Which one was that, Doctor?

4

A. Number sixteen?

5

Q. Number sixteen?

6

A. Yes.

7

Q. And that is the one that you say may well be this

8

one over here (indicating)?

9

A. Close to the midline.

10

Q. No, no. Excuse me a second if I may ask a

11

question. That's the one we walked about that could be this

12

one over here, right (indicating).

13

THE COURT: Indicating the lower left hand

14

corner of J-I.

15

Q. Of People's Exhibit J-I.

16

You remember our discussion about that a few

17

minutes ago?

18

A. Yes.

19

Q. Let's see where you said this one went. You say

20

this one went --

21

A. From the back toward the front and from the left

22

to the right and I find the bullet against the second lumbar

23

vertebra.

24

Q. From the left to the right or right to left,

25

Doctor?

7-2 1

Veress - People - Cross

2 A. Left to right.

3 Q. Upwards?

4 A. Yes, sir.

5 Q. Where did it enter the body, sir?

6 A. Just to the left from the spine on the left side,
7 just to the left.

8 Q. Doctor, if in the course of the shooting, you were
9 shooting at me and I turned to the side and you shot and hit
10 where fifteen went; do you remember?

11 A. Yes.

12 Q. I could have turned more and you could have hit
13 where sixteen went (indicating); is that correct?

14 A. Yes, I can.

15 Q. Now, this went in, according to you, according to
16 your notes rather, also low down on the back right near my
17 belt level, right, above my buttocks right here
18 (indicating), right?

19 A. Yes.

20 Q. And you said that there wound up to the left at
21 the second lumbar vertebra?

22 A. Yes.

23 Q. Correct?

24 A. Yes.

25 Q. So it would travel --

7-3 1

Veress - People - Cross

2 A. A few centimeters, probably more.

3 Q. And you had it going ten to fifteen centimeters.

4 Q. Fifteen centimeters is six inches, right, sir that
5 is correct, sir, fifteen centimeters is approximately six
6 inches, six times 2.5 is exactly fifteen?

7 A. Well, at least the distance between the entrance
8 site.

9 Q. The question is, is fifteen centimeters
10 approximately six inches?

11 A. Yes, it is.

12 Q. So this bullet, according to you, traveled about
13 one inch?

14 A. I said between ten and fifteen. I don't know for
15 sure.

16 Q. You are saying the bullet enters the back right
17 off the vertebra and winds up right next to the vertebra we
18 are talking about as you said a second ago a couple of
19 centimeters?

20 A. I did not see my notes. I'm sorry I saw my notes
21 now. The point is that there is distance between the spinal
22 processes, you know, until the frontal end of the spine
23 almost ten centimeters, sir.

24 Q. Almost ~~ten~~ ten centimeters?

25 A. That is a quite wide structure, the lumbar

7-4 1

Veress - People - Cross

2 vertebra itself.

3 Q. Doctor, I put it to you again, is it not a fact
4 that the wound which has the entrance sixteen i^{..}, in fact,
5 the one that came out fourteen, the one that you have a
6 mystery entrance for? Isn't that the one that came out
7 where fourteen is?

8 A. Sir, I don't know.

9 Q. Isn't that the only possible one?

10 A. I don't know, sir?

11 A. Now, Doctor, as a pathologist you have been
12 involved in many cases where bullets have traversed the body
13 and because of what they encounter or the nature of the
14 bullet will expend their energy, these bullets and not
15 actually exit the other side of the body?

16 A. Yes.

17 Q. And, indeed, you said that may well have been the
18 case with number one; is that correct?

19 A. Yes.

20 Q. And you've also seen cases, have you not, where a
21 bullet will go into the body from one side, it will cross
22 the body and will be stopped by clothing or simply expend
23 its energy before actually breaking through the clothes on
24 the other side of the body; is that correct?

25 A. Yes.

7-5 1

Veress - People - Cross

2 Q. And, in fact, when you took off the clothing, and
3 I think you recall that part of the clothing that you were
4 taking off at the time, the jeans and the underwear when you
5 found a bullet?

6 A. Yes. That is is that one is, this one, this one.

7 Q. This is People's Exhibit 15 and this is marked
8 bullet X. This is the one that you marked X and you found
9 after you took off the pants and the underpants, the bullet
10 you found on the autopsy table?

11 A. Yes, sir.

12 Q. And that could well have been between the body and
13 the underpants in the inguinal area, right at the exit of
14 wound fourteen?

15 A. It could.

16 Q. Not only could it, but basically you see something
17 on the x-ray that may lead you to that conclusion.

18 I show you exhibit J-A which I ask to be marked as
19 a defense exhibit in evidence which is a duplicate of your
20 J-A.

21 MR. MAPLES: I thought we had a duplicate set
22 in already.

23 THE COURT: We are doing them one at a time.

24 All right, J-A a duplicate of People's J-A.

25 MR. MAPLES: No objection.

7-6 1

Veress - People - Cross

2

THE COURT: He has the x-ray.

3

Q. Doctor, forgive my curiosity, could I ask you a question?

4

A. Yes.

5

Q. Why did you call it X?

6

A. Unknown.

7

Q. Unknown?

8

A. When I started the autopsy it fell out. I don't know where it came from. I marked with an X.

9

Q. Now, if we look at the x-ray of J-A, before the clothing was taken off, your Honor, you can take a chance to see it.

10

If you would be kind enough to look at it. Do you see this finger this thing glued here, do you see what appears to be the pelvic area and then the bones and the thigh of Andy Liang; do you see that, sir?

11

A. Yes, I do.

12

Q. And do you see what I'm pointing to over here which is the right side of the x-ray film, but, in fact, is the left side of the body, you see what appears to be conventional bullet, right?

13

A. Yes, sir, it is.

14

Q. That is certainly consistent with -- withdrawn. It looks like X?

15

7-7 1

Veress - people - Cross

2 A. It is the same.

3 Q. It is the same?

4 A. Yes.

5 Q. How do you know all of a sudden this is the same,
6 because it can't be anything else?

7 A. I know the bullet.

8 Q. You know the bullet?

9 A. Yes.

10 Q. Now, Doctor, take a look at this, are you telling
11 us now that you are reading this x-ray and you are going to
12 compare this bullet to the x-ray and say that is the same
13 one?

14 A. Yes, sir.

15 Q. Now can you tell it is the same one, Doctor?

16 A. Configuration. It has the features that I see on
17 the bullet. It actually shows it very well.

18 Q. Now, let's look at this one. How about that one,
19 is that the same or is that one a little different?

20 A. It is similar, but not the same.

21 THE COURT: Which one is that.

22 MR. LITMAN: That's L-16.

23 A. It is different.

24 MR. MAPLES: Judge, I believe this has been
25 asked and answered.

MA

7-8 1

Veress - People - Cross

2

MR. LITMAN: No, it has not.

3

THE COURT: It has not. Go ahead.

4

Q. That is the same as that one, 'sn't it?

5

A. It looks different to me, sir.

6

Q. Before you said it looked the same?

7

A. Well, in a way similar, but it is not the same,

8

no.

9

Q. This one, Doctor, look at the photograph that is next to it. would you agree that that is a photograph, sir, of People's Exhibit 15 or bullet X, would you agree that is a photograph of that?

13

A. Yes.

14

15

16

17

18

19

20

21

22

23

24

25

MR. LITMAN: Your Honor I would introduce into evidence or offer rather Defendant's Exhibit which is that little photograph the doctor has identified as bullet X.

THE COURT: Okay.

MR. WAPLES: Judge, can I see it.

THE COURT: Sure. I haven't passed on it yet.

MR. WAPLES: No objection.

THE COURT: Receive.

(A small photograph marked in evidence).

Q. Doctor, will we now get to wound 1/, wound 1/,

7-9 1

Veress - People - Cross

2 right here on the left chest. Is that basically -- Am I
3 correct, the area, sir, where the bullet entered the body,
4 sir?

5 A. Yes.

6 Q. And the record should indicate that I'm a little
7 bit in front of the side seam on the left side of my shirt,
8 sir, on the left chest a little further down from the nipple
9 and above my pants, your honor.

10 THE COURT: Yes.

11 MR. LITMAN: Is that basic area.

12 THE COURT: Yes, that is what you are
13 pointing to.

14 Q. Now, Doctor, that bullet went from the left to the
15 right?

16 A. Yes it did.

17 Q. Just like bullet fifteen did, correct?

18 A. Yes, it went from left to right.

19 Q. Bullet sixteen?

20 A. Went left to right.

21 Q. And nineteen into twelve?

22 A. Sorry. I'm mixed up with the number.

23 Q. The one that broke the number, came out, went
24 right back into the body, left to right?

25 A. Yes.

7-10 1

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2 Q. And the one here in number eighteen which could
3 have gone into the body then would have gone left to right,
4 correct?

5 A. Yes, it could.

6 Q. And number thirteen, you remember that basically
7 went here to the back?

8 A. Yes.

9 Q. And could it have been in a -- Thirteen, these two
10 the body turning like this could have happened like that
11 right, Doctor?

12 A. I don't know it could happen.

13 Q. Now, let's talk about seventeen for a minute.
14 Seventeen went left to right cross the body?

15 A. It does not go across the body, it goes from front
16 over the back and I lose it in the abdominal cavity.

17 Q. You lost it?

18 A. I just could not follow it further because I find
19 some bullet fragment.

20 Q. Where did you find the bullet fragments?

21 A. I found some bullet fragments in the posterior
22 abdominal wall.

23 Q. I'm sorry, Sir, in the posterior?

24 A. Posterior abdominal wall in the back of the
25 abdominal area, in the back.

7-11 1

Veress - People - Cross

2 Q. How far back?

3 A. In the soft tissues I picked up some bullet
4 fragments.

5 Q. And you picked these up and you recovered them?

6 A. Yes, I did.

7 Q. And how come you didn't mark them and put them in
8 an envelope that said wound seventeen?

9 A. I had one, if I recall one envelope and it looks
10 like I just did not put the number on it, but I collected
11 some bullet fragments and other evidence and probably I
12 picked up that from that area.

13 Q. Now, you don't to really see the fragments on the
14 x-ray up you?

15 A. I don't recall.

16 Q. I put it to you sir, is it is not a fact that
17 wound number seventeen, which came in her, traversed the
18 body and, in fact, wound up across the body where this is
19 (indicating)?

20 A. I don't know.

21 Q. You don't know?

22 A. No.

23 Q. I'm pointing to the area on People's Exhibit 3-1
24 to the bullet, the shadow of the bullet which is in the
25 lower left hand corner of the x-ray film on People's Exhibit

1-12 1

Veress - People - Cross

2 J-I.

3 Doctor, you mentioned wounds of the heart. Would you
4 agree, sir, that your autopsy report does not indicate with
5 respect to each wound where the heart was injured; is that
6 correct?

7 A. Yes.

8 Q. And there is a difference, is there not, between
9 injury for example to the left ventricle or to the right
10 atrium?

11 A. Yes.

12 Q. What does a "tip" wound mean?

13 A. Top.

14 Q. Tip?

15 A. I'm not familiar with that term.

16 Q. Sorry?

17 A. I am not familiar with the term. I'm not using
18 it.

19 Q. You are not using it?

20 A. No.

21 Q. Did you at all use that word when you first
22 dictated your autopsy report and then cross it out when you
23 saw the final version?

24 A. I don't remember.

25 Q. Doctor, you agree, do you not, with the following

7-13 1

Veress - People - Cross

2 basic formula, if I could use this, 's a pathologist you
3 have to do some bookkeeping when it comes to wounds in the
4 body to make sure that you have all of the bullets you are
5 suppose to have and they measure up with the number of
6 entrances and the number of exists; isn't that correct?

7 A. Yes.

8 Q. And you would agree basically, "ould you not, that
9 the number of entrances into the trunk of the body has to
10 equal the number of bullets you find inside, "lus the number
11 of exits as long as bullets didn't split and cause different
12 exits? would you agree with that?

13 A. Yes.

14 Q. would you agree basically with that formula sir,
15 that for bullet wounds in the torso the number of bullet
16 wound entries equals the number of bullets found in the body
17 plus the number of exits?

18 I've just wrote what we just said.

19 A. re-.

20 Q. Okay. Now, when you first did your autopsy, and
21 for three years thereafter, you had bullets recovered in the
22 body, nine of them L-1, L-5, L-6, 7, 1, 12, 15, 10 and 16,
23 nine bullets; is that right?

24 A. Yes.

25 Q. And you had initially six exits, "ne, "wo, three,

1-14 1

Veress - People - Cross

2 four, eight, nine, thirteen; correct?

3 A. Yes.

4 Q. So what you had initially --

5 A. And the wounds of the arm.

6 Q. We are talking about the torso because they can be
7 reentry?

8 A. I'm sorry.

9 Q. So the bullets found in the body you initially
10 have nine, the number of exits, you have six; is that
11 correct; is that right, what we just did?

12 A. Yes.

13 Q. Now, the number of entries you had which, of
14 course, should be fifteen. You had seventeen of the 1, 2,
15 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, which you ^{initially} ~~usually~~
16 characterized as an entrance, 15, 16 and 17, correct?

17 A. Yes.

18 Q. So when you first did your autopsy you had
19 seventeen wounds going in, nine bullets found, and six
20 exits, right?

21 A. Yes.

22 Q. And now we know seventeen does not equal thirteen,
23 correct?

24 A. Yes.

25 Q. So that means you had to come up with two

7-15 1

Veress - People - Cross

2 disappearing bullets and you have two disappearing bullets,
3 one for wound fourteen which you say went in and just
4 disappeared after ten centimeters, ^{had} you even ^{another, or for wound}
5 seventeen that went in and disappeared after sometime,
6 right?

7 A. Yes.

8 Q. But they didn't disappear, Doctor, did they?

9 A. I could not find them.

10 MR. LITMAN: Give me a few minutes. I

11 hopefully can bring there to a very quick end.

12 Excuse me one second please, your Honor.

13 THE COURT: Sure.

14 Q. By the way, Doctor, let me mark please, with the
15 court's permission as defendant's X I think we are up to,
16 this chart.

17 (A chart marked Defendant's Exhibit A)

18 Q. Would you please look at Defendant's Exhibit X.
19 That is another anatomical chart, one of several that you
20 created in the past at the request of the prosecution,
21 indicating the entrances and exit wounds on the body of Andy
22 Liang, sir?

23 A. I prepared.

24 Q. Don't you see a handwriting on it?

25 A. This is the one.

1-16 1

Veress - People - Cross

2 Q. That maybe a photograph of it, but that is it?

3 A. It looks like it, yes.

4 MR. LITMAN: Your Honor I would offer this in
5 evidence as Defendant's exhibit X, sir.

6 MR. LITMAN: Show it to Mr. Waples.

7 MR. ~~LITMAN~~ ^{WAPLES}: Yes. I object, Judge.

8 THE COURT: I'm sorry.

9 MR. WAPLES: I object.

10 THE COURT: Overruled.

11 Q. Now, you recall, do you not, sir, that on the
12 shirt of the deceased that one of the bullets went right
13 through one of the buttons on the shirt; do you recall that?

14 MR. WAPLES: I'm sorry. Could I have the
15 question read back please?

16 THE COURT: You want to know whether the
17 witness could recall if one of the bullets went
18 right through the button on the shirt of the
19 deceased, on the chest in the center of the shirt,
20 sir.

21 A. I don't recall.

22 MR. LITMAN: Do you have the shirt here?

23 MR. WAPLES: Yes.

24 Q. Maybe we can find out without taking it out or if
25 you have your gloves, if you would be kind enough.

7-17 1

Veress - People - Cross

2 would you move your chair back a little bit,
3 Doctor. You don't have to hold it up, you can hold it down.
4 If you would look at the shirt right in the front.

5 Mr. LITMAN: May I approach the witness for a
6 moment.

7 THE COURT: Yes.

8 Q. You see that button, sir, on the front of the
9 shirt, it looks like about one, two, three, three buttons
10 down is completely missing with the fabric underneath it;
11 do you see that sir?

12 A. Yes, I do.

13 Q. And there seems to be a hole, what appears to be
14 to you be at least consistent with a bullet hole right in
15 that area that knocked in the fabric of the shirt and that
16 button, correct?

17 A. Yes.

18 Q. And, in fact, we can see at least a fragment of
19 the button?

20 A. Yes. I remember that, sir. I see that.

21 Q. Right here on the x-ray: This is people's exhibit
22 J-J in evidence, Your Honor. I can first turn it to the
23 court.

24 Now, I turn to you, sir, you see the piece right
25 over here?

7-18 1

Veress - People - Cross

2 A. Yes, I do.

3 Q. Which is on the film a little bit to the left of
4 the level of T-8 which would be, of course, on the right
5 side of the person's body.

6 You see this piece, Doctor, you agree that this
7 is, in fact, part of the button of the shirt?

8 A. Yes, I do.

9 Q. And, in fact, that piece is collected with other
10 fragments that I think Mr. Waples marked previously as
11 either 17 or 18, you see the piece in there?

12 A. Yes.

13 Q. Where is the piece of the shirt itself, the fabric
14 of the shirt that also went inside, did you recover that?

15 MR. WAPLES: Objection.

16 THE COURT: Sustained as to the form of the
17 question.

18 Q. Well, Doctor, you said before that to a previous
19 question that not only is the button missing, but the fabric
20 underneath is missing too; is that correct?

21 A. Yes.

22 Q. I'm asking did you recover the fabric of the shirt
23 that was shot away by that bullet, did you recover it?

24 That's the question.

25 A. I'm sorry. I don't know if I can answer it or not.

7-19 1

veress - reople - Cross

2 because it was there was an objection.

3 THE COURT: No. You can answer the question.

4 A. No, I did not.

5 Q. So it could be in the body somewhere?

6 A. Yes, it could. It could be outside too.

7 A. Now, I think I should be basically finished with
8 this, sir.9 Scientifically speaking, not what maybe or what might
10 be, the most you can tell us is that there were sixteen
11 bullets that hit Andy Liang; isn't that a fact?

12 A. Scientifically speaking now, yes.

13 Q. And the reason that is so is that although you
14 described twenty wounds, three of them the grazes, there is
15 one in the arm, number 16 and this one in the arm number 19,
16 all of them could have reentered the body, correct?

17 A. They could.

18 Q. So we get twenty take off three, we are down to
19 seventeen. Then, of course, this number fourteen is now an
20 exit not an entrance, now we are down to sixteen; is that
21 right?

22 A. Yes.

23 Q. Mr. Waples asked you whether all people who come
24 that you see obviously deceased at the morgue, if they are
25 all fingerprinted and you say they are not all

1-20 1

Veress - People - Cross

2 fingerprinted, right?

3 A. Yes.

4 Q. But Andy Liang was?

5 A. Yes, he was.

6 MR. LITMAN: Thank you, sir, your Honor.

7 THE COURT: Mr. Waples, can I see you for a
8 minute.

9 MR. WAPLES: I'll be very brief, your Honor.

10 THE COURT: That's okay. Go ahead.

11 MR. WAPLES: If that is what you are
12 inquiring about.

13 THE COURT: Go ahead.

14 REDIRECT-EXAMINATION:

15 BY MR. WAPLES:

16 Q. Mr. Veress, any doubt in your mind, sir, that Andy
17 Liang suffered a gunshot wound of entrance on the right side
18 of the neck in the area shown in photograph People's Exhibit
19 4-A in evidence?

20 A. No doubt.

21 Q. Is there any doubt in your mind, sir, that Andy
22 Liang also suffered a gunshot wound of entryway in the upper
23 left chest in the photograph 4-A, in this area shown here?

24 A. Yes.

25 Q. Marked as two on your diagram?

7-21 1 Veress - People - Redirect

2 A. Yes.

3 Q. Any doubt in your mind about that?

4 A. No.

5 MR. LITMAN: I'll stipulate that is there is
6 no doubt he suffered three, four, five, six,
7 seven, eight in the same direction.

8 THE COURT: Sir, I don't know that Mr. Waples
9 wants your stipulation at all. We talked about
10 doing that sort of thing in the open courtroom.

11 MR. WAPLES: I would prefer to do my own
12 redirect if I may, your Honor.

13 THE COURT: You have every right.

14 Q. Dr. Veress, is there any doubt in your mind that
15 Andy Liang suffered a gunshot wound of entry on the left
16 side of the chest in the area marked on the diagram number
17 three, sir?

18 A. No doubt.

19 Q. And, sir, is there any doubt that Andy Liang
20 suffered a gunshot wound or entrance at the area you marked
21 on the diagram as four?

22 A. No doubt.

23 Q. Likewise, Dr. Veress, is there any doubt in your
24 mind that Andy Liang suffered another gunshot wound of
25 entrance at the area marked five on the anatomical diagram?

7-22 1 Veress - People - Redirect

2 A. No doubt.

3 Q. Dr. Veress, is there any doubt in your mind, sir,
4 that Andy Liang also suffered a gunshot wound of entrance
5 that you marked six on the anatomical diagram?

6 A. No doubt.

7 Q. And is there any doubt, sir, is that Andy Liang
8 suffered a gunshot wound of entrance at the area you marked
9 seven on the diagram?

10 A. No doubt.

11 Q. And is there any doubt, sir, that Andy Liang
12 suffered another gunshot wound of entrance in the right side
13 of the chest at the area you marked eight on the diagram?

14 A. No doubt.

15 Q. And, sir, irrespective of where Andy Liang's right
16 nipple is now many centimeters to the right of the midline,
17 is there any doubt that he suffered two gunshot wounds of
18 entrance almost on top of that nipple, wounds that you
19 marked on the diagram nine --

20 MR. LITMAN: Ten and eleven.

21 Q. I'm sorry ten and eleven?

22 A. Yes, he suffered these gunshot wounds.

23 Q. No doubt in your mind about that?

24 A. No.

25 Q. Any doubt in your mind, sir, that he also suffered

7-23 1

Veress - People - redirect

2 a gunshot wound of entry or reentry on the left chest area,

3 A. No doubt.

4 Q. At the area marked twelve on the diagram?

5 A. No doubt.

6 Q. And also suffered a gunshot wound of entry at the
7 area marked thirteen on the diagram almost right next to
8 twelve?

9 A. No doubt.

10 Q. Is there also any doubt in your mind, sir, that
11 And- Liang suffered a gunshot wound of entry in the left
12 flank, the lower left flank, the area you marked fifteen in
13 red on the far right portion of the diagram?

14 A. No doubt.

15 Q. Is there any doubt, sir, that Andy Liang suffered
16 a gunshot wound of entry almost in the center of the back at
17 the area you marked sixteen in red on the diagram, on the
18 far right hand side?

19 A. No doubt.

20 Q. Do you have any doubt, sir, that Andy Liang
21 suffered another gunshot wound of entry at an area you
22 marked seventeen in the lower left chest on the diagram?

23 A. No doubt.

24 Q. Is there any doubt, sir, is that many of those
25 entrance wounds had corresponding exit wounds in Andy

7-24 1

Veress - People - Redirect

2 Liang's back at areas you denominated on the far right hand
3 portion of the diagram?

4 A. Yes.

5 Q. Areas which are shown in People's Exhibit 4-C in
6 evidence. Dr. Veress, is there any doubt in your mind that
7 all of this ballistics evidence, L-1, L-6, L-10 you
8 recovered during the autopsy of Andy Liang on June 10, 1988?

9 A. Yes, sir.

10 MR. WAPLES: Thank you. Nothing else, your
11 Honor. May the photographs be shown to
12 the jury, your Honor?

13 THE COURT: Well, let's complete the
14 examination. Then we can certainly do that first
15 thing in the morning.

16 RE-CROSS-EXAMINATION:

17 BY MR. LITMAN:

18 Q. There is no doubt that he suffered sixteen gunshot
19 wound to the torso,, correct, there is no doubt about that?

20 A. Correct.

21 Q. The doubt is the tracks and what happened inside
22 the body, right?

23 MR. WAPLES: Objection.

24 THE COURT: Sustained.

25 Q. Isn't that right, you even expressed some doubt?

7-25 1

Veress - People - Recross

2

THE COURT: It was sustained, Mr. Litman.

3

MR. LITMAN: I thought I changed the

4

question.

5

THE COURT: Now you are making a speech. You

6

are not asking a question.

7

Q. You have expressed before the jury this afternoon

8

some doubts about that the tracks; have you not?

9

A. There were some inconsistencies, yes.

10

MR. LITMAN: I have nothing further.

11

MR. WAPLES: Nothing further, your honor.

12

THE COURT: All right. Step down.

13

MR. WAPLES: Are we calling it a day, judge?

14

THE COURT: Do you want to watch them faint.

15

I think we have Detective Race's testimony to

16

complete; is that correct?

17

MR. WAPLES: Among other things, yes.

18

THE COURT: All right. Hopefully we will do

19

that tomorrow at 10 o'clock. We still have some

20

distance to go in this trial. You will hear other

21

evidence. It may effect your judgment about the

22

evidence you've already heard. It may confirm it,

23

may not confirm it, but the important thing is

24

that you maintain an open mind with respect to

25

what you heard and to be open to all other

RA

