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July 3, 2006

**\*\*Via Facsimile Transmission Only\*\***

The Honorable Patrick L. Willis  
Manitowoc County Circuit Court  
1010 S. Eighth Street  
Manitowoc, WI 54221-2000

Re: **State of Wisconsin v. Steven A. Avery**  
**Manitowoc County Case No. 05-CF-381**

MANITOWOC COUNTY  
STATE OF WISCONSIN  
**FILED**

JUL 3 2006

CLERK OF CIRCUIT COURT

Dear Judge Willis:

I am writing to reply briefly to one of the State's requested motions, specifically item #3 in the State's *Motion in Limine (Series 1)*, dated June 9, 2006. That item requests an order allowing the State to introduce "portions of Teresa Halbach's life history to the jury." The request is premature and insufficiently developed to permit the court to make a ruling because the State has not specified what evidence it seeks to introduce. All that is mentioned is "testimony which will identify Teresa's family status, employment and leisure activities." The State also mentions "some photographs" will be offered, but without knowing what is being offered and the reasons advanced for its probative value, the court cannot properly exercise its discretion. Thus, the defense objects to the court issuing a blank check to be filled in at the State's discretion. When the court does decide to exercise its discretion, the defense respectfully submits the following.

Mr. Avery intends no disrespect to the Halbach family, but there are legal limitations on the general class of evidence the State references. First, for any evidence to be admissible it must be relevant, that means "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." § 904.01, Wis. Stats. Evidence "which is not relevant is not admissible." §904.02, Wis. Stats. Finally, even evidence which is relevant should be "excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence." §904.03, Wis. Stats. Unfair prejudice results when the proffered evidence "has a tendency to influence the outcome by improper means or if it appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish or otherwise causes a jury to base its decision on something other than the established propositions in the case." *State v. Sullivan*, 216

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Wis. 2d 768, 789-90, 576 N.W.2d 30, 39 (1998).

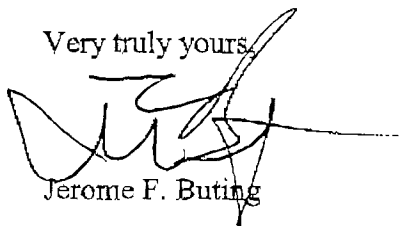
The State does not explain how any evidence of Teresa Halbach's life history is relevant and probative to the issues in this case. If the State believes some aspect of Teresa's life played a direct role in causing her death, or any of the other charged offenses, then it should explain how and why it is probative to the issues in this case.

The Halbach family, of course, can introduce evidence of Teresa's life history, family status, or employment and leisure activities at the time of any sentencing of the perpetrator of the crime. §950.04, Wis. Stats.; Article 1, Section 9m, Wisconsin Constitution. Her good character may be considered in the exercise of a court's sentencing discretion. *State v. Gallion*, 2004 WI 42, ¶ 68, 270 Wis. 2d 535, 569, 678 N.W.2d 197. But without demonstrating the specific relevance of the evidence at a proceeding where only the guilt or innocence of Mr. Avery is at issue, the proffered evidence is not admissible.

The court must be vigilant to prevent evidence which is unfairly prejudicial from influencing the jury in this case. The State has cited no authority to permit the introduction of evidence of the "life history" of a victim at a trial to determine the guilt or innocence of a defendant. *Hayzes v. State*, 64 Wis. 2d 189, 198, 218 N.W.2d 717 (1974), cited by the State for the use of photographs, does not concern the use of "lifetime" photographs of a victim, but instead involves the use of gruesome photographs of the victim's body. Sometimes, despite the potentially inflammatory nature of such photographs, they are nonetheless admissible because they better show the situation at issue than does the testimony of witnesses. 64 Wis. 2d at 199. That does not appear to be what the State intends here, so *Hayzes* is not helpful.

All parties to this case are sympathetic to the Halbach's for the loss of their daughter and sibling. But evidence which is designed to elicit the sympathy of a jury is expressly excluded under § 904.03. Without a clearer showing of what evidence the State seeks to introduce and how it is relevant and not unfairly prejudicial, this court should decline to grant the State's request.

Very truly yours,



Jerome F. Buting

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cc: Attorney Dean Strang (via USPS)  
Attorney Kenneth Kratz (via fax)  
Attorney Tom Fallon (via USPS)  
Attorney Norm Gahn (via USPS)