

1 of some kind.

2 THE COURT: Okay. I think they just want you to  
3 authentic the tape.

4 THE WITNESS: Thank you, Judge.

5 THE COURT: All right. (Witness excused.)

6 THE COURT: Is this a good quitting point?

7 MR. BURT: It would be.

8 THE COURT: Okay. Now remember tomorrow I'm going to have to  
9 adjourn at 3:30, so do y'all want to start early or start 9:30,  
10 it's fine with me. follows, to-wit:)

11 MR. HENDRIX: 9:30.

12 THE COURT: All right, 9:30 in the morning. Court  
13 will be in recess.

14 (WHEREUPON, a recess was taken August 10<sup>th</sup>, 2009; proceedings  
15 resumed August 11, 2009 as follows, to-wit:)

16 **AUGUST 11, 2009**

17 THE COURT: Call your next witness.

18 MR. BURT: Your Honor, we call Dr. Michael Baden.

19 (Witness sworn.)

20 THEREUPON,

21 DR. MICHAEL BADEN, MD FORENSIC PATHOLOGIST

22 was called as a witness by and on behalf of the Defendant/  
23 Petitioner and having been duly sworn was examined and testified  
24 as follows, to-wit:

25 DIRECT-EXAMINATION

1 BY MR. BURT:

2 Q] Good morning, sir.

3 A] Good morning.

4 Q] Could you state your name for us, please?

5 A] Michael Baden, B-A-D-E-N.

6 Q] And Dr. Baden, what is your business, or occupation?

7 A] I'm a physician, a forensic pathologist, medical examiner.

8 Q] Doctor, how long have you been a forensic pathologist?

9 A] I've been a forensic pathologist for some 44 years.

10 Q] Forty-four years?

11 A] Yes.

12 Q] Give us a brief summary of your educational background, the  
13 training that you need as a forensic pathologist?

14 A] Yes, I received a bachelor's of sciences degree in 1951  
15 from the City College of New York. A medical degree, MD degree,  
16 from New York University, NYU School of Medicine in 1959. I was  
17 then an intern resident, chief resident, at Bellevue Hospital  
18 Medical Center in New York City, first in internal medicine then  
19 in pathology. While a resident doctorate at Bellevue in 1960, I  
20 became a part-time assistant medical examiner for the city of  
21 New York. And upon completion of my training in 1965, became a  
22 full-time medical examiner, forensic pathologist for New York  
23 City. I stayed there until 1985, held a number of positions,  
24 including that of chief medical examiner for the city of New  
25 York.

1 Q] And what year did you become chief medical examiner for the  
2 city of New York?

3 A] That was in '78, 1978, 1979. In 1985 I became the chief  
4 forensic pathologist for the New York state police. That's a  
5 position I still hold, but that permits me to have a private  
6 practice. And I'm here as a private forensic pathologist, not  
7 as a representative of my other job.

8 Q] And in your role as a chief pathologist for the New York  
9 state police, do you have state-wide jurisdiction of cases in  
10 New York; is that the way that works?

11 A] Yes, jurisdiction, uh, in many parts of the state of New  
12 York and we're also available for consultation for any of the  
13 sixty-two counties of New York state.

14 Q] And you've held that position for how long?

15 A] Since 1985.

16 MR. BURT: Your Honor, I've marked next in our  
17 exhibits as #51, Dr. Baden's CV.

18 THE COURT: All right, it may be received.

19 (WHEREUPON, Defendant/Petitioner's Exhibit #51 was admitted and  
20 received into evidence and is appended on page .)

21 DIRECT-EXAMINATION, continuing:

22 Q] Doctor, I've put in front of you Exhibit #51. Is that a  
23 copy of your current CV?

24 A] (Witness examining same.) There's one page that's a  
25 summary biography that's used mostly by the New York state

1 police, and then the remaining seventeen pages is a recent copy  
2 of my curriculum vitae, which is a resume for doctors.

3 Q] Does it accurately set forth your educational and other  
4 qualifications?

5 A] Yes.

6 Q] And beginning on page four, does it set forth your publi-  
7 cations and presentations in the area of forensic pathology?

8 A] Yes.

9 Q] And it looks to be about separate publications or presen-  
10 tations in the area of forensic pathology?

11 A] Mostly publications; presentations are separate.

12 Q] Okay. Now, Doctor, are you what's called board certified?

13 A] Yes.

14 Q] Can you explain to the Court what board certification  
15 means, and how you became to be board certified?

16 A] Yes. There are twenty-four specialties in medicine, uh,  
17 which includes surgery, internal medicine, pathology, OB-GYN,  
18 uh, and largely after World War II, uh, a system was developed  
19 so that persons seeking out medical attention would have a means  
20 of determining whether their physician is, uh, specializes in  
21 the field of their potential illness. And what was developed  
22 was a system of testing and qualifications for each of the  
23 twenty-four specialties in medicine, uh, that require at least  
24 three satisfactions: one, there has to be a, uh, record of  
25 successful completion of studies in a recognized medical school;

1 second, there has to be evidence of completion, uh, successful  
2 completion of a internship and residency training in a specific  
3 specialty that the individual wishes to practice in; and  
4 thirdly, the individual has to then pass various examinations to  
5 demonstrate skill in that profession. So by that means, if an  
6 individual then passes all three, uh, requirements successfully,  
7 that person then becomes board certified in that specialty, or a  
8 diplomat of that specialty, same thing, and that means that the  
9 person has satisfied proper training and should be a good  
10 physician in that area - - not that he is, but that he could be.

11 Q] All right. Just like in lawyers - - there are good law-  
12 yers and bad lawyers.

13 A] Oh, really?

14 Q] Really. The fact that they are certified doesn't guarantee  
15 that they're good.

16 A] Yeah, but there's a better chance of them being good if  
17 they're certified, than if they're not certified, as with  
18 physicians.

19 Q] Okay. And within the field of pathology, are there  
20 different areas in certification, just within pathology?

21 A] Yes, each of the twenty-four specialties has sub-special-  
22 ties involved. In pathology, there are the main sub-special-  
23 ties are anatomic pathology, and clinical pathology. Those are  
24 the specialties that physicians who, uh, practice in a hospital  
25 are usually required to pass. Anatomic pathology is a specialty

1 in which the physician, uh, tests the physician on the anatomic-  
2 al changes in the body. And what I mean by that, pathology it-  
3 self is the specialty in medicine concerned with determining  
4 what's wrong with the human body: disease, uh, cancer, stroke,  
5 heart disease. The diagnosis is part of pathology. The path-  
6 ologist then gives that information to the treating physician  
7 who treats the patient accordingly. So anatomic pathology con-  
8 cerns things like reading, looking at biopsies under the  
9 microscope to, uh, determine cancer, not cancer, looking at  
10 autopsies, seeing what's wrong with the patient. Clinical  
11 pathology is looking at the chemistry of the body: electrolytes,  
12 PSA levels, uh, glucose levels, blood levels are all part of the  
13 laboratory medicine the hospital, which is part of clinical  
14 pathology, and most hospital pathologists are required to have  
15 board certification in both of those specialties; clinical  
16 pathology and anatomical pathology. Another sub-specialty is  
17 forensic pathology. That requires further training, uh, largely  
18 on unnatural conditions that affect the body, whereas the  
19 hospital pathologist knows a great deal about heart disease and  
20 cancer and kidney disease and strokes, their specialty. A  
21 forensic pathologist goes on to learn more about injury and  
22 trauma, accident, suicide, homicide are the areas that the  
23 forensic pathologist is trained in and, uh, has expertise beyond  
24 the hospital pathologist.

25 Q] And your, your, uh, certification is in the area of

1 forensic pathology?

2 A] Well, actually, it's all three areas: anatomical pathology,  
3 clinical pathology and forensic pathology. My practice as a  
4 physician is largely, ninety-five percent, in forensic  
5 pathology.

6 Q] Doctor, as a forensic pathologist with forty-plus some  
7 years of experience in this field, approximately how many  
8 autopsies have you conducted?

9 A] I have preformed more than twenty-thousand in medical/legal  
10 autopsies over the years.

11 Q] Doctor, do you hold any teaching appointments?

12 A] Well, I have held, uh, professorial teaching appointments  
13 for many years in, uh, New York University School of Medicine,  
14 Albert Einstein School of Medicine, Albany Medical Center, which  
15 is where the state police are located, uh, John Jay School of  
16 Criminal Justice and New York Law School, where at times I've  
17 taught courses or given lectures in how forensic pathology  
18 relates to what the students are learning there.

19 Q] Now you said in addition to being the chief pathologist for  
20 the New York state police, do you have a private consulting  
21 business?

22 A] Well, practice. I'm a physician and in addition to doing  
23 work for the New York state police, I'm permitted to have a  
24 private practice.

25 Q] And is part of your private practice or otherwise, are you

1 consulted by law enforcement agencies, other than the New York  
2 state police?

3 A] Yes. Outside of, uh, I am able to consult with police  
4 agencies privately, outside of New York state. Anything I do in  
5 New York state will be part of my New York state police function  
6 but I'm also able to do private consultations for outside of New  
7 York state police agencies.

8 Q] And what kind of agencies have you done, uh, autopsies for  
9 in connection with your consulting practice?

10 A] Attorney general offices, district attorneys, uh, around  
11 the country, uh, homicide investigators, uh, I also do consul-  
12 tations for defense attorneys around the country, outside of New  
13 York state.

14 Q] Have you, have you consulted with the FBI on cases?

15 A] Yes, the FBI, I'm involved with a number of cases with the  
16 FBI presently, and the Department of Justice with drug enforce-  
17 ment agency, the ATF on a federal level; yes.

18 Q] And in terms of the, uh, the amount of time you spend con-  
19 sulting with law enforcement versus the amount of time you spend  
20 consulting with defense lawyers, can you give me just a rough  
21 breakdown?

22 A] In my official functions for the New York state police,  
23 it's a hundred percent for law enforcement. In my private  
24 capacity, it's about fifty-fifty. I don't have a predilection;  
25 fifty-fifty for defense, for prosecution or in civil cases, but



1 I do consult in civil cases for plaintiffs or defendants, uh,  
2 approximately fifty-fifty.

3 Q] Uh, can you give us an example of some of the cases that  
4 you have worked on either in doing autopsies or reviewing  
5 autopsy findings by other pathologists?

6 A] Well, one that would immediately come to mind is, uh, I  
7 did, uh, I was the chief forensic pathologist for the U.S.  
8 Select Committee on Assassinations back in the late '70s which  
9 was charged with the responsibility of reinvestigating the  
10 deaths of President John F. Kennedy and Dr. Martin Luther King.  
11 In both of those, uh, instances, as part of the forensic path-  
12 ology, uh, section, we had to review the autopsies of other  
13 doctors, uh, the, the photographs, the microscopic slides and in  
14 that situation, were able to, uh, under oath, take testimony  
15 from one of the doctors involved in both of those, uh, uh,  
16 investigations. So it's not uncommon for a forensic pathologist  
17 to be a consultant in case that he or she did not do the  
18 autopsy, because normally, the defense persons would not know  
19 that they are defendants until after the body has been autopsied  
20 and buried, or cremated. So it's quite common for our system of  
21 justice to work for, in any homicide case, for the defense  
22 attorneys to be able to consult with forensic pathologists, just  
23 the basis of the record that was established by the person who  
24 did the autopsy.

25 Q] Does your work involve work outside of this country?

1 A] Yes.

2 Q] And could you explain what you do in other countries in  
3 connection with forensic pathology?

4 A] Yes, uh, forensic pathology medicine has become kind of  
5 globalized, uh, and investigation of death in other countries  
6 are similar to the way they're done in the United States. And  
7 I've been called upon by prosecutors, by defense attorneys, by  
8 families, uh, to investigate deaths in Canada, in Israel, in  
9 Gaza, in Monaco, in Brazil; most recently, Brazil and Taiwan,  
10 uh, I had to read autopsies of persons who died in those areas.  
11 Just a couple of weeks ago, and in South America countries, uh,  
12 that I have been to Kuwait, done autopsies in Kuwait, and I have  
13 testified, uh, I testified just a number of months ago in a  
14 court martial procedure concerning the homicide in Camp Victory  
15 in Baghdad.

16 Q] How many times have you been qualified in the field of  
17 forensic pathology, either for the prosecution or the defense?

18 A] Oh, more than a thousand times over the years.

19 MR. BURT: At this point I would offer Dr. Baden  
20 as an expert in forensic pathology, and will read into  
21 the minutes his CV.

22 I don't know if there is questioning at this  
23 point.

24 THE COURT: Any voir dire?

25 MR. HOLT: No, Your Honor.

1                   THE COURT: All right, you may proceed.

2                   MR. BURT: Thank you.

3 DIRECT-EXAMINATION, continuing:

4 Q]     Doctor, I assume from the fact that you work for a state  
5 police agency and also do defense work, that you might have some  
6 perspective on this question, which is why would the defense in  
7 a criminal case need the services of an independent pathologist;  
8 for instance, you work for the state of New York. Why can't we  
9 just rely on police pathologists in forensic pathology? What  
10 role does independent examination by a defense expert play in  
11 pathology?

12 A]     Two very obvious answers. One is that even police forensic  
13 pathologists can make mistakes. So there should always be a  
14 healthy concern on the part of the defense attorneys, that under  
15 the most innocent of circumstances, mistakes can be made in  
16 doing autopsies and evaluations of autopsies. Another reason,  
17 which was pointed out very strongly recently, a few months ago,  
18 by the report from the National Academy of Sciences, is that is  
19 a recognized bias in crime laboratories and medical examiners  
20 around the country toward prosecution. And the National Academy  
21 of Sciences made a strong recommendation to have a more  
22 independent approach to homicides, and that one of the concerns  
23 was that's why more and more people are being released from jail  
24 for being wrongly convicted - - this is the National Academy of  
25 Sciences - - and, uh, uh, why a number of the homicide solve

1 rate in this country has gone from eighty-five percent in 1960  
2 to less than fifty percent today because of problems in  
3 investigations by crime labs and medical examiners, uh, into  
4 homicidal death. So I think it's, uh, it's important that if  
5 somebody's life is at stake, in a murder, particularly, uh, that  
6 the defense should feel, uh, satisfied that the evidence being  
7 presented is valid evidence. Very often we may even do second  
8 autopsies, uh, do this from the defense point of view, just  
9 confirms what was done initially. But the family and the  
10 attorneys often accept that more readily, uh, than if somebody  
11 that they have trusted has done it rather than if the, uh,  
12 independent, uh, crime lab or forensic pathologist has done it.

13 Q] Is your work, working for the state, for instance, as a  
14 chief pathologist for the New York state police, do you find  
15 that when defense lawyers in cases you're involved with for the  
16 prosecution, hired independent pathologists, that is, makes the  
17 process more accurate and leads to discovery of mistakes made by  
18 you?

19 A] Well, two things. Yes, in general, I think that I welcome  
20 and I'm always pleased when a defense attorney, when I'm doing  
21 an official autopsy, be that when I'm with the New York state's  
22 medical examiner's office or with the state police, hire their  
23 own independent forensic pathologist to be present when I'm  
24 doing the autopsy to make sure that we both see the same thing,  
25 that if I overlook something that pointed out, uh, it's hard to

1 have on your conscious, uh, uh, the fact that somebody's going  
2 to jail for the rest of their lives, uh, when the possibility of  
3 a mistake exists, so I feel more comfortable when there is  
4 another pathologist there who independently, uh, is able to make  
5 a conclusion which we would both agree upon.

6 Q] And turning that around, when you are hired by defense  
7 lawyers to review the work of prosecution pathologists, do you  
8 often find that it leads to the discovery of mistakes and a more  
9 accurate process?

10 A] Well, sometimes it does, sometimes.

11 Q] Now how long have you been doing defense consulting?

12 A] When I started out in 1965 full-time for the forensic, uh,  
13 for the New York City medical examiner's office, uh, we were  
14 immediately encouraged by the chief medical examiner, Milton  
15 Helpern at the time, to do private consultations, for two  
16 reasons: one, we were paid so little that, uh, I was making less  
17 money as a medical examiner than I was a chief resident at  
18 Bellevue Hospital, uh, so it was a way of supplementing salary.  
19 But also, to learn that it isn't just the good guys against the  
20 bad guys. There's a tendency for us, uh, young medical  
21 examiners, working only with the police to deal with the good  
22 guys versus the bad guys, and every now and then we learn that  
23 the good guys can make mistakes. So it gives us a better pers-  
24 pective on why the medical examiner should be independent.

25 Q] Now working in that, I assume you have seen your share of

1 cases involving water, bodies found in water, drowning cases?

2 A] Yes.

3 Q] Uh, what part of your practice has that been, uh,

4 investigating drownings, uh, bodies found in water?

5 A] I would say a relatively small part, but we would have a  
6 hundred or more cases a year, uh, you know, people in bodies of  
7 water, people in, you know, Hudson River and around, and people  
8 in bathtubs at home, you know; people in pools, people drowning  
9 in pools. So the small but significant, uh, part of our work.

10 Q] Doctor, I want to ask you about your involvement in this  
11 case and take you back to 1998 when you were attending, I  
12 believe it was a conference out in San Francisco. Do you recall  
13 having some initial connection with this case back in 1998?

14 A] Yes.

15 Q] Could you explain to the Court how you became involved back  
16 in 1998?

17 A] Well, the American Academy of Forensic Sciences is the, uh,  
18 major organization that, uh, to which forensic scientists belong  
19 and that includes not only pathologists, but criminalists,  
20 toxicologists, dentists, forensic dentists, uh, and the  
21 serologists, people involved, and police, people involved in  
22 criminal investigations. And it is not uncommon at the meetings  
23 that, uh, police, attorneys, other pathologists will bring cases  
24 and show them to various members, uh, to get opinions about what  
25 current cases are being investigated. And I believe back in

1 the, uh, I think it was '98, that somebody did come and show me  
2 some photos relative to, uh, this case.

3 Q] Okay. I think we have marked, it's in evidence, it's  
4 Plaintiff's Exhibit #36 and it was identified by Mr. Stidham,  
5 who is the trial counsel in this case, as an e-mail that he  
6 wrote on February 22, 1998, documenting a meeting he had with  
7 you at this convention that you referenced?

8 A] (Witness examining same.) Right.

9 Q] And it says "I feel my trip to San Francisco was quite  
10 fruitful. The meeting I had with Turvey, Baden and David went  
11 real well. Dr. Baden seems to have a genuine interest in the  
12 case and I feel his input will be quite valuable." And he also  
13 goes on to say that, uh, there was some discussion of the  
14 possibility of some of the injuries in the photos that you  
15 looked at as being contributive to animal predation was also  
16 discussed?

17 A] Something like that; yes, sir.

18 Q] Now it's been some time, sir, and I assume you don't have a  
19 vivid recollection of what photographs you looked at, or what  
20 your conclusions were?

21 A] That's correct. My memory is I looked at something like,  
22 uh, like necrophagia, uh, I notice you used the term here, uh,  
23 depredation, uh, but in general, necrophagia is the, uh, is the  
24 eating of tissue from dead bodies by animals, uh, by anybody,  
25 but mostly animals.

1 Q] So is it fair to say that based on your review of the  
2 photos back then, whatever was shown to you, you had some  
3 discussion about whether there was some animal depredation, but  
4 your involvement at that point was pretty minimal?

5 A] Yes. That is, we look at things and give some, pontificate  
6 some opinion we might have and then, uh, usually, we don't hear  
7 anything more about it.

8 MR. BURT: And I want to mark next in order, if I  
9 could, two letters from Mr. Stidham's trial file.

10 One is dated March 5<sup>th</sup>, 1998 and the second is  
11 dated May 25<sup>th</sup>, 1998. And I'll mark those  
12 collectively, and this is Exhibit #52.

13 DIRECT-EXAMINATION, continuing:

14 Q] Doctor, I'm showing you Exhibit #52 and referencing first  
15 the letter of March 5<sup>th</sup>, 1998. Is that a letter from Mr. Stidham  
16 to you concerning this case?

17 A] (Witness examining same.) Yes, that first letter you read  
18 from was not to me. That, I hadn't seen.

19 Q] Okay?

20 A] But in March the 5<sup>th</sup>, he wrote a letter, uh, to me in which,  
21 uh...

22 Q] ...what information did he provide you in that letter at  
23 that point?

24 A] In which he, uh, thanked me for looking at, uh, the  
25 material he had with him and asked for some information, some



1 questions about how long the bodies had been in the water, could  
2 mosquitoes leave marks on the bodies; you could see an autopsy,  
3 and the third question was do beetles or other animals cause  
4 damage to bodies after death.

5 Q] Okay. And did he include any material with that letter, or  
6 was it just an inquiry?

7 A] He was inquiring as I recall, he may have at some point  
8 later, sent me some affidavits of other experts, but not at that  
9 time.

10 Q] And in March when you received that letter, did you have  
11 any sort of retention, retainer agreement with Mr. Stidham?

12 A] No.

13 Q] He hadn't paid you any fee?

14 A] No, I didn't ask for any.

15 Q] No obligation, and you looked at these photos when you were  
16 at the meeting, but when he wrote to you in March he had not  
17 formally retained you to do any work on the case?

18 A] No, and he had asked some questions that I thought I had  
19 gone over previously, like, uh, you can't look at a body and  
20 tell how long it's been dead; you have to know more information  
21 about it. And that was one of his questions here.

22 Q] Now did he then write you a second letter which I think was  
23 dated May 25<sup>th</sup>?

24 A] May 25, 1998.

25 Q] And what did he want you to do in this letter; what infor-

1 mation did he provide you?

2 A] He, he sent me the affidavits of a dentist, I believe, and  
3 a, uh, entomologist, somebody who is an expert in bugs, and  
4 asked me if I could testify at a hearing coming up on June 8<sup>th</sup>,  
5 you know, two weeks away.

6 Q] Now that was in connection with Mr. Echols' hearing, I  
7 believe?

8 A] I believe so; yes.

9 Q] So he's writing you and he's asking you to come and testify  
10 in a hearing that's going to take place less than two weeks  
11 away?

12 A] For which I had received no information to review, to have  
13 an opinion.

14 Q] No information, and of course, you still didn't have a  
15 retainer agreement with him; right?

16 A] That's true.

17 Q] And the information he sent you, uh, the experts you  
18 mentioned, a odontologist?

19 A] A dentist, a forensic dentist, yes; and, uh, a bug doctor.

20 Q] A bug doctor? Who was the bug doctor?

21 A] Neil Haskin - - Neil Haskell, he's a very good bug guy, but  
22 not related to my opinions.

23 Q] Right. Uh, did you review the declarations that he sent to  
24 you?

25 A] Yes.

1 Q] What were the import of the declarations and what were  
2 these people saying at that time?

3 A] I think they were talking, uh, I think they were referring  
4 to possible human bite marks on the body and the age of how long  
5 the body had been dead.

6 Q] Now the affidavit from Dr. Gavin, who was the odontologist,  
7 he was opining that a mark, uh, I believe it was Mr. Branch, was  
8 a human bite mark, was he not?

9 A] Yes.

10 Q] Whereas the bug guy...

11 A] ...oh, I'm sorry. I'm sorry. Uh, I think he was, uh, of  
12 Mr., uh, that there was a bite mark on Steven Branch's face.

13 Q] Of human origin?

14 A] That he thought was of human origin; yes.

15 Q] Okay. And that the bug guy, Dr. Haskell, was opining that  
16 there was possible animal depredation, was he not?

17 A] Yes.

18 Q] What did he say in that letter?

19 A] Uh, he said that from his experience, uh, that there were,  
20 uh, that there may have been various animals that caused the,  
21 the, uh, the marks on the face and, uh, the result of feeding by  
22 either aquatic arthropods, crawfish, in parenthesis, or fresh-  
23 water fish, was Dr. Haskell's suggestion.

24 Q] Okay. And when Mr. Stidham sent you this declaration, did  
25 he send you any materials, or was it just a declaration?

1 A] That was it, I think, as I recall.

2 Q] So you didn't have any photographs, you didn't have any  
3 medical examiner testimony and yet, Mr. Stidham was asking you  
4 to come to Arkansas and testify two weeks down the line in  
5 essentially a case that you hadn't been retained?

6 A] Well, if that's what - - the lack of retaining, which is -  
7 - but that I didn't have enough information to give an opinion.

8 Q] So did you hear back from him after he sent you that  
9 material?

10 A] No, I don't recall ever hearing from him again.

11 Q] Now did there come a time when you reconnected with this  
12 case at some point, either through Mr. Stidham or through  
13 another aspect?

14 A] Yeah, I think some time in 2003, I did have a conference...

15 Q] ...2003?

16 A] I'm sorry. Sometime afterwards.

17 Q] Some time after you received that letter from Stidham in  
18 1998?

19 A] Yeah. That was the letter - - I didn't hear from Mr.  
20 Stidham again, but when you said "another expert," it was a few  
21 years later, uh, well, maybe 2006, uh, I don't recall - - Dr.  
22 Spitz did show me some photographs of the same case.

23 Q] Okay. And, uh, can you tell me the circumstances of which  
24 Dr. Spitz was showing you some photos?

25 A] I think it was also a, uh, we, we, uh, participate together

1 doing a number of homicide cases each year, and it was one of  
2 the conferences, I believe that he showed what he thought was  
3 interesting, uh, we show each other interesting cases, or cases  
4 that we like each other's opinion. And he had shown me some  
5 photographs, as I recall, of, of, well, relative to this, to  
6 these deaths.

7 Q] And did you form any opinions at that point when he showed  
8 you those photos?

9 A] Well, when I looked at the, uh, the photographs, I had the  
10 same opinion as I had with, uh, previously with Mr. Stidham.  
11 The marks I did see, the photographs, I did see. Not a lot of  
12 photos, uh, were of postmortem, uh, necrophagia, the marks on  
13 the body caused by animal activity after death.

14 Q] And, uh, was this conclusion something that you had to  
15 study the photos for a long time in order to make sure, or is  
16 this something that just sort of jumped out at you, or how would  
17 you characterize it?

18 A] No, it was like looking at your grandmother. You know it's  
19 your grandmother - - it's either your grandmother or not. It's  
20 looking at the photos, uh, these look very much like postmortem  
21 animal activity. I had that opinion very quickly.

22 Q] All right. Now after that meeting with Dr. Spitz, did you  
23 get formally retained in the case by counsel for Mr. Echols; and  
24 specifically Dennis Riordan?

25 A] Yes.

1 Q] And he retained you and then what happened?

2 A] Dennis Riordan, uh, retained me and, uh, sent me materials  
3 and at some point afterwards, I think it was in May of 2007, uh,  
4 we had a conference, uh, a conference was arranged, uh, in  
5 Little Rock, Arkansas with Dr. Peretti, the prosecutors, the  
6 experts for the defense, relative to the findings of the  
7 different experts. Uh, for example, uh, I had been sent  
8 material; I told Mr. Riordan my opinion that some of the  
9 important evidence in the case, that is, cults, satanic cult,  
10 cutting off penises and injuring a person, uh, was just wrong;  
11 that part of it was just wrong. And, uh, I think, Dr. Di Maio,  
12 Dr. Vincent Di Maio, separately and independently, came to the  
13 same conclusion.

14 Q] Who is Dr. Vincent Di Maio?

15 A] He just retired as the chief medical examiner in San  
16 Antonio, Texas, and he has written some books on forensic path-  
17 ology that are widely used. Dr. Spitz has written the bible and  
18 Dr. Di Maio has written some very good books, in addition to  
19 what Dr. Spitz has written about.

20 Q] Is Dr. Di Maio, as well as Dr. Spitz, are they two people  
21 who are renown in the field forensic pathology?

22 A] Yes. Yes. Absolutely.

23 Q] So Mr. Riordan sent you materials. What materials did he  
24 send you; do you recall?

25 A] I think he sent me the autopsy reports and discs with

1 hundreds and hundreds of photographs.

2 Q] These are about the crime scene, and the autopsy?

3 A] Crime scene, autopsy photographs, uh, and I believe the  
4 testimony from the first trial, the trial in 1993.

5 Q] So it would be Dr. Peretti's testimony at the Misskelley  
6 and Echols/Baldwin trial; there were two trials?

7 A] Yes, the testimony from each of those trials; from both  
8 trials.

9 Q] Okay. And did you review all of that material?

10 A] Yes.

11 Q] Just in general, can you tell me what conclusion you reach-  
12 ed at that time in terms of what he was saying?

13 A] Well, I...

14 Q] ...you don't have to give the specifics...

15 A] ...after I reviewed the materials, I was concerned that a  
16 mistake had been made in the, uh, attaching guilt to the three  
17 people who were convicted. Uh, that, uh, the, the testimony  
18 about cults generating from injuries in the body, bodies, par-  
19 ticularly the, what was testified to as the cutting off of the  
20 penis and scrotum, or cutting the penis and removing the testes,  
21 uh, by a human being, was just wrong.

22 Q] "Was just wrong" in the sense that the pathologist's  
23 testimony attributing penile injuries to somebody cutting them  
24 off was wrong? Is that what you mean?

25 A] That's correct. Because the way I read the transcripts and

1 all, it sounded like that was, that finding by the pathologist  
2 was seized upon to, uh, go along with satanic cult activity,  
3 which was popular around that time. In 1993 there were a number  
4 of satanic cult trials being investigated and uh, that there  
5 was, uh, and this was based on incorrect, uh, evaluation of the  
6 injuries on the body. I also felt that a lot of the other  
7 injuries on the body, on the bodies of the three boys were  
8 animal activity of various kinds, uh, and that, uh, the boys,  
9 uh, my opinion was that they were victims of homicide, that they  
10 had been hit on the head by an object, because all three had  
11 skull fractures and damage to the brain, contusions to the brain  
12 which would have made them unconscious at the time of those  
13 injuries. And that, uh, and those injuries had a lot of blood  
14 around them, whereas all of the other injuries didn't have any  
15 blood around them, which is part of how we identify postmortem  
16 injuries. And that, uh, however, there was evidence in all  
17 three cases, in all three deaths, that they did breathe in some  
18 water from the, uh, from the, uh, uh, body of water in which  
19 they were found. So I would agree that, uh, the cause of death,  
20 uh, were multiple injuries and drowning. I think that one of  
21 them, Dr. Peretti said was just multiple injuries, but I think  
22 there was also evidence that that child had been alive; so alive  
23 and breathing in water is what makes a drowning, uh, it doesn't  
24 tell us whether they were conscious or not and I think from the  
25 head injuries, which occurred before they were put into the



1 water, uh, the three of them were most probably not conscious at  
2 that time.

3 Q] So let me see if I understand. Your concern after review-  
4 ing the material was not so much as disagreeing with Dr. Peretti  
5 about the cause or manner of death, but rather in his testimony  
6 about the source of the, what you perceived to be the animal  
7 activities; the penile injuries and other injuries as well?

8 A] Yes. I was concerned that a proper forensic pathologist  
9 should know the difference between postmortem injuries and, uh,  
10 premortem injuries. And when I discussed this with, uh, uh,  
11 attorney Riordan, uh, I felt that the best way to sort this out,  
12 because my, my naïve feeling is, and I'm often disappointed, is  
13 that when you have forensic pathologists disagreeing, that you  
14 should bring them together, both sides together to discuss with  
15 the lawyers to see what the strengths or weaknesses are, or  
16 what, what is agreed upon or what isn't agreed upon. And my  
17 feeling was that it would be, it might be useful to have a  
18 meeting with Dr. Peretti and Dr. Sturner, if he were available,  
19 uh, and with the experts for the defense and see where we agree  
20 or where we don't agree, uh, in a non-adversarial situation,  
21 such as in the courtroom.

22 Q] Okay. I understand. I have marked next in order a letter  
23 from Mr. Riordan to Brent Davis dated March 9, 2007 - - I  
24 should say e-mail - - and I'm showing you this. Doctor, are you  
25 aware that this, pursuant to your discussions with Mr. Riordan,

1 which were proposing that this meeting take place and Mr.  
2 Riordan then called his office, Mr. Davis, the prosecutor and  
3 later sent a letter suggesting such a meeting?

4 A] Yes, I was aware that Mr. Riordan did send a letter to,  
5 well, I thought also to the, to the, uh, uh, Dr. Peretti's  
6 office.

7 Q] You were aware that in this letter Mr. Riordan set forth  
8 generally your findings and the findings of the other experts,  
9 and he said in the letter "we will be prepared to present for  
10 you forensic evidence in court, but because we do truly believe  
11 in the accuracy of these medical opinions, we would like to  
12 present evidence to you in a consultative, rather than  
13 adversarial process. You have asked with a not inappropriate  
14 note of skepticism whether we are prepared to lay all of our  
15 cards on the table disclosing all opinions we have received,  
16 rather than merely the ones that are supportive of our position.  
17 I am prepared to do so provided that we receive a simple quid  
18 pro quo, an assurance that you and any experts that you utilize  
19 will approach the subject without an adversarial agenda, letting  
20 the science take you where it will. We are also more than  
21 willing to cooperate in developing a process for further  
22 evaluation of this issue by mutually agreed upon experts." You  
23 are aware that that letter got sent with that particular  
24 statement?

25 A] Yes.

1 Q] Okay. And after that letter was sent, was there in fact a  
2 meeting arranged where all of the defense experts, or at least  
3 the ones that were available, excluding Dr. Spitz, I believe,  
4 met with Dr. Peretti?

5 A] Well, I think this letter is dated March 9<sup>th</sup>, 2007, and by  
6 May 17<sup>th</sup>, I think it was, we did have a meeting in Little Rock.  
7 And the only reason Dr. Spitz wasn't there was because he had a  
8 prior commitment. He wasn't excluded from it.

9 Q] Right. Okay. Next in order would be another letter, this  
10 one dated May 15, 2007 by me to Dr. Peretti on the eve of this  
11 meeting indicating that the meeting would take place on May 17<sup>th</sup>  
12 and outlining in some detail what you and the other experts had  
13 concluded; correct?

14 A] Uh, you know what? I don't know if I've seen, if I've read  
15 this before. But that, what it seems, yeah, this is a letter to  
16 Dr. Peretti, uh, indicating what the defense experts have  
17 reviewed and what our opinions are.

18 Q] Okay. Now following that letter did you in fact meet on  
19 the 17<sup>th</sup> of May with other defense experts?

20 A] Yes, in Dr., I think it was Dr. Peretti's office, the, the  
21 medical examiner's office. We met with Dr. Peretti and I  
22 believe at least two of the prosecutors.

23 Q] Brent Davis?

24 A] Yes.

25 Q] Okay. And who were the experts there representing the

1 defense; do you recall?

2 A] What I recall was Dr. Di Maio, Vincent Di Maio, was there,  
3 who had been a teacher of, of, uh, Dr. Peretti, as I recall, uh,  
4 who knew Dr. Peretti well.

5 Q] Some personal connection?

6 A] Yes. I had not really, uh, been in contact with Dr.  
7 Peretti before.

8 Q] But you knew Dr. Sturner, though; right?

9 A] Yeah. Dr. Sturner and I worked together in New York City  
10 in the '60s. And when I was asked by attorney Riordan to re-  
11 view the material and after I thought that, uh, I had my  
12 concerns about, uh, uh, confusion between postmortem and  
13 premortem injury, uh, I did call Dr. Sturner, who was retired  
14 and living in South Carolina, uh, and I knew him all of the  
15 years that we worked together and we have children, daughters,  
16 who went to Brown together, and stuff like that. Uh, he used to  
17 teach at Brown. And, uh, I called him just to discuss that, you  
18 know, my opinions differ with what Dr. Peretti said and my  
19 understanding is that he had agreed with Dr. Peretti. And he  
20 advised me that he retired, that he doesn't remember that much  
21 of the case; he remembered the case but not very much about it  
22 and, uh, wasn't going to attend the meeting; I'm talking about  
23 the meeting that we were going to have; he was not going to be  
24 there.

25 Q] He said he was not going to be there?

1 A] He told me that, uh, I don't know if he was asked, but he  
2 told me, I asked if he was coming to the meeting that's being  
3 set up and he said no.

4 Q] And so what, what did you and the other experts share with  
5 Dr. Peretti in this meeting?

6 A] Well, at the meeting, uh, we, we said, Dr. Baner and I did,  
7 and also Dr. Souviron and other, you know, forensic dentists,  
8 and investigators...

9 Q] ...uh, Dr. Souviron was there, as well?

10 A] Dr. Souviron was there, uh, because there were some dental,  
11 there were some bite mark issues.

12 Q] And also, was Dr. Robert Wood from Canada and other  
13 forensic odontologists present?

14 A] Yes, and Dr., uh, well, yes, yes. I don't remember every-  
15 body, but because there was a dental issue that was separate  
16 from the forensic, uh, pathology issue.

17 Q] And, and among the defense experts who were there, that is,  
18 Dr. Souviron, Dr. Wood, Dr. Di Maio and yourself, was there a  
19 consensus of opinion, or was there disagreement among you?

20 A] Well, as I recall, as far as the forensic pathology, Dr. Di  
21 Maio and I agreed and spoke to Dr. Peretti in the opening, among  
22 the ten or twelve of us who were in the room, that we disagree  
23 that this was, that what he was describing as, uh, the cutting  
24 of the penis and, uh, other sexual, uh, findings, even to  
25 dilatation of the anus, I mean, which, uh, he has in his reports

1 indicating some kind of sodomy, uh, which we felt independently,  
2 was just normal anus, you know, the normal anus that happens  
3 after death, and that, uh, we discussed that. We told him our  
4 opinions, uh, he was very polite and very accommodating, you  
5 know, he was very, uh, he spoke very nicely to us. He didn't  
6 say very much about his opinions, uh, and we were under the  
7 impression, we had asked him for some things like, uh, "Dr.  
8 Peretti, have you seen postmortem predation or postmortem  
9 necrophagia of bodies in water in Arkansas," you know, because  
10 Di Maio said in his experience, these looked like animal  
11 activity, and he said he thought he had, he wasn't sure, but  
12 that he was or was going to do a study about the last ten years  
13 in all of the drowning cases in Arkansas, uh, to see if drowning  
14 in the, uh, outside of, outside and not pools and not bathtubs,  
15 uh, what kind of, of, uh, injuries, if any, were caused by  
16 drowned bodies in Arkansas, to see what his experience was. And  
17 he was going to send that to us, uh, after they completed this  
18 ten-year study of drowning people.

19 Q] Now that, uh, meeting took place in May; did you ever hear  
20 back from him, did he ever provide that?

21 A] No, he, he was going to get back to us on a couple of  
22 things but, uh, never did. He was polite, he was, uh, but he  
23 never got back to us and never really, uh, never really told us  
24 anything about his opinions, other than those were his autopsy  
25 reports and he stuck by - - he said he would consider what we

1 said but that, uh, that he didn't say that he changed any of his  
2 opinions as presented in the trials and the autopsy reports.

3 Q] And was he ever forthcoming, either at the meeting or at  
4 any time, or at any time up to according to the time he wrote a  
5 letter to the prosecutor about his reasons for disagreeing with  
6 you and the other experts?

7 A] No.

8 Q] Now are you aware that, uh, I've marked next in order  
9 another letter, October 4, 2007, and I'm showing you Exhibit  
10 #55. Are you aware that after the meeting, a month or so after  
11 the meeting that, uh, Mr. Riordan, after consulting with you and  
12 the other experts, sent a letter to Dr. Peretti, uh,  
13 specifically asking him some follow-up questions and requesting  
14 the information that he said he was going to provide at the  
15 meeting?

16 A] This was about five months, this is a letter that was sent  
17 about five or six months after our meeting, October 4<sup>th</sup>, 2007,  
18 uh, thanking - - to Dr. Peretti, thanking him for the meeting in  
19 May and reminding him of, of, uh, uh, certain questions he was,  
20 uh, uh, Mr. Riordan thought he was going to be responding to,  
21 questions we raised at the meeting, uh, such as where's, you  
22 know, the, the, experience that Dr. Peretti had with postmortem  
23 injury to bodies by animal activity and other activities. When  
24 the body is in water there's branches, there's logs, there's  
25 animal activity, all of which can cause changes in a dead body

1 in water that the forensic pathologist has to know about, or  
2 else he or she may misattribute the cause of the injuries.

3 Q] And that's what happened in this case?

4 A] Yes.

5 Q] And at the very end of this letter, this is #55, Mr.  
6 Riordan says "additionally, in our meeting you offered to make  
7 available to our experts files of bodies located in water in  
8 Arkansas over, I believe, the last decade and you indicated that  
9 you were reviewing your office's records of postmortem  
10 examinations and autopsies dating back ten years, from the  
11 present, in an effort to investigate the conditions of human  
12 remains examined by your office and had reportedly been located  
13 in water." Then he said "any assistance in that and any other  
14 regard likewise would be deeply appreciated." Right?

15 A] Yes, that was part of the letter he sent.

16 Q] Now did he ever hear back from Dr. Peretti after this  
17 letter was written, and were you ever provided with the kind of  
18 information that he was requesting in this letter?

19 A] I did not hear back, but I understand that at some point  
20 the, the, uh, prosecutor sent a response to attorney Riordan.

21 Q] Are you referencing the letter that was attached to the  
22 government's pleadings, uh, a letter by Dr. Peretti dated May  
23 30, 2008?

24 A] Yes.

25 THE COURT: Have you read all of these letters?



1           Did you receive them or were they given to you for  
2           part of your opinion?

3           THE WITNESS: Yes, sir.

4           THE COURT: All right. Go ahead.

5 DIRECT-EXAMINATION, continuing:

6 Q] And again, uh, I'm not going to take the time to locate the  
7 exhibit number, but it's the letter we marked yesterday, May  
8 30<sup>th</sup>, 2008. That's the letter you referenced Dr. Peretti  
9 essentially defended his position against the defense experts  
10 there?

11 A] Well, uh, this was the letter to Mr. Davis on the Arkansas  
12 State Crime Laboratory letterhead from, uh, uh, Dr. Peretti in  
13 which he's really not responsive to the issues that we had  
14 discussed in May of '07 and, uh, does support in a few sentences  
15 - - it's a one page letter - - uh, does support a few sentences,  
16 uh, his previous opinion.

17 Q] What does he say, and do you agree or disagree with what he  
18 says?

19 A] Well, he, the first statement is that, uh, uh, Dr. Dougan,  
20 I guess the forensic anthropologist, uh, the forensic dentist  
21 for the prosecutor's office, uh, had stated that none of the  
22 wounds were human bite marks, number one, and I would agree with  
23 that. I don't see evidence of human bite marks; but that's a  
24 forensic dentist expert's expertise. Second, as part of the  
25 autopsy process, tissue samples were taken from some of the

1 superficial and penetrating wounds. When examined grossly and  
2 microscopically these samples demonstrated presence of  
3 hemorrhage clearly indicative of antemortem injury, and not post  
4 mortem animal activity. I think that's just plain wrong.  
5 That's not correct.

6 Q] And why is it not correct?

7 A] He did not take, the only sections he took under the micro-  
8 scope were on the three children from the tie marks around the  
9 wrists and ankles and in two of them, he took testis. In only  
10 one of four-eighth of those, of those, uh, twelve slides of  
11 ankles and wrists, in two of the boys there was no hemorrhage.  
12 In one of the young men, uh, there was some hemorrhage, he  
13 writes in his autopsy report, uh, in the area of the ankles, uh,  
14 and there's no photo, uh, sections taken of any of the other  
15 injuries. None of the face, uh, uh, none of the head, uh, he  
16 did not take sections of the injuries that we're in dispute  
17 about.

18 Q] In other words, the ones that you say are related to animal  
19 predation?

20 A] Yeah. The wrists, uh, to the extent that there could be  
21 hemorrhage on the ankles, would indicate that that was probably  
22 put on while the heart was still beating and gets a little bit  
23 of hemorrhage in the wrists, uh, of tying. But, uh, there was  
24 no hemorrhage in any of the other slides he took and there was  
25 no penetrating wounds, and he says here "penetrating wounds." I

1 did not see any evidence in his autopsy report, certainly, that  
2 he took microscopic sections of any penetrating wounds as  
3 opposed to these superficial tie abrasions.

4 Q] And penetrating wounds, for instance, would be the wounds  
5 that, uh, were on Steven Branch's face?

6 A] Yes, yes, the abrasions, rubbing against something causes  
7 an abrasion such as, if you have hand cuffs on somebody or  
8 ligatures around the wrists or ankles. That causes rubbing of  
9 the outer layer of skin. Penetrating wounds would be the wounds  
10 in the face or even the wounds in the head that break the skin  
11 and go under the, uh, the, uh, outer layer of skin. And, uh,  
12 none of those wounds were sampled.

13 Q] So you disagreed with his conclusion that somehow the  
14 microscopic exams refute animal predation?

15 A] Yes, not only that, but I'm just saying he's saying things  
16 that are not true here, because according to the autopsy report,  
17 he took no samples from penetrating wounds, but he says here  
18 that he did.

19 Q] Okay. And there's another thing he says; right?

20 A] There's a third thing, the third opinion he gives, which is  
21 the last one, uh, "the physical examination of the penetrating  
22 wounds showed a lack of soft tissue bridging typical of wounds  
23 caused by tearing or biting. These wounds did show clearly and  
24 incised edges indicative, indicating they were caused by a sharp  
25 instrument." Now that's not from the microscopic. That's from

1 the examination with the naked eye of the injuries on the skin.  
2 And there were cut marks on the skin. There was no penetrating  
3 wound like, uh, going in an inch, or two or three inches, the  
4 penetrating wounds were all like less than a quarter-inch or  
5 half-inch at the most, under the skin. In my examination of the  
6 photographs of these wounds such as on some of the boys' head,  
7 uh, cut wounds of the head, they were all blunt force trauma;  
8 they were tears of the skin, not sharp cut wounds as Dr. Peretti  
9 says, uh, and the difference is that a knife, a sharp instrument  
10 cuts the skin very neatly on both sides of the cut, whereas a  
11 blunt impact, say with a stone or a, a, uh, a branch, a wooden  
12 branch or something, uh, tears the skin and causes bruises on  
13 the outside and an irregular, slightly irregular tearing of the  
14 skin, not a sharp tearing of the skin. And from what I've seen  
15 in the various photographs of these wounds, they were tears, not  
16 sharp instruments, and so I would disagree with that part of  
17 that report, also.

18 Q] I'm showing you 48V. Does that illustrate what you talked  
19 about?

20 A] Yes. This is the left side of the, uh, face, Exhibit 48V,  
21 and shows a lot of small penetrating wounds. And when I say  
22 "penetrating," breaks in the skin. But there is also a rough  
23 left side of the face, not rough, abrasion, there is a rubbing  
24 of the skin away on the left side, plus penetrating wounds that  
25 are very, you know, probably less than a quarter-inch in width,

1 but multiple, many of them.

2 Q] So were those wounds caused by a knife?

3 A] No, no. My opinion is that's animal activity. And also,  
4 there's no blood around any of them and there are on his head.  
5 Part of his head is shaven; this is Branch?

6 Q] Branch.

7 A] The child Branch, he did have hemorrhage in the scalp,  
8 indicating that, in my opinion, that he was hit in the head with  
9 something, uh, while the heart was beating. But none of these  
10 injuries had any bleeding around them.

11 Q] "These injuries," meaning the face?

12 A] On the left side of the face, which have a lot of little  
13 puncture wounds as well as rubbing. Now oftentimes in water,  
14 bodies rub against rocks, they rub against trees, they rub  
15 against the bottom of the, uh, of the waterway that they're in,  
16 so it's not uncommon to see postmortem abrasions like this,  
17 without any hemorrhage. And the way we tell the difference  
18 between a wound when you're alive and a wound when you're dead,  
19 is does it bleed into the tissues. And here, there's no  
20 bleeding into the tissues, so my opinion would be that this is  
21 all postmortem predation or postmortem necrophagia.

22 Q] Have, have you seen wounds like that before from bodies  
23 pulled from the Hudson River and other bodies of water?

24 A] Oh, yes. Yes. And around the state and upstate New York.  
25 And they often depend on, the shape of the wounds depend on what

1 kind of animal activity there is in the area, but the fact that  
2 there's no bleeding into the tissues, and this is a good photo-  
3 graph, because on the left side of the face there is no bleeding  
4 of the tissues, but when the scalp is reflected and you see part  
5 of that by twelve o'clock, uh, there is hemorrhage under there.  
6 And so I would say that happened while he was alive, and this  
7 happened - - well, alive when his heart was beating. And the  
8 ear is also slightly injured, uh, after he was dead.

9           THE COURT: Doctor, am I understanding you  
10           correctly? You're assuming that there was animal  
11           activity in the area to make that opinion, and you're  
12           also assuming that there was aquatic life in the  
13           little ditch with a muddy bottom?

14           THE WITNESS: Yes, sir.

15           THE COURT: All right. Did I also understand that  
16           you're telling us that those abrasions could have been  
17           occurring, could have occurred from something other  
18           than animal predation, like scuffing on the bottom of  
19           the water or the bottom of the surface or of other  
20           causes, other than predation?

21           THE WITNESS: Yes, sir.

22           THE COURT: Do you have any evidence and was any  
23           evidence submitted to you of animal activity in the  
24           area, such as large predators, uh, dogs, wolves or, of  
25           course, there are no wolves, but, or the fact whether

1 or not there were any turtles, fish, crawdads or any  
2 other kind of aquatic life in that body of water?

3 THE WITNESS: Yes, sir.

4 THE COURT: What was that evidence?

5 THE WITNESS: Well, I think there was some testi-  
6 mony that I had read at some point that, uh, some of  
7 the friends of the boys, or one of the sisters,  
8 brothers and sisters of one of the decedents, had said  
9 that they would swim in this area, in this body of  
10 water and that there were snapping turtles, they would  
11 see snapping turtles and occasionally, they would take  
12 the snapping turtles...

13 THE COURT: ...have you seen this area? It's a  
14 shallow drainage ditch.

15 THE WITNESS: I've seen the photos. I went, I  
16 tried to see it, uh, I tried to see it, uh, uh, when I  
17 came here but now they have a motel there.

18 THE COURT: I understand your testimony then to be  
19 that you're assuming that there was aquatic activity  
20 in the water and that large predators were in the  
21 area?

22 THE WITNESS: Well, I'm not sure about large  
23 predators. I'm saying that, I'm saying - - that's why  
24 we do autopsies - - that there was animal activity  
25 that caused these injuries.

1           Now everybody says, uh, it's like, Your Honor, we  
2 do an autopsy and we see a bullet wound under the head  
3 and ten people say it's not possible that he was shot.

4           The reason we do an autopsy is because there's a  
5 bullet wound and he was shot, even though nobody may  
6 have seen it.

7           Here, even if nobody saw animal activity in that  
8 area, I'm saying that there was some animal activity,  
9 uh, that caused the punctures in the skin, even though  
10 some of this is not due to animal activity; it's due  
11 to just rubbing against - - and my understanding was  
12 that the area they were found - - and when I say "body  
13 of water," because it's, I can see two or three feet  
14 deep, and about four or five feet across, so in New  
15 York, in Brooklyn, that would be a big pond or  
16 something.

17           THE COURT: We call it a ditch.

18 DIRECT-EXAMINATION, continuing:

19 Q] Following up on the Court's questions, when you referenced  
20 the evidence you had reviewed about animal activity in that  
21 area?

22 A] Yes, sir.

23 Q] And I have marked next in order, uh, this is Exhibit 32  
24 from Mr. Baldwin's exhibits in support of his habeas corpus  
25 petition, and it's the affidavit of Heather Dawn Hollis, and



1 then #57 would be Exhibit 33 from Mr. Baldwin's exhibits in  
2 support of his petition and this is the declaration of Shawn  
3 Ryan Clark.

4 MR. BURT: And Your Honor, with the Court's  
5 permission, we're going to substitute copies, because  
6 these are from the originals of Mr. Baldwin's  
7 petition.

8 THE COURT: That will be fine. No problem.  
9 (WHEREUPON, Defendant/Petitioner Exhibit #56 was received into  
10 evidence and is appended on page.)  
11 (WHEREUPON, Defendant/Petitioner Exhibit #57 was received into  
12 evidence and is appended on page .)

13 MR. BURT: Thank you.

14 MR. HOLT: What's the number of that Exhibit?

15 MR. BURT: 33.

16 MR. HOLT: 33.

17 THE COURT: Well, this exhibit - - oh, you're  
18 talking about a different exhibit here.

19 MR. BURT: Yes, sir.

20 THE COURT: That's fine. All right, go ahead.

21 MR. BURT: Thank you.

22 DIRECT-EXAMINATION, continuing:

23 Q] Doctor, I'm showing you #56 and #57. Did you review and  
24 rely upon these two affidavits in forming your opinion?

25 A] Well, I reviewed and I took them into account in, uh,

1 forming my opinions.

2 Q] And, and what was significant in any information that is  
3 contained in those affidavits?

4 A] I, I think that, uh, both, uh, Shawn Ryan Clark and, uh,  
5 Heather Dawn Hollis, uh, stated that, uh, they had swum in that  
6 creek or ditch.

7 Q] Ditch?

8 A] Ditch, ditch, uh, and from time to time and did see, uh, I  
9 think that what they called alligator, uh, snapping turtles and  
10 that, uh, one of them said that they would sometimes pick them  
11 up by the tail and put them into a pool or something to see if  
12 they could fight with each other, that they were, that they  
13 could be very nasty. So that there was evidence, uh, uh, I  
14 thought that there was, I mean, there had to be wild life in the  
15 area like that, that turtles were present. I don't know about  
16 the larger animal, it also said something about feral dogs that,  
17 that may have run around but, uh, I would lean more to these  
18 injuries on the bodies being caused by, caused by turtles  
19 because of the nature of the puncture from the turtle and also  
20 the scrape marks on some of the bodies. There seemed to be, uh,  
21 scrape marks on them that could have been caused by turtles.

22 Q] And by-the-way, are you purporting to attribute the  
23 injuries to a specific animal; can a forensic pathologist do  
24 that?

25 A] Uh, no I wouldn't do this to a specific animal, but there

1 are forensic, uh, uh, forensic, uh, veterinarians who would be  
2 much more knowledgeable. I have not shown these photos to a  
3 forensic veterinarian, but we have a forensic veterinarian that  
4 we consult with the New York state police and I think that would  
5 be a good idea. I haven't shown it to them, but it might be  
6 interesting.

7 Q] I'm showing you 48G, that's a photograph. Is that illus-  
8 trative of the kinds of, uh, wounds you were just describing?

9 A] (Witness examining same.) That would be included in the,  
10 uh, in the postmortem damage caused to this genital area.  
11 There's no hemorrhage here, there's nothing to indicate, uh, uh,  
12 that this was done while the heart was beating, number one;  
13 there's no sharp cuts with a knife. These are all, in looking  
14 at this, and other photographs in this area, uh, in my opinion,  
15 this was done by animals. It could be turtles, uh, possibly  
16 other animals but, uh, I would, uh, and there are on the buttock  
17 areas these scrape marks that look like turtle claw marks kind  
18 of thing, turtle feet marks.

19 Q] Uh, you saw crime scene photos such as this one, 48A;  
20 right?

21 A] Uh, yes.

22 Q] Is it your understanding that this area we're talking about  
23 was surrounded by wolves?

24 A] Yes.

25 Q] Is it unusual for there to be animal activity in the kind

1 of environment that's depicted in that photo?

2 A] In my experience, sure, that is in, uh, this type of  
3 environment there would be animal activity. I can't tell you  
4 what kind of animal activity, but certainly I would think that  
5 there would be animal activity in this area, uh, both on land  
6 and in water.

7 Q] So are you saying that it is not necessarily true that the  
8 injuries were inflicted by an animal, at least in the water?

9 A] My opinion is, my opinion when I first looked at the  
10 injuries to the children, given the history and all, was that,  
11 uh, most of these injuries could be, could be, uh, attributed to  
12 aquatic animals such as turtles. Uh, I don't know if in the - -  
13 I think seventeen hours that the, uh, three boys were missing,  
14 whether at any time the bodies came up to the surface near the,  
15 uh, edge of the, of the, uh, ditch. If so, then, then, uh, land  
16 animals could also have caused injuries. But, uh, but I can't,  
17 uh, my opinion is to a reasonable degree of, uh, reasonable  
18 degree of medical certainty, that these marks were made after  
19 the children, the three boys, died. Who did it and how it was  
20 done? What kind of animal, uh, I would leave to veterinarians  
21 to figure out, but my best opinion would be that it's snapping  
22 turtles. I've seen snapping turtles before, uh, do this kind  
23 of, uh, triangular little punctures; however, whatever it is, it  
24 was done after death, it was done by animals, it was not done by  
25 human beings with a knife.

1 Q] You have a reasonable degree...

2 A] ...that's my opinion; yes.

3 Q] Uh, and you were shown actually the knife, the knife  
4 depicted, a photograph of the knife depicted in 48NN?

5 A] (Witness examining same.) Yes.

6 Q] And you were aware that there was some testimony, particu-  
7 larly in the Echols/Baldwin case and also some demonstrative  
8 evidence in closing argument, concerning this knife; right?

9 A] Yes.

10 Q] Now what is your opinion about the evidence that was  
11 presented about this knife and the demonstrative evidence that  
12 was done through closing argument?

13 A] In my opinion, there is nothing on any of the three bodies  
14 that match this knife. Uh, the serrated edge, it doesn't match  
15 any of the injuries on the bodies. The sharp tip doesn't match  
16 because all of the injuries are, uh, not sharp; they're bruises,  
17 the tearing of the skin by animal activity, by blunt object.  
18 There's some, there was some, uh, uh, injury to the head, uh,  
19 the lacerations of the head of the boys, uh, which could have  
20 been done by, say, a blunt object like a rock, but not by a  
21 knife. Not by this knife. I think that the closing argument in  
22 which this knife was scraped against a grapefruit, uh, was  
23 awful, if I may. It was not scientific. There was no  
24 scientific evidence in the trial about this, uh, knife and the  
25 scraping against a grapefruit, uh, just, uh, that was one of the

1 things that made me want to stick with and look through this  
2 case. That makes me think it was a, uh, a wrong conviction,  
3 that, uh, for, for somebody to get up without any forensic  
4 experience and say that this, uh, scraping against a grapefruit  
5 matches, uh, any injuries on the body...

6 MR. HOLT: ...Your Honor, I object, just for a  
7 point of clarification. I don't think a forensic  
8 pathologist said it was a grapefruit.

9 It was the prosecutor that said that.

10 THE WITNESS: Yes. I'm sorry.

11 MR. HOLT: I just wanted to clarify that.

12 THE WITNESS: Yes.

13 DIRECT-EXAMINATION, continuing:

14 A] Had Dr. Peretti said that, I think he has a right to say  
15 that. He can say "I scraped against a grapefruit and it  
16 matches." Uh, I may disagree with Dr. Peretti, but I think he  
17 has a right to have that opinion, I mean, he might have opinions  
18 that I may be wrong. But I think a non-, uh, uh, scientist  
19 like, you know, an attorney who is very good at being an  
20 attorney, doesn't have the experience to make that statement.  
21 That was what I was trying to make, sir.

22 Q] Just as a scientific matter, what's wrong with using a  
23 grapefruit, whether it's done by Dr. Peretti or by the prosecu-  
24 tor. What scientifically was wrong with that?

25 A] Well, grapefruits have never been used as far as I know in

1 trying to match injuries. Whatever the reasons, there are, uh,  
2 uh, there are other objects that can be used for scrape injuries  
3 to try and match, even the skin, such as the most common one is  
4 pigskin, or something. But, I think that grapefruits are not,  
5 uh, considered to be of use in trying to match up injuries to,  
6 uh, clay has been used, uh, but not grapefruit.

7 MR. BURT: Your Honor, I wonder if we might take  
8 a break? We want to set up a projector and may need a  
9 few minutes to do that.

10 THE COURT: Sure. A ten-minute recess.

11 MR. BURT: Thank you, sir.

12 (WHEREUPON, a recess was taken; proceedings resumed as follows,  
13 to-wit:)

14 THE COURT: Court's back in session.

15 DIRECT-EXAMINATION, continuing:

16 Q] Doctor, I put up on the screen trial exhibit 64A. Is this  
17 one of the photos that you reviewed in connection with your  
18 review of this case?

19 A] (Witness examining same.) Yes.

20 Q] Now I want to reference some testimony by Dr. Peretti about  
21 this exhibit and then ask you whether you agree or disagree with  
22 that testimony. And this is at page 823 of the Misskelley  
23 trial. He says: "State's Exhibit 64A is showing abrasions, con-  
24 tusions, or bruising behind the ear and some scattered abrasions  
25 that were under the scalp on the left side. This dark dis-

1 coloration here is a bruising behind the ears. You can see this  
2 little area here, this discoloration. This is an abrasion or  
3 scrape behind the ear. And also, we can see in the hairline an  
4 abrasion or a scrape."

5 First of all, do you agree, just in terms of his description?  
6 Is he accurately describing what was seen here in 64A?

7 A] Do you have a pointer that I could use, or can I come up  
8 and just point to what I'm talking about?

9 THE COURT: Yes, you can do that. Do you have a  
10 laser?

11 THE WITNESS: Or a pointer, or I can get up and  
12 point.

13 MR. BURT: Sure, if you want to.

14 THE COURT: That will be all right. I thought all  
15 San Francisco lawyers had lasers.

16 MR. BURT: Well.

17 DIRECT-EXAMINATION, continuing:

18 A] In this photograph, uh, there is an abrasion here at the  
19 bottom of the ear which, uh, I think Dr. Peretti was referring  
20 to. And in my opinion, this was, uh, after death by some kind  
21 of fish or some kind of minnow or whatever, uh, that turtles, I  
22 mean, could do this. I think this is a postmortem injury.

23 Q] What about the, the nature of the injury, just looking at  
24 it, tells you what's going on? We don't have any slides from  
25 that, but can you look at that injury and say, you know, "my



1 training and experiences, this is not..."?

2 A] In my training and experience, because there's no redness,  
3 no hemorrhage about it, it appears to be postmortem. Now you  
4 made a point that what could be positive about it, and an  
5 additional degree of certainty would require, but yet, under the  
6 microscope, and if this had been sectioned and looked at under  
7 the microscope, uh, we could be more certain that it is post-  
8 mortem, if there is no hemorrhage.

9 Q] Okay. So you would not agree with Dr. Peretti's character-  
10 ization of that mark on that photo as being an abrasion,  
11 contusion or bruise?

12 A] Well, I, I think it's an abrasion or a rubbing away of the  
13 outer layer of the skin, postmortem. As with the left side of  
14 the face we looked at, one, the skin can be rubbed off.  
15 Abrasion means the outer layer of skin is rubbed off after  
16 death, as much as before death.

17 Q] Okay. Now I want to show you another exhibit, trial ex-  
18 hibit, this is, uh, 69A and I'll read you the testimony by Dr.  
19 Peretti at page 824, he says "69A is a photograph of the anal  
20 orifice. Here we can see abrasions and the focal areas of con-  
21 tusion and Lividity," and further up on the page and he says  
22 "there was anal dilation."

23 And the question is asked "that means a loosening or slackening  
24 of the muscles around the anal area?"  
25 He says "That's correct."

1 The question is "Was there also a purple, are there some  
2 abrasions on the buttocks?"

3 Answer: "You can see some abrasions, scrapes and postmortem  
4 Lividity. This red discoloration is the postmortem Lividity or  
5 the settling out of the blood vessels after death."

6 Do you, could you tell us whether you agree or disagree with  
7 that characterization?

8 A] I agree with Dr. Peretti calling this bluish discoloration,  
9 the bluish stuff, that it is clear as being the postmortem  
10 Lividity, that settling of the blood while the body was on its  
11 back, or wherever it was found in the, uh, in the water. Uh, I  
12 disagree that there's any abnormality to the anus, other than as  
13 he says, that relaxation of the anal muscles; one of the reasons  
14 that sometimes we find that bodies, uh, defecate at the time of  
15 death, is because the relaxation of the sphincter muscles,  
16 people, they die, some of them, some people urinate a little  
17 bit, some people ejaculate because of the relaxation of those  
18 muscles, and some people defecate. And that's because normally,  
19 when we die the muscles relax and there's a little bit of, of  
20 separation of, uh, that is more so than during life. But that  
21 doesn't mean that it's abnormal. During life, this is entirely  
22 consistent with being a normal anus. I think there are some  
23 little marks on the anus, on, on the buttocks that, that could  
24 be, uh, uh, that could be from rubbing against the bottom of  
25 the, uh, ditch or from ants or, or, uh, other, uh, fish, you

1 know, minnows or something that is very superficial and, uh,  
2 and, uh, dots, uh, those are also postmortem.

3 Q] Postmortem?

4 A] Yes, sir.

5 Q] Okay. Uh, and he also says at page 829 "we had anal  
6 dilation and hyperemia, H-Y-P-E-R-E-M-I-A, of the anal/rectal  
7 mucosa"; M-U-C-O-S-A.

8 Could you explain what he is talking about there and whether or  
9 not that opinion is correct?

10 A] Yeah, the anal/rectal mucosa is where the anus, which is  
11 where through which defecation occurs, meets up with the lining  
12 of the large intestine. The rectum is the end of the large  
13 intestine that goes into the anus. I don't see that in this  
14 photograph but again, in order to document any kind of - -  
15 hyperemia, means increased amount of blood in the blood vessels.  
16 Hyperemia is the increased amount of blood, the blood vessels  
17 are intact. Bruising is that there is a break in the blood  
18 vessels, but in order to see that, again, it would require  
19 looking at it under the microscope. And what is normally done  
20 in autopsies, in general, is that little pieces of tissue are  
21 taken from (a) from all of the organs, which wasn't done here,  
22 and from any from any area of injury, because one of the things  
23 that always comes up, one when we are considering a homicide, is  
24 when did the injury occur; how long before death did it occur.  
25 And you look, have a pretty good idea with the naked eye, it's

1 much more accurate when you look at it under the microscope.

2 Q] Now in this case, and this is Michael Moore, and according  
3 to the Michael Moore autopsy, there was anal and rectal  
4 microscopic slides, and according to Dr. Peretti's report at  
5 page 7, they say "no hemorrhage." What implication does that  
6 finding have for whatever irregularities there may be?

7 A] Uh, that if there's no hemorrhage, it means that whatever  
8 happened, happened after death, there was no injury while the  
9 heart was beating.

10 Q] And specifically, there could not have been any sexual  
11 assault associated with whatever discoloration we're seeing  
12 here, if the injuries were inflicted after death?

13 A] That's correct. In order to have sexual assault, there has  
14 to be some kind of evidence, like a, you know, regular swabs of  
15 the rectum, which wasn't done.

16 Q] Okay. Now I want to show you, uh, 65A and let me read you  
17 what he says about that. "The next photograph, State's Exhibit  
18 #65A and 66A," which I'll show you in a minute, "show the  
19 mucosal surface of the inner aspects of the lips, the upper lip  
20 and the lower lip respectively, and also the nose. Here on the  
21 nose we can see some abrasions or scrapes. Here on the upper  
22 lip we can see some cuts, contusions and edema or swelling, not  
23 in 65A."

24 Question: "Doctor, does that also reflect what you referred to  
25 as punctate," P-U-N-C-T-A-T-E, "scratches of the nose?"

1 Answer: "Yes, sir."

2 Question: "What are those?"

3 Answer: "Innumerable very small scratches or abrasions situated  
4 on the entire nose."

5 Could you comment on that?

6 A] There are two slides.

7 Q] Yes?

8 A] The second slide, uh, let me finish this one, here there is  
9 a bruise, this is a lower, inside the lower lip where I am  
10 pointing, and that looks like there is some kind of bleeding  
11 under the skin, it's what we call mucosa. This could very well  
12 be an injury that happened while he was alive. But again,  
13 looking at it under the microscope would have been more  
14 definitive in making that assessment, that there was some kind  
15 of, kind of trauma to the lower lip. And that, if so, would be  
16 during life, he was still alive when that happened; not  
17 necessarily conscious or unconscious, but alive.

18 Q] Okay. And according to the autopsy report, we don't have  
19 these slides for this injury?

20 A] No.

21 Q] No microscopics for this injury?

22 A] No, the microscopic, I mentioned the wounds that they were  
23 testing were to and they were of the perianal thing, but there  
24 were very few microscopic slides.

25 Q] Now referencing his testimony about the punctate scratches

1 of the nose?

2 A] That would be the next slide.

3 Q] Uh, actually, referring to this one.

4 A] Oh, I'm sorry. I'm backwards here, man. This is the upper  
5 lip, not the lower lip.

6 Q] Right.

7 A] Upper lip, and there looks like a bruise that could be, uh,  
8 could be during life. And here is the bottom of the nose.  
9 There are other photos that show it better, there were little  
10 abrasions on the nose and, uh, and also the abrasions up here.  
11 And this could be, again, from some kind of, uh, uh, animal  
12 activity, or the outer part of the nose rubbing against a tree  
13 or a branch or something floating in the water, perhaps; whereas  
14 this part, by, by hand or by little fish or is what I thought  
15 when I looked at some of the other photos when I looked at that  
16 nostril.

17 Q] So that, that, the nose injuries, in your opinion are not  
18 human, of human origin?

19 A] That's correct. Not of human origin, not, nobody sat down  
20 and made dozens of punctate, little scratches of the nose, in my  
21 opinion. There's no bleeding; these are postmortem, in my  
22 opinion.

23 Q] Okay. Now let's take a look at 66A and I'll read you what  
24 he says about this one. He says "State's Exhibit 66A is also  
25 showing the nose where you can see the abrasions and scrapes and

1 the lower lip where you can see the bruising. The dark dis-  
2 coloration is the bruise."

3 Q] Well, I'm not sure about a bruising here. I thought there  
4 was a bruising in the upper lip. I'm not sure about one down  
5 here in the lower lip; however, there are little white dots here  
6 that look like fly eggs. I think it was noted in one of the,  
7 uh, in the report that there was some maggot activity when the  
8 bodies came to the, uh, to Dr. Peretti's office. This, this  
9 type of activity could be due to maggots or to beetle eggs or so  
10 and that is a hatch-out that can cause scratching on the surface  
11 of the nos - - on, on the lining of the nostrils. But again,  
12 postmortem.

13 Q] Now when I showed you the photo earlier of the ear, do you  
14 recall that, uh, 64A?

15 A] Yes.

16 Q] And in Dr. Peretti's autopsy he describes this wound as  
17 this is page 3 of his autopsy report "Situated behind the right  
18 ear was an ovoid contusion with edema measuring one and three  
19 fourths inch by three fourths inch." Okay?

20 A] Yes. That's simply this area here (indicating on photo).

21 Q] Right. Now he does not describe in his autopsy any injury  
22 to the left ear. Okay?

23 A] Right.

24 Q] The question is asked of Dr. Peretti, "Doctor, in your ex-  
25 perience as a medical examiner, when you see injury to the ears

1 and injuries to the inside surface of the mouth, what does that  
2 indicate to you a person that is eight-years-old and has died  
3 this type of death?"

4 And Dr. Peretti starts to answer, "there's a number of  
5 possibilities, but commonly, when we see the ears are contused  
6 on both sides or bruised with overlying fine linear scratches,"  
7 and then there is an objection.

8 And then the question is rephrased. Question: "Let me ask you,  
9 have you seen in your past experience as a medical examiner,  
10 have you seen similar injuries to the ears of children?"

11 Answer: "Yes, I have."

12 Question: "In those cases, were there frequently also  
13 accompanied by injuries to the inside of the child's mouth?"

14 Answer: "Yes, they were."

15 Question: "Based on your past experience, expertise and  
16 training, did those type injuries indicate to you, based on your  
17 expertise and training, a particular type trauma that has  
18 occurred to cause those injuries?"

19 Answer: "My experience, these types of injuries, I have seen in  
20 children that are held by the ears who are forced to perform  
21 oral sex. They can also be due to putting the hand over the  
22 mouth causing the injuries to the mucosal surface of the lips,  
23 or they can be someone grabbing someone by the ear and hold them  
24 there."

25 Now do you agree or disagree with that testimony, based on the



1 photos that we've just reviewed, including the anal dilation  
2 photo, the ear photos and the mouth photos?

3 A] There were a couple of things that he said "or," "or," but  
4 for the oral sex, uh, part of it, absolutely not. This is, I  
5 think that's a hundred percent speculation and that in forty-  
6 five years I do work with, you know, loony people with sexual  
7 abuse also in my job with the state police. I have never seen  
8 ear injuries of any kind and mouth injuries in forced fellatio  
9 of children. I just, uh, if that happens, uh, in my experience,  
10 uh, it never has that constellation of injuries, uh, so I would  
11 just - - uh, and what's in the literature and the various text-  
12 books that are written about, uh, sexual, uh, crimes in the  
13 living, as well as in the dead, I've never seen that, uh, any-  
14 body else has had that experience. Now the point I make here,  
15 you see, even though he doesn't mention it, later on at the time  
16 of the autopsy when the scalp is reflected, there are photos  
17 that show that this hemorrhage under this area of the scalp,  
18 that's consistent with that injury occurring during life, when  
19 the heart is beating, uh, but my opinion is this: that there is  
20 no evidence that happened during life and I would a hundred per-  
21 cent disagree with making a diagnosis of forced fellatio, uh, on  
22 this evidence.

23 Q] Would you or another competent forensic pathologist have  
24 been available in 1993 when this case was tried, to testify that  
25 Dr. Peretti was wrong about this particular aspect?

1 A] Well, I could tell you what I would say. Uh, but there  
2 were, well, a lot of, uh, for instance, pathologists around who  
3 would have been able to evaluate this. I'm surprised - - I know  
4 Dr. Sturner - - I'm surprised - - I assume that he had that  
5 opinion, also. So he's a very competent board certified  
6 forensic pathologist, but I would, I don't think when he was in  
7 New York City, because, you know, eight million people, that he  
8 ever saw forced oral fellatio injuries of the kind that, uh, Dr.  
9 Peretti is talking about. But I would respect Dr. Sturner's  
10 opinion, if he has this opinion, uh, even though I strongly dis-  
11 agree with it.

12 Q] By-the-way, his answer here: "In my practice these types of  
13 injuries I have seen in children that are held by the ears."  
14 Two ears?

15 A] Right.

16 Q] He's assuming there are injuries to both ears, is he not?

17 A] Well, that's what he's saying. Yes.

18 Q] But there's not injury to both ears?

19 A] There's only one ear here, but the whole concept, that con-  
20 cept is just wrong, in my opinion and experience.

21 Q] Now there was also some testimony about some, uh, hand  
22 injuries and I show you 72A. That was another photo that I'll  
23 show you in a minute. He says "State's Exhibit 72A and 73A show  
24 the front and back of the hands, showing there's a few  
25 abrasions, but what I'm trying to point out here is the washer

1 woman wrinkling of the hands, showing that the bodies had been  
2 in the water. That's the wrinkling."

3 Question: "Doctor, you may need to refer to your report. I'm  
4 not sure it is clearly shown in the photos. Did you also find  
5 on the hand some, what I refer to in your report, as defense  
6 type wounds?"

7 Answer: "Page 5, yes, on the right, this part of the anatomy  
8 here, I found some cuts, a one inch cut. There are also some  
9 very small lacerations which are about one-eighth of an inch  
10 each. On the back of the left hand there was a three-quarter  
11 inch scratch, a one-sixteenth inch abrasion was present on the  
12 left thumb."

13 Question: "When you characterize these as defense type wounds,  
14 what do you mean by that?"

15 Answer: "The type of injuries that we normally see when people  
16 are trying to defend themselves."

17 And the second photo, well, first of all, this photo, 77 - -  
18 72A, do you see evidence of a cut there, or any sort of  
19 abrasions as he was describing?

20 A] No injuries on this photograph of the palms of the hands.

21 Q] Okay. And I'm showing you 73A, do you see the cut he is  
22 referring to there?

23 A] I think, uh, what he is referring to is this little scratch  
24 here on the index finger, uh, and, uh, I must say that in my  
25 opinion, this clearly is not a defensive wound. It's a small

1 scratch. Defensive wounds occur when somebody holds out their  
2 hands, usually it's on the palms of their hands.

3 Q] Here, the injury is on the back of the hand?

4 A] But this isn't an injury.

5 Q] Whatever it is?

6 A] And, and, and it consists of cut marks with a weapon, or a  
7 bullet wound going through the hand, trying to ward off the  
8 bullet, or, uh, black and blue marks. This is a postmortem  
9 injury. There is nothing around it to say that the body is  
10 reacting to it. We have a cut, the body starts sending in, uh,  
11 uh, the immune system to heal it up immediately. And this  
12 doesn't - - couldn't be seen under the microscope very quickly  
13 and with the naked eye as any of us who have had a bruise know  
14 that it will start changing appearance. I just think, and this  
15 is one of the reasons I called Dr. Sturner is to go over some of  
16 these photos with him, uh, this photo and the previous photo  
17 about the oral sex, because somehow, uh, if he agrees with  
18 these, uh, I'm surprised. I'm just surprised.

19 Q] Did Dr. Sturner, uh, indicate that he agreed with any of  
20 these two areas of testimony, that is, the oral sex testimony  
21 and this defense wound testimony?

22 A] Well, I didn't specifically ask about it. In, in my  
23 discussion with him, he didn't remember the case very well, but  
24 he testified at it and that he agreed with the, uh, the, uh,  
25 with the conclusions of the autopsy. I'm not sure at all that

1 he looked at all of these little bits and pieces, but I'm not -  
2 - I don't know.

3 Q] Were these two areas, that is, the sexual assault testimony  
4 and these defense wound testimony the subject of your  
5 discussions with Dr. Peretti when you and the other defense  
6 experts met with him?

7 A] That was part of what we discussed; yes. That was raised  
8 that there was no defense wounds on any of the children.

9 Q] And was it also discussed about the sexual assault, the  
10 anal dilations?

11 A] Oh, yes. All of that, uh, Dr. Di Maio, myself, uh,  
12 specifically said that in our experience, clearly, this is  
13 normal anus, normal anus, uh, uh, uh, appearance. There's no,  
14 uh, abnormality of anal dilatation caused by sexual, uh, any  
15 kind of sexual, uh, entry through, uh, through the anus. And  
16 Dr., as soon as we spoke, Dr. Peretti didn't comment; he  
17 listened, he listened and then we thought that he was going to  
18 send us some further thoughts about it, whether he agreed or  
19 disagreed, but that never happened.

20 Q] Let me show you photograph 71B that relates to autopsy of  
21 Steven Branch and here Dr. Peretti says "State's Exhibit 71B is  
22 a photograph of the face showing the abrasions and the gouging  
23 type wounds, cutting wounds. Also you can note on the top here  
24 we have the pattern abrasions. It looks like a belt. It almost  
25 has the appearance of a belt buckle." Do you agree that this

1 photo shows cutting wounds?

2 A] Not cutting wounds with a, uh, a sharp knife. I think  
3 there are puncture wounds; puncture wounds by animal activity,  
4 but not cutting wounds - - and, and they're rough edges; they're  
5 not sharp edges.

6 Q] So those are not incised wound cuts as he describes in his  
7 letter?

8 A] That's correct. I disagree that these are cut wounds made  
9 with a knife. But you can have a cut wound made by a bite mark,  
10 too, and that would be very irregular, you know. So it's not a  
11 sharp knife wound; it's a tearing of the tissue by animal  
12 activity. And I think most likely, but wouldn't comment  
13 consistent with a turtle, but it could be any other kind of  
14 animal, or it could be, some of this could be, because the body  
15 struck branches of a tree under the water, you know, while  
16 moving back and forth. But I would prefer, I would think more  
17 to the turtle possibility.

18 Q] So again, postmortem animal activity?

19 A] Postmortem. Postmortem; most probably animal activity,  
20 most probably a turtle, but whatever it is, it happened after  
21 death.

22 Q] Okay. And then, uh, 72B he says "States Exhibit 72B is a  
23 photograph of the face showing the abrasions, the gouging  
24 cutting wounds and contusion and bruising and the previously  
25 described superficial lacerations and abrasions."

1 Question: "When you say 'those multiple gouge wounds,' are those  
2 caused by an instrument different than the blunt object you  
3 described and then the broom-end handle sized object you  
4 described?"

5 Answer: "Yes."

6 Question: "We're now talking about injuries caused by yet a  
7 third weapon?"

8 Answer: "Yes, sir. In here you can see the large openings in  
9 the skin. Those are the gouging wounds. If you'll notice how  
10 irregular they are, the skin has been pulled away, pulled out.  
11 The underlying soft tissue has been pulled away from the cheek."  
12 Do you agree?

13 MR. HOLT: Could you reference what page you're  
14 reading from?

15 MR. BURT: Okay. This is page 834.

16 MR. HOLT: Thank you.

17 DIRECT-EXAMINATION, continuing:

18 Q] Do you agree that this photograph depicts injuries caused  
19 by a weapon?

20 A] I don't agree that's a weapon. I think that Dr. Peretti is  
21 describing very well. These are gouging wounds with the skin  
22 pulled out, which is typical of postmortem animal activity. So  
23 that all of these, there may be fifty of these little punctures  
24 in this area that you can see on different angles under the chin  
25 and a lot of them under the chin, and up here, and it is my

1 opinion that those couldn't be produced by someone just sitting  
2 there and with a weapon and constantly puncturing. That would  
3 take a while and that it is - - and there's no bleeding from  
4 these, from these, uh, uh, perforations or punctures. And I  
5 think it is a gouging, which is irregular, caused by some kind  
6 of animal activity.

7 Q] Okay. And 62B also relates to Mr. Branch and Dr. Peretti  
8 says, this is again at page 834, "State's Exhibit 62B is showing  
9 some of the gouging wounds on the face, showing the left ear,  
10 the contusions, the scratches on the back of the left ear and  
11 some of the superficial lacerations on the scalp."

12 Again, are we looking at animal activity here?

13 A] Yes. First of all, these, I would call these scrape marks,  
14 these superficial scrape marks to be a laceration, and we only  
15 have to go down into subcutaneous. It has to go below the skin  
16 into the soft tissues, which happened on the left side of the  
17 face. But these are scrape marks, uh, exposed by the, the, uh,  
18 where Dr. Peretti or somebody has shaved away the hair. You  
19 see, there was hair here and that's also a problem that, uh,  
20 hair will prevent a lot of, uh, of, uh, injury, uh, but it can,  
21 but one can scrape the scalp against either by animal activity  
22 or branches of trees. These are all very superficial, this is  
23 superficial, here is some, uh, very superficial abrasions that  
24 are forming a cluster. I think all of this is after death.

25 Q] After death. And to the right in the lower right-hand



1 corner, what is that, uh, area of redness?

2 A] This is the left cheek of the young boy, uh, which we saw  
3 in more greater detail previously, which he describes in the  
4 previous, uh, description as due to gouge marks and the pulling  
5 away of the skin, uh, from the, uh, from the underlying bone  
6 there.

7 Q] Now as a lay person, when I hear the word "hemorrhage," I  
8 think blood and red and that area is certainly red; isn't that  
9 hemorrhaging?

10 A] No. There's no blood here. This is just redness caused by  
11 scraping of the skin, like you'd have a bruise of some type,  
12 you've got a redness there. And with time this will then dry  
13 out and turn brownish.

14 Q] And is it your opinion that a weapon caused that scraping?

15 A] No. No, I think this is a rubbing and part of the reason  
16 is that when we - - just so we understand - - when we die, when  
17 we die, the blood stays in all of the blood vessels. It doesn't  
18 go away. So that we have the capillaries, the veins, the  
19 arteries filled with blood at the time of death. If the skin is  
20 scraped it will cause a pink color because we're exposing the  
21 capillaries, millions of capillaries, so that scraping, uh, does  
22 reveal the red capillaries but the blood is still in the  
23 capillaries and, uh, the color is not due to bleeding - - it's  
24 not due to hemorrhage.

25 Q] 63B, Dr. Peretti in regard to this photo says "State's

1 Exhibit 63B...

2 MR. HOLT: ...what page?

3 MR. BURT: 835.

4 DIRECT-EXAMINATION, continuing:

5 Q] "State's Exhibit 63B is a photograph of the front of the  
6 ear showing the contusions, the scrapes and injuries involving  
7 the ear."

8 And then Question: "Doctor, were the injuries to the ears of  
9 Steve Branch, were they of the same nature and type as the kind  
10 you described in regard to Michael Moore?"

11 And he says "Yes, they were."

12 And then the follow-up question: "Were there also injuries to  
13 the mouth and lips regarding Steven Branch?"

14 Answer: "Yes."

15 And then there is some objections and then he says "Injuries  
16 noted to the ears can be done by holding the ears pulling the  
17 ears, injuries involving the lips could be from having an  
18 object, any object, inserted inside the mouth or a hand placed  
19 over the mouth or a firm object placed over the mouth and it  
20 could also be from the punch or a hit with a rock," and then he  
21 also goes on to describe anal dilation with respect to Mr.  
22 Branch.

23 Uh, do you agree with the suggestion of this testimony, that  
24 this is somehow related to the sexual activity allegation?

25 A] No, no.

1 Q] What are we seeing here?

2 A] Postmortem; this is the front of the ear and this is the  
3 earlobe up here and this is some of the injuries, uh, on the,  
4 uh, below the ear or beside of the face and these are all post-  
5 mortem injuries from the body being in the water and being  
6 striking something, some object or more like the animal  
7 activity.

8 Q] All right, 64B is again, related to the Branch case and on  
9 page 837 Dr. Peretti says "Exhibit 64B and 65B," which we will  
10 get to in a minute, "are photos of the penis. 65B shows the  
11 mid-shaft of the penis and the head of the penis with  
12 contusions, bruising and overlying scratches."

13 First of all in regard to this photo, do you see any evidence of  
14 irregularities?

15 A] Well, there is some discoloration here and this is the head  
16 of the penis. This, uh, irregularity, I mean some discoloration  
17 but all of that can happen after death. I'd like to see the  
18 other photo again?

19 Q] Yes, 65B. And let me tell you what he says about this:  
20 "The mid-shaft of the penis and the head of the penis with  
21 contusions, bruising and overlying scratches. This injury is,  
22 you can see there is an area of demarcation of the involved area  
23 and the uninvolved area. All of this discoloration here is  
24 bruising. There are fine scratches overlying the head of the  
25 penis, along the other focal areas of bruising. Also 64B is the

1 back of the penis showing similar injuries and lines of  
2 demarcation between the involved and noninvolved area."

3 Question: "Do you have an opinion as to what type of instrument  
4 or what could have caused the bruising, lacerations and injury  
5 you have indicated to the penis?"

6 Answer: "Well, these injuries could be from oral sex. They  
7 could also be from a squeeze, a very tight squeeze. But also  
8 with the clear band of demarcation between the involved and  
9 uninvolved areas, an object could have been placed around the  
10 penis and tightened very fast."

11 Do you agree with that testimony, based on those comments?

12 A] No, I think that one does not get these injuries in oral  
13 sex. Uh, we have people who die during oral sex; or fights;  
14 again, irregular bruising of the penis during oral sex, but not  
15 this kind of banding, which looks more like some kind of  
16 predator crawling along the penis at that point. And the point  
17 of the thing here to distinguish whether this is during life or  
18 after death, is to take a microscopic section of it. There's no  
19 microscopic section of this and if this is really a hemorrhage  
20 rather than postmortem discoloration, uh, that would be  
21 important. But I think saying that this happened during oral  
22 sex is just pure speculation and there's no evidence that I know  
23 of to support that.

24 Q] Now 59C I believe is Mr. Byers. Here Dr. Peretti says "59C  
25 is a close-up of the facial and contusions, black eyes and

1 abrasions on the nose. There is a pattern type injury here."

2 Do you agree with that?

3 A] First, if I may just make mention of Mr., uh, this child's  
4 father is here, uh, do you want to sit through this - - I don't  
5 know - - Mr. Byers? It's kind of upsetting.

6 (REPORTER'S NOTE: Mr. Byers nodding head affirmatively.)

7 DIRECT-EXAMINATION, continuing:

8 A] Uh, there are some scrape abrasions on the nose. I don't  
9 see a pattern of anything here as to what it could be, uh, just  
10 some usual abrasions. The left eye is totally normal. The  
11 right eye here, there's a brown discoloration here which I can't  
12 tell whether it's a shadow or not, but if it is a brown dis-  
13 coloration, it would mean it's been there a few days. That's  
14 not a fresh hemorrhage, it would not be that color. It's  
15 yellow/brown and if it's a true injury, it was nothing that - -  
16 it happened during life, but it happened a few days before his  
17 death. And here there is bruising on the, uh, but again, I  
18 think there's snails. We have this kind of thing, uh, I don't  
19 know if it's snails in the area, but snails inflict that kind of  
20 loss of the outer skin tissues. So I think that's postmortem.

21 Q] How about these injuries, and I'm pointing to, it looks  
22 like almost like a fingernail type of semi-half-moon shape  
23 injury. There's three of them right there. What is that?

24 A] That's just, uh, some object that scraped the skin after  
25 death and that given all of the different, uh, uh, uh, skin

1 abrasions on the three boys, uh, one can pick out some that what  
2 is speculated as a fingernail. If it's a fingernail, it's the  
3 fingernail of a very small person, but I think that's just the,  
4 the, uh, scraping either by animals or by tree branches.

5 Q] Is, is that, are those three, uh, indentations consistent  
6 with claw marks of animals with a long sharp claw?

7 A] Yeah, an animal with claws, or a turtle that's walking in  
8 that area. It could be. It could be, uh, it could be a lot of  
9 things, but it's after death.

10 Q] That part you're clear on?

11 A] Yes.

12 Q] Okay. 64C and he says "64C shows the ear with the bruises  
13 and the overlying scratches."

14 Question: "Those scratches with the bruising, would those be  
15 consistent with fingernail scratches?"

16 Answer: "Fingernails will cause these types of scratches. Yes.  
17 Here we can see the side of the face with scratches, bruising of  
18 the ears, bruising of the eyes, here we have on the back of the  
19 scalp with a laceration similar appearance of the other two  
20 boys; linear."

21 Question: "Doctor, that laceration would be more consistent with  
22 broom handle type weapon you referred to, rather than the large  
23 forage club of some sort?"

24 Answer: "Or a 2x4 piece of wood."

25 Do you agree that that's what's depicted here?

1 A] I think there must be another slide that he is also  
2 referring to in that grouping, but all of that there is post-  
3 mortem, uh, superficial abrasions of the lower ear lobe and  
4 maybe a scratch here. These are scratches. These happened, in  
5 my opinion, uh, entirely consistent with happening after death,  
6 not during life. Ear lobes, often animals will nibble on the  
7 ear lobes because they protrude and they have a little bit of  
8 marks on some of these spots here on the ear lobe.

9 Q] Is there anything in this photo suggestive of somebody  
10 holding somebody by the ears for the purpose of oral sex?

11 A] No.

12 Q] Can you tell that kind of inference from this type of  
13 injury?

14 A] No. There's no inference in any of these photographs that  
15 these children, uh, were held by the ears for oral sex. I mean,  
16 that's, in my opinion, is just not true.

17 Q] 71C, Dr. Peretti said at page 843, "State's Exhibit 71C is  
18 the buttock region in here. There was evidence of genital  
19 mutilation. There is the back, the anal orifice, the multiple  
20 cutting wounds here on the anal orifice and the perineum area  
21 which is the area below the anal orifice."

22 Question: "Doctor, did you also make a finding that the anal and  
23 rectal mucosa were hyperemic and injected?"

24 Answer: "Yes."

25 Question: "Can you explain what that means?"

1 Answer: "It was red, injected, some capillary dilation there."

2 Question: "And there were signs of physical trauma as far as  
3 abrasions, lacerations to the buttocks area and the area  
4 immediately surrounding the anus, correct?"

5 Answer: "There's cutting wounds and abrasions; yes."

6 Are these cutting wounds?

7 A] Firstly, this is a normal anus after death. There is no  
8 injection, there's no redness, there's no, uh, evidence of, uh,  
9 hyperemia or injection of the normal appearing anal verge. This  
10 is where the edge of the anus and the colon meet. There is sex-  
11 ual mutilation, uh, we don't quite see here of the scrotum and,  
12 and, uh, penis covered by the ruler here, uh, but there's no  
13 bleeding here. That's all postmortem. These marks here are  
14 lacerations, but not cuts. They're, they're, uh, this one goes  
15 just below the skin surface and in my opinion, they're animal  
16 activity, whatever the animal is. They're not consistent with  
17 the, uh, serration of a knife. And in measuring the - - these  
18 are much wider than the knife serrations, which had been raised  
19 as a possibility. And I think that these are not knife cuts,  
20 but more directly caused by some kind of claw.

21 Q] And how about these, uh, they look like puncture type  
22 marks. I may be misreading this, but are those puncture marks?

23 A] They, they could be. They could be pin-point punctures by,  
24 uh, the nails of a clawed animal of some kind.

25 Q] Okay. Now in regard to this 70C, Dr. Peretti says at page



1 843 "State's Exhibit 70C is a close-up of the genital  
2 mutilation. Here we have multiple gouging type injuries where  
3 the skin has been pulled out. The skin overlying the shaft of  
4 the penis was carved off. What you see here, this red part that  
5 is in the photograph, that is the shaft of the penis after the  
6 skin was removed and you can see above the scrotal sac and  
7 testes are missing. The whole genital area is missing,  
8 especially the internal aspect of the shaft and penis. Around  
9 these areas you can see the multiple gouging type wounds, stab  
10 wounds and cutting wounds."

11 Does this picture depict stab wounds and cutting wounds inflict-  
12 ed prior to death?

13 A] No. No, this area is a very vascular area, a lot of  
14 little blood vessels. So if there is some kind of mutilation of  
15 the penis and scrotum or the scrotal area during life, there's a  
16 lot of bleeding, a lot of blood in this soft tissues. Here,  
17 there is no bleeding at all, there's, uh, the edges are  
18 irregular where the skin has been separated from the underlying  
19 soft tissues, uh, he describes as with the facial wound, that  
20 the puncture marks, gouge marks with separation of the skin.  
21 That's how animals take skin off the body; they puncture, they  
22 try it and then they pull it off. And I think that none of  
23 these, in my opinion, none of these injuries were caused by an  
24 instrument, uh, used by a human during life.

25 Q] Now he goes on to say on page 844 with reference to this

1 photo:

2 Question: "The gouge wounds and cutting wounds you referred to  
3 around the genital area, in your opinion, how could these wounds  
4 have been inflicted? What type of manner would those been  
5 inflicted?"

6 Answer: "Well, it could be, you see these types of irregular  
7 gouging wounds, not knowing the instrument, you can get these  
8 type of wounds from a knife, a piece of glass, usually the knife  
9 or the object that's being twisted and the victim is moving to  
10 get these irregular shapes."

11 Uh, does this photograph depict a knife wound caused by a  
12 perpetrator twisting a knife at a point in time when the victim  
13 was moving?

14 A] Not in my opinion.

15 Q] Okay. And for the same reasons that you previously told  
16 us?

17 A] Yes, sir.

18 THE COURT: Are you going to be much longer?

19 MR. BURT: No, Your Honor, but it might be a good  
20 time to break.

21 THE COURT: All right, we'll take the noon recess.

22 Court will be in recess until 1:15.

23 (WHEREUPON, a recess was taken; proceedings resumed as follows,  
24 to-wit:)

25 THE COURT: All right, court will be in session.

1                   MR. BURT: Thank you.

2 DIRECT-EXAMINATION, continuing:

3 Q] Doctor, I wanted to return to clarify one point. You had  
4 mentioned when we were talking about those photos of the Branch  
5 penis, do you remember that when you identified some postmortem  
6 wounds, and I think you said, uh, that you didn't think there  
7 were any microscopic slides?

8 A] That's correct.

9 Q] Did I bring it to your attention over the lunch hour the  
10 autopsy report for the Branch case?

11 A] Yes.

12 Q] And what does the autopsy report show with reference to the  
13 swabs?

14 A] There were two sections taken of the, uh, penis and they,  
15 uh, show intact epithelium, that is, the covering of the, the,  
16 uh, skin of the penis was intact. And that there was blood  
17 vessel engorgement, meaning that blood vessels in that area were  
18 filled with blood. There was no hemorrhage, it was just that  
19 there was blood that was distending the blood vessels of the  
20 penis.

21 Q] So if there's no hemorrhaging, what did that tell you about  
22 whenever injuries were visible on the penile area were  
23 inflicted?

24 A] Well, uh, it, it doesn't tell you much, because there's  
25 still no hemorrhage. There's no bleeding into the tissues so

1 therefore there were no injuries, uh, to the blood vessels, uh,  
2 at the time of the death. The blood vessels at the time of the  
3 death were intact even though there was blood present in the  
4 blood vessels.

5 Q] So does that indicate to you that whatever injury, that  
6 they were inflicted postmortem?

7 A] That's correct. There's still no hemorrhage. And I must  
8 say, uh, I also looked at the other, uh, if I may, at the micro-  
9 scopic examinations of all three of the children, uh, in  
10 addition to the, uh, the, uh, sampling of the skin of the wrists  
11 and ankles, there was, all three of them did have, uh, sections,  
12 uh, microscopic sections made of the anus. All three of them  
13 did have and in all three cases, there was no hemorrhage, uh, in  
14 the anal verge or in the anus, uh, under the microscopic exam-  
15 ination.

16 Q] And if there had been forced sexual activity with an eight-  
17 year-old, say, penile insertion on an eight-year-old boy, would  
18 you expect to see hemorrhaging when you looked at the micro-  
19 scopic slides?

20 A] Yes.

21 Q] If the injury had been inflicted prior to death?

22 A] Yes.

23 Q] Okay. Now I have up on the screen State's Exhibit #69C.  
24 And Dr. Peretti says at page 844 "State's Exhibit 69C is a  
25 photograph showing the legs, the area of the genital mutilation.

1 You can see the binding injuries of the left wrist but also here  
2 we can note on the top of the thighs and inner aspects of the  
3 thighs, we have multiple contusions and abrasions inside the  
4 thighs and you can see that here."

5 Question: "Doctor, what would cause that type of bruising?"

6 Answer: "These type of injuries we normally see in female rape  
7 victims when they are trying to spread the legs for penetration,  
8 or they may be hit with an object; also, it is a possibility."

9 Do you agree with the testimony, uh, that looking at that photo,  
10 it's a reasonable speculation that this is a situation similar  
11 to a female rape victim?

12 A] Let me come down to you and point it out. (Witness exits  
13 witness stand.) Just to put it in context, uh, these marks on  
14 the, on the, uh, ankles and the left wrist are from the shoe-  
15 lace ties. And the other boys also had similar bindings. And  
16 this is where Dr. Peretti did take sections from these areas  
17 which I referred to earlier, uh, that most of them show no, no  
18 hemorrhage.

19 Q] And by-the-way, that, uh, those injuries, those ligature  
20 indentation injuries, those weren't caused by animal predation;  
21 correct?

22 A] No, these are caused by the, uh, by the tightness of the  
23 shoelaces around the ankles and the wrists. Now we can't tell  
24 from this whether they were put on before death or after death,  
25 because the same furrowing can take place in either way. But I

1 think in one boy, there's hemorrhage in the ankle, uh, which is  
2 the case that the heart was probably beating at the time, uh,  
3 that that was put on.

4 Q] All right?

5 A] The other is not. And here there are some, uh, superficial  
6 bruising on either side.

7 Q] Either side of the inside of the thighs?

8 A] The thighs.

9 Q] Now the general construct of what Dr. Peretti says, if in  
10 sometimes in rape victims if there's forcible rape one can see  
11 bruising on, on the inner aspects of the thighs, that's, that's  
12 a possibility. But I think in this instance it's highly un-  
13 likely, uh, that these are caused by forcing the, the, uh,  
14 thighs apart, especially since there is so much damage done to  
15 the, uh, uh, penis and testes, that whatever is causing this  
16 damage is also causing the damage on either side of the thighs,  
17 and not a human intervention causing the thigh injuries, and an  
18 animal intervention causing the, the, uh, scrotal injuries. I  
19 think that all of this, had it been a woman who was raped and  
20 alive, there would be black and blue marks, not just superficial  
21 abrasions. There will be hemorrhage underneath the abrasions  
22 that are easily identified, uh, on a proper, uh, forensic  
23 examination, uh, of that person.

24 Q] I'm showing you now State's Exhibit 72C and I'm reading  
25 from page 845 of the Misskelley trial, Dr. Peretti says "State's

1 Exhibit 72C is a photograph. I'm showing the back of the anal  
2 region, the thighs and the bruising situated on the thighs and  
3 also on the back of the lower legs. Here you can see all of the  
4 bruising. There is some sort of pattern, two linear bands of  
5 contusions in between here. And there is what is called pallor,  
6 which is uninvolved. That indicates an object, such as a piece  
7 of wood, a large object was inflicted there, struck there to  
8 cause this type of injury. Also, you can see on the back of the  
9 legs what we would classify as defense wounds, too, bruising on  
10 the back of the legs."

11 Do you agree or disagree with that testimony?

12 A] I disagree with the testimony. I disagree with the  
13 "defense wounds." It can happen that sometimes a person will  
14 try and fend off an attacker by trying to kick the person and  
15 they get wounds on the soles of the feet that could be defense  
16 wounds under certain conditions. It's unusual, but it can  
17 happen. But I think these injuries of the back of the legs are  
18 minimal, if any, and they just show some postmortem, uh, uh,  
19 scrapings. Here, too, he talks about these brown circles being  
20 evidence of being struck with a stick, or something, uh, that he  
21 mentioned. I think that just depends on how the body lay in the  
22 water, that it could lay on some rocks or pebbles or something,  
23 uh, until the bodies were recovered. And that there are various  
24 other marks; let's see, there are two marks here on the right  
25 thigh that look a little brownish and that would have to be

1 looked at under the microscope to tell whether this is a few  
2 days old. They look a little older, or whether it's fresh or  
3 whether it's postmortem, would have to be done by microscopic  
4 examination, and it wasn't done. And here, too, you can see the  
5 anus is not dilated. It's perfectly normal - - you can't see  
6 the anus because of the cheeks of the buttocks.

7 Q] Okay. So in that regard, uh, this is the questioning of  
8 Dr. Peretti at page 845 and 846, he's asked:

9 Question: "In regard to Chris Byers' autopsy did you find in him  
10 injuries to the mouth and to the ears, similar to what you found  
11 with the other two?"

12 Answer: "Yes, I did."

13 "Would your opinion as to the cause of those injuries be the  
14 same, regarding this particular case?"

15 Answer: "Yes."

16 Question: "What is that opinion?"

17 Answer: "Those injuries you normally see on areas of children  
18 who are forced to perform oral sex. You can get those types of  
19 injuries from an object placed over the mouth, a firm object,  
20 the hand or mouth, some injuries, the contusions of the lips and  
21 the bruising may be due to a punch."

22 I take if from what you've already said, you disagree with that  
23 testimony, also?

24 A] I disagree with it and if in fact there was oral sex, that,  
25 uh, they should have been able to find evidence of it by, uh,



1 swabs in the mouth and, and the back of larynx, uh, looking for  
2 spermatozoa. I, I disagree with that.

3 Q] And Dr. Peretti, on page 846 further testifies,

4 Question: "The injuries that were around the genital area, those  
5 were inflicted by some sharp object, such as a knife?"

6 Answer: "A sharp object; yes."

7 A] I disagree with that.

8 Q] For the reasons that you have stated?

9 A] Yes, uh, blunt tearing.

10 MR. BURT: Thank you. Thank you, Doctor, you may  
11 be seated.

12 (Witness retakes witness stand.)

13 DIRECT-EXAMINATION, continuing:

14 Q] Doctor, why did the various disagreements that you had, uh,  
15 in your testimony here with Dr. Peretti's testimony, is this a  
16 case that in your opinion, cried out to the use of a defense  
17 pathologist?

18 A] Uh, yes, I think back in 1993, uh, the, uh, in my opinion,  
19 there should have been some expertise brought in, uh, by the  
20 defense, to see whether or not they agreed with the, uh,  
21 findings of Dr. Peretti, that, uh, especially three young boys  
22 with such a, a terrible tragedy that, uh, in my opinion, yes,  
23 there should have been, absolutely been a, uh, forensic path-  
24 ology evaluation in 1993, independent of the official  
25 investigation.

1 Q] And, and in your opinion, if that had been done, could you  
2 or someone of similar qualifications and experience, have given  
3 testimony similar or identical to what you've given here today?

4 A] Well, if I had been called in, I, I would, uh, have  
5 presumably given the same testimony as I'm giving today.

6 Q] Now in your examination you quite kindly referred to, uh,  
7 Mr. Byers, who is seated in the courtroom. During the lunch  
8 hour did Mr. Byers bring some information to your attention  
9 which adds some significance to your views?

10 A] Yes, in fact.

11 Q] What, uh, could you share with us that conversation?

12 A] Yes, he indicated to me in the light of what testimony I  
13 gave this morning, uh, that he's been in that bayou area where  
14 the bodies were found and has seen very large turtles, uh, in  
15 that area, as snapping turtles that could bite your finger or  
16 hand off.

17 Q] Now in terms of going back to the question the Court asked  
18 about the possibility of other animals, you mentioned turtles,  
19 did you, in connection with your review of this case, review  
20 Plaintiff's Exhibit #25, which are photocopies of hair slides  
21 that were taken by the State Crime Lab at the time of the  
22 autopsies in this case?

23 A] Uh, yes.

24 Q] And was there anything significant in that exhibit in terms  
25 of your view?

1 A] Yes. My understanding of Exhibit 25 is that, uh, a number  
2 of hairs were removed from the three bodies by personnel at the  
3 Crime Lab before the autopsies were done. And when these hairs  
4 were examined, some of them were animal hairs. I'm not sure  
5 which kind of animal, but animal hairs. Uh, and none of the  
6 other human hairs matched the three, uh, defendants at that  
7 time.

8 Q] Uh, specifically, there is a photocopy of a slide here  
9 dated 5/26/93 with a notation "animal hairs"?

10 A] Yes.

11 Q] Apparently determined by the Crime Lab that these hairs  
12 taken from the body were animal hairs?

13 A] Yes.

14 Q] Okay. There's a second slide, uh, which says "animal hair"  
15 and then on the same slide a hair which says "similar to horse  
16 hair"; right?

17 A] Yes.

18 Q] As to the human hair, but there's also an animal hair and  
19 it says "similar to cat hair"?

20 A] Yes. Whoever looked at the hair under the microscope  
21 thought it might be some kind of a cat, but apparently that was  
22 not DNA tested.

23 Q] In terms of your opinion about animal predation, am I  
24 understanding this correctly, that what you're looking at is  
25 what you've got in front of you in terms of the photographs and

1 you're looking at injuries which in your training and experience  
2 tell you that this is animal predation?

3 A] That's right. And this is, we had this discussion in May  
4 of 2007 with Dr. Peretti, uh, we did discuss specifically, and I  
5 think as I recall, Dr. Souveiron, the forensic dentist, had  
6 raised the issue right then of, uh, turtle bites, you know, of,  
7 uh, uh, turtle bites and I remember Dr. Peretti's response was,  
8 uh, he didn't think so, uh, and partly because he raised turtles  
9 and he knows a lot about turtles and, uh, he dismissed the, uh,  
10 possibility of turtles.

11 MR. BURT: Thank you, Doctor. That's all I have.

12 I believe Mr. Phillipsborn has some questions, Your  
13 Honor, and with the Court's permission, I was going to  
14 put on a disc all of the photos that I just showed Dr.  
15 Baden, which were trial exhibit photos, with the  
16 Court's permission, and I'll have that marked as soon  
17 as I get it prepared.

18 DIRECT-EXAMINATION

19 BY MR. PHILLIPSBORN:

20 Q] Doctor, I have a question in just a few areas and, and just  
21 so you know, I'm not going to go into the kind of, uh, detail  
22 that was just gone into. You testified at the beginning of your  
23 examination about the board certification process, and let me  
24 ask you, uh, just so we're clear, are, are you, uh, are you, uh,  
25 familiar or have you reviewed some testimony that was given by

1 Dr. Peretti in the context of a post-conviction hearing in this  
2 case indicating that he had passed an examination, uh, related  
3 to certification in forensic pathology, or words to that effect?

4 A] Yeah, I read that. Yes.

5 Q] Okay. Now, uh, is, is that, uh, is, is there a difference,  
6 at least as you experienced it and understand it, uh, given your  
7 own board certification, between passing the examination in  
8 forensic pathology and actually, uh, having successfully  
9 achieved board certification as a forensic pathologist?

10 A] Yes.

11 Q] What is, uh, first of all, before you become board  
12 certified as a forensic pathologist, do you have to be board  
13 certified in any other areas of pathology?

14 A] Yes.

15 Q] And can you explain that?

16 A] Yes. To be board certified in pathology, and there may be  
17 ten different, uh, sub-specialties in pathology, the most im-  
18 portant is anatomic pathology, to know the basic, uh, uh,  
19 anatomy of the body, any damage, any disease of the body. To be  
20 able to look at surgical pathology slides, et cetera, to be able  
21 to do an autopsy requires board certification in anatomic  
22 pathology. If one wants to have another sub-specialty, such as  
23 forensic pathology, you have to pass the anatomic pathology  
24 boards. So what I gather from reading through Dr. Peretti's  
25 explanation that he may have passed the forensic pathology

1 portion of the exam but did not pass the anatomic portion;  
2 therefore, he was not board certified.

3 Q] Now, uh, the next area I wanted to ask you about, you  
4 testified in your direct-examination about attending a meeting,  
5 uh, I think you put it on May 17, as far as you could recall, of  
6 2007 at the Arkansas Crime Laboratory in Little Rock?

7 A] Yes, I remember.

8 Q] And you, you identified, at least, uh, some of the  
9 participants there and just to, to be clear, was Dr. Souveiron,  
10 to your knowledge, at that meeting as well?

11 A] Yes, he was.

12 Q] Okay. And was it your understanding that, that in terms of  
13 the so-called "defense experts," meaning people who have been,  
14 uh, consulted and who were at the meeting at the request of the  
15 Defense, there were two experienced forensic pathologists and  
16 two odontologists, if you recall?

17 A] Yes, sir.

18 Q] Okay. Uh, now do you recall during the course of the  
19 meeting in question that there were personnel from the Crime  
20 Laboratory in addition to Dr. Peretti, who attended? In other  
21 words, there were people who, there were people in the room in  
22 addition to the, to the medical experts, if you will, there were  
23 also additional persons in the meeting room?

24 A] Yes.

25 Q] Uh, moving to another area, and this is specific to the

1 testimony that you have given, in part, because of the way my  
2 colloque, Mr. Burt, was asking you questions. He was focusing,  
3 and rightly so for his purposes on the Misskelley, uh, trial  
4 transcript on some of the record of the Misskelley proceedings.  
5 You, uh, testified as part of your direct-examination that as  
6 far as you can recall, you actual reviewed Dr. Peretti's  
7 testimony in two different trials; is that fair?

8 A] Yes.

9 Q] Now, uh, again, uh, I'm just going to ask you, uh, general  
10 questions, with your indulgence, Doctor. The testimony that  
11 you've already given concerning your opinions, uh, of whether  
12 there was any sexual assault, uh, that, uh, was, uh, evidenced  
13 either by any marks on the, uh, bodies or on the, uh, in the  
14 area of the mouth of any of the three children, uh, assuming for  
15 the purposes of my questions that there was testimony similar to  
16 that given at the Misskelley trial that was also given at the  
17 second of the trials, would it be your opinion that Dr. Peretti  
18 erred in opining that there was evidence in sexual assault in  
19 any of the remains of the three young boys?

20 A] In my opinion, I disagree with Dr., uh, Peretti's opinion;  
21 I think it's an incorrect opinion.

22 Q] And, uh, with respect to, uh, with respect to the testimony  
23 that you've already given, uh, as I understand it, uh, in your  
24 opinion, uh, based on your review of photographs and of the  
25 postmortem, uh, examination reports, did Dr. Peretti correctly

1 distinguish between premortem, perimortem, and postmortem  
2 injury?

3 A] Not in my opinion.

4 Q] You, you, uh, discussed, uh, a little while ago the  
5 implications of, uh, the furrowing in the areas of the ligatures  
6 applied to the wrists and, uh, ankles of the three young boys  
7 as, as well as the implications of some indication of hemorrhage  
8 in the, uh, one of the, uh, findings. Uh, just so we are clear,  
9 in your view, uh, does the lack of hemorrhage observed in the  
10 microscopic slides definitively indicate the cessation of  
11 heartbeat in a given victim?

12 A] In taking into consideration, uh, all of the, uh, surround-  
13 ing, uh, uh, uh, information in this case, in these cases, the  
14 lack of hemorrhage, in my opinion, uh, to a reasonable degree of  
15 medical certainty, means the heart was not beating at the time,  
16 uh, the injuries were inflicted.

17 Q] Uh, have, have you, uh, experienced situations in which  
18 during the course of a postmortem examination of, uh, of an  
19 individual you saw, uh, uh, ligatures or restraints of rope or  
20 shoelaces or something equivalent applied in which you saw signs  
21 of what you thought was, uh, evidence of struggle or, uh, the  
22 individual tried to fight against the restraints prior to death?

23 A] Yes, that commonly happens when people are handcuffed by  
24 the police. Yes.

25 Q] And, and, uh, is it fair to say that, that there are some,



1 some characteristic signs that accompany the, uh, the, the  
2 formation of the opinion that an individual was struggling  
3 against the restraints? In other words, are there things you  
4 would expect to see, uh, either microscopically or just by gross  
5 observation that would tell you this person was alive and able  
6 to resist, or in some way struggle against the ligature, uh,  
7 prior to death?

8 A] Yes.

9 Q] And what sorts of things would you look for?

10 A] It would be, uh, problems with bruising, hemorrhage under  
11 the skin, uh, which would be readily apparent under the  
12 microscopic examination, and hemorrhage into the soft tissues in  
13 the area of the furrow, the furrow, uh, with hemorrhage in the  
14 fatty tissue and muscle tissue beneath it.

15 Q] And, and so based on what photography or photographic  
16 evidence has been presented to you and based on your, uh, view  
17 of the, of, uh, the reports - - and incidentally, uh, did you  
18 actually have a chance to review some of the photographic  
19 evidence of the slides? In other words, uh, did you see some  
20 photography that was made of the actual tissue slides?

21 A] Yes.

22 Q] Okay. Uh, and, and based on, on your review of the photo-  
23 graphs of the actual tissue slides, are you able to say any-  
24 thing other than what you have just, uh, what you have already  
25 testified about with respect to the condition of the young boy

1 whose tissue showed some area of hemorrhage? In other words, is  
2 the best we can do, in your opinion, simply to say it appears  
3 that this person's heart was beating, but there is no way we  
4 would know if he was conscious or unconscious at the time?

5 A] I'm not sure - - now the person we were referring to was  
6 James Moore and the sections of his wrists, uh, showed no  
7 hemorrhage and the sections of his ankles - - he was the only  
8 one, show, uh, some hemorrhage, subcutaneous hemorrhage. So it  
9 would suggest that, uh, his heart was still beating at the time  
10 those ligatures were on the, uh, ankles, uh, and that, uh, uh,  
11 we cannot tell from that, or cannot tell from that if he's  
12 conscious or unconscious, although the, the lack of, uh,  
13 hemorrhage around the wrists in Mr. Moore, James Moore, uh,  
14 would suggest he's not struggling with his, uh, with his hands.  
15 That would point toward loss of consciousness.

16 Q] I, I'd like you to assume for the purpose of my next  
17 question, Doctor, that, uh, anecdotal information was gathered  
18 during the investigation of the case by a, an individual who is,  
19 uh, being interviewed by a law enforcement officer and that that  
20 individual reported to the law enforcement officer that a defen-  
21 dant in this case had admitted to him that he had, uh, bitten  
22 off the testicles of one of the victims and sucked the blood  
23 from the, uh, victim. And I'd like to ask you based on your  
24 review of the evidence in the case, whether you find that, uh,  
25 whether you, uh, find, uh, any reliable forensic pathological

1 evidence or, or forensic medical evidence that would support  
2 that anecdote that an individual bit off the testicles of one of  
3 the victims and sucked out his blood?

4 A] I do not find any forensic evidence that would support that  
5 statement.

6 Q] I, I'd like you to assume for the purposes of my next  
7 question that, uh, an individual, uh, was interviewed by, by  
8 investigating police officers and provided anecdotal information  
9 during the interview in which he said he observed the children  
10 being, uh, punched about the head and, uh, being stabbed. Uh,  
11 do you have, uh, uh, evidence, first of all, in your opinion,  
12 that indicates that any of these victims in this case was  
13 stabbed with the use of a knife?

14 A] No. None of these three, uh, boys were stabbed. There  
15 were no stab wounds, to say, that is deep penetration of a  
16 knife. No.

17 Q] And in your opinion, uh, based on the observations that  
18 you've made of the available evidence, is there an indication  
19 that as far as you're concerned, that any or all of these three  
20 boys were beaten through use of fists or tools, uh, other than  
21 fists?

22 A] There, there is some indication, some indication that they  
23 were struck on the head, uh, which caused some bruising on the  
24 scalp and fractures of the skull, uh, and bruising of the brain  
25 on all three. So that there was some impact, not many blows,

1 but maybe one or two blows or a small number of blows, uh, the  
2 object could be a rock, it could be a piece of wood, it could  
3 be, uh, uh, well, most likely, and that these blunt impact  
4 injuries while the heart was still beating which would have  
5 caused, if they were conscious, caused loss of consciousness  
6 because of the bruising on the brain. And that, uh, they were  
7 then, consistent with them being, uh, tied up and put in the  
8 water and drowning, with the head injuries.

9 Q] Did you see evidence that would support the notion that  
10 they had been beaten with fists?

11 A] No. No.

12 Q] Uh, now moving to a different area of your testimony, one  
13 of the things you mentioned is that, uh, in your own practice  
14 you have, uh, uh, the availability of a forensic veterinarian or  
15 a veterinarian, uh, within whom you can consult on forensic  
16 issues. Uh, with respect to questions that you might have, uh,  
17 about bites or, uh, uh, necrophagia/animal predation, uh, in  
18 your opinion, uh, is it also possible to consult with an  
19 experienced and qualified forensic odontologist?

20 A] Yes.

21 Q] Now, uh, I know you testified about this, uh, in response  
22 to some of Mr. Burt's questions but just to be clear, you were  
23 shown a photograph of a survival knife, uh, and we can retrieve  
24 the photograph if you need to take a look at it, but the exhibit  
25 number for our purposes is 48NN as in November, and, uh, to

1 clarify for the purposes of the Baldwin record, do you see or do  
2 you recall having observed any injuries on the remains of the  
3 three boys that in your opinion are consistent with some  
4 application of force, either stabbing with the end of it,  
5 slicing with the blade of it or scraping with the, uh, with the,  
6 the teeth or serrated portion of that knife? Do you see any  
7 evidence that that knife was applied to any of these three boys?

8 Q] No.

9 Q] Or a knife like it? In other words, some kind of a tool  
10 with a pattern, uh, that is either forged or cut into it?

11 A] No, I see no such evidence in the autopsies.

12 Q] Now were you asked questions, uh, again, you answered in  
13 detail in Mr. Burt's examination, uh, that would be applied to  
14 the record in Mr. Baldwin's case, uh, about the implications of  
15 the, uh, abrasions on the ears and whether in your view, uh, the  
16 evidence on the ears or found on the ears during the postmortem  
17 examination whether these were in any way consistent with sexual  
18 abuse. Would your, uh, opinions be the same as stated already?  
19 In other words, if a, if there's no evidence that the, uh, based  
20 on the injuries to the ears that's consistent with forced  
21 fellatio?

22 A] I see absolutely no evidence of forced fellatio. And what  
23 concerns me is it's such an inflammatory charge, uh, statement,  
24 that unless there's evidence for it, it, uh, it's a mistake to  
25 make that speculation public.

1 Q] And with respect to the implication the findings of a  
2 dilated, uh, anus, uh, and, and the implications that there may  
3 have been some form of anal penetration or anal sex, would you  
4 answers be the same as already given, that there was, there is  
5 no evidence that you can find that, uh, anal, some form of anal  
6 penetration?

7 A] I, I found in the records and photographs no evidence of  
8 anal penetration, no evidence of anal dilation, dilatation. Uh,  
9 recognizing that the anus, uh, uh, sphincters become lax after  
10 death and the water being water, also, uh, relaxes the  
11 sphincters even more, uh, taking all of that into account, these  
12 are normal anuses in these young children and there is no  
13 evidence of penetration.

14 Q] Now by, by 1993, uh, had you personally actually, uh, to  
15 your recollection, taught any courses intended to provide basic  
16 education in forensic pathology to criminal defense lawyers?

17 A] Yes.

18 Q] And, uh, you've already explained to us, again in the  
19 context of the Misskelley case, or the questions by counsel for  
20 Mr. Misskelley that, uh, if to your knowledge, uh, there were  
21 board certified forensic pathologists available to consult on  
22 this case in 1993?

23 A] Oh, definitely. Yes.

24 Q] Uh, were there, to your knowledge, authoritative texts;  
25 that is to say, generally accepted in your field of endeavor and

1 considered, uh, uh, filled with, uh, valid and reliable infor-  
2 mation that were available, uh, for review that covered some of  
3 the issues presented by this case in 1993?

4 A] Yes, absolutely.

5 Q] Okay. And can you give us some examples of what you would  
6 have considered, uh, texts that, that would have been generally  
7 available?

8 A] Well, in this country, uh, Spitz and Fischer was, uh,  
9 available then and had a lot of material. Uh, in England there  
10 was Bernard Knight and, uh, Gragwell, uh, textbooks on forensic,  
11 uh, pathology, forensic science. But there were, and there were  
12 other textbooks around.

13 Q] And now your CV actually lists a number of publications of  
14 yours, including some, some portions of book length treatments,  
15 uh, and again, in addition to the book length, the foreign book  
16 treatments on, uh, forensic pathology topics, is there a, uh,  
17 was there a fair amount of periodical literature in the forensic  
18 sciences that could be reviewed, uh, that bore on, for example,  
19 drowning deaths and, uh, mechanisms of injury and things of  
20 that, uh, uh, and those sorts of topics as of 1993?

21 A] Oh, yes. And, uh, *General Forensic Sciences*, uh, was the  
22 leading journal, uh, in that regard, uh, that had all kinds of  
23 articles relating to drowning, sexual assaults and many other  
24 topics.

25 Q] And, and this is the last area of inquiry that I'm, I'm

1 going to, uh, uh, or the next to the last that I'm going to ask  
2 you about. It sounds as though, uh, there have been occasions  
3 over the years when you have attended, uh, uh, meetings,  
4 professional meetings pertinent to your field of endeavor where  
5 lawyers and other persons, perhaps other colleagues, have  
6 approached you to essentially get free advice and counsel and,  
7 uh, on cases they're working on. Is that fair?

8 A] Yes, that's fair.

9 Q] Uh, the last, uh, thing I wanted to ask you is you've  
10 provided a series of opinions connected with some trial evidence  
11 that was shown to you by Mr. Burt and I take it that were I to  
12 ask you questions about the photographs you were looking at  
13 earlier today and this afternoon that were identified by  
14 Misskelly trial, uh, trial evidence numbers, uh, would your - -  
15 and assuming I were asking you, uh, similar questions in  
16 connection with the Baldwin trial, would your answers be the  
17 same as the ones you gave Mr. Burt about your opinions about  
18 what was shown on the trial exhibits that were displayed to you?

19 A] Yes, sir.

20 MR. PHILLIPSBORN: Thank you very much. Thank  
21 you, Your Honor. I pass the witness.

22 CROSS-EXAMINATION

23 BY MR. HOLT:

24 Q] I just have a very few questions, Doctor.

25 A] Thank you.



1 Q] Uh, uh, it's just something that I'm supposed to ask, but I  
2 assume that you are being paid to consult in this case and that  
3 you're probably getting paid more to consult in this case than  
4 you did when you started out as a medical examiner?

5 A] That's true.

6 Q] Okay. That's all. I don't need any more on that.

7 A] I made eight thousand dollars a year when I started out as  
8 a medical examiner full-time for the city of New York.

9 Q] Okay. Uh, are the, uh, I could ask Mr. Burt - - are the  
10 autopsies themselves, have they been made as an exhibit?

11 MR. BURT: I don't believe so.

12 CROSS-EXAMINATION, continuing:

13 MR. HOLT: I would move that we have them, uh,  
14 we've referred to them as reports from the experts; so  
15 if we could just submit them.

16 THE COURT: They will be received as a joint  
17 admission.

18 (WHEREUPON, Joint Exhibit #        was admitted into evidence and  
19 are appended on pages .)

20 CROSS-EXAMINATION, continuing:

21 Q] In terms of the autopsies themselves, are they essentially,  
22 well, let me first ask you, what is the organization - - is it  
23 the National Association of Medical Examiners?

24 A] Yes.

25 Q] What do they do?

1 A] That's an organization of medical examiners, uh, forensic  
2 pathologists and other people who do autopsies, uh, who, uh,  
3 have annual meetings, semi-annual meetings and, uh, present  
4 papers similar to the American Academy of Forensic Sciences, but  
5 limited to pathologists.

6 Q] I see. Do they also have some sort of function sort of  
7 like the joint commission in that they inspect crime  
8 laboratories?

9 A] They have, uh, they have functions that they make, uh, they  
10 try to make standards for medical examiners and they have a  
11 function of, uh, uh, of evaluating medical examiner offices to  
12 see if they're up to snuff, as ASCLAD does for crime labs. This  
13 is, uh, for, uh, medical examiner's offices.

14 Q] I see. With regard to the form of the Arkansas State Crime  
15 Laboratory protocol, are autopsy reports generated in this?

16 A] Yes.

17 Q] Is that, does that appear to be a fairly standard form  
18 autopsy?

19 A] Yes.

20 Q] And, and is part of this the protocol of what it is that  
21 the autopsy examiner observes and the way he puts it on paper in  
22 terms of measurements and whether he called something an  
23 abrasion, a contusion, a laceration or a different - -  
24 describing that in terms that you and he both can agree is a  
25 term that there's a common understanding what that term means?

1 A] Yes.

2 Q] Now did you find any, any, did you have any disagreement  
3 with regard to these three autopsy reports with regard to the  
4 characterization or to the description of a wound, uh, and I'm  
5 not, you know, versus a measurement or something like that,  
6 versus what it was caused by?

7 A] Yeah, I think, uh, I had a, uh, I think the protocol and  
8 the autopsy descriptions are fine; they're proper, professional.  
9 I think where my disagreement is with the interpretation of the  
10 injuries.

11 Q] I see?

12 A] So the interpretation varies. But the protocol and the way  
13 the autopsies are done, I think are, uh, are very proper.

14 Q] Uh, I think in terms of - - and, and you do agree with the  
15 cause and manner of death in the cases?

16 A] I do. I think, uh, one decedent, uh, uh, that is, uh, the,  
17 uh, the cause of death of Mr., of, uh, Christopher Byers is, is  
18 multiple injuries. The other are multiple injuries and  
19 drowning. I think the Byers child also has evidence of  
20 drowning.

21 Q] Would it be fair to say that in these cases that drowning  
22 hastened death?

23 A] Yes.

24 Q] Do you believe that any of the other injuries prior to  
25 drowning, were life threatening?

1 A] Yes.

2 Q] Meaning that if they did not receive medical attention,  
3 they could have died from those injuries?

4 A] Well, what I'm referring to is in my review of all the in-  
5 formation, the autopsy reports and the photographs, all three of  
6 the children had head injuries, skull fractures and brain  
7 contusions, so that, those are serious injuries. One may not  
8 die from, uh, from, uh, brain contusions and can certainly  
9 remain conscious, but some people recover from brain contusions.  
10 So, uh, if the drowning hadn't occurred, uh, these individuals  
11 may have survived. But the head injuries were significant  
12 injuries, in my opinion.

13 Q] I see. Now in comparing the, uh, well, along those lines,  
14 the process of hemorrhaging following an injury, uh, is that, is  
15 it immediate and continuous until the heart stops pumping, or  
16 but - - let me just, let me get to the bottom of where I'm going  
17 with this. Is there the likelihood that drowning or some other  
18 cessation of the heart can stop hemorrhagic activity; could it  
19 cut it short?

20 A] Two answers, if I may?

21 Q] Okay. Sure.

22 A] One, sure, if somebody is bleeding from various blood  
23 vessels and the heart stops, then the bleeding will, uh, trickle  
24 down and pretty much stop. Uh, but in the normal course of  
25 bruises, say a bruise or contusion is a hemorrhage under the

1 skin; uh, boxing match, somebody gets hit in the eye in round  
2 one. By round two, there's already a big shiner, a big, uh,  
3 because the blood accumulates in the tissues under the eye. And  
4 at some point pretty quickly, the pressure in that blood under  
5 the eye matches the tying up to match the pressure in the little  
6 capillaries, so the bleeding stops. So that even though a blood  
7 vessel is, is, uh, uh, torn to lead to bleeding, uh, it will  
8 stop after a period of time, if it's internal. If it's  
9 external, some is bleeding out into the, uh, uh, above the skin,  
10 a small injury, a small bleeding will stop by itself and as  
11 clotting occurs in five to seven minutes, even though the heart  
12 is pumping. So a lot depends on how big the hemorrhage is.

13 Q] Well, using that analogy, too, that you used for the boxer,  
14 uh, some blunt force trauma to some parts of the body won't stop  
15 hemorrhaging or show evidence of hemorrhaging until round five  
16 or six; is that correct?

17 A] Well, if there, if there, for example, if there were a  
18 laceration to the liver or spleen, the bleeding can continue  
19 slowly for many rounds until finally, the person collapses, and  
20 might even be their death. The same with head injuries; that  
21 is, there could be bleeding - - the Richardson gal, uh, Natalie  
22 Richardson, she had a fall, she had what's called epidural  
23 hemorrhage, a little artery bleeding. And that bleeding kept  
24 continuing slowly, but continuously, until about an hour or two  
25 later, causing her to collapse and die. So it depends, what

1 blood vessel it is, how big the blood vessel is and, uh, some  
2 bleeding, most bleeding, stops in time, uh, you know, without  
3 any medical intervention. But some bleeding can lead to death  
4 if it's not, uh, if it's not stopped.

5 Q] But you can get a, for instance, you can get a bruise on  
6 your arm and you look and you realize you have a bruise and  
7 then, but you didn't, you, you can't associate it with anything  
8 that you've seen recently; I mean, it has a certain life span to  
9 it?

10 A] Yes, yes.

11 Q] Uh, are you aware that, uh, in connection with this case  
12 that another forensic pathologist was retained by defense  
13 counsel by the name of Terri Haddocks?

14 A] I read something - - I don't know Terri Haddocks. I read  
15 something in the records I reviewed, uh, that there was such a  
16 fellow, a forensic pathologist.

17 Q] Well, I just wanted to, one of the portions of, uh, now  
18 irrespective of the testimony that was given at trial in terms  
19 of various experiences that Dr. Peretti had had or certain  
20 instances that he had seen in terms of his autopsy, uh, and she  
21 writes in her autopsy report "anal dilation is found in all  
22 three children," and Dr. Peretti said that, as well?

23 A] That's correct.

24 Q] "Dr. Peretti acknowledges that this finding can be entirely  
25 attributed to postmortem relaxation."

1 Do you agree with that?

2 A] Yes.

3 Q] Okay. So in terms of that, in terms of the physical  
4 characteristics of that particular finding, you and Dr. Peretti  
5 agree?

6 A] That there is some dilatation, but what I'm saying is  
7 normal dilatation.

8 Q] Right.

9 A] For dead bodies, though.

10 Q] Well, she says that he acknowledges that it's entirely  
11 attributed to whatever postmortem relaxation?

12 A] Of the muscle, yes.

13 Q] You would agree?

14 A] Yes.

15 Q] She also says in her report that "sharp force injuries are  
16 described in Branch's left facial area," and I believe you've  
17 discussed much of that?

18 A] Yes.

19 Q] And she says "I think that these are postmortem injuries,  
20 possibly attributable to animal depredation, super imposed upon  
21 antemortem injuries." What's your, do you have any observation  
22 regarding that statement?

23 A] Yeah, uh, I don't see, agree that with her evaluation that  
24 the punctures are postmortem. I think she's referring to the  
25 general underlying redness of the, uh, cheek and skin and, uh,

1 to the extent that she had attributes that to premortem, uh, to  
2 happening while the child was alive. I would disagree with  
3 that. I think it all could be, well, it's possible. In my  
4 opinion, it's more likely that all of these injuries occurred  
5 after death.

6 Q] Okay. Well, uh, and that's just a disagreement on part of  
7 that?

8 A] Right.

9 Q] I believe that you have a disagreement with Dr. Peretti in  
10 several of the abrasions and whatnot, and I believe that you  
11 said something to the effect that those, that, uh, in some  
12 instances, uh, "the abrasions could be antemortem, they could be  
13 postmortem. We don't have a tissue slide to say." Which a  
14 tissue slide would be helpful...

15 A] ...would be helpful. Yes.

16 Q] And so he has an opinion that is one way, and you have an  
17 opinion that it is postmortem with regard to some of the  
18 injuries?

19 A] That's right.

20 Q] Okay. Do you know of any other, uh, in your experience, do  
21 you ever see any other injuries associated with blunt force  
22 trauma, uh, especially blunt force trauma where it appears as  
23 though a body has been carried from one spot to another?

24 A] I don't quite understand the question.

25 Q] Well, is it entirely consistent with what you're saying



1 that there are in fact some antemortem injuries associated with  
2 the blunt force trauma; for instance, dragging-type injuries?

3 A] Well, well, I would say to start with, I think there were  
4 antemortem trauma to the head and brain and skull of all three  
5 children.

6 Q] Okay. Yes?

7 A] Yes. Uh, whether there was additional - - I remember  
8 reading in Dr. Haddocks', uh, statement, that Dr. Haddocks  
9 thinks that the, uh, uh, some of the marks, I think on the left  
10 side of the face of the child, uh, were caused by dragging over  
11 a rough surface, uh, a rough surface.

12 Q] I'm wanting you to consider all three. Do you think that  
13 any of those, any of those injuries, any of the abrasions or  
14 contusions were, in fact, caused antemortem as dragging  
15 injuries? Would that be consistent with part of the assault?

16 A] No, I don't think so. I think the only question of drag-  
17 ging injuries does come up with the left side of, uh, the face  
18 of, uh, one of the children, uh, because of the redness that's  
19 pointed out that could be, uh, old postmortem injuries super-  
20 imposed on premortem injuries. But I don't think that, uh, in  
21 my opinion, I think the injuries occurred, the most likely way  
22 the injuries, in my opinion, is that they all occurred in the  
23 area where the bodies were found. Could some of the injuries  
24 have occurred some place else and the bodies brought there?  
25 It's possible. I mean, I can't rule that out.

1 Q] Have you ever, have you ever used or relied on luminal for  
2 defining circumstances of a crime scene before?

3 A] I haven't, but criminalists use it. It's not something  
4 that pathologists usually use.

5 Q] Well, but would it perhaps give you circumstances of where  
6 the crime took place?

7 A] Yes, luminal can be very helpful, but then luminal will  
8 identify very trace amounts of blood, if there are attempts to  
9 wipe it up at a scene. It isn't very useful in the outdoors,  
10 because the soil and the, and the water or whatever is there,  
11 uh, uh, would not make it appropriate. It's, it's good on  
12 linoleum, on, on, uh, on rugs, on indoor, uh, wood. It can be  
13 helpful on walls, but, uh, I'm not an expert on luminal.

14 Q] Okay. And you had said with regard to a sexual assault in  
15 this particular case, you did not, uh, you said unless there is  
16 evidence for it, you could not opine to the effect that there  
17 was a sexual assault in a particular case. And now are you  
18 referring to, uh, scientific evidence?

19 A] Well, yes, scientific evidence, well, part of the  
20 scientific evidence would be swabs, chemical evidence and  
21 another part would be injuries, injuries to the anus, injuries,  
22 uh, to the, uh, body of a sexual nature. I do not think that  
23 ears and mouth injuries here in any way reflect a sexual, uh,  
24 uh, contact.

25 Q] Okay. Well, the, uh, what if there was anecdotal evidence

1 that one of the defendants had attempted to have anal sex with  
2 one of the victims. Would there necessarily be any scientific  
3 evidence?

4 A] Well, if there's an attempt, uh, without much contact, then  
5 there wouldn't be any evidence, I mean, scientific evidence.

6 Q] Any forensic evidence?

7 A] Yes.

8 Q] And so there could be, if there was some anecdotal  
9 evidence, eye-witness evidence of sexual acts that were being  
10 performed, there wouldn't necessarily be scientific evidence  
11 that would support that?

12 A] If the sexual act weren't completed in some way, there  
13 wouldn't be any of the DNA forensic evidence, but at the same  
14 time, where I sit, the, the, uh, eye-witness testimony is, as  
15 you know, fraught with potential error.

16 MR. HOLT: Just a second.

17 (Pause.)

18 CROSS-EXAMINATION, continuing:

19 Q] I believe that you said that you, uh, there were times when  
20 you conducted an autopsy that you would, uh, there were times  
21 when a defense counsel pathologist would be present for an  
22 autopsy?

23 A] Yes.

24 Q] And what was the purpose of that?

25 A] Uh, the purpose of that would be, that if I was doing an

1 official autopsy for New York City, medical examiner's office or  
2 the state police, uh, there would be some times when the  
3 defendant, when a potential perpetrator was identified, as a  
4 husband, or so, where the immediately obtained defense counsel  
5 would say, "Hey, before you do your autopsy, we want out expert  
6 to be there." And the purpose of that would be because the  
7 defense counsel is concerned that a mistake could be made, uh,  
8 by, by whoever, I don't take it, that personal, but, uh, a  
9 forensic can make mistakes that might not be good for his  
10 client; and number two, uh, they'd want to be able to hire some-  
11 body that they can rely upon and trust so that even if, as  
12 usually happens, I and the defense expert agree totally the fact  
13 that their expert is telling the family, uh, uh, the findings,  
14 makes it believable for the family, when it might not be so  
15 believable as I as an agent of government told it to them. I'm  
16 not sure I'm making it clear but, uh, the, the, uh, I welcome,  
17 the reason I welcome, uh, any such expert from, uh, from the  
18 other side, so to speak, was I knew that once we went through  
19 the whole autopsy and I could say to him, to the doctor, "Is  
20 there anything I'm not doing? Anything I should do better?  
21 Anything, anything you would want me to do," that, uh, so that  
22 it's clear - - once we're in agreement, whatever that agreement  
23 is, it's easier for both sides, the prosecution and the defense,  
24 rather than to have an issue six months later as "how come you  
25 didn't do A, B and C," uh, which upsets the defense, when we all

1 could have done it right away. And I think it works out better  
2 and the family is more trusting of somebody they hire.

3 Q] And so it heads off problems that might come up in the  
4 future?

5 A] That's what I found; yes, sir.

6 Q] Okay. Did you ever, did you ever supervise the autopsy of  
7 an individual that was conducted by an associate in your office?

8 A] Supervise the...?

9 Q] ...did you ever supervise a colleague of yours, I assume an  
10 associate, since you were the chief. Did you ever supervise an  
11 autopsy that was conducted by one of your associates?

12 A] Oh, sure. Every autopsy is supervised. Yes, sir.

13 Q] And you would review those findings?

14 A] Yes.

15 Q] Because you wanted to make sure that those findings were in  
16 fact what you said they were?

17 A] Yes.

18 Q] Okay.

19 MR. HOLT: Thank you very much, Doctor.

20 THE WITNESS: Thank you, sir.

21 RE-DIRECT EXAMINATION

22 BY MR. BURT:

23 Q] Very briefly, Doctor, because I know you've got a plane to  
24 catch here, but as to Dr. Peretti following protocol, did he  
25 follow the normal autopsy that standards and procedures in terms

1 of the microscopic slide gathering?

2 A] I think that as far as the, uh, autopsy goes, it's, he, he  
3 did a, uh, proper job. I do think, as I mentioned earlier,  
4 that, uh, he, what I think should be done in every case, but  
5 especially in homicide cases, that there be proper sampling of  
6 tissues microscopic examinations from all of the organs in the  
7 body, uh, as well as from any areas of injury. To that extent,  
8 uh, and this was partially done, but, uh, I think that more, uh,  
9 his logical preparation could, should have been done, in my  
10 opinion, given the nature of this terrible situation.

11 Q] You were asked some questions about whether your opinions  
12 differ from Dr. Haddocks' opinion?

13 A] Yes.

14 Q] And, uh, portions of a report were read to you. Did you  
15 actually review Dr. Haddocks' report in this case, and did you  
16 rely on it in forming your own opinions?

17 A] Well, at, at some point, uh, I read through a report of Dr.  
18 Haddocks, but no, I didn't rely on it. I took it into account,  
19 but did not rely on it.

20 Q] You took it into account and you were familiar with it when  
21 you were cross-examined about it?

22 A] Yes.

23 Q] In other words, you had read it prior to taking the stand?

24 A] Yes.

25 Q] Okay. I'd mark next in order the report dated October 22<sup>nd</sup>,

1 2007 by Dr. Terri Haddocks.

2 MR. HOLT: No objection.

3 THE COURT: It may be received without  
4 objection.

5 (WHEREUPON, Defendant/Petitioner exhibit # was received into  
6 evidence and is appended on page .)

7 MR. BURT: And what I have marked next,  
8 beyond that the, uh, Misskelley trial exhibits that  
9 were referenced in the, uh, direct-examination of, uh,  
10 Dr. Baden.

11 THE COURT: All right, it may be received,  
12 also.

13 (WHEREUPON, Defendant/Petitioner's exhibit # was received into  
14 evidence and is appended on page .)

15 MR. HOLT: Michael, is that a read only, and  
16 can we get a copy of that?

17 MR. BURT: Yeah, I can give it to you right  
18 now. I'll give it to you on flash drive. This is,  
19 uh, the CD is marked joint exhibit #1. Is that all  
20 right?

21 RE-DIRECT EXAMINATION, continuing:

22 Q] And Haddocks' report, just to verify, this is the report  
23 that was partially read to you?

24 A] Yes.

25 Q] Now is it true that in general, uh, Dr. Haddocks and you

1 agree on many points?

2 A] Yes.

3 Q] For instance, she says in her report, uh, does she not, "I  
4 do not think a specific mechanism, for example, forced oral sex,  
5 can be assigned to any reasonable degree of medical certainty."

6 A] I agree with that.

7 Q] You agree with that conclusion. Uh, she also says, "There  
8 is no objective evidence of anal penetration in these cases."

9 Do you agree with that, as well?

10 A] I agree with that, yes.

11 Q] And when she says, uh, and this is a portion that was  
12 quoted to you, quote, "Dr. Peretti acknowledges that this  
13 finding referring to anal dilation can be entirely attributed to  
14 postmortem relaxation." Is the problem here that in his  
15 testimony, Dr. Peretti implied otherwise? In other words, did  
16 he make it clear to this jury that this anal dilation was not  
17 symptomatic in sexual, uh, penetration, or did he on the  
18 contrary suggest just the opposite?

19 A] As I, uh, recall his testimony, he indicated that was a  
20 factor in, uh, his conclusion that the children were sexually  
21 attacked.

22 Q] Okay. Uh, she says that referring to the injuries on, uh,  
23 Mr. Byers' buttocks where she says, "The injuries on Byers'  
24 buttocks, specifically the cuts, photographically appear to re-  
25 present abrasions, rather than sharp-force injuries. I think



1 these injuries are also most compatible with dragging. In the  
2 discussion of the perineum injuries, Dr. Peretti noted that you  
3 have all of this bleeding here in the soft tissue. Photograph-  
4 ically, there is not convincing evidence of hemorrhaging to the  
5 tissues." Do you agree with that?

6 A] I agree that, uh, I don't see any evidence of, of bleeding  
7 into the tissues, into the soft tissues. I think that the drag-  
8 ging part of it, uh, I, I don't necessarily agree with that. It  
9 could be, there could have been dragging, but I don't think so.

10 Q] All right. And the portion that was read to you in cross-  
11 examination about the sharp-forced injuries, the total context  
12 of that sentence says "sharp-forced injuries are described in  
13 Branch's left facial area. I think these are postmortem  
14 injuries possibly attributed to animal predation, superimposed  
15 upon antemortem injuries. The close-up photographs of the quote  
16 'cutting' end quote, injuries which were described as entering  
17 the mouth, show characteristics which are not typical of  
18 injuries produced by a sharp-edged instrument. Specifically,  
19 the edges of the wounds are irregular and not cleanly incised  
20 and tissue bridges are evident within the depths of some of the  
21 wounds. As these injuries extend to the left side of the neck,  
22 I would expect to see some indication of hemorrhage within the  
23 anterior neck, rather than the described absence of  
24 abnormalities in the soft tissue of the neck, including strap  
25 muscles, thyroid gland and large vessels."

1 Do you agree with that?

2 A] I agree with her all, except for the, uh, comment that  
3 there are postmortem injuries, the sharp, the cut wound, the,  
4 the predation of, of wounds, uh, animal predation, uh, she  
5 refers to, which is postmortem on top of antemortem, uh, uh,  
6 injury. Uh, that's the redness of the, of the left side of the  
7 face that, uh, she's, uh, her opinion happened before death. I  
8 think that also was probably, most probably, uh, uh, postmortem,  
9 that all of the injuries on the left side of the face were post-  
10 mortem.

11 Q] All right. And with respect to the sharp force injuries to  
12 the genital region and thighs of Mr. Byers' autopsy she says  
13 quote "these injuries also did not have the cleanly incised  
14 edges that are typical of injuries inflicted by a sharp edge  
15 implement. Additionally, the skin surrounding this area has a  
16 yellow bloodless appearance which is typical of postmortem  
17 abrasions. I believe the genital and thigh injuries are most  
18 compatible with postmortem animal depredation."

19 A] I agree with that. Entirely.

20 Q] Uh, and in terms of a consensus of opinions, are your  
21 opinions about animal depredation essentially the same, with the  
22 exceptions you just noted with Dr. Haddocks, Dr. Spitz, Dr. Di  
23 Maio, Dr. Souveiron, Dr. Wood?

24 A] Well, my understanding is that, uh, we were all in agree-  
25 ment on that point, on those points.

1 Q] As well as the sexual aspects?

2 A] Yes.

3 MR. BURT: Thank you. That's all. I'd move this  
4 into evidence.

5 MR. HOLT: I've already said no objection.

6 THE COURT: All right, it may be received.

7 Anything else?

8 MR. PHILLIPSBORN: Nothing further.

9 RE-CROSS EXAMINATION

10 BY MR. HOLT:

11 Q] Just two things real quick. Isn't it true that one of the  
12 main reasons that critters are attracted to bodies so they can,  
13 uh, feed off of them is that they are giving off some scent, uh,  
14 and many times where there has already been some sort of trauma  
15 where they bleed?

16 A] I think, uh, if there's bleeding on a body, that's more  
17 attractive to animal predation, but, uh, animals can smell dead  
18 bodies, uh, even without bleeding, but it makes it an additional  
19 factor that they are attracted to them.

20 Q] And if this creek, which really wasn't deep enough to swim  
21 in, this ditch, it in fact fed into - - are you familiar with  
22 the crime scene at all, of how this ditch feeds into the larger  
23 bayou, which is essentially a name for a bigger ditch?

24 A] Yes, I saw diagrams of that.

25 Q] Okay. Well, isn't it also true that the vast majority of

1 sexual attacks start with someone incapacitating a victim by  
2 tying them up or putting a knife to their throat and saying "do  
3 what I say or I'll kill you" and then gaining access to a sexual  
4 organ, I mean, like taking their clothes off. I mean, would  
5 you, how would you characterize the fact that these boys were  
6 stripped of all of their clothing and they were hog-tied?

7 A] Two things: I think that the majority of adults, uh, in  
8 sexual assaults, a good percent of the time, involve alcohol or  
9 drugs or imbibe, which has the more common ways in which sexual  
10 assaults, uh, are generated, on the part of either party. How-  
11 ever, uh, children are different. I mean, three, uh, this is  
12 such an unusual situation, uh, that I cannot say at all that  
13 just because the clothes are taken off, uh, and that they're  
14 nude, uh, means that it is a sexual assault. Of course, one has  
15 to consider it being a sexual assault, but unless there is  
16 evidence for it, and I think the evidence that Dr. Peretti found  
17 persuasive, the dilated anus, the, uh, uh, injection or around  
18 the anus, or the ear lobes and mouth, uh, and the, uh, removal  
19 of the, uh, testes and part of the, uh, penis, uh, don't make it  
20 a sexual attack. And I agree, he, he uses that to confirm a  
21 sexual attack. I don't think that means a sexual attack.

22 MR. HOLT: Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: All right, you are free to go. Thank  
25 you very much.

1           THE WITNESS: Thank you, Your Honor.

2           THE COURT: Yes, sir.

3 (Witness stands down.)

4           THE COURT: Call your next witness.

5           MR. BURT: I call Mr. Byers.

6           THE COURT: It should be pointed out that he's  
7 been in the courtroom the entire time. If the State  
8 doesn't object, it's fine with the Court, but other-  
9 wise, it's a violation of the rules.

10           MR. BURT: We didn't frankly, anticipate that we  
11 would call him as a witness, but it came to light as  
12 the discussion with Dr. Baden and I just wanted to  
13 make sure that we got this straight.

14           THE COURT: If they don't object, that's all  
15 right.

16           MR. HOLT: I don't think we have an objection.

17           THE COURT: All right, come on.

18           DR. BADEN: This isn't the way it works in  
19 Brooklyn. Everyone would object in Brooklyn.

20           THE COURT: Raise your right hand, please.

21 (Witness sworn.)

22 THEREUPON,

23                           JOHN MARK BYERS

24 was called as a witness by and on behalf of the Petitioner/  
25 Defendant and having been duly sworn, was examined and testified