

1           THE COURT: Well, hopefully, we can do that,  
2 because it's going to be real hard for me to find time  
3 between now and the first of the year. I've got two  
4 or three capital cases to try and a couple of big  
5 civil cases, and then I'm going to quit.

6           MR. PHILLIPSBORN: Your Honor, I appreciate the,  
7 uh, the Court's situation and I think that the  
8 difficulty, even though Mr. Burt and I are in two  
9 different capital cases - - I know I was in front of a  
10 judge to whom I showed Your Honor's letter and he was  
11 anxious to make sure I had the time to appear here,  
12 but I'm going to have to call her and see what we can  
13 work out.

14           THE COURT: Well, just see what you can do and  
15 we'll do our best to work around it. Now as far as  
16 those cell phone pictures that appeared on the Inter-  
17 net, the officers know who did it and I know who did  
18 it, and it better not happen again or somebody is  
19 going to be locked up. Is that clear?

20           Court will be in recess.

21 (WHEREUPON, the proceedings in the above-styled cause were  
22 concluded at 4:44 p.m., September 25, 2008; proceedings resumed  
23 at 9:30 a.m.,

24                           **September 29, 2008**

25           THE COURT: Court's back in session. Call your

1 next witness.

2 MR. BURT: I call Mr. Channell.

3 THE COURT: I don't believe he's been sworn.

4 Raise your right hand, please?

5 (Witness sworn.)

6 MR. BURT: Your Honor, before we begin, I have  
7 one of our experts who is going to testify right after  
8 Mr. Channell on the very issues Mr. Channell is going  
9 to address.

10 Her name is Patricia Zajac, Z-A-J-A-C, and I'd  
11 ask the Court's permission to exclude her from the  
12 Rule so that she can listen to the testimony and  
13 comment on it.

14 THE COURT: All right.

15 MR. BURT: Thank you.

16 THEREUPON,

17 KERMIT CHANNELL, Serologist  
18 was called as a witness by and on behalf of the Petitioner  
19 /Defendant and having been duly sworn, was examined and  
20 testified as follows, to-wit:

21 DIRECT-EXAMINATION

22 BY MR. BURT:

23 Q] Good morning, sir.

24 A] Good morning.

25 Q] Would you tell us your business or occupation, please?

1 A] I'm the executive director of the Arkansas State Crime Lab.

2 Q] And how long have you held that position?

3 A] A little over a year, now.

4 Q] Uh, how long have you been with the Arkansas State Crime  
5 Lab?

6 A] Approximately nineteen (19) years.

7 Q] And do you have, besides your position as executive direct-  
8 or, do you have some training and experience in the areas of  
9 serology and DNA testing?

10 A] Yes, sir.

11 Q] Could you give the Court a brief synopsis of your back-  
12 ground?

13 A] I received my bachelor's degree in biology and minor in  
14 chemistry from Elon College in North Carolina, and I've also  
15 completed graduate course work at the University of Central  
16 Florida in statistical genetics. My background in DNA, uh, in  
17 serology, with respect to serological techniques, I started that  
18 process in 1990 and was a forensics serologist through 1995. In  
19 1995 I was in the start-up at the DNA laboratory in Arkansas and  
20 held the position of DNA supervisor and technical leader until  
21 2005, at which time I am in the science director for the State  
22 and then in 2007, became executive director. I've had DNA  
23 training from several corporations, uh, Promaga Corporation,  
24 Wisconsin; LifeCodes Corporation in Connecticut and Perkin-Elmer  
25 Corporation in California. I've also had DNA training by the

1 FBI in Quantico, Virginia.

2 MR. BURT: Your Honor, at this point I would ask  
3 the Court to qualify Mr. Channell as an expert in both  
4 forensic serology and forensic DNA testing.

5 THE COURT: Do you want to take him on voir dire?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: He's been qualified many times in  
8 courts in Arkansas, so you may proceed.

9 MR. BURT: Thank you.

10 DIRECT-EXAMINATION, continuing:

11 Q] Mr. Channell, were you somehow involved in the investi-  
12 gation in this case, uh, that is the case of *State versus Miss-*  
13 *kelley, Echols and Baldwin*?

14 A] Yes, I was.

15 Q] And were you in fact, uh, the person who was asked to do  
16 certain serology testing on various items of this case back in,  
17 beginning in 1993?

18 A] Yes, sir.

19 Q] Uh, is it true that at that time your Crime Lab could not  
20 do DNA testing?

21 A] That is correct.

22 Q] Is it also true that although your lab did not do DNA  
23 testing, you were responsible for coordinating testing, the DNA  
24 testing, of certain items of evidence in this case from an out-  
25 side agency?

1 A] That's correct.

2 Q] And the outside agency that you used back then was called  
3 Genetic Design down in North Carolina?

4 A] Yes, sir.

5 Q] Now have I requested you to bring the original, uh, your  
6 files for this case with you today?

7 A] Yes; I did.

8 MR. BURT: Your Honor, I have an exhibit I would  
9 like to have marked, if I may?

10 THE COURT: Yes, you may.

11 MR. BURT: While we were marking that, Your  
12 Honor, Mr. Stidham walked in, and because I'm going to  
13 be asking some questions of him about his failure to  
14 use expert testimony in this case, I'd ask that he be  
15 under the Rule.

16 THE COURT: All right, you'll need to go back to  
17 the witness room.

18 MR. STIDHAM: I'm sorry, Your Honor.

19 THE COURT: You'll need to go back to the witness  
20 room.

21 (Witness excused.)

22 MR. BURT: Judge, in other words, the Court will  
23 not allow Mr. Stidham to hear this testimony?

24 THE COURT: That's right.

25 MR. BURT: Thank you.

1 DIRECT-EXAMINATION, continuing:

2 Q] Mr. Channell, have you had a chance to review Exhibit #21?

3 A] Yes, sir.

4 Q] And is that exhibit a true and accurate copy of your lab  
5 notes from your original file?

6 A] (Witness examining same.) Yes, it is.

7 MR. BURT: We'd move those into evidence at this  
8 time.

9 THE COURT: All right, they may be received.

10 MR. BURT: Thank you.

11 (WHEREUPON, Petitioner's Exhibit #21 was admitted and received  
12 into evidence and is appended on page .)

13 DIRECT-EXAMINATION, continuing:

14 Q] Now I have them numbered in the lower right hand corner;  
15 that's not your number; correct?

16 A] That's correct.

17 Q] Now I want to ask you some questions. Is page one in that  
18 document a request to your laboratory to test certain items of  
19 evidence and conduct serological examinations of that evidence?

20 A] (Witness examining same.) Yes, it is.

21 Q] And is pages 2, 2a, and 3 a letter that was sent to you by  
22 the lead detective in this, asking you certain questions about  
23 the evidence?

24 A] (Witness examining same.) Yes, it is.

25 Q] And beginning on page 4, uh, are these the actual lab notes

1 which reflect the testing you did on certain items of evidence?

2 A] (Witness examining same.) Yes, it is.

3 Q] Turn to page 5, we're going to talk about - - you tested  
4 various items of evidence?

5 A] Yes, sir, I did.

6 Q] Throughout the course of this case; right?

7 A] Yes, sir.

8 Q] We're going to talk about two specific items that you test-  
9 ed and testified about, and those are Q6, which is a pair of  
10 blue pants and Q10, which is also a pair of blue jeans. Are you  
11 familiar with those two items?

12 A] Yes, sir.

13 Q] And on page 5 of your lab notes, which are dated 5/11/93,  
14 is there an indication of certain test results that you conduct-  
15 ed with respect to Q6 and Q10, the two pants samples?

16 A] Yes, there is.

17 Q] And first of all with respect to Q6 does it indicate that  
18 on that pair of blue jeans you took a cutting from the back of  
19 the pants and labeled it 1(S) and you also took a cutting from  
20 the front of the pants and labeled it 2(S)?

21 A] That's correct.

22 Q] Uh, do the notes also reflect that one of the tests that  
23 you conducted on both 1(S) and 2(S) was something called an acid  
24 phosphatase test?

25 A] That's correct.

1 Q] And would you explain to the Court the purpose of that  
2 test?

3 A] Acid phosphatase is basically a screening technique to try  
4 to identify the possible presence of semen. And we get a color  
5 reaction; if it is, we continue on with our testing.

6 Q] And when you say a presumptive test, by that you mean it is  
7 not a positive indicator for semen; correct?

8 A] That's correct.

9 Q] And the reason for that is many substances of nature you  
10 can get possibly to an acid phosphatase test?

11 A] There are some things that react to it; the main reason is  
12 because when you use acid phosphatase in trying to identify  
13 semen, uh, especially true in sexual assault-type cases, uh, you  
14 can have acid phos [sic] from the vaginal fluid as well as from  
15 seminal fluid; therefore, it's just a screening.

16 Q] And the theory of the test is that acid phosphatase is  
17 present in high levels in semen; correct?

18 A] That's correct.

19 Q] It's present in other bodily fluids, such as vaginal secre-  
20 tions in low quantities; correct?

21 A] Low quantities; that's correct.

22 Q] And it's also present in things that are not of a  
23 biological nature; correct?

24 A] That's correct. I'm not sure which ones they are, but that  
25 is correct.

1 Q] In other words, uh, certain, uh, microbes and certain sub-  
2 stances, uh, through nature that don't have anything to do with  
3 human substances, a kind of reactive positive to these tests?

4 A] Yes, I would say that's correct.

5 Q] And that's why it's a presumptive test, not a confirmatory  
6 test; is it not?

7 A] That's correct.

8 Q] Now when you tested 1(S), you got a negative result - -  
9 that's reflected in your lab notes; correct?

10 A] Correct.

11 Q] Uh, and so you did no further testing with that sample;  
12 that was the end of the testing?

13 A] That's correct.

14 Q] Sample 2(S), which was the sample from the front of the  
15 jeans, according to your lab notes you wrote down "very light +"  
16 (plus); right?

17 A] Yes, sir.

18 Q] So does that indicate you got a weak reaction on the acid  
19 phosphatase test?

20 A] Yes, it is.

21 Q] And by "weak," you're talking about the intensity of the  
22 color?

23 A] Correct.

24 Q] Uh, and if it had been stronger, a stronger intensity, that  
25 would have been a stronger reaction which would have been more

1 indicative of perhaps the presence of semen?

2 A] Yes, it could have been.

3 Q] A light reaction is, is consistent with other substances  
4 reacting; correct, besides semen?

5 A] Well, I honestly can't tell you that. I've not done the  
6 research to see the different color reactions, other than if  
7 it's blue, whether it's light or dark, uh, but what's causing  
8 that, I can't, I cannot say.

9 Q] Okay. Now is it true that for that sample, uh, your lab  
10 notes on that page, that is page 5, also indicate that you did a  
11 microscopic examination to determine whether you can actually  
12 see sperm from an extract that was sampled?

13 A] That's correct.

14 Q] And the reason you did that is sperm presence is an  
15 unequivocal indicator of semen; is it not?

16 A] Yes, it is.

17 Q] That's well accepted not only in your lab but other labs in  
18 the country, but if you find sperm in a sample, you know you've  
19 got semen?

20 A] That's correct.

21 Q] And when you did that test, 2(S), you didn't see any sperm;  
22 correct?

23 A] Correct.

24 Q] Then you went on and you did a third test called "P30"?

25 A] Yes, sir.

1 Q] Tell us that that is?

2 A] P30 is a prostatic antigen that's found in prostate glands  
3 of males. It's commonly found, of course, in ejaculation and  
4 it's a test that we employ, uh, it's called cross-over P30 like  
5 phoresis and the antigen and antibodies would react with each  
6 other and a positive reaction would be demonstrated by a fine  
7 blue line that would be in-between the two deep wells in which  
8 you spotted your sample.

9 Q] And is the way the test works is that you run your testing  
10 along with certain controls at the same time?

11 A] Yes, you do.

12 Q] And do you use what's called a positive control and a  
13 negative control and a substrate control?

14 A] Yes, we do.

15 Q] Tell us what the controls are and what function they do?

16 A] The controls basically function and perform as: 1) you have  
17 a known sample of semen you want to see a reaction with. And  
18 your negative control should be just that - - negative. And if  
19 they are positive, then you can't really render an opinion on  
20 that; they would become inconclusive.

21 Q] And how about the substrate control; what function does  
22 that perform?

23 A] The substrate control is if there is anything in the  
24 garment itself that could create a reaction; again, we want to  
25 make sure that there is nothing in that.

1 Q] All right. So the purpose of the substrate control is to  
2 see if something in the garment itself is causing the reaction?

3 A] Correct.

4 Q] And the way the interpretation rules work is that if you  
5 get a reading on the substrate control, then the test is in-  
6 conclusive; you can't call the result if you get a positive on  
7 your substrate control?

8 A] That's correct.

9 Q] Now in this particular case, if you skip down to page 9 of  
10 your lab notes there. This sheet of the lab notes has to do  
11 with the blood examination which is an entirely separate  
12 analysis; right?

13 A] Correct.

14 Q] You didn't find any blood on either Q6 or Q10; correct?

15 A] No, I did not.

16 Q] One of the things you noted in your lab notes here on page  
17 9 is the condition of the sample; you were looking at the  
18 condition of the pants?

19 A] That's correct.

20 Q] And, uh, for Q6, the blue jeans, did you write in your lab  
21 notes "jeans are dirty, soiled + mud, pants are damp"?

22 A] That's correct.

23 Q] Is that your handwriting there?

24 A] Yes, sir.

25 Q] And you wrote that down because of the condition of the

1 sample, especially dirt, dampness and mud had some relevance to  
2 what kind of result you're going to get; right?

3 A] I think it's important to know that; correct.

4 Q] And one of the things you're looking at there, especially  
5 in terms of dampness is that if you've got a damp sample, it  
6 tends to encourage the growth of bacteria and you may be dealing  
7 with a sample that has bacteria on it?

8 A] That's correct.

9 Q] This particular sample, your understanding was, was  
10 collected out at the crime scene on May 7<sup>th</sup>; correct?

11 A] Yes, sir.

12 Q] And the testimony at the Misskelley and the Echols trial  
13 was that the pants were found floating in the water, muddy, and  
14 that they were put inside of a brown paper bag and taken to the  
15 Crime Lab, uh, were taken to the police department and opened up  
16 and allowed to air dry inside the paper bag. Were you informed  
17 of those facts before you did your examination?

18 A] I'm not sure if I was informed of all of those facts or  
19 not. I think I was aware that they were in fact found in the  
20 water.

21 Q] In any event when you came to your examination on the 11<sup>th</sup>,  
22 which was some time after the collection on the 7<sup>th</sup>, at least Q6  
23 was still damp; correct?

24 A] According to my notes, that's correct.

25 Q] Which would lead you to the inference that there was

1 probably some bacteria, uh, on those pants when you did your  
2 examination?

3 A] I would assume that there would be.

4 Q] And on that same page you also note the condition of Q10 -  
5 - excuse me. On the next page, page 10, you note the condition  
6 of the pants: "pants are very dirty"; correct?

7 A] That's correct.

8 Q] And again, a situation where you might be seeing some  
9 bacteria on the pants themselves?

10 A] Yes, you could.

11 Q] Now if you would turn to page 5 of your notes, what you put  
12 down in your notes for the P30 test was "+" but then in print  
13 you wrote the words "false positive results"; did you not?

14 A] Yes, I did.

15 Q] And tell us what you mean by that, why did you write false  
16 positive as the results?

17 A] I wrote that down because in my control I actually had a  
18 reaction. And since I had a reaction, I couldn't really make a  
19 determination of the stain itself.

20 Q] So you had a reaction in the substrate control; correct?

21 A] I believe that's correct.

22 Q] In other words, when you ran the questioned evidence sample  
23 on your electrophoresis, along with that you ran a sample that  
24 was taken outside of the stain and that sample, which is your  
25 substrate control, showed up with a positive reaction?

1 A] That's correct.

2 Q] And as you said before, when you see that positive reaction  
3 in your substrate control, the test is invalid and you can't  
4 determine the results?

5 A] That's correct.

6 Q] Uh, do you actually have the original of the electro-  
7 phoresis results?

8 A] Yes, sir.

9 Q] Could you, uh, they're, I believe, correct me if I'm wrong,  
10 at pages 13 and 14 of the Xerox copies there?

11 A] (Witness examining same.) That's correct.

12 Q] Uh, 13 and 14 are copies of your P30 results conducted on  
13 May 18<sup>th</sup> and June 9<sup>th</sup>; correct?

14 A] Yes, sir.

15 Q] Is there a third, uh, P30 result that I don't have here in  
16 these notes - - that's in your original file, or do you just  
17 have two?

18 A] (Witness examining same.) Yes, there is.

19 Q] And what am I missing here? Is there a page, a third  
20 result?

21 A] Actually, the first page is not in here, is actually  
22 demonstrating a control that where I tested some muds and some  
23 silicates, basically, that reacted positive...

24 Q] ...let me stop you there. What date was that on?

25 A] That was dated on June 9<sup>th</sup>, 1993.

1 Q] I've got that one in the notes - - that's page 14; right?

2 A] Oh, okay.

3 Q] Is that in there?

4 A] Yes, sir, that's correct. You have that one.

5 Q] And then I have one on 5/18. I'm trying to find out if  
6 there is a third one that I'm missing.

7 A] 5/18 is correct and there would have been one on 5/19, as  
8 well.

9 Q] All right. I'm going to ask you to make a copy of that at  
10 the break here so we can have that for our records, but let's  
11 look at the first one, the 5/18 one. That was the first time  
12 you did the P30 test on both Q6 and Q10 at the same time; right?

13 A] That's correct.

14 Q] And you also, uh, along with running those samples, you did  
15 a control sample; correct?

16 A] That's correct.

17 Q] And where was your control sample taken from; was it taken  
18 from Q6 or Q10?

19 A] This was taken from Q6; my Q6, 1C.

20 Q] And do you actually have the gel there, or a photo of the  
21 gel for the electrophoresis; not only you can show the Court and  
22 show him where the false positive is?

23 A] Yes, I can.

24 Q] Show us that, because the Xerox copy is kind of hard to  
25 see?

1 A] On the electrophoresis run on May 18<sup>th</sup>, 1993, you really  
2 don't see the band between the control, but on May 19<sup>th</sup>, 1993,  
3 you can clearly distinguish the band on the actual sample.

4 Q] And when you say "you can clearly distinguish the band,"  
5 what you mean is that on the control sample which should show up  
6 with no band, you actually have a band which shouldn't be there  
7 in order for you to run the test correctly; right?

8 A] It would make it undeterminable for the source of that.

9 Q] And what you are saying is that on the 18<sup>th</sup> when you ran the  
10 control, it's a little bit unclear whether the control showed up  
11 as a positive?

12 A] It's unclear on that sample, but it's more clear on the  
13 19<sup>th</sup>.

14 Q] So, uh, when you re-ran it on the 19<sup>th</sup>, uh, what you got was  
15 a clear indication in your substrate control of a positive re-  
16 action, which was not coming from the stains; right?

17 A] That's correct.

18 Q] Now the stains you had identified using a laser; correct?

19 A] That's correct.

20 Q] The laser is not a test for identifying semen, is it?

21 A] No, it is not. It is simply a tool that one can use to  
22 help identify stains.

23 Q] And in this case you were using that tool because the pants  
24 were muddy and it aided you in visualizing the stains?

25 A] That's correct.

1 Q] So you take your laser, you try and identify a glow with a  
2 laser and that's where the stain is; but you then take your  
3 control from some place on the pants that it is not glowing;  
4 right?

5 A] That's correct.

6 Q] And what you're indicating is when you did that, you got a  
7 positive reaction from the pants itself?

8 A] That's correct.

9 Q] And that invalidated the test at that point; correct?

10 A] Yes, it did.

11 Q] Now did you conduct any other testing on Q6?

12 A] Other than semen and blood, I don't believe I did.

13 Q] On page 5 is where you also indicate the results of your  
14 testing for item Q10, the second pair of blue pants?

15 A] Yes, I do.

16 Q] And does it there indicate at the bottom of page 5 that you  
17 got a light reaction to your acid phosphatase testing for the  
18 one - - is that the 1(S) sample from the left thigh?

19 A] Yes, sir.

20 Q] So you, again, you got a light reaction?

21 A] That's correct.

22 Q] And for that sample, you look for sperm and you got a  
23 negative; you couldn't find any sperm?

24 A] That's correct.

25 Q] Basically, the way that works is you take an extract from

1 your stain and you put it on a slide and put the slide under the  
2 microscope and you see if you can see sperm?

3 A] That's correct?

4 A] You did that and you look carefully and you couldn't find a  
5 single sperm?

6 A] That's correct.

7 Q] Then you went on to do another P30 test on the sample?

8 A] That's correct.

9 Q] And the results were not the same as the other; in other  
10 words, you got a positive reaction on your substrate control,  
11 which invalidated the test?

12 A] That's correct.

13 Q] And you tested a second sample from Q10, which is I think  
14 in your notes indicated there, is 2(S)?

15 A] Yes, sir.

16 Q] That was from the right thigh of the pants?

17 A] Yes, sir.

18 Q] Uh, did you get the exact same results; in other words, you  
19 got a light acid phosphatase reaction to a negative on your  
20 microscopic examination for sperm and you got a, as you indicat-  
21 ed in your notes, "false positive," because of the - - you got a  
22 positive on your substrate control, and that made the test in-  
23 valid because it was a false positive?

24 A] That's correct.

25 Q] And you actually wrote the words "false positive" in your

1 notes?

2 A] Yes, I did.

3 Q] Now do you ever recall in the course of this case handing  
4 those lab notes over, of the ones that we just reviewed, and  
5 specifically page 5, uh, that we just reviewed?

6 A] I recall doing that; I can't remember when.

7 Q] Uh, did Mr. Stidham or lawyers for Mr. Baldwin ever sit  
8 down with you and review, as I'm doing right now, what these lab  
9 results mean, as indicated in your lab notes?

10 A] I don't recall that they did that.

11 Q] If you would, turn to page 16 and 17 of the notes there.  
12 Is this a handwritten letter that you were drafting to send to  
13 Genetic Design as a cover letter for what you were sending them?

14 A] Yes.

15 Q] And the letter indicates here that you were sending certain  
16 samples to them for DNA testing; correct?

17 A] That's correct.

18 Q] Including the, uh, known samples for the three victims, a  
19 known sample for Damien Echols, a known sample for an individual  
20 named Richard Cummings, and also certain questioned samples;  
21 correct?

22 A] That's correct.

23 Q] And the questioned samples that you were going to send to  
24 Genetic Design at that time were Q6, the cuttings from the blue  
25 jeans that we just talked about?

1 A] That's correct.

2 Q] Q10, the cuttings from the second pair of blue jeans we  
3 talked about?

4 A] Correct.

5 Q] Q37, which was possible tissue recovered from a knife?

6 A] Yes, sir.

7 Q] Q38, tissue received from a ligature?

8 A] Correct.

9 Q] And Q39, tissue received from the ligature from James  
10 Moore?

11 A] Correct.

12 Q] Now in your handwritten version of this letter, uh, next to  
13 Q6, did you write the words "positive P30" next to samples Q6  
14 and Q10?

15 A] Yes, I did.

16 Q] And if you look at the next page, which is page 18, page 18  
17 is the actual typed letter that you sent to Genetic Design;  
18 right?

19 A] Correct.

20 Q] And it's the exact same verbatim as your handwritten  
21 letter, except the words "positive P30" were not included?

22 A] That's correct.

23 Q] And the reason you didn't include it was because you felt  
24 that you had a false reaction on the P30 test, so you didn't  
25 feel it was right to be informing Genetic Design when you had a

1 positive P30 result?

2 A] That's correct.

3 Q] Now on this letter, uh, page 18, which is the typed letter,  
4 there is certain handwriting next to the Q6 and Q10 samples?

5 A] Yes, sir.

6 Q] As well as next to some of the other samples; correct?

7 A] That's correct.

8 Q] And that handwriting was obviously not on there when you  
9 sent the letter on May 19?

10 A] That's correct.

11 Q] Now if you turn back for a minute to page 15 of the notes,  
12 and it's entitled "Telephone Conversation Record" and there's  
13 actually two entries - - one on May 18 through which you  
14 apparently spoke with John Rader from Genetic Design; correct?

15 A] Correct.

16 Q] And looking at that notation, that indicates that that con-  
17 versation had to do with what their testing procedures were and  
18 how long it would take, et cetera?

19 A] That's correct.

20 Q] That conversation took place before you wrote the letter  
21 and sent the samples off, obviously?

22 A] Correct.

23 Q] And then the second entry on that page is dated June 23<sup>rd</sup>,  
24 1993, 9:25 a.m., I assume, and reflects a second conversation  
25 with Mr. Rader?

1 A] That's correct.

2 Q] And I assume at this point you are now checking with Rader  
3 to find out if they've got any results?

4 A] Yes, I believe so.

5 Q] And what Rader told you, according to your notes was  
6 "ligatures - no results - no amplification"?

7 A] Correct.

8 Q] Is that what he told you?

9 A] Yes, sir.

10 Q] And you also put in your notes "tissues on knife" and  
11 you've got quotation marks to indicate the same thing: no  
12 results, no amplification?

13 A] That's correct.

14 Q] Now turning back to that letter, which is page 18, uh, next  
15 to Q4, possible tissue recovered from ligature, you have written  
16 in "no reactions yet, one more possible run left"; do you see  
17 that?

18 A] Yes, sir.

19 Q] Now is that a note that you were taking on this letter as  
20 you were talking to John Rader on the 23<sup>rd</sup>?

21 A] It must have been.

22 Q] And similarly, uh, next to samples Q6 and Q10, you have  
23 written the words "question mark, poss, P-O-S-S, bacterial in  
24 nature"; do you see that?

25 A] Yes, I do.

1 Q] And does that reflect your conversation with John Rader  
2 where he was telling you that whatever DNA they found on those  
3 two samples was possibly bacterial in nature?

4 A] I don't recall the conversation, but that would indicate  
5 so.

6 Q] Okay. Although you don't recall it today, uh, you would  
7 concede that your notes are probably - - your notes on this  
8 letter are an accurate reflection of what Rader was telling you  
9 when you spoke to him on the 23<sup>rd</sup>?

10 A] Right. I believe it to be.

11 Q] And you did not make any determination of, uh, that this  
12 sample, that any DNA in the sample was possibly bacterial in  
13 nature; right?

14 A] No, I did not?

15 Q] Because at that time, you hadn't gone through your DNA  
16 training; you didn't do DNA training; you didn't do the testing  
17 yourself, and you're basically relying on what he was telling  
18 you as to what he was finding in the samples?

19 A] That's correct.

20 Q] And what this note reflects is that you're documenting what  
21 he is telling you about the possible source of the sample, uh,  
22 possible source of the DNA in the sample?

23 A] That's correct.

24 Q] As being bacterial in nature?

25 A] That's correct.

1 Q] Now you recall testifying in both trials in this case; do  
2 you not?

3 A] Yes, I do.

4 Q] And do you recall testifying, this is at page 1031 in the  
5 Misskelley trial, uh, referring to Exhibits 45 and 48, which are  
6 the Q6 and Q10 samples, okay, and the question is:

7 Question: "Specifically referring to Exhibits 45 and 48, what  
8 type of test did you run on those items?"

9 And you said: "I examined these items for the presence of blood  
10 and semen. I did not find any blood on each of the items, they  
11 were my Q6 which were some blue jeans and also Q10, another pair  
12 of pants were very dirty and muddy. I employed a laser  
13 technique, which is an alternate light source, to help determine  
14 if there were any stains I could not see with the naked eye. I  
15 did find some questionable stains; I further analyzed these  
16 stains under microscope to see if I could identify any sperm  
17 cells present. I could not. I also tried to determine whether  
18 there were any enzymes present, specifically P30, a prostatic  
19 antigen."

20 Question: "What do you mean by that?"

21 Answer: "Prostatic antigen is a protein that is specific to the  
22 male prostate that is found in semen samples. I ran a test on  
23 these items for that and I got a positive reaction. However, in  
24 the course of my work I also ran control samples which also gave  
25 me a similar reaction. Based on that, I concluded that there

1 could possibly be something in the material or in the mud that  
2 was interfering with my test; therefore, I submitted those items  
3 also to Genetic Design where they could employ DNA testing,  
4 which is a more sensitive technique."

5 Do you have that testimony in mind?

6 A] Yes.

7 Q] Now first of all we, uh, you didn't say anything in that  
8 testimony about false positives; right?

9 A] I believe that I did.

10 Q] You are referring to false positives when you say "I ran a  
11 test on these items and I got a positive reaction," and then you  
12 say, "however, in the course of my work I also ran control  
13 samples which also gave me a similar reaction"?

14 A] That's correct.

15 Q] Okay. Now does that, uh, looking at it today and in your  
16 mind convey to the jury that the test that you ran for P30 was  
17 actually invalid because your control sample produced a false  
18 positive?

19 A] In my mind, it does. Yes.

20 Q] All right. And then you said, "based on that I concluded  
21 there could possibly be something in the material or in the mud  
22 that was interfering with my testing, and I submitted these  
23 items to Genetic Design where they could employ DNA testing  
24 which is a more sensitive technique." That testimony, a "more  
25 sensitive technique," is DNA testing a more sensitive technique

1 for determining the presence of semen?

2 A] No, I wouldn't say it's more sensitive for detecting the  
3 presence of semen. It's a, I would say it's a more definitive  
4 test to extrapolate from that genetic information from a stain.

5 Q] Now Mr. Fogleman then tries to clarify your answers here  
6 and he says, "On these two items are two pair of pants; right?"  
7 And you say, "That's correct."

8 Question: "You ran basically two tests - - well, wait a minute.  
9 Let me back up. You ran a test for blood?"

10 Answer: "I employed a screen test for the presence of blood."

11 Question: "Did that screening test indicate the presence of any  
12 blood on either pair of the pants?"

13 Answer: "No, it did not."

14 Question: "Then you ran two screening tests for the presence of  
15 semen?"

16 Answer: "That's correct."

17 Question: "What were the results on those tests?"

18 Answer: "Actually, the first test was a laser technique, based  
19 on the condition of the two garments. They were too dirty to be  
20 able to visualize any stains with the unaided eye. What the  
21 laser does, it picks up, it's an alternate light source that  
22 picks up on any material that might glow. For instance, there  
23 is certain items that will glow and semen is one of them. It is  
24 however just a basic screening test which allowed me to try to  
25 first identify the stain and secondly, to try to continue on

1 with my analysis."

2 Q] That testimony, uh, is not consistent with what you told us  
3 a minute ago, that the laser technique is not a screening test;  
4 rather a way to visualize the stain; correct?

5 A] I think it's both. It's a tool to aid you in visualizing a  
6 stain. It is a screening test for stains.

7 Q] Now, it's a screening test, is your opinion for stains?

8 A] To help you identify stains. It doesn't tell you what the  
9 stain is. I could have, uh, Kool-Aid and it could react and  
10 glow, as well. So again, it doesn't tell you anything; but to  
11 help you locate the potential of a stain in which to test.

12 Q] Right. But I thought you told me on direct-examination  
13 just a couple of minutes ago that the laser technique was not a  
14 screening test per se, but rather a way to visualize the sample.

15 A] Right.

16 Q] Did you tell me that?

17 A] You can use those terms somewhat interchangeably. I would  
18 not consider it a test as acid phosphatase. It's basically a  
19 tool, a tool to use to help you find a stain.

20 Q] So bottom line, you would not characterize the laser tech-  
21 nique as a screening test for the presence of semen?

22 A] Yes, I would not call it a screening test that would  
23 indicate that this sample is semen.

24 Q] And in fact, your lab reports don't identify it as a  
25 screening test for the identification of semen?

1 A] That's correct.

2 Q] Now, uh, you then say the second part of the analysis is an  
3 acid phosphatase test which is, again, a screening test to see  
4 if the item that I am testing possibly can contain semen, and  
5 that test results are positive. Now when you said that test was  
6 positive, were you referring to you light acid phosphatase  
7 results as reflected in your lab report?

8 A] That's correct.

9 Q] And then you say the third step is to try to visual and see  
10 if you can see any spermatozoa in the stain that I identified.

11 Question: "Did you conduct that?"

12 Answer: "That's correct."

13 So at that point you had in your testimony, you had indicated  
14 that you had performed two screening tests: the laser technique  
15 and acid phosphatase test; correct?

16 A] Correct.

17 Q] And you had indicated to the jury that you got positive  
18 results on those two tests and, uh, what you hadn't indicated to  
19 the jury was that in order to have positive identification of  
20 semen, you needed either microscopic identification of sperm, or  
21 a positive invalid P30 test; right?

22 A] I did not identify semen in this case.

23 Q] Right?

24 A] The testimony reflects that.

25 Q] You did not identify sperm in this case?

1 A] Sperm and/or semen.

2 Q] And you didn't have a valid P30 test?

3 A] That's correct.

4 Q] And the conclusion that you drew from the absence of those  
5 two tests was that no semen was present on Q6 and Q10; right?

6 A] Based on the P30 test, I could not say whether there was  
7 semen on that or not.

8 Q] Now take a look at page 24 of your lab notes there. This  
9 is the actual report that you typed up after, uh, doing these  
10 tests and filling out your lab notes; right?

11 A] That's correct.

12 Q] And right above your signature on page 24, uh, right above  
13 the line which says "Samples have been retained," what did you  
14 write in your report?

15 A] "No semen was found on any items."

16 Q] No semen was found on any items?

17 A] That's correct.

18 Q] Including Q6 and Q10 that are listed in the report;  
19 correct?

20 A] That's correct.

21 Q] So the conclusion that you drew at least when you wrote  
22 this report on 6/1 was that no semen was found on any of the  
23 items, including Q6 and Q10?

24 A] That's correct.

25 Q] And the reason you drew that conclusion and wrote that

1 report was because when you looked under the microscope for  
2 sperm, you didn't find any on Q6 or Q10; right?

3 A] Correct.

4 Q] And your P30 tests were invalid so you couldn't rely on the  
5 P30 tests?

6 A] That's correct.

7 Q] And you couldn't rely on the acid phosphatase to conclude  
8 that there was semen present?

9 A] Correct.

10 Q] And you certainly could not rely on the laser techniques,  
11 since it's not a screening test at all?

12 A] That's correct.

13 Q] And, uh, did you recall or represent to you that at no  
14 point did you ever tell the jury that you had printed this  
15 report - - do you recall this, what you said that no semen was  
16 found on any items?

17 A] I'm sorry. Your question again was?

18 Q] Yeah, the question is do you recall at no point in your  
19 testimony in the Misskelley case or the Echols case,  
20 Echols/Baldwin case, did you, were you ever asked on cross-  
21 examination or direct about your statement in this report that  
22 no semen was found on June 6 and June 9?

23 A] I don't recall that.

24 Q] Do you recall that?

25 A] I do not.

1 Q] Would that surprise you that nobody brought that out?

2 A] I'm not sure if that would surprise me or not.

3 Q] Now let me read to you the entire cross-examination of Mr.  
4 Stidham on points that we've been discussing this morning, and  
5 this is at page 1042:

6 Question: "On State's Exhibit 45 and 48 you found no blood and  
7 no sperm; is that correct?"

8 Answer: "That's correct."

9 Uh, do you think that conveys to the jury that not only did you  
10 find no sperm, but that your conclusion was that there was no  
11 semen present on either one of these exhibits?

12 A] I can't honestly answer what that conveys to the jury.

13 Q] Now although you didn't have training in DNA analysis at  
14 that time, you subsequently obtained it; right?

15 A] That's correct.

16 Q] And one of the things that's important in DNA testing is  
17 figuring out the quantity of DNA that you have to sample;  
18 correct?

19 A] That's correct.

20 Q] And the way that, uh, your lab used to do it was using a  
21 procedure called QuantiBlot?

22 A] That's correct.

23 Q] Which is also called a "slot blot" procedure?

24 A] Correct.

25 Q] And basically the way it works, correct me if I'm wrong, is

1 that you take a part of your sample and you put it on an electro  
2 phoretic gel and you run it next to known quantities of DNA  
3 and that you compare what you get through your questioned sample  
4 through known standards and you figure out from that in a kind  
5 of subjective way, how much quality you have?

6 A] That's correct. It's not an electrophoretic process;  
7 however, it is a, the DNA is bound to a membrane, uh, but you  
8 are correct. You do compare those DNA samples to a known  
9 standard.

10 Q] And you're aware from Genetic Designs, uh, reporting they  
11 used a slot blot procedure in this case; right?

12 A] Yes, I am.

13 MR. BURT: I have an exhibit I'd like marked next  
14 in order, Exhibit number 22 and it's the QuantiBlot  
15 Human DNA Quantitation Kit.

16 (WHEREUPON, Petitioner's Exhibit #22 was admitted and received  
17 into evidence and is appended on page .)

18 DIRECT-EXAMINATION, continuing:

19 Q] Can you identify that for us, please?

20 A] (Witness examining same.) Yes, this is the user's manual  
21 put out by Perkin-Elmer, the corporation who makes the kit.

22 Q] And you're familiar with that manual and use it in your lab  
23 as well; right?

24 A] We use this; correct.

25 Q] Okay. Now if I could have that - - we only have one copy -

1 - I'll direct your attention to page 12, and if you could sort  
2 of point out to the Court how that works, how you determine the  
3 quantity of DNA by the diagram that's referenced on that page?

4 A] (Witness examining same.) There is a diagram referenced in  
5 the right side of the diagram, verses the left side which is the  
6 DNA Standards which the known set of controls that are run on  
7 the membrane. These samples on the right are actually the DNA  
8 calibrators and the test samples. And you simply compare the  
9 intensity of your test samples to the intensity of your known  
10 standards to determine how much DNA you have in a sample.

11 Q] Okay. And the lowest standard that you're comparing  
12 in the case is how much DNA; do you recall?

13 A] It's 0.15625 nanograms.

14 Q] 0.156 nanograms, which is a hundred and fifty pekagrams;  
15 correct?

16 A] That's correct.

17 Q] Approximately?

18 A] Approximately.

19 Q] Okay. And so basically, the way the test works, it's  
20 matched to detect quantities at or above 150 pekagrams; right,  
21 that's what it was designed to do?

22 A] That's correct.

23 Q] Now on the last page of the - - and it's supposed to only  
24 detect human DNA; right - - or correct that - - primate DNA?

25 A] That's correct.

1 Q] And by that, it can tell whether it's DNA, theoretically  
2 you can tell whether it's DNA from human or a chimpanzee or an  
3 ape somebody in the primate family?

4 A] That's correct.

5 Q] However, when you go below the lowest standard, it may be  
6 detecting non-human DNA; isn't that true?

7 A] That's correct.

8 Q] So if you're dealing in quantities of DNA less than 150  
9 pekagrams and getting a positive result, you may be looking at  
10 bacterial DNA?

11 A] You simply cannot tell.

12 Q] You cannot tell?

13 A] That's correct.

14 Q] In this case, uh, Mr. DeGuglielmo testified in the Miss-  
15 kelly case that he detected very, very low quantities of DNA  
16 samples and it was the Misskelley case he testified that he  
17 detected approximately 50 pekagrams of DNA, which is way below  
18 the lowest standard; is it not?

19 A] That's correct.

20 Q] So based on your training and experience he could pretty  
21 well have been looking at looking at bacterial DNA and not human  
22 DNA at that level of pekagrams?

23 A] That is a possibility.

24 Q] Uh, the last page of this exhibit says, and they're talking  
25 here about troubleshooting and they say you're getting a signal

1 for non-human DNA samples and one reason why you could get a  
2 reading in non-human DNA samples is the water bath temperature  
3 is too low; right?

4 A] Correct.

5 Q] Or the SSPE concentration is too high in the Wash Solution?

6 A] Right. And specifically what that means is that you could  
7 have binding that occurs.

8 Q] Okay. And so you'd be getting a reading but it wouldn't be  
9 human DNA?

10 A] It could possible not be human DNA.

11 Q] And in a sample like this, uh, pants floating in a drainage  
12 ditch behind some houses, uh, you're most likely in an environ-  
13 ment where you've got a high lever of microbial contamination;  
14 right?

15 A] That's correct.

16 Q] Especially on samples such as the ones you were dealing  
17 with where they were taken from the water, a drainage ditch on  
18 May 7<sup>th</sup>. Apparently still not dry when you examined them on the  
19 11<sup>th</sup>; that could have a very, very high possibility that those  
20 samples were contaminated with microbial, uh, activity?

21 A] That's correct.

22 Q] Now, uh, the last line of this manual, could you read what  
23 that says, beginning with "DNA from primate species"?

24 A] "DNA from primate species may give signals similar to those  
25 obtained from equivalent amounts of human DNA. In Roche

1 Molecular Systems laboratories, 30 ng to 300 ng quantities of  
2 non-primate DNA samples result in either no signals or signals  
3 that are less than or equal to the signal obtained for 0.15 ng  
4 of human DNA. The following non-primate DNA samples have been  
5 tested in RMS laboratories: *E. coli*, yeast, dog, cat, mouse,  
6 rat, pig, cow, chicken, fish and turkey."

7 Q] All right. First of all, one thing that's saying is that  
8 in levels below 150 pekagrams they got a reaction from non-human  
9 DNA; correct?

10 A] That's correct.

11 Q] And the second thing that sentence is saying is that the  
12 only things that they tested to see if it reacted with the list  
13 that you gave - - turkey, whatever the others were; right?

14 A] I believe so; yes.

15 Q] There may have been other bacterial substances that were  
16 not tested by the company which could give a view on the DNA  
17 quantitation test; right?

18 A] That is possible.

19 Q] Now are you familiar with a, uh, a term called "Differen-  
20 tial Extraction"?

21 A] Yes, I am.

22 Q] Tell the Court about it?

23 A] Differential Extraction is a technique employed in DNA  
24 laboratories to try to separate the non-sperm from the sperm  
25 fractions of DNA.

1 Q] And, uh, typically when that's done, is it true that the  
2 laboratory labels - - well, let me back up. You have a sample  
3 that's mixed in a rape case. You've got the victim's vaginal  
4 secretions and you've got sperm in the sample; right? That's  
5 the sort of typical...

6 A] ...that's correct...

7 Q] ...sexual assault scenario that you deal with day in and  
8 day out in your lab?

9 A] That's correct.

10 Q] And this procedure, this Differential Extraction procedure,  
11 is designed to separate out the sperm part of the sample from  
12 the non-sperm?

13 A] Correct.

14 Q] And for convenience, uh, when you - - and you do that  
15 chemically - - without getting into the details; right? There's  
16 a way to do it?

17 A] That's correct.

18 Q] And once you make the sample, you differentially extract  
19 the samples; you're ending up with two test tubes?

20 A] Correct.

21 Q] And for convenience sake, one of the samples is called the  
22 "sperm fraction," and the other sample is called the "non-sperm  
23 fraction" in a lot of labs?

24 A] That's correct.

25 Q] Is that how you designate them in your lab, or do you use

1 "female/male"?

2 A] The first scenario: non-sperm fraction/sperm fraction.

3 Q] Now that label does not mean that there is sperm in the  
4 sperm fraction; right?

5 A] That's correct.

6 Q] And it would be misleading to tell the jury that because,  
7 in fact, the only reason you can tell if there is sperm in your  
8 sperm fraction is if you have microscopic examination for sperm  
9 or the P30 test as we've talked about before?

10 A] That's correct.

11 Q] But for convenience, these two things are called sperm and  
12 non-sperm?

13 A] Correct.

14 Q] Now is it your understanding that in this case, Genetic  
15 Design performed that kind of a procedure with the intent to  
16 separate out the sperm fraction from the non-sperm fraction?

17 A] Correct.

18 Q] And when you do that, you don't always get a neat separa-  
19 tion, do you?

20 A] No, sir, you don't.

21 Q] In other words, you do the chemical reaction and theoret-  
22 ically, you'd have one tube with only the sperm part and another  
23 tube with the non-sperm part, but for a variety of reasons, it  
24 doesn't work and you end up with non-sperm stuff in the sperm  
25 part and sperm stuff in the non-sperm part?

1 A] Correct.

2 Q] And that's well understood now, and it was well understood  
3 in 1993?

4 A] A lot more well-understood now than it was in '93.

5 Q] But when you say "a lot more understood," there were text  
6 books and people who had written them in '93 that were out there  
7 in the public domain that had talked about, uh, Differential Ex-  
8 traction where it said, "you're not always going to get a neat  
9 separation"?

10 A] That's correct.

11 Q] Now in this case, uh, Mr. Fogleman asked Mr. DeGuglielmo  
12 about his DNA testing and he said he got a marginal amount in  
13 the sample, in the sperm fraction of the sample and he says,  
14 "the initial step, the quantitation in this case showed a very  
15 small amount of DNA basically right at the marginal level of  
16 detection for the two sperm fractions, that being Q6 and Q10,  
17 and we detected no DNA present from the non-sperm or epithelial  
18 portions." He's talking there about Differential Extraction;  
19 right?

20 A] Correct.

21 Q] Okay. And then he is asked:

22 Question: "From all of that what can you conclude about the  
23 source of the DNA, well, probable source of the DNA in the two  
24 cuttings from these parts?"

25 And his answer is: "What I know from those two particular items

1 is that we did obtain a small amount of DNA, basically a thresh-  
2 old amount for our testing. The testing that we used is  
3 specific for human or higher primate."

4 Now that statement, the way it's phrased, is not correct, is it,  
5 based on what we talked about?

6 A] Well, I'm assuming at this point he's talking about the  
7 QuantiBlot...

8 Q] ...right...

9 A] That's correct.

10 Q] And his statement is not correct, is it?

11 A] Uh...

12 Q] ...at the levels that we're talking about, that it is not  
13 specific for human DNA?

14 A] Based on what we've talked about, I've had to lower  
15 numbers, you would have to include the other items.

16 Q] In other words, it's not correct to say that it's specific  
17 for human or higher primate, when you're talking about 50 peka-  
18 grams?

19 A] I think it could be either/or on that one. You couldn't  
20 say it was in fact human, and at that point you couldn't say it  
21 was in fact bacteria. I don't think you can determine that.

22 Q] Right. But you certainly can imply to the jury that it's  
23 specific for human and higher primate; that's wrong, isn't it?

24 A] Not on quantitation, no.

25 Q] It's wrong, isn't it?

1 A] Yes, it is.

2 Q] And now then he says "by that I mean there is some cross  
3 reactivity between higher primates as far as the DNA sequence.  
4 Human beings, gorillas, chimpanzees and great apes will have  
5 some similarity in the actual DNA sequence. And because of that  
6 they are not just human specific, but we know that the DNA that  
7 we detected is from the source of a higher primate."  
8 That's incorrect, isn't it, because he doesn't know, based at  
9 the level he's testing, whether it's from a higher primate. He  
10 can't make that determination, can he?

11 A] I would not have.

12 Q] And then he continues: "the other thing is that the small  
13 amounts of DNA we detected were present in the male or sperm  
14 portions of the extraction which would be indicative of the DNA  
15 having come from a sperm origin."

16 And that's outright false, isn't it, the fact that, uh, he was  
17 reading codes from a sperm fraction, is not indicative that the  
18 DNA is coming from sperm, in light of your testing that there  
19 was no sperm present and no semen present?

20 A] Then based on that, I believe that to say that it was  
21 indicative of the sperm is true, but under the situation with  
22 the quantitation, I think you couldn't say that.

23 Q] You could not say that, could you?

24 A] No, sir.

25 Q] Uh, and then the entire cross-examination by Mr. Stidham,

1 and I'll read it to you is as follows, page 1049:

2 Question: "Those are a lot of big words but what I gathered was  
3 that you're talking about possibilities. You cannot say for  
4 certain that there were sperm stains on these clothes, can you?"

5 Answer: "No, sir. As we discussed earlier, in forensic science,  
6 the only way that people will definitively say, to my knowledge,  
7 that there are sperm there is if they visually observe them  
8 under a microscope. And with a very limited specimen, most of  
9 the crime labs and our lab as well, generally will not consume  
10 the material in order to do that."

11 Now in fact, your lab had consumed material and you had deter-  
12 mined that there was no sperm present; right?

13 A] We did consume material, but not the entire material.

14 Q] Right. But you had used a portion of the sample to look,  
15 extract it, look under the microscope to see if you saw sperm,  
16 and you didn't see any?

17 A] Correct.

18 Q] And so when he said "with very limited specimen most of the  
19 crime labs and our lab as well, generally will not consume  
20 material in order to do that," he's apparently unaware that you  
21 had performed that sperm analysis and it had come back negative?

22 A] You could assume that.

23 Q] All right. And not only can you assume that, but when the,  
24 uh, the issue was raised about the admissibility in Mr.  
25 DeGuglielmo's testimony in front of the Court outside of the

1 presence of the jury was, and this is at page 1003, he says:  
2 "What that has done if there is sufficient specimen is to take a  
3 portion of that and do a microscopic exam to officially see  
4 sperm cells. That is considered conclusive for there being  
5 sperm cells. I did not do that. I don't believe it was done by  
6 the lab here, once again, because of the limited specimen."  
7 That's false testimony, isn't it?

8 A] He did not do it. When I hear that...

9 Q] ..."I don't believe it was done by the lab here..."

10 A] ...his lab...

11 Q] ...that's incorrect?

12 A] No, when he said "the lab here," was he referring to the  
13 Crime Laboratory, or was he referring to his laboratory?

14 Q] He says "I did not do that. I don't believe it was done by  
15 the lab here, once again, because of the limited specimen."

16 A] Right. That would be incorrect, if he was referring to the  
17 Crime Laboratory.

18 Q] That you had done the testing and that it had come back  
19 negative for the presence of sperm?

20 A] Correct.

21 Q] And he apparently did not know that?

22 A] It sounds as if he did not.

23 Q] It sounds - - okay. Uh, then on cross-examination, he  
24 continues: "We know that the extractions will separate male and  
25 female components."

1 That's false testimony too, isn't it, because we don't know that  
2 the extractions will separate male and female components?

3 A] We know the techniques were designed to separate. Was he  
4 talking specific case that we know that they will separate, the  
5 techniques will separate? Now whether it did in this case, you  
6 couldn't say that.

7 Q] But when he said that "we know that the extractions," he's  
8 talking about Differential Extractions, "will separate male and  
9 female components"; you told me that everybody is aware of the  
10 fact that this separation is not, uh, a complete separation; in  
11 other words, you get non-sperm in the sperm, and sperm in the  
12 non-sperm?

13 A] That's correct.

14 Q] That's well understood?

15 A] That's correct.

16 Q] And when he tells the jury there in answer to Mr. Stidham's  
17 cross-examination question, which is "those are a lot of big  
18 words, you cannot say for certain that there were sperm stains  
19 on these clothes, can you?"

20 And he says, "We know that the extractions will separate male  
21 and female components."

22 That's not a true statement, is it, because we don't know that?

23 A] That's correct.

24 Q] And he says, "We know that the extractions will separate  
25 male and female components and we also know the material we're

1 looking at has to be human specific or higher primate specific  
2 to obtain a result."

3 That's incorrect, too, based on what you told me?

4 A] Correct.

5 Q] And then the last question he asked: "Did you see any  
6 sperm?"

7 Answer: "No, sir, we did not do a microscopic. We did not want  
8 to consume any of the material."

9 And that's the end of the cross-examination. Now a question, a  
10 follow-up question at that point would be: Did you know that Mr.  
11 Channell had performed a sperm analysis and found no sperm?

12 Would you agree that would be a reasonable follow-up question?

13 A] I think it's reasonable.

14 Q] And would you, uh, another reasonable follow-up question  
15 then: Did you know that Mr. Channell wrote a report dated June  
16 1, 1993, in which he said no semen was found on Q6 and Q10.

17 Would that have been a reasonable follow-up question?

18 A] Reasonable.

19 Q] Uh, would it have been a reasonable follow-up question to  
20 ask him: Did you know that there was no positive P30 test, no  
21 valid positive P30 test and no microscopic examination that  
22 showed the presence of sperm?

23 A] Valid.

24 Q] Reasonable?

25 A] Reasonable.

1 Q] Would a reasonable follow-up question then: Did you know  
2 that this quantitation test that you're using can get a reaction  
3 for bacterial DNA at levels below 150 pekagrams?

4 A] Reasonable.

5 Q] Uh, would it have been a reasonable follow-up to ask him:  
6 Did you know that Mr. Channell has a documented note of a  
7 conversation in your lab in which somebody in Genetic Design  
8 represented that this sample was possibly bacterial in nature?

9 A] Reasonable.

10 Q] That would have blown him out of the water, wouldn't it, in  
11 terms of his opinion that this was human DNA?

12 MR. DAVIS: Your Honor, I object to the form of  
13 that question. That's inappropriate.

14 MR. BURT: I'll withdraw it.

15 THE COURT: All right. Sustained.

16 DIRECT-EXAMINATION, continuing:

17 Q] That would have been a reasonable question to impeach Mr.  
18 DeGuglielmo's testimony in "we know that this is human DNA"?

19 A] Reasonable.

20 Q] And if he denied it, it would have been reasonable to put  
21 Mr. Rader on the stand and say: "Did you tell Mr. Channell that  
22 this sample was possibly bacterial in nature"?

23 A] Reasonable.

24 Q] And if denied it, it would have been reasonable to put you  
25 on the stand with your notes saying "he told me that it was

1 possibly bacterial in nature”?

2 A] Reasonable.

3 MR. BURT: That's all I have.

4 MR. PHILLIPSBORN: Your Honor, I, I have a  
5 question in a different area. I don't know if the  
6 Court wants to proceed?

7 THE COURT: Yeah, go ahead.

8 MR. PHILLIPSBORN: Thank you.

9 DIRECT-EXAMINATION

10 BY MR. PHILLISBORN:

11 Q] Good morning, Mr. Channell. Just so you know where I'm  
12 gonna go, what I, I'm going to be asking much less specific, uh,  
13 questions about, uh, the nature of the analyses done. Uh, I,  
14 I'm going to be covering information that will help us, hope-  
15 fully, understand, uh, how the reporting occurred in this case.  
16 In other words, uh, the source of, uh, of identifiers that were  
17 used to separate each of the victims' samples, uh, the meaning  
18 of some of the designations used by the Crime Laboratory. And,  
19 and also, uh, I, I'm going to ask your help if, if you are able  
20 to provide it to identify records that I believe were Crime  
21 Laboratory records kept in the context of this case. And I  
22 would be referring both to reports that you generated and some  
23 other person's reports. In 1993 - - I know that you are  
24 currently the Laboratory's director - - but what was your, what  
25 was your specific area of responsibility?

1 A] Forensic serology, processing items of evidence.

2 Q] Now in your testimony you've explained to Mr. Burt your in-  
3 volvement in, in a specific aspect of the case, uh, did you  
4 become involved in this matter in, in the investigation of this  
5 case, uh, in the consideration of, of, uh, scientific evidence  
6 issues soon after the case was reported to the Arkansas Crime  
7 Laboratory?

8 A] Yes, I was.

9 Q] Do you, uh, do you happen to recall how soon, uh, after  
10 the, the, uh, remains of the three boys were discovered, you  
11 personally became involved? Was it a matter of days, weeks;  
12 what was it?

13 A] It was a matter of probably twenty-four hours.

14 Q] Now, uh, do you recall - - and I think the exhibit that Mr.  
15 Burt marked, the multi-page exhibit, #21, has, uh, has in it a  
16 letter that was addressed to you, uh, by Inspector Gitchell; is  
17 that correct?

18 A] Yes.

19 Q] Okay. Uh, why would that report have been, or why would  
20 that letter have been addressed to you specifically at that  
21 point in time? What was your connection with the case, such  
22 that the lead detective on the case would be communicating to  
23 you about the matters covered in the letter?

24 A] I believe, uh, I had contact with Mr. Gitchell and West  
25 Memphis Police Department early on in the case with respect to

1 crime scenes.

2 Q] And did you actually personally travel to West Memphis and  
3 go to the crime scene, interact with some of the law enforcement  
4 personnel in West Memphis soon after you became aware of the  
5 case?

6 A] Yes, I did.

7 Q] Uh, uh, and, uh, the, the letter that Mr. Burt referred to  
8 that you are looking at, uh, actually asks you a, it actually  
9 states that it's asking you a list of questions; correct?

10 A] Correct.

11 Q] Uh, now as to item 4, "which clothing belonged to which  
12 boy"; do you see that?

13 A] Yes, sir.

14 Q] Uh, would that have been in your area of responsibility to  
15 deal with at that time, or was that a, uh, a request that you  
16 would have been passing along to someone else in the Crime  
17 Laboratory?

18 A] I would have been passing that off to the medical exam-  
19 iner's section.

20 Q] Okay. And, and just so we can be oriented, which, what  
21 sections were in existence in the Crime Laboratory at, at the  
22 time, meaning in May of 1993, and in addition to the medical  
23 examiner's section, what other sections would be involved in, in  
24 a criminal investigation of this kind?

25 A] The, uh, of course, forensic serology, trace evidence,

1 firearms, latent fingerprints, we have a drug section, uh, those  
2 were - - and toxicology - - those were the main sections.

3 Q] Now, uh, when a case is, is opened for, and again, my  
4 questions, Mr. Channell at this point are all in reference to  
5 the, uh, period of time involved, meaning around May of 1993.  
6 When, when a case is brought to the Laboratory's attention, it  
7 gets involved, uh, how is it that a, uh, a number is determined  
8 for the, for the case? In other words, uh, is it the victim's  
9 name that is associated with a lab number; is it, uh, an  
10 evidence item; is it a case name? What, how is it that you  
11 determine what identifiers the Laboratory is going to use?

12 A] When a case comes in through the medical examiner's office,  
13 it is given an ME case number, which will reflect a number in  
14 the year. When evidence - - and it will also be associated with  
15 a crime lab number, for instance, in this case, uh, 19930516.  
16 05716 would have been one of the case numbers and so those  
17 numbers would have been tied together. As far as actual items  
18 of evidence law enforcement will bring those in and they'll be  
19 associated with an "E" number and the laboratory will assign it  
20 to a specific section and assign a unique identifier; for  
21 instance, "Q1" which would refer to a questioned item of  
22 evidence.

23 Q] Now in, in this case, do you recall whether, for the labor-  
24 atory's purposes, uh, after, uh, each of the, uh, the deceased  
25 young men was given a medical examiner's number, did the labor-

1 atory then open case numbers under the, uh, names of each of the  
2 deceased; in other words, for Christopher Byers there was one  
3 number; for James Michael Moore there was another number, uh,  
4 for Steven Branch there was a third number?

5 A] That's correct.

6 MR. PHILLIPSBORN: Your Honor, I'm going to ask  
7 that a combination of two documents be marked as next  
8 in order.

9 THE COURT: They'll be received.

10 (WHEREUPON, Petitioner's Exhibit #23 was admitted and received  
11 into evidence and is appended on page.)

12 (WHEREUPON, Petitioner's Exhibit #24 was admitted and received  
13 into evidence and is appended on page.)

14 MR. PHILLIPSBORN: May I approach the witness,  
15 Your Honor?

16 THE COURT: Yes, you may.

17 DIRECT-EXAMINATION

18 BY MR. PHILLIPSBORN, continuing:

19 Q] I'm showing you these combined exhibits, sir, which are  
20 Exhibits #23. The first of these items, have you had a chance  
21 just to thumb through it, and I'm not going to be asking you  
22 about - - just so you know, because we didn't have a chance to  
23 talk earlier this morning, Mr. Channell. I, I'm not going to  
24 ask you in detail about the list. Uh, what I want, I'm going to  
25 ask you about one or two items, but first, the first of these

1 documents, the multi-page document under Laboratory number 93-  
2 05716, would have been associated with one of the victims in  
3 this case; correct?

4 A] Correct.

5 Q] And, uh, would it be your understanding that, that the, the  
6 person whose, uh, and also from your knowledge of the case, the  
7 person who, whose laboratory case number this is would be James  
8 Michael Moore?

9 A] (Witness examining same.) I'm not sure this is actually  
10 for James Michael Moore.

11 Q] Well, I, I think we'll have a way of doing it. Do you want  
12 to look at the one-page document that follows it?

13 A] Yes, the one that follows it is 93-05718.

14 Q] And it's associated with whom?

15 A] Mark Byers.

16 Q] And so is that the indication that, that, uh, that, that  
17 number was associated with young Mr. Byers?

18 A] Correct.

19 Q] And, uh, and then would it refresh your recollection again,  
20 just so we get the laboratory numbers straight. I, I've got a  
21 document here that I'm showing to, uh, to Mr. Davis. Would it  
22 refresh your recollection to see a document that's related to  
23 Mr. Branch so that we can get ourselves straight?

24 A] (Witness examining same.) That's correct. This 93-05717  
25 would be representing Steven Branch's case.

1 Q] And so, uh, in connection with, with Michael Moore's case,  
2 the number is 5716; correct?

3 A] Correct.

4 Q] And, uh, we've looked at the larger of these two, uh,  
5 documents. The, the documents basically, uh, lists a number of,  
6 of items of evidence and, and the source of them; correct?

7 A] Correct.

8 Q] Now do you recall, uh, that one of the things that happen-  
9 ed in the context of this case was there was attention focused  
10 on ligatures that were removed from the remains of each of the  
11 three boys?

12 A] Correct.

13 Q] And the ligatures were looked at, uh, by several different,  
14 uh, criminalists and, and, uh, analysts in your laboratory;  
15 correct?

16 A] I know that Lisa Sakeviceus looked at these items, but I'm  
17 not sure who else looked at those specific items.

18 Q] Well, uh, do you, do you recall your looking at the liga-  
19 tures as well?

20 A] Yes, I did.

21 Q] Uh, I, I'm going to be, uh, asking that a set of handwrit-  
22 ten notes that have the laboratory numbers that we were just  
23 referring to be marked as next in order. Just, uh, if you  
24 would, Mr. Channell, if you would just thumb through those and,  
25 and I'd like to ask you as you're thumbing them, uh, do you

1 recognize the handwriting that is contained in this, uh, several  
2 pages of notes?

3 A] (Witness examining same.) I don't really recognize the  
4 handwriting per se, but the initials on the bottom, which would  
5 appear to be similar to L.S., which is for Lisa Sakeviceus.

6 Q] And, and, uh, for the record, uh, what was Ms. Sakeviceus  
7 doing at the laboratory when this case was being processed?

8 A] She was a criminalist and specialized in trace evidence.

9 Q] And to your knowledge, did she work on this case?

10 A] Yes, she did.

11 Q] And to your knowledge, did she generate notes and reports  
12 that became part of the record of this case that was kept by the  
13 Crime Laboratory?

14 A] Yes, sir.

15 Q] And, uh, what form would these records be kept in? In  
16 other words, did, did, is there a, uh, is there a, uh, a file  
17 that's kept in a case like this, a set of notebooks, or both?

18 A] Yes, sir, there is.

19 Q] Okay. Meaning there's both?

20 A] Both.

21 Q] And is, are, are the originals of those materials still in  
22 the care and custody of the Arkansas Crime Laboratory?

23 A] Yes, they are.

24 Q] And, and looking at the items before you, are those copies  
25 of the official records of the Arkansas Crime Laboratory? In

1 other words, would these notes could be considered part of the  
2 Laboratory's official records in a case of this nature?

3 A] Yes, they were.

4 Q] Now looking at the notes, uh, they, the top right-hand side  
5 have page numbers and then at the top left-hand side they have,  
6 uh, what appears to be the case numbers that you and I were  
7 referring to earlier; will you agree?

8 A] Yes, I would.

9 Q] And, uh, there's a date indicating, uh, there's a date on  
10 each of these, uh, does it appear to you as you're reviewing  
11 these items that these, uh, three - - there's actually, I guess,  
12 four - - four pages of notes, seven through ten, that, that  
13 these notes refer among other things to the ligatures that were  
14 being processed by the laboratory in early May, 1993?

15 A] Yes, it does.

16 Q] And, and so getting back to what I was asking you earlier  
17 about the, uh, the case, and again, I, I understand it's been a  
18 while and that you are dealing with cases all of the time these  
19 days, but just to review our numbers, if we take the first page,  
20 Laboratory number 5718, would pertain to Christopher Byers; is  
21 that correct?

22 A] (Witness examining same.) Correct.

23 Q] And if we go to the next page, page 8, 5716, would pertain  
24 to Michael Moore?

25 A] Correct.

1 Q] And if we go to the next page, page 9, 5717, would pertain  
2 to, to, uh, young Mr. Branch; is that correct?

3 A] Correct.

4 Q] Now looking at the second page of these notes, meaning page  
5 8, there is, after we get through the page number, the date and  
6 the case number, there is a designator "FP6" and then the hand-  
7 written word "ligatures"; what does FP mean? Would that be, uh,  
8 uh, would the FP be identifying Dr. Frank Peretti?

9 A] That's correct.

10 Q] So would this mean, just in terms of the, uh, laboratory  
11 procedures as you were familiar with them at the time that, uh,  
12 this is a record that indicates that in the case of James  
13 Michael Moore, "FP6" would be the identifier for ligatures  
14 associated with him; correct?

15 A] Correct.

16 Q] And these notes, the notes that I'm making reference to,  
17 uh, if someone for example were to, uh, go to the Crime Labora-  
18 tory, a lawyer defending a case, uh, especially at the point of  
19 which this case is going to, is about to go to trial, the lawyer  
20 would be able to get access to these notes if they asked you or  
21 the, the Crime Lab director at the time; correct?

22 A] Correct.

23 Q] And, uh, would it be the policy of the Laboratory that if  
24 the lawyer wanted to talk to a particular analyst about some  
25 aspect of the case, that lawyer could sit down with the analyst,

1 uh, in this case, Ms. Sakeviceus, and go over the record that  
2 would pertain to her part of the case?

3 A] That would be correct.

4 Q] Uh, and then just in terms of following, uh, uh, what the  
5 Laboratory did with items; for example, the ligatures that per-  
6 tained to, uh, the James Michael Moore, the lawyer, uh, would be  
7 able to identify or would be able to tell what had been done  
8 with, uh, that particular ligature just by looking at the  
9 Laboratory's records to tell that on May 12, according to these  
10 notes, something happened to these ligatures?

11 A] Correct.

12 Q] Now to your knowledge, uh, were the ligatures looked at,  
13 uh, for the presence of physical evidence, in, in addition to  
14 the ligature itself, the physical presence of the ligatures,  
15 were they looked at to see if there was anything of evidentiary  
16 value on them?

17 A] I believe so.

18 Q] Well, you looked at them for the presence of human tissue,  
19 didn't you?

20 A] Actually, I believe, uh, there was some possible tissue  
21 that was transferred to me from Lisa Sakeviceus.

22 Q] Uh, would one of the procedures used in the case of  
23 physical evidence like these, uh, ligatures have been, uh, that  
24 they, uh, among other things, would have been, uh, photographed,  
25 a lot of documentation about the ligatures would have been

1 produced by the Crime Laboratory; right?

2 A] That would be correct. I'm assuming they were in this  
3 case.

4 Q] I'm, and I, and I understand, and I appreciate your  
5 hesitation. I, I take it from your reaction that your point is  
6 that isn't work you would have done personally, so it's nothing  
7 that you were specifically recall being done?

8 A] I don't specifically recall.

9 Q] Uh, again, just for the purposes of identifying Laboratory  
10 records, I'm going to ask for one final exhibit for the purpose  
11 of my examination, be marked. Sir, I'm showing you what's been  
12 marked as #25. Do you know, incidentally, from your association  
13 with this case, uh, whether in, in the course of the last few  
14 years the Laboratory has been kind enough to make access, or to  
15 provide access to the current defense counsel, to your Lab-  
16 oratory notebooks and copies of them?

17 A] Yes, we have.

18 Q] And, uh, in fact, uh, would it be fair to say that we've  
19 met together on the premises of the Laboratory and you've  
20 actually allowed us to go through, uh, all of the evidence and  
21 you were kind enough to volunteer a fair amount of Laboratory's  
22 time to permit us to do that; is that correct?

23 A] Correct.

24 Q] Uh, you allowed us to come in and have criminalists look at  
25 the items and again, uh, you've provided us whatever time we

1 asked for in that connection; correct?

2 A] Correct.

3 Q] And had the lawyers defending these cases at trial asked  
4 you for the, uh, same professional courtesy, you would have  
5 provided it; is that a fair statement?

6 A] Yes, it is.

7 Q] Now I just want to ask you, uh, as the current director of  
8 the Laboratory, does the item that I just shown you, Exhibit  
9 #25, appear to contain, uh, information that is at least  
10 referenced in terms of the, uh, of, of the case that we are  
11 dealing with; in other words, this is, uh, it has a photo log  
12 that apparently, uh, involves other cases but if you look at the  
13 second page of our exhibit, the first page being an item that  
14 says "photocopies of hair slides," you look toward the bottom  
15 of the page, there is a, uh, designator 93-05716, uh, and that,  
16 that would be James Michael Moore; correct?

17 A] Correct. If I could make some clarification as far as the  
18 evidence coming into the Laboratory?

19 Q] All right?

20 A] But these cases, if I recall, each individual victim had a  
21 Crime Laboratory case number and a medical examiner number.  
22 Evidence coming in and reports issued, other than, uh, I believe  
23 my reports, my initial ones to the medical examiners, all of the  
24 evidence would have come in under 1993-05716, in order to bring  
25 it all into one case, since we have three victims, just for

1 clarification.

2 Q] Okay. And I appreciate that. In terms of our under-  
3 standing of the significance of, of the, uh, of, of the photo  
4 log, someone looking at it would be able to tell that in that  
5 case number that you just used for an illustration, uh, 93-  
6 05716, item FP6 which, uh, we referred to moments ago in the  
7 handwritten notes, the ligatures, someone would be able to tell  
8 that photos were made of hairs associated with that ligature,  
9 uh, one could tell a little bit about the film, film speed,  
10 camera, microscope, and then one could even tell from the  
11 analyst or criminalist was who did the photography; correct?

12 A] That's correct.

13 Q] And then when it would have been done; correct?

14 A] Correct.

15 Q] And then, uh, in, in that same exhibit there, uh, uh, are,  
16 are, uh, included, uh, some exemplars of slides. Now these are  
17 slides that, uh, if, if you look at the copies of them, are  
18 associated with, uh, the case number we are talking about, like  
19 the first of them, 5/26/93, has the case number of the Moore  
20 case; correct?

21 A] Correct.

22 Q] Uh, and, and here, do you recognize this, this handwriting  
23 on the, uh, on the slide?

24 A] I believe it's Lisa Sakeviceus; it also has her initials on  
25 it, on the slide itself.

1 Q] And again, this would be the kind of, uh, this is a record  
2 that, uh, is kept in the ordinary course of business in the Ark-  
3 ansas Crime Laboratory; correct?

4 A] Correct.

5 Q] And this would be, uh, this would be a record character-  
6 istic of the kinds of records that you would have generated in a  
7 case of this nature. Again, if a defense lawyer were coming by  
8 and saying, uh, to the Laboratory director, "I'd like to look  
9 through all of these materials - - do you have hair slides, does  
10 the Laboratory have this material?" A person could have looked  
11 at it as we're looking at it today; correct?

12 A] Correct.

13 Q] I'd like you to look at the last page of this particular  
14 exhibit if you would. Now the, the, the, it appears this copy  
15 is a little bit better. Would you agree, if you look at the  
16 copy of the actual hair sample slide, it, it is clearly a number  
17 associated with James Michael Moore; correct?

18 A] Correct.

19 Q] Uh, it refers to FP6, which is the ligature that's as it's  
20 been labeled in, in her notes; correct?

21 A] Correct.

22 Q] Uh, "QH" means questioned hair; correct?

23 A] Correct.

24 Q] If, if, and it would be consistent with Laboratory practice  
25 that the analyst or criminalist would have noted down the

1 location from which the questioned hair was being taken;  
2 correct?

3 A] Correct.

4 Q] Uh, it says "Ligature Moore"; correct?

5 A] Correct.

6 Q] Uh, and then there are dates that would have referenced the  
7 preparation of the slide; correct?

8 A] Correct.

9 Q] And there are actual notations indicating that in those,  
10 the Moore ligature, there, uh, is a red hair fragment and a  
11 possible beard hair; correct?

12 A] Correct.

13 Q] And, and again, this would have been the sort of thing that  
14 anyone who took the time to actually look at the slide would  
15 have been able to tell; correct?

16 A] Correct.

17 Q] Now, uh, do you recall, and, and understanding that it's  
18 been a long time, and again, the, uh, uh, this may or may not be  
19 familiar: do you recall whether you personally met with an  
20 attorney named Paul Ford in connection with this case?

21 A] I do remember meeting with Paul Ford, but I don't recall  
22 where or when.

23 Q] Uh, do you remember on how occasions you met with him?

24 A] No, I do not.

25 Q] Do you recall whether you ever told Mr. Ford, uh, that a,

1 that some hair had been found on one of the ligatures?

2 A] I, I don't recall that.

3 Q] Assuming that, uh, there actually was, uh, a, a note con-  
4 tained in Mr. Ford's file, uh, to the effect that, uh, there  
5 was, uh, a hair in the Byers' ligature, or a hair found in the  
6 Byers' ligature, do you have any memory from your personal know-  
7 ledge of the case, of how Mr. Ford would have come upon that in-  
8 formation?

9 A] I don't. That type of information typically comes from the  
10 trace analyst, Lisa Sakeviceus.

11 Q] Now at least in the context of the case as you and I have  
12 just examined it, the, uh, hair fragment that's on the slide we  
13 looked at is actually not associated Byers, it is associated  
14 with Moore; correct?

15 A] If you are referring to that FP6?

16 Q] That FP6; correct?

17 A] The ligature from Moore; correct.

18 MR. PHILLIPSBORN: Thank you very much. I pass  
19 the witness, Your Honor.

20 THE COURT: In looking at this, Mr. Channell, you  
21 also found cat hairs and other animal hairs, did you  
22 not?

23 THE WITNESS: I believe so.

24 THE COURT: And the one referred to as a red hair  
25 fragment was possibly a beard fragment; is that what?

1           THE WITNESS: I believe they're, according to  
2 this, there would be two different fragments.

3           THE COURT: Would also find a non-Caucasian hair?

4           THE WITNESS: If memory serves me, I believe that  
5 there was one found in a, uh, sheet that transported  
6 one of the victims.

7           THE COURT: But there were multiple animal hairs?

8           THE WITNESS: That's correct.

9           THE COURT: Okay. Go ahead.

10          MR. PHILLIPSBORN: Actually, Your Honor, in the  
11 scope of the Court's questioning, just one clarifying  
12 question?

13          THE COURT: Sure.

14                           DIRECT EXAMINATION

15 BY MR. PHILLIPSBORN, continuing:

16 Q] Uh, Mr. Channell, given the Court's perceptive questions  
17 about this area, do you happen to know one way or the other  
18 whether the hairs from FP6 ended up being sent to a, uh, to a  
19 DNA laboratory in Virginia recently, so that they were actually  
20 identified by DNA testing; do you know one way or the other?

21 A] I know that several hairs were, but I don't recall FP6  
22 specifically.

23          MR. PHILLIPSBORN: And, and, Your Honor, just,  
24 uh, because the Court, uh, asked that, that, uh,  
25 additional question, I would indicate to the Court

1 that the Court has before it, has the records.

2 THE COURT: I have that report.

3 MR. PHILLIPSBORN: The DNA testing, so it  
4 actually was human hair. Thank you Mr. Channell.  
5 Thank you, Your Honor.

6 MR. DAVIS: Could we take a quick break?

7 THE COURT: Yes. A ten-minute recess.

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

10 CROSS-EXAMINATION

11 BY MR. DAVIS:

12 Q] Mr. Channell, one thing I do need to clarify for the  
13 record, Lisa Sakeviceus that there has been a lot of testimony  
14 about and was a criminalist that was involved in analyzing some  
15 of the evidence in this case, uh, can you state for the record  
16 what had happened to her and when it was that she passed away?

17 A] Uh, Lisa Sakeviceus passed away, she had terminal cancer  
18 and she passed away I believe in early 2000.

19 Q] And the items that Mr. Phillipsborn showed you, uh, that  
20 were photocopies of logs or photo logs, photographs, a pair of  
21 slides, uh, notes regarding examination of evidence, those are  
22 all items that Lisa maintained and put together in her exami-  
23 nation of the trace evidence; correct?

24 A] That's correct.

25 Q] Now there were a lot of questions asked of you regarding

1 ligatures. When you refer to a ligature, are you referring to  
2 the knot that bound, uh, or that tied the shoestrings together,  
3 or are you referring to the entire length of the shoestring?

4 A] It would be the entire length of the shoestring.

5 Q] Okay. And...

6 MR. DAVIS: ...Your Honor, may I approach the  
7 witness?

8 THE COURT: Yes.

9 CROSS-EXAMINATION, continuing:

10 Q] And on page 8 of the evidence collection notes that Mr.  
11 Phillipsborn showed you, the reference to FP6, did Lisa refer in  
12 there to the shoestrings being cut?

13 A] (Witness examining same.) Yes, on the left wrist knot,  
14 "end is cut."

15 Q] Okay. And did she also make a note that "this could be one  
16 shoestring cut in two"?

17 A] That's correct.

18 Q] Okay. And from your experience in the Crime Lab, if a  
19 criminalist made a reference or noted in the record that a  
20 string or ligature was cut, would that be a different way of  
21 that item being separated that if it was broken, or sheared or,  
22 uh, worn in two or something of that nature?

23 A] Yes.

24 Q] Okay. Would that indicate to you that it was some sort of  
25 sharp object that split the shoe lace in half?

1 A] Yes, it would.

2 Q] Let me show you what was marked as Petitioner's Exhibit #23  
3 which was referred to as the QuantiBlot Human DNA Quantitation  
4 Kit instructions?

5 A] That's correct.

6 Q] Okay. And the question surrounding this particular docu-  
7 ment that was asked of you, uh, involved testing that was per-  
8 formed on the cuts Q6 and Q10 that you submitted to Genetic  
9 Design back in some time during the year of '93, May or June of  
10 '93; correct?

11 A] That's correct.

12 Q] Okay. And the tests were done and the results submitted  
13 back to you some time before the year 1993 was completed;  
14 correct?

15 A] That's correct.

16 Q] Okay. Now can you look on the last page of this where it  
17 indicates where the date, the copyright date for these  
18 instructions in this particular instructional packet?

19 A] Copyright 1996 by Roche Molecular Systems.

20 Q] Okay. And do you in fact even know if this is the  
21 instructional kit that was in existence and the information that  
22 was contained in this exhibit was in existence in the instruct-  
23 ional kit back in 1993 or even '94?

24 A] No, I do not.

25 Q] Now Mr. Burt asked you about your testimony concerning the

1 testing of items over the Q6 and Q10, primarily the Q6, I  
2 believe, and he went over your testimony at trial. After having  
3 heard that, do you feel that what you testified to at trial, are  
4 you concerned that it was misleading or do you feel that it was  
5 misleading to the jury?

6 A] I don't personally feel that it was misleading.

7 Q] And let me refer you to page 1033 of Volume 5 of the  
8 transcript of the Misskelley trial. And you had testified, and  
9 this is the last portion of the statement: "The third step is to  
10 try to visualize to see if you can see any spermatozoa in the  
11 stain that I identified." And the question was asked of you:  
12 "And you could not do that?" And what was your response?

13 A] "That's correct."

14 Q] Okay. And so your testimony was at that time that you  
15 couldn't visualize any in an attempt to do so, but you were  
16 unable to do it; correct?

17 A] That's correct.

18 Q] Okay. And I believe you indicated that though you can't  
19 recall the specifics, you recall some contact with Paul Ford at  
20 the Crime Lab prior to the time of the trials of these cases?

21 A] That's correct.

22 Q] Okay. And as far as Mr. Stidham or Mr. Crow, uh, you  
23 indicated that you don't personally recall any contact with  
24 those two?

25 A] That's correct.

1 Q] Okay. And as far as questions or explanations about the  
2 various trace evidence that would have been involved in this  
3 case, the person that they would have more likely contacted  
4 would have been Lisa Sakeviceus; correct?

5 A] That's correct.

6 MR. DAVIS: One second, Your Honor.

7 THE COURT: All right.

8 CROSS-EXAMINATION, continuing:

9 Q] Mr. Channell, I'm not sure the record is clear on this.  
10 Back in May of 1993, uh, was there any DNA testing capability at  
11 the Arkansas State Crime Laboratory at all?

12 A] No, there was not.

13 Q] Okay. And when - - and you were the one that ultimately  
14 was placed in charge of creating the DNA section of the Arkansas  
15 State Crime Lab, and when did that take place?

16 A] We started some work in 1995. We didn't actually come into  
17 a line of case work until 1996.

18 Q] Okay. And during the year of '93, uh, January 1 of '93  
19 until on into '94, were all requests for DNA examination of  
20 items farmed out to other laboratories, other than the Crime  
21 Lab?

22 A] Yes, they were.

23 Q] Okay. And did the, uh, in sending items from the Crime  
24 Lab, items of evidence that needed to be tested, were there  
25 protocols and procedures that the Lab had in order to accomplish

1 that; send out items to other labs for testing?

2 A] Yes, there was.

3 Q] Okay. And as far as you know in this particular case, were  
4 those protocols and procedures followed?

5 A] Yes, they were.

6 Q] Okay. And at the time Genetic Design was the laboratory  
7 that was used by the Crime Lab to test items?

8 A] Yes.

9 Q] And were there other labs that were used; were they  
10 explicit?

11 A] No, sir. We also used the FBI Laboratory and a lot of the  
12 officers would come from law enforcement to pick and choose a  
13 laboratory of their choosing.

14 Q] And was time, uh, in terms of what factors might go into  
15 whether you choose the FBI or whether you choose a private lab  
16 such as Genetic Design, would Genetic Design tend to turn the  
17 evidence around more quickly in terms of getting a result more  
18 quickly than it would the FBI?

19 A] Yes, sir.

20 Q] And were there other cases in which Genetic Design lab was  
21 use to provide DNA testing in other cases, other than just this  
22 one?

23 A] Yes, sir.

24 Q] Did the testimony where you referred to, you said that in  
25 order to, uh, the testimony about "the third step in the process

1 of being able to determine if there is sperm present," was that  
2 you would try to identify sperm by examining a particular item  
3 through the microscope?

4 A] That's correct.

5 Q] Okay. And that testimony that you referred to, that was  
6 provided to the jury that heard and made a decision in the Miss-  
7 kelly case; correct?

8 A] That's correct.

9 Q] Do you know if that testimony was provided before or after  
10 Mr. DeGuglielmo testified to?

11 A] It was before his testimony.

12 MR. DAVIS: No more questions, Judge.

13 RE-DIRECT EXAMINATION

14 BY MR. BURT:

15 Q] In terms of your testimony in what you say, I want to read  
16 you a portion of the closing argument that was made on the basis  
17 of the testimony that Mr. Davis just read to you. And this is  
18 at page 1042 of the Misskelley transcript: Mr. Fogleman argues,  
19 "Now if you recall...

20 MR. DAVIS: ...Judge, at this time any question  
21 of that nature that was asked of this witness would  
22 require this witness to draw a legal conclusion.

23 THE COURT: Sustained.

24 MR. BURT: What I was going to ask, Your Honor,  
25 the question he was asked on cross was "whether the

1 testimony you gave was misleading," and what I would  
2 like to ask him is although the testimony may have, is  
3 in his opinion not that misleading, was it used in  
4 other words, statements were made about what he said,  
5 and I want to ask him his opinion about whether it was  
6 asked, how it was characterized; whether it was a  
7 reasonable interpretation from a scientific point of  
8 view, not from a witness's point of view.

9 THE COURT: Well, all argument, it should be  
10 couched in reasonable inferences from the evidence  
11 that was received.

12 Now how a lawyer twists and spins the testimony  
13 at the time of the trial, you know, an objection could  
14 be made if it's not a reasonable inference that could  
15 be drawn from the evidence.

16 But I don't know how you're going to ask him what  
17 was in the mind of a lawyer when he was addressing the  
18 jury.

19 MR. BURT: Let me be more specific, then.

20 THE COURT: All right.

21 RE-DIRECT EXAMINATIN BY MR. BURT, continuing:

22 Q] A statement is made by Mr. Fogleman, uh, and I'll read it  
23 to you. It says, "Now if you recall Kermit Channell from the  
24 Crime Lab said that in his tests on the little boys' pants that  
25 he ran screening tests. He ran one screening test that came

1 back positive, positive for semen. He ran a second screening  
2 test positive for semen. He looked under a microscope and the  
3 pants are all muddy and everything and he couldn't see any sperm  
4 but he had these two positive tests for semen."

5 MR. BURT: And what I would like to ask him is  
6 whether his not being able to identify semen or sperm  
7 had anything to do with the pants being muddy, as it  
8 was implied.

9 THE COURT: All right, go ahead. I'll let you  
10 ask that.

11 RE-DIRECT EXAMINATION

12 BY MR. BURT, continuing:

13 Q] Did you understand my question?

14 A] Sure.

15 Q] In other words, what the lawyer here says "he looked under  
16 the microscope and the pants were all muddy and everything and  
17 he couldn't see any sperm." Was the fact that the pants in this  
18 case were muddy, did that have anything to do with your ability  
19 to see or not see sperm under a microscope?

20 A] No, it did not obstruct my vision under the microscope.

21 Q] In other words, the way you do this microscopic examination  
22 is regardless of whether the pants are muddy or not, you identi-  
23 fy a stain; right?

24 A] Correct.

25 Q] And then you use some sort of chemical process to extract

1 whatever that stain is into, uh, onto a swab and into a test  
2 tube; correct?

3 A] Right. The cutting itself is placed into a test tube and  
4 by centrifugal forces, we pull the sperm cells, if there are  
5 any, into the bottom of that, and that's what we examine.

6 Q] And that centrifugal process separates out the sperm, if  
7 it's there, from any other junk that's in the sample?

8 A] Correct.

9 Q] So when you put that, after you do that separation, uh,  
10 you've got a pallet that's clear and contains only the sperm  
11 portion; right, if it's there?

12 A] That's correct.

13 Q] And then you dab it onto a slide and you put it under a  
14 microscope?

15 A] That's correct.

16 Q] There's no mud in that process; in other words, there's - -  
17 the mud is not transferred into the microscopic slide, and it  
18 doesn't prevent you from looking at sperm if it's there?

19 A] I don't believe in this case, that that was the case.

20 Q] And the reason that you have no - - under the microscope  
21 you have a clear vision of what you were looking at, and that  
22 clear vision, using that clear vision, you didn't see a single  
23 sperm in either one of the extracts taken from these two  
24 samples?

25 A] Correct. I don't recall what the slide looked like, but if

1 it would have been a bad slide, if you will, based on the two  
2 meaningful ones, I would have created another one.

3 Q] Or you would have had some note in your lab notes  
4 indicating that your negative on the sperm microscopic was some-  
5 how being influenced by some murkiness in your sample?

6 A] Right. And at that point I would have created another  
7 slide; correct.

8 Q] And, and your notes just indicate a flat out negative?

9 A] Correct.

10 Q] Meaning you looked, you didn't see it; no sperm?

11 A] Correct.

12 Q] Now the question about the, uh, the QuantiBlot testing,  
13 although this particular user's kit has a, uh, copyright on the  
14 last page of 1996, the fact of the matter is, this kit was in  
15 use long before than 1996; correct?

16 A] It was in use before 1996; that's correct.

17 Q] Do you know when it first got validated and first started  
18 being used in crime labs for quantitative DNA?

19 A] No, sir, I don't.

20 Q] But it was obviously some time before the testing in this  
21 case, because we know that Genetic Design used this kit to  
22 quantitate; correct?

23 A] Correct.

24 Q] And as far as you know in 1993, was the information, were  
25 the standards the same in terms of a minimum quantity that you

1 would be looking for, the, uh, 0.150 nanograms?

2 A] I can't recall, because that refers to a specific kit, uh,  
3 so I did not see any literature in 1993. There could be  
4 literature out there from that point, but I am not personally  
5 aware of that.

6 Q] And are you aware of any literature in terms of the, uh,  
7 testing that was done on the, uh, issue of whether it detected  
8 non-human DNA, the chain between 1993 and 1996?

9 A] No, I am not.

10 Q] In other words, that was not information back in 1993 that  
11 was known at that low levels you were going to pick up non-human  
12 DNA?

13 MR. DAVIS: Your Honor, if I may, I wish to  
14 object. If I understood the question was whether he  
15 was familiar with any materials or any writings that  
16 would indicate that there is a chain between '93 and  
17 '96 and he said no that he was not familiar with, and  
18 then the next question assumed that he was, that he  
19 would have some explanation.

20 I would object to the form of the question. I  
21 think the proper question would be whether the  
22 information contained in the kits; does he know, does  
23 he not know whether that was information that was  
24 available back in 1993.

25 THE COURT: He's already testified that he didn't

1 know.

2 RE-DIRECT EXAMINATION

3 BY MR. BURT, continuing:

4 Q] You didn't know, uh, whether the information about the  
5 levels of usage from this kit were the same in '93 as in '96?

6 A] I don't have any knowledge of that. Again, I wasn't, uh,  
7 involved in the DNA field until in 1995.

8 Q] And after '95 you became familiar with this kit; right?

9 A] That's correct.

10 Q] And how much research did you, uh, absorb in your own use;  
11 in other words, did you go back into the history of this case?

12 A] No, I did not.

13 Q] So your knowledge of it is based on the 1996 kit, and  
14 that's the one that you referenced in your letter?

15 A] That's correct.

16 Q] And as to whether there is an earlier version of this Quan-  
17 tiBlot manual, uh, you wouldn't have any knowledge?

18 A] I'm sure there is, that based on its use in forensic  
19 laboratories.

20 Q] So if we produced that and it was the same information  
21 about the non-human DNA that's in here, you wouldn't have any  
22 disagreement with that?

23 A] No.

24 Q] Now in terms of whether, uh, the use of this kit was  
25 producing non-human DNA or bacterial DNA, you were asked in this

1 case to comment, were you not, of the likelihood of finding any  
2 non-contaminated DNA in the samples taken for relating to this  
3 case?

4 A] In some of the samples, yes.

5 Q] In other words, uh, you were aware of the DNA testing that  
6 was conducted?

7 A] Yes, I am.

8 Q] And, uh, one of the things you were asked to do by the  
9 State was to author an opinion of what the likelihood would be  
10 of finding any human DNA that was not either from the victim or  
11 it was contamination?

12 A] Correct.

13 Q] And you, uh, you wrote a letter to the State dated May 27,  
14 2008, which is set forth your opinions in that regard; correct?

15 A] That's correct.

16 MR. BURT: The next in order would be that  
17 letter, May 27, 2008.

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

19 MR. BURT: Thank you.

20 (WHEREUPON, Petitioner's Exhibit #26 was admitted and received  
21 into evidence and is appended on page.)

22 RE-DIRECT EXAMINATION

23 BY MR. BURT, continuing:

24 Q] Is that the letter you wrote to the State which you render-  
25 ed your opinion about the likelihood of finding DNA on the

1 samples in this case?

2 A] (Witness examining same.) Yes, it is.

3 Q] And did you, uh, say in that letter: "One cannot overlook  
4 the facts in this case: The three victims in this case were nude  
5 and submerged in water for between 18 to 24 hours prior to  
6 discovery. It is very unlikely that any interpretable DNA  
7 profile other than that due to contamination or that of the  
8 victims would be recoverable." Did you write that?

9 A] Yes, I did.

10 Q] And would that same logic apply to the pants that were  
11 sitting in the water for 18 to 24 hours and that that sat in  
12 your laboratory from May 7<sup>th</sup> to May 11<sup>th</sup>, damp and wet, that it's  
13 very unlikely that you could find any interpretable DNA from the  
14 suspect, on samples that were cut from those blue jeans and kept  
15 under those conditions?

16 A] Yes, I think it's highly unlikely.

17 MR. BURT: Thank you. That's all I have.

18 RE-DIRECT EXAMINATION

19 BY MR. PHILLIPSBORN:

20 Q] Mr. Channell, with that framework of the questions I have  
21 just a two quick areas to cover. Uh, I believe that Exhibit  
22 #25, I don't know if you still have that in front of you.  
23 That's the item, uh, uh, I'll tell you that I'm referring to for  
24 our record, and I apologize - - just a second. It's the set of  
25 notes - - what exhibit is it?

1 A] This is Exhibit #24.

2 Q] Now calling your attention to the, uh, some of the  
3 questions asked of you of Mr. Davis. First of all, uh, would  
4 you expect that in the course of looking at case evidence, the  
5 trace evidence, the analyst would actually be looking for trace  
6 evidence?

7 A] That's correct.

8 Q] So, uh, the notations that you would expect in her notes  
9 would pertain to, uh, trace evidence that she may or may not be  
10 picking up as she is looking at the item?

11 A] I guess the only clarification that would I make, just  
12 having looked at this, is the difference between, you know, if  
13 there was other documentation other than this based on these  
14 items into evidence away from the fact of talking specifically  
15 about the knots.

16 Q] Uh, well, looking at what in the upper right-hand corner is  
17 page 8, uh, the document that I believe we've previously identi-  
18 fied as the document pertaining to the Michael Moore related  
19 ligatures, about half-way down the page, uh, there is a notation  
20 that is actually not, uh, not specific in terms of describing  
21 the knots, but there's a description of what could be trace  
22 evidence for some biological evidence, uh, "L, leg, knot, dash,  
23 skin, question mark"; correct?

24 A] Correct.

25 Q] And, and so that would signal among other things that there

1 might be some reason to look within the, uh, evidence that's,  
2 uh, that was in that knot and what had been retrieved and  
3 described as skin to see what, what is there; correct?

4 A] Correct.

5 Q] Uh, and then as you mentioned, part of what is notated as  
6 Mr. Davis points out is that, uh, the end of the item is, uh, is  
7 described as cut; correct?

8 A] Correct.

9 Q] And, and, uh, uh, you were asked, uh, about you were  
10 experienced in criminalists to indicate that a cut would signify  
11 something other than tearing or shredding or some, some other  
12 breakage of textile, like a, uh, like a shoe lace. Do you  
13 recall that line of questioning?

14 A] Yes, sir.

15 Q] And, uh, at this juncture, that notation doesn't tell us  
16 anything about any opinion of, of when or where the item was  
17 cut; correct?

18 A] Correct.

19 Q] Or by whom?

20 A] Correct.

21 MR. PHILLIPSBORN: Thank you, sir.

22 RE-CROSS EXAMINATION

23 BY MR. DAVIS:

24 Q] Just for clarification purposes, Mr. Channell, the exhibit  
25 #26 that Mr. Burt introduced through you is a letter dated May

1 27, 2008; is that correct?

2 A] That's correct.

3 Q] And the primary content of that letter, uh, deals with  
4 other issues regarding DNA that had nothing to do with what  
5 happened at the trial; right?

6 A] Correct.

7 Q] Now the very last paragraph, or the third paragraph from  
8 the bottom which he referred to, was a statement, and I'm going  
9 to generally characterize it and you tell me if I'm wrong; that  
10 basically, you put in the letter that the victims being located  
11 in water, being nude, that that wasn't a, uh, those factors  
12 limited, in your opinion, the likelihood that any viable DNA or  
13 beneficial DNA resolving the case would be found; correct?

14 A] That's correct.

15 Q] Okay. Does that mean, even though the chances are great  
16 that no beneficial DNA may be found, that no efforts are done to  
17 collect it or to attempt to locate it?

18 A] Oh, absolutely not.

19 Q] Okay. And does it mean that if there are findings or con-  
20 clusions that result in what may be DNA that would have some  
21 significance regarding the case, that it's ignored or not  
22 pursued in any manner whatsoever?

23 A] Absolutely not.

24 Q] Okay. Does it give some limitation or some concern about  
25 and express your opinion about how beneficial or cautionary, how

1 cautious you should be if you get results in the area of DNA?

2 A] Yes.

3 Q] And that was true as to the jeans cutting; is that right?

4 A] That's correct.

5 Q] And that's why you put in your report, you put in here  
6 information that you unable to visualize any evidence of sperm  
7 and why you made the findings in your notes; is that right?

8 A] That's correct.

9 MR. DAVIS: Judge, may we approach the bench?

10 THE COURT: You may.

11 STAN MITCHELL, JONESBORO SUN NEWSPAPER REPORTER:

12 Your Honor, I'm Stan Mitchell, reporter for *The*  
13 *Jonesboro Sun*, and just for clarification, I respect-  
14 fully request that your comments be made public since  
15 there is no jury and that all "on the record" comments  
16 be made public, as well.

17 THE COURT: That's fine. Go ahead.

18 (Open conference.)

19 MR. DAVIS: Judge, what I would like to do at the  
20 time this letter was introduced, unlike other exhibits  
21 that were copied, I think they did that rather quickly  
22 and they hadn't thought to make copies of it.

23 Now that I see what the entire letter is, it was  
24 introduced for the purpose of referring to one  
25 paragraph, which is the third from the bottom on page

1           2. The entire balance of the letter has no relevance  
2           at all to these proceedings.

3           MR. BURT: I don't have any objections to that if  
4           we just introduce the paragraph that was referenced.

5           MR. DAVIS: Okay.

6           MR. BURT: Judge, I don't think I offered the  
7           letter - - just made reference.

8           MR. DAVIS: Well, I mean, it is an exhibit, and  
9           also the attachment, a letter, which is a letter from  
10          some person from Bode, and I don't know the date on  
11          it.

12          What I would - - I have no objection to the  
13          paragraph that he referred to, which is the third  
14          paragraph from the bottom, coming in as what Mr.  
15          Channell referred to and what he agreed to, and the  
16          rest of it, I would ask to be stricken as an exhibit.

17          THE COURT: All right, that's fine. I'm the one  
18          that's going to have to sift through it anyway.

19          MR. DAVIS: I have no further questions of this  
20          witness.

21          THE COURT: Is that it?

22          MR. DAVIS: Yes, sir.

23          MR. BURT: I have one follow-up question.

24          RE-RE-DIRECT EXAMINATION

25          BY MR. BURT:

1 Q] What you wrote in this letter is "It is very unlikely that  
2 any interpretable DNA profile other than that due to  
3 contamination or that of the victims would be recoverable." And  
4 what you are expressing there is although you might get some re-  
5 sults from a pair of pants, that it's most likely going to be  
6 due to contamination?

7 A] Well, I think the intent of the statement for a DNA person  
8 is that based on the condition of these samples, whether it's  
9 the jeans or the penile swabs of the boys or evidence being sub-  
10 merged in the water, has to be looked at with caution, because  
11 based on the condition, based on my years of experience of doing  
12 DNA work, you have to be cognizant of that when you go through  
13 the interpretational value of the evidence.

14 Q] Right.

15 A] And that was the intent; not to try to say, "well, let's  
16 don't do it," but, you know, I just want people to be aware of  
17 the risk that you take, and you have to take those risks with  
18 caution in the interpretation of those results. And that's what  
19 it actually means.

20 Q] All right. And the caution that you want exercised, uh, is  
21 in the context in this case where you have these jeans, two  
22 pairs of jeans, "floating in this drainage ditch," which I think  
23 you said in my examination you agreed would contain a high level  
24 of microbial contamination; right?

25 A] Yes, they possibly do.

1 Q] And the chain of custody on this evidence is that it's  
2 removed wet and muddy and dirty and put into a bag and trans-  
3 ported to the police department, according to the testimony,  
4 opened up, uh, and that when you get it a week later on the 11<sup>th</sup>,  
5 it's still damp. That's an ideal environment for the growth of  
6 microbial contamination in a DNA sample; correct?

7 A] That's correct.

8 Q] And that when you, uh, actually do the testing on that  
9 sample and you see that you've got levels of DNA that down in  
10 the 50 pekagram levels, it's simply not reasonable to conclude  
11 in your opinion that the only interpretation you could draw is  
12 that that is human DNA?

13 A] That's correct; however, in reference to the letter, the  
14 bacterial contamination will not yield DNA genetic results that  
15 would mimic a human profile, or a human partial profile. So in  
16 that context, I would agree. However, that's not the context of  
17 the letter.

18 Q] Right. The context of the letter has to do with other  
19 samples?

20 A] Correct.

21 Q] And I think you agreed with me that the same reason you  
22 applied to the blue jeans?

23 A] As far as the initial stage of the testing; correct.

24 Q] And when you say that, uh, the testing would not - -  
25 microbial DNA would not mimic human DNA, you're talking about

1 levels higher than 150 nanograms - - 150 pekagrams?

2 A] What I am referring to as the genetic profile, if you  
3 will, there are alleles that you could obtain from that, because  
4 the bacterial degradation, or contamination with bacterial  
5 growth, would hinder a DNA analyst from obtaining results.

6 Q] Right. And in this case, you know that Genetic Design, uh,  
7 got no results when it looked at the Q6 and Q10 samples, no, no  
8 DNA results?

9 A] That's correct.

10 Q] And in that scenario where they're at the 50 pekagram  
11 levels on their quantitation, when they went ahead and tried to  
12 get a DNA result, they got nothing. The chance that that DNA is  
13 microbial DNA is pretty obvious, given the, the chain of custody  
14 on the sample and circumstances under which it was stored, and  
15 given also the fact that the Genetic Design analyst told you  
16 that these samples were possibly, that the DNA he saw was  
17 possibly bacterial in nature?

18 A] That's correct.

19 MR. BURT: Thank you. I pass the witness.

20 THE COURT: Are we going to be through with him;  
21 is he going to be able to go back to Little Rock?

22 MR. DAVIS: No, because we're probably going to  
23 need him to stay present in the event that we are need  
24 him after they put on their additional experts.

25 THE COURT: Well, if you're going to stay, I have

1 a question, but I'll ask it later, if you're going to  
2 be here. Court will be in recess until 1:30.

3 (WHEREUPON, a recess was taken; proceedings resume as follows,  
4 to-wit:)

5 THE COURT: Court's back in session. Call your  
6 next witness. I guess, I don't know, they might have  
7 been through with you, Kermit. Did you have any  
8 additional questions of Mr. Channell?

9 MR. BURT No, sir, Your Honor.

10 THE COURT: You can go back there to the witness  
11 room, then. No, you want him in the courtroom; right?

12 MR. DAVIS Your Honor, I was told that they may be  
13 calling an expert in that field.

14 THE COURT: Okay, then you can have a seat in the  
15 courtroom. All right, call your next witness.

16 MR. BURT Dr. Zajac, Your Honor.

17 THE COURT: Okay. Did you get the spelling of  
18 her name?

19 MR. BURT It's Z-A-J-A-C; Patricia. Raise your  
20 right hand and be sworn.

21 (Witness sworn.)

22 THEREUPON,

23 PATRICIA ZAJAC

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