

1 MR. PHILLIPSBORN: Your Honor, the next witness
2 is Jack Lassiter.

3 THE COURT: Raise your right hand and be sworn.

4 (Witness sworn.)

5 THEREUPON,

6 JACK LASSITER

7 was called as a witness by and on behalf of the Petitioner/
8 Defendant and having been duly sworn, was examined as follows,
9 to-wit:

10 DIRECT-EXAMINATION

11 BY MR. PHILLIPSBORN:

12 Q] Sir, would you be kind enough to state your name for the
13 record and spell your last name?

14 A] Jack Lassiter, L-A-S-S-I-T-E-R.

15 Q] Mr. Lassiter, what do you do?

16 A] I'm a lawyer.

17 Q] And how long have you been a lawyer?

18 A] I was admitted to practice in August of 1973.

19 Q] Where were you admitted to practice, sir?

20 A] I was admitted to practice in the state of Arkansas at the
21 time. I was subsequently admitted to federal court in the
22 Eastern District of Arkansas and on to the Eighth Circuit, I
23 think all in that same year.

24 Q] Now I'm going to ask you a couple of foundational
25 questions. Mr. Lassiter, in your capacity as an attorney, were

1 you asked, uh, by counsel connected with the Jason Baldwin case,
2 to review a file or a series of files?

3 A] I was.

4 Q] And to your knowledge, sir, uh, were the original files
5 that you reviewed brought to court here today?

6 A] To my knowledge.

7 Q] Mr. Lassiter, before asking you about your review of the
8 file, can you, uh, tell the Court the, the nature of the
9 practice that you have had since you were made a member of the
10 state bar of Arkansas?

11 A] Sure. Uh, the first year out of law school I clerked for
12 the Arkansas Supreme Court, uh, I worked in the Attorney
13 General's office in the criminal division for the next two and a
14 half years. I went into private practice in 1977, uh, the great
15 majority of my career has been spent doing exclusively criminal
16 defense work. Certainly, the last seventeen or eighteen years,
17 there was a period there of a couple of years where, uh, I was
18 in a firm in addition to doing my criminal defense work. I had
19 some responsibilities, uh, for supervising some younger lawyers
20 who were doing some civil work in that time. So I would say my
21 whole career in private practice, except that two year period,
22 ninety to a hundred percent of my practice has been criminal
23 defense work.

24 Q] And sir, are you a member of any professional organizations
25 that, that really are specific to the practice of law in the

1 state of Arkansas?

2 A] I'm a member of the Arkansas Association of Criminal
3 Defense Lawyers.

4 Q] And uh, have you been involved in activities, professional
5 activities related to the profession in Arkansas, either on
6 committees, on working groups and the like?

7 A] I have, uh, in the mid-'80s I was the chair of the Criminal
8 Defense Section of the Arkansas Bar Association. In '89 I was
9 the first chair of the criminal defense section of the Arkansas
10 Trial Lawyers Association. For a four-year period I think from
11 '90 to '94, give or take a year, I don't remember exactly, I was
12 on the Supreme Court Committee, uh, for our Model Criminal Jury
13 Instructions, uh, I'm currently on the Supreme Court Committee
14 for the criminal practice, uh, I was on the Criminal Code
15 division committee four years ago. I currently am on a Bar
16 Association committee, along with Mr. Raupp, dealing with
17 sentencing issues. I've also been the Bar Association represen-
18 tative for almost thirty years in the Arkansas Crime Information
19 Center.

20 Q] Now Mr. Lassiter, uh, would you be kind enough to give us
21 just a general picture of the, of the, uh, sorts of cases that
22 you have defended in your career since leaving the Attorney
23 General's office?

24 A] It's a very wide variety of criminal cases in both state
25 and federal court, uh, both the trial and appellate level. Uh,

1 I've handled appeals before the Arkansas Supreme Court, in the
2 Eighth Circuit, uh, I was fortunate enough to have two argu-
3 ments, two cases, before the United States Supreme Court, uh,
4 *Sanders vs. Arkansas* in 1979 and *Coby Lockhart* in 1985. Uh,
5 I've done, I think, a whole range of trial work with a criminal
6 defense lawyer from, uh, a trial that lasts half a day to a
7 three-month racketeering trial in federal court. In 1999 I was
8 involved in the second Whitewater trial; I represented one of
9 the defendants in that case, uh, Dan Guthrie, a friend of mine,
10 a good defense lawyer of Dallas, Texas represented the other
11 defendant and that was a trial that lasted six or seven weeks,
12 so I've been fortunate enough to try a lot of different kinds of
13 cases over the years.

14 Q] And can you, for the record, uh, tell us what proportion of
15 your practice is consisted of trial work; meaning the prep-
16 aration of the defense cases and either the trial or the prep-
17 aration for trial of a case?

18 A] I would say the vast majority of it, uh, all we do is
19 criminal defense work, so when the case comes in the door, we
20 don't know how it's going to work out, or most of the time we
21 don't; sometimes it's obvious the case is not going to trial.
22 But I am constantly in a state of trial preparation.

23 Q] And, uh, Mr. Lassiter, have you, on previous occasions,
24 been asked to testify and qualify, uh, have you been qualified
25 as a witness on standards of practice applicable to the practice

1 of criminal defense?

2 A] I have.

3 Q] And have you done so in, in, uh, this particular court?

4 A] I think in this judicial district.

5 Q] Were you, uh, familiar with the standards of practice
6 applicable to the criminal defense function in Arkansas in 1993
7 and 1994?

8 A] Yes.

9 Q] Can you describe for the record your understanding of what
10 sources existed for the definition of standards applicable to
11 the criminal defense function?

12 A] Well, the basic standard is *Strickland v. Washington* a U.S.
13 Supreme Court case in 1984 that, uh, discusses the standard for
14 effective representation. *Strickland* references the American
15 Bar Association Standards for criminal justice as guides in the
16 opinion, uh, that certainly something that I was familiar with
17 when I was in law school, I think those standards were in draft
18 form. So one in 1993 would refer to that if you were analyzing
19 whether or not an attorney had, uh, performed competently. Then
20 in addition to that, I guess it would, I mean, there's not any
21 data base, there's not anything where I can just look that up:
22 what's the definition of that in Arkansas in great detail? So
23 from that point I would say that I was familiar with that
24 because of my experience. A lot of young lawyers would call me
25 with questions during those days. We now have a list service

1 for our professional organization and every day, I guess, there
2 are fifteen or twenty postings on there, banter back and forth
3 about different issues and questions. In those days we didn't
4 have it, so lawyers would call each other and I frequently got
5 calls, so I think I had a pretty good sense of what troubled
6 people, uh, what other lawyers were concerned about, uh, not
7 only in Little Rock, but around the state.

8 Q] And, uh, were you also, without getting into the detail of
9 it, uh, familiar with, with, uh, law, including the case law
10 authority that might have to do with, for example, a criminal
11 defense lawyer's access to, uh, expert services?

12 A] Yes, I was particularly familiar with that at that time.
13 There was a case that I was appointed on in federal court in the
14 early '90s, uh, the style of the case was *Starr v. Lockhart*. I
15 think I have it here if anybody is curious about the cite, but
16 the defendant in that case, uh, was a mentally impaired
17 individual that was convicted of the murder of an elderly woman
18 and, uh, the defense attorneys had asked the court to appoint an
19 expert for mitigation purposes at the guilt and sentencing
20 stage. That request was denied, uh, I came on board in the case
21 once it was in the federal system. I was appointed by Judge
22 Reasoner to represent Mr. Starr and we ultimately prevailed in
23 the Eighth Circuit in that case, just around the time period
24 that we were talking about. So I was very familiar with the
25 case law at that time.

1 MR. PHILLIPSBORN: Your Honor, I'm going to offer
2 Mr. Lassiter as an expert on the standards of practice
3 applicable to the criminal defense function in 1993
4 and 1994 in the state of Arkansas.

5 MR. HOLT: No objection.

6 THE COURT: All right, you may proceed.

7 MR. PHILLIPSBORN: Thank you, Your Honor.

8 DIRECT-EXAMINATION, continuing:

9 Q] Mr. Lassiter, in connection with what work you've done in,
10 in this case, uh, can you tell us first, did you have the oppor-
11 tunity on more than one occasion to actually review the file
12 materials that I earlier identified to you, uh, as having been
13 brought into the courtroom that were identified as Paul Ford's
14 trial file?

15 A] Yes, I have on several occasions.

16 Q] And fully realizing that the file is here, can you just
17 generally explain to us what was in the file, and I don't mean
18 this in any kind of a detailed inventory, but just the sorts of
19 materials you reviewed, sir?

20 A] All right. There are three boxes in the courtroom. One
21 long rectangular banker's box, one brown box, uh, with a slight
22 tear on the top, and I'm looking at another white box here.
23 These three boxes contain, uh, as I understand it, the Ford
24 trial file in this case. I reviewed these boxes, uh, prior to
25 the last round of hearings in this case; I believe that would

1 have been sometime last fall or last winter. I have reviewed
2 these boxes again, uh, before coming up here and have looked at
3 certain files again before coming here to testify today. Uh,
4 there are a series of files with witnesses names on them,
5 containing, uh, what appears to be the interviews by the police
6 that probably were provided during the course of Discovery.
7 There are files pertaining to witnesses from the Crime Lab, uh,
8 there are files that contain some newspaper articles. There's a
9 very large stack of suspect interviews that were conducted by
10 the police department and then there were some pleadings
11 contained in the file in the usual sort of thing that you would
12 see turned over during the course of Discovery. If you would
13 like me to get more specific, I can step down here and look in
14 each file.

15 Q] Mr. Lassiter, I'm not going to ask that of you. I'm just
16 going to ask you about a few specific items. First of all, do
17 you recall seeing in the file that you reviewed, photographs,
18 and by this, I mean photographs that appear to you to be of the
19 crime scene or and/or of a postmortem examination of, uh, of the
20 victims in a homicide case?

21 A] I did not recall seeing that in the file.

22 Q] Uh, do you recall seeing any photographs in the file?

23 A] No, I don't believe so.

24 Q] Now in the course of your review of the file, Mr. Lassiter,
25 do you remember by way of class of documents, having seen uh,

1 reports that based on your background and experience, you took
2 to be the reports to be prepared by a private investigator
3 working for the defense?

4 A] I did not.

5 Q] I want to show you a couple of exhibits that previously
6 have been admitted. I'm showing you what has been admitted as
7 Exhibit 1, sir. Do you recall seeing a document, of seeing that
8 particular document, meaning a copy of that particular document
9 in the file that you reviewed?

10 A] (Witness examining same.) I do not recall seeing this in
11 the file.

12 MR. PHILLIPSBORN: For the record, Your Honor,
13 this document is entitled Michael Echols file index to
14 page 94 and I believe was identified by witness Ron
15 Lax as the inventory of materials that he prepared in
16 the case.

17 DIRECT-EXAMINATION, continuing:

18 Q] I'm showing you Exhibit 2 which has been admitted as
19 Exhibit 2, uh, a document that has, uh, is entitled Inquisitor's
20 Inc. Do you recall, Mr. Lassiter, seeing that document, or
21 meaning a copy thereof in the file?

22 A] (Witness examining same.) I do not.

23 Q] Now Mr. Lassiter, I'd like to move to a different area, and
24 that is what I'm going to be asking in my next questions relates
25 to whether you saw certain classes of other documents in the

1 file. Did you see any evidence in the file folders and in the
2 files you reviewed, of a consultation or some kind of an engage-
3 ment of an independent pathologist or forensic pathologist by
4 the Baldwin defense?

5 A No, I did not.

6 Q] Did you see any evidence of consultation with, uh, with an
7 independent serologist by the Baldwin defense?

8 A] I did not.

9 Q] Did you see evidence of consultation with a DNA expert?

10 A] I did not.

11 Q] Did you see evidence that Mr. Ford or someone who had
12 generated documents that, uh, ended up in Mr. Ford's file
13 consulted with Dr. Frank Peretti?

14 A] Now I saw documents in the file indicating that Mr. Ford
15 had consulted with Dr. Peretti, and if my memory serves me
16 correctly, we can pull those if you want to. Uh, I believe he
17 consulted with him in person one time, uh, and I believe also he
18 consulted with him over the phone. And I also saw some trans-
19 cripts, which I assume were from, those were some transcripts of
20 recordings of interviews with Dr. Peretti.

21 Q] Now Mr. Lassiter, in your own practice and here, I should
22 actually ask you, in terms of your understanding of the stand-
23 ards of practices as they apply to the criminal defense function
24 in '93 and '94, uh, in your opinion, would it have complied with
25 the standards of practice as they related to the defense of a

1 murder case or a potential murder case, for the criminal defense
2 lawyer to confer with the medical examiner, pathologist, in the
3 medical examiner's office in Little Rock, who performed the
4 postmortem examination?

5 A] Yes.

6 Q] And, uh, in addition to the consultation, uh, is there any-
7 thing else that you would have expected the criminal defense
8 lawyer to do, based on a consultation with Dr. Peretti, if Dr.
9 Peretti was the pathologist on the case?

10 A] Sure. Every case is different; sometimes you consult with
11 the medical examiner when the cause of death is obvious; let's
12 say a gunshot wound to the heart. You really should sit down
13 and talk to him and make sure there's not anything there that
14 isn't apparent from the autopsy. And then you get into more
15 complex cases, uh, where the mechanism of death, uh, is not
16 readily apparent and perhaps it deals with issues that you
17 haven't run into before in your practice, or outside of your
18 ability to understand. Or perhaps you ask Dr. Peretti about
19 some underlying data that he may have. Depending on the case
20 and depending on your interview with Dr. Peretti, uh, other
21 things may be required. Uh, you might, in your interview, de-
22 termine that he has removed some piece of evidence from the body
23 of the deceased, uh, a hair or a fiber, uh, it could be any of a
24 number of things and, uh, he has sent it to the Crime Lab or
25 sent it somewhere. You would obviously ask him "where did you

1 send this and what for, and have you gotten the test results
2 back; who do I need to talk to there or what underlying data do
3 you have"; depending on the nature of the case and what is at
4 issue, uh, you may be in a situation where you need to consult
5 with another forensic pathologist, which I think is exactly what
6 has happened in the case here.

7 Q] Now, uh, you mentioned, uh, you were differentiating be-
8 tween a case that, uh, had a straight forward mechanism of
9 injury or cause of death and a case that might be more complex.
10 In your opinion, based on your review of the file in this case,
11 and incidentally, let me ask before -- I'll withdraw that
12 question. Have you reviewed anything other than the, uh, than
13 the file in this case?

14 A] Yes, I read the opening and closing statements; I read Dr.
15 Peretti's testimony; I reviewed the affidavits of a couple of
16 forensic pathologists that were given to me; they were asked for
17 their opinions concerning mutilations at issue in this case.

18 Q] Uh, and do you have those materials in mind as you're ex-
19 pressing your opinions about what course of action, in your
20 view, would have been reasonably effective or compliant with
21 professional standards?

22 A] I do.

23 Q] Now I'm going to ask you, sir, uh, are you, uh, I'm going
24 to ask you the following hypothetical question. Assuming that
25 counsel of record for Mr. Baldwin testified in this court as

1 follows:

2 MR. PHILLIPSBORN: Our transcript, Your Honor, is
3 unnumbered. I think Mr. Burt actually has it if there
4 is a question about the accuracy as its reading.

5 DIRECT-EXAMINATION, continuing:

6 Q] "My recollection is, is that thought," and this is in
7 relation to Dr. Peretti, "that some of the, one in particular, I
8 believe it was the cheek of one young boys may have been bitten
9 by a turtle or some of those were turtle bites." And it went on
10 but what I'm purporting to do here is to read to you an answer
11 given by trial counsel for Mr. Baldwin. First of all, have you
12 seen anything in Mr. Ford's file that reflected a conversation
13 in which there was some notation about turtle bites?

14 A] No, I did not see anything like that.

15 Q] Assuming that, uh, that the testimony given pertained to a
16 conversation that Mr. Ford had with Dr. Peretti prior to trail,
17 uh, is that the kind of information conveyed by an examining
18 forensic pathologist, that in your view, would have called for
19 the criminal defense lawyer in this particular case to have made
20 further inquiry about the mechanisms of injury to one or more of
21 the victims?

22 A] Yes, it would. That would have reinforced it, even with-
23 out, uh, that notation. I am of the opinion that counsel did
24 not comply with the standards of *Strickland v. Washington* when
25 he did not research further and consult with an expert concern-

1 ing the wounds to the victims in this case, particularly to
2 Christopher Byers. As I mentioned a moment ago, there are cases
3 when it's quite clear that a gunshot wound to the heart caused
4 the death. We have a case here where, uh, we have these awful
5 mutilations, which are very inflammatory in trial, uh, we have
6 Dr. Peretti saying that, uh, they are caused by a knife. As an
7 attorney in 1993 or now, you run into that, that's not a case
8 where these injuries, uh, the cause of these injuries are
9 apparent. You've got somebody telling you it's a knife. These
10 bodies were recovered from the water, uh, a reasonably competent
11 criminal defense lawyer at that time or now faced with that
12 situation, owes an investigative duty to his client. And the
13 way you deal with that, the way it should have been dealt with,
14 he should have done some research and he should have found a
15 pathologist to talk to and to review Dr. Peretti's findings.

16 Q] I'd like to move to a slightly different area. Mr.
17 Lassiter, I'm going to show you an exhibit that has been admit-
18 ted as Plaintiff's Exhibit 14. And for the purposes of this
19 question I'm going to ask you to assume, sir, that the yellow
20 sheet of paper with handwriting that is Exhibit 14 that was
21 identified by Mr. Ford as handwriting that he made in the
22 context of this case. And I'm going to draw your attention,
23 sir, as you look at that piece of paper to an entry that is
24 immediately to the right of two vertical parallel lines. Do you
25 see that entry, sir?

1 A] (Witness examining same.) I do.

2 Q] And, uh, can you read that entry?

3 A] Sure. It says "head hair in ligatures on Byers."

4 Q] Now, uh, do you know one way or the other whether, uh,
5 there was any evidence contained in Mr. Ford's file in the form
6 of photographs of slides taken by the Arkansas Crime Lab of
7 hairs recovered from the scene?

8 A] I do not recall seeing any slide photographs.

9 Q] Now I'm going to ask you to assume, uh, Mr. Lassiter, that
10 the, uh, the state of the record as to Exhibit 14 as Mr. Ford
11 testified that, uh, the notes that you see, uh, were made during
12 the course of his preparation of the case and appeared to him to
13 have been made as a result of some contact he had with the Ark-
14 ansas Crime Laboratory. Do you have that hypothetical in mind?

15 A] I do.

16 Q] Okay. Now had, uh, in your opinion at the time this case
17 arose and was being investigated prior to trial, had a criminal
18 defense lawyer been verbally informed by a representative of the
19 Arkansas State Crime Laboratory that a hair had been found in
20 the ligature, did that lawyer, in your view, have any obligation
21 to conduct any follow-up related to that information?

22 A] Well, yes. You want to determine whether or not that head
23 hair had been submitted for analysis at the Crime Lab, and if
24 so, what, if any results were there?

25 Q] And just in terms of your further consideration of the

1 hypothetical, I'm going to ask you to assume that since the
2 trial of this case, uh, the hairs recovered from a ligature, uh,
3 have in fact, been subjected to examination and that, uh, there
4 are head hairs identified in the ligature that were human hair.
5 Uh, again, would that information, in your view, have been
6 significant for a criminal defense lawyer to have in hand during
7 the preparation of this case for trial?

8 A] Well, yes, you would certainly want to know that and that
9 would be significant information. And the next question is can
10 we determine whether or whose hair it is.

11 Q] Mr. Lassiter, I want to move to another area if I may. And
12 this is the preparation of the defense outside of forensic
13 science issue. Now you have indicated that a number of the file
14 folders in the file you reviewed did contain, as I understand
15 it, names of witnesses, in other words, the folders had names of
16 witnesses; is that correct?

17 A] Correct.

18 Q] And were there typical contents to these files; in other
19 words, if you were to characterize what you found in a given
20 file folder, what, what, uh, what would you find?

21 A] The majority of those files contain the interview conducted
22 by the state investigator. And along with, usually a typed or
23 sometimes, I think, handwritten pieces of paper that were maybe
24 four or five, points for a lack of a better term, but maybe four
25 or five points that and I assume this was Mr. Ford doing it, in

1 review of those witness statements the important facts that he
2 saw in those witness interviews. The majority of those files
3 contain just that, as I recall.

4 Q] Mr. Lassiter, I'd like to ask you to assume that you're de-
5 fending a case that has the, uh, that has basic framework of the
6 Baldwin case that we have explored to this point. It is a
7 triple murder case in which the pathologist, the medical
8 examiner has pronounced the deaths homicides and the attending
9 opinion is that there was, as you were saying, mutilation
10 consistent with knife mutilation, uh, I'm also going to ask you
11 to assume that, uh, the, uh, defendant whose file is at issue,
12 uh, was denying involvement in the, uh, in the homicides and
13 claimed to have not been at the scene at all. I'm going to ask
14 you to further assume that the defendant's mother, uh, contends
15 that she provided information to the criminal defense lawyer
16 indicating that her son was at school during the course of the
17 days on which the events in question took place, May 5 and May
18 6, 1993 and that she had obtained further information that her
19 son had returned from school on May 5 and had subsequently gone
20 to her uncle's house to cut the grass. Do you have that
21 hypothetical in mind this far?

22 A] (Witness nods head affirmatively.)

23 Q] I'm going to ask you to further assume that, uh, the anec-
24 dotal information was that the three boys were last seen by
25 their parents riding on bicycles away from their residential

1 area at about 6:00 p.m. or a little thereafter and that by about
2 8:00 p.m. the parents had reported the children missing and that
3 a search by the parents and also by law enforcement officers had
4 ensued and that on May 6th in the early afternoon by about 1:30
5 p.m., the remains of the three boys had been found in a drain-
6 age ditch in West Memphis. Do you have all of that, do you have
7 the hypothetical in mind?

8 A] I believe I do.

9 Q] I'm going to ask you to further assume that, uh, the, uh,
10 that the defendant at issue was said to have been living with
11 his mother, uh, a fourteen-year-old brother, a younger brother,
12 and that there was another adult in the trailer home that they
13 were living in at the time. Now with all, uh, with that hypo-
14 thetical in mind, uh, first of all, in your opinion, what was
15 the duty incumbent on a lawyer at the time of this case to, uh,
16 investigate the narrative information provided, just within the
17 framework of the hypothetical I gave you?

18 A] The lawyer's duty is to immediately determine everywhere
19 that the client was during that time period. In your hypothet-
20 ical, it would have been during the time period, uh, that the
21 children disappeared the, uh, evening before until the time
22 their bodies were found the next day. Any competent defense
23 attorney would try to get a list of all of the individuals that
24 the client had been in contact with during that time period, uh,
25 probably in this case, give the client's parents marching orders

1 to go round up names and phone numbers, uh, of the individuals
2 they knew who he was with. On the next day if it's a school day
3 and he is at school for part of the day, uh, you would want to
4 get school records to demonstrate that he was there, uh, you
5 would want to talk to the client concerning who he had contact
6 with that day, uh, what teachers he had, uh, in class; you would
7 want to verify every way you can where he is for every minute in
8 that time period. And that's something you would want to do
9 quickly. That's something a defense lawyer, a competent
10 criminal defense lawyer would want to do quickly before memory
11 is faded and witnesses are places you couldn't find them.

12 Q] Now in your review of the file, uh, did you encounter, uh,
13 any reports that to you appeared to have been prepared by the
14 West Memphis police department, uh, dealing with at least some
15 of the purported activities of Jason Baldwin, uh, during the
16 target time period. Do you recall, uh, reviewing any
17 information pertinent to police interviews of some at that time
18 teenage girls or three teenage girls who purported to have been
19 engaged in some telephone conversations with Mr. Baldwin and a
20 co-defendant?

21 A] Let me see if I understand your question. First, I didn't
22 see any document that appeared to have been generated by the
23 police department that said Jason Baldwin's whereabouts during
24 the time period we're talking about. I did see interviews with
25 individuals that indicated that he was seen, uh, during that

1 time period or that, uh, talked to him or one of the other
2 defendants on the phone during that time period.

3 Q] And, and again, in terms of the answer that you gave a
4 little while ago about the duties of defense counsel, assuming
5 that in addition to whatever the mother and step-father could
6 come up with or that the client could come up with, uh, there
7 was actually information generated by the police department to
8 the effect that there was, uh, there were three young girls who
9 purported to have been on the phone with Mr. Baldwin and/or with
10 Mr. Baldwin and a co-defendant. Would that be the kind of in-
11 formation that in your view a criminal defense lawyer would have
12 a duty to at least investigate?

13 A] Yes, certainly, duty to investigate.

14 Q] And, uh, did you see any evidence in the file that that had
15 been investigated?

16 A] Within those witness files I didn't see any handwritten
17 notes or typed summaries of interviews done by the defense.
18 There were a couple of files, uh, I think there were notes con-
19 cerning defense counsel's interview with Mr. Baldwin's mother
20 and his brother. And some notes perhaps in one other file, uh,
21 of a witness interview. May I have just a moment? Let me look
22 at some notes here.

23 Q] Sure.

24 (Pause.)

25 A] I believe what I said is correct.

1 Q] The last thing I'm approaching you with has been admitted
2 as Plaintiff's 12, which has previously been identified by Mr.
3 Ford as material that was in his file, uh, including a hand-
4 written note from a Hubert, or, I'm sorry. It has the name on
5 it "Hubert Bartouch" that reads "Jason Baldwin was here mowing
6 my yard from 4:30 p.m. to 6:30 p.m. on Wednesday, May 5; left to
7 go to Wal-Mart," and has an address "1037 Park Drive, West
8 Memphis, Arkansas," and has a phone number and then a, uh, a
9 signature repetition of Hubert Bartouch. And, uh, there are
10 also some other names, a Garrett S., uh, some other names and
11 phone numbers. First of all, was it your understanding that a
12 person named Mr. Bartouch had purportedly seen Mr. Baldwin on
13 the afternoon of May 5, 1993 and, and actually, do you recall
14 seeing any interview done by the West Memphis police department
15 of Mr. Bartouch on the same subject that is dealt with in the
16 note?

17 A] I believe so. We have a file on him, uh, perhaps I should
18 pull that to make sure of the content. I can do that now or I
19 can do that whenever you want me to.

20 Q] Uh, well, let me move on to some other questions. In any
21 event, assuming, uh, that a, uh, and individual at issue had
22 written the notes that I just read to you or that that
23 information was conveyed to trial counsel. Is that the kind of
24 information that you would expect trial counsel to follow up on?

25 A] Yes.

1 Q] And, and would the same answer apply to any information
2 that came from an individual who might be able either to provide
3 an alibi or purportedly have information bearing on, on the
4 guilt or innocence of the client?

5 A] Yes.

6 MR. PHILLIPSBORN: Your Honor, I ask that a file
7 folder that was just removed by Mr. Hendrix from the
8 trial file, uh, with the name Hubert Bartouch be
9 marked as next in order.

10 THE COURT: All right, it may be received without
11 objection.

12 MR. PHILLIPSBORN: Thank you.

13 (WHEREUPON, Petitioner/Defendant Exhibit #66 was admitted and
14 received into evidence and is appended on page .)

15 THE COURT: I don't know what's in it. It's just
16 marked file folder.

17 MR. PHILLIPSBORN: And with the Court's permission
18 can we mark the contents as sub-parts of what is now
19 Exhibit 66?

20 THE COURT: Yes.

21 MR. PHILLIPSBORN: Thank you. So 66 A and B.

22 THE COURT: Is it two sheets of paper?

23 MR. PHILLIPSBORN: Your Honor, it is a yellow
24 sheet of paper, uh, saying Jason's uncle, which would
25 be 66A; and 66B is an investigative report from

1 Detective Ridge.

2 THE COURT: It will be received.

3 (WHEREUPON, Petitioner/Defendant's Exhibits 66A and 66B were
4 admitted and received into evidence and are appended on pages
5 and .)

6 MR. PHILLIPSBORN: Thank you.

7 DIRECT-EXAMINATION, continuing:

8 Q] Mr. Lassiter, showing you the collective exhibit 66 and
9 containing 66A and 66B, is that the file folder that you thought
10 you had seen?

11 A] (Witness examining same.) It is. This is file folder
12 which is Hubert Bartouch. Do you wish me to address the
13 contents?

14 Q] Yes, if you can, just to clarify what was in it?

15 A] Your Honor, it contains a, uh, interview conducted by De-
16 tective Ridge with the West Memphis police department on, uh,
17 looks like June 14, 1993. And then it contains a handwritten
18 statement on the second page that says "On 5/5/93 Jason Baldwin,
19 my grandnephew came to my house at about 4:30 p.m. and mowed my
20 yard. He was alone when he was at my house. He left my house
21 at about 6:30 p.m. and said he was going to Wal-Mart to play
22 video games. I remember the times because *Jeopardy* was coming
23 on when he got here and *Wheel of Fortune* was coming on when he
24 left." And it is signed by Mr. Bartouch, June 14, 1993,
25 witnessed by Detective Ridge. And then there was a third page

1 which appears to be a copy of the first page, that is, the in-
2 vestigative report that is typed and it contains some yellow
3 highlight of certain parts in the first paragraph. And in there
4 the file also contains a piece of yellow legal paper which has
5 the bullet points that I talked about seeing in the other files.

6 Q] Mr. Lassiter, I'd like to show you what's been admitted as
7 Plaintiff's #10 and represent to you, sir, that this is another
8 exhibit that was marked during the examination of, uh, Mr. Ford
9 and, uh, ask you if you would just briefly, if you can, review
10 this exhibit and I'll ask you some questions about it.

11 (Pause.)

12 A] (Witness examining same.) All right.

13 Q] Mr. Lassiter, I'd like you first to assume that the state
14 of the record is that Mr. Ford identified that as material that
15 was in his file and that he had received copies of material that
16 he had received in Discovery. First of all, would you be kind
17 enough to explain for the record just in general terms what you
18 just reviewed?

19 A] All right. I'm looking at what appears to be the handwrit-
20 ten statement of Heather Cliett and it's dated June 8, 1993 and
21 it's witnessed by the - - I can't read the last name - - of the
22 detective, uh, and she obviously was questioning as to write
23 about her contact with, uh, Jason Baldwin during this time
24 period. She writes about the 5th and then she also writes about
25 a conversation she had with him on the 7th when she asked him

1 where he was on the 5th, and he said he was mowing his uncle's
2 yard.

3 Q] Again, assuming that a criminal defense lawyer received in-
4 formatin like that and disclosures from the state circuit
5 prosecutor's office, is that the kind of information that in
6 your opinion in a case of this nature, should be followed up on
7 by the criminal defense lawyer?

8 A] Yes, it certainly should. This is the girlfriend that has
9 contact with him during this time period and she talks about the
10 date issues and then a couple of days later asks where he was on
11 the 5th and he says consistent with what his uncle says in the
12 note that he was mowing his yard that afternoon.

13 Q] I want to move to a completely different topic, uh, Mr.
14 Lassister, within the framework still of your, uh, of the issues
15 presented. Was one of the tasks that, uh, that often faces
16 criminal defense lawyers dealing with witnesses who are either
17 informants or citizen witnesses who happen to have been incar-
18 cerated with the accused, a jailhouse informant?

19 A] I tend not to think of the term "citizen witness" within
20 that context, so let's go with jailhouse informant.

21 Q] But is there, in terms of one, of an issue that arises in
22 criminal cases, does it happen on occasion that criminal defense
23 lawyers have to prepare to evaluate the testimony of a jailhouse
24 informant?

25 A] It happens so frequently that if your client is pre-trial

1 detained, you expect it. It's very frequent.

2 Q] And, uh, do you have any opinion of whether there are any
3 duties incumbent on a criminal defense lawyer, again, the
4 applicable to our target time period, uh, focused on the inves-
5 tigation of the voracity of a witness from a jailhouse who is
6 incarcerated with the defendant?

7 A] Yes, you certainly have to get to work to try to determine,
8 uh, what this individual's motivation might have been to have
9 made the statement, uh, and whether or not you can uncover
10 evidence to that he's not credible. So what it, if you want me
11 to go on, I can tell you some of the things one might do as a
12 criminal defense lawyer to investigate the credibility of the
13 jailhouse informant.

14 Q] And again, what, in your opinion, were steps that, uh, that
15 were considered to be within the framework of professional con-
16 duct, essentially, by a criminal defense lawyer in that
17 situation; what are the steps you would expect a reasonably ex-
18 perience effective criminal defense lawyer to take?

19 A] First, is there some inducement to come forward, uh, with
20 some story, uh, that the defendant has made some incriminating
21 statement. Inducement can be any number of things: is he
22 seeking to curry favor with the police officers? Is he seeking
23 to curry favor with the prosecutor over some pending charges?
24 Uh, whether or not, whether or not there has been anything said
25 to him by a police officer or a prosecutor, in this individual's

1 mind, if he has convinced himself that if he comes forward with
2 some story like this, it might better his position. So you want
3 to know why he's in, how long he's been in, what he's looking
4 at, what his legal problems are and what his situation was at
5 the time, uh, that he makes this announcement, that this state-
6 ment has been made. Is there a pending trial? Is his lawyer
7 trying to work something out with the prosecutor's office, you
8 want to try to context this as best you can. You want to find
9 out as much as you can about his background: does this
10 individual have a criminal record? Has he been in court caught
11 lying before? Uh, anything you can find on him that might
12 affect his credibility while you're cross-examining him with the
13 jury, uh, you want to determine whether or not it was even
14 physically possible for this conversation to have occurred. Uh,
15 I was involved in a case about ten years ago that involved a
16 series of these quote "jailhouse informants" and, uh, with one
17 of the informants, it was proven that he wasn't even in the same
18 pod or cellblock as the institution may call it, at the time the
19 conversation occurred. And, uh, that was proven through
20 assignment records at the time at the particular institution.
21 So that, that would be an issue, uh, particularly if your client
22 has been in the same pod with this guy at the same time, then
23 you would want to try and verify that. Now even if they are in
24 the same pod, uh, or the same unit, whatever it's called in
25 their particular institution, uh, most corrections officers

1 don't allow their inmates just to run freely all during the day.
2 For example, Pulaski County Detention facility, uh, in certain
3 pods, they're on lockdown, uh, during certain hours every day.
4 And they're in their cell with their cell mate and they're not
5 out with any opportunity to talk to anybody. So even if, uh,
6 the individuals that are supposed to participate in a
7 conversation were, uh, in the same pod or cellblock at that
8 time, you want to get their routine to see if they were, if the
9 conversation was even possible. You want to try to determine
10 who else was in that pod at the time, uh, perhaps interview them
11 to see if they had any contact with this individual. You might
12 pick up something else on the jailhouse informant from some of
13 the other individuals that were in the pod at the time. You
14 might also question the corrections officer that was responsible
15 for that pod to see if that particular inmate stood out in his
16 mind as a particular problem or "ran stories" as they like to
17 say inside the units on some of the other inmates frequently.

18 Q] And, uh, assuming for the purposes of this question that
19 the criminal defense lawyer at issue, uh, is aware of who the
20 supervisor of the juvenile detention unit is and has actually
21 been admitted to the unit to meet with his client, uh, and has
22 talked on other topics with the supervisor of that unit and also
23 has access to other members of the staff on the unit, would you
24 expect that if the detainee is the informant, is the detainee in
25 that very juvenile unit that the criminal defense lawyer might

1 at least attempt to interview staff to find out whatever staff
2 had observed about the interactions between the defendant and
3 the informing inmate?

4 A] Yes, I mean, you never know what you might when you pick up
5 the phone, as I said a moment ago, you might find that this was
6 a common problem with that individual - - and by "common
7 problem," I mean that he makes things up; he is dishonest and
8 deceptive with the staff.

9 Q] Now, uh, Mr. Lassiter, in connection with your review of
10 this file, uh, and I think you have addressed some of this, but
11 were you asked to consider the contents of the file, consider
12 the materials that you've reviewed and, uh, based on your review
13 of those materials to determine whether you can form an opinion
14 about whether it, uh, appeared to you to be ineffective under
15 the standards of effective representation by a criminal defense
16 lawyer, as you previously stated that, for a lawyer defending a
17 case like the one at issue here, to fail to consult with an
18 independent forensic pathologist and if necessary to seek to
19 retain or at least to summon one if necessary to address the
20 issues presented in the case?

21 A] Yes, I have an opinion.

22 Q] And what is that opinion, sir?

23 A] My opinion is that, uh, that he breached the duty of the
24 client in that he did not reach the standard that's required of
25 him in *Strickland*. He's under a duty to investigate or reach a

1 reasonable decision and he does need to investigate and he did
2 need to address the nature of the wounds, particularly the
3 mutilation wounds and the inner-thigh wounds, uh, on Christopher
4 Byers. Those were not, the cause of those were certainly not
5 apparent that the wounds were very bizarre, uh, he should have
6 sought out review by pathologists; he should have done some
7 research on his own. So I am of the opinion that he breached
8 the duty to his client and did not perform to the required
9 standard.

10 Q] And Mr. Lassiter, last area I wanted to ask you about, uh,
11 do, uh, are you able to form and express an opinion concerning
12 the duty owed to a criminal defendant by his or her lawyer in a
13 case in which the accused is denying guilt and claiming alibi or
14 where there is independent evidence of a potential alibi?

15 A] Yes.

16 Q] And in that connection, my specific question, sir, is do
17 you have an opinion concerning what the standards of practice
18 applicable in 1993 required with respect to reasonably effective
19 investigation of the alibi defense?

20 A] Yes, and those are those factors we discussed earlier.

21 MR. PHILLIPSBORN: Thank you, Your Honor. I pass
22 the witness.

23 Thank you, Mr. Lassiter.

24 DIRECT-EXAMINATION

25 BY MR. BURT:

1 Q] Good afternoon, Mr. Lassiter.

2 A] Good afternoon.

3 Q] Sir, I understand you were retained by Mr. Baldwin's
4 counsel, and I just have one general question. Would your
5 answers as to the standard of practice be the same as to all of
6 the attorneys in this case; in other words, attorneys for other
7 defendants, based on the same facts that you reviewed in
8 connection with Mr. Baldwin: failed to hire a forensic path-
9 ologist. Would your opinion be that that fell below the
10 standards of practice?

11 A] Yes, it would be the same.

12 Q] And would your opinion be the same with respect to the
13 forensic serology aspects in this case?

14 A] My testimony would be the same.

15 MR. BURT: Thank you, sir. That's all I have.

16 THE COURT: Let's take a ten-minute recess.

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

19 THE COURT: Court's back in session. You may
20 continue.

21 CROSS-EXAMINATION

22 BY MR. HOLT:

23 Q] Good afternoon, Jack.

24 A] Mr. Holt, how are you?

25 Q] Doing good. Uh, basically, in terms of standards of prac-

1 tice in Arkansas, you need a law license and a copy of
2 *Strickland v. Washington*; right?

3 A] Well, I think you need to know a little more than that.

4 Q] Okay. Well, you need to know - - you gain some experience
5 from different things, but I mean, this is in fact a legal de-
6 termination, is it not, that we're about here today with regard
7 to what happened in this case?

8 A] Well, sure, for the court to make a legal determination as
9 to whether or not counsel exercised effective counsel at the
10 time.

11 Q] Okay. And, but you did mention *Strickland* as being really
12 key to what it was that needed to be assessed in any particular
13 case with regard to these kinds of counter-claims that are
14 raised here and why you're here testifying?

15 A] Sure; it's watershed case.

16 Q] Okay. Well, co-counsel is insistent that I bring up the
17 case of a Linda Fay Goff, so I'm going to do that. Uh, I
18 believe that you were in fact counsel on that case in the cir-
19 cuit court level for the Rule 37?

20 A] Yes.

21 Q] Okay. And in fact, the trial court in that case ruled both
22 prongs as to *Strickland*, both the prejudice, deficient lawyering
23 and the prejudice; is that correct?

24 A] Correct.

25 Q] Okay. And then subsequently the Supreme Court made a legal

1 determination and said that was incorrect; is that correct?

2 A] That's right. They reversed the lower court.

3 Q] They reversed the lower court. Okay. I wouldn't have
4 brought that up...

5 A] ...I didn't agree with that, but they did.

6 Q] You didn't agree with that, I can understand, but I
7 wouldn't have brought that up had not co-counsel insisted I do
8 that. Okay. You say that you have reviewed Paul Ford's file in
9 this particular case; is that right?

10 A] That's right.

11 Q] Okay. And the assumptions or the opinions that you have
12 made were based upon your review of his file. What else did you
13 review?

14 A] I reviewed his file. I read parts of the transcript, open-
15 ing and closing; I read Dr. Peretti's testimony, uh, I looked at
16 the affidavits of, uh, one was a dentist, a forensic dentist - -
17 I can look up his name here. Hang on just a second.

18 Q] Was it Souviron?

19 A] I looked at his affidavit also. Well, there's a dentist
20 from Memphis, anyway, I looked at his affidavit - - Tabor, Dr.
21 Tabor.

22 Q] Oh, Tabor. Anything else?

23 A] I re-read a few cases.

24 Q] But you did not read the entire transcript of this trial?

25 A] That's correct.

1 Q] Have you reviewed any of the motions in this particular
2 case?

3 A] There were some pleadings that were in the file. I did not
4 do an extensive review. So I think the answer to your question:
5 not to any degree that I would testify I had knowledge to what
6 the pleadings in the case.

7 Q] Well, uh, do you believe - - so your assumption is based
8 upon only what was presented to you in I guess - - I have a Dis-
9 covery list in this file box, but let's just say for purposes of
10 this is the same as what you reviewed in ever how many boxes it
11 was, and that's it; right?

12 A] I may have, I'm not certain of this, I may have ready read
13 Dr. Peretti's testimony in the other trail.

14 Q] Okay. Well, let me ask you this: have you discussed this
15 with Paul Ford?

16 A] I have not.

17 Q] Uh, well, would you agree that not everything that - - is
18 everything that you ever thought or done on a case, in every
19 file of every case you've tried?

20 A] No.

21 Q] And in fact, a lot of what a lawyer does on a case is in
22 his head, isn't it?

23 A] Yes.

24 Q] Okay?

25 A] Yes, it varies between lawyers, you know, I've been around

1 lawyers that just about everything goes in the file, and then
2 I've been with lawyers that most of it is in the head. So to
3 some extent, you're correct.

4 Q] And I guess in a perfect world, everything that went
5 through a lawyer's head, if there was a subsequent determination
6 of a 6th Amendment claim like this, in a perfect world, every-
7 thing would be in a file, would it not?

8 A] I guess so, in a perfect world.

9 Q] Okay. Do you recall whether or not Paul Ford had co-
10 counsel?

11 A] I believe he did.

12 Q] Do you know who that was?

13 A] I don't remember the name.

14 Q] So did you review any file of co-counsel in this case?

15 A] No, I did not.

16 Q] Uh, did you, have you reviewed the - - I mean, this may go
17 more to prejudice, but - - well, no, I guess not. Have you re-
18 viewed any of the testimony of Paul Ford given in this case with
19 regard to certain issues that were raised here?

20 A] I have not.

21 Q] You have not. So if he told you in fact that he had in-
22 vestigated a particular claim or that he had considered a
23 certain information, you would not be privy to that in terms of
24 the testimony, would you?

25 A] Not unless it appeared in the file.

1 Q] Only if it appeared in the file? Not if the file had - -
2 not if he had used the file and based his answer from his memory
3 and any kind of action that he took that was not documented in
4 the file?

5 A] Yeah, I wouldn't be privy to that.

6 Q] And in fact, a large part of what some of decisions that
7 are made in a particular criminal case are matters of strategy;
8 are they not?

9 A] Sure, there's strategy decisions usually made from the
10 case; that's right.

11 Q] Okay. Are you familiar with Paul Ford's experience as a
12 criminal trial lawyer in any degree?

13 A] No, I'm not.

14 Q] Do you think that it would have been helpful if within a
15 year before he was appointed on this case, he had tried a
16 capital murder case that involved the death penalty?

17 A] Helpful for me to know that?

18 Q] Yes?

19 A] Probably not in terms of the opinion that I rendered
20 concerning his failure to consult with a forensic pathologist,
21 concerning the wounds to these boys. I don't think it would
22 have made any difference if he had tried fifteen capital murder
23 cases before that case.

24 Q] I see. Now do you recall whether or not these boys were
25 charged with a sexual offense?

1 A] Oh, I'm sorry. When you said "boys," you threw me off for
2 a second.

3 Q] I'm sorry. The defendants?

4 A] I'm just familiar with the homicide charge.

5 Q] Okay. Not a sexual - - they weren't charged with a sexual
6 assault?

7 A] I didn't review the arrest affidavits and any of the
8 initial warrants, so I don't know what they were initially
9 charged with. I think those were in the file, but that wasn't
10 pertinent to what I was reviewing at the time.

11 Q] Well, if a pathologist who said that you did review some of
12 the pathologist reports that had been brought into this subse-
13 quent case; correct?

14 A] I reviewed what was in the file. I saw Dr. Peretti's
15 autopsy reports and the interviews of Dr. Peretti and the two
16 affidavits that I just mentioned.

17 Q] I guess what we're arguing about is a pathologist who says
18 that there is no scientific evidence for a sexual assault would
19 be very important in a case where a sexual assault was charged;
20 is that right?

21 A] That makes sense.

22 Q] Okay. And that's where it would be the most important;
23 would it not, if that is in fact an element of the events that
24 you're charged in?

25 A] Well, I would say it's very important.

1 Q] Mr. Phillipsborn posed a hypothetical about human hair and
2 whose hair it is for purposes of a case and, uh, I mean, a human
3 hair found in a ligature and you would want to know possibly
4 whose hair that belonged to, wouldn't you, as a defense
5 attorney?

6 A] Of course.

7 Q] Okay. And potentially, that could be something that did
8 not meet a *Strickland* standard; how?

9 A] I...

10 Q] ...if you failed to investigate it, it might be deficient
11 lawyering on your part; correct?

12 A] In some cases.

13 Q] If in subsequent, as his hypothetical went, if it was later
14 determined to belong to somebody who wasn't implicated in the
15 crime but a family member, then it would be, what would you do
16 with it then?

17 A] Well, I don't - - in your - - you've got to give me some
18 more facts than your hypothetical. I'm not sure I understand
19 where you're going here. It might or might not be some
20 *Strickland* violation, but failing to determine whose hair it was
21 in a piece of tape, I mean, you've got to give me more facts.

22 Q] Well, now you didn't have any trouble answering his hypo-
23 theoretical and I'm using the same hypothetical when you said that
24 it was a failure, it was deficient to not investigate that. And
25 if it is subsequently found as he said in his hypothetical,

1 belonged to a particular person, would that not be a strategy
2 decision to not pursue that?

3 A] What I think I said was the hair is in the tape and you
4 want to know what happened to the hair.

5 Q] Okay?

6 A] Dr. Peretti - - did you send it over to the crime lab?

7 Q] Okay?

8 A] And who did you send it to, what did they do with it over
9 there? And then if you determine the test had been run on it,
10 you would want to know the results of those tests.

11 Q] Yes?

12 A] I, I don't - - in every situation where you have that, it's
13 not going to be a *Strickland* violation if you don't follow it.

14 Q] I see. Okay.

15 A] It just depends on the context. It's a lot different than
16 what I testified to concerning the need for a pathologist.

17 Q] Okay. There was another hypothetical that talked about
18 different things, including the fact that the defendant was at
19 school, you know, during the day?

20 A] Right.

21 Q] Now that might, in some cases that might provide an alibi;
22 correct?

23 A] Correct.

24 Q] Okay. Well, in other cases if it was also shown that the
25 victims were in school, then it would eliminate the possibility

1 that the homicide occurred during the school hours, would it
2 not?

3 A] Yes.

4 Q] So in some way, that would not be a piece of information
5 that would be relevant to a particular case with regard to
6 timing of the homicide?

7 A] Correct. And when the victims were missing I guess is the
8 key component in our determination.

9 Q] Okay. Do you know how many, if any, meetings that this de-
10 fense counsel, Ford, we don't know about Wadley, that he had
11 with West Memphis police department?

12 A] I do not know how many. I know there were meetings, uh,
13 there were memos in that file that talk about meeting with
14 investigators.

15 Q] What about meetings with other defense counsel representing
16 separate defendants?

17 A] Yeah, I think there are some notes concerning that. And in
18 fairness, I will say there are memos in there concerning
19 meetings with detectives and physical evidence and photographs
20 and that sort of thing.

21 Q] I see. Did you review the cross-examination of Michael
22 Carson?

23 A] No. I did see Michael Carson's file in there and I under-
24 stand from reading the Arkansas Supreme Court decision that he
25 apparently was a significant witness in the case, and I think

1 the Supreme Court, in their opinion, notes that Mr. Baldwin did
2 not raise the sufficiency issue and then the opinion reflects
3 the testimony of Mr. Carson.

4 MR. HOLT: One moment. Co-counsel is the problem
5 here.

6 THE COURT: Sure.

7 MR. HENDRIX: Aren't they all?

8 MR. HOLT: That's all I have. Thank you very
9 much.

10 THE WITNESS: Sure.

11 RE-DIRECT-EXAMINATION

12 BY MR. PHILLIPSBORN:

13 Q] Mr. Lassiter, just a few questions. Mr. Holt noted that,
14 uh, the only requirements for a criminal defense lawyer to
15 practice in Arkansas were a license to practice and *Strickland*
16 or at least those are the requirements, the essential require-
17 ments. And, and again, just so our record is clear, were you in
18 agreement with that assertion, or not?

19 A] No, I was not.

20 Q] Now do you understand *Strickland* to state, among other
21 things, uh, reading from 466 U.S.691, "the reasonableness of
22 counsel's actions may be determined or substantially influenced
23 by the defendant's own statements or actions"?

24 A] I don't remember that specific quotation. If you show me
25 the opinion on that, I'll be happy to find it and look at it.

1 Q] Sure, if we actually have a print-out of the opinion. I'm
2 actually reading from my digest. So you're not...

3 A] ...I don't disagree with it.

4 THE COURT: Didn't that come from *Strickland*?

5 MR. PHILLIPSBORN: Yes.

6 THE COURT: I thought it did.

7 CROSS-EXAMINATION, continuing:

8 Q] Do you have any reason to disagree with it?

9 A] No, although I'm still under a duty to perform my own in-
10 vestigation. And I think it's necessary despite what the defen-
11 dant tells me happened or didn't happen.

12 Q] Okay. And that would be true whether the defendant is
13 professing to be guilty or not guilty of the offense; correct?

14 A] Correct.

15 Q] Or regardless of the version of facts?

16 A] Correct.

17 Q] The narrative that is provided by the client?

18 A] Correct.

19 Q] And, and would you agree, uh, with the following statement:
20 "that counsel has a duty to make reasonable investigation or to
21 make a reasonable decision that makes particular investigations
22 unnecessary"?

23 A] That's a direct quote from *Strickland*. And I do agree with
24 that.

25 Q] And in any ineffectiveness in this case, a particular

1 decision not to investigate must be directly assessed for
2 reasonableness in all of the circumstances applying the heavy
3 measure of deference to counsel's judgments?

4 A] That sounds like language in *Strickland*, and I agree with
5 that.

6 Q] And "counsel's judgments in part are premised," am I
7 correctly interpreting your testimony in part, on your experience
8 and your professional practices?

9 A] Yes.

10 Q] Now Mr. Holt asked you about the pertinence of certain
11 inquiries that you would make of a pathologist in a case in
12 which a client is specifically charged with a sexual offense as
13 well, presumably, with a homicide as well in a case in which the
14 theory under which the client is being prosecuted includes the
15 notion that the victims were mutilated pursuant to some kind of
16 a ritual or that there was sexual abuse such as forced oral sex
17 or forced anal sex, uh, regardless of whether a specific charge
18 was present. Would that cause you to engage in that type of
19 consultations with an independent forensic pathologist as you
20 mentioned earlier?

21 A] Yes, it certainly would. I think the Arkansas Supreme
22 Court said the state's theory of motive was that the killings
23 were done as part of a Satanic ritual. And when you have these
24 injuries to the boys, and particularly to Christopher Byers, it
25 just becomes extremely significant to review the autopsy report

1 and what Dr. Peretti is telling you in every way you can to see
2 if you can determine a different explanation for that, and it
3 certainly was accurate.

4 Q] Was it your understanding in this case that, that Mr. Bald-
5 win's defense was that he was not culpable, he was not guilty of
6 the offense and that he essentially was being erroneously ident-
7 ified as the perpetrator?

8 A] I have not read the transcripts, but that's what has been
9 told to me that that was his defense.

10 Q] And, uh, in line with the questions asked of you by Mr.
11 Holt, uh, were you aware that in 1993 that hair evidence could
12 be used to identify?

13 A] My recollection is at that time that that expert witness
14 examined hair reached a conclusion that, uh, that there were
15 similarities between, uh, I didn't use part of my job here to go
16 back and determine in 1993 what the expert could or could not
17 say. That's my independent recollection of that area.

18 Q] And I apologize. I was inartful. But this is in line with
19 the questioning concerning the criminal defense lawyer who is
20 put on notice that a hair is found in the ligature and in rela-
21 tion to the answers that you gave concerning that, assuming that
22 the, uh, in the course of conversation with the laboratory, that
23 information were provided, again, would it continue to be your
24 opinion that it was the duty of criminal defense counsel to at
25 least get more information about whatever the hair was, what-

1 ever other information was available?

2 A] Yes, that was my testimony.

3 Q] Now you were also asked about the issue of school and the
4 implications or importance of any investigation related to, uh,
5 Mr. Baldwin's being in school either on the day that the victims
6 were said to have, uh, been missing, May 5, or on the day the
7 bodies were recovered, May 6, uh, was part of your answer that
8 you gave on your direct, uh, premised on the notion that Mr.
9 Baldwin's being in school the day that the bodies were
10 recovered, on time and without any noticeable injuries and
11 without any change in his demeanor or behavior, something that
12 would be worthy of investigation within the framework of an
13 attorney's duty in a case in which the accused is denying that
14 he is the, uh, perpetrator?

15 A] Yes. I mean, during the course of determining who saw him
16 at school that day, you'd say what was his demeanor, how was he
17 acting? You certainly could pose those questions during the
18 course of the interview.

19 MR. PHILLIPSBORN: And, Your Honor, one final
20 area and in fairness to the state, this, I think,
21 looking at my notes would be a question outside of the
22 frame-work of my direct.

23 MR. HOLT: I have no objection.

24 MR. PHILLIPSBORN: Thank you. I appreciate that
25 and the Court's indulgence.

1 RE-DIRECT EXAMINATION, continuing:

2 Q] Mr. Lassiter, I apologize I didn't reach this topic; this
3 is the last topic. Do you, uh, do you have any opinions about
4 an attorney's obligation when defending a criminal case and
5 being informed of the, uh, the client professes that he is not
6 guilty and wants to testify?

7 A] What, what should an attorney do in that situation - - are
8 we talked about this in the middle of the trial or two weeks
9 before trial, or if you would kind of context that for me, it
10 would help.

11 Q] Well, uh, in a more general sense in a situation in which
12 the attorney and the client have consulted; the client has con-
13 tinuously professed that he is not guilty; the lawyer, incident-
14 ly in this specific hypothetical case, states that he believes
15 that the client is not guilty and the client is both willing to
16 testify and wants to testify in his own defense?

17 A] Well, you have to have a very serious discussion about that
18 in every case and sometimes that decision is reached before
19 trial; sometimes that decision is not reached until the state
20 rests. But ultimately it is the client's decision, not the
21 attorney's decision. You have to give him all of the reasons
22 why you should or why you shouldn't testify, uh, all of the
23 things you know are coming on cross-examination, things that
24 might be coming on cross that you don't know about, uh, in your
25 discussions with your client and try to make a decision as to

1 whether or not to let him testify in his defense, but
2 ultimately, it's their decision.

3 MR. PHILLIPSBORN: Thank you, sir. Thank you,
4 Your Honor. I pass the witness.

5 RE-DIRECT EXAMINATION

6 BY MR. BURT:

7 Q] Mr. Lassiter, I just had a question about your testimony
8 regarding allegations of Satanic allegations. Have you ever
9 tried a case where those allegations had been in play either as
10 an element or as a motive?

11 A] No. I have not, and I've never been around a case like
12 this nor am I familiar with another case like this.

13 Q] Okay. I take it, though, in your years of experience
14 you've gotten some feel for what Arkansas jurors would react
15 strongly to?

16 A] Yes, I think so.

17 Q] In a case such as this one where there were allegations of
18 ritualistic Satanic abuse as a motive for the murders, in your
19 opinion, even though ritualistic abuse was not an element of a
20 capital murder trial charges facing these defendants, would it
21 have been important for a criminal defense attorney to do every-
22 thing possible to refute the allegations of Satanic abuse, and
23 if so, why?

24 A] Well, because it's - - gosh. Allegations as the motive for
25 the killings just takes you to a place most people never thought

1 about. They may have seen something twisted like that on TV,
2 but to actually sit in the jury box and see those photographs
3 and to hear that testimony, must have been extremely disturbing
4 to them. And you have to walk into the case knowing that it's
5 going to be extremely disturbing to the citizens in this
6 judicial district, or in any judicial district in the state. So
7 to answer your question: yes, it's extremely important to do
8 everything that you can in a case like this, uh, to refute the
9 notion that this was in any way related to some kind of Satanic
10 ritual.

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

12 RE-CROSS EXAMINATION

13 BY MR. HOLT:

14 Q] Just quickly, to follow-up on what they said. Do you think
15 the attorney - - well, let me just ask it this way: Representing
16 a co-defendant in a particular case, uh, you, yourself, and
17 another co-defendant of a client has a trial, now would it be
18 helpful for you or do you feel some compunction to attend the
19 first trial if the evidence, perhaps, is similar?

20 A] Yes, if there's a trial before my trial with the same basis
21 as their defendant, sure, I would want to know as much as I
22 could about what happened in court.

23 Q] Do you know if that happened in this case?

24 A] I don't know.

25 Q] Okay. Do you know whether or not defense counsel, particu-

1 larly Paul Ford or Robin Wadley, in fact, had informal meetings
2 with members of the Crime Lab prior to trial?

3 A] Yes, they did.

4 Q] They did?

5 A] Yes, the meetings were - - I know that Mr. Ford went to the
6 Crime Lab on one occasion and talked to Dr. Peretti and some
7 others and I think there were follow-up phone conversations.

8 Q] There were what?

9 A] There were phone follow-up conversations with Kermit
10 Channell.

11 Q] Do you know whether or not there were any conversations
12 with regard to the hypothetical hair we've talked about?

13 A] I don't know.

14 MR. HOLT: Counsel and co-counsel have nothing
15 further.

16 THE COURT: Are we done?

17 MR. PHILLIPSBORN: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. PHILLIPSBORN: Thank you, Mr. Lassiter.

20 THE WITNESS: You're welcome.

21 THE COURT: Do you have another witness?

22 MR. PHILLIPSBORN: Yes, Your Honor. Mr. Burt,
23 Your Honor, is calling that witness. We're getting
24 out of line.

25 THE COURT: Okay.