

1 I'm sure you are.

2 MR. HOLT: I am.

3 THE COURT: Well, it's five o'clock.

4 MR. HOLT: I'm prepared to continue.

5 THE COURT: Well, let me ask, are we going to need
6 to go into Monday or Tuesday?

7 MR. HOLT: I don't think so.

8 THE COURT: We can finish tomorrow, with cross and
9 all?

10 MR. BURT: We'll get it finished tomorrow.

11 THE COURT: Well, I have out-of-town guests, and
12 I'd like to recess.

13 MR. HOLT: Okay.

14 THE COURT: And then start back in the morning
15 with the doctor.

16 MR. HOLT: That's fine with us.

17 THE COURT: All right, we'll be in recess until
18 9:30 in the morning.

19 (WHEREUPON, a recess was taken at 5:00 p.m. 10/1/09; proceedings
20 resumed at 9:30 a.m., 10/2/09 as follows, to-wit:)

21 **OCTOBER 2, 2009**

22 THE COURT: Court's back in session.

23 MR. ROSENZWEIG: Your Honor, could we do some
24 housekeeping for a minute?

25 THE COURT: Sure.

1 MR. ROSENZWEIG: Okay. I've talked with Mr. Raupp
2 on this and there was references yesterday that
3 *Drymon*, that's D-R-Y-M-O-N, case which holds that the,
4 uh, you know, that the trial record of a particular
5 person is deemed part of the Rule 37 record and may
6 not be specifically reintroduced.

7 Technically, however, a strict interpretation of
8 *Drymon* would mean that the Echols/Baldwin trial record
9 would not be part of the Misskelley case.

10 THE COURT: Well, I thought we agreed early on
11 that both of them would be merged for Rule 37
12 purposes, if that's what you're asking?

13 MR. ROSENZWEIG: Yes, that's what we're wanting to
14 do.

15 THE COURT: Y'all don't have any objections to
16 that, do you?

17 MR. RAUPP: No.

18 THE COURT: All right.

19 MR. ROSENZWEIG: Okay. Secondly, your court
20 reporter was talking to us just a moment ago and just
21 so we have it on the record, uh, if I understand
22 correctly, uh, she has talked to Leslie Steen, who
23 said assuming there is an appeal out of these
24 proceedings, that the exhibits need not be duplicated.

25 There will be two transcripts, one coming out of

1 Clay County and one coming out of Craighead County,
2 uh, and it's her intention to take everything to Clay
3 County and put in the Clay County record and then
4 Craighead will work from that, and apparently that's
5 with the approval of Leslie Steen.

6 The third question, Your Honor, is this. You
7 had previously said that we'd have sixty days to do
8 the proposed brief and findings of fact. The question
9 is, when will the sixty days start- - when we conclude
10 today?

11 THE COURT: Today.

12 MR. ROSENZWEIG: Okay.

13 THE COURT: And in fact, I'd like to cut it to
14 thirty days, but as voluminous as this is, I'm going
15 to give you the sixty days.

16 MR. ROSENZWEIG: Okay. So right after Thanks-
17 giving?

18 THE COURT: Okay, let me be sure. I still don't
19 know how to resolve that issue that came up the other
20 day about sealing records.

21 I didn't seal anything. You know, the Defense
22 filed some documents under seal.

23 MR. ROSENZWEIG: Well, I think that we're going to
24 be able to come up with an approved order, an order
25 approved by all counsel, which then presumably would,

1 you would not object to.

2 THE COURT: No, that would be fine. I just want
3 you to be sure and do that so we can close up that
4 issue.

5 MR. RAUPP: The State has no objection to that.
6 If their counsel prepares a precedent asking that the
7 - - be as to whatever it is that they'd like sealed,
8 we'd have no objections to any one or all that they
9 want to seal.

10 THE COURT: Okay. And I guess for the record, the
11 record in Echols and his Rule 37, all of the pleadings
12 and documents in it will also apply in this case.

13 MR. ROSENZWEIG: That will be great.

14 THE COURT: Okay. As well as the original two
15 trials.

16 MR. ROSENZWEIG: Yes, sir. That's correct.

17 THE COURT: All right. Any problem with that?

18 MR. RAUPP: No, and Mr. Baldwin's case was at Mr.
19 Echols trial, and there were a number of reliances on
20 that Echols' Rule 37 proceedings, as well.

21 THE COURT: Okay. That sounds fine to the Court.

22 MR. RAUPP: Thank you.

23 MR. PHILLIPSBORN: And Your Honor, the same
24 applies then with respect to Baldwin, in the sense
25 that the Misskelley record...

1 THE COURT: ...yes, sir. Sure. That's what I
2 meant. It would apply for all three.

3 MR. PHILLIPSBORN: I apologize.

4 THE COURT: And you're going to make, reduce that
5 to a written order, fix a precedent for it?

6 MR. ROSENZWEIG: We can; yes, sir.

7 THE COURT: Well, I think it would just be
8 cleaner.

9 MR. ROSENZWEIG: That would be good to show to the
10 Supreme Court. Now if you could also recommend to the
11 Supreme Court if they allow us to file a joint
12 abstract of this; we tried to before and they wouldn't
13 let us.

14 THE COURT: I don't think I can dictate what their
15 rules are, or their policies. Also, I might point
16 out, uh, I think the court reporter has been giving
17 you, or has been giving all sides, a disc of the
18 proceedings, just to facilitate your preparation.

19 MR. ROSENZWEIG: Yes, sir.

20 THE COURT: When the official record is prepared,
21 she will have to sign it and you're going to have to
22 order it. You know that.

23 MR. ROSENZWEIG: Yes, sir.

24 THE COURT: Well, I wanted to be sure. I think in
25 California you don't have to do that.

1 MR. BURT: That's true.

2 MR. ROSENZWEIG: I was being somewhat facetious
3 about the recommendations to the Supreme Court.

4 THE COURT: I mean, I can't tell them what to do.

5 MR. ROSENZWEIG: We had an unopposed motion, which
6 they rejected.

7 THE COURT: All right, are we ready with - - where
8 is Dr. Peretti?

9 MR. HOLT: In the restroom.

10 THE COURT: Okay. Gentlemen, I'm showing it's
11 five minutes until starting time, and you all have
12 assured me that we can finish today.

13 MR. ROSENZWEIG: Yes, sir.

14 THE COURT: If not, I'm going to block out time
15 next week, because I want to get the proof over with.

16 MR. BURT: We'll finish today.

17 THE COURT: All right.

18 MR. HOLT: Sort of as a matter of housekeeping, I
19 want to, I'd like to, I don't think I introduced
20 State's Exhibit #33 and that was Dr. Peretti's vitae.

21 THE COURT: And that was as of the trial, wasn't
22 it?

23 MR. HOLT: Yes, well, I assume this was as of the
24 Rule 37.

25 THE COURT: Okay.

1 MR. HOLT: In the Echols case.

2 THE COURT: Any objection?

3 MR. BURT: None.

4 MR. PHILLIPSBORN: None.

5 THE COURT: All right, it will be admitted.

6 (WHEREUPON, State's Exhibit #33 was admitted and received into
7 evidence and is appended on page.)

8 MR. HOLT: Also, these were identified in the
9 record as being Echols Rule 37 exhibits by their
10 number, but the numbers that I have them assigned
11 again in this case are exhibits 35 through 40, and I
12 move for introduction of those.

13 THE COURT: Any objection?

14 MR. PHILLIPSBORN: None.

15 MR. BURT: No.

16 THE COURT: All right, they will be received.

17 (WHEREUPON, State's Exhibits #35 through 40 were admitted and
18 received into evidence and are appended on pages through .)

19 MR. HOLT: And I think I have one gap, the video,
20 and I want to move to introduce the video.

21 MR. BURT: No objection.

22 MR. HOLT: Did we assign it a number?

23 THE COURT: I don't think we did.

24 MR. HOLT: Okay. It will be #41.

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

1 (WHEREUPON, State's Exhibit #41 was admitted and received into
2 evidence and is appended on page .)

3 MR. HOLT: Your Honor, I anticipate that at some
4 point we will craft either a stipulation or some
5 statement of fact with regard to testimony, and
6 concerning the ligatures that came up yesterday.

7 THE COURT: Okay.

8 MR. HOLT: I think I'm ready, Your Honor.

9 THE COURT: All right.

10 DIRECT-EXAMINATION, continuing:

11 Q] Let's see, Dr. Peretti, I believe that yesterday we finish-
12 ed with part of the autopsies, covering the autopsies of Michael
13 Moore and Steve Branch, for the most part. If we could at this
14 time, if we could move on to the autopsy of Chris Byers. And
15 did you have an occasion to perform an autopsy on the body of
16 Chris Byers in connection with this case?

17 A] Yes, I did.

18 Q] And if you would refer to your report, the cover page of
19 your report lists the cause of death as multiple injuries and
20 the manner of death as homicide; is that correct?

21 A] Yes.

22 Q] And then did you go into some detail at the time, uh, are
23 those wounds all described - - were the injuries to the body all
24 described within the context of the report that followed that?

25 A] Yes.

1 Q] Is this the page that's issued initially to law enforce-
2 ment?

3 A] No, this is the first page of the autopsy report.

4 Q] I see. Okay. And did you - - when notifying, or when re-
5 leasing information regarding this case at the time that you
6 conducted these autopsies, did you release any more than cause
7 of death and manner of death?

8 A] No, we issue to the Crime Lab on everybody that comes into
9 the Lab a cause of death sheet. So that's separate from this.

10 Q] And was there a reason for listing as cause of death of
11 Christopher Byers, multiple injuries?

12 A] Yes.

13 Q] What was that reason?

14 A] Well, uh, because of the graphic extent of his genital mu-
15 tilation, I just thought it would be best to keep everything
16 more generic, as multiple injuries, you know, not to release all
17 of this information to the press. You know, there were a lot of
18 rumors going around about the case and I just thought multiple
19 injuries would be, would cover everything.

20 Q] Okay. Now the date of the examination of these autopsies
21 was May 7, 1993?

22 A] That's correct.

23 Q] At that point did you have any, uh, was there any type of -
24 - well, let me just cut to the chase.

25 MR. HOLT: May I approach the witness, Your Honor?

1 THE COURT: Yes, sir.

2 DIRECT-EXAMINATION, continuing:

3 Q] I want so show you what's been marked for identification as
4 State's Exhibit #42 and ask if you recognize that?

5 A] (Witness examining same.) Yes, I do.

6 Q] What is it?

7 A] It's a knife that was provided to me.

8 Q] Do you know who it was provided by?

9 A] The investigating agency.

10 Q] Does it bear, uh, do you know whether or not that knife was
11 subsequently admitted into evidence?

12 A] It was. I, I've never seen it, you know, when I was doing
13 the autopsies.

14 Q] Okay. When did you, approximately when did you first get
15 to examine that knife?

16 A] I believe it was either the first or second trial; maybe
17 both.

18 Q] Okay. But it was, do you know whether it was introduced in
19 either of those trials?

20 A] Uh, you know, that's a long time ago. I know that the
21 second trial, I don't recall in the first, I think it was.

22 Q] Okay. Was that, uh...

23 MR. HOLT: ...I'm going to go ahead and move for
24 introduction of State's Exhibit #42 in this proceed-
25 ing; it having already been admitted into evidence as

1 State's Exhibit #77 in the Echols/Baldwin trial.

2 MR. BURT: No objection.

3 MR. PHILLIPSBORN: No objection.

4 THE COURT: All right, it will be received without
5 objection.

6 (WHEREUPON, State's Exhibit #42 was admitted and received into
7 evidence and is appended on page.)

8 DIRECT-EXAMINATION, continuing:

9 Q] Were you asked to make some, uh, were you requested to make
10 any observations or render an opinion with regard to that par-
11 ticular knife?

12 A] Recently; yes.

13 Q] Okay. Let's go into the autopsy of Christopher Byers, if
14 you would? Let's just proceed, since we're interested in exact-
15 ly what you wrote in the particular autopsy and if you would,
16 let's just use the same procedure we used yesterday.

17 A] Okay.

18 Q] Would you start with the external description?

19 A] "The body was that of a well developed, well nourished nude
20 white male. The hands were bound to the feet in "hot-tied"
21 fashion. The fingernails were short and intact, with dirty
22 beds. The body was covered with dried mud, leaves and debris.
23 There were multiple injuries situated on the body which are
24 described further below in detail. The body weighed 52 pounds,
25 was 48 inches in height and appeared compatible with the

1 reported age of 8 years. The body was cold. Rigor was present
2 and fixed to an equal degree in all extremities. The body was
3 pale with minimal posterior fixed Lividity. The scalp hair was
4 brown, wavy, and blood-soiled. A $\frac{3}{4}$ inch old scar was present on
5 the right forehead and a $\frac{1}{4}$ inch old scar was present adjacent to
6 the bridge of the nose. And old hypopigmented scar was present
7 on the front of the chest. The irides were brown. The corneae
8 were cloudy. The sclerae and conjunctivae were slightly
9 congested, with no petechial hemorrhages. The teeth were
10 natural and in good condition. The neck, chest and abdomen were
11 unremarkable, except for the injuries to be described. There
12 were injuries noted to the anal/genital area which are described
13 below in detail. The upper and lower extremities show no
14 abnormalities, except for the injuries and bindings to be
15 described further below. The lower extremities show the
16 presence of a few old healed scars. Abundant amount of feces
17 was present about the anus."

18 Q] Let me ask you a question regarding the external descrip-
19 tion. And it's just that at this particular point, you noted in
20 your report that "the body was pale with minimal posterior fixed
21 Lividity"?

22 A] Right.

23 Q] When you say "pale," what do you mean?

24 A] The body had lost a lot of blood and didn't have the normal
25 appearance; it was real pale looking, anemic.

1 Q] Was it different than the other two bodies?

2 A] Yes.

3 Q] If you would continue with the description of the injuries?

4 A] "The body was received nude and was covered with dried mud,
5 leaves and debris. There was washer woman wrinkling of the
6 hands and feet. The hands were bound to the ankles behind the
7 back in a "hog-tied" fashion. Strands of hair-like material
8 were found on the left posterior thigh and under the bindings of
9 the left ankle. The right wrist was bound to the right ankle
10 with a black shoe lace and the left wrist was bound to the left
11 ankle with a white shoe lace."

12 Q] With regard to the "washer woman wrinkling of the hands and
13 feet," is that a, will a body typically have that appearance if
14 it's placed in water?

15 A] Yes.

16 Q] Is it any particular amount of time?

17 A] It, it, you know, it usually takes a half-hour, up to a few
18 hours, you know. Females doing the, girls doing the dishes, you
19 know, even men, they get their hands in water for a period of
20 time or if you're taking a bath, your hands and feet start to
21 wrinkle.

22 Q] Will this phenomenon happen irrespective of whether a
23 person is alive or dead?

24 A] Correct; it can happen postmortem.

25 Q] Go to the head injuries?

1 A] "The right ear was abraded and contused. The inferior
2 aspect of the right ear showed multiple linear abrasions
3 measuring ½ inch to 1¼ inch."

4 Q] Now you say that - - let me go to, I'm showing you what's
5 marked and introduced at trial at #64c.

6 MR. HOLT: Your Honor, I believe that most of
7 these exhibits were in fact, they used the same number
8 in both trials.

9 MR. BURT: That's true.

10 MR. HOLT: I think there were some additional ones
11 in the Echols/Baldwin, a three hundred series, and if
12 I know another number, I'll give it to you.

13 DIRECT-EXAMINATION, continuing:

14 Q] The right ear, you say, was "abraded and contused." I know
15 this is on a picture, or on the screen, but did you note, uh,
16 was there evidence of, uh, was this contusion similar to the
17 contusion that you saw on the other two boys?

18 A] Yes.

19 Q] Were the linear abrasions similar to some of the marks that
20 you saw on the other boys?

21 A] Yes.

22 Q] I believe that you opined during your testimony that the,
23 uh, that you believed that this was consistent with, given the
24 surroundings of the other facts in this case, that this was - -
25 you had seen this type of injury before and it was consistent

1 with trying to control or pull a victim into a certain position
2 for forced fellatio; is that correct?

3 MR. BURT: I'm going to object to the form of the
4 question. "Consistent with" is not the same. He's
5 asking him to speculate, basically.

6 MR. HOLT: I'm asking him what his prior testimony
7 was.

8 THE COURT: I'm going to overrule the objection.

9 DIRECT-EXAMINATION, continuing:

10 A] Would you repeat the question, please?

11 Q] I don't think I can.

12 A] Okay.

13 Q] Did you give some testimony previously in this case that
14 the injuries that you observed in all three boys were consistent
15 with other cases where you had observed this kind of injury and
16 it was part of a sexual assault?

17 A] Yes.

18 MR. HOLT: And Your Honor, just as a matter of,
19 uh, this may be a good time to bring it up, we
20 attempted yesterday to introduce a textbook, uh, a
21 reference, a textbook of the fourth edition that was,
22 uh, that stated that "bruises on the ear are commonly
23 due to the child being pinched or pulled by the ear,"
24 and it had a photograph, and it continued with "there
25 would usually be a matching bruise on the posterior

1 surface of the ear."

2 Mr. Burt objected to that, saying, and
3 rightfully, and he was correct in saying that the
4 fourth edition was not in print during this particular
5 time.

6 We'd like the judge to reconsider his initial
7 ruling because, with regard to, you know, there are
8 two different issues here.

9 The issue with regard whether a textbook was in
10 existence or not may go to ineffectiveness of counsel
11 in what they knew or didn't know or could know or
12 perhaps what an expert may or may not have known.

13 But in terms of there being information that is
14 present-day information that really goes not so much -
15 - it goes to the credibility of anyone else, for
16 instance, another hired expert who might say that
17 she's never heard of such a thing, and such a thing as
18 is ridiculous to think that these types of injuries
19 are consistent with that.

20 And it's that purpose that we're offering it for.

21 MR. BURT: I see the point he's making and as long
22 as we can clarify which literature didn't exist at the
23 time of trial and which is afterwards, I don't see any
24 problem with cross-examining - - or examining him on
25 the literature that didn't exist, for the reasons he

1 went into.

2 But I think there should be some record so it's
3 clear that whatever he is referring to couldn't be
4 used by people who were trying this in '93 and '94,
5 but it goes to the present, and I understand the
6 argument that it goes to the present credibility of
7 this witness versus another. Right?

8 MR. HOLT: That's correct.

9 THE COURT: I'll receive it for that purpose. The
10 only question that leaves open was whether or not
11 similar literature was available in 1994 at the time
12 of the trial.

13 But for the purpose that it's being offered, I'll
14 receive it and I take it that you're not objecting to
15 it?

16 MR. BURT: No, I'm not.

17 MR. HOLT: Did we mark this as #33?

18 THE REPORTER: Yes.

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

20 MR. BURT: 33, you say?

21 MR. HOLT: 33.

22 (WHEREUPON, State's Exhibit #33 was admitted and received into
23 evidence and is appended on page .)

24 DIRECT-EXAMINATION, continuing:

25 Q] If you would continue with the next paragraph, please?

1 A] "On the bridge of the nose were multiple abrasions.
2 Situated between the nose and the upper lip was a semi-lunar
3 abrasion measuring about 1/8 inch. A ¼ inch abrasion was
4 present at the lateral aspect of the lower lips. A 1/8 inch
5 abrasion was present at the midline of the lips. The mucosal
6 surfaces of the lower lip showed a 5/16 inch laceration. The
7 frenulum was contused and was surrounded by a ½ inch contusion.
8 Multiple superficial bite marks were present on the mucosal
9 surfaces of both right and left cheeks."

10 Q] Okay. When you described some of the injuries in State's
11 Exhibit #59c as "semi-lunar abrasions measuring about 1/8 of an
12 inch," do you have an opinion as to what those types of
13 abrasions are consistent with?

14 A] In my opinion, they're consistent with an implement that
15 has a semi-lunar form.

16 Q] Is it necessarily an implement, or the smaller ones, I'm
17 talking about around the mouth?

18 A] Well, the smaller ones, some of the smaller ones could be,
19 uh, because they're so small, they could be just scratch marks,
20 uh, fingernail marks.

21 Q] Are fingernail marks sometimes described as semi-lunar in
22 shape?

23 A] Yes.

24 Q] I note, too, you said that there is, that the "frenulum was
25 contused and was surrounded by a ½ inch long contusion." Again,

1 is this a bruised area?

2 A] Yes.

3 Q] Did you note hemorrhage in that area?

4 A] Yes.

5 Q] You then say that "multiple superficial bite marks were
6 present on the mucosal surfaces of both right and left cheeks."

7 When you refer to the mucosal surfaces, what are you referring
8 to?

9 A] The inside of the cheeks.

10 Q] Would a competent pathologist or expert realize that
11 mucosal surfaces are on the inside; mucosal necessarily would
12 give you the location of that, would it not?

13 A] Correct.

14 Q] And are those, just in laymen's terms, what are those type
15 bite marks consistent with?

16 A] He's probably having a seizure during the assault; he's
17 just biting his cheeks.

18 Q] Could a blow to the head in some way cause him to bite a
19 cheek?

20 A] Well, he could have had a seizure from the blow to the
21 head, and subsequently, the bite marks.

22 Q] Okay. The next, please, on page 3.

23 A] "A 3/16 inch laceration was present above the left upper
24 lip."

25 Q] Did these show signs of hemorrhage?

1 A] In the underlying tissues, yes.

2 Q] Next paragraph, please?

3 A] "Situated on the superior aspect of the bridge of the nose
4 was a 3/16 inch abrasion."

5 Q] Next?

6 A] "Situated above the left eyebrow were two abrasions
7 measuring respectively 1 inch and 3/4 inch. Situated on the right
8 eyelid was a 1/2 by 1/2 inch contusion. Adjacent to the medial
9 aspect of the left eye was a 1/8 inch abrasion."

10 Q] Did you see any evidence of any animal predation, uh, in
11 any of the soft tissues of the eyelids?

12 A] None.

13 Q] Is that an area that is often targeted by animals?

14 A] Yes.

15 Q] Next, please?

16 A] "A 1/8 inch abrasion was present adjacent to the lateral
17 aspect of the left eyebrow."

18 Q] Continue?

19 A] "Situated on the left zygomatic region were two circular
20 abrasions, each measuring 3/16 inch. Below these was a 1/4 by 1/8
21 inch abrasion."

22 Q] Continue?

23 A] "The left ear was contused and situated behind it were five
24 linear abrasions measuring respectively 1/2 inch, 7/16 inch, 1/2
25 inch, 7/16 inch, and 3/4 inch. A 1/8 inch abrasion was present on

1 the helix of the left ear. In front of the left ear were five
2 haphazardly oriented abrasions, measuring 5/16 to 1¼ inch."

3 Q] So collectively, in all three of these cases, you have that
4 same contusion, bruising to the ear, along with some linear
5 abrasions or scratch marks?

6 A] Yes.

7 Q] Next, please?

8 A] "Situated on the left parietal scalp was a 1¼ inch
9 laceration."

10 Q] I'm going to show you what's been marked as #68c and if you
11 could, is that the photograph that you're referring to?

12 A] (Witness examining same.) Yes.

13 Q] And where was this located?

14 A] That was situated on the left parietal scalp, so center and
15 top and back of the head on the left side.

16 Q] Okay. Continue, please?

17 A] "Reflection of the scalp showed hemorrhage in the soft
18 tissues underlying the laceration. There were multifocal,
19 subgaleal contusions with associated edema."

20 Q] Okay. Continue, please?

21 A] "There were no fractures noted to the calvarium, however,
22 the base of the skull shows multiple fractures. In the left
23 posterior cranial fossa was a fracture measuring 3½ inches in
24 length. Extending from this fracture were multiple radiating
25 fractures which involved the entire posterior left cranial

1 fossae. Situated on the left posterior medial cranial fossa was
2 a ¼ inch ovoid punched out fracture. A one inch fracture also
3 involved the left middle cranial fossa."

4 Q] So if you could, demonstrate exactly where on Byers' head
5 that you saw those fractures?

6 A] This is all in the back. They were on the back of the
7 skull.

8 Q] Was it from side to side?

9 A] It was on both sides.

10 Q] Was this referred to at some point as like an eggshell?

11 A] Yes.

12 Q] Describe that term, if you will?

13 A] "Eggshell" is when you have this, you know, you get an egg
14 and you drop it, you see a little cracks and just fracture lines
15 just going anywhere.

16 Q] I see. Next?

17 A] "The brain showed multifocal subarachnoid hemorrhage
18 involving the left posterior cerebral and cerebellar
19 hemispheres. Associated fracture contusions were present."

20 Q] Okay. Continue with neck injuries?

21 A] "Situated on the left side of the neck were a few scattered
22 abrasions. Subsequent autopsy of the neck showed no hemorrhage
23 in the strap muscles of the neck. The hyoid bone and larynx were
24 intact. No petechial hemorrhages were noted. No fractures were
25 noted."

1 Q] Okay. If you would, the next paragraph?

2 A] Okay. General anal injuries: "The anal orifice was
3 markedly dilated. Examination of the rectal and anal mucosa
4 showed them to be diffusely hyperemic and injected. There were
5 no injuries present."

6 Q] The next?

7 A] "The skin of the penis, scrotal sac and testes were
8 missing. There was a large gaping defect measuring $2\frac{3}{4}$ by $1\frac{1}{2}$
9 inch. The shaft of the penis was present and measured 2 inches
10 in length. The gaping defect was surrounded by multiple and
11 extensive irregular punctate gouging type injuries measuring
12 from $\frac{1}{8}$ to $\frac{3}{4}$ inch and had a depth of penetration of $\frac{1}{4}$ inch to $\frac{1}{2}$
13 inch. Some of these wounds showed hemorrhage in the underlying
14 soft tissues, others did not. In between the thighs there were
15 multiple areas of yellow abrasions with skin slippage. The
16 medial aspect of the left thigh showed a yellow abrasion."

17 Q] Okay. If you would, I'm showing you what's been marked as
18 Exhibit 70c and when you described "extensive irregular punctate
19 gouging type injuries measuring from $\frac{1}{8}$ to $\frac{3}{4}$ inch with a depth
20 of penetration of $\frac{1}{4}$ to $\frac{1}{2}$ inch," which of these are you referring
21 to?

22 A] All of these injuries around the perineum (indicating)
23 right here. Here, here, here (indicating).

24 Q] And do they appear - - are they - - okay. And you noted
25 that "some of these wounds showed hemorrhage in the underlying

1 soft tissues"?

2 A] Correct.

3 Q] "Others did not"?

4 A] Correct.

5 Q] Was it - - did you make or form any opinion with regard to
6 the appearance of those particular injuries?

7 A] Well, my opinion, all of these injuries are antemortem
8 injuries. I mean, even though, if you look at some of them here
9 it looks like there is no blood in there, but if you look
10 around, there's others that have blood and the fact is that his
11 body was also in water and the blood can leech out from the, uh,
12 from the underlying tissues. And also, the factors, too, that
13 the thighs are predominately fat and there's very few minimal
14 blood vessels there, so you generally don't see much hemorrhage
15 there, but some areas had distinct hemorrhage.

16 Q] Okay. Well, uh, what does the mechanism of blood pressure
17 play with regard to hemorrhage?

18 A] Well, I think - - mechanism of blood pressure - - well, the
19 blood pressure would, uh, when you have open wounds like this,
20 if your heart is beating, will pump the blood out.

21 Q] Okay. Well, as an individual loses blood, what happens to
22 the blood pressure?

23 A] Well, the blood pressure, what's happening is that losing
24 blood, what the body is trying to do is pump the blood to the
25 brain, okay, so you'll have more blood flow going up towards the

1 head. So as you're losing blood, your blood pressure is going
2 to decrease.

3 Q] I see. Does the body naturally decrease the supply of
4 blood to different extremities?

5 A] Yes, to an extent, you know, its trying to get blood to the
6 brain so, you know, you want to get as much blood flow to the
7 upper than lower extremities.

8 Q] I believe you said it "had the appearance of being post-
9 mortem"?

10 A] Yes.

11 Q] But did you also note that "these also exhibited the
12 qualities of peremortem or antemortem"?

13 A] Yes, there's hemorrhage there in the tissues.

14 Q] If you would, continue with the next paragraph?

15 A] "Situated on the posterior surface of the left buttocks was
16 a ½ by ¼ inch contusion and a 1¾ inch linear abrasion."

17 Q] I want to show you what's been marked - - well, continue,
18 if you would?

19 A] "Situated on the posterior surface of the right buttocks
20 were two faint contusions, each measuring about ½ by ½ inch."

21 Q] Next?

22 A] "The left buttock showed five superficial cutting wounds
23 measuring from ½ to 2 1/8 inches."

24 Q] Okay. First of all, I want to ask you about the, uh, with
25 regard to 70c that was just there. Did you also - - did you

1 note any contusion in that area of the thighs?

2 A] Yes, he had some bruising right here (indicating), you can
3 see it right here.

4 Q] And so you have, uh, what is that on top of the bruising?

5 A] You have, uh, abrasions.

6 Q] And do the abrasions contain hemorrhage?

7 A] Well, the abrasions have a yellow, uh, discoloration to
8 them, uh, you can't really see the hemorrhage in them, but you
9 can see the hemorrhage in the underlying subcutaneous tissues.

10 Q] I see. What causes the yellowness?

11 A] The drying.

12 Q] I show you what's been marked as 71c and I believe you
13 described these as "the left buttock showed five superficial
14 cutting wounds measuring from ½ to 2 1/8 inches long"; is that
15 correct?

16 A] Correct.

17 Q] Now you noted the cutting type wounds that were linear and
18 in large part, they were parallel, weren't they?

19 A] Yes.

20 Q] Did you note any, uh, any types of cuts on the right hand
21 side?

22 A] Well, you have this pattern here, uh, you can see the
23 patterns here (indicating), some superficial cutting wounds
24 right here (indicating).

25 Q] Were those two distinct patterns?

1 A] Yeah, you have separate patterns here.

2 Q] I note next - - if you would observe next to the, uh, those
3 parallel cutting patterns on the left buttock, you see what
4 appear to be, uh, I guess sort of a gouge or a rip in the skin
5 next to that?

6 A] Right here (indicating)?

7 Q] No, to the left. Right there (indicating)?

8 A] Yes, these are the cutting wounds right here (indicating).

9 Q] Do you know of any sort of animal that has a habit or a
10 practice of long linear scratches with those other accompanying
11 patterned wounds?

12 A] No.

13 Q] If you would, continue with the next, uh, injuries of the
14 right leg?

15 A] Okay. "Situated on the right anterior thigh was a 1 by 1
16 3/8 inch reddish contusion. Below this contusion was a
17 patterned contusion consisting of two ovoid red-purple
18 contusions, the superior one measuring 3/4 by 7/16 inch, and the
19 inferior one measuring 3/4 by 1 1/8 inch. Extending from both of
20 these contusions were linear contusions, the superior one
21 measuring 5 3/16 inches and the inferior contusion measuring 4 1/2
22 inches. The interspace between these two linear contusions was
23 about 3/4 inch."

24 Q] So where were these contusions in, uh, kind of describe
25 where they were?

1 A] Well, they were on the front of the right thigh, the
2 interior surface.

3 Q] Was that a consistent injury that you saw on the other two
4 boys?

5 A] Yes. They had contusions on the thighs.

6 Q] Turn your attention to that exhibit in the box?

7 A] Number 42.

8 Q] Could you take it out, please?

9 A] (Removing exhibit from box).

10 Q] Were you asked to compare some of the patterns on that
11 particular knife with the patterns of some of the injuries in
12 this case?

13 A] Yes.

14 Q] Now if you would, describe what you - - what do you call
15 the different edges of that particular knife?

16 A] Well, once sharpened, and I originally said it was
17 serrated, but I was corrected, uh, it seems like a saw, so I
18 defined this as a saw.

19 Q] Is it, does that knife appear sharp to you?

20 A] It's very sharp.

21 MR. HOLT: Your Honor, I would also ask that the
22 Court examine that knife and make a finding with re-
23 gard to ...

24 THE WITNESS: ...do I just pass it over?

25 THE COURT: Yes, place it in the box and pass it

1 over.

2 THE WITNESS: Okay.

3 MR. PHILLIPSBORN: Your Honor, as the Court is
4 doing that and just for our record, I don't think any
5 record was made about the conditions and circumstances
6 under which that knife was retained since the time of
7 the trial, and again, in the spirit that we talked
8 about, uh, accompanying the introduction of the
9 article this morning and getting findings that the
10 Court makes with respect to that knife now, would not
11 really pertain to the ineffectiveness claims that were
12 made but are being alleged with respect to the Baldwin
13 case, and I imagine with the Misskelley case, simply
14 because that process was not part of either trial.

15 The Court was not asked by anybody to make any
16 findings at the time when fifteen years ago, about the
17 knife.

18 THE COURT: Well, I remember fifteen years ago
19 when it was introduced into evidence, there was a
20 great deal of testimony about how it was discovered,
21 where it was found and so forth, and I remember, well,
22 I wasn't asked to make any finding, and I'm not sure
23 what the State's asking me to do now. I've examined
24 the knife and remember doing it fifteen years ago.

25 MR. HOLT: Well, with regard to Misskelley, it

1 wasn't introduced.

2 MR. BURT: That's correct. I think Dr. Peretti
3 said it was; it actually was not.

4 THE COURT: I don't think...

5 MR. BURT: ...there was no testimony about this
6 knife at our trial.

7 MR. HOLT: At their particular trial, and in the
8 Baldwin/Echols case, it was introduced, and again,
9 it's Counsel sort of wants to box the State in on what
10 they can or can't do, uh, and really, it's the inef-
11 fectiveness claim that is part of what they are trying
12 to prove, and what the State's case is, or you know,
13 what the State's case is not static with regard to
14 what it might or might not do in response to something
15 that should have been done with regard to the totality
16 of all of the evidence.

17 This, in fact, though, was an exhibit at trial
18 and was examined by Dr. Peretti prior to trial and
19 there was not some sort of claim made at the time of
20 trial with regard to animal predation.

21 And if he has an opinion with regard to these
22 marks on the buttocks and matching both the smooth
23 bladed surface and the serrated or the gouged out
24 design, uh, pattern injuries, then he should be able
25 to testify.

1 THE COURT: If that's what you're wanting to do,
2 I'm going to allow him to render his opinion, for the
3 purposes of this hearing.

4 MR. HOLT: Yes.

5 THE COURT: Yes, sure. I don't have any problem
6 with it.

7 MR. HOLT: All right.

8 MR. PHILLIPSBORN: And Your Honor, that wasn't,
9 uh, just so the nature of the objection is clear, that
10 knife was in the care and custody, it's been in the
11 care and custody of a variety of people since 1994.

12 The question of whether its condition today is
13 the same as it was at the time of trial, is an open
14 question, because of the number of people who handled
15 it.

16 That's the only point I was making.

17 THE COURT: Your objection is to the chain of
18 custody?

19 MR. PHILLIPSBORN: No, Your Honor. My objection
20 is, uh, actually, uh, now that the Court mentions it,
21 it's not a chain-of-custody objection, because the
22 Court has admitted it.

23 The question has to do with the relevance of any
24 observation you're asked to make at this time, without
25 knowing what's happened with the knife between '94 and

1 the present testimony.

2 MR. HOLT: Well, is Counsel claiming that we've
3 sharpened the knife?

4 MR. PHILLIPSBORN: Well, we don't know exactly
5 what has happened to the knife since '94; that's all.

6 I have no idea if the doctor is going to be asked
7 to make observations about what's on the knife, uh, in
8 addition to the condition of the blade or the
9 serrations, so all I'm saying, and I don't think this
10 is any secret, is the evidence in this case,
11 especially the evidence that was at the West Memphis
12 police department and some of the evidence at the
13 Crime Lab, has passed through a number of hands since
14 '94. That's all.

15 THE COURT: Well, I'm not sure what you're asking
16 me to rule on if it's not a chain of custody, and of
17 course, it's been in the custody and care of the
18 investigative agency or the Supreme Court or the
19 State.

20 MR. HOLT: Or the State.

21 THE COURT: I'm going to allow you to ask the doc-
22 tor if he has an opinion with regard to the knife, and
23 then you need to qualify it.

24 MR. HOLT: Okay.

25 THE COURT: Okay.

1 DIRECT-EXAMINATION, continuing:

2 Q] This - - uh, we'll come back to that. Let's see. You were
3 at injuries of the right leg and you had discussed the first
4 paragraph, I believe, as far as the contusions.

5 A] Do you want me to start at a quarter-inch abrasion?

6 Q] Yes, please?

7 A] "A $\frac{1}{4}$ inch abrasion was present on the anterior surface of
8 the right leg. The ankles showed evidence of yellow-red binding
9 abrasions. On the left ankle below the binding abrasion was a $\frac{3}{4}$
10 by $\frac{1}{2}$ inch abrasion. Situated over the posterior right thigh and
11 leg were multiple scattered abrasions and contusions. A $2\frac{1}{2}$ by
12 $2\frac{3}{4}$ inch contusion was present above the ligature binding site of
13 the right ankle."

14 Q] Again, those contusions being bruises?

15 A] Yes.

16 Q] Okay. Injuries of the left leg?

17 A] "A $\frac{1}{4}$ inch abrasion was present on the right knee. Situated
18 below the right knee were three red contusions measuring $\frac{3}{4}$ inch,
19 $\frac{1}{4}$ inch, and $\frac{1}{2}$ inch each. A $\frac{3}{4}$ by 1 inch abrasion was present on
20 the left ankle. The posterior surface of the left lower leg and
21 ankle show confluent contusions."

22 Q] What are "confluent contusions"?

23 A] These are overlapping contusions.

24 Q] And in your opinion, were those caused peremortem, or
25 antemortem?

1 A] Antemortem.

2 Q] Okay. Back injuries?

3 A] "Multiple scattered abrasions were situated over the upper
4 back region."

5 Q] Continue?

6 A] Injuries to the right arm. "Scattered abrasions were
7 present over the right arm and forearm. A yellow binding
8 abrasion which was not surrounded by contusion was present on
9 the right wrist."

10 Q] Continue?

11 A] Injuries to the left arm. "Multiple scattered abrasions are
12 present on the anteroposterior surfaces of the left arm. A
13 binding abrasion was present on the left wrist and at the
14 superior margin of this abrasion was a faint red-purple
15 contusion."

16 Q] In that there was a bruise associated with that particular
17 abrasion that you saw?

18 A] Correct.

19 Q] Okay. Internal examination?

20 A] "The body was opened by the usual thoraco-abdominal
21 incision and the chest plate was removed. No adhesions or
22 abnormal collections of fluid were present in any of the body
23 cavities. No petechial hemorrhages were present. All body
24 organs showed diffuse pallor. The subcutaneous fat layer of the
25 abdominal wall was ½ inches thick. There was no internal

1 evidence of blunt force or penetrating injury to the thoraco-
2 abdominal region."

3 Q] So there was not any internal bleeding?

4 A] No.

5 Q] Now you said "all body organs showed diffuse pallor." What
6 do you mean by "diffuse pallor"?

7 A] What it means is that, uh, because of the genital injuries,
8 he exsanguinated and, uh, he lost a lot of blood. Usually, when
9 you look at the organs, they're congested, have blood in them.
10 His organs, the majority of them were just like bloodless,
11 because all of the blood, he bled out.

12 Q] Okay. Could we go to the, uh, continuing the internal, was
13 there anything remarkable, the previously described head, neck
14 or cardiovascular?

15 A] Well, you know, I stated that the liver was pale, uh, the
16 kidneys were pale. I'm just describing the internal organs as
17 pale.

18 Q] I see. And were there, uh, was there some microscopy done
19 in this particular case?

20 A] Yes.

21 Q] And did you take microscopic slides of the penis?

22 A] Yes.

23 Q] And the injury, particularly to the penis, what, what was
24 your finding there?

25 A] Well, there was some bacterial colonies, postmortem over-

1 growth. There were a few ghost remnants of blood cells were
2 identified in the blood vessels and soft tissues, and I went
3 back this week and I revisited the penis slides. And one slide,
4 specifically slide number 19, uh, I did find some fresh
5 hemorrhage.

6 Q] Uh, in terms of "ghost cells," what is that - - is that not
7 a red blood cell?

8 A] Well, what it is, it's the form of the red blood cell in
9 which it's lost its blood. So they call the "ghost cells" or
10 "ghost remnants."

11 Q] And is there an explanation for that?

12 A] Because he bled to death.

13 Q] Well, those particular kinds of cell in that tissue; is
14 that correct?

15 A] Yes.

16 Q] What causes a ghost cell or a cell that still has the blood
17 in it?

18 A] Well, when you look at it under the microscope, you look at
19 the cells, you can see the blood in them.

20 Q] Okay?

21 A] So they're intact, okay. When you have the cell with no
22 blood in them, they're ghost cells.

23 Q] And can submersion cause the leeching out of the blood from
24 the cell?

25 A] Oh, yes.

1 Q] These particular, uh, with regard to the knife that was
2 admitted to your agency, and in fact, weren't several knives
3 admitted to your agency?

4 A] I believe so.

5 Q] And I believe that you received at some point, a packet of
6 materials from defense counsel with regard to different issues
7 that they were raising; is that correct?

8 A] That is correct.

9 Q] I show you what's been marked as State's Exhibit #43. Do
10 you recognize that?

11 A] (Witness examining same.) Yes.

12 Q] Does that indicate that certain types of knives will, in
13 fact, leave certain types of patterns?

14 A] Yes.

15 Q] Is the subject of that particular article, that a specific
16 survival knife, for lack of a better term, is used in the
17 commission of a crime?

18 A] Yes.

19 MR. BURT: Could you clarify the date of publica-
20 tion, because of the issue we talked about?

21 MR. HOLT: Okay.

22 MR. BURT: Thank you.

23 DIRECT-EXAMINATION, continuing:

24 A] The date, uh, I think it's published, uh, accepted for
25 publication January 29, 2002.

1 MR. BURT: Thank you.

2 THE WITNESS: You're welcome.

3 DIRECT-EXAMINATION, continuing:

4 Q] I believe there was some testimony that you gave in the
5 Echols/Baldwin case regarding how a knife, or a knife such as
6 this one or a serrated knife, would leave a pattern; is that
7 correct?

8 A] Right.

9 Q] If you would, explain how that works?

10 A] Well, when the serrated portion of the knife is rubbed up
11 against the skin, it leaves the pattern of the serration mark on
12 the skin.

13 Q] I see.

14 A] If the knife is not rubbed up against the skin, you can't
15 tell this wound, uh, a wound from a serrated knife from a wound
16 of a double-edge knife. They both look the same.

17 Q] So when it actually cuts into flesh, you cannot tell the
18 difference between a serration or a smooth?

19 A] Right. Only -- the way we can tell is by looking for the
20 pattern of the serration on the skin, if it was a serrated
21 knife.

22 Q] So in that case, it makes a striation or a profile?

23 A] Yes, it reduplicates the pattern of the knife.

24 Q] Okay. In this particular instance, were you, in this par-
25 ticular case, were you asked to look at, I think what was refer-

1 red to in your testimony in this case, as a serration pattern?

2 A] Yes.

3 Q] Okay. Now technically, is that knife, I mean, it has two
4 edges; correct?

5 A] Correct.

6 Q] Is the top edge sharp?

7 A] Yes, very sharp.

8 Q] What about the - - and what exactly did you do, did you
9 look at with that knife and these particular injuries?

10 A] Well, I compared the injuries situated around the buttocks
11 with the, uh, serrated portion, whatever term you want to use,
12 on the knife.

13 Q] Okay. Did you have an opinion, or do you have an opinion
14 now with regard to whether or not the top of that knife was cap-
15 able of leaving some type of pattern?

16 A] Yes.

17 Q] And did you see wounds that were consistent with a pattern
18 similar to that knife?

19 A] Yes.

20 Q] With regard to State's Exhibit #308, in the left side of
21 the picture, it's hard to see?

22 A] Right in here (indicating)?

23 Q] Yes. You see that. Did you note different patterns of
24 linear gouges?

25 A] Yes, I saw the patterns here (indicating), consistent with

1 patterns of this knife right here (State's Ex.#42).

2 MR. BURT: I'm going to object, unless there's
3 some foundation as to when he saw this, because he
4 said at one point that he just recently re-examined
5 this knife.

6 Is he talking about opinions he formed back
7 before the trial, or is he talking about opinions he
8 just recently formed?

9 MR. HOLT: Well, Your Honor, my response would be
10 that it doesn't matter, it doesn't matter when he
11 formed it with regard to this type of injury, you
12 know, because it's not a matter of - - it's not a
13 matter of what, what the amount of testimony put on by
14 the State with regard to the particular issues.

15 Obviously, in the first trial there wasn't an
16 issue with regard to animal predation. There was not,
17 there was not, uh, it was not at issue necessarily
18 that this was anything but that the long linear dashes
19 and the long linear marks were anything but that
20 caused by...

21 THE COURT: ...all right, I'm going to let him
22 testify, and you can bring that out on cross-exam-
23 ination.

24 MR. BURT: Yes, sir.

25 DIRECT-EXAMINATION, continuing:

1 Q] Okay. Did you cause to have to, or did you examine certain
2 one-to-one photographs that were made of this particular area of
3 injury?

4 A] Yes.

5 Q] Now with regard to the injury itself, I believe you testi-
6 fied that the testicles and the skin of the penis and the head
7 of the penis were missing; is that correct?

8 A] Yes.

9 Q] And you testified that these injuries were, in fact, ante-
10 mortem?

11 A] Yes.

12 Q] With regard to any sort of pattern that was made, is it,
13 and this sounds like a dumb question and I'm sorry, but is this,
14 if a person was conscious during this, while this happened,
15 would there be involuntary reflexes to the pain?

16 A] Yes, I mean, when you have an injury, I mean, people,
17 you're going to try to stop the assault and people tend to close
18 their legs.

19 Q] And in fact, did you not note there were contusions on the
20 thigh areas of this boy, as well as Branch?

21 A] Yes.

22 Q] Is that consistent with a defensive type wound for this
23 kind of assault?

24 A] Yes.

25 Q] I show you what's been marked as State's Exhibit #44 and

1 ask if you can identify that?

2 A] (Witness examining same.) Yes. State's Exhibit #44 is one
3 of the autopsy pictures on one-to-one ratio.

4 Q] And did you request that that autopsy photograph be made
5 one-to-one?

6 A] Yes.

7 Q] And did you subsequently compare a portion of the top of
8 the knife to those particular marks that were made?

9 A] Yes.

10 Q] And were the marks on the top of the knife roughly equi-
11 valent to the striated pattern on the right thigh of Byers?

12 A] Yes.

13 MR. PHILLIPSBORN: Objection; vague as to time.
14 Again, just so our record is clear for any future re-
15 view, does this pertain to activity undertaken prior
16 to or during the trials or since the trials?

17 MR. HOLT: The same response, Your Honor. We've
18 had hired experts come in and say that this is, that
19 it looks like animals to them.

20 And this is the State's rebuttal case.

21 THE COURT: I'm going to allow it. Go ahead.

22 MR. HOLT: Okay.

23 MR. PHILLIPSBORN: But I still think, Your Honor,
24 again, in terms of our - - I understand the Court's
25 point that the Court's expectation is that we can

1 clarify this on cross, but the State is also address-
2 ing the ineffectiveness claims, and the question would
3 be is this evidence that would have been available,
4 for example, to Mr. Ford, to discuss with Dr. Peretti,
5 or was this evidence that wasn't even in existence
6 until after the trial?

7 So in that sense, I mean, it's ...

8 THE COURT: ...well, I understood Dr. Peretti to
9 testify that he ordered the one-to-one photographs
10 taken at the time of the autopsy, which would have
11 been fifteen years ago.

12 MR. HOLT: No, Your Honor, I have to clarify.
13 He's recently ordered the one-to-ones to compare, but
14 he did testify...

15 THE COURT: ...okay, well, it's admissible, in the
16 Court's opinion, to rebut the testimony of the Defense
17 experts that have been called to challenge his
18 original autopsy, so I think it's relevant for that
19 purpose.

20 MR. PHILLIPSBORN: I agree completely, Your Honor.
21 We're not, uh, we have no disagreement, Your Honor;
22 it's simply a matter - - it's just - - it's simply so
23 that we can clarify when it was done.

24 I'm not contending it's not admissible.

25 THE COURT: Okay. Well, I misunderstood him. I

1 understood him to testify that it was done at the
2 time, but now I'm informed that it was done for
3 purposes of rebuttal, which is fine with the Court.

4 MR. PHILLIPSBORN: I, I, and again, no problem.
5 Thank you.

6 THE COURT: Okay.

7 MR. PHILLIPSBORN: Thank you.

8 DIRECT-EXAMINATION, continuing:

9 Q] And with regard to, uh, some of these injuries, the further
10 injuries close to the left side of the photograph. How did you
11 describe those particular injuries?

12 A] Are you referring to these, here (indicating)?

13 Q] In the far left.

14 A] Up in here, these are gouge type injuries.

15 Q] And are those the injuries that you noted did not have the
16 presence of hemorrhage but they appeared to be postmortem?

17 A] Some had hemorrhage, some didn't; they have the appearance
18 of being postmortem.

19 Q] But you're not going to - - well, let me ask you this. Is
20 the, is a dead person going to bleed into any of these wounds?

21 A] No.

22 Q] Uh, in terms of the angle of these, or the attitude of an
23 edge on this, if you assume that the perpetrator of this is cut-
24 ting off the testicles and the skin of the penis of this indi-
25 vidual, would the back of the, of that particular knife, or a

1 knife consistent with that type of knife, create those dotted
2 gouges across the curved surface of the thigh?

3 A] Yes, they would.

4 Q] Is that also consistent with the smooth edge of the knife
5 as it's cutting the testicles and the skin of the penis, would
6 that be consistent with those, the particular cut marks that you
7 noted on the right side of Exhibit #308?

8 A] Yes.

9 Q] And by that, I mean these down here in the right-hand
10 corner (indicating)?

11 A] Correct.

12 Q] So if someone is cutting off the testicles and the skin of
13 the penis of this individual, the top of the knife that has the
14 serration, I believe is how you described it in some testimony?

15 A] Correct.

16 Q] Or the saw-tooth points of that knife will reflect an
17 attitude toward the right inner thigh, and the blade of the
18 knife will be towards the testicles, the scrotal sac and the
19 penis, and there will be, and it will be exposed to the left
20 inner thigh on the smooth surface?

21 A] Right. That's why you have all of those superficial cuts.

22 Q] And then, well, when you say "superficial cuts," this
23 individual didn't, didn't die of these wounds, the ones in the
24 right corner?

25 A] No. He died as a result of, you know, all of the injuries

1 combined, with the exsanguination.

2 Q] Did, uh, did those particular, do you ever note in
3 autopsies injuries that are incidental to an attack, or that
4 aren't the main blow, for instance?

5 A] Well, we list, you know, all of the injuries that we see.

6 Q] And you listed those, did you not?

7 A] Yes.

8 Q] And those are both the long linear cutting marks, and also
9 the ones that the long linear gouges; is that correct?

10 A] Correct.

11 Q] And leaving this particular exhibit aside, did you have an
12 opinion with regard to whether or not those injuries were caused
13 by an implement, or some other mechanism?

14 A] An implement.

15 Q] Did you, considering the fact that this body had been left
16 for a time submerged in water, did you consider the possibility
17 of animal predation?

18 A] I did, but there's no evidence of it.

19 Q] Did you see any bite marks?

20 A] No, there's no bite marks.

21 Q] When someone characterizes some of these marks as scratch
22 marks, have you ever seen linear parallel scratch marks like
23 that?

24 A] No.

25 Q] Did you, in fact, attend a meeting that was held at the re-

1 quest of counsel for the parties in this case?

2 A] Yes, I did.

3 Q] And I want to just refer to Exhibit #55, uh, which is a
4 letter from Riordan and Horgan, which has been admitted by
5 Defense counsel in their case in chief. And I believe it says
6 here "we did not ask you to respond specifically to our presen-
7 tation at the meeting; rather, you listened attentively and
8 promised to give the presentation your careful consideration."
9 Did you do that?

10 A] Yes, I did.

11 Q] And at that meeting, was it essentially a discussion of
12 their experts in this case?

13 A] Yes.

14 Q] Did they suggest certain animals with regard to these
15 injuries?

16 A] Yes.

17 Q] Did they suggest certain animals, or do you recall, if they
18 suggested certain animals with regard to the injuries to Steve
19 Branch?

20 A] Yes.

21 Q] What animals did they suggest?

22 A] Okay. Uh, dogs, cats, rats, turtles, fish, minnows, uh, I
23 think coyote, uh...

24 Q] ...feral dogs?

25 A] Yes, feral dogs, uh, crayfish, a few others.

1 Q] Now you were given a certain body of literature, but did
2 you make any requests of them at that time?

3 A] Yes, uh, Dr. De Maio and I believe it was Dr. Baden or Dr.
4 Souveiron - - is that how you pronounce his name - - they were
5 going to provide me photographs of bite marks from fish and
6 turtles. Dr. De Maio said that he had vast experience with fish
7 markings, uh, from the Rio Grande River. And I told them, you
8 know, I said that's good, I'd like to see them because in my
9 collection, I do have those turtles from the Rio, where he's
10 from, in my collection. And I said "you just supply me the
11 photographs," which he never did. One of the physicians there,
12 uh, I can't recall his name, he was from Canada, I believe. He
13 graciously provided me a copy of his textbook about penile
14 injuries.

15 Q] I see. Did they - - and have you ever received any of that
16 particular documentation?

17 A] No.

18 Q] Do you know of any - - are you familiar, through your own
19 husbandry and cultivation of different turtles, which I assume
20 some are indigenous to Arkansas?

21 A] The majority are.

22 Q] Have you had occasion to observe and note the pattern of
23 bites and the habits of turtles.

24 A] Well, in the summer I watch turtles eat every day.

25 Q] Now do you have a species of turtles commonly known as a

1 snapping turtle?

2 A] Yes.

3 Q] Do you have a species of turtle commonly known as an
4 alligator snapping turtle?

5 A] Yes, there are two types of snapping turtles in the state
6 of Arkansas: common snapping turtles and alligator snapping tur-
7 tles, which people call "loggerheads," generally.

8 Q] And what are the characteristics of a bite mark left by
9 either of those turtles?

10 A] Well, the snapping turtles, uh, they feed a little
11 differently, uh, what they do is they, for example, if you put a
12 dead fish in there or a piece of meat, they'll hold it down with
13 their web claws, okay. Then they will bite into it; they have a
14 beak, the beak tends to hold the food down, then they crush it.

15 Q] What is the shape of the beak?

16 A] Well, the beak is like an upside down triangle, okay. The
17 jaws are triangular shaped on all of the turtles, they're train-
18 gular shaped, okay. Then they have the beak, okay. So what the
19 snappers do is they bite, they hold it down, the food down with
20 their webbed feet. They have long claws that are razor sharp,
21 then what they do is they bite into it, the beak goes into the
22 food, they crush it. Snapping turtles not only - - they crush,
23 they bite quite hard, they crush, okay, then they rip. That's
24 what they do. Then they swallow it.

25 Q] Okay. So what sort of physical injuries would you expect

1 to see?

2 A] Well, from a snapping turtle?

3 Q] Yes?

4 A] Well, from a snapping turtle, one, you would definitely see
5 the pattern of the beak going into the skin. You would see the
6 pattern of the triangular shape of the jaws and you would also
7 see the crushing defects in the skin and you would see where
8 everything is just pulled out, ripped out.

9 Q] Were the margins of this wound pulled out?

10 A] No.

11 Q] And you were aware that these particular bodies were found
12 submerged; is that correct?

13 A] Right.

14 Q] Do you know of any mammal, uh, woodland creature that feeds
15 under water - - and I'm talking mammal, I'm going aside to
16 mammals first?

17 A] No, mammals cannot eat under water.

18 Q] So now focusing on aquatic, and specifically turtles, would
19 the turtles have left any sort of marks from their claws on
20 these?

21 A] Yes, you would see the claws; they're very, very sharp.

22 Q] Now you say the "claw," what part?

23 A] The nail, the nail portion.

24 Q] Okay?

25 A] And what they do is, they're very, very sharp and they use

1 it to dig into the mud also, and the females use them when they
2 get onto land, to lay their eggs. So what they do is they embed
3 into the skin. So if these were turtle bites, you would expect
4 to see the claw marks on the skin where they held down, uh, held
5 down the boys down and started crushing and pulling.

6 Q] Do you see any crushing or pulling?

7 A] No, not at all.

8 Q] Do you see any claw marks?

9 A] None.

10 Q] How would you describe a claw mark from a turtle?

11 A] Well, usually, it depends on the size of the turtle, you
12 know, they, their feet are webbed, so they spread it out and I
13 just - - I don't know the term to use. They just put it into
14 the tissue and just hold it down, the prey. If you put a dead
15 fish in there, they will hold down with their front feet.

16 Q] Will they puncture the skin?

17 A] Oh, yes. It will go in.

18 Q] Well, did you see any punctate type injuries similar to
19 that of the turtle?

20 A] None.

21 Q] If you had seen it back in 1993 when you performed these
22 autopsies, would you have said so?

23 A] Oh, sure.

24 Q] At that particular meeting, did anyone address the issue of
25 tissue samples taken?

1 A] Yes.

2 Q] And what was discussed in that regard?

3 A] Uh, what tissue samples I took at the time of autopsy.

4 Q] And were those provided to defense experts?

5 A] The...

6 MR. PHILLIPSBORN: ...objection to vague. Again,
7 Your Honor, just for our record, it's relevant, but
8 it's vague. Did this happen before the trial, or is
9 this the meeting that occurred in 2007?

10 MR. HOLT: The meeting in 2007.

11 THE COURT: All right.

12 MR. PHILLIPSBORN: Thank you.

13 DIRECT-EXAMINATION, continuing:

14 Q] Continue?

15 A] Okay. We did not provide tissue samples, uh, per se. We
16 provided the microscopic slides.

17 Q] I'm sorry. That's what I meant to say. At that meeting,
18 did any of the hired experts address whether or not there was
19 hemorrhage in the wound?

20 A] Not that I recall, truthfully recall.

21 Q] Did any of the hired experts address the fact that all of
22 the organs of Christopher Byers exhibited pallor, indicating
23 that he bled to death?

24 A] No.

25 Q] Did any of the hired experts indicate or discuss the

1 process of exsanguination and how it contributed to Chris Byers'
2 death?

3 A] No.

4 Q] Did any of the hired experts address the fact that there
5 was a pattern injury on Steve Branch's forehead and cheek area
6 that was incised?

7 A] Yes, they talked that wound.

8 Q] Okay. What did they talk about with that regard?

9 A] Well, you know, they were saying it was due to, uh, animal
10 predation and, you know, I kind of reminded them that - - at one
11 point, the experts thought they were human bite marks.

12 Q] I see.

13 A] And I said now we're going from human bite marks to
14 animals?

15 MR. PHILLIPSBORN: Objection. Vague. "At one
16 point," I think, referred to the Echols Rule 37, but
17 the way it was discussed, it could have been "at one
18 point" at the meeting. So objection; vague.

19 MR. HOLT: I'll have him clarify that.

20 DIRECT-EXAMINATION, continuing:

21 Q] When you say "they" and refer to bite marks, are you
22 referring to prior litigation involving Echols as the third
23 defendant in this case?

24 A] I don't remember the exact verbiage that was used, but sit-
25 ting there at the meeting, they brought up this being animal

1 predation and I said to them, and I believe it was Dr.
2 Souveiron, the dentist, well, being human bite marks versus
3 animals, now.

4 Q] Okay.

5 A] So it was at that meeting.

6 Q] Okay. You made that remark because you had testified with
7 regard to one of the injuries on Steve Branch as being, uh, as
8 not being a human bite mark?

9 A] Right. And my concern was that they're going, that the
10 issue was at first, I was criticized for missing human bite
11 marks. And now they're saying, no, no, no; they weren't human
12 bite marks, they're animal bite marks.

13 Q] I see.

14 A] So I was just kind of, you know, annoyed with that, going
15 from human to animals.

16 Q] Okay. But did they discuss the pattern injury nature of
17 those - - for instance, did they discuss the circular pattern
18 that appeared to have an "X" in the middle of it?

19 A] No.

20 Q] Did they show you any kind of photograph or did they sug-
21 gest any type of animal that leaves that kind of injury?

22 A] No.

23 Q] Now in that particular letter that they asked, that they
24 thanked you for meeting with them and referenced the fact that
25 they didn't ask you to respond at that time, uh, they did indi-

1 cate that they were going to be filing court pleadings. And
2 they asked you a series of questions. Did you ever answer their
3 questions in that regard?

4 A] No.

5 Q] But in terms of some of the questions that they asked you,
6 for instance: "Can you identify and list the injuries you would
7 classify as postmortem?" In this particular case, were there
8 injuries, and I believe some of your testimony, you said that
9 there were injuries that appeared antemortem, peremortem and
10 postmortem; is that correct?

11 A] Correct.

12 Q] Okay. Uh, which ones are you, which ones, if you had
13 responded to this letter at that time, which injuries would you
14 have classified as postmortem?

15 A] Well, there's a lot of little small, scratches, uh, yellow
16 abrasions, scratches on them. You know, it could be from the
17 bodies on the mud, being pulled out of the water, being put on
18 the bank, being turned over on the bank, you get some little
19 scratches or abrasions that way.

20 Q] That way? And what about some of the injuries to Byers in
21 the groin area?

22 A] I mean, to me, all of these injuries are, especially with
23 that pattern there, are all antemortem. You know, I did see
24 hemorrhage there. You can see it in some of the wounds. There
25 is contusions, there is bruising surrounding the wounds, uh, a

1 lot of the wounds are pale looking for loss of blood, uh, from
2 being submerged in water and really, if you look at it under a
3 microscope, uh, if you look at the penis under the microscope,
4 you can see fresh hemorrhage.

5 Q] I see. So if they asked you do you have an opinion as to
6 the agency mechanism that caused the injuries that you clas-
7 sified as postmortem, I believe you've just answered that
8 particular question?

9 A] Yes.

10 Q] If some of these had the appearance of the, uh, that you
11 said had the appearance of being postmortem that were similar to
12 injuries that were clearly in your mind antemortem, would you
13 have classified them as continuing through death, or through
14 some other agency having acted upon them, like the water?

15 A] Well, because they're in the, right near the vicinity of
16 the injuries that have hemorrhage, I would classify them as ante
17 mortem injuries; however, they have the appearance of being post
18 mortem.

19 Q] I see. It was mentioned at the Echols/Baldwin trial you
20 identified a few of the wounds suffered by the victims as
21 exhibiting a pattern consistent with that made by a serrated
22 knife, although you stated it would not be possible to trace
23 injuries to any specific serrated instrument, uh, including
24 People's #77 introduced into evidence during the Prosecution's
25 case. When you said "any specific knife," there was no

1 eyewitness there, except whoever did this, to say that this
2 specific knife was the one that caused these injuries; is that
3 correct?

4 A] Correct. I believe that's a "consistent with."

5 Q] "Consistent." Okay. The next question is: Do you have an
6 opinion as to what caused the abrasions that you did not
7 identify as exhibiting a serrated pattern?

8 A] Well, some of those abrasions could be from the blade of
9 the knife.

10 Q] Did you also identify other wounds that were consistent
11 with trauma inflicted in a different manner than something con-
12 sistent with that knife?

13 A] Well, there was blunt force head trauma.

14 Q]. Now you were asked a question in this: "Do you agree that
15 there are many abrasions on the three bodies that are at least
16 consistent with their having been caused by animal predation?"

17 A] Would you repeat that?

18 Q] They asked you this question: "Do you agree that there are
19 many abrasions on the three bodies that are at least consistent
20 with their having been caused by animal predation?"

21 A] No, I don't agree that they're caused by animal predation.

22 Q] For the reasons that you've given?

23 A] Yes.

24 Q] At the Echols/Baldwin trial you testified concerning
25 genital mutilation suffered by Chris Byers, whose testes had

1 been removed, along with skin, but not the muscle of his penis.
 2 You also testified that to accomplish this mutilation, a person
 3 would have needed both the knowledge of anatomy and a very sharp
 4 implement and that you, as a physician, could not do it in five
 5 to ten minutes, even in a laboratory setting and using a
 6 scalpel. You further testified that it would have been
 7 difficult to do this sort of operation in the night near water,
 8 with mosquitoes around." With regard to that testimony, and
 9 what you can do, is it your understanding that that was the
 10 circumstances surrounding this assault on those three boys?

11 A] Yes.

12 Q] In terms of this particular assault, was there any evidence
 13 that a sharp instrument was in fact used?

14 A] Yes, there was evidence.

15 Q] Was there, you know, do you know how long it took in this
 16 particular case?

17 A] How long it...

18 MR. BURT: ...that's vague. "How long" what
 19 took?

20 MR. HOLT: Okay.

21 DIRECT-EXAMINATION, continuing:

22 Q] Do you know how long the assault in this case lasted?

23 A] No, I do not.

24 Q] Do you know whether or not, uh, well, let's just contrast
 25 the difference. You're a doctor in a laboratory, or you're a

1 doctor performing, I suppose, this sort of operation in an
2 operating room. Is that going to be similar to someone who has
3 in fact incapacitated three eight year old boys, tied them up,
4 beat them in the head, and sexually assaulted them? Are those
5 two consistent, I mean, those are two different things, aren't
6 they?

7 A] Correct.

8 Q] So when you're asked how you would do it, does that have
9 really any relevance to how it's done during an attack on three
10 boys?

11 A] No.

12 MR. BURT: Argumentative.

13 THE COURT: Sustained.

14 DIRECT-EXAMINATION, continuing:

15 Q] Is there a, if you were to perform this particular
16 operation on an individual, would there have been the accompany-
17 ing gouge marks on the sides?

18 A] No.

19 Q] So is it your opinion, and this question is also asked by
20 them, "is it your opinion that the genital mutilation of Chris
21 Byers was a pere- or postmortem injury?"

22 A] It's antemortem.

23 Q] Antemortem. "Whatever the timeframe in giving your
24 testimony concerning the difficulties involved in any attempt to
25 cause, effectuate this injury by use of a cutting instrument,

1 what is your opinion as to the agency mechanism means or
2 instrument that caused the Byers' mutilation?"

3 A] Well, I think it's an instrument with a very sharp edge.

4 Q] "Do you agree that the large serrated survival knife which
5 you examined at trial could not have been the very sharp instru-
6 ment that would have been required to surgically remove Byers'
7 testes and the skin of his penis?" And this says "surgically
8 remove"?

9 A] I mean, that knife is consistent. You can't do it with
10 that knife.

11 Q] You would not use that knife in surgery?

12 A] No.

13 Q] The next question asked of you: "Do you agree that the re-
14 moval by the Byers' testes and the skin of his penis was
15 accomplished by a process described in the medical literature
16 cited at our meeting as 'degloving'?"

17 A] I completely disagree with that.

18 Q] You were asked this question: "Concerning the facial
19 abrasions on the left side of the face of Steve Branch, do you
20 agree, based on your education and experience as a forensic
21 pathologist, that there is no empirical basis for a conclusion
22 that such left side injuries are indicative of a satanic
23 motivation on the part of the perpetrator of the homicides?"

24 A] I know nothing about satanic rituals.

25 Q] "Do you agree that the pattern of the serrated knife would

1 make on human flesh could not be reproduced by using that knife
2 to make an impression on the skin of a grapefruit?"

3 A] Well, I don't know, you know, I never did that test.

4 Q] Is the skin of a grapefruit and the skin of a human being
5 different in texture?

6 A] Yes.

7 Q] Will a knife leave an impression on the skin of a grape-
8 fruit?

9 A] Yes.

10 Q] "Do you agree that the relevant medical literature refutes
11 the proposition that the dilation of the anus exhibited on one
12 or the other of the bodies of the victims in this case was
13 caused by that victim being sodomized?"

14 A] No, I never said they were sodomized. And I think during
15 my testimony I said that dilation was due to postmortem changes.

16 Q] But it is also consistent with other things, is it not?

17 A] Yes.

18 Q] It says here that "in addition to your views on these
19 issues, they're interested in getting access to any case files
20 in your archives that you rely on in formulating your opinion or
21 that otherwise would be helpful in resolving this important
22 case," etc cetera. Was there some mention of a study, a
23 statistical study or a study involving massing various autopsies
24 and determining whether or not those particular autopsies were
25 part of animal, uh, had any part of animal predation involved?

1 A] We were going to do that, but we elected not to. One of
2 the main reasons was, uh, not because we didn't want to give the
3 information to the counsel, was that the cases at the office,
4 uh, our computer system was a little archaic back then and it
5 would be so hard to go back and hand pick all of the cases, so
6 we didn't do that.

7 Q] I see. Well, with regard to animal predation, uh, there are
8 different types, aren't there?

9 A] Yes.

10 Q] Is there animal predation on land?

11 A] Oh, yes.

12 Q] Which is more prevalent in your experience; on land or in
13 bodies of water?

14 A] Well the majority of the bodies we receive at the Crime Lab
15 are on land, so the majority of animal predation injuries are
16 land based.

17 Q] And what are some of the animals that in fact you see as
18 evidences with necrophagia?

19 A] Well, you know, we have a lot of elderly people who live
20 alone and have dogs and cats and they die, and the animals feed
21 on them out in the woods.

22 Q] When you say there's feeding on them, uh, with regard to,
23 for instance, a snapping turtle or an alligator snapping turtle,
24 is there any reason why that sort of animal would the soft
25 tissue of the penis?

1 A] Well, the snappers, whatever they can grab, they'll take.
2 And I don't see how they can deglove a penis, you know, with
3 those triangular heads, the crushing injury, to cut the skin off
4 the penis and just take that off and leave the rest there. I
5 mean, that's ridiculous to even think that.

6 Q] Do you, when you see these cases of elderly people and you
7 see, for instance, dogs feeding off bodies, I mean, is the
8 purpose food?

9 A] Food. A lot of times these people are deceased for an
10 extended period of time, no one checks on them, they have
11 animals, the animals get hungry and they eat them.

12 Q] And what other types of predation do you see?

13 A] Well, out in the field, you know, you see the coyotes, the
14 raccoons, rats, uh, mice.

15 Q] Anything else?

16 A] Sometimes, buzzards.

17 Q] Any other type of animal?

18 A] Not that I can think of.

19 Q] What about insects?

20 A] Oh, insects. Okay. Yeah, insects, I mean, ants, all of
21 the time, especially the fire ants. In the summer here in
22 Arkansas, even on your grass, you know, the bodies will come in
23 with ants and you'll see the ant bites on them. Another
24 condition we see quite commonly here in the state is roaches.
25 Some of these homes are so filthy that these bodies come in and

1 they're just full of roaches, and they have roach bites all over
2 them.

3 Q] And roaches will feed on a body that's available?

4 A] Oh, yes. Flies, too.

5 Q] Did these bodies have a smell when they came in?

6 A] No. They weren't decomposed.

7 Q] In Defense Exhibit #54, you were also given another letter,
8 or sent another letter by counsel and in that letter they stated
9 to you that "all of our experts agree that the victims' deaths
10 were homicides and that they were caused by blows to the head,
11 drowning and/or some combination thereof. In their view none of
12 the injuries to the victims' head are consistent with the use of
13 a stick or branch as opposed to a much heavier and harder
14 object. In addition, and as noted, the general conclusion
15 shared by the attending is that apart from the blunt force
16 injuries to the head, the injuries to the skin of the victims,
17 the hundreds of gouges, punctures, lacerations, abrasions and
18 scratches were not caused antemortem by the use of a knife, but
19 were instead, in all instances, the postmortem product of animal
20 predation. In addition, our experts have concluded that none of
21 the victims exhibited injuries consistent with sexual abuse,
22 such as anal penetration or oral sex."

23 Do you agree with their conclusion?

24 A] No, I do not.

25 Q] Were you shown any sort of information with regard to any

1 specific animal, either a land based mammal, or aquatic animal
2 that would demonstrate, for instance, a bite?

3 A] No.

4 Q] This letter also states that "your testimony also stated
5 that Christopher had essentially bled to death."

6 Is that your view?

7 A] Yes, along with the head injuries. He lost a lot of blood.

8 Q] Is that still your view today?

9 A] Oh, yes.

10 Q] In your opinion, is there any foundation, any foundation
11 based on any type of photograph or exemplar of any type of
12 animal predation as they had stated, that covers either aquatic
13 animals or even land based animals, assuming that these - -
14 well, can you assume that these bodies were alive until they
15 were terminally submerged?

16 A] They were alive before they were put in the water.

17 MR. PHILLIPSBORN: Your Honor, can we just get
18 that exhibit number of that exhibit, which again, I
19 think is, uh...

20 MR. HOLT:...54.

21 MR. PHILLIPSBORN: Thank you. I think it also,
22 for anybody reviewing the record, is a relatively
23 recently written letter; it doesn't pertain to the
24 pre-trial trial phase as opposed to post-conviction.

25 MR. HOLT: No objection.

1 THE COURT: Okay.

2 MR. HOLT: Your Honor, could we take a short
3 break?

4 THE COURT: Yes.

5 MR. HOLT: I think I can finish.

6 THE COURT: All right, court will be in recess for
7 ten minutes.

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

10 THE COURT: Court's back in session.

11 DIRECT-EXAMINATION, continuing:

12 Q] I'm going to hand you a copy of Exhibit #54, which was
13 correspondence that you received in this particular case. You,
14 in fact, received that letter?

15 A] (Witness examining same.) Yes.

16 Q] If you would, turn to page three, actually, I guess, the
17 very bottom of page two. "Conclusion as to nature and cause of
18 injuries." The very bottom?

19 A] Okay.

20 Q] It states: "All of our experts agree that the victims'
21 deaths were homicide and that they were caused by blows to the
22 head, drowning and/or some combination thereof. In their view,
23 none of the injuries to the victims' heads are consistent with
24 the use of a stick or branch, as opposed to a much heavier or
25 harder object."

1 Do you agree or disagree with that?

2 A] Well, I mean, I don't know what was used but, you know, I
3 think a stick or a branch, or a rock.

4 Q] But you determined that it was, in your opinion, blunt
5 force trauma?

6 A] Yes.

7 Q] And certain blunt force trauma leaves evidence different
8 than other types of blunt force trauma, does it not?

9 A] It leaves patterns; correct.

10 Q] And were some of those patterns consistent with a stick, a
11 large stick or I think you said a 2 X 4?

12 A] Yes.

13 Q] Now when you say "a 2 X 4," are you talking generically or
14 specifically?

15 A] No, a piece of wood, you know, 2 X 4.

16 Q] So a piece of wood?

17 A] Yes.

18 Q] "In addition, and as noted, the general conclusion shared
19 by the attending is that apart from the blunt force injuries to
20 the head, the injuries to the skin of the victims, i.e., the
21 hundreds of gouges, punctures, lacerations, abrasions and
22 scratches, were not caused antemortem by the use of a knife but
23 were instead, in almost all instances, the postmortem product of
24 animal predation."

25 In that regard, they say "gouges, punctures, lacerations,

1 abrasions and scratches," did you see contusions or bruises that
2 accompanied the majority of lacerations, abrasions, punctures or
3 gouges in this case?

4 A] Yes.

5 Q] Were these, would it be fair to say that these boys bodies
6 were bruised throughout?

7 A] Yes.

8 Q] Were the inner thighs of the boys bruised?

9 A] Yes.

10 Q] And I believe that you testified with regard to instances
11 where that was consistent with other cases; is that correct?

12 A] Correct.

13 Q] You testified with regard to the bruising on the ears; is
14 that correct?

15 A] Correct.

16 Q] With regard to Christopher Byers, they make the statement
17 on page four: "Our attending experts have also concluded that
18 rather than being carved, Christopher," - - well, before I get
19 to that, one last thing in terms of all of those - - "except for
20 the blunt force trauma that incapacitated the victims," and I
21 guess the hog-tying and the stripping of the clothing of the
22 victims, "they are asserting that those punctures, gouges,
23 lacerations, abrasions and scratches were caused by some sort of
24 woodland creature."

25 Do you agree with that?

1 A] I disagree with that.

2 Q] Would you have disagreed with that in 1993 when you did the
3 autopsies?

4 A] Yes, I would.

5 Q] Would you have disagreed with it in 1994 when you testified
6 at trial?

7 A] Yes.

8 Q] On page four they make the statement: "our attending
9 experts have also concluded that rather than being carved,
10 Christopher's scrotum and the skin covering the penis was
11 removed by an animal in a degloving process. As to injuries
12 surrounding Christopher's groin, use of a large knife,
13 particularly a dull one, could have caused incisions far deeper
14 and more extensive than the irregular punctate gouging type
15 injuries measuring from 1/8 inch to 3/4 inch and with the depth of
16 penetration of 1/4 inch to 1/2 inch as described in Christopher's
17 autopsy report."

18 Now you got, I think you stated that you disagreed with the fact
19 that this was degloving on the part of any sort of woodland
20 creature; is that correct?

21 A] Correct.

22 Q] I want to ask you - - I've got to ask you - - on State's
23 Exhibit #308 in this particular case, showing the inner thighs
24 of Christopher Byers, if you assume that this is an antemortem
25 injury consistent with the hemorrhage that's present, and you

1 assumed that some of the injuries to the inner thighs along with
2 other injuries, are defensive type injuries and you assumed that
3 Christopher Byers was conscious at least when some of this was
4 going on, would you, could you say that some of these injuries
5 were caused as part of a struggle?

6 A] Yes.

7 Q] Do you see injuries that are incidental that are part of a
8 struggle in cases of autopsy you have examined?

9 A] Oh, yes.

10 Q] Would it be possible, in your opinion, if someone was cut-
11 ting off the penis and the scrotal sac of Christopher Byers on
12 either the left or the right side, that the tip of this knife
13 could in fact come down on the inner thigh aspect of either the
14 left or the right leg?

15 MR. BURT: We object to the form of that
16 question. He's just asking him to speculate; "would
17 it be possible?"

18 MR. HOLT: It's hypothetical, Your Honor.

19 MR. BURT: How could it be "possible."

20 MR. HOLT: Hypothetically, Your Honor.

21 MR. BURT: Anything's possible.

22 MR. HOLT: I'll change it to a hypothetical.

23 THE COURT: All right, go ahead.

24 DIRECT-EXAMINATION, continuing:

25 Q] Hypothetically, if Christopher Byers - - oh - - a person,

1 if an eight-year-old boy who had been beaten on the head, had
2 been stripped of his clothing and had been hog-tied with shoe
3 laces, if there had been being a process by which he was
4 emasculated, that his testicles and the skin of his penis was
5 removed with a knife, is there, or is it consistent with that
6 hypothetical that a conscious person, or semi-conscious person
7 would in fact struggle?

8 A] Yes, they would.

9 Q] In the ensuing struggle that hypothetically would take
10 place, is it possible that the tip of the knife similar to the
11 one marked State's Exhibit #42, would cause injuries consistent
12 with those found in State's Exhibit #308?

13 A] Yes, this injury is that consistent.

14 Q] Specifically, does it appear as though the tip of this par-
15 ticular knife could make some of the gouging injuries that occur
16 on the inner aspect of the thighs?

17 A] Yes, it would.

18 Q] And considering that the scrotum is at the, I guess, at the
19 apex of the legs, and the legs form a "V" I believe that you had
20 there are some instances of injury where you had to, in fact, to
21 spread the legs; is that correct?

22 A] Yes, oh, yes, to see them.

23 Q] And so once you, and I guess the point is, once you get
24 toward the scrotal sac, the area that this could happen without
25 causing incidental injury, narrows, does it not?

1 A] Yes.

2 Q] And if you cut on the left-hand side, you would subject the
3 right interior thigh to the top of the survival knife, to the
4 top of a survival knife, or an edge that had something consist-
5 ent with this, and then you would subject the knife blade itself
6 to the scrotal sac, would you not?

7 A] Correct.

8 Q] So you could have, it would then be possible to have inci-
9 dental injury to the buttock of the opposite side of the saw-
10 point side, or the serrated side; is that correct?

11 A] Correct.

12 Q] And then if you also did it from the right side, you would
13 have corresponding injury on the left side from the other side
14 of the blade; is that correct?

15 A] Correct.

16 Q] Now with regard to how this could be done, if skin is
17 stretched or pulled, if it provides some sort of - - I believe
18 you testified that specifically with regard to turtles, they had
19 to get some sort of purchase on whatever it was that they were
20 going to feed on. With regard to, uh, with regard to the
21 scrotal sac and the penis, would it have been easier cutting it
22 if it were pulled taut?

23 MR. BURT: Calls for speculation.

24 MR. HOLT: If he can answer, uh, he may be able to
25 answer.

1 THE COURT: Go ahead.

2 DIRECT-EXAMINATION, continuing:

3 A] If it's pulled taut, it would be a lot easier.

4 Q] On page four, as to Steven Branch: "the relevant forensic
5 testimony at trial, like the autopsy report, noted the presence
6 of abrasions or cuts overlying the facial area of the right
7 side, a confluent area of abrasions, scrapping, involving the
8 face, also overlying this area there are multiple irregular
9 gouging type cutting wounds. Such wounds, the testimony
10 continued, was consistent with the use of a sharp object such as
11 a serrated knife."

12 When you said that those particular wounds had an "irregular
13 gouging type cutting wound," did those wounds appear to be
14 incised?

15 A] Yes, they're cuts.

16 Q] Okay. And are these the wounds that you described as dome
17 shaped?

18 A] Some of them; yes.

19 Q] Did you see corresponding contusions associated with those?

20 A] Yes.

21 Q] Was that contusion - - well, did that contusion, along with
22 the presence of hemorrhage, lead you to form the opinion or was
23 the foundation actually for the opinion that these were antemor-
24 tem injuries?

25 A] Yes.

PROPERTY OF ARKANSAS SUPREME COURT/COURT OF APPEALS

CR 10 00456

Appellant(s)

Charles Jason Baldwin
lessie Lloyd Misskelley, Jr.

r. Craighead Circuit, Western District
Hon. Charles David Burnett, JUDGE
CR93-450 (BALDWIN), CR93-47 (MISSKELLEY)

Appellee(s)

State Of Arkansas

25 Volume Supplemental Record Lodged
3 Envelopes Exhibits
1 Small Box Exhibits

Writ Returned
Supplemental Record Filed
June 11, 2010
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By Renee Herndon

Volume 11

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IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

CR-93-4506

~~JASON CHARLES BALLWIN~~

DEFENDANT

FILED

APR 21 2010

Ann Hudson
Circuit Court Clerk

VOLUME X of X

1 Q] With regard to Michael Moore, it said: "the trial testimony
2 adduced as to the injuries suffered by Michael Moore, again,
3 described certain serrations and abrasions, including some on
4 the chest and the hands, which were again deemed consistent with
5 the use of a serrated knife, such as the lake knife."

6 Did those, do you recall which ones are referenced in that par-
7 ticular instance?

8 A] Can you repeat the question, sir?

9 Q] Do you recall what injuries they're referring to on Michael
10 Moore, on the bottom of page 4?

11 A] I think the cuts on the hands, the injuries on the hands.

12 Q] Let's see. Uh, "again, described certain serrations and
13 abrasions and some on the chest and the hands." The wounds on
14 the chest?

15 A] Yeah, the chest. Okay. Right here (indicating).

16 Q] That's in Exhibit number...

17 MR. PHILLIPSBORN: ...Your Honor, as we're doing
18 this, just so we understand the pronoun "they," I
19 think applies to Mr. Burt throughout that letter.

20 MR. HOLT: Yes.

21 MR. PHILLIPSBORN: Okay.

22 DIRECT-EXAMINATION, continuing:

23 Q] These particular wounds right here (indicating), did you
24 see a - - how would you characterize this pattern?

25 A] It looks like a pattern of striation, to me. They're

1 almost equally distanced apart, almost the same length.

2 Q] Do you know, uh, well, in terms of how they are formed, the
3 linear parallel lines, uh, in some length from here, this
4 distance here to the bottom here, close to where the ruler is,
5 do you know of any animal that causes a parallel linear scratch
6 mark that long?

7 A] No.

8 Q] And I'm going to expand - - aquatic, or otherwise, I guess?

9 A] No.

10 Q] Did you see hemorrhage in this particular wound?

11 A] Well, there are scrapes on the skin, so there's, you can't
12 really see the hemorrhage in the wound.

13 Q] I see.

14 A] Yeah.

15 Q] They stated: "again, the serrated injuries on the right
16 side of Michael's chest are claw marks as depicted in autopsy
17 photograph from the relevant literature which we will supply you
18 at the meeting."

19 Were you ever supplied any "relevant literature" with regard to
20 those particular wounds that had those characteristics?

21 A] No.

22 Q] And considering the fact that these boys were all, that,
23 that submersion affectively ended each of their lives, you know,
24 if they were, if there were wounds, if there were postmortem
25 wounds while on land in the fifteen hours that they were missing

1 someone would then have had to have taken the bodies and put
2 them in water. But that couldn't happen, could it, because at
3 least two of them had evidence of drowning?

4 A] Correct.

5 Q] So at least two of them went into the water alive; is that
6 correct?

7 A] Yes.

8 Q] So would that explain why you wouldn't necessarily - - you
9 don't really see any ant bites on these, which is sort of
10 ubiquitous all over Arkansas for dead people outside?

11 A] Correct.

12 Q] You don't see any canine teeth on these, do you?

13 A] No, there's no canine teeth.

14 Q] You don't see any cockroach bites, do you?

15 A] No.

16 Q] Again, so if this were brought to you in 1993, if this
17 meeting had taken place in 1993, or if an expert had testified
18 in 1994 with regard to animal predation in these particular
19 cases, would it have been your opinion then that there is no
20 physical evidence of animal predation?

21 A] Correct. That's my opinion.

22 Q] And is it your opinion to a reasonable degree of medical
23 certainty in the field of forensic pathology?

24 A] Yes.

25 Q] With regard to the knowledge and experience and education

1 that you've gained with regard to herpetology, and specifically
2 turtles in the state of Arkansas, did you see any wounds on any
3 of these three boys that had wounds that were consistent with
4 any species of turtles located in the state of Arkansas?

5 A] There are no wounds consistent with turtle bites.

6 Q] Did you see any consistent with any other imaginable
7 creature?

8 A] None.

9 Q] Now just as a point to clarify, with regard to this
10 environment is it your opinion that there weren't turtles out
11 there?

12 A] Oh, I believe there are probably turtles in there. I mean,
13 you find turtles in a lot of bodies of water here.

14 Q] Have you had occasion to see turtles out in bodies of
15 water?

16 A] All of the time.

17 Q] Has the Crime Lab performed autopsies on bodies where it
18 was known for a fact that turtles were seen in the immediate
19 area at the immediate time the body was discovered?

20 A] Yes.

21 Q] Anecdotally, have you had even a recent case of that
22 nature?

23 A] Yes.

24 Q] And what did you observe - - tell me the facts particularly
25 about what you observed and what you saw?

1 A] Well, you know, I pay particular attention after the
2 bodies, a lot of the bodies come in, the bodies coming in out of
3 water, for animal predation after this was all brought up. And
4 we just had a case, uh, maybe a month or two ago, and individual
5 was found unclothed in a body of water in Little Rock, and there
6 was literally hundreds and hundreds of turtles out there, I
7 mean, they're a lot...

8 Q] ...specifically, what body of water?

9 A] It was off the Interstate.

10 Q] Was it a lake, a ditch, or what?

11 A] Yeah, it was like a big pond. It wasn't near the river.

12 So when that body came in, I looked to see if there was any
13 turtle bites, knowing there were turtles in there, and I didn't
14 see any, and none of the other doctors saw any turtle bites.

15 Q] And is that your opinion to a reasonable degree of certain-
16 ty within the field of herpetology, with regard to turtles?

17 A] Yes.

18 MR. HOLT: Could I have a moment, Your Honor?

19 THE COURT: Yes.

20 (Pause.)

21 MR. HOLT: Just a follow-up.

22 DIRECT-EXAMINATION, continuing:

23 Q] How long had that body been in water?

24 A] It was there approximately two or three weeks.

25 Q] So it did show some signs of decomposition?

1 A] Oh, it was decomposed; definitely.

2 MR. HOLT: I pass the witness. Oh, excuse me. Can
3 I continue for just a second? I just have one other
4 thing.

5 THE COURT: Yes.

6 DIRECT-EXAMINATION, continuing:

7 Q] One more exhibit that was introduced, #48-00, uh, it's a
8 letter that was written, and I believe it was attached to some
9 of the pleadings in this particular case. Do you recognize
10 that?

11 A] (Witness examining same.) Yes. It's a letter written by
12 Dr. Charles Kokes, the chief medical examiner, and myself.

13 Q] What's the date of the letter?

14 A] May 30th, 2008.

15 Q] And in that letter you referenced that, or it is referenced
16 that "first, Dr. William Q. Sturner, the chief medical examiner
17 at the time of the autopsies and I first examined the bodies of
18 the three boys, along with Dr. Kevin Dougan, a forensic dentist.
19 Dr. Dougan's findings that none of the wounds appeared to be
20 human bite marks was subsequently corroborated by Dr. Harry
21 Mentzer. Second, as part of the autopsy process, tissue samples
22 were taken from some of the superficial and penetrating wounds.
23 When examined grossly and microscopically, these samples demon-
24 strated the presence of hemorrhage, clearly indicative of
25 antemortem injury and not postmortem animal activity."

1 Is there any specific microscopy, I guess, that you were refer-
2 ring to in that?

3 A] Around the mutilation.

4 Q] And specifically the, I think there was...

5 A] ...the penis, around that area.

6 Q] "Third, physical examination to the penetrating wounds
7 showed a lack of soft tissue bridging, typical of wounds caused
8 by tearing or biting. These wounds did show clearly incised
9 edges, indicating that they were caused by a sharp instrument."
10 If you could, when you say "a sharp instrument," could you sub-
11 stitute for the word "instrument," implement?

12 A] Yes.

13 Q] Meaning something that, in fact, was man-made?

14 A] Yes.

15 Q] Okay.

16 MR. HOLT: I pass the witness.

17 THE COURT: All right, who's going to jump up?

18 MR. PHILLIPSBORN: Your Honor, I am.

19 CROSS-EXAMINATION

20 BY MR. PHILLIPSBORN:

21 Q] Doctor, when you were testifying earlier today, you noted
22 that part of the process that you have been through since your
23 testimony in this case, your testimony in 1994, has been an
24 annoying process; correct?

25 A] Annoying? I mean, it's taken up a lot of my time.

1 Q] But annoying also because you've been, in your view,
2 subject to unfair attack?

3 MR. HOLT: Object to the question, Your Honor.

4 It's argumentative.

5 THE COURT: Sustained.

6 CROSS-EXAMINATION, continuing:

7 Q] Your characterization of it being annoying this morning was
8 because there had been a suggestion at one point that there was
9 a human bite mark; correct?

10 A] Correct.

11 Q] And then a subsequent point, it was annoying that other
12 people were now suggesting that there was animal predation;
13 correct?

14 A] Correct.

15 Q] And annoying in part because, as you say, it's taken a fair
16 amount of you time to have to address these issues; correct?

17 A] Correct.

18 Q] Uh, and also annoying because your view is that, uh, there
19 is a sound basis for the opinions you've formulated in this
20 case; correct?

21 A] Correct.

22 Q] And, and Doctor Peretti, would you agree that essentially
23 what you were explaining to the Court today and what you were
24 explaining yesterday, is that your views have not changed; your
25 views and opinions have not changed since you prepared the post-

1 mortem examination reports in May of 1993?

2 A] Correct. I don't think I would have done anything
3 differently. I've read, you know, these over multiple times and
4 I keep on asking myself what could I have done differently.

5 Q] And, and would it be fair, and again, please correct me if
6 what I'm saying is wrong, would it be fair to say that part of
7 what you also have been explaining over the past two days is
8 that, uh, having reflected on it, there's nothing you would
9 change in the testimony you gave in the trial of these cases;
10 correct?

11 A] Correct.

12 Q] Now I want to ask you a little bit about, uh, the back-
13 ground that you described to us, the professional background
14 that, that you also described when you took the witness stand in
15 these cases in 1994. You received some anatomical pathology
16 training at Brown University in the 1980s; correct?

17 A] Correct.

18 Q] Brown being Providence, Rhode Island; correct?

19 A] Correct.

20 Q] And, uh, was it a result of that training that you actually
21 first came in contact with Dr. Sturner, who is present in the
22 courtroom?

23 A] Well, no, actually, uh, I've been involved in forensics for
24 - - I've always been interested in forensics and I, actually, I
25 knew Dr. Sturner before I went into forensic pathology.

1 Q] Uh, and, uh, but without prying into your, uh, into private
2 matters, how long, uh, had you known Dr. Sturner prior to your
3 time at Brown?

4 A] Well, I knew him throughout my entire undergraduate at St.
5 Louis University.

6 Q] Uh, but in any event, you went to Brown, you did work there
7 and you were also working on a part-time basis for the state of
8 Rhode Island, uh, the state of Rhode Island's Medical examiner's
9 office; correct?

10 A] Correct.

11 Q] And that was at a time when Dr. Sturner was the medical
12 examiner in Rhode Island; correct?

13 A] Correct.

14 Q] And Dr. Sturner is the same Dr. Sturner who has been here
15 throughout your testimony for the past two day; correct?

16 A] Correct.

17 Q] And, uh, you then went on to the office of the chief
18 medical examiner in the state of Maryland; correct?

19 A] Correct.

20 Q] Now the office of the chief medical examiner in the state
21 of Maryland at the time you went there was a, uh, in terms of
22 the profession of forensic pathology, was a well-known training
23 ground; correct?

24 A] It still is.

25 Q] Uh, and, uh, would it be fair to say that the persons who

1 served as the chief medical examiner, again, in the state of
2 Maryland, up to the time that you received your training, were
3 well-known in the field?

4 A] Correct.

5 Q] Including Dr. Werner Spitz; correct?

6 A] He wasn't there when I was there.

7 Q] But you know, you knew, you know now and you knew at the
8 time you took your training, that he had been in that office?

9 A] Correct.

10 Q] Now you actually went through the, uh, all of the training,
11 uh, that, uh, was, uh, offered to a fellow at the office of the
12 chief medical examiner in Maryland; correct?

13 A] Yes.

14 Q] Now Doctor, you did at one point attempt to, uh, pass your
15 boards; correct?

16 A] Correct.

17 Q] And, and just so the reference here is clear, uh, there is
18 a, uh, there is a professional organization that accredits
19 physicians in a number of disciplines in pathology, including
20 anatomic and clinical pathology?

21 A] Correct.

22 Q] And is it, to your knowledge, is it true that for a person
23 to obtain a sub-specialty certification in forensic pathology,
24 that physician has to be certified in anatomic and/or anatomic
25 and clinical pathology?

1 A] That is correct.

2 Q] Now were you actually able to obtain your certification in
3 either anatomical or clinical pathology?

4 A] The time I did the autopsies, I was still board eligible,
5 and for personal reasons, uh, I took the exam once, twice and I
6 wasn't successful; the first time I took it just to take it, and
7 the second time I didn't make it. Then for personal reasons, I
8 elected not to get certified. So at the time I did these, I was
9 still board eligible. So you can't say I wasn't board certified
10 - - I was board eligible and I still could have taken the exam,
11 but I didn't.

12 Q] Uh, how many times, actually, can you, can you take and
13 fail the boards?

14 A] I think it's, I don't know, I think it's five times.

15 Q] And, and you're certain of that?

16 A] I believe it's five. It may have changed, I mean, I'm not
17 involved with it. That's twenty years ago.

18 Q] Now, uh, did you part ways with the office of the chief
19 medical examiner in the state of Maryland because Dr. Sturner
20 had left Rhode Island and come to Arkansas and offered you a
21 position here?

22 A] Well, Dr. Sturner came to Arkansas and I was, when I was in
23 Maryland, I was still looking for another position, and I had a
24 very good relationship with Dr. John Smialek but I was just
25 really tired of the workloads and the volumes of homicides we

1 were doing and the pay scale wasn't that good there at that
2 time, so I was looking around. And Dr. Sturner had come to
3 Arkansas. That's how that played out.

4 A] Had, had there been any concern expressed because of the
5 policies at the office of the chief medical examiner about what
6 was happening with you and the boards?

7 A] Oh, no, not at all.

8 Q] Now, uh, I want to ask you a bit about the, uh, the files
9 that were maintained in the context of these cases and just,
10 just so you know where I'm going, uh, what I'd like to do is,
11 with your assistance, to describe for the Court and the record
12 what kind of information a lawyer would have been able to get
13 access to, prior to the trials of this case, and particularly, I
14 mean, defense counsel. If defense counsel had approached you
15 and consulted with you, what kind of information might have been
16 available?

17 A] Okay. Sure. That's very easy to answer. The way the law
18 is written in the state of Arkansas, we need permission from the
19 prosecuting attorney. So if you send a letter saying you're re-
20 questing whatever, okay, we will send a letter back saying
21 contact prosecuting attorney Jones. He subsequently will send
22 us a letter saying release the entire file to, to you, for
23 example. So we have no problem releasing it, but the way the
24 law is written, we have to get permission from the prosecutor.

25 Q] The point being, let's say again, hypothetically, uh, let's

1 say the prosecutor does provide whatever permission you needed
2 and the defense lawyer seeks to confer with you. Would you
3 document that consultation?

4 A] Oh, yeah, yeah, I have some notes in the file where I met
5 with the defense attorney. Sure.

6 Q] Okay. And, and would it be fair to say now, being specific
7 to this case, that, uh, in the instance of the, uh, Jason Bald-
8 win defense that involved two lawyers, one named Paul Ford and
9 the other named Robin Wadley, if and when Mr. Ford or Mr. Wadley
10 had contact with you, would you have documented the contacts?

11 A] I think so. I think there's some documentation in the file
12 where I met with them. The prosecutor did give permission and
13 there were a lot of phone calls, uh, I have an open-door policy
14 and I personally prefer to discuss the cases with both sides be-
15 fore we go to trial, uh, I like doing that.

16 Q] And, uh, and assuming that a defense lawyer, for example,
17 calls you to talk to you, do you also document that?

18 A] Sometimes. It depends if I'm on the road or not. I mean,
19 I'm not very good at record keeping as far as phone conferences.

20 MR. PHILLIPSBORN: Your Honor, I'm going to ask
21 that two documents be marked as Petitioner's next in
22 order.

23 Your Honor, with the Court's permission, I'd like
24 to mark these pieces of paper, because they are
25 related as #76 a and b, for the record.

1 THE COURT: That's fine.

2 MR. HOLT: No objection.

3 CROSS-EXAMINATION, continuing:

4 Q] Doctor, I wanted to show you a piece of paper that's been
5 marked as Exhibit #76a, sir, and ask you, is that the kind of
6 document that you generate or that your office generates in a
7 case like this case when a defense lawyer makes contact with the
8 office?

9 A] (Witness examining same.) Yes.

10 A] And looking at that particular document, can you tell one
11 way or the other whether it is a document that was generated in,
12 in this particular case?

13 A] (Witness examining same.) Yes.

14 Q] Does it reflect that there's a, uh, that there was some
15 contact, uh, initiated by defense counsel, uh, who directed an
16 inquiry to your office?

17 A] Yes, it does.

18 Q] Looking At #76b, I'm going to ask you, is the document that
19 I'm handing you, #76b, on a similar pre-printed form and a docu-
20 ment that's kept for a similar purpose, meaning to allow your
21 office to document a contact by defense counsel in the context
22 of the case?

23 A] (Witness examining same.) Yes.

24 Q] Okay. And, and to your knowledge, is that document, #76b,
25 a document generated in the context of this case, that among

1 other things, evidences a contact between attorney Paul Ford and
2 your office?

3 A] (Witness examining same.) Yes.

4 Q] Do you see any handwriting on #76b that is familiar to you?

5 A] Yes, that's my handwriting, that he called.

6 Q] Okay. And so again, just so we understand the nature of
7 the records that would be generated, in the instance of that
8 particular call, Mr. Ford, uh, makes a call and you actually
9 note down part of what occurred during the call?

10 A] Yeah, it was a brief conversation.

11 Q] Okay. And so would it be fair to say that if an individual
12 were, were trying to ascertain who you communicated with and
13 specifically, which defense lawyers tried to contact you and
14 when they contacted you, one of the ways such a person can do
15 that would be to look through the file and to get documents like
16 #76a and #76b?

17 A] Right, 'cause that's the secretaries who take the call.
18 And then they put that in the file and when, for example, you
19 want to make an appointment, they just set it up and say I have
20 an appointment with you on such and such date. I don't do any
21 of the scheduling.

22 Q] Uh, now those are documents that in your experience, uh,
23 at, at the time of this case, so 1993 and 1994 were kept in the
24 ordinary course of the Laboratory's business?

25 A] Yes, sir.

1 Q] And they would have been maintained in your file, again, in
2 the course of the Laboratory's business, just to allow complete
3 records to be kept?

4 A] Correct.

5 MR. PHILLIPSBORN: I'd like to move in #76a and
6 #76b, Your Honor.

7 MR. HOLT: No objection.

8 THE COURT: All right, then they'll be received.
9 (WHEREUPON, Petitioner's Exhibit #76a and #76b were admitted and
10 received and are appended on pages and .)

11 CROSS-EXAMINATION, continuing:

12 Q] Now to the best of your recollection, Doctor Peretti, and
13 this is again on the subject of contacts between yourself and
14 defense counsel, uh, would efforts have been made, uh, according
15 to the practices and procedures of the Laboratory or the staff
16 working with you to keep track of calls that were directed to
17 you from defense counsel, either seeking information or seeking
18 an appointment?

19 A] Right. The secretaries would do that and put that in the
20 file.

21 Q] As you, uh, as you sit here now, do you have recollection
22 of attorneys Ford and Wadley?

23 A] Oh, yes.

24 Q] Okay. And, and drawing your attention back to the time
25 that this case was pending prior to trial, do you recall having,

1 uh, having phone interaction with attorney Paul Ford?

2 A] Oh, yes.

3 Q] Uh, do you recall whether at any time Mr. Ford actually,
4 uh, made the arrangements necessary to get a complete copy of
5 your files, including all of the notes in it?

6 A] That I don't know. That would be in the file, because I
7 don't handle this. At the Crime Lab there's a protocol for re-
8 leasing the file, you know, there's a paper trail, okay, so that
9 would be in the - - and the secretary and the staff would handle
10 that.

11 Q] And, and for example, you anticipated where I was going,
12 for example, if a lawyer had requested a complete set of autopsy
13 photos, would you expect, given your experience in the medical
14 examiner's office, would you expect that someone on your staff
15 would have documented that request?

16 A] Yes, 'cause that would be a release, 'cause when you pick
17 up the records, there's a release you have to sign, saying you
18 received them.

19 Q] So for example, if Mr. Ford had actually asked for a com-
20 plete set of the autopsy photographs from your office, you would
21 have expected a record of that to be generated; correct?

22 A] Correct.

23 Q] Similarly, had he requested a, uh, a file, including all of
24 the notes that were in the file, assuming that the prosecutor
25 had consented, there would be documentation where someone on the

1 staff had made the arrangements to copy the file; correct?

2 A] Yes.

3 Q] Now by the time - - let me start again. Do you recall, Dr.
4 Peretti, testifying, uh, at the trial of Misskelley before you
5 testified at the Echols and Baldwin trial?

6 A] That was the first trial.

7 Q] And, uh, do you recall, one way or the other, whether after
8 you testified at the Misskelley case, either Mr. Ford or Mr.
9 Wadley had any contact with you; do you recall one way or the
10 other?

11 A] No, I don't.

12 Q] Now Doctor, I'd like to move to another area. The, uh, the
13 next area is to discuss a little bit about the meeting that you
14 talked about today, and so that we're both oriented, I am making
15 reference to a meeting that took place in May of 2007. Do you
16 recall there being a meeting that you and other persons at the
17 Crime Laboratory in Little Rock hosted, that included some of
18 the persons that you've mentioned earlier, including Dr. DeMaio?

19 A] Yes, I remember that meeting.

20 Q] Dr. Souviron?

21 A] Yes.

22 Q] Dr. Michael Baden?

23 A] Correct.

24 Q] Another forensic odontologist from Canada, Dr. Wood?

25 A] Correct.

1 Q] And Dr. Wood is the person who actually gave you a book
2 during that meeting; correct?

3 A] Yes, he did.

4 Q] Uh, now Dr. Spitz was not at the meeting; correct?

5 A] Correct.

6 Q] Is that the first time, in other words, is the meeting
7 that, uh, I'm referencing in these questions, the May 2007 meet-
8 ing, the first time that you had sat down with some outside
9 forensic pathologists, meaning persons other than colleagues of
10 yours, including Dr. Sturner, persons employed by defense
11 counsel, to discuss this case?

12 A] That was the first time.

13 Q] Uh, and had defense counsel for, uh, Mr. Baldwin or Mr.
14 Echols or Mr. Misskelley, at or near the time of the trials of
15 these cases, sat down to meet with you, that would have been
16 documented in your file; correct?

17 A] Yes.

18 Q] Had they, uh, had counsel sat down and met with you with an
19 expert present, like another forensic pathologist, that would
20 have been documented in your file?

21 A] Yes.

22 Q] In relation to the questions you were asked by Mr. Holt
23 this morning, uh, again, connected with this post-conviction
24 meeting that took place in May of 2007, by the time of that
25 meeting, uh, you had been made aware that there certain persons

1 employed by the defense who purported to have different view
2 points from the ones you had expressed; correct?

3 A] Yes.

4 Q] Now prior to the meeting, you knew Dr. Vince Di Maio;
5 correct?

6 A] Oh, I know him personally, and I've socialized with him in
7 the past.

8 Q] But I mean, in other words, he is a person that you have
9 known for some period of time?

10 A] Oh, a long time. I knew him when I was in Maryland.

11 Q] He, he is well-known in your field; correct?

12 A] For gunshot wounds, yeah. Correct.

13 Q] Well, actually, do you recall that in the course of the
14 Echols/Baldwin case, you were, you were specifically asked about
15 Dr. Di Maio?

16 A] I believe there's something in there; correct.

17 Q] At the trial?

18 A] Yes.

19 Q] And, and that you explained as of 1994 that you were on a
20 first-name basis with him; do you recall that?

21 A] Correct.

22 Q] And that was true; correct?

23 A] Oh, yes.

24 Q] And also, you were talking about his being well-known on
25 gunshot wounds, you were actually, uh, uh, you were actually

1 asked whether you had reviewed and were aware of Dr. Di Maio's
2 book in connection with certain, uh, opinions that you were
3 rendering about Lividity; do you recall that?

4 A] Correct.

5 Q] So in other words, in addition to gunshot wounds, Vince Di
6 Maio is somebody whose work you would have relied on, uh, for
7 issues like estimates of time of death and the impact of
8 Lividity?

9 A] His textbook is one of many reference textbooks that
10 forensic pathologists use.

11 Q] Uh, now you spent a little bit of time at Miami/Dade during
12 the course of your training; correct?

13 A] Correct. That was just, I went down there a month with Dr.
14 Davis, uh, just to see how different offices did things. And
15 when I was doing my training, they let me go down there for one
16 month.

17 Q] Did you, when you were down there, meet the chief of odon-
18 tology, Dr. Richard Souviron?

19 A] No.

20 Q] Were you aware when he met with you in May of 2007 that he
21 had been the chief of odontology at Miami/Dade for a number of
22 years?

23 A] He, he told me that. Now I didn't get to meet him, I just
24 stayed with the pathologist.

25 Q] Well, he was in the room with you, right?

1 A] Right. No, I'm saying when I was in, when I spent my time
2 in Miami, I never met the man.

3 Q] Now are, are you aware that in the course of this case, Dr.
4 Richard Souviron actually prepared, uh, some, or transparencies
5 or a transparency, uh, of, of the knife, a, a, to scale trans-
6 parency of it?

7 A] The only time I've seen it was when he was on TV criti-
8 cizing me with it. That's the only time I've seen it.

9 Q] Well, again, I'm sorry that you had to hear that the way
10 you heard it, but that's - - that wasn't my question. What I
11 was asking you is have you been made aware that there was a
12 transparency made of that knife, uh, so that it could be
13 essentially assessed together with one-to-one photographs of the
14 marks on the bodies?

15 A] The only time I was aware of it was when I saw it on TV.
16 If I didn't see it on TV, I would have never known.

17 MR. HOLT: And Your Honor, I just to pose an ob-
18 jection to sort a clarification, uh, Mr. Phillipsborn
19 said "photographs," and there was only one exhibited
20 photograph that Dr. Souviron said didn't match the,
21 uh, didn't match the knife in the top serrated pattern
22 and that particular photograph, uh, was of Michael
23 Moore.

24 And that's the only one photograph that was
25 admitted and used as an exemplar, and not from the

1 other two.

2 MR. PHILLIPSBORN: Your Honor, the record speaks
3 for itself and my review of the record indicates that
4 he was asked opinion-related questions about other
5 remains as well, but I accept the point made and as I
6 said the record is the record.

7 MR. HOLT: Well, the record is the record but he
8 mentioned the overlay and then the particular photo-
9 graph.

10 MR. PHILLIPSBORN: And I know we're, uh, we're at
11 lunchtime, so let me just ask you one question before
12 we, we, uh, take a break, if it please the Court.

13 CROSS-EXAMINATION, continuing:

14 Q] And that is do you actually recall the subject of overlays
15 coming up prior to your testimony in the Echols/Baldwin case?

16 A] I'm trying to think.

17 Q] In 1993 or 1994?

18 A] I truthfully don't recall, but if there's evidence of it, I
19 wouldn't disagree with you. Okay.

20 Q] Well, maybe we can get into that after lunch.

21 THE COURT: We'll be in recess until one o'clock.

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

24 THE COURT: Court's back in session.

25 MR. PHILLIPSBORN: Your Honor, may I just ask a

1 part one question that I would think help Mr. Burt and
2 myself and maybe even Dr. Peretti, because the three
3 of us talked briefly about scheduling. I gather it is
4 the Court's intention to go all the way through this
5 afternoon; is that correct?

6 THE COURT: Yes, sir. I hope we can finish today
7 but at a reasonable hour.

8 MR. PHILLIPSBORN: Well, we're all hoping that,
9 Your Honor. But thank you. That, that helps clarify.
10 Your Honor, may I approach?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION, continuing:

13 Q] Good afternoon, Dr. Peretti.

14 A] Good afternoon, sir.

15 Q] Doctor, I would like to show you what's been marked Exhibit
16 #77 for identification and ask you if that is yet another copy
17 of another document that is from the medical examiner's file in
18 this case?

19 A] (Witness examining same.) Yes.

20 Q] And, uh, at least according to the, uh, writing on it, does
21 it appear to you that the document was dated in 1994?

22 A] Yes.

23 Q] Now, uh, that document has handwriting on it; is that
24 correct?

25 A] Yes, sir.

1 Q] And can you identify any handwriting on it?

2 A] (Witness examining same.) I think it's, uh, Pat Calhoun,
3 uh, she's since retired, but I recognize the writing.

4 Q] And, and would that have been, uh, a person who was employ-
5 ed by the medical examiner's office?

6 A] Yes.

7 Q] Now that particular document, and actually, will you be
8 kind enough to tell us when it's dated?

9 A] January 5, 1994 at 10:50 a.m.

10 Q] And, uh, at least based on the contents of the document,
11 does it appear to you the document or contact between the
12 prosecutor's office and the medical examiner's office?

13 A] Yes, it is.

14 Q] And, and does it appear the document a contact in which one
15 of the prosecutors in this case when it was at the trial level,
16 was asking about the status of some overlays?

17 A] Correct.

18 Q] And, uh, I think when we left off before lunch, what I was
19 asking you was whether you recall at the time the case was
20 pending at the trial level, whether you had been asked to
21 prepare any overlays of, uh, the knife that would have been
22 marked and received at trial as Exhibit #77, a large survival
23 knife that you looked at earlier today, uh, and overlays of that
24 knife. Do you recall our discussion of that?

25 A] Yes, I think what this is referring to, I did not personal-

1 ly do the overlays, okay? Another section of the Laboratory
2 does them. I didn't request the overlays; the investigating
3 agency did. Okay? So this, what this is telling me is that the
4 prosecutor is asking about them, uh, where they are, and it
5 probably had to go to another section of the Crime Lab. Okay?
6 Because we don't do that there, we only give the information out
7 what's in the file and they may have another section that did
8 make it into the file. That's how I interpret that.

9 Q] Now Doctor, if I could approach you for just a moment,
10 looking at Exhibit #77, uh, there appears to be some handwriting
11 that indicates that the overlays have not been done, but they
12 will be. Do you see that?

13 A] (Witness examining same.) It says "want to know overlays
14 in re to weapon hasn't been done, will be, supp the bill for
15 photos."

16 Q] Now do you know whether at any time, at least as far as
17 your contact with this case is concerned, while this case was
18 pending at trial, were any overlays of the weapon, namely, that
19 knife, Exhibit #77, made for you to look at and to apply to the
20 photographs so that you can testify about, uh, the character-
21 istics of that knife in relation to any of the wounds in this
22 case?

23 A] I truthfully don't know if I've looked at them, but if it's
24 documented somewhere that says I did, I did. I mean, that's a
25 long time ago, uh, like I said, I didn't -- this comes from the

1 investigating agency to do this. So sometimes a lot of things
2 are done, testing is done. It doesn't make it to our file be-
3 cause it wasn't requested by our section.

4 Q] Got it.

5 A] Okay. So in other words, if this was done by Trace,
6 whoever is requesting it, it would be in the Trace file, not in
7 the medical examiner's office file, because we didn't request
8 it. Am I clear about that?

9 Q] Thank you, Doctor. Nonetheless, uh, would you agree that
10 unless a, uh, Trace evidence examiner or some other forensic
11 scientist were to be asked about the overlay and the wounds, and
12 another person who could actually testify about any comparison
13 between an overlay of a weapon and a wound depicted in a photo-
14 graph taken during an autopsy, would have been you; right?

15 A] Me, or someone in the Trace section.

16 Q] So that we're clear, Exhibit #77 is, at least as far as we
17 can tell from the appearance of the document, is not specific-
18 ally addressed as Trace section, it's actually addressed to the
19 medical examiner's office; right?

20 A] That is correct.

21 MR. PHILLIPSBORN: Your Honor, I'd move Exhibit
22 #77 into evidence.

23 MR. HOLT: No objection.

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

25 (WHEREUPON, Petitioner's Exhibit #77 was admitted and received

1 into evidence and is appended on page .)

2 CROSS-EXAMINATION, continuing:

3 Q] Now again, based on your knowledge and understanding of the
4 way the files were maintained in '93 and '94, after that docu-
5 ment, #77, was generated, a copy of it or the original would
6 have been placed in the appropriate file in your office;
7 correct?

8 A] Correct.

9 Q] And a defense lawyer preparing for trial, getting ready for
10 example, to examine you if you're the pathologist who's going to
11 be testifying, uh, and again, assuming that the proper permis-
12 sion were given, could get access to the file and could see that
13 document in the file; correct?

14 A] That is correct.

15 Q] Now to move forward for a moment to the more present time,
16 I believe you have testified this morning that you looked, you
17 had had occasion to look at the knife that was presented to you
18 this morning; it was previously Exhibit #77 and these days is
19 Exhibit #42; it has been received as Exhibit #42, uh, and please
20 correct me if I'm wrong, but did you testify that based on your
21 examination the saw-tooth section of the knife or large
22 serrations approximately fit onto some of the marks that you
23 saw, for example, on the front right chest of Michael Moore?

24 A] No, I didn't say the chest. I said the genital region.

25 Q] Okay. So your questions were, uh, related to the genital

1 region?

2 A] Yes, sir.

3 Q] And am I correct...

4 A] ...that's what we're talking about today; you're referring
5 to today's testimony?

6 Q] Yes?

7 A] Okay. Just so I'm clear.

8 Q] And, and so, again, uh, with that clarification, what you
9 testified today, please correct me if I'm wrong, is that
10 according to your review of the evidence, uh, that the saw-tooth
11 and/or large serrated, uh, machined pattern on that knife
12 approximately fits in some of the markings?

13 A] Yes.

14 Q] In the crotch area of Mr. Byers?

15 A] Yes, it matches up; correct.

16 Q] Well, when you say "it matches up," uh, how is it that you
17 actually, uh, performed this examination?

18 A] Well, it reduplicates the pattern. I did not do, I want to
19 make it clear, I did not do the overlays. Someone else did the
20 overlays, and I just interpreted it.

21 Q] Okay. Well, we're not talking overlays here, are we?

22 A] That's what I thought you were referring to? No, no.

23 Q] No, what I was asking, that's why I wanted to make sure,
24 and I apologize, Doctor, but I was, I meant to differentiate the
25 testimony about overlays from the testimony you gave this

1 morning. Uh, the testimony you gave this morning, I believe,
2 was when you looked at some photographic evidence shown to you
3 and you had the knife in front of you, you indicated that in
4 your opinion some of the marks on Mr. Byers in the genital area,
5 uh, appeared to you to resemble or to approximate the saw-tooth
6 or serrated, uh, the serrations on the knife; is that correct?

7 A] Yes, sir.

8 MR. HOLT: Your Honor, as a point of
9 clarification, we have in the recent past had an
10 overlay produced of the knife pattern.

11 I assume that's the one that Dr. Peretti is
12 referring to, but considering that we in fact
13 introduced the knife into evidence here, it was, we
14 have the ability to overlay it on the one-to-one
15 photograph that was also introduced.

16 We didn't introduce the overlay, itself, if
17 that's the one that he's referring to.

18 THE COURT: Okay.

19 CROSS-EXAMINATION, continuing:

20 Q] And I noticed you weren't asked about the overlay this
21 morning, specifically, it was the recently produced overlay. So
22 is it fair to say that the testimony you gave this morning was
23 based on your eyeballing of the knife and relating it to the
24 photographic evidence that you were testifying about this
25 morning?

1 A] Yes, and I also used the overlay on the one-to-one photo.
2 So I used both.

3 Q] And, uh, uh, your testimony is that it approximates?

4 A] It reduplicates the pattern.

5 Q] So, so, and is your testimony that if the Court, for
6 example, were to lay the overlay of that knife against the
7 pattern injuries it would duplicate the serrations of the knife,
8 match, one-to-one?

9 A] The pattern of the serration on the skin is consistent
10 with the pattern of serration on the knife.

11 Q] If it's held flat against the skin, or if it's at an angle
12 the way Mr. Holt was trying to demonstrate, with the knife going
13 from front to back?

14 A] Well, both. I mean, you can see it on the overlay. On the
15 photograph, it's a little more difficult.

16 Q] And "you can see it on the overlay," meaning you can see it
17 on the overlay simply of the knife; right?

18 A] Right. The overlay of the knife on the pattern on the
19 skin.

20 Q] And again, are you saying that if the Court were to put the
21 knife up against the overlay of the knife up against the one-to-
22 one, it would match?

23 A] It matches.

24 Q] Now are you, are you aware of there being some one-to-one
25 photographs that have been introduced in evidence in this case

1 with an overlay of the knife, already?

2 A] I believe that has happened; correct.

3 Q] Now I want to move back for a moment, uh, Doctor, to the,
4 uh, meeting of May 2007, a brief series of questions and then
5 we'll move on. By the time that meeting had taken place, you
6 had been provided with certain materials from or by defense
7 counsel from Mr. Echols; is that correct, some literature?

8 A] Yes.

9 Q] And then the meeting itself took looking at it approximate-
10 ly - - how much time did you and the experts who were present,
11 in addition to yourself, talk?

12 A] Now you're talking about the meeting when Dr. Baden was
13 there, and Dr. Di Maio?

14 Q] Dr. Di Maio, Dr. Souviron, Dr. Wood?

15 A] Maybe about an hour; maybe a little longer.

16 Q] Uh, now would you agree that during the course of that
17 meeting, uh, you actually raised the issue of the retrospective
18 look at the, uh, that the medical examiner's office was going to
19 give some cases to essentially assist it in an understanding of
20 whether you had ever been involved in prior cases in which, uh,
21 there had been bodies found in water and/or animal activity?

22 A] Yes, I suggested that. That is correct.

23 Q] And I believe your testimony this morning was that in the
24 end, it proved not possible to do that particular research, in
25 part because the computer system did not permit that kind of

1 retrospective look; is that correct?

2 A] Correct. The way the data is entered into the system, I
3 wasn't just able to go back and pull all of the drownings. I'd
4 have to go back, you know, through thousands of cases and pull
5 each one.

6 Q] Doctor, are you aware of an article entitled *Incidence of*
7 *Autopsy Findings in Unexpected Deaths of Children and*
8 *Adolescents?*

9 A] Yes.

10 Q] In fact, you're one of the co-authors?

11 A] Yes.

12 Q] And it's an article that, uh, involved a retrospective look
13 -- the article was published in 2002; correct?

14 A] Correct.

15 Q] It involves a retrospective look at some autopsy reports
16 from the medical examiner's office of the Arkansas Crime Labora-
17 tory; correct?

18 A] That is correct.

19 Q] Uh, and autopsies that have been performed between 1997 and
20 through 1999; correct?

21 A] Correct.

22 Q] On children and adolescents; correct?

23 A] That is correct.

24 Q] And it involved a retrospective look at a total of 439
25 cases; is that correct?

1 A] That is correct.

2 Q] And another co-author of that article is Dr. Sturner; is
3 that correct?

4 A] That's correct.

5 Q] And, and I, I gather you were able to find the 439, uh, re-
6 ports in the data concerning the cases that you wrote about, you
7 and your co-author?

8 A] Well, at that time we had medical students at the Labora-
9 tory and we had them look up, pull all of the files. Now at the
10 present, we don't have the medical students and I would have to
11 do it all myself, I mean, back then we had help.

12 Q] And so, is, is part of what you're explaining that one of
13 the difficulties that you would have encountered in trying to do
14 the project that you had suggested you would undertake at the
15 time of the May 2007 meeting, is, is in addition to whatever the
16 computer problem was, that you did not have the assistance that
17 would have been needed to pull all of the cases?

18 A] Correct. I would have to do it all myself.

19 Q] Now it, it sounds as though part of what you were explain-
20 ing when Mr. Holt was reviewing with you some letters written to
21 you by defense counsel was that you did not provide a written
22 answer to all of the questions that had been put to you by
23 defense counsel in those letters; correct?

24 A] Correct.

25 Q] Uh, and, uh, essentially, you undertook to answer a number

1 of them here today; is that correct?

2 A] Yes, he asked me about them; correct.

3 Q] Let's talk a little bit about the scientific process and
4 sort of collegial collaboration with persons in your field. Is,
5 is it unusual for forensic pathologists working on a given case
6 to communicate with one another to exchange ideas about, uh,
7 issues that arise in a given case?

8 A] At the Arkansas State Crime Laboratory, we do that every
9 morning.

10 Q] Uh, and, and with respect to a case like this one, I think
11 you did say that it was, and correct me if this is wrong, the
12 meeting that was held in May 2007 was an unusual meeting;
13 correct?

14 A] Yes. I've never, uh, no one has ever proposed a meeting
15 like that before.

16 Q] "No one," meaning defense counsel on a case in which the
17 Arkansas State Crime Laboratory was involved, had not proposed
18 that you get together and have the ability to talk to the
19 defense experts before any courtroom proceedings; correct?

20 A] Correct. The only time that I know we've had some defense
21 experts come in, but they wouldn't talk to us; they just wanted
22 to see the tissues, see the stock jar and look at the reports.

23 Q] And is it fair to say that your, in your experience, it
24 does occur that competent and qualified pathologists working on
25 forensic cases, will have differences of opinion concerning the

1 case?

2 A] Yes, I've always maintained friends with all of the, what
3 should be labeled "forensic opinions."

4 Q] Uh, and do you recall in fact, testifying in the, uh, in
5 the course of the, uh, of, of the Echols and Baldwin case that,
6 uh, that you would actually expect the different forensic
7 pathologists would see cases differently?

8 A] Correct. I mean, people have different opinions.

9 Q] Now, uh, you are aware that, uh, the, uh, your work on the
10 case and the case generally has, uh, been reviewed by Dr. Di
11 Maio; correct?

12 A] Correct.

13 Q] Uh, Dr. Werner Spitz; correct?

14 A] Correct.

15 Q] And you know that Dr. Spitz actually authors, uh, standard
16 textbook on pathology; correct?

17 A] Correct.

18 Q] And in fact, one of the contributors to it is Dr. Sturner;
19 correct?

20 A] Correct.

21 Q] Uh, Dr. Baden has weighed in on the case and testified, you
22 know that; right?

23 A] Oh, yes.

24 Q] Uh, now in the course of your work, there have been
25 occasions on which you have actually relied on, on at least some

1 of the publications that have been edited by Dr. Spitz; correct?

2 A] His book is a reference textbook.

3 Q] Similarly with Dr. Di Maio; correct?

4 A] Correct.

5 Q] Dr. Baden is a well-known forensic pathologist; correct?

6 A] Yes.

7 Q] You're aware that a pediatric pathologist by the name of
8 Dr. Janis Ophoven has testified in this case?

9 A] Oh, yes.

10 Q] You're aware, uh, that a, uh, forensic pathologist from,
11 uh, from Stanford, Dr. Terri Haddix, H-A-D-D-I-X, has provided
12 written material in this case; correct?

13 A] Correct.

14 Q] Uh, you are aware that Dr. Souviron met with you and has
15 provided testimony in this case; correct?

16 A] Correct.

17 Q] You're aware that the chief odontologist of the state of
18 Tennessee, Dr. Tabor, T-A-B-O-R, has provided an opinion in this
19 case; correct?

20 A] I haven't read his opinion, but I know he has.

21 Q] Uh, and let, let me ask you this, Doctor. I gather that
22 since the meeting in May of 2007, you've had the opportunity to
23 discuss this matter with Dr. Sturner; correct?

24 A] Not really. I haven't seen Dr. Sturner since he retired.
25 I did see him yesterday when he came to town. But I haven't, I

1 haven't talked to him about the case on the phone.

2 Q] Well, are you saying - - let, let me ask you, sir - - since
3 the, uh, meeting in May 2007, other than the current chief med-
4 ical examiner, uh, at the Arkansas State Crime Laboratory, have
5 you, have you talked to any other professional colleague about
6 this case?

7 A] No.

8 Q] Doctor, I'm, I, I want to move another area, so just so you
9 know where, uh, what I'm asking about. I believe, subject to
10 your correcting, that you testified about your memory of
11 sequence of matters that were, that had come up during the Rule
12 37 proceeding that specifically involved the Echols defense; do
13 you recall that?

14 A] Yes, sir.

15 Q] And, and just to be clear, uh, Doctor Peretti, when you
16 were giving testimony earlier today about the defense expert
17 opinions that you have had to deal with in over the years, would
18 it be fair to say that it was in the context of Echols Rule 37
19 proceeding in which you testified in the late '90s, that the
20 issue of a human bite mark was brought up?

21 A] Yes, uh, I, I was criticized for not interpreting human
22 bite marks on the forehead and on the cheeks. Uh, and they
23 turned out not to be human bite marks.

24 Q] And, and, uh, just so, again, to try to clarify. With
25 respect to the exchange of information that took place between

1 you and other experts in May of 2007, would you agree that the,
2 uh, the bite mark related exchanges, uh, were focused on animal
3 predation and the suggestion by some of those, uh, by the
4 defense experts in attendance, that they believed, uh, that
5 there had been animal predation?

6 A] Well, what was approached to me was that they were human
7 bite marks. I don't recall any conversation - - I may be wrong
8 - - that's some time ago, uh, about animal predation. It was
9 more about, you know, the marks on the cheek, on the forehead,
10 were human bite marks.

11 Q] Your, uh, your recollection of what occurred in that meet-
12 ing, uh...

13 A] ...uh, we're talking about what meeting, now?

14 Q] May, 2007 meeting.

15 A] Okay. May, 2007. I thought you were referring to the
16 hearing. Okay.

17 Q] No. May of 2007.

18 A] I'm sorry.

19 Q] Was the emphasis there from the defense experts, the sub-
20 ject of animal predation?

21 A] Yes.

22 Q] Now I had thought, and this is where I'm inviting you to
23 correct me if I'm wrong giving that preamble, that you had
24 testified yesterday that you did not recall the subject of
25 animal predation coming up during the course of the Echols Rule

1 37 proceeding?

2 A] I don't recall that. I recall about it being human bite
3 marks.

4 Q] Uh, were you present when a pathologist from the, uh, city
5 of New York testified in that particular proceeding the, uh, the
6 pathologist in question, just to give you an orientation,
7 testified on October 28, 1998 and, uh, his name was Joseph Cohen
8 C-O-H-E-N?

9 A] I knew there was a pathologist, uh, I wasn't there when he
10 testified. I wasn't there when any of the other experts
11 testified.

12 Q] And, and so are you aware that when he testified, Dr. Cohen
13 actually testified and my reference date is 11/26, 11/28 and 1 of
14 this Rule 37 proceeding that he thought that the injuries to Mr.
15 Branch's cheek were, to him, resembled marine activity. Were
16 you ever made aware of that?

17 A] I don't have that. That's not in the file here. I don't
18 have any transcript from him.

19 Q] Okay. But again, I'm just asking you: were you ever made
20 aware that Dr. Cohen had actually raised, uh, the question in
21 his mind of whether, whether there was, whether there were bite
22 marks, animal bit marks, marine activity on the face of Steve
23 Branch?

24 A] I, I truthfully don't recall. I mean, I've never read his
25 testimony.

1 Q] Okay. And, and so just to clarify, if that subject came up
2 at the Echols Rule 37, uh, proceeding, you would not have been
3 made aware of it; correct?

4 A] I don't recall ever seeing it. Now maybe I have and don't
5 remember it, but I don't have a copy of it right now.

6 Q] And, and, uh, another one of the witnesses at that par-
7 ticular proceeding was a Dr. Davis. Uh, were you made aware
8 that of, uh, of, of his opinion, and I'll just read a portion of
9 it from an answer that he gave. I'll read the full answer at
10 page 1080, lines 23 through 25. He's asked about whether the
11 injuries to the cheek: "Is it your opinion that those were bite
12 marks?"

13 "I think that it's probable that the incised wounds that's
14 patterned on the left cheek is probably an animal bite, not a
15 human bite."

16 Were you ever made aware that he opined that?

17 A] No. I don't even recognize the name.

18 Q] Okay. The subject area now, Dr. Peretti, is the, uh, is a
19 few questions about the actual autopsies in this case.

20 A] Okay.

21 Q] Now just in terms of the autopsy protocol, the practices
22 and procedures at the Arkansas State Crime Laboratory medical
23 examiner's office, does the office, or did the office maintain a
24 log of, uh, a time log, for example, "autopsy starts at 'X' time
25 and it ends at 'Y' time"?

1 A] No, we do not do that.

2 Q] Do you maintain a log of who is in the, uh, the theater
3 room at the, uh, that the autopsy is conducted in?

4 A] Well, there are a number of cases going on at the same time
5 so it would be, uh, the techs are on duty, so we normally don't
6 do that.

7 Q] Okay. For example, uh, when you are, uh, when you are
8 conducting a postmortem examination, part of what you are doing
9 is taking notes; is that correct?

10 A] Yes.

11 Q] And, uh, just so the record on this is clear, are, are you,
12 uh, actually physically taking the notes as the autopsy is pro-
13 ceeding?

14 A] Well, I take my notes in stages.

15 Q] Uh, I'd like to show you some documents that I'm going to
16 ask you about. While Mr. Holt reviews the, uh, documents, let
17 me, uh, ask you this, sir. There are pre-printed forms that
18 include anatomic drawings to use, or that were used in '93 and
19 '94, uh, to assist you during the course of the note taking pro-
20 cess; correct?

21 A] Correct.

22 Q] And, uh, do you recall whether in this particular case, uh,
23 you used those pre-printed forms to make notes about each of the
24 three postmortem examinations?

25 A] I did.

1 Q] And those notes and pre-printed forms would have been part
2 of the file kept under each of the ME numbers, 329, 330 and 331
3 in this case; is that correct, sir?

4 A] That is correct.

5 Q] And so again, uh, given a, given the circuit prosecutor's
6 permission for you to, uh, provide information to the defense,
7 had defense counsel asked for your file, among other things,
8 what defense counsel would have received would have been copies
9 of these notes; correct?

10 A] Yes.

11 Q] Uh, and when you say you were taking the notes in stages,
12 can you explain just what your procedures, what your habit and
13 custom was at the time of these postmortem examination; just in
14 preparation of the notes?

15 A] Uh, what I'll do is, uh, I have the body diagram, I'll do
16 my external exam, uh, then, you know, I'll stop and, uh, you
17 know, document everything. And then proceed with the internal
18 examination, sometimes I'll be weighing the organs and the
19 handwriting of the organs may be in someone else's handwriting,
20 because my hands are bloody. Uh, and then I go back and I make
21 some handwritten notes, uh, you know, as far as the, uh, the
22 injuries that I found. And sometimes on the really complicated
23 cases like these, sometimes, uh, well, I know I did in this
24 case, I go back and revisit the body; sometimes, I get my lefts
25 and rights mixed up and, you know, try to get all of that taken

1 care of, you know, before the final autopsy report is issued.

2 So that's essentially how I do it.

3 Q] In order, let's say for a defense lawyer to understand part
4 of the process that you went through and some of the - - and the
5 records that you produced in the postmortem examination, would
6 it be fair to say that, uh, it would be important to the under-
7 standing of the observations you were making during the course
8 of the postmortem examination, to actually have in hand the
9 autopsy diagram with the, with the contemporaneous notes?

10 A] Let me understand your question. You're asking if the
11 autopsy diagrams are part of the official autopsy report?

12 Q] No.

13 A] I don't understand your question.

14 Q] What I'm saying, Doctor, is, what I'm asking you, sir, is
15 in order for an individual - - let me start again. Are the
16 notes made on the pre-printed diagram, uh, significant to an un-
17 derstanding of the observations that you made during the course
18 of the postmortem examination of a given case?

19 A] Yes.

20 Q] Okay. So with that in mind, I'd just like to ask you, sir,
21 uh, Exhibit #78, is that a, uh, is that a copy of notes that
22 were made in the course of one of the postmortem examinations in
23 this particular case?

24 A] (Witness examining same.) Yes.

25 Q] Uh, and again, uh, with proper authorization, defense

1 counsel could have gotten access to those notes; correct?

2 A] Oh, yes, it's part of the file.

3 Q] Okay. And, uh, just a quick look at this particular item:
4 At the top of it, it seems as though a name, deceased's name is
5 written, there is a black-out of the originally written name and
6 then another name is written on it. It was Christopher Byers
7 written at first, uh, but then Michael Moore written afterwards.
8 Who writes that name?

9 A] The autopsy techs did that.

10 Q] Okay. Uh, other than what is written at the top of the
11 page, are the notes that are reflected on the actual anatomic
12 diagrams and diagrams of skulls and the like, are those your
13 notes?

14 A] Yes.

15 Q] And those are the notes that are made prior to the prepa-
16 ration of any final typewritten reports?

17 A] Right.

18 Q] And again, just so we have a record of this, #79a, is that,
19 uh, is that a series of notes associated with one of the post-
20 mortem examinations in this case?

21 A] Yes.

22 Q] Uh, and that's the postmortem examination of Steve Branch;
23 is that correct?

24 A] Yes.

25 Q] And finally, this last one, #80, is that the set of notes

1 associated with the postmortem examination in this case?

2 A] Yes.

3 Q] Uh, and is that Chris Byers?

4 A] Yes.

5 Q] So you've done a postmortem examination, the notes have
6 been prepared and as you explained to us in complicated cases
7 like this one, you would sort of double-check things. And then
8 when is the report actually dictated, and I'll be specific: do
9 you recall when the reports were dictated in this case?

10 A] I know exactly how I did these. I did each boy separately
11 and what I did was, I went down and did the examination; when I
12 did the examination and as soon as I got through with it, I went
13 upstairs and I dictated it, okay, so I have it written on paper.
14 Uh, then I did that for each boy, okay. I think it took me
15 about a day and a half to do everything, if my memory serves me
16 correctly. Then what I did was, uh, after I dictated it, uh, I
17 went downstairs with a rough copy of the autopsy report, just to
18 make sure I, you know, covered everything, didn't miss anything,
19 you know, just to make sure I have everything included, because,
20 you know, these children have hundreds and hundreds of injuries
21 on them and I just wanted to make sure I didn't really, you
22 know, miss anything of importance; you know, sometimes you
23 dictate and then you get a phone call and you get distracted,
24 and then you don't know where you left off. So I just wanted to
25 be sure.

1 Q] Now the autopsies started on May 7th; correct?

2 A] Yes.

3 Q] Of 1993. Uh, and from what your, uh, from your memory of
4 the goings on, uh, were the postmortem examinations completed on
5 May 7, meaning the actual autopsy process; not the double check-
6 ing, but the autopsies?

7 A] I think I went through the following day on one of the
8 boys. I don't know which order I did them in; okay? I think I
9 left Byers for last, uh, because I knew he had the most exten-
10 sive injuries, if my memory serves me correctly.

11 Q] And then dictated the reports in hand and with your notes,
12 also, then you do the double-checking; correct?

13 A] Right.

14 Q] Okay. And, uh, now during the course of the May 7 autopsy,
15 uh, process, uh, to your memory, was Dr. Sturner even in Little
16 Rock that day?

17 A] Dr. Sturner was inspecting a lab, uh, he was inspecting a
18 medical examiner's office, so he came back, uh, and I held the
19 bodies for him to see, okay, because I wanted to make sure, like
20 I explained earlier, I called Dr. Dougan in just to make sure
21 and I wanted Dr. Sturner because he, you know, his forty years'
22 experience, to go over these with me to look at everything and,
23 you know, see if I missed doing something; because he had a lot
24 more experience than I had. Maybe there was something I have
25 overlooked, and I just wanted to make sure, because I knew these

1 cases would be high-profile, uh, I just wanted to make sure that
2 I did everything very thorough. That was my intentions.

3 Q] Okay. Uh, so when was it that Dr. Sturner actually saw the
4 bodies?

5 A] I don't recall a day, but I kept them, just to see if any
6 other injuries came out. So whatever day he came back, I don't
7 know what that day is.

8 Q] Uh, with respect to the, uh, to the files and records, as
9 you sit here today, the files and records pertinent to these
10 three cases, uh, do you know of anything, other than the
11 testimony of Dr. Sturner in the Echols Rule 37 proceeding, that
12 actually documented Dr. Sturner's presence at any one of the
13 examinations; in other words, was there a piece of paper in any
14 of the files that tells us that Dr. Sturner was there?

15 A] No, we normally don't keep those type of records, but he
16 was there.

17 Q] Okay. And similarly, with Dr. Dougan; was there any piece
18 of paper that documents that?

19 A] Well, he came down; he made his notes, so I guess you can
20 check with him on that, uh, you know, like I said, I just called
21 him down just to make sure, you know, I wasn't missing some-
22 thing. I wanted to have another opinion.

23 Q] Are, are you aware of the fact that, that Dr. Dougan
24 actually testified in the Echols Rule 37 proceeding that his
25 normal procedure would be when he reviews a case, to tender a

1 billing?

2 A] Yeah, he does bill, uh, I don't handle any of that; it
3 doesn't come to me, so I don't even know what it is.

4 Q] Now, uh, do you know, other than there being a bill in one
5 of those files that would reflect his work connected with the
6 Echols Rule 37 proceeding, do you know if there is a bill that
7 actually reflects when he, uh, purportedly saw the bodies, uh,
8 during the course of 1993?

9 A] I don't know, but a lot of times Dr. Dougan, he didn't
10 charge us, didn't charge the state. He, 'cause he just liked
11 doing it and he'd come down.

12 Q] Now your purpose, you, you don't always call Dr. Dougan
13 into an autopsy; or at least in 1993 you wouldn't automatically
14 get him over from his general dentistry practice in North Little
15 Rock to come over to look at a body?

16 A] Well, if I, if there is a body I thought maybe there was a
17 suspicious bite mark, you know, I would call him over. Uh, this
18 case here, there's a lot of markings on them; I just wanted to,
19 you know, make sure, especially with the injury on the head that
20 had the little "X" in it, I just wanted, you know, someone else
21 to look at it.

22 Q] Now Doctor, and, and would it be fair to say that that's in
23 part, because someone who is a dentist or an odontologist may
24 see evidence differently than you do?

25 A] Right. It didn't look like a bite mark to me, okay, but I

1 just wanted to have someone else say it wasn't a bite mark,
2 also. If it was a bite mark, I would have said it was a bite
3 mark.

4 Q] Now Doctor, when you were in Rhode Island, did the - - the
5 protocol there was that a medical examiner or a pathologist
6 would go to crime scenes - - you went to crime scenes in Rhode
7 Island?

8 A] A lot of them.

9 Q] Okay. And, and the procedure and practice, uh, in Arkansas
10 is different; correct?

11 A] Oh, yes.

12 Q] And, uh, I think you, you've testified that it wasn't until
13 recently; in other words, after the Misskelley and Baldwin/
14 Echols trials, that you saw the crime scene video; correct?

15 A] Just recently; correct.

16 Q] Uh, you, uh, did not go to the crime scene as part of the
17 postmortem examination review process in this case; correct?

18 A] Because the Arkansas State Crime Laboratory, by statute, is
19 not an investigating agency - - we're a referral agency - - we
20 have to be invited.

21 Q] Okay. And again, uh, would that appreciated clarification
22 in mind that it wasn't, uh, would it be fair to say that it
23 wasn't necessarily your preference that you not go to the crime
24 scene?

25 A] I would have liked to have gone, but no one invited me.

1 Q] And, and part of the reason for, uh, going to the crime
2 scene, among other things for somebody with your background and
3 training, is that, uh, you can get a sense of, of, uh, a number
4 of issues from seeing where bodies were discovered and seeing
5 the scene; is that fair?

6 A] Correct, because the autopsy is not just the body, it's
7 everything else; it's the scene, too.

8 Q] Now, uh, do you recall whether, uh, at any time prior to
9 your actually signing off these cases; meaning prior to your
10 signing along with Dr. Sturner, the autopsy reports, uh, do you
11 recall whether you were made aware of any of the trace evidence
12 examination results that, uh, were ongoing, uh, at the Crime
13 Lab?

14 A] No. I know they - - I submitted the trace to them and they
15 normally handle that aspect.

16 Q] Now in a case in which, uh, individuals are, uh, processed,
17 if you will, by a crime laboratory in addition to the medical
18 examiner's office, uh, does it become significant at times that
19 certain trace evidence is found on an individual; for example,
20 let's say a case in which you have human remains that are found
21 in an outdoor scene and there are animal hairs found on them.
22 Is that significant?

23 A] Would be.

24 Q] Okay. Are you aware, one way or the other whether there
25 were any animal hairs found?

1 A] I found hairs; I described hairs and I submitted them to
2 Trace. Then I let them handle it from there.

3 Q] Okay. And so I think what I'm asking you, sir, is, uh,
4 were you aware, as far as you can recall, when you testified in
5 either Misskelley or Echols/Baldwin, that Trace had found animal
6 hairs and actually had prepared slides that were labeled "animal
7 hairs"?

8 A] Well, I knew when I got the, you know, as we were preparing
9 for this, it was animal hair. I don't know what type of animal.

10 Q] Okay. Do you recall when you knew that?

11 A] It was probably before the trial. You know, you do these
12 cases, you submit the evidence and sometimes it takes so long
13 and you just sort of lose track of things.

14 Q] Now Doctor, your testimony, it was clear this morning, you
15 saw no evidence of any animal predation?

16 A] That's my opinion.

17 Q] And would it be fair to say that you don't recall talking
18 to anybody in connection with this case prior to the trial,
19 Misskelley, and Echols/Baldwin, about there being any animal
20 bites on these, on any one of these three boys?

21 A] That is correct.

22 Q] Let, let me ask you, sir, and I'm going to be making
23 reference, uh, to the testimony of attorney Paul Ford in these
24 proceedings.

25 A] Is that something I have in my notebook?

1 Q] No.

2 A] Okay.

3 Q] From September 24, 2008 session, the question was asked:
4 "And, uh, and in connection with your discussions with Dr.
5 Peretti, in addition to discussing the knife, did you have
6 occasion to discuss with him how other injuries might have
7 occurred to any the three boys; in other words, what, what kind
8 of mechanism, instrument, or the causation that produced some of
9 the injuries that was observed?

10 Answer: "I had, uh, I had, uh, I had conversations with Dr.
11 Peretti just about anything I could think of that might somehow
12 be relevant or helpful, uh, whether it be exculpatory or incul-
13 patory.

14 Question: "Do you recall any of the discussions that you had
15 with Dr. Peretti involving the subject of whether any kind of
16 animals or wildlife that might have inflicted some of the
17 injuries observed on any of the remains?

18 Answer: "Yes, sir.

19 Question: "And what's your recollection of that discussion?

20 Answer: "My recollection is that he thought, uh, some, one in
21 particular, I believe it was the cheek of one of the young boys
22 may have been bitten by a turtle, or some of those were turtle
23 bites.

24 Question: "And, uh, in the context of your discussions, do you
25 recall whether that topic came up more than once or is it that

1 do you have any, any specific memory of how often that
2 particular topic arose?

3 Answer: "My recollection is that it occurred once and my recol-
4 lection is, is that it was a remark that he voluntarily and
5 without prompting, uh, just sort of quote 'oh, and by the way, I
6 think that these may have been caused by a turtle, or could have
7 been.'"

8 First of all, do you recall discussing animals with, uh, Mr.
9 Ford?

10 A] No, and that's a lie. I would never say they were turtle
11 bites, because they were not turtle bites. That's a blatant
12 lie.

13 Q] Doctor, I appreciate your patience and I'm almost through
14 with my examination.

15 A] Oh, that's okay. I understand. Take your time.

16 Q] Doctor, at the time of the postmortem examinations in this
17 case, uh, at least in your experience, would it be fair to say
18 that different medical examiners offices have different pro-
19 cedures that were employed in postmortem examination processing?

20 A] Well, we follow at the Arkansas State Crime Laboratory, the
21 procedures of the National Association of Medical Examiners, so
22 most medical examiners offices follow those procedures.

23 Q] Well, some, uh, you're referring, among other things, the
24 things like the forensic autopsy performance standards; correct?

25 A] Correct.

1 Q] Those were not, uh, at least the current ones, were not in
2 existence in 1993; correct?

3 A] Correct.

4 Q] Uh, but part of what you're pointing out is that there are
5 some standards at least in existence since the trials of these
6 cases that offices like yours adhere to; correct?

7 A] That is correct.

8 Q] Uh, now with respect to the matter of pattern injuries, and
9 this is just pertinent to, uh, so that the purpose in this
10 question is clear, I'm asking you now, uh, in relation to what
11 are accepted practices now, okay?

12 A] I don't have the book in front of me, but I'll try...

13 Q] ...well, if you want, we can follow along together.

14 A] Okay.

15 Q] If you want to be assured that I'm...

16 A] ...no, I trust you. I trust you.

17 Q] With respect to pattern injuries "standard E18 leaves docu-
18 mentation of patterned injuries as listed below: should include
19 details sufficient to provide meaningful information to users of
20 forensic autopsy report, and to permit another forensic
21 pathologist to draw independent conclusion based on the documen-
22 tation. Bite marks should be swabbed to collect specimens to
23 use for DNA comparison with putative cells."

24 Now at the time these autopsies were done, DNA was not -- was
25 in its DNA technology as applied to forensic cases, was in its

1 infancy; correct?

2 A] Right. I, I did not swab those areas, because the bodies
3 were in water.

4 Q] Okay. And I'm not, I'm not getting to the swabs.

5 A] Okay.

6 Q] But I just wanted to read this in.

7 A] Sure.

8 Q] Now at the time of the autopsies, was it your purpose to
9 include sufficient detail in your reports to provide meaningful
10 information to the users of your autopsy report?

11 A] Yes, I tried to.

12 Q] And, uh, to permit another forensic pathologist to draw
13 independent conclusions based on the documentation?

14 A] I tried to do that.

15 Q] So, I mean, just in terms of your understanding about the
16 uses to which your work product could be put, uh, you were aware
17 when you produced the autopsy reports in this case that they
18 could be reviewed by either one of your colleagues in the
19 medical examiner's office, or by some other pathologist, maybe
20 one retained by the defense; correct?

21 A] Oh, yes. I knew that when I was doing these cases.

22 Q] And, and the point is, you produced reports and diagrams so
23 that they could be relied on by other forensic pathologists to
24 draw independent conclusions; correct?

25 A] Correct.

1 Q] And that's part of the reason, also, that you documented,
2 uh, the, the, uh, autopsy process by photography; correct?

3 A] Correct.

4 Q] And, uh, that was part of what you had in mind, as well, at
5 least the notion that you wanted to permit your work to be inde-
6 pendently reviewed by producing the notes that we see in, uh,
7 Exhibits 78, 79 and 80; correct?

8 A] Correct.

9 MR. PHILLIPSBORN: Your Honor, I'd move into
10 evidence #78, 79 and 80.

11 MR. HOLT: No objection.

12 THE COURT: All right, they may be received
13 without objection.

14 (WHEREUPON, Petitioner's Exhibits #78, 79 and 80 were admitted
15 and received into evidence and are appended on pages .)

16 MR. PHILLIPSBORN: Thank you.

17 CROSS-EXAMINATION, continuing:

18 Q] And, and in your experience and in your opinion, Doctor, is
19 it fair to say that it is, uh, not uncommon, in fact, it's
20 common practice in your field for either colleagues of yours in
21 the same office, or other qualified forensic pathologists to
22 rely on an autopsy report, notes made during an autopsy on
23 photographs made during the autopsy report, to formulate
24 opinions?

25 A] Well, as far as the notes, the notes can change because you

1 could write something down and then as you're going over the
2 body, change it, and may not change my notes, okay? So what
3 counts is, you know, is the final autopsy report. A lot of
4 medical examiners offices destroy their notes, don't keep them.
5 After the autopsy, they shred it and they have the final autopsy
6 report. And, uh, that's one thing they did in Dr. Di Maio's
7 office, my understanding was. So I know I keep my notes.

8 Q] But again, you kept them, in part, with the understanding
9 that they would be sufficiently reliable, that they would per-
10 mit another qualified trained professional in your field, to
11 review them and formulate independent judgments and opinions;
12 correct?

13 A] Correct.

14 Q] Doctor, I have one last area I wanted to ask you about and
15 then I'm going to let my colleague take over. Doctor, I'm going
16 to show you a photograph that the Court has received as #48MM.
17 Do, do you recognize that photograph?

18 A] (Witness examining same.) And that's a photograph of, uh,
19 the genital area of young Mr. Byers; correct?

20 A] Yes, sir.

21 Q] Okay. And, and what you have explained to us and what you
22 testified about, in fact, in '94, was that, uh, one of the, uh,
23 tissues that you see there is the, is tissue from, uh, Mr.
24 Byers' penis; correct?

25 A] Correct.

1 Q] And the, uh, the end result of whatever process removed the
2 scrotum and the skin covering the penis, actually, essentially
3 removed the outer, the, uh, the skin that covers the penis, as
4 well as the entire scrotum; correct?

5 A] Correct.

6 Q] And, uh, have, have you been made aware, Doctor, that, uh,
7 the officers who searched the scene didn't purport to find any
8 tissue or something that, uh, resembled a scrotum or part of a
9 scrotum or even tissue in the area of the discovery of the body?

10 A] Correct.

11 Q] Okay. And so, I mean, a number of things, uh, could have
12 occurred with that tissue; correct?

13 A] Correct.

14 Q] Uh, now you have described that in your opinion, a reason-
15 able scenario would be that a sharp instrument like a knife,
16 including, uh, the knife, uh, Exhibit #42 that the Court has
17 received, uh, could have been used to cut the tissue that
18 included, uh, the skin over the penis and the scrotum and remove
19 it from the body; correct?

20 A] Correct.

21 Q] Uh, and, uh, is it also correct that in, one way to remove
22 the skin from the penis would have been to literally dissect it
23 uh, and to, to remove it by hand; correct?

24 A] Correct.

25 Q] The other way would have been to, uh, to cut certain

1 portions of the scrotum, the skin surrounding the area and to
2 remove it by, let's say, the use of the hand?

3 A] Correct.

4 Q] Okay. In other words, just sort of rip it off?

5 A] Correct.

6 Q] Uh, now you, uh, is it correct to say that as of 1993 and
7 1994, you had never encountered the degloving injury of male
8 genitalia?

9 A] What I'm saying is, I have never seen it degloved like
10 this. I mean, we get bodies, you know, decomposed bodies out of
11 the water and there's some skin slippage, but I've never seen
12 this.

13 Q] But again, I, I, and I apologize by restricting myself;
14 you've answered the more global question, but to be very
15 particular: at the time that you testified in '94, you had never
16 seen a degloving injury; correct?

17 A] Correct.

18 Q] And do you, do you remember any lawyer ever asking you
19 whether you had seen one, one way or the other?

20 A] Not that I can recall. If it would be, it would be in the
21 testimony.

22 Q] Okay. Uh, and in that connection, Mr. Holt asked you a
23 number of questions that incorporated the knife, which is #42.
24 Do you recall looking at the photograph and he's trying to, he's
25 explaining various scenarios, and you're answering questions; do

1 you agree?

2 A] Correct.

3 Q] Do you also agree that, first of all, you have previously
4 testified that you have never said that, uh, you could with any
5 medical certainty, link that particular knife to the injuries in
6 this case; correct?

7 A] I said a knife of that type is consistent with performing
8 those injuries. I never said that particular knife did it.

9 Q] Let me, uh, let me be specific to these last questions, and
10 again, I appreciate your indulgence. In, uh, the Echols/Baldwin
11 case at page 1109, uh, you're being questioned by Paul Ford,
12 beginning at line 6 and the question is:

13 "Are you telling this jury that this knife caused those
14 injuries?"

15 And the answer is: "No. I never said that knife caused those
16 injuries. I said a knife of this type, of these types, are
17 consistent with causing those types of injuries. But I never
18 said that these two knives sitting here, caused those injuries.

19 Question: "Okay. Any number of knives that have serrated pat-
20 terns, any number of them could cause these injuries?"

21 Answer: "Yes."

22 Question: "Just like any number of items that could have these
23 diameters could cause those other injuries?"

24 Answer: "That's correct."

25 Does that testimony given in 1994 appear to you to be correct?

1 A] Yes.

2 MR. PHILLIPSBORN: Thank you, Doctor. I pass the
3 witness.

4 THE WITNESS: You're welcome.

5 MR. BURT: Did the Court want to take a break?

6 THE COURT: Let's take a short recess.

7 (A recess was taken; proceedings resumed as follows, to-wit:)

8 THE COURT: Court's back in session.

9 MR. BURT: Thank you.

10 CROSS-EXAMINATION

11 BY MR. BURT:

12 Q] Doctor, first of all, I want to thank you for acknowledging
13 the people in your profession can reasonably disagree; is that
14 your opinion?

15 A] Yes.

16 Q] And it's true, is it not, that they reasonably, within the
17 field of forensic pathology, that doctors with the same training
18 or experience as you, can reasonably differ on the whole range
19 of topics within your field; correct?

20 A] Correct.

21 Q] For instance: cause and manner of death. You've been
22 involved in cases throughout your career where pathologists have
23 differed on the basic issue of whether, of what the cause and
24 manner of death has been?

25 A] Correct.

1 Q] Uh, another area that forensic pathologists can disagree
2 about and do disagree about frequently, is whether a wound or an
3 injury is antemortem or postmortem.

4 A] There have been differences of opinion; correct.

5 Q] Okay. Uh, another area where forensic pathologists dis-
6 agree is whether when an injury was inflicted in terms of timing
7 of an injury; some pathologists look at it and say this is a
8 very recent injury, another equally qualified forensic path-
9 ologist could look at it and say I disagree, this is an old
10 injury?

11 A] I'll agree with that statement.

12 Q] Okay. And, uh, similarly, uh, equally qualified forensic
13 pathologists can disagree about whether a wound on visual ob-
14 servation shows hemorrhaging; correct?

15 A] Correct.

16 Q] And another area where forensic pathologists can disagree
17 is when they look at microscopic slides taken at autopsy, they
18 can disagree as to whether or not what they're seeing under the
19 microscope shows hemorrhaging or not hemorrhaging?

20 A] Correct.

21 Q] Okay. Uh, and is it your, uh, belief that the kind of dis-
22 agreements that I just enumerated for you are properly resolved
23 within the context of a case where each side calls their oppos-
24 ing experts and the jury then decides where the truth lies?

25 A] They can decide on what opinion they want to believe.

1 Q] Okay. Now in your practice, are you allowed to do private
2 consulting work?

3 A] Yes.

4 Q] And do you, on occasion, consult on criminal cases for
5 defense counsel?

6 A] Rarely. I just do a lot of civil things.

7 Q] And, and in the civil practice, you run into the same kinds
8 of disagreements that I was just talking about; correct?

9 A] Correct.

10 Q] And your experience with those differences of how to
11 resolve this, one side calls their experts, the people that hire
12 you call you and then the jury decides and it gets resolved?

13 A] It's not for us to decide; correct.

14 Q] Okay. Now I want to ask you about some, uh, the chronology
15 of this case. As I understand your testimony here and in other
16 places, you began your autopsies here on May 7, 1993; correct?

17 A] Yes.

18 Q] Do you recall when you began your autopsies?

19 A] Well, I usually start at seven in the morning.

20 Q] Seven in the morning?

21 A] And that's, I normally would get in, go down and see what
22 the cases are, uh, you know, probably get going around 7:30.

23 Q] All right. And you talked about this process of doing the
24 autopsy and then going up to your office and dictating the, uh,
25 report, or the draft report; correct?

1 A] Yes.

2 Q] So I take it the way you work in your office, you're not
3 dictating as the autopsy is going on, there's no microphone that
4 you're dictating into?

5 A] No, and we can do it, but I don't like doing it because
6 back then we had tapes, and you're dictating and the tape
7 breaks, then you have to start all over again.

8 Q] And I assume the way you worked this case was, you had one
9 body out at a time; the other bodies are somewhere else?

10 A] Yes, one at a time.

11 Q] And, uh, do you recall which body you started with?

12 A] No, I don't. I know Byers was last, because he was the
13 most difficult one. I left him for last.

14 Q] And as I understand it, you would do the autopsy, then you
15 go up to your office, dictate the report, then you would print
16 out the draft report and come back?

17 A] No, what I do, I give it to the secretary. No, she types
18 it, you know, back then they typed it and then she'd have it
19 ready for me when I came upstairs.

20 Q] Uh, and so, you didn't start the next autopsy until you had
21 the first draft in hand?

22 A] No, no. No, what I did was, I go upstairs and I dictate
23 it, give the tape to the secretary, because it takes them some
24 time to type it, then I go back downstairs and start on the
25 second case.

1 Q] Okay. So there's no review process right away, as I'm un-
2 derstanding it, you do the autopsy, you go up, dictate the
3 report, go down and start the second autopsy, dictate that
4 report, then start the third one?

5 A] Right. Now after all of the reports are typed, I go down
6 with each report after they're all typed, and I go over every-
7 thing.

8 Q] Okay. And you'd have a typed report in hand and you'd go
9 down...

10 A] ...it's a rough draft.

11 Q] Rough draft, and now you're basically double-checking in
12 terms of whether you've got the injuries described correctly?

13 A] Right. I may change little things here and there.

14 Q] Do you recall whether there was changes made on any of the
15 three?

16 A] I'm sure I made some changes if there are some typos in the
17 left and right mixed up, you know, I'm not perfect. So I'm sure
18 there were some changes made.

19 Q] All right. Now at what point in the process does either
20 Dr. Sturner or Dr. Dougan come into this picture that we're
21 exploring here?

22 A] Dr. Dougan came in after I finished the autopsies.

23 Q] Okay. So was he the first one to come in, or was it Dr.
24 Sturner, or did they come in together?

25 A] Dr. Dougan, because Dr. Sturner was out of town.

1 Q] So did Dr. Dougan come in on the 7th?

2 A] 7th or 8th, one of those days.

3 Q] The 7th or the 8th?

4 A] Right, because I held the bodies. I think I held them for
5 like three days, so he came in one of those days. I, I truth-
6 fully don't know what date, but I'm sure he has some record of
7 it.

8 Q] And, and as I understand your past testimony, he was
9 brought in for a couple of reasons, uh, number one, you said he
10 had a lot more experience than you did on bite marks; correct?

11 A] Correct.

12 Q] Uh, you at that point, uh, I think you referred on direct
13 examination to you just kind of coming into your specialization
14 process and you felt more comfortable having other experts such
15 as Dr. Dougan and Dr. Sturner take a look at this case in light
16 of the fact that it was a high-profile case?

17 A] I was confident with my findings, but I just wanted, I knew
18 this case was high-profile, I knew this case would go on for
19 years; I just had that feeling when I did it, and I just wanted
20 to have someone else to look at it, because if I did not have
21 Dr. Dougan come in and look at it, I would have been criticized
22 for not having him come in.

23 Q] Okay. And, uh, do you recall testifying in the, uh, Rule
24 37 proceedings that you actually directed Dr. Dougan to a par-
25 ticular injury, facial injury that you wanted him to focus on?

1 A] Yes, sir.

2 Q] And which injury was that?

3 A] I believe the injury on the forehead and the injuries on
4 the side of the face.

5 Q] And that's on, on Steven Branch?

6 A] Yes, I believe it was Branch. Yes.

7 Q] So that particular group of injuries was something that you
8 thought that he should focus on in terms of whether he was deal-
9 ing with a bite mark?

10 A] Especially the one on the forehead.

11 Q] All right. And did you direct him as to whether he should
12 be looking for a human bite mark, an animal bite mark, or did
13 you give him no direction whatsoever?

14 A] Human bite marks.

15 Q] So your direction then was, "come in and tell me whether or
16 not these injuries on the cheek are human bite marks?"

17 A] Correct.

18 Q] All right. And I take it from that there was no discussion
19 of animal bite marks at that stage in your investigation?

20 A] Correct.

21 Q] All right. Now, uh, did you direct his attention to any
22 other areas on any of the other victims?

23 A] No, not that I recall.

24 Q] And, uh, did you show him your draft protocol?

25 A] Oh, no.

1 Q] At that point?

2 A] Oh, no.

3 Q] This was a visual observation that he made in your
4 presence?

5 A] Right.

6 Q] Of these three bodies?

7 A] He made his own notes.

8 Q] That's interesting you say that, because he testified he
9 made no notes.

10 A] Okay, well, he usually makes notes. So if he testified he
11 made no notes, he made no notes. Maybe it was just a visual. I
12 don't recall. I, I know he was down there. I mean, I don't
13 recall all of the specifics of what he was doing. Okay, so if
14 he said he didn't make any notes, he didn't make any notes.

15 Q] Do you have any recollection of what he did?

16 A] I mean, he was down there and he looked at them, uh, I know
17 that. I don't recall anything else. I don't know if he took
18 any photos; he may have taken some photographs. I don't know.

19 Q] Well, actually, he testified that he had no record whatso-
20 ever of anything he did that day.

21 A] Okay. If that's what he said, that's what he said.

22 Q] And if that's what he said, would that be in line with his
23 normal practice when he was dealing with you on cases to come in
24 on a high-profile case involving three homicide victims and not
25 take a single note or make a single photograph?

1 A] Well, he normally takes notes. He looked and he said to me
2 these aren't human bite marks and, uh, that was the end of it.

3 Q] All right. So "these are not human bite marks," refer-
4 encing any wounds on any of the three bodies were not human bite
5 marks was the conclusion he reached?

6 A] The wounds that I showed him.

7 Q] All right. So he was focused on what you were getting him
8 to focus on?

9 A] Right, and I think he looked at all three boys.

10 Q] Do you know that for a fact?

11 A] Yes, I sure he did, because they were all out.

12 Q] They were all out, but the context of this was that you had
13 told him, 'I want you to take a look at these cheek wounds'?

14 A] Right. I mean, that was the specifics, you know, and that
15 one on the forehead, because it had that little "X" in there and
16 I just wasn't sure. So I just wanted to have someone else look
17 at it and, uh, say if it was or wasn't, because if it was a bite
18 mark, uh, I didn't think it was, I never thought it was, uh, or
19 I would have approached it differently.

20 Q] Uh, and he came in after you had completed the autopsies on
21 all three victims?

22 A] Yes.

23 Q] And you then said you didn't direct his attention to any-
24 thing else, other than the cheek wounds; correct?

25 A] That's what I truthfully recall. I mean, that's a long

1 time ago, all of those specific details.

2 Q] And by the way, at that point you yourself had concluded
3 that you had bite marks on two of the three victims, had you
4 not?

5 A] I, well, I saw these injuries. I thought they could have
6 been bite marks, I just wasn't sure.

7 Q] Well, there were injuries described in what ultimately be-
8 came your report, that described bite marks on the inner cheek
9 of two of the three victims?

10 A] Sure, but those are the bite marks the children made. No
11 one bit them on the inside of the cheek. How are you going to
12 get in there? Open their cheek and bite them? They bit them-
13 selves.

14 Q] But my point is, you had concluded on two of the three vic-
15 tims you had bite marks; right?

16 A] Inside of the cheeks and on the tongue. Oh, yes.

17 Q] And my question is, did you direct Dr. Dougan's attention
18 to those bite marks?

19 A] No, no, because I knew they were caused by the kids.

20 Q] And had you concluded in your original examination of the
21 three victims that on two of the boys there were bite marks on
22 the insides of the mouth?

23 A] Yes, I knew they were. I described them in my reports as
24 bite marks.

25 Q] All right. So although you directed Dr. Dougan to the bite

1 marks on the outer cheeks, you didn't ask him to look at all of
2 the wounds on the inner cheek?

3 A] There was no need to, because they, I mean, how would any-
4 one bite them in there? They bit them selves.

5 Q] And, uh, now after, after Dr. Dougan got done with this
6 process, did Dr. Sturner come another day?

7 A] I think he came back. I mean, he was - - you would have to
8 ask him exactly when he came back. If you recall, you know, I
9 held the bodies; I wanted him to see them. And like I said, I
10 held the bodies for a few days, and one of the other reasons was
11 just to see if any additional injuries had come out. So after I
12 was through, I called Dr. Sturner and I said let's go down-
13 stairs, it was just Dr. Sturner and myself and we went over
14 everything because he's been doing it for forty years, and I
15 just wanted to make sure I didn't overlook something.

16 Q] Now with Dr. Sturner, did you go through the same process;
17 did you say, "I want you to look at these cheek bite marks"?

18 A] Yes, we went through everything. I showed him everything.

19 Q] And when you say "showed him everything," did you call his
20 attention particularly to the cheek wounds on Branch and say
21 "take a look at these and tell me what you think"?

22 A] The inside?

23 Q] Yes?

24 A] No, I mean, there was no need to for that. I mean, they
25 bit themselves. I mean, we were concerned with what was on the

1 outside, not on the inside.

2 Q] And were you directing his attention to the outside wounds?

3 A] The outside wounds, of course. I wanted him to look at
4 those wounds.

5 Q] And those are the ones you thought there might be some
6 ambiguity about?

7 A] Yeah, I just - - I knew they weren't human bite marks, you
8 know. And I said these aren't human bite marks but I just
9 wanted someone else to look at it, you know, just in case, you
10 know, I'm wrong. So that's why I called Dr. Dougan.

11 Q] And at that point in your investigation, you didn't know
12 what caused those wounds to the cheek area; is that correct?

13 A] Well, they were incised wounds.

14 Q] They were incised, but you described them as gouging?

15 A] Yeah, gouging. Yes, incised gouging type wounds.

16 Q] Like someone had torn away the tissue?

17 A] Right. The tissues were all torn, there was hemorrhage un-
18 der there, uh, so that's how I described them.

19 Q] And when you say "there's hemorrhage under there," you're
20 talking about your gross observation of hemorrhaging in the
21 tissue?

22 A] Yeah, 'cause I, you know, when I'm doing it, as I'm
23 measuring each wound, I'm looking at each wound and so I'm sort
24 of opening it up and I'm looking inside, so I can see the fresh
25 hemorrhage. You can't appreciate a lot of the what's in the

1 photographs, but it's there, I mean, I saw it and I described
2 it.

3 Q] And was that one of the wounds that you took microscopic
4 slides on?

5 A] I didn't take any micros of that. I took the micros around
6 the genital mutilation.

7 Q] So on none of the wounds to the cheek did you take any
8 micros?

9 A] No, there's really no reason why, I mean, they were ante-
10 mortem wounds. There was no reason to take them.

11 Q] Now, uh, after Dr. Sturner got done with his observations,
12 is it then that you reached some conclusions that what you had
13 on the autopsy reports were in fact accurate conclusions?

14 A] Well, I thought they were accurate. I thought they were
15 accurate the day I did them. I just wanted someone else to look
16 at it.

17 Q] Did you come to a final conclusion after they examined the
18 bodies, Dougan and Sturner, that "okay, what I've got here looks
19 good"?

20 A] Well, I already had the causes of death. Yes, I went
21 through it and I asked Dr. Sturner "should I word this any
22 differently? Would you do anything differently? Give me some
23 advice." And he said he thought everything looked fine.

24 Q] Uh, and then after that conversation with Dr. Sturner,
25 well, strike that. While this was going on, there was intense

1 media interest in what was happening in this case; isn't that
2 true?

3 A] Intense.

4 Q] And you were getting phone calls and people were wanting to
5 know what had happened to these boys; and in particular, local
6 and national press?

7 A] They were camping out at my house.

8 Q] And so there was, uh, you were feeling some pressure to get
9 some information out as to what was going on in terms of your
10 autopsy findings; correct?

11 A] Well, I already had the causes of death and that was al-
12 ready discussed how it was going to be worded.

13 Q] Uh, did you issue a, uh, press statement in this case be-
14 fore or after you consulted with Dr. Dougan and Dr. Sturner?

15 A] What's the date on the press release? I'd have to look at
16 the date. Do you have it?

17 Q] Sure. I have it marked and we're going to talk about this
18 in a little bit more detail; a packet of your correspondence,
19 it's marked as #81 and they're arranged in chronological order.
20 The first document is the press release?

21 A] (Witness examining same.) Right. Okay. That was released
22 on the 7th.

23 Q] On the 7th?

24 A] Right, 'cause I already knew what they died of. And you
25 know, people were calling me and it was relentless and they were

1 camping out in front of my house and, uh, wanted more infor-
2 mation, more detailed information, and so I, we, uh, with
3 consultation of the director of the Crime Lab, Mr. Jim Clark, he
4 decided that we should put out the press release.

5 Q] And your press release says, quote, "According to Dr. Frank
6 Peretti, autopsies were performed on Christopher Byers, Stevie
7 Branch, and Michael Moore. Autopsies showed that all three
8 children died of multiple injuries." End quote. That's the
9 information you put out?

10 A] Yes, that's all we wanted the media to know.

11 Q] Now my question is: Did this get put out there after you
12 consulted with Dr. Dougan and Dr. Sturner?

13 A] No. It was that day. I mean, I knew they had multiple
14 injuries, I mean, you didn't need to be a rocket scientist to
15 figure that out. They had multiple injuries, so I made every-
16 thing generic, so the press would stop calling. And that was
17 the day of the autopsies. I knew what they died of because I
18 did the autopsies.

19 Q] And if you turn to the next page in that packet, it's a
20 notation, uh, office notation, the second page in this packet
21 documents a contact by someone named Myra Altschulor,

22 A-L-T-S-C-H-U-L-O-R?

23 A] Correct.

24 Q] And it's dated May 7, 1993 at 1:20 p.m.; correct?

25 A] Correct.

1 Q] And your secretary, or whoever took this information down,
2 indicated she was calling you and was asking if you could
3 confirm or deny sexual molestation?

4 A] Correct.

5 Q] Next to that someone has written in "no, I can't"?

6 A] That's right. We didn't want that information out. It was
7 not going to be released from our office, the sexual mutilation.

8 Q] And is that your handwriting "no, I can't," or is that
9 somebody else's?

10 A] Where do you see "no, I can't"?

11 Q] Right after sexual molestation, somebody has written in
12 "no, I can't"?

13 A] No, that's not my handwriting.

14 Q] Okay. Then it says, "Will there be another press release?"
15 Do you see that?

16 A] Yes, I see it.

17 Q] So was there another press release?

18 A] No.

19 Q] So I take it from the timing of the second note that by the
20 7th at 1:20 p.m., you had already issued a press release saying
21 that your autopsies had disclosed that these boys had died of
22 multiple injuries?

23 A] Well, I mean, sure. I mean, you just look at them; you
24 didn't even have to autopsy them. They've got multiple stab
25 wounds, cutting wounds, mutilation, head trauma, hog-tied, nude.

1 I mean, what else were you going to say? It was multiple
2 injuries; I just grouped it all into one cause of death.

3 Q] Well, what you said in your press conference was the
4 autopsies had been completed and you had reached certain con-
5 clusions; right?

6 A] Well, I mean, that's how they typed it out.

7 Q] "Autopsies were performed and they showed that all children
8 died of multiple injuries"?

9 A] Yeah, I mean, "were performed," "being performed." I mean,
10 we're in the process of doing it. I mean, what difference did
11 it make, really?

12 A] Well, uh, in terms of when your conclusions were formed in
13 this case, it makes a difference, does it not, if you're putting
14 out press releases in your name before you had even conducted
15 the autopsies, that reflects on when you formed your opinions?

16 A] Sir, when I walked in, I had three boys naked, hog-tied,
17 multiple stab wounds, multiple cutting wounds, blunt force head
18 injuries, genital mutilation, you know, you didn't have to be a
19 rocket scientist to determine the cause of death on these
20 children. And, no, we didn't have all of the specific details,
21 which we were not going to release to the press. I just, we
22 just decided at the Crime Lab, with the administrative director,
23 Jim Clark, we were just going to say "multiple injuries." I
24 mean, you could just look at them, you know, and say "multiple
25 injuries." I mean, we didn't have to give specific details to

1 the press.

2 Q] And would it be accurate to say that the press release was
3 inaccurate, in the sense that you had not, in fact, performed
4 the autopsies at the time...

5 A] ...do you...

6 Q] ...let me finish. At the time that this press release got
7 issued?

8 A] The autopsies were being performed.

9 Q] Being performed?

10 A] That's right.

11 Q] At 1:20 - - the release was before 1:20 - - how many
12 autopsies had you done on these three victims before you
13 released this press statement?

14 A] I don't know; probably one and a half, two. I don't know.
15 But to me, I had the injuries, I mean, you look at these kids;
16 anyone in this room could look and say, "Oh, my God. Multiple
17 injuries." These children had horrific injuries, so that's why
18 I elected, along with the director of the Crime Lab, because he
19 was getting all of the calls. I mean, he says, "We've got to do
20 something." I said, "Okay, let's put multiple injuries."

21 Q] Okay. And not only did you put multiple injuries, but you
22 put that it was your conclusion that as a result of the
23 autopsies, you had concluded that they had died of multiple
24 injuries?

25 A] We'll, of course. I mean, you could just look at them. I

1 mean, you don't have to be a forensic pathologist, I mean, the
2 extent of the injuries, the stab wounds, the cutting wounds, the
3 blunt force head trauma, you just look at them and you know they
4 got injuries.

5 Q] Now when did you actually finalize the autopsy reports?

6 A] You have to look at the date on them.

7 Q] Okay.

8 A] Let me look. I've got them right here. (Examining same.)

9 At 5/25.

10 Q] 5/25?

11 A] Let me check and see if it's 5/25 for all of them. One was
12 at 5/24 and 5/28.

13 Q] 5/28 was the - - 5/25 is the date on the Moore report;
14 correct?

15 A] Correct.

16 Q] Okay. And 5/24 is the date on the Branch report?

17 A] Okay.

18 Q] And 5/28 is the date on the Byers report?

19 A] Right.

20 Q] So that accurately reflects when you finalized the autopsy
21 reports?

22 A] According to the secretary; correct.

23 Q] Uh, and even as you were finalizing the reports, you were
24 still getting some pressure from the investigators in this case
25 to the effect that you weren't giving them enough information;

1 is that true?

2 A] That's true. I did that purposely.

3 Q] Okay. And, uh, there's a letter in your file, I think if
4 you look in that stack there, it's dated May 26, 1993?

5 A] (Witness examining same.) Yes.

6 Q] Do you see that?

7 A] Yes.

8 Q] Uh, it was directed to Kermit Channell, but it was forward-
9 ed to you for inclusion in your file; correct?

10 A] Correct.

11 Q] According to the fax, and it's from Channell, uh, to
12 Channell from Gary Gitchell?

13 A] Correct.

14 Q] And what he says here is "we feel like we have not gotten
15 sufficient information from the Crime Lab. This case has
16 received national attention. We feel as though we are walking
17 blindfolded through this case at this moment."

18 Does that accurately sort of summarize the kind of pressure you
19 were getting at that point in terms of trying to solve the case?

20 A] Well, you know, I'm not the ones investigating it, okay?
21 I'm just doing the autopsies. However, uh, when we were, you
22 know, the police were calling us, we'd give out - - we couldn't
23 talk to the media, okay? The doctors, I mean, that all came
24 from the executive director, okay? Doctors, we don't talk to
25 the media. So, you know, I'd go to Mr. Clark, he'd want to know

1 what was going on so I would give him a verbal, and he was
2 giving some pieces of information out to Gitchell, okay? Then,
3 before we know it, it's all over the press, you know, everything
4 we're saying, it's all over the press. So then we decided, hey,
5 we're not going to say anything, you know, because it's being
6 leaked out.

7 Q] Okay. Did you tell Gitchell or somebody in law enforce-
8 ment, prior to this letter being written, that you had found
9 urine in the stomach of two of the boys?

10 A] Listen, I don't know where that came from, you know, I went
11 through all of the correspondence - - I never heard of that. I
12 was like shocked when someone said that. I said "What?"

13 Q] When you say "someone said it," ...

14 A] ...well, I mean, saying about the urine. I mean, this
15 thing about the urine is just like where did that come from?

16 Q] Where'd that come from?

17 A] I never said that. I mean, I don't know where it came
18 from.

19 Q] Well, what we're referencing here is that in this letter
20 from Gitchell to Kermit, there's under paragraph 9 it says,
21 "Doctor Peretti mentioned finding urine in the stomach of two
22 boys and requested from us water supplies."

23 A] I don't know where that came from. Kermit, you know,
24 Kermit is now the director of the Crime Lab. At the time, he
25 wasn't; I think he was in the serology section at that time, uh,

1 I may be wrong which section he was in, but it's like, I didn't
2 know anything about that. I was just like "where is this coming
3 from?"

4 Q] Now did you respond to this letter and say "what are you
5 talking about here"?

6 A] I let administration handle it.

7 Q] All right. Now another topic raised in this letter is,
8 quote, this is number 8: "Was the stick we sent used as a weapon
9 on the children? The stick appeared to have been carved on or
10 possibly done by animals. Can the Lab address this?"

11 A] I never saw the stick.

12 Q] So you didn't look at a stick they seized, down at the
13 Crime Lab to see whether in fact an animal had been chewing
14 [sic] on it?

15 A] I never knew about the stick. See, the problem is, and
16 you're probably having a difficult time understanding this, and
17 I did too, when I first came here, uh, if an agency sends a
18 piece of evidence, for example, to the Trace section, okay, the
19 Trace section will analyze that and send it, the evidence, to
20 the agency that submitted it. Even though it's a medical
21 examiner's case, it doesn't come to the medical examiner's
22 section. We only get the reports from the evidence that we
23 submit, okay? That's how it works.

24 Q] Well, you're describing the process that takes place at the
25 time, I guess a follow-up question would be, at some point you

1 must have seen this letter in here, right? Before you came to
2 court?

3 A] Actually, this is like the first time I've seen it. I
4 mean, I don't ever recall seeing this - - it may have been in
5 the back of the file, but all of the - - we decided, because I
6 was getting bombarded by everybody, I mean, it was just a
7 horrible situation, that Mr. Clark, who was the director, he
8 handled everything. Okay? And, you know, it kept the pressure
9 off me, because I, I didn't want to say anything.

10 Q] Mr. Phillipsborn had mentioned to you that there were some
11 slides where animal hairs had been found; correct?

12 A] Correct.

13 Q] And you have stated an opinion here that, at least as I
14 hear it, "unequivocally rejects the idea that any of the wounds
15 on any of these victims was caused by animal predation."

16 A] I don't know where the animal hairs came from. I mean, I
17 found hairs; I didn't know if they were human hairs, animal
18 hairs. I find them; I submit them to the section where they
19 belong.

20 Q] Would it be of some significance to you in rendering the
21 kind of opinion you've rendered here today, especially the
22 positive nature of that opinion, to know whether or not sticks
23 found at the crime scene had animal chaw [sic] marks on them?

24 A] Sure, I would look at it and take it into consideration,
25 but, I mean, it would have to be a beaver. I mean, beavers are

1 the only animals that would gnaw on wood.

2 Q] Now you've described a little bit this process of Discovery
3 to the defense and as I understood what you were saying, your
4 orders are don't release anything to the defense unless there is
5 something from the court?

6 A] Yes. There's a policy of the Crime Lab, and I think maybe
7 state law - - I think it's state law, that we can only release
8 information to the defense if the prosecutor gives us
9 permission. And if he says okay, release it, you can have
10 everything. If he says no, you can't have it, take it up with
11 him.

12 Q] In contrast to that, you're free to say whatever you want
13 and to release whatever you want to the prosecution side;
14 correct?

15 A] That's the law, I mean, since I've been here.

16 Q] And in this case, uh, if you take a look at the next couple
17 of, uh, memos here; there's one dated July 2, '93 and the caller
18 is Val Price?

19 A] Okay. I have it.

20 Q] Okay. And he's apparently, according to this memo, calling
21 indicating to you through your secretary that he would like to
22 stop by and look at the autopsy reports on the three cases;
23 correct?

24 A] Correct.

25 Q] And there's a note at the bottom there; is that your hand-

1 writing?

2 A] That's my handwriting.

3 Q] Could you translate that for us?

4 A] "I spoke to Mr. Fogleman, P.A., prosecuting attorney, said
5 it was okay to me as long as I didn't give a written or typed
6 statement." Oh, a taped statement.

7 Q] Taped statement. So the prosecutor at this point is saying
8 you can talk to the defense side, but don't let them tape you?

9 A] Correct.

10 Q] Now did you become aware at some point that in fact, some-
11 body on the defense side taped a telephone conversation with
12 you?

13 A] No.

14 Q] Uh, do you recall being...

15 A] ...isn't that illegal?

16 Q] In California it would be; I'm not sure about Arkansas law
17 here.

18 THE COURT: If you're a party to the conver-
19 sation, it's not.

20 MR. BURT: It's in the transcript, I think it's
21 #50 - - I'm not going to take the time to look it up,
22 but I've got it here.

23 CROSS-EXAMINATION, continuing:

24 Q] Do you recall that one of the issues at the trial, at both
25 trials, was the significance of anal dilation; correct?

1 A] Correct.

2 Q] And as I'm understanding your testimony here today and yes-
3 terday, you're not subscribing to the idea that anal dilation on
4 any of these three victims shows to a reasonable degree of
5 medical certainty that there was sexual assault; correct?

6 A] Correct. I saw no trauma.

7 Q] You saw no trauma, and in fact, you told these lawyers, or
8 at least the ones that talked to you back then, that if there
9 had been sexual assault, you would expect to see trauma?

10 A] Yes, especially in an eight-year-old. You see abrasions,
11 you see lacerations, contusions, their anus would be torn open
12 and you'd see injuries to the anal mucosa. That's why, you
13 know, I took the microscopic sections, you know, as I said in my
14 report, I said there was no evidence of injury; they were
15 injected, congested; well, I took sections just to make sure
16 there was no injury there.

17 Q] And there were none?

18 A] That's correct. And I've always maintained that.

19 Q] And, and those lack of microscopic findings indicated to
20 you that there was no trauma associated with any anal obser-
21 ations you were making?

22 A] Sometimes the negative is more important than the positive;
23 correct.

24 Q] And do you recall that when Mr. Stidham, during the Miss-
25 kelley trial, that there was an issue made of the significance

1 you were drawing from anal dilation. Do you remember that.

2 A] Sort of. Let me refresh my memory.

3 Q] Yes. This is at page 854 at the end of the sort of back-
4 and forth exchange. The prosecutor asked you: "And would
5 whether or not there was trauma of that nature, would that
6 depend, number one, if there was penetration?"

7 Answer: "That would depend if there was penetration.

8 Question: "If there was an attempt to sodomize an individual but
9 no penetration, would you expect to find tears or lacerations?"

10 Answer: "Well, if the penis enters into the canal, because the
11 canal is tight, I would expect to find tearing, bruising and
12 abrasions of the opening.

13 Question: "But with no penetration, would you expect to find the
14 injuries to be the outer portion of the buttocks?"

15 Answer: "Well, without penetration, if there was forceful pene-
16 tration, you would have some injuries around the external
17 aspect.

18 Question: "Here, we had some injuries.

19 Answer: "We had some abrasions.

20 Question: "Also, the size of the object penetrating would deter-
21 mine if there was any laceration and tears; correct?"

22 Answer: "That's correct."

23 Now at least in that portion of the testimony, what's being
24 suggested by the state is that the absence of trauma does not
25 mean these victims were not sodomized; right?

1 A] Right. That's the reason why.

2 Q] Right. And you're going right along with that?

3 A] Well, I'm saying that there's no trauma, I mean, I never
4 said they were sodomized. There's no where in my testimony I
5 ever said that. I've always maintained there was no anal/rectal
6 trauma.

7 Q] Now I want to read to you this, uh, tape recorded interview
8 that was being tape recorded without your consent. Uh, and
9 this, as I'm understanding it is Mr. Wadley asking you about a
10 conversation you had with John Fogleman. And he says: "Okay,
11 because it's my understanding, Doctor, that John Fogleman told
12 another attorney on his word of honor, that these boys were
13 sodomized.

14 And you say: "I don't know how he can say that they were
15 sodomized. I mean, I told him that. I told him there are no
16 tears and lacerations, as I told you, and I told him the
17 explanation why the anuses may be dilated.

18 And then Wadley says: "Doctor, do you think the prosecutor in
19 this case can stand in front of a jury and in good faith tell
20 the jury that they expected to, that the proof would be that
21 these boys were sodomized?

22 And your answer is: "I would say not in good faith. That's his
23 decision, not mine."

24 Do you recall saying that to Mr. Wadley?

25 A] I didn't even know I was being taped. So I mean, if it's

1 there...

2 Q] ...it's there.

3 A] So if that's the conversation, I'm not going to argue with
4 it.

5 Q] Now let me ask you this: If you did make that statement,
6 would you have expected a defense attorney make you eat that
7 statement, word-for-word, if you had implied to the jury that
8 there had been sodomy? Wouldn't you expect a good defense law-
9 yer who was in possession of that tape to say, "Doctor, you're
10 implying to this jury that these victims were sodomized, and
11 yet, you said here on tape that no prosecutor could make that
12 claim in good faith"?

13 A] I mean, I don't understand where I'm "implying" they were
14 sodomized. I mean, I, I don't understand that.

15 Q] Well, the record will speak for itself in that regard, and
16 I didn't read you the whole...

17 A] ...okay.

18 Q] Exchange.

19 A] Okay. I remember my testimony, I don't recall in there my
20 ever saying that these boys were sodomized. I've always main-
21 tained that they had no injuries to the anus or anal/rectal
22 mucosa. I always maintained that.

23 Q] Right. But you also said that the absence of injuries
24 didn't mean they weren't sodomized; right?

25 A] Well, I said that, but I said my opinion, they were not. I

1 guess it's how the question is posed to me. Attorneys, you know
2 how you like using words in sentences.

3 Q] Well, is it true that your obligation to the Court and to
4 the jury depends on how the questions are posed, I mean,
5 assuming...

6 A] ...I just answer them.

7 Q] You just said to this lawyer in a tape recorded conver-
8 sation "no prosecutor could claim in good faith that these
9 victims were sodomized."

10 Are you telling me that you have no obligation to correct a
11 misimpression that's being made by a prosecutor to the effect
12 that these boys were being sodomized?

13 A] Well, first of all, you know, it's the first time I hear
14 about the tape, I mean, no one has ever told me about the tape.
15 I testify not knowing about the tape, I mean, what am I supposed
16 to do? I just answer the question truthfully in court. And,
17 uh, that's what I did.

18 Q] Now the other thing you said besides that the absence of
19 injuries did not mean there was no sodomy, you also said to the
20 jury in the Misskelley case, and I believe in Echols as well,
21 that the combination of ear injuries and mouth injuries was
22 something that suggested to you sexual assault. Did you say
23 that?

24 A] Yes, I did say that because I've seen that before.

25 Q] All right. Now when you say you've "seen that before," the

1 only thing that I heard in support of that statement was this
2 publication, Exhibit #33...

3 A] ...oh, no, and all of the autopsies since. We get females
4 sexually assaulted. We see quite a few injuries and these type
5 of injuries.

6 Q] We'll, we'll go through that. One of the things that was
7 brought to your attention was this publication, Exhibit #33?

8 A] Right.

9 Q] Do you have that in front of you?

10 A] No, I don't. Well, it's right here. Here it is.

11 Q] Now show me where in this publication it says that the
12 combination of injuries to ears and mouth injuries suggest
13 sexual assault?

14 A] Well, it doesn't say it here. I went through a lecture by
15 Dr. Joe Rupp who specializes in sex-related crimes, uh, and he
16 said that. He showed photos. I mean, because it's not written
17 doesn't mean it doesn't exist.

18 Q] When, uh, in fact, what this article says at the bottom of
19 page 209, does it not, Doctor, quote "it is extremely important
20 to state that there are no injuries which are pathogenic of
21 child abuse. Any text that suggests so is incorrect."

22 A] Where are you reading that?

23 Q] At the bottom of page 209, left-hand side, last sentence.
24 "It is extremely important to state that there are no injuries
25 which are pathogenic of child abuse. Any text that suggests so

1 is incorrect." Isn't that what that says?

2 A] Well, that's what he's saying. That's his opinion.

3 Q] And, and do you agree with that opinion?

4 A] No.

5 Q] Can anybody who suggests that any injuries pathogenic of
6 child abuse is incorrect? "There are no injuries which are
7 pathogenic of child abuse."

8 A] There are. There are plenty.

9 Q] So you disagree with the text that was brought up on direct
10 examination?

11 A] And we see child abuse cases all of the time; injuries that
12 are so common to them. I didn't read the whole - - listen, you
13 know, let's get the record straight here.

14 Q] Sure.

15 A] Okay. I didn't read - - this is just a couple of pages out
16 of this text. I don't even know who these people are.

17 Q] Well, did you...

18 A] ...I read what it said there, and I agreed with that one
19 statement.

20 Q] Which one statement were you agreeing with?

21 A] He's agreeing "bruises on the ears are commonly due to the
22 child being pinched and usually there will be matching bruises
23 on the posterior surfaces of the ear." And that's what we have.

24 Q] Did you bring this text to the attention of the state's
25 attorney?

1 A] No.

2 Q] They brought it to your attention?

3 A] Correct.

4 Q] And so did they come to you and say, "Doctor, there's going
5 to be an issue made about what support you have for this idea
6 that, uh, injuries to the ears and mouth show sexual abuse, so
7 give me some support for that." Did they ever ask you that?

8 A] No, no. I didn't tell them to give me any support. I
9 mean, I've seen these injuries before, I mean, this is, you
10 know, the expression "nothing new under the sun," I mean, this
11 stuff happens.

12 Q] Uh, what this photo of the year in this textbook says is
13 physical abuse; right? Does it say anything about sexual abuse?
14 It says that "these injuries show that..."

15 A] ...it's still physical abuse, grabbing them.

16 Q] Right. That's all it says, though, isn't it?

17 A] It says physical abuse.

18 Q] Physical abuse?

19 A] Well, I'm giving my opinion. I said "these injuries are
20 consistent." I didn't say "these injuries are cause by oral
21 sex." I said "you can see these type of injuries in individuals
22 being forced to perform oral sex." And we see a lot of females
23 who are gang raped and they have these injuries.

24 Q] Okay. Now what you said on direct was in support of that
25 proposition that statement that you gave at trial regarding ears

1 and lip injuries, that you heard that in a lecture by a guy
2 named Dr. Rupp; correct?

3 A] Yes.

4 Q] And he's a medical examiner down in Corpus Christi, Texas,
5 is he not?

6 A] Yes, I believe he's retired.

7 Q] And you said that he was an expert in sexual assault cases?

8 A] Well, that's what they said at the time. I mean, that's a
9 long time ago I heard this lecture, but some things stand out,
10 you know?

11 Q] Well, if I told you I did a literature search on him and I
12 could not find a single article that he wrote concerning
13 examination of sexual assault cases, would that surprise you?

14 A] I mean, he gave a lecture about it, okay?

15 Q] When?

16 A] I mean, this is going back in the '80s, so I don't even
17 remember where it happened, but I remember him saying that and
18 I've always kept that in the back of my mind.

19 Q] You know that when you say "I heard it in a lecture,"
20 there's no way for us to check that out?

21 A] I mean, I can't write down every lecture and everything,
22 you know, I hear on a piece of paper hoping thirty years later
23 defense experts want to read it and use it against me. I mean,
24 come on, now.

25 Q] Can you name for me a single peer review article that

1 supports the proposition that injuries to one or both ears, plus
2 injuries to the lips suggests sexual assault?

3 A] I can't give you an article, but I've had cases where
4 females were gang raped, and we see these type of injuries.
5 Their ears are pinched and they have injuries in their oral
6 cavity from forced oral sex. Any competent forensic pathologist
7 would know that, especially if they deal with a lot of rape
8 strangulation type cases.

9 Q] One of the things you said to the jury in the referencing
10 the Michael Moore case, you were asked this on page 826, Doctor,
11 uh, the question was asked, "Doctor, in your experience as a
12 medical examiner, when you see injuries to the ears and injuries
13 to the inside surface of the mouth, what does that indicated to
14 you in a person that is eight years old and has died this type
15 of death?"

16 Answer: "There's a number of possibilities but commonly when we
17 see the ears are contused on both sides or bruised with overly-
18 ing fine linear scratches," and then there's an interruption,
19 "uh, in my practice these types of injuries I've seen in child-
20 ren that are held by the ears who are forced to perform oral
21 sex."

22 Do you remember that testimony?

23 A] Yes.

24 Q] Okay. That's in relation to Michael Moore; correct?

25 A] Right.

1 Q] Tell me what, uh, injuries there were that were documented
2 in your report to the left ear of Michael Moore?

3 A] Well, I described it as bruising and overlying fingernail
4 marks.

5 Q] To both ears, Doctor?

6 A] One ear.

7 Q] One ear?

8 A] Yes.

9 Q] And the question that is stated here and your answer, sug-
10 gests to the jury, does it not, that there were injuries here to
11 both ears and that that pattern was common with sexual assault?

12 A] Well, the way the question was posed, that's how I answered
13 it. But you know, see, what you're doing is you've got a peri-
14 scope and you're just focusing on one little area, but let's not
15 forget the fact that the boys were stripped naked, hog-tied;
16 that's part of a sexual assault.

17 Q] Now is that a forensic pathology issue, or is it an issue
18 for the jury; in other words, does it take any of your medical
19 expertise to argue to a jury that because they were hog-tied and
20 naked, they must have been sexually assaulted?

21 A] I didn't say - - what I'm saying is, it implied sexual
22 assault. Now, come on. You've got boys naked, stripped down
23 and hog-tied.

24 Q] And, and does that, uh, argument that you just made, is
25 that something that a lawyer can make to a jury based on the

1 facts, or is there something about your medical training that we
2 need to go to you to ask you, "Doctor, what does that imply?"

3 A] I think it implies common sense.

4 Q] Well, what you were stating to the jury was that in
5 addition to common sense inferences, they should put into the
6 balance your expert opinion, based on your training and your
7 prestige; correct?

8 A] Well, what I said was that those type injuries - - I didn't
9 say they had forced oral sex. I said those injuries are consis-
10 tent with. I never said they had forced oral sex. Are consis-
11 tent with. I mean, there's a big difference saying "they had
12 it" or "it's consistent with." But you have to take everything
13 in the context, you know, the boys being naked, hog-tied, the
14 injuries, the pinching injuries.

15 Q] And you said, and you're absolutely right, there's a big
16 difference between saying something is consistent with and
17 saying that something is a fact to a reasonable degree of
18 medical certainty.

19 A] Right. I said it was consistent with.

20 Q] Right. And no defense lawyer pointed that distinction out
21 to the jury in Mr. Misskelley's case, did they?

22 A] I mean, I'm not an attorney.

23 Q] Okay. And in your file you had a schematic of the ears,
24 ear injuries of Mr. Moore, did you not?

25 A] Yes, on all boys.

1 Q] Right. And on the Moore schematic, your diagram clearly
2 showed that he had no injuries to the left ear; right?

3 A] Okay. Yeah.

4 Q] Right?

5 A] Yeah, that's correct.

6 Q] And that's something that a defense lawyer, if he was doing
7 his job at the trial, would have pointed out when you, in answer
8 to that question, says "well, when you have injuries to both
9 ears and injuries to the lips, that implies or is consistent
10 with sexual assault." You would expect a good defense lawyer to
11 say "wait a minute, Doctor, we don't have injuries to two ears
12 here. You only have injuries to one." Would you expect that?

13 A] Well, I'm not an attorney. I mean, I'm just focusing on
14 the medical aspect and I don't and I don't want to get involved
15 with what an attorney should or should not do.

16 Q] Well, you were a consultant as an independent forensic
17 pathologist, and as an independent forensic pathologist, put the
18 shoe on the other foot for a moment. If you were consulting an
19 attorney and you're sitting in court and you heard a pathologist
20 make the kind of statement that injuries to both ears and
21 injuries to lips suggest sexual assault, and you had in your
22 hands at that time a schematic which showed no injuries to the,
23 uh, to the right ear, you would have nudged a defense lawyer and
24 said, "hey, you don't have injuries to both ears"; right?

25 A] Probably I would have.

1 Q] Okay. Now do your notes reflect how many times, and by
2 "notes," I mean your correspondence there, can you tell me how
3 many times, if there were such times, that Mr. Stidham met with
4 you to discuss your report and photographs in this case prior to
5 trial?

6 A] Stidham?

7 Q] Yes?

8 A] All right, give me a minute. I have to go through them.

9 (Pause.)

10 A] There's one.

11 Q] Okay. And, and let's go through them in order, just so
12 I've got the record. Uh, which is the first one that you've
13 identified?

14 A] Okay. When. Let me just go through again.

15 (Pause.)

16 Q] The first one I see is 11/9.

17 A] I think you're right. I was just going from the front just
18 to make sure I didn't skip one. Yeah, 11/9.

19 Q] Okay. And on 11/9 the contact was, uh, you got a phone
20 call from him; right?

21 A] Yeah, and I called him back and left him a message.

22 Q] Okay. When was the next contact with Mr. Stidham?

23 A] Uh, according to this order here, uh, 11/25.

24 Q] 11/25, and this was again a phone call from him?

25 A] Yes.

1 Q] And you wrote down what you told him at that time; correct?

2 A] Right.

3 Q] Could you translate that for us?

4 A] "Concerned about time of death; has two reports from Kent
5 Hale; don't make sense; defense feels he altered his reports,
6 but confirms the police wants my opinion of time of death to
7 him; told him I can't give it, based on the," uh, I can't read
8 my own writing.

9 Q] "Based on the original..."

10 A] "...information provided." Correct.

11 Q] Okay. So the only focus of that inquiry from Stidham was
12 time of death issues?

13 A] Correct.

14 Q] All right. When is the next time he called?

15 A] 11/25, a.m. Oh, wait a minute.

16 Q] That's the same one.

17 A] I'm sorry. Okay, I think 12/5 - - does that look like 12/5
18 to you? I can't make it out because it's blurred.

19 Q] Which year is it?

20 A] Uh, '93.

21 Q] 12/30/93.

22 A] 12/30. Okay. I'm just going to make a 3 on this; okay?

23 Q] That's okay.

24 A] In case the next time I have to go over it.

25 Q] Sure. And you've got some writing there; correct?

1 A] Yeah.

2 Q] On the side. What does that say?

3 A] "All three bodies, anus dilated, no trauma, would expect to
4 see trauma. No evidence of sodomy."

5 Q] Okay. So on, uh, and, and this note would have been in
6 your file; correct?

7 A] Oh, yes.

8 Q] And this note, uh, if Stidham had of bothered to look at
9 it, he could have brought this up on your cross-examination and
10 said "this is your handwriting and you're saying no evidence of
11 sodomy"; correct?

12 A] He could have.

13 Q] He didn't, though, did he?

14 A] No.

15 Q] All right. When is the next time he called?

16 A] Let's see. Okay. I think it looks like 2/19.

17 Q] Yes. 1998; right?

18 A] Yes.

19 Q] All right, this is well after the trial, is it not?

20 A] Correct.

21 Q] And does it indicate, uh, we'll just go through these
22 quickly, since it's post-trial. The very next page he contacted
23 you again on April 29th, 1998 and said he needs to speak with you
24 in reference to the photos and the case file; right?

25 A] Correct.

1 Q] And then, uh, the very next page, uh, is a letter from your
2 office to him saying he's going to have to pay sixteen hundred
3 and forty-four dollars to get that information; right?

4 A] Well, that's what the photos cost.

5 Q] Okay. And then the very next document is a letter from him
6 May 4th, enclosing a check for that amount?

7 A] Correct.

8 Q] So according to your records, the only time that Mr.
9 Stidham asked to see your case file or copies of it, was several
10 years after the trial; correct?

11 A] According to these notes, correct.

12 Q] Okay. Now, uh, Mr. Phillipsborn asked you about this entry
13 in there dated January 5th, '94, John Fogleman is calling...

14 A] ...what date is that, please?

15 Q] January 5th, '94.

16 A] Okay.

17 Q] And this is a call from Fogleman into your office; right?

18 A] Yes.

19 Q] "Wants to know about the overlays in re the weapon," and
20 somebody has written in "hasn't been, but will be."

21 A] Yes.

22 Q] Correct?

23 A] Correct.

24 Q] Now that is on the 5th. On the 27th, according to the tran-
25 script, Fogleman announces in court that in the Misskelley case

1 the state will not be introducing any testimony from you about
2 the knife; just to refresh your memory?

3 A] Okay.

4 Q] And my question to you is: was there some activity between
5 the 5th when this phone call came in from Fogleman, and the 27th
6 of '94 where you actually attempted to work with the overlays
7 and you concluded that it just wasn't going to fit and you told
8 Fogleman "forget this knife theory, it ain't gonna fly"?

9 Q] I think, see, I didn't do that, okay, the overlays, okay?
10 It was done in the Trace. I think what he did was he called the
11 ME section inquiring about the knife, where actually, it should
12 have been the Trace Evidence section. So I'm not trying to put
13 words in anyone's mouth, but he probably ended up talking to the
14 person up there who did that, okay, because they would issue the
15 report, okay. So he may have talked to them. I don't know what
16 those conversations were, and then he made his statement, be-
17 cause truthfully, I don't recall having any conversation with
18 Mr. Fogleman about the knife or the overlays, because I wouldn't
19 do them, do you see what I'm saying? I wouldn't be the one
20 interpreting them. It would be the people up in Trace, at that
21 time.

22 Q] Right. You showed up in court on the 27th to testify in
23 Misskelley, and there's not a word about the knife. In fact,
24 what you testified in Misskelley was that the wounds to the face
25 of Branch could have been caused by a piece of glass?

1 A] Yeah, a sharp object. Yes, I did say that.

2 Q] You said in your direct toward the very end, "I don't know
3 what caused these injuries," and that's true, isn't it?

4 A] Right. They're not animals; I know that. Some sort of
5 implement, but not animals.

6 Q] In your opinion?

7 A] In my opinion.

8 Q] Uh, and in terms of what did cause these injuries, it's
9 just speculation, is it not?

10 A] Correct.

11 Q] Okay. Now did you ever tell Fogleman that you weren't
12 going to testify that a particular knife and particularly that
13 knife that's been shown to you in court here today, did you tell
14 him prior to the Misskelley case, "I am not going to be able to
15 help you out on that issue"?

16 A] I don't recall. I don't think I would say that, you know,
17 because they can make you testify to things; do you know what
18 I'm saying?

19 Q] How can they do that?

20 A] Well, they'll say, "Well, you're going to have to testify."
21 I mean, I don't recall any of those conversations. I mean,
22 that's a long time ago.

23 Q] Yeah?

24 A] But, you know, as far as the knife, if it matches up, that
25 was done by someone else. And there were probably conversations

1 with that individual, but not with me, because there's nothing
2 in the file, do you see what I'm saying?

3 Q] There's nothing in the file, but what I'm curious about...

4 MR. HOLT: ...Your Honor, I would object to the
5 basis of that question.

6 MR. BURT: What question?

7 MR. HOLT: The question that you're asking him
8 about this conversation that someone may have had with
9 a third person to Mr. Fogleman.

10 CROSS-EXAMINATION, continuing:

11 Q] I'm just asking you, Doctor, whether you had a conversation
12 with Mr. Fogleman prior to taking the stand in the Misskelley
13 case where you told him that as a result of reviewing overlays
14 done by somebody else or as a result of your own examinations,
15 you were not going to testify in the Misskelley case about this
16 knife being a possible weapon of use?

17 A] I truthfully don't recall that.

18 Q] You don't recall it. And do you know, as you sit there
19 today, why there was such an emphasis on the knife in the Echols
20 case, but nothing said about it at all in the Misskelley?

21 A] I don't know a lot of the back-door negotiation of things
22 I'm not really privy to; I just show up for court.

23 Q] Now a lot of your testimony in terms of these injuries
24 being, none of the injuries being, uh, due to animal predation,
25 is based on your conclusion that the injuries were inflicted

1 prior to death; correct?

2 A] Correct.

3 Q] Okay. And you would agree with me that microscopic tissue
4 examination is a vital and necessary part of the overall
5 investigative processes; right?

6 A] Well, I did do it.

7 Q] Would you agree with that statement I just made to you?

8 A] I mean, it depends on the context. You can't do it on
9 every body and every injury. So, I mean, if you take it as a
10 whole, yes. But, you know, you've got to take each case
11 individually and just make your decision at the time of the
12 autopsy what you're going to do and what you're not going to do.

13 Q] All right. Well, let me read you the entire sentence and
14 see if you agree with it: "Although there has been recent
15 discussion with the forensic pathology community regarding
16 utility of routine hystiopathology, these cases serve to
17 demonstrate that microscopic tissue is evidential and remains a
18 vital and necessary part of the overall investigative process."

19 A] It depends, sir. You have to tailor it for each case and
20 if you've got a case with someone with heart disease, or
21 myocarditis, sure, you need micros. You got someone who was
22 shot in the head, you know, why do you need to do a microscopic?

23 Q] Well, how about a case in blunt force trauma, uh, in
24 pediatric fatalities?

25 A] Fatalities?

1 Q] Fatalities?

2 A] There, you want to - - I mean, it depends. I mean, some-
3 times we'll take the sections, uh, if the injuries are old,
4 we'll take, you know, like if they're in-between fresh and
5 healing, we'll take sections there. But, I mean, Arkansas has a
6 lot of battered babies and, I mean, I don't take every
7 contusion, uh, and look at it under a microscope. That's more
8 of a gross diagnosis, looking at a contusion.

9 Q] That statement I read to you is your statement, is it not?
10 Did you write an article called *Histologic ...*

11 A] ...yeah, I did write that, but you see...

12 Q] ...wait a minute. Let me finish.

13 A] Okay. Okay.

14 Q] Did you write an article called *Histologic Evidence of*
15 *Repetitive Blunt Force Abdominal Trauma in Four Pediatric*
16 *Fatalities?*

17 A] Yes, I did, and that refers to - - repeat the title:
18 *Repetitive Abdominal Trauma*. That's why you need to take the
19 micros; the repetitive trauma, to see how old that injury is.
20 You have these children and these families that have these old
21 injuries, superimposed on new injuries. So yeah, I did say
22 that. And that is absolutely correct there.

23 Q] You, you referenced Dr. Spitz's book as a, uh, recognized
24 text your field?

25 A] We use it as a reference.

1 Q] Okay. And his 1993 text *Medicolegal Investigation*, there's
2 an article in there by Dr. Perper. Do you know Dr. Perper?

3 A] I've met him on a couple of occasions. I don't know him
4 personally.

5 Q] According to some of the cross-examination in this case,
6 the State retained Dr. Perper to work on this case; did you know
7 that?

8 A] Yes.

9 Q] Did you talk with Dr. Perper about his conclusions?

10 A] Never.

11 Q] You never had any conversation with him at all?

12 A] Never.

13 Q] Before you took the stand and disagreed with all of the
14 defense experts, did you review the testimony that the experts
15 gave here during testimony in front of Judge Burnett?

16 A] I reviewed Spitz, which I thought was laughable. Baden's,
17 uh, I started reviewing; uh, and Souviron's, and I just put it
18 down because I thought it was ridiculous. Those were the only
19 ones I reviewed.

20 Q] So you didn't even finish it?

21 A] I thought it was ridiculous.

22 Q] And so you weren't even willing to consider their opinions,
23 in total; correct?

24 A] I just read some of the pages as they were starting out; I
25 said this is craziness. Dr. Spitz saying the dogs picked these

1 boys up and shook them up against a tree? I mean, that's
2 laughable.

3 Q] So my question, Doctor, is you were not even willing to
4 consider the opinions of your colleagues in total, before you
5 rejected them?

6 A] I read Dr. Spitz's; I read Dr. Baden's and I started read-
7 ing Dr. Souviron's - - you know, I read through it and as I'm
8 reading through Spitz's it was just like incoherent, laughable
9 testimony. Baden: sort of reasonable. Souviron: way out in
10 left field. And I looked at it - - they gave testimony here, it
11 was - - okay, personal attack on Dr. Frank Peretti. That's how
12 I interpreted everything in there.

13 Q] So you interpreted the opinions and conclusions of all of
14 the defense experts as a personal attack on you?

15 A] Part of it.

16 Q] Personal?

17 A] Part of it. Of course. Some of the things they were say-
18 ing. I mean, just because you write a book and you have a TV
19 show doesn't mean you're right.

20 Q] And by the same token, just because you don't write a book
21 and you don't have a TV show doesn't mean you're right, either?

22 A] That's right. But I know I'm right because here's the dif-
23 ference: I was there, I did the autopsies, I was able to prod
24 and probe and look at everything, okay? I had the opportunity
25 of calling Dr. Dougan to look at it. I had the opportunity to

1 have Dr. Sturner come in there and look at it. What are they
2 looking at? A photograph and saying, come look at all of these
3 conclusions based on a photograph?

4 Q] Well...

5 A] ...listen. Let me finish. If these are animal bites, I
6 would have said they were animal bites. It would have made my
7 life a lot easier. But they're not animal bites.

8 Q] Well, you're kind of in a jam right now, aren't you, be-
9 cause you didn't say they were animal bites?

10 A] No one asked me.

11 Q] And no one challenged you at the trial, and now it's a
12 little bit too late to change your opinion, isn't it?

13 A] Well, no.

14 Q] In light of these convictions?

15 A] Look. As a forensic pathologist, I really don't care who
16 did it or why they did it; it's just how they did it. The
17 rest...

18 Q] ...well...

19 A] ...let me finish, because it's not my concern. But the
20 point is I was there. I did them. If they were animal bites,
21 animal predation, I would have said they were animal predation.
22 We get cases that we find are out of the woods, I say they were
23 animal bites. It would make my life a lot easier. I didn't
24 misinterpret it. I had the good sense of calling other people
25 in who agreed with me, who actually, physically saw the bodies,

1 were able to touch the bodies. They're just looking at photo-
2 graphs.

3 Q] Now Doctor, when you say "they're just looking at photo-
4 graphs," your opinion as to whether the wounds are antemortem or
5 postmortem, are depending on part on the microscopic slides;
6 right?

7 A] No. This - - no. There's contusions. Even Dr. Baden says
8 somewhere in his testimony, "you know, you got a bruise, your
9 heart is beating." They have contusions. They have sharp force
10 injuries with hemorrhage in the underlying subcutaneous tissues.
11 There's bruising in the thighs. You look at the penis. There's
12 hemorrhage in the penis. I mean, what else are you supposed to
13 do? I mean, take the whole face off, cut the face?

14 A] Does your microscopic slides of the penis show hemor-
15 rhaging?

16 A] There's ghost cells, remnants. And I went back and I look-
17 ed at them again before I came here and, you know, I focused in
18 on some sections and I saw some fresh hemorrhage and you can
19 have your experts look at it; it's slide number 19.

20 Q] And those slides were looked at by our experts, were they
21 not?

22 A] Yes.

23 Q] And they all concluded there was no hemorrhage?

24 A] Well, that's their opinion.

25 Q] Okay. And you agree with Dr. Perper's statement in Dr.

1 Spitz's book, quote: "The reliable...

2 MR. HOLT: Your Honor, first of all, I want to
3 object. Mr. Burt used the plural "all of our
4 experts." I don't believe there was testimony that
5 all of his experts had actually looked at the slides.

6 THE COURT: I don't remember at this point.

7 MR. BURT: Well, with that qualification, if I
8 said - - if that's not true, it's not true.

9 MR. HOLT: I believe Dr. Spitz was sent a cutting
10 of the tissue slides and he testified that he looked
11 at the slides.

12 CROSS-EXAMINATION, continuing:

13 Q] Let me ask you this, Doctor: Do you agree with Dr. Perper's
14 statement in Dr. Spitz's 1993 book, quote: "The reliable
15 differentiation of premortem from postmortem injuries and the
16 aging of premortem injuries obviously requires hystiologic and
17 hystio chemical studies"?

18 A] Well, he says "aging," there's no injuries to age here.

19 Q] "The reliable differentiation of premortem from postmortem
20 injuries and the aging of premortem injuries obviously requires
21 hystiologic and hystiochemical studies." Do you agree with that
22 statement?

23 A] I disagree with part of it. I don't think you need to do
24 microscopics on every body.

25 Q] And that's why you did them; right, because you did

1 microscopics in this case?

2 A] Yes, I did it where ever I thought it was important to do.

3 Q] Right. And you did it in relation to the injuries that you
4 thought there was going to be an issue as to whether they were
5 pre- and postmortem; correct?

6 A] Right. But the other injuries, you know, you don't have to
7 be a - - any competent forensic pathologist would see the hemor-
8 rahge in the wound and say these are antemortem. There's con-
9 tusions there. There's bruising. The heart's got to be pumping
10 blood.

11 Q] You say "any competent forensic pathologist," are you sug-
12 gesting that the defense forensic pathologists are not compe-
13 tent?

14 A] No, I'm not saying that. But I'm saying any competent
15 forensic pathologist would know you've got a sharp force injury,
16 you've got a hemorrhage under there; that's antemortem. I mean,
17 come on. I mean, a first year pathology resident would know
18 that. I mean, how else would the hemorrhage be there?

19 Q] How would you explain then, the difference between your
20 opinions and all of the defense experts?

21 A] I don't know.

22 Q] And when you say "sharp force injuries," a lot of those
23 cheek wounds were not sharp force injuries, were they?

24 A] Well, they're gouging, consistent with sharp force injury.

25 Q] Gouging?

1 A] Well, the same thing.

2 Q] You said in your experience, turtles gouge out the food;
3 right?

4 A] No.

5 Q] They don't?

6 A] I said - - he asked about snapping turtles.

7 Q] By the way, uh, are you trying to imply that your experi-
8 ence in turtles also qualifies you to talk about other animals,
9 besides turtles?

10 A] Well, I think in a general sense, I mean, I've had a lot of
11 animals in my life.

12 Q] Well, what other animals do you consider yourself to be an
13 expert in, besides Arkansas turtles?

14 A] Well, okay, let's see. I had - - I'm not saying I'm an
15 expert. I had twenty monkeys; I had a kangaroo; I had a
16 wallaby; uh, I've had a lot of animals over the years, skunks,
17 raccoons.

18 Q] Did anybody, during that meeting, suggest to you that, uh,
19 monkeys, uh, inflicted these injuries?

20 A] No, but they, uh, someone mentioned birds of prey.

21 Q] Uh-huh?

22 A] Well, we must have some really big eagles, there.

23 Q] Now, Doctor, you said as you were reading the testimony,
24 you took it personally. When you testify as an independent
25 pathologist against other pathologists, is that personal?

1 A] No, it's not personal. But I can see from the tone of what
2 I was reading, you know, in Dr. Souviron, on the news calling me
3 incompetent, you know, I take that personal.

4 Q] And when you take it personally, it kind of affects your
5 judgment, doesn't it?

6 A] No, it doesn't affect my judgment. It affects - - it
7 doesn't affect my judgment. I take it personally when they're
8 on national TV criticizing me, going up there, waving photo-
9 graphs and when he doesn't know what the hell he's talking
10 about.

11 Q] Did you ever look at his testimony in relation to the
12 photographs of the one-to-one photos and look at his overlay and
13 try and analyze it in a scientific way, as opposed to a...

14 A] ...no one has ever given me the overlay, number one.

15 Q] Well, before...

16 A] ...look, he was supposed to provide all of this stuff to me
17 during the meeting. He hasn't given me one thing. Not one
18 thing. He was supposed to give me photographs of turtle bites,
19 he was supposed to give me photographs of fish bites - - he
20 didn't give me anything.

21 Q] Your understanding of that meeting which you described as
22 unusual, was it was going to be a mutual exchange of infor-
23 mation; correct?

24 A] Right.

25 Q] And the defense experts showed up; they laid their cards on

1 the table; they told you what their opinions were, and you then
2 promised them to get back to them; correct?

3 A] And they promised to give me some stuff.

4 Q] Did you promise to get back to them?

5 A] I told them I would do the study, but we couldn't do it.

6 Q] Right. And did you ever take the courtesy of informing the
7 experts or the lawyers that you weren't going to do the study?

8 A] No, because no one called me.

9 Q] And no point in time?

10 A] No one called me.

11 Q] So, well, you got a letter, did you not, from Mr. Reardon,
12 saying we're looking forward to your follow-up, as you promised
13 this study, and here are some specific questions - - you didn't
14 even give him the courtesy of a reply, did you?

15 A] Well, I didn't think I needed to reply to that, to the
16 questions.

17 Q] Did you give the courtesy of a reply to say, "hey, you know
18 what, we're under staffed, we're not going to do the study," you
19 didn't do that, did you?

20 A] Did they give me a courtesy saying they were not going to
21 provide you all of this information?

22 Q] Well, what would you conclude if you're working a case and
23 you make a reasonable request to your opponent and your opponent
24 completely ignores you. What would you conclude that to mean?

25 A] Listen. Do you know what I perceived that meeting - - this

1 is my touch on that meeting. Bring in all of these experts, sit
2 me down, try to intimidate me, you know, I actually - - and I
3 have to say this. I feel quite honored that it takes all of
4 these kinds of people to take me down, you know, to prove I'm
5 wrong. Six people, you've got six people that have to review my
6 work to try and say I'm wrong. I feel quite honored if it takes
7 six people. If my work was that bad, why couldn't one person do
8 it?

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

10 MR. BURT: No.

11 THE COURT: Well, we've got one more witness to
12 do.

13 MR. BURT: I understand that, and I'm not going to
14 be much longer.

15 Thank you.

16 CROSS-EXIMANTION, continuing:

17 Q] Doctor, this letter, uh, that you wrote dated May 30th,
18 2008, Petitioner's Exhibit #48-00, you wrote that letter at the
19 request of the state's attorney; correct?

20 A] Is that the letter to Mr. Davis?

21 Q] Yes?

22 A] Yes.

23 Q] He called you up and said "I want you to summarize for me
24 why you disagree with the defense..."

25 A] ...he called Dr. Kokas. He didn't call me.

1 Q] Okay. And Dr. Kokas then told you "I want you to reduce to
2 writing all of the reasons you have for disagreeing with the
3 defense"?

4 A] Yes, and Dr. Kokas and I, we sat down and went through it.

5 Q] Okay. And the three reasons you documented were that
6 first, Dr. Sturner and I personally examined the bodies of the
7 three boys, along with Dr. Kevin Dougan. Dr. Dougan's findings
8 that none of the wounds appeared to be human bite marks was sub-
9 sequently corroborated by Dr. Harry Mentzer. That was your
10 first reason; right?

11 A] Correct.

12 Q] Your understand is that Dr. Mentzer was only asked to look
13 at the photographs of the cheek injuries that the Echols lawyers
14 were claiming were human bite marks; right?

15 A] I believe that was the case.

16 Q] Okay. And so Dr. Mentzer was never asked, and you under-
17 stand he was never asked to look at all three bodies to see if
18 there were any animal bite marks; correct?

19 A] Correct.

20 Q] And based on your testimony in cross-examination, you never
21 asked Dr. Dougan to see if there were any animal bite marks;
22 correct?

23 A] No, because I didn't see any and I didn't think it was
24 necessary.

25 Q] He doesn't even have any expertise in animal bite marks,

1 does he? He's a human bite mark specialist; right?

2 A] He's a dentist.

3 Q] Okay. Then you said second "as part of the autopsy process,
4 tissue samples were taken from some of the superficial and pene-
5 trating wounds. When examined grossly and microscopically,
6 these samples demonstrated presence of hemorrhage, clearly in-
7 dicative of antemortem injury and not postmortem animal
8 activity." There you are relying on your microscopics; right?

9 A] Right.

10 Q] And did you accurately record your microscopic results of
11 the three autopsy reports?

12 A] I put in there I saw ghost cells; correct.

13 Q] And as to each and every microscopic, except that ghost
14 remnant slide, you have indicated no hemorrhaging; isn't that
15 true?

16 A] Well, some had hemorrhaging. Some of the bindings had
17 hemorrhaging.

18 Q] The bindings?

19 A] Yes.

20 Q] So did anybody claim that the bindings were animal
21 activity?

22 A] No.

23 Q] So, so what did the microscopics on the bindings have to do
24 with the injuries that are in issue here?

25 A] Because we normally take microscopic sections of the

1 bindings.

2 Q] Right. And how do those relate to refuting...

3 A] ...well, we want to see if there is some hemorrhage there
4 or not. Some had hemorrhage; some didn't.

5 Q] The bindings; right?

6 A] Yeah.

7 Q] The injuries that are at issue here have nothing to do with
8 bindings.

9 Q] Well, that's what we do. We take sections of the bindings.
10 But I knew the genital mutilation would be a problem later on
11 and I knew we had to see if there was antemortem or postmortem,
12 so that's why I took all of the sections of his penis.

13 Q] And then you said that the third reason was that "all of
14 the injuries were clearly incised edges"; correct?

15 A] Yes.

16 Q] And in fact, that's not true, is it?

17 A] Well, some of them are gouged, but they're incised; they're
18 sharp force injuries.

19 Q] You described the injuries to the cheeks, those sort of
20 rectangular looking gouges as sharp force injuries?

21 A] Well, it was done by an implement.

22 Q] In your opinion?

23 A] Yes.

24 Q] And all of the other experts who have looked at this
25 besides Dr. Sturner and yourself, have said those are not sharp

1 force injuries; correct?

2 A] That's their opinion.

3 Q] Okay. Now lastly, Doctor, uh, was your lab, do you agree
4 with this statement, "currently, the standard for quality in
5 death investigation for medical examiner offices is
6 accreditation by MEME"?

7 A] Correct.

8 Q] Is that true?

9 A] Yes.

10 Q] Was your office accredited when these autopsies were done?

11 A] No. The Crime Lab was never accredited until Dr. Sturner
12 came there, and he made it accredited.

13 Q] Okay. And is your...

14 A] ...but we follow - - let me finish...

15 Q] ...yes.

16 A] But we followed all of the MEME guidelines for doing all of
17 the autopsies, so the accreditation has nothing to do with our
18 performance.

19 Q] Is your lab currently accredited?

20 A] We're in the process of getting re-accredited.

21 Q] So the answer is no, you're not currently accredited?

22 A] It's being accredited. We're in the process of - - that,
23 you're going to have take up with administration.

24 Q] All right. Then the last question, uh, do you agree with
25 this statement: "For forensic pathologists, basic competence is

1 initially documented by examination and certification, and
2 subsequently by recertification by the American Board of
3 Pathology”?

4 A] There’s a lot of competent pathologists who are not board
5 certified and there are plenty of board certified pathologists
6 who are incompetent.

7 Q] So you disagree with that statement?

8 A] I disagree with that statement.

9 Q] And this is the statement of the *National Research Council*;
10 have you read this book?

11 A] I’ve never seen it.

12 Q] Never seen it?

13 A] No.

14 Q] And as I understood your testimony, you tried twice to take
15 the, uh...

16 A] ...at the time I was doing the autopsies, I was board
17 eligible. So my being board certified has nothing to do with
18 the performance of these autopsies.

19 Q] Well, when you say you’re “board eligible,” I’m board
20 eligible right now, am I not, if I had an MD and passed the
21 exam?

22 A] Right. But at that time I was studying for the board, so I
23 was still board eligible. Just because I didn’t have my boards,
24 that doesn’t make me incompetent. I was studying for my boards
25 during that period.

1 Q] And you had studied, you took the exam, you failed twice,
2 you never got certified; correct?

3 A] I failed it afterwards; correct.

4 Q] Okay.

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

6 MR. HOLT: Do you want to take a short break?

7 THE COURT: No, let's plug right on.

8 RE-DIRECT EXAMINATION

9 BY MR. HOLT:

10 Q] I just have a few questions, Dr. Peretti.

11 A] I have all day.

12 Q] Do you know whether - - if you assume that all of the
13 lacerations, abrasions and contusions not involved in the head
14 injuries were - - if you assume that they were animal predation,
15 would you have still put that these boys died of multiple
16 injuries?

17 A] Yes, of course.

18 Q] Do you only look at, uh, in the first instance in this
19 particular case, was there any doubt in your mind that the con-
20 tusions that were observed by you on the bodies, were bruising
21 that were antemortem?

22 A] They were all antemortem.

23 Q] Is a contusion, by its very nature, antemortem?

24 A] Yes, it is.

25 Q] Did some of these contusions have sharp force injuries - -

1 were they overlaid by sharp force injury?

2 A] Yes, and abrasions.

3 Q] In the review of the testimony that you looked at, and
4 taking that into consideration along with the meeting that you
5 went to and that you were thanked for your attention and parti-
6 cipation in that regard, did anyone ever offer you any exemplars
7 of other animals - - I guess land based animals with canine
8 teeth, or was any documentation given for what kind of animal
9 predation this would have been on land?

10 A] Well, I was told it could be raccoons, skunks, possums,
11 rats, uh, dogs, coyotes, birds of prey, turtles, fish, uh, cray-
12 fish, oh, and even snails. There was mention of snails. So I
13 mean, there's all of these animals, you know, I try to make the
14 analogy - -it's like the Ivory-billed woodpecker, you know.
15 Everybody talks about it but no one has ever seen it. You know,
16 what is this animal that's living in West Memphis attacked these
17 boys - - they're saying postmortem. What is there?

18 A] Well, in one of the interesting things about this case, is
19 it not, is that the fact that they all had terminal submersion,
20 that acted as sort of a timeline with regard to when these
21 injuries occurred.

22 A] Correct.

23 Q] And did anyone mention, was that fact ever mentioned by any
24 of those experts at the meeting?

25 A] No.

1 Q] Would a person, after being, I believe that there was in
2 part of Dr. Souviron's testimony, you said that he, uh, that you
3 read part of it?

4 A] Yeah, but I just got so disgusted with it.

5 Q] Well, did you read the part about where he said that these
6 boys could have been unconscious in the water for fifteen or
7 twenty minutes?

8 A] Yes; that's totally out of his area of expertise.

9 Q] How would that have, how would these boys, being hog-tied,
10 stripped of their clothing, hog-tied and with blunt force trauma
11 injuries that all of the experts, except, I guess Dr. Spitz,
12 agree are antemortem, how would these boys be in that water un-
13 conscious for fifteen or twenty minutes?

14 A] It's impossible.

15 Q] Does it sort of overlook the fact that the boys drown?

16 A] That's what he's implying.

17 Q] Now Dr. Baden's testimony, did you review his testimony?

18 A] Yeah, I read all of his.

19 Q] And I believe that you said that in some instances you
20 would call a forensic - - what was the word that he used?

21 A] He used forensic veterinarian.

22 Q] Well, no, you said forensic opinions - - oh, you would
23 call, uh, in some instances, forensic autopsy, or forensic
24 opinions.

25 A] I would change it from forensic medicine to forensic

1 opinions.

2 Q] I see. And those are opinions that are based on observa-
3 tion, are they not?

4 A] Right.

5 Q] And in fact, Dr. Baden, in his testimony, had no issue, he
6 said yours was a very, uh, the protocol and the way the autopsy
7 is done are very proper. He said that the interpretation
8 varies. And is that what you mean when you say that people can
9 have opinions based upon their observations?

10 A] Correct.

11 Q] And who observed these bodies first-hand?

12 A] Me.

13 Q] Who else?

14 A] Well, Dr. Dougan just observed the injuries on the head,
15 and Dr. Sturner.

16 Q] And in the instances of all three boys, based upon the
17 entire surroundings and the circumstances of this case, the fact
18 that there was blunt force trauma to the head. The fact that
19 they were stripped of their clothing, the fact that they were
20 hog-tied and incapacitated, the fact that one of them bled to
21 death, the fact that there were contusions throughout the bodies
22 overlaid by other lacerations and cuts, consistent with that,
23 did you see any foundation for any postmortem animal predation
24 in this case?

25 A] None.

1 Q] Did you ever tell anybody that if had thought that this was
2 a turtle bite, would you have said so in your reports?

3 A] Of course. If it was a turtle bite, I would have said it
4 was a turtle bite.

5 Q] Did you ever tell Paul Ford that this was a turtle bite?

6 A] No. That's a lie, a blatant lie. I mean, I don't even
7 know where he came up with that.

8 Q] And in his cross-examination of you, do you think that - -
9 if you had said that, he would have brought it up?

10 A] Yeah, I think he would have.

11 MR. HOLT: I pass the witness.

12 RE-CROSS EXAMINATION

13 BY MR. PHILLIPSBORN:

14 Q] Doctor, there was an Exhibit that was marked by Mr. Burt
15 that you were asked to look through; I just have one question.

16 A] Sure. And those are all of your exhibits.

17 Q] Okay. So just so you know that my part of this is going to
18 be pretty simple, but you just went through Exhibit #81.

19 MR. PHILLIPSBORN: Your Honor, I'd ask Mr. Burt,
20 through the Court, whether number has been moved into
21 evidence?

22 MR. BURT: I don't think it has been, but I would
23 move it into evidence.

24 MR. HOLT: No objection.

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

1 (WHEREUPON, Petitioner's Exhibit #81 was admitted and received
2 into evidence and is appended on page.)

3 RE-CROSS EXAMINATION, continuing:

4 Q] So #81 has been received, uh, you were trying, uh, to
5 review that document a little while ago, uh, do you recall
6 seeing the paperwork that you and I reviewed that, uh, had the
7 name of Paul Ford on one sheet and Ford and Wadley on the other?

8 A] Yes.

9 Q] Do you recall whether there were any other sheets; in other
10 words, are there only two sheets that reflect the record of con-
11 tact with you by Ford or Ford and Wadley?

12 A] Yes, I believe there were two sheets.

13 MR. PHILLIPSBORN: Thank you, Doctor. I have
14 nothing further. I appreciate your participation.

15 THE WITNESS: Your welcome. Have a safe trip
16 home.

17 RE-CROSS EXAMINATION

18 BY MR. BURT:

19 Q] Doctor, just very quickly here. This difference that you
20 were pointing to, you saw the bodies and the defense experts
21 didn't, is seeing the bodies a guarantee that you're going to
22 come up with accurate conclusions?

23 A] Yes. I think the person doing the autopsy has the advant-
24 age.

25 Q] And in that study that Mr. Phillipsborn referenced in his

1 cross-examination, called *The Incidence of Autopsy Findings and*
2 *Unexpected Deaths in Children and Adolescents*, I have that
3 marked as next in order that I want to show you that.

4 THE COURT: Are you offering it?

5 MR. BURT: Yes.

6 MR. HOLT: No objection.

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

8 (WHEREUPON, Petitioner's Exhibit #82 was admitted and received
9 into evidence and is appended on page .)

10 RE-CROSS EXAMINATION, continuing:

11 Q] In that study, you were looking at cases that your office
12 had autopsied; correct?

13 A] And Children's Hospital. Yes.

14 Q] These are forensic autopsy cases from the Arkansas State
15 Crime Laboratory?

16 A] And Arkansas Children's Hospital.

17 Q] And there were four hundred and thirty-nine in your study?

18 A] Yes.

19 Q] And of those 439 cases, which were based on personal ob-
20 servation at the autopsy table; correct?

21 A] Yes.

22 Q] Your office and the other office study missed diagnoses in
23 about forty percent of the cases, did they not?

24 A] On most of the hospital cases, yes. You know, missed
25 diagnosis, it's - - see, you don't understand the article.

1 Q] I don't?

2 A] No. Well, people come in and say it's one thing, then we
3 do the autopsy and find something else.

4 Q] Well, what it says is "of the 439 pediatric and adolescent
5 forensic autopsies, a hundred and seventy-three, that is thirty-
6 nine percent, revealed previously undiagnosed lesions, sixty-
7 eight of the one hundred and seventy-three, thirty-nine percent,
8 autopsies revealed significant lesions and fifty-nine, or thirty
9 -four percent of these noted lesions that were directly related
10 to the demise of the subject."

11 A] Well, look at that. This says lesions.

12 Q] Right. So in those cases where there were autopsies per-
13 formed, the doctors were missing lesions in about forty percent
14 of the cases?

15 A] No, I don't think it was missing lesions. I mean, it's the
16 cases that came in, some of the clinicians.

17 Q] "Previously undiagnosed lesions," in other words...

18 A] ...yeah, from clinicians.

19 Q] They performed an autopsy and they were, in their autopsy,
20 they missed lesions which you went back and found?

21 A] No. It's patients going to doctors and doctors missing the
22 lesions and we found them at autopsy.

23 Q] And in your work as a forensic...

24 A] ...you know, these kids were alive before.

25 Q] In your work as an independent forensic pathologist, do you

1 render opinions without having seen the body, based on photo-
2 graphs?

3 A] Sometimes.

4 Q] And based on your testimony here today, will you, from this
5 point forward be turning down work, uh, because in all of those
6 cases where you were not actually able to see the body?

7 A] No.

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

9 THE COURT: All right, you can stand down, and
10 you're free to go.

11 THE WITNESS: Free to go?

12 THE COURT: Yes.

13 THE WITNESS: Okay. Thank you.

14 (Witness stands down.)

15 THE COURT: Call your next.

16 MR. HOLT: We call Dr. William Sturner.

17 THE COURT: You've been waiting two days for this,
18 haven't you?

19 THE WITNESS: Yes.

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

21 (Witness sworn.)

22 THEREUPON,

23 WILLIAM QUENTON STURNER, MD, FORENSIC MEDICAL EXAMINER (Ret.)

24 was called as a witness and having been previously sworn, was
25 examined and testified as follows, to-wit.

DIRECT-EXAMINATION