

1 MR. HOLT: No questions.

2 THE COURT: All right, you may stand down. You're
3 excused.

4 (Witness excused.)

5 THE COURT: Call your next witness.

6 MR. BURT: Your Honor, I'm afraid we've kind of
7 run out of witnesses for today.

8 THE COURT: I wanted to quit at 3:30 anyway.

9 MR. BURT: Yes, we anticipated a little longer on
10 cross, so I apologize for that.

11 THE COURT: Well, I can start back at about 12:30
12 if that's convenient. It takes me an hour to drive
13 over here and I suspect I could probably be here by
14 twelve. Let's say 12:30, is that all right?

15 MR. BURT: Thank you.

16 THE COURT: All right, court will be in recess
17 until tomorrow at 12:30.

18 (WHEREUPON, a recess was taken August 11, 2009; proceedings
19 resumed August 12, 2009, 12:30 p.m., as follows, to-wit:)

20 **AUGUST 12, 2009**

21 THE COURT: All right, call your next witness.

22 MR. BURT: Judge, just to let the Court know in
23 terms of scheduling, we have one expert that will
24 probably take all afternoon, hopefully, a little bit
25 less than that and then we have witnesses lined up for

1 tomorrow.

2 There are some scheduling issues that hopefully
3 after the expert testifies today, we have some time to
4 discuss those with the Court, and some records and
5 some issues.

6 THE COURT: Okay.

7 MR. BURT: Thank you. We call Dr. Souviron.

8 THE COURT: Will you be finished with your case
9 this week?

10 MR. BURT: I think we'll spill over into Monday.

11 THE COURT: And how long will y'all take?

12 MR. HOLT: Well, I can't say right now, not at
13 this moment.

14 MR. BURT: Your Honor, while Dr. Souveiron is
15 getting settled in, I'll mark next in order Dr.
16 Souviron's CV.

17 THE COURT: Yes, it may be received.

18 (WHEREUPON, Defendant/Petitioner's exhibit #59 was admitted and
19 received into evidence and is appended on page .)

20 THEREUPON,

21 DR. RICHARD F. SOUVIRON, D.D.S., Forensic Odontologist
22 was called as a witness by and on behalf of the Petitioner/
23 Defendant and having been duly sworn was examined and testified
24 as follows, to-wit:

25 DIRECT-EXAMINATION

1 BY MR. BURT:

2 Q] Sir, could you restate your name for us, please?

3 A] Richard Souviron.

4 Q] And tell us your business or occupation?

5 A] I'm a dentist.

6 Q] Do you have any particular specialty within the field of
7 dentistry?

8 A] Yes, sir, I do.

9 Q] And tell us what that is?

10 A] I'm a forensic odontologist, so I have a field of forensic
11 dentistry specialty.

12 Q] Tell us what forensic odontology is?

13 A] It's that area of dentistry that deals with the law, in a
14 real quick sense.

15 Q] Can you tell us what's encompassed within forensic odon-
16 tology and what kinds of cases you have worked in?

17 A] Yes. Strictly in the criminal area, uh, I do all of the
18 work for the Miami/Dade County medical examiner's office, so any
19 body that comes through there that needs to be identified, any
20 mass disaster plane crash, whatever, the dentist is always call-
21 ed in so the family doesn't have to look at the bodies if
22 they're mutilated. So that's one area. The other area...

23 Q] ...so that's victim identification?

24 A] Victim identification; yes, sir.

25 Q] All right?

1 A] And then the other areas I'm called in on, uh, cases in-
2 volving pattern injuries of all types, including, and mainly
3 bite marks. So that's the second area that I deal with.

4 Q] And "pattern identification" in terms of human bite marks,
5 or other kinds of bite marks?

6 A] Other kinds of bite marks. We have an unusual array of
7 bite marks that come through the medical examiner's office in
8 Dade County.

9 Q] All right. You mentioned this, but do forensic odon-
10 tologists often work in connection with medical examiner
11 offices?

12 A] They do, yes, sir, and also with sheriff's departments. In
13 our area the medical examiner's office is completely and
14 separately apart, so it is a separate entity, if you will. It
15 doesn't work under the state crime lab; it doesn't work under
16 the prosecutor's office or the defense, the public defender's
17 office. It's a separate entity unto itself, so it's
18 independent.

19 Q] And you are employed by the medical examiner's office to do
20 their forensic odontology work?

21 A] Yes, sir, that's correct.

22 Q] Is that a full-time position?

23 A] No, sir.

24 Q] You also have a private business?

25 A] Yes, sir.

1 Q] And tell us what that consists of?

2 A] I practice dentistry on people, which involves the routine
3 things that dentists do, uh, I have a specialty in treating
4 joint - - temporal mandible joint injuries, but primarily I do
5 crowns, bridges, fillings, extractions, root canals; that type
6 of thing.

7 Q] Do you consult with other law enforcement agencies, besides
8 the medical examiner's office down there in Miami?

9 A] Yes, I do.

10 Q] And tell us what agencies you consult with in the field of
11 forensic odontology?

12 A] Throughout the state of Florida I have consulted with most
13 of the jurisdictions from Jacksonville to over to Pensacola down
14 to the Florida Keys, uh, helping to identify and dealing with
15 bite mark cases. And then outside of the state of Florida I've
16 been involved with cases throughout the country and certainly
17 not with the wide variety that Dr. Baden has. I haven't been
18 called to Kosevo or any of those places, but I have done
19 Canadian cases and I've been consulted with Nova Scotia and some
20 of the Bahamas.

21 Q] Okay. And are these situations where, say, a law enforce-
22 ment agency gets a homicide case, there's an issue of bite marks
23 involved; they then call you in to consult and give them
24 opinions about what they're dealing with?

25 A] Absolutely. Yes, sir.

1 Q] Okay. Now do you also do some defense, criminal defense
2 consultation work?

3 A] Yes, sir.

4 Q] And tell us about that part of your practice?

5 A] The, uh, usually the prosecution gets the first bite at the
6 apple, so to speak. So they, uh, if it's a prosecution case,
7 they call me; they got me first. But as a second rung, the de-
8 fense usually gets the second rung people, which is me, in some
9 cases. And I've been involved in defense work in numerous
10 states.

11 Q] Okay. Can you tell us how much of your work is law
12 enforcement work versus criminal defense work?

13 A] Oh, by far, the law enforcement.

14 Q] Law enforcement?

15 A] Yes.

16 Q] Would you say seventy percent?

17 A] Yeah, probably seventy, seventy-five percent is for law
18 enforcement.

19 Q] And in terms of your criminal defense consultation work,
20 how long have you been doing that?

21 A] The first criminal defense case I did was 1973, and it was
22 a dog-bite case.

23 Q] So that was a situation where a criminal defense lawyer
24 representing his client, retained you to work on a case where
25 there was a dog bite back in 1973?

1 A] Yes, sir.

2 Q] Have you been doing the work ever since then?

3 A] Yes, sir.

4 Q] Tell us about your educational background?

5 A] I was educated in Miami, graduated from Miami Senior High
6 school and attended the University of Miami, the "U," as they
7 call it, uh, not in those days, but now it's the U. And then I
8 attended college at Emory University in Atlanta and got my
9 dental degree graduate training degree at Emory.

10 Q] Okay. In printing, there is an exhibit. It says
11 Plaintiff's 59. Is that a copy of your current CV?

12 A] (Witness examining same.) Yes, sir.

13 Q] Does it accurately list your educational background and
14 also, your other qualifications to be a forensic odontologist?

15 A] Yes, it does.

16 Q] Can you tell us any specialized training you've received in
17 the field of forensic dentistry?

18 A] Oh, boy. I've taken courses, uh, at University of Texas,
19 San Antonio; at Bellevue in New York; uh, in Connecticut, uh,
20 the primary training has been at the medical examiner's office.
21 To be there hands-on, uh, not learning it out of a book or
22 listening to some guy lecturing and showing slides, but actually
23 seeing the real cases.

24 Q] So it's actually learning by doing?

25 A] Oh, absolutely. That's the experience that you get in that

1 office is just unbelievable.

2 Q] I imagine in Miami, you get your fair share of water cases;
3 cases where bodies are found in water or drownings, things of
4 that nature?

5 A] Yes, sir.

6 Q] How many cases have you worked on since you began doing
7 this work?

8 A] Probably in the thousands.

9 Q] You said you did your first defense case in 1973. How long
10 have you been doing forensic odontology?

11 A] '67, I started.

12 Q] Started in '67?

13 A] Yes, sir.

14 Q] And just give us a brief run-down of where you went after
15 you graduated from dental school, in terms of the field of
16 dental odontology. What positions have you held?

17 A] Well, my background was, uh, I had to work my way through
18 school and one of my jobs was at Georgia Baptist Hospital, uh,
19 and I was called in to do what they call the "scrub tech," or
20 the "morgue tech." I would do the opening of the body for the
21 pathologist through my junior and senior year while I was in
22 dental school. So I got a really good background in clinical
23 pathology. It wasn't forensic stuff, but I had an opportunity
24 to read Dr. Helpert's book; he was mentioned yesterday, on
25 forensics, and I came to Miami and started my practice. And in

1 19667 I got a call on a controversial identification case and
2 Dr. Davis was the chief medical examiner and I told him that
3 "I'm interested in the field and this is what my background is
4 and I'm not going to charge you anything. Call me when there's
5 something worthwhile." So he got free help until about 1971 or
6 '72 and then I decided I was going to quit unless they paid me
7 something. So I think Dr. Baden got eight grand; I got three
8 grand a year when I started. So that's my background.

9 Q] Okay. And did that evolve into a full-time position in the
10 medical examiner's office?

11 A] Not really. When you say "full-time position," I was the
12 only forensic odontologist there until in the '80s, uh, and then
13 I started training people to come in. Right now, uh, we have a,
14 if I'm the chief forensic odontologist, the deputy chief is Dr.
15 Silver, Bill Silver, he's working with me. We have at least
16 thirty other individuals that have been trained so that - -
17 they're not board certified - - just the two of us are board
18 certified. But if we have a mass disaster, a plane goes down
19 and we need help with more than one or two bodies, then we've
20 got people we can call.

21 Q] Do you work mass disaster cases, airline crashes, things of
22 that sort?

23 A] Yes.

24 Q] How many?

25 A] Four or five.

1 Q] And are these situations where bodies are found in water
2 after a crash, or both land and sea?

3 A] Both. We did, uh, the latest one was Chalk's Airline. It
4 went down, uh, the wing fell off the airplane. It was going to
5 the Bahamas and twenty people were killed in that one; uh, Fine
6 Air crash; uh, Value Jet crash; Eastern Air Lines crash; North-
7 west crash; uh, all of these have bodies involved that were
8 either disfigured, horribly disfigured, or burned, or mutilated.
9 So somebody has to identify them.

10 Q] Okay. Now you've mentioned board certification and you
11 said that you are board certified. Board certified in what?
12 What is your certification?

13 A] Forensic odontology.

14 Q] And tell us about the board certification process. When
15 did that begin for forensic odontologist; tell us about your
16 role in it in the whole certification organization?

17 A] Okay. Well, it started when the federal government had a
18 edict and it was all of the specialties had to be, uh, they were
19 trying to get boards set up in the different specialties. For
20 instance, medicine and forensic pathology was already up and
21 running. But anthropology wasn't, dentistry wasn't, uh, those
22 are the two main ones. I'm not sure about criminology, uh, but
23 under a grant from the federal government, they set up the
24 background for the boards. It took us, I was one of the
25 original board members and one of the ones that set up the

1 examination, both written and practical. It was a three-day
2 test, uh, you could take the exam in those days with four or
3 five years of work with the medical examiner. Now, it's much
4 more complicated to do. You have to have so many autopsies
5 you've been involved with, been to court, so many bite mark
6 cases, uh, and it's a very extensive examination and not every-
7 body passes it.

8 Q] Is the agency that certifies you the American Board of
9 Odontology?

10 A] That's correct.

11 Q] And you said you were a founding member of that organiza-
12 tion?

13 A] That's correct.

14 Q] Have they been existing about since 1976?

15 A] The boards were set up in 1976, but the odontologists
16 actually started in the early '70s, with the American Academy of
17 Forensic Sciences, uh, there is a division - - American Academy
18 of Forensic Sciences, as Dr. Baden explained yesterday,
19 encompasses all of the forensic fields, including lawyers; they
20 have a jurisprudence section. They have a bio section, the
21 criminologist section, the anthropology, uh, questioned document
22 section, odontology. So when we started that group, there were
23 ten of us. We now have several hundred in that section, and of
24 those several hundred, that's where they get a lot of the
25 experience and training and mentoring, if you will, to be able

1 to qualify for the board. But the board actually started to
2 form in 1974 but the first exams were done in, I think, '76.

3 Q] And have you held any leadership positions in either of
4 these organizations; that is, the American, the odontology
5 section of the American Academy of Forensic Sciences or the
6 American Society of Forensic Odontologists?

7 A] Yes.

8 Q] Tell us what your positions have been?

9 Q] Well, I went through the chairs and became president;
10 section chairman of the odontology section; president of the
11 American Board of Forensic Odontology; served on the ethics
12 committee, uh, was on the initial examining of credentials
13 committee. I think I did that for ten years. I've been on the
14 ethics committee three different times. There're three years
15 stints, so I've done that for like nine years. I'm currently on
16 the board of directors and I want the younger guys to have a
17 shot, so I don't want to run again for president. I've been
18 there, done that. Let the young guys have a chance.

19 Q] Do you hold any academic positions?

20 A] Yes.

21 Q] And what are they?

22 A] University of Miami medical school.

23 Q] And what do you teach at the medical school?

24 A] Well, I teach forensic dentistry and that's with the
25 pathology department. They have me as an adjunct, what's called

1 an adjunct professor.

2 Q] Now you regularly lecture to law enforcement and other
3 agencies in your field?

4 A] Is that a question?

5 Q] Yes?

6 A] Yes.

7 Q] And, uh, give us the, uh, some sense of the agencies you
8 taught or lectured for law enforcement?

9 A] Okay. With the law enforcement, I've lectured to, uh, on a
10 continuing basis in a five-day course called Medical/Legal Death
11 Investigation put on by the medical examiner's office. And the
12 people that attend are the people that are involved with any
13 kind of death investigation. So you have the detectives that
14 deal with homicides, you have the sexual battery people that are
15 there, federal agencies send their people there so that's the
16 FBI and people with the US Justice Department, attorneys, both
17 defense and prosecutors and those five-day courses are four
18 times a year. And then numerous other courses, but for
19 instance, forensic photography, I have lectured in that, you
20 know, showing the value in how to do what I need for my
21 particular area: the bite marks, as far as photography is
22 concerned.

23 Q] Now are your publications accurately listed in your CV?

24 A] I would say reasonably accurate. They're not complete be-
25 cause Dr. Silver and I just put out a textbook on forensic

1 dentistry that came out in June and that's not in here.

2 Q] This is a June, 2009 publication?

3 A] Yes.

4 Q] A textbook on - - what's it called?

5 A] It's called *Dental Autopsy*.

6 Q] Do the publications you've done appear in journals like *The*
7 *Journal of Forensic Science*?

8 A] Yes.

9 Q] *The FBI Law Enforcement Bulletin*?

10 A] Yes.

11 Q] And the others are listed in your CV; correct?

12 A] Right.

13 Q] And have you been publishing in the field of forensic odon-
14 tology since about 1980?

15 A] That's correct.

16 Q] Did you author two chapters in a 2005 book which is entitl-
17 ed *Bite Mark Evidence*?

18 A] Yes.

19 Q] Edited by Robert Dorian?

20 A] That's correct.

21 Q] And what were the two chapters you wrote for that textbook?

22 A] The one chapter was on animal bites and the other chapter
23 was on pattern injuries that mimic bite marks.

24 Q] Patterns that mimic bite marks?

25 A] Yes.

1 Q] And the animal bite chapter obviously dealt with animal
2 bite marks?

3 A] Yes.

4 Q] Did you author the forensic odontology chapter in a book
5 that's been referred to here as *Forensic Pathology Principles*
6 *and Practices*?

7 A] Yes, sir.

8 Q] That was in 2005?

9 A] Yes.

10 Q] And did you author the forensic odontology chapter in Dr.
11 Spitz's book that has been referred to throughout these
12 proceedings?

13 A] Yes, sir.

14 Q] And you said your most recent publication is a textbook
15 that came out in June, 2001?

16 A] Correct.

17 Q] Do you keep up with the literature in your field?

18 A] I would think so; yes.

19 Q] Just to write the stuff, you've got to?

20 A] Yeah, you have to have some idea of what other people are
21 doing; sure.

22 Q] Tell me this. Is there literature that's devoted specific-
23 ally to injuries caused by animal bites, such as, or in addition
24 to the chapter that you wrote for the textbook; are there other
25 people writing about the kind of injuries that animals cause?

1 A] Yes.

2 Q] Were people writing about this topic back in 1993 and '94,
3 and even before that?

4 A] Yes.

5 Q] Now does your CV accurately list the jurisdictions that
6 you've qualified in as an expert witnesses?

7 A] I think so. I don't think it lists Arkansas, though, so I
8 probably left that one out.

9 Q] Have you qualified to testify in Arkansas before?

10 A] Yes.

11 Q] Okay. In a criminal case, or was that a civil case?

12 A] I think it was, uh, well, I did two. Back in the '80s I
13 did some work for the FBI in Arkansas, and I became an *Arkansas*
14 *Traveler*. Bill Clinton signed that as the governor.

15 THE COURT: That's a certificate they give in
16 Arkansas; the governor's office. You might get one.

17 MR. BURT: I look forward to that.

18 THE COURT: Well, it's real impressive.

19 DIRECT-EXAMINATION, continuing:

20 Q] What other states have you qualified in as an expert
21 witness?

22 A] It's in the CV, but just basically pretty much throughout
23 the south. I've done cases in Mississippi, Louisiana,
24 Tennessee, Alabama, Georgia, Florida, uh, Connecticut, New York,
25 uh, Michigan, Illinois, California. I'm sure I've left out

1 something - - Wyoming.

2 Q] Have you ever qualified as an expert in forensic odontology
3 that relates specifically to animal bites, or animal bite marks?

4 A] Well, I've already told you one. My first case was an
5 animal bite case.

6 Q] That's the '74 case?

7 A] '73.

8 Q] '73?

9 A] And then I have to think - - specifically, animal bites - -
10 possibly, but I can't, offhand, I can't tell you.

11 Q] You've come across a lot of animal bite cases in your
12 career?

13 A] Yes, sir.

14 Q] Now when did you first become involved in this case?

15 A] I have to look and see. Somewhere around '06.

16 Q] '06.

17 MR. BURT: And at this point I'd offer the doctor
18 as an expert in forensic odontology.

19 MR. HOLT: No objection.

20 THE COURT: Any voir dire?

21 MR. HOLT: No, Your Honor.

22 THE COURT: All right, you may proceed.

23 DIRECT-EXAMINATION, continuing:

24 Q] How did you become involved in 2006?

25 A] You know, I think, again, from memory, uh, I was sent some

1 material and it may have been Lori Davis that contacted me. And
2 then two attorneys out of San Francisco, uh, Horgan and Riordan,
3 I believe are their names.

4 Q] Riordan?

5 A] Yeah.

6 Q] Donald Horgan?

7 A] Yes.

8 Q] Did you at some point write a report of your findings in
9 this case?

10 A] Yes, sir.

11 MR. BURT: I would have marked next in order, a
12 report dated January 11, 2007.

13 THE COURT: Any objection?

14 MR. HOLT: No objection.

15 THE COURT: All right, it will be received.

16 (WHEREUPON, Petitioner/Defendant's Exhibit #60 was admitted and
17 received into evidence and is appended on page .)

18 DIRECT-EXAMINATION, continuing:

19 Q] Is Exhibit #60 a copy of your report, Doctor?

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

21 Q] And this is addressed to Donald Horgan out there in San
22 Francisco?

23 A] Yes, it is.

24 Q] Now does the report accurately list the materials that you
25 reviewed in connection with this case, and also the findings

1 that you gave?

2 A] Yes.

3 Q] Now it says in your report that you were first contacted
4 November 14, 2004?

5 A] That's a typo. It's '06.

6 Q] '06?

7 A] Yes. November 14th is right, but November, 2006.

8 Q] Okay. And you go on to say that you received some materials
9 and approximately fifteen hundred photographs?

10 A] Yes.

11 Q] Crime scene evidence, and it lists the material that you
12 received on page one; correct?

13 A] Yes.

14 Q] And based on that material that's listed on page one of
15 your report, you have formed certain opinions related to this
16 case; correct?

17 A] Yes, sir.

18 Q] Now as part of the material that you reviewed, the autopsy
19 reports in the case?

20 A] Yes, sir.

21 Q] And in your review of the autopsy reports in this case, do
22 you recall reading at page two of the autopsy report of Chris-
23 topher Byers, a statement made by Dr. Peretti which says
24 "multiple superficial bite marks were present on the mucosal
25 surfaces of both right and left cheeks"?

1 A] Yes.

2 Q] When a medical examiner or other law enforcement personnel
3 identifies a wound as a potential bite mark, is there a
4 generally accepted protocol that is followed in terms of docu-
5 menting and investigating the nature of a bite mark?

6 A] Yes.

7 Q] Can you tell us what the protocol is?

8 A] Basically, the protocol is that the area is photographed.
9 Even in 1993, I think we were using alternate light in those
10 days, so UV photography is done, as well as ambient light,
11 meaning this kind of light (indicating ceiling), color, black
12 and white photographs, uh, the area of the bite is analyzed with
13 impression materials. We fingerprint, uh, I've published on
14 that, fingerprinting the bite, lifting the bite, the fingerprint
15 pattern, uh, the bite is swabbed. In those days it was swabbed
16 for saliva, but DNA was just coming out at that point. And now,
17 all of the pattern injuries that even look like a bite are
18 swabbed for DNA. But then the tissue is removed; the bite mark
19 is removed, it's preserved in formaline, and microscopic studies
20 can be done, trans-illumination can be done; so it's preserved.

21 Q] The tissue itself; in other words, a cut is made into the
22 tissue, the tissue containing the bite mark is lifted off of the
23 body and preserved in some medium?

24 A] That's correct.

25 Q] And that's so that you have some documentation of where the

1 bite mark is, and so you can have something to look at?

2 A] Exactly.

3 Q] Okay. You mentioned this, but you say you've written about
4 this protocol?

5 A] Yes.

6 Q] Is that in your chapter entitled *Forensic Pathology,*
7 *Principles and Practices*?

8 A] Yes.

9 Q] Did this protocol exist back in 1993 and 1994?

10 A] Yes, it did.

11 Q] Okay. So after you, uh, preserve the bite mark, what do
12 you do in terms of documenting whatever examination you're going
13 to make. First of all, how do you conduct the examination, and
14 then how do you document the results?

15 A] Well, do you want to know how we do it today, or how we did
16 it in '93?

17 Q] Tell us how you did it in '93?

18 A] In '93, I took my own pictures. Today, we're not allowed;
19 nobody is allowed to take pictures in the ME's office in Dade
20 County, because of Dale Earnhart. So everything is done with
21 the medical examiner's cameras. But in '93 I took my own photo-
22 graphs with my camera. So we documented that way. That's one
23 of the ways of documenting. I would make notes.

24 Q] These are separate and apart from the photographs taken at
25 autopsy by the medical examiner?

1 A] Absolutely.

2 Q] These are your own photographs?

3 A] My own.

4 Q] Using your expertise in the field of forensic odontology?

5 A] Exactly.

6 Q] Okay?

7 A] And on a bite mark case, after all of the protocol that I
8 just got through mentioning is done, actually, I take notes
9 down, what the bite looked like, where it was located, uh, which
10 marks were left by top teeth, which marks were left by bottom
11 teeth. And I do a profile of the biter; in other words, what
12 kind of teeth did he have, are they crooked teeth, were there
13 spaces between the teeth, uh, did one tooth stick out further
14 than the other tooth, is the person buck-toothed or whatever.
15 And I'll make those notes and write down what I did, obviously,
16 where the tissue sample is, uh, and pretty well document step by
17 step the time, the date, you know, that type of thing.

18 Q] Now after you do that and you make an examination of the
19 bite mark, I assume you reach certain conclusions, like it is or
20 is not a bite mark?

21 A] Okay.

22 Q] Does that conclusion then go some report or documentation
23 or is it just kept in your head?

24 A] No, it goes into - - and I put down why I think it is or
25 isn't a bite mark - - it's a pattern injury. And then we go

1 from there, that if, uh, let's assume for the sake of argument
2 that it is not a bite mark. In my opinion, this pattern injury
3 is not a human bite mark, but I still go through, particularly,
4 if it's a case where the victim is dead, uh, on a live victim,
5 they will tell you. So you have to be careful. So my testimony
6 here is dealing on a dead individual that has a bite mark, as
7 opposed to a live individual.

8 Q] Right?

9 A] So I keep a record of it and I write down what it looks
10 like, where it is, and then all of the steps that I took on it,
11 and then if it's not a bite mark, I'll put on the report that in
12 my opinion, this pattern injury located on such and such a date
13 and this part of the body is not a human bite mark.

14 Q] And that then is incorporated in the medical examiner's
15 report, or is it a separate report?

16 A] It's my report that goes to the medical examiner. And
17 whether he - - well, of course, it goes into the file. Sure.

18 Q] So is one purpose of that so that years down the line,
19 somebody asks you what you did and how you did it, you've got a
20 report to look at to refresh your memory as to what you did and
21 what your conclusions were?

22 A] Yes, sir.

23 Q] Okay. Now did you examine some transcripts of testimony in
24 this case relating to the procedure that was followed in regard
25 to the bite mark evidence in this case?

1 A] Are you talking about human bite mark evidence, or animal
2 bite mark evidence?

3 A] Any bite mark evidence. Did you review the testimony that
4 was given by Dr. Peretti, uh, Dr. Dougan, Dr. Mincer, uh, back
5 in '99 in a proceeding where there was some testimony about some
6 human bite marks?

7 A] I did. Yes.

8 Q] And did Dr. Peretti and Dr. Dougan describe the procedure
9 that they followed with respect to examining these bodies for
10 the presence of bite marks?

11 A] Well, the answer, obviously, is no. But to qualify that,
12 uh, it's a little confusing because if you compare the autopsy
13 reports where he talks specifically about bite marks, and then
14 you read the testimony from 1999 where he said there were no
15 bite marks, it's, there's something there that's incongruous; it
16 doesn't make sense. But the bottom line is in 1993 at the time
17 of autopsy, he called in a dentist because he thought they were
18 bite marks. And then he says well, there were no bite marks.
19 So I didn't do anything. But on a pattern injury that looks
20 like a bite mark, you ought to do the work-up on it.

21 Q] Okay. And do you recall Dr. Dougan testifying at the '99
22 hearing that although he looked at the bodies and formed certain
23 conclusions about bite marks, that his conclusions were nowhere
24 documented either in notes, photographs or reports?

25 A] That's correct.

1 Q] That there was absolutely no documentation of any exam-
2 ination he or Dr. Peretti had made in relation to bite marks?

3 A] The first part of that is Dr. Peretti did document bite
4 marks.

5 Q] In his autopsy report?

6 A] Exactly. Dr. Dougan just stated from memory that he looked
7 and there wasn't anything, so he didn't write anything; he
8 didn't do anything.

9 Q] And so was that following proper protocol in terms of docu-
10 mentation of bite mark examinations?

11 A] No.

12 Q] And it was not following protocol back in '93?

13 A] That's correct.

14 Q] Now let's talk a little bit about animal bite marks as
15 opposed to human bite marks. Are animals capable of inflicting
16 some pretty serious injuries on bodies?

17 A] You bet.

18 Q] When you examine a case where it looks like there is a bite
19 mark, do you use your experience from past cases in order to de-
20 termine what kind of bite mark you're dealing with?

21 A] Sure. Absolutely.

22 Q] And does the medical examiner's office in Dade County have
23 quite a bit of experience with animal bites?

24 A] Yes, sir.

25 Q] Now have you brought with you some photographs which

1 illustrate the kind of damage you would see in animal bite mark
2 cases that you are familiar with in forming your opinions in
3 this case?

4 A] I have.

5 MR. BURT: Your Honor, we have marked Joint
6 Exhibit #1 all of the photographs that I am about to
7 show the doctor.

8 THE COURT: Can we get the lights off? I can't
9 see that screen. You're not going to be talking about
10 the 'gator's bites, are you?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. The U of M 'gator's bites?

13 THE WITNESS: (Laughing.)

14 DIRECT-EXAMINATION, continuing:

15 Q] In the folder called "Animal Bites" and this is identified
16 on the disc as photo #1. This looks like a pretty harmless
17 critter. Tell us what kind of dog this is?

18 A] It's a little white dog, but as far as the species, I don't
19 know. It's a white dog and it's a little bitty white dog; cute
20 little white dog.

21 Q] Okay. And photo #2 shows a human face with some injuries.
22 What caused those injuries?

23 A] That little white dog.

24 Q] And how do we know that?

25 A] Because the circumstances of the event were documented by

1 the medical examiner who went to the scene, uh, and this lady
2 had died and the dog was in the house with her and the dog ate
3 her.

4 Q] And in your experience what would cause a certain red mark-
5 ing around here below the teeth?

6 A] That's, uh, when you take a body that's reasonably fresh -
7 - now this person hadn't decomposed, uh, and you start pulling
8 off, there's blood there and that blood's going to come to the
9 surface with this type of trauma.

10 Q] Okay. And how is the wound actually inflicted? Is it
11 biting, is it licking, is it paws?

12 A] It's all of the above. Absolutely. Now you can see here,
13 you can see teeth marks - - no, let me have a pointer. You
14 don't have a pointer?

15 MR. BURT: I've been asked that before.

16 THE WITNESS: From San Francisco and you don't
17 have a pointer?

18 THE COURT: I asked him that yesterday.

19 MR. BURT: I don't.

20 THE WITNESS: That's embarrassing. (Laughter.)

21 Sorry Mike.

22 MR. BURT: Sure. (Witness exiting witness stand.)

23 DIRECT-EXAMINATION, continuing:

24 Q] These are teeth marks right here.

25 Q] Okay. So that little dog is just putting it's teeth on

1 there and that's the effect you get when a dog like that bites?

2 A] That's correct. And these are claw marks down here.

3 Q] Okay. And then you can see in here there's some, you know,
4 parallel lines. Are those claw marks, as well?

5 A] Those are probably from the lower anterior teeth of that
6 dog. But look at the ear. Look at the marks on the ear, and
7 all of this is from the dog.

8 Q] Okay?

9 THE WITNESS: Now do you want me to stay down here
10 or go back up there?

11 MR. BURT: Why don't you stay here?

12 THE WITNESS: Your Honor, is it all right if I
13 stay down here?

14 THE COURT: You may.

15 DIRECT-EXAMINATION, continuing:

16 Q] What is this we're looking at? This is photo #3?

17 A] This is one of our cases. It was recovered from the water
18 and this is damage from a shark.

19 Q] Okay. Now obviously we're not dealing with sharks in this
20 case, but this illustrates the kind of damage that large fish
21 can inflict?

22 A] Yes.

23 Q] Photo #4?

24 A] Photo #4 is the same case and it's interesting because I
25 was called in, obviously, they knew it was sharks that did it,

1 but the pattern injury is an unusual pattern injury. It shows
2 the teeth marks that the shark does when it bites, uh, before it
3 really grips and rips and tears the flesh, but on the previous
4 photograph, one of the reasons I brought that is because you can
5 see when flesh is ripped off that the edges of it, if somebody
6 just took a portion of that, you'd say "well, gee, that's nice
7 and sharp; that's done by a knife." But when an animal bites
8 and rips and tears, you'll get that line that in some areas it
9 looks like it was a cut, and we'll see more of those later.

10 Q] Okay. And is that in regard to all animals, or just
11 sharks?

12 A] All animals. Well, "all animals," I mean roaches and ants
13 and that type of thing don't do that, but the bigger animals do.

14 Q] We're looking at photo #5?

15 A] This one was put in specifically, because of the marks that
16 in this case were documented or testified to by the prosecution
17 as having been caused by a Rambo knife with the serrations on
18 the back end of the knife. And it's a pattern similar to this.
19 This, these are marks left by the claws of a buzzard that was
20 feeding on this body, and if you, uh, and I'm going to move it
21 off here. This area right here is part of the claws of the
22 buzzard, but this mark right here, here, here, and here, are the
23 claws of the buzzard.

24 Q] Okay. So they are parallel lines and they're similar to
25 the marks that we have in this case?

1 A] Similar.

2 Q] In terms of looking like they might be caused by some sort
3 of a knife?

4 A] Correct.

5 Q] Okay. What are we looking at here; this is photo #6?

6 A] Now this is a woman that died as a result of a dog attack
7 and these are, uh, marks on the back of the individual that are
8 claw and teeth marks left by a dog.

9 Q] And these injuries that are sort of look like scratches,
10 uh, what are those from?

11 A] Claws.

12 Q] Okay. Now are those similar to some of the wounds that
13 we're going to talk about in relation to this case?

14 A] Yes.

15 Q] Do you know what kind of a dog caused this?

16 A] This was a pit bull, or a pit bull breed; a half-breed.

17 Q] Photo #7?

18 A] This is a great case because - - not really a great case;
19 that's not a right word - - this is a great teaching case and
20 it's a great teaching case because if this shown to the
21 authorities, whether it's a medical examiner or to police
22 agencies, uh, the first thing you're going to say is "that's
23 done by a knife. These are knife wounds, for sure." They're
24 not knife wounds and we know that because we have eyewitnesses
25 that were present at the time of this child being attacked and

1 killed by the pit bull. So, uh, I was involved because they
2 said that the marks were done by a 'gator and not by the pit
3 bull; they were trying to save the family dogs, you know, to
4 keep them from being euthanized. But this is dog activity.

5 Q] Do you actually use this photo in your training with law
6 enforcement people and medical examiners?

7 A] Yes, and I think it's in the text, also.

8 Q] And you say you show this photo to train people and ask
9 them what it is?

10 A] Yes, right off the bat. But you have to understand that
11 when you just look at a photograph of a victim, it's not the
12 same the same thing as knowing all of the circumstance of the
13 case. That's why it's so important that you can give the
14 investigative opinion, which is a preliminary opinion, and in my
15 investigative opinion and just looking at that photograph, I'd
16 say it looks like this person was stabbed numerous times. And a
17 big case up in Canada where the mother was charged with the
18 murder of a child with scissors, supposedly, and it was by act-
19 ually dogs that did it. So, you know, it can be a really
20 serious thing. And that's why you want all of the circumstances
21 so you can come up with an intelligent opinion.

22 Q] And the thing that looks like, I mean, that, and obviously
23 I'm pointing to it looks like something that a knife would
24 cause; right?

25 A] Sure. All of them look like something that a knife would

1 cause.

2 Q] But they weren't caused by a knife?

3 A] None of them. They were all done by a dog.

4 Q] Okay. Photo #8?

5 A] This is the same case. This is the face of the child and
6 you can see the marks, you can see the blood. Around the area,
7 you can see how the tissue has been torn and it's in here
8 specifically because this tear right here, the rip of that
9 tissue looks like it's done by a knife. I mean, to an untrained
10 individual looking at that would say "that's definitely a knife
11 wound."

12 Q] Photo #9?

13 A] Photo #9 is the back of the child which shows the marks,
14 both a bite mark here; this is a canine tooth of the dog biting,
15 uh, these are scratches from the claws. So you have a
16 combination of clawing and scratching and biting all at the same
17 time. Here's some more of it down here.

18 Q] So it looks like the paws did not necessarily produce
19 regular and evenly spaced claw marks; right?

20 A] That's correct.

21 Q] You can get sort of wild with the patterns here?

22 A] Exactly.

23 THE COURT: Is it one dog, or more than one?

24 THE WITNESS: Good question. There are three;
25 three dogs. Good question.

1 DIRECT-EXAMINATION, continuing:

2 Q] How about this one, photo #10?

3 A] This one is in here because, again, would look like a knife
4 wound. Anybody looks at that and says "that person has been cut
5 with a knife," and again, knowing the circumstances of the event
6 here are important, because this is one of several wounds on
7 this man who died as a result of being attacked by a Bengal
8 tiger. So he was killed and attacked by a Bengal tiger and
9 that's one of the marks that the tiger left. That is a canine
10 mark from a tooth.

11 Q] Tooth mark, as opposed to a claw mark?

12 A] Exactly.

13 Q] Okay. And photo #11?

14 A] Photo #11 is the one that I have closest to what we see
15 here or in one of the three boys. In one of the three boys, I
16 think it's the Byers child that had the genital injuries, and
17 this is a case, again, documented, this girl is alive. She
18 survived this attack. And she was home, uh, she had a top on,
19 uh, she had a blanket over her bottom; she was in bed. She has
20 a condition called spina bifida, where she is paralyzed from the
21 waist down and she can't talk. So she survived, but she
22 couldn't tell anybody what happened. When the police came to
23 the scene they said she was attacked and this was done by dogs,
24 and when she went to the emergency room, a nurse in the
25 emergency room said "I don't know what did it, but it definitely

1 wasn't dogs." So the prosecutor came in on the case, disregard-
2 ed the police, didn't do any protocol at all, uh, and charged
3 the mother and the mother's boyfriend with this aggravated child
4 abuse. And it came to the Miami/Dade County, this wasn't in
5 Miami, it was outside of Miami; it came to Miami and the chief
6 medical examiner, Dr. Davis, myself, uh, one of the other
7 medical examiners, probably Emma Lou, and all three of us looked
8 at this thing and said this is dogs; there's no question about
9 it. The experts for the state were saying that it was done with
10 a serrated knife, but if you look at this picture here, you can
11 see that you have an edge here that's almost similar to what we
12 have in this case. Both of these edges look very similar. You
13 can call them knife cuts or whatever you want to call them, but
14 look at this up here. These marks right here are from a dog and
15 the dog grips, rips and then tears this flesh, so it rips off.
16 Other animals do exactly the same thing.

17 Q] Now is this a case where there was pre-existing bleeding in
18 the genital area?

19 A] You know, that's a good question. There probably was, uh,
20 she was old enough to have menses, so she may have, uh, been
21 that time of the month for her. That's a good point.

22 Q] Is it unusual in your practice to see animals going for the
23 genital area?

24 A] It's very common. I mean, that's where they go, one of the
25 first places they go, if you're not dressed. In other words, if

1 you have clothing on, they're not going to go there. They're
2 going to go to what's soft and easy to get to. But the
3 genitals, because of the urine, the uric acid, and the odor of
4 the urine, the animal goes right to that area.

5 Q] And that's regardless of whether there is a pre-existing
6 wound?

7 A] That's correct.

8 Q] Okay. So you've seen these cases where the injuries are
9 confined to the genital areas?

10 A] Right.

11 Q] And not uncommon?

12 A] That's correct. This is the same child; this is the, uh,
13 her back, and you can again see these scratch marks here. She
14 had a top on, so the scratching was actually through the night
15 gown that she had on.

16 Q] And this is one dog?

17 A] There were two dogs here; a Shepherd and another dog. The
18 shepherd is the one that did the damage.

19 Q] And we're looking at photo #12 and going on to photo #13.

20 A] This is the case out of Mississippi in which a forensic
21 dentist looked at the pattern injuries and took the teeth of the
22 suspect and was placing them over these pattern injuries. The
23 reason it's in here is because, uh, these pattern injuries were
24 definitely done by something other than a human being.

25 Q] And, and how do we know that?

1 A] Well, we know it for several reasons. First of all, there
2 was a video of the body in the woods and they have ants running
3 off the body in the video. Yet the medical examiner in this
4 particular case, uh, relied on a forensic dentist who is no
5 longer doing forensic dentistry, thank God, there's another case
6 of his, too, but in this particular situation, uh, they got a
7 conviction here based on the bite mark that none of these
8 injuries are bite marks.

9 Q] So are these caused by ants?

10 A] These are caused by ants; whatever you call those big red
11 ants.

12 Q] All of these marks?

13 A] All of them.

14 Q] Were these postmortem?

15 A] Yes - - now when you say "postmortem," the person may have
16 been unconscious, in the woods. Technically, they may have been
17 breathing, but they in all intents and purposes, were dead.

18 Q] The same case here?

19 A] Same case. Look at the injury patterns that you see here.
20 See these marks right here? And see this right here? This is
21 all insect activity.

22 MR. HOLT: What number was that?

23 MR. BURT: That was number 14.

24 DIRECT-EXAMINATION, continuing:

25 Q] Photo #15, again, is on this same case in which the marks

1 here supposedly are teeth marks. But it's a circular pattern
2 and this was all done by, uh, postmortem, by ant activity.

3 Q] But sort of mimicking human bite marks?

4 A] Yes. That's exactly why it's in there.

5 Q] And number 16?

6 THE WITNESS: Judge, that's your case. That's
7 the 'gator.

8 THE COURT: Okay.

9 THE WITNESS: That's what you've been waiting for.

10 DIRECT-EXAMINATION, continuing:

11 A] That's an alligator marks, the scratching marks. If you
12 look, uh, you can see puncture wounds. I didn't bother to show
13 what really happened to the kid, because he was swimming and the
14 'gator came up and got him and just took his arm and ripped it
15 off. So he died from the loss of blood, but the scratch marks
16 that you see here are classic of animal scratches and not from a
17 knife.

18 Q] So these are claw marks over here on the side?

19 A] Yes. That's correct. And all of these are claw marks.

20 Q] Including this?

21 A] No, no. Those are going to be teeth marks of some type.
22 Those aren't from the claws.

23 Q] Photo #17?

24 A] Photo #17 is a case that I did back in the early '70s.
25 This is a body that was found in the woods and this is the

1 damage that was done by possums.

2 Q] #18?

3 A] #18, again, is insect activity and this particular case,
4 uh, this individual was in the woods and there were animals
5 around him, but these are a combination of roaches and ants.

6 THE COURT: How long does it take insects to
7 cause that type injury; what period of time are you
8 talking about?

9 THE WITNESS: It depends where the body is, what
10 the temperature is, uh, is it wet? Is it dry? Is it
11 hot? Is it cold? Where are they located? But this
12 could be done in a matter of hours on a body.

13 DIRECT-EXAMINATION, continuing:

14 A] This body was outside in south Florida, so it's going to
15 happen quicker than it would if it were in Alaska.

16 Q] Because of the heat and the humidity?

17 A] Sure. Everything is more active.

18 THE COURT: Insects wouldn't attack a body sub-
19 merged in water, would they?

20 THE WITNESS: Is a crayfish an insect - - because
21 crayfish will definitely feed on a body, for sure.
22 We're going to talk about that in a minute. But if
23 you call a crayfish...

24 THE COURT: ...I think it's not an insect. It's
25 something else.

1 THE WITNESS: Yeah, it's something else, but they
2 eat good, don't they?

3 DIRECT-EXAMINATION, continuing:

4 A] Anyway, this is a pattern injury...

5 Q] ..."this," being photo #19.

6 A] Number 19 is a pattern injury, uh, this was a triple homi-
7 cide in the Florida Keys, and the case number is not supposed to
8 be up there.

9 MR. BURT: We won't look at that.

10 THE WITNESS: Don't look at the case number.

11 DIRECT-EXAMINATION, continuing:

12 A] But anyway, this was thought to be a bite mark by an
13 individual. I looked at it and I didn't think it was a bite
14 mark. Again, this is going to be some type of insect activity
15 on the body eating away the surface of the flesh. And to prove
16 it, go to the next one.

17 Q] Number 20.

18 A] Number 20 is an incision that is made through the pattern
19 injury that shows that it's strictly surface and there is no
20 bleeding down into the subdural areas which would indicate that
21 it is not a pressure type, but a surface type of an injury. And
22 this is the last case, this is a case out of Mississippi called
23 the *Kennedy/Brewer* case. I testified in this case that none of
24 these marks on the body in 1993 were human bite marks. The body
25 was found in a swampy area, uh, and it was in there for

1 approximately twenty-four to thirty hours, somewhere in that
2 range. Experiments have been done and some entomologists have
3 done some experimental work with some crayfish. And he found
4 crayfish there and then he took a pigskin, or a fetal pig back
5 to his laboratory and threw the crayfish in and within minutes
6 of the body being, uh, the pig body being in the water, the
7 crayfish were eating it. So that tells you that depending on
8 the situation, they'll be on it right away.

9 THE COURT: When insects or an animal bite human
10 remains, here we're talking about postmortem injuries,
11 do they not leave bacteria; do they not leave residue
12 of their bites or their presence?

13 THE WITNESS: It depends on the animal. I can't
14 answer that question because I don't think anybody has
15 done DNA studies on dogs, but I would assume that if
16 the wound were swabbed for DNA, you would take it to a
17 veterinarian who specializes in DNA on animals. But
18 you're right; ants, no; roaches, no; uh, crayfish,
19 when it's in water, I don't think so. But most of the
20 time these things are documented because people have
21 actually observed it.

22 DIRECT-EXAMINATION, continuing:

23 Q] And the last one here is the same case?

24 A] Yes, it's the same case.

25 Q] Crayfish injuries?

1 A] Right. (Witness retakes the stand.)

2 Q] Let's talk now about this case. One of the things you said
3 when we were looking at those photographs was you can't just
4 look at the photos in isolation, or you might just be misled;
5 right?

6 A] Yes, sir.

7 Q] You've got to take into account all of the certain
8 instances and appearances?

9 A] Yes, sir. And did you, in connection with this case,
10 review certain crime scene photographs and diagrams to deter-
11 mine, first of all whether the environment in which these bodies
12 were found was the kind of place where you would get some animal
13 activity that could be involved in inflicting the kinds of
14 injuries we just saw?

15 A] Yes.

16 Q] Okay. And were you also informed, or did you read some
17 testimony that indicates that at some point in time after the
18 investigation started, that the police apparently sectioned off
19 the stream where these bodies were found and then drained out
20 the water?

21 A] Ditch.

22 Q] Ditch?

23 A] Yes.

24 Q] Okay. And did you look at some testimony about what the
25 investigators were doing prior to the draining taking place?

1 A] Yes.

2 Q] And specifically, uh, did you review some testimony that
3 was given by Detective Ridge at the Misskelley trial?

4 A] Yes.

5 Q] And I want to read this to you and ask you if you've
6 reviewed this. This is at 754 of the Misskelley trial: "When I
7 got into the water north of the bodies, north of the victim that
8 had been located who we discovered was Michael Moore, I proceed-
9 ed to work my way through the water, through the ditch and being
10 careful not to destroy any evidence. I was searching the bottom
11 if the ditch as I made my way to the body. Question: "When you
12 say you were searching the bottom of the ditch, what do you
13 mean?" Answer: "Okay. Obviously, you can't see into this muddy
14 water. So the best way to describe it is, as I actually do it.
15 From the water level I was raking my hands from one bank of the
16 water to where it came out on the other side, along the bottom,
17 all of the way. That's what I did, until I made my way to that
18 body."

19 Question: "After you made your way to Michael Moore, what did
20 you do?"

21 Answer: "We took the body of Michael Moore from the water."

22 Question: "Then what did you do?"

23 Answer: "I continued to search."

24 Question: "In the same manner?"

25 Answer: "Yes, I did."

1 And then later on, uh, this is at page 762 he says, Question:

2 "Were efforts also made to search in ten-mile bayou?"

3 Answer: "Yes, sir."

4 Question: "What was done?"

5 Answer: "It was a quite a bit deeper area. I walked through
6 this ditch all the way into ten-mile bayou. When it got up to
7 my neck, I had to turn around and come back out. It was up to
8 my neck in the bayou and we took a boat and got into the bayou
9 itself and drug a large magnet to pick up any metal items that
10 might have been in the bayou."

11 As part of your review in this case, did you review that
12 testimony?

13 A] I did; yes, sir.

14 Q] Okay. And did you also review a crime scene diagram, which
15 I'm going to have marked. I'm showing you Exhibit #61. Is this
16 the crime scene diagram that you reviewed in connection with
17 your review in this case?

18 A] (Witness examining same.) Yes, sir, I did.

19 Q] Okay. Now you see in the diagram the bodies marked as 1, 2
20 and 3; correct?

21 A] Yes.

22 Q] And from the diagram it looks like this ditch or stream,
23 it's described as both in the testimony, empties into the ten-
24 mile bayou, which as we just heard from the testimony, looks to
25 be fairly deep, at least up to the neck of Detective Ridge;

1 right?

2 A] Yes, sir.

3 Q] And my question is this: if Detective Ridge is starting
4 somewhere north of where the bodies were found as he testified
5 to, and he's moving his way south in the ditch sweeping along
6 the bottom of the water as he goes, what's happening to any
7 insect or animal activity in that kind of scenario?

8 A] They're going to move out.

9 Q] And where do they go? I mean, if they're moving south to-
10 ward the bayou in a sweeping movement?

11 A] They're going to go south; they're going to move to the
12 bayou. They're going to get out of there.

13 Q] And if later on, according to their testimony, hours later
14 they drain out the water in the ditch portion, or a portion of
15 it, they don't find any critters in there, does that mean there
16 was none in there when the bodies were found?

17 A] Of course not.

18 Q] How long were these bodies exposed in a situation where
19 animals, insects or other things could have inflicted injury?

20 A] The best information that I have is seventeen hours.

21 Q] Now I'm going to look at some photographs and these are on
22 the disc in a folder called "case photographs" - - I'm sorry.
23 In a folder called "crime scene." And photo number 1 is an
24 overview of the area; right?

25 A] Yes.

1 Q] And it says, according to the diagram, that the dotted
2 lines represent ditch drainage. So the drainage sort of goes in
3 a rectangular area, uh, and you see the bodies located, Moore,
4 Branch and Byers and this says "culvert drains from the ditch
5 into ten-mile bayou"; right?

6 A] Yes.

7 Q] Just looking at this overall, you know, and having in mind
8 the wooded nature of this area, is this the type of environment
9 where you would expect large or small animals to be living?

10 A] Yes.

11 Q] Or frequenting?

12 A] Sure.

13 Q] Why is that?

14 A] Well, it's heavily wooded, uh, great protection for them,
15 uh, you've got water, a ready water supply.

16 Q] You've got a holding pond out to the left here, you've got
17 the drainage itself, which, how deep was this drainage, accord-
18 ing to your understanding of the testimony?

19 A] It varies, uh, my understanding was that, and pretty good
20 information, that it was knee-deep in some areas and below the
21 knee in other areas.

22 Q] By the way, I see on this diagram that this area where the
23 bodies were found is called Turtle Hill. Do you know why it's
24 called Turtle Hill?

25 A] I would assume that it meant that there were turtles in

1 that area.

2 Q] Okay. Now looking at a little closer look, this is photo
3 number 2 and this actually shows the ditch; correct?

4 A] (Witness examining same.) Yes.

5 Q] Is this the type of environment where you would expect that
6 the animals would have access to something that's in the water?

7 A] Yes.

8 Q] Why?

9 A] Well, first of all, it's narrow; secondly, it's heavily
10 wooded and protected, uh, and if a body were there, uh, and were
11 up near the bank, it would be easy for the animal to get to it.

12 MR. HOLT: Your Honor, if I might, this is not
13 really an objection, but Dr. Souviron is a forensic
14 odontologist and the testimony he has given the past
15 five or ten minutes of this, if it's based on forensic
16 odontology or whether it's based on just his common
17 understanding or his common spirit, because otherwise,
18 it's speculation as to what this causes.

19 MR. BURT: Well, I think he has a basis...

20 THE COURT: ...I'm going to sustain the objection.
21 Rephrase your question to him and put it to him in the
22 form - - I mean, I'll let him express, "just in my
23 opinion" as a basic understanding as long as he
24 clarifies it.

25 MR. HOLT: That's the extent of my objection,

1 Judge.

2 MR. BURT: Let me clarify this.

3 DIRECT-EXAMINATION, continuing:

4 Q] When you're using your expertise as a forensic odontologist
5 one of the things I think you said is you have to examine the
6 whole context of the case; right?

7 A] Yes.

8 Q] And is one of the things you look at in the context of the
9 case, the crime scene?

10 A] Absolutely.

11 Q] And do you use not only what you learned in dental school,
12 but also your good common sense in interpreting what you see in
13 photographs and what you see out at the crime scene?

14 A] Well, I think it's important that the word "experience"
15 should be in there, you know, it's, uh, after doing this work
16 for forty-some years, you realize the importance of knowing what
17 the scene is. And in a situation like this, it's important for
18 me to see, and I asked for the scene photographs in evaluating
19 the injuries on these bodies. So, yes.

20 Q] And we appreciate it when you're giving your opinions about
21 the crime scene, for instance, you're expressing your experience
22 and your opinions based on your experience, your training and
23 your common sense; would that be fair to say?

24 A] I think so.

25 Q] Okay. So your opinion about this particular scene is what

1 in terms of its being a situation where you would expect to find
2 some animal activity in some access to where these bodies were
3 found?

4 A] My opinion is you're going to see animal activity in this
5 area, and the animals are going to have access to the bodies. I
6 don't think it would be a great area to go fly fishing, but it
7 would certainly be a great area if you were going to do, you
8 know, do coon hunting or look for possums or something like
9 that. That would be a good area.

10 Q] Are you a hunter, yourself?

11 A] I am.

12 Q] Number 3, uh, does this give us some idea of how deep this
13 water is? This apparently is Detective Allen, according to the
14 trial transcript.

15 A] You can see that he's standing in the ditch and you can see
16 where his, uh, where the water level is in relation to his leg.
17 It's about calf-high, and maybe six, eight inches at that point.

18 Q] This is photo number 4. This is Detective Ridge and from
19 this photo it looks like the water is a little higher; correct?

20 A] I'm not sure if the brown is the water and the gray is the
21 land, and he's standing on land. The other photograph was much
22 better as far as - - I think the brown is the area of the water.
23 I'm not sure of what he's doing.

24 Q] When you say "brown" right here?

25 A] I would think that he's standing on dry land, but maybe

1 he's in the water. But in any event, I can't tell much from
2 that photo.

3 Q] All right. And this one apparently shows him actually
4 finding one of the bodies?

5 A] Yes. It looks like he's about knee-deep in the ditch at
6 that point.

7 Q] About knee-deep?

8 A] Yeah.

9 Q] Does that give you some information about where these
10 bodies were in relation to the surface? If he's knee-deep, I
11 assume that the bodies are not far down in the water?

12 A] That's an accurate assumption.

13 Q] And so does that mean because they're under water, that
14 animals are not going to have access to the bodies?

15 A] No, because nobody knows, uh, exactly where the bodies were
16 when the animals got to them. They could very easily have been
17 up against the bank and then drifted back down into the water
18 and became submerged. The testimony was that they were alive
19 and they breathed phlegm, vomitus, and water into their lungs.
20 Well, everybody knows that if you're in the water and you're
21 alive and you have air in your lungs, you're going to be float-
22 ing. As the air goes out, you start to drop down, and then as
23 you decompose, you come back up again. So, uh, during that
24 seventeen hour period of time, these bodies very easily could
25 have been against the bank; they could very easily have been

1 above water where an animal could have gotten to them, a dog...

2 MR. HOLT: ...Your Honor, I object at this point.
3 I mean, what's this based upon? He's been qualified
4 as a forensic odontologist.

5 THE COURT: Sustained. Doctor, did you observe
6 what you consider to be animal bites on any of the
7 three bodies, from your review of the autopsy?

8 THE WITNESS: Yes.

9 THE COURT: What type animal are you referring to,
10 or you opine?

11 THE WITNESS: Well, I opined, Your Honor, that the
12 bites that I saw were scratching and marking, more
13 likely than not, turtles.

14 The area on the face of 330, which is the red
15 area on the side of the face, certainly to me, looks
16 like that - - and all of the marks on the left side of
17 number 330, which is Branch, Stevie Branch, the side
18 of Stevie Branch's face, uh, with the scratch marks
19 and whatever, looks like that would be that side of
20 the face, uh, the roughness of the tongue would have
21 done it.

22 The scratching and the marks that we see below
23 that would be consistent with some type of an animal.
24 Now whether it's a turtle, or a combination of turtle,
25 a coon or a dog, uh, you know, that's for - - I think

1 it's a combination of more than one thing, though,
2 aquatic as well as land animal.

3 DIRECT-EXAMINATION, continuing:

4 Q] Is that unusual that there would be more than one animal
5 attacking a body?

6 A] Not at all.

7 Q] Why is that not unusual; what is the process that leads to
8 more than one animal being involved?

9 A] Animals do what animals do. They have a free meal, uh, and
10 it's not unusual if you have a gut pile out in the woods, that
11 you're going to see, if you come up on it, you will see a coyote
12 has been feeding on it and you can also find other animals that
13 would be feeding on the same gut pile, including birds, uh, you
14 know, insects; whatever, depending on how long it's been there.

15 Q] Photo number 6 shows the attempt to block off with sand
16 bags the, uh, the part of the ditch above the sand bags?

17 A] Okay.

18 Q] And my question is, if they drained it and they didn't find
19 anything in there, would that be unusual, or would you expect
20 there not to be anything in the ditch, given what happened be-
21 fore they did the sand bag?

22 A] Based on what I've read, it would be highly unusual if they
23 did find anything; any turtle, or any catfish or anything like
24 that, crayfish, anything, they're going to get out of there. So
25 the other thing is done during the day and a lot of these

1 animals like the possum, uh, wild dogs, coyotes, they primarily
2 feed at night.

3 Q] So they're not going to be present in the daytime?

4 A] No, they'd be gone and with all of that activity there,
5 they're going to get out of there.

6 Q] Okay. Now the judge asked you about the injuries in this
7 case, so let's turn to that. And these are in a file called
8 "case photographs" and you have formed certain opinions in this
9 case that injuries on the victims were caused by animal
10 activity; correct?

11 A] Yes.

12 Q] Looking at photo number 1, which is medical examiner case
13 number 329-93, does it tell us what's depicted here and what
14 your opinion is as to what caused these injuries?

15 A] The right shoulder chest area, uh, there's one deep gouging
16 mark and a series of scrape marks, and this is done by more
17 likely than not, uh, the claws of an animal. Whether that
18 animal is a dog or a turtle or a coon or a possum, or whatever,
19 but it's - - what it isn't - - I can tell you what it isn't.
20 There's a whole series of things that it isn't, but the question
21 was, was it made by the Rambo knife, uh, for lack of a better
22 term. And I have prepared an exhibit to prove that it was not a
23 Rambo knife that did this. And the penis area in the other case
24 was also not done by the Rambo knife.

25 Q] Okay. Now these parallel lines here are similar to the

1 parallel lines we saw in some of your examples of the other
2 Cases that you brought?

3 A] Yes.

4 Q] You said you had some way to show to us that this was not
5 caused by a knife?

6 A] By this particular type of knife that they were showing, or
7 by any knife, as far as I'm concerned.

8 Q] And tell us how you determined that?

9 A] Well, what I did was the same way that we do with bite
10 marks when we are trying to relate a bite mark to an injury
11 pattern, uh, somebody's teeth to the injury left on an
12 individual. And one of the ways of doing it is to get a life-
13 size photograph or one-to-one, if you will, using a ruler to
14 size a photograph to life-size, then take the photograph of the
15 instrument, in this case, the knife, which also has a ruler.
16 Size it to life-size, so we're dealing with an apple with an
17 apple, so to speak. And then a tracing is done, an acetate
18 tracing, and in this case a tracing was made of the knife and
19 then you can take this acetate tracing and place it over the
20 injury to show how it doesn't fit.

21 Q] And is that a technique that is used in forensic odontology
22 to find out the source of the wound?

23 A] It's used in odontology, not to find out the source of the
24 wound, but to do the comparison between the known and the un-
25 known; meaning, you have a bite mark on somebody, you have a set

1 of teeth from a suspect and you're able to rule that suspect out
2 and say "these teeth couldn't have done it, and here's why."

3 And also, "these teeth could have done it, and here's why."

4 Q] And what were the results of your comparison in this case?
5 Could you illustrate for us with your overlay?

6 A] Yes.

7 Q] Go ahead?

8 A] Who do I demonstrate it to? We don't have a jury.

9 Q] Could you stand up and show the Court?

10 THE COURT: I think I'm the one you need to
11 demonstrate it to.

12 THE WITNESS: Yes, sir. Do you want me to come up
13 there?

14 THE COURT: No, I think I can see it from here.

15 THE WITNESS: Do you want me to do it all at once,
16 or just this one?

17 MR. BURT: Well, let's - - we'll get to the other
18 photos, but let's concentrate on this injury.

19 DIRECT-EXAMINATION, continuing:

20 A] This is the one-to-one and this is the knife. And I can
21 show you, we'll start in the middle since this is the only
22 photograph I have of the knife. And this is the clear of the
23 knife, and you can line that up to see that it, if it fits. And
24 then the testimony was that the knife did the scraping and the
25 point made this. And that's absolutely, physically impossible

1 to do, when if you lay this down over here, the point here is -
2 - here's your mark and none of these line up with the marks of
3 the knife. So that would eliminate the knife from having made
4 this mark.

5 MR. RAUPP: In that way?

6 THE WITNESS: What?

7 MR. RAUPP: In that way?

8 THE WITNESS: You're exactly right, in this way,
9 you're exactly right. But it just doesn't make sense
10 if somebody is going to take a knife and scrape it
11 down like this, with the point here, which is going to
12 cut and leave this mark by the knife, unless it was
13 like this.

14 And then these marks are going to be out over
15 here. "These marks" being the serrations, for the
16 lack of a better word, on the backside of the blade of
17 the knife.

18 THE COURT: It could have been done in two
19 motions, couldn't it?

20 THE WITNESS: Yes, anything is possible. You're
21 right. They could have made a cut right here and then
22 come back in here somehow or another, and done this.

23 MR. BURT: If you don't mind, I think I'll mark
24 those, just so we'll have the record on that.

25 THE COURT: That will be fine. I've got another

1 question, Doctor.

2 THE WITNESS: Yes, sir.

3 THE COURT: It's in your protocol, and in your
4 opinion you indicated that you believe all three of
5 the young men to be dead, uh, as a result of drowning
6 and that you opined that it was a homicide?

7 THE WITNESS: Absolutely.

8 THE COURT: And then you indicate in here also
9 that some of the injuries were premortem and post-
10 mortem?

11 THE WITNESS: Yes.

12 THE COURT: The animal predation, that bothers me.
13 Are you saying that they were alive at the time that
14 the animals...

15 THE WITNESS: ...let me say, that's a good point.
16 Number one, uh, if there are injuries on one of these
17 kids in the mouth, that in my opinion, and there's no
18 question it's my opinion, this kid was hit in the
19 mouth.

20 And the bruising inside the lips in the medical
21 examiner - - that is antemortem, or peremortem,
22 because he died of it. That's what I'm talking about.
23 As far as the animals are concerned, technically
24 speaking, we don't know how long they were in that
25 water before they died.

1 If they were unconscious in that water, uh, if
2 they were alive for a period of time, fifteen, twenty
3 minutes, I don't know. I have no way of knowing that.
4 So the animals certainly could have been eating on
5 them or a turtle could have gotten to them within
6 minutes of them being in the water.

7 So technically speaking, what I'm referring to is
8 the lip injuries, the mouth injuries, that was before
9 death.

10 MR. BURT: If I could, I want to mark the...

11 THE COURT: I'm sorry, I had one other question.
12 Did you examine the head injuries to - - I don't
13 remember which one of the boys it was. I've had
14 testimony that there were bite marks to the skull.
15 Did you examine that or have an opinion on it?

16 THE WITNESS: Yes, sir, I have an opinion. And
17 yes, sir, I have examined those marks on...

18 MR. BURT: ...and we've got a photo on that and
19 we're going to cover it.

20 THE COURT: Okay, well, if you've going to cover
21 it, I don't really - - usually, if I keep my mouth
22 shut, you'll get to it.

23 MR. HOLT: He will, Judge, he'll get to it.

24 MR. BURT: Well, the short of it is, yeah. Next
25 in order would be the one-to-one photo of photo number

1 1 which is on the screen, and maybe I could make as
2 part of that same exhibit the one-to-one photo of the
3 knife and the two acetate overlays.

4 THE COURT: Do you want that as a composite
5 exhibit?

6 MR. BURT: I think so, and we could keep those all
7 together. So that would be #62.

8 (WHEREUPON, Defendant/ Petitioner's Exhibit #62 was received
9 into evidence and is appended on page .)

10 DIRECT-EXAMINATION, continuing:

11 Q] And I want to follow-up on a question the judge asked,
12 which is, you know, what if the stabbing was in two movements
13 here, uh, and you said "well, anything is a possibility," but
14 even if it was in two movements, did the serrations line up with
15 those parallel scratches there?

16 A] No, they don't at all. But I think what the judge was
17 asking was could the mark that I'm calling a claw mark have been
18 done by that knife, but not the scrape marks, or maybe I mis-
19 understood what, in fact, that was my understanding. So you
20 could have taken the knife and made a slice like that, but those
21 scratch marks were not made by that knife. That, I'm positive
22 of.

23 Q] Whether it's one or two movements; right?

24 A] That's absolutely possible.

25 Q] And that's simply because they don't match up?

1 A] That's right.

2 Q] So is one of the things you do as a forensic odontologist,
3 eliminate other possibilities?

4 A] Yes, the best we can; sure.

5 Q] So this allowed you to say, "well, this couldn't have been
6 done by this knife, and therefore, it must have been done by
7 something else"?

8 A] Right.

9 Q] And can you look at this wound and say "well, this is like
10 the parallel wounds I've seen in my other animal cases, and
11 therefore I can identify any specific animal"; or can you just
12 say it's claw marks or teeth marks, or what can you say about
13 this?

14 A] We say that this is done by animal, uh, but I can't tell
15 you what animal. I can tell you what animal it wasn't, just
16 because of the circumstances, the area, knowing that it's in
17 Arkansas and not in Africa, for instance, so, I mean, uh, I
18 couldn't tell you that that was dog and what size dog it was or
19 anything like that. The only thing I can tell you is that,
20 those are scratch marks from claws; could be from a turtle; uh,
21 it could be from a coon, but it certainly wasn't from the knife.

22 Q] And did you do some research that was particular to the
23 kinds of animals that would be in Arkansas?

24 A] Yes.

25 Q] Did you read a book called *The Amphibians and Reptiles of*

1 Arkansas?

2 A] Yes.

3 Q] And did you also consult a second book called *Arkansas*
4 *Mammals, Their Natural History and Classification and*
5 *Distribution?*

6 A] I did.

7 Q] Now Doctor, do you have some knowledge based in terms of
8 what kind of animals could possibly cause, uh, the injuries that
9 we see in these photos?

10 A] Yes.

11 Q] What are we talking about here in terms of the
12 possibilities in the state of Arkansas would have caused this?

13 A] We're talking about furry animals; let's start with them.
14 You have the possum, the coon, the skunk, uh, you have coyote
15 here, you have fox, uh, some testimony that I read that there
16 were four or five dogs in that area, wild dogs, uh, cats - -
17 that's another thing: feral cats. So those are the furry
18 animals. I mean, it wasn't a mountain lion and wasn't you know,
19 a Bengal tiger or anything like that. The other, as far as the
20 amphibians, which my first opinion when I looked at this case,
21 and a lot of times your gut opinion, your first visit to a case,
22 is usually the best is that this was an aquatic animal of some
23 type. A turtle was my first choice, but it may have been
24 turtles plus crawfish, plus maybe a catfish or something. I, I
25 don't know. But the books were helpful to tell me would be

1 available in that particular area, the north part of Arkansas.

2 Q] And did you review as part of the basis for your opinion in
3 this case, uh, excerpts and help prepare an excerpt of those two
4 books, which lists the *Water Life and Mammals* that are present
5 in Arkansas?

6 A] Yes.

7 MR. BURT: I'll mark that as next in order, and
8 this just contains excerpts of documentation from
9 these books, uh, various things that are present in
10 the state of Arkansas.

11 And this is broken down into reptiles and
12 animals; right?

13 THE WITNESS: Yes.

14 DIRECT-EXAMINATION, continuing:

15 Q] And in terms of the state of Arkansas, you've got in the
16 back of documentation here from the textbooks, uh, the reptiles
17 that were in the state of Arkansas were common snapping turtles,
18 alligator snapping turtles, East River cooters, Three-toe Box
19 Turtles, Mississippi Mud Turtles, spiny soft shells; correct?

20 A] Yes.

21 Q] And then mammals are more numerous; correct?

22 A] Yes.

23 Q] Virginia possums, marsh rice rats?

24 A] Yes.

25 Q] Black rats, Norway rats, coyotes, raccoons, minx, stripped

1 skunks and bobcats?

2 A] Yes.

3 Q] And according to your documentation here these are

4 A] Yes.

5 Q] Meaning?

6 A] They eat dead things.

7 Q] And you have photographs of each these where in the state
8 of Arkansas these are usually found?

9 A] Right.

10 Q] Now did this help you sort of narrow the field in terms of
11 what the possibilities were?

12 A] Yes.

13 Q] And I think you also alluded to the fact that you reviewed
14 an affidavit, I think Dr. Baden referred to, two affidavits
15 yesterday where witnesses indicated that there were wild dogs
16 and turtles, etc cetera, in this area?

17 A] Yes.

18 Q] And you heard the testimony of Mr. Byers yesterday?

19 A] I did.

20 Q] Does that strengthen or weaken your opinion that these are
21 animal related injuries?

22 A] It strengthens my opinion.

23 Q] Now number 2 is again from Mr. Moore; this is the medical
24 examiner case number 329-93, what is your opinion - - this is,
25 it looks like a close-up of the same injury?

1 A] Yeah, I think it's pretty obvious on this injury that to
2 me, when I look at it immediately, these are claw marks.

3 Q] And this is the same case, photo number 3. What is causing
4 the injuries we see here?

5 A] In my opinion, those are postmortem injuries, and that,
6 those injuries look very similar to what we saw in the
7 Mississippi case with the crawfish.

8 Q] This is again Mr. Moore?

9 A] Yes.

10 Q] Number 4 is from 329-93 again, Mr. Moore. What is your
11 opinion as to what caused the injuries we see here?

12 A] That's not animal. That, in my opinion, is some blunt
13 force trauma.

14 Q] Okay. Blunt force trauma are the three marks up here;
15 correct?

16 A] Yes.

17 Q] And how about the injuries in the nose, on the side here?

18 A] That, I think is postmortem animal activity.

19 Q] Number 5, this now is the case the judge alluded to, Mr.
20 Branch. And what is your opinion as to what caused the injuries
21 we see depicted here?

22 A] Again, postmortem activity from animals.

23 Q] Number 6, this again relates to Mr. Branch?

24 A] Yeah, he's got injuries to his lower lip. It's not a real
25 good picture. I liked that other one, the close-up, but this,

1 this one, I would skip over this picture.

2 Q] Okay. Number 7?

3 A] There you go. Yeah. Those injuries are before death;
4 inside the mouth. Dr. Peretti did a good job getting pictures
5 of that. That is what you see if somebody gets hit in the
6 mouth.

7 Q] So these are, this reflects a antemortem injury?

8 A] That's correct.

9 Q] And what caused these injuries to the right where you see
10 these rectangular?

11 A] That looks like turtle, to me. The scraping on the side of
12 the face, all of that red area, I've seen that before, uh, where
13 a body has been licked by dogs. That's the only case I've seen
14 by licking of the dog, because there's bleeding there, and
15 they're going to go and lick it off. They want the blood.

16 Q] And what is there about a dog's tongue, if there is some-
17 thing, that can cause that sort of redness?

18 A] Well, just about all animals have rough tongues; I mean
19 they're like sandpaper.

20 Q] Is the shape of this triangular wound significant to you in
21 terms of your opinion about turtles possibly causing these?

22 A] Well, they have a beak. If you look at book, at the
23 pictures of the snapping alligator turtles, they have like a
24 beak. But more important than that is the fact that none of
25 these injuries, in my opinion, even come close to being made by

1 a knife, whether it's the Rambo knife or whether it's a scalpel,
2 uh, these were not made by a knife. This is postmortem muti-
3 lation is the term I use.

4 Q] Okay. Number 8?

5 A] I showed pictures of that earlier. That's scratching,
6 those are scratch marks from claws. And I actually showed a
7 picture of an ear where you could see the injuries around the
8 ear from the dog, uh, where the woman was left in the house with
9 her little poodle, or whatever it was.

10 Q] And is the, I call it "random nature" of those, are those
11 consistent with the other photographs you showed to us in terms
12 of what dogs can cause?

13 A] Exactly.

14 Q] With their claws, or other animals?

15 A] Or other animals.

16 Q] Not necessarily one animal; correct, it could be more than
17 one?

18 A] That's right.

19 Q] And these are postmortem, these marks?

20 A] Yes.

21 Q] Okay. This again is Mr. Branch, photo 9. Again, you have
22 the numerous - - I don't know how to characterize those?

23 A] It's degradation, or mutilation, whatever term you want to
24 say - - that's postmortem animal activity.

25 Q] Uh, number 10 is the knife you referred to?

1 A] Right.

2 Q] And your opinion is, there's no way that knife could have
3 caused the injuries that we just saw?

4 A] None, or yes, that's my opinion.

5 Q] Now tell us what we're seeing here?

6 A] It's not a real good picture. I wish it was blown up more
7 but what it says is "potential bite mark evidence." And I am
8 not really sure who wrote that.

9 Q] Was this designation on this photo when you received it?

10 A] Yes. I have two of them; one, an enlargement of the other.
11 And it shows injuries to the lips and I would assume, and this
12 is always bad to do, but...

13 MR. HOLT: ...Your Honor, I'm going to object,
14 because of "assume."

15 THE COURT: Sustained.

16 MR. BURT: Don't assume anything.

17 THE WITNESS: Yeah, I know. I told you it was bad
18 to say that.

19 MR. BURT: And you were right.

20 DIRECT-EXAMINATION, continuing:

21 A] Are they referring to a human bite, or are they referring
22 to animal bites if they say "potential bite mark evidence," I
23 would say they're absolutely right. It is, it's animal bite
24 mark evidence. If they're saying these are human bites on this
25 photograph, and I think the photograph you want to do is the one

1 straight on where the judge mentioned earlier about the head
2 injury.

3 Q] Right.

4 A] I think that's the one that everybody was talking about.
5 That one. Yes.

6 Q] This is the one I think the judge was alluding to that he
7 had heard prior testimony on back in '99 where Dr. David, who
8 was an expert for Mr. Echols, said that what this wound on top
9 here is, is a human bite mark. Do you agree with that?

10 A] No.

11 Q] Is there any indication that's a human bite mark?

12 A] No.

13 Q] Uh, what is it?

14 A] It's a pattern injury, but it's definitely not made by
15 human teeth. That's for sure.

16 Q] And can you tell us why you're able to conclude that?

17 A] Well, first of all, look at the size of it. Secondly,
18 where the bottom teeth put a mark; third, if you look at it, uh,
19 there's no distinct teeth marks there that you could say "this
20 is made centrals, laterals, cuspids, and you've got a mark in
21 there on my photograph, which is better than what you have, you
22 can actually see what looks like a hook or a curve, uh, part of
23 that, that injury pattern. So whatever made this was semi-
24 circular, but there were no bottom teeth marking. And if you
25 bite somebody in that area, surely you're going to have -- the

1 soft part is going to be lower down where the eyebrow is, where
2 the eyelid, and if you open your mouth, and bite, you're going
3 to have bottom teeth marking down there and, and fewer teeth on
4 the top, because it's against the skull, so you don't have that
5 area to sink your teeth into.

6 THE COURT: Did you review the testimony of the
7 odontologist that opined that that was a human bite
8 mark?

9 THE WITNESS: No, sir, and I want that testimony.
10 I've asked for it and I would love the video of it.

11 THE COURT: Well, I think you're the fourth odon-
12 tologist I've heard since 1993. It's very interest-
13 ing, though.

14 I teach a course in forensics; would you be
15 available to come one night?

16 THE WITNESS: I think you're joking with me.

17 THE COURT: No, I'm not joking. I'm serious.

18 THE WITNESS: Well, the answer is yes. And that's
19 on the record.

20 DIRECT-EXAMINATION, continuing:

21 Q] Now Doctor, what you did review, you reviewed the testimony
22 of Dr. Mentzer?

23 A] I did.

24 Q] And Dr. Dougan?

25 A] I did.

1 Q] And Dr. Peretti?

2 A] Yes.

3 Q] All of whom opined that that mark that we've just been re-
4 ferring to was not a human bite mark that in contradiction, Dr.
5 David had said it was a human bite mark; correct?

6 A] Yes.

7 Q] And you agree with doctors Mentzer, Dougan and Peretti that
8 this is not a human bite mark?

9 A] Absolutely. They're correct.

10 Q] Now is it your understanding from reading the testimony of
11 Dr. Mentzer that the only thing that he was asked to look at was
12 the injury that's depicted in this photo, as it relates to Mr.
13 Branch?

14 A] That's correct.

15 Q] Did anybody ever look at the other photos of the other
16 victims, or for that matter, other photos related to this victim
17 with an eye toward determining whether there was animal bite
18 marks as opposed to human bite marks?

19 A] The answer is no. And the only explanation I can have in
20 this, I said earlier there is a conflict of opinion when Peretti
21 says on one hand that these are not animal bites, these are like
22 somebody went in there with a knife and just kept gouging, which
23 is ridiculous, uh, on one hand he says that; on the other hand,
24 he says they're bite marks on the cheek. Now I don't get it.
25 When he said "bite marks on the cheek," is he referring to

1 animal bite marks, or human bite? It doesn't say. The testi-
2 mony was that Dr. Peretti, in his autopsy report on page 2, what
3 ever it is, found bite marks on the cheek, right and left cheek.
4 But he doesn't say human bite marks. He just says bite marks.
5 He's absolutely right; these are bite marks, but they're animal
6 bite marks, not human.

7 Q] Are you referring to his, uh, this is page 2 of the Byers'
8 autopsy, "multiple superficial bite marks were present on the
9 mucosal surface as to both right and left cheeks."

10 A] That's correct. On Byers.

11 Q] Now in this photo, uh, you know, putting aside this injury
12 up here and accepting your opinion it's not a human bite mark,
13 some sort of a pattern injury, what about all of these injuries,
14 you know, on the lower part of the face where the face appears
15 to be gouged out. You can see the irregular, what Dr. Peretti
16 described as "gouging wounds" here, what caused those?

17 A] Postmortem animal activity. Look at the neck, which is not
18 in that. I'm looking at my pictures. Look at the scratch marks
19 down underneath the neck and half-moon shaped bites, gouging
20 marks, I mean, it just screams out at you that this is animal
21 activity here.

22 Q] We're looking at photo 13?

23 A] That's the picture. Yeah.

24 Q] Tell us what about this photograph screams out at you?

25 A] Well, what I'm seeing is these chunks of flesh being taken

1 out, irregular borders, uh, the redness of that whole area which
2 in my opinion, is a result of activity of a tongue of some kind
3 of an animal. The scratch marks all around here, little tiny
4 puncture marks, the half-moon shaped marks that are in there
5 that are right on the surface. It's just, uh, it's classic,
6 classic of bite marks of animals.

7 Q] Number 14, now this is the Byers, uh, Mr. Byers. This
8 looks like an overview shot?

9 A] It is.

10 Q] Reminiscent of that photo you showed us?

11 A] Exactly.

12 Q] You know, you see this kind of injury where the genitals
13 have been mutilated. Does this photo speak to you in terms of
14 what this is?

15 A] Sure.

16 Q] And what's your opinion, and what do you base it on?

17 A] Animal, uh, we see it with aquatic animals, uh, people that
18 are in bodies that are dumped in the bay, uh, in Miami, and the
19 fish and crabs go right for the genital areas. That's the first
20 they're - - and the eyeballs are the other areas. They go for
21 the softest, easiest to get to. We're assuming the person
22 doesn't have a swim suit on or that they're not dressed. That's
23 the difference. A nude body in the water, the animals are going
24 to go for it for the reasons I told you because of the urea in
25 the urine, uh, that chemical attracts them. And all wild

1 animals do that. I mean, when you go hunting, you spray
2 yourself down with deer urine so that the animals don't pick up
3 the human scent. So animals like that. They lick it, uh, it's
4 good for them.

5 Q] And photo 15 is a close-up and I want to direct your
6 attention to these marks along the side, in particular. Is that
7 in your opinion, animal activity?

8 A] Yes.

9 Q] Especially, where these look like puncture wounds?

10 A] Yes, absolutely. That's animal activity. And that's post-
11 mortem animal activity.

12 Q] And how, how do we know that?

13 A] Well, there are several ways you can tell that. First of
14 all, the multiplicity of the trauma, uh, I don't know and I have
15 never seen - - I've seen people that were stabbed, you know,
16 fifty, sixty times, and nothing like this. This is not done by
17 a knife where somebody is stabbing or gouging or twisting a
18 knife in a sadistic kind of a way. This is animal activity, and
19 the fact that the penis has been degloved and in that the
20 testicles are missing is consistent with exactly what that pic-
21 ture I showed you earlier of the dogs that ate out the, the, for
22 lack of a better word, the pubic area of that young girl.

23 Q] Using "degloving," was there literature back in '94 that
24 talked about penis degloving caused by animals?

25 A] Yes.

1 Q] And was that a well-recognized phenomenon?

2 A] Well, you know, when you say "well-recognized," obviously,
3 it wasn't well-recognized.

4 Q] I don't mean by lay people. I mean by people that know
5 what they're doing, experts such as yourself. In other words,
6 would you have looked, if you had been consulted back in '93 and
7 seen this photo?

8 A] Absolutely. No question in my mind that it would have been
9 animal. In '93, and if I had seen it in 1970 I would have said
10 it was animal. And I'd only had four years' experience then.

11 Q] And is part of what allows you to say that is you're read
12 the literature?

13 A] And I've seen the cases; I've been there. You know,
14 there's a big difference between seeing a slide and listening to
15 somebody lecture and actually being there and seeing the three
16 dimensional, and seeing the body and being on top of it and
17 watching how the medical examiner is going to go in and cut out
18 these areas so they can have them preserved, so they can check
19 the depth of how deep these went. And we just pointed today,
20 they would definitely take swabs. And the testimony, as well,
21 they were in the water so you're not going to take - - you'd
22 take swabs anyway because saliva, human saliva, is sticky. And
23 you can put human saliva on something and put it under water and
24 two or three days later take it out and swab it and you can get
25 the DNA off of it. And it's been done.

1 Q] By the way, would you expect if this was knife wounds as
2 opposed to animal activity, uh, in a situation where somebody is
3 repeatedly stabbed in this area, that there would be some under-
4 lying damage to the bones?

5 A] That's a good point. And I think I brought that up the
6 other day that nobody has checked. Obviously, you're going to
7 have injuries to bone if you're stabbing somebody. And that's
8 one of the things that are done, when an autopsy is done,
9 they're going to cut that area out and they're going to examine
10 the bone underneath it for marks. And I should have brought you
11 some of those pictures, but I didn't.

12 Q] Did you see any indication in these autopsy reports that
13 there was any damage to the underlying bones?

14 A] I don't think they examined the underlying bones.

15 Q] Uh, 16 is a close-up of this same area as showing the same
16 thing; correct?

17 A] Again, it just, it, it is so obvious that that's animal
18 activity, postmortem animal activity, that, uh, you can
19 absolutely positively beyond reasonable doubt, eliminate that
20 being done by somebody with a knife.

21 Q] And, uh, 17, now we're starting to see in this photo some
22 marks down at the bottom, parallel marks similar to the ones
23 we've seen in photos from other cases and, uh, 18 is a close-up
24 of that same area and then 19, there's 3 very parallel lines.
25 What caused those?

1 A] Again, those parallel lines were caused by, more likely
2 than not, uh, the claws of whatever animal was degloving and
3 taking off the testicles. Uh, they were up there, that animal
4 used its claw to grip or pull, and those are claw marks.

5 Q] Uh, looking at your acetate overlay, did you see whether
6 the knife matched up with those parallel lines?

7 A] I have 2 photographs, a one-to-one of that particular pic-
8 ture, I have a one-to-one of that. And again, uh, the knife,
9 using the acetate transfer, can totally eliminate the knife as
10 having made that mark.

11 Q] Because the marks just don't match?

12 A] They don't match.

13 Q] And here's the same lines from the back; correct?

14 A] Yes.

15 Q] Again, animal activity?

16 A] Yes.

17 Q] Okay. Here you have other parallel lines; some are close
18 together and some appear to have some distance between them. Did
19 you use the acetate technique to determine whether the knife
20 could cause these parallel lines?

21 A] Yes, sir, I did.

22 Q] And what was your conclusion?

23 A] It did not cause those marks.

24 Q] Any possibility it could have been caused by that knife?

25 A] No.

1 Q] What did cause this?

2 A] Again, you can see other marks all around it; the scratch-
3 ing of animals.

4 Q] Postmortem?

5 A] Postmortem, whether it's an aquatic animal or a land
6 animal, uh, it's an animal.

7 Q] Are, are we looking at two different animals because of the
8 difference, you know, the space between these are fairly close
9 together, whereas these are further apart?

10 A] Not necessarily, because animals, if you notice, they can
11 spread their - - like we can our fingers - - and sometimes
12 they're close together and other times, they spread them out.
13 So I wouldn't opine that that was two different animals that
14 made that.

15 Q] All right. The same injury here?

16 A] Yes.

17 Q] And, uh, 23?

18 A] Nothing to do with odontology.

19 Q] That's not an animal?

20 A] No.

21 Q] What are these marks along the side?

22 A] Whatever instrument was used left those marks.

23 Q] But that's in contrast to the other injuries that we just
24 saw with these parallel lines?

25 A] Absolutely.

1 MR. BURT: Now I have other questions, but I won-
2 der if this would be a good place for a break.

3 THE COURT: It's time for a recess. Court will
4 be in recess for ten minutes.

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

7 THE COURT: All right, go ahead.

8 MR. BURT: Thank you.

9 DIRECT-EXAMINATION, continuing:

10 Q] Doctor, I see in your report that part of the material you
11 reviewed in this case was the trial testimony of Dr. Peretti,
12 both at the Misskelley trial and at the Echols/Baldwin trial?

13 A] Yes, sir.

14 Q] And did you see in that testimony where Dr. Peretti
15 attributed the injuries which were displayed on the photos we
16 reviewed earlier, uh, attributed those injuries to, in the Miss-
17 kelley case, "a knife"; and in the Echols/Baldwin case "a par-
18 ticular knife"?

19 A] Yes.

20 Q] Uh, I take it from what you've said so far that you strong-
21 ly disagree with that?

22 A] Strongly disagree.

23 Q] And would you have been available or someone of your
24 similar qualifications, have been available back in '93 and '94
25 when this case was tried, if somebody had come to you with the

1 photos and said, you know, "what are we dealing with here?"

2 Would you have been available to come in and offer your opinion?

3 A] Yes, sir.

4 Q] Now, uh, you know that, uh, Dr. Dougan, uh, at least
5 reviewed the Branch photo that related to that question whether
6 it was an animal or a human bite mark; correct?

7 A] Yes.

8 Q] Was Dr. Dougan board certified; do you know?

9 A] I know, and he was not.

10 Q] Well, does that matter, I mean, is that just a fancy
11 qualification that really has no bearing on one's expertise in
12 this case?

13 A] No, you know, and as a matter-of-fact, uh, the National
14 Academy of Science, the NAS, has just come out with white paper
15 that was commissioned by the justice department to analyze, uh,
16 evidence, uh, experts. And in there they not only addressed
17 forensic odontology, but, you know, crime labs, everybody. And
18 they recommend board certification with recertification, in
19 other words, re-examining every five years, is a recommendation
20 they came out with. And that's exactly what the, uh, American
21 Board of Forensic Odontology does. Everybody is re-examined
22 every five years; you have to be current. So it's really im-
23 portant and if somebody isn't board certified means they haven't
24 taken the courses, they haven't attended the American Academy of
25 Forensic Science meetings. They're not active in the field and

1 they may be able to - - any dentist is a forensic dentist; any
2 dentist can come in and look at a body and make an ID from X-
3 rays, or something, but to get involved in things like this, you
4 really have to be active.

5 Q] And "active" I take it in the way that you were indicating
6 it earlier, actually doing the case work and seeing what kinds
7 of injuries animals can cause and having had experience based on
8 that, when you look at those wounds?

9 A] Well, there's no substitute for experience; believe me, and
10 hands on is the best.

11 Q] Did you see in the work of Dr. Dougan and Dr. Peretti,
12 proper documentation of the forensic odontology aspects of this
13 case?

14 A] No.

15 Q] Uh, did you at some point attempt to share your findings
16 with Dr. Peretti?

17 A] Yes.

18 Q] And explain to the Court how that came about?

19 A] Well, it came about because Dr. Peretti, uh, the medical
20 examiners, uh, forensic odontologists, the prosecutors, every-
21 body had an open mind. They said let's all get together and go
22 over this, which is really unusual. I mean, I thought it was
23 really great that the prosecutor would be open to this, that
24 Peretti would be open to it. And we all got together and we had
25 a meeting in his office and I laid out my position, the other

1 forensic dentists laid out his position and I think Dr. Baden
2 was there, Dr. Di Maeo, uh, was there and we laid it out. And
3 Peretti was very congenial, uh, very open minded, uh, so yeah,
4 he heard where we were coming from.

5 Q] Okay. And did you go through it with him step-by-step, in
6 terms of why you thought he had gone wrong on this issue?

7 A] Well, you know, it's pretty embarrassing, uh, to sit there
8 and tell the man that he made a mistake, that he goofed, uh, so
9 I just, I didn't tell him he was wrong; I just told him what my
10 perspective was, how I looked at it. The interesting thing
11 about that meeting, he, Peretti, was going to go back through
12 his records of the past ten years and pull out cases that in-
13 volved animal, uh, "mutilation" is the term I used, uh, of
14 bodies. And it was kind of open for the group. That's why I
15 did what I did. I went back and pulled out the cases that I
16 thought were significant to show, uh, what animal activity does,
17 how it looks, why do they go for the genitals; that kind of
18 thing, uh, so maybe Dr. Peretti has done it. I don't know if he
19 has or not; I've never seen it.

20 Q] Uh, and have you seen this, uh, this letter that the pro-
21 secutors got from Dr. Peretti explaining about why he disagrees
22 with the position of all of the defense experts in this case?

23 A] Yes.

24 Q] Uh, parts of this letter have to do with pathology; I'm not
25 to ask you about this, but part of it has to do with odontology.

1 So let me read to you part of his letter, uh, this is
2 Plaintiff's Exhibit #48, uh, he says, "First, Dr. Sterner and I
3 personally examined the bodies of the three boys, along with Dr.
4 Kevin Dougan, a forensic dentist. Dr. Dougan's findings that
5 none of the wounds appear to be human bite marks was subsequent-
6 ly corroborated by Dr. Harry Mentzer."

7 Why doesn't that, in and of itself, put this issue to rest?

8 A] Well, for several reasons. First of all, I totally agree
9 with Dr. Mentzer and Dr. Dougan, and I've already testified that
10 there are no human bite marks. It was never addressed that this
11 was animal bites. That's number one. Number two, uh, based on
12 what he says in this letter is totally contradictory to what he
13 put in his autopsy report. And I found it disconcerting that a
14 medical examiner who went through such great detail and how he
15 reviewed it with other medical examiners and he put such detail
16 in his report because it was so important, yet, on the other
17 hand, he talks about bite marks, human bite marks on one hand
18 and the other hand, he says there weren't any human bite marks.
19 So it's disconcerting.

20 Q] And do you recall reading the testimony of Dr. Sterner,
21 who's referenced in Dr. Peretti's reports, back when he
22 testified in '99?

23 A] Yes.

24 Q] And do you recall reading this testimony by Dr. Sterner,
25 and this is at page 1460 at the Echols Rule 37 proceeding:

1 Question: "There was nothing in any of his reports referring to
2 anything that appeared to be a bite mark or that might be a bite
3 mark. Was that consistent with what you saw when you looked at
4 those bodies?"

5 And Sterner answered: "None whatsoever, and was perfectly
6 consistent with what I saw."

7 Now is that testimony in line with what the autopsy report
8 itself says?

9 A] Of course not.

10 Q] The autopsy report itself says it was bite marks?

11 A] That's correct.

12 Q] And so the fact that Dr. Sterner and Dr. Peretti examined
13 the bodies of the three boys as stated in this letter and said
14 it was not human bite marks, does that in any way cause you any
15 question in your own opinions here concerning the animal bites
16 that you testified about?

17 A] That's a convoluted question. Can you repeat it?

18 Q] Sure. I apologize for that. Does anything in the testi-
19 mony that you reviewed of the Rule 37 proceedings cause you to
20 question your opinion in this case about the injuries that we
21 talked about are animal bite marks?

22 A] No.

23 Q] And then lastly, uh, I think you referenced the literature
24 that was out there in 1993 that might have alerted a
25 conscientious defense lawyer that there may be issues here re-

1 lated to forensic odontology; and I think you mentioned the, uh,
2 the Helpern textbook?

3 A] Yes.

4 Q] Was that, uh, Dr. Helpern's book, uh, *Legal Medicine Path-*
5 *ology and Toxicology*?

6 A] Yes.

7 Q] Published in 1954?

8 A] Right.

9 Q] And in addition to that standard textbook that was out
10 there for anybody who might have wanted to educate themselves on
11 it, there were other textbooks, forensic pathology textbooks
12 that discuss the issue of animal bites and actually have photo-
13 graphs which are similar to the ones you've shown here in court
14 from your cases; right?

15 A] Yes.

16 Q] One of the other books was Dr. Spitz and Fisher's earlier
17 edition, uh, the book *Medicolegal Investigation of Death*?

18 A] Correct.

19 Q] And a third textbook that was out there and commonly used
20 at the times was *The Pathology of Homicide* by Dr. Lester
21 Adeleson, published in the '70s?

22 A] Yes.

23 Q] And I'll show you just a portion of all three of them and
24 ask you if you can identify them first. These are the standard
25 textbooks.

1 MR. BURT: I would mark these collectively next
2 in order, Petitioner/Defendant #64.

3 DIRECT-EXAMINATION, continuing:

4 Q] And the first one is *Legal Medicine Pathology and Toxi-*
5 *cology*, that's Dr. Helpern's book; right?

6 A] (Witness examining same.) Yes.

7 Q] A defense attorney could have gone through there and seen
8 photos, uh, injuries caused by ants?

9 A] Yes.

10 Q] Injuries caused by rats?

11 A] Yes.

12 Q] Injuries caused by dogs, etc cetera?

13 A] Yes.

14 Q] And the same in Dr. Spitz' textbook back in '93 there was
15 postmortem injury by mice?

16 A] Yes.

17 Q] Uh, by ants, roaches, etc cetera. So Dr. Adeleson's book,
18 cats?

19 A] Yes.

20 Q] And rats; right?

21 A] Yes.

22 Q] And the text of those would have alerted a defense lawyer
23 that injuries are often mistaken for knife wounds when in fact,
24 they're caused by animals?

25 A] Yes.

1 Q] And if somebody had picked up the phone back in '93 and
2 said "are you available to review these photos," you would have
3 been available, in light of your testimony today?

4 A] Absolutely.

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

6 THE COURT: Did you have any questions?

7 MR. PHILLIPSBORN: I just have a few, Your Honor.

8 DIRECT-EXAMINATION

9 BY MR. PHILLIPSBORN:

10 Q] Dr. Souviron, I have questions, I think, in four specific
11 areas. You, uh, discussed with Mr. Burt in your direct-exam-
12 ination the existence of a protocol that you considered applic-
13 able to the investigation of pattern injuries that could be bite
14 marks. Do you recall your testimony about that; in other words,
15 that you were aware of a, of a defined protocol that, uh, you
16 would use in the Miami/Dade coroner's office when a pattern
17 injury seemed as though it might be a bite mark?

18 A] Yes.

19 Q] Now, uh, just so we understand your testimony in that re-
20 gard, uh, is it your view and opinion that by 1993, uh, where an
21 investigation of death was in process on human remains and
22 pattern injuries were detected on a body that could be bite
23 marks that, uh, medical examiners' offices would follow the type
24 of protocol that you yourself would follow in Miami/Dade?

25 A] Yes.

1 Q] And I think you've explained and just covered with Mr. Burt
2 that, uh, by 1993 there was a literature that was generally
3 pertinent to the investigation of death and causes and
4 mechanisms of injuries associated with death that was available
5 to consult; correct?

6 A] Correct.

7 Q] And, uh, as far as you know and recall, in 1993, would
8 individuals, meaning lay persons, including lawyers, lay persons
9 from the viewpoint of not being in your field of expertise, was
10 there periodical literature in addition to textbook treatments
11 of matters such as bite marks and investigation of pattern
12 injuries that could be bite marks in existence at that time?

13 A] There was.

14 Q] Uh, now another area that you talked about just in passing,
15 and this is, uh, so that we're, uh, we're clear on the testimony
16 that you gave; you explained as you were beginning your
17 testimony your knowledge of, uh, an occurrence in Canada, uh, an
18 investigation into some, uh, into deaths that had been
19 misidentified as, uh, having been caused by sharp objects like
20 scissors and the like, but turned out, uh, on further inquiry
21 and investigation to have been caused by animals. Do you recall
22 your testimony about that?

23 A] I do; yes.

24 Q] And do you, do you happen to know, uh, whether as a result
25 of those occurrences, there actually was a fairly major, uh,

1 inquiry which was formally titled *Inquiry into Pediatric Path-*
2 *ology* that occurred in the Canadian province of Ontario, and,
3 and do you know whether in fact that inquiry was, was, uh, also
4 known as the Goudze - - G-O-U-D-Z-E - - commission inquiry?

5 A] I've heard of it; yes. I haven't read the report but I'm
6 familiar with it; yes.

7 Q] And to your knowledge, uh, was one of the professional
8 colleagues who attended the meeting that you described for us in
9 which Dr. Peretti and others were present and the meeting you
10 attended in, in Little Rock, was it attended by a forensic odon-
11 tologist who had been associated with the inquiry in Ontario?

12 A] Yes, sir.

13 Q] Uh, and do, do you, uh, recall whether during the course of
14 that meeting either you or your colleague odontologist actually
15 provided Dr. Peretti with a copy of a book that one of the two
16 of you had on forensic odontology?

17 A] Yes, as a matter-of-fact, you're right.

18 Q] Uh, and, uh, and just so we, uh, and I think you've
19 characterized it already, but would it be fair to say that the
20 tone of the meeting that you attended with Dr. Peretti was one,
21 uh, in which there, uh, it, it was a conversation between pro-
22 fessional colleagues of which a number of us were observers; is
23 that a fair characterization?

24 A] Yes, sir.

25 Q] Uh, and, uh, in your presence do you recall either you or

1 one of your other colleagues explaining that the whole purpose
2 of the meeting was to have a free and open discussion among
3 professionals about, uh, what had occurred in this particular
4 case and, and to allow the expression of differing views about
5 what had occurred?

6 A] Yes, sir.

7 Q] Uh, now I want to move that the, uh, last area that I have
8 to ask you about and, Doctor, some of the, uh, matters that, uh,
9 I'm going to ask you about, you've testified about in connection
10 with some, uh, photos that were displayed on the screen. I'm
11 going to show you some different photographs and, and I'm, uh,
12 with your indulgence, I'm just going to show these to Mr. Holt
13 so he knows what I'm talking to you about and then obviously if
14 he, uh, wants to approach during the discussion.

15 MR. PHILLIPSBORN: Your Honor, may I approach?

16 THE COURT: Yes.

17 MR. PHILLIPSBORN: Thank you.

18 DIRECT-EXAMINATION, continuing:

19 Q] Doctor, I'm approaching you with a series of exhibits that
20 have actually been admitted by the Court in a series of photo-
21 graphs marked #48, beginning with 48A. And each of these has
22 been tabbed individually and I'm going to be asking you about a
23 specific photo. And again, some of which I think you've
24 actually reviewed with the Court. Uh, I'm going to show you
25 what's been marked 48J and ask you if you, if this is a photo-

1 graph that you associate with, uh, the autopsy of case 329, and
2 that would have been James Michael Moore?

3 A] Yes.

4 Q] Now do you see what appears to be a pattern injury that,
5 uh, or, or some injury that it is, uh, to the right of, of that
6 young man's eyebrow as you're looking at it?

7 A] (Witness examining same.) Yes.

8 Q] Uh, and I wonder again, because the Court has been follow-
9 ing these photographs with you, if you would be kind enough to,
10 uh, to show Judge Burnett what, what I was referring you to?

11 A] (Showing photograph to judge.)

12 Q] Now the injury that I just pointed out to you, sir, is, is,
13 uh, is that a, a, what you would call a pattern injury?

14 A] Yes.

15 Q] And do you see, again, so that we're clear on your testi-
16 mony about Mr. Moore's case, do you see anything about the
17 injury that's to the right of the eyebrow as you look at that
18 photograph that's consistent with a tool, like a knife?

19 A] (Witness examining same.) No.

20 Q] And, and, uh, what's your opinion about the mechanism of
21 that specific injury?

22 A] It's trauma, uh, it looks like it was postmortem. It could
23 have very easily occurred with the dragging of the body, uh, it
24 could have occurred from any number of things. It does not
25 specifically resemble any kind of a human bite mark, uh, not an

1 animal bite mark, nor a knife-type injury.

2 Q] I'm, I'm going to show you a second photograph, Doctor,
3 and, uh, for the record, this is 48T. Do you recognize this to
4 be a photograph that is at least, according to the photograph,
5 associated with ME case 330?

6 A] (Witness examining same.) Yes.

7 Q] Mr. Branch?

8 A] Right.

9 Q] Uh, now the, uh, the photograph there is of the body in an
10 apparently unwashed condition; is that correct?

11 A] (Witness examining same.) Yes.

12 Q] Uh, I don't think that particular view is on the slides you
13 had in court with you this afternoon, and I just ask you to take
14 a look at the, at the left cheek of Mr. Branch as it's depicted
15 in that photograph. Do you see anything on the left cheek that
16 appears to you, uh, uh, to be an injury that you see fresh
17 bleeding in and that you would associate, uh, with, uh, a, a
18 peremortem or an antemortem injury?

19 A] (Witness examining same.) No. This is postmortem.

20 Q] Okay. And again, uh, is, uh, do you have an opinion about,
21 about the mechanism of injury to the left cheek, and I'm talking
22 about the sum total of it: the reddish quality of the, uh, the
23 reddish appearance of the tissue, uh, as well as the, uh, the
24 actual injuries, the puncture marks, the scratches and the like
25 in this photo?

1 A] Well, this is classic of animal mutilation of a body, uh, I
2 think Dr. Baden called it necrophagia, uh, it's been eaten, the
3 body has been eaten on.

4 Q] Now I, I'm going to ask you some questions about 48W and
5 first of all so that we're clear, and if you, uh, wanted to show
6 the Court so that the Court, uh, sees what I'm, uh, what area
7 we're talking about. Uh, according to the ME number, is that
8 also a photograph of Mr. Branch's face?

9 A] (Witness examining same.) Yes.

10 Q] Uh, you testified earlier this afternoon, Doctor, as to
11 some opinions concerning injuries that, uh, had been shown by a
12 different photograph of Mr. Branch's mouth; the mouth with the
13 lips pulled open and this one is a slightly different view.
14 Looking at the upper lip, specifically, now, uh, just so we're
15 clear on the opinion that you have as to the upper lip when the
16 lips are not retracted, do you see areas that appear to you to
17 be injured?

18 A] (Witness examining same.) On the upper lip?

19 Q] Yes, sir?

20 A] You bet.

21 Q] Okay. And do you have an opinion about the mechanism of
22 those injuries?

23 A] These injuries, multiple injuries to the upper left, again,
24 are postmortem. You can see these little drag marks that very
25 easily could be caused by claws or by the beak of an animal.

1 That injury on the upper lip is a postmortem injury.

2 Q] Okay. So when you were testifying earlier about injuries
3 that you saw, uh, in one of the photographs that to you are
4 injuries consistent with, uh, a blow that had been suffered.
5 Those, those injuries are injuries that were actually seen
6 inside the mouth?

7 A] Sure. When Dr. Peretti pulled the lip back, the lower lip
8 and the inside areas with what I see when somebody has been
9 struck in the mouth.

10 Q] And, and, uh, looking at the lower lip as depicted in the
11 photograph that you're now holding, uh, can you see injuries on
12 the lower lip?

13 A] Yes, sir.

14 Q] And, and do you have an opinion about the mechanism of
15 those injuries?

16 A] (Witness examining same.) I think that injury occurred
17 before death.

18 Q] Okay. And, uh, again, as to the, uh, as to the mechanism,
19 specifically, do you have any opinion?

20 A] Trauma.

21 Q] Okay?

22 A] Let me clarify before you proceed with the next question.
23 I'm referring specifically to the injury in the anterior part of
24 the lower lip. To the side that are, again, postmortem animal
25 activity to the left side. You can see these marks, the, what

1 we call the commissure of the lip, where the upper and lower lip
2 come together. That area right there is in my opinion post-
3 mortem activity. What's right in the front is antemortem
4 activity.

5 Q] And, and that's right on the front of the lower lip?

6 A] Yes.

7 Q] Uh, I'm showing you what's been marked and admitted as
8 48CC, uh, asking you again, according to the, the number
9 depicted on the ruler, is that also a photograph of Mr. Branch?

10 A] (Witness examining same.) Yes.

11 Q] Now I, I, uh, I'm going to ask you, Doctor, do you, uh, do
12 you recall earlier today giving some testimony when Mr. Burt was
13 asking you questions about seeing triangular areas, uh,
14 triangular injuries that, uh, in your view, are consistent with
15 animal bite marks?

16 A] I do.

17 Q] Do you see in that photograph any, uh, any triangular marks
18 that in your view are consistent with bite marks?

19 A] No. What I see here are all kinds of marks. For instance,
20 the two that are right in front are abrasions, uh, and there's
21 two little dots above that and some other marks that could very
22 easily have been caused around the time of death. The upper
23 part area, in my opinion, would be consistent with either, uh,
24 animal claws, uh, and I don't see any bites. I don't see any
25 animal bites on this and I don't see, uh, any human bites in

1 this photograph.

2 Q] And so, when you, uh, when you look at that particular
3 photograph, uh, do you see anything that to you resembles an
4 injury caused by a tool?

5 A] (Witness examining same.) No.

6 Q] The last thing I wanted to ask you about, Doctor, is, uh,
7 you, you, uh, have testified I think in relation to this
8 particular photograph as it was displayed by Mr. Burt, uh, in
9 this series it was admitted as 48MM, do you recognize that to be
10 a photograph associated with Mr. Byers, ME case 331?

11 A] Does the judge want to see it?

12 THE COURT: I've seen it.

13 THE WITNESS: Okay.

14 DIRECT-EXAMINATION, continuing:

15 Q] Uh, and, uh, the, uh, that particular photograph is a, uh,
16 is a close-up of the, uh, the groin or crotch area of, of the,
17 uh, young boy whose genitalia were removed; correct?

18 A] (Witness examining same.) Yes.

19 Q] Now, uh, you, uh, have talked about degloving injuries and
20 the like. Let me ask you: do you, uh, just so we're clear as
21 to your opinion on that particular photograph, does that photo-
22 graph, in your opinion, depict, uh, injuries that are consistent
23 with, with degloving by animals?

24 A] (Witness examining same.) Yes.

25 Q] And do you see anything in that photograph, uh, that's

1 indicative of injuries suffered prior to, uh, prior to death,
2 meaning when there was still blood pressure?

3 A] No.

4 MR. PHILLIPSBORN: Your Honor, I appreciate the
5 Court's indulgence. We're actually looking for one
6 particular photo.

7 (Pause.)

8 DIRECT-EXAMINATION, continuing:

9 Q] Doctor, this one last area I want to ask you about, and
10 I'm sorry for the delay, and let me, let me set the stage so
11 that the Court and you have a context in which the following
12 question is going to be asked of a photograph that's going to be
13 displayed to you. There was the following testimony given in
14 the, uh, Echols/Baldwin trial which is from page 1057. Dr.
15 Peretti is testifying and he is being shown a photograph and the
16 question begins: "Now State's 64B," and we're going to show you
17 the photograph in a moment, "64B is showing the undersurface of
18 the penis and here we can see the injury and part of the head
19 and shaft of the penis, but what is important to note in this
20 photograph is that we have a clear line of demarcation here,
21 okay, where we have this area which is involved, we have this
22 nice circumferential band going around the penis which you can
23 also see on the front of the penis, the anterior parts of the
24 penis. This line of demarcation which is separating the injury
25 from the uninvolved skin." A further question is: "Doctor, do

1 you have an opinion or have you seen similar injuries? Do you
2 know what the cause of these type injuries could be?"

3 The answer: "Well, you could see those type of injuries in two
4 situations. One, if an object is wrapped around, like a belt,
5 for example, tightly around the penis or those types of injuries
6 are more characteristic when you see young children who have
7 oral sex performed on them, because the little scratches are the
8 teeth marks."

9 And what I'd like to do, with Mr. Burt's help since I'm
10 electronically challenged, is to, uh, to just show you this
11 photograph and to ask you your opinion. So Doctor, the question
12 is, uh, looking at what is 64B in that, uh, in the Echols/
13 Baldwin exhibit, do you see teeth marks?

14 A] (Witness examining same.) No.

15 MR. PHILLIPSBORN: Thank you, Your Honor, I have
16 nothing further. And thank you, Doctor.

17 THE WITNESS: You're welcome.

18 MR. BURT: We apologize to the Court. The
19 projector blew up when we were taking a break.

20 THE COURT: Goodness.

21 THE WITNESS: You didn't see the smoke?

22 THE COURT: No, I didn't pay attention.

23 THE WITNESS: It smoked.

24 THE COURT: Really?

25 CROSS-EXAMINATION

1 BY MR. HOLT:

2 Q] Just quickly before I forget, you did see the testimony of
3 Dr. Mentzer and Dr. Dougan and Dr. Peretti from a previous hear-
4 ing in this matter?

5 A] Yes, sir.

6 Q] And what was your - - and you, I believe that Mr. Burt
7 elicited the statement which you agreed with him with regard to
8 what they said of that bite mark being a human bite mark on, I
9 believe it was on the forehead of Steven Branch; is that
10 correct?

11 A] Yes, sir.

12 Q] Okay. And you had not seen the, uh, you had not seen the
13 testimony of a fourth forensic odontologist by the name of, Dr.
14 Thomas David?

15 A] No, I have not received that.

16 Q] You have not seen that?

17 A] No, sir.

18 Q] But is it your understanding that he opined that, uh, he
19 opined that it was in fact a human bite mark?

20 A] I've heard that.

21 Q] You've heard that? Are you going to review that testimony?

22 A] I would very much like to see that testimony.

23 Q] Okay. We can provide that to you.

24 A] I would love it. What about the video? Can you get me the
25 video?

1 Q] I don't know. But would you be able to check and see if
2 during the course of this trial, because as a paid expert of
3 defense counsel, he made a statement that he was in fact not a
4 board certified odontologist?

5 A] I know Tom David very well. I've had dinner with him.

6 Q] Okay?

7 A] He's a friend of mine, but he was wrong.

8 Q] Okay. So you know for a fact you know he is a board
9 certified odontologist?

10 A] Oh, yeah. He is board certified; sure.

11 Q] Okay. Great. But you disagree with his opinion?

12 A] He is flat wrong.

13 Q] Okay. Bottom line in this case, you say that there is
14 animal mutilation on the bodies of Steve Branch, and that would
15 have been up in the facial region in one of the cheek-head-ear
16 areas?

17 A] Yes.

18 Q] Okay. And Chris Byers, which would have been in the groin
19 area, for the most part?

20 A] Yes.

21 Q] And is that the one that has the marks - - we'll just call
22 them scratch marks, uh, but at this point let me just for
23 purposes of what we're talking about, let me assume that this is
24 in fact animal mutilation; okay? Is that also the one that
25 Chris Byers had the marks around the anus that you opined were

1 scratch marks?

2 A] Yes.

3 Q] Okay. And in terms of Michael Moore, you said you did not
4 believe there was any postmortem animal activity; is that
5 correct?

6 MR. BURT: Well, I think that misstates the
7 testimony. The first photographs were Michael Moore.

8 MR. HOLT: Well, I'm just referring to your report
9 where you say that "Steve Branch and Chris Byers show
10 signs of both pere and postmortem animal mutilation."

11 THE WITNESS: He's right.

12 CROSS-EXAMINATION, continuing:

13 Q] And you are silent on what you say anything with regard to
14 Michael Moore, and your report does in fact include information
15 that you obtained as to Michael Moore?

16 A] You're exactly right. And the mark on Michael Moore that
17 we talked about, uh, was the Rambo knife scrape marks on the
18 shoulder, on the deltoid area that I said, and I hope proven,
19 that that was not made by the Rambo knife.

20 Q] Okay?

21 A] But at the time I did that report, I didn't have the testi-
22 mony of the, uh, what went on in the courtroom on that
23 particular point.

24 Q] Okay. But when you formed your opinion, you said that you
25 wanted to know all of the circumstances surrounding the case?

1 A] Yes, sir.

2 Q] And you got a whole lot of photographs; right?

3 A] You bet.

4 Q] And I assume that you got some police reports?

5 A] Yes.

6 Q] Autopsy reports?

7 A] Yes.

8 Q] Reports about the circumstances of the crime; is that
9 correct?

10 A] Yes.

11 Q] Okay. Now you weren't hired back in '93, pre-trial, as a
12 trial witness in this case, were you?

13 A] No, sir.

14 Q] You were hired later by other defense counsel?

15 A] Yes, sir.

16 Q] Did you realize that those defense counsel had access to
17 the files and records of the trial counsel?

18 A] I would assume they did.

19 Q] Well, okay, so you assume that they did. So did they show
20 you any notes or any sort of anecdotal evidence that had been
21 provided in them by the way of statements that the defendant
22 Misskelley had made to his attorney? Were you provided with any
23 of that?

24 A] What Misskelley said to his attorney?

25 Q] Yes, what he said to his trial counsel regarding this case?

1 A] I don't remember.

2 Q] Okay. Let me put it a different way?

3 A] Please.

4 Q] If you were looking at the evidence in this case, would it
5 have been very important for you to know what an eyewitness said
6 in any case; because I notice in some of those slides, you said,
7 "no, this was not a 'gator, this was a dog." And you relied on
8 an eyewitness, did you not?

9 A] No. The eyewitnesses said it was a 'gator. So the eye-
10 witnesses lied.

11 Q] Oh, I'm sorry. Okay.

12 A] And they lied, if you remember my testimony, they lied to
13 protect their dogs.

14 Q] Oh, that's right.

15 A] And they said it was the 'gators that did it.

16 Q] Okay. So they said it was the 'gators?

17 A] So just opposite of what you're saying.

18 Q] I'm sorry. Okay.

19 A] But you're on the right track. Keep going.

20 Q] Okay. Well, then you just finished the answer for me. So
21 what am I talking about when you say "all of the circumstances
22 surrounding the case," what am I talking about?

23 A] What you're talking about is as a odontologist, I want to
24 know the scene, I want to see the bodies at the scene, I want to
25 see the creek, I want to see as much information as I can,

1 including what animals are available.

2 Q] Right?

3 A] Since I don't hunt in Arkansas, other than birds, I don't
4 know what animals are up in this north part of Arkansas. So
5 that was important for me to know that. In some of the testi-
6 monies from 1999 that I hadn't seen prior to me talking today,
7 was important for me to know that. My understanding was that
8 the bite mark, human bite mark, was totally dismissed; it wasn't
9 there, it didn't happen, there was no human bite mark.

10 Q] And you believe that to be the case?

11 A] Well, absolutely, that's the case.

12 Q] Okay?

13 A] But I never saw Dr. David's testimony, because they said it
14 wasn't important. Everybody agrees that there's no human bite,
15 except for Dr. David.

16 Q] Well, we'll get that to you. Don't worry.

17 A] I would love it.

18 Q] But when you say you wanted to know all of the circum-
19 stances, for instance, you would want to know what a police
20 officer had to say who, the one who found the body, the one who
21 physically observed the scene of where the bodies were found; is
22 that correct?

23 A] That would be nice.

24 Q] Okay. So were you provided with the testimony of a Bryan
25 Ridge?

1 A] You know...

2 Q] ...you've been asked a lot about Mr. Ridge's testimony?

3 A] I have seen excerpts of Mr. Ridge's testimony. I couldn't
4 bring my whole file here today because they charge extra money
5 on the airplane for all of that baggage. So I didn't bring it.
6 I just brought what I could carry with me.

7 Q] I understand. But reading from the transcript of Baldwin/
8 Echols - - I'm sorry - - the Misskelley trial at page 727, uh,
9 where the witness says "it appeared that just a lot of scuffing
10 marks, like someone's feet were doing this number
11 (demonstrating) but there were no impressions that you could
12 actually see of any particular shoe in a given area. It appear-
13 ed that it had been smoothed, like watered down with the water
14 hose. It was clean, to be in that section of the woods."
15 So in a description of the bank adjacent to where the bodies
16 were found, is important to sort of know the circumstances of
17 the crime; is it not?

18 A] Yes, it is.

19 Q] Okay. Now is it, do you know whether or not you actually
20 saw any kind of crime scene notes?

21 A] Excerpts, maybe, but I have not read the entire crime scene
22 report.

23 Q] Okay. If crime scene notes, as far as evidence that was
24 recovered at the scene, for instance, the shoes of the boys and
25 other pieces of evidence were found, and in fact, a confession.

1 If there was a confession that said a knife was present, that a
2 knife was used in some manner, would you have to take that into
3 consideration, at least partially?

4 A] Absolutely. Certainly.

5 Q] Were you ever provided with any information that a knife
6 was present at the scene?

7 A] Yes.

8 Q] You were?

9 A] Sure.

10 Q] And how did you take that into consideration?

11 A] I just went through this whole thing about this knife and
12 the Rambo knife, how it, who it belonged to, that was found in
13 the lake behind the house; that that knife was used and the
14 demonstration of scraping a grapefruit. And that's bunk. Abso-
15 lute bunk.

16 Q] So you did not see any particular pattern injury, which I'm
17 assuming for the purposes of this, that pattern injuries other
18 than dental impressions of animals or people is also part of
19 odontology?

20 A] Yes.

21 Q] Okay. Are you aware of a report by Dr. Terri Haddocks who
22 was retained by defense counsel in this case?

23 A] And she's a female pathologist, if I'm not mistaken.

24 Q] If I'm not mistaken, either, I think so. But when she says
25 that "sharp force injuries are described in Branch's left facial

1 area, referring to the autopsy, I think these are postmortem
2 injuries, possibly attributable to animal depredation..."

3 A] ...good for her.

4 Q] "Superimposed upon antemortem injuries."

5 A] Well, I'm sure there's antemortem injuries. But she's
6 right on. And how come Peretti didn't know that?

7 Q] Well, do you know whether or not in his testimony during
8 the Baldwin/Echols trial, Dr. Peretti in fact said there were
9 some postmortem injuries?

10 A] I think he talked about some mosquitoes or something
11 that...

12 Q] ...no. I'm talking - - are you aware that he said, not
13 with mosquitoes, that he said there were some postmortem
14 injuries?

15 A] Yes.

16 Q] Okay. Now when she says there were antemortem injuries
17 superimposed upon postmortem injuries, what is she talking
18 about?

19 A] You know, she is talking about some of the injuries that I
20 talked about, that could - - dragging the body, uh, scrapping
21 the body across the ground, throwing the body into a creek.
22 That's going to be - - and if they were alive in the creek,
23 obviously that's going to be antemortem. The postmortem
24 injuries, certainly, we talked about the fact that there was
25 blood from these children that attracted animals. It is an

1 attraction. The urine is an attraction. So there's going to be
2 postmortem. She's right on. And I agree with that a hundred
3 percent.

4 Q] Okay. Well, I wanted to get with you, you're going in the
5 right direction...

6 A] ...thank you.

7 Q] In that you said, it's the first time I've heard you say
8 the word "blood" and "attraction." Remember at the first of
9 this, I said I was going to assume that there was some animal
10 mutilation. Now what would attract an animal to a body in order
11 to do postmortem injuries? You continue to mention "urine."
12 Okay, I've never heard the phrase "the sharks are circling
13 because there's urine in the water." What else will attract an
14 animal, besides urine?

15 A] Blood.

16 Q] Blood?

17 A] Smell.

18 Q] So if, is it, can we assume then that if there were ante-
19 mortem injuries on these bodies that caused hemorrhaging, that
20 they would in fact attract animals?

21 A] Yes.

22 Q] And is that consistent with your opinion in this case?

23 A] Yes, sir.

24 Q] Okay. Now you say that the - - and would that hold true
25 for - - would that hold true for, uh, well, what would attract

1 them, what particularly would attract an animal to the face?
2 And I'm assuming that, for purposes of this, I'm agreeing with
3 you. Let's even name an animal; let's say turtles. Let's say
4 that there is some postmortem depredation by turtles on this.
5 What would attract a turtle to the left side of the face of
6 Steven Branch? What would do that?

7 A] There's a couple of things that would attract a turtle.
8 One of them is going to be easy access. They're going to go for
9 the areas that are easy to get to. So assuming that that face
10 had been previously scraped, as Dr. Baden talked about yester-
11 day, or it had been, the blood on that face from oral injuries
12 where it was bleeding had been licked off by dogs, uh, the body
13 then is moved down into the water...

14 Q] ...well, now, wait a minute. Now "licked off by dogs."
15 Have we really established the licked off by dogs - - now you
16 said, you testified with regard to your expertise, but you don't
17 have a degree in animal behavior or zoology or anything like
18 that, do you?

19 A] I'm glad you asked that question, because I don't have a
20 degree in zoology, but I treat the animals at the Metro Zoo. I
21 do all of the dental work on the animals. So I have been up and
22 close with tigers, lions, wild dogs, so I think I have more ex-
23 pertise by far than the average dentist, unless he's a
24 veterinary dentist.

25 Q] For example, yes or no, do dogs feed under water?

1 A] Will dogs feed under water? Yes.

2 Q] Do you know based upon any training that you have...

3 A] ...I'm not an expert in that area. I'd have to defer on
4 that question. I can't answer it.

5 Q] Okay. Fair enough. We've referred to the autopsy of
6 Christopher Byers, I think page 2 was where Mr. Burt directed
7 you to where it says: "multiple superficial bite marks were
8 present on the mucosal surfaces of both right and left cheeks."
9 And I believe that you, there was some confusion or some
10 discussion about whether or not this was referring to animal or
11 human; is that correct?

12 A] Yes.

13 Q] In review of the testimony, though, that you looked at, uh,
14 it was Dr. Dougan was brought in. Do you know if he was
15 specifically looking at multiple superficial bite marks in that
16 particular part, or was he looking at, for instance, the top
17 part of Steven Branch's face?

18 A] That's a very good question. And I don't think I have an
19 answer; I don't think Dr. Dougan has an answer, because he
20 didn't make any notes, didn't make any records. So that's why
21 you make a record; that's why you write it down so fifteen years
22 later, you have a pretty good idea of what you saw, so I could
23 say Dr. Dougan did this, based on the record. I can't. I don't
24 know.

25 Q] So you don't know if he's referring to, I mean, and I don't

1 have an answer, either.

2 A] We're in the same boat, then.

3 Q] But multiple superficial bite marks were present and that's
4 the last, and then it says "superficial." What do you take that
5 to be?

6 A] That they weren't deep.

7 Q] Okay. Well, let's go on to, we've talked about turtles a
8 little bit. Let's talk about crayfish, or turtles and crayfish.
9 Do those bites, are some of those bites of different depths, or
10 are they different...

11 A] ...configuration.

12 Q] Okay. Different configurations...

13 A] ...I'm trying to help you.

14 Q] Do they show up differently?

15 A] Sure. Absolutely.

16 Q] When he says "superficial bite marks," when he says "bite
17 marks" in this case, do you know whether if Dr. Dougan is exam-
18 ining these bodies for bite marks, do you know whether he's
19 doing it for the purpose of identifying a perpetrator or to de-
20 termine if there was postmortem animal predation; and which do
21 you think would be more likely?

22 A] Neither one. I think he was there to determine if the
23 pattern injury was a bite mark to begin with.

24 Q] I see?

25 A] And if it's determined the pattern injury is not a human

1 bite mark, then you stop. You don't go any further. There's no
2 comparison to anybody, because it isn't a bite mark. But you
3 certainly are going to document the record that you looked at
4 it, and you know, this is a high-profile case.

5 Q] Right. Well, did I read in the testimony that Dr. Peretti
6 brought in Dr. Dougan?

7 A] He did.

8 Q] Just to be on the safe side?

9 A] He did. Good for him.

10 Q] And in this particular instance, he doesn't say "multiple
11 superficial human bite marks"?

12 A] No, he doesn't. Exactly.

13 Q] He just says to him as he looks at the gross, as he does a
14 gross observation of the body and makes notes, he just says
15 "bite marks"?

16 A] Right. Correct.

17 Q] Okay. And none of the bite marks that you have examined in
18 this particular case, in your opinion, caused the deaths of
19 these three eight-year-old boys, did it?

20 A] No, of course not.

21 Q] Well, I have to ask that.

22 A] Well, I know. I understand. But, no, of course not.

23 Q] Okay. So in a large part, in terms of cause and manner of
24 death, these bite marks don't really, they don't really factor
25 into that?

1 A] I think they do. And they certainly didn't cause the death
2 but from the testimony that I've read that this was a satanic
3 ritual, that somebody bit off the penis and the scrotum is out-
4 rageous. Absolutely outrageous. It didn't happen that way;
5 therefore, the animal bites and the postmortem mutilation by
6 animals is what mutilated the body, not somebody going in there
7 and twisting a knife. That didn't happen. So I think it is
8 important.

9 Q] Okay. But it would also be important to know whether or
10 not there was a knife at the scene?

11 A] Sure.

12 Q] And whether it left any kind of an injury that had super-
13 imposed on it, a postmortem injury. Do you ever deal with that
14 when you're dealing with injuries in the wild? Do you ever see,
15 for instance, someone who suffers a boating accident, for
16 instance I believe in one of the texts there is a person who is
17 run over by a boat and has slash marks from the rotor. And if
18 that body is not recovered quickly, then animal predation can do
19 something to that wound, as well, can it not?

20 A] Yes, sir.

21 Q] Okay. Let's talk a little bit about what animals do to the
22 margins of wounds. When I say "the margins of wounds," what am
23 I talking about?

24 A] You're talking about the area that Dr. Peretti described
25 very well, between the normal tissue or the unaffected tissue

1 and the removed tissue. I showed examples of that.

2 Q] Is that a part where animals are, when animals, if animals
3 are attracted to wounds, is it also reasonable that they start
4 at the margins?

5 A] No, the margins are created by the animal.

6 Q] But they were preexisting wounds?

7 A] Yeah, like a knife wound and then the animal would go for
8 that knife wound; that's exactly correct.

9 Q] Could they affect, for instance, could a crawfish affect
10 the margin of that wound?

11 A] Yes.

12 Q] I'm showing you a picture that was shown earlier and it's
13 listed as a picture that is number 10 and you describe that.
14 I've listed these as the numbers that were given out in terms of
15 what you have. I'm sorry. Number 11?

16 A] Is the question to describe it?

17 Q] Yes, if you would. What's that, just identify that picture
18 for the record as one that has already been discussed?

19 A] Okay. It's a white female with mutilation to the groin
20 area.

21 Q] Okay. Now could you describe what is on that, if you
22 would, what was it that how you came to the conclusion that you
23 did with regard to that - - and I assume that you came to the
24 conclusion, you had mentioned I guess, Dr. Joseph Davis?

25 A] Yes.

1 Q] Is he still a medical examiner?

2 A] No, he's an old guy now and he's retired and moved to
3 Tallahassee and, you know, taking care of his grandkids and
4 doing the things that old people do.

5 Q] Okay. I see. Something we all hope to do?

6 A] Yeah.

7 Q] Well, with regard to that wound, just tell me a little bit
8 about what you, you know, how you made the determination of
9 that?

10 A] Well, I did very similar to what I did in this case. I had
11 an opportunity to review some reports; I had an opportunity to
12 see scene photographs, uh, but from an odontology point of view,
13 the analysis of this wound, uh, is clearly from dogs. And if
14 you look in the upper right-hand corner you can see where teeth
15 marks came in. You also can see a puncture from a canine, uh,
16 upper canine of the dog, and then it's, you know, it doesn't
17 just happen once. This is multiple dog - - you know, the dog
18 will bite and pull back and forth, back and forth. So it's a
19 dynamic - - this is a standard photograph of a dynamic situation
20 and the picture just went off. But the bottom line is here, you
21 will see where that tissue has been ripped and torn. And to a
22 person who hasn't seen anything like this before, you're going
23 to say that the bottom line is here, it had to be a knife,
24 because you've got a nice sharp line of demarcation. But that
25 isn't what happened. What happened is where the dog gets hold

1 of that tissue and rips it, it tears. And that, what you're
2 looking at is a tear.

3 Q] What else do you have there around the margins of that
4 wound?

5 A] I think his battery blew up.

6 Q] It's probably just a screen saver.

7 A] I don't think so. He thinks it's the battery.

8 Q] Well, if you would, would you describe what the area is
9 around the margins of the wound?

10 A] You see a rough and you also see a smooth. This area right
11 here photographically, isn't real good. And we're talking about
12 her right or to the left of the picture. But this is the area
13 that I'm talking about. The upper right-hand corner, these are
14 teeth marks from the dog, there's the eyetooth of the dog, but
15 this is where the tissue ripped. See how straight that is
16 coming down?

17 Q] What is this circular pattern around the wound itself, the
18 purplish over here on this side, the red, the abrasion. What is
19 that?

20 A] It's an abrasion. Are you talking about this area right
21 here?

22 Q] Right.

23 A] I don't - - it could be from the dog licking it.

24 Q] Well, have you ever heard of the term "abrasion collar"?

25 A] Yes.

1 Q] How when there's an animal bite, that the force of the,
2 just the very force of the bite, because the bite is going to
3 tear at this point; correct?

4 A] Rip.

5 Q] It's going to tear here?

6 A] Right.

7 Q] But before it can tear there, it has to gain some sort of
8 purchase?

9 A] Exactly.

10 Q] And it's going to create an abrasion collar?

11 A] Right. If you look, this, in my opinion, is where the
12 separation came and the dog was able to get hold of this
13 purchase point, if you will, and then rip it in this direction.
14 But I wasn't there; I didn't see exactly how it happened, but
15 this type of an injury is very similar to what we see in this
16 case and I think it was a multiple biting and pulling and
17 tearing.

18 Q] So the characteristics of this could be both, they could be
19 peremortem or antemortem or postmortem?

20 A] No.

21 Q] These characteristics?

22 A] In this case, this girl is alive.

23 Q] Alive, yes, so it's all antemortem. Yes, but you just said
24 that this is similar to the case here?

25 A] Yeah, it could be, it could be postmortem. You're exactly

1 right.

2 Q] That's what I wanted.

3 THE COURT: I'm not sure that I understand your
4 last answer. You testified previously that the
5 injuries to Branch were postmortem. Are you now
6 saying that they could have been antemortem?

7 THE WITNESS: No, Branch's were postmortem, for
8 sure.

9 CROSS-EXAMINATION, continuing:

10 Q] Based upon the odontological work you've done in this case,
11 have you reached a conclusion as to the guilt or innocence of
12 these two defendants?

13 A] No.

14 Q] Okay.

15 MR. HOLT: I pass the witness.

16 RE-DIRECT EXAMINATION

17 BY MR. BURT:

18 Q] Just to be clear, that photo that he just showed you was
19 from another case; right?

20 A] Yes.

21 Q] And you were saying that the wounds in that case were ob-
22 viously premortem, because the woman is still alive?

23 A] That's correct.

24 Q] But if you were looking at them in the abstract, could they
25 be characterized as postmortem?

1 A] Yes.

2 Q] Okay. You weren't expressing any opinion contrary to what
3 you said about the photo?

4 A] No.

5 Q] Now you were asked wasn't it true that Dr. Peretti in fact
6 testified that some of the wounds were postmortem in this case?

7 A] Yes.

8 Q] And do you recall reading - - this is from the Echols'
9 transcript at page 838, the only reference to that subject which
10 is a question asked: "could you tell in regard to any of these
11 three children whether there were some wounds that were
12 inflected even after death?" And Dr. Peretti answered: "Some of
13 the wounds would be peremortem around the time of death, and
14 postmortem after death." And then they go on to another topic.
15 That's the only thing in the transcript; do you recall that?

16 A] Yes.

17 Q] Does that single, uh, sentence answer accurately describe
18 for the jury the nature of the postmortem injuries that were at
19 issue in this case?

20 A] Not at all.

21 Q] In fact, didn't Dr. Peretti, although he said some of the
22 wounds were peremortem or postmortem, didn't he specifically tie
23 the wounds, uh, in the penile area of Mr. Byers as being
24 premortem and tied to human in the form of a knife?

25 A] Absolutely.

1 Q] And, you know, did it clear up any misimpression that may
2 have been formed by that testimony for him to vaguely assert
3 here some of the wounds were peremortem, around the death, and
4 postmortem after the death without specifying, uh, that the
5 wounds that he had just described as being caused by a knife
6 were in fact postmortem?

7 A] No, and nobody ever asked him.

8 Q] And didn't he specifically tie the wounds into the side of
9 Mr. Branch's face as being caused by a knife and graphically
10 described how they were gouging, twisting knife, multiple
11 cutting wounds by a human being?

12 A] Right.

13 Q] Does this in any way clear up the misleading nature of that
14 testimony to assert generally that "some of the wounds would be
15 peremortem around the time of death and postmortem after death"?

16 A] No.

17 Q] It leaves a misimpression right in front of the jury,
18 doesn't it?

19 A] Yes.

20 Q] Isn't that the problem with this case?

21 A] There are a lot of problems with this case.

22 Q] Well, in terms of this scientific accuracy of his testimony
23 and in terms from an odontology standpoint, did he ever clear up
24 that there were multiple postmortem wounds caused by animals,
25 and specifically the wounds in the penile area and the face of

1 Mr. Branch?

2 A] Never.

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

4 MR. PHILLIPSBORN: Your Honor, I have one
5 particular question.

6 RE-DIRECT EXAMINATION

7 BY MR. PHILLIPSBORN:

8 Q] Dr. Souviron, I, I have only one area I wanted to ask you
9 about. With respect to the evidence pertinent to Mr. Byers, ME
10 #331, do you see, uh, any evidence of, uh, based on what you
11 have reviewed as, uh, links a human being to the removal of the
12 testes and the penis of that young boy?

13 A] No.

14 Q] Do you see any evidence, uh, of human agency, for example,
15 do you, uh, is there anything about the evidence that you have
16 that is suggestive to you that a human being, uh, might have
17 ripped the, uh, the scrotum off of that body?

18 MR. HOLT: Your Honor, objection. Could Mr.
19 Phillipsborn referred to the page in the testimony of
20 the trial transcript where he is getting the "ripped"
21 - - I assume he's going to say testicles?

22 THE COURT: If he's referring to the transcript,
23 yes. I thought he was just asking if he had an
24 opinion.

25 MR. HOLT: Well, what I'm saying, he was referring

1 to it as being "ripped from." And if he is referring
2 to testimony or anything that is documented in this
3 case, if he could make a reference to that.

4 THE COURT: All right, I'll sustain the objection.
5 Clarify your question and if it relates to previous
6 testimony, identify the area of the transcript.

7 MR. PHILLIPSBORN: Your Honor, uh, it doesn't
8 specifically refer to testimony. So I think the Court
9 was correct in his understanding.

10 RE-DIRECT EXAMINATION, continuing:

11 Q] Is there any evidence that you saw, uh, as to any 331, or
12 Mr. Byers, that, uh, a human being had bitten off the genitalia?

13 MR. HOLT: Objection. The basis for that?

14 THE COURT: Sustained.

15 MR. PHILLIPSBORN: And Your Honor, the reporter's
16 transcript 1116 of the Baldwin/Echols case, uh, a
17 witness named Michael Carson said, testified that Mr.
18 Baldwin stated he dismembered him and sucked the blood
19 from the penis and scrotum and put the balls in his
20 mouth. He doesn't say, but that's the extent of the
21 quotation.

22 THE COURT: I recall that testimony.

23 MR. PHILLIPSBORN: In terms of the, uh, the
24 suggestion.

25 MR. HOLT: I just raised the objection, because

1 Mr. Phillipsborn has mentioned on more than one
2 occasion that they were ripped by his teeth. And I
3 did not see that in the transcript anywhere.

4 MR. PHILLIPSBORN: And Your Honor, and I
5 appreciate that comment, uh, the, uh, and again, I
6 would ask the Court in view of the testimony...

7 THE COURT: ...well, I think I'm going to go ahead
8 and allow you, with that reference to the Baldwin
9 testimony, I'm going to allow the series of questions.

10 MR. PHILLIPSBORN: Thank you.

11 MR. HOLT: With that characterization?

12 THE COURT: With reference to the Baldwin
13 testimony that he just read from the record, I'm going
14 to allow him to pursue his question of the witness.

15 MR. HOLT: Okay.

16 MR. PHILLIPSBORN: Thank you, Your Honor.

17 RE-DIRECT EXAMINATION, continuing:

18 Q] Dr., again, based on your review of ME331, and, uh, in Mr.
19 Byers' case, do you see any evidence of a human being biting off
20 any part of the genitalia?

21 A] No.

22 MR. PHILLIPSBORN: Thank you.

23 THE COURT: In connection with the last line of
24 questions, would a human being's bite be any different
25 from an animal as far as the tearing characteristics

1 or the other characteristics you've described as a
2 bite?

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 RE-CROSS EXAMINATION

6 BY MR. HOLT:

7 Q] Dr. Souviron, did you review anything that said one of
8 these defendants had bitten off the testicles?

9 A] No.

10 Q] Anything?

11 A] No, sir.

12 Q] So any reference to that has been referred to or character-
13 ized as being bitten is not in the testimony; is that correct?

14 A] Yes, sir.

15 MR. HOLT: Thank you.

16 MR. BURT: I have nothing further, Your Honor.

17 Thank you.

18 MR. PHILLIPSBORN: Nothing further, Your Honor.

19 THE COURT: I think they're through with you.

20 THE WITNESS: It's about time.

21 MR. BURT: Your Honor, in terms of scheduling, we
22 have one more expert witness who is flying in tonight
23 so she's not available this afternoon.

24 But I anticipate tomorrow will be our last
25 expert, and that's Dr. Ophoven. And then we have some

1 lay witnesses and then will have additional lay
2 witnesses Monday and then we'll be done with it.

3 THE COURT: Tomorrow is Thursday.

4 MR. BURT: I mean Friday.

5 THE COURT: Do you think you'll complete it by
6 Friday?

7 MR. PHILLIPSBORN: We may spill over until Monday
8 morning, Your Honor.

9 THE COURT: Okay. Well, I would like to conclude
10 the factual testimony next week at some time, at some
11 point.

12 MR. PHILLIPSBORN: Your Honor, we have one witness
13 at this point who, uh, a lay witness who will be
14 called on Monday morning, uh, according to our current
15 plans. I, I don't think one way or the other that our
16 case will go past noon on Monday.

17 THE COURT: Okay. Gentlemen, in connection with
18 the anticipation of the conclusion at some time next
19 week, I'm going to request and ask that each of you -
20 - I don't want you to exchange briefs - - I want your
21 briefs submitted to the Court and a precedent for a
22 finding by the Court by each of you, submitted
23 directly to the Court, not in exchange.

24 I don't want you to go back and fight each
25 other's precedents. Just give me what you think the

1 Court ought to find, and then I'll deal with it.

2 MR. HOLT: Well, that's when we will reach a
3 decision about whether the State is going to call any
4 witnesses?

5 THE COURT: Well, sure, I'm assuming that you will
6 finish next week. If you don't...

7 MR. HOLT: ...no...

8 THE COURT: ...but I'm saying at the time that
9 we've concluded the taking of testimony and evidence,
10 then I want you to give me a brief and a model
11 precedent.

12 And then I'll either use it or abuse it.

13 MR. RAUPP: Do you have a timeframe in mind?

14 THE COURT: Yeah, I mean, golly, as much time as
15 we've spent on this, I'm going to say - - do you want
16 as much as thirty days?

17 MR. RAUPP: Yes.

18 THE COURT: Now I don't want it, it's not to be an
19 exchange; it's to be submitted to the Court directly.

20 MR. BURT: I'd like to check with Jeff.

21 THE COURT: Do you need more than thirty days?

22 MR. BURT: I'm not sure. We have the transcripts.

23 THE COURT: Jeff, what I'm asking or requesting is
24 a brief and a suggested precedent submitted to the
25 Court directly; not an exchange.

1 MR. ROSENZWEIG: Okay.

2 THE COURT: How long do you need is my question?

3 MR. ROSENZWEIG: Well, frankly, as long as you can
4 give us, in terms of my participation. I start a, uh,
5 I have a capital-murder trial starting in very late
6 September that's going to go.

7 THE COURT: Well, I'll give you as much as forty-
8 five days, but I don't want to give you any more than
9 that. Wouldn't that be plenty of time?

10 MR. ROSENZWEIG: Yes.

11 THE COURT: You'll take forty-five?

12 MR. RAUPP: Is that apiece?

13 THE COURT: Well, it's going to be a simultaneous
14 submission, so forty-five days.

15 MR. BURT: We appreciate that.

16 THE COURT: I'll say sixty if you want it, but I
17 mean, I'll forget everything in sixty days.

18 MR. BURT: Sixty is preferable. The only thing is
19 that the transcript is pretty long.

20 THE COURT: Well, Rosemary is going to need, I
21 mean if you're talking about an ultimate final
22 transcript for review purposes, if that's necessary,
23 she's going to need more time than that.

24 MR. BURT: We've actually got most of the tran-
25 script up to this point. So we're just talking about

1 getting something so we make sure we have the
2 testimony.

3 THE COURT: But that's not an official transcript.
4 She'll have to give you an official transcript.

5 MR. HENDRIX: And Judge, I'm keeping an eye out
6 for the lay witnesses coming in; I understand there's
7 a little bit of an issue about that yesterday.

8 THE COURT: Well, it's not an issue with me at
9 all, unless somebody objects to it. But I had to
10 point out that the witness had been in the courtroom,
11 so I mean, I don't know who your witnesses are.

12 MR. HENDRIX: Right now I have Jason's mom in here
13 and she wasn't here during the testimony. I just saw
14 her come in afterward.

15 THE COURT: I think I saw her come in. Are we
16 done for the day, then?

17 MR. BURT: I think we are, Your Honor.

18 (WHEREUPON, a recess was taken August 12, 2009; proceedings
19 resumed 9:30 a.m., August 13, 2009 as follows, to-wit:)

20 **AUGUST 13, 2009**

21 THE COURT: All right, call your next witness.

22 MR. PHILLIPSBORN: Thank you, Your Honor. We
23 call Dr. Janis Ophoven. Doctor, would you come
24 forward and take the stand?

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