

1 render opinions without having seen the body, based on photo-
2 graphs?

3 A] Sometimes.

4 Q] And based on your testimony here today, will you, from this
5 point forward be turning down work, uh, because in all of those
6 cases where you were not actually able to see the body?

7 A] No.

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

9 THE COURT: All right, you can stand down, and
10 you're free to go.

11 THE WITNESS: Free to go?

12 THE COURT: Yes.

13 THE WITNESS: Okay. Thank you.

14 (Witness stands down.)

15 THE COURT: Call your next.

16 MR. HOLT: We call Dr. William Sturner.

17 THE COURT: You've been waiting two days for this,
18 haven't you?

19 THE WITNESS: Yes.

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

21 (Witness sworn.)

22 THEREUPON,

23 WILLIAM QUENTON STURNER, MD, FORENSIC MEDICAL EXAMINER (Ret.)

24 was called as a witness and having been previously sworn, was
25 examined and testified as follows, to-wit.

DIRECT-EXAMINATION

1 BY MR. HOLT:

2 Q] State your name for the record, please?

3 A] William Quenton Sturner, last name spelled S-T-U-R-N-E-R.

4 Q] And what is your occupation?

5 A] Retired, but I am a physician and I'm a forensic path-
6 ologist, as well, which work I did for forty years.

7 Q] I'm going to show you what's been marked as State's Exhibit
8 #45 and ask you if you recognize that?

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

10 Q] What is it?

11 A] It's my curriculum vitae, as of May of 2003, which is about
12 one year prior to my retirement.

13 Q] And so when did you retire?

14 A] June 30th, 2004, I think was the official date.

15 Q] And when you retired, what position did you hold?

16 A] Chief Medical Examiner for the State of Arkansas.

17 Q] And if you would, briefly describe the education that you
18 have received to become a forensic pathologist, and some of your
19 experiences?

20 A] I graduated from St. Louis University medical school in
21 1959. Following that, I stayed for three years at the Univer-
22 sity residency program in pathology. Following that, I was a
23 Fulbright scholar at the University of London, England at St.
24 George's and Guy's Hospital for one year and following that, I
25 was a fellow in legal medicine and toxicology at the University

1 of Kentucky for one year. And then I went to work; I was a
2 junior medical examiner at very low pay in the city of New York
3 for two and a half years. I spent two, plus, years in Chicago
4 as a deputy coroner's pathologist and following that, I was five
5 years at the Dallas County Medical Examiner's office, also known
6 as the Southwestern Institute of Forensic Sciences, where I was
7 an associate medical examiner. Following all of this moving
8 around, I went to Rhode Island and I was a chief medical
9 examiner for seventeen years and after that, I came to Arkansas,
10 I think, early 1992, where I was a chief medical examiner for
11 almost twelve, going on thirteen years, I believe, which takes
12 us through the forty years.

13 Q] During the course of that education and your work history,
14 did you make the acquaintance of Dr. Michael Baden?

15 A] Oh, yes. We trained together.

16 Q] And where was that?

17 A] In the city of New York medical examiner's office, right
18 adjacent to Bellevue Hospital.

19 Q] And who was the chief of pathology there at the time?

20 A] Dr. Milton Helpert.

21 Q] And are you acquainted with Dr. Vincent Di Maio?

22 A] Oh, yes.

23 Q] And how do you know him?

24

25

1 A] Well, I knew his father, uh, I knew him quite well, because
2 we shared an office in Dallas at the Southwestern Institute.
3 And I've kept track of him and his family, I guess you could
4 say, for the intervening years.

5 Q] When you say "Dallas," was that Texas?

6 A] Either San Antonio, if he still lives there.

7 Q] But you knew him in Dallas, Texas?

8 A] Yes, sir.

9 Q] Okay. Do you know Dr. Werner Spitz?

10 A] Oh, yes.

11 Q] How do you know him?

12 A] Well, the same thing. I've known him for a number of years
13 and have been to conferences with him and, uh, I participated in
14 a book chapter of his on the most recent edition of the Spitz
15 and Fischer *Medicolegal Investigation of Death*, among other
16 things.

17 Q] And, let's see. Are you a member of the National Associa-
18 tion of Medical Examiners?

19 A] I am.

20 Q] I take it that in all of these places where you have held a
21 position as a forensic pathologist, you have been qualified to
22 testify as an expert in forensic pathology?

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

24 Q] Did you ever work at the Baltimore office?

25 A] No, I didn't, but I, uh, let me just say that the former

1 deputy chief there for many years, Dr. Charles Petty, was the
2 first medical examiner in Dallas when he changed the system, and
3 I was honored to be asked to come down there and serve as his
4 deputy. That's why I went to Dallas.

5 Q] You went to Dallas why?

6 A] I beg your pardon?

7 Q] Why did you go to Dallas; what about Charles Petty?

8 A] Oh, he went to Dallas to be the chief, and I came the next
9 month. Oh, it was a marvelous opportunity, because the crime
10 laboratory was part of the medical examiner's office; it was all
11 one and one budget, and it worked out very well. And it was a
12 new building and the University of Texas at Dallas, uh, some
13 call it Southwestern Medical School, very well thought of in
14 every respect.

15 Q] And so Dr. Charles Petty was renown in the field of foren-
16 sic pathology?

17 A] Yes, sir.

18 Q] Uh, do you have any association with Dr. Bernard Knight?

19 A] Oh, yes. He's another friend of mine. I mean, we're all
20 of the same vintage, you know, so it was easy to befriend these
21 people when we went to meetings.

22 Q] Have you lectured with Dr. Knight?

23 A] Yes, as a matter of fact, just a few years ago, we did.

24 Q] You have been qualified in all of the states you have
25 worked as a forensic pathologist as an expert, have you not?

1 A] Yes, I have.

2 Q] And you've been qualified in Arkansas as an expert in
3 forensic pathology?

4 A] I have when I was here; yes, sir.

5 Q] In fact, you've been qualified in this court, have you not?

6 A] Yes, sir.

7 MR. HOLT: Your Honor, I'd move to introduce
8 State's Exhibit #45, the curriculum vitae of Dr.
9 Sturner.

10 MR. PHILLIPSBORN: No objection.

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

12 (WHEREUPON, State's Exhibit #45 was admitted and received into
13 evidence and is appended on page .)

14 DIRECT-EXAMINATION, continuing:

15 Q] Okay. Going directly to the year 1993, uh, the early days
16 of May, uh, did you become aware of a triple homicide case out
17 of West Memphis?

18 A] Yes, sir.

19 MR. HOLT: Your Honor, I would submit Dr. Sturner
20 as an expert.

21 THE COURT: Do you want to take him on additional
22 voir dire as to his qualifications?

23 MR. BURT: Not on behalf of Mr. Misskelley.

24 THE COURT: All right, you may proceed.

25 MR. PHILLIPSBORN: No, Your Honor. Thank you on

1 behalf of Mr. Baldwin.

2 DIRECT-EXAMINATION, continuing:

3 Q] When you first learned that there were three, uh, the
4 bodies of three eight-year-old boys that were, uh, that had been
5 submitted to the Crime Lab for autopsy, where were you; do you
6 recall?

7 A] Yes, I sure do. I was in Memphis, inspecting the medical
8 examiner's office with the chief, Dr. Jerry Francisco. I was
9 asked by the National Association of Medical Examiner's to do
10 this some months before, and I agreed to do it. We were, I
11 think, near the beginning, but perhaps half-way through the
12 inspection when there was a phone call from the office in Little
13 Rock at the Crime Lab, and information was given to me that
14 there were such cases present. So I rushed and completed the
15 inspection, perhaps eating at the same time so I could get on
16 the road and get back. My recollection is I came back approxi-
17 mately three or four o'clock that afternoon. I had stayed over-
18 night so I'd be ready to inspect the next morning, so I spent
19 the sum of two days there, and one evening.

20 Q] Well, when you returned, what did you do?

21 A] I think I grabbed Dr. Peretti and said "let's go down to
22 the basement and look at these cases," either that or he grabbed
23 me and said the same thing. And we did. We examined all three
24 of the youngsters on the autopsy gurneys with sheets covering
25 them, and we went through the injuries on each body, at least

1 the significant injuries.

2 Q] Had he prepared, at that point, had he already prepared an
3 autopsy protocol?

4 A] Well, I don't know the answer to that, uh, but my guess is
5 he was somewhere between all of the diagrams that he was making,
6 and perhaps some dictation. But as soon as I came there, he
7 said "all right, let's go down to the basement and we'll look."
8 So we spent some time there; I don't remember exactly how much
9 time. I think it might have been the better part of an hour.

10 Q] And did you go over each of the bodies and the reports - -
11 what was the process there? Did he read off to you what he had
12 seen?

13 A] Well, he didn't read anything that I remember, and again,
14 this was a long time ago, and I may be a little sketchy on
15 exactly what happened, but I seem to remember him in charge of
16 the body, moving it, turning it so I could see certain things,
17 which tells me he didn't have anything in his hands at that
18 time. He might have brought something downstairs that he
19 referred to.

20 Q] So did you do a gross assessment of the injuries to the
21 three bodies?

22 A] Yes, I did.

23 Q] And you have reviewed his autopsy report in all three
24 cases, have you not?

25 A] Yes, at various stages, I think. And I don't remember

1 looking at the microscopic slides; I might have done that. And
2 at the finished product, shall we say, of the autopsy, which I
3 eventually signed, so the answer is yes.

4 Q] Dr. Baden, in his testimony, did you have a chance to
5 review his testimony?

6 A] Yes, I did read it.

7 Q] I suppose you were pleased to learn that he called it a
8 very proper autopsy protocol?

9 A] The autopsies I reviewed of his are also very proper, too.
10 I mean, we had a good teacher.

11 Q] And that was?

12 A] Milton Helpern, in New York City.

13 Q] Did Dr. Helpern have any particular axioms or aphorisms
14 that he taught with?

15 A] Well, there was any number of them, and I'd refer you and
16 counsel to my bibliography in which I have written with is
17 called *The Wit and Wisdom of Milton Helpern* in the National
18 Association of Medical Examiner's journal some years ago.

19 Q] Did he, uh, was it one of his tenants that you were to
20 consider all of the surrounding circumstances of the case?

21 A] Well, indeed, because we went to scenes in New York, uh,
22 especially of homicide cases, with police officers, I might add.
23 And environment was a very important thing and it was crucial,
24 he used to say, to know what that environment looks like and
25 what it could do to the body and you take pictures and you look

1 at it and then make your decision about what you think happened,
2 and then you'll know more after the autopsy.

3 Q] Do you, uh, did you deal with cases of animal predation in
4 New York?

5 A] Yeah, there were a number of cases that came out of the
6 East River and the Hudson River, and those are the ones that we
7 saw rather frequently, because it was a very busy office. I
8 autopsied some, but not, I would say, the majority, because
9 there were six or eight pathologists there; too few, by the way,
10 at that time, but nevertheless.

11 Q] Any other kinds of animal predation?

12 A] Uh, animals such as dogs and cats and usually, in closed
13 surroundings such as apartments or houses occupied by owners who
14 are deceased and nobody else there to feed these animals. That
15 was quite common; uh, roaches and other insects, especially in
16 infants which were deceased. Those are two examples.

17 Q] Any others?

18 A] Uh, the rats, we did see rat bites and we did see, I can
19 still remember a case from Chicago of a dismembered rather
20 famous musical artist, uh, who hadn't been seen for a week, and
21 his German shepherds hadn't eaten during this time, but they
22 decided that he was the only food available, and began to devour
23 some of his tissues, so I've seen that. Those come to mind.

24 Q] Did you see any instances of animal predation while you
25 were in the office in Dallas, Texas?

1 A] Oh, yes, indeed.

2 Q] What kind was there?

3 A] Well, more of wild animals, birds, uh, oh, I think foxes
4 and, uh, nothing else comes to mind, but I'm sure it will as I
5 sit up here.

6 Q] Uh, in these three autopsies, the wounds were described in
7 various ways, uh, by their shapes and by their dimensions and
8 the kind of, whether they were a laceration or an abrasions or a
9 contusion. Are those generally accepted words or parlance in
10 autopsy reports?

11 A] Yes, sir, they are. And on occasion, I will be referring
12 to each of the three autopsies, because I do have copies that I
13 brought up to the witness stand with me.

14 Q] Were you also aware in these particular cases that Dr.
15 Kevin Dougan had been brought in to determine whether or not, or
16 to either confirm or dispute whether a particular pattern injury
17 on one of the individuals was a human bite mark?

18 A] Yes, sir, I do remember that, uh, I don't think, uh, Dr.
19 Peretti told me that. I don't remember seeing him that day and
20 my best guess is he came in before I drove up from my ride from
21 Memphis.

22 Q] Would it have been unusual for Dr. Peretti to consult
23 another member of the Crime Lab with regard to this case?

24 A] Not at all. We all consulted each other all of the time.

25 Q] If you would, could you, uh, without going into a lot of

1 details on the autopsies, is there a particular timeline of
2 injury that can be established in these three cases?

3 A] Timeline?

4 Q] When they're living and when they're dead, essentially?

5 A] My timeline for this would be when they were last seen
6 alive and when they were found, uh, in the water, in the ditch.
7 And I think that's perhaps even more than twelve hours.

8 Q] But that's an estimated range, somewhere in there, they
9 were, they became deceased?

10 A] Yes. That, I think, is fairly clear, at least in my
11 opinion.

12 Q] Well, as you have heard through the testimony in the time
13 that you have been here, at issue in this Rule 37 proceeding, is
14 whether or not defense counsel were constitutionally ineffective
15 for not getting a forensic pathologist to make - - who had the
16 opinion that some of these wounds were in fact postmortem, and
17 they were the result of animal predation. I believe you've
18 heard testimony that there was, in fact, a meeting at which Dr.
19 Peretti attended, other members of the Crime Lab, and other
20 experts who had been hired by the defense team?

21 A] Yes, sir.

22 Q] Did you attend that meeting?

23 A] Oh, no, I did not.

24 Q] Did you have some contact with Dr. Baden prior to that
25 meeting?

1 A] Uh, yeah, he called me up one afternoon, quite by surprise,
2 and after the initial inquiries about family and so-forth, said
3 that he was involved in this particular case. And he also
4 mentioned that he thought - - I don't know if he said some of
5 the injuries - - but he mentioned injuries on all of the boys
6 might have been animal predation and not antemortem stab wounds,
7 for example. So that was the gist of our conversation.

8 Q] I see. Did you have any further contact with him at that
9 time?

10 A] No, sir.

11 Q] Did you recall these particular autopsies when you had that
12 conversation with him?

13 A] Yes, sir.

14 Q] Did you, well, the conclusions that are reached in these
15 autopsies say that one of them died multiple injuries and that
16 at least two of them died multiple injuries with drowning?

17 A] Yes, sir. I agree with that.

18 Q] You do agree with that?

19 A] Oh, yes.

20 Q] What's the basis for your agreement with that conclusion?

21 A] Well, there's, first of all, the injuries are significant
22 and multiple throughout the body, but most significantly, in the
23 head injury area where there are skull fractures in all three of
24 the boys, uh, the drowning part, uh, drowning was diagnosed in
25 two of these cases because of watery fluid in the sphenoid

1 sinus, the skull of the brain as I think Dr. Peretti described,
2 and extensive pulmonary edema, including froth and foam. How-
3 ever, the third case, uh, Mr. Byers, #331, did not show this and
4 therefore, the submersion or the drowning activity was not part
5 of his demise; he died from the multiple skull fractures, the
6 other injuries, and result of exsanguination. So I think the,
7 uh, verbiage that was used, and this was implied by Dr. Peretti,
8 uh, that multiple injuries, homicide, for one, and multiple
9 injuries with drowning, homicide for two, would be my opinion,
10 too. And of course, I signed off on this report, so that
11 indicates that I accept that conclusion.

12 Q] And do you accept that conclusion, based upon your own
13 personal observation of those bodies?

14 A] Yes, sir.

15 Q] When you looked at these wounds, you know, there is some,
16 uh, there is a school of thought that it is important in some
17 instances to collect tissue samples of particular areas. Do you
18 agree with that?

19 A] Of course, it is. That's part of an autopsy that you
20 should consider in every case, and I see Dr. Peretti did that by
21 taking tissue samples from, uh, especially peripheral areas such
22 as where the, uh, ligatures were and also from the, uh, genital
23 organs where it would have been important to document whether,
24 for example, there was fresh hemorrhage or not.

25 Q] Well, you've come to learn through hearing the testimony

1 that the issue is whether or not there was, or, and the, I guess
2 the dispute or the - - that there should have been tissue
3 samples taken, for instance, of the face of Steve Branch. Do
4 you agree or disagree with that?

5 A] Well, you could argue that either way, I think. It wasn't
6 a necessity, I would say, to determine the cause and manner of
7 death. It may or may not have been useful, but I think the
8 tissues that were taken, the slides, which I think there were
9 twenty-two, did answer some questions histologically - - well,
10 as a matter of fact, they probably confirmed what was thought of
11 grossly. That's often what histologic slides do. But there's
12 reason that you could argue that it would be beneficial to take
13 it, but not certainly to determine what the cause and manner of
14 death were.

15 Q] Well, in terms of a timeline of these particular injuries,
16 would it have been helpful?

17 A] Well, it might have. All of the lesions I saw did not have
18 any inflammation which would make it several hours old. Now
19 some had fresh hemorrhage and some had none, which indicates
20 that they were probably postmortem or at least peremortem.

21 Q] At least in appearance?

22 A] That's right. That's correct.

23 Q] When you refer to those, which wounds are you referring to
24 in that instance?

25 A] Well, I haven't picked out any particular wound with which

1 that might be an issue, but I'd be glad to look through and try
2 and find one.

3 Q] Well, do you recall Dr. Peretti referencing his report with
4 regard to some of the groin area injuries?

5 A] Oh, I do. Yes, I do. That might have been helpful, but I
6 appreciated the commentary he made about the pallor of many of
7 the depths of the wounds versus an adjacent one that had hemor-
8 rhage, and these particular wounds, as I recall it, at least on
9 case #331, the Byers case, may well have reflected the fact that
10 there was so little blood in the system that they were unable to
11 bleed, if you will, because there was no blood available for
12 that, not to mention the probable massive - - not massive - -
13 moderate to marked decrease in blood pressure.

14 Q] I see. Well, is the position of the injuries suffered to
15 Byers on the inner thighs, does that, what is the - - does that
16 have some, uh, is there some aspect or does that play some role
17 in how an injury is going to hemorrhage, for instance?

18 A] Yes, it might. The inner thighs, as I remember, showed
19 contused areas and perhaps some abrasions, and reflected the
20 fact that there may have been a struggle. I mean, they're
21 interpretable, shall we say, by gross examination.

22 Q] But by definition, is a contusion an antemortem injury, or
23 a postmortem injury?

24 A] Well, contusion is I think described and defined as a
25 bruise, and that means that there is fresh blood within it, and

1 that, I would say, automatically qualifies for an antemortem or
2 a peremortem injury.

3 Q] And if an injury, if the tissue that is surrounding an
4 injury happens, if an injury happens during life, does the
5 injury hemorrhage?

6 A] Oh, yes, indeed.

7 Q] And is there evidence of that?

8 A] If it's significant enough, it will hemorrhage. And the
9 answer is yes, it will.

10 Q] Is that something that you can see, as a trained forensic
11 pathologist?

12 A] Very much so.

13 Q] And what does it look like?

14 A] Well, hemorrhage is red, and a bruise can be maroon,
15 especially if it's fresh. If it isn't, it's going to be brown
16 and yellow. It goes through color changes.

17 Q] I see.

18 A] And those things we document, appreciate, photograph and
19 so-forth in every case.

20 Q] Did you note and follow the autopsy report with regard to
21 contusions throughout the bodies of these three individuals?

22 A] I did. Yes, I have done that.

23 Q] With regard again to Byers in reference to the microscopy,
24 you said that there were in fact some tissue cuts taken from the
25 penis?

1 A] Yes, sir.

2 Q] Of Mr. Byers?

3 A] Yes, sir, there were.

4 Q] Have you subsequently had an occasion to view those par-
5 ticular, the histological slides of that cut?

6 A] Yes, within the last couple of days, I have. And it may be
7 a re-review, because I think I looked at it before I put my
8 signature on these reports, including Byers.

9 Q] And what did you observe in those slides?

10 A] Fresh hemorrhage, first of all. And it's some in blood
11 vessels and some outside of it. And on the periphery, uh, it
12 looks like some bacteria are present, and occasionally, some of
13 the red cells show what is known as "ghost forms," uh, in other
14 words, they're pale, without the red. But there is large
15 amounts, uh, relatively speaking, of fresh blood cells in the
16 tissue surrounding these vessels in the penis.

17 Q] And what conclusion can you draw from that histological
18 information?

19 A] That tells me that there was antemortem hemorrhage present.

20 Q] And if there was antemortem hemorrhage in the penis
21 tissues, what does that suggest with regard to the injury
22 itself?

23 A] Well, that the injury also was antemortem, or peremortem in
24 timing.

25 Q] And when we were talking about "the injury," we were talk-

1 ing about the emasculation?

2 A] Yes, sir.

3 Q] And the, I guess for the lack of a better word, degloving?

4 A] We're talking about genital mutilation, I think, to use one
5 of Dr. Peretti's terms.

6 Q] I believe the autopsy listed the contusions noted in the
7 left side and the right mandible of Steve Branch, did you in
8 fact, together with several distant wounds that were described
9 as being "bell shaped" or "dome shaped" pattern injuries, pat-
10 terned abrasions and then areas where there was in fact gouging
11 out of the flesh?

12 A] Yes, sir. The autopsy protocol reflects that language.
13 And in that particular, in that particular area, the autopsy
14 also indicated that there were multiple surfaces with multiple
15 contusions?

16 A] Yes, I see that.

17 Q] What does that indicate?

18 A] Well, if the mucosal surfaces had multiple contusions, that
19 means there's inside hemorrhage, as well as some extent outside
20 hemorrhage, because it's talking about mucosal surfaces, and
21 that's in the inside of the lips.

22 Q] When it talks about the gums were hemorrhagic, so there was
23 in fact trauma to the gums?

24 A] Well, there was bleeding, which that indicates. But prob-
25 ably as the result of trauma, given the other findings on the

1 face.

2 Q] I see. And did you reach an opinion with regard to the
3 timing of those particular injuries?

4 A] Yes, I did.

5 Q] And what was that opinion?

6 A] I thought that they were peremortem or antemortem injuries.

7 Q] Now there was a large amount of blunt force trauma that was
8 described in all three of these cases?

9 A] Yes, sir.

10 Q] I don't have the photograph of Steve Branch, but is it con-
11 sistent with force applied to the front -- he, I believe that
12 the autopsy report listed that the calvarium of Steve Branch was
13 intact; do you recall that?

14 A] I think I do, uh, I just want to make sure that's the, uh,
15 what I remember. That's correct. It says there were no
16 fractures noted to the calvarium, which we have said before, is
17 the top of the head; that the majority of the fractures were in
18 the base of the skull.

19 Q] And in the posterior region; is that correct?

20 A] In the back; yes, sir.

21 Q] Are those fractures consistent with a force that is being
22 applied to the front of the face of Steve Branch?

23 A] Yes, it probably had an angle, because it's, uh, force is
24 being projected in a backward way to produce these impact
25 fractures. So, yes, it is consistent with that.

1 Q] And is it also consistent with a blow coming from the front
2 at an angle when there is no, when there is no laceration or
3 indication that the wound has come from the back?

4 A] Yes, there would be one - - probably more than one impact
5 wound, as is described here, in the front of the facial region
6 on the left side.

7 Q] Did you have an opportunity to, uh, you know, you testified
8 once before in litigation that was another one of the defendants
9 in this particular case, and the dispute there essentially was
10 that these were human bite marks. When you observed these, when
11 you saw these marks on Steve Branch, did you think that they
12 were human bite marks?

13 A] No, I didn't, but I think I asked Dr. Peretti, because he
14 had already told me Dr. Dougan was there. I said, "What did he
15 think?" I seem to remember saying something like that. But I
16 didn't think so, is my answer.

17 Q] Okay. Do you recall seeing an overlay prepared by Dr.
18 Dougan?

19 A] Yes, I think so. At some point I have.

20 Q] That depicted the circular, or the domed nature of the
21 pattern injuries on Steve Branch's face?

22 A] Oh, that, I have seen. Yes. The circular abrasion; yes,
23 indeed. It's a very thin-walled circle, shall we say.

24 Q] Well, did you also note the thin-walled circle, those ab-
25 rasions that contained the patterned "X" in the middle?

1 A] I did see that on some of them; not all of them.

2 Q] Do you have an opinion with regard to what the mechanism of
3 that injury is?

4 A] Well, I have an opinion. I certainly wouldn't know exactly
5 what type of object did it, but it probably is something near
6 the shape of a very firm well-built cylinder that is open in the
7 middle, but semi-sharp on the outside that could be used in a
8 pounding fashion on the face, or other tissues.

9 Q] So in your opinion, did those particular injuries, did they
10 appear to come from an instrument or an implement?

11 A] Yes, indeed, they did.

12 Q] Did they in any manner suggest to you that they were the
13 result of animal predation?

14 A] No, sir, they did not.

15 Q] Moreso, did they indicate to you that they were postmortem
16 animal predation?

17 A] No, sir.

18 Q] Antemortem animal predation?

19 A] No, sir.

20 Q] With regard to the injuries of Chris Byers, the groin area
21 injury?

22 A] Yes, sir.

23 Q] First of all, did you - - I suppose you viewed the bodies
24 grossly, uh, Dr. Peretti noted in his, well, first through his
25 external description, "the body was pale, with minimal posterior

1 fixed Lividity." Is that an important finding to make?

2 A] Yes, indeed.

3 Q] Okay. Why would the body be pale?

4 A] Well, in a case like this, from blood loss. Acute, and
5 rather marked blood loss.

6 Q] Would that, would there be any other corresponding findings
7 that would indicate blood loss?

8 A] Well, one that comes to me is further down in the autopsy
9 there is a, uh, an opening of the thorax and abdomen and in
10 appreciation of the organs, and I believe the words "diffuse
11 pallor" were used, which also indicates blood loss. And I
12 believe all of these reports indicated that there were no
13 internal injuries in the thoracic region; is that correct?

14 A] Yes, sir, that's the case.

15 Q] You have been able to review testimony that the injuries to
16 Chris Byers had a serrated, uh, quality to them?

17 A] Yes.

18 Q] Can you describe what a serrated pattern is?

19 A] That's a continuous duplicative set of injuries, usually,
20 abrasions, which are more or less linear in nature, and
21 repetitive, shall we say, uh, taking the shape, presumably, of a
22 given implement that has one or more serrated edges.

23 Q] With regard to the injuries to the groin area of Chris
24 Byers, did you observe certain pattern injuries?

25 A] Yes, posteriorally, on Mr. Byers were cuts that were

1 parallel and bruises that were also somewhat sequential, or
2 parallel in nature.

3 Q] Did you also note gouges that were parallel and linear?

4 A] Yes, in the groin area, anteriorally, especially.

5 Q] Did you reach an opinion with regard to the groin injuries
6 of Christopher Byers, whether or not they were the result of
7 animal predation?

8 A] I did reach an opinion.

9 Q] And what was that opinion?

10 A] That they were not characteristic of animal predation.

11 Q] What did they appear to be characteristic of?

12 A] Incised, uh, gouged, uh, penetrating wounds, uh, some of
13 which, as Dr. Peretti described them, some showed hemorrhage and
14 some don't.

15 Q] Would water also have an effect on whether or not you could
16 see hemorrhage in the wound?

17 A] Maybe. It certainly would leech out some of the blood that
18 was present therein, and knowing that that might be a reason for
19 ghost red blood cells, which have lost its color, it might make
20 these areas paler than they would be ordinarily. That would be
21 my best guess.

22 Q] Now a tissue sample of those wounds wasn't taken, was it?

23 A] Not that I know of.

24 Q] But if there were wounds that were similar in pattern and
25 appearance and some were hemorrhagic and others were not hemor-

1 rhagic, what could you say about the ones that were hemorrhagic?

2 A] Well, they'd be antemortem injuries, in other words, or
3 peremortem injuries inflicted prior to demise, prior to the
4 death of the boy.

5 Q] And with regard to those that you could not actually see
6 the hemorrhage but were similarly patterned, does the process of
7 dying have an effect on that?

8 A] It may, and that, I would say, I probably should say, pere-
9 mortem for those, for lack of a better explanation. In other
10 words, it's close to death and they may have showed hemorrhage
11 at one time. And the other thing that you should know is that
12 they're regional; they're - - not regional - - but they're
13 geographically contained; they're near one another. They're in
14 the same neighborhood, shall we say.

15 Q] Based upon your observations of these bodies, did you see -
16 - and your consideration, I assume, of this case for the autopsy
17 reports, the slides that you have seen, uh, did you view all of
18 the micros?

19 A] I reviewed all that were cut and present and still remained
20 in the Crime Laboratory two to three days ago.

21 Q] Was there any foundation that you saw to base an opinion
22 that these wounds were either postmortem or the result of animal
23 predation; specifically with regard to the injuries to Steve
24 Branch's face, or Chris Byers' groin area?

25 A] I thought they were antemortem injuries and I saw nothing

1 that reminded me of animal predation of any kind. I know that's
2 something we talked about when we looked at these bodies, and
3 dismissed it.

4 Q] And is your opinion with regard to the nature of these
5 wounds, the cause and manner of death, is that to a reasonable
6 degree of medical certainty in your field?

7 A] Yes, sir.

8 MR. HOLT: I pass the witness.

9 THE COURT: Talk fast.

10 CROSS-EXAMINATION

11 BY MR. PHILLIPSBORN:

12 Q] Good afternoon, Doctor Sturner.

13 A] Good afternoon, Counselor.

14 Q] Dr. Sturner, uh, I'd first like to ask you about some of
15 the colleagues that you talked about, and again, I'll try to
16 move through this at a pace so that hopefully we're all out of
17 here. You talked about your familiarity with Dr. Baden, having
18 trained with him; correct?

19 A] Yes.

20 Q] You've actually written with him, as well; correct?

21 A] I guess so. I didn't quite remember that, but I think we
22 have a paper or two at the time we were in New York.

23 Q] Publication number ten on your CV; do you have it in front
24 of you?

25 A] Do you want me to look at it?

1 Q] Well, would "M. Baden" be Michael Baden?

2 A] Well, it didn't used to be, but it is now. That's an
3 inside story, but it is. That's the answer I should have given
4 you on that.

5 Q] All right. Thank you.

6 A] Number 10; oh, yes. Well, I think we did the autopsy on
7 this particular case but we had great help from ophthalmologists
8 and other people who are the first two authors in this paper.

9 Q] All right. Uh, but the point is, you, at least at the time
10 thought enough of Dr. Baden that you were willing to put your
11 name on the same paper with him; right?

12 A] I still feel the same way about him. He's a very excellent
13 forensic pathologist.

14 Q] Uh, similarly, you have known Dr. Werner Spitz for a number
15 of years?

16 A] Yes.

17 Q] And you indicated you contributed to his most recent text-
18 book?

19 A] Well, let's say he asked me to do it and I was honored to
20 do so.

21 Q] And, Doctor, I gather you did it in part because you
22 respect Dr. Spitz; correct?

23 A] Sure. Absolutely.

24 Q] And he's a well-known authority in the field; right?

25 A] Indeed, he is.

1 Q] Uh, and, uh, he's a person whose opinions you'd at least
2 consider in a given case; correct?

3 A] I think I would consider any of these people's opinions and
4 see if they weighed equally with my own, or they were completely
5 different, because experts always have differences of opinions
6 on cases.

7 Q] Uh, well, and the same then, I gather is true of Dr. Di
8 Maio; correct?

9 A] Oh, yes. I've known him for - - I knew his father first,
10 uh, because he was a deputy chief medical examiner in Brooklyn
11 at the same time I was in the office in Manhattan. But I knew
12 Vince because he came to Dallas when I was there and we shared
13 an office together for two or three years, I think. So I got to
14 know him and his family.

15 Q] And so, again, you actually authored another publication,
16 of your many publications, and, one of them was with Vince Di
17 Maio?

18 A] Oh, yes, I seem to remember that. Maybe two of them.

19 Q] Part of what you were explaining to us is that physicians
20 do train and also practice forensic pathology in New York City,
21 uh, you would expect have some exposure to issues of animal
22 predation; correct?

23 A] Yes, sir.

24 Q] Okay. Are you aware that a physician, uh, who was with the
25 medical examiner's office, city of New York, testified in the

1 same hearing you testified in, in Echols, the Rule 37 in 1998?

2 A] Well, not as you describe it. I think if you gave me the
3 name, I might remember it, but I might not have known he
4 testified.

5 Q] Dr. Joseph Cohen?

6 A] I don't know him, and I didn't know he testified.

7 Q] But again, you would expect that such a physician, assuming
8 that he has been in that office for a period of time, would have
9 had the opportunity to see animal predation?

10 A] If he's in the medical examiner's office; I don't happen to
11 know that. But if he's there, he's going to see cases of that
12 kind; like I described that I saw.

13 Q] Now, uh, in the context of this case, you explained the
14 process that you went through in returning from Memphis; your
15 recollection is that you saw the bodies on the day you returned;
16 correct?

17 A] Yes.

18 Q] And you reviewed them with, uh, with Dr. Peretti; correct?

19 A] Correct; and I don't think anybody else was in the morgue
20 at time, and I think it was around four o'clock, but I could be
21 wrong about all of those things, because it's sixteen years ago.

22 Q] If you had made any notes, uh, they would have been retain-
23 ed in the relevant case files; correct?

24 A] Notes? I don't think I would have made notes; I was too
25 busy looking at the injuries. And as long as the bodies were

1 going to be there for a while, or there was other discussion
2 about it, I didn't see the necessity putting a note in. And
3 it's not my practice to do that, anyway. It's a kind of a curb-
4 side consult in which the other doctors in the office are always
5 asked to look at other people's findings and see if they can
6 help with interpretation, if needed.

7 Q] Well, you were anticipating where I was going, Doctor, but
8 just to complete the record, you, uh, had you made notes in
9 these cases, you would have expected as the medical examiner,
10 that your notes would have been retained in the relevant case
11 file?

12 A] Absolutely.

13 Q] Okay. So you don't recall making notes in this context;
14 correct?

15 A] No, sir, I do not.

16 Q] And, and essentially, you were there as the medical
17 examiner and as the senior physician, but the person who was
18 charged with doing the autopsies, was Dr. Peretti; correct?

19 A] Correct.

20 Q] It was essentially his responsibility to go through the,
21 the procedures that he had been instructed on in the completion
22 of the postmortem examinations; correct?

23 A] Yes, sir; correct.

24 Q] And you were there, though you were a senior and the chief
25 of the office, you were there in a sense, uh, to perform a, a

1 collegial consultation with one of your colleagues; correct?

2 A] Yes, sir.

3 Q] Now, uh, Doctor, you were never called as a witness in the
4 trial of these cases; correct?

5 A] Oh, no. Not the trial; only in the other Rule 37 hearing
6 did I testify, although albeit it briefly, but I did testify.

7 Q] I, I take it based on your opinions as expressed with
8 respect to the injuries to the left cheek of young Mr. Branch,
9 that, uh, your position about the cylindrical, uh, tool, uh,
10 something that was circular or had a circular end to it and
11 would have left an imprint or a shape, that was an opinion that,
12 uh, had you been asked about it, you would have expressed;
13 correct?

14 A] I think so.

15 Q] To your knowledge, uh, did any of the defense counsel in
16 this case ever approach you to talk to you - - this is in '93
17 and '94 - - about this case?

18 A] I have to tell you, not that I remember. I'm pretty sure I
19 was never approached, but I can't say that in a lot of other
20 things for certain, because of the timeframe.

21 Q] Uh, and I take it from the answer that you gave with
22 respect to the injury to young Mr. Branch to the left cheek in
23 this case, the left cheek injury, that you didn't feel that that
24 injury involved a knife blade, but rather some kind of a tool
25 with a shape to it as you've described it; correct?

1 A] Well, I think there are other lesions there that you could
2 think that there may have been a sharp bladed instrument, but
3 they weren't - - should I say - - the dramatic ones in which
4 this circular area and as counsel suggested, with an "X" in the
5 middle, that was a very unusual type of lesion. And I thought
6 it was a pipe, in other words, that that might be it, because it
7 has a wall or a cylindrical wall outside and open inside. At
8 least that entered my mind. That, I do remember.

9 Q] Now at the time that, uh, that, uh, Dr. Dougan was consult-
10 ed in this case, first of all, you weren't present when he was
11 present?

12 A] I didn't see him, to the best of my recollection.

13 Q] And, uh, I, I take it from what you were explaining to us,
14 that the information that Dr. Dougan was involved in the case
15 was of some comfort to you; correct?

16 A] Well, yes, it's pro forma, I would say, because here's
17 somebody that would know a lot about dentician and so forth,
18 and he's here to answer our questions, as he would in any other
19 case. So, yeah, that made us all comfortable, I think; that is,
20 Dr. Peretti and i.

21 Q] So somebody who, for example, is a certified forensic
22 odontologist with a lot of experience, is a person who is useful
23 to a forensic pathologist reviewing a case; correct?

24 A] Yes. As a matter of fact, they're usually on staff and on
25 call and so-forth, for the office.

1 Q] And that would have been the case in major offices, like
2 the one in New York; correct?

3 A] Yes, sir.

4 Q] Now, uh, Doctor, in your lengthy experience, uh, how many
5 cases have you been involved in, in which you have observed male
6 genitalia removed, in general, in the manner that you saw in
7 this case?

8 A] I thought this was unique in my experience. I may have
9 seen one other one in Chicago, uh, I believe it was Chicago, I
10 don't have the good recollection of that, but it is a very in-
11 frequent circumstance; at least, in my experience.

12 A] And, and being able to, uh, during the course of a post-
13 mortem examination process, being able to ascertain whether the
14 genitalia were cut away or pulled off; is that something that's
15 actually, uh, easily possible to do, uh, to a reasonable medical
16 certainty?

17 A] I'm not comfortable with "easily possible"; but I suppose
18 that if you have somebody that has some training in, in
19 dissection, and has a sharp enough knife and is so disposed,
20 maybe it's easy and maybe it isn't. But it's hard to answer
21 that question.

22 Q] Uh, now what you have explained with respect to your find-
23 ings is that it is your opinion that the young Mr. Byers was
24 alive, meaning his heart was beating at the time that the
25 injuries to the genitalia were caused; correct?

1 A] Yes, and especially the penis, because that was a micro-
2 scopic study that did confirm that, in my opinion.

3 Q] Now there's nothing that a forensic pathologist can observe
4 as part of a postmortem examination process that would inform
5 you whether Mr. Byers was conscious at the time of the injury;
6 correct?

7 A] Well, that's often times asked, and it has to be answered
8 in the negative, unless you hear somebody yelling at you. Then
9 you know, as Dr. Helpert used to say, but no, that would be
10 impossible, nearly, unless there was eye-witness. But you,
11 yourself, alone, with an individual, uh, you're as fraught with
12 difficulty to assess consciousness.

13 Q] Now Doctor, uh, in addition to working as a chief medical
14 examiner in more than one jurisdiction, you've also engaged in
15 private consultation; correct?

16 A] On occasion, I have done that; yes. Not recently, but
17 since I retired, I've only had one case. But in the past, I
18 have; yes.

19 Q] And, and, uh, in your opinion, uh, is it reasonable for an
20 experienced qualified, uh, forensic and board certified, uh,
21 forensic pathologist to, uh, review reports, meaning autopsy re-
22 ports, review any histological slides, uh, review photographs of
23 the scene, review photographs of a, uh, review photographs of an
24 autopsy process and develop opinions concerning cause and manner
25 of death?

1 A] As you know, Counselor, it's done all of the time.

2 Q] And so, at least with respect to the process that you, uh,
3 are aware, was engaged in this case, by a pathologist employed
4 by the defense, I gather at least the process of reviewing those
5 materials while not having actually seen the bodies, is not
6 uncommon in your career?

7 A] "Not uncommon" is very well put. Yes, sir, I would agree
8 with that.

9 Q] Now, uh, with respect to, uh, to, uh, your own, uh, obser-
10 vations and opinions, I gather that when you were a chief
11 medical examiner in Rhode Island, it was common for you and your
12 supervisees to actually go to crime scenes?

13 A] That was the medical examiner's law, as it is in several
14 states, especially in New England and the east coast. And in
15 New York City, we did it on call and saw, I would say, three,
16 four, six scenes a month, which was a lot for people doing, uh,
17 autopsies every day.

18 Q] And, uh, would you agree that, uh, there are advantages to
19 the forensic pathologist to actually go to a scene prior to
20 rendering ultimate opinions in a case?

21 A] Yes, sir.

22 Q] Now in this case, do you recall having been advised at any
23 time prior to your signing off with these autopsy reports that,
24 uh, a criminalist working in Trace Evidence section of the Ark-
25 ansas State Crime Laboratory had mounted hairs retrieved by law

1 enforcement personnel and by the medical examiner's office, and
2 had actually found among the hairs, animal hairs?

3 A] Well, I didn't - - I don't think I knew it at that time,
4 but I have not only heard about it, I heard counsel, such as
5 yourself, ask questions about it, and I've heard responses, so,
6 indeed, I am aware of that and I finally also heard Dr. Peretti
7 say that he found hairs and submitted them. And I think that's
8 reflected in one of the autopsy protocols, as well. But for my
9 own personal involvement, I don't think I was ever told that.

10 Q] Uh, and would having that information at your disposal
11 prior to having signed off on the autopsies, then useful, uh, in
12 your opinion?

13 A] It may well have been, uh, it depends.

14 Q] Now Doctor, as you testified - - I just have a few more
15 items - - have had a long and distinguished career as a forensic
16 pathologist, you, uh, have on, uh, in the course of your
17 professional career, encountered a few bumps as an administrator
18 of the medical examiner's office; correct?

19 A] Now and then; yes.

20 Q] Including in Rhode Island?

21 A] In Rhode Island; yes.

22 Q] And, uh, had you been called to, uh, to testify in this
23 case, would it be fair to say that you would have expected, when
24 it came to the issue of supervision of some of the people that
25 you worked with, that you would have been asked about certain

1 matters that came up when you were in Rhode Island?

2 A] Oh, certainly.

3 Q] And, uh, I take it from the way you're answering the
4 questions, you would have answered candidly about the issues
5 that came up in Rhode Island?

6 A] Absolutely. I always have.

7 Q] Uh, and, uh, uh, now, and, uh, did, at least one of the
8 issues have to do with your, uh, supervision of autopsy
9 processes?

10 A] To supervision of the autopsy technicians, uh, assisting.
11 That was the, uh, shall we say the point of the charge or the
12 name of the charge by the medical society.

13 Q] Uh, and also, uh, indicating that, uh, that you had actual-
14 ly performed an autopsy when another physician had done so?

15 A] Well, that's a case of say "captain of the ship," uh, one
16 of the residents was, uh, did the performance, a pathology
17 resident who was interested in forensic pathology, and she
18 performed that, and I think I had just - - when I got to court,
19 I used the first person pronoun more than I used the second; I
20 should have just said we both did the autopsy, because I was
21 there watching her do it. But that an issue.

22 Q] I take it that when you signed off on these autopsies, the
23 issue of whether there had been sexual assaults or not, was not
24 a specific question that you recall being raised?

25 A] You mean on these three, now - - we're back to these three?

1 Q] Yes.

2 A] Uh, I don't recall. It may have been raised, as a matter
3 of fact, by positioning and location and the arrangement of the
4 bodies, and so-forth. I don't have any independent recollection
5 of specific sexual assault, queries or conversations taking
6 place; on the other hand, I think both Dr. Peretti and I thought
7 there may be an element of that, uh, associated with this. But
8 at any rate, we should keep it in mind or we should not discard
9 it automatically, I guess that's how I'd best put it.

10 Q] And while you were thinking that it shouldn't be discarded,
11 at the same time, none of the autopsy reports that you signed
12 off on, actually, uh, includes any specific discussion of sexual
13 assault or of, of specific evidence of sexual assault; is that
14 correct?

15 A] Well, I think there are indications that something might be
16 consistent with it. But, uh, it's important, for example, that
17 the laboratory reports showed that there is no semen in smears.
18 And so, therefore, that at least told me that there - - it's
19 more likely that there wasn't sexual assault.

20 Q] Similarly, the findings that Dr. Peretti testified about
21 this afternoon with respect of the lack of hemorrhagic tissue in
22 the anal area would also be consistent with the notion that
23 there was no penetration of the anal area, uh, traumatic
24 penetration?

25 A] Well, there certainly weren't any injuries there, and any

1 blood may well have been just settling. It might have been
2 Lividity in the area, but injuries were really not seen.

3 Q] Would you agree with respect to the practice of the
4 forensic pathologist that it is important, notwithstanding
5 participation in the court process, that testimony given, uh,
6 the, within the, the scope of the information that was actually
7 observed by the forensic pathologist, and where the forensic
8 pathologist is asked to speculate, that pathologist should make
9 clear that he or she expected that?

10 A] That's a wise thing to keep in mind, because that falls
11 short of reasonable certainty, but on occasion, we are asked if
12 something is possible, and, uh, we respond accordingly.

13 MR. PHILLIPSBORN: Thank you, Doctor. I pass the
14 witness.

15 THE WITNESS: You're welcome.

16 MR. BURT: Let me do this in about ten minutes.

17 THE COURT: I hope so. I'm supposed to cook for
18 guests tonight.

19 MR. BURT: I'll get you out for that.

20 CROSS-EXAMINATION

21 BY MR. BURT:

22 Q] Doctor, good afternoon.

23 A] Good afternoon, Counselor.

24 Q] I just want to clarify a couple of points.

25 A] Sure.

1 Q] Did I understand you to say that you spent, at most, about
2 an hour looking at these bodies back when Dr. Peretti called you
3 in?

4 A] Well, I said approximately one hour, and that that was the
5 best of my recollection. It might have been longer; I don't
6 think it was shorter. I have no other way to verify that,
7 except to ask him, and I think I did a while ago and he didn't
8 remember.

9 Q] And other than just eyeballing the bodies, did you perform
10 any procedures in relation to the bodies?

11 A] No, but we turned the bodies over so we could see
12 posteriorally and we did the same, I believe, with the heads of
13 the three boys, but no procedures, as you, I think are getting
14 at by scalpel or anything else. No, sir.

15 Q] Okay. Now did you look during that hour period of time,
16 approximately, at each and every injury on all three of the
17 boys?

18 A] I don't think so. I think there was some that we, uh, or I
19 felt, were regional injuries and they looked alike and I didn't
20 focus on, say, more than one because there were many others to
21 look at.

22 Q] Did Dr. Peretti focus your attention on particular injuries
23 and ask you whether those injuries were human bite marks?

24 A] I don't remember that.

25 Q] Now back in 1998 when you testified, you were asked this

1 question and you gave this answer. Question, and this is at
2 page 1460 of the Rule 37 hearing in Echols, as follows:

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

7 Your answer: "None whatsoever; it was perfectly consistent with
8 what I saw."

9 Do you recall that answer?

10 A] No, but I'm not surprised I said it that way. It sounds
11 like me and I believe that's what I did see.

12 Q] Okay. Now my question is his reports, his autopsy reports
13 on two of the victims actually indicate that there were bite
14 marks on the inside of the mouth?

15 A] Oh, inside of the cheeks?

16 Q] Right.

17 A] I thought you were getting to the skin outside.

18 Q] No.

19 A] Oh. Forgive me.

20 Q] Do you remember that?

21 A] Oh, yes, and he has testified here today to that, and I do
22 remember it in the autopsy report.

23 Q] Well, when you answered this question when you said "none
24 whatsoever," the questioner said "there was nothing in any of
25 his reports that appeared to be a bite mark," and you said,

1 "none whatsoever and it was perfectly consistent"?

2 A] Well, obviously, I took that to mean externally.

3 Q] Okay. That's what I wanted to clarify with you.

4 A] Well, okay.

5 Q] Now other than that one hour or so of observation, as I
6 understood your testimony, the only other thing that you did
7 besides review testimony of other experts, which we will get to
8 in a minute, was you recently looked at some of the microscopic
9 slides; correct?

10 A] Yes, sir.

11 Q] And did you look at all of the microscopics in all three
12 cases?

13 A] Yes, and I looked at re-cuts, too. There were several
14 slides which had been cut more than once, so I looked at every-
15 thing that was in the file.

16 Q] And on the, uh, on the Moore case, as I read Dr. Peretti's
17 reports on page seven of his autopsy, he says that there were
18 anal/rectal microscopics where he saw no hemorrhaging. Did you,
19 on your review of those slides, also agree that there was no
20 hemorrhaging in those slides?

21 A] Yes, sir.

22 Q] And he also says in the Moore report that on the testes
23 microscopic, there was no hemorrhaging. Do you agree with him
24 there was no hemorrhaging on that slide?

25 A] That's correct. There wasn't.

1 Q] Okay. Now the Branch autopsy, he's got - - I think this is
2 at page six?

3 A] Page six.

4 Q] Okay. He's got "head of penis intact; epithelium, which I
5 assume means no hemorrhaging; correct?

6 A] I'm on page six and which micro are we looking at?

7 Q] We're looking at the head of the penis.

8 A] "Head of penis," yes. "Intact epithelium, blood vessel en-
9 gorgement."

10 Q] Yes. Now do you read that as saying there is no hemor-
11 rhaging, but there is engorgement of the blood vessels?

12 A] Yes, no injury, but engorgement can be for a number of
13 reasons.

14 Q] Okay. And was that also your interpretation of that slide?

15 A] Oh, yes.

16 Q] Okay. Now the next one: "shaft of penis," it says the same
17 thing?

18 A] Yes, and I saw the same thing.

19 Q] So no hemorrhaging there?

20 A] No, sir.

21 Q] Head and shaft of penis, he's got "disruption epithelium";
22 is that what you saw?

23 A] Yes.

24 Q] Is that hemorrhaging or no hemorrhaging?

25 A] No, that doesn't mean hemorrhage. It means somehow the

1 outer, uh, surface of the epithelium has moved or is not intact
2 anymore with the rest of the skin, but that can be artifactual;
3 it doesn't have to be something else, but the important thing is
4 there is no evidence of trauma there.

5 Q] All right. And you agree with that?

6 A] Yes, sir.

7 Q] And on the anus and rectal microscopics, he says "no hemor-
8 rhaging identified"; do you agree with that?

9 A] I didn't see any.

10 Q] And the same with the testes?

11 A] Yes, sir. The same with the testes.

12 Q] And then lastly on the Byers microscopic?

13 A] Yes, sir.

14 Q] He's got, this is at page seven.

15 A] Page seven, on the bottom.

16 Q] Anal orifice, no hemorrhaging." Do you agree with that?

17 A] Yes, sir.

18 Q] On the penile slide he has, "bacterial colonies, a few
19 ghost remnants of red blood cells are identified in vessel and
20 soft tissues." I read that to mean no hemorrhaging; is that the
21 way you read it?

22 A] Well, no. There are red blood cells present on re-cuts of
23 the penis, which are not ghost forms. There's both kinds there,
24 so that would be my interpretation.

25 Q] All right. And how many slides did you look at for the

1 penile area on Byers?

2 A] Well, there are re-cuts, some of them, but I think five or
3 six.

4 Q] And on how many of those do you interpret any one of them
5 to be hemorrhaging?

6 A] One, which is large and has the best view of all of the
7 tissues, that is fresh hemorrhage. And it's antemortem.

8 Q] And that's in your opinion?

9 A] Oh, yes, my opinion. Yes, sir.

10 Q] I understand that Dr. Spitz reached a contrary opinion?

11 A] Yes.

12 Q] Okay. And you would agree with Dr. Peretti when he says
13 that these microscopic slides are subject to different
14 interpretations?

15 A] Well, they are. People can say what they see, and should
16 say what they see, but this is what I saw.

17 Q] Now lastly, I wanted to ask you about one of your publica-
18 tions. I have this marked as next in order. Doctor, I'm show-
19 ing you what I believe one of your publications called *Common*
20 *Errors in Forensic Pediatric Pathology*. Do you remember that
21 article?

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

23 Q] In this case we are involved in the general area of
24 forensic pediatric pathology, given the age of these victims;
25 right?

1 A] I'd say so, yes, indeed.

2 Q] Okay. Now when you wrote this article, uh, in 1998, you
3 noticed that there was an earlier article out by Prof. Morris on
4 *Classic Mistakes in Forensic Pathology*. No one, except one
5 author, had addressed the issue of *Classic Mistakes in Pediatric*
6 *Forensics*; correct?

7 A] I think that's probably why I tried to do it, uh, for
8 better or worse.

9 Q] And the one author who had addressed that issue up to the
10 time when you wrote this article was who?

11 A] Well, I wish I could find it and remember it. But it's
12 probably back in the...

13 Q] ...I think you referred to it on page, uh, you say: "As no
14 compilation of such mistakes in infants is available, other than
15 the admonitions contained...?"

16 A] ...oh, yeah, now I know. Janis Ophoven.

17 Q] "In Ophoven's *Pitfalls of Forensic Pediatric Pathology*, it
18 was thought appropriate to document some of the more common
19 areas"; right?

20 A] Yes.

21 Q] And you referenced Dr. Ophoven's publication?

22 A] Yes, she wrote a chapter in a book.

23 Q] *Forensic Pathology*, in 1992?

24 A] Yes.

25 Q] In which she pointed out some of the pitfalls you should

1 look for in cases involving young victims?

2 A] I do remember that; yes.

3 Q] Okay. And what is her reputation within the field of
4 forensic pediatric pathology?

5 A] She's an excellent pathologist and well-versed and
6 experienced. I know her.

7 Q] Were you asked to look at the testimony of all of the
8 defense experts in this case, and critique them?

9 A] Not all.

10 Q] What did you review?

11 A] Shall I say I received a couple of them, but perhaps not
12 all of them. I received Dr. Baden, uh, I did not receive Dr.
13 Spitz; that's two. What other names did we have - - Vince Di
14 Maio - - I did not receive anything, if he wrote it, what else
15 am I missing?

16 Q] How about Dr. Souviron?

17 A] I can't remember getting...

18 Q] ...what about Dr. Ophoven?

19 A] Yes, Dr. Ophoven.

20 Q] And you looked at that?

21 A] I started that. I don't think I finished all of it.

22 Q] So you were not asked in this case to go through and care-
23 fully read the testimony of the defense experts and critique
24 them?

25 A] Not in those words.

1 Q] Does anything that you read in the testimony suggest to you
2 that the defense experts were bent on making personal attacks
3 against Dr. Peretti?

4 A] No, sir. I may not know all of the facts, but it doesn't
5 seem like it, the way what I heard and the way you're asking
6 questions.

7 Q] All right. Uh, in your article *Common Errors in Forensic*
8 *Pediatric Pathology*, you say: "Failure to appreciate postmortem
9 rectal changes resulting in erroneous diagnosis of sexual abuse
10 is unfortunately not uncommon and utmost care must be exercised
11 in making these..."

12 A] ...please give me the page?

13 Q] Yes, it's page 3, second paragraph.

14 A] Okay.

15 Q] "Failure to appreciate postmortem rectal changes resulting
16 in erroneous diagnosis of sexual abuse..." what do you mean,
17 sir, by "Failure to appreciate postmortem rectal changes"?

18 A] Well, I think that the exercise that we've done here with
19 the determination and the questioning about the changes in the
20 rectum, uh, mucosa, and how congested it is, or does it look
21 like hemorrhage, is a case in point, because these boys, being
22 in the water and being dead for what, some fourteen, sixteen
23 hours or whatever, maybe less, are going to show dilatation of
24 the anus. And that's a common finding and I think that's what I
25 was thinking of when I penned that sentence.

1 Q] All right. And then the last area, you say on page 4: "All
2 specimens of the major organs and tissues, including the gastro
3 intestinal tract should be histologically examined"?

4 A] Now wait a minute.

5 Q] It's the second paragraph on page 4.

6 A] Yes, okay.

7 Q] "All specimens of the major organs and tissues, including
8 the gastro/intestinal tract should be histologically examined";
9 there, you are referring to microscopic examinations?

10 A] Yes.

11 Q] And you say: "Iron stains should be employed on all wounds,
12 whether old or recent. Some abdominal and other injuries may be
13 at various ages as a result of repetitive trauma. Failure to
14 submit each and every organ and tissue, some in multiple
15 sections, for example, lungs, for a thorough microscopic exam-
16 ination, including aging, may cause the examiner to overlook a
17 significant finding and miss the correct diagnosis."

18 A] Yes.

19 Q] Is that your opinion?

20 A] I should say so. Yes.

21 Q] And you also say at the very end of your article: "When
22 doubts persist about any equivocal finding or interpretation,
23 one should pay consultations with experts in pediatric
24 pathology, whose diagnostic acumen may be invaluable"; correct,
25 and you're referring to someone there like Dr. Ophoven, who

1 specializes in pediatric pathology?

2 A] Well, I'd say I'm more, I refer to people like Dr. Don
3 Singer and Dr. David Parham, who were head of the Children's
4 Hospitals in the communities where I worked in Rhode Island,
5 Providence and Little Rock. We had conferences, uh, every month
6 at which we picked certain cases that we felt were difficult and
7 he should look at and give us advice on, and had a meeting of
8 all of the medical examiners and pediatric residents taking
9 pediatric pathology at the Children's Hospital, and we all got a
10 lot out of that, including that article that we penned with the
11 forensic pathologist and Dr. Parham, I believe it was, that's
12 been referred to in the testimony.

13 Q] Maybe your point was that somebody with a forensic
14 pediatric training can bring something to the interpretation
15 that a generalist might not have?

16 A] That, plus the fact that the forensic people might be able
17 to tell him or her something that is available or interesting,
18 and what-not. Yes, sir.

19 MR. BURT: Thank you very much.

20 THE COURT: Where is the article that you were
21 reading from?

22 THE WITNESS: Is it this one?

23 MR. BURT: Yes.

24 THE WITNESS: Oh, there's another copy.

25 RE-DIRECT EXAMINATION

1 BY MR. HOLT:

2 Q] If you, if there had been any indication to you when you
3 viewed the bodies and noted the different types of pattern
4 injuries and the contusions and abrasions, if there had been any
5 indication in your mind with what you observed there before you,
6 would you have had any discomfort in telling Dr. Peretti that?

7 A] None whatsoever. We're pretty straight with each other;
8 always have been for many years.

9 Q] And in the testimony that you have reviewed concerning
10 these particular experts and those portions that you have looked
11 at, have you seen any indication or any basis for the opinions
12 that those experts made with regard to either animal predation,
13 uh, whether these injuries were animal predation or were post-
14 mortem?

15 A] That's difficult to say, without what the experts were
16 thinking about. But I didn't see anything that would suggest
17 animal predation of a postmortem nature in any of the bodies or
18 the photographs I reviewed earlier or now.

19 Q] Well, I believe that some of the testimony, well, one of
20 the experts said, when asked what his basis for his opinion that
21 it was animal predation, he compared it to his grandmother, that
22 you just know what your grandmother looks like. Is that really
23 a sound basis for a forensic pathologist to draw a conclusion?

24 A] Let me say: it would be unsound for me.

25 MR. HOLT: That's all I have.

1 THE COURT: All right, Doctor, you can stand down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Yes. It's good to see you again. I
4 haven't seen you in a while.

5 (Witness stands down.)

6 THE COURT: All right, gentlemen, I assume that
7 that concludes the testimony and the evidence.

8 MR. BURT: Yes, I move for the introduction of the
9 Don Singer.

10 THE COURT: Yes, it can be received.

11 MR. BURT: Thank you.

12 THE COURT: I would like for each of you, as I've
13 said before, to prepare a proposed precedent for an
14 order in the case, along with findings of fact and
15 submit it to me - - I don't want you to exchange it,
16 just get it to me and if you can, I'd love to have a
17 disc in Word, but I can take Word Perfect, but I'd
18 rather have it in Word, if you can do that. And then
19 I'll adopt what I think is appropriate or change them
20 around, and that's why I want the disc. That will
21 make it easier.

22 MR. BURT: We'll do that.

23 THE COURT: Sixty days from today.

24 MR. BURT: Thank you.

25 THE COURT: All right, court will be in reces

1 (WHEREUPON, the proceedings in the above-styled cause, having
2 begun September 24, 2008, were concluded October 2, 2009.)

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