Witness for the Prosecution

March 1, 1994

THE COURT: Do you swear to tell the truth, the whole truth and nothing but the truth in the matter now pending before the Court, so help you God?

PERETTI: I do.

(mumbling)

THE COURT: Alright, this witness has requested that his uh - testimony not be reproduced on video tape. So, the cameras will be excluded in his testimony.

PRICE: And also still photographs?

THE COURT: Still photographs as well.

(discussion of whether to have an in camera hearing or not...)

(recess)

THE COURT: Let the record reflect that this is a hearing out of the presence of the jury. All right.

DAVIS: Your Honor, rather than qualify him as an expert, will you all stipulate for the purposes of this hearing?

FORD: For the purposes of the hearing.

PRICE: Yes, sir.

THE COURT: All right.

DAVIS: Would you state your name please, sir.

PERETTI: Dr. Frank Joseph Peretti.

DAVIS: And, Dr. Peretti, you are a medical examiner with the Arkansas State Crime Lab?

PERETTI: That's correct.

DAVIS: I would like to show you what has been marked for identification purposes as State's Exhibit Number 77. Would you look at that and see if you have seen that particular item before?

PERETTI: Yes, I have.

DAVIS: Okay. And have you made comparisons between that knife and certain wounds found in the photographs and in your examination of the body of Christopher Byers?

PERETTI: Yes.

DAVIS: And do you have an opinion as to whether or not that knife, the wounds found on that body are consistent with the serrated portion of that knife?

PERETTI: The -- some of the lacerations are consistent with being inflicted with this type of knife.

DAVIS: No further questions, your Honor.

FORD: Dr. Peretti, do you have your autopsies with you?

PERETTI: The reports?

FORD: Yes.

PERETTI: Yes, I do.

FORD: I've got them also. If we could start with Mr. Moore.

PERETTI: Yes sir.

FORD: If you could take a minute to review Mr. Moore's autopsy and show me where you have described in the autopsy, injuries that would be consistent with haven been inflicted with that knife.

FOGLEMAN: Your Honor, I think that's an unfair question since the knife wasn't discovered til much later.

FORD: He would describe every injury, I mean, no matter if relevant or irrelevant. He describes every injury, do you not Dr. ?

PERETTI: Yes.

FORD: Each bruise, each scratch, even measured dimensions.

THE COURT: I think the question is, did he go back at a later date and compare the autopsy photographs to that weapon to determine if the described injuries reflected in the photographs could have been produced by that knife. Is that what you're asking?

FORD: I'm asking him, on his report to show me - with respect to Michael Moore, what injuries - where he has described injuries which he believes are consistent with being caused by this knife. That's what I'm asking. And if there's a photograph for that young man, I would

inquire about them both, your Honor. But I want to know where it is mentioned in this autopsy that this knife - what injury - if you could do that Dr., I would appreciate it.

PERETTI: Well, I would like to refer to the photograph if I can because it would be a lot easier, so I can look at the photo and find it in the report.

FORD: If you can look at the photo and that may help, that's fine. We'll go backwards.

DAVIS: We can speed things up as far as the question about where it says in the autopsy, I think we'll stipulate that there's nothing in that autopsy indicating that that particular knife or a knife consistent with that caused these injuries. 'Cause that knife was not discovered until after that autopsy was performed. We stipulate to that fact.

FORD: Now, that's not my question. I want him - I want to see which injuries he has actually described in his report and/or photograph that will show that -

THE COURT: We just went over the photographs and discussed that -

FORD: - Well, I'm gonna try to find -

THE COURT: - Why don't you hand him the photographs and let him find -

FORD: I'm gonna -

(pause - mumbling)

FORD: That's Michael.

DAVIS: Right. Chris -

FORD: - This is - is this Michael?

DAVIS: Right.

FORD: These are the photographs that you - of Michael Moore that the state intends to proffer during your testimony, could you show me in those photographs.

(pause)

PERETTI: Um - state's exhibit 59A.

FORD: 59A?

PERETTI: Yes sir.

FORD: Alright. And would you show me - then that would be an injury to the um - to the neck, chest, abdominal regions, which would be on page 4.

PERETTI: Let's review that.

(pause)

PERETTI: That would be on um - page 4, paragraph 2. Where it says 'right shoulder', that paragraph section.

FORD: Situated on the right shoulder were three scattered contusions measuring about 1/4 to 1/2 inch.

PERETTI: Right, and below that. That sentence um - below this contusion um - an area - below this contusion an area measuring 2 1/4 by 1/4 inch were multiple linear, diagonally oriented abrasions surrounded by contusions. These abrasions were interspaced by a distance of 1/8 to 1/4 inch.

FORD: So 59A is contengant - could be caused by the pattern on that blade?

PERETTI: Yes sir.

FORD: Did you measure the serration spaces on that blade?

PERETTI: Um - I don't have that in my report, I don't - because I received the knife subsequent to the autopsy. I did not issue a report um - examining the knife. It was sent to the other section of the crime lab, which um -

FORD: - Alright, did you ever see that knife until today?

PERETTI: I saw it previously, sir.

FORD: You - ok, you actually handled it?

PERETTI: Yes sir.

FORD: Ok. But at that time, did you measure the serration pattern?

PERETTI: Well, it's uh - I believe I did, I don't recall what it is. I believe it's about a 1/4 of an inch between each one here.

FORD: Ok. Would it be important for them to be the exact spacings to be proper? In other words, if those spaces are 3/8 or 3/16 and then 1/4, 3/8, 1/4, 3/8, 1/4 would that be important that the injuries also be caused by a like dimension?

PERETTI: Well that would, but it depends on how the skin is at the time 'cause - you know, the skin tends to crease up and fold a little too.

FORD: So you're saying that could account for some minor differences in measurements?

PERETTI: Yes sir.

FORD: Because the - what we have here is distance by 1/8 and 1/4.

PERETTI: Right, yes sir.

FORD: And um - you agree with that?

PERETTI: Sure.

FORD: Um - that is more than 1/8 of an inch, isn't is?

PERETTI: Yes sir.

FORD: And is that more than 1/4?

PERETTI: It's probably about 1/4, it would be just a little over 1/4.

FORD: Ok. So if they're spaced by 1/8 and 1/4, you would expect to find a larger spacing between the abrasion, would you not?

PERETTI: Depending on how the - the position of the skin at the time it was -

FORD: So it's not exact?

PERETTI: No, it's not exact, no.

FORD: It's only possible?

PERETTI: Yes. I believe I said it was consistent.

FORD: Based on your education, training, and experience - based upon a reasonable degree of medical certainty, is it your opinion that a knife with this serration pattern caused those injuries?

PERETTI: It is my opinion that a knife um - with that serration pattern is consistent with inflicting those type of injuries. I'm not saying that that knife caused those injuries.

FORD: Alright. But a knife with either - a knife with this - some knife with this identical pattern is the only knife that could cause that type injury?

PERETTI: Well, I don't know if it's the only knife but it'd be - you know, different knives have different um - serrations - I mean, if it's similar, sure it can cause that type of injury.

FORD: But is - is it your opinion based upon a reasonable degree of medical certainty or are you merely saying it's possible as oppose to probable?

PERETTI: Well, I'm saying it - it - it's possible for a knife with even similar type serrations to cause those types of injuries, if they were the same distance.

FORD: But again, since the skin can account for differences, just about any kind of serrated edge can cause one since the skin can twist between 1/8, 3/16 - that kind of twist, right?

PERETTI: That's correct. The skin is gonna - it's not stationary - it's - you know, it's gonna -

THE COURT: - The skin and the underlying tissues are elastic?

PERETTI: Yes.

FORD: So what you're saying is, based on the elasticity of skin just about any serrated edge could cause it, couldn't it?

PERETTI: Well, if um - one with a very fine serration, I think you can rule out - a very, very fine serration. But um - most serrated knives - depending on the position of the deceadant, the elasticity of the skin can cause those type of serrated um -

FORD: - So, most serrated knives could cause this injury? Most serrated -

PERETTI: - No, I think we can rule out a butterknife ok, a serrated butterknife.

FORD: Ok, but most serrated knives can cause it?

PERETTI: Yes.

FORD: Ok. Now, we'll look with Mr. Branch. I believe these were the photographs that they - the state will offer.

PERETTI: This is Mr. Branch?

FORD: Yes. Would you look at his photographs, please and then show me, if possible, where that would relate on the autopsy report.

PERETTI: You're referring specifically to serrations only in your question or other types of injuries?

FORD: I - I'm concerned about the serrations -

PERETTI: - Ok, ok.

FORD: If we need to back up to go on another issue we will but let's start with the serrations.

PERETTI: Ok. I just wanted to clarify that.

(pause)

PERETTI: State's exhibit 66B may be a serration from a knife being - going across the skin.

FORD: Is that your opinion based upon a reasonable degree of medical certainty that in your opinion that injury was caused by a serrated knife?

PERETTI: Well, it may be caused - it may be caused by another instrument also. But it has the appearance - you know, of the distance. If you look at it there is a pattern to it, but it may be caused by another object also.

FORD: Ok so, in your - is it your opinion that this knife could have caused that injury?

PERETTI: It could have caused this injury.

FORD: But anything could have caused it, you don't know what caused that injury - anything? I'm asking, do you know what caused that injury?

PERETTI: No.

FORD: Ok. Do - going back to state's exhibit number 59A, which is this photograph, do you know what caused that injury?

PERETTI: Well that - that injury is - has the appearance of - of serrations.

FORD: Ok. But this photograph may or may not?

PERETTI: That's correct, sir.

FORD: Ok. You would have to speculate to say that that was caused by a - this was a serrated edge, that requires speculation on your part?

PERETTI: Yes.

FORD: Your Honor, based on that answer, I would ask that he be prohibited from making any opinion as to anything on Mr. Branch being caused by this knife since he said the only one was that one photograph and it would require him to speculate.

FOGLEMAN: Your Honor, I believe that what he said was #1 that it's consistent with that but there were other things that he - that could cause it and that he couldn't say that it - that the other things didn't cause it, but this is consistent.

THE COURT: Doctor, do you have an opinion based upon a reasonable degree of medical certainty whether or not this knife could have caused the injury that you see in exhibit number -

PERETTI: - Um - 66B.

THE COURT: - 66B.

PERETTI: Um - we're just referring to this one particular injury, no other injuries, is that correct?

THE COURT: At this particular time, yes sir.

PERETTI: This injury may be caused by a serration or it may be caused by another object.

THE COURT: Ok.

FORD: And would you have to speculate to give an opinion to the jury -

FOGLEMAN: Your Honor, that's not the test -

FORD: - Yes it is, John.

FOGLEMAN: No.

FORD: I'm asking this doctor if he's speculating and I'm - I think that's proper for dire, your Honor.

FOGLEMAN: You're talking about speculating between two different objects.

FORD: Doctor, didn't you tell me a few minutes ago that you would have to speculate to say that this - the knife with this type of serration patterns would cause that injury?

PERETTI: Yes, I said that.

FORD: Ok. Then, your Honor, at that point I'd ask that he be in limity - be instructed not to give an opinion that this injury was caused with that - a knife with that type of serration pattern.

THE COURT: If he has an expert opinion that that knife could have caused the injury depicted in 68B then he"ll be permitted to give that testimony.

FORD: Your Honor, he just stated that he would have to speculate. Therefore, I'm asking in limity for him not to be allowed to give that opinion and I'd like to review the rule on that request.

THE COURT: A - An expert's opinion to some degree is speculation, congestured, concluded. An expert testifies based upon their field of study, their expertise, and their knowledge in their field of study and they draw conclusions that other experts with the same information could and would draw. Now, Dr., the question properly put to you is: based upon your education, your training, and your experience as a medical examiner do you have an opinion or can you draw a conclusion as to whether or not that knife could have caused those injuries in 68B?

PERETTI: That knife very well can cause these injuries, along with another object.

THE COURT: Is that conclusion one that uh - someone in your field could reasonably draw based upon the information and the evidence at hand?

PERETTI: Well, we just have a small um - small injury and a knife of that type, it is capable of forming - of causing that type of injury. It's - along with many other types of objects, too.

THE COURT: Alright.

FORD: Is my motion of limity denied?

THE COURT: Yeah. You can bring out on cross examination that many other objects likewise could cause that injury.

FORD: Dr., would you show me on uh - on the uh -

(unknown female voice): It was 66 rather than 68.

THE COURT: Oh, was it 66?

PERETTI: Yeah, 66B.

THE COURT: Ok.

FORD: Were there any other injuries in - to Mr. Branch, which you feel in a - based upon a reasonable degree of medical certainty it could have been caused by this knife?

PERETTI: Um - yes, there are other injuries.

FORD: Alright. And would you show those to me, please sir?

PERETTI: The um - the facial injuries.

FORD: Ok. In what - in what photograph number?

PERETTI: I'm sorry, um - 71B, um - 72B, 63B, 62B -

FOGLEMAN: - Your Honor, so we don't get bogged down, I'd understood earlier that uh - that Dr. Peretti had said that a regular edged knife could cause those injuries, too. Is that - did I misunderstand that?

PERETTI: Yes, sir. A regular um - a straight edge knife can also cause these type injuries.

FORD: So there's nothing peculiar about this knife that would cause those facial injuries?

PERETTI: No.

FORD: Any knife in the world could cause those?

PERETTI: That's correct.

FOGLEMAN: Ok, we weren't - we're not going to get into that on his face.

THE COURT: Alright.

FORD: Ok. Would you show me, please, on Mr. Branch's autopsy then, with respect with the first photograph, which is 6 - um - top one -

PERETTI: 66B.

FORD: Would you show me where that is in the autopsy report, please?

(pause)

PERETTI: Just bear with me, there's - I mean, there's a lot in the report here.

(pause)

PERETTI: I believe this injury's on the left um - the orientation is difficult with the - with the identification marker.

FORD: Would it be on page 4? Upper extremity injuries?

PERETTI: On page 5 um - on page 5, just um - we're on Michael Moore, right?

FORD: No sir, we're on Stevie Branch.

PERETTI: On Branch, I'm sorry. Ok.

(pause)

PERETTI: I believe this is on the um - on the left thigh - the side of the left thigh. I'm having a hard time with the orientation because of the way the ruler is situated and I can't pinpoint it in the autopsy report. Some of the injuries, I grouped together also, you have to - to - a lot easier to -

FORD: (mumble) - Not in the specific spot, there's no place you could point to -

PERETTI: Well, I grouped a lot of them - the smaller ones together so, - because otherwise, the autopsy report would be 4 - 150 pages, so -

FORD: So there's no particular description of the injury on Mr. Branch -

PERETTI: - No.

FORD: - Like there was Mr. Moore?

PERETTI: Yes, that's -

(mumbling)

FORD: First we'll do the serration patterns.

PERETTI: Sure.

FORD: Let's get through that part first.

(pause)

PERETTI: Ok. On state's exhibits um - 70C, 71C, and 73C.

(mumble)

PERETTI: Sure.

FORD: On 73C, are you - are you referring to abrasions like this?

PERETTI: Yeah, those - those injuries there, those - those cuts there, right in here.

FORD: Now when you measured - was there any way that you could measure those now to determine whether they are - they have the pattern of separation -

PERETTI: Well, at the time of autopsy, I didn't measure each one because there were literally hundreds of 'em. Um - it'd be hard to do with a ruler here because it's not one to one, ok - the measurements, so um - you can only estimate somewhat but it's not one to one ratio with the photography.

FORD: Ok. So again Dr., although it is similar, can you state based upon a reasonable degree of medical certainty that that unique pattern caused that?

PERETTI: Well -

FORD: - Or just about any source of pattern -

PERETTI: Well, this pattern, um - I mean, there is like an area of - of um -

FORD: - Clear separation.

PERETTI: Yeah, clear separation. You know, this pattern here could cause those type of injuries.

FORD: But due to the nature of the separation - of the fact that there is a significant size of the troft in that serration pattern, wouldn't it be important to determine on that photograph

exactly how far apart the cuts are and how the length of the cuts themselves and compare them to the teeth on that blade?

PERETTI: Well, that would be important, and as I stated earlier, at the time of the autopsy, I didn't - I didn't have it, so - I mean, there's so many of them that it's uh - you can't do it with every wound.

FORD: I see. So to be - although it's consistent or possible, you can't say absolutely -

PERETTI: - No.

FORD: - That that pattern there and that pattern on that are the same, 'cause they could be different, could they not?

PERETTI: Yes.

FORD: Ok. And again, would you have to speculate to say this pattern here and that pattern match like a grid?

PERETTI: Well, this - this pattern is consistent. I don't like using the word speculation. You know, this pattern is consistent with causing these type of injuries.

FORD: Ok.

PERETTI: Also, a similar knife with this pattern could cause these injuries.

FORD: Ok. So a number of serrated knives that have the - you know the survival type knives that generally have the serrated edge on the top as oppose to the cutting blade. So any number of those type of knives could have caused those injuries reflected in 73C?

PERETTI: That's correct.

FORD: So there's nothing magical about this serration pattern?

PERETTI: No.

FORD: Can - since there's three at this point, can you look in the autopsy of Mr. Byers and see if you can pinpoint a description of those injuries in 73C?

PERETTI: Well, on this report, I'm referring to uh - the genital/anal um - injuries, that's where that's -

FORD: Ok. Where are the descriptions of those injuries, please?

PERETTI: That's on page 4.

FORD: Alright.

(pause)

FORD: Can you show me where that is -

PERETTI: - Oh, sure. It's um - where it's saying The gaping defect was surrounded by multiple and extensive irregular punctate gouging type injuries measuring from 1/8 inch to 3/4 inch and had a depth of penetration of 1/4 inch to 1/2 inch.

FORD: Ok. Now Dr., since - since you described them at that point, uh - irregular punctate gouging type injuries 1/8 to 3/4, wouldn't you expect them to be regular based on the blade as opposed to irregular?

PERETTI: Well, it depends - you know, at the time if - if the knife was being twisted or if the um - if the deceadant was moving at the time.

FORD: Alright, so - so the - someone moving could cause it to become 3/4 of an inch when there's no blade edge there that would be 3/4 of an inch?

PERETTI: That's correct. The tearing of the - the skin is gonna tear.

FORD: And I assume that photograph 70C is basically just a larger angle that shows the same type injuries, is that correct?

PERETTI: That's correct, sir.

FORD: Is anything new in 70C that was not reflected in the smaller photograph?

PERETTI: Well -

FORD: - With respect to these injuries.

PERETTI: Well, ok, 70C is - is a general overview and 73C is a closeup of the injuries.

FORD: Ok. With respect to 71C, Dr. there's no ruler in that photograph is there?

PERETTI: 71C, yes.

FORD: Ok, alright. Can you tell whether they are spaced - the scratches and abrasions there are spaced further apart than on the teeth on that blade?

PERETTI: Well here, what we're doing is - this is a photograph showing the um - the anal region and the - we have to um - to take photographs, we have to separate the buttocks regions so the picture's more distorted - like round. So you're looking at it - say it's pulled back this way.

FORD: So you're saying it - that the - the pattern of the abrasions in that photograph are distorted?

PERETTI: It's distorted, um - yes, because of the way - in the photograph, because the way the -

FORD: - You're - you or someone else is pulling the buttocks apart?

PERETTI: To take the photograph, that's correct.

FORD: So that - that photograph does not fairly and accurately reflect the true pattern of that injury?

PERETTI: Well, no because it's pulled apart.

FORD: Well your Honor, at that point since it's not a fair and accurate representation of that injury and that's the reason we've discussed these changes, that photograph was offered to show that abrasion and he says that's not a fair and accurate representation of it - that it's distorted, we would ask that it be excluded on that basis.

DAVIS: Your Honor, I -

FORD: - And based upon the earlier arguments we made regarding uh - the fact that it shows his anus. Which the Court excluded that photograph on another one of the boys because it had no real value and when you add that argument to the fact that he indicates that the abrasion is kindly distorted and not a fair and accurate representation, it shows that those two factors combine together to exclude that photograph.

DAVIS: Your Honor, as I understood him - I may have misunderstood him, but when Mr. Ford uses the term distorted, what he said is that this is an abrasion pattern consistent with what you would see with buttocks basically being pulled apart.

PERETTI: That's correct.

DAVIS: Ok. Now, when he says that that distorts it, we don't know that that wasn't the situation when the wound was inflicted. Uh - all we know is - and what I think the doctor can testify, and what he has - is that that injury reflects uh - the serrated - a serrated edge and that this type of weapon has a serrated edge on it, and that that injury is one of others that he has identified that are consistent with the serrated edge on that knife.

THE COURT: Well, he can testify just as you outlined without the photograph if the photograph is a distortion, but I'm not sure if distortion is a correct statement although the doctor said it. It shows the line of serration or cuts, but what I take his testimony to mean is that by spreading the buttocks, it spreads out those lines and they're not their true proportions. Is that what you -

PERETTI: - Well, yes, 'cause I have to take the photograph. I have to spread the buttocks and it's gonna - maybe distort is the wrong term - it's gonna alter it because you're putting pressure on to take the photograph.

FOGLEMAN: Your Honor, if the wound was caused when the buttocks were spread in the same way then it wouldn't be a distortion then - if the wound was caused in that manner.

FORD: Is that your testimony, Dr., what he just said?

PERETTI: I - I -

FOGLEMAN: Doctor, if the person who has caused the wound or somebody else had spread the buttocks and then caused the wound, would it be a distortion of the wound if it was caused in that manner?

PERETTI: Well, no, it wouldn't be distorted if the buttocks were open - if it was spread then again - I just like the clarification, if I didn't spread the buttocks we wouldn't be able to take the photograph 'cause we wouldn't be able to see it.

FORD: Your Honor, I think it's misleading because he's indicated that he alters it, distorts it - those weren't my words and I didn't suggest it.

THE COURT: Doctor, what's your - let me see if I understand it. You're saying that exhibit 71C depicts injuries that could have been caused by a knife similar to the one uh - before you?

PERETTI: That's correct.

THE COURT: And in order to describe and depict - or photographically - those photographs - those injuries, it's necessary to spread the buttocks so you can see 'em?

PERETTI: That's correct.

THE COURT: I'm gonna allow it. As long as there's an explanation given why it was necessary.

FORD: Can you show me on - can you show me where um - on the autopsy of Chris Byers would you refer to that injury, please?

PERETTI: I'm just - Ok, situated on the left buttocks you will find superficial um - cutting wounds um - and situated that's - and situated on the right buttocks region were multiple linear superficial disruptive cuts measuring 3/16 to 1/2 of an inch and were interspaced by a distance of 1/8 of an inch. Scattered linear abrasions were present about the anal orifice. That's the uh - 1, 2, 3, 4 -

FORD: - So the last paragraph?

PERETTI: - 5, 6 - yeah.

FORD: So, the 6th paragraph?

PERETTI: Yes. Well, the 5th and 6th.

FORD: 5th and 6th.

THE COURT: You'll have to put those back in whatever order you want them in.

PRICE: Judge, on that - (mumble)

(mumbling)

PRICE: Doctor Peretti, I would like to show you what's been marked for identification purposes as defense Echols exhibit number 6, if I can approach the -

PERETTI: Thank you.

PRICE: And I will call that for identification purposes the John Mark Byers knife. Did you have an occasion to make comparisons with the John Mark Byers knife and the wounds upon - that were found on Chris Byers?

PERETTI: Um - yes, I did.

PRICE: Alright. Do you have an opinion if the wounds that were - that you found on the body of Chris Byers were consistent with wounds being inflicted by this type of knife?

PERETTI: Well, some of the um - serrated patterns were very small and this does have a smaller serrated pattern. Small serrations um - are capable of causing that type of injury so in answer to your question, um - this serrated pattern is consistent with causing some of the smaller serrated wounds.

PRICE: And these were some of the smaller serrated wounds found on Chris Byers?

PERETTI: Um - yes sir.

PRICE: Alright. Nothing further, this concludes my proffer, your Honor.

THE COURT: Now, was that a proffer of evidence?

PRICE: Well, it's part of the same proffer we're doing right now.

DAVIS: Well your Honor, we have got some questions if we have got the time.

(pause)

DAVIS: Doctor, which - and these are the photographs uh - on Christopher Byers, try and keep those in order.

PERETTI: Yes sir.

DAVIS: If you would, look at those and see if you can identify which particular wounds you say could have been caused by the serration type pattern on the knife that Mr. Price just showed you.

PERETTI: Well, the wounds - some of the smaller serrated patterns on the buttock region.

PRICE: Which number is that?

PERETTI: That's 71C.

PRICE: 71C.

DAVIS: Which ones are you referring to?

PERETTI: These here, the smaller ones.

DAVIS: Ok. These larger serrated patterns that you showed us earlier, those would be inconsistent with this particular serration on that knife Mr. Price showed you?

PERETTI: Yes. The larger ones, yes sir.

DAVIS: Ok.

PERETTI: Did you want me -

DAVIS: Any other photographs in here that you - that you found that indicated that same serrated pattern?

PERETTI: No.

DAVIS: Ok.

FORD: Doctor Peretti, if the skin was described as being - having some elasticity and how it may have folded and twisted, could that have affected the injuries and in fact this knife - this second knife you looked at - based on how the skin may have been twisted and it's elasticity, could it in fact be caused - all of 'em be caused by that serration pattern?

PERETTI: I think the small ones, but not the very, very large ones because we have larger space, but - you know, it just depends on - on the position of the person with the knife and the position of the deceased - you know, what has happened at the time it's taking place - movement, which I have no idea.

FORD: But it's possible?

PERETTI: It's possible.

(pause)

THE COURT: Alright, anything else?

PRICE: No sir, your Honor.

THE COURT: Anything else, gentlemen?

PRICE: No sir.

THE COURT: Alright, let's call the jury back in -

DAVIS: Your Honor, at one point they had some photographs that they had turned around, they are no longer turned around. They can identify them - (mumbles).

FORD: I - based on the testimony of Dr. Peretti, I feel that the uh - (mumbles) - there was a couple that I turned sideways that you excluded and then there was - the only one that remained excluded - sideways was the 71C, which was - we had already discussed about it being distorted and I have already requested it be excluded but I believe I may want to - (mumbles)

(mumbling)

THE COURT: Well, as long as the doctor uh - and you can bring it out on cross examination that many other weapons of similar designs could have caused the injuries reflected. As long as he explains that in order to photographically display the injuries that he found, it was necessary to spread the buttocks therefore distorting it to some degree. I mean, I'm gonna allow it 'cause that's the only way you can show it, by a picture. He can certainly testify to it, but uh - as long as it's explained that by manipulating the buttocks uh - to - that that caused some spreading of the gap between the injuries, that can be explained and I'm gonna allow it.

(pause)

THE COURT: It didn't distort the injuries that were present, it just distorted them photographically. Is that what you're saying?

PERETTI: Yes.

THE COURT: Alright.

DAVIS: Judge, one thing we would ask is a motion to eliminate Mr. Price - and that motion - referred to as, rather dramatically to the knife as the John Mark Byers knife and during the course of the proceeding until that knife has been introduced or there is evidence established to

introduce that knife, we would ask that it be referred to by exhibit number uh - rather than by reference that Mr. Price has done in this hearing.

PRICE: Judge, is the state going to challenge the chain of evidence on that knife?

DAVIS: No - we're going to let you put the evidence on -

THE COURT: Well, I don't know - that's not the issue, the issue is how you characterizes it. Right now it's going to be defendant's exhibit number 7.

PRICE: My question is, is the state going to challenge the chain of evidence because they have been manufacturing part of the chain of evidence in specific with that particular knife.

DAVIS: Wait a minute Judge, is he alleging we manu - I mean, done something?

PRICE: Alright, we - Judge -

(mumbling)

FORD: Your Honor, while they're conferring their - is the statement going to be held to the same -

THE COURT: Sure.

FORD: Regarding the evidence of this serrated knife?

THE COURT: Sure.

FORD: Ok.

PRICE: I'll be glad to refer to this as number 6 until we -

THE COURT: Well, you're going to be required to.

PRICE: Alright.

THE COURT: Ok. As far as chain of custody, nobody has established chain of custody - as far as I know, nobody's objected to it at this point.

PRICE: Alright, is the state going to object to the chain of custody of the John Mark Byers knife?

THE COURT: I don't know.

PRICE: I'm asking that right now.

FOGLEMAN: And we hadn't decided if we will.

PRICE: Alright, fine.

THE COURT: What else? So let's do it, call 'em back.

(mumbling)

(in presence of the jury)

DAVIS: Doctor, if you would - again, state your name and occupation for the ladies and gentlemen of the jury.

PERETTI: Dr. Frank Joseph Peretti, P-E-R-E-T-T-I. I'm the medical examiner for the state of Arkansas.

DAVIS: And Dr. Peretti, if you could briefly tell us about your education, training, and background that qualifies you as a medical examiner for the state of Arkansas.

PERETTI: I graduated from medical school in 1984. I began my training in anatomical pathology at Brown University at Providence, Rhode Island from 1985 to 1988. During that time, I was uh - a medical examiner on a part time basis for the state of Rhode Island. After completion of my training in anatomical pathology at Brown, I went to the office of the chief medical examiner in Baltimore, Maryland where I did one year of uh - training in the subspecialty of forensic pathology. And that was in 1985 to 1988. Uh - 1988 to 1989, excuse me. Um - after completion of my training there, I remained on as a staff pathologist at the University of Maryland Medical School and the office of chief medical examiner. I left Maryland in August of 1992, when I came to Arkansas.

DAVIS: Now, Dr., you said that you uh - received some specialized training in the field of forensic pathology, could you explain briefly for the ladies and gentlemen of the jury what forensic pathology is?

PERETTI: Um - forensic pathology is a subspecialty in the field of pathology. And pathology is defined as the study of disease um - we have different types of pathologists. We have the anatomical pathologist, he's the hospital pathologist. For example: if there's a breast biopsy, the surgeon sends him the specimen, he says yes - it's benign or malignant. A forensic pathologist is someone who's um - has training in anatomical pathology but specializes in interpretation of patterns of injuries and to determine um - cause and manner of death.

DAVIS: Ok. Now, in your job as medical examiner for the state of Arkansas can you briefly tell us what you do on a day to day basis? What your job entails?

PERETTI: What I do on a day to day basis is perform medical legal autopsies, um - generate autopsy reports and testify in court.

DAVIS: Your Honor, at this time we would submit Dr. Peretti as an expert in the field of forensic pathology.

PRICE: No objection.

FORD: No objection.

THE COURT: Alright, you may proceed.

DAVIS: Now Dr., did you have occasion to perform autopsies on the bodies of Michal Moore, Stevie Branch and Chris Byers?

PERETTI: Yes.

DAVIS: And could you explain to the ladies and gentlemen of the jury the general procedure that you follow in performing an autopsy?

PERETTI: Well any body that comes into the office what we do is - the first thing we do is, we take the height and weight. Then what we do is, we take the as is photographs - as the body comes into the office. Um - now depending on the type of case it is, for example: if it's a gunshot wound case, we would do a gunshot residue kit. If it's a rape case, we would do a rape kit. Um - we focus our attention on the type of case it is. And what we do is, we take the as - the photographs of the body as is - as it comes in. After that's all been documented by photography, what we proceed to do is, we clean the body off - we clean the body up uh - and we take additional clean photographs. At that time, we document any unusual features or injuries situated on the body. After that's completed what we do is, we do an external examination. An external examination, that's where we look at the general features of the body. Such as the color of the hair, the color of the eyes, the injuries, any unusual features on the body. After that has been documented, we proceed with the actual autopsy - is when we examine the internal structures, the organs. And what we do is, we examine the structures of the neck, the chest, the abdomen, the pelvis, and the head. During the time of autopsy, we look for any evidence of natural disease, any abnormalities, or injuries. And what we also do is, we take specimens for toxicology to determine the presence of drugs or alcohol in the body fluids and we get blood, bile, urine, and the vetrius. The vetrius is the fluid behind the eyeball. After that's been completed, um - by state law I have to um - issue a death certificate. I also issue um - generate an autopsy report which is used in uh - criminal and civil proceedings.

DAVIS: Now Dr., did you -

(next audio begins here-)

DAVIS: - Show you what's been marked for identification purposes as state's exhibit 59A, 61A, 62A, 63A, 64A, 65A, 66A, 67A, 70A, 71A, 72A, 73A, 68A, 60A, and 86. And ask if you could look at those photographs and if you could identify those for me, please?

PERETTI: Yes, these are the photographs of um - James Michael Moore.

DAVIS: Ok. Now Dr., is there - do you have a process where by you identify uh - the photographs with your report so that you can keep up with things?

PERETTI: Um - yes.

DAVIS: And could you explain that briefly?

PERETTI: Um - in the photographs you will see a ruler with a number, in this case it's um - MEA329 um - dash 93.

DAVIS: And that's that particular case number?

PERETTI: Yes sir.

DAVIS: And do you also place that number then on your autopsy report?

PERETTI: Yes.

DAVIS: Ok. Dr., do those photographs - were they true and accurate representations of um - the body of Michael Moore at the time you performed the autopsy back in May of 1993?

PERETTI: Yes, they are.

DAVIS: Your Honor, at this time we would introduce those exhibit numbers that I previously stated. Um - ask that those be introduced into evidence.

FORD: No objection, your Honor.

THE COURT: Alright, they may be received without objection.

DAVIS: Dr., I would show you - your Honor, for the jury's benefit, I have to read these numbers off the record. Photograph number 70 - or exhibit number 70B, 72B, 71B, 69B, 66B, 68B, 67B, 65B, 64B, 63B, 62B, 61B, 60B, 59B, and also photograph number 70A and ask if you can look at these - see if you recognize those photographs, please.

PERETTI: These are the photographs of um - Steven Branch.

DAVIS: Ok. And what case number is associated with those photographs?

PERETTI: It's case number um - 33093.

DAVIS: Ok. And are those photographs fair and accurate representations of the condition of the body of Stevie Branch at the time you performed the autopsy?

PERETTI: Yes they are.

DAVIS: And would they be beneficial to you in explaining and describing your findings to the ladies and gentlemen of the jury?

PERETTI: Yes they would.

DAVIS: Your Honor, at this time we would move to the introduction of the exhibit numbers previously decided.

FORD: No objection.

PRICE: No objection.

THE COURT: Alright, they may be received without objection.

DAVIS: Your Honor, we would like to have photographs following exhibit number - state's exhibit 59C, 62C, 61C, 63C, 64C, 65C, 66C, 67C, 68C, 69C, 72C, 70 and 71C, and 73C. Dr., if you could look at these photographs and tell us if you recognize those photographs.

PERETTI: Yes, these are the photographs of um - Christopher Byers with the identification label 331-93.

DAVIS: Ok. And are those photographs and the exhibit numbers that I previously read off, are those fair and accurate representations of the body of Christopher Byers at the time you performed the autopsy?

PERETTI: Yes they are.

DAVIS: And would those photographs essentially be beneficial to you in explaining your findings to the ladies and gentlemen of the jury?

PERETTI: Yes, they would.

DAVIS: Your Honor, we would move for the introduction of the state's exhibit numbers previously read out regarding the photographs of Christopher Byers.

PRICE: No objection.

THE COURT: Alright, they may be received without objection.

DAVIS: Now Dr. if you would, do you have with you a copy of your autopsy report regarding Michael Moore?

PERETTI: Yes, I do.

DAVIS: Ok. And what date does that reflect that you performed that autopsy?

PERETTI: On May 7th, 1993.

DAVIS: Ok. Now if you could Dr., tell us what the height and weight of Michael Moore was based on your autopsy examination.

PERETTI: Michael Moore weighed 55lbs. and was 49 and 1/2 inches in height.

DAVIS: Ok. And in doing your visual examination of the body - could you generally tell the jury what type injuries, or what injuries you deter - you found on the body?

PERETTI: Um - yes, I can. Well, the - the um - I divi - I have the injuries divided up into um - head injuries; neck, chest, abdominal injuries; um - anal/genital region; lower extremities; back injuries; upper extremity injuries; um - internal evidence of injury; and evidence of drowning.

DAVIS: Ok. Now Dr. in explaining the specifics of those injuries and specifically what you found uh - would these photographs assist you in making that explanation?

PERETTI: Yes, they would.

DAVIS: Your Honor, at this time we would ask that Dr. Peretti be allowed to step out of the witness box and come before the jury - using these photographs, explain his findings based on the autopsy of Michael Moore.

THE COURT: Alright, you may be permitted to stand down and do so.

(mumbling)

DAVIS: Dr., in using the photographs - I am going to set them on the corner - if you could use those and in referring to them, could you show them to the entire jury panel and also refer to them by exhibit number.

PERETTI: Ok.

DAVIS: Dr. what I would like to do is start nearly from the top down in regards with the injuries to Michael Moore. And if you could, using these photographs would you describe what head injuries you found regarding Michael Moore.

PERETTI: Ok, the um -

(unknown female) : Dr. can you (mumbles)

(mumbles about microphone)

PERETTI: Ok, state's exhibit 55A shows a frontal view of um - Michael um - Moore. Here we can see different injuries. We have a laceration on the scalp region here. We have an abrasion or laceration um - most people use - think of a laceration as a cut, and here we have an abrasion. When I use the word abrasion, I mean a scrape and when I use the word contusion uh - I mean a bruise, like black and blue. I will try to use laymen terminology, but sometimes I - I forget. Um -

here we have um- an abrasion on the top of the - on the right side of the scalp. And on the left, we have a laceration. Here on the face - on the nose, we have a lot of abrasions and scrapes. And on the lips, we have um - some um - injuries, which we can see in an additional photograph - closeup. Here on the side of the chest, we have an abrasion that has a pattern of a serration um - on the front of the chest, which would be the right clavicle region. Now also, on state's exhibit 61A, we have two um - impact sites of abrasions or scrapes.

(microphone noise)

PERETTI: Now state's exhibit 62A is showing three lacerations situated over the scalp region - these here. Also in this photograph, we can see some abrasions of the side of the face - the left side of the face and the nose, it slips in this general region right here.

DAVIS: Dr. if you could - and I'll try to hold these up - could you tell us what difference is between the type of injuries we see in 61A uh - and the - the lacerations on the side of the head, what we see in 62A. Uh - what cause or what could cause the differences in the type of injuries that we see?

PERETTI: Well on state's exhibit 61A, we have an injury that's uh - consistent with - would be caused by an object with - with a broad surface area - near regular surface area. On state's exhibit 62A, we have lacerations and here um - these type of injuries could be caused by an object with a smaller surface area - such as maybe a handle of a broom or a piece of wood, a 2x4, or an edge of a log. Um - that's why you have a difference in the type of um - of injuries. There's two different patterns of injuries here.

DAVIS: Ok, so the - the photograph 62A, that would be caused - injuries caused by a - some item that is smaller in circumference?

PERETTI: Yes, it's surface area.

DAVIS: Ok. And the injuries in 61A would be caused by a much broader surface or -

PERETTI: - Yes, an object with a larger surface area.

DAVIS: Ok. Based on your experience and expertise and training, would you say that two different weapons or two different items caused these injuries?

PERETTI: It's my opinion that two different uh - weapons caused these injuries.

DAVIS: If you could, continue Doctor.

PERETTI: State's exhibit 63A is showing the ear and around the ear we can see some abrasions and faint area of contusion. And over the forehead region - or excuse me, towards the back - back of the ear, we can see some abrasions or scrapes. State's exhibit um - 64A is a closeup of the ear, showing the abrasions and contusion - or bruising, behind the ear and this

abrasion situated on the scalp. State's exhibit 65A is showing the um - upper inner aspect of the lip, which is contused and has little lines - superficial cuts. The dark discoloration is the bruising. State's exhibit 66A is showing um - the lower lip and the bridge in the - of the nose - bridge of the nose. Now the bridge of the nose, we can see the abrasion or scrapes. And here on the lower lip - if you look very carefully you can see that - the discoloration there, that faint discoloration - that bruising or contusion.

DAVIS: Now Dr., in your experience as a medical examiner have you seen instances or are you familiar with cases in which there were injuries and bruising to the ears and also injuries to the mouth of victims?

PERETTI: Well, those types of injuries we generally see in children who are performed - who are forced to perform uh - oral sex.

DAVIS: Ok. And the injuries - the punctate scratches to the nose and to the upper lip uh - are - is - what are the possible or what are the scenarios as far as the causes of those injuries?

PERETTI: Well, you can have - you can get them by uh - the lip injuries, by putting an object uh - inside the mouth. You can get those type of injuries also by a punch or a slap or um - you can get those type of injuries from putting a hand over the mouth and pressing in very, very tightly up against the mouth.

DAVIS: Ok. Dr. if you could continue using the remainder of the photographs.

PERETTI: Um - state's exhibit 67A shows the um - the hogtying fashion. Um - the hands were hogtied um - to the feet behind the back and this is a photograph um - showing that - the shoelaces. State's exhibits um - 70A and 71A show abrasions. 71A shows abrasion or scrape over the back region. And state's exhibit 71A shows an abrasion or scrape on the side of the neck. In state's exhibits 72A and 73A - well, it's not in 72A. 72A shows the washer woman wrinkling of the hands. By washer woman wrinkling, when your hands are submerged in water - for anyone who washes dishes all the time and keeps your hands in the water, you know how your hands wrinkle. And that indicates the bodies were in water for a prolonged period of time and we can see the wrinkling of the hands. State's exhibit 73A um - also shows the hands, but on the um - on the right finger um - excuse me, the left finger - the left second finger, you can see a cut here on the hand.

DAVIS: Dr. do you have a - is there a terminology that you use for a wound of that nature?

PERETTI: Well, generally when you see any injuries on the hands and on the forearm - and on the forearms, those are types of wounds we call defense type wounds - when people try to defend yourself. If someone was coming at you with an object the - your um - reflex would be, the first thing you do is put your hands up or if you're on the ground, you put your feet up - you want to try and protect your body, those are the type of injuries we call defense wounds.

DAVIS: In addition to that one injury shown of the hands, did you find defense wounds in regard to Michael Moore?

PERETTI: Yes, he had defense injuries of the hands.

DAVIS: Ok.

PERETTI: State's exhibit 68A is a photograph of an abrasion with a - that's patterned and has a - like a serrated appearance to it. And that's 68A. State's exhibit um - 60A is um - is a photograph of the body um - before it's been cleaned up. And here you can see um - this blackish brown material on the front of the body is mud and debris. But here, we've got some pictures of some um - abrasions that have appearance of serrations here on the front of the chest. And here you can see some injuries to the face and to the lips. State's exhibit 86 is a photograph of the um - back, and the arm is showing abrasions or scrapes.

DAVIS: Now Dr. if you could, take the stand again.

(mumbling)

DAVIS: Dr. did you also make - at the end of your autopsy report, does it reflect kindly a - a list of your findings as far as injuries are concerned of Michael Moore - pathologic diagnosis?

PERETTI: Um - yes, they do.

DAVIS: Ok. And could you go down through that list and describe for us what your findings were under that particular category?

PERETTI: Well, there were multiple injuries with evidence of drowning. So, the multiple injuries consisted of - of um - the head injuries, which consisted of the multiple facial abrasions or scrapes, contusions or bruising, um - we have multiple scrapes and contusions of lips, multiple um- scalp lacerations and contusions, uh - there were multifocalsubgaleal contusions and edema. By subgaleal - at the time of autopsy what we do is, we reflect the scalp back so we're looking at the scalp from the inside out and underneath it we found many - edema or swelling, and hemorrhaging. Also, there were multiple fractures of the calvarium - that's the top of the skull, and the base of the skull. In addition, it was uh - subarachnoid hemorrhage and contusions or bruising involving the um - entire brain.

DAVIS: Dr. when you talked about the skull fractures, were those in conjunction with those obvious outer signs of head injury that we saw in the photograph?

PERETTI: Yes. Underneath those um - injuries that I pointed out earlier, were skull fractures.

DAVIS: Ok.

PERETTI: Then the other um - other findings include the bindings of the wrists and ankles in a hogtied fashion. There were multiple uh - bruises um - scrapes and lacerations of the torso and extremities. We have the um - defense type injuries of the hands. There were also um - anal dilatation with hyperemia - hyperemia or redness of the anal rectal mucosa.

DAVIS: Dr. could you - where you said anal dilatation, could you describe in layman's term what that means?

PERETTI: Well, that means that the anal orifice was dilated.

DAVIS: Ok. And the hyperemia of the anal rectal mucosa, could you explain what that means in layman's term?

PERETTI: Well, that means reddening of the - or congestion of the mucosa. That's the lining of the - inner lining of the anus and rectum.

DAVIS: Ok. And would those two signs uh - dilation of the anus and reddening of the rectal mucosa - would those be consistent with some sort of sexual trauma to the anal area?

PERETTI: Well, you have the dilatation of the anus - it could be from putting um - an object in the um - anus, but also it could be due to the fact that um - postmortem relaxation and the fact that the body was in water. That would alter things also. Then we had evidence of drowning and we had the wrinkling - the washer woman wrinkling og the um - hands and feet, we had um - petechial hemorrhages of the heart, lungs and thymus. These are little hemorrhages uh - that are caused by lack of oxygen that we see on most people who die, so it's really a nonspecific finding but we do find them in drowning victims. Uh - pulmonary edema and congestion - what I mean by that in layman's terms, the lungs are full of fluid - water. And we have aspiration of water into the sphenoid sinus. The sphenoid sinus is a little um - like a little cavity in the base of the skull. When we have sinus problems - you know, sometimes they act up on us - and what happens is, we have aspiration of water and that means um - when he was in the water, he was breathing and he sucked water up through his nose into the um - sinus area. Um - there was no evidence of any disease, which um - which would have contributed to his death. There was evidence of terminal aspiration. Terminal aspiration is when you have um - regurgitation of the um - stomach contents, due to uh - postmortem relaxation of the esophagus. So, instead of the esophagus being very firm, preventing - it acts like a valve, instead of a valve working correctly - at the time of death it loosens and the gastric contents backflow into the esophagus and go into the air passages. That's a very common finding in most people who die.

DAVIS: Does the terminal - not the terminal aspiration, but the uh - aspiration of water, does that indicate that Michael Moore was still breathing at the time he was placed into the water?

PERETTI: Um - yes, it does.

DAVIS: Ok. Dr. as part of your job, do you formulate an opinion as to the cause of death of the individuals you do an autopsy on?

PERETTI: Um - yes, I do.

DAVIS: And in this case, what was your opinion as to the cause of death of Michael Moore?

PERETTI: Multiple injuries with drowning.

DAVIS: Ok. The head injuries that he sustained alone would they have been life threatening or would they have caused his death had he not drowned?

PERETTI: Um - yes.

DAVIS: Ok. Your Honor, at this time I would ask to be able to exhibit this photograph to the jury while the doctor gets his notes on it.

THE COURT: Alright, you will be permitted to do so.

(pause)

THE COURT: Are we going to be able to conclude with the doctor today?

DAVIS: I doubt it, it's close to noon.

THE COURT: I doubt it, too.

(mumbling)

THE COURT: I'm just saying I didn't think we would. You can plan to stay over.

PERETTI: Na, I'm going back to Little Rock, I'll come back in the morning.

(pause)

DAVIS: Judge, have you got some water up there?

THE COURT: Yeah.

(mumbling)

THE COURT: Anybody else? That's the last cup I've got.

PRICE: I'm fine, Judge.

(mumbling)

(pause)

THE COURT: I'm assuming you're waiting for them to look at the pictures?

DAVIS: Yes sir, Judge.

(pause)

(mumbling)

THE COURT: I'm just asking him if he's going with me this weekend.

(laughter)

(tape flipped)

DAVIS: - People that are continuing to look at the photographs, all.

THE COURT: Alright.

DAVIS: Thank you. Dr. Peretti, you also performed an autopsy on the body of Steven Branch, is that correct?

PERETTI: That's correct.

DAVIS: And what was the size and weight of the body of Steven Branch at the time you performed that autopsy?

PERETTI: Steven weighed 65 lbs. and was 50 inches in height.

DAVIS: Ok. And when - when his body was presented to you in the crime lab, was his body still bound in the same fashion as it was when the body had been recovered?

PERETTI: Yes sir.

DAVIS: Ok. And could you describe how the body was bound?

PERETTI: The right hand was bound to the right ankle with a black shoelace. The left hand was bound to the left ankle with a white shoelace.

DAVIS: Ok. Now Dr., in your visual examination of the body of Steven Branch, what was - what general areas of injury did you discover?

PERETTI: Well, there were head injuries, there were chest injuries, there were genital/anal injuries, lower extremity injuries, upper extremity injuries, back injuries, and evidence of submersion.

DAVIS: Ok. Dr. if you could, step down from the witness stand and using these photographs that have previously been introduced - if you could explain your findings regarding the autopsy of Stevie Branch.

PERETTI: State's exhibit 70B um - shows some abrasions or scrapes overlying the - the facial area, the eye and the lip and chin.

DAVIS: Dr. are the injuries in 70B, are those to the right side of the face of Stevie Branch?

PERETTI: Um - yes. Also, um - state's exhibit 72 um -B shows multiple - shows a confluent area of abrasion and scrape - scraping involving the - the face. Also, overlying this area we have multiple irregular gouging type cutting wounds. These little irregular areas.

DAVIS: Dr. would those cut marks be consistent with some sharp object such as a knife?

PERETTI: Um - yes.

DAVIS: Ok. When you say irregular gouge marks, what - what causes - what would cause an irregular mark such as that?

PERETTI: Well, we generally see these types of injuries with an object such as a knife or piece of glass, a sharp object was put into the skin and either the person doing the - the um - stabbing, is twisting and pulling the knife or a combination of the person being stabbed - I mean, that skin's soft so if you move around or moving the knife with a twist, the knife is going to cut it out - it's going to pull out the soft tissues of the skin. (mumbles) And also in this photograph, you can see that the ear is abraded and it's contused - it's scraped - bruising with underlying scratches. And you can also see the abrasions and superficial cuts involving the scalp region. State's exhibit 71B is a closeup. Now on this photograph, we can also see the scraping and we can see the gouging type injuries here. What's important to know is that um - the forehead region, we have an um - an abrasion or scrape that left a pattern and inside the pattern - you can see it's almost like a dome shape and it has this little area of square abrasion inside here - right on top of the forehead. And that injury um - you see, is typical of a belt injury. You know the belt that has the little buckle and that's what the - the buckle, that's that little um - one that goes back and forth, left and right. That's the base of the um - the latch. And that's an injury we typically see in um - belts. And also if you look very closely you can see on the face - overlying the area of abrasion, you see the other similar patterns here - but a lot of them are obscured by the um - by the scraping. State's exhibit 69B is showing some scrapes on the lower extremities and the abrasions - the binding abrasions from the ligatures, this darkened area you can see at the ankles - where the ligature was fastened. State's exhibit 66B is um - showing an injury that could be caused either by a um - a serration from a knife or another type of object - right here. It's got a pattern to it. State's exhibits 68B and 67B show the um - the washer woman wrinkling of the hands. Also on state's exhibit 68B, there was a cloth bracelet that I left on the body so that he could be buried with. On state's exhibit 67B you can also see the wrinkling of the hands, but you can note the

abrasions from the ligature being tied to the wrists - that's the area with the darkness discoloration on the skin. State's exhibits 65B and 64B are showing a penile injury. Here on state's exhibit 65B what we can see is, we have a photograph of the head of the penis and midshaft of the penis. And you can note here this dark discoloration, which is bruising and overlying this area of bruising - if you look very closely you can see a smaller area of bruising and fine linear scratches. Now state's exhibit 64B is showing the undersurface of the penis. And here you can see the injury and part of the head and shaft of the penis, but what's important to note in this photograph is that we have a clear line of demarcation here. Ok, where we have this area here - which was involved, and we have this nice circumferential band going around the penis - which can also be seen on the front of the penis - the injured part of the penis. This line of demarcation, which is separating the injury and the uninvolved um - skin.

DAVIS: Dr. do you have an opinion or have you seen similar injuries - you know what the cause of those type injuries could be?

PERETTI: Well, you can see those type of injuries in - in two situations. Um - one if an object is wrapped um - like a belt for example, tightly around the penis. Or those type of injuries are more characteristic of one you see um - in young children who have oral sex performed on them because the little scratches are the teeth marks. In state's exhibits 63B and 62B, are showing the ears. Now here you can see all the um - on 63B you can see all the abrasions or um - scrapes, you can see this darkened discoloration - that's the bruising of the ear. If you look very, very closely you can see the fine little scratches which are the linear. And also, state's exhibit 62B is showing - what I'm emphasizing is this showing the back of the ear showing the bruising and the abrasions and the fine linear scratches.

DAVIS: Dr. are the - is the bruising to the ears and the mouth injuries as you described in Michael Moore's case, are they similar in this situation?

PERETTI: They're similar. Now state's exhibit 61B is a photograph of the back of the head showing that um - if you recall on the first um - was it Moore I did first?

DAVIS: Yes sir.

PERETTI: On um - Moore - the Moore child, this is a similar type injury on the back of the head. Big area of abrasion type injury you see inflicted with an object - with a broad surface area.

DAVIS: Was there an underlying skull fracture associated with that injury, Dr.?

PERETTI: Yes. Um - association with the base of the skull - the back of the skull um - showed a um - a 3 and 1/2 inch fracture which had multiple extension fractures. The way I can put it in laymen terms: if you ever drop an egg and you see how you have the fracture lines through the egg, that's basically what happened. And also the brain showed multiple focal areas of hemorrhage, contusions, and bruising.

DAVIS: Dr., is it fair to say that you have to have a significant force or trauma to cause skull fracture and brain hemorrhage?

PERETTI: Um - yes, you would need a lot of force. Ok. State's exhibit 60B is a photograph showing the back of the neck, showing an area of abrasion - irregular type of abrasions on the back of the neck. State's exhibit um - 59B is an area of the um - of the inner aspect of the thigh where you see a band - you have a pattern here of a band, here. You see, it's diagonal and you have these two areas. You see the darkened area is a contusion um - and the area of the palor or paleness inside, so that indicates some sort of object. You know if your big finger - you know picks up on the wrist what happens is, as soon as you pull your um - finger off you're gonna see an area of blanching and inside you're going to see um - the redness where the blood is pushed out of the vessels. Well, this is the general principle that we see here. He was hit with an object and it left it's pattern. And state's exhibit um - 78 is a photograph, I believe of the back which shows a small area of abrasions or scraping.

DAVIS: Dr. did you also find - did you have an evidence of injury to the genital/anal area?

PERETTI: The um - anus was dilated, there were no injuries noted. Um - the anal and rectal mucosa - or the lining of the rectum and anus, showed mild hyperemia or reddening. Um - but no other evidence of injury was noted. Um - there were no injuries noted to the testes or internal aspects of the scrotal sac.

DAVIS: Dr. did you find evidence of drowning in regard to uh - Stevie Branch?

PERETTI: Um - yes, the hands and feet showed the wrinkling, there was fluid in the lungs or pulmonary edema and congestion, there was a lot of bloody frothy fluid - that's the fluid in the lungs that has no place to go so what would happen is it just backs up into your trachea or windpipe. And we have the water fluid was aspirated into the sphenoid sinus.

DAVIS: Ok. And Dr. would you - you indicated the cuts - I believe to the left side of Stevie Branch's face, those would be consistent with some knife or sharp object, is that correct?

PERETTI: That's correct.

DAVIS: And the injury - the skull fractures to the back of his head, what would be considered - consistent with a blunt, large - a larger blunt type object. Is that correct?

PERETTI: That's correct.

DAVIS: Ok. Dr. if you could, take the stand. Dr. in performing your duties as medical examiner, what was your official opinion - based on your experience, training, and the autopsy performed on Stevie Branch, as to your opinion as to the cause of death?

PERETTI: Um - he died of multiple injuries with drowning.

DAVIS: Would the head injury in and of itself, had he not been submerged in the water - would the head injury have caused death?

PERETTI: Yes.

DAVIS: Your Honor, at this time if we may exhibit these photographs to the jury - again while the Dr. gets his other report ready.

THE COURT: All right.

DAVIS: Your Honor, I will go ahead and proceed. Doctor, did you also perform an autopsy on the body of Christopher Byers?

PERETTI: Yes, I did.

DAVIS Would you tell us the height and weight of Christopher Byers at the time you performed the autopsy?

PERETTI: Christopher weighed 52 pounds, was 48 inches tall.

DAVIS: Was he also bound at the time that you performed the autopsy?

PERETTI: Yes.

DAVIS: Would you describe to us in what fashion he was bound?

PERETTI: The right wrist was bound to the right ankle with a black shoelace, and the left wrist was bound to the left ankle with a white shoelace.

DAVIS: Now, could you describe for us generally the injuries that you found regarding Christopher Byers?

PERETTI: Well, Christopher also had head injuries, neck injuries, genital-anal injuries, right leg injuries, left leg injuries, back injuries, right arm injuries -- right arm injuries, and left arm injuries.

DAVIS: Doctor, if you could, I would ask you to step down off the witness stand and using these photographs describe for us and the benefit of the jury your findings on the autopsy.

PERETTI: 59C is a facial photograph. Here you see there are abrasions. But also note that you can see here and here you have a pattern type injury. See this curvy, linear or half moon, these little round areas right here. These round areas have the appearance of like a stud on a buckle, one of those round studs, and sort of bell shaped here under the nose. State's Exhibit 62C is a close-up photograph of an injury I just described. It is very faint. You can see it here, in this photograph this little round area this little punched-out area on the skin.

DAVIS: Take my pen and circle it.

PERETTI: State's Exhibit 63C is showing injuries to the ear, the scratches, the bruising of the ear. But also you can note the eyelid here that has a contusion or black eye. State's Exhibit 61C is showing a little abrasion or scrape, a small one to the back of the neck. State's Exhibit 64C is showing the ear again. It is the right ear showing the bruising and scrapes and little overlying scratches.

DAVIS: Doctor, were those injuries to the ear in regard to Chris Byers, are those similar to the injuries that you found to the ears of Michael Moore and Steven Branch?

PERETTI: Yes, they are.

DAVIS: Did he also have the comparable injuries to the outside of his mouth and the mouth area that the other two had?

PERETTI: Yes, he did. State's Exhibit 65C is a photograph of the inner aspect of the thigh. And here these areas, this darkened area here, all the bruising, contusions on the inner thigh -- outer thigh, excuse me.

DAVIS: Doctor, while I think of it, and I don't know if there are any particular photographs here, but are you able to determine injuries that are before death and injuries that occur after death? Is there a difference in how they look to you?

PERETTI: Well, we have injuries that are antemortem, injuries before death. We have perimortem injuries, injuries around the time of death; and you have postmortem injuries. A lot of the injuries that you see with the hemorrhaging -- when you have hemorrhage and bruising, that means your heart is pumping, your heart is beating and you are able to bruise. Some of the injuries have the yellow discoloration to them and a lack of hemorrhage. And those injuries are injuries that we normally see in the postmortem period, after death. Then you have the perimortem injuries. Those injuries when you look at the underlying fatty tissue there is a slight amount of hemorrhage. That means that the heart is still pumping blood, but it's not pumping to full capacity.

DAVIS: Did you find some injuries in this situation that occurred after death?

PERETTI: Yes, there are postmortem injuries. State's Exhibit 66C shows the inner aspect of the upper lip. And you can see all the bruising and dark discolorations inside the lip. State's exhibit um - 68C is a photograph showing the back of the skull and we have a laceration right here.

DAVIS: Now Dr. would that type injury to the back of the scalp, would that be consistent with a broad blunt object that you described in regard to the other injuries to the other boys?

PERETTI: Well, it's more consistent with an object that - that's narrower, sometimes you see these injuries - for example a piece of woods, like this railing here - the sharp edge can give that type of injury or um - an injury with an object such as a broomstick would cause that type of injury. State's exhibit 69C is um - a photograph of the - the genital region, showing genital mutilation. Um - here it is important to note, here is uh - you can see where um - and there's a closeup photograph of it - that here is where the penis, scrotal sac and testes should be. Here, we have all these gouging type um - injuries that are described as similar to the ones we saw on the face. But also um - what's important to note here is that we have contusions and bruising of the internal - of the inner aspect of the thighs. These type of injuries we commonly see in the um - female rape victim. And also there, you can note on the feet you can see some bruising and contusions on the ankles and you can see where the um - ligature was tied - these marks here. State's exhibit 72C is also showing the back and side of the left thigh and the right thigh. The - all the contusions - you can see all of the bruises here. And here we saw like a pattern. Here it's interspaced and it's diagonal, we have all this focal bruising. Here we have um - all these gouging type wounds and we have these um - cuts around the penis. Ok. State's exhibit 70C is a closeup of the genital region. Here, um - we can see that the um - the skin of the penis has been literally removed or carved off. And what we have here is the shaft of the penis without the skin on it. And all around it we have all these cutting - gouging wounds. The srotal sac and testes are - are missing. State's exhibit 71C is showing the um - anal orfice um - which is dilated and below we can see um - cutting wounds here on this side and this side here. And we can see - if you look very closely you can see all the hemorrhage indicating that he was alive at the time, see where he was bleeding here um - in the soft tissues. State's exhibit 73C is a closeup view of the injuries, the gouging um - type wounds, the cutting wounds that we have in the inner aspect of the thigh. This red area here, that you can see is the um - shaft of the penis.

DAVIS: Dr. are there - is there also um - serration type wounds or serrated type wound pattern contained in that photograph?

PERETTI: There is um - a serrated type pattern here, yes.

DAVIS: Ok. Could you take my pen and circle that area - you know, the wounds that you denote are serrated - maybe that's not a good marker, is that gonna work?

PERETTI: That - that worked.

DAVIS: Now Dr. when you say serrated, what do you mean?

PERETTI: Well, I'm talking about a - for example um - a typical serrated knife is a steak knife, that pattern of serrations.

DAVIS: Ok. And in this case - the items that you marked, there seems to be - those three or four wounds, there's a distance between those wounds? Is that correct?

PERETTI: That's correct.

DAVIS: Ok. And that wound be consistent with a serration of the blade that inflicted that?

PERETTI: Yes. Um - to an extent, providing there's no twisting and turning.

DAVIS: Ok. Now is the surface that we're looking at, where you circled the indicated serrated injury - is that a flat surface or is that a curved portion of the body?

PERETTI: Well, that's the inner aspect of the thigh, so it's curved. So when you look at it - at the thigh, it's rounded. It's not flat.

DAVIS: Ok. Now Dr. what type of head injury - was there skull fractures associated with the head injury that you noted?

PERETTI: Um -

DAVIS: - In the photographs.

PERETTI: The top of the skull - there were no fractures. The calvarium, this is the top of the skull. However, the base of the skull - back of the head here you can feel the base of the skull, um - that showed a fracture that measured 3 and 1/2 inches in length and extended from this fracture were multiple um - smaller fractures which involve the entire base of the skull. So, it goes back to what I explained earlier, it's like if you have an egg and you drop it you see all the fracture lines. So that's what happened at the base of the skull. And associated with this we have um - hemorrhage of the brain, contusions or bruising of the brain, but also on the left posterior medial cranial fossa - the base of the skull is divided into regions, we have the interior portion where our eyes are; we have the middle portion basically where the ears are attached; and we have the posterior portion - or the back, or the neck of the skull. So we divide it up because we're symetrical right side and left side. So on the left posterior side medial - by medial, I mean towards the midline - ok. Um - towards the spinal column, not away from the spinal column. We have a 1/4 inch oviod punched out fracture. That the fracture was punched out, it was round, measured 1/4 of an inch and it was punched out into the brain.

DAVIS: Now Dr. you've indicated in your testimony regarding more than one of the boys that there were injuries to their scalp that was consistent with an object approximately the size of a broom handle, is that accurate?

PERETTI: Yes.

DAVIS: Ok. I would like to show you what has been marked as state's exhibit number 53. Would an object this size and this diameter be consistent with those injuries you noted were consisted with that broom handle?

PERETTI: An object of this type is typical of causing those type of injuries.

DAVIS: Ok. Your Honor, at this time we would offer state's exhibit number 53 into evidence.

THE COURT: Any objections? - Pardon?

(pause)

(mumbling)

(bench conference)

FORD: Your Honor, at this time it's our opinion there's been a lack of foundation that this stick had anything at all to do with homicides. The fact that it could cause the injuries -- he said any number of things could cause them. There's no indication of blood, fiber, tissue, etc. on this stick.

THE COURT: Well, it was found at the crime scene, there are photographs of it when they were moving the bodies and the doctor's testified that it could have caused the injuries and to me that's a sufficient link that would make it relevant. Now you can certainly argue that it could have been many other things, that it wasn't this stick and - but that's a circumstantial link that the jury could conclude caused the injuries.

FORD: In anticipation of the next phase, they will probably show the larger stick.

THE COURT: Um hum.

FORD: We will make the same objection, your Honor that they're - you don't do that mess. That there's been an absence of any kind of connection.

THE COURT: Well, again - again the same thing will be true if the doctor testifies that that stick is consistent with an object that could have caused the head injuries, the concusions and so forth. It being found at the crime scene - there's a cause of connection and it becomes circumstantial evidence from which a jury could form an infrance. So - I mean, it's clearly connected to the crime scene. I'm gonna allow it.

FORD: And - and - Your Honor, I would uh - he testified yesterday and his third question may be that uh - about showing him the knife and asking him if the serration pattern of the wound -

THE COURT: He's reading my mind.

FORD: Um - that um - we conclude that previous statement made outside the presence of the jury regarding that knife uh - we are just stating now that we don't want to waive that objection by any -

THE COURT: - You're not - you're not waiving any objection that you've made. And again, my finding with regard to the knife was that based on the doctor's testimony that the knife was consistent injuries that he found - I believe on all three boys -

FORD: We would make no objection, your Honor, but we reserve the comments we previously made - understanding the Court's - I understand the Court's rule, your Honor.

THE COURT: I don't understand what you're doing, if you're not objecting. You're not objecting. (laughs)

FORD: No, we object based on what has previously been said - on the record that has previously been made.

DAVIDSON: We didn't make a record on that.

FORD: We did last night.

THE COURT: You did in here, we took proof in here. But you're right, you didn't make a record on what we discussed informally, but you had - you had a testimony.

FORD: I'm talking about the record from when I objected to the knife because of the absence of the connection to the defendant. I was going to raise the issue of no connection to the crime scene -

THE COURT: - Ok. Ok again, the Court's ruling - in that regard, is that the knife based upon the doctor's testimony that it is potentially a weapon that could have been employed to produce the type injuries that he saw on all three young men. Coupled with the fact the knife was retrieved at a very short distance from the backyard of Jason Baldwin. That to me is a link that - that is relevant. And it's another circumstantial link of the evidence.

FORD: We want to know if this objection -

THE COURT: - Well, ok.

(whispering)

(open court)

THE COURT: Alright, you may proceed.

DAVIS: Your Honor, the ruling on the -

THE COURT: I - I allowed it into evidence, so - I thought I did.

DAVIS: Dr. Peretti, in your testimony regarding the three victims, you indicated that some of the head injuries were caused by what you described as a larger surface - blunt object, would an object of this nature be consistent with that?

PERETTI: Um - yes, it would.

DAVIS: Your Honor, I'm showing him what is marked as state's exhibit number 55, now can the state move for the introduction of -

FORD: We talked at the bench your Honor, we have no objection.

PRICE: No objection.

THE COURT: Alright, it may be received wthout objection.

DAVIS: Frank, I am now going to show you what has been marked for identification purposes only as state's exhibit number 77. Have you had a chance to look at that knife and examine that knife, Doctor?

PERETTI: Yes.

DAVIS: Ok. In refer to your testimony you made to wound patterns on the three victims that we serrated in nature.

PERETTI: That's correct.

DAVIS: Ok. Did you find wound patterns on the three victims that would be consistent with having been caused by a knife with that type of serrated pattern?

PERETTI: There are injuries consistent with this type of serrated pattern.

DAVIS: Your Honor, at this time that exhibit will only be marked for identification, uh - until at a later point in time. Doctor, let me also show you for chain of custody purposes what are marked as state's exhibits 82, 81, and 80. I believe these are sacks that indicate the ligatures, did you remove the ligatures from the body - or the shoelaces off of the bodies of the three victims when you performed the autopsy?

PERETTI: Yes, I did.

DAVIS: Ok. And then did you send those items to another area of the crime lab for further analysis?

PERETTI: Yes, I did.

DAVIS: Ok. Do you - is there a process that you follow whereby you make sure that it - it's identified by case number and the proper chain of custody is maintained?

PERETTI: Um - yes.

DAVIS: Ok. And did you do that in this case?

PERETTI: Yes, I did.

DAVIS: Ok. Your Honor, at this time we would move to introduction of state's exhibits 80, 81, and 82 - which would be the ligatures from the bodies of the three victims.

FORD: No objection.

PRICE: No objection.

THE COURT: Alright, they may be received without objection.

DAVIS: Doctor, in performing the autopsies on these three victims, did you note anywhere in your report or indicate uh - any insect bites or mosquito bites on the three children?

PERETTI: There was no evidence of um - animal activity or insect bites.

DAVIS: Ok. And if an insect, such as mosquitos - those type of things, had - if the children had received insect bites prior to the time of their death, then you would expect to still see those in an autopsy, correct?

PERETTI: Well, um - you should see 'em uh - prior to death, yes.

DAVIS: Ok. And would that be different if insect bites were received after death?

PERETTI: Well after death, I don't think you would see 'em for the simple reason you need to be alive to have the reaction so it can swell and itch.

DAVIS: Ok. And on any of the three victims did you note or did you find anything - any insect bites in any of the three victims that you did autopsies on?

PERETTI: No.

DAVIS: Now Doctor, I've noted in your autopsy report there's no mention as to time of death. Did you - did you deal with that issue or did you mention that in your autopsy report?

PERETTI: No, I didn't.

DAVIS: Ok. Now I use to be a fan of Quincey and from tv and what I've seen on tv, they show exact times of death. Is that the way it is in your science or in your field of expertise?

PERETTI: Um - determining the time of death is more of an art and not a science. I mean, on tv they can tell ya someone died at 2:30 - I mean that's - realistically, not possible unless you

were there and witnessed the person to die. So, what we do is um - you have to give ranges of intervals of time of death

DAVIS: Ok. And even then when you give ranges or intervals, is it basically an estimate?

PERETTI: It's an estimate.

DAVIS: Ok. And what are some of the factors that you need to have in order to even be able to make an estimate?

PERETTI: Well, what you need to have is - there are a lot of factors, but the ones most important is you need to know um - when the person was last seen alive and when the person was found dead so you have this - what they call postmortem window period. In that window period, there are many other factors that come into effect. Such as, um - for example the um - the temperature outside um - the humidity; if the bodies are found um - buried underground; if they're on top of the ground; or if the bodies are in the water. Um - these are all factors of the medality, which is the way in which um - a person died is also important. If the person um - for example, looses a lot of blood plays a - puts a different interpretation on it, as if someone was just to die - you know, walking down the street and collapsing. So there are all these factors. Most of them are environmental factors that need to be taken into consideration.

DAVIS: Ok. And Dr. if in this particular case - were you provided with all those factors or information that you would need to be able to formulate an estimate as to time of death?

PERETTI: Well, I was not at the scene when the bodies were found. So - Arkansas has a coroner system and the coroner of Crittendon county, he went to the scene, he pronounced the three boys, and he uh - issued um - his report. You know, based on his findings when he arrived on the scene.

DAVIS: Ok. And in order to make an estimation as to time of death, you would need to know the temperature of the water the children were submersed in - correct?

PERETTI: That - that's important.

DAVIS: Ok. And you would need to know uh - what type of clothing, if any, they had on - correct?

PERETTI: That's correct.

DAVIS: Ok. And you would need to have a rectal temperature taken, correct?

PERETTI: Well, um - you can use body temperature, but it's not as accurate as - as people um - make it to be, but that's one of the factors that you have to take in consideration.

DAVIS: Ok. And all those things are information that you would need in even being able to give an estimate, right?

PERETTI: That and the one with the rigor mortis - the rigidity of the body.

DAVIS: Ok. And in this particular case did you have any of those factors to work with? Were they provided to you?

PERETTI: Well, the factors that were provided to me was um - the li - the lividity when the coroner arrived at the scene. Now there are some terms I would like to explain, so the jury will understand what I'm talking about. Is that ok?

DAVIS: That's fine.

PERETTI: Ok. We - I am going to use two terms, you have rigor mortis which is the stiffening of the body after death and you have livor mortis, L-I-V-O-R mortis or lividity. Lividity is the postmortem settling of the blood into the capillaries in the blood vessels which have lost their tone after death. Ok. So that happens on everybody. We all uh - when we die, we all go through rigor mortis. We all develop lividity. Um - And these are factors that I take into consideration when trying to give an estimate or a range for the time of death.

DAVIS: Ok. And - and when we talk about lividity, it's primary function is to determine if the body has been moved correct?

PERETTI: Well um - lividity is one of the uh - major criteria to see if the body has been moved. Now, one thing I think I didn't explain and I would like to clarify. Lividity goes through different stages, okay. What we have - we have lividity which is called unfixed. Then we have lividity that is fixing and lividity that's fixed. Ok, now unfixed lividity means up to a certain period of time if someone dies on their back - ok, up to normal environmental conditions, if I was to die in this room right now and I was lying on this floor - for say eight to ten hours, all my blood would settle to the back of the body. Now, if you were to examine my body - say two hours after I die, the lividity - if you were to touch it with your finger, it would blanch. In other words, you would be able to push the blood out of the blood vessels. So it is called blanching. But if I was to still be the floor and um - around eight hours, you would come and you would press the lividity, you would see it's fixing. It is in that stage where it is beginning to fix and unfix. And fixed lividity is when you go there - you know, no matter how much you press it, it is going to stay in that one spot. So, we use lividity - for example if someone was to die, if you were to find someone in the field and the lividity - and he's found on his back, and all the lividity is fixed on the front of the body, you know that the person died in some other location and was dumped there because the lividity is not consistent with lying on its back.

DAVIS: Ok. And the time at which lividity becomes fixed is dependent upon environmental factors, correct?

PERETTI: Environmental factors and the state of health of the individual is very important also.

DAVIS: Ok. And the degree of the fixed - or the degree that the lividity is fixed is based on also the extent to which the body has remained in a single position, correct?

PERETTI: That's correct.

DAVIS: Ok. And the cooling - if the body is quickly cooled, such as being submerged in water, that would retard the fixing of lividity - is that true?

PERETTI: It slows it down, that's correct.

DAVIS: Now Doctor, what - you said that part of your job is to prepare an autopsy report, in this particular case were you particularly cautious about who you released that information to as when you released it?

PERETTI: Um - yes I was.

DAVIS: Ok. Normally, where do your reports go as far as who gets a copy of it?

PERETTI: Ok, what we do in the - at crime lab is, the day we do the autopsy we issue a sheet. It's called the cause of death sheet. This sheet automatically goes to the prosecutor of the county of death, the coroner, and the investigating agency um - handling the death investigation. So, we do that um - so they'll have automatic feedback because a lot of times, um - they don't - these agencies don't have the time to call us back to get the autopsy result. So what we do is, as soon as we do the autopsy - that day we fill out the sheet and it's mailed to the - those three agencies.

DAVIS: Ok. Did you - did you kindly change that procedure a little bit in this case in order to insure that the information contained in your autopsy report wasn't disiminated to the general public?

PERETTI: Well, what I did was - normally what we do - for example, we have a gunshot case I would write on there, I would say well gunshot wound to the front of the chest I recovered a bullet in the back and say the type of bullet it is, but this case - I do that with all cases, even with natural disease if I do someone with a heart attack I would write - you know we found a heart attack, we found evidence of coronary artery disease, but because this case generated such intense media coverage and there were rumors - a lot of rumors, people calling - there were all these circumstances. I elected on the cause of death sheet just to put the causes of death on the sheet. I did not say anything about any of the injuries, um - I didn't tell the prosecutors, I didn't tell the police, and I didn't tell the coroner.

I just kept it to myself.

DAVIS: Ok. And because with an ongoing investigation, it was important that only as few people as possible had access to that type of information.

PERETTI: Right, I didn't want to dissiminate that information to the media and community.

DAVIS: Your honor, if i may exhibit these remaining photographs to the jury and with that I would pass the witness. I have no further questions.

(mumbling)

THE COURT: We are going to recess just as soon as they have an opportunity to view those pictures. For those of you in the audience, there's not going to be anything else. We are going to recess until in the morning at 9:30. But the jury, take your time looking at the photographs. You'll have to come back. I'm sorry. I tried to get you on at 10:00 this morning, but (mumbling)

(Court in recess)

March 2, 1994

PRICE: Dr. Peretti, I would like to show you what's been marked for identification purposes - defense exhibit number E6. This is a kershaw knife, K-E-R-S-H-A-W. And does this appear to be a lock blade folding knife?

PERETTI: Yes.

PRICE: Let me go ahead and - Judge, if I could approach the witness?

THE COURT: Alright.

PRICE: I want you to take a look at that knife. Doctor, did you make a comparison with this knife - E6, and compare that with some of the wounds that you found on Chris Byers?

PERETTI: Um - yes, I did.

PRICE: Alright. Is - does that knife appear to be a serrated knife?

PERETTI: Yes, this is a serrated knife.

PRICE: Do you have an opinion if some of the wounds you found on Chris Byers were consistent with wounds which would have been caused by that type of serrated knife?

PERETTI: Well, some of the wounds that have some of the smaller serrated um - patterns um - could have been um - inflicted with a knife having this type of um - serration.

PRICE: Alright. Dr. Peretti, I would like to show you what's already been introduced in evidence as uh - state's exhibit number 71C. Which is a photograph, I believe of the buttocks

area of Christopher Byers. In looking at that picture, are some of the smaller wounds - the ones that you're referring to that could have been caused by that particular knife.

PERETTI: This knife may have caused some of the smaller wounds.

PRICE: Is that in this picture shown right here?

PERETTI: Yes, um -

PRICE: In the buttocks region?

PERETTI: Yes.

PRICE: And Dr. Peretti when you are sent pieces of evidence do law enforcement officers ask the crime lab to test for certain - to perform certain tests on pieces of evidence?

PERETTI: Um - yes, that's correct.

PRICE: Did you receive that particular lock knife from the Genetic Designs laboratory in North Carolina?

PERETTI: Yes, it was mailed to me directly.

PRICE: And were there instructions by the - Detective Gitchell with the West Memphis police department to compare that knife with some - with the wounds?

PERETTI: I believe so, yes.

PRICE: Alright Dr. Peretti, I'd like for you to look on the inside of the knife - the blade portion. Uh - does there appear to be some type of red fabric inside that knife?

PERETTI: Um - yes, there is.

PRICE: Alright. Were you ever asked by the West Memphis police department to uh - to send that to the trace evidence section to have them test that fabric?

PERETTI: What happened was, the knife came to me and it should have went directly to the trace evidence section. But I opened it up to see what was in the package 'cause I didn't know what was in the package and I saw the knife - I opened it up um - I took a fast look at it because I didn't want to handle it 'cause I wanted the trace evidence section to look at it first. Um - I opened it up, I noted that there was a piece of red fabric in there and I properly submitted it to the appropriate section of the crime lab.

PRICE: Alright. Dr. Peretti were there other items of evidence that you examined that was sent off to other sections of the crime lab?

PERETTI: Well, there were um - items that I took at the time of autopsy that I sent to the appropriate section of the crime lab.

PRICE: Alright. Do you have the report of Lisa Sakevicius with you that - she's got a number of reports, this particular one is an elevan page report dated um - June 29th 1993.

PERETTI: I may have it, I may not.

PRICE: If you don't, I've got my copy, but if -

PERETTI: - It would probably be easier if I look at your copy.

DAVIS: Excuse me Mr. Price, I hate to interrupt you, but I anticipate - only thing I can anticipate is when he's asking about a report generated by another member of the crime lab that he's going to start asking questions regarding that report and obviously, your Honor, we intend to have that witness present in here to testify and if there's questions to ask her -

THE COURT: Ok. I'm gonna limit you to anything based upon that report upon which he would have taken action that would relate to any scientific endeavour he made himself and not one conducted person in the crime lab.

PRICE: That's fine, your Honor. All I'm going to ask him about evidence is that he sent to other parts of the crime lab. I'm not going to ask any results from Dr. Peretti.

THE COURT: Alright.

PRICE: Uh - Dr. Peretti, do you recall if there - on the autopsy of uh - James Michael Moore - on page number 2 -

(pause)

PRICE: Alright, on page number 2 - under the paragraph description of injuries, does the last sentence indicate that a strand of fabric-like material was clenched in the left hand?

PERETTI: Yes, that's correct.

PRICE: Ok. To your knowledge, was this fiber sent on to Lisa Sakevicius - who's with the trace evidence section of the crime lab?

PERETTI: Yes, it was.

PRICE: Alright. I would like to approach the bench to show you her report to look at the - each item of evidence that was sent from either um - the police agencies or from your part - the medical examiner's division to other crime lab sections is assigned a particular number?

PERETTI: That's correct.

PRICE: To keep track of it?

PERETTI: That's correct.

PRICE: Alright. If I could approach the witness, your Honor?

THE COURT: Yes.

PRICE: Was FP1 the number that was assigned to this particular fabric that you took out of the hand of Michael Moore?

PERETTI: That was the number assigned by the trace um -

PRICE: - By the trace section?

PERETTI: - The trace section.

PRICE: To your knowledge, was this the only fabric that was sent to them on the - based on your autopsy of Michael Moore?

PERETTI: On Michael Moore, yes.

PRICE: What - and does that indicate the date that it was sent to the trace evidence section?

PERETTI: Um - yes, it was received on May 7th, 1993.

PRICE: Alright. (mumbles) Alright Dr., do you recall if when the bodies were actually sent to the crime lab, if the bodies were wrapped in some type of white sheet?

PERETTI: Yes, they were wrapped in a white sheet.

PRICE: Ok. Do you recall if the white sheet that Christopher Byers was wrapped in - and I - let me back up. A laboratory case number was assigned to each - all three of the bodies?

PERETTI: That's correct.

PRICE: And actually, there's um - the medical examiner's section has one number and the rest of the crime lab have another number?

PERETTI: That's correct.

PRICE: Ok. And on Christopher Byers, do you recall if the - or do you know if the laboratory case number was 93-05718? It might make it easier if I just approach the witness, your Honor.

THE COURT: Yes.

PERETTI: Yes, that's correct.

PRICE: And do you recall if on May the 11th, the white sheet that Christopher Byers was wrapped in was sent to the trace evidence section?

PERETTI: Um - it was sent to the trace evidence section.

PRICE: And according - the number the trace evidence assigned to the white sheet, would that be FP10?

PERETTI: Yes sir.

PRICE: And does - does the FP stand for forensic pathologist?

PERETTI: No, it's my initials - Frank Peretti.

PRICE: Ok. Alright. My next question deals with the um - the autopsy on Christopher Byers. Uh. On page number 2 of the autopsy of Christopher Byers, the top paragraph dealing with the internal description - probably midway in the paragraph um - there's - you made some references to some old scars. You see that?

PERETTI: On the external description?

PRICE: Uh - yes sir.

PERETTI: Ok.

PRICE: If I can approach - this section right through here.

PERETTI: Yes, ok.

PRICE: 3/4, this part - alright. Did you find several old scars on the body of Christopher Byers?

PERETTI: Um - yes, I did.

PRICE: Alright. And where did you see these scars? Would you just describe them?

PERETTI: Sure. A 3/4 inch old scar was present over the right forehead region - generally this area here. And a 1/4 inch old scar was present uh - adjacent to the bridge of the nose - generally in this direction here. An old uh - hypopigmented scar was present on the front of the chest, um - just on the midline of the chest. Those were the only old scars.

PRICE: That you noticed. Alright. Um - Dr. Peretti, there's been testimony introduced in this trial that on the day of the murders, Christopher Byers received a spanking um - was there any evidence that you could tell from the - your examination of his body that there was any type of bruises or abrasions on the buttocks area that may have been caused by some type of spanking that he received that day?

PERETTI: Well, on the - the injuries on the back of the left buttock was 1/2 by 1/2 - excuse me, a 1/2 by 1/4 inch bruise or contusion and there was a 1 and 3/4 inch linear abrasion or scrape.

PRICE: Would either - excuse me, would either of those be consistent with a belt spanking?

PERETTI: Possibly.

PRICE: Ok.

PERETTI: On the back of the right buttock, there were two very faint contusions or bruises. Um - they each measured um - about 1/2 by 1/2 inch.

PRICE: Alright. One moment, your Honor.

THE COURT: Is that coming from outside, Dale? If it is, tell them to be quiet out there.

(pause)

PRICE: Alright. Nothing further, your Honor.

FORD: Dr. Peretti, how long have you been a doctor?

PERETTI: Well, I graduated from medical school in 1984.

FORD: Ok. And um - how long have you been a licensed forensic pathologist?

PERETTI: Well, a licensed physician since 1984. I began my um - I did my training from '88 to '89 in Maryland. Then, from '89 to present date, I've been practicing forensic pathology.

FORD: Ok. And how long have you been in the state of Arkansas?

PERETTI: Since August of 1992.

FORD: Ok. And has that always been as an employee of the Arkansas state crime lab?

PERETTI: Yes sir.

FORD: Ok. And your duties - are you the chief medical examiner?

PERETTI: No, I'm not the chief medical examiner.

FORD: Ok. How many other forensic pathologists work in the medical examiner's office?

PERETTI: There's two others.

FORD: Um - do ya'll work together from time to time?

PERETTI: Oh, yes.

FORD: Ok. Um - tell this jury about how many autopsies you've performed.

PERETTI: Me personally?

FORD: Yes sir.

PERETTI: Here in Arkansas?

FORD: In -

PERETTI: - In my career, or -

FORD: - Yes, in your career.

PERETTI: Well, in my career - well over 2500.

FORD: Ok. And since you've been in the state of Arkansas as a medical examiner here, how many autopsies have you performed?

PERETTI: Well, um - the first year I was here I performed about 500. And this year, I don't know how many, it's been well over 100.

FORD: Ok. Um - many of those autopsies been on children?

PERETTI: Some children, the majority are adults.

FORD: Ok. Have some of those adults been the victims of beatings?

PERETTI: Yes sir.

FORD: Similar to beatings that occurred in this case?

PERETTI: Yes sir.

FORD: Ok. Have some of those autopsies uh - been for victims of sexual assault?

PERETTI: Yes, that's correct.

FORD: Also Doctor, during your experience uh - and training as a pathologist, have you gone to crime scenes?

PERETTI: Well, when I was in Rhode Island, the medical examiner went to every crime scene.

FORD: Ok. Um - since you've been in the state of Arkansas have you ever been called upon to go to a crime scene?

PERETTI: No-one's ever called me to go to a crime scene.

FORD: Ok. Let me ask you some questions, Doctor, about some of the injuries. Ok. But before I do that, are you routinely called upon and are you qualified to render opinions as to the manner of death?

PERETTI: Yes sir.

FORD: And are you routinely called upon to give opinions as to the cause of death?

PERETTI: Yes sir.

FORD: Is that part of your normal job?

PERETTI: Yes.

FORD: You do that on a daily or weekly basis?

PERETTI: Yes sir.

FORD: Was there any evidence of strangulation?

PERETTI: There was no evidence of strangulation

FORD: If you were looking - if you were to find evidence of strangulation, you would expect to find injuries to the strap muscles of the neck?

PERETTI: Yes, the muscles of the neck and the larynx and the hyoid bone.

FORD: Is that - now tell the jury what the hyoid bone is.

PERETTI: Well, we have our larynx which is uh - our voice box. And the Adam's apple, as people routinely refer to it, is the larynx region. Uh - above the larynx is this little um - bone called the hyoid bone and it's shaped like a "U" and that sits above it - sits above the larynx and it's connected to the larynx by muscles.

FORD: Is - the hyoid bone acts as a center piece of some sort - like suspension, things are connected to it to form a - a rigid structure that is not based out of bone. Is that correct?

PERETTI: That's correct.

FORD: Ok. So now, you found no damage to the hyoid bone?

PERETTI: No sir.

FORD: No damage to the larynx?

PERETTI: No sir.

FORD: No damage to the strap muscles?

PERETTI: No sir.

FORD: No exterior evidence on the neck of strangulation?

PERETTI: No, there were a few little abrasions - scrapes on the neck, but no evidence of strangulation.

FORD: Doctor, did you make an attempt to determine whether or not uh - there were sperm cells present?

PERETTI: Yes I did. I did a rape kit.

FORD: Ok. Now would that include both an attempt to determine whether there had been oral sex or anal sex?

PERETTI: That's correct.

FORD: Ok. Tell the jury when you do this rape kit, what you do with swabs. Tell them what you do.

PERETTI: Well, what we do is, we um - we take the swabs - we swab the um - the inside of the mouth, the lips, and the back of the mouth. Then um - we swab on a female, the vaginal area. And the male, the anal area.

FORD: Ok. And how deep down into those cav - those oral or anal cavities in these three boys was that swab placed?

PERETTI: Well, in the mouth we try to get all around the lips and as far back as we can to um - we rub the swab up against the um - the linings of the mouth. And in the anus, we try to go up um - as far as we can around the anal orifice region um - you know, to make sure we pick up any material if it's there.

FORD: Ok. Do you then microscopically examine those swabs to determine whether or not there are sperm cells present?

PERETTI: What we do is um - we make a glass slide and we send it to the serology section of the laboratory and they look for the presence of sperm.

FORD: Ok. And was that done in this case?

PERETTI: Yes, it was.

FORD: Alright. Was there any evidence of sperm cells?

PERETTI: There was no um - sperm detected.

FORD: Would - would the crime - would the serology department of the crime lab also routinely run a test for P30?

PERETTI: Um - I believe that the procedure is um - I may be wrong, but you would have to check with the serologists - that if it's positive for sperm, they'll run the P30.

FORD: Ok. Tell the jury what P30 is.

PERETTI: They're looking for the um - the antigen for the sperm. To see if there's any detection of the sperm or acidphosatates.

FORD: So, they're - that's prostate fluid?

PERETTI: Yes.

FORD: Ok. Now, was a P30 test run on the slides made from these boys?

PERETTI: I don't know if a P30 was run. Um - I would have to check the serology report.

FORD: Now, you testified yesterday about some of the injuries to the mouth -

PERETTI: - Yes.

FORD: - Of these three boys. You testified that that - those injuries could be caused by a punch?

PERETTI: Yes.

FORD: By a slap?

PERETTI: Yes.

FORD: By something firmly being placed over the mouth?

PERETTI: Yes.

FORD: Could these injuries have been caused by a gag?

PERETTI: Um - the injuries - the contusions um - and the superficial cuts inside the lips may be caused by a gag. But not the cutting wounds on the outside of the lips.

FORD: Ok. So, some of the wounds would be - are consistent with being caused by a gag?

PERETTI: A gag would cause those types of injuries to the inside of the lips, yes.

FORD: Now, if you found um - bruising to the exterior of the mouth - the lips, from forced oral sex wouldn't you also expect to find damage to the tongue?

PERETTI: Well, sometimes you may see damage to the tongue. Other times, uh - you may not.

FORD: Alright. Would you expect to see some sort of damage on the inside of the mouth - to the uvula or to the hypofarynx, to the epiglaudis, to the tonsils?

PERETTI: If the uh - penis or object was inserted into the mouth - and it was forceful, I would expect to see some injuries.

FORD: Ok. So if you - so if there was forcible penetration - to force an 8 year old boy to perform oral sex, are you telling this jury you would expect to find damage on the inside of the mouth?

PERETTI: If the penis was inserted um - way back into - in the back of the mouth, I would expect - you should find some injuries. But then again, you may not. And a lot of factors are involved - the size of the penis, you know - how forceful the sex is, things of that sort.

FORD: Alright. If the oral sex was forceful enough to cause those bruises on the outside of the mouth, wouldn't you expect them to also cause it on the inside of the mouth?

PERETTI: I - I would think so.

FORD: Ok. Did you find any evidence of damage inside their mouths?

PERETTI: The only damage I found was some superficial bitemarks. Um - on one of the boys - inside the cheeks, but there was no um - injuries noted to the - to the back of the mouth.

FORD: Ok. Those that you would expect to find?

PERETTI: Yes sir.

FORD: Ok. Doctor, based on what you have seen in your examination of these boys, and based on your experience and your training, based upon a reasonable degree of medical certainty isn't it your opinion that these boys were not forced to perform oral sex?

PERETTI: Well, that's - that's a difficult - they have injuries that - that are consistent with that - you know, you have the ear injuries, you have the mouth injuries. Um - like I said before, it could be another modality how those injuries was sustained, but we see those type of injuries in people who are perfor - uh - forced to perform oral sex. But then again, there are no injuries um - to the back of the mouth, and one way you can explain that is if the uh - the mouth wasn't totally open - the teeth were clenched.

FORD: Are you telling these - this jury that in your opinion - based upon a reasonable degree of medical certainty, these boys were forced to perform oral sex?

PERETTI: No. I'm saying they have injuries con - that we normally see in people who are - especially children, especially the ear injuries, um - who are forced to um - perform oral sex.

FORD: Ok. Now those injuries to the ears, they could also be caused if those boys are tied up - in the fashion that they are, and if anyone wants to grab 'em and pull or pick 'em up - they could - that could cause those same type of injuries. Could they not, Doctor?

PERETTI: Yes, if you grab someone by the ears, yes.

FORD: Any - just - you don't have to be grabbing them any certain - you could just grab 'em and they're going to cause these injuries that you observed, is that correct?

PERETTI: That's correct.

FORD: Did you examine the swabs of their anal and rectal cavities for presence of sperm?

PERETTI: What I did, I submitted to the um - the serology section of the laboratory and they examined the -

FORD: And well -

PERETTI: - And they issue a report.

FORD: Were there sperm cells present there?

PERETTI: No. No semen was identified in all three boys.

FORD: Ok. Now if someone is forcefully sodomized, would you expect to find injuries to their nus and rectal areas?

PERETTI: Uh - in the cases that I've um - in my experience, I have always seen injuries to the um - anal and vaginal regions.

FORD: Would you expect to find lacerations?

PERETTI: Um - yes.

FORD: Uh - contusions and abrasions?

PERETTI: Yes.

FORD: Would you expect to find, microscopically - evidence of hemorrhage?

PERETTI: There should be hemorrhage there, yes.

FORD: Ok. There was some discussion yesterday about hyperemia.

PERETTI: Yes, it's reddening of the uh - mucosa.

FORD: That's just red, isn't it?

PERETTI: Congestion, yes.

FORD: Red. If a capillary is filled with blood, that would be hyperemia - more blood than normal?

PERETTI: Right. It's just that the - the vessels um - are filled with blood um - part of it depends on - it's positional.

FORD: Ok. And hemorrhage is when those small microscopic capillaries break?

PERETTI: That's right.

FORD: Ok. Now, did you examine them and make microscopic efforts to determine whether or not there was hemorrhage to the anal areas?

PERETTI: Yes, I did.

FORD: And was there any hemorrhage?

PERETTI: Well, in the slides I took there was no hemorrhage identified.

FORD: Ok. So it's - one can conclude that there was not enough force to break and damage a microscopic capillary?

PERETTI: That's correct. There was no injury noted to the um - anal rectal mucosa.

FORD: And in your experience and your training, if someone was sodomized you would expect to find injuries?

PERETTI: In a child - definitely.

FORD: Ok. And that was not found?

PERETTI: That's correct.

FORD: Did you find any rope burns?

PERETTI: Well, I found the um - the injuries on the ankles and the feet, what the ligatures - where they were tied.

FORD: But did you find any evidence of being tied with a rope?

PERETTI: Uh - no.

FORD: No evidence of being tied with a rope?

PERETTI: No. There were some abrasions there um - maybe um - I - I can't put a pattern to 'em.

FORD: Now Doctor, did you examine the uh - any of the wounds to see if there were wood fragments?

PERETTI: There were no foreign bodies such as - such as wood fragments, glass or debris.

FORD: So, if someone were to be hit with a stick like this that had bark that just crumbled and comes apart, wouldn't you expect there would be some evidence of that left behind in the wounds?

PERETTI: Um - yes, unless it was washed off being in the water.

FORD: Ok. But you would expect to find those - some sort of wood fragment left behind?

PERETTI: I think I would expect to find some fragments.

FORD: Did you?

PERETTI: No.

FORD: Any fragments?

PERETTI: No fragments.

FORD: On any of the three boys?

PERETTI: That's correct.

FORD: Now, you testified that some of these injuries could be caused by being hit with an object of this size, is that correct?

PERETTI: Yes.

FORD: Could those same injuries also be caused by a baseball bat?

PERETTI: Baseball bat have um - a different type of pattern of injury, but you could get a similar pattern.

FORD: And a baseball bat could clearly cause a skull fracture, couldn't it?

PERETTI: That's correct.

FORD: And it could clearly cause a bruise to the top of the head?

PERETTI: That's correct.

FORD: Ok. And so could a rolling pin?

PERETTI: Oh, yes.

FORD: Ok. The flat part of a shovel?

PERETTI: That's correct.

FORD: There's any number of things that have - hundreds of items that could be willed in as a weapon, that could cause these types of injuries?

PERETTI: That's correct.

FORD: Ok. Now, you also indicated that something of this diameter could have done it, is that also correct?

PERETTI: That and I believe I stated a piece of wood - a 2x4.

FORD: A 2x4.

PERETTI: - Could do that.

FORD: A broom handle?

PERETTI: That's correct.

FORD: A mop handle?

PERETTI: That's correct.

FORD: A shovel handle?

PERETTI: Objects similar to that appearance, yes.

FORD: A tire iron?

PERETTI: Sure.

FORD: A jack handle?

PERETTI: Possibly.

FORD: A flashlight?

PERETTI: Sure.

FORD: So there's any number of items - hundreds of items located in almost any household that could be willed as a weapon to cause the types of injuries that you saw?

PERETTI: That's correct.

FORD: Are you telling this jury in your opinion, those are the murder weapons?

PERETTI: No. I never said that. I said, objects such as this type are consistent with causing those type of injuries. I never said that these objects caused those injuries.

FORD: Ok. Did you examine those sticks yourself for evidence of blood, skin tissue, clothing fibers? Did you look at that - make an eyeball gaze of it?

PERETTI: Well, I believe what happened was the um - these two items here went directly to the trace section of the laboratory. And after they were through doing - looking for trace evidence, they were submitted to me. So, all the analysis on these objects here were done by the um - the trace section of the lab, not me.

FORD: Ok. Let's talk about those knives, ok. Both of these knives have serrated edges - do they not, Doctor?

PERETTI: That's correct.

FORD: Ok. And I believe you stated previously, under oath that um - serrated edges can leave behind a pattern?

PERETTI: Yes. The only way a serrated knife can leave a pattern is if it's rubbed across the - the skin. If you have um - two knives - this knife for example and this knife here and you were to stab someone, you - by looking at the stab wound, if both knives go in say um - straight down, you can not tell the difference if um - a straight edge knife did it or a serrated knife 'cause they both have similar appearance. The only way you can tell if a serrated knife has been used is by looking for the serrations that rub across the skin.

FORD: Ok. Now Doctor, if that serrated knife is used, the elasticity of the skin, the angle that the blade is being used, and the reaction of the body that's being scraped - all three of those factors can make the abrasion pattern different from the actual serrated pattern of the knife? Can it not?

PERETTI: That's correct.

FORD: Ok. And so if the serrated pattern of one knife has a 1/8 gap and then a 1/4 inch and 1/8, and 1/4 inch or 3/8 inch and 1/2 an inch - whatever the pattern is, those three factors could make two knives with obviously different serrated patterns cause the same type of injury - is that correct?

PERETTI: That's correct.

FORD: Ok. So basically, any serrated knife could cause these kind of injuries that you saw?

PERETTI: Well -

FORD: - Is that correct?

PERETTI: - That's correct, but if you have a larger serration - you know, you can usually differentiate that more from a smaller serration, but it's correct that the bodies do move and there will be distortion on the skin.

FORD: So really Doctor, to get right down to it - to say one knife caused an injury over another knife caused an injury, based on a serration pattern - it really calls for some sort of speculation, doesn't it?

PERETTI: Well, I hate to use the word speculation, but um - you know, you can see a pattern. You know, you can tell a difference between a small serration and a large serration. And sure, there are distortions when uh - the skin is moving due to the elasticity of the um - of the skin.

FORD: Ok. Are you telling this jury that this knife caused those injuries?

PERETTI: No. I never said that knife caused that injury. I said a knife of this type - of these types, are consistent with causing those type of injuries. But, I never said that these two knives sitting here caused those injuries.

FORD: Ok. Any number of knives have serrated patterns - any number of them could cause these injuries, could they not?

PERETTI: Um - yes.

FORD: Just like any number of items that have these diameters could cause those other injuries?

PERETTI: That's correct.

FORD: Ok. Now, let me turn to an area Doctor that - that uh - is not real pleasant, but it's important, ok. So that everybody can have a clear understanding of what happened. Try to - as detailed as possible, although it's unpleasant - please describe the genital mutilation of Chris Byers.

PERETTI: May I um - use the photograph?

FORD: Yes.

(mumbling)

PERETTI: It's 331.

FORD: 331?

PERETTI: Yes, it's the autopsy number.

FORD: I'm just going to hand you the whole stack, Doctor.

PERETTI: There's one photograph um - right there.

FORD: Ok, and if it would help you -

(pause)

PERETTI: Do you want me to approach or do it from -

FORD: Yeah, you can - if you'd like - if you think it would be easier, you can step down and show the jury.

PERETTI: Now the question was to explain the injuries again?

FORD: Explain the genital mutilation.

PERETTI: Ok. I believe um - state's exhibit um - 70C and 69C show it uh -

FORD: - Ok.

PERETTI: Ok. State's exhibit 70C is the um - the genital region. Here on the thighs you can see all these superficial uh - gouging type wounds. And some of them are deep, they go down into the soft tissues. This is all this area around here on the thigh. Now here - this red area here, this is the uh - the shaft of the penis and here is where the scrotal sac and testes should be - and they're missing. So what we have is that the skin overlying the penis and the head of the penis has been carved off. It's gone, it's not there. Around here - this large opening here are multiple cuts. It was - appears to be um - large cutting around here to cut this out. Um - this is the cutting wound here and the red is the shaft of the penis.

FORD: Alright. Thank you, Doctor. You may retake the stand. Let -

PERETTI: (mumbles)

FORD: No, you can hold on to it.

(pause)

FORD: In layman's language - that I understand, with respect - his penis is, has not been cut off - has it?

PERETTI: No. The skin has been taken off the penis.

FORD: Now with respect to anatomy, a man's penis has glands in it - does it not?

PERETTI: That's correct.

FORD: And those are contained in the shaft of the penis?

PERETTI: That's correct.

FORD: Ok. And when you get to the head of the penis, the glands stop?

PERETTI: That's correct.

FORD: Ok. And in this case, the skin off the penis was actually dissected off?

PERETTI: Was taken off, yes.

FORD: Ok. Uh - and the head of the penis was taken off?

PERETTI: That's correct.

FORD: But the glands in the shaft of the penis are undamaged, are they not?

PERETTI: That's relatively intact.

FORD: And basically it would take some skill and precision to do that, wouldn't it?

PERETTI: I would think so.

FORD: Ok. And it would take someone who had some medical knowledge, wouldn't it Doctor?

PERETTI: Well, I don't know about that. Someone who had some knowledge of anatomy.

FORD: Some anatomy knowledge, ok. Doctor, if you were to uh - if this was to be done - this dissection, where the skin is cut off - that would take a very sharp instrument, would it not?

PERETTI: Um - I think it would.

FORD: Ok. Such as a razor?

PERETTI: Or a sharp knife.

FORD: A very sharp knife?

PERETTI: Um.

FORD: Ok. Doctor, if you were to do this for - let's say you were back in medical school in gross anatomy, and you were asked to do this - or now, with the skill and precision and knowledge that you take - how long would it take you to do that?

PERETTI: That's a difficult question. Um - it would take me some time. It's not something I think I could do in 5 min - in 5 or 10 minutes.

FORD: It would take you longer than 5 to 10 minutes?

PERETTI: I would think so.

FORD: And that's at - in your lab?

PERETTI: I would think so.

FORD: With a scalpel, is that correct?

PERETTI: That's correct.

FORD: Now Doctor, if we added to the equation that you were in the dark - could you do this in the dark? You Doctor, could you do it in the dark?

PERETTI: I would be difficult.

FORD: And if you were doing it in the dark, wouldn't it take you longer than if you were doing it in your lab - your ideal conditions?

PERETTI: Yes.

FORD: Ok. Could you do this in the water? You Doctor, could you do this in the water?

PERETTI: I think it would be very difficult to do.

FORD: Ok. And if it was - you was in the water and it was dark, it would take even longer. Is that correct?

PERETTI: That's correct.

FORD: Ok. And if you were doing it in the dark, in the water, with mosquitoes all around you would that make it even much more difficult?

PERETTI: I would think so.

FORD: If not impossible?

PERETTI: Well, I don't know about impossible, I - I think it could get done.

FORD: Ok. But it would - it would really be a tedious task to do it in the dark, in the water, with mosquitoes all around - wouldn't it?

PERETTI: I would think so.

FORD: It would take you - it would be a very tedious task for you - a skilled pathologist?

PERETTI: It would.

FORD: Ok. Now Doctor, you testified yesterday that uh - Chris Byers, and that's the boy who was mutilated that we've just been describing - that he bled to death, is that correct?

PERETTI: I believe there was - I said that he exsanguinated, yes.

FORD: Ok. Is that, for us who don't know - that are not doctors, is that bleed to death?

PERETTI: Um - yes and -

FORD: - Ok.

PERETTI: - Along with his other injuries.

FORD: Ok. Now didn't - doesn't your autopsy reflect that the organs are pale?

PERETTI: Um - yes.

FORD: The internal organs?

PERETTI: Yes.

FORD: And that means - they become pale when the blood is gone from it, is that right?

PERETTI: That's correct.

FORD: Ok. Now isn't it true Doctor that people have 5 - about 5 pints of blood?

PERETTI: A little more than that, yes.

FORD: Ok. Um - now if I poured out 5 pints of blood - out here on the floor, it would make a big mess - wouldn't it?

PERETTI: Yes.

FORD: And it would be almost impossible to clean up, wouldn't it?

PERETTI: Oh, you could do it, but not very easily.

FORD: It would be very, very difficult - wouldn't it?

PERETTI: It's not easy to clean blood.

FORD: Ok. Does blood soak into the ground?

PERETTI: Um - yes, it does.

FORD: Ok. Would blood - would blood soak into wood?

PERETTI: Oh, yes.

FORD: Um - Doctor, with this - with this homicide we're talking about here today, would you agree with me that this could have happened in one of three ways? These injuries could have happened in the water, these injuries could have happened on the bank there by the side of the ditch, or it could have happened somewhere else. Would you agree with me that those are the three possibilities of how this could have happened?

PERETTI: Yes.

FORD: Ok. Now would you also agree with me that based on what you saw - that was done to these boys, that it would be highly improbable for it to happen in the water?

PERETTI: It would be very difficult.

FORD: Ok. And would you also agree with me Doctor, that it would be highly improbable for the amount of blood to have been - that these injuries would have caused to - if they fell on the bank, to wash all that away?

FOGLEMAN: Your Honor, I've got to enter an objection. Dr. Peretti has indicated he did not go to the scene. He is not familiar with the scene. And I don't believe he is really in a position to give an opinion, based on the question that Mr. Ford has uh - given to him.

FORD: Your Honor, this is their doctor. This is their expert. He has indicated he's a forensic pathologist, that that's their job - that's their duties. I'm - he knows about blood and how blood works. And I'm asking for his opinion -

THE COURT: I will allow him to testify as to the quantity of the blood, but you're asking him a question I think goes beyond his expertise. He didn't go to the scene, he didn't uh - I don't know if he knows the type soil, the absorbtion rate of fluids, I - Doctor, are you prepared to give a statement on uh - or an opinion on that?

PERITTI: Well, I don't know the absorption rate so - of blood at the scene um - in soil. But I would just like to clarify one fact for the court that I am not um - a prosecution witness. The crime lab is an independent agency. Um - we don't work for the defense, we don't work for the prosecution. We are an independent agency. So, I would just like to clarify that.

PRICE: Judge, if I could interject. Judge, Dr. Peretti is an expert witness. The fact that we've had earlier testimony in this trial that there was no blood found at the crime scene, is a fact that the Doctor can also take into consideration - since he is an expert witness.

THE COURT: Well, if he can take that fact that apparently you're -

FORD: - Let me rephrase my question.

THE COURT: Then alright, rephrase your question.

FORD: May I rephrase my question. Dr. Peretti, based on your skill, your education, your training as a forensic pathologist, the experience that you have had over the years, with your knowledge of the amount of blood that was lost from not only Chris Byers but these other boys who've had some pretty - they're going to bleed as well, won't they?

PERITTI: Oh, yes.

FORD: Ok. With the amount of blood that you would expect from those injuries, do you have an opinion as to whether or not you could clean up that amount of blood at a scene, in the dark? Do you have an opinion as to that?

PERITTI: I think it would be quite difficult to do.

FORD: So of the three possibilities that you agreed with me on - in the water, on the bank, or somewhere else - the most plausible is that it happened somewhere else, of those three. Is that correct?

PERITTI: Well in a hypothetical situation, if there's no blood - from what I understand the scene is bloodless, in the information that's been provided to me. I don't know if that's - if I'm interpreting that information incorrect. I - I just think it would be difficult to have um - injuries of this nature without having any blood. I mean, that's - I would question that, about the blood. Unless it happened in the water or it happened some other place.

FORD: Ok. And you again Doctor said that you couldn't - you couldn't do this in the water?

PERITTI: Personally, I don't think I could.

FORD: Dr. Peretti, I want to move now to a new area. Probably the most important area of this trial. Did you have an opportunity to review the coroner's reports?

PERITTI: The reports, yes.

FORD: That the coroner reported?

PERITTI: Yes sir.

FORD: Ok. And you read them?

PERITTI: Yes sir.

FORD: And you examined the bodies?

PERITTI: Yes sir.

FORD: And made your findings?

PERITTI: That's correct.

FORD: And I noticed yesterday that the prosecutor asked you about time of death. Remember him asking you about time of death?

PERITTI: Yes, The generalities yes.

FORD: He asked you the generalities. How many times have you talked to the prosecutors in this case? From the beginning up to now.

PERITTI: We have had multiple discussions. I can't pinpoint a number.

FORD: A half a dozen?

PERITTI: I would say that would be fair.

FORD: Dr. Peretti, based on your skill, and your training, and your experience, your review of the bodies themselves, the information contained in the coroner's report, taking in all of the factors of the environment, manner of death - do you have an opinion as to the time of death?

PERITTI: The only opinion I can give is like I explained yesterday, I can't tell you that someone died at 10:00 or 2:30, um - the only thing I can do is give you um - an estimate of a range.

FORD: Alright. And what is that range doctor, if you have one?

PERITTI: Well, with the bodies being in the water it makes it much more difficult. Um - you know, especially with the fact that the lividity um - fixing, um - being fixed, um - compared to being um - unfixed. You know, based - I - you're - I'm assuming you're asking me to base my opinion just on that one factor in the coroner's report.

FORD: I'm asking you to base it on what you know, your experience, your training, your information that you have evaluated in this case. What time doctor, in your opinion is the range that these boys were killed? What time?

PERITTI: Well, given a very wide-open range for the fixation of the um - lividity, you know, calculating back - it is very, very difficult to do just based on lividity alone. But - you know, based on the other factors that I would have to take in consideration, you could say that the lividity would fix up to um - 12 to um - 15 hours. It could be longer, and it could be shorter.

FORD: Well, what is the time doctor? What time is that range?

PERITTI: Well, what time are you asking me to -

FORD: - I'm asking -

PERITTI: - No - to calculate from, from the time the bodies were found or the time the coroner pronounced them?

FORD: I'm asking you to tell this jury, in your opinion - in your opinion, based on what you have read, what is your opinion as to the time of death? What time?

PERITTI: Well, based on what I know, it would be um - as a very, broad range - between 1 and -- 1AM and - you know, 5-7 in the morning.

FORD: 1AM to 5AM Thursday, May the 6th.

PERITTI: Yes.

FORD: Dr. Peretti, is that opinion based upon a reasonable degree of medical certainty?

PERITTI: It's based on the facts that I know. As I stated um - yesterday, determination of the time of death is more of an art and not a science. And it's very subjective. And um - I'm just going by one fact that was put in the report. I wasn't at the scene. I didn't have the opportunity to review - to examine the bodies at the scene. But - you know, based on the information that I have - I mean, it could be a little shorter. It could be a little longer.

FORD: But that is your opinion though, isn't it doctor?

PERITTI: That's my opinion - that range.

FORD: Thank you. Your honor, I pass the witness.

DAVIS: Now Dr. Peretti, at one point when Mr. Fogleman and I went to your office, we asked you based on the information contained in the coroner's report, could you give an accurate estimation as to the time of death. And what did you tell us?

PERITTI: I told him it was very difficult to do, that I think the best person would have been to have the coroner - based on what he has in his report.

DAVIS: Ok. Did you in fact not tell us at that time that you could not give an accurate estimation as to time of death based on one factor alone.

PERITTI: That's right.

DAVIS: Ok. And in fact, in that coroner report, the only factor you had was one - correct?

PERITTI: That's correct.

DAVIS: And in fact, that one factor was lividity - was it not?

PERITTI: That's correct.

DAVIS: Ok. Are you familiar with an author, Vincent DeMayo.

PERITTI: Yes I am.

DAVIS: And in fact, you and Vince are on a first-name basis, correct?

PERITTI: That's correct.

DAVIS: And is this book on forensic pathology an accepted text in the field?

PERITTI: Yes it is.

DAVIS: Ok. And I've got marked there for you doctor, a section regarding the estimation of the time of death. Does it indicate - first off, have you read that portion of Dr. DeMayo's book?

PERITTI: Yes I did.

DAVIS: And He's a noted forensic pathologist, correct?

PERITTI: Yes.

DAVIS: Does it indicate in there - is there a portion that indicates how significant lividity is in making a determination of the time of death?

PERITTI: Yes, there is.

DAVIS: Ok. And what does it say regarding - in single factor of lividity, in terms of estimating the time of death?

PERITTI: Did you want me to read the sentence?

DAVIS: Yes sir, I think it's on the second page.

PERITTI: There are two sentences. It says: Fixation can occur before eight to 12 hours if decompensation is accelerated, or at 24 to 36 hours if delayed by cool temperatures. Thus, the statement that rigor mortis becomes fixed at eight to 12 hours, is really just a vague generalization.

DAVIS: Ok. So, Dr. DeMayo - a renowned forensic pathologist, indicates that that 8 to 12-hour time period is just a generalization - correct?

PERITTI: That's correct

DAVIS: And one of the factors which would throw that off would be the cooling of the body, correct?

PERITTI: That's correct

DAVIS: And I believe that you indicated in the coroner's report - or it's indicated in the coroner's report that the estimate of the water temperature was approximately 60 degrees, is that right?

PERITTI: That's correct.

DAVIS: And that would mean that if the bodies were immediately submerged in water, that they would cool by 38 degrees - just like that. Correct?

PERITTI: Well I don't know about just like that, but they would cool.

DAVIS: Ok. And we would see a significant cooling simultaneously with their bodies, or nearly simultaneously with their bodies being submerged?

PERITTI: Yes.

DAVIS: Ok. In that book - I forgot to ask you - on the next page there's a portion I have highlighted, and I would like you to refer to that - read that statement for us doctor.

PERITTI: It says: livor mortis is not very important in determining the time of death.

DAVIS: Ok, would you agree to that statement?

PERITTI: Well, livor mortis is more important in determining the position of a body.

DAVIS: Ok. And the truth of the matter is, when determining time of death you look for two other factors - or you need two other factors to even make an estimate: algor mortis and rigor mortis, which is body temperature and body stiffness.

PERITTI: That's correct.

DAVIS: And without the three factors - or information regarding the three, any estimation would be very difficult, correct?

PERITTI: It's a difficult thing to do - the estimating.

DAVIS: Ok. And in this particular instance, the coroner's report reflects he didn't make any determinations as to rigor. Correct?

PERITTI: That's correct.

DAVIS: And the reason was, because to do that would require him to manipulate or mess up the bindings that were binding the children.

PERITTI: For the rigor mortis in the extremities, yes.

DAVIS: Right. So he couldn't make a determination as to that factor?

PERITTI: In the extremities, yes.

DAVIS: Ok. And to determine algor mortis, you would need - the best means would be to take a rectal temperature, correct?

PERITTI: Rectal or liver temperature, yes.

DAVIS: Ok. And to take a rectal temperature could possibly affect evidence of a sexual or sodomization of the children, correct?

PERITTI: That's correct.

DAVIS: Ok. And so that wasn't done either. So you didn't have that information to work with, correct?

PERITTI: That's correct.

DAVIS: Ok. And you did indicate yesterday that there were no mosquito bites or insect bites on the children. Correct?

PERITTI: That is correct.

DAVIS: Now as I understood your testimony - the sexual mutilation, basically the skin was peeled off the penis and the head of the penis was removed?

PERITTI: Along with the uh - scrotal sac and testes.

DAVIS: Right. And you aren't familiar with the area out there, where the crime scene occurred as far as the configuration of the ditchbank - what the ditchbank's like, or the creekbank's like near the water, or any of that sort of information?

PERITTI: I believe I saw a photograph of it.

DAVIS: Ok. Now Dr. Peretti, let me talk - Mr. Ford asked you about these weapons - if you could say positively that those weapons caused the injuries. And if I understood your testimony yesterday, there was one weapon used on these three boys that was a sharp object such as a knife - correct?

PERITTI: That's correct.

DAVIS: Ok.

FORD: Your Honor, I want to object to the leading. This is his witness - he's leading his witness in an effort to rehabilitate him.

THE COURT: That's an expert witness, go ahead.

FORD: Is my objection overruled?

THE COURT: Overruled. Yes.

DAVIDSON: We join in that motion, your Honor.

THE COURT: Overruled, go ahead.

DAVIS: So there's one weapon that's a sharp object such as a knife?

PERITTI: That's correct.

DAVIS: Ok. One weapon that would be consistent with the size of a broom handle, correct?

PERITTI: That's correct.

DAVIS: And yet another injury caused by a weapon that's large and blunt?

PERITTI: That's correct.

DAVIS: So, even though your testimony is not that these two particular items caused the injuries, you found injuries consistent with three different type weapons - is that correct, Doctor?

PERITTI: That's correct.

DAVIS: Mr. Ford also asked you if there were any findings of sperm either in the anal area of the children or in the mouth - on the mouth swabs of the children.

PERITTI: That's correct.

DAVIS: And it's my understanding that you didn't find evidence -

PERITTI: No sperm was detected.

DAVIS: Ok. Now what would the affect of bodies being submersed in water - number 1, and anal dilation - of the anus, what would the affect of that be on the loss of evidence such as sperm in a case like this?

PERITTI: Well, the water would enter into their body cavities and it could wash the sperm away.

DAVIS: Now, you talked about the serrations caused by - or the serrations patterns of these knives. And just - when we talk about serrations, I think that's a word that kindly - I don't know what it conjures up in people's minds, but we're basically talking about the same thing as saw teeth - like on a saw?

PERITTI: Yes.

DAVIS: Ok. And if you take a saw and you put the - the saw across here and you move it back and forth, are you going to be able to tell that that's a serrated injury? Or is it just going to be a straight line cut?

PERITTI: A straight line.

DAVIS: Ok. Now if you take that saw and say, slap it down across your arm - not cut, but slap it down. Are you then going to be able to see where the teeth or the points of that saw come in contact with the skin?

PERITTI: Yes, you would.

DAVIS: Ok. Now would you - the injuries that you determined were serrated, those are not injuries where the blade moved - is that correct Doctor, as far as moving back and forth on the skin?

PERITTI: No, they're injuries of the blade rubbing up against the skin.

DAVIS: Ok. And so one way that you would see serrated patterns would be if the serrations were dragged crossways across the skin, correct?

PERITTI: That's correct.

DAVIS: Ok. And if the serrations were slapped down on the skin then you would also see a serrated pattern?

PERITTI: Yes.

DAVIS: Ok. But if the serrations are moved like this, you end up with a straight line?

PERITTI: That's correct.

DAVIS: And the smaller the serration, or the distance between points to the less distance you have to move that knife to end up with a straight line incision, correct?

PERITTI: That would be correct, yes.

DAVIS: Ok. Mr. Ford asked you about whether or not there was uh - any signs of physical injury uh - to the - and I don't know what's the proper scientific term is, but inside the anal area - lacerations.

PERITTI: Right.

DAVIS: And you indicated there weren't.

PERITTI: That's correct.

DAVIS: Are you familiar with medical literature regarding injuries from sodomy to small children which indicates that there may not be any lacerations inside the anal area?

PERITTI: There is literature to that fact, yes.

DAVIS: And the injuries that you look for inside the anal area would be consistent if there was forced penetration of a large object, correct?

PERITTI: That's correct.

DAVIS: Ok. And so attempted anal penetration - you would not expect to find the lacerations, correct?

PERITTI: If the object did not enter into the um - anus, yes.

DAVIS: Ok. And as far as the lack of sperm both in the anal area and in the mouth - all the sperm would indicate would be ejaculation, correct?

PERITTI: That's correct.

DAVIS: There can be sexual assault and sexual attack without the presence of sperm, correct?

PERITTI: That's correct.

DAVIS: And I believe I understood you to say that the lacerations and the degree of trauma to the anal area would be based on the size of the penis - if the person was sexually attacked?

PERITTI: Penis or object, yes.

DAVIS: Your Honor, can I have one minute?

THE COURT: Yes.

(pause)

DAVIS: Doctor, one question that I neglected to ask. Yesterday you were referring - and I don't recall now, but there was one of the boys that you indicated had a round type circular abrasion to the forehead with a - what was - it looked like, kindly another abrasion in the center.

PERITTI: Yes sir.

DAVIS: And you said that was consistent with a belt buckle?

PERITTI: You see that type of injury - it's a belt buckle type injury.

DAVIS: Ok. And that was to the boy's forehead?

PERITTI: Yes sir.

DAVIS: Ok. Now Doctor, just once again so I understand it. In this estimation that you gave Mr. Ford as to the time of death, that was based on only one factor, is that correct?

PERITTI: Based on - you know, when they were last seen, when they're found dead, and what was found - the lividity, when the coroner arrived at the scene.

DAVIS: Ok. But your opinion was not based on all those factors, it was based on only one thing - lividity, correct?

PERITTI: Well, the lividity and the two factors that I just mentioned because I'm going to have to take them into consideration.

DAVIS: In other words, they couldn't have died before they were last seen or after they were found.

PERITTI: That's right.

DAVIS: Ok. And the only medical factor that you based it on was lividity, correct?

PERITTI: That's the only factor yes.

DAVIS: And that was information that you obtained out of the coroner's report?

PERITTI: That's correct.

DAVIS: Ok. Now in your day-to-day business as a forensic pathologist, if you had - if you were presented with the one factor of lividity, would you feel - and no other information in terms of body temperature, amount of rigor, anything of that nature - if you were presented with that, would you feel comfortable in making estimations regarding time of death.

PERITTI: I wouldn't be too comfortable with just that one factor, lividity.

DAVIS: Did you have reason to question the accuracy of some of the information contained in the coroner's report? And I realize that's a difficult question to put to you but did you have reason to question it?

PERITTI: The um - the coroner's report wasn't written to the standards that it should have been written to.

DAVIS: Ok. And after you had received the bodies, did in fact, the coroner contact you requesting information concerning the condition of the body to put into his report?

PERITTI: He wanted information, yes, that's correct.

DAVIS: And was it your conclusion that he had failed to get the information that a coroner would normally get prior to sending the bodies to your office.

PERITTI: That's correct. I don't um - I'm not being critical of anyone in particular, but it is the - Arkansas has a coroner system and it is the coroner's responsibility when they go to the scene to provide us with a report. Um - they are the ones at the scene. They are the ones making the evaluation - you know, based on the - some of them, the limited experience that they have. Um - I don't - when coroners call me up and say to me: Doc, what did you find, tell me the lividity and rigor mortis after I already viewed the body, I don't give that information out to them because that - they're supposed to do that at the scene. And that is being very dishonest 'cause I know what would happen. Reports may get altered to reflect what I am saying because those coroners' reports should come in with the bodies. When our investigators go to the scene and pick up the bodies, we like to have - you know, a coroner's report that day handwritten out or something faxed us that day. Um - so I don't give that information out to coroners when they call. If they want other information such as cause of death and type of injuries, I will provide them with that information because they need to know that. But as far as any particular facts uh - pertaining um - to a body, such as lividity - settling of the blood, or the rigidity - the rigor mortis, I don't provide them with that information.

DAVIS: And the - his reference in his report to lividity, determining whether lividity is present or whether blanching occurs is a judgment call. Isn't it doctor?

PERITTI: On his part. He did the examination. You know, I don't - I am not being critical of the coroner here in this county. I don't know his degree of um - expertise or training um - when it comes to making these um - determinations.

DAVIS: But that's - basically we're talking about a degree of discoloration, correct?

PERITTI: The blanching, yes.

DAVIS: Ok. And with a body that's lost a lot of blood, the lividity would be very pale or it would be very slight at best - correct?

PERITTI: That's correct.

DAVIS: Ok. And so we are talking about your estimation was based on the one factor that he provided to you, that was a judgment determination on his part.

PERITTI: That's correct.

DAVIS: Ok. And this is the same individual that contacted you after the bodies were received to get information to fill out his coroner's report.

PERITTI: Well, I don't want to say he wanted the information to fill out the coroner's report. I don't want to imply that. But he wanted information. So. But I didn't give it out. So whatever - what he was going to do with that information, I don't know.

DAVIS: No further questions your honor.

THE COURT: Anything else?

FORD: Dr. Peretti, I believe you indicated that uh - Dr. DeMayo and you are on a first-name basis.

PERETTI: Oh, yes.

FORD: Before you got up here and testified here today, were you aware of that language in that book?

PERETTI: Um - Yes I was.

FORD: You knew that it existed before you gave your opinions.

PERETTI: That's correct.

FORD: Ok. Do you - do doctors agree with everything from doctor to doctor, or are there differences in opinion?

PERETTI: There's always a difference of opinion.

FORD: Ok, Now your.....

PERETTI: In most cases.

FORD: Now, do the coroner reports indicate what the temperature of the water was? Does it?

PERETTI: Um - do you have a copy of that? I have it -

FORD: I've got one, just as second.....Approximately here, Doctor. Does it indicate there um - what the temperature of the water was?

PERETTI: It says um - approximately 60 degrees.

FORD: And did you know that? Were you aware of that fact?

PERETTI: Yes.

FORD: When you gave your opinion here today?

PERETTI: Yes.

FORD: Ok. And did you take that into consideration?

PERETTI: I took that into consideration, yes.

FORD: And Doctor, did you also take into consideration your experience?

PERETTI: Yes sir.

FORD: And all of the knowledge that you have gained over the years of being a pathologist.

PERETTI: Yes sir.

FORD: Ok. And you also told me earlier Doctor that there were um - you took into consideration factors like how hot it was that day.

PERETTI: The ambient temperature.

FORD: The air temperature.

PERETTI: Yes sir.

FORD: Ok. You took that into account. You took into account the water temperature?

PERETTI: Yes sir.

FORD: Took into account when they disappeared?

PERETTI: Yes sir.

FORD: Took into account when they were found?

PERETTI: That's correct.

FORD: Took into account the cause of death?

PERETTI: That's correct.

FORD: Took into account the manner of death?

PERETTI: That's correct.

FORD: Um - you also indicated that you had um - two other doctors that you worked with?

PERETTI: Yes.

FORD: Ok. And did you discuss your opinion with them?

PERETTI: We discussed it.

FORD: Ok. And do they concur your opinion?

PERETTI: Uh - they're in agreement.

FORD: Pass the witness.

THE COURT: Anything else?

PRICE: Nothing further, Judge.

DAVIS: Judge, just one question. In the coroner's report that you referred to, which provided the one factor upon which your opinion is based - did it - was there any differentiation between the lividity in either of the three boys or did it - in his report indicate they were all the same?

PERETTI: Um -the reports indicate they're all the same.

DAVIS: Ok. And based on your knowledge of physical reactions of the body upon massive blood loss, that doesn't seem to make much sense does it - when one boy bled to death and the other boys had minimal bleeding, you would expect there to be a difference in the lividity.

PERETTI: Well, in the coroner's report it just states um - lividity blanches um - with pressure, I believe that's how it's phrased. Um - it doesn't mention the amount of lividity, where the lividity is. Um - We are building a house starting with the roof and not with the foundation. So um - you know, it just says lividity blanches with pressure. I don't know where he's measuring that from um - what part of the body. I have no idea. It would be best to ask him.

DAVIS: No further questions your honor.

PRICE: Judge, I - Doctor, would there have been blood on the clothing if the bodies - boys would have been beaten with their clothes on?

PERETTI: Um - I would um - believe - I would assume you would find blood on the - on the clothing.

PRICE: Nothing further.

FORD: Nothing further, your Honor.

THE COURT: Last chance. Alright, you're free to go Doctor - thank you very much.

(10 minute recess)