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Affidavit of Dr. Richard Souviron for Jimmie Duncan's  
post-conviction petition.

STATE OF FLORIDA

AFFIDAVIT OF RICHARD R. SOUVIRON, D.D.S.

I, Richard Souviron, do depose and say:

1. I received my D.D.S. from Emory University in 1960 and am a board-certified forensic odontologist.
  2. I am currently employed as the Chief Forensic Odontologist for the Miami-Dade County Florida Medical Examiner Department. I have provided consultations in the past to numerous medical examiner offices and crime laboratories and have qualified as an expert witness in the courts of seventeen states and in federal court. I am also presently an adjunct professor in the Pathology Department at the University of Miami Medical School.
  3. I am a founding member of the American Board of Forensic Odontology (ABFO) and am a fellow of the American Academy of Forensic Sciences (AAFS). I served as the president of the ABFO from 1987 to 1988 and as the vice president during 1986. I am currently on the ABFO Board of Directors. I was a member of the ABFO Ethics Committee from 1990 to 1994 and served as the committee chairman from 1992 to 1994. I received the Outstanding Forensic Odontologist Award from the AAFS in 1999-2000. In 2005, I received the AAFS Odontology Section Award, the Reidar F. Sognnaes Award of Excellence in Forensic Odontology.
  4. I was retained by defense counsel to provide my expert opinions at Jimmie C. Duncan's capital trial. At that time, I was provided with various documents and photographs and testified that the alleged bitemarks found on the body of Haley Oliveaux were not in fact bitemarks.
  5. Mr. Duncan's post-conviction counsel has provided me with additional materials which would have been highly significant to and corroborative of my findings at trial.
  6. Evidence existed and was not presented that would have significantly reinforced my finding that the marks on Haley Oliveaux's right cheek, contrary to the testimony of Dr. Neal Riesner, could not have been a bitemark. This evidence shows that none of the marks were present when Ms. Oliveaux was in the hospital, that some of the marks were later created by the removal of medical tape from Ms. Oliveaux's cheek, and that other marks were created by the flagrant misconduct of Dr. Michael West.
1. Dr. Riesner's failure to review the photographs taken of Ms. Oliveaux at the Glenwood Regional Medical Center violated published protocols, which dictate that a forensic odontologist must review all scene photographs. If he had viewed the hospital photographs, it should have been evident to him that Ms. Oliveaux did not suffer a

bitemark to her cheek. First, the photographs do not show any mark at all on Ms. Oliveaux's cheek, and if Mr. Duncan had in fact bitten her, such a mark should have at that time been visible. Second, the photographs show that the medical tape on Ms. Oliveaux's face went directly over the spot where bruising later occurred, illustrating that the mark could have been caused by the removal of the tape.

2. At trial, I testified that the hospital photographs showed that when Ms. Oliveaux was at the Glenwood Regional Medical Center, there was not a mark on her cheek. The State contested this fact, presenting the testimony of several witnesses who stated they had earlier seen red marks on Ms. Oliveaux's face. My testimony could have been corroborated by a number of materials which I have now reviewed, but were never made available to me or presented at the time of trial.
  - i. Michelle Hebert, an investigator for the Ouachita Parish Coroner's Office, was sent to the Glenwood Regional Medical Center to view Ms. Oliveaux's body and document visible injuries. Ms. Hebert made note of several injuries, but did not record any injuries to or marks on Ms. Oliveaux's right cheek.
  - ii. Debra Sherrill, a social worker for the Department of Social Services, was also sent to the Glenwood Regional Medical Center. She examined Ms. Oliveaux's body, documenting the injuries she found. None of the injuries documented were to Ms. Oliveaux's right cheek.
  - iii. Dr. West wrote a letter to the Ouachita Parish Coroner's Office in which he stated the injury to Mr. Oliveaux's right cheek was not visible when her body was brought to the morgue. Dr. West stated in the letter that marks on Ms. Oliveaux's cheek were, however, present when Dr. West returned to the morgue the next day and re-examined her body. According to the testimony of Dr. Steven Hayne, Dr. Hayne had by that time removed the medical tape from Ms. Oliveaux's face.
  - iv. At the beginning of the video recording of the examination of Ms. Oliveaux's body, there are no injuries to her face.
3. Dr. Kim Malmay, the doctor that treated Ms. Oliveaux at the Glenwood Regional Medical Center, could have corroborated my opinion that the mark on Ms. Oliveaux's cheek formed as a result of the removal of medical tape. During the civil lawsuit that followed Mr. Duncan's trial, Dr. Malmay testified that the mark may have been caused when medical tape was removed.
4. The videotape taken during the examination of Ms. Oliveaux's body shows Dr. West violently, and repeatedly, forcing a mold of Jimmie Duncan's teeth into Ms. Oliveaux's right cheek. In doing so, Dr. West produced a mark that was not previously present. Dr.



West's behavior and methods are absolutely not supported by any scientific standards or protocol.

7. Evidence that was not presented at trial reinforces my conclusion that Dr. Riesner was incorrect in finding that the mark on Ms. Oliveaux's left elbow was a bite mark. The bruising on the elbow was a result of an older injury that occurred well before Ms. Oliveaux's death.
1. The autopsy videotape shows Dr. West pushing the mold of Mr. Duncan's teeth into Ms. Oliveaux's elbow, creating a mark.
2. Unavailable to me at the time of trial were medical records from St. Francis Medical Center which clearly show that the injury to Ms. Oliveaux's elbow was old and occurred on a date well before her death. These records indicate that on November 29th and November 30th of 1993, three weeks before Ms. Oliveaux's death, various medical personnel made note of a bruise or abrasion on her left elbow. I have also been shown deposition transcripts from Carol Gwin and Bill Layton, members of Ms. Oliveaux's family, in which they remark on noticing a bruise on the back of Ms. Oliveaux's elbow weeks before her death. These medical records and statements would have shown that the injury to Ms. Oliveaux's elbow was clearly not suffered at the time of her death.
8. Dr. West and Dr. Riesner both deviated from the ABFO guidelines by not:
  1. Taking saliva samples from the injuries.
  2. Taking impressions of the injuries.
  3. Performing test bite analysis.
  4. Taking the injuries for microscopic and transillumination analysis.
  5. Making an incision into the injury to prove there was no compression of the tissue.
9. A single arch bite is rare and none of the possible explanations for its occurrence existed in this case. Instances involving multiple single arch bites are exceptionally uncommon.
10. Prior to this trial, Dr. West had been disciplined and resigned (therapeutic resignation) from the IAI (International Association for Identification) and the AAFS (American Academy of Forensic Sciences). He was also found guilty of violating the code of ethics of the ABFO and was suspended for his unethical actions for one year. He was found guilty of unethical conduct by the AAFS, however, he resigned before any disciplinary action took place.

Richard R. Souviron

Sworn to and subscribed to before me, , Notary, this day of \_\_\_\_\_, 2008 at \_\_\_\_\_.

Notary My commission expires on:

Affidavit of Dr. Harry Bonnell for Jimmie Duncan's post-conviction petition.

STATE OF CALIFORNIA

AFFIDAVIT OF HARRY J. BONNELL, M.D.

I, Harry Bonnell, do depose and say:

1. I received my M.D. from Georgetown University in 1979 and am a board-certified forensic pathologist. I am a member of both the National Association of Medical Examiners and the American Academy of Forensic Sciences. I was previously the chair of the San Diego County Child Fatality Review Committee and was also a member of the San Diego County Domestic Violence Review Committee.
2. I am currently employed as a pathologist with 4N6Pathology, Inc. Before my current position, I was for 10 years the Chief Deputy Medical Examiner for San Diego County, California. I have also served in the past as the Chief Deputy Coroner and Director of Forensic Pathology in Cincinnati, Ohio and as a Staff Pathologist for the Armed Forces Institute of Pathology. For nearly 15 years I was an Associate Clinical Professor of Pathology at the University of California at San Diego School of Medicine and have also served as an Assistant Professor at the University of Cincinnati College of Medicine and at the Uniformed Services University of Health Services.
3. I have been retained by the Capital Post-Conviction Project of Louisiana to provide my expert opinions in the post-conviction case of petitioner Jimmie C. Duncan. I have reviewed testimony of the emergency room doctors and forensic experts testimony at the trial and in the civil case, various medical records, Child Protective Service Records, police reports and interviews of witnesses, a videotape of Dr. West's examination of the child's body, and emergency room and autopsy photographs of Haley Oliveaux conducted in connection with Mr. Duncan's trial.
4. Based on my education, training and experience, it is my opinion to a reasonable degree of medical certainty that:
  - a. The injury to the cheek of Haley Oliveaux is not seen in hospital photos and the right cheek injury was generated by using a mold of Duncan's teeth to create a bitemark, as demonstrated by the video referenced above. The injuries on the child's face are abrasions, which form almost immediately, unlike bruises, therefore the fact that the marks are not present in the hospital photographs and in the beginning of the West Video makes it medically impossible that Jimmie Duncan could have inflicted any of these injuries. Nor is it possible that witnesses could have seen these marks at the emergency room since abrasions cannot appear, then disappear, and then reappear at the morgue;

- b. The bruising on the left elbow seen during the autopsy does not appear to be acute or occurring at the time of death; it appears older, was reportedly seen three weeks prior to death, and is certainly *not* a bite mark;
- c. Stating that the bites (which they are not) were inflicted within 30 minutes of death is rubbish and supported by no scientific fact or literature. The only way to date an injury accurately is to, within the first twenty-four hours after the injury occurred, perform a microscopic exam and observe the body's microscopic response to that injury;
- d. If microscopic analysis reveals a lack of bleeding in tissues, it indicates a lack of blood pressure and establishes that an injury was suffered after death. It does not take a period of time after an injury occurs for blood to seep into tissue; the seepage takes place immediately.
- e. Dr. Hayne testified that he based his conclusion of forcible drowning upon thumb marks and fingernail scrapes found on the body of Haley Oliveaux. However, there are no thumb marks or fingernail scrapes seen in any of the available photographs.
- f. There are no defense injuries described in the autopsy report or seen in photos. Defense injuries occur to the hands, arms and legs in attempts to ward off blows. A twenty-three month old lacks the coordination to do this. Nor are there any acute bruises visible; the only bruises on the child's body were older bruises from the chest of drawers incident, and bruising that was caused by the resuscitation efforts such as an injury on her wrist where IV's were inserted. The bruising that you can see in the photographs around the child's neck is livor mortis or pooling of blood, as noted by Dr. Norwood and Dr. Malmay. Blood pressure is *not* required for bruising because post-mortem bruising can occur as blood drains into damaged tissue as a result of gravity (lividity);
- g. The statement that the frenulum of the upper lip was lacerated due to pressing the face into the bottom of the tub is totally unsubstantiated, especially in view of the fact that the chin and nose are untraumatized. Lacerating the frenulum occurs frequently during the process of intubation as the laryngoscope is angled upwards, pressing on the upper lip. Haley was intubated three times on an emergent basis;
- h. Drowning is a diagnosis of circumstances and exclusion of other causes of death. As such, froth in the trachea, non-clotting blood, and mastoid hemorrhage are common post-mortem findings. Water, if it really was water, found in the stomach is not indicative of drowning but simply that the person swallowed water from some source;
- 1. There is nothing to support Dr. Hayne's conclusion that this child was forcibly drowned. At the time of her death this child had skull fractures from a previous accident and a history of seizures. Jimmie Duncan's account of leaving the child alone in the bathtub and finding her unconscious is entirely possible.

j. Bodies, especially unclad children, feel cool immediately following death. It would **not** take forty five minutes to an hour after death before a child's body would feel cool. Dr. Hayne's statement to the contrary is erroneous. Any hospital-based pediatric nurse or doctor will confirm that infants begin to cool immediately following death because of their small mass which cannot retain heat and their relatively large skin surface area which dissipates heat. The observations of Dr. Malmay, the Emergency Room physician, also confirm that Haley had died only very recently before being examined;

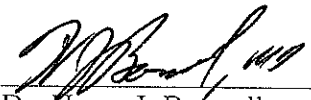
j. Without evidence of semen in the vagina, there is no way to prove that penetration of the vagina was by a penis; digital penetration can leave skin cells containing DNA and penetration by other objects such as fruits, vegetables or inanimate objects can produce the same trauma as a penis.

k. Dr. Gustavson's explanation that the anal trauma occurred due to the assailant's pelvis grinding against the victim's pelvis is ludicrous and probably based on fantasy, definitely not scientific or medical fact. If there was significant penetration by a penis or similar sized object, there would also be tearing and probable perforation of the rectum, which was not present. Similarly, his civil testimony is egregiously inaccurate when he states that bruising around the eyes can only come from the brain; black eyes quite often occur without brain injury. He is also incorrect when he states that a 60 foot fall is required to cause a subdural hematoma, as they may be seen in falls from heights of less than ten feet, and again incorrect when he states the child had old scars in her anus and rectum, as they are not described on autopsy findings or present in photos;

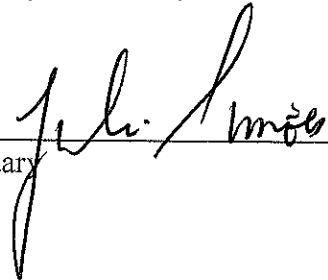
l. Dr. Hayne and Dr. Gustavson testified that, absent medical intervention, Haley Oliveaux would have bled to death from her anal injuries. This claim is completely unsubstantiated by scientific fact or literature. The lack of blood clotting of the anal injury would support that the anal injury may have occurred 24-48 hours prior to her death and had begun to heal.

m. While I am able to base particular opinions and conclusions on the record that is available to Mr. Duncan's counsel, I am not able to reach a definitive conclusion on the nature of the anal trauma suffered by Haley Oliveaux. To reach a conclusion on the issue, it would be necessary for me to examine the microscopic slides, or alternatively, recut slides, of the sections of rectal tissue removed from Haley Oliveaux's anus and rectum during the autopsy of her body performed by Dr. Hayne. Without access to these slides, it would be virtually impossible for me to render a reliable conclusion on key issues regarding Haley Oliveaux's anal and rectal injuries, such as the dating of when those injuries occurred. Dr. Gustafson and Dr. Kirschner did not examine the tissue slides according to the trial testimony and could not render opinions as to the cause of the injuries that had any scientific reliability. Since these slides are known to be of evidentiary value in determining whether or not criminal activity occurred, they must be preserved and stored somewhere.

n. I previously reviewed Dr. Hayne's work in *State v. Walter Conlee* in Mississippi and found his autopsy findings to be "near total speculation" and contrary to what was seen in photos. In that case Dr. Hayne failed to perform toxicology studies and failed to describe the microscopic findings in the lung and liver tissue which was egregious error. Moreover, although the victim's body was partially skeletonized, Dr. Hayne claimed he could determine that the victim had died from strangulation, which is medically impossible, and described body parts which were no longer present.

  
Dr. Harry J. Bonnell

Sworn to and subscribed to before me, Julio SIMOES, Notary, this  
11 day of December 2008 at El Cajon CA 92020.

  
Notary

My commission expires on: 12/09/2011

**Jurat**

State of California

County of San Diego

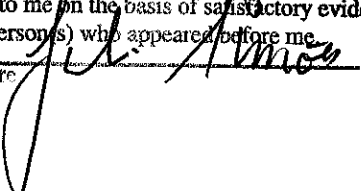
Subscribed and sworn to (or affirmed)

before me on this 11 day of December

2008 by Harry James Bonnell

Proved to me on the basis of satisfactory evidence

to the person(s) who appeared before me.

Signature  (Notary seal)



Michael West's report to the coroner's office explaining his bite mark examination.



**MICHAEL H. WEST**

*Deputy Medical Examiner Investigator*  
**FORREST COUNTY MISSISSIPPI**

Box 15846  
osburg, MS 39402

Business: (601) 264-2474  
Residence: (601) 264-1422

December 30, 1993

Office of the District Attorney  
Charles L. Cook  
P.O.Box 1652  
Monroe LA 71210

RE: Oliveaux

Dear Chuck:

On 18 Dec 93, I did recieve a call from Dr. Steve Hayne requesting assistance in a death investigation. That day I did travel to the Rankin Co. Morgue in Pearl MS. There I did examine the remains of an 23 m/o white female, Haley Oliveaux. She was examined and photographed. A bruise pattern was noted on her left elbow. It was decided to allow her to rest in the morgue cooler for 24 hours and then be re-examined.

On 19 Dec 93 I did return to the morgue and re-examined her body. The exam included UV and NBI scanning. Several other areas were noted: left wrist, right cheek and right arm. Chris Sasser, West Monroe P.D. supplied me with dental study models (DSM) of one Chris Duncan. These models were compared to the areas noted. Color, black & white, Fluorescent UV and NBI still photos and video tape were taken.

**OPINIONS**

The areas noted: left elbow, left wrist, right cheek and right arm are human bite marks.

The bite marks are mild to moderate in nature.

The bite marks were inflicted within 30 minutes of her death.

There is a high degree of correlation with the DSM of Chris Duncan and the bitemarks on the left elbow, left wrist and right arm.

A positive match of class and individual characteristics were made between the DSM of Chris Duncan and the bite mark on the right cheek of Haley Oliveaux.

If I can be of any further assistance in this matter, please feel free to contact me at home or office.

Sincerely,



Michael H. West BS DDS ABFO DMEI SCSA

Autopsy report on Haley Oliveaux, prepared by Dr. Steven Hayne.

# REPORT OF POST MORTEM EXAMINATION

Steven T. Hayne, M.D., F.C.A.P.  
350 Crossgates Blvd., Brandon, MS 39042

AME12-E7-93  
Off: 601-825-1541  
Res: 601-992-4583

Decedent Haley Oliveaux Authorized by Dr. Claude Smith, CMEI,

Type of Death ☒ Violent or Unnatural Quachita Parish, LA  
☐ Unattended by Physician ☐ Unusual  
☐ Sudden in apparent health ☐ In prison  
☐ Suspicious

RIGOR ☒ Jaw ☒ Arms LIVOR ☐ Color Purple  
☒ Neck ☒ Chest ☐ Anterior ☒ Posterior  
☒ Back ☒ Abdomen ☐ Lateral  
☒ Legs ☐ Regional ☐ Fixed.

Age 23 mo. Race Cau. Sex F Length 35" Weight 30 lb Eyes Blue Pupils R0.2  
Hair Blond Beard no Mustache no Circumcised n/a Body Heat Absent L0.2  
Opacities, etc

BODY IDENTIFIED BY: Dr. Claude Smith \* PERSONS PRESENT AT AUTOPSY:

Clothes: None. \* Prosecutor  
Jewelry: None. \* Jimmy Roberts, CMEI, Rankin  
Valuables: None. \* Victor Beckley, Diener  
Others: None. \* Dr. Michael West, DCMEI,  
Serology: 1 red blood/1 purple blood. \* Chris Sasser, Det. WM PD  
Toxicology: 1 gray blood. \* Larry LaBorde, Chief Police  
Trace Evidence: RSVK IIII/photographs. \* Robert Staley, Asst. DA.  
USE OF DEATH: Fresh water drowning. \* Pat Kelly, Capt., WM PD  
MANNER OF DEATH: Homicide. \* Chuck Cook, 1st Asst DA

## 1. GENERAL:

The post mortem examination is requested by Dr. Claude Smith, Coroner, of Ouachita Parish, Louisiana. The request for the post mortem examination is made in that the decedent, Haley Oliveaux, died a violent death. The request for the post mortem examination is in compliance with the Coroners Reorganization Act of 1986.

\* ☐ Provisional Report  
\* ☒ Final Report  
\*

Facts stated herein are true and correct to the best of my knowledge and belief:

Steven T. Hayne, M.D., F.C.A.P.  
Anatomic, Forensic & Clinical Pathology  
Deputy Coroner, Rankin County  
Designated Pathologist,  
Mississippi State Medical Examiner's Off.

1100 hours, 18 December 1993  
Completed, 19 December 1993  
Time and Date  
Rankin County Morgue  
Pearl, Mississippi  
Place of Autopsy

181177A

The post mortem examination is conducted at the Rankin County Morgue in Pearl, Mississippi commencing at 2100 hours on 18 December 1993, and being completed on 19 December 1993. The remains are identified as those of Haley Oliveaux by Dr. Claude Smith. Individuals present and attending the post mortem examination include Dr. Michael West, Deputy Coroner Medical Examiner/Investigator of Forrest County and Forensic Odontologist, the prosecutor, Jimmy Roberts, Coroner Medical Examiner/Investigator of Rankin County, Victor Beckley, Diener, Larry LaBorde, Chief Police Department, West Monroe Police Department, and Pat Kelly, Captain, West Monroe Police Department.

The decedent is a white female appearing the approximate recorded age of 23 months. No clothing, valuables, or jewelry are identified on the remains. The decedent is noted to measure 35 inches in length, and have an approximate body weight 30 pounds. Well-developed rigor mortis is present and noted to involve the jaw, neck, back, legs, arms, chest, and abdomen. Fixed purple livor mortis is present over the posterior aspects of the remains. Body heat is absent.

## 2. EXTERNAL EXAMINATION:

A. Head and Neck: Examination of the scalp reveals the scalp to be covered with blond hair. The eyes are blue, the sclerae are clear, and the pupils are fixed, bilaterally, at 0.2 cm. An endotracheal tube is present within the mouth and is held in that position with tape. A nasogastric tube is present within the nares and is held in that position with tape. Multiple subacute contusions are identified over the forehead that measure up to 2 cm. In addition, raccoon eyes are identified, bilaterally. Acute abrasions are identified over the left cheek that measure up to 2 cm. Multiple acute contusions are identified over the right cheek that measure up to 2 cm, and multiple acute abrasions are identified to involve the right angle of the mouth that measure up to 2 cm. Acute abrasions are identified over the left cheek as well as the angle of the mouth that are linear in configuration that measure up to 2 cm. Examination of the scalp reveals the presence of a 2 cm acute contusion identified over the apex of the scalp immediately to the right of the midline in the superior occipital site. Examination of the right neck reveals the presence of two curvilinear abrasions, the first of which measures 1.2 cm and is identified on the right lateral aspect of the neck, and the second of which measures 0.9 cm and is found on the angle of the jaw extending, minimally, to involve the right lateral aspect of the neck, and each is consistent with a fingernail abrasion. Multiple abrasions course over the right side of the neck and are linear in configuration measuring up to 3 cm. Multiple contusions are identified over the right side of the neck that measure up to 2 cm. Examination of the left side of the neck, as well as the posterior surface of the neck reveals the presence of an area of pink discoloration that is noted to involve

Dr. Steven T. Hayne

the frenulum that measures 0.6 cm.

B. Right Upper Extremity: Examination of the right arm, forearm, and hand reveals the presence of an acute contusion identified over the posterior surfaces of the forearm that measures up to 3 cm in single greatest dimension. A puncture site is identified in the anterior surface of the wrist. The fingernails are intact, and no tears to the fingernails are identified.

C. Left Upper Extremity: Examination of the left arm, forearm, and hand reveals the presence of two puncture sites identified in the area of the antecubital fossa. Two linear abrasions measuring up to 2 cm are identified over the anterior surface of the arm. Contusions, both acute and subacute, are identified over the elbow that measure up to 2.5 cm. A 1.5 cm acute contusion is identified over the distal posterior surface of the forearm. The fingernails are intact, and no tears to the fingernails are identified.

D. Right Lower Extremity: Examination of the right leg and foot reveals the presence of an interosseous catheter identified on the anterior of the shin. Tape is identified over the foot. A 0.5 cm acute contusion is identified over the distal aspect of the calf. A 0.5 cm acute contusion is identified over the proximal medial aspect of the shin.

E. Left Lower Extremity: Examination of the left leg and foot reveals the presence of tape identified over the mid aspect of the shin as well as an intravenous catheter, in place, over the anterior surface of the ankle and held in that position with tape. A 1 cm abrasion is identified over the heel.

F. Chest and Abdomen: Examination of the chest and abdomen reveals the presence of three cardiac monitor tabs identified, respectively, over the right mid superior chest wall, left mid superior chest wall, and left mid inferior chest wall. A 1 cm contusion is identified over the mid aspect of the abdominal wall and is irregular in configuration.

G. Back: Examination of the back reveals the presence of a 3 cm scar coursing over the inferior mid aspect of the back.

H. Rectum and Anus: Examination of the rectum and anus reveals the presence of multiple deep lacerations measuring up to 1 cm with focal hemorrhage in the base of the lesions. The vulva as well as the mons pubis, labia majora, labia minora, and vaginal vault are, essentially, unremarkable.

### 3. INTERNAL EXAMINATION:

The body is opened via the usual "Y" incision, and subcutaneous adipose tissue over the chest wall is noted to measure to a depth of 0.6 cm, and over the abdomen to a depth of 0.7 cm. The anterior right and left ribs are reflected en bloc with the

Dr. Steven T. Hayne

sternum in the usual manner. The right and left lungs have an aggregate mass of 310 grams. No adhesions are identified to involve the pleural surfaces. Examination of the pleural surfaces, however, reveals the presence of multiple petechiae that measure up to 0.3 cm and are found, bilaterally and extensively, to involve the five lobes. The lungs are serially cross sectioned, and a large amount of serosanguineous fluid exudes from the cut surfaces and is, focally, frothy in configuration. No clotting of the blood is identified. Examination of the distal aspect of the trachea as well as the main-stem bronchi reveals the presence of foam within the luminal space of the trachea and main-stem bronchi. The mucosal surfaces of the distal trachea as well as the main-stem bronchi reveal no distinct abnormalities.

The pericardial sac is opened and a small amount of clear wetting fluid is present within the luminal space. No adhesions are identified. The takeoff of the great vessels is unremarkable. The heart is noted to have a mass of 70 grams. External examination of the heart reveals no distinct abnormalities and no petechiae are identified over the pericardial surface. The coronary arteries are serially cross sectioned, and the cross-sectioned coronary arteries are unremarkable. The heart is serially cross sectioned, and the right ventricle measures 0.3 cm in thickness, and the left ventricle measures 0.9 cm in thickness. Evidence of acute or remote infarction is not appreciated. The four cardiac valves are unremarkable, and no evidence of congenital heart disease is found. The aorta is examined through its entire course, and no abnormalities are identified.

The abdominal cavity is opened and a small amount of clear wetting fluid is present within the luminal space.

The liver assumes it's usual right upper quadrant abdominal location and is noted to have a mass of 410 grams. The capsule is intact, and no subcapsular contusions are appreciated. The liver is serially cross sectioned, and a moderate amount of serosanguineous fluid exudes from the cut surfaces. Examination of the cross sections of the liver reveals no distinct abnormalities. The gallbladder is found on the inferior surface of the liver and is noted to measure 6 cm in length and contains approximately 10 cc of green bile. No gallstones are identified. The mucosal surface of the gallbladder is unremarkable. The biliary tree is patent to the duodenum.

The spleen assumes it's usual left upper quadrant abdominal location and is noted to have a mass of 60 grams. The capsule is intact, and no subcapsular contusions are appreciated. The spleen is serially cross sectioned, and a moderate amount of serosanguineous fluid exudes from the cut surfaces. Examination of the cross sections of the spleen reveals malpighian corpuscles to be of normal size and number.

The right and left kidneys assume the usual retroperitoneal

Dr. Steven T. Hayne

-8120A

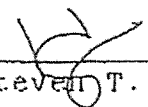
location and each is noted to have a mass of 60 grams. The capsules strip with ease revealing smooth cortical surfaces, bilaterally. The kidneys are serially cross sectioned, and a moderate amount of serosanguineous fluid exudes from the cut surfaces. The calyces are unremarkable. The ureters are single, bilaterally, and patent to the urinary bladder. No urine is found within the luminal space of the urinary bladder, and the mucosal surface of the urinary bladder is unremarkable. The corpus uterus and cervix, as well as the right and left adnexa are, essentially, within normal limits for age.

The esophagus is examined, and no abnormalities are appreciated. The stomach contains approximately 50 cc of food to consist of fragments of onion, pickle, and tomato as well as approximately 50 cc of water. The mucosal surface of the stomach is unremarkable. The contents of the stomach fail to reveal an odor of ethyl alcohol and no particulate pill matter is found within the contents of the stomach. The small bowel, vermiform appendix, and large bowel. Well-formed stool is present within the large bowel. The mesentery is unremarkable, and no adhesions are identified to involve the organs of the abdominal cavity.

The pancreas assumes it's usual retroperitoneal location and is noted to have a mass of 40 grams. The pink structure is serially cross sectioned, and no abnormalities are identified. The right and left adrenal glands assume the usual suprarenal location and each is noted to have a mass of 3 grams. The structures are serially cross sectioned, and no abnormalities are identified.

The scalp is reflected and a diffuse subgaleal hemorrhage is identified and is located, predominantly, over the right and left temple areas as well as extending into the superior occipital area and over the superior aspect of the forehead. In addition, an acute area of subgaleal hemorrhage is identified over the right occipital area of the scalp. The calvarium is removed, and a diffuse subacute subarachnoid hemorrhage is identified over the occipital lobe of the left cerebral hemisphere that measures up to 2.5 cm, and is discontinuous and multi-focal. The brain is serially cross sectioned, and no intraparenchymal lesions are identified. The dura is, subsequently, stripped and acute focal, bilateral petrous ridge hemorrhages are identified. In addition, subacute linear fractures are identified to include a non-depressed linear fracture measuring approximately 1.5 cm identified to involve the left orbital ridge in its anterior aspect. A subacute linear, focally-depressed fracture, assuming a horseshoe-like configuration is identified over the superior mid aspect of the frontal bone. Identified over the occipital bone, is a 1.4 cm subacute depressed linear fracture.

The structures of the neck are dissected after washing the cranial vault as well as the contents of the thoracic cavity and coursing water over the structures of the anterior neck prior to dissection. The neck is, then, dissected in the usual and

  
Dr. Steven T. Hayne

proscribed manner. Focal hemorrhage measuring 1.3 x 0.8 cm is identified at the base of the tongue and hemorrhage is identified about the right common carotid artery that measures up to 0.7 cm. Areas of hemorrhage are identified to involve the right and left sternocleidomastoid muscles that measure up to 0.6 cm. Examination of the larynx and trachea reveal no hemorrhage and the greater cornu of the thyroid cartilage and the hyoid bone are intact without evidence of fracture or hemorrhage about the structures.

4. TOXICOLOGY:

One gray-topped tube of ventricular heart blood is returned with the remains, under chain of custody, for toxicological analysis. The final reports are pending. If significant abnormalities are identified, an addendum will be issued to the report.

5. SEROLOGY:

One red-topped tube of ventricular heart blood is returned with the remains, under chain of custody, for appropriate serological analysis. The final reports are pending.

6. DNA STUDIES:

One purple-topped tube of ventricular heart blood is returned with the remains for DNA analysis, if and when requested. The specimens are returned under chain of custody.

7. SEXUAL ASSAULT EVALUATION:

An RSVK III sexual assault kit is employed to collect samples in the usual and proscribed manner. The collected specimens are returned, after identification and labeling, under chain of custody for appropriate analysis. The final reports are pending.

8. SPECIAL STUDIES:

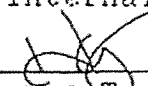
Dr. Michael West is noted to conduct a search for bite marks as well as employment of alternate light source imaging and other augmented light source views of the remains documenting the presence of injury and identifying the type of injury. His report will be submitted as a separate report.

9. PHOTOGRAPHIC DOCUMENTATION:

During the course of the post mortem examination, photographic documentation of the sustained injuries is performed by Dr. Michael West.

10. NOTIFICATION OF THE CORONER:

Upon completion of the external and internal examinations, Dr.

  
Dr. Steven T. Hayne



Claude Smith, Coroner, Ouachita Parish, Louisiana is apprised as to the preliminary cause and manner of death.

11. BODY ORGANS:

Representative sections of the major body organs are retained for microscopic analysis. The remaining and preponderance of the body tissues are returned to the body cavities.

12. TRANSPORTATION OF THE REMAINS:

The remains are transported to and from the Rankin County Morgue by private ambulance service. The condition of the remains at the time of arrival and departure is noted to be good. The decedent is transported under chain of custody in a black body bag, and the black body bag has been sealed prior to arrival at the Rankin County Morgue.

13. MICROSCOPIC ANALYSES:

A. Respiratory System: Sections of lung reveal pulmonary congestion and edema. A section of trachea is, essentially, unremarkable.

B. Cardiovascular System: Sections of myocardium are, essentially, unremarkable. Evidence of acute or remote infarction is not appreciated. A section of aorta is unremarkable.

C. Hepatobiliary System: A section of liver reveals acute congestion. Evidence of acute or chronic hepatitis is not found. A section of gallbladder reveals autolytic change.

D. Reticuloendothelial System: A section of spleen reveals acute congestion.

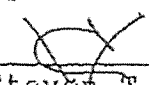
E. Genitourinary System: Sections of kidney reveal acute congestion. The glomeruli, interstitium, tubules, and blood vessels are, essentially, unremarkable.

F. Gastrointestinal System: Sections of esophagus, stomach, small bowel, vermiform appendix, and large bowel are, essentially, unremarkable.

G. Endocrine System: A section of pancreas and a section of adrenal gland are unremarkable.

H. Central Nervous System: Sections of cerebral cortex reveal focal subacute subarachnoid hemorrhage of mild intensity. In addition, vascular congestion of the meninges is present. Sections of the brain reviewed are, essentially, unremarkable.

I. Tongue: A section of tongue reveals focal hemorrhage at the base of the tongue of mild intensity.

  
Dr. Steven T. Hayne

J. Rectum: Multiple sections of rectal tissue reveal acute dermal and subcutaneous hemorrhage. No vital reaction is identified and only minimal fibrin is identified in the areas of hemorrhage.

K. Frenulum: A section of the frenulum reveals focal submucosal hemorrhage. The hemorrhage is acute without evidence of distortion of the red blood cells nor evidence of significant fibrin deposition.

L. Lesion of Left Elbow: A section of skin taken from site of the left elbow reveals focal mild acute hemorrhage. The erythrocytes are focally identified outside the vascular channels though adjacent to the vascular channels. No significant fibrin deposition is identified nor is evidence of distortion of the red blood cells seen.

M. Right Shoulder: A section of skin and subcutaneous tissue from the right shoulder reveals only rare extravasated erythrocytes lacking distortion of the normal erythrocytic outline.

N. Scalp: A section of the right occipital scalp reveals rare extravasated erythrocytes without distortion of the erythrocytes.

14. CAUSES OF DEATH:

A. Immediate Cause of Death: Fresh water drowning.

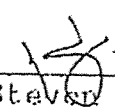
B. Acute Traumatic Injuries:

- (1) Contusion of the frenulum.
- (2) Lacerations of the rectum and anus.
- (3) Multiple contusions and abrasions, acute, of the head and neck.
- (4) Multiple contusions and abrasions, acute, of the right and left upper and lower extremities.
- (5) Acute contusion of the abdomen.
- (6) Acute hemorrhage of the base of the tongue.
- (7) Acute hemorrhage of the right and left strap muscles (sternocleidomastoid muscles).

C. Pathologic Findings Supportive of Fresh Water Drowning:

- (1) Absence of clotting of the blood.
- (2) Foam in the distal trachea and right and left main-stem bronchi.
- (3) Presence of water within the stomach.
- (4) Hemorrhage of the right and left petrous ridges.
- (5) Absence of other causes of death.

D. Subacute Traumatic Injuries:

  
Dr. Steven T. Hayne

- (1) Fractures of the cranial vault and base of the skull.
- (2) Subarachnoid hemorrhage of the occipital lobe of the left cerebral hemisphere.
- (3) Subacute contusion of the left elbow.
- (4) Subacute contusions of the forehead.
- (5) Subacute periocular hematomas, bilateral.
- (6) Subacute subgaleal hemorrhage, diffuse.

E. Other Pathologic Findings:

- (1) Pulmonary congestion and edema.
- (2) Petechiae of the pleural surfaces of the lungs, bilateral.
- (3) Hepatomegaly.
- (4) Acute hepatic congestion.
- (5) Acute splenic congestion.
- (6) Acute renal congestion, bilateral.

15. MANNER OF DEATH: Homicide.

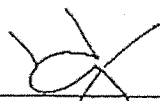
16. DISCUSSION OF THE CASE:

The decedent was noted to have both acute and subacute injuries as documented. The presence of an acute contusion over the right occipital area as well as the two curvilinear abrasions identified over the right anterior surface of the neck, one of which is further noted to involve the right angle of the jaw give evidence that the decedent was pushed into the water with an assailant's right hand. The construction gives evidence that the assailant's right thumb was placed against the posterior aspect of the scalp and two of the assailant's fingers were used to grasp the right side of the neck pushing the child under water. In addition, numerous lacerations that are acute are identified to involve the anus and rectum.

The alternate light source imaging and bite mark analysis conducted by Dr. West, during the course of the postmortem examination, are reviewed in a separate report by Dr. West.

STH/ms-5

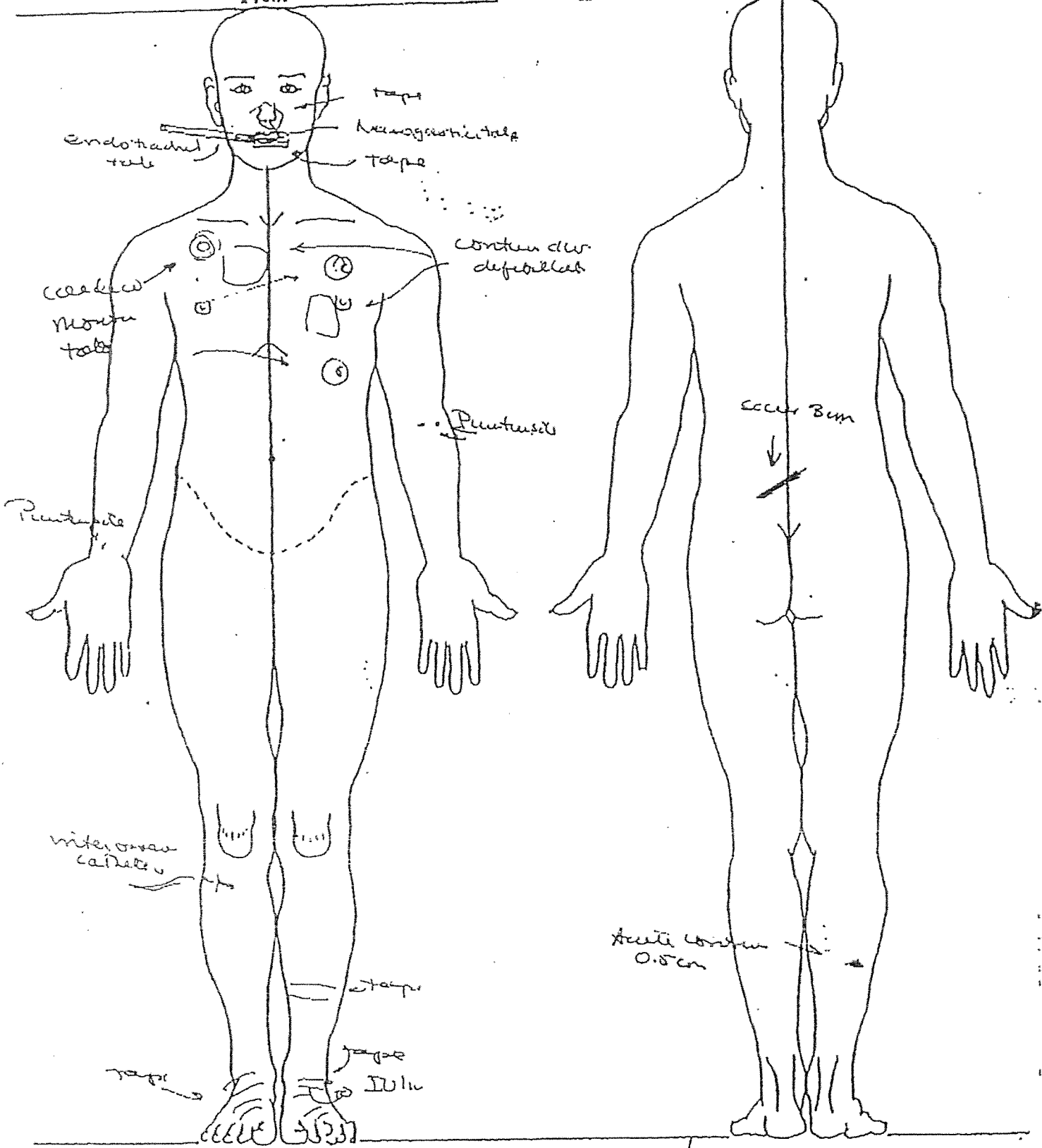
dt 03/01/94 09:45 PM

  
Dr. Steven R. Hayne

# BODY DIAGRAM

Front

Back



Decedent's Height \_\_\_\_\_ inches

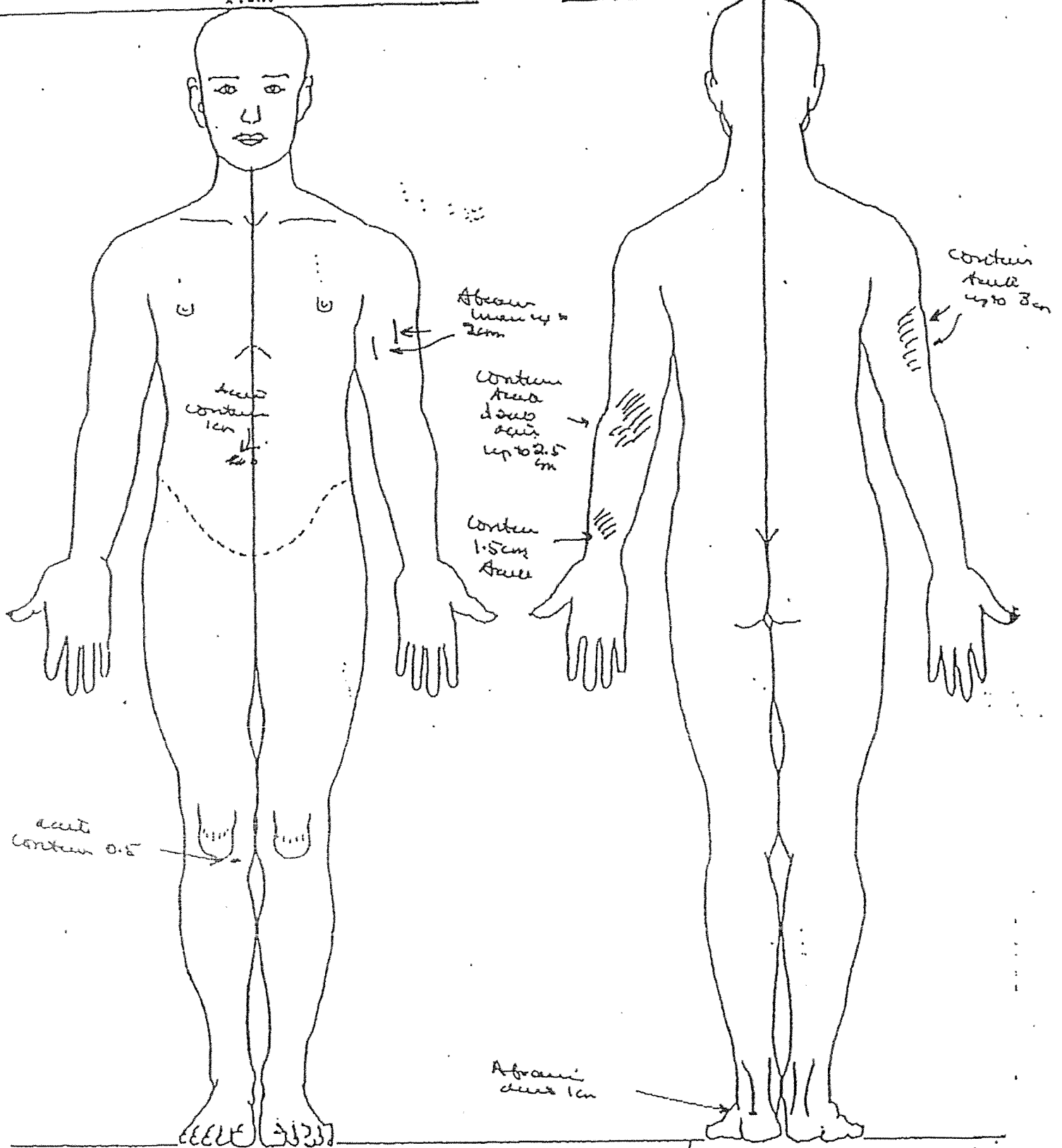
Name Henry Oliver  
 Examined by [Signature]  
 Date 19/10/2000

(10.00)

# BODY DIAGRAM

Front

Back



Decedent's  
Height \_\_\_\_\_ inches

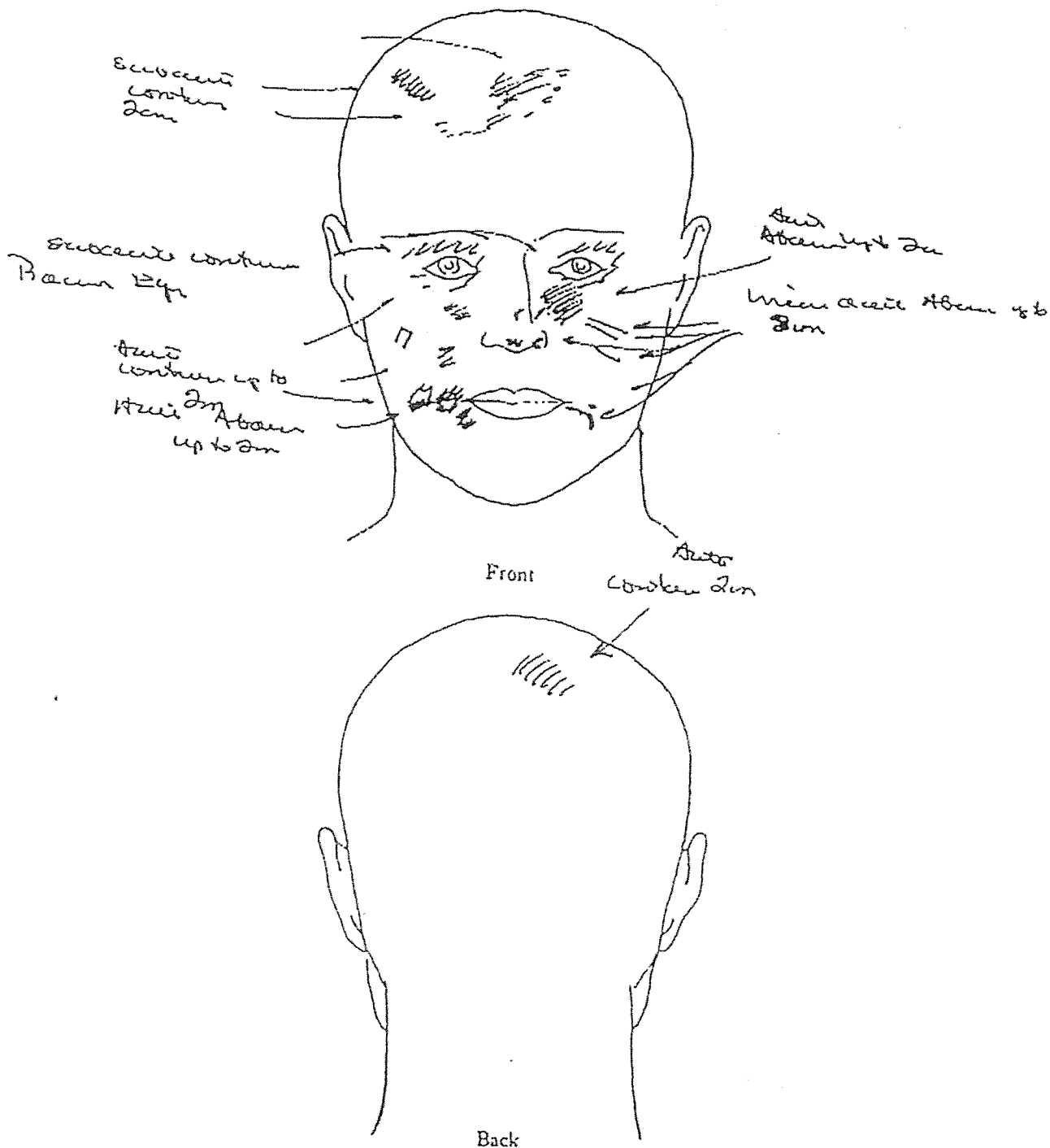
Name Natly Olvera  
Examined  
By Hay Date 19 Dec 61

1-8127A

ME 12-E7-93  
BODY DIAGRAM-HEAD



STATE  
MEDICAL  
EXAMINER



Decedent's Name Walter O. Jones  
Examined Hayn  
By Hayn Date 12/22/93

ME 12-7-93



STATE  
MEDICAL  
EXAMINER

BODY DIAGRAM—HEAD

Right

incisor above up to  
3cm

incisor up to 2cm

Left

incisor above 1.2cm  
over teeth

0.2cm

Decedent's Name

Harry Oliver

Examined

By

Harper

Date

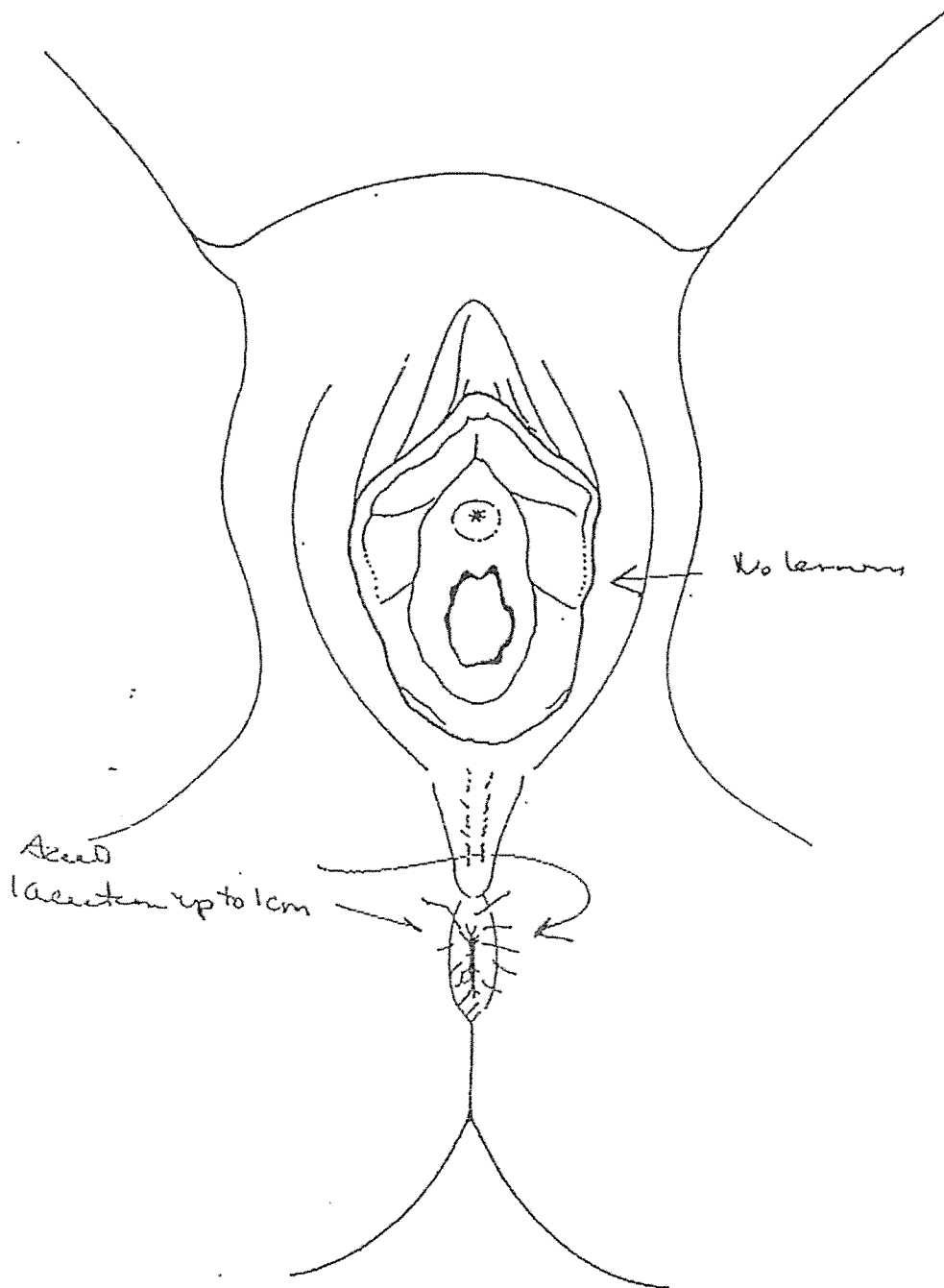
12/2/93

PERINEUM - FEMALE

MM12-E7-97



STATE  
MEDICAL  
EXAMINER



100% of cases

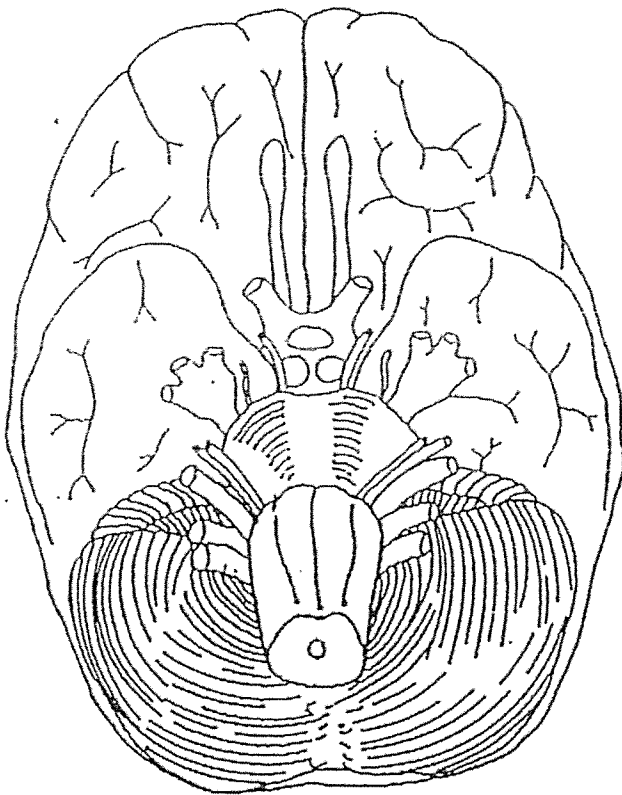
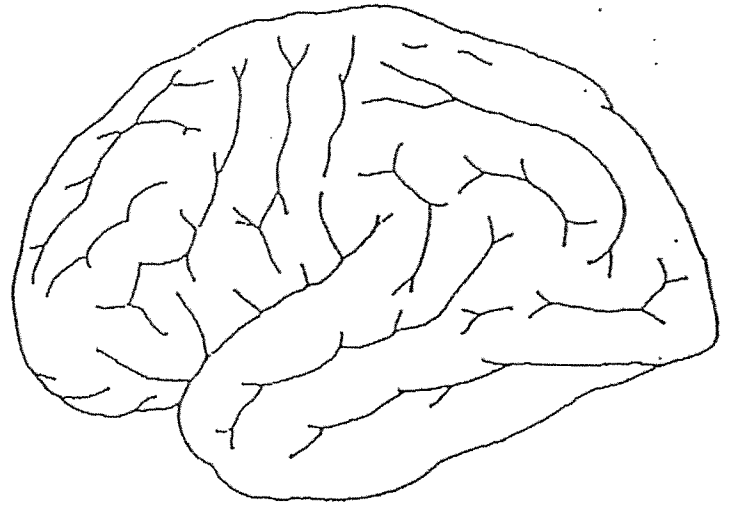
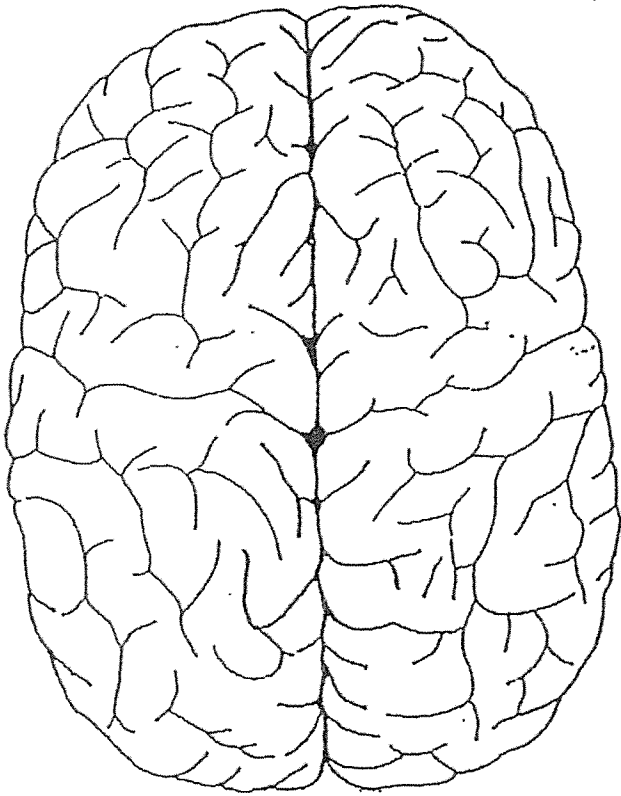
Case No. MM12-E7-97

Date 19 Dec 1997

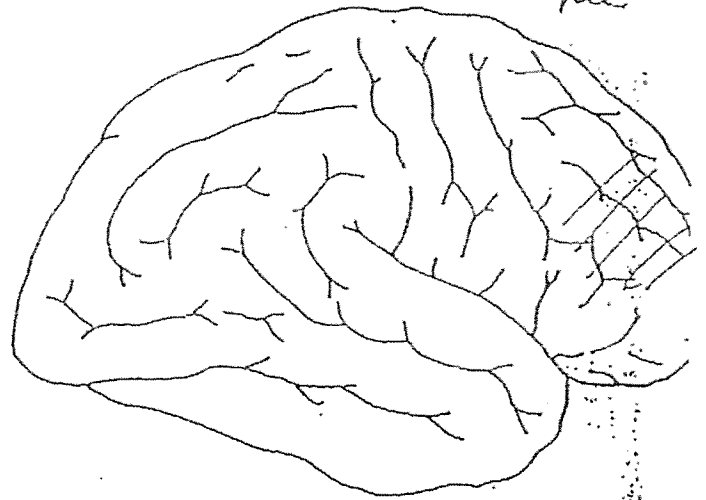


11072-47-94

RESEARCH  
BRANCH



Subacute  
Subarachnoid  
hemorrhage



Name Wally Oluey

Case No. 11072-47-94

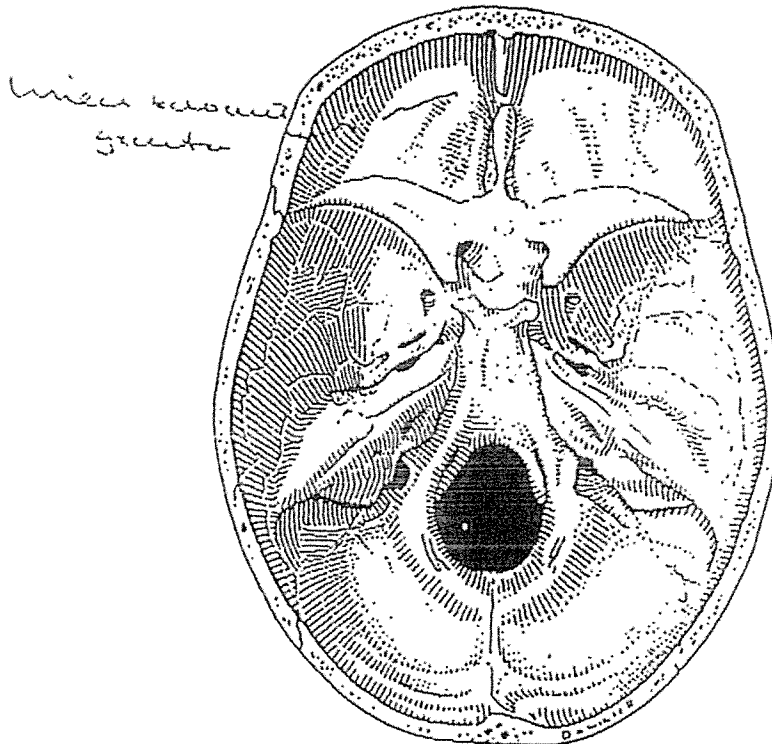
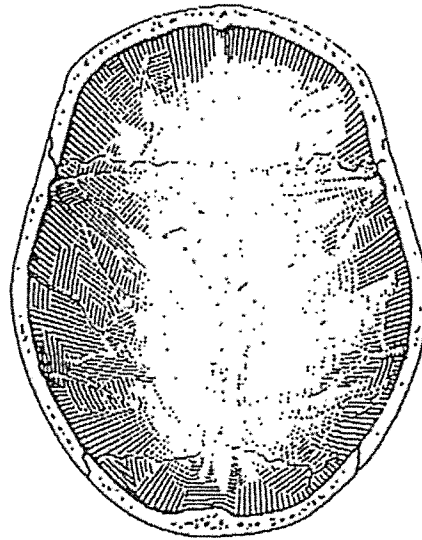
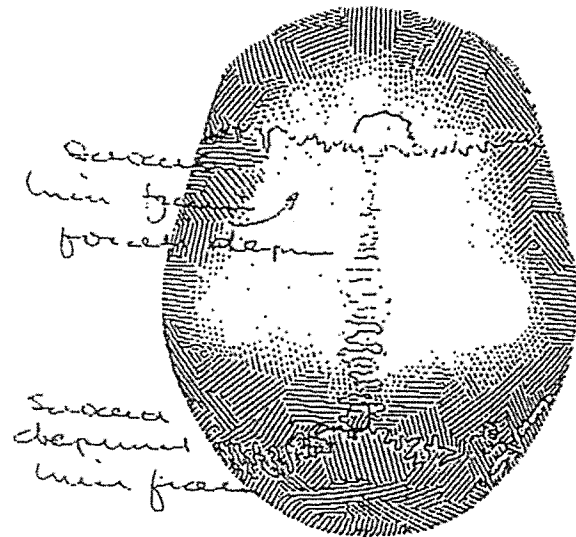
Date 19 Dec 68

*AS*



STATE  
MEDICAL  
EXAMINER

ME 12 E7-93

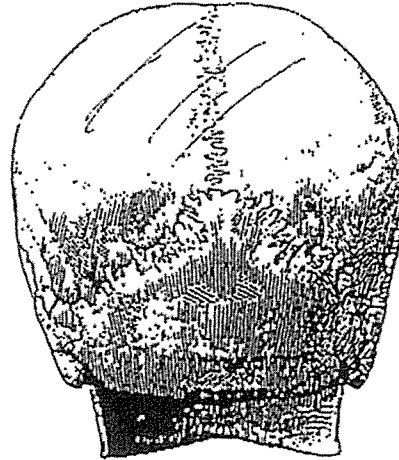


Decedent's Name Wally Olivas  
Examined By  
By Dayn Date 1/28/94

116512-67-93

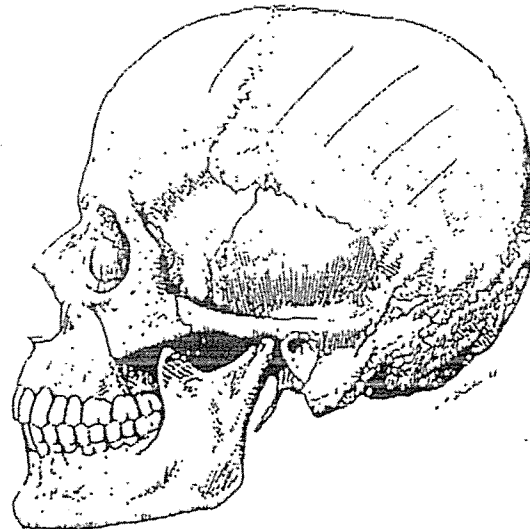
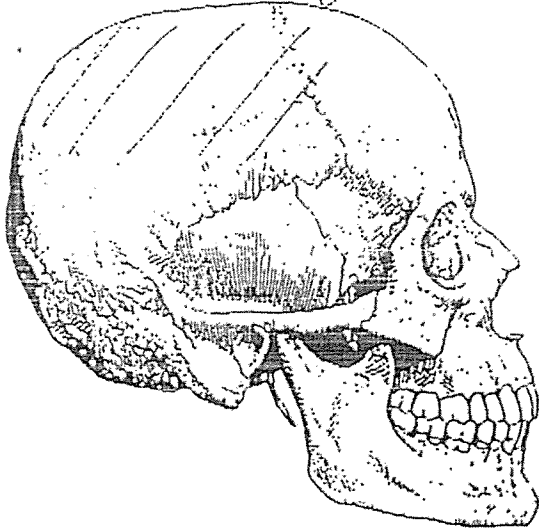


STATE  
MEDICAL  
EXAMINER



diff. fracture subgaleal  
subcutaneous hemorrhage

See param sheet  
for suture fx.



Decedent's Name

Walter Olivas

Examined

By

Hern

Date

1/26/88

**OUACHITA PARISH CORONER'S OFFICE**  
**REPORT OF INVESTIGATION BY PARISH CORONER**

DECEDENT Haley Oliveaux RACE: W SEX: F AGE: 23 months  
First Name Middle Name Last Name  
 HOME ADDRESS 108 Copley Apt. A West Monroe LA DOB 1/11/92 SS# N/A  
Number and Street City State

TYPE OF DEATH: Violent ☐ Casualty ☐ Suicide ☐ Suddenly when in apparent health ☐ Found Dead ☒  
 (Check one only) In Prison ☐ Suspicious, unusual or unnatural ☐ Cremation ☐ Natural ☐

Comment If Motor Vehicle Accident Check One: Driver ☐ Passenger ☐ Pedestrian ☐ Unknown ☐

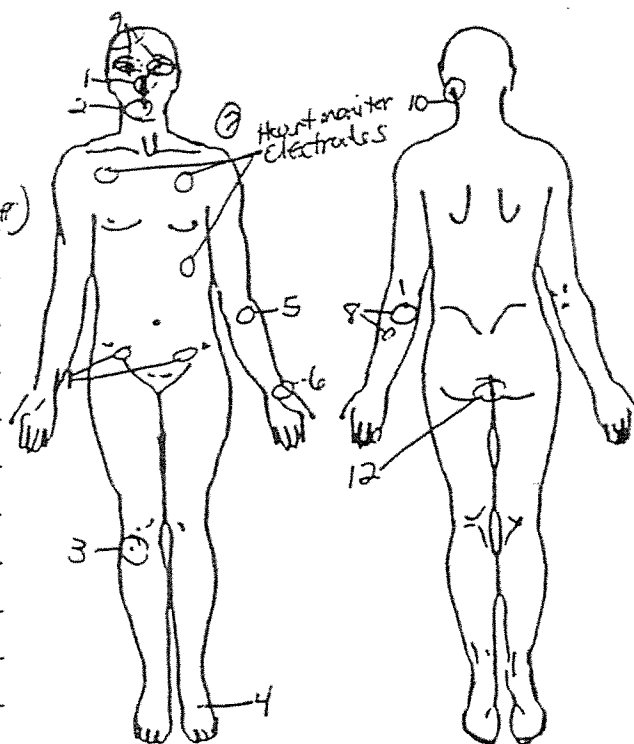
Notification by GRMC Address West Monroe

Investigating Agency OPCO

DESCRIPTION OF BODY: Clothed ☐ Unclothed ☒ Partly Clothed ☐ Circumcised Yes ☐ No ☐  
 Eyes Blue : Hair Blond : Mustache N/A : Beard N/A  
 Weight 30# : Length 36" : Body Temp \_\_\_\_\_ : Date and Time 12/18/93 11:40 AM  
Pounds Inches Fahrenheit Body Viewed  
 Rigor: Yes ☐ No ☒ Lysed ☐ City of Monroe ☐ City of W. Monroe ☐ Ouachita Parish ☐

MARKS AND WOUNDS \_\_\_\_\_ Other ☐ \_\_\_\_\_

- ① Nasogastric Tube
- ② Endotracheal Tube (oral - 21 cm)
- ③ Intraosseous IV - ~~Distal~~
- ④ Peripheral IV @ foot - D5W
- ⑤ Puncture sites x2 (unsuccessful IV attempts per hospital staff)
- ⑥ Puncture sites x2 (unsuccessful IV attempts per hospital staff)
- ⑦ Electrodes x3 for heart monitor
- ⑧ One large bruise + one smaller bruise @ elbow
- ⑨ Multiple small bruises @ forehead + eyelids both eyes
- ⑩ Bruise behind @ ear
- ⑪ Small bruise to @ + @ & abdomen
- ⑫ Discoloration, tearing noted to anus/rectum



Body Released to: Jackson, MS for autopsy

PROBABLE CAUSE OF DEATH	MANNER OF DEATH	DISPOSITION OF CASE
	(Check one only)	1. Not a medical examiner case
	Accident <input type="checkbox"/> Natural <input type="checkbox"/>	2. Autopsy requested Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> (per WMPD)
	Suicide <input type="checkbox"/> Unknown	Autopsy ordered Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	Homicide <input type="checkbox"/> Pending <input checked="" type="checkbox"/>	Pathologist _____

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause of death in accordance with Louisiana Law and that the information contained herein regarding such death is true and correct to the best of my knowledge and belief.

12/18/93 Ouachita Michelle Helbert, Investigator  
Date Parish of Appointment Signature of Parish Medical Examiner

PERSONAL HISTORY: Suicide attempts ☐ Suicide threats ☐ Hobbies, aptitudes, skills with firearms, chemicals, etc. ☐  
 Domestic premarital or marital conflicts ☐ Financial or business reverses ☐ Social or religious conflicts ☐  
 Legal difficulties ☐ Criminal record ☐ Unemployment ☐ Test of disease ☐ Other (specify) \_\_\_\_\_

CONDUCT BEFORE DEATH: Efforts to prevent help ☐ Efforts to obtain help ☐ Suicide attempt: Admitted ☐ Denied ☐  
 Refusal to talk ☐ Written declaration of intended suicide ☐ Accusations against others ☐ Other (specify) \_\_\_\_\_

	Last Seen Alive	Injury or Illness	Death	Discovery	Medical Examiner Notified	View of Body	Police Notified
Date	12-18-93	12-18-93	12-18-93	12-18-93	12-18-93	12-18-93	12-18-93
Time	10:32 AM	10:32 AM	11:15 AM	10:32 AM	11:20 AM	11:46 AM	10:32 AM
		Location	City or Parish	Type of Premises (Hospital, Hotel, Highway, etc.)			
Injury or Onset of Illness		108 Copley Apt. A	West Monroe	Residence			
Death		GRMC	West Monroe	Hospital			
Viewing of Body By Medical Examiner		GRMC	West Monroe	Hospital			

#### MEDICAL ATTENTION AND HOSPITAL OR INSTITUTIONAL CARE

Name of Physician or Institution	Address	Diagnosis	Date
Malma, Kim	GRMC	poss. aspiration resulting in respiratory arrest	12-18-93
Norwood, Charles	GRMC		12-18-93

#### CIRCUMSTANCES OF DEATH

	Name	Address
Found Dead By		
Last Seen Alive By	Chris Duncan (live in boyfriend of deceased's mother)	108 Copley Apt. A, West Monroe
Witness to Injury or Illness and Death	Chris Duncan (mother's boyfriend)	108 Copley, Apt. A, West Monroe
Funeral Home		

NARRATIVE SUMMARY OF CIRCUMSTANCES SURROUNDING DEATH: Called to Glenwood to investigate death of a 2 yr. old. Investigation revealed that Chris Duncan, who was babysitting the child, put the child in the bathtub after child ate some oatmeal. Mr. Duncan then left the child unattended in the bathroom for an unknown amount of time. When he returned, he found the child submerged in water in the bathtub. He then called 911, Metro picked up the child, transported the child to Glenwood where the child was pronounced dead. Further investigation revealed that there may have been a possible history of child abuse. Child was recently released from SFMC for multiple skull fractures.

#### DOCTOR'S COMMENTS:

Autopsy ordered - Results pending

Testimony of Dr. Steven Hayne, medical examiner for the state.

1 STEVEN TIMOTHY HAYNE, witness called on behalf of the  
2 State, first duly sworn, testified as follows:  
3  
4  
5

6 DIRECT EXAMINATION  
7  
8

9 By Mr. Ruddick:

10 Q. Dr. Hayne, if you would would you state your name and your  
11 occupation for the record?

12 A. Steven Timothy Hayne and I'm a Pathologist who practices in  
13 the fields of anatomic pathology, clinical pathology and  
14 forensic pathology.

15 Q. And how long have you been practicing in those fields?

16 A. Approximately twenty (20) years, sir.

17 Q. And where is your office or area of normal practice?

18 A. I have an office at the Renal Laboratories in the Jackson  
19 Metropolitan Area. I also have an office at Rankin Medical  
20 Center and I have an office at the Rankin County Morgue.

21 Q. Could you tell the Jury your educational background please?

22 A. I did the predominance of my undergraduate work at North  
23 Dakota State University in Fargo, North Dakota. I graduated  
24 from Medical School at Brown University, Providence, Rhode  
25 Island and I did my pathology training at Letterman Army  
26 Medical Center at (inaudible), San Francisco.

27 Q. Okay. And did you do anymore formal training after that?

28 A. No, the rotations that I conducted at the (inaudible), San  
29 Francisco in the Metropolitan area included rotations at the  
30 Erin Memorial Blood Bank, the Medical Examiner's Office for  
31 the City and County of San Francisco, Children's Hospital as

1 well as other institutions in the Bay area.

2 Q. And sir, what are your fields of expertise?

3 A. Anatomic Pathology, Clinical Pathology, Forensic Pathology.

4 Q. And you've been practicing in that field for how long?

5 A. Approximately twenty (20) years, sir.

6 Q. And are you Board Certified by any governing authority in that

7 particular areas?

8 A. Yes, sir.

9 Q. Okay. As to all three?

10 A. I'm also Board Certified in Forensic Medicine.

11 Q. Okay. Would you tell the Jury when you talk about the

12 anatomic and forensic and clinical what are you talking about?

13 A. The two basic areas of pathology are anatomic pathology and

14 clinical pathology. Anatomic pathology is the making of

15 diagnosis from tissues taken from patients usually by a

16 surgeon or another type of clinician submitted to the

17 laboratory to determine the presence or absence of disease and

18 the implications of that disease and that information is

19 conveyed back to the clinical physician who is taking care of

20 the patient directly. Clinical pathology is the running most

21 commonly of a laboratory and I am the medical director of the

22 Ranking Medical Center Hospital Laboratory and I'm also the

23 Medical Director of the Renal Laboratory which is a National

24 Laboratory located in the Jackson Metropolitan area serving

25 many states across the United States for dialysis patients.

26 A pathologist practicing in clinic pathology maybe working in

27 the area of blood banking or toxicology or clinical chemistry,

28 urinalysis, microbiology as well as other areas within that

29 type of a laboratory. The third area that I practice in is

30 one of the sub-specialities of pathology specifically

31 forensic pathology. It's one of some twenty (20)



1 sub-specialties and that essentially is the determination of  
2 the cause of death of an individual as well as the manner of  
3 death of an individual. The cause of death is the medical  
4 reason that person died whether it be from a gun shot wound  
5 or cancer or heart attack, they're literally ten of thousands  
6 of possibilities. The manner of death however one only has  
7 six (6) possibilities to chose from and that's a  
8 classification of death rather than a medical reason the  
9 person died. And those would include among the six (6)  
10 possibilities, suicide, accident, homicide, natural, some  
11 cases pending until additional information is obtained and  
12 rare cases undetermined when one can not come to a final  
13 conclusion.

14 Q. Dr. Hayne, have you been qualified in this Court before as  
15 an expert in the field of anatomic, clinic and forensic  
16 pathology?

17 A. Yes, sir.

18 Q. And have you been qualified as an expert in the same field  
19 in other various Courts throughout this State as well as  
20 Mississippi?

21 A. This State, Mississippi, other states, in the military as  
22 well as in Federal Courts, sir.

23  
24 By Mr. Ruddick: Your Honor, at this time we tender  
25 Dr. Hayne as an expert in the field  
26 of anatomic, clinical and forensic  
27 pathology.

28 By The Court: Questions as relates to his  
29 expertise?

30 By Mr. Scott: We would request brief cross  
31 examination in reference to

1 qualifications.  
2 By The Court: Alright, proceed.  
3  
4  
5

6 CROSS EXAMINATION  
7  
8

9 By Mr. Scott:

10 Q. Dr. Hayne, when you stated that you are Board Certified you  
11 are board certified by who?

12 A. I'm Board Certified by three institutions, the American Board  
13 of Pathology, the American Academy of Neurologic and  
14 Orthopedic Surgery and the American Academy of Forensic  
15 Examiners.

16 Q. Okay. Now, with either of those did you have to take any  
17 type of test to become certified?

18 A. In two I did. In the third in Forensic Medicine I was  
19 grandfathered in.

20 Q. Are either of those recognized by the American Medical  
21 Association?

22 A. There are no Boards recognized by the American Medical  
23 Association they're only listed but they are not recognized.

24 Q. Is either of those Boards listed by the American Medical  
25 Association?

26 A. They are listed, sir. The accrediting agency, sir.

27 Q. They're accrediting agencies?

28 A. Yes, sir.

29 Q. Okay. What is the accrediting agency of the American Medical  
30 Association?

31 A. There is no such thing.

1477

1 Q. Okay. I thought you said they were listed by the accrediting  
2 agency?

3 A. They list the accrediting agencies.

4 Q. Okay. Now, are either of those accredited by the American  
5 Medical Association?

6 A. They do not accredit Boards, sir. There is no such entity.

7 Q. Now -

8

9 By Mr. Scott: - That's all the questions.

10 By Mr. Ruddick: Tender him again, Your Honor, same  
11 fields.

12 By The Court: The Court will at this time  
13 recognize Dr. Hayne as an expert in  
14 the field of clinical, forensic and  
15 what was the other?

16

17 A. Anatomic, sir.

18

19 By The Court: Anatomical pathology. Thank you,  
20 sir.

21

22

23

24

DIRECT EXAMINATION

25

26

27 By Mr. Ruddick:

28 Q. Dr. Hayne, I'm going to direct your attention to the dates  
29 of December 18th and December 19th of 1993, and ask you on  
30 those dates did you have occasion to perform an autopsy on  
31 an individual or a baby described to you as Haley Oliveaux?

1 A. Yes, sir identified to me as Haley Oliveaux by the coroner  
2 of Ouachita Parish, Dr. Smith.  
3 Q. And did you in fact perform a autopsy on this child?  
4 A. I did, sir.  
5 Q. Could you tell the Jury what do you do in an autopsy?  
6 A. In a post-mortem examination or an autopsy there are series  
7 of steps that one goes through that have been established  
8 essentially nationally, it's a National standard, and they  
9 would include familiarizing oneself with the case - with the  
10 submitting officer in this case Dr. Smith. Followed by an  
11 external examination, looking for the presence or absence of  
12 injury or disease whether it be new or old and recording that  
13 evidence either by illustration or by photography and  
14 concurrently collecting evidence as appropriate, followed by  
15 an internal examination, looking at the body organs to  
16 include the organs of the chest and abdomen as well as those  
17 within the cranial vault and the skull and again collecting  
18 evidence as appropriate during those steps of the examination  
19 and documenting the findings whether they be findings of new  
20 injury or old injury or disease or the absence of those  
21 findings, followed by a microscopic review of selected  
22 tissues taken from the body organs and other sites to be  
23 reviewed under a microscope after the tissues have been  
24 prepared as slides and then followed by the generation of a  
25 written report summarizing the pertinent steps, the findings  
26 and coming to a conclusion as to the cause of death and the  
27 manner of death of that individual.  
28 Q. In this case and we'll go into this later but after doing  
29 the autopsy -  
30

31 By The Court: - Excuse me.

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1 By Mr. Scott: - May it please the Court, we would  
2 like to approach the bench.  
3 By The Court: Alright.  
4  
5 By The Reporter: Brief bench conference with all  
6 counsel. Court in recess for  
7 fifteen (15) minutes. Jury members  
8 and alternates escorted out of the  
9 Courtroom.  
10  
11 By The Court: Go ahead and bring the Jury back.  
12 By Mr. Ruddick: Your Honor -  
13 By Mr. Perkins: - Could we hold the Jury?  
14 By The Court: Hold it just a minute. Just a  
15 minute. Hold them for a little  
16 while. I didn't hear you state that  
17 Mr. Scott or Perkins you have an  
18 argument to make before the ....  
19 By Mr. Scott: Well, I don't know what position  
20 you are -  
21 By Mr. Jones: - On the injuries?  
22 By Mr. Scott: Yeah.  
23 By Mr. Jones: We have no problem with the  
24 injuries.  
25 By Mr. Ruddick: - I've talked to the -  
26 By Mr. Jones: - No, sir we'll agree nothing old.  
27 By Mr. Scott: Okay.  
28 By The Court: Okay.  
29 By Mr. Jones: Nothing old. Nothing at all. We're  
30 in agreement.  
31 By Mr. Scott: Okay. Thank you.

1 By The Reporter: Jury members and alternates escorted  
2 back into the Courtroom and  
3 testimony resumed with Dr. Hayne on  
4 direct examination.

5  
6 By Mr. Jones: Judge, may we approach?

7 By The Court: Yes, sir.

8  
9 By The Reporter: Brief bench conference with all  
10 counsel.

11

12

13

14

DIRECT EXAMINATION

15

16

17 By Mr. Ruddick:

18 Q. Dr. Hayne, I believe you were explaining to the Jury the  
19 process of an autopsy?

20 A. Yes, sir.

21 Q. Okay. And did you finish that explanation?

22 A. I believe I did, sir.

23 Q. Alright. Then we were at the autopsy of Haley Oliveaux, is  
24 that correct?

25 A. Yes, sir.

26 Q. Alright. And did in fact you perform that autopsy?

27 A. I did, sir.

28 Q. Do you recall who was present during the autopsy?

29 A. There were multiple individuals identified to me in addition  
30 to the coroner medical examiner investigator of Rankin  
31 County, the deaner and the forensic odontologist, individuals

1 from Louisiana and on a slip of paper that I handed them to  
2 identify themselves include Chris Sasser, Detective, Larry  
3 LaBorde, Chief of Police, Robert Staley, Assistant District  
4 Attorney, Pat Kelly, Captain West Monroe Police Department,  
5 Chuck Cook, 1st Assistant District Attorney.

6 Q. Alright. During the course of the autopsy did you make a  
7 determination how tall or the length of this baby?

8 A. I did, sir.

9 Q. And what was that?

10 A. Thirty-five (35) inches, sir.

11 Q. And as a part of your autopsy do you make a determination of  
12 the weight of the child?

13 A. Yes, sir.

14 Q. And what was that?

15 A. Thirty (30) pounds, sir.

16 Q. Is there a normal procedure that you use during the autopsy  
17 as to what you examine first and when?

18 A. The external examination of course would commence before the  
19 internal examination. One goes over the different body  
20 surfaces sequentially looking at the head and neck, the upper  
21 extremities, the arms, forearms, fingers, hands both right  
22 and left, the legs including the feet and toes and then  
23 looking at the chest and abdomen, sir.

24 Q. Okay. And did you follow that same procedure in this  
25 autopsy?

26 A. I did, sir.

27 Q. Okay. In the external examination of the head and neck was  
28 there anything there that you found of significance?

29 A. I did, sir. I found evidence of medical intervention giving  
30 at or about the time of death or shortly thereafter and there  
31 were also significant acute injuries. Injuries suffered at

1 or about the time of death, sir.

2 Q. Alright. Acute injuries, that's at or about the time of

3 death?

4 A. Yes, sir.

5 Q. Okay. Medical intervention, I understand what you're saying

6 just for - sometimes understand what you're saying, what does

7 that mean?

8 A. There was an endotracheal tube, a tube placed within the

9 decedent's mouth giving access to the trachea or the airway

10 provide for breathing of that child mechanical and as well

11 as a tube inserted in one of the nares of the nose that was

12 inserted and went down the esophagus to the stomach, sir.

13 Q. Somebody tried to save the baby's life?

14 A. Yes, sir.

15 Q. Okay. What acute injuries did you find about the head and

16 neck, sir?

17 A. There were abrasions or scraping of the skin, scratches

18 located over the cheek area on the right side as well as the

19 left side that measured individually up to approximately

20 three quarters of an inch. There were also bruises located

21 over the right cheek area that also measured up to

22 approximately three quarters of an inch. Those bruises

23 extended to the lips and on the examination of the inner

24 surface of the upper lip there was an area of bleeding

25 underneath the attachment of the upper lip called the

26 frenulum. There was also, looking at the scalp there was a

27 bruise or a contusion located over the back of the scalp that

28 measured approximately three quarters of an inch. May I look

29 at my notes while I'm discussing this, sir?

30 Q. Certainly.

31 A. There was also acute injuries suffered at or about the time



1 of death located over the right angle of the jaw and the  
2 right side of the neck consisting of two semi-circular  
3 curvilinear, slightly curved but still essentially straight  
4 line scraps of the skin that measured approximately one half  
5 inch and approximately seven sixteenths of an inch. One  
6 located on the right side of the neck and one located near  
7 that area on the angle of the jaw. There are also straight  
8 line abrasions or again scraps of the skin. Scratches  
9 located over the right side of the neck that individually  
10 measured up to three sonometers and there were bruises  
11 located in the same general area that measured up to  
12 approximately three quarters of an inch, sir.

13 Q. Alright. My fault, start over and using your head as the  
14 example look at the Jury and tell us what you're talking  
15 about and where it existed on this baby.

16 A. There were bruises as well as scratches located over the  
17 right cheek area. There was also bruising located across  
18 the lips and there was a bruise underneath the lip on the  
19 upper surface with a small area of connective tissue that  
20 attaches the upper lip.

21 Q. Does that have a name?

22 A. The frenulum, sir.

23 Q. Okay.

24 A. There was also scratching on the left side of the cheek and  
25 there was one area that was more round and there are also  
26 straight line scratches located on the left cheek. Located  
27 on the right side of the neck there was a small scratch that  
28 had a slight curve to it I thought it was consistent with a  
29 fingernail scratch located on the angle of the jaw  
30 approximately here. There was one located that was slightly  
31 bigger located on the right side of the neck. And located

1 in this area slightly higher than those two scratches were  
2 additional abrasions, scratches that measured up to  
3 approximately an inch and a quarter and there was also  
4 bruising located in the same area that measured up to  
5 approximately three quarters of an inch. Located on the back  
6 of the head there was a bruise located slightly to the right  
7 of the mid-line that measured slightly less than one inch in  
8 size.

9 Q. Okay. Without going through each one of the areas that you  
10 checked what other areas did you note or find acute injuries?

11 A. Other areas on the body surfaces excluding the head and neck,  
12 sir?

13 Q. Yes, sir.

14 A. There were bruises located over the right upper extremity as  
15 well as the left upper extremity. There was area of  
16 scratching located over the front surface of the left arm.  
17 There was also a bruise located near the umbilicus of the  
18 belly button and there was also bruising located to the right  
19 knee area and as well as over the back of the left ankle  
20 area. And there was also injury located to the anus and the  
21 rectum, sir.

22 Q. Describe for us if you would the injuries to the anus and  
23 the rectum?

24 A. There were a series of tears commencing at the anus going  
25 into the rectum that measured approximately one half inch in  
26 length penetrated through the soft tissue into the muscle  
27 tissue surrounding the rectum and there was no bleeding at  
28 the sight itself, sir. It was bleeding in the tissue but  
29 there was no bleeding on the skin surface of the anus or the  
30 mucosal surface of the rectum.

31 Q. Is there any medical significance that there was no bleeding

1 at the sight?

2 A. They had been washed, sir.

3 Q. Okay. What about the gathering of the blood as I believe  
4 you said, is that .....

5 A. Sir?

6 Q. There was no bleeding at the sight itself?

7 A. There was no bleeding in the luminal surface that is the  
8 rectum or the anus inside where the stool passing through.  
9 There was bleeding in the tissue but not in the actual tears.  
10 The bleeding was located into the soft tissue, the fat tissue  
11 as well as the muscle tissue, sir.

12 Q. And does that mean anything to us, sir?

13 A. That means that the area was washed and that the bleeding  
14 had occurred and not only occurred into the skin surface and  
15 into the rectum which holds stool but also occurred and was  
16 found in the soft tissue that surrounds the rectum and anus.

17 Q. Describe if you would the rectum and the anus is this - and  
18 I'm going to use the term a vascular type area but if you  
19 would describe - if that's true describe to the Jury what  
20 we're talking about.

21 A. It's an area located on the inner surface of the buttocks.  
22 The rectum attaches to the large bowel and it allows for  
23 control of release of stool through the anus and the rectum.  
24 There is a series of muscular rings around the opening to the  
25 anus and the rectum that allow for contracture and closing  
26 so one does not leak stool not voluntarily. There is a dual  
27 blood system located at that sight due to the genetic and  
28 embryological development of the anus and the rectum and they  
29 are commonly large numbers of blood vessels at that sight  
30 which may even be exacerbated in certain disease states such  
31 as psoriasis of the liver where bleeding can occur readily

1 from that sight because of the dual blood vessel supply to  
2 that area.

3 Q. The injuries that you observed at the rectum of the anus are  
4 these slight injuries, moderate injuries, I mean is this  
5 severe tearing here?

6 A. It's severe tearing, sir.

7 Q. Would the severe tearing and the nature of where it was would  
8 it cause a lot of bleeding?

9 A. Yes, it would, sir.

10 Q. Okay. How much bleeding can you tell?

11 A. It would depend upon the length of time that that occurred  
12 and the length after the injuries had been inflicted. There  
13 could be a serious loss of blood even to the approaching of  
14 life threatening, sir.

15 Q. Absent - is this correct, absent medical intervention and  
16 absent the heart stopping possibly the child would have bled  
17 to death from these injuries?

18 A. That's correct, sir.

19 Q. At the time these injuries were inflicted, Doctor, would you  
20 expect blood to be everywhere?

21 A. I would expect to see blood clotted possibly or in a semi  
22 liquid phase located in the rectal canal, in the - around  
23 the anus on the skin surface as well as of course the  
24 bleeding in the soft tissue. If the injury had not occurred  
25 right at the time of death then I would expect to see  
26 significant bleeding in the immediate area, clothing or any  
27 other sight that the child would be in contact with.

28 Q. Okay. I want to show you a series of photographs that I've  
29 marked for identification although I'm going to have to  
30 change one, S-21, 22, 23, 24 and what used to be S-20, Mr.  
31 Scott is now S-25.

1 By Mr. Ruddick: Your Honor, I have previously  
2 provided Defense counsel with copies  
3 of these.  
4 By Mr. Scott: S-20 is now 25?  
5 By Mr. Ruddick: Yes, sir.  
6  
7 Q. I'm going to ask you if you could look at those photographs  
8 and identify same?  
9 A. Yes, sir.  
10 Q. Dr. Hayne, did those photographs accurately depict what is  
11 contained therein?  
12 A. Yes, sir.  
13 Q. Dr. Hayne, were you present when these photographs were  
14 taken?  
15 A. Yes, sir in fact that's my hand in that, sir.  
16 Q. You're the hand?  
17 A. Yes, sir.  
18  
19 By Mr. Ruddick: Your Honor, at this time we would  
20 like to offer, file and introduce  
21 into evidence before I go further  
22 S-21 through 25.  
23 By Mr. Scott: We would request that a ruling on  
24 admissibility be reserved until  
25 after cross examination however we  
26 don't object to him referring to  
27 them during the course of direct.  
28 By The Court: I'm sorry you don't - you object.  
29 I know you want to reserve your  
30 right but what else did you say?  
31 By Mr. Scott: We don't object to him being shown

1 and discussing the photographs  
2 during the course of - we  
3 request -  
4 By The Court: - Well, I'll just not rule on them  
5 until after cross examination then.  
6 By Mr. Ruddick: Your Honor, the problem that I  
7 have -  
8 By Mr. Jones: - The Jury has got to see them.  
9 By Mr. Ruddick: We have them on slides and I intend  
10 to show them on slides.  
11 By The Court: He said he didn't have any problem  
12 with that didn't you?  
13 By Mr. Scott: Yes, but we would request making a  
14 ruling on the admissibility of them  
15 into evidence to be put into  
16 evidence until after we have a  
17 chance to cross examine.  
18 By The Court: Well, the Doctor has testified that  
19 he was there, that as a matter of  
20 fact part of the photographs are his  
21 hand. I would - I haven't seen them  
22 myself. Let me see those.  
23 By Mr. Scott: My question was in reference to  
24 whether or not they accurately  
25 portrayed what they - state they  
26 wanted to portray them. We wanted  
27 to cross examine him regarding that  
28 prior to admissibility.  
29 By The Court: But you have no objection to the  
30 slides being shown? Let me look at  
31 these a minute.

1 By Mr. Ruddick: Your Honor, he can cross him right  
2 now if he wants to while I'm setting  
3 this up.

4 By Mr. Jones: On the accuracy.

5 By The Court: Okay.  
6  
7  
8

9 CROSS EXAMINATION  
10  
11

12 By Mr. Scott:

13 Q. Dr. Hayne, I see that - Dr. Hayne, on the photographs that's  
14 been identified do you have them in your hand?

15 A. I do, sir.

16 Q. I see that in - could you turn them over, please? Okay. I  
17 see that on each of the photographs the background of each  
18 photographs seems to be somewhat dark, well very dark was  
19 it - was it dark in the room at the time these photographs  
20 were taken?

21 A. No, sir.

22 Q. Okay.

23 A. That's an artifact of the film, sir.

24 Q. When you say an artifact of the film what do you mean by  
25 that?

26 A. That the light source would not carry to a point where the  
27 background would be visible. We're not photographing the  
28 background we're photographing the findings on the child.

29 Q. Okay. And isn't the technique where the back is darken  
30 designed to make the bruises appear more prominent than they  
31 are? I mean than they would appear to the naked eye?

1 A. No, sir that was not our goal at all. Our goal was to  
2 outline the bruises as accurately as we could and using an  
3 ABFO ruler to document their size in some the incidences,  
4 sir.

5 Q. Okay. For instance, in this one even right up here at the  
6 head is very dark was there any specific significance to that  
7 or was that just the way that film came out?

8 A. That was the focus of light was on the sight of injury. We  
9 were not interested in those other areas but we were  
10 documenting the injury that was being photographed  
11 specifically that's under the control of the ABFO ruler.

12 Q. Okay. And there was a light - the light - there was a light  
13 that was specifically focused to catch the injury that you  
14 were trying to take a picture of?

15 A. It's a flash, sir.

16 Q. Okay. Thank you.

17

18 By Mr. Scott: May it please the Court, based upon  
19 what he stated we submit that it  
20 doesn't accurately betray what it  
21 says because it was a light room and  
22 it gives the appearance of it being  
23 darken in the background so we don't  
24 feel like the statement that it's  
25 accurate is - so anyway that's our  
26 objection. It doesn't accurately  
27 portray what - based upon the  
28 testimony it doesn't accurately  
29 portray what he said that it  
30 portrays.

31 By Mr. Ruddick: Your Honor, if he's going to testify



1 as to the back wall I may tend to  
2 agree with Mr. Scott. But since  
3 he's going to talk about the  
4 injuries he took a photo of I don't  
5 discuss with that.

6 By The Court: Based upon the statement made by  
7 the Doctor the Court would overrule  
8 that objection.

9 By Mr. Scott: Note our objection.

10 By The Court: So noted.

11

12

13

14

DIRECT EXAMINATION

15

16

17 By Mr. Ruddick:

18 Q. Dr. Hayne, if you would look at what's now been marked as  
19 S-25.

20 A. State's 25, sir?

21 Q. Yes, sir.

22

23

By Mr. Ruddick: You can get the lights.

24

25

By The Reporter: Slides of photographs being put onto  
screen so that the Court and Jury  
members can view the photographs.

26

27

28

29

Q. If you could use the pointer that you have up there, Doctor,  
and on the screen show the Jury the injuries you were  
describing?

30

31

1 A. Yes, sir.  
2  
3 By The Court: Is that portable mic hooked up?  
4 By The Reporter: No, sir.  
5 By The Court: Okay. You'll just have to talk loud  
6 enough when you up at the screen.  
7  
8 A. Your Honor, may I stand and face the screen?  
9  
10 By The Court: Sir?  
11  
12 A. May I stand and face the screen?  
13  
14 By The Court: Yes, sir. I was trying to ascertain  
15 whether or not you could be picked  
16 up over there. Go ahead and stand  
17 in front of the screen. Over to the  
18 side if you can where - over to this  
19 side so that the Jurors view won't  
20 be blocked.  
21  
22 Q. Dr. Hayne, please talk loud enough for people back - the  
23 Jurors back here can hear you.  
24 A. Yes, sir.  
25 Q. Go ahead.  
26 A. Describe the injury, sir?  
27 Q. Yes, sir.  
28 A. There's bleeding in the frenulum which is the attachment of  
29 the upper lip to the gum line. There was also bruising  
30 located over the lips that are readily apparent predominantly  
31 on the right angle of the mouth. And there were also other

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1 injuries that are identified on the left side of the face  
2 including a large scratch as well as other scratches located  
3 in this case on the left side and there is also a scratch  
4 located on the right side there, sir.

5 Q. As to the injuries on the lower part of the lip or the lower  
6 lip were you able to determine the cause of those injuries?  
7 A. They were consistent in my opinion to impressions from the  
8 upper teeth, sir.

9 Q. And on the outside of the lip, on the lower lip did you find  
10 any type of evidence of any type of trauma or injury?  
11 A. There was bruising located in that area, sir.

12 Q. Okay. Did that have any indication to you?  
13 A. It would indicate to me that the teeth were forced against  
14 the lower lip, sir, and that there was also pressure located  
15 on the upper lip pulling the upper lip away from the gum  
16 line, sir.

17 Q. If this child was being forced down on a hard surface and  
18 either the child was moving or someone was moving the child  
19 would it cause these injuries you describe up here?  
20 A. It would cause these injuries, sir, and if there was a  
21 movement of the child with the body surface, a sliding  
22 movement, it would cause the injury to the frenulum, sir.

23 Q. Okay. Thank you. If we could go to S-21. Describe these  
24 injuries please, sir.  
25 A. S-21 is the left elbow I believe, sir.

26 Q. Alright.  
27 A. And located over the left elbow are contusions that measured  
28 up to approximately one inch, sir.

29 Q. Are there any injuries that you saw on this left elbow that  
30 made you believe that you - or made you feel that you needed  
31 to consult somebody else about them?

1 A. It did, sir. There were faint patterns located on the elbow  
2 that I saw on other areas of the body that necessitated me  
3 notifying a forensic odontologist to make examinations to see  
4 if they matched dental impression marks.

5 Q. What did - the impression you got what were these marks?

6 A. They were consistent, sir, with a bite mark.

7 Q. Thank you. If we could go to S-22.

8 A. S-22, is on the right cheek and it shows patterned abrasions  
9 or scrapes of the skin and other patterned abrasions located  
10 over the right cheek that measured individually up in  
11 greatest dimension approximately one inch, sir.

12 Q. Did you also see patterned bruising there that indicated to  
13 you that you needed to talk to a forensic odontologist?

14 A. It was highly suspicious to me and I thought it was  
15 consistent that these were manifestations of a bite mark and  
16 I requested a forensic odontologist to review them, sir.

17 Q. Before we leave S-22, Dr. Hayne, those injuries that you see  
18 there could they have been caused by tape placed on that  
19 cheek?

20 A. Tape, sir? Such as medical tape?

21 Q. Yes, sir.

22 A. No, sir.

23 Q. S-23.

24 A. S-23, shows the abrasions located in part on the area  
25 immediately below the right ear which had similar  
26 characteristics to the abrasions located over the right cheek  
27 and the skin scrapes also had characteristics of the  
28 contusions located over the back of the left elbow.

29 Q. Again you thought possible bite marks?

30 A. I thought they were highly consistent with it, sir. Again  
31 necessitating a request for -

1 By Mr. Scott: - I object to him suggesting the  
2 bite marks rather than letting the  
3 pathologist state what he found them  
4 to be.  
5 By The Court: You need to ask specific questions.  
6 By Mr. Ruddick: Okay, but - yes, sir.  
7  
8 Q. S-24.  
9 A. Is this S-24, sir?  
10 Q. Yes, sir.  
11 A. S-24, shows the bruise located over the back right side of  
12 the head that measured slightly less than one inch, sir.  
13 Q. Okay. Did you come to a conclusion or an opinion as to what  
14 would have caused that bruise, Dr. Hayne?  
15 A. I thought it was consistent with a digit such as a thumb or  
16 a finger pressing down on the back of the head, sir.  
17 Q. Thank you. You can sit down.  
18  
19 By Mr. Scott: I object to that as being - as not  
20 being a scientific or medical  
21 conclusion.  
22 By The Court: Overruled.  
23  
24 Q. Dr. Hayne, as part of your examination did you examine the  
25 stomach, the bowels and the windpipes, all the internal parts  
26 of this child?  
27 A. I did, sir.  
28 Q. And in any part that you examined, Dr. Hayne, did you find  
29 any trace or evidence of oatmeal?  
30 A. I did not, sir.  
31 Q. The injuries that you observed and documented as to the

1 rectum and the anus were they consistent with an adult male  
2 penis making penetration?  
3  
4 By Mr. Scott: Objection to leading, objection to  
5 not being a scientific conclusion.  
6 By The Court: He's an expert, Mr. Scott, I think  
7 the question is permissible,  
8 overruled.  
9  
10 A. It would be consistent with that, sir.  
11 Q. Based upon your examination of this child, Dr. Hayne, did  
12 you make a determination as to cause of death?  
13 A. I did, sir.  
14 Q. And what was that?  
15 A. Fresh water drowning, sir.  
16 Q. And the objective findings on this child could you tell the  
17 Jury what they are that support your conclusion?  
18 A. Findings for fresh water drowning included the presence of  
19 froth located within the trachea and the main stem bronchi  
20 which is a mixture of water and mucus. There was also water  
21 found with the luminal space of the stomach. The blood did  
22 not clot. And also there was bleeding into the bony  
23 structures that hold the right and left ears. And those are  
24 hallmarks for fresh water drowning. In addition there was  
25 no other cause of death that I could identify, sir.  
26 Q. Did you see anything in your autopsy that would indicate the  
27 possibility of a pre-death seizure?  
28 A. I did not see that, sir.  
29 Q. Did you find - did you find any food in the stomach?  
30 A. I did, sir.  
31 Q. What was that?

?

1 A. I found fragments of onion, pickle and tomato, sir.

2 Q. Dr. Hayne, if this child tried to poo poo, I'm going to use

3 the words that this Jury has heard, have a bowel movement

4 after the injuries that you described would she be capable

5 of doing that?

6 A. It would be difficult in light of the pain that would be

7 present. Stool could leak from that injured area.

8 Q. Had this child had this bowel movement after receiving these

9 injuries what else would you expect to see?

10 A. A large amount of blood, sir.

11 Q. Did the injuries that you saw to the rectum and anus of this

12 child was it consistent with a finger being placed there

13 accidentally?

14 A. A finger placed there accidentally, sir?

15 Q. Yes, sir.

16 A. No, sir.

17 Q. From your autopsy in this matter and from I believe you've

18 reviewed that Glenwood Medical Center Emergency Room when

19 the child was brought in, their reports?

20 A. I did, sir.

21 Q. If within fifteen (15) minutes or ten (10) minutes of this

22 child arriving at the medical scene - the medical center this

23 child was found lying in a tub within two (2) minutes of last

24 being seen alive, jerked out of the tub, immediately taken

25 next door with CPR begin, ambulance arriving within three (3)

26 minutes and taking the child to the doctor - to the Emergency

27 Room is that consistent with the findings that you found as

28 well as the findings as reported by the Emergency Room

29 physician?

30 A. No, sir.

31 Q. Okay. Based on what you have reviewed can you make an

1 estimation or determination or approximation how long this  
2 child had been dead prior to arriving at Glenwood Medical  
3 Center?  
4 A. Approximately forty-five (45) minutes to an hour or even  
5 slightly longer, sir.  
6 Q. Now, the contusion that you found on the head and the  
7 markings that you found that were consistent with fingernails  
8 on the right side of the cheek and lower cheek of this child  
9 are they consistent with your finding of fresh water  
10 drowning?  
11 A. They would be, sir.  
12 Q. Okay. And they would be consistent with someone holding the  
13 child's head underneath the water or in the water?  
14 A. It would be, sir.  
15  
16 By Mr. Scott: Again I object to just him directing  
17 the witness as to what to testify  
18 to.  
19 By The Court: He is an expert and I have so ruled  
20 but do be a little more cautious,  
21 Mr. Ruddick, in your leading.  
22  
23 Q. Did you find any evidence as to the damage to anus and the  
24 rectum of any aging of those wounds?  
25 A. No, sir.  
26 Q. And based upon your findings can you make - have you come to  
27 a conclusions as to when they were inflicted?  
28 A. They were suffered at or about the time of death, sir, and  
29 that was based upon not only the external examination but  
30 the microscopic review of that tissue.  
31 Q. Dr. Hayne, you've rendered a autopsy report in this case, is



1           that not true?

2       A.    I have, sir.

3       Q.    Did you alter or forge anything in that autopsy report, sir?

4       A.    I beg your pardon, sir?

5       Q.    Did you alter or forge or change anything in that autopsy

6           report?

7       A.    Alter or forge no, sir.

8       Q.    Have you ever done that, Dr. Hayne?

9       A.    No, sir.

10

11               By Mr. Ruddick:       Just a minute.

12

13       Q.    Let me show you one more picture that I believe you've looked

14           at. Give me S-4, if you could. I want to show you what's

15           been marked for identification as S-4, Doctor. Can you

16           recognize that, sir?

17       A.    Yes, sir.

18       Q.    And what does that .....

19       A.    It's focused on the anus and rectum of Haley Oliveaux, sir.

20       Q.    If you could again using your pointer could you point out to

21           the Jury the nature and the extent of the injuries that you

22           observed?

23       A.    It shows the tears, ripping of the anus going into the

24           rectum, the absence of bleeding around the surface and the

25           bleeding underneath the skin surface manifested by this

26           purple discoloration which microscopically showed red blood

27           cells found within the soft tissue and the tears are

28           extending deeply into the adjacent soft tissue areas around

29           the rectum and the anus, sir.

30       Q.    Dr. Hayne, what causes bruising?

31       A.    Bruising is the tearing of a blood vessel where there's blood

1 pressure and the red blood cells leave the blood vessels, go  
2 into the soft tissue and reveals itself as a purple area of  
3 discoloration.

4 Q. Generally speaking you have to have blood circulation to have  
5 bruising?

6 A. You would have to have blood pressure, sir. Yes, sir.

7 Q. The heart would have to be beating?

8 A. Yes, sir.

9 Q. Okay, Doctor. The injuries that you've gone through that  
10 you found at your autopsy and discuss did any of these  
11 injuries occur after death?

12 A. I did not see evidence of that, sir.

13 Q. Could the injuries to this child's rectum or anus could they  
14 have been caused by a bowel movement?

15 A. No, sir.

16 Q. Do you have any idea - let me ask you this, Doctor. If the  
17 child had eaten oatmeal for breakfast on the morning of  
18 December the 18th, during your autopsy would you have found  
19 evidence of oatmeal inside that child either in the stomach,  
20 in the bowel or in the esophagus or the windpipe?

21 A. Yes, sir.

22 Q. Did you find any?

23 A. Assuming that - no, sir. Assuming that he had any quantity  
24 whatsoever I would have found evidence of oatmeal in the  
25 stomach or small bowels, sir.

26 Q. If the child had ate oatmeal for breakfast that morning there  
27 had not been sufficient time passed for that oatmeal to have  
28 been digested would that be correct?

29 A. That's correct, sir. It would take approximately four (4)  
30 hours to five (5) hours for a full meal to pass from the  
31 stomach into the small bowel. I saw none in the stomach, I

1 saw none in the small bowel, sir.

2 Q. Okay.

3 A. The only food that I found in the stomach were fragments of  
4 pickle, tomato and onion, sir.

5

6 By Mr. Ruddick: Let me go through my notes here.  
7 Judge, just give me a second.

8

9 Q. Dr. Hayne, did you find any vegetable matter that appeared  
10 to be marijuana to you in this child's stomach, bowels or  
11 esophagus?

12 A. I did not see that, sir.

13

14 By Mr. Ruddick: I tender.

15

16

17

18 CROSS EXAMINATION

19

20

21 By Mr. Scott:

22 Q. Dr. Hayne, I think that you stated that the injury to the  
23 anus was consistent with an injury that could have been  
24 caused by a penis?

25 A. Yes, sir.

26 Q. Okay. Was it also consistent with an injury that could have  
27 been caused by a broom stick?

28 A. It would be unlikely and I think a broom stick could be  
29 excluded in that in a broom stick one would see abrasions  
30 and what we see in this case are lacerations and tears, sir.  
31 It would be a different type of injury, sir.

1 Q. Okay. Could it have been caused by a hair brush?  
2 A. No, sir for the same reason that one would expect to see a  
3 different type of injury. This is an injury that's produced  
4 by something that is not hard in the sense that it's not  
5 metal, it's not glass, it's not wood, it's not hard plastic,  
6 sir. It would have to have some give to it, sir.  
7 Q. Okay. But you can not say to a scientific certainty that it  
8 was caused by a penis can you?  
9 A. I didn't say that, sir. I only said that it was consistent  
10 with a penis, sir.  
11 Q. But it would also be consistent with any object who had -  
12 that had the characteristics that you just described in your  
13 testimony would that be true?  
14 A. It would be so. It would be consistent with an object that  
15 had residual strength, two structure, that it had to be hard  
16 enough to penetrate and produce the injuries but it did not  
17 have an edge to it that would leave abrasions and other  
18 patterned injuries, sir.  
19 Q. Okay. Let's say wouldn't it be consistent with the - with  
20 the point of a leather ... a soft leather sharp toe shoe?  
21 A. No, sir.  
22 Q. Why not?  
23 A. Cause one would see abrasions with that type of an injury,  
24 sir.  
25 Q. Well, doesn't leather have some give to it?  
26 A. Leather would have some give to it but one would also see  
27 not only the lacerations but one would be seeing scraping of  
28 the skin. Plus the buttocks would have to been open widely  
29 to produce that type of an injury cause they're no injuries  
30 located on the outer surface of the buttocks.  
31 Q. Now, what time was - what was the time of this child's death?

1 A. What time was the death, sir?

2 Q. Yes, sir.

3 A. It was on the - in the morning hours prior to arrival at the

4 hospital at a time frame of approximately forty-five (45)

5 minutes to an hour or slightly longer, sir.

6 Q. Now, would you agree with this statement, "at the time of

7 death is a science (inaudible) with danger and that one can

8 only come to an estimate, that one can not come to finite

9 conclusions, essentially you can only come to a range of time

10 not a specific time and one has to look at multiple barriers

11 and it is a science that has accuracy only among writers or

12 on television, it does not have any accuracy as to a specific

13 time in forensic pathology" would you agree with that

14 statement?

15 A. Yes, sir. That's a direct quote out of Dr. Boden - no, Dr.

16 Demio's book on forensic pathology and for that reason I did

17 not give you a specific time I gave you a range of time, sir,

18 just as that definition and that statement indicated. If I

19 had been in violation of that standard I would have given you

20 a specific time. I did not give you a specific time. I gave

21 you a range of time.

22 Q. Okay. Now, you say that within forty-five (45) minutes

23 before the child - within forty-five (45) minutes before

24 what - before what?

25 A. Before arrival to the admitting emergency facility or up to

26 I said an hour or even slightly longer than that, sir.

27 Q. And what time do you estimate - what time did you understand

28 that admitting facility - that the child was admitted?

29 A. I don't have that exact time, sir, but it was around 11:00

30 o'clock I believe.

31 Q. So you don't have the time? You don't know what time it

1 was - you don't know what time it was? You don't know what  
2 time the child got to Glenwood do you?  
3 A. I don't have that exact time no, sir.  
4 Q. Okay. Now, let's - if it was about 11:00 are you saying that  
5 it would be your estimate that the child died approximately -  
6 would have died approximately forty-five (45) minutes before  
7 that?  
8 A. I couldn't say forty-five (45) minutes. Forty-five (45)  
9 minutes to an hour to a slightly longer from the time of  
10 arrival at the medical facility.  
11 Q. Could it have been thirty-five (35) minutes?  
12 A. That would possible but unlikely, sir.  
13 Q. Now, if you say that it takes food approximately five (5)  
14 hours to digest in the stomach according to what you found  
15 would that mean that the child had been feed pickles and  
16 onions within the last five (5) hours prior to death?  
17 A. I didn't say that it takes five (5) hours to digest in the  
18 stomach, sir. I said it takes approximately four (4) to five  
19 (5) hours for a full meal to pass from the stomach into the  
20 small bowel.  
21 Q. Okay. Well, but where were the pickles and onions and -  
22 found?  
23 A. They were found in the stomach, sir.  
24 Q. Tomatoes? Okay. Now, so I'm asking you if you found  
25 pickles, tomatoes and onions in the stomach would that mean  
26 that the child had had some pickles, onions and tomatoes  
27 sometimes within five (5) hours prior to the time of death?  
28 A. It would indicate that sir, yes, sir.  
29 Q. Now, back when you - on the date of the autopsy did you tell  
30 Detective Sasser that an injury to the anus and rectum could  
31 have been caused by a penis?

1 A. I did, sir.  
2 Q. And do you still say that today?  
3 A. Yes, sir.  
4 Q. Now, in attempting to age the injury from looking at the  
5 injury is it possible to give a specific time at which the  
6 injury occurred?  
7 A. By looking at it, sir?  
8 Q. Well by - is it possible by any method?  
9 A. There's no way to give you an exact time. For example, if  
10 the injury occurred two (2) minutes before death or five (5)  
11 minutes before death, seven (7) minutes before death that  
12 doesn't - that's impossible to do. One can only give  
13 characteristic times within groups of time from time of death  
14 and in this case I think the injuries were such that they  
15 were inflicted at or about the time of death, sir.  
16 Q. Okay. When - what does about mean?  
17 A. Within minutes or tens of minutes of the time of death, sir.  
18 Q. Tens of minutes. Let's say could it have been up to - let's  
19 say could it have been up to an hour?  
20 A. I think that would be highly unlikely and I would exclude  
21 that, sir.  
22 Q. Could it have been forty-five (45) minutes?  
23 A. I would exclude that, sir.  
24 Q. Why?  
25 A. Now, we're talking about the injuries that we looked at  
26 microscopically including the injuries to the rectum and anus  
27 there was no acute inflammatory cell development and  
28 margination of those cells in the blood vessels or  
29 extravasation, that is the leading of those types of cells  
30 inflammatory cells whether it be neutrophils or macrophages  
31 leading the blood vessels going into the soft tissue.

1 Q. Okay. What time - at what time does - over what period of  
2 time does those things happen?  
3 A. It can occur as soon as thirty (30) minutes, sir. In some  
4 cases even shorter than that.  
5 Q. Okay. Now, have you - okay, you said it can be only  
6 estimated in ranges of times. Could you give the ranges of  
7 time that let's say pathologist use to - okay, did you tell  
8 Detective Sasser that you could not determine what type of  
9 object caused the rectum injury?  
10 A. I could only give a classification of objects. I couldn't  
11 tell you the specific object which I've done in this  
12 Courtroom.  
13 Q. Now, did you tell Detective Sasser that you could not  
14 determine what type of object caused the injury?  
15 A. What type of object?  
16 Q. Yes, sir.  
17 A. No, I could give a classification of objects that could  
18 produce this type of injury if we're talking about the injury  
19 to the rectum and anus.  
20 Q. Now, would a finding of drowning also be very similar to an -  
21 the cause of death in drowning be very close to that of  
22 asphyxiation matter of fact isn't drowning a form of  
23 asphyxiation?  
24 A. It's a type of asphyxiation however in fresh water drowning  
25 as opposed to other types of asphyxiation one does not  
26 normally get water in the stomach, one does not normally get  
27 froth and water in the upper airway and one does not normally  
28 have absence of clotting of the blood and one does not  
29 normally have the presence of bleeding into the bones that  
30 hold the ears so there are four (4) variables immediately  
31 come to mind that would exclude almost all other forms of



1 asphyxiation, sir.

2 Q. Okay. And those are what now?

3 A. The presence of water within the luminal space of the  
4 stomach, in the stomach, the presence of water and air and  
5 mucus mix forming froth within the lower airway and the upper  
6 airway and also the absence of clotting of the blood. The  
7 blood did not clot it was liquid and in addition there was  
8 bleeding into the what are called the petrous ridges which  
9 are bone structures that hold the right and left ears and in  
10 those - in that constellation or gathering of four variables  
11 that to me gives strong evidence of fresh water drowning or  
12 in some cases salt water drowning.

13 Q. Okay. Now, if you have drowning wouldn't there normally be  
14 amount of accumulation of water in the lungs?

15 A. There could be yes, sir.

16 Q. Now, the amount of water in the lungs did it appear to have  
17 been consistent with drowning or did it appear less than what  
18 you would normally have for a drowning?

19 A. I thought it was consistent with drowning especially in the  
20 type of blood and water that was located in the lungs. It  
21 had formed froth and when one sees froth in light of the  
22 other findings that gives strong evidence of fresh water  
23 drowning.

24 Q. Now, sometimes when you have drownings and you attempt CPR  
25 does that make some of the water come back out of the lungs?

26 A. Yes, sir. In fact that ones of the goals of Cardio Pulmonary  
27 Resuscitation.

28 Q. Okay. One of the goals of Cardio Pulmonary Resuscitation is  
29 when you press the chest to make the water that has gone into  
30 the lungs come back out?

31 A. That would be in the resuscitation of a known fresh water

1 drowning or a suspected fresh water drowning. The most  
2 important reason for compressing the chest is to compress  
3 the heart by direct pressure through the chest wall to the  
4 heart to activate the heart and provide for an external  
5 pumping of the heart.

6 Q. Now, on the body did you see anything that you considered to  
7 be a rash?

8 A. A rash, sir?

9 Q. Yes, sir.

10 A. No, sir.

11 Q. In your experience do injuries become more pronounced after  
12 the death of an individual? Let's say a bruise - would a  
13 bruise normally become more pronounced after death?

14 A. It is common in my experience that the characteristic of a  
15 bruise becomes more readily recognized after death and after  
16 a period of time after death.

17 Q. So would a bruise that maybe let's say barely visible within  
18 a few hours before death look highly visible after death at  
19 some point, could that - could that happen?

20 A. That would be possible.

21 Q. Now, when you were shown the photograph of the child and then  
22 there was a photograph of the child's teeth do you know what  
23 it is that had caused the rotting of the child's - I mean  
24 of - not necessarily rotting but whatever the difficulty  
25 with the child's teeth were what did you feel like that that  
26 was?

27 A. I'm not a dentist but I thought it would consistent with  
28 lactose.

29 Q. Now, with the pickles and onions in the stomach be  
30 inconsistent with having remained there for over twelve (12)  
31 hours? What I'm saying would they have been there for over

1 twelve (12) hours would they have been - have moved on into  
2 the bowel?

3 A. Most commonly they would unless there is some underlying  
4 disease or some other problem with passage of food from the  
5 stomach into the small bowel even enheightened emotion,  
6 stress, can delay the passage of food but normally under  
7 normal circumstances for a healthy individual who is not  
8 under great stress the food will normally pass, a full meal,  
9 in approximately four (4) hours to five (5) hours, sir, from  
10 the stomach into the small bowel.

11 Q. Now, from looking at the tomatoes and the pickles that you  
12 saw in the stomach was it possible to make a determination  
13 as to whether or not they were - whether or not they had been  
14 in there for - on the upper end of the five (5) hours or more  
15 toward the beginning end or towards the mid end? What I'm  
16 saying is it possible for you to determine whether or not it  
17 was approximately two (2) hours or approximately three (3)  
18 hours or approximately four (4) hours or approximately five  
19 (5) hours?

20 A. I could not make that determination, sir.

21 Q. There was no conclusion as to the length of time it had been  
22 since the child had ate the pickles and tomatoes that you  
23 could come to at all?

24 A. I thought it was consistent with the time frame of less than  
25 four (4) to five (5) hours, sir.

26 Q. Now, did you state that you found some injuries to the child  
27 that were consistent with what you thought were fingernail  
28 scratches?

29 A. Yes, sir.

30 Q. Okay. Now, is that a conclusion that it was caused by  
31 fingernail scratches or is that just saying that it was

1 consistent with fingernail scratches but it could be some  
2 type - it could be a class of things that could have caused  
3 it?

4 A. It was consistent with it, sir. It had a slight curve just  
5 a like a fingernail does. It was thin, it caused a scrape  
6 and it was consistent with a fingernail. Could another  
7 object like a fingernail cause that? I could not exclude  
8 that but I indicated that it was consistent with a  
9 fingernail, sir.

10 Q. Okay. And at that time were you shown any photograph to show  
11 the length of Jimmie Duncan's fingernails at that time?

12 A. I don't know who Jimmie Duncan is, sir.

13 Q. Were you shown a photograph of - to show how long Allison  
14 Oliveaux's fingernails were at that time?

15 A. No, sir.

16 Q. Now, back in December of 1993 - well, was this - was this  
17 autopsy the very first autopsy that you did for Ouachita  
18 Parish?

19 A. I don't know, sir. It was about that time that we were doing  
20 post-mortem examinations or autopsies for Ouachita Parish but  
21 I don't remember if this was the first or not.

22 Q. Now, isn't it a fact that at the time of this autopsy that  
23 you were first attempting to be able to perform autopsies  
24 for this particular area, this particular Judicial District?

25 A. I was what, sir?

26 Q. Wasn't this during the time when you were first starting to  
27 perform autopsies for this - in this Judicial District?

28 A. It was about that time for this Parish, sir.

29 Q. And what - was it unusual for that many people to be  
30 attending an autopsy being conducted by you?

31 A. It would not be unusual in a high profile case, sir. In some

1 instances we have numerous members from the District  
2 Attorney's Office and law enforcement attending high profile  
3 cases.

4 Q. Now, wasn't the attendance of all of these individuals at  
5 the autopsy sort of equivalent of grading your performance  
6 for there to be a determination as to whether or not you were  
7 going to be able to do the autopsies for this area?

8 A. I never even thought of that, sir, I considered it an  
9 informative to those individuals conducting the investigation  
10 as to the death of Haley Oliveaux.

11 Q. Now, but since this particular autopsy you have been  
12 performing autopsies in this District since 1993, isn't that  
13 a fact?

14 A. Yes, sir.

15 Q. Okay. And prior to December of 1993, the autopsies from this  
16 Judicial District was being performed by a doctor out of  
17 Shreveport weren't they?

18 A. I believe so, sir. I don't think all of them were being  
19 performed by that physician I think some were being performed  
20 locally, sir.

21 Q. Now, do - I mean does you or the organization that you work  
22 for are they paid for doing autopsies?

23 A. A bill is sent and normally we receive remuneration for a  
24 post-mortem examination.

25 Q. And about how many autopsies would you estimate that you  
26 perform from this Judicial District during the course of a  
27 year?

28 A. I don't know, sir. I don't keep that figure in my head. I  
29 could only estimate approximately forty (40) maybe thirty  
30 (30) autopsies, I can't give you that figure though.

31 Q. Is it your understanding that you perform all the autopsies

1           that are needed from this Parish? That every time - that  
2           each and every time an autopsy is needed for this Parish that  
3           you are the one to perform it?

4       A.    I don't know that for a fact, sir. I do all the autopsies  
5           in which this Parish requests me to do the autopsies.

6       Q.    Now, the mark that you saw around the neck did you associate  
7           that - did you feel that they had any significance to the  
8           death of the child?

9       A.    The death of the child?

10      Q.    Yeah.

11      A.    I thought that the two semi-circular abrasions to the right  
12           angle of the jaw and the right neck were impart consistent  
13           with injuries producing fresh water drowning forcing the head  
14           into the water, sir.

15      Q.    Okay. Now, but - so you thought that those - that those  
16           injuries were consistent with someone having the thumb on  
17           one side and the fingers on the other and pushing Haley?

18      A.    I thought it was consistent, sir, with a thumb making contact  
19           with the back of the head and the fingernails making contact  
20           with the right angle of the jaw and the right side of the  
21           neck pushing an individual down into the water.

22      Q.    Okay. So you didn't - what did you - did you find a bruise  
23           on the left side of the neck?

24      A.    No, sir.

25      Q.    Okay. You found one on the right side of the neck?

26      A.    I found bruises on the right side of the neck, sir.

27      Q.    Now, do you know what type of - okay, do you feel that if  
28           somebody does CPR that normally they catch - on a small child  
29           would catch a child behind the neck holding the child and  
30           during the CPR if they were doing CPR standing up wouldn't  
31           they hold the child behind the neck?

1 A. Hold the child behind the neck?  
2 Q. Yes, sir.  
3 A. I think you would want to place the child on a flat surface  
4 to do CPR you wouldn't be holding the neck.  
5 Q. Okay. But if you were - if a person was standing up trying  
6 to do CPR to a child wouldn't they hold the child around the  
7 neck? I mean can you see any other way to reasonable do CPR  
8 let's say if you were standing up beside holding the child  
9 around the neck?  
10 A. Hold a child by the neck and do CPR on the child, sir?  
11 Q. Yes, sir.  
12 A. I think you would end up strangling the child if you held  
13 them by the neck, held them up in the air trying to do CPR.  
14 Q. I'm - what I'm referring to is that if you had a child that  
15 you were trying to do CPR on wouldn't your fingers be  
16 somewhere around the child's neck if you were trying to stand  
17 up and do CPR?  
18 A. It would be on the back possible on the neck yes, sir.  
19 Q. Okay. And even if you - even if the child was laying down  
20 you would still tilt the child's head back to perform the CPR  
21 would you not?  
22 A. You would want to rock the neck back to clear the airway.  
23 Q. Okay. And as a matter of fact that's one of the things that  
24 you - we normally do during the course of CPR don't you?  
25 A. That's one of the steps, yes.  
26 Q. Now, do you think - now, I think you said that normally what  
27 you would do you would put the child's head on a hard  
28 surface?  
29 A. You want the child or any individual on a flat surface.  
30 Q. Now, where was it that you found the injury to the child  
31 towards somewhere around the back of the head where was that

1 injury at?

2 A. It was located over what's called the right occipital of the

3 scalp.

4 Q. Could you point that out on your head?

5 A. Here, sir.

6 Q. Okay. And if you were doing CPR to a child you would tilt

7 the child's head back so that you could breathe in the child

8 up against a hard surface would you not?

9 A. You would.

10 Q. Now, when you decided to do your - I mean when you decided

11 that there was a need to bring in, cause I can't think of the

12 proper name, the dentist, a forensic dentist that was because

13 you thought that you saw what you considered to be bite

14 marks?

15 A. Yes, sir.

16 Q. And - but that was not your area of expertise, is that

17 correct?

18 A. My expertise does not extend to identifying specific

19 individuals who would inflict bite marks but would certainly

20 extend to the point where I could render an opinion if I

21 thought they were a bite mark.

22

23 By Mr. Scott: I would like to talk to him about

24 one of the exhibits on the -

25

26 By The Reporter: Setting up screen so that

27 photographs can be displayed to the

28 Jury members and Court.

29

30 Q. Dr. Hayne, in this particular photograph where did you -

31 where on the (inaudible) did you feel that you saw bite mark?



1 A. I thought this area was consistent with a bite mark and this  
2 area I thought was consistent with.  
3 Q. Now, did you feel that this area here where you have this  
4 straight edge right there that that was consistent with a  
5 bite mark?  
6 A. Yes, sir.  
7 Q. Okay. And with - where did you feel were the indentions for  
8 the individual teeth were?  
9 A. I thought they were sitting in here and in here and there  
10 and I thought -  
11  
12 By The Court: - Mr. Scott, you're blocking the  
13 view of those jurors right there.  
14 By Mr. Scott: Okay.  
15  
16 A. And I thought that could represent a scrape mark with a tooth  
17 sliding over the chin and I deferred that to the forensic  
18 odontologist to render the final opinion.  
19  
20 By Mr. Scott: And could you change it to the one  
21 on the elbow?  
22 By Mr. Jones: S-21.  
23 By Mr. Scott: To S-21.  
24 By Mr. Jones: Hold on and let me see if I have it  
25 on this one. Hold on one second.  
26 S-12.  
27  
28 Q. Okay. On this particular picture that's been identified as  
29 S-12 where did you feel that - where did you feel that the  
30 bite marks were on there?  
31 A. I felt this area here and here were suspicious for a bite

1 mark, sir.

2 Q. Okay. Are you pointing - right here?

3 A. Here and there, sir.

4 Q. And you felt those to be bite marks so therefore you felt it

5 necessary to consult an odontologist, is that how you

6 pronounce it?

7 A. A forensic odontologist?

8 Q. Yes, sir.

9 A. I thought they were suspicious for it. I thought that the

10 injuries located on the left side of the neck and the right

11 cheek were consistent with it, sir.

12 Q. Okay. Thank you. And at that time who was the odontologist

13 that you referred them to - for examination to?

14 A. Dr. Michael West.

15 Q. Now, since that time have you referred them to any other

16 odontologist yourself?

17 A. Have I, sir?

18 Q. Yes, sir.

19 A. No, sir.

20 Q. Now, at the time of the autopsy did you state that there were

21 some other - besides the individuals from Ouachita Parish did

22 you state that there was some other individuals present at

23 the autopsy also?

24 A. Yes, sir.

25 Q. Okay. Who were those individuals?

26 A. Myself, the coroner medical examiner investigator of Rankin

27 County, the deaner and Dr. West.

28 Q. Okay. You say the deaner?

29 A. I said the deaner.

30 Q. What is that?

31 A. It's a German word for assistant. It's the person who

1               assists me.

2       Q.     And do you remember who the deaner was for that?

3       A.     Yes, sir.

4       Q.     Who was the deaner?

5       A.     Mr. Beckley.

6       Q.     Now, the injuries to the jaw you came to an absolute  
7               conclusion that those injuries could not have been caused by  
8               tape?

9       A.     One, they weren't injuries to the jaw they were injuries to  
10              the cheek.

11      Q.     I mean to the cheek that's what I'm talking about.

12      A.     Two, there is no such standard as absolute. I've rendered  
13              my opinion to the highest degree that I know of that's  
14              accepted in this country and that's with reasonable medical  
15              certainty.

16      Q.     Did you come to the conclusion to a reasonable medical  
17              certainty that that could not have been caused by tape?

18      A.     I did, sir.

19      Q.     Now, the - you say there was injuries to the frenulum?

20      A.     Yes, sir.

21      Q.     And - but you also said that there was an - there was an  
22              intubation tube down the child's mouth?

23      A.     Yes, sir.

24      Q.     Okay. And about how large is the intubation tube - was the  
25              intubation tube in this child?

26      A.     I did not measure it. It was a standard pediatric. It would  
27              measure approximately eight (8), nine (9) inches, sir.

28      Q.     Now, do you know what efforts were made to get the intubation  
29              down in the child's throat?

30      A.     I don't know, sir.

31      Q.     Now, I think you said that you took - did you take some blood

1 from the baby?

2 A. I did, sir.

3 Q. Okay. And what was the purpose of the blood that you took

4 from the baby?

5 A. It was three fold, sir.

6 Q. Okay. What was the three purposes?

7 A. Toxicology and drug abuse also for serology and also for DNA

8 studies.

9 Q. So toxicology that would have determined whether or not the

10 child got a hold to some toxic substance that contributed to

11 the death would that be an accurate statement?

12 A. No toxic substance would have. The finding is fresh water

13 drowning, sir. It may indicate presence or abuse of a toxic

14 substance or medication in a child but it would not be the

15 cause of death, sir.

16 Q. No, I didn't say cause. I said it may have contributed to

17 the cause of death. Let's say if there would have a toxic

18 substance that rendered the child unconscious and caused the

19 child to drown. What I'm saying is that was your

20 investigation - did you do - is the - when - collected a

21 toxicology is the purpose to be able to determine what toxins

22 may be in the blood I guess so to speak?

23 A. What drugs or medications?

24 Q. Yes, sir.

25 A. Or alcohol?

26 Q. Yes, sir.

27 A. Yes, sir.

28 Q. Okay. And what was the other purposes that you took blood

29 for?

30 A. Serology, to determine the blood type of that individual.

31 And a purple top tube of blood was taken for possible DNA

1 studies if that became necessary.

2 Q. Now, so there are tests by which blood can be tested and  
3 there can be a determination as to whether or not the blood  
4 contains some medication or toxic substance or things of that  
5 nature?

6 A. Yes, sir.

7 Q. Okay. Now, was - did you - did you test the blood to  
8 determine what medications or toxins were in the blood?

9 A. I did not, sir.

10 Q. Did you do any DNA studies with the use of the blood that  
11 was taken from the child?

12 A. I did not, sir.

13 Q. Now, since the blood was kept for the purpose of being able  
14 to determine whether or not there were any toxic substances  
15 or medications, etcetera if there would have - if there would  
16 have been a test where it would have been tested and there  
17 would have been medications or toxic substances found in the  
18 blood could that have possibly effected your determination  
19 as to what brought about the fresh water drowning?

20 A. No, sir force was used to inflict fresh water drowning, not  
21 drugs, not medications, not toxins, sir.

22 Q. Okay. But you had come to that conclusion, what I'm saying  
23 is that if you would have found that the child had some high  
24 level of toxins in the blood that could have effected the  
25 child's consciousness you wouldn't - that wouldn't have  
26 effected your opinion one way or the other?

27 A. How do you explain all the other injuries, sir? No, the  
28 answer would be no and you could not explain all the other  
29 acute injuries on the body because of presence of some  
30 substance in the blood, sir.

31 Q. Now, have you ever witnessed anybody having a seizure?

1 A. I have, sir.

2 Q. Okay. And have you ever witnessed someone having a seizure  
3 where they were flailing around and getting up against  
4 whatever may be close and having a seizure that causes them  
5 to lose control of their muscles you've never heard of  
6 nothing like that happening?

7 A. I've seen that. That's unusual. In fact it's highly unusual  
8 when you describe flailing of arms and the like.

9 Q. Okay. But it can happen?

10 A. Almost exclusionary, sir.

11 Q. Now, if there would have been a toxin in the blood that could  
12 have caused seizures you don't feel that that would have  
13 effected your decision one way or the other?

14 A. No, sir. There would have to be a very unusual type of toxin  
15 or medication to produce such violent movement that would  
16 even tear the rectum and the anus, sir.

17 Q. Now, so you concluded that the tearing of the rectum or the  
18 anus was absolutely connected to the bruises then did you  
19 not? When - how do you - how did you beside the  
20 approximate - excuse me, besides the injuries occurring at  
21 a similar time - okay, which you can't establish for sure how  
22 do you know that the bruise to the rectum occurred at or  
23 about the exact same time as the other injuries?

24 A. There's no such thing as the exact same time as you indicated  
25 in referring to the chapter in forensic pathology by Dr.  
26 Demio, it's at or about the same time, sir. There's no aging  
27 to the injury that occurred at or about the same time.

28 Q. Okay. So there is no way that you can determine that - that  
29 the injuries around to the neck and in the head - and to  
30 the - and the bruise back here occurred at the same time that  
31 the anus was torn can you?

1 A. Within minutes no, sir. Within minutes even ten (10) minutes  
2 even a few minutes longer than that but at or about the same  
3 time, sir.

4 Q. And can you say - do you feel that you can say to a medical  
5 certainty that the injuries to the neck could not have been  
6 caused by CPR efforts?

7 A. Yes, sir.

8 Q. You feel that you can say that?

9 A. With any expertise in CPR absolutely, sir.

10 Q. Okay. What about people that didn't have expertise in CPR?

11 A. If they're biting and they are scratching and they are using  
12 force to produce bruising that would be the most unusual CPR  
13 that I've ever heard of, sir.

14 Q. Okay. So you concluded - so you have concluded that - so you  
15 think that that injury on the side of that neck was a bite  
16 mark too?

17 A. I said it's consistent with it, sir.

18 Q. It's consistent with it. Okay. But I thought you said that  
19 the injury over here was consistent with a finger or one of  
20 the flanges or the thumb?

21 A. We're talking about multiple injuries. We're talking about  
22 skin scrapes, we're talking about linear - curvilinear  
23 scrapes of the skin two of which I thought were consistent  
24 with fingernail injuries. We also had patterned injuries  
25 located over the right side of the neck and the right cheek  
26 that I thought were consistent with injuries produced by  
27 teeth, sir.

28 Q. Okay. Now, even let's say if it were fingernail injuries  
29 you don't think a person of desperate effort to resuscitate  
30 a child hold this child around the neck could possibly cause  
31 a scratch on the side of the neck?

1 A. Like you had that body there, sir?

2 Q. Uh, huh (yes).

3 A. The fingernails are at right angles to your fingernails, sir.

4 Q. Okay. But what about when you move up like this? Okay. In

5 a desperate attempt to save a child do you think that person

6 is actually sitting up wondering whether or not - I mean

7 where they're going to put their fingers or you don't - you

8 think - don't you think that sometimes in emergency

9 situations people make mistakes and may cause a scratch here

10 or there when they're trying to resuscitate a child if

11 they're fingers are even close to this child - to the child's

12 neck you don't think that a fingernail could have slipped

13 especially let's say if it was a woman who had long

14 fingernails or a man who had long fingernails during the

15 process of resuscitation?

16 A. Again the way you held the body, sir, holding the body as you

17 indicated CPR was delivered the scraps of the skin were at

18 right angles to your fingernails they're at ninety degrees,

19 sir, that would be inconsistent with that, sir.

20 Q. Now, okay, I thought I heard you say that there were - that

21 there were - that there were bruises along the side of the

22 neck that was consistent with a finger, did you not say that?

23 A. They were consistent with injuries, sir, I didn't give a

24 definition as to what caused those injuries, sir. I

25 indicated that the fingernails were the object that I felt

26 produced the two slightly curved scratches located on the

27 right angle of the jaw on the skin surface and the right side

28 of the neck.

29 Q. Okay. Now - but did you say that you saw any injuries on the

30 child that you found to be consistent with a finger holding

31 the child around the neck did you say that?



1 A. No, sir around the top of the head, sir. That I thought was  
2 consistent given the location of the two curve scratches  
3 located on the neck consistent with a thumb located over the  
4 back of the head and two fingers located on the right side  
5 of the neck and right side of the jaw on the skin surface,  
6 sir.

7 Q. Okay. So you thought it was consistent with a thumb on the  
8 back of the head and two fingers on the - are you talking  
9 about this way? Left hand?

10 A. No, sir it would have to be on the right hand because the  
11 scraps were located on the right side of the jaw and neck on  
12 the skin surfaces.

13 Q. Okay. Now, you say that you thought that it would have been  
14 like this? You thought that it was consistent with something  
15 like this?

16 A. Essentially like that, sir, of course Haley Oliveaux's head  
17 was smaller than that head.

18 Q. Okay. Now, the - did you notice two scratches over here that  
19 you thought - I mean not scratches, bruises that you thought  
20 were consistent with fingers being held on the side of the  
21 neck?

22 A. I saw bruises there, sir.

23 Q. Okay. And did you feel them to be consistent with fingers  
24 being on the side of the neck?

25 A. I never said that, sir.

26 Q. Okay.

27 A. I could not exclude that.

28 Q. You couldn't exclude?

29 A. No, sir.

30 Q. Nor could you exclude fingers being on the side of the neck  
31 if the child was being held like so then either could you?

1 A. No, sir. Of course when you hold the child like that then  
2 you can't get the bruise to the top of the head.  
3 Q. Okay. But I thought you said that when I asked you to point  
4 to the bruise you pointed to the back of your head?  
5 A. I did, sir.  
6 Q. Okay. But then I thought you said that in order to do CPR  
7 you lay the child on a hard surface?  
8 A. That's correct.  
9 Q. At the time when the child was brought to the - sometime  
10 after the child was brought to the morgue did you remove the  
11 intubation tube that the child had?  
12 A. I did, sir.  
13 Q. Okay. And did you remove the tape that was holding the  
14 intubation tube?  
15 A. I did, sir.  
16 Q. Okay. And did you find that - okay, did you find that the  
17 intubation tube was being held with tape that extended to  
18 each side of the lips?  
19 A. I did, sir.  
20 Q. And did you remove that tape from the child's lips?  
21 A. I did, from the cheek and from the endotracheal tube, sir.  
22 Q. Okay. You removed tape from the cheek. And when you removed  
23 that tape from the cheek aren't the injuries that's left on  
24 this cheek don't they have straight lines similar to the tape  
25 that was removed from the child's cheek?  
26 A. No, sir.  
27 Q. Now, at the time when - and I'm going to show you a picture  
28 that I'm going to mark D-5 - D-4, and ask you whether or not  
29 that appears to be the way that the child appeared with the  
30 intubation tube at the time when the child was brought to the  
31 morgue?

1 A. Yes, sir.  
2 Q. Okay. And when the child was brought in did the child have  
3 on - I mean have that type of tape on?  
4 A. Yes, sir.  
5 Q. Okay. And is that the tape that you removed?  
6 A. I did, sir.  
7 Q. And did you also remove that intubation tube from the child?  
8 A. I did.  
9  
10 By Mr. Scott: Okay. I'd like to offer D-4.  
11 By Mr. Ruddick: No objection.  
12 By The Court: Let it be admitted.  
13  
14 Q. Now, in the child's stomach you found pickles, onion and what  
15 else?  
16 A. Tomato, sir.  
17 Q. Do you think that possible that child - I mean those - I  
18 guess those ingredients kind of ring a bell do you think the  
19 child had eaten - is it possibly the child had eaten a  
20 hamburger or do you think that was the end - the last part  
21 of a hamburger?  
22 A. Could be that, sir, it could be the top part of a pizza or  
23 something like that, sir.  
24 Q. Let's say if the child had eaten a hamburger is it possible  
25 that the meat could have digested and the pickles and - and  
26 the pickles and onions and tomato still have been in the  
27 stomach?  
28 A. Would the meat have passed from the stomach into the small  
29 bowel?  
30 Q. Yes, sir.  
31 A. No, sir.

1 Q. Okay. Usually meat would pass slower than .....

2 A. It would pass about the same time. The food would have been

3 mixed some of the pickle, some of the tomato, some of the

4 meat would pass and some would stay behind, sir.

5 Q. Now - okay, did you find anything else in the stomach?

6 A. I didn't.

7 Q. I just find it kind of strange that a person would have a

8 meal with just pickles, onions and tomatoes?

9 A. I found two other things, sir.

10 Q. Okay.

11 A. I found water and I also found the nasal gastric tube going

12 from the nose into the stomach.

13 Q. Okay. When you say nasal gastric tube you're talking about

14 an appliance that was put there by a hospital or a doctor

15 aren't you?

16 A. Placed by medical personnel.

17 Q. Okay. What I'm - I guess my question is though - my question

18 is did you find any other type of food because it just sounds

19 sort of strange that a person - that a kid would have a meal

20 that just consisted of pickles, onions and tomato, did you

21 find - I mean did you find let's say any evidence of any meat

22 or did you find any evidence of any bread or did you find any

23 evidence of anything else that may have gone with pickles,

24 onions and tomato?

25 A. I found no other food substance, sir.

26 Q. Now, would the test that you had run - excuse me, not the

27 test but the examination that you had performed would it had

28 been the type of examination that would have picked up if the

29 child had a seizure?

30 A. The only way to observe a seizure would be either observing

31 it directly during the time of seizure in some cases that

1 would require augmented medical intervention or seeing the  
2 changes secondary to a seizure. The brain showed no evidence  
3 of seizure activity thou a seizure could not be excluded as  
4 an agonal event during severe oxygen deprivation during the  
5 course of fresh water drowning, sir.

6 Q. Okay. Seizures are usually caused by oxygen deprivation I  
7 mean isn't that one of the major causes of seizures?

8 A. It is a cause of seizure yes, sir.

9 Q. Okay. And so if a person had a seizure that would me - could  
10 that also be linked to some breathing difficulties - to some  
11 breathing difficulty? What I'm saying is we breath oxygen  
12 don't we?

13 A. We breath oxygen.

14 Q. Okay. And seizures are caused by oxygen deprivation  
15 sometimes, is that correct?

16 A. They may.

17 Q. Okay. So if you have a problem with breathing couldn't that  
18 lead to oxygen deprivation?

19 A. Yes.

20 Q. Can an oxygen deprivation could lead to a seizure, is that  
21 right?

22 A. It's possible, sir, yes.

23 Q. So if a child had periodic seizures then could those periodic  
24 seizures be caused by a deprivation of oxygen?

25 A. That would remain possible if there were some underlying  
26 disease of the upper airway or the lungs or some other  
27 mechanism producing decrease oxygen delivery to the brain as  
28 one of the mechanism of seizure.

29 Q. Couldn't exposure of some kind either to the smoke or to the  
30 substance itself - exposure to cocaine cause seizures?

31 A. Seizure would be an unusual event in exposure to cocaine.

1 Far more commonly one would see cardio vascular disease as  
2 a response to cocaine especially in a lethal case producing  
3 cardiac erythema, miocardia infarction, coronary artery  
4 disease, stroke and aneurysm.

5 Q. Okay, but cocaine could possible bring about a seizure could  
6 it not?

7 A. It would be possible.

8 Q. Now, isn't it possible that ingestion of Prozac could cause  
9 a seizure in a child?

10 A. It would be possible.

11 Q. Isn't it possible that Xanax - an ingestion of Xanax could  
12 cause a seizure in a child?

13 A. That's possible, sir.

14 Q. Is it possible that inhalation of quantities of marijuana  
15 smoke could cause a seizure to a child?

16 A. That would be unusual, sir, highly unusual. It would have  
17 to be large volume of tetrahydrocannabinol to that, sir.

18 Q. And tetrahydrocannabinol comes from marijuana?

19 A. Marijuana.

20 Q. Now, what is it that sometimes will cause injuries to become  
21 more pronounced after death? What process causes that -  
22 would cause that?

23 A. It's the pooling of blood into the body injured areas and it  
24 appears to effect the refractive index of hemoglobin  
25 underneath the skin surface and it gives a more clear and  
26 more defined outline, sir.

27 Q. Now, are you familiar with any studies by the American  
28 Academy of Pediatrics relating to neurologic manifestations  
29 of cocaine exposure in childhood?

30 A. I'm not familiar with that particular study.

31 Q. Okay. Now, exposure to cocaine could it besides causing

1           seizures could it cause delirium, dizziness, drooling and  
2           ataxia, a-t-a-x-i-a, do you know anything about that?

3       A.    About ataxia?

4       Q.    What I'm saying do you know whether or not exposure by a  
5           child to cocaine could cause dizziness, drooling, ataxia or  
6           delirium?

7       A.    That - I would agree with that in high doses exposure to  
8           that, yes, or prolonged exposure.

9       Q.    Now, the blood that was connect - I mean that was collected  
10           so that you all would be able to determine whether or not the  
11           child had ingested any medication or other toxins or toxic  
12           substances what happened to it?

13      A.    It was transported back to this Parish.

14      Q.    Okay. And -

15      A.    - With the other items.

16      Q.    And did you - do you know whether or not it was destroyed?

17      A.    I believe it was, sir.

18      Q.    Would you consider the sides of a bathtub to be a hard  
19           surface?

20      A.    I'm sorry, sir.

21      Q.    Do you think that the - a bathtub is made of hard material?

22      A.    Yes, sir.

23      Q.    Now, we - there's an age that we commonly refer to as  
24           terrible two's do you find that many times in your studies  
25           that children around the age of two (2) who pull up on  
26           objects and pull objects over and things of that nature  
27           sometime pull objects over themselves and injury themselves  
28           and hurt themselves sometimes?

29

30                   By Mr. Ruddick:       Your Honor, I'm - although I've been  
31   trying not to object I think we've





1 Q. Now, when you - when the back of the head comes to - in  
2 contact with the hard surface your whole head doesn't come  
3 in contact with the surface does it?

4 A. It -

5 Q. - Matter of fact when your head lays back on a hard surface  
6 isn't it about - and it's a small head isn't it about an inch  
7 or so that's in contact with the hard surface?

8 A. I would say it make contact with a greater surface area than  
9 three quarters of an inch especially on a child's head who  
10 has greater flexibility than a person like you or me, sir.

11 Q. Okay. Now, don't you think though if the child's head is on  
12 the hard surface that part of the head is going to compact -  
13 going to contact with the hard surface a little bit harder  
14 than the other part that's surrounding it because the area  
15 that protrudes the most is going to contact the most with the  
16 hard surface don't you think?

17 A. I would agree.

18 Q. Can you say with medical certainty that an injury to the  
19 child's elbow was caused by a bite or would you defer that  
20 to the forensic dentist?

21 A. I would say it was suggestive and I would defer the final  
22 diagnosis of the injury to the left elbow to the forensic  
23 odontologist.

24

25 By Mr. Scott: Just one moment.

26

27 Q. Just a couple more questions. Doctor, in doing forensics  
28 over the years and I'm sure that a number of pictures have  
29 been taken of autopsies and things - I mean autopsies that  
30 you've performed, is that right?

31 A. Yes, sir.

1 Q. Okay. And have you - have you noticed that on pictures that  
2 are taken that the darker the background the more pronounced  
3 the bruises or injuries tend to appear cause - well, I just  
4 want to show you a series of photographs, three photographs.  
5 Now would you look at those photographs, all three  
6 photographs of the same thing? Okay. On those photographs  
7 do you notice that the darker the background of the  
8 photograph the more pronounced the blood appears in the  
9 child?

10 A. The more pronounced the blood - the livor mortis, sir, the  
11 pooling of blood?

12 Q. Yes, sir. Yes, sir.

13 A. I would say in this particular instance the darker photograph  
14 shows the pooling of blood in a more pronounced way.

15 Q. So a picture with a darken background that causes the  
16 injuries to look more pronounced wouldn't necessarily be the  
17 same picture that one would get by looking with the naked eye  
18 at the object that the picture betrays would that - would you  
19 find that to be true?

20 A. Would not be the same as one sees with the naked eye?

21 Q. Yeah, if - you may look at it with the naked eye but you may  
22 not see - necessarily see the same picture as you would see  
23 if it was a picture with a darken background that causes the  
24 injury to look more pronounced?

25 A. I think you enhance you don't distort, that you use different  
26 techniques of lighting, angulation of light, intensity of  
27 light, duration of light so as to capture photographically  
28 what you see. In some instances it's not as good as what you  
29 see with your eye and in some instances it may even be a  
30 little bit better so there would be a range. It doesn't  
31 necessarily distort it enhances and sometimes even diminishes

1           what you see with your eye.

2       Q.    Okay.  Well, whether it enhances or whether it diminishes

3           sometimes there is a difference between what is viewed with

4           the naked eye and what comes out on the image that's produced

5           by a camera?

6       A.    There could be a change in color, intensity and the light,

7           however in this instance if we're referring to this case

8           those photographs show the same thing that I documented with

9           my eye and recorded in the autopsy protocol.

10      Q.    But you're very trained in that area though aren't you?

11      A.    That's my job, sir.

12      Q.    Okay.  Oh, here's one other question that I wanted to ask

13           you, are you - when you first started I didn't - I thought

14           you said you were Board Certified in what type of pathology?

15      A.    Anatomic pathology, clinical pathology, forensic pathology

16           and forensic medicine.

17      Q.    Okay.  And you're Board Certified in forensic pathology also?

18      A.    Yes, sir.

19      Q.    Is this recent or have this been for some time?

20      A.    Several years, sir.

21      Q.    Okay.  And you are Board Certified by what authority I guess

22           I would call it?

23      A.    I'm certified in the specialties, different specialties by

24           the American Board of Pathology, the American Academy of

25           Neurologic and Orthopedic Surgery and the American Academy

26           of Forensic Examiners.

27      Q.    Okay.  Thank you, sir.

28

29                   By Mr. Ruddick:       Your Honor, I request a fifteen (15)

30   minute break for any possible

31   re-direct.

1 By The Court: Okay. How much longer are we going  
2 to be?  
3 By Mr. Jones: Let's approach.  
4  
5 By The Reporter: Brief bench conference with all  
6 counsel.  
7  
8 By The Court: We're going to take a fifteen (15)  
9 minute recess, ladies and gentlemen.  
10  
11 By The Reporter: Jury members and alternates escorted  
12 out of the Courtroom and Court in  
13 recess for fifteen (15) minutes.  
14  
15 By The Court: Come on back up Doctor.  
16 By Mr. Ruddick: Your Honor, in fairness to the Jury  
17 our other expert is in the process  
18 of making arrangements so that we  
19 put him on in the morning instead  
20 of keep going tonight.  
21 By The Court: Well, I'm sure the Jury will  
22 appreciate and I know the Judge  
23 will. Okay. Go ahead and bring the  
24 Jury in.  
25  
26 By The Reporter: Jury members and alternates escorted  
27 back into the Courtroom and  
28 testimony resumed with Dr. Hayne on  
29 re-direct examination.  
30  
31

RE-DIRECT EXAMINATION

By Mr. Ruddick:

Q. Dr. Hayne, I just have a few questions for you. The rips and tearing of the anus that you testified to I believe you also testified that could possibly be caused by a finger?

A. It would be possible, sir.

Q. And can you tell under what circumstances would have to occur to have caused all that damage?

A. A large finger repeatedly inserted into the anus with great force.

Q. When you did the autopsy and you went through what was left in the stomach did you find any indication of any medicine, capsules, anything that would indicate this child had ingested any type of pills?

A. No, sir there were no pill fragments or capsule fragments from medication.

Q. And if there had been testimony that within five (5) or ten (10) minutes of this child supposedly being found lying in the bathtub that the child was happy and playing would that be consistent with this child having ingested any type of Prozac, Xanax or any other type of medication?

A. No, sir.

Q. What is lactose?

A. Lactose is a sugar, sir.

Q. Found in milk?

A. Yes, sir.

Q. You've also testified that based on what you've reviewed that the child was dead somewhere between forty-five (45) minutes or longer by the time it hit the hospital?

1 A. Yes, sir.  
2 Q. Glenwood Medical Center. If the child had been dead at the  
3 time it's head was placed on the floor for CPR to begin would  
4 the bruise that you testified to at the top of the head could  
5 it have been made?  
6 A. No, sir that bruise would require active blood pressure for  
7 the red blood cells to leave the tear in the vessel and go  
8 into the soft tissue what we would see externally is a  
9 bruise.  
10 Q. If there had been testimony that as soon as the child was -  
11 within three (3) minutes of the child being taken out of -  
12 supposedly taken out of some water and supposedly had been  
13 playing, other people touched the child and the child was  
14 cold to touch would that be consistent or that would support  
15 your testimony that the child had been dead forty-five (45)  
16 minutes or longer before hitting the hospital?  
17 A. That would be supportive that the child was dead. Cold body  
18 temperature would remain - would allow for the external skin  
19 surface to remain warm for a period of forty-five (45)  
20 minutes or an hour, sir.  
21 Q. And whether or not the child would have been in water that  
22 was warm or cold would not make a difference?

23  
24 By Mr. Scott: May it please the Court, I would  
25 object. It seems that he's asking  
26 new direct questions not questions  
27 relating to the cross.

28 By The Court: Mr. Scott, he could re-call him for  
29 purposes of expediency I'll allow  
30 it although you're correct. I'll  
31 allow it.

1 Q. When you testify that the body retains heat what are you  
2 talking about?

3 A. That the body itself, the internal organs remain the same  
4 temperature after death for a period of approximately two (2)  
5 hours and that heat will radiate to the skin surface though  
6 at a slower rate after death and that the blood is no longer  
7 being pumped and warm blood is no longer being delivered to  
8 the skin. The rate of cooling is such that for a period of  
9 forty-five (45) minutes to an hour the child will remain  
10 essentially warm in a normal environment after that period  
11 of time the child will start cooling and will appear cool to  
12 touch.

13 Q. If the child was taken from where the child was living and  
14 went next door and the people and the EMT's that came in  
15 contact with the child next door testified that the child was  
16 cold to touch would that be consistent with the child being  
17 dead forty-five (45) minutes or longer from the time it hit  
18 the next door neighbors house?

19 A. Yes, sir.

20 Q. Thank you.

21  
22 By Mr. Ruddick: I don't have anything else.

23

24

25

26

RE-CROSS EXAMINATION

27

28

29 By Mr. Scott:

30 Q. Dr. Hayne, do you find that different individuals have - feel  
31 different to the touch? For instance, have you ever remember

1538

1 shaking hands with somebody and saying your hands sure feel  
2 cold or thinking that their hands really feel cold? Do all  
3 people feel the same to layman - to the touch of a layman?  
4 A. There would be some differences. I can remember in North  
5 Dakota people were outside for a period of time without  
6 gloves on in the middle of the winter they definitely felt  
7 cold when you'd shake their hands. In normal environments  
8 that would far less pronounced.  
9 Q. If the temperature on this day let's say would have been  
10 thirty-eight (38) degrees do you think that that could effect  
11 a temperature - a temperature of a person?  
12 A. Of a live person or a dead person, sir?  
13 Q. Of a dead person?  
14 A. If the person were outside in thirty-eight (38) degree  
15 temperature they would cool more quickly.  
16 Q. Okay. Now -  
17 A. - Then if they were inside in a temperature of approximately  
18 seventy (70) or seventy-five (75) degrees say in a house.  
19 Q. Okay. But would you agree that even to - I mean to the touch  
20 different people may have different perceptions of what's  
21 cold and what's hot. I mean for instance, let's say if you  
22 have a secretarial pool some secretaries under the same  
23 condition is going to feel that it's cold and some are going  
24 to feel that it's too warm do you feel that sometimes  
25 different individuals feel different ways about what is cool  
26 and what is warm?  
27 A. If we're talking about what's comfortable, what's comfortable  
28 inside a room I think that would be one thing. If we're  
29 talking about trained medical personnel arriving to deliver  
30 emergency medical care to an individual I think that  
31 perception would be something else and I think it would be



1 more standardized and more accurate, sir.

2 Q. Okay. So if we were talking about let's say an oil field  
3 worker who wasn't an emergency medical personnel then they  
4 might be in the group of people that it may feel different  
5 to don't you think?

6 A. I think there would be a greater range of opinion, sir.

7 Q. Now, was there any test to determine the amount of blood that  
8 the child had lost?

9 A. No, sir. The only impression that I would have was the  
10 degree of congestion of the body organs. Congestion was  
11 present indicating that was called exsanguination or massive  
12 lethal blood loss had not occurred.

13 Q. Okay. So you did not - you did not find that massive blood  
14 loss had occurred?

15 A. I did not find that, sir, I found it would be consistent with  
16 some blood loss but certainly not massive blood loss in which  
17 the body organs become pale. The body organs were not pale  
18 there was blood in those body organs.

19 Q. And as a matter of fact when you got the body to the morgue  
20 what do you call it when the blood starts to settle toward  
21 the part that's laying down?

22 A. Livor mortis, sir.

23 Q. Okay. You had quite a bit of livor mortis where the child  
24 was laying down and the blood started to flow toward the  
25 direction that the - well heart - well, start to flow toward  
26 the back of the child?

27 A. In the dependant position yes, sir.

28 Q. Yes, sir.

29 A. Secondary to gravity.

30 Q. Okay. Now, this is one question I really would like to know  
31 the answer to is pickles, onions and tomatoes if those food

1 items would have been eaten fifteen (15) hours before or  
2 let's say before 8:00 o'clock on the 17th, would they have  
3 still been in the stomach at that time?

4 A. It would be highly unlikely, sir. The only instance which  
5 that would have occurred if there were significant underlying  
6 disease to the gastrointestinal tract or there were  
7 significant psychological pressure on an individual. For  
8 example, an individual who has severe gastritis, inflammation  
9 of the stomach, may not pass food for a longer period of time  
10 than a normal healthy individual. An individual who is under  
11 great stress such as an individual who is about to be legally  
12 executed may receive the last meal and after execution which  
13 may be many, many hours past the normal four (4) or five (5)  
14 hours none of the stomach has passed - none of the food in  
15 the stomach has passed into the small bowel.

16 Q. Okay.

17 A. So under those circumstances where there is intrinsic disease  
18 to the gastrointestinal tract or great emotional travail or  
19 pressure or excitement on an individual there may not be  
20 normal passage of food from the stomach into the small bowel.

21 Q. Okay. But under normal circumstances in an individual  
22 without all those difficulties that you've talked about could  
23 you say to a medical certainty that food eaten fifteen - that  
24 those items eaten fifteen (15) hours prior would not still  
25 be in the stomach at 10:30 in the morning?

26 A. That would be correct, sir. And if none of these other  
27 variables which would be unusual and should have been  
28 recognized were present.

29 Q. So based upon your testimony is it possible that somebody  
30 could have awoken the child at 7:00 o'clock in the morning  
31 and fed the child a meal that consisted of onions, pickles

1 and tomatoes?

2 A. I could not exclude that, sir.

3 Q. Could you exclude the possibility that someone could have

4 awoken the child at 6:00 o'clock in the morning and feed the

5 child lettuce, pickles and tomatoes?

6 A. I could exclude lettuce, sir.

7 Q. I'm sorry.

8 A. Pickles, onions and tomatoes I could not exclude that.

9 Q. Alright. Thank you, sir.

10

11 By Mr. Ruddick: Nothing else, Your Honor.

12 By The Court: Is the Doctor released?

13 By Mr. Jones: Yes, sir.

14 By Mr. Ruddick: Yes, sir.

15 By The Court: You are released, Dr. Hayne, thank

16 you, sir. Anything else, gentlemen,

17 for the evening?

18 By Mr. Jones: No, sir.

19 By Mr. Ruddick: Your Honor, if you could I don't

20 know if I - I had the doctor

21 identify these photographs but I

22 don't know if I've offered them.

23 I believe I did because we had the

24 discussion.

25 By The Court: I think you did.

26 By Mr. Ruddick: But in case I didn't.

27 By The Court: Offered them over the objection.

28 By Mr. Scott: Those were the ones that you

29 reserved ruling until after cross

30 I think. I don't know whether you

31 ever -

Testimony of Dr. Neal Riesner, forensic odontology  
witness for the state.

1 By Mr. Jones: I have nothing further, thank you,  
2 Chief.  
3 By The Court: Thank you, sir. Is he still on  
4 call?  
5 By Mr. Jones: And he's released by me. I will not  
6 need him again.  
7 By The Court: Mr. Scott?  
8 By Mr. Scott: Defense release.  
9 By Mr. Jones: I release him.  
10 By The Court: You're released, Chief. Thank you,  
11 sir.  
12 By Mr. Jones: Your Honor, I'm going to keep him  
13 under the Rule. I don't anticipate  
14 using him but .....  
15 By The Court: Chief, you know not discuss with  
16 anybody. Alright, sir.  
17 By Mr. Ruddick: Dr. Neal Riesner.

18

19

20

21 NEAL RIESNER, called on behalf of the State, first duly  
22 sworn, testified as follows:

23

24

25

26

DIRECT EXAMINATION

27

28

29 By Mr. Ruddick:

30 Q. Would you state your name and your occupation please, sir?

31 A. My name is Neal Riesner, R-I-E-S-N-E-R, first name N-E-A-L.

1 Q. Could you spell that last name again?  
2 A. R-I-E-S-N-E-R.  
3 Q. And what's your occupation, sir?  
4 A. I'm a dentist.  
5 Q. Okay. And do you have any specialties within the dental?  
6 A. Yes, I do. I have two, I'm an orthodontist and a Board  
7 Certified Forensic Odontologist or Forensic Dentist. That's  
8 a fancy name odontology for dentistry.  
9 Q. Could you tell the Jury, sir, your educational background?  
10 A. I'm sorry.  
11 Q. Could you tell the Jury your educational background?  
12 A. Yes. I went to my pre-dental training was at Brown  
13 University in Providence, Rhode Island. I then went to the  
14 University of Pennsylvania School of Dentistry for my dental  
15 training. I served in the Navy as a Navy Captain, rose to  
16 the rank of Captain. I got out and I went to the Graduate  
17 School of Medicine at the University of Pennsylvania  
18 specializing in orthodontics and at that time starting my  
19 training in forensic dentistry.  
20 Q. Are you a member of any Boards or organizations in relation  
21 to your profession?  
22 A. Yes. Well, I made Fellow of the American College of  
23 Dentists, Fellow of International College of Dentists, Fellow  
24 of New York Academy of Dentistry, Fellow of American Academy  
25 of Forensic Sciences, I made diplomate of the American Board  
26 of Forensic Odontology.  
27 Q. How many diplomates are there to the American Board of  
28 Forensic Odontology?  
29 A. I'm not positive of the exact number it's approximately a  
30 hundred and ten (110). I've been boarded since 1978. My  
31 certificate number is twenty-five (25) so I've been doing

1           this a while and every five (5) years we have to re-certify.  
2           In other words once you're certified you're just not there  
3           for life you have to re-qualify every five (5) years.  
4       Q.   Besides your business of orthodontist do you serve in any  
5           other capacity in New York?  
6       A.   Yes, I do.   I'm Chief of Forensic Dentistry for the  
7           Westchester County Medical Examiner's Office.   I'm also  
8           consultant to the Rockland County Medical Examiner's Office  
9           and I was consultant to Nassau County Medical Examiner's  
10          Office and was consultant to New York City Medical Examiner's  
11          Office.  
12       Q.   And how long have you been dealing in Forensic Odontology,  
13           sir?  
14       A.   It started about 1960, I took a course ... well, I went to  
15          grad school of medicine, University of Pennsylvania, I was  
16          writing a thesis on growth and development under a doctor,  
17          Wilton Marion Croghan, an anthropologist, who was the expert  
18          at that time in growth and development.   What happened was  
19          he was also a forensic anthropologist and he tossed me a  
20          skull one day and asked me what I could tell him about the  
21          dental work to help identify it and we ended up identifying  
22          it eventually through some usual dental work and it got me  
23          interested in forensic dentistry and I took the course at  
24          the Armed Forces Institute of Pathology and as a Naval  
25          Officer I had access to it and then one thing lead to another  
26          and I became certified.  
27       Q.   Have you ever been qualified as an expert in any Courts in  
28           the field of Forensic Odontology?  
29       A.   Yes, I have.  
30       Q.   And where and how many times, sir?  
31       A.   I've had about eighteen (18) or nineteen (19) actual trials

1 on - actually more than that those are bite mark trials.  
2 I've had another half dozen to a dozen times when I've had  
3 to testify as to identification cases for bodies I've  
4 identified for the medical examiner.

5 Q. Okay. And besides -

6 A. - I've also ... civil cases. You see forensics comes from  
7 the Latin form to debate and it means anything to do with  
8 the law and dentistry, forensic dentistry, so I don't - it  
9 includes insurance fraud, malpractice, so I do other areas  
10 other than criminal work too and I've been in Court on those.

11 Q. Besides having been qualified that number of times as a  
12 forensic odontologist have you also been called upon to  
13 render a opinion either for an investigation by the State or  
14 by the Defense in cases concerning bite marks?

15 A. Yes, I have.

16 Q. And approximately how many times?

17 A. Maybe fifty (50) times over a long period of time. I don't  
18 keep count because a lot of these cases if they don't go to  
19 trial it's so many I don't bother. I do document though the  
20 cases that have gone to Court and I can give you a list of  
21 those.

22

23 By Mr. Ruddick: Your Honor, at this time we want to  
24 offer Dr. Riesner as an expert in  
25 the field of Forensic Odontology.

26 By The Court: Questions, Mr. Scott?

27 By Mr. Scott: We don't have any questions.

28 By The Court: Alright. The Court will accept Dr.  
29 Riesner as an expert in the field  
30 of Forensic Odontology.  
31



1 Q. Again I think you did it briefly, Doctor, but if you could  
2 describe to the Jury or tell the Jury what is Forensic  
3 Odontology?  
4 A. To start with odontology is just a fancy name for dentist.  
5 So it's a forensic dentist. It's a dentist that deals with  
6 legal matters and that includes identification of bodies,  
7 includes bite mark evidence, malpractice, insurance fraud as  
8 I said before so it's a broad field and it's all considered  
9 part of forensic dentistry.  
10 Q. Okay.  
11 A. Particularly as being associated with the medical examiner  
12 I have a lot of cases that involve identification and bite  
13 marks. But I'm also a consultant to many insurance companies  
14 on malpractice too. I have a couple of trials pending on  
15 that now too as a Defense Expert and by the way I'm presently  
16 elected to the Dental Society so I end up reviewing cases for  
17 the Dental Society on malpractice too. That's fifteen  
18 hundred dentist in our local dental society it's pretty big  
19 by your standards I guess but only thirty states have more  
20 dentists.  
21 Q. Dr. Riesner, in the past have you had occasion to present  
22 lectures and papers to the American Board of Forensic  
23 Odontology?  
24 A. I have made presentations, yes, on several occasions.  
25 Q. Were you contacted by our office and asked to review some  
26 photographs as well as dental impressions?  
27 A. I was.  
28 Q. I'm going to show you what's been marked for identification  
29 as S-29 and ask you to open that and look at that and tell  
30 me if you can identify those?  
31 A. I can.

1 Q. Sir?

2 A. Yes, I can. These models were sent to me and I had mailed  
3 them back.

4 Q. Okay. And what are those?

5 A. These are models of Jimmie Duncan's teeth. They are made  
6 from dental impressions and they - which is like a negative  
7 and the positive is poured in that's how these are made and  
8 these had been sent to me and I duplicated them and sent  
9 these back.

10 Q. When you say duplicate what do you mean? Tell the Jury what  
11 you mean.

12 A. Basically you take like a spoon and you put this alginate  
13 material it's like a goeey whip cream and you put the model  
14 in it and it turns rubbery and you pop it out and now you  
15 have a negative that is very precise and exact cause that's  
16 how you make inlays and dentures and everything else. And  
17 you pop that out and you pour plaster in the stone, which is  
18 a type of hard plaster and you let it harden and you pop it  
19 out and you have an exact copy just like a xerox machine only  
20 it's with plaster.

21 Q. Dr. Riesner, did you also receive some photographs from our  
22 office to review?

23 A. Yes, the photographs came from the State Police also I got  
24 from two sources.

25 Q. You got the negatives didn't you?

26 A. Yes.

27 Q. I'll show you what's been marked for identification and  
28 introduced as S-11 and ask if you can identify that?

29 A. Yes, I can.

30 Q. And is that one of the photographs you previously reviewed?

31 A. Yes, it is.

1 Q. Dr. Riesner, when you reviewed S-11 did you see anything on  
2 there that could have been a possible bite mark?

3

4 By The Reporter: Dr. Riesner using infra red pen on  
5 screen to show the Jury members,  
6 the Alternates and the Court his  
7 findings.

8

9 A. Yes, but I got to figure out how to make this thing work.

10 Q. It's just a little button on there you push.

11 A. I see it, thank you.

12 Q. Could you point out and show to Jury what you originally  
13 thought could be a bite mark?

14 A. There are several bite marks on here that I saw. One here,  
15 one here and there's nothing else in this photograph I could  
16 point to.

17 Q. Okay. I'll show you another photograph that's been marked  
18 for identification as S-12. Have you seen that photograph,  
19 sir?

20 A. Yes, I have.

21 Q. And in that photograph, sir, did you see anything that could  
22 possibly be a bite mark after reviewing the photograph?

23 A. Yes, I did.

24 Q. Could you show the Jury please, sir?

25 A. Here.

26

27 By The Reporter: Dr. Riesner using infra red pen to  
28 show Jury members, Alternates and  
29 Court the possibly bite mark he saw.

30 By Mr. Ruddick: You can turn it off, thank you.

31 By Mr. Scott: Excuse me, I wasn't able to see what

1 he pointed to.  
2  
3 A. Would you like for me to point again, I'm sorry?  
4  
5 By Mr. Scott: I wasn't able to see what you  
6 pointed to?  
7  
8 A. Right here.  
9  
10 By The Reporter: Dr. Riesner pointing to his findings  
11 with infra red pen on the screen.  
12  
13 By The Court: State for the record where you're  
14 pointing.  
15  
16 A. Pointing to the elbow.  
17  
18 By The Court: Alright.  
19  
20 A. I pointed to the elbow.  
21  
22 By Mr. Ruddick: Do you see it, Mr. Scott?  
23 By Mr. Scott: Yes, I saw it.  
24  
25 Q. Dr. Riesner, when you're called upon to make an analysis of  
26 a possible bite mark or a bite mark tell the Jury what you  
27 do.  
28 A. Well, first we have to have a photograph with a bite mark to  
29 compare against or a - usually if one hasn't been taken we  
30 have to take one with a scale and it has to have a scale so  
31 it can be brought up to life size and accurately. Then you

1 need impressions or the models of the teeth like you just  
2 showed me to compare it against. Once I have those two  
3 things you can compare it directly but also at that time what  
4 we do is we take - there's two methods that - it just last  
5 year changed. I've done both methods on this. The forensic  
6 photographer takes a photograph of the model itself with a  
7 scale. He then makes a negative for me that I trace with a  
8 view box, the outline of the biting edges of the teeth and  
9 I use that to compare on the photograph. More recently and  
10 the way we've done it again and I re-did it, we scan it with  
11 a scanner and put it into a computer program called a Dobie  
12 Photo Shop for and it's just ... what you've done is you make  
13 a digital picture, it goes right into the computer. And then  
14 you print out and a scale has been placed in there with it  
15 so now you have a scaled one to one accurately reproduced  
16 flat so I can then trace over it. But better than that I  
17 take a - IBM makes a transparent celluloid that you can put  
18 in your printer and it prints out transparencies just like  
19 a xerox machine would but you don't have to go through the  
20 process. The computer does the whole thing. And it's very  
21 accurate, it's very precise and we can make a copy on a  
22 floppy, a little "a" disc that fits in the computer. And I  
23 have one here I can ever show you how we do it.

24 Q. In this case did you do that?

25 A. Yes, I did. And then I used that overlay. It overlays on  
26 top of the photograph of the bite mark and you can compare  
27 it, the arch size, shape, etcetera.

28 Q. Alright. In a few minutes I want to get you to show the Jury  
29 how you do this but before we get into that I'm going to show  
30 you the photograph that has been marked for identification  
31 and introduced as S-22 and ask if you can identify that?

1 A. I can.  
2 Q. Is that one of the photographs that you reviewed?  
3 A. It is.  
4  
5 By Mr. Ruddick: Can I have S-22?  
6  
7 Q. Dr. Riesner, is that a photograph ... a closer photograph of  
8 what you identified as a bite mark in the earlier photo?  
9 A. It is.  
10 Q. And did you do a comparison of that particular bite mark?  
11 A. I did.  
12 Q. And what did you compare it to?  
13 A. I compared it to the teeth of Jimmie Duncan in this  
14 photograph here with this bite mark matched the teeth on the  
15 lower jaw.  
16 Q. Just so I understand the lower part of that -  
17 A. - That's of course within the reasonable medical dental  
18 certainty.  
19 Q. Certainly. The lower part in that photograph? Could you  
20 use your pointer again, Doctor?  
21 A. This?  
22 Q. No, sir the mark?  
23 A. Yes.  
24 Q. Right there?  
25 A. Yeah.  
26 Q. That matched the lower jaw of Jimmie Duncan?  
27 A. Yes. This matched the teeth, one, two, three, four, five  
28 teeth are present here. Tooth for tooth, both the size,  
29 shape and individual characteristics. Because these markings  
30 are not just bruises there's a little triangle here, the  
31 lower eye tooth and it starts here at the apex and it's here.

1           That's individual and characteristic. Then there's a space  
2           here and then next tooth is a little rectangle here and I can  
3           show you later on tooth by tooth how it matches up.  
4       Q.   Okay. We're going to do that, Doctor, let me show you S-23.  
5           Can you identify that, sir?  
6       A.   I can.  
7       Q.   And have you reviewed that photograph before?  
8       A.   I have.  
9       Q.   Alright. And that's also a marking you've previously  
10           identified in the big photo as a bite mark, is that correct?  
11       A.   That is correct.  
12       Q.   Okay. Could you point it out on again on the screen for the  
13           Jury.  
14       A.   Right there.  
15  
16                   By The Reporter:   Dr. Riesner pointing with infra red  
17                                       pen on the screen for the Jury  
18                                       members, Alternates and Court.  
19  
20       Q.   And did you do a comparison of that bite mark with the  
21           impressions that you had?  
22       A.   I did.  
23       Q.   And did you make any findings on that?  
24       A.   Yes, I found that that's the lower arch and that it's  
25           consistent with the detention of the teeth of Jimmie Duncan.  
26       Q.   Thank you.  
27       A.   Again I'm saying all these things that is everything is  
28           qualified within a reasonable medical dental certainty. I  
29           want to be sure that that's understood.  
30       Q.   I'll show you S-21. Have you reviewed that photograph  
31           before, sir?

1 A. I have.

2 Q. And again that's a closer view of the overall. Could you

3 point out for the Jury - first of all did you identify a bite

4 mark?

5 A. I did.

6 Q. Could you show that to the Jury?

7 A. Right here.

8

9 By The Reporter: Dr. Riesner pointing with infra red

10 pen on the screen to the Jury

11 members, Alternates and Court.

12

13 Q. And did you -

14 A. - Starts here and goes around to there.

15 Q. And did you compare that to the dental impressions of the

16 Defendant?

17 A. I did.

18 Q. And what did you find?

19 A. That - it's consistent with the upper teeth of Jimmie Duncan.

20 Q. Thank you.

21 A. And again of course that's within a reasonable medical dental

22 certainty.

23 Q. I understand that. What's that mean, Doctor?

24 A. It means that while I'm fairly certain there's always since

25 it's not an absolute fact and it's my opinion it has to be

26 given that it could be 99% - you have to leave open the

27 possibility that it may not be.

28 Q. Certainly and the Board that you're a member of require that

29 any opinion that you give as any other odontologist be within

30 a -

31 A. - Reasonable medical dental certainty. I'm required to say



1           that.

2       Q.    Okay.

3       A.    As a forensic scientist.

4       Q.    Now then do you have the overlays that you were talking

5           about?

6       A.    I do.

7       Q.    Alright.

8

9           By Mr. Ruddick:       If the Jurors will bear with me for

10                               a second we need to set up a box for

11                               the Doctor.

12

13           By The Reporter:     Mr. Ruddick setting up shadow box

14                               stand for Dr. Riesner.

15

16       A.    I could show one group and move down and show it again cause

17           it's going to be very small to see.

18

19           By The Court:        Whatever you need to do.

20

21       A.    Well, let me get up there and see how it shows up.

22

23           By Mr. Ruddick:       Yes, Your Honor.

24           By The Court:        He's asking some question about

25                               getting in some position to show

26                               this better. Where do you need to

27                               be?

28

29       A.    No, I mean I'll have to show it more than once.    I don't

30           know if they are going to be able to see it over that wide

31           of thing.

1                   By Mr. Ruddick:       We'll take care of that, Your Honor.  
2                                       We'll take care of that.  
3  
4       A.    Okay.  
5       Q.    Alright, Dr. Riesner, in doing a bite mark comparison are  
6           there certain things and certain steps that you go through  
7           and prepare to make the comparison?  
8       A.    That's correct.  
9       Q.    Okay. And what's the first thing you do? You went through  
10          it generally but could you show the Jury what you do and how  
11          you make them?  
12       A.    Yes, could I come forward to show them?  
13  
14               By Mr. Ruddick:       May the witness step down to do this  
15                                       Judge?  
16               By The Court:        As long as she can pick up what he's  
17                                       saying.  
18               By Mr. Ruddick:       We could use this mic right here.  
19               By The Court:        That one records but doesn't  
20                                       amplify.  
21  
22       A.    I could talk into this other stand like over there.  
23       Q.    Just speak up so the Jury can hear you, Dr. Riesner, that's  
24          okay. It'll be able to pick you up.  
25       A.    Alright, we'll start with the lower first and - can I have  
26          the model of the teeth? We take the model of the teeth,  
27          this. This is the lower teeth. I'll start showing you with  
28          the lower and it was photographed. Then the photograph -  
29  
30               By The Court:        - Excuse me just a minute, I'm going  
31                                       to step over here so I can see that,

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please. I'll get over here.

Q. Go ahead, Doctor, I think the Judge has made it.

A. It was photographed and this is a scale. The scale - the purpose of the scale is to keep everything the same size. It can make it larger or smaller if it's somebody's bite that it isn't theirs it can keep it accurate. So this is exactly life size if you were to put this down it matches exactly if it's photographed on here. Not this particular - this photograph from this, then this negative of the photograph was made, the positive/negative and I laid it down on a tracing box like that and I took a celluloid tracing material, it's made for tracing x-rays, as an orthodontist I've done over three thousand tracings. I'm used to doing tracing. And this tracing is marked and it's marked left and right. Now, this is placed here like this and a tracing is made over the biting edges of the teeth.

Q. Now, you've got - I've noticed you've got some darker marks on that can you explain to the Jury what that represents?

A. Yes. If we look at this model you'll see that certain parts of the teeth are higher than others. If I laid this model down here you'll see that some teeth will touch before - as if I took my hand and were to lay it down what's going to hit first? My middle finger. So I would mark that darker cause it would tend to leave a first mark but if you had several - if one is short it's not going to leave a mark maybe. Same thing here with the teeth if they go up a little bit you can see certain teeth don't touch the railing. You see what I'm talking about? Can you see at this end, I'm sorry? Can you see over there? Can you see what I'm talking about the teeth don't touch. Okay. So to indicate to myself as I do

1 my analysis I put the marks where they would be higher. This  
2 point is higher, this point is here, this little point here  
3 is higher so I have the tooth outlined but I have the point  
4 of the tooth that would touch more. Then I put this in a  
5 scanner as I just described to you earlier and we made with  
6 a scale so I couldn't change the size and I made this of the  
7 teeth. Now, that's the same as this there's no difference  
8 except this is flimsy and can be altered this can't be  
9 altered. That's permanent that's like an ink in and that's  
10 pencil obviously I keep erasing and making that as perfect  
11 as I can comparing it back and then this can be compared for  
12 accuracy right back on here. So now, I have that these  
13 little "x's" show me where the "x's" were on here so I could  
14 always put it back step by step and I haven't made any  
15 changes. So now I have an overlay that's accurate of the  
16 lower biting edges of the lower teeth. Now, the same thing  
17 was done to the upper. Do you want me to repeat it?

18 Q. No, that's fine. After you did the lower now what do you do  
19 when you compare it to the photograph that you've previously  
20 identified?

21 A. Oh, okay, I'll have to get the photographs I'll show you.  
22 I did the same thing on the upper and I can go through step  
23 by step to.

24 Q. That's alright. We may later but right now let's just go  
25 through that one.

26 A. Okay. Let's start with the cheek. Forgive me for a moment  
27 while I just put these together so when you ask me a question  
28 I can look back. Okay. Now, I have the lower and you took -  
29 now, this is marked on the left and right. It's important  
30 to do that because when I did this it's lying flat. But when  
31 I go to have to bite it's got to turn around cause it's

1 (inaudible), it's not going to be standing up. So then left  
2 and right if this is going to be it it's got to be this way  
3 because this is the left and the right. Does everyone  
4 understand what I'm saying? So as I traced it this way but  
5 it has to be turned around if this is the way the teeth bite.  
6 You know what I'm talking about? Cause it's like a mirror  
7 image you change. So left ... my left, the left (inaudible).  
8 Now, it goes on here - cause it will be easier to look in  
9 this direction. This as I started to point out before is ...  
10 this here is where the lower left eye tooth. Now, so we know  
11 what we're talking about dentist to be able to communicate  
12 gave each tooth a number. It's called the universal  
13 numbering system but it's only in the United States so we  
14 have a big ego here. It's tooth number 1 is the first third  
15 molar - the upper right third molar cause tooth number 2, the  
16 second molar, was already around the 16 drops to 17 around  
17 the 32 so every tooth has a number. If I told you tooth  
18 number 6, it's my upper right eye tooth. If I told you tooth  
19 number 22, it's the lower left eye tooth or canine or  
20 whatever name you want to give it. I just want you to  
21 understand which tooth I'm talking about. So we're talking  
22 about tooth number 22, the lower left eye tooth or canine.  
23 That's where this is here. Now, each tooth when it makes a  
24 bite mark has their class characteristics which are overall  
25 arch size. And types of canines or cuspids or eye teeth tend  
26 to make a little triangle, the lower front teeth tend to make  
27 little rectangles, those are - and the arch size those are  
28 class characteristics. Individual characteristics would be  
29 size, shape or rotation of the tooth. So we see that this  
30 tooth here that's the eye tooth is a little triangle with the  
31 apex where the top of the triangle pointing out this way.

1 This would be this way and both this way. If can show it on  
2 this then I'll show you the (inaudible). Take this and with  
3 that point over there every tooth but the lower right eye  
4 tooth matches up here and if -

5  
6 By The Court: Just a minute, Doctor. You're going  
7 to have let somebody hold that mic  
8 for you I guess.

9 By Mr. Ruddick: I'll do it.

10  
11 A. I'm sorry.

12  
13 By The Court: It's not your fault.

14 By Mr. Scott: I think if it could be moved back  
15 this way more jurors could see.

16  
17 A. I'll have to repeat it twice I think. I don't think you're  
18 going to be able to do it.

19 Q. Doctor, just go through this part of it for this part of the  
20 Jury and then I'll move it down.

21 A. Okay. Can you all see what I'm talking about? I apologize  
22 I can see it and if you can't see it please say something  
23 cause I'm here to explain it.

24 Q. That's far enough, Doctor.

25 A. This eye tooth is this eye tooth, number 22. We put -

26  
27 By The Court: - Can you pull it back just a little  
28 bit?

29  
30 A. Okay. Now, what you've got is this going right over here.  
31 There's a space between these two teeth, there's a space

1 here. There's a tooth that marks ... there's a space between  
2 there, there's another tooth, there's a space here where  
3 there's a very faint marking because that's where this tooth  
4 is up higher and doesn't leave a marking. And I just took  
5 this - I took this and I ran it through a copy machine  
6 because I didn't want to draw on the photograph and I  
7 labelled teeth.

8  
9 By Mr. Jones: They can't see.

10  
11 Q. He's going to come back -

12 A. - I'm going to come back over there. Just to help you orient  
13 it but this is just from that to this to make it easier.  
14 Actually the picture is better because you can see here the  
15 individual teeth and then you can see their drag marks so  
16 that this was a harsh and violent bite pulling up and you can  
17 see the teeth drag this way. Where's the model? It just -  
18 putting the eye tooth down is orientation and if we looked  
19 at it ... maybe you can see it better this way. If we put  
20 it down like this and I'll - you can see as I drag the teeth  
21 you see how it just mimics all the teeth, tooth for tooth.  
22 Now, this tooth didn't show over here but the head could be  
23 in this position. In other words, if it was - his head was  
24 lying like this you would tend to have less on one side cause  
25 the position of the head. I can't tell for sure but I'm  
26 only - I have no idea as to why the tooth didn't but I'm  
27 giving you a possible explanation of my opinion. I don't  
28 know.

29 Q. Alright, Doctor, can you bring it down here and let this side  
30 of the panel see?

31 A. Okay.

1                   By The Reporter:     Dr. Riesner moving shadow box so  
2   that other members of the Jury will  
3   be able to see.  
4  
5     A.   I think we better put this over there.   I'm afraid if  
6           dropping these, these break and they shatter.   Okay.   Let's  
7           start over again.   We have the picture, we have the overlay  
8           that's been reversed because this is how the teeth match.  
9           It was made this way and then we turn it around to do the  
10          biting.   And this matches up tooth for tooth.   Right there.  
11          Or more easily seen - what we're talking about is the teeth  
12          have individual markings.   There's a - this is like a little  
13          triangle, the apex going this way, these are little  
14          rectangles in here and if I take and put - this is tooth 22  
15          and that would be 22 and I put it down on here.   You can see  
16          the drag marks in the individual's face here, the teeth.  
17          There's a space between the two teeth here from here to here  
18          and then the teeth dragged up as the jaw moved.   In other  
19          words, you got that tooth over there, this here and this.  
20          For instance, when you have a pointy part of this tooth it  
21          left more of a point here.   So it matches up tooth for tooth  
22          right up to the side.  
23     Q.   Alright, thank you, Doctor.  
24     A.   Can you see back there?   Okay.   I get concentrated on what  
25           I'm doing and I'm not paying - I apologize.  
26  
27                   By Mr. Scott:           We'd like to be able to view what  
28   he was just referring if you all  
29   are about to go something else?  
30                   By Mr. Ruddick:        It's going to be on screen, Mr.  
31   Scott.



1 By Mr. Scott: Oh, okay.  
2  
3 Q. Dr. Riesner, again could you look at S-22 that you have in  
4 your hand?  
5 A. Yes.  
6  
7 By Mr. Ruddick: Show it on the screen.  
8  
9 Q. Now, this is the bite mark on the cheek that you identified  
10 as being made by Jimmie Duncan?  
11 A. That's correct, it's the lower teeth.  
12 Q. To me it looks like some of the markings are darker than the  
13 others is there a reason for that?  
14 A. Yes, that's where the tooth ... the tip of the eye tooth hit  
15 here and as it impressed and left a pattern injury and  
16 there's a pattern injury in here, there's a space here cause  
17 there's no tooth and it's a little rectangular and these are  
18 drag marks.  
19 Q. What do you mean by drag marks?  
20 A. The teeth as I showed you over there before as a rest - as  
21 the teeth move the skin slid underneath it so that being a -  
22 wasn't a general little pressure it was a harsh violent  
23 pressure down or up in this instance so that you got these  
24 marks here going this direction. It's a vertical moving of  
25 the teeth, dragging up. If you were to take your teeth and  
26 go (biting on hand) you would get marks on your hand or  
27 whatever you were biting sliding. If you bite into an apple  
28 and you would see marks of your teeth going up in it.  
29 Q. Now, to explain that to a boy from Calhoun this wasn't a peck  
30 on the cheek is that what you're saying?  
31 A. Yes, sir.

1 Q. Okay.

2 A. It was definitely a violent bite, harsh, not a general thing

3 to a young child.

4 Q. Thank you. Dr. Riesner, as a member of the American Board

5 of Forensic Odontology do they have guidelines and

6 recommendations that they put out for those of you who

7 practice in this field to do when you have made a bite mark

8 identification?

9 A. Yes.

10 Q. And what's that?

11 A. They're listed in - they tell you what is ideal. They're

12 recommendations they're not absolute things.

13 Q. Certainly.

14 A. Among them it tells you to take photographs. You can't

15 always do what everything they want. Sometimes they want

16 the tissue cut out, preserved, sometimes they want it swabbed

17 for saliva if it's possible but the basic thing that you need

18 in a determination you must have an accurate and reproducible

19 photograph, you must have accurate study casts and the

20 photograph must have an appropriate scale that (inaudible)

21 American - ABFO #2 scale that we've been using. And the

22 purpose of that is to get re-productibility and accuracy.

23 Q. And did you have the accurate photographs and the accurate

24 impressions to use in this case?

25 A. I did.

26 Q. Did they also recommend that you have someone review your

27 findings?

28 A. Yes, they do. That was since - in the last two years they

29 came out with a recommendation that independently you should

30 if you could to give more validity ... I'm on a committee

31 that will evaluate bite mark evidence for the United States,

1 American Board of Forensic Odontology and the American  
2 Academy Forensic Sciences and we're trying to establish even  
3 more scientific validity to the bite mark analysis and to do  
4 that we recommend that each diplomate American Board show  
5 another diplomate independently the bite and see whether he  
6 agrees or disagrees with it independently.

7 Q. Did you do that in this case?

8 A. I did.

9 Q. Was there any disagreement?

10 A. No -

11

12 By Mr. Scott: - I believe that's hearsay if it's  
13 somebody else.

14 By The Court: He hadn't said what anybody said  
15 per say.

16 By Mr. Ruddick: I didn't ask him what they said per  
17 say I asked him if he disagreed with  
18 him.

19 By The Court: Okay. Overruled, Mr. Scott.

20

21 Q. Did they disagree with you?

22 A. No, he did not.

23

24 By Mr. Scott: Note our objection.

25 By The Court: Noted.

26

27 Q. Doctor, both I and the Jury saw on these photographs we have  
28 lower jaw twice, upper jaw once we didn't see anything about  
29 the corresponding opposite jaw, what are these called?

30 A. These are called one arch bite marks or a partial bite mark,  
31 partial meaning you would ideally have an upper and a lower

1 but there have been many cases and I've testified in many  
2 cases with just one arch either an upper or a lower being  
3 present.

4 Q. And that's not necessarily unusual is it?

5 A. No, it's not unusual and we don't have a scientific reason  
6 as to why. Sometimes it can be the position of the head or  
7 somebody's moving away. If it's a moving object - the upper  
8 jaw when you go to bite it's neck muscles and if that's not  
9 been - you might not get a movement of the neck in biting or  
10 in biting what you're biting rotated slightly you might not  
11 get the upper teeth marking. I have no scientific  
12 explanation as to why but it is a very common occurrence.  
13 When I say common not infrequent.

14 Q. Are you familiar with the manual of Forensic Odontology?

15 A. Yes, I am.

16 Q. And what is that?

17 A. That's a publication of the American Academy - American  
18 Society of Forensic Odontology. It's a forensic dental group  
19 that published a manual. It was a successive to the outline  
20 of forensic dentistry done a number of years ago by Dr.  
21 Levene and Catone and Standish where there was a whole  
22 listing of bite mark and other forensic dental procedures  
23 and then more recently is the manual but they're both  
24 considered very informative and authoritative works in  
25 forensic dentistry.

26 Q. And does that manual recognize single arch bite marks?

27 A. Both of them mention them, yes. And it recognizes them as  
28 a direct entity and being able to utilize in your analysis  
29 and identification.

30 Q. Alright. I want to show you another photograph if I can find  
31 it. I believe we got it S-25 or S-20 on the slides. It's

1           been marked for identification and previously introduced as  
2           S-25 although it's on 20 on yours. Look at that Doctor, and  
3           tell me if you recognize that photograph?

4       A.    I do.

5       Q.    And have you previously reviewed that photograph?

6       A.    I have.

7       Q.    Okay. Doctor, could you explain to the Jury what we have in  
8           this photograph?

9       A.    You have a photograph showing the teeth with milk bottle  
10           syndrome. The decay is due to letting a child go to sleep  
11           with a bottle in their mouth and they lactose, the milk sugar  
12           causes the teeth to decay and rot. And then you've got a  
13           torn frenulum up here, this muscle attachment is torn, you've  
14           got a marking of pressure on the lower lip. This is this,  
15           this is that, because the lip has been pulled to the side  
16           like this. So, while it looks like they don't match these  
17           match up due to the pressure. Being pushed on them the teeth  
18           left an imprint in here and bruising.

19      Q.    And where the - the tear that you mention is that the upper  
20           lip?

21      A.    That's up in here. It's the - right in here this muscle  
22           attachment.

23      Q.    Do those muscles tear easily, sir?

24      A.    No, they don't. They're protected from the outside by the  
25           lip so it would have to be a harsh pull, hard or violent, in  
26           other words it's just not an accident that what happened to  
27           a child by itself it had to be due to trauma.

28      Q.    Thank you. Dr. Riesner, have you testified in other cases  
29           in which you've rendered opinion that involved so called  
30           single arch bite marks?

31      A.    Yes. The two - I have two cases that are most notable and

1           come to mind.

2       Q.   And what are those?

3       A.   One was a Lemuel Smith trial in New York.  It was unusual  
4           from the stand point that it was a lower arch bite mark but  
5           it had two bite marks at different times.  In other words  
6           the man had bitten somebody and they found out about it  
7           afterwards and he was already serving a long prison term but  
8           he admitted to doing the biting.  So we have a known bite  
9           mark of just the lower teeth admitted to by the individual  
10          and then we had in the following trial a bite mark on a  
11          subsequent victim, the first was on the face, the second was  
12          on the neck, both were lower bite marks and we were able to  
13          compare not only tooth to bite mark but bite mark to bite  
14          mark and they matched exactly.

15       Q.   Okay.  What was the other case?

16       A.   The other case was in - that was - the Golub trial, Kelly  
17          Tinus, murdered -

18  
19           By Mr. Scott:           - I object to the relevance of him  
20                                   telling about his other cases.

21           By Mr. Ruddick:        If you'll just bare with me, Your  
22                                   Honor, we're talking about his  
23                                   experience to identify single arch  
24                                   bite marks.

25           By The Court:          Well, you can ask him if he's had  
26                                   experience in other cases if Mr.  
27                                   Scott objects to giving the details  
28                                   of the cases I'll overrule it.

29           By Mr. Ruddick:        That's fine.

30           By The Court:          I mean I'll sustain it, excuse me.

31

1 Q. The second case that you testified in what was the name of  
2 that?  
3 A. The Golub trial in the Kelly Tinus murder, Golub trial and  
4 I presented that case to the American Academy of Forensic  
5 Sciences at the end so it was a well known and documented  
6 case and it was accepted by my profession.  
7 Q. And was it a single arch bite mark?  
8 A. It was of the lower teeth.  
9 Q. Okay. And did you receive - I'm going to show you something  
10 that I'm going to mark for identification as S-30 and I'm not  
11 going to ask you to tell me what that is, sir, but did you  
12 receive that as a result of your testimony in the Golub  
13 trial?  
14 A. Yes, I did.  
15 Q. Doctor, is it your testimony that the bite mark on the cheek  
16 of this child was made by Jimmie Duncan?  
17 A. I did.  
18 Q. Are you familiar with the literature dealing with bite marks  
19 and sexual assaults on children?  
20 A. Yes.  
21 Q. And in that literature is it common that that bite marks  
22 appear on the cheek?  
23 A. It is.

24  
25 By Mr. Ruddick: I'd tender.  
26  
27  
28  
29  
30  
31

CROSS EXAMINATION

By Mr. Scott:

Q. Doctor, is it common that bite marks appear on the knee?

A. They can appear anywhere.

Q. Is it common though?

A. I'm not able to say. I haven't see that in any - one way or the either I mean it's not as common as on the cheek if that's what you're asking me. It's a hard area to get to.

Q. Now -

A. - It would be more common on a thigh say or a back side but the knee is usually moving.

Q. Now, in this case I thought you stated that you had made - did you state that you had made these to scale like when you were referring to the ones on the thing that you use for x-rays -

A. - This is to scale.

Q. Okay. This is to scale. Okay, and I thought you stated that you had had placed it over the teeth and made pencil markings to show where the teeth -

A. - You're talking about a different part. That's the work - end work product. This is the photograph to scale, this is the thing that was made over the - from this and this was fabricated from that. All these were done with a scale. The scale is where these three "x's" are and I can give you a scale to match it up and it matches perfectly.

Q. Okay.

A. I was very precise in the way I produced those. Would you like a scale to compare it to?

Q. No, I was - okay, for instance on - okay, when I look at this



1 we have - are the dark places where the teeth extend lower  
2 than the other places?

3 A. The biting edges are a little bit higher, those places,  
4 correct.

5 Q. Okay. The dark places is where the biting edges are higher  
6 or lower?

7 A. Higher.

8 Q. Okay. Now, I don't know I guess what I'm asking is okay, to  
9 me that edge seems very straight and -

10 A. - That's only cause you don't - you're not a dentist and  
11 able - I wouldn't say -

12 Q. - I mean I don't have to be a dentist to see an edge looks  
13 straight.

14 A. I don't think you're looking at it appropriately. You've  
15 eliminated three teeth. This is where it starts here and it  
16 hooks all the way around and that is not straight that's a  
17 curve.

18 Q. I'm talking about right here, right here?

19 A. But you've eliminated half the dog. You've only given me  
20 three teeth. You've eliminated some teeth over here.

21 Q. My question is why is that edge straight?

22 A. Because the teeth are. Could I have the model please? If  
23 I were to hold this up like this those three teeth look  
24 fairly straight. The minute I don't confuse you and let you  
25 look at the whole arch, they are part of an arc. If you make  
26 the arc smaller it tends to be - look like it's more straight  
27 but it's not straight and there isn't any dentist in the  
28 world that's going to tell you that that's straight.

29 Q. What I'm - I guess what I'm -

30 A. - It fits in just like that. You can see it too.

31 Q. Okay. But how do you account for this edge right here?

1 A. It's a moving - it starts here and it moved. It dragged I  
2 already told you that.

3 Q. Okay. Now, so you're saying that you got the upper teeth  
4 and -

5 A. - No, that's the lower teeth, I'm sorry.

6 Q. I thought sure you said it was the upper teeth that drug this  
7 way?

8 A. No.

9 Q. You didn't say that?

10 A. No, I didn't.

11 Q. Okay.

12 A. I said many times that it was the lower bite mark.

13 Q. Okay. You got a lower bite mark that drug this way?

14 A. That dragged upward and you can see the direction from the  
15 teeth. And you can actually see the space between the teeth.  
16 There's a space here and you got a space there it matches.  
17 Come look from this side. You can see it. It doesn't take  
18 a dentist. Anybody can see that there's a space there. And  
19 it moves and as it moves you can see more drag marks.

20 Q. But it seems that this tooth is shorter?

21 A. No, no. This is the one that's shorter. If you look at it  
22 you can see which is shorter.

23 Q. Okay. Now but in your earlier testimony did you say that it  
24 was the upper teeth that drug this way?

25 A. No, I didn't. I said lower teeth. Why do you keep changes  
26 drawers on me?

27 Q. It was my understanding I thought you said it was the upper  
28 teeth dragging.

29 A. I've already told you several times it's the lower jaw.

30 Q. Okay. Now, what - are you saying that okay, this pattern is  
31 identical to - okay, the one on the knee what teeth was that?

1 A. That's not the knee that's the elbow.  
2 Q. Okay. On the elbow which teeth are those?  
3 A. That's why I was confused when you started talking about  
4 knees.  
5 Q. Okay. I'm sorry. I better ask those same questions all over  
6 again. Is it common to find bite marks on the elbow?  
7 A. You can find bite marks anywhere. That could be a defensive  
8 thing or the child was flailing I can't tell you how common  
9 or uncommon it is. It is a part of the body that - any part  
10 of the body could be bitten.  
11 Q. Okay. Earlier the Prosecution ask you whether -  
12 A. - The cheek is more likely to be bitten than the elbow if  
13 that's what you're asking.  
14 Q. Yes, sir. That's what I'm asking. Okay, now the bite on -  
15 the mark that you identified as a bite on the elbow was that  
16 the upper teeth or the lower teeth?  
17 A. That's the upper teeth.  
18 Q. Okay. And in which direction did it move?  
19 A. Would you like me to go through the - I have all the tracing  
20 and everything done for the elbow would you like me to show  
21 that, Your Honor?  
22  
23 By The Court: What's your pleasure?  
24  
25 Q. My question is -  
26 A. - Well, I don't think you can see it unless I show it to you  
27 I mean would you like me to show it to you? I would be happy  
28 to.  
29 Q. Well, I'd like -  
30 A. - It's consistent.  
31 Q. I'd like for you to put it on the screen.

1 A. You can't see the overlay though on the screen. You asked  
2 me how I achieved me opinion?

3 Q. Could you put -

4 A. - I can show you the direction but I can show you better with  
5 the overlay if you really like to see it.

6 Q. Okay. But I want to first see it on the screen.

7

8 By The Court: He's saying he can't show the  
9 overlay on the screen he has to show  
10 it on the shadow box.

11 By Mr. Scott: Okay. I'm not asking for the  
12 overlay I'm asking for the picture  
13 of the elbow.

14

15 A. No problem. You're going to see it a lot clearer on the  
16 photograph that's closer but this is the upper teeth here.  
17 This is an eye tooth, there's a space, there's another tooth  
18 and it's all (inaudible), this is the curvature of the upper  
19 teeth and if you let me show you the overlay you could  
20 see -

21 Q. - Wait a minute, just a minute. I haven't finished asking  
22 the questions.

23 A. I apologize.

24 Q. Okay. Now, on this - on this - did this - did the bite move  
25 in one direction or another or was it just a direct bite?

26 A. You got - I can't answer you as to whether it moved or not  
27 I can only tell you about the pattern injury that I see here  
28 and you can see that some diffuseness and that's why I said  
29 this was consistent with and not on exact match. Consistent  
30 means it has all the characteristics. But if I saw a little  
31 bit more of individual teeth here I would have made this a

1 match also.

2 Q. Okay. But you can't say - you couldn't say that that was an  
3 absolute match on the elbow?

4 A. I never said it was. I said it was very consistent.

5 Q. Okay. Now, my question is on this injury - okay, on the face  
6 you said it was a drag injury where a person bit and drag is  
7 this - does this show a drag injury or is this just a direct  
8 bite?

9 A. They're both direct bites. The first one had some drag marks  
10 on it. This you can't see specifically that doesn't mean it  
11 wasn't cause the elbow could have moved. You have a target  
12 that's going to be - that's - they're not going to stand  
13 there and hold this like this so you can bite it even if  
14 you're not awake that's going to move unless you're holding  
15 it.

16 Q. Okay, but my question is do you see anything that you can  
17 identify as drag marks -

18 A. - No, there's no drag -

19 Q. - teeth drag marks on this?

20 A. I don't see it per say.

21 Q. Okay.

22 A. There's some diffuseness. This is a definite arc. I can  
23 identify certain teeth though.

24 Q. Now, if teeth cause - if teeth caused this and this all  
25 appears to be part of one injury what caused this?

26 A. Hold it. I didn't say it was all part of one injury you did.  
27 You're putting words in my mouth. I told you -

28 Q. - Oh, you don't feel that this - you feel that this is two  
29 separate injuries?

30 A. I can't, I don't know. You're not - why don't you let me  
31 answer my own question - your question rather?

1                   By The Court:           Doctor, just let him ask - just  
2   answer the question, please.  
3  
4       Q.   Let me clarify my question. Let me clarify my question. My  
5           question is first does this injury to the elbow represent two  
6           separate injuries or one injury?  
7       A.   I have no way of knowing I can only tell you that I see a  
8           pattern injury here and I have no idea what that is. It  
9           could be anything. This is a bite mark.  
10      Q.   So you think that the injury to my right - so that the injury  
11           over here you think that that represents a separate injury  
12           from the injury over here?  
13      A.   It may. I can't identify it as a pattern injury from teeth  
14           per say so that I can say it could be anything. A false  
15           premise leads to any conclusion.  
16      Q.   Now, the injury over here do you feel that you can see - that  
17           you can say to a medical certainty that that is a bite mark?  
18      A.   Yes, I can.  
19      Q.   And over here you can't say whether that's a bite mark or  
20           not?  
21      A.   I don't think it is. I can't say.  
22      Q.   Okay. So if this one over here was caused by a bite mark and  
23           this one wasn't then that would be two separate injuries?  
24      A.   If what you say is true it would be but it's hypothetical I  
25           don't know and neither do - you know, nobody knows.  
26      Q.   That's what I'm saying.  
27      A.   I do know that that's a lower bite - that this lower marking  
28           or to the left ... this is a marking of the upper teeth.  
29      Q.   Okay.  
30  
31                   By Mr. Scott:           You can cut it off.

1                   By The Reporter:     Projector being turned off.  
2  
3     A.   Do you want the overlay on that?  
4     Q.   At some point. Dr. Riesner, okay, now the initial pictures  
5           that were taken they were taken by Dr. West?  
6     A.   I guess so, yeah.  
7     Q.   And do you know why is it you're to testify instead of Dr.  
8           West?  
9     A.   I have a fair idea, yes.  
10    Q.   Okay. And what do you see that reason to be?  
11    A.   He was sanctioned by our American Board of Forensic  
12           Dentistry, Forensic Odontology for overstating his  
13           credentials and describing pattern injuries that were not due  
14           to teeth from instruments - other things that they said he  
15           wasn't qualified to testify to and we suspended him for one  
16           year. From the membership.  
17    Q.   Okay. Are there any standards for establishing bite marks?  
18    A.   Yeah.  
19    Q.   And generally what are they - generally speaking? I mean I  
20           know it's not possible to remember all of them but generally  
21           speaking what are the standards for establishing?  
22    A.   You have to identify class characteristics of teeth which  
23           are present and identifiable and then individual  
24           characteristics of teeth if you want to be able to make a  
25           match. I already mentioned about the class characteristics  
26           before in my testimony.  
27    Q.   Now, since most of the testimony that you give relates to -  
28           I mean since you're a dentist and you - forensic dentist and  
29           testimony - for you to give testimony most of the time it  
30           would regarding dental matters wouldn't you say that you have  
31           somewhat of an interest in finding bite marks so that - so

1           that you can keep your profession going so that you can get  
2           business?

3       A.   No, that's not true. I do more malpractice work than bite  
4           marks. I'm very active in my - if you'll look at my C. V.  
5           you'll notice that I'm Chairman of the District Claims  
6           Committee for my dental society. I review three or four  
7           malpractice cases a month for fifteen hundred dentist though  
8           it's not that everybody is doing something wrong.

9       Q.   Now, did you follow the general accepted standards in your  
10          profession when you identified what you say are bite marks  
11          on the child?

12      A.   Yes, of course. I followed - I showed you how I identified  
13          it and how.

14      Q.   Now, I think you identified one other location that you felt  
15          to be a bite mark was - did you identify a location on the  
16          neck to be a bite mark?

17      A.   No, it was below the ear right here.

18      Q.   Below the ear.

19      A.   I have that and I can show you the overlays on that too if  
20          you'd like.

21      Q.   Do you have a picture of the mark with you?

22      A.   Yeah, sure.

23      Q.   Now, what was that one - what do you feel caused that one  
24          the upper teeth or the lower teeth?

25      A.   I already identified it as the lower teeth.

26      Q.   Okay. So that mark that's under the ear there that could -  
27          that could not have been caused by a finger pressing down  
28          could it?

29      A.   I'm sorry, no. Not even in my wildest dream.

30      Q.   Not even in your wildest dream.

31      A.   No, scientifically it isn't, it's a curve and no finger is



1 going to leave marks that match individual characteristics  
2 of teeth and the - it's a curve and there are individual  
3 parts that match up, some don't and it's not as precise as  
4 the other so I again on this one I said it was consistent.  
5 You'd have to have awful funny fingers to leave that.

6 Q. Now, I think you said that the mark on the - on the - under  
7 the ear - under the right ear there that absolutely could  
8 not have been caused by a finger?

9 A. That's correct, with a reasonable medical dental certainty  
10 of course.

11 Q. Did you find any other marks on the child that you identified  
12 as bite marks?

13 A. Other than the cheek, the ear and the elbow.

14 Q. Now, I think you identified some marks on the child's lips  
15 as coming from the child's teeth, is that right?

16 A. Yes.

17 Q. Okay. And isn't it common that if a person has a seizure  
18 they may bite their lips or their tongue?

19 A. The tongue yes, the lips not necessarily so and it wouldn't  
20 be in that area anyhow it would be more on the inside of the  
21 lip.

22 Q. Well - but it could happen - it could happen from a seizure?

23 A. I can't tell you I'm not an expert on seizures and in the few  
24 cases I've seen it's been the tongue and the inside of the  
25 lip.

26 Q. Now, I notice that - I mean when you first started talking  
27 about the overlays I was - and you was talking about how you  
28 did it to scale I was thinking that when you put one overlay  
29 over the other since you had done it all to scale that when  
30 you put one over the other that it would match but I noticed  
31 that you had to turn it and twist it to try to find - to try

1 to find a way that it would probably match?

2 A. No, no, no.

3 Q. I mean for instance let's say that the markings on the side

4 of your face I bet I could take these teeth and fit some

5 location to match up to the markings on the side of your face

6 if I turn it -

7 A. - No, there's no way -

8 Q. - enough different directions?

9

10 By Mr. Ruddick: Your Honor, is he asking a question

11 or is he just making presentation?

12 By The Court: Are you arguing with him or you

13 asking a question?

14

15 Q. My question is if - if you had drawn this to scale like you

16 say that you had drawn it to scale and you called - and you

17 had matched everything up why was it when you were

18 demonstrating to the Jury that you had to turn it in all

19 those different directions to get a match?

20 A. Okay. I explained that obviously you didn't pay attention.

21 What happened was I had the scale there, I produced it on a

22 separate scale we had that. I have "x" marks on each one so

23 it matched up with the original scale. Now, if there are two

24 different pictures the scale is in a different part and I

25 told you that when you take the lower teeth and you traced

26 them this way you go to bite you have to turn it over. I

27 explained that very carefully and why I labelled left and

28 right. I made a big point of that. And I showed how the

29 teeth would have to turn. Maybe you were over here and you

30 couldn't see me. I apologize I don't mean to be rude.

31 Q. Now, have you been in your examinations - have you ever

1 encountered any situations where tape left bruises similar  
2 to the ones on the jaw?  
3 A. You want - would you repeat that?  
4 Q. Have you ever encountered situations in any of the  
5 examinations that you've done where tape left bruises similar  
6 to the bruises on the jaw?  
7 A. No.  
8 Q. Now, have you ever encountered a situation where tape left  
9 bruises?  
10 A. Yes.  
11 Q. And when tape leaves bruises isn't sometimes the tape  
12 stickier in one place than it is in the other so therefore  
13 some places are more bruised than the other?  
14 A. Yes, but not like this this is totally different.  
15 Q. Now, when you were making your examination were you sent a  
16 picture of the child while the child was intubated?  
17 A. No.  
18 Q. Oh.  
19 A. I have seen one before and it hasn't changed my opinion.  
20 Q. Now, of the pictures that you have are some of these pictures  
21 suppose to be the exact duplicate of the size of the child  
22 for instance, this picture is this suppose to be -  
23 A. - That's to scale.  
24 Q. Okay, this is to scale. This should be - this should  
25 represent the child - the size of the child in real life?  
26 A. That's what scale means.  
27 Q. Okay. Do you have any other pictures to scale?  
28 A. Yeah. These are the tracings that I have here. I took them  
29 out already you must have more than one folder. Here these  
30 are to scale, this is the cheek and that's the ear.  
31 Q. That one would seem a lot smaller than this one.

1 A. The scale is identical if you want to compare them. I asked  
2 you if you wanted a scale and you could hold it up, it  
3 matches. The scale is the same it's just the angle is  
4 different.

5 Q. Okay.

6 A. The scale has not changed. These are millimeter markings  
7 anybody can measure them.

8 Q. Okay. What I'm saying is that - does this picture represent  
9 the life size of the child?

10 A. Yes, it's just encroached.

11 Q. Okay. Alright.

12 A. What you see is what you get. There's a scale on it. That's  
13 the purpose of the scale. Whoever is holding this that's the  
14 size of their thumb.

15 Q. Okay. Now, I'd like to show you what I've - what's been  
16 marked as D-4 and does that tape appear to be over the same  
17 area where you have identified markings to be - I mean  
18 bruises to be?

19 A. Of the cheek, no, it's the opposite side I can't see around  
20 the corner.

21 Q. Okay.

22

23 By Mr. Scott: Do we have a picture of the other  
24 side too?

25

26 Q. I'd like to show you another photograph that I'm going to  
27 mark as D-5 and ask you whether or not you see tape over that  
28 area of the jaw in that photograph?

29 A. I do.

30 Q. Okay. And in your experience does tape over the jaw or other  
31 places on the body sometime when you remove it leave bruises?

1 A. It can.

2 Q. Okay. And when you have tape on a part of the body and the  
3 tape is removed and it leaves a bruise is it - is the bruise  
4 always totally consistent or are there sometimes places where  
5 the tape sticks more than the other and causes a - and cause  
6 bruises of different amounts where the tape came off?

7 A. One, there would be a linear type of bruising, two, it would  
8 not be punctuated with bruising that matched his teeth.

9 Q. Okay. Now, when you say a linear type of bruising what do  
10 you mean by that?

11 A. This is going in a different direction. The tape is not  
12 where the bite was it's in a different direction, different  
13 area over here and this is not to scale so nobody can tell  
14 anything from it.

15 Q. Sounds like you just did -

16 A. - Well I mean -

17 Q. - or tried to?

18 A. I'm talking about as so far as the bruising goes. In other  
19 words neither one of these has a scale (inaudible) can tell  
20 you though that if you pull tape away it's not going to leave  
21 a pattern injury that resembles a bite mark. Not this many  
22 teeth and that accurately and the spacing that would match  
23 his teeth.

24 Q. I mean well - but if you turn the teeth enough different ways  
25 you could pretty much match it up with almost anyone you  
26 wanted to match it don't you think?

27 A. I don't think. You think so because you're not a Forensic  
28 Dentist but I can identify this.

29 Q. Now, I mean the reason I'm asking these questions is  
30 because - I mean just from experience people come out of the  
31 hospital that's had IV's and things of that nature and I

1 normally see tape burns and - from where the tape has stuck  
2 especially if a person is a lighter complexion person -  
3  
4 By Mr. Ruddick: - Your Honor, can I object.  
5 By The Court: Mr. Scott, he's answered the  
6 question.  
7 By Mr. Ruddick: - Questioned and answer and not the  
8 summation.  
9 By The Court: He's answered your question more  
10 than one time whether or not the  
11 tape caused that marking. Move on  
12 to something else.  
13  
14 A. Do you want these pictures back?  
15 Q. Did you render any type of written report or opinion in this  
16 case?  
17 A. I did.  
18 Q. Do you have it with you?  
19 A. I do. This is a copy the original one is on stationery. I  
20 just ran this off my computer.  
21 Q. That's the report there?  
22 A. Yeah.  
23 Q. Oh, okay.  
24 A. I think you'd been given it or it's been given to the  
25 District Attorney.  
26 Q. I thought it was a report - I thought it was -  
27 A. - This is a report.  
28 Q. - longer document.  
29  
30 By Mr. Scott: Excuse me just a minute. I need  
31 about a minute. No further

1 questions.  
2 By Mr. Ruddick: I have nothing further to ask of  
3 the Doctor.  
4 By The Court: Is he released?  
5 By Mr. Ruddick: Yes, sir.  
6 By The Court: Doctor, you are released. Thank  
7 you, sir.  
8 By Mr. Ruddick: You want us to call the next  
9 witness, Judge?  
10 By The Court: He wants to gather his things.  
11 By Mr. Jones: Do you want to take a break or call  
12 the next witness?  
13 By The Court: Well, take a break it's 10:30.  
14 By Mr. Perkins: Can we introduce in evidence all the  
15 things that he - transcripts since  
16 he (inaudible). Do you have any  
17 problem with that?  
18 By Mr. Jones: Do what?  
19 By Mr. Perkins: Introduce into evidence - I would  
20 like to into the evidence and all  
21 the documents -  
22 By Mr. Jones: - Transparencies. Yes, I agree.  
23 By Mr. Ruddick: That he used?  
24 By Mr. Perkins: Yes, right.  
25 By Mr. Ruddick: Sure.  
26 By Mr. Jones: Just the ones he used, right.  
27 By Mr. Ruddick: We'll pull them out.  
28  
29 By The Reporter: Jury members and alternates escorted  
30 out of the Courtroom and Court in  
31 recess for fifteen (15) minutes.

Testimony of Dr. Richard Souviron, forensic odontology  
witness for the defense.



1 coughing their toenails up. You have to treat the patient.  
2 You have to look at their white count, their physical  
3 findings. A lot goes into that. The emergency room physician  
4 has to take into consideration everything from a clinical  
5 stand point.

6 Q. Yes, sir. Okay. So sometimes you have - an x-ray - a chest  
7 x-ray may actually appear normal but the patient could still  
8 have serious problems?

9 A. Sometimes yes.

10 Q. Okay. Thank you, sir.

11

12 By Mr. Jones: No questions.

13 By The Court: Is Dr. Lawrence released?

14 By Mr. Scott: Yes, sir.

15 By The Court: Thank you.

16 By Mr. Scott: Call Dr. Richard Souviron.

17 By Mr. Scott: I call Dr. Richard Souviron.

18

19

20

21 RICHARD SOUVIRON, expert witness, called on behalf of  
22 the Defendant, first duly sworn, testified as follows:

23

24

25

26 DIRECT EXAMINATION

27

28

29 By Mr. Scott:

30 Q. Would you please state your name, sir?

31 A. My name is Richard Souviron.

1 Q. And what is your profession?  
2 A. I'm a dentist.  
3 Q. Okay. And do you have any type of specialty in reference to  
4 dental work?  
5 A. Yes, sir I do.  
6 Q. What is that?  
7 A. I'm Board Certified in the field of Forensic Dentistry.  
8 Q. Okay. And -  
9  
10 By Mr. Ruddick: - Your Honor, the State will  
11 stipulate that if they're going to  
12 tender Dr. Souviron as an expert in  
13 Forensic Odontology we'll stipulate.  
14 I've talked to him on the phone I  
15 know he's an expert.  
16 By Mr. Scott: Okay. But we still would like to  
17 ask him additional questions as to  
18 introduce his expertise.  
19 By The Court: But that is the specialty you're  
20 offering him?  
21 By Mr. Scott: Yes, sir.  
22 By The Court: Let him be so accepted but continue  
23 with your questions if you wish.  
24  
25 Q. Where were you trained?  
26 A. I did my -  
27 Q. - Educational?  
28 A. - dental training at Emory University in Atlanta.  
29 Q. Okay. And when was that?  
30 A. 1960.  
31 Q. And after completion of - your training - you completed

1 training at Emery where else did you train?

2 A. Well, I'm not really sure what you're asking by training. I  
3 started work in the late - mid to late '60's with the Dade  
4 County Medical Examiner's Office that's in Miami, Dade County  
5 Medical Examiner's Office and I served in the capacity of the  
6 Chief Forensic Dentist. Back in those days I was the only  
7 Forensic Dentist so obviously I would be the Chief. But since  
8 that time there's been other ones that have been brought in.  
9 I've been trained in Forensic Dentistry primarily because of  
10 the tremendous amount of experience that I've had in exposure  
11 to Forensic Dentistry through the Medical Examiner's Office  
12 in Dade County. I'm an Assistant Medical Examiner for Dade  
13 County.

14 Q. Okay. And - now as a part of your duties as Assistant Medical  
15 Examiner with Dade County what type of services do you  
16 perform?

17 A. Good question. I'm called in on all cases involving dental  
18 evidence. I'm responsible for the identification of  
19 individuals that can not be identified by visual means. An  
20 example would be airline crashes. When the ValueJet went into  
21 the everglades and I was the one that was called in to what  
22 was left to try and make identification on the body parts.  
23 We had FineAir crashed last summer there were five people  
24 killed in that and they were all burned and I had to identify  
25 them so that's one of the major areas is identification of  
26 decomposed and skeletonized and burned remains. The other is  
27 why I'm here today deals with injury patterns or wound  
28 patterns to determine whether or not these patterned injuries  
29 are bite marks or not bite marks and if they are bite marks  
30 I am asked to describe what the person looks like that made  
31 the bites. What their teeth look like, is there any

1 distinguishing features about the individual but the major  
2 area in bite marks is to be able to distinguish between what  
3 is and what is not a bite mark.

4 Q. Okay. And after you're able to distinguish what is and what  
5 is not then you go into individual characteristics of the bite  
6 mark? Okay. Now -

7 A. - Was that a question?

8 Q. Yes, sir.

9 A. Okay. The answer is yes.

10 Q. Okay. Now, I heard you say that something about being able  
11 to tell what the person looks like by a bite mark did you say  
12 that it's possible? Is that what I heard you say?

13 A. You heard correct. That's exactly right.

14 Q. Okay. How is that possible?

15 A. Well, by saying what the person looks like obviously I can't  
16 tell if it's male or female but I can tell you that one of  
17 the areas that I'm called on all the time particularly dealing  
18 with day care, child care centers, I'm brought children many  
19 times or photographs of the children with bite marks and I'm  
20 asked the question is this bite left by an adult or by a  
21 child? Well, when we're talking about children we're talking  
22 about children under the age of six or actually eight when  
23 they have their baby teeth or part baby and part adult teeth  
24 you can tell the difference by the arch size. So, children  
25 are going to leave little bitty bites and adults are going to  
26 leave bigger bites so that's one of the ways to tell the  
27 difference. The other thing is can you tell anything about  
28 this individual? And you can tell by their teeth that the  
29 person is - has got teeth that are crooked or they've got  
30 teeth - they've got a gap between their front teeth or the  
31 lower teeth are crowded in a certain manner and one tooth is

1 sticking out or a tooth is missing. This is what we mean by  
2 the description and you should be able to look at a bite and  
3 tell the class characteristics and individual characteristics.  
4 The class characteristics is different between an adult and  
5 a child by - basically by the size.

6 Q. When you say class characteristics what do you mean? What  
7 are you talking about?

8 A. Class characteristics, a bite has class characteristics. It's  
9 like when you - a bite - the mechanics of a bite is you have  
10 an upper jaw that's fixed and a bottom jaw that moves and you  
11 have a pincher effect as the two jaws come together. Just  
12 like you'd squeeze something with a pair of pliers or channel  
13 locks or whatever. You're going to have that upper and lower  
14 are going to come together so when you bite something you have  
15 the upper teeth are set and the lower jaw swings up and down  
16 and they make a mark. And the marks that they make are  
17 curves, two opposing semi-circles. So you have half moons or  
18 whatever you want to call them but they're two semi-circles  
19 and they come together like this and that's called class  
20 characteristics. So you look for the curved arches to  
21 determine whether or not it is a bite mark ... human bite  
22 mark.

23 Q. Okay.

24 A. The other thing you look for is individual characteristics  
25 which is what I was just talking about a minute ago, the gaps  
26 between the teeth or crooked teeth or certain teeth out of  
27 line and that type of evidence is extremely important when  
28 you have a closed population group. For instance, there's  
29 only five people in the world that had access to this person  
30 at the time they were murdered and it's great to eliminate  
31 four of those five people because none of them had a space

1           between their teeth except one. Well, you don't have to be  
2           a rocket scientist to figure out that if the bite was left by  
3           the person that had a space and none of the other one's had  
4           spaces those people are gone.

5       Q.   Now, before we go too far into the class and individual  
6           characteristics there's a couple of other things I had wanted  
7           to ask you. The County where you work for what cities are  
8           located in that County?

9       A.   There's a whole group of cities in the County but Miami is  
10          the major - would be the major city that everybody knows  
11          about.

12      Q.   Okay. And what other cities are contained within that County  
13          or are within that County? Some of the other -

14      A.   - Some of the other ones? Homestead, Florida, Hialeah,  
15          Florida, Miami Gardens, Carl Jables, North Miami, Miami Beach,  
16          I mean I can go on and on.

17      Q.   Okay. That's okay. Okay, now do you belong to any forensic  
18          organizations or - well, are you - do you belong to the  
19          American Board of Forensic Odontology?

20      A.   Yes.

21      Q.   Okay.

22      A.   That's the specialty Board.

23      Q.   That's the specialty Board?

24      A.   Right.

25      Q.   Okay. Now, explain how that is set up.

26      A.   Well, I was one of the founding members I guess because of my  
27          age. When we started in Forensic Dentistry we started back  
28          organizing it in the early '70's. And there were probably ten  
29          of us that got together and formed the Forensic Odontology  
30          Section of the American Academy of Forensic Sciences and the  
31          forensic sciences encompass medical examiners and everybody

1 else. And the American Board then was established because the  
2 legal profession and the criminal justice system wanted to  
3 know who knew what they were talking about and who didn't when  
4 it came to bite marks. So the American Board of Forensic  
5 Odontology was established to credential dentists who do this  
6 type of work as experts.

7 Q. Okay. And did - were methods of comparing bite mark evidence  
8 developed?

9 A. Yes.

10 Q. And did you prepare any type of - I mean did you prepare a  
11 booklet showing the methods of comparing bite mark evidence?

12 A. Yes, sir.

13 Q. Okay. Do you have it with you?

14 A. Yes, I do.

15 Q. Okay. Would you please take it out and present it to the  
16 Jury, please?

17 A. Yes. May I step down, Your Honor.

18  
19 By The Court: Yes, sir. Hold on just a minute.  
20 Now, what are you doing here?

21 By Mr. Scott: This is his demonstrative evidence  
22 that - and he prepared in a booklet  
23 that we would like to pass out to  
24 the Jury.

25 By Mr. Jones: I think you need to establish that  
26 everything's in evidence.

27 By The Court: To do what? You're going to read  
28 from it and let them follow is that  
29 what you're doing?

30 By Mr. Scott: Yes, sir.

31 By Mr. Ruddick: Your Honor, I'd like for him to at

1 least lay the foundation and  
2 recognize it and offer it into  
3 evidence and then state under oath  
4 that these are duplicate copies  
5 that's he's going to let the Jury  
6 look. I saw it for the the first  
7 time last night so I don't know what  
8 other stuff is in there.

9 By The Court: Okay. Mr. Scott, you know the  
10 procedure.  
11

12 Q. Okay. Doctor, what material is contained in the booklet that  
13 you prepared for demonstrative evidence, generally?

14 A. Generally the material is what I was given in 1996, on this  
15 case and it contains reprints from the odontology information  
16 on bite mark evaluation, terminology and standards for bite  
17 marks. It also has a section in there that has a series of  
18 bite marks of cases that I have done to show Juries what a  
19 real bite mark looks like and then a little demonstrative part  
20 in there to show them when we talk about how we identify  
21 people and what bite marks look like and how we can identify  
22 people by the class and individual characteristics.

23 Q. Okay. And you prepared this booklet in conjunction with  
24 materials supplied to you in reference to this case?

25 A. Yes, sir.

26 Q. Okay. And in order to explain the concepts and explain what  
27 you did and how you did it and how you came to the conclusions  
28 that you came to would it be helpful to be able -to - for  
29 individuals to look at this book so that they can determine -

30 I mean so they can understand what you're talking about?

31 A. Yes, sir.



1 By Mr. Scott: May it please the Court at this time  
2 I would - well, I supplied the State  
3 with a copy of it yesterday. I would  
4 request that Mr. Souviron be allowed  
5 to make his - I mean to give his  
6 testimony while the Jury views the  
7 booklets that he's prepared as his  
8 demonstrative evidence in reference  
9 to this case.  
10 By Mr. Ruddick: Your Honor, I'm going to object as  
11 to the majority of this. This  
12 witness can testify as to evidence  
13 presented in this trial only not as  
14 to anything else that may have  
15 occurred in other trials. As I've  
16 reviewed this booklet I see  
17 approximately I think three  
18 photographs that have been introduced  
19 in this trial and if the doctor wants  
20 to talk about that he can but to  
21 bring in stuff from other trials I  
22 object. He can not talk about things  
23 that are not in evidence in this  
24 trial.  
25 By Mr. Scott: He's an expert, Your Honor.  
26 By The Court: He's an expert but the evidence has  
27 got to be limited to this case, Mr.  
28 Scott.  
29 By Mr. Scott: No, sir.  
30 By Mr. Ruddick: Yes, sir.  
31 By The Court: Mr. Scott, don't argue with me.

1 By Mr. Scott: Okay. I was - I thought I was  
2 suppose to present my position in  
3 reference to the -  
4 By The Court: - I - let me see one of them. I  
5 haven't seen .....  
6 By Mr. Scott: May it please the Court it's  
7 demonstrative evidence.  
8 By The Court: Well, hold on just a minute. Are  
9 you going to have overlays and that  
10 kind of thing like the other doctor  
11 had?  
12 By Mr. Scott: Yes, sir.  
13 By The Court: Well, I would think anything you want  
14 to show the Jury should be done in  
15 that fashion.  
16 By Mr. Scott: Well, when the prosecution presented  
17 it's case the Jury was allowed to  
18 have little head phones so everybody  
19 could hear what the State presented  
20 better. Okay, so that they could  
21 hear it better. In this case we wish  
22 to present books so they can see it  
23 better. Also, when Dr. - when their  
24 Forensic Dentist was testifying he  
25 was allowed to put his ... put his  
26 stand right here and to present to  
27 the Jurors - and he first presented  
28 it down here and then he did like -  
29 he was allowed to move down here.  
30 By The Court: That's correct. He gave the  
31 demonstrative evidence to the group

1 as a whole though he didn't have a  
2 shadow box for each Juror.  
3 By Mr. Ruddick: Your Honor, but he only discussed  
4 evidence in this trial.  
5 By The Court: I haven't - I've got to rule upon  
6 that and I think I've already stated  
7 that it needs to be restricted to  
8 evidence that has been presented in  
9 this case. The prosecution presents  
10 it and if you have something to rebut  
11 that of course you got a right to do  
12 that or refute it. If I -  
13 By Mr. Scott: - But if -  
14 By The Court: - Sir?  
15 By Mr. Scott: Let me ... let me finish questioning  
16 him and then let - I'm going to come  
17 back to it.  
18 By The Court: Come back to it and we may need to  
19 excuse the Jury before arguing it  
20 any further but go ahead.  
21  
22 Q. Okay. Now, in making an investigation into whether or not  
23 something is a bite mark what's some of the things that you  
24 do?  
25 A. If I'm shown an injury pattern at the Medical Examiner's  
26 Office the first procedure that's performed is photographs,  
27 taking pictures of it. I don't touch it I just take pictures  
28 of it. The injury pattern is wiped with a q-tip to pick up  
29 any saliva or any DNA that we might be able to get from the  
30 wound. After that's done then the wound has been photographed  
31 then what I do is I lift or attempt to lift the bite mark with

1 finger print powder. So I print the bite and then try and  
2 lift it. Then an impression is made of the injury pattern.  
3 And then a wedge is taken out of the injury pattern for the  
4 medical examiner to look at histologically under a microscope  
5 so he can get some kind of an idea as to how old this injury  
6 pattern is. After that's done and at the same time that  
7 that's done you have assume that this is a person that's dead  
8 we're not talking about what we do on live. We don't cut out  
9 pieces of skin on live people but when they're dead in the  
10 morgue when we can go ahead and do that, we have a body, then  
11 that - at the same time the wedge is taken out I look to see  
12 how deep the injury pattern is. For instance, if you have a  
13 very superficial lesion on the face as you do in this case  
14 you're going to want to make an incision through that to see  
15 is this a bite? If you bite down on somebody you're going to  
16 squeeze that tissue together, that blood's going to come from  
17 the bottom up to the surface and you're going to see the blood  
18 way down deep into the tissue. If it's just a surface  
19 abrasion such as an ant bite or just a scuff on the surface  
20 it's going to be strictly surface bleeding. There will be no  
21 depth to it at all. And then the last thing that I do is I  
22 will remove the actual bite itself and preserve that bite so  
23 it can be evaluated by others.

24 Q. Okay. Now, back when you talked about class characteristics,  
25 in your booklet the pictures that you have of other bites of  
26 class characteristics and individual characteristics did you  
27 make those pictures for the purpose of being able to show the  
28 class characteris - various class characteristics and various  
29 individual characteristics of bites?

30 A. Yes, sir.

31 Q. And is it your opinion that the best way to be able to explain

1 to someone else what you're talking about when you talk about  
2 class characteristics and individual characteristics is by  
3 showing them actual bites so that they'll be able to see what  
4 you're talking about when you talk about the individual  
5 characteristics and when you talk about the class  
6 characteristics?

7  
8 By Mr. Ruddick: I object, Your Honor. I believe this  
9 may be beyond his expertise.

10 By Mr. Scott: What?

11 By Mr. Ruddick: His opinion the best way to show  
12 something.

13 By Mr. Scott: Well, the best way to show -

14 By Mr. Ruddick: - It may be the best way for him to  
15 explain it in his mind but he's not  
16 an expert in that. He's not an  
17 expert in anybody else's mind.

18 By The Court: I think it goes back to the objection  
19 of the evidence being limited to  
20 what's been presented in this case.

21 By Mr. Scott: May we approach the Bench?

22 By The Court: Well, let's excuse the Jury for a  
23 moment.

24  
25 By The Reporter: Jury members and Alternates escorted  
26 out of the Courtroom for argument.

27  
28 By The Court: Be seated, please. Okay.

29 By Mr. Scott: Well, I guess we don't need to  
30 approach? We don't have to really  
31 approach the Bench now since the Jury

1 is out.

2 By The Court: Okay. Alright.

3 By Mr. Scott: May it please the Court, what we're

4 saying is that this is demonstrative

5 evidence and it's also a mean by

6 which it can be better conveyed to

7 the Jury. I mean such as if - such

8 as when the State played it's tapes

9 the - each Juror was given an ear

10 phone by which they could listen to

11 the tape so that they could better

12 hear it. Okay, now in this case we

13 would like to give them individual

14 booklets so they can better see it.

15 Now, that's one thing. Also,

16 demonstrative -

17 By The Court: - Why do you need to give them the

18 whole booklet when you're going to

19 refer to certain things in the

20 booklet why do you give the whole

21 thing?

22 By Mr. Scott: Because - because we're just going

23 to be referring to things one thing

24 at a time then he's - as he talks he

25 can show them the individual pages

26 that he'll be referring to.

27 By The Court: Well, I have no problem with you

28 referring to things one at a time

29 but it must be photographs of Haley

30 Oliveaux or something that's been

31 offered into evidence concerning this

1 case.  
2 By Mr. Scott: No, sir.  
3 By Mr. Perkins: May it please the Court, may I say  
4 something?  
5 By The Court: Just one at a time or who's going to  
6 argue it you or him?  
7 By Mr. Scott: I mean for instance in reading from  
8 the trial notebook demonstrative  
9 evidence includes those items which  
10 may or may not be admitted in  
11 evidence but are proper for use in  
12 the Courtroom to serve as a visual  
13 aid to the Court or the Jury in  
14 comprehending the verbal testimony  
15 of the witness. So what we're  
16 talking about is an aid to - an aid  
17 to assist - a visual aid to assist  
18 the Jury in comprehending the  
19 testimony of the witness. For  
20 instance, it seems that if this is  
21 eliminated then the slides should  
22 have been eliminated, the tape -  
23 By The Court: - Well, there's not been any slides  
24 or there's not been any tape of  
25 anything other than what's been  
26 offered here has it? That's my  
27 problem.  
28 By Mr. Ruddick: May I respond?  
29 By Mr. Scott: Okay, relating to the tape, okay,  
30 the tape would not have been - they  
31 would have not been able to hear the

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tape as well -

By The Court: - The tape you're talking about were the confession - I mean excuse me, the statement of the Defendant, is that right?

By Mr. Scott: Now, - okay, yes. The doctor has been talking about individual characteristics and class characteristics of bite marks. Let's say if we were talking about fingerprints, okay, and the expert was talking about the individual characteristics of a fingerprint he would start off by showing the loops and swirls of the fingerprint to show the various characteristics that fingerprints have and I've seen it often fingerprint experts will use these diagrams, will use various diagrams to show what they're talking about -

By The Court: - Somebody else's fingerprints?

By Mr. Scott: Yes, to explain - to explain generally how fingerprints look. How the loops and swirls look in fingerprints and then - and then they tell the Jury - I mean because an expert is obligated to present the foundation or the facts for his determination. Now, how - how can it be shown - if he's talking about



1 class characteristics - class  
2 characteristics certain teeth are  
3 this way, certain teeth are this way,  
4 different classes of teeth how is he  
5 going to demonstrate the class  
6 characteristics without showing them  
7 what a tooth in that class looks  
8 like. How would he show what the  
9 individual characteristics are  
10 without showing what individual  
11 characteristics look like in teeth.  
12 By The Court: You're proposing to show that by  
13 photographs of some other individual  
14 concern -  
15 By Mr. Scott: - Right, because -  
16 By The Court: - concerning teeth of some other  
17 individual.  
18 By Mr. Scott: Right. Right, that is the way -  
19 because that's the way that he can  
20 show what individual characteristics.  
21 In this case since there are no teeth  
22 marks he can not demonstrate it  
23 through this case he has to  
24 demonstrate it through another case.  
25 By The Court: I thought there were teeth marks.  
26 By Mr. Scott: That's exactly our point. We are  
27 showing that there were no teeth  
28 marks so he wants to be able to show  
29 what teeth marks look like in the  
30 individual characteristics and the  
31 class characteristics so that it

1 can - so that he can compare what  
2 the real looks like compared to what  
3 is not. So he's trying to use his  
4 demonstrative evidence to show - so  
5 that they can have something to  
6 compare what a tooth mark - what a  
7 tooth can look like as compared to  
8 something that it does not look like.  
9 By Mr. Ruddick: May I respond?  
10 By The Court: Yes, sir.  
11 By Mr. Ruddick: Your Honor, in order for  
12 demonstrative evidence to be  
13 admissible foundation must be laid  
14 to establish that it's more probable  
15 than not the object is the one  
16 connected with the case. "State Vs.  
17 Sneed", Louisiana Second Circuit,  
18 1990, if the good doctor wants to  
19 talk about photos that have been  
20 introduced he's more entitled to.  
21 Furthermore, if he's going to say  
22 and his report said that I got -  
23 actually I got it fourteen (14)  
24 months after he rendered it but I  
25 finally got it it said it's not bite  
26 marks then why does he have to talk  
27 about all these other bite marks on  
28 other bodies that don't have anything  
29 to do with case to say it ain't a  
30 bite mark. He doesn't need to go  
31 through that besides the case law

1 says it's got to be connected with  
2 this case.  
3 By The Court: There's a lot of pictures in here of  
4 Haley Oliveaux but they're pictures  
5 of other people too as I have -  
6 By Mr. Ruddick: - And they're tape (inaudible) what  
7 - that has nothing to do with this  
8 case according to his little tab.  
9 By The Court: Rather than have each Juror hold the  
10 book in their lap and propose to -  
11 now, if this were a Deposition of  
12 course, you know, something he's  
13 reading from they could follow that  
14 would be something else but this is  
15 a different situation for me. Now,  
16 he's got all kinds of pictures of  
17 the child here that were testified  
18 to if he wants to give some testimony  
19 that will refute what has been  
20 testified to by the other doctor of  
21 course he's got a right to use the  
22 photographs -  
23 By Mr. Scott: - But how is he going to show what  
24 a bite mark looks like?  
25 By Mr. Ruddick: He's saying - he doesn't have to he  
26 saying it's not a bite mark.  
27 By Mr. Scott: Yeah, but - okay, if he says it's  
28 not a bite mark how can he show the  
29 Jury - how can he demonstrate to the  
30 Jury so that they can have something  
31 to compare - to compare with?

1 By Mr. Ruddick: By using evidence admitted in this  
2 case, Judge. The case law is clear  
3 he can not use evidence or testify  
4 unless it deals with this case and  
5 if he's going to refer to this  
6 booklet then I ask the Court to order  
7 that he can not refer to these -  
8 whatever these bodies are that are  
9 in here that has nothing to do with  
10 this case.  
11 By The Court: I'm inclined to - I've said all along  
12 that I follow that line of thinking.  
13 I just do. I haven't been convinced  
14 otherwise.  
15 By Mr. Scott: Okay. Now, on some of them - on some  
16 of the pictures there's no faces,  
17 there's nothing - there's nothing  
18 detrimental to the -  
19 By The Court: - It's the - what he will testify to  
20 apparently is the bite mark on some  
21 other individual made by some other  
22 teeth not the molding of the  
23 Defendant that we have here.  
24 By Mr. Perkins: May I make a suggestion, Your Honor?  
25 Could the Court -  
26 By The Court: - You're going to take over the  
27 argument now, Mr. Perkins?  
28 By Mr. Perkins: No, I was just -  
29 By Mr. Scott: - Maybe he needs to.  
30 By The Court: Alright, go ahead.  
31 By Mr. Perkins: I just want to make a suggestion at

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this point so maybe the Court can be a little bit further enlightened maybe we could take some testimony outside the presence of the Jury so that we can show what we're trying - we can't show that there's no bite marks unless you have something to compare what bite marks are and so if we took some testimony outside maybe we can show, Your Honor, what - all it is is demonstrative evidence.

By The Court:

How would you distinguish this from say if we were dealing with an automobile accident case and there was a bumper involved and the car that was involved that had all kinds of damage on it are you saying that you could put another bumper in there that's just like it that was not involved in the wreck and you view it as evidence?

By Mr. Scott:

It's not putting - oh, I'm sorry go ahead.

By Mr. Perkins:

All we're trying to do is by demonstrative evidence we're saying our case in chief is that these are not bite marks. In order - the only way we can - the only way we can show what bite marks look like if we don't have bite marks in this case are by showing the bite marks of other

1 individuals. And that's  
2 demonstrative evidence. We're  
3 showing -  
4 By The Court: - What you would have to show, Mr.  
5 Perkins, in my thinking if there were  
6 something else that would have to  
7 be - you can't show something else  
8 if it's not made by the same teeth  
9 and by the same individual I just  
10 don't see how you can do it. It's  
11 something that's not been offered  
12 into evidence I just do not see how  
13 you do it. What I'm - go ahead if  
14 you want to finish. Go ahead.  
15 By Mr. Perkins: That's why I was - in order to  
16 demonstrate what Dr. Souviron is  
17 talking about I wanted to have Louis,  
18 Mr. Scott, demonstrate what he's  
19 doing by maybe asking him a few  
20 questions outside the presence of the  
21 Jury to satisfy, Your Honor, what  
22 is - what we're trying to show.  
23 By The Court: I think I know what you're trying to  
24 show. I don't have any problem with  
25 further questions being asked but  
26 we'll continue with the argument if  
27 you wish outside the presence of the  
28 Jury. Go ahead, Mr. Scott, if you  
29 want to ask questions.  
30 By Mr. Scott: Sir?  
31 By The Court: Do you want to ask further questions

1 of him?  
2 By Mr. Scott: Yes, sir.  
3  
4 By The Reporter: Questions of Dr. Souviron being asked  
5 outside the presence of the Jury.  
6  
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8  
9 DIRECT EXAMINATION  
10  
11  
12 By Mr. Scott:  
13 Q. Dr. Souviron, explain to the Judge why it's necessary to show  
14 the pictures that you have in order to explain about bite  
15 marks?  
16  
17 By Mr. Ruddick: What a minute. I object to that?  
18 He's wanting Dr. Souviron to make  
19 his argument for him. I thought we  
20 were going to talk about what he was  
21 going to testify to the Jury.  
22 By Mr. Scott: Well, I'm asking - well my question  
23 is why is it necessary -  
24 By The Court: - You're going to try to ask  
25 questions of him to convince me that  
26 it's necessary for him to show these  
27 pictures of somebody else to make  
28 his point to the Jury here as I  
29 understand it?  
30 By Mr. Scott: Yes, sir.  
31 By The Court: Alright. Go ahead.

1 Q. Dr. Souviron, why is it necessary to show these pictures to  
2 be able to explain why - how the other marks on this child is  
3 not bite marks?

4 A. Okay. This is an unusual situation in that the defense in  
5 this case has to be able to have a Jury understand what a bite  
6 mark looks like in the first place in order to be able to  
7 intelligently evaluate what isn't a bite mark and how a bite  
8 mark is the dynamics of a bite mark, what bite marks look  
9 like, the class characteristics, would help them and I will  
10 be asking them to - and I did it verbally and I'd like to it  
11 visually to show the Jury what patterns are left by teeth so  
12 you can use that to actually look at the pattern injury based  
13 on the individual characteristics and describe what the person  
14 looks like and that's a hard concept for a lay person to  
15 understand that you can describe the person by a bite and I  
16 want to be able to show the Jury that I can describe what  
17 this -

18  
19 By The Court: - That's a hard concept for me to  
20 understand also.

21  
22 A. Well, Your Honor, and I appreciate that and that's - when I  
23 talk to a Jury on an injury involving the jaw joint I take a  
24 skull and I show the Jury it's not the skull of the person  
25 that's injured but it's a skeleton and I show them what the  
26 joint looks like, how the jaw functions and they hold that  
27 and each one of them holds that jaw and they move it back and  
28 forth and they mess around with it and then I put it in my  
29 box and I leave - leave the Courtroom. They don't keep it.  
30 In this case though when we're trying to show the Jury and  
31 I'd like to show you, Your Honor, what a bite mark looks like



1                   and how you can tell what people look like.

2

3                   By The Court:           Well, all bite marks are not going

4   to look the same.

5

6   A.   Oh, really? Let me tell you something I can show you bite

7           patterns that -

8

9                   By Mr. Jones:           - I object to that.

10

11   A.   They do. Some of them do look the same.

12

13                   By Mr. Ruddick:       Your Honor, if he can -

14                   By The Court:           - Go ahead with your question.

15                   By Mr. Ruddick:       He can testify about characteristics,

16   class characteristics whatever he

17   wants to using photographs that are

18   entered into this trial but to bring

19   in all this other stuff is not

20   admissible.

21                   By Mr. Scott:       Judge, why are we making an exception

22   in this case? In all cases that we

23   deal with in this Court -

24                   By The Court:           - Just - quite over there, Mr.

25   Duncan.

26                   By Mr. Scott:       - People are allowed to use

27   skeletons, people are allowed to use

28   anatomic charts, people are allowed

29   to use diagrams of veins of

30   individuals, people are allowed to

31   use for illustrative purposes like

1 the heartbeat and how the veins go  
2 throughout the body and it's not -  
3 it is not unusual in - people are  
4 allowed to use dummies to demonstrate  
5 let's say how certain things could  
6 have happened. As a matter of fact  
7 even in this case and as a part of  
8 my cross examination I used the dummy  
9 so that I could ask the doctor about  
10 the person so the Jury could be able  
11 to visualize what we're talking  
12 about. This is not an unusual  
13 concept, Your Honor, this is done  
14 in - this is done - this is done in  
15 this Court.

16 By The Court: Mr. Scott, if you're going to use -  
17 if you're talking about bite marks  
18 and you're going to use a picture  
19 this one is apparently of somebody  
20 else.

21 By Mr. Scott: Yes, sir.

22 By The Court: If you're going to use a picture now,  
23 look here's a bite mark made on so  
24 and so over her just look at the  
25 difference? Now, how is that fair?

26 By Mr. Scott: No, sir that's - he has a series of  
27 them to show -

28 By The Court: - On other people.

29 By Mr. Scott: No. Okay. See the purpose of that  
30 is to show what individual  
31 characteristics are about such as

1 over on that side to show that the  
2 person had sharp edges on their  
3 teeth.  
4 By The Court: And the indication is that all bite  
5 marks have got to be like this. Now,  
6 the picture of Haley Oliveaux doesn't  
7 look like that so that's not a bite  
8 mark. I don't buy that.  
9 By Mr. Scott: Okay. You may not buy it but that's  
10 a factual issue, Your Honor, for the  
11 Jury to determine whether or  
12 not -  
13 By The Court: - It's a factual issue -  
14 By Mr. Scott: - whether or not bite marks - okay,  
15 if he - if he - if he presents  
16 evidence - I mean such as I didn't  
17 buy what Dr. Hayne said or Dr.  
18 Gustavson said but it's a question  
19 for the - it's a question for the -  
20 or you may not buy what they said  
21 but it's still a question for the  
22 Jury on whether or not they buy it  
23 not whether - not for the Court to  
24 make the threshold -  
25 By The Court: - I understand that. Now, the Doctor  
26 can testify looking at photographs  
27 of the child this is not bite marks.  
28 This is why it's not bite marks. But  
29 I don't want him to show a picture  
30 of somebody else that's bitten almost  
31 all the way through or more

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By Mr. Scott:

pronounced bite and say now here's a bite mark, that's not a bite mark. It does not seem like that would be the proper way to do it.

Okay. He's going to testify - I mean for instance we had - we had a car crash. Okay, they do car test and crash automobiles and then that is allowed as demonstrative evidence in Court to show how this particular make and model and size and everything reacts under this - under - when it crashes. It's always - this is nothing new. It certainly is nothing new and he can - and even though - even though you may be of a different opinion the doctor is going to be able - is going to present evidence that all bites have certain class characteristics, okay and whether you believe it or not it's still a issue that should be presented to the Judge not where the Judge make the threshold decision that I don't believe that all bites - I don't believe that all bites look alike.

By The Court:

I'm not making a decision one way or another, Mr. Scott. I'm just saying that a photograph of somebody else with what's alleged to be a bite mark

1 is much more pronounced compared  
2 against this one to show - to say and  
3 try to establish this is not a bite  
4 mark. I just don't follow that.  
5 Now, he's got a number of  
6 photographs -  
7 By Mr. Scott: - Well, I guess to sum my argument  
8 up ..... I had started but I never  
9 did - I think - I think maybe if I  
10 would have gone on through, Your  
11 Honor, would have understood it if  
12 I would of let the doctor kept  
13 talking instead of me - instead of  
14 me start arguing.  
15 By The Court: Do you have further questions you  
16 wish to present to the doctor?  
17 By Mr. Scott: Yes, sir.  
18 By The Court: Go ahead.  
19  
20 Q. Okay. Dr. Souviron, explain how these are markings illustrate  
21 characteristics of individuals based upon their appearance?  
22 Starting with the first one and going through them.  
23 A. Alright. If you turn to page six (6) this is a bite mark.  
24 The class characteristics show that you have an upper set of  
25 teeth and you have a lower set of teeth. The individual that  
26 inflicted this bite we can tell it's a human bite, we can  
27 count the number of teeth that are in it but the significant  
28 thing about this individual that left this bite mark is in  
29 the lower jaw he's got a lower front tooth that's going to be  
30 sticking out forward so if you have five individuals that -  
31 in a closed population and none of them have a front tooth

1 sticking out with the rest of the teeth straight in line  
2 except for one like I said earlier you don't have to be a  
3 rocket scientist to know that that - four of those people for  
4 sure are eliminated.  
5  
6 By Mr. Ruddick: Your Honor, then I'm going to object  
7 if he's going to say it's not a bite  
8 mark then why in the world do we have  
9 to eliminate the four of the five  
10 people or worry about whether  
11 somebody's got a tooth protruding.  
12 It's not relevant and it's not  
13 admissible.  
14 By Mr. Scott: It is relevant whether or not  
15 somebody has a bite mark.  
16 By Mr. Ruddick: That's true.  
17 By Mr. Scott: That's what the whole - that's what  
18 we're talking about whether or not  
19 somebody's got a bite mark and they  
20 are saying that they want to take  
21 away the method by which it can be  
22 proven cause if they take away that  
23 method there is no way that it can  
24 be proven and the basically we are  
25 being deprived of our Constitutional  
26 Right to present a defense because  
27 if it can't be - if they're saying  
28 that we can't prove it and the only  
29 way you can prove it is by showing  
30 what something like that really - I  
31 mean what a bite really looks like

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then you can't prove that this is not a bite if you don't have nothing to compare it to.

By Mr. Ruddick:

Your Honor, if this doctor in his expert opinion can not look at the photographs in evidence and render an opinion one way or the other either it is or it isn't if he can't do that then he doesn't need to be qualified as an expert.

By Mr. Scott:

I mean even the -

By The Court:

- I assume the doctor has looked at the photographs and is going to testify that they're not bite marks, I guess this is what this is all about.

By Mr. Scott:

I mean for instance the plastic - I mean the thing that were presented - I mean these items here is demonstrative evidence it's not -

By Mr. Ruddick:

- Made from those teeth that have been introduced into evidence -

By Mr. Jones:

- Connected with the case.

By Mr. Ruddick:

- dealing with this case.

By The Court:

Well, I've listened to all this argument and I'm not going to hear any more. I think the evidence should be restricted to what's here. Now, what's been offered into this case if you want to refer to photographs and then give some

1 explanation as to why he does not  
2 agree with the prior doctor that  
3 testified that they are bite marks  
4 that's fine but - and the photographs  
5 that he uses I think I'm going - I  
6 will restrict to those that have been  
7 offered into evidence.  
8 By Mr. Scott: May it please the Court, at this time  
9 we would like our objection noted.  
10 By The Court: Your objection is so.  
11 By Mr. Scott: And the bases for - and we would also  
12 request a proffer into evidence for  
13 purposes of possible review.  
14 By The Court: Alright. Let's go into the proffer  
15 at this time. Ready?  
16 By Mr. Scott: Yes, sir.  
17  
18 By The Reporter: Proffered evidence being given with  
19 Jury members and Alternates out of  
20 the Courtroom.  
21  
22 By Mr. Perkins: May I confer with counsel for just  
23 a second?  
24 By Mr. Scott: May it please the Court at this time  
25 before I get started with the proffer  
26 I'd like to state some of the grounds  
27 for my objection because - one is  
28 that it deprives Mr. Duncan of a fair  
29 trial, well, we base it on the 14th,  
30 the 5th, the Louisiana Constitution  
31 or the right to a fair trial, the



1 right to - and the defendant's right  
2 to a fair trial.  
3  
4 Q. Now, Dr. Souviron, did you prepare this booklet marked bite  
5 mark evidence?  
6 A. Yes, sir I did.  
7 Q. Okay. And did you prepare it for demonstrative purposes or  
8 to be able to demonstrate the concepts relating to class  
9 characteristics and individual characteristics of teeth that  
10 you want to explain to the Jury?  
11 A. Yes, sir.  
12 Q. Okay. Would you explain how this booklet would have - would  
13 accomplish that especially relating to the pictures that are  
14 not pictures of Haley Oliveaux?  
15 A. Well, first the series of five bite marks that are in there  
16 would help a lay person understand what a bite mark looks  
17 like. All bite marks have certain things in common, class  
18 characteristics, that is upper and lower teeth. Upper half  
19 circles, lower half circle opposing each other they all look  
20 the same in that regard. Now, when it comes to the individual  
21 characteristics of the teeth that's what separates a different  
22 individuals. Not all teeth leave exactly the same pattern  
23 because everybody knows all teeth are different, natural teeth  
24 anyway not man made teeth.  
25 Q. Okay. Now, how does the booklet illustrate that - those  
26 points - that point?  
27 A. It illustrates those points by giving examples of what - how  
28 individual teeth leave patterns in the skin and if a tooth is  
29 there it's going to mark a certain way and if it's not there  
30 there's going to be a gap where there's suppose to be a tooth  
31 and if teeth are chipped or broken they're going to leave

1 scrap marks that are different then if the teeth aren't broken  
2 off. So those examples of the individual characteristics I  
3 think would be helpful to the Jury to arrive at a fair  
4 evaluation when you say something is not a bite mark if they  
5 don't know what something is a bite mark it's kind of hard for  
6 them to make that determination. The other - the other part  
7 of that book that is not a bite mark but it's my  
8 experimentation that I did and I put the photographs so the  
9 Jury could see exactly what I did and it's nothing more than  
10 an example of how the tape that's on Haley's face is  
11 transparent and you can see through that and that happens to  
12 be significant in my testimony with regarding a bite mark that  
13 is not present in the hospital.

14 Q. Now, can you think of any effective method that would be as  
15 effective or that could give you as much value in  
16 demonstrating what bite marks - class characteristics of bite  
17 marks then showing pictures of bite marks do you know of any  
18 other way that that can be demonstrated as effectively?

19 A. Yes, sir I do.

20  
21 By Mr. Ruddick: Your Honor, I'm going to object to  
22 this line. If he wants to go through  
23 and say why he wants to introduce but  
24 now we're getting into could there  
25 be something more effective, less  
26 effective.

27 By Mr. Scott: That's why I want to introduce it  
28 because that's the one of the most  
29 effective ways to do it. It still  
30 relates to the questions we're  
31 dealing with.

1 By The Court: This is on a proffer.  
2 By Mr. Jones: On a proffer.  
3 By Mr. Ruddick: Okay.  
4 By The Court: I'm out of it.  
5 By Mr. Jones: Thank you.  
6  
7 Q. Yes, sir go ahead.  
8  
9 By Mr. Ruddick: Well, could we make the proffer  
10 during lunch so we can get the Jury  
11 back in and -  
12 By Mr. Jones: - Do we have to sit here and listen  
13 to it? We can go eat lunch while he  
14 proffers all he wants to.  
15 By The Court: How much longer will it be, Mr.  
16 Scott, the proffer?  
17 By Mr. Scott: Not very much longer.  
18 By The Court: Go ahead.  
19 By Mr. Scott: But I want to make a record.  
20  
21 A. The question is there a more effective way to demonstrate what  
22 the class and individual characteristics of a bite mark are  
23 better than what the photograph in the book and the answer is  
24 yes, there is a better ways. And the better way would be to  
25 go around and bite each one of the Jurors and show them  
26 exactly what a bite mark looks like.  
27  
28 By Mr. Jones: We don't object to that.  
29  
30 A. I'd object to it to if I was a Juror. But it is effective.  
31 Well, short of biting each Juror or having them bite each

1           other to show them what bite marks look like the best way to  
2           do it is show them pictures of what bites look like. These  
3           things hurt.  
4  
5           By Mr. Scott:           At this time I'd proffer the booklet  
6                                    marked "State of Louisiana versus  
7                                    Jimmie Duncan".  
8           By The Court:          Does that complete the proffer?  
9           By Mr. Scott:          Yes, sir.  
10          By The Court:          Alright. Let's go back to the - get  
11                                   the Jury back in.  
12          By Mr. Scott:          Well, wait just a minute. Okay.  
13                                   And let's say since the State - I  
14                                   mean since, Your Honor, has ruled on  
15                                   the booklet - well the pictures of  
16                                   the other individuals inadmissible  
17                                   I would - I would secondarily request  
18                                   that the pictures that are from the  
19                                   evidence in this case that he be  
20                                   allowed to refer to the book using  
21                                   those pictures in this case.  
22          By The Court:          I don't know if I followed your .....  
23          By Mr. Scott:          Okay, they objected to these pictures  
24                                   of other individuals. Okay, and I  
25                                   think, Your Honor, ruled in their  
26                                   favor.  
27          By The Court:          Right.  
28          By Mr. Scott:          Okay. But from here - from here you  
29                                   are talking about pictures -  
30          By The Court:          - Well, I have ruled that any picture  
31                                   of the victim he can talk about.

1 By Mr. Jones: That's in evidence.  
2 By The Court: That's in evidence certainly and all  
3 those are I think.  
4 By Mr. Scott: Which ones are you saying are not in  
5 evidence?  
6 By Mr. Jones: I don't know. You got to use the  
7 ones in evidence I don't know.  
8 By Mr. Scott: So, I would request that he be  
9 allowed to use a portion of the book  
10 that refers to the pictures of Haley.  
11 By The Court: I have ruled that if it involves  
12 information that's offered into  
13 evidence, photographs, the medical  
14 reports or what have you concerning  
15 the victim he is allowed to use that.  
16 You'll just have to take those others  
17 out, Mr. Scott, as far as - but I'm  
18 not - Mr. Scott, I'm just not going  
19 to let the Jury sit with a book. Any  
20 expert - most experts have written  
21 books and things and it's just not  
22 proper for an expert to say I wrote  
23 such and such a book now here Jury,  
24 you follow this while I talk about  
25 it. I just don't accept it. But if  
26 you're going to offer the book you  
27 need to take those other photographs  
28 out.  
29 By Mr. Scott: Okay. I'm going to proffer one with  
30 everything in it.  
31 By The Court: I thought we were out of the proffer.

1 You offered the book for the proffer  
2 that's your business. But you're out  
3 of it aren't you? Out of the  
4 proffer?  
5 By Mr. Scott: I'm out of the proffer but I'm going  
6 to have to - considering your ruling  
7 I'm going to have to have the pages  
8 removed from the other books so  
9 that -  
10 By The Court: - Right, okay.  
11 By Mr. Scott: - so that that can be used.  
12 By The Court: And since you're not going to be able  
13 to present the whole booklet to each  
14 Juror you can just - I don't know how  
15 you want to do it but you can't talk  
16 about anything except those that are  
17 offered into evidence.  
18 By Mr. Ruddick: Your Honor, it's going to take us a  
19 few minutes to check what's been  
20 introduced into evidence to the  
21 photographs in this booklet.  
22 By The Court: Okay. Let's take a fifteen (15)  
23 minute recess.  
24 By Mr. Jones: Thank you.  
25  
26 By The Reporter: Court in recess for fifteen (15)  
27 minutes.  
28  
29 By The Court: Are we ready, gentlemen? Ready for  
30 the Jury? Bring them in.  
31

1                   By The Reporter:     Jury members and Alternates escorted  
2   back into the Courtroom and testimony  
3   resumed with Dr. Richard Souviron on  
4   Direct Examination.  
5

6     Q.     Doctor, I'm trying to get back to where we were.   What type  
7             of - I mean as a part of your investigation into bite marks  
8             or alleged bite marks what type of things do you do?

9     A.     I explained that earlier.   When you have an injury pattern  
10            that has certain resemblances to a bite mark you first  
11            determine is it a bite mark and there are some areas where  
12            there may be some questions but the standard procedures are  
13            photographing, taking a saliva sample for DNA, I personally  
14            lift the bite print with finger print powder, usually there  
15            is some kind of description, written description, of what the  
16            pattern looks like without any suspects, without any teeth,  
17            without anything the exemplars of a bite you would want to be  
18            able to determine which mark was made by upper teeth and which  
19            mark was made by lower teeth and you want to be able to pick  
20            out certain of the individual characteristics of the teeth  
21            such as a rotated tooth or space between teeth or crooked  
22            teeth or whatever and then from those individual  
23            characteristics you can give some kind of a more likely than  
24            not the person that left this bite has got an upper front  
25            tooth that's sticking out or a bottom tooth that's turned or  
26            a missing tooth or a broken tooth in a certain location, very  
27            significant from exclusionary purposes to exclude somebody.  
28            After the fingerprint is done then the - an impression is made  
29            of the bite itself just like the dentist puts the material in  
30            your mouth.   We do the same type of technique using similar  
31            impression materials to get an impression of that - of the

1 bite and then we make a stone model from that so we have an  
2 actual stone model of the - of the bite pattern. Following  
3 that the medical examiner in our Jurisdiction anyway if I tell  
4 them that I think that's a bite mark and we need to age that  
5 bite he would take a wedge out of that bite to do his  
6 microscopic sections. I would then and very importantly  
7 observe that injury pattern to make sure it's not a rug burn  
8 or a it's not a scrap or an ant bite on the surface of the  
9 skin. In other words a bite mark is the dynamics of a bite  
10 are going to be pinching something together and they're going  
11 to be - it's going to be a deep mark so you make an incision,  
12 you look and you give the medical examiner his piece and I  
13 look down in there ... we photograph the depth of it and then  
14 that - without going into great detail the tissue sample then  
15 is removed and we put it on a plastic ring so it can be  
16 removed exactly as it on the cadaver, on the dead individual,  
17 and then that's preserved informal and for an additional  
18 opinion from another forensic dentist. When that is removed  
19 you can take that tissue and hold it up to high intensity  
20 light and that's called trans-illumination and you can get a  
21 light through the skin and it will in some cases enhance  
22 what's already there and you photograph that. It also shows  
23 and it will show very clearly that this was a pinching type  
24 mark and you'll see blood down into the muscle layers where  
25 the pressure of the jaws coming together caused that deep  
26 bruising, that deep bleeding.

27 Q. Okay. Is it possible to determine lower teeth - I mean look  
28 at - to look at a bite mark and determine which marks were  
29 caused by the lower teeth and which marks were caused by the  
30 upper teeth?

31 A. Yes.



1 Q. Okay. And how is that done?  
2 A. The - I don't have the models here in front of me. I was  
3 going to show the Jury the models of a set of teeth but  
4 basically the lower front teeth ... the lower front four teeth  
5 are all pretty much the same size so you have four little  
6 teeth all about the same size but in the upper jaw, the upper  
7 two front teeth are twice the size of the lower teeth so you  
8 would have a - may I, Your Honor?  
9  
10 By The Court: Yes, sir.  
11  
12 By The Reporter: Expert witness stepping down to  
13 screen to demonstrate to the Court.  
14  
15 A. In this situation you have the lower teeth and these four  
16 front teeth called the incisors are all about the same size.  
17 So when you look at the skin patterns this particular set of  
18 teeth is going to leave a nice curved mark. You don't have  
19 a tooth that's sticking out, you don't have anything broken  
20 off or chipped so you're going to have a nice straight line  
21 of teeth on the bottom and it's curved. If you'll look at  
22 this it forms a half arc if you will. Now, the upper teeth  
23 you also have a half arc because your jaw is curved but look  
24 at the two upper teeth and look at the space in between those  
25 teeth and when they bite down this clamps in this direction.  
26 The upper jaw is connected to the skull of the head and the  
27 lower jaw is on a hinge and all you have to do is open wide  
28 and you'll see what I'm talking about. Your jaw  
29 disarticulates, it comes apart so lower - and when you bite  
30 this lower jaw comes up and it puts that pinching or a pair  
31 of pliers type of effect, this bite. That's a bite mark.

1 That's what you get when you bite. Bite an apple sometime  
2 and look and see what you get unless you pull it off on your  
3 teeth but you're going to get upper and lower marks on that  
4 apple. The upper teeth in this particular case this  
5 individual has what we refer to as an individual  
6 characteristic. There is a gap between those upper front  
7 teeth and the two lateral incisors on either side of the upper  
8 arch have gaps so what you'd get in a case like this you'd  
9 have four marks in a row, there would be a space right in the  
10 center then there would be another gap and then you'd have the  
11 point where the eye tooth came in so the upper teeth of this  
12 individual would be pretty distinctive. The lower teeth are  
13 not very - these could be consistent with probably a lot of  
14 you on the Jury to have bottom that look very similar to this.  
15 So they're not really distinctive bottom teeth. But the key  
16 is you got two arches that are half moon shaped, upper and  
17 lower and you're going to get a pinching effect.

18 Q. So by looking at a mark or if it's a bite mark you can - you  
19 can be able to determine whether or not the mark was caused  
20 by the lower teeth or the upper teeth, is that right?

21 A. Yes, sir.

22 Q. Now, if a mark is not a bite mark how do you go about  
23 eliminating the fact that it - how do you go about showing  
24 that it is not a bite mark?

25 A. That's pretty tough. It's like the question when did you stop  
26 beating your wife? You know, I mean it's a catch twenty-two  
27 how do you show something is not a bite mark. Well, you show  
28 examples of what bite marks are suppose to look like and one  
29 of the ways of doing that would be to take these models and  
30 go around and bite everybody or everybody can bite themselves  
31 on their arm, I know, and you can see what a bite mark looks

1           like, do it. Just bite yourself and you'll see what a bite  
2           mark looks like. And you bite hard enough you're going to get  
3           blood up to the surface and that's going to hurt really bad.  
4           So, what you do and I explained it earlier is you examine and  
5           you try and pick out an upper and lower arch. If you don't  
6           have an upper and lower arch marking you've got a real good  
7           chance it's not a bite mark.

8       Q.   Why is it a real good chance that it's not a bite mark if you  
9           don't have an upper and lower arch?

10      A.   Because of the dynamics of a bite you have upper and lower  
11           jaws that come together and the tissue goes in between the  
12           jaws and as they come down they pinch. Now, how are you going  
13           to get ... it is possible to sit here and say it is totally  
14           impossible not to have both arches marked would be not true  
15           but in 99% of the cases that I see you got upper and lower  
16           arches marking and the tissue in between the jaws as they  
17           clamp down so I mean it's a no brainer they're both going to  
18           mark.

19      Q.   Okay. And in the 1% of where you may not see an upper or  
20           lower is there usually some reasonable explanation for why  
21           you don't see an upper and lower?

22      A.   Yes, sir.

23      Q.   Okay. Could you explain that?

24      A.   Yeah, let me give you a couple of examples of how that can  
25           happen. First of all if there is an object that blocks off  
26           one of the jaws. For instance, in a case that I was involved  
27           with an individual was in the process of being murdered but  
28           he was screaming during the period of time so the murderer  
29           shoved a towel in his mouth. Well, when he shoved the towel  
30           in the mouth - in the man's mouth the guy getting the towel  
31           shoved in did what anybody - he bit. Well, when he bit down

1 the towel was underneath the thumb there were no marks on one  
2 side of the thumb and you could see the upper marks of the  
3 upper teeth on the other side so you had an artifact, the  
4 towel, and when you bit down that towel protected your hand  
5 but didn't protect it from the top teeth. So you got one arch  
6 mark. Another example and this is what I've seen so I can  
7 testify from my own experience in rape homicide cases where  
8 articles of clothing have been moved up and out of the way.  
9 Somebody is on the back of somebody and they shove up a blouse  
10 or a jacket or whatever or a sweater and then that person  
11 bites down - the attacker bites the victim and the sweater's  
12 in the way so it blocks one of the jaws so you get a partial  
13 mark that way. Or another example is that if you hit somebody  
14 in the mouth and you do - give them one these (hits fist into  
15 hand) you're going to get teeth marks in your fist but it's  
16 only the jaw that you hit against so it's usually the upper  
17 teeth marks when you hit somebody in the mouth you're going  
18 to get it.

19 Q. So in the 1% where you just find either an upper or a lower  
20 it's usually some reasonable explanation for why that would  
21 happen?

22 A. And it's rare yes, sir.

23 Q. It's extremely rare?

24 A. Yes, sir.

25 Q. So would you say that the most common characteristic of a bite  
26 mark is the pinching effect of the upper and lower jaw?

27 A. Yes, sir.

28 Q. So that's one of the things that - that's one of the first  
29 things that you look for in making a determination as to  
30 whether something maybe a bite mark or may not be a bite mark.  
31 What other types of things would you look for if you were

1           trying to make a determination whether or not something was  
2           a bite mark?

3       A.   Well, besides the most common which is the upper and lower  
4       jaw's marking the second thing you want to do is to be able  
5       to identify teeth patterns. What an individual tooth looks  
6       like and again exemplar would help to understand what an  
7       individual tooth looks like. And again if you want to bite  
8       yourself and you can look at your hand and if you leave teeth  
9       marks on it you say, okay, that's going to be my upper tooth.  
10       Do an apple, bite into an apple or a moon pie or something  
11       just bite into it and then it's going to leave a mark of your  
12       teeth. You're going to see and you can say oh, yeah, that's  
13       my upper front tooth and it's kind of twisted or rotated or  
14       there's a space like this one right here. These models if  
15       you bit into a - into an object like an apple or a candy bar  
16       you would leave that gap would be in there. You would see  
17       it. I mean it would be there and wouldn't be any question  
18       about it. So the individual characteristic, we've talked  
19       about class characteristics and now we're talking about the  
20       individual teeth characteristics you look for that in a bite  
21       mark.

22       Q.   Now, about how many bite marks or alleged bite marks do you  
23       think you have examined in your career?

24       A.   Into the thousands.

25       Q.   Into the thousands. And in your entire career where you have  
26       examined into the thousands of bite marks have you ever seen  
27       any case where an individual was bitten three times and in  
28       all three instances there was no - there was no indication  
29       that both - there was an upper and lower tooth - I mean teeth?

30       A.   Jaws.

31       Q.   I mean jaws, yes.

1 A. Never seen that ever.  
2 Q. Never ever seen it?  
3 A. Never ever seen that.  
4 Q. Now, in this particular case would you explain to the Jury  
5 how you came to - I mean - okay, in examining the pictures  
6 that are in evidence did you find anything on any of those  
7 pictures that you identified as a bite mark?  
8 A. No, sir.  
9 Q. And explain the process by which you came to the conclusion  
10 that neither one of those pictures - and what are the areas  
11 of the marks that you are referring to? Where are the areas  
12 on the body?  
13 A. The areas on the body that I am referring to are areas that  
14 were suppose to be pointed out as bite marks. One is on the  
15 right cheek of the little girl. One is on the ear on the neck  
16 area right up behind the ear. And the other one is on an  
17 elbow I think it's the left elbow but I'm not positive, right  
18 or left. But it's on the elbow.  
19 Q. Okay. And you examined all three of those bruises? You  
20 examined those three bruises?  
21 A. Well, one's - the cheek is a contusion or more of an abrasion  
22 as opposed to a bruise.  
23 Q. Okay.  
24 A. It's a superficial mark on the tissue it is not a bruise and  
25 if it was handled the way it would have been handled if it  
26 were a bite mark an incision would have been made through that  
27 and it would have been right on the surface. I mean it's like  
28 a rug burn or a it's a scrap. It's an abrasion. The elbow  
29 is a bruise there's no question. That's what a bruise looks  
30 like on the elbow. And those two little marks behind the ear  
31 they're either abrasions or if they are bruises they are real,

1 real slight bruises. They're like three little marks in a  
2 row.

3 Q. Now, explain the process that you used to determine that these  
4 are bruises or discolorations were not bite marks.

5 A. Okay.

6 Q. And use whatever evidence that's been presented into evidence  
7 to explain what you did.

8 A. Well, what I'm going to do without rambling too much is to  
9 show the Jury slides then I've got some photographs. I want  
10 to make sure that my pictures are the ones that are exactly  
11 the ones that are in evidence so I don't miss-speak myself or  
12 show something that I shouldn't show and the third thing is  
13 I want to show them acetate tracings of the teeth of Mr.  
14 Duncan and I want to show them test bites which is something  
15 you didn't get into but what a test bite looks like left by  
16 this set of teeth and what kind of a pattern that you're going  
17 to get, what you expect to see. So, that's what I'd like to  
18 do.

19 Q. Okay. Would you -

20 A. - If you want to ask the questions and I'll answer them if  
21 you want me to just go up and give a dissertation.

22 Q. Well, my question is for you to explain the process and what  
23 you did to come to the conclusion that you came to.

24 A. Well, the first thing that I did was I tried to examine all  
25 the evidence. And that includes everything from the autopsy  
26 report right on through with video tapes that were done by an  
27 individual that looked at this bite mark in the morgue, to  
28 look at the photographs of the morgue and then which in this  
29 case were critical pictures of the little girl in the hospital  
30 because what I saw in the morgue wasn't there in the hospital.  
31 So I wanted to be able to show that somehow to be able to get

1 the point across that the scraps that were in the morgue were  
2 not there in the hospital and if they're bite marks you're  
3 going to see them in the hospital and certainly somebody in  
4 the hospital would have said, an Emergency Room doctor or  
5 Anesthesiologist, somebody would have said, look a here we've  
6 bite marks on this kid. [The first time it was found was when  
7 the child went to the medical examiner's office and he said  
8 this maybe, could be, possible, which is good I agree with  
9 that, maybe it's a bite mark let's work it up like it is a  
10 bite.] Well, if that's the way you're going work it up how  
11 come impressions weren't made. What about the saliva sample?  
12 What about the incision into it and photographs? What about  
13 the removal of the tissue? All of those points that are in  
14 the guidelines, boom, boom, boom, boom that are recommended  
15 procedure, standard procedure to do when you got a bite mark  
16 and none of them were done.

17 Q. Okay.

18 A. So I went by that information, I went by the pictures from  
19 the hospital and I compared the pictures in the hospital with  
20 the pictures that were done at the medical examiner's office  
21 and I didn't see in any case any class characteristics that  
22 looked like a bite mark. I didn't see any individual  
23 characteristics that looked like a bite mark and I didn't see  
24 any two jaws coming together. I just saw a line which is a  
25 straight line which teeth don't leave straight line marks  
26 anyway. They're curved so you're going to get a curve. No  
27 individual characteristics. So I determined that in all due  
28 respect we're not dealing with a bite mark here.

29 Q. Now, would you explain by showing the Jury on the screen which  
30 of the bruises you looked at and what you determined about  
31 those bruises?



1 By Mr. Scott: May we have all the pictures in  
2 evidence?

3  
4 By The Reporter: Pause in testimony while attorneys  
5 looking through pictures in evidence.  
6

7 A. Alright. I just looked at the slides that are in the  
8 carrousel and I think it's really significant that in these  
9 slides there's not a single slide that shows this child in  
10 the hospital of the face. All these pictures that I've looked  
11 at on both carrousels are pictures that are represented by  
12 these photographs right here and everyone of these photographs  
13 are photographs that were taken at the medical examiner's  
14 office. Here, here, here, all of these are autopsy pictures.  
15 There's none of them that are pictures that I saw with the  
16 child in a hospital with the tape on the side of her face.  
17 I think that's pretty important because that's how my analysis  
18 starts. But let's just talk about the elbow. Well, we've got  
19 one picture, okay. And this is the picture that's been  
20 introduced into evidence and is it okay if they pass that  
21 around?  
22

23 By The Court: No, sir.  
24

25 A. No, sir?  
26

27 By The Court: No, sir.  
28

29 Q. You can show it to them though.

30 A. Well, I can show you if you can see anything on this picture  
31 then you're better than I am because I really can't see that

1 much. This picture needs to be enhanced and enlarged so you  
2 can see what you're dealing with. But you're looking at a  
3 side of a face of the little girl in the hospital and you can  
4 see the tape on her face but you really can't see any detail.  
5 You can not see detail on this picture and you need to see  
6 the detail of that - of this picture and the other one like  
7 it of the child in the hospital with the tape on her face.  
8 It's very, very important but it's not here. But let's talk  
9 about - we'll go backwards now and we'll talk about what you  
10 see at the medical examiner's office. We're looking at a  
11 injury pattern on an individual and did you have a pointer?

12  
13 By Mr. Scott: May we use your pointer?

14 By Mr. Jones: I don't have one.

15  
16 A. Nobody has that little laser pointer, huh? Okay. Well, let  
17 me go up to the screen and I'll point to it. My understanding  
18 is that this bruise that's on the elbow was described as a  
19 bite mark. Well, if it is a bite mark then this straight line  
20 up here, these two bruises, a round bruise and an elongated  
21 bruise right here would certainly rule it out instantly as a  
22 bite mark. You have a curve down here or a curve pattern on  
23 the elbow, a bruise on the elbow but you don't see any teeth.  
24 They're no teeth there at all. That's just a curved -  
25 something made this whether the person fell on it's elbow or  
26 whether something - they bumped up against I haven't any clue  
27 but I can tell you that that's definitely, positively not a  
28 bite mark. Let's assume now that somebody said it really is.  
29 Well, where's the work up on it? Where's the incision made  
30 into this area? Where's the impression of that area? You got  
31 a picture of it. It doesn't even resemble a bite mark. If

1           you saw what bite marks really looked like and I ask you and  
2           I suggest to you that you bite into something on your lunch  
3           hour like an apple or bite into your hand, hard into your hand  
4           and see what the teeth are going to do. You can look -

5  
6           By Mr. Ruddick:       - Your Honor, Your Honor, I object.  
7                                   This is testimony and not -

8           By The Court:       - Doctor, it's not a lecture just  
9                                   answer the question, Doctor, no  
10                                  lecture please, sir.

11  
12       A.   Okay. This is the photograph that was introduced into  
13       evidence that's State's Exhibit -

14  
15           By Mr. Ruddick:       - Your Honor, it's my understanding  
16                                   during the trial that the lawyer ask  
17                                   questions and the witness answer  
18                                   them. It's not for the Doctor -

19           By The Court:       - Doctor, you're going to have  
20                                   to -

21           By Mr. Scott:       - My question was for him to explain  
22                                   why the - why -

23           By The Court:       - Well, ask him specific questions  
24                                   about specific things and not let  
25                                   the doctor give lectures and  
26                                   introduce the photographs themselves.

27           By Mr. Scott:       Okay.

28  
29       Q.   Doctor, on that particular photograph how did you eliminate  
30       that mark on the child's elbow as being a bite mark?

31       A.   I eliminated it because there's no opposing arch. I

1 eliminated it because there's no individual characteristics  
2 of teeth shown.

3 Q. Okay. And of those - what you referred to as a straight line  
4 would that pretty much eliminate it as a bite mark also?

5 A. Sure, absolutely.

6 Q. Okay. Why is - why would that eliminate it as a bite mark?

7 A. That's not the way teeth look. That's not the way if an  
8 individual were bitten on their elbow hard enough to leave a  
9 bruised pattern like this round area then you would have the  
10 upper teeth marking opposite to that half semi-circle.

11 Q. Okay. So, based upon your examination can you eliminate this  
12 as being a bite mark?

13 A. Yes, sir I can.

14 Q. Okay. Would you turn to the bruise - to one of the other  
15 bruises either on - well, not necessarily bruises would you  
16 turn to the other mark on the child's face? Okay. Now, what  
17 did you do to try to make a determination - excuse me, as a  
18 part of making a determination as to whether something is a  
19 bite mark is it necessary to eliminate other possibilities  
20 sometime?

21 A. Absolutely.

22 Q. Okay. And did you go through a process to eliminate other  
23 possibilities?

24 A. Yes, sir.

25 Q. Okay. And what did you do to eliminate the other  
26 possibilities?

27 A. I looked at the photographs.

28 Q. Okay. And when you looked at the photograph what was it that  
29 you observed about the photograph that let you know that this  
30 was not a bite mark?

31 A. Well, what I observed on the photographs were the photographs

1 in the hospital that showed that this individual had tape that  
2 covered this area and you can see through the tape. And that  
3 would indicate to me that this patterned injury on the side  
4 of this child's face, these abrasions if you will here were  
5 the result of tape being pulled off - being pulled off the  
6 face. This has no class characteristics of a bite mark.  
7 There's no upper, there's no lower semi-circle, this is not  
8 a semi-circle this is a straight line. It's a straight line.  
9 You would have a semi-circle here and you'd have a semi-circle  
10 up above it. This is not a bite mark. Just looking at the  
11 photograph I see no individual teeth marks and I see no class  
12 characteristics of a bite mark.

13 Q. Okay. And did you see something else that would reasonably  
14 explain that particular mark on the child's face?

15 A. I did.

16 Q. Okay. And what was that?

17 A. That was this and this photograph right here shows and this  
18 isn't the - this is one of the ones that I looked at but right  
19 in this area of the head there is tape over the child's cheek,  
20 mouth, nose and it runs back right past where this ... stops  
21 right about where this area is right here. And there's a fold  
22 in the tape that would correspond with this fold right here.

23 Q. And that would - and did you enlarge the photograph with the  
24 tape on it to make your determination?

25 A. I sure did. You bet.

26 Q. And when you enlarged it were you able to see whether or not  
27 the blood ran - were you able to see the fold in the tape?

28 A. Yes.

29 Q. Okay. And did the fold in the tape where it wasn't taped down  
30 as much as the other was that in the place where you don't see  
31 as much marking?

1 A. That's correct. The tape had like a bubble in the tape where  
2 it wasn't - the tape was taped here, it was taped here but  
3 right in the center there was a little opening in the tape or  
4 a bubble or however you want to describe it. The tape was  
5 not down on tissue it was sitting up from the tissue.  
6 Q. Now, if another doctor had testified that - that this  
7 particular mark was caused by the lower jaw - I mean the lower  
8 teeth contacting here and scraping upward what would be your  
9 explanation to that?  
10 A. Didn't happen.  
11 Q. It didn't happen. Okay, how -  
12 A. - Not from teeth it didn't happen.  
13 Q. How can you be so sure that it didn't happen from teeth?  
14 A. Well, again if it happened from teeth where's the upper teeth?  
15 If it happened from teeth show me the individual teeth in this  
16 mark right here. Where are you going to see - show me where  
17 the teeth are? What's a tooth right there? I don't see  
18 anything that looks like a tooth mark, not a thing. The third  
19 thing is that if it is by somebody's - some how or another  
20 being able to do this without leaving any upper teeth how come  
21 ... how come that wasn't treated like a bite mark suppose to  
22 be treated?  
23  
24 By Mr. Ruddick: Your Honor, is he asking him  
25 questions or is he answering  
26 questions? I don't know.  
27 By The Court: Doctor, you're asking -  
28 By Mr. Scott: - Well, I asked what - I said what  
29 did he -  
30 By The Court: - Well, just a minute. Just a  
31 minute, Mr. Scott. Doctor, I don't

1 want to have to warn you again just  
2 answer the question. Do not ask  
3 questions yourself the lawyer does  
4 that.  
5  
6 A. Yes, sir.  
7  
8 By The Court: Alright. I don't want to warn you  
9 again.  
10  
11 A. Sorry, Your Honor.  
12 Q. Now, what - okay, what about the characteristics of this  
13 particular injury that makes you able to totally eliminate  
14 this as a bite mark?  
15 A. It's a straight line.  
16 Q. Okay.  
17 A. It doesn't have any individual teeth marks in it. It doesn't  
18 have an upper jaw mark in it.  
19 Q. Okay. And did you also see some other reasonable explanation  
20 as to how it could have happened?  
21 A. Yes, sir I did.  
22 Q. Okay. And as a matter of fact after looking at the  
23 characteristics of the tape did you conclude that it was the  
24 tape that caused this mark?  
25 A. Yes, sir.  
26 Q. Now, let's go to the mark as indicated on - I think we can  
27 use that same photograph.  
28 A. I think we have a better one.  
29 Q. Okay. Did you examine that mark? A photograph of that mark?  
30 A. I did.  
31 Q. Okay. And did you examine a photograph of that particular

1 location before the child got to the morgue?  
2 A. I did.  
3 Q. Okay. Was the - was the mark visible on the photograph at  
4 the hospital?  
5 A. No, sir.  
6 Q. But was it visible on the photograph taken at the morgue?  
7 A. Yes, sir.  
8 Q. Now, is that mark below the ear there a bite mark?  
9 A. No.  
10 Q. Is it a tooth mark?  
11 A. No, sir.  
12 Q. By what process could you eliminate this as a bite mark?  
13 A. Several processes. One and foremost is common sense. The  
14 second is again there is no class characteristics of a bite  
15 mark. The interesting thing is that you -  
16 Q. - What - okay, which class characteristics are missing?  
17 A. The upper jaw.  
18 Q. Okay. Now, what about this particular picture that shows to  
19 you that there - that no upper jaw was involved and why would  
20 it have been necessary for an upper jaw to be involved to make  
21 that mark if it was - if it was a bite mark?  
22 A. If this contusion under the ear were a bite mark they're red  
23 marks here, this is a bruising and you have an ear located  
24 directly above it and it is further out of the plain so if an  
25 individual were to somehow or another grab a head and try and  
26 bite down on that head this ear would have had some  
27 significant marks on it left by the upper teeth if in fact  
28 these are supposedly lower teeth.  
29 Q. Okay. Now, what if they were supposedly upper teeth?  
30 A. Then you would have without question you would have lower  
31 teeth leaving marks and the ear would have shown signs of



1 trauma. There are no signs of trauma on that ear and you bite  
2 - if that were a bite hard enough to leave this kind of a  
3 pattern right here there would have been a mark on the ear.  
4 Q. So it did not leave the common characteristic pinching effect  
5 that you talked about earlier, is that right?  
6 A. Yes, sir that's right.  
7 Q. Okay. And it did not leave any impression of upper teeth, is  
8 that right?  
9 A. Yes, sir that's correct.  
10 Q. And it does not have any of the class characteristics of the  
11 bite, is that right?  
12 A. Yes, sir that's correct.  
13 Q. And it is your opinion that since the ear stands out further  
14 than the neck itself that if a person had used enough force  
15 to bite the neck then they ought - so would have probably have  
16 had to have contacted the ear and caused some damage to the  
17 ear?  
18 A. Yes, sir.  
19 Q. Okay. So after looking at this particular mark were the  
20 factors - okay, the factors that you considered - were the  
21 factors that you considered that one, it didn't show up on  
22 the picture in the hospital, two, it didn't have any  
23 individual characteristics of teeth, three, that it didn't  
24 have class characteristics of teeth, four, that the ear  
25 protruded to the extent that the teeth would have come in  
26 contact with the ear and also you don't have the  
27 characteristic pinching effect of a bite, is that - are those  
28 factors - did those factors weigh into your conclusion?  
29 A. Yes, sir.  
30 Q. Okay. Now, are there any other factors that I missed?  
31 A. Other than the factor that if this were to be diagnosed as a

1 bite there were no impressions made of it, there were no  
2 tissue samples taken from it, there was no trans-illumination  
3 of the tissue, none of the standard procedures of a bite mark  
4 guideline passed photographing it were performed.

5 Q. Okay. So, when you say guideline what guidelines are you  
6 referring to?

7 A. Well, the American Board of Forensic Odontology the specialty  
8 group that's come out with guidelines that recommended  
9 procedures to use in gathering the evidence. It's kind of  
10 like a cookbook thing. You know, these are certain things  
11 that we would suggest that you consider doing.

12 Q. Okay. And why would those guidelines or following those  
13 guidelines be important in actually making a positive  
14 identification that something is or is not a bite mark?

15 A. Well, I think it's pretty important had they been followed we  
16 wouldn't be - I wouldn't be here today.

17 Q. Okay. So after viewing that particular mark and can you say  
18 for sure that that is not a bite mark or can you say to a  
19 reasonable medical certainty that that is not a bite mark?

20 A. All of the above. It is not a bite mark period.

21 Q. Now, when you enlarged the photograph showing the tape over  
22 the mouth were you able to see through the tape?

23 A. From the photograph yes, sir.

24 Q. And when you could see through the tape did you see any type  
25 of injury under the tape by looking through the tape?

26 A. What I saw underneath the tape was a trail of blood that had  
27 run out of the nose and gone down underneath the tape.

28 Q. Now, did you do any experiment to see whether or not you could  
29 see through the tape?

30 A. Yes, I did.

31 Q. Okay. And were you - were you furnished with tape that

1                    appeared to be identical to the tape used on the child?  
2  
3                    By Mr. Ruddick:        Objection.  
4                    By The Court:            I'm sorry, repeat your question.  
5  
6                    Q.    Were you furnished with tape that appeared to be tape  
7                    identically to the tape used on the child?  
8                    A.    Yes, sir.  
9  
10                   By Mr. Ruddick:        Objection, there's - not a proper  
11                   foundation has been laid to go into  
12                   this part of it.  
13                   By The Court:            I sustain. It would have to be the  
14                   same tape. Sustained.  
15                   By Mr. Perkins:        Can I confer with counsel, please?  
16  
17                   Q.    Doctor, when you looked at the tape that was on the child you  
18                   were able to see through the tape, is that right?  
19                   A.    Yes, sir.  
20  
21                   By Mr. Ruddick:        Your Honor, I object to the form of  
22                   the question unless this doctor is  
23                   going to testify he saw the child  
24                   personally. Now, he can testify what  
25                   he may of seen in a photograph.  
26                   By The Court:            He has testified that that's where  
27                   he saw it was in the photograph.  
28                   He's already answered that.  
29                   By Mr. Ruddick:        But the question was when he looked  
30                   at the child. I just want to make  
31                   sure -

1 By Mr. Scott: - Okay.  
2  
3 Q. When you looked at the picture of the child were you able to  
4 see through the tape?  
5 A. I was yes, sir.  
6 Q. And when you looked through the tape did you see any visible  
7 signs of injury through the tape?  
8 A. I didn't see any of the signs of injuries that are shown on  
9 the face of the child at the medical examiner's office. The  
10 only thing I saw was on one corner you could see - actually  
11 see underneath the tape and see a little blood trail that had  
12 run underneath that tape. But there were no injuries that  
13 were seen underneath the tape.  
14 Q. Now, I want to show you a picture that's been marked as  
15 Exhibit - State's Exhibit 25 and ask you to take a look at  
16 that. Do you see anything on State's Exhibit 25 and I'm  
17 showing him State's Exhibit 25. Do you see anything on the  
18 baby - in the picture - on the picture of Haley Oliveaux that  
19 you would identify as a bite mark on there?  
20 A. No, sir.  
21 Q. And how did you eliminate those as being possible bite marks?  
22 A. Well, what I would do in a situation like this in looking at  
23 the lips of this individual would be again - once again to  
24 look at the - at the pictures from the hospital and it was  
25 tape over those lips. This is what you see normally on a  
26 deceased individual where their skin dries out and particular  
27 if they've had something pressing on their lips they'll have  
28 when that tape comes off you'll have marks underneath that  
29 tape.  
30 Q. Now, in one picture I'm showing you what's been marked as D-9,  
31 full body shot of Haley Oliveaux. Now, I think on one of

1           those - one of the pictures that were shown there may have  
2           been some circular like mark on the child - on the child's  
3           chest what did - did you determine where that came from?  
4  
5           By Mr. Ruddick:       Objection, Your Honor, unless he's  
6                                   going to be qualified as a pattern  
7                                   injury expert. He can say it was a  
8                                   teeth mark or not a teeth mark but  
9                                   beyond that he can't.  
10          By The Court:        You'll have to identify this alleged  
11                                   teeth mark - tooth mark.  
12  
13       Q.   Well, the mark that you saw that was in the same place as this  
14           electro here did that appear to be a tooth mark?  
15  
16           By Mr. Ruddick:       A tooth mark?  
17           By The Court:        He can answer that.  
18           By Mr. Ruddick:       Okay. Alright, I didn't hear him.  
19  
20       A.   No, it's not a tooth mark.  
21       Q.   And by looking at what you had available to you were you able  
22           to determine - what were you able to - what were you able to  
23           view that lead you to the conclusion that something else had  
24           caused it or did you see what else was a probable cause for  
25           it?  
26  
27           By Mr. Ruddick:       I object, Your Honor. First of all  
28                                   I'm not quite sure -  
29           By The Court:        - He can test -  
30           By Mr. Ruddick:       - If I understand the question but  
31                                   he can testify under his expertise

1 it's a bite mark or not a bite mark  
2 beyond that .....

3 By Mr. Scott: Well, in order to establish what's  
4 a bite mark he has to eliminate other  
5 possibilities of how the mark could  
6 have appeared.

7 By The Court: He has answered that it's not a bite  
8 mark. It's proper to ask him why he  
9 thinks it's not. I'll allow it.

10

11 A. The reason it's not a bite mark is the ... once again the  
12 photographs that I saw of the - of a series of photographs of  
13 the child in the hospital would indicate that this was a  
14 medical monitoring device, a pad, that was put on the body  
15 and then it had subsequently been removed and photographed  
16 and you could see an arm was laying up over part of it. You  
17 could just see a half circle. Once again it was from the  
18 medical electrode device as opposed to human teeth. There  
19 were no individual teeth characteristics it was just a curved  
20 line.

21 Q. Now, Doctor, as a part of your profession have certain  
22 terminologies been developed to explain whether or not  
23 something is a bite mark or explain the degrees of certainty  
24 within your profession in reference to something that you have  
25 looked at or made an analysis of?

26 A. Yes, sir.

27 Q. And in your profession what are the established degrees of  
28 certainty and what do they mean?

29 A. The - that's also a publication that's come out and they have  
30 the terms that are commonly used and what these terms mean  
31 the consensus of the forensic dental community is that the

1 most positive that we can be on a bite mark is in linking it  
2 to it's perpetrator, to a biter, is reasonable medical/dental  
3 certainty. That means that there are possibilities outside,  
4 it's not a fingerprint you can not say 100% sure but you can  
5 say within reasonable certainty. That's the correct term to  
6 use for the most positive. And then it goes down from there  
7 probable, the word consistent with a bite.

8 Q. What does consistent with mean?

9 A. Well, to me and I think what they have down there is  
10 consistent means it's possible.

11 Q. Okay. And what does ruled out, excluded, eliminated mean?

12 A. Those terms mean that and what you're referring to I believe  
13 cause I don't have it in front of me is a comparison with a  
14 set of teeth to a set of - to an injury pattern that is  
15 already determined to be a bite mark. Well, to exclude or  
16 couldn't be or whatever would eliminate that particular  
17 individual. If you're asking the question based on here's an  
18 injury pattern is it or isn't it a bite mark then you would -  
19 you could use that term and say it is not a bite mark it can  
20 be excluded as being a bite mark.

21 Q. Okay. Now, what term would you use to - I mean for the injury  
22 that was to the elbow could you exclude that - could you not  
23 only - I mean could you exclude that as being a bite mark?

24 A. Yes, I can.

25 Q. On the injury or the discoloration to the jaw could you  
26 exclude that as being a bite mark?

27 A. Yes, sir.

28 Q. And on the discoloration under the ear which you say it was  
29 not there in the hospital can you eliminate that as being a  
30 bite mark?

31 A. Yes, sir I can.

1 Q. Okay. Now, did you do any analysis using models of Jimmie  
2 Duncan's teeth to compare with the injuries to determine  
3 whether or not they could have been caused by his teeth?

4 A. I -

5 Q. - What - yes, go ahead.

6 A. Well, I did two things. Number one, I took the models of Mr.  
7 Duncan's teeth and made acetate tracings.

8 Q. What's an acetate tracing?

9 A. That's a clear piece of material called acetate and it has on  
10 it - it would have the outline of the actual teeth. It can  
11 either be a solid outline of the teeth or what's called a  
12 hollow volume tracing where you have just the edges of those  
13 teeth.

14 Q. Okay. What did you then - what else did you do?

15 A. In addition to that I took Mr. Duncan's teeth and -

16

17 By Mr. Ruddick: - Your Honor, I'm going to object at  
18 this time since Dr. Souviron has said  
19 this is not a bite mark and what he  
20 did with Mr. Duncan's teeth is not  
21 relevant.

22 By Mr. Scott: Well, it's relevant to the reach of  
23 the case. It's relevant to - it's  
24 relevant to show that he didn't just  
25 stop at - he didn't just stop at  
26 saying it wasn't a bite mark he  
27 actually did a specific analysis so  
28 that he could be more sure plus it  
29 may not be - it wouldn't be relevant  
30 if we didn't have an expert that said  
31 that it was. Now - so I think that -



1 I think that we have to be able to  
2 go into these type of matters because  
3 we have an expert that says it was  
4 a perfect match. So I have to be  
5 able to refute that it is a perfect  
6 match.

7 By Mr. Ruddick: If I may respond. Dr. Souviron  
8 testified what factors he's  
9 considered to determine that wasn't  
10 a bite mark. The dental impressions  
11 of Jimmie Duncan never were mentioned  
12 therefore for him to talk about  
13 anything else he did is not relevant  
14 at this time.

15 By Mr. Scott: Well, we have to have some means by  
16 which we can refute the other doctors  
17 statement that, one, that it was a  
18 perfect match and two, that they were  
19 bite marks and three, that Jimmie  
20 Duncan was the one who -

21 By The Court: - I'm going to allow it. I'll allow  
22 it.

23 By Mr. Ruddick: I understand but if I could correct  
24 Mr. Scott Dr. Reisener did not say  
25 they were a perfect match he  
26 qualified that by saying within a  
27 reasonable dental certainty.

28 By The Court: Okay. The discrepancy between the  
29 experts of course is something for  
30 the weight of the Jury when it gets  
31 to that point.

1 Q. Now, what else did you do?  
2 A. Besides the acetates I did test bites with the teeth in  
3 styrofoam just to show the pattern that these teeth would  
4 leave if they had bitten into something.  
5 Q. Okay. And what else did you do in that regard?  
6 A. Well, what you do in that regard is you examine the test bites  
7 in the styrofoam to see the pattern that the individual teeth  
8 would make, the class characteristics, the arch size and you  
9 can tell from the test bites high and low on the teeth. I  
10 also looked at the models, I examined the models and saw  
11 discrepancies in the models, looked at Mr. Duncan's teeth  
12 yesterday to see whether or not his teeth really in fact did  
13 have these -  
14  
15 By Mr. Ruddick: - Objection, Your Honor. From the  
16 time he has no idea what's happened  
17 to Mr. Duncan's teeth from the time  
18 those impressions were made until  
19 yesterday afternoon.  
20 By The Court: You'll have to establish that. That  
21 they are the same.  
22 By Mr. Scott: Well, may it please the Court, like  
23 when Detective Sasser talked about  
24 the pictures that were taken at a  
25 house. The pictures weren't taken  
26 on the day that it happened but that  
27 goes more to the weight than the  
28 admissibility. They've presented  
29 picture after picture that they  
30 stated were not taken on the day that  
31 it happened and like of the house and

1 the house next door like Mr.  
2 Bennett's house and my client's  
3 house. So, that goes to the weight.  
4 By The Court: I don't think the analogies the same.  
5 The doctor here is going to say that  
6 he looked at Mr. Duncan's teeth  
7 yesterday or whenever, today or  
8 whenever and if he did and is going  
9 to testify as to what the teeth are  
10 you've got to show that they hadn't  
11 changed since the mold was made.  
12 By Mr. Scott: Well, I - my understanding -  
13 By Mr. Ruddick: - Your Honor, I'll withdraw the  
14 objection.  
15 By The Court: Okay. Let me do this it's time for  
16 the Jury to go to lunch. We're going  
17 to recess for lunch we will reconvene  
18 at 1:30.  
19 By Mr. Scott: May it please the Court, I would like  
20 an Instanter for Detective Chris  
21 Sasser.  
22 By The Court: Is he on call anyway?  
23 By Mr. Jones: You don't need an Instanter I'll get  
24 him here.  
25 By Mr. Scott: We tried to get him this morning and  
26 we weren't able to get him when we  
27 called West Monroe this morning.  
28 By Mr. Jones: I'll get him here.  
29 By The Court: You want him here at 1:30?  
30 By Mr. Scott: Yes, sir that's when we reconvene.  
31 By Mr. Jones: Hold on just one minute. He's just

1 gone to lunch he'll be here.  
2 By The Court: Okay. Go ahead.  
3  
4 By The Reporter: Jury members and Alternates escorted  
5 out of the Courtroom and Court in  
6 lunch recess until 1:30.  
7  
8 By The Court: Alright, go ahead and bring the Jury  
9 in, please.  
10  
11 By The Reporter: Jury members and Alternates escorted  
12 into the Courtroom and testimony of  
13 Dr. Richard Souviron resumed.  
14  
15 By The Court: Ready, Mr. Scott?  
16 By Mr. Scott: Yes, sir.  
17 By Mr. Perkins: May I approach the witness for just  
18 a second?  
19  
20 By The Reporter: Mr. Perkins and Dr. Souviron  
21 conferring momentarily.  
22  
23 By Mr. Jones: Your Honor, Mr. Scott is going to  
24 introduce a variety of photographs  
25 in evidence and I have no objection.  
26 By The Court: Alright.  
27 By Mr. Scott: They have been marked as D-13 through  
28 D-18 and we request to make the  
29 proffer as Proffer 1.  
30 By The Court: These are offered in the proffer, is  
31 that what you're saying?

1 By Mr. Scott: No, sir. These are stipulated to  
2 their - these are stipulated to their  
3 admission by the prosecution and the  
4 defense.  
5 By The Court: Okay. Alright.  
6 By Mr. Jones: They're stipulated to accuracy and  
7 therefore they're admissible.  
8 By The Court: Okay. Let them be admitted.  
9 By Mr. Scott: But for purposes of the record I was  
10 requesting that proffer be marked as  
11 Proffer 1 and admitted for that  
12 purpose only.  
13 By The Court: Alright.  
14  
15 Q. Okay. I'd like to show you a series of photographs that I  
16 have marked D-13 through D-18. Have you examined photographs  
17 identical to those as a part of your examination in this case?  
18 A. Yes, sir.  
19 Q. Okay. And I would like to - for you to turn to D-17 and D-13  
20 and - okay, now on D-13 would you display that to the Jury,  
21 please? Okay, what does that appear to be a picture of?  
22 A. This is a picture of the right face of the young lady, the  
23 twenty-three (23) month old girl, with a tube - appears to be  
24 a tube going down her nose and one into her mouth and they're  
25 taped in place and there's some bleeding from the corner of  
26 her nose down under the tape to the back of her head.  
27 Q. Okay. And at the time when you examined that photograph were  
28 you under the impression that that photograph was taken in  
29 the hospital?  
30 A. Yes, sir.  
31 Q. Okay. And when you examined that photograph closely were you

1           able to see a mark on the child's neck under the ear?

2       A.    No - yes, I did and no, it's not there.

3       Q.    Okay. Well, yes you did?

4       A.    Examine it.

5       Q.    Okay.

6       A.    And no, there is no mark under the ear.

7       Q.    Okay. Now, earlier when you testified about the fold in the

8           tape are you able to look at that photograph and see the fold

9           in the tape that you referred to?

10      A.    Yes, sir.

11      Q.    And you see that on the photograph?

12      A.    I do, yes.

13      Q.    Okay. And do you also see tape in the same area where you

14           notice the mark on the child's cheek and the mark?

15      A.    Yes.

16      Q.    Okay. And since you have eliminated the possibility of bite

17           mark did you feel that that tape showed another reasonable

18           explanation of how the injury got there or how the mark got

19           there?

20      A.    Yes, sir.

21      Q.    I'd like for you to take a look at D-16. Now, at the time of

22           your examination did you determine that picture to be a morgue

23           photograph?

24      A.    Yes, sir.

25      Q.    And do you see on that photograph a mark or discoloration on

26           the right cheek of the child, Haley Oliveaux?

27      A.    Yes, sir.

28      Q.    And did - okay. Now, when you examined the photograph that

29           was in the hospital - that was taken in the hospital and -

30           were you able to see through the tape that was used?

31      A.    In my opinion yes, sir.

1 Q. Okay. Now, at this time there's - the District Attorney has -  
2 that this - a stipulation that this was the same type of tape  
3 that was used at Glenwood on the night of November - not the  
4 night but the day of November 18th at the time when Haley  
5 Oliveaux was admitted.  
6  
7 By Mr. Jones: December 18th.  
8  
9 Q. December 18th.  
10  
11 By Mr. Scott: I would like to mark this and offer  
12 it as D-19.  
13 By The Court: That is a stipulation, Mr. Jones?  
14 By Mr. Jones: Yes, sir that is a stipulation.  
15 By The Court: Alright.  
16  
17 Q. Now, did you have occasion to see whether or not you were able  
18 to - I mean whether that tape was transparent enough to be  
19 able to see through it once it is taped onto an object?  
20 A. Yes, sir.  
21 Q. Okay. And are you able to have some visibility through the  
22 tape while it's taped?  
23  
24 By Mr. Ruddick: Your Honor, I'm going to object to  
25 that unless he's talking about on  
26 the same circumstances as they  
27 existed in the hospital.  
28  
29 Q. Okay. Did you have occasion to put the tape on an individual  
30 to determine whether or not you could see any characteristic  
31 of the individual through the tape?

1 By Mr. Ruddick: I object again for the same grounds.  
2 By The Court: You'll have to be more specific  
3 because you're dealing with a child  
4 and there is a skin coloration  
5 difference between children and  
6 adults.  
7 By Mr. Scott: Yeah, but if you can see through  
8 tape, Your Honor, you can see through  
9 tape.  
10 By Mr. Jones: The tape speaks for itself.  
11 By The Court: I'm sorry?  
12 By Mr. Scott: I withdraw that question.  
13  
14 Q. Now, Doctor, did you have occasion to examine the - what do  
15 you call the transparencies that forensic dentists prepare?  
16 A. Are you talking about the acetate transfers?  
17 Q. Yes, sir the acetate transfers. Okay, did you have occasion  
18 to examine the acetate transfers that were prepared by Dr.  
19 Riesener?  
20 A. Right. Yes, I did.  
21 Q. Okay. And now when you examined the acetate transfers?  
22 A. Yes, sir.  
23 Q. Okay. When you examined those acetate transfers did you see  
24 anything that you considered to be defective or - about the  
25 transfers?  
26 A. I examined them and I found them to be well done.  
27 Q. Okay. Did you examine the dental impressions of - supposedly  
28 of Jimmie Duncan - I mean of Jimmie Duncan?  
29 A. I examined the models that were made from impressions of  
30 Jimmie Duncan. So I examined the stone models of his teeth.  
31 Q. Okay. And did you determine the stone models to be in anyway



1 defective?

2 A. The stone models had some chips on them so if we were dealing  
3 with a bite mark and we were trying to match somebody to that  
4 bite mark I would have had another set of models made but  
5 since it isn't a bite mark and his teeth didn't leave those  
6 patterns it's irrelevant.

7 Q. Now, when you looked at the work that had been done by Dr.  
8 Riesener and after you looked at his work did it change your  
9 opinion any at all?

10 A. No.

11 Q. Now - and after you looked at the work by Dr. Riesener are  
12 you still very strongly of the opinion that neither of the  
13 marks that we referred to earlier in your testimony are bite  
14 marks?

15

16 By Mr. Ruddick: Objection. It's been asked and  
17 answered several times.

18 By Mr. Scott: But my question is after he reviewed  
19 Dr. Riesener's did it make him change  
20 his mind.

21 By The Court: I thought he had answered but go  
22 ahead Doctor answer it.

23

24 A. I did not change my mind.

25 Q. And now what are test bite marks?

26 A. Test bite marks are marks that are left by the models of a  
27 suspect or suspects in some type of the (inaudible). Dentist  
28 use such things as wax, dental wax, they use styrofoam, silly  
29 putty, anything that can record how the teeth are going to  
30 mark.

31 Q. Okay. And is this a part of the process that you use when

1           you are trying to make a determination whether - well, usually  
2           when you're trying to make a determination as to whether or  
3           not bite marks fit is that a part of the process that forensic  
4           dentist usually use?

5       A.   Yes, sir.

6       Q.   Okay. Did you find any indication that Dr. Riesener had done  
7           any test bite marks?

8       A.   No indication that he did.

9       Q.   And do you feel that to be something very important for a  
10          proper determination if you're trying to test to determine  
11          whether or not something is or is not a bite mark and if  
12          you're trying to determine whether or not a bite mark was made  
13          by a certain individual?

14      A.   Yes, sir that's correct.

15

16                   By Mr. Scott:           I tender for cross.

17

18

19

20                                   CROSS EXAMINATION

21

22

23      By Mr. Ruddick:

24      Q.   Dr. Souviron, during the year 1998, have you gone to any  
25          schools or received any additional training for your  
26          profession?

27      A.   1998, I presented three papers in San Francisco one of them  
28          was on bite marks.

29      Q.   Okay. What were they on?

30      A.   Bite marks.

31      Q.   Okay. Did you go to any training, sir, not what you

1 presented?

2 A. I didn't do any training in 1998. I teach.

3 Q. Dealing with bite marks?

4 A. Dealing with bite marks.

5 Q. What about -

6 A. - I teach tomorrow on bite marks.

7 Q. I hope you make it.

8 A. So do I.

9 Q. What about 1997?

10 A. 1997?

11 Q. Yes, sir.

12 A. Training yeah, I attended a photography course on alternate

13 light presented by Dr. Gray Golden on photographic techniques

14 for recording bite marks.

15 Q. So in the last year and a half the training that you've been

16 to dealt with photographic techniques, is that correct?

17 A. I would say that's not correct because in San Francisco I

18 attended four days on nothing but bite marks at the American

19 Academy of Forensic Science meeting. One was Saturday which

20 was a full day. I presented at that one but I also was in

21 the class taking notes and attending and being trained like

22 all the other forensic dentist that were there.

23 Q. Dealing with bite marks, is that correct?

24 A. Dealing with bite marks that is correct.

25 Q. Okay. Now, you talked about the guidelines that I believe

26 these are in the manual of Forensic Odontology?

27 A. No, sir they're in a manual of the American Society of

28 Forensic Odontology.

29 Q. Okay.

30 A. It's a different organization.

31 Q. Now, isn't it true that these procedures are suggested and

1 not mandatory?

2 A. That's correct.

3 Q. Isn't it also true, Dr. Souviron, that you have compared and

4 identified many bite marks without having all these things

5 that you testified that you would need?

6 A. That's correct, absolutely.

7 Q. And you're testimony would be under the optimum situations

8 you would want these but it doesn't necessary mean that you

9 get them would that be correct?

10 A. That would be correct.

11 Q. Now, is it your testimony to the Jury that Dr. Scott who made

12 these impressions did not do a good job?

13 A. If Dr. Scott did the impressions then something happened to

14 them after Dr. Scott took them cause the stone has been

15 chipped and that can happen.

16 Q. So if they had happened to fall off the witness stand

17 yesterday that may have caused them?

18 A. Sure, absolutely.

19 Q. Okay. Now, are you familiar with the Manual of Forensic

20 Odontology, sir?

21 A. I'm not sure that there is a manual on forensic odontology

22 other than that book by the American Society.

23 Q. Okay. Well, I'm reading and it says Manual of Forensic

24 Odontology -

25 A. - Forensic Odontology and it says publication of American

26 Society of Forensic Odontology not by the Board.

27 Q. Thank you. You're familiar with it?

28 A. I've contributed to it, sure.

29 Q. And in this book they talked about half bite marks, single

30 arch bite marks?

31 A. Correct.

1 Q. They recognize them do they not?  
2 A. Yes, it happens.  
3 Q. Now, you have testified to this Jury that tape made these  
4 wounds on this child's cheek, is that correct?  
5 A. Part of what I've testified to that's correct.  
6 Q. Okay. And is it also not true that in March of 1997, you  
7 testified under oath that you're not qualified to testify as  
8 to pattern injury other than teeth marks?  
9 A. I may have. I'm not a pattern expert and I don't hold myself  
10 as a criminologist and an expert in other types of pattern  
11 injuries.  
12 Q. Okay. Are you familiar with Dr. Neil Riesener?  
13 A. Sure.  
14 Q. Is he a Board Certified Forensic Odontologist?  
15 A. Yes, sir.  
16 Q. Do you consider him a quack?  
17 A. I beg your pardon?  
18 Q. Do you consider him a quack?  
19 A. No, I consider a duck a quack.  
20 Q. Okay. To answer my question is you don't consider him a  
21 quack?  
22 A. Of course not.  
23 Q. Okay. And in fact you've had conversations with him before  
24 haven't you about cases he's worked on and you've worked on,  
25 is that true?  
26 A. Absolutely yes, sir.  
27 Q. And you've sent him letters congratulating him on his  
28 testimony in cases haven't you?  
29 A. In certain cases he's done a great job.  
30 Q. Are you familiar with the "Gallup" case in New York?  
31 A. I am, yes.

1 Q. I want to show you what's previously been marked for  
2 identification as S-30 and ask if you can identify your  
3 signature on that?  
4 A. Sure.  
5 Q. Did you send that to Dr. Riesener?  
6  
7 By Mr. Scott: I object to the relevance of other  
8 matters dealing with other cases.  
9 By The Court: I'm sorry, he's got him on cross  
10 concerning the testimony that has  
11 been given by the other expert I  
12 think it's proper. Overruled.  
13 By Mr. Scott: Okay.  
14  
15 Q. Did you send this to him?  
16 A. Sure, it's my signature.  
17 Q. And you congratulated him on his testimony?  
18 A. Yeah, I thought he did a great job.  
19 Q. And was it your testimony to this Jury, sir, that the markings  
20 that were identified as bite marks by Dr. Riesener were made  
21 after this child left the hospital?  
22 A. Yeah and the - the answer is yes and I'd like to explain the  
23 yes answer. I don't think Dr. Riesener had the same  
24 photograph that I had and certainly he didn't look at it under  
25 a microscope and certainly he didn't make enlargements of that  
26 photograph like I did -  
27 Q. - Yes, sir -  
28 A. - so how could he know.  
29 Q. Yes, sir. My question is not what Dr. Riesener may or might  
30 not have done is it your testimony to this Jury that those  
31 marks were not present at the hospital and were caused after

1           that child left the hospital, is that your testimony?  
2       A.   Yes, yes.  
3       Q.   Okay, Doctor. This Jury has heard from Floyd Bennett now he's  
4           not a dentist he's an oil field worker but he happened to be  
5           breathing in this mouth trying to get the heart to breathe -  
6           to start pumping. Floyd Bennett told this Jury that he saw  
7           markings on this child's cheek here and here so he didn't see  
8           those because they didn't happen until the child left the  
9           hospital, is that correct?  
10      A.   When did -  
11      Q.   - Yes or no, sir is that correct?  
12      A.   I don't know when he saw the child.  
13      Q.   Before the child went to the hospital?  
14      A.   I just have a picture here that shows no marks.  
15      Q.   If he testified that he saw these marks prior to this child  
16           going to the hospital he didn't see them because they didn't  
17           exist, is that your testimony?  
18      A.   I think he's mistaken I certainly do yes, sir.  
19      Q.   Now, I understand he's just an oil field worker, now if Shane  
20           Harris, a policeman, testified that he saw markings -  
21  
22                   By Mr. Scott:           - Objection, argumentative.  
23                   By The Court:          If that was - unless you can  
24   establish that that was not testified  
25   to he can ask that question on cross  
26   examination.  
27  
28      Q.   If the policeman told this Jury that he saw markings on this  
29           child's cheek prior to this child getting to the hospital he  
30           didn't see them because they didn't exist, is that correct  
31           according to you?

1 A. I would say that the photographs then are mistaken.

2 Q. I didn't ask you that I'm saying would he be wrong?

3 A. I don't know what marks he's referring to. The child's got  
4 marks on other areas of the body that were there at the  
5 hospital maybe he's referring to those marks.

6 Q. Now, if Dr. Norwood testified, now he doesn't fly around  
7 testifying he flies around building hospitals for kids and by  
8 the way he was the Emergency Room Physician if he testified  
9 to this Jury that he saw -

10  
11 By Mr. Scott: - Now, I object cause Dr. Norwood  
12 did not testify - he said he was so  
13 busy working on the child till he  
14 didn't - till he didn't see them.

15 By Mr. Ruddick: Dr. Norwood testified he -

16 By The Court: - Mr. Scott, I think he said he came  
17 back later after the emergency part  
18 of it. Go ahead.

19 By Mr. Jones: That's exactly what he said.

20  
21 Q. Now, if he testified he noticed these markings in the hospital  
22 prior to that child leaving the hospital -

23  
24 By Mr. Scott: - He said these markings, he needs  
25 to identify what markings he's  
26 talking about.

27 By Mr. Ruddick: On the cheek.

28 By Mr. Scott: These markings - there's a number of  
29 markings that we're talking about.

30 By The Court: Point out which markings you're  
31 referring to.



1 Q. On the right cheek, Doctor?  
2 A. He said that he saw markings on the right cheek before -  
3 Q. - Then he was not correct?  
4 A. - before this tape was put on and that's what he said -  
5 Q. - Can you answer -  
6 A. - and he saw them I sure don't see them and I'm looking at  
7 the picture right here.

8  
9 By Mr. Ruddick: I don't have anything else.  
10 By The Court: Anything else, Mr. Scott?  
11  
12  
13

14 RE-DIRECT EXAMINATION  
15  
16

17 By Mr. Scott:  
18 Q. Doctor, the photograph that you have is it an enlargement of  
19 what has been marked as D-13?  
20 A. Yes, sir.  
21 Q. And - okay, and are both the photographs that you hold in your  
22 hand now both enlargements of D-13?  
23 A. Yes, sir.

24  
25 By Mr. Scott: May it please the Court, I would  
26 request to mark these as D-19 and  
27 D-20 and offer their introduction  
28 into evidence.

29 By Mr. Ruddick: I got to see - I can't see what he's  
30 looking at down here.

31 By The Clerk: It should be 20 and 21.

1 By Mr. Scott: I'm sorry.  
2 By Mr. Ruddick: That's fine.  
3 By The Court: Alright. You're offering those at  
4 this time?  
5 By Mr. Scott: Yes, sir.  
6 By The Court: Let them be admitted.  
7 By Mr. Scott: Thank you, Doctor. I don't have any  
8 further questions.  
9 By Mr. Ruddick: I have no other questions, Your  
10 Honor.  
11 By The Court: Alright. Is he released, gentlemen?  
12 By Mr. Ruddick: The State has no reason to keep him.  
13 By The Court: Mr. Scott?  
14 By Mr. Scott: We request that he be released too.  
15 By The Court: You are released, Doctor. Thank you,  
16 sir.  
17 By Mr. Ruddick: Your Honor, in connection with this  
18 witnesses testimony we'd like to  
19 offer, file and introduce S-30.  
20 By Mr. Scott: I object to relevance.  
21 By The Court: I thought that had been admitted  
22 earlier anyway.  
23 By Mr. Jones: No, sir it was identified earlier.  
24 By Mr. Ruddick: It was identified.  
25 By The Court: Okay. It's been identified so let  
26 it be admitted.  
27 By Mr. Jones: Yes, sir.  
28 By Mr. Scott: Well, just because you identify it -  
29 well identification and admissibility  
30 is two different things.  
31 By Mr. Jones: He's admitted it.