

1 BY THE COURT: Swear the witness, clerk.

2 DOCTOR MICHAEL WEST,

3 upon being called to testify as a witness on behalf of the State,  
4 after having been first duly sworn by Deputy Clerk, Lloyd Cobb,  
5 testified as follows, to-wit:

6 BY THE COURT: You may proceed.

7 BY MR. ALLGOOD: Thank you, your Honor.

8 DIRECT EXAMINATION BY MR. ALLGOOD:

9 Q. Would you tell the ladies and gentlemen of the jury what  
10 your name is, please, sir?

11 A. Uh, Doctor Michael West.

12 Q. And what is your occupation?

13 A. I'm a general dentist.

14 Q. And where are you presently practicing dentistry in this  
15 state?

16 A. Uh, Hattiesburg, Mississippi.

17 Q. And how long have you practiced dentistry in this state?

18 A. Since nineteen eighty-one.

19 Q. Doctor West, uh, what capacities do you serve in Forest  
20 County, Mississippi?

21 A. Uh, I'm the coroner; chief medical examiner/investigator  
22 for Forest County, and I'm on the, uh, Metro Crime Scene Unit there  
23 also.

24 Q. Doctor, during the course of a number of years of your  
25 career I believe you have labored in the fields of forensic  
26 odontology, is that correct?

27 A. Yes, sir.

28 Q. If you would, give the Court the benefit of your training  
29 and experience in the field of dentistry and that specializing in

1 forensic odontology, uh, to include at this particular juncture  
2 just your education. There are some other specifics I would ask in  
3 a little bit.

4 A. Uh, after graduation from high school in Picayune, I went  
5 to Pearl River Junior College for two years, University of Southern  
6 Mississippi for two years where I received a B.S. Then I attended  
7 the LSU School of Dentistry in New Orleans and upon graduation went  
8 into the United States, uh, uh, Air Force for four years.

9 Q. And what did you do in the United States Air Force?  
10 Explain that for the ladies and gentlemen of the jury.

11 A. Uh, during my tour of duty in the air force I was a  
12 captain, I was a general dental officer, and also, uh, base  
13 forensic dental officer.

14 Q. Doctor, if you would, tell the ladies and gentlemen of  
15 the jury the number of occasions you have had to lecture in the  
16 fields of forensic odontology and where those lectures took place  
17 and who those lectures were to, what the assembled bodies were.

18 A. Over the past fifteen years, uh, I've had an opportunity  
19 to lecture numerous times, uh, usually as a guest lecturer. A list  
20 of some of the areas that I've lectured, uh, the Mississippi Law  
21 Enforcement Training Academy, the Georgia Police Academy, the FBI  
22 Academy Forensic Science Research Training Center in Quantico,  
23 Virginia. I've guest lectured at the Metropolitan Police Forensic  
24 Science Laboratory, New Scotland Yard, London; I've guest lectured  
25 for the University Medical Center in Jackson, the University of  
26 Southern Mississippi, the University of Mississippi, Loyola  
27 University in New Orleans, Louisiana State Louisiana--excuse me--  
28 Louisiana State University Law Enforcement Training Center in Baton  
29 Rouge, uh, the Miami Valley Regional Crime Laboratory in Ohio, uh,

1 Southern Association of Forensic Scientists, Midwest Association of  
2 Forensic Scientists, the Spectrum International Symposium, 1991, in  
3 Detroit, uh, the Dade County Medical Examiner's office in Miami,  
4 Florida, uh, the Mississippi Trial Lawyers Association, the  
5 Mississippi Prosecutors Training, Ohio State Coroners Association,  
6 uh, most recently for Polaroid, and numerous law enforcement, uh,  
7 entities in and around the country.

8 Q. You mentioned the Dade County Medical Examiner's office.  
9 I believe a man by the name of Doctor Richard Souviron works in  
10 that particular office, is that correct?

11 A. Uh, yes, sir.

12 Q. And you have lectured in that particular area, is that  
13 correct?

14 A. Yes, sir.

15 Q. Doctor, if you would, tell the ladies and gentlemen of  
16 the jury the awards you have won for your research efforts in the  
17 field of forensic odontology.

18 A. Uh, the American Society of Forensic Odontology gave me  
19 their award for research publications back in nineteen eighty-nine,  
20 the Reider F. Sognnaes Award; uh, I'm also listed in the marque's  
21 who's who in science and engineering; and received a letter of  
22 commendation from the City of Kenner, Louisiana, for the work I did  
23 in a airplane crash there in, uh, eighty-two.

24 Q. Doctor, if you would, would you relate for the ladies and  
25 gentlemen the number and the size of the research grants that you  
26 have had granted to you in the past in the particular area of  
27 forensic odontology or at least in areas associated with the  
28 investigation of forensic odontology.

29 A. I received a grant in nineteen ninety from the American

1     Board of Forensic Odontology dealing with the, uh, rating of the UV  
2     output of electronic flash sources for UV photography.

3       Q.   UV stands for what?

4       A.   Oh, excuse me, ultraviolet.

5       Q.   Go ahead.

6       A.   I'm currently finishing up a research project that was  
7     funded by the National Institute of Justice, the Department of  
8     Justice, dealing with narrow band illumination sources for the  
9     fluorescent photography of patterned injuries on skin. I believe  
10    that is the largest, uh, research grant ever, uh, given out in  
11    forensic odontology research.

12      Q.   What academic appointments do you currently enjoy?

13      A.   I'm a clinical instructor at the University Medical  
14    Center in Jackson; I'm a clinical assistant professor Department of  
15    Oral Diagnosis, Medicine and Radiology at the LSU School of  
16    Dentistry in New Orleans.

17      Q.   What professional organizations are you currently a  
18    member in good standing of?

19      A.   Uh, the South Mississippi Dental Society, your dental  
20    organization; uh, the Mississippi State Coroner/Medical Examiner  
21    Association. I've been president of District Seven, eighty-nine,  
22    ninety, and this year. Uh, I'm a member of the American Society of  
23    Forensic Odontology. I'm a diplomat in the American Board of  
24    Forensic Odontology. I was on the board of directors from eighty-  
25    six to eighty-nine. I was on the article and--by-laws and article  
26    committee in eighty-six. I was on the research committee in  
27    eighty-seven. Uh, I was on the nominating committee in eighty-  
28    eight. I'm currently under suspension from the board which is to  
29    upheld till eighteen March of this year--eighteen May--excuse me.

1       Q. And we will go into that suspension I believe later, is  
2 that correct, Doctor?

3       A. Yes, sir.

4       Q. Doctor, insofar as your articles and media sighting work,  
5 if you would, give the Court and the jury the benefit of any  
6 articles and media sighting work you have to your credit in this  
7 area of research, that is, forensic odontology.

8       A. Uh, I've been on CNN science and technology week back in  
9 eighty-nine, uh, the Journal of American Medical Association in  
10 ninety-two, uh, Medical Rounds, a television show on CNBC in  
11 ninety-three; uh, also the U. S. Department of Justice Office of  
12 Justice Programs, National Institute of Justice executive technolo-  
13 gy brief research applying it on the front lines, and, uh, several  
14 other newscast. There's one pending, uh, the BBC is doing an hour  
15 on my current research, uh, supposed to be aired either this summer  
16 or the fall in England.

17      Q. Doctor, uh, if you would, how many times have you had the  
18 occasion to present papers to professional associations or  
19 gatherings on just bite mark evidence, just bite mark evidence?

20      A. Just bite mark I've presented papers on numerous  
21 occasions. I think my latest total here is--I presented new papers  
22 in, uh, dealing with bite marks on, uh, thirty-nine occasions; uh,  
23 sixteen other occasions were non-bite mark forensic dental related.  
24 So I'm going to say--

25      Q. And there were sixteen--

26      A. --thirty-nine times.

27      Q. Thirty-nine times on just bite mark, sixteen times on  
28 forensic--extra times on forensic odontology in addition to that  
29 thirty-nine then, is--

1 A. And crime scene--

2 Q. --that correct?

3 A. --yes, sir.

4 Q. How many total papers have you had, uh, presented to  
5 professional groups, associations or bodies in the course of your  
6 career, total--

7 A. Sometimes--

8 Q. --which would in--

9 A. --we repeat a presentation; you'll present a presentation  
10 over and over, but I have a listing of fifty-five presentations.

11 Q. Doctor, how many times have you had published articles  
12 concerning bite mark evidence in any one of a number of various  
13 professional and scientific journals?

14 A. I've had, uh, forty-nine articles published, thirty of  
15 them deal with, uh, bite marks.

16 Q. And what about, uh, forensic odontology? You said you  
17 had forty-nine total articles published, thirty some odd of them  
18 dealt with bite marks. What about forensic odontology in general?  
19 How many of those articles would have something to do with that?

20 A. Uh, all of them. There's a couple here on, uh, pathology  
21 and crime scene, but the vast majority is forensic odontology.

22 Q. And, Doctor, how many times have you ever qualified as an  
23 expert in the fields of forensic odontology in the courts of just  
24 the State of Mississippi?

25 A. Oh! Just the State of Mississippi, I'm sorry I don't  
26 have that number. One, two, three, four, five, six, seven, eight,  
27 nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen,  
28 seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two,  
29 twenty-three, twenty-four--twenty-eight.

1       Q.    In the courts of other states, how many times have you  
2   qualified as an expert, and if you would tell us what states those  
3   are, please, sir.

4       A.    I've also given sworn testimony in, uh, Louisiana,  
5   Arkansas, Kansas, Georgia, California, and Washington. I've given  
6   sworn testimony forty-seven times, twenty-eight times in Mississip-  
7   pi, and twenty-one times concerning bite marks.

8       Q.    Now you are I think currently suspended from the American  
9   Board of Forensic Odontology, is that correct?

10      A.    Yes, sir.

11      Q.    And I believe to be fair, you were--you resigned from the  
12   American Academy of Forensic Sciences, and I think the Interna-  
13   tional Association of Identification, but that would have been just  
14   before they would have expelled you, is that correct?

15      A.    Yes, sir.

16      Q.    Now in--in those particular areas, in the Academy of  
17   Forensic Sciences, the International Association of Identification,  
18   and the American Board of Forensic Sciences, what does all of that  
19   stem from? What is the source of all of those difficulties, if you  
20   will, please?

21      A.    There was a case out of Meridian that I was asked to  
22   investigate, was ordered to perform some tests, and I made a report  
23   and testified to what I'd done, what I'd seen. It was the State  
24   versus Larry Maxwell, I think three years ago.

25      Q.    And that occurred in nineteen hundred and ninety what, do  
26   you recall?

27      A.    I believe ninety-two.

28      Q.    Do you recall what month in ninety-two off the top of  
29   your head?

1       A: It was over a period of several months. I know I  
2 testified in December and I believe in June. There were, uh, two  
3 court appearances on hearings in State versus Maxwell.

4       Q. Now this particular testimony that you rendered in State  
5 of Mississippi versus Larry Maxwell, thumbnail sketch, what was the  
6 scenario, what occurred, and what did you testify to? Explain that  
7 for the ladies and gentlemen of the jury.

8       A. A triple homicide had occurred just outside Meridian.  
9 Three elderly black adults, two females, one in her sixties, one in  
10 her eighties, and a black male in the nineties, had been, uh,  
11 bludgeoned with a butcher knife, a hundred and fifty wounds were  
12 applied to the bodies. I was asked to, number one, examine the  
13 bodies of the victims and render an opinion as to whether or not a  
14 certain weapon was the weapon that created these wounds. Uh, we  
15 did examine the bodies, we did examine a large butcher knife that  
16 had some chips in the blade, and we came to the opinion that this  
17 was the murder weapon. Several days later, under court order, I  
18 was asked to perform a test on Mr. Maxwell. Mr. Maxwell had been  
19 arrested and charged with the murder of these three individuals.  
20 I was asked, number one, to scan his body using special lighting  
21 techniques that I had developed to see if we could find any  
22 documentation or signs that he had been in a recent struggle. The  
23 other part of the test was to perform a trace metal test. Trace  
24 metal is where if you grab a metal object, a gun, a knife, et  
25 cetera, you will leave a coating of metal on the skin. This  
26 coating of metal can be detected by spraying a chemical on to the  
27 skin, letting it dry and then illuminating it with either a--  
28 usually an ultraviolet light. Uh, the test is only good for about  
29 twenty-four to thirty-six hours. Uh, it had been eight to ten days

1 after the, uh, murder had taken place. I informed the sheriff that  
2 there was no need in me taking--doing this test because it was  
3 all--if there was any trace metal evidence it had long been gone,  
4 and I was informed that you've got a court order, do the test. So  
5 I turned off the lights and shined the light into the suspect's  
6 hands; you have to wear yellow goggles to look at it.

7 Q. Let me stop you just for a second. This light that  
8 you're talking about I think is what we term a, uh, four hundred  
9 and fifty nanometer blue light I think is what it's called. Is  
10 that correct?

11 A. Yes, an alternative light source.

12 Q. Okay. And it was shown on to the suspect, along with you  
13 were wearing yellow goggles I think, is that correct?

14 A. Yes, sir.

15 Q. This is a technique, an alternate imaging technique which  
16 you have pioneered, is that correct?

17 A. Yes, sir.

18 Q. Is there any person in the United States of America, for  
19 that matter in the world, who has done more work with alternate  
20 light imaging than yourself?

21 A. On wound patterns on skin, no, sir.

22 Q. On this particular occasion, what did you see? Explain  
23 what you saw on that particular instance.

24 A. We first scanned Mr. Maxwell's body to see if there were  
25 any bite marks or ring marks or any signs on his arms, legs, et  
26 cetera, that he had been in a fight or a struggle. Those turned  
27 out to be negative. We, uh, then, if you would, shifted gears from  
28 the four-fifty light, we were going to get ready to do the trace  
29 metal test on his hands, I informed the sheriff that the trace

1 metal test was invalid. It's no way it was going to work, and I  
2 shined the blue light on to his hands; we looked at it with the  
3 yellow goggles; I wanted to show him that there was no trace metal  
4 there, and to my surprise, and I say surprise because for twelve  
5 years I've been photographing wounds on people's bodies, abrasions,  
6 scrapes, bruises; it never occurred to me that you could develop a  
7 bruise in the palm of your hand or a pattern in the palm of your  
8 hand if you held a weapon and wielded it very intensely. Uh, what  
9 I'd found in the palm of Mr. Maxwell's hand was a pattern that  
10 happened to match the murder weapon. The murder weapon was a  
11 butcher knife about yea long, about a foot and a half. The handle  
12 consisted of two pieces of wood riveted together over the shank of  
13 the handle. One side of the wooden handle had broken off so you  
14 had two rivets like nail heads sticking out and then a third rivet  
15 that had broken, and in the palm of his hand we found two circular  
16 bruise patterns and then a doughnut shaped pattern, and when you  
17 put the knife back into his hand and let him close around it, you  
18 could see that these bruise patterns matched exactly the position  
19 and size and location of the rivets in the knife. Uh, I became  
20 very excited because I had never seen anywhere in the forensic  
21 literature anybody being able to put the weapon back into a  
22 suspect's hand, and, uh, we tried to photograph; we had the  
23 sheriff, my assistants look at it; we photographed it; we made  
24 charts and diagrams. My problem was I overexposed my film. I  
25 didn't get a picture that I thought was sufficient quality to give  
26 to the jury and say, "Here, you look at it for yourself."

27 Q. But you did take photographs, is that not correct?

28 A. Yes, sir.

29 Q. Now subsequently I believe you testified in court as to

1 what you had seen and to the fact that this was a match, is that  
2 correct?

3 A. Yes, sir.

4 Q. And I believe as a result of that testimony, uh, you were  
5 disciplined by both the American Academy of Forensic Sciences,  
6 International Association of Identification, and suspended from the  
7 American Board of Forensic Odontology, is that correct?

8 A. Yes, sir.

9 Q. Since your suspension from the American Board of Forensic  
10 Odontology, how many times have you been qualified as an expert in  
11 the field of forensic odontology in the courts of any jurisdiction?

12 A. It'll take me just a minute here. The American Board--  
13 since the American Board action I've testified in court one, two,  
14 three, four, five, six, seven times.

15 Q. All as an expert in the field of--

16 A. Of forensic odontology, uh, in seven of those.

17 BY MR. ALLGOOD: If your Honor please--

18 A. Excuse me, six of those.

19 BY MR. ALLGOOD: If your Honor please--

20 A. Child abuse in the other.

21 BY MR. ALLGOOD: If your Honor please, we would  
22 tender this witness as an expert in the field of  
23 forensic odontology.

24 BY THE COURT: Voir dire on qualifications.

25 VOIR DIRE EXAMINATION BY MR. KESLER:

26 Q. Are you telling this jury that you testified before a  
27 jury in State versus Larry Maxwell?

28 A. No, sir.

29 Q. That testimony was before the judge down there so he

1 could decide if the jury would hear your testimony.

2 A. Yes, sir.

3 Q. And the judge decided that you were not of sufficient  
4 expertise in this alternate light imaging to so testify.

5 A. As it was explained to me, if I didn't have a photograph  
6 for the defense to do their own independent analysis I could not  
7 testify about what I saw in his hand. He limited my testimony, but  
8 did allow me if we continued to testify on a limited basis.

9 Q. Who gave you that explanation?

10 A. Uh, Bilbo Mitchell, the district attorney of--it's  
11 Meridian--Lauderdale County.

12 Q. Did he tell you that the judge ruled that it was a novel  
13 technique?

14 BY MR. ALLGOOD: If your Honor please, what he was  
15 told I am going to object to. There is a court order  
16 which has been entered in that affair. I have a copy of  
17 that court order; I would assume defense counsel has one  
18 also. I will object to hearsay, your Honor.

19 BY THE COURT: The objection is overruled. He can  
20 answer.

21 BY MR. ALLGOOD: Very well, your Honor.

22 A. Yes, sir, it was a--it was new; yes, sir. It--that was  
23 the case that we discovered the ability of the light to find  
24 patterns in the palm of the hand; that was the first time.

25 Q. Were you told that the judge ruled that it was not an  
26 accepted technique in the forensic science field?

27 A. Yes, sir.

28 Q. Did Bilbo Mitchell tell you that the judge was not  
29 convinced that you had done the necessary studies on the technique?

1           A. Yes, sir.

2           Q. Did he tell you that the judge in State versus Maxwell  
3 was concerned about your use of the term indeed and without a  
4 doubt?

5           A. Yes, sir.

6           Q. Had you in fact used that terminology as a preface to  
7 your opinion in that case?

8           A. Yes, sir, I did.

9           Q. Is that a term that you have employed throughout your  
10 career in giving opinions as a forensic odontologist?

11          A. Up to February thirteenth of this year.

12          Q. Of nineteen ninety-five?

13          A. Yes, sir.

14          Q. Your testimony is then that prior to February the  
15 thirteenth, nineteen ninety-five, your opinions were expressed with  
16 the terminology indeed and without a doubt?

17          A. If I had a opinion which warranted my greatest satisfac-  
18 tion of being a match, in other words, if I thought that it was a  
19 hundred percent, I had not doubt, I was totally assured of my  
20 results, then I rendered that opinion. If I wasn't a hundred  
21 percent sure, then I would use the term highly probable or highly  
22 consistent.

23          Q. You said that you had lectured in a number of locations  
24 throughout the--the south and indeed the country?

25          A. Yeah. China, England, all over America.

26          Q. Do you remember giving a presentation to the Southern  
27 Association of Forensic Scientists in Nashville, Tennessee, on May  
28 thirteenth, nineteen ninety-one?

29          A. Yes, sir.

1           Q.     Did you discuss before that group, uh, the subject of  
2     these opinions indeed and without a doubt and reasonable certainty?

3           A.     We went into--

4                         BY MR. ALLGOOD: If your--

5           A.     --the terminology--

6                         BY MR. ALLGOOD: If your Honor please, I am going to  
7     have to interpose an objection at this point. This has  
8     nothing to do with his qualifications as an expert.

9                         BY THE COURT: Neither did the fact that he might  
10    have been suspended from any organizations, but I allowed  
11    you to go into that.

12                         BY MR. ALLGOOD: I understand that, your Honor.

13                         BY THE COURT: And I will overrule the objection.

14                         BY MR. ALLGOOD: Very well, your Honor.

15                         BY THE COURT: You may proceed.

16           Q.     Did you tell that body that you disagreed with the  
17    doctors and, uh, scientists that employed the term reasonable  
18    scientific certainty?

19           A.     It was reasonable medical/scientific/dental certainty.  
20    The only literature that I was aware of either through the American  
21    Academy of Forensic Science or the Forensic Medicine Pathology  
22    Journal was, number one, there was no standard set in odontology as  
23    to guidelines or standards for terminology. The other problem that  
24    I had was all the articles that were ever published in the American  
25    Society of Forensic Odontology or the American Academy of Forensic  
26    Sciences Journal were articles dealing with how ambiguous the term  
27    reasonable medical, reasonable dental, or reasonable scientific  
28    certainty was. We had no guidelines, no standards, uh, up until  
29    February of this year.

1       Q. Did you tell the Southern Association of Forensic  
2 Scientists that you prefer, quote, "It is; it isn't; I can't tell."

3       A. Yes, sir. Wound patterns or bite mark analysis is simply  
4 an extension of tool mark analysis. Tool mark analysis asks a  
5 question, did this object leave this imprint in some material,  
6 whether it be skin, wood, metal, whatever. If you're asked did  
7 this object make this imprint, you really only got three answers,  
8 yes, it did, no, it didn't, or I can't tell. Now, uh, those are  
9 answers that I feel are the only ones that have any meaning in a  
10 court or to a jury.

11      Q. So you don't feel that reasonable degree of scientific  
12 certainty has any meaning?

13      A. It does now, but I find that the juries that I usually  
14 testify to find that--they usually look at me with a kind of  
15 perplexed look like, well, Doctor, did he do it or not, you know,  
16 quit beating around the bush, did he or didn't he, and now, uh, we  
17 said that reasonable medical certainty is now the highest term that  
18 you can use to denote you are positive, it is a match, uh, your  
19 level of certainty so now we have guidelines to follow.

20      Q. Now you mentioned the date, February the thirteenth,  
21 nineteen ninety-five.

22      A. Yes, sir.

23      Q. Is that coincidentally the date that your appeal of your  
24 suspension from the American Board of Forensic Odontology was  
25 denied?

26      A. Yes, sir.

27      Q. Did you take any further action after your appeal within  
28 the organization was denied?

29                     BY MR. ALLGOOD: If your Honor please, once again,

1           I interpose an objection. I realize the Court allowed  
2           me to go into the suspension. However, I don't recall  
3           their being an objection made to that by counsel  
4           opposite. If your Honor please, it has nothing to do  
5           with his qualifications. This can certainly be inquired  
6           into on cross examination at a subsequent point in time,  
7           and I don't think it's proper in terms of voir dire at  
8           this point.

9           BY THE COURT: The objection is overruled. You  
10          can answer.

11          A. Could you repeat that, please?

12          Q. After your appeal of your suspension was denied, did you  
13          take further and subsequent action regarding that suspension?

14          A. I have retained an attorney. He is researching the law  
15          and I'm still negotiating with the board of directors as to whether  
16          or not we need to go to court to resolve this matter or not.

17          Q. Have you filed a lawsuit?

18          A. I filed a one point five million dollar slander lawsuit  
19          against the American Academy of Forensic Science in federal court.  
20          I haven't had the opportunity, and like I say, we're still  
21          negotiating. Uh, I feel that these men are--

22           BY THE COURT: I'm going to interrupt him now.

23           We are getting a little far afield, counsel. Let's  
24          stick to the voir dire on qualifications.

25          Q. You are not a board certified forensic odontologist?

26          A. At this time, no, sir.

27          Q. You have been--you said resigned from the International  
28          Association of Identification?

29          A. Yes, sir.

1 Q. Did you do that quite literally at a hearing where you  
2 were about to be expelled?

3 A. No, sir. Uh, my resignation from the IAI took place in  
4 Orlando, Florida. I had been on the agenda to speak for an hour on  
5 this new technique of photographing wounds for about four months.  
6 Five minutes before I was to get up and address the, uh, congrega-  
7 tion, the president of the association came up to me and says,  
8 "Look, we got this complaint. I've read it. I think you're  
9 guilty. I want you to sign this piece of paper and quit." And I  
10 told him, uh, "You mean I don't get to present my evidence; I don't  
11 get to present my side? You've done decided that I'm guilty, and  
12 it's over with." I said, "I don't think I want to, you know, carry  
13 on with you anymore. Thank you."

14 Q. Okay. Did that happen on July the thirty-first, nineteen  
15 ninety-three?

16 A. Uh, it sounds pretty close.

17 Q. And was that president Curtis Shane?

18 A. Yes, sir.

19 Q. Did he make you aware that you had a right to a hearing?

20 A. He told me that he thought I was guilty and that I ought  
21 to quit.

22 Q. Did--

23 A. And I disagreed with him on being guilty, but I agreed  
24 with him that I didn't need to be part of his organization.

25 Q. Did he make you aware of your right to a hearing?

26 A. No, sir.

27 Q. You deny that?

28 A. No, sir--yes, sir.

29 Q. And as of August the third, nineteen ninety-three, you

1 terminated your affiliation, is that correct?

2 A. With who?

3 Q. Is that date about right?

4 A. With who?

5 Q. IAI?

6 A. Uh, soon as--well I--I took my family to Orlando, you  
7 know, Disney World and all that, and when we got back home, I  
8 drafted a letter, told them I had--when I had joined I thought was  
9 joining a police organization, not a police state, and that I  
10 didn't need to be a member of their organization anymore.

11 Q. And the International Association for Identification, its  
12 membership is mostly law enforcement?

13 A. Yes, sir.

14 Q. And the certification you had through that was that of a  
15 senior crime scene analyst?

16 A. Yes, sir.

17 Q. And you are no longer have such designation?

18 A. I am the consultant or director, whatever you want to  
19 call it, of the Metro Crime Scene Unit in Lamar and Forest County,  
20 but I do not have a certification through the IAI. No, sir.

21 Q. Okay. The--there was a written finding from the ethics  
22 committee of the American Board of Forensic Odontology concerning  
23 your suspension, is that correct?

24 A. I've got boxes of papers.

25 Q. Okay. One reason for your suspension was material  
26 misrepresentation of evidence and data, was it not?

27 A. Yes, sir, that's what they claim.

28 Q. Another ground was failure to act in an impartial manner?

29 A. Yes, sir.

1 Q. Another was presenting opinions regarding physical  
2 evidence outside the field of forensic odontology?

3 A. I find that--that's the one that--that--that really stuns  
4 me because they say, uh, you know, sure you've got certification as  
5 a forensic dentist, you're certified as a deputy medical examin-  
6 er/investigator; you're certified as a senior crime scene analyst,  
7 but if you render an opinion about a crime scene, we want to  
8 sanction you for your odontology. Uh, and like I say, that's one  
9 of the things we're ongoing with the board right now.

10 Q. Now you mentioned this medical examiner position in  
11 Forest County a couple of times.

12 A. Yes, sir.

13 Q. Is that an elected position?

14 A. Yes, sir.

15 Q. You run for office?

16 A. I won the special election in November, took office  
17 November the tenth; I had been deputy medical examiner/investigator  
18 since nineteen eighty-four. Uh, this current election coming up,  
19 I am running unopposed.

20 Q. What is the educational requirement in the State of  
21 Mississippi to be a county medical examiner?

22 A. I believe you have to pass high school, uh, never deny  
23 the existence of a Supreme Being, and then pass a forty hour  
24 course, uh, given by the state medical examiner's office.

25 Q. Back to the American Board of Forensic Odontology, you  
26 were a diplomat.

27 A. Yes, sir.

28 Q. This wasn't just an organization that you sent  
29 and got a magazine from?

1           A. No, sir. Uh, the American Board of Forensic Odontology  
2 you must submit an application of case work; you must take a  
3 written, an oral, and a practical test and pass to be certified.

4           Q. It is a medical specialty board for that particular  
5 field, is it not?

6           A. I don't know if I'd qualify it as a medical specialty  
7 board; no, sir.

8           Q. Well dental specialty then?

9           A. I wouldn't call it--the American Dental Association which  
10 is the parent organization for dentistry only recognizes eight or  
11 nine sub--,uh, specialties, and they do not recognize forensic  
12 odontology as a specialty like they do oral surgery, endodontics,  
13 perio, oral surgery, et cetera. It's a--I'd call it a sub-  
14 specialty.

15          Q. Now the American Academy of Forensic Science, did you say  
16 that you resigned from that body?

17          A. Yes, sir.

18          Q. Did they nevertheless make a finding on the complaint  
19 that had been filed against you?

20          A. Yes, sir.

21          Q. And have you been given a copy of those findings?

22          A. Yes, sir.

23          Q. Are you familiar with those findings?

24          A. Yes, sir.

25          Q. Did they find that you engaged in a pattern of activities  
26 in disregard for generally accepted professional standards?

27          A. That's why I kept asking them, how can I break a standard  
28 in ninety-three if it wasn't set till ninety-five.

29          Q. Did they make that finding?

1 A. I believe they did.

2 Q. Did they find that you misrepresented data in order to  
3 support an opinion?

4 A. They said I did; yes, sir.

5 Q. And did they say or make a finding rather than the use of  
6 the phrase indeed and without doubt is an affirmative concealment  
7 of the possibility of an alternative?

8 A. They made that statement, and I still disagree with them  
9 from the language that I grew up with. Uh, when I tell a jury this  
10 is my opinion and do I have any doubt about it, no, I don't. If I  
11 do have doubt, then I call it a consistent.

12 Q. Now did you give an interview to the National Law Journal  
13 at one time?

14 A. Yes, sir.

15 BY MR. ALLGOOD: If your Honor please, what  
16 interviews with the National Law Journal have to do  
17 with this man's qualifications, I cannot--I--I--I have  
18 to object to this once again. I think it is far afield  
19 from his qualifications.

20 BY THE COURT: The objection is overruled.

21 BY MR. ALLGOOD: Very well, your Honor.

22 Q. Did you tell them that your peers are vastly ignorant,  
23 they haven't read the material and haven't done the research?

24 A. In the area of alternative light imaging, photography of  
25 wound patterns on skin, I really only had one contemporary who came  
26 close to any case load, and that was Doctor Tom Krauss who's passed  
27 away. Since then, now you've got to look at it this way, I've been  
28 doing research in this area for twelve years. My closest competi-  
29 tor has been doing it for a year, and when I get up and show the

1 pictures and tell them what I have found, the--the vast majority of  
2 dentists get up and say, "That's not possible." But if you take  
3 this photographic question to photographic experts and ask them,  
4 they'll tell you that not only is it not new, but it's an old  
5 photographic technique that's been around for about a hundred  
6 years. All we're doing is taking an established photographic  
7 technique and giving it a new application as far as photography of  
8 wound patterns on skin, and my colleagues are way ignorant for the  
9 vast majority of them in the photography aspects.

10 Q. So you were correctly quoted, you said that your peers  
11 are vastly ignorant?

12 A. Yes, sir.

13 Q. Now you said that you have testified as an expert a  
14 number of times since your suspension from the American Board. Is  
15 that seven times?

16 A. Yes, sir.

17 Q. One of those cases, at least one was in Louisiana?

18 A. Well excuse me. (Witness looks through file) I  
19 testified in a hearing in Louisiana; yes, sir.

20 Q. Did you testify in Louisiana versus Keko?

21 A. Yes, sir.

22 Q. Is that--

23 BY THE COURT REPORTER: Spell that.

24 BY MR. KESLER: K-E-K-O.

25 BY THE COURT REPORTER: Thank you.

26 Q. Is that the case that you were making reference to?

27 A. Yes, sir.

28 Q. Did you testify at a hearing or chest--testify at trial?

29 A. I testified in the trial; the trial was the previous

1 year. Uh, my suspension went in eighteen May of ninety-four, and  
2 I testified in the Keko in September of ninety-four--

3 Q. That--

4 A. --in the hearing.

5 Q. September, ninety-four, that was a hearing on a motion  
6 for a new trial for Mr. Keko.

7 A. Yes, sir.

8 Q. Are you aware of the outcome?

9 A. Yes, sir.

10 Q. He was awarded a new trial?

11 A. Yes, sir.

12 Q. Based upon your failure to disclose certain information  
13 to the trial court, is that fair?

14 A. No.

15 Q. What was it?

16 A. Failure of myself, Doctor Souviron, and Doctor Golden to  
17 disclose that I had an ethics complaint against me. Doctor  
18 Souviron and Doctor Golden testified for the defense; they were on  
19 the ethics committee and I testified for the prosecution. We were  
20 told by the board that this was confidential and that we were not  
21 supposed to tell anybody; if we told anybody we could get kicked  
22 out. So we didn't tell anybody and then after it was over and made  
23 public the judge said, "You should have told me."

24 Q. The judge in Keko granted a new trial because he felt  
25 that should have been testified to?

26 A. Yes, sir.

27 Q. Do you anticipate testifying against Mr. Keko again?

28 A. Yes, sir. I do for this reason: there was an ethics  
29 complaint saying that my technology, the alternative light imaging

1 didn't work, that I made it up and made a story about it. I do  
2 admit that I probably tried to take it to court too early; I should  
3 have waited till I had a little more peer review before we tried to  
4 introduce it in court, but now, uh, Doctor Golden and Doctor  
5 Souviron have both published and presented papers saying that the  
6 fluorescent photography works so I anticipate going back to trial  
7 with Mr. Keko.

8 Q. Have you been furnished a copy of the Keko, as you  
9 pronounce it, court's opinion on these issues?

10 A. Yes, sir.

11 Q. You have read that?

12 A. I looked through it at--I'm not very good in legalese.

13 Q. Did you read that--where the Court stated that had it  
14 known about your suspension that it would have never issued an  
15 arrest warrant for Mr. Keko?

16 BY MR. ALLGOOD: If your Honor please, this is at--

17 BY THE COURT: You're getting a little far afield,  
18 counsel. Let's get back on the qualifications and cross  
19 examination on qualifications.

20 BY MR. KESLER: May I approach the bench?

21 BY THE COURT: You may.

22 (THE ATTORNEYS APPROACHED THE BENCH, ALONG WITH THE  
23 COURT REPORTER, AND THE FOLLOWING OCCURRED OUT OF THE  
24 HEARING OF THE JURY:)

25 BY MR. KESLER: The State went to great length's to  
26 show where he's been allowed to testify as an expert. I  
27 think I'm allowed to go into where he has not been  
28 allowed.

29 BY THE COURT: Fine.

1 BY MR. ALLGOOD: I wasn't allowed into, quote,  
2 "foreign jurisdictions court orders," your Honor.

3 BY THE COURT: We have gone a little far afield.  
4 Let's get back on the--

5 BY MR. KESLER: I have a Mississippi case to cover  
6 on that issue.

7 BY THE COURT: Let's back on the--we've gone quite  
8 lengthy into that issue. I think you have developed it  
9 fully, but I will allow you to continue to cross examine  
10 on voir dire on qualifications.

11 BY MR. KESLER: Yes, sir.

12 (ATTORNEYS RETURN TO RESPECTIVE SEATS)

13 Q. Are there any other courts that have not accepted you as  
14 an expert witness?

15 A. I don't believe.

16 Q. Are you familiar with the prosecution of a man named  
17 Johnny Bourn?

18 A. Yes, sir.

19 Q. You rendered an opinion to the district attorney in  
20 Pascagoula, Mississippi, on that case?

21 A. Yes, sir.

22 Q. That case never got to trial?

23 A. No, sir.

24 Q. The district attorney had to dismiss that case?

25 A. I don't know if he had to, but he did.

26 Q. He did.

27 BY MR. KESLER: The Court indulge me just a moment.

28 (MR. KESLER CONFERS WITH MR. WALTERS)

29 BY MR. KESLER: Your Honor, we do object to the

1 reception of this man as an expert witness in this court.  
2 We believe that he has failed to demonstrate qualifica-  
3 tions.

4 BY THE COURT: Fine. Ladies and gentlemen, I'm  
5 going to ask you to step back in the jury room. We're  
6 going to take a brief recess at this time. You've been  
7 out here for a pretty good while. I'm going to ask you  
8 to step back.

9 (JURY OUT)

10 BY THE COURT: Do either of you care to be heard on  
11 it?

12 BY MR. KESLER: Yes, sir. I assume this is my  
13 motion. Am I first?

14 BY THE COURT: That procedure would be fine. Go  
15 ahead now if you care to argue.

16 BY MR. KESLER: Your Honor, I, uh, from the legal  
17 argument, uh, I think the Court if--it probably is  
18 familiar with, if not, I have a copy of the United State  
19 Supreme Court decision in Daubert versus Merrill-Dow.  
20 That is a federal rules of evidence case, of course. My  
21 research does not indicate that the Mississippi Supreme  
22 Court has even discussed Daubert to this date; however,  
23 our rules of evidence regarding experts are identical,  
24 and there is a, uh, discussion in this decis--decision  
25 regarding the role of the trial court in being a, "gate-  
26 keeper," quote, unquote, as to the admissibility of  
27 scientific opinions, and I am urging the trial court to  
28 read, review and consider our rule, that is, the  
29 Mississippi Rule of Evidence which is of course identical

1 to the federal rule in light of Daubert, and I would  
2 simply like to, if the Court would like to avail of  
3 itself, pass this copy of Daubert to the Court.

4 BY THE COURT: We can agree that the--both the  
5 Mississippi rules and federal rules are substantially  
6 similar rules--

7 BY MR. KESLER: I have--

8 BY THE COURT: --concerning experts.

9 BY MR. KESLER: --examined them, your Honor. They  
10 are word for word.

11 BY THE COURT: I believe--I believe they are  
12 substantially similar, and we can also agree that the  
13 courts of the United States and the various states that  
14 have adopted the federal rules give a liberal  
15 interpretation to that rule. Is that correct?

16 BY MR. KESLER: That is what Daubert is talking  
17 about.

18 BY THE COURT: Okay. I just wanted to know, we  
19 have--we're on the same wave link. Do you care to  
20 respond?

21 BY MR. ALLGOOD: If your Honor please, it now  
22 appears that we have moved from voir dire of an expert  
23 on his qualifications to a Kelly Frye hearing or what  
24 functionally is a Kelly Frye hearing because that's what  
25 Daubert concerns itself with.

26 BY MR. KESLER: Exactly.

27 BY MR. ALLGOOD: If necessary, your Honor, I will  
28 make a proffer at this particular point in time to clear  
29 the air insofar as that particular issue is concerned.

1 BY THE COURT: I would rather have the extent of  
2 the testimony given to me other--by another source other  
3 than this witness at this time to see whether there is a  
4 necessity for that hearing.

5 BY MR. ALLGOOD: If your Honor please, I will state  
6 into the record then.

7 BY THE COURT: Fine. Would you step down from the  
8 witness stand at this time, Doctor West, and you will be  
9 summoned again when we reach that stage.

10 A. Thank you.

11 (WITNESS LEAVES WITNESS STAND)

12 BY MR. ALLGOOD: If your Honor please, my proffer  
13 very simply is that during the course of this  
14 investigation the only use of any, quote, "novel,"  
15 unquote, technique was that the ALI, that is, alternate  
16 light imaging process, was used on this child's body;  
17 however, it was not used in forming any opinions, no  
18 photographs were taken, nothing was found in the course  
19 of irradiating the child's body with the four hundred  
20 and fifty nanometer blue light; there was nothing that  
21 was not seen with the naked eye that was seen with the  
22 blue light that was developed by the blue light, and  
23 the use of that scanning four hundred and fifty nanometer  
24 light played absolutely no part whatsoever in these  
25 analysis in this particular case. I would further  
26 proffer to the Court that when Doctor Richard  
27 Souviron testifies, he will testify that he himself has  
28 no difficulties whatsoever with the processes and  
29 procedures followed by Doctor Michael West in this

1 case.

2 BY MR. KESLER: May I put a spin--the defense spin?  
3 Your Honor, what Doctor Souviron is going to say, to be  
4 exact, is cut off--he's going to say as far as it went.  
5 He is not going to wholeheartedly endorse Doctor West's  
6 techniques. He is going to say that what he did is  
7 contemplated and meets minimal standards, but may not  
8 have reached the recommended guidelines.

9 BY THE COURT: Fine. Then that is strictly then  
10 a battle of experts and expert testimony. It does not  
11 involve, as I understand it, an opinion given on a novel  
12 scientific procedure or test or any new development  
13 untried or untested in a particular scientific field.

14 BY MR. ALLGOOD: That's correct, your Honor.

15 BY THE COURT: I don't see the necessity for a  
16 Frye hearing in that incident or in that instance;  
17 however, before any opinions of a scientific nature,  
18 medical nature or dental nature are given in this court  
19 or offered in this court, they must meet certain  
20 standards and those opinions must be to a reasonable  
21 medical, dental or scientific certainty. I do not  
22 know what opinion might be offered or--

23 BY MR. ALLGOOD: All--

24 BY THE COURT: --not in this case, but if it is  
25 not to those standards--

26 BY MR. ALLGOOD: All opinions offered on behalf  
27 of the State will be in conformity with that ruling,  
28 your Honor.

29 BY THE COURT: Do you want me to review the case

1 prior to ruling?

2 BY MR. KESLER: I do.

3 BY THE COURT: Please let me have it--

4 BY MR. KESLER: I would also--

5 BY THE COURT: Please let me have it.

6 BY MR. KESLER: Your Honor, if I may tender as an  
7 exhibit for the purposes of this hearing only, uh, the  
8 letter report of Doctor West dated May fourteen, nineteen  
9 ninety-two, which was supplied to us pursuant to  
10 discovery, and a supplemental report dated September  
11 twenty-one, nineteen ninety-three, that was also supplied  
12 as supplemental discovery that the Court--I--I would ask  
13 the Court to take a look at those.

14 BY THE COURT: Would you pass those to the court  
15 reporter--

16 BY MR. KESLER: Yes, sir.

17 BY THE COURT: --please.

18 BY MR. KESLER: May I hand the Court the Daubert  
19 case while I'm up here.

20 BY THE COURT: Identification only, court  
21 reporter.

22 (COURT REPORTER MARKS COPY OF REPORT FROM DOCTOR  
23 WEST DATED MAY 14, 1992, AS DEFENDANT'S EXHIBIT NUMBER  
24 23 FOR IDENTIFICATION)

25 (COURT REPORTER MARKS COPY OF REPORT FROM DOCTOR  
26 WEST DATED SEPTEMBER 21, 1993, AS DEFENDANT'S EXHIBIT  
27 NUMBER 24 FOR IDENTIFICATION)

28 BY THE COURT REPORTER: Okay.

29 BY THE COURT: Thank you, court reporter. Court's

1 in recess.

(RECESS)

\* \* \* \* \*

4 FOLLOWING THE RECESS, ALL MEMBERS OF THE COURT, INCLUDING THE  
5 JUDGE, COURT REPORTER, ATTORNEYS, CLERK, BAILIFFS, AND THE  
6 DEFENDANT BEING PRESENT, THE FOLLOWING PROCEEDINGS WERE HAD:

7 BY THE COURT: Gentlemen, I have some more reading  
8 to do before I go on the record with an opinion in this  
9 matter and it's approaching five o'clock. I propose to  
10 recess the jury at this time under proper instruction  
11 and continue testimony tomorrow morning at nine o'clock.  
12 I do want to reiterate for the record matters that were  
13 discussed in chambers concerning this expert. I  
14 specifically discussed matters and areas that we could  
15 agree on and counsel for the State and defendant have  
16 told me that we can agree that there is a body of  
17 scientific knowledge that would allow the identification  
18 of individuals through bite mark examination on soft  
19 tissue. Am I correct in that statement?

BY MR. ALLGOOD: I think that's correct, your Honor.

BY THE COURT: Am I correct in that statement?

22 BY MR. KESLER: There is such a body of forensic  
23 science.

24 BY THE COURT: And it is generally accepted in the  
25 scientific community for the basis of opinions.

26 BY MR. KESLER: Among forensic odontologists, yes,  
27 sir, it is, of which the defense expert is one. It is  
28 not the science in question; it is the qualifications  
29 of the individual.

1 BY THE COURT: Thank you. I'm glad you made that  
2 clear for the record.

3 BY MR. KESLER: Yes, sir.

4 BY THE COURT: So that--that--on that particular  
5 point, we can agree.

6 BY MR. KESLER: Yes, sir.

7 BY THE COURT: Show the jury in, please.

8 (JURY IN)

9 BY THE COURT: Ladies and gentlemen, that is a  
10 mighty small room for fourteen individuals to be in  
11 wondering when we're going to start again. There are  
12 still some matters that I must take up before we can  
13 begin with additional testimony. Rather than have you  
14 sit back there in that room, I am going to recess until  
15 nine o'clock tomorrow morning. During this recess,  
16 please do not discuss the case among yourselves or with  
17 anyone else. Do not allow anyone to speak to you about  
18 this case. I have instructed the bailiffs to contact  
19 the Holiday Inn and have the televisions that were  
20 removed reinstalled in your rooms. I do not know whether  
21 that has been completely accomplished.

22 BY BAILIFF, MR. OGLESBY: Hadn't at lunch, but I  
23 checked on them.

24 BY THE COURT: But in any event it is supposed to  
25 be accomplished. You might see if you can check on  
26 that again and see if you can speed things up in that  
27 vein, if--if hasn't already been done.

28 BY BAILIFF, MR. OGLESBY: Yes, sir.

29 BY THE COURT: In the event that you do have those

1                   televisions, should any news coverage come on about this  
2                   particular trial or the events of this trial, please turn  
3                   it off immediately or turn to another channel, disregard  
4                   it. As I told you, you have the best seats in the house.  
5                   You will know everything you need to know to resolve this  
6                   case, based on evidence and testimony you hear here in  
7                   the courtroom not on what some other person's opinions  
8                   might be as to what happened in the courtroom.

9                   Are there any other or further instructions that the  
10                  State would request the Court give at this time?

11                  BY MR. ALLGOOD: Not from the State, your Honor.

12                  BY THE COURT: The defendant?

13                  BY MR. KESLER: No, sir.

14                  BY THE COURT: I'm going to ask you to go back into  
15                  that crowded room at this time until they get the vans  
16                  ready for you to carry you back to the motel. You may  
17                  retire to the jury room.

18                  (JURY OUT)

19                  BY THE COURT: Anything further before the recess?

20                  BY MR. ALLGOOD: Not on behalf of the State, your  
21                  Honor.

22                  BY MR. KESLER: I'd just like to note that the  
23                  Court in chambers granted me the opportunity to make  
24                  that offer of proof and I'll do that in the morning.

25                  BY THE COURT: There were some matters that defense  
26                  counsel had brought up to the Court, wanted to have  
27                  certain items marked for identification purposes--

28                  BY MR. KESLER: Yes, sir.

29                  BY THE COURT: --on its motion to exclude this

1 testimony of Doctor Michael West.

2 BY MR. KESLER: Yes, sir.

3 BY THE COURT: It's my understanding you have to  
4 make copies to be able to do that and you do not  
5 anticipate that taking more than a few moments tomorrow  
6 morning.

7 BY MR. KESLER: I don't think it will. I will  
8 organize it, get the copies ready and it will be much  
9 more efficient if I do it in the morning.

10 BY THE COURT: If it's going to--if you envision it  
11 taking a substantial amount of time or additional  
12 testimony, I want to go ahead and do it this afternoon.

13 BY MR. KESLER: Your Honor, I--I'm not anticipating  
14 additional testimony; it'll be documentary in nature.

15 BY THE COURT: Fine.

16 BY MR. KESLER: I might want to make a short  
17 dictation, but no witness from the witness stand.

18 BY THE COURT: When a lawyer tells me it's going to  
19 be short or brief, I'm always a little cautious.

20 BY MR. KESLER: I'm going to give you the proverbial  
21 five minutes, but it won't take over ten.

22 BY THE COURT: Court is in recess until nine o'clock  
23 tomorrow morning.

24 (RECESS)

25 \* \* \* \* \* \* \* \* \* \*

26 FOLLOWING THE OVERNIGHT RECESS, ALL MEMBERS OF THE COURT,  
27 INCLUDING THE JUDGE, COURT REPORTER, ATTORNEYS, CLERK, BAILIFFS,  
28 AND THE DEFENDANT BEING PRESENT, THE FOLLOWING PROCEEDINGS WERE HAD  
29 ON THURSDAY, MARCH 23, 1995:

1 BY THE COURT: I believe you had something you  
2 wanted to get done that would take approximately five  
3 minutes this morning.

4 BY MR. KESLER: Yes, sir. I had, uh, some  
5 materials that I wanted to put in as an offer of proof  
6 as to Doctor West's qualifications. Your Honor, in--in  
7 no particular--may I come over and just hand these to  
8 the court reporter as I identify them?

9 BY THE COURT: You may. Have you shown them to  
10 the State?

11 (DOCUMENTS SHOWN TO MR. ALLGOOD)

12 BY MR. ALLGOOD: There are two transcripts and a  
13 video tape. I have not seen the two transcripts and the  
14 video tape, and of course it would take a considerable  
15 amount of time to read those two things. I realize  
16 this is not going to the jury, uh, and I--I--I--I don't  
17 think at this particular point, I'm going to be at any  
18 position to object to any of this. This is just for the  
19 Court's perusal on the motion. However, uh, there is a  
20 sizable amount of material there that if it were to get  
21 in a situation where this material was to be offered to  
22 the jury or things of that nature, I do need the time to  
23 read that. I--I--

24 BY THE COURT: It's my understanding that it was  
25 not--are you just wanting to put it in the record for  
26 whatever benefit.

27 BY MR. KESLER: If appellant review is necessary  
28 in this case, I simply want it in the record to be  
29 available.

1 BY THE COURT: And preserved.

2 BY MR. KESLER: Now, your Honor, there are--I expect  
3 Doctor West to testify in conformity as--as he has in  
4 the past, but if he does not, of course, then some of  
5 this I may use as impeachment evidence. I--I am assuming  
6 that he is going to testify as he has many times before.

7 BY THE COURT: I assume that what this is, all these  
8 materials, and the Court hadn't seen these materials  
9 either--

10 BY MR. KESLER: Correct.

11 BY THE COURT: --nor had they been offered prior  
12 to the proffer today, but I assume it is supportive of  
13 the defendant's cross examination of the expert concern-  
14 ing his credentials or voir dire concerning his  
15 credentials yesterday.

16 BY MR. KESLER: It is.

17 BY THE COURT: And that you merely are offering  
18 this as supportive of that cross examination that you  
19 did yesterday.

20 BY MR. KESLER: I am.

21 BY THE COURT: If that's the reason and you merely  
22 want it marked for that reason alone, I will allow it.

23 BY MR. KESLER: Yes, sir.

24 BY THE COURT: Should there become a later time  
25 it become necessary for you to use something for  
26 impeachment purposes, I feel that you would be allowed  
27 to feel free to use that for impeachment and impeachment  
28 only.

29 BY MR. KESLER: Yes, sir. These materials I do not

1           feel would be proper for dir--defendant's case in chief  
2           direct evidence.

) )  
3           BY THE COURT: Fine. You just want them marked  
4           for--

5           BY MR. ALLGOOD: I--I'm--I'm not having any problem  
6           at all, Judge.

7           BY THE COURT: Fine. Would you just pass the  
8           materials to the court reporter and ask her to mark  
9           them.

10          BY MR. KESLER: Do you want me to call this out  
11          and identify them, your Honor?

12          BY THE COURT: I think that you need to.

13          BY MR. KESLER: This is a tape of Doctor Michael  
14           West, May thirteenth, nineteen ninety-one, a presentation  
15           to the Southern Association of Forensic Scientists in  
16           Nashville, Tennessee.

17          BY THE COURT REPORTER: These are for identifica-  
18           tion?

19          BY THE COURT: I.D. only in support of a proffer  
20           in the defendant's motion to the Court to exclude  
21           Doctor West's testimony in this case. You may proceed.

22          (COURT REPORTER MARKS VIDEO TAPE OF MAY 13, 1991,  
23           AS DEFENDANT'S EXHIBIT NUMBER 24, FOR IDENTIFICATION)

24          BY THE COURT REPORTER: Okay.

25          BY MR. KESLER: Your Honor, this is a transcript  
26           consisting of the direct and cross examination of  
27           Doctor Michael West from a trial that was styled State  
28           of Mississippi versus Alfred Ray Case. This is not a  
29           certified copy. It is a plain copy and it is only a

1 portion of that overall transcript.

2 (COURT REPORTER MARKS COPY OF TRANSCRIPT FROM  
3 ALFRED RAY CASE AS DEFENDANT'S EXHIBIT NUMBER 26 FOR  
4 IDENTIFICATION)

5 BY THE COURT REPORTER: Okay.

6 BY MR. KESLER: Next is a transcript of the  
7 testimony of Doctor Michael West before the  
8 Twenty-fifth Judicial District Parish of Plaquemine,  
9 State of Louisiana in an action styled State of  
10 Louisiana--Louisiana versus Anthony Keko.

11 (COURT REPORTER MARKS TRANSCRIPT FROM KEKO CASE  
12 AS DEFENDANT'S EXHIBIT NUMBER 27 FOR IDENTIFICATION)

13 BY THE COURT REPORTER: Okay.

14 BY MR. KESLER: Next is a judgment and supporting  
15 opinion by the Twenty-fifth Judicial District Court of  
16 Parish of Plaquemine, State of Louisiana in that action  
17 styled State of Louisiana versus Anthony Ke--Keko. It  
18 is a judgment granting a new trial following a  
19 conviction of capital murder. It is not a certified  
20 copy, your Honor.

21 (COURT REPORTER MARKS COPY OF JUDGMENT FROM KEKO  
22 CASE AS DEFENDANT'S EXHIBIT NUMBER 28 FOR IDENTIFICATION)

23 BY THE COURT REPORTER: Okay.

24 BY MR. KESLER: Your Honor, next I have a copy of  
25 the Circuit Court's opinion, State of Mississippi  
26 versus Larry Costell Maxwell, Cause Number 5139, Circuit  
27 Court of Kemper County, Mississippi, that was entered  
28 December four, nineteen ninety-two. It is not a  
29 certified copy.

1 (COURT REPORTER MARKS COPY OF OPINION IN MAXWELL  
2 CASE AS DEFENDANT'S EXHIBIT NUMBER 29 FOR IDENTIFICATION)

3 BY THE COURT REPORTER: Okay.

4 BY MR. KESLER: Next, your Honor, is a certified  
5 copy of a motion for nol pros and an order of nol pros  
6 entered by the Circuit Court of Jackson County,  
7 Mississippi, in an action styled State of Mississippi  
8 versus Johnny Bourn, No. 93-10,214(3) in that court.

9 (COURT REPORTER MARKS COPY OF NOL PROS IN JOHNNY  
10 BOURN CASE AS DEFENDANT'S EXHIBIT NUMBER 30 FOR  
11 IDENTIFICATION)

12 BY THE COURT REPORTER: Okay.

13 BY MR. KESLER: Next, your Honor, is a copy of a  
14 case report authored by Chris Sperry, M.D., and Homer  
15 R. Campbell, Jr., D.D.S. It's entitled "An Elliptical  
16 Incised Wound of the Breast Misinterpreted as a Bite  
17 Injury."

18 (COURT REPORTER MARKS COPY OF CASE REPORT AS  
19 DEFENDANT'S EXHIBIT NUMBER 31 FOR IDENTIFICATION)

20 BY THE COURT REPORTER: Okay.

21 BY MR. KESLER: Last, your Honor, I'd like to  
22 offer as a collective exhibit the reports of Doctor  
23 West's expulsion from the American Academy of Forensic  
24 Sciences, American Board of Forensic Odontology, and  
25 the International Association for Identification.

26 (COURT REPORTER MARKS COPY OF REPORTS OF DOCTOR  
27 WEST'S EXPULSIONS AS DEFENDANT'S EXHIBIT NUMBER 31-A  
28 FOR IDENTIFICATION)

29 BY THE COURT REPORTER: Okay.

1                   BY MR. KESLER: Your Honor, very briefly, these  
2                   materials would show, if presented as evidence to the  
3                   Court that, uh, in addition to the matters that the  
4                   Court actually heard in open court yesterday, that  
5                   Doctor West has no regard for the standard of  
6                   reasonable degree of scientific certainty, that he  
7                   bases his opinions entirely on subjective observations,  
8                   that Doctor West fails to identify wound patterns as  
9                   bite marks prior to making direct comparisons with  
10                  dental models, that he believes there is no consensus  
11                  on standards within the scientific community of bite  
12                  mark analysts, that he believes there are only three  
13                  possible opinions that a forensic odontologist should  
14                  express, first being one hundred percent positive  
15                  identification, second being one hundred percent  
16                  exclusion, third insufficient data to make an opinion,  
17                  that Doctor Michael West materially misrepresented  
18                  facts concerning the pending discipline to the trial  
19                  judge in Louisiana versus Keko. Doctor West considers  
20                  bite mark identification as much an art as it is a  
21                  science, and that Doctor West's methods have not been  
22                  subject to any valid scientific validations. There  
23                  have been no controlled studies; there have been no  
24                  double blind studies and there is no determined error  
25                  rate. That concludes the offer of proof.

26                  BY THE COURT: Expert testimony and expert  
27                  opinion has been offered in the courts of the United  
28                  States throughout the history of the judicial system.  
29                  Prior to passage of the Mississippi Rules of Evidence,

1           this evidence was offered under our old common law  
2           system and post rules under the Mississippi Rules of  
3           Evidence 700 series. In this particular case and to  
4           the point, expert testimony is proposed to be offered  
5           by the State and as I understand it by the defendant  
6           concerning a field of study known as forensic  
7           odontontology, that is, the identification of injuries to  
8           soft tissues as being caused by teeth and the  
9           identification or possible identification of individuals  
10          through patterns of wounds left in that soft tissue as  
11          compared to dental impressions of teeth of suspects, in  
12          this case the suspect being the defendant in this case.  
13          Both the State and the defense agree that there is a  
14          body of scientific knowledge that is recognized  
15          concerning this identification. The main thrust, as this  
16          Court views it, of the defendant's objection is to this  
17          particular witness, not that he has the requisite  
18          knowledge or training to make such identification and to  
19          render opinions, but in this Court's view more--the  
20          objection is more to the issue of this witness's  
21          credibility concerning his opinions. The Court feels  
22          that the witness should be allowed to testify and render  
23          opinions based on his knowledge and training and  
24          expertise in this field, and that the credibility issue  
25          is one for the trier of fact in this case. Therefore  
26          the motion of the defendant is overruled because this  
27          Court does feel that such testimony elicited by Doctor  
28          West and Doctor Souviron for the defense in this case  
29          will aid and assist this trier of fact in determining

1 issues in this case. It is a jury function to determine  
2 the credibility of these witnesses and the opinions  
3 espoused by those witnesses. Should the defendant  
4 request, the Court would grant a cautionary instruction  
5 concerning experts in this case.

6 Are we ready to proceed?

7 BY MR. ALLGOOD: The State's ready to proceed,  
8 your Honor.

9 BY THE COURT: Show the jury in, please. Get  
10 the witness back on the witness stand.

11 (JURY IN)

12 (DOCTOR MICHAEL WEST RETURNS TO WITNESS STAND)

13 BY THE COURT: The State has tendered this  
14 witness as an expert in the field of forensic  
15 odontology. The Court will at this time accept this  
16 witness as an expert in that field, and the witness  
17 will be allowed to offer opinions in that field, as  
18 long as such opinions are to a legal standard, that  
19 is, that such opinions must be based to a reasonable  
20 scientific certainty. You may proceed.

21 BY MR. ALLGOOD: Thank you, your Honor.

22 DIRECT EXAMINATION CONTINUES BY MR. ALLGOOD:

23 Q. Doctor West, you were asked a couple of questions during  
24 your voir dire of yesterday concerning several things. First of  
25 all, let's talk about alternate light imaging. Explain for the  
ladies and gentlemen of the jury what alternate light imaging is.

27 A. Alternate light imaging is kind of a fancy name for  
28 literally looking at something in a different light. What we do is  
29 if you take the whole visible light, white light that comes from

1 the sun or a light bulb, it's made up of the rainbow, blue to red;  
2 got red and green and yellow all in the middle. It's been a known  
3 photographic and medical fact for many years that if you take just  
4 a small portion of that rainbow, just pure blue or pure yellow or  
5 pure red and shine that on an object, you may come up with what we  
6 call fluorescence and what it allows you to do is to literally look  
7 at something in a different light. It's called an alternative  
8 light because originally the light sources themselves, uh, back in  
9 nineteen seventy-seven they used a laser to find fingerprints. Uh,  
10 when you shined the ligh--laser light on it the fingerprint would  
11 glow, and further research showed that you didn't have to have a  
12 laser, all you needed was just a--a narrow beam of the spectrum.  
13 So what they did was make a machine that had a very bright light  
14 and you'd put filters like sunglasses in front of the light and it  
15 would only let a certain portion of that light through, and it was  
16 an alternative to the laser. Uh, most women are familiar with  
17 this, if you put on makeup for fluorescent lights and then go  
18 outside in the sunlight you look different. It's just a different  
19 way of looking at things. You can see things you normally don't  
20 see under regular light.

21 Q. Insofar as a technique devised by you, alternate light  
22 imaging refers to what? Explain that technique for the ladies and  
23 gentlemen of the jury.

24 A. Okay. Alternate light imaging is a technique where you  
25 look at an individual in the, uh--with no ambient light, in other  
26 words, it's dark. You use a high intensity narrow band blue light  
27 to shine on to their body; you then put on yellow sunglasses; the  
28 yellow sunglasses are designed to block out the blue that is  
29 reflected off the surface. That is what we call reflective

1 photography or reflective imaging. If you block out the reflec-  
2 tive, you will then only have what we call fluorescence. Uh, you  
3 know, your watch is--that sometimes you can shine them in a light  
4 and then go into the dark and they glow. Uh, that's a type of  
5 fluorescence. If you've ever seen these black lights that they use  
6 to shine on posters or examine material with, they'll cause cotton  
7 and fibers to glow, fluoresce, and I'm interested in capturing the  
8 fluorescence, not the reflection, uh, and it's just a standard  
9 photographic technique.

10 Q. Insofar as the use of this blue light, I think it's four  
11 hundred and fifty nanometers and the yellow goggles and what have  
12 you, who has pioneered this particular technique?

13 A. I have.

14 Q. And insofar as Maxwell, the case where, uh, you had your  
15 genesis of these--these difficulties, these disciplinary actions  
16 with these professional boards and associations, what procedures,  
17 what--what system were you using in Maxwell?

18 A. In Maxwell we were using alternative light imaging which  
19 was the blue light, the yellow goggles, and then a fluorescent  
20 return.

21 Q. Now in this case, this case today, State versus Kennedy  
22 Brewer, what part did alternative light imaging play in your  
23 analysis of the evidence in this case?

24 A. We did in this situation, uh, Christina Jackson, after  
25 we had video taped her and photographed her--

26 Q. Using conventional means?

27 A. Conventional light, regular like you take pictures of,  
28 you know, Christmas and birthdays with a camera; after we had  
29 accomplished that we did look at her body, Doctor Hayne and myself

1 did put her under a black light and a blue light to see was there  
2 anything different or did anything appear better to us. Uh, we  
3 scanned her body; nothing changed. In this instance, it did not  
4 help us see anything that we couldn't already see.

5 Q. So was there any part whatsoever that the blue light,  
6 alternative imaging, anything of that nature play in this particu-  
7 lar analysis?

8 A. In our analysis and opinion it played no part whatsoever.

9 Q. And insofar as the techniques that you used, this is, uh,  
10 comparison, uh, in this particular case using conventional  
11 photography, is that in fact a standard method used throughout the  
12 forensic odontology community?

13 A. Yes, sir.

14 Q. Now, Doctor, likewise, uh, you were asked some questions  
15 concerning a case in the State of Louisiana called Keko I believe,  
16 is that correct?

17 A. Yes, sir.

18 Q. Now in Keko you were questioned about the pending  
19 disciplinary actions surrounding your testimony in Maxwell, is that  
20 correct?

21 A. Yes, sir.

22 Q. And you in fact told the board that you--told the Court  
23 that, uh--or what did you tell the Court, just briefly--quickly,  
24 thumbnail sketch? What did you inform the Court during that trial  
25 in Keko?

26 A. Uh, we told them about this--the history of the case with  
27 Maxwell where we discovered this in the palm of the hand, where in  
28 the Keko it was on the shoulder; we had been doing that for five or  
29 six years.

1 Q. Who--who were the experts on the other side in Keko?

2 A. Uh, Doctor Dick Souviron and Doctor Greg Golden.

3 Q. Doctor Richard Souviron chaired the committee which  
4 recommended your suspension, is that correct?

5 BY MR. KESLER: Your Honor, we're going to object  
6 to the leading of the witness and also--

7 BY MR. ALLGOOD: I'll--

8 BY THE COURT: Don't lead--

9 BY MR. ALLGOOD: I'll rephrase it, your Honor.

10 BY THE COURT: Don't lead your witness, counsel.

11 Q. What--

12 BY MR. KESLER: We also object; this witness is  
13 responding to we and our and such. We object to that.

14 BY THE COURT: He'll be subject to cross examina-  
15 tion. You may proceed.

16 Q. Doctor Richard Souviron performed what function in your  
17 suspension?

18 A. He was the chairman of the committee to determine whether  
19 or not I misrepresented myself about the technique in blue  
20 lighting.

21 Q. And Doctor Greg Golden was also on the other side I  
22 believe, is that correct?

23 A. Yes, sir, he was.

24 Q. And what capacity did Doctor Golden serve on that  
25 committee?

26 A. He was the second member of the three man committee  
27 ruling on my, uh, correctness in the blue light episode.

28 Q. What information was imparted to you, to Doctor Souviron,  
29 and Doctor Golden concerning the pendency of these disciplinary

1 actions?

2 BY MR. KESLER: Your Honor, we'll object unless he  
3 lays a found--who was imparting this.

4 BY THE COURT: I'm going to overrule. I feel that  
5 that has been developed prior to this and will be  
6 developed further, and I think that I should allow it at  
7 this time so that objection will be overruled.

8 BY MR. KESLER: Yes, sir.

9 BY THE COURT: You may answer the question.

10 A. I'm sorry. What was it?

11 Q. What information was imparted to you, to Doctor Souviron,  
12 to Doctor Golden concerning the--the pendency of these particular  
13 actions?

14 A. We were told that it was supposed to be confidential,  
15 that we were not supposed to tell anyone that charges had been  
16 brought, that an investigation was going on until after the opinion  
17 and the appeals, then it was supposed to be made public. If we  
18 told what was going on, we were to be, you know, kicked out of the  
19 board.

20 Q. And during the course of those hearings in Keko did  
21 Doctor Richard Souviron or Doctor Greg Golden ever reveal to the  
22 Court the pendency of these disciplinary actions?

23 A. No, sir.

24 Q. All three of you, not just you, but all three of you said  
25 nothing about it, is that correct?

26 A. Yes, sir.

27 Q. Now, Doctor, uh, likewise you made mention of an ethics  
28 complaint yesterday during your voir dire, an ethics complaint  
29 which concerned your techniques, that was in fact the same

1 complaint we're talking about or have talked about here that--that  
2 began with Maxwell, is that not correct?

3 A. Yes, sir. It's all from the Maxwell case with the  
4 pattern in his hand.

5 Q. Just so there's no misunderstanding on the part of the  
6 jury, there's just one instance, one complaint, one sit--situation,  
7 that's with Maxwell, right?

8 A. Yes, sir.

9 Q. Now on May fifth, nineteen ninety-two, did you have the  
10 occasion to examine the body of Christina Jackson?

11 A. (Witness examines file) Yes, sir, I did.

12 Q. And upon examining the body of Christine Jackson, first  
13 of all, where did that occur?

14 A. Uh, at the Mississippi Mortuary, Rankin County Morgue in,  
15 uh, Brandon--Pearl--excuse me--Pearl, Mississippi.

16 Q. Upon examining the--the body of Christine Jackson at that  
17 time, what did you perceive, if anything at all?

18 A. After examining her body visually, I discussed with  
19 Doctor Hayne and the coroner the possibility of being able to hold  
20 the body in the, uh, morgue cooler for a day or two. We have found  
21 in the examination of remains, especially people that have been  
22 in--submerged in water that if we allow these individuals to sit in  
23 the cooler, uh, it allows the tissue to dry a little bit, it makes  
24 the minute abrasions and scratches on the skin become much more  
25 apparent. Uh, we refer to it as aging the wounds and allowing them  
26 to come to the surface. So the decision was made to allow the body  
27 to, uh, sit in the morgue cooler so that it'll--within the next day  
28 or two we could come back and do a much more intense examination of  
29 the skin.

1 Q. And insofar as what you--you examined and what have you  
2 on that particular day, uh, what efforts did you subsequently make  
3 I believe on May eighth of nineteen hundred and ninety-two to  
4 obtain something to compare all this with?

5 A. A deputy from the Noxubee County sheriff's office brought  
6 four individuals down to my office in Hattiesburg. Uh, they were  
7 Kennedy Brewer, Gloria Jackson, Dewayne Graham, and Leshone  
8 Williams. Uh, they were brought to my dental office; uh, there we  
9 talked with them as to what procedures we wanted to do; uh, release  
10 forms were given; they signed the release forms and we then took  
11 standard dental impressions of their mouth. This is a procedure  
12 that's done routinely every day by dentists. Uh, you mix up a  
13 material called alginate, looks a lot like Jello, and you make a  
14 mold of their teeth. It takes about two minutes for it to set; you  
15 take the mold out, mix up what we call stone which is a powder and  
16 a liquid, you pour this into the mold and in about thirty to forty-  
17 five minutes you have a very accurate life size duplicate of these  
18 people's dental structures.

19 Q. And this method that you've just described is generally  
20 accepted in the dental community as a conclusive, a positive method  
21 for obtaining an accurate duplication of someone's dentition, is  
22 that correct?

23 A. Uh, yes, sir.

24 BY MR. ALLGOOD: May I approach the witness, your  
25 Honor?

26 BY THE COURT: You may.

27 Q. I'm going to hand you a stone model, stone cast model,  
28 with some paper in between it to prevent there from being an  
29 chipping of the--of the model, and ask you to examine that and tell

1 us if you can tell us what exactly that is.

2 A. These are the dental stone models, what we call dental  
3 study models, of Mr. Kennedy Brewer that were made up, uh, or  
4 duplicated on fourteen May, ninety-two. This is an original from  
5 eight May. Once you have one set of these, you can make up another  
6 batch of Jello and take another impression and make more copies of  
7 it.

8 Q. I believe it was necessary to make duplications so that  
9 the other expert in this particular case could examine them, is  
10 that correct?

11 A. Yes, sir. We felt that rather than just send off the  
12 only set, we better duplicate them, so we'd keep a copy and send a  
13 copy to, uh, the other experts; yes, sir.

14 Q. And those in fact are fair and accurate reproductions of  
15 the--the dentition of Kennedy Brewer as it existed back in May of  
16 nineteen hundred and ninety-two, is that correct?

17 A. Uh, yes, sir.

18 BY MR. ALLGOOD: If your Honor please, we would  
19 tender these as exhibits to this witness's testimony  
20 at this time.

21 BY THE COURT: Being no objection, let them be  
22 received and marked. Do you have something to keep  
23 them in so they will not--

24 BY MR. ALLGOOD: I do have a small box, your  
25 Honor, but these things are very fragile; they break  
26 rather easily. The only way to--to prevent them from  
27 being just shaken to where they'll actually break would  
28 be to actually wrap it in some type of paper and stuff  
29 it in a box and I--I--I--I've got enough over there that

1           I might can accomplish this, but if it's still loose it  
2           can still break.

3           BY THE COURT: You better accomplish that somehow.

4           BY MR. ALLGOOD: Yes, sir.

5           BY THE COURT: I don't want to have the court  
6           reporter have to mark two separate--

7           BY MR. ALLGOOD: He is going to need that--to refer  
8           to those I expect during some point, your Honor, but I  
9           think I can get a small box.

10          BY THE COURT: For the record, there are other  
11          copies or duplicates of these particular exhibits that  
12          might be kept in safekeeping.

13          BY MR. ALLGOOD: If your Honor please, at this point  
14          this is the only duplicate that I know of. The others I  
15          have, uh, I think are broken. If your Honor please, I  
16          have prepared a box with some, uh, bubble wrap, some  
17          tissue paper, I think for purposes here at this courtroom  
18          they'll be sufficient as long as we're careful, and the  
19          court reporter can mark that particular box and insert  
20          them in--into that box.

21          BY THE COURT: Mark the exhibit please, court  
22          reporter.

23           (COURT REPORTER MARKS BOX CONTAINING DENTAL  
24           IMPRESSIONS OF KENNEDY BREWER AS STATE'S EXHIBIT  
25           NUMBER 32 IN EVIDENCE)

26          BY THE COURT REPORTER: Okay.

27          BY THE COURT: You may proceed.

28          Q. Now after your, uh, taking these impressions, when was  
29          your next I guess you'd say interaction with the body of Christine

1 Jackson?

2 A. Uh, the impressions were made on the eighth of May; the  
3 next day, the ninth of May, I took the impressions of these four  
4 people and returned to the Rankin County Morgue in Pearl, and  
5 compared the, uh, dental study models to the patterns that we were  
6 looking at on the body of Christina Jackson.

7 Q. Now let's talk about your comparison, uh, process. How  
8 did you go about making those comparisons? Explain that for the  
9 ladies and gentlemen of the jury.

10 A. First off what you have to do is of course look at a  
11 scrape or a bite or a pattern and try to determine, you know, is  
12 this something of value, is--do I believe this to be a bite mark or  
13 could it be a bite mark. If so, you want to photograph that area  
14 before anything is done, and you want to photograph it with a--what  
15 we call an ABFO Number 2 ruler which is an L-shaped ruler, place it  
16 on the body, try to do a perpendicular photograph. Uh, the purpose  
17 of the ruler is so you can blow the pictures back up to life size,  
18 uh, at a later point in time. Once this is done you can now go in  
19 and touch and examine the body; you want to make--uh, take special  
20 care that you don't disrupt or cause any damage to the skin surface  
21 by touching or looking at the, uh, patterns. Uh, we then looked at  
22 what we call class characteristics, uh, in some of these areas.

23 Uh--

24 Q. Explain--uh, we're getting ahead of ourselves--

25 A. Okay.

26 Q. --just a little bit, but since you've brought the term  
27 up, uh, go ahead and explain for the ladies and gentlemen of the  
28 jury the basis, if you will, for bite mark identification. You've  
29 mentioned the term class characteristics; explain for the ladies

1 and gentlemen of the jury what we're essentially talking about  
2 here.

3 A. Okay. Most--most lay people understand the fact that you  
4 can do an identification of human remains through dental means  
5 because everyone's teeth are unique. Uh, studies have been done in  
6 the general population and on twins, identical twins, and trying to  
7 determine can you tell who is A and who is B in this group of twins  
8 simply by looking at their teeth as a method of identification.  
9 Since teeth are unique you open up the possibility that if these  
10 teeth were used to bite or the impression of those teeth were left  
11 into some material, skin, cheese, other objects, you might be able  
12 to go back and determine was this mark made by these teeth. It's,  
13 if you would, it's kind of an extension of tool mark analysis, did  
14 these teeth make this mark on this skin. Uh, as dentists, we study  
15 teeth; uh, of course, that's--that's kind of obvious, but especially  
16 like in the construction of dentures, uh, everyone's teeth there  
17 are certain class characteristics, uh, that are exhibited by the  
18 teeth and their structure. Class characteristics are characteris-  
19 tics that you would expect to find in a certain group of objects.  
20 Like if I had a box with five regular blade screw drivers, whether  
21 some of them were long or some were short, some were wide, some are  
22 narrow, they would all have the class characteristic of the blade  
23 screw driver, where if I had another box that had Phillips head  
24 screw drivers, this would be a class characteristic, one is a  
25 blade, one is a Phillips. Now I have--may have five blade screw  
26 drivers over here and five Phillips over here; maybe none of the  
27 two Phillips screw drivers are the same and maybe none of the two  
28 Phil--uh, blade screw drivers are the same; they are separated by  
29 class. The same thing about people's teeth and what we call

1 arches, the upper jaw and the lower jaw. A class characteristic of  
2 a jaw may be what we call the arch form; some people have a very  
3 semi-circular shaped arch; some people have what we call a square  
4 arch; it comes up and goes across, has--almost have like corners.  
5 Then we have what we call the vaulted or pointed vaults. I'm sure  
6 you've--you've seen individuals where their teeth--where they were  
7 buck toothed, their teeth stuck out of their mouth. This would be  
8 a vaulted arch. So if I was looking at, let's say, we had a--a  
9 sandwich and someone taken a nice bite out of it and the bite was  
10 very U-shaped, very semi-circular, and I was given an individual  
11 and they said, "Did this person bite this material," and I look at  
12 this person and he's got a very pointed arch, it comes to a point,  
13 it's not a circle, I could look at that and say, "He is not of the  
14 proper class. In other words, I'm looking for someone with a semi-  
15 circular arch and this man has a pointed arch." So I could  
16 eliminate him as being the person who had bitten this material.  
17 The teeth themselves have class characteristics. Uh, we name the  
18 front four teeth incisors. They're called incisors because their  
19 job is to cut into food, and they have the overall shape of a blade  
20 screw driver so you would expect the incisors of myself, the  
21 incisors of someone else, if it was bitten into a piece of material  
22 to leave a characteristic shape usually like if you took a--a blade  
23 screw driver and poked it into a piece of clay or wax and you'd get  
24 a long rectangular shape. This is a class characteristic for  
25 incisors. Now again you may have wide incisors, you may have  
26 narrow incisors, uh, you may have what we call tapering, square,  
27 square ovoid, different configurations within that class, but  
28 compare that to the next tooth over which would be your eyetooth or  
29 your canine. This is a pointed tooth; it's a, if you would, a

1 fang, and its function is to rip and tear. Usually if you see  
2 someone bite into some skin, an arm or whatever, you would find  
3 that the incisors make that long rectangular mark where the canine  
4 makes a triangular in form mark on the skin. There is a class  
5 characteristic. You can look at this pattern and say, "This mark  
6 is from an incisor; this mark is from a canine." Uh, another class  
7 characteristic would be how many teeth are present. Uh, the adult  
8 human has the possibility of having thirty-two teeth. Of course,  
9 due to misuse, accidents, dental treatment, disease, sometimes we  
10 lose our teeth, and if you had an individual, uh, say you were  
11 looking at a bite mark and there were five teeth present in the  
12 mark and when you go back and you look at your suspect to see did  
13 he make this mark and this individual only had three teeth, he had  
14 two missing, there were gaps, spaces, you could say it's--this  
15 isn't the man who made this mark. Uh, one of the things, the  
16 premises of the bite mark analysis is that your first intention is  
17 to eliminate an individual. You want to look for things that you  
18 can say, "It's not possible for this person to have made this mark  
19 because his teeth's either too big, they're the wrong shape,  
20 they're the wrong size, they're the wrong number, they're the wrong  
21 position." It's much easier to exclude an individual from saying,  
22 "This is the person who made that." I would imagine in my career  
23 for every time I've made a inclusive opinion, in other words, "I  
24 believe this person made this mark with his teeth," there are  
25 probably ten that I have eliminated and said, "It's not possible  
26 for this person to have made that mark with his teeth."

27 Q. As a matter of fact in this particular case, what  
28 conclusions were you able to determine insofar as Leshone Williams,  
29 Dewayne Graham, and Gloria Jackson were concerned?

1       A. In this situation my analysis showed me I was of the  
2 opinion that neither Gloria Jackson, Dewayne Graham or Leshone  
3 Williams could have made these marks on Christina's body.

4       Q. All right. Now you--you've told them what class  
5 characteristics are and you have I think touched perhaps on  
6 individual characteristics in some respects, but if you would  
7 explain for the ladies and gentlemen of the jury what an individual  
8 characteristic is and what part it plays in the analysis of a--of  
9 a wound pattern, bite mark, tool mark.

10      A. An individual characteristic is a characteristic that  
11 falls under the category of usually random wear and tear. If you  
12 bought, uh, two new screw drivers that you took right off the shelf  
13 and you took one screw driver and mashed it into wax, you took the  
14 other screw driver and mashed it into wax and you looked at the  
15 patterns left by these two screw drivers, since they didn't have  
16 any individualizing characteristics it would be almost impossible  
17 to say which was screw driver A and which was screw driver B, but  
18 now let's give one screw driver to a carpenter and the other screw  
19 driver to an electrician and we send them off for a couple of years  
20 and they do their work. They come back and they give us screw  
21 driver A and they give us screw driver B. Well in screw driver A  
22 we find that one of the corners has been chipped off from prying  
23 action, using it to pry something open, the blade of the screw  
24 driver breaks, and then let's say in the other case, uh, the blade  
25 of the screw driver has been bent or warped so that it's twisted  
26 and turned, maybe has a dog-ear on it. These random wear and tear  
27 on these instruments make these instruments unique because of their  
28 individual characteristics. Now that screw driver A is no longer  
29 identical to screw driver B, you could press them into wax and very

1 easily, due to one being chipped and the other one being warped,  
2 say, "Yes, this is screw driver B that made this mark; screw driver  
3 A made that mark." Now in human teeth we have individualizing  
4 characteristics. The class characteristics kind of fall into, is  
5 your tooth in its right position or is it a little bit further back  
6 or does it stick out too far, does it sit straight on like it  
7 should or is it rotated this way or is it rotated that way. An  
8 individualizing characteristic would be, has this tooth got a chip,  
9 has it been broken, has, uh, there been a cavity in this tooth, has  
10 the tooth been worked on by a dentist and a filling placed in it,  
11 plus, uh, as we get older the old term, "long in the tooth," uh,  
12 children, uh, three or four years old, you know, if you've ever  
13 been bitten by a small child, you'll know how sharp their teeth  
14 are; as they grow older they wear those teeth down. We call this  
15 attrition. Uh, as you get older into your sixties and seventies,  
16 you may know someone whose teeth they've literally ground them  
17 down, they're just flat across, there's a lot of excessive wear.  
18 It's this normal attrition plus chipping your teeth, having decay  
19 or having them worked on, that now makes your teeth unique. Of  
20 course, the more chips or missing teeth or fractures or unique  
21 features about your tooth make it more individualized, and usually,  
22 like I say, an--an individualizing characteristic is a feature on  
23 that tooth that you have to, you know, pay a special attention to.  
24 It may not be very gross or obvious that there's a small minute  
25 fracture or crack in this tooth and you're moving in on a much  
26 closer scale. You try to eliminate as many people as you can  
27 through class characteristics. Then you start looking at your  
28 individual characteristics and see, well in this position, we give  
29 each tooth a number; we start in the corner up here and call that

1 tooth number one, go around to tooth number sixteen, down to  
2 seventeen and around to thirty-two. So when me or any other  
3 forensic dentist talks about tooth number eight, we're talking  
4 about the front tooth here, uh, the big central incisor. If you  
5 look at your bite mark pattern and you see that that tooth that  
6 should be in position number eight is four millimeters across, two  
7 millimeters wide and appears to be rotated, let's say a twenty  
8 degree angle, uh, that's what you see in the bite mark pattern. If  
9 you're given three people and you look at their models and one  
10 person, his tooth is six millimeters and your--your mark is four,  
11 well you can say well his tooth is too big to have made that, and  
12 then you find another one, but his tooth is straight and your mark  
13 is curved, you can eliminate him. But let's say your third person,  
14 his tooth is four millimeters across and it's twenty degrees in  
15 rotation, well, of course, you would keep him on as being possible.  
16 Then you'd go back and look and see did you have any characteris-  
17 tics; there may be a very small one millimeter chip on the cutting  
18 edge of that tooth; if you can go back and look at your pattern and  
19 in the right position of your wound pattern you have that little  
20 chip, a mark or dip, and it matches your tooth, now you have the  
21 ability to say within reasonable scientific certainty this tooth is  
22 what made this mark.

23 Q. Now insofar--after having given us that--that thumbnail,  
24 so to speak, of--of sketch of the general analysis of bite marks,  
25 tool marks, uh, injury and wound patterns, Doctor, you've already  
26 said that what you did, I think we'd gotten to the point was that  
27 you had started saying you started looking to see if anything was  
28 in fact, uh, a--a bite mark, anything that could fit into that  
29 category which could be a bite mark; uh, you had gotten to that

1 part in your process, if you would continue from that point and  
2 elaborate for the jury, if you would, the process, the procedures  
3 you followed in this particular case.

4 A. Uh, first off let me--let me explain this term bite mark.  
5 Uh, you may from hearing this term think that what we're talking  
6 about is someone biting another person. That can happen and often  
7 is the case, but we kind of generically use the term bite mark also  
8 to mean, uh, let's say an individual strikes you in the mouth and  
9 your teeth cut his hand, even though you didn't bite him, that is  
10 what we call a bite mark or a tooth mark. Uh, it's not to imply  
11 that biting had to occur. Uh, we then go through and we look for  
12 what we call prototypical bite marks. A prototypical bite mark is,  
13 uh, something that a lay person could probably see. If you took  
14 and held your arm out and bit yourself and then stood back and  
15 looked at it, you would see you'd have a--usually a nice upper U-  
16 shaped arch and a nice lower U-shaped arch. This is what we call  
17 a prototypical bite mark. Uh, you see them a lot in test results  
18 and in isolated, uh, situations, but that's not always the pattern  
19 that's left by teeth. Sometimes you'll have variations in what we  
20 call the peridem--excuse me--paradigmatic bite mark which is just  
21 an atypical bite mark. You could think of it like taking a rake  
22 and dragging it through the sand. If you've ever been out raking  
23 leaves in the dirt and the sand, if you take a rake and drag it  
24 through the sand, you'll see the pattern that's left as it comes  
25 across, and whether it be straight or at an angle or zigzaggy you  
26 can look with--with your eyes and see is it possible for this rake  
27 to have made this mark in the dirt. Your bite mark analysis is  
28 very similar to that insomuch that you want to look and see because  
29 you have to consider the orientation and dynamics of what's going

1 on, why do you think this person bit this other person. Uh, unless  
2 you're an odontologist like myself, I've had quite a number of  
3 volunteers that we've sedated, uh, had bite marks inflicted on  
4 their arm and then we sit back and photograph them and study them  
5 for several weeks or months, those are usually, uh, your prototypi-  
6 cal bite marks, nice U-shaped arches. You don't see that in a life  
7 and death combative struggle. Uh, if I have a volunteer who'll  
8 hold his arm, we'll wash it and such and he'll try to brace himself  
9 and somebody will bite their arm and he'll stand there and try to  
10 hold it as best he can, then, you know, he'll tell us stop and  
11 we'll get that nice bite mark pattern. That's very different from  
12 someone attacking another individual because when they're bitten,  
13 if the victim can, what they will try to do is free themselves; we  
14 have a fight going on, uh, and usually someone is fighting for  
15 their life and in a lot of these situations these bites are very  
16 painful. Uh, I've been sedated, I've been bitten, uh, I can attest  
17 that biting can be very, very painful from time to time, and unless  
18 you're trying to sit there and make yourself withstand this so that  
19 you get a nice research bite mark, you're going to find that you're  
20 going to pull away, and as you pull away, let's say, someone's  
21 bitten me on the wrist, my first reaction is to pull or get my arm  
22 out of this man's mouth, and of course the teeth bite down and drag  
23 as this tissue is pulled out from the, uh, clasp of their jaws.  
24 The other thing you've got, of course, take into consideration is  
25 the postural positioning of the individual. Uh, skin is elastic,  
26 and you can take and put a pattern, draw a circle or a design on  
27 someone's arm, especially let's say the bicep area, we draw a  
28 circle here, depending if I hold my arm out straight or if I flex  
29 it or if I curve it like this, you can see of course how my jacket

1 folds. The skin is going to distort and stretch, and of course  
2 usually in a--in a life and death combative struggle, you've got a  
3 lot of movement, a lot of struggling, so you shouldn't really look  
4 for this nice prototypical bite mark. It'd be like me taking a  
5 rubber stamp and coming over here and stamping a sheet of paper and  
6 then someone else coming up and doing like that. Don't expect to  
7 find a nice rubber stamp in these combative situations. So the  
8 first thing I do is to look to see do I have any bite marks that  
9 are close to being, uh, prototypical. Uh, it's what I like to call  
10 a--a patterned injury. A patterned injury is an injury that when  
11 you look at it, it gives you an idea of what happened. After  
12 eighteen years of looking at bite marks, I'm a little bit better  
13 than the lay person at looking at a mark and saying, "That could be  
14 a--have been caused by teeth." I don't have to see just this nice  
15 U-shape. If I see a pattern that could have been caused by teeth,  
16 the first thing I want to do is go through my class characteris-  
17 tics. If I've got an individual that's from his eyetooth to  
18 eyetooth is forty millimeters and my bite mark is only thirty  
19 millimeters, then I can say, "Hey, that doesn't look like, you  
20 know, I don't think this guy could make this mark." But if my bite  
21 mark is forty or so millimeters, my teeth that I'm looking at are  
22 forty or so millimeters, then I proceed on to the next, you know,  
23 well how many teeth are involved or are they in the right position,  
24 and the--the best way to do this comparison is to eliminate  
25 duplicating errors. Every time you copy an object you incorporate  
26 some error. Right now the best way to document a wound pattern on  
27 skin is through photography. Even though that is the best way it  
28 involves distortion of the object because you're trying to take a  
29 three dimensional object and reduce it to two dimensions, a

1 photographic image. The other thing is skin will give, it's  
2 flexible, it'll wiggle and move where a photograph won't do that.  
3 So to eliminate and keep the most minimum error possible, you're  
4 probably your most accurate analysis is to take the stone dental  
5 models that you have of your suspect and go and compare them  
6 directly to the skin of the victim and then photograph the  
7 relationship between those stone models and the pattern you find on  
8 the skin.

9 Q. I think a technique called direct comparison among--

10 A. Yes, sir.

11 Q. --I believe your brothers in the forensic odontological  
12 profession, is that correct?

13 A. Yes, sir.

14 Q. Go ahead, Doctor. What did you do--in this particular  
15 case, did you in fact perform that direct comparison with those  
16 working models to the injuries which you found on this little girl?

17 A. Yes, sir. Uh, my original opinion about, you know, how  
18 many of these marks could possibly be bite marks, I saw maybe three  
19 or four that right off the bat I said, "These could possibly be  
20 bite marks." And so I started comparing the--the study models,  
21 some of them I said no, this couldn't possibly be the one and go to  
22 the next, and on the ones that I said, you know, "This looks like  
23 a nice match." The--of course, I'm talking about the models of  
24 Kennedy Brewer. I looked to see, number one, did the class  
25 characteristics match, were there any individualizing characteris-  
26 tics in his teeth that show up in the pattern, and if so, then I  
27 want I want to take and very carefully set the teeth on that piece  
28 of tissue and back it off just a millimeter or two, and then take  
29 a photograph to try to show the leading edges of the teeth and the

1 leading edges of the bite so that one could look at this and come  
2 to their own opinion, did this tooth make this mark in this skin,  
3 and we went through and photographed those. Uh, later we had many  
4 other marks on the girl's body and the question that we wanted to  
5 answer was, number one, could these marks been made by these teeth  
6 or could they have been made by someone else's, in other words, am  
7 I looking at a situation where I have one or two attackers, and we  
8 went through and looked at the other areas. When we were finished  
9 we had found nineteen areas on the little girl's body; uh, out of  
10 those five are what I would consider your very good bite marks, and  
11 the other fourteen started, uh, from fair to average or--or poor.  
12 Uh, I did not find any bite--any marks on the little girl's body  
13 that I considered could be human bite marks that I could not equate  
14 to Mr. Brewer.

15 Q. Now insofar as this process that you have gone through,  
16 this process of--of making these comparisons and photographing the  
17 results and comparing these class characteristics with these  
18 individual characteristics, uh, the--this process, is it generally  
19 accepted in the forensic odontological community as being positive  
20 and conclusive for the comparison of bite marks, wound analysis,  
21 uh, things of that nature?

22 BY MR. KESLER: Object to the form of the question  
23 as conclusive; generally accepted is not objectionable,  
24 but--

25 BY THE COURT: Rephrase your question and I'll allow  
26 it.

27 Q. Is it generally accepted in the forensic odontof--I have  
28 difficulty with that word--forensic odontological community as the  
29 technique to use for these types of comparisons?

1       A. Yes, sir. I'd have to say so because I believe in  
2       nineteen eighty-nine, nineteen ninety, I, uh, published an article  
3       in the American Academy of Forensic Sciences Peer Review Journal on  
4       direct comparisons, the video taping of the direct comparisons for  
5       courtroom presentation, and I've seen numerous articles and  
6       presentations on direct comparisons video and--and, uh, still  
7       photography of this technique.

8       Q. Now just so there won't be some confusion among the jury,  
9       just so they'll understand, uh, there is some controversy over  
10      direct comparison technique, is that correct?

11      A. I have not found any topic that we have a hundred percent  
12      agreement on in dentistry or forensic dentistry. Uh, you always  
13      have other doctors who feel one technique is better than another,  
14      and, uh, as I say, I don't--yeah, there's going--you're going--it's  
15      easy to find other doctors who say, "Well I don't like to do it  
16      that way, I want to do it this way." But there's been no studies  
17      or publications saying that it's improper. It is accepted in the  
18      methodology guidelines of the American Board of Forensic Odontolo-  
19      gy.

20      Q. Now insofar as this examination was concerned, you have  
21      already testified that you photographed it and videoed it, is that  
22      correct?

23      A. Yes, sir.

24                   BY MR. ALLGOOD: May I approach the witness, your  
25                   Honor?

26                   BY THE COURT: You may.

27                   (ITEM SHOWN TO DEFENSE ATTORNEYS)

28      Q. I am going to now hand you a series of black and white  
29      photographs; it is a large number of photographs. I'm going to ask

1 you to look at those and tell us if you can identify that for us,  
2 please.

3 A. (Witness thumbs through photographs) Yes, sir. These  
4 are the photographs I believe, what, a hundred and thirteen,  
5 somewhere in that neighborhood, quite a number of black and white  
6 photographs that I took of the, uh--not only the body of Christina  
7 Jackson, but of the comparison of the dental study models of  
8 Kennedy Brewer and the body of Christina Jackson.

9 Q. And are those photographs, photographs you either  
10 personally took or photographs that you were present when they were  
11 taken?

12 A. Yes, sir. I either took them or they were taken under my  
13 supervision; yes, sir.

14 Q. And are they in fact fair and accurate reproductions of  
15 those comparisons and those marks and those patterns as they  
16 existed on that date?

17 A. Yes, sir, they are.

18 BY MR. ALLGOOD: If your Honor please, we would  
19 tender these an exhibit to this witness's testimony at  
20 this time--composite, your Honor.

21 BY THE COURT: Let them be received and marked. I'm  
22 going to ask the jury to step back into the jury room  
23 while these exhibits are being marked. We'll take a  
24 recess while the court reporter is actually marking the  
25 exhibit. If you would, please step back into the jury  
26 room.

27 (JURY OUT)

28 BY THE COURT: (To the witness) During this recess  
29 you may step down from the witness stand. Please do not

1 discuss your testimony with any other witness during this  
2 recess.

3 A. Your Honor.

4 BY THE COURT: Yes.

5 A. I've had a request from the district attorney of  
6 Hernando, Desota County, uh, when I leave here I'm supposed to  
7 testify over there in another case. Uh, the defense expert in that  
8 case is also Doctor Souviron. Uh--

9 BY THE COURT: I'm aware of that.

10 A. Okay. He has the photographs and models that are the  
11 evidence in the Hernando County case. The district attorney wanted  
12 me to be able to ask the defense attorneys, number one, do they  
13 know if Doctor Souviron's going to be here today, and if so, when  
14 I finish this could I meet with Doctor Souviron to collect that  
15 evidence, take it to Hernando cause it has to be introduced under  
16 my testimony.

17 BY THE COURT: He's supposed to fly in at about--

18 BY MR. KESLER: Ten--ten-fifteen; his flight has  
19 arrived; my paralegal has gone to pick him up. I--I--I  
20 do not know anything about him being--bringing evidence  
21 back for the other case, but certainly he will be here  
22 and will be available; Doctor West can talk to him.

23 BY THE COURT: Fine. Does that answer that  
24 question?

25 A. Yes, sir.

26 BY MR. ALLGOOD: If your Honor please, before we go  
27 off the record there is one other thing. I intend to  
28 introduce the color video which was made also. I doubt  
29 defense counsel will object. I--they have informed me

1           that they're interested in having it introduced also;  
2           however, there is conversation on this video; uh, there  
3           is comments made by Doctor West, made by some of his  
4           assistants and things of that nature which, uh, may very  
5           well be of a nature that would be considered editorial-  
6           izing and things of that nature. Uh, I think in all  
7           fairness that the sound should not be allowed, the--the  
8           audio portion of the tape should be, uh--it can't be  
9           erased, there's no way to do that, but it should just be  
10          turned down during the playing of the tape. Uh, that is  
11          my request of the Court. I do this before defense  
12          counsel to see if there's any objection to such or any-  
13          thing of that nature.

14           BY THE COURT: Will you discuss that with him  
15          during the recess.

16           BY MR. KESLER: Vehement objection.

17           BY THE COURT: You discuss that with him during the  
18          recess. The next question that I have is that there have  
19          been, what, the witness has said a hundred and nineteen?

20           BY THE COURT REPORTER: Thirteen.

21           BY MR. ALLGOOD: Thirteen.

22           BY MR. KESLER: Thirteen.

23           BY THE COURT: Excuse me. --thirteen photographs  
24          that have been tendered as exhibit. Are these photo-  
25          graphs to be used individually?

26           BY MR. ALLGOOD: Some of them will be used  
27          individually, your Honor.

28           BY THE COURT: If they're to be used individually,  
29          they must be marked individually so that the witness can

1           identify which photograph his testimony is concerning.

2           BY MR. ALLGOOD: I understand that, your Honor.

3           If your Honor please, it appears from defense counsel's  
4           response that there is going to be--

5           BY THE COURT: Let's stay with the photographs  
6           first.

7           BY MR. ALLGOOD: Yes, sir.

8           BY THE COURT: Give me time on that. Court  
9           reporter, there is--you can step down if you'd like.

10           (WITNESS LEAVES WITNESS STAND)

11           BY THE COURT: There is no other alternative that  
12           I know of other than to label each of these photographs  
13           individually so that when the district attorney is  
14           allowing the witness to testify, he can identify which  
15           exhibit he is using as a basis for that testimony. I  
16           would ask during this recess that defense counsel and  
17           attorney for the State get with the court reporter to  
18           see if there is any methodology that can be employed to  
19           shorten that process.

20           Now another matter has been brought up while the  
21           jury is out that the State proposes to introduce a video.  
22           Is that correct?

23           BY MR. KESLER: Yes, sir.

24           BY MR. ALLGOOD: Yes, sir, your Honor.

25           BY THE COURT: And that video is the examination of  
26           this body. The defendant will interpose an objection to  
27           the introduction of the video.

28           BY MR. KESLER: No, sir. But we're going to object  
29           to only a portion, that being the video and not the

1                   audio, being given. If it's going to come in as evidence  
2                   they're going to hear the whole thing.

3                   BY THE COURT: Oh, you--you do--

4                   BY MR. KESLER: If he plays it without the sound,  
5                   then I'm going to play it in case in chief with the sound  
6                   and I think that's silly.

7                   BY THE COURT: Then the suggestion of the State that  
8                   they just show it and not have the sound is what you  
9                   object to--

10                  BY MR. KESLER: Yes, sir.

11                  BY THE COURT: --not to the video itself?

12                  BY MR. KESLER: Oh, we want it in, the whole thing,  
13                  sound, everything.

14                  BY MR. ALLGOOD: If your Honor please, at this  
15                  point then the State feels it must make a motion. I'm  
16                  going to make--move the Court to review the tape in  
17                  chambers and move the Court to exclude the audio for the  
18                  extraneous material that is on the audio.

19                  BY MR. KESLER: Your Honor, I'd--the only thing I  
20                  can say this--this, uh, video is going to be evidence  
21                  that is part of the basis of the--or the foundation of  
22                  the--the expert's opinion, and, uh--and it's all  
23                  admissible. Just because they're talking on it, it's  
24                  not hearsay. It is the evidence--

25                  BY THE COURT: What is it that is a problem or with  
26                  what is said by the physicians as they do the--what is  
27                  it that's--

28                  BY MR. ALLGOOD: If your Honor please, it is a, if  
29                  you will, problem of perception. There will be conversa-

1 tition between the--the doctor and his assistants as he is  
2 doing this, sometimes which may be somewhat, shall we  
3 say, colorful. There will be, uh, music being played in  
4 the background, all of which has nothing to do with the  
5 comparisons of the--of the marks to the body. I know  
6 that this Court has had this issue presented to it before  
7 and the audio portion has not been played for the jury  
8 in those circumstances. In any event, your--

9 BY THE COURT: Let me ask this question: is the  
10 introduction of this video in evidence necessary to form  
11 the basis of this expert's opinion?

12 BY MR. ALLGOOD: In all candor, no, your Honor.

13 BY THE COURT: Get it set up so the Court can see  
14 the film please during this recess.

15 BY MR. ALLGOOD: We can bring that into your  
16 chambers or we can do it out here, your Honor. What's  
17 the Court's pleasure?

18 BY MR. KESLER: I have one that'll roll that's a  
19 good size television.

20 BY THE COURT: Bring it in chambers then. Court is  
21 in recess.

22 (RECESS)

23 (COURT REPORTER MARKS ONE HUNDRED AND TWENTY-ONE  
24 (121) BLACK AND WHITE PHOTOGRAPHS OF VICTIM'S BODY AS  
25 STATE'S EXHIBIT NUMBER 33(1-121) IN EVIDENCE)

26 \* \* \* \* \*

27 FOLLOWING THE RECESS, ALL MEMBERS OF THE COURT, INCLUDING THE  
28 JUDGE, COURT REPORTER, ATTORNEYS, CLERK, BAILIFFS, AND THE  
29 DEFENDANT BEING PRESENT, THE FOLLOWING PROCEEDINGS WERE HAD:

1 BY THE COURT: Court reporter, for the record, the  
2 State has offered into evidence a video with audio sound  
3 also contained on the video of an examination in the  
4 morgue of the cadaver of Christine Jackson, the minor  
5 victim in this case. The video is in color with the  
6 sounds, comments and background noises in the autopsy  
7 room. The video depicts the placement of dental  
8 impressions on and about the cadaver of this child. The  
9 Court finds the video particularly gruesome and macabre.  
10 I do note that the physicians and persons in attendance  
11 seemed rather callous and were carrying on conversations  
12 unrelated to this particular case, but I am told that is  
13 not unusual among physicians even in surgery on living  
14 patients. There was a background music from a radio  
15 playing that I assume defense counsel wishes introduced  
16 because it appears to be inappropriate for the task that  
17 the individuals were about at the time. The Court, after  
18 viewing this video, is of the opinion that it in its  
19 entirety should not be introduced in this case as the  
20 State has stated to the Court that this video is not such  
21 as would allow the expert to form any opinion from it  
22 since he actually did the examination himself. The color  
23 video and manipulation of the cadaver of this three year  
24 old infant in some stage of decomposition, the Court  
25 finds should not be viewed by the jury in this case, and  
26 that its prejudicial effect would outweigh any relevance  
27 in this matter. The Court has already allowed the  
28 introduction of black and white photographs depicting  
29 portions of skin and body parts used during the examina-

1 tition and purported identification feels that under the  
2 circumstances that is sufficient. The--excuse me--the  
3 court reporter is having some difficulty.

4 (BRIEF PAUSE IN PROCEEDINGS)

5 BY THE COURT: What was my train of thought when I  
6 stopped?

7 BY THE COURT REPORTER: You were talking about the  
8 probative value of the video.

9 BY THE COURT: It is not sufficient to outweigh its  
10 prejudice given the fact that the black and white photo-  
11 graphs have been introduced. The in camera inspection  
12 did reveal a certain degree of callousness of the  
13 individuals doing the filming and manipulation of this  
14 cadaver, and the background music might be construed to  
15 be inappropriate for the occasion. But in any event the  
16 Court feels that it is unnecessarily gruesome and macabre  
17 and will not allow its introduction after having viewed  
18 the tape in its entirety.

19 Now it has not formally been offered yet. I would  
20 not expect it to be offered because of the Court's ruling  
21 by the State.

22 BY MR. ALLGOOD: It will not be offered by the State  
23 in response to the Court's ruling, your Honor.

24 BY THE COURT: Did you want something in the record  
25 at this time, Mr. Kesler?

26 BY MR. KESLER: I want the tape in the record in--in  
27 case there's any need for review.

28 BY THE COURT: I would ask that the State supply the  
29 court reporter with the tape viewed by the Court in

1                   camera and have it marked for identification purposes at  
2                   this time.

3                   (COURT REPORTER MARKS VIDEO TAPE AS DEFENDANT'S  
4                   EXHIBIT NUMBER 34 FOR IDENTIFICATION)

5                   BY THE COURT REPORTER: Okay.

6                   BY MR. KESLER: With all due respect, uh, I am not  
7                   arguing with the Court, I understand the Court's ruling  
8                   and of course I will obey the Court's ruling, but I  
9                   simply wanted to place something additional in the  
10                  record if I could.

11                  BY THE COURT: You may.

12                  BY MR. KESLER: I'd like the record to reflect that  
13                  I brought to the Court's attention what I thought were  
14                  relevant legal authorities on the issue of autopsy  
15                  photographs, that being Noe, N-O-E, versus State, 616  
16                  So.2d 298, Hurns, H-U-R-N-S, versus State, 616 So.2d 313,  
17                  Alexander versus State, 610 So.2d 320, Mackbee, M-A-C-K-  
18                  B-E-E, versus State, 575 So.2d 16, and would like to  
19                  state for the record that the defendant feels that the  
20                  tape has probative value to the defense in that the tape  
21                  underscores the defense expert's opinion that the wound  
22                  patterns on the body are not bite marks at all, but are  
23                  other--other trauma, decomposition, result of decomposi-  
24                  tion, skin slippage and that the tape shows that the  
25                  models have to be manipulated in a manner where it would  
26                  be physically impossible for a human--normal human jaw  
27                  to approach the surface of the body in such a manner.  
28                  Thank you, your Honor, for letting me make that record.

29                  BY THE COURT: The Court's ruling is the same. The

1           Court feels that the series of black and white photo-  
2           graphs of the wounds and the dental impressions is  
3           sufficient.

4           Let's get the witness back on the witness stand.

5           (DOCTOR MICHAEL WEST RETURNS TO WITNESS STAND)

6           BY THE COURT: Show the jury in, please.

7           (JURY IN)

8           BY THE COURT: You may proceed.

9           DIRECT EXAMINATION CONTINUES BY MR. ALLGOOD:

10          Q. Doctor, now in these particular photographs there is a,  
11       uh, measuring implement that shows up in--in many of them in any  
12       event. Explain for the ladies and gentlemen of the jury what that  
13       is and why you do that.

14          A. There's an L-shaped ruler, we refer to it as the ABFO  
15       Number 2; uh, the ABFO Number 1 was just a simple ruler. We had  
16       contacted a photographic expert and asked him to devise us a scale  
17       that we could put in a photograph so that when a picture was taken  
18       this picture could later be blown up to life size, and he designed  
19       the, uh, ABFO Number 2 which is two of those rulers, one, you know,  
20       hooked together to make an L, and it's placed in the photograph for  
21       that purpose. It's been accepted by the board and many other  
22       agencies as far as a photographic standard of scale.

23          Q. And I believe that is part of the guidelines, part of the  
24       requirements that when y'all take such photography as we have here  
25       that the measuring devices be in at least those portions which are  
26       measuring the, uh--the wounds themselves so that there can be some  
27       objective measurement to know exactly what the distances are and  
28       things of that nature. Is that correct?

29          A. Yes, sir.

1       Q. Doctor, insofar as the wounds themselves, did you form an  
2       opinion based on a--the training and experience in your field of  
3       medicine to a reasonable dental certainty I think as to whether or  
4       not these wounds were in fact perimortem in nature?

5       A. Yes, sir, I did.

6       Q. And what is that opinion and if you would explain for the  
7       ladies and gentlemen of the jury what perimortem means and why you  
8       hold to that opinion.

9       A. When we talk about antemortem, perimortem, or post-  
10      mortem, what we're talking about is when did something happen in  
11      relationship to a death. Antemortem is things that occur while  
12      you're alive; postmortem are things that occur after you die;  
13      perimortem is that brief period in between the time or at the time  
14      of your death. If you took an individual who was alive and slapped  
15      them on the arm with a ruler, that area would turn red and swell.  
16      Uh, when someone dies we take it that their heart stops or their  
17      brain function stops. The body as a whole dies in different  
18      stages; that's the reason why we have, you know, people being able  
19      to donate kidneys and livers and eyes and--and such. Uh, one of  
20      the things that takes a few minutes, if you would, I mean from the  
21      instant your heart stops, how long does it take before your skin no  
22      longer responds or is alive even though the body or the person is  
23      dead. If you had a person hooked up to a heart machine and, you  
24      know, you've seen it on television where it goes beep, you know,  
25      his heart is no longer beating. If you took a ruler and slapped  
26      that individual on the arm immediately when that happened, even  
27      though he was dead, you would see a red streak come up on his skin.  
28      Now it varies; if--if you took and slapped someone with a ruler  
29      five minutes before they died or if you slapped with the ruler five

1 minutes after they died, before or after, I couldn't come back at  
2 a later time and look at that and tell you it was before death or  
3 after death; it's just too narrow of a window to be able to make  
4 that concern. So we use the term perimortem to describe injuries  
5 that occur at the time of death as opposed to, say, an individual  
6 had been dead for several hours and then some trauma, a cut, a  
7 gunshot, or a slap is applied to the body, that would look  
8 different than if you did it during the perimortem or antemortem  
9 phase.

10 Q. Now insofar as this particular--these particular wound  
11 patterns that you found on the body of this child, once again, what  
12 was your opinion to a reasonable med--medical cert--dental  
13 certainty wheth--whether or not it was in fact perimortem or not?

14 A. In my opinion in this case these wounds were perimortem.

15 Q. Why? Explain that for the ladies and gentlemen of the  
16 jury.

17 A. Any time that you may bruise yourself or scratch yourself  
18 or cut yourself, you will of course notice that certain changes  
19 un--are undergone. Uh, the bruise may come up and look red, then  
20 it'll turn blue and as it ages it'll go through green, yellow and  
21 kind of, you know, fade out, and this may take a couple of days or  
22 a couple of weeks. Uh, if you cut yourself you will start the  
23 inflammatory response which is the first part of the healing  
24 response; it swells up, it gets red, it responds. Uh, if you take  
25 someone whose been dead two or three hours, of course, this  
26 response is no longer viable in the skin and you can cut somebody  
27 and you won't see swelling or an inflammatory reaction. If, of  
28 course, this inflammatory reaction kind of fades over, maybe five  
29 to ten minutes, there's a lot of debate amongst the physiologists

1 and pathologists as to how long this actually persists after the  
2 heart stops, but usually what you look for in a perimortem wound is  
3 a wound that has just started into the inflammatory response.  
4 There may be little or no inflammation, redness, swelling; uh, you  
5 wouldn't expect to see healing, a scab, formed on a perimortem  
6 wound where if you had some trauma inflicted on this person the day  
7 or two before they died, you would expect to see it in a much more  
8 advanced stage of inflammation or scab or eschar formation.

9 Q. And in this particular case, due to the nature of the  
10 wound, you hold the opinion that you do, is that correct?

11 A. Yes, sir.

12 Q. Now, Doctor, you of course identified I think an area,  
13 uh, a total of nineteen, is that correct--

14 A. Yes, sir, nineteen areas.

15 Q. --marks?

16 BY MR. ALLGOOD: May I approach the witness, your  
17 Honor?

18 BY THE COURT: You may.

19 Q. I'm handing you, Doctor, what has been labeled a series  
20 of photographs labeled State's in Evidence Numbers 33-1 through 33-  
21 26, and ask you if you would to examine those. I believe these are  
22 photographs which were selected prior to this trial by myself and  
23 some others for use for demonstrative use before the jury. Is that  
24 correct?

25 A. Yes, sir.

26 BY MR. ALLGOOD: If your Honor please, may the  
27 witness be allowed to come down from the witness stand  
28 and present these to the jury as he testifies in the next  
29 few minutes?

1 BY THE COURT: He'll be allowed to stand down from  
2 the witness stand. Refer to each photograph that he does  
3 use in his testimony by exhibit number. Please feel free  
4 to move if you need to move, counsel, to see the exhibit  
5 and to see the matter that the witness is testifying to.

6 BY MR. ALLGOOD: We will need a--

7 BY MR. KESLER: Yes, sir.

8 BY MR. ALLGOOD: We will need a microphone, your  
9 Honor, over there by the jury if we could--

10 BY THE COURT: The bailiff will tend to that for  
11 you. You may stand down.

12 (WITNESS MOVES TO FRONT OF JURY BOX)

13 BY THE COURT: You may proceed.

14 BY MR. ALLGOOD: Thank you, your Honor. If I can  
15 have the Court's indulgence just for one minute.

16 Q. Doctor, I am handing you now a series of four photo-  
17 graphs, that which has previously been marked as State's Exhibit  
18 33-7, State's Exhibit 33-1, 33-26, and 33-25, and ask you to  
19 identify those for us, please, sir.

20 A. These are black and white photographs of me placing the  
21 dental study models, the stone models, of Kennedy Brewer on the,  
22 uh, I believe it's the lower right thigh of Christina Jackson.  
23 There was a mark on her leg and I wanted to compare to see how did  
24 his teeth compare to this mark. Uh, like I said, I'm not trying to  
25 take these teeth and put them in the actual biting position. In  
26 other words--may I have the models?

27 BY MR. ALLGOOD: May I obtain those for--for the  
28 witness, your Honor?

29 BY THE COURT: You may.

1       Q. Doctor, I'm handing you now what has been marked State's  
2       in Evidence Number 32 which is the box containing the models of  
3       Kennedy Brewer.

4       A. What I have in my hand, this is the dental study model of  
5       Kennedy Brewer's teeth. We took the Jello, made a mold of his  
6       teeth, took--mixed up the stone and poured it in there, and allow  
7       this to, uh, turn hard, and it's a life size and fairly accurate,  
8       as impressions go, uh, representation of his teeth. Now let's look  
9       at his teeth first. Uh, we have four incisors, those are the screw  
10      driver shaped teeth in the front that cut with; then we have the  
11      two eyeteeth, canines, the fangs, the pointed ones, and then behind  
12      those we have the premolars, the ones with the two bumps on them.  
13      Now this is important for this reason, you have to think about the  
14      dynamics, it's the interplay between the teeth and the skin while  
15      this assault is going on, and this is very important because while  
16      this individual is alive their flesh and their tissue is flexible.  
17      I can take and pinch up the tissue here on my arm to simulate a  
18      bite. Now after death the skin loses this elasticity, uh, you  
19      know, the patient--the victim will go into rigor mortis, the body  
20      becomes cold and stiff, and you die, it's not flexible anymore, and  
21      that's very important in understanding these photographs for this  
22      reason, when the bite occurred, the skin was able to bunch up and  
23      flex so in reality if I had a bite mark on my arm and I wanted to  
24      put the models on the arm, I would have to put them in the, you  
25      know, the anatomical position of the way the bite occurred which  
26      would be, let's say, in this position. Now the area that I'm  
27      interested in, in these photographs is where the edges of these  
28      teeth come in contact with the skin. Now you can see I've pressed  
29      the models on my arm and have got a--a very faint little indenta-

1 tion there, and what I want to do is, if I put the models back in  
2 the exact position the way they were when it was bitten, you can't  
3 see where the teeth and the skin come together. If you want to see  
4 that area, instead of having it in this position, you have to lay  
5 the teeth down like this, rotate them so that you can see the area  
6 where the teeth and the skin come together. Now you'll notice that  
7 space there in the middle caused--that's what a call a diastema;  
8 it's just a fancy name for a gap, but what I want to try to do is  
9 not photograph them from the actual biting position, but lay the  
10 teeth back like so, so that now you can see the teeth just opposing  
11 the indentation. So don't think that this is, "Well you're telling  
12 me his teeth were exactly like this when that happened?" No. His  
13 teeth were probably like this, but because I've lost the flexibili-  
14 ty of the skin and because I want to show where the two came  
15 together, I have to rotate them down like that. Now in these  
16 photographs we'll see, of course, the teeth; right underneath those  
17 teeth you'll see a dark line; that dark line is of the scar or  
18 pattern that I'm trying to analyze. Here I have the teeth sitting  
19 just about on it, and here I've moved them back and we're looking  
20 at this dark line here. And what I've done is place them on there  
21 and then slowly move them back, take a picture, move them back,  
22 take a picture, move them back, take a picture, and then look to  
23 see which one of these shows me or gives me the opportunity to see  
24 the most correlation.

25 Q. Explain for the ladies and gentlemen of the jury why you  
26 moved them back. Explain what that motion is for and why you're  
27 doing that.

28 A. Biting is a very dynamic situation. As I said earlier,  
29 I'm not taking a rubber stamp and just placing it here on my arm

1 and then coming straight off. What we're seeing is someone is  
2 biting and this person's pulling away so what we've actually got is  
3 the skin is dragging out from under the teeth so we get this drag  
4 mark, if you would. What I'm trying to do is to re-simulate that  
5 action and show how this pattern is progressing from the motion of  
6 the teeth. Now before I get into the very minute details in these  
7 photographs, let me point out some things that you want to look at  
8 in these photographs. Now Mr. Brewer's teeth, he has a fairly  
9 uniform arch shape; that looks like a pretty good semi-circle, a U-  
10 shape, pretty even, pretty straight around, so as far as arch form  
11 he has what we call a--a uniform semi-circle. Now notice he does  
12 have some spaces not only in the--the big one in between the front  
13 teeth, but he also has some minor spaces in between what we call  
14 the laterals, the second teeth over, and we can see that they line  
15 up fairly straight; notice these teeth are flat here, these are  
16 turned a little that way, these are this way, of course, plus we  
17 want to look at the actual cutting edges of these teeth. Uh, let  
18 me get just a little piece of tissue here to put behind this tooth.  
19 Now we've just talked about the general characteristics. If you'll  
20 look here on this front tooth, and I'm going to put a small dot on  
21 it right there, notice that this chip, there's a leading edge right  
22 here that's chipped, very minute, but there is a leading edge right  
23 there that's chipped. This tooth with the dot, there's a small  
24 little chip or wear area here on this tooth, the one with the dot,  
25 that little area, and if you look at them from the back side or  
26 what we call the linguals, you can--it's kind of difficult, but you  
27 can make out that little chip right there at that area. If you  
28 see, we have that little chip right there, an uneven spot. This is  
29 what we call an intra-dental feature. Remember I talked about the

1 chipping, the wearing, the grinding down of teeth, these are the  
2 things. I could probably find several of us in here who has a  
3 front tooth that's that size and fairly that shape, but to find one  
4 of us who has a chip that's exactly in that position, has this  
5 width and this length, that's going to be extremely difficult, if  
6 not impossible to do. Now the other tooth also exhibits a little  
7 bit of wear and tear. Now it's these minute anatomical unique-  
8 nesses of this tooth, little variations, that I have to look for in  
9 these photographs to see do I see that pattern in the wound, do I  
10 see these little discrepancies that are on the tooth, are they  
11 represented in the wound. Uh, in this photograph right here, it's  
12 fairly easy to see that the marks are the same size and shape as  
13 the two front teeth. It's fairly obvious to see that those two  
14 marks are the same size as these two front teeth. What we want to  
15 do now is to look into these areas and see do we find anything that  
16 we can relate to these minute areas. Now I'm holding Photograph  
17 132-7; in that photograph you can pick up that little notch on this  
18 front tooth that I showed you on the model. Notice on this scrape  
19 on the skin, if you notice that little dot in the skin, notice  
20 where it falls in relationship to this tooth; it comes right down  
21 at the beginning of that chip. I'm going to over-exaggerate the  
22 chip; let's say the chip's coming up this way and then here's the  
23 flat surface there, the point at where that chip comes together  
24 which would be, you know, right here on that part of the tooth,  
25 it's going to give me an angle, a little point. If these teeth  
26 inflicted this bite mark--let me make sure y'all see that--that  
27 little dot right there in the bite mark, that line, it falls  
28 directly where my chip comes into my incisal edge. So here is a  
29 unique feature of these teeth that shows itself in the wound

1 pattern. Uh, in Photograph 33-25, we're also looking at the tooth  
2 next door to it. Uh, this tooth does not come up to a razor sharp  
3 edge; it comes up and then it's flat for about a millimeter across.  
4 You see, it's not at a point, but it's actually a flat groove just  
5 like the end of a screw driver blade. Right there is flat; it  
6 doesn't come up to a point; it comes up and does like that. There  
7 are some striations and wear in that actual what we call incisal  
8 surface. We see in this photograph, uh, which is 33-25 another  
9 minute area that corresponds to the shape of the abrasion pattern  
10 on the surface of this tooth, right in this area right there. So  
11 just as we would if we had two different rakes, one rake had ten  
12 fingers on it, and the other rake had fifteen fingers, and we come  
13 up and we see where someone has scratched in the dirt and we want  
14 to know was it the ten rake or the fifteen fingered rake. Now  
15 since all of us have the same teeth, that's kind of an easy, you  
16 know, ten or fifteen, that's pretty easy, but let's say we have--we  
17 have two rakes and both of them have fifteen fingers on them. Rake  
18 Number One is fairly uniform, Rake Number Two the third finger is  
19 broken, and then the tenth finger is bent. When we look in the  
20 dirt and we count one, two, three, we find that that one, the third  
21 gap or third line is missing, and then when we look at the tenth  
22 striation, we see that it's bent and out of place. Then we can  
23 say, "Hey, we're looking at this rake, not that rake." And that's  
24 all we're trying to look at in these photographs. Uh, that's about  
25 all I wanted to point out about these.

26 Q. I'm handing you now 33-10, 33-9 and 33-6, and will ask  
27 you, Doctor, to display those for the jury and also point out those  
28 areas of correlation which you have already begun your explanation  
29 of.

1           A. These are photographs of the right foot. I'm sorry, I'll  
2 have to back up. It is a bite mark that is located right here in  
3 this area, just over the instep of the foot, and we have three of  
4 these. These photographs are showing the teeth of Kennedy Brewer  
5 of the study models. Now once again we want to look for these not  
6 only overall fit but any small nicks and dings on his teeth that  
7 show themselves in the pattern. Uh, let's go back to our two front  
8 teeth. I'll do this for this side and then that side. Our little  
9 angle point, and then our scooped out area on the cutting edge, if  
10 we look at these models, and once again I'm going to place them on  
11 the skin and then slowly bring them back and photograph, what we're  
12 going to see is we find that not only is these two scraps here and  
13 here exactly the width of that tooth, but where we have our scooped  
14 out incisal area we have a little extra scratch right there in the  
15 dead center of the tooth, and then on our other tooth that has the  
16 pointed angle from the chip, we find that we get a scrape that  
17 comes right to that point. Notice also the tooth that we call  
18 Tooth Number 10, it's not evenly flat; if you look at it from the  
19 back side you'll see that it kind of comes up to a little point.  
20 When we get these two teeth in their right position, look at Tooth  
21 Number 10 and how that point falls right on top of that minute  
22 scratch right there, that little white dot. Now as we look at  
23 these teeth notice this scratch mark and that scratch mark, you'll  
24 see that it is exactly the same width as this tooth. Where we have  
25 the little scooped out area, we have an extra scratch right there  
26 in the middle of that tooth, that white dot. Now on this tooth  
27 where we have our angle from where our chip comes up to the edge,  
28 notice that scrape comes right to that point. Now on the lateral  
29 tooth, as I just said if you look at it from the back, you'll see

1 that it makes a slight peak, a little cutting point. In the  
2 photograph when we look at that tooth we will see that there's a  
3 little white scratch and it falls directly underneath the point of  
4 tooth number ten. So here I've got one, two, three, four, five  
5 unique features of his teeth that are represented in the pattern.  
6 Now I've drug it back a little bit more now in this photograph,  
7 notice these two white areas here and here as we pull along; notice  
8 the outline of that white pattern and that white pattern and how it  
9 compares to the outline of those two teeth. Think of this as  
10 taking a cookie cutter and stomping it down in the dough, then look  
11 and does that correspond to that. Now we've taken and drug the  
12 teeth back a little bit more, notice these two white scrape areas  
13 here and here. Notice the outline of the cutting edges of those  
14 two teeth and look at how they correspond to that area on her skin.  
15 Of course, what we've got here is a bite and then the foot is  
16 either being pulled away or whoever doing the biting is now  
17 turning their head so we get that rake through the sand effect plus  
18 as he goes back you'll see we also pick up the areas over here on  
19 that tooth and that tooth. So what we're looking at here is, like  
20 I say, five unique features of Mr. Brewer's teeth that represent  
21 themselves in this bite mark on her foot.

22 Q. Doctor, I am now going to hand you what has been marked  
23 State's in Evidence 33-5, 33-8, 33-11, 12, 13, 14, and 15.

24 A. Now we're on the same foot, but instead of down on the  
25 foot we're now up here on the ankle, this area right here, and  
26 we're going to go through the same thing again and try to see can  
27 we find the overall pattern and then can we find any of these  
28 unique features from his teeth in that pattern. This is Photograph  
29 33-15; it's one that I feel has a very important area or areas.

1 Let's go back to our tooth number eight where we have the little  
2 chip and the cutting edge of the tooth. Look very carefully in  
3 this photograph. We're talking about this tooth right here. This  
4 is the point of my chip from right there to right there. If you'll  
5 notice, I have an abrasion or a scrape that goes from the beginning  
6 of my fracture to the end of my fracture. It is not only the same  
7 size, it is the same length and the same shape; notice how we get  
8 that little dip area there, right here. On our front tooth with  
9 the chip in it, that is this tooth right here. Now notice this  
10 brown abrasion on that--on the skin; notice it starts where the  
11 chip starts and comes down to where the chip ends; it is the same  
12 shape, length, and overall morphology of this tooth. Even--even  
13 with that, let's go to the tooth next to it, tooth number seven, do  
14 you see the little point that the tooth comes to, the ever so  
15 slight point right there; notice the outline of this mark; right at  
16 that point we have that little bump right there; that's what we  
17 call a mamelon. On tooth number 7, that's the one I just showed  
18 y'all, it comes to an ever so slight point right there; that's what  
19 we call a mamelon, and as you look here at this photograph there's  
20 that point in the tooth; notice the shape of the abrasion on her  
21 foot and notice at exactly that position we have the little bump  
22 right there. Now as we continue to drag the model through the  
23 tissue, here I want to go to photograph 33-13, same thing again,  
24 not only do we have the class characteristics of his teeth in this  
25 wound, we have the individual characteristics of his teeth in this  
26 wound. Let's look first, now we've dragged it back about two to  
27 three millimeters, notice the outline of this tooth here, it's  
28 called number seven, and tooth number six which is the eyeteeth.  
29 Remember I told you the eyeteeth will characteristically give you

1 a little triangular mark. Look at where when we drag this back,  
2 look at where this eyetooth falls in relationship to that little  
3 white triangle right underneath it, plus our point here and notice  
4 from that point to this corner how it corresponds to that scrape  
5 area on the skin there. Here we see I've moved them back a few  
6 millimeters, notice on this tooth number seven from the high point  
7 to the corner how it matches this scrape in the skin from here to  
8 there. We have that exame--uh, same distance from that point to  
9 that point on the tooth, from that point to that point in the skin.  
10 Now I told you that the canines made little triangles shaped when  
11 they mark and this is the canine. Notice that when we have this  
12 positioned look at where his pointed eyetooth falls, right on top  
13 of that little white triangle in the scrape in her skin, and of  
14 course the other teeth line up. Tooth number five, the cutting  
15 edge of it, lines up right on our abrasion line at that point.  
16 Tooth number five, we're going on back into the mouth, when we have  
17 these three teeth lined up, look at where that tooth and the  
18 cutting edge of it lands, right there on that scrape. So in this  
19 photograph we have one, two, three, four, five unique characteris-  
20 tics of this teeth represented in this wound pattern. Uh, let's go  
21 to the next one which would be 33-14. Notice the outline of these  
22 teeth as they compare to the outline of the abraded area, the  
23 bruise pattern. Just to get an overall feel, did that--did these  
24 teeth where they drug through that tissue, and, you know, here's  
25 our point again, lining everything up. Here we are, we've pulled  
26 it on off again and look at the outline of this tooth and how it  
27 compares to the pattern that we see, and then of course, you know,  
28 the question is, did these teeth, were they dragging through the  
29 skin at this point in time. Uh, have I done 33-12?

1 Q. No, I do not believe so, Doctor.

2 BY MR. KESLER: Your Honor, I'm going to object to  
3 the witness asking the district attorney questions.

4 BY THE COURT: Overruled. You may continue.

5 A. Excuse me, my hands are asleep. In photograph 33-12,  
6 same thing that we've been doing in all of these photographs,  
7 looking at the overall configuration and then the minute configura-  
8 tions. Here we see the outline of the chip on tooth number eight;  
9 here we see the high point on tooth number seven, and notice tooth  
10 number five and six as they fall into place on these abrasions,  
11 same thing again overall, then minute. Here we see literally the  
12 outline of this abrasion follows exactly the outline of that tooth.  
13 Our high point on tooth number seven falls right into that dot, the  
14 extra scrape area, and then the outline of these two teeth are  
15 mimicked in the pattern again. So once again we have several other  
16 unique characteristics, uh, representing themselves. Uh, photo-  
17 graph 33-5 is a continuation and you can look at the outline of the  
18 pattern and compare it to the outline of the teeth and see how one  
19 is a--a mirror image of the other. Once again, compare the outline  
20 of the teeth to the outline of the pattern and you can see that one  
21 is just a mirror image of the other, a hit and a drag.

22 Q. Doctor, I'm now going to hand you 33-4, 2 and 3.

23 A. These are three photographs taken of the left cheek right  
24 here to the side of the mouth. Uh, once again we're going to look  
25 at the overall shape and then we want to look for individual  
26 markings from the teeth on the little girl's skin. Our tooth  
27 number eight with the chip in it, notice how wide this scrape is on  
28 her face; it's the same width as our chip here. Our incisal  
29 scraping on the other tooth lines up; notice how this bruise falls

1 in between those two teeth at that step, plus of course we've got  
2 our gap there in the middle. Here we have one, two, three, four,  
3 five unique features of his teeth on that area. Uh, this is an on-  
4 going, if you would, dynamic movement. If you'll look at our  
5 chipped tooth here in all three of these photographs--my hands are  
6 a problem--if--if you'll look at that chip and notice how it's kind  
7 of scooped out and notice what do we have as we move that tooth  
8 back, but an area that fills in the scooped out area completely  
9 right there at that point. The same thing we've been doing in all  
10 of these, what we want to look at is first off, tooth number  
11 eight--excuse me--yes, tooth number eight, the one with the chip,  
12 notice how that abrasion when we line it up in that gap, that  
13 abrasion comes right to the edge of our chip to the edge of the  
14 tooth from that point over, and then as we look at our other tooth,  
15 notice how it looks a little scooped out on the cutting edge  
16 especially in this photo right here, it's a little chip that I've  
17 been talking about on the cutting edge of this tooth; look at the  
18 abrasion or the scrape that we have on the little girl's face in  
19 this photo, uh, 33-4, and notice that that scrape and abrasion not  
20 only fills in that scoop area but it's the same shape. So once  
21 again we have the class characteristics of his teeth; we have the  
22 positioning of his teeth; we have the rotations of his teeth; we  
23 have every little nick and ding of his teeth represented in these  
24 photographs of the wounds on Christina Jackson.

25 Q. I am now handing you 33-21, 20, 19, 18, 17, 16 and 22.  
26 I think these show a little bit of different type of pattern than  
27 we have seen before. Is that correct, Doctor?

28 A. Yes, sir. Uh, this is what we refer to as paradigmatic  
29 variations, uh, that means atypical. Okay. This is not your

1 rubber stamp. Think if we took a rubber stamp and put it on here  
2 and drug it as opposed to going down nice and neat and coming back  
3 up. These are photographs of Christina Jackson's left hand,  
4 particularly her thumb. Uh, what we have is a series of photo-  
5 graphs that I believe depicts Christina's thumb in Kennedy Brewer's  
6 mouth, he bites and she of course pulls her thumb out of the man's  
7 mouth, and what we're looking at is the dragging patterns; let me  
8 see if I can sort them in an order here for you. I've now put them  
9 in the order of 33-22, dash 21, dash 20, dash 18, dash 19, dash 17,  
10 dash 16, and what we want to look at, what would we expect the  
11 pattern on this little girl's thumb to be if this person was biting  
12 into her and she pulls her thumb out of his mouth. Using the same  
13 principles that we have in the other photographs, we start with  
14 this bite, the first photograph, the thumb is almost all the way  
15 into the mouth; as the thumb is retracted, notice several areas  
16 that's going to be of importance; that's of course going to be the  
17 edges of these two front teeth on either side of the gap plus the  
18 edges, uh, of the teeth to where the chip start, that point area  
19 there, and watch as the tooth drags through or over the thumb. Of  
20 course, you know, if we look at my thumb, we'll know that the skin  
21 is going to fold and flex as it squeezed through there, and we  
22 follow along as it comes up, it--it's--it's not a smooth even  
23 motion, but it jerks and it looks like the tooth here once it's  
24 passed the knuckle sinks back in again, and then we're back to the  
25 beginning. The same thing on these that we did on the others,  
26 we've got a thumb that's put into teeth and then pulled through,  
27 and we want to see are these teeth consistent with that action as  
28 the tongue was being drug through; the areas we want to look at  
29 because this thing, you know, is going from side to side and wiggly

1 like that, the cutting edges, the spaces and our chip, and as we  
2 follow as the thumb comes out from underneath the teeth, notice  
3 this scrape right here how it falls right in on our point of our  
4 chip, once again. I'm sorry I didn't point this one out to you,  
5 but here notice this center scrape how it falls right in on where  
6 our angle is on that tooth and then we continue on as it clears the  
7 knuckle, this tooth falls back into place or once it's over the  
8 hump it sinks back in and cuts from that area to here and then  
9 carries on and then we're back to the beginning.

10 Q. Doctor, I'm going to hand you the last two photographs,  
11 those are 33-24 and 33-23.

12 A. Here we have two bite marks or--excuse me--two photo-  
13 graphs of a bite mark on the right wrist, just above the right  
14 wrist. Of course, the most prominent teeth in Mr. Brewer's mouth  
15 are the two front central incisors with the gap in between, and in  
16 these series--these two photographs we look at the relationship of  
17 those two teeth, once again, to these two marks on the little  
18 girl's wrist, and once again we see the outline of not only the  
19 tooth and the beginning of our space, but our scooped out area here  
20 from our chip. Once again, as we look at these marks underlying  
21 the two teeth, we see the outline of our tooth mimicked in the  
22 pattern plus our chip area follows that configuration from that  
23 point over to that point over, plus we have that other edge on that  
24 side so once again we have the impression of these teeth in this  
25 tissue.

26 Q. Thank you, Doctor. If you would resume the witness  
27 stand, Doctor.

28 (WITNESS RETURNS TO WITNESS STAND)

29 BY THE COURT: Ladies and gentlemen, at this time

1 I'm going to recess for the noon recess. The bailiffs  
2 will take you to lunch. I'm going to recess you until  
3 one-thirty. When you return to the courthouse at one-  
4 thirty we will resume the examination of this witness.  
5 During this noon recess, please do not discuss the case  
6 among yourselves or with anyone else. Do not allow  
7 anyone to speak to you concerning this case. Should  
8 anyone attempt to do so, please report that to the  
9 bailiffs or to myself upon your return. You are in  
10 recess until one-thirty. Please step back into the jury  
11 room. As soon as the transportation is ready, you'll be  
12 taken out.

13 (JURY OUT)

14 BY THE COURT: During this recess, Mr. Witness,  
15 please do not discuss your testimony with any other  
16 witness. You may stand down if you'd like.

17 (WITNESS STANDS DOWN FROM WITNESS STAND)

18 Court is in recess until one-thirty.

19 (RECESS)

20 \* \* \* \* \*

21 FOLLOWING THE NOON RECESS, ALL MEMBERS OF THE COURT, INCLUDING  
22 THE JUDGE, COURT REPORTER, ATTORNEYS, CLERK, BAILIFFS, AND THE  
23 DEFENDANT BEING PRESENT, THE FOLLOWING PROCEEDINGS WERE HAD:

24 BY THE COURT: Show the jury in, please.

25 (JURY IN)

26 BY THE COURT: You may continue your examination  
27 of the witness.

28 DIRECT EXAMINATION CONTINUES BY MR. ALLGOOD:

29 Q. Doctor West, just to recap some things that you've

1 previously testified to, when you place those teeth on the skin in  
2 that fashion, what are you trying to show? Are you trying to show  
3 the actual way the teeth are on the skin at the time the bite takes  
4 place?

5 A. Uh, no, sir. What I'm trying to do is to put the teeth  
6 in the best position so that they can be photographed at the same  
7 time with the wound pattern so you can compare the cutting edges of  
8 the teeth to the surface that's been disrupted. Uh, it's not  
9 trying to reposition as far as, you know, mimicking the--the angle  
10 at which the bite was given, no.

11 Q. And these--these marks that we find in human skin are no  
12 more than--than an artifact--fact of a split second in time, is  
13 that correct?

14 A. Yes, sir. These are just imprints from a dynamic action.  
15 It's, if you would, a freeze frame of what happened.

16 Q. Doctor, in many if not most of these marks, there is no  
17 opposing, if you will, uh, bite, no--no opposing mark; uh,  
18 there's--there's a mark, for example, I noticed you using mo--in  
19 most of these that we selected, uh, if not all these that we  
20 selected, uh, the upper mandible, but I--I never saw you resort to  
21 or have the occasion to use the--the lower mandible. Explain to  
22 the ladies and gentlemen of the jury, if you would, please, how  
23 that can happen, how you can have marks from only the upper portion  
24 of someone's teeth and not having a--an--an opposing, if you will,  
25 I think that's the word of art that's supposed to be used, an  
26 opposing mark from the lower teeth.

27 A. Eighteen years ago when I started into this, uh, area of  
28 bite mark analysis, we were shown several cases where only one of  
29 the two arches, it takes two jaws to bite, but only one of the jaws

1 whether it be the upper or whether it be the lower, were the only  
2 ones that left an imprint in the skin. I found this, at first  
3 look, uh, you know, I--I didn't understand if one set of teeth  
4 marked why didn't the other. Over the years in doing research and  
5 producing bite marks and studying bite marks, I have found that  
6 it's more common than I originally would have anticipated. The--  
7 the problem that we're looking at is how do the tooth close on to  
8 the skin. It is literally the interplay between the teeth and the  
9 skin that determines whether or not you're going to have a mark.  
10 Uh, you may have what we call a tooth mark, say, someone's pressing  
11 you back, pressing on you, you just get one arch, sometimes you get  
12 a good impression of the lower arch and the upper arch doesn't  
13 match or doesn't mark because the skin is pressed up, not against  
14 the cutting edge this way, but on the back surface as it's bunched  
15 up as the skin is pulled together. It all depends on which of the  
16 teeth grab and then which push. In the biting you're usually going  
17 to have one set of teeth that do the grabbing and one set that does  
18 the pushing. Of course, you may have what we call, uh, the board  
19 has officially designated a new term called half bites which is one  
20 in which comes under the, uh, variations of the paradigmatic, uh,  
21 bite mark as ones that you don't see both sets of teeth or you  
22 don't see all of the teeth, uh, a partial bite mark, if you would.  
23 Uh, it may be either from the interplay of the teeth to the skin;  
24 it may be a factor that one set of teeth, in Mr. Brewer's case, his  
25 upper teeth are a lot sharper than his lower teeth; they're much  
26 blunter; the other thing is you may have one jaw into some clothing  
27 material and another into the skin, uh, especially the--excuse me--  
28 the mark on the thumb, if you would take your thumb, put it in your  
29 mouth and bite down, and then drag, you would find that you had a

1 lot more pressure on the upper teeth on the back of the thumb where  
2 there's not much room to give as opposed to the back side of the  
3 thumb; in other words, the teeth could move over that portion much  
4 easier than it can over that area, and it's the angle and position  
5 of the teeth to the skin that accounts for whether or not you'll  
6 get a mark or not.

7 Q. Doctor, based on your examinations of the dentition of  
8 Kennedy Brewer and based on the photographs, the observations you  
9 made in your direct comparison, do you have an opinion to a  
10 reasonable medical certainty as to whether or not the teeth of  
11 Kennedy Brewer caused the bite marks which were found on the body  
12 of Christine Jackson?

13 A. Yes, I do.

14 Q. And what is that opinion, Doctor?

15 A. Within reasonable medical certainty, the teeth of  
16 Kenneth--uh, Mr. Kennedy Brewer inflicted the patterns described on  
17 the body of Christina Jackson.

18 Q. And I believe there are some--some markings which you  
19 feel more stronger about than others, is that correct; would that  
20 be an accurate way of phrasing that?

21 A. Yes, sir. Uh, we have nineteen total patterns in all  
22 that I feel were related to the teeth, five of those bite marks I  
23 give my highest level of match or comparison; uh, of those five I  
24 would rank them the highest which is reasonable medical certainty.  
25 Uh, of the remaining fourteen, uh, I have several that are what I  
26 refer to as highly consistent, consistent and probable. I did not  
27 find any marks that I considered to be bite marks that could not,  
28 in other words, I would say I think this is a bite mark, but it  
29 doesn't have any correlation to Mr. Brewer's teeth. I didn't find

1 any like that. I had no evidence of another attacker.

2 BY MR. ALLGOOD: I have no further questions of  
3 this witness at this time, your Honor.

4 BY THE COURT: Cross examination.

5 BY MR. KESLER: If the Court will indulge me just a  
6 minute.

7 (MR. KESLER CONFERS WITH MR. WALTERS)

8 CROSS EXAMINATION BY MR. KESLER:

9 Q. For fourteen of these wound patterns then, your opinion  
10 is something less than a reasonable degree of medical certainty or  
11 dental certainty?

12 A. Yes, sir.

13 BY MR. KESLER: Approach the bench.

14 BY THE COURT: You may.

15 (THE ATTORNEYS APPROACHED THE BENCH, ALONG WITH THE  
16 COURT REPORTER, AND THE FOLLOWING OCCURRED OUT OF THE  
17 HEARING OF THE JURY:)

18 BY MR. KESLER: Your Honor, the defendant moves the  
19 Court to exclude all the testimony concerning the  
20 fourteen wound patterns that he has less than a reason-  
21 able degree of dental certainty.

22 BY THE COURT: The--

23 BY MR. KESLER: Move for a mistrial.

24 BY THE COURT: The witness offered no opinion as  
25 to the maker of those marks. He merely testified that  
26 in his opinion they were made consistent with those made  
27 by teeth or bite marks. He only expressed an opinion as  
28 to the five and the motion is overruled.

29 BY MR. KESLER: Thank you, your Honor.

1 Q. Then for these fourteen you are simply unable to give an  
2 opinion within reasonable dental certainty?

3 A. Don't let me confuse you. Reasonable dental certainty is  
4 a term which is to be used by the diplomats to describe the highest  
5 level of confidence or certainty in a analysis. Uh, the board  
6 recognizes four, uh, opinions to the answer, did these teeth make  
7 this mark in skin. The one that would be yes, he did, would be  
8 described as reasonable medical certainty. The one that if you  
9 said no, he didn't do it, then you would have exclusion, no. If  
10 you couldn't tell, then you would give the answer, "I can't tell,"  
11 and then the fourth answer is consistent, and there are varying  
12 degrees of consistency and of the fourteen, uh, remaining patterns,  
13 I would classify them as consistent.

14 Q. You--you're making reference to the board in some kind--  
15 did you say standard or guideline?

16 A. I think they're guidelines in the--we have just adopted  
17 some standards in February.

18 Q. You say, "we have." You're--

19 A. The board.

20 Q. --you're referring to the American Board of Forensic  
21 Odontology?

22 A. Yes, sir, I am.

23 Q. All right. And that's the same body that you are  
24 suspended from until May.

25 A. Yes, sir.

26 Q. And it's your--

27 A. I was--I was at the meeting and did participate in the  
28 adoption of the standards.

29 Q. Okay. And it's your testimony that they were adopted at

1 that meeting?

2 A. To the best of my knowledge they were adopted on the  
3 thirteenth of February, yes, sir.

4 Q. And you're sure of that?

5 A. I believe so; I'm not sure.

6 Q. You could be mistaken about that?

7 A. Yes, sir.

8 Q. Who's the current president of the A.B.F.O.?

9 A. Uh, John Kinney.

10 Q. Okay. And if Mr. Kinney says they have not been adopted  
11 as of yet, would you defer to what he says?

12 A. He or the secretary-treasurer.

13 Q. Doctor Kinney I should have said.

14 A. Yes, sir.

15 Q. There were of course guidelines in effect before  
16 February, nineteen ninety-five?

17 A. Yes, sir.

18 Q. There were guidelines in effect in May of nineteen  
19 ninety-two?

20 A. Yes, sir.

21 Q. Can you explain to the jury the difference perhaps  
22 between the term guidelines as opposed to standards, if there is,  
23 in your opinion?

24 A. I have that actual--the board's definition of those two  
25 terms if you can give me just one minute I'll get those.

26 Q. Sure.

27 A. (Witness looks through file) Uh, here we go. Uh, this  
28 is the material given to me by the American Board of Forensic  
29 Odontology. They state that a guideline is a outline or procedure

1 to help direct, suggest, but not mandatory procedures, starting  
2 point, an aid, advice, not required, recommended, not enforceable,  
3 little imperative. Now standards they give this: a model to be  
4 followed, establishes protocol, a benchmark, strictly defined and  
5 followed by all basis on its correctness, a method of practice that  
6 has met the scrutiny of scientific study and verification,  
7 compulsory minimal level of practice, more restrictive than  
8 guidelines, more enforceable, out of compliance, and subject to  
9 sanction if not followed. Uh, comment, a failure to follow a  
10 standard may be defensible if it can be justified by proof that the  
11 standard is not worthy or that the departure is equivalent, and  
12 then the last comment, a guideline may state the optimum or ideal  
13 situation. It would be outlined the most desirable approach, but  
14 if not followed may be excusable. A standard might be less  
15 comprehensive, but would state the minimum requirements of  
16 acceptability. A policy would not necessarily have anything to do  
17 with correctness, but would carry the maximum imperative to comply  
18 and is not appropriate for scientific investigation.

19 Q. Okay. Perhaps you and I can agree that put a bit more  
20 simply, standards would equal to the minimal level of study? Is  
21 study a good word?

22 A. Yes.

23 Q. And guidelines would reflect going further and doing more  
24 than the minimal requirements?

25 A. I'm sorry, but I would think it'd be the other way; the--  
26 the guideline is a suggestion and a standard is a--

27 Q. Mandate?

28 A. --law. A mandate, yes.

29 Q. Okay. So standard means mandate, guideline means going

1 further, options?

2 A. One's a suggestion and the other one says you should.

3 Q. Okay.

4 A. I--

5 Q. Now back to this--the terminology that you use in giving  
6 your opinions, has your opinion regarding Kennedy Brewer always  
7 been to a reasonable degree of certainty?

8 A. Has my opinion been?

9 Q. Yes, sir.

10 A. My state of mind?

11 Q. The way you've expressed it.

12 A. No. The way I expressed it, to me, the best way for me  
13 to tell somebody from Mississippi that I believe that this term is  
14 that, you know, my opinion on this matter instead of saying  
15 reasonable medical certainty, in the past I'd have said indeed and  
16 without doubt.

17 Q. Okay. And you said that in, as far as I know, your first  
18 written report in this case, May fourteenth, nineteen ninety-two?

19 A. Yes, sir.

20 Q. Do you have a copy of that before you?

21 A. Yes, sir. (Witness looks through file) I have it.

22 Q. All right. In that opinion, I believe that was addressed  
23 to Diane Brooks who was the deputy medical examiner in Noxubee  
24 County.

25 A. Yes, sir.

26 Q. Okay. And in that report you stated that you found  
27 nineteen human bite marks that were found and compared to the  
28 dental study models. Is that in there?

29 A. Yes, sir.

1 Q. And that the bite marks found on the body of Christina  
2 Jackson were indeed and without doubt inflicted by Kennedy Brewer.

3 A. Yes, sir.

4 Q. Did you in that report distinguish between the five that  
5 you have testified here today and the remaining fourteen?

6 A. No, sir.

7 Q. Why not?

8 A. Uh, I wasn't asked. I mean I--I wasn't trying to hide  
9 anything. I'm just--did I think Kennedy Brewer bit this girl at  
10 the time she died, yes, I do. You know, can you prove it to all  
11 nineteen, no, but I can--got it on five that I believe so.

12 Q. Who directed the questions to you that you were respond-  
13 ing to in this written report?

14 A. Uh, the coroner insomuch that, you know, and the district  
15 attorney, uh, you know, here's four people, look at these four  
16 people, look at this little girl and tell us which one of these  
17 four people, if any, do you think bit this girl.

18 Q. Okay. The district attorney did that?

19 A. Well I mean they--they brought--I mean, I'm talking about  
20 the law enforcement of Noxubee County. Uh, the sheriff brought  
21 them down; I don't know if I had a court order to examine them, uh,  
22 but, you know, if I find some evidence I'm going to give it to the  
23 coroner or the sheriff and the D.A.

24 Q. Well you said you weren't asked to make any distinction.  
25 I just want to know who was doing the asking.

26 A. They called me and asked me to render an opinion in a  
27 bite mark analysis. Okay. Did any of our suspects bite this  
28 little girl, and my opinion was, yes, I believe I have a suspect  
29 here who bit this little girl.

1 Q. Well whoever this was, did they tell you that they had  
2 two suspects in jail and two others that had not been arrested?

3 A. All I examined was four people.

4 Q. Okay. But back to the report, indeed and without doubt,  
5 I believe you have used to express one hundred percent certainty.

6 A. Or as certain as I can be being a human.

7 Q. Okay. I--I think I asked you yesterday you had given  
8 that presentation in Nashville and you told them that what you  
9 regarded the way to give opinions were it is, it isn't, or I can't  
10 tell.

11 A. That's what I've been advocating, yes, sir.

12 Q. And during that time period all of your opinions were  
13 expressed indeed and without a doubt?

14 A. No, sir.

15 Q. Not all?

16 A. No, sir.

17 Q. But--

18 A. Some of my opinions were no, some of my opinions were I  
19 can't tell, some of my opinions were consistent, and some of my  
20 opinions were indeed and without doubt. I could not just write a  
21 report and say, "Yes, he bit her." We had no guidelines or  
22 standards to follow up until February of this year so I was kind of  
23 on my own and I'll--I'll admit to you and I'll admit to everyone  
24 else, I did very well in school in chemistry and math and biology,  
25 and I was a C student in English.

26 Q. Did something change between May fourteenth, nineteen  
27 ninety-two, and September twenty-first, nineteen ninety-three?

28 A. Yes, sir.

29 Q. Do you have your report that is dated September the

1 twenty--or letter rather that's dated September the twenty-first,  
2 nineteen ninety-three, before you?

3 A. Yes, sir.

4 Q. In that letter or report you stated, "The dental study  
5 models of Kennedy Brewer are found to be within reasonable dental  
6 certainty the teeth that inflicted the bites."

7 A. Yes, sir.

8 Q. Now if I understand you correctly that's a--an expression  
9 of less certainty than indeed and without doubt?

10 A. Under the new guidelines it's not. From the time of my  
11 first letter to the time of my second letter, I had three organiza-  
12 tions tell me that I was evil and carnate because I used the terms  
13 indeed and without doubt, and they were going to investigate me for  
14 using these words and maybe I should use these others until it  
15 became official, and I'm not trying to play a name game with any of  
16 those individuals or groups; they give me a guideline, I will  
17 follow it; I'm only trying to express to the Court what my opinion  
18 is on this matter. In simple terms, I believe this man bit this  
19 girl at least five times somewhere at the time of her death, and  
20 whatever words you want to phrase it in is fine with me.

21 Q. Did you do further study on this case between May,  
22 ninety-two and September, ninety-three?

23 A. I did receive a request from the sheriff of Noxubee  
24 County and I can't remember which date; there was a very similar  
25 murder in his jurisdiction of a young female, uh, who had been I  
26 believe murdered and raped and bitten and the sheriff asked me  
27 would I take the models of the man who was--

28 BY MR. KESLER: Your Honor, may we approach the  
29 bench?

1 BY THE COURT: You may.

2 (THE ATTORNEYS APPROACHED THE BENCH, ALONG WITH THE  
3 COURT REPORTER, AND THE FOLLOWING OCCURRED OUTSIDE THE  
4 HEARING OF THE JURY:)

5 BY MR. KESLER: I am making an assumption that he is  
6 going to be talking about Bud Permenter, at one point  
7 called and wanted him to look at these models with  
8 respect to the Lavon Brooks case.

9 BY THE COURT: Was that a separate case?

10 BY MR. KESLER: Yes, the Lavon--who had already been  
11 convicted and was in the penitentiary. I think that's  
12 what he's fixing to say, and I don't think that--

13 BY THE COURT: That would be responsive to your  
14 question. If you--

15 BY MR. KESLER: I don't--I don't think it is, but  
16 regardless I'm entering an objection.

17 BY THE COURT: You--you--

18 BY MR. ALLGOOD: If your--

19 BY THE COURT: --do not want--

20 BY MR. ALLGOOD: --Honor please--

21 BY THE COURT: You do not want that question  
22 answer--you want to rephrase that question?

23 BY MR. KESLER: I want--yeah.

24 BY MR. ALLGOOD: He asked--

25 BY THE COURT: I'll allow you to withdraw that  
26 question and rephrase it.

27 Q. Doctor West, what I'm--what I'm trying to ask you is I  
28 guess simply this: the difference in terminology between your May,  
29 ninety-two report and your September, ninety-three, report, you're

1 telling us that you changed it merely because these three organiza-  
2 tions raised the issue?

3 A. Simply on a matter of semantics, yes, sir.

4 Q. Semantics?

5 A. Yes, sir.

6 Q. And that's really all this is to you?

7 A. At that time, yes. Since that time I've been able to--  
8 the board had a distinguished law professor, Enwrinkle Finger--  
9 that's his name, Enwrinkle Finger. And, uh, he pre--he lectured to  
10 us for eight hours; he's written several books on evidence and  
11 procedures, and I, as I say, I'm not an attorney, I'm not a poet or  
12 an English major, and prior to that lecture I really saw no problem  
13 between "I'm a hundred percent sure; reasonable dental certainty;  
14 yes, I have no doubt; indeed and without doubt." Since his lecture  
15 he pointed out to us, the board and myself, that indeed and without  
16 doubt may carry the connotation to the jury that they feel that I  
17 have left no room for error. Please understand, I'm only giving  
18 you my opinion. I'm only a man. I've been doing this eighteen  
19 years; I've made mistakes; I'll probably make some more. I do not  
20 feel that I made any mistakes in this analysis. I have no doubt  
21 that my opinion in this case is not correct or is in error and  
22 whatever the governing bodies deem to be the proper term to get  
23 that information to the jury, I have always followed the guide-  
24 lines, whenever they're in existence I follow them, and whatever  
25 you want to call it, as long as it gets the idea that I believe he  
26 bit her, I don't have any doubt, and I think I have plenty of  
27 evidence to back that up. If not, please be free to look at the  
28 photographs yourself. I'm just a man.

29 Q. And there is--there are other possibilities?

1 A. I don't believe there's any reasonable possibilities.

2 Q. Okay. Let's talk about your techniques a little bit.

3 This direct comparison, of course, it is an accepted technique.

4 A. Yes, sir.

5 Q. It's not the only approach or technique, is it?

6 A. Oh, no, sir.

7 Q. It's simply one that you prefer?

8 A. In certain cases. You have to judge each case by its own  
9 merit. Sometimes I'm only given photographs; uh, I may not have  
10 access to the body, and in those cases you have to do a--a model to  
11 photograph comparison, but as I stated earlier, any time you  
12 duplicate material, you incorporate error. When I take a photo-  
13 graph of that little girl's leg, it looks like the leg, but it is  
14 not her leg; it is a piece of paper with light and dark spots on  
15 it. It doesn't fold; it's not contoured; it's not a three  
16 dimensional object. Uh, I like to think of it as the best  
17 evidence, and if I'm going to render an opinion in a matter of this  
18 severity, I want to look at the best evidence. That's why on  
19 several occasions I've asked for exhumations so that I could look  
20 at the body.

21 Q. Do you know if there's an established error rate  
22 associated with direct comparison?

23 A. I know of no error rates established for any area of  
24 forensic odontology.

25 Q. Do you have an established error rate for Doctor Michael  
26 West?

27 A. Yes, sir. Uh, my first marriage ended in divorce; my  
28 second marriage is current so I made one mistake--(witness laughs)  
29 for sure.

1           Q.    I see.

2           A.    Uh, I--I--I don't know. Uh, uh, I have used the wrong  
3 terms when compared to the language of the whole United States. I  
4 felt it was appropriate for Mississippi, the people I was talking  
5 to. Uh, I have never seen in any meeting a hundred percent  
6 agreement on any issue that was brought before the society, the  
7 academy, or the board.

8           Q.    Have you ever testified and responded to a question about  
9 your personal error rate?

10          A.    Yes, sir, I did.

11          Q.    Did you tell--I believe this was the--in McComb,  
12 Mississippi, was it not, Johnny Ray case? Do you--

13          A.    I--

14          Q.    --remember that case?

15          A.    I don't know.

16          Q.    Did you--

17          A.    I was thinking Louisiana.

18          Q.    Did--did you respond to that question that your error  
19 rate was slightly less than Jesus Christ?

20          A.    Yes, in the context that I'm not a god. I'm just a  
21 human. I'm--I'm just as capable of making an error as you are or  
22 the--anybody. I'm just human. I'm--I'm nothing special.

23          Q.    Have you, uh--I believe you've expressed an opinion, uh,  
24 resolving the controversy surround the assassination of President  
25 Kennedy, haven't you?

26          A.    Yes, sir.

27          Q.    And you believe that you solved that?

28          A.    No. I think that we constructed the timing events of the  
29 number of shots fired at the motorcade and--and where they struck.

1    That's, you know.

2           Q.    And that of course is outside the field of forensic  
3         odontology?

4           A.    Yes, sir. But I'm also a death investigator for the last  
5         eighteen years, and I investigate child abuse; I investigate rape;  
6         I investigate assault. Uh, I do more than just dentistry.

7           Q.    When you first look at a body, are you looking for the  
8         term I've been expressed to was wound patterns?

9           A.    Yes, sir.

10          Q.    Okay. I think you--you use a slightly different term,  
11         but--but areas of trauma on the body.

12          A.    A wound pattern is synonymous to a patterned injury which  
13         is simply a pattern or mark on a body that if you look at it, it  
14         gives you an idea of its mechanism or the object or the event that  
15         took place. If you saw someone without a shirt and there was a big  
16         red hand print on his back, it would make you think that someone  
17         took their hand and slapped that individual on their back. That is  
18         a patterned injury. If you saw someone with a tire track across  
19         their chest, you looked at them you'd say, "Gee, it looks like  
20         somebody run over him with a car." If you see a prototypical or an  
21         aprototypical pattern on someone's arm or leg, you may say, "Gee,  
22         I think someone bit this person." That's all it is, is looking at  
23         it and it gives you an idea of what happened.

24          Q.    That's the first step?

25          A.    It--well that's how you start an analysis is of course to  
26         look at it; I've always considered that one of your first premises  
27         is the orientation and dynamics of what went on.

28          Q.    Let me see if I can ask it simpler. Is one of the first  
29         things you want to do is attempt to visually identify a wound

1 pattern that is perhaps a bite mark?

2 A. Yes.

3 Q. Why is--

4 A. You want to--

5 Q. --that important?

6 A. You want to look to see, number one, is there anything  
7 that's obvious, is there anything that's glaring out at you that  
8 you can look at and say, "Yes, I believe this to be a bite mark."  
9 Now the other side of the coin is, I'm given a pattern and they  
10 say, "Does this pattern match this object?" Usually when I'm first  
11 presented the pattern that means I'm at the morgue, I'm looking at  
12 the body and I have no idea of any suspects that the police may  
13 develop. So I look at areas on a body and I may or may not  
14 recognize their importance. It's like looking at half of a jigsaw  
15 puzzle, I've got one piece and they say, "Well does it match this  
16 other piece?" I said, "Well let me see the other piece and I'll  
17 tell you if I think it matches or not." Sometimes I get the other  
18 piece and it's like this and I go, "No, it doesn't match." And  
19 then sometimes I get it and I go, "Oh, look, it--it looks like it  
20 matches." So it's--it's a--an on-going, you know, dynamic  
21 analysis.

22 Q. The five areas that you've testified about on the body of  
23 Christine Jackson, were you able to identify those wound patterns  
24 as bite marks without the aid of the dental models?

25 A. The two on her feet I did. I felt from looking at them,  
26 I said, "I believe these on the ankle are bite marks." I didn't  
27 realize the thumb was a bite mark, the face was a bite mark, the  
28 thigh was a bite mark, or the other fourteen, uh, could possibly be  
29 bite marks, but there were the two on the ankle and the foot that

1 I thought from looking at them, I said, "Yeah, that looks like a  
2 bite mark to me."

3 Q. So with--with those three that you just mentioned, you  
4 didn't come to the conclusion of bite mark until you applied the  
5 dental model?

6 A. This is an area that we're still debating amongst the  
7 diplomats of the board. I'm of the opinion that if you have a  
8 patterned injury, you should call it a wound pattern or a patterned  
9 injury and not refer to it as a bite mark or tooth mark until you  
10 have some level of certainty that it was produced by teeth. You  
11 could, of course, get around that debate by saying, "I think it's  
12 possibly a bite mark." But in my way of thinking, until you have  
13 some certainty as to what its origin is which means have you made  
14 a positive match with someone else's set of teeth, only then with  
15 any certainty can you call it a bite mark.

16 Q. Did Doctor Hayne identify any of these pattern wounds or  
17 wound patterns to you as bite marks?

18 A. I know that we looked at the body one evening; we saw a  
19 couple of areas that we thought may or may not; I like to discuss  
20 these things with Doctor Hayne; even though he's not a dentist,  
21 even though he's not a board certified odontologist, I've always  
22 respected his opinion because in the past, I've worked with him for  
23 nine years, he has recognized bite marks that I overlooked, uh, but  
24 in this particular instance, I couldn't tell you; you know, he  
25 said, you know, "I want to look at this tomorrow or not." We just  
26 agreed that it's worth looking at; we--we might be able to find  
27 something of value here.

28 Q. But he called you into this case according to your May  
29 fourteenth, nineteen ninety-two, report?

1       A. Yes, sir.

2       Q. My question is: when you joined him there in the presence  
3       of the body, did he point out to you and say, "Doctor West, these  
4       are pattern wounds, bite marks. I want you to evaluate them for  
5       me."

6       A. I've never recalled Steve ever saying anything like that.  
7       Steve usually says, "Mike, I want you to look at this, tell me what  
8       you think."

9       Q. In fact--

10      A. And like I say, he's had a--he's been very accurate in  
11      the past. Uh, I can only think of out of eight, nine years only a  
12      handful of cases that he's asked me to come look at and when it was  
13      over I didn't find a bite mark or wound pattern, depending on what  
14      we were doing.

15      Q. Eight or nine times you say?

16      A. Just a handful of them; yes, sir.

17      Q. Out of how many occasions would you say?

18      A. Oh, gosh!

19      Q. Hundreds?

20      A. Hundreds might be too many, but maybe over a hundred,  
21      something like that.

22      Q. For the purposes of our--is that--would a hundred be a  
23      fair number?

24      A. Yes, sir. I--I know that there's one statistic me and  
25      Steve has talked about. Over the last eight to nine years, we have  
26      cases that me and Steve refer to as rape overkill. These are cases  
27      where the victim of the crime, the person being raped, has been  
28      savagely beaten or mutilated, an overkill situation. In the last  
29      eight to nine years, we have not had a case of rape overkill that

1 did not involve a bite mark. Uh, I can't go into all the psychology,  
2 but when you have this very violent person to person contact,  
3 these are the cases in which you usually find bite marks.

4 Q. Okay. So if a hundred is a fair number, then about eight  
5 percent of the time you have failed to find bite marks?

6 A. When Doctor Hayne has done the preliminary scanning, and  
7 now this include bite marks and wound patterns.

8 Q. Okay. When you, uh--you did the majority of your work I  
9 think on the second visit to the morgue on the ninth.

10 A. Yes, sir.

11 Q. Do you recall talking with Doctor Hayne about any need to  
12 biopsy any of the flesh of this--of the body of this girl?

13 A. Yes. Uh, you've got to--you've got to understand how me  
14 and Steve work. Uh, we'll go in and look at a body together  
15 sometimes. Sometimes he'll prefer me to go look at it and then  
16 come to him, and, uh, in this case we had both seen the body  
17 previously, and, uh, on that evening we had gotten together again.  
18 I went ahead and did my work, made my notes, and then I got back to  
19 Steve, he had moved to an adjacent table doing some other work, and  
20 I told him, I said, "Look I want you to do some biopsies on three  
21 of these bites," and he asked me, you know, what--what kind of  
22 answer did I want to know. I said, "Well, you know, can you tell  
23 me what it is." He said, "Look they're perimortem in nature;  
24 you've got advanced tissue slippage from the body exposed to  
25 water." It's--would be worthless for him to biopsy those to give  
26 me the answers I wanted so--

27 Q. Who--who said that?

28 A. Doctor Hayne.

29 Q. Told you it would be worthless to do the biopsies?

1           A. That was three years ago and all I can tell you is, you  
2 know, I had requested if he thought it was worthwhile to do them,  
3 and for whatever reason Steve may or may not have had, he elected  
4 not to. You'd have to ask him.

5           BY MR. KESLER: May I approach the court reporter  
6 and get an exhibit, your Honor?

7           BY THE COURT: You may.

8           BY MR. KESLER: May I approach the witness, your  
9 Honor?

10          BY THE COURT: You may proceed.

11          Q. Doctor West, did you, uh, prepare a body diagram in--in  
12 conjunction with, uh, your examination of, uh, Christine Jackson?

13          A. Yes, sir.

14          Q. Let me hand you what was marked as Exhibit 13 for  
15 Identification, and ask you, is that a copy of it?

16          A. Yes, sir.

17          Q. Did you prepare that?

18          A. Yes, sir.

19          Q. Are those your initials down there?

20          A. Yes, sir.

21          Q. With a M.H.--

22          A. W.

23          Q. --W.

24           BY MR. KESLER: Your Honor, we would ask that this  
25 be made an exhibit to his testimony at this time.

26           BY MR. ALLGOOD: I have no objection, your Honor.

27           BY THE COURT: Let it be received and marked. Pass  
28 it back to the court reporter. She does have to change  
29 the number.

1 (COURT REPORTER MARKS PHOTOCOPY OF BODY DIAGRAM AS  
2 DEFENDANT'S EXHIBIT NUMBER 13 IN EVIDENCE)

3 BY THE COURT REPORTER: Okay.

4 BY THE COURT: You may proceed.

5 Q. Did you or did you have Doctor Hayne make any cuts into  
6 the tissue underlying these wound patterns?

7 A. I don't--I--I don't recall. Uh, all I--the only  
8 recollection I have of that is that I asked Steve to do something  
9 that he later told me that he couldn't do, not that I asked him to  
10 do something and he didn't. That's--that's all I really remember.

11 Q. Is that, uh, an acceptable technique to--to either do or  
12 ask the pathologist to cut into that underlying tissue?

13       A.    That's a difficult question because I found you receive  
14 criticism if you do and you receive criticism if you don't. If you  
15 cut the tissue out of the body, then you're criticized for removing  
16 its anatomical position and losing the angiotrophic properties of  
17 the skin. If you do a histological section, then you're accused of  
18 destroying the evidence. If you don't do a histological section,  
19 then you're accused of not doing a full and complete diagnosis. I  
20 don't think I can answer that question.

21 Q. Is it part of the guidelines of the A.B.F.O.?

22       A. If possible, if you can preserve the tissue, you want to  
23 do that, and that was one of the problems we had in Christina's  
24 case because she was going--starting into a fairly advanced  
25 decomposition. If you take that tissue and try to preserve it from  
26 that stage on, you'll find that it's--the process is already on-  
27 going and you wind up with a jar full of mush.

28 Q. You're saying then that the body of Christine Jackson was  
29 in an advanced state of decomposition?

1       A. It was starting. It's all a matter of degree; she did  
2 have of course the decompositional odor; she did have skin  
3 slippage; there was bacterial action. Uh, as compared to a  
4 pristine fresh body, yes, but as far as was there too much  
5 decomposition present to examine the wound patterns, no. I have  
6 had cases where there was just too much wound pattern--I mean too  
7 much decomposition of the tissue that you just had to forget about  
8 even trying to do anything with it. It was beyond analysis.

9       Q. But in your opinion this was not such a case?

10      A. From photographic and direct model comparison, no. I  
11 thought it was still adequate.

12      Q. Now you mentioned I believe you said histologic study?

13      A. Histological.

14      Q. Histological; pardon me. Is that--does that involve the  
15 microscopic study of the tissue?

16      A. Yes, sir.

17      Q. That was not done in this case to your knowledge?

18      A. To my knowledge, I don't know.

19      Q. Without the direct comparison technique at least on three  
20 of these wound patterns, you would not able to identify them as  
21 bite marks?

22      A. I would not--in--in other words, if you just gave me a  
23 photograph, especially, say, the one over her cheek and said, "Do  
24 you believe that this is a bite mark, yes or no?" I would look at  
25 it and I would probably tell you no, I don't think it is, but then  
26 if you took his teeth and set it on there and ask me, "Now that you  
27 see the pattern and now that you see the teeth, do you think that's  
28 a bite mark?" I'd say, "Yes." But no other information than the  
29 photograph of her cheek, I'd have to say, "No, I--I'm of the

1       opinion that it's probably not," or "I can't tell."

2           Q.   Who is Homer R. Campbell, Jr.?

3           A.   He's a forensic odontologist from Albuquerque, New  
4   Mexico.

5           Q.   And do you know who Chris Sperry is?

6           A.   Yes.

7           Q.   Are you familiar with the case report that they wrote?

8   I believe it was published in October, nineteen eighty-nine, is  
9   what this says.

10          A.   Yes, sir.

11          Q.   And that is an--an article about, uh, these processes  
12   that we've been discussing here today, is it not?

13          A.   My recollection of that article is that a wound pattern  
14   was found I believe on the breast of a victim and one group of  
15   doctors thought that this pattern was a bite mark and the other  
16   group of doctors thought that it was actually a section or a  
17   vulched area of tissue that had been cut out with a knife. Uh, I  
18   never saw the original photographs, I was not involved in that  
19   case, but if I remember correctly I think Doctor Campbell, uh, who  
20   I've consulted with on many times, he was of the opinion that this  
21   was a piece of tissue that had been cut out with a knife; it was  
22   not a bite mark.

23          Q.   Did you say you've worked with Doctor Campbell?

24          A.   Consulted with him. I--I talked with him last week. I  
25   have a case that I wished his opinion on.

26          Q.   In that article was it set forth that there should be two  
27   initial questions in the mind of the odontologist when he begins an  
28   examination? Do you remember that?

29          A.   No, sir.

1       Q.   Would you disagree with that the first question should  
2   be, is it truly a bite injury?

3       A.   Well that'd be like walking up--now I'm--I'm trying to--  
4   you got to look at it from my perspective. A lot of my colleagues,  
5   Doctor Campbell, uh, and others, they are only just dentists. Uh--

6       Q.   What do you mean by that?

7       A.   In other words, they limit a lot of their work strictly  
8   to odontological. In other words, if I walked up on somebody and  
9   there was a tire track across his chest and I said, "That's not a  
10   bite mark," that'd be kind of ludicrous. Now Homer does the  
11   lectures for the Armed Forces Institute of Pathology on Wound  
12   Pattern Analysis which means, you know, whether it be a ring, a  
13   watch, a shoe, a bumper from a car, a hammer, teeth, uh, now I  
14   would have guessed the odontologist if he was looking at an area  
15   and, uh, the question to him was, "Is it a bite mark or not," I  
16   guess he would have to do that. I have to look at it from a much  
17   broader perspective as to what is this; is this a piece of useful  
18   information; is it a bite mark; is it an artifact; is it a  
19   decompositional alteration; uh, in other words, if you take a set  
20   of dental models and compare it to this pattern and there's no  
21   correlation whatsoever, you could probably say, "Well I don't  
22   believe it's a bite mark, at least not a bite mark inflicted by  
23   this man." I--I don't, you know.

24       Q.   But you said Doctor Campbell is only a dentist. You said  
25   that, didn't you?

26       A.   From the standpoint of that article, yes, sir. I don't  
27   know is he a coroner or medical examiner/investigator.

28       Q.   He's a past president of the American Academy of Forensic  
29   Sciences, isn't he?

1           A.     The president of the American Academy of Forensic Science  
2     sets up meetings, xeroxes papers, has receptions and gives out  
3     awards, an odontologist analyzes bite marks, a medical examiner  
4     investigates death. Being president of the academy is an adminis-  
5     trative; he's a sa--you know, he's a secretary. I could hire a  
6     girl out of high school that can type to do that.

7           Q.     Is he one of your colleagues that's vastly ignorant?

8           A.     No, sir, not Doctor Campbell.

9           Q.     Then maybe you do regard him as a little more than just  
10    a dentist?"

11          A.     From the standpoint of is he doing wound patterns or  
12    medical examiner or death investigation.

13          Q.     Is he a board certified forensic odontologist?

14          A.     Yes, sir, he is.

15          Q.     And you're not?

16          A.     Not until May the eighteenth.

17          Q.     Do you agree or disagree that the first area of inquiry  
18    should be is this truly a bite injury?

19          A.     I disagree.

20          Q.     And as you said, there is a great deal of disagreement  
21    among the group?

22          A.     Yes, sir.

23          Q.     Have you in fact regard forensic odontology as much an  
24    art as it is a science?

25          A.     Just as dentistry, yes, sir.

26          Q.     So is it a science or is it art?

27          A.     It's an art and a science, yes, sir.

28          Q.     I see. Do you consider that the opinions that you give  
29    are objective impartial scientific opinions?

1       A. I try my best to make sure that I'm only influenced by  
2 what I see and the evidence I collect; yes, sir.

3       Q. What does it mean to be ob--objective; what does that  
4 term mean, for the record?

5       A. If you gave the same information to two people, they  
6 should come to the same opinion; you don't put in your personal  
7 biases or your subjectivity, and I've always found that ludicrous.  
8 Anything you've ever asked, anybody's ever asked me, has got to  
9 have some level of subjective response to it.

10      Q. And you have so testified in the past, have you not?

11      A. I believe so.

12      Q. You have testified that these opinions are subjective in  
13 nature?

14      A. That's why at the bottom of my report, I put my name so  
15 they'll know this is the opinion of Mike West. That's all it is.

16      Q. Now you didn't take or you didn't have taken any  
17 impressions of the wound patterns?

18      A. No. Number one, they weren't three dimensional; number  
19 two, I felt that trying to take impressions of this tissue would  
20 have destroyed it.

21      Q. Is it when it's possible?

22      A. Yes, sir.

23      Q. It is a preferred technique to utilize?

24      A. If you have a three dimensional pattern that you can take  
25 an impression of, yes, sir.

26      Q. Were there any sample bites made in this case by you or  
27 anyone to your knowledge?

28      A. Sample bites, if you mean pressing them into wax, yes.  
29 If you mean taking the molds and inflicting a similar intensity

1 bite mark on somebody, no. If you mean taking the models like I  
2 did in front of the jury and just press them into my skin to get an  
3 indentation, yes.

4 Q. But you did--you didn't press any--what did you say, wax?  
5 You didn't do that?

6 A. Alley wax.

7 Q. You didn't do that?

8 A. I did one. It's--I published a paper in the American  
9 Academy of Forensic Science several years ago. It was a study to  
10 show--one of the techniques that my--some of my colleagues promote  
11 is you take the stone models of the teeth and you press them into  
12 a flat piece of wax, and it makes a very accurate indentation of  
13 where the teeth go in, and then you lay a sheet of cellophane over  
14 that wax and you trace out the holes. Now you take that cellophane  
15 and go back either to a photograph or to the person and lay that  
16 cellophane over it and see if it matches or not. That was one of  
17 the major techniques for many, many years. The only problem is it  
18 doesn't work. We did a research study where we had individuals  
19 bite their arm and we photographed their arm. Then we took  
20 impressions of their teeth; we then took their teeth, mashed them  
21 into wax, made our tracings, and then put the tracings back over  
22 photographs of their own bite mark, and in over fifty percent of  
23 the cases the tracings did not match so the technique is in error.  
24 It's published in a peer review journal and I'm really amazed at  
25 the number of dentists who still use that in--uh, improper  
26 technique.

27 Q. Would that also be referred to as using an overlay?

28 A. Yes, sir. Well it's one of the ways to--to fabricate an  
29 overlay. I published the article, "The Use of a Human Skin and the

1   Uses of Bite Mark Template." Instead of using wax which has no  
2   relationship to human skin that I know of, I advocate if you're  
3   going to do that method take the stone models, dip them in ink and  
4   then find somebody who's about the same size anatomically, press  
5   them on to them and photograph it from the same perspective as you  
6   do the other. Now this is very useful in what I call compression  
7   bites; a cookie cutter, it goes down and comes straight back up.  
8   This would be very good for your prototypical bite marks, but if  
9   you have bite marks that exhibit drag like a rake going through the  
10   sand, it's not applicable.

11       Q. Anybody that uses this overlay technique then would be in  
12   that category of being vastly ignorant?

13       A. No, sir. Vastly ignorant meant the doctors in the  
14   odontological field who knew nothing about fluorescent photography.  
15   We have ninety diplomats; some of the diplomats are very well  
16   versed in computers; I am not. We have some who are very well  
17   versed in malpractice which I am not. We have some that are very  
18   well versed in bite marks, some in, uh, human identification, but  
19   I would say probably one of the areas that the board is the most  
20   lacking is photography, and if you have never conducted any  
21   research into the photography field, if you don't take your own  
22   photographs, if you don't have the lighting equipment and you're  
23   totally unaware of what it is I'm talking about in a photographic  
24   connotation, then I consider you ignorant from the dictionary term  
25   of being uninformed. I have tried to publish and present every-  
26   thing that I've ever done in this field to educate. My critics are  
27   people who don't do photographs; the people that agree with me are  
28   photographers.

29       Q. Photographers, but not forensic odontologists?

1           A.. Oh! A photographer is someone who understands photogra-  
2 phy whether he be a lawyer, a doctor, candle stick maker. If you  
3 are ignorant in photography, it's very difficult for you to  
4 understand what I'm doing in photography.

5           Q. Can you, uh, define a controlled double blind study for  
6 the members of the jury?

7           A. Yes, sir. A controlled double blind study is one that's  
8 usually designed for the testing of medications. Let's say I had  
9 a pill that I said will keep your hair from falling out, and, uh,  
10 we took the jury and we gave twelve pill bottles and half of those  
11 pill bottles was the medicine to keep your hair to fall out and the  
12 other half of those pills are sugar, and we don't tell you which  
13 one it is and we let you take this medicine and as we go down in  
14 time we come and look at you and we ask you, "Do you think your  
15 hair's falling out," and you don't know if you're taking the sugar  
16 or if you're taking the medicine and you tell us, "Well I think I  
17 am; I don't think I am, whatever." Uh, double blind studies do  
18 not--are usually inappropriate in bite mark analysis and wound  
19 pattern analysis. If we were doing a drug study, it'd be very  
20 important. The thing that you have to look at in bite mark  
21 analysis, what type of study should you do, that should be an  
22 examination of the class characteristics and an examination of the  
23 individualizing characteristics. If those work, then you have a  
24 proper analysis.

25           Q. There are no such studies then to your knowledge  
26 regarding this technique of direct comparison?

27           A. I've published three articles; there were over twelve  
28 presentations in the last ten years at the American Academy of  
29 Forensic Science of other doctors advocating the use of direct

1 comparison. I have on file in my office ten other doctors, some of  
2 them diplomats, some of them not, who advocate the use of direct  
3 comparison. I have never seen any articles or presentations  
4 against direct comparison.

5 Q. I must have phrased my question--let me rephrase it--are  
6 there any controlled double blind studies on direct comparison?

7 A. Not to my knowledge.

8 Q. You said earlier that, uh, you used that term indeed and  
9 without doubt. Can you tell me some other forensic odontologist  
10 who used that terminology?

11 A. I know Doctor Souviron, I--I heard one of his reports  
12 where he did say indeed, and I have had him--heard him say he  
13 had not doubt, but I don't think he's put them together.

14 Q. So your answer is no?

15 A. Uh, to my knowledge, no.

16 Q. Have you ever published anything, uh, about that  
17 terminology, indeed and without doubt?

18 A. I--I wrote two articles, one was, uh, "The Uniqueness of  
19 Wound Patterns," and then the other one was, "A Second Look at  
20 Wax," and I don't have them in front of me. Uh, I know I've never  
21 written an article on terminology, no. I'm a--I'm ignorant when it  
22 comes to English. I'm not an expert.

23 Q. When you had your hearing with the American Academy of  
24 Forensic Science, did you make some verbal responses to the charges  
25 that they brought against you?

26 A. See, I'm glad you brought that up. The reason I quit the  
27 academy is because I never had a hearing.

28 Q. The academy or the international association?

29 A. The international association, I never had a hearing; the

1 academy I never had a hearing. All I asked was let me be present  
2 at my trial and present my evidence and I wasn't allowed that  
3 opportunity.)

4 Q. Were you given the opportunity to make a response in  
5 writing?

6 A. Yes.

7 Q. Within that response did you say that you do not  
8 subscribe to the verbal fencing advocated by many that one may only  
9 couch his or her opinion behind the vail of reasonable medical,  
10 parenthesis, dental certainty?)

11 A. As I've tried to explain to you, number one, that  
12 sentence was written for me by a lawyer friend. Number two, I can  
13 only tell you in whatever words you want to know, yes, no, I can't  
14 tell or maybe. Now if you want to talk for five years, use any big  
15 word you want to use, to me it's going to come down to yes, no, I  
16 can't tell or maybe. In this case I think it's yes.)

17 Q. Did you make that response to the American Academy  
18 complaint?)

19 A. Yes, sir. It was in one of my reports.

20 Q. You said a little while ago that you have made mistakes  
21 in the past.)

22 A. Yes, sir.

23 Q. I asked you yesterday about the Bourn case down in  
24 Pascagoula, do you recall that?)

25 A. Yes, sir.

26 Q. Did you make a mistake in that case?

27 A. I reviewed the photographs, I reviewed the models, I  
28 reviewed my analysis, I am still confident of my opinion that his  
29 teeth made that mark on that woman's skin, and unless someone can

1 show me another set of teeth that would have to be identical to him  
2 or explain to me how that could possibly be, I am still confident  
3 of my opinion in that case.

4 Q. Have you ever heard of Gen Test Laboratories, Incorporat-  
5 ed?

6 A. Yes, sir.

7 Q. Do you know what they do?

8 A. They--they do DNA analysis. They're in Metarie,  
9 Louisiana; I've used them a couple of time.

10 Q. That laboratory excluded Mr. Bourn based on DNA studies,  
11 did it not?

12 BY MR. ALLGOOD: If--if your Honor please, I will  
13 object to the hearsay in that respect. I--obviously he's  
14 under cross examination; I don't have any problem with  
15 that; I don't have any problem with him bringing up the  
16 matters before the Court, but I expect them to do it in  
17 an appropriate fashion. That is a hear--calling for a  
18 hearsay or information based on a hearsay source, and I  
19 am going to object to that.

20 BY THE COURT: The objection is sustained.

21 BY MR. KESLER: The Court indulge me just a moment.

22 (MR. KESLER CONFERS WITH MR. WALTERS)

23 Q. You are of course familiar with the Mississippi Crime  
24 Lab?

25 A. Yes, sir.

26 Q. The Mississippi Crime Lab did some tests on hair and  
27 fingerprint evidence in that Bourn case, did they not?

28 A. I'm not--I'm assuming they did.

29 Q. You assume they did?

1           A. I didn't submit any hair or fingerprint evidence to the  
2 lab. I was never supplied a report. It has no bearing on the  
3 question that I was asked, was Mr. Bourn's teeth the teeth that  
4 inflicted the bite on the victim. Uh, I--if they did issue a  
5 report I wouldn't want to see it while I was doing my analysis.  
6 The only thing I want to concern myself with is the class and  
7 individual characteristics of his teeth and how they relate to the  
8 bite mark. That's the only thing I'm an expert in and that's the  
9 only thing I should base my judgment on. I should not worry about  
10 what the blood guy says or what the hair guy says, I should only  
11 base my opinion on the facts of the evidence of the teeth.

12          Q. Are you aware you were the only remaining expert  
13 available to the prosecution against Mr. Bourn?

14                 BY MR. ALLGOOD: If your Honor please, once again,  
15 this calls for hearsay information based on a hearsay  
16 source, and I have to object to it.

17                 BY THE COURT: Sustained.

18          Q. Could we agree that objectivity is important, should be  
19 important to a scientist?

20          A. Of course.

21          Q. Can we--

22          A. In the aspect of rendering an opinion and in the aspect  
23 of the interpretation of his data, but if that scientist is an  
24 advocate of a new technique, I think that if he does not show to  
25 the Court or the people who is questioning him that he has the  
26 confidence of that technique, then he is in error.

27          Q. Are you through?

28          A. Yes, sir.

29          Q. Do you think ethical conduct is important to scientists?

1       A.     Depending on who is the ethics judge. I do not want to  
2 have other experts who testify against me in court routinely where  
3 they're on one side of the issue and I'm on the other side of the  
4 issue, those men are not ethically qualified to sit and judge me.  
5 They should get someone who has no bias against me to judge me.

6       Q.     Finally, could we agree that in any disciplined making  
7 material misrepresentations a fact would be unethical?

8       A.     Representation, misrepresentation of data is lying,  
9 cheating. People who are going to determine was this evidence  
10 presented properly should be knowledgeable about the evidence. You  
11 should not get two plumbers to rule on did the electrician do a  
12 good job. I am a dentist, and I have been judged by dentists. My  
13 problem is they judged me on a photographic technique that they are  
14 ignorant on. When they do their research, they find out that, yes,  
15 Doctor West is right. The two men on the ethics committee who  
16 found me guilty have published a paper and presented a paper  
17 confirming the results that they said I lied about. I'm stunned.

18      Q.     You thought that it was important to join the American  
19 Board of Forensic Odontologists, didn't you?

20      A.     Yes, sir.

21      Q.     And it was important to become a diplomat?

22      A.     Yes, sir.

23      Q.     And when you joined it you agreed to abide by its  
24 constitution and by-laws, didn't you?

25      A.     Yes, sir.

26      Q.     Which include the ethical standards of your field of  
27 expertise--

28      A.     Yes, sir.

29      Q.     --forensic odontology?

1 A. Yes, sir.

2 Q. There are only about a hundred in round figures forensic  
3 odontologists in the United States, aren't there?

4 A. Yes, sir.

5 Q. And they have judged you unethical?

6 A. No, sir.

7 BY MR. KESLER: No further questions.

8 BY THE COURT: Redirect.

9 BY MR. ALLGOOD: Just a few questions, your Honor.

10 REDIRECT EXAMINATION BY MR. ALLGOOD:

11 Q. Insofar as the, uh, instructions you obtained from law  
12 enforcement before you did your examinations in this case, the case  
13 of the State of Mississippi versus Kennedy Brewer, who gave you  
14 those instructions, who requested this information of you, and what  
15 did you or what were you asked to do?

16 A. I believe--yeah. I was--Steve Hayne called me and asked  
17 me to come up and look at this girl's body. For the last eight  
18 years I look at a body and I write a report and I send the report  
19 to the coroner or the D.A. or the sheriff who's handling the  
20 investigation of that individual's death. Uh, Steve asked me to  
21 look; I look; I wrote a report; uh, I answered the questions I  
22 thought. You know, I mean no one said, did this person bite, did  
23 that person bite, did this person bite; they said we want you to  
24 examine these people and do an analysis, and I--I did that. As a  
25 matter of fact, my report to the coroner, I sent a carbon copy to  
26 the sheriff's office and one to the district attorney's office.  
27 You know, these are the people that are involved in death investi-  
28 gation. I--

29 Q. And you did that--

1       A. I did it for them; I didn't do it under their direct  
2 supervision other than their permission to examine their body.

3       Q. You did that as a matter of form, a matter of course, is  
4 that not correct?

5       A. Yes, sir.

6       Q. I mean it's not like the coroner called you up and said,  
7 "I want a report with this, this and this in it," or I called you  
8 up and said, "I want a report with this, this and this in it."

9       A. I'm always, you know, "Look at it and tell us what you  
10 think, Doc." That's usually my instructions.

11      Q. As soon as you formed an opinion you reduced that opinion  
12 to writing and mailed it to the appropriate authorities?

13      A. Yes, sir.

14      Q. In the testimony that you have previously testified to,  
15 just so there will not be any--any misunderstanding, you testified  
16 about a similar homicide in Noxubee County, Mississippi, is that  
17 correct?

18      A. Yes, sir.

19      Q. Just so the jury will not be confused, that case has been  
20 tried, disposed of, and it's over with, is that correct?

21      A. Yes, sir.

22      Q. You were asked about your techniques in making your  
23 evaluations, in making your determinations and what have you, and  
24 much of that has centered on this direct comparison, uh, that we  
25 have heard so much about here this afternoon. Do you always use  
26 the technique of direct comparison?

27      A. No.

28      Q. Explain why or why you would not use the technique of  
29 direct comparison, depending upon the circumstances and the

1 situation.

2 A. Number one, you don't always have the body or the tissue  
3 to do a direct comparison. Number two, uh, a case comes to mind a,  
4 uh, small infant, uh, had open wounds and he was in the hospital.  
5 It would have been inappropriate for me to touch those areas with  
6 any type of object because you can't sterilize those stone models;  
7 you could cross infect the infant. Uh--

8 Q. The child was still alive, right?

9 A. Yes, the child was still alive. Uh, number three, if the  
10 pattern is in tissue or material that is very fragile, you either  
11 have to be extremely careful with direct comparison or not do it  
12 because you have to have some degree of certainty that you're not  
13 going to alter the evidence by doing a direct comparison, and then  
14 sometimes, like I say, you're--it's--all you're given is a stack of  
15 photographs and the majority of the cases in bite mark analysis is  
16 you're given photographs and a model, and you have no access to  
17 that tissue.

18 Q. You were asked about some articles you had written on the  
19 John F. Kennedy assassination. I think--I think you have put  
20 together a presentation and have had--written an article or two on  
21 that particular instant in American history, is that correct?

22 A. Yes, sir.

23 Q. Uh, you and I believe there's another doctor or two  
24 involved in that effort, is that correct?

25 A. Oh, goodness. Doctor Mark McKozie who's the curator of  
26 the National Museum of Health placed my video in the permanent  
27 archives of the Armed Forces Institute of Pathology Museum of  
28 Medicine in Washington, D. C. George Lundberg, the editor of JAMA  
29 wrote an article--

1 Q. What is JAMA? Explain that--

2 A. Oh, I'm sorry. (Witness laughs)

3 Q. --for these people. They don't know what JAMA is.

4 A. JAMA is the Journal of the American Medical Association.

5 That's part of our lingo. Uh, they wrote several articles in that  
6 journal about my analysis. Uh, I got a nice letter from Governor  
7 Connally and President Ford and, uh, such as that, but it's just,  
8 you know, a historical question.

9 Q. Much like some people today debate who killed President  
10 Lincoln and how he actually died and things of that nature, is that  
11 correct?

12 A. Yes, sir.

13 Q. It was a version as much as anything, is that correct?

14 A. Yeah. I don't believe they're going to take my analysis  
15 and charge anybody with a murder; no, sir.

16 Q. In--in the instance of the child you were talked about,  
17 uh, or you did talk about, the--the level of decomposition, when  
18 you first saw the child you saw her on May ninth I believe, is that  
19 correct? Check your records if you need.

20 A. No, sir. I saw her on May the fifth.

21 Q. My error, May fifth. It was on May ninth that you  
22 returned to perform your other examinations, is that correct?

23 A. Yes, sir.

24 Q. So that was--there are some four or five days that had  
25 elapsed between the time you initially saw the child and the time  
26 you actually came to perform your comparisons, is that correct?

27 A. Yes, sir.

28 Q. And, of course, during that period of time, uh, the body  
29 is continuing to deteriorate, is that right?

1           A. Of course. The--it was stored in a cooler; we--we looked  
2 at the body, we discussed the situation, we came to the opinion  
3 from our training and experience that it would be better to let her  
4 body cool in the cooler of the morgue for a few days to accentuate  
5 the minor patterns that were there, allow the tissue to dry; it  
6 would be--we would have more information to work with and we'd be  
7 in a less chance of destroying the tissue if we went through that  
8 process.

9           Q. And, uh, Doctor, much I think of the cross examination  
10 and much of your difficulties with these various licensing boards,  
11 various professional organizations, stems from your use of words,  
12 is that not correct?

13          A. Yes, sir. I'm terrible with words.

14          Q. And I believe that much of, again the cross examination  
15 and much of your difficulties with these various licensing, various  
16 professional organizations, really turns on--much of your difficul-  
17 ties really turns on the way you phrased your opinion, is that not  
18 correct?

19          A. Yes, sir..

20          Q. Whether you use the words indeed without a doubt or  
21 rather instead you use the words reasonable medical certainty?

22          A. I thought it was a lot to do about nothing and then it's  
23 caused me so much grief. I'll say purple, purple, yellow if that's  
24 what they want me to say. I don't care. As long as the jury and  
25 the Court understands what I'm trying to tell them, I don't care  
26 what words are used. I am bound to follow the guidelines of the  
27 board, but please remember these guidelines were not a--I'm  
28 assuming they were adopted; I've been eluded to that maybe they  
29 haven't even been adopted yet. But, you know, I--I'm--I'm always,

1 "How do I break in ninety-three that hasn't been set till ninety-  
2 five?" I haven't figured that one out yet.

3 BY MR. ALLGOOD: I have no further questions of this  
4 witness, your Honor.

5 BY THE COURT: You may stand down.

6 BY MR. ALLGOOD: If your Honor please, I am going to  
7 ask that Doctor West be allowed to remain and that he--  
8 we discussed previously whether or not he be allowed to  
9 remain in the courtroom during the pendency of other  
10 witnesses testimony in this case.

11 BY THE COURT: He's excluded from the rule as an  
12 expert. He can remain in the courtroom during the  
13 testimony of other witnesses.

14 I'm going to ask you to step back into the jury  
15 room for a brief recess. I'll call you out as soon as  
16 we're ready to proceed.

17 (JURY OUT)

18 BY THE COURT: Mr. Allgood, you had indicated that  
19 you would probably use this witness that has just  
20 testified as your last witness prior to resting. Is  
21 that correct? Do you anticipate doing that when we  
22 reconvene?

23 BY MR. ALLGOOD: Yes, sir, your Honor. As a matter  
24 of fact, I intend to rest in chief immediately. Uh,  
25 quite frankly I intended to do so before you let the jury  
26 go out and I don't know why I neglected to. I had other  
27 things on my mind; however, I will make such a statement  
28 now that I do--the State does, uh, intend to rest at  
29 this particular juncture and the State would rest in

1           chief. I will do that before the jury once we come back  
2           from--from the recess, but I think we can treat it as  
3           already done for purposes of what I know is coming and  
4           this Court knows is coming.

5           BY THE COURT: Do you want to make a motion at this  
6           time or do you want a few moments before you make the  
7           motion?

8           BY MR. KESLER: I'll make it now, your Honor, just  
9           it--it--

10          BY THE COURT: State your motion.

11          BY MR. KESLER: This is out of order and it's with  
12           your permission to do so?

13          BY THE COURT: It's in order. Make your motion.

14          BY MR. KESLER: Your Honor, the defendant moves the  
15           Court to direct a verdict of not--strike that--comes now  
16           the defendant and moves the Court to exclude the evidence  
17           offered on behalf of the State showing in support thereof  
18           they failed to make out a prima facie case of the offense  
19           charged, that being capital murder, murder committed  
20           while engaged in the underlying felony of sexual battery.  
21           That concludes the motion.

22          BY THE COURT: In ruling on that motion at this  
23           time, the Court must assume all evidence adduced on  
24           behalf of the State as true and all reasonable inferences  
25           that might be garnered from that evidence. In accepting  
26           all of that evidence as true and reasonable inferences  
27           therefrom, the Court finds that the motion should be and  
28           hereby is overruled.

29           I would like to take this opportunity to address the

1 defendant for the record.

2 BY MR. KESLER: Come here, Kenny. Stand up here.

3 (DEFENDANT STANDS AT PODIUM WITH MR. KESLER)

4 BY THE COURT: Mr. Brewer, in this case the State  
5 has presented its evidence in chief and has rested. I  
6 have ruled on a motion made by your counsel in your  
7 behalf to direct a verdict. I have overruled that  
8 motion. That means that the defense must go forward,  
9 if it desires to go forward at this time and present  
10 evidence and testimony, if it desires to do so. During  
11 this particular stage of the trial, you have certain  
12 constitutional rights that I want you to be aware of.  
13 I am sure that you have already discussed this with your  
14 attorneys, and they have explained the legal ramifications  
15 of this to you; however, I want to be certain that  
16 you understand. You have a constitutional right to  
17 testify as a witness in this case. If you elect to  
18 testify you will be sworn and subject to cross  
19 examination as would any other witness who testifies.  
20 You also have an absolute right to not testify as a  
21 witness in this case, and if you elect to not testify  
22 as a witness, the State is prohibited by our law from  
23 commenting on that fact either directly or indirectly  
24 in the presence of the jury. Do you understand that?

25 BY MR. KESLER: Speak up.

26 A. Yes.

27 BY THE COURT: The decision as to whether a  
28 defendant should or should not testify is an important  
29 decision. You should make that decision only after a

1 full and complete consultation of its ramifications  
2 with your attorneys. Do you understand that?

3 A. Yes, sir.

4 BY THE COURT: How much time do you want?

5 BY MR. KESLER: May he be seated, your Honor?

6 BY THE COURT: He may.

7 BY MR. KESLER: Sit down, Kenny.

8 (DEFENDANT RETURNS TO SEAT)

9 BY MR. KESLER: Your Honor, we have, uh--I've  
10 already, uh, talked with Mr. Allgood and advised him,  
11 when Doctor Souviron arrived, also arriving with him  
12 are some slides that are demonstrative evidence that  
13 he--we plan to use in his testimony. Uh, they were  
14 collected and prepared, as I understand it, either late  
15 last week, this week, and Mr. Allgood, of course, uh,  
16 needs to be afforded an opportunity to see those so we  
17 will need a little extra time.

18 BY MR. WALTERS: And also to set that equipment up  
19 in the courtroom, your Honor.

20 BY MR. ALLGOOD: If your Honor please--

21 BY THE COURT: I'm sure these are matters of  
22 physical matters that you have shown to the State in  
23 discovery and given to them way before today's date.

24 BY MR. KESLER: No, sir. They only arrived and  
25 I saw them about ten minutes till twelve today for the  
26 first time.

27 BY THE COURT: You mean to tell me that your  
28 expert had these items of evidence and did not disclose  
29 the fact that he had them even to defense counsel.

1 BY MR. KESLER: No, sir. I'm telling you that in  
2 the course of preparing he decided that it would be  
3 helpful in explaining his opinion to the jury and decided  
4 to use those, advised us of it, and I have advised the  
5 district attorney of it.

6 BY MR. ALLGOOD: If your Honor please, I am going  
7 to have to spend some time with these exhibits. I am  
8 not going to--and--and I want to make it clear, I am not  
9 going to chastise defense counsel, but I have to say  
10 this is the very sort of ambush which the rules of  
11 discovery were designed to prevent. Were the shoe on  
12 the other foot, the State of Mississippi would be held  
13 probably in contempt of court because I would be charged  
14 with knowing everything that my expert had, my evidence  
15 would be subject to suppression, I would be subject to  
16 public castigation. As it is, I am in a position that  
17 they have articles which they intend to use, and once  
18 again, I do not fault defense counsel, I fault the  
19 expert because defense counsel did not know this was  
20 going to be here until he showed up with them. That's  
21 my understanding.

22 BY MR. KESLER: Well I knew about it on the phone,  
23 and it wasn't literally ten-fifteen this morning.

24 BY MR. ALLGOOD: At ten-fifteen this morning then.  
25 That's--that's--

26 BY MR. KESLER: I told Mr. Allgood about it actually  
27 before today that he would be bringing this stuff, but  
28 I didn't have access to it to give it to him or really  
29 to explain what it was.

1                   BY MR. ALLGOOD: I am now in a position where I need  
2                   to sit down with my expert and view from what I have seen  
3                   three sheets, and I cannot tell you how many slides are  
4                   on each sheet. I apologize, your Honor.

5                   BY THE COURT: Box versus State. You will have the  
6                   opportunity to physically examine--

7                   BY MR. ALLGOOD: A concurring opinion that has been  
8                   adopted by law it seems.

9                   BY THE COURT: You will have the opportunity to  
10                  examine those items and report back to me if there is  
11                  anything further.

12                  BY MR. ALLGOOD: Yes, sir.

13                  BY THE COURT: I do agree with the statements that  
14                  the State has said about what I would do if the State  
15                  had produced experts who at the last minute came in  
16                  with physical exhibits that they wished to have viewed  
17                  by a jury.

18                  BY MR. KESLER: Your Honor, may I just make a  
19                  comment? We have been receiving discovery from Doctor  
20                  West up through yesterday. Things that were, uh, not  
21                  timely revealed or which we were able to deal with and  
22                  be prepared. The Court has viewed those two rather  
23                  sketchy letter reports that he initially provided, and  
24                  it was only yesterday I believe that we found out that  
25                  his opinion was restricted to five bite marks rather  
26                  the entire nineteen, but we voiced no complaint.

27                  BY MR. ALLGOOD: If your Honor please, if--to make  
28                  the record complete, I--three days before the trial,  
29                  once again, we--we talked about that. I received a--

1           a--a copy of Doctor Souviron's report which, uh,  
2           counsel attempted to provide me on Tuesday, but the  
3           fax number that was published was wrong so once  
4           again, I don't fault counsel, and he sent it to me  
5           I think fifteen minutes after he got it or something.  
6           It was very prompt after he got it; however, I will  
7           tender for purposes of just making the record clear  
8           a copy of that--of that opinion; that opinion has  
9           perhaps four lines in it which are pertinent to his  
10          opinions of what he actually found. In no way is--  
11          has Doctor Souviron, uh, been forthcoming, uh, open,  
12          uh, in any more degree than Doctor West. I can  
13          certainly not say that--that Doctor West's flaws in  
14          that respect are confined to him. Apparently it is  
15          endemic to the nature of forensic odontology.

16           BY MR. KESLER: Your Honor, I wasn't--I didn't  
17          really intend to get into this verbal exchange, but  
18          I--I'd--

19           BY THE COURT: Good. We won't.

20           BY MR. KESLER: Your Honor, there's one more  
21          thing I do want to put on the record regarding Doctor  
22          Souviron though. I made Doctor Souviron available to  
23          the district attorney for telephone interview,  
24          encouraged him to do that; they attempted to do that;  
25          unfortunately they were taping him; he was not made  
26          aware of it; he became angry; he terminated the inter-  
27          view. That is part of their problem in getting  
28          information from Doctor Souviron. I called him after  
29          that, told him to please excuse them on that and if

1           they called back to please consider resuming the  
2           interview. I don't know what happened after that.  
3           I've done all that I could.

4 BY THE COURT: I do note this is--Doctor Souviron  
5 is the second expert witness to be used by the  
6 defense. The first expert, a Doctor Thomas Krauss,  
7 died prior to his examination of the physical evidence  
8 which necessitated all the physical evidence having to  
9 be sent to a second expert, and it appears during this  
10 period of time, this particular field of study and  
11 these two particular experts that are scheduled as  
12 witnesses both Doctor West and Doctor Souviron have  
13 become embroiled in a professional squabble. In any  
14 event, take this opportunity to accomplish what Box  
15 mandates.

16 BY MR. ALLGOOD: Thank you, your Honor.

17 BY THE COURT: Court's in recess

18 (RECESS)

20 FOLLOWING THE RECESS, ALL MEMBERS OF THE COURT, INCLUDING THE  
21 JUDGE, COURT REPORTER, ATTORNEYS, CLERK, BAILIFFS, AND THE  
22 DEFENDANT BEING PRESENT, THE FOLLOWING PROCEEDINGS WERE HAD:

BY MR. ALLGOOD: If your Honor please, a comment  
on geography at this point, uh, obviously from where  
the slide and the screen is right now from where Doctor  
West is currently positioned, he would, of course, not  
be able to see that. Might I be allowed to move him  
around in the courtroom so that he can see the--

29 BY THE COURT: I assume that this is going to be

1 moved.

2 BY THE BAILIFF, MRS. HEMBY: They're going to set  
3 it out here.

4 BY THE COURT: As soon as the witness is called,  
5 see, this witness has not been called yet and shouldn't  
6 be in the courtroom at this stage.

7 BY MR. ALLGOOD: Okay. But I will be allowed to  
8 reposition Doctor West so he can see the slides.

9 BY THE COURT: You can just have him have a seat  
10 over here.

11 BY MR. WALTERS: All right, sir.

12 BY THE COURT: He's an expert witness and he's  
13 excluded under the rule, and just have him have a seat  
14 over here.

15 There are some housekeeping matters that must be  
16 taken up before we can proceed with the defense case  
17 anyway. Are we ready to proceed now?

18 BY MR. ALLGOOD: The State's ready, your Honor.

19 BY THE COURT: Is the defendant ready?

20 BY MR. WALTERS: Ready, your Honor.

21 BY THE COURT: Show the jury in, please.

22 (JURY IN)

23 BY THE COURT: Call your next witness, please.

24 BY MR. ALLGOOD: If your Honor please, the State  
25 rests in chief.

26 BY THE COURT: Call your first witness, please.

27 BY MR. WALTERS: We call Doctor Richard Souviron,  
28 your Honor.

29 BY THE COURT: Clerk, would you please swear the

1 witness.

**DOCTOR RICHARD SOUVIRON,**

3 upon being called to testify as a witness on behalf of the  
4 defendant, after having been first duly sworn by Deputy Clerk,  
5 Lloyd Cobb, testified as follows, to-wit:

6 BY THE COURT REPORTER: That is S-O-U-V-I-R-O-N?

7            A.    Perfect; perfect.

8 BY THE COURT REPORTER: Thank you.

9 A. May I get my file?

10 BY THE COURT: You may.

11 (WITNESS LEAVES WITNESS STAND TO RETRIEVE FILE.)

12 BY THE COURT: You may proceed.

13 DIRECT EXAMINATION BY MR. WALTERS:

14 Q. Doctor Souviron, would you please tell the jury your  
15 name?

16 A. Uh, my name is Richard Souviron.

17 Q. Doctor Souviron, were you made aware that you could be  
18 present in the courtroom during Doctor West's testimony?

19 A. Yes, sir.

20 Q. Did you choose on your own not to be present during  
21 Doctor West's testimony?

22 A. Yes, sir.

23 Q. And what is your reason for that?

24 A. Uh, I feel that I can give a better objective, uh,  
25 testimony if I haven't heard what Doctor West, uh, had to say. I  
26 think I can be more to the point and--and I'm here to testify about  
27 the evidence as I see it and I would prefer not to hear what his  
28 opinions are.

29 Q. Doctor Souviron, would you please give the jury the