

COPY

EIGHTH JUDICIAL DISTRICT, COURT 7  
CIVIL/CRIMINAL DIVISION  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

**Plaintiff,**

VS.

KIRSTIN BLAISE LOBATO,

**Defendant.**

CASE NO. C177394

DEPT. NO. II

Transcripts of  
Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

**"ROUGH DRAFT"**

JURY TRIAL - DAY 12   
VOLUME XII

TUESDAY, SEPTEMBER 26, 2006

COURT RECORDER:

LISA LIZOTTE  
District Court

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DEFENDANT'S WITNESS

Michael Laufer 16/52 36/114

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1 LAS VEGAS, NEVADA TUESDAY, SEPTEMBER 26, 2006

**PROCEEDINGS**

3 PROCEEDINGS BEGAN AT 11:07:31 A.M.

4 (Jurors are not present)

5 THE BAILIFF: Department II is now in session, The  
6 Honorable Valorie 3, Vega presiding. Please be seated.

7 THE COURT: The record shall reflect that we're  
8 convened outside the presence of the jury, at counsel's  
9 request, in State versus Lobato, under C177394, in the  
10 presence of the defendant, together with Mr. Schieck, and the  
11 two prosecuting attorneys are present as well.

12 Who wishes to be heard?

13 MR. KEPHART: I do, Your Honor, with regards to  
the witnesses -- however, they have been excluded from the  
15 testimony, and I know -- I mean from the trial, and there's one  
16 sitting in here now. This gentleman here. I'd ask that he that  
17 be excluded during my argument.

18 THE COURT: Who is the gentleman?

19 MR, SCHIECK: It's Dr. Laufer, Your Honor.

20 THE COURT: Okay.

21 MR. SCHIECK: He's an endorsed expert.

22 THE COURT: Okay.

23 MR. SCHIECK: He's our next witness.

24 THE COURT: The Court's going to ask that he step

X11-5

1 to the hallway and while he there wait, that he not discuss  
2 anything that concerns this case.

3 The record shall reflect that he has complied and  
4 exited the courtroom.

5 MR, KEPHART: Your Honor, we received an  
6 amended notice of defendant's expert witnesses filed August  
7 18<sup>th</sup> of 2006 -- I'm sorry, August 18<sup>th</sup> of -- yeah, 2006, and, in  
8 that, amongst many of the individuals that they noticed, one of  
9 them was Michael Laufer, M.D., I think the Court can -- has a  
10 copy of that

11 The -- what they've noticed him of, as an emergency  
12 room trauma surgeon, forensic pathologist, with expertise in  
13 injury reconstruction, trauma -- traumatic injury and  
14 biomedical engineering. What they say he's expected to testify  
15 to is regarding the type of instrument wielded by Duran  
16 Bailey's assailant, the manner of affliction of injuries, the  
17 positioning of clothing at the time of certain injuries based on  
18 the blood stains and cut in the decedent's pants, the  
19 sophistication of tri attack, and the physical dimensions  
20 required of the assailant's hands based on the injury patterns.  
21 That's the extent of what they've noticed us on.

22 They -- in the interim, they have provided us with  
23 three separate report. One of them is not dated but I assume  
24 it came shortly -- in conjunction with the August 18<sup>th</sup> notice.

X11-6

1 I think that this case here already has precedent.  
2 And it's interesting that the very defense attorneys in this case  
3 are making the same attempt that they were unsuccessful  
4 doing last time. This is sandbagging, what they pulled with us  
5 here, and provided us with this report at the late hours  
6 yesterday. We had an opportunity to look at it last night, and  
7 we're making this motion now, Your Honor, to prevent the  
8 defense from being able to proffer testimony from this man in  
9 reference to the areas of cause of death, time of death, rigor  
10 mortis, blood drying, footprints, alcohol effects and  
11 methamphetamine use.

12 MS. GREENBERGER: One moment, Your Honor,  
13 (Pause in the proceedings)

14 THE COURT: Last week the State had represented  
15 to the Court that the State would be resting its case in chief on  
16 Monday, so the Court had believed that the State would be  
17 concluding on Monday also the defense. Yesterday, Mr.  
18 Kephart informed the Court, during Detective Thowsen's  
19 testimony when we had a sidebar, with regard to scheduling  
20 for today because the defense had the expert coming in from  
21 out of state. Mr. Kephart indicated that Detective Thowsen  
22 would be the State's last witness in the State's case in chief.  
23 So this most recent report you received on what would have  
24 been the last day of your case in chief had the examination not

X11-8

1 Then we received a September 4<sup>th</sup> report, dated September  
2 3<sup>rd</sup>, And then we received, yesterday, a report dated  
3 September 24<sup>th</sup>, and we got it on the 25th.

4 With regards to the report that was given to us  
5 yesterday by the defense, there's quite a few additional areas  
6 that this expert is claiming he wants to testify with. He's  
7 talking about cause of death, the bloody footprints, the time of  
8 death, the rigor mortis, the blood drying, information about  
9 meth use and alcohol. He has not -- they have not provided  
10 us any information on their notice that that was what his intent  
11 was to be testifying about. Matter of fact there's other experts  
12 that they've noticed that would be testifying regarding the time  
13 of death. They haven't given us -- Turvey -- Brent Turvey has  
14 been noticed as being a crime scene -- forensic crime scene  
15 reconstructionist. And now this gentleman, here, is going to  
16 be coming in here and expected to testify, at least according to  
17 his report, in reference to multiple areas outside what they  
18 notice us in.

19 So I think it's inappropriate. It's similar to what was  
20 attempted in a previous trial with George Schiro. And this  
21 Court did not allow the defense to allow Mr. Schiro to testify to  
22 things beyond what he was noticed in, and the Supreme Court  
23 upheld that and found that it was without merit to object -- to  
24 argue that.

X11-7

1 gone a little longer than anticipated, it appears?

2 MR. KEPHART: That's correct, Your Honor.

3 MS. GREENBERGER: Your Honor, just a couple  
4 things in response. First of all, we noticed Dr. Laufer as an  
5 expert as an emergency room trauma surgeon and a forensic  
6 pathologist with expertise in injury reconstruction, traumatic  
7 injury and biomedical engineering. And at that time, we  
8 indicated to the Court that he would testify regarding the type  
9 of instrument wielded by Duran Bailey's assailant, the manner  
10 of infliction of injuries, the positioning of clothing at the time of  
11 certain injuries based on the blood stains and cut in the  
12 decedent's pants, the sophistication of the attack and the  
13 physical dimensions required of the assailant's hand based on  
14 the injury patterns.

15 Second, prior to the first trial of this case of which  
16 we didn't handle -- however, we have a notice of expert  
17 witness list from the prosecution. In noticing Larry Simms, the  
18 medical examiner that testified, all the prosecution indicated  
19 was the witness is a medical examiner and is expected to  
20 testify regarding the autopsy of the victim. Likewise, Dr,  
21 Laufer is a forensic pathologist, and the cause of death, time  
22 of death is with the domain -- within the domain of forensic  
23 pathology.

24 Moreover, after the prosecution recently put on

X11-9

1 evidence, as of Friday, with regard to Detective Ford testifying  
 2 about the wet and dry footprints, partially wet, partially dry,  
 3 and introduced evidence yesterday that they believe another  
 4 individual, not the assailant, was present in the dumpster area,  
 5 new material has come up which is in the ambit of all the  
 6 parameters that we previously noticed Dr. Laufer on, and we  
 7 will be presenting this testimony as an offer to rebut the  
 8 evidence that the State has presented. We believe it's  
 completely permissible. We noticed him much more  
 10 exhaustively than Dr. Simms was noticed. And again, like Dr.  
 11 Simms, he's forensic pathologist in addition to being an  
 12 emergency room trauma surgeon that has qualified in the area  
 13 of forensic medicine which encompasses forensic pathology  
 14 and injury reconstruction.

15 And we have been repeatedly disclosing our Power  
 16 Point presentation to them, weeks ago, and every time a new  
 17 dimension is added into the report based on something that  
 18 has come up during this trial, we have immediately disclosed  
 19 that to the prosedaron.

20 MR. SCHIECK: Your Honor, if I could just add a  
 21 couple of things that I noted?

22 THE COURT: The State's not arguing that he's not  
 23 qualified to testify in all of these areas. They're not getting to  
 24 that issue. They're saying that they weren't noticed under

X11-10

1 sandbagging is. And when we say reconstructionist, what do  
 2 they think that means if it's not time, manner and method of  
 3 death? He's noticed as a reconstructionist which goes to the  
 4 entire incident, Your Honor. And they could have called him at  
 5 any time-

6 THE COURT: No, It says he has expertise in injury  
 7 reconstruction but then it says he's expected to testify  
 8 regarding thus and such. And the thus and such didn't include  
 9 that.

10 MR. SCHIECK: Your Honor, as this case has  
 11 progressed, there has been additional testimony that was not  
 12 anticipated, including Mr. Ford on his bloody footprints and the  
 13 speed of drying, that opened up new areas, and that's the only  
 14 thing that —

15 THE COURT: Such is the nature of a trial,

16 MR. SCHIECK: Yes, that's true, Your Honor. And  
 17 we try to give as much notice as we can to the State. And  
 18 that's all the legislature and the statute envision, is that we  
 19 give them everything we have when we have it. And that's  
 20 what we've done, We haven't played hide the ball with them.

21 THE COURT: The record shall reflect that there was  
 22 no objection during Ms. Paulette's testimony as to her going  
 23 into areas that were not on the State's notice. This is the first  
 24 such motion that the Court has entertained in this trial.

X11-12

1 NRS174,234, that he would be called by the defense to give  
 2 testimony in all of these areas. Only in those areas that are  
 3 set forth in that amended notice from August 18<sup>th</sup> of 2006.

4 MR. SCHIECK: Which notice was timely, Your  
 5 Honor. The reports were provided as soon as they were  
 6 available, as they became available. The 24<sup>th</sup> was a Sunday  
 7 and unfortunately we don't have the home addresses to go to  
 8 their house and give them a copy of it. We gave them the  
 next day, Monday, the report, that I didn't see until Monday  
 10 morning becatisse it was transmitted Sunday night to my office.  
 11 So they were provided everything as soon as we had it. And  
 12 for them to accuse us of sandbagging or hiding the ball,  
 13 speaks volumes toward their own ethics in this case.

14 If we just look at Kristina Paulette and the notice  
 15 that they gave us on Kristina Paulette, who was to testify  
 16 concerning the area of DNA technology and scientific opinions  
 17 related thereto. She's expected to testify regarding DNA  
 18 profiling, analysis and related procedures. Nowhere do I hear  
 19 phenolphthalein or luminol testimony which they elicited, that  
 20 wasn't noticed. So if anybody's been sandbagging the case,  
 21 it's them.

22 They never had a problem with Dr. Laufer until the  
 23 very last minute, They come in here this morning knowing  
 24 he's here today, before they say word one. That's what

X11-11

1 MR, KEPHART: Judge, just for the record with  
 2 regards to Ms. Paulette, though -- however, the testimony that  
 3 she proffered about the phenolphthalein and the luminol, she  
 4 talked about the effect that those would have on DNA. So it is  
 5 in conjunction with her expertise in the area of DNA.

6 Besides that point, Your Honor, with regards to my  
 7 motion — State's motion here this morning, they did notice us  
 8 of a Charles Wetley, M.D., medical examiner, and they say that  
 he'd be testifying regarding opinion about the cause and  
 10 manner of the victim's death and the estimated time of death.  
 11 And they provided us with his CV in that area. It's interesting,  
 12 though, because his CV basically would assist or even comport  
 13 with Dr. Simms' testimony as to the time of death.

14 However, Michael Laufer, now, in this third report  
 15 -- bear in mind, there was two reports done. And in the third  
 16 report, we're told now about -- about time of death. It's  
 17 drastically different than their own medical examiner that they  
 18 have noticed on, and they say that he's a forensic pathologist.  
 19 When you look at his CV, there is absolutely nothing in his CV  
 20 that says he is a forensic pathologist. I haven't addressed that  
 21 yet, and the Court pointed that out, but I think that it will  
 22 come to light in any voir-dire question that I may have of him.

23 However, there's all the additional information about  
 24 the blood drying, he's talking about alcohol effect on time of

X11-13

1 death, he's talking about rigor mortis, he's talking about the  
 2 time of death, and he talks about the footprints in this case.  
 3 All of that is all new information that was never provided us in  
 4 any of his report until yesterday. And we did receive it in the  
 5 afternoon, and we were in our case in chief. We were  
 6 presenting evidence and presenting our case in chief. We  
 7 were here late last night reviewing this in order to make  
 8 -- or determine the -- his arguments and be able to be  
 9 prepared for cross-examination. And as we were looking, we  
 10 see he had not noticed us of any of these additional areas,  
 11 I think it's appropriate that he not be allowed to  
 12 testify in that area -- in these areas that I've pointed out. And  
 13  
 14 THE COURT: The Court grants the motion, Dr,  
 15 Laufer, L-A-U-F-E-R, will be permitted to testify in the areas  
 16 that were properly noticed on the amended notice of witness,  
 17 filed August 18<sup>th</sup> of 2006. The ruling's pursuant to  
 18 NRS174.234.  
 19 The bailiff may return the jury to the courtroom at  
 20 this time.  
 21 Whichever of defendant's counsel is going to be  
 22 questioning Dr. Laufer may step to the hallway and once the  
 23 jury has come into the courtroom, may explain the Court's  
 24 ruling to him before he comes in to give testimony.

X11-14

1 MR, KEPHART: Your Honor, in light of your ruling,  
 2 we have not seen what his Power Point is with regard to these  
 3 other areas, And similar to the opening of the defense, as we  
 4 had to make an objection at the -- at certain points during  
 5 that, I don't want to be in a situation where something goes  
 6 up in front of the board on his Power Point that goes directly  
 7 to these areas.  
 8 THE COURT: I didn't know that Dr. Laufer was  
 9 going to have a Power Point presentation.  
 10 MR!KEPHART: They've provided us —  
 11 MS, GREENBERGER: It hasn't been modified.  
 12 MR, KEPHART: What's that?  
 13 MS, GREENBERGER: It hasn't been modified. What  
 14 we provided you is exactly what that is.  
 15 MR, KEPHART: What we have been given is -- are  
 16 photographs. And in those photographs — we've gotten three  
 17 sets at various stages. And —  
 18 (Jurors reconvened at 11:24:43 a.m.)  
 19 THE COURT: The record shall reflect that the jury is  
 20 being returned to the courtroom at this time and may be  
 21 seated as they arrive in their seats in the jury box area,  
 22 Good morning, ladies and gentlemen. We  
 23 unfortunately had a legal issue arise that we had to address  
 24 outside your presence.

X11-15

1 As the Court had advised you yesterday, there's a  
 2 witness that for scheduling reasons is going to be called out of  
 3 order. This will be the defendant's first witness. Ms,  
 4 Greenberger has stepped to the hallway to retrieve the witness  
 5 and will be back shortly,  
 6 MICHAEL LAUFER, DEFENDANT'S WITNESS, SWORN  
 7 THE CLERK: State your name and spell it for the  
 8 record, please,,  
 9 THE WITNESS: My name is Michael D. Laufer,  
 10 L-a-u-f-e-r, M.D.  
 11 THE COURT: Ms. Greenberger, you may proceed,  
 12 MS. GREENBERGER: Thank you, Your Honor.  
 13 DIRECT EXAMINATION  
 14 BY MS. GREENBERGER:  
 15 Q Good morning, Dr. Laufer,  
 16 A Morning.  
 17 Q Could you kindly introduce yourself to the jury and  
 18 tell them about your formal education?  
 19 A Sure. My name is Dr, Mike Laufer. I'm a attending  
 20 physician at Stanford University Medical Center, I used to  
 21 work at University Medical Center here, as well, when we were  
 22 opening the trauma center. I'm an emergency physician  
 23 trauma surgeon. I've been doing that for longer than I care to  
 24 remember, over twenty-five years. I've been trained in

X11-16

1 emergency medicine, as well as trauma, advanced cardiac life  
 2 support, basic life support. I'm an instructor in advanced  
 3 cardiac as well as basic life support, and advanced trauma life  
 4 support and basic life support. Lots of what we call merit  
 5 badges.  
 6 I also have taken a specific interest in forensic  
 7 medicine. Have done several hundreds of autopsies, I've  
 8 treated a hundred thousand patients in my career. Several of  
 9 them had various injuries -- penetrating injuries, which  
 10 includes gunshot injuries, stab wounds, overdoses, drug  
 11 intoxications, drug withdrawal, pretty much the entire gambit  
 12 of medicine that emergency medicine incorporates.  
 13 Q What degrees do you have?  
 14 A I have a bachelor's degree from the University of  
 15 Colorado which was actually a combined program -- sort of  
 16 self-created bioengineering program. My degree is actually in  
 17 molecular cellular developmental biology but I also had enough  
 18 credits to get degrees in biochemistry and in electrical  
 19 engineering.  
 20 Q What is bioengineering?  
 21 A Well, at the time, it was still being defined. But,  
 22 fundamentally, it is the engineering approach of systems,  
 23 mechanics, electronics, electricity, to the body and biological  
 24 systems.

XII-17

1 Q Where did you go to medical school?  
 2 A At Stanford University,  
 3 Q When did you graduate?  
 4 A 1985, with an MD.  
 5 Q Have you done postdoctoral training?  
 6 A I have.  
 7 Q What does that involve?  
 8 A I completed a residency in emergency medicine at  
 9 Harbor-UCLA Medical Center which is I guess the little county  
 10 hospital in Los Angeles. We have five emergency  
 11 departments. We treat about a thousand patients in twenty-  
 12 four hours. And then I went back to Stanford and completed a  
 13 fellowship in trauma and emergency medicine which included  
 14 flying around in a helicopter doing emergency care. And also  
 15 did a fellowship in sort of the business aspects of medicine.  
 16 Q Have you been practicing medicine — well, how long  
 17 have you been practicing medicine?  
 18 A I was licensed in 1986.  
 19 Where ' &e you licensed?  
 20 A In California, then, Although when I came out to  
 21 work at University Medical Center when we opened the trauma  
 22 center here, I was also licensed in Nevada.  
 23 Q Can you describe the licenses and certifications that  
 24 you have?

X11-18

1 A Well, the licenses are fairly straightforward. It's  
 2 essentially a license to practice medicine and surgery.  
 3 Certifications are all those merit badges that I mentioned, But  
 4 I'm also a fellow of the American College of Emergency  
 5 Physicians, as well as a fellow in both Forensic Medicine and  
 6 Forensic Examination.  
 7 Q Can you describe for the ladies and gentlemen of  
 8 the jury what a "fellow" is and what it signifies and how you  
 9 obtain that status?  
 10 A Well, it all starts with an organization which has  
 11 actually morphed its name. I was I think one of the first thirty  
 12 members of what at the time was called the American College  
 13 of Forensic Examiners. That later became the International  
 14 College of Forensic Medicine and the International College of  
 15 Forensic Examiners.  
 16 Fellowship requires licensure as well as being in  
 17 good standing in all of the other things of being a member of  
 18 the college, but, in addition, you have to take an examination  
 19 and you have to be recommended by various other members,  
 20 that sort of thing.  
 21 Q What percent -- if you can quantify — does a fellow  
 22 signify -- how many people obtain fellow status?  
 23 A I'm not completely sure of the number. When I   
 24 became a fellow, it was less than 10 percent of the members.

X11-19

1 Q So it's a significant status that you enjoy?  
 2 A It's certainly the smaller part of the group,  
 3 Q Are you a base station physician and, if so, can you  
 4 describe what that is?  
 5 A Yes. I've actually been a base station physician in  
 6 both Santa Clara County, San Mateo County, Los Angeles  
 7 County and in Clark County, It involves giving direction to the  
 8 paramedics so when they have a particularly challenging or -  
 9 difficult case they make radio contact with the base. Some of  
 10 you may remember Rescue 51 or Emergency, that television  
 11 show where they ring up on the little box and nurse sticks [sic]  
 12 him a call or somebody comes to the box and then they get  
 13 Dr. Bracken to come over and give further information about  
 14 starting IVs or what kinds of procedures to perform. So it's  
 15 essentially medical direction for paramedics in the field.  
 16 Q In addition to working with paramedics, do you also  
 17 have an opportunity to work with law enforcement?  
 18 A Yes. I'm medical director for the Palo Alto Fire  
 19 Department which involves doing research, doing teaching,  
 20 going over cases, But I also work with the Santa Clara County  
 21 SERT team which is like a SWAT team, It's the Sheriff's  
 22 Emergency Response Team.  
 23 Q In the course of your career have you specifically  
 24 assisted law enforcement with regard to the origin and

X11-20

confirmation of injuries?  
 2 A That's interesting. A lot of the time the law  
 3 enforcement groups have their own sort of internal experts.  
 4 Certainly every once in awhile we end up discussing cases, but  
 5 I can't say that law enforcement specifically has brought me  
 6 into cases, with one exception. And that is that my wife is a  
 7 career federal prosecutor, and on a number of occasions they  
 8 have cases where they ask me to consult and give them  
 9 direction and ask them how to build their cases,  
 10 Q So you've been an emergency room surgeon at  
 11 Stanford for twenty years?  
 12 A At least. Yes.  
 13 Q Can you give us an overview of your experience and  
 14 activities as a consequence of your employment in surgery and  
 15 autopsy?  
 16 A Well, luckily as an emergency physician we don't see  
 17 too many dead people. You know, most of them come in alive  
 18 at least. Every once in awhile they die in our care. One of the  
 19 things we always try to do is, you know, do the best to keep  
 20 them alive, Sometimes on those occasions when we are  
 21 unsuccessful for whatever reason, we like to know what  
 22 happened. Some people sort of have the cases end when the  
 23 body leaves the emergency department. I actually on a  
 24 number of occasions have followed the bodies and either done

X11-21

1 the autopsy or assisted in the autopsy, in order to find out  
2 more about what the circumstances of death were

3 Q So in the course of your emergency room work, you  
4 developed an interest in looking behind injuries, and followed  
5 the bodies down to autopsy? Is that how your forensic  
6 pathology developed?

7 A It actually even predated that. I mean, I can  
8 remember when I was fourteen years old going to the  
9 Colorado Bureau of Investigation and learning how they  
10 examine evidence and how they tag evidence, how they bag it,  
11 how they maintain chain of custody, how they microscopically  
12 examine forensic evidence. So it really started then, and then  
13 continued through -- throughout medical school. I used to go  
14 both to the emergency department where I used to just hang  
15 out and study, and also to the autopsy suite where I assisted  
16 or did probably a hundred autopsies over the course of four  
17 years.

18 Q What is forensic pathology? Can you define it?

19 A Well, it's part of forensic medicine. So maybe I  
20 should go one step back and sort of say what forensic  
21 medicine is. It encompasses multiple specialities, things like  
22 forensic psychiatry or forensic psychology, trying to get into  
23 the head of the person. And you've probably heard of the FBI  
24 having people who will try to get a specification on what sort

X11-22

1 of person may have committed these crimes. It involves  
2 things like forensic accounting, where -- the old adage of  
3 follow the money and you'll find the perpetrator comes into  
4 effect. You know, people getting divorces may want to find  
5 out where all the money is hidden or where it went. So  
6 forensic accounting is part of forensic medicine or forensics in  
7 general.

8 Forensic pathology is a part of that as well. And that  
9 can include everything from looking at injuries and figuring out  
10 time of death and figuring out things about blood spatter  
11 patterns, figuring out patterned injuries and what could have  
12 caused them, and that then morphs into a further subspecialty  
13 of injury reconstruction, sometimes failure reconstruction and -  
14 - so it's really a very broad sort of range, and different people  
15 have different specialties within that.

16 Q Do you have specific training within the area of  
17 forensic pathology?

18 A Well, certainly as far as having done several  
19 autopsies under direction, learning how to do them, learning  
20 how to look at tissue specimens, seeing different kinds of  
21 injuries, you know, seeing thousands of different injuries on  
22 dead people. But probably more important, seeing, you know,  
23 tens of thousands of injuries on people who are still alive,  
24 which is something that's a bit different from what your typical

X11-23

1 forensic pathologist does. Where I can actually talk to the  
2 person and say, you know, did you fall down stairs or did you  
3 hit this on a jungle gym or, you know, did you get hit with a  
4 billy club or a stick or a belt or a -- you know, was this a stab  
5 wound from a butcher knife or a kitchen knife or, you know,  
6 was it a 38mm, a .9mm, a 40 caliber, you know, what -- what  
7 all of those pieces then -- that come together, as well as  
8 talking to other people who were at the scene and can give  
9 further information.

10 Q In the course of evaluating over a hundred thousand  
11 patients, have you had opportunities to examine and contrast  
12 when someone comes into the emergency room with a specific  
13 injury and tells you it was caused by a specific instrument and  
14 actually deciphering the mechanism of injury?

15 A Yes, And in fact I lecture on that topic. One of the  
16 important things in emergency medicine is being able to put  
17 together the pattern of injury that you see with the story that  
18 you hear. As an example, a child comes in who has a broken  
19 arm, and they say that they just fell down, and you say, well,  
20 you can't get this kind of an injury just falling down, are you  
21 sure something else didn't happen, and then you slowly but  
22 surely find out that they didn't fall down, they were thrown  
23 down, or they fell off -- or out of a second story window, and,  
24 yeah, they fell but it was more than just falling down.

X11-24

1 So we are actually charged with having a fairly high  
2 suspicion in certain kinds of cases. And the charge is to be  
3 correct. You have to both know when the injury matches the  
4 mechanism, because you don't want to falsely accuse someone  
5 of abuse when it didn't happen, and you also have to be right  
6 when you see something that doesn't match, because it's our  
7 -- you know, we are given the responsibility of protecting the  
8 patient from further injury if it's -- if the injury is happening in  
9 a household or in an environment We have to take them out  
10 of that environment. So --

11 Q Does your biomedical engineering background assist  
12 you in that capacity?

13 A Well, I'd say probably all of my training to some  
14 degree, helps. I mean, I think that in some ways I look at  
15 some of these things a little bit differently than your average  
16 physician does because I've had that rigorous engineering  
17 training where you look at the specifics of forces and vectors  
18 and direction and torque and all of those sort of mechanical  
19 physical properties and apply those to tissues and bones and  
20 parts of the body. So it's certainly an extension..

21 Q Excuse me for getting you off -- so unlike a forensic  
22 pathologist that devotes all of his time to examining  
23 decedents, you enjoy practicing on patients as well as  
24 attending autopsies?

X11-25

1 A Well, that's right I mean, I guess in a way it's  
 2 broader than just looking at the patients who can't tell you the  
 3 story and having to figure it out. But you can figure out a lot  
 4 more by doing both. So, you know, in some cases you have a  
 5 pretty good idea of what happened and then you go and get  
 6 the rest of the data from the autopsy or from the family or  
 7 from the paramedics or the police, and you put the whole  
 8 picture together. Where, you know, sometimes in forensic  
 9 pathology, you're stick in the dungeon of the autopsy room  
 10 and then, you know, two-thirds of your time is spent in court  
 11 giving testimony. So it's -- it's all part and parcel and both are  
 12 clearly important, But I've had the good fortune to be able to  
 13 do both.

14 Q In addition to your work at the hospital, can you tell  
 15 us what academic appointments you hold?

16 A Well, I mean, over the years, I've been assistant  
 17 professor of medicine at University California, San Francisco,  
 18 and assistant professor of surgery at Stanford. I don't think I  
 19 had an academiCtitie when I was in Nevada but -- I can't  
 20 remember,

21 Q Have you recently been contacted regarding an  
 22 adjunct teaching position at any other universities?

23 A Yeah, Well, actually Harvard has been recruiting me  
 24 to join their faculty in the department of surgery. In order to

X11-26

1 give lectures -- they have a new program of satellite  
 2 education, and they want me to do satellite programs for  
 3 them, both on some of these sorts of issues as well as on  
 4 some of the business aspects of medicine.

5 Q What hospitals are you affiliated with?

6 A Currently, I think the only hospital is Stanford. But  
 7 over the years, obviously, UNLV in Nevada. We actually  
 8 opened up a new hospital called St Louise in Morgan Hill,  
 9 California. I was at Mt. Zion and was the medical director at  
 10 Mt. Zion for a humber of years. So --

11 Q What did your work -- you mentioned at UNLV --  
 12 what did that entail?

13 A We had actually bid successfully and then received  
 14 the contract to staff the emergency and trauma center. The  
 15 trauma center was just being built and we needed physicians  
 16 to essentially work the shifts there, So I would come over and  
 17 work as an attending physician, supervising the residents and  
 18 taking care of patients.

19 Q Over the years have you held other professional  
 20 positions and major visiting appointments with other agencies?

21 A You I guess have my CV in front of you. I-- I don't

22 Q Yes. If it would refresh your recollection -- would  
 23 that refresh your recollection?  
 24

x11-27

1 A Sure.  
 2 MS. GREENBERGER: May I approach, Your Honor?  
 3 THE COURT: You may,  
 4 THE WITNESS: I guess the one that I left out was  
 5 Pacific Presbyterian where I ran the occupational medicine  
 6 department, Chinese Hospital where I also worked as an  
 7 attending physician.  
 8 BY MS. GREENBERGER:

9 Q You mentioned that you were a medical director for  
 10 the Palo Alto Fire Department, What does that entail?

11 A In order to provide state of the art paramedic  
 12 service, at least In California, the paramedics have to function  
 13 under the license of a physician. So at the basic level, it's the  
 14 person who the paramedics essentially work under the license  
 15 of.

16 In my case, I started working with the fire  
 17 department in 1980 actually, when I was a first-year medical  
 18 student. I started doing ride-a-longs with the paramedics,  
 19 started doing teaching with regard to drugs and injuries and  
 20 crime scene maintenance and those sorts of things, and was  
 21 asked by the fire chief, who was appointed, to become the  
 22 medical director for them, with the expectation that I would be  
 23 more active. That I would continue to do ride-a-longs, I would  
 24 be active in education, and, you know, also help them stock

X11-28

1 their ambulances with drugs and do all the other things that  
 2 medical directors have to do.

3 One of the big pieces is -- you know, paramedics  
 4 bring patients to a hospital and then the patient sort of gets  
 5 taken over by the system at the hospital. And when things go  
 6 right, they point fingers. And when things go wrong, they  
 7 point fingers. And you need a liaison that can answer the  
 8 questions and sort of balance some of the finger pointing so  
 9 that when there are questions of, for instance, why did it take  
 10 so long to bring this patient who was in this massive motor  
 11 vehicle accident with all the metal crushed around him  
 12 -- why did it take twenty minutes to get him from the scene to  
 13 the hospital? You know -- well, you know, actually it took  
 14 about nineteen minutes to get the patient out of that crusted  
 15 crushed pile of metal and then, you know, in about a minute  
 16 we traveled the three miles to the hospital to get him to you.  
 17 So it's a matter of dealing with some of those perceptions and  
 18 making sure that perception and reality match a little bit more  
 19 closely.

20 Q Did you also perform or hold a position of medical  
 21 director with Bayshore Ambulance and San Francisco  
 22 Ambulance over the years?

23 A Yes. I'm still medical director for Bayshore  
 24 Ambulance, Specifically, they have a critical care transport

X11-29



1 unit and have nurses that staff that critical care transport unit.  
 2 In order to have a CCT with nurses, the nurses have to  
 3 function under a physician's license and so I'm the physician.  
 4 The job entails reviewing calls, acting as a liaison between the  
 5 hospitals and the ambulance, as well as the receiving and  
 6 sending facility, and sometimes just answering questions with  
 7 regard to should we take this patient or not. If we do take  
 8 him, should we put him on a ventilator or not, can we give him  
 9 additional sedation because they seem to be jumping around a  
 10 lot in the back of the ambulance. Those sorts of questions.  
 11 And it was a similar situation with San Francisco Ambulance.

12 Q Are you board certified by the American College of  
 13 Emergency Medicine?

14 A Yes,

15 Q Are you board certified as a forensic medical  
 16 examiner?

17 A As well as a forensic -- well, this is sort of what I  
 18 was talking aboutearlier. Board certified in both forensic  
 19 medicine and as a forensic examiner.

20 Q And that encompasses the field of forensic  
 21 pathology, correct?

22 A Correct,

23 Q And also injury reconstruction?

24 A Yes.

X11-30

1 A Yes.

2 Q In addition to medicine and the work you do with  
 3 the hospitals and the paramedics and fire department, have  
 4 you patented any inventions?

5 A Yes,

6 Q How many?

7 A I have approximately two hundred patents pending,  
 8 just short of a hundred issued.

9 Q Can you give us a sample of what types of  
 10 inventions?

11 A Well, one of the first companies that I started is a  
 12 company that's public now. It's called Venus. One of the  
 13 procedures that people had was called vein stripping, where if  
 14 you have a varicose vein that's painful or one that you don't  
 15 like how it looks, they literally go in with a device that looks  
 16 like a wire, and attach something on the end of it and then  
 17 literally rip it out of your leg. That's called vein stripping, And  
 18 then, you know, they hold a bunch of packs on it for awhile  
 19 because it bleeds a lot and it takes several weeks to recover  
 20 from it. And I said, you know, this is sort of barbaric, there's  
 21 got to be a better way to do it. So I invented a catheter that  
 22 you can put in through a very small needle puncture at the  
 23 ankle, after anesthetizing it, and then you put energy from  
 24 radio frequency generators into that vein, the vein heats up

X11-32

1 Q Have you achieved awards and honors over the  
 2 years? For example, Tau Beta Pi Engineering Honor Society?

3 A Well, I was -- yeah, I was Phi Beta Kappa and Tau  
 4 Beta Pi, Tau Beta Pi is sort of the engineering equivalent of  
 5 Phi Beta Kappa r

6 Q And you have received departmental honors in  
 7 various fields of molecular cellular developmental biology?

8 A Yes,

9 Q Have you authored articles for publication?

10 A Yes.

11 Q What subjects would those be?

12 A Well, I think one of the first ones was with regard to  
 13 the autopsy which is -- actually goes way back. But it -- it was  
 14 an article that supported the very difficult but necessary part  
 15 of medicine which is, you know, when you're a medical student  
 16 or a resident or an attending physician, and something goes  
 17 wrong, you have a requirement to figure out what that was,  
 18 because otherwise you'll just make the same mistake again.

19 This was an article about how residents and medical  
 20 students can gently but persuasively convince families to allow  
 21 an autopsy so that they can learn from all of the things that  
 22 happened both in terms of pathology and disease as well as  
 23 medical treatment.

24 Q Have you also written chapters in books?

X11-31

1 and closes off, and instead of having to rip it out, you just pull  
 2 the catheter gently down through the vein, it closes the vein  
 3 and you're back to work the same day in some cases, or the  
 4 next day.

5 Q Do these patents that you've invented -- are they for  
 6 all different parts of the body and all types of different injuries  
 7 and diseases?

8 A Let's see, I've got a vein system, a asthma system,  
 9 an emphysema system, urinary incontinent system, So I -- I  
 10 actually literally have one of those visible man sort of skeleton  
 11 things on the back of my door and I look at, okay, I haven't  
 12 done anything there yet, why don't we think about something  
 13 for the heart or something for the lungs or something for the  
 14 other areas. So it's -- I haven't done anything twice yet except  
 15 the lungs,

16 Q Have you developed a number of nonprofit and  
 17 profit entities to raise money for medical purposes?

18 A As far as I know, they're all for profit They're all  
 19 companies. Actually for about a ten-year period, I was with a  
 20 venture capital firm called Med Ventures, and eight of the  
 21 companies that I started, I started essentially while I was  
 22 there, and they funded them and got them to a certain point  
 23 and then we raised money from other venture capitalists and,  
 24 in a couple cases, from the pubic markets as well,

XII-33

1 Q Have you previously qualified as an expert in  
 2 forensic medicine?  
 3 A Yes,  
 4 Have you previously qualified as an expert in injury  
 5 reconstruction?  
 6 A Yes.  
 7 Q Have you given lectures, seminars and oral  
 8 presentations in those areas?  
 9 A Yes,  
 10 Q If you haven't already, can you further describe your  
 11 expertise in injury reconstruction?  
 12 A Well, expound a little bit in order to give just a  
 13 little bit more flavor, if you will. But when there are certain  
 14 kinds of injuries, you know, it's sort of incumbent upon us to  
 15 figure out what caused them, as I spoke about earlier. I've  
 16 sort of taken it a step further, which is to say I've taken  
 17 various skeletal parts, you know, upper parts of the arm, lower  
 18 parts of the arm, same with the legs, same with the ribs, same  
 19 with the head, sariie with the neck, and actually done testing  
 20 to determine how much force and which direction it takes in  
 21 order to injure those kinds of parts.  
 22 One of the other things that we see frequently is  
 23 lacerations. So how much force does it take against a sharp  
 24 edge of a table, for instance, to get a laceration of the

X11-34

1 forehead versus the cheek versus the arm. You know, these  
 2 are all things that come up because — you know, one of the  
 3 cases that I was involved with was a 6' tall model who, you  
 4 know, one person said was sitting on a stool and was drunk  
 5 and fell off the stool and got a laceration of the forehead, and,  
 6 you know, other witnesses said that actually what happened  
 7 was this guy came and said you're in my chair and pushed her  
 8 out of the chair and she got a laceration. So the question was,  
 9 could she fall off the chair and get the laceration. And you do  
 10 the calculatiolis knowing how much force it takes to get that  
 11 kind of a laceration and you find that in fact she had to be  
 12 pushed. She couldn't have fallen\_ So it's that sort of thing.  
 13 MS. GREENBERGER: Your Honor, at this time we  
 14 would move to qualify Dr. Laufer in the area of forensic  
 15 medicine which encompasses forensic pathology, and  
 16 specifically the field of injury reconstruction, traumatic injury,  
 17 biomedical engineering\_  
 18 MR. KEPHART: May I take him on voir-dire, Your  
 19 Honor?  
 20 THE COURT: Yes.  
 21 MR, KEPHART: Showing what's been marked as  
 22 State's Proposed Exhibit 260 to defense,  
 23 THE COURT: 260?  
 24 MR. KEPHART: Yes, May I approach, Your Honor?

X11-35

1 VOIR-DIRE EXAMINATION  
 2 BY MR. KEPHART:  
 3 Q Doctor, I'm showing you what's been marked as  
 4 State's Proposed Exhibit 260. Do you recognize what that is?  
 5 A It looks like a copy of my curriculum vitae.  
 6 MR. KEPHART: Your Honor, Ill move to admit  
 7 State's Proposed Exhibit 260.  
 8 MS. GREENBERGER: No objection.  
 9 THE COURT: Granted.  
 10 (State's Exhibit 260, admitted)  
 11 BY MR. KEPHART:  
 12 Q Doctor, you have testified here, just now, in  
 13 reference to your qualifications that you are an emergency  
 14 room trauma surgeon?  
 15 A Yes.  
 16 Q And you've been doing that for how long now?  
 17 A About -- I started my training in 1980, so -- I was  
 18 licensed in 1986, finished my residency in 1988.  
 19 Q Okay. So as a actual trauma surgeon -- or doing  
 20 trauma surgery and emergency type of medical procedures,  
 21 was in, according to your CV, 1988?  
 22 A Actually as an emergency physician, yes.  
 23 Q Okay. And that was at Stanford University?  
 24 A I did my residency in Los Angeles.

X11-36

1 Q Okay. And when you became licensed as a doctor,  
 2 when was that?  
 3 A 1986, 1987.  
 4 Q Okay. So in 1983 you weren't a doctor at that time  
 5 but you were giving advanced cardiac life support instructions  
 6 at that time?  
 7 A Correct- I was a medical student.  
 8 Q Okay. And your CV's pretty full with regards to life  
 9 support instructor, trauma life support provider, basic trauma  
 10 life support instructor, pediac advanced life support provider,  
 11 certified base station physician, Los Angeles -- is that what  
 12 we're -- when you testify about that, you're talking about --  
 13 like you were using Engine 51, that movie Engine 51 — you're  
 14 at a base and somebody like a paramedic or emergency  
 15 medical individual out at a scene would call in and talk to you  
 16 and you would give them instructions?  
 17 A Correct. Yes.  
 18 Q Like when to start IVs and maybe put a supine  
 19 board on him or put something around his neck or --  
 20 A Right.  
 21 Q -- to support his head? Okay. And you said that in  
 22 1992 you were board certified as American College of  
 23 Emergency Medicine. Is that correct?  
 24 A I don't think I said 1992 but that's right,

XII-37

1 Q Well, that's on your -- on your —  
 2 A Yes.  
 3 Q Okay. And the American College of Emergency  
 4 Medicine — you said that you were kind of part of that when  
 5 you got started? Is that right?  
 6 A I'm not sure exactly what you're asking.  
 7 Q Well, you said in the beginning -- 'cause they were  
 8 asking about your fellowship, what the percentage was, and  
 9 you said that you kind of started with this program. You  
 10 started with them. Is that not true, that you didn't help start  
 11 them?  
 12 A I don't think I said that I started the American  
 13 College of Emergency Physicians, I think what I said was that  
 14 I was one of the first thirty members -- a charter member of  
 15 the American College of Forensic Medicine.  
 16 Q Okay, So, but with regards to what's required to  
 17 become an American College of Emergency Medicine  
 18 individual, you have to be a licensed doctor? Is that right?  
 19 A Yes.  
 20 Q And you have to do what else?  
 21 A In the case of that, you have to do a board  
 22 certification process which involves a written examination as  
 23 well as an oral examination. And you have to do a residency.  
 24 And be certified by your residency program as being qualified.

X11-38

1 Q Okay. Then you say that you're a fellow of the  
 2 American College of Emergency Physicians. Is that the same  
 3 program?  
 4 A It's different actually. In order to become a fellow,  
 5 you have to be an academic. Essentially you have to write  
 6 papers, and you have to be in an academic institution and —  
 7 Q Same program though? Same people, American  
 8 College, I mean, that's -- if I was looking at that —  
 9 A It's actually different. The board is the American  
 10 Board of Emergency Medicine or ABEM. And the fellowship is  
 11 through the American College of Emergency Physicians, So it  
 12 is two different organizations.  
 13 Q Okay, And then there's national advanced life  
 14 support provider. And then fellow -- American College of  
 15 Forensic Medical Examiners. Okay. And then you said you  
 16 were affiliate with the faculty of the Northern California basic  
 17 trauma life support, California medical license in 1987. And in  
 18 1990 you got your Nevada medical license?  
 19 A Correct,  
 20 Q And then you were talking about UNLV Hospital. Is  
 21 that -- you're talking about here in Las Vegas?  
 22 A Yes,  
 23 Q Okay. UNLV Hospital, would that be the same as  
 24 the UMC Hospital?

X11-39

1 A Yes,  
 2 Q University Medical Center, It's not University of  
 3 Nevada Las Vegas Hospital, right?  
 4 A You're right.  
 5 Q Okay, And I asked you about emergency room  
 6 trauma surgeon and you said you were. Are you also a  
 7 forensic pathologist?  
 8 A I am not, per se, a forensic pathologist, no,  
 9 Q Okay. Do you know any reason why we would have  
 10 been told that you were a forensic pathologist?  
 11 A Sometimes people get caught up in the idea that  
 12 forensic medicine involves forensic pathology, as I was saying  
 13 earlier,  
 14 Q Okay. So you're not a member of the American  
 15 Board of Pathology?  
 16 A Correct,  
 17 Q And so you wouldn't have been involved in a five-  
 18 year residency requirement in pathology?  
 19 A Correct. Actually when I was training, it was a  
 20 three-year requirement. It's changed now You have to do  
 21 two years of primary care which obviously I did do.  
 22 Q And then three years —  
 23 A And then three years of pathology.  
 24 Q Okay, And then you have to do a year of fellowship

XII-40

1 in forensic pathology? Correct?  
 2 A To be boarded in forensic pathology, yes.  
 3 Q And you haven't done that?  
 4 A Correct,  
 5 Q Now, you say that -- in your curriculum vitae, that  
 6 from 1999 to present, you were the medical director for  
 7 California EMS Academy. Is that Emergency Medical Service  
 8 Academy or something?  
 9 A It's actually a paramedic school. Right. So it's  
 10 California Emergency Medical Services Academy.  
 11 Q Similar to -- I mean, you've kept your line of  
 12 expertise similar to the base station position type of — where  
 13 you're helping or working with emergency medical technicians?  
 14 A Yes, that's certainly part of what I do.  
 15 Q Okay. And 2001 you were the medical director for  
 16 the Bayshore Ambulance. 2005 to the present you're medical  
 17 director of the Palo Alto Fire Department.  
 18 A Correct.  
 19 Q And you indicated in your curriculum vitae that that's  
 20 actually an administrative responsibility in all three of those --  
 21 except -- I'm sorry, Palo Alto Fire Department, Bayshore  
 22 Ambulance and San Francisco Ambulance. You've had  
 23 administrative positions in them?  
 24 A That I have administrative responsibilities, yes.

XII-41

1 Q That's like making sure there's enough staff to  
 2 maybe man the phones when the EMTs are calling in or  
 3 enough EMTs or -  
 4 A Yeah, Actually, in my case, it's everything from  
 5 lecturing -- I give approximately twelve lectures a year. I do  
 6 an autopsy lab actually for the paramedics and show them  
 7 injuries and reconstruction, as well as how to place lines, IVs,  
 8 chest tubes, that sort of thing,  
 9 Q Doctor, do you do -- in the autopsy labs, are you  
 10 given - 'cause in your curriculum vitae you talk about cadaver  
 11 classes and that. In your autopsy labs are you given a  
 12 cadaver to use basically as an exhibit to show individuals,  
 13 EMTs and paramedics -  
 14 A Yes.  
 15 Q So you're not actually doing an autopsy in those  
 16 particular settings, are you?  
 17 A Well, actually we do, Because we do a number of  
 18 things to them and then we do the autopsy afterward in order  
 19 to show what thOSē things that we did to them, did to them.  
 20 Q Is this something -- is it -- pardon my words, but is  
 21 it a fresh cadaver? Meaning that no one else has done  
 22 anything on it  
 23 A Yes,  
 24 Q Okay.

X11-42

1 another eighty-some outside the U,S, as foreign patents, sort  
 2 of going country by country, and then there's another 120 or  
 3 so, plus or minus, that are pending but haven't had a final  
 4 office action yet.  
 5 BY MR, KEPHART:  
 6 Q And these are devices that will help in medical  
 7 treatment of individuals?  
 8 A Diagnosis, treatment -- but, yes, generally they are •  
 9 things that some physician presumably would buy to use on a  
 10 patient that had some sickness or injury.  
 11 Q Okay. And you said that your primary activity since  
 12 1983 involved the creation of the new medical devices to treat  
 13 patients with common illnesses. Is that still true?  
 14 A Hard to know what primary activity is because I do a  
 15 lot of different things. But certainly most of my income derives  
 16 from doing those things.  
 17 Q I was just using your words, Doctor. Okay.  
 18 A Sure,  
 19 Q Also, you have indicated on direct by the defense  
 20 attorney, that you are published. You've been involved in a lot  
 21 of -- a lot of - you've written chapters, you've written  
 22 publications. Is that true?  
 23 A Yes,  
 24 Q Okay, With respect to your patents and the ones

X11-44

1 A Yeah, In fact, it's fresh frozen, specifically,  
 2 Q And are those cadavers that are provided to you,  
 3 individuals that have been subject to murders?  
 4 A Not in those cases, at least not as far as we know.  
 5 Q Because that would be more in tune with what a  
 6 forensic pathologist would be looking at?  
 7 A Correct. Or a coroner. Even more specifically,  
 8 coroner medical examiner.  
 9 Q Okay, You -- you've indicated that you have about  
 10 200 patents ori different devices that help us medically, and  
 11 you went through a bunch of those. Okay. How long have  
 12 you been involved in that?  
 13 A Since -- well, I joined MedVentures in 1993 so that's  
 14 when it started, But I had a number of inventions probably  
 15 dating back to the mid-80s.  
 16 Q Okay. Isn't -  
 17 THE COURT: I want to make a clarification. I  
 18 understood the prior testimony to be about a hundred patents  
 19 and less than 200 pending patents?  
 20 THE WITNESS: That's correct.  
 21 MR\_ KEPHART: Is that right? Okay. I heard 200.  
 22 So I heard the number but just heard it out of -  
 23 THE WITNESS: Sure. Yeah. It's -- I think the  
 24 actual number now is 86 or 88 issued in the US. There's

X11-43

1 pending, you indicate in your CV -- and I need to ask you why  
 2 you do this - you wrote in here, "My work has been the  
 3 foundation of at least 50 scientific publications," Is that right?  
 4 A Yes,  
 5 Q Then your next line is, "I have asked that my name  
 6 not be listed on these publications in order for the work to  
 7 stand on its own without hampering its commercial or scientific  
 8 strength." What do you mean by that, Doctor? Do you mean  
 9 that if you -- if your name shows up, it's going to affect the  
 10 publication? Is it going to make it less credible? Is it going to  
 11 make it more credible? Is it going to affect your reputation?  
 12 What? What does that mean?  
 13 A Yeah,  
 14 Q Is that a fair question though?  
 15 A It's a fair question, In 1993 when I joined the  
 16 business world, it was explained to me that having the name  
 17 of a company on a scientific publication reduces its credibility.  
 18 And that because I was sort of the founder, in a company  
 19 sense, that when we had a choice between having the world's  
 20 experts in pulmonology, in respiratory medicine, in neurology,  
 21 in neurosurgery, in neurology, writing papers, that they would  
 22 like the full academic credit, if you will, for those papers, even  
 23 though in many cases I was the one that wrote the papers. So  
 24 I pulled back into the background and said, great, go get your

X11-45

1 academic credibility, and I'm happy to help you with that  
 2 because it helps the company succeed as well,  
 3 Q That's kind of what you mean also on the report of  
 4 clinical activities, you say "I have tried to keep a low profile  
 5 and have shunned the spotlight in favor of the clinical  
 6 investigators who will make the products commercially  
 7 successful?"  
 8 A Correct,  
 9 Q So you've stayed in the background?  
 10 A Right  
 11 Q Now, you've indicated that -- I remember the  
 12 defense had asked you if -- do you have any specific training  
 13 in forensic pathology, and you quite -- you didn't quite answer  
 14 that question, You kind of went around and said, well, you  
 15 know, forensic pathology also involves forensic medicine. My  
 16 question to you, here, is not what it involves. My question is  
 17 do you have specific training in forensic pathology?  
 18 A Yes.  
 19 Q And whkis that?  
 20 A Well, I trained with some of the probably better  
 21 known names. Tom Noguchi, the folks at the Colorado and  
 22 California Bureaus of Investigation. With the people who ran  
 23 the autopsy lab, the anatomic pathologists, as well as the  
 24 histological and psydological [sic] pathologists, So I spent

X11-46

1 years learning from them how to do autopsies, how to look at  
 2 tissues, how to look at injuries, how they look at things, and,  
 3 you know, I think they would say today that they've also  
 4 learned from me.  
 5 Q You also said that -- I think you said from a very  
 6 young age -- I believe you used the age of 9?  
 7 A Fourteen.  
 8 Q Fourteen, That you liked looking at these kind of  
 9 areas and you were interested in it -- and that was in the area  
 0 of forensic mddicine, I think, when they were asking those  
 11 questions. And my question to you, is, if you liked it ever since  
 12 you were fourteen years old, why haven't you specialized in  
 13 forensic pathology?  
 14 A Yeah, I was heavily recruited by the pathologists, as  
 15 well as the folks at the crime labs who wanted me to do  
 16 exactly that, but I actually like taking care of live people too.  
 17 So that was really the reason. There were a lot of people  
 18 wanting me to go into neurosurgery as well, but I decided  
 19 having a nice general speciality like emergency medicine was  
 20 the place where I got to do all sorts of things,  
 21 MR. KEPHART: Court's indulgence, Your Honor,  
 22 THE COURT: Yes,  
 23 MR. KEPHART: A couple more questions, Your  
 24 Honor.

X11-47

1 BY MR. KEPHART:  
 2 Q Can you tell me the difference between forensic  
 3 pathology and forensic medicine?  
 4 A Well, forensic pathology is sort of part of forensic  
 5 medicine. As are a bunch of other specialities, as I  
 6 enumerated earlier. So forensic pathologists work with the  
 7 accident reconstructionists and the injury deconstructionists  
 8 and if it works the way it's supposed to, they all put the picture  
 9 together in order to get the whole picture.  
 10 Q Okay, You would agree that a cardiac specialist  
 11 would be part of medical doctor?  
 12 A Correct.  
 13 Q So in the big picture, forensic pathology is part of  
 14 forensic medicine?  
 15 A Yes,  
 16 Q But forensic pathology is a specialization in forensic  
 17 medicine?  
 18 A Yes,  
 19 Q Kind of like a cardiac doctor in medicine?  
 20 A Right. Or even, you know, the anatomic pathologist  
 21 versus the forensic pathologist, where an anatomic pathologist  
 22 may do the autopsies for people who die in a hospital but the  
 23 forensic pathologist because -- you know, let's face it, they  
 24 spend half their life testifying in court -- have that as part of

X11-48

1 their speciality as well, and they're looking at bodies who die  
 2 generally due to some sort of a unexpected event as opposed  
 3 to perhaps, you know, a medical event,  
 4 Q Okay. Now, you also testified that you've done -- I  
 5 think in one part of your testimony you said over a hundred  
 6 autopsies in four years, And I think you said over a period of  
 7 your career, about 200 autopsies? Is that right?  
 8 A Round numbers. Two to three hundred, somewhere  
 9 in there.  
 0 Q When you were contacted by the defense to testify  
 1 in this case and provide a curriculum vitae, you knew that this  
 2 involved a murder case, is that correct?  
 3 A Yes. I think at that point I -- I knew a lot about the  
 4 case,  
 5 Q Okay. And do you know why you didn't put in your  
 6 CV that you -- that you've conducted any autopsies? Your  
 7 curriculum vitae,  
 8 A I think when I was asked for a CV, I provided the CV  
 9 that was the most recent CV I had, So I didn't modify it or  
 0 change it for the purposes of the trial,  
 1 MR. KEPHART: Your Honor, at this time I'm going  
 2 to challenge Dr. Laufer in reference to the notice of him being  
 3 a forensic pathologist.  
 4 THE COURT: The motion pending that Ms.

X11-49

1 Greenberger brought was for him to be accepted as an expert  
2 in forensic pathology, is the Court's recollection. That that was  
3 the motion brought before Mr. Kephart asked to take the  
4 witness on voir-dire.

5 MS, GREENBERGER: That, and the field of injury  
6 reconstruction which would both be encompassed by forensic  
7 medicine of which he is board certified,

8 THE COURT: Is your motion to accept him as an  
9 expert in forensic medicine?

10 MS. GREENBERGER: Which would encompass  
11 forensic pathology and the field of injury reconstruction.

12 MS. GREENBERGER: May I respond?

13 THE COURT: Yes,

14 MS. GREENBERGER: Your Honor, my understanding  
15 of the standard for qualification is that he has some expertise  
16 in the field above and beyond what is possessed by the  
17 average juror. And by that standard, we believe this witness is  
18 well qualified in both of these fields of forensic pathology and  
19 injury reconstructiar, which are both encompassed in the field  
20 of forensic medicine. He's qualified a number of times in these  
21 areas,

22 THE COURT: The Court will grant the motion to  
23 accept him as an expert in the area of forensic medicine  
24 encompassing injury reconstruction and forensic pathology,

XII-50

1 the stand under oath,

2 The court recorder has advised me that what we did  
3 since coming back from lunch got recorded up until the last  
4 bench conference when Mr. Kephart asked to approach the  
5 bench, that that did not get recorded, and also the Court's  
6 reading of the admonishment to the ladies and gentlemen of  
7 the jury did not get recorded.

8 So the Court makes the record at this time that the -  
9 admonishment was given to the jury at the last recess, the  
10 same admonishment that the Court has given throughout the  
11 trial was given. And we're proceeding forward, and Mrs.  
12 Greenberger may resume.

13 MS. GREENBERGER: Thank you, Your Honor, May I  
14 approach the Clerk?

15 THE COURT: You may.

16 MS, GREENBERGER: Thank you.

17 DIRECT EXAMINATION (Continued)

18 BY MS. GREENBERGER:

19 Q Dr, Laufer, before we broke, you were discussing  
20 that it was your opinion that scissors may have inflicted the  
21 injuries in the first photograph we're looking at. Is that  
22 correct?

23 A Yes.

24 MS, GREENBERGER: May I approach the witness,

X11-52

1 MS, GREENBERGER: Thank you, Your Honor.

2 THE COURT: At this time we'll be taking our lunch  
3 recess and resuming at 1:30. You may step down from the  
4 stand until that time.

5 Ladies and gentlemen, at 1:30 please be in the  
6 hallway and the bailiff will return you to the courtroom.  
7 During the recess you're admonished not to talk or converse  
8 among yourselves nor with anyone else on any subject  
9 connected with the trial. You're not to read, watch or listen to  
10 any report of dr commentary on the trial or any person  
11 connected with the trial by any medium of information,  
12 including, without limitation, newspaper, television, radio and  
13 Internet. And you're not to form or express any opinion on  
14 any subject connected with the trial until the case is finally  
15 submitted to you. The Court's in recess till 1:30.

16 (Court Recessed at 12:17:20 p.m., until 2:26:17 p.m.)

17 (Recording Malfunction)

18 THE BAILIFF: Department II is again in session.  
19 Please be seated.

20 THE COURT: The record shall reflect that we are  
21 resuming trial in State versus Lobato, under C177394, again in  
22 the presence of the defendant and her three counsel, the two  
23 prosecuting attorneys, the ladies and gentlemen of the jury,  
24 and the defendant's first witness, Dr. Laufer, who remains on

X11-51

1 Your Honor?

2 THE COURT: Yes.

3 BY MS. GREENBERGER:

4 Q Showing you what's been marked as Defense  
5 Proposed Exhibit CCCC. Do these appear to be scissors?

6 A They do,

7 MS. GREENBERGER: Your Honor, could we move  
8 for admission of the scissors into evidence at this time?

9 MR. KEPHART: Could I see them?

10 THE COURT: Yes.

11 MR. KEPHART: No objection, Your Honor.

12 MS. GREENBERGER: Thank you,

13 THE COURT: Granted.

14 (Defendant's Exhibit CCCC, admitted)

15 MS. GREENBERGER: May I approach the witness?

16 THE COURT: You may.

17 BY MS. GREENBERGER:

18 Q Can you demonstrate for the jury how these scissors  
19 were used to inflict the injury which you described?

20 A Well, there are two points, and if they were partially  
21 closed, maybe partially open, either held like this or held in the  
22 fingers like this, in sort of a stabbing type motion with the  
23 thumb being up and striking the thumb,

24 Q And can you describe for the record since the

X11-53

1 recorder can't pick up the motions you're making, which hand  
 2 you were holding it in and the —  
 3 A It sort of doesn't matter really because the defensive  
 4 injuries that we have here are on the right hand, and the  
 5 assailant could have been holding them either in the left or the  
 6 right hand in order to cause these injuries,  
 7 Q Is it your testimony that the edges of those scissors  
 8 would be consistent -- consistent with the injury to the thumb?  
 9 A Not necessarily the edges. I think these were  
 10 caused more by the tips. And these scissors actually have  
 11 fairly rounded tips so it's more likely that the scissors that  
 12 caused this injury were slightly more pointed.  
 13 Q Is there anything else significant about this  
 14 photograph?  
 15 A Only as we described.  
 16 Q Showing you what's been marked as -- and admitted  
 17 as Exhibit 00. Can you describe what this is and the  
 18 significance to you?  
 19 A This is .tib?  
 20 Q Yes.  
 21 A So this is again the right thumb. This is now the  
 22 back of the thumb, again, showing the area between the  
 23 furthest-out knuckle and the closer knuckle, And what this  
 24 shows is actually two injuries, one here and another here. And

X11-54

1 but at least conscious enough to localize a threat and then  
 2 attempt to defend against it  
 3 Q Do you have any opinion how this injury was  
 4 caused?  
 5 A Only as I've indicated already,  
 6 Q Anything else significant about this photo?  
 7 A No  
 8 Q Showing you what's been marked and admitted as -  
 9 Defendant's RR. Can you tell the ladies and gentlemen of the  
 10 jury the significance of this photograph?  
 11 A Obviously I apologize for the graphic nature of the  
 12 photograph. But there are actually several things going on, so  
 13 let me first talk about the things to exclude. This is -- all of  
 14 these little areas here that I've circled, are areas where the  
 15 skin is breaking down. These are all due to the early stages of  
 16 decomposition.  
 17 Q Is that called slippage?  
 18 A Yes, There is also discoloration in this area. Again,  
 19 without biopsies or histology, difficult to say if that's  
 20 hemorrhage or if it's just the way his skin is colored, But it  
 21 could be -- it could be suggestive of a bruise.  
 22 Q Have you had an opportunity to review the histology  
 23 slides taken in this case?  
 24 A I have, yes.

X11-56

1 these actually look as though they are more linear, meaning  
 2 that they have more of a straight character here and here.  
 3 There's also a bit of a -- a very superficial laceration where I  
 4 put that last line, right here. And those indicate that the  
 5 person who was being attacked may have put their thumb in  
 6 between the scissors and actually caused these injuries now  
 7 with the edge of the scissors as opposed to the point,  
 8 Q So you believe that this injury is well -- appears to  
 9 have been made by a scissor blade?  
 10 A It's consistent with that, yes,  
 11 Q Is it consistent with a knife?  
 12 A It could be although what would make it easier to  
 13 separate the two, would be seeing the other side of the  
 14 thumb. Unfortunately that was not photographed.  
 15 Q Is there anything else significant with this picture  
 16 with regard to bleeding-type injury?  
 17 A There does appear to be hemorrhage in both of  
 18 these lacerations indicating that it's most likely that they  
 19 preceded death.  
 20 Q Can you tell whether this injury was inflicted while  
 21 the decedent was still conscious or not?  
 22 A It is most likely that he was conscious because it  
 23 requires some active movement of the hands in order to fend  
 24 off blows. So they may not have been completely conscious

X11-55

1 Q And was there any histological slides of this  
 2 particular area?  
 3 A The slides I reviewed were not marked as to from  
 4 where they were taken. There were some histological sections  
 5 of skin but they didn't say where they came from, So I don't  
 6 know if there was any section from this particular area or not,  
 7 Then there are these linear sort of areas where the skin  
 8 has been opened. They appear to be of a similar depth and  
 9 they appear to be fairly continuous with one another, although  
 10 as you as see from the two lines, it may be that the first is  
 11 where I drew the first line and another is where I drew the  
 12 second line, This is very similar to the kinds of injuries that we  
 13 see which we call straddle injuries where someone comes  
 14 down on a fence or someone comes down on a bucking bull,  
 15 that sort of thing, and it actually causes the skin to split open.  
 16 It's also consistent with the seam of a pair of pants when  
 17 someone gets kicked if they're not wearing underwear.  
 18 Q Have you seen this type of injury in the emergency  
 19 room?  
 20 A Several times, Several hundred times probably.  
 21 Q Is this consistent with a blunt force impact?  
 22 A Taken together with potential area of bruising here  
 23 and splitting of the skin, it is consistent with something like a  
 24 kick or a fall onto a rounded object sort of like the toe of a

X11-57

1 foot  
 2 Q Can you describe for the jury what a blunt force  
 3 injury is?  
 4 A It's easiest to describe by saying what it isn't. So a  
 5 stab or a cut or a gunshot wound would be considered  
 6 penetrating or lacerating or incising injury, and this is due to  
 7 force from something that isn't concentrated in one area It's  
 8 actually more of a diffuse force,  
 9 Q We've heard testimony that this injury would be  
 10 consistent with a knife. Do you agree or disagree?  
 11 A I think the testimony you're referring to — and  
 12 correct me if I'm wrong — was that it was multiple slashes with  
 13 a knife.  
 14 Q Correct  
 15 A And it's very difficult to get to different depths of the  
 16 -- or to the same depth of the skin with multiple slashes of a  
 17 knife. You tend to go some deeper, some more superficial.  
 18 It's certainly possible but it's less likely that that's the  
 19 mechanism.  
 20 Q Do you recall if you reviewed evidence about  
 21 whether the decedent in this case had underwear on?  
 22 A I did not see any photographs of underwear. And I  
 23 didn't see it described anywhere that he had underwear.  
 24 Q If the decedent had been kicked, would this injury

X11-58

1 A I did not see the rectum or intestines shown on any  
 2 of the pictures that I saw.  
 3 Q Anything else of significance in this photo?  
 4 A Well, the one question that I guess you didn't ask  
 5 which is could it have been caused by scissors, and I suppose  
 6 it is possible that this one area was caused by one blade and  
 7 this other area was caused by the other blade, with someone  
 8 sort of going like this along the surface of the skin.  
 9 Q Anything else with this slide?  
 10 A No.  
 11 Q Showing you what's been marked and admitted as  
 12 Defendant's QQ. What is the significance of this photograph?  
 13 A Well, I guess I should first give sort of the lay of the  
 14 land. So, left leg is here. Right leg is here. The genitals is  
 15 and were there. The left testicle is in this area, the right is in  
 16 this area. And there's an injury that's fairly obvious where the  
 17 penis was removed. There's also a swab that's in the rectum  
 18 which was presumably placed by crime scene technicians or  
 19 coroner's technicians. And then there's several findings. You  
 20 see that there is clotting of blood here, and you see that there  
 21 is more of a sort of superficial deposition of a dark substance  
 22 without clots specifically.  
 23 Q Why is that significant?  
 24 A Well, typically what happens -- as we've all seen,

X11-60

1 be more likely to be caused with or without underwear?  
 2 A Well, it's most likely to be with pants and without  
 3 underwear,  
 4 Q And would the seam of the pants make this kind of  
 5 injury?  
 6 A Yes. And I've seen that on a number of occasions.  
 7 The seam is sort of double-rolled fabric, which is then sewn  
 8 with a bias machine, and that causes a sort of raised edge, if  
 9 you will, which when it's impacted like with a kick, can cause a  
 10 concentration of the force on that area and cause the skin to  
 11 split.  
 12 Q Are you able to see bleeding under the skin in this  
 13 picture?  
 14 A Well, in this area that I circled earlier there is  
 15 darkness which could be bleeding under the skin, But again,  
 16 without histology or further evidence, it's impossible for me to  
 17 say anything more about it.  
 18 Q Do you see any evidence of a rectal injury?  
 19 A Not on this picture. The rectum is deep to the anus  
 20 and so would have to be inside, so I wouldn't be able to see a  
 21 rectal injury, per se.  
 22 Q Do you recall in this case with the hundreds of  
 23 photographs you've reviewed, seeing any evidence of a rectal  
 24 injury?

X11-59

1 people draw blood, the blood if it doesn't have a anticoagulant  
 2 in the tube, forms a clot, and then if you spin it or separate it,  
 3 the clot goes to one side and the serum which is what's left  
 4 after the clot, goes to another. And blood is sort of like a  
 5 match, it only burns once. So if you have clots, it means that  
 6 it was essentially fresh bleeding from someone who hadn't  
 7 clotted yet. When you start seeing deposition of large areas of  
 8 serum, as here, and the area here and in other places, that  
 9 indicates that the blood had already clotted, presumably in the  
 10 person or on the ground or on some other object, and then  
 11 been deposited. So this is kind of a mix of fresh and less fresh  
 12 blood.  
 13 Q What do the A and B that are labeled, reflect?  
 14 A The A -- and I think we have another picture of this  
 15 coming up -- is a laceration or injury to the scrotum, And B is  
 16 an area of fullness within the scrotal sack. That area of  
 17 fullness could represent swelling, could represent some other  
 18 injury, The thing that's most important to notice here is that  
 19 the right testicle is actually up higher than the left. And the  
 20 reason that you can actually move the testicles up and down is  
 21 a muscle called the cremasteric muscle which when injured,  
 22 especially by a stab wound or a laceration, doesn't work. So if  
 23 you get paralysis of that cremasteric muscle, that testicle  
 24 actually ends up falling. The typical male has a higher right

X11-61



1 testicle and a lower left testicle. So this is consistent with  
 2 typical normal anatomy. If there had been a stab wound here  
 3 as opposed to some other injury, I would expect that that  
 4 normal configuration could be different. This just gives further  
 5 evidence that it's less likely that there was a stab wound to the  
 6 area.

7 Q Based on the fact that it's not swollen?

8 A Based on the fact that that testicle hasn't dropped,

9 Q All right, And just for a moment -- going back to the  
 0 last slide for a minute, which was RR, do you believe that this  
 11 injury was inflicted before death?

12 A I don't have any way of knowing. My understanding  
 13 from other testimony is that it was not,

14 And you don't have an opinion one way or the  
 15 other?

16 A Not based on this or the unmarked histology that I  
 17 saw earlier.

18 Q Moving on to Defense Exhibit SS, is this a blown-up  
 19 version of DefensS.QQ?

20 A It certainly shows the same area, in higher  
 21 magnification.

22 Q And what is the significance of this photo? Is it the  
 23 injury on the scrotum?

24 A There are really a few things. One is that there's a

X11-62

1 Right there, right there, right there, which to me indicates that  
 2 it's less likely that it was done with a sharp instrument.

3 The other thing that's significant is you can actually see  
 4 that this area where the penis was, is somewhat raised. That's  
 5 significant because it indicates that the tissues — especially the  
 6 bulva cavernosus, which is the muscle that allows for an  
 7 erection — did not withdraw down into the rest of the tissue.  
 8 So it's —

9 Q What does that mean?

10 A It's unlikely that when this happened the person had  
 11 an erection,

12 Q Does this injury appear to be consistent with  
 13 something that a knife could have inflicted?

14 A If you had a really big knife, it's certainly possible  
 15 that you could sort of lift up and cut across, but it would have  
 16 to be something that wouldn't require a sawing action.  
 17 Remember that there was one question from the jury about  
 18 whether it required a sawing action to do this. A sawing action  
 19 is the same sort of hesitation marks as we see here, from  
 20 repositioning. You end up with a more jagged edge along the  
 21 tissue. So it would take a fairly large knife where — you know,  
 22 knives don't cut very well pushing down, you actually have to  
 23 move them, and so you'd have to have a long enough blade  
 24 that you could get all the way through the tissue in order to

X11-64

1 shape to this area of amputation, where the point of the  
 2 teardrop, if you will, is down toward the feet, and the wider  
 3 end of the teardrop is up toward the head,

4 Q What does the teardrop shape signify?

5 A Well, typically when you're cutting something with  
 6 scissors, you end up compressing the tissue where the scissors  
 7 meet, and then as you cut through, the tissue ends up  
 8 spreading. So this signifies that the start of the cut was down  
 9 in the lower area closer to the testicles and then ended up  
 10 higher toward the head,

11 Q Would a scissor injury in that area cause a jagged  
 12 shape?

13 A Well, when you're using scissors as we all know from  
 14 cutting paper, if you have to take several cuts at it, you end up  
 15 sometimes with a little jag every time you move the scissors.  
 16 So depending on how many swipes it took to get through, it  
 17 could end up with a jagged shape. There actually is one area,  
 18 right here, that -- and I'll erase the mark just so you can see it.  
 19 But that looks as though it sort of started and stopped, as  
 20 though they went through and then kept going. The other  
 21 significant aspects of this are that it shows this laceration in  
 22 the scrotum a little bit more clearly because it's spread a little  
 23 further. And again, has fairly specific wound edges. But in  
 24 this case there are actually a lot of things that look to be tears.

X11-63

1 generate this injury.

2 Q Anything else of significance with regard to this  
 3 slide?

4 A No,

5 Q Showing you what's been marked as Defense Exhibit  
 6 UU, Can you describe what we're looking at?

7 A This appears to be the right head of the decedent,  
 8 sort of the top of the head. The eyebrows in this area. The  
 9 right eye is here, the nose is here, ear is here. There's  
 10 obviously a measuring device there. And there are multiple  
 11 injuries that are shown, in addition to slippage again on the  
 12 skin,

13 Q The slippage is not injury?

14 A Correct.

15 Q What do the arrows depict in this photo?

16 A There's again a pair of injuries here and here. They  
 17 are different sizes. The depth of this injury in this area here  
 18 appears to be slightly deeper than this injury on the other side  
 19 of the eyebrow. The distance between them is significant.  
 20 We'll talk about that in a second. But it's -- it's consistent with  
 21 someone holding scissors sort of like brass knuckles and  
 22 striking at the forehead in a direction that goes from the top of  
 23 the head toward the nose,

24 Q Have you seen this type of injury before in the

X11-65

1 emergency room?  
 2 A Yes. These --  
 3 Q You -- go on,  
 4 A Sorry, These scissors are actually not ideal -- and  
 5 we've got pictures of some other scissors which actually match  
 6 this injury more closely. And the reason for that is that you  
 7 can see both handles of these scissors are curved. So what  
 8 you would end up with is an injury that's deeper in the center  
 9 and sort of smooth out toward the edges. In this particular  
 10 case there's actually more of a gouging wound, right here,  
 11 which suggests that the scissors that were used had a little  
 12 finger rest on the -- the large handle. Again, very common  
 13 Fiskar-type scissors. But that's what caused this sort of flat  
 14 and wider injury, is that it actually gouged into the skin there.  
 15 Q You mention that the distance was significant  
 16 between injuries,  
 17 A Right  
 18 Q Why is that?  
 19 A The sp6'66 between these lacerations was actually  
 20 r43 centimeters,  
 21 Q How did you measure that?  
 22 A I actually cut out this ruler and laid it over the injury  
 23 on a print of the picture. And that would indicate that the  
 24 spacing between the handles was 4.3 centimeters when the

X11-66

1 injury occurred. So if someone had a bigger hand, the spacing  
 2 would be larger. And if someone had a smaller hand, the  
 3 spacing would be smaller. Now, it's certainly possible to cheat,  
 4 Right? You can put the scissors into the fingers that are closer  
 5 together and get the -- the injuries closer. But you can't make  
 6 this wider than your hand because it only spreads so far -- and  
 7 still have enough force to cause the injury.  
 8 Q So, based on these calculations, are you able to in  
 9 some way discern the width of the hand of the perpetrator?  
 10 A Weir, it would be very unlikely that the person's  
 11 hand was less than the distance that was necessary to put  
 12 these handles in the positions of the incision or the lacerations.  
 13 Q And in this case that would be 4.3 centimeters?  
 14 A Correct. So the distance between the top of this  
 15 handle and the top of this handle would be 4.3 centimeters,  
 16 which is roughly the distance between the center of your index  
 17 finger and the center of your pinkie.  
 18 Q Is there anything else of significance with regard to  
 19 this picture?  
 20 A There's obviously another injury, here, which  
 21 appears to be a blunt force injury. Again, it looks darker sort  
 22 of like the one that we saw in that sort of anal area. And  
 23 there's also area here that's dark, area around this one that's  
 24 dark, all consistent with bruising,

X11-67

Q Can you tell if these injuries were made before  
 2 death?  
 3 A Not from these pictures, no. Although with the  
 4 bruising into the skin, it's more likely that they were done  
 5 before death,  
 6 Q Anything else of significance to you in this photo?  
 7 A No.  
 8 Q Showing you what's been marked and admitted as -  
 9 Defense Exhibit TT, What is the significance of this photo?  
 10 A This laceration here is what we would describe as a  
 11 distal base flap laceration, meaning that there's a flap of skin,  
 12 which I've drawn two little blue lines on, and it's actually  
 13 connected still to the chin down at the further end away, which  
 14 we call -- you know, you can call it on the chin. So the way  
 15 that these injuries happen is something catches the skin in this  
 16 area and starts to tear the skin as it moves through the skin.  
 17 So it's a blow that occurred in the direction that I just drew  
 18 with the arrow and it's very consistent with the edge of the  
 19 scissor handle.  
 20 Q Would this be a blunt force injury?  
 21 A It's most likely a blunt injury as opposed to a cutting  
 22 injury just because you do have a fair amount of spread in the  
 23 tissue here. If it were cutting -- certainly if tissue was under  
 24 tension, it will spread, but the tissue of the chin is really not

XII-68

1 under tension. There's a fair amount of space there. So it's  
 2 more consistent with a blunt force blow than with a cut.  
 3 Q Anything else of significance in this injury -- or  
 4 photo?  
 5 A No.  
 6 Q Is this a blowup of a previous photo?  
 7 A It is. And the only real significance again is it allows  
 8 me to measure more accurately, again using the ruler that's in  
 9 the picture,  
 10 Q This would be a blowup of Defense Exhibit VV?  
 11 MR. KEPHART: What did you say, ma'am? I didn't  
 12 hear you.  
 13 MS. GREENBERGER: This would be a blowup of  
 14 Defense Exhibit W?  
 15 MR. KEPHART: What is the exhibit number?  
 16 MS. GREENBERGER: W.  
 17 MR. KEPHART: No, the exhibit number.  
 18 THE COURT: The one that's up right now, what is  
 19 its number?  
 20 MS. GREENBERGER: Its an -- it's a blowup of  
 21 what's been marked as VV.  
 22 THE COURT: But this one hasn't been marked?  
 23 MS. GREENBERGER: I think it was just blown up,  
 24 and so I don't know that we have a printout of it.

X11-69

1 BY MS. GREENBERGER:  
 2 Q Did you blow this image up from what was  
 3 previously shown to you as Exhibit VV?  
 4 A Yes.  
 5 Q It's the same photograph?  
 6 A Correct.  
 7 Q And you just used the computer to magnify it?  
 8 A Yeah. To zoom it in.  
 9 Q And the purpose was just to show a closer view of  
 10 the injury?  
 11 A Correct. And to make the measurement more  
 12 accurate  
 13 Q Showing you Defense Exhibit UU. What is this  
 14 injury?  
 15 A This appears to be an injury on the right anterior  
 16 neck. There's a muscle here called the sternocleidomastoid.  
 17 It's just on the inside or toward the center of the  
 18 sternocleidomastoid. And that is where the carotid artery and  
 19 the jugular vein live. So this is a laceration over and  
 20 apparently into, according to the autopsy report, those vessels.  
 21 Q Is it a pathonemonic injury?  
 22 A This injury because of its characteristics, is strongly  
 23 suggestive of being caused by scissors. In fact, there's  
 24 nothing else that I know of or that anyone has described,

X11-70

1 think a knife caused these,  
 2 Q Have you seen numerous injuries to this area in the  
 3 emergency room, with a knife?  
 4 A Yes.  
 5 Q And how does that look distinct from what we're  
 6 looking at now?  
 7 A I think we actually have some better pictures of that,  
 8 later,  
 9 Q All right.  
 10 A But generally knives come in two flavors, single edge  
 11 or double edge. Single-edge knives usually have one sharp  
 12 edge on them that causes a sort of sharp point of a teardrop  
 13 and a dull edge which cause a dull side to the teardrop, where  
 14 a double-edge blade causes more of something like a very  
 15 narrow diamond shape with a sharp edge at both sides and  
 16 something wider in the middle.  
 17 Q Is the significance of this injury, the stair stepping  
 18 that you called it? Is that significant of a scissor versus a  
 19 knife?  
 20 A That's certainly part of it, as well as the bruising  
 21 around the incision.  
 22 Q Anything else of significance in this photo?  
 23 A No,  
 24 Q Showing you what's been marked as Defense Exhibit

X11-72

1 which will cause this injury. This injury goes like this, comes  
 2 up, and then comes over, which is what you would expect  
 3 when you have scissors that stab in and then cut. Because the  
 4 blades actually shear in the center but don't meet like this.  
 5 They actually cross over. And so you end up with a stair-step  
 6 pattern which is what's represented here,  
 7 Q What is a pathonemonic injury? What is that  
 8 defined as?  
 9 A It really means that it's diagnostic of that which you  
 10 are searching! So, in this case, there's nothing else other than  
 11 scissors that can cause it,  
 12 Q Is there anything else significant in this photograph?  
 13 A There is some obvious bruising along the edges of  
 14 this, which is consistent with something of a blunt edge.  
 15 Usually when you stab with a knife, it causes very little actual  
 16 bruising along the edges because the tip of the knife is very  
 17 sharp. But with scissors, they're slightly rounded — maybe less  
 18 rounded than these but still slightly rounded, and so you get  
 19 bruising of the skin as the blades puncture through.  
 20 Q When you first looked at these injuries, were you  
 21 looking at them with an eye towards whether a knife could  
 22 have caused these injuries?  
 23 A When I first started looking at these, I was told that  
 24 a knife caused these. And when I saw them, I said I don't

X11-71

1 WW. Can you tell us what is significant about this injury and  
 2 what we're looking at?  
 3 A Sure. So this appears to be a set of fairly superficial  
 4 abrasions, maybe even laceration on this side where it's a bit  
 5 deeper, more superficial here. You can see that it's deeper in  
 6 this corner and in this corner than it is where it starts. And  
 7 that is consistent with an open pair of scissors coming into the  
 8 area, and then as the tissue starts to interact with the tip of  
 9 the scissors it gouges in a little bit and causes the distant parts  
 10 of these to be deeper than where it starts.  
 11 Q Is there discontinuity in the center where the arrow  
 12 is pointing?  
 13 A There is, yes.  
 14 Q And what is that due to?  
 15 A Well, when you hit a round structure -- and use  
 16 my bottle as sort of a demonstration tool here. So you hit  
 17 something like the neck, and you can't get all the way in, the  
 18 center doesn't get touched by the blades, and so that area  
 19 ends up being untouched and therefore discontinuity.  
 20 Q Does this appear to be a typical type of attack that  
 21 you've seen in the emergency room?  
 22 A Well, this could be one of a couple things. It could  
 23 be sort of a glancing blow where someone sort of moves away  
 24 and doesn't get the full force. Or one of the other things that

XU-73

1 we see sometimes -- it's less common here than in it is in, say,  
 2 South Africa, where someone actually tries to injure the spinal  
 3 cord by cutting it

4 Q And where is the spinal cord connected, if you can  
 5 show us?

6 A The spinal cord is actually right in this area.

7 Q And is that something -- you mentioned in South  
 8 Africa -- is that a common objective or —

9 A Actually in South Africa, at least during apartheid, it  
 10 was fairly common to take a bicycle spoke, sharpen one tip of  
 11 it, and actually jam it down into the spinal canal and sort of do  
 12 this, like you might pith a frog, and essentially kill the person  
 13 by causing them to stop breathing because they get a spinal  
 injury,

15 Q Or at least paralyze and immobilize?

16 A Yes, I mean high up, like this, paralyzing respiratory  
 17 muscles and -- almost certain death.

18 Q Would you characterize this as a directed type of  
 19 injury?

20 A This one is a bit difficult to say because it could just  
 21 have been a glancing blow where they were trying to do  
 22 something and missed. But the fact that someone is hitting on  
 23 the back of the neck is certainly suggestive that they're trying  
 24 to cause injury in whatever places they can.

X11-74

1 Q When you say glancing blow, glancing blow with  
 2 scissors in hand or glancing blow with a fist? Or a sharp  
 3 object?

4 A Sharp object consistent with scissors,

5 Q Anything else of significance in this photograph?

6 A No.

7 Q Showing you what's been marked as >0C. Can you  
 8 tell us what we're looking at?

9 A So this is on the left side of the neck,, Chin is here,  
 10 back of the netk is here, shoulder is in this area, the ear is up  
 11 here. And this is another injury where it's stair stepped.

12 There's a smear of blood right here -- which if we go back to  
 13 the previous picture for a second -- this injury is actually  
 14 underneath the measuring device, and so the smear is most  
 15 likely due to the fact that the measuring device, here, was on  
 16 top of the blood and then sort of smeared it, So I would  
 17 suggest —

18 Q A transfer?

19 A Yes. I would suggest sort of ignoring that smear,  
 20 per se. But the important point is that you have the injury that  
 21 goes down and like this with a stair step.

22 Q And was this one of the injuries that's been  
 23 characterized as a fatal injury?

24 A My understanding is that this injury actually cut

X11-75

1 through the carotid artery on this side.

2 Q And the carotid artery is a major vessel in the neck?

3 A It's one of two major vessels. You have one on the  
 4 left and one on the right. You of course have vertebrales but  
 5 the carotids are the ones that provide most of the blood to the  
 6 front and sides of the brain,

7 Q Would you describe this as a calculated injury?

8 A It certainly appears that it was either a very lucky -  
 9 one or someone knew what they were cutting. The fact that  
 10 they tried on both sides to get these vessels, indicates that  
 11 they were probably more good than lucky,

12 Q Anything else of significance? You pointed out that  
 13 it's a stair-step injury. Do you believe this was caused with  
 14 scissors?

15 A That is the most likely instrument, yes.

16 Q Anything else on this photo?

17 A Only for -- for reference again to show this is the  
 18 abrasion that we talked about in the previous picture,

19 Q Moving on to what's been marked as Defense Exhibit  
 20 YY. What does this depict?

21 A Well, my understanding is that one of the questions  
 22 that came up is whether the decedent's pants were up or  
 23 down at the time that the other major injuries to the head and  
 24 other parts of the body occurred. I think we all would agree

X11-76

1 that the pants were probably down when the penis was cut  
 2 off. But prior to that, the question is whether a lot of these  
 3 other injuries on the head and on the abdomen, occurred with  
 4 the pants up or down. And what it depicts is that there's a lot  
 5 of blood with streaking and staining, sort of up here, and then  
 6 there's actually a place, right there, where it stops. And the  
 7 pants can certainly act as a dam where the blood when it's  
 8 running down, hits the pants — the top of the pants waist and  
 9 then is redirected downward.

10 Q Is that — would you call that a line of demarcation?

11 A Well, it certainly appears to be that. Now, if it were  
 12 just on one side, I'd probably be a little bit more skeptical. But  
 13 if you can go sort of two forward —

14 Q This is just where you're showing you believe the  
 15 pants were fastened?

16 A Right. So — one -- one more.

17 Q Showing you what has been marked as Defense  
 18 Exhibit YY,

19 A So here now is the other side --

20 Q I'm sorry, ZZ.

21 A Here's now the other side of the victim. And again,  
 22 you see an area of demarcation, here, where there's blood  
 23 above it, and there's an area of clearing below it. Now,  
 24 certainly there's some blood here and here and here, but that

X11-77

1 looks more as though it was sort of serum deposited later.  
 2 And again, my understanding is that the legs were at least in  
 3 contact with plastic which would cause this sort of a  
 4 configuration and look. So at least at the time that the  
 5 bleeding was active, it seems to have stopped right here, and  
 6 again consistent with the top of the pants, now on both sides  
 7 of the body acting as a dam, therefore more consistent with  
 8 the other injuries happening with the pants up than down,  
 9 Q And you consider this because you were trying to  
 10 reconstruct the pattern of injuries in the order the injuries  
 11 occurred?  
 12 A Correct,  
 13 Q Is there anything else of significance in either of  
 14 these photos?  
 15 A No,  
 16 Q And does the yellow line that's inserted, that reflects  
 17 where you see -- is it a cleaner area than below the yellow  
 18 line? Is that what --  
 19 A Correct'As we described, right.  
 20 Q Showing you Defense Exhibit AAA, What does this  
 21 reflect?  
 22 A So my understanding is that these were the trousers  
 23 that were worn by the decedent at the time of these injuries.  
 24 And they show several things. One is that there's a general

X11-78

1 concentration of blood around the fasteners. So around the  
 2 button and around the zipper.  
 3 Q Why is that significant?  
 4 A It suggests at least to me that since we know the  
 5 pants were pulled down to amputate the penis, that the blood  
 6 on the hands of the attacker were now trying to unfasten the  
 7 zipper and the button in order to pull the pants down,  
 8 MR. KEPHART: Your Honor, I'm going to pose an  
 9 objection with his conclusionary remark that we know the  
 10 pants were pulled down in order to amputate his penis. That  
 11 would be his opinion but we don't know that. The jury  
 12 certainly doesn't know that from other testimony, So I'm  
 13 going to object to that form of his answer.  
 14 THE COURT: Counsel approach.  
 15 (Bench Conference)  
 16 THE COURT: He testified to it as if it were a fact  
 17 rather than -- rather than being asked does he have an opinion  
 18 as to how it would be done, So I'm going to sustain the  
 19 objection because of the form of the question and then you  
 20 can reask it.  
 21 (End of Bench Conference)  
 22 THE COURT: The objection's sustained and Ms.  
 23 Greenberger will rephrase.  
 24 ///

X11-79

1 BY MS, GREENBERUER:  
 2 Q What is your opinion of why the blood in that area is  
 3 significant in terms of the pants being up or down at the time  
 4 of the amputation?  
 5 A Well, let me actually state my answer slightly  
 6 differently because I think the amputation required -- unless  
 7 there are holes in the pants that I can't see -- that the pants  
 8 were down. So it appears because of the concentration of  
 9 blood around the fasteners, that the hands of whoever was  
 10 undoing the fasteners were bloody.  
 11 Q Is blood a sticky substance?  
 12 A Especially when it's drying, yes.  
 13 Q Does the blood appear to be crusted?  
 14 A Well, the -- these pictures, from my understanding,  
 15 were taken at the autopsy suite several hours after the victim  
 16 was found. So the blood appears to be dry. And in that  
 17 sense, yes, it is crusted.  
 18 Q Does there appear to be a lot of blood or a little  
 19 blood on the pants?  
 20 A A lot or a little is all relative. It's more than I would  
 21 want to have on mine and it's probably more than he wanted  
 22 to have on his. But it certainly doesn't account for all of his  
 23 blood loss given that he had other major injuries to the great  
 24 vessels.

X11-80

1 Q Were you able to determine whether there were any  
 2 visible types of cuts in the pants?  
 3 A I don't see any visible cuts to the pants, no  
 4 Q Are the blood that we're -- is the blood that we're  
 5 seeing consistent with a blood transfer?  
 6 A Yes.  
 7 Q And what is that?  
 8 A It's when blood is on one surface and is transferred  
 9 on to another surface. So from hands to trousers.  
 10 Q Anything else of significance with regard to this  
 11 photograph?  
 12 A This sort of small pant pocket is folded down and  
 13 the front pocket appears to be folded a bit as well, That would  
 14 be consistent with someone using that as leverage to pull the  
 15 pants down, I don't know who that person is however.  
 16 Q Anything else of significance?  
 17 A There are other areas of blood, obviously, on the  
 18 pants as well. They appear to be at fairly regular intervals  
 19 suggesting that the pants may have been sort of crumpled up,  
 20 if you will, It's also possible that these were places of transfer  
 21 where a person was sort of transferring blood again from the  
 22 hands or some other object onto the pants. It could have  
 23 been on the ground where they were transferred but it does  
 24 not appear that the blood soaked through from the inside of

X11-81

1 the pants to the outside. It appears that it was deposited on  
 2 the outside  
 3 Q And is it your opinion that the heavy concentration  
 4 of blood around the fastener is consistent with the hands of  
 5 the assailant being used to pull the pants down?  
 6 A It is consistent with the hands of someone who had  
 7 blood all over them pulling or at least opening the pants. One  
 8 other thing that's worthwhile to point out here, that is that —  
 9 as I recall, Dr. Simms gave testimony about rapid oozing from  
 10 the scrotal wound. Rapid oozing to me indicates that you have  
 11 at least some significant blood loss and that that would  
 12 presumably deposit if the pants were still on the person, into  
 13 the pants. I don't see any evidence of any blood soaking  
 14 through in the area where I would have expected to see that.  
 15  
 16 Q Do you have an opinion whether the scrotum injury  
 17 was pre-mortem or postmortem?  
 18 A I don't have any independent basis on which to  
 19 make that assessment. I know that others have testified that  
 20 it was pre-mortem but I don't have any independent basis on  
 21 which to make that judgment.  
 22 Q Did it appear there was significant blood loss from  
 23 the scrotum injury?  
 24 A Well, again, on the places that you would have

XII-82

1 before, of the scrota' injury and the sort of pen-anal injury.,  
 2 There is the seam that we talked about which may well be the  
 3 thing that caused that pen-rectal injury.  
 4 Q You've heard testimony that one of the -- according  
 5 to Dr. Simms, one of the first injuries was the injury to the  
 6 scrotum. Do you agree or disagree with that?  
 7 A There's certainly a lot more bleeding around the  
 8 facial wounds than there is around the scrotal injury. So if you  
 9 go by blood pressure equaling amount of blood loss with the  
 10 injury that's caused, I would say that the head injuries were  
 11 more likely to be early. But, again, it may have been within  
 12 such a short period — you know, the time interval between one  
 13 and the other may have been so short that it may be sort of  
 14 an irrelevant separation of issues.  
 15 Q Are you able to determine how quickly blood dries?  
 16 A Well, not from this.  
 17 MR. KEPHART: Your Honor, objection. Could we  
 18 approach?  
 19 THE COURT: Yes.  
 20 (Off-record Bench Conference)  
 21 THE COURT: The objection's sustained and you  
 22 may proceed.  
 23 MS, GREENBERGER: Thank you, Your Honor.  
 24

XII-84

1 expected to catch the blood, I don't see that much blood, no.  
 2 Q Anything else on this photo?  
 3 A No,  
 4 Q Showing you Defendant's next-in-order, BBB. What  
 5 is the significance of this injury -- or of this photo?  
 6 A This goes back to this question of rapid oozing. And  
 7 I see that the inside of the pants at least from what I can tell,  
 8 are fairly clean. So I don't see any evidence of dripping or  
 9 bleeding into the pants. Remember that at least at some point  
 10 this victim wM found supine, lying on his back, and if there  
 11 was any bleeding going on you would expect to have seen  
 12 some bleeding into the pants,  
 13 Q Anything else of significance?  
 14 A No,  
 15 Q Showing you Defendant's next CCC. This appears to  
 16 be what?  
 17 A The back of the pants that the decedent was  
 18 wearing, And really there's very little blood on the back of the  
 19 pants. The only significant blood that I see is sort of on this  
 20 back of the left leg which appears to be transfer as well.  
 21 Q What does the absence of blood tell you?  
 22 A Well, it doesn't look like the decedent was lying in a  
 23 pool of blood, for instance. At least not face up. And there's  
 24 essentially no blood soaking through in this area that we saw

XII-83

1 BY MS, GREENBERGER:  
 2 Q Anything else of significance in this photo?  
 3 A No.  
 4 Q Showing you what's been marked as DDD. What  
 5 are we looking at?  
 6 A This is the lower abdomen of the victim. The belly  
 7 button is here and the sort of start of the pelvis is on these  
 8 edges. These appear to be two sets of stab wounds. One,  
 9 this set. The other, this set. They appear to be in pairs.  
 10 There appears —  
 11 Q Are they connected?  
 12 A They are apparently connected by an abrasion  
 13 through the center, here and here. There is a sharp edge here  
 14 and here. There's a sharp edge here and here. There's a  
 15 rounded edge there, there, there and there.  
 16 Q Do they appear to be deep punctures?  
 17 A They do appear to be deep punctures, yes.  
 18 Q Is the spacing between the injuries of significance?  
 19 A Yes.  
 20 Q Why is that?  
 21 A I believe that each of these -- this and this, and this  
 22 and this, were each caused by one blade of scissors. So this  
 23 represents two stab wounds with scissors, this time opened,  
 24 and the abrasion in the center is actually where when you

XII-85

1 push through the tissue the blades end up touching the  
 2 bunched up skin and causing the abrasion.  
 3 Q Is the shape of the puncture significant?  
 4 A It's significant in that scissors have a sharp edge and  
 5 another sharp edge sort of facing each other, and a dull edge  
 6 and a dull edge facing away from each other. Exactly like  
 7 these injuries.  
 8 Q Did you measure the spacing of these injuries?  
 9 A I did,  
 10 Q And what was the measurements?  
 11 A 5,8 centimeters is the minimum separation between  
 12 entry point and entry point,  
 13 Q Similar to the previous slide, can you explain why  
 14 that distance is relevant?  
 15 A When a person is holding scissors open in their  
 16 hand, as I'm demonstrating here, the tips of the scissors are at  
 17 an interval that's spaced exactly at the same place as the web  
 18 space between the index finger and middle finger, and the  
 19 web space between the small finger and the ring finger. So  
 20 the separation of the injuries suggest the separation of the  
 21 points of the scissors and also therefore suggests the size of  
 22 the hand holding the scissors,  
 23 Q Similar to the injury we saw on the neck, with the  
 24 faint line, is that same faint line evident between these two

X11-86

1 A There is a pattern to the streaking. It goes sort of  
 2 from the high ground, if you will, to the low ground on the  
 3 abdomen. There's also some area over in the left side of the  
 4 abdomen which looks like that serum was compressed by  
 5 something. That's consistent with the plastic wrap that I think  
 6 we've talked about — or you've talked about before,  
 7 Q Have you seen photographs from the autopsy that  
 8 have plastic wrap depicted in that area?  
 9 A Yes,  
 10 Q And your testimony is that what we're seeing -- that  
 11 you highlighted in blue -- is consistent with that?  
 12 A Correct,  
 13 Q Anything else of significance?  
 14 A Well talk about this area I think in just a second, but  
 15 that is also significant. And there it is.  
 16 Q This is another picture of the abdomen area?  
 17 A Correct.  
 18 THE COURT: Which exhibit is it?  
 19 MS. GREENBERGER: FFF again.  
 20 BY MS. GREENBERGER:  
 21 Q What's the significance of this?  
 22 THE COURT: So this is a closeup off of FFF?  
 23 MS, GREENBERGER: One moment, Your Honor.  
 24 Actually, I'm -- the previous exhibit, I'm sorry, was EEE. And

X11-88

1 sets of injuries?  
 2 A It is,  
 3 Q And would that be consistent with the inside of the  
 4 scissors?  
 5 A Yes. And in fact if you look carefully, right here and  
 6 right here, you see what appears to be a perpendicular —  
 7 double line perpendicular to that connecting line. And that is  
 8 exactly what you get from the place where the scissors cross,  
 9 what I call the hinge point,  
 10 Q Anything else of significance in this photo?  
 11 A No.  
 12 Q Do you believe these injuries could have been  
 13 caused by a knife?  
 14 A It's very unlikely.  
 15 Q Showing you Defense Exhibit FFF, What's the  
 16 significance of this photo?  
 17 A Part of this is what we were talking about earlier,  
 18 just a better picture of it. And that is that you have clotted  
 19 blood here and then you have sort of streaky blood here This  
 20 is more like serum at B and the clots are more like old blood,  
 21 Q What is the difference between the two?  
 22 A If you are alive and bleeding, you'll have clots. If  
 23 you are dead and oozing, you won't.  
 24 Q Anything else of significance in this photo?

X11-87

1 this is FF —  
 2 THE COURT: Okay.  
 3 MS. GREENBERGER: This is FFF, So I misspoke,  
 4 THE COURT: So what was previously designated  
 5 FFF was an error?  
 6 MS. GREENBERGER: Yeah. Sony about that.  
 7 THE COURT: It was EEE?  
 8 MS. GREENBERGER: Yes.  
 9 THE COURT: Thank you,  
 10 BY MS. GREENBERGER:  
 11 Q This is Defense FFF, What are we seeing in this  
 12 picture?  
 13 A Well, this appears to be a patterned mark, meaning  
 14 that the thing that left it, left its shape behind,  
 15 Q What is a pattern mark?  
 16 A It could be caused by, for instance, a shoe print.  
 17 That's a pattern mark. If someone stomps a body, it can leave  
 18 a pattern. If someone's hit by a billy club, it can leave a  
 19 pattern. In this case it could be that it's a combination of  
 20 serum, it could be that it's a pressure mark, but, in any event,  
 21 it's something that's on the skin that was left behind  
 22 presumably by the attacker,  
 23 Q And was that visible to you when you looked at this  
 24 photo?

X11-89

1 A Not initially, I actually did a fair amount of work sort  
 2 of with everything else, but it was actually probably several  
 3 weeks after I started looking at this that this sort of became  
 4 more evident to me,  
 5 Q Can you tell us what you're seeing in this picture?  
 6 Or should I move to the next slide?  
 7 A No, this is fine. There appears to be a ring here, a  
 8 ring here, a handle here, and a blade here,  
 9 Q What does that appear to be?  
 10 A It looks like at least part of a scissors. In addition,  
 11 there is an area of clearing here, an area of clearing here, an  
 12 area of clearing here which is interesting because there's also  
 13 a mark there. Another area of clearing here. And then there's  
 14 a further area defined here which appears to be the imprint of  
 15 the knuckles of the hand  
 16 Q How could that be left on the body?  
 17 A If someone had the instrument in their hand and  
 18 then pushed up on the abdomen as they were standing up,  
 19 that could leave trk mark,  
 20 Q Have you seen marks like this in the past?  
 21 A It's very unusual to see a complete set like this. I've  
 22 seen other patterns from coins, from knives, from guns  
 23 actually in a couple of cases. This is the first sort of complete  
 24 picture like this, And if you go to the next one, I actually

X11-90

1 made an outline around that just to make it a little bit more  
 2 clear,  
 3 Q And what does your outline depict?  
 4 MR. KEPHART: Your Honor, for the record, what  
 5 exhibit is this?  
 6 MS. GREENBERGER: This is Defense Exhibit FFF.  
 7 MR, KEPHART: No, you just had FFF,  
 8 MS, GREENBERGER: This is FFF,  
 9 THE COURT: It's FFF which he has drawn on  
 10 apparently.  
 11 MS. GREENBERGER: Right,  
 12 THE COURT: So it should be marked separately.  
 13 MS, GREENBERGER: Yeah, it wasn't capable of  
 14 being printed in that format. It just — 'cause it's a computer —  
 15 MR. KEPHART: Your Honor, maybe I can help the  
 16 defense with what they provided us.  
 17 MS. GREENBERGER: Oh, excellent. May I have this  
 18 marked as next in order?  
 19 THE COURT: It could be FFF-1,  
 20 MS, GREENBERGER: All right.  
 21 BY MS. GREENBERGER:  
 22 Q Showing you FFF-1 —  
 23 THE COURT: Before you do that, are you moving its  
 24 admission?

X11-91

1 MS. GREENBERGER: Yes, I would move for its  
 2 admission,  
 3 MR., KEPHART: No objection, Your Honor,  
 4 THE COURT: Granted.  
 5 MS. GREENBERGER: Thank you,  
 6 (Defendant's Exhibit FFF-1, admitted)  
 7 BY MS. GREENBERGER:  
 8 Q What did you draw on this photo?  
 9 A I actually attempted just to draw the outline of that  
 10 darkened area and then put into it the cleared spaces  
 11 significant or at least consistent with where the knuckles may  
 12 have been.  
 13 Q The cleared spaces would be the inside of the  
 14 scissors and then the red that you outlined would be consistent  
 15 with a knuckle?  
 16 A The hand, correct.  
 17 Q The hand. Anything else of significance — well, let  
 18 me ask you this. Which way does it appear that the scissors  
 19 are pointed?  
 20 A Toward the left of the victim. Toward our right.  
 21 With the pointy side toward our right,  
 22 Q And it's your testimony that the outline that we're  
 23 seeing is an imprint of the actual scissors, in your opinion, that  
 24 were used to inflict the injury in this case?

X11-92

1 A And the hand holding them, yes. The other thing, of  
 2 course, that I did was to measure this distance and to see if it  
 3 matched this distance. And it —  
 4 Q Did it match?  
 5 A It did.  
 6 Q And what was that measurement?  
 7 A The measurement from the outside of the handle to  
 8 the outside of the handle is -- is not here -- but the distance  
 9 from the inside of this webbed space between the little finger  
 10 and ring finger and the distance from the outside of the index  
 11 finger is -- I just saw it -- 5,8 centimeters.  
 12 Q And is that the same distance that you measured in  
 13 calculating the distance on the injuries on the abdomen?  
 14 A Yes.  
 15 Q Anything else of significance in this photo?  
 16 A No,  
 17 Q What does this depict? This is Defense Exhibit HHH.  
 18 THE COURT: I'm sorry, I couldn't hear you.  
 19 Triple —  
 20 MS, GREENBERGER: H.  
 21 THE COURT: H. Thank you,  
 22 THE WITNESS: So this is one of the hands that was  
 23 reported to me to be the hand of the defendant,  
 24 HI

X11-93



1 BY MS. GREENBERGER:  
 2 Q And have you personally measured her hand as  
 3 well?  
 4 A I actually measured both the left and the right side.  
 5 This actually is the left hand,  
 6 Q And what is the significance of the measurement?  
 7 A Well, the question was could her hand have been  
 8 the one in the scissors, and so when we asked her to measure  
 9 her hand we didn't tell her why we were asking her to  
 10 measure it, But I wanted to verify that in fact it was her hand  
 11 and that the measurements were accurate. So I measured  
 12 them again today.  
 13 Q And what was the measurement of her hand that  
 14 you found?  
 15 A Actually on the right hand it was 4.4 centimeters  
 16 from the first webbed space to the inside of the index to  
 17 middle finger, and 7.9 outside to outside.  
 18 Q What did you conclude as a result of your  
 19 measurements? —  
 20 A Her hand is at least 1 1/2" centimeters too small to  
 21 have caused these injuries  
 22 Q Anything else of significance --  
 23 A No.  
 24 Q — in that photo?

X11-94

1 A Nor  
 2 Q In testing your observations did you have the  
 3 opportunity to do any experimentation in this case?  
 4 A I did a test, yes,  
 5 Q Did you take several photographs with regard to this  
 6 test that you did?  
 7 A I did,  
 8 Q Can you tell us a little bit about what you did?  
 9 A Sure, Well, one of the things that I wanted to make  
 10 sure that I could show you was what scissor stab wounds,  
 11 knife stab wounds, double-edged knife stab wounds actually  
 12 look like. And so I took some ultrasuede and put it on some  
 13 foam  
 14 -- because I didn't want to injure any animals or do anything  
 15 that was not politically correct -- and stabbed that material and  
 16 took pictures.  
 17 Q Did you use several instruments?  
 18 A I — well, I used several — yeah, I used two different  
 19 kinds of knives and scissors.  
 20 Q What types of knives did you use?  
 21 A Actually butterfly knives because my understanding  
 22 is that that is what some people think was the instrument that  
 23 caused the injuries,  
 24 Q And what other instrument did you use?

X11-95

1 A Scissors.  
 2 Q And did you pick a particular pair of scissors to test  
 3 your —  
 4 A I did. I actually used the kind of scissors that I  
 5 thought were most likely to have caused the injury, which  
 6 have that little finger groove that I described earlier.  
 7 Q Did you take photographs of your experiment?  
 8 A I did,  
 9 MS. GREENBERGER: May I approach, Your Honor?  
 10 THE COURT: Yes, you may.  
 11 BY MS. GREENBERGER:  
 12 Q Showing you what's been marked as Defense  
 13 Proposed III through \NV. Can you take a look at these  
 14 photos? Do you recognize these photos?  
 15 A Yes, I do.  
 16 Q Are these photos that you yourself took?  
 17 A They are.  
 18 MS. GREENBERGER: Your Honor, the defense would  
 19 move for admission of III through VVV at this time,  
 20 KEPHART: Your Honor, before I agree with  
 21 that, could I take the witness on voir dire?  
 22 THE COURT: Counsel approach,  
 23 (Off-record Bench Conference)  
 24 ///

X11-96

1 BY MS. GREENBERGER:  
 2 Q Can you tell us about how you took these  
 3 photographs, what these photographs — what you took them  
 4 with?  
 5 A Yes. I went to Walmart, I got some foam, I got  
 6 some ultrasuede, actually a remnant, I put the foam into the  
 7 ultrasuede and actually stapled the edges, and then I put it on  
 8 top of a trash can, took scissors and stabbed it as you might  
 9 stab like a chair cushion,  
 10 Q Did you proceed to take a photograph after each  
 11 stab?  
 12 A I did,  
 13 Q Did you — do these photographs that you reviewed,  
 14 represent all of the photographs that you took?  
 15 A Yes.  
 16 Q What kind of camera did you use?  
 17 A This was a Canon Elf digital camera,  
 18 Q Did you conduct this experiment more than once?  
 19 A No,  
 20 Q Are these photographs a fair and accurate depiction  
 21 of your entire experiment?  
 22 A Yes,  
 23 MS. GREENBERGER: Your Honor, we would move  
 24 for admission of these exhibits at this time,

X11-97

1 MR, KEPHART: Submit it, Your Honor,  
 2 THE COURT: Granted.  
 3 MS. GREENBERGER: Thank you, Your Honor,  
 4 (Defendant's Exhibits III through VVV, admitted)  
 5 BY MS. GREENBERGER:  
 6 Q Did you incorporate these photographs into a power  
 7 point?  
 8 A I did.  
 9 Q Showing you what's been marked as Defense Exhibit  
 10 KKK and III, can you tell us what we're looking at?  
 11 A This is a single-edge butterfly knife. It has been  
 12 stabbed into the cushion through this ultrasuede material, as I  
 13 described earlier It was then removed and laid next to the  
 14 incision that was caused, with the blade in the direction -- so  
 15 essentially I stabbed in, pulled out, laid the knife down took a  
 16 picture,  
 17 Q And so what's being depicted as Defense KKK, in the  
 18 left-hand corner is the single-edged butterfly knife, and then in  
 19 the right-hand cora4i- what's being depicted as III is the tip of  
 20 that same knife and that is below the stab wound?  
 21 A Correct  
 22 Q And what is significant about the shape of that?  
 23 A This is a very typical configuration of a stab that you  
 24 would see from a single-edge blade. It has a sharp point on

X 98

1 between a double edged and a single edged?  
 2 A It actually has two sharp edges, one on this edge,  
 3 one on this edge, and then it actually has sort of a beveled cut  
 4 in the center.  
 5 Q And what you're encircling is Defense Exhibit LLL.  
 6 And did you do the same type of experiment with a double-  
 7 edged butterfly knife as you did in the last slide? You made a  
 8 stab?  
 9 A Yes, I did,  
 10 Q And what is significant about the nature of the  
 11 incision?  
 12 A Here we have a sharp edge, actually on both sides,  
 13 and rather than being a teardrop, it's sort of like a narrow  
 14 diamond, if you will, that spreads out on both sides,  
 15 Q And that's based on the sharpness on both sides?  
 16 A The sharpness and the relatively thicker blade in the  
 17 center, if you will.  
 18 Q Anything else of significance in this slide?  
 19 A No.  
 20 Q Showing you Defense Exhibit MMM, Are these the  
 21 scissors we've been talking about?  
 22 A Yes,  
 23 Q And what is significant about these particular  
 24 scissors?

XII-100

1 one end, a dull sort of curved edge on the other. It looks sort  
 2 of like a teardrop shape. And the sharp side is where the  
 3 sharp edge is and the dull side is where the dull edge is.  
 4 MS GREENBERGER: May I approach the witness,  
 5 Your Honor?  
 6 THE COURT: Yes,  
 7 BY MS, GREENBERGER:  
 8 Q Showing you Defense UUU, is this the single-edged  
 9 butterfly knife?  
 10 A It is  
 11 MS. GREENBERGER: And the record should reflect  
 12 that UUU is the picture depicted in the left-hand corner, not  
 13 KKK I apologize for that, Your Honor.  
 14 THE COURT: Very well. Thank you.  
 15 BY MS, GREENBERGER:  
 16 Q Anything else of significance in these -- this first  
 17 slide?  
 18 A No,  
 19 Q What's in the left corner -- can you tell us what that  
 20 is? That instrument.  
 21 A This is my cushion here with foam underneath, and  
 22 this is a double-edged butterfly knife, stabbed into it,  
 23 Q And this would be Defense Exhibit KKK, This is a  
 24 double-edged butterfly knife. And what is the distinction

XII-99

1 A They have this little cutout for the fingers. There's a  
 2 finger rest there, Other than that, the handle length is  
 3 essentially equal to the blade length. So when the handles are  
 4 open an inch, the blades are open an inch,  
 5 Q And what is significant about the curvature over the  
 6 left handle of the blade?  
 7 A This little point here is the thing that's sort of  
 8 gouged into that eyebrow that I showed you about twenty  
 9 pictures ago.  
 10 Q Did you measure the distance of the outside edges  
 11 of the scissors?  
 12 A I measured the ratio between the blades and the  
 13 handles,  
 14 Q And why is that significant?  
 15 A Well, if you had scissors that have, say, shorter  
 16 handles and longer blades, the ratio would be different, Most  
 17 scissors if — you know, like you use hedge clippers -- I think  
 18 those were commented on by Dr. Simms -- they actually have  
 19 long handles and short blades, so that you can exert more  
 20 leverage. So if as in this case, the ratio of the blades to the  
 21 handles is one to one, the distance between the blades and  
 22 the handles end up being the same as well. That makes the  
 23 calculations a lot easier.  
 24 Q And have you actually done any work in comparing

XII-101

1 the measurements on these scissors to the injuries you  
 2 observed on Duran Bailey?  
 3 A Yes. So one question is whether the handle  
 4 separation matches those injures, and it does, In fact the  
 5 handle separation matches the sharp point separation which  
 6 leads to a more likely situation that the configuration of the  
 7 scissors is like this. And then looking at that imprint, it actually  
 8 matches a ratio of one to one handles to blades. So they -- all  
 9 three of those facts match each other,  
 10 Did you do any experimentation with the scissors?  
 11 A I did.  
 12 Showing you Defense Exhibit 000. What are we  
 13 looking at?  
 14 A So this is scissors held with one ring on the index  
 15 finger, the other ring on the small finger and just stabbing into  
 16 the cushion, And what it shows is that there's actually  
 17 bunching up of the tissue in between the scissor blades which  
 18 results in -- if this were skin, that little connecting abrasion  
 19 between the two <sup>9</sup>tk) wounds.  
 20 Q Did the material you used in this experiment  
 21 simulate human skin?  
 22 A It's thinner. It has different characteristics. But the  
 23 characteristics that are similar are that it's similarly resilient,  
 24 similarly elastic. Obviously, it's not skin,

X11-102

1 Q Did the bunching that occurred — would it have the  
 2 same reaction with skin?  
 3 A Yes,  
 4 Q How do you know that?  
 5 A I've seen scissor injuries in the past and they look  
 6 like these do,  
 7 Q Anything else of significance in this photo?  
 8 A **No**  
 9 Q Showing you Defense Exhibit SSS --  
 10 THE COURT: SSS?  
 11 MS. GREENBERGER: SSS.  
 12 BY MS. GREENBERGER:  
 13 Q -- and NNN. What is the significance of these two  
 14 photographs?  
 15 A These are two consecutive stabs into my little  
 16 cushion with scissors. And it shows that you can get different  
 17 configurations of those stab wounds, in part because the  
 18 material can twist a little bit. Sometimes one of the blades  
 19 goes in first, and then it twists, then the second blade goes in,  
 20 sometimes they both go in together, that sort of thing. So, on  
 21 the left, you see that — you have one incision going one  
 22 direction, the other incision going at a slightly different  
 23 direction. On the right, you see them actually going in the  
 24 same direction. What's significant is that you have sharp point

X11-103

1 facing each other, in both, you have dull edge away from each  
 2 other, in both, and the spacing between the two of them is the  
 3 same and actually matches my hand,  
 4 Q Can you show us how you made the incisions using  
 5 the scissors?  
 6 A Yeah. I put them on my hand like this, had the  
 7 cushion like this, and just pushed down into it.  
 8 Q And is the twisting — which is illustrated in Exhibit -  
 9 555 -- is that consistent with the human body? Something —  
 10 A It is. Yeah.  
 11 Q You've seen that before?  
 12 A Yes. And this is why they tell you not to run with  
 13 scissors.  
 14 Q Anything else of significance in this photo?  
 15 A You can see little scuff marks actually, here and  
 16 here, between the blades. Again, it's ultrasuede, it's not a  
 17 perfect material, but it's significant for the material bunching  
 18 up between the blades.  
 19 Q So this depicts Defense Exhibit SS, NN, and then  
 20 photographs of the abdomen which would be DDD. Can you  
 21 tell us what we're looking at and the significance of it?  
 22 A In the case of the two test wounds that don't point  
 23 toward each other, they actually match very closely with the  
 24 lower stab wound on the abdomen. With the case of the ones

X11-104

1 that point toward each other, they match very closely to the  
 2 upper stab wound again connected by that little abrasion.  
 3 Q And the bunching that you mentioned in the -- on  
 4 the left-hand photo, Exhibit SSS, is consistent with the linear  
 5 abrasion on DDD, on the abdomen?  
 6 A Correct. And here again you see this sort of double  
 7 abrasion here, and that's significant for this place where the  
 8 blades actually meet each other.  
 9 Q Did this comparison confirm your opinions on what  
 10 the mechanism of injury was in this case?  
 11 A Certainly consistent with it, yes.  
 12 Q Showing you Defense Exhibit PPP, QQQ and RRR?  
 13 Can you tell us what we're looking at?  
 14 A These are actual sequence photos. The first one in  
 15 the upper left-hand corner is the first in the sequence.  
 16 Q Can you identify — mark that? Okay.  
 17 A This one.  
 18 MR. KEPHART: What number is that again, counsel?  
 19 MS. GREENBERGER: That is Exhibit PPP,  
 20 THE WITNESS: And the one in the right upper is  
 21 the next step, which is closing the scissors. And which one is  
 22 that one?  
 23 BY MS. GREENBERGER:  
 24 Q That is QQQ. And then RRR.

1 A And then the bottom -- is?  
 2 Q Sorry, RRR.  
 3 A And that's the cut that ensued from closing the  
 4 scissors. So we have sort of number 1, number 2 and number  
 5 3, in the sequence. And you can see the stair-stepped pattern  
 6 which is because the blades cross over each other, cutting  
 7 here, cutting here, and then cutting in the middle when they  
 8 actually meet and shear across.  
 9 Q It would be a slow motion picture, starting with PPP.  
 10 After you did the snip incision, what you wound up with was  
 11 RRR, the photo at the bottom —  
 12 A Right, And that's —  
 13 Q -- as a direct result?  
 14 A That's unfortunately why they're a little fuzzy 'cause  
 15 I was holding the scissors like this and taking the pictures like  
 16 this, as I was closing and then snipping across.  
 17 Q Now, this — you testified you did this only one time  
 18 This isn't something you did time and time again to try to  
 19 replicate. This w<sup>o</sup> just --  
 20 A Correct. Just one time.  
 21 Q Adding to this picture, Defense Exhibit XX, tell us  
 22 what we're seeing.  
 23 A This is what I understand from the autopsy report,  
 24 as being the fatal injury to the left neck, which we showed

X11-106

1 actually create one without having the stair step be the same  
 2 width as the knife blade. Because you'd have to stab, stab,  
 3 and turn, and stab again, or stab, slice a little bit, and then  
 4 cut, So this one on the neck would take a very narrow knife in  
 5 order to create that. The measurement of each of these is less  
 6 than a centimeter so it's a third of an inch. Q How many  
 7 stab injuries have you seen approximately? I know you said  
 8 you've treated a hundred thousand patients. I mean,  
 9 hundreds —  
 10 A Yeah. It's on the order of thousands,  
 11 Q Over thousands, From all kinds of different knives?  
 12 A Knives, poles, spikes, scissors, yeah, every kind of —  
 13 rebar, lots of different things.  
 14 Q And your testimony is that in the thousands of  
 15 patients you've seen with stab wounds, you've never seen  
 16 anything that resembles what we're looking at in Defense  
 17 Exhibit BB?  
 18 A Remind me which one that is,  
 19 Q I'm sorry?  
 20 A Which -- remind me which exhibit that is,  
 21 Q What we're looking at  
 22 A Oh, this one. The only thing that I know that  
 23 matches this is scissors,  
 24 MS. GREENBERGER: May I approach the Clerk?

X11-108

1 earlier and discussed earlier. But it matches the configuration  
 2 of my test.  
 3 Q Does that injury seem to mirror the injury on RRR in  
 4 terms of the shape?  
 5 A It does,  
 6 Q And the stair step?  
 7 A Correct.  
 8 Q Does that confirm — or further confirm your opinion  
 9 that the injury to the carotid artery was caused by a scissor?  
 10 A Yes:" It's consistent with that.  
 11 Q Is there anything else of significance in this photo?  
 12 A No.  
 13 Q Showing you VV, Defense Exhibit VV, we saw that  
 14 earlier. What does that depict?  
 15 A This is actually the injury on the right neck. And  
 16 here the points were not quite as far apart. Rather than going  
 17 in wide like this, they went in more narrow like this So it's a  
 18 smaller width. But the stair step is still between here and  
 19 there,  
 20 Q And this stair step was something that you saw  
 21 when you did your experiment with the scissors?  
 22 A Correct.  
 23 Q Can you get a stair step with a knife?  
 24 A I've never seen one, and I couldn't figure out how to

X11-107

1 THE COURT: Yes.  
 2 BY MS. GREENBERGER:  
 3 Q Did you review —  
 4 MS. GREENBERGER: May I approach the witness?  
 5 THE COURT: Yes.  
 6 BY MS. GREENBERGER:  
 7 Q -- several photographs of Kirstin Lobato in this case?  
 8 A I think I reviewed three of them, yes.  
 9 Q Did these photographs appear to be what you  
 10 reviewed?  
 11 A Yes.  
 12 MS. GREENBERGER: Your Honor, we'd move for  
 13 admission of AAAA, 777 and YYYr  
 14 MR. KEPHART: I have no objection, Judge. They're  
 15 in.  
 16 THE COURT: YYY, 777 and AAAA will be admitted,  
 17 (Defendant's Exhibits 777, YYY and AAAA, admitted)  
 18 BY MS. GREENBERGER:  
 19 Q Showing you YYY. Did you review the injuries on  
 20 the abdomen?  
 21 A Not the injuries but the photograph certainly.  
 22 Q Or the photographs of the injuries?  
 23 A Yes,  
 24 Q What do those injuries appear to be?

X11-109

1 A Abrasions., Linear abrasions more specifically.  
 2 Q Do they appear to be -- or can you opine what they  
 3 could be caused with?  
 4 A Well, let me describe them first, and then --  
 5 MR. KEPHART: Your Honor, may we approach the  
 6 bench?  
 7 THE COURT: Yes.  
 8 (Off-record Bench Conference)  
 9 THE COURT: The objection's sustained as beyond  
 10 the notice,  
 11 BY MS. GREENBERGER:  
 12 Q Do you have an opinion what the penis in this case  
 13 was amputated with?  
 14 A Yes.  
 15 Q What is that?  
 16 MR. KEPHART: Objection, Your Honor. Asked and  
 17 answered.  
 18 THE COURT: Sustained.  
 19 BY MS. GREENBERGER:  
 20 Q Are the incisions -- lacerations of the neck, abdomen  
 21 and fingers of the decedent in this case, consistent with  
 22 scissors being used as a cutting and stabbing weapon?  
 23 MR. KEPHART: Your Honor, objection. Asked and  
 24 answered.

X11-110

1 enough force from an instrument to cause a fracture of the  
 2 inner part of the skull, it's enough to cause the outer part of  
 3 the skull to cave in, if you will, and cause a depressed skull  
 4 fracture. If you -- as some people have said, just hit lightly  
 5 with a bat, you'll fracture the outer part but not the inner part  
 6 and it will still cause the caving of the outer part without a  
 7 fracture that goes all the way through. So you can't with a bat  
 8 cause a linear skull fracture whether you hit lightly or hard, --  
 9 that doesn't cause the outer surface of the skull to cave in and  
 10 cause a depressed skull fracture,  
 11 Q I know you wrote a lengthy report in this case\_ Is  
 12 there anything in the report -- so I don't repeat myself -- that  
 13 was significant in your opinion that we haven't addressed?  
 14 A The one thing that we didn't talk about was fracture  
 15 of the teeth which was brought out in I think Dr. Simms'  
 16 testimony., And I guess that may be something that you may  
 17 want to ask me about.  
 18 Q What is your opinion with regard to the teeth  
 19 fracture?  
 20 A While it's certainly possible to fracture the teeth with  
 21 a bat, you know, swinging the bat -- and it doesn't take a lot  
 22 of force. It actually takes about between 15 and 17 pounds  
 23 depending on dental condition, to actually cause the teeth to  
 24 become loose. That usually also causes injuries to the maxilla,

X11-112

1 THE COURT: Sustained.  
 2 BY MS. GREENBERGER:  
 3 Q The skull fracture in this case -- I don't believe we've  
 4 talked about that., Do you have an opinion whether the skull  
 5 fracture could have been caused by a bat?  
 6 A It's very unlikely,  
 7 Q Why is that?  
 8 A The skull is really made out of what we call  
 9 trabecular bone, It's two fairly hard kinds of bone with kind of  
 10 spongy bone ii the middle. The outer part of the skull is a  
 11 different thickness from the inner part of the skull, And it  
 12 actually takes about 80 pounds per square foot to fracture the  
 13 in part of the boner It only takes about 30 pounds per square  
 14 foot to fracture the outer part of the boner And because you  
 15 have this spongy bone in between, when you apply that  
 16 amount of force, what ends up happening is that you crush the  
 17 spongy bone in between and it ends up having a different  
 18 configuration\_ This fracture was a linear fracture. What you  
 19 might get from taking a knife and cracking an egg. Whereas  
 20 the kind of fracture that you would get with a bat is more like  
 21 the fracture that you would see on an egg from trying to crack  
 22 it on a bowl, where the bowl is, you know, sort of a thicker  
 23 rounder edge, where it actually caves in a little bit, and that's  
 24 what we call a depressed skull fracture. So if you have

1 meaning the bone holding the teeth, unless the person's  
 2 mouth is open and it just happens to impact the bat on the  
 3 tooth itself. Usually you'll see various lip lacerations and things  
 4 that go along with that. But it's also possible to get those  
 5 fractures with the back of the scissors being swung in the fist,  
 6 So I would say it's more likely that this narrow area of the  
 7 scissor handle hits a tooth than the large surface area of a bat,  
 8 although it's possible for either to do it in the right  
 9 configuration,  
 10 Anything further?  
 11 A No\_  
 12 MS. GREENBERGER: I don't believe I have anything  
 13 further, Your Honor,  
 14 THE COURT: We'll be a taking ten-minute stretch  
 15 break at this time, Ladies and gentlemen, in ten minutes  
 16 please be in the hallway. The bailiff will meet you there to  
 17 return to your seats in the courtroom.  
 18 During the recess you're admonished not to talk or  
 19 converse amongst yourselves nor with anyone else on any  
 20 subject connected with this trial. You're not to read, watch or  
 21 listen to any report of or commentary on the trial or any  
 22 person connected with the trial by any medium of information,  
 23 including, without limitation, newspaper, television, radio and  
 24 Internet, And you're not to form or express any opinion on

X11-113

1 any subject connected with the trial until the case is finally  
 2 submitted to you. Court's in recess for ten minutes,  
 3 (The Court recessed at 4:06:49 until 4:25:28)  
 4 (The jury is present)  
 5 THE COURT: The record shall reflect that we're  
 6 resuming trial in State versus Lobato, under Case Number  
 7 C177394, in the presence of the defendant, her three counsel,  
 8 the two prosecuting attorneys, the ladies and gentlemen of the  
 9 jury, and the first defendant's witness, Dr. Laufer, who  
 10 remains on the stand and under oath.

11 I believe that Ms. Greenberger had passed the  
 12 witness when we took the stretch break,

13 MS. GREENBERGER: That's correct.

14 THE COURT: So the State may initiate their cross-  
 15 examination

16 MR. KEPHART: Thank you, Your Honor,  
 17 MICHAEL LAUFER, DEFENDANT'S WITNESS,  
 18 REMAINS UNDER OATH

19 —dROSS-EXAMINATION

20 BY MR. KEPHART:

21 Q Dr. Laufer, when is it that you were contacted by the  
 22 defense in this case?

23 A I don't know the exact date. I'd approximate it at  
 six weeks ago or so,

X11-114

1 testified in direct and you basically read off numerous items, is  
 2 that correct?

3 A Yes.

4 Q Okay, And with regards to this first report, did you  
 5 have an area in that report where you wrote down things that  
 6 you looked at as well?

7 A I don't recall,

8 MR. KEPHART: May I approach again, Your Honor,-  
 9 to refresh his memory?

10 THE COURT: Yes.

11 BY MR. KEPHART:

12 Q Look at this one, tell me if that's still your report.

13 A Yes.

14 Q Does that appear to be your first report?

15 A Yes.

16 Q Okay, Is there an area in there where you indicate  
 17 things that you looked at?

18 A Yes.

19 Q Okay. Can you go through that and tell us what you  
 20 looked at in your -- by your first report?

21 A Yes. Digital images and documents provided on CD  
 22 ROM and printed. These included images of the decedent  
 23 initially identified as John Palms Doe, the area where the  
 24 decedent was apparently found, aerial views of the same area,

1 MR. !KEPHART: Approach the witness, Your Honor?

2 THE COURT: Yes.

3 BY MR. KEPHART:

4 Q And after you'd been contacted by the defense, you  
 5 drafted a report, is that true?

6 A Yes

7 Q And in your report -- well, just so we know what  
 8 we're talking about, you actually drafted three reports in this  
 9 case, didn't you?

10 A One<sup>d</sup> report with two revisions subsequently, yes.

11 Q Okay. And in your --

12 MR, KEPHART: If I may approach the witness, Your  
 13 Honor?

14 THE COURT: Yes.

15 BY MR. KEPHART:

16 Q Can you tell me -- do you recognize what this is?

17 A This looks like the first -- the original.

18 Q Okay. You didn't date this one?

19 A Apparently not, no.

20 Q Okay. And in that report -- do you have a copy of  
 21 that with you now?

22 A I don't, no.

23 Q Okay. Do you recall -- 'cause, I mean, you just  
 24 testified about numerous things that you looked at. You

X11-115

1 images of the decedent after transport to what appears to be  
 2 a morgue, as well as images of the accused and images of  
 3 another woman with multiple contusions, abrasions and  
 4 lacerations apparently after a sexual assault and battery.  
 5 Documents reviewed were written statements by another  
 6 consulting forensic expert contracted by the defense.  
 7 Transcripts of trial testimony of the first trial accusing Lobato  
 8 of inflicting the injuries upon the decedent, as well as the  
 9 laboratory result summarizing results of samples taken from  
 10 the decedent at autopsy. I also requested and received  
 11 images of Lobato's hands measured with calipers across the  
 12 distal metacarpal-phalangeal joints of the second to fifth  
 13 fingers.

14 Q Okay, Can you tell me who is the forensic expert  
 15 that was contacted by the defense, that you looked at  
 16 statements from them? Who was that?

17 A I believe his name is Brent Turvey.

18 Q Brent Turvey. Okay. Do you have his report with  
 19 you?

20 A I do not.

21 Q And you didn't look at any other experts that were  
 22 contacted by the defense as well?

23 A Not that I recall, no.

24 Q You never looked at anything from Mr. -- from Dr.

X11-1.1.7

1 Wetley?  
 2 A Not that I recall, no.  
 3 Q And when you testified, earlier, you said in your  
 4 third report, you now additionally -- and have the third report  
 5 in front of you, right?  
 6 A I do, yes.  
 7 Q You looked at the autopsy report?  
 8 A Correct. Yes.  
 9 Q That's in addition to what you looked at before?  
 10 A Yes.  
 11 Q Okay, You looked at additional DNA tests done on  
 12 various samples, including the pubic hair found on the  
 13 decedent's body?  
 14 A Correct,  
 15 Q You looked at video coverage of the trial of Dr.  
 16 Simms' testimony, And you also said you looked at crime  
 17 scene coroner's technician testimony. Who would that have  
 18 been?  
 19 A My understanding is someone who testified over the  
 20 last couple of days.  
 21 Q And your understanding, it was a crime scene  
 22 coroner's technician?  
 23 A My understanding was that it was a -- someone from  
 24 the coroner's office who is a technician, yes,

XU-118

1 A Correct, that's what I was told that person was,  
 2 about whose testimony we were conferring.  
 3 Q Now, if you watched Dr. Simms' testimony, then you  
 4 recall the questions that were -- matter of fact you even talked  
 5 about one of the jurors questions.  
 6 A Yes.  
 7 Q So you recall that? Okay. One of the questions  
 8 asked by the State -- me -- was would you expect that if  
 9 somebody's going to render an opinion about a crime, a  
 10 person's body, that they would look at an autopsy in  
 11 conjunction with photographs? Do you remember that?  
 12 A I do. And as I recall, Dr. Simms said -- well, I  
 13 reviewed a lot of things, including the autopsy report. Correct,  
 14 Q His answer was he would expect you to see -- look  
 15 at both of them.  
 16 A Right,  
 17 Q And my question there, then, is, is why is it that you  
 18 waited until at least September 24th -- well, when you -- or  
 19 after Dr. Simms' testimony, to then review the autopsy report?  
 20 A I think that that's a mischaracterization,  
 21 Q Okay.  
 22 A We don't have a date of the first. I don't know if  
 23 you have the second,  
 24 Q I have the second. I'm going to ask you about that

XII-120

1 Q Did anyone tell you that?  
 2 A Yes. I asked specifically what she was, and that's  
 3 what I was told she was.  
 4 Who told you that?  
 5 A The defense,  
 6 Did she give you a name?  
 7 A I think Paulette was the last name.  
 8 Crime scene coroner's technician testimony?  
 9 A She was someone who apparently did DNA testing.  
 10 And they told you it was a crime scene coroner's  
 11 technician, though?  
 12 A That was actually another person who was  
 13 describing the condition in which they found the body and the  
 14 plastic wrap and the trash, and the sequence of events.  
 15 Q Okay. So did you watch or view a crime scene  
 16 coroner's technician's testimony? That's my question.  
 17 A I did not watch or view that, no. That was in  
 18 discussion,  
 19 Q So that's something that we probably ought to mark  
 20 out of your report?  
 21 A This was reviewing that, and I reviewed it with the  
 22 defense. Their notes on that testimony.  
 23 Q Once again, a crime scene coroner's technician's  
 24 testimony?

XU-119

1 one, too.  
 2 A Okay.  
 3 Q Okay.  
 4 A So it was in that interval between the second and  
 5 the third that I reviewed it.  
 6 Q Okay. So you would agree that even in the second  
 7 report, you hadn't even looked at the autopsy report?  
 8 A I actually can't recall if I had looked at it at that  
 9 point or not.  
 10 MR, KEPHART: May I approach, Your Honor?  
 11 THE COURT: Yes.  
 12 BY MR, KEPHART:  
 13 Q I'm showing you what appears to be a -- one, two,  
 14 three -- four-page report. Does that appear to be your report?  
 15 A Yes.  
 16 Q Okay, And in -- this area says -- right under  
 17 September r of 2006 -- it's the same area that starts out with  
 18 what you reviewed. Can you tell me in that area if you see  
 19 anyplace in there that you reviewed an autopsy report? It'd be  
 20 that first paragraph, Doctor,  
 21 A No, it's not listed specifically.  
 22 Q So we can assume, then, that you had not looked at  
 23 the autopsy report of Dr. Simms at least by September 3rd,  
 24 2006? Is that correct?

X11-121

1 A I certainly didn't list it. I can't remember if I  
 2 reviewed it prior to that or not.  
 3 Q And you rendered some opinions, however, about  
 4 your findings, particularly in this case, in all three reports,  
 5 didn't you?  
 6 A Yes,  
 7 Q And it changed actually — well, let me ask you this.  
 8 You came here to testify -- and we have marked -- I guess the  
 9 defense marked into evidence -- I don't know if you have them  
 10 there with you still, Doctor, but some scissors. Oh, here they  
 11 are. Exhibit CCCC,  
 12 MR, KEPHART: Is that right, Judge? Four Cs?  
 13 THE COURT: Four Cs,  
 14 BY MR. KEPHART:  
 15 Q Right here. And you kind of held them and you  
 16 talked about them in direct examination. Did you bring the  
 17 scissors with you that you did the tests on?  
 18 A No.  
 19 Q Okay. And in your first -- in your first report do you  
 20 remember characterizing them as the kind commonly used to  
 21 cut hair by a barber or hair stylist?  
 22 A Yes,  
 23 Q And you said that they had a finger hook on them?  
 24 A Correct.

X11-122

1 aren't you?  
 2 A Yes.  
 3 Q 'Cause you say it has a finger hook on it?  
 4 A Correct.  
 5 Q And that's what we mean right there at the bottom,  
 6 a finger hook?  
 7 A Yes.  
 8 Q Then in your next report, September r of 2006, -  
 9 you change that, and you're now saying scissors — here they  
 10 are  
 11 -- scissors that are -- the configuration is consistent with  
 12 Fiskar-like scissors. Is that correct?  
 13 A Yes,  
 14 Q And that's what we have here today, somewhat of a  
 15 Fiskar-like scissor?  
 16 A Right, Plastic handles as opposed to a metal hook.  
 17 Q Okay, Now, you — when you were contacted by the  
 18 defense -- now, you said in previous testimony, that you have  
 19 actually testified in previous -- on previous occasions. Matter  
 20 of fact, your curriculum vitae talks about -- I guess with  
 21 accident reconstruction, automobile accidents type of thing like  
 22 that? Is that what we're talking about?  
 23 A On a few occasions, yes.  
 24 Q And when you're contacted by the defense do you

X11-124

1 Q Is that correct?  
 2 A Yes,  
 3 MR., KEPHART: Can I have this marked, Your  
 4 Honor? Showing defense State's Proposed Exhibit 261. May I  
 5 approach, Your Honor?  
 6 THE COURT: Would you state the number of it  
 7 again?  
 8 MR. KEPHART: 261.  
 9 THE COURT: 261, Yes, you may.  
 10 BY MR. KEPHART:  
 11 Q Doctor, I'm showing you what's been marked as  
 12 State's Proposed 261. Does that appear to be a photograph of  
 13 scissors?  
 14 A Yes,  
 15 Q And those would be -- it says actually styling  
 16 scissors, is that right?  
 17 A Correct,  
 18 Q And there's a —  
 19 MR\_ KEPHART: Move to admit 261, Your Honor,  
 20 MS. GREENBERGER: No objection,  
 21 THE COURT: Granted.  
 22 (State's Exhibit 261, admitted)  
 23 BY MR. KEPHART:  
 24 Q That's what you're talking about in your first report,

X11-123

1 arrange a negotiation with them as to what it would cost for  
 2 you to actually come testify?  
 3 A Not on every occasion, no.  
 4 Q Did you do that in this case?  
 5 A I didn't,  
 6 Q You're doing this for free?  
 7 A Yes.  
 8 Q Now, you've had an opportunity to view -- prior to  
 9 today, view a website in reference to the defendant?  
 10 A I'm not sure I know what you mean.  
 11 Q It's your testimony that you would be an objective  
 12 observer?  
 13 A Yes-  
 14 Q And you have — matter of fact you are here to  
 15 render an opinion, and you basically if I'm -- get me wrong or  
 16 not -- are you — you have rendered three different reports that  
 17 talk about your opinion in this case? Is that right?  
 18 A Correct.  
 19 Q And in your most recent report you even went so far  
 20 to say, I still intend to do further testing and review prior to  
 21 testifying that may add to or change my opinions, is that  
 22 correct?  
 23 A Yes.  
 24 Q Your exhibits -- the defense exhibits —

X11-125



1 MR. KEPHART: Excuse me, Your Honor.  
 2 THE COURT: Yes.  
 3 MR. KEPHART: Is that UUU or WV?  
 4 MS. GREENBERGER: I think it's UUU.  
 5 MR. KEPHART: Okay,  
 6 BY MR. KEPHART:  
 7 Q UUU is the one that we were talking about with the  
 — your test of the use of this knife, This butterfly knife. Is  
 9 that right?  
 10 A Yes  
 11 Q Okay. And then HI -- I guess your Power Point has  
 12 it a little bit clearer than this. You described -- there, that's  
 13 better. You described that as a teardrop-type injury. One-  
 14 sided weapon?  
 15 A Single edged. Yes,  
 16 Q Single edge And the rough side -- I guess the back  
 17 side of the knife would be to the left of this photograph, the  
 18 sharp side would be to the right of the photograph? Is that  
 19 correct?  
 20 A Correct.  
 21 Q And Exhibit FFF — we'll use EEE. See that?  
 22 THE COURT: So this is EEE rather than FFF?  
 23 MR. KEPHART: Yes, Your Honor. Defense Exhibit  
 24 EEE.

X11-126

1 THE COURT: We seem to keep getting that one  
 2 mixed up  
 3 BY MR, KEPHART:  
 4 Q See that, Doctor?  
 5 A Yes,  
 6 Q Teardrop?  
 7 A Yes,  
 8 Q Pretty consistent with what you had talked about in  
 9 HI, isn't it?  
 10 A Single-edge instrument.  
 11 Q What's that?  
 12 A It's a single-edged instrument, yes.  
 13 Q In fact all those are teardrop, correct?  
 14 A Correct -  
 15 Q Now, it's your testimony that with regards to the  
 16 type of instrument that would have been used here, as in —  
 17 specifically EEE, is scissors, is that right?  
 18 A Yes.  
 19 Q And you had conducted some tests where we saw  
 20 some bunched up suede in some foam, is that correct?  
 21 A Ultrasuede, yes,  
 22 Q Ultrasuede, Okay. And can I ask you this, Doctor:  
 23 You said that you've invented -- or been involved in inventing  
 24 or you have a hundred patents or a little less than a hundred

X11-127

1 patents. So you've <sup>P</sup>een involved in -- have you actually been  
 2 involved in the invention of these type of things?  
 3 A Yes.  
 4 Q Okay. So you've tested them?  
 5 A Correct.  
 6 Q And you've marketed them?  
 7 A In some cases,  
 8 Q And when you test those items in order to market  
 9 them, do you show your tests? Do you document your  
 10 tests?  
 11 A Sure. Yes.  
 12 Because you want to impress upon somebody the  
 13 purpose of the item that you're -- that you have designed and  
 14 how it works?  
 15 A For a variety of reasons.  
 16 Q Okay. In this particular case you said you were  
 17 contacted by the defense some six weeks ago, and you  
 18 conducted these tests I guess after the defense contacted  
 19 you?  
 20 A Yes,  
 21 Q Have you — did you actually conduct the tests prior  
 22 to drafting your third report that's dated the 24<sup>th</sup> of  
 23 September, arid after your report of September the 3rd?  
 24 A No, it was actually -- that was the test that I was

XII-128

1 going to conduct when I referred specifically to "I intend to  
 2 conduct further tests." This was the test.  
 3 Q So you did it after the 24th?  
 4 A Correct.  
 5 Q Okay.  
 6 A Last Saturday.  
 7 Q What time?  
 8 A Last Saturday, specifically.  
 9 Q Well, today's the 26<sup>th</sup>. Yesterday was the 25th.  
 10 Sunday would have been the 24<sup>th</sup>, But you conducted the test  
 11 Saturday?  
 12 A It actually was Sunday. Sorry.  
 13 Q Okay, So you drafted the report, I guess sent it to  
 14 the defense, who in turn gave it to us yesterday, and you were  
 15 conducting the test after you did that?  
 16 A Correct.  
 17 Q Okay. And where was it conducted at?  
 18 A My office.  
 19 Q And who helped you do the test?  
 20 A No one.  
 21 Q Okay, No one witnessed the tests?  
 22 A Correct.  
 23 Q Matter of fact you testified that --  
 24 A Actually that's not completely true 'cause I did show

XII-129

1 them to someone who happened to be working on the  
 2 weekend, who's our controller.  
 3 Q Okay But you actually said that when you did the  
 4 tests — when you took a photograph, you were holding the  
 5 scissors yourself and you took the photograph, is that correct?  
 6 A Yes,  
 7 Q And you have no -- no video documentation of this  
 8 test or anything like that?  
 9 A Only the video documentation that you see.  
 10 Q There's actual video or is it just what you put as  
 11 your Power Point?  
 12 A It's -- it's video in the sense of still picture video but  
 13 it's not moving picture video.  
 14 Q And you have shown us in cross-examination, and  
 15 multiple times, basically situations where you believe how  
 16 these scissors were handled?  
 17 A Yes,  
 18 Q How thg were held?  
 19 A Correct.  
 20 Q Show us once again how you believe the scissors  
 21 were held to — when the injuries of EEE were made?  
 22 A [witness demonstrates]  
 23 Q Okay,  
 24 MR, KEPHART: Your Honor, for the record, he's got

X11-130

1 his pointer finger -- he's using his right hand, he's got his  
 2 pointer finger through the -- one of the holes I guess in the  
 3 scissors, and his pinky finger on the same hand, through the  
 4 other hole,  
 5 THE COURT: The record shall so reflect.  
 6 MR. KEPHART: Okay,  
 7 BY MR, KEPHART:  
 8 Q And you're saying that that would have been in a  
 9 situation — maybe he's getting stabbed like that?  
 10 A Correct.  
 11 Q Okay, And when you conducted these tests on the  
 12 ultrasuede -- and you -- show me you how you did it on the  
 13 ultrasuede. Use your book there or something as your  
 14 ultrasuede, Just -- don't stab through it obviously but —  
 15 A This -- this was resting on a trash can, across here,  
 16 and straight through,  
 17 Q And you did that with -- two different times?  
 18 A Correct.  
 19 Q And that's the two photos that we have here?  
 20 A Yes.  
 21 Q Matter of fact -- is this photo here, PPP, is that a  
 22 photo that you took as you were stabbing into the ultrasuede?  
 23 A No\_  
 24 Q Who took that photo then?

X11-131

1 A This was tor the snip test.  
 2 Q Okay, Is this the one you took for stabbing into it?  
 3 A Yes.  
 4 Q Okay, Now, in reference —  
 5 THE COURT: Can you identify that one?  
 6 MR, KEPHART: Oh, I'm sorry, Judge. 000.  
 7 THE COURT: Thank you.  
 8 BY MR, KEPHART:  
 9 Q And is there another one like that?  
 10 A No,  
 11 Q Okay.  
 12 MR, KEPHART: Court's indulgence, Your Honor.  
 13 THE COURT: Yes.  
 14 MR, KEPHART: I'm having trouble here. I'm sorry.  
 15 THE COURT: Yes,  
 16 BY MR, KEPHART:  
 17 Q You said there was only one time that you tested  
 18 that?  
 19 A I stabbed the cushion twice,  
 20 Q Okay.  
 21 A But I only took a picture of it in the cushion once.  
 22 Q Did you change the material between stabs?  
 23 A No. It's all one continuous piece,  
 24 Q Do you have a photograph of the whole piece so we

X11-132

1 could see in relation to where you stabbed it?  
 2 A I don't,  
 3 Q So you only have a photo of one stab? Is that right?  
 4 A I have a -- I have two photos of the stabs, which  
 5 you have, one pointing away, one pointing toward,  
 6 Q Okay.  
 7 A But only one picture of the scissors in the foam.  
 8 Q Okay. So we don't know which one of -- the one  
 9 that you see here on the screen now, 000 -- I mean 000, we  
 10 don't know if it caused SSS or I I I, do we?  
 11 A Actually we do, only because I remember,  
 12 Q Okay. Which one did it cause? SSS —  
 13 A The picture -- this picture is the first stab wound.  
 14 And which one is that?  
 15 A That was the one where they actually point away  
 16 from each other.  
 17 Q So you're talking about —  
 18 A It's upside down, but —  
 19 Q SSS?  
 20 A Yes.  
 21 Q Right here?  
 22 A Correct.  
 23 Q Okay, And then TTT was -- is that upside down too?  
 24 Was another time?

X11-133

1 A That one's -- correct.  
 2 Q That's one right now?  
 3 A [no audible response]  
 4 Q Is that a yes?  
 5 A That's a yes,  
 6 Q Okay. And so we don't know -- well, at what point  
 7 in time did you do the second stab? Was it in the -- like I said,  
 8 was it in the same material?  
 9 A Same material -- and actually if you go back to the  
 10 picture that shows the scissors still in --  
 11 Q Yeah,  
 12 A -- you'll notice, right here, there's a seam.  
 13 Q Okay.  
 14 A That's where the second stab wound happened. In  
 15 that area of the seam.  
 16 Q Okay, Can you show me on SSP I'm sorry, that  
 17 was your first one. The second one, i l l, where the seam's  
 18 at?  
 19 A Right here.  
 20 Q Oh, I thought you said that that was an abrasion  
 21 caused from the knife.  
 22 A Well --  
 23 Q I mean the scissors.  
 24 A If you -- go back to the one where they point away

X11-134

1 Q And it's not light? Isn't the seam right below that?  
 2 A Well, even though it was unintentional when I  
 3 stabbed, it happened because there was a seam there that the  
 4 points went into the seam, and resulted in the stabs in the  
 5 seam. It's not where I would have chosen to stab, and I  
 6 guess if I wasn't going to be completely direct about it, I  
 7 would have done it again somewhere else, but I didn't,  
 8 Q Can you see this area right here? Appears to be a  
 9 little darker than any other area, doesn't it? Right above the  
 10 blue line,  
 11 A Yes.  
 12 Q Is that your seam?  
 13 A It's certainly in the vicinity of the seam, yes, There's  
 14 a shadow there.  
 15 Q Then what's this area right here? Is that your  
 16 abrasion?  
 17 A No. I think what you're seeing is the shadow caused  
 18 by the seam. If you go back, the seam is actually pointing  
 19 upward, as I recall, and so the light is casting a shadow down  
 20 in the area of the line that you drew.  
 21 Q So that certainly wouldn't be an abrasion then?  
 22 A That is not an abrasion, no  
 23 Q Okay. Now, Doctor, can you show us again how you  
 24 say that you used -- just held the scissors with regards to the

X11-136

1 from each other,  
 2 Q Okay.  
 3 A That's the one where I was talking about the  
 4 abrasion, right here.  
 5 Q You see something on there? Is it your testimony  
 6 that you see something on that photograph that appears to be  
 7 an abrasion? That's 555,  
 8 A It was certainly visible on the fabric and on the  
 9 Power Point presentation. This thing as you pointed out  
 10 earlier, degrades the image.  
 11 Q On your Power Point presentation -- okay. Well, let  
 12 me -- let me give you the photograph, SSS, and you tell me if  
 13 you can see an abrasion there?  
 14 A Well, again, you've printed it at a different  
 15 resolution. But if we go back to the Power Point, it's easier to  
 16 see,  
 17 These are actually your -- the defense's exhibits.  
 18 A Yeah, these -- these are prints.  
 19 Okay, And it's your testimony, though, the Power  
 20 Point presentation has an abrasion on it?  
 21 A It certainly is more clear than on these prints, yes.  
 22 Q And then on -- on TIT, you're saying that this mark  
 23 through the center here, is the seam?  
 24 A That's a seam, correct.

X11-135

1 stab puncture?  
 2 A This is the snip.  
 3 Q No. Stab,  
 4 A The picture you're showing is the snip.  
 5 Q Okay. This one here.  
 6 THE COURT: That was PPP?  
 7 MR. KEPHART: Yes, Your Honor.  
 8 THE COURT: And now the one that's up is --  
 9 MR. KEPHART: SS.  
 10 THE COURT: SS.  
 11 MR. KEPHART: May I approach, Your Honor?  
 12 THE COURT: You may.  
 13 BY MR, KEPHART:  
 14 Q You're saying that these here, this is how it would  
 15 be held --  
 16 A The blades.  
 17 Q to make the stab?  
 18 A Yeah.  
 19 Q Okay. So you're saying that they -- that they would  
 20 be more fixed like that than a knife?  
 21 A I'm not sure I understand the question.  
 22 Q Well, obviously, they're not designed to be held that  
 23 way, are they?  
 24 A No.

X11-137

1 Q A knife's designed to be held in Ene palm of the  
2 hand. And my question of you, is, are you saying that scissors  
3 in that nature, being held like that, are — would they be able  
4 to be moved back and forth? That's what I mean,  
5 A You mean open and closed?  
6 Q No, Back and forth.  
7 A Or do you mean rotated on the hand?  
8 Q Uh-huh, Yeah,  
9 A Yeah, they're -- they're rotatable.  
10 Q Okay, You indicated that -- that with respect to the  
11 stab wounds — you described these ones here in the abdomen  
12 of Mr. Bailey, EE -- that it's your opinion that these were  
13 caused by scissors?  
14 A Correct.  
15 Q Okay. And my question to you, is, do you know how  
16 deep these were?  
17 A No There was evidence by Dr. Simms that at least  
18 one went into the liver,  
19 Q Okay, That's pretty deep,  
20 A It's pretty deep.  
21 Q Did you read the autopsy report?  
22 A I did.  
23 Q Okay. In this -- these particular pictures, if you were  
24 using the very scissors that you have right there, one of them

X11-138

1 would have to penetrate the liver. How deep is the liver?  
2 A It depends on how thick the abdominal wall is. It's  
3 certainly on the order of inches.  
4 Q Okay, Inches. Would you expect that once the -- a  
5 pair of scissors go into the point where they actually penetrate  
6 the liver, several inches here, that the injuries would get closer  
7 together? Are you saying that they bunch up when you do  
8 that?  
9 A Yeah, the skin bunches up.  
10 Q Human skin is going to bunch up like you have these  
11 pictures in -- in Exhibit 000?  
12 A Correct,  
13 Q Wouldn't that have a lot to do with the muscular  
14 portion of the individual in the abdomen here?  
15 A The thickness of that bunch is certainly going to be  
16 dependent on the individual, yes,  
17 Q And it's your testimony here that these bunched up  
18 enough to where it caused that laceration in the center?  
19 A The abrasion, correct.  
20 Q The abrasion, Would that also be consistent with a  
21 stab wound and then the knife being drug across the wound?  
22 A You would have to do essentially three things. You'd  
23 have to stab, you'd have to drag and rotate the knife, and then  
24 stab again. And you'd have to do it at a fixed interval between

X11-139

1 the two sets of stab wounds.  
2 Q Well, you say fixed interval, you're talking about the  
3 distance between here and here?  
4 A Well, it's actually the distance of that line connecting  
5 between the two. Sorry, that was not a very good one, So --  
6 Q Sorry, I'm trying to get it where you can see better.  
7 A So the distance -- and it's actually not so much the  
8 distance between the sharp edges, it's actually the distance -  
9 between the puncture and the other puncture, and the  
10 puncture and the other puncture,  
11 Q Okay. The back side? Would it be the back side?  
12 'Cause, obviously, in order to make the back side of that  
13 injury, something had to start there, right?  
14 A I'm not sure I know what you mean by the back  
15 side.  
16 Well, you talked about a teardrop, and you -- that  
17 you expect the sharp portion of the weapon to be at the sharp  
18 point of the teardrop.  
19 A Correct.  
20 Q And that the dull portion of the weapon would be at  
21 the back -- at the —  
22 A Outside.  
23 Q dull portion of the teardrop,  
24 A Right,

XII-140

1 Q And in this particular case, wouldn't you expect the  
2 weapon to have entered the skin at least at the back portion,  
3 meaning the blunt portion of the teardrop?  
4 A No, because actually the hole gets bigger as you go  
5 down the blade.  
6 Q So it'd be right in the middle?  
7 A Well, it's not actually in the middle either because if  
8 you look at the blade, it's actually along a line that connects --  
9 or that actually connects the sharp and the dull. But if you  
10 only have one of those edges, it's really along the edge that  
11 doesn't cut, which is really the dull edge.  
12 Q Where would you start your measurement on these  
13 particular -- these particular injuries to tell us that they came  
14 from the same weapon?  
15 A The only straight edge on the scissors is the dull  
16 edge. So you start from there to there, there to there.  
17 Q And it's your testimony that these here are  
18 consistent?  
19 A Yes.  
20 Q In what regard? Tell me the measurements. Are  
21 they both the same?  
22 A Actually I went from the smallest —  
23 Q And if you could direct me to your report —  
24 A Sure.

X11-141

1 Q — where you're actually talking about the  
 2 measurements?  
 3 THE COURT: Would counsel approach?  
 4 (Off-record Bench Conference)  
 5 THE COURT: Ladies and gentlemen, we had hoped  
 6 that Dr. Laufer's testimony would be concluded today but that  
 7 is not going to be possible due to a scheduling issue tomorrow.  
 8 He will be returning with us on Thursday at 1:00 o'clock.  
 9 He may step down and we will see him back -- the  
 10 Court orders him to return Thursday at 1:00 p.m.  
 11 We will be taking our evening recess. During this  
 12 recess the Court admonishes you that you are not to talk or  
 13 converse among yourselves nor with anyone else on any  
 14 subject connected with the trial. You're not to read, watch or  
 15 listen to any report of or commentary on the trial or any  
 16 person connected with the trial by any medium of information,  
 17 including, without limitation, newspaper, television, radio, and  
 18 Internet. And you're not to form or express any opinion on  
 19 any subject connected with the trial until the case is finally  
 20 submitted to you,  
 21 You have a good evening and we will see you  
 22 tomorrow at 10:30. Please be in the hallway at that time and  
 23 the bailiff will meet you there to return you to your seats.  
 24 The jury may exit.

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**AFFIRMATION**   
 Pursuant to NRS 2398.030

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. C177394 does not contain the social security number of any person,

Lori Lutz  
 Transcriber

5/10/07  
 Date

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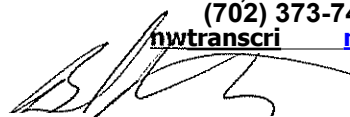
1 (Jurors Recessed at 5:09:34)  
 2 THE COURT: The record shall reflect that the jury  
 3 has exited and the Court's asked counsel to stay to discuss  
 4 some scheduling issues. And we'll go off the record at this  
 5 timer  
 6 Court Adjourned until the following day,  
 7 September 27, 2006  
 8 \* \* \* \* \* 4 \* \*  
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**CERTIFICATION**

I (WE) CERTIFY THAT THE FOREGOING IS A "ROUGH DRAFT" TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER,

NW TRANSCRIPTS, LLC   
 NEVADA DIVISION  
 1027 S. RAINBOW BLVD., #148  
 LAS VEGAS, NEVADA 89145-6232  
 (702) 373-7457  
[nwtranscri](http://nwtranscri.com) [msn.com](http://msn.com)

  
 FEELI RALLY CERTIFIED MANAGER/OWNER

Lori Lutz  
 TRANSCRIBER

5/10/07  
 DATE

\* \* \* \* \*

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COPY