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Deposition of Dr. Cyril Wecht

Cyril H. Wecht

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ALAN DAVIS, Executor,

Plaintiff,

vs.

Case No. 312322

STATE OF OHIO,

Defendant.

- - - -

DEPOSITION TRANSCRIPT OF: CYRIL H. WECHT, M.D., J.D.

- - - -

DEPOSITION DATE:
January 21, 2000
Friday, 10 a.m.

PARTY TAKING DEPOSITION:
Defendant

COUNSEL OF RECORD
FOR THIS PARTY:
Steven Dever, Esq.

REPORTED BY:
Keith G. Shreckengast, RPR
Notary Public

ORIGINAL

DEPOSITION OF CYRIL H. WECHT, M.D., J.D.,
a witness, called by the Defendant for examination, taken
by and before Keith G. Shreckengast, RPR, a Court Reporter
and Notary Public in and for the Commonwealth of
Pennsylvania, at the offices of AKF Reporters - 436
Boulevard of the Allies, Pittsburgh, Pennsylvania, on
Friday, January 21, 2000, commencing at 10 a.m.

- - - -

APPEARANCES:

FOR THE PLAINTIFF: Terry H. Gilbert, Esq.
FRIEDMAN & GILBERT
1700 Standard Building
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Cleveland, Ohio 44113
(216) 241-1430

FOR THE DEFENDANT: Steven Dever, Esq.
Dean Boland, Esq.
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CYRIL H. WECHT, M.D., J.D.,

having been duly sworn,

was examined and testified as follows:

- - - -

EXAMINATION

- - - -

BY MR. DEVER:

Q. Good morning, Doctor Wecht. This is January 21st, am I right, is today the 21st?

A. Yes.

Q. January 21st, we are in Pittsburgh on a lovely winter morning for a deposition. Doctor Wecht, my name is Steve Dever, I work for the Cuyahoga County Prosecutor. We are representing the defendant, the State of Ohio in an action known as Estate of Sam Sheppard versus State of Ohio. You have been listed as an expert by the plaintiffs to testify in the upcoming trial; is that correct, sir?

A. Yes.

Q. And I have before you what's been marked as Defendant's Exhibit No. 2. Can you identify that particular document, first of all?

A. This is a report I submitted to Attorney Terry Gilbert on July 29th, 1999, following my review of

1 the materials that had been sent to me as of that
2 time.

3 Q. That particular report, does that encompass all of
4 your testimony that you intend to give in the trial?

5 A. I can't answer that simply or unequivocally, because
6 I don't know what else may be raised by Mr. Gilbert.
7 I should also point out that, in fact, there was a
8 supplemental report that did address some additional
9 materials that were sent to me months later, and
10 that report went in earlier this month to
11 Mr. Gilbert. It addressed my review of reports from
12 the photographer, Mr. Wentzel, and an
13 anthropologist, Doctor Lovejoy. So that's a
14 specific addition. And it also gets to the answer I
15 gave a moment ago, that I don't know what else may
16 be given to me. I think that the report of July
17 29th, 1999 addresses the principal questions that
18 Mr. Gilbert had raised with me, and which I would
19 have anticipated in light of my field of expertise,
20 forensic pathology.

21 Q. Just to be clear, then, Doctor Wecht, is that
22 Defendant's Exhibit No. 2 is your initial report,
23 and there was a supplementary report that you made
24 concerning issues that were raised by Doctor Lovejoy

1 at the Cuyahoga County Coroner's Office, as well as
2 Jim Wentzel, who works for the Coroner's Office; is
3 that correct?

4 A. Yes.

5 Q. And in response to observations or claims that they
6 were making; is that correct, sir?

7 A. Yes.

8 Q. Other than those two particular documents, are there
9 any other reports that you issued concerning your
10 involvement in this case?

11 A. No, those are the only two reports.

12 Q. So let me back up now, and then begin with a little
13 bit about your background, Doctor. I was provided a
14 copy of your CV. And just some basic questions,
15 what is your profession?

16 A. Physician specializing in anatomic, clinical, and
17 forensic pathology.

18 Q. Are you Board certified -- first of all, are you
19 licensed to practice medicine in the State of
20 Pennsylvania?

21 A. Yes.

22 Q. Do you hold licenses in any other states?

23 A. Yes.

24 Q. In what states are those?

1 A. Maryland and California.

2 Q. And as a pathologist, are you Board certified as a
3 pathologist?

4 A. Yes.

5 Q. And Board certified by?

6 A. It's the American Board of Pathology. The
7 certification initially is in anatomic and clinical
8 pathology, and then after the additional training,
9 the certification by that same Board in forensic
10 pathology.

11 Q. Now forensic pathology, can you describe that
12 specialty, as far as you understand it?

13 A. Forensic pathology is an officially recognized
14 subspecialty of pathology, which has existed in a
15 sense for thousands of years, but officially has
16 been recognized by the American Board of Pathology,
17 with definitive requirements for training at
18 accredited institutions for a prescribed period of
19 time. Following that training, one is then eligible
20 for the additional certification. Forensic
21 pathology deals with the study, evaluation, analysis
22 of violent, sudden, suspicious, unexpected,
23 unexplained, medically unattended deaths, primarily
24 for the purpose of determining the cause of death,

1 the manner of death, the mechanism of death, in some
2 instances the time and place of death, the
3 relationship sometimes between injury and disease,
4 or vice versa, if more than one victim is involved,
5 sometimes the sequence of death, sometimes the
6 question of conscious pain and suffering following
7 injuries, et cetera. In modern times, forensic
8 pathology in our country has expanded to deal with
9 various issues involving live people also. And has
10 dealt with matters of environmental pollution,
11 various alcohol and drug abuse related questions,
12 sexual assault, child, spousal and elderly abuse,
13 injury patterns, matters sometimes related to
14 product liability. These are matters which fall to
15 some extent or another under the purview, the aegis
16 of the forensic pathologist. To a great extent it's
17 the kind of work that is associated with medical
18 examiner or coroner's offices, although forensic
19 pathologists also can practice privately, and are
20 involved, as other medical specialists are, in
21 writing, teaching, and research.

22 MR. DEVER: Go off the record for one
23 second.

24 - - - -

(There was a discussion off the record.)

- - - -

BY MR. DEVER:

Q. Doctor, I better ask you this question before we go any further. Now showing you what's been marked as Defendant's Exhibit 3, can you identify that particular document?

A. This is the supplemental report I submitted to Mr. Gilbert on January 14th of this year.

Q. Those two particular exhibits, then, Defendant's Exhibit 2 and Defendant's Exhibit 3, do they contain all of your findings relating to the case involving the death of Marilyn Sheppard?

A. I don't know that they set forth all of my findings. As I said before, they've addressed what I felt were the principal issues and important questions that Mr. Gilbert had talked to me about. The supplemental report specifically responds to two reports that were sent to me for the purpose of reviewing them. The Wentzel and Lovejoy reports. So those are definitive and limited.

Q. Are there any other issues or questions that you have at this particular time that do not appear in reports, Defendant's Exhibits 2 or 3 that you can

1 think of?

2 A. There's no separate area that I have in mind. I
3 think, you know, I've addressed the question of the
4 injuries, somewhat the patterns, the
5 instrumentality, the scene investigation, from a
6 coroner forensic pathology standpoint, some
7 observations about the autopsy. Those are the
8 matters that I would be dealing with. I'm not
9 aware -- I do not anticipate and have no knowledge
10 of some other aspect of the case that is not touched
11 upon in these reports.

12 Q. Fair enough. And you know that we're going to trial
13 ten days from today.

14 A. I don't know the exact day, but I just knew that it
15 was coming up soon.

16 Q. Now as far as the subspecialty of forensic
17 pathology, do you hold the appropriate
18 certifications to call yourself a forensic
19 pathologist?

20 A. Yes. There is only the one certifying board in this
21 country, the American Board of Pathology, and just
22 that one certification in forensic pathology. There
23 are other subspecialties, but the basic one that we
24 who train additionally in forensic pathology take,

1 the examination is the one I've referred to.

2 Q. What do you do for a living right now?

3 A. I am associated with St. Francis Central Hospital,
4 where I'm Director of Forensic Pathology. I'm
5 Coroner of Allegheny County. And I'm a medical
6 legal consultant on a private basis for attorneys,
7 agencies, families, and companies. And I also do
8 the forensic pathology work, that is the medical
9 legal autopsies, for coroners in five southwestern
10 Pennsylvania counties outside of my own, Allegheny
11 County.

12 Q. Are you elected as the -- is the coroner elected in
13 Pennsylvania?

14 A. Yes, the answer to the coroner, yes. We have a few
15 counties with a medical examiner system. But 63 or
16 so of the 67 counties, including ours, have the
17 elected coroner system.

18 Q. So you're an elected public official; is that
19 correct?

20 A. Yes.

21 Q. And how long have you been an elected public
22 official?

23 A. This is my second time around in the coroner's
24 office. I was elected in '95, so I've been serving

1 now since January 1, '96. Previously I had been the
2 elected coroner and served for 10 years from 1970 to
3 1980. And I was the chief forensic pathologist in
4 the Allegheny County Coroner's Office for four years
5 before that from '66 to '70.

6 Q. The Allegheny County Coroner's Office, where is that
7 located?

8 A. 542 Fourth Avenue, downtown Pittsburgh.

9 Q. And you direct a staff of Deputy Coroners; is that
10 correct?

11 A. Yes. And the professional and paraprofessional
12 people, and the entire laboratory division.

13 Q. When was the last time that you performed an
14 autopsy?

15 A. Day before yesterday.

16 Q. And so you do those --

17 A. No, wait a minute, it was yesterday. It was
18 yesterday morning. Yesterday morning, exactly to
19 the minute 24 hours ago.

20 Q. So how often do you conduct autopsies, you,
21 yourself?

22 A. I, myself, do approximately 250 autopsies a year. I
23 then participate as a secondary pathologist or
24 observer on about 100 or so autopsies done at the

1 Allegheny County Coroner's Office. These are for
2 the most part homicides, and other complex cases
3 where we feel it is wise to have a second forensic
4 pathologist involved in the case. However, in those
5 cases I do not actually perform the autopsy, I'm
6 there, as I say, as a secondary person. Actual
7 performance would be limited to about 250 autopsies
8 a year, in the various private cases, and the cases
9 that I do for other coroners.

10 Q. As the elected Coroner for Allegheny County,
11 Pennsylvania, you issue a report detailing your
12 findings as to cause and manner of death; is that
13 correct?

14 A. Yes, the report is issued by our office. You asked
15 my if I issue it.

16 Q. As the elected public official?

17 A. It comes from the office, but it doesn't go out over
18 my name, except on the cases which I have
19 participated in. The majority of the autopsy
20 protocols are signed off on by the pathologist who
21 did the autopsy. Thus it is clear who did the
22 autopsy. In an official sense it's from the office,
23 I'm responsible, it's on our stationery, the death
24 certificates I guess all have the stamped signature

1 and so on. But I just wanted to make it clear when
2 you asked me if I issue the findings, what exactly
3 is done in our office.

4 Q. So the primary report, then, is the autopsy
5 protocol, as far as detailing the results of the
6 internal and external examination of the body?

7 A. Yes.

8 Q. And does that also include any toxilological reports
9 that would be part of that examination of the body?

10 A. Yes. They will be attached, either by staple or
11 paper clip or maybe just by rubber band. The answer
12 to the question is they are part of the autopsy
13 report of an official nature, when requested by any
14 governmental agency, law enforcement or so on.

15 Q. The Coroner's verdict, is that also part of the
16 record detailing cause and manner of death?

17 A. When you ask -- what did you say, the Coroner's
18 record?

19 Q. The Coroner's verdict. First of all, do you use
20 verdict?

21 A. Yes, when we do inquest. When we do not do inquest,
22 then there is no verdict. There are just the
23 diagnoses as to the cause of death, and the
24 statement on the autopsy report, and also checked

1 off on the death certificate regarding the manner of
2 death. In inquest, those are separate matters which
3 will have, then, their own transcripts and findings
4 and so on, but they will not be a part of the
5 autopsy protocol.

6 Q. Okay. So just to be clear, then, on every autopsy
7 that's performed at the Allegheny County Coroner's
8 Office, there is a protocol that is issued, but
9 there in some instances may not be a Coroner's
10 verdict issued; is that correct? I'm understanding
11 what you're saying?

12 A. That's correct. We would only refer to the word
13 verdict in the context of a closed or open inquest.
14 And we only do those in homicides where charges have
15 been filed, and they are all arraigned at our
16 office, and inquests are held at our office. And
17 then on open inquest, these are cases where no
18 charges have been filed, where we believe there
19 should be a further inquiry. In those instances
20 there will ultimately, then, be a decision, or a
21 verdict, if you wish to use that term.

22 Q. In your duties as the Allegheny County Coroner, do
23 you have the power to issue subpoena?

24 A. Yes.

1 Q. And to compel witnesses to attend an inquest?

2 A. Yes.

3 Q. Have you conducted a Coroner's inquest in relation
4 to your duties as the Coroner for Allegheny County?

5 A. Not in these last five years. I had conducted a few
6 back in the '70s. I have my own solicitor, and he
7 conducts them. I review things with him. The open
8 inquests are conducted either by our solicitor, or
9 by an outside attorney on a pro bono basis,
10 something which I started to do in these past five
11 years. Looking for experienced prominent attorneys,
12 in matters of a sensitive, controversial nature
13 within the community. And I open up the inquest. I
14 conclude it with the findings, but I do not conduct
15 it.

16 Q. So but it's done under your authority as the Coroner
17 for Allegheny County?

18 A. Yes, and at our office.

19 Q. And what is the purpose or the function of these
20 inquests?

21 A. The inquest is designed, in the cases of closed
22 inquest, to function essentially as if it were a
23 preliminary hearing. The District Attorney's
24 office, in conjunction with city or county homicide

1 detectives, present the essence of their case. We
2 allow, in our office, some cross-examination by
3 defense counsel. And we then make a determination
4 as to whether or not that person should be held over
5 for further action by the District Attorney's
6 office. In the open inquest, the purpose is to
7 learn more about the case, to have facts made
8 public, to conduct further studies, if necessary,
9 and ultimately to conclude whether or not
10 recommendations should be made to the District
11 Attorney's office to pursue any further
12 investigation and the filing of criminal charges.

13 Q. Now the Coroner doesn't have the power to charge an
14 individual for a crime, do they?

15 A. We do not.

16 Q. So is it your understanding, Doctor Wecht, that the
17 authority that the Coroner has in conducting these
18 inquests is used to determine whether or not they
19 can make a ruling as to a homicide?

20 A. Yes. We do go further. We also look for matters
21 pertaining to public safety, health and welfare.
22 Some of the open inquests are conducted for that
23 purpose. But certainly all of the closed inquests
24 are homicide cases. That's why the charges have

1 been filed, and that inquest is being conducted in
2 our office. In the open inquest, most of those
3 would certainly have the possibility of criminality
4 involved, and the question of whether there has been
5 a homicide. But there are few where at least going
6 in, we don't think there's a criminal matter, but
7 there's an issue of public health, safety, or
8 welfare that should be brought to the attention of
9 the public.

10 Q. At the closed inquest, is that a nonpublic hearing,
11 is that what you're telling us by closed?

12 A. No, no, they're open to the public.

13 Q. So these are public hearings, and everything that is
14 said, is it recorded on the record?

15 A. Yes, we have an official court reporter. Everything
16 is on the record.

17 Q. So would it be fair, then, to characterize some of
18 the responsibilities of when these Coroner's
19 inquests are conducted, is for a public accounting
20 of a particular death; is that correct?

21 A. Yes, all part of the public record, accounting, if
22 you will. In our jurisdiction, as I say, our office
23 functions as magistrates, justices of the peace or
24 lower courts would function in other jurisdictions,

1 at what would probably be called preliminary
2 hearings, simply to determine if there is a prima
3 facie case, if there is a probable cause to hold
4 somebody over. In Allegheny County, we handle all
5 of those cases.

6 Q. So then by your testimony, Doctor, you would
7 recognize, then, that there is a legitimate function
8 for a Coroner's inquest, would you not?

9 A. Yes.

10 Q. And other than in the 1970s, and how many times
11 would you say that you personally have presided over
12 an inquest, or even including in the 1970s?

13 A. Not many. I always had a solicitor. I only
14 presided in cases that had a particular issue of
15 medical complexity. I would say in the ten years
16 from '70 to '80, that I sat with the solicitor maybe
17 a dozen times. I did not conduct inquests by
18 myself, because I always had a solicitor. Even
19 though I had a law degree, we have the position of
20 solicitor, and that was his or her assignment.

21 Q. To preside over the inquest itself?

22 A. Yes.

23 Q. Is that correct?

24 A. Yes.

1 Q. That particular power or authority to conduct these
2 inquests, has this been a long standing tradition in
3 Allegheny County, or was this something that you
4 implemented during the time that you have served as
5 the Coroner for Allegheny County?

6 A. No, I think the power has been there since the state
7 constitution was adopted. It's been there forever,
8 as far as I know. We have expanded upon it with the
9 open inquest. I don't know that anybody had ever
10 conducted open inquest before I did. That I may
11 have started. But the closed inquest regarding the
12 homicide cases, in which charges had been brought by
13 law enforcement agencies, that probably goes back, I
14 don't know, maybe a couple hundred years.

15 Q. For a particular homicide case to have charges made
16 here in Allegheny County, for the police to be
17 permitted to seek charges through the prosecuting
18 attorney, it requires a finding by your office as to
19 a homicide; is that correct?

20 A. Yes, that's correct.

21 Q. And if you do not have a finding by the Coroner as
22 to homicide, then you cannot bring charges against
23 an individual for murder; is that correct?

24 A. That's not technically correct.

1 Q. Correct me.

2 A. The detectives or the District Attorney's office can
3 shop around. It happens maybe once a year, or once
4 over two years, they're not happy when we find there
5 is no prima facie case, and so they'll go to some
6 Justice of the Peace. But I don't think there have
7 been six such cases in the last four years. And I
8 don't recall from '70 to '80 that there may have
9 been. I just don't recall any offhand. So I mean
10 in other words it's not the end of the road for
11 them, if they want to press it further.

12 Q. But generally speaking, you would agree, Doctor,
13 that in order to bring a homicide case against an
14 individual, you necessarily need the Coroner to come
15 in and testify as to cause and manner of death; is
16 that correct?

17 A. Well, yes. If I understand your question,
18 ultimately in a trial they're going to need some
19 forensic pathologist, presumably, to testify as to
20 the cause and manner of death. I would assume that
21 they could not go very far without that.

22 Q. Do you see any need to eliminate or ban the use of
23 the Coroner's inquest as a fact finding tool?

24 A. No, I do not.

1 Q. This particular case, Doctor Samuel Gerber, are you
2 familiar with him?

3 A. Yes, I knew him.

4 Q. So you knew him personally?

5 A. Yes.

6 Q. Did you have an opinion of Doctor Gerber as far as
7 his reputation in the medical community as a
8 forensic pathologist?

9 MR. GILBERT: I'm going to object to the
10 question, because I don't think he's a forensic
11 pathologist.

12 A. With all due respect to you --

13 MR. GILBERT: Go ahead.

14 A. I was smiling because we're in the year 2000, and
15 intelligent, knowledgeable, experienced people like
16 you gentlemen still refer to Mr. Gerber as a
17 forensic pathologist. I find that fascinating.
18 Doctor Gerber never had one day of formal training
19 in pathology, let alone forensic pathology. Doctor
20 Gerber was not a forensic pathologist. Doctor
21 Gerber was not a pathologist. If you will read his
22 extracted curriculum vitae set forth I think in the
23 -- what do you call it, the statement, or his
24 affidavit or whatever it is referred to, you will

1 see that I think he did some training after medical
2 school, Ob, or something like that, and came back,
3 worked in some hospital. And I think even
4 maintained some private practice for some years
5 while he was the elected Coroner. Doctor Gerber was
6 not a forensic pathologist.

7 Q. So you've made it a point to know Doctor Gerber's
8 complete background; is that correct?

9 A. Oh, no, no. I haven't -- no, I knew this before. I
10 just am referring you, for your own edification,
11 should you wish, or corroboration of what I am
12 saying, in his own official certified statement. I
13 knew this, I don't know when I first knew it, but I
14 certainly knew it 35 years ago.

15 Q. Then going back to my question concerning his
16 reputation as a Coroner, did you formulate an
17 opinion as to his reputation as a Coroner?

18 MR. GILBERT: Objection.

19 BY MR. DEVER:

20 Q. You can answer.

21 MR. GILBERT: You can answer.

22 A. I really have difficulty in answering it. You know,
23 I don't know what to say, because people have
24 different opinions of individuals that are based on

1 likes and dislikes and so on. He was elected
2 Coroner by the voters in Cuyahoga County. And he
3 was reelected many times. I can't fault, do not
4 fault elections. He developed basically a good
5 office with forensic pathologists and so on. So
6 whether I agree or disagree with certain things he
7 did, or certain ways in which he proceeded, these
8 are matters of individual beliefs and so on. I
9 don't think it would be appropriate for me to, or
10 even maybe possible to respond to the question. I
11 think I made my point that he was not a forensic
12 pathologist. How he functioned in the office, the
13 way in which he controlled things, the way in which
14 reports were issued, et cetera, with his name, and
15 never the name of the person who did the autopsy and
16 so on, there are things that I think were not right.
17 But I'm not suggesting that that means that the
18 office, overall, was not a good medical legal
19 investigative system.

20 Q. Did you ever express any type of personal dislike
21 for Doctor Gerber?

22 A. I don't know about personal dislike. I have
23 expressed criticisms such as I have stated moments
24 ago. I have expressed criticisms, I guess about

1 individual cases over the years. I wouldn't say
2 these were personal. I never had any personal
3 confrontations with Doctor Gerber. We were always
4 cordial in the few meetings where we saw each other.
5 And I think the only times we ever saw each other
6 were once a year at the American Academy of Forensic
7 Sciences during the years that Doctor Gerber was
8 alive. And the couple of times I was at his office,
9 once in my fellowship, and as I recall once to
10 review materials in some homicides cases, I probably
11 saw him, and he was cordial. So there were no
12 personal relationships for me to have feelings
13 about. Did I have thoughts about him as a
14 professional, yes. On a personal basis, I really
15 knew nothing about Doctor Gerber, married, children,
16 I really knew nothing about him.

17 Q. Did you ever express any type of personal or
18 professional concerns about Doctor Gerber's ethical
19 standards or conduct?

20 A. I have expressed criticisms, and I have had
21 discussions over the years about some things which
22 possibly could be characterized as comments of a
23 professional, ethical nature.

24 Q. Can you share those with us?

1 A. Well, yes. Well, one thing, I don't think it is
2 ethical to issue reports with your name and no name
3 of the pathologist, and have people believe, as they
4 did, from the most eminent experienced judges, to
5 prosecutors and who knows how many other people in
6 Cuyahoga County, believing for 30, 40 years, that
7 you were the forensic pathologist, that you did the
8 autopsy and so on. I don't think that's ethical.

9 Q. So you believe --

10 A. I know personally, because I was an active member of
11 the Academy, I don't think it was ethical what he
12 did in keeping Paul Kirk out of the American Academy
13 of Forensic Sciences. And I have expressed opinions
14 back then and so on. Yes, I guess those are matters
15 of professional ethics, if you will.

16 Q. First dealing with the reports that are issued by
17 the Cuyahoga County Coroner that bear the signature
18 of Doctor Samuel Gerber, most specifically the
19 autopsy protocol, do you find that to be misleading,
20 that the Coroner for the county signs the protocol,
21 as opposed to the pathologist who actually performed
22 the autopsy?

23 A. No.

24 Q. Correct?

1 A. I have no problem with his signing. I have a
2 problem with the absence of the designation of the
3 person who performed the autopsy, so listed. If he
4 wishes to sign it, that's his business. As I've
5 said, I sign all homicides, and I'm last. There are
6 one, and often two, of the pathologists above who
7 did the autopsy. I just want to be on board because
8 I make it a point to see these cases, and to look at
9 them, so that should there be problems later on,
10 procedurally or substantively, should it happen, and
11 it does rarely, that the District Attorney wants me
12 to come in, in rebuttal, I am on board officially.
13 But I have no problem, some public officials sign
14 their names to all documents, that's fine. I don't
15 have any problem, that's the elective system in
16 America. But I strongly disagree, and have always,
17 this has nothing to do with the Sheppard case, that
18 you issue reports from your office, and somebody
19 getting the report doesn't know that a forensic
20 pathologist did the autopsy, and who that person is,
21 and is certainly led to believe, as intelligent
22 people through the decades were, indeed, led to
23 believe, that he, Doctor Gerber, had performed the
24 autopsies.

1 Q. So that's what it's misleading by failing to
2 disclose who the pathologist is; is that correct?

3 A. That's correct.

4 Q. Are you aware that the current Cuyahoga County
5 Coroner, Elizabeth Balraj, continues to apply that
6 same pattern as far as not detailing the name of the
7 pathologist who actually performed the autopsy, and
8 just the records of the Coroner's office, bearing
9 her name and her signature?

10 A. No, I'm not aware of that.

11 Q. So would you find that to be unethical on the part
12 of Doctor Balraj as well?

13 MR. GILBERT: Objection, unless he's had
14 an opportunity to review specific reports that come
15 out of her office, I don't think it's fair to ask
16 him that question, because I think -- I know
17 personally that things have changed a little bit.

18 BY MR. DEVER:

19 Q. If my question is correct, accepting the scenario
20 that the Coroner's verdict and autopsy protocol, as
21 a matter of practice by the Cuyahoga County Coroner,
22 bears only the signature and name of Doctor
23 Elizabeth Balraj, and not the Deputy Coroner who
24 actually performed the autopsy, would you find that

1 to be unethical practices?

2 A. I would want to see the reports. I do not find it
3 unethical to sign the Coroner's verdict. You hadn't
4 asked me that before. And that's applicable to
5 Doctor Gerber posthumously, as it would be to any
6 Coroner today. The Coroner's verdict, if you have
7 that as part of each case, and evidently they do in
8 Cuyahoga County, that's fine, that's officially from
9 the Coroner. The autopsy report, I will repeat, I
10 believe should include the name of the person who
11 did the autopsy. I do have much hesitation, and do
12 not, therefore, wish to say that I believe that
13 Doctor Balraj is acting unethically, because I have
14 positive feelings about her professional expertise,
15 and I've had good relationships with her. I would
16 want to know more about how her reports are
17 presented and so on. I don't know, and can't think
18 offhand if I have seen any such reports from her.

19 Q. The other issue that you raised in regard to Doctor
20 Samuel Gerber, was his conduct in prohibiting or
21 blocking Doctor Paul Leland Kirk's admission into
22 the professional organization, which is known as
23 what, Doctor?

24 A. American Academy of Forensic Sciences.

1 Q. And were you present during those particular
2 meetings where Doctor Gerber personally stood before
3 the group and voiced objection to allowing Doctor
4 Paul Kirk to be admitted into that organization?

5 A. Yes, I was present at some of them, by no means all
6 of them. I don't recall exactly when I became a
7 member of the executive committee. But I was
8 present at some meetings, at some Academy
9 discussions, when Doctor Gerber voiced his opinions
10 and objections about Doctor Kirk.

11 Q. What did you understand those opinions or objections
12 to be about the work of Doctor Kirk?

13 A. I don't recall the specifics. I really cannot tell
14 you what basis Doctor Gerber predicated his
15 objections, perhaps because I did not accept them at
16 that time, I don't know. And I don't have the
17 transcripts of any such meetings. I don't know what
18 reasons he verbalized.

19 Q. Well, were you present when there were discussions
20 concerning, at these meetings by Doctor Sam Gerber,
21 concerning Doctor Kirk's presentation and testimony
22 of evidence in the Marilyn Sheppard murder trial?

23 A. I don't recall that specifically.

24 Q. Were you aware of objections that Doctor Gerber had

1 to the testimony that was provided by Doctor Kirk
2 concerning the identification of blood typing on the
3 wardrobe door of the murder room in Marilyn
4 Sheppard's home?

5 A. No, I have no knowledge or recollection of that.

6 Q. Did you believe that there was a personal
7 disagreement that existed between Doctor Paul Kirk
8 and Sam Gerber?

9 A. Yes.

10 Q. And was it your belief, then, that Doctor Sam Gerber
11 was in the wrong for blocking Doctor Kirk from
12 admission into the Academy?

13 A. Yes.

14 Q. And you felt that to be unethical conduct on the
15 part of Doctor Gerber; is that correct?

16 A. Yes. And by the way, although I should know better
17 after almost 40 years, but maybe as you get older
18 you are list interested in playing games or
19 withholding information, I think you might find this
20 of some interest. The annual award in the --

21 Q. Is the Kirk Award now?

22 A. It's named after Kirk, and the recipient of the
23 award this year is Mary Cowan, now deceased. I
24 think that is absolutely delightful. I just had to

1 share it.

2 Q. As far as your opinion about Doctor Gerber's
3 reputation for ethical conduct, those two particular
4 instances you've described, those are the basis for
5 your opinion; is that correct?

6 A. Well, there was a third instance that troubled me,
7 ethically. I have already referred to my going to
8 that office to review records in homicides. These
9 were I believe ten deaths of civilians and police
10 officers many years ago. I went there, reviewed the
11 records that were given to me. I was told that they
12 were complete. And it was obvious, it would have
13 been to any forensic pathologist, they were not
14 complete, because not one of them had the toxicology
15 reports present. I did get them through the
16 attorneys that had consulted me. I don't recall if
17 I called them then, and they got them that day or
18 later. I did not feel that that was ethical, to
19 withhold toxicology findings. Especially since the
20 three police officers who had died and who had been
21 on duty some hours at the time of this shootout, had
22 significant levels of alcohol, two well above the
23 designated limit for driving, although driving
24 wasn't the issue, and the other one just a little

1 below that level. I did not think that was ethical.

2 Q. And that was directly the conduct of Doctor Gerber
3 as far as withholding that information from you?

4 A. I went there and everything was approved by him. My
5 recollection is that everything was given to me
6 based upon his approval, and was represented to me
7 as being complete, and had been represented to the
8 attorneys who had consulted me as being complete.

9 Q. What case was that, do you recall?

10 A. Referred to as the Glenville shootout, I think there
11 were seven African American civilians and three
12 white police officers who were killed in this
13 shootout in a suburb of Cuyahoga County.

14 Q. So this is 1968; is that correct?

15 A. Was that the year? I don't remember.

16 Q. And you had been retained as an expert on behalf of
17 the defense; is that correct?

18 A. Yes.

19 Q. Once you learned that the toxilological reports had
20 been withheld, did you contact Doctor Gerber and
21 confront him about the fact that he had held things
22 back on you?

23 A. No.

24 Q. Did you protest to him in any way?

1 A. No.

2 Q. But it was clear in your mind at the time that this
3 was a deliberate act perpetrated by Doctor Sam
4 Gerber; is that correct?

5 A. Well, in as much as Doctor Gerber is in charge, and
6 as I believe is implicit in the reports that
7 emanated from his office during his long tenure in
8 that position, I certainly felt that decisions
9 regarding the transmission of records from his
10 office to attorneys of record in homicide cases, and
11 thence to their experts, and especially when such an
12 outside expert had traveled to his office, that the
13 ultimate responsibility lay with him. It was also
14 my belief and my recollection in the office that
15 everything had to be approved by Doctor Gerber. I
16 want to make it clear, I don't want to be the least
17 bit evasive or equivocal on that, I frankly believe
18 that nothing happened in that office of any
19 consequence or significance that was not approved or
20 disapproved by Doctor Gerber.

21 Q. So he ran a tight ship; is that fair to say?

22 A. Yes, he did.

23 Q. Any other instances or events that occurred that
24 affect your opinion as to the ethical conduct or

1 standards of Doctor Samuel Gerber, other than what
2 these three particular areas you've laid out to us?

3 A. I believe that those are the -- well, the four
4 things, the Paul Kirk business, the Academy, this
5 Glenville shootout and reports. When you said
6 three --

7 Q. Well, the first one I think you indicated was it was
8 misleading for Doctor Gerber to sign the autopsy --

9 A. Those three, yes, that's correct. Yes, those are
10 the three specifics that I have referred to, wanting
11 to be specific and not just making statements about
12 whether I like or dislike somebody personally.

13 Q. Now the other folks over at the Cuyahoga County
14 Coroner's Office, Doctor Lester Adelson, now he's a
15 forensic pathologist, right?

16 A. Yes.

17 Q. What was your opinion of his reputation for
18 competence in the work of serving as a forensic
19 pathologist?

20 A. Doctor Adelson enjoyed a very good reputation as a
21 forensic pathologist, as an experienced and
22 competent and knowledgeable forensic pathologist.

23 Q. Did you know him personally?

24 A. Yes.

1 Q. Did you have any type of relationship with him,
2 friendship, or an adverse relationship?

3 A. Never adverse. We were friendly. But there again,
4 I only saw him at the American Academy of Forensic
5 Sciences, and the couple of times perhaps at the
6 Cuyahoga County Coroner's Office. I don't think I
7 ever saw him otherwise, unless we were on some other
8 program, but I don't recall. So they were limited.
9 There was never anything of a hostile or adverse
10 nature, other than adverse in the sense of my
11 testifying for the defense in a murder case on the
12 opposite side from the Coroner's Office.

13 Q. He was a worthy advocate as a forensic pathologist
14 in testifying in homicide cases?

15 MR. GILBERT: Objection to the word
16 advocate.

17 BY MR. DEVER:

18 Q. Or a good witness as far as testifying?

19 MR. GILBERT: Objection, unless he's
20 actually seen him testify.

21 Q. I thought you testified or gave testimony --

22 MR. GILBERT: That doesn't mean he saw
23 him.

24 MR. DEVER: Can I finish the question?