

1 Q. And was all this stuff turned over to the
2 prosecutor's office?

3 A. Yes.

4 Q. Is there anything left here in the
5 Coroner's Office?

6 A. No. I think some of them they took and
7 then brought some back and asked us to keep, so we may
8 have something like that, but all this was first shown
9 to both, to you, Mr. Gilbert, and to the prosecutor's
10 office. So nothing that has not been seen is here.

11 (Thereupon, Plaintiffs' Exhibit 4 to the
12 deposition of Elizabeth K. Balraj, M.D.,
13 was marked for purposes of
14 identification.)

15 BY MR. GILBERT:

16 Q. Showing you what's been marked as Exhibit
17 4. Can you tell me what that is?

18 A. Plaintiffs' Exhibit 4 says, Property
19 Inventory regarding Marilyn Sheppard, Case 76629.

20 Q. Is this an official record of the Cuyahoga
21 County Coroner's Office?

22 A. It appears to be that, yes.

23 (Thereupon, Plaintiffs' Exhibit 5 to the
24 deposition of Elizabeth K. Balraj, M.D.,
25 was marked for purposes of

1 identification.)

2 BY MR. GILBERT:

3 Q. Exhibit 5, can you tell me what that is?

4 A. Plaintiffs' Exhibit 5 says, Received at
5 Cuyahoga County Coroner's Office in regards to Marilyn
6 Sheppard, Case 76629.

7 Q. There's another exhibit number for that,
8 A31?

9 A. Yes. It says A31 copy.

10 Q. Yes.

11 A. Yes.

12 Q. It looks like a stamp of some kind on the
13 left-hand corner?

14 A. Yes. It says Cuyahoga County Coroner's
15 Office March 1996.

16 Q. Is this an official document of the
17 business record of the Cuyahoga County Coroner's
18 Office?

19 A. It appears to be, yes.

20 Q. Just for the record so we know, the one
21 that you looked at before, Exhibit 4, was also known as
22 A10; is that right?

23 A. That's correct.

24 Q. By the way, you brought a file with you
25 today, Dr. Balraj?

1 A. Yes.

2 Q. Would you have any problem if I just
3 looked through it with you just to see what you got?

4 A. Okay. I brought these photographs, the
5 autopsy photographs.

6 MR. DEVER: Those are the
7 colored ones.

8 (Thereupon, there was a discussion off the
9 record.)

10 BY MR. GILBERT:

11 Q. Just so I'm clear, with respect to the
12 recent DNA testing, am I to understand that the DNA
13 profile of Marilyn Sheppard mirrored the same results
14 as Dr. Tahir's testing of hair samples that were found
15 on the bed at the crime scene of Marilyn Sheppard's
16 homicide?

17 A. Yes, it did. Whatever Dr. Tahir confirmed
18 tests as Marilyn Sheppard's we confirmed as the same
19 DNA.

20 Q. On the fetus -- I'll ask Linda Luke about
21 this, but just from your understanding, did you
22 actually get a DNA profile of the fetus at least on one
23 test?

24 A. Yes, I think one test came as the DNA
25 profile of the fetus.

1 Q. Do you remember what -- I couldn't find
2 that in any reports.

3 MR. BOLAND: I'm going to
4 object.

5 You may answer, Dr. Balraj.

6 A. You'll have to ask --

7 Q. You don't know what it was?

8 A. I don't know what it was. This is what
9 was told to me.

10 Q. As a pathologist what opinions are you
11 intending to express in this case?

12 A. I'm intending to express opinion as to the
13 autopsy findings, the cause of death, the manner of
14 death, the time of death, the impact, blunt impact and
15 weapon that is consistent, all the weapons that could
16 have produced this kind of injury.

17 It all depends on what kind of
18 questions I'm being asked. But if I'm asked I'd
19 comment on the sperms in the vagina or absence of
20 sperms, the vaginal smear. Then I would also render
21 opinions on all these additional tests that we have
22 done; namely, the DNA testing as far as the results
23 were concerned, then the testing on the pillows, the
24 results, then the wound reconstruction and injuries
25 that were inflicted by using different weapons, then

1 about blood trail.

2 Whatever I have given on that list, on
3 all of those, the blood trail, the watch, the work done
4 on the watch. So I'll render opinions on those
5 conclusions.

6 Q. Let's look at the second, No. 2, the
7 addendum. You indicate here -- I don't want to have to
8 read the whole thing, I just want to see if I'm
9 summarizing it correctly.

10 You are saying that you agree with the
11 results and conclusions detailed in the tests numbered
12 4, 5, 6, 7, 8, 9, 10?

13 MR. BOLAND: I'm going to
14 object. The report speaks for itself.

15 BY MR. GILBERT:

16 Q. Is that correct?

17 A. That's correct.

18 Q. Does this document say that you're going
19 to render an opinion regarding anything else in this
20 case?

21 A. Anything else means I have to know what
22 else. The document says what it says, but if it is
23 anything else I have to know what else I'll be talking
24 about. I'm not saying I'm limiting my opinion only to
25 this.

1 Q. I'm not sure of all the numbers and what
2 they mean here. I know that No. 4 in Exhibit 2 refers
3 to the head injury reconstruction; is that correct?

4 A. That's correct.

5 Q. That was conducted by Dr. Lovejoy,
6 correct?

7 A. He inflicted the injuries and he prepared
8 the model, but I was present watching it and I was the
9 one who requested that to be done, and everything put
10 together I was responsible for it and I was observing
11 what was happening. I didn't inflict the injuries, he
12 did.

13 Q. Did you instruct him the methodology of
14 conducting that test?

15 A. Yes. I told him this is what I would like
16 done, prepare a model and then we want to inflict
17 injuries on the model using different blunt weapons,
18 and especially we wanted to see using a 1954
19 flashlight, because if those tests came up as they
20 caused it we would have said that too.

21 Q. Did you tell him how to prepare the model?

22 A. The model, I said I'd like it as close to
23 a human head as possible.

24 Q. And is that all you told him?

25 A. Yes. Preparing of the model he did. We

1 discussed a lot as to what all to use until we finally
2 settled on this, what can we use for a model, and we
3 settled on this.

4 Q. What did you settle on?

5 A. This one, the one we used.

6 Q. Who was it that got the flashlight?

7 A. The flashlight, I think it was obtained by
8 Jim Wentzel. He told me that he knew of someone who
9 owned a 1954 vintage flashlight, and I asked him to see
10 if he'd let us borrow it and use it and if he'd mind if
11 it gets damaged.

12 Q. Do you know what brand the flashlight was?

13 A. I do not know. We have the flashlight.

14 Q. Did you look at the police report of the
15 actual flashlight that was found in August of 1955 in
16 this case?

17 A. I read the police report. I don't exactly
18 remember now which portion of it.

19 Q. Do you know what the flashlight was made
20 out of, what kind of metal?

21 A. This flashlight or the other one?

22 Q. This one.

23 A. I think it's aluminum.

24 Q. Test No. 5, what was that test?

25 A. Test No. 5 is weapon imprint analysis on

1 the pillowcase.

2 Q. Whose idea was that to do that?

3 A. It was my idea. What I did was I had Jim
4 Wentzel and Linda Luke, we had a meeting and I told
5 them now that we are looking into this case what I'd
6 like done is anything that we can do using the advances
7 of forensic medicine I'd like done to see what
8 additional information we'll come up with. This idea
9 of the pillow with the stain and that imprint which was
10 talked a lot about in the previous trials, I wanted
11 that checked into.

12 Q. Did you specifically have any input as to
13 the process that was to be employed to do these tests?

14 A. Yes.

15 Q. What was your specific input?

16 A. Input was getting pillows and getting the
17 bloodstaining and putting different weapons and folding
18 it in different ways and checking that and also doing
19 it without weapon, folding and seeing what bloodstain
20 would that cause. All of that was my input along with
21 Jim Wentzel's and Linda Luke's.

22 Q. Did you consult with an expert in
23 bloodstain pattern analysis?

24 A. Linda Luke is an expert. She was there.
25 I had -- I consulted here. It was combined, all three

1 of us were discussing it.

2 Q. What about No. 6, what was that?

3 A. No. 6 was source of blood trail in the
4 Sheppard home, compare the number and size of
5 bloodstains.

6 Q. Did you have any input into that? Whose
7 idea was that?

8 A. Again, as I said, the three of us sat and
9 talked about it. Some of the ideas came from the NOVA
10 program that we looked at where I think it was
11 mentioned in that or Kirk's previous opinion that a
12 weapon, blood cannot drip from a weapon and cause that
13 type of a shape, so we wanted to see if that's true.
14 If it was true we would have reported that or finding
15 it different. So that is how, it was an idea of mine,
16 Jim Wentzel and Linda Luke, it was a combined effort.

17 Q. You didn't actually conduct the test; is
18 that correct?

19 A. No, I did not conduct, not actually
20 conduct the test.

21 Q. And you didn't actually conduct the test
22 with Owen Lovejoy, did you, other than being present
23 and watching it, right?

24 A. Only one person could inflict the
25 injuries.

1 A. Right.

2 Q. That's all he said?


3 A. Yes.

4 Q. And you're saying something different,
5 right?

6 A. That's all I'm saying, that it's not
7 comparable. I did not come to that conclusion.

8 Q. All you're saying is that the
9 photographs -- you're just adopting Wentzel's opinion,
10 right?

11 A. I'm agreeing. Like I say, I concur with
12 the opinion.

13 Q. Nothing more? 

14 A. That's right.

15 Q. Whatever he says, that's what you're
16 saying, right?

17 A. Right, I concur with that.

18 Q. One of the findings he says was because
19 the autopsy photographs of Marilyn Sheppard's hand are
20 lacking a ruler or a scale that prevents a good
21 comparison, correct?

22 A. Yes.

23 Q. No. 8, what's that?

24 A. No. 8 is digitize the film negatives
25 relevant to this case.

1 Q. No. 7 was the photographic analysis of the
2 scar?

3 A. Yes.

4 Q. Was that your suggestion?

5 A. Again, like I said, Linda Luke, Jim
6 Wentzel and I sat down and talked about all of these,
7 what tests to do and how to set all this up. It came
8 up that scar was compared to the fingernail scratch, so
9 we decided that should be done also.

10 Q. Are you ruling out that an avulsed nail
11 could have been in contact with the killer that night?

12 A. No. What that test is saying is that --
13 first of all, there was no scar that could be picked up
14 from that photograph and it's not consistent with that.
15 That fingernail could have come in contact with the
16 assailant, I'm not saying it did not, but what we are
17 saying is that photograph, what was in the photograph
18 is not comparing.

19 Q. You're not an expert in bite mark or that
20 kind of analysis, are you?

21 A. I'm an expert in bite mark. I can look at
22 a bite mark and recognize it as a forensic pathologist.

23 Q. So the report of James Wentzel's just said
24 the photographs were not suitable for comparison
25 purposes, right?

1 Q. We don't need to go through that.

2 The wristwatch, what is your opinion
3 about the wristwatch?

4 A. My opinion is that the blood spots that I
5 seen in the wristwatch is something that would come
6 from a distance; it's not something that will come from
7 close contact, but from a distance of several inches I
8 think as the report says.

9 Q. You're not a bloodstain pattern expert,
10 are you?

11 A. No, I'm not.

12 Q. And you looked at a picture of the watch
13 that was done digitally?

14 A. Yes.

15 Q. Do you know when that picture was taken?

16 A. The picture, I think it was taken later.
17 I don't have the exact date.

18 Q. I think it's here. I think this is it.

19 A. Yes. Jim Wentzel is going to be
20 testifying on that. This is what was made by digital.

21 Q. Is this what you looked at?

22 A. I looked at that and I also looked at the
23 pictures of the wristwatch.

24 Q. When were those pictures taken, do you
25 know?

1 A. The pictures on the wristwatch, I don't
2 have that information, but I think they were taken
3 later, not in 1954. I don't have the date exactly.

4 Q. Later than 1954?

5 A. I think so. Jim Wentzel might have the
6 exact date.

7 Q. Other than the report of Jim Wentzel and
8 you saying that you concur, there is no other report
9 that you've made; is that correct?

10 A. No.

11 Q. No. 10 is what?

12 A. Is digital image analysis of Marilyn
13 Sheppard's crime scene photographs. 10 and 9, this is
14 what we did, again, like I said, we were trying to use
15 the modern advances in forensic work to look at the
16 same evidence, so now using computer technology and
17 imaging this can be looked at.

18 In the past it used to be done by
19 measuring, measuring by hand, now the computer will do
20 the measurements for you and will calculate how far the
21 blood splatter would travel. So that was what was done
22 in 10 and 9. This is using the modern techniques. It
23 takes the human error from measuring those by hand.

24 Q. Wentzel states in his report that when Sam
25 Sheppard regained consciousness he noticed his wallet

1 on the floor and that at this time his watch was still
2 apparently on his wrist. Dr. Sheppard's wristwatch was
3 apparently removed after the struggle on the beach.

4 Do you know that statement in his
5 report?

6 A. I'd like to look at it. Which report are
7 you reading from?

8 Q. Wentzel's.

9 MR. BOLAND: I'm going to
10 just note an objection for the record.
11 This is not her report she's referring to
12 and you're inquiring about things that she
13 did not write or author or study.

14 MR. GILBERT: She wrote a
15 report January 27th saying she agrees with
16 it. Is she now not adopting it, or what?
17 I don't understand.

18 MR. BOLAND: I'm just noting
19 my objection that it's not her report.
20 You're asking her to comment on someone
21 else's report.

22 MR. GILBERT: Well, she did
23 in her January 27, 2000 document adopt the
24 report, she's saying that.

25 ///

1 BY MR. GILBERT:

2 Q. Am I wrong?

3 A. No. Yes, I did say that. Are you reading
4 from this report, is this the one you're reading from
5 (indicating)?

6 Q. Yes. Page 6, second paragraph.

7 A. What's your question?

8 Q. My question is, is that something that you
9 are adopting in this case as your opinion?

10 A. The opinion of the conclusion on the
11 wristwatch, yes.

12 Q. Now, this statement here, "When he
13 regained consciousness, he noticed his wallet on the
14 floor and at this time his watch was still apparently
15 on his wrist. Dr. Sheppard's wristwatch was apparently
16 removed after the struggle on the beach." Is that
17 something that you adopt, that statement, as being a
18 fact in this case?

19 A. It says apparently. This is a theory.

20 Q. Do you know whether the photograph that
21 you looked at, the 1966 photograph of the watch, that
22 the watch was in the same condition as it was when it
23 was taken in for testing in July of 1954?

24 A. I cannot be certain of that other than I
25 read Mary Cowan's report about the watch and she does

SAM

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1 talk about blood in those links and she did do tests to
2 confirm that they were blood.

3 Q. You don't know whether the watch that you
4 looked at in order to formulate the opinions that you
5 just expressed was in the same condition as the watch
6 that was found at the crime scene and examined by Mary
7 Cowan in 1954?

8 A. I don't know that.

9 Q. Do you know whose blood was on the watch?

10 A. In 1966?

11 Q. Yes.

12 A. No, other than based on what was --

13 Q. Do you know --

14 A. -- done in 1954.

15 Q. Do you know from reading anything about
16 this case whose blood it was?

17 A. No.

18 Q. Do you know how many stains that you or
19 Mr. Wentzel detected on that watch that was digitized?

20 A. I think Mr. Wentzel has a detailed report.
21 I don't have that information.

22 Q. Let me ask you this, this pillow test that
23 was done, what's your understanding of that? What's
24 the conclusion that you reach from that?

25 A. We came to several conclusions. We were

1 trying to reproduce a similar pattern to what we saw in
2 the photograph, that imprint, and we concluded in order
3 to produce that type of imprint it does not happen when
4 the bloodstain is wet and the blood on the weapon is
5 wet. We were only able to produce that type of imprint
6 if the bloodstain on the pillow dries and the blood on
7 the weapon is wet. So that was one conclusion we drew.

8 The second conclusion we drew was that
9 it took anywhere over more than 80 minutes to about
10 close to two hours for the bloodstain on the pillow to
11 dry to the touch. So that was another conclusion we
12 drew.

13 Another test we did was to see if the
14 pillow bunched up in the scene photographs and what --
15 this bloodstain was sort of turned downwards in the
16 photograph, so we were trying to see if a wet
17 bloodstain is transferred to the mattress, then the
18 stain should be on the sheet on the mattress. So we
19 were trying to see how long it takes before that stain
20 gets transferred from the pillow to the mattress.

21 We timed that and we found, I think
22 that also we found took about 80 minutes, upwards of 80
23 minutes. Beyond that it doesn't get -- until about 80
24 minutes or so it was transferring to the mattress and
25 after around that time it was not transferring. Once

1 the blood dries it was not transferring.

2 Then the fourth thing we did was we
3 were folding the bloodstained pillow when it was wet to
4 see if it was making any kind of imprint. So we folded
5 it in different directions and left it for different
6 lengths of time and we found when -- this was without
7 the weapon. We found if it was just folded it did give
8 some pattern, but the pattern was very different than
9 what we were seeing in those photographs.

10 Q. Do you know when those photographs were
11 taken of the pillow?

12 A. You mean the scene photographs of the
13 pillow, or the photographs that we did?

14 Q. There were obviously photographs of the
15 pillow on the bed, right?

16 A. That's correct.

17 Q. There were also other photographs that
18 were done in the lab, right?

19 A. In the 1950s?

20 Q. Yes.

21 A. Yes, I assume so yes.

22 Q. And the so-called pattern that you're
23 referring to was not visible from the crime scene
24 photographs, correct?

25 A. That's correct.

1 Q. Do you remember the date that the pillow
2 photographs were taken?

3 A. I don't remember. I can look that up.

4 Q. Do you know what the pillow was made of?

5 A. That pillow?

6 Q. The pillow in 1954.

7 A. No, I don't, unless it's described. I
8 have to look at it again, but right now I don't know.

9 Q. Do you know what pillows were used in your
10 experiments?

11 A. Yes. We have details of that. I don't
12 have that information here, but we do have it because
13 we were looking for a certain type of pillow. We were
14 trying to match as closely as possible what may have
15 been used then. I can get that information for you.

16 Q. Okay. So you don't know what the
17 pillowcase was or the pillow, what kind of material; is
18 that correct?

19 A. Right now I don't, but I have that
20 information.

21 Q. Did you try any tests when the pillowcase
22 had folds already in it and then blood was poured on
23 it?

24 A. A folded pillowcase?

25 Q. Already folded.

1 A. No, we did not.

2 Q. I'd like you to tell me, based on what you
3 know about the crime scene in the Marilyn Sheppard
4 homicide, a theory consistent with the findings that
5 you have determined from the tests that were done in
6 your office?

7 MR. BOLAND: Objection.

8 A. I haven't put any theory together, I'm
9 just getting the tests done and presenting --

10 Q. That's all you're going to do?

11 A. Yes.

12 Q. So you're not going to present a scenario;
13 is that correct?

14 A. No, not from me, I would not be
15 presenting.

16 Q. If I asked you right now your answer would
17 be I don't have one at this point?

18 A. That's correct.

19 Q. Now, we have now, I believe, gone over
20 your January 27th report. You told me earlier on in
21 this deposition that the January 27th, 2000 report is
22 the only report that embodies in written form the
23 opinions that you're going to express in this case.

24 A. I will be expressing opinions on all of
25 these tests like I told you now, those opinions.

1 MR. GILBERT: Can you read
2 the question back because it's an
3 important question. Listen very
4 carefully.

5 THE NOTARY: Question:
6 "Now, we have now, I believe, gone over
7 your January 27th report. You told me
8 earlier on in this deposition that the
9 January 27th, 2000 report is the only
10 report that embodies in written form the
11 opinions that you're going to express in
12 this case."

13 BY MR. GILBERT:

14 Q. Is that correct?

15 A. That's not, because I haven't written in
16 this about the opinions I will be expressing about the
17 autopsy findings. Like the time of death and all of
18 those are not there. I will be expressing those
19 opinions. What I have told you already, I will be
20 expressing those opinions.

21 Q. Dr. Balraj, maybe the prosecutors did not
22 tell you this, but under the rules of this trial any
23 expert who intends to offer an expert opinion in this
24 case must prepare a report expressing the essential
25 opinions that they're going to be making in this case.

1 Do you understand that?

2 MR. BOLAND: Objection.

3 That's a point of law, that's not a
4 question for a deposition, it's
5 inappropriate.

6 BY MR. GILBERT:

7 Q. You were never asked to write an opinion
8 regarding other matters not written in your report?

9 A. I told the prosecutor I will be testifying
10 on the autopsy protocol, and at least the prosecutor
11 requested me to do that and I will be testifying, and
12 that's something I don't give a written report on
13 cases. The autopsy, I will be interpreting the
14 results.

15 Q. Usually you have an autopsy report, right?

16 A. Yes.

17 Q. And that is your expert report in your
18 typical criminal cases?

19 A. That's correct.

20 Q. You and I have been together in trials
21 before?

22 A. Yes.

23 Q. And usually we have the autopsy report and
24 then you come and testify and elaborate upon the
25 findings of the autopsy report, correct?

1 A. That's correct.

2 Q. And those are usually in cases that you
3 have worked on, correct?

4 A. On those and on cases I have not worked
5 on.

6 Q. You did not work on obviously the Marilyn
7 Sheppard autopsy?

8 A. I did not, but I'm testifying from the
9 records, which I've done in other cases also.

10 Q. And you're going to offer an opinion based
11 on reviewing an historical case; is that correct?

12 A. That's correct.

13 Q. And you have not written your own
14 independent report on this, have you?

15 A. No, I have not.

16 Q. Are you going to be expressing opinions
17 separate and different from what was contained in the
18 autopsy report of Dr. Lester Adelson?

19 A. I would be expressing opinion as to the
20 time of death if I'm asked; I would be expressing
21 opinion as to the type of weapon that caused injury; I
22 would be expressing opinion about the vaginal swabs and
23 the smears and the sperms. So anything related to the
24 autopsy if I'm asked I will be expressing opinion taken
25 from information that's in the autopsy.

1 Q. I don't have a written report where I have
2 an advanced knowledge of any of these areas from you.
3 Do you agree with me?

4 A. Yes, you don't have it.

5 Q. So I want you to tell me as we sit here
6 everything that you intend at this point that you know
7 of that you're going to talk about in this trial.

8 MR. BOLAND: Objection.

9 There's no way she knows all the
10 questions.

11 BY MR. GILBERT:

12 Q. Because I don't have a report from you.

13 A. If you want to ask me I can give my
14 opinion now.

15 Q. Okay. You've mentioned three areas, time
16 of death, type of weapon and vaginal swabs.

17 A. Okay.

18 Q. Is there anything else that you can think
19 of?

20 MR. BOLAND: Are you asking
21 her to anticipate every single question
22 you're going to ask her and now respond to
23 it without knowing what those questions
24 will be?

25 MR. GILBERT: Let me put on

1 the record, as you know, Mr. Boland, that
2 expert reports have been filed in this
3 case from a variety of experts, and -- let
4 me finish -- it was only because I
5 mentioned to Steve Dever yesterday at
6 Metro Hospital that I did not have an
7 expert opinion report of Dr. Balraj that
8 he called her yesterday and had her write
9 an addendum.

10 Now I'm finding that she's going to be
11 expressing additional areas that are not
12 contained in her expert opinion report and
13 I want to know what she's going to say.

14 MR. BOLAND: Then ask her a
15 question and she'll respond. Don't ask
16 her to anticipate all your questions.

17 BY MR. GILBERT:

18 Q. I want to know what you believe you're
19 going to be commenting on in this trial other than what
20 we've talked about.

21 MR. BOLAND: Objection. The
22 question is vague. That's not a question.

23 Q. Go ahead and answer the question.

24 A. Like I said, the time of death if I'm
25 asked. If I'm not asked I will not be commenting about

1 it.

2 Q. Okay.

3 A. The way the injuries were sustained, the
4 type of weapons that may have been used, and the
5 vaginal smear. And if any other questions are asked
6 regarding the autopsy I will comment on it. If you
7 want to know what I will be saying I will say that to
8 you also.

9 Q. At this point all you can think of is
10 those three areas, right?

11 A. Those three areas.

12 Q. Tell me your opinion on the time of death.

13 A. Time of death, my estimated time of death
14 would be sometime between 3:00 to 4:00 a.m. on the 4th
15 of July.

16 Q. And how did you come to that opinion?

17 A. Based on the information I had from the
18 investigation, like the food in the stomach. Marilyn
19 Sheppard ate sometime between 8:30 and 10:30 and it was
20 a fairly large meal consisting of -- it was a fairly
21 large meal, and for a meal that size to leave the
22 stomach at autopsy, there was only a half ounce of
23 fluid in the stomach, none of the food was present.
24 The meal consisted of cottage ham, tossed salad, a
25 vegetable and blueberry pie. A meal that size would

1 take anywhere from four to five hours. If she finished
2 eating by 10:00 p.m. she probably died sometime between
3 3:00 to 4:00 a.m.

4 Q. Where did you get this information about
5 the meal?

6 A. From reviewing all of the information from
7 the police investigation and all the material related
8 to Sam Sheppard that I read, from that.

9 Q. And you know how much she ate of the meal?

10 A. I think somewhere during the inquest
11 somebody said she ate good. I don't know how much she
12 ate, but she ate well. She ate all of the food also.

13 Q. So is your estimation of the time of death
14 based on anything else besides the food?

15 A. It's mostly on that and -- it's mostly on
16 that, the food in the stomach.

17 Q. Anything else about the time of death that
18 you are going to offer an opinion on?

19 A. Nothing else.

20 Q. How about the vaginal swabs and the
21 smears, what are you going to say about that?

22 A. The question if it comes up that according
23 to Dr. Adelson's report there were no sperm seen in the
24 vagina, but Dr. Tahir in his work he says he isolated
25 DNA, so how can that happen?

1 For that my explanation would be sperms
2 intact -- when we look at the microscopic examination
3 we examine the smears from the vagina, make them into
4 microscopic slides and then read the microscopic slides
5 under the microscope and we look for intact sperms in
6 order to say there's evidence of recent sexual
7 intercourse.

8 When I say intact, we look for the
9 heads and tails attached. If we don't see that
10 ordinarily we would say there are no sperms in the
11 vagina or at the orifices we have examined. So the
12 intact sperms would be present ordinarily -- this is an
13 estimated time -- from about 12 to 24 hours. Beyond
14 that ordinarily we will not see intact sperms in the
15 vagina, they would separate and we may just see heads
16 or they may look like nuclei.

17 So it's possible that there were no
18 intact sperms and that's why Dr. Adelson did not see
19 those. There may have been some heads, I don't know,
20 which may be from old sexual activity.

21 Q. You're speculating now, aren't you?

22 A. This would be my explanation as to why Dr.
23 Adelson didn't see and Dr. Tahir did.

24 Q. You don't know what he saw or what he
25 didn't see other than what you have in your report; is

1 that correct?

2 A. Yes.

3 Q. Did you ask Dr. Tahir what he saw?

4 A. Yes, I spoke to Dr. Tahir because I did
5 tell him there wasn't anything according to the
6 autopsy.

7 Q. What did he tell you?

8 A. He said that he too didn't see when he
9 looked under the microscope, and then he did some kind
10 of a technique he said and from that he extracted some.
11 So it's something he said that he too did not see under
12 the microscope.

13 Q. Anything else that you're prepared to talk
14 about as to the vaginal smears?

15 A. No. I'll talk about how long sperm stay
16 intact sperm, on that subject.

17 Q. So you're saying that sperm with full
18 heads and tails will be seen anywhere between 12 and 24
19 hours?

20 A. Up to.

21 Q. Up to 12 to 24 hours, right?

22 A. And again, it depends on several factors.
23 I didn't go into all the details that I will be saying,
24 but it will depend on several factors. It depends on
25 the individuals, the conditions of the vagina, the

1 condition of the semen. There have been reports where
2 in rare cases intact sperms have been seen up to even
3 15 days, but that's very rare. It depends on the
4 climate conditions, the condition of the body. But
5 ordinarily on an average 12 to 24 hours.

6 Q. And you don't know whether in this
7 particular case there were intact sperm or non-intact
8 sperm, do you?

9 A. What Dr. Tahir saw?

10 Q. No. You don't know from any source
11 whether there were intact or non-intact sperm at the
12 time that the swab was taken?

13 A. From what I read from Dr. Adelson's
14 report, there were no sperm seen. That means there
15 were no intact sperms. If there were intact sperms
16 he'll definitely say they are present. So there were
17 no sperms according to his report.

18 Q. Anything else?

19 A. These are the things I can think of
20 offhand, but if any other question is asked regarding
21 the autopsy protocol I would answer it if I'm permitted
22 to answer.

23 Q. Now, what about the type of weapon?

24 A. Type of weapon, those injuries are a
25 result of blows to the head from a blunt object.

1 Examples of blunt object, I'm not saying those were
2 used, but blunt objects would be a baseball bat, a
3 hammer, wrench, fireplace poker, a flashlight. But
4 from our experiment we could exclude a flashlight.

5 Q. You used one particular kind of
6 flashlight?

7 A. Right.

8 Q. You didn't look at more than one
9 flashlight?

10 A. No.

11 Q. Did you rule out any other weapons? I
12 mean any other -- I don't mean all weapons, but did you
13 rule out any weapons by size, shape, material?

14 A. There were four weapons used. One of the
15 weapons we felt was somewhat causing more damage than
16 what was seen in Marilyn Sheppard, so we felt it's
17 probably not likely that type of a weapon, something a
18 little less heavier or less forceful than that weapon.

19 Q. And what was that?

20 A. We used a flashlight, a channel lock, a
21 heavy adjustable wrench and a fireplace poker.

22 Q. What did you conclude?

23 A. The conclusion was that the wrench, it
24 could be something a little less than a wrench, but
25 we're not saying it is not, it could be depending on

1 the force that was used. When we did our experiment
2 the wrench was causing more damage than what was seen
3 in Marilyn Sheppard's head, and these were forceful
4 blows. If a wrench was used and less force was used it
5 can be done. We couldn't exclude any one of the
6 weapons, they were all blunt objects.

7 Q. Except the flashlight?

8 A. Yes, flashlight. That particular
9 flashlight did not produce.

10 Q. Now, I remember seeing a pipe, a huge pipe
11 down in the basement there that was used to create
12 those 120 drops.

13 A. Yes.

14 Q. Did you use that?

15 A. No, we did not use that.

16 Q. What would happen if somebody was smacked
17 in the skull with that with great force?

18 A. That would also cause blunt trauma and
19 probably extensive skull fractures and brain injuries.

20 Q. More than what was seen in this case?

21 A. I would suspect. I would expect so.

22 Q. But you didn't use that?

23 A. No, we did not use it.

24 Q. Is there any reason why?

25 A. No reason why. We could only use a

1 certain number of instruments. Also, in the past at
2 trials or in the past investigations one of the
3 instruments that was thought of was an orthopedic
4 instrument.

5 Q. Did you use an orthopedic instrument?

6 A. No, we didn't. We got a few, but the ones
7 that we found were very light weapons.

8 Q. And that couldn't be?

9 A. That we did not use. And we also couldn't
10 damage it, it was borrowed.

11 Q. How about the channel lock?

12 A. We used the channel lock.

13 Q. Did that produce fractures?

14 A. Yes, it did.

15 Q. So you couldn't rule that one out?

16 A. No.

17 Q. And the channel lock was also used in the
18 blood dripping experiment?

19 A. I think it was. I think -- the report
20 would say what exactly was used.

21 Q. Anything else about the type of weapon
22 that you could say in this case other than the general
23 things that you've just indicated?

24 A. Those are the things I can say.

25 Q. No one can come up with a specific weapon

1 at this time, right?

2 A. No, other than to say consistent or not
3 consistent.

4 Q. Now, did you review your files for other
5 cases?

6 A. Yes, I did.

7 Q. And what did you find there?

8 A. There were a few cases I have gotten out.
9 One was injury inflicted by a hammer and another one
10 with sledgehammer, which is multiple injuries somewhat
11 like what Marilyn Sheppard had. The point I was making
12 is these injuries are from blunt object, but unless we
13 have a weapon and we are able to compare the blood or
14 hair from that person we cannot say this is the weapon.

15 Q. Are you prepared to offer an opinion to
16 anything more than you just said, that it was a blunt
17 object and would be of a certain size, right?

18 A. That's right.

19 Q. How about the shape, the edges, the curves
20 or anything like that, can you offer an opinion
21 regarding those issues?

22 A. I cannot, but Dr. Lovejoy in his report he
23 says something about flaking of the skull and he
24 mentions something about edged instrument, but I will
25 not be offering any opinion regarding that.

1 Q. And you will defer to him on that issue?

2 A. Yes.

3 Q. Anything else that you can think of, Dr.

4 Balraj, that you -- I assume that you're going to go

5 over the autopsy report, right?

6 A. Yes.

7 Q. And talk about the wounds and the nature

8 of the wounds and the size of the wounds and all that?

9 A. Yes.

10 Q. And no one really has ever disputed that?

11 A. Right.

12 Q. You understand that?

13 A. Yes.

14 Q. Essentially you would be coming in in a

15 sense as a live body to talk about the -- obviously

16 Lester Adelson is not available, right?

17 A. Yes.

18 Q. He's not?

19 A. He's not. He will not be testifying.

20 Q. So you're going to come and basically go

21 over his report; is that right?

22 A. Right.

23 Q. And offer some of the opinions that you've

24 expressed today?

25 A. Right.

1 Q. Have you talked to him about this case?

2 A. I have not talked to him other than to ask
3 him about the fetus. When I did the exhumation and
4 found that the fetus had been autopsied I asked him
5 does he remember autopsying the fetus, and he said he
6 cannot recall anything. I have not -- I did tell the
7 prosecutors that I would be coming and expressing my
8 opinions independently from reviewing the records.

9 Q. What do you mean by that, independently?

10 A. What I have gotten, my opinions, not
11 talking to Dr. Adelson and getting his opinion and
12 repeating that, or not reading Dr. Adelson's and Dr.
13 Gerber's transcripts and expressing my opinion, it's
14 what I'm reviewing and giving opinions. So I haven't
15 talked to Dr. Adelson about this case other than about
16 the fetus.

17 Q. Do you have a difference of opinion with
18 Dr. Adelson?

19 A. I don't think I'm differing from him from
20 what I have heard. From what I have heard -- I have
21 not gone through his transcript, I did not want to read
22 his transcript, so I don't know if there is any
23 difference of opinion.

24 MR. GILBERT: Let's go off
25 the record for a moment.

1 (Thereupon, there was a brief recess.)

2 (Thereupon, Plaintiffs' Exhibit 6 to the
3 deposition of Elizabeth K. Balraj, M.D.,
4 was marked for purposes of
5 identification.)

6 BY MR. GILBERT:

7 Q. Showing you what's been marked as Exhibit
8 6. Is that your CV, Dr. Balraj?

9 A. Yes, Mr. Gilbert, it is.

10 Q. Has there been any changes to that since
11 it was prepared?

12 A. No.

13 MR. GILBERT: I have no
14 further questions. Thank you.

15 MR. BOLAND: Dr. Balraj, I
16 don't represent you and I can't advise you
17 on this issue, but I have to present it to
18 you for you to make a decision whether
19 you'd like to review a copy of the
20 transcript of this deposition.

21 THE WITNESS: I would like
22 to.

23 - - -

24 (DEPOSITION CONCLUDED.)

25 - - -

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ELIZABETH K. BALRAJ, M.D. (Date)

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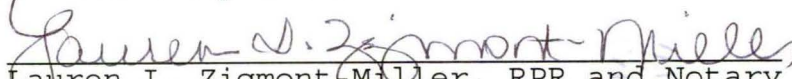
1 STATE OF OHIO,) CERTIFICATE
2 COUNTY OF CUYAHOGA.) SS:

3 I, LAUREN I. ZIGMONT-MILLER, Registered
4 Professional Reporter and Notary Public within and for
5 the State of Ohio, duly commissioned and qualified, do
6 hereby certify that the within-named witness, ELIZABETH
7 K. BALRAJ, M.D., was by me first duly sworn to tell the
8 truth, the whole truth and nothing but the truth in the
9 cause aforesaid; that the testimony then given by her
10 was reduced to stenotypy in the presence of said
11 witness, and afterwards transcribed by me through the
12 process of computer-aided transcription, and that the
13 foregoing is a true and correct transcript of the
14 testimony so given by her as aforesaid.

15 I do further certify that this deposition was
16 taken at the time and place in the foregoing caption
17 specified.

18 I do further certify that I am not a relative,
19 employee or attorney of either party, or otherwise
20 interested in the event of this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and affixed my seal of office at Cleveland, Ohio, on
23 this 8th day of February 2000.

24 
25 Lauren I. Zigmont-Miller, RPR and Notary
Public in and for the State of Ohio.
My commission expires December 3, 2000.