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2 STIPULATIONS

3 It is hereby stipulated and agreed
4 by and between counsel representing the parties
5 that the deposition of JOSEPH H. EMBRY, M.D., is
6 taken in pursuant to notice and stipulation on
7 behalf of the Petitioner; that all formalities
8 with respect to procedural requirements are
9 waived; that said deposition may be taken before
10 Jennifer J. Bullard, Certified Shorthand
11 Reporter and Notary Public in and for the State
12 of Alabama at Large, without the formality of a
13 commission; that objections to questions other
14 than objections as to the form of the questions,
15 need not be made at this time, but may be
16 reserved for a ruling at such time as the
17 deposition may be offered in evidence or used
18 for any other purpose as provided for by the
19 Civil Rules of Procedure for the State of
20 Alabama.

21 It is further stipulated and agreed
22 by and between counsel representing the parties
23 in this case that the filing of the deposition

1 Of JOSEPH H. EMBRY M.D., is hereby waived and
 2 that said deposition may be introduced at the
 3 trial of this case or used in any other manner
 4 by either party hereto provided for by the
 5 Statute, regardless of the waiving of the filing
 6 of same.

7 It is further stipulated and agreed
 8 by and between the parties hereto and the
 9 witness that the signature of the witness to
 10 this deposition is hereby not waived.

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1 MR. HARCOURT: So this is the
2 deposition of Dr. Joseph
3 Embry. Clay Crenshaw is here
4 for the attorney general, and
5 this is Bernard Harcourt.

6 Usual stipulations; right?

7 MR. CRENSHAW: That's fine.

8 MR. HARCOURT: Okay. So reserved as
9 to everything except form.

10 MR. CRENSHAW: I haven't asked Dr.
11 Embry about reading and
12 signing, so we can do that when
13 he walks back in the room.

14 MR. HARCOURT: Okay. We have here
15 some, what you've just given
16 me, six original autopsy slides
17 that were from Dr. Embry. And
18 it's my understanding that
19 these are the only pieces of
20 evidence that the State has in
21 this case other than anything
22 that's at the courthouse?

23 MR. CRENSHAW: Yes, that's correct.

1 I inquired of Lawden Yates and
2 Bill Landrum and Dr. Embry
3 about any physical evidence
4 that they retained about this
5 case, and these six autopsy
6 slides are the only physical
7 evidence that they have in
8 addition to the documents that
9 you have a copy of.

10 MR. HARCOURT: Right, okay. And the
11 documents we're referring to
12 are the documents from the
13 Alabama Department of Forensic
14 Sciences which will be
15 introduced at the hearing, and
16 it's an 85 page document.

17 Okay. So there's no other
18 physical evidence in anyone's
19 possession other than the
20 evidence that was admitted at
21 trial and is at the
22 courthouse?

23 MR. CRENSHAW: That has been

1 represented to me by the three
2 individuals that I've already
3 stated.

4 MR. HARCOURT: Okay.

5 MR. CRENSHAW: Dr. Embry, do you
6 want to sign and read the
7 deposition, or do you want to
8 waive reading and signing of
9 the deposition?

10 THE WITNESS: Well, I -- if it's not
11 too much trouble, I don't mind
12 reading it and signing it.

13 MR. HARCOURT: That's fine. Okay.

14 JOSEPH H. EMBRY, M.D., of lawful
15 age, having been first duly sworn, testified as
16 follows:

17 EXAMINATION

18 BY MR. HARCOURT:

19 Q. Dr. Embry, could you state your full name,
20 please?

21 A. Joseph Baden Embry.

22 Q. And what is your position with the Alabama
23 Department of Forensic Sciences?

- 1 A. My title is state medical examiner.
- 2 Q. How does that relate to your title back in 1978?
- 3 A. In 1978 my title was forensic pathologist.
- 4 Q. Okay. And what's the difference between a state
5 medical examiner and a forensic pathologist?
- 6 A. A state medical examiner is a more specific
7 title; forensic pathologist is a more generic
8 titlee I'm still doing the same work that I was
9 then in general which is as a coroner's
10 pathologist in North Alabama. At present I have
11 17 counties, north to Tennessee and east to
12 Georgia. On weekends I have another 15 or so.
- 13 Q. Okay. And are your responsibilities different
14 now than they were before as a forensic
15 pathologist?
- 16 A. Only in respect to one county. Jefferson County
17 has been a medical examiner system as opposed to
18 a coroner system since I've been here and since
19 the beginning. But Tuscaloosa County has
20 changed from the coroner system to a medical
21 examiner system, so I -- when I cover Tuscaloosa
22 County on the weekends that I work, I'm
23 responsible for certifying the deaths, which is

1 part of a medical examiner system as opposed to
2 a coroner system.

3 Q. Okay. Could you clarify for me the difference
4 between a coroner system and a medical examiner
5 system?

6 A. Sure. In Alabama the coroner system, which in
7 the majority of the counties is the system, an
8 elected coroner is the death investigator
9 locally, and he has virtually no qualifications
10 other than that he is eligible to be elected.

11 The majority of them are funeral directors.

12 Q. Okay. And in a county that's a coroner county,
13 examinations are then done by a forensic
14 pathologist?

15 A. Some, yes, the homicides and certain other cases
16 if deemed necessary by the district attorney.

17 The district attorney in Alabama is usually the
18 one who authorizes autopsies.

19 Q. Okay.

20 A. They can also be authorized by a circuit judge,
21 the attorney general, or the governor, but
22 usually it's the district attorney.

23 Q. Okay. And in a medical examiner county?

1 A. Okay. In Tuscaloosa, Mobile, and Jefferson
2 County, those three counties out of Alabama's
3 67, a local act has been passed so that the
4 pathologist functions as the coroner. He
5 investigates the deaths. He decides instead of
6 the district attorney which cases will be
7 autopsied, which cases will be accepted and
8 examined, and he certifies the deaths. That's
9 the main difference, plus there's a list of
10 situations or types of deaths which are mandated
11 by law to be examined --

12 Q. Okay.

13 A. -- or investigated.

14 Q. Now, focusing on Coosa County where this case
15 arose, is Coosa County a coroner's county or a
16 medical examiner's county?

17 A. It's a coroner's county.

18 Q. Okay. It's still a coroner's county?

19 A. Yes.

20 Q. All right. Now, so back in 1978, there was a
21 coroner in the county who was elected and then
22 somehow there would be an assignment for you to
23 do an autopsy; is that right?

1 A. Yeah. They found a body and they called us.

2 Q. Okay. Now, in 1978 you were in Birmingham?

3 A. Yes.

4 Okay. And what -- what was there in Birmingham
5 at the Alabama Department of Forensic Sciences,
6 or what were the facilities here, and how did
7 you fit in the structure of the organization?

8 A. Well, the facility was a different one. It was
9 some office space in the health department at
10 UAB in the public health building. And I had an
11 office and a certain number of counties. And we
12 responded to requests for examinations of
13 bodies, usually autopsies, from the coroners
14 from my counties and coordinated with the
15 district attorneys if there was any question
16 about it.

17 Q. Okay. And was there a Birmingham lab director
18 at the time, or was that you or.

19 A. No. The lab director was James Burtram
20 (phonetic).

21 Q. Okay. And then there was a -- you were there as
22 a forensic pathologist, and I suppose there were
23 some other experts there also?

1 A. Yeah. There was a toxicologist. Lawden Yates
2 was there. There were trace-evidence
3 examiners. I think Lawden was doing serology.

4 Q. And what were your responsibilities in 1978?
5 This might be a little bit repetitive, but -- so
6 you as a forensic pathologist -- all right.
7 Strike that.

8 In this particular case, you
9 oversaw the investigation from the Department of
10 Forensic Sciences' side; is that right?

11 A. Well, yes.

12 Q. Okay. And so -- and what did that involve in a
13 case like this?

14 A. Okay. I did the autopsy. I collected certain
15 evidence. I had it transferred to the
16 appropriate criminalists and toxicologists and
17 then examined their reports --

18 Q. Okay.

19 A. -- to make sure everything looked all right.

20 Q. Okay. So is it fair to say that you were kind
21 of the person in charge of the investigation --

22 A. Yes.

23 Q. -- from the perspective of the Alabama

1 Department of Forensic Sciences?

2 A. That's correct.

3 Q. Okay. Now, because this case dates back to
4 1978, there are a lot of kind of confusions
5 about or questions about what existed at the
6 time and what kind of technology existed and
7 whether y'all used that kind of technology, so
8 I'm going to ask you a few questions that kind
9 of are going to bring us back to 1978. Some of
10 them are going to be more obvious than others.
11 But in speaking with Lawden Yates and Bill
12 Landrum, we've kind of spent a lot of time going
13 over this, and it would be nice to just kind of
14 put it all in one place.

15 DNA evidence -- and I'm going
16 to be asking you these kind of questions about
17 whether this kind of technology existed for
18 different kinds of evidence, the three different
19 kinds of evidence that kind of come up in this
20 case. There is blood -- whole blood,
21 bloodstains, and then body-fluid stains.

22 So starting with DNA, did the
23 technology exist in 1978 to do DNA typing on any

1 of those kinds of evidence?

2 A. You know, I have that book that describes the
3 initial case in England, you know, where they
4 examined all the -- the men in the village. And
5 I don't remember the year of it, but I think
6 that it was after this.

7 Q. It would have been after 1978?

8 A. That -- I think.

9 Q. Okay.

10 A. Maybe. You know, I mean, do you know what I'm
11 talking about?

12 MR. CRENSHAW: I don't know.

13 Q. That's okay.

14 A. At any rate, it was not available in our
15 department.

16 Q. Okay. That's my second question.

17 A. And for that matter, it was not available
18 anywhere around here. I mean, the answer is it
19 was not available.

20 Q. Okay. So the second kind of question that goes
21 to that is, did the lab here in Birmingham use
22 that technology in 1978?

23 A. Of course not.

- 1 Q. Okay. What about enzyme testing, so using
2 enzymes to test blood types, for instance, PGM?
- 3 A. You're out of my area of expertise.
- 4 Q. Okay. Well, let me ask you: In 1978 would
5 you -- when you had a case like this, would you
6 ask that blood be tested for certain types or --
7 to kind of categorize it?
- 8 A. No.
- 9 Q. Okay. So how would that process happen? For
10 instance, in this case blood was tested for, you
11 know, ABO, I think, Rh, and MN which are
12 different categories.
- 13 A. In other words, how was the decision made what
14 tests to do?
- 15 Q. Right, right.
- 16 A. Well, this department, it was my impression,
17 it's still my impression, prided itself on being
18 state of the art in terms of doing testing.
19 that's most adequate to exclude and to find out
20 the truth. In other words, there is a very
21 strong history in this department of good
22 criminalistics. That's as close as I can come
23 to answering that question.

- 1 department at about 7:50 p.m., and my
2 understanding is that the autopsy started about
3 10:30 p.m. that same day?
- 4 A. I probably found out about it soon after 5:35
5 p.m. when she was found.
- 6 Q. Okay. And would your first involvement with the
7 case have been the autopsy?
- 8 A. Sure.
- 9 Q. Okay. And I'm wondering -- there is some
10 information on this worksheet on Page 4, for
11 instance, a date of birth and some other
12 information, I suppose, age and name and address
13 of the victim --
- 14 A. Uh-huh.
- 15 Q. -- which you would have received from the
16 investigators or from the medical examiner.
- 17 A. Coroner.
- 18 Coroner?
- 19 A. Right.
- 20 Q. Okay.
- 21 A. Or investigator, I don't remember which.
- 22 Q. Okay. On Page 2 there was a piece of paper
23 which doesn't have a date on it but it kind of

1 gives the basic information about where the
2 person was found and the date of birth.

3 Does -- would a document like
4 this come with the body or someone would bring
5 this along or.

6 A. Well, some kind of written information would be
7 available, yes.

8 Q. Okay.

9 MR. CRENSHAW: Are you going to ask
10 anything relative to the
11 petition today? Is this
12 preliminary going to speed up
13 or --

14 MR. HARCOURT: Yeah, yeah.

15 MR. CRENSHAW: Okay.

16 Q. Now, when you received the body, what was the
17 victim wearing?

18 A. I believe that's described in the autopsy
19 report. Stockings and shoes and a ring --
20 couple of rings on her left -- left ring finger
21 probably, I guess, and a wrist watch.

22 Q. Okay. And from that did you start thinking that
23 this might be a case involving a sexual assault?

- 1 A. Sure.
- 2 Q. Okay. Were there protocols then for how a case
3 involving a sexual assault would be dealt with?
- 4 A. Not written.
- 5 Q. Okay. They would have been uninformed or
6 unwritten?
- 7 A. Right.
- 8 Q. Okay. And so it would have been just your
9 practice or --
- 10 A. Uh-huh.
- 11 Q. Is that right?
- 12 A. Correct.
- 13 Q. Okay. And what kind of things would you do in a
14 case which may have involved sexual assault?
- 15 A. The main thing would be to take smears, slides
16 and smears from the mouth, rectum, and vagina,
17 and in this case we took some from the area
18 between the vagina and the rectum, and
19 fingernail scrapings, and, of course, some of
20 her blood for blood-typing.
- 21 Q. Okay.
- 22 A. And pubic combings is another thing that's
23 routinely done in these cases.

- 1 Q. Do you know if any pubic combings were taken in
2 this case?
- 3 A. I think I saw the picture of the comb on Page
4 53. Well, this is, I suppose, his head hair.
5 Maybe that's not the comb. Here it says pubic
6 hair for comparison from Tim Davis, so I presume
7 we had something to compare.
- 8 Q. Let me draw your attention to Page 25.
- 9 A. Oh, good, yeah.
- 10 Q. On Page 25 which is the last page of the autopsy
11 report you indicate the materials for further
12 study. Could you explain what this list is
13 supposed to convey?
- 14 A. Just that, materials saved from the autopsy for
15 further study
- 16 Q. Okay.
- 17 A. -- for further examination.
- 18 Q. Okay. And there are ten items listed. Let's
19 just go through them. The first and the second
20 are blood; is that right?
- 21 A. Correct.
- 22 Q. Okay. What would you have wanted to do with the
23 blood? What further studies would you have

- 1 wanted to do with her blood?
- 2 A. Well, toxicology and, as I've already mentioned,
3 serology, blood-typing.
- 4 Q. Okay. And what -- and by toxicology do you mean
5 checking for alcohol content or.
- 6 A. Sure, alcohol and drugs.
- 7 Q. Alcohol and drugs, okay. Is that done
8 routinely? Was that part of the protocols?
- 9 A. Yes, uh-huh.
- 10 Q. I mean, there wasn't any particular reason in
11 this case that you were checking for alcohol and
12 drugs, was there?
- 13 A. Well, it would have been significant -- it would
14 have -- had she had any alcohol or drugs in her,
15 so the answer would be yes. There was a reason,
16 and the reason was to find out.
- 17 Q. Okay. The third item is a portion of liver?
- 18 A. Correct.
- 19 Q. And what
- 20 A. For toxicology.
- 21 Q. For toxicology. The fourth item is a kidney.
22 What would that be for?
- 23 A. For toxicology also.

- 1 Q. Tissue for histology. The fifth item, what
2 would that be for?
- 3 A. To make microscopic slides of her major organs
4 to detect any natural disease that couldn't be
5 seen with the naked eye.
- 6 Okay. Plastic bags from hands, Number 6, and
7 fingernail scrapings, Number 7, what would you
8 do with those?
- 9 A. They would be examined for trace evidence.
- 10 Q. Okay. Number 8, swabs from mouth, vagina, anus,
11 and perineum, what would you want to do with
12 those?
- 13 A. Examine them for semen and sperm.
- 14 Q. Okay. And if there was sperm, could you also
15 examine those for a blood type?
- 16 A. Sure.
- 17 Q. Photographs, that's self explanatory. Clothing,
18 and that would go to the criminologist, I
19 assume; is that right?
- 20 A. Well, it would just be kept for trial.
- 21 Q. Okay.
- 22 A. Anybody could look at them if they wanted to.
- 23 Q. Okay. In this case there were not pubic hair

1 combings or hair combings that were taken then;
2 is that right?

3 A. They're not listed. I see a little note in here
4 from Bill Landrum saying he received hair, and
5 I'm hoping that means hair from her, but
6 anyway.

7 Q. Actually, what page is that on?

8 A. 56.

9 Q. Well, let me draw your attention to Page 59
10 which is Bill Landrum's report. In that report
11 he indicates that he received one plastic bag
12 containing head hairs from Tim Davis and one
13 plastic bag containing pubic hairs from Tim
14 Davis.

15 A. Right.

16 Q. Do you know if those were ever compared against
17 any evidence that might have been found at the
18 scene?

19 A. I do not.

20 Q. Now, while the investigation was going on at the
21 Department of Forensic Sciences, you were
22 communicating with Bill Landrum and Lawden Yates
23 about what they were doing; is that right?

- 1 A. At what time are you talking about, after the
2 autopsy?
- 3 Q. After the autopsy.
- 4 A. I don't recall communicating with them about the
5 case. I might have.
- 6 Q. Okay.
- 7 A. Obviously, I have a note here from him, that
8 Page 56, so.
- 9 Q. On Page 26 --
- 10 A. Page 26?
- 11 Q. 26. Can you describe what that document is?
- 12 A. Well, this is in Lawden's handwriting. It has
13 his initials at the bottom. It has the case
14 number at the top and the victim's name. And it
15 says rectum -- it says first, swab, then it says
16 rectum equals 4 plus A P, anti-sperm one plus,
17 others negative. Micro profuse bacteria in
18 several -- with several heads seen -- several
19 heads seen and one intact decomposing sperm
20 seen.
- 21 Q. So this indicates that there was sperm found on
22 the rectal swab; is that right?
- 23 A. That's correct.

- 1 Q. Okay. Now, these reports, for instance, on Page
2 7.
- 3 A. Is this it?
- 4 Q. 17, I m sorry. Were you involved somehow in the
5 preparation of these reports or.
- 6 A. Well, this is not exactly a report. It is a --
7 it's a form. It's like a receipt, I guess.
- 8 Q. It lists some evidence.
- 9 A. I'm not sure what this is.
- 10 Q. Okay.
- 11 A. It's a list of personal effects and toxicology
12 evidence. Okay. What was your question?
- 13 Q. Well, at the time that the investigation was
14 going on, did you know that Tim Davis was a
15 suspect?
- 16 A. I think his name was mentioned on this original
17 -- yeah. It says -- this is some information
18 that was probably available about the
19 circumstances surrounding her death, and it
20 indicates at the bottom that Tim Davis was a
21 suspect.
- 22 Q. Uh-huh, okay. And when you discovered that
23 there was sperm found on the swab, would there

1 have been an opportunity to check for blood
2 type?

3 A. Well, that would have been routine --

4 Q. Okay.

5 A. -- even if she hadn't been sexually assaulted or
6 even if it hadn't been suspected. We do blood
7 typing of all homicide victims.

8 Q. Okay. And what about blood typing of the sperm?

9 A. Again, what was possible then and what was done
10 then is -- should be -- those are questions that
11 shouldn't be directed to me because I wasn't
12 doing that kind of work. I wasn't doing that
13 work in my opinion.

14 Q. Okay. At some point during this
15 investigation -- and I'm drawing your attention
16 to Page 48 -- did you ask for the suspect's
17 blood type?

18 A. Well, this says Gladys. And that's Gladys
19 Patterson. She was the head secretary. Number
20 1, bags from hand sent to Auburn, question mark,
21 status. Number 2, suspects blood type, call
22 Gosdin, G-O-S-D-I-N, it looks like, ABI.
23 Hospital, military records, or if necessary

- 1 court order. Well, your question is, was I
2 inquiring about his blood type?
- 3 Q. Right.
- 4 A. Apparently I was.
- 5 Q. And why were you doing that?
- 6 A. I don't know. You'd think I was the prosecutor.
- 7 Qe Excuse me?
- 8 A. I said you'd think I was the prosecutor. I
9 would think, in other words, the prosecutor
10 would be mainly interested in the blood-typing
11 of a suspect.
- 12 Q. Well, did it have something to do with your role
13 as kind of the person in charge of the
14 investigation?
- 15 A. I probably thought it did, yes.
- 16 Q. Did you feel that that was information that
17 would have been important to provide to the
18 prosecutor?
- 19 A. I think it would be. I probably -- that's why I
20 -- yes.
- 21 Q. And on Page 49 does it indicate that Gladys
22 Patterson, your secretary --
- 23 A. That's 49. Okay.

- 1 Q. -- looked into trying to determine the blood
2 type for Tim Davis?
- 3 A. Yes.
- 4 Q. And on Page 52, was there an indication that you
5 received or that the department received a blood
6 sample from Tim Davis?
- 7 A. 52?
- 8 Q. 52 and 55.
- 9 A. Yes.
- 10 Q. And Bill Landrum prepared a report on Page 59
11 concerning the testing of the blood that was
12 received from Tim Davis; is that right?
- 13 A. Yes.
- 14 Q. And that report would have been provided in the
15 packet of reports that were then turned over to
16 the district attorney with your cover letter
17 which is on Page 60; is that right?
- 18 A. Well, six memos we turned over to him, and
19 probably this was one of them.
- 20 Q. Okay. So it's fair to say that you were
21 involved in terms of trying to do additional
22 testing if necessary to kind of have a complete
23 investigation; is that right?

1 A. I thought I was.

2 Q. Okay. Were there any protocols in place at the
3 time regarding what would be done with the
4 evidence that was tested after it was tested?

5 A. I don't know.

6 Q. Was it part of your responsibilities to insure
7 that the evidence was maintained?

8 MR. CRENSHAW: Object to the form.

9 I think he's already answered
10 the question.

11 A. No. Only -- well, I had control of the
12 microscopic slides, but I don't think you're
13 talking -- you're talking about --

14 Q. Those are the histological slides?

15 A. Yeah. You're talking about the most
16 incriminating evidence, aren't you, I mean, like
17 the blood and the semen and so forth?

18 Q. Right.

19 A. I didn't have any control over that.

20 Q. Okay. Do you know if any of that evidence would
21 have been put in a refrigerator or freezer?

22 A. Well, at one time it was, I'm sure. I mean,
23 that was -- that would be standard procedure

1 universally.

2 Q. Y'all had a refrigerator?

3 A. Yeah, we had a refrigerator.

4 Q. Did you have a separate freezer or, I mean.

5 A. I don't remember.

6 Q. You don't remember?

7 A. (Witness shakes head.)

8 Q. Okay. Did you ever communicate with the
9 attorneys in this case, or did they ever
10 communicate with you?

11 MR. CRENSHAW: Which attorneys?

12 MR. HARCOURT: Back in 1978.

13 MR. CRENSHAW: Okay. The defense
14 attorneys?

15 MR. HARCOURT: The defense
16 attorneys. I'm sorry.

17 A. I don't remember that. I don't remember having
18 any communication with them except during trial.

19 Q. Do you know if they ever requested you to do any
20 particular testing of any sort on any of the
21 evidence?

22 A. I don't remember that.

23 Q. Do you maintain now or did you maintain then a

1 separate file of reports or documents on this
2 case?

3 A. No.

4 Q. So all of the documents that you would work --
5 would have worked on would be incorporated in
6 the central file which is this one?

7 A. Yes.

8 MR. HARCOURT: Why don't we take a
9 short break, and I don't think
10 I have that much more.

11 (Brief recess.)

12 Q. On Page 2 of the documents, does it indicate
13 that in third line from the bottom, pubic hairs
14 stuck in blood on floor? Does it indicate that
15 there were pubic hairs at the scene of the
16 crime?

17 A. Apparently.

18 Q. Okay. Now, I'll ask you to quickly look over
19 the reports in this case, and I'll draw your
20 attention to them quickly.

21 There is your postmortem
22 examination on Page 19. And my question is, you
23 -- was there any hair comparison that was done

1 in this case? It's your report on Page 19.

2 MR. CRENSHAW: Bernard, why don't
3 you say what the hair could
4 have been compared to?

5 MR. HARCOURT: Okay. Well, there
6 were hairs taken of Tim Davis.

7 MR. CRENSHAW: Right.

8 MR. HARCOURT: Right, hair and pubic
9 hair. And the records reflect
10 that there was no comparison
11 made between the hairs that
12 were taken from Davis and any
13 hairs that would have been at
14 the scene of the crime or, you
15 know.

16 MR. CRENSHAW: So I guess my point
17 is that there was no hair to
18 compare Davis's hair with. I
19 mean, do you understand what
20 I'm saying?

21 MR. HARCOURT: Okay. But there was
22 hair at the scene of the crime.

23 MR. CRENSHAW: And you're referring

1 to the handwritten note on Page
2 2 of your exhibit?

3 MR. HARCOURT: Right, right, right.

4 MR. CRENSHAW: So there was --

5 MR. HARCOURT: I'm just trying to
6 determine whether there was any
7 hair comparison that was made
8 in this case.

9 MR. CRENSHAW: All right. And
10 whether the pubic hair was
11 compared with --

12 MR. HARCOURT: Anything.

13 MR. CRENSHAW: -- with the pubic
14 hair supposedly found at the
15 scene?

16 MR. HARCOURT: Right.

17 MR. CRENSHAW: All right.

18 A. His report would not suggest that it was. It
19 does not appear that it was.

20 Q. Okay. And in your capacity as the person in
21 charge of this investigation, would you have
22 pursued that to try and get some kind of
23 comparison made?

1 A. I did not. I wouldn't remember that.

2 Q. Okay. Let me ask you: If there was semen found
3 on the swab from the victim's rectum -- which is
4 on Page 42. The report from Lawden Yates is on
5 Page 42?

6 A. Right.

7 Q. The documents reflect that that semen was never
8 tested to determine its blood type. Is that
9 something that you in your capacity as being in
10 charge of this investigation would have looked
11 into?

12 A. Well, I don't recall looking into it.

13 Q. Okay. On Bill Landrum's report at Page 46,
14 Paragraph 4, there were epithelial cells and
15 other material found in Tim Davis's
16 undershorts. There's no indication from the
17 documents that those items were tested to
18 determine blood type.

19 Would you have considered that
20 important in your capacity as being in charge of
21 the investigation to determine the possible
22 blood type?

23 A. I did not.

1 Q. Okay. That's all I have.

2 MR. CRENSHAW: I may have a few
3 questions.

4 EXAMINATION

5 BY MR. CRENSHAW:

6 Q. The fact that the body was presented to you nude
7 with the exception of having stockings and shoes
8 on, did that -- did that indicate to you that it
9 was a sexual assault case? Did those facts
10 indicate to you that it might have been a sexual
11 assault?

12 A. Yes.

13 Q. All right. In 1978 when you were presented with
14 a sexual assault case, I believe you've stated
15 that you didn't have a written protocol that you
16 followed; is that correct?

17 A. That's correct.

18 Q. And I believe you stated that -- I think your
19 words were, whatever you did at that certain
20 time is what you did on the body. I mean, is
21 that correct? You know, whatever your practice
22 was is what you did in 1978? And you can
23 elaborate on that if you want to.

- 1 A. Well, I did what I was taught to do or -- so the
2 answer would be yes.
- 3 Q. Referring to Page 2 of Petitioner's Exhibit 4,
4 whose -- who wrote that note?
- 5 A. It looks like Lawden's writing to some extent,
6 but I'm not a hundred percent sure. It's not
7 mine, I know that.
- 8 Q. If you know, would Lawden have been writing the
9 note based on information that was relayed to
10 him?
- 11 A. I presume.
- 12 Q. So, if you know, would a Department of Forensic
13 Sciences' employee have seen the pubic hair that
14 is referred to on the handwritten note on Page 2
15 of the exhibit?
- 16 A. It's possible, but I don't know for sure.
- 17 Q. Does the fact that Tim Davis's name is reflected
18 on Page 2 with a hyphen by his name and suspect
19 right besides his name, does that fact -- would
20 that have made you do anything differently in
21 this case?
- 22 A. No.
- 23 Q. And again just to be clear, you don't know who

1 was relaying this information to Lawden Yates;
2 is that correct?

3 A. I don't know, or I don't know when it was
4 relayed. I mean, it's not dated or timed or
5 anything.

6 Q. Would you have seen that note before you began
7 the autopsy?

8 A. I don't know, that's what I'm saying. It might
9 not have been available until the next day.

10 Q. Did you say it might not have been available
11 until the next day? Did you mean

12 A. Right. It's not dated or timed, so I don't know
13 when it was received.

14 Q. So at the time you conducted your autopsy, you
15 may not have known anything about there being a
16 possible suspect; is that correct?

17 A. That's correct.

18 Q. And whether you knew there was a suspect or not,
19 again, would you have done anything differently
20 in this case?

21 A. No.

22 Q. Referring to page -- referring to Page 48 in
23 Petitioner's Exhibit 1 -- you may have said

1 this -- is that your handwriting?

2 A. Yes.

3 Q. All right. And I think that you said -- well,
4 let me ask it this way: Could you have written
5 that note based on what someone was asking you
6 to do?

7 A. Sure.

8 Q. Is it possible that the prosecutor requested
9 that you type Tim Davis's blood, and would that
10 note -- would that handwritten note be
11 reflective of that?

12 A. I suppose it's possible.

13 Q. Do you consider the Department of Forensic
14 Sciences an arm of the State or an agency that
15 seeks the truth?

16 A. Well, actually it's both.

17 Q. All right. You can elaborate on that.

18 A. I don't -- I don't think that being a state
19 department precludes neutrality if that's --
20 I've sort of got that from your question.

21 Q. I think that was a poor question. That's all I
22 have.

23

EXAMINATION

1 BY MR. HARCOURT:

2 Q. Okay. Just a few questions. On Page 3 of the
3 document which is Petitioner's Exhibit 1, does
4 it indicate that the medical examiner's field
5 agent was at the scene of the crime and took
6 possession of the body?

7 A. I believe it does.

8 Q. And who was that person?

9 A. Carl Murdock, Carl M. Murdock.

10 Q. Now, Clay was asking you a lot of questions
11 about whether you would have done anything
12 differently if you knew or didn't know that
13 there was a suspect, and your answer is that you
14 would have performed the exact same
15 investigation regardless of whether you knew
16 that there was a suspect or not; is that right?

17 A. Right.

18 Q. Based on these documents, when do you think you
19 knew that there was a suspect?

20 A. I suppose the earliest I can answer that would
21 be that -- the date of that note.

22 MR. CRENSHAW: You need to refer to
23 the page number. Page 48?

- 1 Q. Is that on Page 48?
- 2 A. And it's not dated, so I don't know.
- 3 Q. What about the fact, for instance, that on Page
4 17 Tim Davis is listed as a suspect?
- 5 A. Well, that would be evidence that -- at that
6 time whenever this thing was prepared.
- 7 Q. July 20th?
- 8 A. No, that's just the date that's on it. I don't
9 think anybody typed this thing up on 10:30 p.m.
10 on July 20th.
- 11 Q. In a possible rape case or a sexual assault
12 case, if there is evidence of sperm having been
13 found, is it helpful to try to do a blood type
14 on that sperm?
- 15 MR. CRENSHAW: Object to the form.
16 It's very vague. What do you
17 mean by helpful?
- 18 Q. Is there any reason to do a blood type?
- 19 A. Well, nowadays you do DNA on it.
- 20 Q. Okay.
- 21 A. Which is another form of genetic testing.
- 22 Q. Okay. Let's put aside DNA.
- 23 A. It would be helpful to do whatever you could do,

1 yeah, in terms of genetic testing.

2 Q. Okay. So it would be helpful to do, for
3 instance, ABO testing?

4 A. Yes.

5 Q. And what would the purpose of that be?

6 A. To match it to a suspect.

7 Q. Okay. And generally is that done in your
8 practice?

9 A. Me in my practice, no, huh-uh.

10 Q. So when you investigate a death that's related
11 possibly to a sexual assault and you find
12 evidence that there is sperm on the victim, in
13 your practice you do not generally type the
14 sperm?

15 A. What do you mean by you?

16 MR. CRENSHAW: I think he's meaning
17 you personally.

18 Q. In your practice.

19 A. You mean me personally?

20 Q. No, no. You don't -- not you personally
21 actually do the absorption elution or whatever
22 it's called, but you if you're in charge of the
23 investigation have somebody do that?

1 MR. CRENSHAW: Object to the form.

2 He's answered it.

3 A. That's correct. At the very first part of the
4 deposition I thought you were asking essentially
5 the same thing that did I tell them what to do,
6 and the answer was no.

7 Q. Okay.

8 A. They never asked me neither.

9 Q. Lawden Yates indicated that he didn't test the
10 semen for blood type because he didn't receive a
11 request to do that. Can you --

12 MR. CRENSHAW: Can he see that part
13 of the deposition?

14 MR. HARCOURT: Sure.

15 Q. My question was -- to Mr. Yates was, would it
16 have been helpful to try to type the semen for
17 blood type? And I'm referring to the semen that
18 was found on the swab that was found on the
19 victim's rectum. And the answer is, I don't
20 know. This is on Page 52 of Lawden Yates'.
21 deposition. I never received such a request.

22 Can you help me understand who
23 would have requested that if it wasn't you?

- 1 A. Well, he's talking about investigators.
- 2 Q. So you mean police investigators?
- 3 A. I presume. He wouldn't use that term to apply
4 to me.
- 5 MR. CRENSHAW: In that answer he
6 used the term investigators.
7 Lawden Yates used the term
8 investigators.
- 9 Q. So it's the investigators that determine what
10 tests get run?
- 11 A. Apparently in some cases they may have input.
12 would -- I would think that answer would
13 indicate that.
- 14 Q. Are there any written protocols about how to
15 deal with a rape case now?
- 16 A. Yes.
- 17 Q. Do you know if those protocols provide that if
18 semen is found it needs to be typed?
- 19 A. Oh, I'm sure it -- I'm sure that they do.
- 20 Q. But that was not the practice in 1978?
- 21 A. I would think based on his answer that it was
22 not.
- 23 Q. And when you say based on his answer, what

- 1 you're suggesting is that it was not your
2 practice to make sure that that happened?
- 3 A. No. I thought -- no. Your question was, did
4 the serologists in our department routinely type
5 semen.
- 6 Q. Okay. Did the serologists in your department
7 routinely type semen?
- 8 A. I'd have to say no.
- 9 Q. Okay.
- 10 A. Routinely meaning every time, because he didn't
11 do it in this case. Not only that, his answer
12 to the question of why he didn't do it would
13 suggest that they didn't do it routinely.
- 14 Q. Okay. Was there anybody else supervising this
15 investigation at the Alabama Department of
16 Forensic Sciences?
- 17 A. No.
- 18 Q. Okay. Is it fair to say that you were the only
19 person supervising the investigation?
- 20 A. The information given to me by the director of
21 the department is that the pathologist is in
22 charge of homicide investigations which I have
23 already qualified has limited meaning.

- 1 Q. Okay. And by limited meaning, you mean that
2 while you are in charge of the investigation,
3 you don't get involved in the.
- 4 A. I mean, for instance, if I get in a real tight
5 I'll ask the toxicologist to do certain tests in
6 the years that I've been here, and he may say,
7 well, we're not -- we don't do that. We have
8 our own protocols in homicides, so their -- in
9 spite of lip service to the idea of the director
10 that the pathologist is in charge of the
11 investigation, it's not always the way it works
12 out in real life.
- 13 Q. If you had asked Lawden Yates to do a blood type
14 on the semen, do you think he would have done
15 it?
- 16 A. I don't know.
- 17 Q. If Tim Davis's attorney at the time had asked
18 the Department of Forensic Sciences, would the
19 Department of Forensic Sciences have typed the
20 semen?
- 21 A. I don't know. I was not Yates' supervisor, so.
- 22 Q. Who was Yates' supervisor?
- 23 A. Burtram.

1 Q. Where was Yates located? Was he here in
2 Birmingham?

3 A. Uh-huh. He and I were on the same floor in the
4 health department.

5 Q. Okay. Did Dr. Burtram supervise this
6 investigation in some way?

7 A. Well, he was Yates' supervisor, so that in
8 answer to your last question had an attorney
9 asked that Yates do something in the case and
10 Yates refused, then likely as not they would
11 have gone to his supervisor who would have been
12 Burtram to request that it be done. In fact, if
13 they really wanted it done, that's what they
14 probably would have done.

15 Q. Uh-huh.

16 A. That's probably what they still would do.

17 Q. Now, the Alabama Department of Forensic Sciences
18 is an independent department in the government
19 of the State of Alabama; right?

20 A. Right.

21 Q. And it takes requests from both prosecutors and
22 defense attorneys; right?

23 A. I don't know how that works exactly.

1 Q. In your experience --

2 A. If they deem it, you know, in the interest of
3 justice, they take it from both sides --

4 Q. Okay.

5 A. -- the requests, that is.

6 Q. Okay.

7 A. There is a tradition of neutrality, I think -- I
8 mean, I hope.

9 Q. Do you still supervise death investigations like
10 this?

11 A. Yes, same policy as was in 1978.

12 Q. Okay. If a death investigation like this
13 tragically walked in the door tonight and you
14 were in charge of the investigation with the
15 same facts, would you want to know -- would you
16 want to blood type the semen that was found on
17 the victim?

18 MR. CRENSHAW: Object to the form.

19 This is completely irrelevant.

20 A. I think that would be good, yes.

21 Q. Okay. Is there any reason why you think that
22 would be good now and why, I think your
23 testimony earlier was, that it wasn't important

1 in this case?

2 MR. CRENSHAW: Object. This is also
3 irrelevant.

4 A. I didn't mean to say that if I said that.

5 Q. Okay. So then just to clarify then -- maybe I
6 got it wrong. You also feel it would have been
7 important to do in this case?

8 A. I think so, yes.

9 Q. Okay. That's all I have.

10

(The referred-to document was
11 marked for identification as

12

Petitioner's Exhibit No. 1.)

13

(The deposition of JOSEPH H. EMBRY, M.D.,

14

concluded at 5:12 p.m., on August 17, 1995.)

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