IN THE CIRCUIT COURT, NINTH JUDICIAL CIRCUIT
CRIMINAL JUSTICE DIVISION,
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

PLAINTIFF,

VS. CASE NO: CR 98-1730
(VOLUME I)

ALAN R. YURKO,

DEFENDANT./

TRIAL PROCEEDINGS

BEFORE THE HONORABLE

R. JAMES STROKER

FEBRUARY 23, 1999
ORANGE COUNTY COURTHOUSE
ORLANDO, FLORIDA 32801

A P P E A R A N C E S:

ROBIN WILKINSON, ATTORNEY
ASSISTANT STATE ATTORNEY
415 NORTH ORANGE AVENUE
BUILDING B
ORLANDO, FLORIDA 32801
APPEARING ON BEHALF OF THE PLAINTIFF

JUNIOR BARRETT, ESQUIRE AND
ROBERT LARR, ESQUIRE
ASSISTANT PUBLIC DEFENDERS
435 NORTH ORANGE AVENUE
BUILDING A
ORLANDO, FLORIDA 32801
APPEARING ON BEHALF OF THE DEFEN

CATHY L. MATTA, C
OFFICIAL COURT RE
NINTH JUDICIAL C

I believe this should complete you having every bit of the case court record from start to end This is all the misc. trial procedure stuff I didnt think you needed but here it is... double ck by pg #'s to make you you dont already have this in previous records sent.

Q. HAVE YOU EVER TESTIFIED FOR THE DEFENSE?

A. YES, MA'AM, I HAVE.

Q. IN REVIEWING A CASE DO YOU STATE AN OPINION BEFORE YOU REVIEW IT?

A. YOU CAN'T MAKE UP YOUR MIND BEFORE YOU LOOK AT EVERYTHING. IT'S INAPPROPRIATE TO DO SO.

Q. WHEN YOU'RE FIRST EXAMINING A CHILD ARE YOU LOOKING FOR ABUSE?

A. I'M LOOKING FOR ANY INFORMATION I CAN GET THAT WILL LEAD ME IN ONE DIRECTION OR ANOTHER.

MS. WILKINSON: YOUR HONOR, AT THIS TIME THE STATE WOULD TENDER DR. SEIBEL AS AN EXPERT IN THE AREA OF CHILD ABUSE.

THE COURT: YOU WANT TO REPHRASE THAT?

MS. WILKINSON: WE'LL TENDER HIM AS AN EXPERT IN THE AREA OF PEDIATRICS AND PHYSICAL ABUSE OF CHILDREN.

THE COURT: ANY OBJECTION?

MR. BARRETT: NO, YOUR HONOR.

THE COURT: SO RECEIVED.

BY MS. WILKINSON:

Q. DR. SEIBEL, DID YOU HAVE AN OCCASION TO EXAMINE ALAN JOSEPH REAM YURKO?

A. YES, MA'AM.

Q. WHERE DID YOU FIRST EXAMINE HIM?

A. THE ONE AND ONLY TIME I EXAMINED HIM WAS IN

PEDIATRIC INTENSIVE CARE UNIT AT FLORIDA HOSPITAL SOUTH ON THE 25TH OF NOVEMBER, 1997.

Q. AND AT THAT TIME WHAT CONDITION WAS HE IN?

A. THE CHILD WAS IN VERY GRAVE STATE. HE WAS INTUBATED OR HAD A BREATHING TUBE INTO HIS LUNGS BREATHING FOR HIM AND WAS BEING CARED FOR BY THE ICU STAFF IN A VERY CRITICAL MANNER.

Q. DID YOU REVIEW HIS MEDICAL CHART BEFORE YOU EXAMINED HIM?

A. YES, MA'AM.

Q. AND ONCE YOU EXAMINED HIM AND REVIEWED HIS MEDICAL CHART, DID YOU HAVE A DIAGNOSIS?

A. YES, MA'AM.

Q. WHAT WAS THAT?

A. THE CHILD HAD RECEIVED INFLICTED TRAUMA THAT WAS SEEN AS BOTH BRAIN INJURY AS WELL AS INJURIES TO SEVERAL RIBS THAT IS CHARACTERISTIC OF AN ABUSIVE SITUATION.

Q. LET'S START WITH THE RIBS. HOW MANY -- WHAT RIBS WERE INVOLVED?

A. THERE WAS THE SIXTH RIB HERE ON THE SIDE LATERALLY AND THERE WAS THE SIXTH AND SEVENTH RIB ON THE LEFT IN THE BACK, BACK HERE, ALL TO ONE SIDE.

Q. WHAT TYPE OF FORCE WOULD CAUSE AN INJURY TO A RIB?

A. WELL, IT'S A VERY VIGOROUS SQUEEZING TYPE FORCE.

THE ANALOGY THAT I LIKE TO USE IS -- I WISH I HAD SOMETHING TO DRAW ON. I COULD SHOW YOU.

THE COURT DEPUTY: WE HAVE THE THING IN THE BACK.

THE COURT: BRING THE EASEL.

THE WITNESS: IF I CAN DRAW IT, IT WOULD ACTUALLY -- VISUAL AIDS WORK BETTER.

MS. WILKINSON: YOU MENTIONED SOMETHING OF INFLICTION --

THE COURT: PERHAPS WE COULD SET THAT OUT IN THE MIDDLE OF THE COURTROOM SO THE JURY CAN SEE IT.

THE COURT DEPUTY: WHERE DO YOU WANT IT?

THE COURT: RIGHT IN FRONT OF THE PODIUM.

YOU MAY STEP DOWN, DOCTOR.

THE WITNESS: THIS IS THE SPINAL PROCESS. IT'S YOUR SPINE AND WHAT A RIB DOES IS --

THE COURT: I'M SORRY. LET ME EXPLAIN, LADIES AND GENTLEMEN, THAT THIS DRAWING IS NOT ITSELF EVIDENCE. THIS IS SIMPLY A DEMONSTRATIVE AID TO HELP YOU UNDERSTAND BETTER THE TESTIMONY OF THE DOCTOR. THE TESTIMONY ITSELF IS THE EVIDENCE. THIS IS A DEMONSTRATIVE AID AND WILL NOT BE AVAILABLE AS EVIDENCE IN THE CASE.

YOU MAY PROCEED.

THE WITNESS: THE FRACTURE ON THE LATERAL SIDE IS A FRACTURE THAT WE SEE ON THE OUTSIDE OF THE RIB AND

POSTERIOR FRACTURES WE SEE ON THE INSIDE HERE AND THE BEST WAY TO LOOK AT THIS IS IF THE RIBS ARE SQUEEZED IN A VERY VIGOROUS MANNER BY PUTTING PRESSURE DOWN LIKE THIS, ONE CAN IMAGINE AS THIS SQUEEZES DOWN, THIS -- IT BENDS HERE AND WE GET A FRACTURE HERE.

ALSO, POSTERIORLY, WHEN THIS RIB GETS BENT OVER THIS SPINUS PROCESS RIGHT HERE SO YOU GET A BENDING OF THIS RIB DOWN LIKE THIS THAT THE FRACTURES ON THE INSIDE RIGHT HERE, ALMOST LIKE WHEN I TAKE THIS MARKER AND PUSH IT OVER THE EDGE OF THIS EDGE RIGHT HERE, THE FRACTURE'S ON THIS SIDE, NOT ON THIS SIDE AND THAT'S WHAT WE SEE. POSTERIOR FRACTURES HERE AND LATERAL FRACTURES HERE.

THE COURT: YOU CAN GO AHEAD AND MOVE THAT.

BY MS. WILKINSON:

Q. DR. SEIBEL, CAN THIS RIB FRACTURE BE CAUSED AT BIRTH?

A. [redacted]

Q. ARE THERE FRACTURES THAT CAN BE THE RESULT OF BIRTH TRAUMA?

A. YES, MA'AM.

Q. AND WHAT TYPE OF FRACTURES WOULD THAT BE?

A. THE MOST COMMON FRACTURES THAT WE SEE IS FRACTURES OF THE CLAVICLE WHICH IS THE COLLAR BONE RIGHT

HERE.

Q. AND YOU MENTIONED THAT THEY WERE IN DIFFERENT STAGES OF HEALING, IF YOU COULD EXPLAIN THAT TO THE JURY?

A. AS A LONG BONE LIKE A RIB HEALS, IT DOESN'T JUST HEAL RIGHT WHERE THE FRACTURE IS. IT HEALS BY WHAT WE CALL A CALLUS. A CALLUS IS AN AREA OF HEALING JUST BELOW ON EITHER SIDE OF THE FRACTURE AND IT LOOKS -- IT GETS RATHER BIG OVER A MATTER OF WEEKS UNTIL IT FINALLY HEALS. AND THE LATERAL FRACTURE HAD A MUCH LARGER CALLUS OR IT WAS AN OLDER FRACTURE THAN THE POSTERIOR FRACTURES WHICH HAVE A MUCH SMALLER CALLUS TO THEM.

Q. CAN YOU SPECIFICALLY TIME WHEN A RIB FRACTURE OCCURRED?

A. NO.

Q. WHY IS THAT?

A. THE CALLUS FORMS AT DIFFERENT TIMES. ONE CAN LOOK AT THESE AND KNOW THE TWO POSTERIOR ONES ARE ALMOST IDENTICAL AND THEY ARE DIFFERENT FROM THE OTHER ONE. BUT WE KNOW THE CALLUS TAKES APPROXIMATELY A WEEK OR LONGER TO FORM AND YOU CAN'T DATE IT OR TIME IT AS ACCURATELY AS YOU CAN BRUISES, NOR CAN YOU DATE IT BY MINUTES OR HOURS OR ANYTHING LIKE THAT.

Q. LET'S TALK ABOUT THE HEAD INJURIES. WHAT TYPE OF HEAD INJURY DID THIS CHILD HAVE?

A. THE CHILD HAD INJURY THAT EVENTUALLY COST HIM HIS

LIFE. THIS WAS SEEN ON CAT SCAN AS SUBDURAL BLEEDING OR BLEEDING IN THE SPACE BETWEEN THE BRAIN AND THE SUBDURAL SPACE AS WELL AS BLEEDING WITHIN THE BRAIN ITSELF.

Q. THE BLEEDING IN THE BRAIN ITSELF IS DIFFERENT THAN THE SUBDURAL?

A. WELL, IT'S BLEEDING BUT IT'S SEEN DIFFERENTLY ON CAT SCAN. IT'S WHAT WE CALL INTERPARACHYMAL BLEEDING OR BLEEDING IN THE BRAIN CELLS.

Q. ARE YOU FAMILIAR WITH THE TERM DIFFUSE AXONAL INJURY?

A. YES, I AM.

Q. CAN YOU EXPLAIN THAT?

A. THIS IS THE LATEST THEORIES REGARDING THE INJURIES THAT OCCURS IN CHILDREN IN CASES LIKE THIS. WHEN THERE HAS BEEN A RAPID DECELERATION OR RAPID STOPPING TYPE FORCES THAT OCCUR, THE AXON OR THE NERVE CELL ITSELF BECOMES INJURED OR DAMAGED. WHEN ENOUGH OF THESE ARE DAMAGED AND BLOOD VESSELS IN THESE AREAS ARE DAMAGED THERE IS BLEEDING. AND DIFFUSE AXONAL INJURY IS SEEN IN THESE TYPE OF CASES.

AND THE IMPORTANCE OF IT IS WHEN WE SEE THIS, WE KNOW THAT THERE'S BEEN SIGNIFICANT BRAIN INJURY AND THE CURRENT THEORIES POSTULATE THAT. THE SYMPTOMS ASSOCIATED WITH SEVERE BRAIN INJURY OCCUR WITHIN A VERY FEW NUMBER OF MINUTES AFTER THE BRAIN INJURY.

Diffuse Axonal Injury Defined

Q. ONCE THE CHILD RECEIVES A DECELERATION-ACCELERATION INJURY, WHAT TYPE OF COURSE WOULD THE CHILD GO THROUGH?

A. WELL, DEPENDS ON THE TYPE OF INJURY THAT HAS BEEN SUSTAINED, OBVIOUSLY. IF THERE'S BEEN SHEERING OR TEARING OF THE BLOOD VESSELS BETWEEN THE BRAIN AND THE OUTER SPACES SO THERE'S BLEEDING INTO THE SUBDURAL SPACE AND IT'S SLOW BLEEDING, THIS WILL BE -- THIS OFTENTIMES WILL CAUSE INJURY TO THE CHILD BUT OFTENTIMES DOESN'T CAUSE THE CHILD TO DIE. WHEN THERE HAS BEEN MORE SUBSTANTIAL TRAUMA AND THERE'S BEEN AS WE'VE TALKED ABOUT EARLIER DIFFUSE AXONAL INJURY, SYMPTOMS WILL OCCUR VERY, VERY QUICKLY.

Q. WHAT WOULD BE THE OUTSIDE PERIOD OF TIME?

A. THE LATEST THEORIES THAT HAVE BEEN POSTULATED AROUND THE COUNTRY ARE AS LONG AS AN HOUR.

Q. AND HAS THIS BEEN PUBLISHED IN THE MEDICAL LITERATURE?

A. YES, MA'AM.

Q. IS THIS A WELL-ACCEPTED THEORY AMONG PEDIATRICIANS?

A. CURRENTLY, YES, MA'AM, IT IS.

Q. DOCTOR, DID THIS CHILD ALSO HAVE A RETINAL HEMORRHAGE?

A. THE CHILD HAD RETINAL HEMORRHAGES, YES, MA'AM.

Q. WHAT IS THE SIGNIFICANCE OF THAT?

A. THIS AGAIN MERELY SHOWS THE SHEERING OR TEARING OF THE BLOOD VESSELS THAT IS SEEN WITH THE SUBDURAL BLEEDING WHICH IS SEEN AS THE BLEEDING IN THE BRAIN AND YOU CAN SEE IT AS SHEERING OR TEARING OF THESE BLOOD VESSELS AT THE BACK OF THE EYE.

Q. ARE YOU FAMILIAR WITH THE TERM BATTERED CHILD SYNDROME?

A. YES, MA'AM.

Q. AND WHAT IS THAT?

A. THE BATTERED CHILD SYNDROME IS TERMINOLOGY WHICH WAS FIRST COINED BY DR. KEMP IN THE EARLY 1950'S. WHAT WAS SEEN IN THE LATE '40'S WAS CHILDREN WHO PRESENTED WITH LONG BONE INJURIES OR INJURIES TO THE SPINES -- EXCUSE ME -- TO THE RIBS, ARMS, LEGS ASSOCIATED WITH BRUISES AND ASSOCIATED WITH HEAD INJURY. AND DR. KEMP AND HIS COLLEAGUES WERE THE FIRST ONES TO PLACE A SPECIFIC NAME TO THIS AND ASSOCIATE IT WITH ABUSIVE SITUATIONS OR CHILD ABUSE.

Q. IS THE HISTORY GIVEN BY THE CARETAKER WHAT OCCURRED IMPORTANT IN DIAGNOSING BATTERED CHILD SYNDROME?

A. ABSOLUTELY, IT'S VITAL.

Q. WHY IS THAT SO IMPORTANT?

A. MEDICAL DIAGNOSIS IS BASED UPON HISTORY AND IT'S BASED ON PHYSICAL FINDINGS. AND THERE ARE A NUMBER OF INJURIES THAT WE WILL SOMETIMES SEE WHICH CAN BE INFLICTED. ALTHOUGH, IF PRESENTED WITH AN APPROPRIATE HISTORY, JUST

BECAUSE SOMETHING IS INFLICTED, DOESN'T MEAN IT'S ON PURPOSE. IT CAN BE ACCIDENTAL. BUT AS WE TRY TO PROVIDE INFORMATION TO THE DEPARTMENT OF CHILDREN AND FAMILIES, TO THE COURTS AND TO OUR CLIENTS WHO ARE OUR FAMILIES, THE HISTORY HAS TO BE PUT TOGETHER WITH THE PHYSICAL FINDINGS THAT YOU SEE TO COME UP WITH A DIAGNOSIS. THAT'S HOW WE WORK IN MEDICINE.

Q. COULD THESE INJURIES HAVE BEEN CAUSED FROM A FALL?

A. NO, MA'AM.

Q. WHY IS THAT?

A. WELL, FIRST OF ALL, WE HAVE RIB FRACTURES WHICH ARE DIFFERENT AGES. WE HAVE RIB FRACTURES WHICH ARE NOT THE SAME AGE AS THE BRAIN INJURY. RIB FRACTURES OCCUR FROM A VIGOROUS SQUEEZE WHICH IS NOT FROM A FALL AND A FALL WILL NOT CAUSE THIS DEGREE OF BRAIN INJURY.

Q. COULD A THREE-YEAR-OLD CHILD CAUSE THE AMOUNT OF DECELERATION-ACCELERATION TO THIS INFANT TO CAUSE THESE INJURIES?

A. IN MY OPINION, NO, MA'AM, IT COULD NOT OCCUR THAT WAY.

Q. WHY IS THAT?

A. A THREE-YEAR-OLD CANNOT GENERATE ENOUGH FORCE TO DO THIS AND AGAIN THIS IS SOMETHING WHICH IS NOT SEEN IN THE MEDICAL LITERATURE TO BE CAUSED BY A CHILD OF THAT

SIZE.

Q. HOW MUCH FORCE IS NEEDED?

A. DEMONSTRATIONS THAT I'VE SEEN BY NATIONALLY KNOWN, INTERNATIONALLY KNOWN PATHOLOGISTS AND PEDIATRICIANS SHOW IT AS A VERY VIOLENT FORCE. IT'S NOT A TOSSING UP IN THE AIR OR A SHAKING. IT'S A VERY VIOLENT TYPE SHAKING THAT OCCURS.

Q. THIS CHILD WAS A TWO-MONTH, TWO-WEEK-OLD INFANT. AT THAT AGE WHAT MOVEMENT WOULD THIS CHILD HAVE?

A. THE CHILD PROBABLY -- WELL, THE CHILD'S MOVING HIS HEAD. HE'S MOVING HIS ARMS AND LEGS. HE MOST PROBABLY WHEN PLACED ON HIS TUMMY CAN PUSH UP ENOUGH TO DROP ONE ARM AND THEY WILL ROLE FROM THEIR FRONT TO THEIR BACK. THIS CHILD IS NOT SITTING. THIS CHILD IS NOT GETTING UP AND STANDING. THIS CHILD IS PROBABLY ROLLING OVER AT BEST.

Q. IF THIS CHILD WERE TO ROLL OFF THE BED, WOULD THIS CHILD BE ABLE TO GET BACK UP ON THE BED?

A. NO, MA'AM.

Q. IF THIS CHILD WERE TO FALL OFF THE BATHROOM COUNTER, COULD THIS CHILD GET BACK UP ON THE COUNTER?

A. NO.

Q. IF THIS CHILD WERE TO FALL INTO THE TOILET, WOULD THE CHILD BE ABLE TO GET OUT OF THE TOILET AND BACK TO THE COUNTER?

A. UNFORTUNATELY NOT, NO, MA'AM.

Q. AS SPECIFICALLY TO THE RIB FRACTURES, IS THERE AN ACCIDENTAL WAY THAT THAT COULD OCCUR?

A. WELL, WE KNOW THAT RIB FRACTURES ACCORDING TO THE LATEST LITERATURE OVER THE LAST EIGHT, TEN YEARS IS ONE OF THOSE TYPES OF INJURIES THAT IS CONSIDERED PATHOGNOMONIC OR DIAGNOSTIC OF AFFLICTED TRAUMA ASSOCIATED WITH CHILD ABUSE. THIS IS MEDICAL LITERATURE WHO LOOKS AT CHILDREN WHO HAVE BEEN RESUSCITATED, OFTENTIMES BY UNTRAINED PEOPLE AND INCIDENTS OF RIB FRACTURES IN THIS GROUP OF ALMOST 400 PATIENTS WAS ZERO. BUT IT IS A VERY VIGOROUS SQUEEZE AND I CAN IMAGINE SOME SITUATIONS WHERE A LARGE FORCE IS PLACED ON A CHILD'S CHEST TO POSSIBLY CAUSE THIS, EVEN THOUGH I'VE NEVER SEEN IT. IT IS CONCEIVABLE.

Q. WITHIN A REASONABLE DEGREE OF MEDICAL CERTAINTY, RIB FRACTURES ARE CONSIDERED TO BE ABUSE?

A. YES, MA'AM.

Q. AND HOW PLIABLE ARE A CHILD'S RIBS?

A. THE RIBS ARE EXTREMELY PLIABLE AS ARE THE LONG BONES OF THE CHILD. THAT'S WHY WHEN CHILD'S BONES BREAK THEY DON'T SNAP IN TWO LIKE OUR OLDER MORE BRITTLE BONES. THEY BEND AND WHEN THEY DO BREAK THEY BREAK IN HALF. THAT'S WHY THEY GET THINGS CALLED GREENSTICK FRACTURES. BUT THEY DON'T BREAK LIKE OURS DO. THEY'RE VERY, VERY PLIABLE BECAUSE OF THE AMOUNT OF CARTILAGE AND LACK OF CALCIUM.

Q. ARE YOU FAMILIAR WITH THE TERM OSTEOGENESIS IMPERFECTA?

A. YES.

Q. WHAT IS THAT?

A. OSTEOGENESIS IMPERFECTA. CHILDREN ARE BORN WITH A NUMBER OF DIFFERENT TYPES OF IT. THESE CHILDREN BECAUSE OF GENETIC ABNORMALITIES HAVE BONES THAT FRACTURE EASILY. SOME OF THESE CHILDREN WITH CERTAIN TYPES ARE BORN WITH MULTIPLE FRACTURES. OTHER TYPES OF SITUATIONS THE CHILDREN SUSTAIN LONG BONE FRACTURES WITH RELATIVELY MINOR TRAUMA. THIS IS SOMETHING THAT IS DIAGNOSED WITH A CERTAIN BLOOD TEST. BUT WE CAN OFTENTIMES SEE IT RADIOLOGICALLY BECAUSE THE BONES ARE, WHEN YOU LOOK AT THEM ON X-RAY, THEY LOOK VERY WASHED OUT. THERE'S VERY POOR MINERALIZATION OF THE BONE AND YOU'LL SEE THESE UNUSUAL SHAPES OF THE BONES TOO THAT WILL LEAD YOU IN THAT DIRECTION.

Q. IS THERE ANY EVIDENCE OF THAT IN THIS CASE?

A. NOT IN MY OPINION.

Q. DR. SEIBEL, AFTER THIS CHILD WOULD HAVE RECEIVED THE DECELERATION-ACCELERATION INJURY, WOULD THIS CHILD HAVE BEEN ABLE TO EAT?

A. WITH THE AMOUNT OF INJURY THAT THIS CHILD SUSTAINED, THIS CHILD WOULD HAVE HAD VERY SEVERE SYMPTOMS WITHIN A VERY, VERY SHORT PERIOD OF TIME AFTER HIS INJURY.

Q. WOULD THIS CHILD HAVE BEEN ABLE TO CRY?

A. I DON'T THINK THIS CHILD WOULD HAVE BEEN ABLE TO DO MUCH OF ANYTHING. THERE WAS SUBSTANTIAL BLEEDING WITHIN THE BRAIN WHICH EVENTUALLY CAUSED HIS DEATH. AND I THINK THIS CHILD HAD SYMPTOMS WITHIN A VERY FEW NUMBER OF MINUTES AFTER HIS INJURY.

Q. DR. SEIBEL, WHEN YOU REVIEWED THESE CHARTS, DID YOU ALSO REVIEW WHEN THE CHILD WAS ADMITTED TO PRINCETON HOSPITAL?

A. YES, MA'AM.

Q. AND AT THAT POINT WHAT CONDITION WAS THE CHILD IN?

A. VERY SIMILAR CONDITION TO THE WAY I SAW HIM AT FLORIDA HOSPITAL LATER THAT EVENING, I BELIEVE.

Q. AND BASED ON YOUR REVIEW OF THE CHILD'S MEDICAL RECORD, DID THE INJURIES OCCUR PRIOR TO THE CHILD BEING ADMITTED TO THE HOSPITAL?

A. YES, MA'AM.

Q. DR. SEIBEL, DID YOU SEE ANY EVIDENCE THAT THIS CHILD HAD MENINGITIS?

A. I DID NOT SEE ANY EVIDENCE IN THE MEDICAL RECORDS, NO, MA'AM, I DID NOT.

Q. AND WHAT TYPE OF SYMPTOMS WOULD THE CHILD HAVE IF THE CHILD HAD MENINGITIS?

A. MENINGITIS IS A CONDITION WHERE THE LINING OF THE BRAIN OR THE MENINGES BECOMES INFECTED EITHER WITH A VIRUS

OR BACTERIA. THESE CHILDREN WILL PRESENT WITH FEVER, IRRITABILITY AND A DOWN HILL SPIRLING COURSE OVER TIME AND IF NOT TREATED FOR THE BACTERIAL SOURCE WILL LEAD TO DEATH.

Q. WOULD THAT BE EVIDENT ON THE AUTOPSY OF THE CHILD?

A. YES, MA'AM, ABSOLUTELY. ONE WOULD SEE PUSS OR INFECTED MATERIAL IN THE SPINAL FLUID. ONE WOULD SEE MARKED INFLAMMATION OR SWELLING OF THE MENINGES ON AUTOPSY ALSO.

Q. AS PART OF YOUR EXAMINATION OF THIS CHILD, WOULD YOU RULE OUT ANY NATURAL DISEASE AND CAUSES IN MAKING YOUR DIAGNOSIS?

A. YOU ALWAYS LIKE TO TRY TO PUT A NICE FACE ON IT. AND YOU LOOK AS HARD AS YOU CAN TO MAKE SOME SENSE OF IT. BUT I WASN'T ABLE TO FIND ANY NATURAL DISEASES OTHER THAN TRAUMA TO CAUSE THESE INJURIES IN THIS CHILD.

Q. DURING THE CHILD'S COURSE OF TREATMENT THE CHILD HAD FEVER. WHAT WOULD CAUSE THE CHILD TO HAVE A FEVER WHILE IN THE HOSPITAL?

A. PNEUMONIA, ALVEOLOSCHISIS OR COLLAPSING AREA OF THE LUNG. BRAIN INJURY CAN CAUSE DAMAGE TO THE REGULATORY CENTER OF THE BRAIN ITSELF CAUSING A FEVER. IF YOU WARM THE CHILD UP TOO MUCH, THE CHILD CAN HAVE A FEVER. A LOT OF THINGS CAN CAUSE FEVER IN A CHILD IN THIS STATE IN THE HOSPITAL.

Q. IF THE CHILD WERE TO HAVE PNEUMONIA, WOULD THAT CAUSE THE TYPE OF BRAIN INJURY THAT YOU SAW?

A. ABSOLUTELY NOT.

MS. WILKINSON: I HAVE NO FURTHER QUESTIONS.

CROSS-EXAMINATION

BY MR. BARRETT:

Q. GOOD MORNING, DR. SEIBEL.

A. GOOD MORNING, SIR.

Q. YOU JUST DISCUSSED SOME OF THE THINGS THAT COULD CAUSE A FEVER IN A CHILD. ISN'T MENINGITIS ONE OF THOSE THINGS THAT CAN CAUSE A FEVER?

A. MENINGITIS CAN CAUSE A FEVER.

Q. HOW LONG DID YOU EXAMINE THIS CHILD FOR?

A. I ONLY SPENT A FEW MINUTES DOING THE ACTUAL EXAMINATION OF THE CHILD. I SPENT SOME TIME REVIEWING THE CHART PRIOR TO GOING INTO THE EXAMINATION ROOM. I SPENT A FEW MINUTES LOOKING OVER THE X-RAYS AND CAT SCANS. I THEN EXAMINED THE CHILD AT LENGTH, HAD A FEW MOMENTS TO SPEAK WITH THE CHILD'S MOTHER AFTER I DID MY EXAMINATION.

Q. SO YOU SPOKE TO THE CHILD'S MOM?

A. YES, SIR.

Q. ARE YOU CERTAIN ABOUT THAT?

A. YES, SIR, I'M ABSOLUTELY CERTAIN ABOUT THAT.

Disputed

Q. IS IT REFLECTED ANY WAY IN THE NOTES OR RECORD THAT YOU MADE OF THIS CASE?

THE COURT: YOU'RE TO GIVE TESTIMONY ON THE STAND. YOU'RE NOT PERMITTED TO TESTIFY FROM THE VIEWING AREA.

MS. REAMS: I'M SORRY. I DIDN'T KNOW I WAS DOING IT.

THE COURT: GO AHEAD.

BY MR. BARRETT:

Q. IS IT RECORDED IN ANY DOCUMENT -- LET ME TRY IT THIS WAY, YOU DID DO A REPORT IN THIS CASE, DIDN'T YOU?

A. YES, SIR.

Q. IN FACT, YOU DID TWO REPORTS, ONE ADDENDUM AS WELL?

A. YES, SIR.

Q. DO YOU HAVE THOSE WITH YOU?

A. YES, SIR.

Q. IS IT REPORTED ANYWHERE IN ANY OF THOSE REPORTS THAT YOU DID SPEAK TO THE MOTHER OF THIS CHILD?

A. I'M NOT SURE.

Q. CAN YOU LOOK?

A. I DO HAVE INDEPENDENT RECOLLECTION OF SPEAKING TO HER. I REMEMBER THE ROOM. I REMEMBER TALKING TO HER. SHE WAS VERY DISTRAUGHT AND I HAVE INDEPENDENT RECOLLECTION OF SPEAKING WITH HER RIGHT AT THE BEDSIDE.

Q. THAT'S FINE, DOCTOR; BUT MY QUESTION WAS, IS THERE ANYWHERE IN ANY OF YOUR REPORTS ABOUT YOUR SPEAKING

TO THE MOM?

A. NO, SIR, NOT THAT I'M AWARE OF.

Q. OKAY. DO YOU INCLUDE IN YOUR REPORT A HISTORY OF THE CHILD MEDICAL HISTORY?

A. I INCLUDE ANY HISTORY THAT IS EITHER PERTINENT OR ANY HISTORY THAT I CAN GET MY HANDS ON.

Q. OKAY. DID YOU MAKE ANY ATTEMPTS TO GET THIS CHILD'S PRIOR MEDICAL RECORDS, PRENATAL RECORD, ANYTHING LIKE THAT?

A. NO, SIR, I DID NOT.

Q. YOU TALK ABOUT A FEW MINUTES, EXAMINING THE CHILD A FEW MINUTES, LOOKING AT THE X-RAYS A FEW MINUTES, READING THE REPORT. TOTALLY, HOW MUCH TIME DID YOU SPEND EXAMINING IN THIS CASE?

A. PROBABLY THERE OR AT THE HOSPITAL ANYWHERE BETWEEN A HALF HOUR AND 45 MINUTES. I DON'T RECALL EXACTLY HOW MUCH TIME IT WAS THOUGH.

Q. THAT'S FINE. DID YOU ALSO LOOK UP THE MEDICAL EXAMINER'S REPORT?

A. I HAVE BEEN MADE AWARE OF IT. I DON'T HAVE IT WITH ME. I DON'T REMEMBER REVIEWING IT VERY, VERY CAREFULLY.

Q. OKAY. YOU TALK ABOUT YOU SAW NO EVIDENCE IN THE MEDICAL RECORDS OF MENINGITIS. WHICH RECORDS ARE YOU TALKING ABOUT?

A. THE HOSPITAL RECORDS OF THE CHILD PRESENTED TO PRINCETON HOSPITAL AND THE EARLY RECORDS WHEN THE CHILD WAS ADMITTED TO FLORIDA HOSPITAL.

Q. HOW WOULD YOU FIND OR LOOK FOR MENINGITIS IN THE CHILD; WHAT WOULD YOU NEED TO DO?

A. WITH A SPINAL TAP.

Q. WAS A SPINAL TAP DONE IN THIS CASE?

A. AGAIN, I DON'T HAVE THOSE RECORDS HERE WITH ME.

Q. SO YOU DON'T EVEN KNOW IF ONE WAS DONE?

A. NO, SIR, I DO NOT.

Q. OKAY. SO WHEN YOU SAID YOU SAW NOWHERE IN THE CHILD RECORD EVIDENCE OF MENINGITIS, YOU DON'T KNOW IF ANYTHING WAS DONE TO CHECK?

A. THAT'S RIGHT.

Q. YOU CAN'T SAY THIS CHILD DID NOT HAVE MENINGITIS?

A. THERE WAS NO EVIDENCE OF ANYTHING IN THE MEDICAL RECORDS TO SUGGEST THE CHILD HAD MENINGITIS.

Q. THAT'S NOT MY QUESTION. CAN YOU TELL WHETHER THIS CHILD HAD MENINGITIS BASED UPON THE RECORDS THAT YOU LOOKED AT, SINCE THERE WAS NO SPINAL TAP?

A. BASED UPON THE RECORDS I EXAMINED, I DID NOT FEEL THE CHILD IN MY OPINION HAD MENINGITIS.

Q. THE ONLY WAY TO TELL IS BY A SPINAL TAP?

A. YES, SIR, OR ON POSTMORTEM.

Q. NO SPINAL TAP WAS DONE BY YOU OR TO YOUR

KNOWLEDGE BY ANYONE?

A. I DON'T HAVE THOSE RECORDS IN FRONT OF ME. I DON'T RECALL AT THIS TIME WHETHER ONE WAS DONE.

Q. DID YOU DO ANY PREPARATION WITH THE STATE ATTORNEY ABOUT YOUR TESTIMONY TODAY?

A. I SPENT A FEW MINUTES WITH MS. WILKINSON DISCUSSING SOME TIMING ISSUES BUT THAT'S ABOUT IT.

Q. WAS THIS THE FIRST TIME YOU HEAR ANYTHING ABOUT POSSIBLE MENINGITIS IN THIS CHILD? WAS THIS THE FIRST TIME YOU HEARD THAT?

A. I THINK IT WAS BROUGHT UP TO ME ONCE IN THE RECENT PAST. AGAIN, I DON'T RECALL.

Q. SO YOU HAD SOME REASON TO BELIEVE THAT THIS MAY VERY WELL BE AN ISSUE AND A QUESTION IN THIS CASE?

A. I WAS MADE AWARE OF IT, YES, SIR.

Q. DID YOU MAKE ANY ATTEMPTS TO CHECK THE RECORDS OR TO SEE IF ANY SPINAL TAP WAS DONE OR ANYTHING WAS DONE TO CHECK FOR MENINGITIS IN THIS CASE?

A. NO, SIR, BECAUSE I DIDN'T FEEL IT WAS IMPORTANT BASED ON THE PHYSICAL FINDINGS WHICH I FOUND ON THE CAT SCAN AND ON THE X-RAYS OF THIS CHILD'S CHEST.

Q. SO WHAT YOU'RE TELLING US IS BECAUSE OF WHAT YOU FOUND YOU MADE THE DETERMINATION THAT THIS WAS THE CAUSE OF DEATH IN THIS CHILD'S CASE AND DIDN'T LOOK ANY FURTHER?

A. NO, I DON'T MAKE DETERMINATIONS AS TO CAUSE OF

DEATH. THAT'S DONE BY THE ATTENDING PHYSICIAN AND THE PERSON AT THE MEDICAL EXAMINER'S OFFICE.

Q. DIDN'T YOU JUST TESTIFY, DOCTOR, THAT THIS CHILD DIED FROM SHAKEN BABY SYNDROME?

A. IN MY OPINION, YES, SIR.

Q. ISN'T THAT A CAUSE OF DEATH?

A. AGAIN, THE EXACT CAUSE OF DEATH IS DONE BY THE MEDICAL EXAMINER AND/OR THE ATTENDING PHYSICIAN. I'M MERELY STATING THE INJURIES THIS CHILD HAD. THE BRAIN INJURY IS SOMETHING THAT IN MY OPINION CAUSED THIS CHILD'S DEATH.

Q. OKAY. YOU ALSO SAID THERE WAS NO EVIDENCE IN THIS CASE OF WHAT IS COMMONLY KNOWN AS BRITTLE BONE SYNDROME.

A. YES, SIR.

Q. HOW WOULD YOU CHECK FOR THAT?

A. FIRST OF ALL, IT'S SOMETHING THAT WHEN CHILDREN HAVE WHAT YOU DETERMINE AS BRITTLE BONE SYNDROME, THE X-RAYS WILL APPEAR TO BE VERY WASHED OUT OR THEY WILL APPEAR TO BE A CERTAIN DENSITY. OTHER THAN THAT THERE IS CERTAIN TESTING THAT CAN BE DONE TO CONFIRM OR RULE OUT WHAT YOUR SUSPICION IS CLINICALLY.

Q. WHAT KIND OF TESTS?

A. THERE IS A CERTAIN GENETIC BLOOD TEST THAT CAN BE DONE.

Q. DO YOU KNOW IF ANY WAS DONE IN THIS CASE?

A. NO, SIR, I DO NOT.

Q. OKAY. HOW MANY X-RAYS DID YOU EXAMINE?

A. I DON'T KNOW EXACTLY, SIR. I KNOW I LOOKED AT A NUMBER OF X-RAYS, CHEST FILMS AND CAT SCAN BUT EXACTLY HOW MANY FILMS I LOOKED AT --

Q. NOT IN YOUR REPORT ANYWHERE HOW MANY X-RAYS YOU LOOKED AT OR NOT?

A. NO, SIR.

Q. WASN'T IMPORTANT?

A. I LOOKED AT EVERYTHING THAT WAS THERE. EXACTLY HOW MANY, I GENERALLY DON'T COUNT THE NUMBER OF X-RAYS THAT I SEE.

Q. YOU ALSO SAID THAT RIB FRACTURE'S CONSIDERED TO BE ABUSE?

A. YES, SIR.

Q. [redacted] WITHOUT ABUSE?

A. [redacted] I CAN ENVISION CERTAIN SITUATIONS OF A VERY VIGOROUS SQUEEZE OR WHICH CAUSES A LOT OF PRESSURE TO THE ANTERIOR CHEST WHICH CONCEIVABLY COULD CAUSE SIMILAR TYPE FRACTURES.

Q. AND BRITTLE BONE SITUATION IS ONE OF THOSE SITUATIONS THAT RIB FRACTURES THAT IS NOT ABUSE?

A. BRITTLE BONE OR OSTEOGENESIS IMPERFECTA.

Q. WHICH IS THE SAME THING?

A. RIGHT, YES, SIR. THAT CAN CAUSE MULTIPLE DIFFERENT TYPES OF VERY UNUSUAL FRACTURES.

Q. IN FACT, SOMETIMES IT CAN HAPPEN WHERE THE RIB FRACTURES ARE AT DIFFERENT TIMES IN BRITTLE BONE SYNDROME; ISN'T THAT ALSO CORRECT?

A. THAT'S TRUE BUT WE WOULD SEE MARKEDLY DIFFUSE DEMINERALIZED BONE WHICH WE DO NOT SEE IN THIS CASE.

Q. YOU ALSO INDICATED A THREE-YEAR-OLD COULD NOT GENERATE ENOUGH FORCE TO CAUSE THESE INJURIES?

A. NO, SIR, NOT IN MY OPINION.

Q. ARE WE TALKING ABOUT AN AVERAGE THREE-YEAR-OLD OR ANY THREE-YEAR-OLD?

A. I'M NOT SURE THAT I'VE EVER SEEN IT IN THE MEDICAL LITERATURE A THREE-YEAR-OLD COULD CAUSE ENOUGH SQUEEZING FORCE OR ENOUGH SHAKING DECELERATION FORCES TO CAUSE THIS.

Q. YOU KEEP SAYING IN THE MEDICAL LITERATURE. ARE YOU SUGGESTING IF IT'S NOT IN THE MEDICAL LITERATURE IT DOESN'T HAPPEN?

A. NO, SIR, I'M NOT.

Q. OKAY.

A. PEOPLE LIKE TO PUBLISH UNUSUAL AND STRANGE THINGS THOUGH AND THIS IS ONE OF THE WAYS PHYSICIANS COMMUNICATE REGARDING UNUSUAL SITUATIONS THAT CAN SOMETIMES COME UP.

Q. BUT AGAIN, THE FACT THAT IT'S NOT IN THE MEDICAL LITERATURE YOU HAVE SEEN DOES NOT INDICATE THAT IT CANNOT OCCUR; IS THAT CORRECT?

A. THAT'S ENTIRELY CORRECT, YES, SIR.

Q. I THINK THE STATE ASKED YOU HOW MUCH FORCE WOULD BE GENERATED. IS THERE A WAY OF QUANTIFYING THE AMOUNT OF FORCE THAT WOULD BE GENERATED?

A. ABSOLUTELY NOT, SIR.

Q. WOULD YOU ALSO HAVE TO TAKE INTO CONSIDERATION THE SIZE OF THE CHILD WHOSE EFFECTED OR INFLICTED WITH THE SQUEEZING OR WHATEVER ELSE INJURY?

A. TALKING ABOUT THE SQUEEZING OR TALKING ABOUT THE DECELERATION FORCES?

Q. LET'S START WITH THE RIB, THE SQUEEZING FACTOR. WOULD THE SIZE OF THE CHILD ALSO BE A FACTOR?

A. THE SIZE OF THE CHILD IS TO SOME DEGREE A FACTOR. THE BIGGER FACTOR IS THE AGE OF THE CHILD.

Q. OKAY. AND ALSO WOULDN'T THE BONE DEVELOPMENT OF THE CHILD, MEANING IF THE CHILD'S BONES WEREN'T WELL-DEVELOPED AND WELL-FORMED, WOULDN'T THAT EFFECT THE POSSIBILITY OF THE BREAKING OF THE RIBS?

A. ACTUALLY, THE YOUNGER THE CHILD, THE MORE PLIABLE

THEY ARE AND THE LESS THEY WOULD BREAK WITH NORMAL TYPES OF TRAUMA. AS THEY GET OLDER THEY BREAK EASIER.

Q. YOU'RE ASSUMING THIS YOUNGER CHILD WOULD HAVE BEEN DEVELOPED CORRECTLY FOR THE AGE GROUP; IS THAT CORRECT?

A. YES, SIR.

Q. IF IT'S A CHILD WHO'S YOUNG AND ALSO WAS NOT DEVELOPED PROPERLY, THIS DOES NOT APPLY?

A. THAT'S CORRECT, SIR.

Q. YOU TALK ABOUT, I THINK, IT'S DR. CAFFEY AND HIS FINDINGS ABOUT SHAKEN BABY?

A. I SPOKE ABOUT DR. KEMP.

Q. DR. KEMP. OKAY. I THOUGHT YOU SAID CAFFEY. ISN'T THE WHOLE ARGUMENT ABOUT HOW MUCH INJURY CAN BE CAUSED BY SHAKING, VIGOROUS SHAKING OF A CHILD, ISN'T THAT BEING DISPUTED BY SEVERAL DOCTORS?

A. MOST PEOPLE DISPUTE LOTS OF THINGS BUT IT IS THE GENERAL CONSENSUS OF THE MEDICAL COMMUNITY THAT THE DECELERATION FORCES ARE WHAT CAUSED THE SIGNIFICANT BRAIN INJURIES WE SEE IN THESE CASES.

Q. WHEN YOU SAY GENERAL CONSENSUS, HOW MANY PEOPLE ARE WE TALKING ABOUT?

A. WELL, ALL THE CHILD PROTECTION MEDICAL DIRECTORS IN THE STATE OF FLORIDA, WE HAVE MET ABOUT THIS AND I THINK IT'S UNANIMOUS AND AT NATIONAL CONFERENCES OF PATHOLOGISTS

AND PEDIATRICIANS I KNOW THIS HAS BEEN DISCUSSED AND YOU'RE ALWAYS GOING TO HAVE DISSENTERS BUT BY FAR AND AWAY, A HUGE MAJORITY IF NOT IN SOME SITUATIONS IT'S A UNANIMOUS OPINION THAT THIS IS THE WAY IT OCCURS.

Q. HAVE YOU EVER HEARD OF DR. MARCOS N-A-S-H-A-L-S-K-Y?

A. NO, SIR.

Q. HAVE YOU EVER HEARD OF DR. J.D. DIXON M.D.?

A. NO, SIR.

Q. HAVE YOU HEARD OF STUDIES THAT'S BEEN DONE WHERE MODELS HAVE BEEN MADE OF CHILDREN AND WHERE SHAKING HAS BEEN DONE TO THESE CHILDREN TO INDICATE OR TRY AND FIGURE OUT HOW MUCH INJURY, HOW MUCH FORCE WOULD BE REQUIRED TO CAUSE THE KIND OF INJURY THAT THE SHAKEN BABY THEORY BELIEVERS SUGGEST?

A. I'M AWARE OF CERTAIN STUDIES THAT HAVE BEEN DONE; ALTHOUGH, I'M NOT SURE I'VE READ THOSE PARTICULAR ONES.

Q. ARE YOU AWARE THAT SOME OF THESE STUDIES INDICATE THAT JUST SHAKING ALONE COULD NOT CAUSE THE KIND OF INJURY THE SHAKEN BABY INJURY SUGGESTS?

A. RIGHT. THAT'S WHY THE DECELERATION AND LATEST THEORY IS THAT IT'S THE DECELERATION FORCES BY SOME TYPE OF IMPACT, WHETHER IT'S A PILLOW OR MERELY STOPPING ON SOME TYPE OF SOFT SURFACE, THAT IS CORRECT. IT'S THE DECELERATION FORCES AND THAT'S WHY I MENTIONED THAT

EARLIER.

Q. DO YOU HAVE ANYTHING IN THIS CASE BASED UPON ANYTHING YOU'VE REVIEWED ABOUT THIS CHILD'S DEATH THAT SUGGESTS TO YOU THERE'S BEEN ANY KIND OF IMPACT WITH ONLY BEING A PILLOW OR FEATHER, ANY OBJECT, ANY EVIDENCE AT ALL IN THIS CASE THAT THERE'S BEEN ANY KIND OF IMPACT INJURY?

A. WELL, THERE'S NO BRUISING OR ANYTHING OF THE SCALP BUT YOU DON'T ALWAYS SEE THAT. AGAIN, JUST BECAUSE THERE'S NO EVIDENCE OF BRUISING OR CRACKING AT THE BACK OF THE SKULL DOES NOT MEAN IT DOESN'T OCCUR. BUT NO, I DON'T.

Q. OKAY. YOU SAID THE HISTORY GIVEN BY THE CARETAKER IS VERY IMPORTANT?

A. ABSOLUTELY.

Q. DID YOU TALK TO MR. YURKO ABOUT WHAT OCCURRED THAT DAY?

A. NO, SIR, I DID NOT.

Q. DID YOU MAKE ANY ATTEMPT TO SPEAK TO HIM?

A. NO, I SPOKE WITH THE CHILD'S MOTHER AT THE BEDSIDE WHICH IS THE ONLY DIRECT HISTORY THAT I RECEIVED.

Q. YOU TALK ABOUT RETINAL INJURY AND HOW IMPORTANT THAT IS FOR THE SHAKEN BABY THEORY?

A. WELL, THAT'S NOT IMPORTANT -- RETINAL HEMORRHAGES IS NOT TRULY PART OF THE EARLY SHAKEN BABY THEORY AS PROPOSED BY DR. KEMP. IT IS SOMETHING WE DO SEE. IT IS SOMETHING THAT IS COMMONLY ASSOCIATED WITH IT. BUT ONE CAN

HAVE SHAKEN INJURY OR A DECELERATION IMPACT TYPE INJURY WITHOUT RETINAL HEMORRHAGES.

Q. DID YOU EXAMINE THE CHILD'S EYE IN THIS CASE, HIS RETINA?

A. NO, SIR, I DID NOT. I MERELY REVIEWED THE MEDICAL RECORD.

Q. WHO EXAMINED THE CHILD'S EYE TO YOUR KNOWLEDGE?

A. I DIDN'T WRITE DOWN EXACTLY WHO IT WAS. BUT THAT SHOULD BE SOMETHING WHICH IS AVAILABLE IN THE MEDICAL RECORD. BUT THEY ALWAYS DO HAVE A BOARD CERTIFIED PEDIATRIC OPHTHALMOLOGIST DO IT. I'M NOT SURE WHO IT WAS.

Q. DO YOU KNOW HOW MUCH HEMORRHAGE WAS FOUND IN THE CHILD'S RETINA IN THIS CASE?

A. NO, I DO NOT.

Q. DO YOU KNOW WHETHER IT WAS A LOT OR NOT?

A. AGAIN, I DON'T KNOW.

Q. WOULD THAT BE SIGNIFICANT?

A. IT WOULD BE HELPFUL.

Q. WOULD THAT BE SIGNIFICANT?

A. I'M NOT SURE WHAT YOUR DEFINITION OF SIGNIFICANT IS. IT WOULD BE MORE INFORMATION PROVIDED TO BEST DIAGNOSE THIS CHILD'S CONDITION. BUT IN AND OF ITSELF IS NOT A DEAL BREAKER SO TO SPEAK. IT IS HELPFUL INFORMATION TO KNOW.

Q. DO YOU KNOW WHETHER OR NOT THERE WAS RETINAL HEMORRHAGE IN BOTH EYE OR ONE EYE?

A. I'M NOT SURE WHICH ONE OR WHO DID IT.

Q. DOES THAT MEAN YOU'RE NOT SURE WHETHER OR NOT IT WAS IN ONE EYE OR BOTH EYES?

A. I DON'T KNOW.

Q. IN YOUR REPORT DO YOU MENTION ANYTHING IN YOUR REPORTS ABOUT RETINAL HEMORRHAGE?

A. NO, SIR.

Q. YOU DIDN'T? WHEN WAS THE LAST TIME YOU LOOKED AT THE CHILD'S RECORDS?

A. I'M NOT -- THE CHILD'S MEDICAL RECORDS FROM THE HOSPITAL ARE GENERALLY NOT MADE AVAILABLE TO ME. I PROVIDE CONSULTING INFORMATION TO THE DEPARTMENT OF CHILDREN AND FAMILIES AND LAW ENFORCEMENT AS WELL AS THE STATE ATTORNEY. BUT I DON'T SIFT THROUGH THE MEDICAL RECORDS WEEKS AND MONTHS AFTERWARDS, UNLESS THERE'S SOMETHING WHICH IS IMPORTANT THAT THE STATE ATTORNEY AND OR THE DEPARTMENT OF CHILDREN AND FAMILIES ASKED ME TO LOOK AT.

Q. DID YOU UNDERSTAND MY QUESTION?

A. YES, SIR, I DID.

Q. MY QUESTION WAS WHEN WAS THE LAST TIME YOU LOOKED AT THE CHILD'S MEDICAL RECORDS?

A. HIS ACTUAL MEDICAL RECORDS I LOOKED AT WHEN I WAS IN THE HOSPITAL WHICH WOULD HAVE BEEN 1997, SIR.

Q. OKAY. AND THIS WAS BEFORE THE AUTOPSY WAS DONE?

A. YES, SIR.

Q. AND CHECK FOR RETINAL HEMORRHAGE, WOULD HAVE BEEN DONE AS PART OF THE AUTOPSY OR SOMEWHERE AROUND THAT TIME?

A. THAT WOULD HAVE BEEN DONE WHILE THE CHILD WAS HOSPITALIZED BEFORE THE AUTOPSY.

Q. TO CHECK IF THERE WAS ANY HEMORRHAGE, YOU WOULD HAVE TO REMOVE OR CUT TO SEE WHAT'S BEHIND THE EYES?

A. NO, SIR, IT'S SOMETHING THAT CAN BE SEEN BY A WELL-TRAINED OPHTHALMOLOGIST. OFTENTIMES I'LL LOOK FOR THEM AND SEE THEM ALSO IF I DON'T HAVE TO DILATE THE CHILD'S EYES OR THE CHILD'S EYES HAVE BEEN DILATED BY THE OPHTHALMOLOGIST PRIOR TO MY EXAMINING THE CHILD THAT I CAN SEE THEM.

Q. IS THAT YOUR SUGGESTION THAT'S WHAT WAS DONE IN THIS CASE THAT SOME OPHTHALMOLOGIST WITHOUT CHECKING BEHIND THE CHILD'S EYE TO SEE IF THERE WAS ANY BLEEDING?

A. AGAIN, SIR, YOU'RE GOING TO HAVE TO CONSULT WITH THE MEDICAL RECORD. I'M NOT EXACTLY SURE WHAT ACTUALLY HAPPENED AND WHAT THE TIMING WAS BUT THE LOOKING IS SOMETHING THAT THE OPHTHALMOLOGIST, THAT'S WHAT THEY DO.

Q. WHEN YOU EXAMINED THE CHILD'S RECORD, DID YOU SEE ANY SIGNS OF TEARING OF THE BLOOD VESSELS IN THE BACK OF THE EYE? HOW WOULD YOU SEE THAT?

A. BY LOOKING IN THE EYE, BY DILATING THE EYE AND LOOKING WITH AN OPTHALMOSCOPE.

Q. YOU ALSO TALK ABOUT AXONAL INJURY. CAN YOU SEE

THIS DIFFUSE AXONAL INJURY BY LOOKING AT THE CHILD?

A. NO, SIR.

Q. WHAT WOULD YOU HAVE TO DO?

A. IT'S SOMETHING YOU CAN SEE ON RADIOLOGIC SCANS, EITHER CAT SCAN OR MRI. BUT IT'S SOMETHING WHICH IS A PATHOLOGIC TERM. IN OTHER WORDS, WHEN THERE IS SECTIONING OF THE BRAIN MATERIAL ON AUTOPSY, ONE SEES THIS PARTICULAR TYPE OF INJURY.

Q. SO OBVIOUSLY YOU PERSONALLY DIDN'T SEE THIS KIND OF AN INJURY SINCE YOU WEREN'T PART OF THE AUTOPSY?

A. NO, SIR, I DID NOT.

Q. BUT IN YOUR REPORT YOU TALK ABOUT DIFFUSE AXONAL INJURIES; IS THAT CORRECT?

A. YES, SIR, THAT'S THE CURRENT THEORIES REGARDING THESE CHILDREN WHEN THERE IS SIGNIFICANT BLEEDING IN THE BRAIN AS WE SAW IN THIS CASE.

Q. WE'RE NOT TALKING ABOUT THEORIES. IN YOUR [redacted]INATION OF THIS CHILD YOU ACTUALLY DID NOT SEE DIFFUSE [redacted]ONAL INJURY?

A. [redacted]O, SIR, I DID NOT.

Q. THE WAY TO SEE IT WOULD HAVE BEEN THROUGH AN [redacted]AUTOPSY; IS THAT CORRECT?

A. [redacted]T'S CORRECT.

Q. YOU DID NOT REVIEW THE MEDICAL EXAMINER'S REPORT; IS THAT CORRECT?

A. THAT'S CORRECT, SIR.

Q. SO YOU DON'T KNOW IF THERE'S DIFFUSE AXONAL INJURY IN THIS CASE; IS THAT CORRECT?

A. THAT CAN BE ASSUMED BASED ON THE INTERPARACHYMAL BLEEDING PRESENT IN THIS CHILD; BUT NO, I DID NOT.

Q. YOU ALSO SAID THE SYMPTOMS, I'M ASSUMING THE SYMPTOMS OF THE SUBDURAL HEMORRHAGE THAT WOULD OCCUR WITHIN A MATTER OF MINUTES; IS THAT THE SYMPTOMS YOU WERE TALKING ABOUT?

A. WHAT I WAS TRYING TO DESCRIBE TO MS. WILKINSON IS THAT WHEN THERE IS SUBSTANTIAL BRAIN INJURY IN THIS CASE, CHILDREN DON'T WALK AROUND AND ACT NORMAL BECAUSE THERE'S SUCH SUBSTANTIAL INJURY TO THE BRAIN MATERIAL ITSELF THAT THE SYMPTOMS THAT OCCUR OCCUR RELATIVELY QUICKLY.

Q. ISN'T IT ALSO BEING DISPUTED, DOCTOR?

A. I'M NOT SURE WHAT YOU MEAN.

Q. HASN'T THERE BEEN STUDIES DONE THAT SUGGEST THAT THERE MAY BE A LONGER INTERVAL BETWEEN THE INJURY AND THE ONSET OF SYMPTOMS?

MS. WILKINSON: YOUR HONOR, THE STATE WOULD OBJECT AS IMPROPER PREDICATE.

THE COURT: SUSTAIN.

BY MR. BARRETT:

Q. NOW THIS KNOWLEDGE ABOUT THE ONSET OF THE SYMPTOMS AND PROXIMITY TO THE INJURY ITSELF, YOU GET THIS

FROM WHAT MEDICAL LITERATURE?

A. YES, SIR.

Q. CAN YOU TELL US WHAT LITERATURE YOU ACTUALLY GET THIS INFORMATION FROM?

A. IF YOU READ A NUMBER OF THE RECENT PAPERS BY DR. RANDAL ALEXANDER FROM THE UNIVERSITY OF IOWA, WHAT HIS PUBLICATIONS TALK ABOUT IS WHEN THERE IS SUBSTANTIAL INJURY TO THE BRAIN WHICH ONE CAN SEE ON AUTOPSY AS DIFFUSE AXONAL INJURY BUT IS SEEN CLINICALLY AS INTERPARACHYMAL BLEEDING THAT THERE IS SUCH SIGNIFICANT BRAIN INJURY THAT THE SYMPTOMS OCCUR VERY QUICKLY. KIDS CAN'T WALK AROUND WITH THIS DEGREE OF BRAIN INJURY AND ACT NORMAL.

Q. THIS CHILD AT TWO MONTHS WASN'T WALKING AROUND AT ALL WITH OR WITHOUT THESE INJURIES; IS THAT CORRECT?

A. THAT IS CORRECT.

Q. THE SUBDURAL HEMORRHAGE THIS CHILD HAD, DID YOU TELL US WHETHER IT WAS ON BOTH SIDE OF THE CHILD'S HEAD OR ONE SIDE?

A. AGAIN, I NOTED IT WAS THERE. I LOOKED AT THE X-RAY. I DON'T HAVE THE X-RAY REPORTS, NOR DO I HAVE THE CAT SCANS TO REVIEW AT THIS TIME.

Q. SO AT THIS TIME YOU DON'T REMEMBER OR DON'T KNOW IF IT'S ON ONE SIDE OR BOTH?

A. NO, I NOTED IN MY REPORT THERE WAS SUBDURAL BLEEDING THERE. I DON'T KNOW WHETHER IT WAS ANTERIOR,

POSTERIOR AND HOW BIG IT WAS AT THIS TIME BECAUSE I DON'T HAVE THE X-RAYS WITH ME.

Q. NOW, ACCELERATION-DECELERATION INJURY IS THE ONLY THING THAT COULD CAUSE THIS KIND OF A BLEEDING?

A. NO, THERE ARE OTHER POSSIBILITIES OF THINGS THAT CAN CAUSE IT, IF YOU LOOK AT THE BLEEDING INDEPENDENT OF EVERYTHING ELSE THAT CAN OCCUR.

Q. IS BACTERIAL INFECTION ONE OF THESE?

A. BACTERIAL INFECTION DOESN'T GENERALLY CAUSE SUBDURALS UNTIL DOWN THE ROAD AFTER IT'S BEEN TREATED.

Q. DOES THAT MEAN BACTERIAL INFECTION IS NOT ONE OF THESE?

A. NO, SIR.

Q. IT'S NOT? HOW WOULD YOU CHECK TO SEE WHETHER OR NOT THIS CHILD HAD A BACTERIAL INFECTION?

A. EITHER THROUGH A SPINAL TAP OR A LOOK ON AUTOPSY TO SEE WHETHER THIS AREA WAS EXAMINED.

Q. WOULD THE AMOUNT OF PLATELETS IN THE CHILD ALSO EFFECT THE AMOUNT OF BLEEDING?

A. OH, YES, SIR.

Q. AND JUST FOR THE JURY'S BENEFIT, COULD YOU EXPLAIN WHAT PLATELETS ARE?

A. PLATELETS ARE A VERY SMALL TYPE OF MATERIAL OR CELLULAR TYPE OF MATERIAL WHICH ARE MADE BY THE BLOOD THAT CAUSE CLOTTING AND WITHOUT THESE ONE CAN HAVE CERTAIN TYPES

OF BLEEDING.

Q. I BELIEVE YOU STATED YOU DID LOOK AT THE CHILD'S X-RAYS WHEN THE CHILD WAS ADMITTED IN THE HOSPITAL?

A. YES, SIR.

Q. ARE YOU AWARE OF THE FACT THAT WHEN THE CHILD CAME IN, THE CHILD'S PLATELET COUNT WAS 571; ARE YOU AWARE OF THAT?

A. YES, SIR.

Q. ISN'T THAT HIGH FOR THIS CHILD?

A. 571 IS EXTREMELY LOW, SIR.

Q. IT'S LOW?

A. YES, SIR.

Q. ISN'T THE AVERAGE BETWEEN 1725 AND 4740?

A. THE AVERAGE FOR A CHILD OF THIS AGE, NORMAL WOULD BE OVER A HUNDRED THOUSAND.

Q. OKAY. EXCUSE ME. I THINK I DID THAT WRONG.

A. THAT'S OKAY, SIR.

Q. ACTUAL COUNT WAS, WASN'T IT 571 TIMES TEN TIMES THREE? COULD YOU EXPLAIN TO US WHAT THAT MEANS?

MR. BARRETT: IF I MAY APPROACH THE WITNESS?

THE COURT: YES. WHY DON'T YOU SHOW HIM WHAT YOU'RE REFERRING TO.

MR. BARRETT: I'LL DO THAT.

BY MR. BARRETT:

Q. DO YOU RECOGNIZE THAT, DOCTOR?

A. YES, SIR. IT SAYS THE PLATELET COUNT WAS 571,000.

Q. ISN'T THAT EXTREMELY HIGH?

A. THAT'S NOT -- IF WE'RE TALKING UPWARDS AROUND A MILLION, THAT'S HIGH.

Q. ISN'T THAT HIGH?

A. THIS IS HIGH. THIS IS HIGH BASED ON LABORATORY NORMS OF 125,000 TO 442,000.

Q. OKAY. WOULD THE CHILD'S WHITE BLOOD COUNT BE AN INDICATION OF INFECTION ALSO?

A. WHITE BLOOD CELLS ARE THINGS WITHIN THE BLOOD STREAM THAT HELP TO FIGHT INFECTION. AND WHEN THERE'S OVERWHELMING SEPSIS, OFTENTIMES WE SEE A VERY, VERY LOW WHITE COUNT BECAUSE THE WHITE CELLS ARE BEING USED UP. SOMETIMES WE SEE VERY, VERY HIGH WHITE COUNT INDICATING THE BODY IS FIGHTING OFF SOME KIND OF INFLAMMATORY PROCESS.

Q. IN THE CHILD'S CASE WASN'T THE BODY TRYING TO FIGHT OFF SOME KIND OF INFECTION?

A. I DON'T KNOW.

Q. WAS THE CHILD'S WHITE BLOOD COUNT AGAIN EXTREMELY HIGH AS WELL IN THIS CASE?

A. I THINK THIS SAYS 20,900.

Q. TIMES TEN AGAIN. WHAT'S THE RANGE FOR WHITE BLOOD COUNT?

A. GENERALLY WE LOOK AT SOMEWHERE IN THE TEN TO

15,000 RANGE.

Q. THIS CHILD'S WHITE BLOOD CELL COUNT WAS HIGH?

A. YES, SIR. WE LOOK AT THE TYPES OF WHITE CELLS THAT ARE PRESENT. WE LOOK FOR ACUTE INFLAMMATORY CELLS OR YOUNGER CELLS, SOMETHING CALLED BANDS WHICH ARE YOUNG NEUTROPHILS.

Q. YOU CAN PUT IT DOWN.

RIB INJURIES, YOU SAID THEY WERE IN DIFFERENT STAGE OF HEALING; IS THAT CORRECT?

A. YES, SIR.

Q. ISN'T IT ALSO TRUE YOU CAN'T TELL WHETHER OR NOT AN INJURY OCCURRED A WEEK TO FIVE WEEKS, THERE'S NO WAY OF SHOWING THE DIFFERENCE IN TERMS OF HEALING PROCESS?

A. THAT IS CORRECT, SIR, YES.

Q. AND IT IS YOUR OPINION THAT THESE INJURIES WERE LESS THAN FIVE WEEKS OLD?

A. THEY WERE OF DIFFERENT AGES. AND FIVE WEEKS, AGAIN, THAT'S VERY, VERY DIFFICULT TO SAY.

Q. WERE ANY OF THESE INJURIES LESS THAN FIVE WEEKS OLD?

A. THE SMALLER CALLUSES POSTERIORLY MOST LIKELY WERE. THE LARGER ONE LATERALLY, AGAIN, IT'S VERY DIFFICULT TO DATE RIB INJURIES.

Q. THE RIB INJURIES ON THE X-RAYS WOULD HAVE BEEN SOMETHING A RADIOLOGIST WOULD LOOK AT?

A. YES, SIR.

Q. AND GIVE HIS OPINION?

A. YES, SIR.

Q. YOU'RE NOT A RADIOLOGIST, ARE YOU?

A. NO, SIR, I'M NOT.

Q. WOULD YOU DEFER TO THE OPINION OF A RADIOLOGIST ABOUT AN OPINION?

A. IF I KNOW OF A BOARD CERTIFIED RADIOLOGIST THAT HAS EXPERTISE IN PEDIATRICS, ABSOLUTELY.

Q. IF A RADIOLOGIST WERE TO COME INTO THIS COURTROOM AND INDICATE TO YOU NO WAY OF TELLING THE AGE OF THESE INJURIES, YOU WOULD DEFER TO THEM?

A. THAT'S NOT ACTUALLY AN ENTIRELY TRUE STATEMENT.

Q. ABOUT YOUR DEFERRING TO HIM OR THE AGE OF THE INJURY?

A. TO SAY SOMEONE WOULD SAY THEY HAVE ABSOLUTELY NO WAY OF DATING THESE KINDS OF THINGS. THAT'S ACTUALLY NOT AN ENTIRELY TRUE STATEMENT.

Q. LET ME REPHRASE IT. I'M NOT TALKING ABOUT INJURIES THAT'S LESS THAN A WEEK OLD. I'M TALKING ABOUT WHETHER OR NOT YOU CAN TELL THE DIFFERENCE WITH AN INJURY SAY WEEKS OR MONTHS OLD?

A. THAT'S AN ACCURATE STATEMENT, YES, SIR.

Q. AND THE X-RAYS THAT YOU LOOK AT WOULD PROBABLY BE THE SAME ONES THAT THE RADIOLOGIST WOULD HAVE LOOKED AT,

CORRECT?

A. I'M ABSOLUTELY SURE THEY WERE.

Q. I MAY HAVE ASKED THIS QUESTION. IF I HAVE, LET ME KNOW. PLATELET ABNORMALITIES COULD CAUSE BLEEDING TO BE EASIER, CORRECT?

A. PLATELET ABNORMALITIES, WHEN PLATELETS ARE EXTRAORDINARILY LOW, COULD CAUSE THE CHILD TO BLEED EASILY. THE PLATELETS WERE QUITE HIGH. WE USE PLATELETS AS WHAT WE CALL A ACUTE PHASE REACTANT. WHEN THERE'S AN ISSUE GOING ON WITH THE BODY, A LOT OF TIMES YOU WILL SEE AN ELEVATED PLATELET COUNT BUT THIS WON'T CAUSE SUBSTANTIAL BLEEDING UNLESS THE PLATELETS AREN'T FUNCTIONING.

Q. YOU'RE SAYING SEVERE INFECTION COULD NOT HAVE CAUSED THE BLEEDING IN THE BRAIN OR COULD SEVERE INFECTION?

A. [redacted] OF BLEEDING IN THE BRAIN THAT WAS SEEN IN THIS PARTICULAR CHILD.

Q. AGAIN, YOUR OPINION AS TO THE EXTENT OF THE BLEEDING COMES FROM THE X-RAYS, NOT FROM THE AUTOPSY ITSELF, CORRECT?

A. ABSOLUTELY, CORRECT, SIR.

Q. AND FINALLY, I BELIEVE, YOU SAID EARLIER IT WOULD HAVE BEEN INAPPROPRIATE TO MAKE UP YOUR MIND BEFORE YOU CONSIDER EVERYTHING. THAT WAS YOUR STATEMENT?

A. I THINK I SAID THAT, YES, SIR.

Q. YOU DIDN'T LOOK AT THE MEDICAL EXAMINER'S REPORT, CORRECT?

A. IT WAS NOT AVAILABLE WHEN I DID MY EVALUATION, SIR. THE CHILD HAD NOT EXPIRED YET.

Q. THAT MEANS NO, YOU DIDN'T?

A. THAT'S RIGHT.

Q. YOU DIDN'T GET THE CHILD'S MEDICAL HISTORY, PRENATAL HISTORY, ANYTHING LIKE THAT TO LOOK AT?

A. NO, SIR.

Q. YOU DIDN'T LOOK AT THE OPHTHALMOLOGIST FINDING IN THE AUTOPSY; IS THAT CORRECT?

A. THE OPHTHALMOLOGIST DIDN'T DO HIS FINDINGS AT THE AUTOPSY. HE WOULD HAVE DONE HIS FINDINGS PRIOR TO THAT. I WAS MADE AWARE OF THAT. I DON'T HAVE THAT INFORMATION WITH ME, SIR.

Q. YOU DIDN'T SPEAK TO MR. YURKO ABOUT THE EVENTS THAT OCCURRED PRIOR TO?

A. NO, SIR, I DID NOT.

Q. YOU DIDN'T GET EVERYTHING?

A. NO, SIR.

MR. BARRETT: NO, FURTHER QUESTIONS.

THE COURT: REDIRECT?

MS. WILKINSON: THANK YOU.

REDIRECT EXAMINATION

BY MS. WILKINSON:

HEAD OR BONY PART OF THE SKULL STOPS THAT THE BRAIN IS CONTINUING TO MOVE AND WITH THAT DIFFERENTIAL THAT THERE ARE SHEERING FORCES OR TEARING IN THE BLOOD VESSELS BOTH IN THE BRAIN AND THE BLOOD VESSELS THAT GO BETWEEN THE BRAIN AND THE LINING OF THE BRAIN.

Q. YOU'VE REFERRED TO THE MEDICAL LITERATURE. IS MEDICINE ALWAYS CHANGING AND DEVELOPING FURTHER?

A. YES, MA'AM, ABSOLUTELY.

Q. AND MEDICINE OF TWENTY YEARS AGO WOULD BE DIFFERENT THAN WHAT IT IS TODAY?

A. WE HAVE, I THINK, WE'RE A LOT SMARTER THAN WE WERE AND WE HAVE A LOT MORE TECHNOLOGY AT OUR FINGERTIPS THAT ALLOWS US TO DO A LOT MORE, ABSOLUTELY.

Q. AND IN THE RECENT YEARS WERE -- WAS THERE A CASE THAT CAUSED EVEN MORE LITERATURE AND RESEARCH TO BE DONE IN THE AREA OF ACCELERATION-DECELERATION INJURIES?

A. WE'RE UNFORTUNATELY HAVING CASES OUT OF THAT. THERE IS CONTINUING ONGOING DISCUSSIONS AMONG PHYSICIANS ON THESE INJURIES.

Q. IS THAT AN AREA YOU STAY CURRENT ON?

A. I'M SORRY, COULD YOU SAY THAT AGAIN?

Q. IS THAT AN AREA OF THE PROFESSIONAL LITERATURE YOU STAY CURRENT ON?

A. YES, MA'AM.

Q. ON YOUR OBSERVATION OF THE CAT SCAN, WERE YOU

Q. DR. SEIBEL, COULD THE CHILD HAVE HAD AN INFECTION AND STILL HAD THESE INJURIES?

A. I'M SORRY, COULD YOU SAY THAT AGAIN?

Q. IS IT POSSIBLE OR COULD THE CHILD HAVE HAD AN INFECTION AND THEN ALSO HAVE BEEN INJURED?

A. ABSOLUTELY.

Q. AND WAS THERE ANY PRESENCE OF YOUNG WHITE BLOOD CELLS NEUTROPHILS THAT YOU OBSERVED?

A. THE CHILD HAD FIVE PERCENT NEUTROPHILS. AS I DIDN'T LOOK AT THE EXACT DATE THE WHITE COUNT WAS TAKEN BUT IT WAS A VERY LOW NUMBER OF YOUNG WHITE CELLS INDICATING THAT THERE WAS NOT SUBSTANTIAL EVIDENCE OF THE BONE MARROW PUMPING OUT LOTS OF NEW BLOOD CELLS TO FIGHT INFECTION.

Q. EARLIER YOU TALKED ABOUT AS FAR AS DECELERATION-ACCELERATION INJURY WHERE THE CHILD FALLS ONTO A PILLOW. WOULD THERE BE ANY TYPE OF INJURY THAT YOU WOULD OBSERVE IF THE CHILD, DECELERATION, WAS STOPPED BY A PILLOW?

A. NO, MA'AM.

Q. AND WHY IS THAT?

A. PILLOWS DON'T CAUSE BRUISING AND SUBSTANTIAL INJURY TO SCALP OR BONE.

Q. WHAT IS IT ABOUT THE DECELERATION THAT CAUSES THE INJURY TO THE CHILD?

A. AGAIN, THE FEELING, THE THEORY IS THAT WHEN THE

ABLE TO OBSERVE INTERPARACHYMAL BLEEDING?

A. INTERPARACHYMAL BLEEDING, IT WAS SEEN ON RADIOLOGIC STUDIES THAT WERE DONE IN FLORIDA HOSPITAL.

Q. IS THAT WHAT YOU BASE YOUR OPINION ON THAT THE CHILD HAD ACCELERATION-DECELERATION INJURY?

A. YES, MA'AM.

Q. ONCE THE CHILD RECEIVED THIS INJURY, WOULD THE CHILD HAVE BEEN ROOTING, SUCKING OR CRYING THAT THE CHILD WAS HUNGRY?

A. THIS CHILD HAS SO MUCH BLEEDING IN THE BRAIN THIS CHILD WOULD NOT HAVE BEEN ABLE TO DO MUCH OF ANYTHING, MA'AM.

Q. [redacted] WEEKS PREMATURE EFFECT YOUR OPINION IN THIS CASE IN ANY WAY?

A. [redacted] MA'AM.

Q. AND WHY IS THAT?

A. A 35-WEEK INFANT IS GOING TO HAVE, IF HIS BONE MINERALIZATION IS NORMAL, IS GOING TO HAVE THE SAME TYPES OF BONES AS OTHER BABIES. IT'S NOT YOUNG ENOUGH TO BE REALLY TERRIBLY WORRIED ABOUT RICKETS OR OTHER TYPES OF THINGS LIKE THAT. THIS CHILD IS ALSO GOING TO NOT HAVE THE SAME TYPE OF FRAGILITY OF THE BRAIN VESSELS THAT WE WOULD SEE IN A 24, 26, 28-WEEK PREMATURE INFANT. THIRTY-FIVE WEEKS IS CLOSE TO TERM. TERM IS 38 WEEKS. AND I WOULD

EXPECT THIS TO BE, IF TAKEN CARE OF PROPERLY IN THE HOSPITAL, A NORMAL BABY.

Q. THE TYPE OF CONDITION THAT LITTLE JOE YURKO HAD, WOULD A SPINAL TAP AT THAT POINT BEEN APPROPRIATE?

A. IN MY OPINION, MA'AM, A SPINAL TAP WOULD HAVE PROVIDED LITTLE MORE INFORMATION BUT THIS CHILD WAS IN THE IN THE STATE OF BEING VENTILATED WHEN A SPINAL TAP COULD HAVE BEEN DONE. IF ONE SUSPECTS MENINGITIS IN THIS PARTICULAR SITUATION, YOU TREAT FOR IT AND DON'T WORRY ABOUT OVER TREATING WITH ANTIBIOTICS. BUT A SPINAL TAP, ROLLING THE CHILD OVER AND STICKING A NEEDLE IN HIS BACK WHEN HE'S ON A VENTILATOR AND IN THIS STATE IS SOMETIMES NOT APPROPRIATE.

Q. AND WE'VE TALKED A LOT ABOUT SHAKEN BABY SYNDROME. IS IT THE SHAKING ITSELF THAT CAUSES THE INJURY TO THIS CHILD?

A. NO, MA'AM.

Q. WHAT IS IT?

A. IT'S THE RAPID DECELERATION. RAPID DECELERATION CAN BE SEEN AS STOPPING BUT MOST MEDICAL EXAMINERS AROUND THE COUNTRY ARE BEGINNING TO TALK ABOUT THE RAPID DECELERATION AS STRIKING SOME OBJECT AS SOFT OR HARD THAT CAUSES THE ACTUAL INJURY.

Q. WHEN YOU REFER TO SOMETHING SOFT, WHAT DO YOU MEAN?

A. A PILLOW, A BLANKET, SOMETHING THAT STOPS THE SKULL QUICKLY AND THE BRAIN IS CONTINUING TO MOVE AT A RAPID PACE.

Q. THE FACT THAT THERE WERE NO EXTERNAL BRUISES TO THE CHILD'S HEAD EXCEPT FOR A SMALL BRUISE TO THE CHILD'S EYE OR UNDER HIS EYE, DOES THAT EFFECT YOUR OPINION IN ANY WAY?

A. NO, MA'AM.

Q. AND WHY IS THAT?

A. SOME THINGS DON'T LEAVE BRUISES IN THE BACK OF THE HEAD OR ON THE SIDE OF THE HEAD AND, IN FACT, MOST OF THESE CASES WE DON'T SEE SUBSTANTIAL SCALP AND/OR HEAD BRUISING.

Q. IF THE CHILD HAD FALLEN FROM THREE OR FOUR FEET, WOULD YOU EXPECT TO SEE INJURIES TO THE CHILD'S HEAD?

A. YES, MA'AM.

MS. WILKINSON: I HAVE NOTHING FURTHER.

THE COURT: ANYTHING ELSE?

THANK YOU, DOCTOR, YOU MAY STEP DOWN AND BE EXCUSED.

THE WITNESS: THANK YOU, SIR.

THE COURT: AT THIS POINT WE'LL TAKE A RECESS.

MS. WILTANGER, I'M CONCERNED ABOUT YOUR ABILITY TO STAY AWAKE IN THIS TRIAL. IS THERE SOMETHING WE CAN GET YOU, COFFEE OR SOMETHING DURING THE BREAK?

THE JUROR: NO, SIR.

THE COURT: WE'LL TAKE A 15-MINUTE RECESS BEFORE BEGINNING THE NEXT WITNESS. THE JURY MAY STEP DOWN.

(WHEREUPON, THE JURY EXITED THE COURTROOM AT 10:40 AFTER WHICH AT 10:52 THE FOLLOWING TRANSPIRED:)

MR. BARRETT: STATE HAS A REQUEST.

THE COURT: OKAY.

MS. WILKINSON: THE STATE WOULD REQUEST THAT THE JUROR WHO SLEPT DURING A LOT OF THE LAST TESTIMONY BE PLACED AS THE ALTERNATE AND THE ALTERNATE BECOME A REGULAR JUROR. MISSING SOME OF THAT TESTIMONY, I'M SURE IS PREJUDICIAL TO THE STATE. CERTAINLY POINT TO THE CROSS-EXAMINATION THE DEFENSE PROBABLY WANTED TO BE HEARD.

MR. BARRETT: I AGREE, JUDGE.

THE COURT: THAT IS MS. WILTANGER. SHE WILL BECOME THE ALTERNATE AND ANTHONY RAFFA WILL BECOME JUROR NUMBER SEVEN.

THE COURT DEPUTY: WE DON'T HAVE TO MOVE THEIR POSITION PHYSICALLY.

THE COURT: WE DON'T WANT TO EMBARRASS ANYONE, NO. ARE YOU READY?

MS. WILKINSON: YES, SIR.

THE COURT: LET'S RETURN THE JURORS. I THINK HER EYES GOT HEAVY A FEW TIMES. I DIDN'T HEAR HER

Sleeping Juror