

EXAMINATION OF DR. GEORGE DUNCON BY THE COURT: (February 15th , 2007)

THE COURT: Would you state your name for the record?

DR. DUNCAN: Yes, my name is George Duncan, D-U-N-C-A-N>

THE COURT: And you started in 1976?

DR. DUNCAN: Actually '71.

THE COURT: Here in BSO?

DR. DUNCAN: I have worked for BSO—actually, I worked with Ed Sack, and from then on --

THE COURT: I remember when he – you are going to stay with us, right?

DR. DUNCAN: Yes, absolutely.

THE COURT: You are still working out?

DR. DUNCAN: Every day.

THE COURT: Good. What did you do today, anything?

DR. DUNCAN: Not yet.

THE COURT: You will after?

DR. DUNCAN: I will be.

THE COURT: We worked together in the Sheriff's Department around '76.

DR. DUNCAN: Right, right.

THE COURT: We brought you here today to – tell us what your specialty is in the Sheriff's Office?

DR. DUNCAN: DNA testing, basic coordinating of all the tests in this county and exterior.

THE COURT: Let's go through memory lane. What did you first do at BSO?

DR. DUNCAN: At the department, I was doing the old conventional type A, B, O, Rh. Testing all proteins.

THE COURT: Did you run the evidence room or the property room?

DR. DUNCAN: For a short time, yes.

THE COURT: And now you are in charge of DNA – the DNA testing for the Sheriff's Department?

DR. DUNCAN: That's correct.

THE COURT: How long has that been basically?

DR. DUNCAN: I started doing DNA since '87, so since '87.

THE COURT: You have taken all of those seminars?

DR. DUNCAN: Yes.

THE COURT: I am going to let you ask them questions.

MS. HASS: Does the crime lab do paternity testing?

DR. DUNCAN: We do criminal paternity testing.

MS. HASS: Criminal paternity. Can you describe what that is?

DR. DUNCAN: Criminal paternity is a testing whereby we will have, let's say a fetus, that is involved in a criminal action. We will test the father, the mother, the fetus and we will make a match. But we do not – essentially, they are done by someone else.

MS. HASS: You outsource that?

DR. DUNCAN: That is done by someone else.

MS. HASS: Now, in a case like this, a civil case, your laboratory would not have any involvement in this until it is connected to a criminal investigation?

DR. DUNCAN: Generally, that is true because there are two types of paternity, criminal side and a civil side. And the civil side, this is an accreditation by the BABB and we don't have that particular accreditation.

MS. HASS: But you are aware that certain DNA diagnostic companies do have that?

DR. DUNCAN: Yes.

MS. HASS: That would be important that a company would have that?

DR. DUNCAN: In a civil matter, yes.

MS. HASS: In addition, you have not come into possession of any of the samples, the DNA samples that Dr. Perper's office has extracted from Vickie Marshall?

DR. DUNCAN: No.

MS. HASS: You have not been requested by either the Seminole Tribe or the Broward County Sheriff's Office to conduct any DNA testing?

DR. DUNCAN: No, I have not.

MS. HASS: If you were to do paternity testing in light of the fact that paternity is really the subject of a civil action, that would not be appropriate for your lab?

DR. DUNCAN: We do not do civil work; we only do criminal

MS. HASS: No further questions.

THE COURT: Does our medical examiner have all the items you need to do the testing?

DR. DUNCAN: I have listened to Dr. Perper and as a matter of fact, we set the actual procedure for many of the same samples of these body fluids. So we were working closely in that and I totally agree with Dr. Perper, there is so much DNA.

THE COURT: We don't need that body – Miss Smith's body any longer for DNA?

DR. DUNCAN: For DNA, I absolutely agree with Dr. Perper. We do not.

MS. HASS: But do we need it for paternity testing?

DR. DUNCAN: No, no. There's certainly enough.

MS. HASS: If the court requested that you do paternity testing in this case, would it be important for you to have samples of the mother, the child, any punitive father?

MS. BARTH: Objection, relevance.

THE COURT: I am going to allow her to proffer the question and answer, so it's on the record.

MS. HASS: Yes. So proffered.

DR. DUNCAN: Yes. It's really important to have the mother, the father and the child.

MS. HASS: Why is that so?

DR. DUNCAN: Because you have got the DNA type from the mother and from the father. You have the type from the child. So basically, the child is a mixture of the mother and the father. So what you want to do is first see if that mother is the mother. Sometimes that is a question and not often, but it is a the father, the father.

MS. HASS: I have another question for you. It would also be important – I know you have a lot of faith with Dr. Perper, but my question to you is, it would absolutely be important that you knew any sample had been maintained in pristine condition, they had not been tampered with, that would be extremely important?

DR. DUNCAN: That is involved in the chain of custody.

MS. HASS: That is extremely important?

DR. DUNCAN: Absolutely.

MS. HASS: Now, it's my understanding that Dr. Shuler is the one that has the keys to the refrigeration?

DR. DUNCAN: Okay.

MS. HASS: We don't know who else, as we sit here today, but again, it would be important for you to know that those samples were maintained in the same condition today as they had been when they were extracted from that body?

DR. DUNCAN: In a criminal matter – on any matter, that's correct, yes.

THE COURT: When I sit and do a Murder I case, which I did many years ago, the standard is much more difficult. So in a criminal case, they have to slam dunk it. If they don't slam dunk it. The State is not going to prevail.

MS. HASS: My question would be without being requested by the Seminole Tribe or BSO, unless this Court specifically ordered you to do paternity, at this time, you have no authority to do that?

DR. DUNCAN: To tell you the truth, you are talking law, so I have no idea.

MS. HASS: Normally?

THE COURT: Duncan, you have been with me so, how many stories?

MS. HASS: Who normally requests that you do?

DR. DUNCAN: A police agency or state attorney's office or public defender's office. The state agency resolves that nature.

MS. HASS: But an agency of Broward County?

DR. DUNCAN: Yes.

MS. HASS: But as an agency of Broward County?

DR. DUNCAN: Yes.

MS. HASS: And if there was a court order, you would be required to abide by that?

DR. DUNCAN: Yes.

MS. BROWN: I would like to call Dr. Baird.

THE COURT: I am going to allow more people to ask Mr. Duncan.

MR. O'QUINN: Tell us, Dr. Duncan, Doctor do you have a key to the refrigerator where the DNA samples are?

DR. DUNCAN: In my lab?

MR. O'QUINN: No, his.

DR. DUNCAN: No, I do not.

MR. O'QUINN: Do you know of anyone else, other than the man he said would have a key to that laboratory?

DR. DUNCAN: I have no idea.

MR. O'QUINN: Okay.

DR. DUNCAN: I know Dr. Schuler really well, but I don't know that.

MR. O'QUINN: Okay, next question. The medical examiner testified that there are essentially two strands of DNA, one by the mother and one by the father. Do you agree with that.

DR. DUNCAN: A strand is an interesting term, but one component of the mother and one component of the father. One chromosome from the mother and one chromosome from the father.

THE COURT: Let me ask you, I want to protect the sanctity of Ms. Smith's body. There is a certain feeling the Court has to protecting her body and let it be bounding with the

Lord. Now, what kind of invasion would there be now if we took another DNA sample from her body?

DR. DUNCAN: It's a real general question.

THE COURT: I left it generic.

MR. PERPER: It would be dependent on what sample was asked to be taken. If you are asking for bone marrow, that's a pretty invasive procedure or peripheral. But a buckle swab from the mouth area –if you are talking something of – or a blood sample, that's invasive.

THE COURT: Bring in your witness --

MR. RALE: I have a couple questions. For clarification, Dr. Duncan, is it fair to say that to determine the paternity of any particular father, you don't necessarily need the DNA of the mother; it would be the DNA of the child and the father?

MR. DUNCAN: Let me say that if we did not have a mother available. You can determine the paternity based upon the father and child.

MR. RALE: As I understand your testimony, you really wouldn't need the DNA of the mother, unless there is a question of the maternity of the mother.

MR. DUNCAN: Well, let me say this – normally we request it if it's available, we want it. Basically, we demand a sample from the mother. Don't forget, we are dealing with criminal paternity and we need to have that.

MR. RALE: So in that context, that case, I am not sure what you have seen of this case on the news, and if you have seen any pictures of the child, of the infant, Dannielynn but hypothetically, in a case where the child is so visibly publicized, would that lessen your belief? I don't know if you can put it in a non-criminal context.

THE COURT: It's too speculative. Objection sustained on speculation.

MR. RALE: Thank you.

THE COURT: You were reaching. California?

TESTIMONY OF DR. MICHAEL LEONARD BAIRD:

THE COURT: Would you state your name for the record?

DR. BAIRD: Michael Leonard Baird, B-A-I-R-D.

THE COURT: And you have been with us through the testimony of our Medical Examiner and our other doctor that just testified?

DR. BAIRD: Yes.

MR. BROWN: Doctor Baird, what is your business address?

DR. BAIRD: One DDC Way, Deerfield, Ohio.

MR. BROWN: And what is your educational background?

DR. BAIRD: I have a Bachelor's degree from Drew University in 1971, a Master's degree from the State University in Drew in 1977 and a Ph.D from the University of Chicago in 1978.

THE COURT: Your Ph.D is in what?

DR. BAIRD: Genetics.

MR. BROWN: You have been here since what year?

DR. BAIRD: I am from Cincinnati right now.

THE COURT: You want to get to Florida. It's warmer.

MR. BROWN: In what capacity?

DR. BAIRD: I'm the laboratory directed at the DNA Diagnosis Center.

MR. BROWN: How long have you had that employment?

DR. BAIRD: Approximately four and a half years now.

MR. BROWN: Where did you work prior to that?

DR. BAIRD: Life Coat Corporation, which is a biotech company that specializes in DNA testing and I was there from '82 through 2002.

MR. BROWN: Do you have any accreditation for paternity testing?

DR. BAIRD: Yes.

MR. BROWN: What is that?

DR. BAIRD: The laboratory that I work in, DNA Diagnostic Center is accredited by the ABBE and Forensic Sciences International.

THE COURT: You want to qualify him as an expert?

MS. BROWN: Yes.

THE COURT: We want to cut through a lot of things. This group has been going since early morning. Get to the heart of your assets.

MR. BROWN: What does chain of custody mean?

DR. BAIRD: Chain of custody is really the procedure by which the people that were involved in collecting samples and testing samples is established, so you can see who all was involved in the process.

MR. BROWN: If the samples were drawn by the Medical Examiner as opposed to by you, does that effect your chain of custody?

DR. BAIRD: Well, from what I heard from the Medical Examiner, he took all the right samples and I assume he know his business. He has been doing it a long time. The only sample that he did not mention was the buckle swab and I think Dr. Duncan did mention that to you.

THE COURT: But they have taken that, haven't they?

MS. HASS: No.

THE COURT: They have not?

DR. PERPER: Your Honor, we took a buckle swab for cocaine, but I think it's available.

THE COURT: See, there was a reason for keeping you here.

DR. PERPER: I am sure there was.

MS. BROWN: If the Court is going to allow you to designate a test, what would you do?

DR. BAIRD: The easiest test, which is what Dr. Duncan mentioned, the buckle swab.

You use a q-tip on the inside of the cheek and it gets the skin cells as well.

MS. BROWN: Do you want to examine the evidence before you take additional tests?

DR. BAIRD: It would be useful, yes.

MS. BROWN: If the evidence was sufficient, would you want to take additional tests?

DR. BAIRD: No.

THE COURT: Good.

MS. BROWN: What about the chain of custody? Would you interview people to make sure it's correct?

DR. BAIRD: Certainly. From what I heard and knowing the reputation of the people involved, I am certain that this was established correctly.

MS. BROWN: Have you been retained t testify or work in the California paternity case?

DR. BAIRD: Yes.

MS. BROWN: And have you been approved by the Court? These is some comment that they object to you testifying.

MR. RALE: Misspeaks what I said.

THE COURT: We reached a level where we were looking.

DR. PERPER: I would be glad to take an additional buckle swab. It's easy to take.

There is absolutely –

THE COURT: You see that, you just saved time. If we don't go through this now and I had God forbid bury that body, you would be in trouble. Now, we have sat through a few hours and if we didn't have you here and have this expert here, we would – we would have a deep problem.

MS. BROWN: Doctor Perper, would it be okay if Dr. Baird was with you? In other words --

DR. PERPER: If the Court ordered him to do that, but, otherwise, I don't have any problem.

THE COURT: I don't know if we want to invade the sanctity of your system. You got a system that's airtight.

DR. PERPER: Yes.

MS. HASS: What about if the Sheriff's Office was present? Why don't we do that?

THE COURT: Because I don't think he has to be watched. He is nationally acclaimed. This Medical Examiner. He is really world famous.

MS. BROWN: I have a couple of more questions. Do you prefer mom, dad and baby in doing your testing?

DR. BAIRD: Yes.

DR. PERPER: You want the mother to be present during the swab?

MS. BROWN: No, no, no. I didn't mean grandma. Why is it preferable to have both parents and the child and not just dad and the child?

DR. BAIRD: There is a publication that came out recently. I have a copy, but it is here. A couple of reasons. Number one, it can be used as quality control.

THE COURT: We have agreed to it. It's done.

MS. BROWN: Another question. Would it be preferable if there is more than on father for you to test all the punitive fathers?

MR. RALE: Irrelevant.

THE COURT: We're going far afield.

MS. BARTH: We are not trying the paternity case.

THE COURT: The record will reflect the Court is entering an order that a buckle swab test be taken.

MS. BARTH: If you will hold on that ruling.

THE COURT: I thought that you were agreeable?

MS. BARTH: I am not.

THE COURT: I thought we were in agreement.

MS. BARTH: I am not agreeing. You have --

THE COURT: If you have a cause to find, you can ask him.

MS. BROWN: I am not done.

THE COURT: Let me see what she has to say.

MS. BARTH: Doctor, you heard his Honor's representation that is a good thing we did that today, because if we did not have a buckle swab, we would be in trouble.

MS. HASS: Objection.

MS. BARTH: My question is, if we never had a buckle swab, but we had sufficient blood evidence, do we have enough there to determine PAT?

THE COURT: Do you have an answer for that?

DR. BAIRD: It's hard to say. The problem with any DNA test is you need the DNA. In order to establish it, if you can do the test right now, we have samples, a lot of samples collected. We always like the appropriate sample.

MS. BARTH: My question was this, if you never had the buckle swab and you had sufficient evidence --

DR. BAIRD: Probably the blood would be enough, but I don't know for sure.

THE COURT: Why not?

DR. BAIRD: Again, it's the quality of the DNA.

MS. BARTH: I am asking you a hypothetical question. If the sufficiency of the blood sample is there, we have enough blood, you get the information that there is enough and you heard Dr. Perper's testimony which you believe to be true. If we have such blood, we don't need the buckle sample, do we? Assuming that is correct, assuming that we have got a lot of blood here and sufficient, appropriate blood samples, do we need a buckle swab?

DR. BAIRD: I probably don't. Typically, blood is a good source for DNA.

MS. BARTH: The buckle swab is used because it's easier and cheaper?

DR. BAIRD: It's less invasive.

MS. BARTH: There is no evidence to say that the buckle swab is more preferable to blood?

DR. BAIRD: It's DNA and it doesn't matter. If any sample of the body is sufficient to determine for genetic purposes, so we don't need it.

MS. BARTH: If the Court determines that we have sufficient blood samples and they have taken the testimony of Dr. Perper, we don't need to do the buckle swab, do we?

DR. BAIRD: The only thing the buckle swab would do, if I was involved in that process, it would determine my process of chain --

MS. BARTH: But we are talking about chain of custody. You just said, you have no reason to believe that the chain of custody isn't as Dr. Perper said. And you are not questioning the chain of custody. So now you're saying, well, the buckle swab would be nice because I have a chain of custody. Now you have one.

But as far as what's sufficient, what the California judge says is sufficient, what Dr. Perper has testified to yesterday and today is that he has got enough and that chain of custody is tight and we don't really need if that's the case any additional type of DNA sampling; is that correct?

DR. BAIRD: Let me say one thing. I have not seen the samples collected or the chain of custody. We talked about looking at those samples to see whether it was sufficient. From what I heard today, it probably is. I would be surprised if it was not. Until I have looked at it, I cannot say for sure.

MS. OPRI: I think it's my turn.

DR. PERPER: Let me make -- sorry, Your Honor.

THE COURT: We are going to let the medical examiner make another statement and we will bring you on the phone.

DR. PERPER: Let me, obviously, I – any medical examiner does not have any interest in the issues which are present before the court. We have, if you – it's so easy to order a swab test. That's not a problem to do it.

MS HASS: So you have no objection?

DR. PERPER: We do not.

MS. HASS: So Judge --

DR. PERPER: Number two, if you look to the sufficiency of the material in order to be sure, in other words, the blood, we have bone marrow and bone. In bone, there are millions of sources of DNA, which are equally if not more reliable than a swab.

There are two issues which are separate from each other. One, is there enough testing material? We do not need another swab. However, if you want another swab, it's so easily done. It's not worth us going through this.

MS. BARTH: It is worth it, Your Honor.

DR. PERPER: Not from our end. From your end --

THE COURT: Scientifically. Now, we are talking spiritually.

MS. OPRI: Dr. Baird, to preserve your chain of custody --

THE COURT: I don't think he can hear you.

DR. PERPER: Can you repeat?

MS. BROWN: I understand what she is asking. Doctor Baird, would it help your chain of custody --

MS. BARTH: Objection, leading, Your Honor.

THE COURT: I didn't hear the question. Let me hear the question.

MS. BROWN: Would it be helpful to the chain of custody if you could have a buckle swab?

DR. BAIRD: Sure.

MS. BROWN: Why?

DR. BAIRD: There are fewer links in the chain.

THE COURT: I thought we decided it's all going to be in the Medical Examiner's hands.

MS. BROWN: Would a new buckle swab help your chain of custody from what has been collected for days or weeks?

DR. BAIRD: Well, it's certainly another sample that can be used.

MS. BROWN: It seems like the initial buckle swab was for a cocaine test.

DR. BAIRD: Correct, and I don't know how much was used.

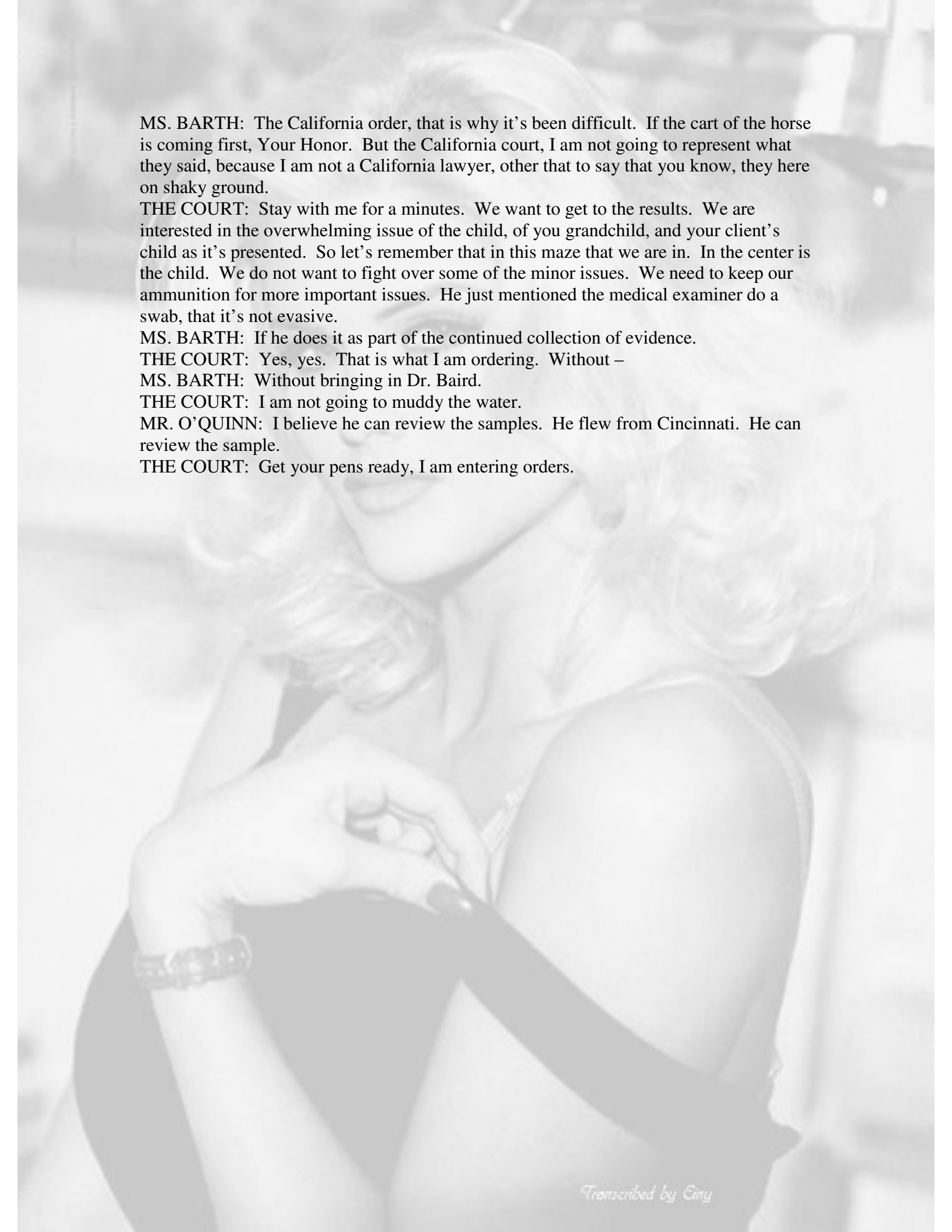
DR. PERPER: Well, we tested the blood for cocaine and we did not have a problem. In other words, if it's in the blood, it would be dictated that she was on cocaine. We have no evidence of that. The thing is, if it was in the blood and we found it in the mouth, that is indicative that was the road of intake.

MS. BARTH: Here is my concern, Your Honor. My concern is this: We have here what the medical examiner just testified to, he has no interest. It's the purest chain of custody you can have. Now, what we have is this gentleman, who is very reputable --

THE COURT: Are we talking --

MS. BARTH: But he is hired.

MS. OPRI: -- in the interest of California court jurisdiction that the swab be taken and this is just another step in following the protocol. It will not harm anyone.



MS. BARTH: The California order, that is why it's been difficult. If the cart of the horse is coming first, Your Honor. But the California court, I am not going to represent what they said, because I am not a California lawyer, other than to say that you know, they here on shaky ground.

THE COURT: Stay with me for a minutes. We want to get to the results. We are interested in the overwhelming issue of the child, of you grandchild, and your client's child as it's presented. So let's remember that in this maze that we are in. In the center is the child. We do not want to fight over some of the minor issues. We need to keep our ammunition for more important issues. He just mentioned the medical examiner do a swab, that it's not evasive.

MS. BARTH: If he does it as part of the continued collection of evidence.

THE COURT: Yes, yes. That is what I am ordering. Without –

MS. BARTH: Without bringing in Dr. Baird.

THE COURT: I am not going to muddy the water.

MR. O'QUINN: I believe he can review the samples. He flew from Cincinnati. He can review the sample.

THE COURT: Get your pens ready, I am entering orders.