

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
GENERAL CIVIL DIVISION

ESTATE OF LISA McPHERSON, by and
through the Personal Representative,
DELL LIEBREICH

Plaintiff,

vs.

Case No. 00-5682-C1
Section 11

CHURCH OF SCIENTOLOGY FLAG
SERVICE ORGANIZATION, INC.;
JANIS JOHNSON; ALAIN KARTUZINSKI;
and DAVID HOUGHTON,

Defendants.

_____ /

**ESTATE'S REPLY TO DEFENDANTS' *FRYE* CHALLENGE
TO COCKROACH EVIDENCE**

The Plaintiff replies to the Defendants *Frye* Motion by first stating that the opinions of cockroaches feeding upon Lisa McPherson while she was alive is “**pure opinion**” testimony based upon the forensic expert’s experience and education. There is not a scintilla of novel or untried theory or science. Secondly, as the Defendants’ experts admit, every publication concerning roaches biting live people affirmatively state that roaches do indeed bite living human beings. There is not one published book or article, including the book published by Dr. Roth, defendants’ now withdrawn expert, that negates or otherwise raises any question that roaches bite living people.

20 Q. Is there any research that you've been
21 able to find that states that cockroaches do not
22 bite living people?
23 A. No.

Goff deposition at 248.

Plaintiff never “fired” Dr. Haskell as contended by the defense. This court restricted each party to one entomologist. The Estate will gladly keep Dr. Haskell if the court permits. The Estate had retained 4 out of 8 board certified entomologist in the United States. All opined that there are cockroach feeding sites on Lisa’s body. They are all Ph.D.’s and board certified by the National Academy of Forensic Scientists. The defense expert has a Masters degree and is not board certified, but is now trying to become certified, not by the National Academy, since he is not qualified, but by the Entomological Society. The Estate does not attempt to denigrate this expert, but simply points this fact out when the defense attempts to argue that the Estate’s experts are not qualified to render their opinions.

Furthermore, Dr. Haskell’s experiment should be considered in this motion. That experiment was successful, as Dr. Haskell stated, since it did prove that roaches do bite on living humans, but that they were not left on the body long enough to create feeding sites. More importantly, one bite did not create any mark. Therefore, the marks on Lisa’s body took more feeding than one bite.

Lee Goff, Ph.D., board certified forensic entomologist and the chair of the forensic science department at Chaminade University in Hawaii, has opined that many of the marks on the body of Lisa McPherson are consistent with cockroach bites. Defense points out that Dr. Goff could not state within reasonable scientific probability that these marks were “caused” by cockroaches. As Dr. Goff explained, per his use of the word “caused,” he could not say “caused” because he did not see the roaches bite Lisa! What he can say, and what any conservative expert would say, is that within a reasonable degree of scientific probability, 80%, the marks are consistent with cockroach bites or feeding sites.

13 Q. All right. What do you mean by
14 "consistent with"?

15 A. Okay. This means I cannot be absolutely
16 certain that they are cockroach bites, but when I'm
17 able to observe sufficient detail, what I see is
18 what I would expect to see, based on my own
19 observations and published reports from a cockroach
20 bite.

Goff at 253.

14 A. Consistent with is basically looking at it
15 and this is what I expect to see and this is what I
16 see. Okay. Being absolutely certain that the
17 cockroach -- that it's a cockroach bite to me, is
18 actually sitting there and seeing the cockroach
19 feeding.

20 Q. Okay. And since you weren't sitting there
21 watching cockroaches feed, you're not able to say
22 that they definitely are cockroach bites?

23 A. That's correct.

Goff at 254.

25 Q. When you rendered an opinion in this case,
1 as you have this morning, stating that certain
2 marks are consistent with cockroach bites, is that
3 within reasonable scientific certainty?

4 A. It's within the 80 percent confidence that
5 I am using for this.

Goff at 255-256.

20 Q. Now, there was -- has been a lot of

21 questions concerning your explanation and your --
22 the way you phrase your opinions. Can you please
23 explain, first of all, what you mean by "art and
24 science"?

25 A. In a context of forensic entomology or,
1 actually, entomology, when I think of science, I
2 tend to think of an experiment deliberately
3 constructed to demonstrate a particular result or
4 lack of results.

5 Art, in this context, comes in the taking
6 of those explanations -- or those -- pardon me --
7 the results of those experiments and applying them
8 then to situations. So they integrate.

9 Q. With respect to your opinions in reference
10 to Lisa McPherson, how do you use the terminology
11 of "art and science"?

12 A. I'm using the science as being the
13 definitely constructed opinion; I'm using the art
14 as being the interpretation.

15 Q. When you said, in reference to questioning
16 by Mr. Weinberg, that your opinions in the Lisa
17 McPherson case fall on the side of art rather than
18 science, what did you mean by that?

19 A. Well, what I was trying to convey -- and
20 may not have actually stated it properly -- what I
21 was trying to convey is the fact that here instead
22 of constructing a deliberate experiment, I was
23 taking results of previous observations by others,

24 my own observations, and taking these and
25 interpreting them and applying my interpretation to
1 this particular case.

2 Q. Does that mean that your opinions are not
3 scientific?

4 A. Not in my opinion, no.

5 Q. Pardon me?

6 A. No, I would say that they are scientific.

7 Q. What is it about your opinions that is --
8 that makes your opinion scientific?

9 A. Again, we're basing this on my
10 observations of cockroach activity on bodies that
11 have been discovered indoors; are taking a look at
12 previous published records of cockroaches feeding
13 on humans, and taking a look -- I lost my train of
14 thought, which is rather bad at this point -- my
15 observations of the wounds that were present on the
16 dead pigs.

17 Q. To your knowledge -- now, you've been
18 doing forensic entomology for how many years?

19 A. Approximately 20 years.

20 Q. To your knowledge, in the 20 years that
21 you've been in forensic entomology, has anyone ever
22 debated the idea within the entomological community
23 that cockroaches do not bite living people?

24 A. No.

Goff at 250-251.

I. PURE OPINION TESTIMONY IS NEVER THE SUBJECT OF A *FRYE* HEARING.

The opinion of the Estate's experts are pure opinion testimony not subject to a *Frye* challenge.

... **pure opinion testimony**, such as an expert's opinion that a defendant is incompetent, **does not have to meet *Frye***, because this type of testimony is based on the expert's **personal experience and training**. While cloaked with the credibility of the expert, this testimony is analyzed by the jury as it analyzes any other personal opinion or factual testimony by a witness. Profile testimony, on the other hand, by its nature necessarily **relies on some scientific principle or test, which implies an infallibility not found in pure opinion testimony**. The jury will naturally assume that the scientific principles underlying the expert's conclusion are valid. Accordingly, this type of testimony must meet the *Frye* test, designed to ensure that the jury will not be misled by experimental scientific methods which may ultimately prove to be unsound. See Stokes, 548 So.2d at 193-94 ("[A] courtroom is not a laboratory, and as such it is not the place to conduct scientific experiments. If the scientific community considers a procedure or process unreliable for its own purposes, then the procedure must be considered less reliable for courtroom use."). (Emphasis added).

Flanagan v. State, 625 So.2d 827 (Fla., 1993).

- 11 Q. Now, is there any objective evidence in
12 this case that you're relying upon?
13 A. Well, the objective evidence, the only
14 evidence I have to look at, are the photographs of
15 the bites.
16 Q. And what is the subjective evidence?
17 A. Subjective basically would be my opinions
18 which are derived from my observations of those
19 photographs.
20 Q. Your opinions expressed in this case, are
21 they pure opinion -- pure opinions, meaning that
22 it's based upon your experience and education,
23 rather than some type of test that you created?
3 A. Well, let me make sure that we're all
4 taking about the same thing. What you seem to be

5 asking me is, is my opinion based on my background,
6 experience, and my examinations --

7 Q. Right.

8 A. -- together as opposed to some scientific
9 experiment that we may have set up to demonstrate
10 this?

11 Q. Yes.

12 A. Okay. In that case, yes.

13 Q. It's based on?

14 A. On my experience and the photographs.

Goff at 256-257.

20 Q. Is there any research that you've been
21 able to find that states that cockroaches do not
22 bite living people?

23 A. No.

24 Q. In fact, the research that is available,
25 states that cockroaches do bite living people?

3 A. Yes.

4 Q. The idea that cockroaches bite living
5 people, is that a novel idea?

6 A. No. If you go back, we have reports cited
7 by Roth and Willis going back to the 1700s. It's
8 not the norm, but it's certainly not unusual.

9 Q. And Dr. Roth, in his book, did he question
10 the accuracy of these reported reports that -- of
11 cockroaches biting living people?

12 A. He appeared to accept them.

13 Q. Now, in the marks of Lisa McPherson -- on
14 Lisa McPherson's body that you have stated are
15 consistent with cockroach bites or feeding sites,
16 if they're not cockroach bites or feeding sites, do
17 you have an opinion as to what else they could
18 possibly be?
19 A. No.

Goff at 248-249.

II. DEFENDANTS' GROUNDS¹

1. It is novel that cockroaches will feed upon living humans. (Note that defendants do not call it "novel science," just "novel.")
2. Identifying cockroach bites by photograph and if antemortem or postmortem is "novel," not generally accepted, and is not supported by scientific studies.(Note again the use of the term "novel" all by itself).
3. Reject Plaintiff's expert testimony since it is pure conjecture and premised upon insufficient fact and not supported by the record. Plaintiff's experts are inconsistent in identifying the bites and cannot say they, the roach bites, were caused premortem. (Note "novel" is not even used here).
4. Plaintiff's Ph.D. board certified entomologists are not qualified to identify cockroach bites, either antemortem or postmortem. They are only qualified to identify "insects." (Note again that "novel" is not even used here).
5. Postmortem cockroach bites are irrelevant, since Lisa could not personally experience the bites and trauma from it. (Note again that "novel" is not even used here).
6. The prejudicial value outweighs the probative value. (Note again that "novel" is not even used here).
- 7.

III. ESTATE'S RESPONSE

¹Found on pages 2-3 of Defendants' motion.

Defendants take great issue with the fact that the Estate's board certified forensic entomologist, Lee Goff, Ph.D., did not view the scene, did not collect a "single insect," and did not view the body. (Page 15-16). First, before Lisa's body was taken too late to the emergency room, her attendants washed the body. Second, before the police could view the scene, FLAG staff completely washed it down and brought in new furniture on the day after her death. Of course, this presumes that Lisa was at the Ft. Harrison Hotel rather than some bug infested residence owned by Flag or in the basement of the hotel where other members were reportedly held at various times.

FLAG also argues that Dr. Goff would expect insect infestation to have roaches feeding on a body, similar to other crime scenes he has investigated. If FLAG is telling the truth that there was no insect infestation at the hotel, then this simply proves the Estate's argument that Lisa was never in the hotel in the first place. She was likely at a distant location, like the staff apartment building, the Hacienda, which is reportedly infested with roaches!

Isn't it interesting that the defense experts do not know of any scientific study concerning roaches biting on people, except the one Russian study by scientists who succeeded in having roaches bite them while the scientists were, presumably, alive. What the defense fails to point out to the court is not only are these "pure opinion testimony," but also that science does rely on case studies, anecdotal reports, and the experience of the scientist.

The defense has nothing to say about the fact that the Estate's forensic entomologists are all board certified and have seen roaches feeding upon pigs and have identified roach bites on human remains. The Estate's experts then take these findings and add to that the other case studies, including criminal reports of roaches found feeding upon babies, both alive and dead,

and combine that with their education to arrive at their opinions. That is why their opinions have nothing to do with “novel science” under *Frye*.

The next amazing argument is that since the FLAG staff never saw a roach in Lisa’s room, and since the hotel was regularly sprayed, then these marks could not be left by roaches. The problem with this argument is that it has nothing to do with *Frye*, since it, like the entire argument of the defense, goes to the **weight of the evidence**. It will be up to the jury to believe or not believe the staff of FLAG.

Both Dr. Haskell and Dr. Goff made very conservative opinions in this matter. Neither would say that these marks are 100% roach feeding sites for one and only one reason: they were not there witnessing the roaches feeding upon Lisa. What both experts do opine is that these marks are consistent with roach bites based upon their experience and education and that their opinions meet the legal requirement of “more likely than not.” Therefore, Dr. Goff renders his opinion at 80% likely, far exceeding the legal minimum of 51%.

Dr. Spitz identifies certain marks on autopsy microscopic slides as being only one thing: “bug bites.”

429 7 Q. And you testified, to a reasonable degree of medical
8 certainty, as an anatomical pathologist, that any mark on
9 Lisa McPherson's body is a bug bite?
10 A **I can testify, within a reasonable degree of medical**
11 **certainty, that these injuries look like bug bites, yes. I**
12 **cannot ever say these are bug bites, because that would be**
13 **a hundred percent. But within a reasonable degree of**
14 **medical certainty, they qualify as bug bites, yes.**

The most prominent cockroach feeding sites are the two oval shaped marks on the tip of Lisa’s nose. Dr. Spitz describes them as follows:

- 491 1 Q You've never seen a cockroach bite anybody, have you?
2 A Oh, yes.
3 Q Seen it with your eyes?
4 A Yes, I have.
5 Q You've seen a cockroach bite somebody?
6 A Yes.
7 Q Who? Who, when and where?
8 A I've seen cockroaches on bodies.
9 Q Have you ever seen a cockroach bite a person?
10 A Yeah.

The defense chastises both Dr. Haskell and Dr. Goff in not being able to ace the defense test at deposition. Under the pressure of direct examination to answer quickly, both experts could not match every roach bite with the one they marked on their respective charts, charts that took hours to produce after extensive examination. This has nothing to do with *Frye*.

III. OTHER PUBLISHED REPORTS IN NEWSPAPERS, BOOKS AND PEER REVIEWED JOURNALS.

1. The Estate attaches hereto two recently reported cases of live babies or children being found with roaches feeding upon them. The first concerns a criminal case involving abuse of a 7-month-old Quail Valley girl from Riverside County, California, in 2001. At the emergency room at Inland Valley Medical Center in Wildomar, California, it was diagnosed that the baby was “**suffering from rat and cockroach bites.**” In April of 1998, in Rochester, N.Y., a mother was sentenced to 15 years for child neglect of her 5 year old daughter. “**Among other**

signs of neglect, a pathologist cited cockroach bites on her arms and legs.” Why couldn't the defense find these cases? (Appendix 5)

2. Dr. Haskell produced several autopsy or scene investigation photographs of adults and children with identified roach bites and feeding sites. Dr. Goff produced several published articles, one of which is attached to the defense exhibits, the Nebojsa Denic, M.D. article, which state in no uncertain terms that roaches bite living people.

**“Cockroaches are omnivorous scavengers that devour keratin.
They will bite human flesh in both the living and dead with
resultant injury.”**

Nebojsa Denic, M.D. et al., *Cockroach: the Omnivorous Scavenger*, The American Journal of Forensic Medicine and Pathology, 1997. Appendix 1.

In the Denic article published in the peer reviewed journal, pictures of children with roach feeding sites are presented. The Estate's entomologists and Werner Spitz, M.D. compare these markings with those found in other criminal investigations and well as pig experiments and come to the conclusion of what particular marks roach feedings make on the skin. Nothing novel about this type of science.

4. In his book, *URBAN ENTOMOLOGY*, Walter Ebeling, Ph.D., professor of entomology at the University of California, Los Angeles, writes that cockroaches can **“cause small wounds on softer skin”** in addition to gnawing on fingernails, eyelashes (of sleeping children), and callused portions of hands and feet. He also refers to the Roth Book. Appendix 2.

5. Louis Roth wrote in 1957 that cockroaches do bite! **“In primitive areas that lack adequate insect control, and especially in tropical areas that support large cockroach**

populations, particularly in sleeping quarters, **BITING HAS BEEN WELL DOCUMENTED.” (Emphasis added).** He even states that in areas which are well controlled,

biting occurs, although it is rare. At 31. Appendix 3. 6. In the book *What Bit Me?*, published by the University of Hawaii Press in 1993, authors Gordon M. Nishida and JoAnn M. Tenoria write:

Cockroaches....in rare instances bite.....Cockroach bites may occur where cockroaches are uncontrolled and have built up heavy populations. They may gnaw toenails and fingernails of a **sleeping, sick, or helpless person**, and bite into the surrounding flesh. Reports of bites are rare when good hygiene and cockroach control are practiced.

Appendix 4.

7. In another book, *Forensic Entomology, The Utility of Arthropods in Legal Investigations*, published in 2001, editors by Jason Byrd, Ph.D. and James L. Castner, Ph.D. write:

In indoor conditions, cockroaches may alter a body in a similar manner as to that of fire ants in outdoor conditions. Cockroaches are scavengers on filth and refuse, but some species will feed on carrion when available, or even on living animals **as well as the skin of living humans. Often babies that are left unattended in tenements and housing where unsanitary conditions prevail have been found with wounds indicating cockroach feeding.**

Appendix 6

8. In the authoritative textbook edited by Dr. Werner Spitz, M.D., there is an extensive discussion with pictures of ant and roach bites on the deceased. This is prime evidence that roaches do bite human flesh. See defense Exhibit 31.

IV. ANTEMORTEM COCKROACH FEEDING SITES ON LISA MCPHERSON.

As a fall back position to the unbelievable argument that roaches do not bite living people, defense argues that all the roach bites are no big deal, i.e., irrelevant, since they are all postmortem. Postmortem roach feeding sites show Lisa was abandoned by FLAG after death

and died inside the hotel or wherever they stored her body. Further, Michael Baden, M.D., defense forensic pathologist, testified that all these marks are antemortem!

8 Q. And do you see the marks on the nose?

9 A. Yes.

10 Q. How did she get those marks? What are
11 they?

12 A. They're dried abrasions. Two abrasions on
13 the tip of the nose. She's got two on the chin. I
14 don't know. Rubbing against -- rubbing against
15 something.

16 Q. So those are **antemortem**?

17 A. I think they -- I think they are.

Baden deposition at page 210.

11 Q. **Would you agree with me that the mark on**
12 **the knuckle that has the redness around it is before**
13 **-- that mark existed before she died?**

14 A. Yes.

15 Q. **And that's because of the inflammatory**
16 **process around it?**

17 A. Yes.

Baden at 248.

19 Q. **So all those marks occurred before she**
20 **died?**

21 A. Yes.

Baden at 252.

2 Q. -- and I'm just going to hold it up for the
3 camera here for a second. And in particular look at
4 the left leg. And you have also excluded those

5 marks as being cockroach feeding sites?

6 A. Yes.

7 Q. Are those marks all then made while Lisa
8 McPherson was alive?

9 A. Yes.

Baden at 253.

18 Q. The marks that are depicted by Dr. Spitz in
19 his deposition as cockroach feeding sites which you
20 say are scrapes, those are all occurring before she
21 died, correct?

22 A. I'd agree with that, yes.

Baden at 254.

12 Q. You saw a mark on the nose?

13 A. Yes.

14 Q. When did that mark first appear?

15 A. I think on Sunday.

16 Q. It appeared on Sunday?

17 A. Yes.

18 Q. And how did she get the mark on her nose?

19 A. She was kissing the floor, the floor doing
20 this.

Attendant Arrunada deposition at 332.

It will be an issue of fact for the jury to decide if these marks are roach feeding sites or the result of Lisa "kissing the floor!"

More evidence of these marks appearing before Lisa died is found in the attendant logs.

The FSO report on Lisa's isolation at Flag on the fourteenth day (December 2, 1995) stated:

"[Lisa] has scratches and abrasions all over her body & on elbows & knees has pressure sores. None of them are open & none of them look infected.

What are these abrasions? It is questionable whether Lisa had ever been out of the bed since the day before, December 1, 1995, after Janice Johnson had administered several capsules of the prescription sedative, chloral hydrate. The testimony is in conflict. Attendant Boykin deposition at 182 and Attendant Hoff deposition at 136:16. Is this Lisa scratching herself or are these the first signs of roach bites?

490 2 A She has two -- these two marks, lesions, on the tip of the
3 nose with a bridge of intact skin between them. Each one
4 is sharply demarcated, recessed, devoid of epidermis and
5 dried.

6 Q And isn't that consistent with a cut on the nose?

7 A A cut? No, it is not, definitely not a cut.

8 Q With a scrape on the nose?

9 A No, I don't think it's a scrape, either.

10 Q How many bugs would it take to make those two marks
and how

11 long would it take them to do that?

12 A How many bugs? Two bugs.

13 Q Two bugs?

14 A One on the right side and one on the left.

493 9 A Yeah. This is distinctive because it's dried and it's
10 somewhat shrunken. That's why it's brown.

501 19 Q Okay. Well, do you want to just -- Can you show anything

20 on here that you believe is indicative of a bug bite? Can
21 you just mark on --
22 A The whole picture.
23 Okay. So the whole picture Nineteen --
24 A Yes.

439 24 ... What is it,
25 scientifically, from looking at these photos, because you
440 1 haven't looked at anything else, looking at these photos,
2 without any testimony that you can testify, from a
3 reasonable degree of medical certainty, **as to when any
4 particular bite was made, whether before death or after
5 death?**

441 3 ... as to when any
4 particular bite was made, whether before death or after
5 death?
6 A In the absence of microscopy and in the absence of
7 observation by witnesses there is no way to do that.

439 1 And can you tell -- testify, to a reasonable degree of
2 medical certainty, when these marks which you say are
3 likely bug bites, when they were made?
4 A I think they -- they are -- some of them are of similar age
5 and some of them are different ages.
6 Q Can you --
7 A Some of them show evidence of drying, some of them don't.
8 Some of them are fresher, some of them are older.
9 Q Can you tell, to a reasonable degree of
medical certainty,

10 whether any of the marks are postmortem?

11 A Some of them, I can't really tell. The fresh ones that are
12 dried, I am unable to tell. I'd have to consolidate that
13 based on what testimony there is in regards to a particular
14 defect, such as the nose, for instance. I understand that
15 Ms. Arrunada knew of the existence of the nose defects
16 earlier on the 5th of December.

489 23 Q Okay. And you picked out a picture of the -- of Lisa
24 McPherson's face. What is it about this picture, which is
25 number four of set nine, that is consistent -- that shows a
490 1 bug bite?

2 A She has two -- these two marks, lesions, on the tip of the
3 nose with a bridge of intact skin between them. Each one
4 is sharply demarcated, recessed, devoid of epidermis and
5 dried.

6 Q And isn't that consistent with a cut on the nose?

7 A A cut? No, it is not, definitely not a cut.

8 Q With a scrape on the nose?

9 A No, I don't think it's a scrape, either.

10 Q How many bugs would it take to make those two marks and how
11 long would it take them to do that?

12 A How many bugs? Two bugs.

13 Q Two bugs?

14 A One on the right side and one on the left.

15 Q And -- and how long --

16 A That's what it would take.

17 Q Well, how big would the bugs have to be to make those

18 marks?

19 A I couldn't tell you how big the bugs were.

20 Q Well, you're --

21 A A cockroach will do that.

22 Q How big would it have to be and how long would it take?

23 A I never stood there with a stopwatch and timed it.

24 Q Excuse me?

25 A I never stood there with a stopwatch and timed it.

491 1 Q You've never seen a cockroach bite anybody, have you?

2 A Oh, yes.

3 Q Seen it with your eyes?

4 A Yes, I have.

5 Q You've seen a cockroach bite somebody?

6 A Yes.

7 Q Who? Who, when and where?

8 A I've seen cockroaches on bodies.

9 Q Have you ever seen a cockroach bite a person?

10 A Yeah.

11 Q You mean after they were dead and they were sitting in the

12 woods and it was feeding --

13 A They were not sitting in the woods, they were sitting in a

14 house.

15 Q And it was dead --

16 A In a -- in a house with -- which was poorly kept and there

17 were cockroaches. In Michigan you don't get cockroaches as

18 much as you get in Florida. You get cockroaches on

19 occasion. Mostly here, this kind of damage, is from ants.

20 Q So you suspect that in this hotel that had regular

21 extermination services that -- that two cockroaches sat on
22 Lisa McPherson's face and did these bites. Is that -- is
23 that what you suspect?

24 A First of all, I didn't say cockroaches sat on Lisa
25 McPherson's face or nose, I said two -- You asked me how
492 1 many cockroaches could have done that and I said two
2 cockroaches, one on the right and one on the left. I
3 didn't say how many cockroaches, I don't even know that
4 these are cockroaches and I told you that this morning.

5 Q You don't even know that they're bug bites, either, do you?

6 A They are bite bugs because they look like bug bites and
7 it's very unlikely that anything else would have caused
8 this as distributed and localized as they are.

434 15 ...But I've seen
16 hundreds of cases, maybe thousands of cases, where there
17 were -- there was damage by insects.

429 22 Q Now, have you gone through the microscopic slides and
23 identified any slide that you believe that you're capable
24 of saying, to a reasonable degree of medical certainty,
25 microscopically indicates an insect bite?

449 1 A Yes. I have two slides, one of the right foot and one of
2 the left hand.

451 19 A I see a superficial defect in the skin where -- or limited
20 to the upper layers of the skin and in one I see abundant
21 fibrosis underneath, which suggests that the lesion is
22 sometime can develop -- developing. And in other -- in the
23 other, I see just a whole lot of bacteria and some minor --

24 **some inflammatory change.**

25 Q Which one do you see the bacteria and the minor
452 1 **inflammatory change?**

2 A I don't recall. So they were incurred during life, one
3 older than the other. The one closer to the time to the
4 death, the other one longer than -- older than.

458 11. **When you say a healing process what does that tell you?**

12 A That's what I referred to earlier as fibrosis, which is
13 indicative that this occurred during lifetime, because it
14 is the reaction of the body to the presence of this bug
15 bite or whatever -- whatever bug it was that caused this.

. . .

19 A The fact that it is a superficial cutaneous or skin damage,
20 or superficial ulcer which, in conjunction with the naked
21 eye appearance, supports the conclusion that this is most
22 likely a bug bite.

463 14 Q Do you see anything in the -- in Exhibit Seventeen, in
15 the slides that you looked at and identified,
16 microscopically, that would indicate that there is any
17 inflammation as a result of any secretion?

18 A The inflammation has mostly healed

464 8 Q -- the lesion. Can you tell from -- from that -- from
9 Exhibit Seventeen or from the slides that you looked at,
10 when the lesion was made, what day, how long before Lisa
11 McPherson died?

12 A I don't know. Maybe -- maybe between ten and -- ten and

13 twelve days, something like that. I couldn't say any
14 closer.

474 24 A We're looking at the back of the right hand.
25 Q Okay.

475 1 A Which shows an abundance of circular, mostly circular
2 lesions which qualify as bug bites and one of them is
3 crater-like, which is infected. And there is bruising of
4 the back of the wrist which qualifies for restraint,
5 similar to the abrasion with underlying bruising on the
6 back of the foot that we were discussing, the ankle –
7 Q Where is the --
8 A -- on the back of the ankle that we were discussing
9 previously.

476 3 Q Okay. So this is Exhibit Twenty-One. Show us on Exhibit
4 Twenty-One what you believe is the bruising that is not the
5 bug bite which you say is consistent with restraint.
6 A There is bruising and abrasion. This looks very similar to
7 what you saw on the back of the foot that we were
8 discussing earlier.

478 14 One of them, the one on the second knuckle is infected and
15 these little areas here are also suspect to me as being bug
16 bites, those little --

487 4 Q Okay. Now, let me show you -- Let me show you exhibit
5 twelve of set nine and ask you if there is anything on the
6 left foot that, from the picture here, that you can tell,
7 but beyond -- to a reasonable degree of medical certainty,

8 is a bug bite as opposed to an abrasion or a bruise. Which
9 foot is that, by the way?
10 **A Right foot. All these lesions, all of them, could be bug**
11 **bites.**

Dr. Spitz was very emphatic that what he identified as bug bites were not abrasions.

464 2 A I didn't say it was an abrasion. An abrasion, for one
3 thing, it doesn't have undermined edges.
4 Q Excuse me?
5 A An abrasion does not have undermined edges.
480 6 A These are not bruises.
7 Q Don't they look to be swollen?
8 A These are not bruises. These are areas where the epidermis
9 is gone. A bruise is a black-and-blue mark.

There is therefore no question that Lisa experienced cockroaches feeding upon her for several days prior to her death.

IV. CONCLUSION.

Based upon all available publications and reported criminal cases, cockroaches do bite living people. The opinions expressed by the Estate's experts in this case are "pure opinion" testimony and therefore not subject to a *Frye* challenge. The estate's experts' opinion also greatly exceed the legal requirement of reasonable medical and scientific probability and certainty. The defense motion should be denied.

V. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax this 26th day of March, 2002, to KENDRICK MOXON, ESQ.(727-443-5640) by request of counsel.

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