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BODY:

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(BEGIN VIDEO CLIP)

ALEX HUNTER, BOULDER COUNTY DISTRICT ATTORNEY: The Boulder grand jury has completed its work and will not return. No charges have been filed.

BILL O'REILLY, HOST: Hi. I'm Bill O'Reilly. Thank you for watching us tonight.

Somebody is getting away with murder. After nearly two years of investigation, the Boulder authorities in Colorado cannot find who killed little JonBenet Ramsey. So no action will be forthcoming.

Joining us now in this incredible story is Jeralyn Merritt, a criminal-defense attorney from Denver, who has been following this very closely.

What's your reaction, Counselor?

JERALYN MERRITT, CRIMINAL-DEFENSE ATTORNEY: I'm actually very pleased with the decision because I do not believe that there was sufficient evidence by which the Ramseys should have been indicted. There is no proof -- scientific proof that has ever been disclosed to the public from which anyone could conclude that the parents were

involved in this case. By returning -- by not returning an indictment, the case will remain open. It will continue to be investigated. In this way, should evidence ever develop, someone could be charged with this crime and held accountable.

O'REILLY: What about the handwriting experts -- we have had them on THE FACTOR here -- who have said con -- you know, in their opinion -- these are the best in the country -- that it was 95 percent certain -- even more than that -- that Patsy Ramsey wrote the ransom note? Wouldn't that be enough evidence for you to say, "Hey, something should be done about this."

MERRITT: Well, a couple of things about that. One, I was the person who did the handwriting evidence in the McVeigh case, and I would dispute that those are the best experts in the country. Second of all, they did not have the original documents to examine, so I do not believe their opinions are valid. And, third, reports have been that the Colorado Bureau of Investigation reports were only that there were indications that Patsy Ramsey may have written the note, which is the lowest rung on the handwriting totem pole, so I don't think we know who wrote the ransom note because that would have been the smoking gun because, clearly, whoever wrote the note was somehow involved in the crime.

O'REILLY: How is it possible that a little girl can be killed brutally in her own home and, after two years, the cops can't figure out who did it? I mean, how is that possible? That's what...

MERRITT: It's possible...

O'REILLY: That's what America is asking tonight.

MERRITT: Sure, and I don't blame them, but the real answer here is that the crime scene was compromised early on on the night of this event, and the Boulder police did not call in Denver who had much more experience -- the Denver police -- and could have assisted. They did not call in the FBI. They commingled evidence. They allowed the Ramseys and other persons to wander through the house. And, therefore, by the time Henry Lee and other experts got to the crime scene, it was too late. Evidence must be properly collected. It must be properly stored and tested. Otherwise, you cannot trust the integrity of the results.

O'REILLY: Now the -- Governor Bill Owens on this broadcast said that if no indictments were handed down that he would be inclined to step in and take the investigation away from the Boulder authorities who, almost everybody admits, really can't handle the investigation. As you said, they botched it early on. They haven't been able to put together a coherent case to the public at all. Shouldn't the governor step in now and take it out -- away from them and give it to other people who may solve this?

MERRITT: I don't think so, and here's why. The grand jury are private citizens who were subpoenaed and who appeared and looked at every piece of investigation in the case, and that's a system of indictment and Alex Hunter, the DA, saying, "Notwithstanding that

O'REILLY: Yeah, but -- wait, wait, wait. I agree with you. The grand jury looked at the evidence provided by the Boulder authorities, who are the Keystone Kops. If you got better investigators, maybe they could come up with more evidence so that the grand jury -- another grand jury or whomever -- might have more evidence to consider.

MERRITT: But you can't go back in time. The crime scene was compromised. Henry Lee has said maybe if you got there...

O'REILLY: Well, there are -- but there are interrogation techniques that could take place. There are other people who could be examined, other people who could be interviewed. I mean, this is a joke. This whole investigation was a joke.

MERRITT: But how do you know that everybody who could have been interviewed wasn't interviewed by now?

O'REILLY: I don't know, but I have no...

MERRITT: I'm willing to...

O'REILLY: I don't know that.

MERRITT: I'm willing to respect the work of this grand jury.

O'REILLY: The grand jury is one thing, Counselor, but I'm not willing to respect the work of the Boulder police. I want pros in there. I want authorities who know what they're doing in there so that the grand jury can get as much evidence as possible. I'm not faulting the grand jury here. I believe they did what they should have done. They examined what was given to them. Who I'm faulting is the Boulder authorities who don't know what they're doing.

MERRITT: But Boulder brought in help. Boulder -- Alex Hunter brought in...

O'REILLY: I don't trust that guy. I don't trust that guy at all.

MERRITT: But -- well, I've practiced law here for 25 years. I've tried -- tried cases against all five of those district attorneys, except Alex Hunter because he doesn't really try cases, and I can tell you they are all ethical and they are all pros, and if they all have looked at this case and said, "We don't think there's enough evidence to indict," I'm sold. You know, America with -- the criminal-justice system, with all its flaws, is still the best in the world...

O'REILLY: Yeah. Well, Alex Hunter is not...

MERRITT: ... and I think we should respect it.

O'REILLY: ... the best investigator, as you know, and I think he's covering his butt here and, as you know, the Ramseys' attorney was tied in to the Democratic establishment in Denver. There was a lot of pussyfooting around to interview them, a lot of things that they got that no other suspect would have gotten, and -- I think this thing was botched, as you said, from the very beginning, but then it got political and, right now, we've got a little girl who's dead, and we have no killer, and you're willing to sit with that?

MERRITT: I am willing to sit with that in the hopes that someday evidence will be developed that will be sufficient. If you are right and if the...

O'REILLY: By who? By Alex Hunter? A boob?

MERRITT: You can -- the only thing that would probably solve this case at this point in time is a confession, and if you were to charge now and go to trial and lose at trial, double jeopardy would prevent these -- anyone from being charged if -- the same person from being charged again.

O'REILLY: I understand that, and that's a good point, Counselor, but what do we lose by having the governor of Colorado take it away from the dopey Boulder people and give it to somebody else? What's to be lost there?

MERRITT: There's nothing to be gained. That's the problem.

O'REILLY: Well, the gain...

MERRITT: This case has been investigated...

O'REILLY: The one-in-a-thousand point that somebody -- that some brilliant investigator might find something is what's to be gained.

MERRITT: Well, there is no brilliant investigator out there. They have used the best investigative powers that they have...

O'REILLY: No, they haven't.

MERRITT: ... had. There is nothing...

O'REILLY: They absolutely haven't.

MERRITT: ... the governor can do at this point. He needs to respect the democratic process, which is this grand jury, and let's move on and get -- and hope that eventually the case gets solved. He...

O'REILLY: Let's move on to what?

MERRITT: Move on to the next case right now that needs looking at.

O'REILLY: Oh, and we let the little girl get killed by somebody in her own home? I'm not buying that.

MERRITT: We don't know that. We don't know that. The presumption of innocence says that people are innocent until proven guilty in a court of law.

O'REILLY: Hey, look, we know she was killed in her own home, is what I said, Counselor. We know that.

MERRITT: But we don't know who did it. Yes.

O'REILLY: No, we don't know who did it, but I think we should use every resource that this country has to try to find out, and to leave it in the hands of these idiots in Boulder, I think, is a disgrace.

But we respect your opinion, Ms. Merritt.

MERRITT: Thank you for having me.

O'REILLY: Thank you very much for coming on.

And when we come back, we'll go to Colorado and get reaction from the folks out there with our reporter Carol McKinley.

the Ramseys are guilty.

We hope you stay tuned as THE FACTOR continues.

<20:09>

(COMMERCIAL BREAK)

O'REILLY: Continuing now with our coverage of the stunning news out of Colorado that no indictments will be forthcoming in the Ramsey murder case.

With us now is FOX News Channel Correspondent Carol McKinley who's been covering the case for the network from Denver.

Carol, what's the reaction in Colorado? I know this just went down a couple of hours ago. What are people saying?

CAROL MCKINLEY, FOX NEWS CORRESPONDENT: Well, out here at the Justice Center where we've been camped for three days or so here, we're hearing a lot of anger. There are people who believe that there was enough cause in this case -- probable cause to go after the killer of JonBenet Ramsey.

I'll tell you one person who was ready with reaction. That's the reporter for "The Colorado Daily Camera" here. This is the local paper here in Boulder. "Stumped." Talking about the grand jury. "Grand jury takes no action in JonBenet Ramsey case."

O'REILLY: Well, who do they think should be indicted? I mean, who does everybody think did it?

MCKINLEY: Well -- well, I believe there are a lot of people who still believe that the Ramseys had something to do with the death of their own daughter. I have reaction...

O'REILLY: All right, but is there -- is there anybody pointing a finger and saying, "Look, I think so-and-so killed JonBenet, and this is why." I mean, are there specifics, or is it just general stuff?

MCKINLEY: It's mostly just general stuff. Really...

O'REILLY: Yeah, because you can't criticize the grand jury because the grand jury -- I believe the grand jury did it -- did their job, but what gets me angry is this Alex Hunter, OK, who comes up there -- he's not contrite. He doesn't say, "Gee, I'm sorry we botched the investigation, and I feel terrible that I can't find the killer." All he is -- is he gets up there and goes, "Well, here are the finest investigators, and we've" -- what a bunch of crap! This guy should be ashamed of himself, should have quit a long time ago and should never be seen again, should get a cabin up in the Rockies and shut up. That's who I'm angry at. Are you getting any of that reaction?

MCKINLEY: Well, yes. We are getting a lot of that reaction. I know someone who went up to Alex Hunter's right-hand guy, Bill Wise (ph), and said, "I'm ashamed of you."

O'REILLY: Yeah.

MCKINLEY: Now, listen, you have to look at the fact, too, Bill, Alex Hunter's going to come out tomorrow at 12:30 Denver time and talk more and answer reporters' questions. From what I understand, everyone's tired. They want to go sit on this and think about it...

O'REILLY: Yeah. He's going to say the same...

MCKINLEY: ... overnight and will come back tomorrow.

O'REILLY: ... supercilious crap. He's going to say the same supercilious crap...

MCKINLEY: Well, that's your opinion.

O'REILLY: ... he's said for almost two years, that "We're doing the best job we can. We have the finest invest" -- what a bunch of baloney. I -- you see, there's no contrition on the part of the authorities for botching the case. It's not the grand jury's fault. I believe, if the grand jury saw evidence, they would have indicted. I don't believe that they saw anything because of the incompetency of the Boulder police, and that's where the ire should be directed, at Hunter and the cops, but I'm not hearing a lot of that.

MCKINLEY: Well, you might see that. I mean, we're just within an hour of the announcement -- an hour or two. So you might see that coming up. In fact, I think you will. I think you'll see an outcry who've tried to go to the governor before. You'll see outcry from detectives who worked and -- I mean, I'm telling you they worked hard on this case up and down these streets trying to prove something, and they're...

O'REILLY: But they failed.

MCKINLEY: ... going to come out, and they're going to say...

O'REILLY: They failed.

MCKINLEY: ... that they tried to give this to Alex Hunter, and Alex Hunter didn't come through. But you know what? There's going to be a lot of criticism, and you all can sit back there in New York and say that people in Colorado don't know what they're doing, but there could be something you don't know, and maybe there's enough to point to an intruder or point away from the Ramseys, that they really can't take this to trial.

O'REILLY: Well, maybe that's the case, but I'll tell you this, Carol, if that's the case, then that boob Hunter should have put it right on the table tonight. He shouldn't be waiting until 12:30...

MCKINLEY: Well, I won't...

O'REILLY: ... tomorrow. If he's got something, it's to the American -- you know, look, everybody in the country feels the same way. This poor, little girl is brutally killed and, after two years, they don't have the killer. If this guy has something, he owes it to the country, to the family, to everybody to say what he's got, not to pull some grandstanding, "I'll tell you tomorrow at 12:30."

How about the governor? Has he...

MCKINLEY: Well, do you want to hear what I...

O'REILLY: ... weighed in on this?

MCKINLEY: We haven't talked -- we haven't talked to the governor yet, but I talked to the detective who quit this case about a year ago because he believes the family is innocent. Now this is the veteran detective. He's been doing homicides for 32 years, was called up from Colorado Springs. They call him the fox, Lou Smit. He wrote a resignation letter to Alex Hunter saying, "You're on the wrong track. I can't be on that train. I'm going to step off right now."

O'REILLY: All right. So he...

MCKINLEY: I called him not too long ago...

O'REILLY: He thought the Ramseys -- he thought the Ramseys were innocent.

MCKINLEY: He thinks the Ramseys are still innocent, and he's going to continue to look for what he thinks is the killer out there, but he tells me that he was very emotional when he heard the news. He was in his car. He had to pull over. He tells me one quote to tell all of you, and that is, "Thank God."

O'REILLY: OK, but, listen, I mean, I don't think anybody can point a finger and say, "This person did anything," but we can say the authorities have handled it terribly.

Carol, thanks very much.

MCKINLEY: OK, Bill.

O'REILLY: And directly ahead, we're going to talk to two more involved, and Darnay Hoffman, whose predictions of an indictment were wrong.

We'll be right back as THE FACTOR continues.

<20:16>

(COMMERCIAL BREAK)

O'REILLY: Continuing our coverage with the late-breaking story. No indictment in the JonBenet Ramsey case in Colorado.

Joining us is Darnay Hoffman, an attorney who's been closely following the case.

We're also efforting (ph) some more sound from Colorado, but it's a bit of a chaotic situation out there, as you can imagine, people running around, and we'll see what we can do.

Counselor, you thought there was going to be an indictment.

DARNAY HOFFMAN, CRIMINAL-DEFENSE ATTORNEY: Yeah. In fact, what's interesting is that, when I was on your show the last time in May, I thought the grand jury was running away from the Ramseys and that they wouldn't charge them, and I believed for probably about four to five months that there would be no indictment. In fact, I was saying no indictment right up until Wednesday or Thursday of last week.

the grand jury, which is that the grand jury was going to be allowed to vote on this case, and now, from my understanding, the grand jury didn't vote on this case. What happened is the grand jury just simply debated among themselves and decided they couldn't agree enough to vote, and so what they said basically was that "We don't think there's enough evidence for us to do anything with the case."

Rather than vote up and down on this, meaning to approve of true bill or no true bill, they just went to Alex Hunter, and they said, "We can't figure this out. You take it. You deal with it," and that's basically what's happened.

O'REILLY: Did your source say that there was division within the grand jury?

HOFFMAN: Yes, there's always been division. In fact, there were always people that were not sure of family involvement. In fact, the way this grand jury was operating is that right up until probably toward the early part of April, it looked as if the grand jury was prepared to February.

And then, for some reason that's never been explained, they introduced Lou Smit to the grand jury. Suddenly, the grand jury, which was prepared to indict somebody in the family, is starting to hear evidence from the chief homicide investigator, the so-called fox, that there was no case against the family.

O'REILLY: Right. Carol McKinley just mentioned him, this guy - this man, Lou Smith, who's very firmly convinced the Ramseys had nothing to do with it. So he was -- he testified in front of the grand jury and may, in your opinion, have swayed some people away from the Ramseys.

HOFFMAN: Well, not only that, but even more suspiciously than that is John Douglas, who's a paid consultant for the Ramseys, was also allowed to testify before the grand jury.

O'REILLY: But isn't that fair?

HOFFMAN: That's fair maybe but with respect to bringing in an indictment. Bringing in something where you're going to solve a case, it's not necessarily so, because all Lou Smit said was, "Well, what about this? What about that?" One thing or the other.

The fact of the matter is that that was pure speculation. Nobody bothered to see if there was a stun gun involved. You'd have to -- you would have to disinter the girl's body and look at...

O'REILLY: Well...

HOFFMAN: ... it again.

O'REILLY: ... why are you -- I -- Carol McKinley got a little testy in the interview, and I understand what she -- why are you in New York so convinced that John and Patsy Ramsey were involved? See, I'm not convinced. I don't -- I'm -- I don't know. What I'm angry about is Alex Hunter and the way he's conducted himself personally, which I think is just a disgrace, and the entire Boulder police department in the sense of their inefficiency and ineptitude, and the higher authorities in Colorado -- now remember I worked there for two years, and I know the structure -- really not into -- injecting themselves and saying, "Look, if you can't do it, we're going to bring in big boys who might be able to do it." See, I don't think this is being -- but I can't say with any certainty that John and Patsy or the son or the neighbor -- they did it. Why are you so convinced the Ramseys are involved?

HOFFMAN: Well, first of all, whenever you look at a domestic homicide, you start with one startling statistic, which is that nine out of 10 times, it's a parent.

O'REILLY: That's true...

HOFFMAN: Until you eliminate...

O'REILLY: ... but that's not enough to convict.

HOFFMAN: No, I understand, but the fact is that you can't eliminate the parents in this case. And then when you have something that affirmatively ties the mother to the ransom note, that eliminates...

O'REILLY: Which is?

HOFFMAN: Which is the handwriting evidence...

O'REILLY: But we just heard from the counselor at the top of the show that she didn't buy that, that that was...

HOFFMAN: Well, fine, but she's a defense counselor. I -- we expect her to not believe that this is handwriting evidence that's going to be valid, but the fact of the matter is that -- you've seen it. You can look at the handwriting evidence. And my contention is that if a jury is shown the handwriting evidence that was shown to the district attorney but not shown to the grand jury that they would have brought in a -- a true bill.

O'REILLY: So let me get this straight. The handwriting analysis wasn't shown to the grand jury?

HOFFMAN: No. In fact, both Sena Wong (ph) and David Lee (ph)...

O'REILLY: Are you sure? Are you a hundred percent positive?

HOFFMAN: ... have the letters from the district attorney's office turning down their request to appear before the grand jury to explain the handwriting evidence to the grand jury. In fact, Michael Caine (ph) said...

O'REILLY: So you're -- the experts that you know volunteered to testify in front of the grand jury...

HOFFMAN: They wrote to -- not only to the DA.

O'REILLY: ... and they...

HOFFMAN: They wrote to the judge complaining the DA never got back to them and, in fact, they were never called by police investigators or anybody else.

O'REILLY: Didn't the Boulder's -- DA's office -- Hunter -- didn't

HOFFMAN: Well, let's put it this way. They went to Chet Eubowsky (ph) who said that, in his gut, he believed Patsy Ramsey wrote the note. However, in his report, which is typical of law enforcement handwriting experts, he equivocated because law enforcement handwriting experts don't like to be on the wrong side of a handwriting issue, where private-sector people like David and Sena, who work for banks, insurance companies, and people that could lose multimillions of dollars, have to be able to determine who wrote something. So law enforcement is notorious for being able to say, "Well, I didn't say they did it. I didn't say they didn't do it."

And remember something else, Bill. Everyone knows what happens to a lab in a major case. There's demolition derby. First, the LAPD lab in a major case.

O'REILLY: Yeah, I know. I know. They're under...

HOFFMAN: And then the Oklahoma City bombing...

O'REILLY: Look, I -- I agree with you in this, that I believe that people out there are just trying to cover their butts like crazy, and nobody's going to go out -- but I'm still not convinced the Ramseys were involved, but you are.

HOFFMAN: Yes, I am.

O'REILLY: And only -- your opinion is based upon handwriting analysis...

HOFFMAN: Well...

O'REILLY: ... outside the case.

HOFFMAN: ... let's put it this way. It's the only forensic evidence that you couldn't say there was an innocent explanation for, and if the mother has written the ransom note, where is the intruder in all of this?

O'REILLY: Well, right. If the -- well, if she wrote the ransom note, then she's involved, as we've all pointed out. Alex Hunter -- Carol McKinley -- we know is going to have this press conference which -- this guy drives me crazy. I don't expect him to say a thing, do you?

HOFFMAN: No, not at all. He's never...

O'REILLY: He's going to say, "We did a great job. All the public" -- you know, I just -- if I had a pie, I'd hit him with it. Should the governor -- Owens -- should he get involved in this now, or what should happen?

HOFFMAN: Well, I think there's no question that at least to ensure the integrity of the criminal justice system in Boulder that the -- a governor should at least have somebody look at the evidence that the grand jury...

O'REILLY: He said he would on this broadcast. Tomorrow, we're going to use the clip from Governor Owens where he said he would. But I'm not sure that'll happen. I'm not seeing a passion to solve the crime out there, is what...

HOFFMAN: Not out there. There has never been a passion to solve it. In fact, I was told very early on in the case that the people in Boulder really wanted this crime to go away. First of all, Boulder was informed by the city council that if they had to go to trial that it would probably bankrupt the community and, at the very least, there'd be a reduction in services.

O'REILLY: Yeah, but I can't believe the people in Boulder -- because I know the town very well -- would -- are rooting for a killer to get away.

But, look, we appreciate it, Darnay. Thanks for coming in. We're going to continue to cover the case. We'll have Owens' comment tomorrow on the broadcast.

And this evening, there's plenty more to come, including a very important question: Where is Hillary Clinton, Yankee fan? She's not at the big Yankee game against Boston. Why not? We'll find out when we get back.

<20:26>

(COMMERCIAL BREAK)

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