

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 KEVIN COOPER,)
4 PETITIONER,) CASE NO. 04CV656-H
5 VS.) RIVERSIDE, CALIFORNIA
6 JILL L. BROWN, ACTING WARDEN,) FRIDAY,
7 CALIFORNIA STATE PRISON AT) JUNE 25, 2004
8 SAN QUENTIN,) 10:05 A.M.
9 RESPONDENT.)
_____)

10 REPORTER'S TRANSCRIPT OF EVIDENTIARY HEARING

11 BEFORE THE HONORABLE MARILYN L. HUFF
12 UNITED STATES DISTRICT JUDGE

13 FOR THE PETITIONER:

14 DAVID T. ALEXANDER
15 ATTORNEY T LAW
332 SHERIDAN ROAD
PIEDMONT, CALIFORNIA 94611

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19 FOR THE RESPONDENT:

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ATTORNEY GENERAL
BY: HOLLY WILKENS, ESQ.
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COPY

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1 RIVERSIDE, CALIFORNIA - FRIDAY, JUNE 25, 2004 - 10:05 A.M.

2 THE CLERK: PLEASE REMAIN SEATED AND COME TO ORDER.
3 THIS UNITED STATES DISTRICT COURT IS NOW IN SESSION. THE
4 HONORABLE MARILYN L. HUFF PRESIDING.

5 NUMBER ONE ON CALENDAR, 04CV656, COOPER VS. GOUGHNOUR
6 FOR EVIDENTIARY HEARING REGARDING HABEAS CORPUS.

7 THE COURT: STATE YOUR NAMES FOR THE RECORD.

8 MS. WILKENS: YES, YOUR HONOR. HOLLY WILKENS, DEPUTY
9 ATTORNEY GENERAL, FOR THE RESPONDENT.

10 THE COURT: AND I THINK WE'VE CHANGED THE NAME OF THE
11 RESPONDENT?

12 MS. WILKENS: WE HAVE, YOUR HONOR.

13 THE COURT: TO?

14 MS. WILKENS: JILL L. BROWN.

15 THE COURT: JILL BROWN.

16 MS. DENAULT: GOOD MORNING, YOUR HONOR. DEPUTY
17 ATTORNEY GENERAL ADRIANNE DENAULT, ON BEHALF OF RESPONDENT.

18 THE COURT: AND FOR PETITIONER?

19 MR. ALEXANDER: GOOD MORNING, YOUR HONOR. DAVID
20 ALEXANDER, ON BEHALF OF PETITIONER.

21 MS. HAWKINS: GOOD MORNING. ANNE HAWKINS, ON BEHALF
22 OF THE PETITIONER.

23 THE COURT: GOOD MORNING. NOW THAT WE'RE HERE, AND
24 THE WITNESS IS HERE, WE MIGHT AS WELL GET STARTED.

25 MS. WILKENS: YES, YOUR HONOR.

1 THE COURT: YOU MAY CALL YOUR WITNESS.

2 MS. WILKENS: THANK YOU, YOUR HONOR. WE WOULD CALL
3 ED LELKO TO THE STAND.

4 THE CLERK: RAISE YOUR RIGHT HAND, PLEASE.

5 YOU DO SOLEMNLY SWEAR THAT THE EVIDENCE YOU'RE ABOUT
6 TO GIVE IN THE CAUSE NOW BEFORE THIS COURT WILL BE THE TRUTH,
7 THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

8 THE WITNESS: I DO.

9 THE CLERK: PLEASE BE SEATED.

10 PLEASE STATE YOUR NAME AND SPELL YOUR FIRST AND LAST
11 NAME FOR THE RECORD.

12 THE WITNESS: EDWARD JOSEPH LELKO, JR. E-D-W-A-R-D
13 L-E-L-K-O.

14 THE COURT: IF AT ANY TIME YOU NEED A BREAK, LET US
15 KNOW.

16 THE WITNESS: THANK YOU, YOUR HONOR.

17 THE COURT: THANK YOU. HOW ARE YOU FEELING?

18 THE WITNESS: FINE. FINE.

19 THE COURT: YOU MAY PROCEED.

20 MS. WILKENS: THANK YOU, YOUR HONOR.

21 DIRECT EXAMINATION

22 BY MS. WILKENS:

23 Q. GOOD MORNING, MR. LELKO.

24 A. GOOD MORNING.

25 Q. COULD YOU PLEASE TELL THE COURT WHERE YOU WERE EMPLOYED IN

1 JUNE OF 1983.

2 A. AT THE CANYON CORRAL IN CHINO HILLS, CALIFORNIA.

3 Q. AND ON WHAT ROAD WAS THE CANYON CORRAL LOCATED, PLEASE?

4 A. ON PEYTON AND CARBON CANYON ROAD.

5 Q. AND, MR. LELKO, WHAT WERE YOUR DUTIES AT THE CANYON
6 CORRAL?

7 A. I WAS A BARTENDER.

8 Q. AND SOMETIME IN JUNE OF 1983, DID YOU LEARN THAT THERE HAD
9 BEEN A MURDER OF THREE MEMBERS OF THE RYEN FAMILY AND A BOY BY
10 THE NAME OF CHRISTOPHER HUGHES?

11 A. YES. I WAS INFORMED THE NEXT MORNING; WHATEVER IT WAS.

12 Q. NOW, WERE YOU INTERVIEWED ABOUT THE NIGHT OF THE MURDERS
13 BY THE SAN BERNARDINO SHERIFF'S DETECTIVES?

14 A. YES, I WAS.

15 Q. AND WERE YOU WORKING THE NIGHT OF THE MURDERS, SIR?

16 A. YES, I WAS.

17 Q. NOW, DO YOU RECALL HOW LONG AFTER YOU LEARNED OF THE
18 MURDERS THAT YOU SPOKE WITH A DETECTIVE FROM THE SAN BERNARDINO
19 SHERIFF'S OFFICE?

20 A. I WAS INFORMED BY THEM. I WAS CALLED AT HOME, AND THEY
21 ASKED ME TO COME DOWN TO THE BAR TO TALK TO ME.

22 Q. NOW, DID YOU TESTIFY AT THE CRIMINAL TRIAL OF KEVIN COOPER
23 IN SAN DIEGO, IN JANUARY OF 1985?

24 A. YES, I DID.

25 Q. AND ARE YOUR MEMORIES OF EVENTS THAT OCCURRED ON THE NIGHT

1 OF THE MURDER BETTER AT THE TIME YOU TESTIFIED IN JANUARY OF
2 1985 THAN THEY WOULD BE NOW?

3 A. YES. A LITTLE BIT.

4 Q. AND DID YOU TESTIFY TO THE BEST OF YOUR ABILITY IN JANUARY
5 OF 1985?

6 A. YES, I DID.

7 Q. AND DID YOU TESTIFY TRUTHFULLY IN THE KEVIN COOPER TRIAL
8 IN JANUARY OF 1985?

9 A. YES, I DID.

10 Q. NOW, WHEN YOU TESTIFIED IN JANUARY OF 1985 IN MR. COOPER'S
11 TRIAL, WERE YOU CALLED AS A WITNESS BY THE DEFENSE?

12 A. YES.

13 Q. AND PRIOR TO TESTIFYING FOR THE DEFENSE IN MR. COOPER'S
14 TRIAL, WERE YOU INTERVIEWED BY A DEFENSE INVESTIGATOR?

15 A. YES, I WAS.

16 Q. AND DO YOU RECALL THE NAME OF THE INVESTIGATOR?

17 A. DENNIS OR DAVID. I CAN'T REMEMBER HIS LAST NAME.

18 Q. DOES RON FORBUSH RING A BELL?

19 A. NO.

20 Q. OKAY. IT'S BEEN A LONG TIME?

21 A. YEAH.

22 Q. DID YOU SPEAK WITH MR. COOPER'S DEFENSE ATTORNEY PRIOR TO
23 TESTIFYING IN SAN DIEGO?

24 A. YES, I DID. JUST TO GIVE A STATEMENT, I GUESS.

25 Q. AND, SIR, DID YOU COOPERATE FULLY WITH THE DEFENSE PRIOR

1 TO TESTIFYING --

2 A. YES, I DID.

3 Q. -- IN MR. COOPER'S TRIAL?

4 A. YES, I DID.

5 Q. AND SINCE YOU TESTIFIED FOR MR. COOPER IN JANUARY OF 1985,

6 HAVE YOU BEEN CONTACTED BY ANY INVESTIGATORS OR ATTORNEYS

7 WISHING TO DISCUSS THE RYEN/HUGHES MURDERS WITH YOU?

8 A. NO.

9 Q. ALL RIGHT. HAVE YOU BEEN CONTACTED BEFORE TESTIFYING HERE

10 TODAY BY ANY REPRESENTATIVE --

11 A. NO.

12 Q. -- OF MR. COOPER?

13 A. NO, I HAVEN'T.

14 Q. ALL RIGHT. SO YOU HAVEN'T SPOKEN TO MR. ALEXANDER, FOR

15 EXAMPLE?

16 A. NO.

17 Q. AND YOU HAVEN'T SPOKEN TO ANYONE FROM THE ORRICK LAW FIRM?

18 A. NO.

19 Q. DID YOU SPEAK WITH SAN BERNARDINO DETECTIVES AGAIN?

20 A. YES, I DID.

21 Q. AND DID YOU SPEAK WITH A DETECTIVE MICHAEL GILLIAM?

22 A. I IMAGINE THAT WAS THE NAME.

23 Q. YOU DON'T RECALL?

24 A. I DON'T RECALL HIS NAME, REALLY.

25 Q. DO YOU RECALL ABOUT HOW LONG AGO YOU SPOKE TO DETECTIVE

1 GILLIAM?

2 A. A MONTH AND A HALF, TWO MONTHS.

3 Q. NOW, MR. LELKO, THERE IS A NOTEBOOK IN FRONT OF YOU, A
4 WHITE NOTEBOOK. IT'S NOTEBOOK 11. AND IF YOU COULD TURN TO
5 EXHIBIT NNN-1.

6 THE COURT: "N" AS IN "NANCY"?

7 MS. WILKENS: YES, YOUR HONOR.

8 THE WITNESS: OKAY.

9 (RESPONDENT'S EXHIBIT NNN-1 MARKED FOR IDENTIFICATION.)

10 Q. BY MS. WILKENS: AND EXHIBIT NNN-1 IS A TWO-PAGE
11 DECLARATION, DATED APRIL 26TH, 2004. DO YOU RECOGNIZE THIS
12 DECLARATION, MR. LELKO?

13 A. YES. I SIGNED THAT WITH THE DETECTIVE.

14 Q. OKAY. AND DID YOU SIGN IT ON THE DATE THAT'S INDICATED ON
15 PAGE 2, WHICH WOULD BE APRIL 26TH, 2004?

16 A. THAT'S CORRECT.

17 Q. AND DID YOU WRITE IN THE DATE WHEN YOU SIGNED IT? IS THAT
18 YOUR "26" THERE IN HANDWRITING?

19 A. YEAH. I THINK HE DID SAY, PUT THAT IN THERE, AND THEN
20 SCRATCH OUT -- I SAID, WELL, IT'S CHINO HILLS, AND THAT'S WHEN
21 I SCRATCHED OUT THE "HILLS."

22 Q. OKAY. SO YOU DIDN'T SIGN IT "CHINO HILLS"; YOU SIGNED IT
23 "CHINO"?

24 A. CHINO, RIGHT.

25 Q. ALL RIGHT. AND BEFORE SIGNING YOUR DECLARATION, DID YOU

1 READ IT OVER CAREFULLY?

2 A. YES, I DID.

3 Q. AND DID IT REFRESH YOUR RECOLLECTION AT THE TIME THAT YOU
4 SIGNED IT?

5 A. YES, IT DID.

6 Q. OKAY. AND I NOTE THAT YOU EXECUTED THIS IN CHINO; SO
7 YOU'RE STILL RESIDING IN THE CHINO AREA?

8 A. YES, I AM.

9 Q. OKAY. AND DO YOU HAPPEN TO KNOW WHETHER THE CANYON CORRAL
10 IS STILL AROUND?

11 A. I THINK THEY BULLDOZED IT A COUPLE OF WEEKS AGO, OR A
12 MONTH AGO OR SO.

13 Q. OKAY.

14 A. PUT IN A RITE AID OR SOMETHING.

15 THE COURT: NO VIEW FOR US.

16 MS. WILKENS: NO VIEW.

17 (RESPONDENT'S EXHIBIT JJJ MARKED FOR IDENTIFICATION.)

18 Q. BY MS. WILKENS: AND IF YOU COULD TURN TO THE VERY FIRST
19 EXHIBITS IN THE NOTEBOOK, WHICH IS JJJ, AS IN JACK, AND GO TO
20 JJJ-1. AND I NOTE THAT IT'S A PHOTOGRAPH, AND IT HAS A SIGN
21 THAT READS, "CANYON CORRAL."

22 WOULD THIS BE A PHOTOGRAPH OF THE BAR WHERE YOU
23 WORKED?

24 A. THAT'S CORRECT.

25 Q. AND IS THIS A TRUE AND ACCURATE DEPICTION OF THE BAR AS IT

1 APPEARED IN JUNE OF 1983?

2 A. YES, IT IS.

3 Q. AND I NOTICE THERE IS A SERIES OF PHOTOGRAPHS.

4 PHOTOGRAPH 2; COULD YOU TELL ME WHAT THIS SHOWS, IF YOU
5 RECOGNIZE IT?

6 A. THIS IS OUT THE BACK DOOR, IN THE BACK PARKING LOT.

7 Q. OKAY. AND IF SOMEONE WERE TO EXIT THE BAR THROUGH THE
8 BACK DOOR, THIS IS WHERE THEY'D COME OUT, INTO THE PARKING LOT
9 IN THE BACK OF THE BUILDING?

10 A. THAT'S CORRECT.

11 Q. OKAY. AND WERE PATRONS ALLOWED TO EXIT THE BACK DOOR?

12 A. PARDON ME?

13 Q. PATRONS COULD EXIT THE BACK DOOR; CORRECT?

14 A. YES.

15 Q. OKAY. AND THEN IF YOU COULD TURN TO THE NEXT PHOTOGRAPH,
16 WHICH WOULD BE JJJ-3. IS THIS THE SAME AREA?

17 A. THIS IS THE SAME AREA, YES; JUST LOOKING AT A DIFFERENT
18 ANGLE.

19 Q. OKAY. IT LOOKS FAIRLY RURAL; IS THAT ACCURATE?

20 A. AT THE TIME, YES.

21 Q. OKAY. IMAGINE IT'S CHANGED.

22 JJJ-4, IS THIS THE SAME PARKING AREA?

23 A. THAT'S THE SAME PARKING AREA, LOOKING AT -- LOOKING EAST.

24 Q. WOULD IT BE A VIEWPOINT FROM THE STREET, FROM THE FRONT OF
25 THE BUILDING?

1 A. NO, NO, NO.

2 Q. NO?

3 A. NO. THIS IS ALL ENCLOSED THERE. JUST LOOKING EAST FROM

4 THE -- THE WALL THAT WAS -- OR FENCE --

5 Q. OKAY. AND THEN THE NEXT PHOTOGRAPH, JJJ-5 --

6 A. THERE IS THE FENCE.

7 Q. -- IS THIS THE SAME PARKING AREA?

8 A. THAT'S THE PARKING LOT FROM PEYTON ROAD, LOOKING TOWARDS

9 THE WEST.

10 Q. OKAY. SO THIS IS A DIFFERENT SIDE OF THE PARKING --

11 A. NO. IT'S THE SAME PARKING LOT, BUT IT'S LOOKING FROM --

12 LOOKING WEST. PICTURE 4 WAS LOOKING EAST.

13 Q. OKAY. AND THEN OVER TO THE LEFT OF THE PHOTOGRAPH 5, THAT

14 WOULD BE THE BAR?

15 A. YES.

16 Q. THE BUILDING THERE?

17 A. YES.

18 Q. OKAY. AT LEAST I GOT SOMETHING RIGHT.

19 PHOTOGRAPH JJJ-6; NOW, DOES THIS SHOW THE FRONT OF THE

20 BAR?

21 A. THAT'S THE FRONT VIEW, YES.

22 Q. OKAY. AND YOU CAN PARK OUT IN FRONT OF THE BAR; CORRECT?

23 A. YES. THERE WAS A FEW PARKING PLACES OUT THERE.

24 Q. OKAY. AND THE ENTRANCE TO THE BAR, IS THAT IN THE FRONT?

25 A. YES. IT'S OFF TO -- BEHIND THAT TREE.

1 Q. OKAY. SO IN THE PHOTOGRAPH --
2 A. THE LEFT.
3 Q. -- IN PHOTOGRAPH 6, YOU WOULD ENTER BEHIND WHERE THE TREE
4 TO THE RIGHT IS?
5 A. WHERE THE TREE IS. TO THE LEFT.
6 Q. TO THE LEFT?
7 A. YEAH. THE LITTLE TREE ON THE LEFT.
8 Q. UH-HUH.
9 A. YOU WALK PAST, BETWEEN THE CAR AND THE TREE, AND THAT'S
10 WHERE THE ENTRANCE IS.
11 Q. AND WHEN YOU LOOK UP ABOVE THE ROOF LINE, YOU CAN SEE SOME
12 WRITING ABOVE THE ROOF LINE. THAT'S WHERE THE DOOR WOULD BE?
13 A. RIGHT.
14 Q. OKAY. AND THEN THE LAST PHOTOGRAPH, THAT WOULD BE
15 PHOTOGRAPH 7; MORE PARKING. IS THAT THE SAME --
16 A. THE PARKING LOT AGAIN, YEAH.
17 Q. OKAY. NOW, WITH RESPECT TO THE ENTRANCES TO THE BAR, YOU
18 CAN COME IN THE FRONT DOOR AND YOU CAN COME IN THE BACK DOOR
19 FROM THE PARKING AREA; CORRECT?
20 A. RIGHT.
21 Q. WOULD PATRONS ENTER THE BAR THROUGH THE KITCHEN?
22 A. NO.
23 Q. OKAY.
24 A. UNLESS THEY KNEW THE COOK. YOU KNOW, I --
25 Q. SO IT WOULD BE UNUSUAL?

1 A. RIGHT.

2 (RESPONDENT'S EXHIBIT SSS MARKED FOR IDENTIFICATION.)

3 Q. BY MS. WILKENS: OKAY. NOW, IF I COULD ASK YOU TO TURN TO
4 EXHIBIT SSS, AS IN SAM, DASH ONE. AND I WILL APOLOGIZE TO
5 EVERYONE BECAUSE THERE IS NO TAB FOR THAT PARTICULAR EXHIBIT.
6 OR THERE MAY BE. LAST TIME I SAW THEM, THERE WASN'T.

7 A. I DON'T SEE IT.

8 Q. IT MIGHT BE TOWARDS THE BACK OF RRR.

9 MR. ALEXANDER: 212528.

10 MS. WILKENS: YEAH. NOT FOR PURPOSES OF TODAY.

11 MR. ALEXANDER: NO. I UNDERSTAND.

12 THE WITNESS: I SEE IT.

13 MS. WILKENS: YEAH. IT'S A HANDWRITTEN DRAWING.

14 THE WITNESS: OKAY. I'M THERE.

15 Q. BY MS. WILKENS: OKAY. MR. LELKO, HAS ANYONE SHOWED THIS
16 TO YOU BEFORE, THAT YOU RECALL?

17 A. NO.

18 Q. OKAY. DO YOU RECOGNIZE IT AT ALL? DOES IT APPEAR --

19 A. YEAH. IT'S A VIEW OF THE CHINO HILLS AREA, CHINO, SOUTH
20 CHINO.

21 Q. I'M SORRY.

22 THE COURT: HE'S LOOKING AT THE MAP.

23 Q. BY MS. WILKENS: OH, I'M SORRY, SIR. COULD YOU TURN TO
24 THE PAGE AFTER THAT.

25 A. THIS ONE. YEAH, I DID.

1 Q. HAVE YOU SEEN THAT BEFORE?

2 A. YES, I HAVE.

3 Q. OKAY. AND WHEN DID YOU SEE THAT, SIR?

4 A. THE DETECTIVE SHOWED IT TO ME.

5 Q. OKAY. AND THAT WOULD BE WITHIN THE LAST TWO MONTHS?

6 A. RIGHT.

7 Q. OKAY. AND DOES THIS LOOK LIKE THE CANYON CORRAL BAR?

8 A. THAT'S CORRECT.

9 Q. OKAY. IS IT PRETTY ACCURATE?

10 A. IT'S PRETTY ACCURATE.

11 Q. OKAY. AND I NOTICE THAT IT HAS A LOT OF WRITING ON IT.

12 FOR EXAMPLE, ON THE LEFT-HAND SIDE IT SAYS, "KITCHEN DOOR,"

13 AND IT SHOWS THE KITCHEN.

14 A. YEAH.

15 Q. AND THEN IT HAS "BARTENDER'S STATION"?

16 A. RIGHT.

17 Q. AND THAT'S FAIRLY ACCURATE?

18 A. THAT'S CORRECT.

19 Q. AND THAT WOULD BE WHERE YOU WORKED?

20 A. RIGHT.

21 Q. OKAY. AND WOULD YOU COME OUT FROM BEHIND THE BAR TO

22 DELIVER DRINKS, OR WERE YOU PRETTY --

23 A. NO.

24 Q. -- MUCH BEHIND THE BAR?

25 A. NO. I STAYED BEHIND THE BAR. I HAD WAITRESSES WORKING.

1 Q. OKAY. SO THEY WOULD COME AND GET THE DRINKS FROM YOU?
2 A. RIGHT.
3 Q. OKAY. AND ABOUT HOW FAR IS THE BAR FROM THE FRONT DOOR?
4 A. MAYBE 20 FEET.
5 Q. OKAY. AND IT LOOKS LIKE IT SAYS "FRONT DOOR" OVER ON THE
6 RIGHT-HAND SIDE --
7 A. RIGHT.
8 Q. -- IT LOOKS LIKE?
9 A. NO.
10 Q. THAT'S NOT RIGHT?
11 A. THAT'S NOT ACTUALLY RIGHT. IT WAS A LITTLE OVER FURTHER.
12 Q. OKAY. WOULD IT BE --
13 A. IT WAS LIKE, THE STATION WAS HERE (INDICATING), AND THE
14 FRONT DOOR WAS MAYBE OFF MAYBE THREE FEET, FOUR FEET OFF TO THE
15 SIDE.
16 Q. OKAY.
17 A. WHEN THEY CAME IN, I HAD A CLEAR VIEW AT THEM COMING IN
18 THE DOOR, FRONT DOOR.
19 Q. NOW, WHEN WE CLARIFY THAT THE FRONT DOOR WAS NOT EXACTLY
20 DIRECTLY ACROSS FROM THE BAR --
21 A. RIGHT.
22 Q. -- WOULD IT HAVE BEEN CLOSER TO WHERE IT INDICATES THAT
23 THE BACK DOOR IS LOCATED, OR WOULD IT HAVE BEEN CLOSER TO THE
24 BOOTHS THAT ARE DRAWN IN?
25 A. OVER WHERE THE BOOTH IS. THE BOOTH ON THE LEFT.

1 THE COURT: THERE IS BOOTHS ON BOTH SIDES.

2 THE WITNESS: ON THE RIGHT.

3 THE COURT: ON THE PEYTON DRIVE SIDE?

4 THE WITNESS: RIGHT.

5 Q. BY MS. WILKENS: OKAY. SO THE FRONT DOOR WAS CLOSER TO
6 PEYTON DRIVE --

7 A. RIGHT.

8 Q. -- THAN IS SHOWN HERE?

9 A. RIGHT.

10 Q. OKAY. SO WE'RE NOT EXACTLY TO SCALE, BUT WE'RE PRETTY
11 ACCURATE?

12 A. PRETTY ACCURATE, YEAH.

13 Q. OKAY. AND YOU SPOKE TO SHERIFF'S DETECTIVES SHORTLY IN
14 TIME AFTER THE MURDERS. AND WHEN YOU INITIALLY SPOKE WITH THE
15 DETECTIVES, DID YOU THINK TO MENTION THE THREE MEN THAT YOU
16 ENDED UP TESTIFYING ABOUT AT TRIAL?

17 MR. ALEXANDER: OBJECTION. LEADING.

18 THE COURT: OVERRULED.

19 THE WITNESS: YES. HE ASKED ME IF I HAD ANY STRANGE
20 CUSTOMERS AT THE TIME.

21 Q. BY MS. WILKENS: OKAY. AND DID YOU HAVE TO RE-CONTACT
22 THAT DETECTIVE AT ALL WITH FURTHER INFORMATION, OR DID YOU JUST
23 HAVE ONE DISCUSSION WITH HIM, IF YOU RECALL?

24 A. I JUST -- JUST ONE DISCUSSION WITH HIM.

25 Q. OKAY. AND WHEN YOU TESTIFIED AT TRIAL, YOU SPOKE ABOUT

1 THREE PATRONS THAT HAD COME INTO THE BAR; IS THAT CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND ON THOSE PARTICULAR THREE PATRONS, WAS THERE -- DID
4 YOU OBSERVE ANY BLOOD ON THEIR PERSON OR CLOTHING?

5 A. NO, I DIDN'T.

6 Q. NOW, THE NIGHT OF THE MURDERS, WHEN YOU WERE WORKING, DID
7 YOU OBSERVE BLOOD ON ANY OF THE PATRONS IN THE BAR THAT NIGHT?

8 A. NO.

9 Q. OKAY. NOW, WHEN YOU SPOKE TO THE SHERIFF'S DETECTIVES
10 SHORTLY AFTER THE MURDERS, YOU UNDERSTOOD THAT THEY WERE
11 INVESTIGATING THE MURDERS; IS THAT CORRECT?

12 A. YES, THAT'S CORRECT.

13 Q. AND YOU WERE TRYING TO BE HELPFUL TO THEM; IS THAT
14 CORRECT?

15 A. YES, I WAS.

16 Q. AND WOULD YOU HAVE BELIEVED THAT IF PATRONS HAD BLOOD ON
17 THEM, THAT WAS SOMETHING THAT DETECTIVES WOULD WANT TO KNOW?

18 A. YES. THAT WOULD STAND OUT.

19 Q. OKAY. NOW, THE THREE MEN THAT YOU TESTIFIED ABOUT AT
20 TRIAL, AND SPOKE TO DETECTIVES ABOUT, WERE ANY OF THOSE THREE
21 MEN WEARING COVERALLS?

22 MR. ALEXANDER: OBJECTION. IT'S LEADING, YOUR HONOR.

23 THE COURT: OVERRULED.

24 THE WITNESS: COVERALLS, LIKE A FARMER-TYPE COVERALLS,
25 BIB OVERALLS?

1 Q. BY MS. WILKENS: NOT BIB OVERALLS. SOMETHING THAT YOU
2 WOULD SEE A MECHANIC --

3 A. NO, NO, NO. NONE WERE WEARING --

4 Q. OKAY. DID YOU TESTIFY THEY WERE WEARING LEVI JEANS?

5 A. RIGHT.

6 Q. OKAY. AND BY THAT, I ASSUME YOU'RE BEING GENERIC?

7 A. GENERIC, YES.

8 Q. OKAY. AND WHEN YOU SAID THEY WERE WEARING JEANS, WOULD
9 YOU HAVE NOTICED IF THEY WERE WEARING COVERALLS WITH THE TOP
10 HALF FOLDED DOWN?

11 A. YES, I WOULD.

12 Q. OKAY. AND YOU DIDN'T OBSERVE ANY COVERALLS?

13 A. NO, MA'AM.

14 Q. DO YOU RECALL WHETHER OR NOT THERE WERE TWO PATRONS IN THE
15 BAR THAT NIGHT THAT WERE WEARING LIGHT BROWN COVERALLS?

16 A. NO, MA'AM.

17 Q. OKAY. NOW, THE THREE MEN THAT YOU SPOKE TO DETECTIVES
18 ABOUT, AND THAT YOU TESTIFIED AT TRIAL, THEY CAME INTO THE BAR
19 TWICE THAT NIGHT; IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. NOW, WHEN THE THREE MEN CAME BACK THE SECOND TIME, WERE
22 THEY WEARING THE SAME CLOTHING THAT THEY WERE WEARING THE FIRST
23 TIME YOU OBSERVED THEM?

24 A. YES, THEY WERE.

25 Q. OKAY. AND AFTER THEY RETURNED TO THE BAR, WERE THEY

1 REFUSED SERVICE?

2 A. YES.

3 Q. AND THEY LEFT THE BAR; IS THAT CORRECT?

4 A. YES, THEY DID. WITHOUT INCIDENT.

5 Q. OKAY. AND YOU OBSERVED NO PROBLEMS IN THEIR LEAVING THE
6 BAR?

7 A. NO, MA'AM.

8 Q. OKAY. DO YOU RECALL APPROXIMATELY HOW FAR FROM YOUR
9 LOCATION OF THE BAR THE THREE MEN WERE WHEN THEY WERE ASKED TO
10 LEAVE?

11 A. THEY WEREN'T ASKED BY ME. THEY WERE ASKED BY THE
12 WAITRESS. THEY WENT AROUND THE CORNER, AND I WENT TO THE
13 WAITRESS (INDICATING), SHOOK MY HEAD, AND SAID, NO. AND THEY
14 UNDERSTOOD. SO SHE WENT OVER AND TOLD THEM THEY WEREN'T GOING
15 TO BE SERVED; SO THEY JUST WALKED OUT THE DOOR.

16 Q. AND SO YOU STAYED BEHIND THE BAR?

17 A. YES, MA'AM.

18 Q. AND YOU DIDN'T NEED TO COME OUT AND HELP?

19 A. NO, MA'AM.

20 Q. OKAY. AND DID YOU CALL THE POLICE TO THE BAR THE NIGHT OF
21 THE MURDERS?

22 A. NO, MA'AM.

23 Q. OKAY. DID ANYONE ASK YOU TO CALL THE POLICE?

24 A. NO, MA'AM.

25 Q. WHERE IS THE PHONE INSIDE THE BAR LOCATED?

1 A. IT WAS ON THE WALL BEHIND MY STATION.

2 Q. OKAY. AND WAS THERE ANY OTHER PHONE THAT PATRONS COULD

3 USE IN THE BAR?

4 A. THERE WAS A PAY PHONE WHERE THE REST ROOMS ARE.

5 Q. OKAY. AND LOOKING AT THE HAND DRAWING --

6 A. AT THE DRAWING, YES.

7 Q. -- THAT WOULD BE AT THE BOTTOM, THERE IS "BATHROOMS"

8 WRITTEN?

9 A. YEAH. IT'S BATHROOMS. IT WENT ALONG, YOU KNOW -- THIS IS

10 GOING THIS WAY (INDICATING). IT WENT THE OPPOSITE WAY

11 (INDICATING).

12 Q. OH. THE BATHROOMS WERE ON THE SAME WALL AS THE BACK DOOR?

13 A. NO, NO. THEY WERE THERE, BUT THEY WERE THERE

14 (INDICATING). THEY WEREN'T LONG WAYS. THEY WERE THE OTHER

15 WAY.

16 Q. OKAY. AND THE PHONE WAS LOCATED OVER THERE?

17 A. YES.

18 Q. OKAY. I SEE THAT THE DANCE FLOOR IS IN FRONT OF THE

19 BATHROOMS?

20 A. RIGHT.

21 Q. OKAY. THE NIGHT OF THE MURDERS, WAS A BAND PLAYING?

22 A. YES.

23 Q. AND THERE WAS DANCING?

24 A. YES.

25 Q. OKAY. SO THE PHONE IS RIGHT OVER BY THE MUSIC?

- 1 A. RIGHT.
- 2 Q. OKAY. THE NIGHT OF THE MURDERS, DID ANY -- DID ANYONE
- 3 TELL YOU THAT THEY HAD SUMMONED THE POLICE?
- 4 A. NO.
- 5 Q. THE NIGHT OF THE MURDERS, DID YOU SEE ANY UNIFORMED
- 6 OFFICER INSIDE THE BAR THAT NIGHT?
- 7 A. NO, MA'AM.
- 8 Q. DID YOU HAVE ANYONE TELL YOU THAT THERE WAS A POLICE
- 9 OFFICER IN THE BAR THAT NIGHT?
- 10 A. NO, MA'AM.
- 11 Q. DID ANYONE TELL YOU THERE WAS A POLICE OFFICER OUTSIDE THE
- 12 BAR THAT NIGHT IN THE PARKING LOT?
- 13 A. NO, MA'AM.
- 14 Q. OKAY. WAS THERE ANYONE ON DUTY AS A BARTENDER THAT NIGHT
- 15 OTHER THAN YOURSELF?
- 16 A. NO.
- 17 Q. IS THERE A WOMAN BARTENDER THAT WORKED AT THE CANYON
- 18 CORRAL IN JUNE OF '83?
- 19 A. YES.
- 20 Q. WHO WOULD THAT BE, SIR?
- 21 A. I CAN'T THINK OF HER NAME.
- 22 Q. OKAY. WHAT WERE SHIRLEY KILLIAN'S DUTIES?
- 23 A. SHE WAS A BAR MANAGER.
- 24 Q. OKAY. SO SHE RAN THE BAR?
- 25 A. RIGHT.

1 Q. DID SHE HELP OUT BEHIND THE BAR?

2 A. SOMETIMES, YES.

3 Q. OKAY. DO YOU RECALL WHETHER OR NOT SHIRLEY KILLIAN WAS
4 WORKING THAT NIGHT?

5 A. SHE WASN'T BEHIND THE BAR, NO.

6 Q. OKAY. DO YOU RECALL WHETHER SHE WAS IN THE BAR THAT
7 NIGHT?

8 A. I THINK SHE WAS OUT ON THE FLOOR.

9 Q. OKAY. HOW WOULD YOU DESCRIBE THE CANYON CORRAL BAR?
10 WOULD YOU DESCRIBE IT AS A RESTAURANT WITH A BAR OR A BAR THAT
11 SERVES FOOD?

12 A. A BAR WITH A RESTAURANT, OR THAT SERVES FOOD.

13 Q. ALL RIGHT. AND DID CHILDREN COME INTO THE ESTABLISHMENT
14 IN JUNE OF 1983?

15 A. OCCASIONALLY. SOMETIMES WE HAD A BREAKFAST ON SATURDAY
16 AND SUNDAY, AND THEY BROUGHT THE KIDS IN. OR EARLY, BEFORE THE
17 BAND STARTED, SOMETIMES THEY'D COME IN.

18 Q. OKAY. AND AT WHAT TIME DID THE BAND NORMALLY START?

19 A. NINE O'CLOCK.

20 Q. OKAY. AND WOULD CHILDREN BE IN THE BAR AFTER THE BAND
21 STARTED?

22 A. NO, MA'AM.

23 Q. OKAY. AND DO YOU RECALL SEEING ANY CHILDREN IN THE BAR
24 THE NIGHT OF THE MURDER?

25 A. NO, MA'AM.

1 Q. OKAY. AND DO YOU RECALL WHETHER THE THREE MEN THAT YOU
2 TESTIFIED ABOUT, DO YOU RECALL WHETHER THEY CAME INTO THE BAR
3 BEFORE THE BAND STARTED TO PLAY?

4 A. IT WAS MAYBE 15 MINUTES BEFORE THE BAND STARTED.

5 Q. OKAY. AND DO YOU RECALL HOW MUCH TIME THEY WERE IN THE
6 BAR THE FIRST TIME YOU SAW THEM?

7 A. THEY WEREN'T THERE VERY LONG. THEY JUST HAD THE ONE BEER
8 AND LEFT.

9 Q. OKAY. AND DO YOU RECALL WHEN THEY RETURNED,
10 APPROXIMATELY?

11 A. APPROXIMATELY 11:30, QUARTER TO 12:00.

12 Q. OKAY. AND DO YOU RECALL HOW LONG THEY WERE IN THE BAR THE
13 SECOND TIME?

14 A. JUST A FEW MINUTES; TO GET REFUSED, AND THEY LEFT.

15 MS. WILKENS: THANK YOU. MR. LELKO, I HAVE NO
16 FURTHER QUESTIONS.

17 MR. ALEXANDER: YES, YOUR HONOR.

18 THE COURT: CROSS-EXAMINATION.

19 MR. ALEXANDER: YOU OKAY?

20 THE WITNESS: YES.

21 MR. ALEXANDER: DO YOU NEED A BREAK?

22 CROSS-EXAMINATION

23 BY MR. ALEXANDER:

24 Q. MR. LELKO, MY NAME IS DAVID ALEXANDER. WE'VE NEVER MET
25 BEFORE; CORRECT?

1 A. THAT'S CORRECT.

2 Q. AND WE'VE NEVER SPOKEN BEFORE?

3 A. NO, WE HAVEN'T.

4 Q. AND YOU'VE NEVER SPOKEN WITH MISS HAWKINS, MY COLLEAGUE?

5 A. NO, SIR.

6 Q. OKAY. AND I THINK YOU CONFIRMED THAT, IN FACT, YOU'VE

7 NEVER SPOKEN -- WITH THE EXCEPTION OF AN INTERVIEW BY SOME

8 INVESTIGATOR FROM MR. COOPER --

9 A. RIGHT.

10 Q. -- YOU'VE NEVER SPOKEN TO ANYBODY ON BEHALF OF MR. COOPER;

11 IS THAT CORRECT?

12 A. NO. NO, SIR.

13 MS. DENAULT: OBJECTION. MISSTATES THE TESTIMONY.

14 Q. BY MR. ALEXANDER: YOU DID SPEAK WITH AN INVESTIGATOR ON

15 BEHALF OF -- ACTING ON BEHALF OF MR. COOPER. DO YOU RECALL

16 THAT?

17 LET ME ASK THE QUESTION MORE SIMPLY. DO YOU HAVE ANY

18 RECOLLECTION OF SPEAKING WITH ANY PERSON WHO YOU UNDERSTOOD TO

19 BE ACTING ON MR. COOPER'S BEHALF?

20 A. YES, I DO. BUT I CAN'T REMEMBER WHO OR --

21 Q. RIGHT. OKAY. AND THAT -- DO YOU RECALL THAT BEING

22 APPROXIMATELY A YEAR AFTER THE MURDERS?

23 A. THAT SOUNDS -- YEAH.

24 Q. OKAY. NOW, IN FACT, MR. LELKO, YOU HAVE EITHER GIVEN

25 STATEMENTS TO INVESTIGATORS OR TESTIFIED ON AT LEAST SIX

1 OCCASIONS IN CONNECTION WITH THE COOPER MATTER; IS THAT
2 CORRECT?

3 A. THAT'S APPROXIMATELY TRUE.

4 Q. ALL RIGHT. LET ME SEE IF I CAN GET YOU TO ACKNOWLEDGE THE
5 OCCASIONS. THE FIRST TIME WAS SOMETIME SHORTLY AFTER THE
6 MURDERS OCCURRED; CORRECT?

7 A. RIGHT.

8 Q. ALL RIGHT. I'LL ASK YOU MORE ABOUT THAT IN A MINUTE. AND
9 THEN YOU MET IN MAY OF 1984, ABOUT A YEAR AFTER, WITH AN
10 INVESTIGATOR. DO YOU RECALL THAT?

11 A. YEAH. THAT SOUNDS ABOUT RIGHT.

12 Q. OKAY. AND THEN DO YOU RECALL YOU ALSO LATER IN MAY --
13 PERHAPS IT WAS EARLY JUNE, BUT I THINK LATER IN MAY, THAT YOU
14 TESTIFIED AT -- IN CONNECTION WITH A HEARING PRIOR TO THE TRIAL
15 OF THE MATTER?

16 A. THAT'S CORRECT.

17 Q. ALL RIGHT. AND THEN IN JANUARY 1985, I BELIEVE IT WAS
18 JANUARY 16TH, YOU TESTIFIED AT TRIAL. DO YOU RECALL THAT?

19 A. IN SAN DIEGO?

20 Q. YES, SIR.

21 A. YES.

22 Q. OKAY. AND THEN THERE WAS QUITE A PASSAGE OF TIME. AND
23 THIS LAST MARCH, I THINK IT WAS THE 29TH, DO YOU RECALL
24 MR. GILLIAM COMING TO SPEAK TO YOU?

25 A. YES.

1 Q. OKAY. AND THEN HE ACTUALLY CALLED YOU SOME DAYS OR MAYBE
2 WEEKS AFTER THAT TIME THAT HE CAME TO SEE YOU; CORRECT?

3 A. CORRECT.

4 Q. ON THE PHONE. ALL RIGHT.

5 AND THEN YOU ALSO GAVE A DECLARATION RECENTLY THAT I
6 BELIEVE MISS WILKENS POINTED OUT TO YOU; CORRECT?

7 A. THAT'S CORRECT.

8 Q. OKAY. SO I DON'T KNOW IF THAT'S SIX OR SEVEN TIMES. BUT
9 IS THAT YOUR RECOLLECTION OF ALL THE TIMES YOU'VE GIVEN
10 STATEMENTS?

11 A. THAT'S CORRECT.

12 Q. ALL RIGHT. AND IS IT YOUR TESTIMONY, SIR, THAT ON EACH
13 OCCASION, YOU TOLD THE TRUTH --

14 A. THAT'S CORRECT.

15 Q. -- WHETHER UNDER OATH OR OTHERWISE?

16 A. THAT'S CORRECT.

17 Q. OKAY. AND I WAS GOING TO ASK YOU THE SAME THING
18 MISS WILKENS DID. BUT TO BE CERTAIN, YOU WOULD AGREE THAT YOUR
19 RECOLLECTION WAS BETTER AT THE TIME OF THE INCIDENT THAN IT IS
20 TODAY?

21 A. THAT'S RIGHT.

22 Q. ALL RIGHT. AND, INDEED, YOUR RECOLLECTION A YEAR LATER,
23 WHEN YOU SPOKE TO THE INVESTIGATOR AND THEN TESTIFIED AT A
24 HEARING, IS BETTER THAN IT IS TODAY?

25 A. RIGHT.

1 Q. OKAY. AND SIMILARLY, AT TRIAL, YOUR RECOLLECTION WAS A
2 LOT BETTER THAN IT IS TODAY?

3 A. YEAH.

4 Q. ALL RIGHT. NOW, LET'S TALK ABOUT YOUR MORE RECENT
5 INTERVIEW, IF WE MIGHT, FOR A MOMENT. THE NAME THAT'S BEEN
6 MENTIONED IS MR. GILLIAM. DOES THAT SOUND CORRECT TO YOU?

7 A. THAT'S CORRECT.

8 Q. ALL RIGHT. DO YOU REMEMBER HIS FIRST NAME?

9 A. NO, I DON'T.

10 Q. DID HE TELL YOU HIS FIRST NAME?

11 A. YEAH, HE PROBABLY DID.

12 Q. YOU DON'T -- WAS HE ALONE --

13 A. YES, HE WAS.

14 Q. -- WHEN HE INTERVIEWED YOU?

15 A. YES.

16 Q. AND HOW DID THAT INTERVIEW GET SET UP?

17 A. HE HAD CALLED ME AND ASKED TO TALK TO ME, AND I SAID YES.

18 Q. ALL RIGHT. AND WHERE DID THAT INTERVIEW TAKE PLACE?

19 A. MY HOME.

20 Q. AND WHERE IS THAT, SIR?

21 A. 4445 GETTYSBURG STREET, CHINO, CALIFORNIA.

22 Q. AND THAT'S WHERE YOU CURRENTLY RESIDE?

23 A. THAT'S CORRECT.

24 Q. AND HOW LONG HAVE YOU LIVED THERE?

25 A. TEN YEARS.

1 Q. OKAY. AND WHERE DID YOU LIVE IN JUNE OF 1983?
2 A. I LIVED IN CHINO HILLS.
3 Q. AND CAN YOU TELL ME THE STREET OR THE ADDRESS, IF YOU
4 REMEMBER?
5 A. NO, NOT REALLY.
6 Q. YOU CAN'T REMEMBER THE NAME OF THE STREET?
7 A. NO.
8 Q. HOW LONG HAD YOU LIVED THERE?
9 A. AT THAT HOME IN CHINO HILLS?
10 Q. YES, SIR.
11 A. A YEAR, YEAR AND A HALF.
12 Q. OKAY. AND IF MY RECOLLECTION IS CORRECT, YOU STARTED
13 WORKING AT THE CANYON CORRAL BAR IN APPROXIMATELY FEBRUARY OF
14 1983; CORRECT?
15 A. THAT'S CORRECT.
16 Q. AND YOU WORKED THERE UNTIL APPROXIMATELY SOMETIME IN JULY
17 OF 1983?
18 A. THAT'S CORRECT.
19 Q. AND WHAT WAS THE REASON FOR YOUR LEAVING?
20 A. I JUST GOT FED UP WITH PEOPLE AND THE PLACE, SO I JUST
21 LEFT.
22 Q. I SEE. AND WHERE DID YOU MOVE TO?
23 A. CHINO.
24 Q. SOMEWHERE ELSE IN CHINO?
25 A. YES.

1 Q. AND YOU STOPPED WORKING AT THE BAR?
2 A. RIGHT.
3 Q. OKAY. DID YOU REVISIT THE BAR, EVEN THOUGH YOU STOPPED
4 WORKING THERE?
5 A. ONCE OR TWICE. I DON'T KNOW.
6 Q. JUST ONCE OR TWICE?
7 A. I DIDN'T GET UP THAT WAY ANYMORE.
8 Q. NOW, HOW MUCH TIME DID MR. -- WELL, EXCUSE ME. WAS
9 ANYBODY OTHER THAN YOURSELF AND MR. GILLIAM PRESENT WHEN HE
10 INTERVIEWED YOU IN LATE -- THIS PAST MARCH?
11 A. NO.
12 Q. JUST THE TWO OF YOU?
13 A. CORRECT.
14 Q. AND HOW MUCH TIME DID HE SPEND WITH YOU?
15 A. MAYBE HALF HOUR, 20 MINUTES.
16 Q. JUST A HALF HOUR OR 20 MINUTES?
17 A. RIGHT.
18 Q. AND HE HAD A TAPE RECORDER WITH HIM; IS THAT CORRECT?
19 A. THAT'S CORRECT.
20 Q. NOW, IT'S CORRECT, IS IT NOT, THAT THE TAPE RECORDER
21 WASN'T ON THE WHOLE TIME; ISN'T THAT CORRECT?
22 A. I HAD NO IDEA IT WASN'T ON OR OFF.
23 Q. YOU DON'T KNOW?
24 A. I DON'T KNOW.
25 Q. ALL RIGHT. WELL, BEFORE -- DID HE -- LET ME SEE IF I CAN

1 REFRESH YOUR RECOLLECTION. DO YOU RECALL HIM GOING THROUGH
2 YOUR STORY OR YOUR -- WHAT YOU HAD TO SAY WITH YOU, AND THEN
3 TURNING THE TAPE RECORDER ON?

4 A. NOT REALLY, NO.

5 Q. YOU DON'T RECALL WHETHER THAT HAPPENED, ONE WAY OR THE
6 OTHER?

7 A. NO. I DON'T THINK IT DID HAPPEN.

8 Q. DID YOU RECALL JUST GOING THROUGH THE STORY ONCE WITH HIM?

9 A. THAT'S CORRECT.

10 MS. WILKENS: OBJECTION TO THE TERM "STORY."

11 MR. ALEXANDER: I'M SORRY. I'M JUST USING --

12 Q. YOUR STATEMENTS, YOU JUST WENT THROUGH ONCE WITH HIM?

13 A. RIGHT.

14 Q. OKAY. NOW, DO YOU RECALL WHETHER OR NOT, ON THAT
15 OCCASION, MR. GILLIAM TOOK NOTES?

16 A. I THINK HE DID, YES.

17 Q. HE DID TAKE NOTES?

18 A. RIGHT.

19 Q. OKAY. AND DID HE HAVE A SHEET OF PAPER OR SOME PAPERS
20 WITH HIM FROM WHICH HE WAS ASKING YOU QUESTIONS?

21 A. THIS THING RIGHT HERE, TO -- THE DIAGRAM OF THE CANYON
22 CORRAL.

23 Q. OKAY. AND DID HE HAVE -- DID YOU NOTICE IF HE HAD
24 ANYTHING -- ANY OTHER PAPER IN FRONT OF HIM FROM WHICH HE
25 SEEMED TO BE ASKING QUESTIONS?

1 A. NO.

2 Q. YOU DON'T RECALL, OR HE DIDN'T?

3 A. NO, I DON'T RECALL HIM HAVING ANYTHING OTHER THAN THIS IN

4 FRONT OF HIM.

5 Q. OKAY. DID MR. GILLIAM, IN TALKING TO YOU THAT DATE, TELL

6 YOU WHAT THE PURPOSE OF THAT -- OF HIS INTERVIEWING YOU WAS?

7 A. YES.

8 Q. WHAT DID HE SAY?

9 A. HE SAID IT WAS STATEMENTS FROM TWO WOMEN THAT SAID THERE

10 WAS OTHER PEOPLE IN THE BAR AT THE TIME.

11 Q. I'M SORRY. I DON'T UNDERSTAND THAT. CAN YOU EXPLAIN.

12 WHAT DO YOU MEAN, STATEMENTS OF TWO WOMEN?

13 A. FROM TWO WOMEN THAT WERE IN THE BAR THAT CAME FORWARD 21

14 YEARS LATER TO TESTIFY SAYING THEY SAW SOMETHING ELSE.

15 Q. OKAY. AND DID HE SHOW YOU ANY STATEMENTS BY THESE WOMEN?

16 A. YES.

17 Q. HE DID. AND DID HE SHOW YOU BOTH STATEMENTS OR ONE

18 STATEMENT?

19 A. I ONLY RECALL ONE.

20 Q. AND HE SHOWED YOU THAT DIAGRAM --

21 A. THAT'S CORRECT.

22 Q. -- THAT MISS WILKENS ASKED YOU ABOUT; CORRECT?

23 A. YES.

24 Q. AND I THINK THAT'S SSS-1 FOR THE RECORD.

25 A. YES, THAT'S CORRECT.

1 Q. OKAY. AND DID HE TELL YOU WHO PREPARED THAT?

2 A. NO, HE DIDN'T. I DON'T RECALL.

3 Q. UH-HUH. DO YOU KNOW WHETHER -- WHETHER ONE OF THE WOMEN
4 WHO HE MADE REFERENCE TO PREPARED THAT?

5 A. HE MIGHT HAVE. I DON'T RECALL.

6 Q. SO YOU DON'T KNOW, AS YOU SIT HERE, WHETHER HE TOLD YOU OR
7 NOT?

8 A. NO.

9 Q. OKAY. NOW, YOU AGREE WITH MISS WILKENS THAT THAT PICTURE
10 IS A PRETTY ACCURATE SKETCH OF WHAT THE INSIDE OF THE BAR LOOKS
11 LIKE, WITH THE COUPLE OF CORRECTIONS YOU MADE?

12 A. RIGHT.

13 Q. OKAY. DID MR. GILLIAM GO THROUGH THE STATEMENT OF ONE OF
14 THE WOMEN WITH YOU RATHER CAREFULLY?

15 A. YES, HE DID.

16 Q. OKAY. AND WAS HE SITTING NEXT TO YOU OR ACROSS FROM YOU?

17 A. NEXT TO ME.

18 Q. RIGHT NEXT TO YOU. OKAY. NOW, LET ME GO TO THAT DIAGRAM,
19 IF WE MIGHT, FOR A MOMENT. OKAY.

20 A. STILL ON IT.

21 Q. THAT'S THAT SSS-1. YOU'VE GOT IT IN FRONT OF YOU, SIR?

22 A. I HAVE IT IN FRONT OF ME, YES, SIR.

23 Q. VERY GOOD.

24 NOW, I JUST WANT TO ASK YOU A FEW QUESTIONS. YOU
25 MENTIONED TO MISS WILKENS TWO DOORS, THE FRONT DOOR, WHICH IS

1 ACTUALLY I THINK YOU SAID A LITTLE BIT TO THE RIGHT; CORRECT?

2 A. THAT'S CORRECT.

3 Q. OKAY. NOW, BY THE WAY, WOULD YOU AGREE WITH ME THAT FOR
4 SOMEBODY TO BE ABLE TO DIAGRAM THIS -- PROVIDE THIS KIND OF
5 DIAGRAM, THAT THEY WOULD HAVE HAD TO HAVE BEEN IN THAT BAR A
6 FAIR NUMBER OF TIMES TO REMEMBER IT THIS ACCURATELY?

7 MS. WILKENS: OBJECTION. SPECULATION.

8 THE COURT: SUSTAINED.

9 Q. BY MR. ALEXANDER: DID MR. GILLIAM TELL YOU WHEN THIS
10 DIAGRAM WAS PREPARED?

11 A. NO, HE DIDN'T.

12 Q. DO YOU SEE DOWN ON THE DIAGRAM, ON THE LOWER RIGHT-HAND
13 CORNER, THERE IS SOME WRITING, "DRAWN BY CHRIS SLONAKER."

14 DO YOU SEE THAT, SIR?

15 A. YES.

16 Q. 2-7-04?

17 A. THAT'S CORRECT.

18 Q. DID MR. GILLIAM POINT THAT OUT TO YOU?

19 A. I BELIEVE HE DID.

20 Q. OKAY. AND DID HE TELL YOU THAT IT WAS PREPARED BY
21 MISS SLONAKER ON OR ABOUT FEBRUARY 7TH?

22 A. YES.

23 Q. OKAY. DID YOU RECOGNIZE THE NAME CHRIS SLONAKER?

24 A. NO.

25 Q. DO YOU KNOW THE NAME CHRIS RENFROW?

1 A. NO.

2 Q. THAT DOESN'T RING A BELL AT ALL?

3 A. NO.

4 Q. OKAY. NOW, LET'S GO BACK TO THESE DOORS THAT I MENTIONED.

5 IN YOUR ANSWERS TO MISS WILKENS, WE'VE GOT THE FRONT DOOR,

6 OKAY. AND THAT'S THE DOOR THAT'S BEHIND THE TREE IN ONE OF THE

7 J -- JJJ EXHIBITS; CORRECT?

8 A. THAT'S CORRECT.

9 Q. ALL RIGHT. AND THEN YOU REFERRED TO A BACK DOOR THAT

10 PATRONS COULD GO IN AND OUT OF --

11 A. RIGHT.

12 Q. -- IS THAT CORRECT?

13 A. RIGHT.

14 Q. ALL RIGHT. AND THAT'S THAT BACK DOOR THAT'S NEAR -- ON

15 THE BACK WALL, NEAR THE BATHROOMS?

16 A. THAT'S CORRECT. WELL, BY THE DANCE FLOOR.

17 Q. BY THE DANCE FLOOR?

18 A. THE DANCE FLOOR.

19 Q. OKAY. FAIR ENOUGH. AND THEN THERE IS ANOTHER DOOR THAT I

20 DON'T KNOW IF IT CAME UP, BUT THAT'S THE SO-CALLED KITCHEN

21 DOOR?

22 A. THAT'S CORRECT.

23 Q. OKAY. AND I THINK YOU SAID THAT THAT WOULD BE UNUSUAL, IF

24 ANY PATRONS CAME THROUGH THAT DOOR?

25 A. THAT'S CORRECT.

1 Q. ALL RIGHT. IT HAPPENED FROM TIME TO TIME, BUT IT WAS
2 UNUSUAL?

3 A. RIGHT.

4 Q. OKAY. AND IT PROBABLY -- WOULD YOU AGREE THAT SOMEBODY
5 UNFAMILIAR WITH THE PREMISES WOULD COME IN THAT DOOR. REGULARS
6 WOULD KNOW NOT TO GO IN THAT DOOR; CORRECT?

7 A. NOT REALLY, NO. BECAUSE YOU CAN SEE THE KITCHEN IF THE
8 DOOR WAS OPEN, AND THE COOKS WOULD SHOO THEM AWAY OR, YOU
9 KNOW --

10 Q. OKAY. BUT MY QUESTION IS, REGULAR PATRONS WOULD KNOW NOT
11 TO GO THROUGH THAT KITCHEN DOOR; CORRECT?

12 A. THAT'S CORRECT.

13 Q. OKAY. NOW, IN REVIEWING SOME OF THE -- IN REVIEWING SOME
14 OF THE DOCUMENTS, OR YOUR PRIOR TESTIMONY, AS I UNDERSTAND IT,
15 THE BAND STARTED ABOUT 9 O'CLOCK AT NIGHT?

16 A. THAT'S CORRECT.

17 Q. OKAY. AND IS THAT WHEN DINNER STOPPED BEING SERVED?

18 A. NO.

19 Q. OKAY. WHAT TIME WOULD DINNER STOP BEING SERVED ON A
20 SATURDAY NIGHT?

21 A. I THINK IT WAS ABOUT 11 O'CLOCK.

22 Q. ABOUT 11 O'CLOCK?

23 A. RIGHT.

24 Q. OKAY. AND THERE WERE TWO CHEFS THAT WORKED THERE?

25 A. THAT'S CORRECT.

1 Q. DO YOU REMEMBER THEIR NAMES?

2 A. NO.

3 Q. TWO HISPANIC MEN?

4 A. YES, MA'AM -- YES, SIR.

5 Q. AND YOU HAVE NO RECOLLECTION OF THEIR NAMES AT ALL?

6 A. NO.

7 Q. WERE THERE ONLY TWO COOKS THAT WORKED AT THE CANYON CORRAL
8 BAR AT THAT TIME PERIOD?

9 A. THAT'S CORRECT.

10 Q. OKAY. AND WHEN YOU STOPPED SERVING AT 11:00, THEY WOULD
11 TYPICALLY GO HOME?

12 A. DO THEIR CLEANUP AND GO HOME.

13 Q. OKAY. AND SO THAT IF SOMEBODY TRIED TO COME THROUGH THAT
14 BACK DOOR, 11:30 OR SO, THEY WOULD BE GONE?

15 A. RIGHT.

16 Q. OKAY. NOW, I WANT TO -- IF YOU CAN HELP ME OUT A LITTLE
17 BIT WITH THESE PICTURES UP FRONT. I'LL ASK YOU TO TURN TO
18 THESE JJJ EXHIBITS, SO I UNDERSTAND. IF YOU GO TO JJJ-1.
19 OKAY.

20 A. OKAY.

21 Q. THAT PATH THAT'S RIGHT NEXT TO, LOOKS LIKE KIND OF A DARK
22 CAR, RED MAYBE CAR THERE. SEE THERE?

23 A. TO THE RIGHT?

24 Q. THAT'S LEADING --

25 THE COURT: ON THE RIGHT?

1 MR. ALEXANDER: YES, YOUR HONOR. THANK YOU.

2 THE WITNESS: OKAY.

3 Q. BY MR. ALEXANDER: THAT'S LEADING TO THE FRONT DOOR?

4 A. TO THE WALKWAY THAT LEADS UP TO THE FRONT DOOR.

5 Q. YES. OKAY. SO IF I GO STRAIGHT DOWN THAT WALKWAY, I'LL
6 GO IN THE FRONT DOOR?

7 A. THAT'S CORRECT. NO, YOU'D HAVE TO MAKE A RIGHT.

8 Q. THE FRONT DOOR IS A LITTLE TO THE RIGHT OF THE --

9 A. NO, NO. YOU'D WALK UP THAT WALKWAY. YOU COULDN'T GO
10 STRAIGHT, OR YOU'D WALK OUT IN THE PARKING LOT. IF YOU WALKED
11 UP, ABOUT HALFWAY UP THAT WALKWAY AND THEN TURNED RIGHT, THAT
12 WAS THE DOOR.

13 Q. LET ME MAKE SURE I'M CLEAR ON THIS. YOU SEE THE CAR AT
14 THE FAR RIGHT OF JJJ-1; CORRECT?

15 A. YES.

16 Q. ALL RIGHT. AND WHERE IS THE DOOR RELATIVE TO WHERE THE
17 FRONT OF THE CAR IS?

18 A. BY THE VOLKSWAGEN THERE, TO THE FRONT OF THAT RED
19 VOLKSWAGEN.

20 Q. OH. ALL THE WAY OVER TO THE LEFT THEN?

21 A. RIGHT.

22 Q. I SEE. SO YOU COME UP THAT PATH, AND YOU TURN LEFT AND
23 THEN YOU -- YOU'LL GO TO THE --

24 A. NO. YOU CAN GO STRAIGHT THROUGH THAT PATH --

25 Q. I SEE.

1 A. -- BUT YOU COULDN'T KEEP GOING STRAIGHT, OR YOU'D END UP
2 IN THE PARKING LOT.

3 Q. I SEE. SO THE FRONT END OF THE BAR IS REALLY ON CANYON
4 CORRAL DRIVE, WHICH IS THE ROAD ON THE LEFT THERE?

5 A. RIGHT.

6 Q. OKAY. AND THE STREET RIGHT IN FRONT, AT THE VERY FRONT OF
7 THIS PICTURE, THAT HAS, IT LOOKS LIKE "STOP," OR AT LEAST SOME
8 STREET WRITING ON IT THERE, IS PEYTON DRIVE?

9 A. THAT'S CORRECT.

10 Q. OKAY. I SEE. AND THEN THE -- OKAY. AND, ACTUALLY, IF
11 YOU CONTINUE ON PEYTON DRIVE UP A WAYS, MAYBE THREE QUARTERS OF
12 A MILE OR SO, YOU'LL COME TO ENGLISH ROAD. DOES THAT SOUND
13 FAMILIAR TO YOU? DO YOU RECALL?

14 A. I DON'T KNOW THE EXACT DISTANCE, BUT, YEAH, YOU WOULD
15 COME A MILE.

16 Q. SO YOUR QUARREL IS MY DISTANCE, NOT WITH THE FACT THAT
17 IT'S ENGLISH ROAD?

18 A. RIGHT, RIGHT.

19 Q. SO ALONG PEYTON, OFF OF PEYTON DRIVE?

20 A. RIGHT. RIGHT.

21 Q. VERY WELL. THANK YOU.

22 NOW, LET'S GO, IF YOU WOULD, TO JJJ-2. WITH REGARD TO
23 THE FRONT DOOR, IS JJ-2 BEHIND THE BAR TO THE RIGHT THERE? I
24 MEAN, IT WOULD BE BEHIND THE BAR?

25 A. THIS IS BEHIND THE BAR. IT LOOKS LIKE IT'S LOOKING WHERE

1 THE KITCHEN DOOR WOULD BE, OUT --

2 Q. ALL RIGHT.

3 A. -- TOWARDS THE HILLS.

4 Q. IN FACT, LET'S DO THIS. IF YOU CAN RECALL, WHICH IS
5 NORTH, SOUTH, EAST AND WEST; OR IF YOU TELL US ONE, WE'LL
6 FIGURE OUT THE REST.

7 A. OKAY. YOU'RE KIND OF LOOKING NORTHWEST OUT THIS JJ --

8 Q. WELL, IF YOU GO BACK DOWN CANYON CORRAL ROAD, THERE IS,
9 LOOKS LIKE, A HOUSE OR A STRUCTURE WAY DOWN THERE.

10 DO YOU SEE THAT IN THE PICTURE?

11 A. WHICH PICTURE ARE YOU LOOKING AT NOW?

12 Q. JJ-1 -- JJJ-1. I'M SORRY. I APOLOGIZE.

13 A. OKAY. I WAS ON 2.

14 Q. NO. FAIR ENOUGH.

15 A. OKAY. NOW, WHAT WAS THE QUESTION?

16 Q. YEAH. IF YOU GO BACK DOWN CANYON CORRAL -- I MEAN, CARBON
17 CANYON ROAD, TOWARDS THAT HOUSE WAY IN THE BACK THERE -- DO
18 YOU SEE THAT?

19 A. RIGHT.

20 Q. -- WHAT DIRECTION IS THAT?

21 A. THAT IS WEST.

22 Q. OKAY. DO YOU HAVE ANY KIND OF AN INSTRUMENT TO WRITE
23 WITH?

24 A. YEAH.

25 MR. ALEXANDER: WOULD YOU -- WITH YOUR HONOR'S

1 PERMISSION, WOULD IT BE ALL RIGHT IF HE PUTS "WEST" UP AT THE
2 TOP AND THEN INITIALS IT?

3 THE COURT: ANY OBJECTION?

4 MS. WILKENS: I DON'T WANT HIM DEFACING MY PHOTO. I
5 DON'T KNOW. I MEAN, IS IT REALLY NECESSARY?

6 MR. ALEXANDER: I THINK IT MAY BE HELPFUL.

7 MS. WILKENS: YOU SHOULD HAVE BROUGHT YOUR OWN PHOTOS.

8 MR. ALEXANDER: I'M GOING TO REFER TO DIRECTIONS, I
9 THINK, FROM HERE ON OUT.

10 MS. WILKENS: IT'S TOTALLY UP TO THE COURT.

11 THE COURT: ALL RIGHT. HE MAY.

12 MR. ALEXANDER: THANK YOU, MR. LELKO.

13 Q. NOW, IF YOU WOULD GO TO -- BACK TO JJJ-2. THE KITCHEN
14 DOOR AND THE BACK DOOR ARE -- WOULD LEAD OUT TO THIS PARKING
15 AREA; CORRECT?

16 A. THAT'S CORRECT.

17 Q. ALL RIGHT. AND IN THAT WAY, WE'RE HEADING -- IF YOU GO TO
18 THE HILLS THAT ARE BEHIND IT, YOU GO TO THE NORTHWEST; WOULD
19 THAT BE CORRECT?

20 A. YES. AT -- WITH THIS PICTURE, YES.

21 Q. YES. ALL RIGHT. THANK YOU.

22 NOW, ARE YOU FAMILIAR WITH WHERE THE RYEN HOUSE WOULD
23 LIE, RELATIVE TO THESE HILLS THAT WE SEE IN THE DISTANCE HERE?

24 A. OFFHAND, NO.

25 Q. YOU DON'T KNOW. OKAY. THANK YOU.

1 IF YOU WOULD TURN, PLEASE, SIR, TO JJJ-4. DO YOU HAVE
2 THAT IN FRONT OF YOU?

3 A. YES.

4 Q. WE'VE GOT A CAR ON THE -- BLACK CAR OR DARK CAR ON THE
5 LEFT, AND THEN A PICKUP TRUCK. DO YOU SEE THAT?

6 A. YES.

7 Q. OKAY. TELL ME WHERE -- WHAT THIS IS A PICTURE OF. WHAT
8 PART OF THE PARKING LOT IS THIS A PICTURE OF?

9 A. THIS IS LOOKING EAST, OUT THE BACK PARKING LOT.

10 Q. DO YOU SEE WHERE THE DUMPSTER IS ON THE LEFT?

11 A. THAT'S CORRECT, YEAH.

12 Q. WHERE IS THE BAR RELATIVE TO THAT DUMPSTER?

13 A. OVER ON THE RIGHT, IN FRONT OF THAT BLUE PICKUP.

14 Q. IS THE BUILDING THERE WITH THE LIGHT ON, IS THAT PART OF
15 THE BAR?

16 A. YES.

17 Q. OKAY. NOW, THERE APPEARS TO BE A DOOR RIGHT SORT OF JUST
18 PAST THE WINDSHIELD OF THE BLUE PICKUP THERE.

19 A. THAT'S CORRECT.

20 Q. OKAY. BY "BLUE PICKUP," I MEAN THE ONE WITH THE SHELL ON
21 IT.

22 A. RIGHT. RIGHT.

23 Q. OKAY. WHICH DOOR IS THAT? IS THAT THE BACK DOOR THE
24 PATRONS GO IN AND OUT OF OR THE KITCHEN DOOR?

25 A. IT LOOKS LIKE THE BACK DOOR THAT THE PATRONS GO IN AND

1 OUT.

2 Q. ARE YOU SURE, OR ARE YOU GUESSING?

3 A. NO. I'M SURE.

4 Q. OKAY. AND THEN THERE IS THE LIGHT AND THEN THERE LOOKS

5 LIKE THERE IS ANOTHER DOOR.

6 A. THAT'S THE KITCHEN.

7 Q. THAT'S THE KITCHEN DOOR. AND DO I SEE A SCREEN ON THAT

8 DOOR?

9 A. YES.

10 Q. OKAY. SO WAS THERE BOTH A SCREEN DOOR AND A REGULAR DOOR?

11 A. YES.

12 Q. OKAY. NOW, BEAR WITH ME. OKAY. I THINK LOOKING AT

13 JJJ-5, WE'RE NOW LOOKING FROM EAST TO WEST IN THE BACK PARKING

14 LOT; CORRECT?

15 A. THAT'S CORRECT.

16 Q. ALL RIGHT. AND THEN GOING TO JJJ-6. WE ARE -- THAT'S THE

17 EAST PART OF THE BAR; CORRECT? EAST WALL?

18 A. NO.

19 Q. IT'S NOT? WHAT DIRECTION IS THIS PICTURE BEING TAKEN

20 FROM?

21 A. FROM SOUTH TO NORTH.

22 Q. OH, I SEE. OKAY. FAIR ENOUGH.

23 BUT FROM THE EAST SIDE, AS OPPOSED TO THE WEST SIDE?

24 A. NO.

25 Q. NO?

1 A. WEST SIDE. THAT'S CARBON CANYON ROAD.
2 Q. OH. THIS IS CARBON CANYON ROAD?
3 A. RIGHT.
4 Q. OKAY. WELL, SIR, I BEG YOUR INDULGENCE FOR A MOMENT.
5 WOULD YOU GO BACK TO JJJ-1. I'M SORRY -- YEAH, JJJ-1.
6 A. RIGHT.
7 Q. DO YOU SEE THAT RED -- THAT RED CAR TO THE RIGHT, RIGHT
8 NEXT TO THE PATH?
9 A. RIGHT.
10 Q. I THOUGHT YOU TOLD ME THAT THAT ROAD THERE IS PEYTON
11 DRIVE?
12 A. THAT IS.
13 Q. OKAY. AND ISN'T THAT RED CAR ALSO AGAIN IN JJJ-6, ALONG
14 PEYTON DRIVE?
15 A. THAT ONE IS, YES. NOW I SEE IT. I'M SORRY. THAT IS
16 PEYTON DRIVE THERE.
17 Q. WHEN YOU SAY "THERE," WE'RE TALKING ABOUT JJJ-6?
18 A. YEAH.
19 Q. OKAY. AND SO THAT IS THE EAST WALL OF THE BAR?
20 A. THAT'S CORRECT.
21 Q. ALL RIGHT. THANK YOU.
22 AND LET'S DO ONE MORE FOR COMPLETENESS SAKE. JJJ-7.
23 I JUST WANT TO BE CERTAIN I UNDERSTAND WHAT THAT -- WHERE THAT
24 PARKING AREA IS.
25 A. THAT'S IN THE BACK PARKING LOT, BUT I THINK THAT'S FACING

1 WEST.

2 Q. OKAY. AND LOOKING UP THE HILL THERE, WE'RE LOOKING
3 NORTHWEST?

4 A. RIGHT.

5 Q. OKAY. THANK YOU. THAT'S VERY HELPFUL.

6 WHEN MR. GILLIAM CAME AND TALKED TO YOU ON MARCH 29TH,
7 I'LL REPRESENT WAS THE DATE, DID HE SIMPLY ASK YOU WHAT
8 HAPPENED, OR DID HE START YOU RIGHT IN BY GOING THROUGH
9 MISS SLONAKER'S DECLARATION OR ONE OF THE WOMEN'S
10 DECLARATIONS? DO YOU RECALL?

11 A. I THINK HE TOLD ME ABOUT WHATEVER HER NAME IS. I CAN'T
12 REMEMBER HER NAME. SLONAKER.

13 Q. UH-HUH. DO YOU RECALL WHAT HE SAID TO YOU ABOUT THAT?

14 A. HE JUST SHOWED ME HER STATEMENT AND ASKED ME IF THAT
15 SOUNDED RIGHT, AND I SAID, NO.

16 Q. OKAY. ALL RIGHT. WE'LL COME TO THAT IN A MINUTE.

17 WHEN YOU WERE WORKING AT THE BAR AT THIS TIME OF --
18 THAT TIME OF YEAR, SIR, WHAT WERE YOUR HOURS?

19 A. FROM 6:00 TO 2:00.

20 Q. I'M SORRY. 6:00 --

21 A. 6 O'CLOCK.

22 Q. 6:00 P.M. TO 2:00 A.M.?

23 A. TO 2:00 A.M.

24 Q. OKAY. AND IF -- IT'S CORRECT, IS IT NOT, SIR, THAT AT
25 9 O'CLOCK, WHEN THE BAND STARTED PLAYING, YOU DIMMED THE LIGHTS

1 IN THE BAR?

2 A. THAT'S CORRECT.

3 Q. ALL RIGHT. AND, IN FACT, AT ABOUT 11 O'CLOCK, YOU DIMMED
4 THEM EVEN MORE?

5 A. I DON'T RECALL THAT. I MEAN, THEY WERE PRETTY DARK IN
6 THERE TO BEGIN WITH.

7 MR. ALEXANDER: EXCUSE ME, YOUR HONOR.

8 THE COURT: IS THIS TRIAL TESTIMONY?

9 MR. ALEXANDER: YES. I'M ACTUALLY -- I HAVE COMBINED
10 THE TWO PIECES OF TESTIMONY THAT HE GAVE, BOTH AT THE
11 EVIDENTIARY, OR THE HITCH MOTION, I THINK, AND THE TRIAL
12 TESTIMONY. AND I'M SORRY, I'VE JUST GOT TO -- I THINK THIS IS
13 IT. YES. I HAVE IT HERE, YOUR HONOR. THANK YOU.

14 OKAY. MAY I APPROACH, YOUR HONOR?

15 THE COURT: YOU MAY.

16 MR. ALEXANDER: FOR THE RECORD, MR. LELKO, I AM GOING
17 TO MARK AS -- HOW WOULD YOUR HONOR PREFER WE DO THIS?

18 THE COURT: GO AHEAD AND MARK --

19 THE CLERK: PETITIONER'S NEXT IN ORDER IS 17.

20 MR. ALEXANDER: THANK YOU VERY MUCH. THIS IS FOR THE
21 COURT.

22 (PETITIONER'S EXHIBIT 17 MARKED FOR IDENTIFICATION.)

23 MR. ALEXANDER: FOR THE RECORD, MR. LELKO, SO YOU
24 KNOW, I'VE ACTUALLY HANDED YOU WHAT IS NOW PETITIONER'S EXHIBIT
25 17. AND THAT IS A TRANSCRIPT, IN THE FIRST INSTANCE, WHERE THE

1 PAGES START AT 1739 OF YOUR TESTIMONY ON MAY 14TH, 1984, WHICH
2 I'LL REPRESENT TO YOU WHICH WAS IN CONNECTION WITH SOME
3 PRE-TRIAL HEARINGS IN THE CASE. AND THEN IF YOU PROCEED
4 FARTHER INTO THE DOCUMENT, YOU'LL COME TO TESTIMONY ON JANUARY
5 16TH, 1985.

6 AND, YOUR HONOR, THAT'S BATES NUMBER 20272. AND I
7 SPECIFICALLY --

8 Q. ARE YOU WITH ME SO FAR, SIR?

9 A. I'M LOST.

10 Q. ALL RIGHT. I'M SORRY.

11 THE COURT: 17 -- WHAT PAGE NUMBER DOES HE WANT?

12 MR. ALEXANDER: I ACTUALLY WANT HIM TO LOOK AT PAGES
13 6534, WHICH IS NEAR THE BACK.

14 A. OH, OKAY.

15 Q. AND THAT'S THE PART OF YOUR ACTUAL TRIAL TESTIMONY.

16 A. OKAY.

17 Q. ALL RIGHT. AND YOU'LL SEE, WE CALL IT A BATES NUMBER.
18 NOBODY HAS YET FOUND THIS FELLOW BATES, BUT HE'S BEEN KIND OF
19 FAMOUS.

20 AND THE BATES NUMBER IS 020281 ON THE RIGHT, AND AT
21 THE TOP IT SAYS, 6534.

22 A. RIGHT.

23 Q. ALL RIGHT. YOU'RE WITH ME?

24 A. I'M THERE.

25 Q. THANK YOU SO MUCH.

1 NOW, DIRECTING YOUR ATTENTION SPECIFICALLY TO LINE 8.
2 AND THE QUESTION IS, "QUESTION: AND YOU CHANGE THE LIGHTING
3 AFTER THE DINNER HOUR, REDUCE IT SUBSTANTIALLY WHEN THE BAND
4 STARTS?

5 "ANSWER: WELL, IF THERE -- THE DINNER HOUR GOES TO
6 10 OR 11 O'CLOCK THAT NIGHT; WE KIND OF DIM THEM A LITTLE BIT.
7 AND THEN AFTER 11:00, WE DIM THEM MORE."

8 A. THAT'S CORRECT. I GUESS.

9 Q. IS THAT ACCURATE TESTIMONY, SIR?

10 A. THAT'S ACCURATE.

11 Q. OKAY. SO BY 11:30 AT NIGHT, THE LIGHTS HAVE BEEN DIMMED A
12 SECOND TIME, AS --

13 A. ACCORDING TO THIS, YES.

14 Q. WELL, THIS IS --

15 A. MY RECOLLECTION, NO.

16 Q. OKAY. BUT THIS WAS YOUR TESTIMONY, SIR, I REPRESENT TO
17 YOU --

18 A. I UNDERSTAND.

19 Q. -- AT THE TIME OF TRIAL.

20 A. I UNDERSTAND.

21 Q. ALL RIGHT. AND YOU -- I THINK YOU HAD TOLD US THAT YOU
22 TESTIFIED TRUTHFULLY?

23 A. THAT'S CORRECT.

24 Q. AND YOUR RECOLLECTION WAS BETTER THEN THAN IT IS NOW?

25 A. RIGHT.

1 Q. ALL RIGHT. THANK YOU.

2 NOW, MR. LELKO, THE EVENING THAT THESE -- YOU DID SEE
3 THREE MEN COME INTO THE BAR ON TWO OCCASIONS; IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. ALL RIGHT. AND IT'S TRUE, IS IT NOT, THAT THE CLOSEST YOU
6 EVER GOT TO ANY OF THEM WAS SOMEWHERE BETWEEN 12 AND 15 FEET?

7 A. THAT'S CORRECT.

8 Q. ALL RIGHT. AND YOU WERE BEHIND THE BAR AT ALL TIMES, TO
9 THE BEST OF YOUR RECOLLECTION, WHILE THEY WERE THERE?

10 A. THAT'S CORRECT.

11 Q. AND IT'S CORRECT, IS IT NOT, SIR, THAT ON THE SECOND TIME
12 THAT THEY CAME IN, THAT YOU NOTICED THAT AT LEAST ONE OF THEM
13 WAS VERY DRUNK?

14 A. THAT'S CORRECT.

15 Q. WAS MORE THAN ONE OF THEM VERY DRUNK?

16 A. YES.

17 Q. OKAY. WERE ALL THREE PRETTY DRUNK?

18 A. THAT'S CORRECT.

19 Q. OKAY. AND THAT CAUGHT -- AND YOU -- WHEN THEY CAME IN,
20 DID THEY COME IN THE FRONT DOOR OR WHAT DOOR DID THEY COME IN,
21 AS BEST YOU CAN RECALL?

22 A. THEY CAME IN THE FRONT DOOR.

23 Q. ALL RIGHT. AND DID THEY GO OUT THE FRONT DOOR?

24 A. THAT'S CORRECT.

25 Q. ALL RIGHT. AND THEY WERE THERE JUST A FEW MINUTES, I

1 THINK YOU TOLD MISS WILKENS?

2 A. THAT'S CORRECT.

3 Q. ALL RIGHT. AND THEY -- WHO WENT UP TO THEM AND TOLD THEM
4 THAT THEY COULDN'T BE SERVED?

5 A. THE WAITRESS.

6 Q. AND WHO WAS THAT?

7 A. I HAVE NO RECOLLECTION OF HER NAME.

8 Q. OKAY. YOU DID NOT, SIR; IS THAT YOUR TESTIMONY?

9 A. NO. NO.

10 Q. OKAY. AND DID YOU JUST NOD TO HER AND INDICATE TO GET
11 THEM OUT, OR DID YOU SAY SOMETHING TO HER?

12 A. I JUST -- I SHOOK MY HEAD, NO. AND SHE UNDERSTOOD WHAT I
13 MEANT..

14 Q. UH-HUH. AND THEY JUST TURNED AROUND AND LEFT?

15 A. THAT'S CORRECT.

16 Q. ALL RIGHT. WITHOUT INCIDENT, I THINK YOU SAID?

17 A. THAT'S CORRECT.

18 Q. NO DISTURBANCE?

19 A. NO.

20 Q. OKAY.

21 THE COURT: NO, THAT IS CORRECT; OR, NO, IT'S
22 INCORRECT?

23 Q. BY MR. ALEXANDER: WHAT I SAID IS CORRECT?

24 A. RIGHT.

25 MR. ALEXANDER: ALL RIGHT. NOW YOU HAVE ME WORRIED,

1 YOUR HONOR.

2 THE COURT: WAS THERE OR WASN'T THERE A DISTURBANCE?

3 THE WITNESS: THERE WAS NOT.

4 Q. BY MR. ALEXANDER: OKAY. IT WENT WITHOUT -- THEIR ENTRY
5 AND DEPARTURE WENT WITHOUT INCIDENT?

6 A. THAT'S CORRECT.

7 Q. THEY DIDN'T APPROACH ANY PATRONS?

8 A. NO.

9 Q. ALL RIGHT. WHAT I SAID IS CORRECT?

10 A. THAT IS CORRECT.

11 Q. ALL RIGHT. THANK YOU.

12 SO CERTAINLY THEY DIDN'T HAVE ANY ALTERCATION WITH
13 ANYBODY IN THE BAR?

14 A. THAT'S CORRECT.

15 Q. ALL RIGHT. NOW, WHEN -- WOULD YOU AGREE THAT -- WELL, LET
16 ME ASK YOU THIS: NONE OF THEM WERE BOISTEROUS ON THEIR WAY
17 OUT, WERE THEY?

18 A. NO, SIR.

19 Q. OKAY. AND NONE OF THEM WERE ACTING IN ANY KIND OF
20 OBNOXIOUS MANNER?

21 A. NO, SIR.

22 Q. AND NONE OF THEM WERE TALKING LOUDLY?

23 A. NO, SIR.

24 Q. OKAY. WHAT I SAID IS CORRECT?

25 A. CORRECT.

1 Q. ALL RIGHT. NOW, WAS MISS KILLIAN, I THINK IS THE NAME
2 MISS WILKENS ASKED YOU ABOUT, WAS SHE WORKING AT THE BAR THAT
3 EVENING, DO YOU KNOW?

4 A. I DON'T RECALL.

5 Q. ALL RIGHT. SO YOU DON'T KNOW WHETHER SHE WAS THERE OR
6 NOT?

7 A. NO.

8 Q. WHO IS DIANE WINTERS?

9 A. PARDON ME?

10 Q. DIANE WINTERS?

11 A. THAT'S MY WIFE'S MAIDEN NAME.

12 Q. I'M SORRY?

13 A. THAT'S MY WIFE'S MAIDEN NAME.

14 Q. YOUR WIFE'S MAIDEN NAME. IN 1983, SHE WAS NOT YET YOUR
15 WIFE; IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. ALL RIGHT. ALL RIGHT. I DON'T MEAN TO PRY, BUT WHEN DID
18 SHE BECOME YOUR WIFE?

19 A. 1985.

20 Q. 1985. OKAY. NOW, IT'S TRUE, IS IT NOT, SIR, THAT WITH
21 REGARD TO THE KITCHEN DOOR, THAT SOMETIMES IT WAS LOCKED AND
22 SOMETIMES IT WAS OPEN?

23 A. THAT'S CORRECT.

24 Q. ALL RIGHT. AND IF THERE WAS A HOT NIGHT OR -- THAT
25 KITCHEN GOT PRETTY HOT, I TAKE IT?

1 A. YEAH.

2 Q. OKAY. SO THE CHEFS COULD LEAVE THAT DOOR OPEN TO GET SOME
3 COOL AIR IN?

4 A. RIGHT.

5 Q. AND CERTAINLY BY 11 O'CLOCK AT NIGHT, THINGS WOULD COOL
6 DOWN DURING THAT TIME OF YEAR?

7 A. THAT'S CORRECT.

8 Q. ALL RIGHT. NOW, WHEN -- AFTER YOU NODDED TO MISS -- OR TO
9 THE WAITRESS WHOSE NAME YOU CAN'T RECALL -- WITHDRAW THAT.

10 DID MISS -- DO YOU HAVE ANY RECOLLECTION OF
11 MISS KILLIAN ESCORTING THESE THREE MEN OUT THE DOOR?

12 A. NO.

13 Q. OKAY. SOMEBODY ELSE?

14 A. I THOUGHT THEY JUST LEFT ON THEIR OWN. I --

15 Q. OKAY. WELL, ACTUALLY, YOU DON'T REMEMBER?

16 A. NO, I DON'T REMEMBER.

17 Q. OKAY. AND ACTUALLY, ONCE YOU NODDED TO WHOEVER THE
18 WAITRESS WAS, YOU WENT BACK TO WHAT YOU WERE DOING; RIGHT?

19 A. THAT'S CORRECT.

20 Q. YOU DIDN'T PAY ATTENTION TO THEM GOING OUT THE DOOR. YOU
21 JUST SAW THEM HEADING TOWARDS THE DOOR; CORRECT?

22 A. RIGHT.

23 Q. OKAY. SO THAT IF, FOR EXAMPLE, THERE WAS A POLICE OFFICER
24 IN THE DOORWAY OR OUTSIDE THE DOOR, YOU WOULDN'T HAVE SEEN HIM?

25 A. NO.

1 Q. WHAT I SAID IS CORRECT?

2 A. RIGHT.

3 Q. ALL RIGHT. AND I BELIEVE YOU'VE TESTIFIED PREVIOUSLY THAT
4 THERE WERE ABOUT 50 TO 60 PEOPLE IN THE BAR AT -- DURING THE
5 11:00, 11:30 TIME OF NIGHT?

6 MS. WILKENS: OBJECTION. MISSTATES THE TESTIMONY.

7 THE COURT: OVERRULED. IF YOU RECALL.

8 THE WITNESS: I CAN'T RECALL THE EXACT AMOUNT OF
9 PEOPLE. I MEAN, IT WAS --

10 Q. BY MR. ALEXANDER: RIGHT. I'M NOT ASKING YOU THE EXACT;
11 I'M ASKING YOU FOR A RANGE. DOES THE 50 TO 60 AMOUNT OF PEOPLE
12 AROUND 11:00, 11:30 AT NIGHT SOUND ACCURATE?

13 A. THEREABOUTS, YEAH. MAYBE 30, 40, 50.

14 Q. OKAY.

15 A. YOU KNOW, I CAN'T SAY.

16 Q. OKAY. NOW, MR. LELKO, HAVE YOU EVER SEEN THE TRANSCRIPT
17 OF THE INTERVIEW THAT MR. GILLIAM DID WITH YOU IN MARCH? HAVE
18 YOU EVER BEEN SHOWN THAT?

19 A. YES. I SIGNED IT.

20 Q. THIS PAST MARCH, I'M SORRY.

21 A. I SIGNED IT. YES.

22 Q. NO, NO. NOT THE DECLARATION. A TRANSCRIPT OF THE
23 RECORDING THAT HE MADE?

24 A. NO.

25 Q. OKAY. YOU'VE NEVER SEEN THAT?

1 A. NO.

2 Q. ALL RIGHT. AND SUBSEQUENT TO HIS -- HE DID THAT INTERVIEW
3 IN PERSON, CORRECT, NOT ON THE PHONE?

4 A. RIGHT.

5 Q. ALL RIGHT. BUT THEN THERE WAS A SUBSEQUENT TELEPHONE CALL
6 FROM MR. GILLIAM; CORRECT?

7 A. RIGHT.

8 Q. RIGHT. AND HE TOLD YOU HE WAS RECORDING THAT, OR DID HE
9 NOT?

10 A. NOT THAT I RECALL.

11 Q. OKAY.

12 A. NOT ON THE PHONE.

13 MR. ALEXANDER: OKAY. I WON'T COMPLICATE THE RECORD.
14 I'M INFORMED THAT THIS DOCUMENT IS IN THE NOTEBOOK.

15 THE COURT: YES.

16 Q. BY MR. ALEXANDER: SO MR. LELKO, IF YOU WOULD DIRECT YOUR
17 ATTENTION, SIR, TO NNN-3 IN YOUR -- IN THE NOTEBOOK THERE. AND
18 IF YOU WOULD JUST VERY BRIEFLY PERUSE THAT. I JUST -- AND
19 THERE ALSO IS A -- WELL, IF YOU WOULD JUST PERUSE THAT TO
20 FAMILIARIZE YOURSELF THAT, IN POINT OF FACT, THAT'S WHAT YOU
21 AND HE TALKED ABOUT ON THE APRIL 20TH PHONE CALL.

22 A. OKAY. YEAH. NOW I RECALL.

23 Q. YOU RECALL THAT?

24 A. RIGHT.

25 Q. AND THAT, THE BEST YOU CAN RECALL, IS A TRUE AND ACCURATE

1 TRANSCRIPTION?

2 A. RIGHT. RIGHT.

3 Q. OKAY. I'D LIKE YOU TO DIRECT YOUR ATTENTION TO THE VERY
4 FIRST PAGE OF THE TRANSCRIPT, AND IT'S THE FIRST LARGE
5 PARAGRAPH. ALL RIGHT. WHERE IT SAYS, "UM, THERE IS JUST SOME
6 MORE QUESTIONS THAT THEY WANTED ANSWERED. AND SOME OF THE
7 QUESTIONS ARE THE SAME THINGS THAT WE ALREADY ANSWERED."

8 DO YOU SEE THAT, SIR?

9 A. RIGHT.

10 Q. DID MR. -- DO YOU KNOW WHO "THEY" IS THAT MR. GILLIAM IS
11 REFERRING TO?

12 A. APPARENTLY YOU, IS THE ONLY THING I CAN THINK OF.

13 Q. LET ME ASK YOU THIS: DID HE INDICATE WHO THE "THEY" WAS?

14 A. NO.

15 Q. OKAY. DID HE INDICATE WHO SENT HIM TO INTERVIEW YOU?

16 A. NOT REALLY, NO.

17 Q. NOT NECESSARILY THE SPECIFIC NAME, BUT IDENTIFYING THEIR
18 POSITION?

19 A. NOT THAT I RECALL.

20 Q. YOU DID UNDERSTAND THAT HE WAS THERE ON BEHALF OF SOME LAW
21 ENFORCEMENT AGENCY; CORRECT?

22 A. RIGHT.

23 Q. ALL RIGHT. NOW, DIRECT YOUR ATTENTION IN THAT SAME
24 PARAGRAPH. IT'S KIND OF RAMBLING, SO LET ME SEE IF I CAN PICK
25 UP AN APPROPRIATE POINT. HE SAYS, THIRD LINE DOWN, I THINK

1 MAYBE THE -- A -- THE QUESTION WRITERS, OR WHOEVER IT IS THAT
2 WANTS ALL THIS INFORMATION -- I DON'T UNDER -- WHAT OUR ANSWER
3 TO IT WAS, ESPECIALLY WITH THE DEAL WITH BLOOD. MAYBE THEY
4 WANTED AN ANSWER THAT YOU DIDN'T -- YOU KNOW, BEFORE YOU DIDN'T
5 SEE NOBODY WITH BLOOD. MAYBE THEY WANTED AN ANSWER IN A
6 DIFFERENT WAY, I GUESS. I DON'T KNOW. OR, YOU KNOW, IN A
7 DIFFERENT FRAME. SO LET ME JUST KIND OF GO OVER THIS REAL
8 QUICK. I'M RECORDING LIKE I DID ON THE ORIGINAL.

9 SO HE DID TELL YOU HE WAS RECORDING; IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. OKAY. DO YOU UNDERSTAND WHAT HE WAS SAYING -- WHAT
12 UNDERSTANDING DID YOU HAVE AS TO WHAT HE WAS SAYING IN, WITH
13 ALL DUE RESPECT TO MR. GILLIAM, SOMEWHAT OF A GARBLED
14 STATEMENT?

15 A. ACCORDING TO THE WAY THIS IS WRITTEN, NO, I DON'T
16 UNDERSTAND WHAT HE WAS SAYING. BUT I UNDERSTOOD HIM AT THE
17 TIME APPARENTLY.

18 Q. LET ME ASK YOU THIS: DID YOU UNDERSTAND THAT HE WAS
19 COMING BACK TO YOU ON SUBJECTS HE HAD ALREADY COVERED, BUT
20 BECAUSE HE WANTED TO SEE IF YOU COULD SAY THEM IN A LITTLE
21 DIFFERENT MANNER?

22 A. YEAH. I THINK THAT'S WHAT HE MEANT.

23 Q. THAT'S WHAT -- HOW YOU READ THIS?

24 A. RIGHT.

25 Q. OKAY. YOU MENTIONED THAT THE LIGHTING IN THE BAR WAS --

1 I'M DONE WITH THE DOCUMENT, SIR. THANK YOU.

2 THAT THE LIGHTING IN THE BAR WAS PRETTY DARK, I THINK
3 YOU SAID, OR WORDS TO THAT EFFECT?

4 A. RIGHT.

5 Q. WAS THE MUSIC ALSO PRETTY LOUD?

6 A. SOMEWHAT.

7 Q. WAS IT COUNTRY WESTERN? WHAT KIND OF MUSIC?

8 A. COUNTRY WESTERN.

9 Q. OKAY. AND DID THE BAND MEMBERS USE SPEAKERS?

10 A. YES.

11 Q. OKAY. AND HOW MANY -- WAS IT THE SAME BAND EVERY NIGHT
12 THAT TIME OF YEAR?

13 A. YES.

14 Q. OKAY. AND HOW MANY MEMBERS IN THE BAND?

15 A. I THINK THERE WAS ONLY THREE OR FOUR.

16 Q. AND WHAT WERE THE INSTRUMENTS?

17 A. I CAN'T RECALL.

18 Q. COUPLE GUITARS?

19 A. YEAH, COUPLE GUITARS.

20 Q. DRUMMER?

21 A. YEAH.

22 Q. MAYBE A FIDDLE PLAYER?

23 A. I --

24 Q. YOU DON'T RECALL?

25 A. I CAN'T RECALL.

1 Q. OKAY. AND AS I UNDERSTAND IT, THE PAY PHONE FROM YOUR
2 DESCRIPTION WAS -- THERE WAS ONE OFF NEAR THE BATHROOMS;
3 CORRECT?
4 A. IT WAS IN THE HALLWAY BY THE REST ROOMS.
5 Q. OKAY. BY THE REST ROOMS?
6 A. RIGHT.
7 Q. SO THAT WOULD BE PRETTY CLOSE TO THE DANCE FLOOR; CORRECT?
8 A. RIGHT.
9 Q. AND IT WAS RIGHT BEHIND THE BAND?
10 A. NO. THE BAND WAS OFF TO THE RIGHT AND THE PHONES WERE
11 STRAIGHT AHEAD.
12 Q. GO BACK TO YOUR PICTURE, IF YOU WOULD, SIR. OKAY. AND
13 THAT'S THAT SSS-1.
14 A. YEAH.
15 Q. CAN YOU TELL ME WHERE IT SHOWS THE DANCE FLOOR, WHERE THE
16 BAND WAS?
17 A. IN THE VERY CORNER.
18 Q. WHICH CORNER?
19 A. THE -- WHERE IT SAYS "BATHROOMS."
20 Q. UH-HUH.
21 A. IT WAS IN THAT CORNER THERE.
22 Q. RIGHT BEHIND THERE --
23 A. RIGHT.
24 Q. -- ON THIS CHART?
25 A. RIGHT.

1 Q. OKAY. SO IF YOU GO JUST ABOVE WHERE IT SAYS "BATHROOMS,"
2 THAT'S WHERE THE BAND WOULD BE?

3 A. RIGHT.

4 Q. AND TELL ME WHERE THE PHONE WAS.

5 A. THEY WERE IN THE HALLWAY. THERE WAS A DOOR THERE, AND YOU
6 WENT DOWN A LITTLE HALLWAY AND THE PHONE WAS RIGHT THERE.

7 Q. WHERE WAS THAT DOOR?

8 A. WELL, THAT -- LIKE I SAID BEFORE, THE BATHROOM IS
9 TURNED --

10 Q. OKAY.

11 A. -- AND IT WAS A HALLWAY THAT RAN DOWN THERE.

12 Q. ALL RIGHT. SO WAS THE HALLWAY -- I'M TRYING TO GET --
13 WHERE WAS THE HALLWAY RELATIVE TO WHERE THE BAND WAS STATIONED?

14 A. THESE BATHROOMS WERE ON THE OTHER SIDE OF THIS WALL
15 REALLY.

16 Q. I SEE. OKAY. THEY ARE ON THE OTHER SIDE OF THE WALL?

17 A. RIGHT.

18 Q. SO THERE IS A HALLWAY THAT GOES DOWN TO THE BATHROOMS
19 THERE?

20 A. RIGHT.

21 Q. ALL RIGHTY. I GOT YOU.

22 ALL RIGHT. SO IF SOMEBODY WAS MAKING A CALL -- FROM
23 WHERE YOU WERE BEHIND THE BAR, IF SOMEONE WAS MAKING A CALL
24 FROM THERE, YOU WOULDN'T BE ABLE TO SEE THEM; CORRECT?

25 A. CORRECT.

1 Q. ALL RIGHT. MR. LELKO, MISS KILLIAN HAD TWO SONS, DID SHE
2 NOT?

3 MS. WILKENS: OBJECTION. RELEVANCE.

4 THE COURT: OVERRULED.

5 Q. BY MR. ALEXANDER: DO YOU REMEMBER ONE BEING NAMED LARRY?

6 A. YEAH.

7 Q. OKAY.

8 A. SHE HAD THREE OF THEM.

9 Q. WHAT WAS THE OTHER ONE'S NAME?

10 A. RANDY, LARRY.

11 Q. RANDY AND LARRY?

12 A. RIGHT.

13 Q. OKAY. AND THEY WORKED AT THE BAR, DID THEY NOT?

14 A. NO.

15 Q. THEY DID NOT. BUT THEY WERE THERE QUITE OFTEN?

16 A. OCCASIONALLY.

17 Q. OKAY. DO YOU REMEMBER THEM BEING THERE THE NIGHT OF THE
18 INCIDENT WHEN THE THREE MEN CAME IN?

19 A. NOT TO MY RECOLLECTION.

20 Q. UH-HUH. DO YOU KNOW, WERE THEIR LAST NAMES KILLIAN ALSO?

21 A. NO. IT WAS SOMETHING DIFFERENT. IT WAS SOMETHING WITH AN
22 "M."

23 Q. WITH AN "M"?

24 A. YEAH.

25 Q. OKAY. AND DO YOU KNOW WHERE THEY ARE TODAY?

1 A. NO.

2 Q. ALL RIGHT. YOU DON'T KNOW IF THEY STILL LIVE IN THE CHINO
3 AREA?

4 A. LAST I HEARD, RANDY WAS UP AT BIG BEAR; AND THAT WAS QUITE
5 A FEW YEARS AGO. AND LARRY LIVED OFF OF GROVE IN ONTARIO
6 SOMEWHERE. BUT I DON'T KNOW IF HE STILL DOES.

7 Q. I'M SORRY. OFF OF?

8 A. GROVE AVENUE IN ONTARIO.

9 Q. OKAY. AND DO YOU RECALL -- YOU DON'T HAVE ANY
10 RECOLLECTION OF ANY OF THE THREE MEN THAT YOU SAW GETTING INTO
11 A TUSSELE OF SORTS WITH LARRY OR RANDY THAT EVENING?

12 A. NO, I DON'T.

13 Q. OKAY. SO IF THAT OCCURRED, YOU DIDN'T SEE IT, AT LEAST?

14 A. I DIDN'T SEE IT, NO.

15 Q. ALL RIGHT. LET ME ASK YOU THIS, MR. LELKO -- AND I
16 APOLOGIZE, I DON'T MEAN THIS TO BE EMBARRASSING -- BUT YOU WERE
17 KNOWN TO HAVE A FEW DRINKS WHEN YOU WERE WORKING THE BAR?

18 A. THAT'S CORRECT.

19 Q. UH-HUH. AND IN POINT OF FACT, THE EVENING THAT THESE
20 THREE GENTLEMEN CAME IN, YOU HAD PRETTY MUCH TIED ONE ON, AS
21 THEY SAY; IS THAT CORRECT?

22 A. I HAD A FEW DRINKS, YES.

23 Q. YOU WERE PRETTY DRUNK, WERE YOU?

24 A. I DON'T RECALL.

25 Q. OKAY. IF ONE OF THE WAITRESSES SAID THAT YOU WERE PRETTY

1 DRUNK THAT NIGHT, LATE AT NIGHT, YOU WOULDN'T DISAGREE WITH
2 THAT, WOULD YOU?

3 A. NO.

4 Q. OKAY. AND YOU'VE HAD A DRINKING PROBLEM, WHICH I
5 UNDERSTAND YOU'VE GOTTEN BY; CORRECT?

6 A. THAT'S CORRECT.

7 Q. OKAY. AND FOR WHAT PERIOD OF TIME DID YOU HAVE THAT
8 DRINKING PROBLEM?

9 A. WHAT PERIOD OF TIME?

10 Q. I'M SORRY. WHEN -- IN 1983, YOU HAD THAT PROBLEM;
11 CORRECT?

12 A. RIGHT.

13 Q. OKAY. WHEN DID YOU -- DID YOU EVER GET ANY HELP TO
14 OVERCOME THAT?

15 A. YES, I DID.

16 Q. OKAY. GOOD. NOW, YOU'VE BEEN SUCCESSFUL IN GETTING OVER
17 THAT?

18 A. THAT'S CORRECT. EIGHTEEN YEARS.

19 Q. EIGHTEEN YEARS NOW. OKAY. SO WE'RE GOING BACK TO ABOUT
20 1986?

21 A. THAT'S CORRECT.

22 Q. ALL RIGHT. AND WAS THAT THROUGH SOME SORT OF AN
23 ALCOHOLICS ANONYMOUS PROGRAM OR THE LIKE?

24 A. NO. I WENT TO A RECOVERY THING FOR 28 DAYS.

25 Q. OKAY. ALL RIGHT. VERY WELL. I WON'T PRY ANY MORE ON

1 THAT.

2 LET ME ASK YOU THIS ONE QUESTION: HOW LONG HAD YOU
3 HAD THAT DRINKING PROBLEM?

4 A. FEW YEARS.

5 Q. FEW YEARS. OKAY. MR. LELKO, I WANT TO SEE IF YOU CAN
6 HELP ME WITH REGARD TO THE EMPLOYEES WHO WORKED AT THE BAR IN
7 JUNE OF 1983. I THINK WE'VE MENTIONED SOME, BUT I WANT TO SEE
8 IF I UNDERSTAND WHO THEY WERE.

9 YOU'VE MENTIONED MISS KILLIAN. SHE WAS THE MANAGER OF
10 THE BAR?

11 A. THAT'S CORRECT.

12 Q. ALL RIGHT. AND SHE HAD A SON WHO DROVE RACE CARS. DO YOU
13 RECALL THAT?

14 A. THAT'S CORRECT.

15 Q. OKAY. WAS THAT EITHER LARRY OR RANDY?

16 A. THAT WAS LARRY.

17 Q. LARRY. OKAY. AND ON SATURDAY NIGHTS IS WHEN HE WOULD
18 RACE HIS CARS?

19 A. THAT'S CORRECT.

20 Q. AND SHE'D GO WATCH HIM?

21 A. YEAH, THAT'S CORRECT.

22 Q. OKAY. SO SHE PROBABLY WASN'T THERE THAT NIGHT, IF IT WAS
23 A SATURDAY NIGHT, AT THE BAR?

24 A. RIGHT.

25 Q. OKAY. AND THEN THERE IS A VIRGINIA MCNEIL, OR I THINK IT

1 MAY NOW BE MANSFIELD?

2 A. THAT'S MANSFIELD. OKAY. THAT'S LARRY'S LAST NAME.

3 Q. LARRY MANSFIELD?

4 A. YEAH. HE MARRIED JENNY.

5 Q. SO JENNY IS VIRGINIA MCNEIL?

6 A. MANSFIELD NOW.

7 Q. MANSFIELD, OKAY. ALL RIGHT. THANK YOU.

8 AND WHAT WAS HER JOB AT THE BAR?

9 A. SHE WAS A WAITRESS.

10 Q. OKAY. AND DO YOU KNOW WHETHER OR NOT SHE WAS WORKING THAT
11 EVENING? DO YOU RECALL?

12 A. I DON'T RECALL.

13 Q. ALL RIGHT. I'M GOING TO ASK YOU SOME NAMES AND MAYBE
14 THERE WILL BE SOME OTHERS.

15 DO YOU RECALL A LESTER LAND?

16 A. YEAH.

17 Q. DID HE GO BY ANY OTHER NAME?

18 A. I CAN'T RECALL. I KNOW THE NAME, YEAH.

19 Q. WAS HE AN EMPLOYEE? DID HE WORK AT THE BAR, OR WAS HE A
20 PATRON?

21 A. HE WAS A PATRON. HE -- SOMETIMES HE ACTED AS BOUNCER, IF
22 I, YOU KNOW, NEEDED A HAND.

23 Q. UH-HUH. AND DO YOU KNOW WHERE MR. -- WELL, WE'LL SEE
24 MR. LAND AS WELL.

25 LET ME ASK YOU: DO YOU KNOW WHERE HE LIVES TODAY?

1 A. NO.

2 Q. WHEN IS THE LAST TIME YOU RECALL SEEING HIM?

3 A. LAST TIME I TALKED TO HIM, HE WORKED FOR THE MONTE VISTA

4 WATER DISTRICT. AND THAT'S BEEN 15, 12, 15 YEARS AGO.

5 Q. KATHLEEN ROYALS; DOES THAT NAME RING A BELL?

6 A. YEAH, THAT SOUNDS FAMILIAR.

7 Q. DO YOU KNOW, WAS SHE AN EMPLOYEE OR WAS SHE A PATRON?

8 A. I THINK SHE WAS AN EMPLOYEE.

9 Q. SHE WAS AN EMPLOYEE?

10 A. I CAN'T BE CERTAIN, BUT HER NAME SOUNDS FAMILIAR.

11 Q. OKAY. DO YOU KNOW WHETHER SHE WAS IN THE BAR THAT EVENING

12 OR NOT?

13 A. I DON'T RECALL.

14 Q. OKAY. LINDA PAULK -- P-A-U-L-K, I THINK IS HOW IT'S

15 SPELLED -- DOES THAT NAME RING A BELL?

16 A. NO.

17 Q. OKAY. PAMELA SMITH, DOES THAT NAME RING A BELL?

18 A. NO.

19 Q. OKAY. AND, I TAKE IT, YOU WOULDN'T KNOW WHETHER EITHER

20 MISS SMITH OR MISS PAULK WERE IN THE BAR THAT EVENING?

21 A. NO.

22 Q. OKAY. NOW, ARE THERE ANY OTHER EMPLOYEES, PEOPLE WHO WERE

23 EMPLOYED AT THE BAR IN JUNE OF 1983 THAT -- WHOSE NAMES YOU CAN

24 RECALL?

25 A. NO. I CAN'T NOW.

1 Q. NOW, ON THAT EVENING, SIR, IF ANYBODY HAD WALKED INTO THE
2 BAR -- FOR EXAMPLE, THESE THREE MEN -- AND WALKED BY YOU, THEY
3 WOULD HAVE HAD TO HAVE COME THROUGH THE KITCHEN DOOR; CORRECT?

4 A. I'M NOT CERTAIN WHERE YOU'RE GOING HERE.

5 Q. I'M NOT GOING ANYWHERE. I'M JUST TRYING TO FIND OUT
6 FACTS. WHAT I'M TRYING -- YOU STAYED BEHIND THE BAR, AS TO THE
7 BEST OF YOUR RECOLLECTION, THE ENTIRE NIGHT?

8 A. RIGHT.

9 Q. YOU TOLD MISS WILKENS THAT, AND I THINK YOU CONFIRMED THAT
10 WITH ME; RIGHT?

11 A. RIGHT.

12 Q. SO IF SOMEBODY ENTERED THE BAR FROM BEHIND YOU, OKAY,
13 WHERE YOU WOULD BE STANDING, THEY CAME IN BEHIND YOU AND WALKED
14 BY YOU, RIGHT, THEY WOULD HAVE HAD TO HAVE COME IN THROUGH THE
15 KITCHEN DOOR; CORRECT?

16 A. RIGHT.

17 Q. OKAY. AND IN POINT OF FACT, SIR, YOU TOLD THE
18 INVESTIGATOR IN MAY OF 1984 THAT THE THREE MEN DID WALK BY
19 YOU. DO YOU RECALL THAT?

20 A. NO.

21 Q. WHEN THE MEN CAME IN AT 11:00 OR 11:30, HOW FAR INTO THE
22 BAR DID THEY GET BEFORE YOU SIGNALLED OR WHATEVER TO THE
23 WAITRESS TO TURN THEM AROUND AND SEND THEM OUT?

24 A. CAN YOU SAY THAT AGAIN? I'M SORRY.

25 Q. YES, SIR. WHEN THE MEN CAME INTO THE BAR THE SECOND

1 TIME --

2 A. RIGHT.

3 Q. -- THE EVENING OF, I THINK IT'S JUNE THE 4TH, OR -- EITHER
4 THE EVENING OF JUNE THE 4TH, OR EARLY MORNING JUNE THE 5TH, THE
5 SUNDAY, HOW FAR INTO THE BAR DID THEY GET, IF YOU RECALL,
6 BEFORE YOU NODDED TO OR SIGNED TO THE WAITRESS TO TURN THEM
7 AROUND AND GET THEM OUT?

8 A. NOT VERY FAR.

9 Q. COUPLE FEET?

10 A. YEAH. ABOUT FOUR, FIVE FEET.

11 Q. OKAY. AND YOU DON'T RECALL, SIR, THAT THEY ACTUALLY
12 WALKED BY YOU IN COMING INTO THE BAR?

13 A. FROM BEHIND ME?

14 Q. WELL, EITHER WAY. YES, BEHIND YOU.

15 A. NO.

16 Q. YOU HAVE NO RECOLLECTION OF THAT?

17 A. NO.

18 Q. DO YOU DENY THAT THEY DID THAT, OR YOU JUST DON'T RECALL?

19 A. I DENY THAT.

20 MR. ALEXANDER: OKAY. JUST GOING THROUGH MY NOTES.

21 THE COURT: YOUR CHECKLIST.

22 MR. ALEXANDER: MY LITTLE TO-DO LIST HERE. AND THEN I
23 HAVE A NEXT TO-DO LIST I THINK MISS HAWKINS HAS PREPARED.

24 Q. DO YOU REMEMBER A WOMAN WHO WORKED AT THE BAR, FIRST NAME
25 OF MARCIA, M-A-R-C-I-A?

1 A. YES.

2 Q. ALL RIGHT. AND WHAT WAS MARCIA'S LAST NAME?

3 A. I HAVE NO IDEA.

4 Q. CAN YOU DESCRIBE -- WELL, LET ME ASK YOU THIS: WHEN WAS

5 THE LAST TIME YOU REMEMBER SPEAKING TO OR SEEING MARCIA? AND

6 BY "SEEING," I DON'T MEAN AT A DISTANCE, BUT IN SOME CLOSER

7 SPACING.

8 A. PROBABLY RIGHT AFTER I LEFT THE CORRAL. I NEVER SAW HER

9 AFTER THAT.

10 Q. SO OVER 20 YEARS NOW?

11 A. RIGHT.

12 Q. NOW, YOU -- IN RESPONDING TO MY QUESTIONS, YOU PRETTY

13 QUICKLY RECALLED A MARCIA. DO YOU RECALL WHAT HER APPEARANCE

14 WAS? WHAT SHE LOOKED LIKE?

15 A. SHORT. ITALIAN.

16 Q. SHE WAS ITALIAN OR --

17 A. YEAH, SHE WAS ITALIAN.

18 Q. -- OR FOR WHATEVER REASONS SHE LOOKED ITALIAN?

19 A. SOMEWHAT.

20 Q. OKAY. WHAT COLOR HAIR?

21 A. I CAN'T RECALL.

22 Q. OKAY. AND HOW IS IT THAT YOU RECALL SO READILY 21 YEARS

23 AFTER THE FACT SOMEBODY BY THE NAME OF MARCIA?

24 A. I DON'T KNOW TOO MANY MARCIAS.

25 Q. I SEE.

1 A. I KNOW I WORKED WITH ONE, AND --
2 Q. AND SHE'S THE ONE?
3 A. AND I REMEMBERED HER NAME.
4 Q. DO YOU KNOW IF SHE WAS AT THE -- DO YOU RECALL WHETHER OR
5 NOT SHE WAS AT THE BAR THAT EVENING?
6 A. SHE PROBABLY WAS. SHE WAS ONE OF THE TOP WAITRESSES
7 THERE.
8 Q. OKAY. BY THE WAY, DID -- IN LOOKING AT SSS-1, WERE THE --
9 WERE THE -- AS IS OFTEN THE CASE -- WAITRESSES GIVEN AREAS IN
10 WHICH THEY WERE RESPONSIBLE FOR THE PATRONS?
11 A. THAT'S CORRECT.
12 Q. OKAY. AND LOOKING AT SSS-1, CAN YOU TELL ME HOW THAT WAS
13 DIVVIED UP?
14 A. JUST LIKE ONE SIDE OF THE ROOM WAS ONE AND ONE ON THE
15 OTHER.
16 Q. ALL RIGHT. AND WHEN YOU SAY ONE SIDE OF THE ROOM, WHERE
17 IS THE DIVIDING LINE, APPROXIMATELY?
18 A. OH, I DON'T RECALL. THERE WAS MORE BOOTHS THAN THIS, AND
19 THERE WAS, YOU KNOW, TABLES AND STUFF LIKE THAT; SO I COULDN'T
20 SAY EXACTLY.
21 Q. YOU TOOK CARE OF ALL THE PATRONS AT THE BAR; CORRECT?
22 A. RIGHT.
23 Q. ALL RIGHT. NO BAR -- NO WAITRESS TOOK CARE OF THOSE
24 PEOPLE; CORRECT?
25 A. NO.

- 1 Q. WHAT I SAID IS CORRECT?
- 2 A. THAT'S CORRECT.
- 3 Q. ALL RIGHT. AND THEN YOU'VE GOT BOOTHS -- IF YOU LOOK IN
- 4 THE BOTTOM LEFT OF SSS-1, YOU'VE GOT THREE BOOTHS OVER ON THE
- 5 LEFT SIDE THERE. DO YOU SEE THOSE?
- 6 A. THERE WAS MORE THAN THREE BOOTHS.
- 7 Q. I UNDERSTAND.
- 8 A. YEAH.
- 9 Q. BUT IN THESE PICTURES, THEY PUT THREE BOOTHS?
- 10 A. YEAH.
- 11 Q. APPROXIMATELY HOW MANY BOOTHS WERE THERE?
- 12 A. THERE WAS PROBABLY ABOUT FIVE OR SIX OVER THAT WAY.
- 13 Q. OKAY. AND THEN GOING OVER TO THE RIGHT SIDE, HEADING
- 14 TOWARDS THE PEYTON DRIVE SIDE, HOW MANY BOOTHS WERE ON THAT
- 15 SIDE?
- 16 A. THERE WAS PROBABLY ABOUT FIVE THERE, TOO.
- 17 Q. ALL RIGHT. AND THEN THERE IS ANOTHER BOOTH THAT ACTUALLY
- 18 RUNS ALONG THE WALL THERE, AS SHOWN IN THIS DIAGRAM; IS THAT
- 19 CORRECT?
- 20 A. ALONG WHAT WALL? I'M SORRY.
- 21 Q. WELL, THE PEYTON DRIVE SIDE, THERE IS A BOOTH ABOVE THE
- 22 ONE ON THE BOTTOM; RIGHT?
- 23 A. THERE WAS ACTUALLY TWO THERE.
- 24 Q. TWO THERE. OKAY.
- 25 A. AND THEN THERE WAS A BIG ONE IN THE CORNER, AND THEN THERE

1 WAS LIKE TWO OR THREE MORE ON THE OTHER SIDE OF THAT BIG ONE.

2 Q. AND WHEN YOU SAY ON THE OTHER SIDE, WHICH SIDE?

3 A. TO THE LEFT, TOWARDS THE FRONT DOOR.

4 Q. OKAY. WHAT ABOUT ABOVE IT --

5 A. ABOVE --

6 Q. -- GOING TOWARDS THE TOP OF THIS PAGE. SEE THERE IS A
7 SMALLER-SIZE BOOTH.

8 MR. ALEXANDER: MAY I APPROACH, YOUR HONOR?

9 THE COURT: YOU MAY.

10 MR. ALEXANDER: THANK YOU.

11 THE WITNESS: ARE YOU SPEAKING OF THIS BOOTH RIGHT
12 HERE (INDICATING)?

13 Q. BY MR. ALEXANDER: YES, SIR. DIRECTING YOUR ATTENTION TO
14 THE BOOTH THAT APPEARS TO BE JUST BELOW WHERE THERE ARE SOME
15 STOOLS, I BELIEVE, AT THE BAR.

16 A. OKAY.

17 Q. WAS THERE A BOOTH THERE ALSO?

18 A. THERE WAS A BOOTH HERE AND THERE ALSO (INDICATING).

19 Q. OKAY. THERE WAS A BOOTH EVEN --

20 A. RIGHT.

21 Q. -- UP FROM THAT ONE?

22 A. RIGHT.

23 Q. OKAY. ALL RIGHT. AND, NOW, WAS THE -- EXCUSE ME, YOUR
24 HONOR.

25 WAS THE RESPONSIBILITY FOR THE WAITRESSES DIVVIED UP

1 FROM THE BOOTHS ON THE LEFT, THE FIVE OR SIX, AND THEN ONE
2 WAITRESS HAD THOSE, AND ANOTHER WAITRESS HAD THE ONES ON THE
3 RIGHT?

4 A. AS MUCH AS I RECALL, YES.

5 Q. ALL RIGHT. WERE THERE MORE THAN TWO WAITRESSES WORKING
6 ANY GIVEN NIGHT?

7 A. TWO OR SOMETIMES THREE.

8 Q. TWO, SOMETIMES THREE. DO YOU REMEMBER HOW MANY WERE
9 WORKING THE NIGHT OF JUNE THE 3RD?

10 A. NO, I DON'T.

11 Q. DO YOU REMEMBER WHICH WAITRESS HAD RESPONSIBILITY FOR THE
12 BOOTHS ON THE LEFT OF THE FRONT DOOR AND WHO HAD RESPONSIBILITY
13 FOR THE BOOTHS ON THE RIGHT?

14 A. I DON'T RECALL.

15 Q. OKAY. DO YOU REMEMBER A LARRY DUCHENE, SIR?

16 A. NO, I DON'T.

17 Q. SOUND KIND OF FAMILIAR?

18 A. SOUNDS FAMILIAR, BUT I CAN'T PLACE A FACE WITH IT.

19 Q. ALL RIGHT. BUT MY SAYING IT ISN'T THE FIRST TIME YOU'VE
20 HEARD THAT NAME; IS THAT CORRECT?

21 A. NO, IT'S NOT CORRECT. IT'S -- THE FIRST TIME I HEARD IT,
22 IT WAS FROM YOU.

23 Q. OKAY. I SEE. BUT IT SOUNDS FAMILIAR TO YOU?

24 A. YEAH. FROM PAST TIMES.

25 Q. ALL RIGHT. SO WHEN YOU SAY THE FIRST TIME YOU'VE HEARD IT

1 IS FROM ME, YOU HAVE SOMETHING IN YOUR MIND TELLING YOU THAT
2 YOU'VE HEARD THAT NAME BEFORE?

3 A. RIGHT.

4 Q. OKAY. BUT YOU CAN'T PUT IT IN ANY OTHER CONTEXT?

5 A. NOT RECENTLY I HAVEN'T HEARD THE NAME, UNTIL NOW.

6 Q. DO YOU RECALL HEARING THE NAME SOMETIME 20-SOME-ODD YEARS
7 AGO?

8 A. RIGHT.

9 Q. DO YOU REMEMBER WHETHER HE WAS RELATED TO ANY OF THE
10 PEOPLE WHO WORKED IN THE BAR?

11 A. NOT THAT I RECALL.

12 Q. NOW, I WANT TO GO BACK TO THE FIRST TIME THAT YOU WERE
13 CALLED OR CONTACTED BY SOME LAW ENFORCEMENT INDIVIDUAL, WHETHER
14 A POLICE OFFICER OR A DETECTIVE IN 1983.

15 ALL RIGHT. DO YOU RECALL WHETHER IT WAS THE SAME DAY
16 THAT YOU LEARNED OF THE CRIMES HAVING BEEN COMMITTED, WHICH WAS
17 I THINK -- WELL, LET ME ASK YOU THIS: WERE YOU FIRST CONTACTED
18 ON THAT SUNDAY, WHICH I'LL REPRESENT TO YOU WAS THE DAY THAT
19 THE CRIMES WERE DISCOVERED?

20 A. YES, I WAS.

21 Q. THAT DAY?

22 A. THAT DAY.

23 Q. YOU HAVE A VERY SPECIFIC RECOLLECTION OF THAT?

24 A. RIGHT.

25 Q. AND DO YOU RECALL THE NAME OF THE INVESTIGATOR OR

1 INDIVIDUAL, ENFORCEMENT INDIVIDUAL WHO INTERVIEWED YOU?
2 A. NO, I DON'T.
3 Q. DOES THE NAME DANA RING A BELL, PHIL DANA?
4 A. NO, IT DOESN'T.
5 Q. WERE YOU INTERVIEWED -- WHERE WERE YOU INTERVIEWED?
6 A. AT THE BAR.
7 Q. AT THE BAR?
8 A. RIGHT.
9 Q. WERE YOU CALLED AT YOUR HOME TO COME DOWN TO THE BAR?
10 A. YES, I WAS.
11 Q. NOW, WERE YOU -- AND, AGAIN, I APOLOGIZE TO INVAD E YOUR
12 PRIVACY, BUT AT THE TIME, WERE YOU LIVING WITH MISS WINTERS?
13 A. YES, I WAS.
14 Q. ALL RIGHT. AND DID SHE ACCOMPANY YOU DOWN TO THE BAR?
15 A. I THINK SHE DID. I'M NOT SURE.
16 Q. OKAY. DID THE PERSON WHO INTERVIEWED YOU -- WELL, FIRST
17 OF ALL, WAS THERE JUST ONE PERSON PRESENT WHEN YOU WERE
18 INTERVIEWED THE FIRST TIME, OR MORE THAN ONE LAW ENFORCEMENT
19 PERSON THERE?
20 A. I CAN'T RECALL.
21 Q. ALL RIGHT. WAS THERE ANYBODY ELSE IN THE BAR, TO THE BEST
22 OF YOUR RECOLLECTION, WHEN YOU WERE INTERVIEWED, OTHER THAN THE
23 LAW ENFORCEMENT PERSON, YOURSELF, AND MISS WINTERS?
24 A. NOT THAT I RECALL.
25 Q. DO YOU RECALL WHAT TIME OF DAY IT WAS, SIR? MORNING OR

1 AFTERNOON IS GOOD ENOUGH FOR ME.

2 A. I THINK IT WAS MORNING. BEFORE NOON.

3 Q. OKAY. THAT'S YOUR BEST RECOLLECTION?

4 A. MY BEST RECOLLECTION, YES.

5 MR. ALEXANDER: ALL RIGHT. LET ME SHOW YOU -- THIS IS
6 PETITIONER'S EXHIBIT 18, YOUR HONOR.

7 (PETITIONER'S EXHIBIT 18 MARKED FOR IDENTIFICATION.)

8 MR. ALEXANDER: FOR THE RECORD, YOUR HONOR,
9 EXHIBIT -- PETITIONER'S EXHIBIT 18 IS A DOCUMENT, TWO-PAGE
10 DOCUMENT, THAT HAS NUMBERS ON IT, DN109062 AND DN109063. AND I
11 HAVE TO CLAIM IGNORANCE ON WHERE THOSE COME FROM. IT ALSO HAS
12 THE NUMBERS 867 AND 868 ON THE BOTTOM. AND I KNOW THOSE ARE
13 REFERRED TO AS THE NUMBERS IN LOOKING AT THIS DOCUMENT IN OTHER
14 CONTEXTS. AND IT APPEARS TO BE AN INTERVIEW.

15 Q. YOUR MIDDLE NAME IS JOSEPH, SIR?

16 A. YES.

17 Q. EDWARD JOSEPH LELKO, JR. THAT'S YOU; CORRECT?

18 A. THAT'S CORRECT.

19 Q. AND ON OR ABOUT THE 9TH OF JUNE, 1983, YOU LIVED ON
20 HEMLOCK LANE IN CHINO?

21 A. THAT'S CORRECT.

22 Q. OKAY. THAT HELPS YOU NOW REMEMBER THE ADDRESS?

23 A. YEAH. I REMEMBER.

24 Q. ALL RIGHT. AND AT THAT TIME, YOU WERE 35 YEARS OLD?

25 A. THAT'S CORRECT.

1 Q. ALL RIGHT. AND, NOW, THE DATE OF THIS REPORT IS JUNE 9TH,
2 1983. DO YOU SEE THAT AT THE BOTTOM?

3 A. OKAY.

4 Q. ALL RIGHT. NOW -- I'M SORRY. JUNE THE 9TH. I MAY HAVE
5 SAID JUNE THE 8TH.

6 AND, NOW, I'LL DIRECT YOUR ATTENTION, SIR, TO THE VERY
7 FIRST PARAGRAPH OF THIS INTERVIEW. AND IT SAYS, AT
8 APPROXIMATELY 1335 HOURS -- YOU UNDERSTAND THAT TO BE 1:35 IN
9 THE AFTERNOON?

10 A. THAT'S CORRECT.

11 Q. -- ON 6 -- AND I THINK THAT'S AN 8, '83, AFTER LEARNING
12 THAT EDWARD LELKO WAS TENDING BAR AT THE CANYON CORRAL IN THE
13 EVENING HOURS OF 6-4-83, I REQUESTED THE MANAGER --

14 THE COURT: IS THAT AN 8 OR A 6?

15 MR. ALEXANDER: WELL --

16 MS. WILKENS: IT'S AN 8, YOUR HONOR. I HAVE A MUCH
17 MORE LEGIBLE COPY, IF YOU'D LIKE TO SEE IT.

18 MR. ALEXANDER: THANK YOU.

19 THE COURT: I DIDN'T KNOW IF IT WAS THE COPY OR MY
20 EYES.

21 MS. WILKENS: NO. IT'S THE COPY.

22 Q. BY MR. ALEXANDER: THE MANAGER, THAT REFERENCE WOULD HAVE
23 BEEN TO MISS KILLIAN; IS THAT YOUR UNDERSTANDING? SHE WAS THE
24 MANAGER OF THE BAR.

25 A. RIGHT.

1 Q. AND YOU THEN WENT DOWN TO THE BAR ON 6-8; CORRECT?

2 A. CORRECT.

3 Q. SO YOU WERE NOT INTERVIEWED -- WELL, WAS THIS THE SECOND
4 TIME YOU HAD BEEN INTERVIEWED AFTER THE CRIMES WERE DISCOVERED,
5 OR THE FIRST TIME?

6 A. I THOUGHT I WAS QUESTIONED THE DAY AFTER OR THE NEXT
7 MORNING.

8 Q. OR THE DAY OF?

9 A. YEAH. I DON'T --

10 Q. SO IF YOU WERE -- SO THIS MAY HAVE, IN FACT, BEEN THE
11 SECOND TIME YOU WERE INTERVIEWED?

12 A. COULD BE. BECAUSE, LIKE I SAID, THEY CALLED ME AT HOME
13 AND I CAME RIGHT DOWN.

14 Q. UH-HUH. DO YOU RECALL, SIR, BEING ASKED WHETHER OR NOT
15 THERE WERE ANY, AND THE TERM AT THE TIME, WAS BLACK PEOPLE, OR
16 BLACK PERSON IN THE BAR THAT EVENING?

17 A. YES.

18 Q. AND YOUR ANSWER WAS THERE WAS NOT; CORRECT?

19 A. THAT'S CORRECT.

20 Q. AND YOU RECALL BEING ASKED THAT IN YOUR VERY FIRST
21 INTERVIEW ON A SUNDAY?

22 A. YES.

23 Q. OKAY. NOW, DO YOU RECALL, SIR, AFTER TALKING TO THE
24 DETECTIVES AT THE BAR, THAT YOU RETURNED TO YOUR HOME AND
25 MISS WINTERS ASKED YOU WHETHER OR NOT YOU HAD TOLD THE POLICE

1 OFFICERS ABOUT THE THREE MEN?

2 A. I HAVE SOME RECOLLECTION OF THAT. I COME HOME AND TOLD
3 HER ABOUT THE THREE GUYS THAT I -- YOU KNOW --

4 Q. YOU TOLD THEM THE NIGHT THAT THEY HAD COME IN?

5 A. RIGHT.

6 Q. ALL RIGHT. AND YOU ACTUALLY SAT UP AND HAD SOME COFFEE
7 WITH HER WHEN YOU CAME HOME; RIGHT?

8 A. RIGHT.

9 Q. IN FACT, YOU HUNG AROUND THAT BAR UNTIL ABOUT 4:00 IN THE
10 MORNING THAT EVENING; CORRECT?

11 A. YEAH. WE CLEANED UP AND PUT -- CASHED OUT AND EVERYTHING.

12 Q. AND DO YOU REMEMBER GOING BACK DOWN TO THE BAR BECAUSE YOU
13 HAD FORGOTTEN TO TELL THE MEN -- THE DETECTIVES ABOUT THE THREE
14 MEN AND THEN TELLING IT TO THEM?

15 A. YES, I THINK SO.

16 Q. ALL RIGHT.

17 A. I TOLD MY WIFE, AND THEN SHE REMINDED ME, DID YOU TELL
18 THEM ABOUT, AND I SAID, OH, SHOOT, I FORGOT ABOUT THAT. AND I
19 WENT BACK DOWN.

20 Q. OKAY. NOW -- AND YOU RECALL THAT BEING THE FIRST VISIT?

21 A. YES.

22 Q. WELL, ON THE SUNDAY?

23 A. RIGHT.

24 Q. AND THEN YOU TALKED TO THEM AGAIN ON THE 8TH; IS THAT YOUR
25 RECOLLECTION?

1 A. THAT'S MY RECOLLECTION, YES.

2 Q. RIGHT HERE?

3 A. YES.

4 Q. WHEN I SAY "RIGHT HERE," SORRY, I MEAN EXHIBIT 18?

5 A. YES.

6 Q. OKAY. AND, AGAIN, WHETHER UNDER OATH OR NOT, YOU TOLD THE
7 DETECTIVES THE TRUTH, TO THE BEST OF YOUR KNOWLEDGE?

8 A. THAT'S CORRECT.

9 Q. OKAY. AND DID YOU TELL THEM EVERYTHING YOU COULD RECALL
10 ABOUT THE THREE MEN IN THE BAR THAT EVENING WHEN YOU SPOKE TO
11 THEM ON THE FIRST OCCASION?

12 A. YES.

13 Q. SO THAT WOULD PROBABLY BE THE MOST THOROUGH --

14 A. RIGHT.

15 Q. -- AND FRESHEST RECOLLECTION ON YOUR PART; WOULD YOU
16 AGREE?

17 A. THAT'S -- I AGREE, YES.

18 Q. OKAY. MR. LELKO, I'M GOING TO SHOW YOU A -- APPEARS TO BE
19 A TRANSCRIPT OF AN INTERVIEW THAT YOU GAVE TO A MR. RON
20 FORBUSH, WHICH IS WHY MISS WILKENS ASKED YOU IF THAT NAME
21 SOUNDED FAMILIAR; AND THAT WAS IN MAY OF 1984. OKAY.

22 A. OKAY.

23 MR. ALEXANDER: AND I'M GOING TO MARK THAT AS
24 PETITIONER'S EXHIBIT 19, I THINK.

25 THE CLERK: YES. 19.

1 (PETITIONER'S EXHIBIT 19 MARKED FOR IDENTIFICATION.)

2 MR. ALEXANDER: THANK YOU. AND ONE FOR THE COURT.

3 Q. YOU HAVE THAT IN FRONT OF YOU, SIR?

4 A. YES.

5 Q. OKAY. AND IN -- THE DATE INDICATED HERE IS MAY THE 8TH,
6 1984. THAT'S ABOUT A YEAR, NOT QUITE A YEAR AFTER THE
7 INCIDENT, OR THE CRIMES OCCURRED. ALL RIGHT. GOT THAT TIME
8 FRAME? WE'RE ABOUT A YEAR LATER NOW.

9 A. RIGHT.

10 Q. ALL RIGHT. AND YOU DO RECALL THAT SOMEBODY CAME TO YOU
11 WHO WAS -- YOU UNDERSTOOD TO BE ACTING ON BEHALF OF MR. COOPER?

12 A. RIGHT.

13 Q. OKAY. AND -- OKAY. AND IF YOU WOULD DIRECT YOUR
14 ATTENTION, SIR, TO PAGE 14, BASED ON THE PAGE NUMBER AT THE
15 TOP. IT'S ACTUALLY DN109077 IS THE DOCUMENT IDENTIFICATION,
16 THE BATES NUMBER.

17 DO YOU HAVE THAT IN FRONT OF YOU?

18 A. RIGHT.

19 Q. IT STARTS WITH -- LET ME MAKE SURE WE'RE ON THE SAME
20 PAGE. THE QUESTION SAYS, OKAY, AT THE TOP OF THE PAGE?

21 A. RIGHT.

22 Q. OKAY. WE'RE ON THE SAME PAGE.

23 ALL RIGHT. NOW, THERE IS A NAME LISTED ON THE LEFT
24 SIDE GOING DOWN, WHERE ANSWERS ARE, IN SOME INSTANCES, GIVEN BY
25 DIANE. THAT'S DIANE WINTERS?

1 A. YES.

2 Q. OKAY. AND SHE IS STILL YOUR WIFE?

3 A. YES.

4 Q. OKAY. SO IN CONNECTION WITH THIS INTERVIEW, YOUR WIFE WAS
5 ALSO PRESENT, THE INTERVIEW WITH MR. FORBUSH?

6 A. YES, SHE WAS.

7 Q. AND JUST SO WE ARE CLEAR, YOU AT THAT TIME LIVED AT 5535
8 PARK PLACE IN CHINO; CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND THAT'S NOT WHERE YOU LIVE NOW?

11 A. NO.

12 Q. DIRECTING YOUR ATTENTION TO THE TOP OF PAGE 16, IT WAS
13 YOUR WIFE'S -- OR AT LEAST AT THAT TIME, YOUR GIRLFRIEND'S
14 PRACTICE TO PICK YOU UP FROM WORK?

15 A. YES.

16 Q. OKAY. AND DO YOU RECALL HER PICKING YOU UP ON THE EARLY
17 MORNING OF JANUARY THE 5TH?

18 A. CORRECT.

19 Q. OKAY. AND THEN AT THAT TIME, SHE SAYS, AT THE TOP OF
20 PAGE 16, THAT SHE WAS NOT WORKING. AND YOU TOLD HER THERE WERE
21 THREE STRANGE GUYS THAT WERE IN THAT NIGHT; CORRECT?

22 A. RIGHT.

23 Q. ALL RIGHT. AND THAT'S -- AND THEN IT FOLLOWS, SHE SAID,
24 THEN WHEN HE HAD COME HOME AND MENTIONED IT, YOU KNOW, THAT,
25 YOU KNOW, WHEN WE HEARD ABOUT THE KILLINGS, AND STUFF, I SAID,

1 WELL, DID YOU TELL THEM ABOUT THE THREE GUYS THAT COME IN. AND
2 HE SAID, NO, I FORGOT ALL ABOUT IT. WELL, THAT'S WHAT REMINDED
3 HIM, YOU KNOW, ABOUT THEM BEING IN THERE.

4 AND THAT -- THAT'S CONSISTENT WITH YOUR RECOLLECTION,
5 SIR, THAT YOU HAD FORGOT TO TELL THE MEN?

6 A. THAT'S CORRECT.

7 Q. AND THIS -- AGAIN, DOWN AT THE BOTTOM OF THAT PAGE, IT
8 INDICATES THAT THE TWO WAITRESSES WERE MARCIA AND YOU THOUGHT
9 JENNY. BY JENNY, THAT'S VIRGINIA MCNEIL MANSFIELD?

10 A. YES.

11 Q. ALL RIGHT. BUT THEN YOU GO ON TO CORRECT THAT AND SAY
12 THAT IT WAS NOT HER, BUT IT WAS KATHY. DO YOU SEE THAT ON
13 PAGE 17?

14 A. YES.

15 Q. AND THAT WAS A TRUE STATEMENT?

16 A. IF I SAID IT THEN, IT WAS A TRUE STATEMENT.

17 Q. OKAY. CERTAINLY YOUR RECOLLECTION WAS BETTER THEN THAN
18 NOW?

19 A. RIGHT.

20 Q. SO IT WAS MARCIA AND KATHY WHO WERE THE TWO THAT WORKED
21 THAT NIGHT?

22 A. RIGHT.

23 Q. OKAY. DO YOU KNOW WHERE MISS KILLIAN LIVES TODAY, SIR?

24 A. I SAW HER A COUPLE CHRISTMASES AGO, AND SHE WAS LIVING
25 AT -- I CAN'T THINK -- LOS HERANOS MOBILE HOME PARK WITH HER

1 MOTHER.

2 Q. EXCUSE ME. I APOLOGIZE FOR INTERRUPTING.

3 A. I'M SORRY.

4 Q. YOU SAID SHE WAS LIVING AT LOS --

5 A. LOS HERANOS MOBILE HOME PARK.

6 Q. AND WHERE IS THAT LOCATED, SIR?

7 A. IT'S LOS HERANOS, CHINO HILLS NOW.

8 Q. I SEE. DO YOU KNOW HOW LONG SHE HAD BEEN LIVING THERE
9 WHEN YOU LAST SAW HER?

10 A. LAST I SAW, LIKE I SAID, I SAW HER ABOUT FOUR, THREE OR
11 FOUR CHRISTMASES AGO, AND SHE WAS LIVING WITH HER MOTHER THERE;
12 AND PROBABLY BEEN THERE SIX, SEVEN YEARS, EIGHT YEARS.

13 Q. NOW, I DIRECT YOUR ATTENTION BACK NOW, IF YOU WOULD, SIR,
14 TO PAGE 13. AND I DON'T HAVE LINE NUMBERS, BUT I'M GOING ABOUT
15 TWO-THIRDS OF THE WAY DOWN. AND THE QUESTION IS, WAS SHIRLEY
16 KILLIAN WORKING AT THAT TIME, WORKING THERE. AND YOU SAY,
17 YEAH, SHE WAS THERE. SHE WAS WORKING THEN. I DON'T KNOW IF
18 SHE WAS THERE THAT NIGHT. NO, ON SATURDAYS, SHE WAS PROBABLY
19 AT THE RACES. HER SON DOES RACE CAR, INAUDIBLE, YOU KNOW, AND
20 SATURDAY NIGHT IS USUALLY THE NIGHT SHE WENT TO THE RACES.

21 SO IS THAT CONSISTENT WITH YOUR RECOLLECTION THAT YOU
22 DON'T RECALL THAT SHE WAS THERE?

23 A. I'M SORRY. I WAS READING ALONG WITH YOU THERE.

24 Q. I'M SORRY. THAT'S -- THIS TESTIMONY THAT YOU GAVE IS
25 CONSISTENT WITH YOUR RECOLLECTION TODAY, THAT YOU DON'T BELIEVE

1 SHE WAS THERE?

2 A. RIGHT.

3 MS. WILKENS: OBJECTION. MISSTATES TESTIMONY.

4 THE COURT: CALLS FOR SPECULATION.

5 Q. BY MR. ALEXANDER: I THINK THE LAST AREA I WANT TO ASK YOU
6 ABOUT, MR. LELKO -- AND I APPRECIATE YOUR PATIENCE -- AND THAT
7 RELATES TO A T-SHIRT.

8 DO YOU RECALL THAT IN GIVING PREVIOUS STATEMENTS OR
9 TESTIMONY, THAT YOU WERE SHOWN A LIGHT-COLORED T-SHIRT AND
10 ASKED WHETHER OR NOT YOU RECOGNIZED THAT T-SHIRT AS BEING LIKE
11 ONE THAT ONE OF THE THREE MEN WORE THAT EVENING?

12 A. YES.

13 Q. OKAY. AND IT WAS A PULLOVER TYPE T-SHIRT?

14 A. CORRECT.

15 Q. AND I THINK YOU ALSO INDICATED AT TRIAL THAT IT HAD A
16 POCKET ON IT?

17 A. I DON'T RECALL THE POCKET PART.

18 Q. ALL RIGHT. LET ME DIRECT YOUR ATTENTION BACK TO
19 EXHIBIT, I THINK IT'S 17, AND SPECIFICALLY TO PAGE 6533.

20 DO YOU HAVE THAT IN FRONT OF YOU, SIR?

21 A. YES, I DO.

22 Q. ALL RIGHT. AND IF YOU WOULD DIRECT YOUR ATTENTION TO
23 PAGE -- I'M SORRY -- TO PAGE 6533, LINE 10.

24 A. OKAY.

25 Q. OKAY. AND YOU WERE ASKED -- WERE YOU SHOWN THE ACTUAL

1 T-SHIRT, OR WERE YOU SHOWN A PICTURE OF IT; DO YOU RECALL?

2 A. IN SAN DIEGO, I WAS SHOWN THE ACTUAL T-SHIRT.

3 Q. OKAY. AND I'LL REPRESENT TO YOU THIS WAS IN SAN DIEGO.

4 AND IT SAYS, THE YELLOWISH OR BEIGE T-SHIRT THAT THE
5 YOUNG MEN WERE WEARING, WAS THERE ANYTHING PARTICULARLY
6 DISTINCTIVE ABOUT IT THAT YOU CAN RECALL? AND YOU SAID, NOT
7 REALLY. JUST MAYBE A POCKET OR SOMETHING IN THEM, OR THEY WERE
8 THE TYPE LIKE THAT.

9 AND THEN THE QUESTION WAS I'VE SHOWN YOU THIS T-SHIRT
10 BEFORE. YES. AND HE SHOWS YOU EXHIBIT 169, WHICH I'LL
11 REPRESENT TO YOU IS A PICTURE. OKAY. HE HAD SHOWN TO YOU THE
12 T-SHIRT EARLIER IN YOUR TESTIMONY. AND THEN -- AND SAYS -- HE
13 SAYS TO YOU, YOU CAN'T SAY POSITIVELY THAT IT IS, BUT AT LEAST
14 THIS IS A SIMILAR TYPE T-SHIRT AS TO WHAT THE PERSON WAS
15 WEARING, AND YOU ANSWERED, YES.

16 CORRECT?

17 A. YES.

18 Q. ALL RIGHT. SO THE T-SHIRT YOU SAW AT TRIAL, BOTH THE
19 ACTUAL T-SHIRT AND THE PHOTOGRAPH, WHICH WAS EXHIBIT 169, WAS
20 THE TYPE OF T-SHIRT THAT YOU SAW ON ONE OF THE GENTLEMEN THAT
21 EVENING?

22 A. SIMILAR TO, YES.

23 Q. OKAY. AND INCLUDING A POCKET, TO THE BEST OF YOUR
24 RECOLLECTION?

25 A. TO THE BEST OF MY RECOLLECTION, YES.

1 Q. OKAY. THANK YOU.

2 AND GO BACK IN THAT SAME DOCUMENT TO PAGE 1746, WHICH
3 IS ACTUALLY YOUR HEARING TESTIMONY IN MAY OF 1984, AND
4 SPECIFICALLY, LINE 9. I'M SORRY, I APOLOGIZE. YOU'RE ASKED,
5 IS THERE ANY -- AT LINE 9, YES. IS THERE ANYTHING INCONSISTENT
6 WITH THAT T-SHIRT BEING THE SAME T-SHIRT THAT YOU SAW? AND THE
7 "THAT" IS A T-SHIRT THAT THEY TOOK OUT OF A BAG AT THAT
8 HEARING.

9 AND YOU ANSWERED, I COULDN'T VERY WELL SAY IT WAS
10 POSITIVELY, BUT IT WAS A BEIGE LIKE THIS KIND OF T-SHIRT, THIS
11 TYPE.

12 A. THAT'S CORRECT.

13 Q. ALL RIGHT. NOW, PRIOR TO COMING HERE TODAY, SIR, HAVE YOU
14 EVER SPOKEN WITH MISS WILKENS?

15 A. ON THE PHONE.

16 Q. AND ON HOW MANY OCCASIONS?

17 A. ONCE.

18 Q. OKAY. AND WHAT WAS THE SUBJECT OF THAT COMMUNICATION?

19 A. ABOUT ME GETTING HERE AND IF I HAD -- IF I WAS OKAY TO GET
20 HERE, AND IF SHE COULD SUPPLY TRANSPORTATION IF I NEED IT.

21 Q. OKAY. AND WAS THAT PROVIDED?

22 A. NO. I DROVE MYSELF.

23 Q. OKAY. AND DID YOU SPEAK TO ANYBODY ELSE SUBSEQUENT TO
24 YOUR TELEPHONE CONVERSATION WITH MR. GILLIAM THAT OCCURRED IN
25 APRIL PRIOR TO TODAY? WITHDRAW THAT.

1 HAVE YOU SPOKEN WITH ANYBODY ELSE WHO YOU UNDERSTOOD
2 TO BE AFFILIATED WITH LAW ENFORCEMENT --

3 A. NO.

4 Q. -- BETWEEN THE TIME MR. GILLIAM TALKED TO YOU ON THE PHONE
5 AND YOU HAD A BRIEF CONVERSATION WITH MISS WILKENS?

6 A. BARBARA SHAKOWKSI, OR WHATEVER.

7 Q. DO YOU KNOW WHO SHE IS?

8 A. SHE WORKED AT THE DISTRICT ATTORNEY'S OFFICE, SACRAMENTO,
9 OR STATE DISTRICT ATTORNEY'S OFFICE.

10 Q. AND HOW LONG WAS THAT -- WAS THAT A PHONE CONVERSATION?

11 A. ONE WAS AN INTERVIEW THE DAY OF THE STAY. SHE CAME TO MY
12 HOUSE.

13 Q. THE DAY OF THE STAY, THAT MEANS --

14 A. EXECUTION.

15 Q. -- FEBRUARY 9TH OF THIS YEAR?

16 A. RIGHT.

17 Q. I SEE. AND DID YOU -- HOW LONG -- HOW LONG WAS SHE THERE?

18 A. TEN, FIFTEEN MINUTES.

19 Q. UH-HUH. AND WHAT DID YOU DISCUSS WITH HER AT THAT TIME?

20 A. SHE JUST SAID I'D HAVE TO TESTIFY AGAIN.

21 Q. WAS THIS AT YOUR HOME?

22 A. YES.

23 Q. AND WHERE WAS YOUR HOME THEN?

24 A. 4445 GETTYSBURG STREET.

25 Q. OKAY. AND WAS SHE ALONE?

1 A. YES.

2 Q. DID SHE TAKE NOTES?

3 A. I DON'T RECALL.

4 Q. DID SHE SHOW YOU ANY DOCUMENTS?

5 A. NOT THAT I RECALL.

6 Q. DID -- DO YOU RECALL WHETHER OR NOT SHE SHOWED YOU A
7 STATEMENT BY ONE OF THE TWO WOMEN THAT WAS THE SAME STATEMENT
8 THAT MR. GILLIAM SHOWED YOU?

9 A. I THINK SHE JUST MENTIONED IT. SHE DIDN'T SHOW ME
10 ANYTHING.

11 Q. I SEE. DID SHE HAVE SOME PAPER IN HER HAND WHEN SHE WAS
12 QUESTIONING YOU?

13 A. NOT THAT I RECALL.

14 Q. HOW WAS THAT LEFT AT THE END OF THAT -- WELL, WITHDRAW
15 THAT.

16 DID SHE -- DID SHE ASK YOU ABOUT THE EVENTS AT THE BAR
17 THE EVENING THAT THE CRIMES WERE COMMITTED?

18 A. NOT REALLY.

19 Q. WHAT'S YOUR BEST RECOLLECTION OF WHAT SHE DID ASK YOU
20 ABOUT?

21 A. SHE JUST SAID THAT THERE WAS TWO WOMEN THAT CAME FORWARD
22 AND THAT I'D PROBABLY HAVE TO, YOU KNOW, TESTIFY AGAIN.

23 Q. DID SHE TELL YOU WHAT THEY SAID?

24 A. NOT REALLY.

25 Q. WHEN YOU SAY "NOT REALLY," DID SHE TELL YOU SOME OF WHAT

1 THEY SAID?

2 A. NO.

3 Q. ALL RIGHT. OTHER THAN -- AND HER NAME WAS SHAKOWSKI?

4 A. I --

5 Q. YOUR BEST RECOLLECTION?

6 A. RIGHT.

7 Q. AND YOU BELIEVE SHE WAS THERE FROM SACRAMENTO?

8 A. RIGHT.

9 Q. OKAY. DO YOU RECALL HOW SHE IDENTIFIED HERSELF?

10 A. GAVE ME A BUSINESS CARD.

11 Q. DO YOU STILL HAVE THAT CARD?

12 A. I DON'T THINK SO.

13 Q. DID MR. GILLIAM GIVE YOU A BUSINESS CARD?

14 A. NO, HE DIDN'T.

15 Q. OKAY. DID HE SHOW YOU SOME IDENTIFICATION?

16 A. HE HAD A BADGE, YEAH, AN IDENTIFICATION.

17 Q. NOW, BETWEEN THE TIME YOU TESTIFIED AT TRIAL IN 1985, AND

18 MISS SHAKOWSKI'S VISIT TO YOU ON I BELIEVE THE 9TH OR THE 10TH

19 OF FEBRUARY -- I THINK THE STAY WAS ISSUED IN THE EVENING. DID

20 SHE COME DURING THE DAY?

21 A. IT WAS EARLY EVENING.

22 Q. EARLY EVENING. OKAY. DO YOU RECALL IF IT WAS A MONDAY OR

23 A TUESDAY?

24 A. NO, I DON'T.

25 Q. FAIR ENOUGH. AND BETWEEN THE TIME OF YOUR TESTIMONY IN

1 1985 AND A VISIT FROM MISS SHAKOWSKI, HAD YOU EVER BEEN
2 CONTACTED BY ANY OTHER LAW ENFORCEMENT OFFICIALS?

3 A. NO.

4 Q. OKAY. AND SO WE'VE GOT THE VISIT FROM MISS SHAKOWSKI IN
5 EARLY FEBRUARY OF THIS YEAR, AND WAS THERE ANY OTHER CONTACT BY
6 ANY LAW ENFORCEMENT OFFICIALS UNTIL THE CALL FROM MR. GILLIAM
7 TO COME SEE YOU, THAT OCCURRED IN MARCH?

8 A. NO.

9 Q. OKAY. IN CONNECTION WITH YOUR TESTIMONY TODAY, HAVE YOU
10 SPOKEN WITH ANY FORMER EMPLOYEES OF CORRAL -- CANYON CORRAL
11 BAR?

12 A. NO, I HAVEN'T.

13 Q. NOR ANY PATRONS?

14 A. NO, I HAVEN'T.

15 Q. OKAY. WHEN -- BETWEEN THE TIME THAT YOU WERE QUESTIONED,
16 ON IT APPEARS TO BE THE 8TH OF JUNE OF 1983, DID -- AND THE
17 TIME THAT YOU TESTIFIED AT TRIAL -- I'M SORRY. AT THE
18 EVIDENTIARY HEARING IN MAY OF 1984, LET ME FIX THAT AGAIN.

19 BETWEEN THE TIME THAT YOU WERE INTERVIEWED ON JUNE THE
20 8TH, TO THE TIME THAT YOU TESTIFIED AT AN EVIDENTIARY, OR AT A
21 HEARING IN MAY OF 1984, HAD YOU -- DID THE POLICE OR ANYBODY
22 ELSE EVER GET BACK TO YOU FOR FURTHER QUESTIONS ABOUT THAT
23 EVENING?

24 A. I DON'T RECALL.

25 Q. YOU DON'T RECALL THEM DOING SO, OR YOU DON'T RECALL ONE

1 WAY OR THE OTHER?

2 A. ONE WAY OR THE OTHER.

3 Q. DO YOU, SIR, REMEMBER THE FIRST TIME THE MEN CAME IN,
4 ABOUT 9 O'CLOCK OR SO, THE -- ON THE EVENING OF JUNE THE 3RD,
5 DID THEY SIT DOWN; DO YOU RECALL?

6 A. YES, THEY DID.

7 Q. THEY DID. AND LOOKING AT SSS-1, CAN YOU TELL ME WHERE
8 THEY SAT?

9 A. THEY WENT OFF TO THE RIGHT. I DON'T KNOW WHERE THEY --
10 THEY SAT IN ONE OF THE BOOTHS OFF TO THE RIGHT.

11 Q. WHEN YOU SAY THE RIGHT, LOOKING AT SSS-1, IT'S THE RIGHT
12 FROM WHERE YOU'RE STANDING?

13 A. LEFT, YEAH.

14 Q. OKAY. FROM WHERE YOU'RE STANDING AT THE BAR?

15 A. RIGHT.

16 Q. ARE THERE TABLES ALSO FOR EATING AND DRINKING, OTHER THAN
17 JUST THE BOOTHS?

18 A. I THINK THERE WERE A FEW OF THEM IN THE MIDDLE.

19 Q. FEW IN THE MIDDLE?

20 A. I CAN'T -- I DON'T RECALL ACTUALLY. I KNOW WE HAD THE
21 BOOTHS, AND THERE WAS LIKE FOUR OR FIVE BOOTHS ON THAT SIDE.

22 Q. HOW MUCH SPACE BETWEEN THE END OF THE BOOTHS CLOSEST TO
23 THE BAR -- AND THOSE ARE BAR STOOLS THAT YOU SEE IN FRONT OF
24 THE BAR THERE. DO YOU SEE THAT IN SSS-1? THERE IS THE BOOTHS,
25 OKAY, ALONG THE FRONT WALL, AND THEN THEY PRESUMABLY TAKE UP A

1 CERTAIN AMOUNT OF SPACE. AND THEN YOU HAVE THE BAR STOOLS.

2 HOW MUCH SPACE IS THAT?

3 A. OH, FIVE, SIX FOOT.

4 Q. FIVE OR SIX FEET. AND YOU THINK THERE MAY HAVE BEEN
5 TABLES THERE FOR SITTING ALSO?

6 A. NO, NOT THERE. I'M SAYING OVER BY THE DANCE FLOOR, I
7 THINK THEY USED TO PUT A FEW TABLES OUT.

8 Q. OKAY. AND YOU DON'T RECALL WHERE THE MEN SAT WHEN THEY
9 CAME IN AT THE 9 O'CLOCK TIME?

10 A. NO. THEY JUST WENT OFF TO A BOOTH IN THE LEFT OF THIS
11 PICTURE; RIGHT OF WHERE I WAS STANDING.

12 Q. WERE YOU ABLE TO BUY BEER AND TAKE IT OUT FROM THE BAR? I
13 MEAN UN --

14 A. NO.

15 Q. -- WITH CAPS ON IT AT LEAST?

16 A. NO.

17 Q. YOU COULDN'T BUY LIKE A SIX-PACK OR A BOTTLE?

18 A. NO.

19 Q. OKAY. YOU'RE CERTAIN OF THAT?

20 A. TO MY RECOLLECTION, I DON'T REMEMBER SELLING BEER TO GO.

21 Q. OKAY. COULD THE WAITRESSES DO SO?

22 A. NO.

23 Q. OKAY. YOU REMEMBER ONE OF THE MEN HAD A DARK T-SHIRT ON
24 THAT SAID "MAY THE FORCE BE WITH YOU" IN WRITING ON IT?

25 A. NO.

1 Q. DOES THAT SOUND FAMILIAR?

2 A. NO.

3 Q. YOU DON'T REMEMBER THAT?

4 A. NO.

5 Q. DO YOU REMEMBER WHETHER ANY OF THE MEN HAD ANY WRITING ON
6 THE T-SHIRT?

7 A. THE THREE GENTLEMEN THAT CAME IN TOGETHER?

8 Q. YES.

9 A. NO.

10 Q. OKAY. YOU DON'T RECALL?

11 A. NO.

12 Q. ANY OF THEM WEARING A T-SHIRT THAT HAD ANY WRITING ON IT?

13 A. NO. THEY DIDN'T HAVE ANY WRITING ON IT.

14 Q. OKAY.

15 A. THE THREE GENTLEMEN YOU TALK ABOUT.

16 Q. YES.

17 A. OKAY.

18 Q. OKAY. THE ONE THAT CAME IN -- THE ONES THAT CAME IN AGAIN
19 AND YOU HAD TO ESCORT OUT.

20 A. RIGHT.

21 Q. OKAY. YEAH. WE'RE TALKING ABOUT THE SAME MEN.

22 MR. ALEXANDER: THANK YOU VERY MUCH, YOUR HONOR.

23 THANK YOU VERY MUCH, MR. LELKO.

24 THE COURT: THANK YOU.

25 MR. ALEXANDER: AND BEST TO YOU.

1 THE WITNESS: THANK YOU.

2 MS. WILKENS: THANK YOU, YOUR HONOR.

3 REDIRECT EXAMINATION

4 BY MS. WILKENS:

5 Q. NOW, MR. LELKO, IT DOESN'T MAKE ANY DIFFERENCE TO YOU
6 WHICH SIDE CONTACTS YOU WITH RESPECT TO THIS INCIDENT; IS THAT
7 CORRECT?

8 A. I'M SORRY.

9 Q. WELL, MR. ALEXANDER WAS ASKING YOU WHEN DETECTIVE GILLIAM
10 SPOKE TO YOU RECENTLY, HE WANTED TO KNOW WHO "THEY" WERE. THEY
11 WANT ME TO ASK YOU QUESTIONS. DOES IT MATTER TO YOU WHO'S
12 ASKING YOU QUESTIONS?

13 A. NO, IT DON'T MATTER TO ME.

14 Q. ALL RIGHT.

15 A. I DIDN'T KNOW IF IT WAS HIS SUPERIORS OR THE OTHER SIDE OR
16 SOMETHING. IT'S JUST THEY.

17 Q. SO YOUR ANSWERS ARE THE SAME, NO MATTER WHO ASKED THE
18 QUESTION?

19 A. RIGHT. RIGHT.

20 Q. AND THAT INCLUDES WHEN DETECTIVE GILLIAM SPOKE TO YOU?

21 A. THAT'S CORRECT.

22 Q. AND MR. ALEXANDER ASKED YOU IF IT WAS YOUR SENSE, WHEN
23 DETECTIVE GILLIAM CALLED YOU BACK AND HE WANTED TO GO OVER A
24 FEW THINGS WITH YOU, IT WAS YOUR SENSE THAT HE WANTED YOU TO
25 SAY -- TO GIVE YOUR ANSWERS DIFFERENTLY. IS THAT WHAT YOU'RE

1 SAYING?

2 A. I MIGHT HAVE PUT THEM IN A SLANG TYPE THING, AND HE WANTED
3 IT MORE DIRECT.

4 Q. SO WAS IT YOUR UNDERSTANDING HE WANTED TO CLARIFY THINGS
5 HE HAD SPOKEN TO YOU ABOUT?

6 A. RIGHT. RIGHT.

7 Q. YOU DIDN'T HAVE A SENSE THAT HE WANTED PARTICULAR ANSWERS
8 FROM YOU?

9 A. NO, NO, NO.

10 Q. OKAY. I JUST WANTED TO MAKE SURE THERE WAS NO CONFUSION
11 ON THAT.

12 A. NO.

13 Q. OKAY. NOW, WERE YOU SERVED WITH A SUBPOENA TO BE PRESENT
14 HERE TODAY; DO YOU RECALL?

15 A. I HAVE ONE IN MY POCKET FOR SAN DIEGO, YES.

16 Q. OKAY. AND DOES IT HAVE A SIGNATURE AT THE BOTTOM AND A
17 DATE ON IT?

18 A. OH, YOUR NAME?

19 Q. YES.

20 A. YEAH.

21 Q. IS THERE A DATE NEXT TO IT?

22 A. JUNE 14TH.

23 Q. OKAY. AND DID SOMEONE BRING YOU THAT SUBPOENA, SIR?

24 A. YES.

25 Q. WHO?

1 A. BARBARA AND A DETECTIVE.

2 Q. OKAY. AND SO IT WOULD BE BARBARA SHAKOWSKI?

3 A. SHAKOWSKI, THERE WE GO. THERE IT IS. I KNEW IT WAS

4 SOMETHING LIKE THAT.

5 Q. ALL RIGHT. AND THERE WAS A GENTLEMAN ACCOMPANYING HER?

6 A. YES.

7 Q. AND DID THEY SHOW YOU IDENTIFICATION?

8 A. YES, THEY DID.

9 Q. AND THEY WERE WITH THE CALIFORNIA DEPARTMENT OF JUSTICE?

10 A. YES.

11 Q. OKAY. AND IS THAT THE FIRST TIME THAT MISS SHAKOWSKI CAME

12 TO SEE YOU?

13 A. YES, IT WAS.

14 Q. OKAY. SO THAT'S THE FIRST TIME YOU MET HER?

15 A. RIGHT.

16 Q. THE FIRST TIME YOU SPOKE TO HER?

17 A. RIGHT.

18 Q. OKAY. AND THAT WOULD BE AFTER THE DATE ON THAT SUBPOENA;

19 IS THAT CORRECT?

20 A. RIGHT.

21 Q. SO YOU NEVER MET AGENT SHAKOWSKI UNTIL JUNE?

22 A. NO.

23 Q. IS THAT CORRECT?

24 A. NO. I MET SOME OTHER WOMAN, BUT I CAN'T REMEMBER HER. I

25 THOUGHT HER NAME WAS -- I DON'T REMEMBER HER NAME.

1 Q. OKAY. ALL RIGHT. SO AGENT SHAKOWSKI, FIRST TIME YOU SAW
2 HER WAS IN JUNE?

3 A. RIGHT.

4 Q. OKAY.

5 A. WELL, SHE STOOD BACK, BECAUSE SHE HEARD -- SHE WAS SICK,
6 SO HAVING CHEMO AND EVERYTHING, SO SHE KIND OF STOOD BACK AND
7 SHOWED ME HER I.D., AND THEN THE GENTLEMAN HANDED ME THE PAPER.

8 Q. OKAY. AND THEY WERE BOTH AGENTS OF THE DEPARTMENT OF
9 JUSTICE --

10 A. RIGHT.

11 Q. -- CORRECT?

12 ALL RIGHT. AND YOU DID SPEAK TO A WOMAN SOMETIME IN
13 FEBRUARY --

14 A. RIGHT.

15 Q. -- OF THIS YEAR; CORRECT?

16 A. RIGHT.

17 Q. AND IT WAS NOT AGENT SHAKOWSKI?

18 A. NO. IT WAS -- SHE SAID SHE WAS FROM -- SHE HANDED ME A
19 CARD AND -- I DON'T THINK I HAVE IT. BUT, YEAH. SHE CAME IN
20 AND I SPOKE WITH HER ABOUT 15, 20 MINUTES, AND THEN SHE LEFT.

21 Q. OKAY. AND YOUR RECOLLECTION IS IT WAS AT THE TIME OF THE
22 SCHEDULED EXECUTION; IS THAT YOUR UNDERSTANDING?

23 A. RIGHT. IT WAS. BECAUSE I WAS READING IN THE PAPER, AND
24 THEN ALL OF A SUDDEN, HERE IS THIS KNOCK ON MY DOOR. AND I GO,
25 HOW DID SHE FIND ME, YOU KNOW, SO...

1 Q. AND WAS IT AFTER -- WAS IT AFTER THE EXECUTION DID NOT GO
2 FORWARD, OR WAS IT WHEN THE PAPER WAS TELLING YOU THAT THE
3 EXECUTION WAS GOING FORWARD; DO YOU RECALL?

4 A. I THINK IT WAS THAT DAY, THE DAY THAT HE WAS SUPPOSED TO
5 BE EXECUTED, AND THEY HAD THE STAY, SHE WAS KNOCKING ON MY
6 DOOR.

7 Q. ALL RIGHT. WERE YOU AWARE OF THE STAY FROM THE MEDIA?

8 A. I WAS AWARE THEY WERE TRYING FOR ONE, YES.

9 Q. OKAY. AND DID SHE SHOW YOU A BADGE?

10 A. NO. SHE HANDED ME A CARD AND THAT WAS ALL.

11 Q. YOU DON'T BELIEVE YOU KEPT THE CARD?

12 A. NO. I PROBABLY THREW IT AWAY. IT'S BEEN SO LONG.

13 Q. AND IT WAS YOUR IMPRESSION THAT SHE WAS FROM SACRAMENTO?

14 A. YES.

15 Q. AND DID YOU BELIEVE THAT SHE WAS WITH MR. COOPER?

16 A. I WASN'T AWARE SHE WAS WITH ANYBODY. I JUST THOUGHT SHE
17 WAS WITH THE -- FROM SACRAMENTO. SHE TOLD ME SHE WAS FROM
18 SACRAMENTO, AND THAT'S WHAT THE CARD SAID.

19 Q. AND DID SHE ASK YOU ANY QUESTIONS?

20 A. NOT THAT I RECALL, NO.

21 Q. AND SO SHE WAS THERE TO TELL YOU THAT YOU WOULD NEED TO
22 TESTIFY?

23 A. RIGHT. SHE SAID THAT TWO WOMEN CAME FORWARD AND THEY GAVE
24 TESTIMONY OR TESTIMONY THAT -- AND THAT THERE MIGHT BE ANOTHER
25 TRIAL.

1 Q. OKAY. NOW, YOU TESTIFIED THAT THE COOKS WOULD LEAVE
2 SOMETIME AROUND 11:00 OR 11:30; IS THAT CORRECT?

3 A. DEPENDING ON HOW BUSY WE WERE, YEAH.

4 Q. OKAY. SO THERE WAS A POINT IN TIME AT WHICH FOOD WAS NO
5 LONGER BEING SERVED?

6 A. RIGHT.

7 Q. WAS IT A SET TIME, OR JUST KIND OF DEPENDING?

8 A. THEY STOPPED SERVING AT 11:00. BUT, I MEAN, THEY MIGHT
9 HAVE HAD ORDERS IN, AND THEY WOULD COME OUT AT 11:30,
10 12 O'CLOCK OR SO.

11 Q. OKAY. SO YOU COULD ORDER UP UNTIL 11:00?

12 A. YES.

13 Q. AND THEY WOULD FILL ALL THOSE ORDERS?

14 A. RIGHT.

15 Q. AND THEN AFTER THE COOKS LEFT, YOU WERE STILL BEHIND THE
16 BAR; CORRECT?

17 A. RIGHT.

18 Q. ALL RIGHT. AND YOU COULD NOT COME THROUGH THE KITCHEN AND
19 ENTER THE ESTABLISHMENT, OTHER THAN GOING PAST WHERE YOU
20 WERE --

21 A. RIGHT.

22 Q. -- LOCATED?

23 OKAY. AND WHEN THE -- WHEN THE COOKS WOULD LEAVE FOR
24 THE EVENING, WAS THERE ANY PRACTICE WHERE THE KITCHEN DOOR
25 WOULD THEN BE LOCKED FOR THE REMAINDER OF THE EVENING?

1 A. IT WOULD BE LOCKED, YES.

2 Q. OKAY. SO IT WOULDN'T BE REAL WISE TO KEEP THE KITCHEN
3 UNLOCKED WITH NO ONE IN IT?

4 A. RIGHT.

5 Q. OKAY. AND DID YOU HAVE SET -- A SET SCHEDULE WHEN YOU
6 WERE WORKING? WERE YOU GIVEN LIKE A BREAK AT ANY POINT IN THE
7 TIME DURING THE EVENING? DID YOU GET TO TAKE A 15- OR A
8 20-MINUTE BREAK?

9 A. NO. NO.

10 Q. OKAY. NOW, MR. ALEXANDER ASKED YOU ABOUT SPEAKING TO A
11 DEFENSE INVESTIGATOR BEFORE YOU TESTIFIED AT TRIAL IN
12 SAN DIEGO. AND HE WANTED TO KNOW IF THAT WAS THE ONLY PERSON
13 YOU SPOKE TO. AND YOU HAD TESTIFIED BEFORE THAT IT'S YOUR
14 RECOLLECTION THAT YOU SPOKE WITH MR. COOPER'S DEFENSE ATTORNEY
15 PRIOR TO TESTIFYING IN JANUARY OF 1985 IN SAN DIEGO; IS THAT
16 STILL YOUR RECOLLECTION?

17 A. THAT'S CORRECT.

18 Q. OKAY. NOW, MR. ALEXANDER GAVE YOU EXHIBIT 17, WHICH IS
19 THE TRANSCRIPTS FROM VARIOUS TESTIMONY, WITH VERY LARGE NUMBERS
20 ON THE RIGHT-HAND SIDE?

21 A. OKAY.

22 Q. AND IF YOU COULD TURN TO PAGE 6537, THAT'S THE TRADITIONAL
23 PAGINATION, WITH THE VERY LARGE NUMBERS ON THE RIGHT, 20284.

24 THE COURT: TELL ME THE NUMBERS AGAIN.

25 MS. WILKENS: IT'S PAGE 6537 AND THE BATE STAMP IS

1 20284.

2 THE WITNESS: OKAY.

3 Q. BY MS. WILKENS: DO YOU HAVE THAT PAGE?

4 A. YES.

5 Q. OKAY. NOW, MR. LELKO, YOU TESTIFIED THAT THE CLOSEST YOU
6 WERE TO THE THREE MEN WHO WERE INSIDE THE BAR THAT NIGHT, THAT
7 WE'VE BEEN DISCUSSING THIS MORNING, WAS 12 TO 15 FEET. IF I
8 CAN INVITE YOUR ATTENTION ON PAGE 6537, LINES 10 THROUGH 12.
9 YOU WERE ASKED THE CLOSEST YOU WOULD HAVE GOTTEN TO THE THREE
10 MEN, AND YOU ANSWERED THAT IT WAS ABOUT FIVE OR SIX FEET.

11 A. RIGHT.

12 Q. OKAY. DOES THAT REFRESH YOUR RECOLLECTION?

13 A. YES.

14 Q. OKAY. SO YOU WOULD HAVE BEEN WITHIN FIVE OR SIX FEET OF
15 THE THREE MEN?

16 A. RIGHT.

17 Q. OKAY. AND, MR. LELKO, THE SAME EXHIBIT, IF YOU CAN JUST
18 MOVE UP A COUPLE OF PAGES TO 6534. NOW, MR. ALEXANDER ASKED
19 YOU IF YOU HAD BEEN DRINKING AT THE BAR WHILE YOU WERE ON DUTY
20 THE NIGHT OF THE MURDERS. WAS IT UNUSUAL FOR YOU TO HAVE
21 DRINKS WHEN YOU WERE WORKING THE BAR?

22 A. NO.

23 Q. WAS IT UNUSUAL FOR OTHER EMPLOYEES TO HAVE DRINKS?

24 A. NO.

25 Q. OKAY. SO THAT WAS PRETTY NORMAL?

1 A. RIGHT.

2 Q. ALL RIGHT. AND MR. ALEXANDER ASKED YOU IF YOU WOULD
3 QUARREL WITH A WAITRESS WHO CHARACTERIZED YOU AS BEING DRUNK
4 THAT EVENING. DO YOU RECALL THAT?

5 A. NO.

6 Q. OKAY. YOU WERE NOT DRUNK THAT NIGHT; IS THAT CORRECT,
7 SIR?

8 A. NO.

9 Q. OKAY. AND IF I COULD INVITE YOUR ATTENTION TO PAGE 6534,
10 LINES 13 THROUGH 17. YOU TESTIFIED IN SAN DIEGO THAT YOU
11 PROBABLY HAD A BOURBON AND WATER.

12 A. RIGHT.

13 Q. IS THAT ACCURATE?

14 A. THAT'S ACCURATE.

15 Q. ALL RIGHT. AND SO YOUR HAVING A BOURBON AND WATER THAT
16 NIGHT WOULD NOT IMPAIR YOUR ABILITY TO OBSERVE?

17 A. NO.

18 Q. DIDN'T IMPAIR YOUR ABILITY TO DO YOUR JOB?

19 MR. ALEXANDER: OBJECTION. SPECULATION.

20 THE COURT: TO YOUR KNOWLEDGE.

21 THE WITNESS: TO MY KNOWLEDGE, NO.

22 Q. BY MS. WILKENS: IN YOUR OPINION.

23 A. IN MY OPINION, I WAS FINE.

24 Q. NOW, MR. ALEXANDER TALKED TO YOU ABOUT THE SHERIFF'S
25 DEPARTMENT SPEAKING TO YOU FOR THE FIRST TIME, AND YOU NEEDED

1 TO RE-CONTACT THEM BECAUSE YOU NEGLECTED TO MENTION THE THREE
2 MEN THE FIRST TIME YOU SPOKE TO THEM. AND IF YOU WOULD BE KIND
3 ENOUGH TO TURN TO EXHIBIT 19, WHICH IS AN INTERVIEW THAT
4 MR. FORBUSH CONDUCTED WITH YOU ON MAY 8TH, 1984, A TRANSCRIPT
5 OF THAT INTERVIEW.

6 AND IF YOU COULD TURN TO PAGE 3, AT THE VERY TOP OF
7 THE PAGE, AND READ THE FIRST -- THE CONTINUATION OF THE FIRST
8 ANSWER, WHERE IT INDICATES THAT YOU CAME HOME FROM SPEAKING
9 WITH THE SHERIFFS. SHE REMINDED ME ABOUT THE THREE GUYS, AND
10 THEN IT SAYS, SO I CALLED UP THE BAR AND THE SHERIFFS WERE
11 STILL THERE.

12 DO YOU SEE THAT?

13 A. YES.

14 Q. OKAY. YOU DIDN'T GO DOWN DAYS LATER TO FOLLOW UP ABOUT
15 THE THREE MEN, DID YOU?

16 A. NO.

17 Q. OKAY. IT WAS THE SAME DAY?

18 A. SAME DAY.

19 Q. CORRECT. NOW, YOU'VE INDICATED THAT YOUR RECOLLECTION IS
20 THAT YOU SPOKE TO THE SHERIFFS SUNDAY MORNING AFTER THE
21 MURDERS; IS THAT CORRECT?

22 A. RIGHT.

23 Q. SO YOU WORKED SATURDAY NIGHT, AND THEN THE NEXT MORNING
24 YOU SPOKE TO THE SHERIFFS. IF I WERE TO REPRESENT TO YOU THAT
25 THE BODIES WERE NOT DISCOVERED UNTIL THAT AFTERNOON, ON SUNDAY,

1 WOULD YOU AGREE WITH ME THAT YOU DID NOT SPEAK TO THE SHERIFFS
2 THAT MORNING, THAT SUNDAY MORNING?

3 A. CORRECT.

4 Q. OKAY. SO YOUR RECOLLECTION OF THE DATE MAY --

5 A. RIGHT.

6 Q. OKAY. I APOLOGIZE FOR SKIPPING AROUND, BUT IF WE CAN GO
7 BACK TO EXHIBIT 17, WHICH IS, ONCE AGAIN, THE TRANSCRIPT OF
8 YOUR TESTIMONY IN SAN DIEGO FROM JANUARY OF 1985. AND IF I CAN
9 INVITE YOUR ATTENTION TO PAGE 6529, WHICH HAS THE BATE STAMP
10 NUMBER 20276. AND IF I COULD INVITE YOUR ATTENTION TO THE
11 QUESTION AND ANSWER AT LINES 10 THROUGH 13. THERE IS A
12 REFERENCE TO YOUR CONVERSATION WITH A MR. DANA, AND IT
13 REFERENCES JUNE 8TH. AND YOU INDICATE THAT THAT IS THE DATE OF
14 YOUR CONVERSATION.

15 DO YOU SEE THAT, SIR?

16 A. YES.

17 Q. OKAY. AND DOES THAT REFRESH YOUR RECOLLECTION?

18 A. IF THAT'S WHAT I SAID AT THAT TIME, YES.

19 Q. OKAY. SO YOU MAY NOT RECALL IT TODAY?

20 A. RIGHT.

21 Q. OKAY. AND YOU RECALL SPEAKING TO THE SHERIFF'S DEPARTMENT
22 ON ONE OCCASION SHORTLY AFTER THE MURDER. AND YOU DID HAVE TO
23 TALK TO THEM TWICE, BUT IT WAS THE SAME DAY; IS THAT CORRECT?

24 A. RIGHT. RIGHT.

25 Q. NOW, YOU'VE -- MR. ALEXANDER ASKED YOU ABOUT THE T-SHIRT.

1 AND IF I COULD ASK YOU TO PLEASE TURN TO PAGE 6539. AT THE TOP
2 OF THE PAGE, YOU WERE ASKED WHETHER YOU HAD RECALLED WHETHER
3 THE T-SHIRT WAS TAN, YELLOW OR BEIGE, AND YOU -- I'M SORRY.
4 THIS IS REREADING EARLIER TESTIMONY TO YOU. AND IT'S REREAD TO
5 YOU, INDICATING, CAN YOU RECALL AT THIS TIME WHETHER IT WAS
6 TAN, YELLOW OR BEIGE. AND YOUR ANSWER WAS NO. AND AT THAT
7 POINT, YOU RESPONDED, OH, IT WAS A LIGHT COLOR. IT WAS ONE OF
8 THOSE COLORS.

9 DOES THAT REFRESH YOUR RECOLLECTION?

10 A. RIGHT.

11 Q. SO YOU DON'T RECALL THE COLOR OF THE T-SHIRT?

12 A. NO. IF I SAID THAT I DON'T RECALL THE COLOR. JUST IT WAS
13 LIGHT-COLORED.

14 MS. WILKENS: THANK YOU, MR. LELKO.

15 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

16 MR. ALEXANDER: JUST A FEW, MR. LELKO. I KNOW YOU'RE
17 ANXIOUS TO --

18 THE WITNESS: OKAY.

19 RECROSS-EXAMINATION

20 BY MR. ALEXANDER:

21 Q. I GUESS I'M A LITTLE CONFUSED NOW. AS YOU SIT HERE TODAY,
22 DO YOU KNOW WHETHER OR NOT YOU TALKED TO DETECTIVES ON SUNDAY,
23 JUNE THE 5TH, OR NOT? YOU'VE BEEN SHOWN BY MISS WILKENS
24 TESTIMONY THAT SAYS YOU TALKED TO THEM ON THE 8TH, BUT YOUR
25 RECOLLECTION IS YOU ALSO TALKED TO THEM ON THAT SUNDAY?

1 A. NO. I RECALL TALKING TO THEM RIGHT AFTER -- I DON'T
2 REMEMBER WHAT DAY IT WAS. I THOUGHT IT WAS THE NEXT DAY.

3 Q. DO YOU KNOW WHETHER ANY OTHER EMPLOYEES OF THE BAR WERE
4 SPOKEN TO BY DETECTIVES ON THAT SUNDAY AFTERNOON?

5 A. I DON'T RECALL.

6 Q. OKAY. YOU DON'T KNOW?

7 A. NO.

8 Q. OKAY. NOW --

9 MR. ALEXANDER: EXCUSE ME A MOMENT, YOUR HONOR.

10 Q. MR. LELKO, I WANT TO GO BACK TO THIS QUESTION ABOUT HOW
11 CLOSE YOU WERE TO THESE THREE MEN AT ANY POINT WHEN THEY CAME
12 IN. CERTAINLY WHEN THEY CAME IN THE SECOND TIME, THEY JUST
13 WALKED IN A FEW FEET, YOU SAID; RIGHT?

14 A. RIGHT.

15 Q. OKAY. SO -- AND YOU'RE BEHIND THE BAR; CORRECT?

16 A. RIGHT.

17 Q. SO THEY ARE CERTAINLY MORE THAN FIVE OR SIX FEET AWAY FROM
18 YOU; CORRECT?

19 A. NO.

20 Q. THEY ARE JUST FIVE OR SIX FEET?

21 A. RIGHT.

22 Q. NOW, I'D DIRECT YOUR ATTENTION, IF YOU WOULD, SIR, TO
23 PAGE 14 -- 1753, WHICH IS PART OF EXHIBIT 17.

24 A. OKAY.

25 Q. AND, SPECIFICALLY, NOW, THIS IS -- THIS IS IN MAY OF 1984,

1 AS OPPOSED TO JANUARY OF 1985, ALL RIGHT, WHEN YOU TESTIFIED AT
2 TRIAL. OKAY?

3 A. OKAY.

4 Q. THIS TESTIMONY I'M SHOWING YOU NOW, JUST SO YOU'RE NOT
5 CONFUSED. OKAY?

6 A. OKAY.

7 Q. ALL RIGHT. SO THIS IS CLOSER TO THE TIME OF THE EVENTS
8 THAN THE FOLLOWING JANUARY. ALL RIGHT. AND DIRECTING -- YOU
9 UNDERSTAND; YES?

10 A. YES.

11 Q. OKAY. SORRY. AND IT SAYS, AT LINE 12, "IT WOULD HAVE
12 BEEN FAIRLY DARK WHEN THEY WALKED INTO THE BAR IN THE FIRST
13 PLACE ABOUT 9 O'CLOCK?

14 "ANSWER: IT WOULD HAVE BEEN DARK, BUT AFTER THE
15 DINNER HOUR, ABOUT 10:30 OR 11:00, WE DIM THE LIGHTS A
16 LITTLE LOWER.

17 "QUESTION: WHAT IS THE CLOSEST YOU EVER GOT TO THE
18 THREE MEN?

19 "ANSWER: ABOUT FROM ME TO YOU, PROBABLY.

20 "HOW FAR WOULD YOU ESTIMATE IN FEET THAT IS?

21 "ANSWER: TWELVE TO FIFTEEN FEET."

22 NOW, WAS THAT TRUTHFUL TESTIMONY, SIR?

23 A. YES, IT WAS. I GUESS AT THAT TIME.

24 Q. I'M SORRY?

25 A. AT THAT TIME, IT JUST --

1 Q. OKAY. IS THERE ANYTHING THAT CAUSED YOU TO CHANGE YOUR
2 TESTIMONY AT TRIAL TO FIVE TO SIX FEET?

3 A. NO. OKAY. WHEN YOU WALK IN THE DOOR, YOU HAD TO COME
4 PAST THE BOOTH, SO THEY HAD TO WALK ALMOST RIGHT UP TO ME AND
5 THEN MAKE A RIGHT TO GO --

6 Q. THAT'S THE FIRST TIME THEY CAME IN.

7 A. RIGHT.

8 Q. I'M TALKING ABOUT THE SECOND TIME. THEY JUST CAME IN A
9 FEW FEET?

10 A. NO. THEY CAME IN AND THEY WALKED AROUND, AND I -- THE
11 WAITRESS LOOKED AT ME, AND I SAID, NO.

12 Q. I THOUGHT YOU TOLD ME THAT THEY JUST CAME IN A FEW FEET?

13 A. NO.

14 Q. DO YOU RECALL WHETHER THEY JUST CAME IN A FEW FEET INTO
15 THE BAR A SECOND TIME OR NOT?

16 A. NO. THEY CAME IN AND WALKED TO THE RIGHT. BOTH TIMES.
17 BUT I --

18 Q. YOUR RIGHT?

19 A. MY RIGHT.

20 Q. UH-HUH.

21 A. THEIR LEFT.

22 Q. OKAY. SO THE DISTANCE FROM WHERE THEY -- AND WHEN THEY
23 WALKED TO THE RIGHT, DID THEY -- WERE THEY THEN STOPPED AS THEY
24 WERE WALKING TO THE RIGHT BY THE WAITRESS?

25 A. NO. THEY WENT AND SAT DOWN, AND THEN THE WAITRESS SAID WE

1 WERE NOT GOING TO SERVE YOU.

2 Q. SO THEY ACTUALLY SAT DOWN NOW, YOU RECALL --

3 A. RIGHT.

4 Q. -- THE SECOND TIME?

5 A. RIGHT.

6 Q. OKAY. AND CAN YOU TELL ME, LOOKING AT SSS-1 WHERE THEY

7 SAT DOWN, WHAT BOOTH.

8 A. NO. I MEAN, PEOPLE WERE STANDING AROUND --

9 Q. WELL, LET'S TAKE THE -- LOOK AT SSS-1. THEY DIDN'T SIT IN

10 THE VERY FIRST BOOTH BY THE FRONT DOOR, DID THEY?

11 A. NO.

12 Q. DID THEY SIT IN THE NEXT BOOTH?

13 A. IN ONE OF THE BOOTHS DOWN THAT WAY.

14 Q. OKAY. DOWN THAT WAY. AND CERTAINLY IT'S MORE THAN FIVE

15 TO SIX FEET FROM BEHIND THE BAR TO ONE OF THOSE BOOTHS;

16 CORRECT? YOU'D AGREE WITH THAT?

17 A. RIGHT.

18 Q. OKAY. NOW, WHILE WE'RE LOOKING AT THAT PICTURE, AT THE

19 TIME THESE MEN CAME IN, YOU WERE BEHIND THE BAR. DO YOU RECALL

20 THAT THERE WERE THREE WOMEN SITTING ON THE LEFT SIDE, IN THE

21 FRONT OF THE BAR, BUT TO THE LEFT OF IT, AS YOU WERE LOOKING

22 OUT?

23 A. NO, I DON'T.

24 Q. YOU DON'T RECALL?

25 A. NO.

1 Q. YOU DON'T RECALL ONE WAY OR THE OTHER?

2 A. ONE WAY OR THE OTHER.

3 Q. OKAY. AND JUST, WELL, NOT QUITE THREE MONTHS AGO, IN YOUR
4 INTERVIEW WITH MR. GILLIAM IN PERSON, WHICH IS IN THE BOOK THAT
5 MISS WILKENS GAVE TO YOU, IT'S EXHIBIT NNN-2. I'LL DIRECT YOUR
6 ATTENTION, IF YOU WOULD, TO PAGE 3.

7 ALL RIGHT. TELL ME WHEN YOU GET THERE.

8 A. OKAY.

9 Q. AT LINE 7, MR. MIKE GILLIAM ASKED YOU, THAT'S THE "M.G."
10 DO YOU SEE THAT, AT LINE 7?

11 A. RIGHT.

12 Q. AND YOU'RE "E.L."

13 A. RIGHT.

14 Q. OKAY. IS THIS, COMMA, WAS THAT KITCHEN DOOR NORMALLY LEFT
15 UNLOCKED DURING THE EVENING TIMES OR -- AND THEN YOU SAY,
16 THE -- ALL THE COOKS WERE BACK THERE.

17 THAT'S TWO, RIGHT, TWO COOKS?

18 A. RIGHT. I -- YOU KNOW, I DON'T KNOW IF THEY HAD IT
19 UNLOCKED OR IF THEY HAD IT OPEN OR WHAT.

20 Q. SO YOU DON'T KNOW WHETHER OR NOT, AS OF JUST A COUPLE OF
21 MONTHS AGO, THREE MONTHS AGO ALMOST, YOU DON'T -- YOUR
22 RECOLLECTION IS YOU DON'T KNOW WHETHER OR NOT THAT DOOR WAS
23 OPEN OR NOT?

24 A. NO.

25 Q. WHAT I SAID IS CORRECT?

1 A. CORRECT.

2 Q. ALL RIGHT. AND THEN FINALLY, SIR, I'D LIKE YOU TO TURN
3 BACK TO THE NEXT TO LAST PAGE OF THE INTERVIEW WITH
4 MR. FORBUSH, WHICH I THINK IS 19.

5 A. OKAY.

6 Q. ALL RIGHT. AND IF YOU'D LOOK AT THE NEXT TO LAST PAGE, IT
7 SAYS DN109082.

8 A. OKAY.

9 Q. LOOKING ABOUT FOUR LINES DOWN, IT SAYS -- AND THIS IS
10 DIANE. THIS IS YOUR WIFE AT THE TIME -- WELL, NOT AT THE TIME,
11 BUT YOUR GIRLFRIEND AT THE TIME. THE "IN FACT, I DON'T EVEN
12 THINK SHE" -- AND I REPRESENT TO YOU, IF YOU GO BACK, THAT'S
13 MISS KILLIAN -- "WAS THERE AT THE BAR THAT NIGHT. I DON'T
14 THINK SHE" --

15 THE COURT: THAT'S NOT HIM? THAT'S HIM, OR NOT HIM?

16 THE WITNESS: NO. IT'S HER, MY WIFE.

17 MR. ALEXANDER: RIGHT. THE "IN FACT. I DON'T" -- YOU
18 WERE PRESENT WHEN THIS STATEMENT WAS MADE; IS THAT CORRECT?

19 A. YES.

20 MS. WILKENS: OBJECTION, YOUR HONOR. MULTIPLE
21 HEARSAY.

22 THE COURT: IT'S SUSTAINED.

23 MR. ALEXANDER: WELL, I'M NOT INTRODUCING -- WELL, LET
24 ME THINK A MOMENT.

25 Q. YOU UNDERSTOOD, BASED ON WHAT YOUR WIFE -- LET ME ASK YOU

1 THIS: YOU DID NOT DISAGREE WITH YOUR THEN GIRLFRIEND'S
2 STATEMENT THAT NIGHT, THAT SHE BET THAT SHIRLEY KILLIAN WASN'T
3 THERE; CORRECT?

4 A. NO, I DIDN'T DISAGREE.

5 Q. OKAY. AND YOU DON'T DISAGREE TODAY?

6 A. NO.

7 Q. NOW, I WANT TO GO BACK TO THIS SHAKOWSKI. DID YOU
8 UNDERSTAND THAT THE WOMAN WHO CAME ON FEBRUARY THE 9TH OR 10TH
9 WAS SOMEHOW AFFILIATED WITH LAW ENFORCEMENT?

10 A. YES.

11 Q. ALL RIGHT. AND -- BUT IT WAS A DIFFERENT WOMAN THAN THE
12 WOMAN THAT CAME WITH SOME GENTLEMAN TO SERVE THE SUBPOENA ON
13 YOU?

14 A. RIGHT.

15 Q. CAN YOU DESCRIBE THE WOMAN WHO CAME IN FEBRUARY?

16 A. NOT REALLY.

17 Q. NO? TALL, SHORT, THIN, HEAVY-SET?

18 A. MEDIUM BUILD. I'D SAY ABOUT FIVE-SIX, FIVE-SEVEN.

19 Q. WHAT COLOR HAIR?

20 A. LIGHT-COLORED HAIR. I DON'T KNOW. I DON'T KNOW IF IT WAS
21 BLONDE OR BLONDE AND BROWN; I DON'T KNOW. I CAN'T REMEMBER.

22 Q. BE CAREFUL. YOU'LL GET IN TROUBLE.

23 COULD YOU GUESS OR GIVE ME YOUR BEST ESTIMATE OF HER
24 AGE?

25 A. MID-30'S.

1 Q. AND, NOW, MISS SHAKOWSKI, CAN YOU TELL ME, AS BEST AS YOU
2 CAN RECALL, WHAT SHE LOOKED LIKE?

3 A. NOT REALLY. SHE WAS ONLY THERE -- I WAS FIGHTING WITH MY
4 TWO PUPPIES TO STAY IN THE HOUSE. AND THE GUY WAS HANDING ME
5 THE PAPERS THROUGH THE DOOR, AND SHE WAS SITTING BACK HALFWAY
6 DOWN THE WALK, AND SHE JUST SAID WHO SHE WAS AND SAID SHE'D
7 CALLED AND SAID SHE WAS GOING TO COME BRING ME A SUBPOENA.

8 BECAUSE I SAID I HAD DOCTORS' APPOINTMENTS, SO I
9 DIDN'T KNOW WHEN I'D BE HOME. AND SHE CALLED ME BEFORE SHE
10 CAME AND SAID SHE WAS ON HER WAY. AND I SAID, WELL, THEY ARE
11 FIXING -- THEY ARE SUPPOSED TO BE WORKING ON MY STREET. AND
12 SHE SAID, WELL, WE'LL WALK AROUND THE CORNER, AND I SAID,
13 OKAY. SO LIKE I SAID --

14 Q. AND DO YOU REMEMBER THE NAME OF THE GENTLEMAN WHO CAME TO
15 SERVE THE SUBPOENA?

16 A. NO. LIKE I SAID, I WAS FIGHTING MY TWO LITTLE PUPPIES
17 AND --

18 Q. DID HE SAY ANYTHING TO YOU?

19 A. NO. HE JUST SAID YOU'RE BEING SERVED. HERE IS YOUR
20 SUBPOENA. AND I GRABBED IT THROUGH THE DOOR AND TRIED TO CLOSE
21 THE DOOR QUICK. AND HE HAD ME SIGN A PAPER FOR THE CHECK; AND
22 I HANDED THAT THROUGH THE DOOR, WHILE I'M KICKING THE DOGS.
23 AND THEY WERE GONE IN TWO OR THREE MINUTES.

24 Q. I THINK I GET THE PICTURE. MANY OF US HAVE BEEN THROUGH
25 THAT, AT LEAST THE DOG PART.

1 MR. ALEXANDER: THANK YOU VERY MUCH.

2 AND I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

3 THE COURT: ANYTHING ELSE?

4 MS. WILKENS: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

6 THE WITNESS: THANK YOU, YOUR HONOR, FOR COMING HERE.

7 THE COURT: WE'LL SEE YOU ON MONDAY.

8 MR. ALEXANDER: MAY I RAISE A COUPLE OF ISSUES THAT
9 RELATE TO MONDAY AND TUESDAY, SCHEDULING WISE?

10 THE COURT: YOU MAY.

11 MR. ALEXANDER: THANK YOU.

12 I HAD ASKED -- I GUESS THERE ARE THREE THINGS THAT I'D
13 LIKE TO RAISE. FIRST OF ALL, AND I DON'T -- I REALLY RAISE
14 THIS SO THAT IT DOESN'T OCCUR, SO WE DON'T HAVE IT AGAIN ON
15 BOTH SIDES. BUT THE CIRCUMSTANCES UNDER WHICH THIS SCHEDULING
16 WAS SET INVOLVED SOME EX-PARTE COMMUNICATIONS WITH I BELIEVE
17 YOUR HONOR'S LAW CLERK. AND I WOULD JUST HOPE THAT IN THE
18 FUTURE --

19 THE COURT: THIS WAS -- JUST TO SET THE RECORD
20 STRAIGHT. THAT'S ONLY CONCERNING THE WITNESS' LUNG CANCER.

21 MR. ALEXANDER: MR. LELKO.

22 THE COURT: CORRECT.

23 MR. ALEXANDER: ALL I'M ASKING IS --

24 THE COURT: SO THE ONLY THING THAT HAPPENED WAS
25 MISS WILKENS -- WE HAD SET IT FOR MONDAY. MISS WILKENS ADVISED

1 MY LAW CLERK THAT THE WITNESS HAD BEEN SERVED BUT HAD LUNG
2 CANCER AND WAS GOING IN FOR SURGERY --

3 MS. WILKENS: WEDNESDAY.

4 THE COURT: -- THIS WEDNESDAY, AND SO THE COURT
5 SUGGESTED PERHAPS RIVERSIDE. THIS WAS MY IDEA, BECAUSE HE --
6 THE CASE WAS HERE -- I MEAN, THE WITNESSES ARE HERE. AND THAT
7 WAS THE EXTENT OF THE EX-PARTE COMMUNICATION.

8 MR. ALEXANDER: I DON'T TAKE EXCEPTION TO THE
9 ACCOMMODATION. I THINK IT WAS PERFECTLY APPROPRIATE IN THE
10 INSTANCE. ALL I WOULD ASK IS IN THE FUTURE, FROM BOTH SIDES,
11 THAT WE CONTACT THE OTHERS REGARDING SCHEDULING FOR SCHEDULING
12 DATES, SO WE CAN SEE PEOPLE'S AVAILABILITY BEFORE WE BOTHER THE
13 COURT WITH THAT.

14 THE COURT: WELL, THIS WAS -- I THINK ON THAT, THAT WE
15 HAD ALREADY SET A HEARING. AND SO --

16 MR. ALEXANDER: FOR MONDAY AND TUESDAY.

17 THE COURT: FOR MONDAY AND TUESDAY. AND THE WITNESS
18 HAD SURGERY. SO THAT IT WAS AN UNUSUAL -- SO WE HAD -- I HAD
19 THOUGHT ABOUT RIVERSIDE, AND THEN DIRECTED TO SEE IF WE COULD
20 DO THIS WITH YOUR SCHEDULE.

21 MR. ALEXANDER: THANK YOU.

22 THE COURT: I THINK FRANKLY WE'VE HAD -- WELL, THERE
23 HAVE BEEN EX-PARTE -- THERE HAVE BEEN SOME CONTACTS BY BOTH
24 SIDES ON SCHEDULING ISSUES. IT'S SOLELY ON SCHEDULING ISSUES,
25 AND I GIVE -- I'VE GIVEN MY LAW CLERK STRICT INSTRUCTIONS NOT

1 TO TALK SUBSTANTIVE --

2 MR. ALEXANDER: VERY WELL. THANK YOU, YOUR HONOR.

3 THEN I HAD ASKED MISS WILKENS EARLIER IN THE WEEK IF
4 SHE CAN GIVE US SOME IDEA OF THE ORDER OF WITNESSES NEXT WEEK,
5 FOLLOWING MISS SLONAKER, AND MISS MARY WOLFE OF THE SIX OR SO,
6 SO WE KNOW WHO IS COMING MONDAY.

7 THE COURT: THAT WOULD BE HELPFUL.

8 MR. ALEXANDER: THAT WOULD BE HELPFUL FOR EVERYBODY
9 FOR PREPARATION.

10 THE COURT: IF YOU CAN DO THAT.

11 MS. WILKENS: YOUR HONOR, I DIDN'T DECIDE -- AFTER
12 WATCHING MR. ALEXANDER, I REALIZED WE'RE NOT GOING TO GET AS
13 FAR AS I THOUGHT ON MONDAY.

14 THE COURT: MAYBE YES. MAYBE NO.

15 MS. WILKENS: I'M GOING TO CALL -- I HADN'T DESIGNATED
16 ANYONE YET FOR TUESDAY VERSUS MONDAY. I HAVE THEM ALL SET FOR
17 MONDAY. I'M GOING TO CALL TODAY AND DECIDE. AND I DON'T
18 REALLY --

19 THE COURT: STILL MAYBE HAVE THEM AVAILABLE IN CASE
20 SOME GO QUICKER.

21 MS. WILKENS: THAT'S WHAT I WAS TRYING TO DO. BECAUSE
22 I THOUGHT IT WAS GOING TO BE PRETTY STRAIGHTFORWARD, AND SO I
23 WANTED TO MAKE SURE IF WE NEEDED TO FINISH ON MONDAY, WE
24 COULD. SO THAT WAS KIND OF THE APPROACH.

25 THE COURT: IT'S NOT SUPPOSED TO BE A DEPOSITION.

1 MS. WILKENS: YEAH. SO I BASICALLY HAVE THEM COMING
2 ON MONDAY. AND I DON'T HAVE THEM IN ANY PARTICULAR ORDER. I
3 HAVEN'T REALLY -- I MEAN, THEY ARE JUST KIND OF ALL --

4 THE COURT: WELL, WHEN YOU THINK OF IT TODAY, CAN YOU
5 GIVE MR. ALEXANDER'S OFFICE A CALL --

6 MS. WILKENS: SURE. I HAD ALREADY PROMISED TO DO SO.

7 THE COURT: -- AND AT LEAST SAY TENTATIVELY HERE IS
8 YOUR ORDER.

9 MS. WILKENS: SURE. I HAD TOLD HIM I WOULD DO THAT AS
10 SOON AS I HAD AN ORDER. I STILL DON'T. I WAS GOING TO DO IT
11 AFTER THE HEARING.

12 MR. ALEXANDER: FINALLY -- THANK YOU VERY MUCH.

13 FINALLY, WE EXPECT THAT WE MAY WANT TO CALL CERTAIN
14 DETECTIVES WHO CONDUCTED THE INTERVIEWS, MUCH THE WAY
15 MR. PACIFICO WAS ALSO BROUGHT IN. AND I WOULD ASK, FRANKLY,
16 THAT WITH REGARD TO THOSE DETECTIVES, THAT IF WE COULD TAKE A
17 BRIEF DEPOSITION OR GET THEIR NOTES OR SOMETHING, IT WILL MAKE
18 IT GO MUCH FASTER.

19 THE COURT: THE COURT DENIES THAT REQUEST.

20 MR. ALEXANDER: WITH REGARD -- AND IF I MIGHT, YOUR
21 HONOR, WE WERE NOT GIVEN ACCESS, IF YOU MAY RECALL, TO --
22 MR. PACIFICO HAD REVIEWED THE SHERIFF'S FILE AND TESTIFIED
23 ABOUT IT, THE OPPORTUNITY TO SEE THAT FILE. AND WHAT I WOULD
24 REQUEST, TO MAKE THIS EXAMINATION GO -- OF THE WITNESSES GO
25 FASTER, IS IF MISS WILKENS COULD PROVIDE US ANY OF THE NOTES

1 THAT THESE DETECTIVES TOOK, AT LEAST IN CONNECTION WITH THE
2 VARIOUS WITNESSES, EITHER BEFORE, DURING OR AFTER, AND ALSO THE
3 NAMES OF ANY OTHER PATRONS THAT THEY INTERVIEWED BUT DECIDE --
4 HAVE DECIDED NOT TO CALL. I MEAN, THEY LISTED THESE AS PART OF
5 THEIR ANSWER, BUT I BELIEVE THERE ARE OTHERS. IN FACT, WE'RE
6 TRYING TO GET IN TOUCH WITH SOME OF THEM OURSELVES.

7 THE COURT: I'LL LEAVE THAT TO THE TWO OF YOU. I
8 WON'T ORDER THAT.

9 MS. WILKENS: THANK YOU, YOUR HONOR.

10 MR. ALEXANDER: ALL RIGHT. THANK YOU VERY MUCH, YOUR
11 HONOR.

12 THE COURT: THEN WE ARE -- I AM CONTINUING TO RESEARCH
13 THE PAYMENT ISSUE UNDER THE CRIMINAL JUSTICE ACT.

14 MR. ALEXANDER: THANK YOU.

15 THE COURT: AND HOPE TO HAVE SOME GOOD NEWS. IT MAY
16 COMPLICATE THE PRO BONO FUND. WE'RE LOOKING AT THAT, TOO. BUT
17 IF YOU COULD PROVIDE THE INFORMATION UP TO DATE, SO THAT WE
18 COULD MAKE SOME PAYMENTS OR GET IT IN ORDER, THAT WOULD BE
19 HELPFUL.

20 MR. ALEXANDER: VERY WELL. WE CAN START AT 9:00 ON
21 MONDAY. I KNOW IT'S MONDAY AND YOUR HONOR MAY HAVE LOTS OF
22 OTHER THINGS. BECAUSE WE ARE -- WE'RE JUST TOO AFRAID OF
23 TAKING A CHANCE ON AIRLINES.

24 THE COURT: DON'T WORRY ABOUT THE AIRLINES. IF YOU
25 GET THERE, IT'S COURT TIME. BECAUSE I HAVE TAKEN MANY FLIGHTS

1 FROM BOTH OAKLAND AND SAN FRANCISCO EARLY. IN ANY EVENT, I DO
2 HAVE OTHER MONDAY MATTERS.

3 MR. ALEXANDER: OKAY. VERY WELL.

4 THE COURT: ON THIS MONDAY FROM 9:00 TO 10:00.

5 MR. ALEXANDER: VERY WELL.

6 THE COURT: SO I'D STILL SAY, IF YOU DECIDE TO COME
7 EARLIER, THEN IT'S ON YOUR OWN NICKEL.

8 MR. ALEXANDER: VERY WELL.

9 THE COURT: IF YOU DECIDE -- GENERALLY THE AIRLINES
10 ARE PRETTY GOOD AT THIS TIME OF YEAR. THERE IS NO GUARANTEES
11 ON IT.

12 MR. ALEXANDER: SURE.

13 THE COURT: ALL RIGHT.

14 MR. ALEXANDER: THANK YOU VERY MUCH.

15 THE COURT: THANK YOU SO MUCH.

16 MS. WILKENS: THANK YOU, YOUR HONOR.

17 THE CLERK: NONE OF THESE EXHIBITS WERE RECEIVED.

18 THE COURT: ON THE EXHIBITS, DO YOU WANT TO MOVE YOUR
19 EXHIBITS IN?

20 MR. ALEXANDER: YES, PLEASE. I WOULD LIKE TO -- I
21 DON'T HAVE ANY OBJECTION TO SSS-1 THAT MISS WILKENS PUT IN.
22 IT'S ACTUALLY ATTACHED TO MISS SLONAKER'S DECLARATION. AND I
23 DON'T HAVE ANY OBJECTION TO THE SERIES OF JJJ --

24 THE COURT: UH-HUH.

25 MR. ALEXANDER: -- EXHIBITS. AND IF I'M NOT MISTAKEN,

1 THE OTHER ONE WAS NNN-3.

2 MS. WILKENS: YOUR HONOR, WE WOULD NOT BE OFFERING
3 SSS-1. IT WAS FOR REFERENCE PURPOSES ONLY. AND WE WOULD BE
4 OFFERING THE PHOTOGRAPHS AND WE WOULD BE OFFERING NNN-1,
5 MR. LELKO'S DECLARATION.

6 THE COURT: AND ARE YOU MOVING IN SSS-1?

7 MR. ALEXANDER: I AM, YOUR HONOR.

8 THE COURT: FOR DEMONSTRATIVE PURPOSES?

9 MR. ALEXANDER: YES. AS REFLECTING MISS SLONAKER'S --

10 THE COURT: NOT MISS SLONAKER.

11 MR. ALEXANDER: MISS SLONAKER'S RECOLLECTION -- I CAN
12 DO THAT THROUGH HER ON MONDAY.

13 THE COURT: RIGHT.

14 MR. ALEXANDER: BUT IT WAS PROVIDED TO THIS GENTLEMAN,
15 AND JUST FOR DEMONSTRATIVE PURPOSES.

16 THE COURT: I THINK FOR DEMONSTRATIVE PURPOSES FOR
17 THIS WITNESS, THE COURT WILL RECEIVE SSS-1.

18 MR. ALEXANDER: BUT ALSO THERE IS A SUBSTANTIVE POINT,
19 AND THAT IS, HE DID AGREE THAT IT WAS AN ACCURATE DESCRIPTION
20 OF THE BAR.

21 THE COURT: YOU CAN CONFIRM THAT WITH MISS SLONAKER.

22 MR. ALEXANDER: OKAY. BUT I GOT IT THROUGH HIM, AND
23 THAT'S -- I MEAN, HIM SAYING IT IS CORROBORATIVE OF WHAT SHE
24 DID; SO IT HAS SOME ADDITIONAL --

25 THE COURT: ALL RIGHT. THE COURT WILL RECEIVE SSS-1.

1 MR. ALEXANDER: THANK YOU.

2 (RESPONDENT'S EXHIBIT SSS RECEIVED IN EVIDENCE.)

3 THE COURT: AND THEN THE JJJ-1 THROUGH 7 AND NNN-1
4 YOU'RE MOVING INTO EVIDENCE?

5 MS. WILKENS: 1.

6 THE COURT: AND NNN-1. AND THEN FOR THE DEFENSE --

7 MS. WILKENS: YES. MY ONLY OBSERVATION IS EXHIBIT 18,
8 THERE ARE TWO VERSIONS OF EXHIBIT 18. IT'S A SHERIFF'S
9 REPORT. THERE IS THE ORIGINAL VERSION, BEFORE IT WENT TO THE
10 DEFENSE FILE, AND THEN THERE IS THE ONE FROM THE DEFENSE TRIAL
11 FILE, WHICH HAS THE BATE STAMP 90624. BUT THERE IS WRITING ON
12 THIS ONE THAT IS IN ADDITION TO WHAT WAS IN THE DEFENSE TRIAL
13 FILE THAT WAS PROVIDED TO US.

14 THE COURT: BEING ARRIVAL, CONTACT DESCRIPTION, OTHER?

15 MS. WILKENS: YEAH. AND NUMBERING.

16 MR. ALEXANDER: I'M WILLING TO PUT IT IN FOR JUST THE
17 TYPEWRITTEN PORTIONS.

18 THE COURT: WHY DON'T YOU REDACT IT. BRING IT ON
19 MONDAY.

20 MS. WILKENS: MAY I BRING A HIGHER-QUALITY COPY,
21 BECAUSE THE DATE ON MY COPY FROM THE SHERIFF'S FILE IS VERY
22 LEGIBLE; AND IT'S CLEARLY AN 8 AND THIS LOOKS LIKE A 6.

23 THE COURT: WHY DON'T YOU BRING IT WITH THE REDACTED
24 VERSION.

25 MS. WILKENS: YES, YOUR HONOR.

1 MR. ALEXANDER: VERY WELL.

2 THE COURT: AND THE COURT WILL RECEIVE IT ON MONDAY.

3 MR. ALEXANDER: VERY WELL.

4 THE COURT: AND WHAT ABOUT 19 AND 17?

5 MS. WILKENS: 17 IS, OF COURSE, ALREADY IN THE RECORD.

6 THE COURT: ALL RIGHT.

7 MS. WILKENS: 19 IS FINE. AND, AGAIN, THIS IS FROM
8 THE DEFENSE TRIAL FILE, WHICH IS ALSO ALREADY BEFORE THE COURT.

9 THE COURT: ALL RIGHT. 19 IS RECEIVED.
10 (RESPONDENT'S EXHIBIT 19 RECEIVED IN EVIDENCE.)

11 MR. ALEXANDER: THANK YOU VERY MUCH, YOUR HONOR.

12 THE CLERK: 17?

13 THE COURT: 17 DOES NOT NEED TO BE RECEIVED, BECAUSE
14 IT'S ALREADY IN THE RECORD. IT'S A DUPLICATION --

15 THE CLERK: THANK YOU.

16 THE COURT: -- OF TESTIMONY.

17 AND 18, WE WILL GET A NEW COPY ON.

18 MR. ALEXANDER: OKAY.

19 THE COURT: ALL RIGHT. THANK YOU.

20 MR. ALEXANDER: THANK YOU SO KINDLY.

21 MS. WILKENS: THANK YOU, YOUR HONOR.

22 THE COURT: HAVE A GOOD WEEKEND.

23 THE CLERK: COUNSEL PLEASE RETAIN YOUR EXHIBITS.
24 (PROCEEDINGS ADJOURNED AT 12:55 P.M.)
25

--O00--

C E R T I F I C A T I O N

I HEREBY CERTIFY THAT I AM A DULY APPOINTED, QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE UNITED STATES JUDICIAL CONFERENCE.

DATED: JULY 9, 2004 AT SAN DIEGO, CALIFORNIA.



CAMERON P. KIRCHER
CSR NO. 9427