

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3

4 KEVIN COOPER,) Case No. 04CV0656-H(LSP)
5)
6 Petitioner,) San Diego, California
7)
8 vs.) Thursday,
9) August 26, 2004
10 JILL L. BROWN, ACTING WARDEN,) 9:00 a.m.
11 SAN QUENTIN STATE PRISON,)
12)
13 Respondent.)
14)

15 TRANSCRIPT OF COURT TRIAL
16 BEFORE THE HONORABLE MARILYN L. HUFF
17 UNITED STATES DISTRICT JUDGE
18

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1 SAN DIEGO, CALIFORNIA THURSDAY, AUGUST 26, 2004 9:00 A.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: Thank you. We have a witness?

5 MS. WILKENS: Yes, your Honor. We have Mr. Ted
6 Fahey.

7 THE COURT: You may call the witness.

8 TED FAHEY - PETITIONER'S WITNESS - SWORN

9 THE CLERK: Please state your name and spell your
10 last name for the record.

11 THE WITNESS: Ted Fahey, F-A-H-E-Y.

12 MR. ALEXANDER: May I proceed, your Honor?

13 THE COURT: You may.

14 MR. ALEXANDER: Thank you.

15 DIRECT EXAMINATION

16 BY MR. ALEXANDER:

17 Q Good morning, Mr. Fahey. My name is David Alexander,
18 and I introduced myself this morning, correct?

19 A Correct.

20 Q And we have had one brief telephone conversation, is
21 that correct?

22 A Yes.

23 Q All right. And I placed that to you?

24 A Yes.

25 Q And that was what, approximately -- well, when --

1 approximately how long ago did that occur?

2 A Two or three weeks.

3 Q All right. Now, Mr. Fahey, you received a subpoena
4 from the Attorney General's Office to attend today, is that
5 correct?

6 A Correct.

7 Q All right. And at some point in your life, did you
8 work for -- or work at the California -- or Chino
9 Institution for Men?

10 A I did.

11 Q All right. And when did that employment begin?

12 A I transferred to Chino in 1973, and I retired from
13 Chino in 1989.

14 Q And were you employed by the Department of Corrections
15 prior to 1973?

16 A Yes.

17 Q For how many years did you work for the Department of
18 Corrections?

19 A Nearly 30.

20 Q Thirty?

21 A Uh-huh.

22 Q Now, let me focus on your years in Chino Institution
23 for Men. I'm not sure if you will be able to place this
24 time wise, but in 1983, what was your position at the Chino
25 Institution for Men?

- 1 A I was a correctional counsel three, and I was in charge
2 of counselors and records at the reception center at Chino.
- 3 Q I'm sorry. At the reception?
- 4 A Reception center.
- 5 Q Center, okay. And you were a correctional counselor
6 number three?
- 7 A Grade three, yes.
- 8 Q Grade three. And how many grades were there?
- 9 A Three.
- 10 Q And I take it -- well, I don't take it. Was three the
11 highest grade?
- 12 A Yes.
- 13 Q And how long -- or when did you first become a
14 correctional counselor grade three?
- 15 A 1973.
- 16 Q Had you had prior experience within the Department of
17 Corrections as a correctional counselor three?
- 18 A No, but many years as a parole agent two and a
19 correctional counselor two.
- 20 Q All right. And was your entire stay -- I'm sorry --
21 not stay. That's a very bad choice of words. Was your
22 entire employment at the Chino Institution for Men as a
23 correctional counselor grade three?
- 24 A Yes.
- 25 Q All right. Now, to whom did you report, sir?

- 1 A The associate --
- 2 Q In 1983.
- 3 A The associate superintendent in charge of the reception
- 4 center.
- 5 Q And who was that, sir?
- 6 A I'm -- I'm not sure. It was either Bob Bales or
- 7 Kathleen Anderson. I think it was Bob Bales.
- 8 Q Bob Beals?
- 9 A Bales, B-A-L-E-S.
- 10 Q Thank you. And was that true in 1984 also, that to
- 11 whomever you reported in 1983 you reported in 1984?
- 12 A No. I left the reception center at Central in
- 13 September of 1983 when I had a slight stroke, and I was off
- 14 for four months. When I returned to work, I went to the
- 15 minimum unit at Chino. I never returned to the reception
- 16 center again.
- 17 Q So from September '83 until the end of that year, '83,
- 18 you were on -- not working, correct?
- 19 A Correct.
- 20 Q All right. And then when you came back, you came back
- 21 to the minimum unit?
- 22 A Yes.
- 23 Q And what were your responsibilities -- or what was your
- 24 job title in the minimum unit?
- 25 A Well, it was still a correctional counselor three, but

1 the first six months I was back, I was assigned to reviewing
2 and rewriting institution procedures. And then at the end
3 of about six months, I was placed in charge of
4 classification and records at the minimum unit.

5 Q Classification and records?

6 A Yes.

7 Q Limited to the minimum unit?

8 A Yes.

9 Q All right. And would you explain what type of
10 classifications you're referring to?

11 A What kind of classifications?

12 Q Yeah, in the minimum unit.

13 A Well, all inmates are classified as to their level of
14 custody. Of course, in the minimum unit, they were all
15 minimum. They all have program requirements, custody
16 requirements. This is all part of classification.

17 Q All right. And what type of records in 1983 now were
18 you in charge of?

19 A When someone is admitted to prison, he goes to the
20 reception center. The ones from Southern California went to
21 Chino. The ones from Northern California went to Vacaville.
22 And we would receive these new commitments, hundreds every
23 week, and we would build a record on them. We would obtain
24 their arrest records, their probation officers' reports. We
25 would test them and get as much information as we could on

1 them, and then we would decide which institution they would
2 be transferred to.

3 Q So you were not just making decisions about inmates who
4 would be at Chino but who would be sent to other
5 institutions, correct?

6 A Correct.

7 Q All right. How many other -- this is, again -- well,
8 withdraw that. After the first six months of 1983, what did
9 you become at -- what was your job at Chino?

10 A After the first six months at Chino --

11 Q Yes.

12 A -- I was in charge of classifications and records.

13 Q All right. That's in 1984?

14 A In 1984. The first six months I was reviewing
15 procedures.

16 Q Okay. Were those procedures -- what did those
17 procedures relate to?

18 A Well, the institution has hundreds of procedures
19 regarding laundry, feeding, custody, classification.

20 There's thousands of them.

21 Q All right. So you were actually -- I'm not going to
22 spend any time on this, but you were reviewing procedures
23 related to all aspects of the operation of the facility?

24 A Yes.

25 Q Was that at the direction of Ms. Carroll?

1 A Yes, it was.

2 MS. WILKENS: Your Honor, I'm going to object
3 under 403. We're getting very far afield from --

4 MR. ALEXANDER: I'm done. I just wanted to find
5 out the scope of this man's responsibilities.

6 THE WITNESS: Yes, it was.

7 BY MR. ALEXANDER:

8 Q Thank you. Now, how many -- in 1983 and into 1984, if
9 you know, how many correctional counselors were there?

10 A At reception center Central, I was the correctional
11 counselor three. There were three correctional counselor
12 twos that reported to me, and there were I think 12
13 correctional counselor ones that reported to them. In
14 addition, the records office staff reported to me.

15 Q How many in that staff?

16 A There was a chief records officer and I think four
17 others.

18 Q Now, I'm going to see -- I'm going to ask you about
19 some names and see if you can tell me if you remember these
20 people and what they did. The first person is a Richard
21 Krupp?

22 A Yes. He worked there as a correctional counselor one
23 for many years.

24 Q And is it your best recollection that he was a
25 correctional counselor one in 1983 and 1984?

1 A Yes, he was.

2 Q All right. Again, very briefly, the difference in
3 responsibilities between a correctional counselor one and a
4 correctional counselor two?

5 A The difference?

6 Q Yes, please.

7 A Well, a correctional -- all inmates would be assigned
8 to a correctional counselor one. He would interview the
9 inmate. He would see that he got all the tests like IQ and
10 reading and things like that. He would get his arrest
11 record, probation reports together, and he would do a brief
12 social evaluation on each inmate.

13 He would then make a recommendation as to where he
14 thought the inmate should go.

15 Q What facility? When you --

16 A Yes, as to what facility, like San Quentin, Folsom --

17 Q Yes.

18 A -- Tahatchapee, whatever.

19 Q Yes, sir. And what then did a correctional officer two
20 do?

21 A Correctional officer two supervised the ones. They sat
22 on classification committees. They reviewed the reports,
23 and they would either agree or disagree with the
24 correctional counselor one's recommendation, and then the
25 report would come to me.

1 Q And did you make the ultimate determination as to the
2 classification?

3 A I would either agree or disagree with the ones and the
4 twos, and then I would give it to a classification
5 representative from Sacramento who would either agree or
6 disagree with our recommendations.

7 Q Now, I take it these recommendations were made in
8 writing?

9 A Yes.

10 Q And the information upon which they were based was in
11 writing?

12 A Yes.

13 Q Are you familiar with a -- a form called the
14 Institution Staff Recommendation Study?

15 A The Staff Recommendation page, yes.

16 Q Okay. When you say the Staff Recommendation page,
17 could you explain what that is?

18 A Well, that would be the last page of the social
19 evaluation where the correctional counselor one would make
20 his recommendation and the correctional counselor two would
21 either concur or disagree and state the reasons. And then
22 the correctional counselor three or whoever was acting for
23 me would either agree or disagree.

24 Q I see. And what were -- just briefly, what were the
25 prior pages to which this last page is attached?

1 A Well, there would be the CII report, the arrest record.

2 Q What does CII stand for?

3 A California Identification and -- I forget. It's the --

4 where we got our arrest records from.

5 Q I see.

6 A California Identification and whatever.

7 Q Any other documents that --

8 A Yeah, there'd be the probation report. There would be

9 a -- there would be a family history page where we would

10 list all the relatives that we knew of, parents, wives,

11 children. There would be a number of pages with this. We

12 called it a cumulative summary.

13 Q That was --

14 A It would probably be a dozen pages in the average

15 cumulative summary.

16 Q And that was a summary of all the underlying documents

17 that you had --

18 A Yes.

19 Q -- that had been reviewed, is that correct?

20 A Correct.

21 Q Thank you. Now, was there a form included that was the

22 actual interview, reflected the questions and the responses

23 that the correctional --

24 A No, not the actual questions. There would be a social

25 evaluation that would be three or four pages long

1 summarizing the interview.

2 Q Okay. Now, I don't want to ask you about all the
3 questions asked in an interview, but was one of the
4 questions that was regularly asked of the inmate whether
5 they had any enemies?

6 A That was always asked.

7 Q Always asked. Okay. All right. Now, I take it --
8 well, I don't take anything. I need to ask you. I'm sorry.
9 At the reception center, was there a separate area where the
10 counseling was done?

11 A Yes.

12 Q And --

13 A Counseling is a kind of a misnomer. A correctional
14 counselor is -- probably should be called a classification
15 officer. They do very little counseling.

16 Q But at least as long as you were there they were called
17 correctional counselors or --

18 A Have been since 1944, yes.

19 Q All right. And to the best of your knowledge, through
20 1989?

21 A Yes.

22 Q All right. You weren't able to change that designation
23 I take it?

24 A Never tried.

25 Q All right. Thank you. Now, let me ask you some other

1 names. Cornelius Shephard, are you familiar with that
2 gentleman who worked at --

3 A Yes, I --

4 Q -- CIM?

5 A -- knew him.

6 Q And did -- did you work with him?

7 A No, I never worked with him, but I -- he was a
8 lieutenant. So I knew him.

9 Q All right. And do you recall what his job was?

10 A He worked over in Reception Center East.

11 Q And what was the designation of the reception center
12 you worked in?

13 A Reception Center Central.

14 Q All right. Was there another reception center?

15 A There were three. Central was maximum custody, and
16 east and west were medium custody. They all came under
17 Reception Center Central all inmates, and then would be
18 transferred to one of the other two except parole violators.
19 Parole violators went directly to Reception Center East.

20 Q Okay. And do you know what Mr. Shephard's job was?

21 A He was watch commander.

22 Q Watch commander?

23 A Yeah. He was -- I think at the time --

24 Q Again, I'm -- I'm talking 1983, 1984 time period.

25 A Yeah. 1983, at the time this Cooper incident occurred,

1 I believe he was the third watch commander at Reception
2 Center East.

3 Q Third referring to the shift?

4 A Yes. That would be 4:00 p.m. until midnight.

5 Q Now, do you remember a gentleman by the name of Steve
6 Downing?

7 A Yes.

8 Q And who was --

9 A We was one of my CC twos.

10 Q He was one of the three CC twos that you had?

11 A Correct.

12 Q Who were the other -- in 1983 and 1984, the other CC
13 twos?

14 A Susan Yearwood and I think Fred Franco, but I'm not
15 sure.

16 Q I'm sorry. I didn't get the last name.

17 A I think it was Fred Franco, F-R-A-N-C-O.

18 Q Would you be able to identify for me for the years 1983
19 and '84 as many of the correctional officer ones other than
20 Mr. Krupp?

21 A Well, the correctional counselor ones I could name a
22 few.

23 Q Why don't you do that for me.

24 A Charlie Goes, G-O-E-S, Ora Tarrson, O-R-A T-A-R-R-
25 S-O-N.

1 Q Is that a man or a woman?

2 A Man. Bill Swisher (phonetic), I think Larry Hurst, H-
3 U-R-S-T, and I really can't remember any others.

4 Q All right. Do you know where Ms. Yearwood is today?

5 A No. The last I heard of her, she was an associate
6 super -- associate warden at San Quentin. That was several
7 years ago.

8 Q How long ago?

9 A Pardon?

10 Q Approximately how long ago were you aware that she was
11 an associate warden at San Quentin?

12 A Eight or 10 years.

13 Q Okay. And Fred Franco, do you know where he might be
14 today?

15 A I know when he left Chino, he went to Susanville.

16 Q To a facility in Susanville?

17 A Susanville, yes, the California Institution at
18 Susanville.

19 Q That's your last information?

20 A Yes.

21 Q And as of when was that information?

22 A I don't know. He probably left Chino in '83 or '84 or
23 '85, somewhere around there.

24 Q Mr. Goes, do you know --

25 MS. WILKENS: Your Honor, I'm going to object

1 under 403. I don't want to interrupt the deposition here,
2 but I don't see the relevance of trying to locate all the
3 correctional counselor ones at CIM.

4 THE COURT: Sustained.

5 MR. ALEXANDER: Your Honor, I'm trying to get
6 information to corroborate further statements by Mr. Krupp.

7 THE COURT: Sustained on 403 grounds.

8 BY MR. ALEXANDER:

9 Q Let me ask this. Do you have any contact -- have you
10 had any contact with any of the correctional counselors in
11 the -- in recent past?

12 MS. WILKENS: Objection. Vague.

13 BY MR. ALEXANDER:

14 Q Spoken with them, met with them?

15 A I talk to Charlie Goes on the phone every once in a
16 while, also Ora Tarrson (phonetic).

17 Q Thank you. Do you know where Mr. -- well, I don't want
18 to violate the Court's order. The next person whose name
19 has come up previously is a Mr. Ballard, Kenny Ballard. Do
20 you recall that gentleman?

21 A I know the name. I can't put a face to it.

22 Q All right. Do you recall what Mr. Ballard's position
23 was?

24 A No.

25 Q If I mention that he may have been involved in gang

1 activities at the --

2 A Gang coordinator, yeah, I think that's probably right.

3 Q All right. And do you have any information as to where
4 he is today?

5 A No.

6 Q All right.

7 THE COURT: If we need that, then we can get the
8 Attorney General to get that.

9 MR. ALEXANDER: Thank you, your Honor.

10 BY MR. ALEXANDER:

11 Q Now, Mr. Fahey, as a -- as the supervisor or
12 correctional counselor grade three in 1983 and 1984, would
13 you in the regular course of your responsibilities have
14 conversations with the correctional counselors one and two
15 concerning information they received in the course of the
16 interviews they conducted?

17 A Yes.

18 Q Okay. And was that a daily occurrence?

19 A Daily.

20 Q All right. Did you make any notes of those -- as a
21 regular matter, of those conversations?

22 A I probably did.

23 Q And do you have any such notes?

24 A No.

25 Q All right. Do you -- when you left in '89, did you

1 have notes --

2 A None.

3 Q -- at the -- did you have a policy re -- or practice,
4 excuse me -- regarding the retention of any notes of those
5 interviews?

6 A No.

7 Q Now, is it fair to say that during the course of 1983
8 and 1984 you probably had hundreds of conversations with the
9 various correctional counselors in connection with
10 classifications of people?

11 A That would be fair to say.

12 Q All right. But it -- all right. And it would also be
13 fair to say you don't recall the substance of every
14 conversation?

15 A No, I do not.

16 Q All right. Do you recall the substance of any
17 conversation as you sit here today?

18 A I suppose there were some that were more memorable than
19 others.

20 Q Are there any that come to mind?

21 MS. WILKENS: Your Honor --

22 THE WITNESS: Not right off hand.

23 MS. WILKENS: -- I'm going to object.

24 MR. ALEXANDER: He's already answered he doesn't
25 know.

1 BY MR. ALEXANDER:

2 Q Now, do you have any recollection, sir, of a
3 communication with a correctional counselor regarding
4 information that that counselor received about the Ryan --
5 well, let me withdraw that.

6 Are you familiar with the Ryan/Hughes murders?

7 A Oh, yes.

8 Q All right. You lived -- did you live in the Chino or
9 Chino Hills community at the time?

10 A No. I lived in Orange County.

11 Q In Orange County. How far away in Orange County?

12 A Sixteen miles.

13 Q Okay. But you were -- in Orange County, you were aware
14 of the Ryan/Hughes crimes?

15 A I was not only aware of it, I had to testify before the
16 State Senate about it.

17 Q All right. And did that relate to the escape?

18 A Yes.

19 Q All right. I don't want to get into that. By the way,
20 did you testify at the trial of Kevin Cooper?

21 A No.

22 Q Did you testify at any proceedings other than the
23 Senate proceeding relating to the --

24 A No.

25 Q -- stay about Kevin Cooper?

1 A No.

2 Q All right. Were you ever interviewed by any Sheriff's
3 Department personnel in connection with the investigation of
4 the Ryan/Hughes crimes?

5 A No.

6 Q All right. Now, do you have any recollection of being
7 provided any information from one of the correctional
8 counselor ones about information that correctional counselor
9 had received from a prospective inmate during the course of
10 the interview of that inmate regarding the Ryan/Hughes
11 crimes?

12 A No, I do not.

13 Q You don't have any recollection?

14 A No.

15 Q Are you saying that it never occurred or you just don't
16 recall?

17 A I think any information that had been given to me about
18 that homicide, I don't think I ever would have forgotten it.

19 Q But -- but you -- you're guessing or speculating?

20 A Yes, I'm speculating.

21 MR. ALEXANDER: Okay. Then I would move to strike
22 that response.

23 THE COURT: Overruled.

24 BY MR. ALEXANDER:

25 Q Okay. Is there any information about the Ryan/Hughes

1 crimes that you do recall as you sit here that you learned
2 from a correctional counselor?

3 A No.

4 Q All right.

5 THE COURT: The reason is you could do it on
6 custom and habit.

7 MR. ALEXANDER: Fair enough.

8 BY MR. ALEXANDER:

9 Q With regard to these institutions staff recommendation
10 I'll call it reports or -- withdraw that.

11 With regard to the materials that were part of which
12 the institution staff recommendation page was a part, what
13 was -- how were those maintained, if you know?

14 A Well, they were typed up and placed in a central file,
15 and then shortly before the Cooper escape, they had started
16 putting those files on microfiche.

17 Q Shortly before?

18 A Yeah, shortly before.

19 Q Was that at your initiation?

20 A No.

21 Q Was the reason for that just space?

22 A Yes, it was.

23 Q Space limitations?

24 A Yes.

25 Q And did that practice continue of putting those reports

1 on microfiche throughout 1983 and 1984?

2 A As far as I remember, I believe it did.

3 Q And did it continue through the period of time that --

4 A No --

5 Q Excuse me. Let me just finish so we have a clear
6 record. I'm sorry.

7 A Okay.

8 Q Did that practice continue past 1984?

9 A About 1984 or early '85 we got computerized. So then
10 it was a different system.

11 Q What was that system called?

12 A Well, the records were on the computer.

13 Q Did the system have -- is the report called the same
14 thing, it was just computerized?

15 A Right.

16 Q All right. And do you know where the -- the tapes of --
17 of the -- on the -- where that information was contained on
18 the computers were maintained?

19 A On the various records offices.

20 Q Okay. Records offices, what records offices do you
21 mean?

22 A Wherever the -- wherever the inmate was assigned was --
23 records would be in the records office.

24 Q Do you recall --

25 A If he was at Folsom, they would be at Folsom. If he

1 were at Chino Minimum, they'd be at Chino Minimum.

2 Q Okay. So they would follow the -- the inmate?

3 A Yes.

4 Q Okay. Would there also be a copy maintained at Chino
5 also do you know?

6 A No, we didn't -- we didn't keep any records when the
7 inmate left, except the records of transfer.

8 Q With regard to those records that were microfiched,
9 were those maintained as best you understand it in 1983 and
10 that part of 1984 for which they may have been prepared?

11 A Were they --

12 Q Were they maintained, the microfiche versions?

13 A Were they maintained where?

14 Q Well, first of all I want to know if they were
15 maintained, and then I can ask you where.

16 A Well, they were maintained.

17 Q Okay. And where?

18 A In the records office.

19 Q Of Chino?

20 A If he were at -- if he were at Chino, yes.

21 Q Okay. Now -- okay. Do you recall, Mr. Fahey, if you
22 didn't make it, participating in a call to the San
23 Bernardino Sheriff's Department relating to information
24 regarding Kevin Cooper that had been learned during the
25 course of an interview?

1 A As far as I know, during my 16 years at Chino, I never
2 once called the Sheriff's Department.

3 Q Okay.

4 A I often called the institutional investigators, and
5 they -- if the Sheriff's Department needed to be told
6 something, they made the phone call --

7 Q That --

8 A -- to the Sheriff's Department.

9 Q Okay. Institutional -- I'm sorry. I didn't mean to --

10 A Investigators.

11 Q Yes, and those are people who work at Chino?

12 A Yes.

13 Q All right. Whether you actually made a call to the
14 Sheriff's Department, do you have any -- do you recall
15 whether or not you may have been in a room where one of the
16 correctional counselors called the Sheriff's Department?

17 A No, and if I had been in the room, I would not have
18 permitted a correctional counselor to call the Sheriff's
19 Department.

20 Q All right.

21 A Because that was not the procedure.

22 Q All right.

23 A The procedure was to call the institutional
24 investigators which was Captain Laudaman at the time.

25 Q Captain Laudaman?

1 A Captain Laudaman.
2 Q Uh-huh. Who were the other --
3 A One of them was --
4 Q -- investigative counselors?
5 A -- Zeke Hernandez, and I can't remember the rest.
6 Q I'm sorry?
7 A One was Zeke.
8 Q Oh, Zeke Hernandez?
9 A Hernandez, yes.
10 Q Do you know where he is today?
11 A No.
12 Q And the other was a woman, correct?
13 A No. John Laudaman.
14 Q No, but I mean the other person's name you can't
15 remember, was that -- I'm sorry, was --
16 A No, I --
17 MS. WILKENS: Leading.
18 MR. ALEXANDER: Withdraw that.
19 BY MR. ALEXANDER:
20 Q Were there -- how many of these investigative -- what
21 did you call them?
22 A Investigators.
23 Q Yes -- at Chino were there?
24 A I think there were probably three.
25 Q All right. Now, we have Mr. Hernandez. We have the

1 captain, Mr. Laudaman, and we're missing one. Do you recall
2 who that person was?

3 A No idea.

4 Q Do you know if it was a man or a woman?

5 A No idea.

6 Q All right. In the -- as part of your responsibilities
7 as a correctional counselor number three, sir, did you come
8 to -- or make use of an offender-based information system
9 with regard to inmates who were going to be placed after
10 interviews at Chino?

11 MS. WILKENS: Objection. 403.

12 THE COURT: Pardon me? This is on the
13 information --

14 MR. ALEXANDER: Yes.

15 THE COURT: -- systems that they have? Overruled.

16 THE WITNESS: Did I make use of it?

17 BY MR. ALEXANDER:

18 Q Yes.

19 A Well, I read the -- I read the printouts.

20 Q And what were the printouts?

21 A The arrest records.

22 Q Okay. Is that essentially what the offender-based
23 information system was?

24 A Yes.

25 Q I see. Is that state based or federal based?

1 A It was both. We -- we -- we used the state based
2 primarily. Occasionally something would be run on the
3 federal based, but usually it would be the investigators who
4 did that. My staff didn't use -- didn't routinely use it.

5 Q Use?

6 A We did not routinely use the federal system, but it was
7 available.

8 Q Uh-huh. Now, just so I'm clear, was the federal system
9 one that dealt with federal crimes or did it deal with
10 crimes in states other than California or both?

11 A Well, theoretically, it would have every arrest that
12 had ever been reported to the FBI, and that would include
13 state arrests and arrests in other states.

14 Q And that was a computerized system?

15 A We accessed it by teletype. I never personally did it.
16 The machine that was used was over near the investigators'
17 office in the minimum unit.

18 Q And did you use that in 1983 and 1984, that system?

19 A Not routinely.

20 Q Not routinely, but it was -- it existed then?

21 A Yes.

22 MR. ALEXANDER: All right. Thank you very much,
23 Mr. Fahey, and I have no further questions.

24 MS. WILKENS: Thank you, your Honor.

25 \\\

CROSS EXAMINATION

1
2 BY MS. WILKENS:

3 Q Now, Mr. Fahey, what you're indicating is that an
4 inmate's file is called a C file, correct?

5 A Correct.

6 Q And the inmate's C file stays with the inmate as they
7 go throughout the California penal system, correct?

8 A That's correct.

9 Q So regardless of how their C file is kept, whether it's
10 hard paper or microfiche, those records go with the inmate
11 throughout the prison system?

12 A Yes.

13 Q Now, you've indicated that throughout your many years
14 as a correctional counselor that you did not call the San
15 Bernardino Sheriff's Office in your professional capacity as
16 correctional counselor, correct?

17 A No, I did not.

18 Q And the procedure with respect to any information that
19 should be passed along to local law enforcement --

20 THE COURT: Let's get -- that's one of those
21 double negative questions. So let's get that one again.

22 MS. WILKENS: I'm sorry. I'm doing it.

23 BY MS. WILKENS:

24 Q Mr. Fahey, could you just tell me what the procedure
25 would be for you as a correctional counselor at whatever

1 level, one, two, or three, with respect to any information
2 that you would receive from an inmate that should be passed
3 along to local law enforcement?

4 THE COURT: I didn't mean that. I just meant that
5 we should get his answer. When you said it's correct, and
6 he said "No, I did not," could you rephrase the question.

7 MR. ALEXANDER: It's called an Alexander question.

8 THE COURT: It's an Alexander question.

9 MS. WILKENS: It's rubbing off. Yeah, I
10 apologize. I can't even remember the question. I
11 apologize. I can just move on and hopefully --

12 THE COURT: I think we need an answer -- a clearer
13 answer to the --

14 MS. WILKENS: Really? Okay.

15 THE COURT: Did he ever call the Sheriff's
16 Department, yes or no.

17 BY MS. WILKENS:

18 Q Okay. Mr. Fahey, could you please tell the Court
19 whether or not -- now I'm doing it again. Could you please
20 tell the Court whether you called the San Bernardino
21 Sheriff's Department in your capacity as a correctional
22 officer?

23 A No, I did not.

24 Q Thank you, sir. Now, could you please tell me the
25 procedure for any correctional officer to follow, whether

1 you -- whether it be a correctional officer level one, two,
2 or three, with respect to any information obtained from an
3 inmate that should be provided to local law enforcement?

4 MR. ALEXANDER: Objection. It's over broad and
5 vague.

6 THE COURT: Overruled.

7 THE WITNESS: The correctional counselor one would
8 often be told things by an inmate, and if he thought it
9 should be reported to law enforcement, he would take it to
10 his supervisor. His supervisor would probably take it to
11 me. I would call the institution investigators. And they
12 would usually go over and talk to the counselor and probably
13 the inmate, and they would be the ones to call the Sheriff's
14 Department.

15 BY MS. WILKENS:

16 Q Now, when you would contact the investigative unit of
17 the prison, would you just speak to whomever was in the
18 facility at the time or would you go through the captain for
19 the --

20 A Whoever answered the phone.

21 Q All right. And you would report the information to
22 them and they would follow up?

23 A Yes.

24 Q Now, do you have any recollection of Lieutenant
25 Shephard having a conversation with you as a correctional

1 counselor?

2 A No.

3 Q And it's your recollection that Lieutenant Shephard was
4 a watch commander?

5 A Well, yeah, I know he was a watch commander at CIM
6 East.

7 Q All right. In 1983 and 1984, if Lieutenant Shephard
8 were a watch commander, what types of interaction would you
9 as a correctional counsel have with a watch commander?

10 A None, not at Reception Center East. I talk to my own
11 watch commanders all the time, but the only time I ever
12 talked to Lieutenant Shephard that I know of was over a cup
13 of coffee or lunch.

14 Q Now, Mr. Krupp, do you know what facility he was
15 assigned to in 1983 and 1984?

16 A Yeah, Reception Center Central.

17 Q All right. And so would Lieutenant Shephard have any
18 duties with respect to that particular facility?

19 A Not that I know of unless he happened to be covering a
20 shift at the Reception Center Central for some reason or
21 other.

22 Q Now, with respect to Mr. Krupp, were you ever his
23 immediate supervisor in the period between '83 and '84?

24 A Never his immediate supervisor. I was -- I would have
25 been his second level supervisor.

1 Q Now, if -- if Mr. Krupp's first level supervisor was
2 not at the institution, would he go to another CIM counselor
3 two in the facility or would he go --

4 A Or he probably --

5 MR. ALEXANDER: Objection, your Honor. Lack of
6 foundation as to what Mr. Krupp would have done. I don't
7 know if this gentleman has any knowledge.

8 THE COURT: You can rephrase it.

9 MS. WILKENS: Certainly, your Honor.

10 THE COURT: You can talk about custom and
11 procedure.

12 BY MS. WILKENS:

13 Q The procedures with respect to CIM counselors one, if
14 their immediate supervisor, the CIM two counselor assigned
15 to them, was not available, would they go to another --
16 would the procedure call for them to go to another two?

17 MR. ALEXANDER: Objection. Leading.

18 THE COURT: Overruled.

19 MR. ALEXANDER: She can just ask what the
20 procedure is and then not lead him.

21 THE COURT: Overruled.

22 THE WITNESS: They would very often come directly
23 to me. My door was always open, and it was rather informal
24 around there.

25 \\\

1 BY MS. WILKENS:

2 Q Now, you were -- were you at CIM at the -- I know you
3 were assigned to CIM, but were you actually at the CIM
4 facility at the time of Kevin Cooper's escape?

5 A No. Fortunately, I was spending a week at the
6 Departmental Training Academy at Gault, California when that
7 happened.

8 Q Now, while you were away on medical leave, do you know
9 who was assigned to perform your duties as a correctional
10 counselor three?

11 A Steve Downing and Susan Yearwood kind of took turns.

12 MS. WILKENS: I have no further questions, your
13 Honor.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. ALEXANDER:

17 Q One or two, Mr. Fahey, and then we'll set you on your
18 way. In the reception center, Central Reception Center,
19 that's where the interviews were done, correct?

20 A Correct.

21 Q All right. And they were called interviews, right?
22 They weren't called gathering of information?

23 A They were called interviews.

24 Q Okay. And how many -- were the interviews done in
25 private closed offices or --

1 A Yes.

2 Q All right. So it was more than just a carrel, C-A-R-R-
3 E-L, that they were conducting?

4 A I'm sorry. I didn't understand the question.

5 Q Fair enough. You're familiar with office arrangements
6 that consist of carrels that are open one to the other?

7 A The ones all had individual offices.

8 Q With --

9 A With doors that closed.

10 Q All right. And how many such offices were there?

11 MS. WILKENS: your Honor, I'm going to object.

12 This is beyond the scope of cross examination.

13 THE COURT: Sustained.

14 BY MR. ALEXANDER:

15 Q Did -- well, it's certainly on the subject matter of
16 whether this man would know certain information.

17 THE COURT: Rephrase the question then.

18 MR. ALEXANDER: Yes, I will.

19 BY MR. ALEXANDER:

20 Q How many such offices were there?

21 MS. WILKENS: Your Honor, I object on the same
22 grounds.

23 THE COURT: Offices of what?

24 MR. ALEXANDER: Where the correctional counselors
25 did their interviews.

1 THE WITNESS: Well, the -- in what we called the
2 counselor section, the counselors all had offices back
3 there. So did the psychologists. So did the gang
4 coordinator. So did the chaplain. There were probably 30
5 offices back there.

6 BY MR. ALEXANDER:

7 Q I see. And was your office in that location?

8 A No. Mine was out front.

9 Q All right. Was there -- I take it -- was there an
10 office in the back of -- way at the back of the correctional
11 counselors' offices, if you recall?

12 A Well, yeah. There's probably one in the front and one
13 in the back.

14 Q Okay. And do you know who occupied in '83 and '84 that
15 back office?

16 A Would have been one of the psychologists.

17 Q One of the psychologists, okay. Now, with regard to
18 Mr. Shephard, is it your testimony, sir, that in connection
19 with the Kevin Cooper matter you never had any -- you recall
20 no conversations with him?

21 A None.

22 Q Okay. Are you saying they didn't occur or you just
23 don't recall any?

24 A Pardon?

25 Q Are you saying they never occurred or you just don't

1 recall the substance of any?

2 A I know I didn't have a conversation with Cornelius
3 Shephard about Cooper ever.

4 Q All right. Now, you testified in response to a
5 question from Ms. Wilkens that if a correctional officer one
6 received some information and their supervisor -- well,
7 withdraw that.

8 You were asked a question that if a correctional
9 officer one received some information, that they would --
10 and their supervisor was not available, they would probably
11 take it to you, correct?

12 A The correctional counselor ones --

13 Q Yes.

14 A -- would probably take it to me.

15 Q All right. Now, but that's not an invariable rule,
16 correct?

17 A Pardon?

18 Q That was not an invariable rule.

19 A I don't know what you mean. He just reported up the
20 chain of command.

21 Q Uh-huh.

22 A The two or the three. I suppose if there wasn't a two
23 or a three around, he would have taken it to the associate
24 superintendent.

25 Q All right. But if they didn't take it to their

1 supervisor, the number two, they may have taken it to
2 another number two supervisor, correct?

3 A Yes.

4 MR. ALEXANDER: All right. No further questions.
5 Thank you, your Honor.

6 THE COURT: Anything else?

7 MS. WILKENS: Nothing further, your Honor. Thank
8 you.

9 THE COURT: All right. You may step down.

10 (The witness was excused.)

11 MS. WILKENS: Your Honor, we have Detective Wilson
12 next.

13 THE COURT: Okay.

14 MR. ALEXANDER: Your Honor, I don't know if it was
15 reported to you, while they're getting Detective Wilson, but
16 Ms. Epler --

17 THE COURT: Is on her way?

18 MR. ALEXANDER: -- is on her way and scheduled to
19 arrive on one of two flights I believe sometime after 1:15
20 or something like that. One's a Southwest. One's a Delta I
21 think she said, and I will report I got her a government
22 rate for a hotel, which is a good thing, and she asked if
23 she could have just a short time to freshen up because she's
24 stopping. She said like 15 or 20 minutes. So I -- my guess
25 is she'd be here by 2:00 o'clock.

1 THE COURT: Yes, 2:00 o'clock.

2 MR. ALEXANDER: Okay. Thank you.

3 THE COURT: If the plane is on time.

4 TIMOTHY WILSON - PETITIONER'S WITNESS - SWORN

5 THE CLERK: Please state your name and spell your
6 first and last name for the record.

7 THE WITNESS: Timothy Wilson, T-I-M-O-T-H-Y W-I-L-
8 S-O-N.

9 MR. ALEXANDER: Am I going first?

10 MS. WILKENS: It's your witness, counsel.

11 MR. ALEXANDER: Well, he's not my witness, your
12 Honor, but --

13 THE COURT: You don't want to hear from him?

14 MR. ALEXANDER: Can I have a moment to think about
15 that?

16 THE COURT: Sure.

17 MR. ALEXANDER: No, I'm -- I'll go ahead. I
18 just --

19 THE COURT: Okay.

20 MR. ALEXANDER: -- for the record, I want to know
21 this is a witness that was raised by Ms. --

22 THE COURT: It was raised by the Court.

23 MS. WILKENS: Yes. I secured the attendance of
24 this witness at the --

25 MR. ALEXANDER: Very well.

1 MS. WILKENS: -- request of the Court.

2 MR. ALEXANDER: Whether the Court or --

3 MS. WILKENS: My -- my position has been not to
4 call people who testified at trial and who filed reports
5 that were turned over at the time of trial. So I did not
6 endeavor to produce this witness for the Respondent.

7 DIRECT EXAMINATION

8 BY MR. ALEXANDER:

9 Q All right. Let's proceed, Mr. Wilson, and see if we
10 can do this efficiently, since you were kind enough to come
11 here. When did you learn that you would be testifying
12 today?

13 A Yesterday afternoon.

14 Q Are you here pursuant to a subpoena?

15 A Yes, sir.

16 Q All right. And are you presently employed?

17 A Yes, sir.

18 Q And what is your employment?

19 A I work for the San Manuel Indian Bingo and Casino in
20 Highland, California. I'm a security officer.

21 Q I see. And in connection with your testimony today,
22 were you provided any materials to review?

23 A Yes, sir, I was.

24 Q And who provided those to you?

25 A They came via fax from the District Attorney's Office.

- 1 Q From the Attorney General's Office or the District
2 Attorney?
- 3 A Copies from both.
- 4 Q All right. So do you have those materials with you?
- 5 A Yes, sir, I do.
- 6 Q And are they in front of you?
- 7 A Yes, sir.
- 8 Q All right. Did you just -- how many pages are there
9 approximately?
- 10 A Five pages.
- 11 Q Would you just very briefly describe that which you got
12 from the Attorney General's Office?
- 13 A They are text from the Attorney General's Office, what
14 I brought with me. It would have been five pages from both
15 agencies. I kept the best ones that were legible, and they
16 are -- they are writings of interviews conducted as part of
17 this investigation.
- 18 Q All right. Did you get the same five pages from each
19 agency?
- 20 A I believe so, yes.
- 21 Q And then you picked the most legible?
- 22 A Yes, sir.
- 23 Q All right. Can you just identify for me briefly what
24 those -- who those interviews reports are of?
- 25 A Yes, sir. The reports were written by me. They are

- 1 interviews with Kathleen Royals.
- 2 Q Uh-huh.
- 3 A With Lester Land.
- 4 Q Uh-huh.
- 5 A With Shirley Killian, K-I-L-L-I-A-N.
- 6 Q Uh-huh, yes.
- 7 A With Pamela Smith and Linda Westervoorde, W-E-S-T-E-R-
- 8 V-O-O-R-D-E.
- 9 Q Who is Ms. Westervoorde?
- 10 A She was a friend of Pamela Smith's.
- 11 Q Who was Pamela Smith?
- 12 A Pamela Smith and she, they were in the restaurant on
- 13 the night after this event occurred, on the night of this
- 14 event.
- 15 Q Were they patrons or employees?
- 16 A I believe they were just patrons.
- 17 Q All right. We'll come to them. All right. Now,
- 18 during your career or your employment, did you at one time
- 19 work for the San Bernardino Sheriff's Department?
- 20 A Yes, sir.
- 21 Q And during what years?
- 22 A I was hired in 1973. I retired in 1997.
- 23 Q What was your position in 1983 and 1984?
- 24 A I was a detective.
- 25 Q In what -- in what division?

1 A In 1983, I was a detective assigned to the homicide
2 detail, and later, '83 and '84, I was a senior deputy
3 investigator assigned to the Yucaipa Substation and then to
4 the West End Substation in Ontario.

5 Q In 1983, some portion of 1983, you were at the West End
6 Station?

7 A Yes, sir.

8 Q What --

9 A Well, I went to the West End Station in early '84. A
10 program came up that processed senior detectives into a
11 senior officer's position, and they were kind of expanded
12 throughout the department, and we were rotated out and put
13 in field positions as investigators and as supervisors and
14 training officers.

15 Q Well, let me be specific. In June of 1983, what was
16 your job with San Bernardino --

17 A I was a detective in the homicide detail.

18 Q Excuse me. Let me finish my question, please.

19 A Yes, sir.

20 Q What was your position with the San Bernardino
21 Sheriff's Department?

22 A I was a detective assigned to the homicide detail.

23 Q Out of what station?

24 A Out of the central investigations in San Bernardino,
25 out of the main office.

1 Q Was the West End Station in existence at that time?

2 A Yes, sir.

3 Q Okay. How far -- are you familiar with the location
4 where the Ryan/Hughes crimes were committed?

5 A Yes, sir.

6 Q How far was the Central Station that you worked out of
7 from that -- from the crime scene?

8 A Maybe 35, 40 miles.

9 MR. ALEXANDER: Do you have the notebook of
10 exhibits for the witness?

11 MS. WILKENS: Which one do you want, counsel?

12 MR. ALEXANDER: I want the daily logs so he can
13 use the more legible one. Do you have another copy?

14 MS. WILKENS: We're fine. Thank you. We have an
15 equally bad copy. Thank you.

16 MR. ALEXANDER: All right. Mr. -- may I approach,
17 your Honor?

18 THE COURT: Yes.

19 BY MR. ALEXANDER:

20 Q I'm going to put before you, sir, an exhibit -- I'm
21 going to put before you an exhibit book, and I've opened it
22 to what I hope is Exhibit NNNN --

23 A Yes, sir.

24 Q -- at the bottom. Do you see that?

25 A Yes, sir.

1 Q Now, if I get it right, I'd like you to turn to page
2 nine on June the 5th, 1983, and just to help you, the item
3 numbers start with 69 and go through 74.

4 A Okay.

5 Q Specifically looking at item 70, all right -- and
6 let -- let me represent to you that I believe this is a
7 daily log from the West End Rancho Cucamonga Station, all
8 right?

9 A Yes, sir.

10 Q And it's probably better on your copy than mine, but do
11 you see that on -- on page nine up in the -- on the right?

12 MR. ALEXANDER: Your Honor, I have a not so good
13 copy for the Court. The microfiche copy I'm happy to --

14 THE COURT: Don't we have the other one?

15 MS. WILKENS: Yes, your Honor.

16 THE COURT: Which is quadruple --

17 MS. WILKENS: The Judge has a copy.

18 THE COURT: -- N?

19 MS. WILKENS: It's NNNN, yes.

20 THE COURT: Yes, I've got that.

21 MR. ALEXANDER: You have it? Okay.

22 THE COURT: Uh-huh.

23 BY MR. ALEXANDER:

24 Q You see the entry at the top under the words daily log
25 over to the right, "Division Reporting" I think it says?

1 A Yes, sir.

2 Q All right. Now, you were -- you would not be
3 dispatched from anybody at this station, is that correct?

4 A That's correct.

5 Q All right. So in order to know -- well, okay. We'd
6 need the daily log and related documents, if necessary, to
7 find out when you were dispatched to the crime scene,
8 correct?

9 A Yes, but I don't know who would have that log
10 specifically.

11 Q All right. But there were daily logs in the format and
12 containing the type of information that's set forth on the
13 Exhibit NNNN for the central or main office when you worked
14 there, correct?

15 A Well, my notification would have come either from
16 dispatch or directly from my supervisor who dispatched me to
17 this call.

18 Q All right. Let's get to that then. Were you
19 dispatched to the scene of the crimes involving the Ryans
20 and Hughes?

21 A I want to say based on this day being a weekend, I
22 would have been off. I'd have received a phone call
23 probably from my supervisor. I don't recall specifically.

24 Q Well, I -- excuse me. I want to -- rather than your
25 guessing, I want to tell you what you remember happening,

1 and then -- okay. You did not work weekends at that time?

2 A No, sir.

3 Q All right. What I said is correct, you did not work
4 weekends?

5 A Yes.

6 THE COURT: We're calling that an Alexander --

7 MR. ALEXANDER: That's called an Alexander
8 question, which will some day get fixed or maybe not. I
9 haven't stopped yet.

10 BY MR. ALEXANDER:

11 Q All right. Now, do you recall who dispatched you to
12 the crime scene?

13 A At this point, no, sir.

14 Q All right. But it would have been either your
15 supervisor --

16 A Yes, sir.

17 Q -- or the dispatcher?

18 A Dispatch center, yes, sir.

19 Q Dispatch center, all right. And who was your
20 supervisor?

21 A I think on that weekend I was working for Sergeant Bill
22 Arthur.

23 Q Bill Arthur. Was he out of central office?

24 A We -- the homicide detail was part of the central
25 investigations out of the main office in San Bernardino.

1 Q All right. And where was Mr. -- Sergeant Arthur
2 mainly? What station did he work out of?

3 A He worked out of the same office I did. We were a
4 division, an intact division.

5 Q Fair enough. Now, when you got to the -- do you have
6 any independent recollection of what you did at the crime
7 scene when you were dispatched there?

8 A Very vague.

9 Q Very vague. What do you recall independently you did?

10 A I --

11 Q Let me with -- let me restate that, okay. What is your
12 independent recollection of what you did when you were
13 dispatched there?

14 MS. WILKENS: Your Honor, I'm going to object.
15 It's very vague.

16 THE COURT: Overruled.

17 THE WITNESS: I dressed in a suit. I responded to
18 the scene. I made contact with Sergeant Arthur, and I was
19 briefed on the events.

20 BY MR. ALEXANDER:

21 Q Do you recall what he told you or any of it?

22 A That a father had come to the house looking for his son
23 and found his son to be victim of trauma inside the house
24 and that there were several victims within the residence and
25 that there was one child with a severe injury that had been

1 taken from the residence to the hospital, but I don't recall
2 how.

3 Q Okay. And so by the time you arrived at the scene, the
4 young boy who was taken to the hospital had already been
5 taken to the hospital?

6 A I believe so, yes, sir.

7 Q Do you have a better -- a more specific recollection --
8 I'm sorry. Do you have a recollection more specifically as
9 to the time that you arrived at the scene?

10 A I do not.

11 Q Okay. I will represent to you that the date upon which
12 the crime was discovered was a Sunday, all right. Do you
13 know whether or not you were at the crime scene on a Sunday
14 or was the first time you were there on a Monday or some
15 other weekday?

16 A I'd have been there on a Sunday.

17 Q You remember that or --

18 A No. I'd have been there on a Sunday.

19 Q Because?

20 A Because we work in -- in teams under one supervisor,
21 and for each event the supervisor is notified and the team
22 is rolled. Myself and Mike Hall were rolled to the scene,
23 and Sergeant Bill Arthur was our supervisor.

24 Q Were you at home when you received the dispatch?

25 A I believe so.

- 1 Q All right. And did you go to the scene in your own
2 private automobile?
- 3 A No.
- 4 Q How did you get to the scene?
- 5 A I'd have driven the detective's unit unmarked.
- 6 Q So when you say unmarked, what do you mean?
- 7 A It was a plain car, no -- no emergency lights,
8 markings, insignias of that type.
- 9 Q Okay. And did you go with Mike Hall?
- 10 A No. Mike met me there.
- 11 Q All right. Now, did Mr. Arthur -- Sergeant Arthur,
12 excuse me -- give you any directions as to what to do when
13 you spoke with him?
- 14 A At the time of my arrival or shortly after my briefing?
15 He was -- Sergeant Arthur was still in the process of -- of
16 assessing what was going on. I was assessed to start
17 checking with external areas and neighbors. Mike was
18 assessed internal investigation, and then additional
19 personnel were requested.
- 20 Q Do you have before you, Mr. -- Mr. Wilson, the
21 interview that you did of Kathleen Royals?
- 22 A Yes, sir.
- 23 Q Would you get it out for a moment, please.
- 24 A Okay, sir.
- 25 Q Do you recall how long after you arrived at the crime

- 1 scene you interviewed Ms. Royals?
- 2 A I can only guess a couple of hours.
- 3 Q Now, directing your attention to I believe the bottom
- 4 of that interview report --
- 5 A Yes.
- 6 Q -- do you see or -- I'm sorry. Forget about the
- 7 bottom. Does it indicate in the report the approximate time
- 8 that you interviewed Ms. Royals?
- 9 A Yes.
- 10 Q And is that 6:46 p.m.?
- 11 A Yes, sir. It's put in military time 1846, which is
- 12 6:46.
- 13 Q All right. What was -- I take it Sunday was not --
- 14 Sunday was not your regular workday, correct?
- 15 A Correct.
- 16 Q So there's no regular workday in which you had a -- you
- 17 didn't have a shift on a Sunday, as you might during the
- 18 week, is that correct?
- 19 A At that time, no.
- 20 Q Okay. What I said is correct?
- 21 A Yes, sir, it is.
- 22 Q And then would you pull out the report you have, if you
- 23 have it there, for Lester Land.
- 24 A Yes, sir.
- 25 Q All right. And am I correct that that report reflects

1 that you interviewed Mr. Land at 6:58 p.m.?

2 A Yes, sir.

3 Q All right. So is it consistent with your -- well, is
4 it the case then that your interview of Ms. Royals lasted
5 approximately 11 to 12 minutes?

6 A Yes, sir.

7 Q All right. I'm sorry -- yeah, Ms. Royals. And then is
8 there an indication of how long your interview with Mr. Land
9 lasted?

10 A I did not put in a conclusion time, and I believe my
11 next interview of the day was done -- in fact, the next
12 interview that I did pursuant to these interviews was the
13 following day.

14 Q Right. So do you have a recollection of how long your
15 interview with Mr. Land lasted?

16 A No, sir. My guess would be perhaps 15 minutes.

17 Q All right. So about the same time as the interview
18 with Ms. Royals?

19 A Approximately, yes, sir.

20 Q Okay. And that interview was conducted -- well, let me
21 ask you, where did you conduct that interview, if you
22 recall? Well, let me ask you, without looking at the
23 report, do you have any independent recollection of where
24 you conducted the interviews?

25 A I think that the first two interviews were conducted at

1 a residence nearby on Old English Road. I think it was the
2 Edwards residence.

3 Q Edwards residence?

4 A Yes, sir.

5 Q Okay.

6 THE COURT: What's the report number, exhibit
7 number for his report?

8 MS. WILKENS: Your Honor, why don't I mark that.

9 THE COURT: Yeah, okay. Thank you.

10 MS. WILKENS: It would be EEEEE because I have
11 some other things that I have marked. So --

12 THE COURT: Okay. Do I have a copy?

13 MS. WILKENS: Pardon?

14 THE COURT: Do I have a copy?

15 MS. WILKENS: No, your Honor. I apologize.

16 THE COURT: Could I have a copy?

17 MR. ALEXANDER: I think I have a copy for you.

18 THE COURT: Do you have one there? We'll just
19 make a copy. Who needs a copy? You have one? You need
20 one?

21 MS. WILKENS: Thank you, your Honor.

22 THE COURT: Four. Why don't we take our morning
23 recess at this time, and then we'll resume at quarter to. I
24 have one matter I need to attend to.

25 MR. ALEXANDER: Thank you, your Honor.

1 THE CLERK: We're in recess.

2 (Proceedings recessed briefly.)

3 THE COURT: We're back in session. We're marking
4 the witness's report and the clearer copy of the report
5 which is slightly different that was in the answer. So one
6 is EEEEE -- EEEEE-1 and EEEEE-2.

7 MS. WILKENS: Thank you, your Honor.

8 THE COURT: And the witness's one is which one?

9 MS. WILKENS: That would be one.

10 THE COURT: Okay.

11 MS. WILKENS: It's a copy that Detective Wilson
12 brought, and two is the one from the defense trial file.

13 THE COURT: Thank you.

14 MR. ALEXANDER: May I proceed, your Honor?

15 THE COURT: You may.

16 MR. ALEXANDER: Thank you.

17 BY MR. ALEXANDER:

18 Q Now, Mr. Wilson, just to get where I think we were back
19 to, there were two interviews that you did on the Sunday in
20 a home near the crime scene, correct?

21 A Yes, sir.

22 Q And I think we -- you mentioned that it was the Edwards
23 home?

24 A I believe it was the Edwards residence, yes, sir.

25 Q Did you know the Edwards?

1 A No.

2 Q All right. Now, after you completed the interviews of
3 Ms. Royals and Mr. Land, did you conduct any other
4 interviews that day relating to the Canyon Corral Bar?

5 A Yes, sir.

6 Q And that's on that Sunday?

7 A No, sir. I did no other interviews on that day
8 referencing Canyon Corral. They were the following day.

9 Q All right. Maybe you can help looking at -- well, I'm
10 going to -- what is it quintuple E, EEEEE-2?

11 A Yes, sir.

12 Q All right. Can you read for me the date at the bottom
13 when you -- when this report was dated at least? Is that
14 the 9th?

15 A Yes, sir, June 9, '83.

16 Q And did you when interviewing Ms. Royals and Mr. Land
17 make your own handwritten notes?

18 A Yes, sir.

19 Q And then did you save those notes?

20 A No, sir.

21 Q All right. Was -- what information about the Canyon
22 Corral Bar, if any, did you have prior to your interviewing
23 Ms. Royals who was, I think, the first of the two, if you
24 recall?

25 A I want to say that we got information from a deputy

1 that had been talking to people in the area, and he came
2 across these individuals and brought these individuals to
3 me.

4 Q And was that deputy Mr. Ward?

5 A I believe so, yes, sir.

6 Q Okay. Do you know Mr. Ward?

7 A Yes, sir.

8 Q Okay. Do you know him still today?

9 A No, sir.

10 Q Okay. When's the last time you spoke with him?

11 A Twenty years ago.

12 Q Okay. So you haven't spoken with him in connection
13 with your proposed testimony today?

14 A No, sir.

15 Q All right. Okay. I guess, going back to my question,
16 Deputy Ward was here and testified that he brought two
17 people up to the crime scene and --

18 MS. WILKENS: Objection, your Honor, to telling
19 what other witnesses have testified to.

20 MR. ALEXANDER: All right. Fair enough. Fair
21 enough. I withdraw that. Okay.

22 BY MR. ALEXANDER:

23 Q Describe, if you would, very briefly the circumstances
24 about how you learned information before you started
25 talking -- interviewing Ms. Royals, if you recall?

1 A I was out doing interviews in the area, and I want to
2 say that I received a radio call from Deputy Ward to say he
3 found some people and they have information that may be
4 important to me.

5 Q You say you want to say that. Is that -- you mean
6 that's your recollection?

7 A Yes, sir.

8 Q So you were not actually at the crime scene when you
9 received that call from Deputy Ward?

10 A I don't -- I think I was down the street from there on
11 Old English Road.

12 Q And were you -- what were you doing on Old English
13 Road?

14 A Conducting interviews.

15 Q I see. And do you recall who you were interviewing at
16 that time?

17 A Specifically, no. I was still near the Edwards
18 residence, which was on Old English Road.

19 Q Okay.

20 A And that may be why my report reflects that that's
21 where the interview was conducted.

22 Q What -- just so I understand, when you make -- you're
23 familiar with the Payton Road, Old English Road
24 intersection?

25 A Yes, sir.

1 Q All right. When you make a left turn off of Payton
2 Road onto Old English Road, where is the Edwards house that
3 you conducted the interviews? Is it on the right side or
4 the left side as you proceed down that road?

5 A I think it's on the left side.

6 Q All right.

7 A That would be going westbound.

8 Q Independent of -- let's go to Ms. Royals' interview,
9 okay. And -- and independent of what's -- or apart from
10 what's written in this report that's the first page of
11 EEEEE-2, do you have your own recollection of what she told
12 you? In short, could you tell me what she told you if you
13 didn't have this report to refer to?

14 A No, sir.

15 Q Okay. And would that be true of each of the interviews
16 that you conducted that are reflected on the reports that
17 are included as part of EEEEE-2?

18 A In detail for these items I couldn't give you exactly
19 what they said. I could give you a brief synopsis, if you
20 will, of what was said and what the conclusions were.

21 Q Okay.

22 A That's all.

23 Q Now, before you interviewed Ms. Royals, had you
24 received information, if you recall, that there were three
25 men, young males, seen in the victim's car? Does that sound

1 familiar to you?

2 A No, sir.

3 Q Okay. You don't recall one way or the other?

4 A No, sir.

5 Q All right. Is the -- when -- when -- let's see, you
6 were briefed by Sergeant Arthur when you first got there?

7 A Yes.

8 Q Got to the scene, okay. And then at some point before
9 talking to Ms. Royals, you went down the road where the
10 Edwards' home was, and you conducted some interviews down
11 there?

12 A Yes, sir.

13 Q All right. And then you received a call from I guess
14 it's Deputy Ward saying that there were some people that he
15 wanted you to interview, is that correct?

16 A He had people that may have information pertinent to
17 what we had, yes.

18 Q Okay. He didn't tell you the information that he
19 thought they had, did he?

20 A I don't believe so.

21 Q All right. Okay. Now, do you recall, sir, whether you
22 asked Ms. Royals the names of other persons who were in the
23 Canyon Corral Restaurant or Bar the prior evening or early
24 into the Sunday morning?

25 A I don't recall.

1 Q Okay. You don't -- you may have, you just don't
2 recall?

3 A Quite possible.

4 Q All right. All right. Now, do you know what you
5 continued to do on that Sunday after you were done
6 interviewing Mr. Lester Land at approximately 7:15 p.m.?

7 A I believe I continued to make other contacts and
8 interviews.

9 Q And you would have filed reports to reflect those?

10 A Yes, sir.

11 Q All right. Let's go to Ms. Killian, which is -- I
12 think it's the third page in of -- I have a problem saying
13 this quintuple E-2, that interview.

14 A Yes, sir.

15 Q All right. And that you did with John Roberts?

16 A Yes.

17 Q Who is Mr. Roberts?

18 A John Roberts was a detective working out of the West
19 End Station at that time.

20 Q A homicide detective?

21 A No, sir.

22 Q What --

23 A Station investigator.

24 Q I see. What kind of a -- you may have said this, and
25 I'm sorry, but were you a station investigator also?

- 1 A No, sir. I was a homicide detective.
- 2 Q All right. And Mr. Ward, what was your understanding
3 as to his job?
- 4 A He was a field deputy.
- 5 Q In homicide or --
- 6 A No, sir. He was a field -- he was a field officer that
7 road patrol in the streets and answered calls.
- 8 Q I see. Okay. Now, do you know where Detective Roberts
9 is today?
- 10 A No, sir, I do not.
- 11 Q When's the last time you had information as to where he
12 resided? Don't tell me where he resided, just the
13 information -- the last time you had information about that.
- 14 A The last contact I had with John, he was living some
15 place in Cucamonga, and that was 20 plus years ago.
- 16 Q Okay. How old a man was he in 1983?
- 17 A Maybe 35.
- 18 Q Okay. Now, what were the circumstances under which you
19 interviewed Ms. Killian?
- 20 A We were making field contacts, and I believe that John
21 and I went to the Canyon Corral to see what other
22 information we could garner.
- 23 Q When you say field contacts, would you describe more --
24 or elaborate on what those consisted of?
- 25 A Trying to find more information from anybody that we

1 could contact at businesses or residences that may have been
2 in the area during this -- this point in time.

3 Q Was there a systematic effort to go house by house in
4 the area within some radius that I can ask you of the crime
5 scene to ask if people had information?

6 A I want to say there was, and on Old English Road I
7 think there's probably no more than maybe five houses.

8 Q Okay. So each of the people in -- do you recall each
9 of the people in those houses being contacted?

10 A I believe they were.

11 Q And did you participate in that?

12 A Not necessarily.

13 Q Okay. Did you participate in any of that?

14 A I was at the Edwards' residence.

15 Q Uh-huh.

16 A I was at another -- the grandmother's residence.

17 Q The grand --

18 A One -- the Ryan family.

19 Q Doctor Mary Howell?

20 A Yes.

21 Q Okay. But that wasn't on the Old English Road?

22 A And I didn't talk to -- I don't think I contacted
23 anyone else on the road at that time myself.

24 Q All right. Did you have -- did you participate in
25 going -- other than on Old English Road, going to houses in

1 the vicinity of the crime scene and the Canyon Corral Bar to
2 see if people had knowledge?

3 A I did not.

4 Q Okay. Do you know if that was done?

5 A I do not.

6 Q All right. Now, again, without the report regarding
7 the interview with Ms. Killian, do you have an independent
8 recollection of what she said to you?

9 A Specifically, no. Only the gist.

10 Q And what was --

11 A Just that there was --

12 Q What was the gist, excuse me?

13 A -- some patrons that had been in the bar that didn't
14 seem to fit, and based on that she felt they were
15 suspicious.

16 Q And that -- and that -- is that the extent of the
17 information you have independent of what's in your report?

18 A Yes, sir.

19 Q Okay. Would that be -- all right. Do you recall --
20 well, withdraw that. Let's go on to Ms. Smith and Ms.

21 Westervoorde, Linda Westervoorde. It would appear that you
22 interviewed them after ms. Killian. Is that consistent with
23 your recollection?

24 A Yes.

25 Q All right. And let's focus on them without reading

1 the -- looking at the report. What is your best
2 recollection independent of the report as to what
3 information you got from them?

4 A Basically the same thing, three male individuals that
5 had been in the bar that didn't seem to fit.

6 Q And you interviewed the two of them together?

7 A Yes, sir.

8 Q All right. Now, are the interviews that you did that
9 are reflected in quintuple E-2 the extent of the interviews
10 you did of bar employees -- Canyon Corral Bar employees or
11 patrons?

12 A I believe yes, that I did, yes, sir.

13 Q Okay. Do you know whether Mr. Roberts interviewed any
14 other people independent or not along with you?

15 A I do not know.

16 Q All right. Do you know of anybody else who conducted
17 any interviews of bar patrons or --

18 A I do not.

19 Q -- employees apart from yourself?

20 A I don't know, sir.

21 Q Okay. And Mr. Roberts, apart from Mr. Roberts? Your
22 answer would be the same?

23 A Yes, sir.

24 Q All right. Thank you. Are you -- do you have any
25 recollection of efforts to locate anybody else that was in

1 the bar either as an employee or a patron on late the night
2 of Saturday, June the 4th or into the early morning of June
3 the 5th as part of the investigation of the Ryan/Hughes
4 crimes?

5 A No, sir.

6 Q Did you do any -- following these interviews, okay, did
7 you do any follow-up with regard to the information that was
8 gained by you and in one or two instances with Mr. Roberts
9 to -- concerning the three men?

10 A The information was passed on to my supervisor, and it
11 was disseminated at a meeting. What was done after that I
12 do not know.

13 Q Okay. So -- and do you recall how soon after you
14 prepared these reports the information was disseminated at a
15 meeting?

16 A The information would have been passed on probably, if
17 they had a briefing that night, a closing briefing, most
18 likely the following morning.

19 Q Now, would you have to wait until the report was
20 prepared before the briefing would be done?

21 A No, sir.

22 Q Okay. So the information that you had gained in these
23 interviews with the bar patrons, it's your testimony that
24 that information was passed on to others involved in the
25 investigation the next morning after you gained the

1 information?

2 A That information would have been shared at a briefing,
3 yes, sir.

4 Q Okay. By you or by somebody senior to you?

5 A Probably by the sergeant.

6 Q All right. And was that Arthur?

7 A Yes, sir.

8 Q Okay. Did Sergeant Arthur ever ask you to do any
9 follow-up of those interviews?

10 A Specific to these items?

11 Q Yes, sir.

12 A Additional follow-up, no, sir.

13 Q Did he tell you not to do any further follow-up?

14 A No, sir.

15 Q Okay. After you conducted these interviews on the 5th
16 and 6th of June in 1983, what further involvement, if any,
17 did you have in the investigation of the Ryan/Hughes crimes?

18 MS. WILKENS: Objection. 403.

19 THE COURT: Overruled.

20 THE WITNESS: I remained in the investigation for
21 several weeks.

22 BY MR. ALEXANDER:

23 Q Okay. Several weeks?

24 A Yes, sir.

25 Q And when you say several, are you talking three to

1 four?

2 A Easily.

3 Q Okay. Perhaps some more?

4 A Not likely.

5 Q Okay. And after the three to four, is that a fair time
6 to say that your -- your involvement ceased in the -- in the
7 investigation of the Ryan crimes?

8 A As far as going out and doing investigation, yes.

9 Q Well, I'm -- can you clarify what you mean as far as
10 going out and doing investigations? What did you do?

11 A In our unit, I was one of a four-man team under a
12 sergeant. We had four teams. We have ongoing
13 investigations unrelated to this that are -- that still need
14 investigation.

15 Q Okay.

16 A And as part of this and specific to these interviews,
17 there were other assignments that were coming along and
18 being handled at the same time.

19 Q All right. All related to the crimes but not related
20 to the Canyon Corral incident?

21 A Correct.

22 Q All right. We're not here to ask about those at this
23 time. Thank you. Did you ask -- I think I may have asked
24 you this with regard to Ms. Royals only, but let me ask you
25 with regard to each of the people that you interviewed who

1 were either employees or patrons of the Canyon Corral Bar,
2 did you ask each of them who else was present that evening
3 that they recalled?

4 A I would have to say I did because that's kind of a
5 common sense question.

6 Q Yeah, that's what I --

7 A But I don't have documentation to support that.

8 Q Uh-huh. But that was your custom and practice, to find
9 out the names of other witnesses?

10 A Yes, sir.

11 Q All right. And all the information that you gathered
12 in connection with the interviews of the people at the
13 Canyon Corral Bar was passed on by you to Sergeant Arthur?

14 A Yes, sir.

15 Q Okay. Anyone else that you recall?

16 A I don't recall.

17 Q Okay. It may -- you may have, you may not have?

18 A Correct.

19 Q But Sergeant Arthur for sure?

20 A Sergeant Arthur was my first supervisor, yes, sir.

21 Q All right. And you passed that on both verbally and
22 then subsequently these reports were written?

23 A Yes, sir.

24 Q Okay. As a detective, would the extent of your work in
25 connection with the Ryan/Hughes murders be reflected in

1 reports such as those in quintuple E-2?

2 A Yes, sir.

3 Q Okay.

4 A They should all be part of that report.

5 Q I have a confusion in my notes maybe you can clear up
6 for me and then I'll be done. In 1983 and -- well, excuse
7 me. At the time in June, you were working out of the
8 central main office, correct?

9 A Yes, sir.

10 Q All right. When did you move to Yucaipa, to the
11 Yucaipa office?

12 A I went to Yucaipa in September of '83.

13 Q By that time were you no longer involved in the
14 investigation of the Ryan/Hughes crimes?

15 A That's correct.

16 Q Okay. All right. Other than to -- you testified at
17 the preliminary hearing?

18 A Yes.

19 Q And you testified at the trial?

20 A Yes, sir.

21 Q And there was another pretrial hearing that you
22 testified at, do you recall?

23 A I believe so, yes, sir.

24 MR. ALEXANDER: All right. Okay. Thank you very
25 much. I have no further questions. I'm -- your Honor, I

1 guess we might as well move into evidence quintuple E.

2 THE COURT: That's received. One and two?

3 MR. ALEXANDER: I guess, yes.

4 THE COURT: Thank you.

5 CROSS EXAMINATION

6 BY MS. WILKENS:

7 Q Now, were the -- were the detectives in June of 1983,
8 did they have set office hours on weekends?

9 A No, sir -- no, ma'am.

10 Q So you would be considered to be on call, is that
11 correct?

12 A Yes.

13 Q And you would have an unmarked detective's car with you
14 on the weekends?

15 A Yes.

16 Q And so you would respond from your home?

17 A Yes.

18 Q And when you were on call, did you carry a sheriff's
19 dispatch radio with you?

20 A No.

21 Q How were you summoned when you were needed on the
22 weekends?

23 A Either by pager or by telephone call.

24 Q Now, at the time of the Ryan/Hughes murders in June of
25 1983, were all homicide detectives based at central?

1 A Yes.

2 Q So no substation had homicide detectives assigned?

3 A No.

4 Q And when you were paged or telephoned to respond to a
5 homicide scene in June of 1983, would that result in the
6 central station creating an incident report on their
7 dispatch log as though the crime occurred within the area of
8 the central station?

9 A No.

10 MR. ALEXANDER: Objection. Lack of foundation.

11 THE COURT: Overruled.

12 THE WITNESS: No, ma'am.

13 BY MS. WILKENS:

14 Q Now, at the time of the Ryan/Hughes murders, how many
15 years experience did you have as a police officer?

16 A Ten years.

17 Q And how many years of experience did you have
18 specifically as an investigator?

19 A Three years.

20 Q And how many years of experience did you have as a
21 homicide investigator?

22 A Two years at that point, maybe two and a half.

23 Q And when you were interviewing people in the area about
24 what they may or may not have observed, would you consider
25 their sighting individuals covered in blood to be something

1 that would be of importance to you as a detective?

2 A Absolutely.

3 Q And is that something that you would have conveyed to
4 your superior, Sergeant Arthur?

5 A Yes.

6 Q And is that something that would have been reflected in
7 your notes?

8 A Yes.

9 Q And is it something that would have made its way into
10 your report?

11 A Yes.

12 MS. WILKENS: I have no further questions, your
13 Honor.

14 THE COURT: Mr. Alexander?

15 REDIRECT EXAMINATION

16 BY MR. ALEXANDER:

17 Q Mr. Wilson, did you ask any of the people who were
18 either employees or patrons of the Canyon Corral Bar how
19 close they got to the three men?

20 A Yes, indirectly. I would have asked how far away from
21 you were they.

22 Q And would you reflect that in your report?

23 A Yes.

24 Q Okay. So is it fair to assume that if it's not in your
25 report, you didn't ask them that?

1 A Or they didn't have a response for it. It was just
2 something in passing.

3 Q Okay. It was a question you would ask in passing?

4 A If I were to ask "How far away do you think they were,
5 I don't know. I couldn't -- I saw them as I was entering."
6 It was more of a comment in passing. There was no
7 information provided for reference, and it wasn't noted in
8 the report.

9 Q When you were in the bar on the Sunday -- withdraw
10 that.

11 When you were in the bar on -- withdraw that.

12 At any time on the Sunday did you go down inside the
13 Canyon Corral Bar to see if there were any persons who were
14 there who might have been there the prior night or early
15 morning?

16 A I want to say that I went to the bar and the bar was
17 closed Sunday night.

18 Q Sunday night?

19 A Or -- yes, Sunday night.

20 Q When you say you want to say, you mean your
21 recollection?

22 A Again, I have to go back to a common sense issue. If
23 this is where information is coming, you're going to want to
24 go look, and I want to say that I drove down and the bar was
25 closed.

1 Q I just want to be clear for the record. When you say
2 you want to say, that means that's your recollection?

3 A Yes, sir.

4 Q All right. Now, when you went to the bar on the Monday
5 and spoke with Ms. Killian and Ms. Smith and Ms.
6 Westervoorde (phonetic), was Mr. -- was there a Mr. Lauko in
7 the bar that day?

8 A Lauko?

9 Q Ed Lauko?

10 A I don't recall.

11 Q All right. Were those three persons that you met --
12 withdraw that.

13 Had you prearranged to meet those three people at the
14 bar on the Monday?

15 A I think Killian was the only person I spoke to at the
16 bar itself.

17 Q I direct your attention to the last page of your
18 interviews with Ms. Smith and Ms. Westervoorde, okay.

19 A Yes, sir.

20 Q Is there anything there that indicates where the
21 interview took place?

22 A No.

23 Q All right. Now, you interviewed Ms. Killian starting
24 at just shy of 6:00 o'clock on that Monday. Do you see
25 that?

1 A Yes.

2 Q And do you recall how long that interview lasted?

3 A Specifically, no.

4 Q Okay. And then you -- you interviewed Ms. Smith and
5 Ms. Westervoorde at about 8:30 on that Monday, is that
6 correct?

7 A Yes.

8 Q Does that help refresh your recollection as to where
9 you interviewed them?

10 A Where I interviewed Smith and Westervoorde was at the
11 Poplar Lane address.

12 Q So that's where you conducted the interview?

13 A Yes, sir.

14 Q All right. Now, how did you know to interview them, if
15 you recall?

16 A Information had been received and passed on to me that
17 they may have information pertinent to this. Where that
18 information came from, I do not know.

19 Q Do you specifically remember that you got information
20 from somebody that they might -- that Ms. Smith and Ms.
21 Westervoorde might have information or are you just
22 guessing?

23 A I went to their residence. I was sent there based on
24 information, but I don't know where the information came
25 from.

1 Q Did you ask them if they knew of anybody else who was
2 at the bar that evening?

3 A That I do not recall because I don't have it reflected
4 in the report.

5 Q Okay. And I take it the next -- either that evening or
6 the next morning you reported this information to Sergeant
7 Arthur?

8 A I reported that information that evening.

9 Q That evening being the evening, the Monday?

10 A Yes, sir.

11 Q Is there anywhere on this -- well, do you have an
12 independent recollection of asking Ms. Smith or Ms.
13 Westervoorde how close they were to the -- to any of the
14 suspect -- not suspects -- subjects?

15 A I do not.

16 Q Okay. And is there anything in the report that
17 refreshes your recollection?

18 A No.

19 Q Had you ever been in the Canyon Corral Bar before that
20 Sunday -- that --

21 A Yes, sir.

22 Q -- Monday, excuse me?

23 A Yes.

24 Q All right. You were a patron of it yourself?

25 A No, sir. I was the deputy assigned out of the West End

1 Station prior to promotion to detective.

2 Q So as part of your regular responsibilities as a
3 deputy, you would check in on the Canyon Corral Bar?

4 A Yes, sir.

5 Q Okay. Just to see that everything was copacetic?

6 A Yes.

7 Q Okay. Did you do that with some regularity as part of
8 your patrol responsibilities?

9 A If I was assigned down at the Chino Hills, yes, sir.

10 Q Okay. Now, Ms. Wilkens asked you about unmarked
11 detective cars.

12 A Yes.

13 Q Okay. Were those cars white Ford Crown Victoria cars?

14 MS. WILKENS: Your Honor, I'm going to object
15 under 403.

16 THE COURT: Sustained.

17 MR. ALEXANDER: She opened up the subject, your
18 Honor.

19 THE COURT: No. Sustained.

20 BY MR. ALEXANDER:

21 Q Okay. Have you until today, Mr. Wilson, heard that
22 persons observed three men in the bar the night of the
23 crimes or early in the morning that had -- and that one or
24 more of the gentlemen had blood on their clothing?

25 MS. WILKENS: Objection.

1 THE WITNESS: Yes, sir.

2 MS. WILKENS: Vague as to time.

3 MR. ALEXANDER: First I want to know if he's ever
4 heard it, and then I'm going to ask him when.

5 BY MR. ALEXANDER:

6 Q So the answer is yes?

7 A Yes.

8 Q Okay. And when did you hear that, first hear that?

9 A First heard it? I think I first heard it maybe a week
10 after this investigation initiated.

11 Q And how did you learn of it?

12 A Rumor control. It was nothing specific. It was just
13 something that I heard. It could even have been something
14 in the newspaper. I don't know.

15 Q Do you recall who -- or what section or division that
16 information came from of the Sheriff's Department?

17 A I don't know that it came from the Sheriff's
18 Department.

19 Q All right. When you say rumor control, what is that?

20 A Talking with people on the street, "Hey, I've heard.
21 Is this true," talking to kids, listening in on briefings,
22 "Did you hear? This is the talk."

23 Q You don't have a specific recollection of where you
24 heard from, but it was within a week of the interviews you
25 conducted, is that correct?

1 A Yes.

2 Q Did you do any follow-up on that?

3 A I did not.

4 Q Okay. Were you involved at all, sir, in putting
5 together information for the arrest warrant of Kevin Cooper
6 that I'll represent was issued on Thursday, the 9th of June,
7 1983?

8 A I don't believe so.

9 MR. ALEXANDER: I have no further questions.

10 Thank you, your Honor.

11 RECROSS EXAMINATION

12 BY MS. WILKENS:

13 Q Mr. Wilson, could you explain to me the information
14 that you heard within a week of conducting the interviews
15 that have been discussed here today? You're telling me that
16 you don't know the source of that information?

17 A No.

18 Q Do you know whether or not the source was in the
19 community?

20 A I don't recall.

21 Q Do you have any recollection as to what the information
22 consisted of?

23 A It consisted of three suspicious people being seen at
24 the bar covered in blood.

25 Q And you're saying that it included that they were

1 covered with blood?

2 A Yes.

3 Q And you're sure that you heard this within say a week
4 of -- of your interviews?

5 A I'm guessing within a week.

6 Q And you have a specific recollection of having heard
7 that?

8 A I do of having heard it. Where it came from, I don't
9 have any idea.

10 Q And you're certain that it wasn't acquired later in
11 time?

12 A I've heard it again several times after that, and the
13 way -- based on -- on my assignments at the time, it could
14 even have been two weeks.

15 Q What is it that allows you to place it in time within a
16 few weeks?

17 A Because I thought it really odd that someone would come
18 up and say something like this, because I'd already been
19 down and talked with people trying to find out if anything
20 unusual had gone on as well as other interviews, and I think
21 someone that had gone through the bar and they were covered
22 in blood would have drawn someone else's attention.

23 Q All right. So you felt it was inconsistent with your
24 investigation?

25 A At that point, yes.

1 Q All right. And you wouldn't have thought that at a
2 period of time after a week or two?

3 A Again, the nature of the information coming through was
4 just talk. I have nothing specific for it.

5 Q When you say it's just talk, does that mean that it
6 wasn't related to you as firsthand information?

7 A The information could have been something I heard on
8 the radio, talk from the kids on the street, general
9 conversation or inquiries or even some of the phone contacts
10 that we had fielded as part of this, "Did you know," this
11 sort of thing.

12 Q Okay. So you fielded phone calls during this period of
13 time?

14 A I did not field the phone calls at that point, no. I
15 had other assignments to do, but we were operating a hotline
16 shortly after the investigation initiated trying to bring in
17 information from the community.

18 Q All right. And when you say you may have heard it on
19 the radio, are you referencing commercial radio or are you
20 referencing police radio?

21 A Commercial, commercial radio.

22 Q All right. So it may have been in the media?

23 A Yes.

24 Q And do you relate information that you -- you hear
25 through the media, do you bring it in and report it to your

1 sergeant?

2 A I would have to say yes, "Did you hear? Did you know?
3 This is what's -- what they're saying."

4 Q And how would you have conveyed that to your sergeant?

5 A I probably would have just told him.

6 Q Would you have written a report?

7 A Not necessarily, no.

8 Q And who would you have told?

9 A I probably would have told Sergeant Arthur.

10 Q Do you have any recollection of having a conversation
11 with Sergeant Arthur about hearing information about men
12 covered in blood?

13 A Specific to this, no, I do not.

14 Q Do you have any recollection of having a conversation
15 with anyone about the information?

16 A Specific, no.

17 Q Do you have any specific recollection of any firsthand
18 information about men being covered in blood?

19 A No.

20 MS. WILKENS: Your Honor, I have no further
21 questions.

22 MR. ALEXANDER: I have one, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. ALEXANDER:

25 Q Mr. Wilson, the information about three men being in

1 the bar covered with blood would be important information to
2 you at that time, correct?

3 A Yes.

4 Q And you'd want to make sure that Sergeant Arthur was
5 aware of it, correct?

6 A Yes.

7 MR. ALEXANDER: Thank you. No further questions.

8 THE COURT: Can you ask him about the Lance Stark
9 memo?

10 MS. WILKENS: The blue slip?

11 MR. ALEXANDER: Let me.

12 BY MR. ALEXANDER:

13 Q Do you know -- have you ever heard the name Lance
14 Stark?

15 A I don't recall right at the moment.

16 THE COURT: Can you show him whatever that --

17 MR. ALEXANDER: I think I have it. I'm not sure.
18 But if it's here, I can ask about it, your Honor.

19 BY MR. ALEXANDER:

20 Q Was there a Mr. Phillips who was involved in the
21 investigation, if you recall?

22 A Phillips?

23 Q Yes.

24 A We had a Detective Bobby Phillips.

25 Q Detective Bobby Phillips. Okay. Was -- do you know if

1 he was or was not involved in the investigation of the
2 Ryan/Hughes crimes?

3 A I believe the -- he -- I want to say Bobby Phillips was
4 part of the CCD team at the time which is a career criminal
5 team, and they were specially assigned detectives to work
6 special projects, and I want -- in fact, they were. They
7 were called in to assist with this investigation because of
8 the spread that it was going.

9 Q Okay. What -- when you say because of the spread, what
10 do you mean?

11 A Because the directions -- the different directions that
12 we were going and the ground we needed to cover.

13 Q Okay. The career criminal division, I think that's
14 what you called it?

15 A Yes.

16 Q Or department, whatever, what was that a part of? Was
17 that part of homicide or patrol or --

18 A It was a -- it was a division in and of itself. We all
19 worked out of San Bernardino out of the main office.

20 Q And were you a part of that also?

21 A No, sir. I was assigned to homicide.

22 Q Okay. And did you ever have any -- in connection with
23 the Ryan Cooper crimes, any -- Ryan/Hughes crimes, did you
24 ever have any dealings with -- did you call him Detective
25 Phillips?

- 1 A It would have been Detective Bobby Phillips.
- 2 Q Yeah. Did you -- do you recall any dealings you would
3 have had with him?
- 4 A No, sir.
- 5 Q Okay. Would there -- would the career criminal
6 division projects or work in connection with the Ryan/Hughes
7 crimes have involved dealing with neighborhood watch groups?
- 8 A With neighborhood watch? No, sir. That's normally out
9 of our community services.
- 10 Q Community services, okay. By the way, was one of your
11 colleagues a Deputy Fields, Scotty Fields?
- 12 A Scott Fields.
- 13 Q Was -- what was his position?
- 14 A He was a -- I think Scott was a detective then, and I
15 think Scott was also assigned to the CCD team.
- 16 Q CCD team?
- 17 A Yes, sir.
- 18 Q You didn't work with the CCD team?
- 19 A No, sir.
- 20 Q Okay. And do you have any recollection of any
21 conversations with Mr. Fields as part of the investigation,
22 whether by your unit or by his concerning the Ryan/Hughes
23 crimes?
- 24 A I do not.
- 25 MR. ALEXANDER: All right. May I use the

1 document, your Honor, to show to the witness?

2 THE COURT: Sure.

3 MS. WILKENS: Your Honor, I could provide copies
4 after the lunch recess that are -- rather than mark your
5 Honor's.

6 THE COURT: Rather than mark mine.

7 MS. WILKENS: Yes, your Honor.

8 THE COURT: All right. Thank you. You can show
9 him and then we'll mark it.

10 MR. ALEXANDER: All right.

11 BY MR. ALEXANDER:

12 Q I'm going to show you --

13 MR. ALEXANDER: May I stand by the witness, your
14 Honor?

15 THE COURT: Yes. You don't have to ask.

16 BY MR. ALEXANDER:

17 Q I'm going to show you a document, sir, that we're going
18 to mark, and can you confirm that it's -- that's entirely a
19 handwritten document?

20 A Okay.

21 Q Yes, it is?

22 A It's a handwritten document, yes.

23 Q All right. Is it your handwriting?

24 A No, sir.

25 Q Do you recognize the document?

- 1 A No, sir.
- 2 Q Have you ever seen it before?
- 3 A Not that I recall.
- 4 Q Do you know what any of the information on the document
5 has to do with?
- 6 A Based on the nature of the investigation, this is an
7 individual that saw something at the Canyon Corral that
8 night.
- 9 Q And that's --
- 10 A Subjects in vehicle.
- 11 Q -- what you get from reading the document?
- 12 A Yes, sir.
- 13 Q Okay. And the name Lance Stark I think doesn't mean
14 anything to you?
- 15 A At this point, no, sir.
- 16 Q All right. And seeing this doesn't refresh your
17 recollection?
- 18 A No, sir.
- 19 Q All right. Now, there's the name Phillip -- Phillips
20 that's written there.
- 21 A Yes.
- 22 Q Let me withdraw that. Do you recognize the
23 handwriting, any of the handwriting on the document?
- 24 A No, sir.
- 25 Q Do you know what B45 stands for up in the left-hand

1 corner? Maybe that's 1345.

2 A That's 1345. My guess would be that's a time notation.

3 Q Yeah, all right. I didn't recognize that that's a
4 number not a letter. Okay. There's some -- there's some
5 words that seem to be scratched out on the -- on the
6 document. I wondered if you can read what those are and
7 then if you can, do you know what they show or what they
8 stand for?

9 A The first word appears to be Donald and looks like it's
10 scratched out D-O-N-A-L-D. The second one letters, looks
11 like D-O-U-L, maybe an L scratched out as well, and I have
12 no idea what they refer to.

13 Q Do you know of a Donald Doulan? Does that name ring a
14 bell?

15 A No, sir.

16 MR. ALEXANDER: Just for completeness, this
17 document, so we'll know what I was referring to, has
18 DN109039 on the right.

19 THE COURT: Thank you.

20 MR. ALEXANDER: I have no further questions, your
21 Honor.

22 THE COURT: Anything else?

23 MS. WILKENS: No, your Honor.

24 THE COURT: All right. You may step down, and
25 then we'll take the lunch recess, and then we'll be back at

1 2:00 o'clock, is that right?

2 (The witness was excused.)

3 MR. ALEXANDER: Yes. I'll -- I'll notify the
4 Court as soon as I make contact with her.

5 THE COURT: Okay. Could you come at 1:30 and then
6 we'll discuss further the EDTA?

7 MR. ALEXANDER: Yes. May I report on that?

8 THE COURT: You may.

9 MR. ALEXANDER: That might help everybody. I got
10 hold of Mr. Ballard, and the suggestion about doing the
11 protocol and filing it simply with the Court under seal is
12 acceptable to him.

13 THE COURT: Okay.

14 MR. ALEXANDER: And -- and I do want to discuss,
15 though we don't have to do it now, I must say I have some
16 concern about what I understand Mr. Sciudak's reasons are
17 for participating in this, and as I understand it, he's
18 going to do it for free because he wants to do some writings
19 or papers on it, and my concern, and this is not --

20 THE COURT: It's supposed to be peer review
21 tested.

22 MR. ALEXANDER: Yeah. And -- but I'm concerned --
23 yes.

24 THE COURT: And you're doing yours pro bono,
25 right? I mean, some people do things --

1 MR. ALEXANDER: Boy do I know that, your Honor.

2 THE COURT: -- for -- for good reasons.

3 MR. ALEXANDER: Yes, yes.

4 THE COURT: Right?

5 MR. ALEXANDER: But I'm concerned, and I don't
6 know the answer to this, whether or not the fact that he's
7 going to do whatever he does with the information would have
8 any impact on what he would do.

9 THE COURT: I don't think so.

10 MR. ALEXANDER: All right. So I'd like to explore
11 that.

12 THE COURT: Well, you can't have it both ways.

13 MR. ALEXANDER: I can't do it now. We can't do it
14 today, but --

15 THE COURT: Well, we're going to issue an order.

16 MR. ALEXANDER: Yeah.

17 THE COURT: If -- the Court's already expressed
18 significant reservations and has issued an order that Doctor
19 Ballard's not participating. If there is another scientist,
20 somebody who's local, somebody who's with a reputable firm,
21 the Scripps Research Institute, who is available to do it,
22 then under those circumstances, then the Court's concerns
23 about if we do it simultaneously, then there's additional
24 peer review checking each other's works. Then the Court's
25 concerns about Doctor Ballard may be mitigated.

1 MR. ALEXANDER: Uh-huh.

2 THE COURT: So if Doctor Ballard or Petitioner
3 wants Doctor Ballard to proceed and if we have some other
4 person who is available to do this, then it's simply testing
5 for a chemical. At the tutorial and to the Ninth Circuit it
6 was represented that it was cheap, quick, and definitive.

7 MR. ALEXANDER: Uh-huh.

8 THE COURT: So all we want is the testing by --

9 MR. ALEXANDER: I couldn't agree more.

10 THE COURT: And so this is where I'm coming from,
11 that there's a pending motion for reconsideration. If we
12 have Doctor DeForest able to take the shirt, cut the
13 material, prepare it with a -- draw out the solution, send
14 the solution in two ways, one to Doctor Sciudak and one to
15 Petitioner's expert, perhaps Doctor Ballard, they do their
16 testing, I thought Ms. Wilkens' comments about observation
17 and expense are -- are well received. If two people are
18 doing it, they don't need to observe each other. We're
19 testing for a chemical. We get the test results. You
20 compare the test results. If two people are doing it,
21 probably it should come out the same.

22 MR. ALEXANDER: Uh-huh.

23 THE COURT: And --

24 MR. ALEXANDER: We don't object, however, to
25 Doctor Ballard observing, even though you may not want to

1 pay for it.

2 THE COURT: I don't think I'm going to have an
3 observation. They're supposed to be reputable scientists.
4 They can just do it. It saves time and expense. He can do
5 it then.

6 MR. ALEXANDER: Okay.

7 THE COURT: He can do it. They can both do it.
8 They can take photographs. They can document. Their
9 protocols are listed and will be filed with the Court, and
10 then we can have the results. Also, I think knowing that
11 another peer is doing similar work does have some added
12 benefit and is consistent with the principles of Daubert,
13 and so that's where the Court is leaning. Also on time and
14 expense, that saves time. It saves expense.

15 We can do it -- I'm only going to do the EDTA, and
16 I think that we can do this relatively quickly. Who has
17 control of the T-shirt?

18 MS. WILKENS: It's in the custody of the DOJ lab,
19 your Honor.

20 THE COURT: Okay. So the DOJ lab could send by
21 FedEx or UPS or some other appropriate method the shirt to
22 Doctor DeForest?

23 MS. WILKENS: But we would want observation on
24 the --

25 THE COURT: Okay.

1 MS. WILKENS: -- cutting and -- and also I am
2 inclined --

3 THE COURT: For that Doctor Simms has observed
4 Doctor DeForest. That's fine.

5 MS. WILKENS: Well, and also there is -- there's a
6 possibility that we could get a private lab very close in
7 relation to the DOJ lab in the Bay area and possibly have it
8 done there.

9 THE COURT: We've already picked Doctor DeForest.
10 I know your concerns about that, but --

11 MS. WILKENS: Well, I'm just talking about in
12 terms of, you know, location and expense and what have you,
13 but --

14 MR. ALEXANDER: FedEx is really quick.

15 THE COURT: FedEx is quick. I'm talking quick.

16 MR. ALEXANDER: I'm talking quick.

17 THE COURT: So that we send it out, we do that --
18 the -- the areas ready. They're -- he's under a
19 confidentiality order not to tell anybody what the code is
20 but just send the code to the Court.

21 MS. WILKENS: Right.

22 THE COURT: They then separately evaluate it.
23 They get the results. Then depending on what we have on the
24 results, then we decide.

25 MR. ALEXANDER: Go from there.

1 THE COURT: But there will also -- Doctor DeForest
2 will keep a portion of the solution.

3 MS. WILKENS: That was the other thing. With
4 respect to a blind testing that the Court wants, I would
5 want Cooper's counsel to be fully aware that when you divide
6 a liquid like that, you may reduce the chances of detection
7 potentially by dividing it, and they would have to, of
8 course, you know, agree that that's not going to be a
9 problem. I don't think it will be a problem because I think
10 there should be enough liquid that you could do multiple
11 injections into a machine, but we will need to know enough
12 information from both Doctor Sciudak and from Doctor Ballard
13 as to what solution will work with their methodology.

14 THE COURT: For Doctor DeForest?

15 MS. WILKENS: Yes, because if you're going to do
16 blind testing, you have to have the extraction done by
17 Doctor DeForest. You can't have it done by their chemist.

18 THE COURT: Correct.

19 MS. WILKENS: And also since we're dividing it,
20 you want to have equal parts. So you can't use -- you can't
21 do half one solution and half another solution, and, for
22 example, I'm being told that the methodology that Doctor
23 Sciudak contemplates, it would not be acceptable to use
24 water as the extraction solution because it would affect his
25 ability to do the detection that he will do as a chemist.

1 So I'm only mentioning that we will need to come
2 to an agreement on an extraction solution that's consistent
3 with both methodologies.

4 MR. ALEXANDER: I can address all --

5 MS. WILKENS: And not knowing what Doctor
6 Ballard's methodology is, Doctor Ballard will need to
7 indicate what solutions --

8 THE COURT: Well, can they just --

9 MR. ALEXANDER: That's been addressed. That
10 specific issue has been addressed already. I don't remember
11 the specific name for it, but it's not just water, and -- in
12 connection with the solution, and I'd have to go back and
13 look at --

14 THE COURT: It's in your --

15 MR. ALEXANDER: -- the communications.

16 THE COURT: Is it in your report to the Court?

17 MR. ALEXANDER: I believe it is. It's in -- in
18 one of them we answered the questions. I'm trying to
19 remember --

20 UNIDENTIFIED SPEAKER: Phosphated buffer solution.

21 THE COURT: Okay.

22 MR. ALEXANDER: You need an intellectual property
23 lawyer to know that.

24 MS. WILKENS: Okay. Let me -- let me check and
25 make sure that's consistent with Doctor Sciudak's

1 methodology.

2 THE COURT: Okay. Could you check?

3 MS. WILKENS: I will, your Honor.

4 THE COURT: And could you do that over the lunch
5 hour?

6 MS. WILKENS: Yes, your Honor.

7 THE COURT: Because what we're contemplating is
8 doing this this week.

9 MS. WILKENS: Okay.

10 MR. ALEXANDER: Could -- could --

11 THE COURT: This upcoming week.

12 MR. ALEXANDER: When Ms. Wilkens talks to Mr.
13 Sciudak or Doctor Sciudak, whether he's ever done it before
14 and the question I had about carbon 13, where that's going
15 to be derived. If it has to be synthesized, that's an issue
16 that has to be addressed.

17 THE COURT: Well, I think I'd leave that to --
18 they will file their protocol. Then they have to follow
19 whatever their protocol is. It should be appropriate.

20 MR. ALEXANDER: Okay. As long as the protocol
21 indicates where that carbon 13 is coming from.

22 MS. WILKENS: Yeah. The carbon 13 is -- is
23 something that --

24 MR. ALEXANDER: It's an isotope.

25 MS. WILKENS: Yeah. It is commercially available.

1 I don't believe it's commercially available with EDTA, and
2 it would be synthesized, but this is something that -- this
3 is something --

4 THE COURT: The lab could do?

5 MS. WILKENS: Well, it's something that Doctor
6 Sciudak can do. This is not --

7 THE COURT: Right.

8 MS. WILKENS: -- something that is uncommon or
9 unheard of or --

10 MR. ALEXANDER: Okay. He told -- he told me in
11 the first conversation that it was commercially available.
12 If that's the case --

13 MS. WILKENS: The --

14 MR. ALEXANDER: Excuse me. If that's the case, we
15 would like to have that information so we know what carbon
16 13 he's talking about. If he's going to synthesize it --

17 THE COURT: I think --

18 MR. ALEXANDER: -- that's a different --

19 THE COURT: I think I'm going to leave the
20 protocols to the labs.

21 MR. ALEXANDER: Uh-huh.

22 THE COURT: They're the scientists, and then it
23 needs to be -- whatever testing there is needs to be
24 appropriate, and the Court reserves the right with respect
25 to Doctor Sciudak that if -- in the event that there are

1 expenses that are unforeseen, that the Court reserves the
2 right to order the Attorney General over its objection to
3 bear a portion of those expenses.

4 MR. ALEXANDER: Yes, your Honor.

5 MS. WILKENS: Yes, your Honor.

6 THE COURT: Or all of those expenses --

7 MS. WILKENS: I understand, your Honor.

8 THE COURT: -- because the Court does not have
9 the -- we've checked, and the -- it would have to -- the
10 Court does not have the capacity to do that under these
11 circumstances.

12 MS. WILKENS: I understand.

13 MR. ALEXANDER: So --

14 THE COURT: Unless the Petitioner requests it, and
15 I'm not hearing the Petitioner to request it in the interest
16 of justice to be funded under the Criminal Justice Act. I'm
17 not hearing that from the Petitioner at this time.

18 MR. ALEXANDER: Well, wait a minute. What am I --
19 what is my silence indicating, your Honor? I don't think we
20 need to address that at this time.

21 THE COURT: I'm not hearing that they're
22 requesting the funding through the Criminal Justice Act.

23 MR. ALEXANDER: Well, we -- we will request
24 funding, if necessary, to pay for our portions of the --

25 THE COURT: What about for Doctor Sciudak?

1 MR. ALEXANDER: Oh, I don't know. I have my
2 concerns about him doing it for free for the reasons that
3 I've indicated, that he seems to have some other purpose in
4 mind, but I --

5 THE COURT: Why don't you think -- why don't you
6 think about this. Experts -- experts are -- expert services
7 are compensated under the Criminal Justice Act but only if
8 requested by --

9 MR. ALEXANDER: Yes.

10 THE COURT: -- the Petitioner, not the Respondent.

11 MR. ALEXANDER: No, I don't want to use up
12 Criminal Justice Act funds on Doctor Sciudak if that's your
13 question.

14 THE COURT: Okay. That's what I thought.

15 MR. ALEXANDER: I --

16 THE COURT: So then we're back to if there are
17 expenses, the Court reserves the right to order them to be
18 paid by the Attorney General. They are -- it is their
19 capital case.

20 MR. ALEXANDER: Can we find out when you talk to
21 him a simple question, whether he's ever done this before?

22 MS. WILKENS: Your Honor, Doctor Sciudak is
23 imminently qualified and --

24 THE COURT: I'm satisfied that he has the
25 capability of doing it and that -- remember --

1 MR. ALEXANDER: Wouldn't it be important --

2 THE COURT: The current order is no participation
3 of Doctor Ballard. The proposed order is that if we have
4 another scientist doing a similar test at the same time, the
5 testing results should be the same.

6 MR. ALEXANDER: What is the problem or what issue
7 is raised by simply asking the gentleman whether or not he's
8 ever done it before? That seems to be a very simple
9 question that goes to his capabilities.

10 THE COURT: Well, you've already talked to him.

11 MR. ALEXANDER: Not any more though.

12 THE COURT: Well, I don't think it's a good idea
13 for counsel to be --

14 MR. ALEXANDER: Why can't she just ask him the
15 question? That's all I'm asking, during the lunch hour.

16 MS. WILKENS: Well, your Honor, we're in a catch
17 22 here because no one does this testing, and we've
18 objected, and we're going forward, and he's trying to
19 preclude a highly qualified scientist from doing the testing
20 because he wants to know how many times he's done it, and --

21 MR. ALEXANDER: I'm not precluding anything. I
22 simply want to know whether he's done it, but I take your
23 response to be that he's never done it.

24 THE COURT: Well, I don't -- I don't know whether
25 we could say that or not. I do believe --

1 MR. ALEXANDER: Well, that's why I want the
2 question asked.

3 THE COURT: -- after reviewing his curriculum
4 vitae that he has the capability of doing it. He's with a
5 reputable lab. The Scripps Research Institute is well
6 known. I reviewed his curriculum vitae. This -- this
7 compromise is something where the Court's concerns about the
8 scientific methodology concerning Doctor Ballard and his lab
9 that have been addressed by courts could be mitigated if we
10 have another lab local also doing similar testing.

11 MR. ALEXANDER: Okay.

12 THE COURT: Also the Court has reserved decision
13 on whether EDTA results are admissible and for what purpose.

14 MR. ALEXANDER: Okay.

15 THE COURT: So if you could find out Doctor
16 DeForest's availability. I'm assuming he's available to do
17 this in the next week.

18 MR. ALEXANDER: I have no idea, but I'll ask.

19 THE COURT: It shouldn't -- if he's not, then if
20 there's somebody else that's available, we could do that,
21 because it shouldn't be that difficult. We do need to know
22 the solution that's acceptable, and then the area that the
23 Court's proposing is the 6G.

24 MS. WILKENS: Yes, your Honor.

25 THE COURT: The control areas around 6G and the

1 scientist, Doctor DeForest or some criminologist to pick the
2 control areas, but the 6G area I think is best suited. The
3 Court's heard a volume of information, has had protocol
4 submitted, and I think that's the best area to start.

5 MR. ALEXANDER: Well, your Honor, I don't know the
6 answer to this, and I'm going to leave it again, since it's
7 the protocol, controls, and everything else, but if Doctor
8 DeForest deems and can explain to you why it would be
9 important to do other areas other than 6G --

10 THE COURT: Remember, the scientists --

11 MR. ALEXANDER: -- it's not an expensive process.

12 THE COURT: -- have an -- the scientists have an
13 interest in examining many many many areas. That also adds
14 to the cost.

15 MR. ALEXANDER: Let me find out what --

16 THE COURT: If --

17 MR. ALEXANDER: Excuse me.

18 THE COURT: He has not participated in all of
19 these hearings. He has not heard all of the evidence. He
20 has not received all of the information. The Court is
21 satisfied that area 6G is the best area to test.

22 MS. WILKENS: Well, also, your Honor, if you -- if
23 it's correctly cut and we're working only with 6G, we won't
24 require DNA analysis because we are confident that it's Mr.
25 Cooper's. So when you start getting into other things, you

1 start getting into DNA analysis.

2 THE COURT: I think we do this. If then we get
3 the results, if it's not -- if there is some scientific
4 problem, we address it at that time, but I think we know
5 that Cooper's blood is in that area.

6 MR. ALEXANDER: Well, according to the DNA, we
7 know it's in all the areas mixed in with others on the
8 shirt.

9 THE COURT: But we know this one is -- we know
10 this one is not as much, if at all, of a mixture. We know
11 the others are definitive mixtures.

12 MR. ALEXANDER: Everywhere.

13 THE COURT: Definitive.

14 MR. ALEXANDER: Right.

15 THE COURT: And so this is the only one maybe it's
16 a mixture, but it's clearly not a definitive mixture. I'm
17 starting with this one. If the planting theory is correct,
18 this one should be planted.

19 If the scientists -- they would want to probably
20 test all of the areas, but that's also additional cost,
21 expense and everything.

22 MR. ALEXANDER: I don't --

23 THE COURT: Let's do this area. We send it out,
24 get it done, get the results, and then we go from there.

25 MR. ALEXANDER: Okay.

1 THE COURT: If then we have to do other areas or
2 revise it, we'll think of that at that time.

3 MR. ALEXANDER: Okay. Well, I'm sure the Court
4 will listen if Doctor DeForest explains why there's a
5 scientific basis for doing other areas in connection with
6 this, but I'll leave that up to him. I don't purport to be
7 the expert. All right.

8 THE COURT: We do also know based on the nuclear
9 DNA that this is an area that is Kevin Cooper's blood.
10 That's the -- that's the essence of the petition, to say
11 this blood was planted. So this area should be able to be
12 tested with the control method if EDTA testing is valid. We
13 should have a yes or no on the results. We'll have two
14 independent labs doing the testing, and we'll come up with
15 the answer. Then if we need to do more, then we can go back
16 and do more.

17 MR. ALEXANDER: Very well.

18 THE COURT: All right. We'll see you back at --
19 why don't we now see you back at 2:00 o'clock.

20 MR. ALEXANDER: Very well. Thank you, your Honor.

21 MS. WILKENS: Thank you.

22 (Proceedings recessed.)
23
24
25

1 AFTERNOON SESSION

2 --oOo--

3 (2:10 p.m.)

4 (Call to order of the Court.)

5 THE COURT: Welcome back. We have our witness?

6 MR. ALEXANDER: We do, your Honor.

7 THE COURT: All right. You may call your witness.

8 MR. ALEXANDER: Thank you, your Honor. Petitioner
9 would call Ms. Laurel Epler to the stand, please.

10 LAUREL EPLER - PETITIONER'S WITNESS - SWORN

11 THE CLERK: Please state your name and spell your
12 first and last name for the record.

13 THE WITNESS: Laurel Epler, L-A-U-R-E-L. Last
14 name is Epler, E-P-L-E-R.

15 THE COURT: Welcome.

16 MR. ALEXANDER: May I proceed, your Honor?

17 THE COURT: You may.

18 DIRECT EXAMINATION

19 BY MR. ALEXANDER:

20 Q Ms. Epler, I know it's been a long day already. So I
21 will --

22 A I can't hear you.

23 Q -- take that into account. Is there --

24 A I can't hear him.

25 Q I'm sorry. First time I've been told that. Thank you.

1 I know you've had a long day already. So I'll try and move
2 through this as quickly as I can, and let me start first, at
3 a period of time in your life, did you live in the Chino
4 Hills area?

5 A Yes, I did.

6 Q And with relation -- with regard to -- well, withdraw
7 that. Were you familiar with the Canyon Corral Bar?

8 A I knew where it was, yes.

9 Q All right. And if you would look at the notebook in
10 front of you and specifically what we have marked as RRR-1,
11 which is a map.

12 A Uh-huh.

13 Q Do you have that in front of you?

14 A Uh-huh, yes.

15 Q All right. Now, am I correct that you lived -- well,
16 you lived on Glenridge Drive at --

17 A Yes.

18 Q All right. I forgot to ask you what years did you live
19 in Chino Hills approximately?

20 A I -- I believe it was the late '70s or early '80s, and
21 I believe I moved to Idaho 1990 or '91.

22 Q And when you lived in Chino Hills, did you live on
23 Glenridge Drive at all times?

24 A Yes, sir.

25 Q And you were married at the time you lived there?

- 1 A Yes.
- 2 Q And you had a son at that time?
- 3 A I had one son living there that lived with us full
4 time.
- 5 Q Yes. Okay. Now, how far from where you lived on
6 Glenridge Drive was the Canyon Corral Bar approximately?
- 7 A I would say half a mile.
- 8 Q Half a mile?
- 9 A Uh-huh.
- 10 Q Okay. And the entrance to Glenridge Drive along Payton
11 Road, how far was that from the Canyon Corral Bar?
- 12 A Probably between a quarter -- it's just not that far.
- 13 Q About a quarter of a mile maybe?
- 14 A Quarter of a mile, maybe a little more coming up the
15 hill.
- 16 Q When you say coming up the hill, is that from the
17 Canyon Corral Bar?
- 18 A From the Canyon Corral up to Glenridge Drive, and then
19 you made a left on Glenridge.
- 20 Q If you were coming from the Canyon Corral Bar?
- 21 A Correct.
- 22 Q All right. Now, am I correct that Payton Drive dead-
23 ended at some point past Glenridge Drive?
- 24 A At that time, yes.
- 25 Q All right. Now, in 1983, were you employed outside the

1 home?

2 A I don't believe. I bought a franchise, but I believe
3 it was in the fall.

4 Q All right. As I understand it, you currently live in
5 Tampa, Florida?

6 A Yes, sir.

7 Q All right. And you've lived there since about June the
8 30th of this year?

9 A I moved back there June this year.

10 Q June of this year. The end of June?

11 A Yes, sir.

12 Q Okay. Now, if you would direct your attention to the
13 Exhibit RRR-1, is there any markings on that exhibit at
14 all -- not markings but any colorings at all?

15 A There's three circles.

16 Q All right.

17 A And a square with yellow inside.

18 Q Would you -- let's see if we can do this without
19 marking on the exhibit. Would you please describe, if you
20 can, where your residence was on RRR-1?

21 A I'm a little concerned because it doesn't say north,
22 south, east, or west. So I don't want to tell you the wrong
23 way.

24 Q Okay. Fair enough. Let's see if -- can you find
25 Glenridge Drive?

1 A Turn it around. Okay. Carbon Canyon -- okay. I would
2 be up here.

3 Q Okay. Now, let's do it this way if we might.

4 A Okay.

5 Q Do you see the intersection of Carbon Canyon Road and
6 Payton Drive?

7 A Uh-huh.

8 Q And there's a circle surrounding that, correct?

9 A Correct.

10 Q All right. Now, if we go up towards the top of the
11 map, heading towards Eucalyptus, all right, above -- I'm
12 going up towards the top.

13 A Uh-huh.

14 Q All right. That takes you up to English Road. Do you
15 see that?

16 A Yes, sir.

17 Q All right. Now, Glenridge Drive comes in below the
18 intersection on the map here, below the intersection of
19 Payton Drive and Carbon Canyon Road, correct?

20 A It's to my left, yes.

21 Q It's towards the bottom of this map, correct, Glenridge
22 Drive?

23 A No. I have my finger on it.

24 MR. ALEXANDER: May I approach, your Honor?

25 THE COURT: You may.

1 THE WITNESS: Glenridge is right here.

2 BY MR. ALEXANDER:

3 Q Okay. You've got it.

4 A This is English Road. So this would be Carbon Canyon,

5 and that would be the Canyon Corral, and then this is --

6 Q All right. So looking at the map in the notebook, as

7 it sits in the notebook, Glenridge Drive is to the left of

8 the circle around the intersection of Payton Drive and

9 Canyon Carbon Road, correct?

10 A Correct.

11 Q All right. And if I were to turn the exhibit notebook

12 so that English Road is towards the top --

13 A Which is north.

14 Q -- north, right, Glenridge Road -- Drive is towards the

15 bottom?

16 A Correct.

17 Q Now, where on -- it would appear that Glenridge Drive

18 intersects Payton at two places. Do you see that?

19 A No. My eyes aren't real good either.

20 Q All right.

21 A It intersects it here.

22 Q And -- yeah, well, this isn't written very well. Do

23 you see there, those words there? Can you read those?

24 A That's not Payton.

25 Q Here's Payton here. It says Payton Drive?

- 1 A Payton, right, and then Glenridge.
- 2 Q And then there's a Glenridge here?
- 3 A Oh, okay. Okay.
- 4 Q So it -- is it correct then that it intersects Payton
- 5 in two places?
- 6 A Yeah.
- 7 Q All right.
- 8 A Yes.
- 9 Q Now, where was -- was Glenridge a circular or
- 10 semicircular street, so if you entered at one place you
- 11 could come out the other, if you recall?
- 12 A No. It was a boulevard with a center divider.
- 13 Q I see.
- 14 A And I'm -- I'm sorry. I don't --
- 15 Q Let me ask you the question.
- 16 A I don't recall two Glenridges. So I don't know if that
- 17 was there when I lived there.
- 18 Q All right. Where -- which is the Glenridge that you
- 19 recall, the one towards the bottom or the one towards the
- 20 top below Carbon Canyon Road? Do you understand my
- 21 question?
- 22 A I understand your question, and I want to be honest. I
- 23 don't -- I honestly don't know.
- 24 Q Okay.
- 25 A To me it would be the -- the one closest to the circle.

- 1 Q Okay. That's the one towards -- towards the -- closer
2 to the -- going towards the top of the page?
- 3 A I -- I think so.
- 4 Q All right. And did you -- where -- where approximately
5 on Glenridge Drive did you live?
- 6 A Okay. You see where Aqueduct is?
- 7 Q Yes.
- 8 A It would be -- there is a house facing Payton, and ours
9 was the first house facing Glenridge. They step down. So
10 one was facing Glen -- Aqueduct, and ours was facing
11 Glenridge.
- 12 Q Well --
- 13 A There's also a junior high back there.
- 14 Q But as between Payton and Aqueduct, was your house
15 located somewhere between Payton and Aqueduct?
- 16 A No. It would be after Aqueduct.
- 17 Q All right. Just immediately after?
- 18 A That was an open field when I lived there.
- 19 Q The area between Payton and Aqueduct?
- 20 A Yes, sir.
- 21 Q Okay. And how far after Aqueduct was your home?
- 22 A It would be right next to it.
- 23 Q Okay. So were you the first house then after Aqueduct?
- 24 A On Glenridge, yes.
- 25 Q On Glenridge?

- 1 A There was one on Aqueduct and then ours.
- 2 Q All right.
- 3 A Okay.
- 4 Q And how far from your home to Payton Drive?
- 5 A I think it was like a long block.
- 6 Q Okay.
- 7 A If I remember correctly.
- 8 Q All right. Now --
- 9 A It was just open field.
- 10 Q -- along Payton Drive, were there sidewalks to walk on
- 11 in 1983?
- 12 A I don't remember.
- 13 Q Okay.
- 14 A I kind of think there were, but I honestly don't
- 15 remember.
- 16 Q All right.
- 17 A There were sidewalks on Glenridge. I know that.
- 18 Q And are you familiar, Ms. Epler, with where the -- are
- 19 you familiar with the Ryan/Hughes crimes?
- 20 A Yes, I am, unfortunately.
- 21 Q Okay. And do you know as you sit here today where the
- 22 Ryans' home was?
- 23 A It was on Old English Road.
- 24 Q All right. And there's a circle around that area on
- 25 Old English Road. Is that where you --

- 1 A It looks to be.
- 2 Q -- remember it being?
- 3 A It looks to be the same area.
- 4 Q All right. And approximately how far is it from your
- 5 home to the Ryan home, to what was the Ryans' home from what
- 6 was your home?
- 7 A I think it was a mile or a mile and a half.
- 8 Q Okay.
- 9 A Too close.
- 10 Q Now, Ms. Epler, you were interviewed recently by
- 11 telephone by representatives of the California Department of
- 12 Justice. Do you recall that telephone interview that they
- 13 conducted of you?
- 14 A Could you give me a name? I've been called several
- 15 times.
- 16 Q Okay. A Barbara Shakowsky?
- 17 A Yes, sir.
- 18 Q Okay. And was there a Mr. Willkomm (phonetic) also on
- 19 the phone?
- 20 A I believe so, yes.
- 21 Q All right. And were you told that the interview was
- 22 being recorded?
- 23 A Yes, sir.
- 24 Q All right. And did either Ms. Shakowsky or Mr.
- 25 Willkomm provide you with any documents before they

1 interviewed you?

2 A No, sir.

3 Q All right. Do you recall approximately how long ago
4 this interview occurred?

5 A I believe it was the first week of August.

6 Q Okay. Now, subsequent to the interview, did you
7 receive from either Ms. Shakowsky, Mr. Willkomm, or anybody
8 else affiliated with law enforcement a copy of the
9 transcript of that interview?

10 A Before it, no.

11 Q No, on.

12 A Or after, no.

13 Q After it.

14 A No. No. I'm sorry.

15 Q Okay. Now, it's correct, is it not, that I sent you a
16 copy of your transcript, correct?

17 A Yes, sir.

18 Q And was that done this week? Did you receive it this
19 week?

20 A Within the last week, week and a half, yes.

21 Q Okay. Now, during the interview with Ms. Shakowsky and
22 Mr. Willkomm, do you recall telling them that in connection
23 with this proceeding, you would be willing to do anything to
24 help?

25 A Probably something to that -- that thinking.

1 Q All right.

2 A I don't remember exactly what I said.

3 Q Okay. I'm going to hand you and mark as for
4 identification --

5 MS. WILKENS: Excuse me, counsel. Her transcript
6 is already marked as DDDDD. It's in the notebook.

7 MR. ALEXANDER: So that's quintuple D?

8 MS. WILKENS: Yes, five Ds.

9 MR. ALEXANDER: All right. Thank you.

10 BY MR. ALEXANDER:

11 Q You have a -- a notebook in front of you, and I think
12 it's the other notebook, the black one, other than the one
13 you're looking at. You're welcome to close up the -- if
14 that helps.

15 A Is it marked? I don't want to mess it up.

16 Q There should be some tabs that --

17 MS. WILKENS: It's towards the back, and there's
18 a --

19 THE WITNESS: The yellow?

20 MS. WILKENS: The Post-It, yes.

21 BY MR. ALEXANDER:

22 Q Let me see if I can assist. This is CCCCC, a bunch of
23 pictures apparently. Here's the --

24 A Yeah.

25 Q Thank you. Now, would you direct your attention to

1 page 32 of this Exhibit DDDDD. The page numbers are on the
2 bottom right.

3 A Pardon?

4 Q They're in the bottom right.

5 A Okay.

6 Q Okay. Now, directing your attention to line five --
7 actually, the initial question I think related to some
8 photos that were going to be sent to you that I'll get to,
9 but you make the statement at line five:

10 "I'd be willing to do anything there is
11 to help."

12 A Yes, sir.

13 Q And that was a truthful statement when you made it?

14 A Yes, sir.

15 Q Okay. And is that why you are here today?

16 A Yes.

17 Q All right. And on page 33, the next page, did you tell
18 the two people on the phone, Shakowsky and Willkomm, that if
19 money was not an issue, you would try to be here?

20 A Yes.

21 Q All right. Now, Ms. Epler, how did you learn of the
22 Ryan/Hughes crimes?

23 A It's a long time ago. I -- I think there was an
24 announcement on television.

25 Q Okay. Now, after you learned of the Ryan/Hughes

1 crimes, did you on more than one occasion call the San
2 Bernardino Sheriff's Department?

3 A Probably. I'm -- I don't know how many times. I know
4 we talked several times.

5 Q Okay. It was at least --

6 A I don't know if they were around my house or if --
7 because we did have a -- I believe a guard up at Payton and
8 Glenridge.

9 Q Okay. But it was more than one time that you called
10 the --

11 A Oh, yes.

12 Q -- Sheriff's Department?

13 A Yes.

14 Q All right. Now, after you learned of the Ryan/Hughes
15 crimes, did you make it -- well, let me ask you this. After
16 you learned of the crimes, did you keep yourself aware of
17 what was going on with regard to developments in the case?

18 A Yes.

19 Q Okay. Was there anything that you did to maintain an
20 active role in that regard?

21 A We had the neighborhood watch meeting in my house, and
22 there were so many people we had to have it in our back yard
23 because it was -- people were terrified.

24 Q And how soon after the -- you learned of the crimes did
25 the first of the neighborhood watch meetings occur?

- 1 A I don't recall exactly. I don't think it was very
2 long.
- 3 Q Within a matter of days?
- 4 A I would say more within a couple of weeks.
- 5 Q Okay. Within a couple of weeks?
- 6 A I think so.
- 7 Q And were there more than one neighborhood watch
8 meetings?
- 9 A Not that I recall.
- 10 Q So there was just one?
- 11 A Just one large one if I remember.
- 12 Q And were there -- was the neighborhood watch meeting
13 attended by individuals employed by the San Bernardino
14 Sheriff's Department?
- 15 A Yes, sir.
- 16 Q Do you remember how many from the Sheriff's Department?
- 17 A I believe there were two, a male and a female.
- 18 Q All right. And directing your attention to Exhibit
19 DDDDD --
- 20 A I'm sorry?
- 21 Q Five Ds, the same transcript of your interview, page
22 eight.
- 23 A Eight?
- 24 Q Yes. Do you recall when the first time it was relative
25 to learning of the crimes that you spoke to a tall female of

1 the Sheriff's Department?

2 A Do I recall exactly when?

3 Q How soon after approximately?

4 A It was -- it was quite soon.

5 Q Quite soon?

6 A I would say within the week.

7 Q All right. And can you describe that woman sheriff's
8 officer to whom you spoke?

9 A As far as I remember she was fairly tall. Of course,
10 most people are tall to me, and large boned. I wouldn't say
11 she was fat. She was just a big woman.

12 Q Uh-huh.

13 A And I believe her hair was like a sandy -- it wasn't
14 brown -- it wasn't dark brown. I know that, and it wasn't
15 blond. So it was kind of dirty blond I think if I remember
16 correctly.

17 Q Do you recall her name?

18 A I wish I did. I can't.

19 Q Okay. Now, do you recall the occasion -- what gave
20 rise to your calling this female sheriff's officer?

21 A I -- I think it was in the context of neighborhood
22 watch.

23 Q And while you don't know her name, you recall her --
24 some of her description. Was she the woman who also
25 attended the neighborhood watch meeting at your home?

- 1 A I believe so.
- 2 Q But you had also spoken to her before that meeting?
- 3 A Yes, sir.
- 4 Q All right. Now, did you also speak to a male sheriff's
5 officer on several occasions prior to the neighborhood watch
6 meeting at your home?
- 7 A Yes.
- 8 Q All right. And do you remember that gentleman's name?
- 9 A I'm not sure.
- 10 Q What is your best recollection?
- 11 A I thought his name was Fields, but I could be wrong. I
12 mean, I -- I talked to several gentlemen, but that -- that's
13 a name that sticks in my head, and I don't know why.
- 14 Q Can you -- as you were able to describe the female
15 sheriff's officer, best you recall, can you describe this
16 gentleman who you thought was Fields?
- 17 A I would -- I would say he was -- I think he was about
18 the size of my husband. I think he was about five seven or
19 five eight. I think he was, if I remember correctly, a
20 medium build.
- 21 Q Do you recall his color hair?
- 22 A I believe it was brown.
- 23 Q Okay.
- 24 A I believe, and I can't be totally sure.
- 25 Q And how about his age? Do you have any idea what

1 his -- what would you guess his age at? I don't know how
2 good you are at that, but --

3 A I would say late 30s, early 40s I believe.

4 Q All right. Now, in the interview you indicated that
5 you recalled going up to the house next to the home where
6 the crimes occurred. Do you recall that?

7 A Yes, sir.

8 Q All right. And do you remember how close in time it
9 was to the -- to your learning of the crimes that you went
10 up to that house?

11 A I think it was within a week.

12 Q All right. And what -- did you go up by yourself or
13 with someone?

14 A No. The female sheriff, the female officer.

15 Q The same person that you've --

16 A Yes.

17 Q -- described before?

18 A Yes.

19 Q All right. And do you recall the purpose for going up
20 there?

21 A The purpose, no. I think she was at my house, and we
22 were discussing neighborhood watch, and I -- I'm not sure if
23 she got a call to go up there or what, but I did -- I went
24 with her, and I don't remember what she did. We weren't
25 there that long.

1 Q So she was actually going up there for some purpose and
2 you simply accompanied her?

3 A Yes.

4 Q Okay. What -- the reason for her going up there didn't
5 have to do with anything the two of you were doing together,
6 is that correct?

7 A To me?

8 Q Yes.

9 A No. I'm not -- no.

10 Q What I said is correct?

11 A I don't know what it -- what -- I don't remember why
12 she had to go up there, but --

13 Q But it was unrelated to any purpose that you were
14 trying to accomplish, is --

15 A Yes.

16 Q -- that correct?

17 A Yes.

18 Q Okay. Now, prior to talking to -- on the phone to Ms.
19 Shakowsky and Mr. Willkomm, did you receive a call from
20 someone from Mr. Hile's office or from some -- somebody in
21 connection with this case?

22 A Yes, yes.

23 Q All right. Do you recall --

24 A It was a female -- it was a female person from -- I
25 believe from his office.

- 1 Q All right. And do you recall her name?
- 2 A I would recognize it probably if you told me. I don't
- 3 know it off hand.
- 4 Q All right. Does the name Shelley White sound familiar?
- 5 A I believe so.
- 6 Q Did she identify that she was calling from Mr. Hile's
- 7 office?
- 8 A Yes.
- 9 Q Did she tell you what her job was or describe what her
- 10 role was?
- 11 A I don't -- I don't remember.
- 12 Q All right. Do you recall --
- 13 A She --
- 14 Q Excuse me.
- 15 A She explained that she was working with him. I don't
- 16 know if she gave me an exact title.
- 17 Q Uh-huh. Now, do you recall what you and Ms. White
- 18 discussed?
- 19 A I believe she was asking me about the shirt, the T-
- 20 shirt.
- 21 Q A T-shirt or a regular shirt?
- 22 A Pardon?
- 23 Q Did she say T-shirt or regular shirt?
- 24 A I don't remember.
- 25 Q Okay. Now, when she told you about the shirt, whatever

1 she said, did that -- was that -- did that ring a bell with
2 you in some way, whether vague --
3 A Vaguely.
4 Q -- or strongly?
5 A Vaguely.
6 Q Vaguely?
7 A Very vaguely.
8 Q It sounded vaguely familiar?
9 A Pardon?
10 Q It sounded vaguely familiar to you?
11 A Yes, sir.
12 Q Okay. Now, you didn't have any materials from Ms.
13 White either, did you, when you talked to her?
14 A No.
15 Q Okay. All right. Now, and was there -- when you and
16 Ms. White talked, was there mention of blood on the shirt?
17 A I don't remember if it was mentioned at that time.
18 Q Okay. But at some point it was mentioned?
19 A Some point. I've had four or five calls this summer,
20 and I believe something might have been said about it, but I
21 don't remember what.
22 Q All right. Directing your attention again to DDDDD,
23 the transcript of the interview --
24 A Uh-huh.
25 Q -- specifically, page 11, down at -- near the bottom of

1 the page, line 19:

2 "Q Right. Now, when you -- when you
3 said that she asked you about a blue
4 shirt, did she tell you the shirt was
5 blue or did you recall that?

6 A No. She told me it was blue, and
7 she said there was blood on it, and I
8 vaguely remember that."

9 Was that a true statement?

10 A Yes, sir.

11 Q And -- and when that was mentioned to you, you had a
12 vague recollection of it?

13 A Yes.

14 Q And at that time you had not seen any documentation?

15 A No.

16 Q All right. Now, were you at -- well, let me ask you
17 this. How soon before the call -- and, by the way, I'll
18 represent to you that the interview occurred on August the
19 3rd, consistent with your saying it occurred the first week
20 of August with Shakowsky and Willkomm. How soon prior to
21 that telephone interview did your call with Ms. White occur?

22 A Ms. White I believe called -- that was the first call I
23 had. It was early July. That was right after I moved back
24 to Tampa.

25 Q Okay. Prior to Tampa, you were living in North

- 1 Carolina as I understand?
- 2 A Yes, sir.
- 3 Q For about a year?
- 4 A Yes.
- 5 Q Okay. Now, did you -- does the name Bruce McPhale ring
- 6 a bell to you?
- 7 A Yes.
- 8 Q All right. And who do you understand Bruce McPhale to
- 9 be?
- 10 A He's with the Sheriff's Department.
- 11 Q All right. And did he call you at some point?
- 12 A I called him.
- 13 Q You called him. All right. Did you know it was Mr.
- 14 McPhale who you were trying to reach when you called?
- 15 A No. Can I explain how I got to him?
- 16 Q I was going to ask you how is it that you had a -- you
- 17 had a conversation with Mr. McPhale at some point?
- 18 A Yes.
- 19 Q All right. Would you explain the events leading up to
- 20 that conversation?
- 21 A When I received the -- the call from Ms. White, I -- it
- 22 came out of the blue. I mean, this is 20 some years. I've
- 23 been away. I haven't heard anything about this case, and
- 24 after I hung up, I thought -- you know, I have a devious
- 25 mind. I wanted to make sure it was legitimate. So I went

1 on line, and I tried to find the telephone number for the
2 Sheriff's Department, and I could only find some other
3 public office telephone number or E-mail. So I -- I wrote
4 to them, and they -- they wrote an E-mail back to me and
5 gave me the telephone number of the Sheriff's Department,
6 and I consequently talked to Lieutenant McPhale.

7 Q When you say the Sheriff's Department, what Sheriff's
8 Department?

9 A The one -- I -- I'm assuming it was the one right here
10 on San -- in San Bernardino County.

11 Q Okay.

12 A On Payton.

13 Q All right.

14 A Because I -- I told them that I was asking about the
15 Kevin Cooper case.

16 Q And what did you ask Mr. McPhale when you spoke to him?

17 A I asked him what was --

18 Q What did you say to him -- I --

19 A I'm sorry. What?

20 Q What did you say to Mr. McPhale --

21 A I asked him --

22 Q -- when you reached him?

23 A -- what was going on.

24 Q And what did he say to you?

25 MS. WILKENS: Object, your Honor. Hearsay.

1 THE COURT: Overruled.

2 BY MR. ALEXANDER:

3 Q You may answer.

4 A He explained that the -- there had been -- that Kevin
5 had been on death row all these years, and that there was a
6 stay of execution or whatever, that it was being looked at
7 again, and that -- that someone was interviewing people, and
8 actually he told me that someone was interviewing people and
9 then they were twisting what the people said and they did
10 not agree with what they had said, which was confusing to
11 me, but --

12 Q Let me make sure I understand it. He -- he told you
13 that the sheriff's people were interviewing people, correct?

14 A No. He said -- he said -- I thought he said someone
15 else, not the Sheriff's Department.

16 Q Somebody representing Mr. Cooper?

17 A I believe.

18 Q And what did he say those people were doing?

19 A I don't know, and I don't want to mislead people. I am
20 not --

21 Q Of course not.

22 A I don't remember exactly who he said they were, to be
23 honest with you, but he said someone was interviewing people
24 that were connected with the case and that they were
25 twisting whatever the people had given them for information,

1 and that's about as far as we went with it.

2 Q Did he give you any examples of -- of --

3 A I don't believe --

4 Q -- of what was being twisted?

5 A I don't believe he did.

6 Q All right. Well, what information were you trying to
7 find out from him?

8 A Just basically I --

9 THE COURT: Why don't we move into the substance.
10 I think we're getting --

11 MR. ALEXANDER: All right. Very well.

12 THE COURT: -- just in background.

13 MR. ALEXANDER: I'll move on, your Honor.

14 BY MR. ALEXANDER:

15 Q Now, after your interview with Shakowsky and Willkomm,
16 did they send you anything?

17 A No.

18 Q They send you any --

19 A The pictures. I'm sorry.

20 Q They did send you pictures?

21 A Yes.

22 Q All right. Now, do you happen to have those pictures
23 with you?

24 A I think they're here somewhere.

25 MS. WILKENS: They're marked as --

1 BY MR. ALEXANDER:

2 Q No. I want to know if you brought the pictures that
3 they sent you.

4 A Did I bring them?

5 Q Yes.

6 A Yes. They're in the hotel room.

7 Q Okay. Well, somebody's just dropped something on my
8 lectern here, and I'm going to ask you to direct your
9 attention to CCCCC-1. That's five Cs-1 in your white book.

10 MS. WILKENS: I believe it would be the black
11 notebook, counsel.

12 BY MR. ALEXANDER:

13 Q I think I mislabeled.

14 A You did.

15 Q I think it's in -- I'm told it's in the black notebook,
16 and it looks like here they are.

17 A Here we go. I'm sorry.

18 Q Now, would you take a moment --

19 A Uh-huh.

20 Q Would you take a moment and just look at the pictures
21 that are in CCCCC-1 through CCCCC-5.

22 A Right.

23 Q All right. And are these copies of the pictures that
24 you were sent?

25 A I received all these, yes.

- 1 Q All right. And that -- when did you receive them?
- 2 A Just a couple of days after the interview with Barbara.
- 3 Q Okay.
- 4 A Whatever her last name is.
- 5 Q Shakowsky.
- 6 A Shakowsky.
- 7 Q And did -- now, during the interviews, it's correct, is
- 8 it not, that you -- that they told you they were going to
- 9 send you some pictures, correct?
- 10 A Yes, sir.
- 11 Q All right. And is it also correct that they wanted you
- 12 to see whether or not any -- anything in the picture looked
- 13 familiar to you?
- 14 A Yes, sir.
- 15 Q Did you understand when you received these pictures
- 16 that these pictures related to the blue shirt that you have
- 17 talked about?
- 18 A I thought they did.
- 19 Q Okay. Did Ms. Shakowsky or Mr. Willkomm ever indicate
- 20 to you that, in fact, these pictures related to a T-shirt, a
- 21 beige T-shirt? Did they ever tell that to you?
- 22 A I don't think so.
- 23 Q All right.
- 24 A Because we had been discussing the blue shirt.
- 25 Q All right. Did they tell you that the pictures were

1 not where the blue shirt was found but where the beige T-
2 shirt -- a beige T-shirt was found?

3 A I don't recall anything being said about that.

4 Q Okay. Now, looking at this picture -- any of the
5 pictures of CCCCC-1 through CCCCC-5, is there anything that
6 looks familiar in those pictures, any persons?

7 A No. I -- I don't recall the people, and I -- I was
8 trying to remember what my son looked like at that age, and
9 I don't see him in here.

10 Q Okay.

11 A I even tried to figure out if I was in here, but I
12 can't. I don't -- I don't recall.

13 Q Now, that's both on CCCCC-1 and 2 are the only ones
14 that have people in it. You don't recognize any of the
15 people in those pictures?

16 A No, I don't.

17 Q All right. You see a car in CCCCC-1?

18 A Yes.

19 Q Towards the top of the picture?

20 A Yes.

21 Q All right. Do you recognize what kind of car that was?

22 A I'm not real good on cars, but it looks like a Ford to
23 me.

24 Q And do you know --

25 A Ford or Lincoln.

1 Q Was it a private car or a law enforcement car, if you
2 know?

3 A I -- that I can't swear to.

4 Q Okay.

5 A I know the trunk is up, so --

6 Q All right. Now, if I represent to you that this -- the
7 road there is Payton Drive, all right --

8 A Yes.

9 Q -- does this help refresh your recollection as to
10 whether or not there were sidewalks along Payton Drive
11 either on the side going up towards Old English Road or the
12 site?

13 MS. WILKENS: Your Honor, I object to the
14 representation that's being made.

15 THE COURT: Overruled.

16 BY MR. ALEXANDER:

17 Q If I represent to you, okay -- and I'll have to show
18 this some other way when we find out who took the picture --
19 whether -- that that was Payton Drive, the road there that
20 the people seem to be standing on --

21 A Yes.

22 Q All right -- does that refresh your recollection as to
23 whether or not there were sidewalks on Payton Drive either
24 going up from Corral Canyon towards Old English Road or down
25 towards Glenridge Drive?

1 A On this section there were no sidewalks that I recall
2 at all. It was very narrow.

3 Q Okay. And --

4 A The other side up toward my house was a boulevard
5 street, and I -- I know there were sidewalks there when I
6 left, but if they were there when I moved in, I don't really
7 recall. I don't remember.

8 Q So you don't recall whether they were there in '83
9 and --

10 A No.

11 Q -- '84?

12 A I don't remember.

13 Q All right. Thank you. Now, was it your habit or
14 custom at the time to go for walks along Payton Drive from
15 your home?

16 A Not that I -- not that I recall. I'm not a big walker.

17 Q All right. Now, when -- when you -- is it correct,
18 ma'am, that you saw a shirt along Payton Drive somewhere
19 near Glenridge Drive?

20 A As I stated before, the shirt I -- I can't recall
21 exactly where it was.

22 Q Okay.

23 A I --

24 Q Go ahead.

25 A -- wish I could. It -- because I didn't walk and

1 because I only drove certain ways, it would have to be I
2 would say within a half or a quarter mile in a radius around
3 Glenridge, Payton, and Carbon Canyon, somewhere in that
4 area.

5 Q All right. And so is it your best testimony that when
6 you saw the shirt you were driving in the car?

7 A As far as I can recall, yes.

8 Q Okay. Now, I don't know how well kept that road was,
9 Payton and Glenridge Drive, but was it common for things to
10 be lying next to the road, other than rocks and things like
11 that?

12 A Rocks, yes, but clothing and -- and garbage, no.

13 Q Okay. And during the -- I don't know if I asked you
14 this. You were the one that initiated the neighborhood
15 watch program, correct?

16 A Yes, sir.

17 Q All right. And you were quite attuned to what was
18 going on in the neighborhood during the period of time
19 shortly after the murders?

20 A I was, and I think most people in that area were.

21 Q All right. And I want to direct your attention then to
22 page 12 and 15 of your -- of your interview.

23 A Twelve?

24 Q Well, I think I misspoke. Hold on a moment and let
25 me -- let me do better. All right. Now, directing your

1 attention to lines eight through 14 on page 12, Special
2 Agent Willkomm asks you a question:

3 "When you were driving the street, if
4 you can remember that far back, do you
5 remember if it was on the roadside or if
6 it was off the road? Was it in a gully,
7 was it -- you know, where was it?

8 MS. EPLER: To the best of my
9 recollection, I believe it was right
10 along side of the road."

11 Now, was that a correct statement, true statement?

12 A Yes, sir.

13 Q All right. Do you recall whether or not -- and, again,
14 I know we're 20 some odd years ago -- it was on the side of
15 the street that you turned into Glenridge -- that you would
16 turn into Glenridge Road from, in other words, the left side
17 of the street going up from Canyon Corral Bar, or was it on
18 the opposite side of the street, if you remember?

19 A I don't -- I don't honestly recall, but to -- for it to
20 be on the left side, that would be quite a ways away from me
21 as I was driving up a boulevard street. I would think it
22 would have been on the right-hand side, but I honestly don't
23 remember.

24 Q Okay. Now, we got to be careful about right and left
25 to make sure which direction we're going. As you're

1 leaving --

2 A Going up.

3 Q Yes, going up towards the Canyon Corral Bar?

4 A Going up toward Glenridge.

5 Q All right. Okay. From --

6 A The bar is right here.

7 Q You're --

8 A I'm sorry.

9 Q Let's go back to the map.

10 A Okay.

11 Q Would that help? And the map is RRRRR-1.

12 A I got it.

13 Q We've got a circle where Payton and Canyon Corral

14 intersect.

15 A Correct.

16 Q Now, I've got it so that -- well, let's -- let's look

17 at it as it appears in the notebook, okay, so that Glenridge

18 is to the left of the intersection of Canyon Corral and

19 Payton Drive, fair enough?

20 A I have -- you have yours the same way I do?

21 Q Do you have the notebook as it -- all right. Let me --

22 A I'm sorry. We need a big map. I can draw it better.

23 MR. ALEXANDER: Actually, that's a good idea. May

24 I use the board, your Honor?

25 THE COURT: Sure.

1 THE WITNESS: That's probably easier to do on a
2 board I guess. This is very hard.

3 BY MR. ALEXANDER:

4 Q I'm going to let you do the drawing.

5 A Okay.

6 Q You'll need -- you'll need to use this hand-held
7 microphone, and let me ask you if you could -- I hope you're
8 good at this. You have a design background, correct? Is
9 that correct?

10 A I'm an interior decorator, not a designer.

11 Q Okay. While we're -- while we're on it and during this
12 Olympic -- these Olympic days, you were also a professional
13 ice skater, correct?

14 A Correct.

15 Q You told me that when I just saw you a little while
16 ago, correct?

17 A Yes.

18 Q All right. Now, would you please draw that so that we
19 have the intersection of Payton Drive and Carbon Canyon
20 Drive?

21 A This is Carbon Canyon. This is the Canyon Corral.

22 Q Okay.

23 A I spelled it wrong. This is actually -- this is the
24 way the -- the boulevard -- this is the Canyon Corral. This
25 is going up toward Old English Road.

1 THE COURT: Why don't you put bar.

2 THE WITNESS: I'm sorry?

3 THE COURT: Put bar.

4 THE WITNESS: I can't spell. This is Glenridge up
5 here.

6 THE COURT: So spell Glen -- Glenridge.

7 THE WITNESS: There we go. This is a boulevard
8 street, okay.

9 BY MR. ALEXANDER:

10 Q When you say boulevard street, do you mean a divided
11 street?

12 A A divided street, correct.

13 Q Is the median in the middle?

14 A Yes.

15 Q Of concrete?

16 A Yes, as far as I can remember, and this was the same
17 thing.

18 Q Glenridge is a boulevard also?

19 A Yeah. This is a boulevard street.

20 THE COURT: Why don't you put Glenridge.

21 BY MR. ALEXANDER:

22 Q If you could put, yeah, Glenridge, not just Glen.

23 Thank you. All right.

24 A Okay.

25 Q Why don't you draw in --

1 THE COURT: And why don't you put Payton.

2 BY MR. ALEXANDER:

3 Q Perfect. Now, did Payton extend also up towards
4 Glenridge?

5 A Yes, sir.

6 Q It was still called Payton?

7 A Yes.

8 Q Thank you. All right. And --

9 THE COURT: And the CC-1 is Canyon Corral?

10 MR. ALEXANDER: No, that's --

11 THE WITNESS: This is the bar.

12 MR. ALEXANDER: -- Carbon Canyon.

13 THE COURT: Carbon Canyon.

14 THE WITNESS: This is Carbon Canyon.

15 THE COURT: Carbon Canyon.

16 THE WITNESS: Yeah.

17 BY MR. ALEXANDER:

18 Q Why don't you put CC -- oh, good. And then put drive,
19 DR.

20 A Here?

21 Q Yeah, right next to it, drive or road, whichever it
22 was. Okay.

23 A I put --

24 Q Road. So Carbon Canyon Road it's called?

25 A Yes.

1 Q All right. Now, what we drew is --

2 THE COURT: And where is her house?

3 BY MR. ALEXANDER:

4 Q Yes. Draw Aqueduct if you could.

5 A Aqueduct is here. There was --

6 Q Write out Aqueduct a little more, A-Q-U-E-D-U-C-T.

7 Thank you.

8 A There was a house here, and my house was -- this was a
9 hill. So my house was right here. It's the first one
10 facing Glenridge, and this one faced Aqueduct, and this was
11 vacant.

12 Q I'm going to ask if you would, please, to put a red
13 mark where your home is -- was on -- on Glenridge. Okay.
14 Now, which side of the road is your best recollection that
15 you found the blue shirt?

16 A I --

17 MS. WILKENS: I'm going to object, your Honor. We
18 don't have testimony to her finding a blue shirt.

19 MR. ALEXANDER: I believe we do.

20 BY MR. ALEXANDER:

21 Q In any event, where -- you found a blue shirt on Payton
22 along side the road I think you testified on Payton?

23 A I think --

24 MS. WILKENS: Object. That's leading, your Honor.

25 THE COURT: Sustained. What did you find?

1 BY MR. ALEXANDER:

2 Q What did you find?

3 A I honestly don't remember totally, but trying to deduct
4 and get an idea how I saw it, I would think it would have
5 been along in here.

6 Q All right. That's where -- that's where you found it
7 where you drew the red line?

8 A I think.

9 Q And what you're referring to is what? What did you
10 find?

11 A The blue shirt.

12 Q Thank you. Now, I -- I think you may resume your --
13 now, in your book, direct your attention to NNNN. I don't
14 know which book it's in. I'm sorry. I think it's in the
15 black one. It's NNNN.

16 MS. WILKENS: No, that would be in the white one.

17 BY MR. ALEXANDER:

18 Q Just like I said, it's in the -- it's in the white
19 book.

20 A In the white book?

21 Q Yeah, apparently.

22 A Did you say --

23 Q Four Ns, quadruple --

24 A Four Ns?

25 Q Yeah.

1 A N as in Nancy?

2 Q Yes. Take your time.

3 A No, that's J. I see NNN-3.

4 Q It's NNN -- doesn't have any -- I'm going to help you.

5 A SSS-4. Here it is.

6 Q Here we are. In the black binder in front of you under

7 NNNN, all right.

8 A Correct.

9 Q Now, during the period of time that -- or when you were

10 being interviewed by Ms. Shakowsky and Mr. -- Mr. Willkomm,

11 do you recall them making reference to a log they said they

12 had and read you information from the log? Do you recall

13 that?

14 A Yes, sir.

15 Q All right. But you didn't have the log?

16 A No, sir.

17 Q And you never -- and they never sent you the log?

18 A No, sir.

19 Q And I sent you the log, correct?

20 A Yes, yes, sir.

21 Q Now, when I sent you the log, did you read through it?

22 A Yes.

23 Q All right. And -- excuse me a moment. Strange, this

24 exhibit has June the 6th on it, but it doesn't have the

25 entry. So let me -- let me see.

1 THE COURT: While you're looking for that, we'll
2 just take a short --

3 MR. ALEXANDER: I'm sorry, your Honor. I just
4 assumed it was within the June 6th that was substituted for
5 the prior one, but it's not. So let me see. I think I have
6 a copy somewhere.

7 THE COURT: Okay. Why don't we take a 10-minute
8 recess break, and then we can resume.

9 MR. ALEXANDER: I apologize.

10 THE COURT: Do you envision when Doctor Ballard
11 was doing his testimony that you would be in communication
12 with him?

13 MR. ALEXANDER: Actually, I wasn't in
14 communication with -- or anybody on our team with --

15 THE COURT: When he's doing the test -- if he was
16 to do the testing.

17 MR. ALEXANDER: I wouldn't envision any need --

18 THE COURT: So would the test results then come
19 directly to the Court and then I would provide them out to
20 counsel?

21 MR. ALEXANDER: You know or come simultaneously as
22 I think was done with Doctor --

23 THE COURT: I mean, once we get --

24 MR. ALEXANDER: -- Doctor Melton.

25 THE COURT: Once we get both of them --

1 MR. ALEXANDER: Yeah. I'd like to actually think
2 about that, but I -- I --

3 THE COURT: Think about it for 10 minutes.

4 MS. WILKENS: We're amenable to having them come
5 to the Court and having the Court distribute them.

6 THE COURT: And then you could talk to him.

7 MS. WILKENS: Sure.

8 MR. ALEXANDER: Yeah, that --

9 THE COURT: The question is do you need to
10 talk you to Doctor Sciudak and him to Doctor Ballard during
11 the testing process or not?

12 MS. WILKENS: You know, if -- if the -- if the
13 order provides that the labeling is not disclosed to anyone,
14 then there shouldn't be any concerns about communication
15 between counsel and their respective experts. I think the
16 sole --

17 THE COURT: So that -- you think that would be
18 okay. So it would be --

19 MS. WILKENS: I think so.

20 THE COURT: So you -- counsel would get the
21 results of your expert and then the Court would provide the
22 two out simultaneously?

23 MS. WILKENS: Yeah, and I suppose there shouldn't
24 be any barrier on communication with the experts.

25 THE COURT: Okay. All right.

1 MR. ALEXANDER: We did find it, but we'll do our
2 recess.

3 THE COURT: We found it, all right. Let's proceed
4 or does somebody -- okay. We're going to take a short
5 break. My staff requires it. Thank you.

6 (Proceedings recessed briefly.)

7 THE COURT: You may proceed. We remind you you're
8 still under oath.

9 BY MR. ALEXANDER:

10 Q I believe when we took our break, Ms. Epler, that you
11 had located a daily log under Exhibit 0000, and do you have
12 that in front of you?

13 A Yes, sir.

14 Q All right. Now, is this a copy of the log that I sent
15 to you?

16 A Yes.

17 Q All right. And is the -- directing your attention to
18 page nine, all right, and it's entry 58.

19 A Uh-huh.

20 Q Is that information there the information that Mr. --
21 or Ms. Shakowsky -- withdraw that. That doesn't make sense.
22 I'm sorry.

23 On entry 58, it says in part "On Payton and Glenridge,
24 597-2195, Laurel Epler reports finding a blue shirt that
25 possibly has blood on it." Do you recognize that as your

1 telephone number at that time?

2 A Yes, I do now, after looking at it.

3 Q Okay. And can you tell us as best you recall when you
4 found the blue shirt, did you then make a telephone call?

5 A I must have or they wouldn't have known about it.

6 MS. WILKENS: Objection, your Honor. Motion to
7 strike. Speculation.

8 THE COURT: Sustained. It's stricken.

9 BY MR. ALEXANDER:

10 Q Looking at entry 58, does that refresh your
11 recollection that, in fact, you did make a telephone call
12 sometime around 2:40 in the afternoon on June the 6th after
13 finding a blue shirt?

14 MS. WILKENS: Objection. Leading.

15 THE COURT: Overruled.

16 THE WITNESS: Yes.

17 BY MR. ALEXANDER:

18 Q All right. Thank you. And the name Fields there, do
19 you see that?

20 A Yes, sir.

21 Q Okay. Is that Mr. -- well, let me ask you, do you
22 recall -- withdraw that.

23 Does this entry refresh your recollection that it was a
24 Mr. Fields who came out to where you located the blue shirt?

25 A To the best of my --

1 MS. WILKENS: Objection. Leading.

2 THE COURT: Overruled. Go ahead.

3 THE WITNESS: To the best of my knowledge.

4 BY MR. ALEXANDER:

5 Q All right. And is this Mr. Fields the same Mr. Fields
6 that you described earlier?

7 A I believe so, yes.

8 Q All right. And he's also the gentleman that you
9 believe went to the neighborhood alert meeting at your home?

10 A I believe they're one in the same.

11 Q All right. Now, do you recall how long -- well, were
12 you -- do you recall looking at this -- withdraw that.

13 Does this entry refresh your recollection that -- that
14 you and Mr. Fields either met or were at the location of the
15 blue shirt at the same time, approximately 2:40 on June the
16 6th?

17 A I don't understand the question.

18 Q I don't blame you. It was very poorly worded. I'm
19 sorry. Do you recall meeting Mr. Fields at the location
20 where you found the blue shirt?

21 A I don't remember.

22 Q Okay. Does looking at this entry refresh your
23 recollection as to whether or not you did?

24 A As to being with him or --

25 Q At the location, yes.

- 1 A No.
- 2 Q You can't recall?
- 3 A I can't recall.
- 4 Q Do you recall whether you took the blue shirt back to
- 5 your home with you or whether you let it sit where it was
- 6 along the side of the road?
- 7 A I don't think I would have picked it up.
- 8 Q All right. So your best recollection is --
- 9 A My best recollection is that I didn't.
- 10 Q Okay. Having seen this entry that was subsequently
- 11 sent to you, is there any doubt in your mind now, Ms. Epler,
- 12 that you, in fact, found a blue shirt somewhere along Payton
- 13 and Glenridge on June the 6th, 1983?
- 14 A No doubt.
- 15 Q Okay. And is there any doubt in your mind that you
- 16 notified the Sheriff's Department about that blue shirt?
- 17 A I honestly don't know how there could be if it's in the
- 18 log. I'm --
- 19 Q Did you during the course of the interview by Ms.
- 20 Shakowsky and Mr. Willkomm say -- or ask them, well, was
- 21 this made up, this entry made up or words to that effect?
- 22 Do you remember something like that?
- 23 A That I made it up?
- 24 Q No, that -- that the entry was made up.
- 25 A I don't recall.

1 Q Okay. Was the information that you provided -- factual
2 information that you provided in the interview that you gave
3 to them that's Exhibit DDDDD correct to the best of your
4 knowledge?

5 A I -- I don't understand, sir.

6 Q The information that you provided to Ms. Shakowsky and
7 Mr. Willkomm that's reflected in this interview transcript,
8 was that correct to the best of your knowledge at the time
9 you --

10 A To the best of my knowledge, yes.

11 Q Okay. And once you received the log, did that -- what
12 effect did that have on your knowledge of what you did at
13 the time in 1983?

14 A It just seemed to refresh my memory after seeing it,
15 yes.

16 Q All right. At any time subsequent to your finding the
17 blue shirt, do you recall being visited by any persons from
18 the San Bernardino Sheriff's Department about the blue
19 shirt? Was there any follow-up, do you recall?

20 A I really can't hear you very well.

21 Q I'm sorry.

22 A I'm sorry.

23 Q Do you recall after finding the blue shirt and calling
24 the Sheriff's Department that in the succeeding days or
25 weeks was there any follow-up about the blue shirt to you?

1 A Not that I recall, no.

2 MR. ALEXANDER: Okay. I believe that's all the
3 questions I have. Thank you very much.

4 THE WITNESS: You're welcome.

5 MR. ALEXANDER: And thank you for coming a long
6 way on short notice.

7 THE COURT: Thank you. Cross?

8 CROSS EXAMINATION

9 BY MS. WILKENS:

10 Q Now, Ms. Epler, you've indicated that you believe you
11 were driving in your car along Payton Drive and you observed
12 an article of clothing, is that correct?

13 A To the best of my knowledge and recollection, yes.

14 Q All right. When we talk about recollection, do you
15 understand the difference between drawing an inference and
16 actually having a memory that you can recall to this day?

17 A Yes.

18 Q All right. So do you recall driving along Payton Road
19 and seeing a garment on the side of the road?

20 A As close as I can remember, yes.

21 Q Well, what do you mean? I mean, sitting here today,
22 can you in your mind recall yourself driving along the road
23 and seeing a garment? Do you have a memory of that?

24 A If I wasn't driving along the road and found it,
25 there'd be no other way I'd be able to find it.

1 Q Well, we're --

2 A I didn't walk in that area at all.

3 Q No, I understand, but --

4 A Okay.

5 Q -- I'm not asking you to infer based on your habit of
6 not walking on the road --

7 MR. ALEXANDER: Objection. Argumentative, your
8 Honor.

9 THE COURT: Overruled.

10 BY MS. WILKENS:

11 Q -- how you would have come across a garment. I'm
12 asking you if sitting here today, 21 years later, you have a
13 specific and independent recollection of having done so?

14 A I don't know how I could be specific after 21 years.

15 Q Well, that's what I'm asking you.

16 A Totally specific. I can partially visualize it, but I
17 can't say yes I found it this day at this time and I recall
18 it all, no, I'm sorry. I wish I could.

19 Q Well, what I'm asking -- I'm not asking if you recall
20 the day. I'm asking if you have a recollection of driving
21 along Payton and seeing a garment on the side of the road.
22 Is that something that you yourself independently remember
23 separate and apart from all the phone calls and the
24 paperwork and everything else? I'm asking if you can tell
25 the Court sitting here today, 21 years later, yes, I recall

1 driving along the road and seeing a garment?

2 MR. ALEXANDER: Object to the form of the
3 question.

4 THE COURT: Overruled.

5 MR. ALEXANDER: Objection. Hypothetical.

6 THE COURT: Overruled. You may answer.

7 THE WITNESS: I'm sorry. I have a problem with
8 hearing in one ear. I just don't know how to answer that,
9 just don't.

10 BY MS. WILKENS:

11 Q Well, you mentioned that you didn't -- you weren't in
12 the habit of taking walks?

13 A No. I don't walk.

14 Q And then you said "I must have been driving." What I'm
15 asking is are you inferring that you must have been driving
16 as opposed to remembering that you were driving?

17 A I'm not trying to be difficult, but if I didn't walk, I
18 had to be driving.

19 Q But I'm not asking you to apply inferences. What we're
20 interested in here today --

21 A Uh-huh.

22 Q -- is what you know based on your memory, not piecing
23 things together. I am asking you if 21 years later you have
24 in your mind a memory that you can call upon that you were
25 driving along Payton and observed a garment on the side of

1 the road?

2 MR. ALEXANDER: Objection, your Honor. It's been
3 asked and answered.

4 THE COURT: Overruled.

5 THE WITNESS: The only way that I could be totally
6 sure of that answer is to be put under sodium pentothal and
7 to recall it that way.

8 BY MS. WILKENS:

9 Q All right. Now, when --

10 A To be fair to you and everyone.

11 Q When you tell me that you would need to be under sodium
12 pentothal, are you telling me that you don't have a present
13 recollection of having driven along Payton Drive and
14 observed the garment?

15 A I don't recall every single thing that happened during
16 that time, no, I don't.

17 Q Well, I'm -- I'm only asking if you can recall driving
18 along Payton Drive and observing a garment?

19 MR. ALEXANDER: Your Honor, I object. She's asked
20 and answered this so many times.

21 THE COURT: Overruled. Go ahead.

22 THE WITNESS: I don't know how else to answer it.
23 I really don't.

24 THE COURT: Same objection, your Honor. I think
25 this --

1 THE COURT: Over --

2 THE WITNESS: You're asking me to have total
3 recall of something that I really think is totally
4 impossible after 21 years, I really do.

5 BY MS. WILKENS:

6 Q Well, Ms. Epler, again, you know, I certainly
7 understand and I'm not trying to be difficult here, but what
8 we want to know is what you do remember, just your memory,
9 not looking at papers or being provided with information and
10 drawing inferences.

11 A I do remember finding a blue shirt. Do I remember
12 exactly where or how I found it?

13 Q Okay. So you --

14 A No, I don't.

15 Q You don't recall where you found it?

16 A No.

17 Q Okay.

18 A Not exactly.

19 Q And you don't recall the circumstances of how you found
20 it?

21 MR. ALEXANDER: Objection.

22 THE WITNESS: Not totally, no.

23 BY MS. WILKENS:

24 Q Okay. You say not totally. What are the circumstances
25 under which you found it based on your present recollection?

1 MR. ALEXANDER: Objection. Asked and answered.

2 THE COURT: Overruled.

3 THE WITNESS: I just have to answer it the best
4 way that I can, and that is in that particular area, the
5 only way I could have found it would be driving down the
6 street, because I didn't walk anywhere.

7 BY MS. WILKENS:

8 Q Well, Ms. Epler, is it possible that someone else
9 brought the garment to your attention?

10 MR. ALEXANDER: Is that a question --

11 THE WITNESS: No.

12 MR. ALEXANDER: -- your Honor? Objection.

13 THE COURT: Overruled.

14 THE WITNESS: No, I don't.

15 BY MS. WILKENS:

16 Q All right. So you -- you're positive?

17 A I'm positive that I was the one that found it, yes.

18 Q Okay. And why are you positive you're the one that
19 found it?

20 MR. ALEXANDER: Objection. Argumentative.

21 THE COURT: Overruled.

22 BY MS. WILKENS:

23 Q What allows you to remember this so many years later?

24 What is it about it --

25 A Because --

1 Q -- that you recall?

2 A -- the only people in my household at the time was my
3 son who was 10 or 12 years old and was not aware that much,
4 and I -- my husband was very unaware of what anything was
5 going on, okay.

6 Q All right.

7 A So he wouldn't -- he wouldn't have brought it to me,
8 and neither would my son.

9 Q All right. So --

10 A And I was the only one that was really concerned and
11 looking out and trying to help find this person.

12 Q Okay. And so you have -- you are able to recall what
13 you did to try and help find this person?

14 A Everywhere we looked, we were looking -- I mean, in our
15 total awareness, in our everyday living was focused on
16 what -- you know, and being very aware of what we were
17 seeing anywhere at that time.

18 Q Now, had you been instructed by local law enforcement
19 to be on the lookout for particular things that you could
20 look for to be of assistance?

21 A I don't think it was a particular thing. I think it
22 was just an awareness.

23 Q Okay. Now, you were -- you were heading a neighborhood
24 watch group, correct?

25 A I was -- yeah. I was just getting -- we were going to

1 start a big one out there, yes.

2 Q Okay. And you got involved because of the murders,
3 right?

4 A Yes.

5 Q Okay. And getting involved in the community with
6 neighborhood watch, it's not possible that someone would
7 have called you up and told you they had found something?

8 A No, no.

9 Q Okay. And why isn't that possible?

10 A If I remember correctly, I found the shirt before that.

11 Q Okay. So you --

12 A I don't think it was found after that.

13 Q All right. So you hadn't made any contacts for
14 neighborhood watch at that point?

15 MR. ALEXANDER: Objection.

16 THE WITNESS: I didn't say that. I said that I
17 thought that I found the shirt before we had the
18 neighborhood watch meeting.

19 BY MS. WILKENS:

20 Q Okay.

21 A Okay.

22 Q Had you contacted the Sheriff's Department about
23 neighborhood watch before finding the shirt?

24 A I'm not sure, but I think I did.

25 Q Okay. And why do you think that is?

1 A I think that because I talked to the Sheriff's
2 Department directly after the murders.

3 Q All right. So you spoke to the Sheriff's Department
4 about the murders before you found the shirt?

5 A I believe so.

6 Q Okay. And why -- why is it that that's your belief?

7 A Because we were all terrified.

8 Q All right.

9 A And I -- I spoke to them, and then we started -- I
10 believe we started talking about the neighborhood watch
11 meeting, but I'm pretty sure I found the shirt before that.

12 Q All right. So you found -- you believe you found --

13 A Before the meeting.

14 Q -- the shirt before the meeting?

15 A Yes.

16 Q Okay. And do you have a recollection as to how long
17 after the murders you called the Sheriff's Department the
18 first time?

19 A The first time?

20 Q Correct.

21 A I would think probably the next day or two. I don't
22 think it was that very far away.

23 Q Okay.

24 MR. ALEXANDER: I'm sorry. Did you say after the
25 meetings? I think maybe you misspoke. Did you mean after

1 the murders?

2 THE COURT: She said after the murders.

3 MR. ALEXANDER: I mis -- then I misheard. I
4 apologize.

5 BY MS. WILKENS:

6 Q Now, when Ms. White called you --

7 A Uh-huh.

8 Q -- and that would be the initial phone call -- and
9 discussed this with you, did she tell you why she was
10 calling you?

11 A I believe she said they were looking into the whole
12 case again.

13 Q All right.

14 A I was surprised. I actually thought Mr. Cooper had
15 been executed. I had no -- didn't know anything about it.

16 Q Now, when Ms. White called you, did she ask you
17 questions?

18 A Yes, I believe so.

19 Q And what did she ask you about?

20 A I believe she asked about the blue shirt.

21 Q All right. And did she ask you what color shirt you
22 found or did she ask you about a blue shirt?

23 A I'm not sure. I don't remember which came up first. I
24 don't know if she just asked me about a shirt and then it
25 came to a blue shirt.

1 Q Do you remember telling the -- the agents from the
2 Justice Department that you were referencing a blue shirt
3 because that's what you had been told?

4 A We discussed a blue shirt.

5 Q Before Ms. White called you, did you recall that you --
6 did you know before Ms. White called you that you had found
7 a shirt that was blue in color?

8 A To be honest, I hadn't thought about the murders in 21
9 years.

10 Q But before Ms. White called you and started talking to
11 you about a blue shirt, would you have known that the shirt
12 that you called the Sheriff's Department about was blue in
13 color?

14 MR. ALEXANDER: Objection, your Honor. Misstates
15 the prior testimony.

16 THE COURT: Overruled.

17 THE WITNESS: That's hard for me to answer seeing
18 I hadn't thought about the murders in 20 years.

19 THE COURT: What would be your answer -- what is
20 your answer?

21 THE WITNESS: Pardon?

22 THE COURT: What is your answer?

23 MR. ALEXANDER: Objection, your Honor. I hate to
24 object to the Court's question, but I mean if she had
25 thought about it, would she have thought about a blue shirt?

1 THE COURT: No.

2 MR. ALEXANDER: I don't understand.

3 THE WITNESS: I hadn't thought about it at all,
4 whether it was a shirt or anything else.

5 BY MS. WILKENS:

6 Q What I'm asking you is Ms. White called you --

7 A Uh-huh.

8 Q -- and she wanted to talk to you about a blue shirt.

9 A Uh-huh.

10 Q And what I'm asking you is are you assuming the shirt
11 was blue because that's what people have been talking to you
12 about or do you now sitting here today, 21 years later, can
13 you visualize the article of clothing you found, and do you
14 recall that it was blue?

15 A Yes, I do recall it was blue.

16 Q Okay. What shade of blue was it?

17 A I -- that I don't remember. I do think in the pictures
18 that we show, it doesn't -- to me it does not look blue.

19 Q You were shown pictures?

20 A I mean, they -- the pictures that I saw looked -- they
21 could be faded.

22 Q Were the pictures black and white, ma'am?

23 A These pictures --

24 Q Yes.

25 A -- are black and white, yes.

1 Q Were you shown black and white photographs?

2 A Yes.

3 Q Okay. And so you're telling me that the black and
4 white photographs do not appear to depict a shirt that's
5 blue?

6 A They depict a shirt that could be light blue, but it
7 doesn't look like it could be a darker blue.

8 Q All right. Well, I mean, you just told me you didn't
9 know what kind of blue. Are you now telling me that it's a
10 dark blue?

11 MR. ALEXANDER: Objection, your Honor.

12 THE COURT: Overruled.

13 MR. ALEXANDER: Misstates testimony.

14 THE COURT: Overruled.

15 THE WITNESS: I don't remember what shade of blue
16 it was.

17 BY MS. WILKENS:

18 Q Okay. But you remember it was blue?

19 A Yes.

20 Q Okay. It could have been light blue?

21 A It could have been, but it --

22 Q I'm sorry. I'm not trying to be difficult, but I'm
23 just -- I don't understand why you look at a black and white
24 photograph and decide that it's not blue in color.

25 A I didn't say it wasn't blue. I said it wasn't a very

1 dark blue. I work with color all the time, okay. And I do
2 know that if you photograph a dark blue shirt, it's going to
3 photograph differently than if you photograph a light blue
4 shirt.

5 Q So when you said the photographs don't look like the
6 garment you saw --

7 A I -- that's not what I said. I said it didn't look
8 like it was a darker blue shirt.

9 Q Okay. But are you telling me that you recall it being
10 dark blue?

11 A I -- the recollection I have it was medium to dark. I
12 don't recall anything being real light.

13 Q Okay. So but you're sure it was blue?

14 A Yes.

15 Q It couldn't have been any other color?

16 A No.

17 Q Okay. And you remember that 21 years later?

18 A I remember it, and I also, after reading this, it
19 impressed it on my memory more, yes.

20 Q Well, I'm -- I'm trying to separate out what has
21 impressed upon your memory from the information and the
22 discussions you've had recently, and I'm asking you before
23 everyone started calling you and asking you things, did you
24 have a specific recollection, you have a memory in your mind
25 of a blue shirt?

1 MR. ALEXANDER: Objection, your Honor. It's been
2 asked and answered. She didn't --

3 THE COURT: Overruled.

4 MR. ALEXANDER: -- think about it for 21 years.

5 THE COURT: Overruled.

6 THE WITNESS: And I can just tell you the same
7 thing I told you before. After 21 years, I had hoped this
8 was gone away. It has not been part of my life for over 21
9 years. So I -- I never thought of this until Ms. White
10 called me, to be honest with you, at all.

11 BY MS. WILKENS:

12 Q Now, what -- what kind of shirt was it?

13 A To the best of my recollection, it was a T-shirt.

14 Q Okay. And did it have any writing on it?

15 A Not that I recall.

16 Q Did it have a pocket on it?

17 A Not that I remember.

18 Q Do you remember handling the shirt?

19 A I don't think I would have handled it, simply because
20 if I was looking at something that was evidence, I wouldn't
21 want to -- I wouldn't want to touch it.

22 Q Okay. So it's your recollection that when you saw a
23 garment, you thought it was possible evidence?

24 A It certainly crossed my mind, yes.

25 Q And why -- why did you think it was possible evidence?

1 A Because there wasn't any -- it wasn't -- we didn't live
2 in an area where things are strewn along side of the road,
3 and because we were all aware that anything we found might
4 possibly have to do with the murders, it wasn't -- I mean,
5 we didn't live that very far away from English Road.

6 Q Now, do you recall any stains or anything on the shirt?

7 A I think that I saw something that I thought was blood,
8 but I -- I'm not an expert. So that's why I called the
9 Sheriff's Department.

10 Q Okay. And -- and you thought it was blood based on the
11 color?

12 A I just think -- I think not necessarily maybe the color
13 but just simply because there was something on it out of the
14 ordinary.

15 Q Okay. But did you think it was blood?

16 A I think after what -- what we went through, yes, that
17 would be the normal assumption that I would have.

18 Q All right. And so the shirt wasn't so dark that you
19 couldn't discern stains on it?

20 A Correct.

21 Q All right. Now, if you could turn to DDDDD, which is
22 the transcript of your interview with the Department of
23 Justice --

24 A Yes.

25 Q -- and if you could turn to page 36.

1 A Okay.

2 Q I'm sorry. You're going to have to turn to page 35 to
3 put this in context.

4 THE COURT: Keep your voice up.

5 MS. WILKENS: Sorry.

6 BY MS. WILKENS:

7 Q If you could turn to page 35, and if you could read to
8 yourself the question at lines 23 to 25 and then turn to the
9 following page and read the answer.

10 A I skipped a page. Okay. What is it that you wanted?
11 I'm sorry.

12 Q Okay. Now, is it -- is it correct that you have a
13 vague recollection of driving between Carbon Canyon and
14 Glenridge on Payton Drive and noticing a shirt?

15 MR. ALEXANDER: Objection as to time. Then, at
16 the time it was made, or today?

17 THE COURT: Overruled.

18 THE WITNESS: I don't know what -- you said 35 and
19 36. I --

20 BY MS. WILKENS:

21 Q Yes, ma'am.

22 A What -- what numbers?

23 Q Well, I'll withdraw the question. We'll just move
24 along. If you could -- if you could please be kind enough
25 to turn to CCCCC-1.

1 A Uh-huh. The pictures?

2 Q Yes, ma'am.

3 A Okay.

4 Q Now, do you -- do you have any recognition of the area
5 that's depicted in CCCCC-1?

6 A To the best of my knowledge this is, I think, Payton --
7 here we go again -- can I show you in here?

8 Q Yes, ma'am.

9 MR. ALEXANDER: Your Honor, we didn't mark that.
10 I wonder if we ought to put a designation on it.

11 THE COURT: You may.

12 MR. ALEXANDER: Thank you. Can we mark it as --
13 for demonstration purposes -- demonstrative purposes as
14 Petitioner's Exhibit --

15 THE CLERK: Next in order is 39.

16 THE COURT: 39.

17 MR. ALEXANDER: I'll put it in for whatever
18 purpose. It's your -- reflecting --

19 THE COURT: It's 39. It's not just for -- sure,
20 marked Exhibit 39.

21 MR. ALEXANDER: All right. For the record,
22 Exhibit 39 is a hand-drawn diagram of the Payton Canyon --
23 Carbon Canyon Road prepared by Ms. Epler.

24 THE COURT: Okay. Could we have the question
25 again?

1 BY MS. WILKENS:

2 Q Yes. Ms. Epler, could you please indicate on the
3 diagram where you believe the location depicted in the
4 photograph would be?

5 A I believe it -- it's in this area. It's -- I believe
6 it's after English Road, more toward the Canyon Corral Bar.
7 That's the only -- that's an area that was two lane. This
8 is -- this is the divided street up here. So, to the best
9 of my knowledge, that would be where it is.

10 Q Okay. Thank you. Now, were you able to recognize any
11 of the people standing around in the photographs?

12 A You know, I really really tried. I thought one of them
13 might be my son, but I really don't recognize any of the
14 people per se.

15 Q And your son was only 11 at this time, correct?

16 A He was 11 or 12 I believe.

17 Q Now, inviting your attention to CCCCC-3 --

18 THE COURT: Which one do you think is your son?

19 THE WITNESS: I don't think any of them is. I'd
20 be a terrible mother if I couldn't recognize him. Okay.
21 Three?

22 BY MS. WILKENS:

23 Q Yes, ma'am. Were you able to recognize anything in
24 CCCCC-3?

25 A No.

- 1 Q And asking you to turn to the next photograph CCCCC-4,
2 were you able to recognize anything --
- 3 A No.
- 4 Q -- in that photograph?
- 5 A I don't.
- 6 Q Okay. And directing your attention to the last
7 photograph CCCCC-5, do you recognize anything there?
- 8 A No, I don't.
- 9 Q Okay. Now, is it -- is it your testimony that you
10 recall speaking with a Deputy Fields when you located the
11 garment?
- 12 A He's the one that came to the house.
- 13 Q All right. Now, when you say he came to your house,
14 are you talking about the neighborhood watch meeting?
- 15 A No. He came about the shirt.
- 16 Q All right. So he came to your house to talk to you
17 about the shirt?
- 18 A Uh-huh.
- 19 Q Okay. And do you recall how long after you called the
20 Sheriff's Department that Deputy Fields came to your home?
- 21 A No, but I -- I believe it was the same day.
- 22 Q Okay. Do you remember what time of day you called?
- 23 A No, I do not.
- 24 Q Okay. Do you remember if it was daylight when you
25 called?

1 A I would -- yes.

2 Q And you -- yes because you're making an inference or
3 yes because you recall?

4 A Do I honestly recall exactly? No, I don't.

5 Q All right. So you don't recall whether it was daylight
6 or not?

7 A Pardon?

8 Q You don't recall if it was daylight out when you called
9 the Sheriff's Department?

10 A No, but I wouldn't call at night.

11 Q Well, I'm not asking what you think you would do. I'm
12 asking if you recall when you called.

13 MR. ALEXANDER: Objection, your Honor. It's
14 argumentative.

15 THE COURT: Overruled.

16 THE WITNESS: It would -- it would have had to be
17 in the daytime.

18 BY MS. WILKENS:

19 Q Why is that?

20 A Why?

21 Q Yes.

22 A Because that's probably when I found the shirt, in the
23 daytime. I wasn't going to find it at night.

24 Q Okay. So do you recall what time of day you found the
25 shirt?

- 1 A Exactly? No, I do not.
- 2 Q All right. So you don't have a memory of whether it
3 was during the day or at night?
- 4 A It would have to be in the daylight to see it.
- 5 Q Well, I'm asking you if you recall. I'm not asking you
6 to infer that it had to be in daylight. I'm asking if you
7 have a specific recollection.
- 8 A No, I do not have a specific time in mind.
- 9 Q All right. And do you know if you accompanied Deputy
10 Fields to the location of the shirt?
- 11 A I do not remember.
- 12 Q Okay. Do you have a recollection of telling Deputy
13 Fields where to find the shirt?
- 14 A I'd have to tell him.
- 15 Q No --
- 16 A Okay. No, I do not recall, okay.
- 17 Q Thank you. Now, do you recall telling Deputy Fields
18 what color the shirt was?
- 19 A Again, I cannot remember 21 years ago. It was a blue
20 shirt. That's what's in the log. I mean --
- 21 Q Again, Ms. Epler, I don't want you to tell me it's a
22 blue shirt because that's what the log says. I want you to
23 tell me it's a blue shirt because that's what you remember
24 sitting here 21 years later. Now, was it a blue shirt?
- 25 A Yes.

1 Q And how do you know that?

2 MR. ALEXANDER: Your Honor, that has been asked
3 and answered.

4 THE COURT: Overruled. Overruled.

5 THE WITNESS: Was it a blue shirt, is that what
6 you're asking me?

7 BY MS. WILKENS:

8 Q I want to know if the shirt --

9 A I saw the shirt. That's how I know it was blue.

10 Q All right. So you recall it being blue?

11 A Yes.

12 Q And so it has nothing to do with reading the log and
13 seeing the word blue, correct?

14 A I don't think it had an awful lot to do with the log.
15 I just think it just reinforced my memory.

16 Q Okay. So you had a memory before anyone called you 21
17 years after the fact to talk about it -- I just want to know
18 if you know it's blue or if you were told it was blue
19 recently. That's very important.

20 A It was a blue shirt.

21 THE COURT: Listen to the question.

22 BY MS. WILKENS:

23 Q Okay. Ms. Epler, what we need to know is do you have a
24 memory of finding the shirt and your memory includes your
25 knowing that it was blue as opposed to any information that

1 you have recently received either through conversations or
2 through looking at logs. Can you tell the Court that you
3 knew from your own memory 21 years later it was blue before
4 anyone ever called you?

5 A I think the only way we can get the answer to this
6 question, to be fair to the Court, is to give me sodium
7 pentothal. I truly do, and I'm not trying to be funny.

8 Q No, no.

9 A I want to be honest with you and with the Court.

10 Q Now, if I can clarify, when you indicate that the only
11 way to be fair to the Court and to be honest is to have
12 sodium pentothal, are you saying that you cannot say that
13 you have a specific recollection of what color shirt it was?

14 A I can sit here and tell you yes, but it's 21 years. I
15 could make a mistake.

16 Q Well, you've testified previously that you have no
17 doubt that you found a blue shirt, and I want to know --

18 A But you continue to -- to come at me, and it confuses
19 people.

20 Q Okay. I'm not trying to confuse you.

21 MR. ALEXANDER: Your Honor, I think 403 we're --

22 THE COURT: Overruled. Overruled. I've read the
23 interview. How could one person say at one time they don't
24 know and then say now that they do.

25 MR. ALEXANDER: She didn't say that. She said it

1 was vague and they didn't send her the log, and that
2 confirmed it. And now, having thought about it, she's quite
3 certain about it, and this is -- and I really do think this
4 is inappropriate for a witness who --

5 THE COURT: One, it was you that wanted her to
6 come out here.

7 MR. ALEXANDER: Absolutely.

8 THE COURT: The Attorney General thought it was
9 fine, and the Court thought it was fine, given her
10 situation, not to --

11 MR. ALEXANDER: The Attorney General did not want
12 this witness --

13 THE COURT: -- not to impose --

14 MR. ALEXANDER: -- to come out, your Honor.

15 THE COURT: -- upon your time and bring you out
16 here, and so I think that it's significant to find out what
17 she recalls, and nobody's intending to harass her, and I
18 think she's being very truthful and --

19 MR. ALEXANDER: I don't know what more --

20 THE WITNESS: I'm trying to. I really am. I
21 don't want to make --

22 THE COURT: What we're trying -- let's say
23 somebody called you a month ago, your son, and said, "Mom,
24 what color was that shirt," would you have been able to say?

25 THE WITNESS: I think I probably could.

1 THE COURT: You think so?

2 THE WITNESS: I think so.

3 THE COURT: All right. Thank you.

4 BY MS. WILKENS:

5 Q Now, Ms. Epler, you're saying that Deputy Fields who
6 came to your home about the shirt, are you saying he also
7 came to your home for a neighborhood watch meeting?

8 A Yes, I believe so.

9 Q Okay. And are you going by his appearance or did he
10 give you his name both times?

11 A His name. His name.

12 Q Okay. And so you recall it was the same gentleman?

13 A Yes.

14 Q Now, Glenridge in 1983 dead-ended, correct?

15 A Uh-huh.

16 Q Okay.

17 A Yes.

18 Q So there was really only one way to come into Glenridge
19 and that would have been off Payton?

20 A Off Payton and make a left.

21 Q All right. So that's the only way you would enter your
22 neighborhood?

23 A Yes.

24 Q Okay. And --

25 A On that end of Glenridge. There was another end out on

1 the other side.

2 Q Okay. And in terms of your indicating where you found
3 this shirt, you have a recollection of that. You're not
4 just going by the information in the log, correct?

5 A No. As I stated before, to the best of my
6 recollection, that would be the area I would have found it
7 in.

8 Q Now, can you tell me in relation to -- I'm sorry.

9 Excuse me. Strike that.

10 When do you recall first hearing about the murders?

11 A When do I first recall it?

12 Q Yes.

13 A I believe it was on -- I think -- I think I heard it
14 from television.

15 Q Okay.

16 A I think the TV was on that day.

17 Q So do you think you heard about it the day the bodies
18 were found or was it later?

19 A No, I'm sure it was the same day.

20 Q And do you have a recollection as to how long after you
21 learned of the murders that you found the shirt?

22 A I think I just answered this a little bit ago. To the
23 best of my knowledge, it was found before they found --
24 right around -- I would say -- I would say within the first
25 week after the murders.

1 Q And do you remember whether it was a weekday? Is there
2 any way --

3 A No.

4 Q -- for you to remember?

5 A I do not.

6 Q And did you have a set pattern as to when you would
7 travel to and from your neighborhood?

8 A No.

9 Q So it could have been errands, could have been
10 anything?

11 A Yes.

12 Q Okay. Now, in addition to Ms. White calling you and in
13 addition to Agent Shakowsky calling you --

14 A Uh-huh.

15 Q -- have you had phone calls from anyone else talking to
16 you about the blue shirt?

17 A Adrienne from the Attorney General's Office was the
18 last call.

19 Q Okay. So that would be Adrienne Denault?

20 A I'm sorry. What?

21 Q Adrienne Denault?

22 A I believe that was her name.

23 Q Okay. And prior to that?

24 A I should have brought -- I have a log at home -- at the
25 hotel. Ms. White, and I talked with the sheriff and

1 Barbara, and then I talked to -- I'm talking to myself. I'm
2 sorry.

3 THE COURT: That's okay.

4 THE WITNESS: I think Adrienne was the last person
5 to call other than David.

6 BY MS. WILKENS:

7 Q Okay.

8 A I think he was the final person.

9 Q Now, when did Mr. Alexander first contact you?

10 A I think it was about a week -- about a week ago.

11 Q Okay. And why did he contact you?

12 A He wanted to talk to me about what was going on.

13 Q Okay. And by what was going on, what do you mean?

14 A With Kevin and he wanted to know if I had seen the log,
15 and I said no. He -- in fact, I was very very upset when he
16 called me. I told him I didn't want to talk to him and that
17 I was -- I was just tired of the whole thing, but I told
18 him, I said, "I will listen to what you have to say."

19 Q Okay. And what did he have to say?

20 A He told me about -- he asked me if I had seen the log
21 and the entry about the blue shirt, and I said no, I hadn't.
22 In fact, just to back up a little bit, when I talked to
23 Adrienne, I asked her, I said, "Why can't I get a
24 transcript? You call me after 21 years, and you -- you come
25 at me with all these questions and things. How -- you know,

1 how would I even remember? You have the advantage of having
2 a transcript. You know what you're talking about. I
3 don't." And she said, no, I couldn't get it unless I'd pay
4 for it or something.

5 The next call I got was from David, and he asked me if
6 I had seen the log. I said no. He said, "I'll send you a
7 copy of it." He asked me if I had a transcript of what took
8 place between Barbara Shakowsky and the other gentleman. I
9 said no, I didn't have it, and he said he would send me a
10 copy of it. He said he would also send me a copy of the
11 letters that were -- had been sent to the Attorney -- to the
12 Government, which he did.

13 Q And did you read those letters?

14 A Yes, I did.

15 Q Do you have them with you today?

16 A I don't have them here. I have them at the hotel.

17 Q And what do the letters say?

18 A I believe there are six letters, and every one of them
19 in different degrees have asked the governor to look into
20 this case again, to not give Mr. Cooper the death penalty,
21 and I might interject here. I'm the one that really thought
22 he should die until I read these letters.

23 Your Honor, can I say what I really feel?

24 THE COURT: Yes.

25 THE WITNESS: Okay. The reason I agreed to come

1 out here after I said I couldn't -- and some of my
2 circumstances have changed a little bit so it allowed me a
3 little bit of time -- as a private citizen, as a person
4 that's lived through this, if what I read in these letters
5 is true and can be proved, and I hope it can, then we've put
6 a man in prison for 21 years needlessly because there was
7 evidence that was not looked into. There were people that
8 were not interviewed. There was evidence that was thrown
9 away or suppressed. And I think we've done a terrible
10 injustice if we don't continue to delve into what needs to
11 be looked at. And that's -- that's why I took the time to
12 come out here.

13 There's just too many things and too many
14 different letters and too many different ways that, to me,
15 reading them says -- I mean, there is one letter that says
16 they -- this juror knew that there was a coverup, he knew
17 that there was information that was not there. He knew that
18 a lot of these things are going on, and how can you convict
19 somebody knowing that? It's -- it's beyond my
20 understanding.

21 BY MS. WILKENS:

22 Q Now, Ms. Epler, when you spoke to Ms. Denault, did you
23 discuss how you might come out and testify?

24 A You mean when I said I needed some money?

25 Q Yes.

1 A Yeah, I recall that.

2 Q And --

3 A Because I -- at that time I was very very short. I was
4 not -- I was terrified because I had some things that I
5 couldn't pay.

6 Q Did you tell Ms. Denault that you wanted money to cover
7 both your expenses and loss of income?

8 A I -- I didn't say -- I said it, that this was the
9 situation that I was in. I didn't hold it over her head and
10 say I won't come out unless you give me money. I just
11 explained my situation --

12 Q Did you --

13 A -- the way it was.

14 Q Did you ask Ms. Denault for \$1,000?

15 A I said that would cover what I needed to have at that
16 time, yes.

17 Q To cover your loss of income?

18 A That and the things that I was facing that had to be
19 paid right away if I -- when I'm here, I can't be working.
20 When I'm here, I can't be looking for a job, okay. This has
21 taken all summer. Every time I turn around, somebody's
22 calling me. So it has me to the point where it's very very
23 hard to even look for a job. I didn't -- I didn't say it
24 the way I think you're trying to put it. I just was very up
25 front with her and told her what my situation was at the

1 time.

2 Q And you asked for \$1,000 to cover your loss of income?

3 A I didn't -- I -- you're putting it in another context.

4 Q I'm just asking you a question.

5 A I said I -- that's what I needed to cover my bills.

6 Q Now, you have flown out from Florida, correct, to
7 testify?

8 A Yes, I did.

9 Q And your expenses are being paid, correct?

10 A Yes.

11 Q And what do those expenses consist of?

12 A My hotel bill, my flight.

13 Q Anything else?

14 A Not really.

15 Q Were you given --

16 A Hopefully meals.

17 Q Were you given a witness fee?

18 A No. I haven't received anything.

19 Q Has your son flown down to see you today?

20 A No.

21 Q So your son's not flying down here to see you?

22 A No. I'm going to probably take the train up tomorrow
23 to see him.

24 Q All right. And who's paying for that, ma'am?

25 A I probably will.

1 Q You don't know?

2 A Or he will. Well, it's either he or I.

3 Q Your son?

4 A Yes.

5 Q All right. And when are you returning to Florida?

6 MR. ALEXANDER: Objection, your Honor.

7 THE COURT: Overruled.

8 MR. ALEXANDER: It's invading privacy.

9 THE COURT: Overruled.

10 THE WITNESS: I may stay until Sunday with him.

11 BY MS. WILKENS:

12 Q All right. And how will your accommodations be paid
13 until you return to Florida?

14 A I'll either stay at his house or he'll take care of
15 them.

16 Q All right. And you flew in today, correct?

17 A Yes.

18 Q And where are you staying tonight?

19 A I'm staying at the Windham.

20 Q The Windham?

21 A Uh-huh.

22 THE COURT: It's government rate.

23 MR. ALEXANDER: Government rate.

24 THE COURT: Government rate.

25 MR. ALEXANDER: Negotiated that. My best

1 negotiation so far.

2 THE COURT: Government rate.

3 MS. WILKENS: I have no further questions, your
4 Honor.

5 REDIRECT EXAMINATION

6 BY MR. ALEXANDER:

7 Q Let me go to one thing Ms. Wilkens just raised, and
8 that is with regard to these letters. You raised the
9 letters with me, correct?

10 A I'm sorry. I couldn't hear.

11 Q You raised the letters with me, correct, the issue of
12 statements that have been made, with me?

13 A Yes.

14 Q Okay. And then I said -- asked you if you'd seen the
15 letters, correct?

16 A Correct.

17 Q All right. And the statements that -- I'm sorry.
18 You -- the statements that you referenced to me are
19 statements that Mr. -- Deputy, whatever it is, Detective
20 McPhale had said to you people had interviewed and twisted
21 things, correct?

22 A That's what I believe, yes.

23 Q All right.

24 THE COURT: That is true based on evidence that
25 we've heard here in court. That is a fair statement.

1 MR. ALEXANDER: I don't believe so, your Honor,
2 but we're -- we're happy to go -- go through that, but just
3 so that there's no suggestion --

4 THE COURT: The declarations and testimony in
5 court, as I've said, on both sides have not necessarily
6 panned out to be the same as the declarations. People have
7 disavowed their declarations in whole or significant part on
8 both parts.

9 MR. ALEXANDER: All right. And that may be.
10 Certainly Mr. Taylor is the outstanding example of that.
11 BY MR. ALEXANDER:

12 Q But with regard to you so that there's no suggestion, I
13 asked you if you wanted to see the letters to which Mr.
14 McPhale made reference, correct?

15 A Correct.

16 Q And you asked me if I would send them, correct?

17 A Yes.

18 Q All right. And I did that, correct?

19 A Uh-huh.

20 Q All right. Now, as for money, have I promised you any
21 money in connection with your testimony?

22 A No.

23 Q Have I offered to pay any portion of any visit you may
24 have with your son or family?

25 A No, no.

1 THE COURT: While you are here, we should get you
2 to sign the witness forms so that we don't have to track her
3 down.

4 MR. ALEXANDER: So that I can get that, yes, taken
5 care of. Thank you, your Honor.

6 THE COURT: I think that's under the podium.

7 BY MR. ALEXANDER:

8 Q Now, I want you to -- Ms. Wilkens showed you the
9 pictures that are in CCCCC, all right.

10 A Uh-huh.

11 Q Would you come up to the map and write five Cs where
12 you believe those pictures reflect or if you don't want to
13 get up, tell me if I'm pointing to the approximate --

14 A Above the T.

15 Q Above the T?

16 A Right around the T I think.

17 Q All right.

18 A Not on that side.

19 Q On the --

20 A I think it's on the right side.

21 Q All right. I'm going to draw an arrow and then put
22 five Cs. Now, is that a correct reflection of where you
23 believe --

24 A That's where I think it is.

25 Q All right. Fine.

1 A But I haven't been out there for 20 years.

2 Q Right. And without getting into the functions of the
3 brain and how you know that, you recognize that as a two-
4 lane road?

5 A Yes.

6 Q And that's clearly distinct from the road where
7 Glenridge is?

8 A Uh-huh.

9 Q And where you found the T-shirt?

10 A Uh-huh.

11 Q That's the blue shirt?

12 A Right.

13 Q All right. Now, is it your understanding still as you
14 sit here today -- withdraw that.

15 So the area where you found the blue shirt and where
16 the pictures are are two different areas in your mind?

17 A Oh, yeah. Yeah.

18 Q Did you say oh, yes?

19 A Yes.

20 Q Okay. And when you reviewed those pictures that are
21 CCCCC, okay --

22 A Uh-huh.

23 Q -- were you led to believe by Ms. Shakowsky and by Mr.
24 Willkomm that that's where the blue shirt was found, when
25 they asked you about that?

1 MS. WILKENS: Objection. Speculation.

2 MR. ALEXANDER: I'm asking what she thought at the
3 time.

4 THE COURT: Overruled. If you know.

5 THE WITNESS: I think that's what I thought, yes,
6 because that's what we were discussing when she said she was
7 going to send them.

8 BY MR. ALEXANDER:

9 Q Okay. Now, you -- sorry. You also mentioned there's
10 another end of Glenridge. Was that true in 1983, the other
11 end of Glenridge?

12 A Yes. Glenridge goes down around to the bank and stuff.

13 Q Bank?

14 A You know, the little part of town.

15 Q Not Wells Fargo type bank?

16 A No. There's -- it wanders down, and then you make a
17 left on another street, and it takes you down to Carbon
18 Canyon. In that little area, there's --

19 Q Okay. Now, is there a Glenridge up near where I'm
20 pointing to that comes --

21 A It looks -- by your map it looks like there is one now,
22 but there wasn't one then.

23 Q Okay. But there wasn't then. All right. Now, Ms.
24 Wilkens also asked you about the time in which you found the
25 shirt. Direct your attention back to the entry on the log

1 that I believe is OOOO I think.

2 MS. WILKENS: It's NNNN, counsel.

3 MR. ALEXANDER: NNNN?

4 MS. WILKENS: Isn't it?

5 BY MR. ALEXANDER:

6 Q Remember the log that was --

7 A Uh-huh.

8 Q Okay. Would you look at that.

9 A I got it.

10 Q Okay. And you see the --

11 A Wait a minute.

12 Q I'm sorry.

13 A Yeah, I found it. I'm sorry.

14 Q All right. Do you see the entry of 1441?

15 A Yes, sir.

16 Q Is that consistent with your recollection of the
17 approximate time you found the shirt?

18 MS. WILKENS: Objection. Leading.

19 THE COURT: Overruled. If you know.

20 BY MR. ALEXANDER:

21 Q By the way, do you know what 1441 is time wise?

22 A No.

23 Q All right. Let me represent to you it's a military
24 description of 2:41 in the afternoon.

25 A Yes.

1 MS. WILKENS: Your Honor, I'm going to object.
2 There's no foundation. She hasn't -- she testified she
3 couldn't recall when she found the shirt. Now he's asking
4 if it is consistent with her recollection when she has none.

5 MR. ALEXANDER: She did. She thought it was
6 daylight, your Honor, and I'm just trying -- that's --

7 MS. WILKENS: No.

8 MR. ALEXANDER: -- exactly what --

9 THE WITNESS: I mean, it's daylight, but I -- I
10 don't know what time it was.

11 BY MR. ALEXANDER:

12 Q All right. But it was daylight, is that correct?

13 A As far as I know.

14 Q Thank you. All right. Now, finally, was the -- what
15 you thought was blood on the shirt the reason that you
16 thought that this shirt might be evidence?

17 A As far as I can recall, yes.

18 MR. ALEXANDER: All right. I have no further
19 questions. Thank you very much.

20 THE COURT: Anything further?

21 MS. WILKENS: Nothing further, your Honor.

22 THE COURT: I did want to say too a lot of
23 people -- I have the responsibility of hearing this case,
24 and then a lot of people such as yourself are brought here
25 21 years later, and obviously they have to leave their daily

1 lives and come here to the Court. And so it will be up to
2 the Court to appropriately evaluate all evidence.

3 Is everything that you said in -- to the
4 investigator true and correct?

5 THE WITNESS: As far as I'm concerned it is.

6 THE COURT: And everything that you said here in
7 court again true and correct?

8 THE WITNESS: To the best of my knowledge, yes.

9 THE COURT: All right. Thank you very much for
10 coming.

11 THE WITNESS: You're welcome.

12 THE COURT: So we do have the witness -- we have
13 the witness form for you to sign for witness fees and
14 expenses, and we'll take care of that.

15 THE WITNESS: I don't like filling out things I --

16 MR. ALEXANDER: Well --

17 THE COURT: Okay. Then what will happen is that
18 then they'll have to fill it out and send it to you, and
19 then the fees will be processed later.

20 THE WITNESS: What -- I mean I --

21 MR. ALEXANDER: I'm not your lawyer, but --

22 THE WITNESS: I don't know what to --

23 MR. ALEXANDER: This is a Federal District Court.
24 I can't imagine, but --

25 THE WITNESS: Is that what I should do? I don't

1 know. I --

2 MR. ALEXANDER: I think it would be more efficient
3 to have you sign the form and then it will be filled out
4 with your documentation of your expenses, although --

5 THE COURT: If you prefer, you can --

6 THE WITNESS: I'm just -- I have a real estate
7 license. I'm funny about --

8 THE COURT: Okay. Well, we can send it to you,
9 and then you can send all your expenses and then do that.
10 We have an address for you.

11 THE WITNESS: I'm just very funny about that.

12 THE COURT: We will need the expenses, right?

13 MR. ALEXANDER: I don't know the --

14 THE COURT: Why don't you take that with you and
15 then fill out the expenses and then send it back, and if
16 there's a miscue, then we'll get it back to you. So take
17 that with you, and then --

18 THE WITNESS: Send it back to you?

19 THE COURT: -- send it back to Mr. Alexander, and
20 then he'll get it to us.

21 THE WITNESS: All right.

22 THE COURT: Thank you.

23 THE WITNESS: Okay. Thank you.

24 (The witness was excused.)

25 THE COURT: Anything else?

1 MR. ALEXANDER: Your Honor --

2 MS. WILKENS: Your Honor, I was going to move
3 exhibits in if that's convenient.

4 THE COURT: You may.

5 MS. WILKENS: I believe I am going back to MMMM
6 through FFFFFF, with the exception of the EEEEE series that
7 has already been admitted.

8 THE COURT: Those are received. Plus what's the
9 number for the chart?

10 MS. WILKENS: Was it 33?

11 THE CLERK: 39.

12 THE COURT: 39.

13 MR. ALEXANDER: 39.

14 THE COURT: 39 is also received.

15 MR. ALEXANDER: May I take it off the -- and give
16 it to the -- what would you like us --

17 THE COURT: You get to keep it.

18 MR. ALEXANDER: I get to keep it?

19 THE COURT: Right? Don't you get to keep it?

20 THE CLERK: Yes.

21 THE COURT: Don't rip it.

22 MR. ALEXANDER: So what just came in, your Honor,
23 if I might please inquire for the exhibits that Ms. --

24 MS. WILKENS: It was MMMM through FFFFFF with the
25 exception --

1 THE CLERK: Please identify FFFFFF.

2 MS. WILKENS: That was the -- the Lance Stark blue
3 slip.

4 MR. ALEXANDER: Well, your Honor, I'm going to
5 have to object to that other than the fact it was marked
6 because there's been no foundation for what it is or
7 anything else. So I don't -- I'm not sure, other than
8 marking it, what it -- we don't know who wrote it, what it
9 is.

10 THE COURT: We could call back the person on the
11 discovery and then get them to say that or --

12 MS. WILKENS: It was -- it was provided as a part
13 of the defense trial file in '97. Detective Wilson has
14 identified the information as being consistent, and also Mr.
15 Kochis has attested to the numbering system of B786, which
16 would make it a blue slip from the San Bernardino Sheriff's
17 Department.

18 THE COURT: The Court receives it.

19 MR. ALEXANDER: For what purpose, your Honor?

20 THE COURT: This was handed over to the defense,
21 Lance Stark's name, at trial, saw suspects in Canyon Corral
22 Saturday night.

23 MR. ALEXANDER: Very well.

24 THE COURT: Also talked to them and saw vehicle
25 and Phillips.

1 MR. ALEXANDER: Well, I don't know what it means
2 or any of those mean, but we'll find a witness, hopefully
3 Phillips if he's around. Maybe he can help us with it. All
4 it is now is a piece of paper that was given to the defense.
5 We have no idea anything more than that, and certainly Mr.
6 Wilson knew nothing about it.

7 MS. WILKENS: Well, your Honor, I have lodged this
8 with the Court because --

9 THE COURT: The Court receives it. This was
10 already -- Lance Stark was known to the defense at the time
11 of the trial.

12 MR. ALEXANDER: Well, that's what we -- we don't
13 know that, your Honor, because we don't know anything about
14 the document.

15 THE COURT: The Court -- the document is received.

16 MS. WILKENS: Thank you, your Honor.

17 THE COURT: If you need Mr. Kochis to talk -- he
18 already talked about the numbering system.

19 MR. ALEXANDER: Yeah. Well, we're going to have
20 more evidence on that to address what Mr. Kochis said and
21 Mr. Ingels.

22 THE COURT: All right. Then the Court has -- let
23 me see counsel in chambers to just discuss some scheduling
24 matters, and then what that would include possible further
25 testimony of witnesses September 1 or 2. What, no can do

1 for you?

2 MR. ALEXANDER: I'm sorry. I cannot, your Honor.

3 THE COURT: 3? That's a Friday before Labor Day?

4 MR. ALEXANDER: Yes, your Honor, it is a Friday.

5 THE COURT: So it's Friday, let's --

6 MR. ALEXANDER: Uh --

7 THE COURT: Why don't we talk about it in
8 chambers. It's getting really warm here.

9 MR. ALEXANDER: Let me see what I have -- the
10 matter I have on the 2nd, I don't know if it will go over to
11 the 3rd. Okay. I --

12 THE COURT: Can you look?

13 MR. ALEXANDER: If I can call the Court tomorrow.

14 THE COURT: Sure.

15 MR. ALEXANDER: I'm happy to do that.

16 THE COURT: Okay. And we'll be talking about
17 Phillips, Fields --

18 MR. ALEXANDER: Mr. Fields is --

19 THE COURT: He's dead. Okay. Phillips and what
20 about the gang coordinator?

21 MS. WILKENS: Yes, the one --

22 MR. ALEXANDER: Mr. Ballard.

23 MS. WILKENS: Yes.

24 THE COURT: Different Ballard.

25 MR. ALEXANDER: Mr. -- yes, yes. He's never --

1 Mr. -- Mr. Ballard has never done EDTA testing.

2 MS. WILKENS: Correct. We'll stipulate to that.

3 MR. ALEXANDER: We'll stipulate to that. I'm
4 sorry, your Honor, but it is 5:00 o'clock. And then Mr.
5 Downing.

6 THE COURT: Is the --

7 MR. ALEXANDER: Mr. Downing was one of the --

8 THE COURT: Investigators, gang --

9 MR. ALEXANDER: -- counselors -- he was a
10 correctional counsel.

11 MS. WILKENS: A counselor two.

12 MR. ALEXANDER: Right. That was identified by
13 both --

14 MS. WILKENS: He's attempting to look around for
15 who spoke to Mr. Krupp now that the people that Mr. Krupp
16 recalled speaking to didn't speak to him.

17 MR. ALEXANDER: Well, I --

18 THE COURT: Well, we'll -- we'll just bring the
19 gang coordinator.

20 MR. ALEXANDER: I did --

21 MS. WILKENS: Yes, your Honor.

22 MR. ALEXANDER: I disagree with that, but I will
23 look back and give any other people we think and tell you
24 why we think it's important.

25 THE COURT: All right. We'll -- let's discuss

1 just a couple of scheduling things, and then we're in
2 recess.

3 (Pause to convene in chambers.)

4 THE COURT: I just want to remind you this is a
5 capital case and people have very strong feelings about it,
6 and to the extent that the record can be elevated, I think
7 that barbs going back and forth don't help the discussion.
8 So let's try to avoid that in the future.

9 I do have an order on the reconsideration that
10 then will permit Doctor Ballard over the objection of the
11 Attorney General to participate in the EDTA testing,
12 assuming that Doctor Sciudak also does the testing.

13 And so I have an order to give to you. That
14 contemplates that the shirt would be sent no later than
15 Monday, either delivered to sent to Doctor DeForest. So
16 either Mr. Simms or his designee can take it back or fly it
17 back.

18 MS. WILKENS: Would you -- would you want it --
19 oh, because they would be watching. And on that, can we say
20 Mr. Simms or his designee --

21 THE COURT: Right.

22 MS. WILKENS: -- with the understanding it might
23 not actually be a DOJ scientist?

24 THE COURT: Sure.

25 MS. WILKENS: We might designate an expert

1 independent of DOJ.

2 THE COURT: That's fine.

3 MS. WILKENS: Okay. And I apologize for not
4 knowing at this moment, but Mr. Simms isn't available.

5 THE COURT: And then the time frame would be
6 that -- and it would be area 6G.

7 MS. WILKENS: Okay.

8 MR. ALEXANDER: I tried to reach Doctor DeForest
9 as you requested, and I hope he's not on vacation. The east
10 coast -- the east coast at this time of the year is like
11 Europe, and I will try again this evening.

12 THE COURT: So what we're contemplating is for
13 Simms and DeForest to do the cut, mount, solution. I put in
14 here the phosphate buffer --

15 UNIDENTIFIED SPEAKER: Phosphate product buffer.

16 MS. WILKENS: Yeah, Doctor Sciudak is requesting a
17 methanol extraction of --

18 THE COURT: Do you have --

19 MR. ALEXANDER: Well, that will be his protocol.
20 No?

21 THE COURT: No. It would have to be for -- for
22 Doctor DeForest.

23 MS. WILKENS: Precisely. The person who does the
24 extraction has to use a -- an extraction buffer that's
25 consistent with the EDTA testing. He's telling me that for

1 his EDTA methodology and protocol he's requesting methanol.

2 I mentioned that counsel's request was for a phosphate --

3 MR. ALEXANDER: No. That was not a request.

4 MS. WILKENS: -- buffer solution. Well, it -- it
5 evolved from my intervention, I will admit, because it was
6 consistent with DNA testing.

7 MR. ALEXANDER: What you asked for is what we
8 agreed to do. Now we're changing to something else? I'll
9 raise it tomorrow.

10 MS. WILKENS: Well, I'm not changing because we
11 didn't anticipate --

12 THE COURT: Let me first say this. Is he saying
13 the phosphate buffer saline would not work?

14 MS. WILKENS: He's saying it will -- it could
15 adversely impact the results because when you use water --
16 and phosphate buffer saline is just a variation on that --
17 there's something where it can affect the testing, and
18 methanol would not.

19 THE COURT: And meth -- so methanol?

20 MS. WILKENS: Methanol would be his preference.
21 And -- but the thing we need to make sure is that's
22 consistent for Doctor Ballard's purposes as well --

23 THE COURT: Correct.

24 MS. WILKENS: -- because we can only use one
25 solution.

1 THE COURT: Okay. Is Doctor Ballard available
2 right now?

3 MR. ALEXANDER: It's 8:00 o'clock, 10 after 8:00,
4 but I'll try him.

5 THE COURT: Why --

6 MR. ALEXANDER: I'll try him -- I get up early in
7 the morning, and I call them early.

8 THE COURT: Why don't we do an amended order right
9 now. See if Thelma's around, and then what we could just do
10 with -- with an equal amount of an appropriate -- what
11 should we call it, solution?

12 MS. WILKENS: Well, yeah, a solution that's
13 consistent with both methodologies, and if it turns out that
14 there's some inconsistency there, then we would have to come
15 back to the Court.

16 THE COURT: Or one could be with one and the other
17 one could be with the other.

18 MS. WILKENS: I'm not sure because I'm thinking --
19 and, again, I apologize for my ignorance, but what
20 they've -- what I'm getting an impression of is you're
21 taking the stain off of the garment, and you're using an
22 extraction solution to do that.

23 THE COURT: Uh-huh.

24 MS. WILKENS: And then you're dividing the
25 solution.

1 THE COURT: Correct.

2 MS. WILKENS: And in order to divide the solution
3 and have the solution be the same, I don't think you can
4 pull half of it off using one particular buffer and then
5 pull another half off using another buffer.

6 THE COURT: I see.

7 MR. ALEXANDER: I just don't know whether there is
8 any basis -- whether there is a possibility of any EDTA
9 already existing in the methanol, which I suppose I ought to
10 like, but -- but I want to be honest about it. I simply
11 don't know. But I --

12 MS. WILKENS: Yeah, I don't think we'd need the
13 testing if that was the case.

14 MR. ALEXANDER: -- you know, I --

15 MS. WILKENS: I'm sorry, counsel. C13 is
16 commercially available. I was able to confirm that.

17 THE COURT: Okay. So --

18 MR. ALEXANDER: Do you know where so we can at
19 least --

20 MS. WILKENS: You want me to find out where it's
21 available?

22 MR. ALEXANDER: Please.

23 MS. WILKENS: You asked me to ask if it was
24 commercially available. You didn't ask me to find out
25 where.

1 MR. ALEXANDER: All right.

2 MS. WILKENS: Can I make the remark that you make
3 all the time about how Doctor Ballard should know because
4 he's an expert?

5 MR. ALEXANDER: He knows --

6 MS. WILKENS: Well, then why are you asking me?

7 MR. ALEXANDER: -- to synthesize it. He doesn't
8 know --

9 MS. WILKENS: Oh, okay.

10 MR. ALEXANDER: -- about commercial availability.

11 MS. WILKENS: All right.

12 THE COURT: Okay. So methanol?

13 MS. WILKENS: Right. And --

14 MR. ALEXANDER: What line are we on?

15 THE COURT: We're on page four.

16 MR. ALEXANDER: I'm there.

17 THE COURT: Line 17.

18 MR. ALEXANDER: We got to go to the order?

19 MS. WILKENS: Yeah.

20 THE COURT: So let me write in methanol, and I
21 need a pen.

22 MS. WILKENS: Okay. So we have a -- we have a
23 date certain for the evidence to be taken to Doctor
24 DeForest, correct?

25 THE COURT: And we have one week for them to cut,

1 pull it out, and do it, which means that tomorrow the two of
2 you -- why don't we have a telephone call --

3 MS. WILKENS: Okay.

4 THE COURT: -- tomorrow --

5 MS. WILKENS: Well, if we have -- if we have our
6 designee arriving on August 30th, your Honor --

7 THE COURT: Uh-huh.

8 MS. WILKENS: -- and then there's a week to do the
9 work --

10 THE COURT: Uh-huh.

11 MS. WILKENS: -- just from an expense standpoint,
12 you know, we'll comply and have the evidence there on August
13 30th, and I will be in deep trouble for paying for someone
14 to be in New York waiting for the work to be done.

15 THE COURT: Exactly.

16 MS. WILKENS: So, but are you envisioning it
17 taking a full week?

18 THE COURT: No. I'm envisioning that, not knowing
19 Doctor DeForest's schedule --

20 MS. WILKENS: Okay. But the evidence, you want
21 that sent by overnight. So the scientist doesn't have to go
22 with the evidence?

23 THE COURT: No.

24 MS. WILKENS: Okay.

25 THE COURT: It can be by overnight.

1 MS. WILKENS: Okay. I'm in enough trouble
2 about -- I get to go back and explain to Sacramento my
3 expenses, and I -- I just want to at least speak up and --

4 MR. ALEXANDER: The governor's in New York, so he
5 won't --

6 THE COURT: The governor's in --

7 MS. WILKENS: He has a different budget.

8 MR. ALEXANDER: You don't need to worry about --
9 where was I? What are we doing at line 17 now? We're
10 putting --

11 THE COURT: In fact, we'll do an amended one right
12 now.

13 THE CLERK: You just want methanol substituted?

14 THE COURT: Methanol instead of PBS.

15 THE CLERK: Okay.

16 MR. ALEXANDER: Well --

17 MS. WILKENS: And everyone's clear that Gary
18 Simms' designee might be outside DOJ because I don't want
19 anybody to suggest that we're misleading on that.

20 THE COURT: Yes.

21 MS. WILKENS: Okay.

22 THE COURT: That's fine.

23 MR. ALEXANDER: Your Honor, before we go making a
24 substitution, you had some other language of an
25 appropriate --

1 THE COURT: They need to know --

2 MR. ALEXANDER: -- phosphate --

3 THE COURT: -- in order --

4 MR. ALEXANDER: -- right, consistent with both
5 methodologies or something like that, because I don't
6 know --

7 MS. WILKENS: Well, an extraction solution that is
8 consistent with both methodologies.

9 MR. ALEXANDER: All right.

10 THE COURT: Okay.

11 MS. WILKENS: Because the --

12 MR. ALEXANDER: Let's use that as opposed to a
13 specific one.

14 MS. WILKENS: I don't believe that --

15 MR. ALEXANDER: I haven't a clue.

16 THE COURT: Doctor DeForest is not allowed nor do
17 I want him talking to Doctor --

18 MR. ALEXANDER: Right.

19 THE COURT: -- Sciudak and --

20 MS. WILKENS: Right.

21 MR. ALEXANDER: That's right.

22 MS. WILKENS: No communication.

23 THE COURT: So -- so we need to settle on this --

24 MR. ALEXANDER: This may be a non-issue, but --
25 right. I just --

1 THE COURT: -- scientifically. If the two of you
2 could -- why don't you do this. Take a look at this order,
3 and then we'll have a conference call tomorrow at 11:00?

4 THE CLERK: Yes. We have two matters at 9:00.

5 THE COURT: Yes, 11:00, and then one is to
6 change -- and we won't actually -- we won't --

7 MR. ALEXANDER: Do a supplemental now then?

8 THE COURT: Well, methanol you know for sure.

9 MS. WILKENS: Methanol I know for sure.

10 THE COURT: So let's put in methanol now. Make
11 sure that methanol works for --

12 MR. ALEXANDER: Yeah. I just don't want to say,
13 you know, that I've agreed that methanol's proper. I
14 haven't a clue. I just don't even have a clue. I mean, you
15 know, nor -- I was told to change it to phosphate buffer
16 saline. I did that.

17 MS. WILKENS: Well, that was to accommodate DNA
18 testing.

19 MR. ALEXANDER: No. That was to accommodate the
20 guys that aren't participating.

21 MS. WILKENS: No, no. That was to accommodate DNA
22 testing. That was the particular reason for going with
23 that, and we're not going to be doing DNA on 6G. So it
24 shouldn't be a concern.

25 THE COURT: If we need to later for a different

1 place --

2 MR. ALEXANDER: I just need to find out --

3 THE COURT: -- then we would do that.

4 MR. ALEXANDER: I just need to find out, your
5 Honor. I don't --

6 THE COURT: Okay.

7 MR. ALEXANDER: -- know methanol from --

8 THE COURT: Sure you do. You've heard of it.

9 MR. ALEXANDER: I know what -- I've heard of
10 methanol.

11 THE COURT: Then so what was contemplated is that
12 he -- Doctor DeForest and your designee, whoever that may
13 be, will do this work. I would estimate it could be done in
14 a day.

15 MS. WILKENS: Yeah. I don't think it's really
16 time consuming.

17 THE COURT: I do not think that it is difficult --

18 MS. WILKENS: Now, are we in an observer capacity
19 with respect to Doctor DeForest or is it a joint capacity?

20 THE COURT: You're in an observer capacity.

21 MS. WILKENS: Okay. So the decisions as to where
22 to cut on the shirt and what to do in terms of preparing all
23 the controls and everything will be done by Doctor DeForest.

24 THE COURT: Uh-huh.

25 MS. WILKENS: And we're simply observing?

1 THE COURT: Correct.

2 MS. WILKENS: Okay.

3 THE COURT: Except that the area is 6G.

4 MS. WILKENS: Correct.

5 THE COURT: And the control areas --

6 MS. WILKENS: But it says -- it says Petitioner's
7 expert, Doctor DeForest, and Respondent's designee shall
8 prepare. So the way this is written --

9 THE COURT: Okay. So --

10 MS. WILKENS: Could we have it where it's clear
11 that it's an observer capacity?

12 THE COURT: Uh-huh.

13 MR. ALEXANDER: To make it easier for the Court
14 and -- it would be fine for our part if you wanted to be
15 prepare it and send us -- in the morning before the 11:00
16 o'clock time. Up to you.

17 THE COURT: We could just go through it right now
18 and get your comments. Then we'll incorporate it. And then
19 if we need to incorporate any additional changes --

20 MS. WILKENS: Sure.

21 THE COURT: So we'll unfile this right now.

22 MR. ALEXANDER: The reason I wanted to do that,
23 your Honor, is because I, again, would like to make sure --
24 read it carefully and make sure that it's fine, and we can
25 talk about that at 11:00 tomorrow. There may be other

1 issues. Do you have any objection to my saying this to
2 Doctor DeForest and Doctor Ballard to make sure that they
3 don't see any issues?

4 THE COURT: I don't have any problem with that.

5 MS. WILKENS: I don't have any problem with that.

6 Now, just so we're clear too --

7 MR. ALEXANDER: Thank you.

8 THE COURT: So the time -- let me just say on the
9 time frame, the time frame would be up to one week to get
10 the evidence ready, and then they ship it to Doctor Sciudak
11 and Doctor Ballard, and then they have up to September
12 27th -- it would be much better for the Court if it's
13 sooner -- to get us the results, to do the test and get us
14 the results.

15 MS. WILKENS: I think we might be able to get it
16 sooner than --

17 THE COURT: Can you ask them too because I would
18 prefer -- the date I would prefer --

19 MR. ALEXANDER: Uh-huh.

20 THE COURT: -- my wish list for my own reasons
21 would be if Doctor DeForest can do it early next week, they
22 ship it out to Doctor Sciudak and Doctor Ballard and I get
23 the results by September 7.

24 MS. WILKENS: See, if --

25 THE COURT: If I can't get the results by

1 September 7, then --

2 MR. ALEXANDER: September 27.

3 THE COURT: -- September 27 is fine.

4 MS. WILKENS: Because Doctor Sciudak told me that
5 theoretically, if he started work on the 7th, he could
6 report results on the 8th.

7 THE COURT: Oh.

8 MS. WILKENS: And so with this time frame, I need
9 to, you know, check and see if that's going to change it.
10 So, yeah, if we could -- if we could move this up, I think
11 that's consistent with what he's already told me, but I'll
12 check at a later time and just make sure.

13 THE COURT: Because the earlier time would be
14 great because I think if you could -- so a key would be
15 DeForest, his availability. If he's available to do it on
16 Monday, he can do it on Monday. We need to get the proper
17 extraction solution.

18 MR. ALEXANDER: Well, we got to wait until your
19 guy gets there, right?

20 MS. WILKENS: That's not going to be a problem.

21 MR. ALEXANDER: Okay. All right.

22 THE COURT: Right.

23 MS. WILKENS: Because it's an observer, so --

24 MR. ALEXANDER: All right. That's fine.

25 THE COURT: So that would be Monday. Now, here's

1 another thing, we were anticipating sending dual out. If
2 it's possible that DeForest keeps a third set, that would be
3 even better because then --

4 MS. WILKENS: And I don't know --

5 THE COURT: -- it's --

6 MS. WILKENS: Yeah, I don't know if that has any
7 impact or not. I asked about the division, and they said
8 that, you know, it could theoretically lessen as you
9 continue to divide, but they thought there would be multiple
10 injections so that a division shouldn't be a problem.

11 THE COURT: Okay. So why don't you review the --
12 we're unfiling it. This will be proposed.

13 MS. WILKENS: Okay.

14 THE COURT: And you can review it and check on
15 availability. I'd like to move up the schedule so that we
16 get the results by -- as soon as possible.

17 MS. WILKENS: Now, there's a -- there's a
18 preclusion on both Doctor DeForest and the observer who
19 observes Doctor DeForest having any communication whatsoever
20 with the scientists --

21 THE COURT: With the testers.

22 MS. WILKENS: -- who are involved?

23 THE COURT: Correct.

24 MS. WILKENS: And they are to reveal to no one but
25 the Court the labeling pattern?

1 THE COURT: Correct.

2 MS. WILKENS: Okay.

3 THE COURT: And then Doctor Sciudak may
4 communicate with your side, and Doctor Ballard may
5 communicate with your side, and then those reports would be
6 sent to the Court. When I get both reports, then I would
7 send them out to counsel.

8 MS. WILKENS: Now, do you want our -- for example,
9 you would like Doctor Sciudak to send that report to you and
10 then I would get it from the Court?

11 THE COURT: I don't care. He can send it cc to
12 you.

13 MS. WILKENS: Okay.

14 THE COURT: And you -- and Ballard could send it
15 cc to you. There was a provision on the confidentiality not
16 to release it because let's say this first phase falls flat
17 on its face and we need to go to phase two because 6G didn't
18 work out. I still want to maintain the confidentiality
19 until we -- at least the Court completes its --

20 MS. WILKENS: Process.

21 THE COURT: -- process.

22 MS. WILKENS: Okay.

23 THE COURT: So that we don't disclose --

24 MS. WILKENS: Anything.

25 THE COURT: -- anything until we're satisfied that

1 we've got results. I have no problem with eventually
2 publication or anything else. So I do have a paragraph in
3 here that says at an appropriate time, the Court will decide
4 whether to conduct further testing, release the test results
5 to the public, or lift the confidentiality requirement.

6 MS. WILKENS: Now, is there -- is there -- are we
7 being directed to file Doctor Sciudak's protocol in advance
8 of the testing?

9 THE COURT: Yes.

10 MS. WILKENS: Is Doctor Ballard filing his under
11 seal?

12 THE COURT: Yes. And probably both should be
13 filed. I don't mind if both are filed under seal, but I do
14 reserve the right because at some point they should comment
15 upon the process --

16 MS. WILKENS: That's --

17 THE COURT: -- to then lift it and then either
18 under a protective order or otherwise --

19 MS. WILKENS: Yeah.

20 MR. ALEXANDER: My understanding --

21 MS. WILKENS: I think a protective order so that
22 we can do the Daubert -- at least the Daubert.

23 THE COURT: Exactly.

24 MR. ALEXANDER: My understanding was Sciudak
25 doesn't care about the confidentiality, correct?

1 MS. WILKENS: He's not requesting --

2 MR. ALEXANDER: Because he's not in the business.

3 Okay. He's not requesting it, so --

4 THE COURT: And Ballard, if he's participating,
5 certainly --

6 MR. ALEXANDER: Shouldn't -- shouldn't care.

7 THE COURT: -- shouldn't, although this -- I don't
8 know.

9 MR. ALEXANDER: Yeah.

10 THE COURT: So at some time I think it would be
11 important if the tests, depending on the test results, that
12 somebody says, yeah, this is a valid method of doing it, and
13 so I can't promise complete confidentiality for all purposes
14 at all times, but --

15 MR. ALEXANDER: Well, for now we limit it to these
16 proceedings.

17 THE COURT: Yes.

18 MR. ALEXANDER: For use only in connection with
19 these proceedings.

20 THE COURT: Uh-huh. But I would contemplate that
21 at some time --

22 MR. ALEXANDER: Yes.

23 THE COURT: -- the Court -- at some time then --

24 MR. ALEXANDER: Advance the science.

25 THE COURT: It's not only -- well, I mean, the

1 Ninth Circuit's going to get it.

2 MR. ALEXANDER: Right.

3 THE COURT: And it is a capital case. So it's not
4 the kind of thing that you keep under seal.

5 MS. WILKENS: Well, that's the problem. In
6 forensics, you know, in order to -- you know, in order to
7 work in forensics, yeah, it can't be a trade secret.

8 THE COURT: Right. So as long -- so why don't you
9 review this with your appropriate people. Then we'll talk
10 at 11:00 o'clock tomorrow, and then you'll check on some of
11 the witnesses. If you have any more witnesses on tomorrow,
12 give me a heads up.

13 MR. ALEXANDER: Okay.

14 MS. WILKENS: Do we know when we're scheduling the
15 witnesses that the Court has ordered?

16 THE COURT: The 3rd would be great.

17 MR. ALEXANDER: Yeah, that's the day. I just want
18 to check, and that's a week from tomorrow, right?

19 THE COURT: It's a Friday.

20 MR. ALEXANDER: Uh-huh.

21 MS. WILKENS: It's a Friday.

22 MR. ALEXANDER: It will be fun getting out of here
23 on Friday before Labor Day.

24 MS. WILKENS: It will be a challenge. It will be
25 an opportunity.

1 MR. ALEXANDER: That's all right. If -- if I can
2 do it --

3 THE COURT: We can go through lunch.

4 MR. ALEXANDER: -- yeah, absolutely, I will be
5 here, absolutely.

6 MS. WILKENS: Okay. So --

7 THE COURT: What else do we have to do?

8 MR. ALEXANDER: Yeah.

9 THE COURT: All right. That's all I have.

10 MR. ALEXANDER: Thank you very much, your Honor.

11 THE COURT: We're making progress.

12 MR. ALEXANDER: Thanks for the long day.

13 (Proceedings concluded.)

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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 Jordan Beatty 9/8/04
6 Transcriber Date

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