

DECLARATION OF MICHAEL ADELSON, ESQUIRE

I, Michael Adelson, declare as follows:

1. I am an attorney authorized to practice law in California.
2. I have extensive experience in defense of individuals facing the death penalty as detailed in the declaration attached hereto as Exhibit A.

IN THE MATTER OF PEOPLE V. KEVIN COOPER

3. I have been asked by Mr. Cooper's current counsel, Norman C. Hile, to review information pertaining to the performance of Mr. Cooper's trial counsel, David Negus ("Negus"), for the purpose of determining whether any aspects of Negus' performance would be considered deficient so as to amount to ineffective assistance of counsel in the context of representation of a defendant in a capital trial in California in 1984-5. In making this determination, I reviewed the following materials: (a) excerpts of the trial testimony of Deputy Eckley who recovered the bloody coveralls (attached hereto as exhibit B); (b) Recovered Evidence Report drafted by Deputy Fields regarding the recovery of the bloody tan "fruit of the loom" t-shirt (attached hereto as exhibit C); (c) excerpts of the evidentiary hearing testimony of Linda Paulk (attached hereto as exhibit D); (d) excerpts of the trial testimony of Deputy Gregonis (attached hereto as Exhibit E.); (e) excerpts of the trial testimony of Deputy Field who recovered the bloody tan "fruit of the loom" t-shirt (attached hereto as Exhibit F); (f) excerpts of the trial testimony of Edward Lelko (attached hereto as Exhibit G); (g) excerpts of the trial testimony of Shirley Killian (attached hereto as Exhibit H); (h) excerpts of the evidentiary hearing testimony of Shirley Killian (attached hereto as Exhibit I); (i) excerpts of the trial testimony of Douglas Leonard (attached hereto as Exhibit J); (j) excerpts of the trial testimony of Paula Leonard (attached hereto as Exhibit K); (k) excerpts of the testimony of Linda Edwards (attached hereto as Exhibit L); (l) declaration of Karree Kellison (attached hereto as Exhibit M); (m) excerpts of the evidentiary hearing testimony of Christine Slonaker; (n) excerpts of the evidentiary hearing testimony of Mary Wolfe (attached hereto as Exhibit O); (o) excerpts of the evidentiary testimony of Lance Stark (attached hereto as Exhibit P); (p) excerpts of the evidentiary hearing testimony of Laurel Eppler who found the bloody blue shirt (attached hereto as Exhibit Q); (q) San Bernardino Sheriff Department Log Page indicating that the bloody blue

shirt was “picked up” (attached hereto as Exhibit R); (r) March 31, 2004, Interview of Shirley Killian (attached hereto as Exhibit S); (s) excerpts of the trial testimony of Deputy Sharp (attached hereto as Exhibit T); (t) Supplemental Report of Deputy Sharp regarding his interview of Josh Ryen (attached hereto as Exhibit U); (u) Sheriff’s Department Report regarding Koon confession to Anthony Wisely (attached hereto as Exhibit V); (v) excerpt of in chambers conference from trial transcript re Koon confession (attached hereto as Exhibit W); (w) excerpt of trial transcript wherein the court requests the presence of counsel during deliberations (attached hereto as Exhibit X); (x) excerpt of the 1997 order denying Mr. Cooper’s first writ of habeas corpus (attached hereto as Exhibit Y); (y) excerpt of transcript of pretrial proceeding evidencing Negus’ exhaustion (attached hereto as Exhibit Z); (z) excerpt of trial transcript regarding Negus’ inability to handle the case alone (attached hereto as Exhibit AA); (aa) excerpt of pretrial transcript where Negus attests to working “7 days a week, 16 hours a day” (attached hereto as Exhibit BB); (bb) excerpt of pretrial transcript wherein Negus’ complains that the case is hurting his health (attached hereto as Exhibit CC); (cc) excerpt of pretrial transcript wherein Negus admits that he is behind and unable to perform all the necessary tasks (attached hereto as Exhibit DD); and (dd) declaration of David Negus regarding his rejection of second counsel and the physical problems he suffered as a result of working on Mr. Cooper’s case (attached hereto as Exhibit EE).

4. In reviewing these materials, I identified several instances in which Negus’ conduct¹ fell below the standard for ineffective assistance of counsel as articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). In my view, as detailed below, Negus’ conduct as counsel for Mr. Cooper did not comply with an objective standard of reasonableness. Moreover, there is a reasonable probability that had Negus’ performance been reasonable, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. at 685-86. If I were called to testify in this matter, I could and would testify in accordance with this declaration.

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¹ For ease of reference, I will refer to the representation as being the trial for the “Ryen murders. In actuality, Mr. Cooper was tried for the murders of Peggy Ryen, Doug Ryen, and their daughter Jessica Ryen, as well as the murder of a young house guest named Christopher Hughes. He was also tried for the attempted murder of Josh Ryen, the only surviving victim. He was convicted of these crimes and sentenced to death.

TRIAL COUNSEL'S FAILURE TO TIMELY REVIEW DISCOVERY

5. Several of Negus' critical deficiencies are traceable to his failure to timely review the discovery provided to him by the prosecution, which in part was responding to Negus' own subpoena duces tecum. Apparently preoccupied with other aspects of Mr. Cooper's case, Negus failed to timely review **thousands of pages of discovery** produced by the prosecution that were relevant to Mr. Cooper's case. This failure unreasonably deprived Mr. Cooper of multiple opportunities to discover, test, and present exculpatory evidence, each of which will be discussed in turn.

6. First, Negus's failure to review the discovery provided by the prosecution prevented him from discovering the existence of bloody coveralls that had been provided to the Sheriff's Department within days of the discovery of the Ryen murders by a woman (Diana Roper) who told a Sheriff's Deputy that her boyfriend—previously convicted murderer Lee Furrow²—had returned home on the night of the Ryen murders wearing those coveralls. (Ex. B [102 R.T.³ 6546-48.]) Those coveralls were destroyed⁴ by the Sheriff's department on the first day of Mr. Cooper's preliminary hearing, and thus, when Negus learned of the existence of the coveralls months after the completion of the preliminary hearing in May of 1984 (not through review of the discovery, but because of a phone call from Roper⁵), they were no longer available for testing, which could have shown that the murders were really committed by Furrow, not Mr. Cooper. *Cooper v. Brown*, 565 F.3d 581, 588, 625 (9th Cir. 2009); Ex. B [102 R.T. 6550-51].

7. Moreover, other evidence supports the probative exculpatory value of these coveralls. A few days after she turned over the coveralls to the Sheriff's Department, and after

² Lee Furrow was previously convicted of murdering Mary Sue Kitts in 1974. *Cooper v. Brown*, 565 F.3d 581, 585 (9th Cir. 2009). He did so by strangling her and then dismembering her body, disposing it of in the Kern River. *Id.* at 584-85. Furrow, a member of the "Allen gang," was allowed to plead guilty to second degree murder after he testified against Clarence Ray Allen; he was released from prison after serving 4.5 years on June 12, 1982. *Id.*

³ "R.T." refers to the reporter's transcript from Mr. Cooper's original trial, assembled for his appeal of right.

⁴ Had Negus reviewed the discovery provided by the prosecution, he would have also learned that Deputy Eckley's testimony that he destroyed the coveralls on his own was false; hidden in the documents was a disposition report wherein Eckley's supervisor approved that destruction.

⁵ Upon learning of the coveralls through Roper in May of 1984, Negus' failure to deduce the importance of the bloody coveralls and the exculpatory evidence that could have been discovered through a thorough investigation thereof (see paragraphs 5-13), also falls below the standard of reasonableness as articulated in *Strickland*.

she learned of the Sheriff Department's discovery of a medium sized, tan "Fruit of the Loom" t-shirt with a front pocket with blood stains on it, Roper contacted the Sheriff's Department to report that Furrow had been wearing a medium sized, tan "Fruit of the Loom" t-shirt with a front pocket on the day of the murders, which she had purchased for him. (*Cooper*, 565 F.3d at 585; Ex. C [SBSD Recovered Evidence Report, June 10, 1983]; Ex. D [June 28, 2004, HRT⁶ 187-88].) Testing of the recovered tan t-shirt showed that blood on the shirt belonged to one of the victims, Doug Ryen. (Ex. E [93 R.T. 4602-06]; Ex. F [101 R.T. 6508-11].) Further, Roper also reported to the Sheriff's Department that Furrow used to own the same kind of hatchet as the one found near the crime scene and that she looked for that hatchet when she heard on a broadcast news report that a hatchet had been utilized in the Ryen murders. (*Cooper*, 565 F.3d at 587.) Tellingly, Furrow's hatchet was missing, never to appear again. (*Id.*)

8. Further, three white men—Furrow is white—were seen on the night of the murders at the Canyon Corral Bar, which was near the scene of the murders. The description of these men matched the initial description of the surviving victim Josh Ryen, who told Sheriff's Deputies and medical staff at the hospital that his attackers had been three white men. (*Cooper*, 565 F.3d at 590-91.) Sheriff's deputies found the bloody tan t-shirt blocks away from this bar. (Ex. F [101 R.T. 6510-13]; Ex. G [102 R.T. 6531, 6533]; Ex. H [106 R.T. 7649].) However, the Sheriff's Department made no effort to obtain witness statements from all patrons who were at the bar that night, nor to track down these three white men. (*Cooper*, 565 F.3d at 590-91.) The information that the Sheriff did obtain was that three unknown white men visited the Canyon Corral Bar twice on the night of the murders and that the second time that they left, some of them got into a car loosely matching the description of the murder victim's stolen vehicle. (Ex. H [106 R.T. 7650]; Ex. I [June 29, 2004, HRT 108]) The Sheriff also obtained statements from individuals in the Ryen's neighborhood describing potential sightings of the stolen vehicle on the night of the murders in the vicinity of the Ryens' house and the Canyon Corral Bar with 3 or 4 white men occupying it. (Ex. J [102 R.T. 6587-92, 6595], Ex. K [102 R.T. 6600-01, 6603]; Ex. L [103 R.T. 6800-03].) Strikingly, on the night of the murders, Roper's sister, Karree Kellison, saw Furrow exiting a similar car in the bloody coveralls. (Exhibit M [Kellison Decl.]) The Sheriff's Department recovered the Ryen's stolen vehicle days later, only 4.5 miles from

⁶ "HRT" refers to the habeas corpus proceedings before Judge Huff in 2004 and 2005.

Furrow's Mother's house⁷ in Long Beach, California, approximately 45 miles east of Chino Hills.

9. The fact that the stolen station wagon was recovered in such close proximity to Furrow's mother's home severely undercuts the prosecution's argument that Mr. Cooper took the Ryen's car to get to Mexico, abandoned that car with the keys in it, and that some unknown party took that car to Long Beach. Likewise, it would make no sense for Mr. Cooper to drive the car to Long Beach and abandon it there. First, it is undisputed that Mr. Cooper was in Mexico as of June 5, 1983, but the car was not discovered in a church parking lot in Long Beach for six more days. Second, had Mr. Cooper intended to go to Mexico, there is no reason for him to drive east approximately 45 miles in order to then head south towards San Ysidro to the Mexican border without the car; a trip of approximately 125 miles. Rather, Mr. Cooper could have driven directly south from Chino Hills towards the Mexican border (a trip of approximately 123 miles), thus cutting 47 miles off his trip and avoiding the need to secure a second source of transportation.

10. Had Negus read the discovery from the prosecution, he would have connected the white men and the bloody coveralls, and he would have learned of and interviewed three critical witnesses who were in the Canyon Corral Bar on the night of the murders: Lance Stark, Christine Slonaker, and Mary Mellon-Wolfe. These individuals were located by Mr. Cooper's post-conviction attorneys and would have, in turn, testified at Mr. Cooper's trial that they saw three white men in the Canyon Corral Bar the night of the Ryen murders with blood on their clothing who were acting strangely around the time of the murders. (*Cooper*, 565 F.3d at 590-91.) Because of Negus' shortcomings, Mr. Cooper didn't actually learn of these witnesses until 2004 when Slonaker came forward shortly before Mr. Cooper was to be executed in response to television coverage regarding the case. (Ex. N [June 28, 2004, HRT 31-35].) In response, Mr. Cooper's post-conviction attorneys contacted Wolfe, who hadn't spoken with Slonaker in eight years. (Ex. O [June 28, 2004, HRT 101-03, 127-139].) Wolfe corroborated Slonaker's statements exculpating Mr. Cooper and implicating the three white men in the bar who were covered in blood. (Ex. N [June 28, 2004, HRT 7, 22, 25], Ex. O [June 28, 2004 HRT 120-24,

⁷ The location of Furrow's mother's house was available to be discovered through a search of the public records at the time of trial.

164-65].) Stark, who had had no contact with Slonaker or Wolf, also remembered the three men who were covered in a dark substance and were giving Slonaker, Wolfe, and a third woman a hard time. (Ex. P [July 23, 2004, HRT 20-24, 59-60, 62-63, 108-09].)

11. Second, Negus' failure to review the discovery provided by the prosecution prevented him from finding a Sheriff's log page that reported that the day after the discovery of the Ryen murders, a woman called in reporting that she had found a blue shirt with blood on it by the side of a road near the Canyon Corral Bar. The log further stated that Deputy Fields of the Sheriff's Department picked up this blue shirt, which was located on the other side of the street and a few blocks away from where the tan t-shirt would be found the next day. (Ex. Q [August 26, 2004, H.R.T. 133-34, 140-48, 154-55, 161, 165, 187, 201-03].) Mr. Cooper did not learn of the existence of this blue shirt with blood on it until the Attorney General reproduced the log page in Mr. Cooper's habeas corpus proceedings in 2004 for an entirely different purpose. (Ex. R [Exhibit 16 at ER 3703]; Ex. Q [August, 26, 2004, HRT 133-34, 140].) When Mr. Cooper's post-conviction counsel discovered the notation in the Sheriff's log page in 2004 referring to the blue shirt, he immediately sought discovery into that shirt and its whereabouts. However, despite the Sheriff's call log and the testimony of the woman who reported the shirt,⁸ the State claimed in 2004 that the blue shirt with blood on it never existed, claiming that, it was actually the tan t-shirt that was found as a result of a search of the area the subsequent day. (*Cooper v. Brown*, 2005 U.S. Dist. LEXIS 46232 *270 (S.D. Cal. 2005).) The federal district court denied any discovery regarding the blue shirt. (*Id.*)

12. Therefore, Negus' failure to review the discovery and note the finding of this blue shirt when Mr. Cooper could have requested discovery regarding it as a matter of right prevented him from obtaining that discovery and linking the blue shirt to the Ryen murders through testing. Further, the existence of two bloody shirts in the vicinity of the bar where 3 white men with blood on their clothing were seen would further exculpate Mr. Cooper, especially considering that witness statements from the Canyon Corral Bar indicate that one of these men was wearing a yellow or beige t-shirt, one had on coveralls, and another was wearing a blue shirt. (Ex. F [101 R.T. 6510-13]; Ex. G [102 R.T. 6531, 6533]; Ex. H [106 R.T. 7649-50]; Ex. O [June 28 2004,

⁸ In 2004, Deputy Fields was deceased and thus unable to corroborate the finding and recovery of the bloody blue shirt.

HRT 120-24]; Exhibit S, [Shirley Killian Interview].) That these men were wearing shirts matching the description of the bloody shirts recovered on consecutive days, on different sides of the street, within the vicinity of the Canyon Corral Car, strongly suggests the shedding of bloody clothing by those men. Strikingly, Josh Ryen also described one of his the three attackers as wearing a blue shirt, information that was incorporated into a crime bulletin announcing the description of the suspects. (Exhibits, T and U [Sharp's Testimony and Report].) Negus failed to introduce the crime bulletin into evidence, even though it described the Ryens' attackers as three white or Mexican men, on wearing a white t-shirt and another wearing a blue short-sleeved shirt.

TRIAL COUNSEL'S FAILURE TO TIMELY INVESTIGATE THE KOON CONFESSION

13. In addition to his failure to review discovery, Negus failed to accept a trial continuance offered by the trial court when, during the trial, it came to light that Kenneth Koon, an associate of Roper and Furrow, had confessed to the Ryen murders to a fellow inmate, Anthony Wisely. This failure is inexcusable. (Ex. V [Ex. 58, Wisely Interview], Ex. W [Ex. 60, Chamber Conference], *Cooper*, F.3d at 588-89.) By accepting the continuance, Negus not only could have obtained testimony regarding a confession to the murders that tracked the reports given by Diana Roper, but a continuance would have provided Negus with the time to then connect the dots that he should have connected months prior. While not an exclusive list, that continuance would have allowed him to connect the bloody coveralls and the tan t-shirt to Furrow and connect Furrow to the three white men at the bar and to connect the three white men to the men driving the Ryen station wagon, which was then left 4.5 miles from Furrow's mother's house, 45 miles away in Long Beach. This evidence conceivably could have led to Mr. Cooper's acquittal, and surely would have provided compelling exculpatory evidence to the jury.

TRIAL COUNSEL'S REFUSAL TO STAND VIGIL OVER JURY DELIBERATIONS

14. Although the trial court specifically and repeatedly requested the presence of trial counsel at the San Diego courthouse during jury deliberations (Ex. X [107 R.T. 7907, 8115]), which was consistent with the accepted practice of capital attorneys in the 1980s in order to immediately respond to any jury actions, Negus failed to stand vigil over the jury, instead leaving San Diego to return to San Bernardino to attend to other duties. (Ex. X [107 R.T. 7907]) Further, after the jury deadlocked the first time, Negus refused to return to San Diego and the

jury was instructed to resume deliberations. (O'Connor, 238-39; Ex. X [107 R.T. 8108-8114].) Negus' refusal to return to San Diego at this point clearly fell below the objective standard of reasonableness of a capital attorney practicing at the relevant time.

15. The second time the jury deadlocked, it took Negus two-and-one half hours to return to court. (Ex. X [107 R.T. 8116 – 8124].) In the meantime, the jury continued to deliberate, despite the trial court's indication that it might declare a mistrial. (Ex. X [107 R.T. 8111, 8115].) By the time Negus arrived in San Diego the jury, rather than being deadlocked, had reached a verdict of death. (Ex. X [107 R.T. 8121 – 8124].) There can be no doubt that Negus' self-imposed absence and corresponding delay resulted in Mr. Cooper's receipt of a death penalty verdict by the then impaneled jury.

TRIAL COUNSEL'S FAILURE TO DELEGATE

16. Negus' employed only one investigator and refused to work with assistants, paralegals, and/or another attorney in defending Mr. Cooper's case. (O'Connor, 102; Ex. Y [*Cooper v. Calderon*, Case No.92-cv-427, August 25, 1997 Order].) This was a travesty and fell far below the standards that applied for capital representation. His failure to delegate the review of discovery, investigation, or even standing vigil over jury deliberations resulted in the ineffective assistance described above. While many attorneys in the relevant era would have preferred to review all of the materials associated with the case, it was below the standard of reasonableness not to employ individuals to aid in that review (either performing the task of a second eye review, or more likely aiding in reviewing items in the first instance in order to direct Negus to the information that was most pressing for his immediate review). Further, to the extent that Negus felt that he was unprepared, it was his ethical obligation to fight for more time to prepare Mr. Cooper's case and to refuse to continue proceedings unless he was adequately prepared to proceed with the case.

17. It is indisputable that Negus was in need of additional help and was overwhelmed with the enormity of Mr. Cooper's case. The need for help is easily illustrated by reference to comments that Negus made himself. He often complained to the trial court that he was working an unsustainable "60 to 80 hours a week" (*see, e.g.*, Ex. Z [72 R.T. 6513-8:21]) and could not conduct more than four court days a week of trial. He had earlier come to a bitter dispute with

the trial judge when he was ordered to conduct, at the very least, one five-day week of *voir dire*, to which Negus responded:

...I'm sorry, Judge, you can get all the mad at me that you want. I only have one life, and I'm not going to give it for this case, and -- my-- I have been told to cut down on the amount of work and the amount of stress I do, and I'm going to, and that's, you know, what I'm going to do, and you know, you can throw me in jail. That's nice and restful, but I can't work any harder than I am, and I have to cut down on the amount of work that I'm doing. That's what my doctor says. That's what I'm going to do.

(See Ex. Z [72 R.T. 6513-4:23 - 6513-5:5]). Later in this same exchange, the Court advised Mr. Negus, "A wise man knows when to delegate, Dave.⁹ You maybe ought to get some help." (Ex. Z [72 R.T. 6513-8:25-26].) Negus, however, continued in his irrational belief that obtaining help would be "a disservice to Mr. Cooper." (Ex. Z [72 R.T. 6513-9].) It is obvious that, without the help he needed and the trial judge offered, Negus was physically and mentally exhausted by the pretrial and trial process, and thus was unable to reasonably represent his client resulting in material prejudice to Mr. Cooper. (See Ex. AA [89 R.T. 3539]; Ex. BB [10 R.T. 174], Ex. CC [58 R.T. 5107], Ex. DD [62 R.T. 5551], Ex. Z [72 R.T. 6513:2-9], Ex. EE [Exhibit 39].) 18. There can be no question that Negus' failure to delegate and the results stemming therefrom fell below the objective standard of reasonableness and severely prejudiced Mr. Cooper's case. Reasonably competent counsel would have, at a minimum, employed assistants to aid in reviewing the enormity of materials associated with Mr. Cooper's case and may have used those assistants to effectively delegate other duties that would have safeguarded against other shortcomings as identified in this declaration.

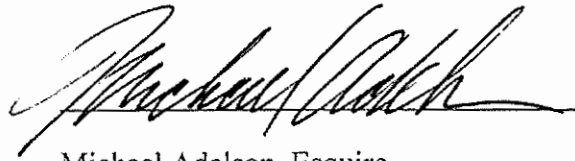
CONCLUSION

19. In conclusion, I have identified several instances in which Negus' conduct fell below the ineffective assistance of counsel standard as articulated in *Strickland v. Washington*, 466 U.S. 668 (1984). Those include failure to: (1) review the relevant discovery and draw the inferences/investigation leading therefrom; (2) stand vigil over the jury deliberations; and (3) delegate the review of discovery and standing vigil over the jury deliberations to appropriate support staff. Negus' conduct as articulated herein did not comply with an objective standard of

⁹ A.K.A. David Negus.

reasonableness of a competent capital attorney operating at the relevant time. *See id.* at 685-86. Further, there is a reasonable probability that had Negus' performance been reasonable, the result of the proceeding would have been different. As Justice Fletcher remarked in his landmark dissenting opinion, "The State of California may be about to execute an innocent man." *Cooper*, 565 F.3d 581.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California, executed at Encino, California on October 16, 2013.

A handwritten signature in black ink, appearing to read "Michael Adelson", written over a horizontal line.

Michael Adelson, Esquire

EXHIBIT A

DECLARATION OF MICHAEL ADELSON

I, Michael Adelson, hereby declare:

1. I am an attorney licensed to practice law in California.
2. I graduated from Detroit College of law in 1965 and was admitted to practice in California in 1966. From 1967 until 1985, with the exception of one year, I was a trial attorney with the office of the Los Angeles County Public Defender's Office. During the period of approximately 1975 to 1985, I was assigned to the Office's Special Trials Division, which was responsible for trying high profile cases, most of which were capital murder cases. From 1985 until the present I have been in private practice focusing almost exclusively on criminal defense. More particularly, I have always had at least one capital case on my calendar during the years of my practice.
3. In 1983 I received the Jerry Geisler Memorial Award from the Criminal Courts Bar Association of Los Angeles County for the trial attorney of the year. In 1994 I was awarded the Distinguished Service Award by the California Public Defenders Association in recognition of my trial skills.
4. I have tried more than 300 cases to verdict in my career. At least 150 of those cases were criminal jury trials. Among the jury trials, a significant number were capital cases in which the prosecution was seeking death. To date, I have lost one client to death row, People v John Westley Hayes, a triple robbery murder. Mr. Hayes's case was tried in the early 1980's. His case was ultimately reversed by the California Supreme Court on instructional error. I was subsequently able to reach a disposition for Mr. Hayes of life without parole.
5. I am a member of the California Attorneys for Criminal Justice (CACJ). I have been a member of the CACJ board of directors and have served and presently serve on the death

penalty seminar planning committee. I have also been a longtime member of the California Public Defenders Association (CPDA) and have frequently lectured for them on criminal defense issues including capital trial representation. During the period 1978 to 1984, I participated in seminars specially organized by CACJ in cooperation with CPDA to disseminate information to California attorneys and attorneys from other states representing clients in capital cases. I have also chaired the Indigent Criminal Defense Association (ICDA) panel for the Los Angeles County Bar Association.

6. Based on my training and experience, I am familiar with the standards of professional competence for attorneys representing defendants in capital murder cases in California. I am also familiar with the training materials and other resources, including ancillary services of experts and investigators that were reasonably available to counsel by the court and the office of the San Bernardino Office of the Public Defender.

7. Norman Hines, counsel for Kevin Cooper, has requested me to review the performance of trial counsel in Mr. Cooper's case to determine if, in my opinion, Mr. Cooper was provided effective assistance of counsel at trial within the meaning of our Constitution and the case law that interprets those demands. I have done so and have concluded that trial counsel's representation of Kevin Cooper was woefully lacking and short of the standard required. The particulars of that opinion are set forth in detail in my declaration.

8. I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 3, 2013



MICHAEL ADELSON

EXHIBIT B

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. *Crim 24552*

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME *102*

January 16, 1985, Pages 6525 through 6621
January 17, 1985, Pages 6622 through 6745

APPEARANCES:

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For the Defendant
and Appellant:

IN PROPRIA PERSONA

ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

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1 Q. Did you ever see the three gentlemen come back?

2 A. No.

3 MR. KOTTMEIER: I have nothing further, your Honor.

4 MR. NEGUS: I have no further questions.

5 THE COURT: Thank you, Mr. Lelko. You may be excused.

6 MR. NEGUS: Rick Eckley.

7 THE COURT: Any of you that have filled up your notepads,
8 you can give it to the bailiff and he will give it to the clerk
9 and she'll keep it safe and provide it for your use later on.

10 I don't know if you are using one pad or not. They
11 can keep it safe for you.

12

13 **FREDERICK E. ECKLEY,**

14 called as a witness on behalf of the Defendant, having been duly
15 sworn, testified as follows:

16 THE CLERK: Thank you. Would you be seated, please.

17 Would you state your full name for the record and
18 spell your last name.

19 THE WITNESS: Frederick E. Eckley. E-c-k-l-e-y.

20 THE CLERK: Thank you,

21

22 DIRECT EXAMINATION

23 BY MR. NEGUS:

24 Q. Mr. Eckley, what's your occupation?

25 A. Deputy Sheriff with San Bernardino County.

26 Q. And on June 9th, 1983, were you assigned as a
27 deputy Sheriff working patrol to the Yucaipa substation.

28 A. Yes.

1 Q. The particular coveralls that you received from
2 this woman, were they -- did they have anything on them?

3 A. Yes, sir.

4 Q. What was that?

5 A. Some hair.

6 Q. Okay.

7 A. And some dirt, mud or manure, and what Diane
8 believed to be blood.

9 Q. You say, "Diane believed to be blood," did it look
10 like blood to you?

11 A. It could have been.

12 Q. Well, after you -- after you got the coveralls, did
13 you also write a report under the -- for the Ryen murder
14 investigation about this?

15 A. Yes, sir.

16 Q. And in the report did you describe those stains as
17 bloodstains?

18 A. Yes, sir.

19 Q. How much of the coveralls had bloodstains on them?

20 A. A portion from the knee down.

21 Q. How big a portion?

22 A. I don't understand your question.

23 Q. Well, I mean, was it like soaked from the knee down
24 or just spots, how much of the -- how much of the coveralls were
25 bloody?

26 A. How much is from the knee down.

27 Q. Okay. All of the -- everything from the knee down?

28 A. No. If you mean pattern, it was kind of a

1 splattered, splashed type pattern.

2 Q. Was it like heavily splattered?

3 A. No.

4 Q. Well, it certainly looked to you like blood, right?

5 A. It possibly could have, yes.

6 Q. At previous times have you been more positive in

7 your description of it?

8 A. Yes.

9 Q. And did you tell Mr. Forbush during the interview

10 he had with you at the Yucaipa Substation that -- that it was

11 heavily splattered?

12 A. I don't recall.

13 Q. Mr. Forbush talked to you at the Yucaipa

14 Substation, did he not, before you had an opportunity to discuss

15 these coveralls with any member of homicide or the prosecution?

16 A. Yes.

17 Q. Since that time you have had a chance to discuss

18 the coveralls with homicide and the prosecution?

19 A. Yes.

20 Q. Was there also any blood anyplace else besides

21 the -- besides below the knees?

22 A. Not that I remember.

23 Q. Where was the hair?

24 A. Primarily at the hips and back pocket area and a

25 little bit on the arms.

26 Q. Could you tell whether the hair was animal or

27 human?

28 A. No, sir.

1 Q. Did you attempt to package the coveralls in such a
2 way that the hair would not get lost from them?
3 A. No, sir.
4 Q. Just -- did you shake the hair off?
5 A. No, sir.
6 Q. Just left it on the coveralls like the way they
7 were given to you?
8 A. Yes, sir.
9 Q. Showing you Exhibit 722, do you recognize that
10 document?
11 A. Yes, sir.
12 Q. What is it.
13 A. It's a page from my evidence book.
14 Q. Okay. Everything that you take into evidence you
15 log into that particular book?
16 A. Yes, sir.
17 Q. At that point in time were you the person who had,
18 in fact, charge of the evidence at the Yucaipa Substation?
19 A. Yes, sir.
20 Q. When you got these coveralls did you then attempt
21 to contact some investigators in the Ryen murder investigation?
22 A. Yes, sir.
23 Q. And did you make contact with a member of the
24 Career Criminal Division by the name of Greg Bengé?
25 A. Yes, sir.
26 Q. Did he give you any instructions as to what to do
27 with the coveralls?
28 A. Just to tag them and put them in our evidence

1 locker.

2 Q. Did he give you any instructions as to what sort of
3 documentation to provide?

4 A. Forward to the Homicide Division my report.

5 Q. Did you then prepare a typewritten report?

6 A. Yes, sir.

7 Q. Did he give you any particular person within the
8 Homicide Division that you should forward the report to?

9 A. Sergeant Arthur.

10 Q. Bill Arthur?

11 A. Yes, sir.

12 Q. And did you do that?

13 A. I forwarded it to homicide with his name. I don't
14 know if he ever got it.

15 Q. But as far as you knew you did everything you could
16 to get the report to Sergeant Arthur.

17 A. Yes, sir.

18 Q. After you forwarded that report, were you ever
19 contacted by homicide about the coveralls?

20 A. No, sir.

21 Q. Well, in, I think it was May of 1984, did a Mr.
22 Stalnaker from homicide come out to talk to you about them?

23 A. No, he didn't talk to me.

24 Q. Did -- how long did you keep those coveralls?

25 A. Somewhere near a period of six months.

26 Q. Do you have -- what did you do with them
27 when you -- after the six months?

28 A. Threw them away.

1 Q. Where?
2 A. In a dempsey-dumpster.
3 Q. Before you threw them away did you make any attempt
4 to contact homicide?
5 A. I'm not sure that I understand your question.
6 Q. Before you threw the coveralls away, did you make
7 any attempt to contact homicide?
8 A. Yes.
9 Q. When was that?
10 A. I don't recall the period or which specific date.
11 There were several attempts.
12 Q. During this -- this was just before you threw them
13 away?
14 A. Probably not just before, no.
15 Q. Back in June?
16 A. There were probably several in June and July.
17 Q. Homicide never got back in touch with you though?
18 A. No, sir.
19 Q. When you -- when you made your decision to throw
20 the coveralls away, did -- had you had them analyzed by anybody
21 to see if the stuff on them was, in fact, blood?
22 A. No, sir.
23 Q. At that point in time did you call up anybody and
24 ask if it was okay to throw them away?
25 A. No, sir.
26 Q. Were you aware that the investigation into the Ryan
27 murders hadn't been closed, that the case was still going on?
28 A. I was aware of that, yes.

1 Q. When you threw them away -- what date was that, by
2 the way, do you have that listed down there?

3 A. December 1st of 1983.

4 Q. That was right in the middle of the preliminary
5 hearing of this case, was it not?

6 A. I have no idea.

7 Q. Did you make any attempt to contact any member of
8 the defense and tell them that you were going to throw them
9 away?

10 A. No, sir.

11 Q. In the report that you submitted to Sergeant
12 Arthur, did you indicate that Diane Furrow had further
13 information about the coveralls that she would not reveal to you
14 but wanted to give to Homicide Division?

15 A. I don't recall it was about the coveralls, but she
16 had more information and she wanted to talk to homicide
17 detectives.

18 Q. That was about the Ryen murders?

19 A. Yes.

20 Q. And in the report that you submitted to homicide,
21 did you indicate that the -- Diane Furrow believed that these
22 bloody coveralls were connected with the Ryen homicides?

23 A. Say that one more time.

24 Q. In the report that you submitted to homicide, that
25 you sent to Sergeant Arthur, did you indicate that Diane Furrow
26 suspected that the bloody coveralls are from the Chino murders?

27 MR. KOTTMEIER: Objection. Irrelevant, calls for
28 hearsay.

1 MR. NEGUS: It's not offered for the truth of the matter
2 asserted, but it's only offered the — on the issue of what it
3 shows about the investigation.

4 MR. KOTTMEIER: You have to assume that it's true.

5 THE COURT: Excuse me, counsel. I will sustain the
6 objection. Sustained.

7 BY MR. NEGUS:

8 Q. Did you also report what had transpired to your
9 supervisor?

10 A. Regarding what?

11 Q. The coveralls.

12 A. Yes.

13 Q. And was that in June of 1983 a Sergeant Stodelle?

14 A. Yes, sir.

15 Q. In your presence did Sergeant Stodelle ever make
16 any attempts to contact homicide?

17 A. In my presence, no.

18 Q. Showing you Exhibit 724, is that a Xeroxed copy of
19 the report that you sent to Sergeant Arthur?

20 A. Yes.

21 Q. In the report there is three parts of it that have
22 underlining; that was not in the report when you sent it off, is
23 that right, the underlining?

24 A. Do what?

25 Q. There's parts of the report that in this particular
26 piece of paper that I'm handing you has some red underlining and
27 some blue underlining on it.

28 A. Okay.

1 Q. That stuff wasn't there when you sent it off,
2 right, the underlining?
3 A. I don't understand the question.
4 Q. The report that you sent to Sergeant Arthur --
5 A. Yes.
6 Q. -- was it underlined in the fashion that this
7 particular piece of paper that I have before you is underlined?
8 A. No.
9 Q. Other than that, is that identical to the piece of
10 paper that you sent to Sergeant Arthur?
11 A. Yes, sir.
12 Q. Where is Mentone located?
13 A. It is would be east of Yucaipa about six miles.
14 Q. And how far is that from Chino?
15 A. Guessing I would say 40 to 60 miles.
16 Q. For the benefit of those people that aren't
17 familiar with that particular part of the world, where is
18 Yucaipa?
19 A. It would be east of San Bernadino neighboring
20 Redlands.
21 Q. And to get from Mentone to Chino, would you
22 essentially take the Interstate 10, go south on one of a number
23 of routes, and then get on Interstate 60 and travel to Chino?
24 A. It is would be the easiest way yes.
25 Q. Thank you.
26 I have nothing further.

27

28

CROSS-EXAMINATION

COMPUTERIZED TRANSCRIPT

EXHIBIT C

SHERIFF'S DEPARTMENT County of San Bernardino California CA 03600			CASE NO. DR 1211029-02
			REPORT AREA SUPPLEMENTAL
CODE SECTION PC 187	CRIME MURDER	CLASSIFICATION HATCHET	
VICTIM'S NAME - LAST NAME RYEN		FIRST NAME	MIDDLE NAME (FIRM NAME IF BUSINESS)
ADDRESS		<input type="checkbox"/> RESIDENCE <input type="checkbox"/> BUSINESS	PHONE ()

RECOVERED EVIDENCE REPORT:

1. One (1) tan t-shirt, Fruit of the Loom brand, size Medium 38 to 40, with a blood stain on the front middle near the bottom edge of the t-shirt. Tagged with Sheriff's Evidence Tag #A58046 and dated and initialed by me.

2. One (1) orange bath towel, Stevens brand, tagged under Sheriff's Evidence Tag #A58047 and dated and initialed by me.

At approximately 1730 hrs., 6-7-83, I noted the above two items on Peyton Road located on the west side of Peyton approximately one quarter of a mile north of the intersection of Peyton and Carbon Canyon.

I noted the t-shirt to be laying approximately five feet west of the roadway with the orange towel approximately two feet west of the t-shirt. I also observed the items to be laying approximately eight feet north of a concrete drainage pipe that runs underneath Peyton Drive.

I photographed the items at the location, collected and tagged the above items with the above Property Tags and stored them in the Sheriff's Evidence Locker for safekeeping.

REPORTING OFFICERS S. FIELD #70311	DATE 6-10-83	REVIEWED BY <i>OK</i>	TYPED BY jmb	ROUTED BY	DATE
FURTHER ACTION: <input type="checkbox"/> YES <input type="checkbox"/> NO		COPIES TO: <input checked="" type="checkbox"/> Detective <input type="checkbox"/> SD/PO <input type="checkbox"/> CII <input type="checkbox"/> Other		REMARKS 715	
15-15184-403 (Rev. 7/83)		<input checked="" type="checkbox"/> Dist. Atty. <input type="checkbox"/> Patrol			

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LEGIBILITY TEST: For quality of original document being filmed.

EXHIBIT D

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.) Monday,
9) June 28, 2004
10 JILL L. BROWN, ACTING WARDEN,) 10:00 a.m.
11 SAN QUENTIN STATE PRISON,)
12)
13 Respondent.)
14)

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

18 APPEARANCES:

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES: (Cont'd.)

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6336 Greenwich Drive
Suite B
San Diego, California 92122
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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Christine Slonaker	2	36	89	--
Mary Wolfe	91 104	130	179	--
Linda Paulk	182	191	200	--
Pamela Smith	202	212	232	235
<u>EXHIBITS</u>	<u>IDENTIFIED</u>		<u>RECEIVED</u>	
<u>Plaintiff's:</u>				
20	Declaration of Slonaker	2	35	
21	6/10/83 interview of Paulk and Smith	196	231	
22	Interview of Smith	220	231	
<u>Defendant's:</u>				
JJJ-1 thru JJJ-4	Photos of bar parking lot	12	--	
OOO-1	Declaration of Smith	202	--	
RRR-1	Map of area	145	--	
SSS	Diagram	20	--	
SSS-1	Drawing of inside of bar	106	--	
SSS-2	Drawing of inside of bar	214	--	
TTT-1	Diagram by Wolfe	106	--	
VVV	Photograph	59	--	
YYY-1	Detective interview with Wolfe	139	--	
ZZZ	Copy of Wolfe declaration	135	--	

1 MS. WILKENS: No, she's --

2 THE COURT: Do you need her?

3 MR. HILE: Right. No, it's fine.

4 THE COURT: Okay. For your convenience, if you
5 could just turn, we'll just put you there on the side, so I
6 can see you, and then we'll just have you continue --

7 UNIDENTIFIED SPEAKER: On this side?

8 THE COURT: -- in your vehicle. Would that work
9 for you?

10 MS. PAULK: Uh-huh.

11 THE COURT: Sure. Good. All right.

12 You want turn it a little bit so that counsel can
13 see. Perfect. Thank you.

14 THE CLERK: Please raise your right hand.

15 LINDA PAULK, RESPONDENT'S WITNESS, SWORN

16 THE CLERK: Thank you.

17 THE COURT: We'll put this on for you.

18 THE CLERK: Please state your full name for the
19 record, spelling your first and last name.

20 THE WITNESS: You want my middle name, too?

21 THE CLERK: First and last name.

22 THE WITNESS: Linda Paulk.

23 THE COURT: Thank you. Please spell your last
24 name for us.

25 THE WITNESS: P-A-U-L-K.

1 THE COURT: Thank you.

2 MS. WILKENS: Thank you, your Honor.

3 DIRECT EXAMINATION

4 BY MS. WILKENS:

5 Q Ms. Paulk, did you hear about the murder of the Ryens
6 and Chris Hughes in June of 1983?

7 A Yes.

8 Q And do you know where you were the night that the Ryens
9 and Chris Hughes were murdered?

10 A Yes. I was in the Canyon Corral.

11 Q Okay. And Ms. Paulk, I'm going to show you a
12 photograph, which is JJJ-1.

13 A That's it.

14 Q Okay. Do you recognize that photograph?

15 A Yes.

16 Q What is it?

17 A The Canyon Corral.

18 Q Okay. And do you still live in Chino?

19 A No.

20 Q Okay. Had you ever been to the Canyon Corral before
21 that night?

22 A Sure.

23 Q Okay. Approximately how often would you go to the
24 Canyon Corral?

25 A Maybe a couple nights.

1 know.

2 Q Did you see anyone in the bar that night with coveralls
3 on?

4 A No.

5 Q Did you notice blood on any of the three men?

6 A No. They were all real clean-looking.

7 Q They were clean?

8 A Yes.

9 Q Okay. So their clothing was clean?

10 A Yes, real clean.

11 Q Okay. They were neatly groomed?

12 A Yes, and they were big guys. They looked like service
13 guys, you know, real muscular-type guys.

14 Q Okay. And did you speak to law enforcement about
15 seeing the three men in the bar that night?

16 A Yes.

17 Q Okay. And how did that come about?

18 A I was just -- after we heard about what happened, you
19 know, me and Pam decided we should let somebody know that we
20 saw the three guys in there.

21 Q Okay. And what was it about the three men that you
22 thought would be of interest?

23 A Well, we were both single at the time, and, you know,
24 when you're sitting there, you see these three pretty good-
25 looking guys come walking in. They were young, you know.

1 They weren't, you know, old, but, you know, you just notice.

2 I didn't look at their feet.

3 Q Did you personally call the sheriff?

4 A I don't know whether it was me or Pam, but we discussed
5 it together, and decided we should say something.

6 Q Okay. So one of you called the sheriff?

7 A Yes.

8 Q And then the sheriff spoke with you?

9 A It was probably her, because I think I was at her
10 house.

11 Q Okay. And the sheriff did speak to you?

12 A Yes.

13 Q Okay. Now, what was it about these men that you
14 thought would interest the sheriff?

15 A Well, I don't know. I don't remember, other than we
16 were at the bar that night that it happened, you know, and
17 they were three guys that normally weren't -- that we'd
18 never seen in there before.

19 Q Okay. So they were strangers?

20 A Yes.

21 Q Okay. And do you remember when you were interviewed by
22 the sheriff?

23 A It was maybe a few days after that. I don't know.

24 Q Okay. So, within a few days, the sheriff came out and
25 talked to you?

1 A Yes. I think there might have been two of them.

2 Q Okay. Was Pam Smith with you at the time you were
3 interviewed? Were you interviewed together?

4 A Yes.

5 Q Okay.

6 A Yes.

7 Q And you gave a description of the men?

8 A Uh-huh.

9 Q Okay. And were you called to testify after giving
10 information to the sheriff?

11 A They just called me. That was the year -- the
12 following year.

13 Q Okay. And did you see anybody in the bar that night
14 with blood on them?

15 A No.

16 Q Okay. Do you think the sheriff would be interested in
17 knowing that someone had blood on them?

18 A Well --

19 MR. ALEXANDER: Objection, your Honor,
20 speculation.

21 THE COURT: Sustained.

22 BY MS. WILKENS:

23 Q All right. And did you tell the sheriff everything
24 that you could recall about the men?

25 A Basically, it was just the three guys that we saw that,

1 you know, were kind of -- it's a country/western bar. So,
2 you know, they didn't really fit into the scheme of the
3 place.

4 Q Was there anything about their behavior that caught
5 your attention?

6 A Just that they had, like, military haircuts, the real
7 short, short hair on the sides. None of them do their shoes
8 (sic).

9 Q Do you recall about what time they arrived in the bar?

10 A It was probably about 8:00 or 9:00 o'clock.

11 Q And do you remember how long they were there?

12 A I didn't even see them leave. If they left I don't
13 know (sic).

14 Q Okay. Do you know what time you left?

15 A Around 10:00.

16 Q Okay. Did you have --

17 A We went there for dinner, so we probably got dinner and
18 left.

19 Q Okay.

20 A I think maybe 8:00, 9:00 o'clock.

21 Q So you left about 9:00?

22 A Yes, I think.

23 Q Okay.

24 A Not too long after the band started.

25 MS. WILKENS: I have no further questions, your

EXHIBIT E

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. Crim 24552

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME 93 / 4394

December 5, 1984, Pages ~~4294~~ through 4528

December 6, 1984, Pages 4529 through 4625

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IN PROPRIA PERSONA

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Official Reporters
San Diego County Superior Court
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San Diego, California 92101

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Copy

1
IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
DEPARTMENT NO. 30 HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
December 5, 1984

APPEARANCES:

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DONNA D. BEARD, CSR #1874
Official Reporters

COMPUTERIZED TRANSCRIPT

011697

1 SAN DIEGO, CALIFORNIA, THURSDAY, DECEMBER 6, 1984, 1:35 P.M.

2
3
4 DANIEL J. GREGONIS,

5 called as a witness on behalf of the People, having been
6 previously duly sworn, resumed the stand and testified further
7 as follows:
8

9 CROSS-EXAMINATION (Resumed)

10 BY MR. NEGUS:

11 Q. Mr. Gregonis, behind on you on the board is Exhibit
12 206, a chart which we need not go into in great detail at this
13 point in time, but involves the reactions of ortho-tolidine and
14 luminol.

15 I just wanted to direct your attention to certain
16 of the substances which I have listed on the board, to wit,
17 algae, fungi, and some types of bacteria.

18 Do those particular -- to algae, fungi, and aerobic
19 bacteria contain a chemical called -- called catalase?

20 A. Yes, they do.

21 Q. And if -- when you do the -- do the second step of
22 an ortho-tolidine will that catalase react with the
23 ortho-tolidine and the hydrogen peroxide and produce a color
24 change?

25 A. If there's sufficient quantity there, yes.

26 Q. Generally as far as in a laboratory setting is
27 concerned if you're using the ortho-tolidine test -- well, in
28 your particular -- the particular testing techniques that you

1 Q. Did -- did A-37 appear to you to be a mixed stain?

2 A. It could be because of a weaker A antigen present.

3 Q. And didn't get any antibodies?

4 A. That's a possibility, but that's not my -- plain --
5 what I'm looking at plainly to do that.

6 THE COURT: We can take a recess any time.

7 MR. NEGUS: Okay, fine. I'm about to shift gears.

8 THE COURT: Let's take the afternoon recess.

9 (Recess taken.)

10

11 BY MR. NEGUS:

12 Q. The -- in your laboratory you received at some
13 point in time an item No. CC; is that right?

14 A. That is correct, yes.

15 Q. And item No. CC is this Fruit of the Loom T-shirt
16 which I have in my hand; is that right?

17 A. Yes, it is.

18 Q. On June the 22nd, 1983, did you take that T-shirt
19 and clip some samples from it?

20 A. Yes, I did.

21 Q. Okay. There -- First off, there appears to be some
22 stains on the front of that particular T-shirt.

23 Did you -- did you test those stains with
24 ortho-tolidine?

25 A. Yes, I did.

26 Q. And you got, I guess -- looks like there is three
27 different -- there's three different areas that are labeled
28 on -- on the T-shirt; one here, one where you've cut something

018181

1 out of, and another one you have "control".

2 Did you test each of the stains in those three
3 areas for -- with the ortho-tolidine?

4 A. Yes, I did.

5 Q. With respect to the control section, was that a
6 negative result?

7 A. Yes, it was.

8 Q. Did you test the stains that you can still see
9 there on the T-shirt with the ortho-tolidine?

10 A. I believe so. I believe I did, yes.

11 Q. Did they give a positive reaction?

12 A. Yes, they did.

13 Q. And you also apparently cut certain parts of them
14 out for further analysis; is that right?

15 A. That's correct.

16 Q. And did the parts that you cut out likewise give a
17 positive reaction with the ortho-tolidine?

18 A. Yes, they did.

19 Q. Now, did you then go ahead and on the hard parts
20 that you cut out did you go ahead and do some further -- some
21 further tests?

22 A. Yes, I did.

23 Q. The stains that you had, when you tested them could
24 you tell if they appeared to be relatively fresh?

25 A. To begin with?

26 Q. Yeah, when you clipped them out and started testing
27 them.

28 A. Well, there -- As far as what stage in my test?

01081822

1 Q. In the beginning.

2 A. At the beginning I couldn't tell whether they were
3 fresh or not.

4 Q. Okay. Well, you tested that T-shirt in a series of
5 tests from June the 2nd to June the 24th; is that right?

6 A. I also did some testing on it I believe through
7 this year also, so --

8 Q. Okay. Well, back in -- the testing you did back in
9 June of 1983, was there enough sample in that area you cut-out
10 right there where your initials are to do a full range of tests?

11 A. Yes, there were.

12 Q. If -- Well, did you get results on all the tests
13 that you did?

14 A. No, I did not.

15 Q. You got results on some of them though; is that
16 right?

17 A. Yes, I did.

18 Q. The -- you got results on your, basically on Group
19 II and Group IV?

20 A. That is correct, yes.

21 Q. And also ABO antigens?

22 A. That is correct.

23 Q. The results that you -- that you got, were they
24 consistent with the blood of Kevin Cooper?

25 A. No, they are not.

26 Q. Were they consistent with the blood of any of the
27 victims?

28 A. Yes, they are.

018183

1 Q. Which victim or victims?

2 A. They are consistent with Doug Ryen.

3 Q. One can -- Well, if that shirt were discovered at a
4 roadside approximately three, two to three days after the
5 murders, and if the spot where it was found was a spot that at
6 least at nighttime got somewhat damp, would the results that you
7 got have been consistent with that having been thrown out there
8 on the night of the murders?

9 A. I believe so, yes.

10 Q. That is, you could have seen the same kind of
11 sample degradation that you saw in a damp spot even if the thing
12 was collected only three days after the murders?

13 A. That is true, yes.

14 Q. Obviously as far as just -- as far as the types of
15 lives of the enzymes and proteins that we were talking about
16 earlier, anything less than sort of indoors, room temperature,
17 in optimal conditions can significantly lessen the life of those
18 particular enzymes; is that right?

19 A. Yes, it can.

20 Q. And particularly like being outside can do that as
21 well; is that right?

22 A. Yes, it can.

23 Q. The results then that you got were -- you got a
24 positive reaction to both A and H antigens; is that correct?

25 A. That is correct, yes.

26 Q. The H antigens, a positive reaction on that is not
27 inconsistent with the blood coming from a person who is a type
28 A; is that right?

018184

1 A. No, it is not.

2 Q. That is, the particular serums that you use will --

3 to determine the A will sometimes also react with -- give a

4 reaction for H; is that right? It's got to do with the

5 specificity of the serums?

6 A. Well, the anti-H will sometimes react with an A or

7 B blood.

8 Q. So, the mere fact that you got both the reaction

9 with the A and the H doesn't necessarily indicate that there is

10 any mixed blood involved?

11 A. No, sir, it does not.

12 Q. You also got the EAP type of BA, ADA type of 1, AK

13 type of 1, the peptidase A type of 1, and the CA II type of 1;

14 is that correct?

15 A. That is correct, yes.

16 Q. And all of those were consistent, among other

17 folks, with Doug Ryen?

18 A. That is true, yes.

19 Q. At the -- the laboratory number before that, an

20 item BB, was that -- was that a towel?

21 A. Yes, sir, it is.

22 Q. On that -- on that particular towel, was that

23 labeled as having come from the same spot that CC was?

24 A. Well, as far as my notes reflect, it's labeled as

25 being a stapled sealed paper bag identified as containing a

26 towel from the roadway.

27 Q. Was that particular towel, did that appear to have

28 some stains on it?

0-18185

EXHIBIT F

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. CRIM 34552

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME 101

January 14, 1985, Pages 6283 through 6399
January 15, 1985, Pages 6400 through 6524

APPEARANCES:

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and Respondent:

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and Appellant:

IN PROPRIA PERSONA

ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
DEPARTMENT NO. 30 HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
January 14, 1985

APPEARANCES:

For the People:

DENNIS KOTTMEIER
District Attorney
WITH: JOHN P. KOCHIS
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For the Defendant:

DAVID L. McKENNA
Public Defender
BY: DAVID E. NEGUS
Deputy Public Defender
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DONNA D. BEARD, CSR #1874
Official Reporters

COMPUTERIZED TRANSCRIPT

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THE COURT: Raise your right hand, please.

SCOTT FIELD,
called as a witness on behalf of the Defendant, having been duly
sworn, testified as follows:

THE CLERK: Thank you. Would you be seated, please.
Would you state your full name for the record and spell your
last name.

THE CLERK: Thank you.

BY MR. NEGUS:

A. Yes, sir.

A. Yes, sir.

A. Yes, sir, I was.

A. Yes, sir. I believe that's it.

1 Q. And is there a bar in the area called the Canyon
2 Corral?

3 A. I believe that's the name of it now, sir.

4 Q. And it's at the intersection of Peyton and Carbon
5 Canyon Road?

6 A. Correct.

7 Q. Is there a creek that runs through that particular
8 area?

9 A. Yes, sir.

10 Q. And does the creek cross Peyton Road at
11 approximately the area where I'm pointing on the map?

12 A. That appears to be about the area, sir.

13 Q. Could you locate, as precisely as you come, on the
14 photograph where that is, putting a -- putting the word "creek"
15 with the green marker at that location?

16 A. I believe it's right up in here as best as I can
17 tell from the aerial. (Witness complied.)

18 Q. Okay. Showing you two photographs, -- neither of
19 which have been marked yet for --

20 One of which has been marked as Exhibit 718;
21 another one has been marked as Exhibit 719.

22 Do you recognize those particular photographs?

23 A. Yes, sir.

24 Q. And do they depict the spot on the east side of the
25 road where the creek goes under the road?

26 A. Yes, sir.

27 Q. Putting those photographs on the board, were both
28 these photographs, do they appear to have been taken on the 7th

1 of June?

2 A. Yes, sir.

3 Q. Now, in the photograph on the right, No. 719, would
4 the -- would that be taken looking north?

5 A. Yes, sir.

6 Q. And would the Ryen residence be off to the left up
7 a hill behind that tree that's there in the -- in the upper
8 left-hand corner of the photograph?

9 A. Roughly in that direction, yes, sir.

10 Q. In the right hand photograph -- the left hand
11 photograph, No. 718, that's looking south towards Carbon Canyon;
12 is that right?

13 A. Yes, sir, I believe so.

14 Q. And there's a stop sign that's just barely visible
15 there in the distance; is that the intersection of Peyton and
16 Carbon Canyon?

17 A. Yes, sir.

18 Q. And to the right-hand side there would be the
19 location of the Canyon Corral Bar?

20 A. Yes, sir.

21 Q. On June the 7th, did you discover any items that
22 you seized as evidence at that location?

23 A. Yes, sir.

24 Q. What did you -- what did you -- what did you sieze?

25 A. A T-shirt and a towel.

26 Q. Could you take the green marker again -- let's see,
27 you have -- there's -- from a previous hearing there's been
28 placed a red circle and a green circle around two objects on the

1 photograph; is that right?

2 A. Yes, sir.

3 Q. Does the red circle indicate the T-shirt that you
4 found?

5 A. Yes, sir.

6 Q. And the orange circle -- excuse me -- the green
7 circle indicates the towel?

8 A. Yes, sir.

9 Q. And the towel was an orange towel?

10 A. Yes, sir, I believe so.

11 Q. Do you recall what brand it was?

12 A. I'd have to refer to my report.

13 Q. Do you have that report with you?

14 A. Yes, sir. A Stevens brand towel.

15 Q. Showing you Exhibit 169 from which I am taking a
16 cotton T-shirt, which has previously been identified by Mr.
17 Gregonis, is that the T-shirt that you discovered in the creek
18 area there on Peyton Road?

19 A. The shirt I discovered had my initials on it.
20 Yes, sir, it appears to be. There's my initials
21 and the date.

22 Q. After you seized that particular item of evidence,
23 what did you do with it?

24 A. I took these photographs, marked it with my
25 initials, the date, collected it, tagged it with a sheriff's
26 evidence tag, and placed it in evidence at the West End
27 Substation.

28 Q. Subsequently did you then transport it from the

0202254

1 West End Substation to the San Bernadino Sheriff's Regional
2 Crime Lab?

3 A. I personally did not, no, sir.

4 Q. What evidence tag number did you give it at the
5 Sheriff's Department?

6 A. The T-shirt was A, Adam, 58046.

7 Q. And what was the towel?

8 A. The towel was A, Adam, 58047.

9 Q. When you discovered the T-shirt, was it in any way
10 damp?

11 A. I don't recall if it was damp, sir.

12 Q. The people that are depicted in the photograph, one
13 of them appears to be a sheriff's officer; is that a reserve?

14 A. I don't know what his status is, sir.

15 Q. You don't know that gentlemen?

16 A. Not personally, no, sir.

17 Q. And the other people depict in the photograph are
18 just spectators?

19 A. Apparently. None of them are personally known to
20 me.

21 Q. Did you yourself search the whole length of that
22 road from Eucalyptus down to Carbon Canyon?

23 A. No, I did not.

24 Q. A what area did you personally search?

25 A. I personally searched, I believe it was from
26 approximately English Road northward toward 71.

27 Q. Okay. Then the towel and the T-shirt were brought
28 to your attention rather than you personally discovering them?

2 Q. Do you remember who it was that brought them to
3 your attention?

6 Q. Do you recall what time it was that you seized the
7 items?

9 O. In the afternoon?

11 Q. On June the 6th, 1983, did you go to the Ryen
12 residence at 2943 English Road?

14 Q. What time did you arrive there?

16 Q. Were you there as part of a -- a large number of
17 people from your particular unit that were involved in removing
18 items from the Ryen master bedroom?

20 Q. Did -- do you know what time you first entered the
21 house?

24 Q. Okay. When you first entered the house, were the
25 walls, carpets, furniture, what have you still in place?

- 1 Q. So there were people from your unit that were
2 involved in moving it?
- 3 A. Yes, during or prior to my arrival.
- 4 Q. On that particular date did you go into any parts
5 of the house other than just the master bedroom?
- 6 A. I don't specifically recall going into another part
7 of the house that day.
- 8 Q. Did you on some subsequent day?
- 9 A. Yes, later on in the week I did.
- 10 Q. And what -- what rooms did you go in later in the
11 week?
- 12 A. At one time or another during the course of the
13 week I had been into almost every room of the residence.
- 14 Q. Okay. The -- was it the next day that you went
15 first into other rooms of the house?
- 16 A. I don't remember specifically, but I don't believe
17 so.
- 18 Q. So the day after?
- 19 A. It would have been Wednesday or Thursday, possibly.
- 20 Q. Then could you on this diagram, Exhibit 226, for
21 yourself put "6-8/9" for "rest of house".
- 22 A. (Witness complied.)
- 23 Q. While you were in other parts of the house, was
24 there anybody in there with you working?
- 25 A. In the specific room or within the residence?
- 26 Q. Within the residence.
- 27 A. I'm certain there was.
- 28 Q. Do you remember who the persons were?

EXHIBIT G

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. *Crim 24552*

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME *102*

January 16, 1985, Pages 6525 through 6621
January 17, 1985, Pages 6622 through 6745

APPEARANCES:

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and Respondent:

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For the Defendant
and Appellant:

IN PROPRIA PERSONA

ROBERT L. ROACH, CSR #1727
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Official Reporters
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

02020608

1 SAN DIEGO, CALIFORNIA, WEDNESDAY, JANUARY 16, 1985 9:40 A.M.

2 --oo0oo--

3
4 THE COURT: Good morning.

5 MR. NEGUS: Ed Lelko.

6
7 EDWARD JOSEPH LELKO,
8 called as a witness on behalf of the Defendant, having been duly
9 sworn, testified as follows:

10 THE CLERK: Would you have a seat, please.

11 Would you state your full name for the record and
12 spell your last name.

13 THE WITNESS: Edward Joseph Lelko. L-e-l-k-o.

14
15 DIRECT EXAMINATION

16 BY MR. NEGUS:

17 Q. Mr. Lelko, in June of 1983, what was your employer?

18 A. Canyon Corral.

19 Q. What is the Canyon Corral.

20 A. It is a restaurant-bar.

21 Q. And what was your occupation at that point in time?

22 A. Bartender.

23 Q. I'm getting good at that.

24 Directing your attention to an aerial photograph
25 being marked as Exhibit 1.

26 Can you orient yourself on that photograph as to
27 the Chino area?

28 A. Right.

1 Q. Was there anything different about them the second
2 time that they came in?

3 A. Well, one of them was extremely drunk and I refused
4 to serve them, so they all left.

5 Q. How did you refuse to serve them?

6 A. I didn't. I told the waitress, I shook my head and
7 she knew what I meant, and she just went up and told them to
8 leave, and they left.

9 Q. Did one of the young men have a yellowish or beige
10 T-shirt?

11 A. Yes.

12 Q. What time did they leave the second time?

13 A. The second time?

14 Q. Yes.

15 A. It was around 11:30. Maybe 11:35.

16 Q. And did you see where they went when they left your
17 establishment?

18 A. They just walked out the door, that is all I know.

19 Q. You walk out the front door of the Canyon Corral,
20 what street are you going to be on?

21 A. Carbon Canyon.

22 Q. From your place in the bar, can you see vehicles
23 out front; parked out front?

24 A. No.

25 Q. Is there a parking place both out front of the
26 place and also in the back?

27 A. Yes.

28 Q. If you are going into the parking lot, if you are a

1 canyon?

2 A. Right.

3 Q. Any others?

4 A. No, not in that area.

5 Q. The other bars that would be the closest other bars
6 would be up in the City of Chino or down at the airport, which
7 is on the other side of the --

8 A. Right.

9 Q. -- photograph here.

10 The yellowish or beige T-shirt that the young men
11 were wearing, was there anything particularly distinctive about
12 it that you can recall?

13 A. Not really. Just maybe a pocket or something in
14 them, or -- they were the type like that, which were just --

15 Q. I have showed you this T-shirt before.

16 A. Yes.

17 Q. Showing you Exhibit 169, a previously identified
18 T-shirt with blood consistent with Doug Ryen on it.

19 You can't say positively that it is, but at least
20 this is a similar type T-shirt as to what the person was
21 wearing.

22 A. Yes.

23 MR. NEGUS: Thank you. I have nothing further.

24

25 CROSS EXAMINATION

26 BY MR. KOTTMEIER:

27 Q. Mr. Lelko, the Canyon Corral bar is just a beer
28 bar?

EXHIBIT H

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. Crim 24552
FROM SAN DIEGO COUNTY
HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME 106

February 5, 1985, Pages 7608 through 7734
February 7, 1985, Pages 7735 through 7863
February 8, 1985, Page 7863-A

APPEARANCES:

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For the Defendant
and Appellant:

IN PROPRIA PERSONA

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
February 5, 1985

APPEARANCES:

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DONNA D. BEARD, CSR #1874
Official Reporters

COMPUTERIZED TRANSCRIPT

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1 still we have enough witnesses that I cannot even predict with
2 any degree of certainty how long before Dr. Howell.

3 THE COURT: All right, gentlemen.

4 MR. NEGUS: We have got stipulations and stuff to do.

5 MR. KOTTMEIER: We have got a tape to play.

6 THE COURT: We have other jury instructions.

7 MR. KOTTMEIER: Hopefully we can get to the section of
8 the conversation to play.

9 MR. NEGUS: Okay. Are you going to play the whole tape?

10 THE COURT: All right, thank you.

11 (Chambers conference concluded.)

12

13 MR. KOTTMEIER: Shirley Killian.

14 THE COURT: You still under oath, just resume the stand
15 and state your name again.

16 THE WITNESS: My name is Shirley Catherine Killian.

17

18 SHIRLEY CATHERINE KILLIAN.

19 called as a witness on behalf of the People in rebuttal, having
20 been previously duly sworn, resumed the stand and testified
21 further as follows:

22

23 DIRECT EXAMINATION (Resumed)

24 BY MR. KOTTMEIER:

25 Q. Miss Killian, are you familiar with the reputation
26 of Ed Leiko within the community for truth, veracity or
27 exaggeration?

28 A. Yes, sir.

021511

8 THE COURT: Cross.

10 CROSS EXAMINATION

11 BY MR. NEGUS:

12 Q. Mrs. Killian, do you exaggerate yourself?

13 A. I hope I don't. I try very hard not to.

14 Q. Okay. Well, according to your recollection then,
15 if Mr. Lelko had described one of the men as extremely drunk,
16 would he have been exaggerating?

17 A. No, sir.

18 Q. If he had said that there were three persons there,
19 would he have been exaggerating?

20 A. No, sir.

21 Q. If he had said that they had left at 11:30. maybe
22 11:30, -35 that particular night, would he have been
23 exaggerating the time?

24 A. I'm not sure he would have known the time.

25 Q. Would he have been exaggerating? Would that have
26 been accurate according to your recollection?

27 A. Yes, sir. Possibly.

28 Q. If he had described the T-shirt that one of the

1 persons were wearing as possibly beige, possibly yellow, would
2 he have been exaggerating?

3 A. No.

4 Q. You can say then in the lighting you had in there
5 that particular night that it was not a white T-shirt, correct?

6 A. Right.

7 Q. At 9:00 o'clock, if Mr. Lelko had said that the
8 lighting in the Canyon Corral was better prior to the arrival of
9 the band, would he have been exaggerating?

10 A. No, sir.

11 Q. Did you in fact provide the San Bernardino
12 Sheriff's office and in the person of Mr. Bedana with Mr. Lelko
13 as a person who had been at the Canyon Corral Bar that night??

14 A. I provided my bartender's name, yes, sir.

15 Q. As the person who had been at the Canyon Corral the
16 night three young men had been there.

17 A. Yes, sir.

18 Q. Now, the vehicle that you saw the person leaning up
19 against, was he trying to get into that vehicle?

20 A. At first I thought he was but he was just leaning
21 on it.

22 Q. Did you actually see some individuals from that
23 group enter a vehicle?

24 A. Yes, sir.

25 Q. And what kind of vehicle was that?

26 A. It was a light-colored pick up.

27 Q. Now, when you described that vehicle as a pickup,
28 are you exaggerating?

02-15-77

1 A. No, sir.

2 Q. When -- when you were first interviewed about this
3 particular event, you were interviewed on the 5th, the 6th, and
4 the 8th of June, is that correct, by different officers?

5 A. Yes, sir.

6 Q. And on the 8th there was an officer by the name of
7 Phil Danna who came out to interview; is that right?

8 A. Yes, sir.

9 Q. And at that point in time you described the vehicle
10 in question as possibly a pickup truck; is that right?

11 A. I believe so.

12 Q. As time has gone on it's become a pickup truck; is
13 that correct?

14 A. I do believe in my testimony as I was interviewed I
15 said it was larger than an automobile. And they asked me if it
16 was as big as a station wagon. I said bigger cause it was
17 taller. I said as far as I can recollect it was possibly a
18 pickup.

19 Q. Then as time has gone on from that initial
20 statement, you came out to California from Colorado last spring;
21 is that right?

22 A. Yes, sir.

23 Q. And at that point in time you talked to a Gary
24 Woods?

25 A. Yes, sir.

26 Q. And by that point in time it was definitely a
27 pickup; is that right?

28 A. I do believe I said it was possibly a pickup.

1 Q. Didn't say it was definitely a pickup?
2 A. I don't remember saying I said it was definitely a
3 pickup.
4 Q. Well. when you testified here today in court you
5 didn't say, "possibly a pickup", right?
6 A. I do believe it was a pickup.
7 Q. Is that an exaggeration from "possibly" to "I do
8 believe"?
9 A. I don't think so.
10 Q. Thank you.
11 A. I'm recalling as best I can.
12 MR. NEGUS: Nothing further.
13 MR. KOTTMEIER: No further questions, your Honor.
14 THE COURT: Thank you, Mrs. Killian.
15 MR. KOTTMEIER: Larry Lease. your Honor.
16 THE CLERK: Raise your right hand.
17
18 LARRY LEASE,
19 called as a witness on behalf of the People in rebuttal, having
20 been duly sworn, testified as follows:
21 THE CLERK: Thank you. Would you be seated please.
22 Would you state your full name for the record and spell your
23 last name.
24 THE WITNESS: Larry Lease. L-e-a-s-e.
25 THE CLERK: Thank you.
26
27 DIRECT EXAMINATION
28 BY MR. KOTTMEIER:

EXHIBIT I

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.) Tuesday,
9) June 29, 2005
10 JILL L. BROWN, ACTING WARDEN,) 9:00 a.m.
11 SAN QUENTIN STATE PRISON,)
12)
13 Respondent.)
14)

15
16 TRANSCRIPT OF PROCEEDINGS
17 BEFORE THE HONORABLE MARILYN L. HUFF
18 UNITED STATES DISTRICT JUDGE
19

20 APPEARANCES:

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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1 AFTERNOON SESSION

2 --oOo--

3 THE COURT: We're back in session.

4 MS. WILKENS: Your Honor, our next witness will be
5 Shirley Killian.

6 SHIRLEY KILLIAN, RESPONDENT'S WITNESS, SWORN

7 THE CLERK: Please state your full name for the
8 record, spell your first and last name.

9 THE WITNESS: Shirley Katherine Killian,
10 S-H-I-R-L-E-Y, K-I-L-L-I-A-N.

11 THE COURT: You may proceed.

12 MS. WILKENS: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MS. WILKENS:

15 Q Ms. Killian, where were you employed in June of 1983?

16 A At the Canyon Corral.

17 Q And what were your duties at the Canyon Corral at that
18 time?

19 A I was manager.

20 Q And did you become aware of the murders of the Ryans
21 and Chris Hughes in the Chino Hills?

22 A Yes, I did.

23 Q And how did you become aware of that?

24 A We were told by the police department on Sunday, I
25 believe, on the day after.

1 Q The day after, the police came to the bar?

2 A Yes.

3 Q And were you working the night of the murders?

4 A No, I wasn't. I was not working that night.

5 Q Okay, were you at the bar the night of the murders?

6 A Yes, I was, later in the evening.

7 Q In the early evening?

8 A I think it was 9:00 or 10:00, somewhere in there. I'm
9 not sure.

10 Q Okay, so, you arrived at the bar sometime around 9:00
11 that evening?

12 A 9:00 or 10:00, somewhere in there.

13 Q Okay, and while you were at the bar that evening, were
14 you helping out or were you a patron?

15 A No, I wasn't. I was sitting in a booth.

16 Q Okay, and that night, when you were at the bar, did you
17 instruct any of the waitresses to cut off any of the patrons
18 from being served alcohol?

19 A I was told that some of the patrons had been cut off
20 and were asked to leave.

21 Q All right, do you recall whether or not you were the
22 one that cut them off?

23 A I don't recall that, no.

24 Q Now, how crowded was the bar that night when you were
25 there?

1 A As I recall, it was a Saturday night and busy.

2 Q And was there a band playing that night?

3 A Yes, there was.

4 Q And when you arrived at the bar that night, was the
5 band already playing?

6 A Yes.

7 Q And was there a set time at which the bands would start
8 on a Saturday night?

9 A Usually at 9:00.

10 Q Now, how was the lighting inside the bar?

11 A It was -- well, we also served dinners, so there was
12 enough light for you to eat on, but it wasn't like a
13 brightly lit room like this or some of the restaurants.

14 Q Now, do you recall who the bartender on duty that night
15 was?

16 A Yes, it was Eddie.

17 Q And would that be Ed Lelco?

18 A Yes.

19 Q And do you recall who the waitresses on duty were that
20 night?

21 A It was Ginny and Kathy. Kathy Royals and Ginny McNeil.

22 Q Okay, and did you notice the three men that came into
23 the bar that night?

24 A They had been in earlier when I was not there. Then,
25 they came back. They were already there when I came. I did

1 not notice them until they were asked to leave.

2 Q Okay, do you have any sense of how long you were at the
3 bar that night before they were asked to leave?

4 A I don't recall, I'm sorry.

5 Q And did anybody have to escort them from the bar that
6 night?

7 A Yes, my friend was also a bouncer there, Ralph, and he
8 usually -- if we asked someone to leave, then we'd usually
9 walk them to the door to make sure they did leave.

10 Q Okay, and do you recall whether or not Ralph walked to
11 the door with these three patrons that night?

12 A Yes.

13 Q You believe he did. Now, did you go outside the bar
14 when the men left?

15 A Yes, I did.

16 Q And why did you do that?

17 A To make sure that they didn't do any damage to
18 anybody's cars that were parked out there.

19 Q Was that something that you would normally do?

20 A Yes, it is.

21 Q Now, when you followed the three men out into the
22 parking lot, did you observe what kind of vehicles they got
23 into?

24 A One got into a pickup, as I recall, and another one got
25 into a smaller car.

1 Q So, they didn't leave in one vehicle.

2 A No.

3 Q Did you see the vehicles leave the parking lot?

4 A Yes, I did.

5 Q Did the men all exit the bar at the same time?

6 A I beg your pardon?

7 Q Did all three men leave the bar at exactly the same
8 time?

9 A Yes.

10 Q Now, that night, did you see anyone come into the bar
11 through the kitchen?

12 A No, I did not.

13 Q Did you see any customers behind the bar that night?

14 A No, I did not.

15 Q Did you see any law enforcement officers inside the bar
16 that night?

17 A I can't honestly remember. I know that, when we had a
18 full house, we usually had one or two officers that would
19 just do a walk through to make sure everything was fine. I
20 don't -- I can't -- I'm sorry. It's been so long. I just
21 can't remember if somebody came in that night. I don't
22 recall today if someone did. I'm sorry.

23 Q Did you call the police that night?

24 A No, I did not.

25 Q Were you told that anyone else had called the police

1 that night?

2 A No, I did not.

3 Q Now, in front of you is a white notebook and it's
4 opened up to what is marked as Respondent's Exhibit BBBB.
5 So, that's four B's. And it consists of Sheriff's reports.
6 Do you have that in front of you?

7 A Yes, I do.

8 Q Okay. If you could turn to the third page of those
9 reports, which is dated June 9th, 1983, and go down to the
10 sixth paragraph, and it begins with, "Seeing that he did
11 respond."

12 A Yes.

13 Q Okay, down there, if you could read that paragraph to
14 yourself and see if that refreshes your recollection.

15 A Yes, I do recall.

16 Q Okay, does that refresh your recollection as to why you
17 went out of the bar that night?

18 A Yes.

19 Q Why did you go out of the bar that night?

20 A I remember I was told that somebody had their head down
21 and was taking a nap.

22 Q Okay, and that was inside the bar?

23 A Pardon?

24 Q That was inside the bar?

25 A Yeah, and I believe then that's when the decision was

1 made that they'd had enough to drink.

2 Q Now, did you go over and personally observe the person
3 with their head down?

4 A I think I did, but you know, it's been 21 years, and we
5 all went on with our lives, so whatever I said then is
6 exactly what I remember and I told the truth.

7 Q Okay, now, did you have an opportunity to observe how
8 the three men were dressed that night?

9 A Yes, I did.

10 Q Did you notice any blood on any of the men's clothing?

11 A No, I did not.

12 Q Did you observe any blood on their person?

13 A No, I did not.

14 Q Now, if you could turn to the -- just two more pages
15 from where I have you now, which is a report dated June
16 10th, the fourth paragraph down, it indicates that, "The
17 manner of dress and actions did not fit in with the type of
18 crowd that the Canyon Corral normally had." Do you recall
19 that they didn't fit in with the crowd at the bar?

20 A They were strangers. This was basically a neighborhood
21 bar, but we had been getting a lot of people coming from
22 Orange County because we had a country western band. And we
23 had been getting in a lot of people we didn't know. And
24 they weren't dressed in our typical country neighborhood,
25 where most of the people who came in were people that were

1 working ranches or whatever.

2 Q Now, if you could go forward again two more pages,
3 there's a report which is dated June 25th, and at the bottom
4 of the page, it indicates that the men were getting into a
5 pickup truck, a light colored pickup truck.

6 A Yes.

7 Q Do you recall seeing one of the men getting into a
8 light colored pickup truck?

9 A Yes, one of them left in a light colored pickup truck.

10 Q And your recollection is that another man left in a
11 smaller car?

12 A Right.

13 Q What do you recall about the car?

14 A Nothing unusual. I couldn't tell you exactly what
15 color because our lights are, you know, kind of yellowish
16 outside. But, they were light colored vehicles. But, there
17 wasn't anything unusual. We have a lot of pickups and
18 vehicles in our parking lot.

19 MS. WILKENS: I have no further questions, your
20 Honor.

21 THE COURT: Cross?

22 CROSS EXAMINATION

23 BY MR. HILE:

24 Q Good afternoon, Mrs. Killian. My name is Norman Hile
25 and I represent the Petitioner in this case. I'm going to

EXHIBIT J

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA.

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. Crim 24552

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME 102

January 16, 1985, Pages 6525 through 6621
January 17, 1985, Pages 6622 through 6745

APPEARANCES:

**For the Plaintiff
and Respondent:**

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**For the Defendant
and Appellant:**

IN PROPRIA PERSONA

ROBERT L. ROACH, CSR #1727
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Official Reporters
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

020268

Copy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
January 16, 1985

APPEARANCES:

For the People:

DENNIS KOTTMEIER
District Attorney
WITH: JOHN P. KOCHIS
Deputy District Attorney
1540 Mountain Avenue
Ontario, California 91762

For the Defendant:

DAVID L. McKENNA
Public Defender
BY: DAVID E. NEGUS
Deputy Public Defender
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ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters

COMPUTERIZED TRANSCRIPT

0202299

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020270

1 Q. And, well, in June, 1983, where were you living?
2 A. Yucca Valley.
3 Q. Where is Yucca Valley?
4 A. About twenty some miles north of Palm Springs.
5 Q. Is it in San Bernardino County?
6 A. Right.
7 Q. On June the 4th, 1983, a Saturday, did you and your
8 wife and some friends of yours go to the races.
9 A. Uh-huh.
10 Q. You have to say yes or no because he's taking it
11 all down.
12 A. Yes.
13 Q. And where did you go to the races?
14 A. Los Alamitos.
15 Q. Is that down near Long Beach.
16 A. Right.
17 Q. Are the races in Los Alamitos day races or night
18 races?
19 A. Night races.
20 Q. After the races did you go back to the Chino Hills
21 area?
22 A. Yes.
23 Q. Were you basically familiar with that area?
24 A. No.
25 Q. Why did you go back there?
26 A. One of the trainers that was -- that had a horse
27 running that night lived there, and so we took him home.
28 Q. How many people were in your car as you drove back

1 there?

2 A. About five.

3 Q. Do you remember who they were?

4 A. Yes.

5 Q. Who.

6 A. Myself, my wife, Jamie Osler, James Menyard and

7 David Key.

8 Q. Do you recall whether -- well, when you were going

9 to Chino Hills, did the person going with you give you

10 directions?

11 A. No, I followed him. A friend was riding with him,

12 so we followed him to his house, and then the friend that rode

13 with him got in our car and -- no, I'm sorry.

14 The trainer was riding with our friends in her

15 truck. We followed them to his house, he got out, and then we

16 left.

17 Q. Okay. Do you know what the main road was that his

18 house was on?

19 A. No.

20 Q. Are you familiar with the road called Carbon

21 Canyon?

22 A. Yes.

23 Q. Were you on that road that night?

24 A. Yes.

25 Q. How far from Carbon Canyon was the -- was the house

26 of the trainer?

27 A. Maybe three quarters of a mile to maybe a mile

28 north of Carbon Canyon.

002034-1

1 Q. Okay. Do you know the name of the -- you don't
2 know the name of the side street that it was on?

3 A. No.

4 Q. At the intersection of that side street and Carbon
5 Canyon, do you remember whether there was any buildings there or
6 not?

7 A. No, I don't believe there were any buildings.

8 Q. Was there a car that you passed on Carbon Canyon
9 that particular night?

10 A. Yes.

11 Q. If you are going on Carbon Canyon on a flat area
12 and then you start going back into the canyon, was the trainer's
13 house back into the canyon from the bar or back out towards the
14 flat area?

15 A. We went up Carbon Canyon past the bar to a street
16 and turned right.

17 Q. So, that would have been winding into the canyon a
18 bit?

19 A. No, it was just before you start winding into the
20 canyon, I think.

21 Q. Coming out after you had gone into the trainer's
22 house, did you notice any vehicles driving unusually?

23 A. When I was leaving or --

24 Q. Leaving.

25 A. Yes.

26 Q. As I was leaving his driveway onto the road I had
27 to stop and wait for a car coming down the road.

28 Q. How was that car driving?

1 A. It was coming down the road.
2 Q. Was it going fast?
3 A. Um, that time of night I don't know if it'd be
4 considered fast. There wasn't anyone else on the road. It was
5 a little quicker, and -- I was going to go ahead and go on out
6 into the street, but he was coming a little quicker than I had
7 thought so I stopped.
8 Q. When the vehicle passed you did you pay much
9 attention to it at that point in time?
10 A. Not a whole lot.
11 Q. Do you know what make of vehicle it was?
12 Did you ever get close enough so you could read
13 what make of vehicle it was?
14 A. No.
15 Q. Was it a sports car, sedan, station wagon?
16 A. Station wagon.
17 Q. Do you know what color it was?
18 A. No.
19 Q. Was it two-tone or just one tone?
20 A. A light color.
21 Q. Do you know if it had wood panelling on it or not?
22 A. Not for sure.
23 Q. Did it have a trailer hitch?
24 A. Yes.
25 Q. Of what type?
26 A. The insert type.
27 Q. Did it have any wires hanging from it.
28 A. I had seen some wires out of the taillights where

1 you connect a trailer to.

2 Q. Now, could you, from the distance that you were at,
3 could you tell for sure that those were wires or could they just
4 be something hanging back out of the tailgate?

5 A. I believe they were wires.

6 Q. Did the car have a luggage rack on top?

7 A. I believe so.

8 Q. Showing you Exhibit 181, a photograph of a station
9 wagon.

10 With the exception of there not being any wires
11 hanging out of the back of that particular -- of those
12 particular lights, is there anything that you could say which is
13 different from the vehicle that you saw?

14 A. It doesn't have the wires and the taillights.

15 Q. Anything else?

16 A. No.

17 Q. Did you follow the vehicle for any distance?

18 A. As we came out of the driveway, and I pulled out
19 behind him, we went to the intersection of Carbon Canyon and the
20 street I was on and then we both turned left.

21 Q. Okay. And which -- do you know the name of the
22 street that you turned left on?

23 A. Carbon Canyon.

24 Q. Okay. And which way did you go then on Carbon
25 Canyon? Back into the canyon out toward Chino again?

26 A. No. South or east.

27 Q. Did you see how far the vehicle went on Carbon
28 Canyon going east?

1 A. No.

2 Q. Did it go faster than you were going?

3 A. Yes.

4 Q. When you first -- you said that -- you used the

5 word "he" in describing the driver.

6 When you first observed the driver of the vehicle,

7 what did -- what did he look like?

8 A. I couldn't tell, other than it was a male.

9 Q. Okay. Was he a white male or a black male?

10 A. I couldn't tell you for sure.

11 Q. Well, when you -- do you remember what kind of

12 shirt he had on?

13 A. It was a plaid.

14 Q. Do you remember the colors of the plaid?

15 A. No.

16 Q. Did you -- shortly after the time in question, did

17 you have occasion to talk with your wife, to a Lieutenant

18 Knadler from the San Bernardino Sheriff's Department?

19 A. We spoke to someone, I am not sure of his name. He

20 came to the house.

21 Q. At that point in time was your memory considerably

22 more clearly than it is now?

23 A. I'm not sure if it was anymore so than now or not.

24 Q. Did you describe to Lieutenant Knadler, a young

25 male, white, under 30?

26 A. I believe so.

27 Q. Is that what the person looked like to you?

28 A. As far as I could tell.

02073455

1 A. I don't think so.

2 Q. Do you wear glasses?

3 A. No.

4 Q. How fast was the car going when you first saw it?

5 A. I couldn't tell you. I was stopped at the end of

6 the driveway, he was coming down the road maybe 40, 45 miles an

7 hour.

8 Q. Well, do you remember going to the substation in

9 Morongo basin back in June, about the 10th of June talking to a

10 lieutenant, Sheriff's lieutenant?

11 A. No. I went to the Sheriff's station.

12 Q. Do you remember talking on a Thursday -- I'm sorry,

13 at your residence in June to a lieutenant from the Sheriff's

14 office?

15 A. I am not sure of the date when he did come to the

16 house.

17 Q. And did you tell the Sheriff's lieutenant that what

18 attracted your attention to the car was that it was moving at a

19 fairly high rate of speed?

20 A. When I was coming out of the driveway I was going

21 ahead and going on out onto the street, and my wife, or someone

22 else in the car said, you know, stop, evidently thinking I

23 couldn't see the car coming. So, I stopped,

24 Q. Did you ever tell the lieutenant that the car was

25 going at a fairly high rate of speed?

26 A. I could have.

27 Q. Is it fair to say that the only lights that

28 illuminated the car were the lights from your headlight?

EXHIBIT K

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER.

Defendant-Appellant.

SUPREME COURT NO. Crim 24552

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME 102

January 16, 1985, Pages 6525 through 6621
January 17, 1985, Pages 6622 through 6745

APPEARANCES:

For the Plaintiff
and Respondent:

JOHN K. VAN DE KAMP
Attorney General
State of California
110 West "A" Street
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For the Defendant
and Appellant:

IN PROPRIA PERSONA

ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

020268

1 called as a witness on behalf of the Defendant, having been duly
2 sworn, testified as follows:

3 THE CLERK: Thank you. Would you have a seat on the
4 witness stand. Would you state your full name for the record,
5 please.

6 THE WITNESS: Paula Louise Leonnard.
7

8 DIRECT EXAMINATION

9 BY MR. NEGUS:

10 Q. Mrs. Leonard, you're married to Douglas Leonard who
11 just got through testifying?

12 A. Uh-huh.

13 Q. You have to say yes or no so she can take it down.

14 A. Yes.

15 Q. And in June of 1983 you and your husband went to
16 the races, right?

17 A. Uh-huh.

18 Q. On the way back from the races did you drop off a
19 person in Chino Hills?

20 A. Yes.

21 Q. As you were leaving that person's house, did you
22 observe a vehicle going at a fast rate down the road?

23 A. Yes.

24 Q. Can you describe that vehicle?

25 A. Well, from what I was -- what I could remember
26 we -- we used to have a 1972 station wagon, a Chevrolet, and
27 that's what it reminded me of.

28 Q. Was it the same thing as your station wagon?

1 A. It was tan, and it had like the wood grain, and
2 that's what I remember about it.

3 Q. What do you mean by the "wood grain"?
4 A. You mean, the wood grain?

5 Q. Oh, it had -- Look at the photograph in front of
6 you. That's Exhibit No. 181. Is that what -- was that the type
7 of pannelling that you're referring to?

8 A. Sort of.

9 Q. Okay. The part of the car that was not panelled,
10 did it appear to be -- to be what color, do you recall?

11 A. It was like tan, a light color.

12 Q. Could you tell for sure in the light whether it was
13 tan or white or cream or --

14 A. Like a cream, yeah.

15 Q. In the -- in the -- Did the car have a luggage rack
16 on top of it?

17 A. I think so. I'm not sure.

18 Q. Do you recall whether or not you could see anybody
19 inside the car?

20 A. From what I remember, it's been so long, but I
21 remember thinking that I seen three or four people in the car;
22 but I can't remember if I actually seen the people or if there
23 was just stuff, you know, stacked in the car or something; but I
24 remember seeing three or four people. That's what it looked
25 like in the car.

26 Q. Okay. When you -- when you first saw it you
27 thought there were three or four people in there?

28 A. Yeah, uh-huh.

00203354

1 Q. The idea that maybe there was something stacked in
2 the car -- Well, did you talk to a Lieutenant Knadler at the
3 same time as your husband did?

4 A. Yeah, uh-huh. That was the first one?

5 Q. Right.

6 A. Okay.

7 Q. Two people have talked to you; is that right?

8 A. Yeah.

9 Q. One was a sheriff's detective and the other was a
10 private investigator?

11 A. Right.

12 Q. The first one that talked to you, he talked to you
13 just a few days after you made the observations; is that
14 correct?

15 A. Yeah, uh-huh.

16 Q. And up till the time -- Well, did that -- did that
17 lieutenant, the man who talked to you a few days after you made
18 the observations, did he ask you the question as to whether or
19 not it could be packages?

20 A. I think it was him. I -- if I remember correctly I
21 believe that's when I said, you know, I thought it could be
22 packages or something.

23 Q. Okay. So what had happened was that you originally
24 thought it was three or four people, but then he suggested to
25 you maybe it was packages and you said it could have been?

26 MR. KOCHIS: Objection. That's leading and suggestive.

27 THE COURT: Sustained. Don't answer.

28 THE WITNESS: Okay.

1 BY MR. NEGUS:

2 Q. Did -- did you have any idea that it could have
3 been packages before the man asked the question?

4 A. No.

5 Q. You are -- as far as your best recollection at the
6 present time was it packages or people?

7 A. I can't answer. I -- I don't know.

8 Q. How were -- how were the shapes spaced, was there
9 like two in the front two in the back, or --

10 A. That's what it -- that's what it appeared to be.

11 Q. Did the -- did the -- Well, you saw -- What did you
12 see? Could you actually see the object itself or just a
13 silhouette.

14 A. Like a silhouette. That's what gave me the
15 impression, well, maybe it was packages or just something
16 stacked in the car.

17 Q. So there would have been three separate stacks in
18 addition to the driver?

19 A. Yeah.

20 Q. And did all of the -- did all of the silhouettes
21 that you saw have the general shape of a head?

22 A. Yeah.

23 Q. Have you ever seen any packages that have that
24 particular silhouette?

25 A. No.

26 Q. Thank you.

27 I have nothing further.

28

02075549

EXHIBIT L

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. CRIM 24552

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME 103

January 22, 1985, Pages 6746 through 6890
January 23, 1985, Pages 6891 through 7007

APPEARANCES:

For the Plaintiff
and Respondent:

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For the Defendant
and Appellant:

IN PROPRIA PERSONA

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Official Reporters
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

020501

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1

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
DEPARTMENT NO. 30 HON. RICHARD C. GARNER- JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
January 22, 1985

APPEARANCES:

For the People:

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ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters

COMPUTERIZED TRANSCRIPT

020502

1

2

LINDA LEE EDWARDS,

3

called as a witness on behalf of the Defendant, having been duly
sworn, testified as follows:

4

5

THE CLERK: Thank you. Would you please be seated.

6

Would you state your full name for the record.

7

THE WITNESS: Linda Lee Edwards.

8

9

DIRECT EXAMINATION

10 BY MR. NEGUS:

11

Q. Excuse me, Mrs. Edwards, for just a moment.

12

Mrs. Edwards, where do you reside?

13

A. In Chino.

14

Q. And directing your attention to Court's Exhibit No.

15

3. Is the house I'm pointing to just down the hill from the
Ryen house, is that your residence?

16

17

A. Yes.

18

Q. And were you residing there in June of 1983 as

19

well?

20

A. Yes.

21

Q. Were you acquainted with the Ryen family?

22

A. Yes.

23

Q. Were you acquainted with their station wagon that

24

is depicted in Exhibit 46?

25

A. Yes.

26

Q. In order to, in order to drive up to the Ryen

27

residence, is it necessary to go past your house?

28

A. Yes.

00205567

1 Q. Does anybody go past your house up that road other
2 than people who are going up to the Ryen residence?

3 A. No.

4 Q. Did you learn about the murders of the Ryen family,
5 on June the 5th, Sunday, 1983?

6 A. Yes.

7 Q. The night before, had you noticed anything unusual
8 involving the Ryen station wagon?

9 A. No.

10 Q. The night before that had you?

11 A. Possibly.

12 Q. What did you notice?

13 A. I am not sure what night it was, but their car left
14 to go down the driveway out onto English Road late in the
15 evening.

16 Q. What -- how late would late be?

17 A. 11:00 o'clock or midnight.

18 Q. Could it have been as late as 12:30?

19 A. Possibly.

20 Q. And did -- what in particular attracted your
21 attention to it that particular evening?

22 A. Just that it was going down the driveway at that
23 time, which was not real normal.

24 Q. Did you -- did you notice what speed it was going?

25 A. It's kind of hard to tell. The road has speed
26 bumps in it, so nobody goes too fast.

27 Q. Did it appear to be traveling at a faster rate of
28 speed than normal?

020560

1 A. Somewhat.

2 Q. After it passed your residence, did it pick up

3 speed again?

4 A. I was not at my residence when I saw it.

5 Q. Where were you?

6 A. I was at a different residence.

7 Q. Where was that?

8 A. At the Hughes house.

9 Q. Which --

10 A. Jim Hughes.

11 Q. There is two?

12 A. Jim Hughes.

13 Q. Okay. That would be on this diagram the house that

14 I'm pointing at?

15 A. No.

16 Q. Off to the right?

17 A. Uh-huh.

18 Q. When it went past you at that point in time, was it

19 going at a very high rate of speed?

20 A. Probably a little faster than normal, but again

21 there's potholes and speed bumps, so you don't go too fast on

22 that road.

23 Q. On the Monday after the discovery of the Ryan

24 murders, did you talk to a sheriff's detective named Steve

25 Moran?

26 A. I talked to several. I don't remember who I talked

27 to on what day.

28 Q. Do you remember a deputy -- a detective named Steve

1 Moran?
2 A. Yes.
3 Q. When you talked to Mr. Moran, did you tell him
4 about the -- about seeing the Ryen station wagon?
5 A. I believe I did.
6 Q. And did you tell him that you believed that it was
7 Saturday night, or possibly Saturday night that you'd seen the
8 vehicle going down?
9 A. I don't remember if I even mentioned a night other
10 than one night I had seen the car go down the road.
11 We were up late waiting for a mare to foal, and I
12 don't remember what night it was and I don't remember if I told
13 anybody what night.
14 Q. Okay. Was it the same night that the mare did in
15 fact, foal?
16 A. No.
17 Q. Did you indicate to Mr. Moran that it was after
18 midnight?
19 A. I don't remember if I indicated a time except that
20 it was late.
21 Q. And did you indicate to him that it was traveling
22 at a very high rate of speed?
23 A. I'm sure I told him that it was going for a higher
24 rate of speed than is normal on that road.
25 Q. You don't remember, though, saying, "very high rate
26 of speed"?
27 A. No.
28 Q. Do the -- did the Ryens have on their barn a light?

020522

EXHIBIT M

DECLARATION OF KAREE KELLISON

I, Karee Kellison, declare as follows:

1. Prior to June 4, 1983, I personally knew Eugene Leland Furrow, hereinafter referred to as Lee, and Debbie Glasgow, hereinafter referred to as Debbie. My sister is Diana Roper, hereinafter referred to as Diana.

2. I attended the US Festival with Lee, Diana and Debbie on June 4, 1983. Lee wore a T-shirt and blue denim pants.

3. After the US Festival I drove home with Diana to her house in Mentone. I stayed at Diana's house that night. During the early morning hours of June 5, 1983, we were in the living room talking when we heard a car pull in the driveway. I would estimate the time was after 3:00 a.m. but before sunrise. I looked out the window in the French doors and I saw Lee and Debbie get out of a car. There was not sufficient light to identify who the other occupants in the car were. However, there was enough light to see that it was a station wagon, kind of brown in color. After Lee and Debbie got out of the car, the car departed.

4. Lee and Debbie came in the house. Lee was wearing long sleeve coveralls, which were splattered with blood. Lee walked to the back of the house and changed his clothes. When he came out of the bedroom he was no longer wearing the coveralls and apparently left them in the back of the house. Lee and Debbie left immediately on his motorcycle. Lee and Debbie were only in the house for a few minutes and were in a hurry.

5. A week or so after the Ryan/Hughs murders I was interviewed by the police. I never told them the above information because I am terrified of Lee Furrow and Debbie Glasgow. I don't recall what I told the police but I know that I did not tell them what I saw for

1 fear of what Lee and Debbie would do to me. While I am still scared to death of Lee, I
2 understand he is in Pennsylvania and Debbie is dead.
3

4 I declare under the penalty of perjury under the laws of the United States and the State
5 of California that the foregoing is true and correct. Executed on November 15, 1998 at
6 Mentone, California.
7

8 Karee Kellison
9 Karee Kellison
10 Declarant
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EXHIBIT N

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

4	KEVIN COOPER,	)	Case No. 04CV0656-H(LSP)
)	
5	Petitioner,	)	San Diego, California
)	
6	vs.	)	Monday,
		)	June 28, 2004
7	JILL L. BROWN, ACTING WARDEN,	)	10:00 a.m.
	SAN QUENTIN STATE PRISON,)	
8)	
	Respondent.)	
9)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARILYN L. HUFF
UNITED STATES DISTRICT JUDGE

APPEARANCES:

13	For the Petitioner:	NORMAN C. HILE, ESQ.
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		and Sutcliffe
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES: (Cont'd.)

2 For the Respondent:

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I N D E X

2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Christine Slonaker	2	36	89	--
4	Mary Wolfe	91 104	130	179	--
5	Linda Paulk	182	191	200	--
6	Pamela Smith	202	212	232	235
7					
8	<u>EXHIBITS</u>		<u>IDENTIFIED</u>		<u>RECEIVED</u>
9	<u>Plaintiff's:</u>				
10	20 Declaration of Slonaker		2		35
11	21 6/10/83 interview of Paulk and Smith		196		231
12	22 Interview of Smith		220		231
13	<u>Defendant's:</u>				
14	JJJ-1 Photos of bar parking lot		12		--
15	thru JJJ-4				
16	OOO-1 Declaration of Smith		202		--
17	RRR-1 Map of area		145		--
18	SSS Diagram		20		--
19	SSS-1 Drawing of inside of bar		106		--
20	SSS-2 Drawing of inside of bar		214		--
21	TTT-1 Diagram by Wolfe		106		--
22	VVV Photograph		59		--
23	YYY-1 Detective interview with Wolfe		139		--
24	ZZZ Copy of Wolfe declaration		135		--
25					

1 SAN DIEGO, CALIFORNIA MONDAY, JUNE 28, 2004 10:00 A.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: We're now ready for the Cooper matter.
5 You want to call --

6 THE CLERK: Number 10 on the calendar, 04CV-0656,
7 Cooper versus Coughnour, set for an evidentiary hearing
8 regarding habeas corpus.

9 THE COURT: Come forward. Good morning. You want
10 to state your appearances for the record?

11 MR. HILE: Good morning, your Honor. Norman Hile
12 of Orrick, Herrington and Sutcliffe for Petitioner Kevin
13 Cooper.

14 MR. ALEXANDER: David Alexander of MBV Law for
15 Petitioner Kevin Cooper. Good morning, your Honor.

16 THE COURT: Good morning.

17 MS. WILKENS: Good morning, your Honor. Holly
18 Wilkens, deputy attorney general, for the Respondent, with
19 Adrienne Denault, deputy attorney general, for the
20 Respondent.

21 THE COURT: I don't see Adrienne here yet.

22 MS. WILKENS: She was just here, your Honor.

23 THE COURT: She's coming. All right. Thank you.
24 We can proceed with the witness.

25 MR. HILE: Yes, your Honor. Petitioner calls

1 Christine Slonaker.

2 THE CLERK: Please raise your right hand.

3 CHRISTINE SLONAKER, PETITIONER'S WITNESS, SWORN

4 THE WITNESS: Good morning.

5 THE COURT: Good morning.

6 THE CLERK: State your full name for the record,
7 spelling your first and last name.

8 THE WITNESS: Christine Slonaker,
9 C-H-R-I-S-T-I-N-E, S-L-O-N-A-K-E-R.

10 MR. HILE: Thank you, your Honor.

11 DIRECT EXAMINATION

12 BY MR. HILE:

13 Q Ms. Slonaker, can you tell us where you currently live?

14 A I live in Nevada City, California.

15 Q And are you employed there?

16 A Yes. I have my own business.

17 Q And what is that business?

18 A Victorian Renovations, Inc.

19 Q How long have you lived in Nevada City, California?

20 A One year.

21 Q I want to now show you an exhibit which --

22 MR. HILE: Excuse me. I'll ask the clerk to mark
23 this as Exhibit 20, your Honor.

24 THE COURT: Is that her declaration?

25 MR. HILE: Yes, your Honor.

1 Q And did you work as a nurse?

2 A Many years.

3 Q Okay. Can you describe, briefly, where you worked?

4 A Well, I did a lot of private-duty nursing on the police
5 chief of Fullerton, geriatrics, pediatrics in Anaheim
6 Memorial Roos (phonetic), Dry (phonetic) Hospital, St. Jude
7 Memorial, Three Rivers Hospital, working in medical records,
8 and I worked in the lab there.

9 Q Did you ever work in the emergency room anywhere?

10 A Internship in the emergency room.

11 Q You said that you had a license as a phlebotomist. Is
12 that correct?

13 A As a phlebotomist.

14 Q What is that, briefly?

15 A It's blood withdrawal. I have the degree to
16 intravenously withdraw blood --

17 Q Did you ever work --

18 A -- and process it.

19 Q Did you work in that profession?

20 A Yes.

21 Q I want to ask you now to focus your attention on the
22 year 1983. I know it's 21 years ago. Where were you
23 living?

24 A Chino Hills.

25 Q How long had you lived in Chino Hills?

1 MS. WILKENS: Objection, your Honor, narrative.

2 THE COURT: Sustained.

3 MR. HILE: I'll ask another question, your Honor.

4 BY MR. HILE:

5 Q I'll get to that in a second, Ms. Slonaker. Let me ask
6 you first, do you remember -- let's start with the first
7 person that you saw -- what he was wearing?

8 A T-shirt and Levis.

9 Q What color was the T-shirt?

10 A Kind of a white or a dirty -- like a tan or white.

11 Q Did you notice what kind of shoes he had on?

12 A Tennis shoes.

13 Q What was the -- can you describe what the other person
14 that you saw was wearing?

15 A He had coveralls on, you know, the kind that buckle
16 here (witness indicating).

17 Q And did you notice what kind of shoes he was wearing?

18 A Tennis shoes. The reason I noticed them was because
19 they were just a mess, and it was all over them.

20 Q Now, with respect to where they were standing at that
21 time, where were they with respect to the bar?

22 A The first time I saw them or after they came around?

23 Q The first time you saw them.

24 A They were standing right in front of us at the bar.

25 Q Okay.

1 Q After they then came through and around the bar, what
2 did they do or say to you?

3 A Well, one of them came around and he kind of put his
4 arm around the chair and myself, and put his arm around the
5 other chair and this woman, and he was all over her, but, in
6 the interim, because the chairs were close, he was getting
7 all over me, and he had this all over him. So I backed --

8 Q Now, let me ask you about that. What did you see that
9 he had on him?

10 A He had blood all over him.

11 Q Tell us where you saw the blood on him.

12 A All over him. It was on his arms. It was all over his
13 face. It was on his -- it was all over his shirt. It was
14 on his feet and his shoes. It was everywhere.

15 Q Did you say anything to him?

16 A Yes. I said, "Do you realize that you are covered in
17 blood? Get off of me."

18 Q And when you said that, what happened next?

19 A He started -- he was like, "Oh, wow, I am." You know,
20 he was just kind of, again, really weird-acting, and he
21 says, "Oh, wow, I am." And he started to move away, and
22 they started proceeding down --

23 MS. WILKENS: Objection, narrative.

24 THE COURT: Sustained.

25 MR. HILE: Okay.

1 A I moved first to Grass Valley, and that would have been
2 in 1999.

3 Q Okay. Now, let me take you back, then, to February of
4 this year, when you saw the report on the television. Were
5 you with anybody at the time when you saw that report?

6 A I was by myself, but my daughter was asleep upstairs.

7 Q Okay. And what did you do when you saw that report?

8 A I was kind of like, "Well, I wonder why they're putting
9 that fellow to death when it's quite possible those other
10 two did it?" You know, "I wonder what ever happened" is
11 what I'm thinking. I was thinking, "Well, they must have
12 found him guilty."

13 Q Now, at that point, without saying what you talked
14 about, did you talk to anyone about what you should do?

15 A Well, I went upstairs, and I told my little girl -- I
16 said, "You know, there's this guy they're going to put to
17 death here. It's just kind of bizarre that -- you know, I
18 wonder what happened to those people."

19 I told her a little bit about what had happened, and
20 she said, "Mom, don't you think you should do -- you should
21 call someone?" And I said, "Well, honey, I don't know. I
22 don't know that they did it, you know." She said, "Well,
23 Mom, I think that you should probably call someone and at
24 least tell them what you know."

25 I said, "Well" -- then I talked to my older daughter

1 and my son, and I said, "What do you guys think, you know?"
2 And they said, "Mom, you should probably do the right thing
3 and call. At least tell them what you folks -- what you saw
4 that night."

5 Q And what are you referring to when you're talking about
6 "what you saw that night"?

7 A The guys all covered in blood.

8 Q Now, did you then contact someone?

9 A Well, I know that they had mentioned on the television
10 that Arnold Schwarzenegger, our new governor, was going to
11 be --

12 THE COURT: Could you just answer the question.
13 Did you contact --

14 BY MR. HILE:

15 Q Yes. Who did you contact, Ms. Slonaker?

16 A Arnold Schwarzenegger's office.

17 Q Okay. And just who did you talk to there?

18 A His secretary.

19 Q And what did you tell her?

20 A I told her that I would like to speak with Arnold
21 Schwarzenegger about this, that there quite possible (sic)
22 that, if the one man did it, maybe there were others that
23 also did it with him, or by themselves.

24 Q And what were you told by the governor's office?

25 A That he would call me or contact me.

1 Q Did you receive a call back?

2 A Not one.

3 Q What did you do next with respect to trying to alert
4 someone?

5 A Well, days went by, a couple days went by, because I
6 wasn't feeling well, and then I thought, "Well, they're
7 still going to execute him." You know, I got on the
8 Internet.

9 Q Okay. Now, I'd like you to look at Exhibit 20, if you
10 would, and look at the last page of it. Can you describe
11 for the Court what that page is?

12 A It's what came up under Kevin Cooper's name on my
13 search engine.

14 Q And is that handwriting that is on that page -- is that
15 your handwriting?

16 A Yes.

17 Q And what were you writing down?

18 A Well, I was writing down different things of, like, for
19 instance, this Lanny Davis was who I figured I should
20 probably contact to say something about this, and then they
21 gave me the -- I couldn't find this name. So I finally
22 ended up going -- and I called this number, and they didn't
23 have it, and so, finally, I went on to -- I finally found
24 David Alexander's name on the --

25 Q State Bar?

- 1 A That's it, the Bar Association.
- 2 Q Okay. And did you get his phone number that way?
- 3 A Yes.
- 4 Q Okay. Did you call Mr. Alexander?
- 5 A Yes, I did.
- 6 Q When did you call him?
- 7 A It was probably two or three days later, after hearing
8 about it.
- 9 Q Okay. With reference to the date of your declaration,
10 when was it?
- 11 A Probably around the 3rd, 4th, 3rd or 4th.
- 12 Q Now, had anybody from the defense side of the case
13 contacted you before you called Mr. Alexander?
- 14 A No.
- 15 Q Had you discussed calling Mr. Alexander with Mary
16 Wolfe?
- 17 A No. I hadn't seen Mary in many, many years.
- 18 Q Let me ask you about that, then. When did you last see
19 Mary Mellon Wolfe?
- 20 A Gosh. It must have been 15 years or more.
- 21 Q When was the last time you had contact with her?
- 22 A About that long.
- 23 Q Okay. Did you see her this morning?
- 24 A Yes. It was good to see her.
- 25 Q Let me ask, when you talked to Mr. Alexander, did you

1 then talk to Mary Wolfe about what you had seen?

2 A No. I didn't have a number or an address for her.

3 Q Did you tell Mr. Alexander that you'd been in the bar
4 that night with Mary Wolfe?

5 A Yes.

6 Q Let me ask you, just briefly, to tell the Court why you
7 decided to contact the governor and then Mr. Alexander about
8 this.

9 A Well, my children thought that I should probably say
10 something, because they felt that, if I didn't, and this man
11 went to death, that I would always wonder, because, if he
12 did it, well, he definitely, you know, needs to be held
13 accountable, and if he didn't, and they found later on that
14 he hadn't, how would I have felt? Would I have lived with
15 this well? Probably not.

16 MR. HILE: Your Honor, I offer into evidence
17 Exhibit 20.

18 THE COURT: 20 is received.

19 MR. HILE: Thank you, your Honor.

20 THE COURT: Now, 20, I guess we're -- it's already
21 a part of the record, so it's received.

22 MS. WILKENS: It's fine, your Honor.

23 MR. HILE: Thank you, your Honor.

24 THE COURT: Thank you.

25 MR. HILE: I have no more questions at this time.

EXHIBIT O

COPY

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.) Monday,
9) June 28, 2004
10 JILL L. BROWN, ACTING WARDEN,) 10:00 a.m.
11)
12 SAN QUENTIN STATE PRISON,)
13)
14 Respondent.)
15)

16 TRANSCRIPT OF PROCEEDINGS
17 BEFORE THE HONORABLE MARILYN L. HUFF
18 UNITED STATES DISTRICT JUDGE
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20 APPEARANCES:

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I N D E X

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1 SAN DIEGO, CALIFORNIA MONDAY, JUNE 28, 2004 10:00 A.M.

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5 You want to call --

6 THE CLERK: Number 10 on the calendar, 04CV-0656,
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8 regarding habeas corpus.

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10 to state your appearances for the record?

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12 of Orrick, Herrington and Sutcliffe for Petitioner Kevin
13 Cooper.

14 MR. ALEXANDER: David Alexander of MBV Law for
15 Petitioner Kevin Cooper. Good morning, your Honor.

16 THE COURT: Good morning.

17 MS. WILKENS: Good morning, your Honor. Holly
18 Wilkens, deputy attorney general, for the Respondent, with
19 Adrienne Denault, deputy attorney general, for the
20 Respondent.

21 THE COURT: I don't see Adrienne here yet.

22 MS. WILKENS: She was just here, your Honor.

23 THE COURT: She's coming. All right. Thank you.
24 We can proceed with the witness.

25 MR. HILE: Yes, your Honor. Petitioner calls

- 1 A Probably not too long after.
- 2 Q Okay. Well, when you say "not too long," a few
3 minutes?
- 4 A Twenty minutes to a half-hour, maybe.
- 5 Q That much longer. Okay.
- 6 A Around that.
- 7 Q Okay. Ms. Wolfe, how were you first contacted in
8 connection with providing your declaration in this matter?
- 9 A I had Morgan County sheriff come to my house and leave
10 a message to contact -- I can't think of her name right
11 now -- to contact somebody on it.
- 12 Q And do you have a phone at your home?
- 13 A Not at that time, no, but I do now.
- 14 Q You do now?
- 15 A Yes.
- 16 Q All right.
- 17 A Yes.
- 18 Q And do you recall approximately when you were contacted
19 by the Morgan County Sheriff's Department to make a call?
- 20 A You mean the date?
- 21 Q Yes, the day.
- 22 A February, somewhere in February.
- 23 Q Okay. Do you remember more precisely the date?
- 24 A About the middle of February.
- 25 Q And were you at that time -- do you remember if it was

1 on a Saturday or a Sunday?

2 A It was a weekday. I know it was a weekday, probably a
3 Tuesday or a Wednesday.

4 Q Did you return the call?

5 A Yes.

6 Q All right. And you spoke with someone?

7 A Right, yes.

8 Q Was it a man or a woman, if you recall?

9 A It was a woman.

10 Q All right. And did the woman then proceed to ask you
11 some questions?

12 A She asked me if I would do a statement over the phone.

13 Q All right. And what did she ask you to do a statement
14 over the phone about?

15 A What I best remembered the night that we were at the
16 Canyon Corral.

17 Q Did she first ask you whether you remembered being at
18 the Canyon Corral Bar that night?

19 A Yes.

20 Q All right. And then did you, from memory, relate to
21 her the matters that you set forth in your declaration?

22 A Yes.

23 Q All right. And is this the first -- was that the first
24 time that you had thought about the evening at the Canyon
25 Corral Bar on June 4th, 1983, in close to 20 years?

1 A Well, I did see a 48 Hours Investigates about six
2 months prior, and that was the last time I actually thought
3 about it.

4 Q Okay. And was that in approximately September of last
5 year, 2003, the 48 Hours?

6 A Probably even sooner.

7 Q Sooner, a little more closer in time?

8 A Yes.

9 Q Okay. And do you recall whether there was anything
10 about the Canyon Corral Bar on that program?

11 A Nothing at all.

12 Q All right. Now, when you gave a statement to the woman
13 on the phone, did you have any notes or anything in front of
14 you?

15 A No.

16 MR. ALEXANDER: Your Honor, I want to --

17 THE COURT: You want a break right now?

18 MR. ALEXANDER: Well, I want to abide by your
19 schedule.

20 THE COURT: Okay. We'll take a recess now. We'll
21 be in recess until 2:00 o'clock.

22 MR. ALEXANDER: Thank you very much, your Honor.
23 Thank you, Ms. Wolfe.

24 THE COURT: Thank you.

25 (Proceedings recessed for lunch at 12:00 p.m.)

1 MS. WILKENS: Objection, speculation.

2 MR. ALEXANDER: Now --

3 THE COURT: Overruled.

4 BY MR. ALEXANDER:

5 Q At any time, did any or all of the three men approach
6 you, Chris, and Diane?

7 A Yes.

8 Q On how many occasions did they do that, if you recall?

9 A I would say two, and one of the -- there was two of
10 them that first approached us, and then, after we talked to
11 them, then the one left, and then the other guy kept
12 coming -- the one guy came back a couple times.

13 Q Came up to --

14 A Came up to where we were at a couple times.

15 Q All right. Were all three of the men loud -- well,
16 were any of the men loud and boisterous?

17 A Two of them were -- well, the one was really loud, kind
18 of rude and obnoxious, and one of them was really quiet, and
19 then the other one, he was, you know, talkative, but he
20 wasn't quite as bad as the first one that was talking to us.

21 Q And how close did they get to the three of you?

22 A Well, they were propped right -- I mean, right there at
23 the booth we were sitting at, because the one guy made a
24 rude comment about my friend Diane.

25 Q He made a rude comment?

1 A Yes.

2 Q Do you recall words to the effect of what he said?

3 A He made some kind of comment because she's very well
4 endowed, and, you know, he was just being rude and
5 obnoxious.

6 Q Was their language, again, slurring, as you described
7 it?

8 A Correct, yes.

9 Q All right. And I guess, in today's vernacular, were
10 they hitting on the three of you?

11 A Yes, that's -- yes.

12 Q And who in particular?

13 A The tallest one.

14 Q Of the men?

15 A Of the men, yes.

16 Q And which of the three of you were they hitting on?

17 A He was basically just trying to flirt with all of us.

18 Q As best you can recall, Ms. Wolfe, can you describe
19 what -- describe the men, their size, and, if you recall,
20 what clothing they were wearing?

21 A I remember the tallest one, the one that was being the
22 most obnoxious, he had like a light tan or white, off-white,
23 shirt on, with jeans, and the other two had on -- one of
24 them had like tan coveralls, like, that zipped up, but he
25 had them kind of like zipped down and thrown over, you know,

1 like all down his waist.

2 Q So the top part was thrown down, hanging down below his
3 waist?

4 A Yes, just like folded over, you know, unzipped and
5 taken off the arms, and then folded over.

6 Q Okay. And let's go to the third person for a moment.

7 A He in specific was more quiet. I'm really, you know,
8 not exactly positive, but I believe he had coveralls, too.
9 But I'm really not sure, because he was pretty quiet and
10 standoffish.

11 Q Very well. Now, was there anything about their hair or
12 the like that you noticed?

13 A They had short hair. One of them had a little bit
14 longer hair, but two of them had really short hair.

15 Q Do you know if any one of them had any writing on the
16 shirt that he was wearing?

17 A I don't recall.

18 Q You don't recall. All right. Well, I've got to ask
19 you, did you happen to see what kind of shoes or boots or
20 whatever they were wearing?

21 A Yes, definitely tennis shoes, because back then I
22 was -- I wouldn't look at you twice if you didn't wear
23 cowboy boots.

24 Q You're a big cowboy boot fan?

25 A You bet.

1 Q Is that still the case now, when you're in Missouri?

2 A No. I think I'm a little more -- not as picky, I
3 guess.

4 Q Now, when the men were standing next to the three of
5 you, did you notice anything unusual about them?

6 A Well, I noticed that one of them had -- the tall one
7 with the tan shirt, he had bloodstains on his shirt, on his
8 T-shirt.

9 Q I see. And did he have blood -- did you say "spaced,"
10 or what did you say?

11 A You know, like spots, you know.

12 Q Spotted on his T-shirt?

13 A Yes, spots on his T-shirt.

14 Q Okay. And could you tell if he had blood on any other
15 part of his clothing?

16 A I believe he had a little bit here, like a little bit
17 on his face right here (witness indicating).

18 Q Did any of you say anything to that gentleman?

19 A Yes, Chris. She asked him what had happened to him,
20 and he told us that he had just gotten in a barroom brawl
21 somewhere else and he had gotten a bloody nose.

22 Q I see.

23 A But yet there was no blood -- when he said that, I even
24 looked up, and there was no blood crusted around his, you
25 know, nose or anything.

1 Q Not crusted around the nostrils?

2 A Right, correct.

3 Q Where was the blood near his nose?

4 A Just like off to the side, on his mouth here (witness
5 indicating).

6 Q Off the side towards the mouth?

7 A Right.

8 Q All right. Did you notice any blood on clothing other
9 than on the shirt?

10 A No. I don't remember that, but I do remember the
11 shirt.

12 Q All right. Now, do you recall anybody, any of the
13 three of you, remarking about the blood that was on him?

14 A Yes. That's when he told us that he was in a barroom
15 brawl.

16 Q What did one of the -- well, which one of the three of
17 you made the remark?

18 A I believe it was Chris.

19 Q And do you recall -- or, the best of your recollection,
20 the words, or words to the effect of what she said?

21 A "What the heck happened to you?"

22 Q Did she mention the word "blood" or point out "You've
23 got blood on you," or something like that?

24 A I think she asked him what he had all over him.

25 Q Okay. Now, Ms. Wolfe, did you yourself see any

1 and if we knew what was going on.

2 Q And do you recall what time of day that was?

3 A It was sometime in the afternoon.

4 Q All right. Now, the evening after you left the bar,
5 did you and Diane and Chris then go home?

6 A Yes.

7 Q All right. Was there anything unusual when you got
8 towards Chris' house and the farmhouse --

9 A Well, I --

10 Q -- the farmhouse where you were staying?

11 A Well, I went home to Chris' house, and, like, Diane was
12 next door, so she went home. And we noticed the dogs were
13 out, and we walked around the property and noticed that all
14 our gates were open. The gates were open.

15 Q And where did you sleep that night?

16 A I spent the night with Chris, because she was kind of
17 scared, and because it just was not normal to have all the
18 gates open like that, and the dogs running loose.

19 Q Ms. Wolfe, I'm almost -- you'll be glad to know --
20 almost done. I think you referred to this earlier. You
21 were interviewed by some law enforcement person sometime
22 this year, correct?

23 A Correct.

24 Q All right. And can you tell me how that occurred?

25 A He called me. He contacted me, and just -- well,

1 first, I believe he even had the police come over, because I
2 still did not have a phone, and then I contacted him.

3 Q All right. And did you two meet, you and the police
4 officer?

5 A Yes, yes.

6 Q Was it a police officer or a detective?

7 A It was a detective.

8 Q A detective?

9 A A detective.

10 Q And did he tell you his name?

11 A It started with G. That's all -- I think -- I don't
12 remember.

13 Q Does Cavanaugh ring a bell?

14 A Yes. Yes, it does.

15 Q Is that the name, or something similar to that?

16 A Something similar to that, yes.

17 Q All right. And how long did he interview you?

18 A It lasted probably about an hour and a half, two hours
19 I was there.

20 Q And --

21 A We met at the Morgan County Sheriff's Office.

22 Q And he tape-recorded that interview?

23 A Yes, he did.

24 Q Was the tape recorder on the whole time of the
25 interview, or did he put it on part of the way through the

1 interview?

2 A Pretty much the whole way, because we didn't -- after
3 it ran -- you know, after he shut it off, we didn't really
4 talk much about the case after that.

5 Q Okay. During the course of that interview, did this
6 Detective Cavanaugh or whatever his name was tell you that
7 what you had told him was vastly different than what Chris
8 Slonaker had said?

9 A Yes, he did.

10 Q And what did you say in response to him?

11 A I told him that that's what I've already -- you know,
12 what I had just told him is what I remember to the best of
13 my knowledge, and, you know, that's what I remember.

14 Q All right. And did you have -- during this hour-and-a-
15 half, two-hour period of time, did you have any sense of --
16 have any feeling or reaction to his questioning of you?

17 A I felt a few times he tried to trick me into -- like,
18 he would say something, "Well, that's not what your friend
19 said," you know, to see if I can -- kind of trying to get me
20 to change what I was telling him. Yes, I felt that a few
21 times.

22 Q And did you stick by what you recalled?

23 A Yes, yes.

24 MR. ALEXANDER: All right. I believe that's all
25 the questions I have, your Honor.

1 THE COURT: Thank you.

2 MR. ALEXANDER: Thank you.

3 Thank you very much, Ms. Wolfe.

4 MS. WILKENS: Thank you, your Honor.

5 CROSS EXAMINATION

6 BY MS. WILKENS:

7 Q Now, Ms. Wolfe, I believe you indicated that you signed
8 your declaration on the date that's indicated on the
9 signature page. Is that correct?

10 A That's correct.

11 Q And did you write that declaration?

12 A No.

13 Q Okay. Do you know who wrote it for you?

14 A I believe her name was Sandra Cook.

15 Q Does Sandra Koch sound familiar?

16 A Koch. Koch, yes. That's it.

17 Q Okay. And you spoke to Ms. Koch over the telephone.
18 Is that correct?

19 A Yes.

20 Q Okay. And you indicated that you didn't have a phone
21 at that time, so the sheriff came out to the house?

22 A Right.

23 Q Do you remember what time of night the sheriff came
24 out?

25 A It was about 10:30 in the evening.

1 Q Okay. Is that rather unusual, to have someone come out
2 to the house that time of night?

3 A Well, there's a time -- you know, there's a two-hour
4 time difference. So they would -- California time, they
5 would have been there at 8:30.

6 Q Well, but, as far as your being in your home, ma'am,
7 was it 10:30 at night?

8 A Yes.

9 Q Okay. Do you normally get visitors at 10:30 at night?

10 A Not the sheriff, no.

11 Q Okay. So that stuck out in your mind?

12 A Yes.

13 Q Okay. And what did the sheriff tell you when he came
14 out to the house?

15 A That Sandra Koch needed to contact me. It had
16 something to do with the Kevin Cooper case.

17 Q And did the sheriff explain to you who Sandra Koch was?

18 A No.

19 Q All right.

20 A Not that I remember, no.

21 Q When the sheriff referenced the Kevin Cooper case, did
22 you know what the sheriff was talking about?

23 A I'm sorry?

24 Q When the sheriff told you that some lady needed to talk
25 to you about the Kevin Cooper case, did you know what the

1 Kevin Cooper case was?

2 A Yes, yes.

3 Q Okay. And did you know because you recalled the events
4 shortly after the murder?

5 A I really had no idea what was going on. It was just
6 out of the blue.

7 Q But you knew who Kevin Cooper was?

8 A Yes. I mean, I didn't know him, but yes, I was aware
9 of it.

10 Q And were you aware that Kevin Cooper had been convicted
11 of the murders?

12 A Yes, I was aware of that.

13 Q All right. And sentenced to death?

14 A Yes.

15 Q Okay. Did you know that his execution was scheduled?

16 A No. The sheriff told me that, that night.

17 Q Okay. And when the Kevin Cooper case was mentioned,
18 did you have any idea as to why anyone would want to talk to
19 you?

20 A Well, I didn't, until he said it also had something to
21 do with Chris Slonaker, and then I knew that -- because --
22 yes, then I knew.

23 Q Okay. And you went with the sheriff, and you spoke to
24 Ms. Koch by telephone?

25 A No. I just went over to my neighbor's house and used

1 the phone.

2 Q Okay. And did you call Ms. Koch right away?

3 A Yes, I did.

4 Q All right. And how long did you speak to her?

5 A Roughly maybe an hour.

6 Q And how did you receive the declaration?

7 A She asked if I would give her a statement over the
8 phone, and I was giving her the statement. She was typing
9 it up.

10 Q All right. She was typing as you spoke?

11 A Right, yes. You could hear the keyboard in the
12 background.

13 Q All right. And you could hear the keyboard the whole
14 time you were talking?

15 A Yes.

16 Q Okay. And when were you presented with the
17 declaration?

18 A Early the next morning, about 6:30 in the morning, my
19 time.

20 Q Okay.

21 A Yes.

22 Q And so you got off the phone with Ms. Koch about 11:30
23 in the evening, your time?

24 A Right, yes.

25 Q Okay. And then somebody was out at the house at 6:30

1 the next morning?

2 A 6:30, 7:00 o'clock, yes.

3 Q Okay. And what time do you normally get up?

4 A Well, I was sleeping when he did come over, but I
5 usually get up around 7:00, 7:30.

6 Q All right. And who came out to your house?

7 A I'm not sure of his name, but it was somebody that she
8 had known from Jeff City, Jefferson City, that drove down
9 and gave it to me.

10 Q Okay. And did you read the declaration before you
11 signed it?

12 A Yes, I did.

13 Q Okay. Now, did you write anything in handwriting on
14 your declaration?

15 A Yes. I corrected some things. I don't recall.

16 Q Do you have your declaration in front of you?

17 A No. Is that here?

18 MS. WILKENS: Counsel, I believe -- has that been
19 marked? You didn't show her her declaration? No. Okay.

20 MR. ALEXANDER: It's part of the record, but I
21 didn't show it to her.

22 THE COURT: Pardon me?

23 MR. ALEXANDER: I said it was part of the record,
24 but I did not show it to her just now.

25 Do you need copies, Counsel? I have copies.

1 MS. WILKENS: No, it's fine. Thank you.

2 BY MS. WILKENS:

3 Q Now, Ms. Wolfe, a copy of your declaration has been
4 marked as Respondent's Exhibit ZZZ, and if you could turn to
5 the second page, and I note, at paragraph seven, there's
6 handwriting, and it reads:

7 "I first heard from the lawyers in this
8 case Sunday night, February 8, 2004, at
9 10:30 p.m. Central Standard Time."

10 Did you write that, ma'am?

11 (Witness proffered document.)

12 A Yes, I did.

13 Q And were you asked to write that?

14 A Well, he wanted me to look it over, and then he said
15 that they didn't put that in, they didn't add that in. So I
16 went ahead and put it in, and then initialed it.

17 Q Okay. And it was executed on February 9th, 2004. So
18 that would be the following morning that you signed it?

19 A Correct.

20 Q And I don't note any other corrections. Is that
21 accurate?

22 A Yes. That was the only one that I wrote, yes. Yes.

23 Q Okay. Now, when you spoke to Ms. Koch, did they tell
24 you what they wanted to discuss with you?

25 A Yes. She just wanted, you know, what I remember, you

1 know, recall of that night.

2 Q Okay. And did they tell you that Mr. Cooper's
3 execution was imminent?

4 A Yes. They said it was the following day, I believe is
5 what she said, and they wanted to try to stop it.

6 Q Okay. And did they tell you that they'd spoken to
7 Ms. Slonaker?

8 A Yes.

9 Q And did they tell you that they'd obtained a
10 declaration from her?

11 A Yes.

12 Q And did they tell you what the declaration said?

13 A No.

14 Q Did they tell you what Ms. Slonaker had said?

15 A No.

16 Q Did they tell you anything about the case?

17 A No. They wouldn't even tell me where Chris even lived
18 anymore, because it's been so long. They wouldn't tell me
19 anything.

20 Q Did you ask?

21 A Yes, I asked.

22 Q And what did they tell you?

23 A They told me that they didn't want me and Chris to
24 speak with each other at this time, that maybe sometime, you
25 know, they'll let us get back, you know, together, because

1 we haven't seen each other in so long.

2 Q Now, the gentleman that brought out the declaration,
3 how long was he at your home?

4 A I'd say probably about 45 minutes or so.

5 Q Forty-five minutes?

6 A Yes, a half-hour, 45 minutes, because I wanted to read
7 it first.

8 Q Okay. And your declaration is two pages?

9 A Yes. Well, I had just woken up. I still had to get --
10 you know, I wasn't dressed or anything. I mean, I still --
11 he stood out there for a while. I mean, it's not like I
12 talked to him that whole time.

13 Q Okay. So most of the time you (sic) spent waiting for
14 you to get ready?

15 A Yes, right.

16 Q Okay. And after you were ready to talk to him, how
17 long did you speak to him?

18 A Probably just 20, 25 minutes, tops.

19 Q Okay. And did you have any conversation, or did you
20 just read your declaration?

21 A He just wanted me to read it and go over it, and, if
22 there was any corrections, to correct them.

23 Q Okay. And how long did it take you to read your
24 declaration?

25 A Just a few minutes.

1 Q Okay. So did you have any conversation with him? I
2 mean, you spent 20 minutes with him. What were you talking
3 about?

4 A Talking about -- well, I was still asking more
5 information on, you know, what was going on, and he wasn't
6 being very informative or anything.

7 Q Okay. Did you want to know what would be expected of
8 you?

9 A What it was going to go to. And, like I said, he
10 wasn't very informative, and so I went ahead and just signed
11 it, and then he left.

12 Q Okay. And did you subsequently talk to Ms. Koch, after
13 she spoke to you on the phone the night of the 7th?

14 A I spoke to her once and said that he had come out, you
15 know, and I had signed it, and then I spoke to her one other
16 time after the detective contacted me. I spoke with her --
17 I called her to find out if she knew -- you know, if she
18 knew who he was, because I didn't know.

19 Q You wanted to make sure he was a detective?

20 A Right, right. And then she called me one time, too, to
21 say that the press, you know, was on it, and that she just
22 warned me that the press was, you know, on the story.

23 Q If you wanted to know whether the detective was really
24 a detective, did you think to call the San Bernardino
25 Sheriff's Department?

1 A I went through the Sheriff's Department after that.

2 Q Okay. But that was after you called Ms. Koch?

3 A After I called her, yes. Then I contacted them, and
4 they looked into it for me.

5 Q Okay. And your recollection is you spoke to the
6 detective for, I believe, two hours?

7 A Hour and a half, two hours.

8 Q Okay. In your notebook, there is an Exhibit YYY, in
9 the notebook right in front of you. If you could please
10 turn to that.

11 MS. WILKENS: Your Honor, the detective's
12 interview with Ms. Wolfe has been marked as YYY-1.

13 THE COURT: Thank you.

14 BY MS. WILKENS:

15 Q Now, if you could look at the first page, line six. It
16 says, "April 8th, 2004," and the time is 1520. And then, if
17 you could look at page 33, line 22, the detective says, "The
18 time is 1610." Was the interview about 50 minutes?

19 A Well, according to that, it was, but it felt like it
20 was a lot longer.

21 Q Well, that doesn't surprise me. Okay. Now, do you
22 recognize the name Derek Pacifico? Does that ring a bell?

23 A Yes, that's the detective that came out.

24 Q Okay.

25 A Yes. I couldn't remember his name for the life of me.

1 right. There was something wrong.

2 Q Okay. Now, did you see any blood on the other two men?

3 A Not that I recall.

4 Q Okay. So no blood on their clothing?

5 A Not that I recall. Definitely the one, though.

6 Definitely the one.

7 Q Okay. And the man that you saw blood on his shirt, did
8 you see blood on his shoes?

9 A Not that I recall.

10 Q Okay.

11 A I mean, actually, I saw mud on his shoes. I remember
12 seeing, you know, they were kind of muddy, like they were
13 walking through mud. But as far as it being mud or blood, I
14 at the time thought -- you know, I just assumed it was mud.

15 Q Okay. So you saw all three persons' tennis shoes, and
16 they had mud on them?

17 A Well, the one for sure, because he was the one that was
18 making -- you know, the tallest one, he was the one that was
19 making himself known the most.

20 Q Okay. And so, his shoes, you saw what you thought was
21 mud?

22 A That's it. Yes. They were dirty.

23 Q Okay. Did he have dirt on his shirt?

24 A No, not that I'm aware of.

25 Q Dirt on his pants?

1 A Not that I'm aware of, no.

2 Q Did you see blood on his pants?

3 A No, not that I'm aware of.

4 Q Did you see blood on his person?

5 A I saw a little speck here (witness indicating).

6 Q Okay. So that would be --

7 THE COURT: "Here" meaning --

8 THE WITNESS: The mouth, by the lip.

9 BY MS. WILKENS:

10 Q Okay. So you saw a speck of blood on his upper lip,
11 below his nose?

12 A Correct.

13 Q Okay. And when you talked to Chris about the need to
14 call the police, did Chris describe for you what she
15 observed at the bar?

16 A Well, we were both -- we both talked about, because we
17 both saw the same thing as far as, you know, I remember. I
18 mean, the guy was right there, and he was making it a real
19 point to just -- you know, he was in our faces, basically.

20 Q Did you ever ask Chris why the police didn't contact
21 you?

22 A We discussed it later, and she said she wasn't sure,
23 and, you know, I didn't -- you know, back then, I was
24 painfully shy, so I wasn't one for, you know -- I don't
25 know. I just thought something more would come up, and

EXHIBIT P

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KEVIN COOPER,	)	Case No. 04CV0656-H(LSP)
)	
Petitioner,	)	San Diego, California
)	
vs.	)	Friday,
	)	July 23, 2004
JILL L. BROWN, ACTING WARDEN,	)	10:00 a.m.
SAN QUENTIN STATE PRISON,)	
)	
Respondent.)	

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE MARILYN L. HUFF
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Petitioner:	DAVID T. ALEXANDER, ESQ. MBV Law 855 Front Street San Francisco, California 94111 (415) 781-4400
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Transcript Ordered by:	ADRIANNE DENAULT, ESQ.

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

I N D E X

<u>WITNESSES:</u>	DIRECT	CROSS	REDIRECT	RECROSS
Lance Stark	2	43	84 101 107	94 106 --

<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
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Petitioner's:

29	Sketch	7	--
30	Declaration of Mr. Stark	38	--

Respondent's:

CCCC	Three-page declaration	52	--
DDDD	Letter dated 7-2-04	53	--
EEEE	Mr. Stark's drawing	77	--
FFFF	Tape	87	--
JJJ	Canyon Corral	78	--

1 SAN DIEGO, CALIFORNIA FRIDAY, JULY 23, 2004, 10:00 A.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE CLERK: Number 1 on calendar, 2004 Civil 656,
5 Cooper v. Brown for evidentiary hearing regarding habeas
6 corpus.

7 THE COURT: Good morning. State your appearances,
8 please.

9 MR. ALEXANDER: Good morning, your Honor. David
10 Alexander on behalf of the Petitioner.

11 MS. WILKENS: Good morning, your Honor. Holly
12 Wilkens, Deputy Attorney General, for the Respondent.

13 THE COURT: Welcome back. Do we have a witness?

14 MR. ALEXANDER: We do, your Honor.

15 THE COURT: You may call him.

16 MR. ALEXANDER: Thank you very much. The
17 Petitioner would call Mr. Lance Stark.

18 Mr. Stark?

19 LANCE STARK - PETITIONER'S WITNESS - SWORN

20 THE CLERK: Please be seated.

21 Please state your name and spell your first and
22 last name for the record.

23 THE WITNESS: Lance Stark, L-A-N-C-E, S-T-A-R-K.

24 THE COURT: You may proceed.

25 MR. ALEXANDER: Thank you, your Honor.

1 right there. Right where that wall is.

2 Q Okay. And have you ever heard -- have you ever
3 described the bar as being the size of a box car,
4 approximately?

5 A Yes, sir, I did say that.

6 Q Okay.

7 A That's what it reminded me of. That's before they
8 turned it into the Canyon Corral.

9 Q Okay. Now, did they expand it when they turned it into
10 the Canyon Corral?

11 A Don't think so.

12 Q All right.

13 A They just covered it up.

14 Q Okay. When you say "covered it up," what did --

15 A Well, they put on a fancy front.

16 Q I see. Well --

17 Now, when you noticed -- or when you heard Mr. -- or
18 Eddie speak to these men and then they came out from behind
19 the bar, where did you see them next?

20 A Well, there were some ladies, women, sitting down at
21 the end, and they started making -- you know, they were
22 loud. They started making, you know, a few -- you could
23 hear what they were -- I'm not sure exactly what they made
24 comments about. And I looked down. I thought, oh, you
25 know, that, oh, Jesus, because they looked like a couple of

1 -- a couple of young -- you know, just a couple of young
2 loud mouths.

3 Q Uh-huh. And had you ever seen them in the bar
4 previously?

5 A No, sir. Not that I can recall.

6 Q What did you do when you saw them approach these women?

7 A Nothing. I was just still sitting there watching
8 Eddie, and then they got into some kind of I guess a little
9 argument with them. And I heard them talk about they'd been
10 in a fight and that -- the whole thing didn't last five
11 minutes. Then they went out the front door and I got up.

12 Q Excuse me. Let me break this down and do it more
13 question and answer rather than narrative.

14 At some point did you get up off of your stool and go
15 over to where the men and the women were -- these men and
16 the women were?

17 A As they were going out the door.

18 Q Uh-huh. And were you able to hear anything that the
19 men said to the women?

20 A No. They were making lude comments to them.

21 Q All right. Did they say anything particular about any
22 one of the women?

23 A Well, here goes another -- how do I say that she --

24 Q Well, just say it.

25 A She had big hooters on her.

1 Q All right.

2 A And they wanted to know, I guess -- and they was just
3 obnoxious and very rude.

4 Q Uh-huh. And so you approached the men and these women
5 when -- after a period of time?

6 A Yeah. They was going out the door and I had -- my
7 truck was parked in the front. And usually whenever they --
8 they usually go out there and bust off the antennas, and I
9 didn't want that to --

10 Q Okay. I want to stick for a moment with when you got
11 up and went over. Did you go over towards where the women
12 were sitting?

13 A Not that close. Probably 20 feet away probably.

14 Q Okay. And did you have any concern that caused you to
15 go over to where the women were?

16 A Well, for Eddie because I didn't want him -- you know,
17 Eddie and I were pretty good friends and we'd had
18 confrontations in there with other people before.

19 Q Were you concerned that these guys might start some
20 trouble?

21 A Yes.

22 Q All right. And so you got up and moved over towards
23 the --

24 A I was going to, and before I got there they had already
25 went out the door.

1 Q Okay. Now, did you have an opportunity to observe the
2 men so that you could describe what any of them was wearing?

3 A The only one that I could really decide was the light-
4 haired guy, because he was the first one that was standing
5 coming in from the kitchen and I could see from the light.
6 And he looked like -- I thought it was grease or mud on him.
7 And then -- but then when Eddie told him to get the hell --
8 get out.

9 Q Yeah.

10 A And they was talking, bragging about that they had just
11 been in a fight over at some other bar.

12 Q Now, did one of the men say anything about they'd been
13 fixing or working on a car?

14 A That's what I thought, maybe that they might have been
15 working on a car.

16 Q All right.

17 A I'm not a hundred percent sure on that.

18 Q Okay. You don't recall whether one of the men said
19 that also?

20 A No, I'm not. I don't want to swear to that.

21 Q Fair enough.

22 With regard to the clothing of any of the men, can you
23 describe what you observed?

24 A The one guy had a light T-shirt on, and he's the one
25 that looked like he had all the grease on him or whatever.

1 Mud or whatever. And then it was -- you know, how -- I
2 don't know, they take the top half down of the coveralls?
3 That's about it.

4 Q So he was wearing coveralls and the top half was sort
5 of --

6 A It was hanging down, yes, sir.

7 Q -- hanging down.

8 And he had a light-colored T-shirt on?

9 A Yes, sir.

10 Q Okay. Now, did you observe any markings on their arms
11 or anything like that?

12 A One of them had a -- to me it looked like a jailhouse
13 tat on his right arm.

14 Q A what? Or jailhouse tat.

15 A Tat. Tattoo. Excuse me.

16 Q Uh-huh.

17 A But I didn't get a close enough look, but it looked
18 like he had one up here.

19 Q And where was it located?

20 A It would be on his right arm I'd say probably right up
21 in this area.

22 Q So between his -- up towards the shoulder?

23 A Yeah. Yes, sir.

24 Q All right. Thank you.

25 Now, apart from the comment that you referred to that

1 come in from the back entrance through the kitchen. And
2 where I was setting, I wouldn't have been able to see them
3 until they'd come into the little bar section.

4 Q All right. So you saw two men behind the bar that were
5 patrons?

6 A Yeah. One of them was leaning -- yeah, leaning against
7 the door.

8 Q Okay. And then you observed those two men and they
9 were inside the bar less than five minutes?

10 A Yeah, I would think so. Yes. I mean, I -- I'm not
11 sure about the times. I don't want to -- I know they wasn't
12 there, because they went underneath there and then they got
13 very obnoxious with the ladies. And the ladies were telling
14 them, you know -- yeah, probably five minutes or less.

15 Q All right. And so what you observed was two men behind
16 the bar being rude to female patrons and then leaving?

17 A Before they were really rude, they had come out from
18 behind the bar and were standing over by the ladies.

19 Q How many women were seated at the bar when these two
20 men were being rude?

21 A I think there was either two or three at the bar, and
22 then right behind them there was one sitting at the booth, I
23 believe.

24 Q Okay. So sitting here today 21 years later, do you
25 have a picture in your mind of three women at the bar?

- 1 A If you want me to swear to it, I won't, because I'm --
2 I'd say anywhere from three to five women sitting there.
3 And then there was Larry and I believe Randy and then Eddie,
4 and I think Eddie's wife or his girlfriend was there.
- 5 Q Now, the two men, other than there being patrons behind
6 the bar, was there anything about them that would have drawn
7 your attention to them that night?
- 8 A Just they was being loud mouthed.
- 9 Q Okay. And by "loud mouthed" do you mean what they were
10 saying or the volume?
- 11 A Both.
- 12 Q Okay. And would you say that they were scruffy
13 looking?
- 14 A Very.
- 15 Q Okay.
- 16 A Very. Yeah, very. They looked like they -- you know,
17 if I hadn't have known better, I'd say they just came off
18 the dairy or something.
- 19 Q Okay. So they looked like they had been working,
20 performing manual labor?
- 21 A In a sense. They were just scruffy looking. Yeah,
22 they were just dirty looking.
- 23 Q Okay. So you would not say they were clean cut?
- 24 A No, ma'am.
- 25 Q Okay. Now, you mentioned that one of the men was

1 wearing coveralls, correct?

2 A Yeah.

3 Q Is that the man who was making rude comments to the
4 women?

5 A I'm not sure which of them was it. The one -- they
6 were down there and I wasn't that close to see, but they
7 probably both were. But I'm not sure.

8 Q Now, the first time you noticed the third man was when
9 they were leaving and going out the door; is that correct?

10 A That's when I believe, when they was already out the
11 door, because I never seen him behind the bar.

12 Q Okay. Now, the top half of the man's coveralls were
13 off?

14 A Yeah, were down.

15 Q Right. So you could see his T-shirt, correct?

16 A I think so, yes.

17 Q Okay. And you're saying that he had a tattoo on his
18 right arm towards the shoulder?

19 A I believe so, yeah.

20 Q What was the style of the T-shirt?

21 A I have no -- I know it was all one color, and that's
22 why I thought it was a jailhouse tattoo.

23 Q A tattoo?

24 A Yeah.

25 Q Okay. But the T-shirt, how long was the sleeve on the

- 1 T-shirt?
- 2 A God, not very long. About the same as mine.
- 3 Q Okay. Was it rolled up, sir?
- 4 A I -- yeah. I won't say one way or the other, because
- 5 he was standing there with his hands like this, so that's
- 6 the only reason I noticed it.
- 7 Q Okay. And the top half of the coveralls, they were
- 8 down around his waist?
- 9 A Yes, ma'am.
- 10 Q Okay. And would you please describe the style of
- 11 coverall?
- 12 A No, ma'am, I can't.
- 13 Q Okay. Do you have a picture in your head of what the
- 14 coveralls looked like?
- 15 A I wouldn't even know how to begin to describe the
- 16 coveralls.
- 17 Q Okay. Were there straps?
- 18 A Yes, because I think that they were hanging down. But
- 19 I'm not -- I mean, it looked like the bib was hanging down.
- 20 Q Okay. So we're really talking about bib overalls; is
- 21 that correct?
- 22 A I'll say yes.
- 23 Q Okay. And that's why you thought he came from a dairy?
- 24 Nearby dairy?
- 25 A Yes.

- 1 Q Okay. So they weren't mechanic's coveralls?
- 2 A No, ma'am.
- 3 Q Okay. Now, the gentleman in the coveralls, do you
- 4 recall what his hairstyle was? The length of his hair.
- 5 A Well, both of them -- one of them, the dark-haired one,
- 6 I never got a real good look at, but the light-haired one,
- 7 it was -- I don't know. It was unkempt, about medium, I
- 8 guess. It wasn't real long.
- 9 Q Okay. So the fact that it was unkempt, it wasn't the
- 10 length. Was it unclear?
- 11 A I don't know. I didn't get that -- in the dark bar, it
- 12 would have been hard to tell.
- 13 Q Okay. So with the lighting, you really wouldn't know?
- 14 A No, ma'am.
- 15 Q Okay. Now, you weren't paying that much attention to
- 16 these men; is that correct?
- 17 A No, ma'am, I wasn't.
- 18 Q Okay. Now, you were a regular at the bar?
- 19 A Yes, ma'am.
- 20 Q Were you there pretty much on a daily basis?
- 21 A Yes, ma'am.
- 22 Q Did you recognize any of the women that were being
- 23 bothered by this gentleman?
- 24 A No, ma'am, I didn't.
- 25 Q Okay. Did they fit in with the bar? Did they look

1 A Yes.

2 Q Did you hear any of the women as you approached, you
3 know, where they were sitting where the men were say, "Do
4 you realize you have blood on you?" or something to that
5 effect?

6 MS. WILKENS: Objection. Leading.

7 THE COURT: Sustained.

8 BY MR. ALEXANDER:

9 Q Were the women saying anything about --

10 A Yeah, how nasty they were.

11 Q -- what was on the men?

12 A I don't remember if they said "blood" or not.

13 Q But you do -- what do you recall one of the women
14 saying?

15 A Right now, I don't know.

16 Q All right. It was something reflecting on what was on
17 the men?

18 A Yes. It was something nasty. Yes.

19 Q No, I don't mean what the men said to the women.

20 A No. I'm saying what the lady -- because they was
21 trying to get rid of them.

22 Q I see. Okay. And do you remember the woman saying
23 words or words to the effect, "You've got something on you"
24 or anything like that?

25 A I believe that I can say, yeah, they were saying.

1 Because they wasn't receptacle or whatever. They wasn't
2 receiving their advances. They were trying to get rid of
3 them, to tell him, you know, "Hit the road."

4 Q Right.

5 A That's it.

6 MR. ALEXANDER: Thank you very much.

7 MS. WILKENS: Nothing further, your Honor.

8 THE COURT: All right. Thank you. You may step
9 down. You're excused.

10 THE WITNESS: Do I leave this stuff here?

11 MR. ALEXANDER: Yes, you may, sir.

12 THE COURT: With respect to scheduling, I received
13 a preliminary report from Dr. Melton.

14 MR. ALEXANDER: Yeah. I just got it this morning.
15 I think both of us, but I haven't read it.

16 THE COURT: Do you have it, too?

17 MS. WILKENS: Yes, your Honor.

18 THE COURT: And then in light of that, do we need
19 a telephonic conference with her or not?

20 MR. ALEXANDER: I don't know that we do, unless
21 there's something further.

22 THE COURT: So then the representative samples
23 will be sent?

24 MS. WILKENS: Yes. The reference samples now need
25 to be showed to Dr. Melton upon receipt of the report, and

EXHIBIT Q

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3

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

10 TRANSCRIPT OF COURT TRIAL
11 BEFORE THE HONORABLE MARILYN L. HUFF
12 UNITED STATES DISTRICT JUDGE

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Timothy Wilson	38	68	70 80	77
Laurel Epler	103	150	184	--
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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 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 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 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 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 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 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 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,

EXHIBIT R

DAILY LOG

DATE: 10-27-73 DIVISION: 2 COMMAND: 1

INCIDENT	TIME	LOCATION	INCIDENT DETAILS	STATUS
1111 SUBJECT	57	1403	3.0003: P2 On 3257 Kirkwood, 2nd St. 2750. Come tobar reports her father, 2750, and 2751 is refusing to leave the residence. IPM, 2IP2 ASSIGNED 2IP1 BACKING 1423 10-98/1430. 2IP2 ADVISED TO CANCEL THE UNIT. SUBJECT WAS LEFT.	KIRKWOOD
ARRP21 VF 27172 PA 143117 OK 121058-EL OR 121059-11	57	1430	3.0003: N/A. 2IP1 reports vehicle stop at Arrow and Hellman, lic/1741/0. 2IP2 BACKING UNITS 10-15 W/2 FOR VC 23152 and RG 647(F). ARRESTEE: ROJAS, ALVARO DOB/10-26-25. EVASER: PC 647(F). ARRESTEE: TORRES, RENE DOB/12-8-52. EVASER: VC 23152.	WESTON KIRKWOOD
FOUND PROPERTY	58	1441	3.0003: P2 On Payton and Glenridge, 597-2195. Laurel Epine reports finding a blue shirt that possibly has blood on it. UNIT 2103. HANDLING 1441 10-97/1452 10-98/1506. EVIDENCE PICKED UP.	FIELDS
AEB 20002 FOR CHP	59	1500	FONTANA: CHP advises 20002 just occurred at Arrow and Calabash. Suspect vehicle left westbound on Arrow at green PU, partial lic. 679357. Suspect a WM in his 50's with blond hair. RANCHO UNITS ADVISED.	DESK
415 VEHICLE	60	1403	1.003: P2 On 33 E. 26th, Up1; 981-8667. Nail Stern reports of a 415 brn passenger vehicle in the area. UNIT 2R3 ASSIGNED 1403 10-97/1423 10-98/1430. GOA UTL.	KOPASZ
ON DUTY	61	1500	PATROL DIVISION SGT. GILMORE DISP. HOLMAN..... RADIO/DESK DEP. PORT..... DESK OFFICER DEP. WARD..... 2P6 NORTH DEP. PRICE..... 2P2 SOUTH DEP. HATCH..... 2R7 ROVING DEP. KOPASZ..... 2R3 ROVING JAIL DIVISION DEP. RYNO B.O. FINKLEMAN	ATT. CAPT DA.

EXHIBIT S

D.G. Detective Michael (Mike) Gilliam
S.K. Shirley Killian

D.G. Ah today is what Wednesday three thirty one oh four (03/31/2004)
and at about zero nine twenty four hours and your last name is Killian

S.K. Yes

D.G. K I L L I A N ah Shirley

S.K. Hmhmm

D.G. and which ah you have a middle name Shirley

S.K. Catherine C A

D.G. C

S.K. T H E R I N E

D.G. And your age

S.K. ah [REDACTED]

D.G. date of birth

S.K. ah [REDACTED]

D.G. Okay now you have testified on this case before and everything like
that

S.K. hmhmm

D.G. and you know some of the things that have come up we have this
woman now I explained to you over the telephone when I talked to
you the other day about how um she's saying that there was some
people that you know some guy that came in dripping in blood ah first
of all did you recognize the name of Mary Mellon or um or Christine
Slonaker

S.K. No

D.G. You don't recognize the names and how long did you work there

S.K. five years

D.G. five years and your what was you are you

S.K. I was manager

D.G. You're the manager do you remember that night when I guess the
police did the police come in there were three guys that came in or
something like that three marines or some thing I guess they were
described as marines

S.K. ah there was um well we had a lot of people at that time came over
from Orange County

D.G. Hmm

S.K. we didn't know all of 'em

D.G. Hmhmm

S.K. but there was a couple of clean cut shorthaired

D.G. hmhmm

S.K. Guys that ah we asked to leave because they had ah they had enough
to drink and we were

D.G. clean cut shorthaired.

S.K. yes

D.G. shorthaired

S.K. yes

D.G. Okay and do you remember what they were wearing?

S.K. One had a white tee shirt on as I recall ah possibly blue jeans light color maybe

D.G. both of them have blue jeans? How many how many were there?

S.K. well I'm,

D.G. two three

S.K. I'm gonna say between two and three like I said twenty years ago the one

D.G. Yeah

S.K. that gave me the biggest problems one I remember the most and that was the one that had the white tee shirt on and light blue jeans I think

D.G. Yeah

S.K. and I think one of them had on a light blue shirt but you know I'm not sure anymore

D.G. then what

S.K. but I know whatever they were wearing were clean because what they had on wouldn't be able to hide any blood

D.G. Now did they what kind of problems did they give ya?

S.K. Just rowdy wanted another drink and

D.G. another drink

S.K. and the bartender said no you guys not

D.G. that was it

S.K. yes

D.G. Okay and ah Ed said no

S.K. Yes either I told him to cut them off or he had cut 'em off I don't remember

D.G. Now do you ah did you guys call the police or did the police come in that night

S.K. No

D.G. police never came in that night

S.K. Not on this no

D.G. oh no do you remember them coming in at all that night?

S.K. I don't think it was until the next day after the discovery of the murders

D.G. Okay um this is a drawing that this woman that ah said she seen the people in the blood and everything like that is that kinda like an accurate description of the of the bar that you know

S.K. Yes

D.G. that's good

S.K. yeah pretty much

D.G. And where there

S.K. there was a little hallway here

D.G. Hmm let me let me just go back to this right did you ever see any weapons or anything on these on any of these guys

S.K. No

D.G. Um they have that um Ed had when I talked to him the day before yesterday he had said that these two these two or three guys came in were well behaved and everything ah didn't seem intoxicated or anything came in drank a beer and everything left then came back sec, came back several hours later

S.K. that's possible because I had been gone

D.G. Okay

S.K. I was at a horse show and when I came in

D.G. so you might have just

S.K. that's when they had come back again

D.G. Okay, okay so where did these people sit at ah

S.K. they were at the bar as far as I know I was in this booth right here by the front door when this problem occurred with these guys

D.G. Okay

S.K. and I think there were some other people here I think there was three

D.G. Yeah

S.K. and I was (unintelligible) but I don't remember them

D.G. so where do you think they were you know

S.K. I think they were at the bar the bar was packed they were standing people were standing all over the place

D.G. Okay (unintelligible talking over her)

S.K. it was a really packed night and ah when I noticed them there were standing up in this area here

D.G. Okay all right do you ah and you were there for five years so you, you pretty much knew all your regular customers

S.K. Yeah

D.G. and everything like that let me show you this photograph here do you recognize that lady now take in to account that, that this picture is a current picture of her drivers license so you'd have to subtract about twenty, twenty one years off of her age off of that photograph does that look does she look familiar to you at all?

S.K. No

D.G. Huh

S.K. no she has a pretty prominate nose so I would have probably remembered that

D.G. Hmhmm so it doesn't

S.K. and her eyes are kinda large.

- D.G. Hmhhh and well so that um let me, let me read something to you here and this is what her part of her declaration is and, and, and that's why ah were kinda asking because um give it Canyon Corral
- S.K. Canyon Corral
- D.G. Canyon corral was a local restaurant bar that I had been to previously with my family and friends for dinner and to socialize while I went there numerous times I only had occasionally had an alcoholic drink so
- S.K. No
- D.G. she would have maybe, maybe not necessarily sat at the bar
- S.K. she may have come in for dinner or for lunch
- D.G. yeah
- S.K. or something like that
- D.G. but not somebody you would consider as frequent or anything
- S.K. No
- D.G. Okay and the other thing I find that that and, and, and Ed went through this thing with me a little bit um and probably if you were working there that night (unintelligible) ah she was there with a Mik lady by the name of Marion Mary's friend but they sometime after they arrived two men walked in to the bar through the back door entrance and through the swinging doors through the kitchen so that would put it this door here correct with them coming these swinging doors
- S.K. No the swinging doors over here
- D.G. but there's two set swinging doors there's another swinging door here
- S.K. Oh coming into the wall yeah
- D.G. yeah and then there
- S.K. Oh this nobody's allowed in here but the help
- D.G. okay
- S.K. kitchen
- D.G. Yeah
- S.K. and if they came in here and came in here the bartender would have seen it and so would the customers
- D.G. the cooks would have seem 'em
- S.K. Yeah the cooks would have seem 'em
- D.G. Okay because even these swinging doors lead back to the kitchen right
- S.K. yes
- D.G. so somebody would had to come in through the kitchens or else came in through here
- S.K. If they came in through the kitchen this is where the kitchen the chef was over here
- D.G. because what she says um here is that ah okay swinging door through the kitchen came in through the back door ah entrance and through the swinging door through the kitchen so I mean this is the other back door and you wouldn't end up through the swinging doors
- S.K. No

- D.G. Is that correct okay now both men were Caucasian and had blonde hair one of them was wearing a light colored tee shirt jeans and the other wearing overalls both men wearing tennis shoes um this is ah because the men were, were coming in through the swinging door to the kitchen I said to them hey you're coming in the wrong way they did not respond instead they stood there for a couple of minutes and I just kinda wondered if Ed, Ed was standing there behind the bar
- S.K. he would have known
- D.G. how would have somebody have you know (unintelligible talking over her)
- S.K. and everybody sittin' at the bar would have seen
- D.G. Yeah
- S.K. where was she sitting did she
- D.G. (unintelligible) she said she's sitting here she's sittin' there and her girlfriend Mary are all sittin' here at the bar and then basically what happens is I guess ah, ah, ah they seem like they were either drunk or high oh drugs or saying something and they saw what they thought was mud or something on their clothing as they stood there one of the men focuses his attention on Mary's friend who had large breasts and started staring at her at that point both men proceeded to come from behind the bar and starting hitting on us that's when they got closer and they saw that there was blood ah that it wasn't mud on them but the spots were blood and ah most of the blood was on their shoes and the front portion of their clothes they also had splat blood splatter on their face and arms and I know twenty one years later kinda hard to tell if these woman were sittin' over here um that night
- S.K. well yeah because there was woman all over the place
- D.G. Yeah
- S.K. and men too um but I ah I was sitting here
- D.G. yeah
- S.K. did she say what time this was
- D.G. she said sometime in the evening
- S.K. Yeah because I think I'm trying to remember when I left the, the ah the horse show
- D.G. Hmhmm
- S.K. (unintelligible) came back there because I would have been sitting right across from the bar
- D.G. Yeah
- S.K. and I would have defiantly noticed somebody coming in there because that was absolutely off
- D.G. do you remember the names
- S.K. limits
- D.G. of the cooks or who the cooks were that were there

S.K. Jerry ah Louie and his brother Jerry don't ask me their last name right now because I can't
D.G. they're both cooks there that night
S.K. yeah well Jerry was probably on cuz
D.G. Yeah
S.K. ah Louie worked days and Jerry worked nights ah they were brothers
D.G. so you know how to get a hold of them now or anything or
S.K. No gosh no
D.G. do you know of anybody that might know where they're at because I mean you know and according to Ed what's Ed's tellin' me is he's said that he says well first of all there'd be like two large Mexican guys he couldn't remember their names that were cooks
S.K. Yeah
D.G. and they would have told 'em hey this isn't the door to come in to
S.K. that's right
D.G. you have to go in the other
S.K. They would have
D.G. so he says so they wouldn't come in and then if they did even the cook would have seen them and redirected 'em but they even there they would have passed up and then you know so you're lookin' at these people coming in this door he says cooks wouldn't didn't see 'em he didn't see 'em
S.K. and I didn't see 'em
D.G. and you didn't see 'em
S.K. yeah
D.G. and, and probably if, if you're the manager I mean would what would be your what would be your take as far as ah you know seeing somebody behind the bar
S.K. that's the kitchen door it's not there it's over here and then the dishwasher sink
D.G. Yeah
S.K. stove and everything is over here then there was another doorway here went into store room so if they came in here right straight ahead
D.G. Yeah
S.K. are more swinging doors that come behind the bar
D.G. Hmhmm
S.K. if they came in here the cooks would have seen 'em they would have had to go through this swinging door
D.G. Hmm
S.K. to get in here and Eddie would have seen 'em
D.G. Hmhmm
S.K. or I would have seen 'em
D.G. well you know because what my what I'm just saying is that for
S.K. there

- D.G. for people to walk in a lot of times you don't wouldn't pay that much attention but I would imagine
- S.K. you would have if you're behind the bar
- D.G. yeah that's what I saying
- S.K. (Laughing) yeah
- D.G. as employees if you start seeing somebody that does not work there and they're behind the bar that would that would probably ah peek your attention a little bit more
- S.K. yes
- D.G. Okay ah
- S.K. cuz nobody was allowed back there customers were not allowed back there um at any time
- D.G. Okay um so you never heard of those two names ah
- S.K. I don't I don't recall the names and this picture doesn't look familiar to me
- D.G. You didn't see anybody that even that looked like they had blood on 'em or anything that you
- S.K. No
- D.G. (unintelligible)
- S.K. and I would of the ones that we asked to leave did not were not dirty
- D.G. ah there we kinda described as military type haircut I mean
- S.K. yeah
- D.G. clean cut
- S.K. clean cut
- D.G. okay
- S.K. not long hair you know
- D.G. Okay
- S.K. almost like a crew cut but
- D.G. and you don't remember the police coming in that night right
- S.K. No I don't know
- D.G. You said you thought (unintelligible)
- S.K. It's probably a possibility because they always stopped in there just to do a bar check every once in a while which was at my request most of the time just a walk through
- D.G. It, it but it wasn't if it wasn't
- S.K. I don't remember anybody calling the police no
- D.G. Cuz was it a very you know like they were a little bit pissed cuz you wouldn't give 'em no drinks but I mean was it I mean you (unintelligible)
- S.K. they were loud and arguing and
- D.G. yeah
- S.K. I said it's time for them to leave and I always had
- D.G. But in the big, big scheme of things you cuz you've been around that bar business for five years

S.K. Yeah most of the
D.G. It wasn't
S.K. customers would have got up and helped me if I need any help
D.G. Yeah and
S.K. and, and one of 'em did
D.G. Hmhhh
S.K. and he was my back up
D.G. Hmhhh
S.K. guy because he you know he didn't have a family and he was there quite a bit
D.G. Okay
S.K. and I said okay Rob it's time we got 'em out and I went out with 'em to make sure they left didn't do any damage in the parking lot
D.G. did you see the kinda what remember what kinda car they got into
S.K. yeah one guy got into a white kinda I think it was well I know it was a pick up a white pick up and then I think I'm trying to remember what the other one was it was a smaller car I think
D.G. Oh so they oh they're both in separate cars and everything
S.K. Yeah they had two vehicles there
D.G. Just you remember the color
S.K. well the pick up was white
D.G. Hmhhh
S.K. then we had florescent lights out there
D.G. yeah
S.K. so you know it could have been tan
D.G. Yeah
S.K. or something to
D.G. yeah
S.K. but it both the vehicles were kinda light color
D.G. hmm, hmm and you said that but you don't remember if there was only two or three it coulda been
S.K. there could have been three of 'em
D.G. Okay
S.K. Um
D.G. but
S.K. I, I was very much interested in the first one because
D.G. Yeah
S.K. he was the one you know giving me the hard trouble too well I don't see why I have we have to leave and they cuz you're not getting' any more to drink and you're rowdy and
D.G. what, what was their approximate age
S.K. Oh probably in there twenty's somewhere
D.G. early mid
S.K. Your asking a lot (laugh)

D.G. I know

S.K. Um probably mid when you looked at 'em you knew they were drinking age

D.G. yeah

S.K. so that, that goes

D.G. Yeah

S.K. anywhere from thirty down to what twenty five maybe

D.G. yeah okay can you think of any thing else?

S.K. No I can't think of anything I haven't already you know

D.G. Okay

S.K. Um like I said I was gone the early evening which was really amazing cuz I never go

D.G. Hmhm

S.K. anywhere else just always there but I got talked in to going to the horse some friends of ours were in the horse show so I went and ah I remember it was cold that night and it was damp and I didn't even stay to the finish we left but I, I now I can't tell you what time I got back whether it was eight thirty somewhere in there but I'm not sure because I don't remember

D.G. Okay

S.K. but and then I spent the rest of the evening there until after the business slowed down and people got out of there

D.G. We'll be off tape and I've got ah zero nine forty one hours

End of Tape

DECLARATION OF DETECTIVE MICHAEL GILLIAM

I, Michael Gilliam, declare as follows:

1. I am a detective with the San Bernardino County Sheriff's Office, and am currently assigned to the homicide division.
2. On March 31, 2004, I went to the home of Shirley Killian in San Bernardino County, California, and conducted an interview of Ms. Killian.
3. I tape-recorded my interview with Ms. Killian. Attached hereto is a true and correct copy of the transcript of my interview with Ms. Killian. Ms. Killian's age and date of birth have been redacted from the transcript.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 27 day of April 2004, at San Bernardino, California.

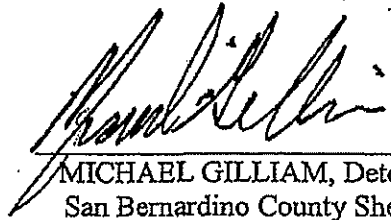

MICHAEL GILLIAM, Detective
San Bernardino County Sheriff's Office

EXHIBIT T

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. Crim 24852

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME 97

January 7, 1985, Pages 5798 through 5915
January 8, 1985, Pages 5916 through 6058

APPEARANCES:

For the Plaintiff
and Respondent:

JOHN K. VAN DE KAMP
Attorney General
State of California
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San Diego, Ca. 92101

For the Defendant
and Appellant:

IN PROPRIA PERSONA

ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

Copy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
January 8, 1985

APPEARANCES:

For the People:

DENNIS KOTTMEIER
District Attorney
WITH: JOHN P. KOCHIS
Deputy District Attorney
1540 Mountain Avenue
Ontario, California 91762

For the Defendant:

DAVID L. McKENNA
Public Defender
BY: DAVID E. NEGUS
Deputy Public Defender
1060 West Sixth Street
Ontario, California 91762

ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters

RE CROSS EXAMINATION

BY MR. KOTTMEIER:

Q. Mr. Gamundoy, you asked him the question, "Do you know who did this?"

A. Yes.

Q. And his answer at one time was yes.

A. Yes.

Q. And when you tried to follow it up the answer was no.

A. Yes.

MR. KOTTMEIER: Nothing further, your Honor.

THE COURT: Nothing else?

MR. NEGUS: Nothing else.

THE COURT: All right, thank you, Mr. Gamundoy. You are free to leave. Your next witness.

MR. NEGUS: Dale Sharp.

ERVIN DALE SHARP,

called as a witness on behalf of the Defendant, having been duly sworn, testified as follows:

THE CLERK: Thank you. Have a seat on the witness stand, please.

Would you state your full name for the record and spell it, please.

THE WITNESS: Ervin Dale Sharp. E-r-v-i-n, D-a-l-e, S-h-a-r-p.

THE CLERK: Thank you.

RE CROSS EXAMINATION

BY MR. KOTTMEIER:

Q. Mr. Gamundoy, you asked him the question, "Do you know who did this?"

A. Yes.

Q. And his answer at one time was yes.

A. Yes.

Q. And when you tried to follow it up the answer was no.

A. Yes.

MR. KOTTMEIER: Nothing further, your Honor.

THE COURT: Nothing else?

MR. NEGUS: Nothing else.

THE COURT: All right, thank you, Mr. Gamundoy. You are free to leave. Your next witness.

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THE CLERK: Thank you. Have a seat on the witness stand, please.

Would you state your full name for the record and spell it, please.

THE WITNESS: Ervin Dale Sharp. E-r-v-i-n, D-a-l-e, S-h-a-r-p.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. NEGUS:

Q. Mr. Sharp, what is your occupation?

A. Deputy Sheriff.

Q. And for whom do you work?

A. San Bernardino County.

Q. How long have you been a deputy Sheriff?

A. Approximately six and a half years.

Q. Were you working on June 5th, 1983?

A. Yes, sir.

Q. What was your assignment on that particular day in June?

A. I was assigned to patrol division that particular day, assigned to the Loma Linda area.

Q. Loma Linda is a city which contracts for its police work with our Sheriff's Department; is that correct?

A. Yes, sir.

Q. And what shift were you working that day?

A. Day shift.

Q. How many officers work that shift?

A. That exact day, I can't recall. On a normal shift, seven.

Q. If not, all those seven people would be assigned to Loma Linda; is that right?

A. No, sir.

Q. But if something important were to happen in Loma Linda, would officers from other areas be brought in?

A. Depending on the situation, yes, sir.

1 Q. When something major happens, as far as crimes are
2 concerned, do officers sometimes just come by to see what's
3 happening so they can inform themselves; drop in, pass on?

4 A. Yes, sir.

5 Q. Did that happen when you wer at the Loma Linda
6 University Medical Center on June 5th, 1983?

7 A. No, sir.

8 Q. Nobody showed up?

9 A. No, sir.

10 Q. What time did you go to Loma Linda University
11 Medical Center on June 5th, 1983?

12 A. Yes, sir.

13 Q. What time did you get there?

14 A. 1344 hours.

15 Q. At that point in time you were driving a fully
16 equipped Sheriff's unit.

17 A. Yes, sir.

18 Q. And you were dispatched in reference to the
19 homicides that had just been discovered in Chino Hills.

20 A. I wasn't advised at the time initially, I found out
21 later on that was what I was dispatched for, yes, sir.

22 Q. Before you got out of the car?

23 A. No, sir.

24 Q. What did you -- what was your purpose in going
25 there to the hospital?

26 A. I was advised to go to the hospital and to call
27 dispatch.

28 Q. Did you do that when you got to the hospital?

1 A. Yes, sir.

2 Q. At that point in time were you given the
3 information as to what you were supposed to do?

4 A. Yes, sir.

5 Q. At the time that you called dispatch, what time was
6 that?

7 A. Be approximately 1350 hours.

8 Q. What were you doing for the six minutes in between?

9 A. Giving six minutes to advise I was 97, pulled in
10 the parking lot, get out, go in the door and call.

11 Q. That took six minutes?

12 A. I would assume so.

13 Q. Where do you get the time 1350?

14 A. That's an approximate time, going from the 1344,
15 that I called in I was 97.

16 Q. Okay. So you are sure of the 1344 time.

17 A. Yes, sir.

18 Q. And that is 1:44 civilian time?

19 A. Yes, sir.

20 Q. And "97" in police codes means I have arrived at
21 the scene.

22 A. Yes, sir.

23 Q. When you parked your car, did you park it in a
24 regular parking place?

25 A. Parked in the emergency lot.

26 Q. How far from the door to the emergency room did you
27 park it?

28 A. Hundred feet.

1 Q. And once you got there, did you make the call from
2 inside the emergency room?

3 A. Yes, sir, I did.

4 Q. Was there a phone right there?

5 A. As you walk in at the reception desk, yes, sir.

6 Q. Did you have any trouble finding that phone?

7 A. No, sir.

8 Q. When you got through with your phone call, had Josh
9 Ryen arrived at the emergency room yet?

10 A. Not being in the actual emergency room, at the
11 reception desk, I wouldn't know. In guessing I'd have to say I
12 believe so.

13 Q. As soon as you got off the phone did you go right
14 into where Josh was?

15 A. I went in the emergency room at that point, yes,
16 sir.

17 Q. And how long was it before you were allowed to go
18 where Josh is?

19 A. As I walked in I could see the partition was open
20 and I could see Josh laying there.

21 Q. Did you make immediate contact with Josh?

22 A. Not at that time, no, sir.

23 Q. How long was it before you made contact with Josh?

24 A. Approximately ten minutes.

25 Q. In your Sheriff's units, did you have a tape
26 recorder?

27 A. Yes, sir.

28 Q. Is that something that you use as part of your

1. Sheriff's work?
2. A. Yes, sir.
3. Q. Did you go out and get it?
4. A. No, sir.
5. Q. Had you been assigned to get information from
6. somebody you believed to be the sole survivor of a mass murder?
7. A. Not at that time.
8. Q. When were you assigned to get information from
9. Josh?
10. A. I subsequently made phone contact with Sergeant
11. Arthur.
12. Q. What time was that?
13. A. It would be right around the same time. I advised
14. dispatch when I was talking to him to have Sergeant Arthur call
15. me at the hospital and he called a few minutes later.
16. Q. At that point in time did Sergeant Arthur tell you
17. to try and get information from the sole survivor of a mass
18. murder?
19. A. Yes, sir.
20. Q. Did you then go out and get your tape recorder?
21. A. No, sir.
22. Q. How long after your conversation with Sergeant
23. Arthur was it that you actually went in and made contact
24. yourself with Josh?
25. A. Approximately a minute, 30 seconds.
26. Q. Do you know what time that was?
27. A. No, sir, I do not.
28. Q. At that time, at the time that you made contact

1 with Josh, was his head bandaged?

2 A. They were either just finishing up or it was
3 bandaged right in that area right there, I believe.

4 Q. Did he have IV tubes?

5 A. I believe so, yes, sir.

6 Q. Could you see what the medical people were doing
7 with him?

8 A. They were all moving around the bed. As to exactly
9 what they were doing, I don't recall.

10 Q. How many medical people were there?

11 A. Approximately six or seven.

12 Q. Do you know the identities of any of these people?

13 A. No, sir, I do not.

14 Q. Did you see anybody obtaining information from Josh
15 before you made contact with him?

16 A. Yes, sir.

17 Q. Who was that?

18 A. It was a nurse.

19 Q. Okay. What -- why do you think the person was a
20 nurse?

21 A. Because it was a female.

22 Q. Did the nurse ask Josh about allergies?

23 A. I don't recall that.

24 Q. Do you recall how the nurse was obtaining the
25 information?

26 A. She had a clipboard in her hand.

27 Q. How was she getting the information from Josh using
28 a clipboard?

1 A. I believe she had Josh write his name and then he
2 pointed to numbers for his age, date of birth and telephone
3 number.

4 Q. Did you obtain that information from her?

5 A. I obtained it while she did, yes, sir.

6 Q. Did you read the name that Josh wrote?

7 A. I believe I was told, sir.

8 Q. By whom?

9 A. I believe it was the female nurse. There was a
10 number of people standing around there, and I asked for the
11 name, and if I recall correctly, it was a number of people told
12 me "Joshua Ryen" or "Josh Ryen".

13 Q. Do you know what time it was that you learned that
14 information?

15 A. Not exactly, no, sir.

16 Q. Approximation?

17 A. 1405, 1410, somewhere around there.

18 Q. Could it have been as late as 2:23 in the
19 afternoon?

20 A. I don't believe it was that late, no, sir.

21 Q. Were you making any notes as this was going on?

22 A. Yes, sir.

23 Q. Where?

24 A. On a notepad that I carried in.

25 Q. In November were you subpoenaed, served with a
26 subpoena duces tecum for those notes?

27 A. What was that question again, sir?

28 Q. In November of 1983, were you served with a

1 subpoena requesting you bring those notes to court?

2 A. No, sir, I don't believe so.

3 Q. Were you ever requested to bring the notes to
4 court?

5 A. No, sir.

6 Q. Did you put down on your notes basically the
7 questions that you were to ask Josh?

8 A. At times they were the exact questions, at times
9 they were the idea of what was being said.

10 Q. Did you put down the order in which you asked the
11 questions?

12 A. The order? That would be in my report, would be
13 the order that we talked about.

14 Q. I'm talking about the notes. Let's just focus in
15 on these notes.

16 Did you put down in your notes the order in which
17 the questions were asked?

18 A. Yes, sir.

19 Q. How many pages of notes did you take?

20 A. Two, three pages of notes, I would imagine.

21 Q. Is this on a spiral notepad?

22 A. Yes, sir.

23 Q. Both sides of the page?

24 A. No, sir, just one side.

25 Q. And what did you do with those notes?

26 A. I have destroyed them.

27 Q. When did you do that?

28 A. It would be sometime after that date. When I'm

1 through with the notepad, I destroy the notepad.

2 Q. Have you been told by people in your department to
3 do that so that the defense doesn't have access to your notes?

4 A. No, sir.

5 MR. KOTTMEIER: Objection, argumentative.

6 THE COURT: Overruled. It may remain.

7 BY MR. NEGUS:

8 Q. Is that why you threw them away?

9 A. No, sir.

10 Q. Why did you throw them away?

11 A. I threw them away because of two reasons.

12 There's not a place to put the notebook when you
13 are through with it, such as an evidence locker where you had,
14 say, this notebook has confidential information in it, therefore
15 I put it in this locker. There's not a place for that.

16 I am not going to keep the notebook at home. I
17 certainly wouldn't want someone to break in my house and get
18 information out of that notebook, and I've got cases that I'm
19 working on in that notebook that I don't want confidential
20 informants to be known or what information they gave me.

21 Q. What confidential informants in that notebook were
22 in it?

23 A. I wouldn't recall.

24 Q. Well, does everybody in your department follow that
25 procedure?

26 A. Everyone that I know of does, yes, sir. At least
27 within the realm of a patrol division.

28 Q. In this particular case, did you think that maybe

1 it was a little different, maybe a different procedure might be
2 followed?

3 A. No, sir, I did not.

4 Q. When you were questioning Josh, did you have any
5 difficulty doing it?

6 A. Yes, sir.

7 Q. From the female nurse you found out that Josh was 8
8 years old.

9 A. Yes, sir.

10 Q. Did you think -- well, did you do anything to try
11 and insure that the form of your question didn't influence
12 Josh's answers?

13 A. I would have asked the questions several times to
14 make sure that I had the correct meaning.

15 Q. The same way each time or different wording?

16 A. Sometimes it would have been the same way,
17 sometimes it would have been different.

18 Q. Did you keep track in your notes of the different
19 ways in which you asked the questions?

20 A. No, sir, I did not.

21 Q. Did you attempt to tape record the conversation to
22 preserve how you asked the questions that way, without any extra
23 effort?

24 A. No, sir, I did not.

25 Q. From the people in the hospital you obtained the
26 name Josh Ryen, right?

27 A. Yes, sir.

28 Q. Now, was that -- did you see Josh give that answer

1 or did you -- was that relayed to you by word of mouth?

2 A. It would have been by word of mouth.

3 Q. Did you ever see Josh asked the question what his
4 name was by these people in the hospital?

5 A. Yes, sir.

6 Q. And did he give the name Josh Ryen?

7 A. Apparently. That was the name that he had written
8 down. Yes, sir.

9 Q. You never -- did you attempt to get ahold of that
10 particular piece of paper that he wrote on?

11 A. No, sir, I did not.

12 Q. Did you, yourself, make any attempts to see how
13 lucid Josh was?

14 A. Not any actual attempts where, you know, I would --
15 could make an attempt for this during the period of time. There
16 were times that I felt that he understood and times I felt he
17 didn't.

18 Q. So that was a subjective feeling on your part.

19 A. Yes, sir.

20 Q. Was there a neurologist present while you were in
21 the emergency room with Josh?

22 A. I would not know.

23 Q. Did you see Mr. Gamundoy, the gentleman that
24 testified just before you did, while he was on the witness
25 stand?

26 A. I saw him walk in, yes, sir.

27 Q. Did you know if Mr. Gamunody was there in the
28 emergency room with you and Josh?

1 A. When I was talking to the paramedic, which was
2 outside the partition area, there was a man there. When I came
3 to court today I felt that possibly that was Mr. Gamunody.
4 After seeing the man that left here, it wasn't, and I have not
5 seen Mr. Gamunody before or do I recall seeing him before, I
6 should say.

7 Q. When, in the chronology of events, were you talking
8 to the paramedics?

9 A. Prior to talking to Josh or getting his name or
10 anything.

11 Q. And did you get a history from the paramedics as to
12 what had happened?

13 A. No, sir, I did not.

14 Q. Which paramedics -- do you know which outfit the
15 paramedic worked for?

16 A. I believe it was the Chino Fire Department.

17 Q. Do he have a blue uniform on?

18 A. Yes, sir.

19 Q. Was he -- what ethnic background was he?

20 A. I don't recall.

21 Q. Well did he give you any information about what
22 type of wounds that Josh had?

23 A. No, sir, he did not.

24 Q. Did he give you any information about Josh's -- who
25 else was involved in the murder?

26 A. No, sir, he did not.

27 Q. What were you talking to him about?

28 A. The crime scene.

1 Q. What did he tell you about the crime scene?

2 A. He said blood was everywhere.

3 Q. When you talked to Sergeant Arthur, did he give you
4 any information about the nature of the causes of the injuries
5 or anything of that nature?

6 A. I don't recall.

7 Q. When you began your attempts to get information
8 from Josh, did you at that point know whether he was going to
9 live or die?

10 A. For sure I did not know.

11 Q. In the training that you had as a deputy sheriff --
12 well, you did -- you have had training as a deputy sheriff in
13 the various aspects of your job; is that right?

14 A. Yes, sir.

15 Q. You went to the Mr. Bland's Academy and Glen Helen
16 and did all the other in-service things that people require?

17 A. The basic academy, yes, sir.

18 Q. Part of that, do they teach you certain technical
19 requirements about trying to get a dying declaration from
20 somebody?

21 A. Yes, sir.

22 Q. And you have to be very careful to try and fulfill
23 certain technical legal requirements when you're talking to
24 somebody from whom you might be getting a dying declaration; is
25 that right?

26 A. I would assume so; although, you know, I was never
27 taught what you're talking about.

28 Q. Well, didn't they teach you in the basic academy

1 how to get a dying declaration, what you had to do?

2 A. They told us to get what information we could.

3 Q. Well, did they teach you --

4 THE COURT: Counsel, he answered negatively.

5 MR. NEGUS: Well, I think -- I don't think he's answered
6 this question. If I could just ask the question.

7 Q. Did they teach you that you had to establish that
8 the person was aware that they were dying?

9 A. No, sir.

10 Q. Did they teach you that had the person had to be
11 aware that they were describing the circumstances which caused
12 their injuries or their demise?

13 A. No, sir.

14 Q. Did you actually observe Josh to give to one of the
15 medical people his birthdate?

16 A. I saw him pointing to the clipboard at some numbers
17 that I had seen them written down -- write down.

18 Q. You saw a medical person write the numbers down?

19 A. Yes, sir.

20 Q. And was that the female person that you presumed
21 was a nurse?

22 A. I believe so, yes, sir.

23 Q. After the female person that you presumed was a
24 nurse wrote the numbers down, did you then put them in your
25 notes?

26 A. Yes, sir.

27 Q. And before you destroyed your notes did you then
28 dictates those into a tape recorder back at your -- at your

1 office?

2 A. Yes, sir.

3 Q. And did one of the typists that work for the
4 Sheriff's Department then transcribe those notes?

5 A. Yes, sir.

6 Q. Did you ever go back and check to see that she --
7 the transcriber had done it correctly?

8 A. You mean check the report with the notes?

9 Q. Yes.

10 A. No, sir.

11 Q. Did you check the report against the tape that you
12 had made?

13 A. No, sir.

14 Q. I take it the tapes aren't preserved either; is
15 that right?

16 A. No, sir.

17 Q. They are not preserved?

18 A. No, sir, they are not.

19 Q. Well, what was the date of birth that you obtained
20 for Josh Ryen?

21 A. Probably have to check my report, but I believe it
22 was 9-5-74.

23 Q. Did you also obtain a telephone number?

24 A. Yes, sir.

25 Q. And probably not going to be able to remember that,
26 right?

27 A. Probably not.

28 Q. Would you like -- would it refresh your

1 recollection if you looked at your report?

2 A. Yes, sir.

3 Q. And is that report prepared from your notes?

4 A. Yes, sir.

5 Q. Would you do so, please. What was it?

6 A. 627-4294.

7 Q. While you were talking to Sergeant Arthur --

8 You had several conversations with him during the
9 course of the time you were with Josh; is that right?

10 A. Yes, sir.

11 Q. Did you verify with Sergeant Arthur, as part of
12 your process of trying to see whether Josh was alert or not, if
13 that was in fact Josh's correct phone number?

14 A. No, sir.

15 Q. In your report you also put down that Josh -- you
16 put down as coming from Josh the age 8; is that right?

17 A. Yes, sir.

18 Q. Did that come from Josh?

19 A. Yes, sir.

20 Q. So, the -- the person that was questioning him at
21 that point in time asked him to point at how old he was and he
22 pointed to 8?

23 A. Yes, sir.

24 Q. Asking you to look at Exhibit 697 that's behind you
25 on the board; does that appear to be a reasonable facsimile of
26 the paper that the medical person who was questioning Josh was
27 using?

28 A. You're asking if the paper that they used had the

1 alphabet and the numbering system on it, yes, sir, that would be
2 true. The, "yes and no", I don't recall.

3 Q. Was the -- was the person that was doing the
4 questioning asking Josh any questions which required a yes or no
5 answer?

6 A. I don't recall.

7 Q. Did you take notes of that?

8 A. I would have -- The notes I would have taken would
9 have went in my report as to Joshua's name, age, date of birth,
10 phone number. I don't believe there were any others -- any
11 others that would have been asked. After that point I would
12 have done with Joshua, and if anybody else asked those
13 questions, you know, I asked them again and got in my report. I
14 don't know whether they were asked or not.

15 Q. So you don't know whether other people got
16 information with what you got or inconsistent or what?

17 A. I would have no idea, sir.

18 Q. You haven't checked -- you never did check to find
19 out whether everything that you had in your notes was typed up
20 in your report though, right?

21 A. I did read the report, and I was satisfied that
22 that was what I had dictated, yes, sir.

23 Q. But you didn't do anything -- didn't do anything
24 independently like look at the notes, make sure there wasn't
25 something you had forgot and make sure of anything like that?

26 A. No, sir, I did not.

27 Q. When did you -- when did you make it, the report?

28 A. After I got back to the substation that day.

1 Q. What time would that have been?

2 A. Approximately 1800 hours.

3 Q. That would be 6:00 o'clock at night civilian time?

4 A. Yes, sir.

5 Q. And that was the end of your shift?

6 A. Yes, sir.

7 Q. What time did you review the written, typewritten
8 report?

9 A. Approximately two days later.

10 Q. During that intervening two days had you been out
11 in the field?

12 A. Yes, sir.

13 Q. And had you been -- had you been assigned to work
14 this case?

15 A. I had been assigned to work other cases, which
16 would be the 6th, and then the following two days I worked on
17 this case.

18 Q. Did that involve the days in which the -- what's
19 been referred to as the hideout, 2991 English Road, was
20 discovered?

21 A. I believe it was the end of the second day, yes,
22 sir.

23 Q. And that would have been prior to your reviewing
24 your report?

25 A. No, sir. I reviewed it before then.

26 Q. Well, that would have been two days later, right?

27 A. Well, we're talking two days from the point that I
28 dictated it.

1 Q. That would have been Tuesday night, approximately
2 6:00 o'clock, right?

3 A. Well, it would have been sometime -- well actually
4 it was sometime Monday night because I picked up a copy of the
5 report to bring it to to Sergeant Arthur after work on the day
6 of the 6th.

7 Q. On June 6th, did you interview, yourself, and
8 prepare written reports of an interview with Sue Lease?

9 A. I did an interview with Sue Lease, yes, sir.

10 Q. On the 6th?

11 A. I'm not sure if it was the 6th or the 7th.

12 Q. Do you have your reports with you?

13 A. Yes, sir.

14 Q. Could you check?

15 A. It was on the 6th.

16 Q. Same day you also did an interview with a member of
17 the Edwards family, lived just down the hill from the Ryens?

18 A. No, sir. That interview would have been on the
19 7th.

20 Q. Do you have the report?

21 A. Yeah. It would have been the 7th.

22 Q. How about Kimberly Ward?

23 THE COURT: Counsel, let's perhaps break it at this
24 point. We will continue at 1:30. Please remember the
25 admonition over the noon period.

26 We will take the noon recess until the hour of
27 1:30.

28 (Noon recess taken.)

1 SAN DIEGO, CALIFORNIA, TUESDAY, JANUARY 8, 1985, 1:37 P.M.

2
3 THE COURT: Go ahead, counsel.

4
5 DALE SHARP,

6 called as a witness on behalf of the Defendant, having been
7 previously duly sworn, resumed the stand and testified further
8 as follows:

9
10 DIRECT EXAMINATION (Continued)

11 BY MR. NEGUS:

12 Q. Mr. Sharp, just before the break you testified that
13 your interview with a member of the Edwards family was on the
14 7th rather than the 6th of June.

15 When you submitted your written report to your
16 superiors, what date did you have in the report?

17 A. It's hard to say whether I dictated the 6th or the
18 7th, whether it was my error or the typist. Obviously, in the
19 report it came out the 6th, but the interview was done on the
20 7th.

21 Q. Okay. Well, in the typed report that you submitted
22 then to your superiors it reads June 6th?

23 A. Yes, sir.

24 Q. And I take it that when you were -- Did you read
25 over that typed report before it was submitted?

26 A. That particular report I did not receive until just
27 before the prelim.

28 Q. So, you were going through a process where -- Let

1 me see if I understand this then, you would --

2 Who do you normally submit your reports to?

3 A. This is a problem. The reports are submitted to
4 the -- the first report that I would have taken at Loma Linda
5 Hospital would have been submitted to one of the secretaries at
6 Central Patrol, the initials on the bottom being K.J. who typed
7 it, that's Kelly Jensen. She typed this on 6-6-83. I picked
8 this report up. I read it and took it to Sergeant Arthur that
9 night.

10 The other reports were done in the West End area
11 and were typed by the West End stenographers. I would not know
12 who they are. And I did not receive those particular reports or
13 look at them until the prelim.

14 Q. I see. Well, at that point in time did you --
15 right now you've sort of taken the date of June 6th and
16 scratched it off that report of the Edwards; is that right?

17 A. I didn't do it right now. I did it prior to this
18 date, yes, sir.

19 Q. When did you do that?

20 A. It would have probably been at sometime prior to
21 the prelim.

22 Q. Well, did you put a supplemental in to indicate
23 that there was a correction?

24 A. No, sir, I did not.

25 Q. And you just had an independent recollection that
26 it was -- that the date was wrong just from the nature of the
27 report?

28 A. Yes, sir.

1 Q. Any of your other reports that were incorrectly
2 dated?

3 A. Yes, sir.

4 Q. Which other ones were those?

5 A. It would have been the report with Kathy Bilbia,
6 B-i-l-b-i-a; the report with Cindy Reynolds, our contact with
7 Cindy Reynolds and the interview with Cindy Reynolds; and the
8 report with Kimberly Ward.

9 I have checked these reports and they look correct
10 to me with the exception of the date. The times appear to be
11 correct.

12 Q. Let me just look at the Bilbia one for just a
13 second, will you?

14 Well, that Bilbia one wasn't really the -- wasn't
15 really an interview with Kathy Bilbia; it was an interview with
16 Sue Lease; is that correct?

17 A. Sue Lease that talked about Kathy Bilbia, yes, sir.

18 Q. And that interview according to what you had
19 written down there was at 5:30 on 6-6-83; is that right?

20 A. According to what the -- is typed there, yes, sir.

21 Q. And now you have it crossed off and you put a "7"
22 instead of a "6"?

23 A. Yes, sir.

24 Q. Did you do that at the lunch hour?

25 A. Yes, I did.

26 Q. You hadn't noticed that at the prelim when you were
27 looking over it?

28 A. No, sir, I did not.

1 Q. Well, how about -- how about Dee Nolte, did you
2 talk to her on June 6th?

3 A. I would have to check that report.

4 Q. Do you have that?

5 A. I believe so. This report is not dated.

6 Q. Well, when was it -- when was it done?

7 A. It would have been the -- I believe the late
8 afternoon -- this is in reference to Cindy and it would have
9 been the late afternoon of the 7th. I believe. Yes, sir, the
10 7th.

11 Q. How about Deanna Johnson, did you talk to her?

12 A. Yes, I did.

13 Q. When was that?

14 A. That was on the 6th.

15 Q. Okay. At what time?

16 A. 1700 hours.

17 Q. And where did you talk to her?

18 A. That was at the substation in the West End.

19 Q. Well, did you go down to the Ryen residence on June
20 the 6th?

21 A. No, sir, I did not.

22 Q. How about down to the Chino Hills area?

23 A. Yes, sir, I did.

24 Q. The interview with Kimberly Ward, did that take
25 place at the -- at the check point that had been established
26 there?

27 A. Yes, sir.

28 Q. About 5:30 in the evening?

1 MR. KOTTMEIER: Objection, your Honor. I see no
2 relevance to this whole line of questioning.

3 THE COURT: I have been wondering did it, Mr. Negus.

4 MR. NEGUS: Well, it's a rather complicated offer of
5 proof. I will be glad to make it if you want.

6 THE COURT: Sure, give me an outline.

7 MR. NEGUS: Okay. Mr. Sharp, I believe, is going to give
8 statements inconsistent with Mr. O'Campo's as to when he and Mr.
9 O'Campo first went to talk to Josh. I believe there's going to
10 be inconsistent statements between Mr. O'Campo, Mr. Sharp, and a
11 variety of other people about when certain information was
12 elicited from Josh.

13 THE COURT: Perhaps then, Mr. Negus, you're premature, so
14 let's save it then till you cross-examine the witness and let's
15 see if that foundation is laid. You are anticipating. I don't
16 know if Mr. Kottmeier and Mr. Kochis will ask those questions.

17 MR. NEGUS: Well, no. I'm thinking that I'm going to
18 bring out the inconsistencies.

19 THE COURT: I will sustain his objection, Mr. Negus.

20 MR. NEGUS: There is one other point. It's also to
21 disprove a fact that Mr. Sharp testified to earlier, which was
22 that he had not participated in the investigation of the Ryan
23 murders prior to his reviewing the report. We now have him
24 picking up the report at 6:00 o'clock, I believe, Monday night
25 in San Bernadino. We have him interviewing witnesses.

26 THE COURT: That's enough, Mr. Negus. Your objection is
27 sustained. Next question.

28 BY MR. NEGUS:

1 Q. Well, when did you get back to -- when did you get
2 back to -- to pick up your report in San Bernadino?

3 A. I would have picked it up at the end of shift on
4 the 6th, which would have been 1500 hours. At that time I took
5 it to Sergeant Arthur.

6 We're talking in reference the report of my time
7 with Josh Ryen at the hospital?

8 Q. Right. So that would have been 3:00 o'clock in the
9 afternoon civilian time?

10 A. Yes, sir.

11 Q. Did you at some point in time introduce Mr. O'Campo
12 to Josh Ryen?

13 A. No, sir, I did not.

14 Q. Were you ever present when -- when Mr. O'Campo
15 talked to Josh?

16 A. Not when he talked to Josh, no, sir. I was present
17 I believe it was three days later while Josh was in Loma Linda
18 hospital. He had been moved. I was sent to relay a message to
19 Deputy Gilliam. At this time I was back on patrol and I relayed
20 a message to Deputy Gilliam, something concerning Josh's family.
21 At that time Detective O'Campo was present in the room.

22 Q. Mr. Gilliam is another deputy out of Central,
23 right?

24 A. Yes, sir.

25 Q. He's a regular Deputy, right, not a reserve?

26 A. Yes, sir.

27 Q. Uh-huh. And what was Mr. Gilliam doing at the
28 hospital when you went to relay this message?

1 A. Security.

2 Q. Well, Mr. Sharp, isn't it a fact that the only time
3 that regular deputies as opposed to reserves were providing
4 security for Josh Ryen was on the 5th and the 6th?

5 A. I don't believe -- I don't believe so, no, sir.
6 I'm not sure of the dates, but I believe it was looking at three
7 days later that Deputy Gilliam was there. This being Wednesday,
8 I believe it was, or Thursday even.

9 Q. Thursday, June the 9th, you went to Loma Linda
10 Hospital to deliver a message to Mike Gilliam and O.C.
11 was there?

12 A. It was either the 8th or the 9th, I'm not sure.

13 MR. NEGUS: Excuse me a moment, your Honor, I thought I
14 had this marked.

15 Q. When you -- when you delivered the message to Mr.
16 O'Campo -- or Mr. Gilliam which one -- who was it that you were
17 delivering to, Mr. Gilliam or Mr. O'Campo?

18 A. Deputy Gilliam.

19 Q. Was there anybody else present?

20 A. Detective O'Campo.

21 Q. Anybody else?

22 A. No, sir.

23 Q. What floor of the hospital was this on?

24 A. I believe it was the 8th floor.

25 Q. Intensive care or was it when he had gone down to
26 the pediatric section?

27 A. It was high up, if that's the intensive care. I
28 remember I took an elevator up.

1 Q. Between the 5th and the 8th you could say that it
2 was definitely the 8th?

3 A. No, I would not. It seemed to me like it was the
4 8th, but I'm unsure.

5 Q. Well, do you recall whether he was in a pediatric
6 ward or an intensive care ward?

7 A. No, sir, I do not.

8 Q. Was he talking, Josh?

9 A. No, sir.

10 Q. Did you -- was he communicating some other way?

11 A. I don't know, sir. I did not talk to him.

12 Q. Did you see him to say, "Hi," or anything?

13 A. I said, "Hi," to him.

14 Q. Did he respond?

15 A. No, sir.

16 Q. Was he asleep?

17 A. No, sir.

18 Q. Just sat there.

19 A. Yes, sir.

20 Q. On the evening of June the 6th, did you ever talk
21 to O.C.?

22 A. I don't recall.

23 Q. Did -- Did you, during the afternoon hours sometime
24 on June the 6th, 1983, did you ever go down to Loma Linda
25 University Medical Center and introduce Hector O'Campo to Josh
26 Ryen?

27 A. I do not recall.

28 Q. Well, you just testified, did you not, that you had

1 no contact with Josh between the time that you saw him on Sunday
2 and the time on Wednesday or Thursday that you went up to see
3 Mr. Gilliam?

4 A. That's affirmative.

5 Q. So the answer would have to be that did you not?

6 A. I don't believe so, no, sir. I'm trying to recall,
7 but I don't recall any time.

8 Q. When -- let's go back to the emergency room for a
9 bit. First off, let me just --

10 Exhibit 697, you did see somebody using such an
11 exhibit to try and get information from Josh, something like
12 that?

13 A. Similar to that, yes, sir.

14 Q. When I first asked you about that at the prelim you
15 denied that; is that correct?

16 A. I am not sure. I did advise you at one point that
17 I was mistaken about that, or something similar to that, I
18 forget.

19 Q. When you first testified at the preliminary hearing
20 you said it was by blinking of eyes that the person was getting
21 information?

22 A. I'm not sure at this point. Reading it over last
23 night, I believe there was point of contention where I had made
24 a mistake. At that time I had to go back and read my report at
25 which time we had straightened it out.

26 Q. Can you do -- try and make a diagram for me of,
27 like, the front entrance, where you parked your car, the
28 emergency room, and where Josh Ryen was located within that

1 emergency room, including also the reception desk at Loma Linda
2 University Medical Center?

3 A. (Witness complied.)

4 MR. NEGUS: While Mr. Sharp is doing that, your Honor,
5 the record should reflect that as soon as we get a chance we
6 will put exhibit tag 701 on the diagram that he is preparing.

7 THE COURT: All right.

8 You might stay is there, sir, he is going to ask to
9 you to explain the diagram I'm sure.

10 Mr. Negus.

11 MR. NEGUS: I'm looking for something. Just a second,
12 your Honor.

13 THE COURT: Then have a seat.

14 Mr. Negus, please, try and expedite. This witness
15 is taking particularly long.

16 MR. NEGUS: Well, your Honor, I'm sorry, but --

17 THE COURT: Do your best, Mr. Negus.

18 MR. NEGUS: I'm trying to do my best, your Honor, but I
19 don't always get the answers that I anticipate.

20 MR. KOTTMEIER: Object to that portion, your Honor.

21 THE COURT: Pardon?

22 MR. KOTTMEIER: I object to Mr. Negus' editorial comment.

23 THE COURT: Sustained.

24 BY MR. NEGUS:

25 Q. Mr. Sharp, at the hearing that we had on May 15th,
26 1983, on page -- Page 1823 Lines 7 through 9, do you recall
27 testifying:

28 "Question: And when you arrived did you park your

1 car right outside the emergency room?

2 "Answer: Yes, sir."?

3 A. Yes, sir.

4 Q. And is there a place you can park right outside the
5 doors to the emergency room right here on the diagram?

6 A. That's where I'm parked, yes, sir.

7 Q. You have it down in the parking lot, according to
8 the diagram.

9 A. Well, that would be -- I would consider that by the
10 doors compared to most hospital parking lots.

11 Q. So you wouldn't have parked your vehicle there at
12 the curb right next to the doors?

13 A. No, sir. It's marked in red.

14 Q. Oh, I see. Mr. Sharp, in the -- did all of your
15 questioning of Josh Ryen take place in this particular area
16 right here?

17 A. No, sir, it did not.

18 Q. How -- Approximately what percentage of it took
19 place?

20 A. I ~~count~~^{couldn't} give a percentage of what questioning took
21 place. It would have been 15 minutes worth of questioning I
22 would imagine.

23 Q. Okay. Did that questioning take place from say,
24 oh, 2:30 to 2:45?

25 A. Well, we are talking sometime ago, but in the -- in
26 looking at the clock and guessing minutes and trying to be as
27 close as we can, I believe it would have been around 2:20 or
28 2:25 to 15 minutes past that that I actually --

1 Q. How did you arrive at that particular time?

2 A. What's that, sir?

3 Q. How do you arrive at that particular time?

4 A. Knowing the time that I arrived.

5 Q. You're just guessing from that point on?

6 A. Knowing what I did, yes, sir.

7 Q. Do you know what time Josh left to go to the next
8 place he went to?

9 A. No, sir, I do not.

10 Q. The next place Josh went to was the CAT Scan room?

11 A. Yes, sir.

12 Q. And let's -- let's if you would assume that he left
13 to go to the CAT Scan room at 2:45, would then 2:30 to 2:45 be
14 roughly how long you questioned him in the emergency room?

15 A. Yes, sir.

16 Q. Other than the female person that you assumed was a
17 nurse, did you observe anybody else obtaining information from
18 Josh Ryen in the emergency room by means of a clipboard?

19 A. No, sir, I did not.

20 Q. Did you observe any -- did you observe a male nurse
21 in the -- that is, a male who was a nurse -- in the emergency
22 room taking care of Josh while you were in there?

23 A. There were both males and females in the room.

24 Q. Okay. Did you observe a male who was a nurse
25 taking care of Josh?

26 A. I would be guessing as to what their occupation
27 was.

28 Q. Could have been a male nurse there?

1 A. Yes, sir.

2 Q. When you were -- when you began your interview with
3 Josh, did you attempt to use the clipboard?

4 A. No, sir, I did not.

5 Q. Did that look to you to be a bad method of trying
6 to get information from Josh?

7 A. No, sir, it did not.

8 Q. What method did you use?

9 A. I used a method of having Josh squeeze my hand for
10 a yes answer and no squeeze for a no answer.

11 Q. How did you -- how did you determine that -- how
12 did you differentiate between a no and a no response?

13 A. A no response would be equal to a no.

14 Q. So you assumed that Josh was responding to all your
15 questions and didn't allow any room for him missing the question
16 or something of that nature.

17 A. When I asked the questions, you know, it might take
18 two or three questions to get to the meaning of what was behind
19 it. I felt sure of it.

20 Q. That's again subjective rather than anything
21 objective; is that correct?

22 A. At that point, yes, sir.

23 Q. Well, did you explain to Josh what you were going
24 to do?

25 A. Yes, sir.

26 Q. And what was the -- what words did you explain it?

27 A. I told Josh that I was going to ask him some
28 questions, and that if the answers to the questions were yes, he

1 was to squeeze my hand; if they were no, he was not to squeeze
2 it.

3 Q. And what did you do then?

4 A. I then began asking him questions.

5 Q. What was the first question that you asked?

6 Apparently you don't remember right now, am I
7 correct in making that assumption?

8 THE COURT: I am not sure he understood the last question
9 or picked up the last question.

10 BY MR. NEGUS:

11 Q. Did you ask -- the last question I asked you was,
12 what was the first question you asked Josh.

13 A. Yes, sir.

14 Q. Now, you then shuffled through some documents and
15 you pulled out a piece of paper, right?

16 A. I have got the report laying in front of me so that
17 there aren't any mistakes.

18 Q. Well, am I to assume from that that you don't
19 really remember right now, without referring to your report,
20 what the first question was?

21 A. The exact first question, no, sir.

22 Q. Then in your report, did you dictate that report in
23 question and answer form? I mean like, question, "Joshua, what
24 is your name?" Answer, "Josh", something like --

25 A. Not totally, no, sir.

26 Q. Basically then it is your conclusions about what
27 you thought Josh was saying.

28 A. Well, those were the answers I felt I was getting,

1 yes, sir.

2 Q. Basically your interpretation after Josh's hand
3 squeeze.

4 A. Yes, sir.

5 Q. Can you recall -- well, the first statement that
6 you have in your report was what?

7 A. "Victim information."

8 Q. That wasn't given to you though, right?

9 A. It was information I had received while I was there
10 with the clipboard.

11 Q. But, when you have explained to Josh you were going
12 to use the hand squeeze method, and you start off, you are going
13 to get information out of Josh, and in your report what you have
14 preserved for us, what's the first statement that you have
15 emanating from Josh to you?

16 A. "The victim first advised me that there were three
17 white male adult subjects in the residence and he had been
18 asleep."

19 Q. I take it you have no particular memory right now
20 as to what questions you asked to get that particular
21 information; is that true?

22 A. It would be a number of questions, yes, sir.

23 Q. But you don't know what they were.

24 A. The exact question, no, sir.

25 Q. How did you set the scene for him? Do you remember
26 that? I mean, how did you let him know that you were interested
27 in the attack?

28 A. I advised him we were going to use the hand squeeze

1 method, and I would have set the scene something similar to,
2 "How many people were in your house last night?"

3 I was being very careful with the questions. I
4 realize, in looking at this report, that it leaves a lot of
5 questions unanswered. This is due to the fact of Josh's
6 situation.

7 My first concern at this point was for Josh and the
8 second, of course, is for the investigation.

9 Q. I understand that. But what -- do you remember now
10 whether you asked him to describe, did you -- who was in your
11 house last night? Who was in your house that didn't belong last
12 night? Who attacked you? Who injured you? Who did this to you
13 and your family? Can you tell me that? Can you exclude any of
14 those as possibilities?

15 A. Yes, I can.

16 Q. Which ones?

17 A. One, I would not have used the word "attack." I
18 would have not used "who injured you." I didn't want to say
19 anything that might have him remember something that he didn't
20 remember at this time and possibly go into shock.

21 Q. Well, so, how about, did you say, "Who did this to
22 you?"

23 A. Not at that point, no, sir.

24 Q. Well, you put, "and he had been asleep."

25 Does that mean you established, at least in your
26 mind, that Josh had been asleep at the time that the attack
27 began?

28 A. I asked him if he had been asleep at that time and

1 the answer would have been affirmative.

2 Q. What was that time? I mean, what were the words
3 that you used to establish what "that time" meant?

4 A. When the three white male subjects were in the
5 house.

6 Q. Did you establish that the three white male
7 subjects were not Josh, his father and Chris?

8 A. No, I did not.

9 Q. Did you establish that -- did Josh say something to
10 you, um, at that point in time, that you could use to infer that
11 they were not himself, Christopher and his father?

12 A. No, sir, not at that point.

13 Q. Well, within that very, that series of questions
14 that continued on from that point, as you were trying to get
15 information about these three males, did he say anything that
16 you could eliminate those three males being Doug Ryen, Josh and
17 Chris?

18 A. I don't recall.

19 Q. If you could perhaps then go on to your report.

20 In your report you wrote, "The victim did not know
21 who the suspects were." Is that correct?

22 A. Yes, sir.

23 Q. What led you to that conclusion?

24 A. I would have asked him to, you know, who the three
25 male subjects were.

26 Q. And he would have given you no response.

27 A. No response.

28 Q. How many different questions did you ask to

1 determine that there were three white males involved?

2 A. Would have been several questions.

3 Q. Did you repeat the race question several times?

4 A. No, sir.

5 Q. How about the number?

6 A. Not at this point I didn't.

7 Q. How many -- at that point in time, how many
8 different questions did it take you to elicit information that
9 there were three white males?

10 A. Well, it would have been several questions. It
11 would have been, "Were the people in your house males?" His
12 answer. "Were they white?" I would have gotten a yes answer.
13 "Were you asleep" or "had you been asleep?" I would have gotten
14 a yes answer.

15 Q. Do you remember which?

16 A. What was that, sir?

17 Q. Do you remember whether the question was "Were you
18 asleep" versus "Had you been asleep?"

19 A. I don't recall.

20 Q. Do you remember how you wrote this stuff down in
21 your notes to key your memory later when you dictated the
22 report?

23 A. It would have been something very close to what's
24 on my report.

25 Q. You have used the word "victim." Would you have
26 used the word "victim"?

27 A. In my notes, no, sir.

28 Q. Maybe just --

1 A. Not under a normal interview I wouldn't write
2 "victim", no.

3 Q. "Three WMA"?

4 A. Quite possibly, yes, sir.

5 Q. Then just the word "asleep"?

6 A. No, I would have probably wrote that out.

7 Q. Did you try and determine during that same, in that
8 same initial interview, the time of day that the attack
9 occurred?

10 A. Yes, sir, I did.

11 Q. Did you use the word "attack"?

12 A. No, sir.

13 Q. Did you use the word "injuries"?

14 A. No, sir, I did not.

15 Q. How did you determine, you know, what time of day
16 you were talking about?

17 A. I would have asked him what time he was awakened.

18 Q. Do you have an independent recollection of that?

19 A. Well, I know that I would not have used the word
20 "injured" or "attacked", it would have been something very
21 similar to that.

22 Q. "Awakened by the three white males." Did you use
23 that phrase?

24 A. No, sir. I believe it was, "Were you woke up?"

25 Q. Well, in your -- in your report you wrote that "it
26 was still dark outside at the time that the crime occurred." Is
27 that right?

28 A. Uh-huh, yes.

1 Q. Yes?

2 A. Yes.

3 Q. Did the word "crime" come into your vocabulary?

4 A. No, sir, it did not.

5 Q. How did that get in your report?

6 A. That is something I put in there.

7 Q. Was the word "crime" in your notes?

8 A. Yes, sir, it would have been.

9 Q. Mr. Sharp, do you believe that Mr. Kochis and Mr.
10 Kottmeier and Mr. Arthur desire that you testify in such a way
11 that they can argue to the jury that in telling you that there
12 were three white males involved in the crime, that Josh was just
13 confused?

14 A. No, sir, I do not believe that.

15 Q. Have you discussed your testimony with either of
16 those three gentlemen or all of those three gentlemen before
17 getting on the stand today?

18 A. Yes, sir.

19 Q. How many?

20 A. Last night in my motel room I received a phone call
21 and also talked this morning with Mr. Kottmeier. Mr. Kottmeier
22 asked me the questions, in my report, is this a sequence of the
23 things that you were talking about as you go down in your
24 report? I advised him yes.

25 Q. That was the sum and substance?

26 A. I asked him last night on the phone if he, if I --
27 if he felt that you were going to hit on some some of the same
28 questions that you had in the Hitch's motion.

1 Q. Anything else?

2 A. He told me to be calm.

3 Q. Good advice.

4 After you elicited from Josh the information that
5 there were three white males involved in the attack, that the
6 attack had occurred, the crime had occurred during the
7 nighttime, had been awakened up early in the morning, did you
8 get a time for "early in the morning"?

9 A. Yes, sir, I did.

10 Q. What was that?

11 A. Between 4:00 and 5:00 o'clock.

12 Q. Did you do anything like ask Josh how sure he was
13 of the time, or how he knew the time, or anything of that
14 nature?

15 A. No, sir, I did not.

16 Q. I mean, time of attack, number of suspects, racial
17 identity, and the fact that Josh did not know who they were.

18 At that point in time Josh had to leave, right?

19 A. Yes, sir.

20 Q. That took you 15 minutes to get that information?

21 A. Yes, sir.

22 Q. Was the fact that it took that long to get that
23 information due to the fact that the hand squeeze method was
24 somewhat awkward?

25 A. No, sir, it had to do with two things:

26 The questions were, of course, awkward, and how I
27 was wording them, and trying to make sure that I didn't say
28 something to hurt Josh.

1 And the level of noise in the emergency room was
2 high, and I wanted, you know, to take time and wait for the
3 spots where the level wasn't so high so as to make sure that
4 Josh heard me.

5 Q. Which hand were you holding?

6 A. His right hand.

7 Q. Did he have -- did Josh have any difficulty
8 maneuvering that hand?

9 A. Not in the squeeze itself, no, sir.

10 Q. Did he have an IV in it?

11 A. Yes, sir, I believe I did.

12 Q. Was Josh's eyes open during the entire 15 minutes
13 that you were there in the emergency room with him?

14 A. No, sir.

15 Q. Did he ever go to sleep?

16 A. No, sir. There was times that he closed his eyes,
17 but it didn't appear to me that he did go to sleep.

18 Q. When you -- when you obtained the information from
19 Josh as to numbers, did you get a squeeze for the "three"?

20 A. Yes, sir.

21 Q. Did you get a squeeze for the "white"?

22 A. Yes, sir.

23 Q. Squeeze for the "males"?

24 A. Yes, sir.

25 Q. And a squeeze for the "adults"?

26 A. Yes, sir.

27 Q. When you asked Josh did he know who they were, was
28 that the question you used; precise question?

1 A. Do you know -- did you know who they -- "Did you
2 know these people" would have, probably have been a more correct
3 statement.

4 Q. Well in your report you put down, "Did not know who
5 the suspects were?"

6 A. That's correct.

7 Q. Did you use the word "suspects"?

8 A. No, sir, I did not.

9 Q. So you can't really tell from your report what
10 exact question you asked, right?

11 A. No, sir, that's the idea of what was said at that
12 point. I did not do every question and every answer, I
13 paraphrased it to the idea.

14 Q. When you asked that question, I take it you got no
15 response.

16 A. Yes, sir.

17 Q. And that was the last question you asked before the
18 doctors moved in and took Josh out of the emergency room, right?

19 A. Yes, sir.

20 Q. During that point in time did you ever use, "Would
21 you recognize the people?" Did you ever ask Josh that?

22 A. Not at that point in time, no, sir.

23 Q. Did you ever ask him if he could identify them?

24 A. Not at that point in time, no, sir.

25 Q. How much after you left the emergency room was it
26 that you began to question Josh again?

27 A. Would have been almost an hour.

28 Q. So, if he left at 2:45, it would have been

1 approximately 3:45?

2 A. Yes, sir.

3 Q. During that period of time did you have any contact
4 with Billy Arthur?

5 A. Yes, sir.

6 Q. Did you, amongst other things, relay to him the
7 information that you'd already obtained from Josh?

8 A. Yes, sir.

9 Q. When you began questioning Josh again, where is the
10 CAT Scan room with respect to the ER Room?

11 A. Up an elevator. It would be, there's a hallway
12 that leads from the emergency room, and you go up an elevator,
13 then you go down another hallway and you are there.

14 Q. How many people were in the CAT Scan room with you
15 when you were interviewing Josh?

16 A. There were three people involved in the CAT Scan.
17 They were in and out, for the most part. Nobody was there while
18 I was interviewing him. I'd have to wait, of course, until
19 after the CAT Scan was done.

20 Q. By the way, after you got through with Josh, did
21 you ever go back and interview the people in the emergency room
22 who had talked to him before, you had to find out what they'd
23 learned?

24 A. No, sir, I did not.

25 Q. How long did the second interview last?

26 A. Approximately 45 minutes.

27 Q. Were you able to get the information from Josh
28 quicker than you were the first time?

1 A. A little bit quicker, yes, sir.

2 Q. In the CAT Scan room, did Josh remain awake?

3 A. There were times that he closed his eyes. I don't
4 believe he ever went to sleep in the CAT Scan room.

5 Q. Similar to the way he had behaved in the emergency
6 room?

7 A. Yes, sir.

8 Q. At that point in time was he still -- did he still
9 have IV's hooked up with him?

10 A. I'm not sure.

11 Q. Given the awkwardness of your questions and the
12 difficulty of getting information from Josh, in the intervening
13 hour, did you go out to the car and pick up your tape recorder?

14 A. No, sir, I did not.

15 Q. When you began requestioning Josh, what was the --
16 how did you begin the interview?

17 A. I asked him if he lived in the house where he was
18 found.

19 Q. And did he squeeze your hand?

20 A. Yes, sir.

21 Q. Did you ask him about any crimes that his family
22 had been the victim of recently?

23 A. Yes, sir.

24 Q. Did he squeeze your hand when you asked about that?

25 A. No, sir, that was a negative response.

26 Q. At this point in time in your notes, did you begin
27 to at least attempt to try and take some notes as to, as to what
28 questions you were asking him?

1 A. I was taking notes the whole way.

2 Q. What hand were you holding Josh's in yourself?

3 A. My right hand.

4 Q. What hand do you write with?

5 A. Left hand.

6 Q. And did you have your notebook pad so you were
7 writing with the one hand and squeezing with the other?

8 A. Part of the time. Sometimes I would, you know,
9 remove my hand from his and write and then place it back in his
10 hand.

11 Q. Were there like -- did you have gaps of time then
12 between the different questions?

13 A. Yes, sir.

14 Q. 10, 15, 20 seconds, something like that?

15 A. Yes, sir.

16 Q. Did you ask a question again trying to, in your
17 way, elicit information about suspects?

18 A. Yes, sir.

19 Q. Okay. Before you asked him that question, did you
20 indicate to him that you were essentially attempting to repeat
21 the questions that you had already asked him?

22 A. No, sir.

23 Q. When you first began talking to Josh in the CAT
24 Scan room, it was basically getting additional information that
25 you hadn't asked him before; is that right?

26 A. Both.

27 Q. The first question you hadn't asked him earlier, if
28 he lived in the house where he was found, right? That was new,

1 right?

2 A. Yes, sir.

3 Q. The second question about if his family had been
4 the victim of burglaries and robberies, that also was new type
5 of stuff.

6 A. Yes.

7 Q. The third question, did you take the approximate
8 words that you used for that third question?

9 A. Yes, sir.

10 Q. And what did you write in your report?

11 A. I wrote -- I asked the victim if there was anyone
12 around the house yesterday that didn't belong there, and the
13 answer was in the affirmative.

14 Q. That particular question, then in your mind, that
15 was to try to get back to the issue of suspects again.

16 A. Yes, sir.

17 Q. Did you actually use the phrase "Yesterday"?

18 A. Yes, I did.

19 Q. Did you clarify for Josh, when you used that
20 phrase, that you were referring to the time of the attack?

21 A. No, sir, I did not.

22 Q. At that point in time did you try and go into that
23 subject of having scene somebody around the house yesterday,
24 that didn't belong there in greater depth?

25 A. Yes, sir, I did.

26 Q. How long did you ask Josh questions then about that
27 subject, having seen somebody around the house yesterday that
28 didn't belong there?

1 A. It would have been on and off for approximately 30
2 minutes. There were times that I stopped asking him questions
3 and we talked about other things.

4 Q. Well, in the narrative of your report --

5 Your report's essentially a two-paged typed report?

6 A. Yes, sir.

7 Q. Okay. And in the -- in the narrative of the report
8 you essentially go on for well over 50 percent of all the
9 information you have for Josh; is that correct?

10 A. Yes, sir.

11 Q. You're going into -- into descriptions, ages, that
12 sort of thing about these people?

13 A. Yes, sir.

14 Q. You got rather detailed descriptions, did you not?

15 A. Yes, sir.

16 Q. Was that a very, very time consuming process?

17 A. No, sir. It wasn't as long as you might think, you
18 know, five minutes.

19 Q. Five minutes to get all those descriptions?

20 A. Yeah. It didn't take long.

21 Q. Well, you were writing down -- you couldn't sort of
22 just go tell me in ten words or less, you know, the description,
23 right? I mean, you had to go each particular -- each particular
24 thing, right?

25 A. Yes, sir.

26 Q. You got hieghts?

27 A. Yes, sir.

28 Q. Did you just happen to hit on the height, right

1 height the first time or did it take awhile?

2 A. I started at five foot.

3 Q. So, there would be a question, a "no" response --
4 did you clarify that, make sure that the "no" was not a "no
5 response"?

6 A. Not at that time. It wasn't that hard when I'm
7 going five foot one, five foot two, five foot three, five foot
8 five, on up to where the first one was five foot eight, and then
9 I would show him marked on me where five foot eight was.

10 Q. Well, the first when you actually got the material
11 that didn't involve getting descriptions of these -- of these
12 individuals that had been at the house the day before, that was
13 right towards the end of the interview, right?

14 A. Yes, sir.

15 Q. Within five minutes of the end?

16 A. Could you clarify exactly where you mean on the
17 report?

18 Q. Okay. Well, let's -- let's back up a bit and go a
19 bit slower.

20 First off, did you first try and clarify like
21 when -- when in time it was that Josh had seen the people around
22 the house that didn't belong there?

23 A. Yes, sir.

24 Q. Okay. And in your -- in your report you have the
25 conclusion "approximately dusk"; is that right?

26 A. Yes, sir.

27 Q. Okay. I take it that the first question out of
28 your mouth in order to get that particular -- that particular

1 bit of information was not the question, was it approximately
2 dusk when all this happened, right, you had to sort of fish for
3 it a little bit?

4 A. Yes, sir.

5 Q. And how did you fish for it?

6 A. Well, I would have started with probably morning
7 and gone to afternoon and was it dark and gotten no response,
8 and I would have asked, is it -- was it dusk, was it just -- in
9 fact, I don't even believe I would have said the word "dusk",
10 considering his age, I would have simply said something similar
11 to was it getting dark outside.

12 Q. With ten or fifteen minutes -- ten or fifteen
13 second pauses again between the questions?

14 A. I don't believe I paused there ten or fifteen
15 seconds, but it would have been a pause between, you know, time
16 to give him time to squeeze.

17 Q. Well, you are -- Well, you're also making an effort
18 not to tire Josh out by going too fast or too intensely for him?

19 A. I was careful, but I really never thought about
20 tiring him out.

21 Q. Anyway, through this elaborate method you got a
22 vehicle description?

23 A. Yes, sir.

24 Q. Chevy Impala, older model?

25 A. Yes, sir.

26 Q. Each of those things I take it would be a separate
27 series of questions?

28 A. Yes, sir.

1 Q. The number of doors?

2 A. Yes, sir.

3 Q. The color?

4 A. Yes, sir.

5 Q. In fact, you even got distinctive information about
6 the paint job, right?

7 A. Yes, sir.

8 Q. You got information as to where -- where Josh had
9 seen them there?

10 A. At his -- at his residence?

11 Q. Well, you wrote down, did you not, that --

12 A. Yes, sir.

13 Q. -- the Chevy had pulled into the driveway of his
14 residence?

15 A. Yes, sir.

16 Q. That certainly wasn't an easy sort of thing to get
17 by yes and no hand squeeze questions, was it?

18 A. No, sir, it wasn't.

19 Q. Took a bit of time?

20 A. A little bit.

21 Q. Three or four minutes?

22 A. It would have been something similar to, did they
23 go in your house, negative response; did they take talk to your
24 dad, affirmative; were they in the front yard, negative; were
25 they on the driveway; this type of thing.

26 Q. And you -- again you determined the fact that these
27 people where male?

28 A. Yes, sir.

1 Q. And that these people were Mexicans?

2 A. Yes, sir.

3 Q. Okay. In answering those kind of questions, how
4 many different racial categories did you give Josh?

5 A. I believe I would have started with White, Mexican,
6 Black, and I don't believe I ever reached Black.

7 Q. So, when you -- in this particular situation then
8 when you're getting the description of the people that had been
9 up at the house the day before, you asked White, got no hand
10 squeeze, then went on to Mexican, and -- and got a hand squeeze?

11 A. Yes, sir.

12 Q. Did you -- did you do anything to determine that
13 they were all three the same ethnic background?

14 A. Yes, sir.

15 Q. How did you do that?

16 A. That came on the descriptions. In the same manner.

17 Q. Was Josh in any way being, I don't want to use the
18 word "evasive", but showing reluctance to answer your questions
19 during this -- during this period of time?

20 A. No, sir, he wasn't.

21 Q. Did his -- did his attention ever appear to wander?

22 A. Yes, sir.

23 Q. How did that happen?

24 A. He would start to close his eyes, at which point I
25 would let him close them for a few seconds, then I would bring
26 up the idea of baseball, and he seemed to like baseball and this
27 kind of perked him up a little bit.

28 Q. So, essentially you were using baseball as sort of

1 an enticement to get Josh's mind back on the subject at hand?

2 A. Well, I would use it to perk him up, and then we
3 might talk about baseball for a few minutes and then go back to
4 the questions.

5 Q. How did you talk about baseball, hand squeeze
6 method? Do you like the Dodgers? You like the Angels? That
7 sort of thing?

8 A. No, I told him that I liked the Angels. And I
9 asked him if he did, and I would have gotten a hand squeeze and
10 then I would do most of the talking about the Angels, and he
11 smiled.

12 Q. How many -- how many times did that happen during
13 the conversation?

14 A. I don't recall. There was a few.

15 Q. Was that all during the time that you were getting
16 the description?

17 A. The three descriptions that I got, no, those came
18 all at one time. It would have been sometime in between the
19 questions.

20 MR. NEGUS: I think this is probably as appropriate time
21 as any to take the break, your Honor.

22 THE COURT: All right. Take the afternoon recess.

23 (Recess taken.)

24

25

26

27

28

1
2 THE COURT: Go ahead sir.

3
4 DIRECT EXAMINATION (Resumed)

5 BY MR. NEGUS:

6 Q. Mr. Sharp, to cut it short, could you please give
7 the descriptions you got of the various suspects.

8 A. Suspect No. 1, five foot eight, slim build, long,
9 shoulder-length black hair, just above the shoulders, wearing
10 Levi's, white T-shirt, possibly aged 18 to 20, Mexican male.

11 Suspect No. 2, five nine, slim build, dark hair,
12 short, wearing Levi's and a blue short sleeved shirt, 18 to 20
13 years, Mexican male.

14 Suspect No. 3, five eleven, slim build, dark hair,
15 short, wearing Levi's, red long-sleeved shirt, aged 18 to 20,
16 Mexican male.

17 Q. After that, is that when you started to talk a
18 little bit about baseball?

19 A. We might have talked about it at that point. There
20 was times when it was, the questioning was broke before that.
21 To exactly what time that was done, I wouldn't recall.

22 Q. Did you then, after you got the information, did
23 you then try and develop that a little bit further by trying to
24 get some idea of what the suspects were doing?

25 A. Yes, sir.

26 Q. And did you use the word "suspect" with these
27 particular people?

28 A. No, sir, I did not.

1 Q. How did you refer to them?

2 A. I told Josh that we were going to talk about the
3 three people that were at his house at dusk, and I wanted him to
4 get the No. 1 guy in his mind. And then we talked, then we went
5 to the No. 2 guy, and the No. 3 guy.

6 Q. So, after you got all three guys and had them all
7 described, with shirts and all, did you then still refer to them
8 as the three guys that had gone in his house at night, or how
9 did you refer to them?

10 A. I asked him what the three guys talked about with
11 his dad,

12 Q. Did you say, three guys? Was that the word you
13 used, or three Mexicans, three young guys. Do you recall?

14 A. I would have said "guys".

15 Q. At that point in time, had you asked -- as you were
16 asking at the time, you were asking about the conversations the
17 people that Josh had described as young Mexican had had with his
18 father, had you done anything to try and determine whether or
19 not the three guys that had been at his house yesterday had ever
20 come back to the house that evening?

21 A. Not at that point, no, sir.

22 Q. So you continued talking about the three guys and
23 did you get information that they were not there to talk about
24 horses?

25 A. Yes, sir.

26 Q. And that Josh wasn't quite sure what they were
27 there for, perhaps to get directions or something.

28 A. Yes, sir.

1 Q. How did you -- how did you determine that there was
2 this doubt in Josh's mind about what they were there for. Was
3 that because he gave you inconsistent responses?

4 A. Yeah. At that point I was going through a number
5 of things, did they talk to your dad about horses, negative.
6 Did they talk to your dad about work, negative. Did they talk
7 to your dad about directions, negative.

8 And then I ran out of things to say, so I would
9 have said something similar, do you believe that possibly your
10 dad would have been giving directions? That was an affirmative
11 response.

12 Q. Basically you would come -- after a long period
13 when Josh would just lie there without squeezing your hand.

14 A. Yes, sir.

15 Q. During that period of time did Josh have his eyes
16 closed?

17 A. No, sir.

18 Q. You are sure about that?

19 A. I don't believe he did. He might have, you know,
20 closed it for a few seconds, but nothing for any length of
21 period of time.

22 Q. Did you talk about baseball in that period of time?

23 A. We could have.

24 Q. After that, well, that was not -- you didn't really
25 get any hard information out of that particular type
26 conversation trying to figure out what the purpose of the
27 Mexicans being there was; is that right?

28 A. Not at that point, no, sir.

1 Q. Then at that point after you got the information
2 about the conversations with his father, did you, did you at
3 that point in time try and find out whether or not those people
4 had come back later or whether they were the same people he
5 talked about earlier, or did you go back in to some other
6 subject?

7 A. I went back into some other subject.

8 Q. And what was that?

9 A. I again asked him about the vehicle.

10 Q. Did you go through the whole thing again?

11 A. Yes, sir.

12 Q. And was this again the vehicle that the three guys
13 had been in that you were talking to him about?

14 A. Yes, sir.

15 Q. And you specified it in those particular terms, is
16 that right?

17 A. Yes, sir.

18 Q. At that point in time, the information you got was
19 all consistent with information that you had received earlier?

20 A. With the exception of one part, yes, sir.

21 Q. Well, the one thing that was different about this
22 particular go around was that Josh would refer to the vehicle as
23 a low-rider; is that right? Somehow you got the idea that he
24 was referring to it as a low-rider.

25 A. Yes, sir. And Josh advised that the vehicle had a
26 appeared small to him.

27 Q. That wasn't necessarily inconsistent with what he
28 had said earlier, just additional; is that right?

1 A. Well, I thought it was inconsistent, because of the
2 fact that a Chevy Impala is a large car.

3 Q. At that point in time did you know what size the
4 vehicles that Josh's family had?

5 A. No, sir, I did not, with the exception that I had a
6 conversation on the phone with Sergeant Arthur and he asked me
7 to ask Josh if the family had owned a white station wagon. I
8 did not know if they had owned it at that time, I was just asked
9 to ask it.

10 Q. When you were given the information from Sergeant
11 Arthur about the white station wagon, was it described to you in
12 anymore particular area than a white station wagon?

13 A. No, sir.

14 Q. No make, no year, anything of that nature?

15 A. No, sir.

16 Q. When you were asking the questions to Josh, were
17 you aware that the Ryens station wagon was in fact a panelled
18 station wagon?

19 A. No, sir, I was not.

20 Q. The information about the vehicle being a low-rider
21 that the three guys had had, how was that developed?

22 A. Due to the description that he gave me of the
23 vehicle, Chevy Impala, older model Chevy Impala, this was what
24 many vehicles look like and what is commonly known in the
25 streets as a low-rider.

26 Q. Did you -- so what you asked him, did you ask him
27 if he knew what a low-rider was?

28 A. No, I asked him if it was a low-rider.

1 Q. You just assumed that Josh knew?
2 A. Yes, sir.
3 Q. At that point in time he squeezed your hand?
4 A. Yes, sir.
5 Q. When you asked Josh the question that Sergeant
6 Arthur wanted you to ask him about the station wagon,
7 essentially you got -- you asked him in what words?
8 A. I asked him if his family had owned a station
9 wagon. Negative response.
10 I then asked him if he had seen a station wagon
11 around the area or anything. We spent a great deal of time on
12 that station wagon and nothing I got was positive.
13 Q. Well, in your report -- do you know that that's
14 important to the prosecution?
15 A. The station wagon?
16 Q. Yeah.
17 A. I know there was a station wagon missing.
18 Q. In your particular testimony --
19 A. I would not know whether that it was important or
20 not.
21 Q. In your report did you describe this extensive
22 conversation?
23 A. No, sir.
24 Q. What did you put in your report?
25 A. I asked the victim if his family owned a white
26 station wagon. The reply was negative.
27 Q. Reply singular?
28 A. Yes, sir.

1 Q. After that did you make some effort in your mind --
2 did you attempt in your own mind to try and see whether or not
3 the three Mexicans were in any way associated with the three
4 White males?

5 A. I asked him if he felt that these were the people
6 that were in his house this morning when everything went crazy.

7 Q. Is that the way that you phrased the question?

8 A. Yes, that is.

9 Q. So you said "this morning"?

10 A. Yes, sir.

11 Q. In the hospital, there in the CAT Scan room, were
12 there any windows through which it would have been possible for
13 Josh to look out and see what time of day it was?

14 A. There's windows in the CAT Scan room where you can
15 seen a person laying down. Whether or not there was a clock
16 there, I wouldn't recall.

17 Q. I was just thinking, would you be able to look out
18 and see trees and --

19 A. No.

20 Q. -- daylight?

21 A. No, sir. It is just a window that would be between
22 the controls of the CAT Scan and the CAT Scan machine itself.
23 It is inside, there is no outside windows.

24 Q. So, there, as you sat there in the CAT Scan room
25 you didn't have a watch to look at, there would be no way for
26 you to know what time it was; is that correct?

27 A. That is correct.

28 Q. And when you asked that question, um, about people

EXHIBIT U

SHERIFF'S DEPARTMENT

County of San Bernardino
California

CA 03600

1221029-02

REPORT AREA

SECTION	CRIME	CLASSIFICATION	
NAME - LAST NAME	FIRST NAME	MIDDLE NAME	(FIRM NAME IF BUSINESS)
RESS	<input type="checkbox"/> RESIDENCE	<input type="checkbox"/> BUSINESS	PHONE

SUPPLEMENTAL REPORT

TIM INFORMATION:

IN, JOSH -DOE: 9-5-74, age 8; home phone is 627-4294. He is a white male juvenile.

TIM'S INJURIES:

tim sustained laceration to throat area, laceration to top of skull, and a laceration to left side of the facial area, extending from the area just below the earlobe down approx. 10 inches. Victim also sustained possible lacerations on back area. RO was advised of injuries by physicians working on the victim. RO did observe the laceration to the throat area, which was approx. a three-inch laceration.

OTHER INFORMATION:

Time of interview with the victim, the victim could not talk. The interview was conducted having the victim write his name and point to numbers for his home phone number, date of birth, etc. Then, all other information was done by the suspect squeezing my hand in order to answer yes to any questions that I might ask.

*interviewed w/ testimony**mostly fantasy*

FORMATION RECEIVED:

6-5-83, 1339 hrs., Sheriff's dispatch advised me to go to Loma Linda Emergency Room and to receive a phone call. At 1344 hrs., same date, I arrived and placed a call to dispatch. Dispatch advised me that a helicopter was flying a child in from the Westend area, and the child was found in a residence where several people had been murdered. 2 min before Josh arrived.

INTERVIEW:

Before CT Scan

Victim first advised me that there were three white male adult subjects in the residence, he had been asleep. He was awakened in the early morning, approx. 4:00 or 5:00, and that it was still dark outside at the time that the crime occurred. The victim did not know who the suspects were. At this time the physicians moved the victim from the emergency room to CT Scan Room. Once located in that room I began to question the victim again. At this time the victim seemed to be more alert. I asked the victim if he lived in the house where the body was found, and the answer was in the affirmative. I then asked the victim if his house had been burglarized recently or if anything had been stolen, and the answer was negative. I asked the victim if there was anyone around his house yesterday that didn't belong there, and the answer was in the affirmative. I then began to ask questions about this. The victim advised

REPORTING OFFICERS:	DATE	REVIEWED BY	TYPED BY	ROUTED BY	DATE
RF, D.	6-5-83		kj		6-6-83
OTHER ACTION:	COPIES TO:	REMARKS			
YES <input type="checkbox"/> NO <input type="checkbox"/>	<input type="checkbox"/> SD/PO <input type="checkbox"/> Detective <input checked="" type="checkbox"/> Dist. Atty. <input type="checkbox"/> CII <input type="checkbox"/> Patrol	<input type="checkbox"/> Other <input type="checkbox"/> Other			

SHERIFF'S DEPARTMENT

County of San Bernardino
California

CA 03600

1211029-02

REPORT AREA

ODE SECTION	CRIME	CLASSIFICATION	
ICTIM'S NAME - LAST NAME	FIRST NAME	MIDDLE NAME	(FIRM NAME IF BUSINESS)
ADDRESS	<input type="checkbox"/> RESIDENCE <input type="checkbox"/> BUSINESS	PHONE ()	

INTERVIEW: (Cont'd)

that at approx. dusk there was an older model Chevy Impala, blue in color, four-door, no primer, that had pulled into the driveway of his residence. He said his dad had talked to the people and they were Mexican males that appeared to be young in age; there were three of them.

SUSPECTS' DESCRIPTION:

Suspect No. 1 - 5'8", slim build, long, shoulder-length black hair (just above the shoulders), wearing Levi's and a white t-shirt, possibly aged 18 to 20, a Mexican male.

Suspect No. 2 - 5'9", slim build, dark hair, short, wearing Levi's and a blue, short-sleeved shirt, 18 to 20 years, a Mexican male.

Suspect No. 3 - 5'11", slim build, dark hair, short, wearing Levi's, red long-sleeved shirt, 18 to 20, a Mexican male.

The victim further advised that the subjects did not talk about any houses or anything like that, but they were possibly asking his dad directions. I again asked for a vehicle description and the victim advised of a older model car, Chevy Impala, blue in color, four-door; he advised the vehicle appeared small to him and that it was definitely a low-rider and he did not believe it had any primer marks on the vehicle. I asked the victim if his family owned a white station wagon. The reply was in the negative. I then asked him if he felt these were the people that were in his house this morning when everything went crazy, to which he advised in the affirmative. It should be noted that I did not want to ask direct questions about his family or about being cut due to the fact that I did not want the subject to go back into shock. I then asked the victim if he felt he could identify either one or all of the suspects, to which he advised in the affirmative. I again asked the victim if he was sure it was the three Mexicans rather than three white male adults. The victim advised of the three Mexicans. The victim then moved up his shoulders and appeared to be confused. At this time I was advised by the physicians that they were going to have to take him into surgery. The interview was concluded.

CONTACT WITH SGT. ARTHUR:

I had contact with Sgt. Arthur three times during the course of the interview and advised him of all of the above information.

REPORTING OFFICERS SHARP, D.	DATE D 0986	REVIEWED BY	TYPED BY RJ	ROUTED BY	DATE 6-6-83
FURTHER ACTION: <input type="checkbox"/> YES <input type="checkbox"/> NO		COPIES TO: <input type="checkbox"/> Defective <input type="checkbox"/> Dist. Atty.		REMARKS	
		<input type="checkbox"/> SD/PD <input type="checkbox"/> CII <input type="checkbox"/> Other			
		<input type="checkbox"/> Other			

496

EXHIBIT V

SHERIFF DEPARTMENT

County of San Bernardino
California

CA 03600

DR 1211029-03

REPORT AREA

ION 187	CRIME Murder	CLASSIFICATION	
NAME - LAST NAME RYEN/HUGHES	FIRST NAME	MIDDLE NAME	(FIRM NAME IF BUSINESS)
<input type="checkbox"/> RESIDENCE	<input type="checkbox"/> BUSINESS	PHONE ()	

ONE CALL RECEIVED:

Approximately 1350 hours, Monday, 12-17-84, I received a phone call from a subject by the name of Lt. JAMES HENSON of the California Medical Facility at Vacaville in regards to some information he had on KEVIN COOPER.

FORMATION RECEIVED:

Phone call that I made to Lt. HENSON at Vacaville (707)448-6841 extension 2474. I called him in reference to the note he left with Sgt. BAKER, Homicide Detail, San Bernardino Sheriff's Office. Lt. HENSON explained that he had talked to an informant by the name of ANTHONY WISELY, who is an inmate at Vacaville. He stated that he had told him about a conversation he had with another inmate by the name of KENNETH KOON. Lt. HENSON had explained that the information he had received from WISELY was that approximately one month ago this conversation had taken place and that KOON was apparently under the influence of some type of drug, or they both were, and that he explained about a story in which KENNETH KOON had gone to the RYEN residence in Chino and two other persons had gone into the house and apparently killed the RYEN family, and during the milieu in which KENNETH KOON was the driver of the vehicle that drove the two subjects to the Chino residence. They had seen a black male subject and that after they left and that his girlfriend or wife had turned in a hatchet to one of the police departments, he doesn't know where they were turned in at.

VEL TO THE VACAVILLE PRISON:

On Wednesday, 12-19-84, I was sent to the Sacramento area then drove to Vacaville prison to make contact with Lt. HENSON. I made contact and entered the Vacaville facility at approximately 1030 hours, Wednesday 12-19-84. I was escorted to the Security and Investigations section where I met Lt. HENSON and shortly thereafter ANTHONY WISELY was brought into the office. We were then escorted to a interview room located near the main entrance.

Ex. A-2

ICERS S, Det. W2108	DATE 12-21-84	REVIEWED BY	TYPED BY jo 00397	ROUTED BY	DATE
IN: <input type="checkbox"/> NO	COPIES TO: <input type="checkbox"/> SO/PO <input type="checkbox"/> Other	REMARKS		127	
	<input type="checkbox"/> Detective <input type="checkbox"/> CH <input type="checkbox"/> Other			2200	

SHERIFF DEPARTMENT

County of San Bernardino
California

CA 03600

DR 1211029-0

REPORT AREA

SECTION PC 187	CRIME Murder	CLASSIFICATION
NAME - LAST NAME RYEN/HUGHES	FIRST NAME	MIDDLE NAME (FIRM NAME IF BUSINESS)
<input type="checkbox"/> RESIDENCE	<input type="checkbox"/> BUSINESS	PHONE ()

INTERVIEW:

Interview was tape recorded. The interview took place at approximately 1051 hours, Wednesday, 12-19-84.

WISELY, ANTHONY JOHN
WMA 27 yrs. DOB: 4-9-57

I asked Mr. WISELY to explain what he had heard or overheard from another inmate in regards to the RYEN murder. He explained that it was before Thanksgiving, in the month of November, when he was in lockdown with a subject by the name of KENNETH KOON. He stated that they were pretty wasted with the use of marijuana and that KENNETH KOON started crying and telling him about this. He stated that he had known KENNETH KOON since the time that he had gotten there and that he knows that he is from the San Bernardino area and also that he is a Arian Brotherhood affiliate that he referred by the name of BRAND, and he began by saying that when he first broke down and started crying he stated I have to tell someone that KENNETH KOON's told him that he was with two other guys that were in the BRAND or Arian Brotherhood and they driven to the Chino area to collect a debt. He also stated that they had driven to a residence in Chino and that the two guys got out and that they were in for about ten or fifteen minutes and that one of the guys was carrying two axes or hatchets. That he also had gloves on, and that one of them made the statement that the debt was officially collected and that the first guy that came out turned around and said who was that, and then again stated "Who the fuck is the nigger?" He said that the man that made the statement was looking in the direction of the window and he saw a black subject through the window and that the one subject told him to get out of there. He states that KOON was dropped off in San Bernardino somewhere, he does not know where. He stated that KOON went to his old lady's house and changed his overalls and that KOON also made the statement that one of the guys that came out with the axes was very upset because they apparently had left one kid alive. He then stated that later on one of the axes was turned into the police department at Yucaipa P.D. by his old lady, and states that KOON told him the name of this girlfriend or old lady but he cannot remember the name. He states later the hatchet was either lost or destroyed by the police department it was turned in to. And that

OFFICERS WOODS, Det. W2108	DATE 12-21-84	REVIEWED BY	TYPED BY jo 00397	ROUTED BY	DATE 128
ACTION: <input type="checkbox"/> NO	COPIES TO: <input type="checkbox"/> Detective	<input type="checkbox"/> SO/PO <input type="checkbox"/> CII	REMARKS	Ex. A-3	
	<input type="checkbox"/> Other	<input type="checkbox"/> Other			

MAY-08-1997 09:00

RANCHO D.A.

909 945 4035 P.05/88

SHERIFF'S DEPARTMENT

County of San Bernardino
California

CA 03600

CASE NO.

DR 1211029-

REPORT AREA

SECTION PC 187	CRIME Murder	CLASSIFICATION	
REPORTING OFFICER'S NAME - LAST NAME RYEN/HUGHES	FIRST NAME	MIDDLE NAME	(FIRM NAME IF BUSINESS)
LESS	<input type="checkbox"/> RESIDENCE	<input type="checkbox"/> BUSINESS	PHONE ()

Page 2

INTERVIEW: WISELY, ANTHONY JOHN (Continued)

since the police department had done nothing with the hatchets, and had apparently destroyed them, that she tried to contact COOPER's attorney. He stated that KOON went on to state that the reason that his old lady turned in the hatchet was that she was feeling so guilty about kids being murdered, and he believes that KOON's old lady has apparently moved out of state, possibly to Arizona.

He stated that these persons that apparently collected the debt at the RYEN residence are debt collectors for the BRAND, the Arian Brotherhood, and that they have been to the pen for murder before and it also includes or involves someone that is currently on death row.

He also stated that KOON thinks that they hit the wrong house for the collection and that after all this blows over that the BRAND will take care of business in the right way.

I asked WISELY about any details when they saw the black subject there in Chino. He stated he could not tell me any other details. He did state, however, that KOON told him some names but he cannot remember them.

He then explained that in talking with Lt. HENSON, that they're willing to put him in the hole with KOON so that he can ask further questions and keep myself and/or the Vacaville staff informed as to what he finds out. I then explained to Mr. WISELY that I could not ask him to do such a thing because he would be acting as my agent in regards to gaining further information. I then spoke to him about the possibility of talking to KENNETH KOON. He advised me that if you start asking questions about this that he will know that he was informed on by himself. He stated that at that point I would be a marked man and that I would be killed most likely in prison.

He then asked me to turn the tape recorder off. I did so, and at that point the information that he had just given me on tape recorder was written on a note pad. At that point in time he took the papers.

REPORTING OFFICERS WOODS, Det. W2108	DATE 12-21-84	REVIEWED BY	TYPED BY jo 00397	R Ex. A-4
ACTION:	COPIES TO:	<input type="checkbox"/> SO/PO	<input type="checkbox"/> Other	REMARKS

129

SHERIFF'S DEPARTMENT County of San Bernardino California CA 03800		CASE NO. DR 1211029
SECTION PC 187		REPORT AREA
CRIME Murder	CLASSIFICATION	
NAME - LAST NAME RYEN/HUGHES	FIRST NAME	MIDDLE NAME (FIRM NAME IF BUSINESS)
SS	<input type="checkbox"/> RESIDENCE <input type="checkbox"/> BUSINESS	PHONE ()

Page 3

INTERVIEW: WISELY, ANTHONY JOHN (Continued)

from the note pad and tore them into smaller pieces destroying them. Lt. HENSON then came to the door and presented me with the prison file of KENNETH KOON. We went into another interview room and went through the file finding that during the period of time from 10-11-82 to 11-7-83 KOON was out of custody. In looking through the case file I noted that list of persons to contact in emergency I noted the name DIANNA ROPER with a Turquoise address in Mentone, and a TERRY CALLIST with another address in the Mentone area.

I then realized that the incident with the hatchet and the coveralls came back to memory as a prior investigation I recalled with DIANNA ROPER turning over a pair of supposed bloody coveralls to the Yucaipa Substation deputies.

I then went back into the interview room to talk with WISELY. I asked him if the female's name, which KOON referred to as his old lady, was DIANNA ROPER. He said it was.

Also with talking to Vacaville staff members Lt. HENSON and Sgt. GEORGE STRATTON, that I found that WISELY was in prison for a two-year period of time under the psychotic and remission program. It was also found that he had been trying to inform on another inmate by the name of NICKERSON for a contract killing out of the Santa Clara area in which he had already been convicted for conspiracy to murder. He further states that he has talked to NICKERSON about these murders and can inform further to the Santa Clara District Attorney's office. He states he has been in contact with Santa Clara County and that they have not yet come up to talk with him. Interviewing contact with ANTHONY WISELY was concluded at that time.

EX. A-5

OFFICERS ODS, Det. W2108	DATE 12-21-84	REVIEWED BY	TYPED BY jo 00397	ROUTED BY	DATE
NOTION: <input type="checkbox"/> NO	COPIES TO: <input type="checkbox"/> Detective	<input type="checkbox"/> SD/PO <input type="checkbox"/> CII	<input type="checkbox"/> Other <input type="checkbox"/> Other	REMARKS 130	

EXHIBIT W

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. *CRIM 24552*

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME *97*

December 19, 1984, Pages 5200 through 5287

December 20, 1984, Pages 5288 through 5321

January 2, 1985, Pages 5322 through 5444

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IN PROPRIA PERSONA

ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

Copy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
January 2, 1985

APPEARANCES:

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1

INDEX OF WITNESSES

3

FOR THE DEFENDANT:

Direct Cross Redirect Recross

COOPER, Kevin
(Mr. Negus)

5327

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0-1-907757

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1 SAN DEIGO, CALIFORNIA, WEDNESDAY, JANUARY 2, 1985 9:30 A.M..

2 --oo0oo--

3

4 (Chambers conference reported.)

5 THE COURT: Good morning. We're all in chambers, all
6 three attorneys and the defendant.

7 Gentlemen, welcome to the new year.

8 MR. NEGUS: I just wanted to clarify one thing on the
9 extended coverage.

10 My objection was the same as the prosecution's, to
11 all extended coverage in the courtroom during Mr. Cooper's
12 testimony.

13 Is that the same order with respect to the
14 prosecution witnesses? I thought that is what you had agreed to
15 last week.

16 THE COURT: Has the press showed up out there?

17 MR. NEGUS: No, they're not here yet. No.

18 THE COURT: All right. So during his testimony there
19 shall be no extended coverage. That's all right.

20 Anything else?

21 MR. NEGUS: You just handed some --

22 THE COURT: What's this, new discovery?

23 MR. KOCHIS: Yes.

24 MR. NEGUS: Could I have about five minutes just to go
25 over this? This might be of some import.

26 THE COURT: You want him at the witness stand?

27 MR. NEGUS: I talked to Deputy Ricks and at my request
28 Deputy Ricks has agreed that Mr. Cooper would not wear a leg

COMPUTERIZED TRANSCRIPT

1 brace when he's testifying, because of him having to jump up and
2 down at the board. I think that they have worked it out so that
3 that won't unduly compromise security. But I would just as soon
4 not have Mr. Cooper moving around the courtroom anymore than he
5 has to for security reasons.

6 What I would like to do is just have him start on
7 the witness stand, be at the witness stand before the jury is
8 brought in, and then he can rise and whatever at the witness
9 stand if that's okay with you.

10 THE COURT: Well, have one of you over by the jury box.

11 THE BAILIFF: Yes. I will be over by the jury box.

12 THE COURT: This is all right with you?

13 THE BAILIFF: Yes.

14 THE COURT: Fine. Okay. Let us know.

15 MR. NEGUS: Okay. Let me just look at this.

16 (Recess)

17

18 THE COURT: All right. We're again in chambers with
19 everybody.

20 What's the problem?

21 MR. NEGUS: I've just been handed some discovery which
22 purports -- and I haven't --

23 THE COURT: This is what you had when you were in here
24 before.

25 MR. NEGUS: 15 pages. I have had a chance to skim it.
26 Apparently the import of it is that it is a confession
27 supposedly that was overheard by a member of the Arian
28 Brotherhood; that that member of the Arian Brotherhood murdered

1 the Ryens along with another person. At least that's what I
2 picked out of it at the beginning.

3 THE COURT: Somebody overheard a member of the Arian
4 Brotherhood making a confession to the Ryen killings?

5 MR. NEGUS: Apparently. I haven't had a chance to study
6 this because it is very complicated as to how it all comes
7 down.

8 Mr. Cooper is somehow mentioned apparently in
9 one -- at least one of the versions of the confession as having
10 been seen outside the Ryen house. somehow -- I haven't figured
11 out exactly yet, but also Lee Furrow (sic), the person who was
12 in possession of the bloody coveralls which Deputy Eckley threw
13 into the dempsey-dumpster, if you recall back to that, is
14 supposed to be involved with the Arian Brotherhood and is
15 somehow involved in the killing. That is, people put Mr. Furrow
16 (sic) --

17 THE COURT: Is his name mentioned in that report?

18 MR. NEGUS: Yes. Fairly in the -- I guess the second,
19 connected with Diane Roper. Amongst other things apparently
20 he's placed in the Chino Hills with blood on it approximately at
21 the time of the killings. This discovery is dated 12-12 through
22 12-21-84.

23 I would like to have at least an hour to think
24 about what my next request is so I can read it and study it
25 before I start this morning. This is not insignificant
26 discovery as far as my side of the case is concerned and I would
27 like to be able to figure out whether I want to request a
28 continuance at this point in time or whether I wish to go ahead.

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1 And that will be in part based upon what I think of the
2 significance of the discovery, because I just can't tell that
3 from a rough reading through.

4 THE COURT: Oh, golly. Why couldn't you have given this
5 to him before, gentlemen?

6 MR. KOCHIS: I got it this morning. I gave it to him as
7 soon as I Xeroxed it.

8 MR. NEGUS: I am sure he did. Mr. Kochis is very quick
9 about it.

10 THE COURT: Then the Sheriff's office should have passed
11 it to Mr. Kochis before the holidays.

12 MR. KOCHIS: Your Honor, I might add that this discovery
13 doesn't put Mr. Farrell or Mr. Furrow (sic) into the Chino Hills
14 area when they started going through the hearsay sources of
15 where the information came from, and they interview the person
16 who allegedly made the statements. He claims to be the current
17 boy friend to Diane Roper and he claims that she told him she
18 had found a pair of coveralls in the closet that she felt came
19 from her husband. That is the type of information that both Mr.
20 Negus and I had when we litigated the Hitch motion.

21 The information that is new is that this person who
22 was interviewed in Vacaville claims that Mr. Koon said more than
23 that. Mr. Koon was interviewed. He does not say that.

24 THE COURT: Until when, Mr. Negus? 10:30 all right?

25 MR. NEGUS: 10:30 is all right.

26 THE COURT: Tell the jurors to have another cup of
27 coffee. It is probably going to be close to an hour before we
28 come back and then at 10:30 keep it loose, approximately an hour

1 before we start. Then at 10:30 I will see you back here.

2 MR. NEGUS: Okay.

3 THE COURT: Is there -- should I be reading a copy of it?

4 MR. NEGUS: You might.

5 (Chambers conference concluded.)

6

7

8 (Chambers conference reported.)

9 THE COURT: Okay. We are all again together in chambers
10 out of the presence of the jury.

11 Mr. Negus.

12 MR. NEGUS: I have had a chance to review in greater
13 detail the reports. I am not going to request any further delay
14 at this point in time.

15 I need Mr. Forbush here for Mr. Cooper's testimony,
16 but there may be a time later on when I may need a day or two's
17 delay to get it all together; but at the present time I don't,
18 and I hope to be able to get it done without any delay.

19 THE COURT: Okay, fine. Let's get started then with the
20 jury.

21 THE BAILIFF: If I can get them all assembled. I told
22 them an hour at about a quarter to.

23 THE COURT: As soon as you can, please.

24 THE BAILIFF: Okay.

25 MR. FORBUSH: The hallway is completely abandoned, so
26 they went somewhere.

27 (Chambers conference concluded.)

28

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EXHIBIT X

Copy

SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. *Crim 24552*

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

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February 13, 1985, Pages 7866 through 7907
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February 28, 1985, Pages 8115 through 8118
March 1, 1985, Pages 8119 through 8135
May 15, 1985, Pages 8136 through 8163

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*Penalty
phase
begins
at P. 7921*

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
February 11, 13, 19 and 20, 1985

APPEARANCES:

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1 While I can't fault you in any way, in an abundance
2 of caution let me spell out for you once again the admonition.
3 I'm not going to you every time you break for lunch or take a
4 recess or out in the corridors or something, if that's what
5 you're doing in the afternoon, and I'm not giving you that
6 admonition, so don't get blase or too comfortable about it in
7 any way don't let down your guard. Be particularly careful at
8 the later stages. Don't discuss the case outside of that
9 deliberation room with any person don't let anybody make a
10 comment to you about it. So maintain your relationship in other
11 respects, but just don't talk about the case or make any
12 comment.

13 I'm sorry I have held you late. Break it at this
14 time. Return tomorrow morning. Are you coming in at 9:30?

15 JUROR NUGENT: Yes, sir.

16 THE COURT: All right. We will see you then. Continue
17 with your deliberation.

18 Good night everybody. See you tomorrow, or be on
19 call.

20 Off the record.

21 (The following proceedings were held in
22 open court out of the presence of the jury:)

23 MR. NEGUS: Judge, before you -- I don't know if this has
24 to be on the record. If the jury remains out, I mean, if they
25 remain deliberating for any length of time are you going to want
26 us to stay down here, you know, all next week?

27 My office is down many attorneys and they would
28 much like if I could go back and try and set it right for a

02-17-84

1 period of time. I can get -- I timed it. I can get down from
2 my office to the court in two hours and five minutes.

3 THE COURT: Without some judge getting involved,
4 hopefully.

5 Well, I'm sympathetic to the request and yet I
6 thought this was very important today.

7 MR. NEGUS: I agree.

8 THE COURT: And I needed you.

9 MR. NEGUS: But I could have been -- if I had been in my
10 own office --

11 THE COURT: You would have been able to get here?

12 MR. NEGUS: I would have been here at the same time any
13 way.

14 THE COURT: All right. Mr. Kochis, can you and Mr. Negus
15 both assure us that you will be reachable by telephone at all
16 times in your office in Ontario?

17 MR. KOCHIS: Yes.

18 THE COURT: All right. Then we will try and take care of
19 things and keep you informed.

20 MR. NEGUS: Okay. I will -- I have some movers coming to
21 move my stuff tomorrow morning, but I will call before I leave
22 and be back in Ontario tomorrow afternoon if that's agreeable.

23 THE COURT: Okay.

24 (Adjournment.)

25

26

27

28

2025-11-20

1 f SAN DIEGO, CALIFORNIA, WEDNESDAY, FEBRUARY 27, 1985, 1:00 P.M.

2
3 --ooOoo--

4 (The following proceedings were reported over the
5 telephone between the Court and counsel.)

6 THE COURT: On the record, this is Judge Garner in
7 chambers.

8 Is the clerk Dodie Bennett here?

9 THE CLERK: Yes, I'm here.

10 THE COURT: She is on another phone.

11 And the reporter, Donna Beard, are you there?

12 THE REPORTER: Yes, your Honor.

13 THE COURT: Thank you.

14 Counsel, identify yourself and your client.

15 MR. NEGUS: David Negus, Public Defender, on behalf of
16 Mr. Cooper.

17 I spoke to Mr. Cooper on the phone at approximately
18 11:20 this morning, explained to him what was to transpire and
19 he has waived his presence for this proceeding.

20 THE COURT: Do you join in the waiver?

21 MR. NEGUS: I do.

22 THE COURT: Mr. Kochis, are you there?

23 MR. KOCHIS: Yes, I am, and I represent the People, of
24 course.

25 THE COURT: Thank you, counsel.

26 The message from the jury foreman, Frank Nugent,
27 reads as follows:

28 "A question, informative in nature, has been raised

1 pertaining to the sentencing procedure if the
2 jury cannot unanimously agree on a penalty
3 verdict."

4 I gave you through the clerk a tentative suggestion
5 earlier. I amplified on that just a bit. Let me read you my
6 suggestion, and then I'll receive any suggestions, objections,
7 whatever from each of you.

8 The answer that I would be giving them would be to
9 step to the jury room with the court reporter and everything on
10 the record and advise as follows, quote:

11 "You previously inquired as to procedure if the
12 jury cannot unanimously agree on a penalty
13 verdict. As I previously instructed, it is the
14 duty of each of you to consider the evidence for
15 the purpose of arriving at a verdict if you can do
16 so in accordance with that evidence and the
17 instructions given to you. You are not to be
18 concerned with procedures. Thank you."

19 Reaction, please.

20 MR. KOCHIS: Your Honor, my reaction is first, I have no
21 objection to the Court's proposed instruction to the jury.

22 Second, I would prefer we take the bull by the
23 horns and tell the jury that if they do not reach a unanimous
24 decision the law provides that another jury must be selected, --

25 THE COURT: We are getting dangerously close to Allen,
26 counsel.

27 MR. KOCHIS: -- that the penalty phase must be retried.

28 THE COURT: I think that's coercive in nature and I think

1 that that would be considered verboten under the Allen decision.

2 MR. NEGUS: I agree. People versus Gainer, 19 Cal.3d at
3 851, is pretty clear on that I believe.

4 THE COURT: I'm afraid not, Mr. Kochis. You know, I
5 don't know what the consequences will be. I've received notes
6 from jurors before indicating a certain inclination and have had
7 them come in with a verdict thereafter. I can still hold one
8 way or another in this case, but I don't want to jeopardize the
9 possibility by giving them an instruction that I think would be
10 clearly erroneous in our present law.

11 Mr. Negus, with reference to my suggestion.

12 MR. NEGUS: The problem I have with it is that I believe
13 that the first part about reaching a verdict if you can might
14 itself be coercive by the circumstances of the note. I would
15 prefer that you tell them that if they cannot reach a verdict to
16 inform the Judge, otherwise they are not to be concerned with
17 procedure.

18 THE COURT: All right. Taking my language directly from
19 17.40 CALJIC previously given in the guilt phase, at least the
20 most part of it, and it basically all comes from 17.40 which is
21 an approved instruction, so I'm giving them really nothing new.
22 There is something but this is not coercive in nature.

23 MR. KOCHIS: Your Honor, the other suggestion I might
24 have if the Court and counsel is agreeable is to tell the jury
25 that any verdict they agree on unanimously is subject to review
26 by the trial court.

27 MR. NEGUS: I object.

28 THE COURT: That is not the law.

1 MR. NEGUS: I -- Dave Negus speaking.

2 I object. That takes away the personal
3 responsibility that they must feel for making the decision. And
4 I believe that -- I don't have the case in front of me, but
5 anything which diminishes the jurors personal responsibility is
6 likewise reversible error.

7 THE COURT: Counsel, you each have objections to my
8 suggestion, but to my way of thinking you are not assisting me
9 in coming up with a better more responsive answer so I will
10 overrule you both. I propose to answer them then as I have
11 indicated.

12 Do you want to be here or may I do it on the record
13 as indicated?

14 MR. NEGUS: Doing it on the record with the reporter
15 present in the jury room is fine with me.

16 MR. KOCHIS: As it is with the People.

17 THE COURT: Now I think you ought to get back. I hate to
18 have you run back, but we might will have a mistrial this
19 afternoon.

20 MR. KOCHIS: Your Honor, it's a two-hour drive from here
21 for both of us. Neither of us have apartments that we can stay
22 at there any more, be nice if we could stay here.

23 The other thought I have, your Honor, is in a
24 case -- this is John Kochis -- in which the jury has heard
25 testimony for five to six months in which a retrial of the
26 penalty phase would entail another five to six month trial, I
27 would not urge the Court to today consider granting a mistrial
28 regardless of what the response is of the jury.

1 THE COURT: All right. Supposing, Mr. Negus --

2 MR. KOCHIS: They had a long time to listen to the law
3 and the evidence and they should take some some time to
4 deliberate amongst themselves, either to reach a decision or to
5 make sure they are unable to reach a unanimous decision.

6 THE COURT: Suppose they tell me today that they are
7 enable to arrive at a verdict.

8 MR. NEGUS: I think then you have no other choice but to
9 grant a mistrial.

10 THE COURT: Well, I do have another choice. I could at
11 that point tell them that considering the duration of the trial
12 and the subject matter I want them to deliberate further before
13 I find out one way or the other.

14 MR. NEGUS: Dave Negus again. I believe on a penalty
15 trial of a death penalty case that especially as there is some
16 doubt in my mind whether or not the former provision of the 1977
17 statute which was purportedly repealed by Briggs is maybe
18 constitutionally mandated, that such a procedure would again be
19 reversable error and coercing a verdict.

20 THE COURT: No. I'm not telling them what way to go in
21 any way.

22 MR. NEGUS: Doesn't matter. Gainer makes it clear. It
23 doesn't matter, that the error is not in suggesting which way to
24 go, the error is in coercing a verdict whichever way it goes.

25 THE COURT: Just a second, please.

26 If I -- got we are anticipating perhaps. We
27 shouldn't do that. But if I got such an inquiry indicating, I
28 would then telephone you, certainly, I wouldn't do anything

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1 without doing that and giving us a chance to discuss it.

2 At this time I think I would be inclined to advise
3 them in this order: Considering the duration of the trial and
4 the length of deliberations, I request you retire for the day
5 and continue your deliberation tomorrow.

6 Counsel, we can discuss that again later if it
7 comes up. With reference to -- Well, if that be the case, then
8 I don't think that I'm going to need to have you return back
9 here. So stand by your phones and be prepared to discuss the
10 matter further, and we will keep you advised.

11 Then what would we do if we got a verdict today? I
12 will have to have them come back tomorrow if you are not coming
13 down today.

14 MR. NEGUS: We can be down there in two hours, a little
15 over two hours. And if they have a verdict I'm sure they would
16 be willing to wait till 4:30 or 5:00 for us to get there.

17 THE COURT: Okay. Would it be all right if we got a
18 verdict if we -- if I advised them that we can either take it
19 two hours and 15 minutes from then or return tomorrow morning at
20 9:30 to take the verdict? What's your pleasure?

21 MR. NEGUS: That's fine.

22 MR. KOCHIS: Fine with me as well. I'm also willing to
23 drive down any time today if we got a verdict.

24 THE COURT: Either one is all right depending upon the
25 jurors' feelings?

26 MR. NEGUS: Yes.

27 THE COURT: All right. Then I guess that's all we can do
28 at this time. Stand by your phone and I will go in with the

1 court reporter and indicate as I indicated.

2 MR. KOCHIS: Thank you.

3 THE COURT: Thank you, gentlemen.

4 (Telephone conference concluded.)

5

6 (The following proceedings were held in the
7 presence of the jury:)

8 THE COURT: Good afternoon. For the record I'm in the
9 jury deliberation room with all of the jurors.

10 You previously inquired, Mr. Nugent as to
11 procedure, if the jury cannot unanimously agree on a penalty
12 verdict.

13 As I previously instructed it is the duty of each
14 of you to consider the evidence for the purpose of arriving at a
15 verdict if you can do so in accordance with that evidence and
16 the instructions given to you. You are not to be concerned with
17 procedures.

18 Thank you.

19 (Adjournment.)

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1 SAN DIEGO, CALIFORNIA, THURSDAY, FEBRAURY 28, 1985 11:20 A.M..

2 --oo0oo--

3
4 (The following proceedings were recorded over
5 the telephone between the court and counsel.)

6 THE COURT: Judge Garner.

7 MR. KOCHIS: This is John Kochis. I have with me Dave
8 Negus, in chambers, behind Department 2.

9 What we would like to do, with the Court's
10 permission, is to continue to work in our office and remain on
11 telephonic standby with the understanding that we would drive to
12 San Diego at any time, day or night, if there was a verdict or
13 question which had to be handled by our presence in San Diego.

14 THE COURT: I have tried to permit that, but I'm
15 concerned that this may be the last day.

16 MR. KOCHIS: There has been no communication, correct?

17 THE COURT: That is true. That is true, there hasn't.
18 But it has now been -- it will have been by the end of this
19 day -- two full days, basically, since we recieved the note
20 about a possible hung jury. So, I still suspect that sometime
21 this afternoon something is going to happen.

22 For example, either we're going to get a verdict or
23 there is going to be a mistrial.

24 MR. KOCHIS: I would urge the Court not to be thinking
25 along the latter lines. The case lasted for six months, the
26 jury has only been out for two days.

27 THE COURT: The day's been short. They don't have to
28 reconsider all the circumstances in the guilt phase.

1 MR. KOCHIS: Based on the law they must reconsider the
2 circumstances of the offense, and part of Mr. Negus argument
3 basically requires them to reconsider the evidence in light of
4 the different standard he's suggested to them.

5 THE COURT: Counsel, if they come in this afternoon, and
6 they're not able to reach a verdict. I suspect that's going to
7 be the end of the case.

8 I would suggest that you, Mr. Kochis, if you don't
9 want to come up here, get yourself a counterpart from the San
10 Diego office, District Attorney's office, to sit in on the
11 taking of the verdict in some manner. Perhaps it is the same
12 for you, Mr. Negus. We have got to do something.

13 I don't want them to have to come back again
14 tomorrow.

15 MR. KOCHIS: We will come down tonight, whenever we get
16 any --

17 THE COURT: Suppose they come in at 3:30 today?

18 MR. NEGUS: We can be here by two hours and five minutes
19 after we get some indication, and we both don't feel that there
20 is any evidence necessarily of either a verdict or a hang-up.
21 They took a long time to come up with their first verdict and
22 the indications were that they were talking most of the time, at
23 least how we read it. We feel that is quite possible they could
24 be --

25 THE COURT: I'm -- well, I'm in no hurry to abort the
26 matter, but I'm just concerned that I don't want to keep them
27 waiting around forever once they reach a decision.

28 MR. NEGUS: The problem is, we have -- neither of us no

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1 longer have any place to go.

2 THE COURT: Well, that's simply not a problem.

3 MR. NEGUS: It's a four hour round trip drive, and if
4 there is no indication from the jurors that there is any reason
5 to come down there, it seems to be a fairly large waste of
6 resources.

7 THE COURT: Okay. I will wait.

8 Are you going to come together if you come?

9 MR. NEGUS: No.

10 THE COURT: I will go along with it. You may have to
11 come down late at night then.

12 MR. KOCHIS: That's fine.

13 THE COURT: Because if they do come in late today, and
14 this is going to be the last day, then I'd be inclined to work
15 them late rather than have them come back tomorrow.

16 MR. NEGUS: Fine.

17 MR. KOCHIS: I'm willing to come down any time between --
18 there is no limit. I will come down at 9:00, 10:00, 11:00,
19 there is no limit. I will make myself available by the
20 telephone the remainder of the day, in the evening.

21 THE COURT: Okay, so be it. I will keep the watch here
22 at the Court.

23 MR. KOCHIS: Then what I will do, your Honor, I will
24 check with the court at Noon, at 1:30, and at 4:00 to see if
25 there is any communication or need for us to come to San Diego.

26 THE COURT: Rest assured we will call you, I don't think
27 you have to bother. As long as you are standing by there, we
28 will call you as soon as anything happens for sure.

002-1-99-7

9 (Telephone conference concluded.)

1 SAN DIEGO, CALIFORNIA, FRIDAY, MARCH 1, 1985 11:25 A.M.

2 --oo0o--

3
4 (The following proceedings were recorded over
5 the telephone between court and counsel.)

6 THE COURT: Judge Garner here.

7 Who else is on the line?

8 MR. KOCHIS: John Kochis, your Honor, and David Negus is
9 seated right beside me.

10 MR. NEGUS: Hi, judge.

11 THE COURT: Okay. Somehow, in shuffling things together,
12 I have set aside the note from the Foreman, Frank Nugent. It
13 reads basically as follows: Your Honor, with regret it seems --
14 I believe seems is underlined -- that we are unable to arrive at
15 a verdict, and the message and the signature date. I have got
16 it here somewhere.

17 So, I think you better come, No. 1, back to court.
18 And I drafted a little message I would like to give the jurors
19 at this time that I would like to read over for you as follows.

20 "In response to your note about your possible
21 inability to agree on penalty, it will take us
22 until 2:00 p.m. to get everybody together. We
23 must therefore call you into open court at that
24 time. Please inform the bailiff whether you
25 desire to continue deliberating or to adjourn
26 until 2:00 p.m."

27 That may not give you enough time. It is 11:00 --

28 MR. KOCHIS: We can be there by 2:00, we think.

1 Your Honor, does the Court have any idea how
2 they're split numerically?

3 THE COURT: Not the slightest at this time. When I
4 bring them into court, without telling us, I will make the usual
5 inquiry.

6 MR. NEGUS: I would like to be heard before you do,
7 either now or down there.

8 THE COURT: Okay. Now.

9 MR. NEGUS: I would object to that particular thing in a
10 death penalty case particularly because once they tell us that
11 they can't reach a verdict, then I don't think it matters what
12 the numerical split is, and any inquiries at this point in time
13 could be, could be taken as coercing the minority members, if
14 there are minorities, into a verdict.

15 THE COURT: Well, first, what I am going to do before I
16 do that, would be to inquire of each and everyone of them
17 individually if they believe that given more time to deliberate
18 that there is a reasonable likelihood that they will arrive at a
19 verdict. If any one of them tells me, yes, I am going to decide
20 to send them back for more deliberation.

21 All right, I will take up your objection with
22 reference to polling under advisement. Anything further?

23 MR. KOCHIS: No. We will attempt to be there at 2:00
24 o'clock.

25 THE COURT: Would it be satisfactory, counsel, to both of
26 you, if I would just have my reporter and have everything on the
27 record, if I stepped to the deliberation room and so advised
28 them as I read to you.

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1 MR. JONES: That would be acceptable to the People. And
2 I would -- we would just stay on the line until you did that and
3 advised us what the response was.

4 MR. NEGUS: Yes. That's a good idea. Can I get back on
5 and you can advise us what they said when --

6 THE COURT: I won't permit any response.

7 MR. NEGUS: -- tell you whether they want to keep
8 deliberating or not?

9 THE COURT: You may stay on the line, but I thought that
10 rather than get me in a dialogue, at that point I will step out
11 and they can advise the bailiff.

12 MR. NEGUS: I feel better if you at least get the
13 response from the foreman.

14 THE COURT: You want me to do it right there?

15 MR. NEGUS: Yes, sir.

16 THE COURT: You may have to caucus.

17 MR. KOCHIS: I agree with that, your Honor.

18 MR. NEGUS: Yes, I want you to find out.

19 THE COURT: All right. If you would hold the line,
20 please.

21

22 (The following proceedings were held.

23 in the presence of the jury.)

24 THE COURT: For the record, I am in the jury deliberation
25 room. The reporter and the clerk are with me, the attorneys are
26 on the telephone.

27 Mr. Nugent, in response to your note about your
28 possible inability to agree on penalty, it will take up until

1 2:00 o'clock to get everybody together. We must therefore call
2 you back into open court at that time.

3 I would like to have you inform me either now or
4 after you caucus for a minute, so to speak, whether or not you
5 desire to continue deliberating or if you'd like to adjourn
6 until 2:00 p.m..

7 Would you like to discuss it with your fellow
8 jurors?

9 MR. NUGENT: Yes.

10 THE COURT: We will step out until you do so, to await
11 your information. Thank you.

12

13 (Continuing proceedings between the court
14 and counsel on the telephone.)

15 THE COURT: Gentlemen.

16 MR. NEGUS: Yes.

17 THE COURT: Is the reporter there? All right. I did so,
18 and I told Mr. Nugent we would like for you to advise us
19 either now or after you caucus with your fellows jurors whether
20 or not you want to continue deliberating, if you'd like to
21 adjourn until 2:00 p.m. There was some uncertainty and I
22 indicated on its face, and I indicated if you like I will step
23 out and let you do it privately. They indicated they would like
24 to do so. I have stepped out. You are going to have to hang on
25 a minute. I don't know how long this will take.

26 MR. NEGUS: Okay.

27 THE COURT: Hang on for a reasonable time anyhow. Thank
28 you. I am setting down the phone.

1

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(The following proceedings were held

3

in the presence of the jury.)

4

5

THE COURT: Back to the deliberation room, the reporter and the clerk once again.

6

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8

I suggested that the bailiff receive your message, but apparently it was more complicated than a brief one. So, you might tell me what your desire is.

9

10

MR. NUGENT: Your Honor, we desire to deliberate, even if it takes through the lunch hour.

11

12

THE COURT: I will have everybody here at 2:00 p.m., standing by for whatever time you so desire.

13

14

Thank you. All right, thank you very much.

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(Further telephonic proceedings.)

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THE COURT: Counsel, I would suggest that the bailiff again standby and let them break with an admonition to go to lunch when they desire, and I would suggest you get on your bicycles and get here, and then I think that we owe a duty to the media to tell them that we're having everybody standby from 2:00 p.m. on, based upon possible action with the jury.

22

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Anything else?

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MR. NEGUS: No.

MR. KOCHIS: Your Honor, I would like the Court to consider that when we bring the jury into open court to request individually of them about their desire to continue to deliberate, that we might want to do so without the media present. I would not want the presence of the media to

1 influence the individual answers one way or the other.

2 MR. NEGUS: I think that is a good idea.

3 THE COURT: You guys are more closed-mouth than I am. I
4 am resistive to that at this stage. So, I don't think so.

5 I think at this time if they indicate that they're
6 still hung at that point, then I think that the media has a
7 right to be there. Now, if they're still working and they're
8 not going to come into open court, and if I only get the message
9 around about 2:00 o'clock that they're still unable to arrive at
10 a verdict, and that they know they're deadlocked or something,
11 then I am going to bring them back into open court right now.
12 But right now it is not necessary. But please come.

13 MR. KOCHIS: We will be there at 2:00 o'clock.

14 (Telephone conference concluded.)

15

16 (Chambers conference reported.)

17 THE COURT: We're in chambers now with Mr. Cooper
18 present, Mr. Negus and Mr. Kochis.

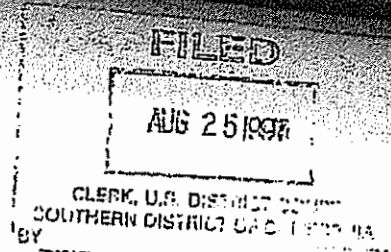
19 Gentleman, I walked in just a few minutes before
20 you did, and I have now been handed a note by the clerk reading
21 "Your Honor, we have reached a unanimous penalty verdict." By
22 the foreman.

23 The jurors have been there throughout the lunch
24 period, it is now ten after 2:00. I am ready to bring them into
25 the courtroom without further adieu unless you have something.

26 MR. KOCHIS: I do. Mr. Kottmeier left San Bernardino by
27 helicopter an hour ago. He should be landing at this time.

28 THE COURT: Counsel, I can't wait for him. The jurors in

EXHIBIT Y



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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KEVIN COOPER,

Plaintiff,

vs.

ARTHUR CALDERON, Warden,

Defendant.

CASE NO. 92-CV-427 H

Order Denying Petition for Habeas Corpus

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Petitioner, Kevin Cooper, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent Arthur Calderon, the Warden of the California State Prison at San Quentin, opposes the issuance of a writ of habeas corpus. After reviewing the submissions of both parties, and thoroughly reviewing the entire transcript of the state court trial proceedings, this court denies petitioner's application for a writ of habeas corpus.

In summary, this court concludes that: (1) petitioner was represented by an experienced and able defense attorney; (2) petitioner's trial and appeal were constitutionally conducted; (3) petitioner was convicted by overwhelming evidence of guilt; and (4) the jury properly weighed the aggravating and mitigating evidence in concluding that four brutal murders justified the death penalty.

BACKGROUND

On June 18, 1983, an information was filed against the petitioner alleging: escape from a state prison, four counts of first degree murder, and one count of attempt to commit first degree murder. On April 17, 1984, venue was changed from San Bernadino County to San Diego County. The petitioner

1 (1984), cert. denied, 471 U.S. 1119 (1985) (Ramos II). Although the Ramos II Court held that mere
2 reference alone to the governor's commutation power would allow a jury to engage in speculation in
3 violation of the California Constitution, in a footnote the California Supreme Court suggested that if a
4 juror were to raise a question about the issue of commutation, either during voir dire or during
5 deliberations, it was probably best handled by a short explanation that the Governor's commutation
6 power applies to both sentences but that in any event the jury should not consider such matters. *Id.* at
7 159, n.12.

8 In this case, as the issue of commutation was *not* raised by a juror during the penalty phase or
9 during deliberations, this court finds the suggestion of the footnote in Ramos to be inapplicable.
10 Similarly, this court fails to see how an alleged failure to follow a *suggestion* contained in a footnote to
11 a California Supreme Court case constitutes an ineffective assistance of counsel claim which is
12 cognizable under federal habeas standards. In any event, this court declines to find that simply because
13 one prospective juror questioned the meaning of the term "life without parole" during the *voir dire* stage
14 of the trial, it was error for the trial court to not explain the meaning of this term prior to the *penalty*
15 phase. In addition, the court agrees with respondent that petitioner has not made any showing that trial
16 counsel's decision not to request such an instruction was anything other than a tactical decision based
17 upon his belief that such an instruction would not have helped.

18 Finally, to the extent that petitioner is relying on Simmons v. South Carolina, 512 U.S. 154
19 (1994), this court notes that the Supreme Court has recently held that the rule postulated in Simmons
20 "was 'new' within the meaning of Teague v. Lane, 489 U.S. 288 (1989), and thereby inapplicable" to
21 any death sentence imposed prior to 1994. O'Dell v. Netherland, 117 S.Ct. 1969, 1971 (1997).

22 K) Trial Counsel's Investigation

23 Based upon trial counsel's testimony at the evidentiary hearing and the record itself, this court
24 finds that trial counsel and his investigator conducted a very thorough and proper guilt and penalty phase
25 investigation. Among other things, counsel testified that he spent seven days in Pennsylvania personally
26 interviewing witnesses in the Pittsburgh area and doctors at the Mayview Medical Facility, a mental
27 institution in which petitioner was previously detained. In addition, counsel stated that he spent
28 approximately \$100,000 for investigation, copying, and the hiring of experts in the field of serology,

EXHIBIT Z

C O P Y

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff-Respondent,)
vs.)
KEVIN COOPER,)
Defendant-Appellant.)

CR 72787

Supreme Court No. CRIM 24552

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

For Plaintiff-Respondent: HON. JOHN K. VAN DE KAMP
State Attorney General
Department of Justice
110 West "A" Street, Suite 700
San Diego, California 92101

For Defendant-Appellant: In Propria Persona

JILL D. McKIMMEY, C.S.R., C-2314
Official Reporter

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VOLUME ~~4~~ of volumes
Pages 6513-1 to 6513-9, incl.

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1 ONTARIO, CALIFORNIA; MONDAY, AUGUST 20, 1984; 10:03 A.M.

2 DEPARTMENT NO. 3(ONT) HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

4 The Defendant with his Counsel, DAVID
5 NEGUS, Deputy Public Defender of San
6 Bernardino County; JOHN P. KOCHIS,
7 Deputy District Attorney of San Ber-
8 nardino County, representing the
9 People of the State of California.
10 (Jill D. McKinney, C.S.R., Official
11 Reporter, C-2314)

12
13 (Whereupon, the following proceedings
14 were had in chambers:)

15 THE COURT: Hello.

16 MR. KOCHIS: Good morning.

17 MR. NEGUS: Good morning.

18 THE COURT: For the first time since 1965, I made a
19 mistake, and I misdirected purely inadvertently the court
20 commissioner down in San Diego, and apparently you picked it
21 up, Mr. Kochis, and I didn't know that before then that I
22 scheduled them for sixty -- for the 14th also. Jurors are
23 requested for September 12, 13 and 14, 12, 13, and 14, so
24 that would be the 60 jurors in the morning on that Friday,
25 instead of letting you have Friday off. I really wasn't
26 trying to get another day's work out of you.

0-1-2-3-4

1 MR. NEGUS: Well, I can't do that. I just can't
2 stand the stress of going four days a week.

3 THE COURT: Can't do what?

4 MR. NEGUS: I can't stand the stress of doing just
5 more than a regular week, and I have to move that week, any-
6 way, so maybe we can have them change over to Monday.

7 THE COURT: Can we adjust, Mr. Negus, perhaps give
8 you time off on Monday? I don't want to change the thing
9 down there, start off wrong and have them recall the jurors
10 and redo it again.

11 MR. NEGUS: Well, I don't think I can do it that way.
12 I mean I am -- it's -- it's sort of -- I'm having difficulties
13 with the stress of it, anyway, and I think if I have to do --
14 move and do four days --

15 THE COURT: Do you disbelieve what I'm telling you
16 when I tell you it was inadvertent?

17 MR. NEGUS: No.

18 THE COURT: I'm telling you that is the truth.

19 MR. NEGUS: Right.

20 THE COURT: But now that I've done it and they've
21 got those people already requested or subpoenaed or whatever
22 they do to jurors, I don't wish to start off and tell them,
23 hey, I've made a mistake, cancel that and bring them in on
24 that Monday instead.

25 MR. NEGUS: Well --

26 THE COURT: So I would rather give you time off on

0-1-2-3-4-5

1 Monday, Mr. Negus, and that would still give you your three-
2 day weekend.

3 MR. NEGUS: It doesn't work that way.

4 THE COURT: I beg your pardon?

5 MR. NEGUS: It doesn't work that way. I need time
6 to rest and relax, and I just can't start off that way.

7 MR. KOCHIS: Your Honor, let me explain what -- what
8 Mrs. Stephens told me about how they summon the people,
9 because I asked them didn't they have a call back or some-
10 thing. She said they're bringing the first two groups in
11 on Tuesday, the 11th, and I said, well, we are involved in
12 change of venue on the 11th. She goes, we know that, we
13 bring them in on the 11th and then we split them, some to
14 come back on the 12th, some to come back -- I'm sorry -- some
15 to come back on the 12th, some to come back, I think, on the
16 13th. Then we give them some type of, she said, indoctri-
17 nation or talk. Then they bring another group in on the 13th,
18 and some of those stay, and then the others are told to come
19 back on Friday, the 14th, and my thought was --

20 THE COURT: I can't understand that at all, because
21 I'm very clear that the 11th will be a non-jury motion day.

22 MR. KOCHIS: Right. They apparently -- unless I
23 completely misunderstood the conversation, they bring them
24 in the day before.

25 THE COURT: Well, I don't want them to do that.

26 MR. KOCHIS: Well, and they talk to them and then

0-11-23-19

1 tell them they can be expected to be called for the following
2 day.

3 Maybe I completely misunderstood the contents of
4 the conversation.

5 THE COURT: I am concerned, however, with your
6 intractable position, and you're telling me, Judge, flatly,
7 non-negotiably, I can't do it that way and I won't do it
8 that way. That's what's coming through.

9 MR. NEGUS: Well, that's basically it. You know, if
10 you want me to get a doctor's excuse that says I can't, I
11 will.

12 THE COURT: Today is the 20th of August. We've got
13 basically two more weeks before there's any in-court work on
14 your part on Cooper. We would be -- excuse me. That will be
15 the Josh Ryan matter, and then the 11th, we'd have the change
16 of venue, and the 12th -- the 11th is a Tuesday, so you
17 would be off the 7th, 8th, 9th and 10th before that, and
18 then I would only be requiring you to work four days. I am
19 about to get tough with you, Mr. Negus. You are not coming
20 through reasonably to me.

21 MR. NEGUS: Well, we have to move the 7th, 8th, 9th
22 and the 10th, and that's going to be a big pain in the behind,
23 and, I'm sorry, Judge, you can get all the mad at me that you
24 want. I only have one life, and I'm not going to give it
25 for this case, and I -- my -- I have been told to cut down
26 on the amount of work and the amount of stress I do, and I'm

1 going to, and that's, you know, what I'm going to do, and,
2 you know, you can throw me in jail. That's nice and restful,
3 but I can't work any harder than I am, and I have to cut
4 down on the amount of work that I'm doing. That's what my
5 doctor says. That's what I'm going to do.

6 THE COURT: All right. Bring me your doctor's letter
7 to that effect.

8 MR. NEGUS: Okay.

9 THE COURT: Let's do it by the book, Mr. Negus.
10 That sounds to me unreasonable unless it's proven to be a
11 medical disability on your part. With that kind of time off,
12 that's simply a slight adjustment. I started off this
13 hearing by telling you is there any room of flexibility in
14 a very reasonable manner to give you the Monday off to
15 compensate, and with that kind of time off out of court, it
16 seems to me that you're being unreasonable at this time.

17 MR. NEGUS: I'm sorry.

18 THE COURT: I simply won't accept it.

19 MR. NEGUS: I was in the hospital on Thursday. I'm
20 not going to go back to the hospital again, and you can get
21 all you want, but you just can't get blood out of a turnip.

22 THE COURT: Now you're giving me something you
23 haven't given me before. If you have been to the hospital,
24 maybe you ought to level with me and give me a doctor's
25 certificate.

26 MR. NEGUS: I'll be glad to. I'll call my doctor

1 this morning.

2 THE COURT: All right. Let's just postpone it till
3 I get more medical information on you. I haven't the
4 foggiest idea about any difficulty with you, and I dislike
5 as well starting off wrong, but, you know, things change
6 during course of trial. We have to remain flexible.

7 MR. NEGUS: That may be true, but I think the Court
8 has to remain flexible to my problems, too.

9 THE COURT: Well, I'm talking about your problem
10 without -- without a medical necessity for it, as opposed to
11 the problems of the staff down there and 50 people that I've
12 got making their job changes and everything else already.

13 MR. NEGUS: Well, but Mr. Kochis tells me that that's
14 not even true, that they're bringing them in on off days.

15 THE COURT: I think and pray that he's off.

16 MR. NEGUS: I suspect he isn't. Mr. Kochis is
17 usually accurate.

18 MR. KOCHIS: I'm going to be talking to Mrs. Stephens
19 about an unrelated matter.

20 THE COURT: I don't want you talking to her.

21 MR. KOCHIS: I have to. She's a potential witness
22 for the People on the challenge to the panel. If Mr. Negus
23 makes a challenge, I have to find out who I subpoena.

24 THE COURT: Well, that's another matter, but I am a
25 little bit put out by your getting into the scheduling and
26 one thing and another down there.

1 MR. KOCHIS: That happened because she said which
2 day can I expect to be on the stand on the motion. I said,
3 well, you know, we're spending these three days handling
4 excuses, and she said, no, you're not, you're handling --
5 other days handling excuses.

6 THE COURT: Okay. I'd better give them a call.
7 What did you tell me now?

8 MR. KOCHIS: That was it. She wanted to know if I
9 would be calling her back or you would. I said I imagine the
10 Court would or the Court's clerk would be.

11 THE COURT: Call who back?

12 MR. KOCHIS: Mrs. Stephens. She wanted to know what
13 our position was going to be on that particular day, on
14 Friday, the 14th, and I said I don't have an answer.

15 THE COURT: Oh, I see, call her back in that regard.
16 Well, I'll do it. Do you know what her first name is?

17 MR. KOCHIS: Yes, I did, Your Honor. She's -- her
18 signature appears on the letter. It's Geraldine. She's the
19 Assistant Jury Commissioner, and I believe she can be reached
20 at Area Code 619 236-2680.

21 THE COURT: 619-236-2680?

22 MR. KOCHIS: Yes.

23 THE COURT: I think, however, I'd better wait until
24 I get more information from Mr. Negus before I call back,
25 because I am not going to change any scheduling at the moment.
26 I sent to you -- I don't know if you've had a chance,

0-1-3-2-2-0

1 Mr. Negus, to read it yet -- the jury selection remarks from
2 the Court. Have you had a chance to review that?

3 MR. NEGUS: No.

4 THE COURT: Okay. Then we won't talk about that.
5 Otherwise, we'll come back. See you at the next occasion.
6 That's all I have.

7 MR. KOCHIS: Thank you.

8 MR. NEGUS: I don't know when -- how soon do you
9 want a letter from my doctor? I'm not sure when I'm going
10 to see him next.

11 THE COURT: It behooves us, I guess, to straighten
12 out this down there with San Diego at an early time. You
13 can have your doctor give me a phone call, if you wish, or
14 bring me a letter whenever you can reasonably do so. Have I
15 got to walk on eggshells considering your physical disability
16 or something like that? I've never known you to have such a
17 problem.

18 MR. NEGUS: Well, that's because I don't go around
19 advertising it, but I -- in this particular case -- normally
20 the stress doesn't get to me, but in this particular case,
21 having worked at it 60 to 80 hours a week for a year, I've
22 sort of got to the stage where it's starting to affect me,
23 and I can only do so much, and I have been told to cut down,
24 and so I'm going to.

25 THE COURT: A wise man knows when to delegate, Dave.
26 You maybe ought to get some help.

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SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. ^{CRIM} 24552

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME ⁸⁹

November 19, 1984, Pages 3414 through 3540
November 20, 1984, Pages 3541 through 3651

APPEARANCES:

For the Plaintiff
and Respondent:

JOHN K. VAN DE KAMP
Attorney General
State of California
110 West "A" Street
San Diego, Ca. 92101

For the Defendant
and Appellant:

IN PROPRIA PERSONA

ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters
San Diego County Superior Court
220 West Broadway
San Diego, California 92101

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
November 19, 1984

APPEARANCES:

For the People:

DENNIS KOTTMEIER
District Attorney
WITH: JOHN P. KOCHIS
Deputy District Attorney
1540 Mountain Avenue
Ontario, California 91762

For the Defendant:

DAVID L. MCKENNA
Public Defender
BY: DAVID E. NEGUS
Deputy Public Defender
1060 West Sixth Street
Ontario, California 91762

ROBERT L. ROACH, CSR #1727
DONNA D. BEARD, CSR #1874
Official Reporters

COMPUTERIZED TRANSCRIPT

016946

1 penalize the jurors during the holidays season. You could have
2 Mr. Negus and I come in and do pushups, but They usually have
3 commitments during that week.

4 THE COURT: I'm not trying to penalize anybody, I'm
5 simply trying to move in a reasonably expeditious manner.

6 I'm really aggravated with Mr. Negus for being so
7 darn inflexible and non-negotiable. I don't know, maybe I'm
8 just rebelling.

9 MR. NEGUS: But the thing is that we went into this case,
10 if you recall --

11 THE COURT: We did not cover every holiday and exception
12 all the way, generally speaking.

13 MR. NEGUS: Do you want me to get the transcript where we
14 brought this up and you said, okay, you don't have to work
15 Fridays?

16 THE COURT: I am fully aware that I said that. We did
17 not cover all of these possibilities.

18 MR. NEGUS: But, Judge, the point that we covered, the
19 general principle was that, first of all, Judge Kayashima and
20 everybody else in the County seemed happy that I have saved the
21 County several hundreds of thousands of dollars by working
22 alone. That is something that everybody else in the County
23 except yourself is very, very happy about, and has in fact gone
24 out of their way to be happy that the Public Defenders office
25 first of all saved the taxpayers in this case and saved the
26 County \$500,000 right there.

27 Then secondly saved them several hundred thousand
28 dollars by not requesting a second lawyer. And I don't care

BB

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SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff-Respondent,)

KEVIN COOPER,)

Defendant-Appellant.)

CR 72787

Supreme Court

No. Crim 24552

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

APPEARANCES:

For Plaintiff-Respondent:

HON. JOHN K. VAN DE KAMP
State Attorney General
Department of Justice
110 West "A" Street, Suite 700
San Diego, California 92101

For Defendant-Appellant:

IN PROPRIA PERSONA

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JILL D. MC KIMMEY, C.S.R., C-2314
Official Reporter

006461

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

VOLUME 2

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
BEFORE HONORABLE RICHARD C. GARNER, JUDGE
DEPARTMENT 3 - ONTARIO, CALIFORNIA
February 24, 1984

APPEARANCES:

For the People:

DENNIS E. KOTTMEIER
District Attorney
and
JOHN P. KOCHIS
Deputy District Attorney

For the Defendant:

DAVID McKENNA
Public Defender
By: DAVID NEGUS
Deputy Public Defender

Also Present:

JOHN VAN DE KAMP
Attorney General
By: STEVEN V. ADLER
Deputy Attorney General
(Representing California
Department of Corrections)

(Appearances continued on
the following page.)

Reported by:

JILL D. McKINNEY
Official Reporter
C.S.R. No. 231A

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SILVER & KREISLER
By: **WILLIAM J. HADDEN**
Attorney at Law
(Representing San Bernardino
County Sheriff's Department)

DONALD ZACHARY
Attorney at Law
(Representing NBC)

1 THE COURT: Because I would think that you need
2 one day off to work.

3 MR. NEGUS: I agree. You're absolutely 100-
4 percent right.

5 THE COURT: As a matter of fact, when I mentioned
6 to Judge Morris and Judge Ziebart, I said I will
7 probably be able to handle my other calendars on those
8 days.

9 MR. NEGUS: Probably we can say the 5th and then
10 on the 12th.

11 THE COURT: So don't plan on working Fridays
12 on this case.

13 MR. KOCHIS: Your Honor, I'm not confident in
14 this type of case you'll have Fridays free, either
15 because I assume oftentimes we'll come to a portion in
16 the case where we'll complete testimony on Thursday and
17 we'll submit something lengthy for you to read in writing
18 that will take you most of Friday to read, so I think
19 you're going to be very busy.

20 THE COURT: Try and time those things where I can
21 do it over the weekend, and I'll come back to you on
22 Monday. I'm happy to work Saturday and Sunday.

23 MR. NEGUS: I've been working seven days a week
24 sixteen hours a day.

25 THE COURT: I'll bet you have.

26 MR. NEGUS: Since August, and I'll tell you that

006579

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SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff-Respondent,)

vs.)

KEVIN COOPER,)

Defendant-Appellant.)

CR 72787

Supreme Court

No. Crim 24552

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

For Plaintiff-Respondent: HON. JOHN K. VAN DE KAMP
State Attorney General
Department of Justice
110 West "A" Street, Suite 700
San Diego, California 92101

For Defendant-Appellant: IN PROPRIA PERSONA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
)
Plaintiff,)
)
vs.)
)
KEVIN COOPER,)
)
Defendant.)

NO. OCR-9319
VOLUME 48
Pgs. 5039 thru 5176

REPORTERS' DAILY TRANSCRIPT
BEFORE HONORABLE RICHARD C. GARNER, JUDGE
DEPARTMENT 3 - ONTARIO, CALIFORNIA
Monday, July 16, 1984

APPEARANCES:

For the People: DENNIS KOTTMEIER
District Attorney

DENNIS KOTTMEIER
District Attorney
By: JOHN P. KOCHIS
Deputy District Attorney

For the Defendant: DAVID McKENNA
Public Defender
By: DAVID NEGUS
Deputy Public Defender

Reported by: JILL D. McKIMMEY
Official Reporter
C.S.R. No. 2314
and
BRIAN RATEKIN
Official Reporter
C.S.R. No. 3715

011691

1 We'll have to go back to square one,
2 and that involves time and considerations, again. I think
3 that the remaining issues and the witnesses that you're
4 presenting now are embellishments, and -- on the point that
5 you're trying to hang this on the Hitch motion, and that that
6 additional evidence is not going to be critical.

7 Counsel, I simply do not find good cause for a
8 continuance. And the request is denied. I expect us to
9 resume tomorrow morning at the usual time.

10 MR. NEGUS: I'm not going to be prepared, Your Honor,
11 to put Mr. Forbush on tomorrow morning. If you wish to
12 rule that I can't put Mr. Forbush on at all, then -- then I
13 can't.

14 THE COURT: We'll proceed at 9:30 tomorrow morning,
15 Mr. Negus.

16 Anything else, gentlemen?

17 MR. KOCHIS: Not at this time.

18 MR. NEGUS: Your Honor, then if -- if -- I have been
19 trying to be good to you in that I was -- did not do anything
20 all day Saturday, because I laid in bed sick. If you notice,
21 I'm not up and running around like I normally am. If you
22 are going to penalize me for doing that, for trying to work
23 so I can use as much of your court time as possible, frankly,
24 I'll just have to call in sick, because I'm not well enough
25 really to proceed at the pace at which you -- in which you
26 want to go. And if you want me to go to get a doctor's --

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SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff-Respondent,)
)
vs.)
)
KEVIN COOPER,)
)
Defendant-Appellant.)

CR 72787

Supreme Court
No. Crim 24552

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
HONORABLE RICHARD C. GARNER, JUDGE PRESIDING
REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

For Plaintiff-Respondent: HON. JOHN K. VAN DE KAMP
State Attorney General
Department of Justice
110 West "A" Street, Suite 700
San Diego, California 92101

For Defendant-Appellant: IN PROPRIA PERSONA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE)	
OF CALIFORNIA,)	
)	
Plaintiff,)	
)	
vs.	)	NO. OCR-9319
)	
KEVIN COOPER,	)	VOLUME 52
)	
Defendant.	)	Pgs. 5438 thru 5564, incl.

REPORTERS' DAILY TRANSCRIPT
BEFORE HONORABLE RICHARD C. GARNER, JUDGE
DEPARTMENT 3 - ONTARIO, CALIFORNIA
Tuesday, July 24, 1984

APPEARANCES:

For the People:	DENNIS KOTTMEIER District Attorney
	DENNIS KOTTMEIER District Attorney By: JOHN P. KOCHIS Deputy District Attorney
For the Defendant:	DAVID McKENNA Public Defender By: DAVID NEGUS Deputy Public Defender
Reported by:	JILL D. McKIMMEY Official Reporter C.S.R. No. 2314 and BRIAN RATEKIN Official Reporter C.S.R. No. 3715

0121037

1 asked me what I meant by that, and, see, that's one of the
2 reasons why I --

3 THE COURT: Sure, okay. I'm with you.

4 MR. NEGUS: I'm behind on my preparation. I confess
5 I am more behind in my preparation than I would like to be.
6 And today I have done stuff basically that I can wing. But
7 I will like to have it all written out as soon as I can; I
8 just haven't had time physically or energy with the bunch
9 of other things I have been trying to do in the case. I
10 just haven't had time to get those done. And this is of less
11 concern to me than some of the other things I have to give
12 my priority to. So that's just where I sit. I mean, I don't
13 like being in that position, but that's just where I have
14 had to sort of make a choice.

15 THE COURT: Well, I doubt if you're going to be
16 ready on that tomorrow, then, since it's going to require
17 you to give me a suggested script.

18 Let me see how long it is, if we can handle it in
19 a manageable fashion.

20 MR. NEGUS: If you want me to tell you, as I said,
21 my first choice on Witherspoon is no Witherspoon. I'm sure
22 I can get you a Witherspoon script.

23 MR. KOCHIS: My script that the -- script, the
24 outline the Court used in Gray contains the three Witherspoon
25 questions and, in addition, four or five others. So he can
26 simply with a black pen fashion what he wants the Witherspoon

EE

DECLARATION OF DAVID NEGUS

I, David Negus, declare as follows,

1. I, David Negus, am a resident of the County of Los Angeles, State of California. I am over the age of eighteen. If called upon to testify, I could competently testify to the facts contained in this declaration.

2. I am an attorney licensed to practice law in the State of California. I represented Kevin Cooper in the special circumstances case which was entitled *People v. Kevin Cooper*, Case No. CR 72787.

3. I never wanted a second counsel on this case. At the time, I did not work well with second counsel. I remember telling all of the judges, even the 987 judge that it was my intention not to seek another attorney to assist me in Mr. Cooper's case.

4. Early on in the case, Mr. Cooper requested that a second attorney be brought on the defense team to assist in the preparation of his case. An African-American attorney visited Mr. Cooper in jail and expressed interest in becoming second counsel. Immediately thereafter, Mr. Cooper approached me with the idea of bringing this attorney on as second counsel and asked if I would meet with him. Mr. Cooper stated to me that he would feel more comfortable if there was at least "one black member of the team." I told Mr. Cooper flat out that "I would not consider it. I will not meet with the man and there will be no second chair on the case."

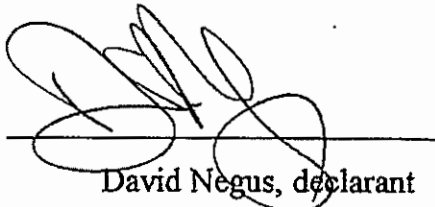
5. Twice during Mr. Cooper's case, I suffered the physical effects of stress and exhaustion which negatively affected my performance in the case. First, I was physically exhausted at the conclusion of the *Hitch* motion. I wanted to type up specific findings for the judge to sign off on; however, I was too tired and did not have enough time to read through the daily transcripts of that hearing. As a result, I produced a product that was "thrown together" at the last minute and did not contain all of the information I wanted. Second, at the end of the defense case, I wanted to put together a comprehensive statement regarding the physical

1 evidence. However, I was physically exhausted and could not complete the task. If I had
2 second counsel, I could have easily delegated both of these tasks.

3 6. In August 1984, I started to hyperventilate and felt heart palpitations while I was
4 driving. As a result, I briefly checked myself into Arcadia Methodist Hospital for monitoring.
5 Throughout my life I have suffered from Rheumatic heart disease brought on by the rheumatic
6 fever I had as a child. I take a medication called digitalis, every day for my heart problems.
7 I was taking digitalis and occasionally an aspirin for my heart problems at the time of trial.

8 7. Presently, I work with second counsel in death penalty cases. We have an attorney
9 in our office who does all of the motions and legal research on the cases for us. This is very
10 beneficial and I have seen how I have been a better attorney because of it.

11
12
13 I declare under penalty of perjury under the laws of the United States and the State of
14 California that the foregoing is true and correct. Executed at La Verne, California on October
15 21, 1996.

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David Negus, declarant