

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 54

BEFORE HON. WILLIAM H. KENNEDY, JUDGE

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

Case No. CR72787

Volume 1 of 3

Pages 1 to 158,
Inclusive

*Plavd - suffic.
quantity of hair to be
tested*

Reporter's Transcript

June 23, 2003

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SAN DIEGO, CALIFORNIA, MONDAY, JUNE 23, 2003, 10:05 A.M.

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THE COURT: This is the case of People versus Kevin Cooper. This is, pursuant to the Court's order, a hearing on a motion that was filed under 1405 of the Penal Code.

There are also two other matters outstanding, as I recall, entwined with that motion, the motion attacking aspects of this because of contamination and also a discovery motion that was filed last week, and I read the motion and I read the response from the Attorney General on it.

I think I'm going to delay a ruling on that motion or hearing any more about it until after the hearing that we had contemplated will take today and tomorrow.

MR. MCGUIGAN: I would agree that that's the logical way to proceed, your Honor, and we can talk about that at the close of this hearing.

THE COURT: Thank you. Are you ready to proceed?

MR. MCGUIGAN: Maybe we should first outline it. Mr. Plourd is recovering from across the street all the materials that I was going to use to introduce him. So the Court will know what the schedule is, we were planning on putting on Mr. Plourd first, and then, when he's done --

THE COURT: That's the Mr. Plourd that I know, Christopher?

MR. MCGUIGAN: That's the one that you know. As you know, his office is right across the street. And then -- and he was here earlier. Then I believe Mr. Kochis -- and that's the only witness that I have today to present. And then

1 Mr. Kochis has a series of witnesses which includes
2 Mr. Gregonis, the original analyst from their lab, and the
3 other people that have to do with the chain of custody, and we
4 believe that that should consume the day.

5 Then tomorrow we'll have -- Mr. Negus is scheduled
6 to be here and he will be my other witness, and he will be
7 discussing the chain of custody of the hair samples. And then
8 I think there's a couple other -- Mr. Myers, the DOJ analyst,
9 will be here, and whoever else I'll leave to Mr. Kochis to
10 tell you.

11 THE COURT: Mr. Kochis, you agree to this procedure?

12 MR. KOCHIS: Yes, your Honor. When the Court granted a
13 hearing, I agreed to make certain sheriff's department
14 personnel available without the necessity of subpoena. Three
15 of those people are here today. Two more will be here
16 tomorrow. And, in addition to that, we have a member of the
17 crime lab that's left and is with another county, and
18 Mr. Myers. They will also be here tomorrow.

19 THE COURT: So I'm a little clearer on this, are these
20 your witnesses you're intending to call or are you just making
21 them available to counsel?

22 MR. KOCHIS: Both. I've made them available. I've
23 discussed with Mr. McGuigan that what I'd prefer to do, if the
24 Court has no objection -- I don't think counsel has any
25 objection -- is I'm going to call them to the stand, lay a
26 foundation for the records and their activities, and then
27 subject -- allow them to be subject to cross-examination.

28 THE COURT: Okay. Is that acceptable to both sides?

1 MR. MCGUIGAN: Yes, your Honor, on behalf of Mr. Cooper.

2 MR. KOCHIS: Your Honor, while we're waiting for
3 Mr. Plourd, I did want to put the Court on notice, as we put
4 Mr. McGuigan on notice last week, both Mr. Millar and I intend
5 to interpose an objection pursuant to Evidence Code section
6 720(a) as to the Court allowing Mr. Plourd to testify and
7 render any opinion that relates to forensic evidence.

8 Our position is going to be that he lacks the
9 training, education, experience and testing requirements of a
10 criminalist, and that he is not a person that should be
11 allowed to testify as to what could or could not be shown by
12 some of the evidence in this case.

13 THE COURT: All right. Before we get to that -- I'll
14 hear from you in a moment on that.

15 Mr. Bernstein?

16 MR. BERNSTEIN: Yes, your Honor.

17 THE COURT: No reflection on asking the question, but
18 would you put on the record exactly what your role is here
19 today and in this case?

20 MR. BERNSTEIN: Well, I'm an independent contractor. I
21 was hired by Mr. Amidon, who represented Mr. Cooper on his
22 habeas corpus -- federal habeas corpus action, and I've just
23 remained on the case in that capacity since.

24 THE COURT: Are you standing in for Mr. Amidon today?

25 MR. BERNSTEIN: You could say so. I mean, we don't have
26 a formal arrangement, but yes is the short answer.

27 MR. MCGUIGAN: Maybe I can clarify Mr. Bernstein's
28 relationship a bit more, your Honor.

1 THE COURT: Well, he's new to this Court today.

2 MR. MCGUIGAN: He's an appellate specialist, and he has
3 drafted certainly most of the appellate pleadings in this
4 matter, and among other things he's drafted the 1405 motion
5 and most of the pleadings in this case. He has been working
6 on the Cooper case now with us for --

7 MR. BERNSTEIN: Six years.

8 MR. MCGUIGAN: -- six years, and we've resorted to him as
9 the expert on Mr. Cooper's file. His file is -- well, the
10 total package, including the defense materials, is on the
11 order of 90,000 pages. And so -- as well as the trial itself,
12 the actual trial records, transcripts and exhibits and so
13 forth are on the order of 30,000 pages, I believe. So he's
14 been the factual resource that we rely on when we need to go
15 to some portion of that voluminous file, and that's what he's
16 been doing.

17 So I anticipate today and tomorrow that he will be
18 doing most of the examination with regard to the evidence
19 tampering/contamination issues, and so -- and because
20 Mr. Amidon had focused on the Atkins motion, he and I had
21 agreed -- and I am focusing on the mitochondrial hair testing,
22 which is -- so that's why we have set up the defense team in
23 the way we have.

24 THE COURT: Mr. Millar, Mr. Kochis, either one of you
25 have any problem with his participation in the case?

26 MR. KOCHIS: No. We were put on notice that it would
27 take place this way.

28 THE COURT: Very well. Mr. Millar?

1 MR. MILLAR: No objection.

2 THE COURT: Thank you.

3 (Mr. Plourd entered the courtroom.)

4 MR. MCGUIGAN: The timely Mr. Plourd is arriving right
5 now, your Honor.

6 THE COURT: Just allow me to review the Evidence Code
7 section just cited as a basis for the prosecution's objection.

8 Well, Mr. Kochis, with respect to alerting the Court
9 about 720(a), on rereading it, I am familiar with that
10 section. It just seems to me that a foundation has to be laid
11 as to whether or not he qualifies. If you wish to take him on
12 voir dire before we get into the merits of any testimony, I'll
13 permit that.

14 MR. KOCHIS: The Court's correct, and that would be my
15 request.

16 THE COURT: Very well.

17 MR. MCGUIGAN: Of course, as the Court knows, I will be
18 offering Mr. Plourd as an expert pursuant to 801 and 802 of
19 the Evidence Code, and the materials he'd be testifying to
20 would be pursuant to 801(b). And I don't know if -- I would
21 prefer to present him and go through the voir dire as far as
22 his expert qualifications and then have Mr. Kochis, if he
23 wishes, take him on voir dire at that time.

24 THE COURT: You may call Mr. Plourd, and since you're the
25 moving party in this you would be required, as far as this
26 Court is concerned, to lay the appropriate foundation; and
27 then, as I've just indicated to Mr. Kochis, depending on what
28 ensues, he will be entitled to take him on voir dire rather

1 than cross.

2 MR. MCGUIGAN: Right.

3 THE COURT: All right.

4 MR. MCGUIGAN: Thank you, your Honor. We'd call
5 Mr. Christopher Plourd.

6 THE BAILIFF: Please raise your right hand and face the
7 clerk.

8

9 CHRISTOPHER PLOURD,

10 called as a witness on behalf of the Defendant, having been
11 first administered the oath, testified as follows:

12 THE BAILIFF: Please have a seat at the witness stand.

13 THE CLERK: State your name, please, and spell your last
14 name for the record.

15 THE WITNESS: Christopher Plourd, last name P-l-o-u-r-d.

16 THE COURT: You may proceed when you're ready.

17 MR. MCGUIGAN: Thank you.

18

19 DIRECT EXAMINATION

20 BY MR. MCGUIGAN:

21 Q. Good morning, Mr. Plourd.

22 A. Good morning.

23 Q. What do you do, sir?

24 A. I'm an attorney and also I -- I'm a forensic
25 evidence consultant. I have basically two occupations split
26 approximately 70 percent/30 percent of my practice.

27 Q. I show you a document here which is titled,
28 "Christopher J. Plourd, Biography." Is this your CV or

1 biography?

2 A. Yes, it is.

3 Q. All right. And this is a current statement?

4 A. Yes.

5 MR. MCGUIGAN: Thank you.

6 I'd like to offer that as an exhibit if I might,
7 your Honor.

8 THE COURT: Very well. Have it marked.

9 THE CLERK: Defendant's Exhibit A.

10 (Defendant's Exhibit A - Christopher Plourd's
11 curriculum vitae - was marked for identification.)

12 THE CLERK: Is that received?

13 THE COURT: He just had it marked. He hasn't offered it
14 yet because I don't think counsel's had an opportunity to
15 review it.

16 MR. KOCHIS: That's correct. We're seeing this for the
17 first time. I will have looked at it before he's done asking
18 some more questions.

19 THE COURT: All right. We'll just leave it marked as
20 Defendant's A for identification at this point.

21 MR. MCGUIGAN: Thank you. And then there's a brief
22 letter that I'd like to have marked as Defendant's B.

23 Q. Mr. Plourd, could you take a look at this document?

24 A. Yes.

25 Q. And what is that document?

26 A. It's a letter where I was asked to join a technical
27 working group that's going to begin this summer regarding
28 developing resource material involving DNA evidence, and the

1 letter is from the United States Department of Justice, Office
2 of Justice Programs, by the director.

3 MR. McGUIGAN: Thank you. I've given -- earlier today
4 given Mr. Kochis a copy of that letter as well.

5 THE COURT: All right. That will be marked Defendant's
6 B.

7 MR. McGUIGAN: Thank you, your Honor.

8 (Defendant's Exhibit B - Letter to Mr. Plourd from
9 DOJ dated 4-21-03 - was marked for identification.)

10 MR. McGUIGAN: And finally, there's a report and two
11 CD-ROMs. Why don't I let Mr. Kochis briefly look at that and
12 I'll introduce it later.

13 Q. Mr. Plourd, are you familiar with the Kevin Cooper
14 case?

15 A. Yes, I am.

16 Q. And how did you come to be familiar with that case?

17 A. Several years ago I was appointed by the court as a
18 defense expert involving the case.

19 Q. Okay. And have you been working with the defense
20 team since that time?

21 A. Yes, I have.

22 Q. And have you participated in the handling of the
23 forensic evidence, the evidence that relates to DNA, both in
24 connection with this motion and in connection with a written
25 agreement which was reached between the prosecution and the
26 defense?

27 A. I have not physically handled the evidence, but I've
28 been involved in the testing of the evidence, the agreement to

1 reach -- reached to test the evidence.

2 Q. And did you participate in the packaging and
3 transfer of the evidence first from the evidence room here in
4 the San Diego court?

5 A. I witnessed the transfer.

6 Q. Yes.

7 A. And I also witnessed the transfer from the San
8 Bernardino Crime Laboratory, and then also I was involved in
9 the unpacking of the evidence at the Department of Justice
10 laboratory in Berkeley, California.

11 Q. Okay. Now, are you familiar with Dr. Edward Blake?

12 A. Yes, I am.

13 Q. And who is Dr. Blake?

14 A. He is a defense forensic serologist that has been
15 involved in the Cooper case since the mid 1980s.

16 Q. And is he involved now?

17 A. He still is.

18 Q. And you've been the technical liaison with Dr. Blake
19 at least here in San Diego, have you?

20 A. Yes, I have.

21 Q. Now, let's briefly go through your resume,
22 Mr. Plourd. Do you need it?

23 A. Not particularly, no.

24 Q. So when were you admitted to the bar?

25 A. 1981.

26 Q. Okay.

27 THE COURT: When you say "resume," this is Defendant's A?

28 MR. MCGUIGAN: Yes, this is Defendant's A. And I don't

1 intend to go through all of it, your Honor, of course, because
2 it's an exhibit before the Court.

3 Q. So as part of that do you also discuss matters about
4 work you've done with regard to DNA evidence?

5 A. Yes, I do, extensively.

6 Q. How long have you been involved in working with DNA
7 evidence?

8 A. Since the -- approximately 1987.

9 Q. And you've handled cases of your own that have to do
10 with DNA evidence?

11 A. Yes, I have.

12 Q. And have you also consulted with other counsel with
13 regard to DNA evidence?

14 A. Numerous times.

15 Q. How many times, approximately?

16 A. Well over 50 times in the last ten years.

17 Q. Now, are you also familiar with mitochondrial DNA
18 evidence?

19 A. Yes, I am.

20 Q. Okay. And you've been involved with mitochondrial
21 DNA evidence in this case?

22 A. Yes, I have.

23 Q. In how many other cases have you been involved with
24 mitochondrial DNA evidence?

25 A. Approximately ten cases over the last five or six
26 years.

27 Q. Okay. Now, I've used the word "involved" with it.
28 In what capacity were you involved with the DNA evidence for

1 the past whenever, ten --

2 A. As a forensic consultant to other lawyers primarily
3 who have hired me to evaluate evidence for suitability for
4 testing, including mitochondrial DNA testing.

5 Q. And that has now included mitochondrial DNA, now
6 that the technology has reached that point?

7 A. Yes, it has.

8 Q. Okay. Have you also participated in seminars,
9 forums, both as an attendee and as a presenter?

10 A. Yes, I have.

11 Q. Dealing with DNA evidence?

12 A. Yes, I have.

13 Q. And what are some of the -- just a couple of the
14 forums or seminars in which you've participated?

15 A. Well, I'm a member of the American Academy of
16 Forensic Sciences and that organization has a section that
17 deals with criminalistics, forensic biology, including DNA
18 evidence, and they put on workshops and seminars and a number
19 of papers are presented at their meetings regarding DNA
20 evidence, and I attend that regularly --

21 Q. Okay.

22 A. -- as well as other -- there's other organizations
23 that also present workshops throughout the year, and I've
24 attended those as well.

25 Q. Is that locally, statewide, nationwide?

26 A. Nationwide.

27 Q. All right. Now, are you also -- and I should have
28 asked you, since you invited me, about the memberships and

1 associations you have.

2 A. The American Academy of Forensic Sciences, like I
3 mentioned; the American Association for the Advancement of
4 Science; the ASTM Committee on Forensic Sciences, the E-30
5 committee; the American Society of Forensic Odontology.
6 Those are the primary scientific organizations that I
7 participate in.

8 Q. Okay. Now, have you also co-authored some
9 publications regarding DNA evidence?

10 A. Yes, I have.

11 Q. And these are the same -- I've shown Mr. Kochis a
12 couple of CD-ROMs and a report. Do you recognize this report
13 here?

14 A. Yes, a July '02 publication, a special report by the
15 United States Department of Justice, Office of Justice
16 Programs, entitled "Using DNA to Solve Cold Cases."

17 Q. Okay. And what is your relationship with this
18 document, Mr. Plourd?

19 A. I was a member of a technical working group that
20 published this report through the National Commission on the
21 Future of DNA Evidence. So the working group that I was a
22 member of developed this report, put the content together and
23 published it through the United States Department of Justice.

24 Q. All right. And also there's a couple of NIJ-labeled
25 CD-ROMs. What are those?

26 A. The one that's black here is a CD-ROM that's
27 entitled, "What Every Law Enforcement Officer Should Know
28 About DNA Evidence, Best Practices for Identification,

1 Preservation, and Collection of DNA Evidence at the Crime
2 Scene, Beginning Level Module."

3 This was developed by the same working group that I
4 just mentioned for the National Commission on the Future of
5 DNA Evidence, and it was designed to educate first responders,
6 primarily law enforcement officers throughout the United
7 States, on the manner and methods for identifying, preserving
8 and collecting DNA evidence, or preserving the evidence for
9 collection, to educate them on the nature of their new role to
10 collect that type of evidence, biological evidence.

11 The red one is a similar CD -- educational CD-ROM
12 for individuals who would be collecting the DNA evidence at
13 crime scenes, and it's just an advanced version of the first
14 one.

15 Q. And I don't know what you call people who come up
16 with CD-ROMs. You're a co-author, if that would be the
17 appropriate term?

18 A. Whatever the term is, I was a member of the working
19 group that developed the idea for it and also the content and
20 the manner and method by which this CD-ROM was put together.

21 MR. MCGUIGAN: Okay. I can offer these as an exhibit,
22 your Honor. Probably I should. I'd like to offer these --

23 MR. KOCHIS: I haven't reviewed any of that material. I
24 have no objection to A and B because I have had an opportunity
25 to look at both of those. But the other documents I haven't
26 even looked at, if we could pass on that until later in the
27 examination.

28 MR. MCGUIGAN: Okay. We'll do that.

1 THE COURT: You can have them marked and you just won't
2 -- I gather, then, that if you offer A and B, he's not going
3 to object to it. That's the tenor of what I just heard. C he
4 hasn't had a chance to familiarize himself with. So it seems
5 fair to me that we just have C marked if you wish, and we'll
6 delay on hearing whether it's admissible or not.

7 MR. MCGUIGAN: Maybe we can mark them C, D and E.

8 THE COURT: That's fine.

9 THE CLERK: The booklet will be Defendant's Exhibit C.

10 (Defendant's Exhibit C - Booklet, "Using DNA to
11 Solve Cold Cases" - was marked for identification.)

12 MR. KOCHIS: Your Honor, I have no objection to A.
13 That's the vitae. I want to reserve my objection to B, which
14 is some letter from somewhere.

15 THE COURT: That's the letter from the Department of
16 Justice.

17 MR. KOCHIS: Yes.

18 THE COURT: All right. Just to be safe, we'll admit A at
19 this time. B and C will just be marked.

20 (Defendant's Exhibit A was received in evidence.)

21 THE COURT: There's B, C, D and E now. Can we indicate
22 for the record what C is, what D is and what E is?

23 MR. MCGUIGAN: Yes. C is the brochure or report, an NIJ
24 report titled --

25 THE CLERK: "Using DNA to Solve Cold Cases."

26 MR. MCGUIGAN: And --

27 THE CLERK: I'll be marking Defendant's Exhibit D, the CD
28 in the black case, the beginning level CD, and I'll mark as

1 Defendant's Exhibit E the CD in the red-colored case, the
2 advanced level.

3 THE COURT: Thank you.

4 (Defendant's Exhibit D - CD-ROM in black case, DNA
5 Evidence, beginning level - was marked for identification.)

6 (Defendant's Exhibit E - CD-ROM in red case, DNA
7 Evidence, advanced level - was marked for identification.)

8 BY MR. MCGUIGAN:

9 Q. Now, have you also done post-conviction work with
10 regard to these kind of forensic materials, Mr. Plourd?

11 A. Yes, I have.

12 Q. Okay. And that would include motions, participation
13 in habeas proceedings, things of that nature?

14 A. Correct.

15 Q. And have you been offered as an expert or -- in
16 connection with any or all of those proceedings, have you been
17 qualified as an expert at least in the area of the collection,
18 evaluation and recommendations for testing of forensic
19 samples?

20 MR. KOCHIS: Objection. That's compound, that question.

21 THE COURT: Sustained.

22 MR. MCGUIGAN: I'll break it down.

23 Q. Have you been involved at the trial level in the
24 collection, evaluation and referral for testing and
25 recommending types of testing and labs for testing of DNA
26 evidence?

27 A. Yes, I have.

28 MR. KOCHIS: Same objection.

1 THE COURT: Same ruling. Step by step, Mr. McGuigan.

2 MR. MCGUIGAN: All right.

3 Q. Have you been involved in the pretrial presentation
4 -- let me go back. Have you been involved in -- at the trial
5 level in the collection and evaluation of nuclear DNA
6 evidence?

7 A. Yes.

8 MR. KOCHIS: I'm going to object. I'd like to interpose
9 an objection and move to strike that answer. It's irrelevant
10 if he's been involved in these proceedings as a lawyer.
11 They're attempting to lay a foundation for his expertise as an
12 expert witness, I assume. The way the question is presently
13 phrased, I can't tell what the nature of his involvement in
14 this proceeding was, was he representing a defendant, was he a
15 litigator, was he a witness. And if it's as a lawyer, my
16 objection would be it's irrelevant.

17 MR. MCGUIGAN: Let me break it down further, your Honor.

18 THE COURT: Very well. The objection is sustained in its
19 present form. You can break it down.

20 BY MR. MCGUIGAN:

21 Q. Have you been involved, other than as a lawyer at
22 the trial level, in the -- in the evaluation of biological DNA
23 evidence?

24 A. Yes.

25 MR. KOCHIS: Objection. I'd like to have the answer
26 stricken. My objection would be the question is so vague, and
27 I can't tell what the answer is to, has he been involved in,
28 did he have a cup of coffee with a lawyer on the case, did he

1 look at a piece of evidence.

2 THE COURT: I'm going to overrule your objection, and I
3 think that he's going to have to do just exactly what you
4 suggest in your objection. But I think that's a preliminary
5 question.

6 MR. MCGUIGAN: Yes, your Honor, it was.

7 Q. Other than as a lawyer where you yourself were
8 either handling or you were an associate of people in court
9 handling the evidence, have you also acted as a consulting
10 expert to lawyers?

11 A. Yes, I have.

12 Q. And what do you do when you act as a consulting
13 expert?

14 A. A variety of things. I look at evidence, evaluate
15 the type and nature of the evidence as far as its suitability
16 for doing DNA testing, determining what type of biological
17 material would exist with reference to evidence; sometimes
18 collecting the evidence, sometimes collecting reference
19 samples with reference to doing DNA testing; making
20 recommendations for testing of particular items of evidence
21 or retesting that evidence; presenting evidence to courts
22 regarding post-conviction cases, in other words, looking at
23 all the evidence in a particular case and making
24 determinations and offering opinions as to whether or not
25 evidence could be tested and what type of test would be
26 appropriate.

27 Q. And have you qualified as an expert in court in that
28 area that you've just described?

1 A. I've submitted a number of affidavits throughout
2 various jurisdictions in the United States on that and I've
3 been set to testify, but the matters have all been resolved
4 without testimony, typically the court granting the request
5 without the need for the testimony to occur. I have testified
6 before --

7 MR. KOCHIS: Objection. I'm going to move to strike all
8 of this. It's a narrative and it's way beyond the scope of
9 the question.

10 THE COURT: Well, I think the answer is yes. The balance
11 is a narrative. Sustained on that.

12 MR. MCGUIGAN: All right. Usually, I think an expert is
13 allowed some leeway normally in explaining his answer, your
14 Honor.

15 THE COURT: Well, I think if you articulate the right
16 questions you'll get the leeway you need.

17 BY MR. MCGUIGAN:

18 Q. So do you have any equipment that you use -- well,
19 have you yourself collected biological evidence for further
20 DNA testing?

21 A. Yes, I have.

22 Q. And do you have equipment and so forth that you use,
23 a kit that you can use to collect and document this evidence?

24 A. Yes, I do.

25 Q. And how often do you use that?

26 A. Not every month, but two or three times a year,
27 essentially, would be a good estimate.

28 Q. All right.

1 A. I don't do that as a regular practice. It's
2 something that I do on occasion.

3 Q. Now -- and that's also true -- what you've testified
4 to, you do that with both nuclear DNA evidence and
5 mitochondrial DNA evidence.

6 MR. KOCHIS: Objection. It's compound.

7 BY MR. MCGUIGAN:

8 Q. Do you do it with nuclear DNA evidence?

9 A. I'm not -- I don't understand the question.

10 Q. Have you testified or offered declarations which
11 have been accepted -- have your declarations been accepted?

12 A. Yes, they have.

13 MR. KOCHIS: Objection. That's compound, whether he's
14 testified or offered a declaration. That's two separate
15 events.

16 MR. MCGUIGAN: I'll do one at a time.

17 Q. Do you remember every case in which you've done
18 this, Mr. Plourd?

19 A. Not every one, no.

20 Q. Okay. Let's go through a few. How many do you
21 remember?

22 A. Off the top of my head, a dozen or so.

23 Q. All right. Let's start with the first one of
24 those. This is a case where you offered a declaration as an
25 expert; is that right?

26 A. Yes.

27 Q. And what areas did it deal with?

28 A. It dealt with Y chromosome testing, evaluating some

1 DQ-Alpha Polymarker testing that had occurred in a case, and
2 the suitability of doing Y genetic testing.

3 Q. So that is an area of -- not mitochondrial but
4 nuclear testing?

5 A. Right, correct. Y chromosome is a nuclear DNA test.

6 Q. And what was that case?

7 A. It was a case in New York, and I don't remember the
8 name of it off the top of my head.

9 Q. Okay. And what did you do in that case? What was
10 your -- did you offer a declaration? Did you testify? What
11 did you do?

12 A. I was appointed by the court as an expert. I did it
13 pro bono, and I provided an affidavit for post-conviction DNA
14 testing in that case.

15 Q. Okay. And were you accepted as an expert in that
16 case?

17 MR. KOCHIS: Objection. That calls for a conclusion. I
18 don't think he's in a position to make that decision.

19 MR. MCGUIGAN: A legal conclusion.

20 THE COURT: Let's take it a step at a time. In that
21 affidavit did you outline your qualifications as you saw them
22 to that court?

23 THE WITNESS: Yes, I did.

24 THE COURT: And of your own knowledge, was that affidavit
25 used by the court in making an assessment?

26 THE WITNESS: Yes, it was accepted, and the testing was
27 done.

28 THE COURT: Thank you.

1 MR. MCGUIGAN: Thank you.

2 Q. Now let's go to the next one. Did you have a second
3 one, sir?

4 A. Yes.

5 Q. And what did you -- in what capacity did you
6 function as an expert in that case? And let's first start
7 with the subject matter.

8 A. It was a bite mark DNA case and it was for a
9 prosecutorial office in Hawaii, the big island of Hawaii, and
10 it had to do with the suitability for certain evidence to be
11 tested regarding an old case.

12 Q. In that case you were consulted by the prosecutors?

13 A. Yes. I believe it was Hilo, Hawaii, if I remember
14 correctly.

15 Q. And you were consulted as to what issues?

16 A. There were some hospital slides that were done in a
17 rape kit, and all the other evidence was destroyed and the
18 only thing left was some slides that were done for some semen
19 or sperm motility testing; and the question was what type of
20 test would be appropriate for that type of material at the
21 time that that decision was being made.

22 Q. What type of DNA test, nuclear?

23 A. Correct. Depending on when you're making this
24 decision, there's different technologies that have evolved
25 that make that decision different.

26 Q. Right. And so did you offer an affidavit in that
27 case? Did you testify? What did you do?

28 A. I gave a declaration. There was some court

1 proceeding going on as to what would be the appropriate test,
2 and I gave a declaration and that was utilized and the testing
3 was done eventually. I never testified in the Hawaii case.

4 Q. In the declaration did you set forth your
5 qualifications, background and training?

6 A. Yes, I did.

7 Q. You were not -- you were found qualified, to the
8 best of your knowledge?

9 MR. KOCHIS: Objection. That calls for a conclusion.

10 THE WITNESS: I believe the judge made --

11 THE COURT: Yes, sustained.

12 THE WITNESS: I didn't understand the question, by the
13 way.

14 BY MR. MCGUIGAN:

15 Q. Anyway --

16 THE COURT: Well, to your knowledge was that affidavit
17 accepted by the court and were rulings made pursuant to it, if
18 you know?

19 THE WITNESS: That's my understanding.

20 MR. KOCHIS: Your Honor, I'm going to object. That calls
21 for speculation on his part, if he's not present at a hearing
22 in Hawaii.

23 THE COURT: I think that goes to the weight, not to the
24 admissibility, Mr. Kochis.

25 MR. KOCHIS: Thank you.

26 THE COURT: Overruled.

27 MR. MCGUIGAN: Thank you.

28 Q. Now, can we go to the third one? What sort of a

1 case was that, Mr. Plourd? Pick one of the remaining ones.

2 A. There was a recent case in San Bernardino County
3 that I was involved in where I offered an affidavit regarding
4 a post-conviction DNA testing issue.

5 Q. Okay. And was that in connection with a motion such
6 as this?

7 A. Similar, very similar.

8 Q. And you offered an affidavit on that, and did you
9 attend any of those hearings?

10 A. I did not.

11 Q. Did you speak to any of the prosecution analysts
12 with regard to what was being done?

13 A. I spoke with Mr. Gregonis.

14 MR. KOCHIS: Objection. The question's been asked and
15 answered. It calls for a yes-or-no answer. He's answered
16 that.

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 BY MR. MCGUIGAN:

20 Q. Who was it?

21 A. Mr. Gregonis.

22 Q. And to the best of your knowledge, was that
23 affidavit utilized in rulings made on that and other evidence
24 that was presented?

25 A. Yes.

26 MR. KOCHIS: Objection. That calls for speculation on
27 his part. There's no personal knowledge if he wasn't in the
28 courtroom.

1 THE COURT: Sustained.

2 BY MR. McGUIGAN:

3 Q. Following the hearing, were you asked to confer with
4 the prosecution and the defense with regard to the selection
5 of a lab to do testing?

6 A. Yes.

7 Q. Okay. And did you confer with both the prosecution
8 and the defense and jointly arrive at a lab that was
9 qualified?

10 A. Yes, and that process is ongoing. The order hasn't
11 been finalized.

12 MR. KOCHIS: Objection; nonresponsive beyond the "Yes."

13 THE COURT: He said "Yes." Sustained.

14 MR. McGUIGAN: Okay. Thank you.

15 Q. Now, in that -- is that mitochondrial DNA that's
16 involved in that case?

17 A. Both mitochondrial and nuclear DNA testing.

18 Q. And -- well, let's discuss one other case. Pick
19 another case in which you were involved post-conviction,
20 post-conviction or --

21 A. The Ted Kaczynski case. I was involved in that
22 case.

23 Q. Okay. Involved -- in what capacity were you
24 involved?

25 A. Evaluating the testing that was done by the FBI
26 laboratory on behalf -- for the defense.

27 Q. Okay. And did you generate any declarations or did
28 you testify in that case?

1 A. No.

2 Q. Okay. You consulted with the defense team, Miss
3 Clark and others, as an expert on that type of evidence?

4 A. Yes.

5 Q. And these documents here which we have from the
6 National Institute of Justice and the CD-ROMs, in what
7 capacity did you work as a co-author on those -- let's take
8 first the --

9 THE COURT: Those are C, D and E.

10 BY MR. MCGUIGAN:

11 Q. First taking C, which is the NIJ Special Report
12 dealing with cold cases.

13 A. Essentially, the National Commission on the Future
14 of DNA Evidence put together a working group consisting of
15 technical experts involving DNA evidence, and that working
16 group was tasked with assessing, first of all, and then the
17 level of need for law enforcement training in the area of DNA
18 evidence, and then developing remedies to improve that, the
19 educational awareness for law enforcement officers.

20 That was the fourth of -- fourth publication from
21 that technical working group, and the working group actually
22 put together all the materials after evaluating the needs,
23 taking evidence as to the level of need that was appropriate
24 for law enforcement education and actually putting together
25 the materials and approving them, editing them, publishing
26 them through the National Institute of Justice.

27 Q. Okay. And some of the other members of the group
28 included Ms. Bashinski, Chief of Forensic Services for the

1 California Department of Justice?

2 A. Yes.

3 Q. And it included Mr. Johnsey of the Division of
4 Forensic Services of the Illinois State Police Department?

5 A. Correct.

6 Q. And Mr. Strange, an assistant district attorney from
7 Texas?

8 A. Yes.

9 Q. And Lee Colwell. What does Mr. Colwell do?

10 A. I believe he was a university professor from
11 Wisconsin.

12 Q. From Arkansas?

13 A. Yes, that's correct. He's from Arkansas.

14 Q. And this report is using DNA to solve cold cases.
15 What do you do when you use DNA to solve cold cases? What is
16 the procedure that's used?

17 A. Well, the idea is that there are a number of old
18 cases that are unsolved throughout the United States, and
19 there is a need to systematically look at these cases to see
20 if they can't be resolved, solved, using DNA technologies that
21 are available.

22 This report was a -- sort of a technical report to
23 law enforcement agencies to give them a guideline, so to
24 speak, as to how to evaluate the cases for suitability of
25 conducting DNA testing, prioritizing them, looking at the
26 evidence, making determinations as to what type of testing is
27 available, utilizing DNA databases to assist them in their
28 quest to solve a cold case.

1 Q. So basically directed towards the prosecution of
2 these cases?

3 A. Law enforcement agencies, and --

4 Q. And is it -- would you be able to characterize it as
5 similar in many ways to habeas cases, which are also old cases
6 that have old evidence that you need to look at and evaluate,
7 make recommendations on?

8 MR. KOCHIS: Your Honor, I'm going to object. That's an
9 argumentative question. Counsel's starting to testify.

10 THE COURT: Sustained.

11 BY MR. MCGUIGAN:

12 Q. Do you see any similarities between the work you do
13 on a cold case, the recommendations you make, evidence you
14 evaluate, and work you do on a post-conviction case which is
15 the same age, ten, twenty years old?

16 MR. KOCHIS: I would object as to its relevancy.

17 THE COURT: Overruled. You may answer.

18 THE WITNESS: You're looking at old evidence, and whether
19 you're using it to solve an old case or reopen a case that's
20 been solved, the issues are the same. You're looking at the
21 technical aspects of whether or not DNA testing is suitable,
22 appropriate and feasible on an old piece of evidence, and you
23 have to evaluate the nature of that evidence, the nature of
24 any biological material on the evidence, and make judgments
25 based on your review of that.

26 BY MR. MCGUIGAN:

27 Q. Okay. Judgments with regard to types of testing?

28 A. Correct.

1 Q. Have you also lectured to law enforcement officers
2 in this area of collecting, evaluating and preserving
3 evidence?

4 A. Yes, I have.

5 Q. How many times?

6 A. Four or five times.

7 Q. And these CD-ROMs which you and the working group
8 prepared, what are they directed toward? Are they directed
9 toward -- what are they directed toward?

10 A. They're directed towards educating police officers,
11 both responding or -- basically patrol officers, one, and then
12 the second one would be evidence collection officers, as to
13 how to identify, preserve and collect DNA evidence for later
14 testing. They're also generally directed -- it's an
15 interactive CD-ROM educational tool that gives the police
16 officer a background as to what the nature of the testing is
17 and why it's important to collect it in a certain way.

18 Q. Have you also lectured to defense attorney groups in
19 the subject area of DNA evidence, its collection, preservation
20 and testing that's appropriate?

21 A. Yes, I have.

22 Q. And what are some of the lectures you have given to
23 defense attorney groups and what groups?

24 A. Just presentations at seminars, meetings, as to what
25 type of evidence is suitable for testing, what type of tests
26 are currently available, basically how they should make
27 judgments as to when to test, when not to test.

28 Q. And in your experience in that area, is it common to

1 recommend that they consult with a person such as yourself?

2 MR. KOCHIS: I'm going to object to that. It's
3 irrelevant. It calls for speculation as to what other people
4 are doing, who they're consulting with.

5 MR. MCGUIGAN: Well, I'll ask it another way, your Honor.

6 THE COURT: I'll sustain it as phrased. You may inquire
7 in a different direction.

8 BY MR. MCGUIGAN:

9 Q. Are you consulted by other defense counsel from time
10 to time?

11 A. Yes.

12 Q. What percentage of your practice consists of those
13 consultations?

14 A. At least 30 percent currently.

15 Q. And what do they consult you about?

16 A. Evaluating evidence in new and old cases with
17 reference to the suitability for testing, DNA testing,
18 reviewing laboratory data as to testing that's done by their
19 opposition, the prosecution, making recommendations as to
20 whether retesting should occur, giving advice as to evidence
21 that isn't tested, and giving advice as to whether different
22 types of tests should be done.

23 Q. Okay. And that's basically the capacity that you've
24 been working in in this case here, the Cooper case.

25 A. Correct.

26 MR. MCGUIGAN: All right. This letter --

27 THE CLERK: Would you like that marked?

28 MR. MCGUIGAN: Yes.

1 THE CLERK: Defendant's F.

2 MR. MCGUIGAN: I'm sure Mr. Kochis has a copy of it.

3 THE COURT: Is this a different letter than the one you
4 alluded to?

5 MR. MCGUIGAN: I thought it was B. I thought we had it
6 already.

7 THE COURT: Well, the record is very cloudy. You had
8 marked as Defendant's B for identification a letter which the
9 witness identified, the letter from the U.S. Department of
10 Justice, according to my notes. Is this a different letter or
11 the same letter?

12 MR. MCGUIGAN: It's the same one, your Honor.

13 THE COURT: I don't want it marked F, then. We've
14 already had it marked B.

15 MR. MCGUIGAN: So I'll withdraw that.

16 Q. Defendant's B, what is that letter, Mr. Plourd, from
17 someplace -- what is the place that it's from?

18 A. Well, it's from Sarah Hart, who is the director of
19 the Office of Justice Programs for the National Institute of
20 Justice, United States Department of Justice. And it's an
21 invitation, an appointment to become a member of a working
22 group on the principles of forensic DNA for officers of the
23 court that has been put together and is about ready to start
24 to meet. The first meeting is actually scheduled for the
25 first weekend in August.

26 MR. KOCHIS: Your Honor, I will object. The document
27 speaks for itself, and whether it comes in over a hearsay
28 objection or not will be the Court's ruling. But if it does

1 come in, the Court can read it.

2 THE COURT: Overruled. I'll let that stand. I don't
3 think it has to go any further. If it comes in, I'll look at
4 it for sure.

5 MR. MCGUIGAN: Thank you.

6 Q. What officers of the court are involved in this
7 program, Mr. Plourd?

8 A. I believe the target educational group would be
9 judges, prosecutors and attorneys that are involved in the
10 forensic DNA cases throughout the United States.

11 Q. Now, as part of the background that you have to
12 evaluate evidence, evaluate the appropriate testing procedures
13 for the evidence and review how it was collected, how it was
14 preserved, in other words, the -- I'm trying to ask you about
15 the technical evaluation of evidence, how it's preserved, how
16 it's collected. Have you familiarized yourself with the
17 actual scientific background of DNA testing?

18 A. Yes.

19 Q. And you're familiar with those principles as well?

20 A. Yes, I am.

21 Q. And you're familiar with, say, testing procedures
22 such as was used in this case, which was the -- what was it in
23 this case? The nuclear testing that was done.

24 A. Yes.

25 Q. Yes. And you, in fact, assisted and were the
26 primary person to negotiate on behalf of the defense the
27 earlier agreement that we -- that was reached between the
28 parties as far as testing was concerned?

1 A. Yes, I was.

2 MR. KOCHIS: Objection. That's irrelevant for the
3 purposes of expertise.

4 THE COURT: Overruled. The answer may stand. He said
5 "Yes."

6 BY MR. MCGUIGAN:

7 Q. And in that capacity did you coordinate with not
8 only Mr. Millar and maybe Mr. Kochis to a minor degree, but
9 with technical experts from the DOJ in that regard?

10 MR. KOCHIS: Objection. It's irrelevant.

11 THE COURT: Why is this relevant to what we're talking
12 about in this particular limited issue?

13 MR. MCGUIGAN: All right. Well, it's just another
14 example, but it probably should follow, I agree, your Honor.

15 THE COURT: Very well. Objection sustained.

16 MR. MCGUIGAN: Well, I would offer Mr. Plourd as an
17 expert in the area that I have outlined, your Honor. I would
18 submit that he's handled many, many cases. He's consulted in
19 many cases, not as a lawyer, which he's also done, but as a
20 consulting expert in the field of this kind of scientific and
21 forensic evidence throughout the country. He's nationally
22 recognized. He's a member of the working committees which
23 draft materials, training for police officers, and I would
24 submit he's certainly an expert in this area or else all these
25 things which are done for the police must be bad.

26 THE COURT: All right. Mr. Kochis, with respect to some
27 of these exhibits, do you want some time to review them -- I
28 know that you've seen them, you told me, for the first time

1 this morning -- before you undertake to examine him on voir
2 dire? You make the call for me. I'll give you a little time
3 if you want it.

4 MR. KOCHIS: If -- I have no objection to A being
5 received. It's a list of his qualifications. I assume he
6 would regurgitate those if I went line by line. As to B, I
7 would be objecting as to B, and I believe C, D and F also on
8 the timeliness of it, the hearsay nature of it, and those
9 would be my objections. Then I would like to ask him some
10 questions on voir dire.

11 THE COURT: All right. You may proceed.

12 MR. KOCHIS: Can I have one minute with Mr. Millar
13 before we go further?

14 THE COURT: Yes.

15 (Discussion off the record.)

16 MR. KOCHIS: Thank you, your Honor.

17 THE COURT: Okay. I think you misspoke yourself a while
18 ago. I think you're objecting to C, D and E, not F. F is not
19 before me. B is what used to be the old F.

20 MR. McGUIGAN: Right.

21 MR. KOCHIS: I'm objecting to B, C, D and, if there is an
22 E, which I believe there is, to E, and I realize F has been
23 withdrawn. Thank you.

24 THE COURT: Okay. You may inquire. I'll rule on this in
25 a moment.

26 MR. KOCHIS: Thank you.

27 / / /

28 / / /

VOIR DIRE EXAMINATION

BY MR. KOCHIS:

Q. Mr. Plourd, do you have a bachelor's degree in biology?

A. No.

Q. A bachelor's degree in chemistry?

A. No.

Q. A bachelor's degree in any forensic science?

A. No.

Q. What is your bachelor's degree in?

A. It is a combination of geography and history, a dual major.

Q. Do you have any college coursework in biochemistry?

A. No.

Q. Any college coursework in genetics?

A. Biology, which includes genetics.

Q. Do you or do you not have college coursework in genetics?

A. At the time I went to college there was very little genetics, so I wouldn't opine that that really dealt with genetics.

Q. Do you have any college coursework in molecular biology?

A. No.

Q. Any college coursework in molecular genetics?

A. No.

Q. Have you ever worked for a crime lab?

A. No.

1 Q. Do you have any formal training from a crime lab on
2 the preparation of samples for DNA analysis?

3 A. No.

4 Q. Have you ever taken a stain and prepared it for
5 analysis?

6 A. No.

7 Q. Have you ever taken a sample of known blood and
8 prepared it for DNA analysis?

9 A. No.

10 Q. Have you ever been involved in proficiency testing?

11 A. No.

12 Q. Have you --

13 A. I take that back. Reviewing proficiency testing for
14 laboratories, I've been involved in that, but not the testing
15 itself.

16 Q. Have you ever done any testing which has been
17 subject to a review?

18 A. No.

19 Q. Have you ever worked for a prosecutor's office?

20 A. Yes.

21 Q. Full time as a prosecutor?

22 A. No. I've advised prosecutors' offices as a
23 consultant in the field of forensic evidence, DNA analysis,
24 as a consultant.

25 Q. Of the cases you've actually appeared as
26 representing a party in the courtroom, is that primarily as a
27 defense attorney?

28 A. Yes, when I'm actually attorney of record, yes.

1 Q. You were retained by the defense in this case?

2 A. I was appointed by the court pursuant to a defense
3 request. I believe they -- I was court-appointed.

4 Q. And you're paid for your services in this case?

5 A. Yes, I am.

6 Q. By the court?

7 A. By somebody. I'm not sure who's paying, but I
8 believe it's San Bernardino County.

9 Q. And those are petitions that are submitted by
10 defense counsel?

11 A. Correct.

12 Q. Now, you talked about three specific cases in which
13 you have submitted a declaration in the past; is that correct?

14 A. Correct.

15 Q. The case in New York, were you in the courtroom when
16 the judge ruled on that matter?

17 A. No.

18 Q. The case in Hawaii, were you in the courtroom when
19 the judge ruled on that matter?

20 A. No.

21 Q. The case in San Bernardino, which is closer to your
22 home, were you in the courtroom when the judge ruled on that
23 matter?

24 A. No.

25 Q. The pamphlet that Mr. McGuigan referred to earlier,
26 which I believe has been marked as C, perhaps --

27 A. That's my recollection. It's actually a special
28 report.

1 Q. And that's a working group that you're a part of?

2 A. Right. The working group has now terminated its
3 work as of -- actually, that was the last publication for the
4 DNA commission. But it's over at this point.

5 Q. And the report deals with a number of different
6 issues; is that correct?

7 A. Yes, it does.

8 Q. Among those are legal considerations?

9 A. Correct.

10 Q. Such as statute of limitations?

11 A. That's one issue, yes.

12 Q. And exceptions to the statute of limitations?

13 A. Correct.

14 Q. Would you have provided some input on that topic to
15 the committee?

16 A. All topics, including that.

17 Q. And there's some victim and witness --
18 victim/witness considerations in the pamphlet; is that correct?

19 A. Correct.

20 Q. Would you have provided that type of input?

21 A. We had subject matter experts that were the primary
22 source of information regarding that, if I remember correctly.

23 Q. And then would there be actual scientists that were
24 the experts that would provide the information -- the subject
25 matter information on DNA issues?

26 A. Amongst others.

27 Q. You mentioned in response to Mr. McGuigan's
28 questions that you provide advice to defense lawyers as to

1 whether or not to have certain material tested; is that
2 correct?

3 A. Yes.

4 Q. Is that trial strategy?

5 A. In part, yes.

6 Q. And is it post-conviction strategy as to whether or
7 not to have a particular piece of evidence tested?

8 A. Right. That wouldn't be a trial strategy. It would
9 be basically an opinion as to the appropriateness of doing
10 testing post-conviction as opposed to not doing testing.

11 Q. And do you also discuss the potential liabilities,
12 what the test could show?

13 A. Oh, absolutely.

14 Q. Now, in this case is there a defense expert who is,
15 in fact, a scientist?

16 A. There's a number of them.

17 Q. Do you know a person named Ed Blake?

18 A. Certainly, yes, I do.

19 Q. Did you see him at the DOJ lab when some of the
20 evidence was unpacked in this case?

21 A. Yes, I did.

22 Q. And have you consulted with Mr. Blake in this case?

23 A. Yes, I have.

24 Q. You are aware that he wrote a letter to the Court --

25 MR. MCGUIGAN: Your Honor, I think this is beyond the
26 scope of this issue, which is his expertise.

27 THE COURT: Well, let him finish the question and I'll
28 rule on it.

1 BY MR. KOCHIS:

2 Q. You're aware he wrote a letter to the Court
3 suggesting that the testing sequence be altered?

4 MR. MCGUIGAN: I renew the same objection, your Honor.

5 THE COURT: Where are we headed, Mr. Kochis, with this?
6 Is that as to his qualifications?

7 MR. KOCHIS: I'll withdraw the question.

8 THE COURT: It sounds like more appropriate
9 cross-examination; but as to qualifications, it doesn't sound
10 like it.

11 MR. KOCHIS: I would agree, your Honor.

12 THE COURT: Thank you.

13 BY MR. KOCHIS:

14 Q. You have never actually conducted a DNA test on any
15 sample; is that correct?

16 A. That's correct.

17 MR. KOCHIS: I have no further questions on voir dire.

18 THE COURT: All right. Do you wish to be heard? You're
19 offering him as an expert.

20 MR. MCGUIGAN: Yes, your Honor, and I think I'll preface
21 the whole thing by saying he's not being offered as an expert
22 on the actual testing or results in this case, whether we have
23 a match, what the statistical probabilities are.

24 He's being offered as an expert on the collection
25 and handling of the evidence and specifically, for this
26 hearing, hair evidence, and I'm also seeking to offer his
27 opinion on whether that evidence is appropriate for
28 mitochondrial testing, namely, will we get a good result

1 scientifically and is it in a condition that would give us a
2 result, and what we could expect mitochondrial results to be,
3 not the actual testing itself. So that's what he's being
4 offered as an expert on.

5 THE COURT: Mr. Kochis?

6 MR. KOCHIS: Your Honor, my objection would be if counsel
7 is going to try to elicit an opinion on the things he
8 mentioned at the end, if it's suitable for testing, could a
9 result be obtained, it would seem that's a question for an
10 analyst or a scientist. Mr. Plourd has no scientific
11 background. He's never done any DNA testing. He's never
12 prepared any sample for testing.

13 I would like to make an analogy by way -- I would
14 like to make an argument by way of analogy to what the
15 California Supreme Court talked about in People versus
16 Venegas, which is a case that was found -- it is found at 18
17 Cal.4th 47. And they discuss, starting at Page 68, some of
18 the factors that they found in the background of the FBI
19 analyst that they felt entitled that analyst to testify in one
20 area but not in the other.

21 They did not qualify the analyst in a broader
22 Kelly-Frye statistical area, but they talked about this: That
23 Agent Lynch had a master's degree in cell biology; that for
24 four years Lynch had been an examiner in the serology unit of
25 the FBI; then Lynch transferred to the DNA analysis unit,
26 where she was trained in laboratory techniques, molecular
27 biology, and statistical calculations; that she was one of the
28 ten most qualified FBI examiners in the area of DNA; that she

1 reviewed the casework of other analysts.

2 We have here, your Honor, a person that essentially
3 consults. He's a defense lawyer. That's his bread and
4 butter. And he gives advice to lawyers and to judges on
5 perhaps some of the courtroom forensic aspects of the case.
6 He's not qualified to prepare a sample, he's not qualified to
7 analyze a sample, and he's not qualified to give an opinion
8 about whether or not a particular sample potentially has or
9 doesn't have any scientific significance to a case from an
10 analytical standpoint.

11 He's part of working groups that appear from the
12 pamphlets to contain a wide variety of people, judges, police
13 officers, some type of a network. But I would suggest that in
14 the field of criminalists, criminalistics, if every scientist
15 whose wife or child or significant other attended conferences,
16 joined a committee -- that would not make them qualified to
17 render an opinion in a court of law as to whether or not a
18 particular sample should or should not be subject to future
19 analysis. I would submit it.

20 THE COURT: Any response?

21 MR. McGUIGAN: Well, of course, the area of expertise --
22 the expert's qualifications, of course, as the Court knows
23 well, deal with the area of expertise in which he's being
24 offered. Mr. Plourd is not being offered as an expert on the
25 actual testing. I've repeated that now for the third time.
26 So whether or not he has done any of it is irrelevant. The
27 fact that he hasn't done any of it is irrelevant.

28 He -- police officers who come in and testify in

1 this court all the time and have collected the evidence rely
2 in part on the training that he gives them. They don't have
3 master's degrees in science. They don't have advanced degrees
4 in criminalistics. They participate in the collection and
5 preservation of evidence, and one of the things they rely on
6 is recommendations, lectures and so forth by people such as
7 Mr. Plourd.

8 Now, there may or may not be a criminalistic expert
9 who deals in the same area. Many criminalistic experts have
10 never collected evidence in the field. They've never
11 evaluated the evidence. They just do what's presented to them
12 to test, and we all know that, your Honor.

13 So in this area Mr. Plourd is being offered as an
14 expert to testify about the hair samples, and I think that his
15 opinions -- which are relied on by prosecutors, defense
16 attorneys and judges about what to test, what types of tests
17 to do -- may not be conclusive, but they are certainly very
18 well-qualified opinions based on many, many years of
19 consulting, interactions with all these people, membership in
20 all these technical organizations, as well as his other
21 memberships.

22 You know, Mr. Kochis essentially is suggesting that
23 the Department of Justice, I guess, scrap all these materials
24 which are used for training of the actual people who collect
25 the evidence, and it's surprising to me that there's even a
26 question about whether he's qualified in the field that he's
27 being asked to testify on.

28 I think he's certainly also qualified to express

1 opinions, which he's done hundreds of times, on can this
2 material be tested, what kinds of tests are appropriate based
3 on the testing programs that are available today, and which he
4 is familiar with and maintains his expertise on by attendance
5 at all these national meetings and numerous scientific
6 societies and presentations and participation in all these
7 other meetings, the same materials that all the other people
8 who may or may not be criminalists, may or may not be police
9 officers -- I would think any of those folks are qualified in
10 this same area, and the fact that he's a defense attorney
11 seems to me to be irrelevant.

12 Now, one other thing: I'm sure the Court understood
13 -- there was an indication that all he does is consult about
14 legal strategy, and of course I think we've amply covered
15 that. But if the Court has any question about whether that's
16 all he does, he's a consultant appointed as a technical expert
17 to assist us, and of course one of the reasons that he's good
18 at that is because he does have some background in legal
19 strategy.

20 But in terms of his advice regarding just the
21 scientific issues, whether or not we should test the
22 mitochondrial as a matter of legal tactics is, you know, not
23 what he's being presented to testify about, whether he agrees
24 with the legal tactics that the defense team has chosen, but
25 whether he thinks this would result in usable, meaningful
26 evidence.

27 THE COURT: All right.

28 MR. MCGUIGAN: I don't know who else can testify to it.

1 I don't see how the lab analyst at the bench who's never
2 collected the evidence, never evaluated its integrity, how
3 they could testify about it.

4 THE COURT: All right.

5 MR. MILLAR: Your Honor, may I make an observation or two
6 just very briefly?

7 THE COURT: All right.

8 MR. MILLAR: In the agreement itself, paragraph 2.09, it
9 says that:

10 "Cooper may elect to designate one of his attorneys
11 to be present and to observe only the opening and initial
12 photodocumentation of the case evidence items to be
13 tested" --

14 MR. McGUIGAN: Your Honor, I --

15 THE REPORTER: I'm sorry. I can only report one at a
16 time.

17 THE COURT: I'll permit him to recite the version of that
18 agreement.

19 MR. MILLAR: -- "(not including reference sample items)."

20 Paragraph 2.10 says that:

21 "After the initial documentation and inspection of
22 the case evidence items, only Dr. Edward T. Blake,
23 Laboratory Director Gary Sims and Senior Criminalist
24 Steven Myers will collaborate to select and to document
25 biological specimens, including hair, suitable for DNA
26 testing by DOJ Berkeley."

27 I think there's a clear demarcation here. This is
28 not a case in which they have no expert to present to this

1 Court. The expert is the expert designated in the agreement,
2 Dr. Blake. Mr. Plourd is not designated in the agreement as
3 an expert. He's designated only as someone to be present at
4 the time of the opening of the evidence. I just wanted to
5 make that point.

6 THE COURT: All right.

7 MR. McGUIGAN: I object to that on the same grounds that
8 other areas in this case were objected to, namely that they
9 don't deal with the expertise. It's been objected that it
10 doesn't deal with his expertise. To take a bit out of this
11 document and quote it to the Court -- I would be very happy,
12 if Mr. Plourd qualifies -- and he would be a witness in any
13 event -- to discuss this whole document.

14 Those are words that are in the document. There's
15 lots of other words in the document too, your Honor. So you
16 really can't evaluate his expertise as an expert based on one
17 paragraph of this 30-page document which took us three months
18 to negotiate word by word.

19 THE COURT: All right.

20 MR. KOCHIS: Your Honor?

21 THE COURT: Yes.

22 MR. KOCHIS: Could I make a last comment as to where I
23 started on this objection?

24 THE COURT: And this is going to be it. We're not going
25 to go back and forth like this. Go ahead.

26 MR. KOCHIS: Referring again to 720(a), it talks about
27 the experience that one should have. They should have special
28 knowledge. He has been to seminars. I would concede that.

1 He needs some special skill -- I don't -- and experience and
2 training. I don't see any training, any experience in the
3 hands-on analysis or education. I don't see a background in
4 any forensic science, any biology or any chemistry, and those
5 are the things upon which we're making our objection.

6 THE COURT: Thank you. I'll be in recess until further
7 call. I'd like to see Exhibit A and those marked for
8 identification B, C, D and E, please.

9 (At 11:22 a.m. a recess was taken until 11:32 a.m.)

10 THE COURT: Initially the objections to B, C, D and E,
11 while perhaps technically correct, indirectly show aspects of
12 Mr. Plourd's recognized expertise in certain areas as a
13 consultant and consequently, for the purposes here, are
14 overruled and they will be received into evidence.

15 (Defendant's Exhibits B, C, D and E were received in
16 evidence.)

17 THE COURT: Actually, in listening to the examination on
18 voir dire, the impression that the Court received and still
19 has is that I will accept Mr. Plourd as an expert for the
20 limited purpose of his expertise, in that the questions asked
21 would go to the weight of his opinions and testimony but not
22 to the admissibility.

23 You may recall Mr. Plourd.

24 MR. MCGUIGAN: Thank you, your Honor.

25 THE COURT: The ultimate test here is going to be whether
26 or not those items listed in 1405 apply or don't apply or
27 whether there's a reasonable probability that a result other
28 than the present result would obtain. That's the central

1 issue. Let's get to it.

2 MR. McGUIGAN: Thank you, your Honor.

3

4 DIRECT EXAMINATION (RESUMED)

5 BY MR. McGUIGAN:

6 Q. So in light of that, Mr. Plourd, could you briefly
7 describe the -- your familiarity with this case and the
8 materials that you've reviewed in reaching opinions on this
9 case in the area of the mitochondrial -- the potential for
10 mitochondrial testing.

11 A. Yes. I've looked at the previous laboratory work
12 that was done, including the original forensic serology work,
13 the protein enzyme testing that was done in the early 1980s
14 and all the laboratory notes, data, photodocumentation. I --
15 both that was done by the San Bernardino Crime Laboratory, as
16 well as some work that was done by Dr. Blake, reports thereof,
17 notes thereof, photographs of the evidence. I've actually
18 looked at some of the evidence myself.

19 I was involved in the discussions regarding what
20 type of evidence was going to be tested, what type of testing
21 methods would be used primarily with Gary Sims, the director
22 of the California Department of Justice Berkeley DNA
23 Laboratory, as well as Dr. Blake.

24 I have reviewed all the technical material that was
25 generated as a result of that testing, including evidence,
26 documentation -- both written and photodocumentation of the
27 laboratory testing data called electropherograms and various
28 reports associated with previous testing that was done, and

1 then I've in particular looked at -- for the purposes of
2 rendering the opinion concerning the hair that's involved in
3 this case I've looked at the actual hair itself, both
4 photodocumentation and some of the hair itself, as to whether
5 or not it's suitable for what's called mitochondrial DNA
6 testing. In general, that's what I've done.

7 Q. Did you participate in the transfer -- packaging and
8 transfer of the evidence in this case to the DOJ lab, both
9 here in the evidence room and at San Bernardino?

10 A. Yes, I did. I simply observed it, both here and in
11 San Bernardino, and at the Berkeley DNA laboratory it was
12 actually unpackaged and it was itemized and reviewed, each
13 item.

14 Q. Now, was I present at San Bernardino and at the
15 evidence room also as the defense team counsel?

16 A. I believe so.

17 MR. KOCHIS: Objection. That's compound.

18 BY MR. MCGUIGAN:

19 Q. All right. Was I present at the San Diego evidence
20 room acting as defense counsel, together with you and together
21 with the representatives from the prosecution when that
22 evidence was packaged -- collected, packaged and transferred?

23 A. It was -- you were there and so were the other
24 people. It was not packaged. It was already packaged.

25 Q. That's true. Some of it was packaged in plastic
26 over your objection, as I recall.

27 MR. KOCHIS: Objection. It's irrelevant. It's an
28 argumentative question.

1 THE COURT: Sustained.

2 MR. McGUIGAN: All right.

3 Q. Now, did we then go to San Bernardino, you and I,
4 and were we there when that evidence was brought out,
5 organized, packaged and mailed?

6 A. Yes.

7 Q. And then we went up yet a second time when reference
8 samples were collected from the lab, transferred and mailed?

9 A. I don't think I was there when the reference samples
10 were sent.

11 Q. Then you also journeyed to Berkeley and were present
12 with Dr. Blake when -- and who were the folks from the DOJ?

13 A. Criminalist Steve Myers was there, as well as
14 Laboratory Director Gary Sims was there for most of the
15 evidence evaluation process.

16 Q. Okay. And this was, of course, well known to
17 everyone that you were there?

18 A. I believe so.

19 MR. KOCHIS: Objection. That calls for speculation.

20 THE COURT: Well, I don't know that it calls for
21 speculation, but it sure sounds irrelevant to me.

22 MR. McGUIGAN: Okay.

23 Q. Now, when you were first consulted on this case, did
24 the subject of the hair -- testing the hair through
25 mitochondrial as well as possibly nuclear, was that one of the
26 matters that the defense was concerned about?

27 A. It's one of the issues.

28 Q. And then when we reached a point where we started to

1 negotiate this agreement, which was an agreement reached
2 between the parties outside -- it wasn't part of the court
3 proceedings per se -- did you participate in that as well?

4 A. Yes, I did.

5 Q. And, in fact, are you the person who negotiated who
6 the analysts would be in this case at DOJ?

7 MR. KOCHIS: Objection; relevance.

8 THE COURT: Sustained.

9 BY MR. MCGUIGAN:

10 Q. Did you recommend both the lab and certain
11 technicians to be the analysts in the case?

12 MR. KOCHIS: Same objection.

13 THE COURT: Counsel, it just seems to me that you've
14 qualified him and I've permitted his qualifications. Let's
15 get to the issue.

16 MR. MCGUIGAN: Okay.

17 Q. So having reviewed both the photographs of the hairs
18 and seen some of the hairs, as well as -- now, when you
19 consult on a case, Mr. Plourd, what sort of information do you
20 rely on? Do you commonly consult with other experts? Do you
21 commonly consult with analysts who worked on the case, both
22 earlier and at the time? What does a person in your field use
23 when you're putting together a recommendation about testing?

24 A. Well, the primary information that I would rely on
25 is the actual scientific data that is available to make a
26 determination as to whether there's any biological material to
27 test, and that data, when it's reviewed, part of that is to
28 discuss the case with previous analysts or analysts that might

1 do the testing that's being considered. You take that into
2 consideration along with the scientific information or the
3 scientific viability of various testing procedures.

4 Q. Okay. And are you familiar with the status of
5 mitochondrial testing of DNA evidence in the United States
6 today?

7 A. Yes, I am.

8 Q. And is that part of the information you use in
9 making recommendations about whether testing should be done,
10 mitochondrial, nuclear, whatever?

11 MR. KOCHIS: Objection. He does not meet the
12 qualifications to give an opinion as to the status of
13 mitochondrial DNA in this country. That is a scientific
14 endeavor. Whether or not he's qualified to advise lawyers of
15 what to look for is one thing. But to give an opinion as to
16 the status of the science, he's not qualified.

17 THE COURT: Sustained.

18 BY MR. MCGUIGAN:

19 Q. Do you keep yourself apprised of the development of
20 DNA technology in this country, Mr. Plourd?

21 A. Yes, I do.

22 Q. Do you read technical journals about that subject?

23 A. Yes, I do.

24 Q. Do you participate in scientific meetings, not legal
25 meetings, dealing with those areas?

26 A. Yes, I do.

27 Q. Okay. in your experience, is mitochondrial testing
28 being done on an increasing basis over the past several years?

1 A. Yes, very much so.

2 Q. All right. And you're aware of the types of
3 evidentiary materials that can yield a mitochondrial DNA
4 result?

5 MR. KOCHIS: Objection; no foundation as to his
6 qualifications. He doesn't do the testing. He doesn't do the
7 preparation. He doesn't do any DNA analysis.

8 THE COURT: Can I have the question reread, please.

9 (The question was read.)

10 THE COURT: Overruled.

11 THE WITNESS: Yes, I am.

12 BY MR. MCGUIGAN:

13 Q. All right. Now, what sort of a result would one get
14 from a mitochondrial testing? Would you get an identity?
15 What is the difference between mitochondrial DNA -- I'll
16 withdraw that question and ask you a foundational question.

17 What is the difference between mitochondrial DNA and
18 nuclear DNA?

19 MR. KOCHIS: Objection; no foundation as a scientist to
20 answer that question.

21 THE COURT: Overruled.

22 THE WITNESS: Nuclear DNA is contained in the nucleus of
23 a cell. It's the entire DNA sequence for human beings.
24 Mitochondrial DNA is an organelle that's in the cytoplasm of a
25 cell in high copy number, anywhere from a hundred to a
26 thousand copies per cell, and it's just a different type of
27 DNA that can be analyzed and sequenced to make determinations
28 as to identity.

1 There are certain segments of the mitochondrial
2 sequence that are different between individuals, and what
3 you're doing is you're trying to compare these between a known
4 sample and an unknown sample to see how they compare. You've
5 got to look at the portions of the mitochondrial sequence that
6 vary in the population.

7 BY MR. MCGUIGAN:

8 Q. And is this the kind of testing that's done in a
9 number of labs, to your knowledge?

10 A. An increasing number of laboratories. At the
11 present time I'm not sure what the number is, but I think
12 it's over 20 labs in the United States are either doing the
13 testing or in the process of developing testing protocols and
14 methods.

15 Q. Now, you've looked at the hairs, you've consulted
16 with Dr. Blake and consulted with Mr. Sims and consulted with
17 the analyst, Mr. Myers, and you've examined the hairs yourself
18 in this case, and the photographs -- you've examined the
19 photographs of all of the hair; is that true?

20 A. Correct.

21 Q. And in your opinion, are some -- not all, but some
22 of these hairs human hairs?

23 MR. KOCHIS: Objection; no foundation.

24 THE COURT: Well, before I rule on that, have you had any
25 experience in examining hairs with scientists and have you
26 arrived at opinions or been with the scientist when he or she
27 has arrived at opinions on the question just asked?

28 THE WITNESS: I have, but I don't feel I'm qualified to

1 look at a hair and say is it human, is it nonhuman. That's
2 not my area of expertise. I rely basically on the screening
3 that a criminalist would do of the hairs, in particular the
4 screening that was done in this particular case.

5 THE COURT: Okay. Thank you for your candor.

6 The objection is sustained.

7 MR. MILLAR: And for the record, your Honor, I assume
8 that the record will reflect that we join in all of these
9 objections, foundational objections.

10 THE COURT: I'm sorry?

11 MR. MILLAR: The Attorney General is joining, of course,
12 in all of these foundational objections in the testimony of
13 Mr. Plourd.

14 THE COURT: That was made clear at the beginning.

15 MR. MILLAR: I just want the record to be sure.

16 BY MR. MCGUIGAN:

17 Q. Well, having looked at all this hair evidence, both
18 the -- is the number of hairs of any significance, in your
19 experience, in recommending further testing?

20 MR. KOCHIS: I would again object, no foundation.

21 THE COURT: Thus far, sustained.

22 BY MR. MCGUIGAN:

23 Q. In deciding on mitochondrial testing, is one of the
24 things that you consider, in conjunction with the analysts
25 with whom you work, the volume of mitochondrial material
26 that's to be tested?

27 A. You need to have sufficient hair in order to
28 reasonably expect a result doing the mitochondrial DNA

1 sequencing test. So when you say "volume," you're talking
2 about an amount of hair.

3 Q. Right.

4 A. And there's considerable scientific literature and
5 information on what you need.

6 MR. KOCHIS: Objection. It's nonresponsive at this
7 point.

8 THE COURT: At this point, yes, sustained.

9 BY MR. MCGUIGAN:

10 Q. So do you have an opinion about whether the volume
11 of hair that you've seen in the Cooper case is sufficient for
12 mitochondrial testing?

13 MR. KOCHIS: Objection; no foundation.

14 THE COURT: Overruled.

15 THE WITNESS: Yes.

16 BY MR. MCGUIGAN:

17 Q. What is that opinion?

18 A. That --

19 MR. KOCHIS: May I be deemed to have a continuing
20 objection so I don't interrupt the witness on each question?

21 THE COURT: Yes, Mr. Kochis.

22 THE WITNESS: Yes, the hair evidence in this case is
23 suitable for mitochondrial testing. There's an abundance of
24 sample material that could be tested.

25 MR. KOCHIS: I would make a motion to strike that
26 answer. That's beyond the question and that goes to an
27 opinion that as a noncriminalist he is not qualified to give.

28 THE COURT: Overruled.

1 BY MR. McGUIGAN:

2 Q. And from what you have seen of the handling of that
3 hair evidence, which perhaps we should quantify, what you saw
4 of it was when we retrieved certain items from the San Diego
5 evidence locker --

6 MR. KOCHIS: Objection. The question is very vague.
7 There's hair in a number of sources.

8 THE COURT: Sustained.

9 BY MR. McGUIGAN:

10 Q. Considering first the hair that was taken from the
11 San Diego evidence locker, did you participate in the
12 identifying and packaging of those items which were sent to
13 DOJ for testing later?

14 A. I simply observed that being done.

15 MR. KOCHIS: Objection. That assumes a fact not in
16 evidence. Unless I'm mistaken, there was no hair evidence
17 shipped from San Diego.

18 MR. McGUIGAN: That could be.

19 THE COURT: Well, I don't know. I'll sustain your
20 objection, and you can make the inquiry in another form.

21 BY MR. McGUIGAN:

22 Q. Turning to the San Bernardino evidence, which you
23 observed -- the point of this whole question, Mr. Plourd,
24 trying to expedite it -- did you see anything about the
25 handling of the evidence from the time you were involved in
26 the case when it was taken from the evidence locker or from
27 the sheriff's crime lab until it was tested at DOJ, where it
28 still is, that caused you to question the chain of custody,

1 the contamination, or anything about that handling from any
2 sources that I've identified to the DOJ lab where you were
3 also present at the unpackaging?

4 MR. KOCHIS: Objection. It's compound, it's vague, and
5 it calls for speculation.

6 THE COURT: I have no problem with your delving into this
7 area, but not in the form that you presently asked it.
8 Sustained.

9 BY MR. McGUIGAN:

10 Q. Did you participate in the -- well, were you there
11 when the evidence was presented to us at least at San
12 Bernardino?

13 A. Correct.

14 Q. And presented by who?

15 A. I don't remember who was involved in that from the
16 San Bernardino Crime Laboratory.

17 Q. Was it crime laboratory or San Diego Sheriff's
18 Department personnel?

19 A. I don't remember. I think it was the San Bernardino
20 personnel, but I'm not sure who it was.

21 Q. So -- and you were there, participated in
22 photographing and watched it being videotaped and being
23 packaged for transfer to DOJ?

24 A. Yes, I was.

25 Q. Is there anything about that process that alerted
26 you to some impropriety, something that might have damaged the
27 evidence, something that might have contaminated the evidence?

28 A. Nothing like that.

1 MR. KOCHIS: Objection. That calls for speculation.
2 He's there watching some package, but beyond that.

3 THE COURT: His answer was no, and you started to say
4 something.

5 THE WITNESS: No. The evidence was handled appropriately
6 from what I saw, and I also reviewed all the previous
7 documentation as to the evidence collection and so forth.

8 BY MR. MCGUIGAN:

9 Q. And you were also present when it was unpackaged at
10 the DOJ?

11 A. Yes, I was.

12 Q. And was there anything about that -- and who else
13 was with you for that process?

14 A. Dr. Blake, Steve Myers, the criminalist who was the
15 primary analyst in the case for the Department of Justice, and
16 then Gary Sims was there also for most of the time that we
17 were looking and reviewing the evidence, if I remember
18 correctly.

19 Q. As far as you could tell, was that appropriately
20 handled?

21 A. Yes, it was.

22 MR. KOCHIS: Objection.

23 THE COURT: Overruled. The answer may stand. He said,
24 "Yes, it was."

25 BY MR. MCGUIGAN:

26 Q. As far as you know, within the area in which you've
27 been qualified, sir, would you be able to recommend or not
28 recommend that mitochondrial testing be done on these hairs

1 for the purpose of identifying whose hairs they are?

2 MR. KOCHIS: Objection to him giving that opinion, lack
3 of foundation.

4 THE COURT: Overruled.

5 THE WITNESS: The hairs can be tested. The methodology
6 exists and appropriate genetic profiles from the hairs can be
7 determined, and they could be compared to whatever reference
8 samples are available.

9 BY MR. McGUIGAN:

10 Q. Could they be compared to one another as well?

11 A. Absolutely.

12 Q. And could they be compared to reference samples --
13 other reference samples that are presented as part of the
14 case?

15 MR. KOCHIS: Again, an objection for lack of foundation,
16 and I won't object to each and every question.

17 THE COURT: All right. Mr. Kochis, I understand.
18 Overruled.

19 THE WITNESS: Yes, they can.

20 MR. McGUIGAN: All right. I don't think I have any
21 further questions of Mr. Plourd at this time.

22 THE COURT: You may cross-examine.

23 MR. KOCHIS: Thank you.

24

25 CROSS-EXAMINATION

26 BY MR. KOCHIS:

27 Q. Mr. Plourd, you testified --

28 THE COURT: Before you do, you mentioned you had some

1 other witnesses down here that you were planning to put on.
2 How long do you think you're going to be with Mr. Plourd? And
3 we're going to stop at noon and resume probably at 1:30.

4 MR. KOCHIS: I don't think I'm going to be any longer, if
5 I am as long as 30 minutes. But I do have two witnesses that
6 have child-care issues, and if I could call them out of order
7 if we're not done with Mr. Plourd by 2:30, I would like to do
8 that.

9 THE COURT: Is that agreeable?

10 MR. MCGUIGAN: That's agreeable, your Honor. I would
11 comment only that Mr. Plourd is supposed to report to Judge
12 Kaneshiro tomorrow for a trial call. I do have him under
13 subpoena, though.

14 THE COURT: Okay. We'll work with what we have.

15 MR. MCGUIGAN: I think all of those things can be
16 achieved, though. I don't think that's a problem.

17 THE COURT: All right.

18 BY MR. KOCHIS:

19 Q. Mr. Plourd, you testified that you have reviewed --
20 you believe you've reviewed all the laboratory documentation
21 dealing with the hair in the Ryen case; is that correct?

22 A. Did you say Ryen?

23 Q. The Cooper case, in which the Ryens were the
24 victims.

25 A. I've looked at testimony, I've looked at laboratory
26 notes, laboratory records, volumes of material.

27 Q. You're aware, then, from those records that in the
28 summer of 1984 the hair that was taken from the hands of the

1 victims was sent to a private laboratory in Northern
2 California?

3 MR. MCGUIGAN: Well, your Honor, this all appears to me
4 to be, one, beyond the scope of direct, where I carefully
5 qualified -- was hedged into dealing with nothing but his own
6 personal observations of the hair in this case.

7 THE COURT: It sounds like a preliminary question to me.
8 Overruled.

9 THE WITNESS: Yes.

10 BY MR. KOCHIS:

11 Q. Do you know who John Thornton is?

12 A. Yes.

13 Q. Do you know who Mr. Espinoza is?

14 A. I do not know him, but his name appeared in the
15 documentation.

16 Q. And you're aware from your review of the records in
17 this case that the hair was sent to Dr. Thornton?

18 A. Certain items were sent to him, correct.

19 Q. Including the hair that came out of the hands of the
20 victims?

21 A. I believe that's correct, yes.

22 Q. Have you ever seen a report written by Dr. Thornton
23 as to what they did with the hair?

24 A. I don't believe I have.

25 Q. Have you ever seen a report from Dr. Thornton or his
26 associates as to how many people handled the hair?

27 A. No.

28 Q. Is it fair to say that when you looked at the hair,

1 for example, C-2 and C-3 -- do you know what laboratory
2 identification numbers that pertains to?

3 A. Not off the top of my head. I know that that's the
4 general nature of how it was labeled, but I don't remember
5 specifically what each one is as I sit here now.

6 Q. Well, is it fair to say that the hair from the hand
7 of each of the victims were assigned different laboratory
8 identification numbers?

9 A. Yes, they were.

10 Q. And does it sound reasonable to assume they were the
11 B through D series?

12 A. It seems like that's correct, and I've got pictures
13 of each item and I've got the laboratory notes here of most of
14 them.

15 THE REPORTER: Is that V or B?

16 MR. KOCHIS: B as in boy through D as in dog.

17 THE WITNESS: Some of them have a V number.

18 MR. MCGUIGAN: I might direct your attention to the
19 first page of that, which isn't an official document, but it
20 breaks down B, C, D and E.

21 THE WITNESS: Some of them are actually on slides also.
22 They were mounted at some point in time.

23 BY MR. KOCHIS:

24 Q. Well, the majority of the hair from the victims'
25 hands was not mounted when you saw it in June of 2001, was
26 it?

27 A. Correct. The volume -- most of the volume of hair
28 was not mounted, but there were also packages or containers

1 full of slides and so forth.

2 Q. Do you recall whether or not the hair that was taken
3 from the hands of the victims was inside a white -- like a
4 pillbox or a jewelry box?

5 A. Some was.

6 Q. Was that loose hair?

7 A. Some of it was, yes.

8 Q. Have you seen any reports as to how many people
9 handled that loose hair at Dr. Thornton's lab?

10 A. No.

11 Q. Have you seen any reports from a man named
12 Mr. Espinoza as to what he did for the defense when he handled
13 the hair?

14 A. Not that I can recall. I remember his name coming
15 up in testimony and various notes, but I don't remember what
16 he did or didn't do.

17 Q. Have you reviewed any notes from Dr. Blake as to
18 his work in this particular case?

19 A. Yes, I have.

20 Q. Is there a reason those notes haven't been provided
21 to the People?

22 A. The notes I reviewed from Dr. Blake were some of his
23 work that was done in 1983, 1984, somewhere in that range.

24 Q. Have you reviewed any notes from Dr. Blake on his
25 work in this case in 2001?

26 A. Not notes, no; reports.

27 Q. You've seen a report by Dr. Blake?

28 A. I certainly have.

1 Q. Is there a reason that hasn't been furnished to the
2 prosecution?

3 MR. MCGUIGAN: It has been.

4 THE WITNESS: I have no idea whether it has or hasn't.

5 THE COURT: Just a minute. If you have something you
6 wish to say, please address the Court and say, "I have
7 information. Can I convey it to counsel," or something.
8 We're not going to interrupt witnesses.

9 MR. KOCHIS: I'll deal with that at a recess, your Honor.

10 THE COURT: Thank you.

11 BY MR. KOCHIS:

12 Q. But it's your belief there is such a report in
13 existence?

14 A. Sure. There's several reports that Dr. Blake
15 authored since the beginning of the current testing in the
16 '90s and after the year 2000.

17 Q. To your knowledge, is there a database that exists
18 for mitochondrial testing results?

19 A. Yes, there is.

20 Q. Who maintains such a database?

21 A. The FBI has one. Several laboratories have
22 databases that deal with mitochondrial DNA sequences.

23 MR. KOCHIS: Would this be an appropriate time for a
24 recess?

25 THE COURT: If this is a good time for you, it's a good
26 time for us. Thank you. We'll be in recess until 1:30.

27 (At 12:02 p.m. a recess was taken until 1:30 p.m. of
28 the same day.)

1 SAN DIEGO, CALIFORNIA, MONDAY, JUNE 23, 2003, 1:35 P.M.

2 ---0---

3 (People's Exhibit 1 - Photo of San Bernardino
4 Sheriff's Office - was premarked for identification.)

5 (People's Exhibit 2 - Aerial photo of SBSO building
6 - was premarked for identification.)

7 (People's Exhibit 3 - Photo of large refrigeration
8 unit - was premarked for identification.)

9 (People's Exhibit 4 - Photo of storage shelves,
10 boxes - was premarked for identification.)

11 (People's Exhibit 5 - Photo of boxes of evidence
12 swatches - was premarked for identification.)

13 (People's Exhibit 6 - Photo of boxes on storage
14 shelves - was premarked for identification.)

15 (People's Exhibit 7 - Photo of white refrigeration
16 doors - was premarked for identification.)

17 (People's Exhibit 8 - Photo of vials on lower shelf
18 - was premarked for identification.)

19 (People's Exhibit 9 - Photo of tray of sealed vials
20 - was premarked for identification.)

21 (People's Exhibit 10 - Photo of one sealed vial -
22 was premarked for identification.)

23 (People's Exhibit 11 - Evidence release/receipt
24 document - was premarked for identification.)

25 (People's Exhibit 12 - Evidence tracking system
26 printout, tag #B68420 - was premarked for identification.)

27 (People's Exhibit 13 - Property movement printout -
28 was premarked for identification.)

1 (People's Exhibit 14 - Property tracking document,
2 tag #C08176 - was premarked for identification.)

3 (People's Exhibit 15 - Property movement printout -
4 was premarked for identification.)

5 (People's Exhibit 16 - Property tracking document,
6 tag #C08170 - was premarked for identification.)

7 (People's Exhibit 17 - Property movement printout -
8 was premarked for identification.)

9 (People's Exhibit 18 - Two pages of notes by witness
10 Gregonis - was premarked for identification.)

11 THE COURT: Good afternoon, counsel.

12 Mr. Kochis, what's your pleasure? I thought I
13 understood you to say you had a couple witnesses you might
14 want to consider calling out of order in order to accommodate
15 them.

16 MR. KOCHIS: Yes. I would like to complete my
17 examination of Mr. Plourd because I know he's got another
18 engagement tomorrow as well. I'm not going to be very long.

19 THE COURT: Okay. Proceed.

20 BY MR. KOCHIS:

21 Q. Mr. Plourd, good afternoon.

22 A. Good afternoon.

23 Q. Do you have the ability to distinguish between dog
24 hair and human hair?

25 A. Personally, I do not. I've looked at hair and there
26 are differences between the two, but I don't profess to be an
27 expert on that subject.

28 Q. Do you have the ability to distinguish between cat

1 hair and human hair?

2 A. No. Personally, I do not.

3 Q. Did you actually look at some of the hair that came
4 from the victims' hands in this case?

5 A. Yes.

6 Q. Did some of that hair appear to be cut at the end
7 where the root would have been?

8 A. Yes, some of it was chopped or cut or torn. It
9 represented all of those. There was a number of hairs that
10 had a lot of different characteristics.

11 MR. KOCHIS: Thank you. I have no further questions.

12 THE COURT: Any redirect?

13 MR. MCGUIGAN: Just a little, your Honor. Regarding
14 handling the hairs, let me take just a second to ask
15 Mr. Kochis about these exhibits which I'd like to offer.

16 (Discussion off the record.)

17 MR. MCGUIGAN: If we could have these marked next in
18 order.

19 THE CLERK: Two sheets of photos. I'll reuse Defendant's
20 F, two photos of hair.

21 MR. MCGUIGAN: F is two photos of hairs which are in
22 boxes, your Honor.

23 THE COURT: All right.

24 (Defendant's Exhibit F - Two photos of hair in tray,
25 box - was marked for identification.)

26 THE CLERK: And G.

27 MR. MCGUIGAN: G is two photos of hairs, and in G both
28 boxes are cardboard boxes. In F one of the boxes is a plastic

1 box.

2 (Defendant's Exhibit G - Two photos of hair in boxes
3 - was marked for identification.)
4

5 REDIRECT EXAMINATION

6 BY MR. MCGUIGAN:

7 Q. Mr. Plourd, are these some of the materials that you
8 examined and have relied on in part in forming your opinions
9 in this case?

10 A. Yes. These are two photographs that -- I'm familiar
11 with the contents of the photographs that are depicted in both
12 F and G.

13 Q. Okay.

14 A. It's part of the evidence, the hair evidence in this
15 case.

16 Q. Okay. And that looks similar to what you recall, as
17 to how it looked when it was packaged for transportation to
18 the DOJ?

19 MR. KOCHIS: Objection. That assumes a fact not in
20 evidence, that the boxes were opened and we packaged them.

21 THE COURT: Sustained.

22 BY MR. MCGUIGAN:

23 Q. We didn't see the boxes opened, but other than that
24 do they look similar to the closed boxes which were
25 transported to the DOJ?

26 A. I don't remember what they looked like when they
27 were sent to the Department of Justice. I do remember looking
28 at these items when they were unpackaged at various points and

1 various things were looked at.

2 Q. At the DOJ?

3 A. At the Department of Justice. In other words, the
4 boxes and the plate here and so forth, these appear to be the
5 evidence.

6 Q. Okay. And was there a discussion, if you know,
7 among the experts there, and is that the type of discussion
8 that you rely on in doing your work as to whether there were
9 human hairs included amongst all the hairs?

10 MR. KOCHIS: Objection. That would call for hearsay.

11 THE COURT: Sustained.

12 MR. MCGUIGAN: It does, but I'm offering it as the type
13 of hearsay that an expert such as Mr. Plourd relies on in
14 making recommendations.

15 THE COURT: All right. I'll let him answer. Reask it.

16 MR. MCGUIGAN: Thank you.

17 Q. Was there discussion among the experts, Dr. Blake,
18 Mr. Sims, Mr. Myers, about whether there were human hairs
19 present in the package of hairs that was being analyzed for
20 nuclear testing?

21 A. Indirectly there was. I don't think there was a
22 question --

23 MR. KOCHIS: Objection; nonresponsive beyond that point.

24 THE COURT: I think that could be answered, Mr. Plourd,
25 yes or no.

26 THE WITNESS: Yes.

27 BY MR. MCGUIGAN:

28 Q. Okay. And in conjunction with Dr. Blake or probably

1 many others, would they be able and would you be able to
2 arrive at human hairs that could be tested from these samples
3 if you were asked to do so?

4 MR. KOCHIS: Objection. That calls for hearsay.

5 THE COURT: It sure sounds like it. Sustained.

6 BY MR. McGUIGAN:

7 Q. As you sit here today, do you feel it would be
8 possible to do mitochondrial testing on hairs and the results
9 would reveal whether they were human or not in this case?

10 MR. KOCHIS: Objection; no foundation, again, for the
11 same reasons I objected to this morning.

12 THE COURT: He's already given an opinion this morning
13 that testing could be done.

14 MR. McGUIGAN: Yes.

15 THE COURT: And I assume it's for the purpose of some
16 sort of identification of the origin of the hair. So I don't
17 think we'll be testing dog hairs here. It will be a
18 scientific determination, which he has already told us he does
19 not have expertise in.

20 MR. McGUIGAN: I'll withdraw it, your Honor. I think
21 some of the other witnesses will be able to answer that
22 question.

23 THE COURT: Very well.

24 BY MR. McGUIGAN:

25 Q. Now, regarding handling the hairs, you've testified
26 that you don't know whether the hairs were handled by
27 Dr. Thornton and other people at his lab back in 1984 or not.

28 A. Correct.

1 Q. And with regard to handling the hairs, if different
2 people handle the hairs, manipulate them, take them in and out
3 of boxes and so forth, will that affect the ability to get a
4 mitochondrial DNA test -- scientifically valid test from the
5 hairs?

6 A. As long as --

7 MR. KOCHIS: Objection; no foundation.

8 THE COURT: No. Overruled.

9 THE WITNESS: As long as the testing is done
10 appropriately, that should not affect it. The nature of hair
11 evidence is it's an unknown. It has an unknown history, and
12 you have to assume that there's always the chance that the
13 evidence has come in contact with other biological material,
14 either from the donor of the hair or from other contacts that
15 the hair has had. So you want to try to test the hair so you
16 can determine who the donor is as opposed to what's on the
17 hair.

18 BY MR. McGUIGAN:

19 Q. So part of the mitochondrial testing process is a
20 cleaning process; is that correct?

21 A. That's correct.

22 Q. All right. What -- are you familiar with the amount
23 of hair that's necessary to get a scientifically reliable
24 mitochondrial result from these labs today?

25 A. Yes, I am.

26 Q. How much is it?

27 MR. KOCHIS: Objection. Can I have a continuing
28 objection, your Honor?

1 THE COURT: Yes, you may.

2 MR. KOCHIS: Thank you.

3 THE WITNESS: One centimeter of intact shed hair or shaft
4 of hair is suitable for testing, and that's one hair.

5 BY MR. McGUIGAN:

6 Q. One centimeter of one hair will give you a reliable
7 result?

8 A. Yes, if the testing is done properly.

9 MR. McGUIGAN: Thank you.

10 Let me have just a second with counsel, your Honor.

11 THE COURT: Yes.

12 (Discussion off the record.)

13 MR. McGUIGAN: I'm through with Mr. Plourd, your Honor.

14 THE COURT: Recross?

15

16 RE CROSS-EXAMINATION

17 BY MR. KOCHIS:

18 Q. Mr. Plourd, we may have not brought this to the
19 Court's attention. Dr. Thornton's involvement in the case in
20 the early '80s was what? Which side was he retained by?

21 A. I believe it was the defense, and I get that from
22 reading transcripts of some of his analysis, as well as some
23 of his bench notes and other things that I was provided from
24 him, maybe evidence receipt records and so forth.

25 Q. And you had --

26 MR. McGUIGAN: Object as calling for speculation if
27 Mr. Plourd doesn't know, your Honor.

28 THE COURT: Overruled.

1 BY MR. KOCHIS:

2 Q. The hair that's in the photograph that counsel just
3 showed you, which I believe has been marked for identification
4 as Exhibits F and G, starting with G, is it important to know
5 the history of the hair?

6 A. I'm not sure what you mean by that. I mean, it
7 would be important to know whether this is related to the
8 crime that you're concerned with investigating.

9 Q. Can hairs be added to a sample, depending on how
10 it's handled by various people that look at it?

11 A. Hair can -- if you have a container that has hair in
12 it, somebody could shed a hair and that could go -- fall into
13 a container if you're not careful. That's always possible.

14 MR. KOCHIS: Thank you. I have no further questions.

15 THE COURT: All right. Thank you, Mr. Plourd.

16 THE WITNESS: Thank you.

17 THE COURT: You may step down and be excused, sir.

18 MR. KOCHIS: The People would call Kelley Rishell as a
19 witness.

20 THE CLERK: Are you the witness, ma'am?

21 THE WITNESS: Yes.

22 THE CLERK: Would you come forward, please, and stand
23 there and raise your right hand.

24 THE WITNESS: Stand right there?

25 THE COURT: Stand right there, raise your right hand.

26

27 KELLEY RISHELL,

28 called as a witness on behalf of the People, having been first

1 administered the oath, testified as follows:

2 THE CLERK: Please be seated in the witness stand.

3 State your name, please, and spell your first and
4 last names for the record.

5 THE WITNESS: Kelley Rishell. The first name is
6 K-e-l-l-e-y, Rishell is R-i-s-h-e-l-l.

7 THE CLERK: Thank you.

8 MR. KOCHIS: May I proceed, your Honor?

9 THE COURT: Yes, you may. I'm sorry.

10

11 DIRECT EXAMINATION

12 BY MR. KOCHIS:

13 Q. With whom are you presently employed?

14 A. San Bernardino County Sheriff's Department.

15 Q. How long have you worked for them?

16 A. Approximately eight years.

17 Q. In the summer of 1999 did you work for a particular
18 division?

19 A. Yes. I believe -- yes, at the scientific
20 investigations division.

21 Q. Where is that located in San Bernardino County?

22 A. The address?

23 Q. The address.

24 A. 200 South Lena Road.

25 Q. Who occupies the building?

26 A. The sheriff's department.

27 Q. Is there more than one division that works in the
28 same building?

1 A. Yes.

2 Q. What division were you assigned to?

3 A. Property and evidence.

4 Q. Who else shared the building with you?

5 A. The crime lab, and at that time Cal-ID.

6 Q. Directing your attention to a photograph which has
7 been marked for identification as People's 1, which for the
8 record appears to be a color picture of a building, do you
9 recognize what that's a photograph of?

10 A. Yes, the scientific investigations division.

11 Q. Are both the crime lab and property located under
12 the same roof?

13 A. Yes.

14 Q. And do you see on the photograph the portion of the
15 building that property is located in?

16 A. Yes.

17 Q. Do you see the portion in the photograph of the
18 building where the crime lab is located?

19 A. Yes.

20 Q. With a blue felt pen, at the bottom left hand of
21 Exhibit 1, could you put your initials and today's date.

22 A. (The witness complied.)

23 Q. Could you indicate with a "P" the portion of the
24 building that property occupies.

25 A. Below or above it?

26 Q. On the building itself.

27 A. (The witness complied.)

28 Q. And can you indicate, perhaps with a "CL" for crime

1 lab, the portion of the building that's occupied by the crime
2 lab.

3 A. (The witness complied.)

4 THE COURT: I can't see from here, counsel. Is that
5 showing up on there?

6 MR. KOCHIS: In one form or another. Let me back up.

7 Q. Can you take -- above the portion of the building
8 that property is located in and on the white portion of the
9 exhibit, can you write "P" and then an arrow pointing down to
10 where property would be.

11 A. (The witness complied.)

12 Q. And above the crime lab portion of the building,
13 could you put on the white portion of the exhibit "CL" for
14 crime lab and an arrow down to where that's located.

15 A. (The witness complied.)

16 Q. And does that photograph accurately depict the way
17 that building appeared when you worked there in the summer of
18 1999?

19 A. Yes.

20 Q. Directing your attention next to a picture which has
21 been marked for identification as Exhibit 2, do you recognize
22 what that's a photograph of?

23 A. Yes, the scientific investigations division.

24 Q. And is that the building that houses both the crime
25 lab and the property division?

26 A. Yes, it is.

27 Q. Can you put your initials and today's date on the
28 white border of the photograph in the lower left-hand corner.

1 A. (The witness complied.)

2 Q. And on the right side of the photograph could you
3 indicate with a "P" where property is and then an arrow
4 pointing in that direction.

5 A. (The witness complied.)

6 Q. On the left side of the photograph can you indicate
7 with a "CL" where the crime lab is located and an arrow for
8 where that's located.

9 A. (The witness complied.)

10 Q. What did your duties at the property division
11 consist of?

12 A. I was the clerk for sheriff stores.

13 Q. Would one of your responsibilities entail checking
14 evidence out?

15 A. Yes, when needed.

16 Q. And was there a procedure in place that that
17 activity was documented by the sheriff's department?

18 A. Yes, there was.

19 Q. Did you keep a log, a property release log?

20 A. They would -- they would bring it down when they
21 wanted evidence.

22 Q. Were you one of the people that would actually
23 initial the sheet with the date, time, and what was released?

24 A. Yes, I was.

25 Q. And did you make those entries in the normal course
26 of your business?

27 A. Yes.

28 Q. And would you make the entry at the time you were

1 releasing the evidence to a particular person?

2 A. Yes.

3 Q. Did you document what item numbers you gave to a
4 particular person?

5 A. Yes.

6 Q. Did you follow that procedure even if the person
7 checking the evidence out was a criminalist that worked in the
8 same building?

9 A. Yes.

10 Q. Directing your attention next to an exhibit which
11 has been marked for identification as People's 3, which
12 appears to be an eight-by-ten color photograph, do you
13 recognize that picture?

14 A. Yes. It's the fridge and the freezer.

15 Q. Now, is there more than one refrigerator or freezer
16 in the building that you worked in?

17 A. No. In property and evidence, no.

18 Q. Does property have a refrigerator?

19 A. Yes.

20 Q. And property had a freezer?

21 A. Yes.

22 Q. Did the crime lab have their own freezer and
23 refrigerator?

24 A. Yes, I believe that they had the fridge.

25 Q. And was that on the other side of the building?

26 A. Yes.

27 Q. Again, on Exhibit 3, lower left-hand corner, could
28 you put your initials and today's date.

1 A. (The witness complied.)

2 Q. Can you indicate with an "FA" where the freezer is
3 located.

4 A. You want me to do it right on the picture or --

5 Q. Let's start with on the picture and see if we can
6 see it.

7 A. "FA" for the freezer?

8 Q. Yes. Was there an abbreviation that was used for
9 the refrigerator?

10 A. I don't recall. It's been a while.

11 Q. How about -- how about "RG" for refrigerator.

12 A. You want me to mark it on there?

13 Q. Please.

14 A. "RG"?

15 Q. "RG."

16 A. (The witness complied.)

17 MR. McGUIGAN: Your Honor, may I approach just to
18 correlate -- we already had a copy of these -- which one is
19 which?

20 THE COURT: Yes.

21 BY MR. KOCHIS:

22 Q. What type of items were stored in the refrigerator?

23 A. In the refrigerator would be bloods.

24 Q. Whole blood vials or frozen blood swatches?

25 A. In the refrigerator would be whole blood.

26 Q. Directing your attention next to an item which has
27 been marked for identification as Exhibit 4, it appears to be
28 an eight-by-ten color photograph. Do you recognize what that

1 picture shows?

2 A. It's the inside of the freezer.

3 Q. Could you put your initials and today's date in the
4 lower left-hand corner.

5 A. (The witness complied.)

6 Q. And do Exhibits 3 and 4 accurately depict the way --
7 does Exhibit 3 accurately depict the way the outside of the
8 refrigerator and the freezer looked when you worked there back
9 in '99?

10 A. Yes.

11 Q. And does Exhibit 4 accurately depict the way the
12 inside of the freezer looked when you worked there in '99?

13 A. Yes.

14 Q. Is there an aisle down the freezer at property, a
15 walk space?

16 A. Inside the freezer?

17 Q. Yes.

18 A. Yes.

19 Q. What types of items, if you know, are stored on the
20 right side of the walkway?

21 A. It would be swatches that I recall on the right-hand
22 side of the freezer.

23 Q. Directing your attention to what has been marked for
24 identification as Exhibit 5, another eight-by-ten photograph,
25 do you recognize what that depicts?

26 A. Yes, I do.

27 Q. And could you tell the Court what it shows?

28 A. Swatches.

1 Q. Is this a picture of the inside of the freezer at
2 the property division?

3 A. Yes, it is.

4 Q. Does this show how the swatches are stored in that
5 freezer?

6 A. At the time that I worked there, yes.

7 Q. Could you put your initials and today's date in the
8 lower left-hand corner of the picture.

9 A. (The witness complied.)

10 Q. Directing your attention to an exhibit which is
11 marked for identification as People's 6, do you recognize what
12 that is a photograph of?

13 A. Yes. It's inside the freezer on the left-hand side.

14 Q. Could you put your initials and date in the lower
15 left-hand corner of that photograph.

16 A. (The witness complied.)

17 Q. And does that accurately depict the way the inside
18 of that freezer looked in 1999?

19 A. Yes.

20 Q. Do you know what type of items were stored on the
21 left side of the walkway?

22 A. All of the freezer evidence that came in.

23 Q. Directing your attention to an item which has been
24 marked for identification as Exhibit 11, which appears to be a
25 Xerox copy of a Release or Receipt of Evidence form, do you
26 recognize this particular document?

27 A. Yes, I do.

28 Q. Is that the type of document that you would have

1 used when you released evidence when you worked at the
2 property division?

3 A. Yes.

4 Q. The original document, does it have a particular
5 color?

6 A. Yeah, we call it the blue form.

7 Q. Are the originals blue?

8 A. Yes, they are.

9 Q. And if you refer in your testimony to the blue slip,
10 is that the type of document you're referring to?

11 A. Yes, I am.

12 Q. Can you determine from looking at the document
13 whether or not your initials appear anywhere on the document?

14 A. Yes, it does.

15 Q. And could you tell the Court where they are?

16 A. I -- they're on the -- where it says "from," I gave
17 it to Dan Gregonis, and my initials, my name, my employee
18 number, the date and time.

19 Q. From that document, does it appear that you were
20 working on August the 12th of 1999?

21 A. Yes.

22 Q. Do you know a person named Dan Gregonis?

23 A. Yes, I do.

24 Q. Does he work for the sheriff's department?

25 A. Yes, he does.

26 Q. Do you know what he does for the sheriff's
27 department?

28 A. He works over in the crime lab side.

1 Q. Is he seated in the hallway outside this courtroom?

2 A. Yes, he is.

3 Q. Does it appear on August the 12th of 1999 you
4 released some evidence to him?

5 A. Yes, it does.

6 Q. How many different items?

7 A. Three.

8 Q. About what time did that transfer take place?

9 A. About 9:46.

10 Q. What did you give him?

11 A. I gave him three -- three items.

12 Q. What case number, what laboratory identification
13 number was it that pertained to this case?

14 A. I don't understand what you mean.

15 Q. On Exhibit 11, is there an LRN number in the upper
16 left-hand corner of the document?

17 A. Yes, there is.

18 Q. And is that the number that's assigned to a
19 particular case?

20 A. Yes, it is.

21 Q. And the LRN number on that form is what?

22 A. It's the LR number.

23 Q. What is the number?

24 A. 42376.

25 Q. Now, did the item numbers that you released to
26 Mr. Gregonis -- did they each have individual identification
27 numbers?

28 A. Yes.

1 Q. And are those numbers reflected on the documents
2 themselves?

3 A. Yes, it is.

4 Q. And is there also a description that accompanies
5 each number as to what the item was that you released?

6 A. Yes, whether it was in a box or a bag, yes.

7 Q. Did you release any boxes to Mr. Gregonis?

8 A. Two.

9 Q. Were they tape-sealed when you released them?

10 A. I don't know. It's been a while. I'm going to say
11 yes because all of them are.

12 Q. Did you release any bags to Mr. Gregonis?

13 A. One.

14 Q. And do the numbers from the boxes appear on Exhibit
15 11?

16 A. Yes.

17 Q. And the number for the bag appears on Exhibit 11?

18 A. Yes.

19 Q. From Exhibit 11, can you tell where in property
20 those items were stored before you gave them to Mr. Gregonis?

21 A. No.

22 Q. Directing your attention to what has been marked for
23 identification as People's 12, it appears to be a Property
24 Evidence Tracking System printout. Do you recognize this
25 particular item?

26 A. Yes, I do.

27 Q. Is that a record that's generated by the property
28 division of the sheriff's department?

1 A. Yes, it is.

2 Q. And does it document the transfer of evidence?

3 A. The transfer of evidence? It just -- this just
4 states where the item is located.

5 Q. Does this pertain to item -- evidence tag number B
6 as in boy, 68420?

7 A. Yes, it does.

8 Q. Where was that item stored at property?

9 A. In the freezer.

10 Q. Did that particular freezer have a number?

11 A. The storage location was FA6A.

12 Q. Directing your attention next to an item which has
13 been marked for identification as Exhibit 13, do you recognize
14 what that's a copy of?

15 A. Yes, I do.

16 Q. Could you tell the Court what it is a copy of?

17 A. It's the movement history of the property.

18 Q. And is that a computer printout of how certain
19 pieces of evidence moved in the property division in this case?

20 A. Yes, it is.

21 Q. And does your name appear on that form next to the
22 August the 12th date?

23 A. Yes, it does.

24 Q. Does it show you released the property to
25 Mr. Gregonis?

26 A. Yes, it does.

27 Q. Directing your attention to an item which has been
28 marked for identification as Exhibit 14, do you recognize what

1 this is a computer printout of?

2 A. Yes, of item number C08 -- C08176.

3 Q. Is that one of the items you released to
4 Mr. Gregonis on August 12th?

5 A. Yes, it is.

6 Q. Does the form show where it was before it was
7 released to Mr. Gregonis?

8 A. In the pallet area.

9 Q. Is the pallet area a refrigerated area?

10 A. No, it is not.

11 Q. Is it a freezer area?

12 A. No, it is not.

13 Q. Is it located in the same building that the freezer
14 and the refrigerator are located in?

15 A. Yes, it is.

16 Q. Directing your attention to Exhibit 15, do you
17 recognize what that is a copy of?

18 A. Yes. It's the movement history of the property.

19 Q. On which particular item of evidence?

20 A. C08176.

21 Q. And does that document show that you released that
22 item to Mr. Gregonis on August the 12th?

23 A. Yes, it does.

24 Q. Directing your attention to Exhibit 16, do you
25 recognize what that is?

26 A. It's property tag C08170.

27 Q. And does that printout show where that item of
28 evidence was stored prior to its release to Mr. Gregonis?

1 A. Yes, the pallet area.

2 Q. And that's the nonrefrigerated area?

3 A. Yes, it is.

4 Q. Finally, directing your attention to Exhibit 17, do
5 you recognize what that's a copy of?

6 A. It's the movement history of the property.

7 Q. Of which particular item?

8 A. Of C08170.

9 Q. And that shows that you released it to Mr. Gregonis
10 on August the 12th of 1999?

11 A. Yes, it does.

12 Q. Does it also show when Mr. Gregonis returned it to
13 property?

14 A. Yes, it does.

15 Q. And what date was that?

16 A. August 13th of 1999.

17 Q. And approximately what time did you release that
18 item to Mr. Gregonis on the 12th?

19 A. 9:48.

20 Q. And approximately what time did you release C as in
21 cat, 08176?

22 A. 9:48.

23 Q. And approximately what time did you release B as in
24 boy, 68420 on August --

25 A. 9:48.

26 Q. And all the records in front of you -- by that I
27 mean Exhibits 11 through and including 17 -- are those records
28 kept in the normal course of the business at the property

1 division?

2 A. Yes, it is.

3 Q. And are attempts made to record the information
4 accurately?

5 A. Can you repeat that again?

6 Q. When you fill out the release forms, do you attempt
7 to record the information accurately as to the date, time, who
8 you release it to and what you give them?

9 A. Yes, I do.

10 MR. KOCHIS: Thank you. I have no further questions.

11 THE COURT: You may cross-examine, Mr. McGuigan.

12 I'm sorry. Mr. Bernstein.

13

14 CROSS-EXAMINATION

15 BY MR. BERNSTEIN:

16 Q. Good afternoon, Miss Rishell. I just have a couple
17 of brief questions for you.

18 When Mr. Gregonis requests certain items that are at
19 the property division, physically how does that work? Does he
20 ask you for them and then you make arrangements for them to be
21 brought to him or do you personally go get the items, or how
22 does that work?

23 A. I personally went and got the items when he came
24 down.

25 Q. And physically handed it to him?

26 A. Yes.

27 Q. And he would go off and do whatever he would do with
28 them and you have no knowledge yourself of what that might be;

1 is that right, they're out of your custody at that point?

2 A. Correct.

3 MR. BERNSTEIN: All right. Thank you. No further
4 questions.

5 MR. KOCHIS: No redirect.

6 THE COURT: Very well. May the witness step down and be
7 excused?

8 MR. MCGUIGAN: No objection.

9 THE COURT: Very well. Thank you very much for your
10 appearance.

11 THE WITNESS: Thank you.

12 MR. KOCHIS: The People would call as our next witness
13 Melody -- I believe it's Marino.

14 THE CLERK: Ma'am, would you come forward, stand right
15 there and raise your right hand.

16

17 MELODY MARINO,

18 called as a witness on behalf of the People, having been first
19 administered the oath, testified as follows:

20 THE CLERK: Thank you. Be seated in the witness stand.

21 State your name and spell your first and last names
22 for the record.

23 THE WITNESS: Melody Marino; M-e-l-o-d-y, M-a-r-i-n-o.

24 THE CLERK: Thank you.

25

26 DIRECT EXAMINATION

27 BY MR. KOCHIS:

28 Q. Who do you work for?

1 A. San Bernardino Sheriff's Department.

2 Q. How long?

3 A. Five years, almost six.

4 Q. Where were you assigned in August of 1999?

5 A. San Bernardino Sheriff's Crime Lab, property.

6 Q. What was the business address?

7 A. 200 South Lena.

8 Q. Was there --

9 A. San Bernardino.

10 Q. -- more than one division that occupied that
11 building?

12 A. Yes.

13 Q. Who occupied the building?

14 A. The crime lab, property and evidence, Cal-ID.

15 Q. Directing your attention to a series of pictures,
16 one of which has been marked for identification as Exhibit 1,
17 do you recognize the building in that picture?

18 A. Yes.

19 Q. What is it a photograph of?

20 A. The crime lab, property division.

21 Q. Is there any mark or letter on the portion of the
22 photograph that indicates where property is?

23 A. Yes, a "P."

24 Q. Is there any mark on the photograph that indicates
25 where the crime lab is located?

26 A. "CL."

27 Q. And directing your attention to Exhibit 2, do you
28 recognize the building in that picture?

1 A. Yes.

2 Q. Does it appear to be a picture of the property
3 division and crime lab where you worked back in August of
4 1999?

5 A. Yes.

6 Q. Were you responsible for checking evidence in and
7 out?

8 A. Yes.

9 Q. Do you know a person named Dan Gregonis?

10 A. Yes.

11 Q. Do you know what he does for the sheriff's
12 department?

13 A. He works on evidence.

14 Q. Did he work in property?

15 A. No.

16 Q. Did he work in the crime lab?

17 A. Yes.

18 Q. Is he outside, seated on the bench waiting to
19 testify in this case?

20 A. Yes.

21 Q. Did the sheriff's department keep records when you
22 released property?

23 A. Yes.

24 Q. Would you keep a record even if you released the
25 property to a member of the crime lab?

26 A. Yes.

27 Q. Directing your attention to Exhibit 11, which
28 appears to be an evidence release form, are you familiar with

1 that document?

2 A. Yes.

3 Q. And the copy in the courtroom is white. Is that the
4 color of the original?

5 A. No. They're blue.

6 Q. Do people refer to that document as a blue slip?

7 A. Yes.

8 Q. Do your initials appear on that document?

9 A. Yes.

10 Q. From the document -- a review of that document, does
11 it appear that you worked on August the 13th of 1999?

12 A. Yes.

13 Q. Did you see Mr. Gregonis on that day?

14 A. Yes.

15 Q. About what time during the day did you see him on
16 that particular day?

17 A. 10:05.

18 Q. A.m. or p.m.?

19 A. A.m.

20 Q. Did he return anything to you?

21 A. Yes.

22 Q. Could you tell the Court what he -- well, how many
23 items did he return to you?

24 A. Three.

25 Q. Did they have property identification numbers?

26 A. Yes.

27 Q. Could you read into the record each of the numbers?

28 A. Bar code C0 -- is that what you want?

1 Q. Yes.

2 A. C08170, C08176, B68420.

3 Q. The first item, C08170, what type of item did he
4 return to you?

5 A. A box, tape-sealed box.

6 Q. C08176, what type of item did he return to you?

7 A. A tape-sealed box.

8 Q. And B68420, what type of item did he return to you?

9 A. A tape-sealed bag.

10 Q. Does the crime lab keep records of where -- excuse
11 me. Does property keep records of where in the property
12 division an item is stored?

13 A. Yes.

14 Q. Looking at Exhibit 13, can you tell where item
15 B68420 was stored prior to the time it was given to
16 Mr. Gregonis?

17 A. The exact location or freezer?

18 Q. Was it a refrigerator, a freezer or a pallet?

19 A. Freezer.

20 Q. And from Exhibit 14, can you tell where item C08176
21 was stored?

22 A. The pallet area.

23 Q. Is that a freezer area?

24 A. No.

25 Q. Refrigerator area?

26 A. No.

27 Q. And from Exhibit C -- from Exhibit 16, which shows
28 the movement of C08170, can you tell where that item was

1 stored before it was given to Mr. Gregonis?

2 A. The pallet area.

3 Q. Directing your attention to a picture which has been
4 marked for identification as Exhibit 3, do you recognize
5 what's in that particular photograph?

6 A. Yes.

7 Q. Could you tell the Court what's in the photograph?

8 A. The refrigerator and the freezer.

9 Q. At the property division?

10 A. Yes.

11 Q. And are there marks on the portion of the silver
12 object that designate which part's the refrigerator and which
13 part's the freezer?

14 A. Yes.

15 Q. What's the initial over the freezer portion?

16 A. "FA."

17 Q. Directing your attention to an item which has been
18 marked for identification as Exhibit 4, do you recognize what
19 that shows?

20 A. Yes.

21 Q. What does it show?

22 A. The freezer shelves.

23 Q. Are the swatches stored separate from the rest of
24 the evidence in the freezer?

25 A. Yes.

26 Q. What side of the walkway are the swatches stored on?

27 A. The right-hand side.

28 Q. Is there a record of when swatches leave the freezer

1 at property?

2 A. Yes.

3 Q. Have you ever worked with that record?

4 A. No.

5 MR. KOCHIS: I have no further questions.

6 THE COURT: You may cross-examine.

7 MR. BERNSTEIN: Thank you.

8

9 CROSS-EXAMINATION

10 BY MR. BERNSTEIN:

11 Q. I'll show you what's previously been identified as
12 Exhibit 11, People's 11. Is that your writing?

13 A. No.

14 Q. Do you know what that signifies, that "TS," for
15 example?

16 A. Tape-sealed.

17 Q. So it would appear from looking at this exhibit that
18 these items were checked out, they were all tape-sealed, and
19 when they were returned they were all tape-sealed; is that how
20 you would interpret that?

21 A. Yes.

22 Q. Do you have any way of knowing whether the tape had
23 been broken in between when it was returned?

24 A. We make sure that they cut on a new portion of each
25 item and tape-seal it.

26 Q. So that --

27 A. With the initials.

28 Q. -- if it was opened you would be able to tell?

1 A. Yes.

2 Q. It wouldn't necessarily be marked on here?

3 A. No.

4 MR. BERNSTEIN: Thank you. No further questions.

5 THE COURT: Anything further?

6 MR. KOCHIS: No redirect.

7 THE COURT: All right. Thank you Miss Marino. You may
8 step down and be excused.

9 THE WITNESS: Thank you.

10 MR. KOCHIS: Dan Gregonis, your Honor, is going to be my
11 next witness. I will get him as soon as I give your clerk the
12 next exhibits.

13 THE CLERK: People's 19, a large diagram.

14 (People's Exhibit 19 - Large diagram of layout of
15 SBSO lab, property room - was marked for identification.)

16 THE COURT: For the record, is that a diagram of --

17 MR. KOCHIS: It's a diagram of the San Bernardino County
18 Sheriff's Department scientific investigation unit.

19 THE COURT: Thank you.

20 (People's Exhibit 20 - Color copy of photo of sealed
21 evidence bag - was marked for identification.)

22 (People's Exhibit 21 - Color copy of photo of sealed
23 evidence bag - was marked for identification.)

24 (People's Exhibit 22 - Color copy of photo of
25 container in sealed plastic - was marked for identification.)

26 (People's Exhibit 23 - Color copy of photo of green
27 plastic vial - was marked for identification.)

28 (People's Exhibit 24 - Color copy of photo of tin

1 with blood scrapings - was marked for identification.)

2 (People's Exhibit 25 - Color copy of photo of side
3 of tin - was marked for identification.)

4 (People's Exhibit 26 - Evidence release/return
5 document - was marked for identification.)

6 MR. KOCHIS: Your Honor, just so I'm clear, Miss Rishell
7 and Miss Marino have asked if they can go back to San
8 Bernardino. I assume the answer is yes.

9 THE COURT: They were excused. There wasn't any hold put
10 on them, so yes.

11 MR. KOCHIS: Thank you.

12
13 DANIEL JOHN GREGONIS,
14 called as a witness on behalf of the People, having been first
15 administered the oath, testified as follows:

16 THE CLERK: Sir, would you please state your name and
17 spell your last name for the record.

18 THE WITNESS: Certainly. Daniel John Gregonis,
19 G-r-e-g-o-n-i-s.

20

21 DIRECT EXAMINATION

22 BY MR. KOCHIS:

23 Q. Do you work for a living?

24 A. Yes, I do.

25 Q. Who do you work for?

26 A. I'm employed as a criminalist with the County of San
27 Bernardino Sheriff's Department.

28 Q. How long have you been so employed?

1 A. Since July of 1979.

2 Q. Do you have any formal education that qualifies you
3 for that position?

4 A. My formal education includes a Bachelor of Science
5 degree in criminalistics from Metropolitan State College in
6 Denver, Colorado, which I received in 1979, as well as a
7 Master of Science in biology that I received in 1997 from Cal
8 State San Bernardino.

9 Q. Have you been employed continually as a criminalist
10 since 1979?

11 A. Yes, I have.

12 Q. Do you have any training in the area of DNA
13 analysis?

14 A. Yes, I do.

15 Q. What type of training?

16 A. To start with, the first course that I took was from
17 the FBI Academy in Quantico, Virginia. It was a month-long
18 course in 1990. Also, I believe it's either 1982 or '83 I
19 attended a course -- actually, two courses put on by what was
20 then Perkin-Elmer Corporation on the use of what is called the
21 polymerase chain reaction or PCR.

22 I have also attended another course at the FBI on
23 what is called short tandem repeat markers. That was a
24 week-long course also held in Quantico, Virginia. And I've
25 attended a course held at the California Criminalistics
26 Institute in Sacramento, California, also on short tandem
27 repeats.

28 Q. Have you qualified in courts in this state as a DNA

1 analyst?

2 A. Yes, I have.

3 Q. Have you received any training in the collection of
4 evidence for DNA analysis?

5 A. Yes, I have.

6 Q. Have you received any training in the area of
7 handling evidence for DNA analysis?

8 A. Yes, I have.

9 Q. Are you familiar with the concept of contamination?

10 A. Yes, I am.

11 Q. Have you received training as to how to handle a
12 sample to avoid contamination?

13 A. Yes.

14 Q. In August of 1999 did you have some evidence checked
15 out in the case of People versus Kevin Cooper?

16 A. Yes, I did.

17 Q. Directing your attention to an item which has been
18 marked for identification as Exhibit 11, do you recognize what
19 that's a copy of?

20 A. Yes, I do.

21 Q. And is it a copy of the evidence release form that's
22 used at the property division?

23 A. Yes, it is.

24 Q. Did anyone ask you to look for certain items of
25 evidence in the Kevin Cooper case?

26 A. Yes, they did. You did.

27 Q. Do you recall which items you were asked to look
28 for?

1 A. By item number, they were Item A-41, which is a
2 bloodstain; Items C-2 and C-3, which were hairs; Item V-12,
3 which I believe is a cigarette butt; Item V-17; Item CC and
4 Item QQ.

5 THE COURT: What was the first one again?

6 THE WITNESS: A-41.

7 THE COURT: Thank you.

8 BY MR. KOCHIS:

9 Q. Were you one of the criminalists that worked on the
10 evidence in this case in 1983 and 1984?

11 A. Yes.

12 Q. Was DNA -- was that procedure in existence at the
13 time?

14 A. No.

15 Q. Was there another procedure that was in existence?

16 A. Yes.

17 Q. What was the name of that?

18 A. There was a couple of different categories. One was
19 for ABO typing, which was -- the other category would be
20 electrophoresis.

21 Q. Is that also known as serology?

22 A. Yes.

23 Q. Directing your attention to a picture which has been
24 marked for identification as Exhibit 2, do you recognize the
25 building in that photograph?

26 A. Yes, I do.

27 Q. And what is the building?

28 A. The building in the foreground is kind of our

1 general services administration. The one in the background is
2 the scientific investigations division at 200 South Lena Road
3 in San Bernardino.

4 Q. And Exhibit 1, do you recognize the building in that
5 picture?

6 A. Yes, I do.

7 Q. Is that the building you work in?

8 A. Yes, it is. This is from ground level.

9 Q. And is there any initial over the portion of the
10 building that you work in?

11 A. Yes. It's labeled with "CL."

12 Q. And is there an initial over the portion of the
13 building that's occupied by the property division?

14 A. Yes. The initial is "P."

15 Q. Are both property and the crime lab under the same
16 roof?

17 A. Yes, it's a continuous roof.

18 Q. For you to obtain evidence from property, do you
19 have to leave the building?

20 A. No.

21 Q. Is there a hall -- are there a series of hallways
22 that connect the crime lab with the property division?

23 A. Yes.

24 Q. Behind you on the board is a two-by-three foot
25 diagram which has been marked for identification as Exhibit
26 19. Do you recognize what this is an outline of?

27 A. Yes, I do.

28 Q. Could you tell the Court what that is an outline

1 of?

2 A. That is a basic floor plan of the scientific
3 investigations division as it exists at 200 South Lena Road.

4 Q. Does it appear to accurately depict the floor plan
5 in your building as of August of 1999?

6 A. Yes.

7 Q. Can you take the blue felt pen and step up to the
8 diagram. On Exhibit 19, in the lower left-hand corner, could
9 you put your initials and today's date.

10 A. (The witness complied.)

11 Q. And can you then -- outside of the actual portion of
12 the building that represents the crime lab, can you write the
13 words "crime lab" and an arrow pointing to the portion of the
14 building that you work in.

15 A. Certainly. (The witness complied.)

16 Q. And with the word "property" and an arrow, again,
17 outside the building, can you indicate where the property
18 division is located.

19 A. Certainly. I'll actually put two arrows, because
20 one is a warehouse and one is a receiving area.

21 Q. And can you put an "N" for north and an arrow as to
22 which direction north would be.

23 A. Certainly. (The witness complied.)

24 Q. Directing your attention to a photograph which has
25 been marked for identification as Exhibit 3, do you recognize
26 the item depicted in this picture?

27 A. Yes, I do.

28 Q. What is it?

1 A. That's a photograph of the property freezer, as well
2 as the refrigerator that they use for whole bloods.

3 Q. Can you indicate with a rectangle on the diagram
4 where this item is located in property.

5 A. Approximately, yes.

6 Q. Can you give us an approximation.

7 A. (The witness complied.)

8 Q. Can you indicate with an "F" where the freezer would
9 be and an "R" where the refrigerator would be.

10 A. Yes, I can. (The witness complied.)

11 Q. Does the crime lab have their own refrigerator and
12 freezer?

13 A. Yes, we do.

14 Q. Can you indicate on the diagram with a rectangle
15 where those items are located.

16 A. Okay. Actually, the walk-in refrigerator in the
17 crime lab already is outlined, the rectangle here. I'll put
18 an "F" on that.

19 Q. Is that the refrigerator or the freezer?

20 A. That's actually the -- oh, I'm sorry. That is the
21 refrigerator.

22 Q. Did you change that to an "R"?

23 A. Yes, I did, and I'll initial and date it.

24 Q. And can you indicate with a rectangle and the letter
25 "F" where the freezer is located?

26 A. The freezer where I store my evidence in, I'll just
27 put an "F" on that.

28 Q. Directing your attention to an item which has been

1 marked for identification -- I'm going to show you a series of
2 items. They've been marked 7, 8, 9 and 10.

3 Starting first with Exhibit 7, do you recognize the
4 objects in this particular photograph?

5 A. Yes, I do.

6 Q. And could you tell the Court -- could you resume
7 your seat for just a moment?

8 A. Certainly.

9 THE COURT: Excuse me, counsel. Is that number 7?

10 THE WITNESS: Yes, it is.

11 THE COURT: Thank you.

12 BY MR. KOCHIS:

13 Q. What does the picture show?

14 A. The picture shows the walk-in refrigerator on the
15 left-hand side, as well as the freezer on the right-hand side
16 that's inside of the crime lab.

17 Q. Directing your attention to Exhibit 8, which is an
18 eight-by-ten color photograph, do you recognize what this
19 shows?

20 A. Yes, I do.

21 Q. What does it show?

22 A. That shows the inside left-hand portion of the
23 walk-in refrigerator in the crime lab.

24 Q. Are you familiar with how sex kits are broken down
25 and how the evidence inside a sex kit is stored?

26 A. Yes.

27 Q. What happens to the blood vials that contain the
28 whole blood?

1 A. The blood vials themselves, at least the procedure
2 now is that the blood vials are taken out. A portion of the
3 blood from the blood vial is dried down onto a piece of filter
4 paper. That is placed into an envelope. The envelope is
5 sealed and placed back into the sex kit. The blood vial with
6 the liquid blood in it is then placed into a heat-sealed
7 plastic bag and that is bar-coded and sent down to property.

8 Q. At property are the swatches stored separate from
9 the whole blood?

10 A. Yes, they are.

11 Q. To your knowledge, are the swatches on the Cooper
12 case at the crime lab -- are they in the property division,
13 the swatches?

14 A. The swatches are -- to my knowledge are in the
15 property division.

16 Q. Are they in the freezer or the refrigerator?

17 A. In the freezer.

18 Q. Do you place whole blood in a freezer?

19 A. No.

20 Q. Is there a reason you put whole blood in the
21 refrigerator as opposed to a freezer?

22 A. Yes.

23 Q. What is the reason?

24 A. The reason is because you can have -- through the
25 expansion in the freezing process, it can actually expand and
26 force the stopper off the vial, and then it will leak out and
27 cause contamination inside of the envelope or whatever it's
28 in.

1 Q. Currently in San Bernardino at the sheriff's
2 department, does the date on which a whole blood sample, a
3 blood vial, was received -- does that have any bearing on
4 whether it's stored at property or the crime lab?

5 A. Yes.

6 Q. Do you know what the cutoff date is?

7 A. Only an approximate.

8 Q. What is the approximation?

9 A. It's in 1995 when that procedure changed.

10 Q. Where are samples -- blood vial samples, whole blood
11 that was obtained prior to 1995, where is that stored?

12 A. The whole blood samples that are from cases --
13 homicide cases in particular are stored in the walk-in
14 refrigerator in the crime lab.

15 Q. And where are the whole blood vials stored on the
16 cases -- the homicide cases where the samples are submitted
17 after 1995?

18 A. Those will be stored in the refrigerator that's
19 depicted in property.

20 Q. So after 1995, is it fair to say that the whole
21 blood goes into the freezer that's shown in Exhibit 3?

22 A. Not the freezer, no.

23 Q. I mean the refrigerator.

24 A. Yes.

25 Q. And the whole blood that exists th-
26 prior to 1995, is that in the refrigerato
27 Exhibit 7?

28 A. Yes.

1 Q. The whole blood vials that were obtained in the case
2 of People versus Kevin Cooper, are they stored in property or
3 are they stored in the crime lab?

4 A. They are stored in the crime lab.

5 Q. I want to take you back to August the 12th of 1999.
6 Did you pick up some evidence on that particular day from
7 property?

8 A. Yes, I did.

9 Q. Directing your attention to Exhibit No. 11, do you
10 recognize what that's a copy of?

11 A. Yes, I do.

12 Q. Could you tell the Court what it is a copy of?

13 A. This is a copy of the Release or Receipt of Evidence
14 form that's kept in the case file in the crime lab.

15 Q. And does the original document have a particular
16 color?

17 A. Yes, it does. It's blue.

18 Q. Does that document reflect the items that you picked
19 up from the property division on August the 12th of 1999?

20 A. Yes, it does.

21 Q. Does it reflect who you picked the evidence up
22 from?

23 A. Yes, it does.

24 Q. Who is that?

25 A. From Kelley Rishell, at approximately 9:48 in the
26 morning.

27 Q. How many items did you get?

28 A. I got three items total.

1 Q. Before we get to the items, can you return to
2 Exhibit 19, and with a blue felt pen can you trace with a
3 dotted line the path you would have taken from the crime lab
4 to property to get the three items.

5 A. Certainly. From the crime lab itself I'll start
6 probably from my office area.

7 Q. Can you indicate -- stop. Can you indicate with
8 "DG" for Dan Gregonis and the word "office" where your office
9 is located in the building.

10 A. Certainly. (The witness complied.)

11 Q. And can you indicate with the initials "DNA" where
12 the DNA portion of the lab is at the crime lab.

13 A. Certainly. The DNA lab itself consists of three
14 rooms.

15 Q. Can you draw a circle around the area and an arrow
16 from the circle and the word "DNA" that would show the
17 approximate area of the DNA lab.

18 A. Yes. (The witness complied.)

19 Q. Are there locked evidence storage areas in the DNA
20 lab?

21 A. Yes.

22 Q. Can you indicate with small rectangles and the
23 initial "L" where that locker or lockers are.

24 A. Where my personal locker is. (The witness
25 complied.)

26 Q. Thank you. Now, can you trace with a dotted line
27 the approximate path you would have taken on August the 12th
28 to go from the crime lab to property to get the items we're

1 later going to ask you about.

2 A. Certainly. The approximate path would have been
3 through my office, if I started out from my office. It's
4 either from the actual DNA area or from my office, so either
5 one. After leaving the crime lab, proceed through --

6 Q. Can you make those dark enough so we can see them?

7 A. Certainly. (The witness complied.)

8 -- proceed through the -- what is our front
9 reception area, the clerical area, through a locked door, down
10 a hallway, and into what is the property receiving area, and
11 that's where I received the evidence.

12 Q. After you got the items on August the 12th did you
13 return to the crime lab?

14 A. Yes.

15 Q. Did you take essentially the same path?

16 A. Yes.

17 Q. Did you leave the building at any time to get the
18 items?

19 A. No.

20 Q. Did you leave the building after you got them to
21 come back to the crime lab?

22 A. No.

23 Q. You may resume your seat.

24 From Exhibit 11, which three items did you get from
25 Miss Rishell on August the 12th of 1999?

26 A. The first was a tape-sealed box. It was property
27 tag number C08170. The second item was also a tape-sealed
28 box. The property tag number was C08176. And the third was a

1 tape-sealed paper bag, with the property tag number B68420.

2 Q. On August the 12th of 1999, did you open either of
3 the boxes or the bag?

4 A. No, I did not.

5 Q. What did you do with the various items on August the
6 12th?

7 A. I stored them in a secure location, the evidence
8 locker or the evidence freezer.

9 Q. The boxes -- do you have any idea where you would
10 have put the two boxes?

11 A. I put those into the -- into my evidence locker.

12 Q. Is that a locked storage facility?

13 A. Yes, it is.

14 Q. As you reflect back three years, four years, do you
15 know where you put the bag?

16 A. I don't have a specific recollection of where I put
17 the bag.

18 Q. Is there more than one potential location you could
19 have put the bag?

20 A. Yes.

21 Q. Could you tell the Court which locations you could
22 have put the bag?

23 A. I could have put it either into the locker with the
24 boxes, or into the evidence freezer.

25 Q. Do you have a procedure as to whether or not you put
26 an item in a locker as opposed to a freezer?

27 A. Yes.

28 Q. What's the procedure?

1 A. A couple of things. One is if it is already in the
2 freezer in property, I will put it into the locked freezer in
3 the crime lab. If it is small enough, I will also put it into
4 the locked freezer if it is biological evidence.

5 Q. Did you leave the building sometime on August the
6 12th?

7 A. At the end of the day, the end of the workday, yes.

8 Q. When you got the three items in question, did you
9 also get any of the blood swatches that remained in the
10 freezer in the property division?

11 A. No, I did not.

12 Q. Did you take any of the whole blood out of the
13 refrigerator at the crime lab when you received the boxes?

14 A. No, I did not.

15 Q. Did you come to work on August the 13th?

16 A. Yes, I did.

17 Q. Can you recall why on August the 12th you didn't
18 open the items up and look for the individual items inside?

19 A. No, I do not.

20 Q. Were you asked to conduct any tests on the items?

21 A. No.

22 Q. What was the nature of the search you were supposed
23 to conduct?

24 A. The nature of the search was just to locate and see
25 whether or not the items were actually present.

26 Q. At the sheriff's station?

27 A. At the sheriff's lab.

28 Q. Directing your attention to an exhibit which has

1 been marked for identification as Exhibit 18, it appears to be
2 two pages. Do you recognize that particular exhibit?

3 A. Yes, I do.

4 Q. Could you tell the Court what it is?

5 A. This is actually a copy of two notes -- two pages of
6 notes that I made on August the 13th, 1999, in reference to
7 looking for the items in question.

8 Q. Is that part of the documentation procedure that's
9 employed by the sheriff's department?

10 A. Yes, it is.

11 Q. Back on Exhibit 11, the Release or Receipt of
12 Evidence form, do your initials appear on that?

13 A. Yes, they do.

14 Q. As well as a date and a time for August the 12th?

15 A. Yes.

16 Q. What time did you get the items on the 12th?

17 A. I actually have down on my side where I signed at
18 0949.

19 Q. And that's an indication that you actually checked
20 the items out, took them from property?

21 A. That I received them from Kelley Rishell at 9:49 on
22 August the 12th.

23 Q. Even though you both work for the sheriff's
24 department, for the scientific investigations division, when
25 you get something from that side of the building you have to
26 sign for it; is that correct?

27 A. Yes.

28 Q. When you return it, she signs -- someone signs that

1 you returned it; is that correct?

2 A. That is correct.

3 Q. Directing your attention back to Exhibit 18, on
4 August the 13th of 1999 did you conduct your inspection of the
5 two boxes and the bag looking for the items in question?

6 A. Yes, I did.

7 Q. What part of the crime lab did you conduct that
8 inspection at?

9 A. That was at my laboratory bench, which is right next
10 to what I marked as "L."

11 Q. Can you perhaps return to the diagram with the blue
12 felt pen, and can you put your initials and a line to the
13 bench as to where that would have been.

14 A. Actually, I'll put a rectangle if that's okay.

15 Q. That's fine.

16 A. (The witness complied.)

17 Q. Can you estimate for the Court about how many feet
18 separate the refrigerator at the crime lab where the whole
19 blood in Cooper is stored from that bench?

20 A. Just a rough estimate, maybe 30 to 40 feet.

21 Q. And the swatches, the frozen swatches on the Cooper
22 case that are stored in property, are they stored on the other
23 side of the building?

24 A. Yes, they are.

25 Q. You can return to your seat.

26 A. (The witness complied.)

27 Q. Reviewing Exhibit 18, does that exhibit refresh your
28 recollection as to which of the three items you examined

1 first?

2 A. Which of the three containers?

3 Q. Yes.

4 A. Yes, it does.

5 Q. Which container?

6 A. The first one I looked at was property tag B68420,
7 which is a tape-sealed paper bag.

8 Q. What item were you looking for in that particular
9 bag?

10 A. I was looking to see whether or not Item A-41 was
11 present.

12 Q. What is A-41?

13 A. A-41 is a -- it's a small metal pillbox that
14 contains a bloodstain that in my analysis in 1983 and 1984 was
15 significant, in that it came back serologically consistent
16 with Mr. Cooper.

17 Q. Did you have Mr. Cooper's whole blood with you at
18 the bench when you opened that bag up?

19 A. No, I did not.

20 Q. Did you have any whole blood vial of any of the
21 victims in this case when you opened that bag?

22 A. No, I did not.

23 Q. Did you have any of the frozen swatches with you at
24 the workbench when you opened up that bag?

25 A. No, I did not.

26 Q. Did you conduct any test on any portion of the item
27 that's labeled A-41?

28 A. No, I did not.

1 Q. Did you take any steps to avoid any contamination of
2 A-41?

3 A. Yes.

4 Q. What steps did you take?

5 A. First was that A-41 was the only item that I
6 examined at that time. I did not have any other items open.
7 I was wearing gloves, and I did it on a clean piece of butcher
8 paper.

9 Q. Directing your attention to an exhibit which has
10 been marked for identification as Exhibit 20, do you recognize
11 what that appears to be a copy of?

12 A. Yes, I do.

13 Q. Could you tell the Court what it's a copy of?

14 A. It's a copy of an outer envelope, as well as a
15 tape-sealed glassine envelope with the writing "A-41" on it.

16 Q. The item that you opened, B68420, is that a bag or a
17 box?

18 A. That's a paper bag.

19 Q. What color?

20 A. Brown.

21 Q. The item depicted in Exhibit 20, was that one of the
22 items inside the bag B8 -- B68420?

23 A. Yes.

24 Q. There appears to be several objects in this
25 photograph; is that correct?

26 A. Yes.

27 Q. There's a ruler?

28 A. Correct.

1 Q. There's a -- how would you describe the object above
2 the ruler on the right side of the photograph?

3 A. I'd call it a glassine bindle or a glassine -- on
4 the right side it's a glassine bindle or a glassine envelope.

5 Q. Does it have any of the properties and
6 characteristics similar to a sandwich baggie?

7 A. Kind of a wax -- wax paper sandwich baggie, if you
8 will.

9 Q. Well, is it glass?

10 A. No.

11 Q. The object on the left is a manila-colored envelope?

12 A. Yes, it is.

13 Q. Now did you open either of those objects on August
14 the 13th?

15 A. I opened the envelope which was tape-sealed at the
16 time, and I opened that for inspection.

17 Q. Was there anything inside the envelope?

18 A. Yes. I found the tape-sealed glassine envelope
19 inside.

20 Q. Directing your attention to Exhibit 21, do you
21 recognize what that appears to be a color copy of?

22 A. Yes.

23 Q. Could you tell the Court what it's a color copy of?

24 A. This is a closer photograph of the glassine bindle
25 with the manila envelope on the left-hand side.

26 Q. Exhibit 22, do you recognize what that's a picture
27 of?

28 A. This appears to be just the opposite side of the

1 glassine bindle.

2 Q. Now, did the glassine bindle contain items?

3 A. Yes.

4 Q. Do you know how many?

5 A. From my notes, A-41 is present, which means that the
6 metal pillbox was present inside of that.

7 Q. Now, did you open up that glassine bindle?

8 A. No, I did not.

9 Q. Can you see through the bindle?

10 A. Yes.

11 Q. Were you able to see anything inside the bindle?

12 A. Yes.

13 Q. Directing your attention to what has been marked for
14 identification as Exhibit 24, do you recognize what that is?

15 A. Yes, I do.

16 Q. What is it?

17 A. That is A-41, which is the metal pillbox which
18 contains the bloodstain.

19 Q. Now, on August the 13th of 1999 did you open the
20 pillbox which is depicted in Exhibit 24?

21 A. No, I did not.

22 Q. Did you ever put anything into that pillbox?

23 A. No, I did not.

24 Q. Did you ever inject anything into the pillbox?

25 A. No.

26 Q. Did you ever put any of Mr. Cooper's blood in that
27 pillbox that contains A-41?

28 A. No, I did not.

1 Q. Did you ever put anyone else's blood in the pillbox?

2 A. No.

3 Q. Did you examine the contents of the pillbox?

4 A. No, I did not.

5 Q. Do you recall at some point being asked by anyone on
6 the prosecution team if it was possible to open the pillbox
7 and examine the contents?

8 A. Yes.

9 Q. Do you recall who asked you to do that?

10 A. That was yourself.

11 Q. Did you do it?

12 A. No, I did not.

13 Q. Did you give any reason why you would not do it?

14 A. The reason I told you beforehand, before examining
15 or looking for this item, was that I believed that there was
16 -- if there was a shot for doing any kind of DNA analysis,
17 that there was sufficiently little of the sample left that by
18 opening the sample itself it may impinge on the ability to
19 actually get a result off of that sample.

20 Q. Directing your attention to Exhibit 23, do you
21 recognize the item in that picture?

22 A. Yes, I do.

23 Q. Could you tell the Court what it is?

24 A. This is a test tube or plastic test tube with a cap
25 with some of the flakes of plaster inside of it from A-41.

26 Q. Did you take that item, the item depicted in Exhibit
27 23 -- did you take that out of the glassine bindle on August
28 the 13th of 1999?

1 A. No, I did not.

2 Q. Did you take it out of the glassine bindle on August
3 the 12th of 1999?

4 A. No, I did not.

5 Q. Did you put anything inside that item on either
6 August the 12th or August the 13th of 1999?

7 A. No, I did not.

8 Q. Did you ever put any of Mr. Cooper's known blood
9 inside that?

10 A. No, I did not.

11 Q. Was that a device that was used in the original
12 serological testing of A-41?

13 A. Not the original testing, no.

14 Q. Subsequent testing?

15 A. Yes.

16 Q. Was there another criminalist with you during that
17 testing?

18 A. Yes.

19 Q. The name of that person?

20 A. Both Dr. Edward Blake, as well as Brian Wraxall were
21 present during that testing.

22 THE REPORTER: Would you spell Wraxall?

23 THE WITNESS: W-r-a-x-a-l-l, I believe.

24 BY MR. KOCHIS:

25 Q. Was Mr. -- was Dr. Blake working for the
26 prosecution at the time he worked on the test?

27 A. No, he was not.

28 Q. Was he retained by Mr. Negus, the defense lawyer in

1 the case?

2 A. Yes, he was.

3 Q. Directing your attention to Exhibit 25, do you
4 recognize what that's a picture of?

5 A. Yes, I do.

6 Q. Could you tell the Court what it's a picture of?

7 A. That is a picture of the side of A-41, the metal
8 pillbox, and in particular it has my initials, DJG, the
9 laboratory case number, 42376, and the item number.

10 Q. After you opened the envelope that's depicted in
11 Exhibit 20 and looked through the glassine bindle, what did
12 you do?

13 A. At that point I put it back into -- with making
14 notes, I put it back into the envelope and sealed the
15 envelope.

16 Q. And what did you do with the envelope?

17 A. I put it back into the paper bag.

18 Q. That's B68420?

19 A. Yes.

20 Q. Did you have any other item of evidence on the
21 workbench when you opened up the envelope and took out the
22 glassine bindle?

23 A. No.

24 Q. Did you have any other item of evidence on the bench
25 the entire time you conducted your visual examination?

26 A. No.

27 Q. And you never contaminated that piece of evidence?

28 A. That is correct, I did not.

1 Q. What was the next item that you looked at?

2 A. The next item was a tape-sealed box which is
3 C08170.

4 Q. And what type of examination did you conduct?

5 A. Once again I was looking for two specific items of
6 evidence, which are C-2 and C-3.

7 Q. Did you find those inside the box?

8 A. Yes, I did.

9 Q. Do you recall what kind of container C-2 and C-3
10 were in?

11 A. Well, inside of the tape-sealed box there was
12 another tape-sealed envelope, and inside that tape-sealed
13 envelope the -- in my notes it says it's one tape-sealed petri
14 dish, which is a plastic -- kind of square plastic box, which
15 was labeled 42376, C-2, C-3; and then there was also a
16 tape-sealed white cardboard box labeled C-2 and another
17 tape-sealed white cardboard box labeled C-3.

18 Q. Did you open either of the boxes?

19 A. No, I did not.

20 Q. Did you open the petri dish?

21 A. No, I did not.

22 Q. After you verified they were inside the box, what
23 did you do?

24 A. I then placed them back into the envelope that they
25 were in and then placed them back in the box.

26 Q. When you opened C08170, had B68420 already been
27 resealed?

28 A. Yes.

1 Q. What was the third item you looked at on August the
2 13th?

3 A. The third item is property tag number C08176, which
4 is a tape-sealed box.

5 Q. Were you at your workbench at the crime lab when you
6 broke that seal?

7 A. Yes.

8 Q. Did you look at certain items inside the box?

9 A. Yes.

10 Q. Was one of the items you were looking at an item
11 that was labeled V-12?

12 A. Looking for, yes.

13 Q. Did you find it inside the box?

14 A. No, I did not.

15 Q. Were you also looking for an Item QQ?

16 A. Yes, I was.

17 Q. Did you find that inside the box?

18 A. No, I did not.

19 Q. Did you find V-17 inside the box?

20 A. I found a pillbox which was labeled "42376, V-17,
21 cig," c-i-g, "butt DCS."

22 Q. Did you open that pillbox?

23 A. No, I did not.

24 Q. Did you put anything inside that pillbox?

25 A. No, I did not.

26 Q. Did you ever put a sample of Mr. Cooper's saliva
27 inside the pillbox that contained V-17?

28 A. No, I did not.

1 Q. Did you ever commingle any of Mr. Cooper's blood
2 into V-17?

3 A. No.

4 Q. Did you commingle Mr. Cooper's saliva with any item
5 that was inside C08176 on August the 12th or August the 13th
6 of 1999?

7 A. No, I did not.

8 Q. What did you do after you were done looking for QQ,
9 V-12, V-17?

10 A. I then reopened B68420.

11 Q. Before you did that, was C08176 resealed?

12 A. Yes.

13 Q. For what purpose did you reopen the B bag?

14 A. To look for another item that I didn't look for
15 before. That's Item CC.

16 Q. Did you find CC?

17 A. I found a tape-sealed manila envelope which was
18 labeled CC.

19 Q. Did you open the envelope?

20 A. No, I did not.

21 Q. Did you do anything to determine if there was
22 anything inside the envelope?

23 A. Yes, simply just felt it.

24 Q. Did you feel anything inside the envelope?

25 A. Yes. It felt like a piece of material inside.

26 Q. Did you then rebox or repackage everything in the B
27 bag?

28 A. Yes.

1 Q. What did you then do with the two boxes and the bag?

2 A. At that point I then proceeded to bring the boxes
3 back down to property and checked them back in.

4 THE COURT: Would this be a good time to give the
5 reporter a respite of about ten minutes?

6 MR. KOCHIS: Thank you.

7 THE COURT: We'll be in recess for about ten minutes.

8 (At 2:57 p.m. a recess was taken until 3:08 p.m.)

9 THE COURT: If you're ready, Mr. Kochis, you may proceed.

10 BY MR. KOCHIS:

11 Q. Mr. Gregonis, directing your attention back to
12 Exhibit 20, which appears to be a color copy of a picture, you
13 previously testified that you recognized what's in that
14 photograph; is that correct?

15 A. Yes, I do.

16 Q. And is that a copy of the manila envelope that
17 contained the glassine bindle that contains the pill canister
18 that contains what's left of A-41?

19 A. Yes.

20 Q. Directing your attention next to Exhibit 21, which
21 appears to be a copy of a photograph, does that appear to be a
22 close-up of a portion of the envelope and the glassine bindle
23 that's depicted in 20?

24 A. Yes.

25 Q. Directing your attention next to Exhibit 22, which
26 appears to be a copy of a color photograph, do you recognize
27 what that appears to be a copy of?

28 A. Yes. That appears to be the opposite side of the

1 glassine bindle and a portion of the envelope.

2 Q. Exhibit 23, does that appear to be a color copy of a
3 portion of an item that was used to process A-41?

4 A. Yes.

5 Q. Now, there's a number in that photograph, "A-41-B."
6 Is that your writing?

7 A. No, it is not.

8 Q. Directing your attention to two exhibits, 24 and 25,
9 do they both appear to be copies of photographs of the
10 container, the pillbox, the pill tin that contains whatever's
11 left of A-41?

12 A. Yes.

13 Q. In Exhibit 24 at the bottom over a ruler is the
14 writing "A-41-A." Is that your writing?

15 A. No, it is not.

16 Q. Did you place it when you looked at the item on
17 August 13th of 1999?

18 A. No, I did not.

19 Q. And Exhibit 25 there appears to be some printing,
20 "A-41-A." Is that your printing?

21 A. No, it is not.

22 Q. Did you see that item when you looked for A-41 on
23 August the 13th of 1999?

24 A. The printing "A-41-A"?

25 Q. Yes.

26 A. No.

27 Q. In 1995, did the San Bernardino Sheriff's Crime Lab
28 go through an accreditation process?

1 A. Yes, they did.

2 Q. Were any recommendations made to the sheriff's
3 department during that accreditation process?

4 A. Yes.

5 Q. Did any of those recommendations involve the storage
6 of whole blood samples?

7 A. Yes.

8 Q. What was the recommendation?

9 A. The recommendation was to take the whole blood
10 samples, which were at that time stored in the refrigerator in
11 the crime laboratory, and blood samples from then on were
12 stored in the refrigerator in the property section.

13 Q. Was there any recommendation as to the blood vials
14 that were going to be retained by the crime lab?

15 A. Yes.

16 Q. What was the recommendation?

17 A. That each and every one of those vials was to be
18 sealed.

19 Q. To your knowledge, was that done?

20 A. To my knowledge, yes.

21 Q. You've previously identified Exhibit 7 as a photo of
22 the freezer and the refrigerator at the sheriff's crime lab;
23 is that correct?

24 A. That is correct.

25 Q. Are those two locations that you have access to?

26 A. Yes, they are.

27 Q. Directing your attention to Exhibit 8, which appears
28 to be an eight-by-ten color photograph, do you recognize what

1 that depicts?

2 A. Yes. It's the inside of the walk-in refrigerator in
3 the crime lab.

4 Q. And does it show the approximate location where the
5 blood vial samples are stored on the Cooper case?

6 A. Yes. It's located approximately the lower left-hand
7 corner of this photograph, on the lower -- on the rack inside
8 of the refrigerator.

9 Q. Can you take a blue marker, and on the lower
10 left-hand corner in the white margin can you put your initials
11 and today's date. On the margin, lower left.

12 A. (The witness complied.)

13 Q. And can you indicate with a circle, perhaps, the
14 approximate location of the blood vials in the Cooper case.

15 A. Sure. (The witness complied.)

16 THE COURT: What was the number of that one, please?
17 I'm sorry.

18 MR. KOCHIS: 8, your Honor.

19 THE COURT: Okay. Thank you.

20 BY MR. KOCHIS:

21 Q. Do you know who Sergeant Meadows is?

22 A. Yes, I do.

23 Q. Does he work for property?

24 A. Yes. He's the sergeant in charge of property.

25 Q. Do you have a supervisor?

26 A. Yes, I do.

27 Q. What's his name?

28 A. Hiram Evans.

1 Q. Were you present when those two persons went into
2 the refrigerator last week at the crime lab?

3 A. Yes.

4 Q. And were you present when they looked at the whole
5 blood samples in the Cooper case?

6 A. Yes.

7 Q. Directing your attention to an item which has been
8 marked for identification as Exhibit 9, it's an eight-by-ten
9 inch color photograph. Do you recognize what that picture
10 shows?

11 A. Yes, I do.

12 Q. What does it show?

13 A. It shows a plastic test tube rack with a number of
14 blood vials. Included in those blood vials are the ones from
15 the -- our laboratory case number 42376.

16 Q. And that applies to what defendant?

17 A. Kevin Cooper.

18 Q. Directing your attention to an item which has been
19 marked for identification as Exhibit 10, which appears to be
20 an eight-by-ten color photograph, do you recognize what that
21 is a picture of?

22 A. Yes, I do.

23 Q. What is it a picture of?

24 A. First of all, I recognize it by my initials, the
25 laboratory case number 42376, the item number VV-2. It is a
26 picture of a blood vial.

27 Q. Do you know whose blood VV-2 pertains to?

28 A. Yes.

1 Q. Who?

2 A. Kevin Cooper.

3 Q. And the date that accompanies your initials is what
4 date?

5 A. 8-1-83.

6 Q. Is the seal that was placed on that vial of blood in
7 1995 -- is that seal still intact?

8 A. Yes.

9 Q. Was that seal placed on that vial of blood
10 approximately four years prior to your search for A-41 in
11 August of 1999?

12 A. Approximately, yes.

13 Q. Have you ever taken anything out of VV-2 from 1995
14 to the present time?

15 A. No.

16 Q. Have you ever taken anything out of VV-2 from 1990
17 to the present time?

18 A. No.

19 Q. Do you remember approximately when the last time you
20 would have taken anything out of VV-2 would have been?

21 A. The approximate date would have been in August of
22 1983.

23 Q. Did you have a swatch prepared from some of the
24 contents of that item, VV-2?

25 A. Yes, I did.

26 Q. And is that swatch -- do you know where that swatch
27 is today?

28 A. From --

1 Q. Strike that. Do you know where the swatch was in
2 August of 1999?

3 A. Yes, I do.

4 Q. Where?

5 A. It was in the property freezer.

6 Q. Directing your attention next to an item which has
7 been marked for identification as Exhibit 26, do you recognize
8 what that is a copy of?

9 A. Yes, I do.

10 Q. Could you tell the Court what it's a copy of?

11 A. This is a copy of a Release or Return of Evidence
12 sheet or what the crime lab refers to as a blue sheet, with
13 some transactions being depicted or recorded.

14 Q. Did you release some evidence in the Cooper case?

15 A. Yes, I did.

16 Q. On what date?

17 A. According to the record, on July 30th of 1984.

18 Q. Who did you release the items to?

19 A. To John Thornton.

20 Q. Did he play a role in the Cooper trial?

21 A. Yes.

22 Q. Who was he retained by?

23 A. He was retained by the defense in the case.

24 Q. Did you list on that release form all the items of
25 evidence that you released to Dr. Thornton?

26 A. On that date, yes.

27 Q. Did you release to Dr. Thornton on July the 30th of
28 1984 B-9 and -10?

1 A. Yes, I did.

2 Q. And did you release on that day D-1 through -4?

3 A. Yes, I did.

4 Q. Did you release to Dr. Thornton C-2 and C-3?

5 A. Yes, I did.

6 Q. And did you release to Dr. Thornton any of the E
7 series of evidence?

8 A. Yes, I did.

9 Q. Which particular items?

10 A. Items E-1, E-2, E-3, E-4, and E-11.

11 Q. Do you know if those numbers correspond to the hair
12 that was recovered from the hands of the victims?

13 A. I don't know if all of those numbers do, but I know
14 that B-9, B-10, C-2, C-3, D-1, D-2, D-3 and D-4 do. I'm not
15 sure which ones of the E-1, -2, -3, -4 and -11 do, but I know
16 at least a couple of those do.

17 Q. Were you one of the criminalists that went to the
18 Ryen home after the murders?

19 A. Yes.

20 Q. Was that within days of when the bodies were
21 discovered?

22 A. That was, I believe, the day after the bodies were
23 discovered.

24 Q. Did you walk through portions of the Ryen home?

25 A. Yes.

26 Q. Were the bodies in place when you got there?

27 A. No.

28 Q. How much time do you think you spent in the house?

1 A. Just an estimate would be two to four hours.

2 Q. Did you have the opportunity to look at the
3 condition of the floor?

4 A. Yes.

5 Q. Did they have carpet in the house?

6 A. In parts of the house, yes.

7 Q. Did you have the opportunity to go into the master
8 bedroom where the bodies of the victims were found?

9 A. Yes.

10 Q. Was that carpeted?

11 A. Yes.

12 Q. What was the condition of the carpet in terms of its
13 cleanliness and debris?

14 A. I would say that it was soiled. There was a lot of
15 debris on it.

16 Q. Were you one of the witnesses that testified in the
17 Cooper trial here in San Diego?

18 A. Yes, I was.

19 Q. After the trial ended, between that time and today's
20 date, have you ever gone to the evidence locker in the
21 courthouse to look at any of the evidence in the Cooper case?

22 A. No.

23 Q. Have you ever looked at the T-shirt, a T-shirt that
24 was found on the side of the road, in the courthouse here in
25 San Diego?

26 A. No.

27 Q. Have you ever looked at any of the cigarette butts
28 that were recovered in the case while they were in the

1 courthouse here in San Diego?

2 A. No.

3 Q. After the trial ended.

4 A. After the trial ended, no.

5 Q. After the trial ended, did you ever look at the
6 hatchet that was admitted into evidence and remained in this
7 courthouse for a number of years?

8 A. No, I did not.

9 MR. KOCHIS: I have no further questions.

10 THE COURT: Very well. Mr. Bernstein?

11

12 CROSS-EXAMINATION

13 BY MR. BERNSTEIN:

14 Q. Good afternoon, Mr. Gregonis. Can you tell me about
15 how long the examination you conducted on behalf of Mr. Kochis
16 took when you finally got around to opening those two boxes
17 and that one bag, about how long it took you to determine if
18 the items were present or not?

19 A. I can tell you that it took probably less than two
20 hours to do, simply by the record. At that time I was coming
21 into work at about eight o'clock, and according to the record
22 I returned the evidence to property on that date at 10:05.

23 Q. So you probably began the examination first thing in
24 the morning when you got to work the next day?

25 A. I don't recall what time I started the examination.

26 Q. Okay. When you check items out of the property
27 division there's certain forms that are filled out. We've
28 seen them. They're in evidence here. You sign for them and a

1 property division employee signs them out, and when you return
2 them you sign them in and a property employee signs them in;
3 is that correct?

4 A. That is correct.

5 Q. There's an extensive paper trail.

6 The same is not true, I take it, of items in the
7 refrigerator in the crime lab.

8 A. That is correct.

9 Q. In other words, anyone with access to that
10 refrigerator, even though it's locked, could take items in and
11 out of it without there being any record of it at all, without
12 any written record.

13 A. That is correct, yes.

14 Q. Do you have any idea how many employees at the crime
15 lab would have a key to that particular refrigerator?

16 THE COURT: Are you talking about the refrigerator in
17 the crime lab?

18 MR. BERNSTEIN: In the crime lab, yes.

19 Q. You have one, correct?

20 A. Yes, I do. There's approximately -- I want to say
21 15 to 20.

22 Q. Okay. You didn't find all the items that Mr. Kochis
23 asked you to look for, correct?

24 A. That is correct.

25 Q. You didn't find in particular Item V-17, a
26 cigarette, and Item QQ, a cigarette?

27 A. No. I found the pillbox that was marked "V-17, cig
28 butt." I did not find Items V-12 or QQ.

1 Q. And those were both cigarette butts as well, correct?

2 A. I don't recall specifically what those were.

3 Q. Do you recall how many cigarette butts you tested
4 for Mr. Cooper's trial in '84?

5 A. There were at least two. I'm not specific as to how
6 many I tested.

7 Q. Do you recall if there was one hand-rolled
8 cigarette?

9 A. Yes.

10 Q. And was one a manufactured, commercial cigarette of
11 some brand or another?

12 A. Yes.

13 Q. Did you test any other cigarettes at the time?

14 A. I may have. I don't specifically recall.

15 Q. Some of the items of evidence apparently in this
16 case are in the evidence locker in this building; is that
17 correct?

18 A. I do not know whether they are or are not.

19 Q. But a good deal of the evidence that was collected
20 in this case is at the crime lab in the property division in
21 San Bernardino; is that correct?

22 A. That is correct.

23 Q. Do you think that the items that are stored in San
24 Bernardino now were ever put in evidence in the trial in San
25 Diego? Do you have any idea?

26 MR. KOCHIS: Objection. That calls for speculation on
27 his part.

28 MR. BERNSTEIN: If he knows.

1 THE COURT: Overruled, if you know.

2 THE WITNESS: Whether or not they were introduced in the
3 trial and are currently in storage?

4 BY MR. BERNSTEIN:

5 Q. At San Bernardino, yes.

6 A. I don't know.

7 Q. All right. So you don't know at this point if Items
8 V-12 or QQ exist at all anyplace anymore; is that right?

9 A. I have no personal knowledge that they do, no.

10 Q. You did some, I think, what you described as
11 electrophoretic testing in 1984?

12 A. That is correct.

13 Q. On A-41. Could you maybe briefly, if that's
14 possible, describe for us what that consists of?

15 A. Electrophoresis, or what's called conventional
16 serology, dealt with what are called polymorphic enzymes,
17 enzymes that had a different form, and the different form had
18 to do with their mobility through a -- usually a gel medium.
19 So different people have different types.

20 You put the sample in a liquid form, usually by
21 dissolving it, put it into a gel, put electricity across that
22 gel, and the protein will migrate at a certain speed,
23 depending on what type it actually is. For instance, a type 2
24 may go faster and be further up the plate when you develop it
25 than a type 1. So you get banding patterns.

26 Q. I see. To sort of cut to the chase, you may test a
27 certain number of proteins, and the more that are consistent
28 with whatever target you're looking for the more likely it is

1 that that sample matches or comes from the same source. In
2 other words, when you tested A-41 you were trying to see if it
3 matched Kevin Cooper's blood electrophoretically?

4 A. Right. When I tested A-41 I was determining what
5 the possible -- what the actually types were. After I
6 determined the actual types I determined whether or not they
7 matched or were consistent with Mr. Cooper's types.

8 Q. So if you were testing for, say, 12 proteins and
9 they all matched Mr. Cooper's, the proteins in Mr. Cooper's
10 blood, then would you say that that was strong evidence that
11 A-41 came from the same -- the same source, Mr. Cooper, as
12 Mr. Cooper's whole blood?

13 A. Yes.

14 Q. Okay. And that was your testimony in '84 as well?

15 A. I believe so, yes.

16 Q. Was one of those enzymes that you test for acid
17 phosphatase?

18 A. Yes, also called EAP.

19 Q. Do you recall what your results were in the instance
20 of that protein?

21 A. Yes, I do.

22 MR. KOCHIS: Objection as to relevance. It's the
23 contamination issue.

24 THE COURT: Sustained.

25 MR. BERNSTEIN: Mr. Gregonis's credibility is very much
26 in issue here. That's where I was going with that.

27 THE COURT: I'll let you ask that question.

28 / / /

1 BY MR. BERNSTEIN:

2 Q. Do you recall what your results were for EAP when
3 you tested Mr. Cooper's blood in '84 -- '83 and '84?

4 A. Yes, I do.

5 Q. What were they?

6 A. A couple of testings that I did for Mr. Cooper's
7 blood, I diagnosed that as a type B.

8 Q. And do you recall what Mr. Cooper's actual --

9 A. At a later point I learned that Mr. Cooper is a type
10 RB.

11 Q. Your testing didn't indicate that it was an RB. It
12 indicated that it was a B?

13 A. My initial testing, yes.

14 Q. Did you do any subsequent testing that showed that
15 it was an RB?

16 A. Yes.

17 Q. You did. Did you do that by yourself or did you do
18 that with Wraxall and Blake?

19 A. Both.

20 Q. And that conclusively determined that it was an RB?

21 A. Yes.

22 Q. Do you recall testifying at a Hitch hearing prior to
23 Mr. Cooper's trial?

24 A. Yes, I did.

25 Q. And did you testify at that time that it was an RB
26 or a B?

27 MR. KOCHIS: Objection as to the relevance.

28 MR. BERNSTEIN: Again, it goes to Mr. Gregonis's --

1 THE COURT: Overruled.

2 THE WITNESS: I don't recall the time sequence, as to
3 whether or not at that point that I had the knowledge about
4 the RB versus the B during the Hitch --

5 BY MR. BERNSTEIN:

6 Q. Where did you get the knowledge? If your initial
7 testing was B, how did you learn that it was RB?

8 A. I believe, as I recall now, Dr. Blake informed me
9 that it was an RB.

10 Q. Based on his testing?

11 A. Based on his testing.

12 Q. Were you present at the testing after which he
13 informed you it was an RB?

14 A. At the actual testing, I don't recall exactly what
15 -- at what point, whether it was over the phone, during the
16 trial or the Hitch motion, or when I actually was informed
17 about that.

18 Q. Did you ever testify that your findings were that it
19 was an RB, either at the Hitch hearing or at the trial?

20 A. I believe at the trial I said it was either a B or
21 an RB.

22 Q. At the trial, though, you had the results of all of
23 the testing that had been done by Blake, right?

24 A. Yes.

25 Q. Okay. Well, he had informed you, apparently
26 unequivocally, that it was an RB?

27 A. Well, according to him, yes. And I believe I had
28 done subsequent testing after getting a standard RB into the

1 laboratory also.

2 Q. All right. Normally when whole blood is collected,
3 is -- describe that for me. How do you preserve it? What
4 exactly is done with the blood once it's drawn from the
5 person?

6 A. Well, as far as the whole blood, both then and now,
7 it's taken in a Vacutainer, which is a tube with a vacuum in
8 it, by a venipuncture, usually out of the arm. It is then
9 transported to the lab in some manner, and then our laboratory
10 protocol calls for taking a portion of that and putting it
11 onto a piece of filter paper or cloth and drying it down.

12 Q. Is there some vessel by which the blood is
13 transferred to the lab? After they collect it from the person
14 they inject it into something, a tube of some kind; is that
15 right?

16 A. I believe I said it was in a tube, in a glass tube.

17 Q. And is that tube sterile or is there any chemical in
18 it before the blood's put in it?

19 A. It depends. In this particular case, for instance,
20 in Exhibit 10, the purple top on this indicates that it's an
21 EDTA vial.

22 Q. What is EDTA?

23 A. It's a preservative and anticoagulant.

24 Q. What does EDTA stand for?

25 A. Ethylenediaminetetraacetic acid.

26 Q. Thank you. Can you describe briefly how that
27 preserves blood? What would happen if EDTA was not in the
28 tube?

1 A. Well, what it does is the EDTA is what is called a
2 chelating agent, and chelating agents capture metal molecules
3 or metal ions. Metal ions are needed to -- by enzymes and,
4 for instance, bacteria and such to reproduce and grow. So if
5 they can't reproduce and grow because there's no metal ions
6 available for the enzyme mechanism to work, they don't grow.
7 They don't chew apart and degrade the blood.

8 Q. So EDTA is, in effect, dissolved in the blood and
9 sequesters these metals and therefore the blood is preserved?

10 A. It dissolves in blood, yes.

11 Q. Do you know the particular salt form of the EDTA
12 that's used by the sheriff's department in San Bernardino?

13 A. I'm not sure exactly what the salt form is. It's
14 probably what's called a disodium salt.

15 Q. It's not the free acid, then?

16 A. I'm not sure. For instance, on this blood vial I
17 can't read it. All I can read is EDTA. I can't read what
18 specific form it was in.

19 Q. Okay. When you do check out items from the property
20 division, at that point they're basically in your custody.
21 Whatever happens is entirely up to you. There's no written
22 record of it at all; is that correct? You just check it out,
23 you have it for a period of time, and you check it in; is that
24 accurate?

25 A. Unless I do an examination on it. Then there's a
26 written record.

27 MR. BERNSTEIN: All right. May I confer with counsel
28 just a moment, your Honor?

1 THE COURT: Yes.

2 (Discussion off the record.)

3 BY MR. BERNSTEIN:

4 Q. Just a few more questions, Mr. Gregonis. You seal
5 and unseal these tubes all the time, I suspect, probably every
6 day, such as Exhibit 10?

7 A. No.

8 Q. Do you ever do it?

9 A. I have in the past, yes.

10 Q. If you want to, for example, withdraw blood from
11 these sealed tubes you would have to unseal it, or does
12 somebody else do it?

13 A. Actually, at this point somebody else does that
14 because I don't handle liquid bloods anymore.

15 Q. When did you last handle them?

16 A. Actually, prior to 1995.

17 Q. Okay. So then you didn't put this seal on; is that
18 right?

19 A. No, I did not.

20 Q. And you really don't have any way of knowing if
21 that's the original seal or not, do you? Couldn't somebody
22 just simulate that same seal and put it on if someone wanted
23 to do that?

24 MR. KOCHIS: Objection. That's argumentative and calls
25 for speculation.

26 THE COURT: Yes, sustained.

27 MR. BERNSTEIN: I have no further questions. Thank you.

28 / / /

REDIRECT EXAMINATION

BY MR. KOCHIS:

Q. Mr. Gregonis --

THE COURT: Redirect?

MR. KOCHIS: May I ask some questions?

THE COURT: Yes.

BY MR. KOCHIS:

Q. Was there a T-shirt found by the side of the road that you did some conventional serological testing on back in 1983 or 1984?

A. Yes.

Q. Did you actually cut a portion of the T-shirt out and test it?

A. Yes.

Q. What laboratory identification number was that portion of the T-shirt given?

A. I believe it's Item CC.

Q. And you did do some ABO testing on that?

A. I believe I did both ABO and what is called a group 1 testing on it.

Q. And were you able to exclude Mr. Cooper from that stain back in 1983 or 1984?

A. I don't recall.

Q. Did you ever put any of Mr. Cooper's blood on CC?

A. No.

Q. Did you ever put any portion of Mr. Cooper's blood on the portion of the T-shirt that remained in this courthouse from 1984 to the present time?

1 A. No.

2 Q. Defense counsel asked you some questions about
3 EDTA. Do you recall that?

4 A. Yes, I do.

5 Q. Is that a substance that exists in laundry
6 detergent?

7 A. I don't know specifically whether it's in laundry
8 detergent.

9 Q. Does it exist outside the preservative setting in
10 the test tube?

11 A. Yes.

12 Q. What types of things can EDTA be found in?

13 A. It can be found in foods. Specifically, it's
14 sometimes used as a food preservative. It's a good general
15 preservative in a lot of things.

16 Q. Is it found -- do you know whether or not it's found
17 in cleaning products?

18 A. I don't know.

19 Q. So it has a source other than the preservative
20 that's used to maintain blood.

21 A. Yes.

22 MR. KOCHIS: No further questions.

23

24 RECROSS-EXAMINATION

25 BY MR. BERNSTEIN:

26 Q. Do you have any idea of what the concentration of
27 EDTA would be in blood that had been stored in an EDTA tube?

28 A. No, I do not.

1 Q. Do you have any idea what the concentration of EDTA
2 would be in human blood after somebody had consumed food that
3 had EDTA in it as a preservative?

4 A. No, I do not.

5 Q. So it's possible the concentrations could be orders
6 of magnitudes different -- hundreds or even thousands of times
7 different from a tube than from food; is that possible?

8 A. That's possible, certainly.

9 Q. And if that were true, it would be possible to
10 distinguish blood that had EDTA in it from a test tube versus
11 blood that had EDTA from a natural process or from food being
12 consumed?

13 A. As long as the blood was still in a liquid form and
14 hadn't evaporated, I think that might be a valid testing.

15 Q. And with regard to the T-shirt, there was a good
16 deal of blood on the shirt that you didn't test; is that
17 correct, back in '84?

18 A. That is correct.

19 Q. Was there any reason that you only tested that area
20 in CC that you cut out?

21 A. As I recall now, I was doing kind of a screening
22 test and looking for blood that was foreign to the victims in
23 the case.

24 Q. Okay. And didn't find any?

25 A. Not to my recollection, no.

26 MR. BERNSTEIN: Thank you. No further questions.

27 / / /

28 / / /

REDIRECT EXAMINATION

BY MR. KOCHIS:

Q. What causes blood to evaporate in a test tube?

A. It's simply that the cap itself isn't a perfect seal, so it's going to lose some of that liquid. Plus, the top of the cap has a hole in it from the needle itself and may leak out of that just by moisture evaporating.

Q. Does the passage of time have anything to do with blood evaporating?

A. Yes.

Q. And do you know how long VV-2 has been in the refrigerator at the sheriff's crime lab?

A. Yes. Approximately 20 years, a little bit less.

Q. And has that had an effect on the condition of that sample? Do you know?

A. Without testing it, I don't know.

MR. KOCHIS: Nothing further.

MR. MCGUIGAN: If the Court would indulge me --

MR. BERNSTEIN: Excuse me. I still have one or two more questions.

RE CROSS-EXAMINATION

BY MR. BERNSTEIN:

Q. If blood were to evaporate from a EDTA tube, would that serve only to increase the concentration of the EDTA in the blood that remained?

A. Yes, it would.

MR. MCGUIGAN: I had a question on the hair matter, your

1 Honor.

2 MR. KOCHIS: And I have no objection to him asking that
3 question.

4 THE COURT: Ask it, then.

5

6 CROSS-EXAMINATION

7 BY MR. MCGUIGAN:

8 Q. Did you retrieve this evidence about the hair
9 samples in the Cooper case recently out of your -- out of the
10 lab records? How does this copy come to be here in court
11 today; do you know?

12 A. As far as how this copy came in, I believe
13 Mr. Kochis introduced it into evidence.

14 Q. Yes. You didn't look for it. You don't know how
15 long this has been around. Obviously, the records have been
16 around.

17 A. As far as this record, according to the dates on it,
18 it's been around since 1984.

19 Q. Okay. When was this returned to the lab? Can you
20 tell?

21 A. The evidence?

22 Q. Yes.

23 A. Not from this document, no.

24 Q. Was it returned to the lab, if you know?

25 A. Yes, it was.

26 Q. It was. Okay. And how did it come to be back at
27 the lab and when; do you know?

28 A. I do have a letter in our case file that indicates

1 when it was returned to the laboratory.

2 Q. Okay. When was that; do you recall?

3 A. Referring to the case file?

4 Q. Sure. You're referring to your own case file that
5 you've maintained on the Cooper case; is that right?

6 A. Or a copy. Actually, most of it's microfiche
7 copies.

8 Q. Right.

9 A. The letter that I'm referring to is dated February
10 2nd, 1985 and refers to -- I haven't done a total itemization,
11 but it refers to many of the items that are depicted in
12 Exhibit 26.

13 Q. Okay.

14 A. And this is a letter that's signed by John
15 Thornton.

16 Q. And were you still active as one of the criminalists
17 in the case at that time, when that letter was received?

18 A. Yes, I was.

19 Q. Okay. And is there any indication that all of the
20 items on here were -- as far as you know, they were all
21 returned to your lab; is that right?

22 A. Actually, according to this document, I believe
23 there's actually a couple that were not present.

24 Q. Which are?

25 A. That is some -- some items that -- well, I can't --
26 I don't know exactly what the notation means. Dave Stockwell
27 from our laboratory has a note on here that says "not found in
28 inventory," but I'm not sure what that refers to.

1 Q. You're not sure which of the items it refers to?

2 A. Yes. The copy's really bad, but it may refer to
3 Items C-12 and C-13.

4 Q. Okay. Other than that, as far as you know they've
5 all -- the records show they were all returned?

6 A. Yes.

7 MR. MCGUIGAN: All right. Thank you.

8 THE COURT: Any further questions?

9 MR. KOCHIS: Not from the People.

10 THE COURT: All right. Mr. Gregonis, you may step down
11 and be excused. Thank you for your appearance.

12 THE WITNESS: Thank you, your Honor.

13 MR. KOCHIS: William Nicks would be my next witness, but
14 I understand I have to make a phone call. He's in the exhibit
15 room downstairs.

16 THE CLERK: It was just that he had called to see if he
17 was going to be called today.

18 MR. KOCHIS: He's going to be very short. He works in
19 the building. They asked that I have him on call, not sitting
20 outside in the hallway.

21 THE COURT: Can you reach him?

22 THE CLERK: Yes, I think so.

23 (Phone call off the record.)

24 THE CLERK: He's on his way.

25 THE COURT: Why don't we take a five-minute recess. It
26 will take him just about that long to get here.

27 (At 3:44 p.m. a recess was taken until 3:48 p.m.)

28 THE COURT: I understand the witness is here.

1 WILLIAM NICKS,
2 called as a witness on behalf of the People, having been first
3 administered the oath, testified as follows:

4 THE BAILIFF: Please have a seat in the witness stand.

5 THE CLERK: State your name, please, and spell your last
6 name for the record.

7 THE WITNESS: William Nicks, N-i-c-k-s.

8 MR. KOCHIS: May I proceed, your Honor?

9 THE COURT: Yes, you may. I'm sorry.

10

11 DIRECT EXAMINATION

12 BY MR. KOCHIS:

13 Q. Mr. Nicks, do you work for the county of San Ber- --
14 the county of San Diego?

15 A. Yes, I do.

16 Q. What do you do?

17 A. I am the senior exhibit custodian for the San Diego
18 Superior Court.

19 Q. Does the San Diego Superior Court store exhibits in
20 the courthouse?

21 A. Yes.

22 Q. Are there any exhibits in the case of People versus
23 Kevin Cooper stored in this courthouse?

24 A. Yes.

25 Q. Does the Superior Court maintain logs that show who
26 views the exhibits?

27 A. Yes.

28 Q. Did you bring such a log to the courtroom?

1 A. I brought a copy of my log.

2 Q. Is this a copy I can have marked into evidence and
3 can remain in this hearing, or do you need it?

4 A. No. You can have it.

5 THE CLERK: People's 27.

6 THE COURT: Thank you.

7 (People's Exhibit 27 - Xerox of exhibit room log
8 cards - was marked for identification.)

9 BY MR. KOCHIS:

10 Q. Directing your attention to People's Exhibit 27,
11 could you tell me what this document is.

12 A. This is the back side of our exhibit locator card,
13 which we use to not only locate or put the locations of the
14 evidence in our vault, but to keep the chain of custody in the
15 back as to who either viewed or took evidence, when it was
16 returned, et cetera.

17 Q. And is there a person from the exhibit room that
18 remains with the person that's viewing the evidence?

19 A. Yes.

20 Q. And is this a complete record of the people that
21 have viewed the evidence in this case?

22 A. Yes.

23 Q. And are steps taken to record this information
24 accurately?

25 A. As far as I know, yes.

26 Q. And is the date on which the viewing takes place
27 indicated on the form?

28 A. Yes.

1 Q. And is the person who comes to view the evidence --
2 is that person's name on the form?

3 A. Yes.

4 Q. Did Dan Gregonis ever come and view the evidence in
5 this case?

6 A. I do not show him on the log, no.

7 Q. Do you show that Craig Ogino came and looked at the
8 evidence in this case?

9 A. No.

10 Q. And that is a complete list of the people who have
11 come at one time or another to view the evidence in this case?

12 A. Dating back to 1985, I believe.

13 MR. KOCHIS: Thank you. I have no further questions.

14 THE COURT: You may cross-examine.

15 MR. McGUIGAN: Thank you. I know Mr. Nicks. I wouldn't
16 want him to think I overlooked him.

17

18 CROSS-EXAMINATION

19 BY MR. McGUIGAN:

20 Q. Before -- who was the senior evidence clerk before
21 you, Mr. Nicks?

22 A. The supervisor at that time was Karen Lundry.

23 Q. Okay. And the other guy whose name I forget, but
24 he's retired now?

25 A. Jim Davis.

26 Q. Jim Davis. And in some cases Mr. Davis's name
27 appears as the clerk.

28 A. Yes.

1 Q. Okay. And so in those cases you don't know who was
2 there, but he would follow the similar procedures that you
3 just described.

4 A. Correct.

5 Q. Okay. Now, in all these cases we have a name like
6 -- for instance, on 8-24 we have Mr. Millar, we have myself,
7 and then it says "with media viewing."

8 A. Right.

9 Q. What does that mean?

10 A. That means members of the media were allowed by
11 court order to accompany you to come down and view the
12 evidence.

13 Q. And which people were they? What are their names?

14 A. I have no idea.

15 Q. And, in fact, when people come in to view the
16 exhibits, you get the name of the lawyer, be it Mr. Millar, be
17 it Robert Amidon, be it William McGuigan, and if they have,
18 say, an investigator with them or something like that, you
19 don't record that information?

20 A. Correct, and a lot of times the order won't even
21 provide that information.

22 Q. Yes. And so these folks here may be accompanied by
23 other people, is what I'm saying, true?

24 A. True.

25 Q. And if they do, of course, you remain in --

26 A. Well, let me go a step further and say the attorneys
27 of record can come down and bring people with them without
28 them having to sign. If it was someone that was coming in to

1 view with an order that was not assigned counsel, then
2 everyone that was there would have to sign.

3 Q. Okay. So as long as the people are accompanied by
4 assigned counsel, the procedure is that assigned counsel have
5 to sign.

6 A. Correct.

7 Q. And that's what -- that's the records that you keep.

8 A. Correct.

9 Q. So you don't know the names of the other people who
10 may have been with these folks from time to time?

11 A. I don't.

12 MR. MCGUIGAN: Thank you.

13 MR. KOCHIS: May I ask a few questions?

14 THE COURT: Sure.

15

16 REDIRECT EXAMINATION

17 BY MR. KOCHIS:

18 Q. Mr. Nicks, are steps taken by the personnel employed
19 in the exhibit room to prevent tampering or contamination of
20 the items when they're viewed?

21 A. As much as possible, yes.

22 Q. What type of steps are taken?

23 A. The viewing is generally taking place in our viewing
24 area, which is right in our workspace where we work, except on
25 certain occasions, like for this case where the exhibits are
26 in such a large amount that we have to store them in another
27 area, where then someone would have to actually accompany
28 whoever is coming to view them to that area and we have

1 nothing else to do but stand there and monitor them the whole
2 time they're viewing it.

3 Q. And in that monitoring process, would employees note
4 if someone tried to tamper with the evidence?

5 A. Yes.

6 Q. Would they stop them from tampering?

7 A. Yes.

8 MR. KOCHIS: I have no further questions.

9 THE COURT: Anything further?
10

11 RE CROSS-EXAMINATION

12 BY MR. MCGUIGAN:

13 Q. You didn't see anybody tampering with the evidence
14 in this case on either side, did you?

15 A. Not without an order, no.

16 Q. And -- now, how many exhibits are there,
17 approximately, in the Cooper case?

18 A. I would guess up to a thousand, maybe exceeding.

19 Q. And not all of them are logged in the Superior Court
20 evidence file. There's also many exhibits that apparently
21 were transferred from San Bernardino earlier in the case and
22 are present there, true?

23 A. True.

24 Q. And they never were logged into the Superior Court
25 trial because apparently they weren't introduced at the trial
26 or something of that nature.

27 A. Something of that nature, yes.

28 Q. But probably several hundred, at least, exhibits

1 fall into that category; is that correct?

2 MR. KOCHIS: Objection. That calls for speculation, if
3 he doesn't know if it's San Bernardino.

4 THE COURT: Sustained.

5 BY MR. McGUIGAN:

6 Q. More than a few?

7 A. More than a few. I could not give you an exact
8 amount. I don't know.

9 MR. McGUIGAN: Thank you. I don't have any more
10 questions.

11 MR. KOCHIS: No redirect.

12 THE COURT: May I see that? Are you offering 27?

13 MR. KOCHIS: I'm going to offer 1 through 27 at this
14 time.

15 THE COURT: Is there any objection to those?

16 MR. McGUIGAN: I don't think so, your Honor, not that I'm
17 aware of.

18 THE COURT: Mr. Bernstein?

19 MR. BERNSTEIN: No, we have no objection.

20 THE COURT: Thank you. 1 through 27 will be received
21 into evidence.

22 (People's Exhibits 1 through 27 were received in
23 evidence.)

24 THE COURT: Okay. Thank you very much. You may step
25 down and be excused, sir.

26 THE WITNESS: Thank you.

27 MR. KOCHIS: Your Honor, that exhausts the witnesses I
28 have available to testify today.

1 THE COURT: All right. May I inquire -- you mentioned
2 earlier you were intending to call -- I thought I recognized
3 the name. Is that the defendant's trial attorney?

4 MR. MCGUIGAN: That's the trial attorney, Dave Negus,
5 your Honor.

6 THE COURT: Okay. And you have some other people from
7 the lab, I thought you indicated, or am I wrong?

8 MR. KOCHIS: I have a DOJ criminalist, two San
9 Bernardino County criminalists, and the supervisor in the
10 property division. The latter three are going to be
11 relatively brief. The DOJ criminalist I would anticipate
12 being perhaps as long as Mr. Gregonis was.

13 THE COURT: Okay. Are they going to be here in the
14 morning?

15 MR. KOCHIS: Yes.

16 MR. MCGUIGAN: And Mr. Negus is also supposed to be here
17 in the morning, and I don't anticipate him being a long
18 witness.

19 THE COURT: Okay. What time can we expect them to
20 arrive? Are they coming in from San Bernardino?

21 MR. KOCHIS: Two of my witnesses are flying in from
22 Oakland, and the other two are driving down from San
23 Bernardino. I was planning on being here at 9:30 and seeing
24 if the Court could accommodate us and, if they're here, start
25 putting them on.

26 THE COURT: I'm available at any time in the morning.
27 I'm just trying to be reasonable as to when they would be
28 expected to arrive. If you think 9:30, we'll shoot for 9:30,

1 and we'll see who's available to testify at 9:30.

2 MR. McGUIGAN: That's agreeable.

3 THE COURT: Is that agreeable?

4 MR. KOCHIS: Yes.

5 MR. McGUIGAN: The order of the witnesses Mr. Kochis and
6 I have agreed before --

7 THE COURT: I'm not too upset about who goes when in a
8 court setting. In front of a jury it's a different story. So
9 we'll be in recess, then, until 9:30 tomorrow morning.

10 MR. KOCHIS: Thank you.

11 MR. MILLAR: Thank you, your Honor.

12 THE COURT: Have a nice evening.

13 (At 4:00 p.m. an adjournment was taken until
14 Tuesday, June 24, 2003, at 9:30 a.m.)

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STATE OF CALIFORNIA)
: ss.
COUNTY OF SAN DIEGO)

I, Kay E. Collier, CSR No. 2725, an Official Reporter of the Superior Court of the State of California, in and for the County of San Diego, do hereby certify that I reported in shorthand the proceedings had in the above-entitled cause on June 23, 2003, and that the foregoing transcript, consisting of pages numbered from 1 to 158, inclusive, is a full, true and correct transcript of the proceedings had in said cause on said date.

Dated this 29th day of September, 2003, at San Diego, California.



Kay E. Collier, CSR No. 2725
Official Court Reporter