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SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE  
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. *Pin 24552*

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,  
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME *104*

January 24, 1985, Pages 7008 through 7138

January 28, 1985, Pages 7140 through 7278

APPEARANCES:

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IN PROPRIA PERSONA

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DONNA D. BEARD, CSR #1874  
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San Diego County Superior Court  
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO  
DEPARTMENT NO. 30 HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT  
January 24, 1985

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Official Reporters

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296	3 x 5 Color Photo A-86		4691
297	3 x 5 Color Photo A-87	3702	4691
298	3 x 5 Color Photo A-88		4691

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		<u>Iden.</u>	<u>In Evid.</u>
299	3 x 5 Color Photo A-89		4691
300	3 x 5 Color Photo A-90		4691
301	3 x 5 Color Photo A-91		4691
302	3 x 5 Color Photo A-93		4691
303	3 x 5 Color Photo A-95	3679	4691
304	3 x 5 Color Photo A-96		4691
305	3 x 5 Color Photo A-99		4691
306	3 x 5 Color Photo A-100		4691
307	3 x 5 Color Photo A-101	3385	4691
308	3 x 5 Color Photo A-102	3489	4691
309	3 x 5 Color Photo T--1		4691
400	3 x 5 Color Photo T-3		4691
401	3 x 5 Color Photo T-4		4691
402	3 x 5 Color Photo T-5	3461	4691
403	3 x 5 Color Photo A-91	3461	4691
404	3 x 5 Color Photo T-7		4691
405	3 x 5 Color Photo T-8	3461	4691

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		<u>Iden.</u>	<u>In Evid.</u>
406	3 x 5 Color Photo T-9	3496	4691
407	3 x 5 Color Photo T-10		4691
408	3 x 5 Color Photo T-11		4691
409	3 x 5 Color Photo T-12	3496	4691
410	3 x 5 Color Photo T-13	3676	4691
411	3 x 5 Color Photo T-14	3449	4691
412	3 x 5 Color Photo T-15		4691
413	3 x 5 Color Photo T-16	3451	4692
414	3 x 5 Color Photo U-1	3424	4692
415	3 x 5 Color Photo U-3	3424	4692
416	3 x 5 Color Photo U-5	3424	4692
417	3 x 5 Color Photo U-7	3424	4692
418	3 x 5 Color Photo U-6	3424	4692
419	3 x 5 Color Photo U-8	3424	4692
420	3 x 5 Color Photo U-8	3424	4692
421	3 x 5 Color Photo U-9	3424	4692
422	3 x 5 Color Photo U-10	3424	4692

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		<u>Iden.</u>	<u>In Eyd.</u>
423	3 x 5 Color Photo U-11	3424	4692
424	3 x 5 Color Photo U-13	3424	4692
425	3 x 5 Color Photo U-14	3424	4692
426	3 x 5 Color Photo U-15	3424	4692
427	3 x 5 Color Photo U-16	3424	4692
428	3 x 5 Color Photo U-17	3424	4692
429	3 x 5 Color Photo W-1	3425	4692
430	3 x 5 Color Photo W-2	3425	4692
431	3 x 5 Color Photo W-3	3425	4692
431-A	3 x 5 Color Photo W-5	3476	4692
432	3 x 5 Color Photo W-6	3425	4692
432-A	3 x 5 Color Photo W-4	3425	4692
433	3 x 5 Color Photo W-7	3425	4692
434	3 x 5 Color Photo W-8	3425	4692
435	3 x 5 Color Photo W-9	3425	4692
436	3 x 5 Color Photo W-10	3425	7104
437	3 x 5 Color Photo W-11	3425	7104

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		<u>Iden.</u>	<u>In Evid.</u>
438	3 x 5 Color Photo W-12	3425	4692
439	3 x 5 Color Photo W-13	3426	7104
440	3 x 5 Color Photo W-14	3426	7104
441	3 x 5 Color Photo W-15	3426	4692
442	3 x 5 Color Photo W-16	3426	7104
443	3 x 5 Color Photo W-17	3426	7104
445	3 x 5 Color Photo W-16	3426	7104
446	3 x 5 Color Photo W-19	3426	7104
447	3 x 5 Color Photo W-20	3426	7104
448	3 x 5 Color Photo W-21	3426	7104
449	3 x 5 Color Photo A-21	3426	7104
450	3 x 5 Color Photo W-23	3426	7104
451	3 x 5 Color Photo W-24	3426	7104
452	3 x 5 Color Photo W-25	3426	7104
453	3 x 5 Color Photo W-26	3426	7104
454	3 x 5 Color Photo I-1	3422	4692
455	3 x 5 Color Photo I-2	3422	4692

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456	3 x 5 Color Photo I-3	3422	4692
457	3 x 5 Color Photo I-5	3422	4692
458	3 x 5 Color Photo I-6	3422	4692
459	3 x 5 Color Photo E-3	3422	4692
460	3 x 5 Color Photo M-4	3422	4692
461	3 x 5 Color Photo M-5	3422	4692
462	3 x 5 Color Photo B-6	3422	4692
463	3 x 5 Color Photo B-5	3422	4692
464	3 x 5 Color Photo R-2	3428	
465	3 x 5 Color Photo R-3	3428	4692
466	3 x 5 Color Photo R-4	3428	4692
467	3 x 5 Color Photo R-10	3428	
468	3 x 5 Color Photo R-1	3428	
469	3 x 5 Color Photo R-12	3428	
470	3 x 5 Color Photo R-13	3428	4692
471	3 x 5 Color Photo LFP-1	3385	4692
472	3 x 5 Color Photo LFP-2	3385	4692

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		<u>Iden.</u>	<u>In Evid.</u>
473	3 x 5 Color Photo LFP-3	3385	4692
474	3 x 5 Color Photo LFP-4	3385	4692
475	3 x 5 Color Photo LFP-5	3385	4692
476	3 x 5 Color Photo LFP-6	3385	4692
477	8 x 10 Color Photo A-59	3484	5088
478	8 x 10 Color Photo JR-5, Head	3358	
479	8 x 10 Color Photo JR- 2, Throat	3354	5003
480	8 x 10 Color Photo JR-7, Ear and Neck	3355	5003
481	8 x 10 Color Photo JR-3, Back	3355	5003
482	16 x 20 Color Photo Ryen Dresser & Bed Area	3349	5003
483	Xerox Copy of Lifts from Ryen Residence by Deputy Punter	3387	5003
484	8 x 10 Color Photo Bilbia Bedroom Closet	3471	5003
485	8 x 10 Color Photo Bilbia Bedroom Closet	3471	5003
486	8 x 10 Color Photo Bilbia Bedroom Headboard	3471	5003
487	Bedsheet, Ryen Master Bedroom	3504	4796
488	3 x 5 Color Photo I.D. #13	3470	4692

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		<u>Iden.</u>	<u>In Evid.</u>
489	3 x 5 Color Photo I.D. #21	3470	4692
490	3 x 5 Color Photo Stockwell Shoes	3524	4692
491	Chart- Butcher Paper Time Line	6730	
492	2943 Notes		7104
493	2943 Notes - Schechter	3756	7104
494	2943 Master Bedroom, DCS	3587	7104
495	Pink Slip - A Series	3583	7119
496	Pink Slip - J Series	3584	7119
497	Pink Slip - Autopsy's	3584	
498	Drawing of DCS Shoe		7104
499	Drawing - Luminol	4316	5088
500	Evidence Collection Summary	3561	
500-A	Exidence List, Crime Lab Pages 1704 - 1719	5094	5094
501	Brown Paper Bag, Empty		
502	3 x 5 Color Photo T-2	3676	4692
503	8 x 10 Chart - Ryen Home	5299	7104
504	8 x 10 Black & White Photo Of South Wall		7104
505	8 x 10 Black & White Photo Closeup of South Wall		7104
506	8 x 10 Black & White Photo Bottom Sheet		7104
507	8 x 10 Black & White Photo Top Sheet		7104

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		<u>Iden.</u>	<u>In Evid.</u>
508	8 x 10 Black & White Photo Comforter		7104
509	8 x 10 Black & White Photo Closeup - Bottom Sheet		7104
510	DCS Notes, T-Series	3878	
511	3 x 5 Black and White Photo Sole Impression - Coronado	3780	
512	Diagram - DCS 7-5-83 42376 A-5 Bottom	3780	
513	Diagram - 42376, A-5 Top	3780	
514	Diagram - 42376, A-10	3780	
515	Diagram - 42376, A-8	3780	
516	8 x 10 Color Photo Old English Road	3798	5088
517	8 x 10 Color Photo Hatchet	3798	
518	Latent Prints - Roper, Ryen Residence	3804	
519	Latent Prints - Roper, Lease Residence	3806	
520	Latent Prints - Roper, Ryen Vehicle	3807	
521	8 x 10 Color Photo Pickup Truck, English Road	3794	5088 7104
523	8 x 10 Color Photo of Nick in Fence	3799	5088
524	8 x 10 Color Photo of Relationship of Truck to	3800	5088
525	Plastic Model - Doug Ryen	3824	4169

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526	Plastic Model - Peggy Ryen	3871	4169
527	Plastic Model - Jessica Ryen	3896	4169
528	Plastic Model - Christopher Hughes	3923	4169
531	Buck Knife Pamphlet	4137	
532	3 x 5 Color Photo Buck Knives	4126	4693
533	Death Certificate Douglas Ryen	3958	4170
534	Death Certificate Peggy Ryen	3959	4170
535	Death Certificate Jessica Ryen	3960	4170
536	Death Certificate Christopher Hughes	3961	4170
537	Case Knife	4162	4107
538	Knife Catalog		
539	3 x 5 Color Photo - Knife Buck #110		
540	3 x 5 Color Photo - Knife Buck #110 FG		
541	3 x 5 Color Photo - Knife Buck #110 FG		
542	3 x 5 Color Photo - Knife Buck #112		
543	3 x 5 Color Photo - Knife Buck #319		
544	3 x 5 Color Photo - Knife Buck #442		
545	3 x 5 Color Photo - Knife Buck #500		

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563	Butcher Paper Chart - Type of Wounds		
564	Butcher Paper Chart - Amount of Bleeding	4038	
565	3 x 5 Color Photo Doug - Left Arm	4032	4170
566	3 x 5 Color Photo Peggy - Left Hand	4032	4170
567	3 x 5 Color Photo Jessica - Right Hand	4032	4170
568	3 x 5 Color Photo Jessica - Right Forearm	4032	4170
569	8 x 10 Black & White Photo Aerial of St. Anthony's	4207	5003
570	8 x 10 Black & White Photo Aerial of St. Anthony's	4205	5003
571	8 x 10 Black & White Photo Aerial of St. Anthony's	4178	5003
572	8 x 10 Color Photo Driver's Seat - Ryen Station Wagon	4191	5003
573	8 x 10 Color Photo Ryen Car Closeup - Driver-s Seat	4208	5003
574	8 x 10 Color Photo Ryen Car - Driver's Seat Floor	4209	5003
575	8 x 10 Color Photo Ryen Car - Front Passenger Floor	4209	5003
576	8 x 10 Color Photo Driver Door - Ryen Station Wagon	4209	5003
577	8 x 10 Color Photo Ryen Car Seatbelt Housing	4209	5003

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578	3 x 5 Color Photo Second Seat - Ryen Car	4210	4692
579	Xerox Prints - Duffy Ryen Vehicle	4206	5003
580-A	8 x 10 Map of Long Beach	4195	
580-B	8 x 10 Map of Long Beach	4195	
581	8 X 10 Sketch - Sister James	4181	
582	White Box Containing Tobacco, J-28	4898	5003
582-A	Plastic Box Containing Tobacco from Exhibit 582 (J-28)		5088
583	White Box Containing Tobacco	4290	5003
583-A	Plastic Box Containing Tobacco from Exhibit 583 (V-15A)	5047	5088
584	White Envelope Containing Round Tin Can of Tobacco	4288	5003
584-A	Plastic Box Containing Tobacco from Exhibit 584 (V-12A)	5047	5088
585	8 x 10 Color Photo Hatchet in Grass	4152	5003
586	3 x 5 Color Photo Seat - Ryen Car	4287	4692
587	3 x 5 Color Photo Ryen Car, Middle seat		4692
588	3 x 5 Color Photo Ryen Car, Middle Seat		4692

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590	Chart - Electrophoresis	4348	5003
590-A	Plastic Overlay For Exhibit No. 590	4557	5003
591	Chart EAP Banding Pattern	4562	5003
592	Chart - Physiological Fluids from Ryen Home	4425	5003
593	Chart - Physiological Fluids from Lease Home	4464	5003
594	Chart - Physiological Fluids from Ryen Car	4469	5003
595	Chart - Butcher Paper EAP Patterns	4374	5003
596	Chart - Blood types of Other Parties	4445	5003
597	3 x 5 Black & White Amount of Sample A-41	4443	4692
598	Chart - Butcher Paper Time Lines	4503	
599	Group II Run #162 - Copy	4539	
600	Group II Run #163 - Copy	4539	
601	Group I Run #258		
602	5 x 7 Black & White Photo EsD Run #258		
603	5 x 7 Black & White Photo PGM Run #263	4631	
604	5 x 7 Black & White Photo PGM Run #255	4631	

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606	5 x 7 Black & White Photo PGM Run # 237	4631	
607	5 x 7 Black & White Photo PGM Run # 255	4631	
608	5 x 7 Black & White Photo PGM Run #259	4631	
609	5 x 7 Black & White Photo PGM Run # 260	4631	
610	5 x 7 Black & White Photo PGM Run # 261	4631	
611	Chart - Butcher Paper Enzyme Life Span	4591	
612	Chart - Butcher Paper Exhausted Items	4616	
613	Police Reports	4697	
614-A	Prints that have been Identified	4748	5004
614-B	Prints found to be not suitable	4748	5004
614-C	Prints that have not been identified	4748	5004
615-A	Prints that have been identified	4749	5004
615-B	Not Suitable Prints	4749	5004
615-C	Not Eliminated Print	4749	5004
616-A	Prints that have been Eliminated	4750	5004
616-B	Prints found to be not Suitable for Comparison	4750	5004

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617	Display - Shoe Impressions	4773	4796
618	Display - Shoe Sole Impressions	4769	4796
619	Shoe Impression - Korea	4771	4796
620	Display - Blood Impression	4775	4796
621	Photo of Shoe Sole Mold	4772	4796
622	Photo of Blood Impression	4776	4796
623	Tennis Shoe Size 10	4786	4796
624	White Box - Open With Tobacco Contents	4897	5003
624-A	Plastic Box Containing Tobacco Removed 624 (FF-2)	5047	5088
625	Chart - Butcher Paper, Hair Characteristics	4816	5003
626	8 x 10 Color Photo Boat, Illa Tika	4983	5003
627	8 x 10 Color Photo Illa Tika	4847	5003
628	8 x 10 Color Photo Inside Illa Tika, Sala	4983	5003
629	8 x 10 Color Photo Inside Illa Tika, Floor	4848	5003
630	8 x 10 Color Photo Inside Illa Tika	4848	5003
631	Plastic Bag & Contents, Photo Album	4865	

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		<u>Iden.</u>	<u>In Eyd.</u>
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633	Plastic Bag & Contents, Two Towels	4878	
634	Plastic Bag & Contents, Pall Malls	4879	
635	Poster Board Chart Tobacco Samples	4896	
636	Poster Board Chart	5051	5088
637	Poster Board Chart	5057	5088
638	Poster Board Chart	5060	5088
639	Poster Board Chart	5065	5088
640	Poster Board Chart	5067	5088
641	Video Tape Cassette of Joshua Ryen, 12-9-84	4931	5003
642	Audio Tape of Joshua Ryen, 12-1-83	4971	5003
643	Diagram of Ryen Home	4931	5003
643-A	Plastic Overlay for Exhibit No. 643	4931	5003
644	LLLL Tobacco from Ryen House	5064	5088
645	3 x 5 Color Photo - Luminol No. 1		
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648	3 by 5 Color Photo - Blank	5285	
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652	3 by 5 Color Photo - Luminol No. 8		
653	3 by 5 Color Photo - Luminol No. 9		
654	3 by 5 Color Photo - Luminol No. 10		
655	3 by 5 Color Photo - Luminol No. 11		
656	3 by 5 Color Photo - Luminol No. 12		
657	3 by 5 Color Photo - Luminol No. 13		
658	3 by 5 Color Photo - Luminol No. 14		
659	3 by 5 Color Photo - Fields between Mc Coy Ranch & Eucalyptus	5271	
660	3 by 5 Color Photo - Taken from Canyon Corral Bar Parking Lot	5275	
661	3 by 5 Color Photo - Taken from Canyon Corral Bar Parking Lot	5275	
662	8 x 10 Diagram - Master Bedroom, Ryen Scene	5320	
663	8 x 10 Diagram - Master Bedroom, Ryen Scene	5320	
664	8 x 10 Diagram - Master Bedroom, Ryen Scene	5320	
665	Drawing	5331	7126

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**1994** *Journal of the American Academy of Child and Adolescent Psychiatry* 33:103-110

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682	3 x 5 Color Photo - 2991 Inside Garage	5520	
683	8 x 10 Color Photo - Kevin Cooper Braids		
684	8 x 10 Color Photo - Cooper Braids	5542	
685	1 Hand-rolled Cigarette Inside Envelope	5501	
686	Remaining Tobacco Inside Envelope	5502	
687	3 x 5 Color Photo - Interior of Prison Gym	5554	
688	Certified Copy of Vehicle Registration	5624	
690	3 x 5 Color Photo - Ryen Residence from Lease Residence	5796	
691	3 x 5 Color Photo - Lang Bathroom	5991	
692	3 x 5 Color Photo Lang Bathroom	5816	
693	Large Brown Bag Clothing	5880	
693-A	Orange Cap	5880	
693-B	Orange Cap	5880	
693-C	Strip of Denim (Headband)	5888	
693-D	Green Terry Cloth Towel	5888	
693-E	Strip of Green Towel	5888	
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693-G	Jar - Hair Conditioner	5880	
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696	Loma Linda Hospital Records - Mr. Gamundoy	5923	
697	Blank Sheet of Paper - Mr. Gamundoy	5922	7104
698	Progress Notes by Mr. Gamundoy	5965	
699	CC 2-Page Medical Record - Neurosurgery	5967	7119
700	CC Admitting Data Base - Trauma Room Record	5969	7119
701	Butcher Paper Diagram - Mr. Sharp	6005	
702	Notes - Dr. Hoyle	7120	
703	Notes - Hector O'Campo	6072	7104
704	Report - Hector O'Campo	6083	
705	Report - Hector O'Campo	6197	
706-A	Loma Linda ICU Charts	6288	7119
706-B	Loma Linda ICU Charts	6288	7119
706-C	Loma Linda ICU Charts	6288	7119
706-D	Loma Linda ICU Charts	6288	7119
706-E	Loma Linda ICU Charts	6288	7119
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706-G	Loma Linda ICU Charts	6288	7119
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707	Tape of Dr. Mary Howell & Mr. Negus	6284	

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708	Transcript of a portion of Exhibit 707	6283	
709	Loma Linda Hospital Medical Record	6296	
710	Butcher Paper Skechth of Josh's Room - Headley	6301	
711	Narrative progress notes - Loma Linda Hospital	6330	7119
712	3 x 5 B & W Photo - Shoewear - Sexton	6452	
713	3 x 5 B & W Photo Shoewear - Hoops	6495	
714	8 x 10 Diagram - Ryen Home		
715	Chino Fire Dept. Resonse Activity Report	6426	7119
716	Copy of Photo - Examination of Blood Stains	6412	7129
717	3 x 5 Color Photo - Doug Ryen		
718	8 x 8 B & W Photo - East Side of Road - Creek	6510	7104
719	8 x 8 B & W Photo - East Side of Road - Creek	6509	7104
720	3 x 5 Color Photo Canyon Corral Bar	6529	
721	3 x 5 Color Photo Canyon Corral Bar	6528	
722	Property List	6549	
723	Jumpsuit Coveralls	6556	
724	Copy of Report from Mr. Eckley to Mr. Arthur	6550	7105

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726	Surgery Notes	6631	7119
727	Surgery Report	6632	7119
728	CAT Scan Report	6652	7119
729	Narrative Summary	6743	7104
730	Inventory List Ryen Home	6744	7104
731	Hotel "Enva" Receipts 6-6-83, 6-7-83	6747	7104
732	8 x 10 Color Photo - Aerial	6776	
733	3 x 5 Color Photo - Ryen Station Wagon	6799 6923	
733-A	3 x 5 Color Photo - Footprint Impression	6923	
734	3 x 5 Color Photo - Matted Down Grass	6844	
735	3 x 5 Color Photo - Foiliage with Matted Down Grass	6843	
736	3 x 5 Color Photo - Matted Down Grass	6844	
737	3 x 5 Color Photo Two Trees & Matted Down Grass	6843	
738	2 Page Copy of Ledger Hotel "Enva"	6898	7104
739	3 x 5 B/W Photo Footwear - Capt. Meyers	6934	
740	3 x 5 Color Photo Ogino & Hill	7091	

00200816

1 SAN DIEGO, CALIFORNIA, THURSDAY, JANUARY 24, 1985 9 :30 A.M..

2 --oo0oo--

3  
4 THE COURT: Good morning.

5 Mr. Gregonis, you are still under oath.

6 The defendant and all counsel and jurors are all  
7 present.

8 Mr. Negus.

9  
10 DANIEL J. GREGONIS,  
11 called as a witness on behalf of the Defendant, having been  
12 previously duly sworn, resumed the stand and testified further  
13 as follows:

14  
15 DIRECT EXAMINATION (Resumed)

16 BY MR. NEGUS:

17 Q. Mr. Gregonis, have you reviewed the documentation  
18 that Mr. Stockwell and Ms. Schechter have provided of their  
19 collection of evidence from the Ryen crime scene?

20 A. Yes, I have.

21 Q. Is that documentation an adequate data base to be  
22 used in order to do a crime scene reconstruction?

23 A. In part, yes.

24 Q. Is it in inadequate?

25 A. Not totally, no.

26 Q. Is it inadequate at all?

27 A. There are some inadequacies in it, yes.

28 Q. What would the inadequacies be?

1           A.     If you are proposing to analyze specific patterns  
2 of blood in the room, specific blood spatter patterns, they did  
3 not specify which pattern. Say, if you have a wall with three  
4 different types of actions from the blood on it, they did not  
5 specify from which action that blood was from.

6           Q.     Okay. Well, in a crime scene reconstruction you do  
7 have to know which pattern the sample is from; is that right?

8           A.     If you are interested in that, yes.

9           Q.     Well, for example, in analyzing the patterns, the  
10 pattern, just the patterns themselves can give you some  
11 indication as to the number of assailants; is that correct?

12          A.     No, sir, it is not.

13          Q.     Can the blood, if you take samples of the blood  
14 patterns and you interpret them properly, you can determine the  
15 position of various victims in the room at times that the blood  
16 was shed; is that right?

17          A.     You can make inferences as to the position of  
18 whatever part of them was bleeding as to when they were  
19 bleeding.

20          Q.     And you can determine their movements, to a certain  
21 extent?

22          A.     To some extent, yes.

23          Q.     And if you put the patterns of blood together with  
24 trace evidence, will it make you -- allow you to make inferences  
25 as to the number of assailants?

26          MR. KOCHIS: Objection, vague, and it calls for  
27 speculation as to what we're talking about. Fingerprints? Torn  
28 garments?

00208-18

1 THE COURT: You understand the question, Mr. Gregonis?

2 THE WITNESS: Somewhat, yes, sir.

3 BY MR. NEGUS:

4 Q. Let me -- I will try and -- let me just define our  
5 terms.

6 What is trace evidence, normally?

7 A. Trace evidence would consist of such things as  
8 fibers, hairs, perhaps paint, whatever.

9 Q. Small pieces of evidence that aren't easily visible  
10 to the human eye are not normally noticed by assailants when  
11 they are undertaking attack; is that right?

12 A. Essentially, yes.

13 Q. And then putting together the blood spatter  
14 patterns with trace evidence, is it possible to make indications  
15 as to the number of assailants?

16 MR. KOCHIS: Objection, irrelevant, unless we're talking  
17 about this scene. What may be done in another scene is not  
18 relevant.

19 MR. NEGUS: I will take that as amended.

20 THE COURT: All right. Let's confine all of your answers  
21 to this particular scene then.

22 THE WITNESS: Yes.

23 First of all, I premise that with the fact that the  
24 condition of the carpet and the condition of the room very much  
25 minimizes any value that trace evidence would have, because the  
26 carpet in that room was very -- well, it was filthy and there  
27 was a lot of hair, lot of debris from a long time on the carpet.

28 So, I think that the -- that very much minimizes

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1 the value of the trace evidence.

2 And I think in this scene, I really do not think  
3 that you could gather from just the trace evidence and the blood  
4 spatter patterns any inference as to the number of assailants.

5 MR. NEGUS: If I could read Page 96, Line 7 through 14,  
6 and then skipping an objection, 18 through 25 of volume XVII of  
7 the preliminary hearing.

8 MR. KOCHIS: Are you going to read to line 25?

9 MR. NEGUS: Yes.

10 MR. KOCHIS: I have no objection.

11 MR. NEGUS: (Reading)

12 "Question: Why didn't you do it?

13 "Answer: I was not given the time to do it.

14 "Question: How much time would it have required?

15 "Answer: For that scene? Possibly two, three days  
16 of maybe two or three criminalists working eight  
17 hours a day.

18 "Question: Would a crime scene reconstruction have  
19 aided in determining the number of assailants that  
20 were involved in the crime?

21 "Answer: It could have, yes.

22 "Question: How could it have?

23 "Answer: Depending on the patterns of the blood or  
24 whatever on the wall. Depending upon what other  
25 trace evidence was found, that may have indicated  
26 more than two assailants.

27 The possibility that the assailants were bleeding  
28 or such from a struggle; that both their blood

1                   would be somewhere in the room. Something like  
2                   that."

3           Q.     Mr. Gregonis, was the collection of the trace  
4     evidence from the carpet that was eventually done adequately  
5     documented?

6           A.     That, I do not know.

7           Q.     Was the -- were there sufficient number of blood  
8     samples collected by Mr. Gregonis -- excuse me -- by Mr.  
9     Stockwell to do a crime scene reconstruction?

10          A.     You can do a partial crime scene reconstruction  
11     from the amount of samples that you could -- he collected, yes.

12          Q.     What's a partial crime scene reconstruction?

13          A.     As far as placing the victims in the room, placing  
14     their -- at least where they are bleeding, at least as to the  
15     location in the room.

16          Q.     You can determine that at some point in time some  
17     of their blood was deposited at certain places in the room?

18          A.     That is correct, yes.

19          Q.     Within a large general area; is that correct?

20          A.     Within the room.

21                   Also, there are some -- some of the victims who  
22     bled in a very isolated area.

23          Q.     But in terms of trying to get a pattern of  
24     movement, is that still possible?

25           MR. KOCHIS: Objection, that assumes a fact not in  
26     evidence that this would ever be possible. I don't believe  
27     there is any testimony that you can sequence it.

28           THE COURT: Well, I don't see an assumption. Overruled.

1 THE WITNESS: As to a movement, a movement of a  
2 particular person?

3 BY MR. NEGUS:

4 Q. Yes.

5 A. Basically, I think the only inference that you can  
6 draw from this scene is that Doug Ryen moved around the room  
7 while he was bleeding.

8 Q. Well, what I'm asking you is, is the documentation  
9 that you got, just from the documentation and number of samples  
10 from Mr. Stockwell, was that sufficient to determine whether  
11 Peggy Ryen was attacked in the spot in which she laid or was in  
12 various different other spots around the room?

13 A. Well, I don't know if you could ever do that to  
14 begin with. If Peggy Ryen's blood was elsewhere in the room,  
15 that wouldn't indicate that she was bleeding in other parts of  
16 the room.

17 Q. We don't -- did Mr. Stockwell collect enough  
18 samples for you to tell whether or not Peggy Ryen's blood was  
19 elsewhere in the room?

20 A. Not absolutely, no.

21 Q. What's the difference between not absolutely and  
22 no?

23 A. Well, as far as the amount of samples that he  
24 collected. He did collect a quite a few samples from around the  
25 room, and they do give an indication as to which person that is  
26 from.

27 Q. Right. But you believe that there should have been  
28 at least eight or nine times more samples collected than he did.



1 A. I believe in order to answer or to try to answer  
2 the questions that you're giving, it would be about 200 samples.

3 Q. As opposed to 15?

4 A. If that's what he collected.

5 Q. The -- during the time that you and Mr. Ogino were  
6 at the scene on June the 6th, did you obtain, from either Mr.  
7 Stockwell or anybody else in the crime lab, information on what  
8 he had collected and what he had not collected?

9 A. No, sir, we did not.

10 Q. Did you and Mr. Ogino collect any samples of blood  
11 from within the house on that particular day?

12 A. No, we did not.

13 Q. Was that because you were not given enough time?

14 A. In part. But I would say also that we felt that  
15 Mr. Stockwell had collected blood the previous day and we were  
16 essentially there to analyze the blood splatter patterns.

17 Q. During -- during that particular day, did you  
18 observe an uncollected blood smear on a light switch leading  
19 into the master bedroom?

20 A. Yes, I did.

21 Q. Did you observe and test an uncollected sample of  
22 blood around the sink in the second bathroom?

23 A. Yes, I did.

24 Q. Did you observe and test a blood sample on the wall  
25 of the refrigerator in the kitchen?

26 A. On the wall of the refrigerator, no.

27 Q. Did Mr. Mike Hall ever point out to you a sample, a  
28 blood smear on the wall of the refrigerator and ask that you

1 test it in his presence?

2 A. Not that I recall, no.

3 Q. In any event, you did not collect any samples from  
4 the wall of the refrigerator.

5 A. That is correct, yes.

6 Q. How do you go about actually physically determining  
7 the location of a victim when they're attacked in the room from  
8 the blood splatter patterns?

9 A. Okay. As far as when they are attacked, I don't  
10 believe that you can do that. I think you can basically tell  
11 when they are bleeding and where they're bleeding, or whatever  
12 part of them are bleeding.

13 Q. Well, there's no way that you can make inferences  
14 about where they are when they are attacked?

15 A. Not specifically, no.

16 Q. What's cast-off blood?

17 A. Cast-off blood is from a weapon which is swung with  
18 blood on it, essentially.

19 Q. And if you have a cast-off pattern on a wall can  
20 you determine where the weapon was swinging?

21 A. You can make some inferences, yes.

22 Q. Can you also determine the location of a victim  
23 when a weapon essentially splashes blood off the victim onto the  
24 wall?

25 A. Either a victim or an object with a victim's blood,  
26 yes.

27 Q. In order to put that kind of a puzzle together, in  
28 order to attempt to chart the pattern of movements, see where

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1 people were at various times, you have to have as complete a set  
2 of information as possible; is that right?

3 A. If it is possible to do in the first place it would  
4 be best to have as complete a set of data in the first place,  
5 yes.

6 Q. Certainly you and Mr. Ogino, when you were asking  
7 for more time, were going to attempt to do that, right?

8 A. Yes, we were.

9 Q. Do you -- in the process, do you attempt, for  
10 example, to take strings and just with a protractor start making  
11 lines across the room in the direction which particular spatter  
12 of blood drops would have traveled to get there?

13 A. From analyzing the blood drops and determining the  
14 angle of their impact, yes.

15 Q. Just a physical process.

16 One of the things you do is you can just use string  
17 across the room to try and physically locate within the room,  
18 the positions of the victims right there in the crime scene; is  
19 that right?

20 A. The point of origin of the blood, yes.

21 Q. And as a practical matter, that should be done at  
22 the crime scene if at all possible; is that correct?

23 A. Yes, it should.

24 Q. Once the walls, furniture, carpet is removed from  
25 the crime scene, that becomes impractical; is that right?

26 A. It is not totally impractical, it obviously will  
27 give you a lot less information.

28 Q. And in determining these angles is it important for

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3           A.    It is preferable, yes.

7                   A.     It may or may not.

9           A.     I would not say "often", I would say it may or may  
0     not. It depends on whether this, that evidence is there or not.

13                   A.     Yes, there was.

**15**                      **A.**        **Yes.**

17           A.     I did not see any bone chips.

19                    A.        Yes.

22 A. I don't recall whether there was or there was not.

25                   A.     I do not recall.

28           A.       There was no evidence to me of any portions of an

1 attack that occurred outside, no.

2 Q. One of the things in doing the crime scene  
3 reconstruction that's necessary is to be able to go back and  
4 factor into your initial observations pieces of evidence that  
5 became available after you left the crime scene; is that right?

6 A. Yes, it is.

7 Q. And that is one of the reasons why it is really  
8 important to document completely all the observations that you  
9 make at a crime scene so that something which may be  
10 insignificant when you are at the scene can be properly analyzed  
11 later; is that correct?

12 A. I would say so, yes.

13 Q. If there were evidence from the clothing of Jessica  
14 Ryen, that she'd been outside during the attack, is that  
15 something, that type of evidence that would have to be factored  
16 in later?

17 MR. KOCHIS: Objection, that assumes facts that aren't in  
18 evidence and it calls for speculation.

19 THE COURT: Sustained. Unless there is some offer of  
20 proof, Mr. Negus.

21 MR. NEGUS: I intend to introduce such evidence.

22 MR. KOCHIS: Well, it would still be same objection if  
23 he's going to have to someone come in say that evidence either  
24 exists, that's going to be a factual question first of all.

25 THE COURT: I can vary the order of proof to come in  
26 later on. That is adequate foundation. Overruled.

27 THE WITNESS: Could you repeat the question, please.

28 BY MR. NEGUS:

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1 Q. If there were evidence on the clothing of Jessica  
2 Ryen that she'd been outside during the attack, would that be  
3 the kind of evidence which should be factored into a detailed  
4 analysis of the crime scene at a later date?

5 A. If you could tell that, which I can't conceive of a  
6 way to do it, unless seeing the evidence, yes it would.

7 Q. In assessing the significance of, for example,  
8 vegetation evidence, evidence of plant, burrs, that sort of  
9 thing, in a crime scene, is it important to know whether or not  
10 that kind of a stuff is like spread throughout a dirty house or  
11 is localized in one particular area?

12 A. Oh, it would be better to know if it was localized  
13 in a particular area or spread throughout the house.

14 Q. From the documentation that you've seen was there  
15 any attempt to do that by the criminalists from your crime lab?

16 A. Unless there is something in the photographs which  
17 would tell me that, no, not that I know of.

18 Q. Can you tell from the analysis of blood spatter  
19 patterns what type of blows were inflicted?

20 A. As to what type of instrument is that what you're  
21 asking or --

22 Q. Whether there were swinging, stabbing,  
23 right-handed, left-handed.

24 A. You can tell whether it is a -- whether it is a  
25 swinging blow or something like that.

26 Q. What hand the instrument was being held in?

27 A. Not really. You cannot really tell hands as to a  
28 blow.

1 THE COURT: For the record, counsel, you have been  
2 searching for approximately a minute. I made a note. Find it  
3 during the recess.

4 MR. NEGUS: I was just about to conclude with Mr.  
5 Gragonis so that's why I was looking for the one thing I had in  
6 mind.

7 Yeah, perhaps I could look and bring it out on  
8 redirect.

9 THE COURT: Mr. Kochis.

10

11 CROSS-EXAMINATION

12 BY MR. KOCHIS:

13 Q. Mr. Gregonis, in looking for foreign blood, how  
14 many separate samples have you analyzed serologically which came  
15 from the master bedroom alone to check and see if there was  
16 blood that didn't come from the victims?

17 A. As to blood from the master bedroom, including the  
18 sheets, the bedding, and the victims, it is over 90 samples.

19 Q. Do you have an approximation of the total number of  
20 samples that you've analyzed serologically in your search for  
21 foreign blood from the Ryen home itself?

22 A. Again, it is over 90 samples.

23 Q. And other than the blood which matched the profile  
24 of the defendant, from the hallway, all the other blood was  
25 consistent from coming from the victims?

26 A. That is true, yes.

27 Q. Now on the 6th, in the refrigerator, in the Ryen  
28 master bedroom, excuse me, the Ryen kitchen, can you see some

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1 cans of beer which had some stains on it that visually appeared  
2 to be blood?

3 A. Yes, I did.

4 Q. Did you do a presumptive test on any of those  
5 stains?

6 A. Yes, I did.

7 Q. Did it react positively for blood?

8 A. Yes, it did.

9 Q. Was some priority placed at that time to which  
10 agency or which division in the Sheriff's office would get the  
11 beer can?

12 A. Yes.

13 Q. Who was to get it.

14 A. The identification division.

15 Q. For what purpose?

16 A. For a looking for fingerprints.

17 Q. After that search was done did you actually perform  
18 some serological tests on the stain which was removed from the  
19 the beer can?

20 A. Yes, I did.

21 Q. You testified that there was as to those results  
22 previously; is that correct?

23 A. Yes, I did.

24 Q. Now, in the bathroom on the same day, did you  
25 discover a stain which appeared to be blood?

26 A. Yes, I did.

27 Q. Where in the bathroom?

28 A. I believe it was as you look at the diagram, it was



2 Q. Did you perform a presumptive test on the stain  
3 which appeared to be blood?

5 Q. Did you get a positive reaction?

7 Q. What was the quantity of that stain in terms of the  
8 number of tests serological tests you could perform on it?

13 Q. Could you tell whether it was human or animal?

15 Q. Beyond the that the quantity was insufficient.

16           A.     That is correct, yes.

17 Q. Quantity alone would have limited your -- limited  
18 you to tell whether it was from a victim or from assailant.

19                    A.     Yes, sir.

20 Q. Do you recall testing presumptively a stain located  
21 near a light switch?

22                   A.     No, I do not.

23 Q. When you went to the home, the Ryen home on June  
24 the 6th, was that essentially to examine the patterns of blood  
25 which you had been told were in the master bedroom?

26                   A.     Yes, sir.

27 Q. And you spent somewhere around a half hour doing  
28 that --

1 A. Yes, sir.

2 Q. -- with Mr. Ogino.

3 A. Yes, sir.

4 Q. At that time did he have more experience in

5 splatter pattern analysis than you did?

6 A. Yes, he did.

7 Q. When you went to the scene was it your intention,

8 for example, to take 200 samples of blood?

9 A. No, sir.

10 Q. After you visually analyzed the inside of that

11 master bedroom, was it your intention to take 200 samples of

12 blood.

13 A. No, sir.

14 Q. Did anyone ever prevent you from taking more

15 samples of blood inside the master bedroom on that day?

16 A. No, sir.

17 Q. In fact, at a later time did you remove samples of

18 blood from the wall which was taken back to the crime lab?

19 A. Yes, I did.

20 Q. Did anyone prevent you, on that day, from taking

21 additional samples of blood if you felt it necessary from the

22 furniture inside that room?

23 A. No, sir.

24 Q. From the carpet inside the room?

25 A. No, sir.

26 Q. Now I believe you testified yesterday afternoon

27 that you had a basic idea of the type of information that was

28 available inside the master bedroom from splatter pattern

1 analysis; do you recall saying that?

2 A. Yes, I do.

3 Q. As you looked at the patterns of blood in the  
4 master bedroom, what type of information did you see?

5 A. The type of information that I could gather from  
6 the blood splatter patterns are the velocity of the blood when  
7 it hit the object that it was on, whether it was high, medium or  
8 low velocity; the type of deposit, meaning whether a person was  
9 bleeding from an artery or whether the deposit was from, say,  
10 something hitting something with blood on it, or whether it was  
11 from a cast-off type of thing from a weapon being swung.

12 Q. The term Mr. Negus used with you over the last two  
13 days, this term of "crime scene reconstruction", when we use  
14 that term in the field of criminalistics, are we talking about a  
15 process by which you make certain inferences or are we talking  
16 about a process by which you determine things with a  
17 mathematical certainty?

18 A. Basically making inferences.

19 Q. Now, in this case what type of information can you  
20 glean from the fact that you have a pattern of blood on the wall  
21 that appears to be arterial spread?

22 A. That the person who deposited that blood was  
23 bleeding from an artery.

24 Q. What type of information can you glean from a  
25 pattern of blood on a wall which appears to be the result of  
26 cast-off pattern?

27 A. That there was a weapon being used; possibly you  
28 could come up with a very general idea of the dimensions of the

28                      A.        No, sir.

1 Q. Which victim was attacked second?  
2 A. No, sir.  
3 Q. Which victim was attacked third?  
4 A. No, sir.  
5 Q. Which victim was attacked last?  
6 A. No, sir.  
7 Q. Can you tell from examining splatter patterns in  
8 this case whether each victim was attacked start to finish  
9 before the assailant moved to another victim?  
10 A. No, sir.  
11 Q. For example, can you tell whether or not Doug and  
12 Peggy Ryen, from the splatter patterns alone were struck, were  
13 both struck before one of them died?  
14 A. No, sir.  
15 Q. Did you walk through the entire Ryen home on the  
16 6th?  
17 A. Yes, I did.  
18 Q. Did you have a chance to examine the condition of  
19 the home, the carpet that was throughout the home?  
20 A. Yes, I did.  
21 Q. Were you able to draw any inference as to whether  
22 or not that carpet had been clean or not prior to the time the  
23 victims were attacked?  
24 A. Yes.  
25 Q. Did it appear to have been dirty, filthy, for some  
26 period of time?  
27 A. Yes, sir.  
28 Q. Would that enter into the significance you as a

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1 criminalist would place on potential, the possibility that trace  
2 evidence may have existed in the bedroom?

3 A. Most definitely, yes.

4 Q. How?

5 A. Because the carpet and the house appeared that it  
6 was not well kept, and being that way that the trace evidence  
7 that we may have found, hairs, fibers, whatever, may have been  
8 there for some time.

9 Q. Now, when you talked with Mr. Negus about  
10 reconstruction, one of the things he mentioned is the  
11 possibility to localize the position of victims during the  
12 attack, and can you make some -- for example, in this case can  
13 you make some general inferences as to the localization of the  
14 victims after they bled?

15 A. As they are bleeding or --

16 Q. After they started bleeding.

17 A. After they started bleeding. Yes, you can.

18 Q. Let me perhaps break the question down. For  
19 example, in the sunken living room, did you find any existence  
20 of arterial blood?

21 A. No, sir.

22 Q. Cast-off patterns?

23 A. No, sir.

24 Q. Medium velocity blood?

25 A. No, sir.

26 Q. Was that some indication to you that the victims  
27 were not bleeding in that particular room?

28 A. Yes, it was.

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1 Q. Is it some indication to you as a criminalist that  
2 they had not been stabbed in that particular room?

3 A. Yes, it was.

4 Q. Is it fair to say that in neither of the bedrooms  
5 you saw -- you saw any blood splatter patterns?

6 A. That is true.

7 Q. Same with the kitchen, the dining room and the  
8 second bathroom?

9 A. That is true, yes.

10 Q. Based on your overall view of the crime scene, is,  
11 for example, one of the inferences that possibly could be drawn  
12 is that the victims were stabbed in the master bedroom?

13 A. They were wounded and bleeding in the master  
14 bedroom.

15 Q. And if you're going to go one step further and draw  
16 another inference or speculate, would you say they were stabbed  
17 there?

18 A. Stabbed along with the hatchet type of wounds, yes.

19 Q. And based on the absence of those types of patterns  
20 in the rest of the home, is an inference, not a mathematical  
21 certainty, but is an inference a criminalist could draw is that  
22 the entire slaughter took place in the master bedroom?

23 A. Yes, sir.

24 Q. When we talk about reconstructions, is this the  
25 type of thing we're talking about?

26 A. Yes, sir.

27 Q. Doesn't give you the name of the person that did  
28 this?

1 A. That is correct, yes.

2 Q. Now, did you see blood splatter patterns anywhere  
3 outside the home on the, specifically on the patio that had the  
4 jacuzzi cover, that would indicate that people bled at that  
5 location?

6 A. Not that I recall, no.

7 Q. And is that to you as a criminalist some indication  
8 that they were not stabbed outside the home?

9 A. Yes, it is.

10 Q. Now, when you -- when we talked about attack, you  
11 cannot determine from splatter pattern analysis when an  
12 assailant first moves on a victim because the movement can take  
13 place without contact; is that correct?

14 A. Yes, sir.

15 Q. You can't tell where people were before the body  
16 was actually punctured with a weapon.

17 Now, did you see -- you had a chance to look at the  
18 carpet as well when you were in the home on that particular  
19 Monday, didn't you?

20 A. Yes; yes, I did.

21 Q. Did you see any trace evidence which at that point  
22 you felt was important enough to collect?

23 A. No, sir.

24 Q. You did collect evidence at the scene on the 6th on  
25 that Monday; isn't that true?

26 A. Yes, we did.

27 Q. And that was some evidence that had what appeared  
28 to be bloodstains on it that was collected and brought back to



1 the lab for further testing?

2 A. Yes, sir.

3 Q. Did you see, for example, broken teeth on the floor

4 of that carpet in the Ryen master bedroom?

5 A. Not that I recall, no.

6 Q. Did you see any weapons on the floor?

7 A. No, sir.

8 Q. Chunks of bone on the floor?

9 A. Not that I recall, no.

10 Q. Did you see in the Ryen master bedroom trace

11 evidence that would have told you who the person was that did

12 this?

13 A. No, sir.

14 Q. Did you see any animals on the property on that

15 particular Monday?

16 A. Yes, sir.

17 Q. Dogs?

18 A. I believe there were two dogs in or around the

19 house, and then plus the horses in the stables.

20 Q. Did you see any cats or anything inside the home?

21 A. I don't recall. I believe I saw one of the dogs

22 inside the house, yes.

23 Q. Does the -- does the presence of pets in a home

24 effect the importance you would place on the possibility that

25 trace evidence may exist in the home?

26 A. It can, yes.

27 Q. For example, -- Well how?

28 A. Well, as far as for instance the animal hair, I

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1 wouldn't -- you know, I would expect to find that with pets  
2 around, so I do not believe that animal hair would have  
3 significance inside the home.

4 As far as objects, say loose objects on the floor  
5 or something like that, it's possible that the animals if they  
6 were inside the home could have moved them simply by walking  
7 around some of those objects.

8 Q. Is it possible, for example, if animals are in a  
9 scene when people die and the animals move in the scene for them  
10 to move trace evidence?

11 A. Yes, it is.

12 Q. For example, blood, if they walk --

13 In this case there was blood in the master bedroom,  
14 wasn't there?

15 A. That is correct, yes.

16 Q. And based on what you saw on the 6th, did it appear  
17 reasonable to infer that on the preceeding day shortly after the  
18 victims were killed that there was wet blood in the room?

19 A. Yes, sir.

20 Q. And animals walking through that may have tracked  
21 that?

22 A. That is true, yes.

23 Q. Now when you were there on the 6th did you also see  
24 insects, flies in the master bedroom?

25 A. Yes, I did.

26 Q. And did they appear to be at times congregating in  
27 areas where there was hardened dry blood?

28 A. They were congregating in the hardened dry blood,

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1 along with the wet blood that was still in the room.

2 Q. From an examination of the splatter patterns alone,  
3 can you tell which wall in the Ryen master bedroom was the first  
4 wall to receive blood from the victims?

5 A. No, sir.

6 Q. Can you tell from the splatter patterns what the  
7 victims may have said after they were attacked?

8 A. No, sir.

9 Q. Can you tell their exact body position at the time  
10 that they were attacked?

11 A. No, sir.

12 Q. Now, do you recall when you testified, I believe  
13 back in December, we used the exhibit -- we used Court's Exhibit  
14 6 and we had you place on a piece of clear plastic over that,  
15 the serological results in terms of which victims genetic  
16 profiles they matched around the room?

17 A. Yes, I do.

18 Q. And did you, in fact, find on the wall, which at  
19 one time was behind the waterbed, a number of samples of blood  
20 which matched the genetic profile of the father, Doug Ryen?

21 A. Yes, I did.

22 Q. And those did not match the profiles of the other  
23 members of his family?

24 A. That is true, yes.

25 Q. And you actually have seen the wall; is that true?

26 A. Yes, I have.

27 Q. It's still in the crime lab?

28 A. As far as I know, yes.

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1 Q. And you made -- you took specific records of the  
2 actual drops of blood you took off that wall?

3 A. Yes, I did.

4 Q. And some of those drops came from a pattern which  
5 appeared to you to be arterial?

6 A. Yes, sir.

7 Q. And from that in terms of Mr. Negus' definition of  
8 reconstruction, does that allow you to make some inferences as  
9 to whose blood that may be on the wall?

10 A. Yes, it does.

11 Q. Doug Ryen's, for example?

12 A. Yes, sir.

13 Q. And does his blood appear on more than one location  
14 on that particular wall?

15 A. Yes, it does.

16 Q. And from that as a criminalist and doing what Mr.  
17 Negus would refer to as a reconstruction, can you draw an  
18 inference that his blood somehow was moved -- his blood moved in  
19 that room?

20 A. Yes, you can.

21 Q. And if we're going to infer further or speculate  
22 further, would one of the interpretations a criminalist may make  
23 is that a weapon which was repeatedly placed into his body flung  
24 some blood on different sections of the wall?

25 A. Yes, sir.

26 Q. And from the arterial spraying, perhaps, can an  
27 inference be drawn that Mr. Ryen moved after, sometime between  
28 the time he was first struck and the time he died?

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1 A. Or that portion of him moved, yes.

2 Q. And these are the types of thing we are talking  
3 about when we are talking about doing the reconstruction?

4 A. Yes, it is.

5 Q. Now, was that wall the only location in the room  
6 that, based on your knowledge of the case and your serological  
7 tests, blood which had a genetic profile similar to that of Mr.  
8 Ryen's was found?

9 A. No, it is not.

10 Q. Would that then suggest that either an object with  
11 his blood on it was in another portion of the room, for example,  
12 a pillow going across the room with blood on it?

13 A. Yes, it would.

14 Q. Or possibly that Mr. Ryen was able to move somewhat  
15 between the time that he first was struck and the time he died?

16 A. Yes, sir.

17 Q. Now, the genetic profile of the arterial blood that  
18 was on the bedroom wall behind the waterbed, Mr. Ryen is not the  
19 only person in the country that has that genetic profile; is  
20 that true?

21 A. That is true, yes.

22 Q. So you can't say for certain even that that's his  
23 blood as opposed to the blood of an assailant that matched his  
24 profile?

25 A. That is true, yes.

26 Q. Carrying it to an extreme?

27 A. Yes.

28 Q. Had a person been injured to the extent necessary

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1 to deposit that amount of arterial blood on the wall, would you  
2 have expected that person, had he been an assailant and not the  
3 victim that died in the room, to have left a trail of blood  
4 leaving the home?

5 A. Yes, I would have.

6 Q. And you saw no such evidence?

7 A. No, sir.

8 Q. So, that's another example of how in this concept  
9 of what we call a reconstruction you can infer that that blood  
10 is Mr. Ryen's even though you didn't see it get deposited?

11 A. Yes, sir.

12 MR. KOCHIS: I have no further questions.

13 THE COURT: Mr. Negus.

14

15 REDIRECT EXAMINATION

16 BY MR. NEGUS:

17 Q. Mr. Gregonis, is it a general practice amongst  
18 criminalists to do a crime scene reconstruction based on blood  
19 splatter patterns alone?

20 A. It can be done that way. There are definitely --  
21 the more information that you have, say, from trace evidence the  
22 better.

23 Q. Well, isn't the general -- isn't the general thing  
24 that you do in a crime scene reconstruction is not to try and  
25 academically isolate what you can get out of any particular type  
26 of evidence, but take all the evidence that you possibly can and  
27 put it together to see what kind of patterns you get?

28 A. That's the ultimate way to do it, yes, but it's --

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1 Q. Okay. And that's --

2 A. -- it's also possible to do a partial  
3 reconstruction simply from the blood splatter patterns.

4 Q. But it's less preferable, right?

5 A. It's less complete.

6 Q. And you're more likely to get wrong answers; is  
7 that correct?

8 A. Or not as complete answers, yes.

9 Q. Leave out assailants?

10 A. Again, except for finding a blood which is -- or  
11 more than one blood that is foreign to the victims, I don't  
12 believe that you can really make any statements about the number  
13 of assailants unless perhaps you will find fingerprints or  
14 something like that.

15 Q. Well, let's -- when you were told to take that --  
16 when you were told you couldn't have the time to analyze those  
17 blood splatter patterns, had you received any information from  
18 the autopsies?

19 A. I don't recall if at that time I had or had not.

20 Q. Only one autopsy at that particular point in time  
21 had even been conducted; is that correct?

22 A. I do not know.

23 Q. From autopsies you can get some information about  
24 the sequence of blows to particular victims; is that right?

25 A. On a particular victim whether, say, a blow was  
26 before death or during death or after death, you can get that  
27 from the autopsy, yes.

28 Q. And from the amount of bleeding the surgeon can

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1 Q. Okay. And that's --

2 A. -- it's also possible to do a partial  
3 reconstruction simply from the blood splatter patterns.

4 Q. But it's less preferable, right?

5 A. It's less complete.

6 Q. And you're more likely to get wrong answers; is  
7 that correct?

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11 more than one blood that is foreign to the victims, I don't  
12 believe that you can really make any statements about the number  
13 of assailants unless perhaps you will find fingerprints or  
14 something like that.

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16 when you were told you couldn't have the time to analyze those  
17 blood splatter patterns, had you received any information from  
18 the autopsies?

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20 Q. Only one autopsy at that particular point in time  
21 had even been conducted; is that correct?

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24 the sequence of blows to particular victims; is that right?

25 A. On a particular victim whether, say, a blow was  
26 before death or during death or after death, you can get that  
27 from the autopsy, yes.

28 Q. And from the amount of bleeding the surgeon can

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1 tell you which blows were more likely to have been struck first?

2 MR. KOCHIS: Objection. No foundation of personal  
3 knowledge.

4 THE COURT: Yes. Sustained.

5 BY MR. NEGUS:

6 Q. Mr. Gregonis, how many autopsies have you  
7 attended?

8 A. 75 to 100.

9 THE COURT: I'm sorry. How many?

10 THE WITNESS: 75 to 100.

11 BY MR. NEGUS:

12 Q. And is that the kind of information that in cases  
13 where there are multiple injuries that the autopsy surgeon will  
14 sometimes be able to furnish you?

15 MR. KOCHIS: Same objection. It calls for hearsay and  
16 it's a question for a pathologist not a criminalist.

17 THE COURT: Yes. Sustained.

18 BY MR. NEGUS:

19 Q. Well, assuming that an autopsy surgeon would give  
20 that type of information, can that be added to whatever  
21 information you get from blood splatter patterns to give you a  
22 larger picture?

23 MR. KOCHIS: Objection. That assumes a fact not in  
24 evidence because it's contrary to what Dr. Root testified to.

25 MR. NEGUS: I think Dr. Root did get general sequences of  
26 patterns of wounds. He told us at least in terms of the amount  
27 of bleeding that you could make certain inferences about some of  
28 them.

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1 MR. KOCHIS: He testified you could not sequence the  
2 blows to the victim, with the exceptions of which were before  
3 and which were after death.

4 THE COURT: I will sustain the objection, Mr. Negus.  
5 BY MR. NEGUS:

6 Q. Do you get -- in trying -- in trying to -- in  
7 trying to reconstruct a crime, is it good criminalistic practice  
8 to arbitrarily exclude information which is available from your  
9 reconstruction?

10 A. No, sir.

11 Q. In scenes where there may be testimony by witnesses  
12 to the crime, can this process of crime scene reconstruction  
13 tell us which -- on occasion which -- which testimony is more  
14 likely to be correct and which testimony is more likely to be  
15 incorrect?

16 MR. KOCHIS: Objection. Irrelevant, unless we're talking  
17 about the Ryen house.

18 BY MR. NEGUS:

19 Q. In the Ryen house. All questions pertain to the  
20 Ryen house.

21 A. As to reconstruction, it may give you answers as to  
22 whether one person's either not telling the truth or does not  
23 recall what he saw correctly.

24 Q. Let's focus in on a specific example. Let's say we  
25 had a witness that believed that Josh Ryen indicated he was  
26 attacked in the hall there near Jessica, and another witness  
27 that believed that Joshua said he was attacked in the spot  
28 where -- in between Chris and Peggy where he was found; in that

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1 particular scene would a more complete analysis have aided us in  
2 determining which of the two places he was attacked?

3 A. Well, as far as this particular scene, everything  
4 is consistent with him having been attacked in the middle of the  
5 room.

6 Q. Well, stab wounds don't normally produce the same  
7 sort of spray of blood that, say, a hatchet wound would; is that  
8 right?

9 A. It all depends where the stab wound is, too.

10 Q. The stab wound that was to the throat that was  
11 covered by the assailant's hand as he dragged Josh into the  
12 room.

13 MR. KOCHIS: Objection. That assumes facts that aren't  
14 in evidence from anybody's statements.

15 MR. NEGUS: Josh remembered an arm coming around his  
16 throat in one particular instance and being stabbed from behind.

17 THE COURT: All right. You may answer.

18 THE WITNESS: Well, as far as assuming that he was  
19 stabbed and then drug into a room, and also assuming that he was  
20 not bleeding considerably, leaving blood on the floor or walls  
21 or whatever on a pathway, if that's the way it is then I don't  
22 see how you could disprove or prove that he was attacked by  
23 Jessica.

24 BY MR. NEGUS:

25 Q. Do you recall seeing a smear pattern on that door  
26 right near Jessica?

27 A. Yes.

28 Q. And it looked like something had been brushed along

1 the door?

2 A. Yes, I do.

3 THE COURT: Counsel, let's don't get argumentative with  
4 the witness now.

5 BY MR. NEGUS:

6 Q. Okay. Was that Josh's blood?

7 A. That I do not know.

8 Q. Do you have your notes?

9 A. Do you know the item number, Mr. Negus?

10 Q. I suspect it was a A --

11 A. 38?

12 Q. Yeah.

13 A. That is consistent with Josh Ryen's blood, yes.

14 Q. And that's labeled as -- as blood from a wipe  
15 that --

16 A. I will read it: "A-38 is metal pill box identified  
17 as containing blood wipe from bedroom door."

18 Q. Showing you Exhibit 227, a photograph of that  
19 bedroom door. There's a great big wipe that sort of extends in  
20 an arc for the full diameter of the door. There is a bunch of  
21 other little wipes that are more like smaller localized smears  
22 on the door.

23 Anything from Mr. Stockwell's notes that would  
24 enable to you determine which of those wipes he is talking  
25 about?

26 A. There may be; there may be not. I do not know how  
27 to interpret his notes as to the door.

28 Q. Well, assuming that if he can't tell you, then

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1 would it be of significance to a criminalist, as far as trying  
2 to assess whether Josh was being dragged into the room or not,  
3 as to whether it was the large circular wipe or some of the  
4 smaller little smears?

5 A. Well, first of all, I don't know as you can tell  
6 whether he was drug into the room. As to whether that was  
7 Josh's blood on the door being swiped or wiped across there,  
8 that you can tell.

9 Q. Okay. But in trying to -- just to try and  
10 reconstruct, you have to try and take all the facts and see  
11 which facts seem to fit more clearly with one interpretation as  
12 opposed to another. That's the point of using physical evidence  
13 in crime scene reconstruction, is it not?

14 A. Yes, it is.

15 Q. And had Mr. Stockwell done a better job we would  
16 have been better able to answer those questions than we are  
17 today; is that right?

18 A. That is true, yes.

19 Q. Okay. Of the 90 samples that you say you analyzed  
20 in this particular case of blood that came from the Ryen home,  
21 or the over 90 samples, were some of those samples that you  
22 analyzed, did you get no information from them?

23 A. I believe some of those, especially on the  
24 furniture from the loft, that I did not get any information  
25 except that they were probably blood.

26 Q. And was that, 10, 15, 20 samples, something like  
27 that from the furniture with no information?

28 A. Seven samples.

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1 Q. ABO type, in the context of this particular case  
2 any blood sample in the world that's going to come from will  
3 have the same ABO type as one of the victims; is that right?

4 A. Except for very rare blood types, yes.

5 Q. So, as far as screening out suspects from victims  
6 is concerned, ABO doesn't tell you anything, right?

7 A. I'd very much disagree with that.

8 ABO as far as this case is concerned is a very good  
9 indication of -- if you're doing a reconstruction, it's a very  
10 good tool in this case.

11 Q. If you are trying -- if you assume that the blood  
12 is the victims, then it will distinguish everybody except Peg  
13 from Jessica as far as victims' blood as far as that is  
14 concerned; is that right?

15 A. If they are AB, yes.

16 Q. Okay. Well, -- if the question you're asking is  
17 which victim deposited the blood, with the exception of being  
18 unable to distinguish Peg from Jessica, ABO gives you a fair  
19 amount of information?

20 A. Yes.

21 Q. If you're trying to distinguish -- if you're trying  
22 to answer the question: Does the blood come from a victim or  
23 from an assailant, ABO is completely worthless, correct?

24 A. Again, I disagree.

25 Q. Well. How can -- what blood -- what blood type  
26 would tell you that you have an assailant rather than a victim?

27 A. What I'm saying, Mr. Negus, is that ABO is of  
28 value; it's not completely worthless. ABO combined with other

1 things will tell you that you have a blood sample different from  
2 the victims.

3 Q. How many of the blood samples of that that you  
4 analyzed were you able to get only ABO?

5 THE COURT: Would you settle for an approximation, Mr.  
6 Negus?

7 MR. NEGUS: Sure.

8 THE WITNESS: It's approximately 20 samples.

9 BY MR. NEGUS:

10 Q. And those -- some of those are from the bedding?

11 A. Yes, they are. I don't know if some of them are  
12 from the bedding, excuse me.

13 Q. Well, on the bedding alone -- let's see, 20, aren't  
14 there almost 20 samples that you only got ABO from on the  
15 bedding alone?

16 A. Not at all.

17 Q. Perhaps we can take the break and count them up  
18 over break, your Honor.

19 THE COURT: All right. We will take the morning recess.  
20 Be mindful of the admonition, ladies and gentlemen.

21

22 THE COURT: Go ahead.

23

24 REDIRECT EXAMINATION (Resumed)

25 BY MR. NEGUS:

26 Q. Mr. Gregonis, over the break we have determined  
27 that of the sheets there was one sample that was just ABO; is  
28 that right?

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1 A. Yes, sir, that is correct.

2 Q. And of the sheets there were four samples that were  
3 either ABO plus either ADA or AK; is that right?

4 A. AK or ADA, yes.

5 Q. Okay. How many samples from the sheets were there  
6 where you could get a complete genetic profile of all the  
7 different markers that you do leaving aside the Gc which really  
8 was hard to get?

9 A. On the sheets, none.

10 Q. How many were there total of the 90 samples where  
11 you could get a complete genetic profile excluding the Gc?

12 A. Approximately 14.

13 Q. From -- were all those from the ones that Mr.  
14 Stockwell collected on the first day where we don't know exactly  
15 where they came from?

16 A. Well, we have a general location. But, yes, they  
17 are.

18 Q. Mr. Kochis said that you were not prevented from --  
19 asked you questions about you were not prevented from taking  
20 additional blood samples at the scene.

21 When you got back from talking to Mr. Longhetti and  
22 Mr. Baird, you and Mr. Ogino in the barn, the furniture was  
23 being moved out, was it not?

24 A. At that time, that point or shortly afterwards,  
25 yes.

26 Q. So, even though nobody prevented you from taking  
27 any samples, the room was being dismantled, right?

28 A. After that point, yes.

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1 Q. And you and Mr. Ogino were -- had been directed to  
2 assist in that dismantling.

3 A. Yes, sir.

4 Q. So there was no opportunity for you to take  
5 samples; is that correct?

6 A. Well there was opportunity. The samples, we could  
7 have gone up to the loft, for instance, to take them off  
8 furniture, or taken them previously to that time.

9 Q. You had been, only been there -- you really  
10 didn't -- did you have a lot of time before, in the hour, hour  
11 and a half before you contacted and asked for permission, to  
12 have more time to do that work?

13 A. Okay. First of all, I think it is more like two  
14 hours that we arrived from the crime scene until we contacted  
15 the people to ask permission to do more work. During probably  
16 40 minutes, maybe half an hour of that period we could have  
17 taken extra samples.

18 Q. But, you -- then if you had done that you would not  
19 have been able to begin the work that you started of trying to  
20 analyze the blood splatter patterns; is that right?

21 A. Well, we had been able to begin it, yes.

22 Q. Did you do both at once?

23 *RE* Excuse me. Could you do both at once, analyze the  
24 patterns and take samples too?

25 A. No. We would have had to analyze the patterns and  
26 then take the samples.

27 Q. So you -- but you never got finished analyzing the  
28 patterns.

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1 A. Not completely, no.

2 MR. NEGUS: That is all I have.

3

4

RE CROSS EXAMINATION

5 BY MR. KOCHIS:

6 Q. Mr. Gregonis, one of the ways you analyze a blood  
7 splatter pattern is from photographs; isn't that true?

8 A. That's one of the ways you can do it, yes.

9 Q. And you've examined a number of the photographs  
10 that were taken in this case of the blood splatter patterns that  
11 were found in the Ryen home.

12 A. Yes, sir.

13 Q. Another way you examine the splatter pattern is to  
14 actually seize an object and take the object either to ID or the  
15 crime lab; isn't that true?

16 A. You could, yes.

17 Q. You had -- for example, if you felt necessary time  
18 to take additional blood samples from the wall which was taken  
19 and stored in your lab.

20 A. Yes, sir.

21 Q. No one prevented you if you felt it necessary to go  
22 to the ID bureau on the 6th the 7th or any day thereafter and  
23 take samples of blood from the furniture.

24 A. No, sir.

25 Q. The photograph that Mr. Negus showed you, with the  
26 blood in the master bedroom, 277, some of that blood matched the  
27 genetic profile of Josh Ryen; is that correct?

28 A. Yes, it is.

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1 Q. You are not able to, from your serological result,  
2 sequence when that blood got there, are you?

3 A. No, sir.

4 Q. From an examination of the splatter patterns you  
5 can't tell when that blood got there, can you?

6 A. No, sir.

7 Q. From the splatter pattern are you able to even  
8 determine whether the assailant that had the boy's blood on his  
9 body deposited it there or whether it came from the boy himself?

10 A. That is correct, yes.

11 Q. Did there appear in the photograph to be a pillow  
12 at the base of the door beneath the patterns themselves, the  
13 smears themselves?

14 A. Which door are you talking about?

15 Q. The door into the bathroom?

16 A. The door into the bathroom, yes.

17 Q. If the boy had been stabbed by an assailant in the  
18 throat in the hallway, and carried into the room, would his  
19 blood at that location have proved or disproved whether that  
20 took place?

21 A. No, sir.

22 Q. For example, an assailant carrying the boy into the  
23 room could have moved into the room without blood getting on  
24 that location.

25 A. Yes.

26 Q. Blood could have gotten there after the boy had  
27 been stabbed several times.

28 A. Yes, sir.

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2

1 Q. Does a blow -- would a blow to the head with a  
2 sharp object, such as a hatchet that hit somebody's head where  
3 his hair is, would the hair prevent splatter patterns initially  
4 from arising on the first blow?

5 A. Yes, it can.

6 Q. So, as to where the first blows were, splatter  
7 patterns may not tell you where a victim was the first time they  
8 were struck; is that correct?

9 A. Yes, sir.

10 Q. From the patterns that were shown in the master  
11 bedroom in the Ryen home, you could rule out the existence of  
12 some weapons being used in the attack, for example, a gun; is  
13 that true?

14 A. Yes, sir.

15 Q. Do you have an estimate as to the number of blood  
16 samples from the Ryen home which you examined serologically that  
17 you can not exclude Mr. Cooper as being the depositor of those  
18 stains?

19 A. Yes, sir. It is approximately 32.

20 Q. How many hours have you spent analyzing the various  
21 serological items in this case?

22 A. As far as the amount of hours I spent on this case  
23 it is approximately fifteen hundred.

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

25  
26 FURTHER REDIRECT EXAMINATION

27 BY MR. NEGUS:

28 Q. Of those 32 samples that you couldn't exclude Kevin

1 Cooper from, one of them, drop A-41, if you were right in your  
2 initial analysis, it didn't come from Kevin Cooper; is that  
3 correct.

4 THE COURT: Counsel, this has been gone into many times.  
5 Go ahead, answer it.

6 THE WITNESS: First of all, since I also got the same  
7 type on Mr. Cooper's blood initially, the EAP --

8 BY MR. NEGUS:

9 Q. If you were correct in your analysis of A-41,  
10 leaving aside any fact if you were incorrect in that initial  
11 analysis, that couldn't have come from Kevin Cooper, right?

12 A. If A-41 is EAP type B, no.

13 Q. Please answer the question.

14 Leaving aside that particular drop of blood, the  
15 other ones that you say could have come from Kevin Cooper  
16 were -- all of those were improperly preserved so you can't get  
17 a complete genetic sample from them.

18 A. No, they were not.

19 Q. How many were you able to get a complete genetic  
20 sample from?

21 A. Excuse me. As far as the improper preservation or  
22 as far as the quantity of blood that was there to work with?

23 Q. Well, how many of them were there just insufficient  
24 quantity to get anymore than one or two times?

25 A. Four or five.

26 Q. The rest then were improperly preserved; is that  
27 right?

28 A. As far as the ones that I did not get the complete

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1 genetic profile, if you are going to go take it initially for  
2 serological purposes, yes, that is correct.

3 Q. So, of those 28, approximately 27 other samples,  
4 had they been properly preserved and had the donor of any of  
5 those bloods been an ABO A, PGM 1, EAP B, one could have proved  
6 that the drop of blood did not come from Doug Ryen, Kevin Cooper  
7 but could have come from the depositor of A-41; is that right?

8 A. No, it is not. As far as A-41, first of all, I do  
9 not know whether it is a EAB B or an RB.

10 Q. So, it could have from come A-41, right, if it was  
11 an ABO A, PGM 1, EAP B, it could have come from --

12 A. If A-41 is an EAP B.

13 Q. You can't exclude that possibility, can you?

14 A. Yes.

15 Q. It is consistent with a B, right?

16 A. As far as my analysis to begin with, yes.

17 Q. So, anyone of those three tests, anyone of those 28  
18 drops of blood with just those three tests getting that  
19 particular result, had they been properly preserved, could have  
20 proved that you had a drop of blood which is neither Kevin's nor  
21 the victims, correct?

22 A. That is correct, yes.

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

24

25 FURTHER RECROSS EXAMINATION

26 BY MR. KOCHIS:

27 Q. Along the same line that Mr. Negus asked you to  
28 speculate to, had the tests on those samples allowed you to form

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1 a complete genetic profile you could have found more of Cooper's  
2 at the scene; isn't that true?

3 A. More of the blood that is consistent with A-41  
4 which is also consistent with Mr. Cooper, yes.

5 MR. KOCHIS: Thank you. No further questions.

6 MR. NEGUS: Nothing further.

7 THE COURT: Thank you again.

8 MR. NEGUS: Mr. Ogino.

9 THE COURT: Is this cumulative, counsel? Is there going  
10 to be something new from this witness?

11 MR. NEGUS: It is not going to take very long, whatever.  
12 He knows some things Mr. Gregonis doesn't, because he's the one  
13 that had the conversation.

14 THE COURT: Reswear the witness.

15  
16 CRAIG OGINO,  
17 called as a witness on behalf of the Defendant, having been duly  
18 sworn, testified as follows:

19 THE CLERK: Would you please be seated.

20 Would you state your full name for the record.

21 THE WITNESS: My name is Craig Ogino. O-g-i-n-o.

22 THE CLERK: Thank you.

23  
24 DIRECT EXAMINATION

25 BY MR. NEGUS:

26 Q. Mr. Ogino, on June the 6th, 1983, did you and Mr.  
27 Gregonis go to 2943 English Road in the Chino Hills?

28 A. Yes.

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1 Q. And on that date, did you you go there for the  
2 purpose of doing a blood splatter pattern interpretation and  
3 collecting additional evidence if you found any?

4 A. We went there to try to determine if we could add  
5 anything to this particular case.

6 Q. Did you specifically have in mind analyzing the  
7 pattern of blood on the walls of the bedroom?

8 A. Yes.

9 Q. And did you also have specifically in mind  
10 collecting additional evidence at the scene if it appeared that  
11 there was additional evidence that needed collecting?

12 A. Yes.

13 Q. Did you ever complete that task on that date?

14 A. I did collect additional samples, yes.

15 Q. You collected two samples from outside the house;  
16 is that right?

17 A. I believe so. Yes.

18 Q. But inside the house did you ever complete your  
19 process of analyzing the blood splatter patterns?

20 A. I looked at it briefly.

21 THE COURT: Complete your thought process that you had in  
22 mind.

23 THE WITNESS: What -- the patterns that I saw were on the  
24 headboard and a large number of furniture items which were  
25 collected and I did not complete it at that time. But those  
26 items were collected.

27 BY MR. NEGUS:

28 Q. On that date did something prevent you from



1 collecting, from completing your analysis at that point in time?

2 A. No, just that they were -- those items were going  
3 to be collected at that date.

4 Q. In doing -- have you done crime scene  
5 reconstructions on other occasions?

6 A. Yes.

7 Q. Are those best done at the scene?

8 A. Yes, they are.

9 Q. And have you actually, yourself, done the process  
10 where you take string and protractors and trace back the path  
11 that blood flew to arrive at a point of origin?

12 A. Yes.

13 Q. That kind of work can be done two weeks even after  
14 a crime has occurred and still yield useful information; is that  
15 right?

16 A. Yes.

17 Q. On June the 6th, did you request from Mr.  
18 Kottmeier, additional time to analyze the scene?

19 A. I believe I talked to Sergeant Swanlund about that.

20 Q. Let's just go one at a time.

21 Did you ask -- did you contact and talk to Mr.  
22 Kottmeier at the scene and request that you be given additional  
23 time to analyze the scene?

24 A. Not personally, no.

25 Q. Did you ask Sergeant Swanlund if you could be given  
26 additional time?

27 A. Yes.

28 Q. Did Sergeant Swanlund refuse you permission?

002008637

1           A.     He stated we were going to collect a large number  
2 of items from the scene and I felt by doing that I could do a  
3 reconstruction at another time.

4           Q.     Well, did Sergeant Swanlund specifically refuse you  
5 the request that you made for additional time at the scene to  
6 analyze the evidence at the scene?

7           A.     He didn't actually say no. No, he did not.

8           Q.     After you had your conversation with Sergeant  
9 Swanlund, did you attempt to appeal his decision?

10          A.     Yes.

11          Q.     Was that to Mr. Baird?

12          A.     Yes.

13          Q.     And was that because even though Sergeant Swanlund  
14 had told you he was going to remove the items from the scene to  
15 put them some place else, you wanted to have time to analyze the  
16 scene in its -- in its best form, that is, without anything  
17 being moved?

18          A.     Yes.

19          Q.     When you made that request of Mr. Baird, did he  
20 deny you permission?

21          A.     Deny me permission for what?

22          Q.     Did he say he would not intervene to try and get  
23 you more time?

24          A.     He stated that if they were going to remove the  
25 items then he had no objection for them to remove the items from  
26 the scene.

27          Q.     Did he in fact tell you then that he would not  
28 intervene to get you more time?

1 MR. KOCHIS: Objection, that calls for a conclusion.

2 He's already testified as to what Mr. Baird told him.

3 THE COURT: He can answer the question yes or no.

4 Overruled.

5 THE WITNESS: All he told me was that if the decision was  
6 made that the wall, the north wall, or the south wall, and the  
7 numerous items of furniture were going to be removed, then he  
8 had no objection to that, and that I let it go at that.

9 BY MR. NEGUS:

10 Q. Did Mr. Baird tell you to take down the scene.

11 That is, tell you and Mr. Gregonis to take it down?

12 A. I don't believe he said that to me, no.

13 Q. Did he tell you and Mr. Gregonis to participate in  
14 the process of dismantling the scene?

15 A. He didn't say that, I don't believe, no.

16 Q. In February of 1984, was that the first time that  
17 you went back and tried to analyze the furniture?

18 A. I believe that was the approximate date, yes.

19 Q. And at that point in time did you take blood  
20 samples from various patterns on the furniture?

21 A. Yes.

22 Q. That was for the purpose of attempting to get  
23 serological information out of them.

24 A. Yes.

25 Q. On June the 22nd, or thereabouts, 22nd, 23rd,  
26 somewhere in that particular time period, did you return to the  
27 ID loft and attempt to analyze the evidence that was on the  
28 carpet that had been removed from the Ryen scene?

1 A. Yes.

2 THE COURT: Just a moment Mr. Negus.

3 BY MR. NEGUS:

4 Q. Had the carpet been collected and preserved in such  
5 away that it was pointless to try to localize the area on the  
6 carpet from which you collected trace evidence?

7 A. Not entirely.

8 Q. Well, did you do that?

9 A. Yes.

10 Q. You did collect four bags of stuff from the carpet;  
11 is that right?

12 A. I believe so, yes.

13 Q. But you didn't label them as to where on the carpet  
14 you collected them from.

15 A. I believe they were.

16 Q. Did you determine that there were bloodstains on  
17 the the carpet from which samples had not been previously  
18 collected?

19 A. I observed that, yes.

20 Q. Did you determine that it was pointless to try to  
21 collect those particular samples because the loft was so hot  
22 that serological typing would have been fruitless?

23 A. I was thinking of that, yes.

24 Q. On the -- on the 6th of June, back at the scene,  
25 did you see Mr. Kottmeier there?

26 A. Yes.

27 Q. But you don't believe that you, yourself,  
28 personally asked him to hold the scene a little longer.

002208666

1           A.     Not until things were being removed.

2           Q.     At some point in time on that particular day, did  
3     you ask Mr. Kottmeier if he would hold the scene a little  
4     longer?

5           A.     I don't remember particularly requesting that from  
6     him. It was the response that was given to me from Sergeant  
7     Swanlund.

8           MR. NEGUS: Page 128 of Volume XX of the preliminary  
9     hearing transcript, lines 19 through 24, leaving aside the  
10    objection, and then 4 through 13 on Page 129.

11          MR. KOCHIS: I have looked at it.

12          MR. NEGUS: (Reading)

13                 "Question: Did you, yourself, ever talk to Mr.  
14                 Kottmeier about this?

15                 "Answer: Yes.

16                 "Question: When was that?

17                 "Answer: Oh, I don't remember. It was that day.

18                 "Question: What was that conversation?

19                 "Answer: I, you know, asked if we could hold onto  
20                 the crime scene a little longer.

21                 "Question: And what did he say?

22                 "Answer: I don't know his exact words, but I think  
23                 there were some legal implications that we had  
24                 to -- we had to give it back to the owners.

25                 "Question: There was -- he said no?

26                 "Answer: Well, he -- he didn't say -- come out and  
27                 say no, he -- he said that we can't -- we  
28                 shouldn't hold onto this scene any longer than

0020867

1                   necessary."

2                   Q.     When you had your conversation with Mr. Baird, did  
3 he talk to Mr. Swanlund on the phone during that conversation?

4                   A.     I don't remember.

5                   MR. NEGUS: If I could read Page 3876, Lines 19 through  
6 26.

7                   MR. KOCHIS: I've seen it.

8                   MR. NEGUS: (Reading)

9                   "Question: What was your conversation with  
10 Mr. Baird?

11                   "Answer: I asked -- Well, first I called Mr. Baird  
12 and asked if he would talk to, I believe it was  
13 Sergeant Swanlund, I'm not sure, and asked if we  
14 could preserve the crime scene for an additional  
15 day.

16                   "Question: And what was Mr. Baird's response to  
17 that?

18                   "Answer: He talked to Sergeant Swanlund.

19                   "Question: You didn't hear that conversation?

20                   "Answer: No. I gave Sergeant Swanlund the phone."

21                   And one additional inconsistent statement back to  
22 to the Mr.. Kottmeier conversation. 3878, Line 14 through 3879  
23 Line 8.

24                   MR. KOCHIS: Well, your Honor, it's essentially rereading  
25 the same statement that was made at the prelim at a later  
26 hearing.

27                   MR. NEGUS: Right. Well, I think I'm entitled to --

28                   THE COURT: I will permit it. Go ahead.

0020868

1 BY MR. NEGUS: (Reading)

2 "Question: Did you ever discuss that issue with  
3 Mr. Kottmeier on that day?

4 "Answer: I asked him if it would be possible to  
5 hold the crime scene for an additional amount of  
6 time I believe. I'm not sure.

7 "Question: And what was his response?

8 "Answer: Again, I believe that there was a legal  
9 issue that we had to give the house back to the  
10 owners within a reasonable amount of time.

11 "Question: So Mr. Kottmeier communicated to you  
12 that there was some sort of legal problems in  
13 holding on to the house and so you couldn't do  
14 that?

15 "Answer: I believe so."

16 That's all I have.

17

18 CROSS-EXAMINATION

19 BY MR. KOCHIS:

20 Q. Mr. Ogino, do you recall -- I know it's been  
21 sometime back on that particular Monday -- talking to Mr.  
22 Kottmeier and Mr. Kottmeier telling you that you should check  
23 with your supervisors about the scene being held?

24 MR. NEGUS: Objection, your Honor. The precise content  
25 of the conversation has been, I believe, irrelevant.

26 MR. KOCHIS: Not today. There was no objection today,  
27 and we have gone into it in other --

28 THE COURT: Go ahead, counsel.

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1 THE WITNESS: Yes, that's why I contacted my supervisor.

2 BY MR. KOCHIS:

3 Q. And was that at Mr. Kottmeier's suggestion?

4 A. Yes.

5 Q. Now, back in June of 1983, did you have more  
6 experience than Mr. Gregonis in splatter pattern analysis?

7 A. It would be hard to say. We had about the same  
8 training.

9 Q. Well, you spent, what, about a half an hour inside  
10 the master bedroom at least on that Monday looking at the  
11 various pattern of blood on the wall?

12 A. Yes.

13 Q. And did you essentially see patterns that were  
14 consistent with arterial bleeding?

15 A. Yes.

16 Q. Cast-off patterns?

17 A. Yes.

18 Q. Did you see any medium velocity blood?

19 A. No.

20 Q. Now, did you have some information when you went to  
21 the scene that a family had died inside that room the day  
22 before?

23 A. Yes.

24 Q. Based on the distribution, the patterns themselves,  
25 what you saw on the wall, did it appear that -- was that  
26 consistent with a family being attacked in the room and bleeding  
27 to death in the room?

28 A. Yes.

0020870



1 Q. Now, based on your visual examination of what you  
2 saw, at that point did you decide it was necessary to collect  
3 additional evidence from that room?

4 A. No, not at that point.

5 Q. When you do a splatter pattern analysis, is one of  
6 the ways in which that is accomplished from photographs?

7 A. Yes.

8 Q. Is another way actually taking an object that has a  
9 blood pattern on it and bringing that item into the custody of  
10 the Sheriff's Office?

11 A. Yes.

12 Q. You were told then on that day that all of the  
13 furniture which had splatter patterns on them were going to be  
14 seized?

15 A. Yes.

16 Q. And you knew the wall which had the most arterial  
17 bleeding on it, the one behind the headboard of the waterbed,  
18 that was going to be seized as well?

19 A. Yes.

20 Q. And did that satisfy you that those patterns on  
21 those objects would be preserved, and if you wanted to view them  
22 in more detail at a later time that could be accomplished?

23 A. Yes.

24 Q. At that time, based on your visual examination at  
25 the scene, did you feel it necessary to take a sample of blood  
26 from each pattern on the wall for serological testing?

27 A. Not at that time, no.

28 Q. When Mr. Negus talked to you this morning and asked

0020871

1 you a question about useful information can be obtained from  
2 splatter pattern analysis, would that include, for example, some  
3 inference that could be drawn as to the type of weapon that was  
4 used?

5 A. Yes, you could do that.

6 Q. For example, a gun versus a cutting instrument?

7 A. A gun versus an instrument that has to be swung.

8 Q. Can it also tell you if a person was bleeding from  
9 an artery in a particular location?

10 A. Yes.

11 Q. Based on what you saw in that bedroom, based on the  
12 splatter patterns alone, did you see the type of evidence that  
13 would have given you the name of the person that did this?

14 A. No.

15 Q. The sequence in which the victims were attacked?

16 A. No.

17 Q. The identity of the person that did the attack?

18 A. No.

19 Q. The number of people involved in the attack? By  
20 that I mean assailants.

21 A. No.

22 Q. Did anyone prevent you, for example, if you felt it  
23 was necessary the very next day, on that Tuesday, the 7th, from  
24 taking blood from the wall that came back to the crime lab?

25 A. No.

26 Q. Or the items that were stored in the ID loft, the  
27 furniture?

28 A. No.

1 Q. Thank you.

2 I have nothing further, your Honor.

3

4

REDIRECT EXAMINATION

5 BY MR. NEGUS:

6 Q. Was it negligence on your part that you didn't take  
7 those samples?

8 A. I don't think it was negligence. I just didn't  
9 think that from the splatter patterns we needed to take those  
10 patterns at that particular time.

11 What had been collected was a representative sample  
12 throughout the entire house, some of which included blood  
13 samples from these items.

14 Q. But you didn't -- the items that were taken out, do  
15 you know whether any blood samples were taken from any of the  
16 furniture items?

17 A. I don't know if there were any blood samples taken  
18 from the furniture items, but I do know that samples were taken  
19 from the wallboard that was collected.

20 Q. Thank you.

21 I have nothing further.

22 MR. KOCHIS: Nor do I.

23 THE COURT: Thank you.

24 THE WITNESS: Thank you, your Honor.

25 MR. NEGUS: I would like to recall Mr. Gregonis on the  
26 issue, brief issue that was brought up up with Mr. Ogino by Mr.  
27 Kochis which I didn't get to go into yesterday.

28 THE COURT: Which one is that, sir? We've had him now

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1 three or four times during this trial.

2 MR. NEGUS: Just on the conversation with Mr. Kottmeier.

3 THE COURT: No. Is there going to be objection to it?

4 MR. KOCHIS: It's cumulative and I object.

5 THE COURT: We've gone to into it. If he is out there  
6 would you ask him to come back, please.

7 Resume the chair briefly, please. You are still  
8 under oath.

9 THE WITNESS: Yes, your Honor.

10 THE COURT: State your name again.

11 THE WITNESS: Daniel J. Gregonis.

12 THE COURT: Mr. Negus.

13

14 DANIEL J. GREGONIS,

15 called as a witness on behalf of the Defendant, having been  
16 previously duly sworn, resumed the stand and testified further  
17 as follows:

18

19 FURTHER REDIRECT EXAMINATION

20 BY MR. NEGUS:

21 Q. Mr. Gregonis, on June the 6th did you and Mr. Ogino  
22 talk to Mr. Kottmeier about blood splattering and the  
23 reconstruction of blood patterns?

24 A. Not that I recall, no.

25 Q. Did you talk to the District Attorney about holding  
26 off on moving items out of the house?

27 A. Yes, sir.

28 Q. Did Mr. Kottmeier respond to you to that request

00200874

1 saying, "Well, we are definitely going to take the wall," and  
2 that he did not want there to be any further of question of  
3 blood evidence like there was in the Manson case?

4 A. Something to that effect, yes.

5 Q. Thank you.

6 That's all I have.

7

8 FURTHER RECROSS-EXAMINATION

9 BY MR. KOCHIS:

10 A. Mr. Gregonis, do you recall Mr. Kottmeier asking or  
11 telling you that you should consult your superiors if there was  
12 a question about holding on to the scene?

13 A. I believe he referred us to the Sheriff's  
14 Department and the people in charge there.

15 Q. To carry your request to the people actually  
16 processing the scene?

17 A. Yes, sir.

18 Q. And was it after that time that Mr. Swanluna was  
19 contacted?

20 A. Yes, sir.

21 Q. And your supervisor Mr. Baird?

22 A. Yes, sir.

23 Q. Thank you.

24 I have no further questions.

25 THE COURT: Thank you very much, sir.

26 THE WITNESS: Thank you, your Honor.

27 MR. NEGUS: Sergeant Arthur very briefly.

28

00200075

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

4 THE CLERK: Thank you. Would you state your name for the  
5 record, please.

6 THE WITNESS: Bill Arthur, A-r-t-h-u-r.

7 THE CLERK: Thank you.

8

9 DIRECT EXAMINATION

10 BY MR. NEGUS:

11 Q. Sergeant Arthur, on December --

12 THE COURT: Just one second.

13 MR. KOCHIS: Your Honor, before we go into this, it's my  
14 opinion that this report is not inconsistent with what anybody  
15 said and perhaps we should have a hearing on it.

16 MR. NEGUS: There's only one sentence I'm going to ask  
17 Mr. Arthur about, and Mr. Gregonis said no when I asked him that  
18 question.

19 MR. KOCHIS: Fine.

20 BY MR. NEGUS:

21 Q. Sergeant Arthur, on December 12, 1983, at  
22 approximately 3:30 in the afternoon did you conduct an interview  
23 with Dan Gregonis?

24 A. I believe that's correct.

25 Q. Showing you a slightly colored copy of your  
26 typewritten report, does that -- do you have a report that so  
27 indicates?

28 A. Yes, sir.

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1 Q. During that conversation did Mr. Gregonis tell you  
2 that he and Mr. Ogino had talked to the District Attorney about  
3 blood splattering and reconstruction of blood splatters?

4 A. Yes.

5 Q. Thank you.

6 That's all I have.

7 MR. KOCHIS: I have no questions.

8 MR. NEGUS: Bill Baird.

9 THE COURT: Mr. Negus.

10

11

WILLIAM W. BAIRD,

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

14 THE CLERK: Thank you. Would you state your full name  
15 for the record and spell your last name.

16 THE WITNESS: William W. Baird, B-a-i-r-d.

17 THE CLERK: Thank you.

18

19

DIRECT EXAMINATION

20 BY MR. NEGUS:

21 Q. Mr. Baird, on June the 5th, '83, did you go to the  
22 Ryen crime scene?

23 A. I did.

24 Q. And were you the first person from the crime lab to  
25 arrive there?

26 A. Yes.

27 Q. Did you do any processing of the crime scene  
28 yourself?

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2  
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7  
7

1 A. No.

2 Q. Did you assign any of your subordinates to do that

3 processing?

4 A. Yes.

5 Q. Were those the two -- two of the most inexperienced

6 people that you had in your lab at that time?

7 A. Yes.

8 Q. Did that particular crime scene appear to you to be

9 an extremely complex one?

10 A. Yes.

11 Q. Did you yourself leave the crime scene at

12 approximately a little over two hours after you had arrived?

13 A. Yes.

14 Q. During the time that you were actually at the crime

15 scene, did you also depart from the Ryen residence and go down

16 the hill for approximately half an hour to view an axe which had

17 been discovered by Mr. Bell?

18 A. Yes.

19 Q. Did you give either Mr. -- either Ms. Schechter or

20 Mr. Stockwell any detailed instructions as to how to process

21 that particular scene?

22 A. No.

23 Q. On the 6th of June did you receive a phone call

24 from Mr. Ogino?

25 A. Yes.

26 Q. Did he request that you intervene with the

27 Sheriff's Department to attempt to hold on to the Ryen crime

28 scene for another day or two so that he and Mr. Gregonis could

0020878



1 have a chance to analyze the scene?

2 A. I don't recall. I don't recall the part about the  
3 length of time that was requested in reference to your remarks  
4 about a day or two. It was requested that I intercede.

5 Q. Okay. And that was for the purpose of them -- them  
6 having additional opportunity to analyze the crime scene?

7 A. The bloodstain patterns, yes, at the crime scene.

8 Q. Had you, in fact, earlier that particular day sent  
9 Mr. Gregonis and Mr. Ogino out to the Ryen crime scene for  
10 precisely that purpose?

11 A. Yes.

12 Q. Once you learned that the other divisions of the  
13 sheriff's department wanted to remove items from the scene, at  
14 that particular point in time did you refuse to intervene and  
15 make a request for more time on behalf of Mr. Ogino and Mr.  
16 Gregonis?

17 A. Yes.

18 Q. Did you, in fact tell, them that they should go  
19 ahead and take it down, meaning the crime scene?

20 A. Yes.

21 Q. Thank you.

22 That's all I have.

23

24

CROSS-EXAMINATION

25 BY MR. KOCHIS:

26 Q. Mr. Baird, were you informed that the items in the  
27 bedroom which had the blood splatter patterns on them were going  
28 to be removed from the scene and taken to the identification

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1 bureau or the crime lab?

2 A. Yes.

3 Q. And did that in your own mind satisfy you that any  
4 further examination of the patterns on the objects, if it was  
5 necessary, could be done at a later time?

6 A. Yes.

7 Q. How long had you been supervising Mr. Stockwell as  
8 of June the 5th of 1983?

9 A. About a year.

10 Q. Had you had the chance to review his proficiency in  
11 processing crime scenes prior to June the 5th of 1983?

12 A. Yes.

13 Q. Did you have in the lab at that time persons who  
14 had more experience in areas other than crime scene processing,  
15 for example, firearms and tool mark identifications, than Mr.  
16 Stockwell had?

17 A. Yes.

18 Q. Did you feel on June the 5th of 1983, that based on  
19 your review of his handling of other scenes he was qualified to  
20 handle the Ryen scene?

21 A. Yes, I did.

22 Q. Did you, on that particular Sunday, look at the  
23 entire crime scene?

24 A. Yes.

25 Q. And did you point out certain items of evidence  
26 which you felt should be collected at the scene?

27 A. Yes, I did.

28 Q. Did you also go to the scene on the following day,

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1 on that particular Monday?

2 A. Yes.

3 Q. Did you see Mr. Gregonis and Mr. Ogino at the scene  
4 on that particular day?

5 A. I did.

6 Q. Did you at any time ask them to leave the scene and  
7 go home?

8 A. No.

9 MR. KOCHIS: I have no further questions.

10

11 REDIRECT EXAMINATION

12 BY MR. NEGUS:

13 Q. When you saw Mr. Gregonis and Mr. Ogino at the  
14 scene, were they in the process of dismantling the master  
15 bedroom?

16 A. Yes.

17 Q. In your particular career as a criminalist, do you  
18 do blood splatter interpretations?

19 A. In my career I've done very limited pattern  
20 interpretation.

21 Q. That's not your particular field of expertise?

22 A. No, it is not.

23 Q. Were you aware of any belief amongst people who do  
24 do that kind of work that it's much preferable to do it at the  
25 scene rather than back at the lab?

26 A. Yes, I was aware of that.

27 Q. Did you have in the lab persons who were more  
28 proficient and more experienced than Mr. Stockwell at crime

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1 scene processing?

2 A. More experienced. I -- I'm less certain about  
3 whether or not I had anybody more proficient.

4 MR. NEGUS: Nothing further.

5

6

RE CROSS-EXAMINATION

7 BY MR. KOCHIS:

8 Q. Have you had a chance -- did you have a chance to  
9 review the reports of Mr. Stockwell and Ms. Schechter of the  
10 processing that they did perform on the Ryen scene?

11 A. Yes.

12 Q. And did you feel that in terms of the crime scene  
13 processing that they adequately collected certain samples at  
14 that particular scene?

15 A. I did.

16 MR. KOCHIS: I have no further questions.

17

18

FURTHER REDIRECT EXAMINATION

19 BY MR. NEGUS:

20 Q. Mr. Kochis asked you if they adequately collected  
21 certain samples, do you have a feeling now that your laboratory  
22 did an inadequate job in processing that particular crime scene.

23 A. No.

24 Q. Have you ever made such statements that of such --  
25 of that type of self-criticism to other members of your  
26 profession?

27 A. I have stated that I felt we could have done a  
28 better job. That is not unusual. Almost any scene in

1 retrospect could have been done better by our people.

2 I don't recall ever saying that I believed that we  
3 have done an inadequate job. I don't believe that and I have  
4 not stated that to my knowledge.

5 MR. NEGUS: I have nothing further.

6 MR. KOCHIS: Nor do I.

7 THE COURT: Thank you, Mr. Baird.

8 THE COURT: Do you have --

9 MR. NEGUS: I have four people coming in this afternoon.  
10 Could we just, after you dismiss the jury, just tell you a  
11 little bit about that?

12 THE COURT: Sure.

13 Don't discuss the case amongst yourselves nor with  
14 any other person, or express or form an opinion on it. Don't  
15 read about it. Remember the admonition at all times. Enjoy  
16 your lunch. See you at 1:30.

17

18 (The following proceedings were held in  
19 open court out of the presence of the jury:)

20 THE COURT: The jurors have departed.

21 MR. NEGUS: I have four witnesses coming in this  
22 afternoon. I believe they will all be relatively brief so that  
23 I could easily imagine finishing by 2:30. I can endeavor to get  
24 another witness down from San Bernadino this afternoon if she is  
25 available.

26 I would prefer, if it's agreeable with the Court,  
27 to send the jury home early and to begin working on my motions  
28 to introduce some of the exhibits, cause my strategy for the

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1 rest of the case may depend upon the admission or nonadmission  
2 of some of the exhibits which we have previously marked.

3 THE COURT: Counsel, we are only talking about then  
4 perhaps an hour, hour and a half?

5 MR. NEGUS: Right.

6 THE COURT: If that other witness can be obtained, let's  
7 don't waste it with the jurors. Everybody's time is too  
8 valuable. You can work on the other things at other times. So  
9 if you can get the person here I would prefer that you do so.

10 MR. NEGUS: I'm not sure we can because we haven't warned  
11 her.

12 THE COURT: Let's make the effort, please.

13 MR. NEGUS: Would you call up Schechter and ask her to  
14 bring down the bags?

15 THE COURT: All right. Anything else?

16 MR. NEGUS: That was it.

17 (Noon recess taken.)

18  
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0020884

1        1        SAN DIEGO, CALIFORNIA, THURSDAY, JANUARY, 24, 1985 1:30 P.M..

2                                --oo0oo--

3  
4                                (The following proceedings were held in

5                                open court out of the presence of the jury:)

6                THE COURT: The defendant and all counsel are here, the  
7 jurors and alternates are not.

8                                Counsel.

9                MR. NEGUS: My next witness I intended to call was  
10 Patricia Schechter. Mr. Baird called her at 12:00 o'clock, and  
11 determined that she had gone home sick for the day, so I don't  
12 have other persons.

13                THE COURT: So, it sounds like very late notice to me.

14                                Why didn't you get her earlier, Mr. Negus?

15                MR. NEGUS: Because I didn't realize that the three  
16 witnesses this morning would go so quickly.

17                THE COURT: How many witnesses do you have remaining this  
18 afternoon?

19                MR. NEGUS: Four.

20                THE COURT: For every ten minutes that you make us wait,  
21 I think we should penalize you about five dollars so that we can  
22 all have a party when this case is over. So, let's keep track.

23                                We will do the best we can this afternoon. Try  
24 and, however, avoid this in the future if you would.

25                MR. NEGUS: I have been trying. We have even gone late  
26 this week, if you can recall.

27                                We do have some work that we can do outside the  
28 presence which I would, really would like to get done before we

0020005

1 get to far into next week.

2

3 (The jurors reconvene in the courtroom.)

4 THE COURT: I have been informed, ladies and gentlemen,  
5 we're going to run out of witnesses again today, two-thirtyish  
6 or so. It is unfortunate but an effort was made and  
7 unsuccessful.

8 Call your next witness.

9 MR. NEGUS: Dale Sharp.

10 THE COURT: I think you were previously sworn, but would  
11 you raise your right hand again, please.

12

13 ERVIN DALE SHARP,

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

16 THE CLERK: Would you please be seated.

17 Would you state your full name for the record,  
18 please.

19 THE WITNESS: Ervin Dale Sharp. S-h-a-r-p.

20

21 DIRECT EXAMINATION

22 BY MR. NEGUS:

23 Q. Mr. Sharp, did you ever go inside the Ryen  
24 residence at 2943 English Road?

25 A. Yes, sir.

26 Q. When was that?

27 A. That was on the morning of June the 7th.

28 Q. In your report you indicated it was June the 6th

020006



1 but in fact you were -- that was another one that was wrong?

2 A. That was a typographical error, or I was wrong  
3 about one of the two.

4 Q. Could you put your name in Slot No. 74 on Exhibit  
5 229 there.

6 A. (Witness complied.)

7 Q. And just -- if you could just remain there for a  
8 second. Could you put -- did you go into both the master  
9 bedroom and to the other parts of the house?

10 A. Yes, sir.

11 Q. Could you then put 6-7 under both those columns.

12 A. (Witness complied.)

13 Q. And to get into the house did you go over the patio  
14 outside the master bedroom?

15 A. No, sir, I did not.

16 Q. Did you ever walk on that patio out there?

17 A. No, sir, I did not.

18 Q. I take it you probably had to go through the  
19 driveway to get in the house; is that right?

20 A. Yes.

21 Q. Could you put 6-7 then in the far right-hand  
22 column.

23 A. (Witness complied.)

24 Q. Did you -- you can sit down, excuse me.

25 Did you enter every room of the house while you  
26 were in the house on the 7th?

27 A. No, sir, I did not.

28 Q. What which one's did you go into?

020887

1           A.     Went in the master bedroom, down the hallway, went  
2     into the living room area. And I am not familiar with what you  
3     are calling it, but it would be the living room, I believe it  
4     was sunken. We went up on a den-type area or something.

5           Q.     Showing you the den-type area.

6                     Is where I am pointing in the horseshoe shape room  
7     near where it says "Purse" on 6-J?

8           A.     Yes, sir.

9           Q.     Did you also search that particular counter where  
10    it says "Purse"?

11          A.     Yes, sir.

12          Q.     Was the purpose in going in there essentially to  
13    obtain an address book?

14          A.     Yes, sir.

15          Q.     Did you go to the residence with anybody else?

16          A.     Yes, sir.

17          Q.     Who was that?

18          A.     Detective Phil Danna.

19          Q.     Did he come into the residence with you on that  
20    occasion?

21          A.     Yes.

22          Q.     Did he also go out in the barn with you?

23          A.     He was in that area, yes, sir.

24          Q.     Did you also obtain some addresses from the barn?

25          A.     I obtained a blue guest book, is what it was  
26    called.

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

28

## CROSS EXAMINATION

1

2 BY MR. KOCHIS:

3 Q. Mr. Sharp, on that day were you essentially trying  
4 to locate a person for an interview?5 A. I was trying to locate a last name of a person,  
6 yes, sir.7 Q. Is that the reason you were searching for the  
8 address book?

9 A. Yes, sir.

10 Q. The day -- that day when you went into the Ryen  
11 home, had the furniture and the carpeting already been taken out  
12 of the master bedroom?

13 A. Yes, sir.

14 MR. KOCHIS: I have no further questions.

15 MR. NEGUS: Nothing further.

16 THE COURT: Thank you.

17 MR. NEGUS: James Coronado.

18

19 JAMES CORONADO,

20 called as a witness on behalf of the Defendant, having been duly  
21 sworn, testified as follows:22 THE CLERK: Thank you. Would you state your full name  
23 for the record and spell your last name.

24 THE WITNESS: James Coronado. C-o-r-o-n-a-d-o.

25

26 DIRECT EXAMINATION

27 BY MR. NEGUS:

28 Q. Mr. Coronado, on June 6th, 1983, what was your

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9

1 occupation?

2 A. Deputy Sheriff for the San Bernardino County  
3 Sheriff's office.

4 Q. And to which division were you assigned at that  
5 particular point in time?

6 A. The Career Criminal Division.

7 Q. Did you go to 2943 English Road in the Chino Hills  
8 on that occasion?

9 A. Yes, sir, I did.

10 Q. And did you go into a residence at that location,  
11 the Ryen residence?

12 A. Yes, sir.

13 Q. What part of the house did you go into?

14 A. I went in through the master bedroom, and through  
15 the hallways looking around the house.

16 Q. Just looking around to see what was in there?

17 A. Yes, sir.

18 Q. Could you, under 6-6, put in Column 72 next to your  
19 name a "6-6" for the rest of the house as well. Just in rest of  
20 the house first.

21 A. (Witness complied.)

22 Q. In entering -- did you enter across a patio that  
23 was outside the master bedroom?

24 A. I entered through the master bedroom.

25 Q. Showing you Exhibit 6. Are those the sliding glass  
26 doors right there?

27 A. Yes, sir.

28 Q. Could you put your "6-6" on the column that says

00200890

2 A. (Witness complied.)

6 A. Yes, sir.

8                   Is that a photograph of a shoe that you were  
9   wearing on that date?

11 Q. Did you also wear the same shoe the next day on  
12 June the 7th?

14 Q. On any day that you were at the Ryen house, did you  
15 ever step on top of a spa cover that was on that patio area  
16 outside?

18 Q. While you were assisting in the investigation of  
19 the Ryen homicides, did you ever personally enter a residence at  
20 2991 English Road, the so-called hideout house, down the hill  
21 from the Ryen home?

23 Q. I take it you didn't loan your shoes to anybody  
24 else on those days.

26 MR. NEGUS: That is all I have.

28

COMPUTERIZED TRANSCRIPT

1 BY MR. KOCHIS:

2 Q. Mr. Coronado, on the 6th, on that Monday, were you  
3 one of the people assigned to carry the furniture from the Ryen  
4 master bedroom outside of the house?

5 A. We moved it I believe two days after the 6th. It  
6 wasn't on the 6th when it was moved.

7 Q. Well, the first day that you were there, is that  
8 the day you helped move furniture out of the master bedroom?

9 A. No, sir.

10 Q. The day that you first went into the house, was  
11 there still carpet on the floor?

12 A. Yes, sir.

13 Q. Were the bodies still there?

14 A. No, sir.

15 Q. Did you -- do you know how many days had passed  
16 between the day the crime was discovered and the day you were  
17 first there?

18 A. No, sir.

19 MR. KOCHIS: I have no further questions.

20 MR. NEGUS: Nothing further.

21 THE COURT: Please step down. Thank you.

22 MR. NEGUS: Steve Moran.

23

24 STEPHEN K. MORAN,

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

27 THE CLERK: Thank you. Would you state your full name  
28 for the record and spell your last name.

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8

BY MR. NEGUS:

1 A. Yes, I believe I did.

2 Q. Sorry. Could you go back in then and put "6-6"  
3 under the column next to your name and "Patio Outside Master  
4 Bedroom."

5 A. (Witness complied.)

6 Q. On June the 6th, at approximately 10:00 o'clock in  
7 the morning, did you interview Linda Edwards?

8 A. Yes, I did.

9 Q. And did you ask her a question as to whether or not  
10 on the night of the murders, that after she had seen the pickup  
11 truck drive up to the house coming back from the party, she had  
12 ever seen any of the victims leave?

13 A. No. I believe I asked if she had seen the vehicle  
14 leave.

15 Q. Well, did you ask -- do you have your report with  
16 you?

17 A. Yes, I do.

18 Q. Could you check the second page of that report.

19 A. Yes.

20 Q. You asked her whether she saw the victims leave.

21 A. Correct.

22 Q. Then she responded that she saw the station wagon  
23 leave; is that right?

24 A. That's correct.

25 Q. When she told you that she saw the station wagon  
26 leave, did she tell you anything about having seen Doug Ryen as  
27 the driver?

28 A. No.

0200894



**4 A. Yes.**

**6 A. Yes.**

8 A. Sometime around midnight, or maybe shortly after.

11 A. Yes, she did.

13           A.     She said it was being driven at a high rate of  
14     speed.

17                    A.     Yes.

20                   A.     Yes, I did.

22           A.     She couldn't recall them being on or off.

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

26 BY MR. KOCHIS:

COMPUTERIZED TRANSCRIPT

3 A. That's correct.

4 Q. In fact, you put this in your report.

5 A. That's correct.

6 Q. On the same day, the day that you talked to Mrs.

7 Edwards, that is the day that you were at the Ryen scene.

8 A. Yes, I believe it was.

9 Q. Do you know if you went up to the home before or

10 after you talked to Mrs. Edwards?

11 A. I don't remember.

12 Q. Did you help on that day removing the furniture

13 from the Ryen master bedroom?

14 A. Some furniture, yes.

15 Q. At that time did you own a pair of Pro Ked tennis

16 shoes?

17 A. No, I did not.

18 Q. Did you have any tennis shoes at that time that had

19 the diamond pattern on the sole of them?

20 A. Not that I can recall.

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

22 MR. NEGUS: Nothing further.

23 THE COURT: Thank you.

24 THE WITNESS: Thank you.

25 MR. NEGUS: James Hill.

COMPUTERIZED TRANSCRIPT

1 sworn, testified as follows:

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

3 Would you state full name for the record and spell  
4 your last name.

5 THE WITNESS: James Hill. H-i-l-l.

6

7 DIRECT EXAMINATION

8 BY MR. NEGUS:

9 Q. Mr. Hill, what's your occupation?

10 A. I am deputy Sheriff for the County of San  
11 Bernardino.

12 Q. And in June of 1983, what was your assignment  
13 within the Sheriff's Department?

14 A. I was assigned to Career Criminal Division.

15 Q. And on June the 6th, 1983, did you go to 2943  
16 English Road in the Chino Hills?

17 A. I believe it was the 7th.

18 Q. Some day in June of 1983, did you go to 2943  
19 English Road in the Chino Hills?

20 A. Yes.

21 Q. When you went to that particular location for the  
22 first time, were you in any vehicle?

23 A. Yes.

24 Q. What what kind of a vehicle?

25 A. It was a blue Pontiac.

26 Q. Did you, on that same day, did you then come -- go  
27 away and then come back later with a different vehicle?

28 A. Yes.

0020897

1 Q. What was the other vehicle?

2 A. Well, it was a flat bed truck.

3 Q. At the time you came back with the flat bed truck  
4 had you ever prior to that entered the residence?

5 A. Yes.

6 Q. Where had you gone?

7 A. Inside the residence?

8 Q. Yeah.

9 A. I walked in the front door of the residence and  
10 checked the, I guess it is a living room. Directly to the right  
11 is an entrance to the left entranceway, and I walked into the  
12 master bedroom.

13 Q. So you essentially walked throughout the house then  
14 in the morning. Was that in the morning of June whatever it  
15 was?

16 A. Yes.

17 Q. Was that the day that you went -- when you walked  
18 in the master bedroom for the first time, was the carpet still  
19 on the floor?

20 A. Yes.

21 Q. And the furniture was still in the room?

22 A. Yes.

23 Q. Was there anybody with you as you walked through  
24 the house?

25 A. Actually walking through the house with me?

26 Q. Yeah.

27 A. Greg Bengé was my partner. I don't know if he  
28 walked in the house or not.



1 Does that appear to be a -- does that appear to be  
2 one of the detectives you are talking about?

3 A. Yes.

4 Q. And showing you Exhibit 187, a small picture, but  
5 asking you to look at the dark-haired gentleman standing just to  
6 Sergeant Arthur's right in that picture.

7 Is that the person that you are referring to as  
8 Phil Danna?

9 A. Yes.

10 THE COURT: Counsel, can you stipulate as to the two  
11 identities?

12 MR. KOCHIS: He's not sure who the people were.

13 THE COURT: I understand. But I suspect --

14 MR. NEGUS: I believe Mr. Danna has already been  
15 previously identified in that photograph.

16 THE COURT: Go ahead.

17 BY MR. NEGUS:

18 Q. On how many other times did you enter the Ryen  
19 house other than that first occasion with the detectives?

20 A. Twice.

21 Q. Once more that afternoon?

22 A. Um, I don't know if it was later on that evening or  
23 if it was the following day. The same time that we did a  
24 luminol process at the house.

25 Q. Okay. What were you doing at the luminol  
26 processing; just watching?

27 A. No, I was assisting in spraying the -- I didn't  
28 actually spray it but I assisted the technicians in turning off

1 lights, and things like that, at the house.

2 Q. So you turned off the lights?

3 A. Some of the lights, yes.

4 Q. How many other people were in there with you while

5 you were doing that?

6 A. Beside the people who were actually doing the

7 luminol test? I remember two.

8 Q. Who were they?

9 A. Bob Phillips and Sergeant Arthur.

10 Q. Was Mr. Phillips helping with the lights as well?

11 A. Yes.

12 Q. I don't know if he turned on and off the lights but

13 he was assisting.

14 Q. Did you ever enter the residence at 2991 English

15 Road just down the hill from the Ryen house?

16 A. Yes.

17 Q. When was that?

18 A. I believe it was the following day.

19 Q. Was that the day, the first day that evidence was

20 discovered in that house?

21 A. I don't know.

22 Q. Showing you photograph 740. Is that you in the

23 picture?

24 A. Yes.

25 Q. Is that also you with Criminalist Craig Ogino?

26 A. Yes.

27 Q. Was that picture taken on the same day that you

28 first entered the house at 2991 English Road?

020901

1 A. Yes.

2 Q. Was that taken after you had made your initial  
3 entry?

4 A. Yes.

5 Q. At some point on that particular evening, did you  
6 and Mr. Ogino and several other people leave the 2991 residence  
7 to go out and look at what you thought might be blood drops on  
8 the driveway?

9 A. Yes.

10 Q. At that point in time, did you go out and look  
11 around in the area near the driveway to see if you could see any  
12 additional evidence?

13 A. I am not clear about what you mean the other area  
14 of the driveway.

15 Q. What you thought were blood drops were discovered  
16 down around in here somewhere; is that right? On the driveway  
17 leading down from 2991 down the hill to the Lease residence.

18 A. Yes. Up in the parking area.

19 Q. The parking area blood drops, weren't they  
20 discovered the next day?

21 A. Yes.

22 Q. Okay. These ones here at night, these were ones  
23 you discovered in the middle of the night.

24 A. I didn't discover those.

25 Q. The ones that were discovered in the middle of the  
26 night, you are pointing at in the picture --

27 A. Uh-huh.

28 Q. -- were they discovered down the hill?



1 A. Yes.

2 Q. Now, when those blood drops were discovered, there  
3 was, they sort of led across the driveway there.

4 A. Yes.

5 Q. Did you and Mr. Ogino and other members of your  
6 office spend sometime securing that particular area looking for  
7 additional evidence?

8 A. Yes.

9 Q. Did you go off the driveway into the bushes and  
10 stuff on the side of the road?

11 A. Yes.

12 Q. The particular type of vegetation which is depicted  
13 in the photograph, that brown bushy, those brown sort of wheat,  
14 those were typical of a type of vegetation that existed in that  
15 particular area.

16 A. Yes.

17 Q. How long were you in the 2991 residence on that  
18 particular evening?

19 A. The night that we found the blood drops?

20 Q. Yeah. Outside.

21 A. I was at the scene for probably three or four  
22 hours.

23 Q. I'm talking about in the house, now.

24 A. I don't remember. It would have been a short time.  
25 I spent most of the time outside.

26 Q. Okay. How short? I mean ten minutes, five  
27 minutes?

28 A. Half hour.

1 Q. Showing you Exhibit 5 with plastic overlay 5-N on  
2 top of it, do you recognize that as a diagram of the house that  
3 you were in on that night?

4 A. Yes.

5 Q. Whereabouts in the house did you go?

6 A. I only remember being at the front living room area  
7 at the entranceway.

8 Q. About right here?

9 A. Right. And behind the counter, in that area there,  
10 possibly.

11 Q. What were you doing there?

12 A. I was assisting Sergeant Swanlund.

13 Q. To do what?

14 A. In the initial time that these pictures were taken,  
15 I was assisting the crime lab in collecting the blood droppings.

16 Q. Okay. Well, when you were inside the house,  
17 through, what were you doing there?

18 A. Talking to Sergeant Swanlund.

19 Q. About what?

20 A. About what I had found outside. I'd found the  
21 blood droppings, about assisting the crime lab.

22 Q. Well, do you have a real good memory of what you  
23 were doing in the house that night?

24 A. No.

25 Q. Did you ever go back in the 2991 residence again  
26 after that first excursion in when the blood drops were found?

27 A. This deposit here?

28 Q. Yeah.

1 A. Yes.

2 Q. How many times times?

3 A. Twice as I can remember.

4 Q. Was that the next day?

5 A. Yes.

6 Q. And do you recall what you were doing on that next  
7 day?

8 A. I searched the area in the kitchen, the area around  
9 the pool table, which would have been right next to the kitchen,  
10 and possibly the two rooms joining that bathroom.

11 Q. Well, have you previously testified that you were  
12 in the residence somehow assisting Sergeant Swanlund as to tasks  
13 you couldn't remember what on June the 7th?

14 A. I'm not sure I understand the question.

15 Q. Have you previously testified that you were in  
16 various different rooms of the house on June the 7th other than  
17 just that front counter area?

18 A. I don't know.

19 Q. When you went into the house on June the 7th did  
20 you touch anything?

21 A. The night that I searched -- the time that I search  
22 it?

23 Q. The night, June the 7th, the night that the blood  
24 drops were discovered, did you touch anything in the house?

25 A. Probably. I don't remember touching a specific  
26 item or anything, but I probably did touch something.

27 Q. Did you move anything?

28 A. No.

1 Q. When you testified at the preliminary hearing in  
2 November of 1983, did you, when I asked about specific  
3 activities at the Ryen and Lease residence on June 6th, 7th, 8th  
4 and 9th, 1983, answer "I don't recall" approximately '83 times?

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

6 THE COURT: Somewhat contradictory, is it not?  
7 Overruled.

8 THE WITNESS: I did answer "I don't recall". I don't  
9 know if it was that many times.

10 BY MR. NEGUS:

11 Q. Many, many times?

12 A. Yes.

13 Q. Were you being untruthful?

14 A. No.

15 Q. Did you testify, for example, you didn't recall  
16 whether it was light or dark outside when you went in the house?

17 MR. KOCHIS: Objection. Vague. Which house? Which day?

18 THE COURT: Yes sustained.

19 BY MR. NEGUS:

20 Q. Did you testify you didn't recall whether it was  
21 light or dark out when you first went to the 2991 residence?

22 A. No, I don't believe I did.

23 MR. NEGUS: If I could read Page 143 of Volume XVI Lines  
24 2 through 7.

25 MR. KOCHIS: I need the page again.

26 MR. NEGUS: 143.

27 MR. KOCHIS: I have that.

28 MR. NEGUS:

0022906

1 "Question: Do you recall if there were any other  
2 officers besides yourself inside the house on June  
3 the 7th when you were there?

4 "Answer: No.

5 "Question: Was it light out or dark when you went  
6 in the house?

7 "Answer: I don't recall."

8 MR. NEGUS: I have nothing further.

9

10 CROSS-EXAMINATION

11 BY MR. KOCHIS:

12 Q. Mr. Hill, on the day that the furniture was removed  
13 from the Ryen home, the murder scene home, were you one of the  
14 persons given the responsibility for locating a truck to put the  
15 items in?

16 A. Yes.

17 Q. Did you have to go to San Bernadino to do that?

18 A. Yes.

19 Q. The first time that you -- was that the first day  
20 that you were at the Ryen scene?

21 A. Yes.

22 Q. In that morning did you participate with some CCD  
23 officers in a search of the area with some members of the  
24 academy?

25 A. I wasn't there present that time, no.

26 Q. The first truck that you got in San Bernadino, was  
27 that a flatbed truck?

28 A. Yes.

020907

1 Q. And did Sergeant Swanlund tell you in effect that  
2 wasn't suitable?  
3 A. Yes.  
4 Q. Did you have to go to another location to get an  
5 enclosed truck?  
6 A. Yes.  
7 Q. When you got back to the Ryen home with the  
8 enclosed truck, was most of the furniture already outside on the  
9 grass area waiting to be loaded?  
10 A. Yes.  
11 Q. The third time that you went into the home located  
12 next to the Ryen home, the home Mr. Negus talked to you about,  
13 was that in November of 1983 to search the attic?  
14 A. Yes.  
15 Q. Approximately five months after the crimes were  
16 discovered?  
17 A. Yes.  
18 Q. The murder scene home, the first time that you went  
19 into that home with the detective, was that to assist them in  
20 locating a box that you guys were looking for?  
21 A. Yes.  
22 Q. Do you remember which room in the victims' home,  
23 the murder scene home, you went into to look for the box?  
24 A. Yes.  
25 Q. Which room?  
26 A. It was the room that went down. Just as you  
27 entered the front door there was a little living room. I went  
28 in there, and then I went into the master bedroom and they had

020908



1           A.     I did two diagrams, one at the residence where the  
2 bodies was found and one at the other residence.

3           Q.     The photograph in front of you, 740, can you tell  
4 which blood drops those pertain to, the ones outside the  
5 victims' home or the ones outside the other home?

6           A.     This would have had to have been at the other  
7 house, the Lease house.

8           Q.     Did you prepare a report of that?

9           A.     Yes.

10          Q.     And do you have the date at which you did that  
11 diagram?

12          A.     Yes.

13          Q.     Which date was that?

14          A.     Could I look at my report?

15          Q.     Yes.

16          A.     It was on the 8th.

17          Q.     And would that date have been the first day you  
18 were inside the Lease house or would it have been the day  
19 before?

20          A.     I think that would be the first day I was there.

21          Q.     Now, when those particular blood drops were  
22 discovered, can you tell from the picture if it was dark  
23 outside?

24          A.     Yes.

25          Q.     The report that you did of the diagram of those  
26 blood drops on the 8th, do you know whether that was in the  
27 early morning hours from midnight until 6:00 a.m. or the  
28 following evening from 8:00 p.m. till midnight?

020910



1           A.     The blood droppings that I diagramed were -- it was  
2     in the morning.

3           Q.     And do you know about what time that was?

4           A.     About 10:00 o'clock.

5           Q.     Thank you.

6                 I have no further questions.

7

8

REDIRECT EXAMINATION

9     BY MR. NEGUS:

10           Q.     Mr. Hill, the blood drops that you diagramed were  
11     not the ones that are pictured in that photograph, right?

12           A.     I can't tell from the photograph that this is up in  
13     the parking area or if it's the blood drops that were found down  
14     on the actual driveway.

15           Q.     Okay. But the ones that were -- that were -- that  
16     were collected from the actual driveway, that's the one that you  
17     diagramed, right?

18           A.     Yes.

19           Q.     And that was done in the daytime, right?

20           A.     Yes.

21           Q.     June 8th at 9:00 o'clock -- 9:43 in the morning?

22           A.     Yes.

23           Q.     And that was done at a time when there were various  
24     people from the press there taking pictures of you?

25           A.     Yes.

26           Q.     And Captain Schuyler and Mr. Kottmeier and Sheriff  
27     Tidwell were out there all watching you work?

28           A.     Yes.

0020911

1 Q. The first night that you were in the house, is it  
2 your testimony that the only place that you went was just right  
3 in this general area here?

4 A. From what I remember, yes.

5 Q. And the next day was when you were throughout the  
6 rest of the house, on the 8th?

7 A. Yes.

8 Q. That would have been the same day that Mr.  
9 Kottmeier was out there watching you collect the blood drops or  
10 diagram the blood drops out in the driveway; is that right?

11 A. Yes.

12 Q. The particular tasks that you were doing, did any  
13 of them involve going over behind a television in the room that  
14 had a fireplace in it and looking out the window up at the Ryen  
15 house?

16 A. When I searched the area of the kitchen and around  
17 the pool table, I could have walked over there. I don't  
18 remember doing it though.

19 Q. Were you just going over behind the television to  
20 peek around to see whether you could see the Ryen house or not?

21 A. No. If I was --

22 Q. Did you have --

23 A. If I was doing a search I could have stepped there  
24 though.

25 Q. But that would have been on the 8th, right, during  
26 the daytime?

27 A. The best I remember, yes.

28 Q. And you never did that the night before at

0000912

1     nighttime, right?

2             A.     Not that I remember.

3             Q.     Thank you.

4             I have nothing further.

5             MR. KOCHIS:   Nor do I.

6             THE COURT:   Thank you very much.

7             Have you reached that point, Mr. Negus?

8             MR. NEGUS:   Yes.

9             THE COURT:   Regretfully I'm going to give you the rest of  
10    the day off, rest of the week off. Return Monday at 9:30,  
11    please.

12            I remind you once again: Do not talk to anybody  
13    about anything. Don't let anybody discuss it with you. Don't  
14    express or form an opinion about it. Don't read about it, if  
15    you can possibly avoid it, or watch it on television, if it ever  
16    comes on. Enjoy your weekend. See you next Monday at 9:30.

17            Counsel, we're going to work in chambers on some  
18    matters?

19            MR. NEGUS:   I think it would be easier to do it in open  
20    court because that's where the exhibits are.

21            THE COURT:   All right.

22            I thought perhaps we were going to work on  
23    instructions. You have something else in mind.

24            MR. NEGUS:   If it's agreeable with the Court I need to --  
25    I would like to begin to introduce all of the various exhibits  
26    that I have had marked so that if there's adverse rulings on any  
27    of them I can take that into account in additional evidence that  
28    I might want to present.

1 THE COURT: Have you first discussed it privately?

2 MR. NEGUS: No. We need to go over -- we need to go over  
3 them for a period of time, and then I can get out what I  
4 consider to be most controversial this afternoon and then if  
5 there is any objection to them we can put that on the record.

6 THE COURT: All right. I will step off the bench, let  
7 you be informal for awhile and call me when you're ready.

8 MR. NEGUS: Thank you.

9 (Recess taken.)

10

11 (The following proceedings were held in  
12 open court out of the presence of the jury:)

13 THE COURT: Defendant is present with all counsel without  
14 the jurors.

15 MR. NEGUS: We have first off, your Honor, some exhibits  
16 which I believe there are no objection to, if I could just read  
17 them slowly into the record.

18 453, 452, 451, 437, 436, 439, 440, 450, 449, 448,  
19 446, 447, 445, 443, 442, 164, 237, 236, 521, 504, 505, 506, 507,  
20 509, 508, 503, 498, 492, 493, 494, 738, 731, 730, 729, 719, 718,  
21 697, 703, and 666.

22 THE COURT: No objection?

23 MR. KOCHIS: No, your Honor.

24 THE COURT: All right. All of those will be received.

25 (Exhibits No. 164, 236,  
26 237, 436, 437, 439,  
27 440, 442, 443, 445  
28 through 453, 492, 493,

002099-14

1 494, 498, 503 through  
2 509, 521, 666, 697,  
3 703, 718, 719, 729,  
4 730, 731, 738 received  
5 in evidence.)

6 MR. NEGUS: Excuse me. I'm sorry to walk in the well.

7 THE COURT: That's all right. No jurors are here.

8 MR. NEGUS: Then we have --

9 MR. KOCHIS: We have a large number of exhibits which  
10 have been marked to which we object to the introduction --

11 THE COURT: All right.

12 MR. KOCHIS: -- into evidence.

13 The first of those would be Exhibit 724, which I  
14 can hand to Mr. Negus and he in turn will hand it to the Court.

15 It's essentially a copy of a police report in which  
16 Mr. Eckely of the Sheriff's Station in Yucaipa interviewed in a  
17 cursory fashion Diane Furrow when he obtained the overalls.

18 And our objection to the exhibit is that it's  
19 simply hearsay. There are statements in the exhibit which are  
20 nothing more than hearsay.

21 MR. NEGUS: It's offered not for the truth of the matter  
22 asserted, because I have no idea whether or not Mrs. Furrow is  
23 telling the truth, nor do I think that that's particularly  
24 relevant, but to show that there was introduced to homicide  
25 physical evidence with an accompanying report which indicated  
26 that the evidence was connected with the -- with the Ryan  
27 homicides and that there was follow-up work to be done.

28 The relevance of introducing that particular piece

020915

1 of evidence is to show the -- one piece of evidence to show the  
2 allegation made in my opening statement, that once they had  
3 focused on Mr. Cooper they ceased to follow-up additional leads.

4 That's an additional lead they ceased to follow-up  
5 to prove that they had the additional lead. Mr. Eckely  
6 testified he submitted that to Sergeant Arthur.

7 THE COURT: There is no contradiction to the fact that  
8 such a report was prepared and submitted, and later on he  
9 telephoned. So all of that is in there.

10 And all of this now, is it not, is cumulative and  
11 perhaps gives undo effect to the matter stated within the report  
12 which go beyond your stated purpose.

13 MR. NEGUS: It's not cumulative because there was  
14 objections made to the statement -- I was -- it was objected  
15 that I was not allowed to bring in from Mr. Eckely what his oral  
16 statements of the -- of the conclusionary type things that he  
17 put in his report, i.e., that the property was connected with  
18 the Ryen homicides and that there was additional follow-up to be  
19 made.

20 THE COURT: So, yes, that was brought out.

21 MR. NEGUS: No, there was objection sustained.

22 MR. KOCHIS: Your Honor, what we objected to --

23 THE COURT: He gave it the same case number and that was  
24 the case number for the Ryen homicide and it was directed to  
25 Detective Arthur.

26 MR. NEGUS: Right. But there's no evidence to show --  
27 the noncumulative nature of this particular document is to show  
28 that not just that there was a DR number, but that it was -- it

1 was claimed by a witness to have been used in the Ryen  
2 homicides, and that there was an additional statement of the  
3 witness that she had additional evidence that she would only  
4 give to homicide.

5 MR. KOCHIS: Your Honor, that's been admitted. Mr.  
6 Eckely was allowed to testify that she had evidence that she  
7 would only give to homicide, that it was entered in under the DR  
8 number.

9 Sergeant Arthur even admitted I believe on direct,  
10 cross-examination, prior to Christmas that it perhaps was  
11 negligence on his part not to have gone over and gotten those  
12 overalls or to have had someone do that.

13 We have not disputed that the overalls were taken  
14 that they were discarded, that homicide knows about it.

15 There are statements in that report which are  
16 classic hearsay about Mrs. Furrow's husband, about his prior  
17 prison sentence, about him strangling a girl, all of those  
18 things, and that's hearsay.

19 MR. NEGUS: Well, it's not offered, again, for the truth  
20 of the matter asserted because I have no way of knowing whether  
21 that's true or not true, but merely that that's the kind of  
22 information that homicide having received should have followed  
23 up on.

24 And I think that that is -- that's the -- that's  
25 the key to, you know, what the relevance of the document is, and  
26 that's why the document itself is the best evidence and it  
27 should be admitted.

28 THE COURT: There are many inadmissible matters in there

00229917

1 as well. I have a 352 objection as well. The hearsay objection  
2 is likewise good.

3 Counsel, I'm going to sustain the objection. But  
4 we are getting into Arabian horses in here, which I can see you  
5 want go to get in. We get into the husband being a paroled  
6 convict. You've done all this without Diane Furrow testifying.

7 I will sustain the objection, so that shall not go  
8 into evidence.

9 Next one.

10 MR. KOCHIS: There are two we can discuss together. They  
11 are exhibits 495 and 496. They are Xeroxed copies of portions  
12 of laboratory reports. The People would obviously have no  
13 objection --

14 THE COURT: Laboratory reports?

15 MR. KOCHIS: Yes, your Honor.

16 -- would have no objection to the bottom half of  
17 the exhibit which lists times at which various evidence was  
18 collected or received in the crime lab. However, the top  
19 portion contains a narrative again of hearsay statements, third,  
20 fourth hand hearsay.

21 One of them is a narrative, I believe by Mr.  
22 Stockwell, indicating that the survivor may have indicated there  
23 were three suspects.

24 And the other one I believe are hearsay statements  
25 having to do with his observations -- Mr. Stockwell's, in the  
26 Lease house.

27 Mr. Stockwell and Mr. Ogino have both testified to  
28 what they saw in the Ryen home in terms of luminol patterns, and



1 certainly what they wrote in their notes about it would be  
2 hearsay. It's cumulative. It's already in front of the jury.  
3 It's going to cause the jury to place undo emphasis on matters  
4 that they've already heard. And it's conclusionary. It singles  
5 certain things out.

6 THE COURT: May I see them, please.

7 What's your purpose for these, Mr. Negus?

8 MR. NEGUS: There are several purposes. Some of them --  
9 there is a lot of prior inconsistent statements in those things,  
10 inconsistent with testimony of Mr. Stockwell I believe about  
11 the -- about the Lease house on the one that deals with the  
12 items No. J from the Lease house.

13 In addition, Mr. Stockwell testified that those --  
14 those are the notes that he made of his observations at the  
15 scene, which give a summary of what he was trying -- of the type  
16 of evidence that he saw and the information that he was given to  
17 use in evaluating the -- the crime scene.

18 As far as -- So the purpose is multiple, one is to  
19 impeach Mr. Stockwell.

20 THE COURT: Well, you've had full rein in that, and  
21 you've surely milked that question dry with the documents, did  
22 you not?

23 MR. NEGUS: I don't think so. But --

24 THE COURT: You always have. I mean, you've gotten every  
25 ounce of worth out of each impeaching document I've seen so far.  
26 I would be surprised if you didn't.

27 MR. NEGUS: Actually some of them I believe I left for  
28 the documents themselves. But be that as it -- be that as it

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1 may, I don't believe that one is precluded from using the best  
2 evidence that -- of impeachment, that is to say, a statement in  
3 the witnesses' own handwriting, just because I may have asked  
4 the question another way, I don't think I did with all of them,  
5 but none the less I still think one is entitled to introduce the  
6 documents which show the best evidence that the witness  
7 impeached himself.

8 THE COURT: You've got hearsay on hearsay on here. A lot  
9 of this is nonfirsthand knowledge of the issue.

10 MR. NEGUS: Right. But there was an issue as to what Mr.  
11 Stockwell knew and what his purposes were in going in.

12 If I could have them back a second I will --

13 THE COURT: Yes, sir.

14 MR. NEGUS: On the -- On the J ones, which I think is the  
15 clearest one, Mr. Stockwell has denied, for example, that he  
16 made any particular conclusions about -- about some of the  
17 physical evidence.

18 In this particular statement it shows -- it says  
19 that: Subject cleaned up an east bathroom, shower and sink,  
20 also several footprints showed up on carpeting consistent with  
21 shoeprints in dust in the game room.

22 That's not been the evidence.

23 THE COURT: I can't tell from that document whether  
24 that's of his personal knowledge or from the neighbor up above.

25 Is that the one --

26 MR. NEGUS: Okay. There is -- there's -- part of it  
27 is -- the owner of the residence contacted -- there's some  
28 history, then it says, "Evidence shows it has been inhabited

1 since then. Blood found in several areas. Several footprints  
2 showed up on carpeting consistent with shoeprints in dust in the  
3 game room."

4 That's not true. At least it's inconsistent with  
5 his other statements. The scabbard was found here with blood on  
6 it. That's inconsistent with his testimony here in court. So I  
7 think --

8 THE COURT: But you impeached him already, did you not?

9 MR. NEGUS: I don't believe so. I don't know whether I  
10 did or not.

11 MR. KOCHIS: That was specifically asked of Mr.  
12 Stockwell: "Did you not note on your notes that there was a  
13 scabbard with blood on it?"

14 MR. NEGUS: Well, anyway, I think I'm entitled to get the  
15 best evidence of that in rather than -- I mean the Proposition 8  
16 may have done away with the best evidence rules as far as --

17 THE COURT: We are not into the best evidence rule at all  
18 with what you're doing here.

19 MR. NEGUS: This is a prior inconsistent statement. His  
20 writing is a prior inconsistent statement. This document is the  
21 best evidence that he wrote a prior inconsistent statement. You  
22 are entitled to use writings of the witness to impeach them.

23 MR. KOCHIS: Your Honor, he admitted on the witness stand  
24 that his note contained that. He admitted it. It's is not an  
25 issue. It's not an issue in dispute.

26 MR. NEGUS: But the document itself is the best evidence  
27 of that rather than his testimony.

28 THE COURT: Let me see them again.

020921

1 MR. KOCHIS: The other one is quite different.

2 MR. NEGUS: That's the one.

3 THE COURT: Let's just have this one.

4 It reads: "Owner of this residence, a nonresident,  
5 contacted sheriff upon hearing of murders. States house had  
6 been vacant since Wednesday, June 1st, when housekeeper vacated  
7 it." So far this is --

8 MR. NEGUS: Noncontroversial. It's just a sort of  
9 history he relies on, and it's not the most important part of  
10 the document. I'm really indifferent as to that. But I don't  
11 see that it hurts anything one way or the t'other.

12 THE COURT: I can't recall his testimony. I don't know  
13 whether this is -- this was described as being his personal  
14 observations or his conclusions from information given to him by  
15 other people. Can you enlighten me?

16 MR. NEGUS: I believe he said that was his analysis of  
17 the evidence, his overview. He said it was his overview of what  
18 he had seen, that was -- that it was put in there in order to  
19 help subsequent criminalists in deciding what tests to do and  
20 what tests not to do.

21 THE COURT: Did he say that he personally saw blood on  
22 the hatchet sheath?

23 MR. NEGUS: Well, I think he denied it now, but he said  
24 that that was a statement of his observations that he put in  
25 there to help other criminalists know what had been collected.

26 THE COURT: I don't know why there is any objection to  
27 this, Mr. Kochis.

28 MR. KOCHIS: Because it's nothing but hearsay, and it

1 doesn't come within any exception that I'm aware of.

2 MR. NEGUS: Prior inconsistent statement.

3 MR. KOCHIS: The vast majority of that document, your  
4 Honor, has nothing to do with any prior inconsistent statement.

5 THE COURT: I think that I would be most inclined to  
6 exclude it under 352 considerations, but it's so brief that's  
7 really not a major consideration for me.

8 I will overrule the objection and let that one in.  
9 That is 496.

10 (Exhibit No. 496  
11 received in evidence.)

12 MR. KOCHIS: The next one.

13 MR. NEGUS: Here, we haven't finished with this one.

14 MR. KOCHIS: I'm aware of that.

15 MR. NEGUS: Huh?

16 MR. KOCHIS: I'm talking about -- the document you are  
17 being handed contains a number of hearsay statements that are  
18 allegedly attributed to Joshua Ryen. It's classic hearsay.

19 MR. NEGUS: The purpose for that is, first of all, to  
20 impeach Joshua in that there was testimony that those statements  
21 were from Sharp to Arthur to Stockwell, so they are prior  
22 inconsistent statements of Joshua's.

23 They also indicated, according to Mr. Stockwell,  
24 his understanding of what he was doing in terms of evidence  
25 collection. It demonstrates that Mr. Stockwell should have been  
26 aware that there -- the sheriff's office believed that there  
27 were three suspects, and he should have collected evidence to  
28 try and either refute or substantiate that theory, which he

020923

1 didn't. So I think it also goes to the negligence with which  
2 the evidence was collected.

3 THE COURT: I'm not persuaded. I will sustain the  
4 objection. 352, cumulative, hearsay.

5 MR. KOCHIS: Your Honor, the next --

6 THE CLERK: Excuse me, is that 495?

7 THE COURT: Yes, 495.

8 (Exhibit No. 495  
9 received inevidence.)

10 MR. KOCHIS: The next are a series --

11 MR. NEGUS: Can I just ask that we put the ones that are  
12 excluded in separate files so I can note them when we get done  
13 with this so I can study them when I get home? I don't care  
14 about the Eckely one, but that one just excluded.

15 MR. KOCHIS: Mr. Negus is about to hand the Court a  
16 series of items which have been marked and identified  
17 individually. They pertain to hospital records from Loma Linda  
18 from which the various witnesses have already testified and read  
19 verbatim into the record the documents. Some of the documents  
20 were used to refresh the recollection of certain witnesses.

21 But it's my understanding under the Evidence Code  
22 that if a document is used to refresh the recollection of the  
23 witness that it's not the proponent but it's the opponent that  
24 can introduce the document, and that's me. I'm not asking to  
25 introduce it.

26 THE COURT: I don't understand that.

27 MR. NEGUS: That's irrelevant. I'm not making that  
28 argument. I believe that they all qualify as business records

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1 under the business records section. Proper foundation has been  
2 laid for all of them, and that's the exception to the hearsay  
3 rule.

4 THE COURT: Did you establish such a foundation?

5 MR. NEGUS: Yes, I did, as to each and every one.

6 MR. KOCHIS: I don't quibble with that, that's not my  
7 objection. They are business records. He laid a foundation.

8 But the witness has read this these records into  
9 this record, into the transcript. They are all orally testified  
10 as to the contents.

11 THE COURT: There is a case specifically on that, I  
12 anticipated this one objection:

13 "That they were secondary evidence because  
14 attending physician testified held untenable under the Uniform  
15 Business Record Act," reading from Witkin Page 552.

16 So I will overrule it on that ground, and all of  
17 those -- that's 238, 700, 709, 726, 706-F, 706-G, 706-H,  
18 706-A, -B, 706-C, 707-D, 707-E, 728, 727, 699, 711, 715 will be  
19 admitted.

20 (Exhibits No. 238, 699,  
21 700, 706-A, 706-B,  
22 706-C, 706-D, 706-F,  
23 706-E, 706-G, 706-H,  
24 709, 711, 715, 726,  
25 728, 727 received in  
26 evidence.)

27 MR. KOCHIS: The next two I believe we can discuss  
28 together. They are Exhibits 696 and 698. They are Xeroxed

00229925

1 copies of typewritten reports of a clinical social worker's  
2 notes.

3 And it's our position that they are not business  
4 records any more than police reports are business records, and  
5 that they are a typewritten summary of an alleged conversation  
6 that took place between Mr. Gamundoy and various other persons,  
7 persons that came to visit Josh Ryen, his conclusions of what  
8 may have taken place between him and Josh Ryen in an attempt to  
9 communicate, and instructions as to whether or not people should  
10 contact basically Sergrant Arthur.

11 It's hearsay. It is not a business records. And I  
12 think -- in fact, Dr. Shahhal testified that they don't rely on  
13 history because they don't determine whether or not it's  
14 reliable, the third party information.

15 THE COURT: Just a minute, Mr. Negus.

16 First, 696 is simply instructions. This is  
17 Gamundoy's information apparently from the social worker and  
18 instructions from the Sheriff of how to treat anybody contacting  
19 Josh.

20 What do you want that in for?

21 MR. NEGUS: 696 is -- Mr. Kottmeier cross-examined Mr.  
22 Gamundoy at length on that. He quoted in part from it, but did  
23 not quote the complete statements in the document regarding the  
24 history that Mr. Gamunody had recorded in there.

25 In order to make that particular -- the segments of  
26 that particular document that Mr. Kottmeier quoted intelligible  
27 I believe that it is necessary that the whole document go in.

28 THE COURT: Well, haven't you slept on your rights? Why



1 didn't you get that out when you had the witness?

2 MR. NEGUS: Because it is a business record. Mr.  
3 Kottmeier referred to it in the cross-examination. We had it  
4 marked and made it available for a witness and the document  
5 itself is the best evidence of what it says.

6 THE COURT: Counsel, you can't get --

7 MR. NEGUS: No. Mr. Kottmeier took excerpts. We made  
8 sure we had it marked and he identified it as a business record.

9 THE COURT: Act, condition event.

10 Where, in 696 -- what act, condition or event?

11 MR. NEGUS: The act that Mr. Kottmeier was quizzing Mr.  
12 Gamunody about was his acts, how he recorded history as opposed  
13 to patient information, and it is clearly -- it is clearly  
14 separated in that document what Josh says from what the history  
15 was.

16 Mr. Kottmeier quoted both back and forth as if  
17 there was a confusion, and I believe that the document is the  
18 history that they received, was put in issue by the prosecution.  
19 They cross-examined him about machetes, about gunshots, about  
20 all that sort of thing. They tried to -- they tried to  
21 discredit the witnesses from the hospital by making it seem as  
22 if they were willing to -- they were willing to credit about  
23 things, about gunshots and other strange phenomenon which we  
24 know didn't occur.

25 The hospital people clearly distinguish between  
26 that reported and which Josh told them. I don't think they're  
27 attempting to impeach these witnesses.

28 If you actually read the actual documents, the

1 actual document is the most important evidence. It does come  
2 within a --

3 THE COURT: I disagree. I do not find the prerequisite  
4 meeting 1271 of the evidence code. I do not find it meeting the  
5 prerequisite. It is simply not a description of an act,  
6 condition or event.

7 And then the other one is 698. Let me peruse that.

8 MR. NEGUS: Do you have a copy of the evidence code up  
9 there?

10 THE COURT: Sure.

11 MR. NEGUS: What's the one that says if you introduce a  
12 part you can introduce the whole of the conversation.

13 MR. KOCHIS: That is Evidence Code section 356.

14 MR. NEGUS: Evidence code section 356 states that "Where  
15 part of an act, declaration, conversation or writing is given in  
16 evidence by one party, the whole on the same subject may be  
17 inquired to by the adverse versus party."

18 Mr. Kottmeier, as to both the last document and  
19 this document, was the one that brought out a portion of the  
20 document.

21 THE COURT: Had you attempted to go into the other  
22 portion, you would have been permitted to do so.

23 MR. NEGUS: But I did. I walked up to the witness, I  
24 handed him the document, I says, is that the complete document,  
25 and so, if they bring out a portion of the writing I'm entitled  
26 to it bring out in toto; the whole writing.

27 THE COURT: No, sustained. You could go into it orally  
28 in testimony. But now to sandbag and sit back and say, I now

1 want to put in this document, with all other sorts of extraneous  
2 and irrelevant, inadmissible matters --

3 MR. NEGUS: I am not sandbagging. I walked up to the  
4 witness and handed him the document. Could you read 356?

5 THE COURT: I'm well aware of it.

6 MR. NEGUS: Well, it seems to me that again if they go  
7 into part, you can go into the whole.

8 THE COURT: Counsel, we don't normally put in police  
9 reports in the course of trial. And that is what you are  
10 attempting to do.

11 You are attempting to select certain reports,  
12 police, hospital or otherwise beneficial to your side, and have  
13 something in there that you want, and perhaps by discontinuing  
14 on direct or cross-examination or bringing it out orally,  
15 suddenly you now say, hey, judge, I have got a right to get the  
16 writing in.

17 MR. NEGUS: Mr. Kottmeier is the one who made issues of  
18 those particular documents to begin with.

19 Also, the problem with police reports that normally  
20 keeps them out, is that they are prepared with an eye towards  
21 litigation, and that is the -- that's the key as far as getting  
22 in police reports as business records.

23 THE COURT: No, it is lack of personal knowledge of the  
24 officer, when he's quoting witnesses at the scene as to how  
25 accidents happen and things of that nature.

26 MR. NEGUS: The officer puts what the officer observes,  
27 that is put in there own personal knowledge of observation, and  
28 that which keeps it out has got to do with the fact that it is

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1 prepared for litigation.

2 These documents stand on a different footing, and  
3 it is quite possible under circumstances to put police reports  
4 into observation. If the defense were to want to put in a  
5 police report that the prosecution referred to in part I believe  
6 that they could under 356.

7 THE COURT: Well, that is not germane here.

8 MR. NEGUS: Well, it is an analogy.

9 You brought it up. You know, you said that the  
10 same reason you can't get in police reports. I am saying that I  
11 think you can get in --

12 THE COURT: Counsel, you see, I may be -- the germane  
13 reason to keep this 698 out is, and quoting again from Witkin,  
14 Page 557, "The requirement of personal knowledge as the basis of  
15 a record is the chief barrier to the introduction of a police  
16 report of an accident. The report is a quote 'record of an act,  
17 condition or event' end of quote, but it is often made by an  
18 officer who did not see the accident, and includes hearsay  
19 statements and opinions of the officer. If so, it is  
20 inadmissible based on statements of participants, bystanders,  
21 measurements, deductions and conclusions of their own."

22 Statements of Dannete Hughes and Linda Edwards,  
23 lack of personal knowledge, doesn't even meet the functional  
24 requirements of 1271.

25 698, the objection is sustained. Shall not be  
26 admitted. What's next?

27 MR. NEGUS: 702 and 705. Actually I think that they want  
28 705 if I get 702 in.

1 THE COURT: Trade off?  
2 MR. NEGUS: No. They want to keep 702 out.  
3 THE COURT: Let's talk about 702. I don't enter into  
4 your deals.  
5 MR. NEGUS: I'm -- it is not a deal, it is just a change  
6 of tradition on their part.  
7 THE COURT: You are offering 702, Mr. Negus?  
8 MR. NEGUS: I am offering both.  
9 THE COURT: What is it?  
10 MR. NEGUS: It is Dr. Hoyle's notes.  
11 THE COURT: He's the one that impeached O'Campo severely,  
12 did he not?  
13 MR. NEGUS: Yes.  
14 MR. KOCHIS: Neither one of the exhibits is a business  
15 record. Both of the exhibits were testified to at great length  
16 orally in which Mr. Negus and Mr. Kottmeier --  
17 THE COURT: Well, let me find out why and how he's  
18 offering and what code section apparently.  
19 MR. NEGUS: First of all, the documents themselves are  
20 statements which impeach Josh. And, again, the evidence as to  
21 the notes -- I think is the best evidence is the notes  
22 themselves as to what they say.  
23 THE COURT: Now, we're impeaching Dr. Hoyle here?  
24 MR. NEGUS: No, we're impeaching Josh. But in evaluating  
25 the issue as to the disputed issue in --  
26 THE COURT: You are offering this to impeach Josh Ryen?  
27 MR. NEGUS: Indirectly. And then I'm also introducing it  
28 to impeach O'Campo.

1           The disputed issue is how much did O'Campo change  
2   what Josh said. Dr. Hoyle doesn't remember very well, O'Campo  
3   doesn't remember very well. One relies on the notes, or relies  
4   on the report. In order to compare the two, I submit that the  
5   best evidence as to the contradiction between the two is their  
6   respective notes and reports.

7           THE COURT: That may have some persuasive effect upon  
8   argument when you argue relative credibility, but that's not  
9   proper procedure.

10          MR. NEGUS: Well, the documents themselves --

11          THE COURT: You know, it is not Josh's writing, it is not  
12   O'Campo's writing, and that witness can impeach both of them.  
13   But his writing can't impeach them unless they themselves also  
14   in some manner have adopted it, neither of whom have. You can't  
15   offer it to impeach.

16          MR. NEGUS: No. But the disputed issue in this  
17   particular case has got to do with suppression of evidence.

18                So, what we're doing is bringing in the evidence  
19   produced by O'Campo; we're bringing in the evidence produced by  
20   Dr. Hoyle, and I would submit that those documents were both  
21   referred to at least in length by both parties in the course of  
22   their examination and, again, because we have had all this  
23   testimony about the documents, I would submit that the document  
24   in this particular instance is the best evidence.

25          THE COURT: The objection is sustained. I don't agree  
26   with you.

27          MR. NEGUS: On O'Campo's, could I articulate another  
28   ground in that Mr. Kottmeier, during the course of my

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1 examination of Mr. O'Campo, was making comments as if I were  
2 skipping important parts of it, and in my elucidation at that  
3 point in time, went up, and after that went up and had O'Campo  
4 identify his particular report. I think that in order to  
5 demonstrate that I didn't leave out important parts that I need  
6 to have O'Campo's report in there.

7 THE COURT: Counsel, it doesn't add much in the way of a  
8 legal persuasion. If I am not admitting 702, do you withdraw  
9 your request for 705?

10 MR. NEGUS: No. I'm requesting 705.

11 THE COURT: Oh, you are?

12 MR. NEGUS: My position -- I thought that their position  
13 on 705 varied as to whether I got 702?

14 MR. KOCHIS: No, we would have an objection to both.

15 THE COURT: I'm sorry.

16 MR. KOCHIS: I have an objection to either, to both.

17 THE COURT: 702 is not coming in.

18 MR. KOCHIS: Right.

19 THE COURT: You object to 705 as well.

20 MR. KOCHIS: Yes.

21 THE COURT: All right. This is O'Campo's report. Is it  
22 his interview with Josh?

23 MR. NEGUS: Yes.

24 THE COURT: And you are saying that this is the best  
25 evidence to what?

26 MR. NEGUS: Well, as to what O'Campo put down in his  
27 report, which is a disputed issue. The reason I want that in is  
28 Mr. Kottmeier was making comments during the examination of

1 O'Campo which was leading the jury to believe that in  
2 questioning him about the document I was leaving out important  
3 parts of it, and so I wish to have it in to indicate that that's  
4 just not true.

5 THE COURT: Your motivation is interesting. But  
6 what's -- let's talk in the legal manner, counsel.

7 MR. NEGUS: How are you going to get in what otherwise is  
8 obviously a hearsay document?

9 MR. NEGUS: 356.

10 THE COURT: 356, did you say?

11 MR. NEGUS: You see, the entire conversation applies to  
12 the writing. Once a party makes allegations about the scope of  
13 the conversation, you are entitled to bring in the whole thing,  
14 and I think that is what they did.

15 THE COURT: You had -- you cross-examined him to a  
16 fair-thee-well of his conversation with Josh.

17 MR. NEGUS: Just because there's less persuasion of  
18 evidence doesn't prevent you from letting in more persuasive  
19 evidence. 356 allows you to let in the entire document.

20 MR. KOTTMEIER: Your Honor, if you recall, on that  
21 particular issue Mr. Negus was taking him line by line by line.  
22 I just don't want a situation when a line is skipped the jury  
23 was given the impression that it was continuing line by line.

24 MR. NEGUS: He made a big issue out of it. He objected  
25 to my skipping around, which I don't think is a proper legal  
26 objection anyway.

27 THE COURT: Did O'Campo deny some of the matters that he  
28 has in his report? Does this impeach O'Campo in any way?

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1 MR. NEGUS: Doesn't impeach him, no.

2 THE COURT: Why are you offering this?

3 MR. NEGUS: Because Mr. Kottmeier suggested in his, I  
4 would call it form of an objection, and other statements on  
5 question of O'Campo to the jury, that I was leaving out  
6 important parts of it, and therefore -- I think that therefore I  
7 had it marked to show that I wasn't leaving important parts of  
8 it; that in fact once that, once what was in the document itself  
9 as opposed to O'Campo's testimony is put into issue, I felt that  
10 the best evidence of the document was the document itself.

11 I had it marked and I think it should be admitted  
12 because that's now a disputed issue. The prosecution put what  
13 was in that document into dispute.

14 THE COURT: No. Sustained. Next.

15 MR. NEGUS: 497 impeaches Dr. Root. It is statements  
16 written out by Mr. Stockwell.

17 THE COURT: Stockwell's statements written out, report.  
18 Impeaching Dr. Root?

19 MR. NEGUS: Right. Stockwell testified that he wrote  
20 down the description Dr. Root gave of the weapon used in the  
21 crime. That statement there impeaches what Dr. Root said about  
22 the weapon.

23 THE COURT: What you are actually doing is you are  
24 attempting to bolster the testimony of Stockwell. Dr. Root has  
25 already been impeached by Stockwell, has he not?

26 MR. NEGUS: I don't even remember. I think, well, in  
27 that particular case if you look there was a diagram which was  
28 testified to by Mr. Stockwell as being a diagram of the shape

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1 shown by Dr. Root. That impeaches Dr. Root. So the document  
2 itself, the writing is an impeachment of Dr. Root.

3 THE COURT: Mr. Kochis.

4 MR. KOCHIS: Your Honor, it is hearsay. Mr. Stockwell  
5 has already testified as to what he heard at this autopsy. If  
6 you use Mr. Negus' arguments, his argument about best evidence,  
7 we'd have all the transcripts from the preliminary and from the  
8 Hitch hearing marked introduced and entered into evidence.

9 I mean, it is in black and white of what someone  
10 previously said. Mr. Stockwell has testified as to the hearsay  
11 contents of that document. It is cumulative.

12 THE COURT: I think it is, Mr. Negus.

13 MR. NEGUS: In this particular situation it is a diagram.

14 THE COURT: But as I recall, I could be wrong --

15 MR. NEGUS: I didn't have that diagram, I didn't have the  
16 drawing of Mr. Stockwell that was identified at the preliminary  
17 marked as evidence in this particular case. I referred him to  
18 that particular document and he said, yes, that is the diagram  
19 that he drew based on the the description of Dr. Root.

20 THE COURT: You didn't indicate that on the board.

21 You can call him back. That objection is presently  
22 good. Sustained. It shall be excluded.

23 MR. KOCHIS: 665, no objection.

24 THE COURT: 665.

25 MR. NEGUS: Yes. That is --

26 THE COURT: In evidence.

27 (Exhibit 665, received  
28 in evidence.)

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1

2 MR. KOCHIS: 510. We have an objection to that, it  
3 contains hearsay.

4 THE COURT: Let me hear why he's offering it and then I  
5 will hear your objection.

6 MR. NEGUS: This is Mr. Stockwell's own document that  
7 impeaches Mr. Stockwell. So, that is done by Mr. Stockwell and  
8 it his own prior inconsistent statement. That is different than  
9 the other things. I think that's plain.

10 THE COURT: What is this, Mr. Negus?

11 MR. NEGUS: It is Mr. Stockwell's notes of his luminol  
12 spraying. He denied that he made the kind of conclusions which  
13 are stated.

14 THE COURT: That he what?

15 MR. NEGUS: He denied he made the kind of conclusions  
16 that are stated in writing on the side of the report.

17 MR. KOCHIS: That, I don't recall. If Mr. Negus can give  
18 me something to read over the weekend where I can check that  
19 out, the specific area or a page --

20 MR. NEGUS: Let's -- I will withhold it, we will argue it  
21 on Monday then.

22 THE COURT: All right. Thank you. Apparently he  
23 concluded that the culprit washed up in the sink and the shower  
24 or something to that effect.

25 MR. NEGUS: Yes. 66 was testified to buy Mr. Taylor as  
26 something that he used, he had seen, and the issue is where Mr.  
27 Taylor got certain information about Mr. Cooper, and it is our  
28 contention he got it from a television program which showed that

1 picture. So, we'd have that introduced into evidence.

2 THE COURT: What information did you think he got from  
3 the television?

4 MR. NEGUS: Description. Let me see. Hair style, names,  
5 descriptions, height, weight, that kind of thing.

6 MR. NEGUS: Is this a television picture?

7 MR. NEGUS: That's a newspaper picture. Mr. Taylor  
8 testified that he saw that on television. In fact, television  
9 cameras were there taking that particular scene. We cut out all  
10 the hearsay part of it. That was the caption.

11 THE COURT: What's your objection, Mr. Kochis?

12 MR. KOCHIS: It is hearsay. And I don't recall --

13 MR. NEGUS: How could it be hearsay, it's a picture?

14 MR. KOCHIS: I don't recall Mr. Taylor --

15 MR. NEGUS: You want me to get the pages on that?

16 MR. KOCHIS: Yes.

17 MR. NEGUS: Let me just write these down to get the pages  
18 on it.

19 The next one is 716, a photograph of Mr. Tidwell  
20 looking at some blood smears. I have no objection to deleting  
21 all the caption and the identifying label from the Sun, but the  
22 picture I think has been testified to.

23 THE COURT: What's the objection?

24 MR. KOCHIS: What's the relevancy of a picture?

25 THE COURT: He objects on relevance grounds.

26 MR. NEGUS: It shows the showmanship of the Sheriff in  
27 allowing the press into the crime scene before the place had  
28 been sprayed with luminol and the investigation had been

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1 completed.

2 It also shows the state of the room on June the 8th  
3 which is somewhat kind of a disputed issue.

4 MR. KOCHIS: Well, you can't tell from the picture  
5 whether it was taken from inside or outside the room.

6 MR. NEGUS: There was testimony it was inside.

7 THE COURT: It appears to be. So, at least at this point  
8 it is arguable.

9 MR. KOCHIS: And how can you draw an inference as to the  
10 showmanship or lack of showmanship of the Sheriff in the  
11 photograph? How is that in issue in the trial? It is not.

12 THE COURT: Well, the number of people in that room is  
13 certainly an issue in the trial, and this is some evidence  
14 documentarywise of media in the room.

15 All right. Overruled. 716 will be admitted.

16 (Exhibit 716 received in  
17 evidence.)

18 MR. NEGUS: 522 was testified to by Mr. Roper. That was  
19 a document that the crime lab has. And it indicates in the  
20 document that you should be careful about using Duraprint on  
21 stuff where there's blood.

22 MR. KOCHIS: That's hearsay, of course.

23 MR. NEGUS: Not offered for the truth of the matter  
24 asserted, but the fact that they were warned and went ahead and  
25 did it anyway.

26 THE COURT: For the record, we have got, I don't know,  
27 seven to ten page, what appears to be a print of an article from  
28 a pamphlet or book entitled "Duraprint Investigators Report".

1 MR. NEGUS It was -- it was testified to by Mr. Roper  
2 that that's a sales brochure that the Sheriff's Office received  
3 about Duraprint from the Duraprint people.

4 THE COURT: And what are you doing offering this, to  
5 impeach Roper?

6 MR. NEGUS: No. I'm offering it to show that they were  
7 warned that you should be careful in using Duraprint on blood,  
8 and they weren't.

9 THE COURT: Well, did you cross-examine him on this  
10 report?

11 MR. NEGUS: Yeah.

12 THE COURT: And did he admit that he knew of it at the  
13 time?

14 MR. NEGUS: I don't remember precisely what his testimony  
15 was. He indicated that they had received some -- some sales  
16 literature.

17 THE COURT: I've got a 352 objection to this, counsel,  
18 we've got multipages and you're after one little paragraph.

19 MR. NEGUS: Well, we can excise it so it's just the one  
20 little paragraph. That's all I care about. As long as it  
21 continues to be identified as a sales brochure from the company  
22 that puts out the product warning the users of the product that  
23 it's going to have harmful effects.

24 THE COURT: Which paragraph are you concerned with?

25 MR. NEGUS: I think it's Page 4 on the left-hand side  
26 there. If counsel has no objection I will take an orange marker  
27 and mark around it.

28 MR. KOCHIS: I do, because if that's somehow going to get

1 to the jury that's going to be quite a highlight.

2 MR. NEGUS: Okay. Well --

3 THE COURT: Work on that and come back. I'm inclined to  
4 let any impeaching paragraph --

5 MR. NEGUS: It's questions from the crime lab, the  
6 left-hand column here --

7 MR. KOCHIS: But, your Honor, it's hearsay. I mean, it's  
8 a statement --

9 THE COURT: But it's offered for impeachment, which is a  
10 nonhearsay --

11 MR. NEGUS: No, it's not offered for impeachment. It's  
12 offered to show a product warning. There are certain statements  
13 which are not offered for the truth of the matter asserted, but  
14 merely it's like a warning in a product liability case. The  
15 fact that they were warned by the manufacturer, you shouldn't  
16 use it in this certain way, shows a certain reckless disregard  
17 on their part for the sanctity of the evidence.

18 MR. KOCHIS: This isn't a product liability case.

19 MR. NEGUS: But the issues -- That's just an analogy. I  
20 mean, Mr. Kochis says, "hearsay" and there is lots of statements  
21 in the world that aren't hearsay because they are offered for  
22 other purposes.

23 THE COURT: I have never had a case with the issues so  
24 vaguely defined. Basically you're trying to show incompetency  
25 or negligence.

26 MR. NEGUS: That's it.

27 THE COURT: I will require you, like with the other ones,  
28 to show me that he did not -- that he denied this in some

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1 manner. If he admitted this in the record, then I'm going to  
2 sustain the objection.

3 MR. NEGUS: Okay. That's the Duraprint article from  
4 Roper.

5 Last but not least is a business record of the  
6 Sheriff's Office showing the date and time and whatever of the  
7 destruction of the coveralls.

8 THE COURT: He's going to work on those.

9 What do we have here?

10 MR. NEGUS: Business records, Sheriff's Department,  
11 testified to foundationwise by Mr. Eckely, destruction of  
12 coveralls, time, date by Sheriff's Department.

13 THE COURT: Just to verify his oral statement in court?

14 MR. NEGUS: Well, it's a business -- I don't even know I  
15 actually got the exact date and time on it. I just had him lay  
16 the foundation that they keep a log of the evidence and it goes  
17 in and out and that was it. December 1, '83.

18 THE COURT: What's your objection?

19 MR. KOCHIS: It's cumulative. He testified that he got  
20 it and they destroyed it. It's not an issue in dispute.

21 THE COURT: There is only one little line that's  
22 cumulative. With the multitude of evidence that we have in this  
23 case, we can stand one more line, so admitted.

24 MR. NEGUS: One other thing. I'm not sure -- I have a  
25 tape that we played a portion of Dr. Howell's -- you don't need  
26 to look at this, I guess, but there it is, 707, that's a portion  
27 of -- I played a portion of a tape recorded conversation between  
28 Dr. Howell and myself with Mr. Gendler and Mr. Forbush present.

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1 THE COURT: Did we actually play that in court?

2 MR. NEGUS: Yes, we played that in court. And we have a  
3 transcript which we're not going to introduce into evidence, but  
4 I would like to have the portions that I played which we have  
5 previously identified for the record into evidence so if the  
6 jury wants to listen to them in back they can.

7 THE COURT: Well, why don't you make another tape with  
8 just the edited portion on it, and then we can put that into  
9 evidence, or we can put them both into evidence but hold the  
10 large one and let the jurors have only the smaller.

2 11 MR. NEGUS: They are not -- I don't think it matters, but  
12 I will do that if you want because they are not going to have a  
13 tape recorder back there.

14 THE COURT: Mr. Kochis, any objection to this?

15 MR. KOCHIS: I had one initially, and my objection  
16 escapes me at the moment. I can't recall it. I don't know if  
17 it's the hour of the day --

18 THE COURT: Want to think about it till Monday?

19 MR. KOCHIS: -- or the merit of my objection. Yes.

20 MR. KOTTMEIER: I think the original objection, your  
21 Honor, was introduction of the entire tape when only a very  
22 small portion of the tape was actually played for the jury.

23 MR. NEGUS: I don't want to do that.

24 THE COURT: Well, we are all in agreement on that.

25 MR. NEGUS: I will handle it either way you want.

26 THE COURT: The rest of it is really not -- in fact, none  
27 of it has to be in evidence for that matter.

28 MR. NEGUS: I want the part that we played in evidence

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1 because that's impeachment. The rest of it I definitely don't  
2 want to be played for anybody outside of counsel. So I'm  
3 willing to make another tape, if that's the easier way to do it,  
4 to make sure that we don't have the other contents of the tape  
5 played to anybody.

6 THE COURT: The reporter did not pick this up?

7 MR. NEGUS: What we stipulated was we have another part  
8 of it, the transcript, which has been marked of the portion that  
9 we played, that's Exhibit 708 or 707-A, or something of that  
10 nature, which has marked on the total transcript the portions  
11 that were played. We stipulated that that would be the record  
12 of what we played for appellate purposes, but that's not the  
13 same as having it in evidence.

14 THE COURT: Make your other tape. And then there maybe  
15 ought to be some explanatory words somewhere along the line to  
16 the jurors, or have it marked.

17 MR. NEGUS: Well, I will -- I will have it marked  
18 separate.

19 MR. KOTTMEIER: I would think that as far as if --  
20 there's two separate issues: One is whether it is in evidence,  
21 which I would submit it is as far as the portion played,  
22 obviously; and then the other issue is whether it has to be in  
23 the same format, that is, the tape recording versus the  
24 stipulated transcript.

25 I would submit that if the jury wanted to hear the  
26 tape again that the court reporter could read the introduction  
27 comments by Mr. Forbush and the stipulated portion of the  
28 transcript and avoid all the difficulties.

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1 MR. NEGUS: I'm not happy with that because I'd rather --  
2 I mean, I think what I introduced of the tape, and that's what I  
3 want in evidence for the jury if they want to hear it again.

4 THE COURT: I think you better make your other tape.

5 MR. NEGUS: Okay. I will be glad to do that.

6 THE COURT: I think that would be probably admissible.

7 Anything further?

8 MR. NEGUS: I think that does it for today. There will  
9 be other things that I will be moving into evidence, but I was  
10 trying to get through a bulk of them for today.

11 THE COURT: We still haven't gone over instructions.

12 Just for you to chew on, it appears to me that  
13 we're going to have to have instructions on Murder One and Two  
14 but not Manslaughter. At least that's my initial reaction. I  
15 don't have any notes on instructions.

16 I thought that you probably should have an  
17 instruction on Principles at the very least in this case. Think  
18 about that one. "All persons concerned in the commission of a  
19 crime are equally guilty thereof," so to speak.

20 MR. KOCHIS: I know 300 and 301. I'm trying to figure  
21 out how to work it into an argument.

22 THE COURT: I'm not sure.

23 MR. KOCHIS: I don't know we are going to be requesting  
24 those.

25 THE COURT: It could be -- Well, the thing that concerns  
26 me, I'm going to have a duty to instruct on everything brought  
27 out whether you request it or not. There's been all this talk  
28 about there being more than one attacker in this case. It's

1 possible that the jurors could say, "Hey, Mr. Cooper had  
2 somebody with him," that they could not deny the strong evidence  
3 against Mr. Cooper and say that there could be somebody else  
4 there. But, "All people concerned in the commission of the  
5 crime are equally guilty," I may have to instruct on the point.

6 MR. NEGUS: I think you may have problems with that  
7 because there may be -- as far as the special circumstances are  
8 concerned, I can see that muddying the water a lot.

9 THE COURT: Think about it. And I will give this 707 to  
10 the clerk. And we're going to have to find thirty minutes time  
11 next week perhaps.

12 How are you doing on your witnesses, sir?

13 MR. NEGUS: Only -- What do you mean?

14 THE COURT: Can you see a light yet at the end of the  
15 tunnel?

16 MR. NEGUS: Well, because we don't talk informally I  
17 guess you don't know, but I have been telling everybody I figure  
18 I'm going to rest on February 5th.

19 THE COURT: 5th.

20 MR. NEGUS: 5th, maybe the 6th, depending upon the view  
21 outcome. But probably we can get everybody in that I intend to  
22 testify and even take a jury view, if you want to do that, or if  
23 you will let me do that by the 5th. That's six more court days.

24 THE COURT: The 5th you expect to rest?

25 MR. NEGUS: Yes. I want to have a view before I rest.  
26 That's part of my case. I've asked for it twice.

27 THE COURT: A jury view. All right. I don't know  
28 whether we are going to do that or not.

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1 MR. NEGUS: I know.

2 THE COURT: We are going to have a hearing on that.

3 MR. NEGUS: All right. I'm going to try, I don't know if  
4 I will have anything in writing on Monday, but I will certainly  
5 have some pages of the transcripts and stuff that I can refer to  
6 on Monday.

7 I'm without a secretary down here, and I don't -- I  
8 can't get things done very quickly. So I may not be able to  
9 have it in writing, but I will try and get it.

10 THE COURT: I'm not at all a stickler for form, so I will  
11 take something you have written out in longhand from you.

12 MR. NEGUS: I will try and get something to you on Monday  
13 morning so we can have the hearing on Monday. My suggestion  
14 would be that we do it on January 31st, just for the convenience  
15 of court and counsel, because we all have to be back in Ontario  
16 on February 12th, and it would be nice to save two trips back  
17 and forth.

18 THE COURT: Mr. Maloney doesn't want to go.

19 MR. NEGUS: Well, I will stipulate that Mr. Maloney can  
20 be --

21 THE COURT: I think he has the idea that we should decide  
22 that issue by the democratic process. All right. We will  
23 discuss these issues more.

24 MR. NEGUS: Anyway, I would like to do it on Monday  
25 because I understand if we do go on the 31st that the bailiff  
26 would need that amount of lead time to make arrangements.

27 THE COURT: Well, I think, yes, we should make the  
28 decision as soon as possible.

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1 MR. NEGUS: Okay.  
2 THE COURT: Thank you. Enjoy your weekend  
3 (Adjournment.)  
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## IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

## IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT  
January 28, 1985

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020951

1 SAN DIEGO, CALIFORNIA. MONDAY, JANUARY, 28, 1985, 9:34 A.M.

2 --ooOoo--

3  
4 (Chambers conference reported.)

5 THE COURT: Defendant and all counsel are in chambers.

6 MR. NEGUS: First off. I just want to tell you some of  
7 the -- well, first of all I request that at 1:30 we set aside 15  
8 minutes or a half an hour to hear the jury view motion.

9 THE COURT: Okay.

10 MR. NEGUS: And have the jury back at either quarter of  
11 2:00 or 2:00 whichever is more convenient.

12 THE COURT: All right.

13 MR. NEGUS: Secondly, I have not yet obtained my first  
14 two witnesses. They are Mrs. Schechter and Mr. Stockwell --

15 They are here?

16 MR. FORBUSH: They are here now.

17 MR. NEGUS: Then I need a few minutes to mark some  
18 exhibits which they have brought down. then I will be ready to  
19 start.

20 THE COURT: Okay. fine. Thank you. Got enough witnesses  
21 for the day?

22 MR. NEGUS: I don't know. Two of them called in sick and  
23 one of them is in other homicide, but we had about so ten or  
24 twelve witnesses, so we figured we better put them in a hotel  
25 rather than run out, so I think I still have enough even though  
26 three people have called -- said that they couldn't make it, but  
27 I hope to be able to go most of the day, especially if we do  
28 that. If not. I'm prepared more or less to begin on the jury

020952

1 instructions.

2 THE COURT: Okay; fine.

3 (Chambers conference concluded.)

4

5 (The following proceedings were held in  
6 open court in the presence of the jury:)

7 THE COURT: Everybody is present. Mr. Negus.

8 MR. NEGUS: Patricia Schechter, please.

9 THE CLERK: Raise your right hand.

10

11 PATRICIA JO SCHECHTER.

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

14 THE CLERK: Thank you. Would you state your full name  
15 for the record and spell your last name.

16 THE WITNESS: Patricia Jo Schechter. S-c-h-e-c-h-t-e-r.

17

18 DIRECT EXAMINATION

19 BY MR. NEGUS:

20 Q. Mrs. Schechter. what's your occupation?

21 A. I'm employed as a criminalist with the San  
22 Bernadino County Sheriff's Office.

23 Q. When did you begin in that occupation?

24 A. In September of 1982.

25 Q. In June of 1983, did you go to 2943 English Road,  
26 the Ryen residence in the Chino Hills?

27 A. Yes. I did.

28 Q. Was that approximately the seventh homicide scene

020953

1     that you had actually gone to?

2             A.     No. it wasn't.

3             Q.     How many had you gone to?

4             A.     Approximately 15.

5             MR. NEGUS: Volume No. 18, Page 14, 23 through 25.

6             MR. KOCHIS: I have it. I don't see how it's

7     inconsistent with her saying what she said.

8             MR. NEGUS: 15?

9             THE COURT: Let's go ahead. counsel. read it. I'll

10    strike it.

11            MR. NEGUS: (Reading)

12            "Question: How many homicides scenes had you

13            worked prior to June 5th. 1983?

14            "Answer: Probably less than a dozen.

15            Q.     On that particular date, what did you do at the

16    Ryen scene?

17            A.     My function was to assist the primary on-call

18    person, who was David Stockwell.

19            Q.     What did you do to assist him?

20            A.     To record document information on evidence that was

21    collected.

22            Q.     How did you do that?

23            A.     As Mr. Stockwell made a determination on which

24    evidence to collect, I would write down what it was.

25            Q.     Showing you showing you Exhibit 492, and asking you

26    to look at Page 2 and 3 of that exhibit; are those a portion of

27    your documentation?

28            A.     Yes, they are.

00200954

1 Q. And showing you 493, is that another portion of  
2 your documentation?  
3 A. Yes, it is.  
4 Q. Is there any other documentation you did besides  
5 those two exhibits?  
6 A. I don't believe so.  
7 Q. During the time that you were not -- how long were  
8 you at the crime scene?  
9 A. I think it was around twelve hours or ten.  
10 Q. During the large portions of those twelve hours  
11 where you were not filling out those pieces of paper, what else  
12 were you doing?  
13 A. I don't recall specifically.  
14 Q. What time did you enter the Ryen crime scene?  
15 A. Approximately 3:00 o'clock that afternoon.  
16 Q. And was that into the master bedroom area?  
17 A. Yes, it was.  
18 Q. Did you remain in the master bedroom area for some  
19 hours after that?  
20 A. Yes, I did.  
21 Q. For approximately how long?  
22 A. I don't recall.  
23 Q. Do you recall a time when Mr. Stockwell left the  
24 scene of the Ryen bedroom that afternoon to go down and look at  
25 an axe?  
26 A. Vaguely.  
27 Q. What were you doing during that period of time?  
28 A. I don't recall.

020955

1 Q. On the document that you have before you there are  
2 various times that have been apparently written in by yourself;  
3 did you write those times in as the items were being collected  
4 or at some later time?

5 A. No. They would be written in at the time of  
6 collection.

7 Q. Were the items collected in numerical order like  
8 A-1 through A-whatever?

9 A. In most cases. However. I remember there are some  
10 cases that we would collect something out of order. The  
11 numerical order is for our purposes, so that each item will be  
12 correlated to this sheet; it isn't necessarily a numerical  
13 order.

14 Q. Well. on the first set of notes that you took.  
15 would that be the exhibit which has the little drawing on it?

16 A. Yes, it would.

17 Q. And on that particular sheet there's only one time  
18 listed; is that correct?

19 A. I'm going to pull the original cause that copy is  
20 difficult to see.

21 Q. Okay.

22 A. Yes.

23 Q. Okay. That would be the time 17:20 next to item  
24 A-5; is that right?

25 A. Right.

26 Q. Is that something that you -- that you noted at the  
27 time?

28 A. Yes; yes, it was.

02009556

1 Q. There's also next to that time an item A-8 which  
2 appears to have been scratched out. What happened there?

3 A. I don't recall.

4 Q. On the -- get my exhibits numbers straight here.

5 On Page 2 of Exhibit 492 under A-8 there is a time  
6 written. "1527"; is that correct?

7 A. Yes.

8 Q. Is that something that you -- that you obtained  
9 from looking at your watch and noting it at the time or is that  
10 something you obtained later?

11 A. No. It would have been from looking at my watch  
12 and recording at the time.

13 Q. Did you begin the first sheet with the items A-1  
14 through -6 on them. Exhibit 493, when you first began collecting  
15 the evidence?

16 A. The first sheet. Exhibit M-15. or do you mean this  
17 other one?

18 Q. Well. we're using the brown numbers.

19 A. The brown numbers.

20 Q. Excuse me. The orange tag.

21 A. Okay. 492 are you referring to there. 492?

22 Q. 493. Exhibit 492 is that the first one that you  
23 began.

24 A. Yes, it is.

25 Q. And then at some point in time you changed your  
26 procedures and went over to the other sheet; is that right?

27 A. Yes.

28 Q. Was that after -- was that after Mr. Stockwell

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1 indicated that he wanted to do his own crime scene diagram?

2 A. Yes, it was, and we made the determination that he  
3 would physically collect the evidence and I would take the  
4 notes.

5 Q. Why is it that the time at the first entry on the  
6 second sheet is at a time two hours before the last time that  
7 you've noted on the first sheet?

8 A. I looked at that last week. Knowing the order that  
9 some things were collected, I think what I did was look at my  
10 watch, which would have said 1527, and so because military time  
11 is something I don't use all the time I think that was supposed  
12 to be 1727.

13 Q. Well, let me show you an Exhibit 501. a brown paper  
14 bag which has the words "A-8 Top Sheet" and the time "1527"  
15 written on it; did you write that time on there?

16 A. No. I didn't.

17 Q. Do you recognize the writing?

18 A. Yes. I do.

19 Q. Is it some Stockwell's?

20 A. I believe so.

21 Q. When you -- do you know how you happened to make  
22 the same mistake he did?

23 MR. KOCHIS: Objection. That assumes a fact that's not  
24 evidence, that he made a mistake.

25 MR. NEGUS: I believe he has already testified, admitted  
26 that he made a mistake. She just said she made a mistake.

27 THE COURT: I will sustain the objection. Rephrase the  
28 question. She can speak for herself only, Mr. Negus.

00220958



1 BY MR. NEGUS:

2 Q. Do you happen to know how you both happened to get  
3 the same time which you believe to be mistaken on separate  
4 documents?

5 MR. KOCHIS: Objection. It would call for speculation.

6 THE COURT: Yes. Sustained.

7 MR. NEGUS: I'm asking if she knows. It can be answered  
8 yes or no. I mean, they may have said it.

9 THE COURT: She can speak for herself, not why Mr.  
10 Stockwell may have done something.

11 MR. NEGUS: Right, but I'm not asking her --

12 Q. Okay. Do you know how you put the same mistaken  
13 time down as Mr. Stockwell entered on that particular bag?

14 A. I believe so.

15 Q. How is that?

16 A. When the person is writing on the evidence itself,  
17 the person who is recording would try and coordinate, make sure  
18 we have the right numbers, the A-8 number. We try to write  
19 about the same description of the evidence and the times. And I  
20 would have given him the time from my watch. I would have said  
21 "1527" and he would write it down.

22 Q. Well, do you remember, Mr. Stockwell collecting a  
23 series of items prior to going out and looking at the axe?

24 A. Yes, I do.

25 Q. How many different items was that?

26 A. Probably maybe only after the first or second item.

27 Q. When did Mr. Stockwell start -- stop taking his own  
28 notes or his own list of the items being collected, if you

02009559

1 observed?

2 A. Timewise or about when which evidence was  
3 collected?

4 Q. Well. time which is -- first of all. timewise if  
5 you know?

6 A. Okay. I started recording at about 5:30. so it was  
7 around that time.

8 Q. So, anything -- anything collected before 5:30 he  
9 was taking his own notes?

10 A. Yes.

11 Q. And did that include items that were taken both  
12 before and after his going to look at the axe?

13 A. Yes, it would.

14 Q. On those items taken after 5:30, were you  
15 collecting and packaging along with Mr. Stockwell?

16 A. No, I wasn't.

17 Q. Well. did you -- did you assist in the packaging of  
18 any of the items?

19 A. I would have helped him fold some items and package  
20 them. but he primarily was packaging and recording.

21 Q. When the items were being collected, were they  
22 originally all being put into the same bag?

23 A. Different items?

24 Q. Yeah. All the -- whole bunch of different items in  
25 the same bag.

26 A. No.

27 Q. Well. did you help Mr. Stockwell fold up and  
28 package the sheets from the bed?

00209960

1 A. Yes. I did.  
2 Q. And the comforter?  
3 A. Yes.  
4 Q. And the bathrobe?  
5 A. I don't recall.  
6 Q. How about the bed pad?  
7 A. Yes.  
8 Q. There are on this -- on bag that's been marked as  
9 Exhibit 501, there's a bunch of scratched out items on there; do  
10 you recall how those items got scratched out?  
11 A. No. I don't.  
12 Q. Was it by yourself?  
13 A. No.  
14 Q. Do you recall putting item A-4 in the same bag with  
15 A-8?  
16 A. No. I didn't see any particular evidence packaged  
17 or the annotations made by Mr. Stockwell that I recall.  
18 Q. You were doing something else while he was  
19 packaging the evidence?  
20 A. No, but I wasn't looking over his shoulder.  
21 Q. There is an entry under A-12 on Exhibit 492, Page 2  
22 which says "Mattress Pad with A-8", what does that mean?  
23 A. As I can remember I think the two items -- I think  
24 that "A-12" was supposed to be "A-10", I think the two items  
25 were packaged together.  
26 Q. A-10. the bottom sheet, and A-12. the mattress pad,  
27 were packaged together?  
28 A. As I can recall.

1 Q. Did you assist in that particular process?

2 A. I'm sure I did.

3 Q. As you presently recollect it then, the -- all of

4 the items, A-8 through A-15, with the exception of A-11, were

5 packaged and folded and put somewhere for safekeeping between

6 5:27 and 6:00 o'clock in the evening?

7 A. Yes.

8 Q. What care was taken when you were folding all those

9 different items to make sure that trace evidence which might be

10 adhering to them wouldn't get lost?

11 A. The items were folded up on side themselves and

12 placed in the bags, which is our normal procedure.

13 Q. You were able to fold up the top sheet in five

14 minutes and get it in the bag, get it marked?

15 A. I'm sure we did.

16 Q. Was there in the master bedroom a large number of

17 items of clothing that you did not seize?

18 A. Yes.

19 Q. A-14 was a pair of jeans?

20 A. Correct.

21 Q. Was there any particular reason why you singled out

22 that pair of jeans as opposed to all the other clothing?

23 A. Yes.

24 Q. What was that?

25 A. There was a shoeprint. it appeared in blood on that

26 pair of jeans.

27 Q. Did you examine the other clothing to determine

28 whether there were similar type marks on it?

0209962

1 A. I believe so.

2 Q. So, you were going through the scene looking for  
3 blood impressions on the clothing?

4 A. I'm sure we did.

5 Q. Let me show you a series of bags that have been  
6 marked for identification 747 through 752; do you recognize  
7 those various bags?

8 A. Not not offhand, no.

9 Q. Did you ever handle any of the bags?

10 A. I may have helped carry them. but I didn't do any  
11 writing on them or any examinations at a later date so I don't  
12 really recognize them in particular.

13 Q. And let me just ask you also to look at some little  
14 boxes, 744 through 746, and ask you if you recognize any of  
15 those?

16 A. No.

17 Q. On some of the -- on some of the entries that you  
18 have on the -- on the sheet you don't have times listed. was  
19 there any reason why you selected some to put down the times on  
20 and some not to?

21 A. No. I like to have a practice of putting the times  
22 down. but there are times I just don't put it down.

23 Q. Just forget?

24 A. I write something down, we collect it, then I would  
25 go back immediately after collection and write the times, and  
26 evidently there are times I don't do that.

27 Q. Well. I guess what I'm asking is: Does that  
28 involve some particular conscious choice that for some reason

1 you can't get an accurate time or is it just you didn't do it?

2 A. I like to do it immediately after collection rather  
3 than before. and I just didn't go back and do it.

4 Q. During the time that you were at the Ryen residence  
5 that evening, did you ever do any processing, note-taking, that  
6 sort of thing, in any room other than the master bedroom. the  
7 hall near Jessica, or the master bathroom?

8 A. I don't believe so.

9 Q. For example, did you ever go and examine any of the  
10 other rooms to see if there was anything of evidentiary value in  
11 them?

12 A. Yes. I went in all the other rooms.

13 Q. Was that with Mr. Stockwell or alone?

14 A. I know I went in alone. I don't know if I went  
15 with Mr. Stockwell or not.

16 Q. Did you examine the kitchen area?

17 A. Yes, I did.

18 Q. Did you see anything of evidentiary value in there?

19 A. No. I didn't.

20 Q. Did you look in the refrigerator?

21 A. No. I didn't.

22 Q. Did you look in the sink?

23 A. I don't recall.

24 Q. Do you remember what time it was that you did that?

25 A. No, I don't.

26 Q. Did you make any notes of your observations?

27 A. No.

28 Q. Did you yourself collect various blood samples from

1 the master bathroom?

2 A. Yes, I did.

3 Q. And were those -- did you select the areas from  
4 which those samples were collected or did somebody else?

5 A. I determined which areas that I would collect the  
6 samples from and then talked with Mr. Stockwell, since he was  
7 the primary criminalist at the scene, and conferred with him.

8 Q. Did you take any samples from any pooled blood?

9 A. I don't think so.

10 Q. Did you take any samples from anywhere other than  
11 the carpet?

12 A. No.

13 Q. Did you note any stains near the light switches,  
14 any of the light switches in the bathroom?

15 A. I don't recall.

16 Q. Did you make the primary inspection of the bathroom  
17 to determine what should be -- what should be seized and what  
18 shouldn't be?

19 A. No. I believe I was asked by Mr. Stockwell to  
20 collect blood samples, possible blood samples from the  
21 carpeting.

22 Q. Not that you weren't asked to look at the rest of  
23 the bathroom?

24 A. I don't recall that. no.

25 Q. Do you recall seeing any blood smears or stains  
26 around the basin of the bathroom?

27 A. Vaguely.

28 Q. Did you elect not to collect those stains?

00229955

3

1 A. I believe Mr. Stockwell and I discussed it and it  
2 was his decision not to.

3 Q. As you were taking the note of blood samples A-31  
4 through -37, you were actually observing Mr. Stockwell collect  
5 those particular samples; is that right?

6 A. Yes. I was.

7 Q. And the only investigative function that you were  
8 performing at that time was to note the sample as it was taken  
9 by Mr. Stockwell?

10 A. Yes.

11 Q. From your notes that you have taken and your  
12 memory, could you determine which blood splatter on the east  
13 wall as shown in photograph 415 was seized by Mr. Stockwell?

14 A. No.

15 Q. Could you for any of the blood samples that you  
16 observed Mr. Stockwell to seize, could you have -- did you --  
17 could you so identify them?

18 A. As to exactly where they came from?

19 Q. Right.

20 A. No.

21 Q. The sample A-35 came from some closet doors behind  
22 Doug Ryen; is that right?

23 A. Yes.

24 Q. There were four different panels to those doors?

25 A. Yes.

26 Q. All of those four panels had blood on them; is that  
27 right?

28 A. I think so.

0020966



1 Q. From your notes and memory, can you say which one  
2 of those four panels or which one or ones of those four panels  
3 the blood splatters came from?

4 A. It was on the set on the right side.

5 Q. Did you specify between which one of the two it  
6 was?

7 A. No.

8 Q. Front or back?

9 A. Front, I believe.

10 Q. Is that just from memory?

11 A. Yes.

12 Q. The A-34, -36 came from a complex of wall shelves,  
13 desks, cupboards on the west wall; is that right?

14 A. Yes.

15 Q. You have it noted as coming from wall shelves; is  
16 that right?

17 A. Right.

18 Q. Do you remember which shelves it came from?

19 A. No, I don't.

20 Q. Do you remember if it came from a shelf?

21 A. No.

22 Q. A-38 through A-40, you did not actually observe  
23 being collected yourself; is that right?

24 A. I don't recall.

25 Q. You don't have times for that; is that right?

26 A. Right.

27 Q. And between A-37 and A-41, converting the times  
28 that you have into -- into minutes after midnight, you have

00209967

1     yourself collecting in the bathroom during the period of time  
2     A-38 to A-40 balances collected; is that right?

3             ~~Q.~~     During the period of time that A-38 through A-40  
4     was collected; is that right?

5             A.     That's right.

6             Q.     A-43 through A-45 were collected actually at  
7     between ten, fifteen minutes after midnight on June the 6th; is  
8     that right?

9             A.     Right.

10            Q.     Okay. And A-37 was collected at 11:55 on June 5th  
11     and A-41 was collected at twenty-five minutes after midnight on  
12     June the 6th; is that right?

13            A.     Right.

14            Q.     Did you get that information as to where A-38  
15     through -40 was collected from Mr. Stockwell afterwards or --

16            A.     As I recall. Mr. Stockwell was going to take  
17     threads which take -- there is some waiting time in taking  
18     threads. I believe that is when he asked me to go take the  
19     carpet sample.

20            Q.     So, what I am asking you, as far as your  
21     documentation is concerned, that is something that was reported  
22     to you by Mr. Stockwell. or you got off the boxes that he had  
23     or --

24            A.     No. It would have been reported by Mr. Stockwell.

25            Q.     After you had all this information, did you ever go  
26     back and check your notes versus the notes that Mr. Stockwell  
27     had written on the various packaging to see if there was any  
28     discrepancy?

00229988

1 A. I don't recall.

2 Q. Except for August 1st. when you went to the County  
3 Jail to get some samples from Mr. Cooper, you were not sent out  
4 into the field on this particular case again; is that right?

5 A. Correct.

6 Q. During the time that you and Mr. Stockwell were  
7 working in the Ryen master bedroom. were there as many as ten  
8 persons in there at any given time?

9 A. Yes. I would think so.

10 Q. And of those ten persons they were different people  
11 different times?

12 A. It could have been.

13 Q. During the time that you were working there, did  
14 you see anybody who came up to the master bedroom turned away?

15 A. The people that I saw that came to the master  
16 bedroom all had a reason to be there and they were not turned  
17 away. Those were the only people I saw.

18 MR. NEGUS: Move to strike the reason to be there as  
19 calling for speculation on the part of the witness.

20 THE COURT: Yes. That portion may be stricken.

21 BY MR. NEGUS:

22 Q. You didn't see anybody turned away?

23 A. Not that I recall.

24 Q. In general, at a crime scene it is important to  
25 have as few people in the scene contaminating as possible; is  
26 that correct?

27 A. Generally.

28 Q. Anything about this particular crime scene which

1 created an exception?

2 A. Most crime scenes require only the assistance of an  
3 investigative team. This one required more than one.

4 Q. There -- as well as -- other than I.D., crime lab  
5 and the homicide detectives there at the scene, they're was many  
6 other people coming through besides that; is that correct?

7 A. Through the scene?

8 Q. Yeah.

9 A. There were some other people, not many other  
10 people.

11 Q. How many is "some"?

12 THE COURT: Counsel, let's don't get argumentative with  
13 the witness now. We have description of good police practices  
14 from other witnesses, perhaps more qualified. Let's try and  
15 stay out of that area.

16 MR. NEGUS: Okay.

17 Q. During the time that you were taking notes as to  
18 what was collected from where, did you take any measurements as  
19 to where in the room items were collected?

20 A. No.

21 Q. Did you observe anybody else taking measurements as  
22 to the individual items which you all collected?

23 A. Yes.

24 Q. Who?

25 A. The homicide investigators.

26 Q. That would be Mike Hall?

27 A. Yes.

28 Q. And which of the items that you collected did he

1 take measurements of?

2 A. I would speculate --

3 Q. Not speculate, that you saw.

4 A. I didn't make any annotations of the items that he  
5 took measurements of. I know he took measurements of items that  
6 were not trace items. I'm pretty sure he took all of those. As  
7 far as the trace items --

8 Q. Did you see him take measurements of the jeans.

9 A-14?

10 A. I believe so.

11 Q. How about the job clothes. it would be A. whatever  
12 it is.

13 A. Yes, I believe he did.

14 Q. While you were in the scene processing. was your  
15 supervisor. Mr. Baird, there for a period of time?

16 A. Yes, he was.

17 Q. Did Mr. Baird tell you -- well, did you consult  
18 with Mr. Baird about the evidence that you collected?

19 A. That we collected?

20 Q. That you were to collect? About the collection.

21 A. We had a general discussion about it.

22 Q. Well. did you -- did you consult with him about the  
23 best way to go about collecting it?

24 A. I don't know if we discussed methodology. He had  
25 mentioned there was a particular item he wanted collected that  
26 was outside of the house. and I think we just generally  
27 discussed with him things initially that we saw that we felt  
28 should be collected. I think that's as in depth as it was.

00209971

1 Q. Well, do you remember -- did you discuss with him,  
2 for example, what items you were going to collect?

3 A. We saw him initially before we had had much time in  
4 the room, so I think we just discussed the scene overall with  
5 him and discussed the things that we had, at that time were  
6 going to take; that we knew for sure we go were going to take.

7 Q. Do you remember testifying earlier that you didn't  
8 consult with Mr. Baird on the evidence that you collected, that  
9 you and Mr. Stockwell were doing the collecting?

10 A. No.

11 Q. Would that be accurate?

12 A. Mr. Baird was there initially, and I know we just  
13 somewhat discussed the scene and things we were going to take  
14 and then he was gone. And Mr. Stockwell and I, once we started  
15 taking the evidence, determined what we would take or not.

16 MR. NEGUS: Page 14 of Volume XVIII of the preliminary  
17 hearing, line 11 through 22.

18 MR. KOCHIS: Well, I would object, it is not inconsistent  
19 with what she's testified to.

20 MR. NEGUS: 11 through 22.

21 THE COURT: I can't recall the last answer that you are  
22 attempting to impeach.

23 MR. NEGUS: Well, it was not just one particular answer,  
24 but a series of answers.

25 MR. KOCHIS: She specifically testified today that she  
26 did not consult with Mr. Baird about what the best way was to  
27 collect certain items.

28 THE COURT: What lines, Mr. Negus?

3 MR. NEGUS: I have nothing further.

6 BY MR. KOCHIS:

14                      A.       Yes.

28 Q. Were there two closets in that room in that

1 bedroom?

2 A. Yes, there were.

3 Q. Did there appear to be clothes hanging up in both  
4 of the closets?

5 A. Yes.

6 Q. Is that an example of the type of clothes that were  
7 left behind at the scene, clothes that were hanging on coat  
8 hangers in the closet?

9 A. No.

10 Q. Well, you didn't take the clothes from the closet.  
11 did you?

12 A. No.

13 Q. Directing your attention to Exhibit 473.

14 Does that appear to be a photograph of the bottom  
15 of the shoes which you wore at the scene on that particular  
16 evening?

17 A. Yes.

18 MR. KOCHIS: I have no further questions,

19 THE COURT: Mr. Negus, anything else?

20

21 REDIRECT EXAMINATION

22 BY MR. NEGUS:

23 Q. There are many clothing items on the floor that you  
24 didn't take.

25 A. As I recall, there were clothes in disarray in the  
26 room, around, and I am sure there were other clothes on the  
27 floor.

28 Q. Clothing items on the bed you didn't take.

00209974



1 A. I don't recall clothing items on the bed.

2 Q. Do you recall seeing a blue sweatband on the bed?

3 A. I don't recall.

4 MR. NEGUS: Nothing further.

5 MR. KOCHIS: I have no further questions.

6 THE COURT: Thank you very much.

7 MR. NEGUS: David Stockwell.

8 THE COURT: Ask your next witness in.

9

10 DAVID C. STOCKWELL,

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

13 THE CLERK: Thank you. Would you state your full name  
14 for the record.

15 THE WITNESS: Yes. David C. Stockwell.

16 THE CLERK: Thank you.

17

18 DIRECT EXAMINATION

19 BY MR. NEGUS:

20 Q. Mr. Stockwell. I asked you bring with you today  
21 various items of packaging; is that correct?

22 A. That's correct.

23 Q. And essentially any bags that existed that had not  
24 been already introduced into evidence, items A-1 through -25.

25 A. Yes.

26 Q. You have also brought with you six small pillboxes  
27 of items from A-1 through -25; is that right?

28 A. Yes.

0020975

1 Q. Of those small pillboxes, are items A-6, A-25 and  
2 A-19 those which had times on them?

3 A. These do have times on them, yes.

4 Q. The other three did not?

5 A. I don't recall specifically. The items that I  
6 brought down with me I'd have to look through the notes and see  
7 the items specifically.

8 Q. Items 747 through 752 are items of evidence that --  
9 they're brown paper bags that had items of evidence in them; is  
10 that correct?

11 A. Yes.

12 Q. And would you then go back to Exhibit 491 here, and  
13 as to those items of evidence which do have times on it, in  
14 brown, could you put in another column the laboratory number  
15 like A-1 through -45, and the time at which it was collected  
16 corresponding to the packaging.

17 A. (Witness complied.)

18 Q. Could you also do the same for the three little  
19 boxes that I have there in front of you.

20 A. (Witness complied.)

21 Q. On the exhibit 4 -- 502 there is a time 1527 for  
22 that item A-8. Is that a correct time?

23 A. It is correct in that it is what is written on the  
24 sack.

25 Q. Is that the time which the item was collected?

26 A. I am not so sure at this point that that is the  
27 exact time that this item was collected.

28 Q. Did you get that time from looking at Miss

1 Schechter's notes?

2 A. It is possible.

3 Q. The item A-2. is the 1630 or 4:30 in the afternoon  
4 an accurate time for that particular item?

5 A. I believe so. yes.

6 Q. Was A-3 collected after it, the rope?

7 A. I believe so.

8 Q. So the rope would not have been collected then  
9 until after you and Mr. Baird returned from looking at the axe?

10 A. That is possible. yes.

11 Q. Was it sitting out there in the asphalt for that  
12 interim period?

13 A. I would assume so. if that is the case. that it was  
14 not collected until we came back.

15 Q. Your previous testimony that items A-1 through A-8  
16 were all collected before you and Mr. Baird went down to look at  
17 the axe. you now believe that that testimony is now incorrect?

18 A. It is possible.

19 Q. Do you have any other explanation for the times  
20 that you have marked on the various items?

21 A. No. I don't.

22 Q. Do you know now whether you collected any items  
23 before you and Mr. Baird went down to look at the axe?

24 A. I know for a fact that A-1 was collected before we  
25 ever entered into the bedroom. That was before we went down to  
26 look at the axe.

27 Q. The rope. item A-3. have you ever compared that  
28 rope with the rope that you collected from the Bilbia closet?

00229977

1           A.     I have not.

2           Q.     Just from your memories of the rope. was it the  
3 same kind of rope?

4           A.     At a glancing look, yes.

5           Q.     But you never studied it more closely to try and  
6 determine whether they were the same type of material or  
7 anything like that.

8           A.     I did not. no.

9           Q.     Did Mr. Gregonis?

10          A.     Not to my knowledge.

11          Q.     On June the 6th and 7th, while you were. you were  
12 at the autopsy with Dr. Root. do you recall various weapons  
13 being brought into show him?

14          A.     I recall that a photograph of the hatchet that was  
15 recovered was brought in at one point during one of those two  
16 days.

17          Q.     What about knives?

18          A.     I don't specifically recall knives.

19          Q.     Did Dr. Root. during the course of the autopsy.  
20 describe or reconstruct for you the shape of the blade of a  
21 knife used in the attack or that he believed was used in the  
22 attack?

23          A.     He gave a verbal summary of a knife that would fit  
24 the wounding patterns that he saw.

25          Q.     And from that verbal summary did you prepare a  
26 sketch?

27          A.     Yes.

28          Q.     Did you show it to Dr. Root?

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1           A.     I don't recall having done that, no, because it --  
2     I wrote that on a pink slip which we keep at the laboratory, so  
3     I don't think I showed it to him.

4           Q.     Can you, on Exhibit 753, make a copy or do a sketch  
5     of the shape of the blade that you drew from Dr. Root's  
6     descriptions, including whatever measurements you may have  
7     gotten for it.

8           A.     (Witness complied.)

9           Q.     What you have drawn on Exhibit 753 is an  
10    approximate copy of slightly larger of your notes that you took  
11    on the pink slip.

12          A.     Yes.

13          MR. NEGUS: I have nothing further.

14          MR. KOCHIS: I have no questions.

15          THE COURT: Thank you, Mr. Stockwell.

16          THE COURT: Want to break at this time for recess?

17          MR. NEGUS: Sounds good.

18          THE COURT: We will take the morning recess, ladies and  
19    gentlemen. Remember the admonition, please.

20                   (Recess.)

21

22

23          THE COURT: Counsel.

24          MR. NEGUS: Pat Whelchel.

25          THE CLERK: Raise your right hand.

26

27

PATRICK WHELCHEL.

28    called as a witness on behalf of the Defendant, having been duly

002209779

1 sworn, testified as follows:

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

5 THE WITNESS: Patrick Whelchel. W-h-e-l-c-h-e-l.

6 THE CLERK: Thank you.

7

8 DIRECT EXAMINATION

9 BY MR. NEGUS:

10 Q. Mr. Whelchel, what's your occupation?

11 A. I'm currently employed by the Department of  
12 Corrections as a correctional officer.

13 Q. And is that the California Institution For Men?

14 A. Yes, sir.

15 Q. Do you also have any status with the Sheriff's  
16 Department of the County of San Bernadino?

17 A. Yes, sir. I do.

18 Q. What's that?

19 A. I'm a reserve deputy sheriff.

20 Q. Back in June of 1983, as in your dual capacity, did  
21 you go up to the Ryen residence?

22 A. Yes, sir. I did.

23 Q. What day was that?

24 A. June 5th, I believe. sir.

25 Q. That would have been the day that the crime was  
26 discovered?

27 A. Yes, sir.

28 Q. And did you go up there with anybody or you just

0020980

1 happened to drive up yourself?

2 A. I went down there with Detective Danna.

3 Q. When you got to the Ryen scene, approximately what

4 time was it?

5 A. Late afternoon I believe, sir.

6 Q. It was still light out?

7 A. Yes, sir.

8 Q. How many times were you at that particular

9 residence?

10 A. Twice on that date, sir.

11 Q. Any time after that?

12 A. Yes, sir.

13 Q. How many times after that?

14 A. Later on that evening, after 11:00 o'clock that

15 evening was the second time, sir.

16 Q. After the 5th, did you ever go back again?

17 A. Not to that residence, no, sir.

18 Q. When you went to the residence, did you go inside?

19 A. In the front door, yes, sir.

20 Q. And what time was that that you first went in

21 there?

22 A. That would be -- when I went in the residence was

23 around 11:00 o'clock that night, sir, to the --

24 Q. When you first went up there, where did you go?

25 A. Just the front yard area.

26 Q. Did you ever go around the patio in the back and

27 look in?

28 A. No, sir.

020981

1 Q. When you went in the front -- when you were -- when  
2 you went in the front door, how long were you in there?  
3 A. Five to ten minutes.  
4 Q. And where did you go?  
5 A. The front room area.  
6 Q. Is that a sunken living room?  
7 A. Yes, sir.  
8 Q. Do you know Gary Woods?  
9 A. I believe so, yes, sir.  
10 Q. Did Mr. Woods ever come and interview you about  
11 where you went in the Ryen house?  
12 A. No, sir.  
13 Q. When you went in the house at 11:00 o'clock was Mr.  
14 Danna with you?  
15 A. Yes, sir.  
16 Q. Who else was in the house at that time?  
17 A. I believe Sergeant Arthur was, and a couple other  
18 detectives I didn't know.  
19 Q. On the chart behind you, Exhibit 229, in slot 76  
20 could you write your name, please.  
21 There's a black marker in front of you on the  
22 witness stand, sir.  
23 A. 76?  
24 Q. Yeah.  
25 A. (Witness complied.)  
26 Q. Did you ever go back in the back room where the  
27 crime had occurred?  
28 A. No, sir.



1 Q. How about on the patio outside, did you go out and  
2 take a look in there that evening?

3 A. No, sir.

4 Q. Then under "rest of house" there could you put  
5 "6-5" and circa 2300; and then on the "Ryen driveway, backyard",  
6 could you put "6-5" and "late p.m." -- "late afternoon", I  
7 guess.

8 A. (Witness complied.)

9 Q. When you -- You can be seated again.

10 When you went in the living room, was there anybody  
11 seated on the stairs?

12 A. I can't recall.

13 Q. Do you remember whether there were any lights on  
14 the outside of the house at that point in time?

15 A. I believe there was, yeah.

16 Q. Did you go up there in a car?

17 A. Yes, sir.

18 Q. Where did you first notice the lights as you were  
19 going up there in the car?

20 A. After you go over the hump of the driveway up  
21 toward the front.

22 Q. When you're actually at the residence?

23 A. Yes, sir.

24 Q. Thank you.

25 That's all I have.

26 CROSS-EXAMINATION

27 BY MR. KOCHIS:

28 Q. Mr. Whelchel, when you went into the living room of

0020987

1 the Ryen home, did you give some documents to Sergeant Arthur?

2 A. Yes, sir.

3 Q. Were those documents that had been procured at CIM  
4 where you work?

5 A. Yes, sir.

6 Q. Directing your attention to Exhibit 741, is that a  
7 picture of the soles of the shoes that you wore when you stepped  
8 into the living room on that Sunday night about 11:00 o'clock?

9 A. Yes, sir, they are.

10 Q. Thank you.

11 I have nothing else.

12 MR. NEGUS: Nor do I.

13 THE COURT: Thank you very much, sir.

14 MR. NEGUS: Sidney Mason.

15 THE CLERK: Raise your right hand.

16

17 SIDNEY FRANKLIN MASON, II,

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

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

21 Would you state your full name for the record and spell your  
22 last name.

23 THE WITNESS: Sidney Franklin Mason, the II. Last name  
24 is spelled M-a-s-o-n.

25 DIRECT EXAMINATION

26 BY MR. NEGUS:

27 Q. Mr. Mason, what's your occupation?

28 A. I'm a correctional officer with the California

0020984

1 Department of Corrections.

2 Q. And were you so employed on May 3rd, 1983?

3 A. Yes. I was.

4 Q. On that particular date do you remember what your  
5 assignment was?

6 A. Yes. I was a search and escort officer in the  
7 hallway at Reception Center Central at CIM in Chino.

8 Q. What's a search and escort officer?

9 A. That's an officer who is placed in the hallway, or  
10 his job assignment is in the hallway. He is charged with  
11 keeping order and escorting inmates to various locations in the  
12 building as they have duckets or passes or whatever.

13 Q. So basically it's -- it's a function which involves  
14 the movement of inmates around the various parts of the  
15 institution?

16 A. Yes, that's about 75 percent of the job.

17 Q. Do inmates have a certain amount of freedom of  
18 movement in the main hallway there at CIM at the Reception  
19 Center Central?

20 A. Certain inmates do; the general population doesn't.  
21 We will walk up to them, challenge them for a pass. If they  
22 don't have a pass they are out of bounds and we escort them back  
23 into the unit.

24 Q. On most -- well, were you on -- on May 3rd were you  
25 working the 8:a.m. to 4:00 o'clock daytime shift?

26 A. Yes. I was.

27 Q. During that particular shift on weekdays, are new  
28 inmates processed through the system on a daily basis?

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1 A. Yes, they are.

2 Q. Does that -- does that processing include a  
3 physical examination?

4 A. Yes, it does.

5 Q. Psychological examination?

6 A. Yes, it does.

7 Q. And various other paperwork being filled out and  
8 things of that nature?

9 A. Yes. Not all on the first day, but that's  
10 subsequent to it. It starts the first day though.

11 Q. Okay. But -- like on any given day "X" number of  
12 inmates will be going through and receiving their physical  
13 examination, for example?

14 A. Yes they will.

15 MR. NEGUS: I can't find one of the other drawings.  
16 I'd like to have marked as next in order which  
17 would be I think Exhibit 795.

18 THE CLERK: 755.

19 MR. NEGUS: 755. excuse me. a piece of butcher paper.

20 Q. And would request if you go to this butcher paper.  
21 which would be marked as 755, and make a rough sketch of the  
22 general outline of Reception Center Central, which would include  
23 the different halls where inmates are kept, the watch  
24 commander's office and the area where they are processed through  
25 the medical examination.

26 A. Want me to do that now?

27 Q. Yes, would you please.

28 A. With one of these?

1 Q. One of those markers.  
2 A. Well. begin with the --  
3 THE COURT: Why don't you just go ahead draw. it all in.  
4 After you get it drawn we can have it explained.  
5 THE WITNESS: Okay.  
6 (Witness complied.)  
7 That's about it.  
8 BY MR. NEGUS:  
9 Q. Okay. You can resume your seat.  
10 Just to compare with some of the other diagrams we  
11 have had drawn. if you continued on this corridor down another  
12 little spot there would be Birch Hall on the same side as Palm  
13 Hall; is that right?  
14 A. Yes.  
15 Q. Now. this general corridor here. is there a gate  
16 that's right about in here somewhere before you get to Palm  
17 Hall?  
18 A. Yes, there is.  
19 Q. And that's to prevent inmates from wandering freely  
20 up and down the corridor?  
21 A. Uh-huh.  
22 Q. Are inmates. after they get through with their  
23 medical examination. do they then go back out into that main  
24 corridor area there?  
25 A. Yes. they are.  
26 Q. And after a period of time then they will be  
27 processed by a person like yourself back to where -- whatever  
28 their housing unit is?

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1           A.     Yes. They are sent to the housing unit or directed  
2 to go there. Most of them don't know where it is first.

3           Q.     The Reception Center Central, is that the receiving  
4 facility for Southern California which has the highest security  
5 of the various facilities there?

6           A.     Yes, it does, it has the highest.

7           Q.     So, a person who's either known to you to be --  
8 deserve high security or who is essentially new into the system  
9 would be first processed through that particular facility; is  
10 that right?

11          A.     Yes, they would.

12          Q.     On -- Sometime in spring of 1983, do you recall a  
13 black inmate coming up to you with a chrono?

14          A.     Yes, I do.

15          Q.     And do you recall at this point in time the name of  
16 that black inmate?

17          A.     Just his general description.

18          Q.     What was the general description?

19          A.     He was tall. He was a little taller than I am.  
20 I'm five eight, so he had me beat by about three or four inches.  
21 And I noticed he was rather thin. His hair was about medium  
22 length Afro, but it was kind of matted down. And at that time I  
23 believe he was -- didn't have facial hair of any type.

24          Q.     You couldn't -- you couldn't identify that person  
25 if you had to?

26          A.     Vaguely, yes.

27          Q.     Did he appear to be consistent in appearance with  
28 Kevin Cooper?

0020988

1 A. Yes.

2 Q. And showing you Exhibit 666. a photo lineup of  
3 various officers. Is the officer with the name S. F. Mason, II.  
4 is that yourself?

5 A. Yes, it is.

6 Q. Showing you Exhibit 8, and directing your attention  
7 to the bottom portion of that document, that portion which is  
8 under the purple line. is that the kind of chrono that the  
9 inmate had?

10 A. Exactly the type. yes.

11 Q. When the inmate approached you had he had  
12 difficulty in getting a pair of tennis shoes?

13 MR. KOCHIS: Objection. That would call for speculation.

14 THE COURT: Sustained.

15 BY MR. NEGUS:

16 Q. Did he say that he had difficulty getting a pair of  
17 tennis shoes?

18 MR. KOCHIS: Same objection.

19 THE COURT: No. Overruled.

20 THE WITNESS: He didn't say. No. not to my knowledge.

21 BY MR. NEGUS:

22 Q. What was the conversation?

23 A. He came up with the chrono. There were myself and  
24 another officer in the hallway. The other officer did not get  
25 him his shoes, so he did come to me. but he didn't say that. he  
26 had merely -- myself. I went and got the shoes for him instead  
27 of the other officer.

28 Q. Where did you go and get the shoes?

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1 A. I escorted the inmate to Palm Hall where the gym  
2 shoes were dispensed from.

3 Q. Palm Hall is where -- is this hall down here on the  
4 far left of the diagram?

5 A. Yes, it is.

6 Q. Now when you got to Palm Hall the inmate did not  
7 actually go into Palm Hall with you?

8 A. No, he couldn't.

9 Q. Why is that?

10 A. It's a security housing unit and only inmates that  
11 either have a work assignment there or that are housed there are  
12 allowed inside. otherwise only staff personnel are allowed in.

13 Q. Okay. Did you yourself go into Palm Hall on that  
14 particular occasion?

15 A. Yes, I did.

16 Q. And did you come out with some tennis shoes?

17 A. Yes, I did.

18 Q. Do you remember what brand they were?

19 A. They were the standard issue Keds, hi-top black  
20 type tennis shoes.

21 Q. Were -- do you remember what size they were?

22 A. They were either 9's or 10's. I remember asking  
23 two sizes in case one size was out.

24 Q. And did -- did, in fact, the inmate give you the  
25 size 9 or 10?

26 A. Yes.

27 Q. But you don't remember which one it was that you  
28 brought out?

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1 A. No. I don't.

2 Q. The pair of tennis shoes that you brought out, were  
3 those brand new tennis shoes or were they used?

4 A. They were new.

5 Q. They were new?

6 A. Yes.

7 Q. Why do you say that?

8 A. They were -- I had brought them out in a box.

9 Q. Have you discussed your testimony with anybody from  
10 the prosecution prior to coming to court today?

11 A. No. I haven't.

12 Q. How about with any of the investigators at the  
13 California Institution For Men?

14 A. No, none of them have asked me anything about  
15 testimony.

16 Q. I see. Mr. Mason the -- on December 15th, 1984,  
17 were you approached by Teresa Cordua, an investigator, and Mr.  
18 Forbush, who is seated at counsel table, about this particular  
19 incident?

20 A. Yes, I was.

21 Q. At that point in time did you even remember it at  
22 first?

23 A. No. It was recalled to me. the date and the  
24 general description of the incident, and then I recalled it.  
25 yes.

26 Q. Do -- at that particular point in time was there --  
27 do you recall there being a problem with not having any new  
28 tennis shoes in Palm Hall?

0209991



1 A. No. I'm not aware of that either.

2 Q. Do you know why it is that you've changed the your  
3 mind between saying they were new versus used?

4 MR. KOCHIS: Objection.

5 THE COURT: Yes, if he has.

6 Reframe it, Mr. Negus.

7 BY MR. NEGUS:

8 Q. If it turns out on the tape recording that you  
9 said, "I do believe they were used because that would be all  
10 that they had issued at that time that they had on hand." do you  
11 know why you've changed your mind?

12 A. No. because like I say, they were issued in a box,  
13 so like I say I didn't know if they were new or used. I assumed  
14 they were new because they were in the box.

15 Q. Well, why did you -- why would you have assumed  
16 that they were used when you talked to Mr. Forbush before you  
17 knew anything about what he was coming for?

18 A. Well, at that particular time he asked me if they  
19 were new or used. At that time I really didn't know either. So  
20 like I say, they were issued in a box, I assumed they were new;  
21 but as far as being concrete about whether they were new or  
22 used, I really don't know.

23 Q. Did they keep used tennis shoes in boxes sometimes?

24 A. They can put them in them I guess.

25 Q. Did you go in and pick the shoes out yourself or  
26 were they handed to you?

27 A. They were handed to me.

28 Q. By whom?



## REDIRECT EXAMINATION

1

2 BY MR. NEGUS:

2

3 Q. Do you know how many different tennis shoes they  
4 had in Palm Hall at that point in time?

3

5 A. From what -- from my viewing when I walked up to  
6 the officer and asked him for them there were at least over a  
7 hundred pair. quite a few pair.

4

8 Q. Some of them used?  
9 A. Some were. yes.

5

10 Q. Some of those used ones in boxes?

6

11 A. Yes.

7

12 Q. Thank you.

8

13 THE COURT: Thank you, Mr. Mason.

9

14 MR. NEGUS: Gary Murray.

10

15 THE CLERK: Raise your right hand.

11

16

17 GARY MURRAY,

12

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

13

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

14

21 Would you state your full name for the record and spell your  
22 last name.

15

23 THE WITNESS: Gary Murray. M-u-r-r-a-y.

16

24 THE CLERK: Thank you.

17

25

## DIRECT EXAMINATION

26

27 BY MR. NEGUS:

27

28 Q. Mr. Murray. what's your occupation?

28

1 A. I'm a correctional officer.

2 Q. And do you have a particular assignment as a

3 correctional officer?

4 A. Yes, sir. investigator.

5 Q. And how long have you been an investigator?

6 A. Approximately three years.

7 Q. As an investigator did you become involved in the

8 investigation into the escape of Kevin Cooper from the

9 California Institution For Men?

10 A. Yes, I did.

11 Q. And at some point this time did you also assist

12 into the investigation of the Ryen homicides?

13 A. No, I didn't. Can you clarify as far as the

14 investigation into that?

15 Q. Well. did you also assist members of the San

16 Bernadino Sheriff's Department in their investigation of the

17 Ryen homicides in the Chino Hills on June the 4th and 5th, 1983?

18 A. Yes, I did.

19 Q. Did that specifically involve attempting to get

20 some tennis shoes?

21 A. Yes. it was.

22 Q. On June the 9th. did you go with a couple of

23 officers from the San Bernadino Sheriff's Department to R.C.

24 West?

25 A. Yes, I did.

26 Q. And was that for the purpose of obtaining tennis

27 shoes which had a diamond pattern on them?

28 A. I believe it was.

00229996

1 Q. Whom did you contact at R.C. West in order to  
2 attempt to get these tense tennis shoes?

3 A. I believe the person was Skip Arjo.

4 Q. Did you also -- are you also familiar with a  
5 correctional officer by the name of Al Hill?

6 A. Yes, sir.

7 Q. At the time that you were attempting to get the  
8 tennis shoes was Al Hill also present?

9 A. I believe Al Hill was at the gym at that time.

10 Q. Did Al Hill actually show up with some tennis  
11 shoes?

12 A. Yes, he did.

13 Q. And did both -- did he have two pair?

14 A. I believe he did.

15 Q. And did both those pair have a diamond pattern on  
16 them?

17 A. I believe they did.

18 Q. At some point in time on the 9th did Mr. Hill make  
19 a Xerox of the sole impression of those particular shoes?

20 A. Yes, he did.

21 Q. Showing you Exhibit 39 and 754, do those appear to  
22 be the Xeroxes that Mr. Hill made of the tennis shoes?

23 A. I don't know because I didn't see the Xerox copy  
24 when Mr. Hill came back.

25 Q. On June the 10th. 1983, did you go back to West to  
26 interview an inmate by the name of James Taylor?

27 A. Yes, sir.

28 Q. And was that at approximately 3:32 in the

1       afternoon?

2           A.     Yes, it was.

3           Q.     Did you tape record that particular interview?

4           A.     Yes. I did.

5           Q.     Did you also prepare a report of that particular

6       interview?

7           A.     Yes.

8           Q.     Was the report that had to do with Mr. Taylor just

9       two paragraphs long?

10          A.     I can't recall if it was two paragraphs long or

11       not.

12          Q.     Do you have that with you?

13          A.     I believe I do.

14          Q.     Could you look at then pages 3 and 4 of your

15       report.

16          A.     I don't believe I have my report with me.

17       MR. KOCHIS: Well, your Honor, I'd be objecting as to

18       relevance.

19       MR. NEGUS: It is impeaching Mr. Taylor.

20       THE COURT: You can refresh his memory. Whose report is

21       it?

22       MR. NEGUS: Mr. Murray's report. that I am going to show

23       him.

24       THE COURT: See if you can refresh his memory.

25       MR. NEGUS: Well, I just --

26       THE COURT: I will permit you to show it to him.

27       MR. NEGUS: Okay.

28       Q.     Showing you pages 1829 through 1832 of the



1 discovery. That appears to be a 4 page report by yourself; is  
2 that right?

3 A. Yes.

4 Q. And there is only two paragraphs that have to do  
5 with Mr. Taylor; is that correct?

6 A. Yes.

7 Q. All right. Now, the tape that you made of the  
8 conversation, did you have that transcribed immediately?

9 A. No, I didn't.

10 Q. What did you do with it?

11 A. It was placed in my desk drawer.

12 Q. And it was forgotten there until the end of  
13 November, 1983.

14 A. Yes, it was.

15 Q. And that tape was first transcribed on  
16 approximately December 3rd, 1983; is that right?

17 A. I believe it was December 2nd, '83.

18 Q. In the conversation that you had with Mr. Taylor,  
19 that was taped, he mentioned giving Mr Cooper some P.F. Flyer  
20 tennis shoes; is that correct?

21 A. Yes, it was.

22 Q. In your two page summary -- well, excuse me, the  
23 four pages which have the two paragraphs about Mr. Taylor in  
24 this, those were available on June 12th, 1983; is that right?  
25 June 20, 1983, excuse me. Showing you page 1829.

26 A. Yes, they were.

27 Q. So, that report was available prior to Mr. Taylor's  
28 testimony in the preliminary hearing in mid-November; is that

00209999

1 right?

2 A. Yes.

3 Q. But the transcribed tape wasn't available until  
4 after Mr. Taylor's testimony; is that right?

5 A. Yes.

6 Q. In fact, there is nothing in the report to even  
7 indicate that there is a tape; is that correct?

8 A. That's correct.

9 Q. In the short report, that was available prior to  
10 Mr. Taylor's testimony, there is no mention whatsoever of P.F.  
11 Flyers; is that correct?

12 A. That's correct.

13 Q. In the tape Mr. Taylor tells you that Mr. Cooper  
14 has some -- had some brown leather shoes when he arrived at  
15 West; is that correct?

16 A. I would have to see a copy of the taped interview.

17 Q. Taking to the witness stand Pages 2216 through 2227  
18 of the discovery, and specifically indicating a paragraph on  
19 page 2218 of the discovery.

20 It indicates there that Mr. Taylor indicated that  
21 Mr. Cooper had a pair of brown shoes when he arrived; is that  
22 right?

23 A. Yes.

24 Q. But you didn't put that in the short report that  
25 was available before Mr. Taylor testified at the preliminary  
26 hearing, correct?

27 A. That's correct.

28 Q. Did you -- did you make a copy of your report

021000

1 available to Mr. Taylor prior to his testimony at the  
2 preliminary hearing?

3 A. No. I didn't.

4 Q. Did you give Mr. Taylor a copy of the taped  
5 transcription?

6 A. No.

7 MR. NEGUS: That's all I have.  
8

9 CROSS EXAMINATION

10 BY MR. KOCHIS:

11 Q. Mr. Murray. when you interviewed Mr. Taylor and  
12 tape recorded it at CIM back in June, did Mr. Taylor also tell  
13 you that he gave Mr. Cooper a pair of Pro Ked tennis shoes?

14 A. That's correct.

15 Q. And that was while Mr. Taylor worked in the gym he  
16 met Mr. Cooper; is that correct?

17 A. That's correct.

18 Q. And that was after he gave Mr. Cooper the P.F.  
19 Flyers; is that correct?

20 A. That's correct.

21 MR. KOCHIS: Thank you. I have nothing further.

22 MR. NEGUS: Nothing further.

23 THE COURT: Thank you very much. sir.

24 MR. NEGUS: Al Hill.  
25

26 ALFRED HILL.

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

00210001

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

2 Would you state your full name.

3 THE WITNESS: My full name is Alfred Hill.

4 THE CLERK: Thank you.

5

6

DIRECT EXAMINATION

7 BY MR. NEGUS:

8 Q. Mr. Hill. what is your occupation?

9 A. I am a correctional officer. California Insitution  
10 for Men in Chino.

11 Q. In and May and June of 1983. what was your  
12 assignment?

13 A. Um. the recreational gym area at R.C. West.

14 Q. What did that assignment entail?

15 A. Well. I was in charge of the recreation for the  
16 institution.

17 Q. Did that mean that amongst other things you  
18 supervised the gym?

19 A. Yes. I did.

20 Q. In that particular capacity. did you know an inmate  
21 by the name of James Taylor?

22 A. Yes. I did.

23 Q. When had you first met Mr. Taylor?

24 A. If I recall correctly. '82. '81.

25 Q. And when you came in contact -- did you come n  
26 contact with Mr. Taylor in 1983 as well?

27 A. Yes. I did.

28 Q. Do you remember approximately when that was?

021002

1 A. Um. it was April. May before I -- right before the  
2 summer.

3 Q. At the time that you made contact with Mr. Taylor.  
4 was he -- had he just arrived at West as a result of  
5 disciplinary proceedings.

6 A. Yes, he did.

7 Q. When he arrived at West, did you immediately give  
8 him a job in the gym?

9 A. Yes, I did.

10 Q. Was that job that was very much coveted by other  
11 inmates?

12 A. I guess you could say that, yes.

13 Q. Did you do that because you were a friend of Mr.  
14 Taylor from his previous incarceration?

15 A. No. I didn't.

16 Q. Friendship have anything to do with it?

17 A. The fact that he had done the job before had to do  
18 with it.

19 Q. Did, at that time, the California Institution for  
20 Men -- did you become aware of the escape of Kevin Cooper from  
21 that institution?

22 A. Yes, I did.

23 Q. When did you become aware of it?

24 A. Um, while, if I'm correct, it was on a news  
25 broadcast while I was at work.

26 Q. At the time of the escape?

27 A. Oh, at the time of the escape?

28 Q. That's a question, sir. Was that at the time of

021003

1 the escape?

2 THE COURT: That's ambiguous. I believe. counsel.

3 MR. NEGUS: Try it again.

4 Q. Did you become aware. over the news. of Mr.  
5 Cooper's escape at the time that he first escaped from the  
6 institution?

7 THE COURT: Counsel. I don't think any cameras are  
8 trained on him at the time of the escape.

9 You mean shortly after that?

10 MR. NEGUS: Same day.

11 THE COURT: Same day. All right.

12 THE WITNESS: I can't recall correctly if it was the same  
13 day.

14 BY MR. NEGUS:

15 Q. Did you become aware of Mr. Cooper's escape from  
16 the institution after you became aware of the Ryen homicide?

17 A. Afterwards. yes.

18 Q. At the California Institution for Men, when  
19 somebody is accused of a crime, do people that work in the  
20 institution attempt to find inmates who may have known the  
21 individual accused of a crime to try and give information  
22 against that individual?

23 A. I am not an investigator.

24 MR. KOCHIS: Objection, calls for speculation on his  
25 part. and it is requires --

26 THE COURT: He can talk about his own experiences. so I  
27 will overrule it. I believe he answered. I don't --

28 THE WITNESS: I said, I don't work in the investigations

021004

1 office at the institution so as far as the procedure goes, no. I  
2 don't know. I was in recreation.

3 BY MR. NEGUS:

4 Q. Well. even in recreation. do you attempt to find  
5 inmates who will give information?

6 A. Not me. no.

7 Q. Did you come forward yourself and volunteer some  
8 information about this particular case?

9 A. Yes. I did.

10 Q. Did you claim that you had known Kevin Cooper on a  
11 previous incarceration?

12 MR. KOCHIS: Objection. irrelevant.

13 MR. NEGUS: I think it goes towards attitude and bias in  
14 the case.

15 THE COURT: All right. Overruled.

16 MR. KOCHIS: Well your, Honor he's not a witness we have  
17 called, so how would his attitude in particular about giving  
18 information about Mr. Cooper effect his bias?

19 THE COURT: Mr. Negus.

20 MR. NEGUS: Your Honor. last I heard in 1967 the evidence  
21 code did away with one having to vouch for a witness that one  
22 calls. The bias of all witnesses called defense or prosecution.  
23 the same rules apply.

24 THE COURT: I begin to wonder about the relevancy.  
25 counsel.

26 MR. NEGUS: Your Honor. I'm forced to call witnesses who  
27 are not necessarily friendly to my side or to Mr. Cooper that  
28 doesn't mean that I -- that in evaluating their testimony I --

002-10005

1 THE COURT: Counsel, that's not responsive to my concern  
2 at all

3 MR. NEGUS: His bias goes to --

4 THE COURT: Overruled. Goes ahead.

5 MR. NEGUS: Thank you.

6 THE COURT: What's your question?

7 BY MR. NEGUS:

8 Q. Did you, yourself, when you first heard about Mr.  
9 Cooper being connected with the Ryen crimes, volunteer false  
10 information about supposedly previous contacts you had with Mr.  
11 Cooper?

12 A. I said that I told them, my supervisors, that he  
13 reminded me of someone who I had known before. I tried to  
14 remember who the particular inmate was and gave the information  
15 on the inmate that I had in mind, yes.

16 Q. The supervisor you are talking about that is Skip  
17 Arjo?

18 A. Yes.

19 Q. Mr. Arjo at that point in time was working with the  
20 investigators?

21 A. I have no idea.

22 Q. Did you, in fact, after you gave that information  
23 to Mr. Arjo, did a deputy from the San Bernardino Sheriff's come  
24 out the same day and talk to you?

25 A. I don't know if it was the same day, but I did  
26 speak to some deputies, yes.

27 Q. Was one of those deputies named Harvey Walker?

28 A. I don't remember.

002-1006



1 Q. Do you remember the race of the two deputies you  
2 spoke to?

3 A. I do remember one of them was black. yes.

4 Q. The black individual that you spoke to, did you  
5 tell that black deputy that you knew Mr. Cooper well?

6 A. I told him that the inmate I was thinking of in my  
7 mind I knew very well.

8 Q. Did you tell him that was Mr. Cooper?

9 A. I did not mention anything about Cooper. I did not  
10 say Cooper at all.

11 Q. Did you tell that deputy that Wednesday night. at  
12 approximately 5:30. you were sitting down watching TV when you  
13 saw a suspect. Kevin Cooper's picture flash on the television  
14 and at once you recognized Mr. Cooper?

15 A. No. I didn't.

16 Q. Never said that to a deputy at all?

17 A. I didn't say that like that. no.

18 Q. Did you say those words?

19 A. I said that he looked like someone that I knew very  
20 well.

21 Q. Did you then tell the deputy that during the  
22 particular time that Kevin Cooper was at West you didn't ever  
23 see Kevin Cooper?

24 A. Did I tell the deputies that?

25 Q. Yeah.

26 A. I don't recall.

27 Q. Did you see Kevin Cooper while you were --

28 A. I was made to remember. yes.

021007

1 Q. When my client --  
2 A. Yes.  
3 Q. -- this Kevin Cooper --  
4 A. Yes.  
5 Q. -- was at R.C. West --  
6 A. Right.  
7 Q. -- did you see him?  
8 A. Yes, I did.  
9 Q. Did you tell the deputy that you didn't?  
10 A. I don't recall saying that I didn't see him, no.  
11 Q. Do you recall telling the deputy that you were on  
12 vacation?  
13 A. Yes, I do remember being on vacation.  
14 Q. Do you remember telling the deputy that you were on  
15 vacation?  
16 A. Yes.  
17 Q. During the time that Mr. Cooper was at West?  
18 A. Yes, I did.  
19 THE COURT: Sir, wait until he finishes his questions  
20 before you respond.  
21 THE WITNESS: Okay.  
22 BY MR. NEGUS:  
23 Q. After you -- well, during the same day that you  
24 were talking to the deputies from the Sheriff's Department, were  
25 you requested to get some tennis shoes?  
26 A. Yes, I was.  
27 Q. And were those tennis shoes that had a diamond  
28 shape pattern?

021008

1 A. I was told to bring a pattern of all the tennis  
2 shoes that we have.

3 Q. How many different pairs of -- different pairs of  
4 shoes did you bring?

5 A. I think it was three or four.

6 Q. There's -- how many different tennis shoes do you  
7 have out there at that time in the gym?

8 A. At the time we had -- I think we had three  
9 different brands at the time.

10 Q. P.F. Flyers, right?

11 A. P.F. Flyers, right. Pro Keds and Converse also.

12 Q. And Nike's?

13 A. Yes, we had some Nike's also, yes.

14 Q. Well, is it a fact that you only brought two pair  
15 of tennis shoes out there with you?

16 A. Two or three. I might have had three or four.

17 I know I had a lot of tennis shoes with me, some  
18 different sizes, some were the same types of shoes.

19 Q. Did you -- were you asked to take make a Xerox of  
20 the sole impression of those tennis shoes?

21 A. Yes, I was.

22 Q. Showing you Exhibit 39 and 754.

23 Do those appear to be Xeroxes of Xeroxes?

24 A. Yes.

25 Q. Of the Xeroxes that you made?

26 A. They appear to be Xeroxes, yes.

27 Q. Are those the same tennis shoes that you made a  
28 Xerox of?

0021009

1           A.     Are these right in front of me the same as I made a  
2     Xerox of?  
3           Q.     Yeah.  
4           A.     Yeah. these look like the Pro Keds and -- these  
5     look like -- look like the Pro Keds and it looks like the  
6     Converse All-Star.  
7           Q.     The only two that you made the Xerox?  
8           A.     I made a copy of those. There were more than two  
9     that I made.  
10          Q.     Did you give them all to the deputy?  
11          A.     Yes, I did.  
12          Q.     When you went out to get -- did you have to go back  
13     and get the tennis shoes from the gym?  
14          A.     Yes, I did.  
15          Q.     When you went back there was Mr. Taylor there?  
16          A.     I don't recall.  
17          Q.     Well. do you recall asking Mr. Taylor to get you  
18     the tennis shoes?  
19          A.     No. I didn't.  
20          Q.     Of the tense shoes that you brought, where did you  
21     get them from?  
22          A.     Out of the storage room.  
23          Q.     Is that as you are facing the offices there in the  
24     gym. would that be to your left or your right to the office?  
25          A.     It would be to your right.  
26          Q.     That was called "The Hot Room" then?  
27          A.     Yes, it was.  
28          Q.     In "The Hot Room". were there fewer varieties of

021010

1 tennis shoes than there were in the storeroom?

2 A. No. there weren't.

3 Q. How many different varieties of tennis shoes were

4 there in "The Hot Room"?

5 A. Four.

6 Q. The four that we mentioned?

7 A. Yes.

8 Q. "The Hot Room" is for tennis shoes that have not

9 yet been issued; is that right?

10 A. Yes. they are.

11 Q. New tennis shoes?

12 A. Yes.

13 Q. The storeroom would contain tennis shoes which are

14 in use at that point in time.

15 A. Yes.

16 Q. Do you always have the full range of new tennis

17 shoes that will equal the range of shoes in use?

18 A. Could you repeat that.

19 Q. Well. do you always. like in May, June of 1983. in

20 June of 1983. did you have new P.F. Flyers?

21 A. I think we did.

22 Q. New Nike's?

23 A. Yes. I think we did.

24 Q. New Converse?

25 A. I am not too sure about the Converse. They were

26 being phased out at the time.

27 Q. The Nike's and the P.F. Flyers did not have a

28 diamond pattern. correct?

1 A. Correct.

2 Q. The Xeroxes that you made. did you initial and sign  
3 them yourself?

4 A. I don't recall. No. I don't think I did.

5 Q. Afterwards, after this interview that you had with  
6 the Sheriffs from San Bernardino. did you talk to Mr. Taylor?

7 A. Yes. I did.

8 Q. Did you tell him what the deputies were interested  
9 in?

10 MR. KOCHIS: Objection. that calls for speculation on his  
11 part.

12 THE COURT: In the manner phrased, yes. Sustained.

13 BY MR. NEGUS:

14 Q. Did you tell your opinion as to what the deputies  
15 were interested in?

16 A. Yes. I did.

17 Q. And did you mention tennis shoes?

18 A. Yes. I did.

19 Q. The diamond shaped pattern?

20 A. Yes. I did.

21 Q. Did you know at that point in time why the deputies  
22 were interested in tennis shoes with the diamond shaped pattern?

23 A. I didn't know exactly. I knew it had something to  
24 do with the escape and shoe patterns. I didn't know where they  
25 wanted to compare them at or anything like that, no.

26 Q. Well. did you know that Mr. Cooper was being  
27 accused of the murders?

28 A. I know he was being sought at the time. yes.

1 Q. Is there a television there in the gym?  
2 A. Yes, there is.  
3 Q. And is that kept in the room where Mr. Taylor  
4 worked?  
5 A. Yes, it is.  
6 Q. That particular evening, did you and Mr. Taylor  
7 watch a news broadcast wherein Mr. Kottmeier, the gentleman with  
8 the beard here, and Sheriff Tidwell, formally accused Kevin  
9 Cooper of the murders?  
10 A. I watched it along with a number of inmates.  
11 Taylor was one of them.  
12 Q. And did you talk about the news broadcast with Mr.  
13 Taylor?  
14 A. Yes, I did.  
15 Q. At that point in time, did Mr. Taylor tell you that  
16 you had known Mr. Cooper when he played basketball on your  
17 basketball team?  
18 A. Not at point in time, no.  
19 Q. When did he tell you that?  
20 A. I think that conversation took place either the  
21 next day or later in the same day.  
22 Q. At any rate he told you that after you had talked  
23 to deputies from the San Bernardino; is that right?  
24 A. Yes.  
25 Q. Did you, that evening, after you saw the news  
26 broadcast with Mr. Kottmeier, and the Sheriff, did you discuss  
27 Mr. Cooper with Mr. Taylor?  
28 A. Yes, I did.

0021013

1 Q. Did you discuss with Mr. Cooper then the tennis  
2 shoes?

3 A. Possibility.

4 Q. At that point in time did Mr. Taylor tell you  
5 anything about having given tennis shoes to Kevin Cooper?

6 A. I can't recollect if it was at that point in time,  
7 no. I had a number of conversations with him.

8 Q. Did you describe to Mr. Taylor, during that  
9 conversation, that you had made Xeroxes of the prints of the  
10 tennis shoes?

11 A. I think so.

12 Q. Discuss with him. "Hey, this is heavy."

13 A. Yes.

14 THE COURT: Find a brake point. please.

15 MR. NEGUS: Fine.

16 THE COURT: Mr. Hill, ladies and gentlemen. I would like  
17 you back at 1:45 this afternoon instead of 1:30.

18 Please remember the admonition previously given to  
19 you. I would like counsel and everybody else in chambers  
20 promptly at 1:30. please.

21

22 (Noon recess taken.)

23

24

25

26

27

28

021014



1 SAN DIEGO. CALIFORNIA. MONDAY. JANUARY 31, 1985, 1:30 P.M.

2  
3 (Chambers conference reported.)

4 THE COURT: All right. We are in chambers now, the  
5 defendant and all counsel.

6 Counsel. before you start. perhaps, I don't know  
7 what your plan is. but perhaps before you start arguing the case  
8 would you answer a few factual questions for me, please.

9 MR. NEGUS: Yes.

10 THE COURT: Is the defendant willing to waive his  
11 presence? No. 1.

12 MR. NEGUS: Yes.

13 THE COURT: Is anybody living in either of the two  
14 houses?

15 MR. NEGUS: There is a caretaker living in at 2991. if  
16 I'm --

17 MR. KOTTMEIER: In one half of it.

18 MR. NEGUS: One half of it. Nobody is living in 2943.

19 THE COURT: Is the Ryen master bedroom and the rest of  
20 the house in the same structural condition?

21 MR. NEGUS: Yes.

22 THE COURT: Do you have any knowledge about the condition  
23 of the master bedroom paint, whether it's lighter, darker,  
24 whatever?

25 MR. NEGUS: Appears to be the same -- It was light white  
26 before, is the light right now; essentially the same.

27 THE COURT: Is it furnished or unfurnished?

28 MR. NEGUS: Unfurnished.

1 MR. KOTTMEIER: The Ryen house is unfurnished. There is  
2 furniture in the hideout house.

3 THE COURT: In the Lease house?

4 MR. KOCHIS: Yes.

5 THE COURT: All right. Now. tell me why we need the  
6 view.

7 MR. NEGUS: Okay. Well. as you indicated before. and my  
8 research supports. I think it's purely a matter of discretion on  
9 your part. and that's what all the cases and authorities that I  
10 found cited, so I have nothing --

11 THE COURT: I try not to be arbitrary, so tell me why you  
12 think you need it.

13 MR. NEGUS: I will. First off. in terms of -- let me  
14 just begin with why not. I mean, the reasons that have been  
15 articulated why not are the cost and the time involved.

16 First of all. in terms of time. it will take  
17 essentially one court day. And given will all the additional  
18 time that we've already spent on this particular case, I would  
19 submit that it's much -- that's a much more probative court day  
20 than many of the ones that we have had.

21 In terms of cost, my understanding is that the  
22 Marshal's office already has a bus, that it can be accomplished  
23 by rearranging schedules so that the marshal. the clerk will not  
24 have to even be paid any overtime in order to do it. So  
25 essentially the costs are the costs of feeding the jurors and  
26 the cost of the gasoline to and from. By my estimate. even if  
27 you spent 12 bucks or 15 bucks a piece on the jurors, that's  
28 going to be less than two hundred dollars. And considering the

021016

1 fact that we have already brought in flown in witnesses from  
2 Massachusetts, Virginia, Montana and a whole lot of them from  
3 Oakland, the cost of going up there is going to be less than any  
4 one of those particular -- those particular witnesses.

5 The reasons why we do need it, going to the other  
6 side, is that as I understand the prosecution's case, one of the  
7 major arguments that they have is proximity. They are -- they  
8 have a lot of evidence to try and argue proximity. My argument  
9 is that proximity needs to be -- in this particular case  
10 proximity, how close Mr. Cooper was to the Ryen crime scene  
11 needs to be evaluated in terms of terrain.

12 We have attempted through Sergeant Arthur, through  
13 some of the witnesses at the place, through Mr. Cooper, through  
14 a variety of witnesses, to give a verbal description or a  
15 photographic description of that terrain, but I believe that all  
16 the witnesses that have testified have agreed that the  
17 photographs do not adequately depict the nature of the terrain,  
18 the degree -- the degree to which the Ryen house is separated  
19 from the Lease house.

20 It has been matter of much debate in the testimony  
21 during Mr. Kottmeier's cross-examination of Mr. Cooper. He made  
22 it appear that anybody who was in the 2991 residence would  
23 certainly have seen the Ryen house.

24 There has been disputed testimony as to how much  
25 you can see from the point of view that Mr. Cooper was inside  
26 the Lease house, how much you can see of the surrounding area.  
27 That's been pointed out. And there's been -- there's sort of no  
28 way that that can be evaluated by either testimony or

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1 photographs.

2 I would need that just. for example, Marty Smith  
3 testified that she didn't notice the Ryen house but other people  
4 have testified that it -- that it stands right out. I forgot to  
5 bring them in here. but I have -- I have attempted at various  
6 times to take photographs at night from like Eucalyptus and  
7 Peyton, which would -- which would show what you can see going  
8 up the hill at night. I have been unable to successfully do it.  
9 You can get pictures where you can see the pinpoints of light on  
10 top of the hill, but what the actual naked human eye can see.  
11 it's been impossible for me to duplicate photographically.

12 Sergeant Arthur or some member of his department. I  
13 think it was Sergeant Arthur, attempted to take photographs at  
14 night indicating what the view is up from the Canyon Corral.  
15 Essentially he took bracketed. I would say, five different  
16 pictures, none of which adequately show anything except a slight  
17 line of light.

18 THE COURT: If I might interrupt briefly. I had kind of a  
19 separate area of concern and that is should we go to the scene  
20 and if we do go to the scene. is there any reasonable necessity  
21 for having the jurors out there at night, because that creates  
22 some special problems?

23 MR. NEGUS: I understand that. I would request that we  
24 go out there at night because that's -- There's two separate  
25 issues. There is the proximity issue, which to a certain extent  
26 can be evaluated during the daytime. There is also the lighting  
27 conditions issue. And that's the other issue that I think is  
28 important.

1 Linda Edwards's testified that the house is such  
2 that its lighting conditions. you have to see it sort of going  
3 up the hill. Other witnesses have testified to the contrary.

4 Then we also have the issue of Josh's ability --

5 THE COURT: You mean the lighting condition of the Ryen  
6 home?

7 MR. NEGUS: The lighting conditions of the Ryen home.

8 Likewise. I have some pictures out there. They are  
9 just the contact sheet, but they are the ones that I took that  
10 were inside the Ryen house, where I had the camera loaded, and  
11 again you can't duplicate the conditions that -- in that house  
12 photographically. I mean, I had bracketed, I took various views  
13 what you can see is that there is light coming into the room  
14 from the outside, but you can't see the degree and intensity of  
15 that light. You can see that there's lights off in the  
16 distance, you can see that the spa area is brightly lit up, but  
17 that's about all.

18 THE COURT: What are you talking now? What you can see  
19 looking out the windows from inside the Ryen house?

20 MR. NEGUS: Yeah.

21 THE COURT: By photographs?

22 MR. NEGUS: Right. What photographs will depict. I  
23 mean, I can go get you the little contacts.

24 THE COURT: Wouldn't a daytime view out the windows  
25 suffice?

26 MR. NEGUS: No, because the -- the problem I have with  
27 that is that it's -- in terms of Josh's testimony, it's  
28 important to be able to see exactly how much you can see inside

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1 the house with the barn light and the two floodlights on.

2 THE COURT: I can't see that at all. There is simply no  
3 dispute as to what Josh could see.

4 MR. NEGUS: I took it that Mr. Arthur --

5 THE COURT: No definition or need for testing of what  
6 that young boy could see in the middle of the night.

7 MR. NEGUS: Or what anybody could see, for that matter.  
8 It's just there is -- there's -- the degree to which the barn  
9 lights and the floodlights illuminate the interior of the house.  
10 Mr. Kottmeier tried to take television pictures, they didn't  
11 show up. I tried to take still photographs, didn't show up. I  
12 don't remember whether Billy tried to take still photographs,  
13 but I haven't seen any, so I presume he didn't. Anyway, you  
14 can't get it by photographs.

15 In addition. I'm going to have -- another reason  
16 for visiting the scene -- this doesn't necessarily have to do  
17 with night versus day but just to visit the scene -- there will  
18 be testimony from the defense experts that there are. in  
19 Jessica's nightgown. burrs on the inside up about three inches  
20 from the hem. certain kinds of burrs which it would be unlikely  
21 that they would have got there by either being carried in by an  
22 assailant or by -- by having been picked up off the -- off the  
23 rug in the Ryen master bedroom.

24 There's also --

25 THE COURT: That's just on Jessica's night clothes?

26 MR. NEGUS: Just on Jessica's nightclothes.

27 There was also in her body bag a beetle of the type  
28 that at least one expert has told me that -- and I hope -- I

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1 haven't got in touch with him to get him down here -- but one  
2 expert has looked at the beetle. identified it. indicated it's  
3 only a night beetle and it never gets inside of houses on its  
4 own locomotion. indicating that it was somehow brought into the  
5 house.

6 So there is -- anyway there is inferences that can  
7 be made that Jessica was outside the house during the attack  
8 because of the nature of the burrs and the nature of the  
9 beetles. At least that's one of the most likely inferences that  
10 can be drawn.

11 It's necessary then to visit the scene in order to  
12 evaluate. you know, where the vegetation around the scene is  
13 that you can pick up that kind of stuff.

14 THE COURT: What time do the outside lights of the Ryen  
15 home come on in the evening?

16 MR. NEGUS: The floodlights on the outside are turned off  
17 and on by a switch. so whenever they are turned on. The barn  
18 light. as I understand it. is activated by darkness. so it would  
19 come on at approximately the hour of dusk.

20 MR. ARTHUR: That's correct.

21 THE COURT: The house works the same as the barn?

22 MR. ARTHUR: No. sir. You can manually turn those lights  
23 on. The barn is on a photocell and comes on at dark.

24 MR. NEGUS: In the photos that the sheriff's people took  
25 though the floodlights were on when Mr. Duffy took the  
26 photographs. Whether they are on -- how they got on or how long  
27 they had been on. don't know.

28 People have testified -- there is conflict -- I

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1 mean, we haven't had it really. but there was conflicting  
2 statements given to the police as to whether or not those lights  
3 were on or not on the night of the attack. They customarily are  
4 on.

5 THE COURT: It doesn't get dark now sufficient to  
6 activate the lights. does anybody have any idea. in my guess  
7 would be no later than 6:00. Oh, it not even dark at 6:00.  
8 It's staying light till later than that, isn't it?

9 MR. NEGUS: Not when I was up -- I mean. we went out -- I  
10 left the complex last week --

11 THE COURT: It was getting dark at 4:30 just a few weeks  
12 back.

13 MR. NEGUS: Well. I left the complex between 5:00 and  
14 5:30 last Friday and it was dark. I mean. the Ontario courthouse  
15 complex.

16 THE COURT: Okay. Are you concluded?

17 MR. NEGUS: Yep.

18 THE COURT: Counsel.

19 MR. KOCHIS: We have no objection to a view.

20 THE COURT: How about night versus day?

21 MR. KOCHIS: I think if we're going to go up to see the  
22 things that are going to be seen during the day. they are going  
23 to have to see the things that are seen at night.

24 THE COURT: How would you do it at night?

25 MR. KOCHIS: Well, one of the issues. your Honor. --

26 THE COURT: Going to have the jury wandering throughout  
27 the house at night?

28 MR. KOCHIS: It's going to be a little more complicated



1     than that because one of our positions is going to be with the  
2     credibility or lack of credibility of Mr. Cooper not being able  
3     to see the Ryen home as he approached the hill and the Lease  
4     house at night. At night there's no way you can miss it. the  
5     Ryen home, as you go up that hill to the Lease house. We would  
6     like to have the jurors take that route if we go to the scene at  
7     night.

8             MR. NEGUS: I think you can probably do that from the  
9     driveway where he was --

10            MR. KOCHIS: No. It's a different view as you follow the  
11     fence that Mr. Cooper claimed he followed up to the Lease home.

12            MR. NEGUS: Well. we can find one spot along the fence  
13     rather than have the jurors tromping over the underbrush.

14            THE COURT: Is the prosecution desirous of the scene  
15     view?

16            MR. KOCHIS: We are not demanding that we go. There are  
17     certain things that we expressed our concern about initially in  
18     that the foliage has changed. It's a different time of year.  
19     I'm not sure exactly if the foliage in the area between the two  
20     homes is the same. The carpet and the paint has been modified.  
21     So the scenes are not the same.

22            THE COURT: Well. I have many more objections to it than  
23     Mr. Negus mentioned.

24            MR. KOCHIS: And I might add, we had, as is somewhat  
25     obvious to the Court, we had the area photographed from every  
26     possible location so we wouldn't have to put the Court through  
27     this.

28            MR. NEGUS: But the problem is that witnesses have all

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1 testified that have been asked about it that the photographs  
2 don't adequately depict what it's like. And I think the jurors,  
3 who have seen all the photographers. I mean, their comment, I  
4 don't know what what weight they are entitled to, they have to  
5 be entitled to some weight, they obviously don't have a clear  
6 picture.

7 I know I studied the photographs for five months  
8 prior to going to the Lease house and didn't have an adequate  
9 idea what it was like until I actually got up there.

10 Then I haven't been up to the Ryen house until  
11 awhile back, last December. and even then I learned a  
12 considerable amount more that I thought was significant. It was  
13 only after that that I actually asked to visit -- view the  
14 scene.

15 THE COURT: If we went there you would have to follow a  
16 certain procedure. If we went there the law requires me to  
17 designate some person to show the premises. The defendant not  
18 being there particularly I wouldn't want to get into any verbal  
19 testimony at all.

20 I'm telling you these things if we do go, and I  
21 haven't yet decided. But if we did, I would suggest that we get  
22 two small floor plans, diagrams, to circulate and pass to each  
23 individual juror so that they -- and have each of the rooms of  
24 the various two houses marked. Work amongst yourselves to draw  
25 a route whereby the jurors can be walked up the hill, or  
26 whatever, in a path. And then I would have to designate  
27 somebody, and I would suggest it probably be Sergeant Arthur, to  
28 be our guide in some manner. He would have to take a separate

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1 oath as well as the bailiff who would be in charge of the  
2 jurors.

3           You can't take them on the the sheriff's bus.  
4 That's just impractical. That buse is like the buses that we  
5 have at home. and I've used a scene bus when we used to have our  
6 own superior court bus. I'm familiar with that kind of bus. It  
7 rides like a rock. They hall prisoners in it. It does not have  
8 restroom facilities. And with jurors. and some of these jurors  
9 are not youngsters. we would have to have a different bus. That  
10 is of no great consequence. I've already checked on that. and  
11 it costs slightly less than \$300 for a bus and driver with the  
12 restroom facilities. That's no problem.

13           We would have to likewise feed the jurors. And  
14 while I'm not given, as you may know to spending money  
15 unnecessarily. that's not a great consideration as well. except  
16 I will have some logistical problems.

17           MR. NEGUS: I would suggest there is a restaurant in the  
18 Chino area which is quite close which has facilities for having  
19 jurors eating in separate rooms even.

20           THE COURT: Canyon Corral?

21           MR. NEGUS: Not a lot of room in the Canyon Corral. The  
22 Centro Basco has separate room.

23           THE COURT: I'm familiar with that. That's taking them  
24 on into Chino though. I'm not sure how we would get to the  
25 scene in this case.

26           MR. NEGUS: You could probably do it in Corona.

27           THE COURT: Do you go through Chino and go south again?

28           MR. NEGUS: The easiest way to get there is to go up 15.

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1 take the Corona turn off, take the 91 towards Orange County, get  
2 off at 71. drive directly up 71.

3 THE COURT: Which way are you going at that point?

4 MR. NEGUS: You are going north. so you are coming from  
5 the south. You get to -- we could probably all rendezvous at  
6 the -- there's a shopping center right were Mr. Cooper testified  
7 that he caught a ride at the corner of Eucalyptus. Pipeline and  
8 71. We could all rendezvous there. drive down Eucalyptus to  
9 Peyton, turn right on Peyton, up English Road on the hill. On  
10 the bus come back down. take them up to the Centro Basco in  
11 Chino. They have separate facilities where the jurors won't  
12 even touch the public. Eat at the Centro Basco. Bring them  
13 back down there for the nighttime viewing. Go directly back  
14 down 71. 15. back to San Diego. And it takes --

15 How long did it take us when we went up there, two  
16 hours? Probably take a little longer on the bus.

17 MR. ARTHUR: About two-and-a-half hours on the bus. I  
18 would say.

19 THE COURT: I'm sorry. how many?

20 MR. ARTHUR: About two-and-a-half hours on the bus.

21 THE COURT: That's what it would take I'm sure.

22 Any comment, Mr. Kottmeier?

23 MR. KOTTMEIER: No. It's a very difficult decision, I  
24 know, for not only the Court but also for the attorneys because  
25 you're not really sure how a juror is going to look. whether  
26 they are looking at the right direction, whether they have  
27 shifted their emphasis, and it is very difficult because you  
28 can't hold their head in place and say. "Now. you we want to you

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1 to look directly this direction."

2 MR. NEGUS: I understand the problems. And until I was  
3 up there it wasn't something I intended to do, but I just feel  
4 that there is no way you can get a feel for it and understand  
5 the different testimony unless you're there. I certainly can't.

6 THE COURT: You know, this is, as I contemplated this for  
7 a long time, this case is of such a magnitude to where I felt  
8 that if both of of you wanted it, really, I would probably go  
9 ahead and do it. But I can really think of more reasons for  
10 denial than I can for giving it. We indeed have abundant  
11 photographs. We have diagrams coming out you're ears. We have  
12 verbal descriptions from the many, many witnesses. The  
13 circumstances have changed considerably. It's going to cause  
14 some confusion in the juror's mind. We have different furniture  
15 than we had before. The lighting, moon, time, season, state of  
16 alertness between the young Josh and the jurors. I have to  
17 instruct the jurors to disregard changed conditions, but I don't  
18 know what they are and I can't specify.

19 MR. NEGUS: Well, we can -- we've already had testimony  
20 as to changed conditions in the Lease house. I have -- I'm  
21 bringing in on Wednesday the man who remodeled the Ryen house to  
22 specify those changed particular conditions. The hillside is  
23 the same, and what plants are there. All those things are  
24 easily demonstrable changes. The furniture, the furniture  
25 doesn't make any difference. In the lighting we experimented I  
26 think with that.

27 THE COURT: I would think that furniture could well make  
28 a difference at night.

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1 MR. NEGUS: In this particular situation it apparently  
2 didn't because of just the way the furniture was placed in the  
3 master bedroom. so it doesn't really make a difference with  
4 lighting. I don't know.

5 THE COURT: As far as the scene. that I mentioned with  
6 the individual diagrams for jurors to hold with the room marked  
7 and the pathway. and then after they are led through a  
8 particular premise to then let them meander, so to speak. by  
9 themselves. to retrace their steps if they want and look at  
10 their leisure for a few minutes before we move on. You would  
11 almost have to do it that way.

12 Does that sound all right?

13 MR. NEGUS: I have no problem with that.

14 THE COURT: Mr. Kochis? Anybody?

15 MR. KOTTMEIER: The only potential problem. your Honor,  
16 with the meandering portions, some juror may see something and  
17 then he is prevented from communicating with his fellow jurors  
18 of. "Hey, come over here, I want to show you this." and you run  
19 into a situation of where a juror may say in the jury room,  
20 "Well, I saw this when I was meandering by myself and I know  
21 none of you other people saw it because you weren't in that  
22 location."

23 THE COURT: Don't you have the same problem when they are  
24 all together? They don't all see out of the same pair of eyes,  
25 don't all see the same thing.

26 MR. KOTTMEIER: That was my concern that I just expressed  
27 to you earlier.

28 THE COURT: I don't know how you can overcome that.

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1 MR. KOTTMEIER: I don't either.

2 THE COURT: They are indeed receiving evidence outside  
3 the courtroom when you take them to the scene. They can  
4 consider that in making their deliberations. I don't know how  
5 you can handle that.

6 Anything else?

7 MR. NEGUS: No. just I have no objection to Billy being  
8 the one that takes us through.

9 THE COURT: I would think we can do this -- I don't want  
10 to hold up the jurors any more. I would think that -- We will  
11 take the waiver from the defendant. I would think that I would  
12 need one court reporter anyhow. I don't see taking any evidence  
13 and, hopefully, we'd never have to use it. but if something  
14 happened to where anything at all was said, I would want the  
15 reporter to take it down. And I would want the defendant, Mr.  
16 Cooper, to permit me to do everything there without him that I  
17 could do in his presence with the attorneys protecting each  
18 other.

19 MR. NEGUS: That's no problem.

20 THE COURT: Things come up sometimes and you have to put  
21 something on the record to protect yourself perhaps. Any  
22 problem with that?

23 MR. NEGUS: No.

24 THE COURT: All right. We will be --

25 MR. NEGUS: I would suggest Thursday if that's agreeable  
26 with the Court.

27 THE COURT: I will have to inquire with the jurors. And  
28 I also have to -- we will have to start getting hot on the

1 reservations and transportation, all the other things.

2 MR. NEGUS: My understanding from the bailiff is that it  
3 can be arranged by Thursday if we made the decision today. I  
4 didn't want to tell you about this before you made your  
5 decision, but there would be a hiatus on that particular day as  
6 far as evidence is concerned anyway.

7 THE COURT: Well, now, wait a minute. Maybe we will go  
8 on Wednesday.

9 MR. NEGUS: Okay. then. That's fine.

10 THE COURT: If we want to get there at, what time, 5:00  
11 o'clock?

12 MR. NEGUS: I would suggest we be there at 3:00 o'clock.  
13 That way we can see both places in the daytime, be at the corner  
14 of -- maybe even -- somewhere between 2:30 and 3:00 on -- at the  
15 corner of Pipeline. Eucalyptus and 71.

16 THE COURT: You can't -- is it really dark at 6:00  
17 o'clock.

18 MR. NEGUS: Yes, trust me it was dark.

19 THE COURT: If it's dark at 6:00 o'clock and we get there  
20 at 3:00. that gives us three hours before it gets dark. Then  
21 you've got to allow another hour after it gets dark.

22 MR. KOCHIS: What he is suggesting, we look at both homes  
23 in the area in the light; let the jurors have dinner; by the  
24 time dinner is over. go back.

25 MR. NEGUS: They have dinner at 5:00. We get back there  
26 at 6:30. It will be dark. As soon as they have their view in  
27 the evening bring them back home. Probably have them back here  
28 by 10:00.

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1 THE COURT: So leave here 12:30 or 1:00?

2 MR. NEGUS: Right. You know. the Court and counsel don't  
3 even have to be here when the jury gets on the bus. I don't  
4 think. We can just meet them up there. That's what I was  
5 suggesting. we do it on Thursday, my hiatus day. Doesn't  
6 matter. I have plane reservations for a bunch of people from  
7 from Oakland on Wednesday, but we can change those. I'm going  
8 to run out of witnesses on Wednesday. I have one witness coming  
9 in from India who won't be here till money I just found out, so  
10 I would have a hiatus that day anyway. Thursday.

11 THE COURT: That will be your last?

12 MR. NEGUS: Last witness will be on Monday. There may be  
13 a half an hour witness --

14 THE COURT: Perhaps --

15 MR. KOTTMEIER: There's one other suggestion or  
16 consideration that maybe we can work on that would help a little  
17 bit, and that is there are some things that we know have really  
18 been changed from before. and maybe we could draw up little  
19 labels to attach. you know, a sign or something that points to  
20 this, says, "This is different than it was at that time."

21 MR. NEGUS: Fine.

22 THE COURT: I think that you at least ought to draw up a  
23 list that I could verbally tell hem before we go. So. counsel.  
24 work on the two diagrams, please. and a list of things that you  
25 know for sure are changed then so that we can hand out the  
26 diagrams and tell them -- I can't hardly see you going around  
27 pasting labels on bushes and things like that.

28 MR. KOTTMEIER: No no as an illustration. for example. in

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1 the Lang bedroom bathroom they have put in a security system  
2 that has caused strings to be cirsscressed over the windows now.  
3 Those strings weren't there. The screen was, but not the  
4 strings. And they have things like that in other portions of  
5 the house.

6 THE COURT: I think it would be sufficient if we simply  
7 told them verbally before we left. So try and make that up  
8 ahead of time as well as the diagram. and try and do that before  
9 Wednesday so that we can take a look at it and agree upon all  
10 these many things before we even go because I don't want there  
11 to be a word on the record if at all possible when we go out  
12 there.

13 MR. NEGUS: And I will have Mr. Johnson as a witness  
14 coming in Wednesday, the man that remodeled the Ryen house and  
15 so he can testify as to what he did. I mean. I had another  
16 reason for bringing him in but as long as he's here --

17 THE COURT: You are not going to have any witnesses on  
18 Wednesday?

19 MR. NEGUS: No. I will have witnesses -- I will have  
20 witnesses all day Wednesday.

21 THE COURT: Okay. On Thursday?

22 MR. NEGUS: Thursday I was going to -- I would have had a  
23 hiatus anyway because I will run out of my witnesses on  
24 Wednesday.

25 THE COURT: So we will just have the jurors come in at  
26 noon, is that --

27 MR. NEGUS: That's my suggestion.

28 THE COURT: Why don't I arrange the bus at 1:00 o'clock?

1 MR. NEGUS: We can --

2 THE COURT: You think that's too late?

3 MR. NEGUS: I think 12:30 would be better or 12:00  
4 because we have a number of things we want them to see in the  
5 daylight, and it starts getting dark around 5:00. And if  
6 there's any problem with the bus driver getting them up there.  
7 it's probably going to be a total of three hours really between  
8 the time they put everybody in the bus. the time we actually  
9 pull people out of the bus and they start looking at things.

10 MR. NEGUS: I would think that 12:30 or quarter to 1:00  
11 because if you leave at 12:30 then you get them there at 1:00 --  
12 I mean there at 3:00.

13 MR. KOCHIS: And we'd like to meet them at 3:00.

14 THE COURT: It might be interesting for them to go to the  
15 Centro Basco --

16 Any objection to those premises?

17 MR. KOTTMEIER: No.

18 THE COURT: -- if we can get reservations there. I find  
19 it delightful every time I go. Well, all right, let's go --  
20 let's go back to work outside.

21 MR. NEGUS: Do you want to take a waiver from Mr. Cooper?

22 THE COURT: All right. Let's do that now.

23 Are you ready to? Go ahead.

24 MR. NEGUS: Mr. Cooper, you understand that you have a  
25 right to be personally present when the jury views the scene.  
26 but we previously discussed this at the time that I first made  
27 the motion; do you agree to waive your right to be personally  
28 present at the scene when the jury goes to visit the Ryen crime

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1 crime?

2 THE DEFENDANT: Yes. I do.

3 MR. NEGUS: Do you also agree if that if it becomes  
4 necessary to put something on the record, as long as I'm there  
5 when the Judge is there doing it, that you not be personally  
6 present as well?

7 THE DEFENDANT: Yes. sir.

8 MR. NEGUS: You understand that could conceivably be a  
9 limited waiver of your right to confront witnesses, because  
10 there may be somebody saying something about the scene on the  
11 record and you would therefore be giving up your right of  
12 confrontation as to that limited thing; do you agree to that  
13 that?

14 THE DEFENDANT: Yes.

15 THE COURT: For instance, I could see --

16 MR. NEGUS: Excuse me. Mr. Kochis pointed out to me that  
17 I just said the Ryen house. What I meant -- what I meant by  
18 that was the whole crime scene including 2991 English Road, the  
19 Lease residence, the bus trip up there from the corner of  
20 Eucalyptus and Pipeline and the bus trip -- bus up -- up English  
21 Road to both the Ryen house and the Lease house.

22 Do you agree to that?

23 THE DEFENDANT: Yes.

24 THE COURT: For instance, I can see that possibly a juror  
25 may have something burning in their mind they want to give us a  
26 note which you, both counsel and the Court. might feel it  
27 entirely appropriate to respond to.

28 If that happened, Mr. Cooper, may we go ahead and

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1 respond and have it pointed out to them or answered in some  
2 manner the same as if you were there?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you join in the waiver?

5 MR. NEGUS: I do.

6 THE COURT: I will accept the waiver then. Okay. Let's  
7 go back in open court. And at the end of the day I will inquire  
8 from the jurors if they can all be ready to go on Thursday.

9 MR. NEGUS: Just to let you know, we have two witnesses  
10 who were sick, but Mr. Woods is here on his way.

11 MR. ARTHUR: He should be here.

12 MR. NEGUS: So we have three witnesses beyond Mr. Hill  
13 this afternoon, I believe, plus we have a stipulation that a  
14 portion of the motion testimony can be read. and I guess I'm  
15 going to be the one that reads them. That should take five or  
16 ten minutes. That should take us most of the rest of the  
17 afternoon, but we do that have that stipulation as well.

18 THE COURT: All right.

19 (Chambers conference concluded.)

20

21 (The following proceedings were held in  
22 open court in the presence of the jury:)

23 THE COURT: All right. Everybody is present.

24 Please continue, counsel.

25 MR. NEGUS: Actually. I think I was finished.

26

27 ALFRED HILL.

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

00210355

1 previously duly sworn, resumed the stand and testified further  
2 as follows:

3

4

CROSS EXAMINATION

5

BY MR. KOCHIS:

6

Q. Mr. Hill, you mentioned that you saw Mr. Cooper at

7

CIM. Would that have been in the gym at West?

8

A. Yes, it would have.

9

Q. And would that have been playing basketball, do you

10 recall?

11

A. Yes.

12

Q. Are the inmates that play on the basketball team,

13

were they, back at that time, given tennis shoes to play

14

basketball?

15

A. Yes, they were.

16

Q. Would that have included the Pro Ked tennis shoes.

17

A. No. We gave them Converse. But at that time we

18

had run out of Converse and we were using Pro Keds, too.

19

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

20

MR. NEGUS: Nothing further.

21

THE COURT: Thank you very much, sir.

22

Sorry to have you wait through your lunch period

23

for just brief testimony. Thank you.

24

MR. NEGUS: Shelby Gaul.

25

26

SHELBY GAUL.

27

called as a witness on behalf of the Defendant, having been duly

28

sworn, testified as follows:

0021036

1 THE CLERK: Thank you. Would you state your full name  
2 for the record and spell your last name.

3 THE WITNESS: Shelby Gaul. G-a-u-l.  
4

5 DIRECT EXAMINATION

6 BY MR. NEGUS:

7 Q. Mr. Gaul. you are still a deputy Sheriff employed  
8 by the County of San Bernardino.

9 A. That's correct.

10 Q. On June 5th. 1983. did you go to 2943 English Road  
11 in the Chino Hills?

12 A. Yes I did.

13 Q. What was your purpose for going up there?

14 A. I was called out to assist Detective Danna, the new  
15 detective from the West End, at the scene of the homicide.

16 Q. Did you actually enter the residence?

17 A. Yes. I did.

18 Q. And where did you go inside the residence?

19 A. I entered through the back porch area, which is off  
20 the master bedroom. went through the master bedroom through the  
21 hallway to the living room, and back out the same way that I had  
22 entered.

23 Q. What was your purpose of going through the house  
24 there?

25 A. To check out the crime scene.

26 Q. On the chart behind you, could you put -- on  
27 Exhibit 229, could you put your name in spot 77 there.

28 A. 77?

021037

1 Q. Yes.  
2 A. (Witness complied.)  
3 Q. What time was it that you entered the master  
4 bedroom? You are going to be up there for a few minutes.  
5 A. It was after dark.  
6 Q. Were the bodies of the victims still in place?  
7 A. No, they weren't.  
8 Q. Okay. All of them had gone?  
9 A. That's correct.  
10 Q. Could you put "6-5" in master bedroom after 9:00  
11 p.m.  
12 A. Right here.  
13 Q. Yes.  
14 A. (Witness complied.)  
15 Q. And then you also went in the rest of the house at  
16 the same time.  
17 A. Yes.  
18 Q. Could you put then a check mark after the rest of  
19 the house there.  
20 A. (Witness complied.)  
21 Q. Was that the first time that you had been on the  
22 patio outside the master bedroom?  
23 A. That's was the second time.  
24 Q. When was the first time?  
25 A. The first time was upon arrival at the scene.  
26 Q. What time was that?  
27 A. Approximately 3:30.  
28 Q. Could you put "6-5" and "1530" for patio outside



1 master bedroom.

2 A. (Witness complied.)

3 Q. When you went in the house -- you can sit down

4 again. When you went in the house. did anybody go with you?

5 A. No.

6 O. Did you see anybody inside when you were walking

7 through?

8 A. Yes. I did.

9 Q. Who was that?

10 A. There were a couple of criminalists inside I guess

11 it is the bathroom off the master bedroom. I also recall seeing

12 Detective Mike Hall from homicide.

13 O. Anybody else?

14 A. That is where I recall I was watching where I was

15 going.

16 Q. Other people. Were there other people there as

17 well though?

18 A. There were. yes.

19 O. You just don't remember who they were.

20 A. No. I don't.

21 Q. Are you familiar with Gary Woods?

22 A. I have heard the name. I don't exactly place his

23 face, no.

24 Q. Did anybody from homicide ever come and ask you if

25 you were in the Ryen master bedroom?

26 A. No.

27 O. Did anybody from homicide ever ask you to take

28 pictures of your shoes?

00210399

2 0. When was that?

4 Q. As late as after the preliminary hearing?

6 Q. Did you testify at the preliminary hearing?

8 Q. And did you testify that you had been inside the  
9 Ryen house during that preliminary hearing.

11 Q. That was the first time that anybody asked you  
12 about it?

14 MR. NEGUS: Thank you. That's all I have.

16 CROSS EXAMINATION

18 O. Mr. Gaul. on the chart. after the -- or next to the  
19 6-5 in the Ryen master bedroom. could you indicate in military  
20 time the time you entered there. I neglected -- you neglected  
21 to put that.

23 O. You. I believe in response to Mr. Negus questions.  
24 somewhere around 9:00 p.m. after the victims were removed.

25           A.     I said it was dark. I don't know what time they  
26     were moved out. It was after the victims were gone.

28 Is that a photograph of the sole of the bottom of

1 the shoes that you wore when you entered the Ryen home on that  
2 day?

3 A. Yes, it is.

4 MR. KOCHIS: Thank you. I have nothing further.

5 MR. NEGUS: Nothing else.

6 THE COURT: Thank you very much.

7 MR. NEGUS: Richard Peterson.

8

9

RICHARD E. PETERSON.

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

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

13 Would you state your full name for the record and  
14 spell your last name.

15 THE WITNESS: Richard E. Peterson. P-e-t-e-r-s-o-n.

16 THE CLERK: Thank you.

17

18

DIRECT EXAMINATION

19 BY MR. NEGUS:

20 Q. Mr. Peterson. what's your occupation?

21 A. I am a deputy Sheriff for the County of San  
22 Bernardino.

23 Q. And what's your current rank?

24 A. Detective.

25 Q. And to which division are you assigned?

26 A. Specialized detective division. homicide detail.

27 Q. Were you part of the homicide detail in June of  
28 1983?

021041

1 A. Yes. sir.  
2 Q. Did you ever go to the Ryen crime scene?  
3 A. No. sir.  
4 Q. Did you, on June the 16th of 1983. go to the  
5 Department of Motor Vehicles?  
6 A. Yes. sir. I did.  
7 Q. And at the Department of Motor Vehicles, did you  
8 attempt to obtain some license plates?  
9 A. Yes. sir.  
10 Q. And was that license plates that were registered to  
11 a vehicle, a pickup truck registered to Franklin and Peggy Ryen?  
12 A. Yes. sir.  
13 Q. And was that -- did that have the license plate No.  
14 RYEN. R-y-e-n. 4?  
15 A. Yes.  
16 Q. How many different sets of license plates did you  
17 get from the Department of Motor Vehicles?  
18 A. One.  
19 Q. What color was that?  
20 A. It was -- that was the -- had blue letters on white  
21 background.  
22 Q. The reflectorized plates?  
23 A. Yes.  
24 Q. At some point in time. after that date, did you  
25 obtain another set of license plates from the Department of  
26 Motor Vehicles?  
27 A. I did not personally. no.  
28 Q. Have you seen another set?

021042

1 A. No.

2 Q. Do you know who did?

3 A. No, I do not.

4 Q. The set of license plates. the reflectorized plates

5 from the Department of Motor Vehicles that you received, had

6 those been issued yet?

7 A. No, they had not.

8 Q. On June the 6th and June the 7th of 1983. were you

9 assigned to go to the County morgue in the County of San

10 Bernardino for the purpose of attending an autopsy?

11 A. Yes. sir. I was.

12 Q. And was one of the purposes that you had in going

13 there to determine whether any investigative leads were

14 developed during the autopsy investigation?

15 A. Yes. sir.

16 Q. During that autopsy. were various weapons brought

17 in for the purpose of showing them to Dr. Root?

18 A. Yes. sir.

19 Q. Showing you Exhibit 532. a photograph of some

20 weapons.

21 Were those amongst the weapons that were brought in

22 for display?

23 A. Yes. sir.

24 Q. And were those weapons shown to Dr. Root in the

25 autopsy in the County morgue during the autopsy?

26 A. Yes. sir.

27 Q. During the course of the autopsy. was there also a

28 photograph of a hatchet that was brought in?

021043

1           A.     Yes, sir. I believe there was.  
2           O.     And are those the only weapons that were shown to  
3     Dr. Root or were there some others?  
4           A.     I believe there was one other additional knife.  
5           O.     Was that brought in by some deputies from the  
6     Career Criminal Division that had been obtained from Chino  
7     Hardware?  
8           A.     No, sir. not to my knowledge.  
9           O.     Did you ever see a weapon brought in from Chino  
10    Hardware by some people from the Career Criminal Division?  
11          A.     No, sir. I didn't.  
12          O.     By anybody?  
13          A.     No.  
14          O.     During the course of the autopsy. showing you  
15    Exhibit 537, did you ever see such a weapon brought in displayed  
16    to Dr. Root?  
17          A.     I saw one similar  
18          O.     Did you know where it came from?  
19          A.     Yes, sir.  
20          Q.     Where was that?  
21          A.     From Sergeant O'Rourke.  
22          O.     Dennis O'Rourke?  
23          A.     Yes, sir.  
24          O.     Do you know how Dennis O'Rourke got the weapon?  
25          A.     No, sir.  
26          Q.     The weapon that you saw displayed to Dr. Root. was  
27    that a Case-type knife with the same sort of blade length and  
28    configuration as on that exhibit?

0021044

1 A. That. I don't recall.

2 Q. During the autopsy. do you recall Dr. Root  
3 describing the approximate dimensions and shape of the blade of  
4 a possible knife used in the killings?

5 MR. KOCHIS: Objection, that would call for hearsay and  
6 it would call for speculation. It is possible.

7 MR. NEGUS: I'll rephrase the question.

8 THE COURT: How do you get around the hearsay?

9 MR. NEGUS: Prior inconsistent statement.

10 THE COURT: Whose?

11 MR. NEGUS: Dr. Root's.

12 THE COURT: All right. rephrase it.

13 BY MR. NEGUS:

14 Q. During the -- during the autopsy did Dr. Root  
15 describe the shape of the knife that he believed was used in the  
16 attack?

17 A. Yes, he did.

18 MR. KOCHIS: Same objection- if it is him; if it was the  
19 doctor speculating.

20 THE COURT: Overruled.

21 BY MR. NEGUS:

22 Q. And showing you Exhibit 753.

23 Is that a picture of the shape and dimensions that  
24 Dr. Root described?

25 A. Those are the dimensions as I recall.

26 As far as the picture. I have never seen one like  
27 that before.

28 Q. Okay. Did he describe it though with approximately

0021045

1 one and a half inches in width and five inches long and sharply  
2 tapered towards the end?

3 A. Yes.

4 MR. NEGUS: That's all I have.

5 MR. KOCHIS: I have no cross.

6 THE COURT: Thank you.

7 MR. NEGUS: Next, your Honor. I would like to offer, I  
8 have a couple of stipulations with counsel.

9 First off, we would stipulate that Exhibit 116-A is  
10 a better Xerox copy of the same exhibit. which is Exhibit 116.  
11 and may be considered by the jury in place of Exhibit 116.

12 MR. KOCHIS: I can't see it.

13 MR. NEGUS: Excuse me.

14 MR. KOCHIS: So stipulated.

15 THE COURT: Are you going --

16 MR. KOCHIS: I have no objection to them both remaining  
17 in evidence. 116 is the copy Marty Smith actually testified to.  
18 116-A is simply a better Xerox.

19 THE COURT: Why don't you attach it behind 116.

20 MR. NEGUS: Fine. That's --

21 THE COURT: All right.

22 MR. NEGUS: Next we would stipulate that if Hermine.  
23 H-e-r-m-i-n-e, Pawlowicz. P-a-w-l-o-w-i-c-z was called as a  
24 witness. she would testify essentially the same as she did at  
25 the previous hearing on the motion. and I'm prepared to read  
26 that testimony. which isn't very long at this present time.

27 THE COURT: So stipulated. Mr. Kochis?

28 MR. KOCHIS: Yes, your Honor



1 THE COURT: Why don't you have a seat.

2 MR. NEGUS: I am not sure sitting down is my most  
3 comfortable spot.

4

5 (The following testimony, having been previously  
6 transcribed, was read into the record.)

7

8 "HERMINE PAWLOWICZ.

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

11

12 "DIRECT EXAMINATION

13 "BY MR. NEGUS:

14 "Question: Mr. Pawlowicz, sometime last summer,  
15 did you and your husband come into possession of  
16 a large white pickup truck?

17 "Answer: Yes.

18 "Question: Was that pickup truck from the Ryen  
19 Arabian Ranch?

20 "Answer: Yes.

21 "Question: Did you obtain that pickup truck  
22 through a friend of Dr. Mary Howell's by the name  
23 of Don Wardle?

24 "Answer: Yes. I did.

25 "Question: Did that pickup truck have painted on  
26 its side 'Ryen Arabians'?

27 "Answer: Yes.

28 "Question: Did it have license plates when you

021047

1           obtained it?

2           "Answer: No.

3           "Question: Was it registered with the license

4           plate numbers of 'Ryen 4'?

5           "Answer: Yes.

6           "Question: At sometime after you came into

7           possession of that pickup truck, did you have

8           occasion to look underneath the front seat of the

9           pick up?

10          "Answer: Yes.

11          "Question. And did you find anything there?

12          "Answer: Yes.

13          "Question: What did you find?

14          "Answer: I think you are referring to the credit

15          cards.

16          "Question: Well. what -- did you find other things

17          as well?

18          "Answer: Maybe pieces of paper. but nothing of any

19          importance. I have papers that I have thrown

20          underneath there.

21          "Question: You say that you found some credit

22          cards. Where did you find them?

23          "Answer: Underneath the front seat.

24          "Question: Was -- did it -- were they -- were they

25          resting on the floorboard?

26          "Answer: On the floor underneath the front

27          seat, yeah.

28          "Question: Did you have to -- in order to find

021048

1           them did you have to search very hard to find  
2           them?  
3           "Answer: Well. they had been in there for awhile  
4           and I used to put my keys under the front  
5           seat and previously when I looked for my keys I  
6           hadn't found them, so they weren't right there  
7           where I found them every time I reached underneath  
8           the seat.  
9           "Question: Did you have to get down -- how,  
10          physically, did you retrieve the credit cards?  
11          "Answer: I probably got way down and went under  
12          the seat because I couldn't find my keys. and I  
13          thought I must have thrown them underneath further  
14          than I usually do.  
15          "Question: When you went in, you found something  
16          that you weren't expecting, which was a small  
17          brown card holder.  
18          "Answer: I think it was blue, but I may be wrong.  
19          "Question: Okay. A blue card holder. and it  
20          had a bunch of credit cards in it.  
21          "Answer: Right.  
22          "Question: Did -- what did you do with that --  
23          with that pack of credit cards?  
24          "Answer: Put it back under the seat.  
25          "Question: Without looking at it?  
26          "Answer: I picked it up and opened it up. I saw it  
27          was Ryens' credit cards. and I closed it up. put  
28          it back under the seat. so when I saw my friend

1                   again I could give it to them to give to Dr.  
2                   Howell

3                   "Question: So you then -- the next time you saw  
4                   Mr. Wardle you gave him the credit cards?

5                   "Answer: Yes.

6                   "Question: Aside from some papers that you had put  
7                   under there was there anything else underneath the  
8                   front seat of the pickup truck that you know of?

9                   "Answer: Not to my knowledge, no."

10                  MR. NEGUS: This is cross-examination by Mr. Kochis.

11

12                               "CROSS EXAMINATION

13                  "BY MR. KOCHIS:

14                       "Question: Mrs. Pawlowicz. do you recall whether  
15                       you took possession of the car or the truck before  
16                       or after the 4th of July?

17                       "Answer: I took possession of the truck before or  
18                       after -- after the 4th of July.

19                       "Question: And then did you -- did he drive the  
20                       car for about a month before you found these  
21                       credit cards?

22                       "Answer: It was approximately a month. right. I  
23                       am not exactly sure about that time.

24                       "Question: And was one of your habits at the time  
25                       to leave the car keys for that truck under the  
26                       front seat?

27                       "Answer: Right.

28                       "Question: Is that something you do on a daily

002-1050

1 basis?

2 "Answer: I have to. because I lose too many keys

3 so that's the place I put them so I know where

4 they are.

5 "Question: So. is it fair to say that you would

6 use the truck on a daily basis after you took

7 possession of it?

8 "Answer: Pretty much. yeah. I use it -- my

9 husband takes the car and I use the truck.

10 "Question: And then is it fair to say that for a

11 month on a daily basis would you reach under

12 the front seat and get your car keys and you were

13 never aware of any billfold or credit cards. Is

14 that true?

15 "Answer: That's the first time I found it and I

16 have always done that because. like I say. I lose

17 the keys if I don't put them under the seat or

18 something like that.

19 "Question: And then what happened on this

20 particular day. unbeknownst to you. you actually

21 had left the keys in the house. you couldn't find

22 them under the front seat. and you did a more

23 thorough search of the truck?

24 "Answer: Right. Because I got frantic and I

25 couldn't find the keys and it was the only set I

26 had. and I just dove down further underneath the

27 seat trying to get the keys.

28 "Question: When you found the wallet or this

02-10-51

1 billfold and you opened it there were credit cards  
2 inside?  
3 "Answer: Uh-huh. yes.  
4 "Question: And they had the name of the Ryens on  
5 them?  
6 "Answer: I think they had Franklin Ryen. I don't  
7 remember if Peggy's name was on it or not.  
8 "Question: And at that point you did not call the  
9 Sheriff's office?  
10 "Answer: No. I never did call the Sheriff's office  
11 there.  
12 "Question: Then approximately how much time passed  
13 between the time you saw the credit cards and you  
14 put it back underneath the seat and the time you  
15 saw Mr. Wardle and gave him the credit cards?  
16 "Answer: It was probably a week or two. It was in  
17 that area.  
18 "Question: Sometime then around the middle of  
19 August?  
20 "Answer: Middle of August or toward the end  
21 of August, around in that area.  
22 "Question: At that time you didn't call Dr. Mary  
23 Howell?  
24 "Answer: No. I never talked to her."  
25 MR. NEGUS: The next witness is Gary Woods.  
26 THE COURT: You can consider that testimony the same.  
27 ladies and gentlemen. as if the lady came placed under oath like  
28 other witnesses and so testified.

021052

1

2

GARY R WOODS.

3

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

4

5

THE CLERK: Thank you. Would you be seated.

6

7

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

8

THE WITNESS: Gary R. Woods. W-o-o-d-s.

9

THE CLERK: Thank you.

10

11

## DIRECT EXAMINATION

12

BY MR. NEGUS:

13

14

Q. Mr. Woods, you are a detective with the San Bernardino County Sheriff's Department homicide detail.

15

A. I am.

16

17

Q. And on January 27th of 1984, did you have a conversation with a person by the name of Vince Pacquet. P-a-c-q-u-e-t.

18

19

A. January 27th? That's correct.

20

21

Q. And that person called you collect at the Sheriff's Department and you spoke to him over the phone

22

A. That's correct.

23

24

Q. Mr. Pacquet was a person who was employed as a landscaper by Mary Lease at approximately the time of the Ryen homicides?

25

26

A. That's what I was told. yes.

27

28

Q. When you talked to Mr. Pacquet, did he tell you that he started working at the house that Cooper used as a

021053

1 hideout on a Wednesday?

2 A. I don't have an independent recollection. I have  
3 to --

4 Q. Do you have your report there?

5 A. Yes. I do.

6 Q. Look -- if you look at the third full paragraph of  
7 the report, it indicates third line there.

8 A. On a Wednesday, that's correct.

9 Q. Okay. And did Mr. Pacquet tell you that it was  
10 on -- that when he had been there on Wednesday he observed the  
11 drapes in the Ryen residence to be in the open position?

12 A. That's correct.

13 Q. Did he tell you that when he returned to work on  
14 Thursday that the position of the drapes had changed and they  
15 were then in a closed position?

16 A. Yes, he did.

17 Q. And did he also tell you that on Thursday that he  
18 had heard the phone ring inside the residence?

19 A Yes. he did.

20 Q. Were you aware, as you talked to Mr. Pacquet, Mr.  
21 Woods, that Kevin Cooper had not been in the house during the  
22 daylight hours on Thursday, June the 2nd?

23 MR. KOCHIS: Objection, that would call for speculation  
24 on his part.

25 THE COURT: Yes. Sustained.

26 BY MR. NEGUS:

27 Q. Were you aware, Mr. Woods, that Mr. Cooper had  
28 escaped from state prison at approximately 3:30 in the afternoon

002-10554



1 on June the 2nd?

2 A. I was.

3 O. After you got that particular response from Mr.

4 Pacquet, that it was a Thursday, did you then ask whether he was

5 sure that the phone-ringing incident was Thursday or Friday?

6 A. He stated he wasn't sure if he -- if it was

7 Thursday or Friday.

8 O. I know. but I'm asking. First he said it was

9 Thursday, right?

10 A. That's correct.

11 O. Okay. Then the next thing you have in your report

12 is that he wasn't sure whether it was Thursday or Friday,

13 correct?

14 A. That is what it states.

15 O. Okay. What I am asking you is, that in between the

16 time that he said -- he said it was on Thursday, given your

17 knowledge of when Kevin Cooper escaped, did you ask him, could

18 it have been Friday?

19 A. I may have. I don't remember.

20 O. Did you -- did you tape record that phone call?

21 A. I believe I did. yes.

22 O. Did you -- were you assigned to do follow-up

23 interviews with 50 or 100 different witnesses in the year 1984?

24 A. I was.

25 O. Those follow-up interviews were essentially done

26 after the preliminary hearing?

27 A. They weren't interviews.

28 O. Conversations?

021055

1 A. Are you speaking in regards to the shoe soles?

2 Q. No. I was just talking about in general with  
3 different witnesses.

4 A. I had been assigned throughout this whole case  
5 approximately 50 to 100 people.

6 Q. And how many of those were done after the  
7 preliminary hearing.

8 MR. KOCHIS: Objection. irrelevant.

9 THE COURT: Yes, sustained, counsel.

10 BY MR. NEGUS:

11 Q. Mr. Woods have you told each of those witnesses  
12 that you talked to that they did not have to talk to the defense  
13 investigator. Mr. Forbush?

14 A. Yes. I did.

15 Q. Were you attempting to discourage them from talking  
16 to Mr. Forbush?

17 A. No. sir

18 Q. Prior to the preliminary hearing, were you assigned  
19 to make a complete list of everybody who had been inside the  
20 Ryen residence from June the 5th through June the 30th. 1983?

21 A. I was.

22 Q. Did you find when you began that particular task  
23 that any such list was already in existence?

24 A. No. there was no list.

25 Q. How did you go about -- how did you go about  
26 attempting to put it together?

27 A. Reading reports that were submitted thus far.

28 looking at photographs that had been taken at the scene. and I

002-10559

1 received a number of names from yourself.

2 O. Well. did you in fact prepare two different lists?

3 A. The first list was submitted. the second was added

4 names to that same list

5 O. The first list was -- the second list was prepared

6 in June of '84 approximately; is that correct?

7 A. That sounds correct. yes.

8 O. I would like to -- starting with -- do you have

9 both those lists there with you?

10 A. I believe so.

11 O. Did you interview anybody besides -- did you

12 interview any of the people that were in the house as to who

13 else they had seen?

14 A. Asked them questions. yes.

15 O. Who all did you talk to?

16 A. I started with the investigating officer at the

17 crime scene from our own detail.

18 O. Anyone else?

19 A. I grew from that point on.

20 O. Did you ever ask the person who was in charge of

21 the crime scene from the 6th to the 9th. Sergeant Swanlund?

22 A. I believe I'd asked him for names. yes.

23 O. Are you sure?

24 A. Yes. I am sure.

25 O. The names that you added between the first list and

26 the second list. were those essentially persons whose names came

27 out during the testimony of the various witnesses at the

28 motions. either people who testified they had been in the house

02-1057

1 or people, other people testified that they had been in the  
2 house during the course of the motions in the preliminary  
3 hearing?

4 MR. KOCHIS: Your Honor. I would object, it is not  
5 relevant, it is going to call for hearsay, perhaps, no  
6 foundation of his personal knowledge.

7 THE COURT: Mr. Negus. I missed the first part of your  
8 question.

9 MR. NEGUS: The name he added between list No. 1 and list  
10 No. 2 essentially. Was the source of those names people who  
11 testified at the various hearings which we have had?

12 THE COURT: That's a good objection. Sustained.

13 BY MR. NEGUS:

14 Q. If you could get the red marker, and of your two  
15 lists, could you go to Exhibit 225 there; Sergeant Gilmore was  
16 on your first list; is that correct?

17 A. That's correct.

18 Q. Could you put a "1" in red in the column next to  
19 Sergeant Gilmore's name.

20 MR. KOCHIS: Your Honor. I would be imposing an  
21 objection. His list is hearsay. He wasn't at the scene. He  
22 doesn't know who was at the scene. And how is it relevant, the  
23 exact order and names on his particular list?

24 MR. NEGUS: The relevance is to show how little the  
25 Sheriff's Department knows about who was coming in and out of  
26 the scene, that the man that they assigned to draw up the list  
27 missed some names and only was able to get names at various and  
28 sundry different hearings.

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1 THE COURT: I will sustain the objection. Sustained.  
2 BY MR. NEGUS:  
3 O. On your list you have the name of a civilian. a Mr.  
4 Dutton; is that correct?  
5 MR. KOCHIS: Your Honor. I would have the same objection.  
6 THE COURT: Counsel. the objection is going to be good if  
7 he reads the list.  
8 MR. NEGUS: I'm not going to have him read the list.  
9 THE COURT: Reading one name at a time is the same thing.  
10 It's a good objection. Unless he saw a witness there, why, he  
11 can't testify about it.  
12 MR. NEGUS: Well. I'm just going to ask him where he got  
13 the names.  
14 THE COURT: And that's irrelevant basically. Sustained.  
15 BY MR. NEGUS:  
16 O. The persons who were -- who were civilians on your  
17 list, where did you obtain those names?  
18 MR. KOCHIS: Same objection That's the question he just  
19 asked.  
20 MR. NEGUS: No. it's somewhat different.  
21 THE COURT: It's the same effect and the same ruling.  
22 MR. NEGUS: Well but I'm not asking him for the names.  
23 at this point in time just whether they are based on his  
24 personal knowledge or something else.  
25 THE COURT: Counsel, if he goes to a person and says.  
26 "Were you out at the Ryen scene." something like that. then he  
27 puts them on the list. it's necessarily now calling for hearsay  
28 and I will sustain the objection.

1 MR. NEGUS: Could we -- I don't have much other evidence.  
2 could we be heard on this outside the presence or inside the  
3 resence before we have a final ruling?

4 THE COURT: I don't think so. Let's move on.

5 MR. NEGUS: That's it.

6

7

CROSS-EXAMINATION

8 BY MR. KOCHIS:

9 O. Mr. Woods. the witnesses that you interviewed. did  
10 you ever tell any of those witnesses they could not talk to Mr.  
11 Forbush?

12 A. I told them they had a choice.

13 O. My question was: Did you ever tell them that they  
14 should not talk to Mr. Forbush?

15 A. No. never worded that way.

16 O. Did you tell them. for example. that they didn't  
17 even have to talk to you if they didn't want to?

18 A. That's correct.

19 O. Did you tell the witnesses essentially that whether  
20 they talked to you or to Mr. Forbush was a matter of their  
21 personal choice?

22 A. That's correct.

23 O. And they could do that if they wanted to or they  
24 had a right to refuse?

25 A. That is correct.

26 MR. KOCHIS: I have no further questions.

27 THE COURT: Anything else?

28 MR. NEGUS: Just like. sometime before Mr. Woods leaves I

00210600

1 would like to be heard further on the thing.

2 THE COURT: How many more witnesses have you?

3 MR. NEGUS: None. The other two were sick, at least they  
4 called sick.

5 THE COURT: Well. let's step back to chambers for a  
6 minute. Let's take it up out of the presence of the jury.

7 Stand. stretch. relax. chat if you wish. just not  
8 about the case.

9 Mr. Cooper and counsel. step back into chambers.

10

11 (Chambers conference reported.)

12 THE COURT: All right. We are in chambers now. defendant  
13 and all counsel.

14 Mr. Negus.

15 MR. NEGUS: Your Honor. the relevance of all this is to  
16 show that the homicide detective that was assigned to prepare a  
17 list of who was inside the house was -- had to rely only on  
18 hearsay reports and that sort of thing, and that the Sheriff's  
19 Department really has no idea whatsoever who was in the house  
20 and who wasn't. and there are civilians listed on that list that  
21 they don't even know the identity of. There are various  
22 officers that were in the house that they didn't know about  
23 until they heard them testify so at the preliminary hearing.

24 And I would submit that the list certainly isn't  
25 offered for the truth of the matter asserted. I would be  
26 willing to bet there's lots of people that were in the house  
27 that aren't on either of the two lists. But in a case where we  
28 are dealing with trace evidence and circumstantial evidence. it

021061

1 is exceedingly relevant how sloppy their procedures are for  
2 trying to determine who is in there.

3 Mr. Kochis has again and again and again tried to  
4 bring up there was just authorized people that were in there.  
5 but they don't know that. I mean, they have no way of knowing  
6 that. And I think Mr. Woods is the witness -- is the person  
7 that they have assigned to find out who was in there, and he  
8 doesn't know.

9 So I think it's the state of how little they know  
10 about who was in their own crime scene is the relevant issue in  
11 the case, and so the hearsay objection is not valid. It's not  
12 offered for the truth, in fact, I think it's probably untrue,  
13 but to show the sloppiness of their crime control.

14 THE COURT: Showing who was in the house does go to the  
15 value of the evidence, the physical evidence because it goes to  
16 the contamination issue. Showing who was not, you have been  
17 taking up hours on that. But this now does not show conspiracy  
18 a frameup, a coverup or go to credibility. All it's doing is  
19 showing perhaps that the Sheriff's Office in general, or this  
20 detective by himself, is to some extent incompetent. And that's  
21 only going to be confusing to the jurors and take up more time  
22 and is basically irrelevant.

23 MR. NEGUS: But the thing is that they are claiming that  
24 there is various and sundry items of evidence that had to have  
25 been put there by somebody during the crime because nobody else  
26 had access to the crime scene during the time they were  
27 investigating. That just ain't true. They had no way of  
28 knowing who was at that crime. That goes to the very integrity

0021062



1 of the evidence they are presenting. It's not trying to show  
2 conspiracy or frameup. just that they don't know who was in  
3 there. And I think that that is in fact relevant.

4 THE COURT: Sustained. The ruling will stand. Let's go  
5 back out.

6 We have no more witnesses after this?

7 MR. NEGUS: No. The other two called in sick.

8 THE COURT: Okay. Let's go on out.

9 (Chambers conference reported.)

10

11 (The following proceedings were held in  
12 open court in the presence of the jury:)

13 THE COURT: Back in open court.

14 Anything further?

15 MR. NEGUS: No.

16 THE COURT: Mr. Kochis. of this witness?

17 MR. KOCHIS: No. your Honor, I have no further questions.

18 THE COURT: We thank you very much, Mr. Woods, you may  
19 step down.

20 Ladies and gentlemen, that exhausts our witnesses  
21 for the day.

22 Let me share with you some news with reference to  
23 visit of the scene. A decision has been made that we shall go  
24 to the scene provided arrangements can be made and some of the  
25 logistical matters can be taken care of, and we will commence  
26 more work on that as soon as we adjourn today, along with  
27 counsel working on jury instructions.

28 The plan is, provided these arrangements can be

021053

1 made, is to have you come in about 12:30 on Thursday, and that  
2 we would then go by way of a chartered bus to the Chino Hills  
3 area and view the scene. Hopefully, we will be able to give you  
4 each a little floorplan of the two premises and then have you  
5 kind of follow like a column of ducks behind perhaps Detective  
6 Arthur. And then give you sometime perhaps to view the scene in  
7 an unstructured manner to some extent. I will give you more  
8 instructions on this later on. Then go to dinner and then come  
9 back after it's dark and to some extent duplicate it to where  
10 you believe -- there's problems in there, and I will admonish  
11 you about some of the problems, because to some extent  
12 circumstances are different and we're going to have the ignore  
13 and disregard the changed circumstances. But there are enough  
14 beneficial aspects of it that we've decided to do it for you.

15 Hopefully, we will not have you back as late as I  
16 originally told you, and that it will be more like maybe  
17 nineish, somewhere, when we can get you back to your homes.

18 As far as --

19 Does that create any insoluable problems with any  
20 of you? Have you got a heavy date on Thursday night or  
21 something to where it go going to break up your life or  
22 something if we disrupt it? If not, we will keep you more  
23 advised on this later on if we firm up these arrangements, but I  
24 would hope that we can -- the bailiff can arrange to have you  
25 personally. those of you that ride public transportation, that  
26 we will be able to get you back to your respective homes on  
27 Thursday evening hours. You won't have a to take a bus once you  
28 get back here. That's the plan.

021064

1           There will not be a party at the scene in any way.  
2   What we are going to do is say everything we are going to say  
3   before we leave. Once we get there, at the scene in any event I  
4   will have a reporter along in case of an emergency. We're not  
5   going to say anything. We have no intentions of having anybody  
6   testify, nobody under oath, nobody pointing out this or that,  
7   except we're going to probably have a little guided trail to  
8   tour you with.

9           In the meantime we're going to meet again tomorrow  
10   morning at 9:30. And again, don't discuss the case amongst  
11   yourselves nor with anybody. Don't let anybody discuss it with  
12   you, nor express or form an opinion on it as yet.

13           Following Thursday we expect if things go well an  
14   additional witness the next Monday from the defense, and then  
15   perhaps some rebuttal by the prosecution. And we are beginning  
16   to wind up on the trial to where I'm hoping that before we get  
17   too far into the month of February we will be able to submit the  
18   matter to you. Stay with us, please. We appreciate your  
19   cooperation. Have a nice evening. See you tomorrow morning at  
20   9:30.

21           Counsel, give me an about ten minutes, please, I  
22   will see you in chambers.

23           MR. KOCHIS: Your Honor, could we address the Court on  
24   one matter when the jury leaves while the spectators are still  
25   here?

26

27

28

(The following proceedings were held in  
open court out of the presence of the jury:)

00210655

1 THE COURT: The jurors have departed.

2 MR. KOCHIS: I notice present in the courtroom at least  
3 one member if not more of the media. I know one of the things  
4 that all parties were concerned about was that if there ever was  
5 a view of the crime scene that it be conducted in a fashion that  
6 nothing would happen to effect the rights of both parties to  
7 receive a fair trial.

8 I think there's some reason to be concerned that if  
9 the possibility of a crime scene visit is portrayed in the media  
10 at this time in a particular fashion that we may create somewhat  
11 of a spectacle or at least the potential for other citizens to  
12 go out to watch what is going to take place.

13 THE COURT: I never thought about that.

14 MR. KOCHIS: And my only concern is, is there some middle  
15 ground we can reach with the media? One, it's either not  
16 mentioned at this time, or when it is mentioned it's mentioned  
17 in a fashion that doesn't create a problem for the jurors, the  
18 prosecution or the defense.

19 THE COURT: Are you open to negotiation?

20 MS. SUSMAN: I had planned on visiting the area at least  
21 on my own at one time or another. I would like to be able to go  
22 with the group, but I had only planned on visiting it purely for  
23 my own information so that I would have a better understanding.

24 THE COURT: We did discuss this in a limited manner early  
25 on. We have considered this matter several times and you know  
26 that there previously was a rule that we are not going to take  
27 any pictures of jurors. So I don't expect a photographer or  
28 video cameraman there at all. I have no objection to your being

021066

1 there or other media, except I'm hoping, again, there won't be a  
2 spectacle.

3 What he is concerned with now that I never  
4 considered before is if you print this in the paper now we are  
5 going to have the neighborhood turned out and a lot of other  
6 people perhaps wanting to see Mr. Cooper or whatever they can  
7 see.

8 So, counsel, feel free to talk with her. I would  
9 add my hopes that you would not perhaps make a public  
10 announcement of the fact that we are going out there, otherwise  
11 I would have probably taken this up in chambers had I considered  
12 it. Okay.

13 Anything else?

14 MR. NEGUS: I would note that Mr. Roberts from CBS is  
15 likewise present.

16 THE COURT: I'm sorry.

17 MR. ROBERTS: Yes.

18 THE COURT: Didn't mean to ignore you, but I see her  
19 every day.

20 MR. ROBERTS: That's all right. We don't have any  
21 problem with not mentioning the fact that there's going to be a  
22 jury tour of the home. I'm wondering how close we can get with  
23 cameras though on that date.

24 THE COURT: I don't want cameramen around there at all  
25 with the jurors there. If you want pictures of the premises,  
26 take them on another day when we are not there. I don't want  
27 the jurors to be inhibited by cameras around at all. I'm not  
28 trying to be obstreperous with you in any way. I like to be

021067

1 free and easy and say everybody come, you know, your welcome,  
2 but I can't do that. And as we wind up toward the end of the  
3 trial I want to be particularly careful. So, Mr. Roberts,  
4 hopefully your camera people, I don't know what you want to do.

5 MR. ROBERTS: Well, the fact that the jury is touring the  
6 scene is to both of us a newsworthy event.

7 THE COURT: And I would expect it to be mentioned in the  
8 media. but you can't take pictures of the jurors, the bus that  
9 they are riding on. I don't see how you can, sir, unless we go  
10 contrary to my prior order. If you have any other ideas we will  
11 try and consider it. I just don't know how we can accommodate  
12 you.

13 MR. ROBERTS: We will think about it.

14 THE COURT: Okay. Let me know.

15 Anything else then? Let's take a few minutes  
16 recess. I want to make a couple phone calls. Let's work on  
17 instructions for a few minutes.

18 (Recess taken.)

19

20 (Chambers conference reported.)

21 THE COURT: All right, in chambers, now. Mr. Cooper and  
22 all three counsel.

23 I have a bus -- I don't know yet how I am going to  
24 pay for it, but I have got a bus lined up at 12:30.

25 And bailiff, we're going to have to give them more  
26 instructions as to where to report, and I think that maybe you  
27 ought to get counsel to assist you in drawing up specific  
28 instructions or marking on a map or something where the bus

1 driver should go, since you are going to be the one to instruct  
2 the bus driver.

3 Yes. It probably would be best, rather than have  
4 Detective Arthur ride in the bus. So, do that and then is there  
5 an alternative eating place apart from Centro Basco in case that  
6 doesn't work?

7 MR. NEGUS: Pyrenees is right up the street. They  
8 probably are just as --

9 THE COURT: How far is it downtown from the scene?

10 MR. NEGUS: Well, it is about five minutes or ten minutes  
11 to the Centro Bosco.

12 THE COURT: Is that all? I will get Mr. Michaels at home  
13 to work on that aspect of it.

14 All right. Going over instructions.

15 Have you had a chance to go through everything that  
16 the District Attorney has prepared, Mr. Negus?

17 MR. NEGUS: Well, more or less. I mean, I have looked at  
18 it. I am not sure I have -- we could start with the easy  
19 things.

20 THE COURT: Why don't I simply do it this way. Let me go  
21 through the ones that I have tentatively approved, so to speak,  
22 in the manner that I've got them. Maybe you can put yours in  
23 order and then we will come back to the harder ones at the end.

24 One is, ladies and gentlemen of the jury, that is a  
25 two-page one. Then 17.45.

26 MR. KOCHIS: I missed the first one, your Honor, I'm  
27 sorry.

28 THE COURT: It is a two-page indoctrinary one. It is

0021059

1 1.00. 17.45. Then people versus Witt. I am not sure if that's  
2 the proper place to give that one.

3 MR. NEGUS: Which one -- where is that in the order you  
4 gave?

5 THE COURT: I have three right now. I am not sure where  
6 it will wind up.

7 MR. NEGUS: Let me just look at it first before I pass on  
8 it. What does that say?

9 THE COURT: People versus Witt. the one the court  
10 prepared.

11 MR. NEGUS: Okay.

12 THE COURT: I'm on note-taking. You should have it 1.20  
13 where --

14 MR. NEGUS: I didn't have that integrated.

15 THE COURT: If you don't have it I can give you another  
16 copy. Then one-on-one instructions to be considered as a whole.

17 1.02, statements of counsel.

18 1.10. masculine, includes the girls, too.

19 CALJIC 2.20, credibility of witnesses.

20 2.23, conviction of a felony.

21 2.21, witness wilfully false.

22 2.13, prior consistent or inconsistent statements.

23 I have a question mark on 2.12 weighing transcript  
24 testimony of unavailable witness. But we have now given this,  
25 that was this last person today, so I can take the question mark  
26 and give -- 2.12 will be given.

27 2.80, expert testimony. Then I assume we will have  
28 conflicts and so that all paragraphs probably.

021070



1 2.82, concerning hypothetical questions.  
2 2.81, opinion testimony of lay witness. Stop me  
3 any time.  
4 2.22. weighing conflicting testimony.  
5 2.11, production of all evidence not required.  
6 2.27, sufficiency of one witness.  
7 17.30, don't pay any attention to the judge.  
8 2.62. defendant testifying. I have a question mark  
9 on that one.

10 MR. NEGUS: That one is objected to.

11 THE COURT: Do you wish to be heard on that, Mr.  
12 Kottmeier or Mr. Kochis? What did he fail to explain or deny?

13 MR. KOCHIS: He claimed he saw the hatchet or no  
14 explanation for what the bloody things were doing in the closet,  
15 the hatchet sheath in his bedroom, the button with blood on it,  
16 rope with blood on it.

17 THE COURT: Persuasive. Mr. Negus, anything?

18 MR. NEGUS: Yes. I mean, because -- first of all we had  
19 a whole series of questions that were argumentative and  
20 objectionable by Mr. Kottmeier asking him to explain blood,  
21 blood drops in the Ryen house, and all kinds of stuff.

22 Given the strategy of the prosecution this is  
23 particularly -- a particularly bad instruction in this  
24 particular case, because it sort of singles out those  
25 objectionable questions that they asked.

26 THE COURT: Counsel, really the thing that -- some things  
27 were pregnant by their absence in his testimony.

28 MR. NEGUS: Well, but what I am saying is that whatever

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1 that particular, that particular argument may be, the fact Mr.  
2 Kottmeier asked seven or eight objectionable questions that --  
3 where the objections were sustained, asking how do you explain,  
4 should just itself be reason not to give this particular  
5 instruction, because it singles out those objectionable  
6 questions that he asked over and over again, and gives them  
7 great weight, making it very difficult for the jury to put  
8 aside.

9 THE COURT: Counsel, I jumped all over them. You  
10 objected and I promptly admonished Mr. Kottmeier. I don't see  
11 the jurors are going to confuse that with some legitimate  
12 consideration of evidence he failed to explain or deny.

13 MR. NEGUS: The other thing is that I think that the  
14 instruction's just bad to begin with, in that it singles out the  
15 defendant and puts him in a different -- requires a different  
16 standard of judging his credibility than does other witnesses,  
17 and is -- also it is supposed to be an instruction to supposedly  
18 protect the defendant but I would object to it because I don't  
19 think it does. So, I would be opposed to it.

20 THE COURT: To my recollection, it is an instruction  
21 that's been approved by the CALJIC committee for many, many  
22 years. If you find some authority to the effect that it  
23 unfairly singles him out or something like that that it should  
24 not be given, I will hear you later.

25 Everything we're doing today is tentative. If you  
26 can give me some authority for it, otherwise it is a properly  
27 approved instruction that seems to apply to this case.

28 4.71, on or about a certain date.

1 I don't think anywhere in instructions do we use a  
2 date. I am not sure if -- in the charging allegation of the  
3 information we did use dates, didn't we?

4 MR. KOTTMEIER: Yes.

5 THE COURT: Okay. I just want to clarify the charging  
6 language. Yes, all right. So, that will be given.

7 2.00 and 2.01. Do you want those, Mr. Negus?

8 MR. NEGUS: Well, yes.

9 THE COURT: Okay. 2.52. flight after crime.

10 MR. NEGUS: That doesn't apply.

11 THE COURT: Doesn't it?

12 MR. NEGUS: No. Because the thing is in this particular  
13 case you have somebody who is escaping from -- he's escaping  
14 from prison, so that he's already escaping, and the fact that he  
15 flees the jurisdiction doesn't prove anything or the t'other.

16 I think it is confusing to the jury and is not a  
17 proper instruction under the particular facts of this particular  
18 case.

19 MR. KOTTMEIER: When the defendant escaped from prison,  
20 your Honor, he said that his destination was Los Angeles, and  
21 then changed that destination without any real explanation as to  
22 reason other than he's looking at television, and sees the  
23 cruise advertisement.

24 I would submit that the change of location from  
25 L.A. to Mexico is the kind of flight that this particular  
26 instruction is related to.

27 THE COURT: I think your objection goes to the weight of  
28 it, Mr. Negus. Most escapees from Chino don't go pretty deep

00221073

1 into Mexico then onto boats. I think your argument is certainly  
2 one that would be made. I think that's for the jurors to  
3 determine whether or not it proves anything.

4 2.51. motive or lack of motive.

5 MR. NEGUS: May I have a second on that?

6 Okay.

7 THE COURT: 2.79 on presumption of innocence. Then I  
8 have the statement of an offense.

9 MR. NEGUS: He got -- which one?

10 THE COURT: This is a shorty.

11 MR. NEGUS: Okay.

12 THE COURT: Defendant is charged in Count Two.

13 MR. NEGUS: I object to the "also" language.

14 THE COURT: It would simplify things a lot all the way  
15 through, and probably be more narrow if we took out the also  
16 known as. I don't know see what purposes that serves in the  
17 verdict forms. Anything else?

18 MR. KOCHIS: Well, there is no dispute that he used many  
19 names.

20 MR. NEGUS: It is argumentative to put it in there.

21 THE COURT: There are other evidentiary facts in the case  
22 that are not disputed as well. Why put them in the verdict form  
23 in all these allegations?

24 You know, all of these -- I am inclined to agree  
25 for the moment. Why don't I take the also known as out? You  
26 can cover that in argument.

27 MR. KOCHIS: Well, without having someone to retype them  
28 all.

021074

1 THE COURT: You can certainly, for sake of fact, I can  
2 block that out. I think you would have to clean up the verdict  
3 forms in this case.

4 Tentatively also known as David Anthony Trautman.

5 MR. NEGUS: The word processor just can be punched and do  
6 it again.

7 THE COURT: You people must be experts with those things  
8 by now.

9 I have next 8.10.

10 THE CLERK: What number did you say?

11 THE COURT: This is not technically correct, is it?

12 MR. NEGUS: Let's see.

13 THE COURT: You just have 8.10 which says that he's  
14 charged with murder, when actually he's charged with Murder One,  
15 is he not? I understand from judge jones that the Bonillas  
16 matter is coming back.

17 THE COURT: Bonillas. Because there was some defugilty.

18 MR. NEGUS: Because they didn't have a second degree or  
19 something like that. They failed -- the Bonillas problem is not  
20 a problem in this case, because despite lengthy objections they  
21 refused to have a charging allegation that charged first degree  
22 or special circumstances case.

23 They also refused or neglected to have the jury  
24 make a finding as to a degree in the verdict forms. That is the  
25 problem.

26 THE COURT: In any event, I don't have my file here. But  
27 doesn't the information charge first degree?

28 MR. KOTTMEIER: It charges murder in the first degree.

1 THE COURT: I think you ought to change that instruction.  
2 8.10. change to charge with first degree.

3 MR. KOCHIS: Is that something we can simply modify? It  
4 is further alleged that murder is in the first degree.

5 THE COURT: Well, you are going to have to have element  
6 of premeditated allegation in there somewhere.

7 MR. KOCHIS: We have that defined separately somewhere.

8 MR. NEGUS: Under elements?

9 THE COURT: The problem in this particular instruction,  
10 this is a first or second degree murder general statement. If  
11 you look at elements it doesn't have premeditation within the  
12 elements of this particular one.

13 MR. NEGUS: Right. That's why I think it should have the  
14 elements within that particular one.

15 THE COURT: I'd like to see it -- tailor make it,  
16 gentlemen. Let's don't use the standard instruction in this  
17 case, let's change 8.10 to tell them precisely what he's charged  
18 with. He's not charged with murder, he's charged with first  
19 degree murder.

20 MR. NEGUS: Then it should be that the killing was  
21 premeditated and the killing was deliberate.

22 THE COURT: Yes. It should change the elements. That  
23 would be more logical, I believe.

24 The next one is 8.70, murder is classified in the  
25 two degrees. You have to determine which one.

26 MR. NEGUS: I object.

27 THE COURT: To what?

28 MR. NEGUS: 8.70.

0021076

1 THE COURT: You do?  
2 MR. NEGUS: Yes.  
3 THE COURT: You don't want second degree in?  
4 MR. NEGUS: No way. It's first degree or it is nothing.  
5 THE COURT: Well. I am probably going to be very willing  
6 to do that, if I get a waiver from the client to everything.  
7 It is my duty to instruct in the second degree.  
8 MR. NEGUS: Mr. Cooper and I both agreed that we don't  
9 want a second degree instruction. Correct?  
10 MR. COOPER: That's true.  
11 THE COURT: What this does, among other things, Mr.  
12 Cooper, it prevents the jurors from compromising, I suppose.  
13 MR. NEGUS: That's what we don't want.  
14 THE COURT: They might --  
15 MR. NEGUS: We want them to go on the testimony. It is  
16 first degree or it is nothing.  
17 THE COURT: I may well inure to your detriment. They  
18 could find first degree, possibly. Otherwise they might only  
19 find second degree. Conceivably they could find he got in the  
20 house to steal and then somebody was startled and one thing led  
21 to another. I don't know.  
22 MR. NEGUS: If Mr. Cooper -- there is no evidence that  
23 that happened if Mr. Cooper did it?  
24 THE COURT: I know. How does the prosecution feel  
25 about --  
26 MR. KOCHIS: I want to check. We may just ask for first.  
27 I want to just check with the attorney general that it is not  
28 sua sponte that they redefine them both.

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1 THE COURT: You understand his feelings now, and I will  
2 put a question mark on it and we will come back to it after you  
3 consider it. I'm inclined to say that's fine, that could  
4 perhaps change the way we instruct.

5 So, the next one that I have is 8.20. In some form  
6 that has to be given.

7 MR. NEGUS: Where is that malice or premeditation?

8 THE COURT: Premeditation.

9 MR. NEGUS: That one is given no matter.

10 THE COURT: Yes, I think you are right.

11 Then 8.11. malice aforethought is going to be given  
12 as well. Just crossed off some of that surplusage.

13 MR. NEGUS: Right. You --

14 THE COURT: I think -- I can't read it but it probably  
15 has to do with an act inherently dangerous to humans, that sort  
16 of thing.

17 MR. NEGUS: I don't see what implied malice has got to do  
18 with this case. It is expressed malice or nothing.

19 MR. KOCHIS: I'm not so sure I agree with that.

20 THE COURT: No great -- not an awful lot of confusion or  
21 anything there. I prefer to leave that in.

22 MR. NEGUS: Well, I object to it.

23 THE COURT: Make a note of it, and tell me again. I want  
24 to know how we're going to go with first degree before I makeup  
25 my mind on that, whether I've going to have second or not in.

26 MR. NEGUS: Anyway you got 8.20 before 8.11.

27 THE COURT: I have given the order that I tentatively  
28 have them in.



1 MR. NEGUS: Right. But I'm just --

2 THE COURT: Then I have 3.31. act and a specific intent.

3 Now --

4 MR. NEGUS: I always think those things are confusing.

5 THE COURT: Well, I don't like to do it but reference  
6 where it always says specific intent required is included in the  
7 definition of the crimes charge. You will note that murder in  
8 the first degree doesn't say with the specific intent to kill.

9 MR. NEGUS: Oh, yes, that's an element. Trust me.

10 THE COURT: It talks about a mental state.

11 MR. NEGUS: Well, I suppose the intent required --

12 THE COURT: Yes, required if you find it was preceded and  
13 accompanied by intent on the part of the defendant to kill.

14 I would prefer that we change 3.31 to say the  
15 specific intent required is to kill.

16 MR. NEGUS: I think it is deliberate and premeditated  
17 murder, or deliberate -- a deliberate and premeditated intent to  
18 kill.

19 MR. KOCHIS: Well, the instruction provides for specific  
20 intent required is blank, and also mental state necessary is  
21 blank.

22 Do you want intent to kill specific intent, and the  
23 mental state is premeditation and deliberation?

24 MR. NEGUS: How about the specific intent required is the  
25 premeditated and deliberate intent to kill. That's as simple as  
26 I can think of it and it is also accurate.

27 THE COURT: Well, the intent is to kill, and when it was  
28 arrived at.

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1 MR. NEGUS: That's what mental state required is, a  
2 specific premeditated and deliberate intent to kill.

3 THE COURT: Deliberation and premeditation referred to  
4 something apart from intent.

5 MR. NEGUS: Well, they have the mental state and for  
6 first degree murder that's the mental state. Mental state  
7 required is deliberate.

8 THE COURT: Do you want to think about it and come back  
9 to me on that as well?

10 MR. KOCHIS: That's why I left it the way it was, to  
11 allow the jurors to refer back in toto.

12 THE COURT: I want to change it. I don't want them to  
13 refer back. It is difficult enough for me to know, more  
14 difficult for them. I want to make it specific.

15 Then 2.02, sufficiency of circumstantial evidence  
16 to prove intent.

17 MR. KOCHIS: 2.02. your Honor?

18 THE COURT: Yes, 2.02.

19 Then 8.30 refers to second degree. I will put a  
20 question mark on it.

21 I'm not sure about 8.55. proximate cause. I don't  
22 recall giving that before, but maybe it is necessary.

23 MR. NEGUS: It is usually given where proximate cause is  
24 in issue.

25 MR. KOCHIS: There is no issue. I think I pulled -- it  
26 was a -- the use note suggested that it was sua sponte, but  
27 there is no cause of death at issue in this case.

28 THE COURT: I'd rather give it if there is any question

28 Then the next one I have is 8.80.

1 MR. NEGUS: It seems to me that that's --

2 THE COURT: It is awfully unwordy, but I don't know how  
3 else you do it.

4 MR. NEGUS: Multiple murder, thing. It seems to me that  
5 all this special circumstances business is just a waste of time.  
6 If they find him guilty of more than one count of murder. then  
7 you have got a special.

8 MR. KOTTMEIER: Actually I have seen cases where in  
9 effect they have come back and not found the special allegation  
10 true, for whatever reason, even though they found the murders.

11 THE COURT: It was held to be insufficient for special  
12 circumstances?

13 MR. KOTTMEIER: Yes.

14 THE COURT: Well, then, let's give it.

15 MR. KOTTMEIER: It is within the jury's discretion.

16 THE COURT: As a matter of law I would think. If there  
17 is any question about it we will have to give something like it.  
18 I'm not sure if this is the best in the world. I guess it is  
19 all right.

20 MR. NEGUS: 8.81.3 should be modified just to strike the  
21 "or second".

22 MR. KOCHIS: I will put a question mark to see what we're  
23 going to do.

24 THE COURT: All right. We will come back to that. A  
25 question mark.

26 MR. NEGUS: I am sure we should also have one about  
27 sufficiency of circumstantial evidence instructions, but I  
28 can't, for the life of me, see what 8.83 has to do with this

021002

1 case or 8.83.1.

2 THE COURT: Well, again, I don't think that that has to  
3 be given, it is just gilding the lily. We've already defined  
4 circumstantial evidence. I think we could leave that out, 8.83.

5 MR. KOCHIS: I think these are sua sponte instructions.  
6 If we're not going to give them I think we're going to have --

7 THE COURT: I will give it if there is any specific  
8 waiver on the record from Mr. Cooper, from Mr. Negus,

9 No, let's give it. 8.83.2, jury must not consider  
10 penalty.

11 MR. NEGUS: I object. That -- I think that doesn't  
12 apply, shouldn't apply in special circumstances cases, because  
13 you are going ask them to fix the penalty by a special verdict.

14 THE COURT: It is kind of sticking your hand in the sand.

15 MR. NEGUS: I object to it on that basis.

16 THE COURT: Well, it is a correct instruction, because at  
17 this stage they really have got to be myopic strictly at guilt  
18 or innocence.

19 MR. NEGUS: I still object.

20 THE COURT: We'll cross another bridge if we later come  
21 to it.

22 Then I have 17.31, all instructions not necessarily  
23 applicable.

24 17.40. individual opinion required.

25 17.41, how jurors should approach their task.

26 Then the various verdict forms and the concluding  
27 instruction 17.50, and then --

28 MR. NEGUS: 17.42 doesn't seem to --

021003

1 THE COURT: I have set aside a few that I have entitled  
2 "questionable instructions".

3 No. 8.00. the first one I set aside, word homicide  
4 means the killing of one human being by another. I don't feel  
5 any need for that.

6 MR. KOCHIS: Fine.

7 THE COURT: Any objection, Mr. Negus? You can take it  
8 out.

9 MR. NEGUS: Doesn't seem to add much.

10 THE COURT: 2.09, evidence limited as to purpose. Have I  
11 limited anything?

12 MR. KOCHIS: Yes. There have been a lot of hearsay  
13 objections which were admitted for the limited purpose to show  
14 bias.

15 THE COURT: Okay.

16 MR. KOCHIS: To show knowledge.

17 THE COURT: I don't think I spelled it out for them.  
18 Only in those few cases where we had argument in open court.

19 All right, that will be given. 17.42.

20 MR. NEGUS: That doesn't seem to apply.

21 THE COURT: I marked "see 8.83.2.

22 MR. NEGUS: That is the penalty instruction I just got  
23 through. Okay.

24 THE COURT: Yeah. So I think 17.42 is just put in error,  
25 the machine ran amuck or something.

26 MR. KOCHIS: No.

27 THE COURT: It is not on a non-capital case.

28 MR. KOCHIS: That is true.

0021004

1 MR. NEGUS: We will stipulate.

2 THE COURT: Then I have 17.51 is substitution of jurors  
3 and we surely have gotten to that stage.

4 Then I have several instructions that I have  
5 clipped together which are applicable only if at all to the  
6 penalty phase, and that's 8.84.

7 MR. NEGUS: Can we hold off on those until we get to a  
8 penalty phase?

9 THE COURT: Sure.

10 MR. NEGUS: Because --

11 THE COURT: Well, it was just so that you can pull them  
12 and set them aside.

13 THE COURT: 8.84. 8.84.1, 8.84.2, those are surely not  
14 applicable at the moment.

15 And then the verdict forms, which you will take out  
16 the aka's on and that basically was the extent of my initial  
17 impression of the instructions.

18 Will you be having any, Mr. Negus?

19 MR. NEGUS: Well. I haven't really thought of any I  
20 particularly wanted. There may be a couple that I bring in the  
21 minor point, but as long as you give 2.01 and 2.90, that's all I  
22 need, I think.

23 THE COURT: Okay. If you think of anything let me know.  
24 I intended this just to be a first look. Anything further?

25 Are we going to have a full day tomorrow?

26 MR. NEGUS: I don't know. I'm -- we're getting down to  
27 pretty much -- I have a fair amount of short witnesses coming in  
28 in the morning, then Mr. Forbush after that. I don't know how

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1 long he will last. Then I have a fair amount of short witnesses  
2 on Wednesday morning and then --

3 THE COURT: You only have two witnesses tomorrow?

4 MR. NEGUS: No, no, no, there's five or six or something,  
5 four or five coming in the morning. I forget. Some police  
6 officers, then Mr. Forbush. then I have five, four or five other  
7 short witnesses on Wednesday morning, and two, hopefully three  
8 experts on Wednesday, and that should be everybody except Mr.  
9 Dr. Thornton. There is a entomologist that I have not yet  
10 caught since the break, and I hope I can get him down Wednesday.  
11 I may have to have him down Monday morning if I can't get ahold  
12 of him before then. But he shouldn't be longer than a half an  
13 hour maximum.

14 MR. KOCHIS: I am sure there is no pun intended on  
15 catching the entomologist.

16 THE COURT: Anyway --

17 MR. NEGUS: Anyway, so that my direct will be done on  
18 Monday morning.

19 THE COURT: Will you have much rebuttal?

20 MR. KOCHIS: We would have at this point. It appears the  
21 maximum would be in the neighborhood of two days.

22 THE COURT: Will you -- excuse me. How long did you  
23 expect to go on Monday?

24 MR. NEGUS: Well, if the bug man is down here on Monday  
25 then he will be a half hour. That includes cross because I  
26 would think -- and then John Thornton would be, be just about as  
27 long as on direct as he was at the Hitch motion. If the cross  
28 goes, he went two days on cross at the Hitch motion. So, I

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1 don't know exactly, a day and a half.

2 THE COURT: I think some of that would be obviated now.

3 MR. NEGUS: One never knows.

4 THE COURT: You are going to surprise Mr. Kochis again?

5 MR. NEGUS: No,

6 THE COURT: Wasn't he surprised with respect to A-41?

7 MR. NEGUS: Just straightforward stuff.

8 Anyway, that is -- so, I should be -- however long  
9 his cross is of Thornton, then we're done.

10 MR. KOCHIS: Your Honor, the two things we wanted to  
11 mention, at least I wanted to mention without having a firm  
12 decision from the Court one way or the other, was one of the  
13 things we wanted to consider is not splitting the arguments up  
14 over a holiday or a weekend.

15 For example, it may not be in this case we can do  
16 the opening, the defense and the rebuttal in one day, and --

17 THE COURT: I'd be surprised if you did.

18 MR. KOCHIS: Mr. Negus doesn't like to split it up. Start  
19 on Thursday, finish on Monday.

20 THE COURT: Let's go on Friday on that. I can be here on  
21 Friday. When we come to the tailend let's don't take Friday  
22 off.

23 MR. KOCHIS: The other thing I was wondering was if it  
24 would be possible to have a day between the last witness and  
25 argument.

26 THE COURT: Now that I have told you we are going take  
27 off you still feel you need it? We're going to work on Friday.  
28 I can't get used to a chambers without a big calendar. I have

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1 always had one. Were talking about now defense resting on the  
2 4th?

3 MR. NEGUS: Or the 5th, I think, with his cross.

4 THE COURT: All right. The 5th. If you go a couple of  
5 days, counsel, are you able to state that with any degree of  
6 certainty that would carry us through the 7th, and then we could  
7 well start argument on Monday. That would -- there was a  
8 holiday the 11th.

9 MR. NEGUS: The 12th is a holiday.

10 THE COURT: The 12th is a holiday.

11 MR. NEGUS: The problem we have is the holiday is on a  
12 Tuesday.

13 MR. KOCHIS: Let's skip the holiday.

14 MR. NEGUS: I'm easy,

15 MR. KOCHIS: Let's argue on Monday and Tuesday.

16 THE COURT: You have trouble -- you get in trouble with  
17 state law, state holidays,

18 MR. NEGUS: What if we take the court holiday Monday,  
19 Monday off, and we argue Tuesday and Wednesday. We could take  
20 the holiday on Monday, then. Is that a no-no?

21 MR. KOCHIS: I don't have a problem with that but I don't  
22 know what problems we creating with getting people into the  
23 building.

24 MR. NEGUS: I just whisked it by as a thought.

25 MR. KOCHIS: The only thing I'm --

26 THE COURT: I don't have to reconcile in your desires to  
27 have a day off. Your desires to not break it up. I don't know  
28 how that can be done.

00210000

1 MR. NEGUS: I'd rather, if I had my druthers, I'd rather  
2 skip the day off and not break it up. That's my position. I  
3 don't know about the prosecution's position. I expect we know  
4 what we're going to say.

5 THE COURT: If you didn't take any time off chances are  
6 we will still start argument on the 7th.

7 MR. NEGUS: That's a Thursday. We could go Thursday and  
8 Friday. I'd rather do it that way.

9 MR. KOCHIS: I was just -- my suggestion was in a case of  
10 this magnitude, we might be asking for a day between the last  
11 witness and the start of argument. That is all. We usually  
12 don't do that, but a case where we have been in trial since  
13 October --

14 THE COURT: I know.

15 MR. NEGUS: Well if we take a day off, then unless we  
16 ignore the holiday, the first day that we can do it without  
17 breaking up the arguments, with at least one or two days hiatus  
18 in between them, is the 13th. So, argue the 13th and 14th if  
19 that's --

20 THE COURT: I think I will let the jurors deliberate on  
21 Friday, too, provided I can work that out with my PJ at home,  
22 because I think I should let them work on it as steadily as I  
23 can which might require you to be here, Mr. Negus. But you  
24 won't be working hard. Then you can work on the next stage.

25 MR. NEGUS: There ain't no next stage.

26 THE COURT: Do you think that you might have two full  
27 days of rebuttal?

28 MR. KOTTMEIER: No, that was outside.

1 MR. KOCHIS: That is an outside estimate.

2 MR. KOTTMEIER: It may be we have plenty of time to take  
3 the day off and then argue the 7th and the 8th, it is possible.

4 MR. NEGUS: That's my -- if the 7th and 8th is fine with  
5 me. I think I have a dental appointment but I think I can  
6 change it.

7 THE COURT: I don't know whether we could have the jurors  
8 deliberating on the 12th or not. Probably not.

9 MR. KOCHIS: No, they wouldn't be deliberating on the  
10 12th.

11 THE COURT: That is a holiday.

12 Well, I'm loathe to make a decision in that regard.  
13 You have got another weekend. We know pretty much what's coming  
14 from here on out.

15 MR. KOCHIS: That's true. With the exception of the  
16 experts.

17 MR. NEGUS: Do you know what the experts are going to  
18 stay? They have all testified except the bug man.

19 MR. KOTTMEIER: Don't bug me.

20 THE COURT: The bug man from India?

21 MR. NEGUS: No, no, Thornton is in India on vacation.  
22 The bug man is from Berkeley.

23 THE COURT: Oh. We will start at 9:30 again tomorrow.  
24 You are not to going to be able work on those instructions until  
25 next Friday or something like that.

26 MR. KOCHIS: I don't have access to a secretary or they  
27 will be in my secretary's late Thursday night, first thing  
28 Friday morning.

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1 MR. NEGUS: Thank you.

2 THE COURT: All right. See you in the morning.

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4 (Adjournment.)

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