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SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE) SUPREME COURT NO. *Crim 24552*
STATE OF CALIFORNIA,)
Plaintiff-Respondent,)
vs.) FROM SAN DIEGO COUNTY
KEVIN COOPER,) HON. RICHARD C. GARNER,
Defendant-Appellant.) 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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For the Defendant
and Appellant:

IN PROPRIA PERSONA

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DONNA D. BEARD, CSR #1874
Official Reporters
San Diego County Superior Court
220 West Broadway
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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
January 24, 1985

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Official Reporters

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287	3 x 5 Color Photo A-72	3421	4691
288	3 x 5 Color Photo A-74	3421	4691
289	3 x 5 Color Photo A-76	3421	4691
290	3 x 5 Color Photo A-77	3421	5088
291	3 x 5 Color Photo A-78	3421	4691
292	3 x 5 Color Photo A-80	3421	4691
293	3 x 5 Color Photo A-81	3421	4691
294	3 x 5 Color Photo A-84	3421	4691
295	3 x 5 Color Photo A-85	3421	4691
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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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
12	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
	403	3 x 5 Color Photo A-91	3461
	404	3 x 5 Color Photo T-7	4691
	405	3 x 5 Color Photo T-8	3461
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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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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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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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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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	489	3 x 5 Color Photo I.D. #21	3470	4692
	490	3 x 5 Color Photo Stockwell Shoes	3524	4692
14	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 Skip - 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		
15	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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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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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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546	3 x 5 Color Photo - Knife Buck #503	
547	3 x 5 Color Photo - Knife Buck Classic III, Model 513	
548	3 x 5 Color Photo - Knife Buck - #102 Woodsman	4135
549	3 x 5 Color Photo - Knife Buck - #118 Personal	4135
550	3 x 5 Color Photo - Knife Buck - #119 Special	4135
551	3 x 5 Color Photo - Knife Buck - #121 Fisherman	4135
552	3 x 5 Color Photo - Knife Buck - #123 Lake Mate	4135
553	3 x 5 Color Photo - Knife Buck - #123 Lake Mate	4135
554	3 x 5 Color Photo - Knife Explorer Fillet	4135
555	3 x 5 Color Photo - Knife Bulau Knife	4120
556	3 x 5 Color Photo - Knife Case Knife	
557	3 x 5 Color Photo - Knife Machete	4129
558	3 x 5 Color Photo - Kitchen Knives	
559	3 x 5 Color Photo - Kitchen Knives	
560	3 x 5 Color Photo - Kitchen Knives	
561	Butcher Paper - Stab Wound Chart	
562	Butcher Paper Chart - Final Position	

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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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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 - Phisiological Fluids from Ryen Home	4425	5003
593	Chart - Phisiological Fluids from Lease Home	4464	5003
594	Chart - Phisiological 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	
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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
17	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	50u3
	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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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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647	3 by 5 Color Photo - Blank	5285	
648	3 by 5 Color Photo - Blank	5285	
649	3 by 5 Color Photo - Blank	5285	

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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	
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663	8 x 10 Diagram - Master Bedroom, Ryen Scene	5320	
664	8 x 10 Diagram - Master Bedroom, Ryen Scene	5320	
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668	3 x 5 Color Photo - 2991 From Peyton Road		
669	3 x 5 Color Photo - Peyton Road		
670	3 x 5 Color Photo Eucalyptus from 71	5441	
671	3 x 5 Color Photo - Eucalyptus from 71	5449	
672	3 x 5 Color Photo - Highway 71 Looking North		
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674	3 x 5 Color Photo Eucalyptus & 71	5442	
675	3 x 5 Color Photo - Pipeline & 71		
676	3 x 5 Color Photo - Eucalyptus & 71		
677	3 x 5 Color Photo - Eucalyptus & 71		
678	3 x 5 Color Photo - Eucalyptus Looking West		
679	Butcher Paper Diagram of CIM - Cooper	5331	
680	3 x 5 Color Photo - Driveway of 2991	5447	
681	3 x 5 Color Photo - 2991 Garage	5517	

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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
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	699 CC 2-Page Medical Record - Neurosurgery	5967	7119
	700 CC Admitting Data Base - Trauma Room Record	5969	7119
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	702 Notes - Dr. Hoyle	7120	
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19	706-A Loma Linda ICU Charts	6288	7119
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711	Narrative progress notes - Loma Linda Hospital	6330	7119
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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		
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721	3 x 5 Color Photo Canyon Corral Bar	6528	
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730	Inventory List Ryen Home	6744	7104
731	Hotel "Enva" Receipts 6-6-83, 6-7-83	6747	7104
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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	
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736	3 x 5 Color Photo - Matted Down Grass	6844	
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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	

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

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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?

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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?

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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

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

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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.

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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 Ryan 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 Ryan 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 Ryan'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 Ryan'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.

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1 A. I believe in order to answer or to try to answer
2 the questions that you're giving, is 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

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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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1 you to have the furniture in the precise position in which it is
2 in in order to get the most accurate information; is that right?

3 A. It is preferable, yes.

4 Q. When you start localizing areas of action within
5 the room, that often will lead to the discovery of further
6 evidence which had previously been overlooked; is that correct?

7 A. It may or may not.

8 Q. Well, I said "often."

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

11 Q. In this particular crime scene, there was lots of
12 evidence that was still lying around uncollected; is that right?

13 A. Yes, there was.

14 Q. Cut hair.

15 A. Yes.

16 Q. Bone chips.

17 A. I did not see any bone chips.

18 Q. There were blood on both walls and on the carpet.

19 A. Yes.

20 Q. Was there any vegetable material from like it might
21 have come from outside?

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

23 Q. Did you see a handprint up against the sliding
24 glass door leading out to the patio?

25 A. I do not recall.

26 Q. Were you able to determine whether or not portions
27 of the attack had occurred outside?

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

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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.

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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 Dragonis 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.

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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

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

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1 to the right hand of the sink.

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

4 A. Yes, I did.

5 Q. Did you get a positive reaction?

6 A. Yes, I did.

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

9 A. It appeared to be a fly speck. As far as diameter,
10 it was probably less than a millimeter in diameter, and as far
11 as serological examinations, I may have been able to get species
12 off of it.

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

14 A. Yes, sir.

15 Q. Beyond 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 --

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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

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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

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1 weapon or the type of weapon, a sharp weapon as opposed to a
2 hand with blood on it, something like that; and possibly the
3 angle of the swing.

4 Q. The presence of what may appear to be medium
5 velocity blood in the Ryen master bedroom, what type of
6 inference would that allow a criminalist to draw?

7 A. That the blood splatter patterns of medium velocity
8 that I remember are consistent with a weapon hitting something
9 with blood on it.

10 Q. For example, a person who is already bleeding from
11 a previous wound?

12 A. Yes, sir.

13 Q. Now, this type of information, these inferences
14 that you've just told the jury about, based on the splatter
15 patterns inside the room is that type of evidence, the
16 distribution of blood, the type of evidence that's going to tell
17 you the name of the assailant?

18 A. No.

19 Q. Is it going to tell you the race of the assailant?

20 A. Not from the blood spatter, no.

21 Q. The sex of the assailant?

22 A. No, sir.

23 Q. Is it going to tell you the number of assailants,
24 the splatter patterns alone?

25 A. No, sir.

26 Q. Can you tell from splatter patterns alone in this
27 case which victim was attacked first?

28 A. No, sir.

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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?

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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

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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,

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. Ryan 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. Ryan 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.

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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?

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 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

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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

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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 THE COURT: Go ahead.

22 REDIRECT EXAMINATION (Resumed)

23 BY MR. NEGUS:

24 Q. Mr. Gregonis, over the break we have determined
25 that of the sheets there was one sample that was just ABO; is
26 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 A. 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.

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4 RECROSS 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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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.

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26 FURTHER REDIRECT EXAMINATION

27 BY MR. NEGUS:

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

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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 Ryon, 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 come from 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

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

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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?

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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?

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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?

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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 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.

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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

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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)

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.

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.

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.

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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

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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.

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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 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

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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. Swanlund was
19 contacted?

20 A. Yes, sir.

21 Q. And your supervisor Mr. Baird?

22 A. Yes, sir.

23 Q. Thank you.

24 A. 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.

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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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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

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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.

3 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 RECROSS-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

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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 Bernardino 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.)

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

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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

1 get to far into next week.

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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

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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?

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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.

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1 CROSS EXAMINATION

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.

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26 DIRECT EXAMINATION

27 BY MR. NEGUS:

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

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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.

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

1 "Patio Outside Master Bedroom."

2 A. (Witness complied.)

3 Q. Did you look throughout the rest of the house just
4 to see what was in it before any evidence had been carted out of
5 the house?

6 A. Yes, sir.

7 Q. Showing you Exhibit 511.

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

10 A. Yes, sir.

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

13 A. Yes, sir.

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?

17 A. No, sir.

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?

22 A. No, sir.

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

25 A. No, sir.

26 MR. NEGUS: That is all I have.

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28 CROSS EXAMINATION

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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.

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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1 THE WITNESS: Stephen K. Moran. M-o-r-a-n

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3 DIRECT EXAMINATION

4 BY MR. NEGUS:

5 Q. Mr. Moran, on June the 6th 1983, did you enter the
6 Ryen residence at 2943 English Road?

7 A. Yes, I believe I did.

8 Q. On how many different occasions?

9 A. Three that I can recall.

10 Q. Did you go into the Ryen master bedroom?

11 A. Yes.

12 Q. Did you also go in other parts of the house?

13 A. Yes.

14 Q. Which other parts did you go into?

15 A. I believe twice to a den, and once to a bathroom.

16 Q. Which bathroom was it that you went into?

17 A. The one off of the master bedroom where the young
18 boy was found.

19 Q. Were the trips through the rest of the house made
20 prior to the time that the carpets and furniture were removed
21 from the master bedroom?

22 A. Yes, they were.

23 Q. Could you go to Exhibit 229, and spot 75 and put
24 your name and "6-6" in both of the two columns, the one under
25 "Master Bedroom" and "Rest of House."

26 A. (Witness complied.)

27 Q. In entering the master bedroom, did you cross over
28 the patio outside of the master bedroom sliding glass doors?

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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 Ryon as
27 the driver?

28 A. No.

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1 Q. Did she tell you at that point in time that she
2 couldn't be sure if it was the night that they were murdered or
3 the night before?

4 A. Yes.

5 Q. Did she give you a time?

6 A. Yes.

7 Q. What was that?

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

9 Q. Did she indicate to you anything about the speed at
10 which the vehicle was being driven?

11 A. Yes, she did.

12 Q. What did she tell you?

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

15 Q. Did she in fact use the word "very" high rate of
16 speed?

17 A. Yes.

18 Q. Did you ask her whether or not the lights were on
19 on the vehicle?

20 A. Yes, I did.

21 Q. What did she tell you?

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

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

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25 CROSS EXAMINATION

26 BY MR. KOCHIS:

27 Q. Mr. Moran, when you talked to Mrs. Edwards back in
28 June of 1983, at that time she told you that she couldn't

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1 remember whether it was Friday or Saturday night the night that
2 she had seen the station wagon come down the hill.

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.

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27 JAMES HILL,

28 called as a witness on behalf of the Defendant, having been duly

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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.

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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?
2 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 Benge was my partner. I don't know if he
28 walked in the house or not.

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1 Q. Do you recall what time of the morning it was that
2 you entered?

3 A. It was -- as a rough guess it would have been
4 around 9:00 o'clock.

5 Q. On this diagram, on Slot 46 next to your name,
6 could you put a "0900" in the column where it says "Master
7 Bedroom" and "Rest of House".

8 A. Is that where 6-6 is? I'm talking about 6-7.

9 Q. Oh, are you talking about the day that the
10 furniture was moved out of the house?

11 A. Yes.

12 Q. Could you then put "0900" in both those columns,
13 "Master Bedroom, Rest of House." We have -- have you do it in
14 red.

15 A. (Witness complied.)

16 Q. Okay. Now, the day that you went to the house was
17 the same day that all of the rest of the people in the CCD were
18 out there; is that right?

19 A. At the house?

20 Q. Yeah. The Ryen home.

21 A. The first time I went to the house it was just me
22 and Greg Benge and two detectives.

23 Q. Who were they?

24 A. I know them by sight. I think one was Hall and
25 maybe one was Danna. I'm not sure.

26 Q. Okay. They were detectives from homicide?

27 A. Either that or West End.

28 Q. First off, showing you Exhibit 453.

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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

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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?

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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?

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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.

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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.

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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.

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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:

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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.

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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

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1 found the box.

2 Q. Bodies were not there on that day, were they?

3 A. No.

4 Q. Now, Exhibit 740, does that depict the shoes that
5 you were wearing on one of the days that you entered the Lease
6 home, the home that was not the scene of the murders?

7 A. Yes.

8 Q. Were those tennis shoes?

9 A. Yes.

10 Q. And did they have a pattern on the bottom of them?

11 A. Yes.

12 Q. What type of pattern?

13 A. It's little circles on the bottom.

14 Q. Now, directing your attention to an exhibit which
15 has previously been marked for identification as 153, it's a
16 photograph, do you see the footwear impression in the photograph
17 near what appears to be the ruler, a ruler?

18 A. Yes.

19 Q. And is that impression consistent with the -- the
20 same type of pattern that you had on the tennis shoes, that you
21 had on the bottom of the tennis shoes which you are wearing in
22 Exhibit 740?

23 A. Yes, circles.

24 Q. Now, were you involved in diagraming some drops of
25 blood which were found outside one of the residences?

26 A. Yes.

27 Q. Which residence, the residence where the bodies
28 were found or the home next to it?

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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?

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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 diagrammed, 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.

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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

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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.)

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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,

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

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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

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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

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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.

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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

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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.

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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

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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

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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 in evidence.)

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

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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

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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

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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.

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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.

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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

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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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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

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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

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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. Gandler 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.

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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

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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
3 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

APPEARANCES:

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Official Reporters

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1 SAN DIEGO, CALIFORNIA. MONDAY, JANUARY, 28, 1985, 9:34 A.M.

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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

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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

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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.

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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.

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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.

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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.

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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

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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?

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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.

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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?

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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

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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

020964

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?

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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.

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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

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1 yourself collecting in the bathroom during the period of time
2 A-38 to A-40 balances collected; is that right?

3 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?

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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

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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.

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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?

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1 MR. NEGUS: 11 through 22.

2 THE COURT: I will sustain the objection.

3 MR. NEGUS: I have nothing further.

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5 CROSS EXAMINATION

6 BY MR. KOCHIS:

7 Q. Ms. Schechter. I take it you were ^{not} the only
8 Sheriff's officers inside the master bedroom while you were
9 processing; is that correct?

10 A. That's correct.

11 Q. Were there members from homicide?

12 A. Yes, there were.

13 Q. Someone from I.D.

14 A. Yes.

15 Q. Did you see Dr. Root there sometime on that evening
16 examining the bodies?

17 A. Yes, I did.

18 Q. Did you see a deputy coroner there who was
19 responsible for pronouncing the victims formally dead?

20 A. Vaguely.

21 Q. Were you present when the two people from the body
22 removal service came in and took the victims from the room?

23 A. Yes, I was.

24 Q. Other than members of the Sheriff's office, Dr.
25 Root, and members of the body removal team, were those the only
26 persons that you saw inside the master bedroom?

27 A. Yes.

28 Q. Were there two closets in that room in that

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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.

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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.

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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 though 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

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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?

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

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23 THE COURT: Counsel.

24 MR. NEGUS: Pat Whelchel.

25 THE CLERK: Raise your right hand.

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27 PATRICK WHELCHEL.

28 called as a witness on behalf of the Defendant, having been duly

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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

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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.

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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.

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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

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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

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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?

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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?

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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?

3 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?

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1 A. No. There was no problem. They were seldom
2 issued. They seldom issued any out. But if a person met the
3 criteria, needed to be issued a pair, there was no problem.

4 Q. When Mr. -- when Mr. Forbush talked to you at
5 the -- that was at the prison he talked to you?

6 A. Yes, it was.

7 Q. And did he have a tape recorder there?

8 A. Yes, he did.

9 Q. Have you -- Mrs. Cordua also had a tape recorder;
10 is that right?

11 A. Yes.

12 Q. Have you had a chance to review the transcript of
13 that tape recording before you came to court today?

14 A. No, I haven't.

15 Q. Well, at that particular point in time do you
16 remember saying that the tennis shoes were used because that was
17 all that they issued at that time that they had on hand?

18 A. No, I don't remember saying that.

19 Q. Do you deny saying that?

20 A. No, I can't deny because I don't remember.

21 Q. Well, are you aware from any source that Kevin
22 Cooper testified that he received new tennis shoes -- or used
23 tennis shoes, excuse me.

24 A. No, I'm not aware of any testimony on his part
25 about that.

26 Q. Are you aware that a criminalist from the
27 prosecution has testified that a shoe impression that's evidence
28 in this particular case was made by a new shoe?

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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?

1 A. I don't know the officer's name. but it was a Latin
2 officer that worked in that part of Palm Hall that gave them to
3 me. I told him what size and he went and got the size for me.

4 Q. Did the box have a lid on it?

5 A. Yes, it did.

6 Q. Are you sure about that?

7 A. Yes.

8 MR. NEGUS: That's all I have.

9

10 **CROSS-EXAMINATION**

11 BY MR. KOCHIS:

12 Q. Mr. Mason. the box that you got for this inmate.
13 directing your attention to Exhibit 51, this blue and white Pro
14 Keds box. is this the type of box you're talking about?

15 A. Yes.

16 Q. And the shoes. one of which I'm removing from the
17 box, this tennis shoe. black hi-top. is this the type of shoe
18 that you gave the person?

19 A. Yes, it was.

20 Q. And at that time at CIM were they keeping the new
21 tennis shoes in boxes?

22 A. Yes. There were a lot of boxes there.

23 O. And then the old shoes were not kept in boxes?

24 A. Correct.

25 O. Thank you.

26 I have nothing else.

27 THE COURT: Any --

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1 REDIRECT EXAMINATION

2 BY MR. NEGUS:

3 Q. Do you know how many different tennis shoes they
4 had in Palm Hall at that point in time?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.

8 Q. Some of them used?

9 A. Some were. yes.

10 Q. Some of those used ones in boxes?

11 A. Yes.

12 Q. Thank you.

13 THE COURT: Thank you, Mr. Mason.

14 MR. NEGUS: Gary Murray.

15 THE CLERK: Raise your right hand.

16

17 GARY MURRAY,

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: Gary Murray. M-u-r-r-a-y.

24 THE CLERK: Thank you.

25

26 DIRECT EXAMINATION

27 BY MR. NEGUS:

28 Q. Mr. Murray. what's your occupation?

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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.

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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

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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

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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

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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

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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:

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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 Institution
0 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 in contact with Mr. Taylor in 1983 as well?

27 A. Yes. I did.

28 Q. Do you remember approximately when that was?

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

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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

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 --

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.

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.

3 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.

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?

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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?

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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

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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?

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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.

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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.

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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.

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22 (Noon recess taken.)

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1 SAN DIEGO. CALIFORNIA. MONDAY. JANUARY 31, 1985, 1:30 P.M.

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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.

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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

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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

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

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 photographs. 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

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

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 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.

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

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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.

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 cirsscrossed 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

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1 previously duly sworn, resumed the stand and testified further
2 as follows:

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4 CROSS EXAMINATION

5 BY MR. KOCHIS:

6 O. 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:

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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 O. 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?

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

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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 Q. 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 Q. 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 Q. 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 Q. Did anybody from homicide ever ask you to take
28 pictures of your shoes?

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1 A. Yes.
2 Q. When was that?
3 A. That was several months later.
4 Q. As late as after the preliminary hearing?
5 A. I believe so. yes.
6 Q. Did you testify at the preliminary hearing?
7 A. Yes. I did.
8 Q. And did you testify that you had been inside the
9 Ryen house during that preliminary hearing.
10 A. Yes. I did.
11 Q. That was the first time that anybody asked you
12 about it?
13 A. Yes.
14 MR. NEGUS: Thank you. That's all I have.
15
16 CROSS EXAMINATION
17 BY MR. KOCHIS:
18 Q. Mr. Gaul. on the chart. after the -- or next to t
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.
22 A. It was after dark. I don't know.
23 Q. 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.
27 Q. Directing your attention to Exhibit 472.
28 Is that a photograph of the sole of the bottom of

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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

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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?

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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?

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?

1 A. Yes. sir. I believe there was.
2 Q. 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 Q. 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 Q. 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 Q. By anybody?
13 A. No.
14 Q. 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 Q. Did you know where it came from?
19 A. Yes. sir.
20 Q. Where was that?
21 A. From Sergeant O'Rourke.
22 Q. Dennis O'Rourke?
23 A. Yes. sir.
24 Q. 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?

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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

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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

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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.

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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

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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

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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

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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

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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.

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2 GARY R WOODS.

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

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

6 Would you state your full name for the record and
7 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 Q. Mr. Woods, you are a detective with the San
14 Bernardino County Sheriff's Department homicide detail.

15 A. I am.

16 Q. And on January 27th of 1984, did you have a
17 conversation with a person by the name of Vince Pacquet.

18 P-a-c-q-u-e-t.

19 A. January 27th? That's correct.

20 Q. And that person called you collect at the Sheriff's
21 Department and you spoke to him over the phone

22 A. That's correct.

23 Q. Mr. Pacquet was a person who was employed as a
24 landscaper by Mary Lease at approximately the time of the Ryen
25 homicides?

26 A. That's what I was told. yes.

27 Q. When you talked to Mr. Pacquet, did he tell you
28 that he started working at the house that Cooper used as a8
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1 hideout on a Wednesday?

2 A. I don't have an independent recollection. I have
3 to --

4 O. Do you have your report there?

5 A. Yes. I do.

6 O. 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 O. 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 O. 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 O. 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 O. 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 O. Were you aware, Mr. Woods, that Mr. Cooper had
28 escaped from state prison at approximately 3:30 in the afternoon

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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?

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1 A. Are you speaking in regards to the shoe soles?
2 O. 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 O. 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 O. 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 O. Were you attempting to discourage them from talking
16 to Mr. Forbush?

17 A. No. sir

18 O. 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 O. 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 O. 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

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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

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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 Q. 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 Q. 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.

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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 presence 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

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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

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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

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

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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.

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

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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 spectable 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

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

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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

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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

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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.

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

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.

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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

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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.

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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.

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 defugility.

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
3 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.

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.

1 MR. NEGUS: That's what mental state required is, a
2 specific premeditated and deliberate intent to kill.

4 THE COURT: Deliberation and premeditation referred to
3 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

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1 at all. So, let's give it then if it is not in issue. There's
2 a lot of instructions we give where there is no issue.

3 We did, for instance, detain all the elements of
4 the murder, when all the elements are in dispute, usually all
5 elements of the -- in a crime burglary, for instance.

6 8.71, again, question mark, doubt as to first or
7 second degree.

8 8.74, again, question mark, must be unanimous,
9 first or second.

10 I would like to see 6.00 modified. Well, not
11 modified, you are missing an instruction. There should be
12 another instruction before that that says the defendant is
13 charged in Count Six with the crime of attempted murder of
14 Joshua Ryen or something like that. I simply don't have that
15 instruction. And then 6.00 defines attempt.

16 Then you also need another instruction that sets
17 the stage for the G.B.I. allegation. I am not quite sure how it
18 reads right now.

19 The next one that I have here simply defines great
20 bodily injury. If you find the defendant guilty of the Counts
21 Two, Three, Four, Five, something like that, then you have an
22 additional task to determine as follows.

23 MR. NEGUS: It is -- only the count of G.B.I. applies
24 to --

25 THE COURT: 17.02, decide each count separately. 8.00.

26 MR. NEGUS: What was that?

27 THE COURT: 17.02 will be given.

28 Then the next one I have is 8.80.

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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

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 --

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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.

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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

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.

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.

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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.

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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