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SUPREME COURT - STATE OF CALIFORNIA

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

KEVIN COOPER,

Defendant-Appellant.

SUPREME COURT NO. *Crim 24552*

FROM SAN DIEGO COUNTY

HON. RICHARD C. GARNER,
JUDGE

San Diego County Superior Court Case No. CR 72787

REPORTERS' TRANSCRIPT

VOLUME *106*

February 5, 1985, Pages 7608 through 7734

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and Appellant:

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT NO. 30

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

NO. OCR-9319

REPORTERS' TRANSCRIPT
February 5, 1985

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Official Reporters

02-1-4-22

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FOR THE PEOPLE:

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(Mr. Negus)

7609

7614

ARTHUR, Douglas
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(Mr. Negus)

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FATE, Robert A.
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7619

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HALL, Robert S.
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KILLIAN, Shirley C.
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LEASE, Larry
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GLENN, Robert E.
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PARRISH, Rodney
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(Mr. Negus)

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FIELD, Scott
(Mr. Kottmeier)
(Mr. Negus)

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ROBLES, Marie A.
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OGINO, Craig
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(Mr. Negus)

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HOWELL, Mary A.
(Mr. Kottmeier)
(Mr. Negus)

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283	3 x 5 Color Photo A-67	3421	4691
284	3 x 5 Color Photo A-68	3421	4691
285	3 x 5 Color Photo A-69	3421	4691
286	3 x 5 Color Photo A-70	3421	4691
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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INDEX OF EXHIBITS

		I den. _ _ _	In E v d.
299	3 x 5 Color Photo A-89		4691
300	3 x 5 Color Photo A-90		4691
301	3 x 5 Color Photo A-91		4691
302	3 x 5 Color Photo A-93		4691
303	3 x 5 Color Photo A-95	3679	4691
304	3 x 5 Color Photo A-96		4691
305	3 x 5 Color Photo A-99		4691
306	3 x 5 Color Photo A-100		4691
307	3 x 5 Color Photo A-101	3385	4691
308	3 x 5 Color Photo A-102	3489	4691
309	3 x 5 Color Photo T--1		4691
400	3 x 5 Color Photo T-3		4691
401	3 x 5 Color Photo T-4		4691
402	3 x 5 Color Photo T-5	3461	4691
403	3 x 5 Color Photo A-91	3461	4691
404	3 x 5 Color Photo T-7		4691
405	3 x 5 Color Photo T-8	3461	4691

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

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

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

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		<u>Iden.</u>	<u>In Evid.</u>
473	3 x 5 Color Photo LFP-3	3385	4692
474	3 x 5 Color Photo LFP-4	3385	4692
475	3 x 5 Color Photo LFP-5	3385	4692
476	3 x 5 Color Photo LFP-6	3385	4692
477	8 x 10 Color Photo A-59	3484	5088
478	8 x 10 Color Photo JR-5, Head	3358	7588
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
486	3 x 5 Color Photo I.D. #13	3470	4692

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		<u>Iden.</u>	<u>In Evid.</u>
489	3 x 5 Color Photo I.D. #21	3470	4692
490	3 x 5 Color Photo Stockwell Shoes	3524	4692
491	Chart- Butcher Paper Time Line	6730	7588
492	2943 Notes		7104
493	2943 Notes - Schechter	3756	7104
494	2943 Master Bedroom, DCS	3587	7104
495	Pink Slip - A Series	3583	7119
496	Pink Slip - J Series	3584	7119
497	Pink Slip - Autopsy's	3584	
498	Drawing of DCS Shoe		7104
499	Drawing - Luminol	4316	5088
500	Evidence Collection Summary	3561	
500-A	Exidence List, Crime Lab Pages 1704 - 1719	5094	5094
501	Brown Paper Bag, Empty	7145	7588
502	3 x 5 Color Photo T-2	3676	4692
503	8 x 10 Chart - Ryen Home	5299	7104
504	8 x 10 Black & White Photo Of South Wall		7104
505	8 x 10 Black & White Photo Closeup of South Wall		7104
506	8 x 10 Black & White Photo Bottom Sheet		7104
507	8 x 10 Black & White Photo Top Sheet		7104

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		<u>Iden.</u>	<u>In Evid.</u>
508	8 x 10 Black & White Photo Comforter		7104
509	8 x 10 Black & White Photo Closeup - Bottom Sheet		7104
510	DCS Notes, T-Series	3878	
511	3 x 5 Black and White Photo Sole Impression - Coronado	3780	7588
512	Diagram - DCS 7-5-83 42376 A-5 Bottom	3780	7594
513	Diagram - 42376, A-5 Top	3780	7594
514	Diagram - 42376, A-10	3780	7594
515	Diagram - 42376, A-8	3780	7594
516	8 x 10 Color Photo Old English Road	3798	5088
517	8 x 10 Color Photo Hatchet	3798	7594
518	Latent Prints - Roper, Ryen Residence	3804	7594
519	Latent Prints - Roper, Lease Residence	3806	7594
520	Latent Prints - Roper, Ryen Vehicle	3807	7594
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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		<u>Iden.</u>	<u>In Evid.</u>
526	Plastic Model - Peggy Ryen	3871	4169
527	Plastic Model - Jessica Ryen	3896	4169
528	Plastic Model - Christopher Hughes	3923	4169
529	Catalog - Knife	7302	7735
530	Pamphlet - Buck Knife	7302	7735
531	Buck Knife Pamphlet	4137	7735
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	7305	7595
539	3 x 5 Color Photo - Knife Buck #110	7303	7595
540	3 x 5 Color Photo - Knife Buck #110 FG	7303	7595
541	3 x 5 Color Photo - Knife Buck #110 FG	7303	7595
542	3 x 5 Color Photo - Knife Buck #112	7303	7595
543	3 x 5 Color Photo - Knife Buck #319	7303	7595
544	3 x 5 Color Photo - Knife Buck #442	7303	7595
545	3 x 5 Color Photo - Knife Buck #500	7303	7595

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		<u>Iden.</u>	<u>In Evid.</u>
546	3 x 5 Color Photo - Knife Buck #503	7303	7595
547	3 x 5 Color Photo - Knife Buck Classic III, Model 513	7303	7595
548	3 x 5 Color Photo - Knife Buck - #102 Woodsman	4135	7595
549	3 x 5 Color Photo - Knife Buck - #118 Personal	4135	7595
550	3 x 5 Color Photo - Knife Buck - #119 Special	4135	7595
551	3 x 5 Color Photo - Knife Buck - #121 Fisherman	4135	7595
552	3 x 5 Color Photo - Knife Buck - #123 Lake Mate	4135	7595
553	3 x 5 Color Photo - Knife Buck - #123 Lake Mate	4135	7595
554	3 x 5 Color Photo - Knife Explorer Fillet	4135	7595
555	3 x 5 Color Photo - Knife Bulau Knife	4120	7595
556	3 x 5 Color Photo - Knife Case Knife	7303	7595
557	3 x 5 Color Photo - Knife Machete	4129	7595
558	3 x 5 Color Photo - Kitchen Knives	7304	7595
559	3 x 5 Color Photo - Kitchen Knives	7304	7595
560	3 x 5 Color Photo - Kitchen Knives	7304	7595
561	Butcher Paper - Stab Wound Chart		7595
562	Butcher Paper Chart - Final Position		7595

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		<u>Iden.</u>	<u>In Evid.</u>
563	Butcher Paper Chart - Type of Wounds		7595
564	Butcher Paper Chart - Amount of Bleeding	4038	7595
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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		<u>Iden.</u>	<u>In Evd.</u>
578	3 x 5 Color Photo Second Seat - Ryen Car	4210	4692
579	Xerox Prints - Duffy Ryen Vehicle	4206	5003
580-A	8 x 10 Map of Long Beach	4195	7595
580-B	8 x 10 Map of Long Beach	4195	7595
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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		<u>Iden.</u>	<u>In Eyd.</u>
589	Chart - Blood Profile Victims & Defendant	4335	5003
590	Chart - Electrophoresis	4348	5003
590-A	Plastic Overlay For Exhibit No. 590	4557	5003
591	Chart EAP Banding Pattern	4562	5003
592	Chart - Physiological Fluids from Ryen Home	4425	5003
593	Chart - Physiological Fluids from Lease Home	4464	5003
594	Chart - Physiological Fluids from Ryen Car	4469	5003
595	Chart - Butcher Paper EAP Patterns	4374	5003
596	Chart - Blood types of Other Parties	4445	5003
597	3 x 5 Black & White Amount of Sample A-41	4443	4692
598	Chart - Butcher Paper Time Lines	4503	7595
599	Group II Run #162 - Copy	4539	7595
600	Group II Run #163 - Copy	4539	7595
601	Group I Run #258		7595
602	5 x 7 Black & White Photo EsD Run #258		7595
603	5 x 7 Black & White Photo PGM Run #263	4631	7595
604	5 x 7 Black & White Photo PGM Run #255	4631	7595

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		<u>Iden.</u>	<u>In Evid.</u>
605	5 x 7 Black & White Photo PGM Run # 236	4631	7595
606	5 x 7 Black & White Photo PGM Run # 237	4631	7595
607	5 x 7 Black & White Photo PGM Run # 255	4631	7595
608	5 x 7 Black & White Photo PGM Run #259	4631	7595
609	5 x 7 Black & White Photo PGM Run # 260	4631	7595
610	5 x 7 Black & White Photo PGM Run # 261	4631	7595
611	Chart - Butcher Paper Enzyme Life Span	4591	7595
612	Chart - Butcher Paper Exhausted Items	4616	7595
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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		<u>Iden.</u>	<u>In Evid.</u>
616-C	Prints not Identified or Eliminated	4750	5004
617	Display - Shoe Impressions	4773	4796
618	Display - Shoe Sole Impressions	4769	4796
619	Shoe Impression - Korea	4771	4796
620	Display - Blood Impression	4775	4796
621	Photo of Shoe Sole Mold	4772	4796
622	Photo of Blood Impression	4776	4796
623	Tennis Shoe Size 10	4786	4796
624	White Box - Open With Tobacco Contents	4897	5003
624-A	Plastic Box Containing Tobacco Removed 624 (FF-2)	5047	5088
625	Chart - Butcher Paper, Hair Characteristics	4816	5003
626	8 x 10 Color Photo Boat, Illa Tika	4983	5003
627	8 x 10 Color Photo Illa Tika	4847	5003
628	8 x 10 Color Photo Inside Illa Tika, Sala	4983	5003
629	8 x 10 Color Photo Inside Illa Tika, Floor	4848	5003
630	8 x 10 Color Photo Inside Illa Tika	4848	5003
631	Plastic Bag & Contents, Photo Album	4865	7596

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		<u>Iden.</u>	<u>In Eyd.</u>
632	U.S. Tobacco - Private Blends Division, Invoices	4893	5003
633	Plastic Bag & Contents, Two Towels	4878	7596
634	Plastic Bag & Contents, Pall Malls	4879	7596
635	Poster Board Chart Tobacco Samples	4896	7596
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
643-B	Plastic Overlay - Exhibit 643	7360	7596
644	LLLL Tobacco from Ryen House	5064	5088
645	3 x 5 Color Photo - Luminol No. 1		7596
646	3 x 5 Color Photo - Luminol No. 2		7596
647	3 by 5 Color Photo - Blank	5285	7596
648	3 by 5 Color Photo - Blank	5285	7596

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		<u>Iden.</u>	<u>In Evid.</u>
649	3 by 5 Color Photo - Blank	5285	7596
650	3 by 5 Color Photo - Blank	5285	7596
651	3 by 5 Color Photo - Luminol No. 7		7596
652	3 by 5 Color Photo - Luminol No. 8		7596
653	3 by 5 Color Photo - Luminol No. 9		7596
654	3 by 5 Color Photo - Luminol No. 10		7596
655	3 by 5 Color Photo - Luminol No. 11		7596
656	3 by 5 Color Photo - Luminol No. 12		7596
657	3 by 5 Color Photo - Luminol No. 13		7596
658	3 by 5 Color Photo - Luminol No. 14		7596
659	3 by 5 Color Photo - Fields between Mc Coy Ranch & Eucalyptus	5271	7596
660	3 by 5 Color Photo - Taken from Canyon Corral Bar Parking Lot	5275	7596
661	3 by 5 Color Photo - Taken from Canyon Corral Bar Parking Lot	5275	7596
662	8 x 10 Diagram - Master Bedroom, Ryen Scene	5320	7596
663	8 x 10 Diagram - Master Bedroom, Ryen Scene	5320	7596
664	8 x 10 Diagram - Master Bedroom, Ryen Scene	5320	7596

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		<u>Iden.</u>	<u>In Eyd.</u>
665	Drawing	5331	7126
666	Lineup Display	5348	7104
667	3 x 5 Color Photos Eucalyptus toward 2991	5425	7596
668	3 x 5 Color Photo - 2991 From Peyton Road		7596
669	3 x 5 Color Photo - Peyton Road		7596
670	3 x 5 Color Photo Eucalyptus from 71	5441	7596
671	3 x 5 Color Photo - Eucalyptus from 71	5449	7596
672	3 x 5 Color Photo - Highway 71 Looking North		7596
673	3 x 5 Color Photo - Highway 71 Looking South		7596
674	3 x 5 Color Photo Eucalyptus & 71	5442	7596
675	3 x 5 Color Photo - Pipeline & 71		7596
676	3 x 5 Color Photo - Eucalyptus & 71		7596
677	3 x 5 Color Photo - Eucalyptus & 71		7596
678	3 x 5 Color Photo - Eucalyptus Looking West		7596
679	Butcher Paper Diagram of CIM - Cooper	5331	7596
680	3 x 5 Color Photo - Driveway of 2991	5447	7596
681	3 x 5 Color Photo - 2991 Garage	5517	7596

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		<u>Iden.</u>	<u>In Evid.</u>
682	3 x 5 Color Photo - 2991 Inside Garage	5520	7596
683	8 x 10 Color Photo - Kevin Cooper Braids		7596
684	8 x 10 Color Photo - Cooper Braids	5542	7596
685	1 Hand-rolled Cigarette Inside Envelope	5501	7596
686	Remaining Tobacco Inside Envelope	5502	7596
687	3 x 5 Color Photo - Interior of Prison Gym	5554	7596
688	Certified Copy of Vehicle Registration	5624	7596
690	3 x 5 Color Photo - Ryen Residence from Lease Residence	5796	7596
691	3 x 5 Color Photo - Lang Bathroom	5991	7596
692	3 x 5 Color Photo Lang Bathroom	5816	7596
693	Large Brown Bag Clothing	5880	7596
693-A	Orange Cap	5880	7596
693-B	Orange Cap	5880	7596
693-C	Strip of Denim (Headband)	5888	7596
693-D	Green Terry Cloth Towel	5888	7596
693-E	Strip of Green Towel	5888	7596
693-F	Strip of Green Towel	5888	7596
693-G	Jar - Hair Conditioner	5880	7596
694	Large Paper bag	5889	7596

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		<u>Iden.</u>	<u>In Eyd.</u>
695	8 x 10 Color Photo Diane Williams	5898	7596
696	Loma Linda Hospital Records - Mr. Gamundoy	5923	
697	Blank Sheet of Paper - Mr. Gamundoy	5922	7104
698	Progress Notes by Mr. Gamundoy	5965	
699	CC 2-Page Medical Record - Neurosurgery	5967	7119
700	CC Admitting Data Base - Trauma Room Record	5969	7119
701	Butcher Paper Diagram - Mr. Sharp	6005	7596
702	Notes - Dr. Hoyle	7120	
703	Notes - Hector O'Campo	6072	7104
704	Report - Hector O'Campo	6083	
705	Report - Hector O'Campo	6197	
706-A	Loma Linda ICU Charts	6288	7119
706-B	Loma Linda ICU Charts	6288	7119
706-C	Loma Linda ICU Charts	6288	7119
706-D	Loma Linda ICU Charts	6288	7119
706-E	Loma Linda ICU Charts	6288	7119
706-F	Loma Linda ICU Charts	6288	7119
706-G	Loma Linda ICU Charts	6288	7119
706-H	Loma Linda ICU Charts	6288	7119
707	Tape of Dr. Mary Howell & Mr. Negus	6284	
707-A	Cassette of Dr. Mary Howell & Mr. Negus	7708	7708

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		<u>Iden.</u>	<u>In Evid.</u>
708	Transcript of a portion of Exhibit 707	6283	
709	Loma Linda Hospital Medical Record	6296	
710	Butcher Paper Skecth of Josh's Room - Headley	6301	7596
711	Narrative progress notes - Loma Linda Hospital	6330	7119
712	3 x 5 B & W Photo - Shoewear - Sexton	6452	7597
713	3 x 5 B & W Photo Shoewear - Hoops	6495	7597
714	8 x 10 Diagram - Ryen Home		7597
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		7597
718	8 x 8 B & W Photo - East Side of Road - Creek	6510	7104
719	8 x 8 B & W Photo - East Side of Road - Creek	6509	7104
720	3 x 5 Color Photo Canyon Corral Bar	6529	7597
721	3 x 5 Color Photo Canyon Corral Bar	6528	7597
722	Property List	6549	7597
723	Jumpsuit Coveralls	6556	7597
724	Copy of Report from Mr. Eckley to Mr. Arthur	6550	7105

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		<u>Iden.</u>	<u>In Evid.</u>
725	Butcher Paper Chart Ha Penny Inn	6660	7597
726	Surgery Notes	6631	7119
727	Surgery Report	6632	7119
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021479

1 SAN DIEGO, CALIFORNIA, TUESDAY, FEBRUARY 5, 1985, 9:32 A.M.

(2 --ooOoo--

3
4 (Chambers conference reported.)

5 THE COURT: We are in chambers this morning, defendant
6 and all counsel.

7 MR. KOTTMEIER: Your Honor. we just wanted permission of
8 the Court to open a seam on one of the T-shirts where the lady
9 from the prison manufacturing thinks that maybe a tag has been
10 sewn underneath the hem line or whatever, so before we altered
11 the exhibit we wanted to get the approval of the Court.

12 I've checked with Mr. Negus; he has no objection.

13 THE COURT: Nor do I.

14 MR. NEGUS: My suggestion was he do it on the stand.

15 MR. KOTTMEIER: Well, I would prefer to have her at least
16 look at it without being under the focus of everything going on.
17 It will only take a minute for her to open it, for her to look
18 at it.

19 THE COURT: Yes. I won't delay the procedure and perhaps
20 distract the jurors by doing it on the stand. Let her do it
21 before we start outside. Is that all?

22 MR. KOTTMEIER: Yes.

23 (Chambers conference concluded.)

24
25 (The following proceedings were held in
26 open court in the presence of the jury:)

27 THE COURT: Morning everyone.

28 Counsel, we are all assembled. Mr. --

1 MR. NEGUS: Your Honor, we have a couple of stipulations
2 if we --

3 THE COURT: Want to take those first?

4 MR. NEGUS: Or do you want to wait on those?

5 MR. KOCHIS: I would prefer to wait on those.

6 MR. NEGUS: All righty.

7 THE COURT: Outside of your presence last night we did go
8 over the exhibits and take care of some of the matters that
9 counsel spoke of when we adjourned and we are now ready to
10 proceed with the prosecution's witness in rebuttal.

11 Mr. Kottmeier.

12 MR. KOTTMEIER: The first witness will be Dave Hayes.

13 THE COURT: Come forward, please.

14

15 DAVID RALPH HAYES.

16 called as a witness on behalf of the People in rebuttal, having
17 been duly sworn, testified as follows:

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

21 THE WITNESS: David Ralph Hayes, H-a-y-e-s.

22 THE CLERK: Thank you.

23

24 DIRECT EXAMINATION

25 BY MR. KOTTMEIER:

26 Q. Mr. Hayes, what is your occupation, please?

27 A. I'm a police officer.

28 Q. For which agency?

002-1-48-1

1 A. City of Costa Mesa.

2 Q. How long have you been in law enforcement work?

3 A. Approximately 20 years.

4 Q. Going back to the date of June 7th, 1983, were you

5 working for Costa Mesa Police Department on that Tuesday?

6 A. Yes, sir.

7 Q. And at some point in time was your attention

8 directed to a telephone call which had been received from

9 someone identifying themselves as Bill?

10 A. Yes, it was.

11 Q. And did you talk to Bill on the telephone?

12 A. Yes, sir.

13 Q. And what was it that Bill told you?

14 MR. NEGUS: Objection; hearsay.

15 MR. KOTTMEIER: Only offered not for the truth of the

16 matter asserted, your Honor, but to explain the actions of this

17 officer and the probable cause for what he does later on.

18 MR. NEGUS: That's irrelevant.

19 THE COURT: Counsel. I really don't know where we're

20 going, but I certainly don't think that probable cause is an

21 issue in this trial. Let's just go to his actions and perhaps

22 later he can back up to explain if need be.

23 BY MR. KOTTMEIER:

24 Q. After the telephone call, did you go somewhere?

25 A. Yes, sir.

26 Q. Where was that?

27 A. Tambo's Bar, 690 West 19th Street.

28 Q. In which city?

0221482

1 A. Costa Mesa.
2 Q. When you arrived at Tambo's did you contact
3 someone?
4 A. Yes.
5 Q. And did that person identify himself by name to
6 you?
7 A. Yes, sir.
8 Q. What was the name he gave?
9 A. Bill.
10 Q. And during your conversations with Bill. did you
11 have him leave the bar?
12 A. Yes, sir, I did.
13 Q. And as you were leaving the bar, did you notice
14 whether he was armed in any way?
15 A. Yes, sir, I did.
16 Q. What did you notice as far as armaments?
17 A. A knife in a sheath on his right side on his belt.
18 Q. Now, as a result of Bill turning himself in, were
19 you going to take him into custody?
20 A. Yes, sir, I was.
21 Q. So, did you take any action in regard to the knife?
22 A. Yes, sir, I did.
23 Q. What did you do?
24 A. I removed the knife from the sheath and placed it
25 in my back pocket.
26 Q. Showing you what has been marked as Exhibit 778. if
27 you would take a moment and look at this item, please.
28 Do you recognize the knife in Exhibit 778?

021403

1 A. Yes, sir.

2 Q. And is that the knife that you took off of this

3 individual called Bill?

4 A. Yes, sir.

5 Q. During your conversations did Bill identify himself

6 by another name to you?

7 A. Yes, sir.

8 Q. What was that name?

9 A. Milton August Bulau.

10 Q. As a result of your conversations with Mr. Bulau

11 did you book him into the jail in Costa Mesa?

12 A. Yes, sir.

13 Q. And what charge was he booked for?

14 MR. NEGUS: Objection; irrelevant.

15 THE COURT: Overruled.

16 You may answer, sir.

17 THE WITNESS: Suspicion of robbery.

18 BY MR. KOTTMEIER:

19 Q. Did you also add an additional charge later on to

20 Mr. Bulau's booking.

21 MR. NEGUS: Objection; irrelevant.

22 THE COURT: Overruled.

23 THE WITNESS: Suspicion of burglary.

24 BY MR. KOTTMEIER:

25 Q. And the date of the burglary?

26 MR. NEGUS: Objection. That would call for hearsay now.

27 THE COURT: Counsel, what exception?

28 MR. KOTTMEIER: As far as the booking process, we're only

0211484

1 discussing what this particular officer did in the filing of
2 charges against Mr. Bulau and it doesn't entail anything that
3 Mr. Bulau said. If anything it refers back to the testimony
4 yesterday.

5 THE COURT: Unless this can emanate from witnesses other
6 than this one, however, he doesn't have it of his own knowledge.
7 Sustained.

8 BY MR. KOTTMEIER:

9 Q. You took the knife from Mr. Bulau and put it into
10 evidence in Costa Mesa?

11 A. Yes, sir.

12 Q. As a result of Mr. Bulau turning himself in, did
13 you go to the Ha Penny Inn?

14 A. Yes, sir, I did.

15 Q. To possibly check for additional evidence?

16 A. Yes, sir.

17 Q. And at the Ha Penny Inn, which took room did you go
18 to for the purpose of a search?

19 A. Room 809.

20 Q. When you got there did you make contact with any
21 individuals at the Ha Penny Inn?

22 A. Yes, sir. I did.

23 Q. Who was that?

24 A. That was Mr. Lenahan, the assistant manager, and
25 Mr. Staubly from security.

26 Q. And following conversations with them, did you go
27 to room 809?

28 A. Yes, sir. I did.

002214005

1 Q. Did you talk with anyone at room 809?

2 A. No, I did not.

3 Q. Did you look through the items removed from 809. as
4 far as trash and other contents of that particular room?

5 A. Yes, sir, I did.

6 Q. Did you take anything into your custody as evidence
7 from searching those materials in relation to Milton Bulau who
8 had turned himself in?

9 A. Yes, sir.

10 Q. What was that?

11 A. It was a black beret type cap.

12 Q. During the examination of the items at 809 Ha Penny
13 Inn, did you at any time see any bloody clothes?

14 A. No, sir.

15 Q. Did you see any bloody rags?

16 A. No, sir.

17 MR. KOTTMEIER: I have nothing further of Officer Hayes,
18 your Honor.

19 THE COURT: Thank you.

20 Counsel.

21

22 CROSS-EXAMINATION

23 BY MR. NEGUS:

24 Q. Did Mr. Lenahan give you a sign-in sheet for room
25 809 under the name of Bill Hatfield?

26 A. Yes, sir.

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

28 MR. KOTTMEIER: Nothing further, your Honor.

0021486

1 THE COURT: Thank you very much. You may be excused.

2 MR. KOTTMEIER: Doug Silber.

3

4 DOUGLAS ARTHUR SILBER.

5 called as a witness on behalf of the People in rebuttal, having
6 been duly sworn, testified as follows:

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

10 THE WITNESS: Douglas Arthur Silber, S-i-l-b-e-r.

11

12 DIRECT EXAMINATION

13 BY MR. KOTTMEIER:

14 Q. Mr. Silber, what is your occupation, please.

15 A. I am currently a civilian, selfemployed.

16 Q. Back in June of 1983 were you working for the Costa
17 Mesa Police Department?

18 A. Yes, sir.

19 Q. In what capacity?

20 A. As a patrol field officer.

21 Q. On Wednesday, June the 8th, 1983, did you go to the
22 Ha Penny Inn in Costa Mesa?

23 A. Yes, sir.

24 Q. And was that in conjunction with an investigation
25 around Milton Bulau and him turning himself in for a robbery and
26 burglary?

27 A. Yes, sir.

28 Q. And having gone there to the Ha Penny Inn, did you

00241487

1 receive three items?

2 A. Yes, sir.

3 Q. What were the three items you got?

4 A. The two out of the three items were white T-shirts,
5 and the third item was a blue with yellow striped swim suit.

6 Q. When you say, "T-shirts", are you sure they are
7 T-shirts or handkerchiefs?

8 A. I'm sorry. They were handkerchiefs.

9 Q. Showing you first of all Exhibit 780 and 781, would
10 you look at these two photographs, please. Mr. Silber.

11 For the record those are two three by five,
12 approximate, color photographs.

13 Do you recognize the two handkerchiefs that are
14 pictured one in each of those photos?

15 A. Yes, sir.

16 Q. Are those the two handkerchiefs that you picked up
17 at the Ha Penny Inn?

18 A. Yes, sir.

19 Q. We've also had marked a paper bag as Exhibit 782.
20 Within the paper bag is what appears to be a swim suit.

21 With the exception of the section that has been cut
22 out of, I guess what would be the front and the left side, do
23 you recognize these particular swim shorts?

24 A. Yes, sir.

25 Q. Were those swim shorts given to you at the Ha Penny
26 Inn?

27 A. Yes, sir, they were.

28 Q. Now, these three items were given to you by whom?

0022488

1 A. By the security guard at the Ha Penny Inn.

2 Q. Mr. Staubly?

3 A. Yes, sir.

4 Q. And they came from the laundryroom?

5 A. Yes, sir.

6 Q. Did anyone say that they saw how these three items,
7 the two handkerchiefs and the pair of swim shorts, got into the
8 laundryroom?

9 MR. NEGUS: Objection. That calls for hearsay.

10 THE COURT: In the absence --

11 MR. NEGUS: Still it calls for an out-of-court statement
12 or lack of statement; offered for the truth of the matter
13 asserted.

14 THE COURT: I think he is correct.

15 MR. KOTTMEIER: The fact that there is no statement is
16 hearsay?

17 THE COURT: You can communicate by silence as well as
18 verbally. Sustained.

19 BY MR. KOTTMEIER:

20 Q. Did you conduct a search of the laundryroom?

21 A. Yes, sir, I did.

22 Q. Did you find any other indications of blood within
23 the laundryroom?

24 A. To my recollection I do not recall.

25 Q. Did you find any bloody rags other than the two
26 handkerchiefs and the pair of shorts that had been turned over
27 to you?

28 A. At this time I do not recall.

021489

1 Q. Did you find any other clothing items within the
2 laundryroom?

3 A. No, sir.

4 MR. KOTTMEIER: I have no further questions of Mr.
5 Silber.

6

7

CROSS-EXAMINATION

8 BY MR. NEGUS:

9 Q. Mr. Silber?

10 A. Yes, sir.

11 Q. Mr. Silber, did you freeze any of the items that
12 you seized to preserve them for serological typing?

13 A. No, sir.

14 Q. Thank you.

15 That's all I have.

16 MR. KOTTMEIER: Nothing further.

17 THE COURT: Thank you very much --

18 MR. KOTTMEIER: Maybe one item.

19

20

REDIRECT EXAMINATION

21 BY MR. KOTTMEIER:

22 Q. Those items though that you did take were logged in
23 in relation to the man that had turned himself in in regard to
24 the burglary and the robbery, Milton Bulau; is that correct?

25 A. Yes, sir.

26 Q. In the Costa Mesa Police Department?

27 A. Yes, sir.

28 MR. KOTTMEIER: Nothing further, your Honor.

00221490

1 THE COURT: Anything else?

2 MR. NEGUS: No.

3 THE COURT: Thank you.

4 MR. KOTTMEIER: Robert Fate.

5

6 ROBERT ARTHUR FATE,

7 called as a witness on behalf of the People in rebuttal, having
8 been duly sworn, testified as follows:

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

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

12 THE WITNESS: Robert Arthur Fate, F-a-t-e.

13 THE CLERK: Thank you.

14

15 ROBERT ARTHUR FATE,

16 called as a witness on behalf of the People in rebuttal, having
17 been duly sworn, testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. KOTTMEIER:

21 Q. Mr. Fate, what is your occupation, please?

22 A. I'm a police officer for the City of Costa Mesa.

23 Q. How long have you been in law enforcement work?

24 A. Approximately seven years.

25 Q. Returning for a moment to the date of Tuesday, June
26 7th, 1983, about 1:00 in the afternoon, did you go to the Ha
27 Penny Inn?

28 A. Yes, I did.

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1 Q. In conjunction with a man who had turned himself in
2 for burglary and robbery, Milton Bulau?

3 A. Not for that reason specifically, no.

4 Q. In an effort to follow up based upon his stay at
5 the Ha Penny Inn?

6 A. No. I was contacted by the security officer.

7 Q. A Mike Staubly?

8 A. Yes.

9 Q. And did you talk with him?

10 A. Yes, I did.

11 Q. During your conversation with Mr. Staubly, did he
12 in effect give you a description of three men that had stayed in
13 Room 809 on the day before. Monday night or Sunday night, June
14 5th or 6th?

15 A. Yes, he did.

16 Q. Referring first of all to suspect No. 1, what
17 description did he give you of that particular person?

18 A. To be accurate of the description I would have to
19 refer to my notes.

20 Q. Do you have the notes that you took during that
21 particular conversation?

22 A. Yes, I do.

23 THE COURT: Feel free to refer to them unless there is
24 some objection.

25 THE WITNESS: Thank you.

26 The first suspect -- or the subject that he
27 described to me was a male, White. approximately 30 years old,
28 five ten to five eleven, 150 to 155 pounds, collar length hair.

002-1-492

1 blonde in color, light blue short-sleeved shirt, light blue
2 pants, and he was carrying a -- it was estimated as a 12 inch by
3 2 inch blade military type knife, bayonet type thing.

4 BY MR. KOTTMEIER:

5 Q. Did he say where that was being carried?

6 A. On his right side on his hip in a sheath.

7 Q. Now, you noted as far as that suspect that he was
8 in custody at the time of the conversation?

9 MR. NEGUS: Objection. That calls for hearsay and for a
10 conclusion.

11 THE COURT: I don't know.

12 MR. NEGUS: There's been no --

13 THE COURT: If he knows. The question was "do you know."
14 Don't tell us what somebody told you. Do you know of your own
15 knowledge?

16 THE WITNESS: I did not know at that time, no.

17 BY MR. KOTTMEIER:

18 Q. What description did you receive of suspect 2?

19 A. No. 2 was a male, appeared to be American-Indian,
20 late teens or early 20's, five seven to five eight, 160 to 165
21 pounds, wearing no shirt, muscular build. He had long dark hair
22 to the middle of his back, straight, not curly, tattoos on both
23 arms, possibly a tattoo on his chest, wearing Levis, and no
24 facial hair, and possibly in charge of the three.

25 Q. The Indian person was?

26 A. Yes.

27 Q. And as far as the description of suspect No. 3?

28 A. No. 3 was a male, White, mid to late 20's,

0021493

1 reddish-blond hair, average length hair, full beard, and the
2 beard was long, five eleven to six foot, 180 to 200 pounds, red
3 short-sleeved shirt and Levi's.

4 Q. Now, after you received the description of these
5 particular suspects, did a detective from the San Bernadino
6 Sheriff's Office arrive and join your conversation?

7 A. Yes. There were I believe two investigators.

8 Q. And during the next portion of your conversation
9 was there a discussion by Mr. Staubly in regard to vehicles or
10 cars that he had seen in the area?

11 A. Yes, there was.

12 Q. What did Mr. Staubly say about a vehicle with a
13 license No. 2ALL731?

14 A. He stated that he believed that he had seen a
15 vehicle with that license number in the Ha Penny Inn parking lot
16 at approximately 0130 hours, which is 1:30 in the morning on
17 6-6-83.

18 Q. As far as the license plate description, did he
19 give you a description as to the color, background and letters
20 of the license plate?

21 A. Yes, he did.

22 Q. What did he tell you?

23 A. He stated it was a blue background with yellow
24 numbers and letters.

25 Q. Did Mr. Staubly have any information as to what
26 kind of a car that particular license plate was on?

27 A. The information that he told me was a white unknown
28 make or model vehicle.

002-1-1944

1 Q. Did he make any statement to you about the vehicle,
2 the white unknown make or model vehicle, being a station wagon?

3 A. He stayed that he did not -- he was not sure, but
4 it possibly could have been.

5 MR. KOTTMEIER: I have nothing further, your Honor.
6

7 CROSS-EXAMINATION

8 BY MR. NEGUS:

9 Q. Mr. Fate, in the report that you made of this, the
10 notes that you're referring to, you essentially, the
11 descriptions that you read were just read, that is, you don't
12 remember exactly what they were from your present memory; is
13 that correct?

14 A. That's why I wrote the notes, right.

15 Q. Okay. And as far as the vehicle description, do
16 you remember the license plate number from your present memory?

17 A. Yes, I remember the 2ALL, but not the numbers.

18 Q. Okay. As far as the notes that you took on that
19 particular -- on that particular occasion, you wrote down:
20 "First observed vehicle white unknown make or model California
21 license 2ALL731 on 6-6-83, 0130, in north parking lot"; is that
22 correct?

23 A. Yes.

24 Q. Nothing about the color of the license plate?

25 A. No.

26 Q. You just happened to remember that?

27 A. The color of the license plate?

28 Q. Right.

002495

1 A. Yes.

2 Q. Why didn't you say make a note of that?

3 A. At that point the San Bernadino Sheriff's were
4 there and they were also taking notes I believe.

5 Q. But why did you -- if that's the case why did you
6 bother to take notes at all?

7 A. Because these notes were taken prior to their
8 getting there.

9 Q. So when Mr. Staubly first described the license
10 plate number to you he didn't say anything about color, is that
11 right, when you were taking the notes from him?

12 A. As far as the plate?

13 Q. Yeah.

14 A. No, he did not. I did not ask him.

15 Q. Do you remember the manner of questioning that the
16 San Bernadino officers asked about the -- about the color of the
17 plate?

18 A. They asked him what the color of the plate was.

19 Q. Did he express some hesitation, some feeling like
20 he wasn't quite sure?

21 A. No, he did not.

22 Q. Did you see him hesitate at all?

23 A. No.

24 Q. Have you -- have you reviewed the reports of those
25 particular officers?

26 A. Of the San Bernadino officers?

27 Q. Yeah.

28 A. No, I have not.

021496

1 Q. Talked to anybody about the reports?
2 A. Not the reports, no.
3 Q. Well, I mean, did you talk to any of the
4 prosecutors here or Mr. Arthur about -- about, you know, what
5 the San Bernadino officers had seen?
6 A. What they had seen?
7 Q. Yeah. And what he had heard.
8 A. No.
9 Q. Did he ask you -- did they ask you -- well, did Mr.
10 Staubly describe the license plate number as blue over gold?
11 A. Can you repeat that, please.
12 Q. Did any of the prosecutors ask you: "Well, did Mr.
13 Staubly describe the license plate as gold letters with a blue
14 background?"?
15 A. Sergeant Arthur asked me if he described the plate.
16 Q. Did he -- did he ask you to describe it as blue
17 background, gold letters?
18 A. He asked me what Staubly said the plate looked
19 like. He did not mention any colors when he asked me, no.
20 MR. NEGUS: Nothing further.
21 MR. KOTTMEIER: I have no further questions.
22 THE COURT: Thank you very much, sir.
23 MR. KOTTMEIER: Deputy Robert Hall.
24 THE CLERK: Would you raise your right hand.
25
26 ROBERT S. HALL.
27 called as a witness on behalf of the People in rebuttal, having
28 been duly sworn, testified as follows:

021497

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

2 THE WITNESS: Robert S. Hall, H-a-1-1.

3

4

DIRECT EXAMINATION

5 BY MR. KOTTMEIER:

6 Q. Mr. Hall, what is your occupation?

7 A. I'm a detective with San Bernadino County Sheriff's
8 Office Career Criminal Division.

9 Q. How long have you been in law enforcement?

10 A. Approximately 15 years.

11 Q. Have you spent all 15 years with San Bernadino
12 County law enforcement?

13 A. Yes, I did.

14 Q. Going back to the date of June 7th, 1983, about
15 4:40 in the afternoon of that day did you go to the Ha Penny Inn
16 in Costa Mesa?

17 A. Yes.

18 Q. Did you talk to a Michael Richard Staubly?

19 A. Yes.

20 Q. At that particular location?

21 A. Yes, I did.

22 Q. During your conversations with Mr. Staubly, did he
23 talk to you about seeing a white station wagon with brown
24 pannelling on or about Monday June the 6th?

25 A. Yes, he did.

26 Q. What did he tell you about that particular station
27 wagon?

28 A. He told me he had seen the station wagon. I

02-14-88

1 questioned him as to where and when, he could not recall the
2 exact time or location, saying he believed it he saw it on
3 Monday but he wasn't sure whether he saw it out driving around
4 or if he saw it at the motel.

5 Q. As a separate topic of conversation, was there a
6 discussion about a license plate 2ALL731?

7 A. Yes, there was.

8 Q. Now, did he say that he saw that particular license
9 plate on the station wagon?

10 A. No. I asked him about that because he didn't
11 mention it, and when I asked him if it had been on that station
12 wagon he said, no, he doesn't remember what car he saw it on,
13 that he believes he saw it in the motel and read it because of
14 the -- he thought it was a personalized plate.

15 Q. Did he tell you in that conversation what colors
16 that particular license plate had?

17 A. Yes, he did.

18 Q. What did he say?

19 A. He said it was the blue with the yellow lettering.

20 Q. During the conversation did Mr. Staubly appear
21 certain in the manner in which he was describing the information
22 to you that you've just related?

23 A. Yes, he did.

24 Q. In connection with your work at the San Bernadino
25 County Sheriff's Office, did you go to 2943 English Road, the
26 scene of the Ryen homicides?

27 A. Yes, I did.

28 Q. What day was it that you went there?

021499

1 A. I believe -- I believe it was on the 5th or 6th.

2 Q. That would be Sunday, the 5th, or Monday, June the
3 6th?

4 A. Yeah. I believe it was on the 5th if I remember
5 correctly.

6 Q. What was your purpose in going to the Ryen scene?

7 A. I was assigned to go to that location to assist in
8 the investigation and conduct interviews.

9 Q. When you arrived at the scene did you at any time
10 go into the area of the master bedroom?

11 A. Yes, I did at one point.

12 Q. And when you went into the master bedroom for the
13 first time were the bodies in place or not?

14 A. No, they weren't.

15 Q. They were gone?

16 A. Yes.

17 Q. In your activities the day that you were first at
18 the Ryen scene, did you help move furniture and the rug and so
19 on out of the house?

20 A. Yes, I did.

21 Q. And that was your first day there?

22 A. Yes, sir.

23 Q. During the time that you were at that location,
24 were you on the patio area outside the master bedroom?

25 A. Yes, I was.

26 Q. I would like to show you Exhibit 784. for the
27 record about a four by four black and white photograph.

28 Do you recognize the shoes that are pictured, at

00215000

1 least the size of the shoes in that photograph, 784?

2 A. Yes, I do.

3 Q. Are those your shoes?

4 A. Yes.

5 Q. Are those the shoes that you were wearing when you
6 were there at the scene after the bodies had been removed from
7 the Ryen residence?

8 A. Yes, they are.

9 Q. In addition to being in the patio area of the Ryen
10 residence, did you also go to 2991 English Road, the hideout
11 house?

12 A. Yes, I did.

13 Q. Do you remember what day that was done?

14 A. I believe that was -- I believe it might have been
15 the morning of the 7th or else on the 6th; in the afternoon of
16 the 6th.

17 Q. You didn't make a report as far as those particular
18 visits to the scene, did you?

19 A. No, I did not.

20 Q. As far as the trip to the hideout house, what was
21 your purpose in going there?

22 A. To -- at the request of a Mr. Lease, to go check
23 the residence to see --

24 MR. NEGUS: Objection, this is all covered in the
25 prosecution's case in chief. We went through Mr. Hall's
26 testimony; it's been asked and answered.

27 THE COURT: Counsel?

28 MR. KOTTMEIER: I'm just trying to establish the time

021501

1 sequence within the witness' memory so that I can identify it
2 specifically. with specificity the actions as far as movements
3 within.

4 THE COURT: But the objection is improper rebuttal, Mr.
5 Kottmeier. As far as I can tell it is a good objection. I will
6 sustain the objection.

7 BY MR. KOTTMEIER:

8 Q. During the time that you were at the Ryen house,
9 did you step on the jacuzzi lid?

10 A. I may possibly have, yes.

11 MR. KOTTMEIER: I have nothing further your Honor.

12 THE COURT: Mr. Negus.

13

14 CROSS EXAMINATION

15 BY MR. NEGUS:

16 Q. Mr. Hall, when you say you may possibly have
17 stepped on the jacuzzi lid. What do you mean by that?

18 A. Well, I was -- we were moving furniture out of the
19 room, and the jacuzzi was just a short distance outside the
20 sliding glass door area from the the master bedroom, and we were
21 standing around it, I was standing around it, I may have stepped
22 across it or may have put my foot onto it.

23 Q. Do you remember doing that?

24 A. I don't have any specific recollection of actually
25 just standing on top of the jacuzzi lid, but --

26 Q. Well, were you -- was there anybody there to sort
27 of warn you maybe not to stand on the jacuzzi lid because there
28 might be some evidence on it?

002-1-5022

1 A. No.

2 Q. Nobody suggested that to you at all?

3 A. No.

4 Q. Well, so it was assumed then at that particular
5 point in time that there was nothing of evidentiary value on the
6 jacuzzi lid?

7 A. We were in the process of actually removing the
8 items from the room and it was my understanding that the house
9 had already been processed. We were actually collecting
10 evidence and removing it from the scene.

11 Q. When you collect evidence, then, after it has been
12 as you say quote "processed", you figure you can step on it
13 without -- that it is okay to step on it?

14 A. If there is nothing that's been indicated that that
15 particular item that I am stepping on is not a part of the
16 evidence, and I have not been told that, then I have no personal
17 objection to stepping on it or any reason to avoid it.

18 Q. I see. So, as far as you were concerned that
19 particular jacuzzi top, there was nothing of evidentiary value
20 on it; no reason to step all over it.

21 A. That's right.

22 Q. When you were at the Ryen house, did you go into
23 any rooms other than the Ryen master bedroom?

24 A. Yes, I did.

25 Q. Which rooms were those?

26 A. Went into the master bedroom -- I believe that is
27 where I initially went into -- down the circular hallway area,
28 looked into the other bedrooms. There was a bathroom along down

0021503

1 here at the -- in the corner, I'm sorry.

2 I turned around here, going around the other way
3 towards the kitchen. I was in the kitchen area, and I believe I
4 might have gone into the living room area as well, but also that
5 center portion right there which I assume would like be a den.

6 Q. Trophy room?

7 A. I assume that was a trophy room.

8 Q. Had pictures of horses and lots of ribbons on the
9 wall?

10 A. Yes.

11 Q. Well, were you investigating the scene when you
12 were walking through the house like that?

13 A. Yes, I was.

14 Q. What were you investigating?

15 A. Just familiarizing myself with the scene itself so
16 that I would be aware of the residence and its condition.

17 Q. I see. Just to get a basic idea of the layout of
18 the house.

19 A. Yes.

20 Q. Now, at that point in time you weren't actually
21 assigned to process the house, that is, look in the house for
22 evidence, right?

23 A. No, I wasn't.

24 Q. Just one of the people that was tromping through
25 the house looking around.

26 MR. KOTTMEIER: Objection, argumentative.

27 THE COURT: Yes, sustained.

28 MR. NEGUS: Were there other people tromping through the

00215004

1 house looking around?

2 MR. KOTTMEIER: Objection. argumentative.

3 THE COURT: With the phrasology, sustained. Rephrase.

4 BY MR. NEGUS:

5 Q. Were there other people besides yourself going
6 without any particular assignment through the house
7 familiarizing themselves with the scene?

8 A. I'm not aware of that.

9 Q. Did you seize any evidence while you were there?

10 A. I would assume you could say I seized evidence. I
11 helped collect some from the master bedroom.

12 Q. Okay. But that was later in the afternoon, was it
13 not?

14 A. Yes.

15 Q. This was in the morning you were wandering around
16 the house?

17 A. I am not sure what time it was.

18 Q. All the carpets were still in place.

19 A. I believe so, yes.

20 Q. Could you put "6-6" in column 30 for "Rest of
21 House" next to your name there. There's a column for "Rest of
22 House", there's your name, "R. Hall, 6-6".

23 When you went down to Costa Mesa and talked to Mr.
24 Staubly, was there a Mr. Fate?

25 Q. Who, Mr. Fate?

26 A. Mr. Fate.

27 A. I don't recall the name Mr. Fate.

28 Q. Well, there was -- when you were in here this

021505

1 morning, before you testified, there was a rather tall dark
2 haired with a mustache officer from the Costa Mesa Police
3 Department sitting right in front of you. Remember him?

4 A. He looked familiar.

5 Q. Did you hear him talking to Mr. Staubly?

6 A. I don't recall if I heard him talking to Mr.
7 Staubly or not.

8 Q. Do you remember a description given by Mr. Staubly
9 to Mr. Fate that the car with the license plate no. 2ALL731 had
10 been parked in the north parking lot of the Ha Penny Inn?

11 A. I don't recall that, no.

12 Q. Did you tape record the conversation you had with
13 Mr. Staubly?

14 A. No, I didn't.

15 Q. And did you take notes?

16 A. Yes, I did.

17 Q. Have you got the notes still?

18 A. No, I don't.

19 Q. What happened to them?

20 A. They are apparently in a notebook someplace. They
21 may have been destroyed, I really don't know.

22 Q. The report that you did, that was prepared on June
23 the 9th.

24 A. Yes. Well, it was prepared on the 7th, apparently
25 was typed on the 9th.

26 Q. You are sure it was prepared on the 7th?

27 A. I prepared it on the 7th.

28 Q. After you learned about the discovery evidence in

00215006

1 the Lease house?

2 A. I don't recall if it was after or before that. It
3 was probably afterwards because I think, I believe, if I
4 remember correctly, I learned about that while I was in Costa
5 Mesa.

6 Q. Was that embarrassing to you?

7 A. No, it wasn't.

8 Q. Well, you didn't want to go back and look in the
9 house at a later date to see what you'd missed, right?

10 A. I wanted to go back to see what they had found,
11 yes.

12 MR. NEGUS: Nothing further.

13 MR. KOTTMEIER: I have no further questions, your Honor.

14 THE COURT: Thank you, Mr. Hall.

15 MR. KOTTMEIER: Oh, excuse me. Maybe one.

16 Q. While you were at the Ryen scene, was the spa cover
17 picked up and taken away in the truck with the other items?

18 A. I don't recall it having been picked up and taken
19 away.

20 MR. KOTTMEIER: Nothing further, your Honor.

21 THE COURT: Thank you.

22 MR. KOTTMEIER: If I can step outside for a moment, your
23 Honor. Shirley Killian, your Honor.

24

25 SHIRLEY CATHERINE KILLIAN.

26 called as a witness on behalf of the People in rebuttal, having
27 been duly sworn, testified as follows:

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

0021507

1 Would you state your full name for the record and
2 spell your last name.

3 THE WITNESS: Shirley Catherine Killian. K-i-l-l-i-a-n.
4

5 DIRECT EXAMINATION

6 BY MR. KOTTMEIER:

7 Q. Miss Killian, returning for a moment to Saturday
8 night, June the 4th, 1983. Were you employed at a location that
9 particular night?

10 A. Yes, I was.

11 Q. What was your job?

12 A. I was manager of the Canyon Corral Restaurant.

13 Q. At some point during the afternoon of Saturday,
14 June 4th, 1983, did you go to a horse show?

15 A. Yes, I did, in the evening.

16 Q. And did you return to the Canyon Corral Bar?

17 A. Yes, I did.

18 Q. About what time did you arrive back at the Canyon
19 Corral Bar?

20 A. I believe it was between 10:30 and 11:00.

21 Q. During the time that you were at the Canyon Corral
22 Bar, were you having something to drink?

23 A. Yes.

24 Q. What was it that you were drinking?

25 A. I do believe I was drinking a beer.

26 Q. During the time of June, 1983, was the Canyon
27 Corral Bar primarily a beer bar or a different type of bar or
28 restaurant?

0021508

1 A. It is a restaurant-cocktail lounge.

2 Q. During that particular period of time, who was the
3 bartender?

4 A. Ed Lelko.

5 Q. Did you know Ed Lelko for quite awhile?

6 A. About eight years.

7 Q. Had he worked at that time in the Canyon Corral Bar
8 for some period of time?

9 A. He worked part-time for me, he didn't have a full
10 shift at that time.

11 Q. Based upon your knowledge of Ed Lelko, do you have
12 an opinion as to whether he tends to exaggerate?

13 A. Yes, he does.

14 MR. NEGUS: Objection. Objection, calls for an opinion.

15 THE COURT: I think you are getting into custom and habit
16 and I'd like to perhaps maybe take an early recess and look at
17 this one, counsel.

18 MR. KOTTMEIER: Fine.

19 THE COURT: Let's do that, ladies and gentlemen, let's
20 take the morning recess, and remember the admonition, please.

21 You will have to return in about 20 minutes.

22 Counsel, I will see you in chambers.

23 (Recess.)

24

25 (Chambers conference reported.)

26 THE COURT: All counsel are in chambers.

27 I think, Mr. Kottmeier, for foundational purposes,
28 you should give an offer of proof.

021509

1 MR. KOTTMEIER: I have an offer as far as Shirley
2 Killian, that she's known Ed Lelko for eight years, she's
3 familiar with his reputation in the community for truth or
4 veracity, and exaggeration, and basically I was just taking a
5 shorter approach to asking that kind of a question as opposed to
6 being very formal in the foundation.

7 THE COURT: Anything, Mr. Negus?

8 Might have made it easier for both Mr. Negus and
9 myself had you been more formal and laid your usual foundation
10 for it.

11 I can't see any exclusion for it. Generally under
12 780 you can show the capacity to communicate or perceive or
13 recollect matters about which they testify and attitude,
14 opinion, reputation. It all appears to be good.

15 So, unless you have something else, Mr. Negus, I
16 will let it in, particularly if he's going to prove it, okay?
17 This trip really wasn't necessary then. You shocked me out
18 there. No comment?

19 MR. NEGUS: No, I didn't have anything to say, so --

20 THE COURT: Take a brief recess. I'm ready to go back
21 whenever you want to bring the jury in.

22 Have you got enough witnesses for this morning?

23 MR. KOTTMEIER: It depends. We're missing at least one,
24 Mr. Rogokos, R-o-g-o-k-o-s. Supposedly he was going to be here
25 at 9:00 o'clock, he's not here. I think I have enough but then
26 you never know. And I have one minor problem in that Dr. Howell
27 will not be available until approximately 2:00 this afternoon.
28 She'll be the last witness. So, we can go right up to it, and

0022510

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

3 THE COURT: All right, gentlemen.

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

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

6 THE COURT: We have other jury instructions.

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

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

10 THE COURT: All right, thank you.

11 (Chambers conference concluded.)

12

13 MR. KOTTMEIER: Shirley Killian.

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

16 THE WITNESS: My name is Shirley Catherine Killian.

17

18 SHIRLEY CATHERINE KILLIAN.

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

22

23 DIRECT EXAMINATION (Resumed)

24 BY MR. KOTTMEIER:

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

28 A. Yes, sir.

021511

1 Q. And what is that opinion?
2 A. He exaggerates.
3 Q. Now, during the evening of Saturday, June the 4th,
4 1983, was he drinking on duty?
5 A. Yes, he was.
6 Q. And about how many people were in the Canyon Corral
7 Restaurant-Bar?
8 A. Oh, at that time, probably it was Saturday night,
9 we're usually busy. I'd say 50, 60 people.
10 Q. Did you notice three young men that attracted your
11 attention because they were clean-cut?
12 A. Yes, sir.
13 Q. And what was it about them that caused you to
14 notice them?
15 A. One of the three gentlemen had his head down at a
16 table where the three were sitting.
17 Q. Almost in a sleeping fashion?
18 A. Yes.
19 Q. That is, did he have his arm up on the table?
20 A. No. He had his forehead on the table.
21 Q. And can you describe the three men that you saw?
22 A. The gentleman I'm referring to is about six foot,
23 maybe six foot one, slender, blond hair, sandy face, or light
24 complexion.
25 Q. Was the hair long or short?
26 A. No. It was very short like a military cut.
27 Q. And the other two gentlemen?
28 A. I observed the one that was sitting on his left

00221512

1 because I spoke to him. He was of medium build, probably five
2 eight to five ten, and dark complexion, dark hair and little
3 longer cut than the tall young man.

4 Q. But still kind of a crew-cut type of haircut?

5 A. Not a crew-cut, a normal haircut, probably for a
6 high school age. That is not right either.

7 Can I look around and give you --

8 Q. If you see anyone similar in court.

9 THE COURT: How about this. I'm as square as they come
10 in the courtroom.

11 THE WITNESS: Longer than yours, sir.

12 BY MR. KOTTMEIER:

13 Q. The other one, do you recall any description?

14 A. I don't recall much of that gentleman because I
15 wasn't observing him.

16 Q. Can you recall what they were wearing?

17 A. The blond tall gentleman was wearing a light
18 colored T-shirt, I believe to be short-sleeved.

19 Q. Anything else that you can recall about what these
20 people were wearing?

21 A. Just the two gentlemen. The other one had on a
22 T-shirt also with -- the sleeves were longer, probably
23 three-quarter length and they were dark colors, as I recall.

24 Q. Down all the way to the elbow?

25 A. Yes.

26 Q. But not all the way to the wrist.

27 A. No.

28 Q. Looking at any of these individuals, did you see

1 blood on any of them?

2 A. No, sir, I did not.

3 Q. Did you see any tears or cuts within their
4 clothing?

5 A. No, sir.

6 Q. Did you have any conversation with the three men or
7 one of the three men as you saw the one person with his head on
8 the table?

9 A. Yes, sir. I touched his arm as I walked by, and he
10 acted like he was going to raise his head, and put it back down
11 again, which didn't come very far off the table.

12 I spoke to his partner on his left and I said, "Is
13 he sleeping or what?" And he said, "Yes. He's very tired."

14 Q. Were these men causing any kind of trouble at that
15 time?

16 A. No, sir.

17 Q. The kind you like to see at the Canyon Corral Bar?

18 A. In better condition, yes.

19 Q. Now, after you had this brief conversation, did you
20 go over and talk to Ed Lelko?

21 A. Yes, I did.

22 Q. And did you tell Ed Lelko that you didn't want
23 anymore alcohol served to the three men?

24 A. Yes, sir.

25 Q. Did Ed Lelko appear to notice them for the first
26 time when you pointed them out?

27 A. He didn't really even look then, he just said that
28 he was too busy to be worried about the tables and was going to

02-15-14

1 find out from the waitress who was waiting on them.
2 Q. So did you go to the waitress?
3 A. Yes, I did.
4 Q. And did you tell her no more alcohol --
5 A. Yes, sir.
6 Q. -- for those three men?
7 Did you go and tell the three men that you had cut
8 them off?
9 A. Yes, sir.
10 Q. As far as -- how did they respond to you?
11 A. They just said okay.
12 Q. Not upset or mad?
13 A. No.
14 Q. Didn't get beligerant or argue?
15 A. No, they didn't.
16 Q. Did you see two of the three men leave the bar?
17 A. Yes, sir, I did.
18 Q. And what was it about them leaving that caught your
19 attention?
20 A. The tall, slim gentleman with the short haircut was
21 carrying a bottle of Budweiser that was open.
22 Q. That is the one that had his head down on the
23 table?
24 A. Yes.
25 Q. When you saw him carrying the bottle of Budweiser.
26 what did you do?
27 A. I approached him and told him he could not leave
28 the building with an open container, he would have to leave the

021515

1 beer with me.

2 Q. And what happened next?

3 A. I reached down to take it and he really didn't want

4 to let go of it.

5 Q. Then what?

6 A. I persuaded -- he finally let go of it.

7 Q. Did he argue with you at all?

8 A. No. He just stood there grinning.

9 Q. Was he still grinning after you took the beer?

10 A. Oh, yes. He didn't know what I was doing, he

11 didn't know where he was.

12 Q. Did you visually follow them outside the bar?

13 A. Yes, I did.

14 Q. Did you walk outside the bar with them?

15 A. I walked out behind them.

16 Q. And what did you see next?

17 A. Well, they walked out and the door closed. I

18 waited possibly, I don't know, ten seconds or so, then I opened

19 the door. The very intoxicated gentleman was leaning up against

20 a small vehicle like he was going to get in it.

21 Q. Did you see the other gentleman, the one with the

22 longer darker hair?

23 A. Yes.

24 Q. He was standing on the passenger side of another

25 vehicle.

26 Q. What kind of a car or truck was that?

27 A. It looked like a white pickup truck.

28 Q. Did he have the doors to the pickup truck open at

02-15-19

1 all?

2 A. At first he didn't, he was talking to the gentleman
3 leaning on the car, and then he saw me and he said, "Come on,
4 let's go, we have got to get out of here."

5 He opened the pickup door and again told the other
6 man to get in the pickup, and finally reached down and pulled
7 him over, and at that point I went back into the restaurant.

8 Q. In regard to the gentleman that you saw that was
9 carrying the Budweiser in a tall bottle, was he virtually
10 falling down drunk at that time?

11 A. He was immobile for sure. He wasn't falling down
12 he was just in -- he would have if his buddy hadn't been with
13 him. He was being escorted from the table and his buddy
14 escorted him outside.

15 Q. Now, in regard to the third person, did he stay
16 inside the bar at this point?

17 A. Yes, he did.

18 Q. And did you return back into the bar itself?

19 A. Yes, I did.

20 Q. And how long approximately, if you know, did the
21 third person stay in the bar?

22 A. I don't know, I didn't know he was still there.

23 Q. But you did not see him leave with the others.

24 A. No, sir.

25 Q. During your contact with these particular
26 individuals, you saw no stains whatsoever on any of their
27 clothing.

28 A. No, sir.

0021517

1 Q. And no injuries.

2 A. None at all.

3 Q. No weapons.

4 A. No, sir.

5 Q. Did any of them smoke?

6 A. I don't know. I never observed them with a
7 cigarette.

8 Q. You didn't see any of them use hand-rolled
9 cigarettes?

10 A. No, sir.

11 Q. And you left approximately midnight or little
12 later?

13 A. Yes. I believe it was -- I really -- I don't
14 remember what time I left, I just -- I know what time it was
15 when I asked them to leave.

16 Q. Now, in regard to these three men that were at the
17 bar, these were what is know as happy drinkers?

18 A. Yes.

19 MR. NEGUS: Objection, that calls for a conclusion.

20 MR. KOTTMEIER: Well, in your experience.

21 THE COURT: Overruled.

22 MR. KOTTMEIER: In your experience have you seen people
23 that can respond differently?

24 THE WITNESS: Yes.

25 MR. NEGUS: Objection, leading, move to strike.

26 THE COURT: All right. Ordered stricken. Sustained.

27 BY MR. KOTTMEIER:

28 Q. Have you seen, as manager of the Canyon Corral Bar,

021518

1 the reactions of individuals who consumed alcohol?

2 A. Yes, sir.

3 Q. And do different people have, in some instances,
4 different ways of responding to alcohol?

5 A. Yes, sir.

6 Q. And are you familiar with the term "mean drunk"?

7 A. Yes, sir.

8 Q. As far as your observation of these three men, were
9 any of them what you would call a mean drunk?

10 A. No, sir.

11 Q. No swearing?

12 A. No, sir.

13 Q. No verbal abuse?

14 A. No, sir.

15 Q. No arguments?

16 A. No, sir.

17 Q. Just having a good time?

18 A. Yes, sir.

19 Q. As best that you can recall, what period of time
20 did you see the three men in the bar? What time to about what
21 time?

22 A. When I first returned I sat in a booth with some
23 friends, and I went to the office to get some change. When I
24 came out of the office, as I went to the restroom, that is when
25 I first noticed the three at the table.

26 Q. So that would be what, 11:45 or in that area?

27 A. Somewhere in that area, between 11:00 and 11:30, I
28 believe.

00221519

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

3 A. No.

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

6 A. Right.

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

10 A. No, sir.

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

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

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

17 A. Yes, sir.

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

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

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

24 A. Yes, sir.

25 Q. And what kind of vehicle was that?

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

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

1 A. No, sir.

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

5 A. Yes, sir.

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

8 A. Yes, sir.

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

11 A. I believe so.

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

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

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

22 A. Yes, sir.

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

25 A. Yes, sir.

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

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

00-1-5722

1 Q. Didn't say it was definitely a pickup?

2 A. I don't remember saying I said it was definitely a
3 pickup.

4 Q. Well. when you testified here today in court you
5 didn't say, "possibly a pickup", right?

6 A. I do believe it was a pickup.

7 Q. Is that an exaggeration from "possibly" to "I do
8 believe"?

9 A. I don't think so.

10 Q. Thank you.

11 A. I'm recalling as best I can.

12 MR. NEGUS: Nothing further.

13 MR. KOTTMEIER: No further questions, your Honor.

14 THE COURT: Thank you, Mrs. Killian.

15 MR. KOTTMEIER: Larry Lease. your Honor.

16 THE CLERK: Raise your right hand.

17

18 LARRY LEASE,

19 called as a witness on behalf of the People in rebuttal, having
20 been duly sworn, testified as follows:

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

22 Would you state your full name for the record and spell your
23 last name.

24 THE WITNESS: Larry Lease, L-e-a-s-e.

25 THE CLERK: Thank you.

26

27 DIRECT EXAMINATION

28 BY MR. KOTTMEIER:

1 Q. Mr. Lease, you've previously testified in this
2 case. I'd like to direct your attention to the home at 2991
3 English Road, sometimes referred to as the Lease house, the Bilbia
4 house or the hideout house, and ask you to mentally go back to
5 June of 1983, the very first part of June -- the 1st through the
6 4th or 5th, and recall for us some of the conditions at the
7 hideout house, that is, your home in the Chino Hills.

8 First of all in the first part of June, 1983, was
9 the garage door of the hideout house fully functional?

10 A. It had broken springs but you could open it.

11 Q. In what fashion?

12 A. With the electric garage door opener.

13 Q. Assuming that you did not use the electric garage
14 door opener, that the garage door opener had the door in the
15 shut position?

16 A. That's correct.

17 Q. What could you do as far as opening the door by the
18 handle from the outside?

19 A. With the garage door connected, you mean just
20 trying it by hand?

21 Q. Yes.

22 A. You couldn't move it but a couple inches.

23 Q. Has the garage door spring on that particular door
24 since been fixed?

25 A. Yes, it has.

26 Q. So, that in the first part of June one side was
27 without a spring?

28 A. That's correct.

00-1-525-4

1 Q. Which side was that?

2 A. I believe that would have been the left -- it would
3 be on the right side as you stood outside facing the door.

4 Q. That would be the side closest to the fence?

5 A. Yes.

6 Q. Within the bathroom of the hideout house, now I'm
7 referring to the -- I will point toward the bathroom that
8 adjoined the bedroom of Roger and Vickie Lang, in this area,
9 there was a door between the hall and the vanity area?

10 A. Yes.

11 Q. Which was a full swinging normal type door?

12 A. Yes.

13 Q. And the door between the vanity and the
14 bathroom/toilet area of that particular house is what kind of a
15 door?

16 A. That was a sliding door.

17 Q. And when you say, "a sliding door", it disappeared
18 into the wall that was closest to the Lang bedroom?

19 A. Yes, into the bathroom -- or the bathtub side.

20 Q. What was the condition of that particular door in
21 the first part of June, 1983?

22 A. It was broken at the track and the handle was
23 broken.

24 Q. As far as your knowledge, could you open that door
25 at that time?

26 A. No.

27 Q. In that same bathroom next to the toilet there is a
28 window that has kind of amber colored louvers, do you recall

00-15755

1 that?

2 A. Yes.

3 Q. And in the first part of June, 1983, was there a

4 screen on that window?

5 A. Yes.

6 Q. And as far as the removal of the screen, how would

7 that be accomplished?

8 A. It would take a Philips screw driver.

9 Q. Is there any way to pull that screen off without

10 using a Philips screw driver to remove the clamps?

11 A. Not without damaging the screen.

12 Q. That particular screen though is actually on the

13 inside of that bathroom?

14 A. Yes.

15 Q. So that you, from the bathroom itself, cannot reach

16 the louvers without taking the screen off?

17 A. No.

18 Q. During the tour that was taken last week there were

19 certain wires or strings across that particular screen; were

20 those in place in the first part of June, 1983?

21 A. No. That's part of a new burglar alarm system.

22 Q. So, as far as the strings or wires that were across

23 the screen, those were put in recently?

24 A. Yes, they were.

25 Q. Were some screws added for the purpose of attaching

26 those particular strings or wires?

27 A. Yes, they were.

28 Q. However, the rusty screws that were the ones

021526

1 holding the screen in place, they were on that screen in the
2 first part of June '83?

3 A. Yes.

4 Q. In addition to the string on that particular
5 window, another change was the fence along the garage side of
6 the property that ran from your corral area virtually up past
7 the driveway section, do you recall that?

8 A. Yes, I do.

9 Q. In the first part of June 1983 did that fence have
10 all of the white slats in place?

11 A. Yes, it did.

12 Q. Did you remove some of those slats for convenience
13 purposes for the jury tour last week?

14 A. Yes, I did.

15 Q. And showing you a photograph, Exhibit 144. does
16 that depict the location of the television and the stand as it
17 appeared in the room that had the fireplace?

18 A. Yes, it does.

19 Q. In the first part of June 1983?

20 A. Yes.

21 Q. Now, that is not the same television nor stand that
22 was present in the home when the tour was taken last week, is
23 it?

24 A. No, it is not.

25 Q. But that is a fair and accurate picture of the
26 television stand and location within that room of those two
27 items in the first part of June 1983?

28 A. Yes.

02-15-77

1 Q. You have since changed the interior of that
2 fireplace room to resemble something of a meeting place; is that
3 correct?

4 A. Yes, I have.

5 Q. And you've also changed the Lang bedroom into an
6 office?

7 A. Yes.

8 Q. There is furniture of course in the Bilbia bedroom?

9 A. Yes, there is.

10 Q. And different furniture in what has been referred
11 to as the living room, that's the room directly opposite the
12 front door?

13 A. Yes, there is.

14 Q. When we go to the hallway and move down the hall to
15 the room next to the front door, that and its contents are
16 different?

17 A. Yes.

18 Q. And the middle bedroom has now become what appears
19 to be a little girl's bedroom?

20 A. Yes.

21 Q. And that wasn't the same condition?

22 A. No, it wasn't.

23 Q. On the June -- returning for a the moment to the
24 television in the fireplace room in the corner, was that
25 particular television on a cable in June of 1983?

26 A. Yes, it was.

27 Q. And is there some difficulty with reception in the
28 Chino area?

002-1-528

1 A. Yes, there is.

2 Q. Do you have any knowledge, personal knowledge as to
3 whether you could get reception by taking the cable off of that
4 television and moving it to a different room?

5 A. The reception is very snowy and difficult without
6 it.

7 Q. And does that also effect the sound?

8 A. Yeah, it would be a staticky sound.

9 Q. Did you personally take the television from the
10 hideout house when the items were removed after the murders of
11 Doug and Peggy Ryen, Chris Hughes?

12 A. Yes -- yes, I did.

13 Q. And can you describe the things that you did to
14 remove that particular television?

15 A. I believe we used a pair of pliers or a small
16 wrench to remove the cable on the back and just unplugged it.

17 Q. Was that particular cable very tight on the
18 television?

19 A. Yes.

20 Q. You needed tools to undo it?

21 A. Yes; yes, I did.

22 Q. Now, as far as the foliage around the area, and I'm
23 indicating now, that is, next to the TV window, which would be
24 the window as you face the television from the fireplace room to
25 the left and virtually forward, has the foliage in this
26 particular area remained the same as it existed in the first
27 part of June '83?

28 A. Yes, it has.

02-1-529

1 Q. Have you cut down foliage or changed foliage as far
2 as the front portion of the house in the area near the Lang
3 bedroom, the middle bedroom and then the storage bedroom?

4 A. Yes, we have.

5 MR. KOTTMEIER: I have no further questions of Mr. Lease,
6 your Honor.

7

8

CROSS-EXAMINATION

9 BY MR. NEGUS:

10 Q. Mr. Lease, when the garage door opener is
11 disconnected on the garage, is it possible to lift up the garage
12 door with just one spring?

13 A. It's possible, yes, it would be possible if you're
14 strong enough.

15 Q. Was there a period of time when the garage door
16 was -- the garage door opener was disconnected?

17 A. Not to my knowledge.

18 Q. How often did you personally use that garage door?

19 A. Not very often. We went through the back entrance
20 just because of the difficulty of it.

21 Q. Was it an electrical device?

22 A. Yes, it was.

23 Q. And where did the -- where did the -- where would
24 it get plugged in?

25 A. The button was in the second wall as you enter from
26 the outside.

27 Q. Where was the -- where was the actual electrical
28 hookup to the opener itself, to the machine, is that --

00215400

1 A. I have no idea.

2 MR. NEGUS: I have nothing further.

3

4

REDIRECT EXAMINATION

5 BY MR. KOTTMEIER:

6 Q. Mr. Lease, even if you unplug the garage door
7 opener, that doesn't make it easier to open the garage door,
8 does it?

9 A. No. You have to physically disconnect the chain
10 from the bracket on the door.

11 Q. So that the door in effect does not slide across
12 the track?

13 A. No. It is a chain-driven piece.

14 Q. Okay.

15 I have nothing further, your Honor.

16 MR. NEGUS: Nothing further.

17 THE COURT: Thank you.

18 MR. KOTTMEIER: Bob Glenn.

19 THE COURT: He's in here.

20 THE CLERK: Would you raise your right hand, please.

21

22

ROBERT EDWIN GLENN,

23 called as a witness on behalf of the People in rebuttal, having
24 been duly sworn, testified as follows:

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

27 THE WITNESS: Robert Edwin Glenn, G-l-e-n-n.

28 THE CLERK: Thank you.

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DIRECT EXAMINATION

3

BY MR. KOTTMEIER:

4

Q. Mr. Glenn, returning to Sunday, June 5th, 1983,
were you the owner of Southwest Body Removal Service at that
time?

7

A. Southwestern Mortuary Services, yes.

8

Q. All right. Well, that's the more businesslike
title?

10

A. Right.

11

Q. And on Sunday June the 5th were you called to go to
2943 English Road?

13

A. I went to that location. I'm not positive of the
address without referring to some type of records, but I went
there, yes.

16

Q. You went to a home that had four bodies in it?

17

A. Yes, sir.

18

Q. In a bedroom?

19

A. Yes -- basically.

20

Q. In regard to your arrival at the scene, did you
contact someone and receive directions into the home?

22

A. Yes.

23

Q. And were you brought in or ushered in to the murder
scene by a sliding glass door off of a patio?

25

A. Yes, we entered through that door.

26

Q. And while you were at the scene you removed the
four bodies?

28

A. Yes, sir.

00-1-5777

1 Q. One of an adult male, one of an adult female, a
2 little girl, and a little boy?

3 A. Yes, sir.

4 Q. During the time that you were at that particular
5 murder scene, were you careful where you stepped?

6 A. Yes, sir.

7 Q. Showing you Exhibit 785. do you recognize the shoes
8 that were pictured in that photograph as far as the soles?

9 A. They are a pair of shoes. I can't --

10 Q. All right. Did you turn your shoes over to the
11 Sheriff's office for photography?

12 A. Yes, sir.

13 Q. The shoes that you were wearing during the time
14 that the bodies were removed?

15 A. Yes, sir.

16 Q. Were those shoes smooth-soled shoes?

17 A. Yes, sir.

18 Q. Dress shoes?

19 A. Yes, sir.

20 Q. With no pattern on the bottom?

21 A. No, sir.

22 MR. KOTTMEIER: I have nothing further of Mr. Glenn, your
23 Honor.

24

25

CROSS-EXAMINATION

26 BY MR. NEGUS:

27 Q. Mr. Glenn, when did the Sheriff's request your
28 shoes from you?

02-15-73

1 A. I don't honestly remember.
2 Q. 1984?
3 A. I don't honestly remember.
4 Q. While you were at the house, did you go into any
5 part of the house other than the master bedroom or the hall area
6 where the young girl was?
7 A. I'm going to answer yes.
8 Q. Did you go to the kitchen?
9 A. No, sir.
10 Q. Where did you go?
11 A. I -- in that hallway, I moved about two steps in
12 the direction of the kitchen. I could see into the kitchen. I
13 moved about two steps from where the little girl lay towards the
14 direction of the kitchen.
15 Q. So you could actually see part of the kitchen; is
16 that correct?
17 A. Yes, sir. I believe it was the kitchen. I could
18 see a counter. I'm fairly sure it was the kitchen.
19 Q. What was on the counter?
20 A. The only thing I remember specifically, I did see a
21 telephone. saw a counter and telephone. I don't remember what
22 else was there.
23 Q. Was there -- was there a bunch of stuff piled on
24 the floor?
25 A. I don't remember.
26 Q. Assuming that there is a counter and telephone down
27 here where it says "purse", and the kitchen is the room in which
28 there is an "X", could you mark on this diagram, 6-J, with the

02-15774

1 red marker where it was that you were standing when you saw the
2 kitchen?

3 A. Okay. Apparently I was not in the kitchen. if
4 that's the way the layout is. I moved from this point to this
5 doorway (indicating) and that's as far as I went.

6 I did see stairways to the right, and I thought I
7 saw a counter with a telephone somewhere in this area.

8 Q. Right where it would say "purse" then?

9 A. Possibly. It was to my left. Like I said I
10 stepped to this doorway and saw what I thought was a counter
11 with a telephone on it. I'm not sure where it was there, and I
12 did see the stairs after looking at the diagram.

13 MR. NEGUS: I have nothing further.

14 MR. KOTTMEIER: Nothing further, your Honor.

15 THE COURT: Thank you, sir.

16 MR. KOTTMEIER: Rodney Parish.

17 THE COURT: Raise your right hand, sir.

18

19 RODNEY PARRISH.

20 called as a witness on behalf of the People in rebuttal, having
21 been duly sworn, testified as follows:

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

25 THE WITNESS: Rodney Parish, P-a-r-r-i-s-h.

26 THE CLERK: Thank you.

27

28

DIRECT EXAMINATION

00215755

1 BY MR. KOTTMEIER:

2 Q. Mr. Parish, going back to Sunday June 5th, 1983, by
3 whom were you employed?

4 A. For Glenn Private Patrol or Southwestern Service.

5 Q. And did you go with Mr. Glenn to 2943 English Road,
6 the scene of a quadruple murder?

7 A. I believe that was the address. Yes, I did go.

8 Q. And when you arrived at the scene did you enter
9 into the scene of the homicide through the master bedroom?

10 A. Yes.

11 Q. And once inside did you assist Mr. Glenn and others
12 in taking the four bodies from the scene to the morgue?

13 A. Yes.

14 Q. Were the bodies packaged at the scene?

15 A. No, sir.

16 Q. By "packaged" I mean did you put them into body
17 bags?

18 A. Yes, sir, we did.

19 Q. During the time that you were present within the
20 home itself, what kind of shoes were you wearing?

21 A. I was wearing black slipon boot.

22 Q. Did they have any sole pattern on the bottom?

23 A. No, sir.

24 Q. Just smooth?

25 A. Yes.

26 Q. Have you ever owned a pair of high-topped Pro Reds
27 type tennis shoes?

28 A. No, sir.

021536

1 Q. Just for illustration I'm showing you from Exhibit
2 51 a pair of tennis shoes that have this crisscross or diamond
3 type pattern on the bottom. Have you ever had a pair of tennis
4 shoes like this?

5 A. No, sir.

6 Q. During the time that you were assisting with the
7 removal of the four victims, were you being very careful where
8 you stepped?

9 A. Yes.

10 Q. And during the time that you were present at this
11 particular scene, did you have any cuts or injuries to yourself?

12 A. No.

13 Q. Did you lose any blood anywhere that you know of?

14 A. No.

15 MR. KOTTMEIER: I have no further questions of Mr.
16 Parish.

17

18 CROSS-EXAMINATION

19 BY MR. NEGUS:

20 Q. Mr. Parish, did you enter the house through a spa
21 or a patio behind the master bedroom?

22 A. Yeah. there was a concrete slab I believe.

23 Q. Did you go to any part of the house other than the
24 spot where the young girl and three other victims were found?

25 A. No, I didn't.

26 Q. Giving you Exhibit 227, just do it here on the
27 thing, there is a spot that has your name on it and it says
28 "patio outside master bedroom", could you put a check mark under

021577

1 that column there to indicate that you did cross over that
2 patio.

3 A. (Witness complied.)

4 Q. Thank you.

5 That's all I have.

6 MR. KOTTMEIER: No further questions.

7 Thank you, Mr. Parrish.

8 THE COURT: Thank you, Mr. Parish.

9 MR. KOTTMEIER: Scott Fields.

10 THE CLERK: Will you raise your right hand.

11

12 SCOTT FIELD,

13 called as a witness on behalf of the People in rebuttal, having
14 been duly sworn, testified as follows:

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

18 THE WITNESS: Scott Field, F-i-e-l-d.

19 THE CLERK: Thank you.

20

21 DIRECT EXAMINATION

22 BY MR. KOTTMEIER:

23 Q. Mr. Field, you've testified earlier in this case,
24 haven't you?

25 A. Yes, sir.

26 Q. Were you present at the scene of the Ryen homicide
27 on Sunday June the 5th, 1983?

28 A. Sunday, sir?

00215300

1 Q. Yes.
2 A. No, sir, I don't believe so.
3 Q. And were you present then on Monday, June the 6th,
4 1983?
5 A. Yes, sir.
6 Q. Showing you Exhibit 767, a photograph about three
7 by five, do you recognize the soles of the shoes that are
8 pictured in that photograph?
9 A. Yes, sir.
10 Q. Are those the shoes that you were wearing when you
11 were present Monday the 6th, 1983, at the Ryen homicide scene?
12 A. I don't recall specifically if I was wearing those
13 shoes. I may have had them on some time during that week.
14 Q. When you say, "those shoes", you are referring to
15 them as what kind of shoes?
16 A. The tennis shoes.
17 Q. As far as the places that you walked within the
18 Ryen homicide scene, were you in the area of the patio with the
19 spa cover?
20 A. Yes, sir.
21 Q. And were you also in the master bedroom area?
22 A. Yes, sir.
23 Q. Did you look in each of the rooms by following the
24 hallway around through the house?
25 A. At some time during the week I had.
26 Q. And you're not sure which day that was?
27 A. No, sir.
28 Q. Do you know whether that was before or after Marty

0221579

1 Smith of the Sheriff's office was present at the scene?
2 A. At the Ryen residence?
3 Q. Yes.
4 A. I'm not sure, sir.
5 Q. Did you wear those particular shoes that are
6 pictured in the photograph at 2991 English Road, the hideout
7 house?
8 A. I may have. I don't recall specifically any day
9 that I had them on specifically.
10 Q. Do you recall the route that you took within the
11 hideout house?
12 A. Partially. but there again not specifically.
13 Q. Directing your attention to Exhibit 5, if you could
14 maybe with the pointer indicate at least the areas that you
15 recall that you went within the hideout house.
16 A. Primarily I was in the master bedroom. the living
17 room, and down the hallway.
18 Q. Excuse me. I'm -- I was distracted for a minute.
19 Where were you?
20 A. Primarily in this hallway, the living room and the
21 master bedroom area.
22 Q. Did you go into the area where the fireplace is
23 located within the portion of the house to your left as you face
24 the diagram?
25 A. At some time I had been there, yes, sir.
26 Q. You can resume your seat.
27 Have you ever owned or had access to a pair of Pro
28 Keds tennis shoes similar to the ones that I'm holding from

1 Exhibit 51?

2 A. Not in my adult life.

3 Q. Did you see Marty Smith in the two scenes?

4 A. I recall her -- seeing her at the Lease residence.

5 Q. That would have been on the 7th of June, Tuesday?

6 A. I believe it would have been the 7th.

7 Q. Did you -- did she arrive after your arrival?

8 A. I believe that she did.

9 MR. KOTTMEIER: I have nothing further of this witness,
10 your Honor.

11 THE COURT: Questions, counsel?

12

13

CROSS EXAMINATION

14 BY MR. NEGUS:

15 Q. Showing you Exhibit 116, with an attached diagram,
16 116-A. I would like you to look through that.

17 Do you have any -- did you ever wear any shoes
18 inside the 2991 residence that matched any of those patterns?

19 A. This one looks a little bit like it but it is still
20 not exactly like mine.

21 Q. This one that you are referring to is No. B?

22 A. It looks like a "B".

23 Q. It would differ in that it had a different line --
24 the different pattern of lines up near the top of it?

25 A. My shoes don't have -- the pattern doesn't go all
26 the way to the toe nor way up to the heel. This shows it goes
27 all the way up.

28 Q. Showing you Exhibit 787.

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1 Is that a diagram of the Lease house that was
2 marked on by yourself at the preliminary hearing?

3 A. Yes, sir.

4 Q. And does that indicate in different colors the
5 areas of the house that you went into on June 7th and June 8th?

6 A. Yes, sir.

7 Q. Which color indicates June 7th?

8 A. I don't see where it indicates it.

9 Q. Do you recall?

10 A. No, I don't, not at this time.

11 Q. Do you recall if you were in the rest of the Ryen
12 house on the first day that you were there?

13 A. The Ryen residence?

14 Q. Yeah.

15 A. I believe that it was just the master bedroom.

16 Q. Okay. When did you go into the rest of the Ryen
17 house?

18 A. It would have been at sometime later. I am not
19 sure what day it would have been right now.

20 Q. Do you remember what you were doing?

21 A. Just generally searching the residence for possible
22 evidence.

23 Q. Did you find anything?

24 A. No, sir.

25 MR. NEGUS: Thank you. I have knowing further.

26 MR. KOTTMEIER: No further questions.

27 THE COURT: Thank you again, sir.

28 MR. KOTTMEIER: Marie Robles.

021542

1

2

MARIE A. ROBLES.

3

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

5

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

6

7

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

8

THE WITNESS: Marie A. Robles. R-o-b-l-e-s.

9

10

DIRECT EXAMINATION

11

BY MR. KOTTMEIER:

12

Q. Mrs. Robles, by whom are you employed?

13

A. Prison Industry Authority.

14

Q. And in which prison do you have your job?

15

A. California Mens Colony.

16

Q. In which community?

17

A. San Luis Obispo.

18

Q. Do you have a particular assignment at that prison?

19

A. Yes. I am a textile production superintendent.

20

Q. What kind of textile production are manufactured in

21

the San Luis Obispo prison for men?

22

A. Jackets, gloves, T-shirts, briefs and shirts.

23

Q. Is one of the production manufactured at the prison

24

a T-shirt that is issued to the inmates within the California

25

prison system?

26

A. Yes.

27

Q. And who is it that physically makes those

28

particular shirts in San Luis Obispo?

021547

1 A. The inmates.
2 Q. Themselves?
3 A. Yes.
4 Q. Under supervision from people like yourself?
5 A. Yes. My supervisors.
6 Q. Directing your attention to a T-shirt from Exhibit
7 160.
8 You have had a moment this morning to take a look
9 at this particular T-shirt?
10 A. Yes.
11 Q. And based upon your examination of the T-shirt, do
12 you have an opinion as to whether that T-shirt was prison
13 manufactured for prison issue T-shirt versus a commercial
14 T-shirt?
15 A. Yes, because of the tail hemming is very crooked,
16 the workmanship.
17 Q. And ways is your opinion?
18 A. That it appears to have been sewn by an inmate.
19 Q. Prison issue type T-shirt.
20 A. Yes. It is poor quality.
21 Q. The prison T-shirts that you make, do they follow
22 the same type with the stitching that in effect runs along the
23 back of the neck and then down the sleeve?
24 A. Yes.
25 Q. Have you also checked other areas of stitching for
26 the consistency of seams and straightness and so on on that
27 particular shirt?
28 A. Yes, I did, and there's several things that have

1 been eliminated due to the supervisors. The inmates tried to
2 push out the production and sometimes forget to bar tack
3 shoulder seams and underarm seams. Bounding in this one area
4 here in the other one also.

5 Q. At least as far as the some of the mistakes that
6 have been made in these particular T-shirts that were
7 manufactured in the prison system. your people have tried to
8 correct those mistakes at the present time?

9 A. Yes.

10 Q. Showing you Exhibit 694. a second T-shirt. Would
11 you take a look at this T-shirt also.

12 You did have a chance to look at that T-shirt
13 earlier this morning as well; is that correct?

14 A. Yes.

15 Q. And what is your opinion as to whether that T-shirt
16 is a prison issue, prison considered T-shirt?

17 A. It appears to be prison manufactured.

18 Q. For the same types of reasons as you have
19 expressed --

20 A. Yes.

21 Q. -- in regard to 160?

22 A. Yes. Irregularity of the hem, it is poor quality.
23 This is not done in private industry.

24 Q. That is the kind of shirt that wouldn't even be
25 sold as a second in private industry.

26 A. Right.

27 MR. KOTTMEIER: Nothing further of Miss Robles.

28 MR. NEGUS: No questions.

021545

2 1 THE COURT: Thank you very much.

2 THE WITNESS: You're welcome.

3 MR. KOTTMEIER: The next thing that we would like to do
4 is enter into a stipulation with regard to an exhibit that has
5 yet to be marked. Maybe it would be easier, your Honor, to take
6 an early recess so as we can set up and make sure the volume is
7 not too high. We will have the tape and then at least Dr.
8 Howell at approximately 2:00 o'clock.

9 I offer that as a suggestion, either that we can
10 try and play the tape at this time. Whatever is the Court's
11 convenience.

12 THE COURT: Counsel, do you -- would you all return at
13 1:15?

14 MR. NEGUS: No problem.

15 MR. KOTTMEIER: Let's do it.

16 THE COURT: Return 15 minutes early. Remember the
17 admonition at all times. Enjoy your lunch. 1:15, please.

18 (Noon recess taken.)

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1 SAN DIEGO, CALIFORNIA, TUESDAY, FEBRUARY 5, 1985, 1:20 P.M.

2

3 THE COURT: Do you have the tape?

4 MR. KOTTMEIER: I think we are going to do Mr. Ogino. We
5 adjusted the volume and everything for when we do it.

6 We will call, first of all this afternoon, Craig
7 Ogino.

8 THE COURT: Somewhat less than a stranger to the action.
9 Let's be sworn again, please.

10

11

CRAIG OGINO.

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

14 THE CLERK: Thank you. Would you please be seated.
15 Would you state your full name for the record.

16 THE WITNESS: My name is Craig Ogino.

17

18

DIRECT EXAMINATION

19 BY MR. KOTTMEIER:

20 Q. Mr. Ogino, we've had marked a manila envelope as
21 Exhibit 789.

22 For the record it has certain identifying letters
23 and numbers on the outside, and inside a matchbook cover, Casa
24 Vallarta.

25 Would you look at this item that is noted as J-8.
26 please. Do you recognize that particular exhibit?

27 A. Yes.

28 Q. And where did it come from?

021547

1 A. From the Lease house.

2 Q. Showing you a photograph that has previously been
3 marked as Exhibit 45; do you see that particular item within
4 Exhibit 45?

5 A. Yes.

6 Q. Would you point to it please.

7 A. It's right at the bottom of the sliding door, the
8 left sliding door here.

9 Q. Now, at the time that you found that particular
10 matchbook cover, was it in the condition that it appears in the
11 manila envelope?

12 A. No.

13 Q. Based upon your training and expertise, does it
14 look as though that particular matchbook cover has been tested
15 for fingerprints by a variety of means?

16 A. Yes.

17 Q. What type of means does that particular matchbook
18 cover look as though it's been tested with?

19 A. Possibly black powder and possibly ninhydren.

20 Q. Ninhydren?

21 A. Ninhydren.

22 Q. And that's a substance that will help lift or bring
23 up fingerprints on paper products?

24 A. Yes, that's correct.

25 Q. That's what causes that kind of orangey
26 discoloration to the matchbook cover?

27 A. Yes.

28 Q. As far as the number of matches in the matchbook,

021548

1 we are down to one.

2 A. Yes.

3 Q. Was that the same condition as when you received it
4 or found it at the hideout house?

5 A. Yes.

6 Q. No, matches have been torn out or taken out by
7 laboratory personnel for testing of any sort?

8 A. Not to my knowledge, no.

9 Q. In addition to the matchbook cover, did you remove
10 a pink blanket from the hideout closet that is pictured in
11 Exhibit 44?

12 A. Yes.

13 Q. And is that the pink blanket that is shown within
14 what would be the closet doors to the right side of that
15 particular closet as you face the closet?

16 A. Yes, it is.

17 Q. We've had marked a brown paper bag as Exhibit 783.
18 There is a tear in the side of the particular bag, but do you
19 recognize that paper bag?

20 A. Yes.

21 Q. Is that the bag that you packaged the pink blanket
22 in after it was picked up at the hideout house?

23 A. Yes, it is.

24 Q. At some point after you picked up that particular
25 blanket, did you examine the blanket for the possibility of
26 trace evidence being on it?

27 A. Yes.

28 Q. Now, what number for the laboratory did you give

021549

1 the pink blanket when you picked it up?

2 A. J-15.

3 Q. Showing you Exhibit 776, do you recognize that
4 particular Petri dish?

5 A. Yes, I do.

6 Q. And you've got certain identifying information on
7 the outside of the Petri dish?

8 A. Yes.

9 Q. What is it that the dish contains?

10 A. It contains numerous fibers, hairs, vegetation,
11 feathers, and looks like a green carpet tuft.

12 Q. Did you personally collect those particular trace
13 items from Exhibit J-15 for your laboratory use, and I believe
14 for our purposes 783?

15 A. Yes.

16 Q. Particularly the burrs that are present within that
17 dish, did you collect those?

18 A. Yes, I did.

19 Q. And how were they distributed on the blanket?

20 A. Pretty much throughout the blanket. There were
21 some in clusters, but pretty much throughout the entire blanket.

22 Q. Mr. Ogino, was the burr material on one side of the
23 blanket or on both sides of the blanket?

24 A. I don't remember. I believe they were on both
25 sides.

26 Q. As far as the burrs that were collected, other than
27 placing them in the Petri dish that you have in front of you,
28 are they in the same condition as when you picked them off of

- 1 the blanket, the pink blanket?
- 2 A. Yes.
- 3 Q. Now showing you Exhibit V-6, for the record a pill
- 4 box that's been previously identified, do you recognize that?
- 5 A. Yes, I do.
- 6 Q. And where was that collected?
- 7 A. From the Ryen station wagon.
- 8 Q. That's the station wagon pictured in Exhibit 46?
- 9 A. Yes.
- 10 Q. From what area of the Ryen station wagon?
- 11 A. May I refer to my note?
- 12 Q. Yes, if you would, please.
- 13 A. They were in the middle portion with the back
- 14 folded down of the vehicle.
- 15 Q. And how many burrs approximately are in that
- 16 particular pill canister, V-6?
- 17 A. Can I open the canister?
- 18 Q. Yes.
- 19 A. There are two what look like pretty much whole
- 20 burrs, and one that's -- looks like it's partially falling
- 21 apart.
- 22 Q. Are those in the same condition generally as when
- 23 you removed them from the car?
- 24 A. Yes.
- 25 Q. We've had marked a plastic bag that's previously
- 26 been referred to as Exhibit 775 with certain vegetation in it.
- 27 Do you recognize Exhibit 775?
- 28 A. Yes, I do.

002-1-55-1

1 Q. And where did you get those particular items from?

2 A. Just outside the Ryen residence.

3 Q. Directing your attention to the very large
4 photograph that we've placed on the board, Exhibit 4. do you see
5 within this photograph the area where you found the
6 vegetation?

7 A. Yes, I do.

8 Q. Would you take the red pen and point to the, first
9 of all, where it was collected from.

10 A. Along this stretch, mainly between the two trees in
11 this picture.

12 Q. Would you write in red, Mr. Ogino, the number 775
13 and vegetation in that area.

14 A. (Witness complied.)

15 Q. What was your purpose in collecting Exhibit 775?

16 A. To have laboratory standards of the vegetation in
17 this particular area of the -- behind the Ryen residence.

18 Q. So, you were careful to try and get a cross-section
19 of the various kinds of vegetation, at least in that area by the
20 two trees?

21 A. Yes.

22 Q. Now, within that particular Exhibit 775. did you
23 find any plant burrs of the type similar to what we had found in
24 the pink blanket and also in the Ryen car?

25 A. Yes.

26 Q. Do you have samples of those contained within 775?

27 A. Yes.

28 Q. Did you perform within the laboratory an

1 examination wherein you compared Exhibit 775, the vegetation
2 from outside the Ryen house, with the vegetation found on the
3 pink blanket?

4 A. Yes.

5 Q. And what were your results?

6 A. Macroscopically and microscopically they were
7 similar.

8 Q. In addition did you perform a comparison between
9 the 775 vegetation and the burrs that were removed from the Ryen
10 car?

11 A. Yes.

12 Q. And what was your result?

13 A. Same results, macroscopically and microscopically
14 they were similar.

15 Q. Mr. Ogino, at some point in time did you package
16 and release to Mr. Thornton C-12, a nightgown, and C-13, the
17 body bag of Jessica Ryen?

18 A. It was released to him, yes.

19 Q. Do you know when that was?

20 A. Yes.

21 Q. When was that?

22 A. July 30, 1984.

23 MR. KOTTMEIER: I have no further questions of Mr. Ogino,
24 your Honor.

25

26 CROSS-EXAMINATION

27 BY MR. NEGUS:

28 Q. Mr. Ogino, when you were collecting vegetation

021557

1 samples, did you collect any from this field area back along to
2 the south of the two residents?

3 A. No, sir.

4 Q. Do you recall what kind of plant that the burrs
5 that are similar to V-6 and J-15 came from?

6 A. It looked like some sort of weed.

7 Q. How -- how big was it?

8 A. They were various sizes.

9 Q. Three feet tall some of them?

10 A. No, they weren't that big.

11 Q. How tall were they?

12 A. I'd say approximately a foot. the larger ones.

13 Q. Okay. Were they these weeds that are showing here
14 in the field down closer to the 2991 residence, same sort of
15 creatures, the same plants?

16 A. It's hard to tell from the photograph.

17 Q. Well, when you were --

18 You looked for a Viceroy pack up here at the top of
19 this incline; is that correct?

20 A. I believe so, yes.

21 Q. Were there weeds of that nature that had the burrs
22 in it up there?

23 A. I don't recall.

24 Q. How about, did you ever look --

25 You collected evidence down here in the driveway
26 somewhere too; is that right?

27 A. Yes.

28 Q. Were there burrs of that nature down there?

002-1554

1 A. I don't recall.

2 Q. Did you ever collect any vegetation samples from
3 the -- from the hill as you come up from Peyton Road up along
4 the fenceline up to the -- to the 2991 residence?

5 A. No.

6 Q. The only vegetation samples you collected were
7 right in there?

8 A. Yes.

9 Q. So, you have no way of knowing whether the same
10 vegetation that is in that spot, 775, existed all over the rest
11 of the hill?

12 A. Is that correct. ✓

13 Q. The -- this particular bag that seems to have some
14 writing on it with your name on it, on the side of it, was that
15 placed there on the night of June the 7th or was that placed
16 there at some other time?

17 A. I believe it was placed on there on June the 7th.

18 Q. There is some writing in, appears to be Mr.
19 Stockwell's handwriting. Does that look like Mr. Stockwell to
20 you?

21 A. Yes.

22 Q. Do you know whether that was placed on there at the
23 same time?

24 A. No, I do not.

25 Q. This item is now referred to in the laboratory no
26 longer by the number J-15 but J-15A, is that correct, that is,
27 the pink blanket?

28 A. I believe it's still referred to as J-15.

1 Q. Do you have a Supplement there, Supplement No. 3?
2 A. Yes.
3 Q. And would you look at the first page of Supplement
4 No. 3.
5 Maybe I can help you. Showing you a Xerox copy.
6 A. Okay, I have it.
7 Q. That was renumbered -- the pink blanket was
8 renumbered J-15A because of the mix-up with the missing green
9 plaid blanket; is that right?
10 A. Yes, that's correct.
11 Q. Do you know whether or not when you removed the
12 vegetation materials and hairs and whatever it is, what have you
13 in the Petri dish, from the pink blanket?
14 A. It was from the pink blanket.
15 Q. When, I said "when"?
16 A. June 16, 1983.
17 Q. Was the pink -- I take it the pink blanket had not
18 been stapled into the bag at that point in time?
19 A. I don't know.
20 Q. Well, did you have -- normally if something were
21 stapled would you put your initials on the outside like Mr.
22 Stockwell did on August 31st there to indicate that you'd
23 unstapled it?
24 A. Usually. yes.
25 Q. And there's no -- there's no such indication on
26 this particular bag, correct?
27 A. Yes, that's correct.
28 Q. When the stuff was collected from 2991 English

1 Road, was it kept for a period of time back at the laboratory in
2 containers other than the ones that it finally ended up in?

3 A. No.

4 Q. None of it was packaged back at the laboratory?

5 A. Some of the evidence was, yes. I thought you were
6 referring to these burrs.

7 Q. No. I'm talking about the blanket right now, that
8 is, the blanket as it existed before you took the burrs off it,
9 was it packaged in something other than that bag back at the
10 laboratory at that time?

11 A. I don't believe so. I think we put this blanket in
12 this particular bag at the scene.

13 Q. Do you remember whether that was all --
14 But it wasn't sealed to your knowledge?

15 A. No.

16 Q. Do you remember if any other items were placed on
17 top of it?

18 A. No.

19 Q. During the same time period when this -- within the
20 same hour that this particular item was collected, that was when
21 you and Mr. Stockwell rushed outside to collect the animal blood
22 that was found in the driveway; is that correct?

23 A. Yes. It was approximately 45 minutes later.

24 Q. Well, in fact, right after you had picked up J-16
25 the -- a belt that was there, the next thing you did was to go
26 outside and eventually collect the blood by -- by 10:00 o'clock;
27 is that right?

28 A. Yes.

1 Q. And showing you Exhibit 740, is that a picture of
2 you and Deputy Hill from the Career Criminal Division in the
3 process of collecting that particular blood sample?

4 A. It is appears to be, yes.

5 Q. There appears to be some vegetation sample -- some
6 vegetation there along the driveway where you are standing, any
7 of that vegetation the type of stuff that had the burrs on it?

8 A. Most of this vegetation looks like -- more like the
9 cattail type weeds. You can see them in the picture here.

10 It's possible that those -- that type of vegetation
11 is in here, but the majority of this vegetation looks like the
12 cattail weed.

13 Q. Do they also call those foxtails?

14 A. Foxtails.

15 Q. Did you also, after you found the blood drop, did
16 you also go walking around that particular area in the -- off
17 the driveway looking for other signs of evidence?

18 A. Yes.

19 Q. Any burrs in that particular area where you were
20 walking off the -- off the driveway?

21 A. It was hard to tell. It was very dark.

22 Q. Thank you.

23 I have nothing further.

24

25

REDIRECT EXAMINATION

26 BY MR. KOTTMEIER:

27 Q. Mr. Ogino, did you have an opportunity to look at
28 the vegetation in this small gully-type area that was just above

00215508

1 the driveway toward the Ryen house?

2 A. Yes.

3 Q. Was it similar in type to the vegetation up at 775
4 that you took?

5 A. There was vegetation there, I can't recall whether
6 it was the same type.

7 Q. Now, Mr. Ogino, when you first saw the pink blanket
8 in the closet, did you notice whether or not there were any
9 burrs on it?

10 A. Yes, I did.

11 Q. And were there burrs?

12 A. Yes.

13 Q. You maintained a blanket, whether it was J-15 or
14 J-15A, within the laboratory after it was taken from the hideout
15 house and transported to the laboratory, didn't you?

16 A. Yes.

17 Q. And specifically, like other items of evidence from
18 the hideout house, was maintained in an unchanged condition
19 until someone like yourself could do laboratory work on it?

20 A. Yes, that's correct.

21 Q. And you were paying particular attention to avoid
22 any problem of contamination from any other sources or the
23 possibility of burrs being put on it?

24 MR. NEGUS: Objection; leading.

25 THE COURT: Yes; sustained.

26 BY MR. KOTTMEIER:

27 Q. What was your purpose in trying to package them in
28 separate bags and so on and take them to the crime laboratory?

1 A. To prevent contamination.

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

3 MR. NEGUS: Nothing further.

4 THE COURT: Thanks again, sir.

5 THE WITNESS: Thank you, your Honor.

6 MR. KOTTMEIER: We will have Sergeant Arthur after we
7 have a stipulation in regard to the tape recording.

8 MR. KOTTMEIER: The People would offer to stipulate with
9 the defendant, through his attorney Mr. Negus, that the male
10 voice on Court's Exhibit 788 is that of Mr. Sexton, the paramedic
11 who was communicating with the Ryan scene. The female is an
12 unidentified female who worked at Loma Linda Medical Center.
13 And that this particular exhibit, 788, a tape recording of the
14 radio traffic between Mr. Sexton and the representative of the
15 Medical Center be played for the jury.

16 MR. NEGUS: So stipulated, with the further provision
17 that I understand that there's a lot -- there's long gaps of
18 silence on it, and Sergeant Arthur is going to go just to the
19 spoken portions and not play the gaps.

20 MR. KOTTMEIER: That's correct. There are a couple
21 locations on the tape itself where, for example, Mr. Sexton
22 would say, "This is 1651." There would be no response or
23 anything, and we are going to just skip over those.

24 THE COURT: All right. Accepted.

25 Want him to go ahead and play it?

26 MR. KOTTMEIER: Yes.

27 (The following is a transcript of Exhibit 788.
28 a tape recording, transcribed to the best of my

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1 ability.)

2 "UNIDENTIFIED FEMALE: This is Loma Linda

3 University. Who's trying to get in touch with us?

4 "MR. SEXTON: Loma Linda University, Chino Fire

5 1671. How do you copy?

6 "UNIDENTIFIED FEMALE: Chino Fire. this is Loma

7 Linda. We copy you 10-2

8 "MR. SEXTON: Loma Linda University, 1671. We are

9 on a hill overlooking Chino at the scene of a

10 multiple homicide. We have three fatal victims.

11 They are all nonresuscitatable. -- correction --

12 We have four fatals, nonresuscitatable.

13 "We have one victim approximately eight years of

14 age. He has suffered multiple gunshots wounds:

15 One entering the midsternal area at the clavicle

16 notch. Well. correction. We don't know if that's

17 entrance or exit. The other side of the wound is

18 right scapular.

19 "Lungs are expanding adequately. They are clear.

20 The rate is 24.

21 "We also have a head wound. The superior occipital

22 region, with no noticeable exit wound as of yet.

23 "Our blood pressure is 160, 160 systolic. Pulse is

24 130.

25 "UNIDENTIFIED MALE-1: Loma Linda University, this

26 is Courtesy Unit 9 --

27 "MR. SEXTON: -- would fall under your jurisdiction

28 so we prefer to contact directly.

1 "UNIDENTIFIED FEMALE: Standby, Chino, for one
2 minute.
3 "Courtesy 9, this is Loma Linda, I'm in the middle
4 of a run with Chino. Could you contact another
5 base station please?
6 "UNIDENTIFIED MALE-1: Courtesy 9 clear with Loma
7 Linda.
8 "UNIDENTIFIED FEMALE: Go ahead Chino Fire?
9 "MR. SEXTON: Loma Linda University, 1671
10 requesting orders on our one patient.
11 "UNIDENTIFIED FEMALE: Chino Fire, this is Loma
12 Linda. I need more information as to whether the
13 patient is conscious or alert or what kind of
14 trauma score we have on this patient.
15 "MR. SEXTON: Okay. Patient's color appears to be
16 pale. He is dry. Temperature is cool. Pupils
17 are dilated, sluggish.
18 "Respiratory efficiency appears to be normal.
19 "Capillary refill appears to be delayed.
20 "Our opening is -- the eyes are open, however there
21 is no response.
22 "Verbal response is none and motor response is
23 none.
24 "UNIDENTIFIED FEMALE: Chino Fire. this is Loma
25 Linda, go ahead and start a lactate of Ringer's
26 just to keep vein open at the moment. Are you
27 assisting ventilations or what have you got on
28 ventilations?

002-1-5021

1 "MR. SEXTON: Loma Linda University, 1671,
2 respirations do not appear to be labored. We do
3 have the patient on oxygen, approximately four to
4 five liters.
5 "UNIDENTIFIED FEMALE: 10-4. Then go ahead start
6 the lactated Ringer's TKO.
7 "What's your ETA to our facility?
8 "MR. SEXTON: Loma Linda University, 1671. Our air
9 ambulance will be here in approximately ten, five
10 minutes to load and eight minutes transport time.
11 "UNIDENTIFIED FEMALE: 1671. do you have -- this is
12 an eight year old child. Do you have a Pete's
13 MAST suit?
14 "MR. SEXTON: We do have a Pete's MAST suit,
15 however we do not have it in place with the
16 pressure of 160.
17 "UNIDENTIFIED FEMALE: Go ahead and place the MAST
18 suit under the child and then put the child on a
19 backboard for C-spine precautions and start your
20 IV.
21 "MR. SEXTON: Loma Linda, 1671. I copy. Under the
22 MAST suit C-spine precautions and spine board.
23 All right. The victim's a ways away from me. I'm
24 going to relay information and be back to you in a
25 few minutes.
26 "UNIDENTIFIED FEMALE: 10-4."
27 (Brief pause in tape.)
28 "MR. SEXTON: Loma Linda University, this is 1671.

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1 "MR. SEXTON: 1671, this is Loma Linda University,
2 go ahead.
3 "UNIDENTIFIED FEMALE: We are having a problem
4 getting veins on this patient, would like to pump
5 up the MAST suit temporarily in order to get veins
6 10-4.
7 "UNIDENTIFIED FEMALE: Also, once you have a line
8 in give the patient ten milligrams of Decadron.
9 "MR. SEXTON: Loma Linda University, 1671. copy.
10 Ten milligrams of Decadron. Apparently the
11 patient just briefly came to and was able to tell
12 us that he is in fact eight years old.
13 "UNIDENTIFIED FEMALE: 10-4."
14 (Brief pause in tape.)
15 "MR. SEXTON: I'm adding another wound to the
16 patient below the left ear, approximately two and
17 a half to three inches long a deep gashing type.
18 A lot of the injuries in a lot of these patients
19 looks like it was sustained with a machete or meat
20 cleaver type of an instrument. The patient's
21 lying supine is experiencing difficulty breathing.
22 We are going to be propping him up with a pillow.
23 "UNIDENTIFIED FEMALE: 10-4. 1671. have you been
24 able to get an IV in?
25 "MR. SEXTON: We are still working on that. Loma
26 Linda.
27 "UNIDENTIFIED FEMALE: 10-4."
28 (Brief pause in tape.)

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1 "UNIDENTIFIED FEMALE: 1671 this is Loma Linda, can
2 you repeat?"
3 (Brief pause in tape.)
4 "MR. SEXTON: Still loud and clear also. Standby
5 to copy."
6 "UNIDENTIFIED FEMALE: 1671. this Loma Linda I'm
7 unable to copy you."
8 (Brief pause in tape.)
9 "UNIDENTIFIED FEMALE: 1671, this is Loma Linda.
10 "MR. SEXTON: Loma Linda, this is 1671. We were
11 unable to establish an IV. Our Patient has been
12 loaded on a Life-Flite. has a ETA your facility,
13 your time approximately six minutes. They should
14 be contacting you on approach."
15 "UNIDENTIFIED FEMALE: 10-4. Do you have the MAST
16 suit inflated or was it deflated?"
17 "MR. SEXTON: Affirmative. MAST suit was inflated
18 for -- to try and get veins out, but we are still
19 unable to get any."
20 "UNIDENTIFIED FEMALE: Did you go ahead and deflate
21 the MAST suit then when you not longer got the IV
22 in?"
23 "MR. SEXTON: Copy. I'll advise the ship."
24 "UNIDENTIFIED FEMALE: 10-4."
25 (Brief pause in tape.)
26 "UNIDENTIFIED FEMALE: We copy. What kind of vital
27 do you have right now and how is the respiratory
28 status?"

021555

1 (Brief pause in tape.)

2 "UNIDENTIFIED FEMALE: Life-Flite. go ahead and
3 open up the IV."

4 (Brief pause in tape.)

5 "UNIDENTIFIED FEMALE: 10-4."

6 MR. KOTTMEIER: That concludes the tape, your Honor.

7 There are a series of stipulations I think that
8 both sides are interested in discussing -- we have discussed
9 them -- but offering at this particular point, so --

10 THE COURT: You may step down, Sergeant.

11 MR. NEGUS: Yes, we would offer to stipulate that the Pro
12 Keds tennis shoes identified by William Baird as having been
13 received in the laboratory on November 8th, 1984, were seized
14 during an investigation of a man who was released from prison
15 during 1977.

16 THE COURT: Accepted.

17 MR. KOTTMEIER: We join in the stipulation, your Honor.

18 MR. NEGUS: We would also stipulate that if Dan Gregonis
19 were recalled to testify he would testify that he conducted an
20 examination of the rope sample, A-3, from the Ryen driveway and
21 the rope, J-9, from the closet inside the Bilbia bedroom. Both
22 ropes had the same color and were made of the same material,
23 however one of the ropes had a center chord and the other did
24 not.

25 MR. KOTTMEIER: So stipulated, your Honor.

26 THE COURT: Likewise accepted.

27 MR. NEGUS: We would further stipulate that according to
28 the National Weather Service the -- on June 2nd, 1983, the moon

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1 was in the last quarter and rose at 2400 hours; on June 3rd it
2 was in the last quarter and rose at 0026 hours; on June 4th it
3 was in the last quarter and rose at 0056 hours; and on June 5th
4 it was in the last quarter and rose at 0125 hours.

5 Further, that according to the Ontario Airport
6 records which are held at the National Weather Service, on June
7 1st, 1983, the temperature range was 56 degrees to 67 degrees
8 Fahrenheit; visibility was a sky cover of scattered clouds;
9 visibility 15 to 20 miles.

10 June 2nd, 1983, temperature range 55 to 64 degrees
11 Fahrenheit; visibility, overcast; visibility 15 or 20 miles.

12 June 3rd, 1983, temperature range 48 degrees to 71
13 degrees Fahrenheit; visibility, overcast, scattered clouds;
14 visibility, five to ten miles.

15 June 4th, 1983, temperature range 50 degrees to 74
16 degrees Fahrenheit; visibility, overcast. hazy sunshine in the
17 afternoon -- excuse me, let me repeat -- visibility, overcast in
18 the morning, hazy sunshine in the afternoon; visibility from
19 four to five miles with haze and smoke.

20 And on June 5th. 1983, temperature range 51 to 71
21 degrees Fahrenheit; fog in the morning, hazy sunshine;
22 two-and-a-half to five miles visibility.

23 MR. KOTTMEIER: Join in the stipulation, your Honor.

24 THE COURT: All right. the jurors may consider all such
25 matters stipulated to as being conclusively proved.

26 MR. NEGUS: We would further stipulate that pursuant to
27 court order, Court's Exhibit 118, a pair of blue denim jeans,
28 was released to Daniel Gregonis on January 14, 1985. and was

1 returned on February 5th, 1985, the markings on the jeans
2 indicate certain stains which were tested, all but one of those
3 was tested for blood and was negative. Another one was
4 inconclusive.

5 MR. KOTTMEIER: So stipulate. your Honor.

6 THE COURT: Accepted.

7 MR. NEGUS: The records should also reflect that on 228,
8 over the break, in the presence of Mr. Kochis, I placed on the
9 list of people in the Ryen crime scene, certain additional
10 information which we stipulated to last week.

11 MR. KOCHIS: So stipulated.

12 THE COURT: Thank you.

13 MR. KOTTMEIER: We have one more witness, your Honor. Dr.
14 Howell, who could not be here until she said between 2:00 and
15 2:30. and we do have some additional matters to introduce as far
16 as evidence and we have not discussed those particular items,
17 outside the presence of the jury.

18 But, with the exception of Dr. Howell, the
19 introduction of exhibits, the People will be resting in
20 rebuttal.

21 THE COURT: Do you have any further witnesses to present
22 at this time?

23 MR. NEGUS: No.

24 THE COURT: Why don't we give you a recess, ladies and
25 gentlemen. Counsel, I would like to discuss a few matters in
26 chambers at some point during the recess after you have had a
27 chance to or I can come back out here, either way.

28 But if you will take your recess now, ladies and

22-1-5900

1 gentlemen, we will get back to you. I won't keep you too much
2 longer this afternoon. I believe one of the things that I can
3 tell you is we're going to give you tomorrow off and then
4 commence argument. It will give counsel a chance to prepare for
5 argument primarily and give us a chance to firm up instructions
6 and things and start with argument Thursday morning and conclude
7 it either that day or on Friday and send you out to commence
8 deliberations. I would expect that when you commence
9 deliberations that we will or you will work and we will work
10 five days a week, that is, Monday through Friday, and we will
11 talk about that more a little bit later.

12 Remember still, however, at this point the
13 admonition. Take your afternoon recess early if you would.

14 (Recess.)

15

16 (Chambers conference reported.)

17 THE COURT: Again, defendant and all counsel are in
18 chambers.

19 What remains with the jurors as far as evidence is
20 concerned?

21 MR. NEGUS: Dr. Howell.

22 THE COURT: How many do you have?

23 MR. NEGUS: Possibly, I suppose. Mr. Forbush depending on
24 what Dr. Howell says.

25 THE COURT: Is she here yet?

26 MR. KOTTMEIER: No.

27 THE COURT: And after that you are going to rest your
28 rebuttal. You still have some more exhibits.

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1 MR. KOTTMEIER: Yes, but there is no objection to any of
2 them. I imagine we could do that out in the courtroom before
3 the jury comes back in for Dr. Howell.

4 THE COURT: All right.

5 MR. NEGUS: We have transcripts of tapes and the
6 expurgated of Linda Headley to handle. There is also a
7 transcript of Linda Headly which I will have but I will have
8 that Thursday morning, which we can substitute in at that point
9 in time.

10 THE COURT: We spoke of some tapes yesterday, conversion
11 of tape. Did you bring those in this morning?

12 MR. NEGUS: I have had the edited versions of the Linda
13 Headley and edited version of the Dr. Howell tape. I don't -- I
14 didn't edit the other one, I edited Mr. Hauser. the ones they
15 just have tapes of.

16 But we have transcripts that we can stipulate to on
17 the record.

18 THE COURT: In any event, whatever remains to be done
19 with reference to any tapes you are going to have all that in
20 first thing Thursday morning.

21 MR. NEGUS: I can do it all except the one transcript
22 this afternoon. Then I will have one transcript to bring in on
23 Thursday morning.

24 THE COURT: Then when you -- when we finish with Dr.
25 Howell, you may or may not have Mr. Forbush on surrebuttal then.

26 MR. NEGUS: There is an extremely unlikely chance that I
27 would. But that would only be depending on -- that would be as
28 to Dr. Howell.

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1 THE COURT: Both sides rest?

2 MR. NEGUS: As it stands now, nothing.

3 THE COURT: Both sides would then rest?

4 MR. NEGUS: Yes.

5 THE COURT: Few questions.

6 I have checked with the executive office here, they
7 have the same procedure that we do in San Bernardino County as
8 far as feeding jurors during deliberations, they don't. So,
9 when I admonish the jurors and send them out, I will give them a
10 kind of an all-encompassing admonishment, tell them that they
11 will be permitted simply to knock on the door and tell the
12 bailiff when they want to go to lunch at lunch time and not to
13 talk about it during, outside the deliberation room, that sort
14 of thing. That goes also to everytime they break for lunch or
15 in the evening hours. Is that satisfactory?

16 MR. NEGUS: Fine with me. Better tell them not to drink
17 during lunch.

18 THE COURT: Okay. How about breakfast? Okay.

19 MR. NEGUS: Don't know of any cases on that.

20 THE COURT: My usual practice as well is to permit the
21 alternates to work, or her, subject to telephone recall with
22 admonishments. Is that satisfactory?

23 MR. NEGUS: I don't have any problem with that.

24 THE COURT: I would like to have Mr. Cooper's personal
25 assent.

26 I believe the code requires, Mr. Cooper, when a
27 jury is out the alternates are kept in the charge of another
28 bailiff here at the courthouse, so they're kept in a separate

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1 room. We keep another bailiff there just on standby.

2 But what I am suggesting is that we permit those
3 people to go home and tell them not to talk about it, don't read
4 anything about it, listen or anything else, and remain subject
5 to coming back to court when we call for them, if we do.

6 Mr. Negus, do you have any questions? You wish to
7 discuss it with him first.

8 MR. NEGUS: Do you need to discuss that, Mr. Cooper?

9 MR. COOPER: Nope.

10 MR. NEGUS: Is that okay with you?

11 MR. COOPER: If it is all right with you.

12 MR. NEGUS: It is all right with me.

13 THE COURT: Okay. With reference to time of jurors
14 deliberating, I guess I don't need to have this on right now, as
15 long as I am right here. I generally suggest that they not come
16 in before 9:00 o'clock nor later than 9:30. and that they can
17 pretty much dictate their own hours with the bailiff, as far as
18 lunchtime is concerned and breaktime in the evening, but I
19 suggest to them they not break before 4:00.

20 Is that satisfactory as well?

21 MR. NEGUS: It is okay with me.

22 MR. KOTTMEIER: Sure.

23 THE COURT: But if they want to work later or something
24 like that we keep us all on standby. I kind of leave that up to
25 the jurors. I have a number of modifications of instructions
26 that require us to go through them.

27 Is Dr. Howell here.

28 MR. ARTHUR: Yes, sir.

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1 THE COURT: We might as well go ahead and dismiss the
2 jury and come back at our leisure and go through those.

3 MR. KOCHIS: You might want to advise or look at the
4 Court's calendar. there are apparently two legal holidays, one
5 which falls next week and one which falls the following week, so
6 they won't be deliberating five days in any of the first two
7 weeks.

8 THE COURT: That is true. That you. I'll do that. If I
9 omit to do any of these things, please remind me.

10 Let's get the jurors back in.

11 MR. NEGUS: Could I have just a second to go to the
12 bathroom before we do?

13 THE COURT: Certainly.

14

15 THE COURT: Everybody is present?

16 Your next witness.

17 MR. KOTTMEIER: Recall Dr. Mary Howell, your Honor.

18 THE COURT: Dr. Howell, please.

19 It has been so long since some witnesses testified
20 we have been having them all be sworn again.

21 THE WITNESS: That's all right.

22

23

MARY A. HOWELL.

24 called as a witness on behalf of the People in rebuttal, having
25 been duly sworn, testified as follows:

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

27 Would you state your full name for the record,
28 please, and spell your last name.

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1 THE WITNESS: Yes. Mary A, is my middle initial, Howell.
2 H-o-w-e-l-l.
3

4 DIRECT EXAMINATION

5 BY MR. KOTTMEIER:

6 Q. Dr. Howell, as Josh's grandmother, have you had
7 occasion to be with him on almost a continuous basis with some
8 breaks in between since his release from the hospital in 1983?

9 A. Yes, I have.

10 Q. And during the time that you have spent with Josh,
11 on occasion has there been some statements or exchanges as far
12 as what happened when his parents, Jessica and Chris Hughes were
13 murdered?

14 A. Some.

15 Q. Has Josh basically told you the same story
16 throughout all of the conversations?

17 A. Yes.

18 Q. And you were present during the time that he made
19 his statement for the jury on video tape?

20 A. Yes.

21 Q. At any time has Josh said that he saw more than one
22 attacker present in the bedroom or anywhere in the Ryen house
23 the night of the attack?

24 A. No, he hasn't.

25 Q. Has Josh ever told you that he saw that attacker
26 well enough to describe the attacker?

27 A. No.

28 Q. Has Josh ever said that he saw more than one

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1 attacker the night of the crime at his house?

2 A. No.

3 Q. Has Josh ever said that he heard more than one
4 attacker the night that his parents, Jessica and Chris Hughes
5 were murdered?

6 A. No.

7 Q. Has Josh ever said that he in any way sensed the
8 presence of more than one attacker during the night that his
9 mother, father, sister and close friends were murdered?

10 A. No.

11 MR. KOTTMEIER: Nothing further, your Honor.

12 THE COURT: Mr. Negus.

13

14

CROSS EXAMINATION

15 BY MR. NEGUS:

16 Q. Dr. Howell, the last day that Josh was in the
17 hospital, did there come an incident where he saw his picture on
18 the television?

19 A. It was the night before.

20 Q. Okay. And after Josh's picture came on the
21 television, did Kevin Cooper's come on television?

22 A. Yes.

23 Q. Did you ask Josh at that point in time whether he
24 had ever seen that man, meaning Kevin Cooper?

25 MR. KOTTMEIER: Objection, asked and answered.

26 MR. NEGUS: I didn't --

27 THE COURT: I don't recall that. If it has I will permit
28 it again. Go ahead.

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1 BY MR. NEGUS:

2 Q. Did you ask if he had ever seen Kevin Cooper
3 before?

4 A. Yes.

5 Q. Did he answer no?

6 A. He said no.

7 MR. NEGUS: That is all I have.

8 MR. KOTTMEIER: No further questions, your Honor.

9 THE COURT: Doctor, thank you once again.

10 MR. KOTTMEIER: With the admission into evidence of the
11 exhibits that have been marked for the proceedings today, the
12 People will rest in rebuttal.

13 THE COURT: Before we brought the jurors back in I
14 intended to come back out and we were going to cleanup some
15 exhibits to which there was no objection, I believe.

16 Can one of you state those now?

17 MR. NEGUS: There's -- as far as the ones that were
18 marked today, I think the prosecutor can -- there is certain
19 exhibits with respect to just cleaning -- having a cleared
20 record as far as tapes that we didn't transcribe, which we still
21 have to do outside the presence. But I have no objection to the
22 other ones coming in at the present time.

23 I intend to call no further witnesses and mark no
24 further exhibits. We will be resting subject to the admission
25 of what we still have left to do?

26 THE COURT: Subject to us working on exhibits which we
27 perhaps can do, about 9:15 on Thursday morning,

28 MR. KOCHIS: Your Honor, I'd prefer to do that today.

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1 MR. NEGUS: Today.

2 MR. KOTTMEIER: It just entails a listing of all the
3 numbers which the jury doesn't need to listen to.

4 THE COURT: All right. Then subject to reciting into
5 evidence formally of those exhibits, both sides then rest?

6 MR. NEGUS: That's true.

7 MR. KOTTMEIER: Yes, your Honor.

8 THE COURT: All right, ladies and gentlemen, a long
9 awaited day is here.

10 As I indicated to you, I am going to excuse you for
11 the rest of the day now, and tomorrow, and I'd ask you to come
12 back at 9:30 Thursday morning, when we hopefully will go
13 directly into argument of counsel.

14 As far as the alternates are concerned stay right
15 with us, you will be here Thursday, listen to all the arguments
16 and instructions of the law, and then so that you will have some
17 idea as to what's going to happen to you, we will permit you to
18 separate and go back to your respective homes or jobs, and be on
19 telephone call just in case something happens to one of these
20 other people.

21 So, you will probably not be returning when we
22 finally submit the matter to the jurors on Friday, nor the
23 following week, until and unless we call you. And then if there
24 is need for one of you, we will take the four names, put them
25 into the wheel and shuffle it up and reach in and pull one out.
26 We don't know which one that will be. I'd admonish you very
27 strongly when we permit you to separate with the same type of
28 admonition.

1 I told you we would be working five days a week,
2 that's somewhat in error. because we do have some holidays here
3 in the month of February. As you can see, the 12th has been
4 crossed out, the 18th is in red, both of those are holidays.

5 The government code, somewhere in these blue books,
6 proscribes the days the court shall be closed and it is
7 mandatory that it is closed, we cannot conduct any judicial
8 business on those days. So, you will not work those days.

9 But contrary to our usual practice of not working
10 you on Friday, you will be working on Friday hereafter until the
11 matter is concluded, but not on Saturdays or Sundays.

12 Further, we don't expect to sequester you or keep
13 you separate in any hotel rooms or anything of that nature.

14 As I indicated early in the selection process,
15 something could happen, I suppose, to change that, heaven
16 forbid, I hope it doesn't. At this time we have no plans
17 whatever for that.

18 I plead with all of you to be particularly careful
19 at this stage of the case to don't talk about it, don't let
20 anybody discuss it, don't express or form an opinion on the
21 matter as yet. It is not yet submitted to you. You have yet to
22 receive the instructions of law, you have yet to hear comments
23 of counsel in argument, which is designed to assist you in
24 making decisions in the case. It is simply not submitted to you
25 yet, so the admonition in all respects still applies, like they
26 would if there were some news from the media about the case.
27 Don't read it, watch it, listen to it in any way, or do anything
28 to affect your integrity or that of the trial.

1 When I send you out, I will admonish you further
2 and more precisely as to the hours that we keep and how you are
3 going to conduct yourself at that time. Please be tolerant
4 again, patient and cooperative with us, ladies and gentlemen.
5 You have been wonderful so far.

6 Okay. With that the jurors are excused for the day
7 and counsel, if you can come to chambers at your convenience, we
8 will do some more work.

9 MR. NEGUS: Could we do the exhibits out here.

10 THE COURT: Okay. Court will be -- the jurors are
11 excused, but the Court will remain in session.

12

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

15 THE COURT: All right, the jurors or alternates have all
16 departed.

17 Counsel, are you ready to do that right now?

18 MR. NEGUS: Yes, I believe so.

19 MR. KOCHIS: I have a list that I have gone over with Mr.
20 Negus of the following exhibits, which the People are moving
21 into evidence at this time. he has no objection.

22 MR. NEGUS: Yes.

23 MR. KOCHIS: They are exhibits 478, Exhibit 767. 478 was
24 an eight by ten color photograph of Joshua Ryen, an injury to
25 the top of his head. 767.

26 And then the exhibits which were used this morning
27 including Exhibit 775, 776, 777 through and including 783, as
28 well as 788. 777. 776. and the exhibits between 777 and 783,

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1 inclusive.

2 MR. NEGUS: No objection.

3 THE COURT: All right. All of those will be received in
4 evidence.

5 MR. NEGUS: In addition, your Honor. I would be moving
6 into -- well, first of all, I have had marked, pursuant to a
7 previous discussion 757-A and 757-B, which are respectively
8 transcripts marked in pink as to the part which was played for
9 the jury of the statements by Richard Sibbitt and Roger Lang,
10 with the stipulation that those can be used in lieu of an
11 official reporter's transcript for appeal purposes.

12 The same thing with 758-A, a transcript of a
13 conversation between Mr. Forbush and Tom Hauser. and 759-A, the
14 transcript of the conversation between Monsignor Gaulderon and
15 Ron Forbush. Those will be the records on appeal.

16 I would move into evidence then a tape, 707-A,
17 which is a copy of the portion of the conversation between
18 myself and Dr. Mary Howell which was played for the jury, the
19 other part being omitted; a tape, 758. which is a portion of the
20 conversation with Mr. Forbush and Mr. Hauser; a tape, 757, which
21 has both -- it has part of an interview with Mr. Sibbitt, part
22 of an interview with Mr. Lang, with the understanding that only
23 a certain portion of that was played which is indicated in the
24 transcript. The same for 756, Linda Headley, and 759, Monsignor
25 Gaulderon.

26 In addition, I would be providing for the court on
27 Thursday morning, a transcript which will be, at that point in
28 time, marked as 756-A being a transcript of the portions of the

1 statement of Linda.

2 MR. KOCHIS: No objection from the People.

3 THE COURT: All right. The ones that you offered into
4 evidence will be received then.

5 Counsel, we had two classifications of exhibits
6 there. didn't we?

7 MR. NEGUS: Yes.

8 THE COURT: One that is a record for appeal, not for use
9 of the jurors, the other one going into evidence for the jurors
10 consideration.

11 MR. NEGUS: Right. I would suggest that all the tapes we
12 keep separate and not send into the jury, but if they request to
13 hear them. that we then in open court, or however we agree at
14 the time, play them for them, and I would suggest that the same
15 with respect to the video tape of Josh and the tape recordings
16 of Josh as well.

17 MR. KOCHIS: That is acceptable.

18 THE COURT: I think that what the clerk is probably going
19 to do, I haven't discussed this with her, for Thursday's use,
20 put the various exhibits on the table, and then she may have a
21 separate stack of matters that were referred to marked but not
22 admitted into evidence. You might review those one final time
23 to see if you have have overlooked anything or for that matter
24 that are now into evidence, and sometimes we have matters in
25 evidence that counsel says he didn't know that should have been
26 excised or something like that. Watch for anything like that.

27 MR. KOCHIS: Your Honor. I neglected on one Exhibit, 789
28 the matchbook removed from the Lease closet, I believe there is

0021581

1 no objection.

2 MR. NEGUS: No objection.

3 THE COURT: Received.

4 MR. KOCHIS: Perhaps the clerk can look at let counsel
5 know if we omitted any that were used.

6 THE COURT: It is so extensive, I am not sure we can.
7 She can try.

8 Anything further before that, before we go back and
9 have a final session on instructions?

10 MR. NEGUS: No.

11 MR. KOCHIS: No.

12 THE COURT: Ladies and gentlemen, those of you that have
13 been watching the trial in process, I don't know what we're
14 going to do for seats in argument. I'm going to reserve two
15 rows of seats. I suspect I have got to discuss this somewhat
16 with counsel for the media, and then I certainly want to have
17 room for members of the family, and I can even have the bailiff
18 put a couple of rows of folding chairs there to try and expand
19 the courtroom. But I suspect we will be turning people down
20 that want to hear argument. So, I hope you won't be too unhappy
21 with us if that occurs.

22 All right, counsel, would you come into chambers.

23 (Recess.)

24

25

26 (Chambers conference reported.)

27 THE COURT: In chambers, the defendant and all three
28 counsel again.

002-1-582

1 Did we clarify and make firm any waivers with
2 respect to lesser included, second degree particularly?

3 MR. NEGUS: I don't know if we clarified. I think our
4 position was that it's pretty clear that we're against it.

5 THE COURT: You don't want it, you want just --

6 MR. NEGUS: I want.

7 THE COURT: -- guilty or not guilty of first degree.

8 MR. NEGUS: You got it. I think we need a --

9 MR. KOCHIS: I think we need a waiver from the defendant.

10 MR. NEGUS: From Mr. Cooper? We did it all but I'll do
11 it again.

12 Mr. Cooper. in this particular case the Court
13 believes there's evidence which will support a second degree
14 finding. I disagree. but that is the Court's -- the Court
15 want's to give the instruction.

16 THE COURT: I am not sure that I expressed that kind of
17 an opinion, but I think that almost -- I would feel duty bound
18 to give it nevertheless because it is always considered to be
19 such an integral part of murder one.

20 MR. NEGUS: Well, there may or may not be evidence which
21 would justify a second degree verdict finding, I believe that
22 there is not.

23 We have discussed between ourselves that the only
24 role that I could see a second degree verdict playing in this
25 particular case is to give a jury a compromise verdict.

26 I also informed you that as far as the eligibility
27 for the penalty phase in this particular case is concerned,
28 according to the present law as it is interpreted by -- at least

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1 by most of the courts, it says in the statute that a verdict of
2 second degree is the same as a first degree if you find two
3 second degrees, then we're into the penalty phase. In order not
4 to encourage a compromise verdict, I believe that it is in your
5 best interest to only give the jury two choices: First degree
6 or nothing. Do you agree to do that?

7 MR. COOPER: Yes.

8 THE COURT: Do you join in the waiver?

9 MR. NEGUS: I Certainly do.

10 THE COURT: All right, I accept it.

11 You objected to, in one of our initial talks, to
12 the instruction on flight, Mr. Negus. And as I got into CALJIC,
13 I believe 2.52, it has a use note in there. Let me read it to
14 you. Just a second. I have modified that flight instruction.

15 All right. "It is suggested in People versus
16 Guzman that if the defendant offers evidence of reasons for
17 flight other than consciousness of guilt, the following
18 sentences, approved in People versus Hill. certiorari denied, be
19 substituted for the present second sentence. 'Whether or not
20 evidence of flight shows a consciousness of guilt and the
21 significance to be attached to such circumstances are matters
22 for your determination.'"

23 And so I have deleted the shorter sentence, "The
24 weight to which such circumstance is entitled is a matter for
25 the jury to determine" and substituted the People versus Hill
26 sentence, longer sentence.

27 Anything further on that point?

28 MR. NEGUS: Just I think that what you have done is

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1 better than what we did before, and I still object, however, to
2 the flight instruction.

3 THE COURT: Well. I think that you have a good
4 explanation as to flight, but you are a little more hard put to
5 explain the extent thereof, and I think that that might be
6 considered for consciousness of guilt. And so I think that the
7 instruction as I have got it now is more proper.

8 I have -- also you will note in the second page
9 that I gave you there. I have modified a statement of offenses
10 to indicate the names of the victims, relate them to the various
11 Counts One through -- Two through Six, I guess.

12 Any objection to that?

13 MR. NEGUS: No.

14 THE COURT: It won't be in the verdict form but I think
15 in some way we ought to tell them formally who is involved in
16 each count.

17 MR. KOCHIS: No objection.

18 THE COURT: Okay. And then I have got a number of notes
19 here. and I would simply like to run through my tentatively
20 approved instructions briefly and see if there is anything else
21 mentioned, any other modifications. So, bear with me.

22 MR. NEGUS: Do you have a copy of the CALJIC there?

23 THE COURT: You bet. Counsel, for instance, CALJIC 1.01,
24 instructions to be considered as a whole, I'm making it in the
25 present tense and eliminating "was" and making making it "is".
26 that sort of thing. Those are standard.

27 I assume you have no objection to any of that.
28 Considering for a second. Can I go ahead, Mr. Negus, while you

002-1-5855

1 are looking there?

2 MR. NEGUS: No, because I want to have that to follow
3 along.

4 THE COURT: Credibility of Witnesses, 2.20. I think
5 probably every single one of them should be given. Any comment?
6 Often times we take out the "character" portion or something
7 like that.

8 MR. NEGUS: I object to the character portion. I admit
9 that we did have it as far as Lelko is concerned, but that
10 really wasn't a heavy part of the case, and I don't want the
11 jurors to assume that they can somehow have an opinion of Mr.
12 Cooper's character and use that as somehow evidence of his
13 guilt.

14 I would submit that in this particular case that
15 because of the very, very limited nature of the character
16 testimony, that it would be misleading.

17 MR. KOCHIS: The problem I have with that, your Honor, is
18 I think through the testimony, at least indirectly of the
19 Handys, people from the mens prison, even the defendant himself,
20 his character is not truthful, he lies about who he is all the
21 time.

22 That was brought out, in addition to his
23 admissions, which are covered by the statement on the second
24 page, it was proved indirectly by the Handys, by the Handys, by
25 the people at CIM.

26 MR. NEGUS: It seems like Mr. Kochis is building in
27 reversible error if that's his position. The defendant's
28 character for honesty or veracity cannot be put in issue unless

02-1-5006

1 the defendant first puts it in issue himself. That is, the
2 People are not allowed to introduce evidence that the defendant
3 has a character for not having honesty or truthfulness and
4 that's reversible error right there.

5 THE COURT: That perhaps would be covered, Mr. Kochis,
6 under admission of untruthfulness.

7 As far as using aliases, somethings of that nature
8 are concerned, it clearly, however, counsel applies to the one
9 witness, was it today only?

10 MR. NEGUS: Mr. Lelko. But I am saying, that if he puts
11 that in, because of the nature of the prosecution evidence, it
12 invites speculation as to there might be evidence of character
13 for honesty or truthfulness on the part of the defendant. And
14 it is plain that unless the defendant brings in character
15 evidence himself, the prosecution is not allowed to try and
16 impeach his character.

17 THE COURT: I think that is his argument.

18 MR. NEGUS: Where I --

19 THE COURT: When he gets on the stand and admits on
20 direct examination the number of falsehoods --

21 MR. NEGUS: Judge, that is not -- what they mean by that
22 is if I bring in somebody to sit and say, oh, yeah. I've known
23 Kevin Cooper for a long time, he's an honest man in the
24 community, then they can rebut it. But they're not allowed to
25 do that unless I do.

26 THE COURT: I know where you are coming from Mr. Negus,
27 I'm just thinking that character may be proven in other --

28 MR. NEGUS: But it is not -- you can't do it, the jury

1 can't consider that unless I put it in issue. I didn't put it
2 in issue. I mean, I never introduced character witnesses on
3 behalf of Mr. Cooper, they are not allowed to attack the
4 defendant's character unless I do that.

5 THE COURT: That is, they couldn't call a witness and
6 say --

7 MR. NEGUS: They can't put on evidence.

8 THE COURT: I know his reputation for truth and honesty,
9 I know it to be bad, they can't do that.

10 MR. NEGUS: They can't use -- you can't use character
11 evidence at all unless I do it. You know, you guys want a
12 reversal.

13 MR. KOCHIS: Let's take it out so that there is no --
14 first of all, I understand that the Court feels that it is a
15 proper instruction sua sponte based on testimony of Shirley
16 Killian, but Mr. Negus is asking the Court to delete that one
17 sentence. Is that correct? Can I get indications from counsel?

18 MR. NEGUS: Yes, that's correct.

19 MR. KOCHIS: While we're on the issue --

20 THE COURT: Then let's take it out then.

21 MR. KOCHIS: While we're on the issue --

22 THE COURT: That is, I am taking out the last sentence on
23 the first page of that instruction, "The character of the
24 witness for honesty or truthfulness or their opposites."

25 MR. KOCHIS: Without at any time referring to the word
26 "character", it is possible the prosecutor in argument could
27 mention that based on the testimony of the Handys and the people
28 in the state prison that Mr. Cooper lies about a number of

002215000

1 First of all, you have Edmonds versus Florida,
2 E-d-m-o-n-d-s, if I am not mistaken, in that if you are going
3 under some theory that somebody else did the acts, with the axe,
4 and Mr. Cooper was just there or somehow aiding and abetting,
5 you have got a real problem as far as the rules about personally
6 committing murders. That's a fair constitutional problem, and
7 not all of it has been resolved.

8 In this particular case I don't know how the heck
9 you are going to instruct them on it in order to not get
10 yourself in a big constitutional box. I think that particular
11 argument points out the other problem with it, in that there is
12 no evidence that there was any; if Mr. Cooper is the one that
13 did the crime, all the evidence points Mr. Cooper did it alone.
14 If somebody else did the crime then that's something else again.
15 But as far as the evidence in this particular case, there is no
16 evidence that would --

17 THE COURT: I am not insisting upon giving these two
18 instructions. I suggested it because it is the defense that all
19 the time says, hey, it wasn't me it was three other guys, and I
20 think that there is evidence that the jurors could say, hey, it
21 could have been more than one guy there. If there was anybody
22 else there, I don't know, but I am certain that the defendant
23 was right there in the middle of it.

24 On that basis, I asked your consideration of it.

25 What's the prosecution position?

26 MR. KOCHIS: We're not asking for it. We have called the
27 an attorney general on it, he thinks in this case that it is
28 somewhat a close call, that if the Court feels that there is

021590

1 evidence of other people there, we should be considering it as
2 we are now.

3 However, based on the strong objection by the
4 defense counsel, on the record, I am sure he's aware of the
5 recent cases on jury instructions in capital cases, if he's
6 expressly asking it not be given, then our position would be it
7 not be given. I can't see how it would prejudice Mr. Cooper.
8 If he's going to be found at the scene they're going to convict
9 him anyway. I wouldn't get into the issue of jury feeling,
10 well, he encouraged someone else to do it.

11 THE COURT: You want me to take out 3.00 and 3.01. Mr.
12 Negus?

13 MR. NEGUS: I do.

14 THE COURT: I'm willing to do so.

15 In the statement of offense, I'm going to have the
16 typist modify Doug Ryen's first name, l-y-n, I believe is it.
17 That is the way the Information reads l-y-n.

18 Going to 8.10 if you would for a moment.

19 You modified this, counsel,

20 MR. NEGUS: That was at your suggestion. That's one that
21 has premeditation and deliberation added to it, is it?

22 THE COURT: Yes.

23 MR. NEGUS: That is fine with me.

24 THE COURT: That's all right. Right above the
25 itemization one through five, at the very least I'd put murder
26 in the first degree. But we're mixing up garden variety murder
27 with murder of the first degree. He's talked about charged with
28 murder in the first degree. Then we define murder generally, or

00221591

1 second degree murder. Then we go through and give the elements
2 for first degree murder. That maybe ought to be revised.

3 MR. NEGUS: I like the way you have it modified.

4 MR. KOCHIS: I have no objection to the modification, my
5 practical problem is the Court can appreciate I'm 120 miles from
6 the typist.

7 THE COURT: I appreciate it. I can get my secretary to
8 type it if you simply tell me. Do you think maybe the second
9 paragraph instead of just defining -- oh, another thing before I
10 get into that. You want us to take out implied malice, too; is
11 that correct?

12 MR. NEGUS: No evidence of implied malice.

13 MR. KOCHIS: I believe I did that.

14 THE COURT: Okay. In the 8.11 instruction. I notice that
15 it is not taken out in 8.10.

16 Well. I would prefer to say in the second
17 paragraph, "The crime of murder in the first degree is the
18 unlawful killing of a human being with malice aforethought."

19 MR. NEGUS: Premeditation and deliberation. That is fine
20 with me.

21 THE COURT: With premeditation and deliberation. Okay.
22 I will get you a fresh clean copy of that for Thursday morning.

23 Going to 8.11. I am going to strike the words "or
24 implied" in the third paragraph of that. "When it is shown that
25 the killing resulted from the intentional doing of an act, with
26 express malice, no other mental state need be shown to establish
27 the state of malice aforethought."

28 Satisfactory?

002-15072

1 MR. KOCHIS: Yes.

2 MR. NEGUS: Yes.

3 Now, 8.55, Proximate Cause.

4 MR. NEGUS: I am not asking for it, I have never had it.
5 The only case I ever had it given is when I was alleging that
6 medical malpractice was an intervening cause.

7 THE COURT: What does CALJIC say about 8.55?

8 MR. NEGUS: "Where proximate cause is an issue,
9 instruction thereon must be given sua sponte."

10 I have never had anybody give it in any situation
11 where we didn't have some sort of intervening conflict. I don't
12 care.

13 THE COURT: I'm willing. I think if I give it I have got
14 to also define -- for instance, tell them what assault with a
15 deadly is.

16 MR. NEGUS: I think it is confusing.

17 THE COURT: So if you want me to take that out and you
18 have no objection to it, why, I think that we all agree there's
19 no issue; but what he died of, the wounds from the perpetrator,
20 whoever that maybe.

21 MR. NEGUS: I agree.

22 MR. KOCHIS: I will withdraw it provided there is a
23 waiver from Mr. Negus.

24 MR. NEGUS: I don't want it.

25 THE COURT: All right. 8.55 is trashed.

26 MR. KOCHIS: And his client does not want it as well?

27 MR. NEGUS: Mr. Cooper. there is a very complicated legal
28 issue involving proximate cause. I don't think it adds anything

1 to this particular case. Is it okay with you if we take it out?

2 THE DEFENDANT: Yes.

3 MR. KOCHIS: And the other issue I neglected to cover.
4 your Honor, is if Mr. Cooper waives his request to have CALJIC
5 3.00 and 3.01.

6 MR. NEGUS: CALJIC 3.00 and 3.01 are the ones that have
7 to do with aiding and abetting. We discussed that previously
8 between the two of us.

9 You agree with me that we don't want those
10 instructions; is that correct?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. On all of these waivers so far I
13 find that Mr. Cooper knows and understands his rights, and he
14 freely voluntarily waives and gives them up.

15 I found Mr. Cooper to be an intelligent,
16 articulate, thinking individual. And I think he certainly knows
17 what's going on during the trial here as much as any defendant
18 that I've had in sometime.

19 Turn for a moment, please, to 8.80 and 8.81.3
20 relating to special circumstances. I wonder why we need both.
21 Aren't three duplicative?

22 MR. NEGUS: I think -- I think that the other one is --

23 MR. KOCHIS: It's 8.81.

24 THE COURT: 8.81.3 and 8.80, both submitted to me by you.

25 MR. NEGUS: May I see the copy that you are -- that you
26 have of 8.80?

27 THE COURT: Wait a minute. We would have to change 8.80
28 to be consistent, "has in this proceeding been convicted of more

02-1-594

1 than one offense of murder in the first degree."

2 I think I could take out -- with that modification,
3 8.81.3, yes, see if that adds anything.

4 MR. NEGUS: Okay.

5 MR. KOCHIS: I thought that was simply a sua sponte
6 instruction and the 8.81 point -- the 8.80 was the reasonable
7 doubt as it applies to special circumstance, and the 8.81.3 was
8 simply the statement of the special circumstance of multiple
9 murder?

10 THE COURT: Does it say sua sponte on 8.81.3?

11 MR. NEGUS: No. It just says Penal Code Section 190.2.

12 THE COURT: I think it's all covered in 8.80.

13 MR. NEGUS: I have no problem.

14 THE COURT: All right. We will take out 8.81. It's not
15 long, but there's no point in trying to confuse it.

16 In the concluding instruction I would probably add:
17 "As soon as all of you have agreed upon a verdict as to each
18 count and the special allegation, you shall have them dated and
19 returned to this courtroom."

20 MR. NEGUS: Are you giving 17.47?

21 THE COURT: Beg your pardon?

22 MR. NEGUS: Is 17.47 in amongst the ones that we're
23 giving?

24 THE COURT: What I was going to do now? That's the one
25 about if I send in jury instruction.

26 MR. NEGUS: No, that's 17.45 I assume that you're going
27 to do that.

28 THE COURT: What's 17.47?

1 MR. NEGUS: Not to give the balloting.

2 THE COURT: I'm sorry.

3 MR. KOCHIS: Not to tell how they are split or decided
4 until requested by the Court, how they have cast their ballots.

5 In the past we have usually decided that was
6 somewhat confusing. I have no objection to it.

7 MR. NEGUS: Well, the reason was -- Well, I have had in
8 the past situations where I wished it would be given. In this
9 particular case I think it would be nice to give it.

10 THE COURT: I had a beaut come up on that point with Mr.
11 Zabado. The jurors came back said, "We are hung up eleven to
12 one for guilty," something like that.

13 MR. NEGUS: I realize that. I was there when that
14 happened with Mr. Zabado. And I have had the same thing happen
15 with myself in the past. And it's my position that that one --
16 as soon as that happens you are precluded further deliberations,
17 and --

18 THE COURT: It creates problems, no doubt about it.

19 MR. KOCHIS: The only problem I have with it is, one,
20 it's somewhat confusing. It -- If you read it literally it
21 stands for the proposition that you don't tell us if you've
22 reached a decision until we ask you. And then the other one,
23 the other problem with it is it indicates to them by its
24 statement that you should be split on your decision and when
25 you're split, you can't reach an unanimous decision, we will
26 contact you and you let us now how you're split.

27 THE COURT: I have to study it. Okay. I think it's
28 clear now. I will get -- I will get the secretary to type it.

1 So if he wants it, we will give it.

2 What I thought I would do at this time is simply
3 run through all of them that I now have in order, let you simply
4 make a list of them. then you can review at your leisure. You
5 will know pretty much how I'm going to give them, the order as
6 well as the numbers.

7 MR. NEGUS: Okay.

8 THE COURT: 1.00. 17.45. 1.01. 1.02. 1.10. People versus
9 White. 2.20. 2.23, 2.21, 2.13, 2.12. 2.80. 2.82. 2.81, 2.62.
10 2.22, 2.11, 2.27, 17.30, 4.71, 2.09, Crime Scene Changes.

11 You got a copy of that. Mr. Negus?

12 MR. NEGUS: Did I?

13 THE COURT: I assume the prosecution gave it to me.

14 MR. KOTTMEIER: In case you don't.

15 MR. NEGUS: Okay, that's fine. I think I do.

16 THE COURT: 2.00, 2.01, 2.51, 2.52, Flight After Crime,
17 2.90. Presumption of Innocence, Statement of Offense, 8.10.
18 Murder Defined, 8.20, Deliberate and Premeditated, 8.11, Malice
19 Aforethought.

20 Now that Malice Aforethought instruction says:
21 "Malice maybe express or implied," and then thereafter we're
22 talking only about expressed malice.

23 MR. NEGUS: Why don't we just scratch the "implied"?

24 MR. KOCHIS: Delete "implied".

25 THE COURT: And just start it off: "Malice is expressed
26 when there is manifested an intention unlawfully to kill a human
27 being."?

28 MR. NEGUS: Yes.

021597

1 MR. KOCHIS: Yes.

2 THE COURT: So ordered.

3 Defendant is charged in Count Six with Attempt,
4 Attempt Defined, 6.00.

5 3.31. Concurrence of Act and Intent, 2.02.

6 Sufficiency of Circumstantial Evidence to Prove Intent, 17.20,
7 GBI.

8 And then entitled Instruction Defining Not Trivial
9 or Insignificant, 17.02 Several Counts, Jury Must Find on Each.
10 8.20. Special Circumstances, Multiple Murders.

11 MR. NEGUS: 8.20?

12 THE COURT: 8.80 excuse me.

13 MR. NEGUS: Okay.

14 THE COURT: 8.83, 8.83.2. Jury Must Not Consider Penalty.

15 I keep wanting to preface that by saying, "in this
16 phase." but I don't think I can.

17 MR. NEGUS: I don't think that's a good idea.

18 THE COURT: 17.31. All Instructions Not Necessarily
19 Applicable, 17.40, Individual Opinion Required, 17.41, How
20 Jurors Approach Their Task.

21 And then the form of verdicts. As to each of these
22 counts, four counts of murder in the first degree or not guilty
23 and then the special allegation, and then guilty or not guilty
24 as to the attempt and that's special allegation of GBI.

25 And then 17.50. concluding instruction.

26 All of the instructions, while some have been
27 suggested I believe by Mr. Negus, all have been supplied by the
28 prosecution.

002-1-5958

1 MR. NEGUS: Are you going to stick 17.47 in there
2 somewhere at the end?

3 THE COURT: Indeed, yes. Thank you. I don't know where
4 yet, but I'll put it in there.

5 MR. NEGUS: If I could just have a second here.

6 THE COURT: We have other things to do apart from
7 instructions. So do we have anything else on instructions?

8 I would like to have you here at 9:15, please. I'd
9 like us to be in chambers, give you a last minute to give me any
10 later thought of instructions or admonitions or anything, and
11 then so we can start at 9:30.

12 So we're going to have one more session on
13 instructions, but I think we are pretty well formed up here.

14 You have the verdict forms for the clerk and all of
15 the aliases have been deleted. I want to get over -- get into
16 the argument thing when we finish with the instructions.

17 MR. KOCHIS: Your Honor. on the matter of exhibits, the
18 Court has -- the clerk has informed me that between Mr. Negus
19 and myself we have not addressed Exhibit 784. 785. and 787. At
20 this time I would move 784 and 785 into evidence. I believe
21 there's no objection by Mr. Negus. He wishes 787 moved into
22 evidence and I have no objection to that.

23 MR. NEGUS: That's true.

24 THE COURT: All three of them then will be received into
25 evidence.

26 Thank you. That was prompt work.

27 Anything else on instructions?

28 Going to argument and number of counsel and the

021599

1 methods and procedures therefore. I read the Bandhauer case and
2 Penal Code Section 1095. Bandhauer is 66 Cal.2d 524. And I've
3 read also the Deskbook published by West. None of them are
4 right on point anywhere on the line. So, do you wish to be
5 heard further, counsel?

6 MR. KOCHIS: Yes. There are three cases which are not
7 specifically on point, and those are People vs. Jackson, which
8 is a 1980 Supreme Court case found at 28 Cal.3d 264. People vs.
9 Keenan, I believe, 31 Cal.3d 428 1982 case, and then the third
10 case is also a 1982 case. It's People vs. -- and I will spell
11 it as opposed to attempting to pronounce it --
12 G-z-i-k-o-w-s-k-i.

13 They all deal with a collateral issue of when it is
14 mandatory upon a court to appoint two attorneys to represent the
15 defendant in a capital case free of charge, but all three of the
16 cases are recent cases and they all talk about Penal Code
17 Section 1095. And when they quote it, the quote that they rely
18 upon mentions again in black and white the elements of in a
19 capital case each side may have two attorneys to argue the case.
20 They don't mention sit at counsel table, examine witnesses. The
21 language that they use is always "argue" or "argument".

22 Specifically in Jackson it says:

23 "It is readily apparent from the language" -- this
24 is I believe 287 -- "of the section that it does
25 not purport to authorize or mandate the
26 appointment of additional counsel at public
27 expense, but only to permit the argument of the
28 case by two counsel."

0021600

1 And a literal reading of Penal Code Section ~~295~~ 1095
2 interestingly states that "each side," and that would imply the
3 prosecution and the defense, has a right to have two attorneys
4 to argue the case.

5 MR. NEGUS: It would seem again that's something for the
6 penalty phase. If we are going to have two counsel argue it
7 would seem that the defense then, as in the penalty phase,
8 should have the right to respond to both. So if they want to
9 have Mr. Kochis open or Mr. Kottmeier. whichever. then I believe
10 I should have the final say. Other than that I think it should
11 be just one because there is -- that's the --

12 THE COURT: Even Bandhauer goes into the burden of proof
13 and the reason why the prosecution has to --

14 MR. NEGUS: But let's assume that I bring in Mr. Zabado
15 here tomorrow or Thursday and he's going to argue as the second
16 attorney in this case, do I have to sandwich both of us in
17 between them? That doesn't seem right. So logically. if in
18 fact you have this -- if in fact it applies to a situation other
19 than the situation where you go 1.2.1.2. then it doesn't make
20 sense. I think that's why there should just be one at the guilt
21 phase. If there's going to be two, then I should get two shots
22 too. That's not fair.

23 THE COURT: Well, it's true that there's an easier
24 division of counsel's responsibilities when you have two
25 attorneys for the prosecution than there is for the defense, and
26 if they have two, but that doesn't outweigh the language of the
27 statute.

28 Bandhauer is not in point. It's still apparently

1 good law that the last argument belongs to the defense in the
2 penalty phase. and we will get to that point as to how that
3 should be done if we ever get to a penalty phase, but reasons
4 why I think that I'm going to let the prosecution have their two
5 attorneys speak. Bandhauer is simply not persuasive analogy
6 with the argument that you made more specifically in open court
7 before, counsel.

8 MR. NEGUS: Well, when if I bring down Mr. Zabado to
9 argue, when would he get to argue?

10 THE COURT: That's speculative. You bring him here I
11 will quickly make the rules for it. We will have to devise
12 rules if that comes up. I don't see any need to get to into an
13 advisory position. I would think, however, if you want to talk
14 about that for a minute. that clearly there are certain parts of
15 the trial that a division could be broken down between the two
16 of you, and we could easily devise rules for that if it occurred
17 but the statute in this case specifically permits two counsel in
18 argument.

19 There's much discretionary language. They use
20 "may" twice; they used "discretion" once, and seeming to invest
21 the Court with a great deal of discretion.

22 Mr. Negus, you and your client were well aware of
23 the two versus one. that is, two prosecutions versus one defense
24 counsel from the very beginning. You've not requested any
25 assistance. You may have even declined it.

26 Four: The prosecutors have been actively involved
27 at all parts of this trial ab initio, and it doesn't seem
28 logical to me that I would exclude one of them from commenting

2006-1-20

1 on the evidence at this stage.

2 Five: We will follow the usual rules, I assure
3 you, of rebuttal argument.

4 Six: I don't find any unfair advantage with two
5 prosecutors arguing in the guilt phase.

6 Seven: The uniqueness of each counsel's
7 personality has long since become evident to the jurors, and I
8 don't think that's a significant factor.

9 And eight: Likewise, the ability of defense
10 counsel to cope with the two of them has similarly long since
11 become evident to the jurors as well as the Court.

12 So overruled.

13 How do you want to do it then? One of you going to
14 take opening argument the other close?

15 MR. KOCHIS: Yes. Unless -- Yes, regardless of what
16 happens with Mr. Zabado on Thursday, if he appears.

17 THE COURT: If he appeared and wanted to argue the case,
18 I would give you a lot of leeway, but I would imagine you'd have
19 to talk back to back.

20 Anything further, gentlemen?

21 MR. KOCHIS: Not at this point, other than closing
22 arguments are going to be in Department 30 and not in any other
23 location?

24 THE COURT: I have made absolutely no -- Yes.

25 MR. KOCHIS: And if it's necessary in the use of closing
26 arguments to use visual aids and -- visual aids and I'm stuck
27 with a choice between blocking the media and Mr. Negus and his
28 client. I'm going to opt for the former. And it may be

021603

1 necessary to have an easel in a location that the media is not
2 as pleased with as they could otherwise be, but we've tried.

3 THE COURT: What are you thinking about, the screen or
4 something like that?

5 MR. KOCHIS: No. Just simply an easel that a chart is
6 going to be on.

7 THE COURT: Well, can't you put it up and block the
8 Court? Don't worry about the Court because I'm subject to
9 moving. I can get out both sides of my bench. Don't worry
10 about me. If you put it towards the back of the courtroom, then
11 everybody can see in the back of the courtroom.

12 MR. KOCHIS: I'm having trouble visualizing the back of
13 the courtroom.

14 THE COURT: Where you've always had your diagrams and
15 photographs.

16 MR. KOCHIS: Oh, there's going to be exhibits at that
17 location. And to do somewhat of a cohesive closing I'm going to
18 have to have something in another location. I will work on it
19 and I will try not to interfere.

20 THE COURT: Probably opposite behind where Mr. Negus has
21 been sitting I believe.

22 MR. KOCHIS: No. It would be at the end of the jury box
23 closest to the railing.

24 THE COURT: Between the jury box and the audience?

25 MR. KOCHIS: It would be between where the jurors are
26 seated and where we usually. the prosecution leaves it's cart in
27 the morning, where the gate is, where no one would be walking
28 any way. No one is allowed to walk in or out of that area.

021604

1 THE COURT: Before you close off the audience or the
2 media, consider usurping part of my bench or something if that
3 will help you, because I don't think I'm going to be
4 particularly needed there. I can squeeze into one corner or sit
5 down with the clerk or something, if necessary, but I don't want
6 to you close off the audience or the media.

7 MR. KOCHIS: That would be as close to the bench as I may
8 have ever get, so I we may take advantage of that.

9 THE COURT: There is a lot of -- as I've studied this
10 case there's a lot of ways the prosecutor can get involved in
11 misconduct that's prejudicial. I hope that you studied some of
12 those arguments.

13 MR. KOCHIS: Simply the evidence, your Honor. That's all
14 we're going to talk about.

15 THE COURT: Anything further?

16 MR. KOCHIS: Not at this time.

17 THE COURT: You've all done a wonderful job. Very
18 professional, Mr. Kottmeier. You have shown no rustiness at
19 all. sir. I remember you from many years ago. You are right
20 back in the saddle.

21 MR. KOTTMEIER: I can say that I have the scars on my
22 heart and my stomach from trying to get back into it in a hurry.

23 THE COURT: In that regard, by gosh, I have been getting
24 annual physicals all my life, and I've come out with a clean
25 bill of health. And I've gone up apparently, since this case
26 started, from 160 over 130 to 190 over 170. I don't know see
27 what you've done to me. something like that.

28 MR. NEGUS: I'm sorry, Judge.

021605

1 THE COURT: My blood pressure has gone up anyhow.

2 MR. NEGUS: It wasn't intentional.

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
February 7, 1985

APPEARANCES:

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Official Reporters

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1 SAN DIEGO, CALIFORNIA, THURSDAY, FEBRUARY 7, 1985 9:15 A.M..

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4 (Chambers conference reported.)

5 THE COURT: Mr. Cooper is present with all the three
6 counsel. We're in chambers out of the presence of the jury.

7 MR. NEGUS: First off, I neglected to introduce last week
8 529, 530, and 531. They are a part of a package of knives
9 catalogs. They were the three exhibits that were separate from
10 the other ones. The other ones were all admitted over the
11 objection by the prosecution.

12 THE COURT: I recall.

13 MR. NEGUS: I request that they be admitted at this point
14 in time.

15 MR. KOCHIS: As I recall I objected to those last week
16 and I would continue to object. I think I was overruled.

17 THE COURT: Well, I know you were. All right. They will
18 be received.

19 MR. NEGUS: The prosecution, I believe, wants you to give
20 CALJIC 2.06. I object.

21 THE COURT: Well, referring to what, gentlemen?

22 MR. KOCHIS: The destruction of certain items of
23 evidence, in particular, the state prison Pro Red tennis shoes
24 which there is no conflict in the evidence but that Mr. Cooper
25 received in state prison by his own admissions took to the Lease
26 house, wore in the Lease house, and when he leaves the Lease
27 house sometime on Saturday, when it is dark, he has those in his
28 possession, as he does the camp jacket, as he does the prison

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1 clothes, and we know from all the evidence that Mr. Cooper
2 destroys those items.

3 THE COURT: He didn't testify to destruction, did he?

4 MR. KOCHIS: He testified, as I recall, that one night on
5 the Illa Tika, when it was dark, when everyone else had gone to
6 sleep, while he smoked a cigarette, one at a time he put them
7 overboard.

8 THE COURT: Mr. Negus.

9 MR. NEGUS: Well, the thing is that they weren't evidence
10 of the crime except the escape, and we have already pled guilty
11 to that. I mean, it is sort of bootstrapping. You have to have
12 a belief Mr. Cooper did it in order for it to be destruction of
13 evidence.

14 MR. KOCHIS: With one major exception, the Pro Keds tennis
15 shoes and dye machine pattern they contain.

16 THE COURT: I think it's an appropriate instruction and
17 we should take out "Intimidation of a witness or to compensate a
18 witness." I will have it typed.

19 MR. NEGUS: Could you next turn your attention to CALJIC
20 2.50.

21 THE COURT: Yes, sir.

22 MR. NEGUS: Is that sua sponte? I forgot to look.

23 THE COURT: It probably should be given whether it is sua
24 sponte or not.

25 MR. NEGUS: Okay. In my opinion the first two paragraphs
26 are all that are particularly relevant to this particular case.
27 The other crimes of evidence which we're dealing is the escape.

28 The only relevance of escape in this particular

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1 case was brought forward by the prosecution to try and connect
2 certain items of physical evidence in with the crime scene, so
3 we'd know where Mr. Cooper came from, and the San Ysidro
4 purse-snatch which is just to show how he got the money.

5 I don't believe the enumerated ones normally apply,
6 but I would suggest that --

7 THE COURT: Any objection?

8 MR. KOCHIS: Your Honor, the problem I have with the
9 instruction is I don't think it is that simple. There's a
10 number of pieces of evidence in the case which point toward Mr.
11 Cooper's involvement in the murder which have to do with the
12 theft of the Lease house of certain items. There are a group of
13 items that were kept at a particular location that are now
14 missing. I don't think it is as simple as Mr. Negus would lead
15 us to believe. The instruction probably should be given, but
16 not limited simply to the first two paragraphs.

17 MR. NEGUS: I don't think -- none of the other paragraphs
18 they have in that instruction applies to the facts of this
19 particular case.

20 MR. KOCHIS: Well, the defendant had knowledge or
21 possession, possessed the means that might have been useful and
22 necessary for the commission of the crime charged. The hatchet,
23 the knife that's missing.

24 MR. NEGUS: But that is normally given in narcotics
25 cases, and I don't think that that particularly applies in this
26 particular case.

27 MR. KOTTMEIER: Another aspect of that particular thought
28 process is the defendant had worn glasses throughout the trial

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1 and then indicated that he didn't wear his glasses in the
2 earlier burglary and didn't really needed glasses inside.

3 MR. NEGUS: I missed the connection between the glasses
4 and the crime.

5 THE COURT: We should probably tailor-make that paragraph
6 to that. The reason that the purse came out is the theft out of
7 the Lease house.

8 MR. NEGUS: It was all just to show connection of certain
9 items of physical evidence with Mr. Cooper.

10 THE COURT: We should put a paragraph in then.

11 MR. NEGUS: How about, the purpose of it was to show the
12 connection of certain items of physical evidence with Mr.
13 Cooper.

14 THE COURT: Such evidence was received and maybe
15 considered by you only for the limited purpose.

16 MR. NEGUS: Connecting certain items of physical evidence
17 with Mr. Cooper.

18 MR. KOCHIS: To the crimes charged.

19 MR. NEGUS: I think that whether it is to the crime
20 charged or not is a matter that shouldn't be part of the
21 instruction.

22 MR. KOCHIS: Your Honor, my experience with this court is
23 you do not preinstruct, and I'm confident you are not going to
24 do so.

25 You do not preinstruct, do you?

26 THE COURT: No, I am not going to.

27 MR. KOCHIS: I'm confident you are not going to get to
28 instructions prior to noon because we're not going to be done

1 arguing the case by noon. If I could have the lunch hour to
2 look more closely at that instruction.

3 MR. NEGUS: I would like to have the instructions
4 prepared before we argue and know what they're going to be
5 before we argue.

6 THE COURT: Well, that is the rule.

7 MR. NEGUS: Then just skip the two paragraphs. The first
8 one about a limited purpose and then the last one.

9 THE COURT: Well the theft of some of the items from the
10 Lease house is circumstantial evidence of identity, so we
11 probably should have that. The identity of the person who
12 committed the crime, of which the defendant is accused, as one
13 of the paragraphs.

14 MR. NEGUS: That particular paragraph has got to do -- is
15 when you have prior similars. I don't think that applies.

16 THE COURT: That is the usual. But let's tailor-make it
17 and consider this specific case. And further, that he had
18 knowledge or possessed the means. That would refer --

19 MR. NEGUS: But I would suggest as a paragraph that I
20 already suggested.

21 THE COURT: I've got that in also.

22 MR. NEGUS: But I'm -- what I am saying is that one
23 does -- argues the case for the prosecution. The real
24 connection is the connection of items of physical evidence with
25 the defendant. If that establishes identity, fine; if it
26 doesn't, fine.

27 THE COURT: That is not the issue. You have to go from
28 that why we are connecting the items with the defendant. We're

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1 doing it to show (a) identity, or (b) explain conduct on his
2 part.

3 MR. NEGUS: But the point of the instruction is to let
4 them know that we're not dealing with a bad character of the
5 defendant.

6 THE COURT: That's true.

7 MR. NEGUS: The particular thing is that it is not a
8 Sears instruction for the prosecution. The particular thing
9 that I have explained is what the limited purpose is without
10 getting argumentative.

11 THE COURT: Should I leave the identity part and just put
12 in the one of the possession -- he possessed knowledge or the
13 means?

14 MR. KOCHIS: That would be acceptable to the People.

15 THE COURT: The other one says that "... the defendant
16 had knowledge or possessed the means that might have been useful
17 or necessary for the commission of the crime charged."

18 Let's go. I suggest to you Mr. Negus, that it
19 wasn't introduced to show bad character, "... such evidence was
20 received and maybe considered by you only for the limited
21 purpose of determining if it tends to show or tends to connect
22 certain items of physical evidence to Mr. Cooper and to explain
23 certain conduct of the defendant", and further.

24 MR. NEGUS: I object to the explaining of the certain
25 conduct of the defendant. I mean, that's --

26 THE COURT: Why did you bring out the purse-snatch?

27 MR. NEGUS: Just as sort of physical evidence to the
28 defendant, the quarters, that is all. I am not explaining the

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1 conduct. I think that could be misused.

2 THE COURT: All right. The meat of it really is all
3 right. We'll put in, "... that tends to connect certain items
4 of physical evidence to Mr. Cooper, and that the defendant had
5 knowledge or possessed means that might have been useful or
6 necessary for the commission of the crime charged."

7 MR. NEGUS: Okay. Can we put in "or", "and/or", or
8 something like that?

9 THE COURT: How about one and two.

10 MR. NEGUS: Okay.

11 THE COURT: All right. I will give it to the typist and
12 distribute it at the next opportunity.

13 MR. NEGUS: Fine.

14 THE COURT: Anything further?

15 MR. KOCHIS: Not at this time.

16 THE COURT: Then give 2.06 as well.

17 MR. KOCHIS: As modified, striking the section on
18 intimidation of witnesses.

19 THE COURT: Yes. All right.

20 Have you got your matters together? Are you going
21 to make the opening argument?

22 MR. KOCHIS: Yes, I am.

23 THE COURT: Are you ready to go?

24 MR. KOCHIS: Yes, I am.

25 THE COURT: All right go out and get started.

26 MR. NEGUS: Can I just just go down to the bathroom and I
27 will circle around if I can get in again.

28 (Chambers conference concluded.)

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1 (The following proceedings were held in
2 open court in the presence of the jury:)

3 THE COURT: Good morning, ladies and gentlemen. Happy to
4 see all of you here.

5 The defendant's present with all counsel, the
6 jurors and the alternates.

7 Ladies and gentlemen, as indicated to you
8 previously, both sides have now rested their case, all the
9 exhibits are in, all the evidence is in, now what remains is
10 what we call argument, or attorneys comment on the evidence, and
11 the instructions of the court, which will be given to you, the
12 principles of law that will apply to the case, or may apply to
13 the evidence.

14 So, what the attorneys say now is not evidence, but
15 as comment designed to assist you in evaluating the evidence.
16 Please continue to give us your full attention.

17 The District Attorney may commence, then the
18 defense, and the District Attorney will close argument.

19 Go ahead, counsel.

20 MR. KOCHIS: Good morning, ladies and gentlemen.

21 One of the issues that is often overlooked in a
22 trial of this nature is that the victims, young Christopher
23 Hughes, the Ryen family, Doug Ryen, his wife Peggy, their young
24 daughter Jessica, they were each unique individuals; each with
25 their own set of hopes and dreams and plans for the future. All
26 those hopes and dreams were lost in the nightmare which Kevin
27 Cooper brought to Chino Hills.

28 Numerous items of evidence have been introduced in

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1 this trial. This morning we are not going to discuss each and
2 every one of those types of evidence. Many of you will recall
3 certain pieces of evidence which establishes for you Kevin
4 Cooper's guilty beyond any doubt. Simply because we do not
5 discuss that evidence this morning is not, does not mean that it
6 is to be forgotten.

7 When we discuss the evidence today we will discuss
8 specific items of evidence not in the abstract, not in a vacuum,
9 but items of evidence as they pertain to two homes and a car,
10 the Ryen home and the hideout home. Two homes which, because of
11 Kevin Cooper, and the tragedy he brought to Chino Hills, have
12 become bound together perhaps for all time.

13 We will discuss items, including a hatchet, prison
14 shoeprints, blood, tobacco, plant burrs and hair. All of that
15 evidence, after we discuss it, will lead you to the only one
16 conclusion that you can arrive after reviewing the evidence, and
17 that is, that Kevin Cooper is the killer. The evidence will
18 prove beyond any doubt that Kevin Cooper is guilty of the crimes
19 which are charged.

20 We will start first with two items of evidence
21 which we will discuss together, because before Kevin Cooper came
22 to Chino Hills they were kept together; they were one item.
23 Exhibit 43, the hatchet sheath, and Exhibit 42, the hatchet, one
24 of the murder weapons. With these two items of evidence alone,
25 we will be able to follow Kevin Cooper from the hideout to the
26 murder scene, to the Ryen car.

27 You know from the testimony of numerous witnesses
28 that before Kevin Cooper arrived, this exhibit, this weapon, was

1 kept in the the hideout house.

2 We know from the testimony of the owners of the
3 home, Roger and Vickie Lang, from Kathy Bilbia, the girl that
4 lived in that home, from Richard Sibbitt, from Perry Burcham,
5 from Larry Lease, that the hatchet was kept in the hideout house
6 on the fireplace in the area of the game room. Numerous persons
7 have identified that hatchet as being the hatchet which was kept
8 in the hideout house.

9 We also know from the evidence that Kevin Cooper
10 was involved with the particular hatchet, this particular
11 hatchet. We know that because of the location at which it was
12 kept. It was kept by the fireplace within feet from the TV, in
13 a room that during the two and a half days Kevin Cooper
14 dominated the hideout house, he would be in numerous times. He
15 would walk up to the window, to the TV numerous times during
16 that two and a half days, passing the hatchet.

17 We know from Perry Burcham that within days prior
18 to the time Kathy moved out, there was an incident involving the
19 snake. He saw the hatchet on the fireplace, with the sheath at
20 that time -- with the sheath.

21 You know from Richard Sibbitt that on May the 30th,
22 two days before Kevin Cooper gets to the home, the hatchet is on
23 the fireplace, with the sheath.

24 What else do we know about the hatchet? We know
25 that the hatchet sheath gets separated from the hatchet, the
26 hatchet sheath comes to rest in a room at one time occupied by
27 Kathy Bilbia. but between June the 2nd and June the 4th it has
28 become Kevin Cooper's bedroom.

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1 Every item of evidence which was brought into the
2 room, after Kathy moved out, was brought into the room by Kevin
3 Cooper, and that includes the hatchet sheath.

4 What else do we know about Kevin Cooper's removal
5 of the sheath in that bathroom, or bedroom? The sheath was on
6 the hatchet for a purpose, so it could be used as a tool and not
7 a weapon; so a person wouldn't get hurt with it, even
8 accidentally. When Kevin Cooper took the sheath off the hatchet
9 in the bedroom, it was as if he took a safety off a loaded gun.
10 It is not a casual act, it is not something you can do
11 accidentally, it takes thought, it takes intent, it takes some
12 deliberation, it takes premeditation in his action of removing
13 the sheath from the hatchet and leaving it behind in the
14 bedroom. He committed an intentional, a deliberate and
15 premeditated act; he armed himself with the most deadly weapon
16 in the Lease house, in the hideout house, a weapon not of
17 choice, but a weapon of opportunity.

18 We could follow the hatchet with Kevin Cooper from
19 the hideout to the murder scene. This can be accomplished a
20 number of ways.

21 Dr. Thornton, the defense's own witness, agrees
22 this is one of the murder weapons used in the Chino Hills
23 massacre. The victims, the victims that did not survive at all,
24 though they cannot testify, they can tell you that hatchet was
25 one of the hatchets -- was the hatchet used in this massacre.

26 Doug Ryen, a chiropractor, horse raiser, father, as
27 he came to rest in his own bedroom, with hatchet blows from that
28 hatchet, which came from the home Kevin Cooper dominated to the

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1 side of his head.

2 Peggy Ryen, his wife, a doctor, a chiropractor,
3 hatchet wounds to her head, to her face with the same hatchet
4 Kevin Cooper brought to the Ryen home.

5 Jessica, their daughter, as she came to rest in the
6 hallway with hatchet blows to the top of her head, and the side
7 of her face.

8 Young Christopher Hughes, with the series of blows
9 administered to his head as he was on the ground in place,
10 helpless, and defenseless.

11 Dr. Root has testified that this hatchet is
12 consistent with the weapon that administered all the chop wounds
13 to the victims.

14 You also know from the physical evidence, Josh
15 Ryen's blood was found on the head of this hatchet; Doug Ryen's
16 hair was found on the head of this hatchet.

17 There is no doubt in anyone's mind, there is no
18 conflict in the evidence but that that hatchet was in the Ryen
19 home.

20 We can also follow the hatchet to the Ryen car.
21 The hatchet last seen in the hideout house used next in the
22 murder scene is found on the only paved road out of Chino hills,
23 the only paved road available to the Ryen car to travel in past
24 the Ryen home and the Lease home, found on the north side of the
25 road, the left-hand side of the road as you drive down the
26 street, the position it had to be found in for Kevin Cooper, as
27 he drove down the road in the Ryen car, to roll down the
28 driver's window and throw the hatchet out of the car in an

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1 effort to separate himself from the murder weapon, and in an
2 effort to get the hatchet into a field as far away from the road
3 as possible so it would not be discovered.

4 It was dark and perhaps he didn't see the chainlink
5 fence. We know from the photographs that the hatchet hit a
6 post, that it came to rest in the grass next to the road and
7 that's where it was discovered.

8 Again, the hatchet tells us more the identity of
9 the attacker, tells you the intent of the attacker, that when he
10 completed the murders, you know what his intent is from the
11 location of the blows to the victims, struck in the face, and in
12 the head.

13 We know his intent due to the number of blows, due
14 to the number of victims. We know that each of the murders was
15 an intentional, deliberate and premeditated killing; that they
16 were each murdered in the first degree.

17 Weapons -- a knife -- also link Kevin Cooper to the
18 hideout and to the Ryen home. We know from the testimony of Dr.
19 Root that a knife was used on each of the victims; that there
20 was a knife which pierced Doug Ryen's body, his wife's body,
21 Jessica's body, Christopher's body and even Josh was stabbed.

22 We know from that there were knives in the hideout
23 house, but more than that, knives that are now missing. A
24 weapon, which was drawn by Roger Lang, a hunting knife which he
25 owned, which is now, after Cooper's flight from the home,
26 missing.

27 We know from Dr. Root that the knife that Roger
28 Lang is missing, the hunting knife which was kept in Roger

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1 Lang's closet, according to Dr. Root, could inflict this type of
2 knifewound; all the stab wounds which the victims suffered.

3 You also know from the evidence, and there is no
4 conflict in the evidence, it has been proven beyond any doubt,
5 that Kevin Cooper used knives inside the hideout house.

6 How do you know that? He was altering clothes, he
7 was cutting the hems out of Roger Lang's pants, pants which were
8 too short for him; pants which would -- he would cut in his
9 bedroom, the bedroom once belonging to Kathy Bilbia.

10 We also know that the knife that is missing that
11 once belonged to Roger Lang was kept in a closet from which
12 Kevin Cooper stole shirts, from which Kevin Cooper stole pants.

13 It was kept in a room from which Kevin Cooper also
14 stole sweatpants, the canvas bag, gloves, which we will discuss
15 in a moment, and a belt. Everything that was taken from that
16 bedroom was taken by Kevin Cooper, and that would include the
17 knife which Dr. Root says would be sufficient to inflict all
18 stab wounds.

19 What do we know about the belt? The belt which
20 belonged to Vickie Lang, a belt which when found would be on top
21 of Kevin Cooper's bed in Kevin Cooper's closet. Vickie Lang
22 testified that the belt was kept in a closet in the room she
23 shared with her husband, in the same room that Mr. Lang is now
24 missing the knife from. When she last saw it it had no holes
25 that were not in it when it was purchased.

26 We know from Vickie Lang's testimony, her demeanor,
27 that she was a slender woman, and you know that the belt that
28 she had would not do a six foot tall, 160 pound man with a 32

1 inch waist any good if you relied simply on the holes that the
2 belt came. But you know there was a whole added with a sharp
3 object, with a knife such as the knife that Kevin Cooper brought
4 into the room, to all the other pants. With the alteration in
5 the belt. The belt was fine for Kevin Cooper.

6 Also access to the knife, the knife missing from
7 the room where all the other items were stolen by Kevin Cooper;
8 his use of the knife in the home to cut the belt and to cut the
9 pants shows that it was Kevin Cooper who took the knife which is
10 now missing from the hideout to the Ryen home.

11 Shoeprints. Not just any type of shoeprint, but a
12 diamond impression on the bottom of a Pro Red tennis shoe, a
13 tennis shoe that you can't purchase in a store anywhere in this
14 country; a tennis shoe that is manufactured only for
15 institutions; a tennis shoe such as this which was sent to state
16 prison in Chino; a tennis shoe which all the evidence
17 establishes beyond any doubt, a tennis shoe of this type was
18 given to Kevin Cooper at the prison in Chino. Kevin Cooper
19 fled, escaped from the prison wearing prison clothes, including
20 this type of tennis shoe.

21 We know from the evidence that Kevin Cooper brought
22 the shoeprint -- brought the shoe with him to the hideout house.
23 We know that he left them for a short time in the garage, but we
24 know that he wore them in the Lease house; we know that for a
25 number of reasons including a complete impression of a shoeprint
26 which was found in the Lease home. And you'll have the
27 opportunity to observe in the jury room that it is not a single
28 impression, sole impression, there are a number of Pro Red

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1 tennis shoeprints left in that location by Kevin Cooper, but the
2 one with the ruler in it is the complete impression of a U.S.
3 made Pro Ked tennis shoe, left foot.

4 Where was it found? It was found in the game room
5 next to the pool table, in the room with the telephone. We know
6 from the phone records Kevin Cooper made numerous calls from
7 that phone. This impression establishes beyond any doubt that
8 Kevin Cooper was moving through this home, the hideout home,
9 with that tennis shoe on. Not only is it in the room with the
10 pool table and the phone but it is in the same room where on the
11 other side of the wall is the hatchet, the murder weapon, and
12 the windows from which you see the Ryen home.

13 With the tennis shoe, with the state prison tennis
14 shoe, that Mike Newberry says has a patent on it, and a pattern
15 that was not sold on the bottom of the tennis shoe anywhere in
16 country, with this pattern you can follow Kevin Cooper from the
17 prison, from the hideout to the murder scene.

18 Two types of impressions at the murder scene. The
19 first an impression which is shown on Exhibit 17, which you will
20 have a chance to look at more closely in the jury room, an
21 impression on the spa cover, an impression on the spa cover on
22 the door that led into the master bedroom into the scene of the
23 massacre.

24 However, another impression, an impression that
25 even Dr. Thornton agrees was left by the murderer, an
26 impression, a Pro Ked tennis shoe impression on a sheet, on the
27 top sheet of the Ryens master bed.

28 Even Dr. Thornton, the defense's own witness,

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1 agrees with two things: One, that impression, that impression
2 in blood that is on the Ryen bed sheet, which the photographs
3 will show was in approximately the location that I'm indicating
4 on the diagram, in a location between Doug, Peggy and Chris
5 Hughes, that impression, according to the defense's own witness,
6 was made by the killer; it was made by a person wearing Pro Red
7 state prison issue tennis shoes.

8 Kevin Cooper is the only person that brought prison
9 issue tennis shoes to Chino Hills; he's the only person that
10 brought prison issue tennis shoes into the hideout house; he's
11 the only person that brought the prison issue tennis shoes into
12 the murder scene.

13 We know from Doctor -- from Mr. Baird, excuse me,
14 that a comparison of size 10, which is Mr. Cooper's size, tennis
15 shoes, Pro Red, U.S. made, when compared to the impression in
16 the Lease home, and the impression in blood, and from Mr. Baird
17 you know that the killer had to have his feet wet in almost
18 liquid-flowing blood to make that impression.

19 We know from Dr. Thornton that that puts the killer
20 in the scene while the victims are dead and dying, the
21 impression in blood, the impression in dust, and the Pro Red
22 impression are all the same.

23 And more than that, Mr. Baird will tell you that
24 the impression in blood, the impression in dust, were not only
25 made by Pro Red tennis shoes they were made by U.S. manufactured
26 tennis shoes, both left foot, both approximately the same size,
27 both by the same shoe.

28 That piece of evidence alone places Kevin Cooper in

1 the center of the slaughter, in the center of the murder scene
2 while the victims are dead and dying.

3 What else do you know about tennis shoes as they
4 pertain to Kevin Cooper? He was a person that went through some
5 trouble to get a pair of tennis shoes at the state prison. He
6 does not like to wear hard-soled shoes; he prefers soft-soled
7 shoes. Mike Newberry knows these aren't sold on the street, but
8 they're not stamped anywhere with CIM, Chino Prison, Men's
9 Institution. They are a pair of tennis shoes which, once you
10 get your hands on them, if you want to wear them there is
11 nothing to make you get rid of them unless they are evidence
12 which links you to a crime.

13 You know from Dr. Thornton, we know from the
14 impression in blood, that these shoes worn by Kevin Cooper were
15 saturated with blood when he was in the murder scene. And where
16 are they now? They are gone. Kevin Cooper has disposed of
17 them. There was no reason for him to get rid of a pair tennis
18 shoes unless they linked him to a crime. And you know we linked
19 him to this crime because they were wet with blood, the blood of
20 the victims when he left that particular scene.

21 When we talk about the prison and the clothes that
22 Mr. Cooper took from the prison, we must always keep in mind how
23 they relate to the two locations, the hideout and the Ryen home.

24 Another type of prison clothing will link Kevin
25 Cooper not only to the hideout but to the Ryen home. That's the
26 state prison camp jacket and the button.

27 Again, the evidence in this case has shown beyond
28 any doubt that Kevin Cooper had a camp jacket in the state

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1 prison. We know from Gary Fletcher when shown Exhibit 54, this
2 was the type of jacket Kevin Cooper was wearing or David
3 Trautman was wearing on that Thursday in the morning on June the
4 2nd when Mr. Fletcher caught Kevin Cooper out of bounds. You
5 know from Lieutenant Shephard that this is the type of jacket,
6 the camp jacket that is given out at the prison, and this is the
7 jacket you saw on Kevin Cooper when Kevin Cooper was
8 approximately a mile from Chino en route to Chino Hills,
9 unbeknownst to the victims. We know from the evidence that
10 Kevin Cooper brought that jacket into the hideout house. The
11 jacket will link Kevin Cooper further to the hideout house, not
12 anywhere in the hideout house, but in Kevin Cooper's bedroom,
13 and it will link Kevin Cooper to the murder scene because of
14 buttons.

15 You'll have a chance to examine Exhibit 54 more
16 closely in the jury deliberation room. And you'll note that the
17 jacket has both buttons and a zipper, buttons up the front of
18 the jacket, buttons on the collar of the jacket. You also know
19 from the evidence that one of the items of evidence found in the
20 hideout house, not anywhere in the hideout house but found in
21 Cooper's bedroom, was a button, a green button. Not just any
22 button. A button that had blood on it. A button that had human
23 blood on it. A button which had Doug Ryen's blood on it. A
24 button which is shown in Exhibit 98.

25 The button, Exhibit 97, was seized. And you'll
26 have a chance in the jury room to open the container, take the
27 button out. And you won't need an expert, you won't need anyone
28 to tell you that the button found in Cooper's bedroom is the

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1 same type of button that came off the state prison camp jacket.
2 And this button had blood on it, Doug Ryen's blood on it.

3 You know from Dr. Thornton that the killer, after
4 this attack, would have blood on the front of their bodies, of
5 course, where the buttons on this jacket would be, and blood on
6 the sleeve. You you know from that evidence that Kevin Cooper
7 got blood not only on his tennis shoes but on his jacket, on the
8 buttons on that jacket. That the button became loose in some
9 fashion, and that the button was left in his bedroom. Why? It
10 was dark. He was in a hurry. With the lights out he got
11 careless. The carpeting is green. You will see from the button
12 in the jury deliberation room that it was green. And he
13 overlooked it, as he did a number of other items in the bedroom
14 which had blood on them when he fled. But the button and the
15 camp jacket allows to you follow Kevin Cooper from the prison to
16 the hideout to the Ryen home.

17 Tobacco: Proof beyond any doubt that Kevin Cooper
18 took tobacco with him when he fled the state prison; not just
19 any tobacco, Role Rite, free prison issued tobacco, tobacco you
20 use to hand roll a cigarette. All the evidence shows beyond any
21 doubt that Kevin Cooper brought that Role Rite tobacco into the
22 hideout house. You know that from the photograph which shows
23 the position of a book of matches, some loose tobacco, and not
24 just any loose tobacco, tobacco which Mr. Aubrey Evelyn and
25 Craig Ogino has told you is Role Rite tobacco. It's not the
26 type of tobacco that is kept in manufactured cigarettes. That's
27 in Kevin Cooper's closet, within inches of some rope that has
28 human blood on it, Doug Ryen's blood on it. You know Kevin

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1 Kevin Cooper brought the tobacco into the hideout.

2 The tobacco, however, also links Kevin Cooper to
3 the Ryen car. Two items, V-15 and V-12. Just as Kathy Bilbia
4 did not smoke, just at Kevin Cooper brought the tobacco into the
5 hideout house, so did the Ryen family not smoke cigarettes.
6 Peggy Ryen smoked no tobacco. Doug Ryen smoked a pipe, never
7 manufactured cigarette and no one has ever seen him smoke a
8 hand-rolled cigarette in his life.

9 V-12, hand-rolled cigarette in the Ryen car, a
10 cigarette containing Role Rite state prison issued free tobacco.
11 Same tobacco Kevin Cooper brought into the hideout house. Same
12 tobacco Kevin Cooper in his haste left behind in the box. And
13 when he left behind the box, he left behind the mechanism to
14 catch the loose tobacco when he rolled it.

15 V-15, on the floor of the Ryen car, loose, spilt
16 Role Rite, state prison free issue tobacco. You'll have it to
17 compare. You know from Mr. Ogino that both macroscopically and
18 microscopically, you know from Mr. Evelyn, that's Role Rite,
19 that's state prison free issue tobacco, it's not pipe tobacco.

20 The only person that would have brought that into
21 the Ryen car is the same person that brought it into the hideout
22 house: Kevin Cooper.

23 Exhibit 586, a photograph of a hand-rolled
24 cigarette butt, the hand-rolled cigarette butt Kevin Cooper left
25 behind in the Ryen car.

26 We know more about tobacco than simply Role Rite
27 state prison free issued tobacco. Kevin Cooper alternated when
28 he smoked. Depending on what he could find, what he could bum

02-1628

1 off other people, he would smoke manufactured cigarettes. We
2 know Roger Lang smokes, and he left behind in the hideout house
3 Viceroys in the drawers in the kitchen, in the kitchen that
4 Kevin Cooper would use for two days, the kitchen he would use to
5 make coffee, to eat, to search.

6 We know that a manufactured cigarette butt was
7 found in his bedroom, the bedroom that once belonged to Kathy,
8 but for two days was no one's room but himself. That cigarette
9 butt was left by Kevin Cooper.

10 There's a cigarette butt in the Ryen car. And
11 again, it's in a car that belongs to a family that does not
12 smoke cigarettes. And you know from Brian Wraxall that when
13 they analyzed that cigarette butt it contained saliva, which
14 meant obviously it had been in someone's mouth at some point
15 that smoked. And the ABO blood type of the person that left
16 their saliva on that cigarette was and A, and now from every
17 serologist that testified in this trial, whether it's Blake,
18 Gregonis or Wraxall, that Kevin Cooper is an ABO type A.

19 One of the first things Cooper does upon breaking
20 into the hideout is sit down and have a beer. We know that one
21 of the first things Kevin Cooper did after the homicides was to
22 do the same thing in the Ryen home, to go into the refrigerator,
23 to take one of the Oly Golds out of the refrigerator, one -- two
24 of the cans are missing. One of the cans has the blood of Josh
25 Ryen on it. The other beer can is found in a field, and not
26 just any field but the field between the hideout house and the
27 murder scene, in the same field where we find a piece of
28 evidence that links Kevin Cooper to the car, to the homes,

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1 specifically to Jessica's clothing, to the hideout house, to his
2 bedding.

3 Plant burrs: We know from J-15A, the pink blanket,
4 that blanket was not brought into the Lease house by anybody but
5 Kevin Cooper. We know from the photographs that when the
6 officers found the closet, that's the way it appeared.

7 Vickie Lang's belt, the belt which had human blood
8 on it, the belt which was modified with a knife so that it would
9 fit Kevin Cooper's waist, and the pink blanket, the closet in
10 which he slept, the blankets which he brought into the closet,
11 and on that pink blanket, plant burrs, not just any plant burrs,
12 but the plant burrs which were found in the field between the
13 two homes.

14 By the the way, even Dr. Thornton, the defense's
15 own expert, agreed that the burrs that were found in the hideout
16 house are the same type of burrs that were found on Jessica's
17 clothing, that they were the same type of burrs found in the
18 Ryen car, that they were the same type of burrs which Mr. Ogino
19 collected in the field between the two homes.

20 And Dr. Thornton agreed with another -- two other
21 things, the presence of burrs on J-15, on Cooper's pink blanket.
22 An interpretation of that evidence is that Kevin Cooper brought
23 the burrs into the closet on to the blanket.

24 Dr. Thornton also agreed that an interpretation of
25 the fact that there are plant burrs in the car which match plant
26 burrs on Jessica, which we'll discuss in a moment, that match
27 the burrs in the hideout, that match the burrs in the field, is
28 simply that Kevin Cooper in walking in the field between the two

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1 homes, brought plant burrs into the Lease home, into the hideout
2 home, on to Jessica, and finally into the car.

3 We know from Dr. Thornton and the evidence as to
4 how Kevin Cooper put the burrs on Jessica in the murder scene.
5 She's found in the hallway. From the testimony of Dr. Root you
6 know that after Jessica was dead, and you also know from one of
7 the photographs that the killer, Kevin Cooper, cut into Jessica
8 after she was dead. As you can see from one of the wounds to
9 her right leg, a wound that didn't bleed, a post-mortem wound.

10 You know from Dr. Root as he testified through the
11 dolls that Jessica had a number of cuts, of carvings on her
12 chest, all that were administered, because there was no
13 bleeding, after she was dead.

14 Now from the defense's own witness, from his
15 examination of the pajama top, that those wounds could not have
16 been placed on Jessica Ryen while her pajama top was in the
17 position it was in in this photograph; that the pajama top,
18 according to the defense's own witness, was moved up to
19 Jessica's neck, the killer carved into her chest and then put
20 the pajama top back down.

21 The plant burrs, the burrs which match the burrs
22 that Cooper brought into the closet, that Cooper brought into
23 the car, are found on Jessica's clothing, on the same side of
24 the garment that Dr. Thornton has testified the killer would
25 raise to carve into her chest.

26 Dr. Thornton also told you that from the position
27 of Jessica in the hallway that the killer would be kneeling next
28 to her, very close to her when he would do that to her, inflict

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1 those post-mortem wounds on her. And it was at that time, in
2 that position, at that location that Kevin Cooper would transfer
3 the burrs which he picked up in the field on his clothes to
4 Jessica in the Ryen home. And he would later leave the same
5 type of burrs behind in the Ryen car.

6 The rope: Again, at two locations. Rope in the
7 hideout house, not just anywhere in the hideout house, again,
8 rope in Cooper's bedroom, in Cooper's closet, in the closet
9 where Cooper slept, within inches of Cooper's state prison
10 tobacco, within inches of the matches Cooper brought into that
11 closet.

12 What else do you know about the rope? It has blood
13 on it, which we'll discuss in a moment, Doug Ryen's blood on it,
14 in the same closet where we have Kevin Cooper's semen, Kevin
15 Cooper's bedding. We have Doug Ryen's blood were Kevin Cooper's
16 tobacco.

17 There's no question from the evidence at this trial
18 that Kevin Cooper brought the rope into that closet, as he did
19 every other item which was brought into the closet after Kathy
20 Bilbia moved out.

21 Rope again at the Ryen scene. Rope with blood on
22 it at the Ryen scene. Rope in the driveway, in the driveway
23 where the Ryen station wagon which Cooper takes from Chino Hills
24 was usually parked. Rope with the blood of the victim. Rope
25 which is of the same color and the same material as the rope in
26 the Lease closet. One of the ropes, however, has a cord in the
27 center and one does not; but both of the ropes is the same
28 color, same material, brought into the closet in the hideout

002-1-5972

1 house.

2 And you know from the testimony of Larry Lease that
3 rope was kept in the hideout house in a box that was used in
4 which the show horse material was kept, in a box in which the
5 sunglasses which Larry Lease identified as being his which were
6 stolen were also kept.

7 Hair: Kevin Cooper's hair, his known hair, V-19,
8 in the Ryen car. You know from two experts, from Mr. Morton and
9 Mr. Lightfoot, V-19 could not have come from any of the victims,
10 any of the persons that would have had a reason to leave behind
11 hair in the Ryen car.

12 You know from those witnesses that that hair
13 belonged to Kevin Cooper. It was the same color, same texture,
14 same buckling, same medulla, same pigment form, same pigment
15 color, same pigment distribution. Why? Why did it agree in all
16 those characteristics with Kevin Cooper's hair? Because it is
17 his hair, some of his pubic hair, which as Mr. Morton testified
18 to, would be left behind if you did something as simple as
19 change clothes in a car. That's not where the hair stops,
20 however.

21 You know from the photographs, the testimony of Dr.
22 Root, that all the victims were struck, in addition to the face,
23 in the head. You will be able to see from the photographs the
24 chop wounds to the sides of their head, how their hair was cut.
25 You also know from the hatchet, Exhibit 42, that that happened
26 because we find Doug Ryen's head hair on the hatchet stuck to
27 the hatchet in blood when it's in the field.

28 But where else does the victims hair turn up? Of

1 course, it turns up where you would expect it, with Kevin
2 Cooper. In the shower, Doug Ryen's head hair. In the sink,
3 Jessica's hair. Of course, not just any shower, not just any
4 sink.

5 P-2, Doug Ryen's head hair is found in the shower
6 in the bathroom next to Cooper's bedroom, in the shower in which
7 we find Kevin Cooper's footprint.

8 Jessica's hair, HH-3, is found in the sink in the
9 bathroom next to Cooper's bedroom, in the bathroom in the sink a
10 few short feet away from where we find Kevin Cooper's footprint,
11 in the bathroom he used.

12 Doug Ryen's head hair in the shower; Jessica's hair
13 in the sink. Why? Because Kevin Cooper when he would wash
14 himself in the sink and in the shower would leave behind the
15 hair of two of his victims.

16 Blood: The type of evidence which will forever
17 stain Kevin Cooper with the guilt of these crimes. We know from
18 the photographs that all of the victims shed blood at the scene.
19 And when we look at the other two locations that Kevin Cooper
20 was at, the car and the hideout, we find, as you would expect,
21 the victims' blood.

22 In the hideout house, blood, human blood, on the
23 belt in Cooper's closet on Cooper's bed, the belt he modified.
24 Blood, not just anyone's blood, Doug Ryen's blood on the rope in
25 Cooper's closet inches from Cooper's tobacco, feet from Cooper's
26 bedding. Blood on the button, Doug Ryen's blood.

27 The only person that brought the tobacco, the rope,
28 the button, and the belt into Cooper's bedroom was Kevin Cooper,

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1 and he's the one that brought the blood into that room as well.

2 The Ryen car, as would you expect, in the driver's
3 seat where Kevin Cooper sat, blood in a number of locations.
4 blood in the driver's door, seatbelt housing, blood on the
5 driver's door, all of it human. Some of it Jessica's and
6 Peggy's blood, in the driver's section of the car in the same
7 seat, the same front seat where we find the hand-rolled
8 cigarette butt and the state prison free issued tobacco.

9 The items of blood which Kevin Cooper brought back
10 into the hideout house link him not only to the hideout house,
11 but to the murder scene as well. But that's not the only way
12 blood links Kevin Cooper to the Ryen home, to the scene of the
13 murder.

14 A-41: A drop of blood found in the hallway of the
15 Ryen home, a drop of blood found within feet of where Jessica
16 was killed, a drop of blood which belongs to Kevin Cooper.

17 Dr. Ed Blake, the defense's own witness, the
18 defense's own serologist. He will tell you that based on his
19 joint analysis with Mr. Gregonis of that drop of blood, based on
20 his study of the photographs of the electrophoretic runs that
21 Mr. Gregonis did, that drop of blood in the hallway could not,
22 and did not come from anyone that was Caucasian.

23 That drop of blood could not under any
24 circumstances have ever come from any one of a group of three
25 young men who happened to be at Canyon Corral on the night of
26 the murders having a glass of beer.

27 You know from Dr. Blake, the defense's own witness,
28 that he can also exclude, he can tell you that there was no way

1 that drop of blood came from anybody who is Mexican-American.
2 It never came, it never could have come from anyone of the three
3 men who may have been in Chino Hills looking for a job working
4 on a ranch on that Friday night.

5 Dr. Blake, however, when asked if he could tell you
6 that that blood did not come from Kevin Cooper, said he would
7 not, he would not exclude that drop of blood which has the same
8 profile as Kevin Cooper as coming from Kevin Cooper.

9 And why not? Because it comes from Kevin Cooper.

10 What do we know about his profile, Kevin Cooper's
11 profile, and Dr. Blake? Dr. Blake has been doing this as he
12 tells you for a long time, since 1972. He's looked at thousands
13 of samples of blood. He's never seen a profile like the profile
14 of Kevin Cooper, and you know with what frequency that appears
15 in the population.

16 Kevin Cooper has a type of blood, A-41, which is so
17 rare it occurs in 11 out of every ten million persons of Black
18 heritage. One out of every every one million persons of Black
19 heritage has that type of blood and Kevin Cooper's profile
20 matches the profile of the drop of blood in the Ryen home, the
21 drop which could not have come from the victims, which could not
22 have come in this case from anybody but Kevin Cooper. It puts
23 him in the Ryen home as sure as the shoeprint does, as sure as
24 the knife does, as sure as the camp jacket does.

25 Two other elements which link Cooper to the
26 hideout, to the home and to the car, elements of place, elements
27 of time, one of which you have considerable firsthand experience
28 in viewing. That will be the former, place.

1 Kevin Cooper was at the hideout house. And let's
2 talk about that location in terms of its proximity, its
3 closeness to the car and to the home. You know in terms of
4 place that the Ryen car was kept in the driveway outside the
5 Ryen home, within feet, within yards. They certainly are
6 incredibly close in terms of place.

7 What do you know about the hideout house and your
8 firsthand opportunity to look at that house while you were in
9 the Chino Hills area? You know from your own observations that
10 day or night, any time you walk around that house, the hideout
11 house, any time you get up close to that TV and look to your
12 left through that window, there's the Ryen house. There's no
13 way you can miss it.

14 You know from your own observations that at night
15 with the lights on inside the Ryen home you can actually see
16 people, as you saw Mr. Kottmeier and some of the deputy sheriffs
17 moving around in the living room of that particular home.
18 There's no way you can miss it.

19 Now your view of the hideout house and the murder
20 scene is somewhat distorted when you compare it to Mr. Cooper's.
21 Let us consider this: You were bused. You were taken to a
22 location approximately 100, 150 yards away from the hideout
23 house. And you walked up and visually, I'm sure many of you,
24 were comparing the distance between where you were let off from
25 the bus and the distance between the two homes. But that's not
26 the way Kevin Cooper found it.

27 He escaped from a prison three miles away, over
28 fences, the lumberyard, evading 150 officers, through fields,

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1 through streets. By the time he gets to the hideout house after
2 covering that two-and-a-half to three miles, the murder scene,
3 the murder home and the Ryen car is really just another step
4 away.

5 What do you know about time? You know from the
6 Blades and Dr. Root, you know from Dr. Root that the victims
7 died somewhere between one and three hours after they last ate.

8 You know from Mr. Blade that the victims showed up
9 at the barbeque sometime between 6:30 and 7:00. They were gone
10 by 8:30 or 9:00, and this is all of course on June the 4th.

11 We know that according to Dr. Root the victims died
12 somewhere between 9:30 p.m. and midnight on the 4th.

13 And the evidence would -- the evidence indicates
14 the car was taken shortly after their death.

15 We know that Kevin Cooper on the 4th is in Chino
16 Hills, but it's not just any time on the 4th, we know Kevin
17 Cooper is there all day.

18 You know from the phone records that Kevin Cooper
19 makes a long distance phone call from the hideout house on
20 Saturday, June the 4th, to Pittsburg, a call which starts
21 shortly before 8:00 p.m., a call which will last 34 minutes,
22 which will end about 8:30, just as the Ryens are getting ready
23 to leave and to come home. They are ten minutes away.

24 Kevin Cooper on that evening is in Chino Hills.
25 And it's more than that Kevin Cooper is in the home. You know
26 from all the evidence that sometime after the phone call, when
27 it was dark, Kevin Cooper has no car, no money, nowhere to turn,
28 and he steps out of the hideout house with his camp jacket on,

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4 1 with Vickie Lang's gloves on, with his state prison tennis shoes
(2 on with some Role Rite in his pocket.

3 And the victims, the Ryen family and young
4 Christopher Hughes, when he steps out of the house they are
5 still alive. What would happen next?

6 Doug and Peggy Ryen would be surprised by Kevin
7 Cooper in the sanctity of their own bedroom. Asleep at first,
8 startled second, unarmed, completely nude, relaxed, defenseless.
9 They would be no match for Kevin Cooper who had a hatchet and a
10 knife. They would both die quickly. Dr. Root has told you that
11 they would die within minutes of the infliction of the first
12 blow.

13 Peggy's screams would draw Jessica down the hallway
14 to the door where there Jessica Ryen, a young girl armed only
15 with her nightgown and her love for her parents, would meet
16 Kevin Cooper with the hatchet. She too would die quickly.

17 The screams in turn awakened Josh who would awaken
18 his friend Chris. They would go down to the master bedroom,
19 find Jessica in the hallway already dead. They would become
20 separated. Josh would hide. Chris Hughes would meet Kevin
21 Cooper in the bedroom, without his parents, without the Ryens to
22 assist him, unarmed, and he would die very quickly. Many of the
23 blows inflicted while he was on the floor helpless.

24 Josh Ryen, feeling that perhaps it was safe, would
25 come down the hallway, enter the bedroom, find everybody dead
26 and be struck from behind.

27 Cooper, careless and now tired would leave Josh
28 Ryen for dead.

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1 You know from Dr. Root's testimony that Kevin
2 Cooper inflicted fewer blows on Josh Ryen than any other victim.
3 Why? Because Josh came last because Cooper is tired.

4 Josh Ryen would live, live always with the memory
5 of two things: His mother screaming and the single figure, this
6 single attacker in his parents' bedroom.

7 Now Kevin Cooper told a story. He got on the
8 witness stand and he testified at this trial. And how do we
9 evaluate that? Every day in courts throughout this country
10 people stand in front of a witness stand. They raise their
11 hand. They take an oath and they sit down and they answer
12 questions. Some people tell the truth, the whole truth; some
13 people tell lies, nothing but lies. Some people say things
14 which are partly true and partly false.

15 The way our system works the witness stand is not a
16 lie detector. We don't have a green light that goes on when
17 someone tells the truth. We don't have a red light that goes on
18 when someone lies. The way our system works is that you, the
19 jurors, each and every one of you, you are the exclusive judges
20 of the credibility of every witness that takes the stand in a
21 criminal case. You and each of you will decide who to believe
22 in the trial, and that includes Kevin Cooper.

23 But the law doesn't simply cast you adrift. The
24 law gives you an outline which Judge Garner will read at the end
25 of argument, an outline which contains a series of factors
26 through which you are to view the testimony of every witness
27 that testifies at this trial.

28 The outline will include whether or not the witness

1 has been convicted of a felony. Well now, Kevin Cooper has, a
2 burglary and escape. The list will include whether or not the
3 witness has admitted in the past that he's been untruthful.]✓

4 What do you know about Kevin Cooper and his telling
5 the truth? You know that Kevin Cooper lies about who he is,
6 what he is and what he's done, whether it's coming to
7 California. Starting with the Department of Motor Vehicles he
8 is David Trautman, through the prison system. He's David
9 Trautman to the prison officials, the prison doctors. He is
10 David Trautman. The guy is not David Trautman. He has never
11 been David Trautman.

12 To the Handys next, after another crime, a new
13 identity, Angel Jackson. For 60 days he is Angel Jackson. The
14 guy is not Angel Jackson.

15 He lies about what he has done whether it's to
16 Diane Williams on the telephone from the hideout house: "I'm
17 out because they passed a new law in California." They didn't
18 pass any new law in California. That's a lie. He escaped.

19 Whether it's to the Handys: "I'm Angel Jackson,
20 art student visiting from Pennsylvania." He's not a visiting
21 art student from Pennsylvania. He is an escaped burglar, a
22 murderer and he's good at it.

23 For two months he fools Angel, he fools the Handys
24 Angelica and Owen Handy, every day of their life then they are
25 dealing with a guy named Angel Jackson. He is good at lying.
26 He fooled them. Don't let him fool you.

27 You may also consider anything which has a tendency
28 in reason to prove or disprove the witness' testimony. What do

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1 you know about Cooper's testimony as it pertains to the crimes
2 in this particular case?

3 His song and dance about the bathroom, the Lang
4 bathroom. That door doesn't close. He never closed it. That
5 wasn't an avenue of escape for him. The window with the
6 louvers. The screen with the rusted screws in place. That
7 never happened. You know that from your view at the scene.

8 Not seeing the hatchet. You know that couldn't
9 have happened, not from someone that dominated or controlled the
10 house for two days with the TV within feet, never seeing the
11 Ryen house. You know that's a lie. From that window and from
12 walking around that house, there's no way you could miss the
13 Ryen house. That is a lie.

14 Kevin Cooper told you he didn't kill the Ryens.
15 That's a lie.

16 What else do you know about Kevin Cooper? Dr.
17 Thornton said it's as if pieces to the puzzle are missing. Some
18 of the pieces are missing. Those state prison tennis shoes, the
19 tennis shoes with the diamond pattern, the tennis shoes only
20 Cooper had. The camp jacket. Two items which were obviously
21 sustained with blood, his clothing, none of which would have CIM
22 on it, none of which would have state prison on it, none of
23 which he would have any reason to destroy unless they linked him
24 to the crimes. He destroyed that evidence so you wouldn't have
25 all of the pieces to evaluate in this particular case.

26 Based on all the evidence which has been introduced
27 at this particular trial, we urge you to reach the only
28 conclusion which the evidence allows you to reach. That

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1 conclusion that is Kevin Cooper is the man responsible for the
2 Chino Hills killing, that Kevin Cooper is guilty of each charge
3 in the Information.

4 Thank you.

5 THE COURT: Thank you, counsel.

6 Get up here where you can see me. Let's take the
7 morning recess at this time, ladies and gentlemen. The
8 admonition previously given to you still applies. We will be in
9 recess about 15 minutes.

10 (Recess taken.)

11

12 THE COURT: Everybody is here. Mr. Negus, please.

13 MR. NEGUS: In a case which involves circumstantial
14 evidence, I suspect that it is almost an inevitable thing that
15 lawyers, investigators of the various parties will refer to the
16 case as a jigsaw puzzle, and Mr. Kochis has done that, Dr.
17 Thornton has done that, and I'm afraid that I am going to do it,
18 too.

19 One of the things that we have in this particular
20 case, in trying to sort out the evidence, is that we have
21 several puzzles that were involved in this case, in which I
22 would suggest that the boxes were dropped, the pieces were all
23 mixed up, some of the pieces were carted away, some of them were
24 left behind, some of them were now forced into place, some of
25 them have actually been changed, altered, cut down, painted
26 over, lied about, according to the evidence.

27 The reason why the puzzle analogy is something that
28 we deal with in a criminal case involving circumstantial

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1 evidence, is because it seems to fit the law of circumstantial
2 evidence as Judge Garner is going to give it to you after Mr.
3 Kottmeier and I finish talking to you.

4 They talk in the law of circumstantial evidence,
5 about what is -- each fact which is essential to complete a set
6 of circumstances necessary to establish the defendant's guilt
7 must be proved beyond a reasonable doubt.

8 The key, I suppose, in the puzzle analogy is the
9 word "set of circumstances." That is, you're dealing with not
10 just one isolated fact, but a bunch of facts and how those facts
11 fit together, how like the individual pieces of a jigsaw puzzle,
12 they interlock, the reconstructive pattern of the prosecution
13 appears in Mr. Kochis chart, but according to the law, each of
14 those facts which are necessary to come to the conclusion that
15 Mr. Kochis would like to have you draw to be proved beyond a
16 reasonable doubt.

17 As a whole, the way that you can readjust the
18 pieces and put them back together, has not only to be consistent
19 with a word that we've heard time and time and time again in the
20 prosecution case, "consistent with", the prosecution's theory,
21 but it has to be consistent with no other rational
22 interpretation.

23 If there are two interpretations of the evidence,
24 one of which points towards innocence, the other towards guilt,
25 it is your duty, under the law of circumstantial evidence that
26 we have in the State of California and throughout the United
27 States, to adopt that which points to the defendant's innocence
28 and not that which points to his guilt.

021644

1 I told you at the beginning of the case, that I was
2 not going to be able to -- there I do it again -- prove Mr.
3 Cooper's innocence, and I wasn't going to be able to prove who
4 did the crime. I think that the reason that I'm not going to be
5 able to do that has become clear: There are too many pieces
6 that have been changed, too many pieces that have been forced
7 together, too many pieces that are missing.

8 Let me start with, in my analogy, the pieces that
9 have been changed. Basically, in that particular -- on that
10 particular issue we're dealing with the credibility, as Mr.
11 Rochis said, of some of the witnesses who have testified here
12 before you.

13 In judging the credibility, the believability of
14 the various evidence, consider what the people said on the
15 witness stand, consider what they said at other points in time,
16 and you can also consider the type of evidence that we have
17 about their statements at other points in time.

18 In this day and age, one of the cheapest and most
19 accurate ways to preserve evidence in a criminal case or any
20 case is a tape recording. We all have them, everybody carries
21 them, police officers also. Cassettes are easy, plug it, push a
22 button. Doesn't take any smarts whatsoever to make this machine
23 run.

24 You have a tape recorder, then you not only know
25 what was said, you know something about how it was said, the
26 inflection, the various ways the people said, you know how
27 questions were asked, whether they were asked in a leading
28 fashion, in a fashion which is designed to bring out a certain

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1 answer, or in a way that is open-ended, designed to try and see
2 what the witness knows.

3 The one thing that is painfully lacking about some
4 of the prosecution's interviews were some of the most critical
5 witnesses in this particular case, is the absence of that most
6 simple but basic tool of modern investigations, a tape
7 recording. Dale Sharp had one in his car when he went in to see
8 Josh; certainly an 8 year old sole survivor of a mass murder is
9 an important enough witness to tape record.

10 Certainly, if you're talking to that type of
11 witness you want to see whether or not the questions that are
12 being posed to the young witness are the type which are going to
13 elicit what he knows, or are going to suggest an answer to you.

2
14 Now, of course Josh couldn't talk when young Dale
15 Sharp went into see him. Dale Sharp didn't know when he went
16 in, when he didn't bring his tape recorder, and that doesn't
17 mean that the -- that the enterprise of tape recording the
18 questions would have been in vein.

19 We have a situation where there is, in this
20 particular case, some direct evidence about the crime. Josh's
21 statements, what he saw, is direct evidence; something that he
22 saw. It is certainly, as the prosecution attempted to show in
23 the cross-examination of the various hospital personnel from
24 Loma Linda University, Josh fitted in the statement, but we will
25 never know; the reason that we will never know is because they
26 failed to use even a simple tool such as a tape recorder in
27 order to record the talking.

28 We know that he was in the emergency room when

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1 there are other people around, the only statements that were
2 made about, were there's three White males that are involved in
3 the attack.

4 In the CAT Scan room when there is no other people
5 around listening, it gets changed. Maybe there were three
6 Mexicans involved in the attack. Or is Dale Sharp mixing up
7 three Mexicans that were at the house earlier with the three
8 males that Josh described as being his attackers? We will never
9 know. That simple, basic tool of investigation was not used.

10 Week and a half later, a formal interview, with the
11 most critical witness in this particular case, Mr. O'Campo
12 doesn't even see fit to bring in a tape recorder. Mr. Kottmeier
13 goes down and talks to Josh at his grandmother's home last
14 December, in order to make a tape in order to show you. We take
15 a video tape. That's better probably and certainly justified
16 given the situation of a first formal interview. But, even if
17 you can't get a video camera together, in order to talk to Josh,
18 surely you could bring in a simple little tape recorder.

19 We know that Mr. O'Campo knows how to use a tape
20 recorder. He certainly tape recorded his complete conversation
21 with Yolanda Jackson. If it suits his purpose, Mr. O'Campo,
22 like any modern detective, is going to use a tape recorder.
23 Maybe Dale Sharp, he's a patrol officer, he's not experienced,
24 maybe inadvertance on his part or negligence.

25 O'Campo had to make a deliberate decision, that is
26 a decision that investigating officers make. Why did Mr.
27 O'Campo not bring in a tape recorder? Because the evidence
28 shows that Mr. O'Campo has consistently lied about his

1 conversations with Josh.

2 When I was learning something of how to try
3 lawsuits, they always used to tell me, never, never say a police
4 officer lies, people don't like to hear that; they distort the
5 truth or they misrecollect or something like that. People don't
6 like to hear the words "lie" in connection with police officers.
7 But in this particular case there is no other rational
8 conclusion that you can come to from the evidence but that Mr.
9 O'Campo lied. Two witnesses in this particular case contradict
10 Mr. O'Campo about a very important point.

11 Now, one of the things that you can deal with in
12 looking at the witnesses, civilians don't take around tape
13 recorders with them. We don't expect them to have the same sort
14 of memory that police officers do, so we have to determine in
15 looking at those witnesses, where are they coming from, what
16 their particular interests are in this particular situation.

17 In this particular case, the defense evidence has
18 been presented to you, almost without exception, witnesses who
19 have no particular interest in Kevin Cooper whatsoever,
20 witnesses who just as soon get rid of Kevin Cooper. We don't
21 even have Kevin's family and friends coming into court to
22 testify for him.

23 The only persons that could be accused of any bias
24 whatsoever towards Mr. Cooper is Mr. Cooper himself and the
25 professional people that have assisted me in the case.
26 Fortunately the professional people that assisted me in the case
27 have tape recorded their statements that they took, photographed
28 their bloodwork, left clear-cut.

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1 Back to Mr. O'Campo. Two witnesses, Linda Headley,
2 and Dr. Mary Howell, contradict clearly, unmistakably Hector
3 O'Campo. Hector O'Campo said under oath, enumerable times, that
4 he never ever talked to Josh about the crime, Mexicans, people
5 who had been at the house, suspects whatsoever prior to that
6 formal interview on June the 14th.

7 That just isn't so. He's lying. You don't forget.
8 It's not a failure of recollection, it is not just a mistake on
9 his part. If you're talking to the sole survivor of a mass
10 homicide, you don't forget that you did it. Mr. O'Campo is
11 lying.

12 Why is he lying? Again, we will never know, he's
13 not going to tell us. The inference you can draw from it is
14 that the information he got from Josh when Josh was in that
15 impressionable state is not going to help the prosecution in
16 this particular case. The inference is that it will establish
17 another rational interpretation of the evidence, one which
18 points towards innocence.

19 There are other people involved in the case who,
20 because of various aspects of their credibility, have changed
21 some of the pieces so that we can't recognize them anymore. Dan
22 Gregonis. He didn't document in a form which another
23 criminalist can interpret but one, but one of all the testing,
24 on A-41 that he did prior to the arrival of Dr. Blake, who
25 looked over his shoulder.

26 The Peptidase A photograph was sufficiently clear
27 so you could tell it, what it is, the PGM, the EsD, the ABO, the
28 EAP, all those other tests of A-41 we have to rely on the

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1 expertise and the judgment of Mr. Gregonis because he was too
2 busy to even compare his photographs with his plate to see if it
3 turned out; to see whether the photograph showed what the plate
4 showed. He didn't even look.

5 We know that Mr. Gregonis has demonstrated some
6 areas of significant ignorance. Some he admitted, some he
7 didn't about the biochemistry that's involved in trying to make
8 these particular calls.

9 We also know that there's a more serious bias on
10 the part of Mr. Gregonis. Three times prior to his getting on
11 the witness stand he testified that A-41 was an EAP type B and
12 no other type. No other type. At that point in time he had,
13 was under a mistaken belief about what type Kevin was. He
14 thought that he was testifying that they were consistent; turns
15 out he was wrong about Kevin.

16 What does he do? Even though he's testified EAP,
17 no other type but B, we know, you know if it is a B it could not
18 have come from Mr. Cooper. He changed it, it's got to be
19 consistent with Mr. Cooper. Is that bias or is that bias?

20 Mr. Stockwell. A lot of -- Mr. Stockwell also
21 changes in memory, his credibility, I would suggest are not
22 anything, not even for the most part based on bias, but just
23 inexperience, ignorance. It's not his fault, he didn't assign
24 himself, it's Mr. Baird's fault. He shouldn't assign somebody
25 that young, that inexperienced to do that kind of job.

26 But as you look at some of Mr. Stockwell's
27 testimony you can see how that ignorance, that inexperience
28 starts in itself creating a bias.

021650

1 At the preliminary hearing -- well, let's back-up.
2 The prosecution tried to show through circumstantial evidence
3 that Kevin Cooper took a shower in the Bilbia bedroom to wash
4 the blood off. The problem is that it is evidence that they had
5 that really wasn't consistent with that particular
6 interpretation.

7 When Mr. Stockwell was asked, after the preliminary
8 hearing, about the test which would distinguish algae, fungi and
9 blood, on the one hand, from bleach on the other, he said that
10 he got an immediate reaction. That's the way you do it, if you
11 do the test in a one-step manner.

12 If you will recall back to those chemistry charts
13 that we had at the beginning, the one-step ortho-tolidine test
14 will not distinguish between bleach and blood. Immediate
15 reaction. Mr. Stockwell becomes educated and his testimony
16 changes, two-step. He doesn't want to admit that he made a
17 mistake.

18 At the preliminary hearing he testifies that all
19 the reaction on the shower is between the knee and the shoulder
20 of a six foot tall person. Which six foot tall person did he
21 have in mind? Why, Mr. Cooper, of course. That's what he's
22 trying to prove. All that reaction would have been between the
23 knee and the shoulder of Mr. Kevin Cooper.

24 He learns a little bit more, finds out that though
25 that may be consistent with what Kathy Bilbia said she did in
26 washing down the shower with bleach, in approximately those
27 distances, if you had blood washing off an individual, it
28 wouldn't look like that. He changed it. Then it becomes, oh,

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1 well, there was not this band around the shower anymore, it is
2 going all the way down and out the cracks.

3 Ignorance. He made a mistake. He didn't know what
4 he was doing, he changes his testimony, probably not
5 deliberately, but there's a natural tendency in all of us to try
6 and cover up our mistakes.

7 But, as far as our role as people trying to figure
8 out what happened is concerned, the pieces change. They didn't
9 draw diagrams at the time so that we could go back and
10 reevaluate them; they didn't take photographs like they did when
11 they were doing tests of the luminol in September, all they did
12 was rely upon the testimony of Mr. Stockwell. The pieces
13 change, we can't go back and put them together again.

14 Mr. Shephard. Mr. Kochis mentioned Mr. Shephard,
15 Cornelius Shephard, a correctional lieutenant from the
16 California Institution for Men. Somewhat important witness for
17 the prosecution, because they want to show that Mr. Cooper was
18 wearing a camp jacket like that.

19 Mr. Shephard originally, when he wrote his report
20 about the inmate that he saw running down the street, described
21 the jacket as brown in color. Surprise, that's what Mr. Cooper
22 had testified to. It is brown. But, these camp jackets and
23 this Exhibit No. 56, is the camp jacket Teresa Cordua testified
24 that somewhat later in preparation for this case Mr. Shephard
25 picked out of the bin of camp jackets as being the closest one
26 in color. That is nowhere near brown.

27 Mr. Shephard starts hedging his testimony. It
28 becomes brownish, it becomes tan, it becomes any color other

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1 than the brown which would indicate that Kevin is telling the
2 truth when he says that it may not even have been that type of
3 jacket that he had.

4 Mr. Shephard, he's sure that the person he saw
5 running down the street was wearing this distinctive type of
6 jacket, an inmate jacket, some of them even have California
7 Institution For The Men on the back of them, some of them don't,
8 but he was sure about that.

9 Except that when he testified in front of the Grand
10 Jury before we began our criminal proceedings, grand jurors were
11 asking him, "Hey, do you think that if we had the inmates wear
12 distinctive type of clothing like the -- like the -- like the
13 stripes that I guess they have in the movies or something like
14 that, would that do any good?"

15 And Mr. Shephard said that he didn't even notice
16 the clothing on the individual that he saw, he didn't -- that
17 wasn't what struck him as distinctive. What struck him as
18 distinctive was that there was a Black man in a White
19 neighborhood. That caused him to wonder. Complete change of
20 testimony. Perhaps not deliberate, but it's a result of
21 suggestibility. It's a result of having one's testimony fit the
22 prosecution's puzzle rather than the actual facts.

23 How does it work? People start thinking about what
24 they must know was the case, not what they actually saw, and
25 their testimony changes.

26 Mr. Shephard on prior occasions has testified under
27 oath several times that he would be unable to identify the
28 person that he saw running down the street. By the time he gets

1 to court, after the defense's opening statement, he realizes
2 that it must have been Kevin Cooper, so he testifies under oath
3 that he can identify the person as Kevin Cooper. That
4 particular fact is probably of no particular significance in the
5 lawsuit because in fact it was Kevin Kevin Cooper, but it shows
6 how witnesses, especially when they are not interviewed with a
7 tape recorder at the beginning of the case, change their
8 testimony, how it seems to drift towards the prosecution's
9 theory of the case and away from their original memory.

10 You even saw on the witness stand. As an example
11 of that, in this very case, Dr. Howell I'm sure was doing her
12 best when she testified to tell what she remembered, but it's
13 been a time since all the events happened. And Mr. Kottmeier,
14 the District Attorney of my particular county, certainly a
15 person that everybody would expect to trust, started putting
16 words into her mouth, started saying, "Well, could this
17 conversation with Mr. O'Campo actually have occurred after the
18 formal interview on the 14th?"

19 Dr. Howell, not wishing to dispute the elected
20 District Attorney of our county, the man charged with
21 prosecuting and investigating in the murder of her family, said,
22 "Of course. Of course." Fortunately there was a tape recording
23 of Dr. Howell's testimony at a time when it was clearer in her
24 mind.

25 Mr. Kottmeier suggested that in that particular
26 conversation leading questions were asked, reversing them, not
27 Mr. Kottmeier asking leading questions but the defense. If you
28 listen to the tape, the question that was asked was: "What was

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1 said?" Hardly leading. Memories change.

2 Finally, I noted that the prosecution is no longer
3 relying apparently upon James Taylor, but they did at one point
4 in time. Why would they rely on James Taylor, a man who I don't
5 think I, in the interest of time, I won't even go through all
6 the different evidence which shows that he lies, but I think you
7 will all agree that he did? Because -- because they have to
8 exaggerate just a little bit in the evidence.

9 They want it to be tight, to be pat, to be
10 consistent with no other rational interpretation.

11 Not enough that they have a chrono that says Kevin
12 Cooper was issued tennis shoes, they have to have somebody come
13 in and say, "Oh, yes, those brand new Pro Keds." But Mr. Taylor
14 was -- had so many contradictory statements you could almost
15 trap him as he adds more and more depending upon what's being
16 suggested to him.

17 The problem is that when you -- when you're doing
18 that sort of thing, sure, it's going to fit together at the end.
19 You're making sure that the puzzle fits together at the end the
20 way you want it, but you are distorting. You're taking, you're
21 change the pieces. And the important thing about circumstantial
22 evidence, again, it's not the individual pieces, but how they
23 fit together.

24 In forcing the pieces into place, the next category
25 of the evidence I'd like to talk to you about, one of the -- one
26 of the things that we've tried to do in forcing the pieces into
27 place is to, as Mr. Kochis says, demonstrate that Mr. Cooper is
28 a liar. That's what they're trying to prove.

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1 You will be given an instruction about lying at the
2 close of the case. The instruction will tell you that
3 deliberate misrepresentation, deliberate lies are such that you
4 can just -- you can disbelieve the whole testimony of a witness
5 if you want to, but also tells you that innocent misrecollection
6 is common. And the significance of misrecollection has got to
7 do with how significant the facts are in the case.

2 On the one hand we have facts, lies, about what
8 Josh Ryen said about suspects early on in the investigation.
9 The type of thing that the prosecution has attempted to prove,
10 Mr. Cooper has got nothing to do with the Ryen homicide.
11 Whether or not he misremembered about a bathroom door, a garage
12 door, things of that nature, even the garage door --

13 Even the garage door incident, they claim in their
14 cross-examination of that Mr. Cooper suggested, and then they
15 brought in Larry Lease to try and verify that there's no way
16 that Kevin Cooper could have opened that garage door on his way
17 into the house. Prove he's a liar. And Larry Lease comes in
18 and says, "No way." He also says that that garage door opener
19 works by a chain, and so the garage door would be pulled up or
20 let down by the chain.

21 Doesn't take a lot of mechanical knowledge to
22 figure out if you have that kind of a garage door opener, maybe
23 you can lift the door even if the garage door opener is in
24 place.

25 But there is another witness to the case who's
26 likewise testified about the garage door, and that was Kathy
27 Bilbia. The question was asked her:
28

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1 "The garage door, the front garage door that was
2 one of those kind you just lift up with your hand?

3 "Answer: Yes.

4 "Question: Didn't have a garage door opener or did
5 it?

6 "Answer: Yeah, it did, but it didn't work.

7 "Question: So basically if you looked into there
8 you'd have to open it up with your hand?

9 "Answer: Yes.

10 Larry Lease, according to the testimony of Mr.
11 Sibbitt, hardly ever got up to the 2991 residence. Kathy Bilbia
12 lived there for over a year.

13 There are people that in a criminal investigation
14 they want to help. They want to help the prosecution, so their
15 memories jog. There are also people that want to be part of it,
16 to get involved. Perhaps there's in evidence that Larry Lease
17 was one of those individuals.

18 We've heard Detective Swanlund, or Sergeant
19 Swanlund, testify at great length that the day that the evidence
20 was collected, while the evidence was collected they were
21 tightly controlling entrance into the Lease house, they kept out
22 the civilians, they kept out their own people. Yet Larry Lease
23 testified that he walked through that house pointing out what
24 was missing, and he saw the sheath sitting right there in the
25 Bilbia bedroom. Did he remember that or is that an exaggeration
26 wanting to be in the picture a little bit more than he actually
27 was?

28 He testified that he went into the Ryen house at

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1 the time the crime was discovered. Everybody else said he
2 didn't. Exaggeration, wanting to be in the picture a little bit
3 more?

4 He also testified that there were a pair of jeans
5 or Levi's that were wadded up in the dryer right there in the
6 Ryen bedroom. Sergeant Swanlund said there wasn't. If there
7 were, that could be significant evidence. Is Larry Lease
8 imagining things or is Sergeant Swanlund suppressing evidence?
9 Probably in that particular instance Larry Lease is imagining
10 things. He is perhaps that type of fellow.

11 Mr. Kottmeier, when he was cross-examining Mr.
12 Cooper, was making a big deal of the creek. Said he -- said to
13 Mr. Cooper, "Isn't it a fact," he said, "that the creek that you
14 fell into was dry? You couldn't have fallen into it? There's
15 been no evidence as to that. You yourself saw a line of trees
16 at approximately the spot where Kevin crossed it. A line of
17 trees doesn't suggest that the creek was running underground at
18 that particular point in time. We have had testimony that there
19 was water in the creek at the other end. Sounds like Mr.
20 Kottmeier is trying to cross-examine to prove a fact. Is it
21 true? Kevin, what Kevin said is, in fact, is true.

22 Mr. Kochis made a point that, you had to have seen
23 the Ryen house from inside 2943 (sic). Well, you remember the
24 testimony, that when we were out there, the television, if you
25 recall, was pushed back in the corner there, couldn't get around
26 behind it. You look at the picture and remember the testimony.
27 At the actual time of the crime the television was out here so
28 that you could step around behind it. There is, in fact, a

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1 footprint that is behind that television, No. D on Exhibit 116.
2 That footprint was not a Pro Keds. Somebody may have gone
3 around there to take a peek. But that's the spot that you have
4 to be in order to get a clear view of the Ryen house.

5 Mr. Kochis has said if Mr. Cooper is in there at
6 the television headed, was the word he used, there is no other
7 way but that he saw the Ryen house.

8 Marty Smith, Career Criminal deputy, was in that
9 house for six or seven hours. She was studying, drawing,
10 sketching, the footprint right over here behind the television.
11 She didn't see it. She didn't even notice the Ryen house. Mr.
12 Cooper had to be lying.

13 Mr. Kochis suggested that there had -- Mr. -- Mr.
14 Cooper had to have destroyed some gloves. Now on this
15 particular -- this particular point neither counsel was really
16 all that skilled in our examination as I went back to look at
17 it. You know that we have one of the two pair of gloves that
18 were taken from Vickie Lang here in court. The implication I
19 suppose is that the other ones were destroyed because they had
20 blood on them, except that Owen Handy testified that the gloves
21 that Kevin Cooper was wearing when he worked on the boat wore
22 out pretty fast.

23 The ones we have left are not worn out. It would
24 suggest that there was another pair of gloves, as Mr. Cooper,
25 testified that were worn out, Mr. Handy saw it, and discarded it
26 in Ensenada, not because they had blood on them but because
27 working with the ropes destroyed them.

28 Finally Mr. Kochis has suggested that Mr. Cooper

1 had to have seen the hatchet that he says was right there, right
2 on the fireplace. That is an example, I think, of how facts
3 tend to, in the prosecution's mind, be the way they want them to
4 be.

5 Was the evidence all that clear as to where the
6 hatchet was kept? I would submit to you that it wasn't. Mr. --
7 Vickie Lang said that the hatchet was normally kept by the
8 fireplace, but she recalled putting it away in a drawer and she
9 never took it out again. Nobody else ever had taken the hatchet
10 out of a drawer during the period of time that it was there.

11 The one person that had the most detailed
12 recollection of when he saw it was Perry Burcham. At that point
13 in time when Perry saw it, it was standing right with a bunch of
14 kindling on the fireplace. Look at the picture we have taken of
15 the crime scene, there's no kindling left on the fireplace. The
16 implication is that the hatchet was put away.

17 The prosecution's attempt to say that Mr. Cooper
18 had to be lying, he had to have seen that hatchet, there's
19 conflicting evidence on that. It hasn't been proven beyond a
20 reasonable doubt. The probabilities are that the hatchet was
21 put away. Doesn't mean that it's impossible for Mr. Cooper to
22 have found it or anybody else to have found it, but the had
23 to's, Mr. Cooper has to be lying.

24 The only rational conclusion is one which points
25 towards guilt. That's not true. The evidence is not so clear
26 as the prosecution would have you believe.

27 Forced pieces. One of the things that is most
28 interesting about the evidence in this particular case is that

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1 as to the major pieces of prosecution evidence there is
2 something fishy about each one. Let's go through them one by
3 one.

4 A-41: Mike Hall does an exhaustive report, doesn't
5 mention A-41 in the report. Dan claims that he's testing A-41
6 blind, but doesn't document it. We can't tell whether his test
7 results are correct. He wastes samples by his own admission so
8 that we can't go back and retest, but what were the conclusive
9 results? He makes mistakes. He sees what he wants to see.

10 He tells us that the cigarette butt from the
11 automobile is consistent with coming from Mr. Cooper. That's
12 true, it is. But according to Mr. Wraxall it could have been
13 any person on the face of this earth that could have smoked that
14 cigarette butt. Dan wants us to believe it's consistent with
15 Kevin. But the facts are that Dan's ignorance, his
16 inexperience, his incorrect techniques, make it impossible for
17 us to distinguish between anybody on the face of the earth as
18 the person that smoked V-12. That was the testimony of Mr.
19 Wraxall.

20 The testimony about A-8, shoe impression on the
21 bedspread in the Ryen home: One of the interesting things about
22 that particular shoe impression is it's right next to the little
23 bit of sheet that Dr. Blake analyzed. There is no dispute but
24 that there is blood on that sheet that is post-mortem blood.

25 How did it get there? There's two rational
26 interpretations. One, that Doug Ryen was moved. Well, we know
27 that he was moved later in the day when the people from the body
28 service came. But if you look at the photographs you can see

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1 that the post-mortem blood was already in place on the sheet
2 before the removal of Doug from the scene. The other rational
3 interpretation is that the sheet was moved. If the sheet was
4 moved after the death of Doug Ryen, then the tennis shoeprint
5 that appears on the sheet probably was made after the death of
6 Doug Ryen, 15 to 20 minutes, 10 to 15 minutes, I don't remember
7 the exact testimony, at least after the death of Doug Ryen.
8 That particular shoe impression is not mentioned in the report,
9 the exhaustive report of Mike Hall.

10 There's a shoe impression on the spa. Marty Smith
11 goes out to that spa to diagram all the footprints on it. She
12 doesn't see it. It's not there. She didn't -- she didn't
13 notice it. It was pointed out to her later.

14 There are photographs of the spa cover when the
15 police arrive at the scene showing the spa cover in a
16 nondislodged state. Sometime along that afternoon it gets
17 dislodged. We don't know how. Not mentioned again in Mike
18 Hall's report of the crime scene supposedly they are taking such
19 care of these valuable pieces of evidence, that shoe impression
20 on the spa -- on the spa cover.

21 But Mike -- Robert Hall testifies that, oh, he was
22 tromping all over, he didn't pay any attention to it nobody
23 thought the spa cover was of any great significance. There was
24 no evidence worth preserving on that spa cover.

25 2991: Steve Moran and Bob Hall go into this house
26 on June the 6th. Steve Moran testifies that they are just going
27 in there to look for suspects; they are not going in to look for
28 evidence. Why does he say that? Why does he say that? Is it

1 likely that they expect to find a suspect still there two days
2 after the killings?

3 He makes statements to John Hagen indicating that
4 there was nothing -- there was no evidence there, nothing about
5 suspects in the statement to John Hagen after he gets through
6 with the search. The Ryen car is gone. Likely that there is
7 still suspects there? No.

8 I would suggest to you that the reason that Mr.
9 Moran tells you that he was going there looking for suspects was
10 because he didn't see any evidence in the Bilbia bedroom when he
11 was in there searching it for evidence at a time when we know
12 that his fingerprints ended up on the inside of the closet door
13 in the Bilbia bedroom. If the reason -- if the axe sheath were
14 still there at the time why didn't Steve Moran see it?

15 The car, the testimony about the car was that
16 according to the prosecution's witness the car had to be there
17 Sunday morning. That witness was James Gordon, a man who was
18 passing out thousands of handbills, and he just happened to
19 remember this particular car, a man that knows it was this
20 particular car in that particular location because he remembers
21 it being a blue Ford station wagon.

22 Mr. Staubly saw the car, or at least a car having
23 that license plate number, in Costa Mesa at a time when Kevin
24 Cooper we know was in Tijuana. The car is still moving when
25 Kevin Cooper is in Tijuana. That is evidence that it was not
26 Kevin Cooper who took the car, it was somebody else. It was not
27 Kevin Cooper who took the car, it was somebody else.

28 Each piece of the puzzle piece that Mr. Kochis is

1 trying to fit together for you has something strange about it,
2 something that doesn't quite add up, something that doesn't
3 quite fit. They have been forced together. But it is a joinder
4 of force rather than a joinder of reason. I cannot explain to
5 you and I don't know the answer to the various mysteries about
6 those pieces of evidence, but in evaluating whether or not
7 there's only one rational interpretation of the evidence that
8 points to guilt, I think that, and I would submit to you, that
9 those particular mysteries, something fishy, something not quite
10 right about the most significant prosecution evidence is
11 something you should keep into account.

12 I have a little bit more to say after lunch, but I
13 think this would be a great breaking point.

14 THE COURT: Sure, that's fine, all right.

15 Ladies and gentlemen, when you leave would you
16 kindly go back here and let the bailiff escort you out of the
17 building. And during the noon period, be mindful still of the
18 admonition. Be particularly careful at this critical stage of
19 the case.

20 We will take the noon recess and resume at 1:30
21 this afternoon.

22 (Noon recess taken.)

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1 SAN DIEGO, CALIFORNIA, THURSDAY, FEBRUARY 7, 1985 1:30 P.M..

2 --oo0oo--

3
4 THE COURT: The Court finds the jurors present.

5 Mr. Negus.

6 MR. NEGUS: Thank you.

7 Mr. Cooper pointed out to me one mistake I made in
8 my statement of the evidence earlier. Larry Lease testified
9 that he saw jeans in that washer, not in the Ryen house, which I
10 may have stated.

11 Continuing on then with the evidence I was trying
12 to bring to your attention which has to do with bootstrapping
13 the actual facts of the case into the kind of evidence which is
14 required under CALJIC 2.01, the instruction on circumstantial
15 evidence. There is a substantial number of exggerations in the
16 rhetoric around this particular case. Pro Keds have been
17 described as prison tennis shoes over and over and over again.

18 There are a number of contracts that have been
19 introduced for you into evidence from the Pro Red Corporation.
20 Pro Keds are available to the Navy, to the forestry, to all
21 kinds of different people besides prisoners.

22 We have had testimony that a man who wasn't in
23 prison since 1977 just coincidently had a pair of Pro Red tennis
24 shoes which haven't even come into the San Bernardino County
25 crime laboratory.

26 Mr. Kochis referred to a hair from the drain in the
27 bathroom as being Doug Ryen's hair. That particular -- and he
28 likened it to the hairs that were on the hatchet. The problem

1 with that particular theory is that Dr. Morton testified that
2 that particular hair had not yet been -- the type of that hair
3 that was chopped with a hatcet, but was a type of hair that had
4 fallen naturally of a human's head. No way he can say whether
5 it was Doug Ryen's. Numerous other people may have use of that
6 shower during the time that Kathy Bilbia was living there.

7 He referred to a hair in the Ryen vehicle as Kevin
8 Cooper's hair. Testimony of his own expert, Dr. Morton, was
9 that he could not even positively say that the hair came from a
10 black person, much less that it was Kevin Cooper's hair.

11 He referred to the knife that was allegedly used by
12 Mr. Cooper, pointed to his version, of course, that had been
13 proved as having come from the Lease house. The problem with
14 that particular theory is that there was a strap from that
15 scabbard found in the Bilbia bedroom, it got there at some point
16 in time.

17 There's an inference perhaps that that strap was in
18 fact from a knife that was used in the murder. The problem is
19 that the strap does not match the scabbard that Roger Lang said
20 that he had in the house. The scabbard that he last remembers
21 seeing -- Roger Lang last remembers seeing in that closet was a
22 dark brown. You can look at it yourself. This is obviously is
23 a black scabbard. Sheath or strap, I should call it.

24 There was lots of testimony about knives that were
25 supposed to have been missing from the house. Roger Lang,
26 however, when he first talked on tape to Mr. Forbush, indicated
27 that nothing other than the axe, which could be used as a
28 weapon, was missing from the house.

021666

1 Richard Sibbitt testified about some missing
2 knives. It turns out when Roger Lang was asked about the same
3 knife that he in fact did not have it at the 2991 residence but
4 had it at his home. Exaggerations in order to try and make the
5 case tighter than in fact it is.

6 The rope that was in the closet, Mr. Kochis says
7 that that's the type of rope that Larry Lease described as
8 having been in one of the bedrooms. The problem with that
9 particular thing is Mrs. Bilbia, who lived in the house, whereas
10 Larry Lease didn't, indicated she never had seen such a rope in
11 the house, the rope was kept down in the artificial insemination
12 room at the very far end, end of the property.

13 You will recall that when we went there, right
14 through the middle of Larry Lease's property, according to the
15 testimony, the artificial insemination room was always to your
16 left, as you went down the rail face down the hill, the hill at
17 the very -- very far removed from the 2991 residence.

18 There was some testimony that changed over time,
19 that according to Mr. Lease, that when he testified in court,
20 this particular door, the front door was locked when he and the
21 officers left the 2991 residence on June the 6th. After Mr.
22 Moran and Mr. Hall searched the house for evidence. Obviously
23 the purpose at that particular point in testimony is to try and
24 show that no one could have gotten in there to tamper with the
25 scene after that particular point in time. The problem is, Mr.
26 Lease had previously testified -- excuse me -- previously said
27 to Mr. Forbush on tape that the door was left unlocked.

28 Mr. Kochis, when he was talking to Mr. Sibbitt and

2
1 Mr. Burcham, the two hired hands that had come up and discovered
2 the evidence in the house on June 7th, tried to make a point
3 that it must have been unlooked because there was a key that was
4 found in the door. But if you look at the photographs carefully
5 you will see that there is also another set of keys that are
6 found on the front counter there.

7 Mr. Burcham and Mr. Sibbitt testified that they
8 found a key inside the residence on that particular day that had
9 been there all along and they tried it in the front door. The
10 evidence does not show that the front door was locked when Mr.
11 Lease, Mr. Moran and Mr. Hall left the house on June the 6th;
12 rather that Mr. Burcham and Mr. Sibbitt had left the key in the
13 door when they attempted to try it out.

14 In addition to the pieces of the puzzle that had
15 been forced together, there also are the pieces that are
16 missing. There are some pieces of the puzzle that I think we
17 can deduce are missing because of a deliberate act on the part
18 of law enforcement. That one particular piece, for example, is
19 the note that Hector O'Campo, on June the 6th, 1983, when he
20 first tried to get information from Josh Ryen.

21 Both Dr. Howell and Mrs. Headley have observed Mr.
22 O'Campo to be taking notes. Mr. O'Campo now tries to say that
23 the notes that he was taking, were -- the only notes he took was
24 the one statement that was written out by Josh Ryen, how is mom
25 and dad, on a piece of paper. The Problem is, Mrs. Headley saw
26 him taking notes. Mrs. Headley was not even in the room at
27 12:20, the time that Mr. O'Campo says that had Josh made that
28 statement at the time, the time he said he took the notes. He

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1 obviously was taking notes from Josh at a point other than --
2 other than those.

3 He originally testified at preliminary hearing that
4 what happened as to the notes, I might have destroyed them, and
5 then he realized what he had said, and changed his testimony,
6 oh, there never were any notes. That Fraudian slip, however, I
7 think, indicates that there were notes that corroborates the
8 testimony of Dr. Howell and Mrs. Headley through the own mistake
9 of Officer O'Campo. They are his notes.

10 Why were they destroyed? Because they would have
11 helped Kevin Cooper. Mr. O'Campo had strong opinions, he didn't
12 want that to happen, he did not want you to have that piece of
13 the puzzle.

14 There is one piece of the puzzle that is missing
15 because there is no evidence on it. That is motive. Mr.
16 Kottmeier, in his opening statement, Mr. Kochis in his closing
17 statement, have both indicated that we had the act of a
18 desperate man who had been turned down, he couldn't get a car,
19 he couldn't get money, and therefore the Ryens were murdered.
20 The problem is that doesn't compute.

21 There was money in Peggy Ryen's purse, there was
22 money on the counter, in plain view, in the living room of the
23 house right near the spot where the killers took the beer. Had
24 the crime been one of robbery, the money was available; had the
25 crime been one to try and get something valuable for a person
26 like Mr. Cooper, who had no money at that point in time, there
27 were many valuable things in the Ryen house which were not
28 disturbed which were not taken.

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1 If the motive of the crime was to attempt to get a
2 car, why would somebody whose motive is to get a car, go up to
3 the most difficult place to get out of in the Chino Hills and
4 steal that car? You, yourself, have been out to the scene.
5 There are cars parked in ranches all around the place, there was
6 a Latter Day Saints church across the street where there's
7 vehicles. There are vehicles that you can see that are lots of
8 places where cars are available for a short walk that does not
9 involve having a black person come down a private road, past a
10 whole bunch of houses, through, in fact, gates to have to drive
11 out. Why? Why would a person in Kevin Cooper's shoes choose
12 that particular car to steal? There is no evidence on that.

13 Now, I envy Mr. Kottmeier, who has a very dramatic
14 ability; he has a great deal of experience, he will present to
15 you a very forceful closing. He may speculate as to why these
16 things happened, he may have a dramatic presentation, but he's
17 introduced no evidence in the course of this particular trial
18 which is what you are really supposed to decide, as to why the
19 crime would have occurred.

20 Mr. Cooper is obviously not the kind of person that
21 any of you are going to particularly like. If he were only
22 charged with escape from state prison, after he had been
23 committed there for just a week, forgetting these particular
24 charges, Mr. Cooper, has committed crimes in the past that,
25 however, does not make him guilty of this particular crime.

26 Look at the way that Mr. Cooper managed to elude
27 the authorities. He did it essentially by lying low. He went
28 to the lumber yard while people were searching all around him.

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1 Rather than make a move, which would draw attention to himself,
2 he lay low on top of the lumber. He then went up to the 2991
3 residence. Rather than seek to escape from that residence
4 immediately, he lay low until the search had died down for him.

5 A person that takes that kind of care to avoid
6 directing attention to himself, Mr. Kottmeier is going to
7 believe, have you believe that for some reason, which we have no
8 evidence about whatsoever, Mr. Cooper did the one thing in the
9 world that would insure that at some point in time he would be
10 caught. Mr. Cooper is supposed to, after lying low for so long,
11 have committed a crime which would cause international pursuit
12 for him to be launched. Mr. Cooper, who, had this crime not
13 occurred, probably still would be at loose, did something for no
14 reason, which is going to make sure that he's caught and
15 severely punished. That doesn't make sense. There is no
16 evidence -- there may be speculation, there may be rhetoric, but
17 there is no evidence to explain why Mr. Cooper would have done
18 that.

19 There is an instruction that should be given that
20 the prosecution does not have to prove motive. That is the law.
21 However, there is also in that instruction the following
22 language: "You may consider motive or lack of motive of
23 circumstances in this case. Presence of a motive may tend to
24 establish guilt, absence of motive may tend to establish
25 innocence. You will, therefore, give its presence or absence,
26 which the case may be, the weight to which you find it
27 entitled."

28 In this particular case, the failure of the

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1 prosecution to produce any evidence of motive is a factor which
2 I think you have to take into account in weighing on the side of
3 the defense.

4 Finally, there are the missing pieces which are
5 missing because the San Bernardino Sheriff's office found
6 themselves with a crime you normally have which in this
7 particular day at that time, that particular time they were
8 unequipped to handle. Physical evidence from a crime scene as
9 both the prosecution's criminalists and as Dr. Thornton tells
10 you, can answer various questions. They don't necessarily
11 answer the questions, but they can tell you how many people were
12 involved in an assault.

13 Was it one, as the prosecution contends, or was it
14 three, as Josh originally said? What are the motives of the
15 victims from room to room? Which of Josh's different statements
16 is more likely to be true? Physical evidence would have allowed
17 us, had it been properly preserved, had there not been gaping
18 holes in the evidence which is available, allowed us to piece
19 that together. It would have allowed us to determine the issue
20 as to were there three assailants or one. Now, you are left to
21 speculate, you don't know. You don't know.

22 The law does not require you, nor should it, punish
23 the prosecution for doing a lousy investigation, but the law
24 does say that the prosecution has the burden of bringing
25 evidence into court, sufficient to convince you beyond a
26 reasonable doubt that the charges are true.

27 When they fail to preserve, to bring in, to produce
28 the evidence which would have allowed us, not through

1 speculation, not through rhetoric, not through theater, not
2 through fudged testimony, but allowed us, scientifically both
3 sides having an opportunity to examine it, so that any conflicts
4 could be brought to your attention scientifically to decide the
5 case, that in itself is going a long way to establish a
6 reasonable doubt.

7 There was evidence in this particular case, in
8 addition to the initial statement of Josh, that there was more
9 than one assailant. There are footprints, shoeprints, that
10 appear. A wavy patterns appears.

11 So, here in the living room, a wavy pattern appears
12 on the spa, a wavy pattern appears in luminol here, and here
13 inside the Ryen crime scene. We are at a loss to evaluate just
14 how significant that evidence is. We are at a loss as far as
15 that particular footprint is concerned, because the prosecution
16 didn't make any sketches, didn't take any photographs of it at
17 the scene.

18 We are at a loss for those particular patterns
19 because the prosecution criminalists were too inexperienced to
20 realize if it they took it back to the lab the pattern would be
21 destroyed by the capillary action of the luminol seeping into
22 the carpets. I don't know why we don't have those particular
23 patterns. We have a sketch, we have a sketch of the one in the
24 Lease bedroom.

25 The prosecution has attempted, through the course
26 of the evidence, perhaps to try and explain these particular
27 footprints, to try and show that this does not indicate another
28 set of footprints, a different possible assailant.

1 How have they tried to do that? They tried to say,
2 well, you can't be sure about those particular footprints
3 because we botched the scene, we had 80 people tromping through
4 the house at various times.

5 First, we had Mr. Coins, who was supposed to be a
6 likely suspect. Fortunately he wasn't in the right places at
7 the right time. Then we had Mr. Coronado, who may had the wavy
8 shoes, another Sheriff's officer, but he wasn't in the right
9 places at the right time. Finally we had Mr. Fields who perhaps
10 would be the person who would clean up those footprints as far
11 as the prosecution is concerned.

12 However, Mr. Fields' shoes don't quite match the
13 patterns that were found and sketched by Marty Smith as she
14 indicated. There are some evidence that there were at least
15 three, maybe four, maybe five weapons used during the course of
16 this particular attack.

17 Now, obviously that doesn't prove anything beyond a
18 reasonable doubt, but it is certainly suggestive that Mr.
19 Cooper, at the most, no matter what Mr. Arthur attempted to
20 acknowledge about him being ambidextrous, might show at the most,
21 two hands.

22 Dr. Root, at the autopsy, described to Mr.
23 Stockwell, the most likely knife and the knife that could not
24 have made all the stab wounds. Dr. Root then at the preliminary
25 changed his mind. Why did he change his mind? Because Mr.
26 Kottmeier suggested to him, showed him, whatever, a photograph
27 which Dr. Root claims that he had never seen before, never
28 thought of that particular type of knife. The type of knives --

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1 and you can see the photographs in evidence -- were common Buck
2 knives; the type that are found in all kinds of hardware stores
3 all over the country. And the testimony was that those very
4 knives were shown to Dr. Root himself. Dr. Root would appear to
5 be switching his testimony. He wants to make it consistent with
6 Kevin Cooper's. It doesn't matter if the facts are a little bit
7 off, we will change them a little bit to make it consistent with
8 one assailant.

9 The patterns. There are patterns on the various
10 victims of the wounds. It just so happens that they tend to
11 group into a shorter knife and a longer knife.

12 Dr. Root says, of course, the nature of the
13 patterns is -- well, it could have been a knife not going all
14 the way in. Look at some of the groupings of those wounds. I
15 warned you at the beginning of the case, I don't wish to be
16 morbid and dwell upon this sort of thing, but unfortunately the
17 physical evidence in this case is not pleasant; we have to
18 consider it.

19 Jessica, 8, 9 and 10, all the same depth, all given
20 one, two, three, right in a row because they're all grouped
21 together. Is it likely that a knife longer than ten centimeters
22 long is going to penetrate the exact same depth each time if it
23 is not being thrust in all the way? Many other type of patterns
24 like that suggest that there are weapons coming from right and
25 from the left.

26 Look at the patterns that were developed by Dr.
27 Root. Doesn't prove it beyond a reasonable doubt, that's true,
28 but they are suggestive that we have more than one attacker

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1 involved in this particular case. Being able to try and compute
2 some of these wounds with the blood patterns on the walls, could
3 well have allowed us to distort that question out with greater
4 certainty than we can from the autopsy evidence alone.

5 But we don't know where any of the various patterns
6 of blood even that we have samples of came from in that
7 particular room. Mr. Stockwell and Ms. Schechter didn't bother
8 to make annotations of where they got the blood sufficient to
9 allow anybody, including themselves, to interpret those patterns
10 even from the patterns from which we still have blood.

11 There is some evidence attempted, by Dr. Thornton,
12 that Jessica may have been outside during the course of the
13 attack. Mr. Kochis has suggested an alternate explanation.
14 These burrs leaped off of one assailant and got transferred to
15 her while the assailant bent over her. You can look at the
16 burrs yourself, they're all in evidence, and see if those are
17 the kind of burrs that easily fall off a piece of cloth once
18 they become attached to it.

19 Somehow, if that's the case, somehow those burrs
20 managed to attach themselves to the assailant during the time
21 that a hundred blows were being struck during the time that
22 intense struggle was going on in that master bedroom, and
23 somehow just at the end, after Jessica was dead, managed to fall
24 off. Suggestions that that is extremely unlikely.

25 There was even evidence that might have permitted
26 an inference from the bathroom. We know that there was some
27 blood around that bathroom; we know that there was some blood
28 around that bathroom; we know that officers were using this

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1 particular bathroom before anybody got around to inspecting it
2 on the morning of June the 6th. We'll never know whether the
3 blood in the second bathroom came from Dr. Root in washing his
4 hands or came from another assailant washing his hands, because
5 the scene was not properly protected.

6 How does the prosecution try and get around that
7 evidence of two bathrooms, more than one assailant? They say,
8 well, we will -- we don't know because we botched the crime
9 scene. We let Dr. Root wash his hands when he had blood on
10 them.

11 Their defense to the evidence was, would suggest
12 that there is physical evidence which supports Mr. Cooper's
13 innocence is, we botched the crime scene. The very thing that
14 they have steadfastly so long tried to dissuade you of during
15 their cross-examination of the various witnesses called by the
16 defense.

17 Finally, there is other pieces of physical evidence
18 that have become somewhat fudged. We know that footprint, the
19 Pro Red foot impression, that was found inside the Lease house,
20 according to the testimony of Bill Baird, came from a nearly new
21 shoe. In an investigation there was a form of timing that one
22 needs to have that is different from the dramatic timing, that
23 comes out in court.

24 One needs to interview witnesses after one witness
25 has been pinned down but before another witness testifies. That
26 is what happened in this particular case. Mr. Baird testified
27 on, I believe, December 11th or 12th of 1983, that it was in the
28 early -- excuse me. Mr. Cooper testified on January 2nd, 1983,

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1 excuse me, back off, I'm in the wrong year.

2 Mr. Baird testified in December of 1984, for the
3 first time that it was a nearly new shoe that was involved. Mr.
4 Cooper testified for the first time on January 2nd, 1985, that
5 he had been given a new pair of shoes before Mr. Cooper
6 testified, before the Department of Corrections could see
7 exactly where we were coming from. Mr. Forbush went down on
8 December 27, 1984, and talked to Sidney Mason, the man pointed
9 out from a lineup card of all the different officers in the
10 California Institution for Men as the person who had given him a
11 pair of used Pro Ked tennis shoes.

12 Lo and behold, on tape, in the presence of Teresa
13 Cordua, the California Department of Corrections interviewer,
14 Mr. Mason read that he had given a tall thin black inmate a pair
15 of used Pro Ked tennis shoes. Of course, Mr. Mason comes into
16 court and says, oh, they're new Pro Ked tennis shoes a month
17 later. But the taped statement indicates that his original
18 statement before he had an opportunity to be prepared, before
19 anybody had an opportunity to recognize the significance was
20 that they were used shoes given to Mr. Cooper on May the 3rd,
21 1983.

22 If that is the case, of course, then unless for
23 some reason -- well, if that is the case then those could not
24 have been the tennis shoes that made the foot impression in the
25 pool room, they were not nearly new, and Mr. Mason at that point
26 corroborated. The prosecution evidence about it, however,
27 tended to shift it to become consistent with the theory that Mr.
28 Cooper was the person responsible for the crime.

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1 The way that the arguments in this particular case
2 are structured, Mr. Kottmeier is allowed to address you without
3 rebuttal by myself. As I indicated I believe, I'm sure that his
4 will be dramatic; however, arguments are not evidence.

5 There was evidence that came from witnesses with no
6 feelings for Mr. Cooper whatsoever. The grandmother of the
7 victim, other people at Loma Linda University Medical Center,
8 people who had no interest whatsoever in helping Kevin Cooper,
9 that indicates that someone else is responsible for the crime.

10 No matter how traumatic Mr. Kottmeier may be in his
11 closing, I don't believe he's going to be able to come up with
12 facts that show that the scene in this particular case was not
13 botched so that these questions can now be answered.

14 He is not going to be able to come up with facts
15 from the evidence which show a motive. He's not going to be
16 able to prove that Mr. Moran did not enter the house, that
17 bedroom, prior to the discovery of the incriminating evidence in
18 this particular case.

19 And whatever he does, he's not going to be able to
20 come up with any facts or any evidence which proved that Hector
21 O'Campo, the man who had the opportunity to discuss with Josh at
22 a time when Josh was just coming out of the anesthetic, at a
23 time when he was most impressionable, what happened during the
24 course of the crime. He's not going to be able to prove that
25 Mr. O'Campo did not lie about that.

26 This particular case is the type of case for which
27 the instructions of law which we've had in this country for many
28 years was designed, the instruction that you do not find anybody

1 guilty unless there is proof beyond a readonable doubt.

2 We have an unpopular defendant. We have
3 considerable amount of evidence which points to his guilt. We
4 also have evidence which points to his innocence. I'm not able
5 to give you that evidence in the full form that I might have
6 been had the scene been properly processed, but I have proved to
7 you why it was that we can't produce evidence: The lies of Mr.
8 O'Campo, the incompetence of the officers in processing the
9 crime scene.

10 This is the kind of case with an unpopular
11 defendant where there is rational evidence not concocted by the
12 defense, coming out of witnesses who were even hostile to the
13 defense, where there is a reasonable doubt as to Kevin Cooper's
14 guilt.

15 I hope that you will all go back, talk it over
16 amongst yourselves for however long it is and come up with a
17 just result, which is a verdict of not guilty.

18 Thank you.

19 THE COURT: Mr. Negus, thank you very much.

20 Mr. Kottmeier, you may conclude.

21 MR. KOTTMEIER: Thank you, your Honor.

22 Good afternoon, ladies and gentlemen, there is a
23 term that Mr. Negus has repeatedly used throughout this trial
24 that is a term of his own making. It is a term that says that
25 law enforcement in this particular case botched the scenes, that
26 law enforcement is responsible for the destruction of evidence,
27 that law enforcement has some ulterior motive in the way in
28 which evidence and witnesses were handled in this case. Those

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1 are only the words of a defense attorney.

2 What about his own expert? What did Mr. Thornton
3 say about the law enforcement agencies of San Bernadino County?
4 Mr. Thornton said he was somewhat critical, but he never used
5 the term "botched." And to that most important question that
6 was asked of Dr. Thornton, he said that there was professional
7 law enforcement which was openminded regarding the investigative
8 leads that were available to the San Bernadino County Sheriff's
9 Office.

10 The only interest the San Bernadino County
11 Sheriff's Office had in the approach to the particular crime
12 that occurred June the 4th, 1983, was to investigate it and to
13 find the person responsible for that terrible murder.

14 Mr. Negus, when he first addressed Mr. Kochis'
15 chart, said everything was fishy with this chart. It's
16 interesting that Mr. Negus did not deal with the tobacco. He
17 did not discuss with you at all the tobacco found both at the
18 hideout and at the Ryen car. He did not talk to you about the
19 hand-rolled cigarette that was present in the seat of the Ryen
20 automobile.

21 In this particular case Mr. Negus suggests to you
22 that there is a need to show motive. You will be instructed, as
23 he suggested, that motive is not an element of the crime. Why a
24 crime occurs is something that is very difficult, at times
25 impossible to explain.

26 I submit to you, ladies and gentlemen, that this is
27 a crime of extreme violence. It is a crime involving the
28 frustrated lashing out, the exhibition of anger that virtually

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1 knows no bounds. There is no explanation. There can be no
2 explanation for such a crime.

3 The defendant in this case is the kind of man that
4 lays low and waits for his chance, waits for his opportunity,
5 maximizes the chances that he has available to himself to
6 accomplish his goals for his own end.

7 The defense has discussed multiple assailants. He
8 says that there may have been more than one assailant. There is
9 no reasonable evidence that you've heard in the past four months
10 to show that any multiple group of individuals is responsible
11 for this particular crime.

2 12 Let's discuss for just a moment some of the
13 thoughts in regard to multiple assailants. We have present in
14 each victim hatchet wounds, chops, as well as stab and incision
15 wounds. Is that consistent with more than one attacker? I
16 submit for your consideration that it is not.

17 Why is that? If you have more than one attacker,
18 one carrying a hatchet, one carrying a knife, would you expect
19 to see an equal distribution of wounds over each victim? Would
20 you expect to see both chop and stab marks to everyone that is
21 attacked? Would you expect that the last victim that is
22 attacked would receive two chop wounds and two stab wounds? Are
23 the multiple attackers, as the defense might ask you to infer,
24 exchanging off the victims so that each victim gets the
25 advantage of the particular weapon that they are carrying? Of
26 course not. But it is consistent with someone who has a hatchet
27 in one hand and a knife in the other hand.

28 If you have more than one attacker, is it likely

1 that all of the attackers would decide that they would leave the
2 valuables behind, such as the video camera, such as the money?

3 We will go one step further. There are many
4 situations that are just absolutely intolerable to individuals,
5 and I submit to you, ladies and gentlemen, that the killing of
6 children is something that you will not find multiple
7 individuals casually out to commit a crime such as this that
8 they could agree on or even let one of their group accomplish.

9 There is a special coldness associated with killing
10 children. It is the kind of frustrated anger that lashes out
11 from a mind of a single person.

12 One of the questions that you heard raised by Mr.
13 Negus, and I want to put it in terms of a question, was a
14 suggestion that, well, what about the groupings of the wounds,
15 from Dr. Root we've got similar depths and so on. All of those
16 are artificial categories created by the defense. The depth of
17 wounds just out of sheer happenstance may at times agree, be the
18 same with other wounds. It tells you nothing about the
19 sequence. It tells you nothing about the particular motion that
20 was used to make those wounds.

21 All of you I'm sure realize that in this case the
22 number of wounds involved could be inflicted very quickly by
23 someone wielding both a hatchet and a knife.

24 Dr. Root specifically told us that in regard to
25 some of the wounds the victim would virtually be rendered
26 defenseless with the first blow if that was the one that was
27 struck.

28 I would suggest to you, ladies and gentlemen, that

1 if you look at the victims you will see with the blood on the
2 pillow, with the blood distributed over the bed, that it is
3 likely that Doug and Peg Ryen were first attacked in the head
4 within the bed.

5 More than that, you won't find any cut marks other
6 than those taken for testing on the top sheet. You didn't hear
7 any testimony in regard to cut or stab marks in any of the
8 blankets or the sheets, no, because the blows that first
9 received their attention were the blows to the head.

10 What about one killer? Is there any question in
11 anyone's mind about the ability of one killer to commit this
12 particular crime? Let me offer you some thoughts in that
13 regard.

14 You have adults in bed, a hatchet blow to each of
15 them would make each defenseless. There are no cuts to the
16 bedding. They are naked adults, which cuts down their ability
17 to respond. They had been drinking, which gives them a deeper
18 sleep than normal. I'm sure even some of you have had the
19 experience that in a deep sleep someone could come into the
20 room, walk in, move the bed even, call to you more than once,
21 and you still do not wake up, fully able to fight and defend
22 yourself.

23 On the side of the defendant in this case was fear.
24 The fact that the victims were unarmed. The confusion of what's
25 happening: Are one of the children sick? Is that what's going
26 on here? The last thing that a parent would think of is that
27 there is a deadly attack underway in that particular bedroom.
28 Maybe any other kind of emergency, but not a deadly attack.

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1 The sequence of arrival as described by Josh. The
2 people coming in at different times, not all in the bedroom at
3 the same time. Children are easy victims. The difficulty of
4 adjusting your eyes to the dark once you have been awakened.
5 And the fact that I will refer to a little bit later on, that
6 Josh saw only one attacker.

7 Within this particular case an area that was dealt
8 with very casually and quickly that came from the defense' own
9 expert is the area of plant burrs. The question that was raised
10 by Mr. Negus is: My goodness, how do did these burrs just jump
11 off on Jessica.

12 Do you recall the testimony of Dr. Thornton? It
13 was a description of a terrible thing, of a little girl who,
14 after she is dead, having her nightgown pushed up around her
15 neck so that the individual that committed that killing could
16 literally carve on her chest after she was dead.

17 Look at the number of wounds on the plastic model
18 if you have any question about the amount of time that the
19 individual that did these killings, Kevin Cooper, spent with his
20 victims. And keep in mind, that to carry out that kind of an
21 operation after the victim was dead on the floor, the defendant
22 would have to kneel down next to her and virtually bring his
23 clothing in contact with her clothing. Those particular burrs
24 on the inside of Jessica Ryen's nightgown are the same type of
25 burrs found in the defendant's bedding and in the Ryen
26 automobile, and are very strong evidence of the guilt of Kevin
27 Cooper.

28 One of our instructions, Mr. Negus talked in terms

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1 of circumstantial evidence, but he neglected to talk to you
2 about the bottom paragraph of that particular instruction. And
3 I'd like to at least direct your attention to it for a moment
4 now and ask that all of you, when the judge reads the
5 instruction, pay close attention to them and think of them as a
6 whole not as a piecemeal approach.

7 The bottom paragraph of the instruction referred to
8 by Mr. Negus is:

9 "If, on the other hand, one interpretation of such
10 evidence appears to you to be reasonable and the
11 other interpretation appears to be unreasonable,
12 it will be your duty to accept the reasonable
13 interpretation and reject the unreasonable
14 interpretation."

15 Mr. Negus has tried to ask a number of questions
16 about the various items of evidence referred to by Mr. Kochis in
17 his first conversation with you this morning. The thing that I
18 would suggest that you do is understand that when you're dealing
19 with the evidence in this case you're dealing with all of it,
20 not one item, not just one piece, but all of it.

21 When you take all of the evidence together that we
22 have talked about, there's only one reasonable interpretation,
23 and that is that Kevin Cooper is the man responsible for killing
24 the Ryen family, Chris Hughes, and trying to kill Josh Ryen.

25 It is that combination of evidence, all of the
26 factors coming together that make the difference. It is not one
27 item, one single item, but a combination, and that combination
28 of evidence has only one reasonable interpretation and that is

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1 that Kevin Cooper is guilty of murder.

2 It's kind of interesting as you look at some of the
3 things that go on in a trial. I'm somewhat surprised at the
4 almost disdain that Mr. Negus referred to Cornelius Shephard.
5 In fact, Cornelius Shephard received a great deal of Mr. Negus'
6 attention during the argument.

7 How did Cornelius Shephard know what the defendant
8 was going to say? Did he look to you like a man that was trying
9 to tailor his testimony or maybe a man that had a
10 forerecollection and doing his best to recall? Yet despite what
11 the defendant has said in this particular case, Cornelius
12 Shephard virtually verified what the defendant was saying: That
13 he saw the defendant running away from prison; that the
14 defendant had a camp type jacket or one that looked like it.
15 What the defendant was doing? Waving at Mr. Shephard. You
16 won't forget that statement, I'm sure, and yet the defense in
17 this particular case wants to paint Cornelius Shephard as
18 someone that is, for lack of a better term, untruthful.

19 The same kind of handling of Mr. Fletcher occurred.
20 Well, you didn't write a report about the violation of seeing
21 Mr. Cooper out of bounds, did you? And then the defendant tells
22 us, "Yeah, he was out of bounds. Yes, he was confronted by Mr.
23 Fletcher." It was an illustration that I suggest that you keep
24 in mind when evaluating the statements of the attorneys in this
25 case.

26 What is the attitude of the attorneys as far as
27 their handling of the questioning of witnesses and their
28 handling of the arguments that are being presented to you?

1 Let's discuss some specifics. First of all, the
2 Ryen house. Now, ladies and gentlemen, you've been out at the
3 Ryen house and you know that in effect when you walk around that
4 house you just can't miss the Ryen house from the hideout house.

5 What about seeing the Ryen house from inside? I
6 submit to you that once you've noticed it on the hill and once
7 you're an escaped convict, that particular residence, the same
8 as the Lease residence, the same as the Edwards' house, are
9 going to receive your attention as long as you hope to stay free
10 from custody.

11 Well, what about Marty Smith? She's assigned to do
12 diagrams of footprints. She's not in that house for the purpose
13 of trying to case it, for the purpose of assuring her own
14 security. But more important, you have to consider the
15 perspective of an individual that is looking for a way, for a
16 way out of Chino Hills.

17 Now there is a concern that has been raised, for
18 example, about the location of the hatchet. According to Mr.
19 Negus' argument, whether it was in the drawer, whether it was on
20 the fireplace. I want to offer you an illustration at this
21 point. There's no need to argue over details such as whether
22 it's on the fireplace or in a drawer when in effect the hatchet,
23 Exhibit 42, is the murder weapon. Does it make much different
24 whether it was in the drawer or whether it was on the fireplace?
25 Kevin Cooper said he was in the same drawer that Vickie Lang
26 testified that she had put it in a few weeks earlier. Does it
27 make any difference whether Mr. Cooper removed the hatchet from
28 the drawer or he took it from the fireplace? Of course not.

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1 There's no issue in this case. Even Dr. Thornton says Exhibit
2 42 is the murder weapon.

3 Mr. Stockwell it was suggested is inexperienced,
4 ignorant; he has biases, motives. For example, as he becomes
5 educated, I gather by the form of that particular argument, Mr.
6 Negus is taking some credit for education. I submit to you,
7 ladies and gentlemen, that when an expert testifies, you may
8 communicate your information at different levels of detail.

9 Dr. Root can give you a general opinion which will
10 have one form or he can literally, and I mean literally, discuss
11 each cut, slice, and so on, of an autopsy. Is it necessary? Of
12 course not. Does the fact that he leaves out some of the
13 details in an early opinion mean that he is being untruthful
14 with you? Of course not. It only means that the expert is
15 trying to gauge the level of simplicity to the task at hand. It
16 does not mean that because he becomes more detailed later on in
17 his explanation that that he is based or untruthful.

18 In addition, something that was ignored or left out
19 by Mr. Negus in this particular discussion is that not only was
20 it Mr. Stockwell, but Craig Ogino that performed the tests in
21 this Bilbia bathroom as well as the area in the hallway with the
22 footprints, the area in front of the closet, and the circle
23 area, that you will recall the closet that Mr. Cooper used as a
24 hideout bedroom and the sink next to the shower. And what else
25 was in that sink, an area that wasn't discussed by the defense?
26 Human blood, as found by Dr. Morton, and the hair of Jessica
27 Ryen.

28 In regard to the defendant's statements, the

1 defense would have you suggest or think that Mr. Cooper may have
2 just had an innocent misrecollection. Was that the tone of his
3 testimony as he talked to you from this witness stand? Every
4 item that had any blood on it the defendant denied knowledge of
5 or even seeing in that particular bedroom.

6 I am not sure what is being suggested. It may be
7 that maybe the defense is suggesting that someone else came
8 along of after Mr. Cooper left and found that such a desirable
9 location that they moved in right behind Mr. Cooper, went up,
10 did the murders, came down and used that as a headquarters.
11 That's as unreasonable as it sounds when you first say it.

12 There is only one reasonable interpretation of all
13 the evidence in that bedroom. Mr. Kochis referred you to it,
14 that is, the defendant brought those items there. That was a
15 vacant bedroom, not the kind of location that anyone would
16 return to after the commission of a crime, unless you were an
17 escaped criminal that was now putting together the remnants of
18 the items that he wanted to take with him from the particular
19 crime scene.

20 Notice something else very interesting. When you
21 compare these two homes, the hideout house with the Ryen house,
22 what is it that you find? Neither house is ransacked. The
23 drawers aren't pulled out and dumped upside down. And only the
24 items that the defendant needs specifically for that particular
25 point in time are missing after Saturday, June the 4th.

26 What items are missing from this particular house,
27 the hideout house? Clothes. From the Ryen house? A car. Who
28 else in the Chino Hills on Saturday, June the 4th, had the need

1 for those kinds of items?

2 But in addition, Mr. Cooper in his testimony I
3 submit to you gave you the opportunity to see him. You were
4 able to see the killing countenance of Mr. Cooper. You could
5 look into his eyes. You could see the change between the time
6 that Mr. Negus is asking the questions and the time that I am
7 asking the questions. You could see, I submit to you, each time
8 Mr. Cooper felt that he was damaged, each time that it looked
9 like the lie was not going to work.

10 The defendant took his first chance to escape from
11 Chino Institution for Men. He left there known as David Anthony
12 Trautman. 150 law enforcement officers combed the area looking
13 for him.

14 The defendant said that he had available friends in
15 Los Angeles who would help. He didn't tell us who they were.
16 In addition, he tells us and asks you to believe that based upon
17 and Azure Seas commercial, he changes his location from Los
18 Angeles where his friends are to Mexico. Reasonable or
19 unreasonable?

20 The only reason I submit to you, ladies and
21 gentlemen, that he changed the location of his destination after
22 escape is because he had committed such a terrible crime. The
23 United States could no longer be his home. But in addition,
24 when offered the opportunity to go to Costa Rica, even Mexico
25 was too close to the scene of his crime to stay around.

26 Consider in addition the statement of Diane
27 Williams in a phone call to the defendant, or by the defendant
28 to her on Monday night.

1 MR. NEGUS: Objection. This is definitely beyond the
2 scope of rebuttal.

3 THE COURT: Counsel, I have been waiting for an
4 objection.

5 Stick to rebuttal argument, Mr. Kottmeier.
6 Sustained.

7 MR. KOTTMEIER: Shift to another area. Let's talk about
8 blood for a moment.

9 Within the blood, all along that sample of blood
10 which came from the Ryen home, A-41, here in the hallway, Dan
11 Gregonis in his analysis of that was consistent. Each time that
12 he analyzed the blood he found it to be the same as Kevin
13 Cooper. What was it, if anything, that was changed in regard to
14 his opinion? Only the name. He found the results from A-41 and
15 Kevin Cooper's blood the same. All he did was change the label.

16 But more than that, recall that in analysis done by
17 Brian Wrzxall of not only the victims' blood but the defendant's
18 blood as well? He verified the results of Dan Gregonis.

19 Recall in addition the defense expert which said
20 that based upon his analysis he could not exclude the defendant
21 in this case as the donor, the person that left the blood behind
22 in the murder scene.

23 At no time did you hear Dr. Blake say Dan Gregonis
24 was wrong. At no time did you hear Dr. Blake say, "I have an
25 opinion that is different than Dan Gregonis's."

26 I submit to you, ladies and gentlemen, that as far
27 as the blood results are concerned the evidence is clear.

28 An area that has been glossed over as far as its

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1 importance to this particular case is the shoe impression. In
2 listening to what Mr. Negus had to say, I submit to you, ladies
3 and gentlemen, that you may have had a similar difficulty in
4 understanding what he was saying about the bloody shoe
5 impression on the sheet, as I did.

6 You recall even Dr. Thornton said that this
7 particular shoe impression would have had to have been done when
8 the blood was wet and flowing, not coagulated. You recall that
9 Dr. Thornton agreed with the prosecution that that print was
10 left by the killer, and in addition that it is consistent with a
11 prison type tennis shoes.

12 In regard to the statements, though, of Mr. Negus,
13 the issue here is not how the defendant got his prison tennis
14 shoes, it's what the defendant did with those prison tennis
15 shoes on his feet.

16 It is the defendant that has prison tennis shoes at
17 the hideout house, and it is the defendant that is able to walk
18 with those prison tennis shoes up the hill and leave the bloody
19 signature on the sheet of the Ryen bedroom during the time that
20 his crime is being committed.

21 The defense wants to discuss new versus used and
22 Mr. Mason, and suggests that this is the prosecution developing
23 somehow Mr. Mason to our uses. Mr. Mason was a defense witness.
24 He was a witness that you heard testify. In addition, Mr. Mason
25 said he hadn't talked to Sergeant Arthur, he hadn't talked to
26 any representative of the prosecution whatsoever. It's very
27 interesting to hear the suggestion that somehow the prosecution
28 has been able to manipulate Mr. Mason. I submit to you, ladies

1 and gentlemen, for your consideration the thought that Mr. Mason
2 is just giving you his best recollection of the situation as he
3 recalls it now. But more importantly, this is really not much
4 of an issue because Mr. Baird said that the tennis shoes were
5 nearly new, not brand new, but nearly new, and further that they
6 were not heavily worn. That gives you a great range of ability
7 to deal with the particular issue without getting involved in
8 Mr. Mason or Mr. Taylor or either of the two gentlemen.

9 A couple of minor notes referred to by Mr. Negus
10 is, well, maybe business that strap was from the knife sheath.
11 Obviously the strap is black; Mr. Lang said that his sheath was
12 brown. You recall also the testimony of the Langs that maybe
13 that strap has to do with holding gloves together or with horse
14 paraphernalia, that is, a portion of a saddle or something such
15 as that. You are dealing with a number of items within that
16 particular house as you saw it that are not necessarily the
17 kinds of items that you would normally find around your house or
18 my house.

19 As far as the knife is concerned, Mr. Lang said
20 that he saw it within his closet and that it is missing, and he
21 adheres to the fact that the diagram that he drew here in court
22 is a diagram of a knife he no longer has in his possession.

23 And that particular diagram is one which Dr. Root
24 says in shape is consistent with having made all of the stab and
25 incision wounds that he found on the victims in this particular
26 case.

27 As far as the rope and Kathy Bilbia. You recall
28 that Kathy Bilbia lived only in a portion of the house. Kathy

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1 Bilbia did not necessarily go into the Lang bedroom and see what
2 things they had. She wasn't like a Kevin Cooper. She didn't
3 use the middle bedroom or the bedroom closest to the front door.
4 In fact, we have no evidence that Kathy Bilbia even had any
5 association with the garage.

6 Final area that I'd like to refer to as far as the
7 evidence, the statements of Josh Ryen. It is amazing at times
8 to hear what can be made of a little boy, a little boy that has
9 survived a tragedy. In fact, if you recall, ladies and
10 gentlemen, as you listened to the tape of Mr. Sexton and their
11 efforts to save Josh's life, you could almost hear in Mr.
12 Sexton's voice the feeling that this child is not going to
13 survive.

14 In regard to Josh, we heard suggestions of, well,
15 Mr. Sharp should have recorded his questions. You heard the
16 description of the hospital personnel as to the emergency state
17 that the emergency room was in.

18 This particular case, it was very early in the
19 discovery of the crime. Is Mr. Sharp, Deputy Sharp making an
20 effort to hide things, to change things? Of course not. He's
21 making an effort to find as best he can the information that
22 Josh has available. You almost get the impression from
23 listening to the defense argue that Deputy Sharp goes upstairs
24 to the CAT Scan room to get Josh's story straight in some form
25 or fashion. Is that consistent with the gentle man that you saw
26 here testify?

27 In fact, speaking of that, let's talk about Hector
28 O'Campo, kind of a big bear of a man, a man who treated Josh

1 with concern and gentleness. Do you think that Linda Headley or
2 Dr. Howell would have allowed Hector O'Campo to begin
3 questioning Josh the first day that he comes in contact with
4 him? And did Hector O'Campo look like the type of person who
5 would do that?

6 I know, I submit to you, ladies and gentlemen, that
7 he is the kind of man that takes a note from a little boy: "How
8 is mom and dad?", and at that particular point in time doesn't
9 even have the ability to answer the question much less try and
10 discuss with that little boy in that condition the attackers or
11 the assailants.

12 Yet we've heard Hector O'Campo called a liar with
13 ulterior motives. And there's no middle ground in the way in
14 which Mr. Negus has dealt with Hector O'Campo, both as a witness
15 on the witness stand and in front you, ladies and gentlemen, no
16 middle ground whatsoever.

17 And yet when we listen to Dr. Hoyle, who was
18 present during O'Campo's later interview, what does Dr. Hoyle
19 tell us about Hector O'Campo's style? He is a man just looking
20 for answers, asking questions, making no suggestions, not
21 leading the child at all.

22 What does Dr. Hoyle say about Josh's initial
23 statement of three Mexicans? Remember, with O.C. Josh left that
24 portion out? Dr. Hoyle says it's a little boy trying to make
25 sense of a senseless act.

26 Hector O'Campo did not alter Josh's memory. We
27 have Dr. Hoyle's observations. We have from Josh the same basic
28 story to different people at different times that have been both

1 tape recorded and videotaped.

2 Even in the Forbes tape, the audio tape, Josh
3 doesn't recall what he said to O.C.. During the entire time
4 that Josh was with his grandmother, a time of protection and
5 love, Josh told the same basic story, a story that you ladies
6 and gentlemen got a chance to hear, the story that shows that
7 there was just just one attacker: Kevin Cooper with a hatchet
8 in one hand and a knife in the other.

9 Ladies and gentlemen of the jury, four dead
10 victims, and even Josh Ryen, depend on you to apply the
11 evidence, the law as his Honor, Judge Garner, will give you and
12 come up with a just verdict.

13 And for those innocent victims, I submit to you
14 that the law and the evidence means that Kevin Cooper is guilty.

15 THE COURT: Counsel, we thank you all. Ladies and
16 gentlemen, I have about 30 minutes of instructions to give to
17 you, and I think I shall give them to you today and then let you
18 go out and at least select a foreman today before you break.

19 I don't want to give them to you now. I think you
20 need a recess before we go with that. So let's take one more
21 recess when all 16 of you shall continue to be together, and
22 following that I will give you the instructions, then we will
23 adjourn later today.

24 The admonition still applies to you. Keep in it
25 mind. Let's take a 20 minute recess, please.

26

27 (Chambers conference reported.)

28 MR. KOCHIS: It's my initiation.

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1 THE COURT: I believe Mr. Kottmeier is missing.

2 MR. KOCHIS: It appears that way. I can speak on his
3 behalf.

4 THE COURT: For the record, the defendant is present with
5 Mr. Negus and Mr. Kochis. Yes, sir.

6 MR. KOCHIS: The lawyers as well as the members of the
7 victims family and the members of Chino Hills have some concern
8 about the verdict.

9 Mr. Negus wants to know what the Court is going to
10 require from the counsel in term of availability.

11 The members of the family of the victims and
12 friends want to know what steps can be taken so that they can be
13 here for the verdict.

14 THE COURT: I would expect that no verdict will be
15 quickly forthcoming, and that the jurors will work long and hard
16 and agonize before a verdict is arrived at one way or or the
17 other, if one is ever arrived at. And I do not intend once it
18 is obtained to wait for a matters of hours for people to come
19 from San Bernadino or something like that and keep the jurors in
20 a secluded position during that time.

21 You know, I can understand their desire, but we can
22 wait for an hour, perhaps, but that's about the maximum that I'd
23 like to wait.

24 MR. KOCHIS: Three of the people are in this courtroom at
25 the present time.

26 I believe Mr. Negus expressed some interest, if I'm
27 not putting words in his mouth, to be in Ontario. He could be
28 in this courtroom within a certain period of time.

1 I can make myself available. I can stay in San
2 Diego. Mr. Kottmeier has a more difficult situation.

3 THE COURT: Counsel, I think Mr. Negus should be here,
4 and I think at least one prosecutor should be here throughout
5 deliberations. In this kind of a case I can foresee all sorts
6 of inquiry from the jury to where we need you. And while I'm
7 sure we could work out a telephonic communication on the record,
8 that's not the very best. I would prefer you be here.

9 It may mean that -- I'm going to go ahead with
10 another case or two in the meantime -- that you would have to
11 twiddle your thumbs, but there may be other things you can do
12 from here.

13 MR. KOCHIS: I don't think Mr. Negus is aware that you
14 have agreed to sit on other criminal cases in San Diego. I
15 don't know why he is upset.

16 THE COURT: I don't know why is it any particular concern
17 with him.

18 MR. NEGUS: As long as we can start with the penalty
19 phase immediately after we get the verdict, if there is a
20 penalty phase, I have no problem. We can do it however you
21 want.

22 THE COURT: How soon would you be ready to go into a
23 penalty phase if we get a verdict?

24 MR. NEGUS: Half an hour.

25 MR. KOCHIS: The problem is I can't do it that fast
26 because although Monday morning I will have in my hand a series
27 of travel orders ready to sign, they involve travel orders for a
28 series of witnesses that are in Pennsylvania. They can't be

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1 here in a half hour unless the Court wants to gamble on when the
2 jury is going to come back.

3 THE COURT: I think it unreasonable to start within 24
4 hours such a phase if we get to it.

5 MR. NEGUS: We have plenty of time to prepare.

6 MR. KOCHIS: It's not a question of preparation. I'm not
7 asking for time to prepare. I need time to put them on a plane
8 and fly them to the West Coast.

9 MR. NEGUS: It would seem like -- I can't imagine the
10 penalty phase taking more than a day. Mine is not going to take
11 more than a day. Mine will probably take less than half a day.
12 It's not going to be a lengthy thing.

13 THE COURT: Counsel, I think about the jurors in that
14 type of a situation. They just can't immediately shift gears to
15 that extent. They need a night's sleep and a few moments to
16 reflect before we resume, if we ever do. It may all be
17 premature for all I know.

18 MR. NEGUS: Well, that may be true; on the other hand it
19 may not. But what I'm suggesting, if they come back with a
20 verdict on Wednesday or if they come back with a verdict on
21 Thursday, we start on Friday. What if it turns out to -- Can we
22 get the people from Pittsburg here the next day.

23 THE COURT: I'm not going to waste a lot of time, but it
24 may be 24 hours or a day or two, I don't know. I think it's
25 unreasonable to start -- to say everybody be Johnny on the spot
26 and come here from Pennsylvania, wherever, and be waiting right
27 here. In this type of a case with that heavy subject matter,
28 that's not realistic. So that's -- does that answer your

1 question?

2 MR. KOCHIS: Yes. I have got stuck acting as the
3 intermediary -- intermediary for the lawyers now. I know we
4 are going to be in San Diego.

5 MR. NEGUS: Could I -- They will be out tomorrow?

6 THE COURT: Counsel, as far as the two of you being in
7 San Bernadino or Ontario, you are two hours roughly from the
8 Court -- from Ontario. If it was all right with Mr. Kochis
9 and --

10 We don't have a conference phone here, do we? Or
11 do we?

12 THE CLERK: There's not one in here, but in some judges'
13 chambers there are.

14 THE COURT: I will have them check on that. If there's
15 some way that we could set Mr. Cooper down where he can hear, a
16 reporter and I can hear us, converse with you two on the phone,
17 some way where we can set up a conference call and I can read
18 you an inquiry from the jury, you can say instruct them in this
19 fashion in that manner, maybe we can work something out. I
20 don't particularly like to do it, but in this case this jury
21 could be out for a week or more.

22 MR. NEGUS: Yes, and my office is greatly understaffed
23 right now, so that's one of the reasons why I'm anxious to at
24 least lend a hand if I can.

25 THE COURT: You don't expect to get tied up in another
26 case in an actual court, do you?

27 MR. NEGUS: Not to be in trial, no, but there's a lot of
28 administrative things that need to be done.

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1 THE COURT: There's some more work that needs to be done
2 with reference to penalty phase instructing.

3 MR. NEGUS: Penalty phase instructions, I don't think we
4 even -- I will probably have it. If we get to that I will
5 probably have a set of them totally different from CALJIC. I
6 think CALJIC are probably unconstitutional and they have been
7 given in prior cases, so I didn't submit penalty phase
8 instructions till we get there.

9 THE COURT: I understand. That's one thing that you
10 could be working on both of you.

11 MR. NEGUS: I will be prepared for the penalty phase, as
12 I say, whenever the jury -- if they come back with a verdict
13 tomorrow, I'm ready.

14 THE COURT: Well, they are not going to come back with a
15 verdict tomorrow. They can't sift through almost 800 items of
16 evidence by tomorrow, and that looks to me like a hardworking
17 jury. However, I certainly know that I can't predict what a
18 jury will do. I never know. So that's the best I can do for
19 you.

20 Anything else?

21 MR. KOCHIS: No.

22 MR. NEGUS: If we could -- if we could -- I know Judge
23 Ziebarth will normally allow us to use his conference phone in
24 his chambers --

25 THE COURT: Just one second.

26 This is from Roselyn Aguinaga, the alternate juror,
27 to me:

28 "Please, would it be possible for the alternates

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1 once the jury deliberates to remain in the courtroom or stay
2 around the jury lounge? I feel for myself coming this far along
3 I would very much like to come every day until the verdict is
4 reached. Also, I only have a message phone and would feel
5 better being here even as an observer in the courtroom."

6 MR. NEGUS: I'm uncomfortable having her as an observer
7 in the courtroom.

8 MR. KOCHIS: In the jury lounge is no problem, but with
9 us meeting informally in the courtroom, no matter what it's
10 about, there would be a danger that something could happen that
11 would influence her and she would be the very name we draw.

12 THE COURT: Would it be all right then to let her wait in
13 the courthouse at the jury lounge without having her under
14 guard?

15 MR. NEGUS: That's fine. I don't have any problem with
16 that.

17 THE COURT: I will so instruct, otherwise they can go as
18 long as they can be telephone close.

19 Anything else?

20 MR. NEGUS: Until I get word otherwise, I will be then at
21 my apartment which is ten minutes from here. And I would
22 like --

23 THE COURT: I assume the clerk has your phone number.

24 MR. NEGUS: I think she does. But if it's at all
25 possible it would be nice if I could go to Ontario.

26 THE COURT: Counsel, I feel real confident about letting
27 you both go back to on Ontario tomorrow. I just can't conceive
28 of their coming back with a verdict on this case tomorrow. If I

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1 had to have you back, why, I'm sure we could work it out.

2 MR. KOCHIS: That's possible. I would prefer that Mr.
3 Negus and I be here tomorrow simply because oftentimes the first
4 day of deliberation is when they have questions, and it may be a
5 question that is not going to be able to be handled over the
6 telephone. I mean, we're here today we might as well be here
7 tomorrow.

8 MR. NEGUS: How about this? Could we be sure to go on
9 Monday because -- there is a gap between Monday --

10 We are going to be off on Tuesday, right?

11 THE COURT: Yes. We will be here Monday. I Will be here
12 Monday will be here, probably Tuesday too.

13 MR. NEGUS: I have to be in Ontario on Tuesday anyway to
14 do some other stuff which I have set up because we are not going
15 to be in court that day. Monday would be the day I would most
16 like to have off.

17 THE COURT: You mean not be here on Monday?

18 MR. NEGUS: Yeah.

19 THE COURT: I don't know how Mr. Cooper would feel about
20 it, but I want to continue to be able to conduct business as
21 much as possible. So if you want to get a waiver from your
22 client to the effect that we can -- I can speak with counsel on
23 the telephone or have Mr. Kochis present and you by phone,
24 however, that I can instruct the jury in your absence, then you
25 can be in Ontario, but you got to agree to all that.

26 THE DEFENDANT: Can I talk to you outside of the presence
27 of everybody else, please?

28 MR. NEGUS: That seems like a good idea. Let me talk to

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1 Mr. Cooper first. I can see that could raise a problem. I will
2 try and be here.

3 THE COURT: Nothing will be done off the record, of
4 course. It's hard.

5 MR. NEGUS: I will change my mind. I will be here.
6 There was one other thing. Oh, while we are -- while we are
7 in -- while the jury is deliberating can Mr. Cooper be kept over
8 at the San Diego County jail rather than brought to court every
9 day, because we can always get him within a very short time I
10 understand if needed.

11 THE BAILIFF: I've already discussed that with the
12 sheriff's and they tell me that they can leave him right in his
13 cell.

14 MR. NEGUS: That's fine. That's -- that way he can talk
15 to me on the phone. Everything is fine.

16 MR. NEGUS: As far as readbacks is concerned, if any
17 testimony is needed to be read back I would waive my presence
18 and Mr. Cooper's presence while the reporter, that is Mr. Roach
19 or --

20 THE COURT: Or Mrs. Beard.

21 MR. NEGUS: Mrs. Beard -- Donna, reads it back to the
22 jury, either in the jury room or in the open court, preferably
23 in the jury room, and that just involves them reading back parts
24 of the testimony.

25 THE COURT: What I would do in that case, if that's all
26 right with you, I would on the record first tell the jurors that
27 I will put her in there, not talk to her, don't ask any
28 questions, don't discuss in it her presence. She will read

1 until the foreperson tells her to stop. Then I would go on
2 about my business if that's all right.

3 MR. NEGUS: That's fine with me.

4 Is that okay with you, Mr. Cooper?

5 THE DEFENDANT: Yes.

6 THE COURT: And, Mr. Kochis, how do you feel about that?

7 MR. KOCHIS: My initial reaction is to waive my presence
8 as well. If he's not going to be there and the defendant is not
9 going to be there, I won't be there, and just let me talk to Mr.
10 Kottmeier about that.

11 THE COURT: I won't do this at all on any occasion
12 without us straightening it out first what I'm going to do.

13 MR. NEGUS: Fine.

14 MR. KOCHIS: But I think to make clear what Mr. Negus
15 said, if at any time the jury wants anything read back, before
16 it's read back we want to be made aware what's going to be read
17 back.

18 THE COURT: Of course.

19 MR. NEGUS: All right. We don't need to be there.

20 THE COURT: I've got this already. I don't know how I
21 wound up with that.

22 MR. KOCHIS: Because the special verdict form did not
23 have specific -- the special allegation did not have murder in
24 the first degree. It was just one count of murder and it has to
25 be murder in the first degree.

26 THE COURT: I have the original of that, apparently,
27 murder in the first degree.

28 MR. KOCHIS: This is a copy.

1 THE COURT: These are just your copies.
2 THE CLERK: I gave you that.
3 MR. NEGUS: You gave me that?
4 THE CLERK: I put the original -- those are your copies.
5 THE COURT: The verdicts seem to be proper.
6 MR. KOCHIS: Then the staff would like a five to ten
7 minute break, as would the lawyers.
8 THE COURT: Have they retained you as, counsel, --
9 MR. KOCHIS: Yes.
10 THE COURT: -- to speak for them? All right.
11 MR. NEGUS: Thank you.
12 THE CLERK: I have a question about the exhibits. None
13 of the tapes or none of the transcripts are to go into the jury
14 deliberating room; is that correct?
15 MR. NEGUS: That's correct.
16 (Chambers conference concluded.)
17
18
19 THE COURT: Counsel, would you stipulate that throughout
20 all sessions of the trial that the defendant, the alternates and
21 the jurors have all been present with counsel?
22 MR. NEGUS: Yep.
23 MR. KOCHIS: Yes.
24 THE COURT: Ladies and gentlemen, I am going to instruct
25 you as to the law and then have the jurors go back to the jury
26 room. and then I will give the alternates special instructions
27 after that.
28 All right. Ladies and gentlemen of the jury:

1 Now that you have heard the evidence we come to
2 that part of the trial where you are instructed as to the
3 applicable law.

4 I am required to read the instructions to you in
5 open court. In addition, you will have these instructions in
6 their written form in the jury room for use during your
7 deliberation, if you request.

8 Whether a defendant is to be found guilty or not
9 guilty depends upon both the facts and the law.

10 As jurors you have two duties to perform. One duty
11 is to determine the facts of the case from the evidence received
12 in the trial and not from any other source.

13 The word "fact" means something that is proved
14 directly or circumstantially by the evidence, or by an agreement
15 of counsel. Your other duty is to apply the rules of law that I
16 state to you to the facts as you determine them, and in this way
17 to arrive at your verdict.

18 It is my duty in these instructions to explain to
19 you the rules of law that apply to this case. You must accept
20 and follow the rules of law as I state them to you.

21 As jurors you must not be influenced by pity for a
22 defendant, or by prejudice against him. You must not be biased
23 against the defendant because he's been arrested for these
24 offenses, or because he's been charged with a crime, or because
25 he's been brought to trial. None of these circumstances are
26 evidence of his guilt and you must not infer or assume from any
27 or all of them that he's more likely to be guilty than innocent.

28 You must not be swayed by mere sentiment,

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1 conjecture, sympathy, passion, prejudice, public opinion or
2 public feeling. Both the People and the defendant have a right
3 to expect that you will conscientiously consider and weigh the
4 evidence and apply the law of the case and that you will reach a
5 just verdict regardless of what the consequences of such verdict
6 may be.

7 The written instructions now being given will be
8 made available in the jury room during your deliberations if you
9 so request. They must not be defaced in any way.

10 You will find that the instructions may be either
11 printed, typewritten or handwritten. Some of the printed or
12 typewritten instructions may be modified by typing or
13 handwriting. Blanks in the printed instructions may be filled
14 in by typing or handwriting. Also, portions of the printed or
15 typewritten instructions may have been deleted by lining out.

16 You are not to be concerned with the reasons for
17 any modifications that have been made. Also, you must disregard
18 any deleted part of an instruction and not speculate either what
19 it was or what is the reason for its deletion.

20 Every part of an instruction, whether it is
21 printed, typed or handwritten, is of equal importance. You are
22 to be governed only by the instruction in its final wording
23 whether printed, typed or handwritten.

24 If any rule, direction or idea in these
25 instructions is repeated or stated in varying ways, no emphasis
26 is intended and you must not draw any inference because of its
27 repetition. You are not to single out any certain sentence or
28 any individual point or instruction and ignore the others. You

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1 are to consider all the instructions as a whole and are to
2 regard each in the light of all the others.

3 The order in which the instructions are given has
4 no significance as to their relative importance.

5 The order in which -- statements made by the
6 attorneys during the trial, are not evidence. However, if
7 counsel for the parties have stipulated to any fact you will
8 regard that fact as being conclusively proved as to the party or
9 parties making the stipulation.

10 A "stipulation" is an agreement between attorneys
11 as to matters relating to the trial. As to any question to
12 which an objection was sustained, you must not guess what the
13 answer might have been, or as to the reason for the objection.

14 You must never assume to be true any insinuation
15 suggested by a question asked a witness. A question is not
16 evidence and may be considered only as it supplies meaning to
17 the answer.

18 You must not consider for any purpose any offer of
19 evidence that was rejected or any evidence that was ordered
20 stricken out by the court. Such matters are to be treated as
21 though you had never heard it.

22 You were previously given notebooks and pencils; as
23 indicated, however, you should not permit your note-taking to
24 distract you from the ongoing proceedings.

25 Your notes are only an aid to your memory and
26 should not take precedence over your independent recollection.
27 If any of you did not take any notes you should rely on your
28 independent recollection of the evidence and should not be

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1 influenced by the fact that another juror has taken notes.

2 Notes are for the note-takers own personal use in
3 refreshing his or her recollection of the evidence. If any
4 discrepancy exists between your notes and your recollection of
5 the evidence, you may request the record be read to you since
6 the transcript will prevail over your notes.

7 For sake of convenience, the masculine pronoun is
8 used in these instructions applies equally to all persons.

9 Every person who testifies under oath is a witness.
10 You are the sole judges of the believability of the witness, of
11 a witness, and the weight to be given the testimony of each
12 witness.

13 In determining the believability of a witness you
14 may consider anything that has a tendency in reason to prove or
15 disprove the truthfulness of the testimony of the witness
16 including, but not limited, to any of the following:

17 The extent of the opportunity or ability of the
18 witness to see or hear or otherwise become aware of any matter
19 about which the witness has testified.

20 The ability of a witness to remember, or to
21 communicate any matter about which the witness has testified.

22 The character and quality of that testimony.

23 The demeanor and manner of the witness while
24 testifying.

25 The existence or nonexistence of a bias, interest
26 or other motive.

27 Evidence of the existence or nonexistence of any
28 fact testified to by the witness.

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1 The attitude of the witness toward the action in
2 which testimony has been given by the witness, or toward the
3 giving of testimony.

4 A statement previously made by the witness that is
5 consistent or inconsistent with the testimony of the witness.

6 An admission by the witness of untruthfulness.

7 A witness' prior conviction of a felony.

8 The fact that a witness has been convicted of a
9 felony, if such be a fact, may be considered by you only for the
10 purpose of determining the credibility of that witness.

11 The fact of such conviction does not necessarily
12 destroy or impair the witness' credibility. It is one of the
13 circumstances that you may take into consideration in weighing
14 the testimony of such a witness.

15 A witness wilfully false in one material part of
16 his testimony is to be distrusted in others. You may reject the
17 whole testimony of a witness who wilfully has testified falsely
18 as to a material point unless from all the evidence you shall
19 believe the probability of truth favors the testimony in other
20 particulars.

21 However, discrepancies in a witness' testimony, or
22 between his testimony and that of others, if there were any, do
23 not necessarily mean that the witness should be discredited.
24 Failure of recollection is a common experiences, and innocent
25 misrecollection is not uncommon.

26 It is a fact, also, that two persons witnessing an
27 incident or a transaction often will see or hear it differently.
28 Whether a discrepancy pertains to a fact of importance or only

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1 to a trivial detail should be considered in weighing its
2 significance.

3 Evidence that on some former occasion a witness
4 made a statement or statements that were consistent or
5 inconsistent with his testimony in this trial may be considered
6 by you not only for the purpose of testing the credibility of
7 the witness, but also as evidence of the truth of the facts as
8 stated by the witness on such former occasion.

9 In this case, testimony given by a witness at a
10 prior proceeding has been read to you from the reporter's
11 transcript of that proceeding. You are to consider such
12 testimony in the same light and in accordance with the same
13 rules which you have been given as to the testimony of witnesses
14 who have testified here in court.

15 A person is qualified to testify as an expert if he
16 has special knowledge, skill, experience, training or education
17 sufficient to qualify him as an expert on the subject to which
18 his testimony relates.

19 Duly qualified experts may give their opinion on
20 questions in controversy at a trial. To assist you in deciding
21 such questions, you may consider the opinion, with the reasons
22 given for it, if any, by the expert who gives the opinion. You
23 may also consider the qualifications and credibility of the
24 expert.

25 In resolving any conflict that may exist in the
26 testimony of expert witnesses you should consider the relative
27 qualification and credibility of the expert witnesses as well as
28 the reasons for each opinion, and the acts and other matters

1 upon which it was based.

2 You are not bound to accept an expert opinion as
3 conclusive but should give to it the weight to which you find it
4 to be entitled. You may disregard any such opinion if you find
5 it to be unreasonable.

6 In examining an expert witness counsel may propound
7 to him a type of question known in the law as a hypothetical
8 question. By such a question the witness is asked to assume to
9 be true a set of facts and to give an opinion based upon that
10 assumption.

11 In permitting such a question the Court does not
12 rule and does not necessarily find that all the assumed facts
13 have been proved. It only determines that those assumed facts
14 are within the probable or possible range of the evidence.

15 It is for you, the jury, to find from all the
16 evidence whether or not the facts assumed in a hypothetical
17 question have been proved. And if you should find that any
18 assumption of such a question has not been proved, you are to
19 determine the effect of that failure of proof on the value and
20 weight of the expert opinion based on the assumed facts.

21 In determining the weight to be given to an opinion
22 expressed by any witness, who did not testify as an expert
23 witness, you should consider his credibility, the extent of his
24 opportunity to perceive the matters upon which his opinion is
25 based, and the reasons, if any, given for it. You are not
26 required to accept such an opinion but should give it the
27 weight, if any, to which you find it to be entitled.

28 In this case the defendant has testified to certain

1 facts.

2 If you find that he failed to explain or deny any
3 evidence against him introduced by the prosecution, which he can
4 reasonably be expected to deny or explain because of facts
5 within his knowledge, you may take that failure into
6 consideration as tending to indicate the truth of such evidence
7 and as indicated that among the inference that may reasonably
8 drawn therefrom, those unfavorable to the defendant are the more
9 probable.

10 In this connection, however, it should be noted if
11 a defendant does not have the knowledge that he would need to
12 deny or to explain evidence against him, it would be
13 unreasonable to draw an inference unfavorable to him because of
14 his failure to deny or explain such evidence.

15 The failure of a defendant to deny or explain
16 evidence against him does not create a presumption of guilt or
17 by itself warrant an inference of guilt, nor does it relieve the
18 prosecution of its burden of proving every essential element of
19 the crime and the guilt of the defendant beyond a reasonable
20 doubt.

21 You are not bound to decide in conformity with the
22 testimony of a number of witnesses which does not produce
23 conviction in your mind as against the testimony of a lesser
24 number, or other evidence which appeals to your mind with more
25 convincing force.

26 This does not mean that you are at liberty to
27 disregard the testimony of the greater number of witnesses
28 merely from caprice or prejudice or from a desire to favor one

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1 side as against the other. It does mean that you are not to
2 decide an issue by the simple process of counting numbers of
3 witnesses who have testified on the opposing side. It means
4 that the final test is not in the relative number of witnesses
5 but in the relative convincing force of the evidence.

6 Neither side is required to call as witnesses all
7 persons who may have been present at any of the events disclosed
8 by the evidence, or who may appear to have some knowledge of
9 these events, or to produce all objects or documents mentioned
10 or suggested by the evidence.

11 Testimony which you believe given by one witness is
12 sufficient for the proof of any fact. However, before finding
13 any fact required to be established by the prosecution, to be
14 proved solely by the testimony of such a single witness, you
15 should carefully review all the testimony upon which the proof
16 of such fact depends.

17 I have not intended by anything that I have said or
18 done or by any questions that I may have asked or by any ruling
19 that I may have made to intimate or suggest what you should find
20 to be the facts on any questions submitted to you or that I
21 believe or disbelieve any witness. If anything that I have done
22 or said has seemed to so indicate, you will disregard it and
23 form your own opinion.

24 When, as in this case, it is alleged that the crime
25 charged was committed on or about a certain date, if the jury
26 finds that the crime was committed, it is not necessary that the
27 proof should show that it was committed on that precise date. It
28 is sufficient if the proof shows that the crime was committed on

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1 or about that date.

2 Certain evidence was admitted for a limited
3 purpose. At the time this evidence was admitted you were
4 admonished that it could not be considered by you for any
5 purpose other than a limited purpose for which it was admitted.

6 You are again instructed that you must not consider
7 such evidence for any purpose except the limited purpose for
8 which it was admitted.

9 Evidence has been introduced for the purpose of
10 showing that the defendant committed crimes other than that for
11 which he's on trial. Such evidence, if believed, was not
12 received and may not be considered by you to prove that he's a
13 person of bad character, or that he has a disposition to commit
14 crimes.

15 Such evidence was received and may be considered by
16 you only for the limited purpose of determining if it tends to
17 show:

18 1. A connection of certain items of physical
19 evidence to Mr. Cooper;

20 2. That the defendant had knowledge or possessed
21 the means that might have been useful and necessary for the
22 commission of the crimes charged.

23 For the limited purpose for which you may consider
24 such evidence you must weigh it in the same manner as you do all
25 other evidence in the case. You are not permitted to consider
26 such evidence for any other purpose.

27 Evidence has been introduced that changes have been
28 taken place at the Ryen home and the 2991 residence since June

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1 5, 1983. You should evaluate all of the evidence in light of
2 the condition of the two homes in June of 1983.

3 Evidence consists of testimony of witnesses,
4 writings, material objects or anything presented to the senses
5 and offered to prove the existence or nonexistence of a fact.

6 Evidence is either direct or circumstantial.

7 Direct evidence is evidence that directly proves a
8 fact without the necessity of an inference, and which, by
9 itself, if found to be true, establishes that fact.

10 Circumstantial evidence is evidence that if, found
11 to be true, proves a fact from which an inference of the
12 existence of another fact may be drawn.

13 An inference is a deduction of fact that may
14 logically and reasonably be drawn from another fact or group of
15 facts established by the evidence.

16 It is not necessary that facts be proved by direct
17 evidence. They may be proved also by circumstantial evidence or
18 by a combination of direct evidence and circumstantial evidence.
19 Both direct and circumstantial evidence are acceptable as a
20 means of proof, neither is entitled to any greater weight than
21 the other.

22 However, a finding of guilt as to any crime may not
23 be based on circumstantial evidence, unless the proved
24 circumstances are not only consistent with the theory that the
25 defendant is guilty of the crime, but cannot be reconciled with
26 any other rational conclusion.

27 Further, each fact which is essential to complete a
28 set of circumstances necessary to establish the defendant's

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1 guilt must be proved beyond a reasonable doubt.

2 In other words, before an inference is essential to
3 establish guilt may be found to have been proved beyond a
4 reasonable doubt, each fact or circumstance upon which such
5 inference necessarily rests must be proved beyond a reasonable
6 doubt.

7 Also, if the circumstantial evidence as to any
8 particular count is susceptible of two reasonable
9 interpretations, one of which points to the defendant's guilt
10 and the other to his innocence, it is your duty to adopt that
11 interpretation which points to the defendant's innocence and
12 reject that interpretation which points to his guilt.

13 If, on the other hand, one interpretation of such
14 evidence appears to you to be reasonable, and the other
15 interpretation to be unreasonable, it would be your duty to
16 accept the reasonable interpretation and to reject the
17 unreasonable.

18 Motive is not an element of the crimes charged and
19 need not be shown. However, you may consider motive or lack of
20 motive as a circumstance. In this case, presence of motive may
21 tend to establish guilt; absence of motive may tend to establish
22 innocence. You will therefore give its presence or absence, as
23 the case may be, the weight to which you find it to be entitled.

24 The flight of a person immediately after the
25 commission of a crime, or after he is accused of a crime is not
26 sufficient in itself to establish guilt, but is a fact which, if
27 proved, may be considered by you in the light of all other
28 proved facts in deciding the question of his guilt or innocence.

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1 Whether or not evidence of flight shows a consciousness of
2 guilt, and the significance to be attached to such a
3 circumstance are matters for your determination.

4 If you find that the defendant attempted to
5 suppress evidence against himself in any manner, such as by
6 destroying evidence, such attempts may be considered by you as a
7 circumstance tending to show a consciousness of guilt. However,
8 such evidence is not sufficient in itself to prove guilt and its
9 weight and its significance, if any, are matters for your
10 determination.

11 A defendant in a criminal action is presumed to be
12 innocent until the contrary is proved and in case of a
13 reasonable doubt, whether his guilt is satisfactorily shown, he's
14 entitled to a verdict of not guilty.

15 This presumption places upon the state the burden
16 of proving him guilty beyond a reasonable doubt.

17 Reasonable doubt is defined as follows:

18 It is not a mere possible doubt; because everything
19 relating to humans affairs, and depending on moral evidence, is
20 open to some possible or imaginary doubt. It is that state of
21 the case which, after the entire comparison and consideration of
22 all the evidence, leaves the minds of the jurors in that
23 condition that they cannot say they feel an abiding conviction,
24 to a moral certainty, of the truth of the charges.

25 The defendant is charged in Count Two of the
26 Information with the crime of Murder in the First Degree of
27 Franklyn Douglas Ryen.

28 The defendant is charged in Count Three of the

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1 Information with the crime of Murder in the First Degree of
2 Jessica Ryen.

3 The defendant is charged in Count Four of the
4 Information with the crime of Murder in the First Degree of
5 Peggy Ann Ryen.

6 The defendant is charged in Count Five of the
7 Information with the crime of Murder in the First Degree of
8 Christopher Hughes.

9 It is further alleged that the defendant has in
10 this proceeding, been convicted of more than one offense of
11 murder.

12 The defendant is charged in Count Six of the
13 Information with the crime of Attempt To Commit The Crime Of
14 Murder in the First Degree of Joshua Ryen.

15 It is further alleged in the commission of the
16 above offense the said defendant, Kevin Cooper, with the intent
17 to inflict such injury, inflicted great bodily injury on a
18 person other than an accomplice, to wit, Joshua Ryen.

19 The defendant is charged in Counts Two, Three, Four
20 and Five of the Information with the commission of the crime of
21 Murder in the First Degree, a violation of section 187 of the
22 Penal Code.

23 The crime of Murder in the First Degree is the
24 unlawful killing of a human being with malice aforethought and
25 with deliberation and premeditation.

26 In order to prove the commission of the crime of
27 Murder in the First Degree each of the following elements must
28 be proved:

- 1 1. That a human being was killed;
- 2 2. That the killing was unlawful;
- 3 3. That the killing was done with malice
- 4 aforethought;
- 5 4. That the killing was done with deliberation;
- 6 and,
- 7 5. That the killing was done with premeditation.

8 All murder which is perpetrated by any kind of
9 willful, deliberate and premeditated killing with malice --
10 excuse me -- with express malice aforethought is murder of the
11 first degree.

12 The word "willful" as used in this instruction,
13 means intentional.

14 The word "deliberate" means formed or arrived at or
15 determined upon as a result of careful thought and weighing of
16 considerations for and against the proposed course of action.

17 The word "premeditated" means considered
18 beforehand.

19 If you find that the killing was preceded and
20 accompanied by a clear, deliberate intent on the part of the
21 defendant to kill, which was the result of deliberation and
22 premeditation, so that it must have been formed upon preexisting
23 reflection and not under a sudden heat of passion or other
24 condition precluding the idea of deliberation, it is murder of
25 the first degree.

26 The law does not undertake to measure in units of
27 time the length of period during which the thought must be
28 pondered before it can ripen into an intent to kill which is

1 truly deliberate and premeditated. The time will vary with
2 different individuals and under varying circumstances.

3 The true test is not the duration of time, but
4 rather the extent of the reflection. A cold, calculated
5 judgment and decision may be arrived at in a short period of
6 time, but a mere unconsidered and rash impulse, even though it
7 include an intent to kill, is not such deliberation and
8 premeditation as will fix an unlawful killing as murder of the
9 first degree.

10 To constitute a deliberate and premeditated the
11 killing, the slayer must weigh and consider the question of
12 killing and the reasons for and against such a choice and,
13 having in mind the consequences, he decided to and does kill.

14 Malice is express when there is manifested an
15 intention unlawfully to kill a human being.

16 When it is shown that a killing resulted from the
17 intentional doing of an act with express malice, no other mental
18 state need be shown to establish the mental state of malice
19 aforethought.

20 The mental state constituting malice aforethought
21 does not necessarily require any ill will or hatred of the
22 person killed.

23 "Aforethought" does not imply deliberation or the
24 lapse of considerable time. It only means that the required
25 mental state must precede rather than follow the act.

26 The defendant is charged in Count Six of the
27 Information with the crime of Attempt to Commit the Crime of
28 Murder in the First Degree.

1 An attempt to commit a crime consists of two
2 elements, namely, a specific intent to commit the crime, and a
3 direct but ineffectual act done towards its commission.

4 In determining whether or not such an act was done,
5 it is necessary to distinguish between mere preparation, on the
6 one hand, and the actual commencement of the doing of the
7 criminal deed, on the other. Mere preparation which may consist
8 of planning the offense or of devising, obtaining or arranging
9 the means for its commission, is not sufficient to constitute an
10 attempt; but acts of a person who intends to commit a crime will
11 constitute an attempt where they themselves clearly indicate a
12 certain, unambiguous intent to commit that specific crime, and,
13 in themselves, are an immediate step in the present execution of
14 the criminal design, the progress of which would be completed
15 unless interrupted by some circumstance not intended in the
16 original design.

17 In each of the crimes charged in Counts Two, Three,
18 Four, Five and Six of the Information, namely, murder, and
19 attempt to commit the crime of murder, there must exist a union
20 or joint operation of act or conduct and a certain specific
21 intent in the mind of the perpetrator, and unless such specific
22 intent exists, the crime to which it relates is not committed.

23 The specific intent required is the deliberate and
24 premeditated intent to kill.

25 The specific intent with which an act is done may
26 be shown by the circumstances surrounding the commission of the
27 act. But you may not find the defendant guilty of the offense
28 charged in Counts Two, Three, Four, Five and Six, unless the

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1 proved circumstances not only are consistent with the theory
2 that he had the required specific intent, but cannot be
3 reconciled with any other rational conclusion.

4 Also, if the evidence as to such specific intent is
5 susceptible of two reasonable interpretations, one of which
6 points to the existence of a specific intent, and the other to
7 the absence of a specific intent, it is your duty to adopt that
8 interpretation which points to the absence of the specific
9 intent. If, on the other hand, one interpretation of the
10 evidence as to such specific intent appears to you to be
11 reasonable and the other interpretation to be unreasonable, it
12 would be your duty to accept the reasonable interpretation and
13 to reject the unreasonable.

14 It is charged in Count Six that in the attempted
15 commission of the crime therein described, the defendant, Kevin
16 Cooper, with the specific intent to inflict such injury,
17 personally inflicted great bodily injury on Josh Ryen.

18 If you find the defendant guilty of attempted
19 Murder in the First Degree, it then will be your duty to
20 determine whether or not the defendant, with the specific intent
21 to inflict such injury, did personally inflict great bodily
22 injury, as herein defined, on Josh Ryen in the attempted
23 commission of murder in the first degree. The burden is on the
24 People to prove this beyond a reasonable doubt.

25 The term "great bodily injury" as used in this
26 instructions means a significant or substantial physical injury.
27 Minor or moderate injuries of a temporary nature do not
28 constitute great bodily injury within the meaning of this

1 instruction.

2 You will include a finding on that question in your
3 verdict using the form that will be supplied for that purpose.

4 Great Bodily Injury refers to significant or
5 substantial bodily injury or damage; it does not refer to
6 trivial or insignificant injury or moderate harm.

7 Each count charges a distinct offense. You must
8 decide each count separately. The defendant may be found guilty
9 or not guilty of any or all of the offenses charged. Your
10 finding as to each count must be stated in a separate verdict.

11 If you find in this -- excuse me. If you find the
12 defendant in this case guilty of murder of the first degree, you
13 must then determine if the murder was committed under the
14 following special circumstances:

15 That the defendant, Kevin Cooper, has in this
16 proceeding, been convicted of more than one offense of Murder in
17 the First Degree.

18 A special circumstance must be proved beyond a
19 reasonable doubt.

20 If you have a reasonable doubt as to whether a
21 special circumstance is true, it is your duty to find that it
22 not true.

23 In order to find the special circumstance charged
24 in this case to be true or untrue, you must agree unanimously.

25 You will include in your verdict on a form that
26 will be supplied your finding as to whether the special
27 circumstance is or is not true.

28 You are not permitted to find the special

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1 circumstances charged in this case to be true based on
2 circumstantial evidence unless the proved facts are not only
3 consistent with the theory that the special circumstances are
4 true, but cannot be reconciled with any other rational
5 conclusion. Each fact which is essential to complete a set of
6 facts necessary to establish the truth of the special
7 circumstances must be proved beyond a reasonable doubt.

8 Also, if the circumstantial evidence is susceptible
9 of two reasonable interpretations, one of which points to the
10 truth of the special circumstances and the other to their
11 untruth, it is your duty to adopt that interpretation which
12 points to their untruth, and reject that interpretation which
13 points to their truth.

14 If, on the other hand, one interpretation of such
15 evidence appears to you to be reasonable and the other
16 interpretation to be unreasonable, it would be your duty to
17 accept the reasonable interpretation and to reject the
18 unreasonable.

19 In your deliberations the subject of penalty or
20 punishment is not to be discussed nor considered by you. That
21 is a matter which must not in any way affect your verdict or
22 affect your finding as to the special circumstances charged in
23 this case.

24 You have been instructed as to all the rules of law
25 that may be necessary for you to reach a verdict. Whether some
26 of the instructions will apply will depend upon your
27 determination of the facts. You will disregard any instruction
28 which applies to a state of facts which you determine does not

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1 exist. You must not conclude from the fact that an instruction
2 has been given that the Court is expressing any opinion as to
3 the facts.

4 Both the People and the defendant are entitled to
5 the individual opinion of each juror.

6 It is the duty of each of you to consider the
7 evidence for the purpose of arriving at a verdict if you can do
8 so. Each of you must decide the case for yourself, but should
9 do so only after a discussion of the evidence and instructions
10 with the other jurors.

11 You should not hesitate to change an opinion if you
12 are convinced it is erroneous. However, you should not be
13 influenced to decide any question in a particular way because a
14 majority of the jurors, or any of them, favor such a decision.

15 The attitude and conduct of jurors at the beginning
16 of their deliberations are matters of considerable importance.
17 It is rarely productive of good for a juror at the outset to
18 make an emphatic expression of his opinion on the case or to
19 announce a determination to stand for a certain verdict. When
20 one does that at the beginning, his sense of pride may be
21 aroused, and he may hesitate to change his position even if
22 shown that it is wrong. Remember that you are not partisans nor
23 advocates in this matter, but are judges.

24 We'll give you all the various possible verdict
25 forms but they will read as follows, and each of them have a
26 number.

27 Verdict form II-A says, "We, the jury in the above
28 entitled action, find the defendant, Kevin Cooper, guilty of the

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1 crime of Murder in the First Degree as charged in the
2 Information as to Count Two"; or

3 Form II-B says, "We, the jury in the above entitled
4 action, find the defendant, Kevin Cooper, not guilty as to Count
5 Two."

6 With respect to Count Three, we have one form that
7 says, "We, the jury in the above entitled action, tax find the
8 defendant Kevin Cooper, guilty of the crime of Murder in the
9 First Degree, as charged in the Information, as to Count Three";
10 or

11 And another form representing that Count III-B
12 says, "We, the jury in the above entitled action, find the
13 defendant, Kevin Cooper, not guilty, as to Count Three."

14 And with respect to Count Four, form IV-A says,
15 "We, the jury in the above entitled action, find the defendant,
16 Kevin Cooper, guilty of the crime of Murder in the First Degree,
17 as charged in the Information as to Count Four"; or

18 IV-B says, "We, the jury in the above entitle
19 action, find the defendant, Kevin Cooper, not guilty as to Count
20 Pour."

21 In this case your verdict may be in one of the
22 following forms as to Count Five.

23 V-A, "We, the jury in the above entitled action,
24 find the defendant, Kevin Cooper, guilty of the crime of Murder
25 in the First Degree, as charged in the Information as to Count
26 Five"; or.

27 V-B says, "We, the jury in the above entitled
28 action, find the defendant, Kevin Cooper, not guilty as to Count

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1 Five."

2 In this case your finding may be in one of the
3 following forms as the special allegation.

4 Special Allegation-True: "We, the jury in the
5 above entitled action, find the allegation that the defendant
6 has in this proceeding, been convicted of more than one offense
7 of Murder in the First Degree to be true"; or

8 Special Allegation-Not True: A different form
9 says, "We, the jury in the above entitled action, find the
10 allegation that the defendant has in this proceeding been
11 convicted of more than one offense of murder, to be not true."

12 "In this case your verdict may be in one of the
13 following forms as to Count Six.

14 VI-A says, "We, the jury in the above entitled
15 action, find the defendant, Kevin Cooper, guilty of the crime of
16 Attempt to Commit the Crime of Murder in the First Degree, as
17 charged in the Information as to Count Six"; or

18 VI-B says, "We, the jury in the above entitled
19 action, find the defendant, Kevin Cooper, not guilty as to Count
20 Six."

21 In this case your finding may be in one of the
22 following forms as to the Great Bodily Allegation as to Count
23 Six.

24 Great Bodily injury allegation to that Count Six
25 -True.

26 "We, the jury in the above entitled action, find
27 the allegation that in the commission of the above offense, the
28 said defendant, Kevin Cooper, with the intent to inflict such

1 injury, inflicted great bodily injury on a person other than an
2 accomplice, to wit, Joshua Ryen, to be true as to Count Six"; or

3 The other form relating to that special allegation
4 says, "Great Bodily Injury Allegation as to Count Six-Not True.

5 "We, the jury in the above entitled action, find
6 the allegation that in the commission of the above offense, the
7 said defendant, Kevin Cooper, with the intent to inflict such
8 injury inflicted great bodily injury on a person other than an
9 accomplice, to wit, Joshua Ryen, to be not true."

10 Ladies and gentlemen, you shall now retire and
11 select one of your number to act as foreman who will preside
12 over your deliberations. In order to reach a verdict, all
13 twelve jurors must agree to the decision and to any finding you
14 have been instructed to include in your verdict.

15 As soon as all of you have agreed upon a verdict as
16 to each count and the special allegation, you shall have them
17 dated and signed by your foreman and then return them to this
18 courtroom.

19 Please swear the bailiff.

20 (The bailiff was duly sworn.)

21

22 THE COURT: Does the jury have a button or a buzzer that
23 is connected with the courtroom?

24 THE BAILIFF: They have a phone where we can call back.

25 THE COURT: Okay. Let me give you some special
26 instructions then before you go out.

27 To some extent I am going to let you make your own
28 hours, so to speak, except that since the Court is not

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1 convening, he has to find twelve of you before he will let you
2 in and before you go into the deliberation room.

3 So, you can caucus there and decide, except do not
4 come in later than 9:30 please, do not go home before 4:00, the
5 hours that we have been keeping heretofore, and other than that
6 you can decide when to go to lunch, when to adjourn in the
7 evening, when to return, and you will simply have the foreman or
8 foreperson, forelady, wherever, tell the bailiff on each
9 occasion your intention.

10 All right. And the bailiff will also tell you
11 where to meet and how to conduct yourself. All you do is phone
12 him when you want to leave, then he will come and let you out on
13 each occasion.

8
14 You know, I have told you I guess a hundred times
15 now, or more, the admonition about talking to anybody outside of
16 court. This specially applies now. It is perfectly all right
17 now for you to talk back in the jury room and you can finally
18 talk about the case in the deliberation room, but when that door
19 opens and you separate, when you go home at night or you walk to
20 your bus stop together, or when you meet the next morning, or
21 when you are at home or any place else except locked up in the
22 deliberation room, you don't talk about the case, you don't let
23 anybody else discuss it with you.

24 Do your very best, do not read about it, listen to
25 the radio about it, or watch it on TV, or in any way get
26 contaminated with outside sources. And as I indicated, you can
27 only discuss it when there is twelve of you behind closed door
28 meetings. When you are divided up and into smaller numbers, you

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1 just don't talk about it with anybody or let them talk to you
2 about it. Okay?

3 We're going to work tomorrow. I would expect you
4 can now go back to the jury room and for your first session it
5 can be very brief. If you want to elect a foreman, if you wish,
6 or save that until tomorrow. Tell the bailiff when you wish to
7 go home today, that is personally fine, then you can start off
8 promptly tomorrow morning at that time. You can likewise tell
9 them when to report in this.

10 Counsel, have I omitted admonishing in any way the
11 jury? It seems like I am forgetting something.

12 We probably won't take all the evidence back there
13 until tomorrow for you to start reviewing the evidence. Okay?

14 Ladies and gentlemen, would you go with the
15 bailiff, please. Would the alternates remain seated, please.

16 (The jury retires from the courtroom.)
17

18 THE COURT: I want to address my words now to the four
19 alternates who are stronger standbys in this case. I am hoping
20 that we will never have to use anyone of the four and I am just
21 rather amazed that we have gone all the way through a trial
22 without any need for you.

23 MR. KOCHIS: Your Honor, did the Court include 17.47, one
24 of the instructions I think Mr. Negus asked for, about not
25 advising anyone how they were polled?

26 THE COURT: No. Somehow we missed that one. We talked
27 about it. Would you like me to bring them back?

28 MR. NEGUS: Yes. You might as well. You can just read

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1 it out of the book as far as I am concerned.

2 THE COURT: Tell the bailiff -- go ahead, I will have the
3 alternates here. Yes, bring them back in here.

4 (The jury convenes in the courtroom.)
5

6 THE COURT: Sorry about that. We're going to permit you
7 to separate. I appreciate -- well, they're back already. All
8 right.

9 I forgot one matter. Please come back in just
10 briefly, if you would. The jurors are back, with the alternates
11 in open court.

12 I told you before that the order in which the
13 instructions are given is of no significance nor should you
14 emphasize one part of an instruction over another.

15 The fact that I am going to give you one more
16 instruction that should have been worked in with the others, it
17 is just my omission, I neglected to have it typed.

18 Let me give it at this time to you, now. But you
19 should give it no special note but consider it along with all
20 other instructions.

21 You shall not disclose to anyone outside the jury,
22 not even to the Court or any member of its staff, either orally
23 or in writing, how you are divided numerically in your balloting
24 as to the guilt or innocence of the defendant, or as to any
25 offense charged, until specifically directed to do so by the
26 Court.

27 I will have that typed up and inserted with the
28 other instructions, ladies and gentlemen. I'm sorry, I just

1 omitted to do that, kind of a false start. Would you retire
2 once again please.

3 One of the alternates has requested the right to
4 stay in the courtroom, to come to court everyday. That is all
5 right, except not in the courtroom. I am going to be trying
6 other cases commencing tomorrow morning, another jury, another
7 case, a short one, much shorter, three or four day case
8 probably, and we would rather you not be in court. Something
9 might happen to effect you if you are in court.

10 Each of you have to remain ready at all times to
11 step into the seat of one of the other people in case something
12 happens to one of them, so you have to guard against becoming
13 contaminated in any way, so to speak. But, if you wish to come
14 down, that is fine, simply let my clerk know where you will be,
15 give a phone number or something like that she could contact you
16 down in the jury lounge, for instance, if you wanted to wait
17 there. Other than that, if you could get to court within 45
18 minutes or an hour, it would be perfectly all right for you to
19 be either by the telephone close at home or at work, to where
20 you can go about your usual life with expectations of not ever
21 having to be called. But in case we need you, we will call you
22 and then you will have to kind of drop things and come running.

23 But since we don't know which one of you would, or
24 more would have to be used, you all have to be careful that you
25 don't read about it, don't watch it on the news, you don't talk
26 about it, or let anybody discuss it with you.

27 All right, any questions from any of you?

28 The clerk will give you a phone number in case you

1 haven't gotten it. You can write what number, should they call
2 it.

3 THE CLERK: This number.

4 THE COURT: She'll furnish to you that when we adjourn,
5 to where you can call in if you need to call the clerk or with
6 any message at all. If you are not going to be at one of your
7 phone numbers that we have, make sure you give her the numbers
8 where you can be reached.

9 And, in case we don't see you, any of you again, I
10 will, at some point I will be doing something I have never
11 done in 19-plus years, at least I am presently intending doing
12 that, is write a letter of appreciation to each and everyone of
13 you. Other than that I expect not to see you again.

14 On behalf of all counsel, everybody concerned here,
15 and the staff. I want to thank you most sincerely for your
16 patience, your promptness. It's been absolutely incredible that
17 all of you have stayed with us so long.

18 That you all, everyone of you. You are now free to
19 leave. Court will be in adjournment until some need from the
20 jury is indicated.

21 (Adjournment.)
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0 (t 1 SAN DIEGO, CALIFORNIA, WEDNESDAY, FEBRUARY 8, 198⁵, 1:39 P.M.

2
3 --ooOoo--

4 (The following is a reported phone conversation
5 between the bailiff and the Court:)

6 THE COURT: "Per instructions from the Court, I will play
7 the tape cassette for you of the conversation between Dr.
8 Lorna Forbes and Joshua Ryen in its entirety or until the
9 foreman tells me to stop. Do not discuss the case in my
10 presence or make any comments in my presence, nor ask any
11 questions. And then as soon as the tape is finished or
12 we are finished, I will take the tape back outside
13 together with the machine. This is all pursuant to
14 stipulation and agreement of counsel."

15 Would you type that up right away so she can get
16 the concurrence of counsel and read it back, and tell Dodie to
17 call me back there if there is any further question.

18 (End of conversation.)
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