

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN BERNARDINO
3

4 THE PEOPLE OF THE STATE)
OF CALIFORNIA,)

5 Plaintiff,)

6 vs.)

7 KEVIN COOPER,)

8 Defendant.)
9

NO. OCR-9319

CR-72787

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10
11 REPORTERS' DAILY TRANSCRIPT

12 BEFORE HONORABLE RICHARD C. GARNER, JUDGE

13 DEPARTMENT 10 - SAN BERNARDINO, CALIFORNIA

14 Monday, June 11, 1984

15 APPEARANCES:

16 For the People:

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District Attorney

17 DENNIS KOTTMEIER
18 District Attorney
19 By: JOHN P. KOCHIS
Deputy District Attorney

20 For the Defendant:

DAVID McKENNA
Public Defender
21 By: DAVID NEGUS
22 Deputy Public Defender

23 Reported by:

24 LEONARD D. GUNN
Official Reporter
C.S.R. No. 1109
and
25 JUDITH L. MORRIS
Official Reporter
26 C.S.R. No. 2400

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I N D E X T O E X H I B I T S

<u>EXHIBIT</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
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H-191	Manual	3173	--
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1 SAN BERNARDINO, CALIFORNIA, MONDAY, JUNE 11, 1984

2 9:55 O'CLOCK A.M.

3 DEPARTMENT NO. 10

HON. RICHARD C. GARNER, JUDGE

4 APPEARANCES:

5 The Defendant with his Counsel, DAVID
6 NEGUS, Deputy Public Defender of San
7 Bernardino County; DENNIS KOTTMEIER,
8 District Attorney of San Bernardino
9 County, and JOHN P. KOCHIS, Deputy
10 District Attorney of San Bernardino
11 County, representing the People of
12 the State of California.

13 (Leonard D. Gunn, C.S.R., Official Reporter, C-1109,
14 Judith L. Morris, C.S.R., Official Reporter, C-2400)

15
16 (David Allen Bellomy, having been on the
17 stand at the adjournment of proceedings
18 on Thursday, June 7, 1984, resumed the
19 witness stand and was further examined
20 and testified as follows:)

21 THE COURT: State your name again for the record,
22 please.

23 THE WITNESS: David Allen Bellomy.

24 THE COURT: Before you resume, Mr. Negus, in Friday's
25 Daily Journal is a complete report of a case, People v.
26 Gonzales, on the Hitch issue. I will have the bailiff make

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1 copies to give to you.

2 MR. KOCHIS: Is that a United States Supreme Court
3 decision?

4 THE COURT: No. Fourth District Court of Appeal
5 out of Orange County.

6 Now go ahead.

7

8 DIRECT EXAMINATION RESUMED

9 BY MR. NEGUS:

10 Q What procedures do you have in the I.D. Bureau for
11 keeping track of fingerprints that you lift?

12 A The fingerprints that are lifted are placed on three-by-
13 five cards. The date, time and initials of the officer
14 who lifted those fingerprints are placed on that card and
15 the cards are filed by the case number.

16 Q Is there any list made of what you have in there?

17 A No, sir.

18 Q Is there any count made so that you can tell if one gets
19 lost or not?

20 A No, sir.

21 Q Do you prepare reports for cases as to what you have
22 lifted prints from?

23 A Occasionally, but not usually.

24 Q Do you recall in January of this year that I came to
25 the I.D. Bureau and requested information on all the
26 prints in this particular case which had been lifted

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1-3

1 which had not been eliminated to a known suspect residence
2 of a house?

3 A I don't recall the date, sir. You came down there several
4 times. But I do remember you making such request.

5 Q And at that point in time, did Mrs. Punter, Mr. Roper and
6 yourself provide me with copies of the fingerprint cards
7 of all the prints that had been found which were either
8 not suitable for comparison or had not been yet
9 identified?

10 A To the best of my recollection, yes, sir.

11 Q Where were the fingerprint cards that you described as
12 not being photographed last Thursday at that time?

13 A They would have been one of two places. First, they
14 would have been locked in a filing cabinet in my office,
15 or they would have been in the possession of
16 Deputy Punter.

17 Q Do you know which one they were?

18 A No, sir, I don't recall.

19 Q Showing you Exhibit H-262, which appears to be some
20 Xeroxes of fingerprint cards, could you look through
21 those and see if you can identify those two lifts?

22 A These are fairly poor reproductions. I see one, however.

23 Q Could you use the green grease pencil and put a green
24 circle around the one that you are talking about?

25 A (Witness complied.)

26 Q Now, you don't see the other one?

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Q Showing you Exhibit H-263, does that appear to be, with two changes on it, a copy of the report submitted by Mrs. Punter on June 28th?

Q And by that date, had all of the fingerprints listed on that report been compared to the known fingerprints of Kevin Cooper?

THE COURT: To the extent that you have to go beyond your own knowledge, I will sustain the objection. But of your own knowledge, if you can answer it, you may.

THE COURT: Okay. That's enough, then.

A Yes, sir, I did.

Q When you testified at the preliminary hearing, did you recall making the two lifts from the Coffee Mate and the Ascriptin bottle?

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1 A I testified that I lifted latent fingerprints from a
2 Coffee Mate container and an Ascriptin bottle at the
3 Lease residence, sir.

4 Q At the preliminary hearing?

5 A At least once during the four times I have testified on
6 this case, sir.

7 Q Would that have been last week?

8 A I don't recall, sir.

9 Q Showing you Exhibit H-261, can you show the location
10 on that diagram in orange, a little "X" of the Coffee Mate
11 bottle?

12 A (Witness complied.)

13 Q And was the Ascriptin bottle in the same place?

14 A They were in approximately the same location, to the best
15 of my recollection.

16 Q Where was that? Was that on the shelf or --

17 A Facing the east wall of the kitchen, it would have been
18 in the wooden cupboard in the right-hand corner on a
19 shelf somewhere between my waist and my shoulders.

20 Q And were there various foodstuffs other than the two
21 bottles that you lifted prints from, were there various
22 other foodstuffs in that cupboard?

23 A Yes, sir, there were.

24 Q To your knowledge, was any other evidence seized from
25 that particular cupboard?

26 A Not that I'm aware of, sir.

4 A Not that I recall, sir.

7 A Yes, sir, I did.

9 A No, sir, I did not.

13 A Yes, sir, I did.

15 A It would have been one of two criminalists, either David
16 Stockwell or Craig Ogino.

19 A Yes, sir. In addition there would have been Deputy Duffy.

21 A Yes, sir, they did.

23 A Yes, sir, he did.

26 A Yes, sir, this morning.

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1 Q By I.D. number, which photographs show the stain?

2 A L62.

3 Q Showing you Exhibit H-266, does that appear to be the
4 L62 I.D. photograph?

5 A Yes, sir, it does.

6 Q And could you use the orange grease pencil to circle the
7 area of the stain in that photograph?

8 A (The witness complies.)

9 Q Were there other stains on the pants that did not appear
10 in the photograph?

11 A Yes, sir.

12 Q And where were they?

13 A To the best of my recollection, the stain was in the
14 form of splattering that appeared in the thigh and
15 extended to the mid-calf area on both pant legs in front
16 of the pants.

17 Q Did you take any notes yourself about discovering those
18 pants?

19 A No, sir, I didn't.

20 Q Did you ever discuss that discovery with Sheriff Tidwell?

21 A No, sir.

22 Q Captain Schuyler?

23 A No, sir.

24 Q Chico Rosales?

25 A No, sir.

26 Q John Clifford?

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1 A No, sir.

2 Q After you showed the pants to the criminalist, did you
3 just hang them back up where they were?

4 A I recall that the criminalist tested the stains and
5 after the testing I'm not sure what the disposition was on
6 the trousers.

7 Q While you were at the residence at 2991 English Road,
8 the vacant Lease house, did you see anybody keeping
9 records of who was going in and out?

10 A. Yes, sir, I did.

11 Q Who was that?

12 A. Sergeant Swanlund.

13 Q And how was he doing that?

14 A To the best of my recollection, he was doing it with a
15 pad of paper and either a pen or pencil.

16 Q He was noting the time -- you saw him write, like when
17 you came in you saw him write something down or something?

18 A I saw him with the pad and the paper, and I heard him
19 make the comment to the effect that he was going to keep
20 track of the individuals who came in. I did not physically
21 see him write anything on the tablet.

22 Q What day was it when you found the pants?

23 A. That would have been on the evening of June the 7th or
24 the very early morning hours of June the 8th, and my
25 best guess is that it was on June the 7th.

26 Q On June the 5th, 1983, did you become aware that Mr. Roper

1 had discovered a hatchet?

2 A I don't recall the exact date, sir. I do recall a
3 discussion, I believe it was by telephone, with Detective
4 Roper regarding a hatchet that had been found at the
5 scene.

6 Q Was that at the time of its discovery?

7 A No, it would have been sometime after the discovery.

8 Q Was it on the same day?

9 A I'm not certain.

10 Q Was it before the hatchet had been processed by Dura-
11 Print?

12 A Yes, sir, it was.

13 Q And did that discussion include whether or not to go
14 ahead and find out how to develop latent prints?

15 A Yes, sir.

16 Q That was a terrible question. Did the discussion include
17 how to develop latent fingerprints on the hatchet?

18 A Yes, sir.

19 Q What was that discussion?

20 A I recall that I was informed there was blood on the
21 hatchet and Detective Roper was concerned that some
22 fingerprint processing techniques might disturb that
23 blood. And at that time I advised him to contact the
24 crime laboratory and ask a criminalist that question.

25 Q Were you yourself at that point in time familiar with
26 the Dura-print process of lifting fingerprints?

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- 1 A No, sir.
- 2 Q Were you familiar with any of the chemical treatments of
3 evidence as far as developing latent fingerprints?
- 4 A Yes, sir.
- 5 Q What were you familiar with?
- 6 A Silver nitrate, Ninhydrin spray, essentially those two.
- 7 Q Neither of those will develop fingerprints in blood;
8 is that correct?
- 9 A I don't know, sir.
- 10 Q Are you familiar with fingerprints left by touching a
11 bloody surface?
- 12 A Yes, sir, I am.
- 13 Q In a fingerprint in blood, the actual ridge impressions
14 are actually made in the blood itself; is that correct?
- 15 A That is correct, sir.
- 16 Q And, for example, the silver nitrate and the Ninhydrin
17 develop fingerprints by reacting with chemicals that
18 are developed by one's fingers when one touches something;
19 is that correct?
- 20 A That's correct, sir.
- 21 Q And there has to be, in order to get a fingerprint
22 impression by touching something, there has to be a
23 firm impression of the fingers on a surface; is that
24 correct?
- 25 A I would not say a firm impression, no, sir.
- 26 Q The ridges have to come in contact with the surface; is

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1 that correct?

2 A Yes, sir.

3 Q In blood, when you touch blood, if you're going to leave
4 a fingerprint in blood, you have to touch it in such a
5 way that you don't press too hard in order to actually
6 breach the surface; is that correct?

7 A I could not say that, sir.

8 Q Ninhydrin reacts with amino acids in your fingers; is
9 that correct?

10 A Yes, sir.

11 Q Do you know if amino acids can be developed from a
12 finger into blood in such a way that they can be
13 developed by Ninhydrin?

14 A No, sir, I don't.

15 Q In developing prints off that particular hatchet, then,
16 your instructions to Mr. Roper were to abide by the
17 advice of the crime lab?

18 A Not necessarily, sir. Simply to seek their advice.

19 Q Did Mr. Roper ever get back to you and ask for any
20 further guidance from you on that issue after he talked
21 to the crime lab?

22 A Not that I recall, sir.

23 Q Did you see any foot impressions in the residence at
24 2991 English Road?

25 A Yes, sir, I did.

26 Q How many did you see?

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3-1

1 Q Showing you a series of diagrams, H-237, and asking you to
2 look at four drawings labeled A, B, C and D, and I ask
3 you if any of those appear to be the foot impressions
4 that you saw.

5 A A, B and C are similar to the impressions that I recall.

6 Q With respect to A, was that particular shoeprint
7 photographed?

8 A Yes, sir, it was.

9 Q And with respect to C, was that particular shoeprint
10 photographed?

11 A I don't recall, sir.

12 Q How about with B?

13 A I don't recall that one, either, sir.

14 Q Was there any reason why A was picked out as opposed to
15 B and C?

16 A As I recall, the shoeprints that I saw at the scene were
17 in dust on a tile floor and the shoeprint that was
18 similar to the drawing that's on A before me was a
19 complete shoeprint. I believe that's the reason it
20 was photographed, sir.

21 Q Because it was complete?

22 A It was complete and it was also very sharp.

23 Q Were there any technical problems if one used oblique
24 lighting in developing an image of B and C?

25 A I don't specifically recall the quality of either of
26 those shoeprints, sir.

3-2

- 1 Q Do you recall a photo being taken of that footprint
2 number D?
3 A D as in Delta, sir?
4 Q Yes.
5 A Not that I recall.
6 Q Was it Mr. Duffy who took the photograph of the shoeprint
7 in number A?
8 A Mr. Duffy took the photographs originally and later
9 Criminalist Baird from the Sheriff's Crime Lab took
10 photographs.
11 Q Were you present when Mr. Duffy took his photographs?
12 A Yes, sir, I was.
13 Q The hatchet that Mr. Roper found was taken to the
14 I.D. Bureau and put in the tank and developed with
15 Dura-Print for a couple of days; is that correct?
16 A To the best of my recollection, yes.
17 Q After that development, have you participated in any
18 research as to the effect of Dura-Print on blood?
19 A No, sir.
20 Q Sometime between August and the preliminary hearing, did
21 you attempt to find some information as to the effect
22 of Dura-Print on blood?
23 A Yes, sir, I did.
24 Q Did that consist of having one of your deputies call
25 the manufacturer and ask for information?
26 A Yes, sir.

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3-3

1 Q Did you do anything else?

2 A At the last meeting of the American Academy of Forensic
3 Sciences in Anaheim, California, I believe that was in
4 February of this year, I talked to a Dura-Print
5 representative. I do not recall his name. And I asked
6 him if Dura-Print interfered with blood typing.

7 Q Did he say that it did?

8 A He said that it did not, sir.

9 Q Did Mr. Kochis send you a copy of an article from the
10 Southern Association of Criminalists meeting in April?

11 A No, sir.

12 Q Now, when you were talking to the Dura-Print person, did
13 he say that his claims concerned ABO typing or enzyme?

14 A He was not specific, sir.

15 Q In the written literature that you received the claim
16 was just made for ABO typing; is that correct?

17 A I don't recall, sir.

18 MR. NEGUS: Nothing further.

19

20 CROSS-EXAMINATION

21 BY MR. KOCHIS:

22 Q Lieutenant Bellomy, directing your attention to H-192,
23 specifically to what appears to be the seventh page of
24 that document and the subsection that's 120.10,
25 according to Sheriff's policy, are there certain
26 circumstances under which property receipts by the

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1 Identification Bureau are not to be assigned to items
2 which are seized?

3 A Let me reflect a minute on that, please, sir.

4 Yes, sir.

5 Q And that document in the section I have just brought your
6 attention to --

7 A Yes, sir.

8 Q -- does that include essentially a situation under which
9 property is seized under the color of the search warrant?

10 A Yes, sir, it does.

11 Q For example, in the Ryen case, had Detective Clifford
12 showed up with a search warrant for the Ryen home at
13 4:00 p.m. on Monday, June the 6th, and seized certain
14 items in the master bedroom pursuant to a search warrant
15 and filled out a receipt for that warrant, would it have
16 been necessary under the Sheriff's policy to attach the
17 separate yellow I.D. tags to the items seized?

18 A According to the subsection, no, sir.

19 Q Directing your attention to the issue that Mr. Negus
20 discussed with you last Thursday afternoon in reference
21 to the disposal of evidence at a particular substation,
22 I believe the hypothetical he used with you last
23 Thursday was Yucaipa. Do you recall that?

24 A Yes, sir, I do.

25 Q Is there a procedure in the Sheriff's substation to
26 dispose of property after it has remained at a substation

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3-6

- 1 Q In addition to the two fingerprints that you lifted
2 from the Lease home, did you also lift a footprint?
- 3 A I did not lift a footprint, but I believe a footprint
4 was lifted, sir.
- 5 Q Did you locate a footprint in the tile shower floor of
6 one of the bathrooms in the Lease home?
- 7 A Yes, sir, I did.
- 8 Q And which bathroom?
- 9 A The bathroom that is located east of the living room and
10 south of what appeared to me to be a master bedroom.
- 11 Q On Exhibit H-261 with the orange grease pen, can you
12 place an "FP" for footprint in the approximate location
13 of the footprint that you saw in the Lease home?
- 14 A (Witness complied.)
- 15 Q Was that photographed in your presence?
- 16 A Yes, sir, it was.
- 17 Q Other than the two fingerprints that you testified to
18 last week, did you lift any fingerprints at the Lease
19 residence?
- 20 A I lifted a partial bare footprint, what appeared to be
21 partial palm prints and two fingerprints that were
22 discussed last week.
- 23 Q Is the partial footprint the footprint that you have just
24 referred to on 261?
- 25 A Yes, sir.
- 26 Q And do you recall where the palm prints were that you

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1 | lifted?

2 | A Yes, sir, I do.

3 Q Where were they?

4 A Fragmentary prints that I believed to be palm prints were
5 in a closet area immediately west of the shower from which
6 the footprint was lifted.

7 Q Directing your attention to the exhibit which has been
8 marked for identification as H-262, do you see those
9 fragmentary prints anywhere on that document?

10 A I would have to see the orange card, sir. I can't be
11 certain.

12 Q Is it fair to say that you were not with Detective Duffy
13 the entire time he was inside the Lease residence?

14 A Yes, sir, it is.

15 Q Directing your attention to the photograph which has
16 been marked for identification as Exhibit H-266, does
17 that depict the pair of pants you referred to on Thursday
18 afternoon and again this morning with the spots on them?

19 | A Yes.

20 Q Was a presumptive test for blood conducted in your
21 presence by one of the criminalists at the scene?

22 | A Yes, sir.

23 Q Was that positive or negative?

24 A It was negative for blood, sir.

25 Q Do you recall if at the scene a determination was made
26 as to the nature of the substance on the pants?

2 Q When you lifted the fingerprints from the Lease residence,
3 did you fill out a three-by-five card such as you
4 described this morning?

6 Q And did that include the location inside the residence
7 that the print was lifted from?

(No omissions.)

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1 Q And the date and the approximate time that the list
2 took place?

3 | A. Yes, sir.

4 Q Would that procedure follow with regard to the partial
5 palm print from the closet as well?

6 | A. To the best of my recollection, yes, sir.

7 Q Directing your attention again to Exhibit H-262, and
8 specifically the print that you had circled in green
9 as being one of the prints that was lifted from the Lease
10 home, was that the print that was lifted off the Coffee
11 Mate jar?

12 A Yes, sir, it is.

13 Q During the time that you were in the Lease residence on
14 June the 7th in the evening and during the early morning
15 hours of June the 8th, did you see anyone inside the
16 residence who was not a member of the sheriff's department?

17 | A. No, sir.

18 MR. KOCHIS: I have nothing further, Your Honor.

19

20 REDIRECT EXAMINATION

21 BY MR. NEGUS:

22 Q Going back to that document H-192, the manual, a receipt,
23 according to that manual, is a piece of paper which is
24 given to a citizen from which property is taken; is that
25 correct?

26 A That's my understanding, yes, sir.

1 Q A different type, entirely different type of piece of
2 paper is the official property tag; is that correct?

3 A Yes, sir, that is correct.

4 Q And as far as official property tags are concerned, the
5 rule is that the property officer will not accept an
6 item of evidence unless it has an official property tag on
7 it; is that correct?

8 A That is the general rule, sir.

9 Q And that's included in the manual, is it not?

10 A To the best of my recollection, yes, sir.

11 Q And receipts for property can be given for found property,
12 property that's taken for safe keeping or evidence; is
13 that correct?

14 A Yes, sir.

15 Q And, for example, in the situation like the Lease
16 residence where fingerprints are being lifted, blood is
17 being scraped, there's a whole bunch of different --
18 trace evidence is being collected, you wouldn't normally
19 give a receipt for any of that particular evidence; is
20 that correct?

21 A That's correct, sir.

22 Q But if that evidence were taken to -- any of that
23 evidence were taken to the I.D. bureau for storage, you'd
24 have to have the official property tag; is that correct?

25 A Unless it was subject to have been seized upon a search
26 warrant, yes, sir.

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1 Q Even for search warrants you have to have official
2 property tags, do you not, in order to accept the
3 evidence into the I.D. bureau?

4 A I believe you'd have to ask Sergeant Baker that, sir.

5 Q Mr. Kochis asked your opinion about this Section 120.10,
6 and that indicates that these receipts which you give
7 to citizens are not required for property seized by a
8 search warrant; is that right?

9 A Sir, you have confused me. Let me read the area, please.

10 Q Okay.

11 A Would you restate the question, sir?

12 Q The question is that the exception that is being made
13 for receipts, that is the piece of paper you hand to the
14 citizen in the Section 120.10 in terms of search warrants;
15 is that correct?

16 A That is not my understanding, no, sir.

17 Q What --

18 A I can read the section, if you'd like me to, sir.

19 120.10, property normally not receipted. Property
20 seized by members of the department under the authority
21 and color of a search warrant need not issue a receipt
22 for such property as search warrants require their own
23 receipt process.

24 Q The receipt process that you're talking about in a
25 search warrant is you have to leave a list at the scene
26 searched of the property taken; is that correct?

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1 A That is correct, sir.

2 Q So what they're saying is that you don't have to give
3 a normal, a different kind of receipt to a citizen in
4 order to get that particular kind of property; correct?

5 A That would be one interpretation, yes, sir.

6 Q And the section about tagging property, the official
7 property tag, is a totally different section number from
8 this section about receipting; is that correct?

9 A Yes, sir, it is.

10 Q And there's no search warrant exception listed in the
11 property tag section of the manual; is that correct?

12 A Allow me a moment to review that section, sir.

13 Q Sure.

14 A That is correct, sir.

15 Q What are the dimensions of the loft at the I.D. bureau?

16 A The dimensions, sir?

17 Q Yes, as best you can.

18 A It's an irregularly shaped loft. I would estimate that
19 the main body of the loft -- you're referring to the
20 second floor, sir?

21 Q Right.

22 A Would be approximately 50 by 30, maybe somewhat larger,
23 and then there are two sections of the loft that would
24 form a U-shape that are somewhat smaller, I would estimate
25 approximately 15 by 30 or 40.

26 Q In June of this year, was there property in that loft

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- 1 other than that which was seized in the Ryen homicide?
- 2 A Yes, sir.
- 3 Q Did that property take up a fair, you know, a majority
4 of the space in the loft?
- 5 A Which, to which do you refer, sir?
- 6 Q The property that was not connected with the Ryen
7 homicide?
- 8 A I don't believe I've been in the property building in
9 June of '84. However --
- 10 Q '83, I'm talking about.
- 11 A In June of '83, the Ryen evidence would have been a
12 minority of evidence.
- 13 Q Was there room on that loft on the floor area of the loft
14 of the area that was not being occupied by other evidence
15 to unroll the rug completely?
- 16 A No, sir.
- 17 Q The partial palm prints that you lifted from -- it was
18 the closet in the Lease residence?
- 19 A It's a closet west of the shower in the master bathroom.
- 20 Q Could you take the black Rolling Writer here and put pp
21 for palm print there?
- 22 A I'd rather put -- it's a fragmentary print, sir. I
23 believe it's a partial palm.
- 24 Q If we use FP, that's going to get us confused. How
25 about just P, then.
- 26 A (The witness complies.)

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1 Q Is that the print that -- well, you called me sometime
2 during the Preliminary Hearing and told me about a print
3 that had not been photographed; is that correct?

4 A Yes, sir, that's correct.

5 Q Is that the print to which you were referring in that
6 conversation?

7 A That's one of the prints, sir.

8 Q There was more than one there?

9 A The fingerprints that were lifted in the kitchen area
10 were also not photographed.

11 Q But when you testified at the Preliminary Hearing, you
12 mentioned those fingerprints, right? You testified that --

13 A Yes, sir.

14 Q -- there were fingerprints that weren't photographed?

15 A Yes, sir, I did.

16 Q Then you made a special phone call to me after you had
17 testified to tell me that there was a print that you'd
18 forgotten; is that correct?

19 A Yes, sir, I did.

20 Q Is that print then the one that's been labeled as P on
21 the back?

22 A Yes, sir, it is.

23 MR. NEGUS: Nothing further.

24 MR. KOCHIS: No recross.

25 THE COURT: Thank you very much, sir. You may step
26 down.

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1 We'll take the morning recess.

2 (Recess.)

3 (No omissions.)

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1 THE COURT: Next.

2 MR. NEGUS: Frederick Eckley.

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4 F R E D E R I C K E. E C K L E Y, called as a
5 witness by and on behalf of the defendant, was
6 duly sworn, examined and testified as follows:

7 THE CLERK: You do solemnly swear that the testimony
8 you are about to give in the action now pending before this
9 Court shall be the truth, the whole truth, and nothing but
10 the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Please be seated.

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

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

16
17 DIRECT EXAMINATION

18 BY MR. NEGUS:

19 Q Mr. Eckley, what is your occupation?

20 A Deputy Sheriff, San Bernardino County.

21 Q On June 9, 1983, were you assigned to the Yucaipa
22 substation?

23 A Yes, sir.

24 Q On that date, were you dispatched to go to the home of
25 a Diane Roper, also known as Kellison, also known as
26 Pearl?

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- 1 A Yes.
- 2 Q Where was that home?
- 3 A In Mentone.
- 4 Q When you got there, did Ms. Kellison direct you to a
- 5 closet?
- 6 A Yes.
- 7 Q Was there something in the closet?
- 8 A Yes.
- 9 Q What was that?
- 10 A A pair of coveralls.
- 11 Q Can you describe those coveralls?
- 12 A They were green, some kind of cotton or synthetic cotton
- 13 looking material. As I recall, they had a zipper closure
- 14 with breast pockets, front pockets, rear pockets.
- 15 I believe they were long sleeved.
- 16 Q Did they appear to have any blood splatters on them?
- 17 A There was a red stuff on it, yes.
- 18 Q And did you think it was blood when you saw it?
- 19 A She told me it was, so I assumed it was.
- 20 Q When you looked at it, did it look like blood to you?
- 21 A Yeah, it could have been.
- 22 Q What area of the coveralls were these splatters on?
- 23 A The legs.
- 24 Q How much blood was on the legs?
- 25 A You mean the quantity?
- 26 Q How would you quantify it? Was there a lot? Some? A

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1 little?

2 A I would say to a degree slightly less than moderate,
3 speckled, splattered type from about the knee down to
4 the cuff.

5 Q Would you call it heavily spotted?

6 A No.

7 Q On May 26, 1984, did you have a conversation with
8 Ron Forbush?

9 A I had a conversation but I don't remember the date.

10 Q Was it a Saturday?

11 A Yes.

12 Q Was it in the squad room of the Yucaipa substation?

13 A Yes.

14 Q And it was with Ron Forbush?

15 A Yes.

16 Q At that point in time, did you use the word "heavily
17 splattered"?

18 A I don't recall.

19 Q Do you recall at that point in time saying it looked like
20 blood to you?

21 A I may have said that, yes.

22 Q When we are talking about splattered blood, would that
23 be in contrast to, say, saturated blood or other kinds
24 of blood? I mean, you used the word "splattered" when
25 you talked to Mr. Forbush; is that correct?

26 A Yes.

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1 Q When you use that particular word, what does that denote
2 to you?

3 A He asked me if it was soaked with blood and I said, no,
4 it was more like a splatter.

5 Q The pattern, then, of the blood would appear that it had
6 been hurled from an external source rather than from
7 somebody bleeding onto it from inside?

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

9 THE COURT: That's the type of occurrence where I
10 think even a lay person can get something out of it.

11 Overruled.

12 THE WITNESS: The question again?

13 Q (BY MR. NEGUS) It appeared that the blood had been
14 propelled in the air by something other than a person
15 wearing the coveralls and bleeding from the inside and
16 it coming out onto the coveralls; is that correct?

17 A I'm not sure I understand your question. It looked
18 like it was just splashed on.

19 Q And consistent, for example, with an animal being
20 slaughtered; is that correct?

21 A Could be.

22 Q And were there also any other substances on the coveralls
23 besides this blood stuff?

24 A Yes.

25 Q What was that?

26 A Hair, sweat or stains that looked like sweat and dirt

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5-5

1 or something. I would have guessed it to be manure,
2 something of that nature or mud.

3 Q Where was the dirt or manure?

4 A Primarily around the cuffs.

5 Q Were there any areas that appeared to be white with
6 manure?

7 A Yes. Right around the rear pocket area or the side
8 like somebody may have wiped their hands.

9 Q Could you tell what species of creature the hair came
10 from?

11 A No.

12 Q What did you do with the coveralls after Diane showed
13 them to you?

14 A Took them to the car.

15 Q Then what did you do with them?

16 A Took them to the substation and tagged them.

17 Q When you took them to the substation and tagged them,
18 was that at the direction of one of your superiors?

19 A Yes.

20 Q That would have been Sergeant Stodelle?

21 A Yes.

22 Q Did Diane tell you who had left the coveralls in the
23 closet?

24 A She --

25 MR. KOCHIS: I object. That's going to call for
26 hearsay.

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1 MR. NEGUS: The offer of proof is these coveralls
2 are going to end up being destroyed and it has to do with
3 materiality with whether they should have been kept or not.

4 THE COURT: Overruled.

5 Q (BY MR. NEGUS) Did she tell you who the coveralls
6 belonged to?

7 A She didn't know. She surmised they belonged to somebody.

8 Q Did she tell you that they had been left there by Lee
9 Pearl?

10 A Either that or some other people.

11 Q Did she tell you that she had seen Lee Pearl wearing those
12 coveralls?

13 A No.

14 Q Did she tell you that she suspected that Lee Parl had
15 been involved in the Ryen homicide?

16 A I don't recall that she did, no.

17 Q Did she mention the Ryen homicides at all?

18 A Yes.

19 Q In what connection?

20 A Something to the effect that she believed that Lee or
21 his friends may have been in the area, in a vision of
22 some kind.

23 Q Did she also tell you about --

24 A Let me correct myself. She didn't tell me about a
25 vision. Her father did.

26 Q She just told you about some contact that Lee had had

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1 with some people who were presumably stealing horses in
2 the Chino area; is that correct?

3 A Right.

4 Q And the person, the only person she named as a possible
5 suspect was Lee Pearl; is that correct?

6 A Right.

7 Q Did you have Lee Pearl checked out on the State computers
8 to see whether or not he had any sort of criminal record?

9 A I thought I did, but evidently I didn't.

10 Q Why do you say you thought you did?

11 A It's a normal procedure that I would have done.

12 Q You talked to Gary Woods on the phone from Homicide on
13 approximately Thursday, May 31st, this year; is that
14 right?

15 A I don't remember the day. I did talk to him on the phone.

16 Q And you were in the District Attorney's Office in
17 Redlands at the time you talked to him; is that right?

18 A Yes.

19 Q When you talked to Mr. Woods, did you tell Mr. Woods
20 that you had run Mr. Pearl?

21 MR. KOCHIS: I would object. That would call for
22 hearsay. It's not inconsistent with what he testified to.

23 MR. NEGUS: He said evidently he didn't.

24 THE COURT: Are you saying you are not asking now
25 for conversation? He has already answered negatively.

26 MR. NEGUS: I asked him if he had run Lee Pearl

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1 back in June, 1983, to see whether or not he had a record,
2 and he indicated that he thought he had but evidently he
3 didn't. So now I'm asking him for a prior inconsistent
4 statement that he made to Mr. Woods that he did.

5 THE COURT: These are very nebulous, the reasoning
6 behind the offer of proof. It's almost wide open.

7 Go ahead.

8 Q (BY MR. NEGUS) Did you tell Mr. Woods when you talked
9 to him on the phone that in fact you had checked out
10 Lee Pearl?

11 A I probably did.

12 Q And did you tell him that what you found confirmed the
13 information that Diane had given you that Lee Pearl had
14 a conviction for a murder for hire?

15 A I believe I told him that he had been in prison for
16 some kind of murder.

17 Q And Diane Pearl had told you that he had been in prison
18 for murder for hire; is that correct?

19 A Yes.

20 Q Why do you say evidently you didn't?

21 A I don't see the teletypes on my report.

22 Q Your report was done when?

23 A Shortly after the incident, if not that evening.

24 THE COURT: Feel free to refer to the file if it
25 will help.

26 Q (BY MR. NEGUS) Possibly you did teletype without putting

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- 1 it on your report?
- 2 A I would have attached a teletype. This was typed by a
3 clerk. I make a cassette tape and attach all my
4 information with that cassette tape, have it typed,
5 returned to me. I would proof read it, then forward it
6 to whoever it needs to go to.
- 7 Q Do you still have your original copy of that report,
8 the copy that you got back in June of 1983?
- 9 A That would be the original.
- 10 Q Do you still have in your possession a copy of the report
11 that you were given in June of 1983?
- 12 A Do I have that in my possession?
- 13 Q Yes.
- 14 A No, sir.
- 15 Q You have a copy right now; is that correct?
- 16 A I have a copy of what I wrote.
- 17 Q That was furnished to you recently; is that correct?
- 18 A Yes.
- 19 Q So you didn't save whatever copies you were given of
20 your report back in June of 1983; is that correct?
- 21 A I'm not allowed to have that. That's the original
22 report.
- 23 Q I mean a copy. When you sign the report off, don't they
24 give you a copy of it?
- 25 A If I ask for it.
- 26 Q Did you ask for it?

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1 A No.

2 Q So in this particular situation, you have no way of
3 knowing, do you, whether there was any teletype attached
4 to your original report or not?

5 A I'm sure that I checked him out. There are no teletypes
6 with the report, so I can't be certain.

7 (No omissions.)

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3 | A. No, sir.

7 | A Would you say that again?

11 A I don't know. Homicide furnished me this copy.

13 A. Because there's no teletype attached to this report.

15 | A. Right, true.

19 | A. Yes.

21 | A. Yes.

24 | A. Yes,

26 | A. Yes.

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1 Q And did you do that?

2 A Yes.

3 Q Showing you H-265, is that a Xerox copy of a report that

4 you sent to homicide?

5 A Yes.

6 Q Did Diane tell you that she had more information but

7 she would only reveal that to homicide?

8 A Yes.

9 Q And did you put that in your report?

10 A Yes.

11 Q Do you also make a phone call to the homicide department?

12 A Yes.

13 Q And did you attempt to talk to somebody there?

14 A I attempted to, yes.

15 Q Nobody was in when you called?

16 A Right.

17 Q Did you leave a message?

18 A Yes.

19 Q Did anybody ever call you back?

20 A No.

21 Q Are you the property officer for the Yucaipa Substation?

22 A Yes.

23 Q And were you in June of 1983?

24 A Yes.

25 Q Whenever you receive evidence, do you keep it in a

26 ledger, keep records of the evidence you receive in a

2 | A. Yes.

5 | A Yes.

8 | A. Yes.

11 | A. Yes.

15 A What procedures do we have?

17 A. Well, we hold it 90 days and then after that it's on
18 a monthly basis the property is reviewed, and if it's
19 no longer needed we destroy it, depending on what type
20 of property it is.

23 | A. Yes.

26 | A. Yes.

- 1 Q And the DR number that you put on this particular case
2 was a DR number given to you by Mr. Bengé over the phone;
3 is that right?
- 4 A I don't recall where I got the DR number.
- 5 Q Well, when you got the DR number, you were informed that
6 that number was the number of the investigation into the
7 Ryen homicides; is that correct?
- 8 A I probably got it out of the computer.
- 9 Q Well, at the top of your report you have DR number PC 187,
10 murder, multiple victims named Ryen; correct?
- 11 A Right.
- 12 Q And so you were aware that this DR number was the DR
13 number for the Ryen homicides?
- 14 A I sure hope so.
- 15 Q When did you destroy the coveralls?
- 16 A According to my ledger, the first of December, 1983.
- 17 Q And why did you do that?
- 18 A I had had them for nine months.
- 19 Q It was more like six months, was it not?
- 20 A Okay, six months.
- 21 Q Was there anything magic about six months?
- 22 A Twice as long as I was supposed to have it.
- 23 Q Well, what was supposed to happen to the coveralls?
24 You knew that the Ryen case hadn't gone to trial then,
25 didn't you?
- 26 A Yeah.

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- 1 Q And you knew -- why did you get rid of the coveralls
2 before the case went to trial?
- 3 A I was never contacted or told anything and believed they
4 had no value to the case, so I destroyed them.
- 5 Q Do they have a little form letter that property officers
6 use to send out before you destroy evidence?
- 7 A Yes.
- 8 Q Did you send that out?
- 9 A No.
- 10 Q Why not?
- 11 A Didn't know who they belonged to.
- 12 Q Well, you have a form letter to send to investigators
13 who are in charge of a particular DR number before you
14 destroy something?
- 15 A I'm not aware of that form.
- 16 Q Did you attempt, before you destroyed them, did you
17 attempt to get on the phone and talk to homicide?
- 18 A No.
- 19 Q Why not?
- 20 A As I said, I didn't believe they had any value pertaining
21 to this case.
- 22 Q Did you ever have them analyzed by the crime lab?
- 23 A No.
- 24 Q Are you aware of a manual that the sheriff has put out
25 which includes a question on handling evidence?
- 26 A Yes.

009774

1 Q In that manual does it say that all bloodstained items
2 of evidence should be submitted to the crime lab
3 immediately?
4 A If you say so, okay.
5 Q Well, I'm asking you.
6 A I'm sure it's in there somewhere.
7 Q Why didn't you do that?
8 A I didn't read it until May.
9 Q After Mr. Forbush talked to you on the 26th, did you then
10 go and look at a subpoena?
11 A Yes. Mr. Forbush brought that subpoena to my attention
12 or inquired about it.
13 Q On that subpoena was there a note from your captain?
14 A It wasn't signed but it looks like my captain's hand-
15 writing. Yes, there was a note.
16 Q Did that note tell you not to talk to Mr. Forbush unless
17 somebody from homicide was present?
18 A No.
19 MR. KOCHIS: Objection, that calls for hearsay, and
20 how is it relevant even if it goes to bias in that he talked
21 to Mr. Forbush.
22 THE COURT: Any inconsistency there, Mr. Negus?
23 MR. NEGUS: I think when we're dealing at this
24 particular stage we're not concerned about his bias when he
25 talked to Mr. Forbush but his bias in court now. I think
26 it goes to his bias in court now and his attitude towards

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1 testifying.

2 THE COURT: I'm going to let it in. Go ahead.

3 Overruled.

4 Q (BY MR. NEGUS:) Did the note tell you not to talk to
5 Mr. Forbush unless somebody from homicide or the District
6 Attorney's Office was present?

7 A No, it didn't tell me that.

8 Q What did it say?

9 A Simply to the effect that we did not have rights of
10 discovery for the Public Defender's Office and that
11 Ron Forbush was coming in to interview me or at least
12 requesting an interview, and the note told me that I
13 was not required to give an interview if I didn't want to.

14 Q Was there anything on the note about having somebody
15 from homicide or the D.A.'s Office present?

16 A No.

17 Q Did you tell Mr. Woods that there was?

18 A Something like that on the note?

19 Q Yes.

20 A No.

21 Q Well, did you tell Mr. Woods that you now understand
22 that you weren't supposed to talk with Forbush unless
23 somebody from the homicide or the District Attorney's
24 Office was present?

25 A I understand I didn't do it properly. What I did was
26 okay, but I didn't do it right.

0009776

1 Q Did you tell Mr. Woods that you understood when you
2 talked to Mr. Woods that you should have had somebody
3 present from homicide or the D.A.'s Office present?

4 MR. KOCHIS: Well, Your Honor, again, that calls
5 for hearsay. It's not inconsistent with what he said.

6 THE COURT: But it does go to his credibility and
7 present bias and prejudice possibly. Overruled. I don't
8 know if you had finished your last question.

9 Q (BY MR. NEGUS:) Did you tell Mr. Woods at the time
10 you were talking to Mr. Woods that you understood that
11 you should have had homicide or the D.A.'s Office present
12 when you talked to Mr. Forbush?

13 A Yeah. I should have had somebody from the District
14 Attorney's Office or homicide present, yes.

15 Q Who told you that?

16 A It was brought to my attention by my supervisor at the
17 substation that that is a more proper procedure.

18 Q Which supervisor is that; Sergeant Yakke?

19 A No.

20 Q Who?

21 A Either a lieutenant or captain.

22 Q When you talked to Mr. Woods, did you talk about
23 testifying in court?

24 A Yes.

25 Q And did Mr. Woods also ask you what the purpose of Mr.
26 Forbush's interview with you was?

1 A Yes, he did.

2 Q And did you tell him?

3 A Yes.

4 Q I have here H-267, which is a tape, and I'm starting
5 at counter number 131 on that tape.

6 MR. KOCHIS: Well, Your Honor, the witness is here
7 in court. A statement that he may have made to Woods at an
8 earlier period of time is hearsay absent some exception.

9 MR. NEGUS: I believe that I'm offering it to show
10 his particular bias in this, in testifying, and his attitude
11 toward testifying in this particular case, to show that he
12 has an idea of what he thinks the Defense is trying to do
13 with this testimony. And then Mr. Woods is going to end
14 up, I think, giving him some advice as to how to testify.
15 And it seems that those statements are relevant to his
16 state of mind in testifying.

17 THE COURT: I think so. I'll overrule the objection.

18 THE WITNESS: May I ask a question before he plays
19 the tape?

20 THE COURT: Sure.

21 THE WITNESS: Am I allowed to talk to the D.A. for
22 a moment?

23 THE COURT: Yes, I think so.

24 MR. NEGUS: I object to that. I don't see any
25 reason why --

26 THE COURT: Well, right now -- I'll permit it. I

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1 permit witnesses to talk to Counsel.

2 Do you want to talk right now before we play the
3 tape?

4 THE WITNESS: I just want to ask him a question,
5 yes, if I may.

6 THE COURT: Mr. Kochis, do you wish it?

7 MR. KOCHIS: I have no objection if he wants to ask
8 me a question.

9 THE COURT: Want to step down to counsel table and
10 perhaps whisper to him.

11 THE WITNESS: Thank you, Your Honor.

12 (Mr. Kochis and the witness conferring,
13 not reported.)

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: I note that the witness talked to
16 Mr. Kochis and to Sergeant Arthur.

17 Q (BY MR. NEGUS:) What was the conversation you had with
18 Mr. Kochis?

19 THE COURT: No, Counsel.

20 MR. NEGUS: It certainly goes to his attitude toward
21 testifying right now.

22 THE COURT: Denied at this time. Proceed with the
23 tape.

24 MR. KOCHIS: Your Honor, could I have a moment with
25 Mr. Negus?

26 THE COURT: Yes, you may.

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(Counsel conferring off the record.)

(No omissions.)

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1 (The following is the transcription of
2 the tape recording as played:)

3 "MR. ECKLEY: How they got to our office,
4 I don't know. But the Kellisons called Negus.
5 So now the series, the flavor is that Homicide
6 fouled up this investigation so bad that, you
7 know, they didn't follow up this lead and they
8 weren't contacted about it and stuff like that.

9 "Okay. The impression that I tried to
10 leave Forbush with is that Homicide could
11 come in there and start a fire and I wouldn't
12 even know it."

13 Q (BY MR. NEGUS) Do you recall words to that effect when
14 you talked to Mr. Woods?

15 A Yes.

16 MR. NEGUS: Continuing with the tape.

17 (Playing of the tape recording resumed
18 as follows:)

19 "MR. ECKLEY: You know, I'm just a field
20 patrol officer. I took the stuff in, put
21 it in evidence and notified Homicide, and
22 whatever Homicide or my superiors did, I
23 don't really know. It's hearsay. I
24 understand they were contacted, but I don't
25 really know.

26 "Anyway, what I think they are going

00978

7-2

1 to do is try to put me on the stand and
2 get a shadow of a doubt on the homicide
3 investigation is what my impression is.
4 I do not know if that is true or not.

5 "MR. WOODS: Well, that's a pretty
6 safe assumption, Rick."

7 Q (BY MR. NEGUS) The person that said, "Well, that's a
8 pretty safe assumption, Rich", does that appear to you
9 to be the voice of Detective Woods?

10 A Yes.

11 MR. NEGUS: Continuing with the tape.
12 (Playing of the tape recording resumed
13 as follows:)

14 "MR. ECKLEY: Yeah, that's the gut
15 feeling I get.

16 "MR. WOODS: That's a safe assumption.
17 You know, all you can do is get up there
18 and say what happened.

19 "Okay, partner. I appreciate your
20 time.

21 "MR. ECKLEY: Stalnaker was out there
22 a few days ago. He was not there the same
23 day the Kellisons were. I don't remember
24 what day that was.

25 "And Stalnaker copied my evidence book
26 on that page, when it was destroyed and

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7-3

1 everything.

2 "MR. WOODS: Okay. Well, if it's any
3 consolation to you, we did contact this
4 Lee character, and I can't remember his
5 last name. And we talked to Diana again,
6 and that's blown out of the water.

7 "MR. ECKLEY: Okay. I understand
8 this Negus character is really good, you
9 know, for raking somebody over the coals.

10 "MR. WOODS: Well, he is. I'll tell
11 you what to be careful of, is -- "

12 MR. NEGUS: The record should reflect at this point
13 in time at least my copy of the tape goes blank.

14 Q (BY MR. NEGUS) What did Mr. Woods tell you at that
15 point in time on the tape?

16 A I do not remember.

17 Q Do you remember how long the conversation continued
18 after the spot where it goes blank on the tape?

19 A No, I do not.

20 Q Were you aware that your conversation with Mr. Woods
21 was being tape recorded?

22 A No, I wasn't.

23 MR. NEGUS: Nothing further.

24 ///

25 ///

26 ///

CROSS-EXAMINATION

7-4

BY MR. KOCHIS:

Q Mr. Eckley, the exhibit that is in front of you which has been marked for identification in this hearing as H-265, that's the copy of the report you caused to be typewritten after your interview with Diane Kellison?

A Yes.

Q And does it contain the substance of your conversation with Diane Kellison?

A The substance, yes.

Q When you talked to her for the first time in June, did she ever tell you that she saw her husband bring those overalls into the house?

A No, she didn't.

Q While you were at the house retrieving the overalls, did the topic of a vision come up?

A Yes.

Q Who first mentioned the topic?

A Would be Diane's father, Bill Kellison.

Q And did he essentially tell you that Diane claimed to have a vision about the coveralls?

A Yes. Diane and Mr. Kellison's wife. I don't remember her name.

Q And that his daughter had some extra sensory perception powers?

A Yes. That vision is not like asleep and then having a

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1 dream. I don't know how to describe it. He was trying
2 to say --

3 Q And did he tell you that that is how Diane, his daughter,
4 felt that these coveralls had some importance was based
5 on a vision she had had?

6 A Yes.

7 Q As opposed to something she had actually seen?

8 A Yes.

9 Q The clothing that we are talking about, the overalls, do
10 you recall whether they were short sleeved or long sleeved?

11 A I think they were long sleeved.

12 Q Did you see any stains that appeared to be red or brown
13 on the sleeves of the garment?

14 A No.

15 Q The stains that you saw from the knee down were what
16 color?

17 A Red. Reddish color.

18 Q Were they wet or dry?

19 A They were dry.

20 Q Have you ever seen blood when it has been dried on a
21 garment?

22 A Yes.

23 Q And when you have in the past seen a garment with blood
24 on it that is dry, was it usually a brownish color?

25 A That's right.

26 Q Since you talked to Mr. Forbush in May, have you been

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1 that he tape recorded?

2 A No.

3 Q While you were on the stand this morning, did
4 Judge Garner give us a brief recess so that you could
5 come down and make a comment to me in Mr. Arthur's
6 presence?

7 A Yes.

8 Q Did you tell me during that conversation that you were
9 not aware that Detective Woods tape recorded your
10 telephone conversation?

11 A I was not aware of it, no.

12 Q Did you also tell me that here in court today?

13 A Yes.

14 Q Did you also tell me in court that when you talked to
15 Mr. Woods, prior to that time you had only testified in
16 a court of law two or three times?

17 A I believe I said four times.

18 Q And did you tell me that you had never testified in a
19 major homicide case?

20 A I never have, no.

21 Q Did you also tell me that?

22 A Yes.

23 Q Did you tell me that you were concerned as to if there
24 was anything you should pay attention to when you
25 testify on a major case such as this?

26 A Yes.

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1 Q And is that why you asked Mr. Woods the question that
2 you did about Mr. Negus and his ability or lack of
3 ability?

4 A Yes.

5 Q The subpoena that Mr. Negus referred to, did you get to
6 read the writing on that before or after you were
7 interviewed by Mr. Forbush?

8 A After. I wasn't aware of it before.

9 Q And did you tape record the interview with Mr. Forbush?

10 A No.

11 Q Did you answer every question that Mr. Forbush asked
12 you during that interview?

13 A Yes.

14 MR. KOCHIS: I have nothing further.

15 THE COURT: Now, Mr. Negus, if you wish to go into
16 that conversation, you may.

17
18 REDIRECT EXAMINATION

19 BY MR. NEGUS:

20 Q Prior to my approaching you with the tape recorder, did
21 you even know the existence of a tape of your
22 conversation with Mr. Woods?

23 A Mr. Woods called me at my home on my day off and told
24 me that he had recorded that conversation.

25 Q Did the District Attorney's Office provide you with a
26 copy of that tape to listen to?

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7-9

- 1 A Of my converation with Woods?
- 2 Q Yes.
- 3 A Yes. A recording?
- 4 Q Yes.
- 5 A No.
- 6 Q I mean prior to my playing that portion of the
7 conversation with you in court today, had you ever
8 heard it?
- 9 A I'm sorry. Yes. You mean this tape?
- 10 Q Yes.
- 11 A They played a portion of it for me this morning, yes.
- 12 Q And they indicated that I was probably going to play
13 the same thing for you?
- 14 A Yeah.
- 15 Q And who is "they"?
- 16 Q Sergeant Arthur and I forget the gentlemen's name in
17 the brown coat there.
- 18 Q Mr. Kochis, the District Attorney?
- 19 A Yes.
- 20 Q And they didn't play the whole tape, though? They just
21 played a part of it?
- 22 A Right.
- 23 Q So they didn't give you an opportunity to refresh your
24 recollection on the substance of what you told Mr. Woods;
25 is that correct?
- 26 A That's correct.

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7-10

1 Q Just on these last little remarks about how to testify;
2 is that correct?

3 A Right.

4 Q When you were talking to Mr. Kochis just now, you
5 indicated that they told me about their lack of discovery
6 of defense tapes and things of that nature.

7 Who was "they"?

8 A The Sheriff's Office.

9 Q Who particularly in the Sheriff's Office?

10 A It was written on the note after the fact, then I was
11 brought in and told that it's a better procedure --
12 there was nothing wrong in what I did, but it's a better
13 procedure to have those present, due to our lack of
14 discovery from the Public Defender's Office, otherwise
15 I would have to write up something verbatim, which I
16 cannot do.

17 Q When Mr. Forbush talked to you, before you talked to
18 him, did you consult with Sergeant Yackie, your
19 supervisor?

20 A Yes.

21 Q And when Mr. Forbush talked to you, he had his tape
22 recorder right out where you could see it; is that
23 correct?

24 A Right.

25 Q And he told you that he was tape recording his interview
26 with you; is that correct?

7-11

1 A I don't know if he told me or not, but I just assumed
2 he was.
3 Q He put a tape in the machine and turned it on; is that
4 correct?
5 A Yes.
6 Q The substance that looked like blood on the bottom of
7 the coveralls, did it appear to be the color of dry
8 blood that you had seen before?
9 A Yes, it could have been.
10 Q There was nothing inconsistent with dry blood that you
11 had seen before; is that correct?
12 A I thought it was a little bit lighter in color than
13 dried blood personally.
14 Q Why did you tell Mr. Forbush, then, that "In my opinion,
15 it looked like blood to me"?
16 A Did I say that?
17 Q Yes.
18 A Okay.
19 Q Why did you say it?
20 A I don't know.
21 MR. NEGUS: Nothing further.
22 MR. KOCHIS: No recross.
23 THE COURT: Thank you, Deputy. You are excused.
24 (Witness excused.)
25 MR. NEGUS: Deputy Roper.
26 ///

26 | A 2943?

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(No omissions.)

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1 Q And what was that?

2 A That was a hatchet.

3 Q Showing you Exhibit S-26, does that appear to be the
4 hatchet that you found?

5 A Yes, it does.

6 Q After you found that hatchet, what did you do with it?

7 A I ultimately placed it in a paper bag and kept it in my
8 possession.

9 Q And how long did you have it in your possession?

10 A Well, after I picked it up from the location it was
11 found out I placed it in the vehicle I was driving and
12 locked it in a side compartment.

13 I proceeded to the Ryen residence, and after I left
14 there, after I left the Ryen residence, I went back to
15 the identification bureau and placed it in a fuming tank
16 and there it remained.

17 Q That fuming tank, the fumes from that were a substance
18 which has the trade name of Dura-Print?

19 A Yes.

20 Q After you seized --

21 THE COURT: Excuse me a moment, Counsel, if I might
22 interrupt.

23 Mr. Gunn, the reporter, wanted to know if he could
24 replay the cassette tape to make sure he has his transcript
25 correct.

26 MR. NEGUS: I have no objection to that. In fact,

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1 A Prior to the identification bureau purchasing Dura-Print,
2 which is a commercially made product, we had become
3 aware of what was or what is referred to as Super Glue
4 fuming, which is basically the same thing except that
5 Dura-Print took the idea of Super Glue fuming and refined
6 it in making their own product.

7 Super Glue fuming is basically just purchasing Super
8 Glue sold in the store that contains cyano acrylate
9 ester. This cyano acrylate ester, when squeezed out of
10 the tube, as it evaporates the fumes from cyano
11 acrylate ester will attach to amino acids and other
12 properties in the fingerprint to develop it. There are
13 ways to quicken the reaction of Super Glue, such as
14 using sodium hydroxide five percent solution which acts
15 as a catalyst.

16 As these processes were becoming known to everybody,
17 that's when Dura-Print as a private company started to
18 refine their own product and even make it more sensitive
19 than what your basic Super Glue is. There had been
20 numerous publications by various individuals and
21 departments regarding Super Glue fuming and ways to make
22 Super Glue fuming more sensitive, such as sodium hydroxide
23 and other things.

24 Basically what we knew at that time about Super Glue
25 fuming was that it did not affect serology up to some
26 point on blood. The extent of it was, you know, not

1 studied that much. But there was some written
2 literature concerning it didn't appear to affect it at
3 all. But that was on Super Glue. Dura-Print, being
4 commercially made, was somewhat different.

5 Q Dura-Print and Super Glue in fact merged, did they not,
6 and they're now one company?

7 A Not to my knowledge. I believe what Dura-Print did as
8 a private company took the idea of Super Glue fuming and
9 experimented and developed some of their own chemicals
10 and just marketing a private product. I don't know if
11 they have merged or not.

12 Q The literature that you read concerning the effect of
13 Super Glue on serological analysis, was that essentially
14 sales literature?

15 A Excuse me?

16 Q Was that essentially sales literature?

17 A No, no. It wasn't sales literature. It was -- it stemmed
18 from individuals or maybe it was written from a department
19 standpoint. I believe one was from Florida, a sheriff
20 or police department in Florida, that had used it and
21 then just put in their findings. But it wasn't a -- I
22 don't believe it was any type of long-term study.

23 Q The claims that were made about the effect of Dura-Print
24 on serology essentially had to do with ABO typing; is
25 that correct?

26 A I believe it did, yes. Everything on just the ABO typing.

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3 MR. NEGUS: That's a fair guess.

5 (Whereupon the noon recess was taken

6 | at 12:02 p.m.)

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1 Q In order to preserve that you took a photograph of it?

2 A Yes.

3 Q How about did you seize any evidence in that general
4 area?

5 A Later on I believe that day I recovered some beer bottles
6 and I believe a wine bottle.

7 Q And where did you discover those?

8 A That was on the north side of English Road almost near
9 the intersection of Peyton and English Road.

10 Q The ax likewise was found on the north side of English
11 Road; is that correct?

12 A That's correct.

13 Q How many beer bottles and wine bottles were there?

14 A I'm sure there was three six packs, empty six packs of
15 beer, and I believe two additional bottles may have
16 been wine bottles.

17 Q And those were all empty?

18 A Yes.

19 Q Were those preserved in such a way that they could be
20 fingerprinted?

21 A Yes.

22 Q When you got the ax, did you then show it to somebody
23 else, or the hatchet?

24 A Excuse me?

25 Q After you'd seized the hatchet in evidence, put it in
26 the brown paper bag, did you ever show it to anybody

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1 else that day?

2 A Yes, both before and after I'd seized it.

3 Q Who did you show it to before?

4 A Bill Baird from the crime lab, and I believe Dave Stockwell
5 from the crime lab was with him.

6 Q Were they driving by or --

7 A No, I called for them.

8 Q And they were where?

9 A I believe at the time I called for them they were at
10 the Ryen residence.

11 Q When you showed it to Bill Baird, that was down at the
12 place you'd discovered it?

13 A Yes, it was.

14 Q Did you have any discussions with him about processing
15 it?

16 A Yes, I did.

17 Q What was that discussion?

18 A I had not been to the Ryen residence as of that time,
19 and I did not know the condition of the scene or any
20 circumstances surrounding it. And the discussion
21 centered around whether I should take the hatchet for
22 fingerprint processing or whether or not the crime lab
23 should first have it for the blood samples.

24 Q Okay. Well, was there any disagreement as to what should
25 be done with it?

26 A No. Bill Baird suggested because there were multiple

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1 victims the blood on the hatchet would than likely be
2 comingled and therefore the fingerprints would take
3 precedence.

4 Q Did Mr. Baird know anything about the Dura-Print process?
5 Had you mentioned that to him?

6 A I'm sure I probably did. I don't recall if I specifically
7 mentioned it, but that would have been my intention at
8 that time was to use Dura-Print.

9 Q You don't recall, though, asking Mr. Baird whether or
10 not he had any knowledge as to the effect of Dura-Print
11 on blood.

12 A No, I don't recall that.

13 Q Did Mr. Baird indicate anything about why he thought the
14 blood might be comingled?

15 A If I remember right, he referred to the wounds or some
16 of the wounds that were found on all the victims being
17 possibly consistent with an ax or hatchet, and if that
18 in fact was the weapon used, then the blood would have
19 been comingled.

20 Q Were there any hairs on the hatchet?

21 A Yes, there was.

22 Q Showing you again S-26, does that show the area where
23 the hairs appeared?

24 A It may. The hairs were on the head of the hatchet and
25 I don't recall from this photograph whether it was this
26 side or the other side laying next to the ground.

1 Q Did you do anything to try and take the hairs before you
2 put it in the ^{Dura-Print} dirt?

3 A No, I did not.

4 Q Did it appear to you that it would be impossible to get
5 a blood sample off the hatchet without destroying finger-
6 prints?

7 A Did it appear that it would have been possible?

8 Q Impossible. Did it appear impossible to get a blood
9 sample off that hatchet without destroying fingerprints?

10 A No. That's not impossible. It's also quite possible
11 after we process for fingerprints to obtain blood.

12 Q That's assuming -- at that point in time you had no
13 knowledge as to whether the Dura-Print would destroy the
14 ability to type enzymes or not; is that correct?

15 A No, I had no knowledge of that.

16 Q Do you know what kind of substance cyano acrylate is?

17 A Cyano acrylate? Well, cyano basically refers to a
18 cyanide fuming or similar to it. And the ester is another
19 word for plastic. Otherwise how the Dura-Print works is
20 it actually forms a fume over the amino acids of the
21 prints like a, suffice to say, possibly just a plastic
22 coating over it.

23 Q Are there any special instructions given about how to
24 handle this stuff like whether you're supposed to get it
25 on your hands or stuff like that?

26 A Well, when you get the kits, they come in various sizes,

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1 application sizes. There's an A and B solution. And
2 then there's also a remover. And if you do mix the
3 two solutions and both of them do get on your skin, it
4 will stick them together. And you have to apply the
5 remover right away.

6 Q Is it toxic?

7 A Not to my knowledge. But you have to use it with
8 ventilation.

9 Q Do you know whether or not this particular substance
10 destroys proteins?

11 A I don't know if it does or not.

12 (No omissions.)

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1 Q Do you know the chemical difference between ABO
2 substances and the various other enzyme markers in
3 blood?

4 A No, I don't.

5 Q Did you have a conversation with Mr. Bellomy about this
6 action on the 5th?

7 A On the 5th?

8 Q Yes.

9 A I don't believe so, no.

10 Q Did you ever call him up and ask him about developing it
11 with Dura-Print?

12 A No. That was a Sunday and I -- Yes. He wasn't even
13 home. On any major crime, any major crime scene that
14 we are called to, the policy is to notify either at that
15 time Sergeant Baker or Lieutenant Bellomy.

16 When the call first came in, we tried calling both
17 and we got no response at either of their homes.

18 Q You started the work of trying to or putting the hatchet
19 in the Dura-Print about 1:00 o'clock in the morning on
20 Monday morning; is that correct?

21 A It was certainly no later than that time.

22 Q So it would have been the same day that you found it
23 you started it?

24 A Within two hours after I left the Ryen residence on the
25 night of the 5th.

26 Q Had you made contact with Mr. Bellomy before you started

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9-2

1 that Dura-Print process?

2 A No, I did not make contact with him. I don't even
3 recall if I tried to telephone him. I may have when
4 I got back to the office, but I don't recall.

5 Q When you got back to the office, do you recall making
6 contact with him?

7 A I'm not real positive on it, but it seems like I did.
8 I was trying to because of the nature of the scene and
9 the hours that we knew we would be spending out there.
10 I'm sure I tried to get a hold of him all night. If I
11 did in fact, I don't recall.

12 Q Do you recall talking to Lieutenant Bellomy and him
13 telling you that prior to putting the hatchet in the
14 Dura-Print, make sure to check with somebody in the
15 Crime Lab about what effect the Dura-Print would have
16 on blood typing?

17 A I don't recall if we had a conversation like that at all.

18 Q Except for your conversation with Mr. Baird, did you
19 check with anybody in the Crime Lab as to the effect of
20 Dura-Print on blood typing?

21 A No, not that I can remember.

22 Q When you talked to Mr. Baird, you don't remember whether
23 Mr. Stockwell was there or not?

24 A No. I'm sure he was.

25 Q Did Mr. Stockwell have anything to say about the
26 strategy of using Dura-Print?

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1 take numerous ones like this, yes.

2 Q Okay. Could you put a "B" with the black grease pencil
3 at the spot where you located the beer bottle?

4 A Nearly right at the T intersection at Peyton and English.
5 It's going to be hard to mark because of the size.

6 Q You put a --

7 A I put something that resembles a "B" there.

8 Q It looks like an oval?

9 A An oval mark.

10 Q Perhaps you could make a larger "B" with the orange and
11 draw an arrow toward the black mark.

12 A (Witness complied.)

13 Q At some point in time, did somebody from the Crime Lab
14 come out to the I.D. Bureau and remove some blood and
15 hairs from the hatchet?

16 A Yes, they did.

17 Q When they did that, did that disturb any fingerprints
18 on the hatchet?

19 MR. KOCHIS: I would object. That calls for
20 speculation on his part.

21 THE COURT: Mr. Negus?

22 MR. NEGUS: I will back up.

23 Q (BY MR. NEGUS) Did you see the person removing the blood
24 and hair from the hatchet?

25 A No, I did not.

26 Q After the blood and hairs were removed, was there any

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9-5

1 further processing done of the hatchet before fingerprints?

2 A Yes.

3 Q What did that consist of?

4 A Sergeant Baker transported the hatchet to Texas Tech

5 University where an argon laser was used.

6 Q Any reason why the blood and hairs were taken before

7 the hatchet went to Texas?

8 A Not that I know of.

9 Q Do you have a present memory of discussing the issue of

10 taking blood off the hatchet before it was put in the

11 chamber? Do you remember that conversation now?

12 A Yes. With Bill Baird, yes.

13 Q At the preliminary hearing, you testified -- You

14 testified the second day of the preliminary hearing; is

15 that correct?

16 A I believe it was.

17 Q At that point in time, do you remember testifying that

18 you weren't even aware of the issue of taking blood was

19 discussed?

20 A I couldn't recall the conversation I had with Mr. Baird

21 at that time.

22 Q What has occurred that has refreshed your recollection?

23 A I asked him.

24 Q When did that occur?

25 A I believe that day or the next day after I had testified.

26 I was at the Crime Lab on an unrelated case and I had

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9-6

1 asked him what we had talked about concerning the
2 hatchet, and then he told me about, reminded me that
3 there were multiple victims there and the blood being
4 comingled and then I recalled the conversation.

5 Q At the preliminary hearing -- Do you remember you did
6 say at the preliminary hearing that you had had a
7 discussion with Bill Baird?

8 A Yes, I believe that's true.

9 Q And then you went on to say that that had to do with
10 lifting latent prints but that you didn't believe
11 there was any discussion directly related to that
12 interfering with blood typing because the published
13 material regarding Dura-Print, I believe, indicated
14 it would not affect the typing?

15 MR. KOCHIS: I object. It's not inconsistent with
16 anything he testified to here. He said at the time he
17 testified he did not recall having a conversation with
18 Mr. Baird on the 5th of June, and he so testified at the
19 preliminary hearing.

20 MR. NEGUS: That's not correct. He testified that
21 he had a conversation with Mr. Baird but they didn't discuss
22 blood typing.

23 MR. KOCHIS: He earlier testified that he did not
24 recall having the conversation about the hatchet with
25 Mr. Baird when he testified, but based on subsequent
26 conversation with Mr. Baird, he now recalls that conversation.

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1 That's not inconsistent.

2 THE COURT: Overruled.

3 MR. KOCHIS: Could I have the page and line number?

4 MR. NEGUS: 55, lines 5 through 10.

5 Q (BY MR. NEGUS) Do you recall testifying that way at the
6 preliminary hearing?

7 A I don't recall the question.

8 Q Do you recall testifying at the preliminary hearing that
9 you did have a conversation with Mr. Baird but that the
10 conversation, there was no discussion directly relating
11 to that development of fuming the ax interfering with
12 blood typing because the published material regarding
13 Dura-Print, I believe, indicates that it will not affect
14 the typing? Do you recall testifying to that effect?

15 A Yes.

16 Q So you did recall at the preliminary hearing having
17 conversation with Mr. Baird; is that correct?

18 A Yes. I called him to the scene out there and we did
19 not discuss typing. We discussed what would come first,
20 the processing for latent prints or the sample of blood
21 from the hatchet.

22 Q But there was no discussion then as to whether or not
23 the fuming would interfere with subsequent blood
24 typing?

25 A I don't specifically recall talking to Mr. Baird about
26 blood typing.

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1 Q After your conversation with Mr. Baird at the laboratory
2 a day or two after you first testified, did the idea that
3 you and Mr. Baird discussed, comingling of blood, did
4 you then have a recollection of that?

5 A Of the blood being comingled, yes.

6 Q What significance was the comingling to your discussions
7 as to what to do first?

8 MR. KOCHIS: Objection. Asked and answered.

9 THE COURT: Counsel, I believe he previously
10 indicated that because there was probably comingling was
11 the reason why they took the prints first.

12 MR. NEGUS: What I'm asking him is what difference
13 did the comingling make and I don't think I have an answer
14 to that.

15 THE COURT: Ask another question.

16 Q (BY MR. NEGUS) Were you of the opinion that comingling
17 prevented blood typing?

18 THE COURT: Go ahead. You can answer the question.

19 THE WITNESS: Well, if you have four or five victims
20 and they have different types of blood and the blood is all
21 mixed together, I would assume that would make it hard to
22 identify any one single victim.

23 Q (BY MR. NEGUS) So is it your understanding, then, that
24 if you have comingled blood, there is no significant
25 information that can be obtained from typing?

26 A I don't know that.

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9-9

1 Q Well, is the reason that the issue of comingling was
2 raised at the time it was was to indicate that blood
3 typing would be futile and that's why you wanted to
4 go ahead and develop it?

5 A I don't know if it would be futile or not, but as a
6 regular standard policy between the Identification
7 Division and the Crime Lab, anytime you have a piece of
8 evidence that falls within their responsibility and also
9 falls within ours, which would be fingerprints, there
10 is always the discussion as to who should have the item
11 first for what process.

12 (No omissions.)

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1 Q Blood could have been taken without interfering with
2 your work, right?

3 THE COURT: That's argumentative. You're trying to
4 get him to come around to your way of thinking.

5 MR. NEGUS: No, I'm trying to clarify what was said
6 and what was not said in that conversation, Your Honor.

7 THE COURT: But you're not asking him about a
8 conversation.

9 MR. NEGUS: Excuse me. I'll rephrase the question.

10 Q (BY MR. NEGUS:) In your conversations with Mr. Baird,
11 was there any discussion as to whether taking blood
12 samples would interfere with your fingerprinting?

13 A I believe there was -- I don't think there was any words
14 exchanged regarding that, but again, the procedure is
15 that if the fingerprints are going to take precedence,
16 then, that item or whatever the item is is going to be
17 processed first for fingerprints.

18 Q So in deciding which takes precedence, the issue of one
19 process destroying the other doesn't come up; is that
20 correct?

21 A I don't know if it would come up or not. It would have
22 to be a case-by-case decision and that was his decision
23 whether he told me that the fingerprints would be of a
24 greater value than the work his division would do at that
25 time.

26 Q In making that decision, did he say anything about

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1 whether or not your work would destroy the possibility
2 of his division doing any work?

3 A I don't recall if he did or not.

4 Q After you picked up the hatchet, did you also show it
5 to Sergeant Arthur?

6 A Yes, I did.

7 Q And did you show it to anybody else?

8 A There were some other people around. I'm not sure who
9 they were. They were, you know, connected with the
10 sheriff's office though.

11 Q What time did you arrive at the Ryen residence?

12 A Sometime around 4:00 p.m. or 4:30 p.m.

13 Q What did you do when you got there?

14 A Parked the vehicle and walked up and contacted Deputy
15 Duffy.

16 Q And where was Mr. Duffy at that point in time?

17 A I believe I first found him on the lawn section east
18 of the master bedroom.

19 Q Was he taking photographs at that position or just there?

20 A I believe he had a camera, yes.

21 Q After you contacted Mr. Duffy, then what did you do?

22 A I asked him what he wanted me to do.

23 Q And what did he want you to do?

24 A He had told me that he had already taken photographs
25 of the exterior of the house and of the master bedroom
26 and went on, I'm sure went on to specifically say what

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1 he had done and how he had done it. And then I told
2 him that I would take the -- I would take some additional
3 photographs as more or less backup photographs of the
4 master bedroom only.

5 Q Did you go ahead and do that?

6 A Yes, I did.

7 Q After you did that, what did you do next?

8 A We then, both of us, I believe, at that time may have
9 went out in the driveway area and the barn and photographed
10 some tire impressions in the dirt and other impressions
11 surrounding that area.

12 Q Then what did you do?

13 A We then dusted or examined parts of the master bedroom
14 for latent prints.

15 Q And do you remember approximately when you started that
16 particular work?

17 A I believe -- you mean the latent prints in the master
18 bedroom?

19 Q Yes.

20 A That probably started right around 6:00 p.m.

21 Q When you first went to take your backup photographs for
22 Mr. Duffy, how many people were in the master bedroom?

23 A I believe two other people besides myself and Deputy
24 Duffy.

25 Q Did you yourself develop any prints?

26 A Latent prints?

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1 Q Yes.

2 A Yes, I did.

3 Q And did you yourself lift all the latents that you
4 developed?

5 A Yes, I did.

6 Q Did you photograph the developed latents before you
7 lifted them?

8 A I did not, no.

9 Q Who did?

10 A I don't believe anybody did, no.

11 Q Why was that?

12 A When you have a scene where you're going to have, let's
13 say, numerous latents, once you start examining, some-
14 times it's a lot easier to photograph the area than
15 to write on the back of the card and draw a sketch on
16 the back of the latent card where you lifted it from.
17 The areas that I was doing were limited, and because of
18 the other work going on in the room, I decided just to
19 dust those areas and then draw a sketch indicating where
20 I had developed and lifted them from.

21 Q Did you work anywhere outside of the master bedroom
22 area?

23 A Of the Ryen residence?

24 Q Yes.

25 A I took photographs of the driveway area.

26 Q Did you develop latents anywhere outside of that master

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1 bedroom?

2 A Yes.

3 Q Where was that?

4 A The Lease residence, the adjoining or adjacent residence.

5 Q And the Ryen residence you only did the master bedroom?

6 A Yes, just small sections of it.

7 Q How many latents did you develop?

8 A From the Ryen residence?

9 Q Yes.

10 A I believe approximately six.

11 Q And you took notations on a little card where all of

12 those were?

13 A Yes.

14 Q Showing you Exhibit H-262, and directing you to the

15 first of those pages, could you take a red-orange marker

16 and put RR by the ones that you lifted?

17 A (The witness complies.)

18 Q I think we're now getting into the 2991.

19 A Some of these latents unless I see the back of the actual

20 latent card, I'm not sure I did or not on this one here.

21 These I don't know.

22 Q Do you recall in January after the Preliminary Hearing

23 coming to the I.D. bureau?

24 A Yes. Several times.

25 Q Do you recall on one of those occasions you made Xeroxes

26 for me of all the fingerprints which had been taken from

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1 the automobile, the Ryen residence, and the Lease
2 residence were either not suitable for comparison or
3 had not been identified to any particular individual?

4 A Yes, I believe so.

5 Q And are these the copies that you made for me?

6 A Yes.

7 Q Or the copies of the copies that you made for me?

8 A Copies of them, yes.

9 Q Let me just mark on here number one by one of these
10 that you lifted. There's an indication in my writing
11 of some information about that. Does that appear to be
12 a copy of the information that you had on the back of
13 your card?

14 A Yes, it does.

15 Q And then putting a number two that appears to be
16 information in your handwriting with a little chart as
17 to where that was lifted from and the time; is that
18 correct?

19 A That's correct.

20 Q Putting a little number three by one that was taken from
21 a telephone, do you have your own information as to when
22 and where the prints that's labeled now with an orange
23 number three was taken?

24 A Yes, I do.

25 Q What was that?

26 A That was on June the 5th at 5:25 p.m.

- 1 Q And number four, the information in my handwriting is
2 the time and place that you lifted that; is that correct?
- 3 A Yes, that's correct.
- 4 Q And number five, the information in my handwriting
5 similarly time and place that you lifted that; is that
6 correct?
- 7 A Yes, that's correct.
- 8 Q Did you also lift some prints that are not displayed
9 there? You have five from the Ryen residence.
- 10 A Yes. There appears to be two more that I did lift.
- 11 Q Where were they lifted from?
- 12 A The bathroom door that's adjacent to the master bedroom,
13 and it would be on the bathroom side or inside the door.
- 14 Q And what was the other one?
- 15 A The other one was the sliding glass door to the master
16 bedroom and a partial palm and fingerprint was taken
17 from the stationary half, the part of the window that
18 does not slide on the outside section.
- 19 Q Is that the one that you're referring to in there as
20 number two?
- 21 A No.
- 22 Q There was another one taken from the outside?
- 23 A Well, one was taken -- this was taken from the inside.
- 24 Q Okay. Number two is from the inside?
- 25 A Is from the inside if you're standing on the inside of
26 the master bedroom looking out. The one that you don't

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- 1 have is if you're standing on the outside looking into
2 the master bedroom.
- 3 Q Showing you number one that you've labeled.
- 4 A There's an additional one besides that, besides this one.
- 5 Q There were two then taken from the outside looking in?
- 6 A Yes, a total of two.
- 7 Q In the I.D. bureau, how do you keep track of which prints
8 you've lifted?
- 9 A They're indicated on the back of the card. There's blanks
10 -- I mean lines to fill in requesting certain information.
- 11 Q You have a little list there of seven that you took?
- 12 A Yes.
- 13 Q Where did you get that information?
- 14 A From the latent cards at lunchtime.
- 15 Q So other than the cards themselves, there's no like log
16 or chart or notes that you all take as to what you've
17 done?
- 18 A No. The back of the card is fairly complete when you
19 fill in the information.
- 20 Q There's no like list of how many cards you have, or you
21 don't keep track of numbers or anything?
- 22 A I'm sure there's a list over there, yes. We've totaled
23 these before, totaled the number of lists before.
- 24 Q Showing you Exhibit H-263, does that appear one such
25 list?
- 26 A Yes. That's a list of latent prints.

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3 A No. I took all -- All of the photographs I took that
4 evening at the house were taken within the first hour
5 I was there.

6 Q What time did you leave the house that night?

7 | A I believe I left at approximately 11:00 p.m.

8 Q Were you present in the master bedroom when the bodies
9 were being removed?

10 A I wasn't inside the master bedroom, no.

11 Q Where were you?

12 A I was outside by the spa area.

13 Q After June the 5th, did you ever return to the Ryen
14 residence?

15 | A No, not to the Ryen residence.

16 Q Have you ever examined the carpet that has been stored
17 in the loft of the I.D. building?

18 | A Yes.

19 Q And when have you examined that?

20 A I don't remember the specific date. I believe it was
21 in September.

22 Q Was that when Mr. Forbush and I were present to look
23 at it as well?

24 | A Yes.

25 Q At that point in time, was there any mildew on the
26 carpet?

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2 | Q How much?

5 Q And do you remember where on the carpet that was located?

8 Q Would that have been in the area where Douglas Ryen's
9 body had been at the crime scene?

11 Q When you showed the carpet to Mr. Forbush and myself,
12 was it possible to, in the space you had in the I.D.
13 loft, unroll the whole thing at one time?

15 Q Did you go to 2991 English Road, the vacant house to
16 the east of the Ryen residence?

18 Q When was that?

21 Q On the 7th, were you involved in any developing of
22 latent fingerprints?

24 Q Were you on the 8th?

26 Q Where did you work on the 8th?

11-3

- 1 A It was a bedroom located on the -- probably best
2 described as the southwest end of the house.
- 3 Q Did you find any latents in that bedroom?
- 4 A Yes, I did.
- 5 Q How many?
- 6 A Five.
- 7 Q Did you lift any other latents from that -- develop any
8 other latents from that Lease residence besides those
9 five?
- 10 A No, I did not.
- 11 Q Going back to H-262 and directing you to the ones that
12 have 2991 at the top, any of those five that you can
13 find and put an "R.R." by?
- 14 A I don't recognize any of them, but there are some
15 latents in here that aren't labeled that could be some
16 of the ones I lifted. But I don't believe so.
- 17 Q Did Mr. Duffy take photographs of the latents that you
18 made?
- 19 A No. He wasn't there.
- 20 Q Did anybody take photographs of the latents that you
21 made?
- 22 A No.
- 23 Q Could you describe as to precisely, as your notes
24 indicate, the areas where you lifted those five prints?
- 25 A Yes. One was in that bedroom on an inside closet door.
26 The second was also on a closet door and that would have

There were two additional latents that I lifted. I went back and processed a closet door that Deputy Duffy had done previously the night before.

Q Let's try and start out showing you Exhibit H-270. Does that appear to be the floor plan of the Lease residence?

Q Could you put a number "A" for the bedroom that you have been referring to as the one on the south?

Q Okay.

Q Could you put a "B" as to the one you referred to as the bedroom on the north?

Q And in the "A", you have got two and in the "B" you have got three?

Q They were both -- One was from the closet and one was

11-5

- 1 from --
- 2 A Both were from a closet door. Without having the actual
3 latent here, I don't know which one of the closet doors
4 they would have been from, if not both from the same
5 closet door.
- 6 Q Then the ones in the "B" bedroom, where were they from?
- 7 A They were also from the closet doors, these closet doors
8 here.
- 9 Q Do you know whether they were from the outside or inside
10 the closet door?
- 11 A I know one was from the inside. Excuse me. I know that
12 two were from the inside because the note on the latent
13 card indicates "Refer to number 32 by Deputy Duffy."
- 14 The night prior, he had marked a latent number 32
15 in black felt pen on the door. The latents I developed
16 were directly below that marking.
- 17 Q And the third one was where?
- 18 A Also from the closet door but I don't know if it was
19 the outside or inside.
- 20 Q Is there no marking on the card that would tell you
21 that?
- 22 A Yes, there is. I just didn't mark it on my note.
- 23 Q Showing you H-268, is that a photograph of the closet
24 door to which you are referring?
- 25 A Yes, it is.
- 26 Q And could you put a number "1" and a number "2" if it

11-6

1 appears, for the latents that you lifted or the spot
2 that they were lifted from?

3 A No. This says "32", but it appears that they were even
4 further down than that in it and the area I believe I
5 lifted them from does not even show in this photograph.

6 Q So they would be toward the bottom off the photograph
7 there?

8 A More toward the carpet, yes.

9 Q How far up from the carpet were they?

10 A The exact measurements were marked on the latent card,
11 but I believe one was about six to eight inches above
12 the carpet and the other approximately maybe a foot.

13 Q Showing you S-28, does that appear to be a photograph
14 of the closet that you developed it from?

15 A Yes, it does.

16 Q There appears to be four different closet doors that
17 appear in that. Can you tell which is the one?

18 A Yes, I can.

19 Q Can you mark that?

20 A It was the inside of this door here with just the edges
21 showing.

22 Q Could you put an "R.R." on the photograph on that door?

23 A (Witness complied.)

24 Q What did you do with them after you had them lifted?

25 A I took them back to the Identification Office.

26 Q How were they stored in the Identification Office?

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11-7

- 1 A They were stored in a file system by our case number.
- 2 Q Whatever number of latents are lifted in a particular
- 3 case, they are put in the same file?
- 4 A They all have the same case number but they are put in
- 5 separate envelopes and marked where they were lifted
- 6 from, the date, who did it.
- 7 Q Are all the envelopes put in the same file? Do you have
- 8 any organizing principle for them or are they just all
- 9 in there in the same file?
- 10 A In this particular case, they occupied a separate file
- 11 cabinet all by themselves.
- 12 Q So they were in a particular drawer?
- 13 A They were isolated in a metal file cabinet, yes.
- 14 Q During the time that you were in the I.D. Bureau, was
- 15 there anybody assigned to keep track of how many were
- 16 in there or anything of that nature?
- 17 A Well, Deputy Punter was given the responsibility of
- 18 making the comparisons.
- 19 Q Did that mean she had the responsibility of knowing
- 20 where they were at all times?
- 21 A Yes. They would have only been in that drawer.
- 22 Q When comparisons were being made, was the whole thing
- 23 taken out at once or were individual ones taken out and
- 24 looked at?
- 25 MR. KOCHIS: Objection. No foundation.
- 26 THE COURT: Lay a foundation.

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11-8

1 Q (BY MR. NEGUS) Did you ever take any out, take any
2 fingerprints out to look at?

3 A Yes, I did.

4 Q When you did that, did you make note that you had them?
5 How did you account for the fact that you had them?

6 A The metal cabinet is locked by a bar and a master padlock,
7 and Lieutenant Bellomy is the only one that has a key.
8 We had to get the key from him.

9 We open it up and then we compare latents to rolled
10 prints and then would mark on the latent card if it had
11 been compared to a set of known prints and who and what
12 the results were. Then they were put back in.

13 Q Which known rolled prints did you compare fingerprints
14 in this case?

15 A I compared just, I would say maybe a half a dozen of
16 the latents to two or three persons' rolled prints.

17 Q Who were those persons?

18 A One was Kevin Cooper, and there was some comparison
19 done with rolled cards of the two other subjects that
20 were listed as escaping, one from C.I.M. that date and
21 the other one from California Youth Authority.

22 Q That was Mr. Martinez and Mr. Norrie?

23 A I believe those are the names, yes.

24 Q Those are the only three people whose known prints you
25 compared with latents?

26 A Yes.

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11-9

- 1 Q Do you remember which latents you compared?
- 2 A No, but the latents would be marked.
- 3 Q How do you mark them when you compare them?
- 4 A Just on the blank space on the cards we would write
- 5 "negative", the last name of the person whose rolled
- 6 cards had been submitted and then the date and then
- 7 your initials.
- 8 Q And did you compare, make any comparisons at the 2991
- 9 residence?
- 10 A Yes. On the night of the 7th, I had arrived at the
- 11 residence sometime around 7:30 p.m. with a rolled
- 12 fingerprint card of Kevin Cooper and some of the more
- 13 comparable latents, some of the best ones, easiest to
- 14 read without magnification were then scanned over by
- 15 Deputy Duffy and myself to the rolled cards.
- 16 Q Do you recall which ones those were?
- 17 A No, I don't. There was only -- At that time, they were
- 18 still in the process of examining the residence and not
- 19 all the latents were lifted.
- 20 Q Did you ever do any work of processing in the kitchen
- 21 area?
- 22 A On the floor.
- 23 Q Was there a dishwasher-washer combination there?
- 24 A I believe there was, yes.
- 25 Q Did you ever take any of the dishes out of the
- 26 dishwasher?

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1 Q When you were in the residence at the Lease house, did
2 you have an opportunity to observe a counter that was in
3 the southern portion of the living room area?

4 A Yes.

5 Q And did that counter run into a wall that was closest to
6 this northern bedroom which you've labeled on the diagram
7 as No. B?

8 A Yes.

9 Q And did you look at that wall?

10 A No, I did not.

11 Q Did you ever see any blood on the wall in the Ryen
12 residence -- or excuse me, the Lease residence?

13 A No, I did not.

14 Q When you were processing in the bedroom which you've
15 labeled as No. A on the diagram, do you recall seeing
16 any clothing hanging in the closet?

17 A I think there was, yes.

18 Q Showing you H-266, do you recognize that photograph?

19 A Yes.

20 Q And is that one of the closets that you were processing
21 in the bedroom that you've labeled as No. A?

22 A It appears to be, yes.

23 Q Did you notice any bloodstains or anything that appeared
24 to be bloodstains on any of the clothing while you
25 were processing?

26 A No, I did not.

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- 1 Q Do you recall if when you were processing that
2 particular clothing was still in the position which was
3 depicted in the photograph?
- 4 A I don't remember that. There were three pair of pants
5 when I arrived there on the 8th. I can recall clothes
6 hangers being in there, but I don't recall what garments
7 were hanging on the clothes hangers.
- 8 Q Were you present when the Lease residence was sprayed
9 with luminol?
- 10 A Yes.
- 11 Q Did you participate in the decision to do that spraying?
- 12 A No.
- 13 Q Did you photograph any of the results of the luminoling?
- 14 A No.
- 15 Q Did you see other people doing it?
- 16 A Yes.
- 17 Q Do you have knowledge of the techniques which are
18 necessary in order to get printable photographs of luminol?
- 19 A Yes, I've done it before.
- 20 Q These people that you saw doing it, was that Mr. Ogino?
- 21 A Yes.
- 22 Q Did he consult with you before he did it?
- 23 A Not in the entire method, no, but I was there and he
24 did ask me some questions regarding it.
- 25 Q Did Mr. Ogino use the method to photograph the luminol
26 that you'd used successfully in the past?

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1 A Yes, he was using the same techniques.

2 Q Do you know if he used the same exposure?

3 A No, I don't.

4 Q Is it possible generally to use Tri-X film pushed to
5 approximately ASA 3200 at about half a second and get
6 readable luminol results?

7 MR. KOCHIS: I'm going to object. That question is
8 argumentative. He's trying to get this witness to agree
9 with what he may feel is the proper procedure.

10 MR. NEGUS: It's a simple yes or no answer.

11 THE COURT: Is it possible. What's argumentative
12 about that?

13 MR. KOCHIS: Well, if the question is is it possible,
14 then I'd object that it calls for speculation in that anything
15 is possible.

16 THE COURT: I can't tell. I'd have to have him
17 go through and repeat it. It's not worth it, Mr. Kochis.

18 Go ahead.

19 THE WITNESS: I don't know.

20 Q (BY MR. NEGUS:) Do you use Tri-X film when you --

21 A Excuse me?

22 Q Have you used Tri-X film when you have successfully
23 filmed luminoling?

24 A No.

25 Q What have you used?

26 A Recording film 1000 ASA.

1 Q What exposure do you use?

2 A We start off with approximately five seconds and we
3 will photograph all 20 exposures at extended time frames
4 from that.

5 Q Did you participate in processing an automobile license
6 number 2ALL731, a 1977 Buick?

7 A Yes, I did.

8 Q And when did you do that?

9 A That was on June the 11th, 1983.

10 Q And did you dust that automobile for latent prints?

11 A Yes, I did.

12 Q Was that both inside and out?

13 A Yes, it was.

14 Q Did you discover any latent prints?

15 A Yes, I did.

16 Q How many?

17 A Six.

18 Q And were those latents photographed prior to their
19 being lifted?

20 A Yes, I believe they were.

21 Q By whom?

22 A Either myself or Deputy Duffy.

23 THE COURT: Why are you going into this?

24 MR. NEGUS: Why?

25 THE COURT: Description of who two photographs were
26 taken by. I understood before there was nothing incriminating

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1 against your client. What's the point?

2 MR. NEGUS: Well, Your Honor.

3 THE COURT: Sounds more like just a deposition or
4 something --

5 MR. NEGUS: The problem is that I keep getting
6 discovery which you haven't heard about, so it becomes an
7 issue.

8 THE COURT: Go ahead.

9 MR. NEGUS: I mean, I wouldn't be doing it if I
10 had gotten the information in a timely fashion to begin with,
11 and we didn't have comparisons popping up at the last
12 minute.

13 THE COURT: Please continue.

14 Q (BY MR. NEGUS:) Do you remember who took the photographs
15 of the prints in the car?

16 A Nearly all of the photography of the vehicle was done
17 by me. However, I do think that Deputy Duffy may have
18 taken one or two of the photographs, because I had my
19 hands full with something else.

20 Q What were the locations that you took -- well, strike
21 that.

22 Showing you the Xerox H-262 again, and could you
23 put again with the orange RR those which you lifted?

24 A (The witness complies.)

25 Q So you've been able to identify four on there that you
26 lifted?

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1 A Yes.

2 Q What were the locations of the two that did not appear
3 in Document H-262?

4 A There's one that -- yeah, they were the ones. I know,
5 they were the ones that had been eliminated and you
6 didn't ask for them.

7 Q What were their locations?

8 A I believe the one was on the rear window on the driver's
9 side, and the other may have been one that just wasn't
10 suitable.

11 Q Where was that?

12 A Tailgate, I believe.

13 Q When you say eliminated, that means that they have been
14 conclusively shown to have come from somebody like the
15 Ryens or the Hughes or somebody like that?

16 A Yes.

17 MR. KOCHIS: Your Honor, would this be a convenient
18 time for the break?

19 THE COURT: Any time.

20 MR. NEGUS: Sure.

21 THE COURT: Okay. We'll take the afternoon recess.

22 (Recess.)

23 (No omissions.)
24
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25 (Whereupon the proceedings taken and had
26 on this date were adjourned.)

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