

COPY

CASE NO. CRIM 24552

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE )  
OF CALIFORNIA, )

PLAINTIFF, )

-VS- )

KEVIN COOPER, )

DEFENDANT. )

SUPERIOR COURT  
NO. CR-72787  
MOTIONS

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

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OFFICIAL REPORTERS

VOLUME

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PAGES

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THROUGH

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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

VOLUME 39

Pgs. 3997 thru

10  
11 REPORTERS' DAILY TRANSCRIPT

12 BEFORE HONORABLE RICHARD C. GARNER, JUDGE

13 DEPARTMENT 10 - SAN BERNARDINO, CALIFORNIA

14 Thursday, June 21, 1984

15 APPEARANCES:

16 For the Plaintiff:

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District Attorney

17 DENNIS KOTTMEIER  
18 District Attorney  
19 By: JOHN P. KOCHIS  
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20 For the Defendant:

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

23 Reported by:

LEONARD D. GUNN  
Official Reporter  
24 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>
H-203    Photograph	4004	--
H-297    Diagram	3999	--
H-303    Photograph	4004	--

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1 SAN BERNARDINO, CALIFORNIA; THURSDAY, JUNE 21, 1984; 9:50 A.M.

2 DEPARTMENT NO. 10

HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

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

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

13  
14 THE COURT: Are you ready, Mr. Negus?

15 MR. NEGUS: Yes, just about.

16  
17 C R A I G O G I N O, having been previously duly sworn,  
18 resumed the stand and testified further as follows:

19  
20 DIRECT EXAMINATION (Resumed)

21 BY MR. NEGUS:

22 Q On June 8th, did you return to the 2991 residence after  
23 you had gone home in the early morning hours of June 8th?  
24 Did you return to the house the same day?

25 A Yes.

26 Q Did you seize any more evidence on June the 8th from what

1       you seized on the 7th?

2   A    Yes.

3   Q    What did you seize?

4   A    Possible blood from the driveway of that residence,  
5       possible blood from the southern entrance, a footwear  
6       impression which was located near the southwest corner  
7       of the game room, and another footwear impression located  
8       near the southwest corner of the game room, an additional  
9       lifted impression from the previously described footwear  
10      impression -- it was like a double lift -- and possible  
11      hairs from the driveway.

12  Q    The hairs from the driveway were in the same general  
13      area as the blood?

14  A    Yes, I believe so.

15  Q    Did you on that day also spray the Lease house, the 2991  
16      residence, with luminol?

17  A    Yes.

18  Q    And that was in the nighttime hours?

19  A    I don't remember.

20  Q    Well, it was dark in the house when you did it?

21  A    We had to darken the house to do it.

22  Q    What areas of the house did you spray?

23       THE COURT:  This is the 2991 residence?

24       MR. NEGUS:  Yes.

25       THE WITNESS:  The northeast bedroom area and the  
26      hallway leading from the bedroom area into the bathroom area,

010566

- 1 and also around the sink in the bathroom and the shower.
- 2 Q (BY MR. NEGUS:) Those are the areas that you sprayed,  
3 or those are the areas that you got reaction?
- 4 A Well, we actually sprayed a large portion of the bedroom  
5 area and the bathroom floor and counter area also.
- 6 Q Did you also spray some parts of the other parts of the  
7 house?
- 8 A Yes.
- 9 Q What parts did you spray?
- 10 A We also sprayed an additional bedroom, which was towards  
11 the south of the house.
- 12 Q That would be the bedroom closest to the south living  
13 room front door?
- 14 A Yes.
- 15 Q Why did you pick that particular bedroom?
- 16 A Because it appeared to be slightly disturbed.
- 17 Q Showing you Exhibit H-297, is that a diagram that you  
18 prepared at the Preliminary Hearing which shows some of  
19 the areas where you got the luminol reaction?
- 20 A I didn't prepare the diagram.
- 21 Q First of all, that's a floor plan of the 2991 residence?
- 22 A Yes.
- 23 Q And then in blue ink there are some little marks on the  
24 diagram?
- 25 A Yes, that's correct.
- 26 Q And you put those there at the Preliminary Hearing; is

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1       that correct?

2   A    I believe I did.

3   Q    And those indicate some of the areas where you saw the  
4       luminol reaction; is that right?

5   A    Yes.

6   Q    Could you take the orange grease pencil and put in any  
7       other areas that you didn't put in at the Preliminary  
8       Hearing where there might have been a luminol reaction?

9   A    (The witness complies.)

10   Q   Did you take any notes or make any sketches as to the  
11       different patterns that you saw in the house?

12   A    Yes.

13   Q    What notes did you take?

14   A    I drew various luminol reaction patterns on my diagram.

15   Q    Are those reproduced on the diagram H-297?

16   A    Somewhat, yes.

17   Q    Did you try and do -- are the patterns that you sketched  
18       on H-297 as reasonably accurate as you can recall for what  
19       the patterns were?

20   A    They could be a little bit more accurate. I just drew  
21       dots where I got very small reactions.

22   Q    But the large patterns are approximately the way that  
23       you remember them?

24   A    Well, there's one pattern where I just circled. There  
25       were numerous footprints inside this particular area  
26       which I just circled.

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1 Q When you say footprints, do you mean like shoe impressions?  
2 A Well, they appeared to be shoe impressions.  
3 Q Did you do any measurements of them?  
4 A I personally did not, no.  
5 Q Did you see somebody else?  
6 A Yes.  
7 Q Who was that?  
8 A Dave Stockwell.  
9 Q Did he ever take notes of those measurements? Did you  
10 ever see him taking notes of the measurements?  
11 A I don't know.  
12 Q Did you ever take any notes of his measurements?  
13 A No.  
14 Q Did the impressions that you saw there in front of the  
15 closet appear to be full shoe impressions; that is, the  
16 whole shoe?  
17 A I don't believe they were.  
18 Q Do you recall whether they had any discernible pattern ?  
19 A I don't think those prints in front of the closet did have  
20 any discernible pattern.  
21 Q Showing you Exhibit H-291 and asking you to look at the  
22 page which is marked as 2104 and then going on over to  
23 2105, there appears to be descriptions of luminol results  
24 from the Lease house there; is that correct?  
25 A Yes, that's correct.  
26 Q Did you prepare that description?



1 A No, I did not.

2 Q Did you sign the report which somebody else prepared?

3 A Yes, I did.

4 Q It indicates on that particular report for the impressions  
5 in front of the closet that you described as nondescript  
6 patterns; is that correct?

7 A Yes.

8 Q Why did you sign a report that didn't have an indication  
9 that there were shoe impressions involved?

10 A I don't understand your question.

11 Q Why did you sign the report when it didn't mention the  
12 shoe, the fact that the non -- try again.

13 Why did you sign the report which described the  
14 patterns which you put down as shoe impressions as non-  
15 descript?

16 A Because in my opinion I couldn't really say they were  
17 positively shoe impressions.

18 Q They didn't look nondescript to you, though, did they?

19 A I wouldn't exactly call them shoe impressions, either,  
20 though.

21 Q Why did you put that down in your notes as possible shoe  
22 impressions?

23 A They're just my personal notes.

24 (No omissions.)  
25  
26

1-1

- 1 Q Did you make any sketches of what you saw in the shower?
- 2 A Yes.
- 3 Q And was that just to indicate which walls of the house
- 4 the pattern was on?
- 5 A Yes.
- 6 Q Did you make any vertical sketches with a vertical axis
- 7 to them?
- 8 A No.
- 9 Q Why not?
- 10 A I don't know. I just didn't do that.
- 11 Q Do you have a recollection of what the pattern looked
- 12 like on the wall?
- 13 A Yes.
- 14 Q What was that?
- 15 A It was a pattern which was approximately two feet from
- 16 the floor of the shower on the indicated walls and
- 17 extending up approximately three feet from that and
- 18 then stopping.
- 19 Q So there would have been a glow, essentially, between
- 20 two feet off the floor and five feet off the floor?
- 21 A In that general area, yes.
- 22 Q Within that area, was it all just glow or were there
- 23 other discernable patterns that you could see?
- 24 A There weren't any discernable patterns. There was just
- 25 the general glow in various areas.
- 26 Q Was there any way that you can describe which areas were

1-2

1 glowing and which ones weren't?

2 A I could show you or draw a picture for you.

3 Q All right. Giving you a blank piece of paper and a blue  
4 pen, could you attempt to make that sketch?

5 A Okay. This will be a front view looking into the shower.

6 Q Okay.

7 A I can't show you all the views, but there was also  
8 luminescence on the back wall and also the wall in which  
9 the shower spout is attached to.

10 Q Is it all in the same general band of area?

11 A Yes.

12 Q And you have -- generally, you have shaded that to  
13 indicate general glow, or was there some sort of like  
14 little line patterns in it?

15 A No. That's just the general glow area.

16 Q Showing you Exhibit H-203 and asking you to look at the  
17 irregularly-shaped glob which is sketched on that, did  
18 you see any pattern such as that in front of the closet  
19 in the northwest bedroom when you were spraying luminol?

20 A It was similar to that, yes.

21 Q Showing you H-303, assuming that these marks of the  
22 approximate dimensions have -- Did you see fingers?  
23 Did you see any such pattern as that in the luminol on  
24 the floor in front of the closet in the northeast  
25 bedroom?

26 A It looks similar, yes.

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1 Q If these marks would be the size of fingers, that would  
2 have been similar to something you saw?

3 A It's possible.

4 Q Would the H-303 have been the total pattern?

5 A I don't recall.

6 Q Did you, on the 8th, attempt to take photographs of the  
7 impressions that you got in luminol?

8 A Yes.

9 Q And how did you do that?

10 A Used a 35 millimeter camera with a tripod.

11 Q Had you ever taken photographs of luminol impressions  
12 with a 35 millimeter camera before?

13 A Yes.

14 Q Were you familiar with an article that appeared in the  
15 Journal of Forensic Sciences, I believe, about  
16 photographing luminol impressions?

17 A No.

18 Q Are you familiar with that article now?

19 A If you show it to me, it might refresh my memory.

20 Q Had you done any reading on photographing luminol prior  
21 to taking the pictures on the carpet on June the 8th?

22 A Yes.

23 Q What did that consist of?

24 A It consisted of various exposure times that were used  
25 when other people had taken luminol pictures.

26 Q Did you see the developed results of the pictures you

0106061

1-4

- 1       took that night?
- 2   A   No, not that night, no.
- 3   Q   Did you see them some other time?
- 4   A   I might have. I don't recall.
- 5   Q   Do you recall whether you ever saw any successfully
- 6       developed prints?
- 7   A   No. I know they weren't successfully depicted.
- 8   Q   Were they overexposed?
- 9   A   I don't remember.
- 10   Q   Did you, in taking -- In taking those photographs, did
- 11       you use Tri-X film?
- 12   A   I believe we did, yes.
- 13   Q   And did you have it specially developed, that is, pushing
- 14       it beyond its normal ASA capacity?
- 15   A   I don't know.
- 16   Q   Who made the decision as to how to process the film?
- 17   A   I don't recall. I know I didn't handle that part.
- 18   Q   Was it done by the I.D. Laboratory? Did you send it to
- 19       them?
- 20   A   I don't know.
- 21   Q   Which impressions did you attempt to take a photograph of?
- 22   A   What appeared to be shoe impressions in the hallway
- 23       leading into the bedroom.
- 24   Q   Those are the four little marks that you have on your
- 25       diagram in H-297 in blue in the hallway area?
- 26   A   Yes.

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- 1 Q Did you attempt to take photographs of the pattern in  
2 front of the closet?
- 3 A I don't remember.
- 4 Q When you sprayed the luminol, do you recall seeing any  
5 reaction in the corridor between the counter and the  
6 windows along the south portion of the house?
- 7 A Yes.
- 8 Q Where was that?
- 9 A It was almost right up against the window on the floor.
- 10 Q Could you put a little red-orange dot at that location?
- 11 A (Witness complying.)
- 12 Q Did you spray the counter area as well?
- 13 A I don't recall.
- 14 Q Did you return to the 2991 residence again on the 9th  
15 of June?
- 16 A Yes.
- 17 Q And did you collect any evidence on that particular day?
- 18 A Yes, sir.
- 19 Q What was that?
- 20 A That was a plastic sales tag attachment, hairs from the  
21 shower drain and vacuum sweepings from the bedroom  
22 closet.
- 23 Q When you took the hairs from the shower drain, did you  
24 have to like go down into the pipes or did you just take  
25 it off the floor?
- 26 A There was like a grate on top of the hole. I went down

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1 underneath the grate and collected the hair samples.

2 Q When you were collecting hair samples, did you attempt  
3 to take any of the water that was -- Was there a trap  
4 underneath there?

5 A I don't know.

6 Q Did you attempt to try and take any water out of the  
7 trap?

8 A No, sir.

9 Q Does the Kirk book recommend that if you suspect that a  
10 suspect has washed blood off himself in a shower, that  
11 water from the trap be taken for the purpose of analysis?

12 A I believe it's in that book, yes.

13 Q Why didn't you do that?

14 A I looked down the shower and I didn't have any  
15 instruments with me to go that deep, plus I didn't  
16 think that particular evidence would have any value.

17 (No omissions.)

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010609

- 1 Q Well, the water from the trap in the shower can be  
2 analyzed by serological means, is that correct, if it  
3 has blood in it?
- 4 A Well, in the Kirk book he was talking about a sink trap.  
5 And when you're talking about a shower, there's so much  
6 more mass of water, I didn't think getting that sample  
7 would aid in this investigation.
- 8 Q Did you also take evidence out of or attempt to get  
9 evidence out of the sink trap in the bathroom where you'd  
10 seen the luminol reaction the night before?
- 11 A Did I attempt to get water out of there?
- 12 Q Well, hair, for instance?
- 13 A Hair, yes.
- 14 Q Did you take any of that sample -- did you take any  
15 water that was in that particular trap at that time?
- 16 A No, sir.
- 17 Q The night before had you washed the luminol out of the  
18 sink with water?
- 19 A I don't recall, but I do recall people, that there was  
20 people using the sink.
- 21 Q To wash their hands and things of that nature?
- 22 A I don't recall why.
- 23 Q So the reason that you didn't collect any water out of  
24 that sink trap is that whatever water had been left in  
25 the trap, if any, by a suspect had already been washed  
26 away?



- 1 A Well, not only that, but when we removed the sink trap  
2 itself I looked at the water and it didn't look discolored.  
3 Q But that was after the people had been using the sink;  
4 is that right?  
5 A I believe so.  
6 Q And it was after the spraying of the luminol?  
7 A Yes, that's correct.  
8 Q On some date did you also spray the Ryen residence with  
9 luminol?  
10 A Yes.  
11 Q And what date was that?  
12 A June 10th.  
13 Q And that was at night?  
14 A I believe it was.  
15 Q At that point in time when you went to the Ryen residence,  
16 had you found out the results of your attempts to photo-  
17 graph at the 2991 residence?  
18 A I don't remember.  
19 Q On Exhibit H-298, does that indicate in blue with numbers  
20 1 through 6 beside it the spots where you saw a luminol  
21 reaction?  
22 A Yes.  
23 Q Did you attempt to photograph any of those reactions?  
24 A Yes.  
25 Q Which ones?  
26 A I believe it was No. 4, which is encircled on Exhibit H-298,

010611

- 1           and Nos. 5 and 6.
- 2   Q   Did you attempt to do that at the scene or some other
- 3       place?
- 4   A   The one that's labeled No. 4, we attempted to do that
- 5       at the scene.
- 6   Q   Were you successful in being able to do that?
- 7   A   I believe we were, yes.
- 8   Q   Was that a black and white or a color photo?
- 9   A   It was a color photo.
- 10   Q   Have you seen that color photo?
- 11   A   I believe I have, yes.
- 12   Q   Was that photograph taken of the footprint impression on
- 13       the rug or hard surface?
- 14   A   That was a hard surface.
- 15   Q   Is that photograph preserved in your laboratory file on
- 16       this case?
- 17   A   I think so, yes.
- 18   Q   Would you have that with you?
- 19   A   No, I do not have it with me.
- 20   Q   Did you also attempt to -- where did you attempt to
- 21       photograph 5 and 6?
- 22   A   In the laboratory.
- 23   Q   Were they on carpet?
- 24   A   Yes, sir.
- 25   Q   Were you successful at that?
- 26   A   No, sir.

010612

1 Q Why not?

2 A You want my opinion?

3 Q Yes.

4 A Or speculate?

5 Q Not speculate. Do you have a scientific opinion on it?

6 A I think I'd call it more speculation.

7 Q What was unsuccessful about the reaction you got when  
8 you attempted to photograph it?

9 MR. KOCHIS: Objection if it calls for speculation.

10 THE COURT: Yes. I'll sustain the objection. But you  
11 can tell us perhaps if it appeared to be a camera malfunction.

12 THE WITNESS: No, it wasn't a camera malfunction.

13 Q (BY MR. KOCHIS:) What about it did you consider to be  
14 unsuccessful?

15 A Again, I'm going to speculate why.

16 Q I'm not asking you why. I'm just asking you first of all  
17 to describe --

18 THE COURT: There should be some way we can narrow  
19 it down legitimately. I think I'd like to let in, but I don't  
20 know how.

21 MR. NEGUS: That's why I'm asking him to describe  
22 what he saw.

23 Q (BY MR. NEGUS:) What did you see on the -- well, did  
24 you see an impression when you attempted to photograph  
25 the shoe impression back at the laboratory?

26 THE COURT: You mean in the camera or on film now?

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1 Q (BY MR. NEGUS:) On the carpet.

2 A It was very, very weak.

3 Q And was there any difference between the impression that  
4 you saw in the laboratory and the impression that you saw  
5 when you sprayed it at the Ryen residence?

6 A Yes.

7 Q What was that difference?

8 A It was lacking detail.

9 Q Whereas the one at the Ryen residence had detail?

10 A Yes.

11 Q Prior to going out to the Ryen residence, had you done  
12 any experiments with carpet to determine whether repeated  
13 sprayings of the carpet with luminol would cause the  
14 pattern to blur and fade?

15 A No.

16 Q Would the results that you saw back in the laboratory  
17 have been consistent with a diffusion of the blood on the  
18 carpet due to repeated spraying with luminol?

19 A Again, I'm going to have to speculate.

20 Q I'm just asking you would that be, based on your  
21 scientific knowledge, consistent?

22 MR. KOCHIS: Objection, that apparently calls for  
23 speculation on his part.

24 THE COURT: Not the last question. Based on scientific  
25 knowledge.

26 Better start over again, Mr. Negus. I'm not sure

1 where we are. What's your pending question?

2 Q (BY MR. NEGUS:) Based on your scientific knowledge,  
3 would the diffusion that you observed back in the  
4 laboratory be consistent with -- based on your  
5 scientific knowledge would the lack of definition that  
6 you saw back in the laboratory be consistent with the  
7 diffusion produced by repeated sprayings of the carpet  
8 with luminol?

9 MR. KOCHIS: I'm going to object, because that assumes  
10 facts not in evidence. There were no repeated sprayings. It  
11 was apparently luminoled once at the Ryen house, once at the  
12 laboratory.

13 THE COURT: Lay a better foundation.

14 Q (BY MR. NEGUS:) At the Ryen house when you're developing  
15 patterns, do you spray it back and forth with luminol  
16 more than one time?

17 A You don't -- it's not like painting on the rug. What  
18 you're doing is you're spraying a very fine mist on the  
19 rug and observing if there is any light reaction.

20 Q You just go one squirt or is it sort of a continuous spray  
21 of mist on the rug?

22 A Usually one squirt's not enough, depending on how big  
23 the pattern is.

24 Q So do you -- for example, the samples that you took back  
25 to the laboratory for photographing back there, how long  
26 had you sprayed them with luminol at the scene? For what

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1        approximate period of time? One second? One minute?  
2        Five seconds?

3        A    Once you spray luminol on it, it stays on there.

4        Q    So you just put one application?

5        A    Yes.

6        Q    Did the carpet become damp after the application of the  
7        luminol at the Ryen residence?

8        A    Yes.

9        Q    The particles of blood which react with the luminol when  
10       the blood is not visible to the naked eye are basically  
11       microscopic; is that true?

12       A    Yes.

13       Q    And the luminol is supplied in a carrier which is  
14       essentially liquid; is that right?

15       A    Yes.

16       Q    Would it be scientifically -- according to your scientific  
17       knowledge would it be consistent with the two observations  
18       you saw that the liquid nature of the luminol caused  
19       the pattern to diffuse?

20       MR. KOCHIS: Again, I would object. I think that  
21       calls for his speculation.

22       THE COURT: Counsel, he's used it, he's sprayed with  
23       it, he's observed it on a number of occasions. He's got more  
24       expertise in it than I do, and thus he can help. Overruled.

25       THE WITNESS: When I've sprayed luminol on a vertical  
26       surface, I've noticed that even the application that you do

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(No omissions.)

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- 1 Q That's because of the diffusion; is that correct?
- 2 A It's possible.
- 3 Q And that would be consistent with what you observed in
- 4 this particular case?
- 5 A It's possible.
- 6 Q Do you have any other reasonable explanation of why it
- 7 became diffused?
- 8 A I haven't done any studies on the effect of spraying a
- 9 stain with luminol and then waiting for a period of
- 10 time and spraying it again. I don't know if there is
- 11 a chemical reaction that's going on that will cause it
- 12 not to react an additional time.
- 13 Q Well, when you took the pictures back in the lab, they
- 14 did glow when you were able to expose the film; is that
- 15 correct? It's just that the pattern was now blurred?
- 16 A It was a lot weaker.
- 17 Q Have you seen a photograph of the -- Have you seen a
- 18 print of the photographs that you took back in the
- 19 laboratory?
- 20 A No.
- 21 Q Did you spray luminol in the bathroom area, the master
- 22 bathroom of the Ryen residence?
- 23 A Yes, I believe I did.
- 24 Q Did you spray it on the sink area, the north sink?
- 25 A Yes.
- 26 Q Did you get a reaction?

010618



3-2

- 1 A Yes.
- 2 Q Showing you H-166, is that one of the areas in the  
3 master bathroom on the north sink that you sprayed?
- 4 A That area was sprayed; however, that wasn't a primary  
5 area that we were concentrating the spray on.
- 6 Q Prior to that area being sprayed, did you note the  
7 stain on the sink there that's circled in orange?
- 8 A I'm not sure if it was noted or a sample was collected.
- 9 Q Do you have any records of a sample being collected  
10 prior to its being sprayed with luminol?
- 11 A That sample was collected after it was sprayed.
- 12 Q Approximately 20 days after?
- 13 A Yes.
- 14 Q Why didn't you collect it before?
- 15 A I don't know.
- 16 Q Did you spray luminol on the walls of the bathroom  
17 itself?
- 18 A I believe so, yes.
- 19 Q The walls of the bathroom as opposed to the walls of  
20 the shower?
- 21 A The walls directly in front and to the side of the sink.  
22 That wasn't a primary area where we sprayed. We tried  
23 to avoid that particular area. This area that's circled  
24 in orange.
- 25 Q What area were you trying to spray?
- 26 A We removed most of this like toothpaste and the lotion.

010619

3-3

1 We sprayed the edge areas of the sink.

2 Q Did you note a reaction, though, on the edge of the sink?

3 A Yes.

4 Q Approximately where that orange is circled?

5 A Yes.

6 Q Showing you photograph H-222, which appears to be a  
7 photograph of the wall of the bathroom, as you look  
8 from the bathroom into the master bedroom, to the left  
9 of the doorway there, did you spray that particular  
10 wall?

11 A I don't remember.

12 Q There are three, at least what looks to be drips of  
13 something running down the wall there. Do you recall  
14 seeing those drips when you were in the master  
15 bathroom?

16 A No.

17 Q And you didn't collect them; is that correct? Or test  
18 them?

19 A I don't believe so, no.

20 Q Did you spray in the hallway area between the doorway  
21 from the master bedroom into the hallway and past the  
22 master bathroom down to the doorway into the living room?

23 A Yes.

24 Q That was essentially spraying the carpet?

25 A Yes.

26 Q When you are spraying carpet, does the luminol get on

3-4

1 the sides of the walls, the lower parts of the walls?

2 A I don't know. It's dark when we are spraying it.

3 Q Did you make a visual examination of the area before  
4 you sprayed?

5 A Yes.

6 Q Showing you H-175, a photograph of the doorway from the  
7 hall into the living room, did you see the impressions  
8 that are collected on the right side of that door?

9 A Yes.

10 Q When was that?

11 THE COURT: While he is looking that up, why don't  
12 we take our recess?

13 MR. NEGUS: Okay.

14 THE COURT: We will take the morning recess.

15 (Whereupon the morning recess was taken.)

16 Q (BY MR. NEGUS) The question was concerning photograph  
17 175, I believe.

18 Did you see that before you luminoled?

19 A Yes.

20 Q When was that?

21 A On June 6th.

22 Q Did you collect a sample from that on June 6th?

23 A No.

24 Q Why not?

25 A Because at the time, I didn't have any additional  
26 information. I believe I did collect a sample at a

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0 June 30th?

Q (BY MR. NEGUS) This is the door, the finger stains on the door?

Q What do you mean you didn't have any additional information on June the 6th? What kind of additional information?

Q On June the 6th, do they appear to you as consistent with finger impressions?

Q Was there any other such impression within three or four feet of those particular impressions?

Q Did they appear as an oddball, sort of standing out by itself?

Q Did you have the equipment there to take samples of stains if you needed to on the 6th?

Q And did it appear to you from scrape marks or any other sign that Mr. Stockwell had already taken samples of those stains?

3-6

- 1 A I don't recall.
- 2 Q Did you take any hair samples from the sink traps in  
3 the Ryen residence, item II?
- 4 A Yes, I did.
- 5 Q And was that on June 13?
- 6 A Yes, it was.
- 7 Q And that was after you had sprayed the sink area with  
8 luminol?
- 9 A Yes, that's correct.
- 10 Q Do you recall whether you washed up the sink area after  
11 it had been scraped?
- 12 A I don't recall.
- 13 Q Do you recall whether that particular sink was being  
14 used during the time that you were at the Ryen house  
15 prior to June the 13th?
- 16 A I don't recall.
- 17 Q You did not take any water samples from the trap of  
18 that particular sink; is that correct?
- 19 A Yes, that's correct.
- 20 Q Were you ever shown a suspected blood stain in the second  
21 bath, that is, the bath on the side of the house where  
22 the kids' bedrooms were?
- 23 A A suspected blood stain, yes.
- 24 Q Did you test that with ortho-tolidine?
- 25 A I believe so.
- 26 Q And was the result positive?

00-100627

3-7

1 A I don't remember.

2 Q Was that on June the 6th?

3 A I don't recall.

4 Q Did you inspect the traps of that particular bathroom?

5 A I don't think I did, no.

6 Q Why not?

7 A Because it was so far away from the majority of the  
8 activity, I didn't feel that that would be part of --  
9 would add to the investigation of this case.

10 Q The purpose for collecting evidence out of sink traps  
11 is to determine whether or not a suspect or suspects --

12 I will back up.

13 One of the purposes for collecting evidence out of  
14 sink traps is to try and make a determination if  
15 suspects have like washed themselves in the sink; is  
16 that correct?

17 A Yes.

18 (No omissions.)

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010624

1 Q And would a suspected blood sample being found in the  
2 sink be some indication that perhaps a suspect had been  
3 washing himself at that sink?

4 A That indicates that somebody might have washed themselves  
5 in a sink.

6 Q If there were multiple assailants, it would be reasonable  
7 to assume then that a different assailant might wash  
8 himself in a different sink than the other ones; is that  
9 correct?

10 MR. KOCHIS: Objection, calls for speculation,  
11 assumes facts that aren't in evidence.

12 THE COURT: For purposes of this investigative  
13 effort, overruled.

14 THE WITNESS: I have no idea. I couldn't say.

15 Q (BY MR. NEGUS:) Would that be a hypothesis which would  
16 be worth investigating?

17 A It might be if there's, you know, evidence that might  
18 lead you to believe that happened.

19 Q A description of three people being involved in the  
20 attack, the discovery of at least what appeared to be a  
21 bloodstain in the sink area of the house, and there was  
22 also, was there not, a suspected blood stain on a wall  
23 across from that particular bathroom, the second bathroom?

24 A I believe so, yes.

25 Q And the added fact that the bloodstain on the wall across  
26 from that, wouldn't that give you some of reason to

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1 suspect that somebody might have washed themselves in  
2 that bathroom?

3 MR. KOCHIS: Again, that calls for speculation.

4 THE COURT: We're concerned with their state of mind  
5 and whether they properly performed their job. Based upon  
6 that statement, overruled.

7 THE WITNESS: The location of stain, there was like  
8 a smudge mark all along the side of that wall and it was  
9 very close to that smudge mark. That particular stain happened  
10 to be animal blood and maybe if that particular stain had  
11 turned out to be human blood, maybe I might have gone back  
12 and collected a sample from the sink.

13 Q (BY MR. NEGUS:) You didn't know when you were collecting  
14 samples from the sinks, though, whether or not you had  
15 animal blood or some other kind of blood on the wall,  
16 is that correct, blood as far as analyzing is concerned?

17 A Not when I was there on the 6th, no.

18 Q You had no knowledge on the 6th one way or the other?

19 A That's correct.

20 Q Just given blood on the sink and a description of multiple  
21 suspects, would that be a reason to take a look inside  
22 the sink to see whether there was any evidence which  
23 might give you a clue as to a suspect?

24 THE COURT: I think a more proper question would be  
25 "would that be a reason." That's argumentative.

26 Q (BY MR. NEGUS:) Okay.



- 1 A No, not when I was there at the time. There just wasn't  
2 that much evidence for me to believe that that sink was  
3 used.
- 4 Q Which stain was it that turned out to be animal blood?
- 5 A I believe it was on the wall across from the bathroom.
- 6 Q When did you learn that?
- 7 A I don't recall.
- 8 Q The stain on the wall across from the bathroom was not  
9 collected until June 30th; is that correct?
- 10 A Yes, that's correct.
- 11 Q So that couldn't have entered into your decision on June  
12 the 13th when you were taking blood out of the sink  
13 traps; is that correct?
- 14 A Yes.
- 15 Q Was there any logical reason you had to believe that a  
16 suspect was more likely to have washed himself in the  
17 master bathroom than in the second bathroom?
- 18 A Yes.
- 19 Q The master bathroom. What was that?
- 20 A There was just more blood in the bathroom.
- 21 Q The second bathroom was not even sprayed with luminol;  
22 is that correct?
- 23 A I don't remember. If it was there wasn't any reactions.
- 24 Q But you have no recollection of even spraying that second  
25 bathroom; is that correct?
- 26 A I don't recall.

0-10077

1 Q Was the reason that -- was one of the reasons why you  
2 didn't try and investigate in that second bathroom the  
3 fact that various investigators had been using that  
4 bathroom as a bathroom?

5 MR. KOCHIS: Objection, that assumes a fact that's  
6 not in evidence.

7 MR. NEGUS: Yes, it is. Captain Myers.

8 MR. KOCHIS: I don't recall Captain Myers testifying  
9 various investigators used the second bathroom.

10 MR. NEGUS: He testified that it was opened up for  
11 use by the sheriff's personnel as a second bathroom, and he  
12 testified I believe that he himself used it.

13 THE COURT: I think so. As I recall it was rather  
14 late in the evening.

15 MR. NEGUS: 6:30 approximately on June the 5th, which  
16 would have been prior to Mr. Ogino being there.

17 THE COURT: You can point out the lack of weight, then,  
18 if it's not there, but I think there's enough foundation for  
19 it. Overruled.

20 Q (BY MR. NEGUS:) Was the fact that it had been used by  
21 investigators as a bathroom one of the reasons why you  
22 didn't concentrate your efforts in the second bathroom?

23 A No.

24 Q Have you done analysis of hair samples collected from  
25 the Lease house?

26 A What do you mean by analysis?

010628

1 Q Okay. Looked at them, separated them?

2 A I've looked at them, yes.

3 Q Have you tried to describe them and compare them?

4 A No.

5 Q Have you made any comparisons between samples found at  
6 the Lease house, for example, and the samples found at  
7 the Ryen residence?

8 A No.

9 Q On June 11th and June 12th, did you participate in an  
10 examination of a vehicle license number 2ALL731 in Long  
11 Beach at the automotive division of the sheriff's office?

12 A Yes.

13 Q Did you seize any hair samples from that car?

14 A Yes.

15 Q Did you seize some of the hair samples just by essentially  
16 picking them up and others by vacuum sweeping?

17 THE COURT: Excuse me. Where are we at now?

18 MR. NEGUS: The car.

19 THE COURT: Oh, yes.

20 THE WITNESS: I did seize hairs by picking them up,  
21 and I also vacuumed the vehicle.

22 Q (BY MR. NEGUS:) The hairs that you took by picking up,  
23 were those ones that were easier to see with the naked  
24 eye than the others?

25 A Yes.

26 Q In the study of comparisons of human hair, it's not

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1 possible to make definitive identifications based on  
2 hair comparisons alone; is that correct?

3 | A. From what I've learned, yes, that's correct.

4 Q Basically all that's possible to do is to say that the  
5 hairs are consistent with one hair from one person  
6 being consistent with a known -- that an unknown hair  
7 would be consistent or inconsistent with a known hair  
8 which would include -- which would be part of a class of  
9 a large number of different people having the same kind  
10 of hair. Is that basically accurate?

11 A Well, yes. Let me back up for a second. You asked the  
12 prior question, whether it's definitive.

13 Q Okay.

14 A In a way, yes, it is. You could say that it did not  
15 come from a particular person.

16 Q But it's not possible to make a definitive identification  
17 based on that?

18 A That's correct.

19 Q And all you could do is put the particular hair as coming  
20 from a large class of individuals; is that correct?

21 A Generally that's correct. It depends how unusual the  
22 hair is.

23 Q For example, Mr. Kottmeier and myself might have different  
24 hairs that if you look at them under a microscope would  
25 be close to identical?

26 A Well, I wouldn't know, but that's a possibility.

1 Q Is it possible to, using serological techniques, get a  
2 much narrower class or smaller class of people than it  
3 is using hair comparison?

4 A Well, again, that depends on how many serological exams  
5 you could perform. It depends how unusual the hair is.

6 Q In general, though, is it possible, if you can do, for  
7 example, the genetic workup that your laboratory does,  
8 to have a considerably smaller class with blood than  
9 hair?

10 MR. KOCHIS: I'm going to object absent some  
11 foundation on his part that he has personal experience in  
12 serology as it relates to hair.

13 THE COURT: Mr. Negus, barring conflicting evidence,  
14 it's already been established to my satisfaction that they  
15 can get the blood portion of it, it can be done. But I'll  
16 sustain the objection for lack of foundation from this  
17 witness.

18 Q (BY MR. NEGUS:) Are you familiar in general with  
19 population genetics of hair enzymes?

20 A Yes.

21 Q And are you also familiar with -- have you done hair  
22 comparisons yourself?

23 A Very little.

24 Q Are you familiar with the general literature about the  
25 frequency of hair?

26 A No.

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- 1 Q Okay. What part of the hair could be typed serologically?
- 2 A You actually need the sheath around the root of the hair.
- 3 Q The hairs that you seized that were in plain view, not
- 4 the ones that you picked up with the vacuum sweeper,
- 5 did you examine them to determine whether or not the
- 6 sheath was still intact?
- 7 A I looked at them fairly closely and did not see a sheath
- 8 on there.
- 9 Q On none of them?
- 10 A That's correct.
- 11 Q Did you likewise examine the hairs that you picked up in
- 12 the vacuum cleaner to see whether or not they had a
- 13 sheath?
- 14 A I don't recall if I found any hair in the vacuum
- 15 sweepings.
- 16 Q Directing your attention to one of the items -- Did you
- 17 collect an item V-3?
- 18 A Yes.
- 19 Q Was there hair in that?
- 20 A I don't recall.
- 21 Q Do you recall examining any -- Well, did you make your
- 22 examination of the hairs for sheaths as you were in
- 23 Long Beach taking the hairs out of the car?
- 24 A The ones that I visually saw, yes.
- 25 Q The vacuum sweepings, did you make an examination of
- 26 what you got in the vacuum sweepings back in the

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5-2

- 1       laboratory, or did you do that at the scene?
- 2       A   No. I did it back in the laboratory.
- 3       Q   Do you recall at that point in time noticing whether
- 4       you saw in any of your vacuum sweepings any hair with
- 5       sheaths on them or did you examine for that?
- 6       A   Glen Lightfoot did that examination.
- 7       Q   There was no attempt made to do those examinations
- 8       right after the evidence had been collected?
- 9       A   I don't see any notes on that, no.
- 10      Q   You yourself collected trace evidence from the blankets
- 11      and stuff that had been -- the blankets and textiles
- 12      that had been seized at the 2991 residence; is that
- 13      correct?
- 14      A   Yes, sir.
- 15      Q   And that was done relatively soon after the items had
- 16      been seized?
- 17      A   Yes.
- 18      Q   Did you see any of those hairs with sheaths on them?
- 19      A   No, sir.
- 20      Q   Did you make an examination to determine whether or not
- 21      they had sheaths?
- 22      A   Yes.
- 23      Q   Did you yourself do the initial screening of any of the
- 24      other items of hair evidence besides that which came
- 25      from the Lease residence?
- 26      A   What do you mean by screening?

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5-3

- 1 Q Did you examine and separate, for example, hairs out of  
2 the trace evidence from the carpet sweepings that you  
3 took from the carpet that came out of the Ryen master  
4 bedroom?
- 5 A No. It's all in one, trace evidence and hair evidence.
- 6 Q It hasn't been separated out?
- 7 A Not to my knowledge.
- 8 Q Was any of that hair examined to see whether it had  
9 sheaths attached to it?
- 10 A From the Ryen carpet?
- 11 Q Yes.
- 12 A I don't believe so.
- 13 Q Did you examine the trace evidence from the bedding  
14 from the Ryen master bedroom?
- 15 A No.
- 16 Q Other than the Lease residence, then, have you done  
17 examinations of any of the other hair collected?
- 18 A No.
- 19 Q Did you examine the hairs that you took out of the sink  
20 to see whether they had sheaths on them?
- 21 A Yes.
- 22 Q Did any of them have?
- 23 A No.
- 24 Q When did you do that examination?
- 25 A It was either last week or the week before. I have it  
26 in my notes back in the laboratory.

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5-4

- 1 Q Do the sheaths dry up and fall off in relatively quick  
2 time if you don't do something to preserve them?
- 3 A No.
- 4 Q How long will they last?
- 5 A I don't know, but they are fairly stable.
- 6 Q When you collect blood samples, do you take notes to  
7 indicate which particular pattern that you took the  
8 blood from, if there is a multiple pattern? If there  
9 are multiple patterns on a single object, like the  
10 dresser in the Ryen master bedroom, do you?
- 11 A I either draw a diagram or circle actually on the item  
12 which we collected before I collect the stain.
- 13 Q On the furniture that you took the samples from in  
14 February, did you make marks on the furniture as to  
15 where you collected the items?
- 16 A Yes, I did.
- 17 Q And as to the samples that you took from the Ryen house  
18 on June the 30th, did you make notes so that you could --  
19 which were of sufficient precision so that if shown,  
20 for example, a photograph, as I did yesterday, of the  
21 stain next to the hand of Jessica Ryen, or the stain  
22 on the north sink -- that you could identify those  
23 particular stains as stains from which you removed the  
24 samples?
- 25 A I believe so, yes.
- 26 Q Is that standard procedure in your laboratory?

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1 A It's up to the individual criminalist. We don't have  
2 like a standard crime scene procedure or anything like  
3 that.

4 Q So in your laboratory there is nobody that sort of says,  
5 "This is the way it should be done"?

6 A Well, in a way, we do. When the new criminalists are  
7 hired, we send them out with the more experienced  
8 criminalists and they show that particular criminalist  
9 how they would process a scene.

10 But to my knowledge, there is no lab policy that  
11 you must collect a stain a certain way.

12 Q In your opinion as a criminalist, is it good policy and  
13 the proper procedure to take notes so that you can, if  
14 shown a photograph, identify the patterns from which  
15 you took a blood stain?

16 A Either take notes or mark on the item itself.

17 Q Something so that somebody else can find out where you  
18 got the blood; is that correct?

19 A Yes, or there is also another way by actually  
20 photographing and pointing to the spot. That's done.  
21 I do that sometimes.

22 Q But not just to -- like you have a wall covered with a  
23 whole bunch of different spots, you wouldn't just take  
24 a photograph of a wall and say, "That's it from somewhere  
25 on that wall"?

26 A I would either diagram it and use the photograph as an

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1 aid.

2 Q When Dave Stockwell was doing his training period, did  
3 he go out on crime scenes with you?

4 A I don't recall.

(No omissions.)

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1 Q When you were speaking about the test that you had done  
2 on the effect of fingerprint powder on ABO typing  
3 yesterday, you mentioned that thin stains were more  
4 affected than thick stains; is that correct?

5 A Weaker stains.

6 Q The stains that were on the hatchet, would they be  
7 classified as weaker stains?

8 A No.

9 Q Why not?

10 A Because it was -- what I mean by weaker stains, it's  
11 very, very light in color and you could barely see it  
12 visually, barely visually see the stain.

13 Q The blood that you collected from the hatchet, was it  
14 crusted in the sense that a blood drop on a wall might  
15 be crusted?

16 A It wasn't that thick, no.

17 Q Was there fingerprint powder on the hatchet when you  
18 saw it?

19 A Yes.

20 Q When you have an item like the hatchet used as a weapon  
21 and a wound is opened up and then blood gets on the  
22 hatchet, the pattern that's made as to blood which is  
23 thrown off the hatchet is called a cast-off pattern;  
24 is that right?

25 A Yes.

26 Q As blood is being cast off, say that there was just kind

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1 of a clear, six consecutive blows, there would be no  
2 cast-off usually from blow one; is that right?

3 A Yes, if there was no previous blood on the hatchet.

4 Q And then blow two or three, you would start to get cast-  
5 off; is that correct?

6 A That's the general rule, yes.

7 Q How many blows would it generally take to, if you stopped  
8 hitting a person with the blood -- with the hatchet and  
9 strike up and down just in the air, how many swings  
10 would you have before all the blood was cast off before  
11 sufficient blood was off the hatchet to not have cast-off  
12 patterns? Do you follow me?

13 A I think so. I don't know. It would depend on how much  
14 blood was on the hatchet after he stopped.

15 Q Generally would it be within one or two swings?

16 A No. I've placed blood on hatchets and did experiments.  
17 I still saw blood after the third swing or cast-off  
18 after the third swing.

19 Q If you had multiple victims one after the other and  
20 there were several hatchet blows struck to Victim 1,  
21 several to Victim 2, several to Victim 3, et cetera, by  
22 the time that you got to Victim 3, would you still  
23 expect to be getting cast-off blood from Victim 1?

24 MR. KOCHIS: I would object. That would call for  
25 speculation on a number of things, including sequence, if  
26 people are struck intermittently, one, two, one, three.

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1 How can he speculate on that?

2 MR. NEGUS: I'm not asking Mr. Kochis's hypothetical,  
3 I'm asking a different hypothetical.

4 THE COURT: Counsel, he's performed some experiments.  
5 He has some knowledge of the subject. He's examined enough  
6 blood to know its consistency and the crime scene. For what  
7 it's worth, overruled.

8 THE WITNESS: Could you repeat the question one more  
9 time?

10 Q (BY MR. NEGUS:) Sure. Taking as an example three  
11 persons, each struck seven times with the hatchet, seven  
12 to one, then seven to two, then seven to three, by the  
13 time he got to the end of number three would you still  
14 expect to see the blood from person number one being  
15 cast off the hatchet?

16 A I haven't done anything like that. I really couldn't  
17 tell you.

18 MR. NEGUS: Could we take the lunch recess? There's  
19 something I need to read at greater length.

20 THE COURT: Okay. 1:30.

21 MR. KOCHIS: Your Honor, what I was wondering while  
22 we're still on the record, do you still want me to make  
23 arrangements to have identification here this afternoon at  
24 3:00 o'clock with the photographs they've been able to  
25 complete at this point and the originals so that you can  
26 make some decision, or do you want them at 4:00 o'clock? How

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26 MR. NEGUS: The front I don't care about, just the

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7 THE COURT: I don't know why you don't let him do it  
8 in a more favorable atmosphere.

15 MR. NEGUS: I could take them --

22 THE COURT: You can step down, if you like.

23 MR. KOCHIS: -- a particular run was properly performed  
24 and giving them to Mr. Negus. And if anything would ever  
25 happen to those records in Mr. Negus's possession, by some  
26 force outside of Mr. Negus's control, some type of accident,

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1 any type of calamity, we would, I feel, in some situation  
2 be responsible for that or be held accountable.

3 MR. NEGUS: People versus Nation says once it's  
4 in the defendant's hand, the District Attorney -- once it's  
5 in the Defense lawyer's hand the District Attorney's  
6 responsibility to preserve it is ended. I mean, that's what's  
7 supposed to be done.

8 MR. KOCHIS: That's actually not what Nation says,  
9 as I read it. Nation said --

10 THE COURT: Photographs are not the issue in Nation.  
11 They're not going to degrade.

12 MR. NEGUS: We're going to have the same problem,  
13 because I'm going to want -- I've been trying to let them  
14 have reasonable time to finish with their hair samples and  
15 the other stuff that they're doing analysis on. But I'm  
16 going to want to have my experts have possession of that  
17 stuff so that they can look at it in a way that's not going  
18 to affect its -- it's not like the blood. They're not going  
19 to use it up. They're just going to look at it in their  
20 laboratory. We're going to have the same problem. I think  
21 that's what the cases give me the right to do, to have  
22 independent analysis done.

23 MR. KOCHIS: That's another issue.

24 THE COURT: Yes, it is.

25 MR. NEGUS: Well, it seems to be the same issue.

26 THE COURT: You know, gentlemen, you're both experienced

1 and I urge you to get together and try to accommodate on  
2 these. If you can't, I'm going to take them up one at a  
3 time and I can't right now envision precisely all the  
4 problems perhaps in connection with these samples.

5 MR. NEGUS: Let's just do the photos.

6 THE COURT: I can see coming into court and having  
7 the clerk mark them and say "set up your camera." I hesitate  
8 to do it that way.

9 MR. NEGUS: On the photographs, you mean?

10 THE COURT: Yes.

11 MR. NEGUS: I have my camera in my office.

12 THE COURT: So bring it here this afternoon. I don't  
13 know that you can. Let me see what we've got.

14 MR. KOCHIS: I'll make the phone call.

15 THE COURT: Anyway, he can be permitted to make an  
16 original photo for blowup purposes. That's as clear as can be.

17 MR. KOCHIS: Your Honor, that depends. On the  
18 pictures that are taken on film which is a negative film,  
19 a copy, every copy is going to be an original.

20 MR. NEGUS: We're not quibbling about that.

21 MR. KOCHIS: And all the recent stuff they've been  
22 putting on negative film so that there's going to be three  
23 originals, one for the Prosecutor, one for the Defense  
24 lawyer, one for the crime lab. I don't think that's going to  
25 be a problem.

26 MR. NEGUS: That's not where the problem is.

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1 THE COURT: The ones that we're talking about now are  
2 not on negative film.

3 MR. KOCHIS: There are some other ones that are  
4 Polaroids, and what we are doing with the Polaroids is having  
5 our I.D. bureau take a picture of that original with film,  
6 with a negative film, such as Mr. Negus would do, and then  
7 have that negative make three originals, one for I.D. and  
8 one for Mr. Negus and one for myself.

9 THE COURT: Isn't that sufficient, Mr. Negus?  
10 That's going to give you all the clarity and detail you're  
11 going to get from your own photo.

12 MR. NEGUS: I don't know, and I won't know until  
13 I get a chance to inspect the original photographs.

14 THE COURT: Bring them here this afternoon.  
15 3:00 o'clock is as good as any other time. I don't have  
16 any preference. I want to take a look at it.

17 (Whereupon the noon recess was taken at  
18 12:02 p.m.)  
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7-1

1 SAN BERNARDINO, CALIFORNIA, THURSDAY, JUNE 21, 1984

2 1:35 O'CLOCK P.M.

3 DEPARTMENT NO. 10

HON. RICHARD C. GARNER, JUDGE

4  
5 (Appearances as heretofore noted.)

6  
7 (Craig Ogino, having been on the witness  
8 stand at the time of the noon recess,  
9 resumed the stand and testified further  
10 as follows:

11  
12 THE COURT: Mr. Kochis.

13 MR. KOCHIS: I was going to allow Mr. Negus to  
14 conclude his examination.

15 THE COURT: I thought he had.

16 MR. NEGUS: What I wanted to do --

17 THE COURT: You have ten more minutes.

18 MR. NEGUS: -- was read from Volume 23, page 45,  
19 line 11, through 46, line 7.

20 "Q Okay. So if you have a series  
21 of cast-off patterns on a wall, one,  
22 two, three, four, five, even if they're  
23 all associated with the same victim and  
24 even if all those patterns were in fact  
25 wounds inflicted on the same victim, the  
26 blood type could be quite different; is

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1           that true?

2           "A   How is that possible if all  
3           the blood's coming from the same person?

4           "Q   Because there was blood on the  
5           ax to begin with that came from another  
6           person.

7           "A   Yeah, but usually once you get  
8           a massive amount of blood on the hatchet,  
9           any blood you had on prior is either going  
10          to be knocked off on a sudden impact or be  
11          very much decreased.

12          "Q   Okay.

13          "A   And say the seventh, eighth, ninth,  
14          tenth, up to the fifteenth, it's probably  
15          going to be all of the last person you hit.

16          "Q   Right. But there will be at --  
17          if you start with a bloody hatchet with  
18          the blood of Jessica, you're going to have  
19          one pattern possibly that's not the blood  
20          of the person who is being struck, true?

21          "A   That's possible, yes."  
22          That's it.

23  
24                                   CROSS-EXAMINATION

25   BY MR. KOCHIS:

26   Q   Mr. Ogino, picking up where Mr. Negus left off, you

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1 testified, I believe, this morning that you had done  
2 some experiments yourself with casts-off of the  
3 hatchet; is that true?

4 A Yes, sir.

5 Q Was there a fluid used in that experiment like a liquid  
6 substance?

7 A Yes.

8 Q Was that human blood?

9 A Yes.

10 Q And in that experiment, did you take the hatchet and  
11 place it in a pool of liquid blood?

12 A I took a pipette and added blood to the hatchet.

13 Q So you didn't actually stick the hatchet in a source of  
14 human blood?

15 A No.

16 Q In your experiment, did you do a series of chopping  
17 motions?

18 A Yes.

19 Q Did you ever, once you started those chopping motions,  
20 reapply the blood in any fashion to the hatchet?

21 A No.

22 Q Have you ever performed any experiment which would be  
23 consistent with sticking a hatchet several times into  
24 the same source?

25 By that, I mean the same person.

26 A No.

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7-4

- 1 Q Are you able to make certain inferences, do you feel,  
2 based upon your experiment with applying the human  
3 blood to the hatchet in the experiment that you did?
- 4 A What sort of inferences?
- 5 Q About cast-off patterns and blood on the hatchet.
- 6 A Yes.
- 7 Q In a case where more than one person was attacked with  
8 the same instrument, for example a hatchet, would you  
9 expect to find cast-off patterns that may have mixed  
10 blood on them, that is, blood from more than one  
11 person?
- 12 A That's possible, yes.
- 13 Q If more than one person -- and for the sake of the  
14 hypothetical, let's assume that two people had different  
15 genetic profiles, you could distinguish the blood from  
16 one person to another -- if they were attacked in  
17 sequence, all the blood on the first person were  
18 administered before any blows were administered on the  
19 second person, would there come a period of time, in  
20 your opinion, during which the second person who was  
21 attacked, the cast-off patterns would be consistent  
22 with his blood and not consistent with the blood of  
23 the first person?
- 24 A Yes.
- 25 Q Have you done any experiment that will allow you to  
26 determine at which blow that would take place?

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7-5

- 1 A No.
- 2 Q You mentioned in response to Mr. Negus' questions  
3 during his examination that when you arrived at the  
4 Ryen home on June the 6th of 1983, that there appeared  
5 to be clothes in the room of that house.  
6 Do you recall that?
- 7 A Yes.
- 8 Q Do you recall where the clothes were that you referred  
9 to during your examination in response to Mr. Negus'  
10 questions?
- 11 A Yes.
- 12 Q Where?
- 13 A In the closets.
- 14 Q For example, directing your attention to a photograph  
15 which has been marked for identification as H-79, does  
16 that appear to depict a portion of the bedroom in the  
17 Ryen home?
- 18 A Yes.
- 19 Q And is that an example of the type of clothes that you  
20 saw hanging up in the closet?
- 21 A Yes.
- 22 Q Is it fair to say that when you arrived on Monday the 6th,  
23 you did not see articles of clothing that were strewn on  
24 the carpet in the master bedroom?
- 25 A Yes, that's correct.
- 26 Q On that day, were you in every room of that house?

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7-6

- 1 A Yes. I believe so.
- 2 Q And did you conduct a visual examination of rooms  
3 other than the Ryen master bedroom?
- 4 A Yes.
- 5 Q Based on your observations, were you able to draw any  
6 inferences from the manner in which the house was kept  
7 in terms of cleanliness prior to the time the attack  
8 occurred?
- 9 A Yes.
- 10 Q How did the house appear to be kept to you?
- 11 A Rather messy.
- 12 Q Did it appear to you in fact filthy?
- 13 A Yes.
- 14 Q Did that include the carpets on the floor in the master  
15 bedroom?
- 16 A Yes.
- 17 Q Did you take that fact into consideration when you made  
18 a determination as to what to do, if anything, with  
19 trace evidence which may have existed on the carpet in  
20 the master bedroom?
- 21 A Yes.
- 22 Q Why would that have had an effect on your decision as  
23 to the presence or absence of any trace evidence on the  
24 carpet, the condition in which the house was kept?
- 25 A Due to the — When I was actually vacuuming the rug,  
26 I picked up so much debris, dirt, many, many different

7-6-75

7-7

1 types of fibers, I couldn't come up with anything  
2 concrete to add to this case because there were so many  
3 numerous different types of trace evidence which was  
4 gathered in the vacuum sweepings.

5 Q If the condition of the carpet would have been the  
6 opposite in the Ryen master bedroom, I'm speaking of,  
7 for example, the condition of a carpet in a home in  
8 which no one ever lived, would that cause you to  
9 evaluate potential trace evidence on the carpet in  
10 a different fashion?

11 A Yes.

12 Q How many separate bags did you fill up when you  
13 vacuumed the carpet of the Ryen master bedroom in  
14 the identification loft on approximately June 22nd?

15 A At least four full bags.

16 Q Did you keep any documentation of which bag came from  
17 which section of the carpet?

18 A I might have. It should be written on the bag itself.

19 Q And were the bags then taken back to the Crime Lab?

20 A Yes.

21 Q And did they remain there to this date?

22 A Do you happen to know which item number that was?

23 Q If you will give me a moment, I can locate it.

24 It appears to be on the August 1, 1983 report. It  
25 appears to be item TT, vacuum sweepings from Ryen  
26 master bedroom.

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7-8

- 1 A No, that was never outside our laboratory once it was  
2 received.
- 3 Q And is it still available for inspection today?
- 4 A Yes.
- 5 Q And did you make an effort to take all the trace  
6 evidence that was on the carpet when you vacuumed it  
7 in the loft and placed it in the bags?
- 8 A Yes.
- 9 Q Did you vacuum the carpet in the loft prior to the time  
10 you applied the luminol mist spray?
- 11 A Yes.
- 12 Q Were you sent to the Ryen crime scene on June the 6th  
13 to look at blood splatter patterns that may have  
14 existed in the home?
- 15 A Yes.
- 16 Q Were you sent there for any other purpose?
- 17 A I was also sent there with another criminalist to also  
18 look for any additional evidence that might be collected.
- 19 Q If you would have seen evidence -- Strike that.
- 20 Did you seize items of evidence from the Ryen crime  
21 scene, the master bedroom and the area outside the house,  
22 on the 6th of June?
- 23 A Yes.
- 24 Q Did that include, for example, a piece of gauze?
- 25 A Yes.
- 26 Q What appeared to be a stain consistent with blood

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7-9

- 1 outside the Ryen master bedroom on a section of road  
2 which was dirt?
- 3 A Yes.
- 4 Q And other items?
- 5 A Yes.
- 6 Q So if you saw things that to you had some evidentiary  
7 value, you would seize them?
- 8 A Yes.
- 9 Q Prior to the time the C.C.D. unit started to remove  
10 items of furniture from the master bedroom, were you  
11 able to look at the walls in the master bedroom?
- 12 A Yes.
- 13 Q Did they appear to have blood splatter patterns on them?
- 14 A Yes.
- 15 Q And essentially to analyze the blood splatter pattern,  
16 must you have either the object itself or a photograph  
17 of the splatter pattern?
- 18 A A photograph taken 90 degrees to the object, yes.
- 19 Q By "90 degrees", are you talking about perpendicular?
- 20 A Perpendicular to the object, yes.
- 21 Q For example, if I had a camera in my hands and took a  
22 picture of you as you sit in front of me on the witness  
23 stand, would that be such a photograph?
- 24 A Assuming I'm the wall or flat object?
- 25 Q Yes.
- 26 A Yes.

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7-10

- 1 Q Have you had a chance to review some of the photographs  
2 that the Identification Unit took in this case of  
3 splatter patterns on the various portions of the Ryen  
4 master bedroom?
- 5 A A few, yes.
- 6 Q And in your opinion, were those photographs the type of  
7 photographs that would allow a person to examine a  
8 blood splatter pattern?
- 9 A Some of those were, yes.
- 10 Q Which of the walls, if any, did you complete your blood  
11 splatter pattern analysis of before C.C.D. started moving  
12 furniture?
- 13 A The wall which contained the sliding glass door and the  
14 wall near the ironing board.
- 15 Q After that process was completed, after the furniture  
16 and carpeting was removed from the master bedroom, did  
17 you remain at the scene?
- 18 A I believe I did, yes.
- 19 Q Did you examine any other walls after C.C.D. moved the  
20 furniture out of the Ryen master bedroom?
- 21 A I examined the wall behind the headboard.
- 22 Q And by that, are you referring to the wall that's shown  
23 in photograph H-61?
- 24 A Yes.
- 25 Q That entire wall was seized and it's at your Crime Lab;  
26 isn't that true?

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7-11

- 1 A Yes.
- 2 Q That was the only wall C.C.D. took at that time; isn't  
3 that true?
- 4 A Yes.
- 5 Q They left, for example, the east wall intact when they  
6 left the scene?
- 7 A Yes.
- 8 Q Were you able to look at the pattern on that wall after  
9 C.C.D. left?
- 10 A Yes.
- 11 Q And was that in conjunction with your, one of your  
12 purposes being at the scene was to look at all the  
13 blood splatter patterns and you were able to do that  
14 on that wall after C.C.D. left?
- 15 A Yes.
- 16 Q Have you also, since the 6th of June, seen the  
17 furniture that was stored in the I.D. loft?
- 18 A Yes, I have.
- 19 Q When did you see the furniture?
- 20 A February 8, 1984.
- 21 Q And did it appear that the blood splatter patterns were  
22 still on the furniture, pieces of furniture when you  
23 saw them?
- 24 A Yes.
- 25 Q Do you recall during the course of the preliminary  
26 hearing being interviewed by Sergeant Arthur over the

7-12

1 telephone on approximately December 12th of 1983?

2 A Approximately that date, yes.

3 Q Was your recollection as to what transpired on June the  
4 6th fresher in your mind on December the 12th than it  
5 is during this month, the month of June, 1984?

6 A Yes.

7 Q Do you recall that during the telephone interview with  
8 Sergeant Arthur he asked you questions about a  
9 conversation you may have had with Sergeant Swanlund  
10 at the crime scene?

11 A Yes.

12 (No omissions.)

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1 Q Did you tell him, did you tell Sergeant Arthur in  
2 December over the phone, that you at no time remembered  
3 Swanlund saying no to any request you made?

4 A Yes, I believe that that's true.

5 Q Did you tell Sergeant Arthur also on December the 12th  
6 that you did not remember making any request to  
7 Swanlund to spend additional time in the residence?

8 A I can't remember.

9 Q At some point on June the 6th you were aware that the  
10 furniture from the Ryen master bedroom was going to be  
11 taken and stored at the identification bureau?

12 A Yes.

13 Q When you learned that, were you in your own mind  
14 satisfied that any additional blood splatter pattern  
15 analysis you wanted to do could be conducted at the  
16 location where those items were stored?

17 A By knowing which items they were taking, I was satisfied.

18 Q Was that likewise true for the blood splatter patterns  
19 that existed on the south wall which was seized by  
20 CCD?

21 A Yes.

22 Q Are you able to draw an inference from blood splatter  
23 patterns on an item such as a wall as to what type of  
24 weapon was used in an attack?

25 A Yes.

26 Q For example, does a bullet passing through a person

1 causing blood to splatter leave a pattern in your  
2 experience that is different from when a knife is used?

3 A Yes.

4 Q When you examined the Ryen scene on June the 6th, were  
5 you able initially to draw an inference as to what type  
6 of weapon was used?

7 A Yes.

8 Q What inference did you draw on the 6th?

9 A From the cast-off patterns, I was able to determine that  
10 a swinging-type instrument was used.

11 Q What other information are you -- what other inferences,  
12 excuse me, are you able to draw from cast-off patterns?

13 A In some cases you're able to determine whether the  
14 instrument was in the right or left hand of the person  
15 by the way the cast-off is arcing.

16 Q Have you conducted such an examination in this case?

17 A Yes.

18 Q Do you feel that for purposes of your opinion that the  
19 evidence has been preserved in a fashion that allows you  
20 to draw that inference?

21 A Yes.

22 Q And is there a pattern on a particular object that allows  
23 you to draw that inference?

24 A Yes.

25 Q Which object was it?

26 A The dresser that was just, I believe, just east of the

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1 master bedroom.

2 Q Is it fair to say that based on the pattern you saw in  
3 that object your opinion is that that pattern is caused  
4 by the person who held an object in his left hand?

5 A Yes, that's correct.

6 Q Is it fair to say that even though you have that opinion --  
7 strike that.

8 Are you able to determine from a blood splatter  
9 pattern, cast-off pattern, if the person is right handed  
10 or left handed?

11 A No.

12 Q Your inference, then, as to that pattern would be limited  
13 to a person having an object in his left hand whether  
14 he was a left handed person or a right handed person?

15 A That's correct.

16 Q What other inference or inferences, if any, can you  
17 make from cast-off patterns?

18 A You could tell how many blow -- approximately tell how  
19 many blows were struck.

20 Q Moving back to the dresser for a moment on which you saw  
21 the pattern, if that pattern would have been destroyed,  
22 would the inferences it would have taken away from you  
23 have been simply two: One, that there was a cast-off  
24 pattern there, and two, that the person who caused the  
25 pattern to be made had an item in his left hand at the  
26 time?

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- 1 A If the -- I'm not sure I understand your question. If  
2 the dresser was removed or the blood splatter was taken  
3 away?
- 4 Q Perhaps I asked it the wrong way. Are there any other  
5 inferences you can draw from the pattern on that dresser  
6 other than, one, that it's cast-off, two, that in your  
7 opinion it was made by a person who had an object in  
8 his left hand?
- 9 A No.
- 10 Q Other than whether it's a cast-off pattern or whether  
11 an object is in a person's hand at the time, what other  
12 inference can you make from a blood splatter pattern?
- 13 A From any blood splatter pattern?
- 14 Q Well, let's limit it to -- for example, you had an  
15 opportunity to look at the south wall in the Ryen home?
- 16 A Yes.
- 17 Q That had blood on it?
- 18 A Yes.
- 19 Q Were you able to make any inferences from the splatter  
20 patterns on that wall?
- 21 A Yes.
- 22 Q What inference?
- 23 A That was consistent with arterial blood, arterial  
24 spraying.
- 25 Q And to take that a step further, would that then be  
26 consistent with being deposited on the wall with someone

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1       who had had one of their arteries cut?

2   A    Yes.

3   Q    Is there any other inference you could make?

4   A    There's also a smear pattern on the wall, which appears  
5       to have been deposited prior to the dripping motion of  
6       some of this blood.

7   Q    And what inference, if any, are you able to draw from  
8       that?

9   A    Only that whatever made this mark was prior to the blood  
10       dripping down the wall.

11   Q    Are there any other inferences in your experience you  
12       can draw from that wall?

13   A    No.

14   Q    Mr. Negus has shown you numerous photographs of the  
15       walls in the Ryen master bedroom; do you recall that?

16   A    Yes.

17   Q    He's shown you photographs of other pieces of furniture  
18       in the Ryen master bedroom which appear to have blood  
19       deposited on them. Do you recall those?

20   A    Yes.

21   Q    In addition to the two inferences that -- the three  
22       inferences that you've mentioned, were you able to make  
23       any other inferences based on the patterns from your  
24       observations of those items?

25   A    Well, on the phone there appeared to be vertical blood  
26       drops. That's another inference that you might be able

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1 A You'd have to know whose blood that particular pattern  
2 came from.

3 Q Again, when we're talking about inferences, are we  
4 talking about something that you can determine with  
5 mathematical certainty?

6 A No.

7 Q Did you see, based on your observations of the splatter  
8 patterns alone, evidence that would have allowed you to  
9 determine the identity of the assailant?

10 A No.

11 Q Did you see from the blood splatter patterns themselves  
12 evidence that would have allowed you to determine whether  
13 the victims were attacked in sequence? By that I mean  
14 an attack was completed on one individual before the  
15 assailant moved to another victim? Did you see that type  
16 of evidence?

17 A No.

18 Q Mr. Ogino, directing your attention to what has been  
19 marked for identification as H-16, does your experience  
20 indicate that with physical evidence it's possible to  
21 identify, for example, to answer Question No. 6, the  
22 identity of an assailant at a scene based on physical  
23 evidence alone?

24 A Some types of physical evidence, yes.

25 Q Would an example of that type of physical evidence be a  
26 fingerprint?

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1 A Yes.

2 Q Can you think of another example of physical evidence  
3 that would allow you to determine conclusively whether  
4 or not a particular person was an assailant at a murder  
5 scene?

6 A Can I make up my own evidence?

7 Q Well, let me ask you this question first. Did you see  
8 when you were in the Ryen home on June the 6th in the  
9 master bedroom a piece of evidence that you felt was  
10 so significant, any piece of evidence, that that piece  
11 of evidence in and of itself would have told you the  
12 identity of the person who committed the Ryen homicides?

13 A No.

14 Q I take it if you would have seen a weapon with blood on  
15 it you would have seized that weapon?

16 A Yes.

17 Q The example you gave with the fingerprint, will the  
18 fingerprint essentially allow you to determine that the  
19 print was deposited in a particular location?

20 A Yes.

21 Q For example, if Mr. Negus's fingerprint were in the  
22 Ryen master bedroom and you lifted it on the 6th of June,  
23 would you still have to make other inferences before you  
24 conclude that he in fact was the assailant?

25 A Yes.

26 Q Would the location of his print, however, perhaps help you?

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- 1 A Yes.
- 2 Q Now, are you familiar with the term trace evidence?
- 3 A Yes, sir.
- 4 Q And is a sample of trace evidence human hair?
- 5 A Yes, it is.
- 6 Q Fibers?
- 7 A Yes.
- 8 Q Will human hairs give you the same type of information  
9 in terms of individualizing the presence of a person that  
10 a fingerprint will?
- 11 A No.
- 12 Q What inference, if any, can you as a criminalist draw from  
13 the presence -- for example, inside the Ryen master  
14 bedroom -- of a hair that is consistent with the human  
15 head hair of Kevin Cooper?
- 16 A Only that it's consistent with or that it's inconsistent  
17 with.
- 18 Q What inference, if any, can you draw from the absence  
19 of any head hair of a person such as Kevin Cooper inside  
20 the Ryen master bedroom?
- 21 A I can't think of any.
- 22 Q Other than the inference that if he was there he didn't  
23 leave his hair?
- 24 A That's possible, or he wasn't there at all.
- 25 (No omissions.)
- 26

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9-1

1 Q With fibers, what type of inference can you draw from  
2 a fiber?

3 A The various types of clothing are made up of different  
4 types of fibers. For example, if you find acrylic  
5 fiber, that's more consistent with socks rather than  
6 it is consistent with, say, a shirt. Blue cotton  
7 fibers are, you know, very common, especially in blue  
8 jeans. Just the actual type of fibers can give you  
9 some idea of where it came from.

10 Q Are there cases in which fibers can allow you, as a  
11 criminalist, to almost draw the same inference as a  
12 fingerprint?

13 A Yes.

14 Q For example, the coat I'm wearing, if I had been at the  
15 Ryen homicide and a section of my coat had been ripped  
16 out and left at the scene and I had later been  
17 apprehended and you could match the patch left at  
18 the Ryen scene with the patch missing from my coat,  
19 that would be such an example; is that true?

20 A Yes.

21 Q When you determine how to evaluate trace evidence at  
22 a crime scene, does whether or not a suspect has been  
23 apprehended enter into the importance you place on  
24 trace evidence?

25 A Yes.

26 Q When you were at the Ryen scene on the 6th of June,

9-2

1 to your knowledge, had anyone been apprehended?

2 A No.

3 Q To your knowledge, had any person been identified as a  
4 suspect?

5 A No.

6 Q Was the absence of those facts things that you considered  
7 or didn't you even consider them when you looked at the  
8 potential of trace evidence on the carpet?

9 A No. I considered that.

10 Q Mr. Negus asked you numerous questions during his  
11 examination about blood samples that should have been  
12 taken or could have been taken from particular portions  
13 of the master bedroom.

14 Do you recall that?

15 A Yes.

16 Q He also included photographs of stains from rooms other  
17 than the master bedroom.

18 Do you recall those?

19 A Yes.

20 Q Your answers -- and correct me if I'm wrong -- to  
21 many of those were you possibly would have.

22 Do you recall that answer?

23 A Yes.

24 Q When you used the term "possibly would have", does that  
25 mean that had you been at the scene, you may well have  
26 not taken a sample from that particular section of the

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9-3

1 house?

2 A Yes.

3 Q You also used the term "should have", a sample should  
4 have been taken.

5 What condition or situation were you explaining or  
6 describing when you mentioned a sample should have been  
7 taken? Or did you have one in mind?

8 A No. I did have one in mind. I took that as being  
9 strictly going by the book, or not so much -- There is  
10 no set guidelines, but if you look at a particular smear,  
11 for example, you should take that particular smear of  
12 blood as well as anything that might be around it even  
13 though you probably, you are probably certain that  
14 that smear of blood is also from the same type of  
15 blood as the pattern that it smeared.

16 Q Have you had an opportunity to review the items of  
17 evidence that Mr. Stockwell and Miss Schechter collected  
18 from the Ryen home on June the 5th and early morning  
19 hours of June 6th?

20 A Yes.

21 Q And did you testify at the preliminary hearing that in  
22 your opinion they collected an adequate number of  
23 samples?

24 A I believe so, yes.

25 Q Returning again to the chart that has been prepared by  
26 Mr. Negus, H-16, starting with the first item on the

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9-4

1 chart, number one, the number of assailants, in general,  
2 in crime scenes in general, is it possible to determine  
3 the number of assailants from the collection of physical  
4 evidence alone at a scene excluding for purposes of our  
5 hypothetical eye witnesses identification and eye  
6 witness account of a crime?

7 A I would have to say no based on the fact that if some  
8 of the assailants didn't do anything but they were still  
9 assailants, I don't think that's possible.

10 Q By that, do you mean that to determine the presence of  
11 the number of assailants at a scene or to draw an  
12 inference as to the number of assailants at a scene,  
13 they may have had to deposit something at the scene?

14 A Something that could be linked back to them.

15 Q For example, three sets of fingerprints belonging to  
16 different persons?

17 A Yes.

18 Q Three patches ripped out of different men's suit coats  
19 that could later be matched to three suits? That type  
20 of thing?

21 A Yes.

22 Q Moving to the Ryen case, when you were inside the master  
23 bedroom on June the 6th, you had an opportunity to look  
24 at the scene at that point?

25 A Yes.

26 Q At that point, did you see the type of evidence that

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1       you felt, if collected, would answer the question of  
2       whether or not there was more than one assailant?

4 Q Along that line, let's consider blood, however, for a  
5 minute.

7 | A Yes.

12 | A Yes.

15 | A Yes.

21 A Well, there might have been blood deposited on the walls  
22 prior to the incident.

23 Q Let me ask you that question.

24 In your experience, are you able to place any time  
25 parameters on a blood stain due to your visual  
26 observations? By that I mean can you tell from looking

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9-6

1 at a wall that has blood on it how much time has passed  
2 since the stain reached the wall?

3 A Only if it's wet, you could tell it's fresh. But once  
4 it's a stain, no.

5 Q Are there any parameters you can place on it, or are we  
6 talking about infinity? Can you place five years, ten  
7 years, a month?

8 A No.

9 Q Would serological examination allow you to place time  
10 limits on a blood stain?

11 A It's possible, yes.

12 Q And would that be the inference that depending on how  
13 many systems you could type would give you some  
14 indication that it hadn't been there for 20 years?

15 A Yes.

16 Q Well, then, in your opinion, would have analyzing every  
17 drop of blood in the Ryen master bedroom have allowed  
18 you to conclusively determine the number of assailants?

19 A No.

20 Q You have also been able to look at the photographs of  
21 the Ryen scene as it existed on June the 5th when  
22 Mr. Stockwell and Miss Schechter were at the scene;  
23 is that correct?

24 A Yes.

25 Q And, for example, do H-211, H-212, H-213, H-125, those  
26 all appear to be photographs of the Ryen master bedroom?

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9-7

1 A Yes.

2 Q Do those appear to be photographs that have been  
3 represented to you as being taken by I.D. during the  
4 first day the scene was processed?

5 A Yes.

6 Q In those photographs, do you see any piece of evidence  
7 that would allow you to answer question number 1, the  
8 number of assailants.

9 A No.

10 Q Moving to the second area, the position of the victims  
11 when attacked, is it possible in your experience to  
12 determine a position of a victim when the victim is  
13 attacked due to physical evidence alone?

14 A You could determine where the origin of the blood  
15 splatter possibly came from, but I don't think you  
16 could accurately determine the exact position a person  
17 was in when they were attacked.

18 Q So again you are talking about drawing a general  
19 inference?

20 A Yes. The victim was in a general area.

21 Q For example, a room?

22 A You could narrow it down smaller than that by doing some  
23 studies of the blood splatter.

24 Q Does that process become more or less complicated as  
25 the number of victims to a scene increases?

26 A It becomes more complicated when the victims start

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9-8

1 moving. If a person was shot with one shot and just  
2 as he was lying on the ground, that's a lot easier than  
3 trying to determine where a person was located if he  
4 was being struck numerous times around the room.

5 Q That's a bad question, I think.

6 A Yes.

7 Q For example, it would be easier in a case with four  
8 victims when you arrived at a crime scene and they had  
9 all been tied to various pieces of furniture and shot  
10 through the head to determine their positions than it  
11 would be to persons where there was evidence of moving?

12 A Yes.

13 Q Let's move to the Ryen scene.

14 Have you observed any evidence, either in the  
15 photographs or in your observations at the scene on  
16 Sunday, that would indicate that one or more of the  
17 victims may have moved between the time they were  
18 attacked and the time they died?

19 A Yes.

20 Q What type of evidence did that consist of?

21 A The dripping on the victims can tell you that.

22 Q Was there any inference you could draw from the blood  
23 on the walls along that line?

24 A Well, the blood on the walls gave you a general  
25 location. You know, I can't tell you where the victims --  
26 how they were moving.

9-9

- 1 Q Did you see evidence at the scene that, had it been  
2 seized or preserved in a different fashion, would have  
3 allowed you to determine, based on physical evidence  
4 alone, which victim was attacked first?
- 5 A No.
- 6 Q Which victim was attacked second?
- 7 A No.
- 8 Q Which victim was attacked third?
- 9 A No.
- 10 Q That is regardless of how the evidence would have been  
11 preserved; is that correct?
- 12 A That's correct.
- 13 Q Was there physical evidence at the scene when you  
14 arrived on the 6th that would have allowed you to draw  
15 any inference as to the type of weapon or weapons that  
16 were used during the attack?
- 17 A Yes.
- 18 Q What was that evidence?
- 19 A It was a swinging-type instrument.
- 20 Q Did that allow you to draw certain inferences?
- 21 A Yes.
- 22 Q Did it allow you to exclude certain potential weapons?
- 23 A Yes.
- 24 Q Directing your attention to the photographs in front of  
25 you that I have directed your attention, specifically  
26 the pictures which depict Douglas Ryen, Jessica Ryen,

9-10

1 Peggy Ryen, from your view of the photographs, does  
2 there appear to be anything on the injuries inflicted  
3 to the victims that would allow a determination to be  
4 made or inference to be drawn as to the type of weapon  
5 that was used in this case?

6 A Yes.

7 Q And what are those facts?

8 A There appear to be puncture wounds.

9 Q So then there was evidence, in your opinion, at the  
10 scene, the Ryen homicide scene, that would have allowed  
11 a criminalist to draw certain inferences as to the  
12 type of weapon that was used, number 4; is that correct?

13 A Generally, yes.

14 (No omissions.)

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- 1 Q What type of inferences in your opinion could be drawn  
2 as to the type of weapon?
- 3 A In this particular scene?
- 4 Q In this particular scene.
- 5 A Just from the blood splatter pattern?
- 6 Q Starting with the blood splatter pattern.
- 7 A From seeing the cast-off, I would determine that there  
8 was a swinging-type instrument versus, say, a gun used.
- 9 Q Any other inference you could make?
- 10 A Again, there's a possibility by the arcing of the  
11 cast-off you could determine whether that instrument  
12 was in the left or right hand.
- 13 Q Anything else about the instrument from the splatter  
14 pattern alone?
- 15 A Not from the studies I've done, I couldn't say.
- 16 Q The photographs that I've directed your attention to --  
17 H-212, 213, 211 -- do they depict items of physical  
18 evidence that would allow you to draw any further  
19 inferences as to weapon?
- 20 A No.
- 21 Q Is it fair to say that in your experience additional  
22 inferences might possibly be drawn from a pathologist  
23 who conducted an autopsy?
- 24 A Yes, that's correct.
- 25 Q Returning to No. 5, whether victims moved from room to  
26 room, starting first generally in your experience at a

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1 crime scene through the analysis of physical evidence is  
2 it possible to make an inference as to whether or not a  
3 victim moved from one room to another?

4 A From certain types of physical evidence, yes.

5 Q What type of physical evidence are you talking about?

6 A For example, if the victim was bleeding in one room and  
7 ran into another room and you see a trail of drops of  
8 blood, and finally the victim is lying on the ground next  
9 to this trail.

10 Q Anything else?

11 A You might make an inference from, say, hair pulled out at  
12 one particular spot in the room and analyzing the hair  
13 from that particular victim at another spot.

14 Q Would that have to be hair that would allow you to draw  
15 an inference that it had been pulled out as opposed to  
16 falling out?

17 A Yes.

18 Q Now, in this case when you arrived on the 6th, did you  
19 see any items of physical evidence that in your opinion  
20 would have allowed you to draw an inference as to question  
21 No. 5 and therefore possibly should be preserved for that  
22 purpose?

23 A Well, there just wasn't much blood in any other room  
24 than the master bedroom and just outside the hallway.

25 Q Did there appear to be stains on the carpet in the  
26 master bathroom that were consistent with human blood?

10-2-67

1 A Yes.

2 Q Assuming for hypothetical purposes that that was human  
3 blood, what inference would that have allowed you to make  
4 as to No. 5, if any, whether the victims had moved during  
5 the attack?

6 A Well, if the victim was actually found in the bathroom  
7 and there's a pool of blood under the victim, I couldn't  
8 see how that would help you to determine whether the  
9 victim was actually inside the master bedroom.

10 Q The doorjamb and the door and the doorknob that led from  
11 the hallway into the living room from which you took  
12 blood samples, samples on the 30th of June, do you have  
13 that area of the house in mind?

14 A Yes.

15 MR. NEGUS: Objection. I think that assumes a fact  
16 not in evidence. I didn't hear the question. Did you say  
17 the blood on the doorway from the --

18 MR. KOCHIS: Let me ask the question in a fashion  
19 that doesn't assume any facts not in evidence.

20 MR. NEGUS: I just didn't hear the facts.

21 Q (BY MR. KOCHIS:) Do you recall going to the Ryen home  
22 on June the 30th and collecting what Mr. Negus and  
23 many people have referred to as the UU series of blood?

24 A Yes.

25 Q Was it on the 30th of June or was it another day?

26 A It was on January 30th, 1983.

1 Q Would that have been June the 30th?

2 A June the 30th. I'm sorry.

3 Q And did you collect a doorknob on that date?

4 A Yes.

5 Q Did it appear to have stains on it that were consistent  
6 with blood?

7 A Yes.

8 Q And did you collect a stain which appeared to be a smear  
9 in the area of that doorknob? UU-6, do you recall where  
10 that sample was collected from?

11 A Yes.

12 Q Was that the same door that the doorknob came from or a  
13 different door?

14 A That was the same door.

15 Q Was that the door that cut off the hallway to the living  
16 room?

17 A Yes.

18 Q Assuming that that was human blood for our hypothetical,  
19 what inference, if any, would that piece of information  
20 have provided as to question No. 5?

21 A That would probably infer that the victims did move over  
22 to that area.

23 Q Well, would it also be consistent with a person who had  
24 the blood of a victim on his hands passing through that  
25 doorway?

26 A That's also possible, yes.

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1 Q Is there any way from serological -- first of all, is  
2 there any way from physical appearance of the blood you  
3 can determine whether it was a person who had been  
4 attacked who deposited it there or whether it was an  
5 assailant who deposited it there?

6 A I don't think you could determine that.

7 Q Assuming for a hypothetical purpose that it was typed and  
8 the genetic profile was consistent with the genetic  
9 profile of one of the victims, even with that additional  
10 fact, would you be allowed to distinguish that smear  
11 coming from a victim being deposited by a victim or an  
12 assailant who had the victim's blood on his hands?

13 A. No, I don't think you could determine that either.

14 Q So even conducting a serological examination of that,  
15 would that allow you to draw any concrete inferences as  
16 to No. 5?

17 A. Not from that smear, no.

18 Q I believe we discussed, Mr. Ogino, No. 6 at the start.  
19 Do you recall my discussing that or not?

20 A. Yes, you have.

Q In general, talking about crime scenes in general, is there physical evidence that you're aware of that may be found at a crime scene that would indicate the nature, if any, of the resistance of a victim during the attack?

25 | A. Yes.

26 Q What type of evidence are we talking about?



1 A Such things as defense wounds.

2 Q Other than wounds on the body of a victim, is there any  
3 other evidence that will allow you to draw an inference  
4 as to whether or not there was resistance?

5 A There might be. I can't think of any right now.

6 Q Getting specific to June the 6th of last year, the Ryen  
7 crime scene, and the Monday you were there, did you see  
8 any item of physical evidence that would allow you to  
9 draw an inference as to the nature, if any, of the  
10 resistance of any of the victims in this case to the  
11 assailant?

12 A No, not when I was at the scene, I didn't.

13 Q Can you make that inference from splatter patterns?

14 A I don't believe you can.

15 Q Would the photographs that I've directed your attention  
16 to, the photographs in the 211 series that are in front  
17 of you, do you see any item of physical evidence -- and  
18 by that, let me limit our discussion to H-211, H-213,  
19 H-212, H-125 -- that would allow you to draw an inference  
20 that the victims resisted other than the wounds to the  
21 various victims that appear in those photographs?

22 A The only possible thing I could see from the smear marks  
23 on the door might tell you something.

24 Q In one of the photographs Mr. Negus showed you during  
25 your examination, that photograph depicted a pillow on  
26 the other side of the room in the doorway that led into

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1 the master bathroom. Do you recall that?

2 A Yes.

3 Q With the existence in that -- and that pillow had stains  
4 on it that appeared to be blood?

5 A Yes.

6 Q Would the presence of blood on that pillow and its  
7 position on the floor away from the bed allow you to  
8 draw an inference as to whether there was any resistance?

9 A Yes.

10 Q What type of an inference would you draw?

11 A Well, obviously the pillow's not normally kept on the  
12 floor in the bathroom. And since there was blood on it  
13 and it appeared to have been a smear on the doorway leading  
14 down and the pillow being right at the end of the smear,  
15 it is an indication that that was in motion while there  
16 was blood on it.

17 Q Assuming that the pillow would have been typed on the  
18 spot for serological purposes, what additional information,  
19 if any, would that have given you as to that question,  
20 the last question, the victim's resistance?

21 A Well, if you knew it was from one of the victims, that  
22 still wouldn't tell you which victim was resisting,  
23 because that blood could have been deposited on the  
24 pillow from another victim. However, another victim  
25 could have been resisting with this pillow.

26 Q So even if the pillow would have been preserved for

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1       serological purposes and the pillow would have been  
2       typed, you still would have been limited in any  
3       inference you could have drawn as to the blood on that  
4       pillow; is that correct?

5   A.   You'd be limited to the inference you can draw as to the  
6       resistance of who made the resistance with that pillow.

7   Q.   In this particular case, did you see physical evidence  
8       at the scene when you arrived on June the 6th that would  
9       have allowed you to draw inferences as to whether or  
10      not the victims remained stationary when they were  
11      attacked or whether they were moved during the attack?  
12      And by movement, I mean within the room.

13   A.   Well, in the photo that depicts Peggy Ryen, which is  
14       H-125, you could see some blood drops dripping as though  
15       she was standing. And then this picture they still remain  
16       in that position. So this tells me that she was in a  
17       vertical position at one time.

18   Q.   Well, for example, in Photograph H-211, there appears to  
19       be patterns consistent with arterial blood on the south  
20       wall behind the master bedroom on the side of the bed  
21       away from Doug Ryen; is that correct?

22   A.   Yes.

23   Q.   And in the photograph there doesn't appear to be a person  
24       at that location, does there?

25   A.   No.

26   Q.   And the bedding underneath that pattern appears to be

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1       stained with a substance the same color as dried human  
2       blood; is that correct?

3   A   Yes.

4   Q   Do those facts allow you to draw any inference as to  
5       whether or not someone was attacked at that position or  
6       not?

7   A   At the position Doug Ryen is in this picture?

8   Q   No, at the position across the bed from Doug Ryen on  
9       the opposite side of the bed where no one is pictured.

10   A   It's consistent with coming from that area.

11   Q   Well, from the photograph without, for example, my  
12       putting words in your mouth, what inference can you as  
13       a criminalist draw from arterial blood at that location?

14   A   You could determine the angle at which the blood hit the  
15       wall and you could, by taking a number of these stains,  
16       you could draw back to a point of origin.

17       (No omissions.)

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- 1 Q What would that ultimately tell you, if anything?
- 2 A That that person was -- that the blood that is deposited  
3 on the wall came from a particular point of origin at  
4 the time it was in flight.
- 5 Q Is that process more difficult in a scene where there  
6 are multiple victims?
- 7 A Yes.
- 8 Q And is there a problem with the blood from one victim  
9 being deposited in the same area of blood from another  
10 victim which will interfere with that inference-drawing  
11 process?
- 12 A Yes.
- 13 Q But if all conditions were ideal in a crime scene, you  
14 potentially may be able to indicate where the blood  
15 originated from; is that correct? The approximate  
16 location?
- 17 A You could determine the maximum height at which blood --  
18 or at a particular height or below from the blood  
19 splatter stains.
- 20 Q And that is the type of inference this type of  
21 information allows you as a criminalist to draw; is  
22 that correct?
- 23 A Yes.
- 24 Q When you were there on the 6th of June, on that Monday,  
25 was there anybody who prevented you from taking, if  
26 you felt it was necessary, additional samples from

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11-2

- 1 the wall?
- 2 A No.
- 3 Q Directing your attention to the blood that you took off  
4 the hatchet at the Identification Bureau, based on the --  
5 You took four threads, approximately four thread samples  
6 from that hatchet?
- 7 A Yes.
- 8 Q And it appeared to have some type of powder on it when  
9 you took these samples?
- 10 A Yes.
- 11 Q And you have done experiments on the effect, if any, of  
12 fingerprint powder on ABO typing?
- 13 A Yes.
- 14 Q Are your experiments limited to fingerprint powder on  
15 ABO?
- 16 A Yes.
- 17 Q And have your experiments shown you that unless the  
18 stain is very weak, you can still get ABO results from  
19 the stain that has been subjected to print powder?
- 20 A Yes.
- 21 Q What is the physical appearance of the type of stain  
22 that in your experiments you have had a difficulty of  
23 obtaining ABO results with after the stain had been  
24 subjected to fingerprint powder?
- 25 A Just very thin, weak stains which are very faint, a  
26 very faint reddish color.

11-3

1 Q Is that description consistent with the type of stain  
2 that you took your samples from?

3 A Off the hatchet?

4 Q Yes.

5 A No.

6 Q Before I move to the Lease house, Mr. Ogino, did you,  
7 at some time, make a determination as to whether in  
8 your opinion a reconstruction should have been done in  
9 the Ryen scene?

10 A Yes.

11 Q And when I use the term "reconstruction", what, to you,  
12 does that mean?

13 A It means whether I could determine what types of weapons  
14 could have been used. It also means whether I could  
15 have placed a particular victim at a particular location  
16 at the time they were being attacked. I'm also looking  
17 for any evidence that might give me an indication of  
18 whether a cast-off pattern was from either using a  
19 right or left hand.

20 In some cases, the number of blows that were struck  
21 can be determined by the number of cast-off patterns.

22 Q So to you, reconstruction, does reconstruction mean  
23 something different from, for example, a complete  
24 re-enactment?

25 A Yes.

26 Q Did you make a determination as to whether a

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11-4

1 reconstruction within your definition should be done  
2 in this case?

3 A Yes.

4 Q And do you recall when you made that decision?

5 A Yes.

6 Q When?

7 A When I looked at the walls and also the furniture at a  
8 later time.

9 Q And what was your opinion after you conducted that  
10 analysis?

11 A Most of those questions had already been answered.  
12 For example, the type of weapon, Dr. Root, I believe,  
13 suggested that it was -- I believe he said it was  
14 either a knife or possibly a hatchet. That's far more  
15 than I could have told from a reconstruction.

16 The number of blows. In this case, there are just  
17 so many, I can't see how a reconstruction would even  
18 help in this case.

19 Q Let me stop you there for a moment.

20 On the type of weapon, did you see, taking your  
21 observations at the scene, your observations of the  
22 furniture in the loft, your observations of the  
23 photographs at the scene, did you see the type of  
24 physical evidence that would have allowed you to  
25 determine, for example, the absent -- putting aside  
26 for a minute the injuries to the victim's body -- the



11-5

1 exact type of weapon that was used in this case? By  
2 that, I mean the length of the blade, the width of the  
3 blade. Did you see that type of evidence at the scene?

4 A Not at that particular day.

5 Q Have you ever seen that type?

6 A Yes.

7 Q What type of information are you talking about?

8 A Last week, either last week or two weeks ago when I was  
9 examining a pillow, I did find a cut mark in the pillow.

10 Q That allows you to draw what type of inference?

11 A You would have to assume --

12 Q A number of things?

13 A Yes.

14 Q But it was, for example, inconsistent with coming from  
15 a gun?

16 A Yes.

17 Q And inconsistent with coming from some type of object  
18 that had a cutting or sharp edge?

19 A No. It was consistent with a type of weapon with a  
20 sharp edge.

21 Q And that's the type of inference you can draw from  
22 that type of physical evidence?

23 A You would have to make some assumptions.

24 Q In addition to that, is there any piece of evidence  
25 that you have seen that would allow you to go further  
26 than that as to an inference of the type of weapon or

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11-6

1 weapons that were involved in this case, again putting  
2 aside the injuries to the victims?

3 A I didn't see any.

4 MR. NEGUS: Could we take our break now?

5 THE COURT: Is it okay with you?

6 MR. KOCHIS: I have nowhere else to go. Yes, it is.  
7 (Whereupon the afternoon recess was taken.)

8 THE COURT: Have you finished with the witness?

9 MR. NEGUS: The answer is --

10 THE COURT: Not conveniently?

11 MR. KOCHIS: I'm not done with my questioning.

12 Mr. Negus tells me that based on the types of questions  
13 I've asked this afternoon, that he is not going to be done  
14 with Mr. Ogino until Monday.

15 MR. NEGUS: Tuesday or Wednesday.

16 THE COURT: All right. We will go as far as we can,  
17 then.

18 What do you want to hit now? The pictures?

19 MR. NEGUS: What we wanted to ask about was --

20 MR. KOCHIS: First of all, we would like perhaps  
21 five minutes to look at the copies, compare them to the  
22 originals to see where we are on our consensus of whether  
23 what I have done is acceptable to Mr. Negus. Then from  
24 there we are going to probably start marking things and  
25 litigate them or otherwise Mr. Negus --

26 THE COURT: Marking things and what?

MR. KOCHIS: Marking photographs and litigating them, unless Mr. Negus gets his camera up here and I can start photographing them.

THE COURT: I see.

MR. KOCHIS: For the record, perhaps I should indicate that I have handed Mr. Negus a copy of photographs that have been prepared by the I.D. Bureau of -- they are photographs that were taken of the pictures the Crime Lab has maintained of the enzymatic runs that accompany the serological work that was done in this case.

THE COURT: Are they negative prints?

MR. NEGUS: Three-by-fives.

THE COURT: These are just regular copies?

MR. NEGUS: And the paper.

THE COURT: I will give you five minutes first.

(Whereupon a brief recess was taken.)

(No omissions.)

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1 THE COURT: What's the most logical thing for us to  
2 do first?

3 MR. KOCHIS: Your Honor, we have the copies that  
4 were made of the photographs. I'm going to hand the Court  
5 in order a stack of enzymatic runs. On the back of each run  
6 are the Polaroid photographs of the particular gel plates.  
7 They correspond by the identification number to a photograph  
8 in a stack I'm going to hand the Court, which is the same  
9 thing we've given Mr. Negus.

10 MR. Negus is not certain -- I think what it boils  
11 down to is he's not completely satisfied with the copy we  
12 are giving him. He's not certain in his own mind that he  
13 can do any better, but I think the end result he wants to  
14 try. So I suppose the only thing we can do is I can show the  
15 Court the originals, show the Court the copy, see if the  
16 Court wants to make some determination, that we've complied  
17 to the best of our ability. Absent a finding of that nature  
18 by the Court --

19 THE COURT: Let me see one of each, please.

20 MR. KOCHIS: Perhaps what we can do for the record  
21 is I'll give the Court the copy that had been earlier marked  
22 at the Preliminary Hearing as DD, and they correspond to  
23 three copies of which I have handed the Court, which at the  
24 bottom are marked JJ-1, JJ-2, and JJ-3, which are the copies  
25 of the photographs that appear on the back of Exhibit  
26 Defendant's DD. This is the way the Court would evaluate

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1 the quality of the copy compared with the original.

2 And Mr. Wyatt, who actually did the photography from  
3 the identification bureau, is present in the courtroom. He  
4 is available to testify if the Court desires for him to  
5 explain the procedure or the attempts we've made to get Mr.  
6 Negus the information contained in the original records.

7 THE COURT: If you wanted to blow some of these up,  
8 what would you do, Mr. Negus?

9 MR. NEGUS: I would take a picture of the original  
10 and enlarge it.

11 THE COURT: Without that --

12 MR. NEGUS: Well, there's two problems, there's two  
13 problems. The only way I could blow it up is to take a  
14 picture of what they've given me and then blow that up, or  
15 else have them blow it up for me, which seems like a very  
16 expensive way to do it. The problem is that if you'll notice  
17 what you're dealing with with these enzymes and which we've  
18 had testimony about at the prelim and which I'm sure we're  
19 going to have much more testimony, is that what you'd like  
20 to have is nice, clear patterns. But the photographs don't  
21 show it. And so the artifacts on the photograph and all those  
22 little smudges become important as to their meaning.

23 We have with respect, for example, to some of the  
24 blood from Joshua Ryen, the results that Mr. Gregonis got  
25 when he retested that blood at my request from the last  
26 hearing would make it biologically impossible for Peggy Ryen

1 to be his mother, a fact that we know is not true. So there's  
2 problems with it.

3 There's also interpretations of what's a faint line.  
4 The only way you can do it really is to study the originals.  
5 What I want to do is be able to make my copies first of the  
6 originals, do as well as I can with printing them, and I  
7 think using a different --

8 THE COURT: You would take pictures of these?

9 MR. NEGUS: I would take pictures of each of the  
10 photographs that are on the back, of the original photograph.  
11 After that, I would want to compare the photographs that I'd  
12 printed, at least some of them, the ones that are most important  
13 to me, make my own originals and mark my photographs as to  
14 there was something on the original I couldn't get. Basically  
15 I want to have --

16 When Mr. Gregonis testified at the Preliminary  
17 Hearing he kept referring to, well, the original shows this  
18 and the original shows that. I need to study the originals  
19 and I need to have pictures of the originals in order to  
20 remember what I have studied.

21 THE COURT: And some good pictures of the originals  
22 is something that you have to take to a studio or something?

23 MR. NEGUS: Mr. Forbush is going to get the light  
24 stand right now. My camera is in my office, in the Public  
25 Defender's Office. Mr. Forbush is buying additional film  
26 that I need, and I can do it right here in court if you want

1 me to. I don't know how long it will take me, but I can do  
2 it right here in court.

3 THE COURT: Any objection to that, Mr. Kochis?

4 MR. KOCHIS: Yes. We've gone to extraordinary  
5 efforts to give him copies, to give him pictures of the  
6 pictures which he's going to do. Apparently, if I understood  
7 him correctly, even if the Court were to allow him to re-  
8 photograph the originals, he still at some point is going  
9 to demand to sit down with the originals and look at them.  
10 So no matter what we do that's not going to solve the  
11 problem. He's going to --

12 THE COURT: Wait a minute. You may be putting words  
13 in his mouth.

14 MR. NEGUS: If they don't wish to physically give me  
15 the photographs, then I'm perfectly willing after I get my  
16 prints made to sit here in court and then visually compare  
17 them. But the Prosecution is not the only people that should  
18 have the right to do work on the original thing. The  
19 originals are the best thing. The prints that we have are  
20 not adequate to the job.

21 I asked them -- I did not ask them to make me these  
22 prints. That was their idea so that they wouldn't have to  
23 let me photograph them myself and study them myself. I don't  
24 think there's any substitute for studying the originals myself  
25 and making my own best evidence.

26 THE COURT: The way we've spent money on this case,

1 this is a nothing item from the point of view of dollars.

2 As far as security is concerned, if it's all going  
3 to be done in the courtroom, I don't see any problem. Whether  
4 he's sitting down analyzing them with a magnifying glass or  
5 setting up a studio here in the courtroom, I don't see any  
6 problem.

7 As far as money is concerned, it's not all that  
8 expensive. You know, we're talking about a hundred, two  
9 hundred dollars, something like that, to have prints made,  
10 and considering the nature of this case that's a drop in  
11 the bucket. I don't see justification for creating another  
12 issue.

13 So that being the case, when we adjourn today, why,  
14 you can set up your camera. The clerk, to safeguard it,  
15 should mark every one of the sheets with the photographs  
16 attached. And it appears that you won't have to disengage  
17 them or will you?

18 MR. NEGUS: I think I can probably work out a way to  
19 do it without disengaging that.

20 THE COURT: That's on the bottom. So these went  
21 where, Mr. Kochis? In that stack? So these are the documents  
22 here that are in dispute.

23 Unless there's something further, I don't see any  
24 problem on this issue.

25 MR. KOCHIS: Your Honor, if we started now, it's  
26 possible Mr. Negus and I may be done by 6:30.



1 THE COURT: What part are you going to play in this?

2 MR. KOCHIS: Someone has, myself or Sergeant Arthur,  
3 has to stay here to maintain security over the photographs.

4 THE COURT: I thought I'd put it in the possession  
5 of my clerk.

6 MR. KOCHIS: I can't see imposing on her the  
7 obligation --

8 THE COURT: I can't either, now that you mention that  
9 kind of time.

10 MR. KOCHIS: If we start now, we can do as much as  
11 we can until 5:00.

12 THE COURT: Take him down to your office, Sergeant.  
13 Take him down to your office and put your men on it in shifts  
14 as far as maintaining security, then. There's no point in  
15 doing it in the courtroom here.

16 SERGEANT ARTHUR: All right.

17 MR. NEGUS: I don't suppose I could do it in my  
18 office.

19 THE COURT: I'll leave that up to you. Since they're  
20 not presently marked, Counsel, work it out, give him an  
21 opportunity to photograph them this afternoon. Will you do  
22 that, please?

23 MR. KOCHIS: I interpret that as an order of the  
24 Court, and I'll follow that order.

25 THE COURT: Very well. That being the case, then --

26 MR. NEGUS: Could Mr. Ogino come back at 11:00 on

1 Monday? We have out-of-state witnesses coming in at 9:30.

2 THE COURT: Can you be here then?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: I've got stacks of files in chambers,  
5 so I'm willing to break it at this time. Is that satisfactory?

6 MR. NEGUS: Yes.

7 MR. KOCHIS: Yes, sir.

8 THE COURT: See you Monday morning at 9:30 then.

9 (Whereupon the proceedings were concluded  
10 at 3:30 p.m.)

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