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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-71787
MOTIONS

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: HON. JOHN D. VAN DE KAMP
ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
110 WEST "A" STREET
SUITE 600
SAN DIEGO, CA 92101

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

REPORTED BY: LEONARD D. GUNN
C.S.R. NO. 1109
AND
JUDITH L. MORRIS
C.S.R. NO. 2400
OFFICIAL REPORTERS

VOLUME ~~44~~ OF 52
PAGES 433 THROUGH 447

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

VS.

KEVIN COOPER,

Defendant.

NO. OCR-9319

CR-72787

VOLUME 42

Pgs. 4336 thru 4471, incl.

REPORTERS' DAILY TRANSCRIPT

BEFORE HONORABLE RICHARD C. GARNER, JUDGE

DEPARTMENT 10 - SAN BERNARDINO, CALIFORNIA

Wednesday, June 27, 1984

APPEARANCES:

For the Plaintiff:

DENNIS KOTTMEIER
District Attorney

DENNIS KOTTMEIER
District Attorney
By: JOHN P. KOCHIS
Deputy District Attorney

For the Defendant:

DAVID McKENNA
Public Defender
By: DAVID NEGUS
Deputy Public Defender

Reported by:

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

I N D E X T O W I T N E S S E S

<u>WITNESS</u>	<u>PAGE</u>
FLOYD TIDWELL	
Direct Examination by Mr. Negus	4337
Cross-Examination by Mr. Kochis	4376
Redirect Examination by Mr. Negus	4379
WILLIAM W. BAIRD	
Direct Examination by Mr. Negus	4383
Direct Examination Resumed by Mr. Negus	4406
Cross-Examination by Mr. Kochis	4465

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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-317 Diagram	4375	--

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1 SAN BERNARDINO, CALIFORNIA, WEDNESDAY, JUNE 27, 1984

2 9:30 O'CLOCK A.M.

3 DEPARTMENT NO. 10

HON. RICHARD C. GARNER, JUDGE

4 APPEARANCES:

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

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

15
16 THE COURT: Good morning.

17 MR. NEGUS: Good morning.

18 Sheriff Tidwell.

19
20 F L O Y D T I D W E L L, called as a witness by
21 and on behalf of the defendant, was duly sworn,
22 examined and testified as follows:

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

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1 THE WITNESS: I do.

2 THE CLERK: Please be seated.

3 State your name, please, for the record, and spell
4 your last name.

5 THE WITNESS: Floyd Tidwell, T-i-d-w-e-l-l.

6
7 DIRECT EXAMINATION

8 BY MR. NEGUS:

9 Q Mr. Tidwell, you are the duly elected Sheriff of the
10 County of San Bernardino?

11 A Yes, I am.

12 Q What procedures did your department have in effect in
13 June of 1983 for the systematic preservation of
14 physical evidence?

15 A The procedures that were in effect at that time are
16 procedures that had been established for a number of
17 years in the department.

18 Q Were they in any sort of written form?

19 A They were, I believe, in written form that was used as
20 a teaching aid for instructional courses.

21 Q Teaching aid at the Frank Bland Sheriff's Training
22 Academy?

23 A At the Academy more than anywhere else, yes, and some
24 individual classes in stations or divisions.

25 Q Showing you Exhibit H-195, is this the document to
26 which you refer?

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1 Q On the bottom of the inside pages, there is a date of
2 January, 1983, January 3rd, on the bottom of all those
3 pages. Is that the date that the document first began
4 being circulated or what does that refer to?

5 A That was probably when the committee that had been
6 appointed to prepare this document probably completed
7 their work, and I believe it was the first part of
8 January they completed their initial work and the final
9 typing of the document for preparation of approval
10 throughout the staff was probably about that date.

11 Q With respect to just the handling of physical evidence,
12 leaving aside questions of administration and other
13 issues, but just with respect to handling and
14 preservation of physical evidence, was the manual
15 intended to change existing procedures or just codify
16 them?

17 A More to codify them than to change.

18 Q The procedures that would be listed in that manual about
19 physical evidence in general, you would have expected
20 to be followed before the manual and you were just
21 setting them out in writing; is that basically correct?

22 A I would say basically, probably with some exceptions,
23 but basically, yes.

24 Q Who had responsibility, if you know, for drafting and
25 decisions as to what the policies with respect to
26 physical evidence would be?

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1-5

1 A Excuse me. If I understand your question, who had the
2 right of approval of sections?

3 Q Whose work it is that -- Who decides what should be
4 in the procedures with respect to preservation of
5 physical evidence?

6 A The manual was written, constructed by a committee which
7 I appointed consisting of a number of people in the
8 department from all ranks.

9 Once a portion was completed, it was then forwarded
10 to a command staff officer who had charge of that
11 particular subject area, such as jail procedures or
12 investigative procedures.

13 It went to a staff officer who had responsibility
14 for final approval of those procedures. He then reviewed
15 it.

16 Q In the case of preservation of physical evidence, would
17 that person have been Deputy Chief Longhetti?

18 A I would say probably with respect to physical evidence,
19 yes, were the particular areas that he was concerned
20 with.

21 Q He would have been in charge of both the Identification
22 Bureau where evidence is sometimes physically stored,
23 and also the Crime Lab would have been in charge of
24 physically collecting and analyzing and preserving the
25 evidence; is that correct?

26 A I had not assigned the Identification Bureau to his

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1 command as of January 3rd, no. That was assigned later
2 on that spring, and I don't recall the exact date. So
3 he did not have command of the Identification Bureau
4 but did of the Crime Lab.

5 Q Would he have had command of the Identification Bureau
6 on June 5th, 1983?

7 A I believe so, but I'm not positive of the date that that
8 responsibility was given to him.

9 Q In assigning responsibility for a crime scene of a
10 homicide, how is responsibility allocated among the
11 various divisions and personnel who would be assigned
12 to any particular crime? And in particular, I'm directing
13 your attention to the Ryen homicide that occurred June
14 5th, 1983.

15 A That is the responsibility of -- The scene assignment
16 is the responsibility of the division or detail commander
17 and he can assign anyone that he wants or himself.

18 Q In this particular case, in the case of the Ryen
19 homicides, who was the division or detail commander?

20 A At that time, Lientenant Bradford, Captain Bradford now,
21 was in command of the homicide detail. Captain Myers
22 was in charge of the division, Specialized
23 Investigations, and it was their choice as to who they
24 placed in charge of that scene.

25 It usually becomes the on-call or next-in-line
26 supervisor, first-line supervisor.

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- 1 Q In this case, that would have been Sergeant Arthur?
- 2 A Sergeant Bill Arthur, yes.
- 3 Q Then as far as coordinating the work of the Crime Lab,
4 Identification, Patrol personnel, all the different
5 divisions that would be involved in the investigation,
6 Sergeant Arthur would have the overall responsibility?
- 7 A As first-line supervisor, yes, and subject to the
8 approval of any of his superior officers, Lieutenant
9 Bradford or Captain Myers, on up the chain of command.
10 But initially, yes.
- 11 Q On June 5th, did you yourself go to the Ryen crime
12 scene?
- 13 A Yes, I did.
- 14 Q And what time did you arrive, approximately?
- 15 A Approximately 5:00 p.m.
- 16 Q When you arrived there, where did you go?
- 17 A I drove to the scene, parked some distance from the
18 residence, walked to the residence, to the front of
19 the residence. And at that location, met Deputy Chief
20 Gene Majors on the front porch.
- 21 Q Deputy Chief Majors would be the next person up the
22 chain of command from Captain Myers?
- 23 A Yes.
- 24 Q After you met Deputy Chief Majors, did you then go
25 into the house?
- 26 A Yes, I did.

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- 1 Q Where did you go inside the house?
- 2 A Into the living room.
- 3 Q Were there other officers already in that living room
- 4 at that time?
- 5 A Yes.
- 6 Q What occurred in the living room?
- 7 A I was briefed by these officers on what had occurred at
- 8 the Ryen residence.
- 9 Q How long did you remain in the living room area?
- 10 A Probably 30, 45 minutes.
- 11 Q Then did you go, actually go and look at the areas in
- 12 which the assault had taken place?
- 13 A Yes, I did.
- 14 Q How long were you in those areas?
- 15 A Where the assault took place? Is that what you are
- 16 referring to, sir?
- 17 Q Yes.
- 18 A Probably 30 minutes.
- 19 Q Do you recall how many other people were in that area
- 20 at the time that you were?
- 21 A No, but there were a number of specialists,
- 22 investigators and technicians working in that area.
- 23 Q Were you with any particular person?
- 24 A I believe either Sergeant Arthur or Lieutenant Bradford
- 25 went with me when I went down the hallway to that
- 26 location to show me where I could go and where I

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1 should not go.

2 Q Did you actually enter the master bedroom at that time?

3 A No, sir.

4 Q Where did you view the scene?

5 A From the doorway from the hall.

6 Q That was the doorway in which there was the body of the

7 young daughter, Jessica, lying in the doorway, right?

8 A Yes.

9 Q After that first half hour that you spent observing the

10 scene, did you ever return to the master bedroom area

11 that particular evening?

12 A Not to my knowledge, no, sir.

13 Q The rest of the time that you were in the Ryen home

14 that evening, did you spend in the living room area

15 where you had been before? Or did you go to other

16 parts of the house?

17 A In the living room. And the living room was a sunken

18 area off of a center, central den. And most of my time

19 was spent right there at the living room, at the

20 central den and then outside.

21 Q At some point that evening, you held a press conference

22 down at the intersection of Peyton and Old English Road?

23 A Yes.

24 Q Then you returned after that to the crime scene again?

25 A Yes. I believe I went back later that night.

26 Q That particular day, just addressing yourself to

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1 June the 5th, 1983, did you participate in any decisions
2 with respect to seizing evidence from the crime scene?

3 A On the night of the 5th?

4 Q On the night of the 5th, right.

5 A No.

6 Q Did you participate in any attempts to reconstruct
7 through analyzing the physical evidence what had
8 occurred?

9 A My participation, if I may broaden the answer on that,
10 sir, was a mere amount of my being briefed on what the
11 officers had discovered there, them telling me what
12 they had determined from what had been discovered at
13 the scene.

14 To participate in decisions on that, no. Merely an
15 approval, yes.

16 Q Was there an attempt to analyze what had been seen as
17 well by the officers?

18 A By them?

19 (No omissions.)
20
21
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- 1 Q Yes.
- 2 A Yes. Oh, I'm sure everyone was trying to do that, yes.
- 3 Q Did you participate in discussions attempting to analyze
- 4 the physical evidence and determine what had happened
- 5 yourself, or was that being done by the homicide people?
- 6 A Well, mostly by the homicide people. I'm sure I
- 7 participated in discussions on it, but I did not have
- 8 enough information, first hand information, to make those
- 9 decisions. That was left to them to make those
- 10 decisions.
- 11 Q Was the person that was primarily giving you the
- 12 information, briefing you, Sergeant Arthur?
- 13 A No.
- 14 Q Who was that?
- 15 A Lieutenant Bradford.
- 16 Q On June 6th, did you return again to the Ryen crime
- 17 scene?
- 18 A Yes.
- 19 Q Approximately what time did you return?
- 20 A Late in the morning sometime between 10:00 and noon,
- 21 I would imagine.
- 22 Q At that point in time -- prior to going there, had you
- 23 participated in any decisions about removing evidence?
- 24 A No.
- 25 Q When you arrived there, did you participate in any
- 26 decisions about removing evidence?

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1 A Yes.

2 Q Could you describe that process?

3 A District Attorney Kottmeier was with me at that time.
4 And he went with me specifically to look at the scene.
5 The District Attorney indicated to me that he felt all
6 of the articles in the bedroom should be removed, and he
7 indicated, I believe, at that time that the wall should
8 be removed, the interior wall.

9 Q When you speak of the interior wall, are you speaking of
10 the wall that was on the south wall of the house behind
11 the head of the bed?

12 A Yes.

13 Q Mr. Kottmeier requested then that -- when you say the
14 interior, does that mean all the furnishings that were
15 there, any specific decision made as to what was to be
16 removed?

17 A No, nothing specific, other than all the furniture should
18 be removed. And the officers indicated to me that they
19 were doing that or had planned to do that. And then
20 he specifically stated he felt the wall should be removed,
21 the interior wall.

22 Q Did he say anything about at that point in time the doors
23 or molding or things of that nature?

24 A I don't believe the doors and molding were discussed at
25 that time, no.

26 Q Did you assign responsibility for that task -- well, it

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1 was decided to do that; is that correct?

2 A Yes. To remove the wall, you mean?

3 Q To remove the wall and the furnishings.

4 A Yes.

5 Q To whom did you assign responsibility for that task?

6 A Sergeant Carl Swanlund.

7 Q And Sergeant Swanlund was a member of the Career
8 Criminal Division that had been established February,
9 I guess, by the sheriff's department?

10 A Yes.

11 Q What was the relationship of his authority to Sergeant
12 Arthur's?

13 A To my knowledge, and I didn't participate in the
14 assignment, but to my knowledge he had been assigned
15 there by Sergeant Arthur to guard the crime scene and
16 to collect evidence as directed to do so and preserve
17 evidence so that it was removed and properly preserved.

18 Q So in essence, Sergeant Arthur's responsibility at the
19 crime scene had been delegated to Sergeant Swanlund?

20 A At the scene at that time, yes.

21 Q When you had your discussion with Mr. Kottmeier, was
22 there any discussion as to what was to be done with the
23 evidence once it was taken?

24 A No.

25 Q When you relayed your request -- when you relayed the
26 request of Mr. Kottmeier to Sergeant Swanlund, was there

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1 any discussion as to what was to be done with it?

2 A No, nothing other than to remove and preserve it.

3 Q What was the purpose for seizing the evidence?

4 A The wall?

5 Q Yes.

6 A The District Attorney indicated that he felt the wall
7 could be produced better in court and would show the
8 patterns of blood on the wall and the action that took
9 place better by demonstrating it with the wall itself
10 rather than through photographs or diagrams.

11 Q Was there any consideration given to preserving the
12 blood on the wall for serological typing?

13 A That I did not discuss with anyone.

14 Q What about with the furniture? A lot of furniture that
15 was removed had blood on it as well; is that correct?

16 A Yes, there was blood on a number of articles.

17 Q In relaying the request to Sergeant Swanlund to remove
18 that furniture, was there any discussion of preserving
19 the blood on that furniture?

20 A No. Not specifically that subject, no.

21 Q When you requested that those items be removed, did you
22 contemplate that it would not be preserved for serological
23 typing, the blood on it?

24 A No, I did not.

25 Q You essentially left the details of that up to your
26 subordinates?

1 A That's right.

2 Q Were you at the Ryen residence any time during the
3 afternoon hours of June 6th?

4 A Well, the time that I was there, I probably stayed into
5 the afternoon time, no doubt. I don't recall the exact
6 time that I left.

7 Q While you were there on the 6th, did you participate in
8 any discussions with Mr. Gregonis or Mr. Ogino from the
9 crime lab about how long to hold the scene before evidence
10 was removed?

11 A I don't recall discussing anything like that with them
12 specifically. There may have been some discussions that
13 indicated that nothing would be removed until they were
14 satisfied that they had collected whatever evidence they
15 wanted there at the scene.

16 Nothing was to be disturbed. That goes without
17 saying. But there may have been some discussions along
18 those lines.

19 Q In requesting to Sergeant Swanlund that the things be
20 removed, was there any particular time limit placed on
21 him that he had to have it out of there by any certain
22 time?

23 A Not that I recall, not from me.

24 Q Were you yourself aware of any time constraints as far
25 as how much time could be spent processing the Ryen house?

26 A No.

1 Q At that point in time had you essentially authorized
2 your department to spend as much time as necessary to
3 collect and preserve all the evidence in the case?

4 A I don't think I had any specific discussion about that
5 subject. However, I'm sure I indicated that whatever is
6 needed, whatever time's needed, whatever resources are
7 needed, get them, use them.

8 Q And essentially during that period of time you created
9 a special task force to work on this particular crime;
10 is that correct?

11 A Well, I didn't. That was done by command staff sub-
12 ordinate to me.

13 Q Did you participate in that decision?

14 A As to who will do this? No.

15 Q As to the creation of the task force.

16 A No.

17 Q Do you know how many people in total were assigned to
18 the investigation of the Ryen crime scene in June --
19 excuse me, of the Ryen murders in June?

20 A No. I think -- it seems to me Captain Myers informed
21 me at one time that there were approximately 50 members
22 of the department involved.

23 Q If more had been needed, more would have been authorized?

24 A Absolutely.

25 Q In terms of your department, if facilities to store the
26 evidence were not available, were there any constraints

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1 that you were aware of as to getting those facilities?

2 A Not that I'm aware of.

3 Q For example, if you needed an extra freezer to freeze
4 stuff in to preserve it, it would have been your desire
5 that your department rent that freezer?

6 A Absolutely, if that's necessary.

7 Q On the 7th of June or the early morning hours of the 8th,
8 did you go to a residence at 2991 English Road, which is
9 a vacant house 150 yards, approximately, to the east
10 of the Ryen house?

11 A Well, that house I believe would be known to me as the
12 Lease residence.

13 Q It wasn't actually resided in by Larry and Sue Lease,
14 but it was owned by them; is that correct?

15 A Yes, I believe so.

16 Q Did you go there at approximately that time?

17 A What date were you referring to, sir?

18 Q It would have been Tuesday, June the 7th, late Tuesday,
19 June the 7th, or early in the early morning hours of
20 June the 8th.

21 A Yes, late the 7th, Tuesday, late that night.

22 Q Around midnight?

23 A No, I believe it was earlier than that. It was after
24 dark, probably 9:00 somewhere around 9:00 o'clock,
25 9:00 or 10:00.

26 Q At that point in time, did you go into the house and

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1 observe some of the evidence?

2 A Yes, I did.

3 Q And did any particular person accompany you?

4 A Sergeant Swanlund directed me into the house and through
5 portions of the house, and I believe Captain Phil
6 Schuyler was with me at that time.

7 Q Was Sergeant Swanlund the person who was essentially
8 briefing you as to what had been found in that house?

9 A Yes.

10 Q During that time that you spent in the house, were you
11 shown any partially eaten or cans of partially eaten
12 food?

13 A It seems to me that there were some articles of that
14 type in the house, yes.

15 Q In the kitchen area?

16 A No. I believe they were in the bedroom.

17 Q And did Sergeant Swanlund point those out to you?

18 A I believe so, yes.

19 Q Were you shown some pants with suspected blood on them?

20 A I was not shown them.

21 Q Were some pants with suspected blood described to you?

22 A Verbally --

23 MR. KOCHIS: Objection, that would call for hearsay
24 if it's being offered for the truth of the matter that they
25 were there.

26 MR. NEGUS: 1235, Your Honor, of the Evidence Code

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1 with respect to Sergeant Swanlund.

2 THE COURT: Is there an inconsistency there?

3 MR. NEGUS: Yes.

4 THE COURT: I can't recall. I'll permit it.

5 Overruled.

6 Do you recall, Sheriff, the question?

7 THE WITNESS: Do I recall whether it was related to
8 me or not?

9 Q (BY MR. NEGUS:) Yes.

10 A Yes.

11 Q And the pants had what was suspected to be blood on them?

12 A That's what I was told, yes.

13 Q Were those pants described to you as corduroy pants?

14 A No.

15 Q Did Sergeant Swanlund describe to you some partially
16 washed clothing in a washer-dryer?

17 A Yes. There was some discussion about some articles
18 were found in a washer or dryer, yes, at that time.

19 Q And those articles were at least discussed as being
20 possible evidence that a suspect had washed blood off
21 clothing; is that right?

22 A No. It was just indicated some articles were found there.
23 I don't know that there was any discussion that anything
24 had been washed by any suspect or anything like that.

25 (No omissions.)

26

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3-1

1 Q When you had your press conference on June the 5th, did
2 you tell that press conference that the evidence
3 available to you showed that the two adults had been
4 killed first and then the children had come into the
5 room afterwards?

6 MR. KOCHIS: Objection. That calls for hearsay.
7 It's not relevant.

8 THE COURT: Take them one at a time.

9 How about the hearsay objection?

10 MR. NEGUS: It's not particularly offered for the
11 truth of the matter asserted except as it goes to the
12 state of mind of the Sheriff's Department. And I think
13 it comes under that exception.

14 THE COURT: I will sustain the objection on that
15 basis, hearsay. We are not concerned with his state of
16 mind.

17 And with reference to the other part of your
18 objection, Mr. Kochis?

19 MR. KOCHIS: If you sustained it on one ground, I
20 don't think it's necessary.

21 MR. NEGUS: Could I be heard as to why I believe
22 it's relevant?

23 MR. KOCHIS: He has already done that.

24 MR. NEGUS: I just stated -- All I believe I did
25 was state the exception to the hearsay rule.

26 THE COURT: Let's go ahead and pass it. See if you

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3-2

1 can't ask some other questions that might illustrate where
2 he got the information.

3 Q (BY MR. NEGUS) The information that you released at
4 the press conference on June the 5th, that information
5 was all information you received from the officers who
6 were briefing you; is that correct?

7 A Yes.

8 Q And that would have been Lieutenant Bradford and
9 Sergeant Arthur?

10 A And Captain Myers and Deputy Chief Majors and
11 Assistant Sheriff Follett.

12 Q And there was discussion among all of those people that
13 were just mentioned by yourself and myself as to what
14 information should be released to the press about the
15 particular crime scene to aid you in your investigation
16 and aiding the public in knowing what happened?

17 A Yes.

18 Q So all that information was gone over before you
19 actually held the press conference, discussed as to
20 whether it should be released or not?

21 A Much of the information was. A lot of it was not
22 discussed by us prior to the press conference because
23 I had no way of knowing what the press might ask.

24 Q When the press asked you factual questions, did you
25 answer them either on the basis of your own observations
26 or on the briefings by your subordinates?

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3-3

1 A Either one.

2 Q Those are the only two sources that you had, right?

3 A Absolutely.

4 THE COURT: Counsel, apparently the Sheriff himself
5 did not make evidence collection decisions, so I don't see
6 how his state of mind is in issue.

7 MR. NEGUS: The Sheriff is the only person that made
8 announcements to the press which we have preserved of the
9 theories of the Sheriff's Department in collecting evidence
10 and investigating the crime scene over a period of time.

11 I believe it's relevant to my motion what those
12 theories were and I believe that this particular one that
13 I'm asking about now would be inconsistent with some
14 statements from, I believe, Sergeant Arthur. It certainly
15 would be inconsistent with Mr. Ogino's testimony, and the
16 only way that I believe that it --

17 THE COURT: He didn't get the information from
18 Sergeant Arthur or Mr. Ogino.

19 MR. NEGUS: Sergeant Arthur was one of the sources
20 that he got the information from and the other people have
21 all indicated, with the exception of Mr. Follett, who
22 hasn't testified yet, that much of the information that
23 they received they got from Sergeant Arthur.

24 So Sergeant Arthur would appear to be the original
25 source of most of the information that we are dealing with.

26 THE COURT: For impeachment purposes?

3-4

1 MR. KOCHIS: For impeachment purposes I'm not aware --
2 I wouldn't hope that what may appear in a newspaper article
3 is a form of impeachment as to what someone said because I
4 don't think they are under any duty to accurately, as a
5 peace officer would be, report what was said.

6 The Sheriff testified that he didn't have any
7 conversations with Mr. Ogino on that day. Mr. Ogino wasn't
8 even at the scene on the 5th, nor was Mr. Gregonis.

9 THE COURT: That's clear as far as Sergeant Arthur
10 is concerned.

11 MR. KOCHIS: I don't see how a statement Mr. Tidwell
12 may have made to the press on the 5th can be used to impeach
13 Sergeant Arthur.

14 THE COURT: If he gets his information from
15 Sergeant Arthur, Sergeant Arthur has testified differently,
16 would that not be impeachment?

17 We are taking too much time with this.

18 MR. KOCHIS: If that were the narrow scope of the
19 evidence, but it's not. Mr. Tidwell testified that he was
20 getting his information from Bradford, Myers, Follett, from
21 his own observations at the scene, and I don't think you
22 can take that state of evidence and say that we are now
23 going to ignore that and say what he may say would impeach
24 Sergeant Arthur.

25 MR. NEGUS: I believe I asked them all where they
26 got their information.

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1 THE COURT: I will sustain the objection.

2 Move on.

3 It's hearsay on hearsay.

4 MR. NEGUS: There is no other way available to me to
5 illustrate what the thinking of the Sheriff's Officers was
6 other than through the statements of their commanding officer.

7 THE COURT: Whatever your difficulties may be, maybe
8 you can get other information another way or through the
9 press release, but I sustain the objection, Mr. Negus.

10 Move on.

11 MR. NEGUS: Basically, I believe the remaining
12 questions I have are all of the same type.

13 THE COURT: I will wait for the next question.

14 Q (BY MR. NEGUS) Did you receive information from
15 Sergeant Arthur about statements received from Joshua
16 Ryen?

17 MR. KOCHIS: Objection. Vague as to time.

18 MR. NEGUS: On June 5th.

19 THE COURT: You may answer.

20 THE WITNESS: I don't believe on June 5th.

21 Q (BY MR. NEGUS) Do you ever recall being briefed by
22 Sergeant Arthur about statements obtained from Joshua
23 at the hospital before he went into surgery?

24 A I recall being briefed by Sergeant Arthur about
25 statements that Joshua Ryen had made. But prior to
26 going to surgery, no, I can't pin it down to that time.

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1 Q When you had the press conference on June the 5th, did
2 you have any other source of information about Josh,
3 any information from Joshua Ryen other than from
4 Sergeant Arthur?

5 MR. KOCHIS: Excuse me. That assumes a fact not
6 in evidence that he had any information from Sergeant Arthur
7 on the 5th about Josh Ryen.

8 MR. NEGUS: I don't think so.

9 THE COURT: Let's establish it first. Sustained.

10 MR. NEGUS: He says he doesn't remember whether he
11 had it with Sergeant Arthur, so I'm asking him was there
12 any other possible source.

13 Q (BY MR. NEGUS) Did you have any other source?

14 THE COURT: I don't think that was your question.

15 MR. NEGUS: I will try and ask it that way again.

16 Q (BY MR. NEGUS) Did you have any source of information
17 about Joshua Ryen at the time of your press conference
18 on June the 5th other than Sergeant Arthur?

19 A I'm sure I received information from other people, yes.

20 Q Who would they have been?

21 A Possibly Lieutenant Bradford or Captain Myers.

22 Q Do you know if they were in contact with anybody at the
23 hospital?

24 A I don't know what contact they had with anyone at the
25 hospital.

26 Q Did Sergeant Arthur brief you on his contacts with the

1 deputy with Joshua Ryen at the hospital?

2 MR. KOCHIS: Objection. Vague as to time.

3 MR. NEGUS: June 5th.

4 THE WITNESS: I don't believe Sergeant Arthur
5 discussed that with me on June 5th. I had very little
6 contact with Sergeant Arthur that evening. Most of my
7 contact was with the officers superior to Sergeant Arthur.

8 Q (BY MR. NEGUS) Did you tell that press conference that
9 information obtained from Joshua Ryen had allowed
10 investigators to trace the path of the killers?

11 MR. KOCHIS: Objection. That would call for hearsay.

12 THE COURT: You are asking specifically about
13 information from Sergeant Arthur now?

14 MR. NEGUS: I'm asking what he told -- We have
15 already established that the person who had contact with
16 the deputy at the hospital was Sergeant Arthur. He was the
17 only person at the crime scene that had any sort of contacts
18 with Mr. Sharp, who was the deputy at the hospital who
19 testified to that effect.

20 The Sheriff made a statement at the press
21 conference about what information had been obtained from
22 Josh Ryen. The inference is that as he wasn't there himself,
23 the Sheriff, and the information came from briefing of a
24 subordinate, that Sergeant Arthur was the only person that
25 had the contact. Sergeant Arthur would have been the source
26 of the knowledge.

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1 THE COURT: It could have gone through several hands,
2 Mr. Negus, but the Sheriff indicated that he doesn't believe
3 he discussed it with Sergeant Arthur. And if he didn't then
4 it can't be used to impeach Sergeant Arthur.

5 MR. NEGUS: The Sheriff said that the only
6 information he gave at the press conference was information
7 that he had received from his subordinates. If he made the
8 statement at the press conference, I suppose that impeaches
9 the Sheriff.

10 THE COURT: Blanket impeachment of anybody in the
11 case, that's no good.

12 MR. NEGUS: I mean we are dealing with a question,
13 your Honor, of was evidence held back. There were statements
14 made to the press that, "We have evidence that such and such
15 and such and such." Everybody denies having the evidence.

16 I think that -- I will offer a different theory,
17 that the statements made to the press for which we discussed
18 evidence which we have been denied having are, in themselves,
19 relevant at the Hitch motion because they are evidence that
20 there was -- they are evidence in court that there was
21 physical evidence.

22 THE COURT: Mr. Kochis, why would it not be
23 admissible to ask the Sheriff where he got such information,
24 if indeed it bears upon a Hitch motion, from whatever source?

25 MR. KOCHIS: I didn't think that was the nature of
26 the question.

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1 THE COURT: I didn't think it was, either.

2 MR. KOCHIS: The question was if he made the
3 statement, it's a hearsay statement. I don't know of an
4 exception to that rule absent some prior foundation that
5 Mr. Negus has brought people into the courtroom that we
6 can examine as to notes they took, what statements they
7 attribute --

8 Newspaper people attribute statements to people all
9 the time. If they were accurate, we wouldn't have to have
10 a courtroom to try cases in. We could submit newspaper
11 articles and try the case that way.

12 I think the law recognizes that there is a problem
13 with the accuracy of the type of things that appear in the
14 newspaper. Otherwise, we could, in short fashion, try
15 people in the press.

16 THE COURT: First he can ask him if he made such
17 statements that are reflected in the newspaper articles.
18 I think that's relevant to the Hitch motion.

19 Then he can ask him the source of those statements
20 and we can consider that as to whether or not they had
21 certain information.

22 Ask a new question, Mr. Negus, along those lines.

23 (No omissions.)
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1 MR. KOCHIS: Well, Your Honor, I don't think Mr.
2 Negus is arguing that there are things that were represented
3 in the newspaper that we never made available to him. Every-
4 thing that we've done that's been committed to a report or
5 any other fashion he has a copy of. He gets it immediately
6 after I get it.

7 MR. NEGUS: But Mr. Kochis wasn't -- he was briefly
8 at the crime scene, but he wasn't involved all these things.

9 The Sheriff made statements to the press. Some of
10 them are preserved in newspaper articles, some of them are
11 preserved on television tape. They're preserved in a
12 variety of ways. There may or may not be doubt as to --

13 THE COURT: Are these statements that are inconsistent
14 with the theory presently in regards to your client or bear
15 upon his guilt?

16 MR. NEGUS: I believe so, yes. They are statements
17 either that have to do with physical evidence which I've
18 never seen --

19 MR. KOCHIS: Your Honor, Mr. Negus can articulate --

20 THE COURT: Wait a minute, Mr. Kochis. Give him a
21 chance to finish. Don't interrupt.

22 MR. KOCHIS: Okay.

23 MR. NEGUS: -- physical evidence that I've never
24 seen and have no reports of other than through these statements
25 of the Sheriff in the press.

26 THE COURT: And you can't get anybody to indicate

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1 the source of it?

2 MR. NEGUS: That's true. I mean --

3 THE COURT: All right. Mr. Kochis, what further
4 points?

5 MR. KOCHIS: I would ask Mr. Negus to articulate
6 one piece of evidence that he claims is not consistent with
7 the guilt of his client in this case that was mentioned
8 by Sheriff Tidwell in the conference.

9 THE COURT: What particular statement do you wish
10 to bring out?

11 MR. NEGUS: One statement was that Joshua Ryen --
12 and this would have been before Mr. O'Campo's interview --
13 made statements from which the investigators could trace
14 the path of the killers through the house.

15 THE COURT: That Josh said that investigators could
16 trace through the house?

17 MR. NEGUS: Let me get -- let me be as relatively
18 precise about this as I can.

19 One statement which we've already had from the
20 Sheriff, there was a statement attributed to him that there
21 was a partially eaten can of food in the house.

22 THE COURT: We've gone into that.

23 MR. NEGUS: Right. And nobody will admit to that.
24 There was a statement which we've already gone -- the statement
25 was that the boy, Joshua, had given the investigators in-
26 formation that helped them reconstruct the path that the

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1 killers had taken inside the house. This, for whatever it's
2 worth, a statement attributed to the Sheriff by a Mr.
3 Burson who writes for the Progress Bulletin, on June the 7th
4 the Progress Bulletin --

5 THE COURT: And now you're saying that you don't
6 have any reports of any such information?

7 MR. NEGUS: Everybody denies that.

8 MR. KOCHIS: Your Honor, apparently what Mr. Negus
9 is looking at is an article that was written on the 7th of
10 June and the paragraph he is referring to does not have
11 quotes. And what it says is: On Sunday Tidwell and other
12 investigators said the boy had given them information to
13 help them reconstruct the path the killers had taken inside
14 the house.

15 It's not limited apparently to information that
16 came from Sheriff Tidwell.

17 Let's assume for the sake of argument the statement
18 was made. How is that statement inconsistent with Mr.
19 Cooper being an assailant in the Ryen homicides?

20 MR. NEGUS: It goes back to were statements by the
21 officers withheld, because Mr. Sharp would indicate that
22 no such statement was made.

23 THE COURT: All right. Ask the Sheriff directly.
24 Overrule the objection.

25 Do you recall getting that information, Sheriff, or
26 something along that line?

1 MR. NEGUS: Can I just ask him the foundational
2 question first, did he make the statement? If he didn't
3 make the statement, then we don't have to get into it.

4 Q (BY MR. NEGUS:) At your press conference on the night
5 of June the 5th, did you make a statement that Joshua
6 had given investigators information that helped in-
7 vestigators reconstruct the path the killers had taken
8 inside the house?

9 A Not that I recall, sir.

10 Q On Sunday, did you discuss at your press conference a
11 hatchet that had been found by then Detective Roper on
12 English Road?

13 A That was at which press conference?

14 Q The first one you had on Sunday.

15 | A. Sunday night?

16 | Q Yes.

17 A I'm not sure whether it was that press conference or not,
18 but I believe I recall being asked by the press about
19 that article. They were aware of it probably prior to
20 the time I was.

21 Q Did you happen to see it at the Ryen residence the night
22 of June the 5th?

23 | A That article?

24 Q Yes.

25	A.	No.
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26 Q Had it been discussed with you?

1 A Yes.

2 Q At that point in time on the night of June the 5th,
3 did you say that the hatchet had not -- has not been
4 definitely linked to the murders?

5 A I probably did, yes.

6 Q What was the source of that statement?

7 A Lack of knowledge on my part. Lack of knowledge of any
8 linking.

9 Q After the discovery of the Lease residence, did you
10 announce to the press that you had changed your position,
11 and did you then believe that there was just one killer
12 involved in the case?

13 A Yes, something to that effect, yes.

14 Q Was that based on the fact that there was only evidence
15 of one person inside the Lease house?

16 A Yes.

17 Q Did you state at your press conference on Sunday, the
18 first one, that Douglas and Peggy Ryen were attacked
19 first and there screams awakened the victims, the parents
20 probably woke the children up?

21 MR. KOCHIS: Your Honor, may I be deemed to have a
22 continuing hearsay objection to questions about the statements
23 that the Sheriff may have made so that I can make a motion
24 to strike when Mr. Negus rests unless he has laid the proper
25 foundation for those statements?

26 THE COURT: I think the proper foundation has been

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1 previously laid as to the last question. I'll overrule your
2 objection. No, you may not have a continuing objection.

3 You may answer, Sheriff.

4 Q (BY MR. NEGUS:) Do you remember the question?

5 A Did I make those statements?

6 Q Yes.

7 A I think that statements attributed to me in that regard
8 were probably in response to questions that led to those
9 kinds of statements. And there were a number of questions
10 that led to those kinds of statements.

11 Q On what information did you base your answer to those
12 questions, specifically about the order in which the
13 victims were attacked?

14 A Probably because I felt that and had been briefed that
15 likely the perpetrator had entered through a glass door
16 into the adult Ryen's bedroom and likely they were
17 attacked first. The children probably responded to the
18 scene in the bedroom because of screams or some noise
19 that attracted their attention to that location, and
20 that's probably why I said that.

21 Q At that point in time on Sunday night, your belief
22 was that there were perpetrators; is that correct?

23 A We had no idea whether there was one or a dozen. But
24 it appeared, yes, to be more than one, possibly.

25 Q And you stated to the press that you were looking for
26 three adult males that had been seen at the house earlier?

1 A I did say that, yes.

2 Q And you also stated that the physical evidence that the
3 scene suggested that there was more than one perpetrator?

4 A I believe I did, that it appeared that it might have
5 indicated more than one person, yes.

6 Q Were you briefed as to what physical evidence at the
7 scene suggested more than one perpetrator?

8 A Yes.

9 Q What was that?

10 A Multiple stab wounds and appearance of multiple instru-
11 ments being used. More than one instrument, I should
12 say. Not multiple. More than one instrument.

13 Q Who briefed you on the point of entry, if you recall?
14 Which investigator?

15 A I believe Lieutenant Bradford is the one that indicated
16 that.

17 Q Was Lieutenant Bradford likewise the one that indicated
18 to you about the order of attack?

19 A Seems to me that the order of attack was more part of a
20 discussion rather than an actual statement that this
21 absolutely occurred. It was more of a discussion that
22 this could have occurred among myself and the other
23 officers that were present there. I mean the staff
24 officers. More speculation than anything else.

25 MR. NEGUS: I just have one last area, Your Honor.

26 Q (BY MR. NEGUS:) Before the discovery of evidence in

1 the Lease residence -- I'll ask the question again --
2 were you aware that before discovery of evidence in the
3 northeast bedroom of the Lease residence at least one
4 of your officers had gone into that bedroom looking for
5 evidence on June the 6th, the daytime?
6 A I'm not aware that there was a northeast bedroom to that
7 house, sir.

8 (No omissions.)
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1 Q The bedroom that had the green rug, no furniture
2 except the bed frame, closet with makeshift bedding
3 in it and an ax sheath in it, do you remember that
4 bedroom?

5 A To my knowledge, that was the southeast bedroom.

6 Q Whatever we call it in terms of directions, that
7 particular bedroom.

8 A That's the only bedroom that I'm aware of, sir.

9 Q That particular bedroom, were you aware that on June
10 the 6th, the day before discovery of the ax sheath, that
11 there was at least one of your officers in that bedroom
12 looking for evidence?

13 A Was I aware at what time? When are you asking me
14 that I was aware of that?

15 Q When did you become aware of it?

16 A After the discovery of the specific evidence on the
17 day of the 7th and the night of the 7th, it was after
18 that that I was made aware that one of the officers had
19 entered a portion of the residence, and what portion I
20 don't know. To this day, I don't know.

21 Q Did you become aware of it that particular night?

22 A It seems to me that I was told that that night of the
23 7th.

24 Q An officer's card was found inside the residence; is
25 that correct?

26 A I was never told that.

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1 Q When you talked to the press about that, did you
2 indicate that your office had been trying for a long
3 time to locate the owner of that residence so you could
4 get inside and check it?

5 MR. KOCHIS: Objection. That calls for hearsay.
6 It's not relevant.

7 THE COURT: What is the relevance?

8 MR. NEGUS: The theory in the motion, your Honor --
9 I believe it's relevant to show the answer that I --
10 I will back up and try again.

11 The answer that I expect is that such a statement
12 was -- He said that the thing was -- that the evidence was
13 found on the fourth sweep of the area by his officers;
14 that they had been trying for a long time to locate the
15 owner but couldn't; that these statements were not true;
16 that in fact the owner had been trying to get them to
17 search it but they wouldn't, and that the reasons for the
18 statement were to cover up embarrassment at his officers
19 having botched the investigation.

20 THE COURT: We are not concerned here with
21 embarrassment, not at all. Only insofar as it might
22 deprive the defendant of a fair trial. Only due process
23 are we concerned with here.

24 MR. NEGUS: But the issues have to do with the
25 state of mind of the officer.

26 Mr. Tidwell has stated that he changed his belief

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1 that there were more than one person involved to just one
2 person involved in the Ryen homicide based on the evidence
3 of only one person being found in the Lease house.

4 I believe that's basically what they had changed.

5 At the time Cooper was charged with the crime, that
6 was the evidence that they had against him was that he was
7 in the Lease house, period, and that --

8 THE COURT: Counsel, I don't need further argument.
9 The objection will be sustained.

10 Move on.

11 MR. NEGUS: There is nothing else to move on to,
12 I don't believe. Let me check.

13 THE COURT: When you conclude, you can sit down.

14 MR. NEGUS: May I have a moment to look and see if
15 there are any other questions?

16 THE COURT: Yes.

17 Q (BY MR. NEGUS) One other question.

18 On June the 8th, did you tell the press that, "If
19 we had fingerprints, Mr. Cooper would be our number one
20 suspect, but we don't have that"?

21 MR. KOCHIS: Objection. Hearsay. It's not
22 relevant.

23 THE COURT: Yes. Sustained.

24 Q (BY MR. NEGUS) Showing you Exhibit H-316, does that
25 appear to be a floor plan of the Ryen house?

26 A Yes, it does.

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- 1 Q And are the marks on there put there by yourself at
2 the preliminary hearing?
- 3 A I believe so, yes, sir.
- 4 Q Does the blue-black indicate the route that you took
5 to look at the scene in the bedroom on June the 6th --
6 excuse me -- June the 5th?
- 7 A I believe so, yes, sir.
- 8 Q And does the orange indicate the path that you took on
9 June the 6th when you were showing Mr. Kottmeier through
10 the residence?
- 11 A Yes. I believe so.
- 12 Q Does the green "X" indicate the path of camera persons
13 who came into the master bedroom on June the 8th to take
14 pictures?
- 15 A On June the 8th?
- 16 Q Yes.
- 17 A Yes, I believe so.
- 18 Q Showing you H-317, is that a diagram of the outline of
19 the residence that you referred to as the Lease
20 residence?
- 21 A It appears to be, yes, sir.
- 22 Q And does the blue indicate the path taken by yourself,
23 Sergeant Swanlund and Captain Schuyler on the night of
24 June the 7th?
- 25 A Yes.
- 26 MR. NEGUS: Nothing further.

CROSS-EXAMINATION

BY MR. KOCHIS:

Q Sheriff Tidwell, on Sunday, June the 5th, 1983, did you have a purpose for going to the Ryen homicide scene?

A Yes.

Q And was one of those purposes to assess what additional manpower and support staff was needed at that particular scene?

A Yes.

Q Would that also have been one of your reasons for going to the 2991 Lease residence on Tuesday, June 7th?

A Yes.

Q As Sheriff of this county, do you operate within a monetary budget?

A Yes, we do.

Q Do you have a finite limit of monetary resources that the Board of Supervisors allocates to your particular division?

A Yes, we do.

Q Then within your office are there certain divisions, for example the Crime Lab and the Identification Unit, that likewise have to live within the budget?

A Normally, yes, sir.

Q After the Ryen homicides, did the Board of Supervisors give you the additional money to hire five or six additional serologists?

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5-6

1 A No.

2 Q After the Ryen homicides, did the Board of Supervisors
3 give you additional money to purchase additional freezer
4 space?

5 A No.

6 Q Did the Sheriff's Office in the summer of -- June of
7 1983, provide security for two US Festivals which took
8 place during the end of May and the beginning of June?

9 A Yes.

10 Q Was one of those a festival which took place the
11 weekend of the Ryen homicides, the festival taking
12 place in Devore?

13 A I believe so, sir.

14 Q And was a portion of the Sheriff's resources involved
15 in providing security at that particular festival scene
16 on that weekend?

17 A Yes, they were.

18 Q Is it fair to say that on Sunday, June the 5th of 1983,
19 you did not step into the Ryen master bedroom?

20 A On Sunday?

21 Q Yes.

22 A That's correct, sir.

23 Q Have you been able to estimate approximately the man
24 hours that have been spent by the Sheriff's Department
25 in San Bernardino County investigating the Ryen homicides?

26 A The total up to date?

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1 Q Are you able to give us an approximation?

2 A Yes. Roughly well over ten thousand hours total at
3 this time, of which a portion are prior to the arrest
4 and a portion are since the arrest of the defendant.

5 Q The policy manuals that Mr. Negus directed your
6 attention to, specifically the manual that has been
7 marked as H-192, that went into effect on June the
8 27th of 1983, is that an overview of the Sheriff's
9 policy as to the collection of items of evidence?

10 A Some investigative procedures are referred to in here,
11 sir, and supervision of crime scenes, of photography,
12 property seizure.

13 Q Perhaps it was a bad question. Let me ask it another
14 way.

15 In your experience as the Sheriff and as a deputy
16 Sheriff, is it fair to say that the facts that may
17 confront investigators varies from scene to scene?

18 A Very definitely.

19 Q Is it fair to say that there is no one checklist which
20 would apply equally to every crime scene?

21 A That's correct, yes.

22 Q In the case of the Ryen homicides, were Sergeant Arthur's
23 responsibilities limited to simply the crime scene
24 itself?

25 A Absolutely not.

26 Q Is it fair to say that he was given the responsibility

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2 | A That's correct.

5 | A Yes.

11 | A That's correct.

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16 BY MR. NEGUS:

20 | A No.

22 | A No.

25 A A percentage of them were. I don't know how much was
26 overtime.

5-9

1 Q Were you denying requests for overtime in this case?

2 A No.

3 Q You were authorizing whatever overtime the people
4 thought was needed?

5 A Yes.

6 Q And your budget constrained you in doing that; is that
7 correct? You found money in your budget to pay these
8 people?

9 A Ultimately, yes.

10 (No omissions.)

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23 A Some were held over, and I couldn't give you the exact
24 figure, but probably half of the officers or more, half
25 to three-quarters, were held over to completely clear
26 the grounds and clear the parking areas.

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1 Q That would have been on Sunday?

2 A On Sunday.

3 Q The people that worked US Festival were deputies
4 essentially who signed up and volunteered for it as work
5 done beyond their normal shifts?

6 A That's right, off duty.

7 MR. NEGUS: Nothing further.

8 MR. KOCHIS: I have no further questions.

9 THE COURT: Sheriff, again, thank you very much.

10 THE WITNESS: Thank you.

11 THE COURT: We'll take the morning recess.

12 (Recess.)

13 MR. NEGUS: Mr. Baird.

14 THE COURT: Oh, there you are. Raise your right
15 hand, if you would, please.

16
17 W I L L I A M W. B A I R D, called as a witness by and on
18 behalf of the Defense, was sworn and testified as
19 follows:

20 THE CLERK: You do solemnly swear that the testimony
21 you are about to give in the action now pending before this
22 Court shall be the truth, the whole truth, and nothing but
23 the truth, so help you God.

24 THE WITNESS: I do.

25 THE CLERK: Please be seated. Please state your
26 name for the record and spell your last name.

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

2
3 DIRECT EXAMINATION

4 BY MR. NEGUS:

5 Q Mr. Baird, what's your occupation?

6 A I am a criminalist.

7 Q And who are you employed by?

8 A The San Bernardino Sheriff's Office.

9 Q And what is your position with the San Bernardino
10 Sheriff's Office?

11 A I am a -- I'm the acting director of the laboratory at
12 this time.

13 Q And was that your assignment on June 5th, 1983, as well?

14 A Yes.

15 Q As acting director of the laboratory, is it your
16 responsibility to ensure that the criminalists in your
17 laboratory are properly trained with respect to
18 collecting, preserving, and analyzing evidence at crime
19 scenes?

20 A Yes.

21 Q What steps have you undertaken to ensure that your
22 criminalists -- that there are regular and systematic
23 procedures that your criminalists follow in collecting,
24 preserving, and handling evidence from crime scenes?

25 A It is essentially an ongoing process in that when a
26 criminalist is hired into our laboratory he or she is

1 instructed about the procedures that we employ in
2 collecting evidence, logging it into evidence, the
3 documentation, and so forth.

4 The training is pretty much an on-the-job type,
5 literally and figuratively, in that the training starts
6 by having a criminalist attend the crime scene or an
7 evidence collection event with another experienced
8 criminalist.

9 Their performance is monitored after the fact when
10 they subsequently do evidence collection on their own
11 by me or Mr. Longhetti. Mr. Longhetti at that time
12 was reviewing the cases, the case file folders. I am
13 doing that now.

14 That's just basically it. Other than just
15 reviewing and discussing with them, there is no class
16 that we send them to, there is no form other than that
17 which is contained in our evidence files, our case files.

18 Q Do you have any written procedures which you've established
19 that sets up minimum standards that people should follow?

20 A No, we don't. We don't have any minimum standards. We
21 have some guidelines that we have distributed from time
22 to time that are still in circulation, most notably the
23 ones that are in use at the Sheriff's Basic Academy.
24 Those as well as other ones that appear in various
25 documents are discussed from time to time.

26 But they are guidelines. They change frequently is

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1 one of the reasons why we really view them as guidelines
2 rather than minimum standards.

3 Q Showing you Exhibit H-195, are these the latest edition
4 of the guidelines that are issued to deputies at the
5 Sheriff's Academy?

6 A Yes.

7 Q Is that the document to which you just referred?

8 A Yes.

9 Q Are all the criminalists in your laboratory members of
10 the California Association of Criminalists?

11 A No.

12 Q Are there any particular requirements for the job as far
13 as keeping up with literature and the various fields of
14 criminalistics?

15 A There are. They're not formalized requirements in that
16 it's something that I monitor and check off. But we have
17 mechanisms available for ensuring that our people do
18 remain current.

19 Q What are those mechanisms?

20 A Primarily it's through the literature that is published
21 continuously. We subscribe to a relatively large number
22 of journals, the exact number of which I am not aware or
23 haven't bothered to check. We also maintain a fairly
24 extensive library in forensic science.

25 The journals themselves are assigned to various
26 members of the staff for indexing purposes, and they are

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1 circulated among all members who must initial them and
2 date them.

3 Now, there is nobody who stands over their shoulder
4 to ensure that they read the articles, and I know in
5 fact that I do not read every article. However, that
6 is our mechanism for at least making available the
7 relevant materials for our people to read and to be
8 familiar with.

9 Q Are amongst the journals that are circulated the Journal
10 of the American Academy of Forensic Sciences, the
11 Journal of Forensic Science, and the Journal of California
12 Association of Criminalists, the Journal of the Forensic
13 Science Society?

14 A Yes, both of those.

15 Q And do people within your laboratory, do they specialize
16 to a certain extent?

17 A Yes.

18 Q Are the people in the laboratory expected at least to
19 keep up with the articles in their specialties in those
20 journals?

21 A Yes.

22 Q Are you familiar with the manual of the Sheriff's
23 Department which was approved on June the 27th, 1983,
24 a portion of which is Exhibit H-192?

25 A Yes.

26 Q In that manual I believe is described a physical evidence

1 outline which is available by officers to request from
2 the crime lab. Are you familiar with that provision?

3 A No, I'm not, actually. I mean, I've no doubt that it's
4 probably there, but I was not familiar with it prior to
5 this morning.

6 Q Showing you Section 160.20, it indicates a physical
7 evidence outline?

8 A Yes.

9 Q Is such a physical evidence outline available from the
10 sheriff's department?

11 A Yes.

12 Q And showing you Exhibit H-279, is this a copy submitted
13 by yourself of that outline?

14 A Yes, it is. This is actually somewhat dated, not that
15 the information in here is necessarily incorrect, but
16 the document issued at the academy is really a more up-to-
17 date publication. But it essentially contains the
18 same information.

19 Q Well, if a deputy were to request a physical evidence
20 outline, which would you give him? The older or the
21 newer?

22 A I quite frankly would give them whichever I had avail-
23 able. If I had the new ones available, I would give out
24 that one; if not, the old one is, despite the fact that
25 it is dated in terms of when it was published and so
26 forth, the information is still substantially correct.

1 Q Are there any textbooks of forensic science which your
2 laboratory relies on as far as just general crime scene
3 processing?

4 A No, we don't rely on any textbook. We have numerous
5 textbooks, and we have contributed to textbooks. But we
6 don't rely on any textbooks.

7 Q Well, how do you use them?

8 A At the risk of sounding facetious, we read them. But we
9 don't -- we give them to new people to read, those
10 especially who have no prior training in forensic science
11 when they're hired.

12 We often times check them out to interested investiga-
13 tors who are attempting to secure more knowledge in the
14 area. But on a day-to-day basis, there are not used.

15 Q Are you familiar with a textbook entitled Techniques of
16 Criminal Investigation originally published by Svensson
17 and Wendel, the latest edition which was prepared by a
18 man named Barry Fisher from the Los Angeles Sheriff's
19 Office?

20 A I am familiar with it. I have not read it in detail.

21 Q Is that a book recommended by your laboratory to
22 inexperienced criminals (sic) and officers in terms of
23 crime scene investigation?

24 A I have not had the opportunity to recommend this particular
25 book. There is no set policy that way. I would
26 probably recommend this amongst others. But I have not

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1 actually done so.

2 Q Are you also familiar with a book entitled Crime
3 Investigation, Second Edition, originally written by
4 Paul Kirk and then edited by John Thornton?

5 A Yes, I am familiar with that book.

6 Q Have you recommended that book?

7 A No, I have not. But I may have given it to somebody.

8 Recommendation is what I'm having difficulty with.
9 I have supplied books to lots of people over the years,
10 and I have no doubt that Kirk's Second Edition was one
11 of them. But I don't actually attach any special
12 endorsement to any of these things. I give them out
13 as texts that are in the field.

14 Q Have you yourself used and consulted Kirk's text in
15 doing your work in criminalistics?

16 A Not for a long time. I used that book when I was in
17 school, and I have rarely looked at it since.

18 Q Well, at the Preliminary Hearing do you recall testifying
19 that in doing some shoe comparisons you used and relied
20 on that particular book?

21 A That's probably one of the few times I've looked at it.
22 But certainly over 14 years it has been no more than a
23 handful of times at most.

24 Q Do you believe that it accurately sets out proper
25 procedures to be used in processing physical evidence?

26 A In general, I believe it is, yes. It is dated and has

1 some things that are outmoded at this time. But in
2 general, it is accurate.

3 Q On June the 5th, 1983, did you assign any criminalists
4 to process the residence at 2943 English Road in the
5 Chino Hills?

6 A Yes, I did.

7 Q Which criminalists did you assign?

8 A Well, actually to be more correct that assignment was
9 made prior to June 5th. But in any event, it was David
10 Stockwell.

11 Q And how was that assignment made?

12 A Well, what I meant to say was that there is an on-call
13 roster that I prepare that on a rotating basis assigns
14 each of the criminalists to the crime scene duty, and
15 that person then has the responsibility to be on call
16 should there be a request for our services. And Dave
17 Stockwell was that individual, and I in fact called him
18 myself. And I received the call from the Sheriff's
19 Office, I subsequently called Dave Stockwell and told
20 him to meet me at that scene.

21 Q In June of 1983, did Mr. Stockwell have six months'
22 experience processing crime scenes?

23 A Approximately. Actually I believe it may have been
24 longer than that, because he was employed with us for
25 about a year at that time, and he would have had only
26 six months of doing it on his own, probably, but I think

1 he had a little bit longer than that in terms of total
2 exposure.

3 Q Did you have anybody with more experience available to
4 you that particular day to assign?

5 A I didn't check. I have no doubt that I would have been
6 able to come up with somebody else had I tried. I did
7 not. I responded myself after having Mr. Stockwell
8 alerted.

9 Q Did you request that he bring somebody else with him?

10 A Yes.

11 Q Did you select that individual?

12 A Yes, I did.

13 Q And that was Patricia Schechter?

14 A Yes.

15 Q How much crime scene experience had she had at that
16 point in time?

17 A She had ten or a dozen crime scenes that she had been on
18 up to that point. She had been employed less than one
19 year.

20 Q Were Mr. Stockwell and Ms. Schechter amongst the least
21 inexperienced -- excuse me, amongst the most inexperienced
22 persons in your laboratory at that point in time?

23 A Yes.

24 (No omissions.)

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1 Q Why didn't you assign somebody with more experience
2 than those two people at that particular time?

3 A I don't really know. I can think back and try to
4 analyze what my motivations and my reasonings were
5 primarily, and I have thought about this especially
6 since it was asked before, and that is that Dave
7 Stockwell, despite his experience in terms of years,
8 was a person whose degree was in forensic science and
9 also he had demonstrated prior to that time an ability
10 to be thorough and to take an interest in the work that
11 he was doing and spend the time that he felt was
12 necessary. And he also had a knowledge of serology.

13 For those reasons, I left him on that assignment.

14 Q You say that you yourself went to the crime scene. You
15 arrived at approximately seven minutes after 2:00 in
16 the afternoon?

17 A Best of my recollection, it was around 2:00 o'clock,
18 yes.

19 Q And how long did you remain?

20 A I think it was in the neighborhood of two hours. I
21 don't recall exactly.

22 Q Had the work of evidence collection been completed by
23 the time that you left?

24 A No, it had not.

25 Q Was there any particular reason why you didn't stay
26 longer?

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7-2

- 1 A I cannot honestly tell you what was on my mind at that
2 time other than I felt at that time the situation
3 seemed to be in hand and that it was progressing and
4 that the evidence was being collected satisfactorily.
- 5 Q At some point in time that afternoon, were you contacted
6 by Rick Roper and asked to come look at a hatchet?
- 7 A Yes.
- 8 Q And did you take Mr. Stockwell with you when you did
9 that?
- 10 A I'm not sure. I think he was there. I don't recall
11 precisely, but I think he was there with me.
- 12 Q Showing you Exhibit S-26, is that a picture of the
13 hatchet that you were called by Mr. Roper to look at?
- 14 A Yes.
- 15 Q Was that hatchet still in that position when you got
16 there?
- 17 A Yes. It had not been touched.
- 18 Q And showing you Exhibit H-269, does that indicate with
19 the little letter "H" the approximate location in which
20 that hatchet was lying?
- 21 A Yes.
- 22 Q When you got there, who actually picked up and put
23 away the hatchet, put it in a bag or whatever you did
24 with it?
- 25 A I don't recall.
- 26 Q Did you examine the hatchet before it was packaged?

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1 A Visually, yes.

2 Q Did you hold it or just look at it on the ground?

3 A Just looked at it.

4 Q Was it on the ground at that time or had it been picked
5 up?

6 A I definitely looked at it when it was on the ground and
7 I don't recall whether I did any additional looking at
8 it after it was picked up.

9 Q Do you recall whether it had a substance on it that
10 appeared, at least looked like blood?

11 A Yes.

12 Q Over what portion of the hatchet was that blood?

13 A Primarily over the head of the hatchet, the blade.

14 Q Was there blood on the handle?

15 A I don't recall.

16 Q Did you have a discussion with Mr. Roper about what to
17 do about the hatchet?

18 A Yes.

19 Q What was that discussion?

20 A It concerned fingerprinting the hatchet.

21 Q Did it also concern blood, taking blood samples from
22 the hatchet?

23 A Blood typing was discussed. I don't recall the
24 particular nature of the discussion other than it was
25 my opinion that it should be processed for fingerprints
26 and that we would do subsequent blood typing if

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1 necessary.

2 Q Was there any particular reason for doing the
3 fingerprinting first?

4 A Yes.

5 Q What was that?

6 A This was Sunday afternoon. Four people just up the road
7 obviously had been struck with a hatchet, and the wounds
8 that I saw, the person to my knowledge who had done
9 this was still loose.

10 The identification of that person seemed to me to
11 be paramount, and I, at that time, had no doubt about
12 whose blood it was on the hatchet. It was a
13 combination of those people that I had just seen.

14 Q What led you to that conclusion?

15 A Just prior to going down to see the hatchet, I had been
16 at the crime scene and I saw people who had been
17 mortally wounded and the wounds were ax wounds, among
18 others.

19 I see a bloody hatchet a short distance away from
20 that scene. I'm left with the conclusion that this was
21 the murder weapon or one of the murder weapons, and it
22 certainly was covered with blood.

23 Frankly, I wasn't interested in blood typing at
24 that point in comparison to the interest that I had in
25 determining any possible fingerprints on the hatchet.
26 And that was the frame of mind that I had at that time.

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1 Q Did you see any surfaces on the hatchet that appeared
2 to you to have any latent fingerprint impressions on
3 them?

4 A No. I didn't make the examination nor did I look
5 closely in an attempt to see if I could see any
6 fingerprints. I left that to other examiners.

7 Q Did you discuss what process would be used in order to
8 raise the fingerprints, if there were any?

9 A I can't recall whether I discussed at that particular
10 time standing down there on that roadway what process
11 would be used. It certainly was discussed oftentimes
12 after that referring to the fuming with Super Glue and
13 the other processes, but I don't recall whether or not
14 that was discussed at that time.

15 Q Was it discussed with you prior to the time that the
16 hatchet was taken back to the Identification Bureau
17 Sunday evening for processing?

18 A There was some discussion about fingerprinting, but I
19 don't recall any of the actual talk regarding that, and
20 I don't recall whether or not Super Glue was discussed
21 at that time. I just don't recall.

22 Q Were you familiar with the Super Glue process at that
23 point in time?

24 A I knew what it was and I knew how it worked and I had
25 actually seen it work and seen it used on materials
26 and so forth. I was not entirely familiar with all

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1 of its effects vis-a-vis serology and blood typing.

2 Q Were you familiar with it at all?

3 A I had been instructed or had been told that it was
4 non-interfering with ABO and I believe that I first
5 heard that when I was back in Virginia at the F.B.I.
6 Academy where I saw my first demonstration of that
7 technique and was told about it.

8 But I had no opportunity to verify that or do any
9 testing on it myself.

10 Q Had you seen any of the sales literature on the
11 particular company that had sold the Identification
12 Bureau their equipment, the Dura-Print equipment?

13 A No, not at all.

14 Q Did you attempt to consult with any of the people in
15 your laboratory who were -- Well, serology is not
16 your particular specialty; is that correct?

17 A That's correct.

18 Q Did you attempt to consult with any of the people in
19 your laboratory who did have a specialty in serology
20 about the process before the process was begun?

21 A No, I did not.

22 Q Why not?

23 A It never occurred to me. And by that I mean it obviously
24 did not seem to me at that time to be important enough.

25 Q Would it be accurate to say that at that point in time
26 you thought fingerprinting was so important that you

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1 didn't think it mattered if the fingerprinting destroyed
2 the ability to type blood?

3 A Had I thought that, I think I still would have gone
4 with it. I still don't see the significance of blood
5 typing on the hatchet.

6 I do feel strongly about the value of fingerprints
7 as physical evidence, and obviously not finding
8 fingerprints, had I had that kind of vision, I would
9 have done differently.

10 But I would not in the future, given the same
11 choice, I believe fingerprints to be the most important
12 of the two types of evidence.

13 Q Do you think it's incompatible developing fingerprints
14 and doing blood typing?

15 A No, not necessarily. However, if I were to put one
16 technique or the other in jeopardy, I would jeopardize
17 the serology as opposed to the other way around.

18 Q If you do take the serological samples first, is it
19 possible to do both without jeopardizing the serology?

20 A Maybe. Maybe. I mean, if we had done that and had
21 rendered a particular area of the hatchet as no longer
22 suitable for examination of fingerprints, I think this
23 argument would be kind of mirror image of what we
24 have now and we would be asking why we didn't do the
25 fingerprints.

26 And I think my decision was based on what the

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1 value of the evidence would be as opposed to whether or
2 not evidence was destroyed.

3 And, yes, it's possible to take blood and not
4 damage fingerprints, assuming the fingerprint is not
5 right next to the blood or right under the blood, and
6 assuming that the person doing that knows what they
7 are doing.

8 Q First off, there is no known process that would be able
9 to develop a fingerprint which is somehow covered with
10 blood; is that correct, where you touch, for example,
11 the surface of the hatchet and then the blood came on
12 afterwards?

13 A Well, if it were totally obscured, I would agree with
14 that. But the fingerprint might be a partial
15 fingerprint that the visible nature of it was caused
16 by the blood, and if that were scraped away, then we
17 would be scraping away fingerprint information to gain
18 serological information, which is not a very decent
19 trade.

20 Q But there was no ridge pattern or anything that looked
21 vaguely like a partial fingerprint on that hatchet; is
22 that correct?

23 MR. KOCHIS: Objection. That calls for speculation.
24 He testified he didn't examine the hatchet.

25 THE COURT: At least he didn't see any. I'll
26 sustain the objection.

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7-9

1 Q Did you see anything that looked at all like ridge
2 patterns on that hatchet?

3 MR. KOCHIS: Same objection.

4 MR. NEGUS: He did look at it.

5 THE COURT: He can describe what he saw.

6 THE WITNESS: I only looked at it to see that there
7 was blood on it and I did not look at it in the way that I
8 would were I looking for fingerprints.

9 So if there had been some, I would have not noticed
10 it unless it had been on the surface that was right in front
11 of me and it had been obvious. I think I would have seen it.

12 But from that examination, I would not testify that
13 there were no fingerprints visible on it.

14 (No omissions.)

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1 Q It's possible, though, for somebody who is collecting
2 blood to look at it and tell whether he'd taken blood
3 from the area of the fingerprint that you just described
4 or not, right?

5 A Well, if the fingerprint -- I don't wish to be argumenta-
6 tive, but if it's truly latent, truly invisible, then
7 it requires some care. And I think that it is technically
8 possible to do what you say. I think it is also possible
9 for evidence to be destroyed.

10 Q Let's back up just a minute. We've established that,
11 I think, if you put your thumb on a hatchet blade and
12 then after you put your thumb on the hatchet blade that
13 print is covered with blood, you're not going to be able
14 to get that print, right?

15 A I don't know that. I don't know -- I don't know that.

16 Q Well, even to get to the print you'd have to scrape off
17 the blood, right?

18 THE COURT: Counsel, he's neither a serologist nor a
19 fingerprint expert. Let's don't dwell on this much longer,
20 Mr. Negus.

21 THE WITNESS: If it were on there thickly, yes, I
22 can envision a situation which the blood could totally
23 obscure a fingerprint and I would not know how to render
24 that fingerprint visible by any technique that I know of.

25 On the other hand, I don't know that blood will
26 always obscure a fingerprint. In other words, if it's a

1 light covering, I believe that the fingerprint still may be
2 visible and left in a condition that it could be rendered
3 visible.

4 Q (BY MR. NEGUS:) Did you examine the hatchet with a
5 mind to determining where on the hatchet there might be
6 latent prints?

7 A No.

8 Q Would those areas which would be most likely to yield
9 latent prints be the areas of that particular hatchet
10 which were covered with what appeared to be blood?

11 A I think that's unanswerable. Certainly a handle area
12 would be a choice area to expect fingerprints. But --

13 Q That's not more than --

14 A -- there's a nice smooth metal surface on the blade which
15 would make a better receiving surface. It's just not
16 commonly handled. I don't know that I can answer your
17 question.

18 Q The particular configuration of that hatchet had surfaces
19 on it, edges, and things like that, which would not be
20 conducive to fingerprints; is that correct?

21 MR. KOCHIS: Objection, no foundation as to his
22 expertise in that area.

23 THE COURT: Yes, sustained.

24 Q (BY MR. NEGUS:) Do you have any foundation in finger-
25 prints, Mr. Baird?

26 A I'm not a fingerprint examiner. I have lifted fingerprints

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1 from surfaces before. I have not done any comparisons.

2 Q So you're familiar basically with how to go about the
3 lifting process?

4 A Yes, I am.

5 Q Then addressing your attention to that hatchet, are
6 there surfaces on that hatchet which are not conducive
7 for lifting fingerprints?

8 A Yes, I think there are.

9 Q The edges, for example?

10 A The edges, yes.

11 Q There was blood on those surfaces?

12 A I can't tell from the photograph.

13 Q Do you recall?

14 A I don't recall specifically. There may well have been,
15 but I honestly don't know.

16 Q Then it would have been possible to have taken blood
17 from those surfaces without any risk to the fingerprints
18 if in fact there were any on the hatchet?

19 A Yes, it could have been done, certainly. I don't argue
20 the fact that technically it could have been done.

21 Q Did you have any discussion with Mr. Roper about the
22 probability of being able to type the blood as entering
23 into your considerations at all?

24 A Once again, I don't recall specifically what was said.
25 But the best of my recollection is that there was some
26 discussion on that. I did feel that blood typing would

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1 be largely uninterpretable at that point.

2 Q On what did you base that?

3 A Two reasons, actually. The first was I felt that the
4 probability of their being mixed blood was high, given
5 the nature of the crime scene.

6 And two, I did not know the extent or how easily
7 separable the blood types of all of the individuals were.

8 Q What difference does it make whether the blood was
9 mixed or not as far as typing is concerned?

10 A The interpretation of the results that one obtains is
11 certainly rendered more difficult with mixed samples
12 than it is with non-mixed samples.

13 Q It's not impossible, is it?

14 A No, given the right set of circumstances. In fact,
15 it can almost be invisible; that is, the fact that they
16 were mixed. It's very obvious. There are other
17 situations where that is not necessarily the case.

18 Q And obviously in a situation where all or most of the
19 people are related, just because of simple genetics you
20 would expect that it would be less likely for interpreta-
21 tions to become -- things becoming uninterpretable with
22 mixed blood than if you had a bunch of strangers?

23 A Once again, that wasn't a terribly large consideration
24 of mine at that time. I think what was on my mind at
25 the time this decision was being made is what you're
26 asking about, is it not?

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1 Basically I felt that there was relatively little
2 information that would be useful to the investigation
3 of this crime to be gained from the typing of the blood
4 that was on the hatchet in comparison especially to the
5 possibility of any fingerprints being present.

6 THE COURT: Mr. Negus, could we perhaps hold that
7 thought and resume after lunch.

8 MR. NEGUS: Okay.

9 THE COURT: If the scouts would like to come into
10 chambers, feel free to do so.

11 We'll be in recess until 1:30 this afternoon.

12 (Whereupon the noon recess was taken at
13 11:54 a.m.)

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1 SAN BERNARDINO, CALIFORNIA, WEDNESDAY, JUNE 27, 1984

2 1:30 O'CLOCK P.M.

3 DEPARTMENT NO. 10

HON. RICHARD C. GARNER, JUDGE

4
5 (Appearances as heretofore noted.)

6
7 (William W. Baird, having been on the
8 witness stand at the time of the noon
9 recess, resumed the stand and testified
10 further as follows:)

11
12 DIRECT EXAMINATION RESUMED

13 BY MR. NEGUS:

14 Q Back to mixed blood. Even with mixed blood, it's
15 possible to make a determination, is it not, whether
16 or not the blood on a hatchet is consistent with
17 coming from the victims in a particular case or not?

18 A Yes.

19 Q And it's possible even with mixed blood to find
20 particular alleles that don't match any of the victims?

21 MR. KOCHIS: Objection. No foundation as to his
22 expertise.

23 THE COURT: Yes. Sustained. He is not an expert
24 in serology.

25 MR. NEGUS: Mr. Roper testified that it was
26 Mr. Baird's opinion on mixed blood that where one of the

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1 bases for his decision as to how to proceed --

2 THE COURT: He testified to that, but what the
3 effect would be from an expert on analyses --

4 MR. NEGUS: I think that's something that probably
5 he knows.

6 THE COURT: Ask another question, please.

7 Q (BY MR. NEGUS) Do you have some background in serology?

8 A Yes, sir, I do.

9 Q What does that consist of?

10 A I have done blood typing. You might say it was some
11 years ago when it was quite a bit easier. I'm familiar
12 with the term "allele" and I'm familiar with most of
13 the systems that we currently employ in the laboratory.

14 And I'm not at all competent to actually do that
15 work, but I have some kind of conversational knowledge
16 might be a reasonable description of what I have.

17 Q And is that the knowledge that you were bringing to bear
18 in your conversation with Mr. Roper on the 5th?

19 A Yes.

20 Q To your knowledge, is it possible to eliminate blood on
21 a hatchet as coming from the victims if there is one
22 allele that is not contained in any of the victims'
23 blood?

24 A Yes, it is.

25 Q For example, in transferring, if all the victims had
26 C blood and you found AB allele on the hatchet, that

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1 would eliminate the blood on the hatchet from coming
2 from the victim; is that correct?

3 A That's correct.

4 Q After the hatchet was taken to the Identification Bureau
5 and processed, did you have any further conversations
6 with anyone about getting the blood off the hatchet?

7 A No, I did not.

8 Let me repeat that. Not that I recall. Certainly
9 nothing significant.

10 I did not initiate any, to the best of my
11 recollection.

12 Q On June 8th, did you send Mr. Ogino to the Identification
13 Bureau to collect blood off that hatchet?

14 A I don't recall that. I don't dispute it, but I don't
15 have any independent recollection.

16 Q Do you recall any discussions about collecting blood
17 before the hatchet was going to be sent to Lubbock,
18 Texas for argon ione laser development of fingerprints?

19 A I just don't recall.

20 Q When you arrived at the Ryen crime scene, did you have
21 to wait 35 or 40 minutes for Miss Schechter and
22 Mr. Stockwell to arrive?

23 A Yes.

24 Q At that point in time, had you already done a brief
25 inspection of the interior of the house as well as
26 certain exterior portions of it?

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1 A Yes.

2 Q Was there a discussion with yourself, Sergeant Arthur,
3 Miss Schechter and Mr. Stockwell about what work should
4 be done as far as collecting evidence?

5 A I believe there was, although I don't believe I could
6 recall everything that was said. That's normal practice.
7 I believe there was.

8 Q What can you recall about that?

9 A Nothing other than over the years I have had a lot of
10 conversations with Sergeant Arthur, just the nature of
11 our work, but I have no specific recollection of what
12 we would have talked about.

13 Q Did you instruct Mr. Stockwell to collect any particular
14 pieces of evidence?

15 A Yes.

16 Q Which pieces were those?

17 A I pointed out to Mr. Stockwell at least two that I can
18 recall. One was a piece of cord in the driveway. The
19 second was an isolated or, relatively speaking isolated,
20 blood stain in the hallway.

21 There may have been others, although I don't recall.

22 Q The blood stain in the hallway, is that the blood stain
23 that has subsequently become known as laboratory number
24 A-41?

25 A Yes.

26 Q And showing you photograph H-178, is that next to the

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1 41 there, a picture of it?

2 A Yes.

3 Q With Mr. Stockwell and Miss Schechter, did you formulate
4 a plan of attack, that is, a decision as to what areas
5 would be processed first?

6 A No.

7 Q Did you give them any suggestions as to that?

8 A I believe that I mentioned to Mr. Stockwell that I felt
9 that the rope or the piece of cord in the driveway
10 should be collected early because of the fact that it
11 was out in the sun and had a perishable nature and
12 that would destroy the blood.

13 And beyond that, I don't have any recollection of
14 any plan or discussion regarding which things should be
15 collected in which order.

16 Q Was it generally decided, for example, to start in on
17 the bedroom first?

18 A I don't recall. The vast majority of the scene itself
19 was the bedroom, and in the bedroom, but I don't recall
20 specifically telling him to "Start here first".

21 Q With respect to work that was to be done while you were
22 there, was there a division of labor decided between
23 Ms. Schechter and Mr. Stockwell?

24 A Not that I'm aware.

25 Q When you were leaving, were they both in the process of
26 collecting evidence?

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2 | 0 Did the amount of evidence --

5 | A Yes.

9 | A Yes.

14 A I didn't even consider that as being a criteria under
15 which I would operate. What I did consider was the
16 location of the crime scene and that, as a matter of
17 fact, it happened to be relatively close to my
18 residence and that should there have been a problem
19 due to fatigue, additional people could have been sent
20 in.

24 Q Did Mr. Stockwell or Miss Schechter call you?

26 Q Did they call you at all for advice?

9-7

1 A It's normal procedure to call me when they are clearing
2 a scene and I don't recall whether they did in this
3 particular case. They may have, but I know that they
4 did not call me to ask to be replaced or for additional
5 help.

6 Q Had such a call been made, were there any constraints
7 on you or orders from your superiors or policies which
8 would have prevented you from providing them with
9 additional help?

10 A Not at all.

11 Q At the end of that particular day, did either of them
12 indicate to you whether or not the work that they had
13 been doing, the processing of the crime scene, had been
14 finished?

15 A Once again, I'm afraid I don't have a good recollection.
16 Mr. Stockwell conveyed to me that it was hard to
17 determine what a stopping point was as best I recall,
18 because it was -- There are no rules or minimum
19 standards, to use the term that was previously used,
20 that would tell one that he has collected enough,
21 whatever that means, blood, and enough evidence.

22 That's all I can recall.

23 Q Basically, then, is it a matter primarily of experience?

24 A I have experienced people in my laboratory that I don't
25 feel would have done as good a job as Mr. Stockwell did.
26 I have others that could have and perhaps done better.

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If I suggest to you, for example, that 15 samples is enough, you may argue with me that it's not. And point is we have no number that we can both agree on short of taking everything in the scene, and that was not my intention ever.

(No omissions.)

1 Q Are there no standards, you know, other than just
2 subjective ones as to how much is enough?

3 A Not that I'm aware of. There are, but they are subjective
4 and I think there are individual opinions. You can ask
5 different people and I feel certain that you would get
6 different answers.

7 Once again, it also depends whether you're asking
8 before or after the circumstances become known. In
9 other words, it's difficult for me to answer these
10 questions because of what I know now and I'm trying to
11 consider the situation at the time the decisions were
12 made.

13 Q Knowing things now essentially -- well, let me -- do you
14 think that at the beginning of an investigation that
15 more evidence should be collected than later on in an
16 investigation when some evidence may be able to
17 eliminated?

18 MR. KOCHIS: Your Honor, I'm going to object as
19 vague as to what scene are we talking about. It would not
20 be relevant unless we're talking about this scene. What's
21 he talking about in terms of more? Is he talking about
22 individual articles of clothing, furniture, blood drops?

23 THE COURT: Be more specific, Counsel, please.
24 Sustained.

25 Q (BY MR. NEGUS:) In a situation like you had at the
26 Ryen crime scene, a very complex crime scene, do you

1 think that at the beginning when you don't know what's
2 going to be significant and what's not that the
3 criminalist should, if there's any doubt about an item,
4 collect it, whereas when he learns more he may find out
5 that he doesn't need it?

6 A That is one of the unwritten rules that I've heard
7 people use that if in doubt, collect it. The reasons
8 are obvious. That is that you may not have another
9 chance to retrieve it later should you decide later that
10 that evidence is worthwhile for one reason or another.

11 So, yes, I suppose in certain contexts it's always
12 better to collect everything.

13 Q In this particular crime scene, given the number of
14 victims and the complexity of the physical evidence,
15 do you think that that would be particularly important?

16 A I judge everything from the point of view of what the
17 evidence will do for the investigation, what information
18 will it produce, and will that information be helpful.
19 It was not in my opinion necessary to know the blood
20 type of all of the -- or more importantly, the origin
21 of all of the blood droplets that were in that room.
22 I did not feel that that would lead our investigation
23 to the perpetrator of that crime and that at that time
24 was foremost on my mind. And part of the -- some of
25 the goals, a large part of our whole effort was toward
26 that end.

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- 1 Q Did you review the evidence collected by Mr. Stockwell
2 and Ms. Schechter from that crime scene?
- 3 A Not in much detail. I did not look at it. I discussed
4 with them what the nature of the evidence was that they
5 did collect.
- 6 Q You've mentioned blood several times in terms of numbers
7 of samples of blood. In terms of your criterion of
8 trying to determine the identity of the perpetrator or
9 perpetrators, would pooled blood from underneath the
10 bodies of each of the deceased victims have provided any
11 beneficial knowledge to that?
- 12 A No.
- 13 Q Would various locks of cut hair of types similar to the
14 victims found near the victims have provided that kind
15 of information?
- 16 A No.
- 17 Q Other than the possibility -- at the crime scene lifting
18 fingerprints is not the primary responsibility of the
19 crime lab; is that right?
- 20 A That's correct.
- 21 Q If you should happen to find one and there's nobody
22 else going around, you're certainly not going to ignore
23 it, but certainly that's the responsibility of the I.D.
24 bureau, correct?
- 25 A Correct.
- 26 Q So of the evidence that the crime lab collects, does

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1 blood generally have the greatest potential for the
2 kind of individuation which is necessary to identify
3 somebody?

4 A It's not the most significant, but it's now especially,
5 it's up there pretty good. In other words, there are
6 other types of evidence, such as handwriting, that may
7 lead one to an unequivocal opinion that it was written
8 by a particular person. And while an individual cannot
9 be identified through blood typing alone, it heads that
10 direction, narrows down the list of possibilities.

11 Q Then of the type of evidence that is collected by your
12 laboratory which was present at the Ryen crime scene,
13 did blood have the greatest potential to aid in
14 identifying the suspect?

15 A Well, there was at that point no reason for me to believe
16 that a suspect was bleeding. I knew the victims were.
17 It was obvious. I had no reason to believe that anyone
18 else was.

19 Now, I recognize that that is a possibility and it's
20 a possibility in every case that we have blood shed. We
21 still have to operate under certain physical realities
22 and limitations and for that reason, which is the simplest
23 reason of all, it was not in any way conceivable for us
24 to do blood typing on the entire crime scene, that entire
25 bedroom.

26 Q But what I'm asking you was of the evidence collected

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1 by your laboratory, blood had the greatest potential
2 for answering the question which you were trying to ask?

3 MR. KOCHIS: Your Honor, I'm going to object. It's
4 been asked and answered. And what the potential would be
5 calls for speculation, because it calls for him to assume
6 some facts that weren't at his disposal that one is bleeding.
7 Absent that, it isn't going to lead to an assailant.

8 THE COURT: It's a question of priorities whether
9 or not it is relevant. He may answer. The objection is
10 overruled.

11 THE WITNESS: The best way I can answer it is that
12 if I knew somebody was bleeding I would answer that question
13 yes. If it is unknown, then I can't answer that yes, because
14 I would have to at that time think what is the most likely
15 situation and the most -- what is the evidence that is most
16 likely to yield information regarding the identity of some-
17 body.

18 Now, blood is good for that if the person is bleeding.
19 If he's not, I could type blood all year long and get results
20 that would never lead anywhere.

21 So that knowing that maybe the efforts would have
22 been better spent trying to find other items, fingerprints,
23 shoe prints, a name and address on that piece of paper.
24 Anything else is a possibility.

25 Q (BY MR. NEGUS:) Well, the fingerprints were being looked
26 for by I.D., right?

1 A Yes.

2 Q And there were from that crime scene by your laboratory
3 no names or addresses on pieces of paper?

4 A No, of course not.

5 Q When you saw the drop of blood A-41, why did you suggest
6 that Mr. Stockwell collect it?

7 A Because of its position relative to the crime scene.
8 It was isolated. It was therefore unique in comparison
9 to the other bloodstains.

10 In point of fact at that particular time I suspected
11 that that blood also would probably belong to somebody
12 from that house. And I also thought that it was likely
13 that that had been dropped there sometime before the
14 crime scene.

15 Q Why did you particularly point it out to Mr. Stockwell?

16 A Because I saw it. No more reason than that. It certainly
17 would bear looking at. But at that time I didn't know
18 what it was going to be, but it certainly, just because
19 I thought the probabilities were against it, did not
20 preclude me from suggesting that it can be collected.

21 We have dealt with random bloodstains at various
22 times in various investigations, and they exist in
23 many people's homes. And, so, because of that we
24 encounter them.

25 THE COURT: Try not to volunteer too much, Mr. Baird.

26 THE WITNESS: Thank you, Your Honor.

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1 Q (BY MR. NEGUS:) Once you saw the A-41, did you look
2 around in that area to see whether there might have been
3 other blood in the near vicinity which might have thrown
4 some light on the significance?

5 A Yes. As I recall, I did look, although not in extreme
6 detail. But I did not see any other bloodstains in that
7 vicinity.

8 Q Did you look behind the door -- did you look at the door
9 that led from the hallway there right next to A-41 into
10 the platform area between the family room and the living
11 room?

12 A I don't remember.

13 Q Just as a matter of practice, if you had found on the
14 door near that drop stains that looked like finger
15 impressions and then you'd also found in the refrigerator
16 in the kitchen stains near some beer cans that appeared
17 to be blood from a person reaching in and taking a can
18 of beer out of the refrigerator, would that have given
19 you reason to believe that perhaps the suspect was
20 bleeding, suspect or suspects?

21 MR. KOCHIS: Objection, it's compound, and the
22 latter portion assumes a fact that's not in evidence. There's
23 no testimony that there were bloodstains in the refrigerator
24 that appeared to be deposited by someone who was reaching for
25 a can of beer.

26 MR. NEGUS: There's a reasonable inference from the --

1 THE COURT: Yes, there is. I've seen the pictures.
2 It's at least one of the reasonable conclusions that may be
3 drawn.

4 Overruled. You may answer.

5 THE WITNESS: I didn't see those bloodstains. Had
6 I seen them, perhaps I would have formulated some theory.

7 Q (BY MR. NEGUS:) Of the 45 items that Mr. Stockwell and
8 Ms. Schechter collected on June the 5th that you looked
9 over in their report, which one of those items -- and
10 I'm handing you H-291, if you need to refer to it, it's
11 a lab report -- do you think had greater potential than
12 blood for identifying the suspect?

13 THE COURT: Counsel, what's the point of this
14 inquiry? I mean, we can get his opinion of what he would
15 have done had he observed any investigator out there and
16 other ways, but to what point?

17 MR. NEGUS: As to what should have been done.

18 THE COURT: All right.

19 MR. KOCHIS: Well, I would object. It calls for
20 speculation in that now he has facts which were not present
21 on the 5th and how can he speculate now as to what his
22 knowledge would have been as to the seizure of those items
23 on the 5th?

24 MR. NEGUS: The question was which had greater
25 potential.

26 THE COURT: All of his second guessing at this stage

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Go ahead. Overruled.

THE WITNESS: It is difficult to separate myself.

(No omissions.)

11-1

1 MR. NEGUS: Yes.

2 THE COURT: On second thought, he is not a trained
3 serologist. He has only a passing knowledge of the collection
4 and analysis of blood, and I think that I can see a long,
5 involved questioning on your part for very little probative
6 value.

7 MR. NEGUS: I don't think it's going to be long and
8 involved.

9 THE COURT: I will bend if you can assure me of
10 that.

11 MR. NEGUS: At least this particular line of
12 questioning is about to end.

13 THE COURT: You are not going to ask him the --

14 MR. NEGUS: Not each and every item.

15 THE COURT: Okay. Go ahead.

16 THE WITNESS: The main thrust of this without looking
17 at these items is to collect a sampling of the blood that
18 was there, to collect evidence that might have been taken
19 away from the scene by the suspect or the perpetrator so
20 that if that perpetrator were apprehended, especially if
21 he were apprehended soon, we would have some chance of
22 finding some evidence on him that would relate back to the
23 scene.

24 So for those reasons, we take some of the carpet
25 fibers that were talked about in here. Many of these
26 things were collected, I suspect, just because they were

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11-2

1 there and knowing nothing else at the time about the facts
2 of the matter, you just take a sampling.

3 It's hard to say whether 15 are enough or 25 are
4 enough. I couldn't answer nor could I tell you how many
5 I would have collected. I probably would have collected
6 less.

7 That doesn't mean it would have been a better job.
8 I just would have collected less.

9 Q (BY MR. NEGUS) I'm not asking you how many you would
10 have collected. What I'm trying to ask you is, of
11 those items, those 45 items there, knowing nothing
12 else about the crime scene which you could see on
13 June the 5th which would have had a greater chance of
14 providing identification than blood evidence,
15 recognizing --

16 A The sheet with the shoe print on it.

17 Q The sheet. Anything else?

18 A No, I can't think of anything here.

19 The A-14 is a pair of jeans that we thought had a
20 possible impression of a shoe print. Other than that,
21 the blood would be the best type of evidence.

22 Q The hairs, fibers collected because they might be
23 adhering to a suspect so that you might find a suspect
24 with those things on his person, do they steadily lose
25 relevance as time passes?

26 A Yes.

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11-3

1 Q Would you say they were still very relevant 24 hours
2 after a crime?

3 A I couldn't say. There are too many variables.

4 Q The next morning, June the 6th, you sent Mr. Stockwell
5 to the autopsy; is that right?

6 A Yes.

7 Q Before he went to the autopsy, did you attempt to get
8 an idea of what he had collected?

9 A I don't recall. I believe I knew that essentially the
10 evidence amounted to mostly blood stains in terms of
11 the items he had collected at the scene and I was
12 aware of that.

13 Q Did you like attempt to get his notes or anything like
14 that so you would have a record that other people could
15 use in investigating the case?

16 A No, I did not.

17 Q Is there any reason for that?

18 A It never occurred to me. I didn't think it was
19 particularly important at that time.

20 Q On June the 6th, did you send Mr. Gregonis and
21 Mr. Ogino back to the crime scene for the purpose of
22 gathering additional evidence, if there was any?

23 A Yes.

24 Q How did you expect them to know what evidence had
25 already been gathered?

26 A I didn't.

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11-4

1 Q How were they, then, to collect additional evidence?

2 A There was to be no harm should they have duplicated
3 what Mr. Stockwell collected. I do not recall whether
4 or not there was some conversation between Gregonis
5 and Stockwell or Ogino and Stockwell.

6 There was sometime before the beginning of the
7 autopsies, and there was discussion -- I don't recall
8 the nature of those discussions, but I was not
9 particularly concerned that there would be a problem
10 as a result of them not knowing exactly what Dave
11 Stockwell had or had not collected.

12 Q Did you also send Mr. Ogino and Mr. Gregonis out to the
13 crime scene in addition to collecting more samples to
14 try and interpret the blood splatter patterns that
15 were on the walls and the furniture?

16 A Yes.

17 Q And for what purpose did you want them to do that?

18 A To see what information could be developed as a result
19 of that. I had no specific purpose in mind. In other
20 words, there was no well-defined stated goal for them
21 to achieve.

22 Q The evidence that Mr. Stockwell and Ms. Schechter had
23 collected the night on June 5th and into the early
24 morning hours on June 6th, who was in charge of
25 preserving that back at the laboratory?

26 A Dave Stockwell.

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11-5

1 Q So while he was at the --

2 Mr. Stockwell continued to work many hours of
3 overtime throughout that particular week; is that
4 correct?

5 A Yes.

6 Q While he was doing that work, was the stuff just
7 essentially allowed to stay in some spot in the
8 laboratory?

9 A Yes.

10 Q After Mr. Gregonis and Mr. Ogino went to the crime
11 scene, did you receive some communications from them?

12 A Yes.

13 Q Did they make a request of you?

14 A Yes.

15 Q What was the request?

16 MR. KOCHIS: Objection. Vague as to person.

17 Q (BY MR. NEGUS) Did Mr. Gregonis make a request?

18 A I don't recall the conversation verbatim. I only
19 recall the substance of it and what they were trying
20 to say and what message they had to convey. I do
21 recall that.

22 But I don't recall who I spoke to first or any
23 of the specific details of the conversation.

24 Q Did Mr. Gregonis request the opportunity to collect
25 more blood samples?

26 A I don't recall that. He --

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11-6

1 MR. KOCHIS: Objection. It's nonresponsive at this
2 point.

3 THE COURT: Once you have answered the question,
4 stop, sir, and wait for the next one.

5 MR. NEGUS: I think he is explaining his "I don't
6 recall."

7 THE COURT: That's a complete answer, Mr. Negus,
8 "I don't recall."

9 Q (BY MR. NEGUS) Do you recall any parts of it?

10 THE COURT: Do you recall any parts of it?

11 THE WITNESS: Yes, I do recall.

12 Q (BY MR. NEGUS) What do you recall?

13 A They were objecting to the fact that the scene was
14 being taken down and I did not support them in their
15 request to have that delayed.

16 Q As part of their objection, did Mr. Gregonis request
17 more time to collect blood samples?

18 A I don't recall.

19 Q Did Mr. Ogino request more time to do blood splatter
20 interpretation?

21 A Yes.

22 Q Do you recall at the preliminary hearing -- Was your
23 memory of the conversation fresher at the preliminary
24 hearing than it is now?

25 A Certainly. That was eight months ago.

26 Q At that point in time -- Have you gone back over the

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1 transcript of your testimony at the preliminary hearing
2 before you came here?

3 A Yes, I have.

4 Q Was that recently?

5 A About a month ago.

6 Q Do you recall testifying at the preliminary hearing that
7 Mr. Gregonis was not given time to collect all the blood
8 samples that he wanted to?

9 MR. KOCHIS: Objection. That calls for hearsay.
10 That's not inconsistent with anything he said at this
11 hearing.

12 MR. NEGUS: He said he remembers -- He said his
13 memory was fresher at the preliminary hearing, and I'm
14 asking --

15 THE COURT: Are you refreshing his memory now?

16 MR. NEGUS: Yes.

17 THE COURT: Is that a different question than what
18 he didn't remember?

19 MR. NEGUS: I think what I asked him first was,
20 "Do you recall saying" -- I think the question was, "Do
21 you recall saying at the preliminary hearing that
22 Mr. Gregonis was not given the opportunity to seize all
23 the blood samples that he wanted to in this particular
24 case".

25 THE COURT: What is the objection?

26 MR. KOCHIS: That was the objection. Can I have

011041

11-8

1 the volume and line and page so I can tell what is being
2 editorialized and what is not?

3 MR. NEGUS: Volume 24, page 34, line 20 through the
4 answer that comes on line 23 and then there is some other
5 stuff that comes after.

6 THE COURT: I will permit him to refresh his
7 memory.

8 (No omissions.)
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1 Q (BY MR. NEGUS:) Do you recall saying that at the
2 Preliminary Hearing?

3 A No, I don't. I'm not disputing it. I just don't
4 recall specifically whether I said that at the Preliminary
5 Hearing.

6 Q Were you trying to be as accurate as you could at the
7 Preliminary Hearing?

8 A Certainly.

9 MR. NEGUS: Your Honor, I would like to read Page 34,
10 Lines 20 through -- the answer actually goes onto 35, 6.

11 MR. KOCHIS: If I could have just a moment, Your
12 Honor.

13 Well, Your Honor, I again would object that it's
14 hearsay, it's not a prior inconsistent statement, and if it
15 doesn't refresh his recollection how can it be offered under
16 that exception?

17 THE COURT: Mr. Kochis, you've got a perfect right
18 to make valid objections, but you know we're not before a
19 jury here and it would be more expeditious if we just let
20 it come out. I don't see the point in taking a lot of time
21 with this matter of critical issue.

22 Do you want to respond to his objection, Counsel?

23 MR. NEGUS: I believe he testified that his memory
24 was more accurate at the Preliminary Hearing.

25 THE COURT: Well, is it an inconsistency?

26 MR. NEGUS: It may or may not be inconsistent, but I

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1 think he has testified that --

2 THE COURT: But it's not refreshing his memory,
3 so how is it admissible?

4 MR. NEGUS: Prior recollection recorded. It was
5 recorded at the Preliminary Hearing. He was being accurate.
6 He can't remember it now, and we have it written down. I
7 think that's all that's required under that particular code
8 section.

9 THE COURT: You're probably correct, if it's relevant
10 at that time and now.

11 All right. Go ahead and read it.

12 MR. NEGUS: Question: To your knowledge was Mr.
13 Gregonis given the opportunity to seize all the samples
14 that he wanted to seize in this particular case?

15 Answer: No. Within reason. I sometimes have to
16 advise Mr. Gregonis that despite the fact that he has
17 technical superiority to me in serology that there are other
18 things going on in the world besides serology, and that
19 while I appreciate his significant expertise in this area,
20 we have other tasks to get done. And this sometimes requires
21 that he do less than he would like to do on a case in order
22 that he may work on another case that either I or Chief
23 Deputy Longhetti have assigned.

24 Q (BY MR. NEGUS:) Was it a consideration in this particular
25 case to not have Mr. Gregonis collect any blood because
26 of his assignment to some other case?

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1 A No, not any specific case.

2 Q Was it a consideration to not have him collect any
3 samples of blood in this case just because of the
4 general work load of the laboratory?

5 A Well, no.

6 Q Why wouldn't you let Mr. Gregonis collect more blood
7 samples?

8 MR. KOCHIS: Your Honor, I'm going to object. That
9 assumes a fact that's not in evidence.

10 He's read a selected portion of the transcript.
11 The transcript indicates at the prelim what he testified to
12 was "I do not recall" or "I recall not talking to Mr. Gregonis."

13 THE COURT: Mr. Kochis, he's testified that he didn't
14 support Mr. Gregonis in his request. Counsel is asking him
15 why. And that's relevant.

16 MR. KOCHIS: But there's been no testimony that
17 Mr. Gregonis specifically asked to collect blood samples not
18 from him or not from something that was reported prior to
19 this time.

20 MR. NEGUS: Says to your knowledge. We were talking
21 about blood at the particular point in time. He mentioned
22 serology in his answers.

23 THE COURT: It's a fair inference. Gregonis objected
24 to them taking the room apart, meaning that he wanted more
25 time.

26 Counsel, overruled. Go ahead.

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1 MR. NEGUS: I'm sorry. I forgot the question.
2 I suspect Mr. Baird did, too.

3 (The question was read by the reporter.)

4 THE WITNESS: I don't know. And the reason I'm
5 having trouble with this is I don't recall it coming this
6 way.

7 He never to my recollection -- which I admit is not
8 very good at this point -- but asked me "I want to collect
9 more blood samples." It was more that he just wanted to
10 stay there and study the scene as I recall, and based upon
11 part of the testimony that you have read back to me.

12 I cannot recall at all prohibiting him from collecting
13 more blood samples, for as we even spoke on the phone he
14 could have been collecting blood samples. He was not in any
15 way inhibited or prohibited from collecting blood samples.

16 I did not allow him to stay at the scene, and I did
17 not intercede and prevent the scene from being dismantled.
18 That I can recall. The other I cannot.

19 Q (BY MR. NEGUS:) You say that Mr. Gregonis could have
20 been collecting samples while he was talking to you on
21 the phone he would need to analyze which samples would
22 be important before he seized them, wouldn't he?

23 A I don't think so.

24 Q Blood is blood?

25 A Once you collect it, you can determine the significance
26 later through the testing if you collect it and write

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1 down where it was collected from. In other words --
2 well --

3 THE COURT: With the mass of blood there, don't
4 you think he had to give it some thought before he took
5 samples?

6 THE WITNESS: Yes, I do. But I don't recall being
7 put in this position by Mr. Gregonis of him complaining to me
8 that I was prohibiting him from collecting blood samples.
9 I think this has gotten out of context somewhat.

10 Q (BY MR. NEGUS:) Why didn't you let them have more time?

11 A I felt that sufficient time had been spent and that
12 furthermore that the evidence was being taken and being
13 brought back, and I was not sure in my mind that anything
14 significant or really useful would have been accomplished
15 by them staying out there longer.

16 Q On what facts or what -- you know, on what did you base
17 that decision?

18 A I based that on my observation of those individuals at
19 work for some period of time. Despite the fact that
20 Mr. Ogino does have some expertise in doing some blood-
21 stain pattern interpretation, he's still relatively a
22 novice at it. And furthermore, I did not see what the
23 bloodstain pattern interpretation was going to tell us.

24 I think that that scene was largely uninterpretable
25 because of the complexity of it, and I think that that's
26 still true.

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1 Insofar as what Mr. Gregonis could have done, that's
2 a different story and he might have been able to
3 analyze and determine that he had another spot of blood
4 that was somehow, despite the fact that it was surrounded
5 by other bloodstains, demonstrably different and
6 suspicious. I doubted that, too, but that was just my
7 opinion versus theirs, and I had the authority.

8 Q Seeing as how yours won, let's see if we can figure
9 out what facts you were using --

10 MR. KOCHIS: I'm going to object and move to strike
11 the argumentative editorial from the record.

12 THE COURT: Move to strike what?

13 MR. KOCHIS: "Seeing how yours won."

14 MR. NEGUS: It's not important to me. I'm willing
15 to withdraw it and rephrase the question.

16 THE COURT: Try it.

17 Q (BY MR. NEGUS:) First off, did you attempt during your
18 two hours at the crime scene to analyze the bloodstain
19 patterns?

20 A No.

21 Q Do you have any background or experience in analyzing
22 bloodstain patterns?

23 A I have attended a number of crime scenes in which blood
24 has been shed and patterns have been on the wall, some
25 of which we have determined through other facts what
26 the sequence of events were.

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1 Also I have a degree in criminalistics that involved
2 some laboratory work in doing bloodstain analysis. I
3 have read some articles on it. I do not, however,
4 possess any kind of extensive expertise in this area.

5 Q Do you know enough to determine what can be done and
6 what can't be done?

7 A Not totally. I do know what some people claim can be
8 done.

9 Q Do you disbelieve them?

10 A Yes, in some cases I have.

11 Q Was there anything about the crime scene other than its
12 complexity which led you to believe that an analysis
13 of the bloodstain patterns would be fruitless?

14 A Would be what?

15 Q Would be fruitless?

16 A It wasn't a matter of being fruitless. I just didn't
17 have any indication of what it was going to offer the
18 investigation at that point. I quite frankly still am
19 not sure.

20 Q Is it possible to determine what that type of analysis
21 will provide before you do it?

22 A No.

23 Q I think you may have misspoke earlier. I think you said
24 that Mr. Gregonis is just learning bloodstain interpreta-
25 tion and he's only done a certain amount. Did you mean
26 to say Mr. Ogino in that context?

011049

1 A Yes.

2 Q Mr. Ogino, amongst the two that were sent out, Mr. Gregonis
3 and Mr. Ogino, Mr. Gregonis is the one that has the
4 greatest expertise in blood splatter interpretation?

5 A Yes.

6 Q Does he have greater expertise than yourself?

7 A It's difficult to answer. I don't know. Maybe, but I'm
8 not sure.

9 Q Do you know whether he's read more of the literature than
10 you have?

11 A In June of 1983 is the point of reference that I'm using.
12 Subsequent to that, he has attended a workshop.

13 Q We're talking --

14 A I don't know if he's read more than I have on the
15 subject. I just don't know.

16 Q Do you have a present recollection as to whether you
17 talked to Mr. Gregonis at all?

18 A No, I don't.

19 Q How long did your conversation with Mr. Ogino last?

20 A It was short. Minutes.

21 Q Did you talk to anybody else other than laboratory people
22 during that conversation?

23 A I don't recall.

24 Q Did you ask whichever person you were talking to
25 whether or not they felt that adequate blood samples had
26 been taken?

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1 Q Did you have any scientific reasons for acting that way?

2 A No.

3 Q Did you attempt to get information from Homicide as to
4 why they were taking the items at the particular time
5 that they were?

6 A I don't recall. I don't believe so. I don't have any
7 recollection of that at all.

8 Q Was the reason that you didn't intercede for them that
9 you were just reluctant to intercede in their behalf
10 with Homicide?

11 A I suppose that may have had something to do with it. I
12 just didn't think their reasons were compelling enough
13 to make me want to interfere with the investigation and
14 change the course of it.

15 Their request, the best of my recollection, didn't
16 seem to be one of terrible urgency and I don't recall
17 them having much discussion with me about it other than
18 asking and getting my response.

19 And my people are certainly free to do that. It's
20 not a situation in which my people don't talk to me.
21 They sound off plenty if they don't agree with me, and
22 I don't recall any of that taking place.

23 Q How long had you been acting laboratory director then?

24 A Six months. Five months.

25 THE COURT: At that time?

26 THE WITNESS: At that time.

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13-2

1 Q (BY MR. NEGUS) If they had screamed and shouted and
2 gotten upset after you said no, you might have changed
3 your mind?

4 A Yes. It would have taken more than a tantrum. I would
5 have expected some logical thought and compelling
6 reasons to have been conveyed to me, and I would have
7 made some attempt to intercede.

8 I'm not saying I would have been successful, but I
9 would have interceded or attempted, anyway.

10 Q Did Mr. Ogino tell you that he needed more time to
11 analyze the scene in order to evaluate the evidence?

12 A Yes, that came across.

13 Q Did you ask him as to why?

14 A As I stated, I don't have a very good recollection of
15 that whole conversation. I don't know.

16 Q At the preliminary hearing, page 36, lines 18 through
17 the next page, 37, line 2, did you indicate that one
18 of the things that they wanted to do, one of the
19 concrete reasons other than analyzing the stain was
20 more samplings?

21 MR. KOCHIS: Your Honor, can I show that to the
22 witness and see if that refreshes his memory?

23 THE COURT: Do you have any objection to that?

24 MR. NEGUS: No.

25 THE COURT: All right.

26 THE WITNESS: The question about more sampling was --

011053

13-3

1 Despite my reading of that, I still don't recall it
2 other than reading that. There may have been, but my
3 answer would have been the same because the evidence was
4 being preserved to a large extent because it was being
5 brought back to the laboratory, or to the storage area in
6 the Identification Division.

7 Q (BY MR. NEGUS) The only item that was brought back to
8 the laboratory from that particular -- the was taken
9 from that particular house that particular day was the
10 south wall; is that correct?

11 A No. We brought carpet and furniture back.

12 Q I said the Crime Lab.

13 A Yes, as far as the Crime Lab goes, the portion of the
14 wall.

15 Q No sample was taken off the wall until almost a year
16 later?

17 A I'm sorry. I didn't hear your question.

18 Q No blood samples were taken off the wall until almost
19 a year later?

20 A I don't know that. I did not do any samplings of the
21 wall. You would have to ask Mr. Gregonis.

22 Q The wall was not frozen to preserve it?

23 A No, it was not frozen.

24 Q None of the stuff in the loft was frozen?

25 A None of it was frozen.

26 Q In fact, it was put in conditions in which the

0-1-1-0557

13-4

1 likelihood of ABO typing was substantially reduced; is
2 that correct?

3 MR. KOCHIS: Objection. That would call for
4 speculation on his part.

5 THE COURT: Sustained.

6 Q (BY MR. NEGUS) Did you have a conversation with
7 Sergeant Arthur, among others, about where to put the
8 stuff in the master bedroom once it was carted away
9 on the 6th?

10 A I believe so.

11 Q With whom?

12 A I believe I spoke to Sergeant Arthur about it.

13 Q What was that conversation?

14 A It was a matter that the property would have to be
15 stored in the Sheriff's property, not in the laboratory,
16 by and large, especially the larger items.

17 Q Were you aware of the existence of the property building
18 on Sierra?

19 A Yes.

20 Q Were you aware of the heat conditions in that building
21 in the summer?

22 A Yes.

23 Q In those conditions, blood could not be expected to
24 survive very long, even for ABO typing; is that correct?

25 A Correct.

26 Q So the decision to put stuff was essentially a decision

0-1-0555

13-5

1 to put it in a place where you knew that it wouldn't be
2 able to be typed after a month or two?

3 A No. I disagree with that. I think that especially
4 with ABO typing, it would last longer than that.

5 But with all the other enzyme typing, yes, I would
6 agree with that statement.

7 Q How long would you expect the ABO typing to last?

8 A Six months.

9 Q Did you order anybody --

10 A Or longer.

11 Q Did you order anybody to go out and collect samples
12 off the furniture prior to the passage of six months'
13 time?

14 A No, I didn't.

15 Q So essentially as far as you were concerned, you were
16 willing to let all the blood on that go, on that
17 furniture and carpet, go untyped?

18 A Absolutely.

19 MR. NEGUS: This is probably as good a time to take
20 the break as any.

21 THE COURT: We will take it now. We will be in
22 recess.

23 (Whereupon the afternoon recess was taken.)

24 THE COURT: Please continue.

25 MR. NEGUS: If I could read --

26 THE COURT: May we have your attention, please?

011056

13-6

1 MR. KOCHIS: Yes. You have my undivided attention.

2 MR. NEGUS: Volume 24, page 36, line 3 through
3 page 37, line 2.

4 MR. KOCHIS: I have found that portion, your Honor.

5 MR. NEGUS: (Reading):

6 "Q And what administrative principles
7 were you applying?

8 "A Well, we have to move on. We have
9 to get things done. We can't -- I don't
10 have the luxury of being able to assign
11 people indefinitely to certain cases. And
12 furthermore, I don't mind admitting that
13 my position is one notch above theirs and
14 I'm not the ultimate authority, and the
15 people who have other aspects, have other
16 responsibilities in the case determine that
17 they want to seize the bedroom, then so be
18 it. It need not be that detrimental a
19 scientific endeavor.

20 "As a matter of fact, what we are
21 talking about here is administrative,
22 collecting more blood stains than we have.
23 What we did was scientifically reasonable
24 and not administratively, or from your
25 point of view.

26 "Q At the time you made that decision

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13-7

1 and you told Mr. Ogino to go along with
2 what the investigators wanted to do, you
3 had no idea whether that was scientifically
4 reasonable or not, did you?

5 "A I wasn't given anything at that
6 time to make me think that some great harm
7 was going to be done by taking down the
8 bedroom, other than they just wanted more
9 time.

10 "But any concrete idea as to what
11 exactly they wanted to accomplish at this
12 time other than more sampling wasn't
13 compelling enough for me to try and
14 intercede."

15 Q (BY MR. NEGUS) Did you tell Mr. Ogino and Mr. Gregonis
16 to assist in the process of dismantling the bedroom?

17 A I don't recall.

18 Q Well, did you tell them, "Go ahead and take it down"?

19 A Yes.

20 Q Is that when -- When you say "take it down", does that
21 mean dismantle and remove the bed?

22 A Yes. I thought you were asking me specifically whether
23 they had to assist or not. I had no qualms about their
24 assisting or watching. It made no difference to me.

25 As a matter of fact, I did stop by and observe
26 part of it and they were assisting. At least

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13-8

1 Mr. Gregonis was.

2 Q So from that point in time that they were assisting,
3 they wouldn't have had the opportunity to seize any
4 more blood samples; is that right?

5 A I think to the contrary. Between the time that this
6 initiated -- and I don't recall the specific time,
7 but I do know that I was in San Bernardino and I also
8 was able to complete that conversation and drive to
9 the scene in Chino.

10 And at that time, the removal of the furniture was
11 about complete and they were taking down the wallboards.

12 Now, during that time, there was time for additional
13 collection, if they had so chosen to do that. And that's
14 all I can tell you.

15 There was some time available for that.

16 Q Was your decision influenced by cost consideration?

17 A No.

18 Q Was it influenced by labor scheduling consideration?

19 A Yes.

20 Q How would that influence you?

21 A The overall caseload and work that was pending, which
22 was substantial and is always substantial, was such
23 that I opt for those actions that will save time.

24 And I felt that this was one of them.

25 Q Did you think that an extra day or two was an
26 unreasonable request in terms of time given the

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13-9

1 complexity of this particular crime?

2 A I think that nothing beneficial would have come from
3 spending an extra day or two. I don't think it would
4 have been worth the time to stay out there.

5 Q That's just based on your analysis of the scene, what
6 you saw?

7 A Well, I don't know what they would have come up with
8 that would have caused me to change that opinion. I
9 have no doubt that they could have collected more
10 evidence, but I'm not so sure at all they could have
11 come up with anything that would have been useful.

12 Q Do you think the crime scene reconstruction would have
13 been useful?

14 A I think it's somewhat useful, but I don't know that
15 they would have been able to do a complete reconstruction
16 of that scene. I don't know that at all.

17 Q So you don't think -- Because of that lack of knowledge,
18 you didn't think it was worth attempting?

19 A I didn't think it was worth staying out there two more
20 days for.

21 Q Is that what they asked for?

22 A No. That was your figure.

23 Q One or two more days?

24 A Yes.

25 Q Do you think that finding blood not from the victims
26 is worth staying out there that time for?

011060

13-10

1 A I wouldn't know how to interpret that. You know,
2 blood that was not from the victims by itself doesn't
3 necessarily prove much. Not without some blood with
4 which to compare it to.

5 In other words, it could or could not. But just the
6 statement that blood not belonging to the victims --

7 Q In the area of the struggle?

8 A I would think that that would have been useful had it
9 been found.

10 Q We don't know whether it would have been found or not,
11 do we?

12 A Not absolutely, no.

13 Q The largest array of different blood patterns were on
14 the sheets on the bed; is that correct? And on the
15 other items of the bed?

16 A That's a very difficult question. The carpet had a
17 lot of blood on it, also. I don't know.

18 Q Nothing was done to preserve any samples of blood from
19 the carpet other than those known to be from the
20 victims, right?

21 A That's correct.

22 Q So leaving aside the carpet, the sheets were the richest
23 source of serological evidence; is that true?

24 A Yes.

25 Q Those sheets were brought, and the bedding with them,
26 were brought back to the laboratory?

011061

13-11

1 A Yes.

2 Q They were not frozen?

3 A Correct.

4 Q Did you participate in that decision?

5 A Indirectly.

6 Q How indirectly?

7 A I did not order them to be frozen.

8 Q Do you have any procedures in your laboratory about
9 attempting to preserve items of like textile items
10 that have blood stains on them that are brought into
11 your laboratory?

12 A Yes, we do.

13 Q What are those procedures?

14 A That on large items, blood stains are removed usually
15 by cutting them out and they are frozen. If the item
16 is small, the item itself would be frozen.

17 Q Starting with the bed sheets, one of the bed sheets,
18 would that be large or small?

19 A It was large for the freezer space that we had.

20 Q How much freezer space did you have?

21 A I don't know the cubic feet. It's a couple of freezers,
22 regular stand-up freezers.

23 Q Was the freezer space a consideration in whether or not
24 to freeze those particular sheets?

25 A Yes.

26 Q How was it a consideration?

011062

13-12

1 A Had we had a large walk-in freezer, it would have been
2 easier for us to have frozen a sheet. It would have
3 required less labor. Actually, we could have simply
4 packaged it and stuck it in the freezer. We did not
5 have that large freezer, so we opted for an alternative
6 method, which was to remove selected blood stains and
7 freeze those for preservation.

(No omissions.)

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1 Q Does your laboratory have less freezer space than most
2 major county laboratories in terms of the case load that
3 you carry?

4 A I don't know.

5 Q Given the amount of blood in this particular case, did you
6 have any constraints on you as far as renting an
7 additional freezer if you needed it to preserve the
8 evidence in this particular case?

9 A No.

10 Q Did you ever consider doing that?

11 A No.

12 Q Why not?

13 A I did not feel it was my duty to rent freezer space.

14 Q Whose duty in the laboratory would it have been if that
15 had been necessary?

16 A If it had been anyone's, it certainly would have been
17 mine. And it was my responsibility, and I assumed that
18 responsibility. But I felt at that time no duty to rent
19 additional freezer space.

20 Q Did you feel the duty to preserve the bloodstains that
21 were on the bedding?

22 A I preserved some of the bloodstains. I did not make any
23 attempt to preserve all of them.

24 Q And why not?

25 A There was really no reason, because if it -- and I
26 realized even at that time that if we froze the entire

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1 sheet, well, then, why didn't we freeze the carpet; if
2 we froze the carpet, why didn't we freeze the chair; and
3 on and on and on. So there was really no end. So why
4 make a decision.

5 It's absolutely a position that could not be won
6 from my point of view.

7 Q So because of the difficulty of deciding where to draw
8 the line, you decided not to draw the line at all?

9 A No. What we did do was to take some random samplings
10 and some non-random samplings. In other words, we cut
11 out some evidence and what we thought might have some
12 utility. But it was known at that time that if this
13 evidence was to be viewed as one of complete preservation,
14 it would certainly be inadequate.

15 Q The problems of storing the carpet, freezing the carpet,
16 as opposed to -- or freezing a chair as opposed to
17 freezing the bedding are considerably different; is that
18 correct?

19 A Well, the problems are different, but the -- the physical
20 problems of storing the sheet are obviously easier. But
21 my point was that had that been done, I recognized that
22 the focus then would have been on the carpet or whatever
23 wasn't frozen. And because I don't think freezing would
24 have yielded anything of benefit from an evidence point
25 of view, I had no intention ever of analyzing every single
26 bloodstain. I just considered that an impossible task.

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1 So under those constraints or with those ideas in
2 mind, I acted as I did.

3 Q Actually as far as the bedding was concerned, when the
4 bedding first came into the laboratory there was no
5 intention of freezing any samples at that point in time;
6 is that correct?

7 A It wasn't excluded. There was no attempt made to do
8 that first.

9 Q Where was the bedding stored during the first month it
10 was in the laboratory?

11 A I couldn't recount the whole month, but I believe it was
12 in an area back in an examining area of the laboratory
13 on a table, at least a good portion of the time there.

14 Q That area is not even refrigerated; is that right?

15 A No, that's correct, that's not.

16 Q Is it air conditioned?

17 A Yes.

18 Q And it was just sitting out in the open essentially?

19 A For some of the time it was, until it was locked into
20 evidence and packed by David Stockwell.

21 Q Well, let's assume that happened relatively soon, like
22 maybe June 10th. From June 10th to July 5th, it was
23 just sitting in packages?

24 A In boxes; that's correct.

25 Q On June the 13th your laboratory became aware, did it
26 not, that you did have blood in the Ryen house that was

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1 not from any of the victims?

2 A I don't recall the date. If Mr. Gregonis has testified
3 to that or somebody, then I think that's about the
4 right time. But I don't have any independent recollection.

5 Q Leaving aside what the date is, you did become aware of
6 that information relatively quickly after Mr. Gregonis
7 did; is that right?

8 A Yes.

9 Q At that point in time, you knew that the furniture was in
10 the loft; is that right?

11 A Yes.

12 Q The carpet was in the loft, wasn't being preserved; is
13 that right?

14 A Correct.

15 Q You also knew at that point in time that the sheets
16 were not being preserved, right?

17 A That did not occur to me at that time, but that's other-
18 wise correct.

19 THE COURT: Counsel, this is on the 13th, was it?

20 MR. NEGUS: He hasn't testified to that.

21 THE COURT: Didn't you just ask him a moment ago on
22 June 13th?

23 MR. NEGUS: June 13th is the date I believe Mr.
24 Gregonis will testify and Sergeant Arthur, I think, testified
25 as to that date.

26 Q (BY MR. NEGUS:) Did you on the 13th or 14th send anybody

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1 back to the crime scene to see if there had been any
2 evidence, any blood evidence, that had been missed that
3 might yield more of this type of blood?

4 A Once again, I don't recall the specific date, but there
5 was a time around two or three weeks after the initial
6 crime scene investigation, as I recall, that additional
7 samples were sought because of the fact that we knew
8 we had a different blood type.

9 Q Why did you wait two or three weeks?

10 A Well, it was not two or three weeks from the time that
11 we found out that we had a different one. It was two
12 or three weeks from the time of the initial investigation
13 and sometime after we learned that we had a foreign
14 blood type present.

15 Q Well, it was not until June 30th that you sent anybody
16 back to the crime scene to look for more blood; isn't
17 that correct?

18 A I'll have to consult the notes, because now I'm starting
19 to get confused by the dates involved.

20 Q I think the UU series will help you.

21 A Thank you. Yes, that was on June 30th.

22 Q So that would be 17 days after the 13th?

23 A Yes.

24 Q Why did you wait 17 days to send people back to the crime
25 scene to look for more blood?

26 A I don't know.

1 Q On June the 22nd laboratory number TT, you sent Mr.
2 Stockwell and Mr. Ogino over to the I.D. loft to look at
3 some items; is that correct?

4 A Yes.

5 Q And what did you send them over to do?

6 A To look for any additional trace evidence, as I recall,
7 on the carpet; hairs and fibers.

8 Q Did you ask them to collect any samples from the carpet
9 or the furniture?

10 A I don't recall that.

11 Q If you did not, why didn't you?

12 A Additional blood samples?

13 Q Yes.

14 A I don't know. It did not occur to me as being anything
15 of particular value. But I can't actually say what my
16 thinking was on that particular date.

17 Q Mr. Stockwell didn't begin to take representative
18 samples -- or random samples, excuse me, from some of
19 the bedding items until July the 5th; is that right?

20 A I don't know.

21 Q Well, assuming that it was July the 5th, is there any
22 reason for waiting that long a period of time to take
23 the samples?

24 A No, there was no single reason for waiting. Lots of
25 reason that may have come into play that are probably
26 not even recallable now. But I could not tell you

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1 specifically why.

2 Q Why did you want Mr. Gregonis to collect trace evidence
3 from the carpet on June the 22nd?

4 A I think it was Mr. Stockwell, but it might have been
5 Mr. Gregonis. In any event, I can't recall --

6 Q I'll withdraw that.

7 Why did you request Mr. Ogino and Mr. Stockwell to
8 take the trace evidence from the carpet on June the 22nd?

9 A I don't once again have any independent recollection
10 other than probably to look for hairs primarily. I don't
11 recall beyond that, though.

12 Q What benefit to the investigation do you think collecting
13 hair would have been at that point in time?

14 A I don't recall.

15 Q Do you know any reason why it wasn't done earlier?

16 A No, I don't.

17 Q After the first week of evidence collection, did you
18 do anything to try and review what had been collected
19 and what hadn't been collected to determine whether or
20 not everything that should have been collected was
21 collected?

22 A No, I did not.

23 Q Why not?

24 A I was not the one who would be in the best position to
25 know that.

26 Q Who would have been?

1 A Probably Dan Gregonis and Dave Stockwell would be the
2 two most significant people with respect to that type
3 of knowledge.

4 Q Did you consult with either of them to find out whether
5 they thought that adequate samples had been taken?

6 A I don't recall.

7 Q Well, did you know at that point in time that Dan thought
8 that adequate samples hadn't been taken?

9 A Dan conveyed that to me at some point, but I couldn't
10 tell you if that was known to me by the 22nd.

11 Q Once Dan did convey that to you, did you do anything to
12 try and rectify the situation?

13 A No, and I should point out at this point that in each
14 of these situations where you have stated did I direct
15 somebody to go or did I order them or tell them, in each
16 of these situations this is not exactly how it's done.
17 Occasionally it is done that way, but the people assigned
18 to the case operate at least somewhat independently,
19 and they have contact with investigators, as do I, and
20 they need not be ordered to do certain things.

21 For example, to retrieve additional evidence off of
22 a carpet does not require my approval.

23 Q But you do sometimes request them to do that; is that
24 right?

25 A Yes, that's true.

26 Q And if they testified that you requested them to do

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1 something, that's most likely why they did it?

2 A Well, I can't answer that question.

3 Q Would you dispute Mr. Ogino's testimony that you were
4 the person that, for example, ordered or suggested
5 that he go back and take trace evidence from the carpet?

6 A No.

7 Q When you returned to the scene on Monday in the evening,
8 did you do anything at that point in time to try and
9 ascertain why Dan and Craig had wanted more time?

10 A No. Oh, I'm sorry. I was thinking of something else.
11 This is the Monday evening?

12 Q The Monday evening. You said on your way home you went
13 to the --

14 A Yes. I don't have much recollection of all the conversa-
15 tion that took place. I did talk to them about what
16 they wanted and I saw a portion of the crime scene that
17 remained and I saw some of the other items being taken
18 away. Beyond that, I don't have a specific recollection
19 of the conversation regarding why they weren't allowed
20 to work there without the scene being taken apart.

21 Q Now, I wasn't asking you, you know, anything about
22 reasons that somebody may or may not have had for doing
23 it that way. But did they tell you what they wanted to
24 do, why they thought it was important at that point?

25 A Other than for the bloodstain pattern interpretation on
26 the part of Ogino, that's the only part I can recall.

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1 Q Can you say that Dan did not ask you or did not tell
2 you he wanted to take more samples at that time?

3 A I don't have any recollection of that.

4 Q With respect to the pillow cases that were taken from
5 the Ryen house, would there have been any problems
6 such as there was with sheets of trying to put those
7 into your existing freezer?

8 A No.

9 Q When Mr. Stockwell was taking his random samples, did
10 you suggest to him which items of bedding he should
11 take them from and which he shouldn't? Or was that
12 left up to him?

13 A That was left up to him.

14 Q Did Mr. Stockwell have any experience, to your knowledge,
15 in interpreting bloodstain patterns so that he could
16 maximize his chances of getting useful information?

17 A I did not expect him to do that independently. Dan
18 Gregonis was in the laboratory at that time and so
19 was Craig Ogino, and any assistance he needed was
20 available to him.

21 Q In your opinion, when you had Mr. Stockwell go to the
22 crime scene, was he adequately trained to interpret
23 bloodstain patterns?

24 A No.

25 Q Was he adequately trained to collect samples that would
26 be necessary if crime scene reconstruction was to be

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15-2

- 1 done?
- 2 A He was as trained as just about anybody I had, with the
3 possible exception of Gregonis and Ogino.
- 4 Q When the laboratory is processing evidence for serological
5 typing, is the strategy to follow, what to do first,
6 which to type, is that Mr. Gregonis', pretty much
7 Mr. Gregonis' choice or do you enter into those
8 decisions?
- 9 A No. That's Mr. Gregonis' choice.
- 10 Q On the 5th after you got back from the talking to
11 Mr. Roper down the hill about the ax, did you remain
12 very much longer at the scene?
- 13 A I don't remember. Not too much longer because I was
14 only there two hours total that day.
- 15 Q Do you recall Mr. Arthur consulting with you about
16 whether or not the Crime Lab had finished with the
17 processing of the living room at any point in time?
- 18 A No, I don't recall that.
- 19 Q At the time that you left, had they even done anything
20 with the living room at that point in time?
- 21 A I couldn't say. I don't recall knowing which rooms had
22 been looked at when I left and which had not.
- 23 Q When you sent Mr. Ogino and Mr. Stockwell back to the
24 crime scene on June the 30th, requested they go back,
25 you were essentially looking for additional blood of
26 the type that you already had in A-41 rather than for

15-3

1 additional types of blood?

2 A Yes.

3 Q On Saturday, December 17th, did you receive a phone
4 call at the Crime Laboratory from Mr. Forbush requesting
5 to speak to Mr. Ogino?

6 A Yes.

7 Q Did you tell Mr. Forbush that he could not speak to
8 Mr. Ogino?

9 A Yes.

10 MR. KOCHIS: Objection. I would move to strike.

11 It's not relevant. It calls for hearsay.

12 THE COURT: It goes to credibility. Overruled.

13 Q (BY MR. NEGUS) Why did you tell Mr. Forbush he
14 couldn't speak with Mr. Ogino?

15 A There was no Deputy District Attorney available to talk
16 with them, and as far as I knew, it was done without
17 the knowledge of the District Attorney.

18 Q What difference does that make?

19 A I think that in this particular situation, there was
20 no -- I had not been aware of it. It was news to me
21 when the call came in other than Mr. Ogino that morning
22 telling me that he was expecting a call and I exercised
23 my prerogative to intercede and prevent that until such
24 time that a Deputy District Attorney was available.
25 And if it was determined by the District Attorney that
26 that was not necessary, then it was only delayed.

011075

15-4

1 That's the best recollection I have of why I
2 interceded.

3 Q Why wouldn't you let Mr. Forbush talk to Mr. Ogino
4 without a District Attorney being present?

5 A Because it tends to be a -- It's not policy in our
6 laboratory, but it's a common procedure that we employ
7 to let the attorney who is prosecuting the case know
8 the nature of our contacts with the opposing attorney
9 and his investigators so that the prosecutor will have
10 access to the same information and won't be surprised.

11 And also to protect Mr. Ogino and have him have
12 what amounts to counsel present so that any remarks he
13 might make would not be misconstrued or misused.

14 Q Did Mr. Ogino request that protection?

15 A No.

16 Q Do you have tape recorders available to you in the
17 laboratory?

18 A No.

19 Q No tape recorders?

20 A Not a one.

21 THE COURT: Is it possible to conclude the thing
22 tonight?

23 MR. KOCHIS: No, it's not.

24 MR. NEGUS: I believe it's not going to be because
25 of the redirect.

26 MR. KOCHIS: We may conclude with Mr. Negus'

011076

15-5

1 examination. We won't conclude with mine.

2 THE COURT: Everything will be appreciated.

3 Q (BY MR. NEGUS) I think I may have asked this question
4 in a different form.

5 On June the 6th, do you recall having any conversation
6 with Sergeant Swanlund about more time for Mr. Ogino and
7 Mr. Gregonis?

8 A I don't recall if I spoke with Sergeant Swanlund or not.
9 I may have.

10 Q If you did, you don't recall the nature of it?

11 A I don't recall it.

12 MR. NEGUS: Could we perhaps take the break now so
13 I could have a chance to look at the transcript? I can't
14 recall all of his answers. It won't be lengthy, I don't
15 think.

16 THE COURT: All right. Do you have any questions
17 you would like to ask now?

18 MR. KOCHIS: I can start now.

19 THE COURT: Why don't you go for ten minutes?
20

21 CROSS-EXAMINATION

22 BY MR. KOCHIS:

23 Q Mr. Baird, correct me if I'm wrong, but was your
24 memory of the events which took place in June fresher
25 when you testified at the preliminary hearing in this
26 case two days after Christmas, on December the 27th,

011077

15-6

1 1983?

2 A Than it is now?

3 Q Yes.

4 A Yes, it was.

5 Q And do you recall that Mr. Negus in the course of that
6 preliminary hearing asked you a number of questions
7 about your recollection of conversations you may have
8 had with criminalists at the scene on the 6th day of
9 June, 1983?

10 A Yes.

11 Q And do you recall that he asked you --

12 Directing your attention to page 35, line 9,
13 Mr. Negus asked you if you could describe the talk,
14 referring to a conversation you may have had with the
15 criminalists at the scene?

16 A Yes.

17 Q And did you respond at that time that you could not
18 recall the talk verbatim?

19 A I did.

20 Q And do you recall stating that "I recall not talking
21 to Mr. Gregonis"?

22 A Yes.

23 Q Well, you just read that from the transcript?

24 A Yes.

25 Q And so in December, is it fair to say that when your
26 recollection was fresher than it is today, it was your

15-7

1 recollection that you did not have a conversation with
2 Mr. Gregonis on the 6th of June, 1983?

3 A On the telephone. I subsequently went to the scene and,
4 of course, there I spoke with him. But the conversation
5 in particular that we are talking about when the
6 telephone call came from the laboratory, I don't now
7 recall it, and apparently then I recalled specifically
8 not talking to Gregonis.

9 I did talk to Ogino.

10 Q Did you state at the preliminary, "It seems I talked
11 to Ogino and it surrounded the taking of the furniture,
12 the wallboard from the Ryen bedroom, and I was
13 informed by him the decision had been made to seize
14 these items. I had no disagreement with that. He
15 indicated they would rather spend more time there
16 but that they were being ordered or asked to take it
17 down and take it into evidence and I informed them that
18 I thought they should go along with that request and
19 that was the end of the conversation"?

20 A Yes.

21 (No omissions.)
22
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1 Q And was that in December your recollection of what that
2 conversation was?

3 A Yes.

4 Q And did that conversation involve Mr. Ogino wanting to
5 view evidence, view items that were going to be seized
6 and removed from the home and taken into the possession
7 of the sheriff?

8 A Yes.

9 Q Did the tone that Mr. Ogino used with you over the phone
10 take part in your decision to allow the evidence to be
11 removed from the home?

12 A First off, I'm not so sure that I have enough authority
13 that I could have presented it. I would have tried had
14 I felt strongly. I did not.

15 And, yes, his tone did have a bearing on it in that
16 I sensed no great sense of urgency. I don't say that
17 I didn't believe his request was sincere. But as I
18 previously stated, the sense of urgency was not that
19 strong as I perceived it. And I acted as I previously
20 testified.

21 Q Well, was his request essentially "I think we ought to
22 spend more time," and your response essentially, "Go
23 ahead, take it down"?

24 A Yes.

25 Q Were Mr. Ogino and Mr. Gregonis sent to the scene to
26 consider the possibilities of taking additional samples

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1 of evidence?

2 A My best recollection is it was primarily to observe the
3 scene. Whether they took additional samples, I don't
4 recall playing a significant part in the decision to
5 send them out there. It was more to observe the scene.

6 Certainly if they saw something significant, I would
7 expect them to seize it as evidence.

8 Q Did Mr. Ogino and Mr. Stockwell in June of 1983 have
9 access to the items which had been removed from the
10 Ryen master bedroom and placed with the identification
11 unit?

12 A Yes, they did.

13 Q Did you ever prevent them from going to the sheriff's
14 identification bureau and taking any additional blood
15 samples from the items which were removed from the
16 Ryen home?

17 A No, I did not.

18 Q Did Mr. Gregonis ever between June the 6th and June the
19 12th of 1983 communicate to you that he felt based on
20 what he saw at the scene he should go back to the I.D.
21 loft and take additional samples of blood?

22 A No.

23 Q Did Mr. Ogino ever communicate that request to you once
24 the items had been placed back in the identification
25 bureau?

26 A No.

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1 Q Did you feel that when the CCD officers took the evidence
2 and brought it back to the identification bureau that
3 they were in effect going to frustrate Mr. Ogino or
4 Mr. Gregonis from ever taking additional samples off the
5 items they collected?

6 A No.

7 Q You apparently have some background in blood splatter
8 pattern analysis?

9 A Some.

10 Q Is it possible to make an interpretation of a blood
11 splatter pattern from a photograph?

12 A Yes.

13 Q In your experience every time that a blood splatter
14 pattern exists at a crime scene, is the analysis conducted
15 at the crime scene itself?

16 A There have been some. Mostly they have been done after-
17 wards.

18 Q Does that include reviewing photography?

19 A Yes.

20 Q Would that also include reviewing the actual items which
21 had been seized which had blood splatter patterns on
22 them?

23 A Yes.

24 Q And to your knowledge during the phone conversation with
25 Mr. Ogino on the 6th, the items of furniture with blood
26 on them were going to be seized by sheriff's officers;

1 is that correct?

2 A Yes.

3 MR. KOCHIS: Would this be --

4 THE COURT: Sure.

5 Would you please return tomorrow morning at 9:30.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: We'll adjourn.

8 (Whereupon the proceedings were concluded

9 at 3:58 p.m.)

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