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SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff-Respondent,)
)
vs.)
)
KEVIN COOPER,)
)
Defendant-Appellant.)

CR 72787

Supreme Court
No. CRIM 2455

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

APPEARANCES:

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57
VOLUME ~~4~~ of 57 volumes.
Pages 4905 to 5038, incl.

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Official Reporters

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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

VOLUME 47

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REPORTERS' DAILY TRANSCRIPT

BEFORE HONORABLE RICHARD C. GARNER, JUDGE

DEPARTMENT 3 - ONTARIO, CALIFORNIA

Thursday, July 12, 1984

APPEARANCES:

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District Attorney

DENNIS KOTTMEIER
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1 ONTARIO, CALIFORNIA; THURSDAY, JULY 12, 1984; 9:40 A.M.

2 DEPARTMENT NO. 3

HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

4 The Defendant with his Counsel, DAVID

5 NEGUS, Deputy Public Defender of San

6 Bernardino County; DENNIS KOTTMEIER,

7 District Attorney of San Bernardino

8 County, and JOHN P. KOCHIS, Deputy

9 District Attorney of San Bernardino

10 County, representing the People of the

11 State of California.

12 (Jill D. McKimmey, C.S.R., Official Reporter, C-2314,

13 Brian Ratekin, C.S.R., Official Reporter, C-3715)

14
15 THE COURT: Good morning. Mr. Gregonis is still

16 on the stand.

17 MR. NEGUS: Before we begin with Mr. Gregonis,

18 Your Honor, just so we don't forget before Mr. Gregonis

19 leaves on vacation, I have marked as Exhibit H-365 a list

20 of stuff that I'd like to request be turned over temporarily

21 to the defense so I can process it. You have there a three-

22 page document which is -- I'm sorry -- not typed, but --

23 but which lists various items. The -- the items under

24 which it says "needs Polaroids" are items where there were

25 Polaroid pictures made of the various runs which were not

26 in the materials that were provided to me to photograph

0 1 1 5 5 5 6

1 in the Homicide Department back in San Bernardino. These
2 are all --

3 THE COURT: They did not make copies of those
4 for you?

5 MR. NEGUS: Well, I don't remember whether we had
6 the copies or not, but I was not -- if you recall, the
7 last order we were at, you ordered them to turn over all
8 the Polaroids that they had -- not to turn over, but they
9 kept control of them, and I was allowed to photograph.

10 THE COURT: Yes. Did you photograph these?

11 MR. NEGUS: Those I did not -- the ones that I
12 say -- where it says "need Polaroids" I did not photograph.

13 THE COURT: You want that opportunity, or are you
14 asking for the original?

15 MR. NEGUS: I want that opportunity; however, the
16 way we did it last time was not particularly satisfactory.
17 I was -- we had to do it in the Homicide Department, and
18 the working conditions were less than optimal, but, you
19 know, leaving that aside --

20 THE COURT: Don't they have an ID Bureau down there
21 with a studio set up that would be better?

22 MR. NEGUS: Well, they have all kinds of things,
23 but --

24 MR. KOCHIS: Your Honor, we have, according to
25 Sergeant Arthur, set aside a room in the Identification
26 Bureau for the examination of evidence and photography,

1 I assume. The conditions that we made available to Mr. Negus
2 last time eventually resulted in a portion of some of the
3 photos being damaged due to some of the light equipment
4 that Mr. Negus brought that we -- that everybody didn't
5 check sufficiently before we started doing the photography,
6 which is why I'm a little reluctant to release negatives
7 and photographs. It wasn't intentional on Mr. Negus' part
8 or Mr. Forbush's part, but it was simply an accident,
9 and accidents happen, and even though everybody was there
10 watching the photography, it wasn't until the process had
11 been underway for 20 or 30 minutes till we realized that
12 we were heating up the emulsion on the photographs.

13 THE COURT: We simply have to avoid that and take
14 safeguards to prevent it, but still in all, he's got to be
15 allowed to take copies of that.

16 MR. KOCHIS: I don't have any problem with that.

17 MR. NEGUS: The other thing that I'm requesting is
18 negatives, which they will retain the Polaroid original,
19 the print. I'd just like to have the copies of the
20 negatives to take to my darkroom and make --

21 THE COURT: Copies of negatives?

22 MR. NEGUS: The negatives. The negatives, there's
23 two things. These are Polaroid -- it makes a print and it
24 makes a negative at the same time, my understanding of
25 the way the process works, and then they take the negative,
26 they develop the negative. What I'd like to be able to do

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1 is to have these negatives for a period -- short period
2 of time so that I can take them, make contact prints
3 suitable for my purposes from them.

4 THE COURT: Have you two discussed this? This is,
5 in effect, an oral discovery motion, and the usual manner
6 is to discuss it with opposing counsel.

7 MR. NEGUS: We have.

8 MR. KOCHIS: We have, Your Honor, and the reason
9 we have to bring it to the Court's attention is accidents
10 happen. They happened last time. Accidents could happen
11 with the negatives, and if an accident happens with these
12 negatives, the prosecution does not want to be responsible
13 for releasing them and allowing them to be damaged. It's
14 that simple.

15 MR. NEGUS: I feel that if you order them to be
16 given to me, they are protected. It's my fault if I
17 damage them, and I will do everything within my power to
18 take proper control of them and not to damage them. I
19 feel that it's easier this way than the way we did it last
20 time --

21 THE COURT: Do you oppose that, my making an order
22 ordering them released that way? Is his argument persuasive
23 that he's taking the risk then?

24 MR. KOCHIS: Well, he is, but as time goes on and
25 we look down the road over the years, he may not be the
26 only lawyer involved in this case, and he realizes that.

1 THE COURT: He can get them back to you. He's
2 not asking for them forever.

3 MR. KOCHIS: Well, I'm aware of that, Your Honor,
4 but what I'm saying is I don't want to stand here and say,
5 Judge, I have no problem, have an accident, have something
6 happen to Mr. Negus or his developing techniques, and later
7 with another lawyer have another lawyer point his finger to
8 me and say I'm not responsible for what Mr. Negus did, he
9 released them to Mr. Negus, and that was the same as
10 allowing them to be damaged or destroyed. There is that
11 potential.

12 MR. NEGUS: He wants to protect himself from that
13 lawyer at some future time attacking the way I handled it,
14 so he doesn't want to consent to it. He wants you to
15 order --

16 THE COURT: How much time do you require, Mr. Negus,
17 on the negatives?

18 MR. NEGUS: If I were to receive them next Tuesday
19 during the daytime, I could probably have them back for
20 sure the following Monday, maybe that Friday. It could
21 take -- the reason I say that, it's going to take me X
22 number of hours just to make the contact prints in the
23 evenings, and I -- so I feel that I could guarantee to get
24 them back on -- on --

25 THE COURT: Are you the custodian, Detective Arthur?

26 SERGEANT ARTHUR: In part, yes.

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1 THE COURT: Do you want to -- do you want to make
2 the transmittal and receive a receipt for them?

3 SERGEANT ARTHUR: I can do that.

4 THE COURT: Mr. Negus can receive it from you.

5 All right. With reference to B then --

6 MR. NEGUS: And there's also the page -- on the
7 third page there's other --

8 THE COURT: Let's take them one at a time.

9 MR. NEGUS: Okay.

10 THE COURT: On A, the -- you need the Polaroids.

11 MR. NEGUS: And if we can get a room which we both
12 agree on which has better ventilation than the other room
13 or if I can just use the light stand which they have in
14 the ID Bureau and put my camera on it or any other way
15 that -- that both of us are satisfied with beforehand, I
16 don't need the physical custody of the Polaroids in order
17 to -- I don't have to take those to my darkroom. I just
18 want to take pictures of them. However they want to work
19 that out, that's fine with me.

20 THE COURT: You know, this is a matter of incon-
21 venience, time-consuming problems, but we have to do it,
22 so it behooves you, I think, to find the best environment
23 to permit it and safeguard them.

24 MR. KOCHIS: Well, that will work only to the
25 Polaroids, which you notice, Your Honor, there's only
26 about three or four of those.

MR. NEGUS: The notes are no problem, Your Honor, just -- we -- I didn't rewrite the list. They are going

1 to provide me with those without -- the copies of the notes
2 without any problems.

3 THE COURT: All right. The negatives on C, are
4 they distinguishable in any way?

5 MR. NEGUS: No. They're the same thing.

6 THE COURT: All right. Same order.

7 MR. NEGUS: Thank you.

8 THE COURT: Off the record for a second on Cooper.

9 (Whereupon, another matter was handled.)

10 (No omissions.)

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1 D A N I E L J. G R E G O N I S, having been previously
2 duly sworn, resumed the stand and testified further as
3 follows:

4
5 DIRECT EXAMINATION (Resumed)

6 BY MR. NEGUS:

7 Q Mr. Gregonis, I'd like you to compare the photographs
8 I showed you yesterday with the originals which I under-
9 stand you now have in your position -- possession, and,
10 first, look at esterase D, which would be run 258. Is
11 there, as far as the original photograph, is there any-
12 thing in the original photograph which would enable you
13 to make typing calls which you couldn't make off H --
14 whatever that was -- .

15 A H-335.

16 Q -- 335.

17 A No, sir, there is not.

18 Q Showing you H-359, which I believe is run 259 for ester-
19 ase D, is there anything in the original photographs
20 which enable you to make these typing calls which you
21 could not make off H-359 -- excuse me, 3 -- yes, H-359?

22 A No, there is not.

23 Q Showing you the Photograph H-336, which is a copy of the
24 PGM results from -- from Run 258, is there anything on
25 the original that -- which enables you to make typing
26 calls that you couldn't make off the exhibit?

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- 1 A No, there's not.
- 2 Q Showing you Photograph H-353, which is a copy of Run 257
- 3 of PGM, anything on the original that would enable you
- 4 to make typing calls that you couldn't make off the
- 5 exhibit?
- 6 A No, there is not.
- 7 Q Showing you H-355, PGM for Run 256, ask you the same
- 8 question.
- 9 A No, there is not.
- 10 Q Exhibit H-356, copy of the photograph, PGM, Run 255, same
- 11 question.
- 12 A No, there is not.
- 13 Q Photograph -- Exhibit H-357, Photograph, PGM, Run 259,
- 14 same question.
- 15 A No, there is not.
- 16 Q Exhibit H-354, a photograph of the PGM on Run 260, same
- 17 question.
- 18 A No, there is not.
- 19 Q Photograph -- Exhibit H-358, a photograph of Run 261,
- 20 PGM, same question.
- 21 A No, there is not.
- 22 Q And last photograph, H-352, and last -- starting -- again,
- 23 Exhibit H-352, a photograph of the photograph in Run 263,
- 24 PGM, same question.
- 25 A No, there is not.
- 26 Q Now, turning your attention to the Group II results and

- 1 showing you the -- asking you to look at first Run 154,
2 the acid phosphatase, and showing you the photograph that
3 you prepared for the Preliminary Hearing, are there any
4 of those enzymes which you can make typing calls from
5 the original photograph that you can't make from the
6 Polaroid that you took of it?
- 7 A No, there is not.
- 8 Q Showing you Exhibit 341, a -- the Polaroid you took of
9 Run 156, acid phosphatase, asking you the same question.
- 10 A No, there is not.
- 11 Q Exhibit H-344, which is the photograph you took of the
12 acid phosphatase in Run 162, same question.
- 13 A No, there is not.
- 14 Q And, finally, H-345, which contains a photograph you
15 took of the EAP results in Run 163, same question.
- 16 A No, there is not.
- 17 Q So essentially, as far as typing is concerned, the
18 photographs which we have in evidence are -- show the
19 same things that the -- that the original photographs
20 that you have?
- 21 A I would say essentially yes, as far as the ones that you
22 showed me.
- 23 Q Just -- just the ones we were talking about here in
24 court today.
- 25 A Yes.
- 26 Q When you testified at the -- at the Kelly-Frye hearing,

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1 I requested that you take a sample of blood from Joshua
2 Ryen, the same -- the same blood that you had sent to
3 Dr. Blake, and retest that for Group I. Do you remember
4 that?

5 A Yes, I do.

6 Q Did you do that?

7 A Yes, I did.

8 Q With respect to the PGM results of Joshua Ryen, what
9 was the result?

10 A The result, after testing it, was that, well --

11 MR. KOCHIS: Well, Your Honor, I would object. This
12 doesn't relate to the Hitch issue. Sounds more like some
13 deposition or discovery issue.

14 MR. NEGUS: I think it does relate to the Hitch
15 issue. It relates to preservation of the -- of the samples
16 of Josh's blood.

17 I'd make an offer of proof that -- that is you read
18 the -- if you read the sample as it has been preserved in the
19 serology freezer of Joshua's blood, it would read of a type
20 that would be biologically impossible, given the fact that
21 Peggy Ryen was his mother. And from that, I --

22 THE COURT: But -- but what does a subsequent taking
23 of blood analysis have to do with --

24 MR. NEGUS: No. This is blood that has been in the
25 serology freezer and, presumably, is being preserved.

26 THE COURT: I thought you asked him to take a fresh

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1 sample and you're now asking him the PGM results of that.

2 MR. NEGUS: No, no.

3 MR. KOCHIS: Well, Your Honor, the problem I have
4 with if it's Joshua Ryen's blood, the objection I have in
5 terms of Hitch is obvious. Joshua Ryen survived. He's
6 available. If it was necessary, we obviously could get whole
7 fresh blood from Joshua Ryen, and it could be tested.

8 MR. NEGUS: Right. And if the results turn out to
9 be inconsistent with the -- with the result that you get
10 from -- from Josh fresh and the results that you get from
11 Josh's blood as they preserved it in the serology freezer,
12 one can then make an inference that they haven't properly
13 preserved Josh's blood in the serology freezer. If they
14 haven't preserved Josh's blood, it's -- one can also draw
15 inferences that they haven't preserved other blood, because
16 it's all in the same freezer.

17 THE COURT: All right. For what it's worth, let's
18 permit it. Overruled.

19 Q (BY MR. NEGUS:) Did you retest the sample of JJ, which
20 you took in -- which you put in the serology freezer in
21 June of 1983?

22 A Yes, I did.

23 Q And what was your call on that?

24 A My call on it was a PGM Type 2.

25 Q Given the fact that Peggy Ryen was Josh's mother, is that
26 call biologically possible?

1 A From what I know of the case or what I know of Peggy
2 Ryen, I would say yes.

3 Q Peggy Ryen was a Type 2, right?

4 A That is correct. She's a 1+1-.

5 Q And, therefore, if -- Josh -- Josh Ryen could not be --
6 could not be a Type 2 and be her son, correct?

7 A However, Josh Ryen could be a Type 2+1-, which he is.
8 And the 1-, as I stated in the Kelly-Frye hearing, is
9 more labile, and that is explainable.

10 Q I'm not asking your -- I'm not asking the explanations
11 right now. If your call that Joshua Ryen is a Type 2
12 is correct, then Josh couldn't have been Peggy's son,
13 correct?

14 A Well, first of all, Josh Ryen is a Type 2. The blood
15 sample that was put in there since June of last year
16 types as a Type 2 because of the degradation of the 1-
17 band.

18 (No omissions.)
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1 Q But obviously the problem we're having is that let's --
2 the other testing you've done on Josh Ryen is that he's
3 a Type 2-1; is that correct?

4 A That is correct, yes.

5 Q And what is your explanation of why you got an incorrect
6 result when you typed JJ this spring?

7 A As I believe I stated, Josh Ryen is a 2+ 1- in his
8 PGM subtype, and also the 1- bands tend to be more
9 labile than the other types of band concerned. Josh
10 Ryen's blood does exhibit a degradation, and I'd say --
11 I must say a relatively marked degradation of the 1-
12 band in comparison with the 2+, and that explanation
13 simply is that the 1- degraded faster than the 2+.

14 Q How did you -- how did you prepare the -- how did you --
15 what did you do to try and preserve the samples that
16 you obtained from the reference -- the reference samples
17 you obtained from various victims in this case?

18 A I did two things. One was that I took the reference
19 samples and I initially typed them, and out of the
20 reference samples, I drew probably approximately four
21 drops of blood, placed that four drops of whole blood
22 on a piece of clean cotton sheeting, white in color,
23 and I would say approximately anywhere from three to
24 four square inches in area. I let that dry overnight
25 to ensure that it was dry, and then I placed it into
26 the serology -- or freezer.

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1 Q You received Josh Ryen's blood in the laboratory on
2 June the 14th; is that right?

3 A That sounds about right, but I'm not sure. Yes, we did.

4 Q How soon after you received Josh Ryen's blood did you --
5 did you take these steps to preserve it?

6 A Well, the first step was putting it in the refrigerator,
7 which will preserve the blood samples to some extent.

8 Q But I'm talking about freezing.

9 A Well, that's part of the preservation of the sample
10 is to refrigerate it. Another part of the sample I
11 also froze.

12 Q The part that you froze, the one that you put the drops
13 on the cotton, how soon did you get that into the
14 freezer?

15 A This would be on June the 22nd of 1983.

16 Q Was the sample that you analyzed on June -- well, did
17 you also analyze Josh's blood on June the 22nd, 1983?

18 A Yes, I did.

19 Q And the samples that you analyzed, were they prepared
20 at the same time as the samples that you prepared for
21 freezing?

22 A Yes, they were.

23 Q So essentially the -- well, the blood that you received
24 as a reference sample from Josh was in a liquid state;
25 right?

26 A Yes, it was.

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1 Q And the -- then it was kept in a liquid state in the --
2 in the refrigerator; is that right?

3 A Yes, sir, along with the frozen swatch that I made out
4 of it.

5 Q Did you freeze the swatch then before the 22nd?

6 A No. I froze it it would be June the 23rd, the day
7 after I started typing the blood.

8 Q So the blood that eventually ended up on the cotton
9 swatch was -- was kept in a liquid state up until
10 June the 22nd; is that right?

11 A That is true, yes.

12 Q And before June the 14th -- the history of that blood
13 was that it was drawn at 2:00 o'clock on the afternoon
14 of June the 5th; is that right?

15 A Okay. I was told that that blood was a pre-transfusion
16 blood from Joshua Ryen.

17 Q Right, and so at 2:00 o'clock June 5 was the history
18 you got when you were told that it was pre-transfusion
19 blood; right?

20 A I can't say the time. I don't know. I believe it's
21 on the blood vial what time it was drawn.

22 Q Did somebody from the Sheriff's Department call you
23 up? Well, did somebody from Homicide call you up and
24 ask you to check the -- the vial?

25 A They may have, but I don't remember.

26 Q Assuming that -- well, whatever time the blood was

1 actually collected, you don't know its history before
2 it got to the lab; is that right?

3 A. As I stated, I was told that it was a pre-transfusion
4 blood from Joshua Ryen. That is the history that I
5 know.

6 Q. Okay, and you don't know whether it was kept in -- in
7 a -- in a refrigerator, out in an open room, or what;
8 right?

9 A. That is correct, yes.

10 Q. When you took the sample on June the 22nd, did you have
11 any problems getting the PGM results from Josh's whole
12 blood?

13 A. I believe I did the PGM results on June the 24th.

14 Q. Okay.

15 A. But no, I did not.

16 Q. Did -- you weren't doing subtyping at that time; right?

17 A. Not for this case. I believe our subtyping was down,
18 if you will, was -- we were having problems. We were
19 not using it for casework.

20 Q. The 2-1 that you got on -- you got a 2-1 on Josh at
21 that point in time; is that correct?

22 A. Yes, I did.

23 Q. And did that 2-1 if -- let's see. I think it's 2 --
24 do you know which?

25 A. I can tell you, Mr. Negus.

26 Q. Okay.

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1 A It's number 260.

2 Q And which -- there's 2 -- there's 2.

3 A It's number 1.

4 Q At that point in time, did the 1 bands appear to be

5 weaker than the 2 bands?

6 A Yes, they did.

7 Q Could you see in the photographs that you have still

8 clearly the 1 bands?

9 A No, I cannot, not clearly.

10 Q The -- in order for the -- in order for you to get the

11 result that you did when you re-ran Josh's blood in

12 I think it was March, the sample would have had to

13 degrade further in the freezer; is that right?

14 A That is true, yes.

15 Q You also did some -- some tests on a fresh sample of

16 Josh's blood, item TTT that was obtained in -- in the

17 spring of this year; is that right?

18 A That is correct, yes.

19 Q And you attempted to find out how long it took for

20 Josh's blood to -- to -- to lose the ability to read

21 the -- the 1- band; is that right?

22 A That is true, yes.

23 Q And at room temperature, what -- did you use liquid

24 blood or dried blood?

25 A Well, I used three different pieces of dried blood

26 that I made on cotton sheeting, as I did with JJ.

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1 Q The liquid blood degrades a lot faster than dried
2 blood; right, no matter -- I mean liquid blood at
3 room temperature faster than dried blood?

4 A Well, liquid -- comparing the two, liquid blood at
5 room temperature compared to dried blood at room
6 temperature, I'd say yes.

7 (No omissions.)

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1 Q And even refrigerated liquid blood will degrade faster
2 than dry blood, room temperature, right?

3 A I disagree with that.

4 Q Well, do you thoroughly understand the -- the wet --
5 differences between wet and dry changes in -- in blood
6 as far as its preservation is concerned?

7 A I understand them, yeah.

8 Q When -- does -- do 2 minuses have the -- sometimes have
9 the same properties as the 1 minus in Josh's blood as
10 far as disappearing faster than -- than other -- than
11 the pluses?

12 A They have been reported as such, yes.

13 Q Given the weakness of your results on A-41 -- well --
14 if you assume, hypothetically, that your -- on June the
15 13th, 1983, your G6PD had degraded somewhat so that it
16 was not bringing out all the -- developing the stain as
17 fully as possible, and if you assumed that A-41 was a
18 2-1+, would that have been consistent with the electro-
19 phoretic results you got?

20 MR. KOCHIS: Well, Your Honor, I'm going to object.
21 It does assume a fact that's not in evidence, that he had
22 problems with his G6PD.

23 MR. NEGUS: I think you can certainly -- you can
24 infer that circumstantially from the fact that --

25 THE COURT: Yes, I will. I reread the transcript
26 on that last night. And there's certainly enough to support

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1 it.

2 Overruled.

3 THE WITNESS: Well, if you're assuming that A-41 is
4 a 2-1+, I -- I first have to state that this phenomena,
5 from my experience, and also talking with other experts,
6 is mostly limited to the 1- bands. There is some discussion
7 about the 2-.

8 If you're -- you're thinking that the 2- band
9 degraded out of a 2-1+, I would say yes, that is possible.

10 Q (BY MR. NEGUS:) Or just that, and in Josh's situation,
11 the activity of the 2- was substantially less than the
12 1+, so that, with a very weak stain, you didn't bring
13 it up?

14 A That is a possibility.

15 Q And the only way that, if that -- if the hypo -- if the
16 facts of the hypothetical were true, the only way that
17 we could determine that would be to retest the PGM,
18 using non-degraded G6PD, correct?

19 A Well, first of all, I would disagree with that on the
20 bases that what I have observed from Joshua Ryen's blood
21 is that this is a phenomenon that occurs not because of
22 degraded G6PD and not because of the conditions of the
23 freezer storage; it's a condition of the sample itself.

24 I believe Josh Ryen's 1- band does degrade at an
25 accelerated rate, even compared to other 1- bands.

26 Q Okay. But -- but -- let -- let -- let's back up a minute.

1 We don't know, unless -- unless -- unless you -- as a
2 scientist, going into this experiment with A-41, you are
3 supposed to go in with an open mind, that is, not making
4 any conclusions as to whose blood you're dealing with,
5 correct?

6 A. That is correct, yes.

7 Q. Going into this experience with -- with -- with A-41
8 with an open mind, you don't know what kind of donor you
9 have, right?

10 A. That is true.

11 Q. And the only way that you can determine that is to find
12 the donor, and, if you could, and check him out, like
13 you did with Josh; is that right?

14 A. That is true, yes.

15 Q. Okay. So in trying to -- in trying to do these particular
16 experiments, when you -- when you did fresh blood from --
17 from Josh, the 1- was at least -- it was approximately
18 one half to one-third -- one half to one-third as much
19 activity as the 2+, right?

20 A. Well, first of all, I can't tell you from the photographs,
21 as I believe you were making the assumption from the
22 photographs. In order to make that statement, I would
23 have had to note it at the time that I read the plate.

24 Q. Okay. The -- the -- the readings that you have done now
25 of Josh's blood, that is, when you've taken his whole
26 blood, using new samples, using good G6PD, that's

1 approximately true; is that correct?

2 A Well, from my notes that you have obviously seen, yes,
3 that is true, using my degradation study. I have done
4 some further typing on those samples which have a lot of
5 sample of blood which I believe to be Joshua Ryan's
6 from the crime scene. And many of those, although they
7 are showing a degraded 1-, still have the 1- present.

8 Q Right. But I'm now talking about, in Josh, degraded
9 or undegraded, you show about twice as much or more
10 2 activity as you do 1 activity. I mean, I just took
11 Josh right here, pricked him and took a blood drop and
12 ran out and did an electrophoretic run on it, you're
13 going to get, according to your results, half as much
14 1- activity as you get 1+, right -- I mean, 2+.

15 A I would say just in the Group I, the study that I did
16 indicates to me that I got a normal -- normal banding
17 pattern for about seven days after I started. And then
18 approximately 14 days after I started the study, I did,
19 at least with the Group I alone, notice less intense
20 1 banding. With the PGM subtyping, approximately two
21 days after I started I did notice a weaker 1-. But to
22 infer from that that I can take him right now and run
23 his blood immediately after I get his blood sample, I --
24 I can't say whether I would find that it's half as much
25 or not. I doubt it.

26 Q Getting back to my -- my hypothetical, how long was it

1 before you -- before you froze A-41?

2 A That was frozen, I believe, the day after it was
3 collected or the day that it was collected by Dave
4 Stockwell. At least, that's the information that I get
5 from him.

6 Q Did -- if that turned out -- I'd like you to look, if
7 you could, at your p30 cross-over electrophoresis
8 results that you did on various vaginal, oral and anal
9 samples. Do you have those?

10 A Yes, I do.

11 Q And down at the bottom of that, there's -- is there
12 some notes about samples being frozen in your handwriting?

13 A That is true, yes.

14 Q And you note, do you not, that on June 9th you froze A-41?

15 A I'm not unclear -- well, I am unclear at this point
16 whether I froze those or whether that I got them from
17 the freezer. I do know that they were frozen. Now,
18 you'd have to ask Mr. Stockwell. But the information
19 that I have from him is that he put them in the freezer
20 the day that he collected them or the day after.

21 Q When did you get that information from Mr. Stockwell?

22 A Over the past year; I don't know exactly when.

23 Q Is that fairly recent or is that something you got a
24 long time ago?

25 A All I can say is it's over the past year. I don't know,
26 Mr. Negus.

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1 Q Back to the hypothetical, did -- if you have a 2- that
2 shows less activity than a 1+, given the weakness of
3 the G6PD which we're assuming in the hypothetical, is
4 it possible if you have that sort of situation to have
5 a result when you do A-41 of looking like a 1+ but
6 you're not seeing the 2- because of the weakness of
7 your G6PD?

8 A I would say it's possible, but not probable.

9 Q Okay. The only way that you could test for that would
10 be to retest A-41; is that correct?

11 A Well, I would say if the 2- band, in your hypothetical,
12 is degrading to a point where you can't read it, I
13 would say it -- at this point you probably couldn't
14 test for it anyway.

15 Q In October -- if -- if the -- in the frozen state, by
16 the way, of Josh's blood that you kept in the frozen
17 state hasn't -- on the TTT series, the ones you've
18 done your experiments on, has not degraded, has it?

19 A It's losing the 1- activity. I have not followed it
20 up to see -- so far, I haven't followed to see exactly
21 how far it's gone. It may have lost the 1- band by
22 now. My last run that I did on that is quite a while
23 ago.

24 Q The -- you had the TTT frozen from February till some-
25 time in the early part of June when you did your
26 results; is that right, February 28, I think?

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1 A Okay. Don Jones is the one who initially typed TTT,
2 and his notation on his notes here is that he did
3 that on March 3. It's customary for us to make stains
4 when we type the ABO.

5 Q So then rather than February 28, it would be March 3
6 that --

7 A Yes, sir. Well, excuse me. That is another swatch.
8 That's not the swatch that I'm conducting the studies
9 on, and that swatch, as of June the 21st, 1984, does
10 show a 2+ 1- activity.

11 Q So it had been frozen since essentially March the 3rd;
12 is that correct?

13 A Yes, sir.

14 Q Then is -- well, is there any other way than retesting
15 using good G6PD that you could determine in my
16 hypothetical whether you had a 2- 1+ with a weak 2-
17 or just a 1+.

18 A There is -- to my thought, there is one way that you
19 can do it. I have been told at least that the
20 degradation effects of the 1- band are not as severe
21 on isoelectric focusing.

22 Q So then you -- if you had run PGM subtyping, you might
23 have picked it up; correct?

24 A As long as I ran using more sample PGM subtyping on
25 isoelectric focusing, yes.

26 Q Isn't that the way you did it?

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1 A No, sir, it is not.

2 Q Is isoelectric focusing the -- as it were, state-of-
3 the-art way of doing PGM subtyping?

4 A I would have to say it's a way of doing PGM subtyping.
5 It is definitely a way that I believe gives you good
6 results. PGM subtyping has its -- or the isoelectric
7 focusing has its strengths and its weaknesses, as does
8 the method that I use.

9 Q Then either you -- the only way you could pick that
10 up then is either have done isoelectric focusing PGM
11 subtyping when you were doing your original tests or
12 to retest; is that correct?

13 A Well, I don't see how the retesting would give you
14 any information at all, granted that the 1- band is
15 going to be degraded.

16 Q The hypothetical is -- the hypothetical is that you
17 used bad G6PD and you can certainly if you have a
18 problem where -- where -- where you have what looks
19 like weak results, you're getting weak results, there
20 are things you can do to -- to cure the problem; right?

21 A Sometimes, yes.

22 Q One thing you can do is make sure you have strong G6PD;
23 correct?

24 A If that's the problem, yes.

25 Q And then if you -- if you still have a problem, you
26 can allow the thing to stain overnight?

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1 A Sometimes, yes.

2 Q You've done that with Josh's blood, have you not?

3 A That is true, but I -- that's also using a different
4 method than I used in -- slight modification of what
5 I've done here.

6 Q But, nonetheless, that can -- that can be done if
7 you -- if there's a problem; right?

8 A That is true, yes.

9 Q But none of those methods are available to us now
10 because there's no sample on A-41; is that correct?

11 A Of course.

12 MR. NEGUS: This is as good a time as any.

13 THE COURT: Sure. Take the morning recess.

14 (Recess.)

15 MR. NEGUS: Could we just have a moment?

16 Q The samples -- the whole blood samples from -- from
17 the deceased victims, when did you prepare the swatches
18 on those?

19 A The one for Peggy Ryen I did on June the 8th, 1983.
20 The one for Jessica Ryen I did on the same date, June
21 the 8th. The one for Doug Ryen I did on June the 8th,
22 1983, and the one for Christopher Hughes I also did on
23 June the 8th, 1983.

24 Q Okay. When you got those -- those whole blood samples,
25 were they like approximately four cc's of blood or
26 something?

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1 A I can't really tell you how much was in there. I don't
2 have that in my notes.

3 Q Did you preserve all of that sample or just part of
4 it?

5 A Well, I took a portion and put it on the swatch to
6 freeze. I -- it's -- it would be impractical to take
7 the whole thing and put it on a swatch and freeze it.

8 Q Why is that?

9 A Simply because to spread that much blood around and
10 have it dry efficiently would take probably a couple
11 square feet of material.

12 Q How much of a swatch do you have left?

13 A Probably I would say depending on -- about an inch
14 square on each of the people. That's about half -- ,
15 that's about the same amount that I sent to Ed Blake.

16 Q And what did you do with the rest of it?

17 A It's in the refrigerator.

18 (No omissions.)
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- 1 Q So it's degraded?
- 2 A Well, I'm sure it is at this point, since they're post-
3 mortem bloods.
- 4 Q Did -- did you do some testing on some cigarette butts,
5 items J-20, V-12 and V-17?
- 6 A Yes, I did.
- 7 Q How did you -- how -- how much -- how did you prepare
8 the sample that you used to do that testing?
- 9 A What I did with that sample -- well, the sample on J-20,
10 V-12 and V-17 are you asking about?
- 11 Q Right.
- 12 A I used a portion of the paper on the outside of the
13 cigarette butt and I put that in a test tube, and I
14 extracted it with saline. And then I used the saline
15 extract for my test.
- 16 Q Basically, the saline that -- that -- the stuff that
17 you extracted, then, was used up in your testing?
- 18 A Yes, it was.
- 19 Q With respect to V-17, a cigarette butt, did you take
20 approximately eight millimeters of paper?
- 21 A That sounds about right, from recalling what we did last
22 week up in Emeryville, yes.
- 23 Q And from the cigarette, the V-12 was a very small, roll-
24 your-own cigarette butt; is that right?
- 25 A Yes, it was.
- 26 Q And did you take about four millimeters of that paper?

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- 1 A I would say so, yes.
- 2 Q The portion of the paper on V-12 that you took, was that
3 the portion of the paper that's most likely to provide
4 serological information about the saliva and cell type
5 of the person that -- that smoked it?
- 6 A That was the paper that I felt is normally the one that
7 would give the most -- the largest amount of amylase,
8 which is a correlation with the largest amount of saliva
9 there.
- 10 Q Okay. So as far as -- as doing any of the various
11 types that could be done on dried -- any of the various
12 types to be done on -- on dried saliva, be it Lewis
13 testing, amylase, absorption-inhibition, absorption-
14 elution, that was the best?
- 15 A I would say so, yes.
- 16 Q Now, when you were doing the test, you did a non-
17 quantitative test to determine whether or not there's
18 amylase; is that correct?
- 19 A That is true, yes.
- 20 Q And even with non-quantitative tests, you can sometimes
21 tell whether you have a lot amylase there or not so much?
- 22 A That is true, yes.
- 23 Q The only records, however, you took was the fact that
24 you had it; is that right?
- 25 A That's true, yes.
- 26 Q And you don't remember presently whether or not you got

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1 strong, weak or whatever results?

2 A Not really, no, not from the testing that I did personally.

3 Q Right. What we're talking about is the stuff that you --
4 that you did back in June of 1983.

5 A That is correct.

6 Q Similarly, you did an absorption-inhibition test; is that
7 right?

8 A That is true.

9 Q And what did you expect the absorption-inhibition test
10 to tell you?

11 A That absorption-inhibition test, if a person is a
12 secretor, I would be able to pick up his secreted antigens,
13 ABO antigens.

14 Q When you did that test, you knew that Mr. Cooper was a
15 non-secretor, right?

16 A I believe the only thing I knew at that time was that it
17 was -- or, non-secretor was consistent with the blanket,
18 the semen on the blanket next door.

19 Q And Mr. Lorenz also told you that, that his samples from
20 Pennsylvania showed that the -- the -- the stains that
21 were presumptively from Mr. Cooper based on the finger-
22 prints were likewise from a non-secretor, right?

23 A I believe so, yes.

24 Q So if the -- if the -- if the cigarettes had -- that you --
25 if the -- if the testing that you -- well, the hypothesis
26 that you were testing was whether or not the person that

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1 smoked those cigarettes was Mr. Cooper; was that -- was
2 that one of the hypotheses you were testing?

3 A That's one of them. I basically wanted to see whether
4 it was consistent with the secretor or non-secretor.
5 That's basically where I was -- what I was after on that.

6 Q Well, you didn't do a test which would tell you whether --
7 whether or not you had a non-secretor, right?

8 A Well, I did a test that told me that -- which could
9 indicate whether it was a non-secretor. I -- the tests
10 that I did would not tell me absolutely that I had a
11 non-secretor, no.

12 Q There are -- you can figure that out, right, if you do --
13 if you do it correctly?

14 A Well, I disagree with your "correctly." The inhibition
15 is a correct procedure, for one thing. If you do Lewis
16 typing, then you can possibly, in some cases, tell that
17 the person is a non-secretor or not.

18 Q Okay. In some cases. And you can also, if you do a
19 combination of tests, amylase test, where you try and
20 gauge the quantity of the amylase, an absorption-
21 inhibition test and absorption-elution test and tests
22 for -- for Lewis antigens, putting all those tests
23 together, you can tell whether a person's a -- for sure
24 whether they're secretor or non-secretor, the person
25 that smoked the cigarette, right?

26 A I would say in most cases, yes.

1 Q And you can tell their ABO type?

2 A In most cases, yes.

3 Q And their Lewis type?

4 A Again, in most cases, yes. I -- I can't make an

5 absolute because it's just -- forensic material is not

6 ideal material to work with all the time.

7 Q I understand. But -- but assuming that you don't have

8 a sample with degradation, you can tell that?

9 A I would say those tests are designed to do that, yes.

10 Q And the absorption-inhibition test that you did can --

11 is -- is not conclusive on any of those things except in

12 fact there's enough there to get a -- get a reaction

13 from a secretor, right?

14 A Well, I would say that it's -- it's partly conclusive,

15 if you will. It's definitely consistent with non-

16 secretor, just -- just -- is that not correct?

17 A There's nothing there that's consistent with a secretor.

18 Q Well, the way you did the test, you can't say whether a

19 secretor smoked the cigarette or non-secretor, right?

20 A Not absolutely. I can say that it's consistent with a

21 non-secretor.

22 Q And consistent with a secretor, correct?

23 A Again, I state that there is nothing there to -- that

24 is consistent with a secretor.

25 Q The -- the -- leaving aside the metaphysics of the

26 "nothing there," the results on your test don't tell you

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1 whether it -- whether it came from a secretor or -- or a
2 non-secretor, correctly -- correct? There's no way we
3 know from your test whether it was a secretor or non-
4 secretor?

5 A Again, not as absolute as those tests that you outlined
6 before. But it's still consistent with a non-secretor.

7 Q And consistent with a secretor, is it not?

8 MR. KOCHIS: Well, Your Honor, I'm going to object.
9 It's been asked and answered about three or four times now.

10 THE COURT: He hasn't received an unequivocal answer.

11 MR. KOCHIS: He's not receiving the answer he wants.
12 He's receiving an answer.

13 THE COURT: But the answer is not precisely on --
14 the question actually can be answered yes or no, I believe.
15 It's either consistent or inconsistent.

16 Is it consistent with a secretor? You can answer
17 that yes or no.

18 THE WITNESS: It is not.

19 THE COURT: The answer is no to that, then. There's
20 your answer, Mr. Negus.

21 MR. NEGUS: Okay.

22 Q (BY MR. NEGUS:) The basis of your answer that it's
23 not is that a secretor should have left antigens in the
24 saliva which would show up on the absorption-inhibition
25 test; is that correct?

26 A That is true, yes.

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1 Q However, you did nothing to demonstrate that there was --
2 well, take it back.

3 Did you do anything to demonstrate that there was
4 sufficient amount of saliva present that you would
5 expect to get results from the absorption-inhibition test?

6 A I did do the amylase test. And from my experience in
7 the past, when I do have a positive amylase, I should get
8 results from the absorption-inhibition. And the positive
9 amylase, I -- if it was a weak amylase or something
10 like that, I would have noted, because that is my
11 normal procedure, to note weak amylase tests in my notes.

12 Q Okay. Well, the amylase test is considerably more
13 sensitive for the presence of amylase than the absorption-
14 inhibition test is for the presence of antigens, correct?

15 A That -- on the outside, I -- I would agree with that,
16 yes.

17 Q So there is at least an unknown to you range of positive
18 amylase results from secretors which will lead --
19 results which you would type as a non-secretor, correct?

20 A If you're talking about what they call aberrant secretors
21 or whatever --

22 Q I'm talking about regular, just regular old, run of the
23 mill secretors that when you -- when you extract your --
24 your stain you don't have enough saliva left to get a
25 result on the inhibition test but you've got enough
26 saliva there to get a result on the amylase test.

1 A I would expect, with the result like I got with a
2 positive amylase, not noted as a weak amylase test, that
3 I would -- I should pick up secreted antigens from a
4 secretor.

5 (No omissions.)
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1 Q Is that based on your experience?

2 A Yes, it is.

3 Q That's not what the literature says, though; right?

4 A I'm sure there's -- I believe I stated to you about --
5 or maybe gave you a clue or whatever about aberrant
6 secretors. If there's a person who is a secretor
7 that is secreting at very low levels, I don't believe
8 that I would pick it up.

9 Q Forgetting aberrant secretors, just regular ordinary
10 secretors, the literature doesn't -- doesn't the
11 literature mention the problem of because of a much
12 greater sensitivity of the amylase test than the
13 absorption-inhibition test, that you have got -- you
14 can't take a positive amylase which is not quantified
15 and use it to demonstrate that a negative absorption-
16 inhibition test means you have a non-secretor?

17 A I don't recall any literature that says that
18 specifically, no.

19 Q When you did the absorption-inhibition test, did you
20 do it in the maximal -- in the best way?

21 A I did it in a way that is, I believe, well known, and
22 it is a standard procedure in our laboratory, and it
23 has worked well for four years previous to this case.

24 Q Is that the best procedure?

25 A I think you're comparing apples and oranges. There
26 are other procedures which work well and work just as

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1 well as this one. There may be procedures, and there's
2 a procedure that I'm doing now which uses less sample,
3 but I don't know as it's any more accurate.

4 Q Is -- have you discussed the work that you did with
5 Brian Wraxall?

6 A Yes, I have.

7 Q Did he indicate to you that he thought he should do
8 the absorption-inhibition again if there was enough
9 sample to do that?

10 A I believe so, yes.

11 Q And why was that?

12 A That was just because we would have enough sample
13 out of the extract to do an absorption-inhibition
14 and just pretty much confirm my results.

15 Q Well, did he indicate to you that he was going to do
16 it differently?

17 A Well, yes. His technique is different.

18 Q And did he indicate to you that yours was not as
19 informative as his?

20 MR. KOCHIS: Well, I would object. It's going to
21 call for hearsay.

22 THE COURT: Sustained.

23 Q BY MR. NEGUS: Well, is Brian Wraxall a person who is
24 an authority you rely on in the field?

25 A He's an authority in the field, yes.

26 Q And he probably has worked on how to do this typing?

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1 MR. KOCHIS: Well, I'm sure he has. I'd probably
2 stipulate to that, but still statements he's made out of
3 court would be hearsay.

4 MR. NEGUS: But -- well, the thing is that
5 Mr. Gregonis is the expert. If he's had -- I'm entitled
6 to go into things that he's relied on, and even if they
7 are hearsay, and I think I'm especially entitled to
8 cross-examine him on areas which -- that he should have
9 relied on which he had available to him which are
10 contrary to his stated position.

11 THE COURT: He tested it in a certain manner.
12 Subsequent to that, he gives a portion to Mr. Wraxall to
13 test, and you want to bring out the results of the latter?

14 MR. NEGUS: No.

15 THE COURT: I don't know how you can do it.

16 MR. NEGUS: Well, no. What I'm -- let me try and
17 clarify what I'm getting at. I believe that Mr. Gregonis
18 did certain testing in which he used up a major portion of
19 the sample on -- on these two cigarette butts. I don't
20 think we're going to be able to get everything we'd like
21 to get out of the cigarette butts. At least, that's
22 what I've been told. I don't know for sure, but that's
23 what I've been told; therefore, that suggests to me a
24 Hitch problem.

25 I believe that Mr. Gregonis has also indicated
26 that the absorption-inhibition test that he did was not

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1 sufficient to demonstrate that which he thought it was,
2 and I think I am entitled to bring that out.

3 THE COURT: I don't see how that cures the problem,
4 Mr. Negus. No, the ruling will stand.

5 MR. NEGUS: The relevance of the statement to
6 Mr. Gregonis goes to his statement in court here today
7 as an expert that the procedure he did was -- was -- was
8 a good procedure to -- to measure the things that he says
9 it does. If he has information to the contrary from
10 Mr. Wraxall, I think I am entitled to bring that out to
11 undercut his opinion.

12 MR. KOCHIS: Well, Your Honor, if the relevance
13 in the Hitch issue is the test we used, the portion that
14 was exhausted, and his state of mind in choosing that test,
15 how is what another expert eight or ten months later says
16 to him about a technique relevant to the --

17 THE COURT: For the third time, the objection is
18 sustained.

19 Q BY MR. NEGUS: Is there enough sample left of V-12 to
20 do an absorption-elution test, a test for Lewis antigens,
21 an absorption-inhibition test, and the amylase test?

22 MR. KOCHIS: Well, I am going to object in terms
23 of relevance as to vague as to time, because his answer
24 today would be different, I assume, than his answer last
25 week when there was joint testing by Mr. Negus' expert --

26 MR. NEGUS: There was not joint testing, Your Honor.

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1 There was testing done by --

2 THE COURT: At least clarify the time, if you
3 would, please.

4 Q BY MR. NEGUS: After you got through with the -- with
5 the -- with your tests back in June, you took the --
6 took the cigarettes, V-12 and V-17, up to Mr. Wraxall
7 last week, I guess; is that right?

8 A That is correct.

9 Q And was there enough left of the sample of V-12 for
10 Mr. Wraxall to test V-12 and have enough there to get
11 results on amylase, absorption-inhibition, absorption-
12 elution and Lewis antigens?

13 A I believe at that time, from what I recall from talking
14 to Mr. Wraxall, there was.

15 Q The little cigarette butt?

16 A Yes, sir.

17 Q Was there enough left for the defense to do independent
18 testing on it?

19 A No. We exhausted the sample.

20 Q Does the same apply for V-17?

21 A There's still parts of V-17 left that can be used.

22 Q What parts are those?

23 A I believe there's parts of the filter itself, and also
24 parts of the paper surrounding the filter that could
25 be used that we got results off of.

26 Q Are those the parts that are farthest away from the lip?

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- 1 A Well, they're -- they're further away than those
2 immediately on the lips, yes, but they are not the
3 farthest away, as you state.
- 4 Q The parts that are left -- you took -- you and
5 Mr. Wraxall took the parts that are nearest; correct?
- 6 A We took -- well, it depends on which cigarette butt
7 you're talking about.
- 8 Q V-17.
- 9 A V-12 we took the entire thing, what was left.
- 10 Q V-17.
- 11 A V-17, we took a portion of the paper that was closest --
12 that was remaining. Anyway, we took a portion of
13 that that was closest, if you will, to the -- to the
14 lips. We also took a portion of the very end of the
15 filter.
- 16 Q Given what remained of that cigarette when you took it
17 up to Wraxall, is it going to be possible to -- to
18 conclusively say that it's consistent or inconsistent
19 with Mr. Cooper?
- 20 A I'd have to talk to Brian Wraxall and see what his results
21 are from his testing.
- 22 Q Was there enough -- was there enough sample left to
23 do tests that would answer those questions?
- 24 A I believe, again, talking to Brian last week, that he
25 believed there was.
- 26 Q Hypothetical: If an ax such as the Estwing type that

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1 you've done experiments on had blood on it of the
2 amount that was on the hatchet which was Exhibit S-21
3 and was thrown into a field in Chino sometime between
4 10:00 o'clock on June the 4th and 6:00 o'clock in the
5 morning on June the 5th, was found approximately 3:40
6 in the afternoon on June the 5th, 1983, and the
7 temperature range at that point in time was between
8 50 and 70 degrees and it didn't rain and it landed in
9 some grass of the type that you have seen previously
10 in the photographs of the Estwing hatchet, would that
11 be enough to degrade the sample so you didn't get any
12 enzyme results from the blood?

13 A. It could.

14 Q. How is that?

15 A. Because the metal surface of the ax from the sun, but
16 I would expect to get some results, at least.

17 Q. Well, the ax -- do you recall the picture of the ax?

18 A. Vaguely.

19 (No omissions.)

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1 Q Showing you Exhibit S-26, is -- asking you to look at
2 the condition of the ax in that photograph taken in the --
3 in the sun, do you believe that that amount of sun that
4 would have come on that ax in which the ax was being in
5 contact with the -- with the earth would have caused
6 the enzymes on that to disintegrate to the fact -- to the
7 state where you couldn't get any results on it?

8 A Again, it is possible.

9 Q Does the earth act as a heat -- heat source when the ax
10 is resting on it like that?

11 A Well, first of all, I think you have to -- you're mis-
12 stating -- what I see in the picture at least is that
13 it's laying on top of some grass, not on the earth
14 itself.

15 Q Okay. The mass -- you felt that -- the hatchet, right?

16 A I didn't see the ax -- actually I don't think I have
17 ever seen the -- seen the hatchet at all except maybe
18 in the Preliminary Hearing. I'm not sure.

19 Q Well, at the Preliminary Hearing, let's see, do you
20 remember being asked the same type of question?

21 A No, I do not.

22 MR. KOCHIS: Your Honor, if I could have a volume
23 and a page, that would aid me.

24 MR. NEGUS: Excuse me. 1087, 88.

25 Q (BY MR. NEGUS:) First of all, showing you Exhibit S-21,
26 the hatchet has a fair amount of mass to it; is that

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1 correct?

2 A Yes, it does.

3 Q And in the photograph, enough mass to compress whatever
4 grass there is into the earth underneath it; is that
5 correct?

6 A Well, it appears that it -- I don't know how much grass
7 is there. I'd have to look at the area itself. So I
8 don't -- I can't really tell you.

9 Q Certainly, like, if you place it on the bag here, it has
10 enough to compress the bag?

11 A Well, it's like any object you put on top of another
12 object. It's going to push it down, yes.

13 Q Okay. And at the Preliminary Hearing, do you -- let
14 me just ask you to look at this pretty, multi-colored --,
15 from Page 87, Line 7 through 88, Line 2.

16 I think you got -- it starts up here.

17 A (Witness complied.)

18 Q Okay?

19 A Yes.

20 Q First of all, were there any facts -- any differences
21 in the facts in the hypotheticals between the prelim
22 and today that would have caused you to vary your
23 answer?

24 A The one that I basically thought of after looking at the
25 picture is that it is exposed somewhat to the sun.

26 Q Okay. But --

1 A I thought basically that the -- that it was buried in
2 the -- in the grass itself. But it's obvious here that
3 it was exposed somewhat to the sun.

4 Q Well, between, say, a piece of nylon rope that's sitting
5 out on hot asphalt and that particular hatchet, remembering
6 the climatic conditions where it's not much above 71
7 degrees, do you think that the ax in the grass should
8 be more affected than the rope on the asphalt?

9 A I believe it could be, and the --

10 Q How's that?

11 A -- reason is because metal is a conductor. And if you
12 have ever touched metal, even on a 70-degree day, it is
13 hot in direct sunlight.

14 Q Well, depends upon -- doesn't that depend upon where ,
15 the metal is? There's -- metal laying on the ground is
16 not necessarily going to be hot as metal as metal that's,
17 say, on top of a car, right?

18 A Well, if they're both exposed to the direct sunlight,
19 I don't see the difference. They're both heat conductors.

20 Q Have you done any -- well, as far as -- as far as -- as
21 far as the metal on top of the car, the reason it gets
22 hot is because the metal retains some of the heat, it
23 doesn't have any place to transfer it to when it comes --

24 THE COURT: Counsel, I've heard enough of it as --
25 as to how much heat is there and whether or not it had any
26 ability to degrade the blood on it. It's all problematical

1 and arguable. Why -- why belabor the point?

2 MR. NEGUS: Well, because, Your Honor, I think
3 there's been a change in the position of the Prosecution.
4 They thought of this idea about the metal between the
5 Preliminary Hearing and now. I don't think it -- I don't
6 think it makes sense. and I don't think they have done any
7 experiments to --

8 THE COURT: Fine. You can argue that, sir. But
9 that's about enough of the questioning on the point. Let's
10 don't belabor the obvious. It's arguable. Another person
11 can say something different. He can have different opinions.
12 You can impeach him on it.

13 MR. NEGUS: I move, then, to strike his opinion that
14 the -- that's the effect -- and the opinion of Mr. Stockwell,
15 whoever it was that gave the opinion from the Prosecution
16 that -- that the degradation on the -- of the -- of the
17 sample on the ax could have been caused by the sun.

18 THE COURT: Okay. Denied. Move on. Under 352
19 of the Evidence Code, move on.

20 MR. NEGUS: I would like to read from Page 87, Line 7,
21 through 88, Line 2, of the transcript of the Preliminary
22 Hearing.

23 THE COURT: You may.

24 MR. NEGUS: "Question: Assuming it was between
25 51 and -- a high of 71, low of 51, and assuming that
26 the ax had been thrown in some grass at 3:30 a.m.,

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1 discovered at 3:30 p.m., approximately, and taken
2 to the lab, would you expect to be able to get
3 results from blood if it were on that ax?

4 "Answer: Yes, I would.

5 "Question: There would be nothing about those
6 particular extremes of temperature or what have you
7 that normally should inhibit blood if that's when
8 the ax got there?

9 "Answer: Not in a day, no, sir.

10 "Question: And the -- all the enzymes should
11 come out without any problems?

12 "Answer: Provided that the blood was placed on
13 the ax some -- close to that period. And there was
14 enough to do the sampling and testing, yes.

15 "Question: Assuming that the blood got there,
16 say, at 11:00 o'clock on June the 4th and was -- it
17 was thrown out at 3:30 a.m. on June the 5th and
18 was found around 3 -- 3:30 in the afternoon on
19 June the 5th, there shouldn't be any problem, right?

20 "Answer: I'd say there shouldn't be a problem."

21 Q (BY MR. NEGUS:) Have you done any tests on the -- whether
22 or not leaving that type of an ax in the sun will cause --
23 how hot it will cause it to get?

24 A No, I don't. But I do intend to.

25 Q In your -- in your examination of -- of the evidence
26 at the scene, when -- and your looking at the photos that

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1 Mr. Kochis showed you Tuesday, you said you -- you saw
2 no evidence at the crime scene from which it could be
3 determined if the victims moved from room to room.

4 A I don't believe I stated that, no.

5 Q Well, do you think that the physical evidence at the
6 Ryen crime scene, based on your examination of that
7 crime scene and the photographs, would enable you to
8 make inferences about the victims moving from room to
9 room?

10 A I believe so, yes.

11 Q What inferences could you make?

12 A Basically, from at least the victims as they're bleeding,
13 I don't believe really they moved much out of the area
14 of the master bedroom and the bathroom and part of the
15 hallway.

16 (No omissions.)

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1 Q Could you rule out the -- well, the hallway, the master
2 bedroom and the master bathroom are places where you
3 found victims' blood; is that right?

4 A That is correct, yes.

5 Q So you're just -- you're basing that on -- that while
6 they were actually physically dripping blood, they
7 wouldn't have moved some other place?

8 A Exactly, yes.

9 Q Are there any other inferences that you can make about
10 the movement of the victims from room to room other
11 than just -- just that one?

12 A Well, again, basing it on the fact that I'm assuming
13 you're talking about when -- after they're bleeding.

14 Q At any point in time.

15 MR. KOCHIS: Well, I would object certainly as not
16 being relevant as to any day prior to June the 4th.

17 THE COURT: Yes. That's a good objection.

18 Q BY MR. NEGUS: During the assault.

19 A I can't say whether that any of the victims were
20 running around the house not bleeding while an attack
21 was going on, no.

22 Q What about tracks of blood?

23 A Tracks of blood would indicate to me that somebody
24 stepped in the blood, not necessarily the victims.
25 I have seen some that are possible that the paramedics
26 have stepped in that blood also.

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1 Q If you had somebody documenting whether it was the
2 paramedics that was tracking around the blood or
3 somebody else, you could then -- that would help you
4 in making inferences as to whether people have moved
5 from room to room with blood on their feet; is that
6 right?

7 A I believe it would, yes.

8 Q Also, if you had some documentation about the shape
9 and size of the impressions that appeared to be --
10 to be foot impressions, that would help you make
11 some inferences; is that correct?

12 A That is true, yes.

13 Q For example, I mean it would -- depending upon the
14 situation, but it might be easier, for example, to
15 distinguish blood on Joshua's feet and blood on
16 a paramedic than one paramedic from another?

17 A Well, it depends on what -- what you have. If you have
18 a large boot print and the paramedic was wearing a boot,
19 yes, compared to a small child footprint.

20 Q But in order to -- in order to make that determination,
21 somebody has to document it so you can measure it and
22 make those kind of comparisons; is that right?

23 A Well, it depends on the initial observation. If the
24 person has -- obviously, if they -- I believe if they
25 have recollection of seeing something, they can make
26 that inference now. If they don't have a recollection

1 or don't have any notes at all, then, no, you cannot
2 make that inference.

3 Q Did you see the blood in the bath of the master
4 bedroom of the Ryen house?

5 A I saw blood in there, yes.

6 Q Did you see any blood to you that looked like footprints?

7 A Possible footprints, yes.

8 Q Did you take measurements of it?

9 A No, I did not.

10 Q Do you have any present memory?

11 A Some, yes.

12 Q Could you tell, based on your memory now, whether it
13 came from a paramedic, police officer, suspect, Joshua?

14 A The ones that I remember are consistent more with a
15 larger foot than a child.

16 THE COURT: Consistent more with shoe prints or
17 bare feet prints?

18 THE WITNESS: I can't tell, Your Honor, because
19 there's no definition of it as to whether it's actually a
20 footprint or a shoe print.

21 Q BY MR. NEGUS: I'm showing you what I believe are the
22 photographs we have of the carpet in the Ryen master
23 bedroom, H-163, -164, -165, -167 and -168. Do you
24 see on those the marks that you're talking about?

25 A Not really, no. I remember some being in front of the
26 toilet. These may be part of them. I'm not sure.

1 Q These being the marks that are near the number 43 in
2 photograph Exhibit H-163?
3 A Yes, sir.
4 Q Those may be part of what you're talking about?
5 A Yes.
6 Q From the photograph, can you tell whether those came
7 from Josh or a paramedic?
8 A Not really, no, sir.
9 Q Do you recall -- can you approximate from your memory
10 the dimensions of the footprints that you thought were
11 more consistent with coming from a paramedic than Josh --
12 or adult than Josh?
13 A I would say the ones that I remember, at least that
14 were in front of the toilet, would be approximately
15 I would say four inches wide by eight to ten inches
16 long, maybe longer. I'm not sure.
17 Q Were there any -- any marks on the molding that might,
18 if analyzed properly, allow inferences about persons
19 moving from room to room?
20 A As to blood you mean?
21 Q Yes.
22 A Well, first of all, I -- I didn't see any indications
23 of blood, even if it was analyzed and it was the
24 victims', that would tell me that it was the victims
25 that moved from room to room. There were things that
26 were consistent with the victims, for instance, lying

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24 A I base that on the fact that there's blood that we
25 found on various locations in the room. I can read
26 you which ones. Blood from the north walls -- wall and

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1 closet doors is consistent with him, blood from the
2 telephone which was on the east side of the bed,
3 blood from the southeast wall near the dresser, blood
4 across from the southeast corner of the waterbed,
5 blood from above the bed, blood scrapings from the
6 nightstand west of the bed, blood scraped from the
7 west closet doors, blood from the doorjamb of the
8 bathroom door, and that so far is it.

9 Q Okay. With respect to the telephone, you yourself
10 took the samples off the telephone?

11 A No, I did not.

12 Q Who did?

13 A I believe that was done by Dave Stockwell.

14 Q Was his telephone delivered intact to the laboratory?

15 A I don't know. I don't recall it being in the laboratory,
16 but I'm not sure at this point.

17 Q Do you have any idea where on the telephone the --
18 A-2 --

19 A Excuse me. Yes. That -- that is -- it was delivered
20 intact to the laboratory.

21 Q Okay. Are you sure that it wasn't you that took the
22 sample from the phone?

23 A I'm not absolutely sure, no.

24 (No omissions.)
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1 Q If it was you, you had no idea where on the phone you
2 took it from?

3 A That is correct, unless I marked somewhere on the phone
4 if I took it.

5 Q Okay. And Mr. Stockwell didn't leave you any notations,
6 if it was he that did it, to where he took it from,
7 right?

8 A Not that I know of, no.

9 Q The -- assuming that Mr. Stockwell has no idea as to
10 where he took the samples of blood that he took other
11 than just those descriptions that -- that you were
12 reading earlier, is there any way from -- from just
13 finding Douglas Ryen's blood in different general
14 locations around the room without knowing the type of
15 deposit it was that you can make an inference that he
16 was there?

17 A Not really, no. You'd have to know the type of deposit.

18 Q Okay. So without knowing the -- the type of deposit,
19 is there anything inconsistent with the proposition that
20 Douglas Ryen didn't get any further out of the bed than
21 he's shown in H-75?

22 A Well, because of the blood on the wall board and what
23 I saw at the crime scene, I don't believe that he was
24 bleeding all the time when he was in that position. I
25 believe he was at -- at least on the opposite side of the
26 bed.

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1 Q Right. But I said didn't get any further out of the
2 bed. I believe earlier you testified you believed that
3 the evidence showed that he somehow maneuvered around
4 the bed, got from one side to the other; is that --

5 A Essentially, yes.

6 Q Okay. What I'm asking you is, based upon -- giving you
7 the additional fact that Mr. Stockwell doesn't know
8 where he got the blood from, other than just those
9 descriptions that -- that -- that you gave, can you then --
10 you therefore still say that Douglas Ryen got out of bed
11 and was going around it, or is the evidence just
12 equally consistent, given the -- the state of the
13 preservation of it, that he never got any further out
14 of bed than he's shown in that photograph?

15 A It's consistent with that, yes.

16 MR. NEGUS: Now, sir.

17 THE COURT: Let's resume at 1:30 this afternoon.

18 (Whereupon the noon recess was taken at
19 11:57 a.m.)
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1 ONTARIO, CALIFORNIA: THURSDAY, JULY 12, 1984; 1:37 P.M.

2 DEPARTMENT NO. 3 HON. RICHARD C. GARNER, JUDGE

3 (Appearances as heretofore noted.)

4

5 THE COURT: Okay, Counsel.

6

7 DIRECT EXAMINATION (Resumed)

8 BY MR. NEGUS:

9 Q Showing you Exhibit H-363, is that a list of your
10 typing results on the three pieces of bedding that Mr.
11 Stockwell took samples from?

12 A Yes, it is.

13 Q Okay. And your typing off that is not yet complete,
14 but what -- what the -- what you have done is listed
15 on that chart; is that right?

16 A That's correct.

17 Q And those samples which are labeled A -- A through --

18 A A dash 5.

19 Q A-5, A through A-5 are from the comforter; is that
20 correct?

21 THE COURT: Are from what?

22 Q (BY MR. NEGUS:) The comforter, the quilt thing on the
23 bed.

24 A Yes, they are.

25 Q And A-8 through A-8k are from the top sheet?

26 A That is correct, yes.

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1 Q And the ones that are A-10a through A-10j are the
2 bottom sheet; is that correct?

3 A That is correct, yes.

4 Q Okay. And showing you Exhibit H-364, is that a summary
5 of the serological work that you've done in this case
6 other than the bedding?

7 A I can't say that it's absolutely everything, but I -- I
8 believe it's most everything.

9 Q And that was prepared by yourself?

10 A Yes, it was.

11 Q Okay. And with respect to the descriptions of the
12 various items on there, like where there's quotes from,
13 let's see, like on A-34, where it says "metal pillbox,"
14 that's your description of what you saw that the blood
15 came in, right?

16 A That is correct, yes.

17 Q And then where it says I.D. as being, quote, "blood from
18 bed stand," that's -- the quoted material is -- is the
19 description that the person that collected it wrote on
20 the item itself; is that right?

21 A Or a partial description, yes.

22 Q Well, did you -- when there was something on the pillbox,
23 did you leave anything out of that?

24 A I believe not, but I may have. I'm not sure.

25 Q And in some -- in -- in all cases you -- you attempted
26 to -- to describe the container in which you received

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1 the -- the item; is that right?

2 A That is correct, yes.

3 Q And the tests that are described there are the same
4 tests that you have been testifying about for several
5 months in this case; is that right?

6 A That is correct, yes.

7 THE COURT: I'll stipulate to that, Counsel.

8 Q (BY MR. NEGUS:) Yesterday Mr. Kochis asked if there
9 were any -- any pieces of physical evidence that you
10 saw on the 6th or that you saw on the photographs which
11 allow you to make inferences about victims' resistance,
12 and you answered, "Without further analysis, no." Do
13 you remember that, basically?

14 A Basically, yes, I do.

15 Q What further analysis would be required?

16 A Well, the analysis of blood samples around the room.

17 Q And in order to do that, you'd have to know what kind
18 of -- again what kind of pattern around the room you
19 were dealing with and precisely where the blood came
20 from, right?

21 A That is correct, yes.

22 Q You indicated that Douglas -- that from your analysis
23 of the physical evidence it appeared that -- that Douglas
24 Ryan was struggling with an assailant; is that --

25 A No; I disagree with that. I -- I -- my inference, and,
26 hopefully what I got across, is that I indicated that he

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1 was moving around the room. Now, whether he was
2 struggling with an assailant or not, that's speculation.

3 Q Well, what's the difference between speculation and saying
4 it is possible that he was in a struggle of some sort
5 with the assailant? Is that -- do you mean speculation to
6 be a reasonable possibility?

7 A I can't put a reasonable pop -- or, reasonable possibility.
8 I can just say it's a possibility.

9 Q When you -- when you were in the room, were there --
10 were there firearms laying on the bed?

11 A I recall seeing some firearms, but I don't know whether
12 they were laying on the bed at the time.

13 Q Let's see.

14 A Are they here?

15 Q They're here, showing you Photograph H-52 and H-53.
16 Are those the firearms to which you're referring showing
17 there laying on the water bed?

18 A They were like the ones that I saw there, yes.

19 Q And were those firearms described to you as having been
20 in the dressers and closet in the master bedroom?

21 A The only location that I remember them being described
22 to me as being was in the west closet. I don't remember
23 them -- anybody telling me that they were in the
24 dressers.

25 Q Is it possible to make inferences from the physical
26 evidence about the number of assailants that would have

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1 been required to, on the one hand, be engaged in the
2 struggle with Douglas Ryen around the room and, on the
3 other hand, keeping Peggy Ryen away from the -- from the
4 guns based on the physical evidence?

5 A. No.

6 Q. Why not?

7 A. Because unless you know for a fact, and I don't believe
8 there's any way of knowing for a fact, that Peggy Ryen
9 was incapacitated prior to Doug Ryen, if you, with your
10 hypothetical or whatever, were struggling around the
11 room, I don't think you can make that judgment.

12 Q. So if you were able to determine who had been
13 incapacitated first, then you would be able to?

14 A. Not absolutely, no.

15 (No omissions.)

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- 1 Q You could at least begin to -- begin to come up with
2 reasonable possibility from the physical evidence?
- 3 A I can't even say that, because of the nature of this
4 thing. I don't know her behavior, either, whether
5 she was incapacitated possibly by the cuts she
6 received or possibly just by the sheer trauma of what
7 was going on then. I -- I can't tell you.
- 8 Q Well, from the wounds that were on Peggy Ryen's
9 body herself, one can infer that she was struggling
10 with an assailant or assailants; correct?
- 11 A I can't say struggling, and I don't -- I believe she
12 had some type of defensive-type wounds, but I can't
13 say where they were and how many.
- 14 Q By the way, when you were in the house on -- on June
15 the 6th, did you see these smears, blood smears, that
16 are depicted in H-175?
- 17 A Okay. Where is that in the house?
- 18 Q The door from the hallway where Jessica was found near
19 the master bedroom into the platform between the family
20 room and the living room.
- 21 A I don't recall them, and I don't recall that door ever
22 being closed in such a manner, so I don't think I
23 would have seen them.
- 24 Q You didn't look behind any doors?
- 25 A No, I didn't, not behind that one, at least.
- 26 Q That was right across the hall from where A-41 was

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- 1 found; correct?
- 2 A Well, as you're looking at this picture, if my
3 orientation is right, A-41 is to your left.
- 4 Q That would be shown as -- in H-174, A-41 was just
5 off the bottom left-hand corner of that picture?
- 6 A Approximately, yes.
- 7 Q With respect to the sample U-31, when you looked at
8 that east wall, you indicated yesterday that at least
9 the blood that you analyzed from that wall appeared to
10 be consistent with coming from Douglas Ryen; is that
11 correct?
- 12 A Did you say U-31?
- 13 Q A-31. Excuse me. I don't know what I said.
- 14 A Yes, it could be.
- 15 Q And showing you photograph H-112, asking you to look
16 at that little drop E that's labeled with an E there,
17 if that were the drop that you were analyzing, would
18 that have been consistent with being cast-off blood
19 that flew from a position where Douglas Ryen was
20 attacked on the bed?
- 21 A I would say it's possible, but to me, just looking at
22 this pattern and looking at that blood drop, it looks
23 more like arterial-type blood, the largeness of it.
24 It's very large.
- 25 Q Well, can you tell how large it is without a scale?
- 26 A Well, I know the approximate dimensions of the numbers

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1 in the picture, and just they -- it seems fairly large.

2 Q Would -- given the directionality of that and the other
3 blood and the size of the other blood on the wall,
4 would you think that that drop that's labeled E would
5 have been consistent with coming from the same source
6 as the other drops?

7 A There's nothing there to eliminate them from coming
8 from the same source. It certainly could be.

9 Q Well, if that were arterial blood -- you'd look at the one
10 that -- let's see -- is labeled as D -- what position
11 would the person whose artery that was have to have
12 been in to have sprayed blood on both those places
13 at the same time?

14 A Just by looking at the photograph, it appears -- first
15 of all, I -- you're assuming that these blood drops
16 are arriving here at the same time. I can't say that.
17 It could be that the person is moving around, but,
18 anyway, looking at the picture, it appears that they --
19 D was deposited somewhat from the right of this picture
20 and possibly even or slightly above where D is, and
21 then E was deposited from below and maybe slightly to
22 the right.

23 Q So you think that they could have come from the same
24 source?

25 A They could have, yes. Again, I -- I can't say that --
26 you know, I don't know of anybody who can say that they

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1 | came at the same time, either.

2 Q The drop D would not be consistent with coming from
3 the bed; right?

4 A Okay. I'm not sure of the orientation of where this
5 picture is. Is this the dresser to the --

6 Q Let's see. No. Showing you photograph H-117 and
7 assuming the drop --

8 THE COURT: Counsel, are you responding to
9 Mr. Kochis' questions of the witness now?

10 MR. NEGUS: With this series, yeah.

11 THE COURT: Okay. Confine yourself to that.

12 MR. NEGUS: Well, I hadn't stopped --

13 THE COURT: But you had stopped, with the exception
14 of that one area.

15 MR. NEGUS: That's not true. I mean I just said
16 that I was -- yesterday I said that I was prepared -- I
17 was prepared yesterday to do A-41. We're going from night
18 to night, Mr. Kochis and I, Your Honor, and I didn't say
19 that that was all that I had left.

20 THE COURT: I understood it to be so.

21 MR. NEGUS: Well, I didn't mean it to be so, and
22 I didn't say that, I'm sure.

23 THE COURT: Are you going to finish with this
24 witness today?

25 MR. NEGUS: I hope so.

26 THE COURT: Hurry.

1 MR. NEGUS: I mean -- well, let me -- I hope to
2 finish with my questioning of him today on what he's
3 done so far. I would not preclude recalling him when
4 he finishes the work that he's going to do.

5 THE COURT: Go ahead.

6 Q BY MR. NEGUS: Assuming that the drop that's labeled
7 E on photograph 117 is the same as the drop E on 112,
8 would the D drop have been consistent of coming from
9 the bed?

10 A It's hard to say, really. Just looking at your
11 photograph and looking at the obstructions, I'd say
12 no.

13 Q When you -- Mr. Kochis was asking you about June 6
14 when you and Mr. Ogino were out at the scene. He
15 asked you if you intended to take -- when you were out
16 there, if you intended to take additional samples of
17 blood, and you answered no?

18 A That is correct, yes.

19 Q Why not?

20 A Basically, because our -- we weren't -- our minds weren't
21 closed to it, but our basic reason for going out there
22 was to take a look at the blood spatter patterns.

23 Q Did you just intend to leave all those uncollected
24 samples on the walls?

25 A I believe I answered that before today in that our
26 minds were not closed to it. There was a possibility

1 of taking those.

2 Q And the only reason you didn't take them is because
3 you were interrupted?

4 A That is one of the reasons. I can't say that we
5 would have found any more of the blood drops significant
6 after doing any more analysis of the scene; so I cannot
7 tell you whether we would have found any of those
8 blood drops that we wanted more than what was taken
9 already.

10 Q Well, you indicated that you thought -- when I was
11 asking you questions earlier on like Monday, that you
12 thought 70 or 80 samples should have been taken from
13 the walls; is that approximately correct?

14 A To do what you are purporting could be done, yes.

15 Q And what you set out to do; is that correct, as well?

16 A We set out to take a look at the crime scene to see
17 what -- take a look at the blood spatter patterns.
18 And had we analyzed the entire blood spatter patterns
19 and everything else, plus wanting to know the blood
20 types of all the -- the various patterns, it would
21 have taken 70 to 80 blood drops.

22 (No omissions.)
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1 Q And that what prevented you from doing that was not
2 having enough time even to see whether -- not having
3 enough time to do the work; is that correct?

4 A From analyzing blood splatter, yes, that's true.

5 THE COURT: If they only removed a portion of one
6 wall, and that wall portion was preserved, even though they
7 took the furniture out of the room, you still had splatters
8 on the wall that you could at least analyze the wall pattern,
9 could you not have?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: But you didn't?

12 THE WITNESS: No, Your Honor.

13 THE COURT: Is that because they had removed
14 simply the carpet and the furniture?

15 THE WITNESS: I think -- well, the reason why we
16 didn't -- I don't remember exactly all the reasons, but I
17 believe it's because of the -- the time involvement, plus
18 everything that myself and Mr. Ogino saw on that wall, when
19 we looked at it and analyzed the patterns visually, was
20 consistent with coming from the victims. So to us, at least,
21 there was not a -- an urgency with -- to analyze those samples,
22 because they were consistent with the type of crime -- the
23 type of murders that were involved.

24 Q (BY MR. NEGUS:) The only reason you would have wanted,
25 then, to collect the blood samples as if you thought it
26 didn't come from the people?

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1 A Or if, again, as you're purporting, it can be done if
2 you wanted to do a complete, quote-unquote, "Crime
3 scene reconstruction."

4 Q And the -- well, just -- just -- I thought I understood
5 your answer, but the way you answered to the Judge, I'm
6 not so sure.

7 You and Mr. Ogino went out there with that in mind,
8 correct?

9 A To analyze the blood splatter patterns visually, at first
10 to see if there was any -- anything there that could --
11 could have anything done with it.

12 Q Okay. And there was?

13 A There was, yes.

14 Q So then the reason that you didn't do it was because
15 of the interruption; is that correct?

16 A At the crime scene, yes.

17 Q In the hall, near A-41, did you see, when you were out
18 there, any blood that didn't look like fly specks still
19 on the wall, that same wall that A-41 was on?

20 A I don't remember anything specific, no.

21 Q Showing you Photograph H-176 and a drop that has been
22 circled with orange, did you see that?

23 A I don't recall seeing that, no.

24 Q Were you ever asked to test that?

25 A I don't believe so, but I don't recall.

26 Q Assuming that that were within five feet of A-41, would

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1 you have wanted to collect that and test that if you
2 had seen it?

3 A Yes, I would have, if it was blood.

4 Q You can't tell by looking at it; you have to test it,
5 though, with ortho-tolidine; is that right?

6 A That is correct. Well --

7 Q Or something.

8 A You can tell by looking at it if it's obviously not
9 blood.

10 Q Okay.

11 A If it's Coca-Cola or something like that, it's, you know,
12 it's not blood.

13 Q But if it looked to a person like Mr. Duffy like blood,
14 then you'd want to test it; is that right?

15 A I believe I would have looked at it first. If it looked
16 like blood to me, then I would have wanted to test it.

17 Q On the description that you got of the hatchet sheath
18 from Mr. Stockwell and Mr. Ogino, Item J-6, did it
19 indicate that there was -- they were submitting -- excuse
20 me, I think it's J-5, instead, that they were submitting
21 it with a hatchet sheath cover with possible bloodstains
22 on it?

23 A The description I have here is "1 leather scabbard with
24 possible bloodstains recovered from the floor west of
25 the bed -- headboard in the northeast bedroom," and
26 that's the Lease house.

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1 Q When you got that and looked at it yourself and found
2 nothing that looked like bloodstains on it, did you ask
3 them what they were talking about?

4 A No, I did not.

5 Q Why not?

6 A Basically because I did the examination myself. There
7 were stains that -- there were stains on there. I
8 examined them. I examined the entire ax sheath. I also
9 did not see or recall seeing any debris in the container
10 it was in that could have been blood.

11 Q What container was that?

12 A Believe it was a plastic bag.

13 Q Do you remember whether the plastic bag was sealed or not?

14 A My notes do not reflect either way, but my normal
15 procedure, if it is sealed, I will put "sealed."

16 Q So that would indicate to you that probably it wasn't
17 sealed, but you can't say for sure?

18 A Probably, yes.

19 Q But you can't say for sure?

20 A I can't be sure, no.

21 MR. NEGUS: I'd like to read, Your Honor -- I have
22 a series of quotations that -- a series of things I didn't
23 read when I was going through my original cross examination
24 with Mr. Gregonis, and I'd just like to read them now some-
25 what out of context.

26 MR. KOCHIS: If I could have a volume and a page.

1 MR. NEGUS: I would be glad to give it to you.
2 Volume 17, Page 115, Lines 1 through 7.

3 MR. KOCHIS: I have that.

4 THE COURT: Go ahead.

5 MR. NEGUS: "Question: Does the amount of
6 freezer space you have in your laboratory affect
7 your decisions of which serological evidence to
8 preserve in a frozen state and which not?

9 "Answer: Yes, sir, it does.

10 "Question: Did it affect those -- did it
11 affect your decisions in this particular case?

12 "Answer: No, sir."

13 Volume 10, Line 19 through -- Volume 10, Page 60,
14 Line 19 through 61, Line 1.

15 MR. KOCHIS: I have that as well.

16 MR. NEGUS: "Question: And when you did that
17 test, were you aware of how much -- how much sample
18 was left of A-41?

19 "Answer: Yes, I was.

20 "Question: At that point in time, your estimate
21 was that there was enough to do that Group II test
22 plus one more test?

23 "Answer: Plus one to two more tests.

24 "Question: Most you could be sure about was
25 one additional test in addition to the great --
26 Group II?

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1 "Answer: Yes, sir."

2 Volume 17, Page 4, Lines 4 through 16.

3 MR. KOCHIS: Page 4, Lines 4 through 16?

4 MR. NEGUS: Yes.

5 MR. KOCHIS: I have that.

6 MR. NEGUS: "Question: Well, would you say that
7 you were sure that it was a non-secretor?

8 "Answer: I would say again that I am -- I did
9 not find any antigens, which is consistent with a
10 non-secretor.

11 "Question: But it's also consistent with a
12 secretor who you just -- who you didn't happen to
13 find any antigens for; is that right?

14 "Answer: That is one possibility, but the most
15 probable idea is it is a non-secretor that deposited
16 the saliva on that cigarette.

17 "Question: Is it a reasonable possibility that
18 it was a secretor? I mean, you can say that's a
19 rational possibility?

20 "Answer: Yes, I can."

21 Q (BY MR. NEGUS:) Back to the hypothetical about the
22 ax just briefly, about the ax being left out overnight
23 and found the next day, given the hypothetical that we
24 discussed before, would you expect to be able to get AK
25 off that ax?

26 A Again, I -- I would say probability, yes. But I -- it's

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(No omissions.)

1 Q But the hardier enzymes like ADA, AK, CA II, you've
2 been able to get off an ax or some item that's been
3 in the trunk of a hot car out in the desert for some
4 period of time; is that right?

5 A No.

6 MR. KOCHIS: I -- I withdraw my objection.

7 THE COURT: I'm sorry?

8 MR. KOCHIS: It doesn't matter. I withdraw
9 whatever objection was going to come out of my mouth.

10 THE COURT: I'm about ready to raise my own objection
11 to it.

12 He answered negatively. It will remain.

13 Q BY MR. NEGUS: Yesterday you indicated that you've
14 seen samples put in the trunk of a hot car out in the
15 desert for a period --

16 THE COURT: Counsel, this is clearly coming up
17 argumentative. If this is with reference to the same point
18 as when will blood degrade in the sun or heat, I don't
19 want it.

20 MR. NEGUS: Could I just finish the question,
21 because I don't think it's going to be argumentative.

22 THE COURT: Well, it certainly is.

23 MR. NEGUS: I was going to ask him what he meant
24 by that. I don't think that's argumentative.

25 THE WITNESS: Your Honor, maybe I can -- hopefully,
26 I can try to clear this up. I believe we were talking about

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1 ortho-tolidine, not any of the enzymes. We were talking
2 about the ax sheath.

3 Q BY MR. NEGUS: It's possible.

4 Volume 17, page 61, line 23 through 62, line 1.

5 MR. KOCHIS: Which page were you starting on again?
6 I lost it.

7 MR. NEGUS: Volume 17, page 61, line 23.

8 MR. KOCHIS: I have that, Your Honor.

9 Q BY MR. NEGUS: "Question: Why was A-41 singled
10 out for you?

11 "Answer: Basically, we were told that's
12 where one of the blood spots was, and Mr. Baird
13 indicated to me at some point that the reason
14 why that looked different is that it was away
15 from the rest of the blood spots."

16 Was the result that you got on the haptoglobin that
17 you did with Dr. Blake in October very weak?

18 A Yes, it was.

19 Q Would that be consistent with there not being a
20 sufficient quantity of sample to get a stronger result?

21 A Well, yes, I would say so.

22 Q And the difference between haptoglobin -- one of the
23 differences between a haptoglobin 2-1 and a 2-1M is
24 the presence of additional banding in the haptoglobin
25 2-1; is that correct?

26 A That is true.

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1 Q One of the problems of a very weak sample in trying to
2 make those distinctions is you can't tell whether the
3 bands aren't there because of the weakness of the
4 sample or because it's a 2-1M; is that correct?

5 A I disagree with that, mostly because there's one band
6 that in a 2-1, in a regular 2-1, would be just as
7 strong, if not stronger, than the position of the
8 bands that we're seeing in this one.

9 Q Isn't the question of intensity, though, set askew
10 if you have a very weak sample?

11 A Partly, yes.

12 Q And given the strength of the reaction that you got
13 the day before when you ran the transferrin, you can
14 say that with A-41 the reason that -- or is it correct
15 to say that with A-41 that the reason that you got the
16 weak result was not because the sample had degraded?

17 A I don't understand your question.

18 Q On your transferrin results on A-41, it was very strong,
19 clear, readable results; correct?

20 A It was clear, readable results. I wouldn't say it
21 was extra strong.

22 Q Did -- was there any indication to you in the
23 transferrin sample of degradation?

24 A Not really, no.

25 Q Transferrin is used as an indicator if there's going to
26 be problems of sample degradation to watch out for on

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1 haptoglobins; is that correct?

2 A Well, it's -- transferrin is about as hardy or hardier
3 than haptoglobins, so that if you don't get your
4 transferrins, I wouldn't expect you to get your
5 haptoglobins.

6 Q But the desialidation signs that you could pick up
7 in transferrin are used as diagnostic indicators to
8 tell you whether or not you're going to get good --
9 you're going to have any sample degradation problems
10 with your haptoglobin; is that correct?

11 A It will show some wet state sample degradation, yes.

12 Q There was none such like that with A-41?

13 A No.

14 Q Given your transferrin results, do you think that you
15 could rule out sample degradation as a cause of the
16 weak haptoglobin?

17 A Sample degradation in the wet state; but sample
18 degradation just because of time period in the frozen
19 state, no.

20 Q With acid phosphatase it's very important to be able
21 to -- to -- you have to use -- you have to use standard
22 in order to -- in order to make calls reliably; is
23 that correct?

24 A I would agree, to the final banding positions, basically.

25 Q And also the intensities, to make sure your intensities
26 are correct; is that not correct?

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- 1 A Basically, yes.
- 2 Q Do you have your notes here still of the original
3 photographs that you took of the acid phosphatase?
- 4 A Yes, I do.
- 5 Q In run 151, one of your standards is in the number 4
6 position; is that correct?
- 7 A That is correct, yes.
- 8 Q And you have that called as a BA; is that correct?
- 9 A That is correct, yes.
- 10 Q Can you tell on the photograph that it's a BA?
- 11 A It appears to be a BA from the bands that I can see.
12 There also appears to be an obstruction of some sort
13 on the photo.
- 14 Q So the photograph itself is -- there's something wrong
15 with the photograph so you can't tell for sure?
- 16 A Well, all the bands plus the intensities are there
17 for a BA, but I -- I would not call it off the
18 picture, again.
- 19 Q On 152, run 152, you also had a -- you had a BA in --
20 in group 4; is that correct?
- 21 A Number 4?
- 22 Q Yeah, in slot 4.
- 23 A Yes.
- 24 Q And from that photograph, can you tell that that's a
25 BA and nothing else?
- 26 A It appears to be a BA. I can't rule out anything else,

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13-6

1 no.

2 Q You couldn't call it from the photograph?

3 A Well, I would -- from looking at the photograph, if

4 I was to call it, I would call it a BA, but my best

5 result is off the plate itself.

6 Q But we're asking you again -- forgetting the plate,

7 just put that out of your mind. Off the photograph,

8 which is all that we have left, could you tell that

9 it's a BA?

10 A It looks like a BA, but I wouldn't -- wouldn't want to

11 call it.

12 Q Okay. Going to run 153, you have a sample in slot 7;

13 is that correct?

14 A Yes, I do.

15 Q And does that look like a BA to you?

16 A Yes, it does.

17 (No omissions.)

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- 1 Q Can you call that off the plate?
- 2 A Off the photograph?
- 3 Q Off the photograph.
- 4 A No, not really. I -- not as confidently as I would
- 5 off the plate itself.
- 6 Q Looks like it possibly could be a B?
- 7 A No. I have the a prime band in there. That indicates
- 8 to me that it -- I would rule out a B.
- 9 Q On Run 154, does -- in band number -- in Slot No. 4,
- 10 you had a standard that was supposed to be a BA; is that
- 11 correct?
- 12 A That was a BA, yes.
- 13 Q Can you tell that from the photograph?
- 14 A No, I cannot.
- 15 Q Can you see anything in the photograph?
- 16 A There's some -- some activity there, but I can't see any-
- 17 thing that I would call.
- 18 Q And in Slot No. 9, there's something that's represented
- 19 as supposed to be a CB; is that right?
- 20 A That is correct.
- 21 Q Can you tell that's a CB and nothing else from the
- 22 photograph?
- 23 A No.
- 24 Q In Run 155, and I forget which slot it was, just looking
- 25 back there a second, in, let's see, Slots -- Slot 10,
- 26 you have a CB; is that correct?

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- 1 A That is correct.
- 2 Q From the photograph, does that look like a C?
- 3 A Looks more like a CB to me.
- 4 Q Can you tell from the photograph as to what it was?
- 5 A Looks like a CB, I would call it.
- 6 Q And in Run 156, in Slot 9, you have a CB; is that
- 7 correct?
- 8 A That's correct.
- 9 Q Does that look like a C in the photograph?
- 10 A It looks like a CB, the way that they turned out on my
- 11 runs.
- 12 Q Well, normally, the C -- in the CB, the C band and the
- 13 B band are supposed to be of equal intensity; is that
- 14 correct?
- 15 A They're supposed to be of similar intensities, yes.
- 16 Q And in the C, the straight C, the -- the C is supposed
- 17 to be stronger than the -- than the B; is that correct?
- 18 A Yes, that is correct.
- 19 Q And in that photograph, in your standard, the C is in
- 20 fact stronger than the B --
- 21 A Yes.
- 22 Q -- is that correct?
- 23 A It is, but not really sufficiently so I would call it a C.
- 24 Q Can you tell from the photograph it's a CB?
- 25 A It looks like a CB on the photograph.
- 26 Q Would you call it that off the photograph?

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1 A I would prefer to have the plate, but it -- well, no,
2 I would not.

3 MR. NEGUS: I have nothing further at this time.
4

5 CROSS EXAMINATION

6 BY MR. KOCHIS:

7 Q Mr. Gregonis, picking up where Mr. Negus left off with
8 the photographs that are in front of you, apparently, in
9 your lap or close by, of the enzymatic runs, you take
10 photographs in an attempt to provide some documentation
11 of the work that you did in this -- in this case?

12 A Yes, I do.

13 Q And is that one of the steps that you recommended to
14 attempt to document the results of electrophoretic runs?

15 A Yes, it is.

16 Q And do the photographs, for example, that you have in
17 your lap allow you or another analyst to determine which
18 particular enzymatic run applies to the documents on the
19 reverse side of the page?

20 A Yes, they do.

21 Q For example, you can tell from the photograph whether
22 it's a PGM run or an EsD run?

23 A Yes, you can.

24 Q And do the photographs also allow you to determine whether
25 your standard came up or not?

26 A Not in all cases, no.

1 Q In some of the cases?

2 A In some of the cases.

3 Q And do the photographs, as Mr. Negus has in fact
4 questioned you about them, allow you to determine whether
5 or not certain standards were coming up, as he termed
6 them, faint or weak?

7 A Yes, they do.

8 Q So you preserve that photographically?

9 A Yes.

10 Q Now, a number of the questions that Mr. Negus asked you
11 in terms of reading off the photographs -- you have
12 testified that from the photograph it still looks to you
13 like a CB but you don't feel comfortable calling it from
14 the photograph; is that correct?

15 A That is correct, yes.

16 Q Is it your procedure to call from the plate as opposed
17 to calling from the photograph?

18 A Yes, it is.

19 Q However, in those with the photographs that you testified
20 that it still looks like the result that you got, do the
21 photographs in fact provide documentation that what you
22 got is consistent with what is shown in the photograph?

23 A Yes, sir.

24 Q Okay. And are you in effect saying that the best
25 result would be to call it right off -- off the plate
26 itself?

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- 1 A Yes, sir.
- 2 Q Can you save the plates for all the enzymatic runs?
- 3 A No.
- 4 Q Is it fair to say that until this trial you have never
5 been examined to the degree or the detail about the
6 photograph procedures you employ in this case?
- 7 A That is true, yes.
- 8 Q Do you know of any serologist who has photographic
9 equipment that he uses in every case in which the photo-
10 graphs are as good as the plates?
- 11 A No.
- 12 Q What type of camera do you use when you photograph the
13 enzymatic runs to preserve them for documentation?
- 14 A It's a Polaroid MP4, just --
- 15 Q And -- I'm sorry?
- 16 A Well, it's a regular stationary camera.
- 17 Q And you use Polaroid film?
- 18 A Yes, sir.
- 19 Q Are you the only serologist that you're aware of that
20 uses that type of equipment to attempt to document the
21 results?
- 22 A You mean the MP4 or --
- 23 Q Right. Well, Polaroid film.
- 24 A Polaroid film, no.
- 25 Q Have you seen the type of film that Mr. Negus' expert
26 uses, Dr. Blake?

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1 A I have seen Dr. Blake use a Polaroid camera with Polaroid
2 film, yes.

3 Q And attempt to document his own runs?

4 A Yes.

5 Q And is that similar to the method that you use?

6 A Using the Polaroid type, yes. It's different cameras,
7 so --

8 Q And do the photographs themselves correlate to written
9 records you keep for each enzymatic run?

10 A Yes, they do.

11 Q And, for example, is it possible, from reviewing the
12 photographs, for an expert to determine whether or not
13 you simply made a run up and got no activity whatsoever?

14 A Could you say that again. I'm sorry.

15 Q Do the photographs which Mr. Negus asked you questions
16 about, from which you testified that it looks like a
17 particular enzyme type but you would feel more comfort-
18 able calling it from the plate, do those allow another
19 expert to determine that at least there's evidence of
20 an electrophoretic run taking place on the plate?

21 A Yes, they do.

22 Q And can you correlate the photograph to the records
23 as to which slot the standard was in and which slot your
24 unknown was in?

25 A Yes.

26 Q Do you check the photographs to see if an image is

1 appearing on the film itself?

2 A Yes, I do.

3 Q And is it -- would you take any steps, if you took a
4 picture after a run, opened the Polaroid film and got
5 either solid white or a solid black background, would
6 you do anything to take another picture?

7 A Yes, I would.

8 Q Is it fair to say that you don't go over each photograph
9 with a microscope to make sure every detail from the
10 plate is manifested on the photograph?

11 A Yes, it would.

12 Q Returning your attention for a moment to A-41, the drop
13 of blood which was removed from the Ryen home, did there
14 come a point in time when you were able to determine
15 that the genetic profile of the person who deposited
16 that drop of blood was not consistent with the genetic
17 profiles of any of the victims in this case?

18 A Yes, sir.

19 Q And did you continue to test the stain after that
20 period of time?

21 A Yes, I did.

22 Q Is it your normal procedure as a criminalist to contact
23 a Defense lawyer on a case before you perform continued
24 analysis on items of serological significance?

25 A No, it is not.

26 Q Up until this case, have you ever done it?

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1 A No, sir.

2 Q Did you deviate from your procedure in this particular
3 case?

4 A Yes, sir.

5 Q Now, you ran A-41 for a Group II result on June the 28th
6 on -- approximately; is that correct -- correct?

7 Rather than looking through your notes, if you
8 could look at the chart Mr. Negus has prepared both
9 for the Preliminary Hearing and for this hearing, H-334,
10 that indicates that on approximately June 28th you ran
11 the Group II on A-41; is that approximately correct?

12 A Yes, sir, it is.

13 Q And then you tested, then, on approximately that day
14 for the EAP, the ADA and the AKA?

15 A Yes, I did.

16 Q Did you get conclusive results for each one of those
17 three enzyme types?

18 A The only one I got a conclusive result for was the ADA.

19 Q So then in your mind as a serologist, was it necessary
20 to rerun the Group II to see if you could answer the
21 questions as to the other enzyme types?

22 A Yes, sir.

23 Q And was that a period in time prior to which Mr. Cooper
24 had been apprehended?

25 A When I decided that, yes.

26 Q And was that prior to the time, for example, that Mr. Negus

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1 had been appointed to represent Mr. Cooper?

2 A Yes.

3 Q Had anyone contacted you at that time and represented
4 that they represented Mr. Cooper and that you could
5 contact them about further testing?

6 A No, sir.

7 Q At some point after his arraignment, after Mr. Cooper's
8 arraignment during the first week in August, did you
9 communicate to me that you wished to do further analysis
10 on A-41?

11 A I believe it was around that time, but I'm not sure.

12 Q Do you remember a day at which I was at the crime lab
13 and, based upon some representation that you made to me,
14 I telephoned Mr. Negus in Ontario?

15 A I believe so, yes.

16 Q And was it your intention at that time to check with him
17 and see if he wanted to have any input or part in the
18 tests that would continue on A-41 or have an expert
19 present when that was done?

20 MR. NEGUS: Objection on that. I think that's more
21 than compound.

22 MR. KOCHIS: I'll break it down.

23 MR. NEGUS: Okay.

24 (No omissions.)

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- 1 Q Well, I'll break it down. Was -- did you advise me
2 that eventually scientific tests would exhaust the
3 remainder of A-41?
- 4 A Yes, I did.
- 5 Q At that point was a decision made to contact Mr. Negus,
6 if you know?
- 7 A I don't know at this point.
- 8 Q Did I, in any event, contact Mr. Negus in your presence
9 and make him aware that eventually with further
10 scientific testing the sample would be exhausted?
- 11 A Yes, sir.
- 12 Q After that telephone conversation, did you cease to
13 do any testing on A-41 until you were present with
14 Ed Blake who was retained by Mr. Negus?
- 15 A Yes, I did.
- 16 Q So the sample that was remaining inside the tin that
17 contained A-41 on the day we contacted Mr. Negus was
18 not used in any fashion until you got together with
19 Mr. Blake; is that correct?
- 20 A That is correct, yes.
- 21 Q Did Mr. Blake then at some time in early October come
22 to the laboratory in San Bernardino?
- 23 A Yes, he did.
- 24 Q And did you perform some further tests on A-41?
- 25 A Yes, we did.
- 26 Q Did you explain to Mr. Blake which tests you were going

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1 to perform before the tests in fact were conducted?

2 A Yes, I did.

3 Q Where did the tests take place?

4 A The test took place in the crime laboratory in San
5 Bernardino.

6 Q Directing your attention to a photo which has been
7 marked for identification as H-360, is this -- that's
8 a photograph of the two halves of the container that
9 contain what is left of A-41?

10 A Yes, it does.

11 Q Was that container opened in Mr. Blake's presence
12 when he came to San Bernardino in October?

13 A Yes, it was.

14 Q Was he allowed to view the contents of the container?

15 A Yes, he was.

16 Q Did either you or he remove the contents and prepare
17 them for serological analysis?

18 A One of us. I'm not sure which.

19 Q Was he with you at all times during the testing of
20 A-41, the testing which took place in October?

21 A As far as I can recall, yes.

22 Q Do you recall, for example, what was the order of the
23 tests, the haptoglobin, the transferrin and the Gc
24 on A-41?

25 A Okay. We did the Group III tests, which include the
26 transferrin and the Gc, first.

1 Q Who actually did the mechanics of preparing the plaster
2 and the specks to be placed on the plate?

3 A I believe -- I think, but, again, I'm not sure, that
4 I removed the samples from the tin itself and placed
5 them in a plastic test tube, and then Mr. -- or
6 Dr. Blake continued with the extraction procedure.

7 Q Was it a situation in terms of the Group III test in
8 which he was simply there as a silent observer or
9 did Dr. Blake actually participate in the test itself?

10 A He actually participated in the test itself.

11 Q Did you have an unlimited supply of A-41 when you ran
12 the Group III system?

13 A No, sir.

14 Q Were efforts being made to consume only the portion
15 that was necessary to do the Group III run in the
16 hopes that there would be something left to perhaps
17 move on to another system?

18 A Yes, sir.

19 Q Is that one of the reasons that the entire sample was
20 not run on a Group III system?

21 A Yes, it is.

22 Q With the last system that was run, was the quantity
23 that was used less than the quantity of A-41 that
24 was used in the Group III system?

25 A I think they're about equal, but I'm not sure at this
26 point.

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- 1 Q Again, with the last test, did Dr. Blake actually
2 participate in the test itself?
- 3 A Yes, sir, he did.
- 4 Q Was he present when the plates on the Group III system
5 came up?
- 6 A Yes, he did -- he was.
- 7 Q Did you both essentially read the plate at the same
8 time?
- 9 A I believe so, yes.
- 10 Q Did you make any written record of your finding?
- 11 A Yes.
- 12 Q Did you attempt to photograph the plates with the
13 Group III system?
- 14 A Yes, we did.
- 15 Q Your results, did you give copies of those to
16 Mr. Negus?
- 17 A I believe so, along with the results that I gave to
18 Dr. Blake.
- 19 Q Did you actually give him copies of your results while
20 he was down here in San Bernardino?
- 21 A I don't remember whether I did or did not. I know that
22 at some point I also sent him up the photographs of the
23 plate.
- 24 Q At that point, was the door swinging both ways? And by
25 that, I mean was he likewise giving you his results?
- 26 MR. NEGUS: Objection, irrelevant.

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1 THE COURT: No, overruled.

2 THE WITNESS: No -- excuse me, Your Honor. No,
3 sir, he was not. That was an agreement between us, that
4 I would not see his results.

5 Q BY MR. KOCHIS: Likewise, with the last test that was
6 run, did the plate come up and was it read in his
7 presence?

8 A Yes, sir, it was.

9 Q By both of you essentially at the same time?

10 A Essentially, yes.

11 Q And the last three runs that were conducted, the
12 transferrin, the Gc and the haptoglobin, how many of
13 the actual plates have you saved?

14 A I've saved -- well, the transferrin and Gc are both
15 on one plate, and the haptoglobin is on another plate,
16 and I saved both of them.

17 Q Are the intensity -- are the intensity of the bands
18 the same today as they were when the plate first came
19 up in October?

20 A I can't say that they are the same intensities. They
21 are -- well, probably on the transferrin and Gc I would
22 say they are.

23 Q And the haptoglobin?

24 A The haptoglobin I believe they probably have faded a
25 little.

26 Q Have you taken any steps to preserve the actual two

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1 | plates?

2 A Well, the Gc and transferrin is easy to preserve because
3 of the nature of the plate. I believe I have it in
4 court today, as a matter of fact.

5 Q But my question is that has been preserved?

6 | A Yes, it has.

7 Q The haptoglobin, have you taken any steps to preserve
8 it?

9 | A. Yes, I have.

10 Q And, for example, what have you done?

11 A. What I've done is the plate that -- or the gel that
12 the haptoglobin is made out of is an acrylamide which
13 the percentages that we're using here cannot really be
14 dried down, so I've put it in a petri dish, and I have
15 saved it immersed in water.

16 Q Does Exhibit H-360 represent the contents of the
17 container A-41 was stored in when it was opened in
18 front of Mr. Forbush and Mr. Arthur, I believe,
19 yesterday or the day before yesterday?

20 | A Yes, sir.

21 Q Do all the particles inside the container have specks
22 on them that are consistent with blood?

23 | A. No, sir.

24 Q Are there portions of the plaster that is inside the
25 can that does not have any stains that are consistent
26 with blood?

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1 A Yes, there are.

2 Q Does the term -- do the terms "hands-on time" and
3 "hands-off time" have any applicability to running
4 serological tests in the crime lab?

5 A Yes, they do.

6 Q What do you mean when you talk about hands-on time?

7 A Hands-on time would be the time that you essentially
8 have preparing the samples, preparing any of your
9 plates that you're going to put the samples in, and
10 the actual physical manipulation of your run.

11 Q What is hands-off time?

12 A Hands-off time would simply mean that time which is
13 required for the electrophoretic run to take place,
14 anywhere from two to twenty hours.

15 Q Is it fair to say then when you're conducting
16 electrophoretic runs, that you can occupy yourself in
17 other fashion during the hands-off time?

18 A Yes, you can.

19 Q How much hands-on time have you spent on A-41 alone
20 just in analysis, putting aside the time you've spent
21 in court talking about it?

22 A Probably as an estimate, eight to ten hours.

23 Q Is that consistent with the amount of time it takes
24 to do all the runs to gather as complete a genetic
25 profile as you have on A-41 on any other sample?

26 A No, it is not.

1 Q Is more or less time required, for example, on whole
2 bloods?

3 A Considerably less time on whole blood.

4 Q Are you able to estimate how much time you've spent
5 in the Cooper case on serology alone in the laboratory,
6 discounting the amount of time you've spent in court
7 testifying?

8 A As an estimate, seven or eight hundred hours probably.

9 Q Are there items of evidence still in the crime lab
10 that have stains of serological significance on them
11 that have not been run for all the four group systems
12 at this point?

13 A Yes, sir.

14 Q And are you still attempting to complete those?

15 A Yes, I am.

16 Q Have demands on your time prevented you from having
17 all those completed up to this point?

18 A Yes, sir.

19 Q Directing your attention to an exhibit which has been
20 marked for identification as H-362, do you recognize
21 what that is a copy of?

22 A Yes, I do.

23 Q And is that a table that you prepared at my request
24 of the various probabilities of individuation and
25 discrimination on A-41?

26 A Probabilities of discrimination, yes.

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1 Q Well, let's break it down. First, you now have been
2 able to develop a rather sophisticated genetic profile
3 of A-41; is that correct?

4 A Yes, sir.

5 Q With the results that you have to this point of the
6 genetic profile of A-41, what is the probabilities of
7 discrimination based on the tests that you have run?

8 A Well, this -- carrying it out to four decimal points,
9 this discriminates between 99.9995 percent of the
10 population, of the general, whole population.

11 Q Statistically, then, is the person who deposited A-41
12 the only person in this country, statistically, that has
13 that genetic profile?

14 A No, sir.

15 Q Are there other people, then, statistically --

16 A Yes.

17 Q -- potentially?

18 A Yes, sir, there are.

19 Q And one out of how many such persons?

20 A It's approximately .0005 percent, so that would be one
21 out of every two hundred thousand people.

22 Q So knowing what you know now about A-41, the genetic
23 profile of that drop of blood, is it consistent with
24 saying, if we just started selecting people in this
25 country at random, one out of every two hundred thousand
26 would have that same genetic profile?

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1 A That is true.

2 Q Is it -- are your results consistent with saying that,
3 in terms of exclusion, if Sergeant Arthur started going
4 out and at random arresting people in groups of one
5 hundred, you would be able to exclude 99.9 of those
6 people as being a possible donor of that drop of blood,
7 sero -- or am I -- is my question ambiguous again?

8 A Well, I think your question is ambiguous, yes.

9 Q Is it fair to say that what we know about the genetic
10 profile of A-41 and the probability of discrimination
11 that 99 out of 100 times you could discriminate between
12 the person who had deposited that sample and someone in
13 the general population?

14 A Well, I --

15 Q Let me -- let me stop for a moment.

16 The probability of discrimination with the tests
17 that you have run so far, knowing what you know about
18 A-41, again, is what?

19 A The probability of discrimination, well, it would be
20 .99. And then, carried on, if you wanted to carry it on,
21 to another four decimal points, is 9995.

22 Q So the probability of discrimination would exceed 99
23 percent of the time?

24 A Yes, sir.

25 Q Now, would that probability increase or decrease if, for
26 example, you would have run the GLO in the Group I?

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- 1 A It would increase.
- 2 Q Okay. What would be the difference?
- 3 A Well, instead of -- well, first of all, my -- my
4 calculations are for a Black population on here.
5 Essentially, if you eliminate, because of the peptidase
6 A, the haptoglobin and the transferrin, if the -- if you
7 only consider the Black population --
- 8 Q Well, let's stop for a moment. There are three enzymes
9 that have genetic marker types that are race -- linked
10 to heritage; is that fair to say?
- 11 A There's one enzyme and two serum proteins in this case,
12 yes.
- 13 Q And as a serologist, you would not expect a person to have
14 all three of those unless they had some Black heritage
15 in their background; is that correct?
- 16 A That is true, yeah.
- 17 Q So your probability of discrimination, then, is, putting
18 aside for a moment the people who would have no such
19 heritage?
- 20 A Yes, sir.
- 21 Q And are you saying by that that if you analyzed a sample
22 of blood and you got those three types, you could exclude
23 virtually all Caucasians who had no Black heritage to
24 begin with?
- 25 A Essentially, yes.
- 26 Q Returning now to the population you are working with,

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1 people who have Black heritage, how much, if any, would
2 the probability of discrimination be increased if, as
3 Mr. Negus suggested, the GLO would have been run in the
4 Group I with the PGM and the ESD?

5 A Okay. Again, carrying it out to the four decimal points,
6 if you were going to -- with what we know about A-41,
7 the -- we have discriminated, or, would discriminate
8 99.9956 percent of the time. With running the GLO,
9 we would discriminate 99.9982 percent of the time.

10 Q And would the probability of discrimination have gotten
11 higher or lower if you also would have run G6PD?

12 A If I would have also run the G6PD, it would have gotten
13 higher, depending on whether it's male or female, between
14 99.9969 and 99.9992 percent of the population.

15 Q So in terms of -- have you placed those figures on the
16 exhibit in front of you?

17 A Yes, I have.

18 Q So in terms of increasing the probability of discrimination,
19 doing those two additional tests, the GLO and the G6PD,
20 the power of discrimination would have -- the probability
21 of discrimination would have increased somewhere between
22 99 percent, where it is without the tests, and 100
23 percent; is that correct?

24 A That is correct, yes.

25 Q So it's -- it's not as if not running those tests left
26 out 40 percent of the probability of discrimination?

1 MR. NEGUS: Objection. I think that question is
2 actually nonsensical.

3 THE COURT: It's pretty obvious, not necessary.
4 Sustained.

5 Q (BY MR. KOCHIS:) Is it fair to say that since June the
6 6th you have been examined extensively not only on your
7 analysis but what you didn't take from the crime scene
8 of the Ryen homicides?

9 MR. NEGUS: Objection. I think that's argumentative
10 and probably irrelevant as to whether it's --

11 THE COURT: It's foundational, Mr. Negus. Overruled.

12 THE WITNESS: Yes, sir, I have.

13 Q (BY MR. KOCHIS:) Has Mr. Negus, during the course of
14 his examination, suggested to you inferences that might
15 be drawn with imagination and speculation to answer
16 questions that you didn't have in your mind when you went
17 to the crime scene on the 6th of June?

18 A That is true, yes.

19 Q When you were at the Ryen house on the 6th of June, did
20 you have in your mind attempting to take evidence that
21 would allow you to draw some kind of inference to every
22 question that Mr. Negus has asked you in the courtroom?

23 MR. NEGUS: Objection. I think that's irrelevant.
24 Basically a lot of the questions had nothing to do with
25 gathering evidence.

26 THE COURT: Overruled.

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1 THE WITNESS: No, sir.

2 Q (BY MR. KOCHIS:) For example, this afternoon, you
3 responded to Mr. Negus that to draw inferences to some
4 of the questions he has posed you would have perhaps
5 taken 70 additional samples of blood from the Ryen scene;
6 is that correct?

7 A I believe I stated from the -- the walls of the scene.
8 It would be around 200 from the entire scene.

9 Q When you looked at the scene inside the Ryen home, could
10 you tell there was more than one action in terms of
11 splatter patterns on the wall?

12 A Yes.

13 Q And on the 6th, were the patterns, as you looked at them,
14 consistent with coming from victims who had been attacked
15 in this case?

16 A Yes, they were.

17 Q Did that analysis enter into your decision not to take a
18 sample from each action?

19 A Yes, it did.

20 Q When you looked at the patterns on the 6th, did you have
21 it in your mind at the time to take a blood sample from
22 each separate pattern that you saw?

23 A No, sir.

24 THE COURT: Would you care to break it, Mr. Kochis,
25 for a while?

26 MR. KOCHIS: Sure.

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1 THE COURT: All right. Take a recess.

2 (Recess.)

3 THE COURT: Everybody's still here.

4 Mr. Kochis, continue.

5 Q (BY MR. KOCHIS:) Mr. Gregonis, directing your
6 attention to H-362 again, are there portions of that
7 particular chart that apply to the probabilities of
8 discrimination of the tests that you did on A-41, assuming
9 you did not know the results, and then figures that
10 pertain to the powers of discrimination of A-41, assuming
11 that we had the results that we have now?

12 A Yes, sir.

13 Q And could you separate those on the -- on H-362 with the
14 red felt pen.

15 A Yes, I can. (Witness complies.)

16 Q And can you place an "A" in the section that indicates
17 the -- the discrimination powers of the genetic profile
18 of A-41, not knowing the results that we know now.

19 A (Witness complies.)

20 Q And can you place a "B" in the portion that deals with
21 the discrimination powers of A-41, knowing its genetic
22 profile.

23 A (Witness complies.)

24 Q When you talk about discrimination powers, what do you
25 mean, for us laymen?

26 A Well, taking the -- the A section on this chart first,

- 1 it's a -- it's a way of evaluating your tests. And the
2 A section refers to, if you're going to pick two people
3 out of the general population, what is the probability
4 that you will discriminate between them.
- 5 Q That's just at random, then?
- 6 A Yes, sir.
- 7 Q And then the B section, does that apply to a situation
8 where you know the genetic profile of a particular stain
9 and what is the probability between distinguishing the
10 person that may have deposited that stain and a -- and a
11 person you pick at random out of the population?
- 12 A Yes, it is.
- 13 Q And have you indicated various discrimination powers
14 for both those types run on A-41, for example, with and
15 without the Gc?
- 16 A Yes, sir.
- 17 Q With and without the G6PD?
- 18 A Yes, sir.
- 19 Q With and without the GLO?
- 20 A Yes, sir.
- 21 Q Did the amount of freezer space that you have available
22 in your laboratory have anything to do with your not
23 freezing the entire south wall of the Ryen master bedroom?
- 24 A Yes, it did.
- 25 Q How?
- 26 A Simply, we don't have a freezer capable of taking that

1 item of evidence.

2 Q Is photography one of the methods that can be used to
3 document stains on a surface such as a carpet?

4 A Yes.

5 Q Directing your attention to two photographs which have
6 been marked for identification in this hearing as H-163
7 and H-167, do those photographs appear to depict stains
8 that are consistent with blood which you observed at the
9 Ryen crime scene?

10 A Yes, they do.

11 Q I believe, in response to Mr. Negus' questions this
12 afternoon, you testified that from the photographs you are
13 not able to determine whether those stains, if they
14 were made with feet with shoes that came from an adult,
15 a child or a paramedic; is that true?

16 A That is true, yes.

17 Q Do the photographs allow you to draw any inference --
18 strike that.

19 One of those photographs depicts the carpet in the
20 master bathroom of the Ryen home, doesn't it?

21 A Yes, sir.

22 Q That carpet was in fact seized and taken to the I.D. loft,
23 wasn't it?

24 A Yes, it was.

25 Q Does the photograph -- the particular photograph you have
26 in your hand, which is H-163, allow you to draw any

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1 inferences as to whether or not you can determine --
2 whether you can actually determine from the spot on
3 the rug whether it was left there by a child, a paramedic
4 or an adult?

5 A. No, it does not.

6 (No omissions.)

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- 1 Q Do you need some type of discernible impression to do
2 that?
- 3 A Yes, you do.
- 4 Q Do -- do the stains in H-163 appear to have that type
5 of discernibility?
- 6 A From the photograph?
- 7 Q From the photograph.
- 8 A No.
- 9 Q Did you go to Emeryville, California last week?
- 10 A Yes, I did.
- 11 Q Did you take some of the evidence that was collected
12 in this case to Emeryville when you went last week?
- 13 A Yes, I did.
- 14 Q Were three of those items cigarette butts that were
15 collected in this particular case?
- 16 A Yes.
- 17 Q Were they analyzed by Mr. Wraxall in Emeryville?
- 18 A Yes, they were.
- 19 Q Prior to the time the analysis started, did you have
20 any contact with Mr. Ed Blake?
- 21 A Yes, we did.
- 22 Q Was he made aware that the analysis of those cigarette
23 butts was going to be conducted in Emeryville?
- 24 A Yes.
- 25 Q Does his office, Mr. Blake's office, bear any
26 geographic proximity to Mr. Wraxall's office?

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- 1 A Yes, it does. They're right next door.
- 2 Q Are they about 10, 15 feet apart?
- 3 A Well, their -- their working spaces are about that,
- 4 yes.
- 5 Q Was Mr. Blake present at any time when you were in
- 6 Emeryville with Mr. Wraxall while Mr. Wraxall was
- 7 analyzing those three cigarette butts?
- 8 A Yes, he was.
- 9 Q Was the procedures that were going to be carried out
- 10 explained to Mr. Blake before you started the analysis?
- 11 A Yes, they were.
- 12 Q Did you actually meet with him before you started the
- 13 analysis?
- 14 A Yes, we did.
- 15 Q Was Mr. Blake present when any of the results were
- 16 read from the experiments?
- 17 A Yes, he was.
- 18 Q Do you recall which results Mr. Blake was present for?
- 19 A I believe he was present for both the -- well, the
- 20 amylase reading plus the plate was there for him to
- 21 read, the Lewis, and I think that we did at that time
- 22 an absorption-inhibition on some of the samples I
- 23 brought up. I don't remember for sure.
- 24 Q Did Mr. Blake remain with you and Mr. Wraxall during
- 25 the entire test procedure?
- 26 A No, he did not.

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1 Q Was he ever -- was he ever at any point asked by you,
2 by Mr. Wraxall, or by anyone in your presence to leave
3 during the experiment?

4 A No, he was not.

5 Q Was in fact an effort made to conduct the experiments
6 in a fashion that would allow him to be present, if
7 he chose to do so?

8 A Yes, they were.

9 Q And during these experiments, were portions of the
10 samples of the cigarette butts consumed?

11 A Yes, they were.

12 Q Is there any sample that was completely exhausted
13 last week when you were there in Emeryville?

14 A Yes.

15 Q Which one?

16 A Well, V-12 was, and then I believe an extract from
17 V-12 was also kept over for this week for further
18 testing.

19 Q Are there tests that are supposed to be performed in
20 Emeryville in your absence by Mr. Wraxall on the
21 remainder of those samples?

22 A Yes, there are.

23 Q Has Mr. Blake been made aware that those tests are
24 going to be performed?

25 A I believe so, yes.

26 Q Was Mr. Blake informed that portions, if not all, of the

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1 samples would be exhausted during the scientific
2 tests?

3 A Yes, he was.

4 Q The hatchet, were you able to get results of serological
5 significance off the stains that were removed from the
6 hatchet in this case?

7 A Yes, I was.

8 Q For example, were you able to determine if there was
9 blood on the hatchet or if the stain was some type of
10 fluid?

11 A Yes, I was. It's blood.

12 Q Were you able to determine the species of the blood?

13 A Yes, I was. It's human.

14 Q Were you able to determine the ABO blood type?

15 A Yes, I was. It's a Type B.

16 Q Directing your attention again for a moment to Exhibit
17 H-291, does the page which has been marked for
18 identification as 1727 at the top -- does it contain
19 a key?

20 A Yes, it does.

21 Q And does the table indicate with a letter -- number
22 corresponding to a particular defendant or victim or
23 suspect whether blood that you analyzed was consistent
24 with coming from a particular person or not?

25 A Yes, it does.

26 Q And then do you have letters that correspond -- excuse

1 me -- numbers that correspond to whether or not a
2 sample is consistent with being mixed or not?

3 A Yes, I do.

4 Q Do pages then 723 through 726 likewise contain in the
5 column which describes the item the number which
6 corresponds to the person that the stain is consistent
7 with coming from?

8 A Yes, it does.

9 Q Now, in this particular case did you send some items
10 of serological significance to the defense expert,
11 Dr. Blake, so that he could conduct independent
12 analysis on those samples outside of your presence?

13 A Yes, I did.

14 Q Did those samples include some of the frozen cloth
15 swatch sections that were preserved of the known blood
16 types of each of the five victims in this case?

17 A I believe that they included only four -- the four
18 dead victims in this case.

19 Q Was that in part because Joshua Ryen was still available
20 to donate whole blood?

21 A Oh, excuse me. Joshua Ryen's swatch was sent up.
22 Excuse me.

23 Q Do you recall when you sent Dr. Blake the swatches?
24 Do you have a record of that?

25 A Not that I can find at this moment, no.

26 Q Returning again to the victims for a moment, you've

1 attempted to preserve the whole blood by placing it
2 in a refrigerator in a vial; is that correct?

3 A I did two things to do that. One was making the
4 swatch and freeze it after drying, and one was to place
5 a remaining sample in a -- leave it in a vial and place
6 it in a refrigerator.

7 Q Did you -- when you sent samples to Dr. Blake, did you
8 send him only the samples -- sections of the samples
9 which had been frozen?

10 A Upon his request, I only sent him the samples that had
11 been frozen.

12 Q In addition to the -- to sections of those samples, did
13 you also send Dr. Blake portions of samples that were
14 collected in this case of items of evidence that had
15 bloodstains on them?

16 A Not yet. I do have them packaged and ready to mail.

17 Q Well, do you recall meeting with Mr. Negus and myself
18 in Ontario during one of the appearances, your
19 appearances in Superior Court, and having Mr. Negus
20 indicate to you sections of sheet that he wanted?

21 A Yes, I do. I know what you're talking about now.

22 Q And was that the bedding that was removed from the
23 master bed in the Ryen home?

24 A Yes.

25 Q And did you in fact send portions of that bedding to
26 Dr. Blake so that he could test it outside of your

1 presence?

2 A Yes, I did.

3 Q Have you in fact received additional telephone calls
4 from Dr. Blake requesting samples of the blood from
5 the carpet that was taken from underneath each of
6 the victims?

7 A Not telephone calls. When I was up in Emeryville last
8 week, I talked to him about that.

9 Q And did he express a desire to obtain sections of those?

10 A Yes, sir.

11 Q Does there appear to be a sufficient section to allow
12 him to have a portion of it for each of the carpet
13 sections underneath the victims?

14 A Yes. I've already separated those, and I have a portion
15 ready to send up.

16 Q And are you going to give him those?

17 A Yes, I am.

18 Q So that he can test them outside your presence?

19 A Yes, sir.

20 Q Has he indicated why he needs those samples?

21 A For some further testing that he wants to do. He
22 didn't indicate what.

23 Q The tests that Mr. Negus asked you about that you've
24 performed on the effect, if any, of Dura-Print on
25 serological typing, do you have those results in your
26 mind?

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1 A The tests that I did personally?

2 Q Yes.

3 A Pretty much, yes.

4 Q And you described the tests, I believe, yesterday,
5 for Mr. Negus that you performed to determine what
6 effect, if any, Dura-Print would have on serological
7 blood typing; is that correct?

8 A Yes, sir.

9 Q Does it have an effect?

10 A As of -- well, it does not, so far as I can see in the
11 papers that I've seen and heard, have an effect on
12 the typing of it. It doesn't make one type look like
13 another. That is, it doesn't change the reliability.
14 My testing indicates that it does not significantly
15 reduce the activity.

16 (No omissions.)

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1 Q Were you still able to get ABO blood group types off the
2 samples that you tested after they were subjected to
3 Dura-Print?

4 A I was. However, I don't -- I can't find the record of
5 that in my notes at this time. It may be back in the
6 laboratory.

7 Q Were you also able to get results on the enzyme systems
8 that you tested for on the samples that had been subjected
9 to Dura-Print?

10 A Yes, I was.

11 Q Is there any scientific procedure or is there any
12 scientific reason for analyzing a sample as soon after you
13 receive it as possible?

14 A Yes, there is.

15 Q And in terms of samples that have serological significance,
16 what is the scientific reason?

17 A Basically because, even in a freezer, a sample is going
18 to degrade. And getting to the sample as soon as
19 possible is a way of getting the most out of the sample,
20 if you will, or having a better chance.

21 Q Returning for a moment to a blood splatter question that
22 Mr. Negus asked you over the last couple of days,
23 apparently, on one occasion in one crime scene you and
24 Mr. Ogino did some splatter pattern analysis that allowed
25 you to make some determinations as to positions of the
26 victim; is that correct?

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- 1 A That is correct, yes.
- 2 Q Was that a multiple victim scene or a single victim
3 scene?
- 4 A Single victim scene.
- 5 Q And was the scene at which the body was found a home or
6 another place?
- 7 A Okay. This -- this was a different scene. This was
8 inside of a car. It was not where the body was found.
- 9 Q Were you able to make some determinations as to movement
10 in that case that, because of the complexity of this
11 scene, you did not feel possible to determine?
- 12 A I was able to make in that a -- or, Mr. Ogino and I
13 were able to tell where the driver, or, the person that
14 was shot was sitting while he was bleeding.
- 15 Q How many wounds did that victim have, if you recall?
16 Was it more than one?
- 17 A Upon going to the autopsy, I believe he had five, five
18 bullet holes.
- 19 Q Were the facts of that case different, so different from
20 the facts of this case that it was -- you were able to
21 make determinations in that case that you could not make
22 in this case?
- 23 A Yes, I believe so.
- 24 Q Do you recall Mr. Negus asking you during the course of
25 this hearing about calls you would make off a photograph
26 of an enzymatic run which, for this hearing, has been

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1 marked H-344?

2 Directing your attention to an exhibit which has
3 been marked for this hearing as H-344. Did Mr. Negus
4 ask you questions about a call you made on a particular
5 EAP run?

6 A Yes, he did.

7 Q And did you in fact at this hearing again call -- make a
8 B call from the photograph itself?

9 A Yes, I did.

10 Q And then did he ask you questions about what you may have
11 said about that particular photograph back at the
12 Preliminary Hearing?

13 A Yes, he did.

14 Q Can you recall every question at this point that he asked
15 you at the Preliminary Hearing about that particular
16 photograph?

17 A No, I cannot.

18 Q Would reviewing a section of that Preliminary Hearing
19 refresh your memory?

20 A Yes, it would.

21 Q Could I direct your attention --

22 THE COURT: Counsel, if you have rehabilitative
23 portions there, you can simply read that like Mr. Negus read
24 the other.

25 MR. KOCHIS: I would like to read, then, Your Honor,
26 from Volume 11, Page 37, Lines 5 through -- Lines 5 through

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1 14, which is the page which precedes the Page 38, which
2 Mr. Negus read.

3 THE COURT: Proceed.

4 MR. KOCHIS: "Question: (BY MR. NEGUS:) Hypo-
5 thetically, if that photograph was taken from another
6 serologist and was brought to you and we asked you,
7 'Are you sure that it's a B,' can you say it's a B?

8 "Answer: (MR. GREGONIS:) I would say from the
9 photograph it looks like a B.

10 "Question: Does it look like -- I mean, it
11 could be something else? You're not sure?

12 "Answer: From the photograph, I would call it
13 a B.

14 "Question: But you're not sure from the photo-
15 graph?

16 "Answer: That's a relative term. I'm sure.
17 However, not to the same confidence as I am it --
18 as I am calling it on the plate."

19 Q (BY MR. KOCHIS:) Directing your attention to two pieces
20 of rope, A-3 which was found outside the Ryen home and
21 J-9, which was taken from the closet inside the Lease
22 home, do you recall yesterday Mr. Negus asked you some
23 questions about factors that may affect the ability of
24 a serologist to analyze the stains on those ropes and
25 get results?

26 A Yes, sir, I do.

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1 Q Is the passage of time, and by that I mean the passage
2 of a period of time from when a stain is deposited on an
3 object and the object is discovered, taken to a crime lab
4 and frozen, will that factor have any effect on the
5 ability of a serologist to get readings off a stain?

6 A Yes, it will.

7 Q If there is a difference in the passage of time between
8 two objects as to when they are discovered and when they
9 are placed in storage, in freezer storage, could that
10 affect the ability to get serological results?

11 A Yes, it can.

12 Q Directing your attention to the Item A-3, the rope that
13 was taken from the driveway by Mr. Stockwell, do your
14 records indicate when that was placed in a freezer?

15 A Okay. Again, as far as I -- from what I gather from
16 Mr. Stockwell, he placed them in the freezer when he got
17 back from the crime scene.

18 MR. NEGUS: Move to strike as non-responsive.

19 THE COURT: Yes. Sustained. May be stricken.

20 Q (BY MR. KOCHIS:) Well, do you have any knowledge as --
21 as to when -- well, first of all, do you have knowledge
22 as to when, based on laboratory records, when J-3 was
23 discovered?

24 MR. NEGUS: J-3?

25 MR. KOCHIS: I'm sorry, A-3.

26 THE WITNESS: This would be sometime on June the 5th.

1 Q (BY MR. KOCHIS:) And do you have any indication from
2 the records as to when J-9, the rope from the Lease-Ryen
3 -- Lease closet was discovered?
4 A This indicates on the record that it was discovered
5 approximately 10:42.
6 Q Well, Mr. Gregonis, directing your attention --
7 MR. NEGUS: I stipulate it was June the 7th.
8 THE COURT: So stipulate?
9 MR. KOCHIS: Yes, Your Honor, I will accept.
10 Q (BY MR. KOCHIS:) From the records, does there appear
11 then to be an approximately 48-hour gap in time between
12 the time the crime lab discovered A-3 and J-9?
13 A Yes.
14 Q Assuming that the stains, the bloodstains on A-3 and J-9
15 were both deposited at approximately the same time, would
16 the additional passage of time, the addition of two days,
17 have the potential to affect the ability of a serologist
18 to get results off of J-9?
19 A It could, yes.
20 Q Mr. Negus asked you a number of questions about items
21 that were placed in plastic containers that had stains
22 on them that -- which were consistent with human blood
23 and later analyzed. Do you recall those?
24 A Yes, I do.
25 Q And you analyzed yourself a number of -- of the stains
26 on the items in those bags; is that correct?

1 A Yes, I did.

2 Q To do that, did you have to actually open the plastic bags
3 up and take the items out?

4 A Yes, I did.

5 Q In your analysis of those items, did you see any evidence
6 of mildew inside any of the plastic bags from which you
7 removed those types of items?

8 A No, I did not.

9 Q Mr. Gregonis, considering the serological work that you
10 have done up to this point, considering the -- the
11 possibility of mixed bloodstains, are there any stains
12 which you have analyzed which are not consistent with
13 coming from either the five victims in this case and the
14 defendant?

15 A No, there are not.

16 Q Are you aware of the discriminatory powers of haptoglobin
17 and transferrin alone?

18 A Yes, I am.

19 Q And what would the discriminatory power of haptoglobin
20 alone be?

21 A For the white population, it's approximately .39. For
22 the -- excuse me, it's approximately .61. For the
23 Black population, it's approximately .62.

24 (No omissions.)

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1 Q And for the transferrin?

2 A For the transferrin, for the white population, it's
3 approximately .02. For the Black population, it's
4 approximately .15.

5 Q In this case you retested a portion of ABO -- a portion --
6 excuse me -- of A-41 twice to determine its ABO blood
7 group type: is that correct?

8 A That is correct, yes.

9 Q The volume of the sample that was used the second time
10 to retest for ABO, had that volume of sample been
11 preserved, how many additional electrophoretic tests
12 would it have been possible to run on that portion of
13 the sample?

14 A Possibly one.

15 Q And by one, are you talking about a group system test
16 such as Group I?

17 A Yes, I am.

18 Q The ABO test that you ran the second time on A-41, was
19 that sample sufficient to run a complete genetic profile
20 on it, Groups I through IV?

21 A No, it was not.

22 Q Groups I through III?

23 A No, it was not.

24 Q Is there any particular problem in photographing the
25 carbonic anhydrase electrophoretic plates?

26 A Yes, there is.

1 Q Have you discussed that problem with other serologists?

2 A Yes, to some extent, yes.

3 Q To your knowledge, are you the only person -- well,
4 strike that. Is -- does that particular plate appear
5 to possess problems with photographing it that other
6 electrophoretic runs do not?

7 A Yes, it does.

8 Q Is it fair to say that that's a harder run to
9 photograph than some of the other ones?

10 A Yes, it is.

11 Q Are you able to determine why that is?

12 A Basically, it's because of the type of fluorescence
13 that's involved. As Mr. Negus calls it, it's a glow-
14 in-the-dark type of enzyme, and it -- the carbonic --
15 the other glow-in-the-dark type enzymes, if you will,
16 are white fluorescence; whereas, carbonic anhydrase
17 is a light yellow fluorescence.

18 Q Mr. Negus over the course of the last two days has
19 asked you a number of questions about calls you made
20 on plates in which the bands were, as he termed it,
21 faint. Do you recall that?

22 A Yes, I do.

23 Q And did you in fact make calls on certain electro-
24 phoretic plates in which the bands were fainter than,
25 for example, bands that appear on optimum plates in
26 textbooks?

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- 1 A Yes, I did.
- 2 Q Did you make in this case any call on an electrophoretic
- 3 run on a plate that had a band that was so weak, you
- 4 felt uncomfortable in calling it?
- 5 A No, I did not.
- 6 Q Is there anything scientifically unacceptable about
- 7 making a call from a plate when it has banding which
- 8 is fainter than optimum?
- 9 A No, sir.
- 10 Q Is that part and parcel of the work forensic scientists
- 11 do?
- 12 A Yes, it is.
- 13 Q Is your practice in reading electrophoretic run plates
- 14 that when you look at the photograph, if you can't
- 15 call it off the photograph, you would never call it
- 16 off the plate?
- 17 A No, it's not.
- 18 Q Do you know of any serologist that operates that way?
- 19 A No, I do not.
- 20 Q Do the amount of enzymes that are in people vary from
- 21 person to person?
- 22 A They can, yes.
- 23 Q For example, does everybody have more or less PGM in
- 24 their body than they do EsD?
- 25 A I can't say everybody does, no.
- 26 Q Is there -- there's some variation in that?

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1 A I believe there's some variation. I don't know how
2 wide.

3 Q Turning to the two different types of tests, the
4 Howard-Martin and the chisum, do those require
5 different amounts of samples to complete?

6 A Yes, they do.

7 Q And between the Howard-Martin and the chisum, which do
8 you use?

9 A I use the chisum.

10 Q Which requires the larger sample?

11 A The Howard-Martin technique does.

12 Q Is one of the advantages of the chisum method then
13 with the small sample you can -- you can do the test
14 and conserve a portion for further analysis?

15 A Yes, it is.

16 MR. KOCHIS: If I could have just a moment,
17 Your Honor.

18 I believe that's all the questions I have of
19 Mr. Gregonis.

20 THE COURT: Mr. Negus.

21 MR. NEGUS: I'm going to ask to bring Mr. Gregonis
22 back not next week or the week thereafter when he's on
23 his vacation, but after my witness, Mr. Thornton, finishes
24 his testimony, which would be the week of July the 30
25 sometime.

26 THE COURT: When are you on vacation?

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1 THE WITNESS: Starting Monday, Your Honor.

2 THE COURT: For how long?

3 THE WITNESS: Two weeks.

4 THE COURT: Monday is the 16th. You'll be back
5 the 30th?

6 MR. NEGUS: That's why I picked that week.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: When will your witness be here?

9 MR. NEGUS: He will be here the 31st, but the
10 reason is that whatever happens, Mr. Gregonis has other
11 work that has to be done on this case before I feel
12 confident being finished with him, so I don't see any
13 point in having him come back twice. I'm going to be
14 asking to wait until he finishes that work before we
15 finish taking testimony in the motion.

16 THE COURT: All right. When do you want him?

17 MR. NEGUS: We'd just as soon have him on -- you
18 know, subject to recall sometime after July the 30th.

19 MR. KOCHIS: Well, Your Honor, he's going to be
20 back that weekend, and I'm sure, if necessary, I can get a
21 phone call to him the 29th, and if it's necessary, if it
22 fits our schedule, he could be here July the 30th to testify.

23 MR. NEGUS: That would seem --

24 THE COURT: Stay in close touch. Enjoy your
25 vacation, and you are subject to recall sometime that week,
26 Mr. Gregonis.

1 THE WITNESS: Yes, Your Honor. Okay.

2 THE COURT: What will we be working on on Monday?

3 MR. NEGUS: Monday we still have additional evidence
4 on this motion. We still have other witnesses yet to --
5 yet to go. We -- there's a few -- there's probably enough
6 to keep us busy most of the rest of the week, at least
7 through Wednesday, on additional testimony.

8 THE COURT: Have you started working perhaps on
9 any points and authorities with reference to this motion?
10 Have you contemplated that?

11 MR. NEGUS: No, I haven't, because, as I've
12 indicated to the Court, and I'm sure Mr. -- from talking
13 to Mr. Kochis, he's in the same boat that I am, we're
14 basically, by this time, going day to day. That is, we
15 exhausted whatever head start we had before we started
16 coming to court every day, and we're just going from day
17 to day.

18 MR. KOCHIS: Well, Your Honor, the one thing I
19 might add is we did file points and authorities on the 995
20 issue.

21 THE COURT: Counsel, I have read them and re-read
22 them. I'm just asking. I'm not urging it, although it
23 might be helpful.

24 MR. NEGUS: I -- I fully intend before we get
25 through -- and I believe, in talking to Mr. Kochis, that
26 he does as well -- to file additional things in writing

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1 with respect to what I think has been destroyed and what
2 I think the remedies should be, and I don't see any --
3 and I'm sure that Mr. Kochis has things he wishes to
4 supply.

5 THE COURT: Well, at some point you should
6 communicate to each other so that in some sort of timely
7 fashion if we can work it in, he'll be able to respond,
8 I'll have time to study them.

9 MR. NEGUS: Right. Well, that's just a question
10 of when -- I intend to do that as soon as I get the time,
11 and there's about 30 things that I have to do as soon as I
12 get the time, and that's one of the ones that has higher
13 priority, and -- but it's -- I haven't had the time to
14 do it yet. I'd certainly like to get it, but I haven't
15 had it.

16 THE COURT: Okay. So other than an expert from
17 the defense --

18 MR. NEGUS: There's a fair amount more -- I mean
19 we're going to -- I'm sure we'll have additional
20 stipulations as to some additional evidence to consider.
21 Mr. Kochis is going to have some witnesses.

22 MR. KOCHIS: I'm not going to wait, Your Honor,
23 until he rests to call the witnesses I wanted to call. I
24 have some in mind. If he runs out next week, I am going to
25 have them available, and I will just simply put them on
26 out of order, rather than waiting until he rests. They are

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1 going to be very short, I would imagine a half a day maybe,
2 maybe a little longer, maybe one day, but that will be it.

3 MR. NEGUS: When I have a chance to sit down and
4 analyze, I believe there may be some witnesses I wish to
5 recall, because we've had a lot of material that's come up
6 that I didn't know about at the beginning, and I'm sure
7 that some of the ones I tried to anticipate in advance that
8 I didn't, and I want to ask them additional questions, so
9 I would imagine that we'd have at least enough to keep us
10 busy on this motion, like I said, most of next week. Then
11 we'll try and have something other for you on tap for the
12 week of the 23rd out of order.

13 THE COURT: Why don't you take the rest of the day
14 off.

15 MR. NEGUS: Thank you.

16 THE COURT: Monday at 9:30.

17 (Whereupon, the matter was adjourned at
18 4:00 p.m., to be continued until Monday,
19 July 16, 1984, at 9:30 a.m.)

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