

COPY

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff-Respondent,)
) CR 72787
vs.)
) Supreme Court
KEVIN COOPER,)
) No. Crim 24552
)
Defendant-Appellant.)
)

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

APPEARANCES:

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and
BRIAN V. RATEKIN, C.S.R., C-3715
Official Reporters

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF SAN BERNARDINO

3 THE PEOPLE OF THE STATE)
4 OF CALIFORNIA,)

5 Plaintiff,)

6 vs.)

NO. OCR-9319

7 KEVIN COOPER,)

VOLUME 48

8 Defendant.)

Pgs. 5039 thru 5176

9
10 REPORTERS' DAILY TRANSCRIPT

11 BEFORE HONORABLE RICHARD C. GARNER, JUDGE

12 DEPARTMENT 3 - ONTARIO, CALIFORNIA

13 Monday, July 16, 1984

14 APPEARANCES:

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21 Deputy Public Defender

22
23 Reported by:

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Official Reporter
24 C.S.R. No. 2314
25 and
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T1

1 ONTARIO, CALIFORNIA; MONDAY, JULY 16, 1984; 9:45 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

11 the 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.

16 Mr. Negus?

17 MR. NEGUS: Before we begin, Your Honor, I have a --

18 I have a problem with timing that I'd like to make you
19 aware of. Originally I had planned to -- I am prepared to
20 go all day today, or at least until we exhaust the five
21 witnesses that we have scheduled for today. Originally I
22 had hoped to put Mr. Forbush on tomorrow, but that involves
23 quite a bit of preparation trying to fish out documents
24 and things of that nature, and I was ill over the weekend,
25 and I wasn't able to do it. Mr. Kochis has his witnesses
26 scheduled for Wednesday, and I would imagine that his

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1 witnesses will take about a day or half a day; therefore,
2 I request that we not do anything tomorrow as far as -- at
3 least as far as taking evidence is concerned and put
4 Mr. Forbush over until Thursday.

5 THE COURT: An investigator you've been working with
6 for months, now you need time to prepare?

7 MR. NEGUS: Yes. I mean I haven't gone -- this is --
8 this is mostly prior inconsistent statements, and I haven't
9 gone through and done the work. I have not had time to
10 prepare.

11 THE COURT: My initial reaction is negative,
12 Mr. Negus. Let's proceed with our witnesses. We can
13 discuss it later today, take it up at noon. Let's don't
14 start the morning off that way. Proceed. Call your first
15 witness.

16 MR. NEGUS: Well, I had some other requests too,
17 but maybe we should do those at noon as well.

18 THE COURT: Very well.

19 MR. NEGUS: Mr. Follett.

20
21 C H A R L E S E. F O L L E T T, called as a witness by
22 the defense, was examined and testified as follows:

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

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1 THE WITNESS: I do

2 THE CLERK: Please be seated.

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

5 THE WITNESS: Charles E. Follett, F-o-l-l-e-t-t.
6

7 DIRECT EXAMINATION

8 BY MR. NEGUS:

9 Q Mr. Follett, what is your occupation?

10 A I am a deputy sheriff for the County of San Bernardino.

11 Q And what is your assignment within the Sheriff's
12 Department?

13 A I am the assistant sheriff in charge of criminal
14 operations.

15 Q What -- what are your duties as assistant sheriff in
16 charge of criminal operations?

17 A As chief of criminal operations, I have the responsibility
18 of all the substations, their activity, their personnel,
19 as well as specialized investigations units and search
20 and rescue.

21 Q Are you the person that is responsible for establishing
22 the procedures whereby those various units run?

23 A Possibly on some occasions, yes.

24 Q Have you established any procedures for the -- for the --
25 well, the units under your command then would include
26 the West End Substation or the West End Sheriff's Station,

1 Homicide and the Career Criminal Division; is that
2 correct?

3 A That's correct.

4 Q Have you established any procedures for those units
5 to systematically and rigorously preserve physical
6 evidence gathered in the course of criminal investi-
7 gation for reanalysis by the defense?

8 A Have I established? No, sir, I have not.

9 Q To your knowledge, has anybody under your direction
10 established such procedures?

11 A A group of individuals assigned by the Sheriff to
12 direct -- to develop a new policy and procedure manual
13 have adopted those, and I have acted in a review
14 capacity of those.

15 Q I'm showing you Exhibit H-192. Are those the procedures
16 established in the manual with respect to physical
17 evidence?

18 A They would appear to be, yes, sir.

19 Q Are -- to your knowledge, are there any other procedures
20 or policies with respect to preserving physical evidence
21 for the defense that you're aware of?

22 A I'm sure there are guidelines and procedures established
23 by the criminal -- crime lab.

24 Q But you're not -- that's not part of your particular
25 responsibility?

26 A No, sir.

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- 1 Q Any others within your -- within your particular unit?
- 2 A No, sir. Each division has policies, but this would
3 supersede those policies.
- 4 Q As far as your particular division, that went into
5 effect on June 27, 1983?
- 6 A That's correct.
- 7 Q Did that merely codify existing procedures or did it
8 attempt to change them?
- 9 A It codified them.
- 10 Q They hadn't been written down in that sort of compre-
11 hensive a form before?
- 12 A Not as much in detail.
- 13 Q On June 5, 1983, did you go to 2943 English Road in
14 the Chino Hills?
- 15 A Yes, sir.
- 16 Q What time did you arrive there?
- 17 A Between 5:00 o'clock and 5:30.
- 18 Q And did you accompany anybody when you arrived? Were
19 you coming with somebody?
- 20 A No. I arrived by myself.
- 21 Q When you arrived, where did you go?
- 22 A To the Ryen residence.
- 23 Q Inside?
- 24 A I'm sorry?
- 25 Q Inside?
- 26 A Eventually, yes.

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- 1 Q How long was it before you went inside?
- 2 A Oh, a matter of a few minutes. I was there a while,
3 was briefed, and then I departed for a while.
- 4 Q And who briefed you?
- 5 A Chief Majors, Captain Myers, Lieutenant Bradford, and
6 now Captain Bradford, and Sergeant Arthur.
- 7 Q Where did that briefing take place?
- 8 A In the front yard of the residence and in the living
9 room area.
- 10 Q How many other people were in the living room area
11 when you were being briefed there?
- 12 A Basically, as I recall, those individuals I've
13 mentioned.
- 14 Q Was the Sheriff there at that time?
- 15 A No, sir.
- 16 Q What time was it that you returned after your
17 departure?
- 18 A About ten minutes after I left.
- 19 Q And then where did you go?
- 20 A I remained at the residence.
- 21 Q Back in the living room?
- 22 A Yes, sir.
- 23 Q Did you ever leave the area of the living room in the
24 residence?
- 25 A Yes, sir.
- 26 Q How many times?

- 1 A Oh, numerous times.
- 2 Q Did you -- where did you go when you left?
- 3 A I went into a different portion of the house. I went
4 outside several times.
- 5 Q Within the house, where did you go?
- 6 A Went in a hallway that I would describe as in a
7 southerly direction from the entrance to a bathroom
8 off to my left.
- 9 Q Showing you Exhibit H-366, does that appear to be a
10 diagram of the Ryen home?
- 11 A Yes, sir.
- 12 Q Taking this red marker, can you mark the various
13 routes you took when you went to rooms other than the
14 living room.
- 15 A (Witness complies.)
- 16 Q So the rooms that you went to then would be the kitchen,
17 the bathroom and the living room in the foyer?
- 18 A Yes, sir.
- 19 Q How much time did you spend in the -- in the bathroom
20 there?
- 21 A I'd estimate three to five minutes.
- 22 Q And you were -- you were looking at the -- at the crime
23 scene at that point in time?
- 24 A That's correct.
- 25 Q And you were doing the same thing when you were in the
26 hallway?

1 A That's correct.

2 Q Were the bodies of the victims still in the room at
3 that point in time?

4 A They were.

5 (No omissions.)

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1 Q How long did you stay at the Ryen residence that particular
2 day?
3 A Until about a quarter to eight.
4 Q And when you left at a quarter of eight, did you leave
5 not to return that day?
6 A That's correct. I went home.
7 Q Did you ever return to the Ryen residence after that?
8 A Yes, sir. I returned the following day.
9 Q And what time were you there the following day?
10 A Late morning hours.
11 Q And did you participate in a decision as to what items
12 to remove from the Ryen residence?
13 A No, sir.
14 Q Did you participate in any decisions as to where to put
15 the items once they were removed?
16 A No, sir.
17 Q How long were you there on the 6th?
18 A Approximately 15 minutes.
19 Q Were you there with the sheriff?
20 A No, sir.
21 Q Just --
22 A I -- let me correct that. The sheriff had arrived
23 there while I was there. He was there during the same
24 period of time.
25 Q Okay. And did you go in the house at that point in time?
26 A I can't recall. I probably did, Counselor, but I can't

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1 recall whether I did or not.

2 Q Do you recall whether you ever went into the Ryen master
3 bedroom?

4 A No, sir, I do not think I was ever in the Ryen bedroom.

5 Q While you were at the house on -- on June the 6th, was
6 there anybody present from the crime lab?

7 A Would you state that again. I didn't hear.

8 Q While you were there in the house -- while you were at
9 the house on June the 6th, was there anybody present at
10 the house from the crime lab?

11 A There were numerous people there, Counselor. They could
12 have been from the crime lab. I specifically cannot
13 remember seeing a criminalist that I could identify as
14 being a criminalist.

15 Q Did you ever return to the Ryen residence after June the
16 6th?

17 A No, sir.

18 Q Did you ever go to the residence at 2991 English Road,
19 the vacant house approximately one hundred and some odd
20 yards to the east of the Ryen residence?

21 A Yes, sir.

22 Q What time did you go there?

23 A During the late afternoon or early evening hours of June
24 7th.

25 Q And what was your purpose for going there?

26 A It had been relayed to me that things of evidentiary

011704

1 value had been located there.

2 Q While you were there, did you go inside that residence?

3 A Yes, sir, I did.

4 Q And how long were you inside the residence?

5 A Maybe ten minutes.

6 Q Who was with you, if anyone, while you were inside?

7 A Sergeant Swanlund.

8 Q And did he show you basically the things of evidence --

9 evidentiary value that had been discovered?

10 A Yes, sir.

11 Q Did Sergeant Swanlund show you any clothing that was

12 suspected to have blood on it?

13 A No, sir.

14 Q Did he show you any clothing in a washer-dryer in the

15 kitchen area?

16 A No, sir.

17 Q Did he show you a can of partially eaten food?

18 A No, sir.

19 Q Did -- did you ever give information to Captain Philip

20 Schuyler about what you had seen inside the 2991 residence?

21 A No, sir.

22 Q Showing you Exhibit H-367, does that appear to be a

23 diagram of the Lease residence?

24 A Yes, sir.

25 Q Using the same red marker, could you describe the route

26 that you took through the house in the evening of

011705

1 June the 7th.

2 A (The witness complies.)

3 Q Then did you exit by the same way you came?

4 A Yes, sir.

5 Q And that would have been the south -- the south door?

6 A Yes, sir.

7 Q Excuse me. Did I interrupt you? I didn't mean to, if
8 you had gone other places, to interrupt you.

9 A That's fine.

10 Q On June the 7th, did you become aware from the briefings
11 that you received from the officers at the scene that
12 there was a suspicion that Kevin Cooper had been in that
13 vacant residence?

14 A I can't recall, Counselor, the date that the discussion
15 was had as to when the possibility of Kevin Cooper might
16 have been involved.

17 Q Well, were you only at that house one time?

18 A Yes, sir.

19 Q Was there discussion when you became aware of that while
20 you were at the house?

21 A I don't think it was at the residence, no. I think I
22 was briefed on that portion probably at the courthouse.

23 Q Did you communicate with Sheriff Tidwell after you had
24 been in the house on June the 7th?

25 A I'm sure I did. I communicated with him on a daily
26 basis.

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1 Q Did you suggest to him that he should go out and look
2 at the scene?

3 A No, sir.

4 Q Did you tell him on that date that -- that there were
5 items of evidence indicating a strong possibility that
6 Kevin Cooper had been the one that was in the residence?

7 A Was as stated earlier. I can't recall the date that I
8 was made aware that Kevin Cooper could have possibly
9 been at the residence.

10 Q Is it possible you were aware of that before you went
11 out there?

12 A Possible, yes.

13 MR. NEGUS: Nothing further.

14

15 CROSS EXAMINATION

16 BY MR. KOCHIS:

17 Q Mr. Follett, at the time the Ryen homicides were discovered,
18 to your knowledge, did investigators contact the various
19 penal institutions located in the Chino area to check
20 as to whether or not there had been escapes from any one
21 of those institutions?

22 A Yes, sir.

23 Q And was the sheriff's office in fact made aware that
24 there was more than one escapee at large at the time the
25 Ryen homicides occurred?

26 A Yes, sir.

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- 1 Q And did the sheriff's office explore the possibility
2 that one or more of these escapees may have been involved
3 in the homicide?
- 4 A Yes, sir.
- 5 Q Did you have a purpose for going to the residence at
6 2991 Old English Road, the residence that has been
7 referred to as the Lease residence or the hideout residence
8 when you were there on the 7th of June?
- 9 A Yes, sir.
- 10 Q What was your purpose for going to that residence?
- 11 A I found that in briefings it's much more easy to -- to
12 understand the sequence and -- and the various scenarios
13 if you've seen it firsthand.
- 14 Q Was that likewise one of your purposes for going to the
15 Ryen homicide scene itself?
- 16 A That's true.
- 17 Q Were you at the Ryen scene on two days or one day?
- 18 A Two days.
- 19 Q When you arrived on Sunday, June the 5th, were you
20 initially prohibited from entering the house?
- 21 A No, sir.
- 22 Q Do you recall ever being instructed that I.D. was
23 photographing the house and you would have to wait until
24 that was completed before you could go into the house?
- 25 A No, sir, that was apparent.
- 26 Q When you arrived, then, on the 5th, did you receive some

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1 information that I.D. was photographing the inside of
2 the Ryen home?

3 A I could see that they were photographing portions of it.
4 I was assured that the area that I entered had been
5 already processed.

6 MR. KOCHIS: Thank you. I have nothing further,
7 Your Honor.

8 THE COURT: Mr. Negus.

9
10 REDIRECT EXAMINATION

11 BY MR. NEGUS:

12 Q Who told you that the area that you were -- entered had
13 already been processed?

14 A The officers that briefed me upon my arrival.

15 Q That would have been Deputy Chief Majors, Captain Myers
16 and Lieutenant, then Lieutenant Bradford?

17 A That's correct. And Sergeant Arthur.

18 MR. NEGUS: Nothing further.

19 THE COURT: Thank you very much, sir.

20 MR. NEGUS: Rosario Rosales.

21
22 R O S A R I O V. R O S A L E S, was called as a witness by
23 and on behalf of the defense, was sworn and testified
24 as follows:

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1 THE CLERK: Raise your right hand, please.

2 You do solemnly swear the testimony you are about
3 to give in the action now pending before this Court shall
4 be the truth, the whole truth and nothing but the truth
5 so help you God.

6 THE WITNESS: I do.

7 THE CLERK: Please be seated.

8 State your name, please, for the record and spell
9 your first and last name.

10 THE WITNESS: Ramiro V. Rosales, R-a-m-i-r-o
11 R-o-s-a-l-e-s.

12

13 DIRECT EXAMINATION

14 BY MR. NEGUS:

15 Q Mr. Rosales, what's your occupation?

16 A I'm a sheriff's detective, San Bernardino.

17 (No omissions.)

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1 Q And what is your assignment?

2 A I am currently assigned to the Public Affairs Division.

3 Q And was that your assignment in June of 1983?

4 A Yes, sir.

5 Q What are your responsibilities with respect to the

6 Ryen homicides in the Public Affairs Division?

7 A I dealt with the public information.

8 Q Does that mean giving information to the -- to the press?

9 A Yes, sir.

10 Q What was the source of the information that you gave to

11 the press?

12 A Primarily the ranking or investigative officers in the

13 case.

14 Q And in this particular case, who were those people?

15 A Lieutenant Bradford, who is now Captain Bradford,

16 Sergeant Billy Arthur, and I believe I talked to --

17 I'm not sure. I could have talked to Captain Myers

18 himself from the Detectives Division.

19 Q With respect to a vacant residence discovered at 2991

20 English Road, did you also talk to Sergeant Swanlund

21 about that?

22 A I don't recall talking with Sergeant Swanlund, no, sir.

23 Q Of those three, do you remember which -- which person

24 it was that you got the information about the vacant

25 residence at 2991 English Road?

26 A No, sir.

1 Q But it was one of those three?

2 A I couldn't say they were directly from one of those
3 three, no, sir, I could not answer that question as
4 to yes.

5 Q Well, you had no other sources, though, about the
6 particular crime than those three people; is that
7 correct?

8 A I'm sorry. I have to correct myself. I did have --
9 Captain Schuyler is my immediate supervisor, and I
10 usually got everything from him.

11 Q With respect to the -- to the Lease house, do you recall
12 making a statement to the press that the evidence
13 indicated there was more than one person in the house?

14 A No, sir, I do not.

15 Q Do you recall making a statement to the press that a
16 pair of corduroy pants, a T-shirt and a partially eaten
17 can of food was found in the house?

18 A I remember a conversation regarding partially eaten can
19 of food. I don't remember articles of clothing.

20 Q From whom did you get the information about the partially
21 eaten can of food?

22 A That would have been interoffice or Captain Schuyler
23 and his latest release of information.

24 Q That's a written release?

25 A No, sir. Generally at that time it was verbal.

26 Q Did you talk to the United Press -- a representative of

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1 United Press International on some time in the late
2 evening of June the 7th?

3 A I don't know if June 7th was Sunday or Monday, sir.

4 I -- I -- I didn't talk to anybody on Sunday.

5 Q Assuming that this was Tuesday, the 9th, that the vacant
6 house was discovered as having something of evidentiary
7 value in it, did you speak to the representatives of
8 United Press International late that evening -- late
9 that -- late that -- late in the P.M. of June the 7th?

10 A As far as I recall, I talked to all -- lots of members
11 of the press, and I might have talked to members of the
12 UPI.

13 Q What was your source of information concerning Josh
14 Ryen?

15 A It could have been Lieutenant Bradford -- Captain
16 Bradford or Sergeant Arthur. I'm not sure.

17 Q Do you -- do you recall telling the United Press
18 International that Josh can talk real well and
19 detectives want to stand by him, he's talking to his
20 grandmother and detectives, but he's not being
21 questioned?

22 MR. KOCHIS: I would object, vague as to time.

23 THE COURT: Well, he's asking generally first.

24 Do you recall saying it at any time?

25 THE WITNESS: I remember part of that, yes, sir.

26 Q BY MR. NEGUS: And was that at approximately the same --

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1 also on the evening of June the 7th?

2 A Sir, I couldn't answer that. It's -- it's --

3 Q And do you remember what your source of that particular
4 statement was?

5 A No, sir.

6 Q On the -- during the daytime of the -- of June the 7th,
7 did you have conversation with Ian Fallis, a reporter
8 from the Ontario Daily Report?

9 A I don't recall, sir.

10 Q Do you recall making a statement during the daytime
11 of June the 7th to a reporter that the investigators
12 in the case were frustrated because they had not come
13 up with anything?

14 A I don't recall, sir.

15 Q So you wouldn't recall the source of any such statement,
16 either?

17 A No, sir.

18 Q Your nickname is Chico; correct?

19 A Yes, sir.

20 MR. NEGUS: Thank you.

21 I have nothing further.

22 MR. KOCHIS: May I have just a moment?

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24 CROSS-EXAMINATION

25 BY MR. KOCHIS:

26 Q Mr. Rosales, Mr. Negus just asked you if you recall

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1 making the following statement to the media at some
2 point about Joshua Ryen, and I am going to read you
3 the quote. It was he can talk real well and detectives
4 want to stand by him. He's talking to his grandmother
5 and detectives, but he's not being questioned. You
6 told Mr. Negus that you recalled saying part of that.
7 Are you able to recall which part of that information
8 you may have given and which you may not have?

9 A I recall that the detectives were standing by and that
10 the grandmother was visiting or -- or -- or also standing
11 by. That part about talking well, I don't recall ever
12 saying anything like that.

13 MR. KOCHIS: Thank you.

14 I have nothing else.

15 THE COURT: Anything else, Counsel?

16 MR. NEGUS: No.

17 THE COURT: Thank you very much.

18 THE WITNESS: Thank you.

19 MR. NEGUS: Mr. Kottmeier.

20

21 D E N N I S K O T T M E I E R, called as a witness by
22 the defense, was examined and testified as follows:

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

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1 THE WITNESS: I do.

2 THE CLERK: Please be seated.

3 Please state your name for the record and spell
4 your last name.

5 THE WITNESS: Dennis Kottmeier, K-o-t-t-m-e-i-e-r.

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DIRECT EXAMINATION

8 BY MR. NEGUS:

9 Q You are the duly elected District Attorney of the
10 County of San Bernardino; is that correct?

11 A Yes.

12 Q And you were first so elected in June of 1982; is that
13 correct?

14 A As a result of a public election, yes, but I had been
15 appointed previously for about two years.

16 Q That was in the spring of 1981 that you were first
17 appointed by the Board of Supervisors; is that correct?

18 A Approximately.

19 Q What have you done as District Attorney to ensure that
20 there have been systematic and rigorous procedures
21 established so that all discoverable evidence gathered
22 in the course of a criminal investigation is preserved
23 for defense analysis?

24 A As opposed to just discovery that is discovery of the
25 reports? You're now talking about physical evidence?

26 Q Physical evidence, yes.

27 A Personally, nothing.

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1 Q Have you delegated to anybody in your office to do that?

2 A No.

3 Q Why not?

4 A It appeared, or, appears to me to be a matter within
5 the control of the various investigating agencies.

6 Q Since you have been District Attorney, have you been aware
7 of the cases of People vs. Hitch and People vs. Nation?

8 A Yes.

9 Q Were you aware that those cases placed upon the
10 Prosecution the duty that I just outlined?

11 A In an indirect sense.

12 Q What do you mean?

13 A That is, that the cases had applied an exclusion to the
14 utilization of certain items of evidence if, within the
15 specific confines of the cases involved, there was such
16 a violation. I did not believe and still do not believe
17 that Hitch and Nation can be expanded beyond the bounds
18 of the specific facts that are set out in those two
19 cases.

20 Q So you -- your belief, then, is that -- that Hitch --
21 that the only thing that they apply to is breath samples
22 and rape evidence?

23 MR. KOCHIS: Your Honor, I'm going to object. We're
24 starting to get argumentative.

25 THE COURT: Yes. Sustained.

26 Q (BY MR. NEGUS:) Why do you believe that they cannot be

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1 expanded beyond the bounds of their particular fact
2 situation?

3 MR. KOCHIS: Again I would object as not being
4 relevant.

5 THE COURT: Mr. Negus, this is going to be -- I think
6 the relevancy objection is good as well as being argumentative.
7 You know, you're going to cite those cases, we're going to
8 analogize from those cases, we're going to discuss it at
9 great length, perhaps, eventually. There's no point in debate
10 with -- with the witness on that.

11 MR. NEGUS: I'm not trying to debate; I'm just trying
12 to limit the -- that he didn't do anything and why he didn't
13 do anything.

14 THE COURT: He so stated. Sustained.

15 MR. NEGUS: He hasn't said why yet.

16 THE COURT: Why hasn't he done anything? He so
17 stated. Didn't think that Hitch applied.

18 Q (BY MR. NEGUS:) Do you think that Hitch and Nation have
19 any applicability to the evidence gathered in this
20 particular case?

21 A No.

22 MR. KOCHIS: Well, Your Honor, I, again, I think
23 I'm going to object. It's such a broad question, and it
24 gets into the arguments that we're going to make at the end
25 of this hearing.

26 THE COURT: I don't wish to deny Counsel a record

1 on the point. And, conceivably, his state of mind, like that
2 of the investigating officers, could well be relevant. I
3 don't know. But if there's any doubt, I'll permit it.

4 Overruled.

5 Q (BY MR. NEGUS:) Do you recall the question?

6 A Yes. And I think I responded "no." That is my personal
7 belief and my belief as District Attorney. That does
8 not mean that steps or actions in regard to this case
9 were not taken in case someone or some Court decided
10 that there may be some degree of applicability.

11 I'm not trying to argue with you. All I'm telling
12 you is I have a set of beliefs, as I do in making policies.
13 However, that does not mean that we don't take action
14 to try and protect the record or try and protect any
15 eventuality, looking at the case from somewhat of a
16 pessimistic standpoint, saying, well, possibly this
17 could happen or that could happen.

18 Q Looking at the case, then, from a pessimistic standpoint,
19 what steps did you think were necessary in order to carry
20 out the dictates of Hitch and Nation in this particular
21 case?

22 MR. KOCHIS: I'm going to object. That assumes a
23 fact that's not in evidence, that there's specific dictates
24 in those cases which he recognized as applying to this case.
25 I believe he testified that in his opinion those cases were
26 limited to the facts of those particular cases.

1 MR. NEGUS: I was trying -- I think he then said
2 that he, as a -- as a Prosecutor, he recognized that -- that
3 you could take a pessimistic view of them. And there --
4 maybe there were some things that he tried to do based on
5 that pessimistic view. And that's what I --

6 THE COURT: Mr. Negus, I -- I -- I think that I should
7 permit some limited inquiry on it, on reflection. But it's
8 not what he thought which steps should be necessary but what
9 he actually did in the case, I believe.

10 MR. NEGUS: Well, or the --

11 THE COURT: And the way --

12 MR. NEGUS: -- the reason I'm asking both is that
13 there may be a discrepancy between the two, what he thought
14 should have been done and what he actually did. And that,
15 I think, that -- that is relevant.

16 THE COURT: I'm not going to spend much time on it,
17 but, overruled.

18 Q (BY MR. NEGUS:) Do you recall the question?

19 A I recall the question, which related to the steps taken
20 for preservation of evidence and --

21 THE COURT: What did you think --

22 THE WITNESS: What did --

23 THE COURT: -- should have been taken?

24 Q (BY MR. NEGUS:) What did you think should have been
25 taken, with a pessimistic view of Hitch and Nation, to
26 preserve evidence in this particular case?

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1 A That's such a broad question that I have difficulty with
2 it. All I can tell you is that we took specific action;
3 we allowed things to be done; we granted, through our
4 request and with the assistance of the sheriff's office,
5 access and made available for testing certain items of
6 evidence that normally would not have been done.

7 Q What did you do, then, that -- what were those actions
8 that you took?

9 MR. KOCHIS: Your Honor, I would object as vague
10 as to time, and I think the time at which he decided certain
11 things were necessary would determine something was relevant
12 or not. He may have thought at this period of time, which
13 would not be relevant as to his thoughts in June or July,
14 when evidence was in existence. I mean, taking a pessimistic
15 view of the case at this point, we could have frozen the
16 entire hill.

17 THE COURT: All right. You can limit it to some
18 particular time, from June 4th to the 30th, or something
19 like that, month of June.

20 MR. NEGUS: It might be quicker if we just got the
21 actions and then went back and -- and tried to put in the
22 time.

23 THE COURT: No. This is a continuing matter that
24 occurred up until this very moment.

25 MR. NEGUS: Well, the Hitch problems continue up to
26 this very moment, too. I mean, it doesn't seem --

1 THE COURT: Becomes more and more remote, Counsel.

2 I'll sustain the objection.

3 Q (BY MR. NEGUS:) First off, when did you -- when did you
4 become aware of the Ryen homicides?

5 A Sunday afternoon, June the 5th, around three or 3:30.

6 Q At that point in time, did you become involved in liaison
7 with the sheriff's office about the investigation?

8 A I made a phone call to the West End Substation, offered
9 whatever assistance they would need. And, beyond that,
10 there was no liaison set up.

11 Q When was -- was there a point in time when liaison was
12 set up?

13 A I'm not sure what you mean by "liaison."

14 Q Was there a point in time when you became involved in --
15 in discussing with the sheriff's department the
16 investigation?

17 A I talked to Sheriff Tidwell Monday morning around ten
18 o'clock.

19 Q Was that the next step you took after your phone call
20 to the West End in the afternoon of June the 5th?

21 A No. I watched the -- when you say "next step," this is
22 a step in between: I watched the news accounts on
23 three channels the evening of Sunday, the 5th of June.
24 So I had some background before I talked to Sheriff
25 Tidwell, at least according to the news reports.

26 Q News reports and the sheriff's press conference?

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1 Q And what were those needs, or, what were those comments?

2 A Generally, that the items within the bedroom as well as
3 the one wall that was underneath the window by the head
4 of the bed be taken into custody and preserved for
5 possible use during the trial.

6 Q When you speak of "being necessary to present the case
7 effectively," in what sense did you mean that?

8 A I wasn't sure what would develop later on as far as an
9 issue in the case. And, additionally, I wanted to be
10 able to have access to reconstruct physically the various
11 items of evidence if it became necessary for potential
12 viewing by a jury or for whatever purpose might come
13 up during the trial.

14 (No omissions.)

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1 Q Did you have a particular reason for doing that in
2 mind at the time?

3 | A. Nothing --

4 MR. KOCHIS: Your Honor, I would object. That calls
5 for work product. If he's going into a lawyer's impressions
6 at a scene as to what he may later want to do at a jury
7 trial, that's work product.

8 MR. NEGUS: People -- Craig versus Superior Court,
9 54 Cal.App.3d, cited in -- the exact page I could dig out
10 of the transcript at the preliminary hearing, and other
11 court cases which we went into, which were also cited at
12 the preliminary hearing, indicate that the District Attorney's
13 Office does not enjoy the work product privilege; that
14 that is a privilege which is particularly -- that is -- it's
15 created by statute in civil cases. It has been created by
16 case law to a limited extent for the defense in criminal
17 cases, but it doesn't exist as far as the prosecution is
18 concerned.

19 THE COURT: Mr. Kochis?

20 MR. KOCHIS: Your Honor, if I could have a moment,
21 I think at the prelim we argued this, and I was able to
22 cite a Supreme Court case to Judge Merriam that indicated
23 that, for example, a district attorney's notes of interviews
24 of witnesses were protected by work product.

25 MR. NEGUS: Craig was the case that -- actually,
26 what Mr. Kochis did at the preliminary hearing was he made

1 that objection on one day, and then after reading the
2 cases, he withdrew it the second day.

3 MR. KOCHIS: I withdrew the objection as to
4 specific conversations Mr. Kottmeier may have had with
5 some of the witnesses, but not as to his thought process
6 as to what he wanted to do at trial at a later time. I
7 don't think this is the type of hearing in which Mr. Negus
8 should be allowed to depose Mr. Kottmeier or any other
9 prosecutor involved in the case to find out what we are
10 going to do at the trial.

11 THE COURT: But where the prosecutor is acting in
12 instructions with the investigating officer, there may be
13 some obligation there. I don't know. I haven't read these
14 cases. Can we pass it, Mr. Negus, till after the recess?
15 Can we move to something else?

16 MR. NEGUS: Maybe we could take the recess now
17 and I'll run back and get the cases. The one Mr. Kochis
18 cited, the Supreme Court case, is Shepherd versus Superior
19 Court, 17 Cal.3d, 107. The one I cited at that point in
20 time was Craig versus Superior Court, 54 Cal.App.3d, and I
21 don't have the page, and somewhere I think we even have --

22 THE COURT: I can read those two during the recess.
23 That perhaps will be enough. All right. Let's take the
24 morning recess.

25 (Recess.)

26 THE COURT: All right. Mr. Kochis, do you wish

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1 to press the point?

2 MR. KOCHIS: Well, Your Honor, I have re-read
3 briefly portions of both the cases, and it's the People's
4 position that Shepherd on pages 121 and 122, starting with
5 the last paragraph on 121, indicates, at least by implication
6 that in discussing the -- the Boehm case, that it is
7 recognized in a criminal case that there are certain
8 discovery -- excuse me -- work product privileges that
9 apply to a prosecutor. They mention the notes of the
10 interview of a witness, and then they go on to distinguish
11 the facts in Shepherd and how that rule does not apply to
12 Shepherd because in Shepherd the D.A. had investigated
13 the case, decided not to file the case, and it was a civil
14 lawsuit in which he was not a party and, therefore, in that
15 lawsuit he could not exercise the privilege.

16 Likewise, in Craig, they discuss the fact that the
17 statements would not fall within the work product definition,
18 statements of certain witnesses, and it's not my intention
19 to object to conversations that Mr. Kottmeier may have had
20 with Mr. Ogino, Mr. Swanlund or Mr. Gregonis, but his
21 thought process certainly seems to be -- fall within the
22 work product gamut of when he looks at a scene, what he
23 would want to argue to a jury, what he would not want to
24 argue to a jury. What type of demonstrative evidence he
25 would like to use to a jury, whether that's a photograph
26 of the wall, the wall itself, a chart, that certainly seems

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to be things that the work product rule was designed to protect, and I think there is language in Shepherd that does indicate that that rule is applicable to a criminal case.

THE COURT: I will come back to you. Thank you.
Mr. Negus.

MR. NEGUS: The Shepherd case doesn't go quite as far as Mr. Kochis would like it to. It says it's been held without significant discussion that -- that in a criminal case, the work product privilege might apply, and it cites the Boehm case. They then go on to say that no matter what, that wouldn't apply in the Shepherd case. If you look at the Boehm case, it was decided by Division 1 District 1 or -- I can never remember which one goes first, but it was one one. The Court of Appeal was one one. The same Court of Appeal, First District Division 1, was the court that decided the Craig case. The Craig case specifically said that there wasn't a work product privilege in criminal cases. To whatever -- whatever significance the Boehm case had before the Craig case, it was certainly overruled by Craig, that being the same -- the same Court of Appeal. The thought processes -- this doesn't normally come up, because the thought processes of a district attorney are seldom relevant, but when we have a situation where the district attorney was making requests as to how to handle the evidence, I would be very

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1 happy with a rule that said if they didn't -- didn't
2 preserve it for trial, then sanctions; however, Hitch
3 and the other cases say that we're not dealing with that.
4 We have to get into their thought processes. I'd just as
5 soon not, but that's what the law is. I don't -- there's
6 no authority that the district attorney has cited that
7 any work product rule shields the thought processes of
8 the district attorney if they're relevant in a court
9 action.

10 THE COURT: Yes. Mr. Kochis -- thank you.

11 MR. KOCHIS: Your Honor, I am going to stand on
12 my original comments.

13 THE COURT: Counsel, I believe that the state of
14 the law, as I glean from these two cases, is that there's
15 a certain amount of discretion in the Court. I do not
16 find under the circumstances so far any public interest in
17 prohibiting inquiry into his directions, thinkings and
18 communications on the collection and preservation of
19 physical evidence and, Mr. Kochis, his purposes therefor,
20 at least to the extent of whether it was for his use or
21 that for the possible defense use; so I will reserve the
22 power, of course, to limit it, Mr. Negus, but with that,
23 proceed. Overruled.

24 MR. NEGUS: Can I have the question read back?

25 THE REPORTER: I think it's in the back.

26 MR. NEGUS: I think it would be -- in this particular

1 case, it probably would save time if she did run back and
2 get it.

3 (Record read.)

4 THE COURT: Pick it up from there,

5 Q BY MR. NEGUS: Did you have -- what was your reason
6 for wanting to reconstruct the scene so it could be
7 physically seen by the jury?

8 A That was only one possible reason for taking the items.
9 I wasn't sure that I would want to reconstruct the
10 scene; however, I wanted that possibility available,
11 and preservation of the scene or the taking of the
12 items of movable evidence and some immovable evidence
13 appeared necessary if that option were to remain open.

14 Q Let me try and -- what did you think you could prove
15 by taking the items from the bedroom?

16 A That consideration really never entered my mind; in
17 other words, the specifics of proof by reconstructing
18 the bedroom, my concern was if there were issues, if
19 it became necessary to do it, I would have to make the
20 decision to take the items of evidence at that particular
21 time, as opposed to waiting maybe months or years down
22 the road at a point in time when the issues would have
23 resolved themselves and become specific so that I could
24 answer the type of question that you're asking.

25 Q So would it be fair to say then that you had no
26 particular point that you thought that taking -- that

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1 taking -- that taking the evidence out of the bedroom
2 could prove, just wanted to have it available in case
3 something came up?

4 A. The general focus of the investigation and my presence
5 at that time, at least as far as what was going on,
6 was trying to find whether there was sufficient evidence
7 even to identify a specific suspect. I was not to the
8 point of delineating in my own mind how I would present
9 a case, because I didn't even know who the suspect was
10 going to be, what relationship the suspect may have to
11 the victims or anything else, but I did know that the
12 scene, once the crime lab had finished its work, would
13 be a potential item that I would prefer to at least
14 have available, whether or not it was going to be used.

15 (No omissions.)
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1 Q Did you have any information when you made the request
2 to the sheriff whether or not the crime lab had finished
3 its work?

4 A When you say "any information," I can tell you that at
5 the time that I was there with the sheriff at 10:30 in
6 the morning there were members of the Identification
7 Bureau, particularly Mr. Duffy, who were engaged in
8 working on the scene. There was no one there that I
9 recognized as a member of the crime laboratory. And
10 since more than 24 hours had passed, or at least it's
11 been my estimation, I assumed that the crime lab had
12 completed whatever investigation had been carried out.
13 So, to answer your question, no one told me. That was
14 just the thought at the particular time.

15 Q When you talked to the sheriff, did you specify other
16 than in general terms what you would request be taken?

17 A No. Just generally furniture, all items out of the
18 bedroom, and the wall underneath the window that formed
19 the back of the headboard area. There was no headboard,
20 but the area behind the head of the bed.

21 I think I might have said also in that context that
22 I saw no need to take the clothing from the closet. I'm
23 not sure that that was mentioned, but that may have come
24 up.

25 Q In order to accomplish that, did you do anything to a --
26 to obtain a search warrant?

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1 at a crucial time and trying to have back-up individuals
2 available to cover whatever needs the sheriff's office
3 might have.

4 Q Mr. Kochis, however, was the Deputy District Attorney
5 that you assigned overall responsibility for the
6 investigation and prosecution if any suspects were
7 caught in this particular case?

8 A No. At that particular time, it was a loose arrangment,
9 which was that one of us, whether it was Mr. Kochis,
10 myself, Frank Cardinal or potentially Dennis Stout would
11 be available, and that we had this list of individuals
12 to assure that there would be someone available regard-
13 less of when an issue came up. That's during the week
14 of June the 6th.

15 Q On June the 6th, did you make an announcement to the
16 press that you had assigned Mr. Kochis to the case?

17 A I don't recall.

18 Q As far as removing the items from the bedroom, did you
19 suggest any time limits or did you -- did you discuss
20 the timing of that with Sheriff Tidwell?

21 A No.

22 Q Did you -- that morning, did you discuss the timing of
23 the removal of the items with anybody else from the
24 sheriff's department there at the scene?

25 A No.

26 When you say "discuss timing," maybe I'm being too

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1 careful in answering the question, because I said
2 something like, "When you are finished, if you are not
3 taking it for some other reason, these are things that
4 I would like to have made available." I did not receive
5 at the scene a long appraisal of all the items that were
6 going to be taken or that had been taken.

7 Q So, in any event, you didn't tell the sheriff that there
8 was any particular rush or hurry about getting the items
9 removed?

10 A Not at all.

11 Q Did you discuss the removal of items with any other
12 sheriff's personnel other than Sheriff Tidwell that
13 morning?

14 A No.

15 Q Showing you Exhibit H-69, is that a diagram of the
16 route you took through the Ryen home in orange, the
17 orange lines, on the morning of June the 6th?

18 A Yes.

19 THE COURT: Excuse me. What time did you say you
20 got there, sir?

21 THE WITNESS: About 10:30 a.m.

22 Q (BY MR. NEGUS:) And what time did you leave in the
23 morning?

24 A I'm not sure. Approximation, about 11:30.

25 Q So after -- after you had gone through the house, you
26 remained outside, then, for a short time afterwards?

- 1 A Yes.
- 2 Q The items that you were requesting be removed were
- 3 essentially items that had blood on them; is that correct?
- 4 A I'm not sure if you're asking the question as to the
- 5 reason or the description or --
- 6 Q Description.
- 7 A No, I didn't phrase it in that way. In fact, I was
- 8 general in terms of saying everything in the bedroom, so
- 9 it made no difference whether it had blood on it or not.
- 10 Q Did you specifically include any physical items that
- 11 appeared to have some degree of concentration of blood
- 12 on them, that is, specifically point out, "Make sure
- 13 you get those," or something to that effect?
- 14 A The only item that morning that I made such a request
- 15 of was the wall underneath the window at the head of
- 16 the bed.
- 17 Q The items that you were asking Sheriff Tidwell to remove,
- 18 you were aware that a majority of them had blood on them?
- 19 A I didn't examine --
- 20 Q Were you aware --
- 21 A -- them that carefully. I took a general view of the
- 22 scene, and I did nothing more than look around the room
- 23 and get a feeling or an impression. I did not go over
- 24 and examine each item to determine whether or not it had
- 25 blood. So I couldn't tell you.
- 26 Q Well, it was apparent that the -- that the walls, the

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1 carpet, the furniture, most of those items had blood on
2 them; is that right?

3 A The wall that I asked to be seized, of course. The
4 carpet, yes, was apparent there was blood on it. When
5 you looked at the bed, the bed itself had blood on it.
6 But when it came to the furniture, the furniture is of
7 such a pattern that the blood is not readily apparent
8 from a distance, viewing. In other words, it's a
9 imitation antique wood that has a splatter pattern in-
10 corporated in it.

11 In fact, in a later conversation with, I believe,
12 Mr. Swanlund, I pointed that out that it was difficult
13 to see in photographs probably some of the patterns
14 because of the way in which the wood was painted. That
15 was one of the reasons why I -- it might be a good idea
16 to take the furniture.

17 Q When did that later conversation with -- with Mr.
18 Swanlund occur?

19 A About 3:30 that afternoon.

20 Q As far as determining -- well, was one of the possibilities
21 that you had in mind in asking that the items be removed
22 to help determine the identity of a suspect in court?

23 A The items that I requested were not requested with
24 investigatory efforts in mind. These were strictly
25 requests associated with trial work. So, in other words,
26 I was not trying to tell Homicide, the crime lab or I.D.

1 how to do their job. I figured they would do whatever
2 was necessary in regards to the investigation.

3 (No omissions.)
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1 Q The question was inartfully phrased.

2 Did you request that the items be removed to help
3 prove the identity of the perpetrator in court?

4 A That was not one of the purposes in my mind at that
5 time.

6 Q When you requested the items be removed, did you know
7 that blood could be typed to limit the number of
8 potential donors?

9 A Sure.

10 Q Did you know that in order to do that, it had to be
11 preserved in certain fashion?

12 A It depends on your definition of "preserved."

13 Q Did you know that if you just let blood sit out in the
14 open without doing anything to try and arrest its
15 degradation, that within a couple of months, much of
16 its ability to provide typing information would be
17 lost?

18 A No, I did not know that if you -- all I'm doing is
19 trying to put that in context. No, I did not know
20 that blood would degrade unless it was frozen or unless
21 special efforts were taken to preserve it.

22 Q At what point in time did you learn that?

23 A I can't pinpoint a time, but it was not within the
24 remaining days of June. It could have been July,
25 August or September of -- it was somewhere along the
26 line, and I can't even identify for you the source.

1 Whether I learned it from a member of the crime lab,
2 Mr. Kochis, Bill Arthur, you, I don't know. You
3 wouldn't have been involved at that point in time,
4 but --

5 Q Did you review a copy of the search warrant that was
6 prepared on June 6, 1983, for the Ryen residence?

7 A No, not to my recollection. I shouldn't be so absolute.
8 I don't recall doing that.

9 Q Was the south wall -- or at least the portion of the
10 south wall under the window that you requested the
11 sheriff to remove -- was that the only wall that had
12 blood on it in the room that you saw?

13 A No.

14 Q Why did you limit your request to that particular wall?

15 A Because that appeared to be the wall that had a
16 pattern of some significance as far as a -- an unusual
17 splatter pattern. There were drops of blood -- I can't
18 tell you if I noticed this during the first viewing or
19 when I went in to see Mr. Swanlund later on, or even if
20 it was on the 8th of June, that I did notice that there
21 were drops of blood on most, if not all, of the walls,
22 as well as the ceiling, but they were isolated and
23 scattered drops of blood, as opposed to blood in what
24 appeared to me to be an identifiable pattern.

25 Q At that particular point in time, I mean had you
26 identified the pattern or just that you thought generally

1 it was identifiable?

2 A It was just a pattern. It appeared as though there was
3 something that could be derived from that particular
4 wall, whether by expert analysis or just by anyone
5 looking at it and making an evaluation of the way in
6 which the blood was laid out on the wall.

7 Q At that particular point in time, had you ever received
8 any instruction, done any reading, been involved in a
9 case which involved blood spatter analysis?

10 A Yes.

11 Q Were you ever involved in a case in which blood spatter
12 analysis was used to try and reconstruct a crime,
13 reconstruct the sequence of events?

14 A No.

15 Q Were you ever involved in a crime which blood spatter
16 analysis was used to try to position the victims when
17 they were bleeding?

18 A No.

19 Q Did you consult with anyone as to the effect of your
20 request after having made it, that is, anybody with
21 a -- a criminalist or Mr. Longhetti or somebody with
22 more experience in that area than yourself?

23 A No.

24 Q After you asked the -- the items to be seized, did you
25 do anything in -- by way of the pessimistic Hitch-Nation
26 sense to see that those items were preserved in the

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1 early days of June?

2 A Well, "preserve" has two different -- or many different
3 definitions. Just the fact that the items were taken
4 is, in a sense, preserving them. They become available.
5 If you're asking did I ask that they be frozen, no, I
6 did not ask that the items be frozen.

7 Q Did you do anything just in the -- in the non-serological
8 sense, but just to see that they were put in a place
9 where they wouldn't be damaged, the blood wouldn't be
10 chipped, that sort of thing?

11 A I relied strictly on the Sheriff's Office to handle
12 that portion of the request. No, I did not check up
13 on it to find where it had gone or in what manner the
14 various items had been stored, and, additionally, I
15 did not supervise the removal of the items from the
16 scene.

17 Q Did you give any instructions about how, for example,
18 the items were to be removed, for example, the south
19 wall?

20 A The only item that I gave any thoughts on was the
21 south wall, and the thought that I offered later in
22 the afternoon of the 6th was if it became necessary
23 to pull out the entire wall, including the stucco and
24 studs, rather than risk destroying the plasterboard
25 by just yanking it out without regard for the pattern
26 that they were trying to save.

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- 1 Q What time did you return to the Ryen residence that
2 afternoon?
- 3 A About 3:30.
- 4 Q And were you alone or did you come with somebody?
- 5 A I had with me Frank Cardinal, John Kochis and Dennis
6 Stout.
- 7 Q What was your purpose in returning that afternoon?
- 8 A To give the prosecutors that were with me an
9 opportunity to view the scene, in case it became
10 necessary for them to draft search warrants or assist
11 the investigation in any way, should I not be available.
- 12 Q While you were there that afternoon, did you re-enter
13 the Ryen house?
- 14 A Yes.
- 15 Q And on the diagram in front of you, is the little red
16 mark the path that you took in entering?
- 17 A Yes.
- 18 Q And that would be diagram H-369?
- 19 A Yes.
- 20 Q How long were you there on the 6th in the afternoon?
- 21 A Probably no more than an hour. It seems to me that we
22 left about 4:30, but that's an approximation.
- 23 Q At that point in time were there criminalists working
24 on the -- at the scene?
- 25 A I was aware that there were two criminalists at the
26 scene. I did not see them working, working in the sense

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1 of collecting items of evidence or engaging in testing.

2 Q At that point in time, was Sergeant Swanlund in charge
3 of the crime scene?

4 A I'm really not sure who was in charge of the crime scene.
5 He's the one that I talked to in regard to removal
6 of the various items, but I don't know who was in
7 charge.

8 Q Did he appear to be the ranking Sheriff's person there?

9 A I have no idea. As far as I knew, the scene was Billy
10 Arthur's responsibility, and I didn't know if Billy
11 Arthur was there or not or cannot recall, and I have
12 no idea what the various ranks of the Sheriff's personnel
13 were that were at the scene.

14 Q In any event, at some point in time, you talked to
15 Mr. Swanlund about what -- what you had requested be
16 done; is that right?

17 A Yes.

18 Q And Mr. Swanlund was -- he was in the -- in the master
19 bedroom at that point in time?

20 A Yes.

21 Q And that was your purpose for entering the house the
22 second time?

23 A Yes.

24 Q What was the -- what was that conversation with
25 Sergeant Swanlund?

26 A Just generally that, yes, I was serious that I wanted

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1 the bedroom removed and the wall, and to give him some
2 explanation as to the whys and the thoughts that I had
3 to justify the expenditure of effort.

4 Q During that particular period of time -- that particular
5 conversation, did you discuss, in addition to why you
6 wanted it removed, where you wanted it held?

7 A No.

8 (No omissions.)
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1 Q Did you discuss with him how long it would be necessary
2 to hold it once it was taken?

3 A No.

4 Q Was Mr. Ogino in the room at the time that you were
5 having your conversation with Sergeant Swanlund?

6 A I don't recall.

7 Q Did -- did you redescribe to Sergeant Swanlund those
8 items that you wanted removed?

9 A It may have come up in the conversation, but it was no
10 more specific than what I have mentioned earlier.

11 Q That is everything except the clothes --

12 A Clothes --

13 Q -- in the master bedroom?

14 A Yes.

15 Q In that conversation, did you specifically mention
16 items with blood on them?

17 A I don't know if it was because I've heard the question
18 so many times or whether it's my recollection. That
19 combination of words sounds familiar, but, beyond that,
20 I have no recollection specifically of saying, "Take
21 everything with blood on it." That becomes an issue on
22 the 8th, or at least that's part of a conversation I have
23 on the 8th. I don't know if it occurred on the 6th or
24 not.

25 Q Let me show you Volume 25, Page 131 of the transcript
26 of the Preliminary Hearing. Showing you Lines 13 through

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1 21 of that, of your testimony at the Preliminary Hearing,
2 on Page 131, you indicated, in your description of --
3 of what you requested of Sheriff Tidwell that you wanted --
4 would appreciate having removed any physical item that
5 appeared to have some degree of concentration of blood
6 on them. Does that refresh your recollection as to
7 making that particular request?

8 A. No, at least in those words. I may have made that
9 statement and obviously did at the Preliminary Hearing.
10 But at this time, hearing that does no more than leave
11 me where I was when you asked the question.

12 MR. NEGUS: Your Honor, if I could, then, read from
13 Volume 25, Page 131, Lines 13 to 21.

14 THE COURT: Yes.

15 MR. NEGUS: "Question: Well, what did you
16 decide to preserve in your limited sense to
17 preserve?

18 "Answer: I advised Sheriff Tidwell that I
19 would appreciate having all of the items from
20 the master bedroom, including carpeting,
21 furniture, any physical item that appeared to
22 have some degree of concentration of blood, and
23 I was not specific at that time, including the
24 master bedroom wall, which was under the window
25 at the head of the bed in the bedroom."

26 Q. (BY MR. NEGUS:) At that time that you had your

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1 conversation in the afternoon with Sergeant Swanlund,
2 were you aware that a search warrant had been drafted
3 and taken to Judge Kloepfer?

4 A Yes.

5 Q Did you so advise Mr. Swanlund?

6 A I don't recall.

7 Q When you talked to Sergeant Swanlund, did you in fact
8 verify that -- that your request to Mr. Tidwell had been
9 passed onto Sergeant Swanlund?

10 A Yes.

11 Q Did Sergeant Swanlund say anything to you about when he
12 was going to take the stuff?

13 A No.

14 Q Was there any conversation about waiting until Mr.
15 Clifford got there with the search warrant?

16 A I don't recall.

17 Q At that point in time, did you --

18 A Again, understand I'm not trying to avoid the question.

19 Q Okay.

20 A There may have been conversation that I heard, but it
21 was not directed at me. When I say I don't recall it,
22 there may have been conversation between Swanlund and
23 someone else, but I don't recall anyone saying to me
24 we would have to wait until Clifford gets here before
25 we can start removing the items.

26 Q Okay. And you didn't make that request to Sergeant

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1 Swanlund to wait for Clifford to get there?

2 A. No.

3 Q. Was your talk with Sergeant Swanlund toward the beginning

4 of your time there or toward the end or in the middle,

5 if you can recall?

6 A. Seems to me it was closer to the end.

7 Q. At some point in time while you were there, did you have

8 a conversation with Mr. Ogino and Mr. Gregonis?

9 A. Yes.

10 Q. Was your conversation with Mr. Swanlund before that

11 conversation or after?

12 A. Before.

13 Q. Did you have a -- another conversation with Sergeant

14 Swanlund after the Ogino-Gregonis conversation?

15 A. No.

16 Q. What was the -- what was the nature of the conversation --

17 well, who was -- who was involved in the Ogino-Gregonis

18 conversation? Yourself, Mr. Ogino, Mr. Gregonis or

19 others?

20 A. Yes.

21 Q. Were there other officers involved?

22 A. Excuse me?

23 Q. Were there other officers involved, too?

24 A. Mr. Kochis may have been within earshot. He was at

25 least in the area. But I don't know that he heard or

26 was able to understand what was being said. He did not

- 1 participate in the conversation.
- 2 Q Was that conversation just about as you were ready to
- 3 leave?
- 4 A Yes.
- 5 Q Do you recall some blood being found in a driveway and
- 6 some gauze being found in an exercise area?
- 7 A I recall the gauze. The blood that you're talking about
- 8 seems to me had occurred at 2991 as opposed to 2943.
- 9 Q Okay. So you recall -- you do recall some gauze that
- 10 would have occurred prior to your leaving?
- 11 A Yes.
- 12 Q And did -- when you left, did Mr. Cardinal, Mr. Kochis
- 13 and Mr. Stout go with you?
- 14 A Yes.
- 15 Q What then was the conversation that you had with Mr.
- 16 Gregonis, Mr. Ogino?
- 17 A I am not sure which one addressed me. I believe it was
- 18 Mr. Ogino. But I'm not positive who did the talking.
- 19 And the statement was something to the effect of they
- 20 wanted to do some additional testing within the Ryen
- 21 residence. That is -- that is not an exact quote.
- 22 That is the general gist of what the conversation was.
- 23 Q Okay. So they were making a request to you to do
- 24 additional testing in the Ryen --
- 25 A Yes.
- 26 Q What did you respond to them?

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- 1 A I told them to make the request of Sergeant Swanlund or
2 someone within the sheriff's office.
- 3 Q And did they respond to that?
- 4 A Not to my recollection.
- 5 Q After you told them that, did you -- did you then leave?
- 6 A Yes.
- 7 Q When they told you that they wanted to do additional
8 testing, did they say of what?
- 9 A No.
- 10 Q Did you ask them?
- 11 A No.
- 12 Q Did the -- did the question or did -- did the -- was
13 the south wall, the portion of the south wall that you
14 had requested be removed, was that discussed at all?
- 15 A In that conversation?
- 16 Q Yes.
- 17 A I don't believe so.
- 18 Q Did you say anything to Mr. Ogino about your problems
19 in holding on to the scene?
- 20 A No.
- 21 Q Did you believe that there were any legal problems in
22 holding on to the scene as long as was reasonably
23 necessary to do scientific work at the scene?
- 24 A No.
- 25 Q Did you say anything to Mr. Gregonis about the Manson
26 case?

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1 A No.

2 Q Or did you say anything to Gregonis about Irving Kanarek?

3 A No.

4 THE COURT: Excuse me, Mr. Negus. Did that come up
5 someplace, by way of offer of proof, Irving Kanarek? Was
6 that mentioned heretofore?

7 MR. NEGUS: Well, I associate Irving Kanarek with
8 the Manson case. And I just wanted to make sure. The
9 Manson case has come up.

10 THE COURT: Well, first I ever heard of Mr. Kanarek.

11 MR. NEGUS: Well, Mr. --

12 THE COURT: I thought about it.

13 MR. NEGUS: -- Kanarek was Mr. Manson's lawyer.

14 THE COURT: I thought --

15 MR. NEGUS: That's the reason why I mentioned it.

16 THE COURT: Counsel, I've thought of the name. I
17 just wondered if somebody else had it heretofore. Go ahead.

18 MR. NEGUS: I believe Mr. Kottmeier's mentioned
19 the name in jest, but I wouldn't want to --

20 THE COURT: Go ahead.

21 MR. NEGUS: -- make an issue of that at this time.

22 Just I don't think I have made a single hearsay
23 objection.

24 Q (BY MR. NEGUS:) Did Mr. Ogino or Mr. Gregonis describe
25 to you wanting to study blood spatter -- spattering
26 and do a reconstruction of blood splatters?

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1 Q When you told Mr. Gregonis to talk to Mr. Swanlund,
2 did you give him any reason for doing -- that you said
3 that you were telling him to go talk to Mr. Swanlund?

4 A If I did, it was nothing more than to the effect that
5 I was not in charge of the investigation; that the
6 Sheriff's Office was responsible, and the manner in
7 which the investigation was being conducted is within
8 the discretion of the officers in charge.

9 Q Did you indicate to him that that -- that their request
10 was between -- between them and Homicide?

11 A Homicide or whoever is in charge of the scene. I don't
12 know that I used the word "homicide." I may have said
13 the officers in charge or "make the request to your
14 superiors."

15 Q Did you indicate that -- that you -- that you didn't
16 get involved or interfere in that sort of thing?

17 A I didn't say it quite that way. I may have said that
18 I would not be responsible for the directing of an
19 investigation, that that was a matter between them and
20 the Sheriff's Office, as opposed to them and the
21 District Attorney's Office.

22 Q Did they indicate why they were coming to you?

23 A No.

24 Q Did you tell them that if they went through the chain
25 of command and at some point in time needed support in
26 making their requests, that at that point in time you

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1 would be willing to consider whether to support them
2 or not?

3 A Yes. I think it went beyond just consideration. I think
4 I advised them that if they went through the chain of
5 command and if they still ran into what they felt was
6 difficulty, that I would be willing to at least offer
7 my voice to be heard in that particular issue, but I
8 would not decide the issue for them.

9 Q In the next hour or so were you in some place where
10 you were available to them to support them had they
11 requested it?

12 A We would go back to the District Attorney's Office in
13 the West End here. I don't know how long we stayed at
14 the District Attorney's Office; however, my phone
15 number is available, whether it's to the D.A.'s office
16 or home. By "available", I mean it's in the phone book
17 as well as available through the Sheriff's Office.

18 Q The D.A.'s office in the West End, the switchboard closes
19 at 5:00, and you can't get in; is that correct?

20 A Yes; however, on this particular case, the reason we
21 had the variety of prosecutors involved is to assure
22 that there would be someone available so that phone
23 calls potentially could have been made to home, and
24 the home phone numbers were available with the investi-
25 gating team.

26 Q Is there any reason why you didn't support them with

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1 Sergeant Swanlund right then and there?

2 A It wasn't given to me in terms of a decision having
3 been finally made and that there was any danger as
4 far as them not getting the opportunity to complete
5 whatever work they wanted to do. I was not in a
6 position even to evaluate what they wanted to do
7 compared to what had been done, I was not aware of
8 all the specifics of evidence collection that had gone
9 on in the preceding 24 hours, but the issue was not put
10 to me in terms of, my goodness, we're going to lose
11 this opportunity or that there is an immediacy as far
12 as a decision that has to be made right this minute,
13 and if you don't help us, we won't have the opportunity.
14 I didn't have that feeling at all.

15 Q Prior to your departing, had Mr. Clifford arrived at
16 the scene with the search warrant?

17 A I don't know.

18 Q Did you see Mr. Clifford at the scene?

19 A I saw Mr. Clifford at the scene a couple of times.
20 That's why I cannot tell you at what point in time he
21 arrived. I did not see him within the context of
22 arriving with a search warrant in his hand saying,
23 "All right, now I've got it, we can go ahead," nothing
24 like that. Each time I saw him, he was doing other
25 functions such as doing a diagram of the interior of
26 the scene, things like that.

011755

1 Q Were you aware that Mr. Clifford was the fellow that
2 was the Sheriff's officer that was getting the search
3 warrant?

4 A No, at that time.

5 Q Do you know how long the conversation with Mr. Ogino
6 and Mr. Gregonis lasted?

7 A A minute to two minutes.

8 Q When you talked to Mr. Swanlund, was there any conver-
9 sation about -- about legal problems of holding the
10 scene longer than one particular day?

11 A No.

12 Q Did Mr. Swanlund indicate that he was going to check
13 with Sergeant Arthur about the removal of the stuff?

14 A I don't recall.

15 Q On June the 8th, did you again return to the Ryen
16 residence?

17 A Yes.

18 Q Approximately what time was it that you arrived?

19 A I'm not sure at this time. I believe it was about the
20 same time as before, maybe --

21 Q 10:30 or so?

22 A 10:30, 11:00, in that area.

23 THE COURT: Let's break it with him here, Counsel,
24 if you don't mind, and go into the scheduling of witnesses
25 now,

26 You will have to be back at 1:30, Mr. Kottmeier.

1 Do you wish to be heard further on your request
2 for a continuance, Mr. Negus?

3 MR. NEGUS: Well, I -- I don't know what to say,
4 Judge. I just am not -- I am only capable of moving so
5 fast. I was sick this weekend, so I wasn't able to prepare
6 as far in advance as I would have liked. I had an informal
7 agreement with Mr. Kochis that I would -- he wouldn't have
8 to have his witnesses here until Wednesday. Apparently,
9 a lot of his witnesses have problems. They can't get here
10 till Wednesday, so there's no way I can -- we could sort of
11 switch places.

12 THE COURT: How many more witnesses have you?

13 MR. NEGUS: Right now I can't tell you. What I'm
14 prepared to do this week is do -- finish Mr. Kottmeier,
15 Mr. Kochis, recall Mr. Arthur. That should take this
16 afternoon is my -- is my best guess. Okay. Then Mr. Kochis
17 has a bunch of people that he wishes to -- to recall. He
18 thinks that might be half a day or something like that. I
19 intend to put --

20 THE COURT: When?

21 MR. NEGUS: Wednesday. Okay. I intend to put
22 Mr. Forbush on to testify, Most of what Mr. Forbush is
23 going to testify is prior inconsistent statements. I
24 haven't even located -- have not had time to locate those
25 statements in my notes and in the transcripts; therefore,
26 it's kind of -- it's hard for me to ask Mr. Forbush about

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1 them till I go through -- I have them, I have some
2 indications in my notes as to where to look, but I haven't
3 written that out.

4 There's also some testimony I want to -- want him
5 to do, which I haven't seen his notes on yet. I was planning
6 on telling him what to bring so that he can talk to me
7 tomorrow afternoon and we could go through it.

8 I expect there to be considerable legal problems
9 involved in Mr. Forbush's testimony in that I expect
10 Mr. Kochis to probably wish to take the opportunity of
11 Mr. Forbush testifying to find out some things about some
12 of the conversations that Mr. Forbush has had and some of
13 the investigations that he's done. I feel it incumbent
14 upon me to, because of what I understand defense lawyers'
15 duties are, to try and resist that as much as possible.
16 That's going to take some thought. Okay. That is
17 basically where I'm at right now.

18 I indicated to you that I have one additional witness
19 that I am sure I am going to call, and that's Dr. John
20 Thornton. I would also not be prepared to be finished
21 with this motion until such time as Mr. Gregonis and the
22 crime lab has finished analyzing the evidence. I'm not
23 sure when that's going to be. In addition, there are
24 probably some newspaper reporters that when I have a chance
25 to go over the -- the testimony, I'm going to want to call,
26 but I haven't had a chance yet to do that. There probably

1 are some other brief witnesses, total -- including newspaper
2 reporters -- less than half a day's testimony that I will
3 want to call, but I just have not had an opportunity to go
4 over the seven or eight weeks of testimony we've had in
5 this particular case yet to determine what areas I neglected,
6 what areas I have to finish up. I've gone through the list
7 of witnesses that I drafted for Mr. Kochis at the
8 beginning, and I'm just about at the end of that. I have
9 not had a chance yet to --

10 THE COURT: All right. Mr. Kochis, anything?

9a 11 MR. KOCHIS: Not at this time, other than to say
12 the witnesses I intend to call this week I'm relatively
13 confident will be done within a half a day, if Mr. Negus'
14 cross is restricted to only the areas I bring up on direct.

15 THE COURT: Counsel, as I've sat here and back in
16 my mind tried thinking about this since you gave me
17 indication this morning, I will give you some thoughts that
18 I have. You have been working fully with Mr. Forbush now
19 for roughly this last ten months. He's a veteran investi-
20 gator known by me from years ago. He's very experienced.
21 He's probably spent 50 to 75 percent of his time in court
22 since these motions started about March of this year.

23 Largely, I think your workload that you complain of
24 has been brought on by you. The motion could have been
25 shortened considerably without sacrificing any of the
26 defendant's rights. I feel that you've shotgunned me to a

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1 large extent. You've held the Court and counsel and all
2 these witnesses captive now for week after week after week.
3 You can get essentials from Mr. Forbush without color
4 coding and annotating all of his testimony and that of
5 every witness who's testified in this case.

6 You seem well enough today. Your sickness could
7 not have been too devastating for you to appear as you have
8 today without any disability. You had Friday, Saturday
9 and Sunday, three days to work on this. You have the rest
10 of today or at least when we break early, as we consistently
11 have, tonight and tomorrow morning. Your familiarity with
12 this subject matter is now, I'm sure, so extensive it
13 shouldn't require another day with all that that involves.
14 Mr. Forbush's testimony is, as indicated, impeaching, and
15 it's not going to be critical, I suspect, to this case
16 at all or to this motion. Your inquiry has been exhaustively
17 thorough and detailed on a trail-blazing effort to establish
18 new law, seemingly completely unprecedented in the scope
19 that you have presented here. I feel the Court has been
20 very considerate and we've literally consumed months of
21 penetrating and exhaustive inquiry. Mr. Negus, I don't
22 feel that you have shown much forbearance, if any, of time
23 or cost, not only in your failure to use the preliminary
24 deposition, and thus duplicating all that went on there in
25 the weeks and months that that went on, but duplicating by
26 cumulative witnesses throughout these proceedings, and I'm

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1 weighing a lot of that with the inhibiting factors that
2 we have.

3 As I told you last week, I spent some time in
4 San Diego, and I have been in communication with the
5 Judicial Council. I am trying to keep San Diego pacified,
6 and I'm not sure that I can do it. If this case is delayed
7 much longer, we may be in difficulty and I may have to go
8 back to square one. I'm not sure if that is a consideration
9 for you, but it is for me. We made certain commitments to
10 them, based upon our estimate, Mr. Negus, and that was --

11 MR. NEGUS: I object to that, Your Honor. I have
12 never made an estimate --

13 THE COURT: Let me finish, and I will come back to
14 you. I appreciate you didn't give me a date certain, but
15 we discussed it, and we selected a date.

16 MR. NEGUS: I have told you hundreds of times I
17 don't --

18 THE COURT: Mr. Negus, will you kindly let me finish,
19 please. And to the extent that I've put it in writing with
20 the communication that we expected to start in San Diego
21 approximately July 9, and you've got me to delay that, if
22 we have San Diego eliminated -- I have also been in touch
23 periodically with personnel from the Judicial Council.

24 (No omissions.)
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1 We'll have to go back to square one,
2 and that involves time and considerations, again. I think
3 that the remaining issues and the witnesses that you're
4 presenting now are embellishments, and -- on the point that
5 you're trying to hang this on the Hitch motion, and that that
6 additional evidence is not going to be critical.

7 Counsel, I simply do not find good cause for a
8 continuance. And the request is denied. I expect us to
9 resume tomorrow morning at the usual time.

10 MR. NEGUS: I'm not going to be prepared, Your Honor,
11 to put Mr. Forbush on tomorrow morning. If you wish to
12 rule that I can't put Mr. Forbush on at all, then -- then I
13 can't.

14 THE COURT: We'll proceed at 9:30 tomorrow morning,
15 Mr. Negus.

16 Anything else, gentlemen?

17 MR. KOCHIS: Not at this time.

18 MR. NEGUS: Your Honor, then if -- if -- I have been
19 trying to be good to you in that I was -- did not do anything
20 all day Saturday, because I laid in bed sick. If you notice,
21 I'm not up and running around like I normally am. If you
22 are going to penalize me for doing that, for trying to work
23 so I can use as much of your court time as possible, frankly,
24 I'll just have to call in sick, because I'm not well enough
25 really to proceed at the pace at which you -- in which you
26 want to go. And if you want me to go to get a doctor's --

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(Whereupon the noon recess was taken at
12:07 p.m.)

1 ONTARIO, CALIFORNIA: MONDAY, JULY 16, 1984; 1:42 P.M.
2 DEPARTMENT NO. 3 HON. RICHARD C. GARNER, JUDGE
3 (Appearances as heretofore noted.)
4

5 THE COURT: All right. Mr. Kottmeier's still on
6 the stand under oath.

7 Proceed, Mr. Negus.
8

9 DIRECT EXAMINATION (Resumed)

10 BY MR. NEGUS:

11 Q On June 8th, did you -- did you go inside the Ryen
12 house?

13 A No.

14 Q Did you -- did you have a conversation with Sergeant
15 Swanlund?

16 A Yes. And I have to retract the last answer. Yes, I did
17 go in the Ryen house on the 8th.

18 Q And that was for the purpose of talking to Sergeant
19 Swanlund?

20 A Yes.

21 Q And that was just inside the master bedroom?

22 A As far as I recall, yes.

23 Q When you went in the master bedroom, did you look around
24 to see what had been taken and what had not been taken?

25 A Yes.

26 Q And as a result of that look, did you request Sergeant

1 Swanlund that additional items be taken?

2 A Yes.

3 Q What did you request be taken?

4 A The closet doors, the molding from -- I should say the
5 baseboard molding from part of the master bedroom, some
6 of the hall, some of the door molding that entered into
7 the hall and some of the door molding next to the bath-
8 room, the door off of the bathroom, the door from the
9 master bedroom. And it wasn't done in terms of an
10 itemized list, the way in which I have given it to you.
11 In effect, I said, "Whatever items left that have
12 significance or bloodstains on them, such as the base-
13 board, the closet doors, and so on, I'd request that they
14 be removed and held in evidence."

15 Q So essentially, with the exception of the walls, which
16 were to remain standing, you were asking anything with
17 blood on it be taken out?

18 A Yes, basically.

19 Q Did you yourself at that time make a complete inventory
20 of the items which would be covered?

21 A No.

22 Q Did you give Sergeant Swanlund examples of what you wanted
23 removed?

24 A Yes.

25 Q Did you make it clear that that was just examples and --
26 and not -- not a complete list of everything that you

1 wanted?

2 MR. KOCHIS: Objection. That would call for
3 speculation as to whether he made anything clear or not.

4 THE COURT: Did you give examples?

5 THE WITNESS: Yes.

6 THE COURT: That's a conversation, asking for a
7 conversation in effect. Overruled.

8 Q (BY MR. NEGUS:) What -- when you gave the examples,
9 did you specify that you were giving examples, and that
10 wasn't a complete list?

11 A To answer that, probably the best I can do is to tell
12 you I was surprised to see those items in the residence
13 at that time. So that I did what I could do best to
14 convey to Sergeant Swanlund that any items that had
15 substantial, and by "substantial" or significant, plainly
16 visible smears of blood or something other than just
17 specks or a few drops of blood, were to be taken. Now,
18 the form of the request, I can't tell you specifically.

19 Q After June the 8th, did you go back again to check that
20 all the items that you wanted removed had been removed?

21 A No.

22 Q Why not?

23 A Didn't appear necessary to me.

24 Q Why not?

25 A Because as far as I could tell, in having seen the
26 items in the Identification Bureau, it appeared to me

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1 that all the items that I requested had been picked up
2 or taken.

3 Q When did you see the items in the Identification Bureau?

4 A Some time in August or September.

5 Q Was that on the occasion that Mr. Forbush, you, me and
6 some people from I.D. went to view the items there?

7 A I believe so. It might help, I had talked to people --
8 I had talked to people such as Billy Arthur and other
9 individuals and asked them if everything had been cleared
10 out, and at least had conversation and assurances from
11 other individuals, yes, all the items had been taken.

12 Q Showing you Photograph H-75, a hall door with fingerprints
13 or what appear to be marks of some sort and blood on it,
14 did that come within the description of items that you
15 wanted seized?

16 A It came within the description of items that I wanted
17 seized. However, I was not aware of the blood on that
18 particular door at the time I made the request.

19 Q Showing you Exhibit H-109, a closet door, along the
20 north wall of the Ryen master bedroom it has some dots
21 of blood on it. Did that come within the description
22 of the items that you wished seized?

23 A No.

24 Q Why not?

25 A There isn't enough blood on the door in particular, and
26 the patterns on the door itself did not appear to have

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Q And those -- those were the same reasons that you had on the 6th of June at your initial request?

A No. These were a little bit different, because at that point in time the molding, the doors and so on stood out a lot more than they did when you viewed the room with all the furniture, the carpeting and so on in it. Because the room was basically white; we were down to concrete, I believe, at that point in time. The drapes and all the other things had been removed, so that the room looked much brighter. And in observing the room in that condition, the blood smears and concentrations stood out more. The spots such as you describe or have pointed out on the door here in H-109 did not stand out in comparison to the others.

(No omissions.)

1 Q Why then did you want them, these additional items,
2 seized on June the 8th?

3 A As far as a -- a reason that had specific relation to
4 the investigation of the case, I could not tell you,
5 other than I wanted the material available for whatever
6 purpose it might be used for, whether it might be some
7 testing that I would think of, somebody might think of,
8 or for demonstrative evidence during the trial. I
9 wasn't specifically sure why we were taking them,
10 other than it seemed like a good idea to have the
11 items preserved.

12 Q So you wished them to be preserved for possible testing,
13 as well as just showing to a jury?

14 A Yes.

15 Q Once you made that decision, did you at that point in
16 time endeavor to find out what steps were necessary
17 in order to preserve them for testing?

18 A No.

19 Q Why not?

20 A Because I wasn't aware of what testing might become
21 important; and as far as the items themselves, I was
22 assured, or at least assured in my own mind, that
23 Homicide, ID and/or the crime lab would take whatever
24 procedural steps would be necessary consistent with
25 their investigation to preserve it for whatever they
26 might have in mind.

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1 Q At some point in time did you request that the crime
2 lab do some serological testing?

3 A Yes.

4 Q Okay. When was the -- was that one time or more than
5 one time?

6 A I would say more than one time.

7 Q When was the first time?

8 A The morning of June the 6th.

9 Q What testing did you request be done on the morning of
10 June the 6th?

11 A ABO typing of blood samples from within the master
12 bedroom.

13 Q Did you specify as to which blood samples?

14 A No.

15 Q Did you specify as to how many samples you wished typed?

16 A No, other than I did make the request of Sheriff Tidwell
17 that sufficient samples or typing be done so as to at
18 least as far as ABO delineate various areas and blood
19 from the victims.

20 Q I'm sorry. I didn't understand what you meant by that.
21 I mean --

22 A In other words, I was not specific. I said that I
23 would like to have ABO testing done within the master
24 bedroom from whatever items or areas the crime lab
25 thought necessary so that we could have available
26 locations or the placement of locations of the various

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1 blood types around the room.

2 Q Did you make any other requests at that time for typing?

3 A I think that -- not at that time, no.

4 Q When was the next time that you made a request?

5 A The afternoon when I talked to Sergeant Swanlund.

6 Q What request did you make at that point?

7 MR. KOCHIS: Your Honor, I would object as not
8 being relevant and calling for hearsay as to each and
9 every time he may have had a conversation with the Sheriff's
10 Office about something he was requesting be done on the
11 case.

12 THE COURT: I think it could be. Overruled. So far,
13 anyhow.

14 MR. KOCHIS: Well, then I would make the second
15 objection that it calls for hearsay. It doesn't relate to
16 conversations that Mr. Negus has introduced evidence of in
17 the past that he's attempting to impeach those witnesses.

18 THE COURT: I don't think he is. Overruled. Continue.

19 THE WITNESS: I just made the statement to Sergeant
20 Swanlund that I hoped that the crime lab got sufficient
21 samples so that we could check the blood types, if they
22 turned out to be inconsistent one with the other from the
23 crime scene.

24 Q BY MR. NEGUS: Did Sergeant Swanlund tell you whether
25 or not that had been done?

26 A I don't recall.

1 Q Did you do anything to try and follow up and determine,
2 other than that comment to Sergeant Swanlund, whether
3 that had been done?
4 A At that particular time, no.
5 Q At some later time, did you?
6 A Well, later in the case, as I talked to members of the
7 crime lab and got the crime lab reports, I was able to
8 verify the extent to which the work had been done.
9 Q Did you make any requests for additional testing to be
10 done on June 8?
11 A No.
12 Q Did you make any requests for additional testing to be
13 done up until the time that you learned that there was
14 non-victims' blood in the Ryen house?
15 A Yes, but I cannot say to who or within what context.
16 Q Do you remember what it was for?
17 A Yes.
18 Q What was that?
19 A Additional blood testing or to have the blood work done
20 that I had earlier mentioned to Sheriff Tidwell.
21 Q So essentially the same request repeated to somebody
22 else?
23 A Yes.
24 Q When --
25 A Keep in mind that -- I'm not trying to confuse the issue,
26 but my request was not for serological profiles. My

1 request was strictly in the area of ABO type of exami-
2 nation.

3 Q When it was -- when you did become aware that there were
4 non-victims' blood in the house, did you make at that
5 time requests for additional testing?

6 A Testing or sample gathering?

7 Q Well, let's -- one at a time. Testing first.

8 A Not that I recall.

9 Q What about sample gathering?

10 A I think I voiced the request and was told at the time
11 I voiced it that that had already been worked on or
12 that they were going back out to the scene to collect
13 it; if not, that they'd already completed the work.

14 Q Do you remember to whom you made that request?

15 A It seems to me I talked to Billy Arthur in regard to
16 it.

17 Q At the time that you were aware that you -- that you
18 became aware that there was non-victims' blood involved,
19 you were also aware, were you not, that they were doing
20 testing that was more than just ABO?

21 A Yes.

22 Q At that point in time, did you do anything to try and
23 re-evaluate the procedures which had been established
24 up to that point as far as preserving blood was
25 concerned?

26 A No.

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1 Q Why not?

2 A My concern was not in checking or second guessing each
3 step of the way the investigation or analysis efforts
4 by the Sheriff's Office, I was dealing with people
5 that I'd had experience with in the past. There was
6 no question in my mind that they were going to do a
7 competent, if not extraordinary, job of investigation
8 and preparation of the evidence available.

9 Q At that point in time, were you aware of what evidence
10 was being preserved for typing of non-ABO -- for non-
11 ABO blood typing and what was not?

12 A You're talking about the day that I discovered or heard
13 about --

14 Q The non-victims.

15 A -- non-victims' blood in the house?

16 Q Yes.

17 A No,

18 Q Did you become aware of that at any time prior to the
19 arraignment of Mr. Cooper?

20 A Only in the very general sense. That is, I knew that
21 there was some evidence in the ID Bureau. I knew that
22 some evidence was being tested for fingerprints in a
23 variety of efforts, including the argon laser. I knew
24 that some items of evidence had been frozen, and I
25 knew that some items of evidence had been packaged and
26 maintained within the crime lab; so that in general

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1 terms, I was aware that evidence was being handled
2 differently, for one reason or another, throughout the
3 investigation of the case.

4 Now, specifically, how many pieces of the sheet
5 had been frozen or not frozen, what was being done
6 with the sheet, no.

7 Q After you became aware of the non-victim blood and up
8 until the time of the preliminary hearing when these
9 issues were first broached in court, did you do anything
10 to request additional samples of blood be gathered?

11 A Nothing more than what I've already mentioned.

12 Q What about testing, anything more than what you've
13 already mentioned as far as testing?

14 A I submitted a general request letter to the Sheriff's
15 Office, and I do not recall specifically what I
16 mentioned in regard to blood tests within that particular
17 letter.

18 Q That was just a general request letter that they
19 process the evidence in this particular case?

20 A No. It was more specific, that is, certain items of
21 evidence or investigation that it appeared to me were
22 priority items, as opposed to normal course-of-business
23 items.

24 (No omissions.)
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1 Q When you went to the I.D. loft, were you aware at --
2 after that visit that the blood on the furniture was
3 not being preserved for serological typing?

4 A By that you mean the blood was present in the loft as
5 opposed to that which had been seized from the furniture
6 at an earlier time?

7 Q I think if there was any such blood at an earlier time,
8 yes.

9 A I'm not even sure that at the time that we visited the
10 loft in August or September that I was aware of the
11 necessity to freeze the blood for serological typing.

12 Q Was there anything immediately visible about the
13 furniture which would give you any -- any indication that
14 the blood on it was in any way deteriorated at that time?

15 A No. Just -- and maybe I should offer an explanation.
16 If I had thought that the preservation of blood was of
17 significant issue, as it has been alluded to within this
18 hearing as far as serology is concerned, I would not have
19 allowed you or Mr. Forbush to have handled the samples
20 or to have moved the various items of evidence around
21 for photographic purposes, and we would have been much
22 more restrictive in the way in which it was handled in
23 your presence.

24 Q At that point in time were complete laboratory reports
25 and notes available to you so that you could tell from
26 the written reports what areas that had samples taken

1 from them and what areas had not?

2 A When you say "available," they may have been in the
3 crime lab; I don't know. And I certainly could have
4 gotten them from the crime lab if that had been my
5 desire. I was not aware personally, whether they were
6 in my possession or in the crime lab's possession, of
7 the details of where each item of blood evidence had
8 been seized and what work had been completed on each
9 item of evidence.

10 Q At -- at some time did you go to the crime lab with
11 Mr. Forbush and myself and perhaps Mr. Kochis and view
12 some evidence at the crime lab on --

13 A Yes.

14 Q Was that on two different days?

15 A Yes.

16 Q During one of those days, did Mr. Stockwell bring out
17 the -- the portions of the south wall which had been
18 taken out of the -- out of the Ryen home?

19 A Yes.

20 Q Was that the first that you became aware of where that
21 south wall had been kept?

22 A By "kept," meaning crime lab versus I.D.?

23 Q Crime lab versus I.D. or any other place.

24 A No. I think I was advised earlier that the wall had
25 gone to the crime lab. And I cannot tell you from what
26 source or even specifically when.

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1 Q When the wall was taken out, was it possible to tell
2 from looking at it first how many samples had been
3 collected from it?

4 A I didn't look at it for that purpose. I don't know.

5 Q I take it you wouldn't be able to tell -- you weren't --
6 you don't know whether it was possible to tell where
7 the samples were taken from.

8 A I have no idea. I looked at it only casually to see how
9 well it fit together and what damage, if any, had been
10 done in removing it from the bedroom. Outside of that,
11 the blood patterns and/or marks on the wall itself where
12 blood may have been removed were of no matter to me at
13 that time.

14 MR. NEGUS: I'd like to read, Your Honor, Volume 25,
15 Page 143, Lines 15 through 21.

16 MR. KOCHIS: If I could have just a minute.
17 I found that.

18 MR. NEGUS: "Question: On Wednesday, June
19 the 8th, did you become aware that the wall that
20 you had requested be removed was in fact physically
21 at the crime lab?

22 "Answer: No.

23 "Question: When did you become aware of that?

24 "Answer: The date that we viewed the evidence
25 in the presence of Mr. Stockwell the first occasion."

26 Q (BY MR. NEGUS:) On -- at some point in time, did you

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1 also go to 2991 English Road, the vacant Lease house?

2 A. Yes.

3 Q. And when was that?

4 A. Morning of June the 8th.

5 Q. What was your purpose in going to the house?

6 A. To look at a hideout scene contained within the
7 residence, to get a visual idea of where the scene was
8 in relation to the Ryen house and also the physical
9 location within the dwelling, 2991, itself.

10 Q. Why did you want to get that information?

11 A. Possible use in relation to search warrants, and also to
12 give me a reading for future reference should I become
13 involved in handling the case or a deputy involved in
14 handling the case and be able to advise them of certain
15 things that I picked up by way of observation.

16 Q. Showing you Exhibit H-370, is that a diagram of the
17 route that you took into that hideout scene?

18 A. Yes.

19 (No omissions.)

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1 Q And that would be -- appear in orange on the diagram;
2 is that right?

3 A That's true.

4 Q Were the various items of -- of evidence still remaining
5 at the scene at the time that you visited?

6 A There were some items that remained, but not the items
7 I think that you're addressing your question to. The
8 items within the bedroom itself and, in particular,
9 inside the closet all had been removed.

10 Q Were those items described to you?

11 A Yes.

12 Q By whom?

13 A Sheriff Tidwell.

14 Q Did you ever receive a description of the items in the
15 house from Mr. Swanlund, that is, in the time frame of
16 June of 1983?

17 A June the 8th?

18 Q Yes.

19 A I believe Sergeant Swanlund mentioned some things or
20 some items, but I could not tell you who mentioned
21 what versus other items; in other words, I can't tell
22 you what part was told to me by Sheriff Tidwell and what
23 was mentioned in regard to the statements by Sergeant
24 Swanlund.

25 Q Do you recall any bloody clothing being described as
26 having come from that house?

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1 A No.

2 MR. KOCHIS: Your Honor, I wonder if we could take
3 a brief two- or three-minute recess. I had too much iced
4 tea at lunch. I'm having difficulty concentrating.

5 THE COURT: All right. We will have a short recess.
6 (Recess.)

7 THE WITNESS: Could we have the prosecutor's
8 comment stricken? / /

9 THE COURT: Any objection? No. We'll leave it
10 there, for what it's worth,

11 Go ahead.

12 Q BY MR. NEGUS: During the preliminary hearing, did you --
13 did you have some conversations with Dr. Root about
14 the knives or knife that was used in the murder?

15 A I asked questions of Dr. Root.

16 MR. NEGUS: (Directed to the clerk). Do you have
17 the little photos that we stipulated to?

18 MR. KOCHIS: Your Honor, while those are being
19 looked for, I would be interposing an objection on the
20 grounds of relevance and hearsay as to conversations he
21 may have had with Dr. Root at the preliminary hearing as
22 to how relevant those would be to a Hitch issue.

23 THE COURT: Mr. Negus?

24 MR. NEGUS: Dr. Root testified first that there
25 was -- the evidence, physical evidence, was inconsistent
26 with there being just one knife being used in the attack.

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1 Then he came back and said that it was, and then he testified
2 that it wasn't, and then he testified that it was. I just --

3 THE COURT: All right. Since it's for impeachment
4 purposes, then I will overrule the objection.

5 MR. KOCHIS: Well, Your Honor, assuming the state
6 of the transcript is as Mr. Negus represented, still what
7 would that have to do with a Hitch issue as to what was
8 preserved or not as to whether or not the doctor had a
9 particular type of opinion as to the number of weapons
10 used at the preliminary hearing? We had his testimony
11 as to what samples he took, what samples he didn't take,
12 what photographs he took, what photographs he did not take,
13 but I fail to see how his opinion as to the type of weapon
14 that was used at the prelim is a Hitch issue.

15 THE COURT: Mr. Negus?

16 MR. NEGUS: I will grant that the whole issue is
17 not one of world-shattering weight, but I don't think it
18 will take very much time, so if you want to think of it in
19 terms of 352, there has been some testimony that you can,
20 through the use of physical evidence, determine the number
21 and type of weapons that are being used. I believe that
22 this is just merely being offered on the issue of the
23 materiality of our no longer being able to make that
24 determination and to show that the prosecution has an
25 interest in limiting it to one weapon so it would be
26 consistent with their theory of the case that Mr. Cooper

1 would have been able to do this crime all by himself.

2 THE COURT: In any way are you claiming that there
3 was just one weapon?

4 MR. KOCHIS: No.

5 MR. NEGUS: Knife, one knife. Their prosecution
6 theory, as I understand it, is that there was -- that the
7 way -- the evidence is consistent with just one person
8 doing it --

9 THE COURT: All right, Mr. Negus, I will overrule
10 the objection. Proceed.

11 Q BY MR. NEGUS: Did you show Dr. Root a photograph during
12 the course of that conversation?

13 A I asked Dr. Root some questions about a photograph.

14 Q What questions did you ask him?

15 A I asked Dr. Root if a number of the wounds that he had
16 described would be consistent with a blade of a
17 configuration similar to one of those pictured within
18 the photograph.

19 Q And that took place after he had testified that his
20 autopsy findings were inconsistent with there just being
21 one knife?

22 A No. He didn't speak in the terms of that kind of
23 conclusion. As I recall, it was during the break within
24 the courtroom itself following a description of some of
25 the wounds to Peggy Ryen, in particular I think some
26 puncture-type wounds to her hand. I don't recall if it

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1 was her right or her left hand.

2 Q Do you recall Dr. Root writing on his notes "different
3 knife" for those two wounds?

4 A No.

5 Let me back up, and maybe clarification will help.
6 When you say writing on his notes, do you mean within
7 our conversation, him physically writing on his report,
8 or that within his report was the statement "different
9 knife"?

10 Q Well, when Dr. Root was testifying, he had on the stand
11 with him his notes; is that correct?

12 A I believe so. I don't recall specifically.

13 Q Do you recall him, while he was on the witness stand
14 testifying about I believe it was wounds 15 and 16
15 on Peggy Ryan, that he wrote down over those wounds
16 "different knife"?

17 A No. I recall him testifying --

18 THE COURT: Just a moment. Whether he does or
19 does not recall it, sir, I don't see the relevancy of
20 that.

21 Q BY MR. NEGUS: Okay. During the preliminary hearing,
22 was it inconsistent with your theory of the case that
23 there was -- that there would be more than one knife
24 used in the attack?

25 A No.

26 (No omissions.)

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1 Q Did you, during the course of the Preliminary Hearing,
2 make a -- well, Dr. Root's testimony, in addition to a
3 knife-type injury, was that there was an ice pick-type
4 injury and an ax-type injury; is that correct?

5 A Hatchet or ax, yes.

6 Q Did you make a statement to the press during the course
7 of the Preliminary Hearing that there were only three
8 weapons used in the attack?

9 MR. KOCHIS: I would object. Calling for hearsay
10 and not being relevant.

11 THE COURT: In some way would that be inconsistent
12 with --

13 MR. NEGUS: I believe it was inconsistent with his
14 last statement, at least by implication.

15 THE COURT: On that basis, I'll overrule the
16 objection.

17 Did you, Mr. Kottmeier?

18 MR. KOTTMEIER: I do not recall all of the statements
19 or comments that were made to the press during the Preliminary
20 Hearing, whether published or unpublished.

21 Q (BY MR. NEGUS:) Well, do you recall saying to the press
22 during the Preliminary Hearing and particularly during
23 Dr. Root's testimony that only three weapons were used?

24 A No, I do not recall that.

25 Q During the Preliminary Hearing, was it your theory that
26 only one person was involved in the attack, the one on

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1 Christopher Hughes?

2 A Yes.

3 MR. NEGUS: Can we just have a brief conference so
4 we can get a stipulation, perhaps.

5 MR. KOCHIS: If I could have just a minute, Your
6 Honor.

7 THE COURT: Counsel, let's take the afternoon
8 recess and give you an opportunity to find it.

9 MR. KOCHIS: Judge, we found it.

10 THE COURT: You found it now?

11 As you were.

12 Q (BY MR. NEGUS:) Showing you Exhibit H-371, is that
13 the photograph that you showed Dr. Root?

14 A I showed Dr. Root two photographs. This is one of the
15 two that I asked him about.

16 Q And the other photograph that you showed him was a
17 closeup of some of the knives in that photograph that
18 you have in your hand?

19 A I don't recall if it was the same knives or if it was a
20 different set of knives, but the one that we discussed
21 or talked about is the top knife in H-371.

22 Q During that conversation, did Dr. Root say anything to
23 you about never having seen a knife such as that before?

24 A I don't recall that, no.

25 Q Do you recall Dr. Root saying anything about not having
26 considered that kind of knife when he was -- when he

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1 was making his description of the knife to -- at the
2 autopsy?

3 A Yes.

4 Q He said something like that?

5 A Something along those lines. However, in the discussions,
6 I offered to him another description verbally in
7 addition to the top knife, which included a more
8 elongated front portion or thick blade from point to
9 the -- I don't know how to describe it, but the portion
10 that is cut out I described to him as being cut out and
11 longer than pictured in the top knife of H-371.

12 Q So you didn't actually have a photograph or an exemplar
13 of the knife that you were asking him was consistent
14 with the wounds?

15 A No, not altogether. By "altogether," I didn't --
16 I offered thoughts in addition to the photograph.

17 Q But the shape of the top knife was the shape that you
18 were describing to him; is that correct?

19 A Yes.

20 Q Just different dimensions?

21 A Yes.

22 Q Later on in his testimony, did Dr. Root indicate that
23 there were some irregularly edged wounds on one of the
24 victims which would have been inconsistent with any
25 other weapons that he'd described up to that point?

26 THE COURT: Mr. Negus, how is that relevant to this

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1 motion?

2 MR. NEGUS: Same -- same relevance as the last one.
3 It's just -- well, he --

4 THE COURT: I think you went too far on the last one.
5 Make your objection, Mr. Kochis.

6 MR. KOCHIS: I made it before and it was overruled.
7 I'll make it again.

8 THE COURT: I'll sustain it this time.

9 MR. NEGUS: Just so I -- may -- may I have, as my
10 offer of proof, the testimony that was on Page -- Volume 25,
11 Page 159, Line 13 through Page 166, Line 22 of the Preliminary
12 Hearing.

13 THE COURT: I don't know what that is.

14 MR. NEGUS: That is what I would offer as what I was
15 going to prove from.

16 THE COURT: What are you doing? Are you attempting
17 to impeach Dr. Root now? That's what I'm objecting to.

18 MR. NEGUS: My theory is that I have been prevented
19 by the -- by the preservation of evidence from determining
20 the number of weapons, that the Prosecution is attempting
21 to limit the number of weapons. Had I had a better preserva-
22 tion of evidence, I could have refuted that just to show
23 that there's -- that -- the materiality of the failure to
24 preserve.

25 THE COURT: All right. The ruling will stand,
26 Mr. Negus.

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1 MR. NEGUS: Nothing further.

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3 CROSS EXAMINATION

4 BY MR. KOCHIS:

5 Q Mr. Kottmeier, on June the 6th of 1983, what was your
6 knowledge of serology as to what your crime lab could
7 do or could not do with bloodstain typing?

8 A At that particular time, from my own personal experience
9 and limited conversations with members of the crime lab
10 at a much earlier date, I thought the limitations were
11 in the area of ABO blood typing and acid phosphatase.

12 Q On the 8th of June of 1983, what was your purpose for
13 requesting that certain items that had blood on them be
14 removed from the residence?

15 A Just to assure their availability for testing or whatever
16 purpose might become necessary in the future.

17 Q When you made the request, were you directing the
18 officers' attention to any item that had a drop of blood
19 on it or items that had what appeared to you to be
20 patterns of bloodstains on them?

21 A I was directing Sergeant Swanlund's attention to areas
22 that had smears or patterns that were clearly discernible
23 as opposed to trying to remove every item that had a
24 drop of blood on it.

25 Q Were you aware on the 6th of June, when you arrived at
26 the crime scene in the morning, what items of evidence

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1 had been taken by the sheriff's crime lab the
2 preceding day on Sunday, June the 5th?

3 A No.

4 Q Were efforts undertaken at the start of this case to
5 get Mr. Negus copies of police reports that consisted
6 of discovery in this case?

7 A Yes.

8 Q Was reference made to keep track of which reports were
9 given to Mr. Negus on which particular day?

10 A Yes.

11 Q And directing your attention to an item which has been
12 marked for identification as H-368, do you recognize
13 what that is a Xerox copy of?

14 A Yes.

15 (No omissions.)
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1 Q What is it a Xerox copy of?

2 A The ready-for-discovery slip in relation to Kevin Cooper's
3 case for August 1st, 1983, the first installment of
4 police reports forwarded to the Public Defender's
5 Office.

6 Q Were you present at the County Jail in San Bernardino
7 on the 1st of August when Mr. Cooper was arraigned?

8 A Yes.

9 Q At that time was Mr. Negus appointed to represent
10 Mr. Cooper in this case?

11 A Yes.

12 Q And was that, to your knowledge, the first time at which
13 you were going to make those reports available to an
14 attorney who had been formally appointed to represent
15 Mr. Cooper?

16 A True.

17 Q Does that exhibit reflect which pages of discovery were
18 given to Mr. Negus on the 1st?

19 A Yes.

20 Q And was that approximately pages 1 through 1632?

21 A Yes.

22 Q Directing your attention to an exhibit which has been
23 marked for identification in this hearing as H-265
24 which appears to be a police report authored by Officer
25 Eckley, is there any writing on that document which
26 appears to be yours?

1 A Yes, the number 1,002 in the lower left-hand corner of
2 the exhibit.

3 Q Would that have been one of the police reports that was
4 given to Mr. Negus on August the 1st of 1983?

5 A Yes.

6 Q Did you ever give anyone at the scene on June the 6th
7 of 1983 a time limit under which items had to be
8 removed from the Ryen home?

9 A No.

10 MR. KOCHIS: I have nothing further.

11

12 REDIRECT EXAMINATION

13 BY MR. NEGUS:

14 Q Just briefly. The 1632 pages that you provided in
15 discovery, were they in any way indexed?

16 A No.

17 Q Did they include numerous reports of investigations
18 undertaken by the Sheriff's Office which in the end
19 proved fruitless?

20 A Yes.

21 Q Was there anything given in the discovery which would
22 indicate which of those particular documents proved
23 fruitless and which did not?

24 A No, particularly because they were numbered before
25 I had read them. That's a practice that I have to
26 assure that you get or that the defense receives a

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1 full set of discovery, and that's why as I then read
2 them and go through them, I run into duplicates where
3 a copier's done more than one copy, and so on.

4 Q Showing you Exhibit H-291 and directing your attention
5 to a report dated August 1st, 1983, in that which goes
6 from page 1715 through 1719, that report was not in the
7 original discovery made available to me at the arraign-
8 ment in the County Jail; is that correct?

9 A True.

10 Q And also a report dated August 10th, 1983, consisting
11 of pages 1720 to 1729, that likewise was not in the
12 original reports made available to me on the -- on the
13 1st because it hadn't even been written yet; correct?

14 A That's true.

15 Q So this report dated August 10th, that was not forwarded
16 to me the same day that it was typed, was it?

17 A I would have to look at our notes as far as the date on
18 which various pages were released to the Public
19 Defender's Office. I cannot tell you from memory.

20 Q And the numbering system that was used in providing --
21 in providing the discovery, was, with the -- was, with
22 a few exceptions and deletions, consecutive from one to
23 three thousand and whatever it is at the present time?

24 A Yes.

25 MR. NEGUS: Nothing further.

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1 RE CROSS-EXAMINATION

2 BY MR. KOCHIS:

3 Q Mr. Kottmeier, on the discovery, was the procedure your
4 office employed essentially that when new reports were
5 forwarded to you, they were numbered sequentially,
6 copies were made, and a copy was made available for
7 Mr. Negus' office?

8 A Yes, unless the reports came to you, and then you would
9 number them and forward them to Mr. Negus' office. We'd
10 call back and forth on occasion to try and pick up the
11 next consecutive number.

12 MR. KOCHIS: Your Honor, I have one area, a short
13 area, that I have left out on cross.

14 THE COURT: Anything else on this point, Mr. Negus?

15
16 FURTHER REDIRECT EXAMINATION

17 BY MR. NEGUS:

18 Q There's often a day or two, sometimes three, time lag
19 between when you receive them and processing when it
20 gets to me?

21 A It depends. In most instances, I'd say it's at least
22 24 hours, and in some instances, no, it's like ten
23 minutes, so it depends.

24 MR. KOCHIS: I have no further recross on that area,
25 but I do have the other area.

26 THE COURT: All right, Go into your new area.

CROSS-EXAMINATION (Resumed)

BY MR. KOCHIS:

Q Mr. Kottmeier, in August or September, did you meet with Mr. Negus and Mr. Forbush at the ID loft in San Bernardino?

A Yes.

Q And was that at their request to view certain pieces of evidence which had been seized in this case?

A Yes.

Q Were they allowed to view the evidence in the ID loft?

A Yes.

Q Were they allowed to photograph the evidence in the ID loft?

A Yes.

Q Did they actually touch pieces of evidence so that they could photograph it?

A Yes.

MR. KOCHIS: I have nothing else.

REDIRECT EXAMINATION (Resumed)

BY MR. NEGUS:

Q With respect to the items with blood on it on the September visit, was that moved by members of the ID Bureau and set in position for us to photograph?

A Not in all cases.

Q Which cases was it not?

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1 A I cannot recall specifically.

2 Q Most of the stuff that Mr. Forbush and I touched was
3 basically a bunch of clothing in drawers that you
4 wished us to go through so that it could be released
5 back to the Ryen family; is that correct?

6 A It seems to me that there were other items that were
7 moved or held in one position or another so that the
8 correct photograph could be taken or examined, but as
9 far as specifics, I can't tell you which item of
10 evidence was touched or moved in that way. ✓

11 MR. NEGUS: Nothing further.

12 MR. KOCHIS: Nothing further.

13 THE COURT: Thank you very much.

14 All right. Now we will take the recess.

15 (Recess.)

16 (No omissions.)
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1 J O H N P A T R I C K K O C H I S, called as a witness
2 by and on behalf of the defense, was sworn and testified
3 as follows:

4 THE CLERK: You do solemnly swear the testimony you
5 are about to give in the action now pending before this
6 Court shall be the truth, the whole truth and nothing but
7 the truth so help you God.

8 THE WITNESS: I do.

9 THE CLERK: Please be seated.

10 State your name, please, for the record and spell
11 your last name.

12 THE WITNESS: John Patrick Kochis, K-o-c-h-i-s.

13
14 DIRECT EXAMINATION

15 BY MR. NEGUS:

16 Q Mr. Kochis, you're a Deputy District Attorney from the
17 County of San Bernardino; is that correct?

18 A Yes.

19 Q On June 6th, 1983, you were so employed?

20 A Yes.

21 Q On that date, were you given an assignment of some sort
22 with respect to the Ryen homicides?

23 A Yes.

24 Q What was that?

25 A To make myself available to answer any legal questions
26 the officers investigating the case might have.

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1 Q As part of that assignment, were you requested to assist
2 in the drafting of a search warrant?

3 A I suggested that we draft a search warrant, and I made
4 myself available to review a search warrant which was
5 brought to me.

6 Q And showing you Exhibit H-372, is that a copy of the
7 search warrant and the affidavit in support of it?

8 A That I reviewed on June the 6th?

9 Q Yes.

10 A Yes, it is.

11 Q In that search warrant, the officers are commanded to
12 bring in blood and hair samples; is that correct?

13 A I don't interpret it that way. I interpret that they're
14 commanded or allowed to search a residence and to
15 possibly seize certain items. And among those items
16 are two of the items that you've mentioned.

17 Q What was the purpose for looking for blood and hair
18 samples?

19 A There was no specific ^{purpose} person when the officers came to
20 my office to look for those particular items. They were
21 concerned when they came to my office as to any legal
22 issues that may arise from their reentry into the home
23 on June the 6th of 1983. They were concerned that they
24 had left the residence on the 5th or the early morning
25 hours of the 6th, and they wanted to know if there
26 was any potential, first of all, Mincey issue with their

1 reentry into the home. Then they wanted to know what
2 steps should be taken to allow them to seize items in
3 the house which to them appeared to have some evidentiary
4 value once they got into the house. And they wanted a
5 warrant to allow them to take things that they determined
6 necessary as opposed to a warrant that was limited that
7 would have to be redrafted every time they came upon a
8 new item.

9 Q Was there any contemplation that they were going to take
10 blood and hair samples?

11 A Specifically at that time, no.

12 Q What about bloodstained carpets?

13 A Yes.

14 Q Bloodstained furniture?

15 A Yes.

16 Q Bloodstained walls?

17 A I don't specifically recall walls being discussed in
18 the morning, but I was sure it was discussed in the
19 afternoon.

20 Q Well, was the -- was this particular warrant drafted
21 in the -- in the afternoon, or, typed?

22 A My conversation started in the morning, and I can't
23 recall specifically when it was typed.

24 Q You were the person that -- that -- that caused the --
25 this warrant to be typed; is that right?

26 A Yes.

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1 Q It was typed by a secretary in your office in the West
2 End?

3 A Yes.

4 Q On that date, did you yourself go to the Ryen residence?

5 A Yes.

6 Q What time did you arrive?

7 A It was some time after 2:30 in the afternoon, because
8 it was after that time that I left for Chino Hills.

9 Q And how long were you at the residence?

10 A Inside or on the grounds?

11 Q On the grounds.

12 A Perhaps 30 minutes.

13 Q And was that with Mr. Kottmeier, Mr. Stout and Mr.
14 Cardinal?

15 A No.

16 Q What were you doing during that 30 minutes?

17 A Approximately 20 minutes I spent outside the residence
18 doing a variety of things, talking with Mr. Clifford,
19 talking with Mr. Ogino and Mr. Gregonis. Most of the
20 time I spent talking with Dennis Stout, and I spent some
21 time outside the residence talking to Dennis Kottmeier.

22 Q Were you present for a conversation between Mr. Ogino
23 and Mr. Gregonis on the one hand and Mr. Kottmeier on
24 the other?

25 A What I can recall is one comment Mr. Kottmeier made
26 when we arrived back at his car as we were going to leave

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1 the scene.

2 Q Okay. What was that?

3 A I can't recall the exact words, but the thrust of the

4 conversation was issues relating to how a crime scene

5 was to be handled should be resolved by different

6 divisions of the sheriff's office.

7 Q Do you recall Mr. Gregonis making a request to Mr.

8 Kottmeier?

9 A No. He did not, not in my presence. Nor did he make

10 any request of me.

11 Q Do you recall Mr. Gregonis ever indicating to Mr.

12 Kottmeier that he wants to do something?

13 A No.

14 Q On December 12th -- or, excuse me, December 13th, 1983,

15 did you have a conversation with Mr. Gregonis concerning

16 the events of June 6th, 1983?

17 A I can't recall if I did on that date or not. I know

18 he was examined about it at the Preliminary Hearing, and

19 I can't recall whether that was the date he was on the

20 stand at the prelim when we examined him. I know he was

21 also interviewed by Detective Arthur about what he recalled.

22 And at this point, without looking at the report, I can't

23 recall whether I was present when Sergeant Arthur

24 interviewed Mr. Gregonis.

25 Q Well, on December 14th, 1983, do you recall a conference

26 in your office with Mr. Kottmeier, Mr. Arthur, myself and

1 yourself in response to an order from Judge Merriam to
2 reveal to me what Dan said to Chick?

3 A I remember we had the conference.

4 Q Assuming that that conference was the 14th, and also
5 assuming that Mr. Arthur talked to Dan Gregonis on the
6 12th, do you recall talking to him on the 13th?

7 A At this time, no.

8 Q Okay. Do you recall some conversation with Mr. Gregonis
9 about what had occurred on the 6th of June?

10 A Between June the 6th and today's date?

11 Q Back -- some conversation that took place in December
12 of 1983 about that.

13 A I definitely recall that he was questioned on the
14 witness stand, and I -- I'm reasonably certain I would
15 have told him before he got on the witness stand that
16 he could expect questions in that area.

17 Q Do you recall Mr. Gregonis telling you in an off the
18 witness stand conversation that when he had requested
19 more time he didn't remember whether the request was to
20 look at splatters or to gather samples?

21 A I can't recall at this time. I remember him telling me
22 they wanted to look at the patterns on the wall. I
23 definitely remember that. Whether the other item was
24 mentioned or not I don't recall at this point.

25 Q Do you have any -- did you keep notes of your conversations
26 with Mr. Gregonis?

1 A No.

2 Q Do you remember making a statement to me on the 14th
3 that that's what Dan had told you?

4 A I didn't keep notes of that conversation. I don't
5 recall saying that. If I could see my notes, that might
6 refresh my memory.

7 Q Not sure if these notes will do you any good, but there
8 is -- (The witness examined the document.)

9 A Do you want me to look at everything, including what
10 Mr. Kottmeier said to you?

11 (No omissions.)

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1 Q What about Mr. -- the notes would be this that -- I
2 don't know if we should have this marked or not, but
3 the top of the page would be your relating a conver-
4 sation between Gregonis and yourself that occurred
5 the day before, then a line, then the combined
6 recollection of yourself and Mr. Kottmeier with one
7 variation, and then some information from Sergeant
8 Arthur.

9 A This refreshes my memory that Dan Gregonis told me that
10 he wanted to look at splatter patterns. I can't at
11 this point recall whether he told me he was going to
12 gather samples or not.

13 Q Where did you go when you went inside the house?

14 A The Ryen house?

15 Q Yes,

16 A I entered through the sliding glass door to the Ryen
17 master bedroom, went into the Ryen master bedroom,
18 looked into the Ryen master bathroom, walked into the
19 hallway where I now believe, based on photographs,
20 that Jessica was found, looked into the various other
21 bedrooms of the home, walked down the hallway, looked
22 into the non-master bedroom bathroom, walked into the
23 kitchen, the dining room, the trophy room and the
24 living room, back through the hallway back into the
25 living room, out the sliding glass door.

26 Q On June 6, 1983, were you aware that blood needs to be

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1 frozen in order to be reliably serologically typed
2 over a period of time?

3 A No.

4 Q When did you become aware of that?

5 A During the preliminary hearing in this case.

6 Q When the blood was being -- when the various items were --
7 I take that back. Were you aware that various items
8 were going to be removed from the Ryen master bedroom
9 on the evening of June the 6th?

10 A Yes.

11 Q And you were aware that those items had, amongst other
12 things, blood on them?

13 A I was aware the carpet and the bed and the one wall
14 had blood on them, yes.

15 Q Did you do anything at that point in time to try and
16 determine whether or not they -- the blood could be --
17 what was necessary in order to preserve it for
18 typing?

19 A No.

20 Q Why not?

21 A At that point, the crime lab had not developed to the
22 point that they are today in terms of typing. The
23 last case I had handled with them, that essentially
24 involved ABO typing and several enzymes, and in that
25 case, it was not my recollection that they were freezing
26 evidence at that time.

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1 Mr. Ogino and Mr. Gregonis were at the Ryen scene.
2 Sergeant Swanlund was there, and I assume the evidence
3 was going to be taken back to either the crime lab or
4 the Identification Bureau, and by that, I felt we were
5 preserving it.

6 Q In August after Mr. Cooper was arraigned, did I request
7 of you to view the physical evidence at the crime lab?

8 A Yes.

9 Q And did you go out with me the first time that I went
10 out there?

11 A I had been with you twice and Mr. Forbush at the crime
12 lab once in August, once I believe in December. I
13 don't know if the August date was the first date you
14 were there.

15 Q When -- when we were at the crime lab, did we -- did
16 we specifically not look at the items that were being
17 maintained in the serology freezer?

18 A In August and December, yes.

19 Q In fact, to your knowledge, Mr. Forbush and I have never seen
20 any of the items in this serology freezer with the
21 exception that Mr. Forbush saw the tin which at one
22 time had A-41 last week?

23 A I've never been at the crime lab when those items were
24 shown to either you or Mr. Forbush.

25 Q In August, did you become -- did you become aware of the
26 reason why some items were in the freezer and some items

1 weren't?

2 A I don't think I asked that question, and I don't
3 recall that specific issue coming up in August.

4 Q On August the 4th, did you phone me at my business
5 office at approximately 10:30 in the morning?

6 A It was between 9:00 a.m. and 11:00 a.m.

7 Q And you were at the crime lab?

8 A Yes.

9 Q And when you called me, Mr. Gregonis was standing within
10 talking distance of you; is that correct?

11 A Yes, he was.

12 Q And he was relaying information to you?

13 A Yes, he was.

14 Q At that point in time did you give me some serological
15 results which had been done on Mr. Cooper and on A-41?

16 A I'm relatively sure about A-41. I'm not sure about
17 your client, but I'm pretty sure.

18 Q And those included what we now refer to as ABO, Group I
19 and Group IV; is that correct?

20 A At this point, I have trouble recalling, because
21 Mr. Gregonis was using terms with me at that time I
22 was not comfortable with. I was relating information
23 to you over the phone, and from time to time, Mr. Gregonis
24 would stop me and say, no, that's not what we've done,
25 we've done this, and he had to do that to me a number
26 of times.

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1 THE COURT: What date was this, Mr. Kochis?

2 THE WITNESS: August the 4th, 1983.

3 Q BY MR. NEGUS: In the end, did I have a list which I
4 read back to you which you checked with Mr. Gregonis?

5 A I remember you attempting to confirm what I was saying
6 to you.

7 Q Did you take any notes yourself of what you -- what
8 information you gave to me?

9 A No.

10 Q Do you know whether or not you gave me what we now
11 know as Group II results for A-41 on that morning?

12 A No.

13 Q After June the 6th, did you ever return to the Ryen
14 residence?

15 A Yes.

16 Q When was that?

17 A I was in the Chino Hills area the week that we started
18 the preliminary hearing on either November the 7th or
19 November the 8th. I can't specifically recall if I
20 went to the house. I know I did not go inside the
21 house on that date,

22 Q Sometime either in the end of September or the beginning
23 of October, did I request from you that -- did I ask
24 you whether or not the carpet that was next to A-41
25 in the Ryen home was still in existence?

26 A You asked me that at some point in time.

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1 Q You're not sure when?

2 A I seem to recall that it was when I was in trial on
3 the Gray case, and that would be anywhere between the
4 middle of September and the end of the first week of
5 November of 1983.

6 MR. NEGUS: Nothing further.

7 THE COURT: Anything to add?

8

9 CROSS-EXAMINATION

10 BY MR. KOTTMEIER:

11 Q Mr. Kochis, in regard to your assignment on June the
12 6th, you had other assignments in addition to the
13 Cooper case?

14 A Yes.

15 Q And specifically the week of June the 6th, did you have
16 a trip pending in Northern California?

17 A Yes.

18 Q When was that to take place?

19 A I was to leave San Bernardino County on Tuesday, June
20 the 7th.

21 Q And how long was the trip?

22 A I was to return to San Bernardino County Sunday, which
23 is approximately June the 12th.

24 Q And the purpose?

25 A To attend an Advanced Prosecutors' Seminar in San
26 Francisco.

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1 Q At the same time you had pending other cases as well?

2 A I was carrying a felony trial load, including another
3 death penalty murder case, at the time.

4 (No omissions.)

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1 Q Throughout the Cooper investigation and case, have you
2 made yourself available for consultation with investigators
3 should they desire?

4 A With the exception of certain portions of time at which
5 I was engaged in this department in People vs. Gray,
6 at which time, I believe, you and I agreed that you would
7 have that responsibility.

8 Q And after the appointment of the Public Defender's
9 Office, have you been the liaison, so to speak, with
10 the Public Defender as far as trying to get work
11 accomplished and done?

12 A Mr. Negus and I, yes.

13 Q Yes. And during this particular time, are there any
14 requests from the Defense that you have denied or not
15 carried out as far as experimentation with items of
16 evidence in the crime laboratory?

17 A Yes, there have been.

18 Q And have those each time been brought to the Court?

19 A Yes, what I referred to as the UU series that Mr. Negus
20 wanted to take to Northern California and test without
21 my expert being present.

22 Q I guess the only thing I'm trying to reach, Mr. Kochis,
23 is that basically the issues that have come up as far
24 as testing or procedures with evidence all have been
25 resolved to the happiness of the Defense or else brought
26 to the Court.

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1 A With A-41, we stopped the testing until Mr. Negus
2 could get an expert there in August. With any sample
3 that I have been made aware of that may be extended
4 during testing, I have always brought that to Mr. Negus'
5 attention. And, to my understanding, A-41 should be the
6 only one of those.

7 By that, I don't -- I'm not aware that other small
8 samples have been completely expended, unless they were
9 done so prior to the time Mr. Negus was appointed.

10 Q At the time of the seizure from the Ryen home on June
11 6th, what purpose did you have in mind or were you aware
12 of for the seizure of the various items of evidence?

13 A I had conversations with you as to what in your mind
14 was the purpose for seizing the south wall of the Ryen
15 home. I had conversations with Sergeant Swanlund about
16 what else, if anything, was going to be taken from the
17 Ryen master bedroom. Do you want the specific person
18 for this which those were to be done?

19 Q Well, before we get to that, did you participate in the
20 decision to have those items of evidence removed from
21 the dwelling?

22 A No.

23 Q At the time that you were there reviewing the scene with
24 the officers, fellow District Attorneys and myself, did
25 those appear to be items that in your judgment were
26 necessary to remove from the crime scene?

1 A The wall, no. And with reference to the other items
2 that were taken from the master bedroom, my only question
3 was had the officers had time to go over everything
4 in the master bedroom to review it, to which Sergeant
5 Swanlund replied everything from the master bedroom was
6 going to be taken, all the furniture, the carpet, the
7 wall, the clothes, the miscellaneous items of personal
8 property. They were all going to be taken.

9 Q And as a result of all your conversations, those with
10 myself, Sergeant Swanlund and anyone else who was
11 present at the scene, what was the purpose of taking
12 all the various items of evidence?

13 A The wall was taken, I believe, based on the conversations
14 I had with you in that you felt there were splatter
15 patterns of blood on the wall which may or may not have
16 some significance. You felt that if we left the wall
17 behind that it might later be in issue in Superior
18 Court in that a Defense expert or a Defense attorney
19 would argue that we left evidence behind at the scene,
20 specifically, that wall, that they might have wanted to
21 look at to assist them in the defense of their case.

22 Sergeant Swanlund and I had no specific conversation
23 about what was seized, the other items that were seized
24 other than they were being seized so that the investigators
25 could later, if they felt it was necessary, review the
26 items and determine which items, if any, should be

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1 retained during the investigation of this case.

2 Q During the period of time when the items were being
3 seized from the Ryen household, particularly the master
4 bedroom, were you aware of any Prosecution theory of
5 who committed the crime at that time?

6 A On June the 6th, no.

7 MR. KOTTMEIER: I have nothing further, Your Honor.

8 THE COURT: Mr. Negus.

9

10 REDIRECT EXAMINATION

11 BY MR. NEGUS:

12 Q How many different conversations are we talking about
13 involving Mr. Kottmeier and Mr. -- and Mr. Swanlund?

14 A I had a conversation with Mr. Swanlund in the master
15 bedroom of the Ryen scene almost immediately after I
16 entered. Mr. Kottmeier was not present for that
17 conversation. I didn't even know that Mr. Kottmeier
18 was on the scene at that time. Mr. Kottmeier and I had
19 a conversation in the car on the way back to Ontario
20 about the south wall. We also had a conversation, I
21 recall, outside the Ryen scene somewhere in the yard
22 area after I exited the Ryen house.

23 Q What was the conversation you had with Mr. Swanlund in
24 the bedroom?

25 A Mr. Swanlund asked to speak to me in a corner of the bedroom.
26 I walked to that location. And he indicated to me that

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1 Mr. Kottmeier wanted the south wall seized. He was
2 checking with me to see what I thought of that and if
3 I had any other input I wanted to give him.

4 I asked him if the house had been photographed.
5 He said the entire house had been photographed the day
6 before, on Sunday. I asked him if the investigators had
7 had time to look through the master bedroom to look over
8 everything. He said everything in the master bedroom
9 is going to be taken -- is going to be taken when they
10 left the scene that day.

11 Q Did Mr. Swanlund give you any indication as to why it
12 was going to be taken that day?

13 A No, he did not.

14 Q Was that the only conversation you had with Mr. Swanlund
15 on the 6th?

16 A Other than to say, "It looks like you have your work cut
17 out for you. I'm sorry you're being put through this."
18 That was the only thing.

19 Q After that, you went out and then talked to Mr. Kottmeier
20 in the yard?

21 A Yes.

22 Q Okay. Was that before or after the contact with Mr.
23 Kottmeier and Mr. Gregonis and Mr. Ogino?

24 A That was before. The only time I recall Mr. Kottmeier
25 saying anything to Mr. Ogino and Mr. Gregonis was when
26 we arrived at Mr. Kottmeier's car to leave the Chino

1 Hills area.

2 Q Your conversation with Mr. Kottmeier in the yard, of
3 what -- what did that consist of?

4 A I noticed he was there. I walked up to him and I said,
5 "I understand you want the wall taken out of the house."
6 And he said, "That's right."

7 Q And did he give you a reason?

8 A Yes, he did. He said --

9 Q And that was?

10 A He said that he felt there was a pattern on the wall
11 of blood that may be subject to interpretation. He
12 said, "If we leave it, we may be criticized later. It
13 may be an issue in Superior Court, raised by a Defense
14 expert or Defense attorney that the evidence we saw is
15 no longer available to them for analysis, the splatter
16 patterns."

17 To which I responded, "I have been told the entire
18 house is photographed. They could answer that question
19 from a photograph." To which he responded, "If we leave
20 the wall, you can bet a Defense expert would argue
21 the photographs aren't adequate."

22 Q Had you done anything to determine whether the
23 photographs were adequate?

24 A At that point, my thoughts were when I looked at the
25 wall I didn't place that importance on it. It had been
26 photographed. I never had a case in which blood

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1 splatter patterns were an issue. And at that point I
2 had not seen any photographs of the scene.

3 Q During the conversation about observing the wall, was
4 there any conversation about preserving, because of
5 Defense lawyers' request or otherwise, any of the other
6 evidence at the scene?

7 A No, other than a comment made to Mr. Kottmeier that I
8 was told the entire house had been photographed, and
9 that was our usual method of preserving what the crime
10 scene looked like, was photography.

11 THE COURT: When was Mr. Negus first involved in
12 the case, to your knowledge?

13 THE WITNESS: To my knowledge, on -- formally on
14 August the 1st. I recall casual conversation with him
15 prior to that time that possibly if a suspect were
16 apprehended, if he didn't have the means to hire his own
17 attorney, that Mr. Negus may be the one appointed from his
18 office.

19 THE COURT: Was he ever at the scene during the
20 early days?

21 THE WITNESS: I never saw Mr. Negus at the scene
22 on June the 6th. I left San Bernardino County on the 7th.

23 THE COURT: Thank you.

24 MR. NEGUS: If there's any doubt, Your Honor,
25 perhaps you could take judicial notice that the Public
26 Defender was appointed to represent Mr. Cooper on August
27 the 1st. We did have contact -- I'll represent we had

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1 contact with Mr. Cooper on July the 31st at the jail. Mr.
2 Mishook, who was in charge of the office, went down to talk
3 to him, but we were not involved in the case other than
4 reading the papers prior to July 31st.

5 THE COURT: Thank you.

6 Q (BY MR. NEGUS:) The conversation that you had with Mr.
7 Kottmeier in the car, going back to the office, what
8 did that consist of?

9 A It consisted of a number of things. One was, again,
10 mention of asking that the wall be taken; my unavailability
11 the remainder of the week; my unavailability in the
12 event we apprehended a suspect in the case, would be in
13 court either in motions, prelim or jury trial during
14 the latter part of August, early part of September; and
15 an issue as to what role, if any, our office should play
16 in the investigation of the case.

17 (No omissions.)
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1 Q Okay. What did that conversation consist of?

2 A The thrust of the conversation essentially was that
3 we had gone to the scene to prepare ourselves in the
4 event there were other warrants to be drafted or
5 legal questions to be answered, that the officers
6 were aware that if Mr. Kottmeier was not available,
7 if I was not available, Mr. Stout would be available;
8 that we would not demand or request to be silent
9 observers in that we would not assign a lawyer to ask
10 if he could follow the investigators around, and that
11 we would not start reviewing written reports until a
12 suspect was apprehended.

13 Q And did you not review written reports until a suspect
14 was apprehended?

15 A I did not. I don't recall seeing anything in writing
16 on the case, other than a search warrant that was
17 typed, until after Mr. Cooper was arraigned at the
18 County Jail in August.

19 Q That search warrant was in the beginning of July that
20 Judge Turner -- from Mr. Hall for a phone record; is
21 that the one you're referring to?

22 A There were a number of search warrants. I recall one
23 on June the 6th, one on June the 7th, then possibly one
24 in the month of July.

25 Q When you received your copy of the police reports, were
26 you briefed as to what was significant and what was not

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1 significant?

2 A What happened in this case, due to the nature of when
3 we apprehended Mr. Cooper, I didn't receive all the
4 reports. They were divided between Mr. Kottmeier and
5 myself. I started to review some of the reports, and
6 then I got stuck in other trials, Mr. Combee's trial,
7 Mr. Sullivan's trial with you, and then shortly
8 thereafter, in Department 3, with Derrick Gray, at
9 which point I gave all the reports in my possession
10 back to Mr. Kottmeier.

11 Q Is it fair to say then before the preliminary hearing,
12 you had not even had a chance to review all those
13 reports that were in the initial discovery?

14 A I have a report that would assist me in answering that.
15 I don't have that with me on the witness stand, and I
16 don't know if it's in the courtroom, but I did not
17 review everything prior to the time of the preliminary
18 hearing.

19 A And during the initial stages of this investigation,
20 I like you was also carrying other felony cases and
21 going to trial in other cases; is that correct?

22 A You and I had one trial together, and we discussed
23 the fact, I believe, that as of August, you were going
24 to be able to get rid of all your cases with the
25 exception of two or three, the Sullivan case, and I
26 can't recall the name of the other case.

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1 Q Do you recall whether in fact for the first 10 or 12
2 days after August I was in a continuing robbery trial?

3 A I wasn't keeping track of you. I don't know where
4 you were at that point.

5 MR. NEGUS: Thank you.

6 Nothing further.

7 MR. KOTTMEIER: No further questions, Your Honor.

8 THE COURT: All right. Thank you.

9 Further witnesses?

10 MR. NEGUS: Sergeant Arthur?

11

12 B I L L A R T H U R, called as a witness by the defense,
13 having been previously duly sworn, was examined and
14 testified as follows:

15 THE CLERK: Do you want him resworn?

16 THE COURT: You remain under oath, Sergeant. Take
17 the stand and state your name again, please.

18 THE WITNESS: Bill Arthur.

19

20 DIRECT EXAMINATION

21 BY MR. NEGUS;

22 Q Sergeant Arthur, pursuant to my request, did you ask
23 the ID Bureau to obtain some additional photographs
24 whose numbers I gave you that were -- that had been
25 taken by the ID Bureau in this particular case?

26 A I have done that several times for you.

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1 Q Okay, and showing you Exhibit H-326, -327, -328, -329,
2 -330, -331 and -332, are those a series of such photos?

3 A They may well be. I did not look at the photos that
4 you requested. I looked at the numbers you requested,
5 and I believe those numbers are consistent with the
6 ones you have requested.

7 Q Now, you were present at the Ryen house during the time
8 that the bodies of the various victims were being
9 removed; is that correct?

10 A That's correct.

11 Q Showing you first of all photograph H-330, is that a
12 photograph of the place that the body bag was placed
13 for the removal of Douglas Ryen from the crime scene?

14 A I believe that's correct.

15 Q And showing you photographs H-326 and H-327, do those
16 depict Christopher Hughes in his body bag on the floor
17 of the Ryen master bedroom?

18 A Yes.

19 Q And showing you photograph H-329, does that depict
20 the process of removing Jessica, picking her up off
21 the floor before she was placed in the body bag?

22 A Yes.

23 Q In -- does photograph H-328 likewise depict the moving
24 of Jessica's body before she was placed in the body bag?

25 A Yes.

26 Q Showing you H-331, is that an accurate reproduction of

1 the position of Jessica's body before she was moved
2 by the body people and as you first saw her?

3 A Well, I believe so. This doesn't depict her whole
4 body and, basically, I believe that's correct.

5 Q It shows the upper part of her body, arms and head,
6 as they existed?

7 A Yes.

8 Q And showing you finally photograph H-332, did you have
9 an opportunity to observe various items of hair on --
10 in one of Jessica's and attached to one of Jessica's
11 hands?

12 A No.

13 Q On the -- on December 12, 1983, did you have a conver-
14 sation with Dan Gregonis at the crime lab?

15 A Yes.

16 Q During that conversation, did Mr. Gregonis tell you that
17 Mr. Gregonis and Mr. Ogino had talked to the District
18 Attorney Kottmeier about blood splattering and the
19 reconstruction of blood splatters?

20 A Yes,

21 Q Did he tell you that the District Attorney had responded
22 to him when he asked for more time, well, we're definitely
23 going to take the wall, and that Mr. Kottmeier did not
24 want there to be any further question of blood evidence
25 like there was in the Manson case?

26 A That's correct,

1 Q Did Mr. Gregonis further tell you that he and Mr. Ogino
2 approached Sergeant Swanlund?

3 A Yes.

4 Q And that at that point in time, Sergeant Swanlund was
5 busy preparing the room for movement?

6 A I believe that's correct.

7 Q On the same date at approximately 10:30 in the evening,
8 did you have a telephone interview with Craig Ogino?

9 A Yes.

10 Q During that interview, did Mr. Ogino tell you about
11 conversations between Mr. Kottmeier and Mr. Swanlund?

12 A I believe that's true, yes.

13 Q And did he say that Mr. Kottmeier and Mr. Swanlund
14 were talking about holding the evidence, where to hold
15 it, and the length of time required to hold it?

16 A That's correct.

17 Q Did you on December the 10th have a conversation with
18 Sergeant Swanlund?

19 A I believe that's the date, yes.

20 Q During that conversation did Mr. Swanlund indicate that
21 he had placed a phone call to you concerning additional
22 items that the District Attorney had requested being
23 taken from the Ryen bedroom?

24 A That's correct.

25 Q And did Mr. Swanlund tell you that -- did he discuss --
26 did Mr. Swanlund tell you on the 10th that back on the

1 6th, he had discussed with you the possibility of
2 the need for being at the residence for several days
3 in regard to removing the items? Do you follow me?
4 On the 10th when you talked to -- when you talked to
5 Mr, Swanlund, you talked to him about a conversation
6 you and he had back on the 6th?

7 A. Yes.

8 (No omissions.)
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- 1 Q In relating to you on the 10th the substance of that
2 conversation on the 6th, did Mr. Swanlund say that you
3 and he on the 6th had talked about the possibility of
4 him remaining at the house for several days and removing
5 the items?
- 6 A There was some talk. I'm not sure of on the 10th that
7 taking place. But on -- during the time frame we were
8 moving the items out, he did talk to me about the removal
9 of certain items, including the wall. He had been
10 assigned there to remove those items, and --
- 11 Q There's one thing that -- do you have your report of your
12 interview with Sergeant Swanlund with you?
- 13 A No, I don't.
- 14 Q Showing you a photograph that I have numbered as No. 5,
15 does that indicate that during your December 10th
16 conversation with Sergeant Swanlund that he had called
17 you to let you know there was a possibility of the need
18 for being at the residence for several days in regards
19 to removing these items?
- 20 A That -- basically that's true, that he was talking
21 about the wall. However, he didn't know how he was
22 going to remove that wall.
- 23 Q The statement, though, you took from -- from Sergeant
24 Swanlund on the 10th had to do with removing these
25 items; is that right?
- 26 A Yes, but I recall what he said on the -- on the 6th

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1 when he called me, too.

2 Q Right. But I'm just not asking you about your recollec-

3 tion of that conversation. Just -- we're now just

4 talking about Sergeant Swanlund.

5 A That's correct.

6 Q When he talked to you on the 10th, he was talking about

7 these items; is that right?

8 A That's correct.

9 Q Did you ever request that Sergeant Swanlund at a date

10 after the 6th remove additional items, like doors and

11 molding and that sort of thing, from the Ryen house?

12 A I don't know if I requested it or not. I was just aware

13 of the request.

14 Q What -- well, whichever it was, what were you aware

15 of was to be removed?

16 A Well, after the 6th, after the wall and all the

17 furniture, carpet, et cetera had been removed from --

18 from the room, I became aware -- we became aware of the

19 need for moldings and doors. And at that time, Swanlund

20 was then assigned or had someone assigned to go out

21 and remove those items.

22 Q Okay. Were there -- was there a list of specified

23 moldings and doors, or were they just somehow described?

24 A I don't recall.

25 Q Did you yourself ever draw a list for Swanlund, "Take

26 that, that, that and that"?

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1 A I don't -- I don't believe I did.

2 MR. NEGUS: I have nothing further.

3 MR. KOCHIS: I have no questions on this area.

4 THE COURT: Thank you again.

5 Mr. Negus.

6 MR. NEGUS: I have no further witnesses at this time.

7 THE COURT: Mr. Kochis, anything?

8 MR. KOCHIS: Not at this time.

9 THE COURT: All right. We'll break it until
10 tomorrow morning at 9:30.

11 MR. KOCHIS: Your Honor, in regards to tomorrow,
12 I have made some telephone calls. And two of the witnesses
13 I had scheduled for Wednesday, assuming their investigation
14 on another murder case completes today, can be here tomorrow
15 at 9:30. Their testimony would last half an hour. Does
16 the Court wish me to have those persons present tomorrow
17 to proceed?

18 THE COURT: I prefer you talk it over with Mr.
19 Negus first to see if he would yield, so to speak. If the
20 two of you can arrange your logistics together informally,
21 I would prefer it.

22 MR. KOCHIS: I don't think he's going to object if
23 I have those people here tomorrow. I don't think his
24 position tomorrow morning is going to be much different than
25 it is today in regard to Mr. Forbush. So I can --

26 THE COURT: Are you telling me you're not going to

1 put Mr. Forbush on tomorrow?

2 MR. NEGUS: If you insist upon it, but -- if I have
3 to have a choice between putting him on tomorrow or not,
4 under the circumstances in which I don't think I could
5 properly do it, I won't put him on. I mean, because I'm
6 not going -- I know that Mr. Forbush is bringing me some
7 stuff. I have to have some time to think about it. I can't
8 do it tomorrow. So I won't put him on, if that's -- I mean,
9 if you're going to order me to put him on when I'm not
10 prepared, I think it's important that the risk part outweighs
11 the advantages. And I'm not going to do it.

12 THE COURT: All right. Then be prepared with
13 whatever you've got. Mr. Forbush, then, will either be
14 called tomorrow or not at all.

15 MR. NEGUS: That's -- so be it.

16 THE COURT: All right. Then let's have as many
17 witnesses as you can tomorrow, if you have further
18 witnesses.

19 Will you have any further witnesses other than Mr.
20 Forbush now and the witness that you've got scheduled for
21 the end of the month?

22 MR. NEGUS: I --

23 THE COURT: What else can we do? I mean, we're
24 ready to move into other matters after he runs out of
25 witnesses, perhaps, and I can't make a decision on this
26 point.

1 MR. NEGUS: Well, that's why I'm -- I have no -- I
2 would suggest that -- I believe, if permitted, there may be
3 a few other witnesses besides Dr. Thornton that I wish to call.
4 I don't know right now whether I need to call Dr. Blake.
5 I will not be able to do that, I'll tell you that, until I
6 have, A, found out what the results of Mr. Wraxall's and
7 Mr. Gregonis' analysis of various blood items are, which
8 they haven't completed, which I think relate to the particular
9 motion, and, two -- that's one, A. And, B, until I have a
10 chance to read in more detail the testimony of Mr. Gregonis
11 that we had last week, neither of which have I had -- well,
12 I certainly haven't gotten the results of the -- of the
13 complete laboratory work, and I don't know when I'm going
14 to get --

15 THE COURT: I can't understand this, Mr. Negus.

16 MR. NEGUS: Well --

17 THE COURT: Will you have witnesses tomorrow?

18 MR. NEGUS: I have no further witnesses except Mr.
19 Forbush until July 31st.

20 THE COURT: July when?

21 MR. NEGUS: July 31st.

22 I'll be ready to put Mr. Forbush on Wednesday. If
23 we didn't do anything in the morning, I could probably be
24 ready to put him on tomorrow afternoon.

25 THE COURT: Mr. --

26 MR. NEGUS: But --

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1 THE COURT: Mr. Kochis --

2 MR. KOCHIS: Three to four witnesses. Those are
3 Mr. Stockwell, Mr. Hall, that I can have available tomorrow
4 morning. We're going to have a stipulation as to Mr. Wilson.
5 If he's available, he'll be here in the morning. Detective
6 Clifford, Wednesday morning. I doubt he's going to take more
7 than a half an hour. And if Sergeant Arthur gets done
8 reviewing the tape tonight, I'll put him on simply to lay a
9 foundation to a transcript I'm going to offer into evidence
10 tomorrow as well. So I believe I would be resting Wednesday
11 morning.

12 THE COURT: Then we'll perhaps run out of witnesses
13 by noon tomorrow?

14 MR. KOCHIS: Your Honor, if I have Mr. Wilson, Mr.
15 Arthur, Mr. Stockwell and Mr. Hall here tomorrow, I don't
16 think they're going to go to noon. I would -- I would
17 estimate they would be, the four of them together, somewhere
18 between an hour and a hour and a half.

19 THE COURT: Well, I'm going to do my best to utilize
20 the time we have. And I'm not sure which area we're able to
21 do without extensive preparation, but surely there must be
22 some things we can simply run through the laundry list and
23 see what we can do. I don't desire to take any more time
24 than necessary.

25 Do you have any suggestions that we can discuss or
26 work on tomorrow, either of you, any of you?

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